42 U.S.C.A. § 1983

Effective: October 19, 1996

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

→§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1979 Acts. House Report No. 96-548, see 1979 U.S. Code Cong. and Adm. News, p. 2609.

1996 Acts. Senate Report No. 104-366, see 1996 U.S. Code Cong. and Adm. News, p. 4202.

Codifications

R.S. § 1979 is from Act Apr. 20, 1871, c. 22, § 1, 17 Stat. 13.

Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

Amendments

1996 Amendments. Pub.L. 104-317, § 309(c), inserted provisions relating to immunity of judicial officers from injunctive relief unless declaratory decree was violated or declaratory relief is unavailable.

1979 Amendments. Pub.L. 96-170 added "or the District of Columbia" following "Territory," and provisions relating to Acts of Congress applicable solely to the District of Columbia.

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42 U.S.C.A. § 1983

Effective and Applicability Provisions

1979 Acts. Amendment by Pub.L. 96-170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub.L. 96-170, set out as a note under section 1343 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Attorney's fees to prevailing party other than United States, see 42 USCA § 1988.

Citizenship clause, see USCA Const. Amend. XIV, § 1.

Conspiracy to interfere with civil rights, damages for, see 42 USCA § 1985.

Crime victims' rights, rights afforded and best efforts to accord rights, procedures to promote compliance, see 18 USCA § 3771.

Institutionalized persons required to exhaust remedies to maintain action under this section, see 42 USCA § 1997e.

Jurisdiction of district courts of civil rights actions, see 28 USCA § 1343.

Privileges and immunities clauses, see USCA Const. Art. IV § 2, cl. 1 and Amend. XIV, § 1.

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106 ALR, Fed. 636, What Persons or Entities May be Liable to Pay Attorney's Fees Awarded Under Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C.A. § 1988).

107 ALR, Fed. 21, First Amendment Protection for Public Hospital or Health Employees Subjected to Discharge, Transfer, or Discipline Because of Speech.

107 ALR, Fed. 686, Termination of Agency or Employment Relationship as Depriving Person of Civil Rights in Violation of 42 U.S.C.A. § 1985(3).

107 ALR, Fed. 758, What Statute of Limitations Applies to Civil Actions Brought in Federal Court Under Education of the Handicapped Act (20 U.S.C.A. §§ 1400 et seq.) to Challenge Findings and Decisions of State Administrative...

108 ALR, Fed. 117, First Amendment Protection for Judges or Government Attorneys Subjected to Discharge, Transfer, or Discipline Because of Speech.

108 ALR, Fed. 862, Action of Court or Clerk of Court as Constituting or Supporting Finding of "Good Cause," Under Rule 4(J) of Federal Rules of Civil Procedure, for Failure to Timely Serve Process Upon Defendant.

109 ALR, Fed. 9, First Amendment Protection for Law Enforcement Employees Subjected to Discharge, Transfer, or Discipline Because of Speech.

110 ALR, Fed. 211, Constitutionality of Regulation or Policy Governing Prayer, Meditation, or "Moment of Silence" in Public Schools.

110 ALR, Fed. 690, Use of Peremptory Challenges to Exclude Ethnic and Racial Groups, Other Than Black Americans, from Criminal Jury--Post-Batson Federal Cases.

102 ALR, Fed. 616, Liability, Under 42 U.S.C.A. § 1983, for Injury Inflicted by Dogs Under Control or Direction of Police.

103 ALR, Fed. 120, Construction of "Stay-Put" Provision of Education of the Handicapped Act (20 U.S.C.A. § 1415(E)(3)), that Handicapped Child Shall Remain in Current Educational Placement Pending Proceedings Conducted Under...

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104 ALR, Fed. 14, Right of Defendant in Civil Rights Case to Receive Award of Attorney's Fees Under Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C.A. § 1988).

105 ALR, Fed. 254, Applicability and Application of § 2 of Voting Rights Act of 1965 (42 U.S.C.A. § 1973) to Members of School Board.

105 ALR, Fed. 755, Necessity of Oral Argument on Motion for Summary Judgment or Judgment on Pleadings in Federal Court.

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105 ALR, Fed. 816, Sufficiency of Suggestion of Death of Party, Filed Under Rule 25(A)(1) of Federal Rules of Civil Procedure, Governing Substitutions of Party After Death.

105 ALR, Fed. 851, Appealability, Under Collateral Order Doctrine, of Order Denying Qualified Immunity in 42 U.S.C.A. § 1983 or Bivens Action for Damages Where Claim for Equitable Relief is Also Pending--Post-Harlow...

96 ALR, Fed. 13, Imposition of Sanctions Under Rule 11, Federal Rules of Civil Procedure, Pertaining to Signing and Verification of Pleadings, in Action for Wrongful Discharge from Employment.

96 ALR, Fed. 275, Recoupment by Alien or Foreign Entity of Attorneys' Fees Under Equal Access to Justice Act (28 U.S.C.A. § 2412).

99 ALR, Fed. 30, Award of Attorneys' Fees in Actions or Proceedings Under Age Discrimination in Employment Act of 1967 (29 U.S.C.A. §§ 621 et seq.).

99 ALR, Fed. 501, Excessiveness or Adequacy of Awards of Compensatory Damages in Civil Actions for Deprivation of Rights Under 42 U.S.C.A. § 1983--Modern Cases.

99 ALR, Fed. 700, Immunity of Federal Tax Agent from Suit Based Upon Agent's Effort to Enforce or Collect Tax.

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100 ALR, Fed. 880, Federal Rules of Civil Procedure, or State Law as Governing Relation Back of Amended Pleading.

91 ALR, Fed. 178, Job Discrimination Against Unwed Mothers or Unwed Pregnant Women as Proscribed Under Pregnancy Discrimination Act (42 U.S.C.A. § 2000e(K)).

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93 ALR, Fed. 314, Actions Under 42 U.S.C.A. § 1983 for Violations of Adoption Assistance and Child Welfare Act (42 U.S.C.A. §§ 620 et seq. and 670 et seq.).

93 ALR, Fed. 706, Validity, Construction, Application, and Effect of Civil Rights of Institutionalized Persons Act, 42 U.S.C.A. §§ 1997-1997j.

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87 ALR, Fed. 148, Validity, Under Federal Constitution, of Regulations, Rules, or Statutes Allowing Drug Testing of Students.

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88 ALR, Fed. 478, Opposition to Construction of New Hospital or Expansion of Existing Hospital's Facilities as Violation of Sherman Act (15 U.S.C.A. §§ 1 et seq.).

89 ALR, Fed. 514, Modern Status of Federal Civil Procedure Rule 54(B) Governing Entry of Judgment on Multiple Claims.

90 ALR, Fed. 157, Imposition of Sanctions Under Rule 16(F), Federal Rules of Civil Procedure, for Failing to Obey Scheduling or Pretrial Order.

81 ALR, Fed. 36, What Conduct Constitutes Multiplying Proceedings Unreasonably and Vexatiously So as to Warrant Imposition of Liability on Counsel Under 28 U.S.C.A. § 1927 for Excess Costs, Expenses, and Attorney...

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82 ALR, Fed. 829, Proper Test to Determine Identity of Claims for Purposes of Claim Preclusion by Res Judicata Under Federal Law.

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85 ALR, Fed. 750, Propriety and Construction of "Totality of Conditions" Analysis in Federal Court's Consideration of Eighth Amendment Challenge to Prison Conditions.

76 ALR, Fed. 46, Discretionary Exercise of Pendent Jurisdiction of Federal Court Over State Claim When Joined With Claim Arising Under Laws, Treaties, or Constitution of United States.

76 ALR, Fed. 199, When Will Premature Notice of Appeal be Retroactively Validated in Federal Civil Case.

76 ALR, Fed. 347, Effect of Contingent Fee Contract on Fee Award Authorized by Federal Statute.

76 ALR, Fed. 504, Propriety of Federal Court's Ordering State or Local Tax Increase to Effectuate Civil Rights Decree.

76 ALR, Fed. 522, When Will Federal Court of Appeals Review Issue Raised by Party for First Time on Appeal Where Legal Developments After Trial Affect Issue.

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71 ALR, Fed. 961, Provision of Family Planning Services Under Title X of Public Health Service Act (42 U.S.C.A. §§ 300-300a-8) and Implementing Regulations.

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72 ALR, Fed. 395, Psychotherapist-Patient Privilege Under Federal Common Law.

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73 ALR, Fed. 271, Appealability, Under 28 U.S.C.A. § 1291, of Order Awarding or Denying Attorneys' Fees.

73 ALR, Fed. 448, What is "Interest" Relating to Property or Transaction Which is Subject of Action Sufficient to Satisfy that Requirement for Intervention as Matter of Right Under Rule 24(A)(2) of Federal Rules of Civil...

73 ALR, Fed. 698, Sufficiency of Demand for Jury Trial Under Rule 38(B) of Federal Rules of Civil Procedure.

74 ALR, Fed. 327, When is Interest of Proposed Intervenor Inadequately Represented by Existing Party So as to Satisfy that Requirement for Intervention as of Right Under Rule 24(A)(2) of Federal Rules of Civil...

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74 ALR, Fed. 895, What Constitutes Impairment of Proposed Intervenor's Interest to Support Intervention as Matter of Right Under Rule 24(A)(2) of Federal Rules of Civil Procedure in Employment Discrimination Actions.

75 ALR, Fed. 600, Existence of Pendent Jurisdiction of Federal Court Over State Claim When Joined With Claim Arising Under Laws, Treaties, or Constitution of United States.

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70 ALR, Fed. 17, Liability of Supervisory Officials and Governmental Entities for Having Failed to Adequately Train, Supervise, or Control Individual Peace Officers Who Violate Plaintiff's Civil Rights Under 42 U.S.C.A. Sec....

70 ALR, Fed. 371, Dismissal Of, or Other Adverse Personnel Action Relating To, Public Employee for Political Patronage Reasons as Violative of First Amendment.

61 ALR, Fed. 7, Defense of Good Faith in Action for Damages Against Law Enforcement Official Under 42 U.S.C.A. § 1983, Providing for Liability of Person Who, Under Color of Law, Subjects Another to Deprivation Of...

61 ALR, Fed. 359, Admissibility of Records Other Than Police Reports, Under Rule 803(6), Federal Rules of Evidence, Providing for Business Records Exception to Hearsay Rule.

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62 ALR, Fed. 376, Exhaustion of State Administrative Remedies Under § 615 of the Education for All Handicapped Children Act (20 U.S.C.A. § 1415).

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63 ALR, Fed. 155, Availability of Postconviction Relief Under 28 U.S.C.A. § 2254 Based on Alleged Governmental Violation of Interstate Agreement on Detainers Act (18 U.S.C.A. App. 2).

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57 ALR, Fed. 504, Legislative Immunity of State Officials from Federal Civil Suit for Injunctive Relief Brought Pursuant to 42 U.S.C.A. § 1983.

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60 ALR, Fed. 204, When Does Police Officer's Use of Force During Arrest Become So Excessive as to Constitute Violation of Constitutional Rights, Imposing Liability Under Federal Civil Rights Act of 1871...

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51 ALR, Fed. 829, Effect of Prior State Court Judgment Upon Action in Federal District Court for Unlawful Employment Practices Under Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

52 ALR, Fed. 106, Applicability of 42 U.S.C.A. § 1985(3), Providing Remedy to One Injured by Conspiracy to Deprive Him of Civil Rights, to Activity of Single Corporation or to Concerted Activity of Its Directors, Employees, Agents...

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52 ALR, Fed. 679, Standards for Determining Whether Proceedings in Forma Pauperis Are Frivolous and Thus Subject to Dismissal Under 28 U.S.C.A. § 1915(D).

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48 ALR, Fed. 259, Situations in Which Federal Courts Are Governed by State Law of Privilege Under Rule 501 of Federal Rules of Evidence.

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49 ALR, Fed. 590, Private Club Coverage Under 42 U.S.C.A. § 1983.

49 ALR, Fed. 955, Action of Private Organization Providing Legal Aid With Public Funds as State Action Within 42 U.S.C.A. § 1983.

50 ALR, Fed. 472, Propriety Under 28 U.S.C.A. § 1920 and Rule 54(D) of the Federal Rules of Civil Procedure of Allowing Prevailing Party Costs for Copies of Depositions.

50 ALR, Fed. 516, Validity, Under First Amendment and 42 U.S.C.A. § 1983, of Public College or University's Refusal to Grant Formal Recognition To, or Permit Meetings Of, Student Homosexual Organizations On...

50 ALR, Fed. 652, What Circumstances Justify Award of Damages And/Or Double Costs Against Appellant's Attorney Under 28 U.S.C.A. § 1912, or Rule 38 of the Federal Rules of Appellate Procedure.

50 ALR, Fed. 773, Right to Relief, Under 42 U.S.C.A. § 1983, for Alleged Unlawful Action by State or Local Tax Officials.

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42 ALR, Fed. 163, Survivability of Civil Rights Cause of Action Based on 42 U.S.C.A. § 1983.

42 ALR, Fed. 189, Refusal to Hire, or Dismissal from Employment, on Account of Plaintiff's Sexual Lifestyle or Sexual Preference as Violation of Federal Constitution or Federal Civil Rights Statutes.

42 ALR, Fed. 463, Action of Private Hospital as State Action Under 42 U.S.C.A. § 1983 or Fourteenth Amendment.

43 ALR, Fed. 243, Construction and Application of Civil Rights Attorney's Fees Awards Act of 1976 (Amending 42 U.S.C.A. § 1988), Providing that Court May Allow Prevailing Party, Other Than United States, Reasonable Attorney's Fee In...

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44 ALR, Fed. 225, Actionability, Under 42 U.S.C.A. § 1983, of Claims Against Persons Other Than Police Officers for False Arrest or False Imprisonment.

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44 ALR, Fed. 574, Right of Alien Who is Under Deportation Proceedings to Depart Voluntarily from United States, Under § 244(E) of Immigration and Nationality Act (8 U.S.C.A. § 1254(E)).

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44 ALR, Fed. 709, Order on Motion to Disqualify Counsel as Separately Appealable Under 28 U.S.C.A. § 1291.

44 ALR, Fed. 886, Scheduling Election on Religious Holiday as Violation of Federal Constitutional Rights.

45 ALR, Fed. 428, Who is a "Guard" Within Meaning of § 9(B)(3) of National Labor Relations Act (29 U.S.C.A. § 159(B)(3)), Prohibiting Certification of Bargaining Units and Bargaining Representatives Composed of Both Guard And...

45 ALR, Fed. 548, What Statute of Limitations is Applicable to Civil Rights Action Brought Under 42 U.S.C.A. § 1983.

45 ALR, Fed. 639, Construction and Application of Provision of Rule 611(B) of Federal Rules of Evidence that Cross-Examination Should be Limited to Subject Matter of Direct Examination.

45 ALR, Fed. 732, What Constitutes Such Discriminatory Prosecution or Enforcement of Laws as to Provide Valid Defense in Federal Criminal Proceedings.

45 ALR, Fed. 871, Arrest and Transportation of Fugitive Without Extradition Proceedings as Violation of Civil Rights Actionable Under 42 U.S.C.A. § 1983.

45 ALR, Fed. 902, State Regulation of Sporting Events as State Action Within Meaning of 42 U.S.C.A. § 1983.

36 ALR, Fed. 9, What Constitutes "Business Necessity" Justifying Employment Practice Prima Facie Discriminatory Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

36 ALR, Fed. 564, Construction and Application of Rule 608(B) of Federal Rules of Evidence Dealing With Use of Specific Instances of Conduct to Attack or Support Credibility.

36 ALR, Fed. 594, Court-Appointed Attorney as Subject to Liability Under 42 U.S.C.A. § 1983.

36 ALR, Fed. 763, Appealability of Discovery Order as "Final Decision" Under 28 U.S.C.A. § 1291.

37 ALR, Fed. 274, In Banc Proceedings in Federal Courts of Appeals.

37 ALR, Fed. 601, Action of Private Institution of Higher Education as Constituting State Action, or Action Under Color of Law, for Purposes of Fourteenth Amendment and 42 U.S.C.A. § 1983.

37 ALR, Fed. 696, Federal Constitutional Right to Bear Arms.

38 ALR, Fed. 27, Appropriateness of Particular Forms of Nonmonetary Affirmative Relief Under § 706(G) of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5(G)), as Against Employers.

38 ALR, Fed. 824, Effect, on Jurisdiction of State Court, of 28 U.S.C.A. § 1446(E), Relating to Removal of Civil Case to Federal Court.

39 ALR, Fed. 829, Appellate Review of Order Denying Extension of Time for Filing Notice of Appeal Under Rule 4(A) of Federal Rules of Appellate Procedure.

39 ALR, Fed. 871, Right of Press, in Criminal Proceeding, to Have Access to Exhibits, Transcripts, Testimony, and Communications Not Admitted in Evidence or Made Part of Public Record.

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40 ALR, Fed. 740, Appealability Under "Collateral Order" Doctrine of Order Staying or Dismissing, or Refusing to Stay or Dismiss, Proceedings in United States District Court Pending Federal or State Administrative...

31 ALR, Fed. 108, Right to Maintain Private Employment Discrimination Action Under Executive Order 11246, as Amended, Prohibiting Employment Discrimination by Government Contractors and Subcontractors.

31 ALR, Fed. 457, Admissibility of Police Reports Under Federal Business Records Act (Federal Rules of Evidence, Rule 803, and Predecessor Amendments).

31 ALR, Fed. 833, Award of Counsel Fees to Prevailing Party Based on Adversary's Bad Faith, Obduracy, or Other Misconduct.

32 ALR, Fed. 7, Consideration of Work Performance or Production Records as Pretext for Unlawful Employment Practice Violative of Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

32 ALR, Fed. 155, Validity, Under Fourth Amendment, of Warrantless Search of Parolee or His Property by Parole Officer.

32 ALR, Fed. 431, Private Person's Enforcement of Lien Through Self-Help as Act "Under Color of State Law" Within Meaning of 42 U.S.C.A. § 1983.

32 ALR, Fed. 601, Fourth Amendment as Protecting Prisoner Against Unreasonable Searches or Seizures.

32 ALR, Fed. 674, Appealability of Order Allowing Action to Proceed as Class Action Under Rule 23 of Federal Rules of Civil Procedure.

32 ALR, Fed. 772, Necessity of Statement of Reasons Underlying District Court's Decision to Grant Certification Under Rule 54(B) of Federal Rules of Civil Procedure.

33 ALR, Fed. 403, Pretrial Discovery of Facts Known and Opinions Held by Opponent's Experts Under Rule 26(B)(4) of Federal Rules of Civil Procedure.

33 ALR, Fed. 484, Mootness of Class Representative's Claim Pending Litigation as Precluding Maintenance of Class Action Under Rule 23 of Federal Rules of Civil Procedure, as Amended in 1966.

35 ALR, Fed. 727, Construction and Application of Provision of Rule 51 of Federal Rules of Civil Procedure Requiring Party Objecting to Instructions or Failure to Give Instruction to Jury, to State "Distinctly the Matter to Which He..."

26 ALR, Fed. 13, What Constitutes Reverse or Majority Discrimination on Basis of Sex or Race Violative of Federal Constitution or Statutes.

26 ALR, Fed. 218, Modern Status of Rule as to Test in Federal Court of Effective Representation by Counsel.

26 ALR, Fed. 535, Propriety and Prejudicial Effect of Compelling Accused to Wear Prison Clothing at Jury Trial--Federal Cases.

26 ALR, Fed. 569, What Constitutes "Excusable Neglect" Which Will Permit Federal District Court to Extend Time for Filing Notice of Appeal from Civil Judgment Under Rule 4(A) of Federal Rules of Appellate Procedure and Under Former Rule...

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27 ALR, Fed. 29, Diluting Effect of Minorities' Votes by Adoption of Particular Election Plan, or Gerrymandering of Election District, as Violation of Equal Protection Clause of Federal Constitution.

27 ALR, Fed. 407, Construction and Application of Provision of Rule 9(B), Federal Rules of Civil Procedure, that Circumstances Constituting Fraud or Mistake be Stated With Particularity.

27 ALR, Fed. 537, Pregnancy Leave or Maternity Leave Policy, or Lack Thereof, as Unlawful Employment Practice Violative of Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

28 ALR, Fed. 26, Voir Dire Examination of Prospective Jurors Under Rule 24(A) of Federal Rules of Criminal Procedure.

28 ALR, Fed. 129, Construction and Application of Rule 15(D) of Federal Rules of Civil Procedure Providing for Allowance of Supplemental Pleadings Setting Forth Transactions, Occurrences, or Events Subsequent to Original...

28 ALR, Fed. 279, Relief Under Federal Civil Rights Acts to State Prisoners Complaining of Denial of Medical Care.

28 ALR, Fed. 422, Validity, Construction, and Application of Johnson Act (28 U.S.C.A. § 1342), Prohibiting Interference by Federal District Courts With State Orders Affecting Rates Chargeable by Public Utilities.

28 ALR, Fed. 488, Civil Actions Removable from State Court to Federal District Court Under 28 U.S.C.A. § 1443.

28 ALR, Fed. 719, Propriety, Under Rule 23 of Federal Rules of Civil Procedure, of Class Action for Injuries and Deaths in Airplane Crash.

29 ALR, Fed. 7, What Constitutes "Good Cause" Allowing Federal Court to Relieve Party of His Default Under Rule 55(C), of Federal Rules of Civil Procedure.

29 ALR, Fed. 418, Validity, Under Federal Constitution and Laws, of Self-Help Repossession Provision of § 9-503 of Uniform Commercial Code.

29 ALR, Fed. 482, Statute of Limitations Under Federal Tort Claims Act (28 U.S.C.A. § 2401(B)).

29 ALR, Fed. 710, State Statute of Limitations as Affecting Federal Civil Rights Actions Under 42 U.S.C.A. § 1981 .

29 ALR, Fed. 792, Employer's Height or Weight Requirement as Unlawful Employment Practice Violative of Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

30 ALR, Fed. 934, Validity, Under Federal Constitution, of State Bar Examination Procedures.

22 ALR, Fed. 272, Refusal of Municipality to Annex Impoverished Area as Violative of Federal Law.

22 ALR, Fed. 765, Who Must be Joined in Action as Person "Needed for Just Adjudication" Under Rule 19(A) of Federal Rules of Civil Procedure.

23 ALR, Fed. 6, Relief Under Federal Civil Rights Acts to State Prisoners Complaining of Interference With Access to Courts.

23 ALR, Fed. 232, Who is "Dependent Child" Within Meaning of §§ 406(A), 407(A), and 408(A) of the Social

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Security Act (42 U.S.C.A. §§ 606(A), 607(A), and 608(A), Entitling Families to Aid for Dependent Children...

23 ALR, Fed. 611, Domicil of Prisoner for Purposes of Federal Diversity Jurisdiction (28 U.S.C.A. § 1332).

23 ALR, Fed. 664, Validity, Under Federal Law, of Sex Discrimination in Athletics.

23 ALR, Fed. 895, Exhaustion of Remedies Under Title VII (Equal Employment Opportunity) of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.) as Prerequisite to Maintenance of Action Under 42 U.S.C.A. § 1981 for Employment...

24 ALR, Fed. 808, Construction and Application of Age Discrimination in Employment Act of 1967 (29 U.S.C.A. §§ 621 et seq.).

25 ALR, Fed. 850, Right of Real Property Owner to Relief Under Federal Civil Rights Acts Against Amendment of Zoning Ordinance Increasing Minimum Lot Requirements.

18 ALR, Fed. 7, Relief, Under Federal Civil Rights Acts, to State Prisoners Complaining of Conditions Relating to Corporal Punishment, Punitive Segregation, or Other Similar Physical Disciplinary Measures.

18 ALR, Fed. 223, Modern Views as to Validity, Under Federal Constitution, of State Prejudgment Attachment, Garnishment, and Replevin Procedures, Distraint Procedures Under Landlords' or Innkeepers' Lien Statutes, and Like Procedures...

18 ALR, Fed. 393, Acquittal or Conviction in State Court as Bar to Federal Prosecution Based on Same Act or Transaction.

18 ALR, Fed. 831, Judicial Review Under 42 U.S.C.A. § 1316(A)(3-5) of Determination by Secretary of Health, Education, and Welfare that State Public-Assistance Plan Does Not Conform to Federal Requirements.

18 ALR, Fed. 915, Validity, Construction, and Application of 38 U.S.C.A. § 211(A) Precluding Judicial or Other Review of Administrative Decisions on Veterans' Benefits.

19 ALR, Fed. 709, State or Federal Law as Governing Applicability of Doctrine of Res Judicata or Collateral Estoppel in Federal Court Action.

19 ALR, Fed. 761, Construction and Application of Provision of Rule 60(B) of Federal Rules of Civil Procedure that Rule Does Not Limit Power of Federal District Court to Set Aside Judgment for "Fraud Upon the Court".

20 ALR, Fed. 448, What Constitutes "Prejudice" to Party Who Objects to Evidence Outside Issues Made by Pleadings So as to Preclude Amendment of Pleadings Under Rule 15(B) of Federal Rules of Civil Procedure.

20 ALR, Fed. 488, Propriety of Dismissal for Failure of Prosecution Under Rule 41(B) of Federal Rules of Civil Procedure.

20 ALR, Fed. 731, Construction and Application of 18 U.S.C.A. § 1503 Making it a Federal Offense to Endeavor to Influence, Intimidate, Impede, or Injure Witness, Juror, or Officer in Federal Court, or to Obstruct the Due...

14 ALR, Fed. 608, Punitive Damages in Actions for Violations of Federal Civil Rights Acts.

15 ALR, Fed. 193, Construction and Application of Rule 60(B)(6) of Federal Rules of Civil Procedure Authorizing Relief from Final Judgment or Order for "Any Other Reason".

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15 ALR, Fed. 407, Propriety of Dismissal of Action With Prejudice, Under Rule 41(B) of Federal Rules of Civil Procedure, Upon Ground of Plaintiff's Failure to Comply With Order of Court.

16 ALR, Fed. 182, Validity, Under Federal Constitution, of Public School or State College Regulation of Student Newspapers, Magazines, or Other Publications--Federal Cases.

16 ALR, Fed. 440, Right to Relief Under Federal Civil Rights Act of 1871 (42 U.S.C.A. § 1983) for Alleged Wrongful Commitment to or Confinement in Mental Hospital.

16 ALR, Fed. 621, Award of Attorneys' Fees Under § 204(B) of Civil Rights Act of 1964 (42 U.S.C.A. § 2000a-3(B)) Authorizing Court to Allow Prevailing Party, Other Than United States, Reasonable Attorney's Fee as Part of Costs In...

16 ALR, Fed. 748, Scope of Relief Which May be Granted, Under Rule 54(C) of Federal Rules of Civil Procedure, Except in Cases of Default Judgment, Even Though Party in Whose Favor Judgment is Rendered Has Not Demanded Such...

16 ALR, Fed. 969, Recording of Testimony at Deposition by Other Than Stenographic Means Under Rule 30(B)(4) of Federal Rules of Civil Procedure.

17 ALR, Fed. 645, Application of Doctrine Exempting from Federal Antitrust Laws Joint Efforts to Influence Legislative or Executive Action.

17 ALR, Fed. 768, Mandatory Maternity Leave Rules or Policies for Public School Teachers as Constituting Violation of Equal Protection Clause of Fourteenth Amendment to Federal Constitution.

17 ALR, Fed. 933, Appealability of Determination Adverse to Confirmation of Action as Class Action Under Rule 23 of Federal Rules of Civil Procedure.

10 ALR, Fed. 220, Validity, Construction, and Application of § 201(B)(2) and Related Provisions of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000a(B)(2)), Prohibiting Discrimination or Segregation in Restaurants, Cafeterias, And...

10 ALR, Fed. 802, Validity, Construction, and Application of "Model Cities" Provisions of Demonstration Cities and Metropolitan Development Act of 1966, as Amended (42 U.S.C.A. §§ 3301-3313).

11 ALR, Fed. 269, Sufficiency of Notice or Knowledge Required Under Rule 15(C)(1)(2) of Federal Rules of Civil Procedure Dealing With Relation Back of Amendments Changing Parties Against Whom Claim is Asserted.

11 ALR, Fed. 683, Right to Maintain Private Action Under Hill-Burton Act (42 U.S.C.A. §§ 291 et seq.) to Compel Hospital to Provide Services to Persons Unable to Pay Therefor.

12 ALR, Fed. 15, Construction and Application of Provisions of Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.) Making Sex Discrimination in Employment Unlawful.

12 ALR, Fed. 329, Valid Governmental Action as Conferring Immunity or Exemption from Private Liability Under the Federal Antitrust Laws.

12 ALR, Fed. 877, Right of Defendant Under Rules 14(A) and 18(A) of Federal Rules of Civil Procedure to Assert Against Third Party Properly in Case, Claim for Damages in Excess Of, or Different From, Those Sought by Original...

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12 ALR, Fed. 964, Relief Under Federal Civil Rights Act of 1871 (42 U.S.C.A. § 1983) Against Denial of Building Permit or Zoning Change for Privately Sponsored Low- or Moderate-Income Housing Projects, on Grounds of Racial...

13 ALR, Fed. 369, Construction and Application of Food Stamp Act of 1964 (7 U.S.C.A. §§ 2011 et seq.) Establishing Food Stamp Program.

13 ALR, Fed. 794, Construction of Rule 60(A) of Federal Rules of Civil Procedure Authorizing Correction of Clerical Mistakes in Judgments, Orders, or Other Parts of Record, and Errors Therein Arising from Oversight Or...

6 ALR, Fed. 973, Actionability Under Federal Civil Rights Acts, of Discrimination Because of Complaining Party's Association With Persons of Different Race, Color, or the Like.

8 ALR, Fed. 6, Application, in Federal Civil Action, of Governmental Privilege of Nondisclosure of Identity of Informer.

8 ALR, Fed. 415, Who is Entitled to Attack Urban Renewal Projects Undertaken Pursuant to Federal Housing Act of 1949, as Amended (42 U.S.C.A. §§ 1441-1469).

8 ALR, Fed. 461, Propriety, Under Rules 23(A) and 23(B) of Federal Rules of Civil Procedure, as Amended in 1966, of Class Action Seeking Relief from Racial Discrimination.

9 ALR, Fed. 422, Actionability Under Federal Civil Rights Acts With Respect to Proceedings to Discipline Attorney, to Regulate Admission to Practice of Law, or to Restrain Unauthorized Practice of Law.

3 ALR, Fed. 325, Racial Discrimination in the Hiring, Retention, and Assignment of Teachers--Federal Cases.

3 ALR, Fed. 372, Right, in Suit Brought as Class Action, to Aggregate Claims or Interests of Members of Class in Order to Satisfy Minimum Jurisdictional Amount Requirement in Federal District Court.

3 ALR, Fed. 467, Construction and Application of Federal Statute (28 U.S.C.A. § 1406) Providing for Dismissal or Transfer of Cases for Improper Venue.

4 ALR, Fed. 123, Timeliness of Amendments to Pleadings Made by Leave of Court Under Federal Rule of Civil Procedure 15(a).

4 ALR, Fed. 833, Time Requirements for Civil Action for Violation of Equal Employment Opportunities Provisions Under § 706 of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5).

4 ALR, Fed. 929, Unavailability or Absence of Party as Ground of Continuance in Civil Case in Federal Court.

5 ALR, Fed. 10, Stay of Action in Federal Court Until Determination of Similar Action Pending in State Court.

5 ALR, Fed. 518, Construction of Federal Civil Procedure Rule 24(A)(2), as Amended in 1966, Insofar as Dealing With Prerequisites of Intervention as a Matter of Right.

1 ALR, Fed. 15, Questions as to Convenience and Justice of Transfer Under Forum Non Conveniens Provision of Judicial Code (28 U.S.C.A. § 1404(a)).

1 ALR, Fed. 519, Police Action in Connection With Arrest as Violation of Civil Rights Act, 42 U.S.C.A. § 1983.

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1 ALR, Fed. 771, Relief from Judicial Error by Motion Under FRCP Rule 60(B)(1).

2 ALR, Fed. 1027, What, Other Than Affidavits, Constitutes "Matters Outside the Pleadings," Which May Convert Motion Under Federal Rule of Civil Procedure 12(B)(C), Into Motion for Summary Judgment.

18 ALR 6th 1, Employee's Expectation of Privacy in Workplace.

18 ALR 6th 519, Authority of Public Official, Whose Duties or Functions Generally Do Not Entail Traffic Stops, to Effectuate Traffic Stop of Vehicle.

18 ALR 6th 775, Wearing of Religious Symbols in Courtroom as Protected by First Amendment.

17 ALR 6th 1, Contribution Between Joint Tortfeasors as Affected by Settlement With Injured Party by One or More Tortfeasors.

17 ALR 6th 327, When is Warrantless Entry of House or Other Building Justified Under "Hot Pursuit" Doctrine.

16 ALR 6th 131, Validity of State Statutes, Regulations, or Other Identification Requirements Restricting or Denying Driver's Licenses to Illegal Aliens.

15 ALR 6th 319, Adoption and Application of "Tainted" Approach or "Dual Motivation" Analysis in Determining Whether Existence of Single Discriminatory Reason for Peremptory Strike Results in Automatic Batson Violation When Neutral...

15 ALR 6th 515, Construction and Application of Rule Permitting Knock and Talk Visits Under Fourth Amendment and State Constitutions.

14 ALR 6th 1, When Statute of Limitations Begins to Run on Action Against Attorney for Malpractice Based Upon Negligence--View that Statute Begins to Run from Time Client Discovers, or Should Have Discovered, Negligent Act Or...

12 ALR 6th 523, Electronic Voting Systems.

2005 ALR 6th 5, Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents.

7 ALR 6th 487, Excessiveness of Bail in State Criminal Cases--Amounts Over $500,000.

6 ALR 6th 365, Validity and Application of Uniform Anatomical Gift Act.

6 ALR 6th 483, Right of Jailed or Imprisoned Parent to Visit from Minor Child.

5 ALR 6th 193, Construction and Application of Interstate Compact on the Placement of Children.

4 ALR 6th 263, Bias or Interest of Administrative Officer Sitting in Zoning Proceeding as Necessitating Disqualification of Officer or Affecting Validity of Zoning Decision.

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125 ALR 5th 497, Dna Evidence as Newly Discovered Evidence Which Will Warrant Grant of New Trial or Other Postconviction Relief in Criminal Case.

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124 ALR 5th 657, Dog as Deadly or Dangerous Weapon for Purposes of Statutes Aggravating Offenses Such as Assault and Robbery.

124 ALR 5th 691, Admissibility of Ion Scan Evidence.

123 ALR 5th 221, Validity of Search Conducted Pursuant to Parole Warrant.

123 ALR 5th 411, Federal and State Constitutional Provisions and State Statutes as Prohibiting Employment Discrimination Based on Heterosexual Conduct or Relationship.

121 ALR 5th 1, Constitutionality of Candidate Participation Provisions for Primary Elections.

120 ALR 5th 483, Criticism or Disparagement of Dentist's Character, Competence, or Conduct as Defamation.

120 ALR 5th 559, State Offer of Judgment Rule--Construction, Operation, and Effect of Acceptance and Resulting Judgment.

119 ALR 5th 1, Rights of Prisoners in Private Prisons.

118 ALR 5th 91, Construction of State Offer of Judgment Rule--Sufficiency of Offer and Contract Formation Issues.

117 ALR 5th 459, Validity, Construction, and Operation of School "Zero Tolerance" Policies Towards Drugs, Alcohol, or Violence.

116 ALR 5th 479, Validity of Routine Roadblocks by State or Local Police for Purpose of Discovery of Driver's License, Registration, and Safety Violations.

2004 ALR 5th 2, Validity, Construction, and Application of Municipal Restrictions on Location or Operations of Facilities for Sale or Use of Firearms.

114 ALR 5th 311, Application of Constitutional "Compactness Requirement" to Redistricting.

113 ALR 5th 1, Validity, Construction, and Operation of Statute or Regulation Forbidding, Regulating, or Limiting Peaceful Residential Picketing.

112 ALR 5th 263, Vacating on Public Policy Grounds Arbitration Awards Reinstating Discharged Employees--State Cases.

111 ALR 5th 529, Admissibility of Computer-Generated Animation.

109 ALR 5th 611, Denial of Accused's Request for Initial Contact With Attorney--Drunk Driving Cases.

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108 ALR 5th 385, Contributory Negligence, Comparative Negligence, or Assumption of Risk, Other Than Failing to Reveal Medical History or Follow Instructions, as Defense in Action Against Physician or Surgeon for Medical...

107 ALR 5th 1, First Amendment Challenges to Display of Religious Symbols on Public Property.

107 ALR 5th 291, Validity of Rules and Regulations Concerning Viewing of Execution of Death Penalty.

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106 ALR 5th 523, Private Attorney General Doctrine--State Cases.

105 ALR 5th 1, Admissibility, in Civil Proceeding, of Evidence Obtained Through Unlawful Search and Seizure.

103 ALR 5th 463, Error, in Either Search Warrant or Application for Warrant, as to Address of Place to be Searched as Rendering Warrant Invalid.

100 ALR 5th 341, Immunity of Police or Other Law Enforcement Officer from Liability in Defamation Action.

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97 ALR 5th 419, Civil Liability in Conjunction With Autopsy.

97 ALR 5th 473, Construction and Application of "Invasion of the Right of Private Occupancy" Clause in Comprehensive General Liability Policy.

96 ALR 5th 485, Validity and Operation of Pre-Employment Drug Testing--State Cases.

95 ALR 5th 229, What Constitutes "Public Place" Within Meaning of State Statute or Local Ordinance Prohibiting Indecency or Commission of Sexual Act in Public Place.

94 ALR 5th 455, Application of Noerr-Pennington Doctrine by State Courts.

94 ALR 5th 537, "English Only" Requirement for Conduct of Public Affairs.

94 ALR 5th 613, Power of Court or Other Public Agency to Order Vaccination Over Parental Religious Objection.

93 ALR 5th 47, When is Work Environment Intimidating, Hostile or Offensive, So as to Constitute Sexual Harassment Under State Law.

90 ALR 5th 273, Liability of Municipality or Other Governmental Unit for Failure to Provide Police Protection from Crime.

87 ALR 5th 253, Right of Husband, Wife, or Other Party to Custody of Frozen Embryo, Pre-Embryo, or Pre-Zygote in Event of Divorce, Death, or Other Circumstances.

87 ALR 5th 277, Construction and Application of State Patient Bill of Rights Statutes.

86 ALR 5th 1, Liability, Under State Law Claims, of Public and Private Schools and Institutions of Higher Learning for Teacher's, Other Employee's, or Student's Sexual Relationship With, or Sexual Harassment or Abuse Of...

85 ALR 5th 301, Tort Liability of Public Schools and Institutions of Higher Learning for Accident Involving Motor Vehicle Operated by Student.

85 ALR 5th 261, Federal and State Constitutions as Protecting Prison Visitor Against Unreasonable Searches and

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84 ALR 5th 1, Validity of Search or Seizure of Computer, Computer Disk, or Computer Peripheral Equipment.

84 ALR 5th 687, Who, Other Than Parent, May Recover for Loss of Consortium on Death of Minor Child.

83 ALR 5th 1, Individual Liability of Supervisors, Managers, Officers or Co-Employees for Discriminatory Actions Under State Civil Rights Act.

82 ALR 5th 103, Validity of Police Roadblocks or Checkpoints for Purpose of Discovery of Illegal Narcotics Violations.

81 ALR 5th 167, Liability of Doctor, Psychiatrist, or Psychologist for Failure to Take Steps to Prevent Patient's Suicide.

81 ALR 5th 367, Availability and Scope of Punitive Damages Under State Employment Discrimination Law.

80 ALR 5th 255, Validity, Construction, and Application of State or Local Enactments Regulating Parades.

78 ALR 5th 533, Validity, Construction, and Application of Statute or Regulation Governing Charter Schools.

77 ALR 5th 541, Damage Action for HIV Testing Without Consent of Person Tested.

76 ALR 5th 239, Validity, Construction, and Operation of State Dna Database Statutes.

75 ALR 5th 619, Implied Cause of Action for Damages for Violation of Provisions of State Constitutions.

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72 ALR 5th 469, Tort Liability of Public Schools and Institutions of Higher Learning for Injury to Student Walking to or from School.

70 ALR 5th 169, Validity, Construction, and Application of Statute, Regulation, or Policy Governing Home Schooling or Affecting Rights of Home-Schooled Students.

69 ALR 5th 559, Scope and Extent of Protection from Disclosure of Medical Peer Review Proceedings Relating to Claim in Medical Malpractice Action.

68 ALR 5th 343, Admissibility of Evidence Discovered in Search of Defendant's Property or Residence Authorized by One, Other Than Relative, Who is Cotenant or Common Resident With Defendant--State Cases.

68 ALR 5th 519, Tort Liability of Schools and Institutions of Higher Learning for Personal Injury Suffered During School Field Trip.

68 ALR 5th 549, Civilian Participation in Execution of Search Warrant as Affecting Legality of Search.

66 ALR 5th 1, Tort Liability of Public Schools and Institutions of Higher Learning for Accidents Occurring in Physical Education Classes.

66 ALR 5th 237, Validity, Construction, and Application of Restrictions on Use or Possession of Tobacco Products in Correctional Facilities.

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66 ALR 5th 397, What Constitutes Obstructing or Resisting Officer, in Absence of Actual Force.

67 ALR 5th 431, Regulation of Exposure of Female, But Not Male, Breasts.

64 ALR 5th 333, Liability for Donee's Contraction of Acquired Immune Deficiency Syndrome (AIDS) from Blood Transfusion.

64 ALR 5th 769, Propriety of Exclusion of Persons from Horseracing Tracks for Reasons Other Than Color or Race.

62 ALR 5th 671, Validity, Construction, and Application of Regulations Regarding Outside Employment of Governmental Employees or Officers.

60 ALR 5th 75, Reportorial Privilege as to Nonconfidential News Information.

59 ALR 5th 203, Disciplinary Proceedings Against Horse Trainer or Jockey.

59 ALR 5th 535, Recovery for Emotional Distress Based on Fear of Contracting HIV or Aids.

58 ALR 5th 1, Validity of Regulation by Public-School Authorities as to Clothes or Personal Appearance of Pupils.

54 ALR 5th 575, Disqualification of Judge for Bias Against Counsel for Litigant.

51 ALR 5th 375, Propriety of Search of Nonoccupant Visitor's Belongings Pursuant to Warrant Issued for Another's Premises.

52 ALR 5th 1, Excessiveness or Adequacy of Damages Awarded for Injuries Causing Mental or Psychological Damages.

53 ALR 5th 1, Applicability of Zoning Regulations to Governmental Projects or Activities.

47 ALR 5th 553, Payments of Attorneys' Services in Defending Action Brought Against Officials Individually as Within Power or Obligation of Public Body.

48 ALR 5th 555, Coercive Conduct by Private Person as Admissibility of Confession Under State Statutes or Constitutional Provisions-Post Connelly Cases.

49 ALR 5th 717, Reviewability Before Trial of Order Denying Qualified Immunity to Defendant Sued in State Court Under 42 U.S.C.A. § 1983.

49 ALR 5th 747, Authority of State, Municipality, or Other Governmental Entity to Accept Late Bids for Public Works Contracts.

36 ALR 5th 1, Liability of Municipal Corporation or Other Governmental Entity for Injury or Death Caused by Action or Inaction of Off-Duty Police Officer.

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37 ALR 5th 349, Judicial Construction and Application of State Legislation Prohibiting Religious Discrimination in Employment.

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8 ALR 5th 860, Liability of Public or Private Agency or Its Employees to Prospective Adoptive Parents in Contract or Tort for Failure to Complete Arrangement for Adoption.

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63 ALR 4th 1021, Employer's Liability to Employee for Failure to Provide Work Environment Free from Tobacco Smoke.

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89 ALR 2nd 864, Validity and Effect of Statutes Exacting Filing Fees from Candidates for Public Office.

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79 ALR 2nd 1148, Use of Public School Premises for Religious Purposes During Nonschool Time.

79 ALR 2nd 1270, Determination of Beginning of Period Allowed by Statute for Commencement of New Action After Failure, Otherwise Than on the Merits, of Action Timely Begun.

79 ALR 2nd 1290, Voluntary Dismissal or Nonsuit as Within Provision of Statute Extending Time for New Action in Case of Dismissal or Failure of Original Action Otherwise Than Upon the Merits.

69 ALR 2nd 449, Practice and Procedure With Respect to Motions for Judgment Notwithstanding or in Default of Verdict Under Federal Civil Procedure Rule 50(B) or Like State Provisions.

70 ALR 2nd 685, Construction and Effect of Rules 30(B), (D), 31(D), of the Federal Rules of Civil Procedure, and Similar State Statutes and Rules, Relating to Preventing, Limiting, or Terminating the Taking Of...

72 ALR 2nd 830, Testifying in Civil Proceeding as Waiver of Privilege Against Self-Incrimination.

72 ALR 2nd 905, Racial, Religious, Economic, Social, or Political Prejudice of Proposed Juror as Proper Subject of Inquiry or Ground of Challenge on Voir Dire in Civil Case.

72 ALR 2nd 1379, Liability of State, or Its Agency or Board, for Costs in Civil Action to Which it is a Party.

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73 ALR 2nd 12, Statements of Parties or Witnesses as Subject of Pretrial or Other Disclosure, Production, or Inspection.

73 ALR 2nd 250, Comment Note.--Formal Requirements of Judgment or Order as Regards Appealability.

74 ALR 2nd 377, Zoning Regulations as Affecting Churches.

65 ALR 2nd 642, What Dismissals Preclude a Further Suit, Under Federal and State Rules Regarding Two Dismissals.

68 ALR 2nd 752, Federal Civil Procedure Rule 17(C), Relating to Representation of Infants or Incompetent Persons.

58 ALR 2nd 903, Right of Student to Hearing on Charges Before Suspension or Expulsion from Educational Institution.

59 ALR 2nd 281, Municipality's Liability for Damage Resulting from Obstruction or Clogging of Drains or Sewers.

59 ALR 2nd 1413, Acquittal, Discharge, or Discontinuance of Criminal Charge as Evidence of Want of Probable Cause in Malicious Prosecution Action.

60 ALR 2nd 873, Personal Liability of Policeman, Sheriff, or Other Peace Officer, or Bond, for Negligently Causing Personal Injury or Death.

62 ALR 2nd 1369, When Does Statute of Limitations Begin to Run Against Civil Action or Criminal Prosecution for Conspiracy.

54 ALR 2nd 1298, Testimony of Witness as Basis of Civil Action for Damages.

55 ALR 2nd 512, Civil Liability, Under Federal Civil Rights Statute (42 U.S.C.A. § 1983) of State Officers Who Coerce or Attempt to Coerce Confessions or Pleas of Guilty.

45 ALR 2nd 5, Attorney's Liability for Negligence in Preparing or Conducting Litigation.

49 ALR 2nd 922, When Statute of Limitations Begins to Run Against Action for False Imprisonment or False Arrest.

39 ALR 2nd 153, Comment Note--Defeated Party's Payment or Satisfaction Of, or Other Compliance With, Civil Judgment as Barring His Right to Appeal.

40 ALR 2nd 1060, Validity, Construction, and Operation of Airport Operator's Grant of Exclusive or Discriminatory Privilege or Concession.

41 ALR 2nd 726, Time of Existence of Mental Incompetency Which Will Prevent or Suspend Running of Statute of Limitations.

43 ALR 2nd 469, Teacher's Civil Liability for Administering Corporal Punishment to Pupil.

34 ALR 2nd 155, Legislative Power to Prescribe Qualifications for or Conditions of Eligibility to Constitutional Office.

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35 ALR 2nd 355, Validity of Municipal Ordinance Prohibiting House-To-House Soliciting and Peddling Without Invitation.

38 ALR 2nd 1188, Comment Note.--Racial Segregation.

27 ALR 2nd 236, Tolling of Statute of Limitations Where Process is Not Served Before Expiration of Limitation Period, as Affected by Statutes Defining Commencement of Action, or Expressly Relating to Interruption of Running Of...

28 ALR 2nd 646, Civil Liability of Law Enforcement Officers for Malicious Prosecution.

31 ALR 2nd 1078, Authority to Consent for Another to Search or Seizure.

21 ALR 2nd 760, Appealability of Federal District Court Order Denying Motion to Remand Cause to State Court.

22 ALR 2nd 599, Binding Effect of Court's Order Entered After Pretrial Conference.

22 ALR 2nd 621, Failure to Assert Matter as Counterclaim as Precluding Assertion Thereof in Subsequent Action, Under Federal Rules or Similar State Rules or Statutes.

24 ALR 2nd 350, Statutes Relating to Sexual Psychopaths.

24 ALR 2nd 752, Matters Arbitrable Under Arbitration Provisions of Collective Labor Contract.

25 ALR 2nd 1407, Requiring Submission to Physical Examination or Test as Violation of Constitutional Rights.

15 ALR 2nd 500, Effect of Fraud to Toll the Period for Bringing Action Prescribed in Statute Creating the Right of Action.

17 ALR 2nd 421, State Taxation of Motor Carriers as Affected by Commerce Clause.

18 ALR 2nd 1287, Conviction or Acquittal as Evidence of the Facts on Which it was Based in Civil Action.

20 ALR 2nd 1249, Inclusion or Exclusion of First and Last Day for Purposes of Statute of Limitations.

9 ALR 2nd 964, Proof of Unadjudged Incompetency Which Prevents Running of Statute of Limitations.

10 ALR 2nd 782, Extent to Which Principles of Res Judicata Are Applicable to Judgments in Actions for Declaratory Relief.

11 ALR 2nd 359, Tax Questions as Proper Subject of Action for Declaratory Judgment.

11 ALR 2nd 751, Civil Liability for Death by Suicide.

12 ALR 2nd 695, May Federal Court, Acquiring Jurisdiction Because of Federal Question But Deciding Such Question Adversely to Party Invoking Jurisdiction, Decide Non-Federal Questions.

14 ALR 2nd 153, Race or Religious Belief as Permissible Consideration in Choosing Tenants or Purchasers of Real Estate.

14 ALR 2nd 264, Necessity and Sufficiency of Allegations in Complaint for Malicious Prosecution or Tort Action

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Analogous Thereto that Defendant or Defendants Acted Without Probable Cause.

14 ALR 2nd 353, Civil Liability of Sheriff or Other Officer Charged With Keeping Jail or Prison for Death or Injury of Prisoner.

3 ALR 2nd 148, Rights and Remedies of Client as Regards Papers and Documents on Which Attorney Has Retaining Lien.

8 ALR 2nd 6, Change in Party After Statute of Limitations Has Run.

8 ALR 2nd 1228, Discretion of Federal Court in an Action Involving Federal Question to Remit Relevant State Issues to State Courts, in Which No Action is Pending, and Suspend Decision of Federal Issues.

1 ALR 2nd 1165, Exclusion of Person (For Reason Other Than Color or Race) from Place of Public Entertainment or Amusement.

172 ALR 231, Enforceability of Federal Penal Statutes in State Courts.

172 ALR 265, Pleading Avoidance of Delay in Discovery of Fraud in Order to Toll Statute of Limitations.

172 ALR 847, Right to Declaratory Relief as Affected by Existence of Other Remedy.

172 ALR 966, Constitutionality, Construction, and Application of Statutes or Governmental Projects for Improvement of Housing Conditions Slum Clearance.

173 ALR 576, Comment Note.--What Constitutes Concealment Which Will Prevent Running of Statute of Limitations.

173 ALR 750, When Statute of Limitations Begins to Run Against Action for Loss of Services or Consortium.

173 ALR 802, Civil Liability of Judicial Officer for False Imprisonment.

173 ALR 912, What Amounts to "Reorganization" of Corporation Within Federal Income Tax Statutes.

173 ALR 1401, The Labor Management Relations (Taft-Hartley) Act, 1947, and Its Effect on the National Labor Relations (Wagner) Act.

174 ALR 549, Interest Necessary to Maintenance of Declaratory Determination of Validity of Statute or Ordinance.

174 ALR 734, Right of Defendant Sued Jointly With Another or Others in Action for Personal Injury or Death to Separate Trial.

174 ALR 1275, Units for Collective Bargaining.

175 ALR 438, Jurisdiction of Equity to Protect Personal Rights; Modern View.

175 ALR 784, Governing Law as to Existence or Character of Offense for Which One Has Been Convicted in a Federal Court, or Court of Another State, as Bearing Upon Disqualification to Vote, Hold Office, Practice Profession, Sit On...

166 ALR 659, Zoning Regulation as Affecting Question of Nuisance Within Zoned Area.

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167 ALR 1052, Rights of Insured or Beneficiary Under Insurance Policy as Subject to Property Tax.

167 ALR 1058, Delay in Issuance or Service of Summons as Requiring or Justifying Order Discontinuing Suit.

167 ALR 1243, Interest and Attorneys' Fees as Factors in Determining Jurisdictional Amount.

169 ALR 435, Who Are "Employees" Within Meaning of National Labor Relations Act.

169 ALR 584, Change in Law Pending Application for Permit or License.

169 ALR 851, Right to Intervene in Suit to Determine Validity or Construction of Law or Governmental Regulations.

169 ALR 1419, Search Incident to One Offense as Justifying Seizure of Instruments of or Articles Connected With Another Offense.

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171 ALR 175, Validity of Removal or Discharge of Governmental Officer or Employee as Affected by Absence of Member of Board or Commission from Hearing.

171 ALR 765, Legal Aspects of Radio Communication and Broadcasting.

171 ALR 920, Private Rights and Remedies to Enforce Right Based on Civil Rights Statute.

171 ALR 1433, Appealability of Ruling on Demurrer to Plea, Answer, or Reply.

160 ALR 332, Suit Against Public Officer to Recover Possession of Property as Suit Against State or Federal Government.

160 ALR 490, Validity and Effect of Agreement by Public Officer or Employee to Accept Less Than Compensation or Fees Fixed by Law, or of Acceptance of Reduced Amount.

160 ALR 890, Constitutionality of Statute Which Requires Incorporation Of, or Otherwise Specifically Regulates, Labor Union or Collective Bargaining Unit.

160 ALR 942, Removal of Causes: Separable-Controversy Provision of Removal Statute as Applicable to Alternative Separable Controversies.

161 ALR 233, Right to Cross-Examine Accused as to Previous Prosecution For, or Conviction Of, Crime, for Purpose of Affecting His Credibility.

161 ALR 494, Constitutionality of State Veterans' Public Employment Preference Laws.

161 ALR 1161, Relief from Stipulations.

161 ALR 1331, Denial of Relief to Prisoner on Habeas Corpus as Bar to Second Application.

162 ALR 724, State Statute of Limitations as Applicable in Equity Suits in Federal Court to Enforce a Federally Created Right.

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162 ALR 922, Right to Aid of Counsel in Application or Hearing for Habeas Corpus.

162 ALR 1373, Validity and Construction of Statutes Making Conspiracy to Deprive or Deprivation of Constitutional Right a Federal Offense.

163 ALR 1346, Right or Duty of Attorney General to Intervene in Civil Suits.

163 ALR 1358, Governmental Control of Actions or Speech of Public Officers or Employees in Respect of Matters Outside the Actual Performance of Their Duties.

163 ALR 1375, Civil Rights and Liabilities as Affected by Failure to Comply With Regulations as to Registration of Automobile or Motorcycle or Licensing of Operation.

163 ALR 1435, Validity and Construction of Legislation Conferring Personal Immunity on Public Officers or Employees for Acts in Course of Duty.

164 ALR 702, Right of Substitution of Successive Personal Representatives as Party Plaintiff.

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165 ALR 1302, Constitutionality, Construction, and Effect of Statute or Regulation Relating Specifically to Divulgence of Information Acquired by Public Officers or Employees.

154 ALR 148, Compensation of Tenure Teacher.

154 ALR 501, Attorney's Representation of Parties Adversely Interested as Affecting Judgment or Estoppel in Respect Thereof.

154 ALR 740, Validity and Effect of Former Judgment or Decree as Proper Subject for Consideration in Declaratory Action.

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155 ALR 501, May Declaratory and Coercive or Executory Relief be Combined in Action Under Declaratory Judgment Act.

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152 ALR 1147, Failure to Prove Allegation of Conspiracy in Complaint in Civil Action as Affecting Right to Recover.

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153 ALR 60, Modification, Abrogation, or Termination of Collective Labor Agreement, or Departure from Agreement Preliminary Thereto.

153 ALR 449, Mistaken Belief or Contention that Defendant Had Not Been Served, or Had Not Been Legally Served, With Summons, as Ground for Setting Aside Default Judgment.

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143 ALR 135, Previous Illegal Search for or Seizure of Property as Affecting Validity of Subsequent Search Warrant or Seizure Thereunder.

143 ALR 157, Malicious Prosecution Predicated Upon Prosecution, Institution, or Instigation of Administrative Proceeding.

143 ALR 1182, Amendment of Petition or Complaint After Statute of Limitations Has Run, by Reinstating Codefendant Who Had Been Dismissed from the Action Otherwise Than Upon Merits.

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145 ALR 1252, Federal Securities Acts as Superseding State Acts.

146 ALR 369, Relief in Habeas Corpus for Violation of Accused's Right to Assistance of Counsel.

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147 ALR 583, Finality, for Purposes of Appeal, of Judgment in Federal Court Which Disposes of Plaintiff's Claim, But Not of Defendant's Counterclaim, or Vice Versa.

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136 ALR 1378, Attack Upon Validity of Zoning Statute or Ordinance as Affected by Provisions for Variations, Permits, etc.

137 ALR 6, Partnership as Distinguished from Employment Where Rights of Parties Inter Se or Their Privies Are Concerned.

137 ALR 504, Malice and Want of Probable Cause as Element or Factor of Action for False Imprisonment.

137 ALR 738, Constitutionality of Statute Relating to Assignment of Wages or Salary.

137 ALR 1155, Inclusion or Exclusion of First or Last Day in Computing Period of Time Prescribed by Insurance Contract.

138 ALR 811, Constitutionality, Construction, and Application of Federal Act Relating to Extortion in Connection With Trade or Commerce Anti-Racketeering Act.

138 ALR 1303, Validity, Construction, and Application of Statute or Ordinance Requiring that Judgments Against Municipality be Paid in Order of Their Entry or in Other Particular Sequence.

139 ALR 9, Judgment as Conclusive as Against, or in Favor Of, One Not a Party of Record or Privy to a Party, Who Prosecuted or Defended Suit on Behalf and in the Name of Party, or Assisted Him or Participated With Him in Its...

139 ALR 421, Power to Open or Modify "Consent" Judgment.

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140 ALR 717, Duty of Federal Courts, Since Erie R. Co. v. Tompkins, in Determining Ultimate Federal Question,

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141 ALR 1207, Constitutionality, Construction, and Effect of Statutes Relating to Exceptions to Rule Denying Contribution or Indemnity Between Joint Tort-Feasors.

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130 ALR 882, Exhaustion of Administrative Remedies as Condition of Resort to Court in Respect of Right Claimed Under Social Security or Old Age Acts.

130 ALR 1504, Validity of Statutes or Ordinances Requiring License For, or Otherwise Regulating, Solicitation of Alms or Contributions for Charitable, Religious, or Individual Purposes.

130 ALR 1512, Discrimination Because of Race, Color, or Creed in Respect of Appointment, Duties, Compensation, Etc., of Schoolteachers or Other Public Officers or Employees.

131 ALR 289, Determination of Dwelling Place and Living Conditions of One Adjudged Incompetent.

131 ALR 383, Validity, Construction, and Application of Probationary Provisions of Civil Service Statutes or Regulations.

131 ALR 810, Subjection of Party in Action in Federal Court to Physical Examination.

131 ALR 1230, Taxpayer's Right to Maintain Action to Enjoin Wrongful Expenditure of Public Funds, as Affected by the Fact that the Funds in Question Were Not Raised by Taxation.

132 ALR 509, Residence or Domicil for Purposes of Venue Statute of Student, Teacher, or Inmate of Institution.

132 ALR 738, Assumption of Jurisdiction by Court Before Completion of Administrative Procedure as Ground of Prohibition.

132 ALR 749, Comment Note.--Identity or Community of Interests Essential to Class or Representative Suit.

132 ALR 914, Danger to Person or Property as Affecting Right of Public Utility to Discontinue Its Service Upon Failure of Consumer to Comply With Reasonable and Valid Regulations.

132 ALR 975, Duress as Ground for Withdrawing or Avoiding Resignation from Public Office.

132 ALR 1340, Libel and Slander: Scope of Absolute Privilege of Executive Officer.

132 ALR 1361, Substituted Service, Service by Publication, or Service Out of State in Action in Personam Against Resident or Domestic Corporation, as Contrary to Due Process of Law.

132 ALR 1424, Right of Defendant in Action for Personal Injury or Death to Bring in a Joint Tort-Feasor Not Made a Party by Plaintiff.

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133 ALR 840, Necessity, as Condition of Effectiveness of Express Finding on a Matter in Issue to Prevent Relitigation of Question in Later Case, that Judgment in Former Action Shall Have Rested Thereon.

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133 ALR 1483, Brevity of Period After Death of Decedent as Affecting Propriety of Grant of Letters Testamentary or of Administration.

134 ALR 242, Presumption and Burden of Proof Regarding Mitigation of Damages.

134 ALR 717, Abatement or Survival, Upon Death of Party, of Action, or Cause of Action, Based on Libel or Slander.

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134 ALR 1411, Constitutionality, Construction, and Application of Compacts and Statutes Involving Co-Operation Between States.

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135 ALR 516, Sufficiency of Expert Evidence to Establish Causal Relation Between Accident and Physical Condition or Death.

135 ALR 784, Dismissal by Magistrate or Other Inferior Court for Lack or Insufficiency of Evidence as a Final Termination of Prosecution as Regards Action for Malicious Prosecution.

135 ALR 934, Jurisdiction of Declaratory Action as Affected by Pendency of Another Action or Proceeding.

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124 ALR 86, Amendment of Process or Pleading by Changing or Correcting Mistake in Name of Party.

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124 ALR 1079, Disqualification of Judge Who Presided at Trial or of Juror as Ground of Habeas Corpus.

125 ALR 263, Constitutionality and Construction, as to Nature of Review, of Statute Providing for Appeal to or Review by Court, as Regards Order of Civil Service Commission.

125 ALR 809, Home Owners' Loan Act.

127 ALR 421, Constitutionality, Construction, and Application of Statutes, Ordinances, and Regulations Concerning the Prevention and Cure of Venereal Diseases.

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129 ALR 779, Attack Upon Attachment After Judgment, Because of Defects or Irregularities.

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120 ALR 758, Reasonableness of Period Allowed for Existing Cause of Action by Statute Reducing Period of Limitation.

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120 ALR 1400, Constitutionality of Statute or Rule of Court Providing for Summary Judgment Unless Affidavit of Merits is Filed.

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121 ALR 1325, Amendment of Process or Pleading by Changing Description or Characterization of Party from Corporation to Individual, Partnership, or Other Association, or Vice Versa.

122 ALR 1425, Pendency of Action in Federal Court as Ground of Injunction Against Action.

122 ALR 1486, Recovery for Illness, Disease, or Death Claimed to Have Resulted from Worry or Mental Anguish Following Breach of Contract or Tort.

123 ALR 252, Constitutionality and Construction of Statutes Providing for Proportional Representation or Other

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123 ALR 1115, Punitive or Exemplary Damages for Assault.

123 ALR 1453, Pendency of Criminal Prosecution as Ground for Continuance or Postponement of Civil Action Involving Facts or Transactions Upon Which Prosecution is Predicated.

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112 ALR 665, Comment Note.--Objective Test as Condition of Competitive Examination Under Civil Service.

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113 ALR 177, Constitutionality, Construction, and Effect of Statutes in Relation to Admission of Nonresident Pupils to School Privileges.

113 ALR 376, Statute of Limitations as Applicable to Action by Municipality or Other Political Subdivision in Absence of Specific Provision in that Regard.

114 ALR 759, Judgment or Order Dismissing Action as Against One Defendant as Subject of Appeal or Error Before Disposition of Case as Against Codefendant.

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Federal Procedural Forms § 25:23, Standing to Sue -- Apportionment Suits.

Federal Procedural Forms § 25:30, Application for Attorneys' Fees.

Federal Procedural Forms § 25:33, Complaint -- to Compel Constitutional Apportionment of Legislative Districts -- Class Action [28 U.S.C.A. §§ 1343, 2201, 2202, 2284; 42 U.S.C.A. §§ 1983, 1988; Fed R Civ P Rules 8(A), 23, 57, 65].

Federal Procedural Forms § 25:34, Allegations in Complaint -- At-Large Election System Discriminatory [42 U.S.C.A. § 1983; Fed R Civ P Rule 8(a)].

Federal Procedural Forms § 25:36, Allegations in Complaint -- by Registered Voters Against State Officials -- to Nullify State Legislative Reapportionment Laws -- Laws Drafted to Minimize Representation of Particular Race and Party (Ge.

Federal Procedural Forms § 3:478, Brief of Appellant or Petitioner -- General Form [Supreme Court Rule 24].

Federal Procedural Forms § 3:574, Illustrative Petition for Certiorari -- to United States Court of Appeals -- School Desegregation Case [Supreme Court Rule 14].

Federal Procedural Forms § 37:13, Governing Law.

Federal Procedural Forms § 37:26, Complaint -- Class Action for Declaratory and Injunctive Relief -- Failure to Provide Assistance to Food Stamp Recipients in Emergency Situations [7 U.S.C.A. §§ 2011 to 2036; 28 U.S.C.A. § § 1331, 1337, 1.

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Federal Procedural Forms § 37:59, Complaint -- in District Court -- Violations of National School Lunch Act -- -- Noncompliance as to Qualifying Child Attending Non-Public School Due to Disability [7 U.S.C.A. § 2011, 7 U.S.C.A. S.

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Federal Procedural Forms § 45:86, Complaint -- Racial Discrimination by Employer -- Wrongful Termination of Employment on Federal Project.

Federal Procedural Forms § 45:87, Complaint -- Racial Discrimination in Employment -- for Damages for Discrimination in Promotion by Police Force.

Federal Procedural Forms § 45:88, Complaint -- Racial Discrimination in Employment -- for Injunction to Compel Admission of Qualified Physicians to Membership on Medical Hospital Staff.

Federal Procedural Forms § 5:103, Complaint -- to Enjoin National Guardmember's Court-Martial and Order to

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Active Duty for Disobeying Unconstitutional Anti-Wig Regulation [28 U.S.C.A. § 2284; 42 U.S.C.A. § 1983; Fed R Ci.

Federal Procedural Forms § 51:28, Citizen Suits.

Federal Procedural Forms § 67:17, Action Against State Officials to Enforce Right to Unemployment Compensation.

Federal Procedural Forms § 67:21, Complaint -- Class Action to Enjoin Enforcement of Provisions of State Unemployment Insurance Statute Conflicting With Federal Requirements [28 U.S.C.A. § 1343(3); 42 U.S.C.A. §§ 501, 503, 1983; Fed R Ci.

Federal Procedural Forms § 67:22, Complaint -- Class Action for Declaratory and Injunctive Relief -- State Unemployment Compensation Statute Violative of Due Process; Denial of Benefits Without Opportunity for Prior Administrative Hear.

Federal Procedural Forms § 67:23, Complaint -- for Declaratory Judgment that Denial of Unemployment Compensation Benefits Violative of First Amendment -- Plaintiff Forced to Quit Due to Religious Convictions [28 U.S.C.A. §§ 1343(3), 134.

Federal Procedural Forms § 67:24, Complaint -- to Secure Benefits and to Impose Maximum Time Limit on Processing of Application [28 U.S.C.A. §§ 1331, 1337, 1343(3), (4), 1361, 2201, 2202; 42 U.S.C.A. §§ 501 et Seq., 1983; Fed R Civ P Rul.

Federal Procedural Forms § 1:1167, Procedural Guide.

Federal Procedural Forms § 10:100, Affirmative Defense -- Action Protected by Immunity [42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(C)].

Federal Procedural Forms § 10:102, Affirmative Defense -- Defendant Not Necessary Party [42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(C)].

Federal Procedural Forms § 10:103, Affirmative Defense -- Doctrine of Respondeat Superior Inapplicable [42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(C)].

Federal Procedural Forms § 10:107, Affirmative Defense -- Immunity from Suit.

Federal Procedural Forms § 10:111, Notice -- of Motion -- for Summary Judgment -- by Defendant [Fed. R. Civ. P. 7(B), 56].

Federal Procedural Forms § 10:114, Motion -- to Dismiss -- for Lack of Personal Jurisdiction -- by Federal Defendants -- in Bivens-Type Action [Fed. R. Civ. P. 7(B), 12(B)(6)].

Federal Procedural Forms § 10:115, Motion to Dismiss -- Absolute Immunity of Defendants [Fed. R. Civ. P. 7(B), 12(B)(6)].

Federal Procedural Forms § 10:116, Motion to Dismiss -- Allegation -- Lack of Subject Matter Jurisdiction [42 U.S.C.A. §§ 1981, 1983; Fed. R. Civ. P. 7(B), 12(B)(6)].

Federal Procedural Forms § 10:117, Motion to Dismiss -- Allegation -- Failure to State Claim Upon Which Relief Can be Granted -- Allegations Vague and Conclusory [Fed. R. Civ. P. 7(B), 12(B)(6)].

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Federal Procedural Forms § 10:121, Motion to Dismiss -- Allegation -- Inapplicability of § 1983 to Federal Defendants [42 U.S.C.A. § 1983; Fed. R. Civ. P. 7(B), 12(B)(6)].

Federal Procedural Forms § 10:124, Response -- to Defendant's Motion to Dismiss [Fed. R. Civ. P. 8, 12(B)(6)].

Federal Procedural Forms § 10:125, Consolidated Motion -- to Dismiss And/Or for Summary Judgment [Fed. R. Civ. P. 7(B), 12(B)(6), 56].

Federal Procedural Forms § 10:127, Complaint -- Interrogation -- Involuntary Confession [28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(a)].

Federal Procedural Forms § 10:128, Complaint -- Unlawful Arrest -- Interrogation -- Incriminatory Statements Leading to Plaintiffs Criminal Conviction -- Action for Damages [28 U.S.C.A. §§ 1331, 1343, 2201, 2202; 42 U.S.C.A. § 1983; Fed.

Federal Procedural Forms § 10:129, Complaint -- Unlawful Arrest in Presence of Media [28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(a)].

Federal Procedural Forms § 10:130, Complaint -- Unlawful Arrest -- Search Conducted in Violent and Abusive Manner [28 U.S.C.A. § 1343; 42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(a)].

Federal Procedural Forms § 10:131, Complaint -- Arrest -- Use of Excessive Force -- Plaintiff Shot by Police Officer in Violation of Department Rules [28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(a)].

Federal Procedural Forms § 10:132, Complaint -- Attempt to Apprehend -- Use of Excessive Force -- Deadly Force Used to Prevent Escape of Unarmed, Nondangerous Suspected Felon [28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. § 1983; Fed. R. Civ. P.

Federal Procedural Forms § 10:133, Complaint -- Attempt to Apprehend -- Use of Excessive Force -- Conspiracy -- to Deprive Decedent of Life and Liberty [28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. §§ 1983, 1985; Fed. R. Civ. P. 8(a)].

Federal Procedural Forms § 10:134, Complaint -- Unnecessary and Unreasonable Search -- Strip Search -- Class Action -- Action for Declaratory and Injunctive Relief and Damages -- Demand for Jury Trial [28 U.S.C.A. §§ 1331 , 1343, 1391, 2.

Federal Procedural Forms § 10:135, Complaint -- Racial Profiling by Law Enforcement [28 U.S.C.A. §§ 1331, 1343, 1391; 42 U.S.C.A. §§ 1983, 1988].

Federal Procedural Forms § 10:139, Notice of Motion and Motion to Dismiss -- Failure to State Claim Upon Which Relief Can be Granted -- Insufficient Allegations [42 U.S.C.A. § 1983; Fed. R. Civ. P. 7(B), 12(B)(6)].

Federal Procedural Forms § 10:140, Interrogatory -- to Defendant -- Civil Rights Action for Wrongful Arrest [Fed. R. Civ. P. 26, 33].

Federal Procedural Forms § 10:141, Jury Instruction -- Deprivation of Constitutional Rights Under Color of Law [42 U.S.C.A. § 1983; Fed. R. Civ. P. 51].

Federal Procedural Forms § 10:142, Jury Instruction -- Deprivation of Constitutional Rights Under Color of Law -- Unlawful Arrest and Search -- Use of Excessive Force [42 U.S.C.A. § 1983; Fed. R. Civ. P. 51].

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Federal Procedural Forms § 10:143, Motion -- for Judgment as a Matter of Law [42 U.S.C.A. § 1983; Fed. R. Civ. P. 7(B), 50].

Federal Procedural Forms § 10:145, Complaint -- by Detainee -- Denial of Necessary and Adequate Medical Care and Treatment -- for Residual Effects of Prior Surgery -- Demand for Jury Trial -- Action for Declaratory and Injunctive Relie.

Federal Procedural Forms § 10:146, Complaint -- by Detainee -- Unreasonable Search and Seizure -- "Shakedown" of Cell Without Probable Cause -- Seizure of Trial Transcript -- Action for Declaratory and Injunctive Relief [28 U.

Federal Procedural Forms § 10:147, Complaint -- by Detainee -- Incarceration Beyond Expiration Date of State Sentence [28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(a)].

Federal Procedural Forms § 10:148, Complaint -- by Detainee -- Improper Interference With Prisoner's Correspondence With Attorney -- Action for Declaratory and Injunctive Relief [28 U.S.C.A. § 1343; 42 U.S.C.A. § 1983; Fed. R. Civ.

Federal Procedural Forms § 10:149, Allegations in Complaint -- Pretrial Detainee -- Unreasonable Delay in Bringing Before Judge [28 U.S.C.A. §§ 1331, 1343, 1391; 42 U.S.C.A. § 1983; Fed. R. Civ. P. 8].

Federal Procedural Forms § 10:156, Complaint -- Denial of Freedom of Religion -- Ordinance Limiting Religious Solicitation at Municipal Facilities -- for Declaratory and Injunctive Relief [28 U.S.C.A. §§ 1331, 1343, 2201, 2202 ; 42 U.S.C.

;Federal Procedural Forms § 10:157, Complaint -- Violation of Right to Privacy -- Statute Prohibiting Sodomy by Consenting Homosexuals in Private -- for Declaratory Relief [28 U.S.C.A. §§ 1331, 1343, 1391, 2201, 2202; 42 U.S.C.A. § 1983.

Federal Procedural Forms § 10:191, Complaint -- Class Action -- by Wheelchair Users -- for Injunctive Relief -- Inaccessible Stadium -- Patrons Precluded from Sitting on Floor Level [28 U.S.C.A. §§ 1331, 1343, 2201, 2202; 42 U.S.C.A. §§ .

Federal Procedural Forms § 10:210, Class Action Complaint -- Wheelchair Users -- Injunctive Relief -- Failure of State Government to Construct Curb Ramps at Newly Constructed or Altered Intersections [28 U.S.C.A. §§ 1331, 1343, 2201, 22.

Federal Procedural Forms § 10:218, Complaint -- by Individual Who is Blind -- for Declaratory and Injunctive Relief -- Refusal to Permit Jury Service [28 U.S.C.A. §§ 1331, 1343, 1391, 2201, 2202; 29 U.S.C.A. § 794; 42 U.S.C.A. §§ 1983, 12.

Federal Procedural Forms § 10:229, Powers and Discretion of Court, Generally.

Federal Procedural Forms § 10:237, Overview.

Federal Procedural Forms § 10:248, Relationship Between the Idea and Section 1983 Actions.

Federal Procedural Forms § 10:253, Complaint -- Segregation -- for Injunctive Relief [28 U.S.C.A. §§ 1343, 2201; 42 U.S.C.A. §§ 1981, 1983; Fed. R. Civ. P. 8(A), 17(C), 65].

Federal Procedural Forms § 10:254, Complaint -- Segregation -- by Failure to Take Affirmative Action to Achieve Racial Integration [28 U.S.C.A. § 1343; 42 U.S.C.A. §§ 1981, 1983; Fed. R. Civ. P. 8(a)].

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Federal Procedural Forms § 10:255, Complaint -- Segregation -- by Interdistrict Transfer of Part of School District -- for Declaratory and Injunctive Relief [28 U.S.C.A. §§ 1343, 2201, 2202; 42 U.S.C.A. § 1983; Fed. R. Civ. P. 8(A), 57,.

Federal Procedural Forms § 10:256, Complaint -- Refusal to Admit to University -- for Declaratory and Injunctive Relief [28 U.S.C.A. §§ 1331, 1343, 2201, 2202; 42 U.S.C.A. § 1981; Fed. R. Civ. P. 8(A), 57, 65].

Federal Procedural Forms § 10:270, Complaint -- for Declaratory and Injunctive Relief -- Denial of Free Appropriate Public Education -- Refusal to Provide Physical Therapy During Summer -- Failure to Provide Timely and Impartial Hearin.

Federal Procedural Forms § 10:294, Memorandum of Law -- in Support of Defendant's Cross Motion for Summary Judgment -- Failure to Exhaust Administrative Remedies -- No Violation of Due Process -- Adequate Consideration of Psycholo.

Federal Procedural Forms § 10:304, Complaint -- Suspension for Violation of Restrictive Hair Length Code -- for Temporary Restraining Order -- for Declaratory and Injunctive Relief [28 U.S.C.A. §§ 1343, 2201, 2202; 42 U.S.C.A. § 1983; Fe.

Federal Procedural Forms § 10:305, Complaint -- Civil Rights Act -- Sex Discrimination and Harassment -- Former Female Cadet at Military Institution [20 U.S.C.A. § 1681; 42 U.S.C.A. §§ 1983, 1985(3)].

Federal Procedural Forms § 10:340, Complaint -- by Female Athletes -- Denied Participation in Tennis Program -- for Declaratory and Injunctive Relief [20 U.S.C.A. § 1681; 28 U.S.C.A. § 1343; 42 U.S.C.A. § 1983; 45 C.F.R. § 86.41; Fed. R. C.

Federal Procedural Forms § 10:353, Actions for Which Fees Available.

Federal Procedural Forms § 10:354, Fees for State Court Action With Concurrent Jurisdiction.

Federal Procedural Forms § 10:386, Allegations in Complaint -- Deprivation of Civil Rights Under Color of Law -- Claim for Attorney's Fees [28 U.S.C.A. § 1343; 42 U.S.C.A. §§ 1983, 1988; Fed. R. Civ. P. 8(a)].

Federal Procedural Forms § 10:389, Motion -- by Plaintiff's Counsel -- for Interim Award of Attorney's Fees and Costs [42 U.S.C.A. § 1988].

Federal Procedural Forms § 10:395, Affidavit -- by Defendant's Counsel -- in Support of Response to Plaintiff's Motion for Attorney's Fees -- Fee Waiver Agreement in Settlement was Voluntary and Precludes Recovery by Pla.

Federal Procedural Forms § 13:160, Procedural Guide -- Judicial Review of Relocation Assistance Claims.

Federal Procedural Forms § 45:183, Introduction.

Federal Procedural Forms § 45:260, Complaint -- by Individual Teacher Against Municipal Authorities Receiving Federal Financial Assistance -- for Injunctive and Declaratory Relief, Damages, and Attorney's Fees -- Alleging Discrimi.

Federal Procedural Forms § 45:262, Complaint -- by Firefighter -- for Back Pay, Compensatory Damages, Declaratory and Injunctive Relief -- Discriminatory Withdrawal of Employment Offer After Applicant's HIV Positive Status Disclos.

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Federal Procedural Forms § 45:264, Allegation in Complaint, With Prayer for Relief -- by Teacher Against Municipal Authorities Receiving Federal Financial Assistance -- for Damages and Attorney's Fees -- Alleging Discrimination on.

Federal Procedural Forms § 45:265, Allegation in Complaint, With Prayer for Relief -- by Employee With Temporary Disability (Back Injury) Against Former Employer Which is a Recipient of Federal Funds -- Failure to Accommodate as Discri.

Federal Procedural Forms § 45:266, Allegation in Complaint, With Prayer for Relief -- by Employee With Temporary Disability (Back Injury) Against Former Employer Which is Recipient of Federal Funds -- Denial of Due Process [Us Constitu.

Nichols Cyclopedia of Legal Forms Annotated § 6.3529, Notice to Municipality of Accident -- Statement of Property Damage Caused by City's Construction of Parking Lot Adjacent to Building, With Related Civil Rights Claim.

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1 West's Federal Forms § 47, Application for Extension of Time for Filing Petition for Certiorari -- Civil Case.

1 West's Federal Forms § 57, Petition for Certiorari -- a Third Illustration of Complete Petition for Certiorari.

1 West's Federal Forms § 60, Petition for Certiorari -- Questions Presented.

1 West's Federal Forms § 70, Petition for Certiorari -- Case from State Court -- Showing How Federal Question was Raised and Passed Upon.

1 West's Federal Forms § 77, Petition for Certiorari -- Reasons for Granting the Writ -- Civil Rights Case.

2 West's Federal Forms § 1567, Complaint -- for Declaratory Judgment and Injunction to Require State Officials to Take Decisive and Final Action on Food Stamp Application Within a Certain Time, Including Hearing, in Accordance With F.

2 West's Federal Forms § 1568, Complaint -- Challenging Adverse Action Notice as Not in Compliance With Regulations or Due Process.

2 West's Federal Forms § 1569, Complaint -- to Enjoin Treatment of AFDC and General Assistance Housing Security Deposit Payments as Income Under Food Stamp Program.

2 West's Federal Forms § 1572, Complaint for Injunction and Declaratory Judgment -- Enjoining State Educational Institution's Action Refusing In-State Tuition to G-4 Nonimmigrant Aliens.

2 West's Federal Forms § 1574, Complaint Under Idea Concerning Level of Funding for Private School Placements.

3 West's Federal Forms § 3056, Complaint in Class Action -- Termination of Welfare Benefits.

3 West's Federal Forms § 3055.20, Complaint in Class Action -- Employment Discrimination.

3 West's Federal Forms § 3056.20, Complaint in Class Action -- Food Stamp Program.

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4 West's Federal Forms § 4610, Motion for Attorney Fees Pursuant to 42 U.S.C.A. § 1988.

2A West's Federal Forms § 1612, Complaint for Deprivation of Civil Rights -- for Assault by Police Officer Acting Under Color of Law.

2A West's Federal Forms § 1613, Complaint for Deprivation of Civil Rights -- for Declaratory Judgment and Injunction Against Discrimination in Use of Public Recreation Facilities.

2A West's Federal Forms § 1619, Complaint that Local Regulations Unconstitutionally Burden Interstate Commerce -- Prohibition of Highway Use of Certain Twin Trailers.

2A West's Federal Forms § 1620, Complaint that Local Regulations Unconstitutionally Burden Interstate Commerce -- Other Prohibition of Highway Use of Certain Twin Trailers.

2A West's Federal Forms § 1640, Complaint for Employment Discrimination Asserting Constitutional Rights -- Exclusion of African-Americans as Teachers by Arbitrary Tests.

2A West's Federal Forms § 1642, Complaint for Employment Discrimination Asserting Constitutional Rights -- Termination of Employment of Teacher for Not Complying With Mandatory Rules for Maternity Leave and Later Return to Employment.

2A West's Federal Forms § 1643, Complaint for Employment Discrimination Asserting Constitutional Rights -- Discrimination in Teaching Employment on the Basis of Pregnancy.

2A West's Federal Forms § 1644, Complaint for Employment Discrimination -- Requiring Pregnancy Leaves Which Are Not Required for Medical Reasons.

2A West's Federal Forms § 1645, Complaint for Employment Discrimination -- for Relief Against Enforcement of State Statute Disqualifying Women Separated Because of Pregnancy from Receiving Unemployment Benefits.

2A West's Federal Forms § 1646, Complaint for Employment Discrimination -- Unconstitutional Discrimination by City on Account of Discharge as Alien Barred from Employment by State Law.

2A West's Federal Forms § 1647, Complaint for Employment Discrimination -- Discharge Motivated by Desire to Curtail or Penalize Employee's Constitutional Rights.

2A West's Federal Forms § 1648, Complaint for Employment Discrimination -- Altered Employment Conditions Motivated by Desire to Curtail or Penalize Employee's Constitutional Rights -- Another Form.

2A West's Federal Forms § 1649, Complaint for Employment Discrimination -- Freedom of Public Employees to Speak on Issues and Assert Grievances.

2A West's Federal Forms § 1650, Complaint for Employment Discrimination -- Termination of Public Employment Because of Political Affiliation.

2A West's Federal Forms § 1653, Complaint for Employment Discrimination Under Title VII of the Civil Rights Act -- Confinement of African-Americans to One Division; Loss of Seniority Upon Transfers by African-Americans; Other Discrimi.

2A West's Federal Forms § 1612.5, Complaint for Deprivation of Civil Rights by Police Officer.

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2A West's Federal Forms § 1613.5, Complaint for Deprivation of Civil Rights -- for Declaratory Judgment and Injunction Against Unconstitutional Treatment and Care of Noncriminal Mentally Ill Patients Involuntarily Committed.

2A West's Federal Forms § 1650.5, Complaint for Employment Discrimination -- Demotion in Public School Employment Because of Political Affiliation.

2A West's Federal Forms § 1652.5, Complaint for Discrimination in Hiring and Promoting Police Officers.

2A West's Federal Forms § 1612.10, Complaint for Deprivation of Civil Rights by Police Officer -- Another Form.

2A West's Federal Forms § 1612.15, Complaint for Deprivation of Civil Rights -- for Failure to Protect Prison Inmate from Sexual Abuse and Physical Assault by Fellow Prisoners.

2A West's Federal Forms § 1613.10, Complaint for Deprivation of Civil Rights -- for Declaratory Relief and Injunction Against Enforcing Ordinance Regulating Abortion.

2A West's Federal Forms § 1613.25, Complaint for Deprivation of Civil Rights -- Nonconsensual Sterilization.

2A West's Federal Forms § 1613.30, Complaint Contesting Ineligibility of Nonresidents for Medical Assistance.

2A West's Federal Forms § 1657.25, Complaint Alleging Plaintiff Discharged in Retaliation for Reporting Sexual Harassment.

2B West's Federal Forms § 1737, Complaint for Injunction and Declaratory Judgment Concerning School Desegregation -- Segregation Conduct of School Board.

2B West's Federal Forms § 1738, Complaint for Deprivation of Civil Rights -- Suspension from Public Schools.

2B West's Federal Forms § 1739, Complaint for Injunction Under Freedom of Speech and Due Process Clauses of the Constitution to Bar Meetings of Religious Student Group on Campus; First Amendment Establishment Clause Does Not Apply.

2B West's Federal Forms § 1740, Complaint for Violation of Establishment Clause of First Amendment -- Particular State Regulation of Religious Group.

2B West's Federal Forms § 1760, Complaint Under the Constitution Challenging State Legislative Reapportionment Plan.

2B West's Federal Forms § 1761, Intervenor's Complaint to Challenge Constitutionality of Plan Apportioning House of State Legislature.

2B West's Federal Forms § 1763, Complaint for Declaratory Judgment and Injunction Against Enforcement of Poll Tax as a Condition of Voting in State Elections.

2B West's Federal Forms § 2013, Answer to Complaint for Employment Discrimination and Including Other Defenses.

2B West's Federal Forms § 1750.5, Complaint Related to Securities Exchange Act of 1934 -- for Injunction Sought by "Tender Offeror" Against Enforcement of State "Takeover" Statutes; for Damages for Violation of Williams Act (15 U.S.C.

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2B West's Federal Forms § 1761.5, Complaint for Declaratory and Injunctive Relief Against County Commissioners Alleging Redistricting Plan Violated Equal Protection Clause and State Statute.

2B West's Federal Forms § 1762.5, Complaint for Declaratory and Injunctive Relief Prohibiting Implementation of Apportionment Plan for Electing Members of State Legislature.

2B West's Federal Forms § 1763.5, Complaint for Declaratory Judgment and Injunction Challenging State Statutory Candidate Filing Deadline on Federal Constitutional Basis.

2B West's Federal Forms § 1719.10, Complaint that Public Housing Authority Overbilled for Utilities in Violation of Rent Ceiling.

2B West's Federal Forms § 1719.35, Complaint for Declaratory Judgment and Injunction -- Indian Gaming.

2B West's Federal Forms § 1738.10, Complaint for Violation of First Amendment Rights of University Students.

2B West's Federal Forms § 1738.15, Complaint Against School District for Failure to End Sexual Harassment Inflicted on Student by Peers.

2B West's Federal Forms § 1738.20, Complaint for Violation of First Amendment Rights of Public School Students.

2B West's Federal Forms § 1738.25, Complaint Against School District Alleging Sexual Harassment in Violation of Title IX.

2B West's Federal Forms § 1762.10, Complaint Under Voting Rights Act of 1965.

2C West's Federal Forms § 2526, Failure to State a Claim Upon Which Relief Can be Granted -- Another Form.

2C West's Federal Forms § 2817.45, Pretrial Order -- Discriminatory Land Use Regulation.

3B West's Federal Forms § 4054, Special Verdict -- Police Conduct.

3B West's Federal Forms § 4055, Special Verdict -- Excessive Force.

3B West's Federal Forms § 4056, Special Verdict -- Equal Protection.

5B West's Federal Forms App. B, Appendix B. Advisory Committee Notes to Rules Governing Habeas Corpus Cases.

1AA West's Federal Forms § 352, Petitioner's or Appellant's Brief on the Merits -- Jurisdiction.

1AA West's Federal Forms § 509, Motion to Retax Costs.

10 West's Legal Forms § 16.2, Constitutional Limitations on Prejudgment Remedies.

11 West's Legal Forms § 18.24, Failure to Comply With Statutory (U.C.C.) Procedures for Repossession -- Notice and Sale.

11 West's Legal Forms § 18.86, Complaint for Wrongful Repossession -- U.C.C. § 9-503.

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14B West's Legal Forms § 30.18, Notice to Sheriff or Police of Repossession of Motor Vehicle.

24A West's Legal Forms § 5.5, Racial and Other Harassment.

24A West's Legal Forms § 3.14, Reconstruction Era Civil Rights Acts.

Am. Jur. Pl. & Pr. Forms Abuse of Process § 34.1, Complaint in Federal District Court -- Against Child Protective Services Worker, Superiors, and State Agency -- Causing Arrest on Criminal Child Abuse Charge and Instigating Juvenile Proceedings...

Am. Jur. Pl. & Pr. Forms Accountants § 21, Complaint in Federal Court -- to Enjoin Revocation of Accountant's License -- Racial Discrimination.

Am. Jur. Pl. & Pr. Forms Arrest § 85.1, Complaint in Federal Court -- Injury to Defendant -- Use of Excessive Force by Arresting Officer.

Am. Jur. Pl. & Pr. Forms Arrest § 85.2, Complaint in Federal Court -- Injury to Defendant -- Use of Excessive Force by Officer -- Traffic Stop -- Unlawful Search.

AMJUR PP Forms Automobiles & Hwy Traffic § 600, Introductory Comments.

Am. Jur. Pl. & Pr. Forms Census § 4, Complaint in Federal Court -- by Elector in Representative Capacity -- to Compel Constitutional Reapportionment of Congressional Districts Based on Census.

Am. Jur. Pl. & Pr. Forms Census § 5, Complaint in Federal Court -- by Citizens, Taxpayers, and Electors in Representative Capacity -- to Compel Constitutional Reapportionment of Legislative Districts Based on Census -- Class Action.

Am. Jur. Pl. & Pr. Forms Civil Rights § 3, Checklist -- Drafting a Complaint or Petition in an Action for Violation of Civil Rights.

Am. Jur. Pl. & Pr. Forms Civil Rights § 7, Complaint in Federal Court -- Child Abuse by State-Approved Child Care Center.

Am. Jur. Pl. & Pr. Forms Civil Rights § 8, Complaint in Federal Court -- Physical Invasion of Home -- Unauthorized Search and Seizure -- Mistaken Identity of Home to be Searched -- Action Against Police Officers, Police Chief, Municipality, And...

Am. Jur. Pl. & Pr. Forms Civil Rights § 9, Complaint in Federal Court -- Placement on List of Persons Perpetrating Sexual Abuse of Children -- Without Prior Notice and Opportunity to be Heard -- Violation of Due Process Rights -- for Declaratory...

Am. Jur. Pl. & Pr. Forms Civil Rights § 10, Complaint in Federal Court -- Wrongful Death of Member of Minority Race Participating in Voter Registration Campaign -- to Recover Compensatory and Punitive Damages -- Against County Sheriff.

Am. Jur. Pl. & Pr. Forms Civil Rights § 11, Complaint in Federal Court -- Wrongful Death -- Use of Deadly Force to Prevent Escape of Unarmed, Nondangerous Suspected Felon -- Against Police Officer, Police Chief, and Municipality.

Am. Jur. Pl. & Pr. Forms Civil Rights § 12, Complaint in Federal Court -- Unlawful Arrest, Search, and

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Incarceration -- Abusive Treatment -- Personal Injuries -- Against Police Officers.

Am. Jur. Pl. & Pr. Forms Civil Rights § 13, Complaint in Federal Court -- Conspiracy to Prevent Enforcement of Alcoholic Beverage Laws -- by State Enforcement Officer -- Against County Sheriff and Liquor Licensees.

Am. Jur. Pl. & Pr. Forms Civil Rights § 15, Complaint in Federal Court -- Violation of the First and Fourteenth Amendments -- for Damages and Injunctive Relief.

Am. Jur. Pl. & Pr. Forms Civil Rights § 16, Complaint in Federal Court -- Violation of Right to Privacy -- Statute Prohibiting Physician Assisted Suicide.

Am. Jur. Pl. & Pr. Forms Civil Rights § 17, Complaint in Federal Court -- Violation of Right to Privacy -- Statute Prohibiting Physician Assisted Suicide -- State Penal Law Criminalizing Assisted Suicide.

Am. Jur. Pl. & Pr. Forms Civil Rights § 18, Complaint in Federal Court -- Denial of Freedom of Religion -- Ordinance Limiting Religious Solicitation at Municipal Facilities -- for Injunctive Relief and Declaratory Judgment.

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I. GENERALLY

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1. Constitutionality

The provisions of this section are sufficiently clear to meet tests by due process of law clause of U.S.C.A.Const. Amend. 5, notwithstanding that word "willfully" is not used in referring to mind of the tort-feasor. Picking v. Pennsylvania R. Co., C.C.A.3 (Pa.) 1945, 151 F.2d 240, rehearing denied 152 F.2d 753.

2. Construction

Congress intended that § 1983 be construed in light of common-law principles that were well settled at time of its enactment. Kalina v. Fletcher, U.S.Wash.1997, 118 S.Ct. 502, 522 U.S. 118, 139 L.Ed.2d 471. Civil Rights 1004

Coverage of § 1983 must be broadly construed. Dennis v. Higgins, U.S.Neb.1991, 111 S.Ct. 865, 498 U.S. 439, 112 L.Ed.2d 969. Civil Rights 1004; Civil Rights 1027

This section should be construed so as to respect proper balance between the states and the federal government in law enforcement. Stefanelli v. Minard, U.S.N.J.1951, 72 S.Ct. 118, 342 U.S. 117, 96 L.Ed. 138. Civil Rights 1004

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42 U.S.C.A. § 1983

Civil rights legislation should generally not be interpreted narrowly; this section was designed as comprehensively, remedial legislation for deprivation of federal constitutional and statutory rights; the contours of this section must necessarily remain flexible to accommodate changing circumstances and the exigencies of a given era. Green v. Dumke, C.A.9 (Cal.) 1973, 480 F.2d 624. Civil Rights 1004

This section is not to be interpreted narrowly. Basista v. Weir, C.A.3 (Pa.) 1965, 340 F.2d 74. See, also, Dyer v. Kazuhisa Abe, D.C.Hawaii 1956, 138 F.Supp. 220.

Statute creates right that may be enforced under § 1983 if (1) Congress intended provision to benefit plaintiff, (2) asserted right is not so vague and amorphous as to be judicially unenforceable, and (3) statute unambiguously imposes binding obligation on states. Rabin v. Wilson-Coker, D.Conn.2003, 266 F.Supp.2d 332, reversed 362 F.3d 190. Civil Rights 1027

When there is no indication from the text and structure of a statute that Congress intended to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action. Lines v. Wargo, W.D.Pa.2003, 271 F.Supp.2d 649. Action 3; Civil Rights 1027

Only Congress can create new rights enforceable under § 1983; agency regulations cannot give rise to a private cause of action where the authorizing statute does not confer such a right. Wright v. Fred Hutchinson Cancer Research Center, W.D.Wash.2002, 269 F.Supp.2d 1286, reconsideration denied. Civil Rights 1027

Congress can foreclose remedy under § 1983 either by forbidding it expressly in statute itself, or impliedly by creating comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983. Caraballo Seda v. Javier Rivera, D.Puerto Rico 2003, 261 F.Supp.2d 76. Civil Rights 1027; Civil Rights 1307

There is strong presumption that Congress intended to allow § 1983 actions without foreclosure by alternative enforcement scheme, and burden of establishing contrary rests on defendant. Caraballo Seda v. Javier Rivera, D.Puerto Rico 2003, 261 F.Supp.2d 76. Civil Rights 1027; Civil Rights 1401

To determine whether Congress impliedly foreclosed recourse to § 1983, court must review legislative history and other traditional aids of statutory interpretation to determine congressional intent. Caraballo Seda v. Javier Rivera, D.Puerto Rico 2003, 261 F.Supp.2d 76. Civil Rights 1027

To determine whether a statutory provision creates a right enforceable under § 1983, courts examine (1) whether Congress intended the statute to benefit plaintiffs, (2) whether the statute expresses a congressional preference or binding obligation, and (3) whether the right is too vague and amorphous, such that it is beyond the competence of the judiciary to enforce; if these factors are met, there is a rebuttable presumption that the right is enforceable under § 1983, which can be overcome only by demonstrating that Congress specifically foreclosed a remedy under § 1983. Long Term Care Pharmacy Alliance v. Ferguson, D.Mass.2003, 260 F.Supp.2d 282, vacated 362 F.3d 50. Civil Rights 1027

Within this section providing redress for deprivation, under color of state law, of rights secured by Constitution "and laws," the quoted words added in 1875 enlarged scope of the section which should not be interpreted solely according to language of original statute passed in 1871. La Raza Unida of Southern Alameda County v. Volpe, N.D.Cal.1977, 440 F.Supp. 904. Civil Rights 1027

This section should be interpreted with sufficient liberality to fulfill its purpose of providing federal remedy in federal court in protection of federal right. Birnbaum v. Trussell, C.A.2 (N.Y.) 1966, 371 F.2d 672. See, also, Schorle v. City of Greenhills, D.C.Ohio 1981, 524 F.Supp. 821; Courtney v. School Dist. No. 1, Lincoln County, Wyoming, D.C.Wyo.1974, 371 F.Supp. 401; Nanez v. Ritger, E.D.Wis.1969, 304 F.Supp. 354.

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42 U.S.C.A. § 1983

3. Construction with constitutional provisions

Supremacy clause does not of its own force create federal rights enforceable under § 1983; the clause is not itself a source of federal rights, but secures federal rights by according them priority when they come in conflict with state law. Golden State Transit Corp. v. City of Los Angeles, U.S.Cal.1989, 110 S.Ct. 444, 493 U.S. 103, 107 L.Ed.2d 420, on remand 895 F.2d 1281. Civil Rights 1029

Although under color of state law requirement does not add anything not already included within state action requirement of U.S.C.A.Const. Amend. 14, this section is applicable to other constitutional provisions and statutory provisions that contain no state action requirement. Lugar v. Edmondson Oil Co., Inc., U.S.Va.1982, 102 S.Ct. 2744, 457 U.S. 922, 73 L.Ed.2d 482. Civil Rights 1325

Consent decree which arose out of voluntary settlement of prior jail-conditions lawsuit, and which was not based on a finding of, and not expressly intended to remedy, any violation of Constitution, could not create or expand constitutional rights, and county's violation of consent decree, in failing to provide second, nighttime jailer to staff jail during hours that pretrial detainee committed suicide, did not without more establish a violation of pretrial detainee's constitutional rights, of kind actionable under § 1983. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1088(4); Federal Civil Procedure 2397.6

Supremacy Clause does not "secure" federal rights within meaning of § 1983. White Mountain Apache Tribe v. Williams, C.A.9 (Ariz.) 1985, 810 F.2d 844.

Inasmuch as § 1983 does not provide remedy for claims resulting from violations of either commerce clause or supremacy clause, attorney fee claim under § 1988, based on § 1983 action involving alleged violation of those clauses, can have no merit. J & J Anderson, Inc. v. Town of Erie, C.A.10 (Colo.) 1985, 767 F.2d 1469. Civil Rights 1479

Use of this section and § 1981 of this title to maintain discrimination cases must be guided by principles announced by Supreme Court for application of U.S.C.A.Const. Amend. 14 to discrimination cases. Mescall v. Burrus, C.A.7 (Ill.) 1979, 603 F.2d 1266. Civil Rights 1033(1)

This section, granting suit for deprivation of rights under color of state law, cannot be engrafted on U.S.C.A.Const. Amend. 11 by judicial construction. Krause v. Rhodes, C.A.6 (Ohio) 1972, 471 F.2d 430, certiorari granted 93 S.Ct. 3056, 413 U.S. 919, 37 L.Ed.2d 1040, certiorari granted 93 S.Ct. 3065, 413 U.S. 919, 37 L.Ed.2d 1040, reversed 94 S.Ct. 1683, 416 U.S. 232, 40 L.Ed.2d 90, 71 O.O.2d 474. Federal Courts 265

Whether plaintiff is seeking to enforce a federal statutory right through a private cause of action implicit in the statute itself or through § 1983, there must first be a determination that Congress intended to create a federal right. Lines v. Wargo, W.D.Pa.2003, 271 F.Supp.2d 649. Action 3; Civil Rights 1027

High school students' Fourth Amendment unreasonable seizure and excessive force claims against county school district and school officials under §§ 1983 were not preempted by Title VI; although students alleged discriminatory motive behind their arrests, Title VI was not intended to remedy instances of unreasonable seizures in violation of Fourth Amendment. Alexander v. Underhill, D.Nev.2006, 416 F.Supp.2d 999. Civil Rights 1309

Eleventh Amendment barred §§ 1983 suit against school district, seeking either equitable or damages relief, by high school student claiming her constitutional rights were violated when officials harassed her for being openly gay; school district was an arm of the state. C.N. v. Wolf, C.D.Cal.2005, 410 F.Supp.2d 894. Federal Courts 269

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Large out-of-state manufacturer stated commerce clause claim under §§ 1983 against Commissioner of New York State Department of Environmental Conservation and Attorney General of State of New York, on allegations that creation and implementation of New York Architectural and Industrial Maintenance Coatings regulations, which were designed to reduce ozone emissions as required under Clean Air Act (CAA), placed unreasonable and excessive, and not incidental, burden on out-of-state manufacturers, in light of any local benefits that may have been received by State of New York. Sherwin-Williams Co. v. Crotty, N.D.N.Y.2004, 334 F.Supp.2d 187. Commerce 52.10; Environmental Law 287

Inmate's § 1983 complaint adequately pleaded claim for infringement of his First Amendment free exercise rights; complaint and exhibits alleged inmate was denied 12 submitted requests to attend services. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1395(7)

Eleventh Amendment barred state prisoner's pro se § 1983 action for damages against prison chaplain in his official capacity, alleging that chaplain violated prisoner's First Amendment right to freely exercise his religion by intentionally interfering with prisoner's ability to observe a religious holiday. Wares v. VanBebber, D.Kan.2002, 231 F.Supp.2d 1120. Federal Courts 269

Nothing in § 1983 overrides state immunity otherwise protected under Eleventh Amendment. Coxson v. Com. of Pa., W.D.Pa.1996, 935 F.Supp. 624. Federal Courts 265

Section 1983 supports commerce clause challenge. Poor Richard's Inc. v. Ramsey County, Minn., D.Minn.1996, 922 F.Supp. 1387.

Plaintiff, who failed to allege violation of federal civil rights statute, could not have independent cause of action arising under First and Fourteenth Amendment. Henderson v. Corrections Corp. of America, E.D.Tenn.1996, 918 F.Supp. 204. Civil Rights 1322

Section 1983 claim premised on violation of supremacy clause through preemption is not cognizable. Gustafson v. City of Lake Angelus, E.D.Mich.1993, 856 F.Supp. 320, affirmed in part, reversed in part 76 F.3d 778, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 81, 519 U.S. 823, 136 L.Ed.2d 39. Civil Rights 1029

Single claim asserted under both civil rights statute, § 1983, and the Fourteenth Amendment was duplicitous, since § 1983 was enacted to serve as means by which claims can be brought under due process clause of Fourteenth Amendment in place of asserting claim more generally under the Fourteenth Amendment. Verdon v. Consolidated Rail Corp., S.D.N.Y.1993, 828 F.Supp. 1129. Civil Rights 1322

Former employee and her alleged attorney failed to state cause of action against former employer, its attorneys, and state court judge who presided over former employee's wrongful discharge action based solely on an alleged violation of Fourteenth Amendment due process right; existence of remedy for former employee and alleged attorney under § 1983 obviated need to imply constitutional remedy. Hammond v. Creative Financial Planning Organization, Inc., E.D.Pa.1992, 800 F.Supp. 1244. Civil Rights 1395(8)

Prisoner alleging valid Eighth Amendment claim could not also bring separate, independent claim under § 1983 for same behavior based on substantive due process. Warren v. State of Mo., W.D.Mo.1990, 754 F.Supp. 150, affirmed 995 F.2d 130. Civil Rights 1090

Supremacy clause does not create property right protected by Fourteenth Amendment. Burris v. Mahaney, M.D.Tenn.1989, 716 F.Supp. 1051. Constitutional Law 277(1); States 18.1

Claim under Fourteenth Amendment was subsumed under § 1983 claim. Valerio v. Dahlberg, S.D.Ohio 1988,

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42 U.S.C.A. § 1983

716 F.Supp. 1031.

Sex discrimination plaintiff who had alternate avenues of relief under civil rights statutes was precluded from bringing suit directly under Constitution. Downum v. City of Wichita, Kan., D.Kan.1986, 675 F.Supp. 1566. Civil Rights 1322; Civil Rights 1502

Plaintiff cannot pursue claim based upon constitutional torts when he has remedy under this section, even though his action under this section is barred by statute of limitations. Matthewman v. Akahane, D.C.Hawai'i 1983, 574 F.Supp. 1510. Civil Rights 1322

Actions brought pursuant to this section are subject to same state action requirement as is applicable to actions involving allegations of violations under U.S.C.A. Const. Amend. 14 § 1. Rosquist v. Jarrat Const. Corp., D.C.N.J.1983, 570 F.Supp. 1206. Civil Rights 1325

Concepts of "state action" within meaning of U.S.C.A. Const.Amend. 14 and under color of state law," for purpose of this section, are analytically distinct and the latter focuses on whether the person who committed the deprivation acted or purported to act by authority conferred by the state regardless of whether the right deprived involved "state action," although the concepts merge when public officials are involved. Fuller v. Hurley, W.D.Va.1983, 559 F.Supp. 313. Civil Rights 1325; Constitutional Law 254(2)

There was no need to imply remedy under U.S.C.A.Const. Amend. 14 where all relief to which complainant would otherwise be entitled was available under this section. Three Rivers Cablevision, Inc. v. City of Pittsburgh, W.D.Pa.1980, 502 F.Supp. 1118. Action 2

This section evinces Congressional intent to define standing as broadly as permitted by U.S.C.A.Const. Art. 3, § 2, cl. 1. Jackson v. Sargent, D.C.Mass.1975, 394 F.Supp. 162, affirmed 526 F.2d 64.

In enacting § 1983, Congress did not intend to abrogate the states' Eleventh Amendment immunity. Davis v. Bruce, D.Kan.2003, 215 F.R.D. 612, reconsideration denied 2004 WL 957854, affirmed in part 129 Fed.Appx. 406, 2005 WL 768778. Federal Courts 265

Police officer lacked standing to assert a First Amendment retaliation claim based on her mother's complaints made on her behalf. Martinez v. City of New York, S.D.N.Y.2003, 2003 WL 2006619, Unreported, affirmed 82 Fed.Appx. 253, 2003 WL 22879401. Constitutional Law 42.3(3)

Even if all of police officer's mother's complaints stemming from officer's transfer and officer's superior's alleged abusive behavior toward officer were characterized as protected speech, officer could not establish a causal connection between those complaints and her transfer sufficient to make out First Amendment retaliation claim against police department; complaints were made after officer was informed that she would be transferred. Martinez v. City of New York, S.D.N.Y.2003, 2003 WL 2006619, Unreported, affirmed 82 Fed.Appx. 253, 2003 WL 22879401. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

4. Construction with Federal Rules of Civil Procedure

Arrestee's § 1983 complaint against federal naval base police officers, who responded to complaint by federal employee about an allegedly disorderly person, failed to allege the officers were acting under color of state law, as required to support the § 1983 claim, even though citations they issued against arrestee concerned exclusively state offenses and were prepared on state form which listed state court as venue where the offenses would be heard, absent any allegation that the state cloaked the officers in any degree of state authority, or that there was a conspiracy between state officials and the officers to deprive arrestee of his civil rights. Case v. Milewski, C.A.7 (Ill.) 2003, 327 F.3d 564. Civil Rights 1327

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42 U.S.C.A. § 1983

This section, which affords right to sue to any citizen of United States who has been deprived of any right, privilege or immunity, prevails over conflicting policy purportedly expressed in rule 17, Federal Rules of Civil Procedure, Title 28, stating that capacity of an individual to sue or to be sued should be determined by law of his domicile, in light of rationale of Code Va.1950, §§ 53-305 to 53-307, providing for appointment of a committee which may sue and be sued in respect to all claims or demands of any nature in favor of or against a person convicted of a felony. Almond v. Kent, C.A.4 (Va.) 1972, 459 F.2d 200. Civil Rights 1389

To state a civil rights claim pursuant to § 1983, the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim; to the contrary, all the Rules require is a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. New York State Federation of Taxi Drivers, Inc. v. City of New York, E.D.N.Y.2003, 270 F.Supp.2d 340. Civil Rights 1394

Two-year statute of limitations on plaintiff's § 1983 claim was extended for additional two days, pursuant to Federal Rule of Civil Procedure concerning computation of time under rules, where bar date fell on Saturday. Arvia v. Black, D.Colo.1989, 722 F.Supp. 644. Time 10(4)

5. Purpose

Purpose of § 1983 is to deter state actors from using badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. Wyatt v. Cole, U.S.Miss.1992, 112 S.Ct. 1827, 504 U.S. 158, 118 L.Ed.2d 504, on remand 994 F.2d 1113. Civil Rights 1004

Civil Rights Act of 1871 was passed for express purpose of enforcing provisions of the Fourteenth Amendment. Lugar v. Edmondson Oil Co., Inc., U.S.Va.1982, 102 S.Ct. 2744, 457 U.S. 922, 73 L.Ed.2d 482. Civil Rights 1004

Deterrence of future abuses of power by persons acting under color of state law is an important purpose of this section. City of Newport v. Fact Concerts, Inc., U.S.R.I.1981, 101 S.Ct. 2748, 453 U.S. 247, 69 L.Ed.2d 616. Civil Rights 1004

Main goal of this section was to override the corrupting influence of the Ku Klux Klan and its sympathizers on the government and law enforcement agencies of the southern states and one strong motive behind its enactment was great Congressional concern that the state courts had been deficient in protecting federal rights. Allen v. McCurry, U.S.Mo.1980, 101 S.Ct. 411, 449 U.S. 90, 66 L.Ed.2d 308, on remand 647 F.2d 167. Civil Rights 1004

Purposes of this section were to override certain kinds of state laws, to provide a remedy where state law was inadequate, to provide a federal remedy where state remedy, though adequate in theory, was not available in practice, and to provide a remedy in federal courts supplementary to any remedy any state might have. McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill., U.S.Ill.1963, 83 S.Ct. 1433, 373 U.S. 668, 10 L.Ed.2d 622. See, also, Madison v. Wood, C.A.6 (Mich.) 1969, 410 F.2d 564. Civil Rights 1004

Purpose of § 1983 is to deter state actors from using badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. McKnight v. Rees, C.A.6 (Tenn.) 1996, 88 F.3d 417, certiorari granted 117 S.Ct. 504, 519 U.S. 1002, 136 L.Ed.2d 395, affirmed 117 S.Ct. 2100, 521 U.S. 399, 138 L.Ed.2d 540. Civil Rights 1004

Purpose of § 1983 is to provide a remedy to parties deprived of constitutional rights by a state official's abuse of his position while acting under color of state law. Haines v. Fisher, C.A.10 (Wyo.) 1996, 82 F.3d 1503. Civil Rights 1004

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42 U.S.C.A. § 1983

Underlying purpose of Congressional scheme for protection of constitutional rights are to permit victims of constitutional violations to obtain redress, to provide for federal criminal prosecutions of serious constitutional violations when state criminal proceedings are ineffective for purpose of deterring violations, and to strike appropriate balance between protection of individual rights from state infringement and protection of state and local governments from unnecessary federal interference. U.S. v. City of Philadelphia, C.A.3 (Pa.) 1980, 644 F.2d 187. Civil Rights 1004; Civil Rights 1804

Provision of this section which establishes a federal cause of action for damages against state and local officials who have caused individuals to suffer constitutional deprivation was designed to protect individuals against a misuse of power made possible only because the wrongdoer is clothed with the authority of state law. Duchesne v. Sugarman, C.A.2 (N.Y.) 1977, 566 F.2d 817. Civil Rights 1325

High school students' equal protection claim under §§ 1983, which alleged that county school district and school officials denied them same treatment as other students on account of their race, was preempted by Title VI, since such allegations fell squarely within conduct that Title VI was designed to remedy; although remedies available under Title VI were different than those that otherwise would have been available pursuant to §§ 1983, Congress enacted statutory scheme sufficiently comprehensive to remedy racial discrimination committed by entity receiving federal financial assistance. Alexander v. Underhill, D.Nev.2006, 416 F.Supp.2d 999. Civil Rights 1309

The essence of § 1983 is to authorize a court to grant relief when a party's federally protected rights have been violated by a state or local official or other person who acted under color of state law. Nabozny v. NCS Pearson, Inc., D.Nev.2003, 270 F.Supp.2d 1201. Civil Rights 1304

A plaintiff must assert a violation of a federal right to invoke a remedy provided by Section 1983. New York State Federation of Taxi Drivers, Inc. v. City of New York, E.D.N.Y.2003, 270 F.Supp.2d 340. Civil Rights 1027

Taxicab companies' claim that city parking authority's relocation of ordinance-created taxi stands without notice constituted taking of property without due process was not cognizable under § 1983; companies did not contend that alleged deprivation was effected pursuant to established state procedure, and state tort law was adequate to handle dispute. Fortuna's Cab Service, Inc. v. City of Camden, D.N.J.2003, 269 F.Supp.2d 562. Civil Rights 1071; Civil Rights 1318

Deprivation of property is not cognizable under § 1983 when state post-deprivation remedies are adequate to protect plaintiff's due process rights, and conduct causing deprivation is random and unauthorized rather than effected pursuant to established state procedure. Fortuna's Cab Service, Inc. v. City of Camden, D.N.J.2003, 269 F.Supp.2d 562. Civil Rights 1071; Civil Rights 1318

Provisions of the No Child Left Behind Act (NCLBA), requiring local educational agencies to notify parents of students enrolled in schools that were identified for "school improvement" "corrective action" or "restructuring" of such identification and students' rights to transfer to different schools, and to offer supplemental educational services (SES) to certain students, did not create individual rights that were enforceable under § 1983. Association of Community Organizations for Reform Now v. New York City Dept. of Educ., S.D.N.Y.2003, 269 F.Supp.2d 338 . Civil Rights 127.1

Initial inquiry for deciding whether federal statute creates personal rights that may be enforced through § 1983 action is determination as to whether or not Congress intended to confer individual rights upon a class of beneficiaries; if Congress wishes to create new rights it must do so in clear and unambiguous terms. Association of Community Organizations for Reform Now v. New York City Dept. of Educ., S.D.N.Y.2003, 269 F.Supp.2d 338. Civil Rights 1027

If text and structure of federal statute do not evince clear and unambiguous Congressional intention to create

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individual rights, there is no basis for a private suit, whether under § 1983 or under implied right of action. Association of Community Organizations for Reform Now v. New York City Dept. of Educ., S.D.N.Y.2003, 269 F.Supp.2d 338. Action 3; Civil Rights 1027

Section 1983 claims, brought by derivative plaintiffs as parents and siblings of citizen who alleged he was deprived of his constitutional rights by false arrest and malicious prosecution, did not raise viable civil rights claims and warranted dismissal. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1332(4)

Section 1983 is not itself a source of substantive rights; instead, it provides a cause of action for the vindication of federal rights. Rinker v. Sipler, M.D.Pa.2003, 264 F.Supp.2d 181. Civil Rights 1305

Section 1983 is not designed to rectify harassment or verbal abuse. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1036

One of principal purposes of § 1983 was to give remedy to parties deprived of constitutional rights, privileges and immunities by official's abuse of his or her position, that is, to provide remedy against individual officials who violate constitutional rights. Ascolese v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1996, 925 F.Supp. 351. Civil Rights 1004

Section 1983 was enacted to override certain kinds of state laws, to provide remedy where state law was inadequate, to provide federal remedy where state remedy, though adequate in theory, was not available in practice, and to provide remedy in federal court supplementary to any state remedy. Davis v. Hudgins, E.D.Va.1995, 896 F.Supp. 561, affirmed 87 F.3d 1308, certiorari denied 117 S.Ct. 1440, 520 U.S. 1172, 137 L.Ed.2d 546. Civil Rights 1004

Section 1983 itself does not create any substantive rights; it simply provides remedy for vindicating rights established under Constitution or laws of the United States. Ward v. Temple University, E.D.Pa.2003, 2003 WL 21281768, Unreported. Civil Rights 1305

City's alleged failure to enforce City Code provisions regarding preservation of cemeteries did not give rise to liability under § 1983; statute provided civil claim for violations of rights protected by Constitution and laws of United States, not for violations arising solely out of state law. Tshaka v. Benepe, E.D.N.Y.2003, 2003 WL 21243017, Unreported. Civil Rights 1029

6. Retroactive effect of court decisions--Generally

The Supreme Court decision to the effect that prisoners' suits seeking restoration of good time were governed by section 2254 of Title 28, even though they came within broad language of this section would not be applied retroactively where state prisoners had commenced civil rights action prior to adoption of the decision and had relied on court decision indicating that suit attacking revocation of good time could be brought under this section. Nelson v. Schmidt, W.D.Wis.1973, 373 F.Supp. 705. Courts 100(1)

7. ---- Deadly force, retroactive effect of court decisions

Rule regarding use of deadly force by police officers to apprehend fleeing felon applied retroactively to § 1983 action by father of unarmed burglary suspect who was shot by officer; father's action was case in which fleeing felon rule was established, and Supreme Court made it clear in its opinion establishing rule that it was to be applied to parties before it. Garner v. Memphis Police Dept., C.A.6 (Tenn.) 1993, 8 F.3d 358, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 1219, 510 U.S. 1177, 127 L.Ed.2d 565. Courts 100(1)

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Supreme Court's decision in *Tennessee v. Garner* holding that deadly force cannot be used to prevent escape of unarmed fleeing felon unless it is necessary to prevent escape and officer has probable cause to believe that suspect poses significant threat of death or serious physical injury would not be applied retroactively in civil rights action brought by unarmed suspect who was fleeing scene of burglary; *Garner* addressed novel question of law whose resolution was not clearly foreshadowed, common-law rule, embodied in Oklahoma statute, permitted using deadly force against fleeing felon, prior to decision in *Garner*, no circuit court had decided whether fleeing felon rule violated Fourth Amendment, retroactive application would not deter unconstitutional actions by police officers, and potentially severe financial strain on city resulting from retroactive application outweighed suspect's interest in compensation. Mitchell v. City of Sapulpa, C.A.10 (Okla.) 1988, 857 F.2d 713. Courts 100(1)

8. ---- Limitations, retroactive effect of court decisions

Even if mobile home park owner who failed to file federal civil rights complaint within three years of enactment of challenged vacancy control provision of rent control ordinance were allowed to pursue "direct" constitutional taking claim, that claim was also untimely; cause of action accrued when ordinance was enacted, and owner did not file complaint until more than three years after limitations period expired and more than one year after *Wilson v. Garcia* decision of United States Supreme Court. Azul-Pacifico, Inc. v. City of Los Angeles, C.A.9 (Cal.) 1992, 973 F.2d 704, certiorari denied 113 S.Ct. 1049, 506 U.S. 1081, 122 L.Ed.2d 357. Limitation Of Actions 58(1)

Decision of United States Supreme Court in *Owens v. Okure*, that forum state's personal injury statute of limitations applies to actions, was given full retroactive effect to suit by university lecturer, even though longer statute of limitations had been held applicable when action accrued, given that new rule announced in *Owens* was applied to parties in that case. Lufkin v. McCallum, C.A.11 (Ala.) 1992, 956 F.2d 1104, certiorari denied 113 S.Ct. 326, 506 U.S. 917, 121 L.Ed.2d 246. Courts 100(1)

A United States Supreme Court decision, overruling Court of Appeals decision that applicable statute of limitations for § 1983 action was six years and substituting a two-year statute of limitations, did not have retroactive effect; the Supreme Court decision overruled the clear precedent established by Court of Appeals, and it would be inequitable to apply the holding as complainant could have relied on the Court of Appeals precedent in waiting over five years to file his complaint. McKissick v. Busby, C.A.11 (Ala.) 1991, 936 F.2d 520. Courts 100(1)

United States Supreme Court's *Owens* decision establishing two-year statute of limitations period in Alabama for § 1983 actions did not apply retroactively to § 1983 suit that had been filed when six-year statute of limitations was applicable. Kendrick v. Jefferson County Bd. of Educ., C.A.11 (Ala.) 1991, 932 F.2d 910. Courts 100(1)

Wilson decision of United States Supreme Court, that appropriate limitations period for federal civil rights actions was state's statute of limitations for personal injury cases, lengthened applicable limitations period and thus would be applied retroactively to Arizona inmate's cause of action arising two years before that decision. Krug v. Imbordino, C.A.9 (Ariz.) 1990, 896 F.2d 395. Courts 100(1)

Court of Appeals decision making Kansas' two-year statute of limitations applicable to § 1983 actions could not be applied to § 1983 action, which accrued before but was filed after the decision; the decision was "clean break" with "past precedent," and the action was timely under the prior Court of Appeals decisions. Derstein v. Van Buren, C.A.10 (Kan.) 1987, 828 F.2d 653. Courts 100(1)

United States Supreme Court decision, which made § 1983 actions subject to state statute of limitations governing personal injury action, was not retroactive to require application of Iowa two-year statute of limitations to action arising out of former psychiatric patient's 1980 hospitalization; two-year statute of limitations had not run when Court of Appeals required application of Iowa catchall five-year limitations period in § 1983 actions; patient was entitled to rely on Court of Appeals' case; although uniformity and consistency suggested that Supreme Court case should be applied retroactively, factors evaluating patient's reliance and equity outweighed purpose factor; thus,

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five-year period was applicable. Dautremont v. Broadlawns Hosp., C.A.8 (Iowa) 1987, 827 F.2d 291. Courts 100(1)

Supreme Court decision in *Wilson v. Garcia* that statute of limitations for personal injury actions, not general statute of limitations, governs section 1983 actions would not be applied retroactively to bar claim of section 1983 plaintiff who justifiably relied on contrary precedent in effect at time of filing. Ridgway v. Wapello County, Iowa, C.A.8 (Iowa) 1986, 795 F.2d 646. See, also, Wegrzyn v. Illinois Dept. of Children and Family Services, C.D.Ill.1986, 627 F.Supp. 636; Fowler v. City of Louisville, W.D.Ky.1985, 625 F.Supp. 181, affirmed 803 F.2d 719, certiorari denied 107 S.Ct. 1375, 480 U.S. 919, 94 L.Ed.2d 690. Courts 100(1)

United States Supreme Court decision that all § 1983 claims accruing within state are to be governed by that state's personal injury statute of limitations could be applied retroactively to bar prisoner's § 1983 action, which was brought under Iowa law more than two years after alleged due process violations. Wycoff v. Menke, C.A.8 (Iowa) 1985, 773 F.2d 983, certiorari denied 106 S.Ct. 1230, 475 U.S. 1028, 89 L.Ed.2d 339. Courts 100(1)

County would not be permitted to amend its answer to fixed base operator's complaint alleging § 1983 violation caused by county's disparate treatment of it to add affirmative defense of one-year statute of limitations, as recent Supreme Court decision warranting application of one-year limitations period to fixed based operator's claim would not be applied retroactively. Jetstream Aero Services, Inc. v. New Hanover County, E.D.N.C.1987, 672 F.Supp. 879. Federal Civil Procedure 846

Supreme Court decision that federal courts were required to apply state statute of limitations for personal injury actions when attempting to determine timeliness of claim under § 1983 applied retroactively to bar arrestee's § 1983 action against city and individual police officer which was filed more than two years after cause of action accrued, even though five-year statute of limitations applied in Indiana to § 1983 claims against police officers prior to decision, where two-year statute of limitations applied prior to decision to § 1983 suits against governmental entities. Dinger v. City of New Albany, S.D.Ind.1987, 668 F.Supp. 1216. Courts 100(1)

A Supreme Court decision determining that the state statute of limitations applicable to personal injury actions was the statute to be applied in § 1983 actions would not be applied retroactively to an action that accrued before the decision but that was filed after it. Keller v. U.S., S.D.Cal.1987, 667 F.Supp. 1351, affirmed 930 F.2d 920. Courts 100(1)

Supreme Court decision holding that proper statute of limitations for section 1983 action is statute of limitations for personal injury action under state law would be applied retroactively to give plaintiffs in California full year after decision, where applicable statute of limitations under California law was one year. Thompson v. Weisenberger, N.D.Cal.1987, 660 F.Supp. 365. Courts 100(1)

Supreme Court decision holding that all § 1983 claims are to be governed by state statutes of limitations for personal injury actions did not apply retroactively to deny plaintiffs opportunity to file action on claim which had accrued and was still timely under former statute of limitations on day Supreme Court handed down its decision. Cabrales v. Los Angeles County, C.D.Cal.1986, 644 F.Supp. 1352. Courts 100(1)

United States Supreme Court decision holding that appropriate limitation period for § 1983 actions is state statute of limitations governing personal injury actions would not be applied retrospectively to bar developer's § 1983 claim based on allegations that defendants withheld police protection from construction area and withheld zoning decisions with intent to reduce value of property because of developer's use of black subcontractors, considering that Supreme Court decision established a new principle of law, that purposes of Supreme Court holding, to promote uniformity and minimize unnecessary litigation would not be hampered, and that retrospective application would impose an unjust result; moreover, case would not be retrospectively applied to bar developer's §§ 1981 and 1982 claims. de Furgalski v. Siegel, N.D.Ill.1985, 618 F.Supp. 295. Courts 100(1)

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42 U.S.C.A. § 1983

Rule of *Wilson v. Garcia*, making statute of limitations for all § 1983 civil rights claims to be forum state's statute of limitations for personal injury torts, did not apply retroactively to cause of action that arose prior to date of that decision but was not filed until after that case was decided, where effect of doing so would be to impose shortened statute of limitations that would serve to bar plaintiff's claim. Usher v. City of Los Angeles, C.A.9 (Cal.) 1987, 828 F.2d 556. See, also, McDougal v. County of Imperial, C.A.9 (Cal.) 1991, 942 F.2d 668; Anton v. Lehpamer, C.A.7 (Ill.) 1986, 787 F.2d 1141; Vargas v. Salvation Army, N.D.Ill.1986, 649 F.Supp. 763; Moore v. Floro, N.D.Ill.1985, 614 F.Supp. 328, affirmed 801 F.2d 1344.

9. ---- Nature of claims, retroactive effect of court decisions

United States Supreme Court precedent characterizing § 1983 actions as personal injury actions for limitations purposes would not be retroactively applied so as to bar cable company's action against city based on franchise agreement under two-year Pennsylvania limitations period; cable company could reasonably have relied upon clear past precedent characterizing claims as contractual and thus subject to six-year Pennsylvania limitations period in its effort to timely file action. Erie Telecommunications, Inc. v. City of Erie, W.D.Pa.1987, 659 F.Supp. 580, on subsequent appeal 853 F.2d 1084. Courts 100(1)

Although the United States Supreme Court's decision in *Wilson v. Garcia*, which characterizes claims under 42 U.S.C.A. § 1983 as personal injury actions for limitation purposes, would not be applied retroactively to foreclose prosecution of section 1983 suit against police, plaintiffs whose section 1983 cause of action accrued before date of the Supreme Court decision would be required to file suit within shorter period of either five years from date action accrued on basis of Indiana statute of limitations governing claims against police and sheriffs, IC 34-1-2-2(2) (1982 Ed.), or within two years after date of decision on basis of two-year limitation period for personal injury actions, IC 34-1-2-2(1) (1982 Ed.). Ross v. Summers, N.D.Ind.1986, 630 F.Supp. 1267. Civil Rights 1382

10. ---- Patronage hiring and discharge, retroactive effect of court decisions

United States Supreme Court decision that public employee cannot be discharged solely for reason that he is not affiliated with or sponsored by particular political party did not apply retroactively, and thus civil rights of public employee were not violated as result of his demotion, before such Supreme Court decision, because of his earlier service as source of information and recommendations relating to patronage hirings and promotions. Aufiero v. Clarke, C.A.1 (Mass.) 1981, 639 F.2d 49, certiorari denied 101 S.Ct. 3052, 452 U.S. 917, 69 L.Ed.2d 421. Courts 100(1)

11. ---- Prisoner proceedings, retroactive effect of court decisions

Supreme Court decision in *Sandin*, elaborating new test for determining whether inmate's liberty interests are implicated, applied retroactively to inmate's § 1983 action that was still open on direct appeal at time Supreme Court decision was rendered. Mackey v. Dyke, C.A.6 (Mich.) 1997, 111 F.3d 460, certiorari denied 118 S.Ct. 136, 522 U.S. 848, 139 L.Ed.2d 84. Courts 100(1)

Decision holding that prison disciplinary proceedings were constitutionally infirm should not be applied retroactively so as to require expungement of disciplinary records established prior to decision. Leonard v. Mississippi State Probation and Parole Bd., C.A.5 (Miss.) 1975, 509 F.2d 820, rehearing denied 515 F.2d 510, certiorari denied 96 S.Ct. 428, 423 U.S. 998, 46 L.Ed.2d 373. Courts 100(1)

The court of appeals decision, that a state prisoner is entitled to certain due process guarantees with respect to disciplinary proceedings which could result in increase in amount of time prisoner would be required to spend in prison or which could result in deprivation of certain liberties enjoyed by other inmates, was prospective only. Wheeler v. Procunier, C.A.9 (Cal.) 1974, 508 F.2d 888. Courts 100(1)

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Supreme Court's *Sandin* decision, reconfiguring circumstances under which inmates are afforded state-created liberty interest protected by Due Process Clause, applied retroactively to inmate's allegations of violations of his procedural due process rights in course of disciplinary hearing which resulted in one-year sentence to confinement in prison's Special Housing Unit (SHU) and recommended one-year loss of good time credit. Cespedes v. Coughlin, S.D.N.Y.1997, 956 F.Supp. 454, on reconsideration 969 F.Supp. 254. Courts 100(1)

The Supreme Court decision to the effect that prisoners' suits seeking restoration of good time were governed by § 2254 of Title 28, even though they came within broad language of this section would not be applied retroactively where state prisoners had commenced civil rights action prior to adoption of the decision and had relied on court decision indicating that suit attacking revocation of good time could be brought under this section. Nelson v. Schmidt, W.D.Wis.1973, 373 F.Supp. 705. Courts 100(1)

Prison warden could not be held liable for damages under this section for following procedures, which pertained to placement of inmate in segregation cells, which may have fallen short of procedural due process standards set out in later cases but which, at time of acts complained of, were not in conflict with any binding decided cases. U. S. ex rel. Bracey v. Rundle, E.D.Pa.1973, 368 F.Supp. 1186. Civil Rights 1092

12. State regulation or control

Presumption of private right of action through §§ 1983 to enforce Medicaid provision that required states to make medical assistance available was not incompatible with provision for state administrative procedures, and thus presumption was not rebutted on basis of comprehensive remedial scheme, since recipients of home and community-based services, as alternative to Medicaid institutional nursing facility services, could appeal only their service level determination, not state's underlying decision to not serve individuals in certain levels. Watson v. Weeks, C.A.9 (Or.) 2006, 436 F.3d 1152. Civil Rights 1321

State statute making sheriff liable for misconduct of his deputy could not be applied to arrestee's § 1983 suit alleging that deputy made illegal arrest and used excessive force, and thus sheriff was entitled to qualified immunity from suit, where sheriff did not fail to adequately train, supervise, or control deputy. Palmer v. Sanderson, C.A.9 (Wash.) 1993, 9 F.3d 1433. Civil Rights 1358; Civil Rights 1376(6)

Measure, scope and application of an asserted immunity under this section cannot be restricted or enlarged by state laws concerning official privilege or immunity. Bell v. Wolff, C.A.8 (Neb.) 1974, 496 F.2d 1252. States 18.37

This section does not preempt state laws in their proper role of vindicating what are essentially state-guaranteed rights. Dorsey v. National Ass'n for Advancement of Colored People, C.A.5 (La.) 1969, 408 F.2d 1022, certiorari denied 90 S.Ct. 58, 396 U.S. 847, 24 L.Ed.2d 97. See, also, Nationwide Amusements, Inc. v. Nattin, D.C.La.1971, 325 F.Supp. 95, remanded on other grounds 452 F.2d 651.

If a state statute purports to confer immunity upon an official of a state who has violated provisions of this section by depriving an individual of a federal right, the state has invaded the liberties of the individual which are protected by U.S.C.A.Const. Amend. 14. Picking v. Pennsylvania R. Co., C.C.A.3 (Pa.) 1945, 151 F.2d 240, rehearing denied 152 F.2d 753. Civil Rights 1376(3); Constitutional Law 301(1)

Pennsylvania's interstate compact concerning parole manifested no congressional intent to create federal right or remedy enforceable by parolees, and therefore § 1983 did not supply viable cause of action for claims premised upon violation of compact. Lines v. Wargo, W.D.Pa.2003, 271 F.Supp.2d 649. Civil Rights 1097

Former public utility executive's failure to comply with state notice-of-claim provisions in connection with § 1983 claims against district attorney and district attorney's office, which arose from criminal prosecution of executive,

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did not preclude executive's § 1983 claims. Smith v. Gribetz, S.D.N.Y.1997, 958 F.Supp. 145. States 197

Massachusetts Civil Rights Act and § 1983 are parallel statutes, coextensive with each other. Canney v. City of Chelsea, D.Mass.1996, 925 F.Supp. 58. Statutes 226

State statute allowing state to bring action to obtain reimbursement for prisoner's incarceration expenses, up to 90 percent of prisoner's assets, defined to include money judgments received by prisoner from state as result of civil action against state or its employees, was preempted by § 1983; state statute interfered with purpose of § 1983, which was to allow compensation for civil rights violations by state personnel. Hankins v. Finnel, W.D.Mo.1991, 759 F.Supp. 569, affirmed 964 F.2d 853, rehearing denied, certiorari denied 113 S.Ct. 635, 506 U.S. 1013, 121 L.Ed.2d 566. Costs 285; States 18.63

This section occupies a special and preferred position in the jurisprudence and mere inquiry by a state into existence of discrimination within its borders can only be consistent with and supportive of principles embodied in the Constitution and national policy in general; given status which our nation accords civil rights, for a state to adopt the national purposes as its own purposes is not grounds for objection per se on preemption grounds. General Elec. Co. v. New York State Assembly Committee on Governmental Operations, N.D.N.Y.1975, 425 F.Supp. 909. Civil Rights 1703; States 18.23

Limited waiver of municipal immunity from suit for torts committed by its employees while engaging in governmental activities granted by Oklahoma Governmental Tort Liability Act, 11 Okl.St.Ann. § 1751 et seq., does not affect immunity of a city from suit under this section governing deprivation of civil rights. Casey v. Purser, W.D.Okla.1974, 385 F.Supp. 621. Civil Rights 1376(4)

State laws applicable to law clinic's action against state mental health agency for alleged constitutional violations arising from the assessment of full care and treatment charges against indigent patients of state medical facilities and the filing of counterclaims for the amount against patients who sued the state were not preempted by §§ 1983 or the Protection and Advocacy for Mentally Ill Individuals Act. Mental Disability Law Clinic, Touro Law Center v. Carpinello, C.A.2 2006, 189 Fed.Appx. 5, 2006 WL 1527117, Unreported. States 18.15

13. Power of Congress

Congress has power to enforce U.S.C.A.Const. Amend. 14 against those who carry badge of authority of a state and represent it in some capacity, whether they act in accordance with their authority or misuse it. Monroe v. Pape, U.S.Ill.1961, 81 S.Ct. 473, 365 U.S. 167, 5 L.Ed.2d 492. Civil Rights 1325

Congress has the power to redress the infringement of individual civil rights, such as the rights to assemble and petition the federal government for redress of grievances. Hardyman v. Collins, C.A.9 (Cal.) 1950, 183 F.2d 308, certiorari granted 71 S.Ct. 63, 340 U.S. 809, 95 L.Ed. 594, reversed on other grounds 71 S.Ct. 937, 341 U.S. 651, 95 L.Ed. 1253. Civil Rights 1005

Congress has the inherent power to fashion a tort remedy designed to protect participants in federal court actions against harm whether of public or private origin. Local No. 1 (ACA), Broadcast Emp. of Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, E.D.Pa.1976, 419 F.Supp. 263. United States 22

Congress cannot create a federal cause of action in favor of persons injured by private individuals who abridge rights which are not federal constitutional rights. Whittington v. Johnston, M.D.Ala.1952, 102 F.Supp. 352, affirmed 201 F.2d 810, certiorari denied 74 S.Ct. 103, 346 U.S. 867, 98 L.Ed. 377. States 18.15

14. Nature of proceedings

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42 U.S.C.A. § 1983

Section 1983 creates a species of tort liability, and statute is interpreted in light of the background of tort liability. City of Monterey v. Del Monte Dunes at Monterey, Ltd., U.S.Cal.1999, 119 S.Ct. 1624, 526 U.S. 687, 143 L.Ed.2d 882. Civil Rights 1304

Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred. Roe v. Office of Adult Probation, D.Conn.1996, 938 F.Supp. 1080, vacated 125 F.3d 47. Civil Rights 1305

Under § 1983, a person may seek redress for violations of a right guaranteed by the Constitution or federal law, but § 1983 is not itself a source of substantive rights. Backlund v. Hessen, D.Minn.1995, 904 F.Supp. 964, reversed 104 F.3d 1031, rehearing denied, on remand 176 F.R.D. 316. Civil Rights 1305

Claim under § 1983 generally describes substantive violation of rights secured by Constitution or law; section 1983 does not create any substantive rights. Davis v. Olin, D.Kan.1995, 886 F.Supp. 804. Civil Rights 1305

Actions, based on this section, for money judgments, plus costs, were civil actions, and not criminal prosecutions, even though proceeding in Nebraska court, out of which actions were by plaintiff said to have arisen, was a proceeding upon an accusation of contempt of court. Rhodes v. Houston, D.C.Neb.1966, 258 F.Supp. 546, affirmed 418 F.2d 1309, certiorari denied 90 S.Ct. 1382, 397 U.S. 1049, 25 L.Ed.2d 662. Action 18

15. Remedial nature of section

Section 1983 is not itself source of substantive rights, but merely provides method for vindicating federal rights elsewhere conferred. Albright v. Oliver, U.S.Ill.1994, 114 S.Ct. 807, 510 U.S. 266, 127 L.Ed.2d 114, rehearing denied 114 S.Ct. 1340, 510 U.S. 1215, 127 L.Ed.2d 688.

All civil suits authorized by this section establishing civil action for deprivation of rights are not based upon it but are rather based upon the right of the citizens; this section only gives the remedy. Chapman v. Houston Welfare Rights Organization, U.S.Tex.1979, 99 S.Ct. 1905, 441 U.S. 600, 60 L.Ed.2d 508, on remand 599 F.2d 111. Civil Rights 1305

No substantive rights are created by § 1983 itself; it provides only procedure for redress for deprivation of rights established elsewhere. Sykes v. James, C.A.2 (N.Y.) 1993, 13 F.3d 515, certiorari denied 114 S.Ct. 2749, 512 U.S. 1240, 129 L.Ed.2d 867. Civil Rights 1305

This section governing civil action for deprivation of rights is not itself a jurisdictional statute; it merely creates a cause of action. Hanson v. Town of Flower Mound, C.A.5 (Tex.) 1982, 679 F.2d 497. Federal Courts 219.1

Section 1983 is not jurisdiction-conferring provision, and rather, because § 1983 is essentially remedial in nature and objective, plaintiffs must allege separate jurisdictional basis in order for federal jurisdiction to exist over their claims. McNally v. DeWitt, W.D.Ky.1997, 961 F.Supp. 1041. Federal Courts 219.1

Statute governing civil rights is not itself source of substantive rights but merely provides method for vindicating federal rights conferred elsewhere. Jones v. Moran, N.D.Cal.1995, 900 F.Supp. 1267. Civil Rights 1305

Section 1983 is remedial statute and not basis for jurisdiction. Cok v. Forte, D.R.I.1995, 877 F.Supp. 797, affirmed 69 F.3d 531. Federal Courts 219.1

Federal civil rights statute creates no substantive rights but, rather, only a remedy for violation of rights originating from other sources. Urban by Urban v. Jefferson County School Dist. R-1, D.Colo.1994, 870 F.Supp. 1558, affirmed 89 F.3d 720. Civil Rights 1305

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42 U.S.C.A. § 1983

Consent decree cannot be enforced through § 1983 action. Kellensworth v. Norris, C.A.8 (Ark.) 2000, 221 F.3d 1342, Unreported. Civil Rights 1056; Federal Civil Procedure 2397.6

16. Exclusive nature of section

When § 1983 is relied on, that statute is the exclusive remedy for the alleged constitutional violations. Davis v. Kent State University, N.D.Ohio 1996, 928 F.Supp. 729. Civil Rights 1307

Where plaintiff alleged cause of action under § 1983, such statute was exclusive remedy for alleged constitutional violations, and plaintiff could not assert independent cause of action under various constitutional provisions. Wynn v. Morgan, E.D.Tenn.1994, 861 F.Supp. 622. Civil Rights 1322

17. Substitute for appeal

This section cannot be used as a substitute for the right of appeal. Reich v. City of Freeport, D.C.Ill.1974, 388 F.Supp. 953, affirmed 527 F.2d 666. See, also, Environmental Aid, Inc. v. Goddard, D.C.Pa.1977, 433 F.Supp. 906; Torres Irizarry v. Toro Goyco, D.C.Puerto Rico 1976, 425 F.Supp. 366.

18. Territorial application of section

Civil rights statutes, §§ 1981 and 1983, did not apply to government of Trust Territory of the Pacific Islands. Temengil v. Trust Territory of Pacific Islands, C.A.9 (N.Mariana Islands)1989, 881 F.2d 647, certiorari denied 110 S.Ct. 2617, 496 U.S. 925, 110 L.Ed.2d 638. Territories 8; Territories 18

Civil rights statute, § 1983, applies to the Commonwealth of the Northern Mariana Islands. Fleming v. Department of Public Safety, Com. of Northern Mariana Islands, C.A.9 (N.Mariana Islands)1988, 837 F.2d 401, certiorari denied 109 S.Ct. 222, 488 U.S. 889, 102 L.Ed.2d 212.

19. Duty of court

Where exercise of authority by state officials is attacked, federal courts must be constantly mindful of special delicacy of adjustment to be preserved between federal equitable power and state administration of its own law. Rizzo v. Goode, U.S.Pa.1976, 96 S.Ct. 598, 423 U.S. 362, 46 L.Ed.2d 561. Injunction 75

20. Secured defined

The term "secured," as used in this section, may for practical purposes be regarded as equivalent to "protected" or even to "granted." Samuel v. Busnuck, D.C.Md.1976, 423 F.Supp. 99. Civil Rights 1027

II. CONSTRUCTION WITH OTHER LAWS

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41. Adoption Assistance Act, construction with other laws

Provision of Adoption Assistance and Child Welfare Act requiring that the amount each adopted family received in adoption assistance payments "shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted...and be re readjusted periodically...if the circumstances of the parents or the needs of the child change" created a federal right to individualized adoption assistance payment determinations, enforceable through §§ 1983, for purposes of class action brought by parents of adopted children with special needs whose adoption assistance payments were uniformly reduced by the state of Oregon. ASW v. Oregon, C.A.9 (Or.) 2005, 424 F.3d 970, petition for certiorari filed 2006 WL 1167416. Civil Rights 1057

Provisions of Adoption Assistance Act governing state foster care system plans, other than requirement that reasonable efforts be made to prevent need for removal of child and to make it possible for child to return home, created rights enforceable by foster care children under § 1983, in light of nature of foster care children as intended beneficiaries of Act, in light of Act's imposition of binding obligation on state to include specific features in state foster care plan in order to obtain federal funding, and absent vagueness rendering requirements unenforceable by

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judiciary. Jeanine B. by Blondis v. Thompson, E.D.Wis.1995, 877 F.Supp. 1268. Civil Rights 1057

42. Americans with Disabilities Act, construction with other laws

Remedies for retaliatory conduct, provided under Americans with Disabilities Act (ADA), were not so extensive as to prevent special needs student and parents from asserting claims under § 1983, that school district's special education director retaliated against them in violation of ADA. P.N. v. Greco, D.N.J.2003, 282 F.Supp.2d 221. Civil Rights 1309

There are no state exhaustion requirements for actions brought under the ADA or Section 504 of the Rehabilitation Act, or under § 1983 to enforce a federal constitutional claim. Hornstine v. Township of Moorestown, D.N.J.2003, 263 F.Supp.2d 887. Civil Rights 1315

Where it appears that a plaintiff has cloaked a claim under the Individuals with Disabilities Education Act (IDEA) as an ADA, Rehabilitation Act, or § 1983 action in an effort to avoid application of the IDEA's distinct exhaustion requirement, courts will require that plaintiff to exhaust the state administrative remedies mandated for IDEA claims. Hornstine v. Township of Moorestown, D.N.J.2003, 263 F.Supp.2d 887. Schools 155.5(3)

Congress provided sufficiently comprehensive remedies in ADA, and in section of Rehabilitation Act requiring nondiscrimination under federal grants and programs, for violations of rights thereunder, that § 1983 action could not be based on such statutes. Bartlett v. New York State Bd. of Law Examiners, S.D.N.Y.1997, 970 F.Supp. 1094, reconsideration denied 2 F.Supp.2d 388, affirmed in part, vacated in part 156 F.3d 321, vacated 119 S.Ct. 2388, 527 U.S. 1031, 144 L.Ed.2d 790, on remand 226 F.3d 69. Civil Rights 1307; Civil Rights 1313

Sua sponte dismissal of disabled tenants' pro se in forma pauperis complaint against apartment complex's owner, manager, and other tenants regarding handicapped parking spaces was abuse of discretion, even though complaint did not state claim under §§ 1983 or 1985, where court failed to address tenants' arguable claims under ADA and Fair Housing Act. Phibbs ex rel. Phibbs v. American Property Management, C.A.10 (Utah) 2003, 60 Fed.Appx. 738, 2003 WL 1384040, Unreported. Federal Civil Procedure 2734

43. Application of state law provisions, construction with other laws

Elements of false arrest and malicious prosecution under § 1983 are substantially the same as the elements under New York law. Boyd v. City of New York, C.A.2 (N.Y.) 2003, 336 F.3d 72. Civil Rights 1037; Civil Rights 1088(4)

Foster parent was not "state actor," liable under § 1983 action for alleged abuse of child in her care, by virtue of Massachusetts Tort Claims Act inclusion of foster parents as public employees, as Act excluded foster parents as employees when intentional conduct of sort alleged in present case was involved. Howard v. Malac, D.Mass.2003, 270 F.Supp.2d 132. Infants 17; Infants 226

It was not the intent of Congress in enacting this section authorizing an action for deprivation of civil rights, to establish liability of a municipal corporation for respondeat superior damages; thus, § 1988 of this title authorizing local state law to be applied by federal courts in civil rights cases may not be used to establish such liability, even though state law permits such recovery. Underwood v. City of Pensacola, Fla., N.D.Fla.1972, 341 F.Supp. 1380. Federal Courts 411; Civil Rights 1345

44. Aviation Act of 1958, construction with other laws

Section 1983 claim brought by fixed base operator at county airport alleging violation of equal protection based on county's disparate enforcement of certain regulations and ordinances was not preempted by comprehensive nature

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of Federal Aviation Act; § 1983 claim was not based on any alleged violations of any substantive federal statute, but rather was predicated on violations of rights derived from constitution. Jetstream Aero Services, Inc. v. New Hanover County, E.D.N.C.1987, 672 F.Supp. 879.

44A. Boren Amendment, construction with other laws

Statute, requiring that state Medicaid plans provide that "assistance shall be furnished with reasonable promptness to all eligible individuals," conferred on eligible individuals the right to receive Medicaid, which was enforceable under § 1983, where Congress did not explicitly foreclose private enforcement actions or implicitly supplant them by establishing comprehensive administrative enforcement scheme. Rabin v. Wilson-Coker, D.Conn.2003, 266 F.Supp.2d 332, reversed 362 F.3d 190. Civil Rights 1052; Health 467

45. Busing of school children provisions, construction with other laws

Section 2000c-6(a) of this title, prohibiting bussing to achieve racial balance, applies only to actions under § 2000c et seq. of this title, and had no application to school desegregation action under this section. Harvest v. Board of Public Instruction of Manatee County, Fla., M.D.Fla.1970, 312 F.Supp. 269.

Section 2000c-6 of this title withholding power from courts of United States to order transportation of pupils from one school to another for purpose of achieving ratio balance would not prohibit district court from issuing preliminary injunction which was designed to correct situation where city school board had actively contributed to the segregated conditions found to exist in the city's schools. Keyes v. School Dist. No. One, Denver, Colo., D.C.Colo.1969, 303 F.Supp. 289, reinstated 90 S.Ct. 12, 396 U.S. 1215, 24 L.Ed.2d 37. Schools 159.5(3)

46. Caretaker statute, construction with other laws

1968 amendment to the "caretaker statute" does not alter basic purpose of § 709 of Title 32 to assist the states in the care of federal property and does not establish that officers of state National Guard act under color of federal and not state law in interfering with civilian technicians' rights. Syrek v. Pennsylvania Air Nat. Guard, W.D.Pa.1974, 371 F.Supp. 1349. Civil Rights 1327

47. Child Abuse Prevention and Treatment Act, construction with other laws

Child Abuse Prevention and Treatment Act (CAPTA) expressly conditioned receipt of federal funding upon state's compliance with its requirements that states take immediate steps to protect children upon receipt of report and finding of abuse or neglect, and thus, CAPTA created rights enforceable by foster care children under § 1983, absent vagueness in statutory language so as to render conditions unenforceable by judiciary. Jeanine B. by Blondis v. Thompson, E.D.Wis.1995, 877 F.Supp. 1268. Civil Rights 1057

48. Civil Rights Act of 1866, construction with other laws

Causes of action under the Civil Rights Act of 1866, § 1981 of this title, this section, and Equal Employment Opportunity Act, § 2000e et seq. of this title, are distinct and independent and have different procedural, jurisdictional and remedial characteristics; also, different groups of persons are protected against discrimination under these various statutes. Scott v. University of Delaware, C.A.3 (Del.) 1979, 601 F.2d 76, certiorari denied 100 S.Ct. 275, 444 U.S. 931, 62 L.Ed.2d 189. Civil Rights 1304; Civil Rights 1511

Allegations by driver involved in collision with vehicle driven by off-duty city police officer that officer conspired with officers who responded to the incident to cover up his role in the collision and his intoxicated state were sufficient to state civil conspiracy claim under §§ 1983. McDorman v. Smith, N.D.Ill.2006, 437 F.Supp.2d 768.

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42 U.S.C.A. § 1983

Conspiracy 18

Express cause of action for damages created by § 1983 constituted exclusive federal remedy for violation of rights guaranteed in § 1981 when alleged violator was school directors of school district, state actors. Bennett v. School Directors of Dist. 204, N.D.Ill.1996, 941 F.Supp. 763, supplemented 1996 WL 649907. Civil Rights 1312

When state employee seeks to hold his or her state agency employer liable in damages for violations of rights guaranteed by § 1981, the state employee must pursue such claims exclusively under § 1983. Ebrahimi v. City of Huntsville Bd. of Educ., N.D.Ala.1995, 905 F.Supp. 993, appeal dismissed 114 F.3d 162. Civil Rights 1312

There is a broader grant of available remedies under § 1981 of this title guaranteeing equal rights under the law and Constitution than under this section authorizing damage suit for violation of constitutional rights by every person acting under color of state law. Stewart v. Wappingers Central School Dist., S.D.N.Y.1977, 437 F.Supp. 250, amended 493 F.Supp. 791. Civil Rights 1307

Action attacking school district's mandatory maternity leave policy could not be maintained under § 1981 of this title dealing with equal rights under law but could be maintained under this section providing civil action for deprivation of rights. Williams v. San Francisco Unified School Dist., N.D.Cal.1972, 340 F.Supp. 438. Civil Rights 1176

49. Civil Rights Act of 1964, construction with other laws

Section 1983 action may not be brought to vindicate rights conferred only by statute that contains its own structure for private enforcement, such as Title VII. Patterson v. County of Oneida, N.Y., C.A.2 (N.Y.) 2004, 375 F.3d 206. Civil Rights 1312

Section 1983 remains an available cause of action for bringing equal protection claims against municipal employers which allegedly have engaged in employment discrimination; Title VII is not the exclusive remedy for public sector employment discrimination. Thigpen v. Bibb County, Ga., Sheriff's Dept., C.A.11 (Ga.) 2000, 223 F.3d 1231. Civil Rights 1312; Civil Rights 1502

Title VII did not preclude female correctional officers from asserting sexual harassment and sex discrimination claims under § 1983 and civil rights conspiracy statute against captain who was their alleged harasser and former director of state Department of Criminal Justice, even if such claims arose from same facts as officers' Title VII claims. Southard v. Texas Bd. of Criminal Justice, C.A.5 (Tex.) 1997, 114 F.3d 539. Civil Rights 1502

Allegations of discriminatory treatment in connection with public employment that formed the basis of a Title VII claim could not also form the basis of a second, separate claim under § 1983 as well. Jackson v. City of Atlanta, Tex., C.A.5 (Tex.) 1996, 73 F.3d 60, rehearing denied, certiorari denied 117 S.Ct. 70, 519 U.S. 818, 136 L.Ed.2d 30. Civil Rights 1502

In cases alleging disparate treatment in which § 1983 is employed as remedy for the same conduct attacked under Title VII, elements of the two causes of action are the same. Richardson v. Leeds Police Dept., C.A.11 (Ala.) 1995, 71 F.3d 801, on remand 990 F.Supp. 1331. Civil Rights 1138

Employment discrimination plaintiff alleging violation of constitutional right may bring suit under § 1983 alone, and is not required to plead concurrently a violation of Title VII and to satisfy the procedural requirements of Title VII; Congress did not intend to make Title VII exclusive remedy for employment discrimination claims, at least not those claims cognizable under Constitution. Annis v. County of Westchester, N.Y., C.A.2 (N.Y.) 1994, 36 F.3d 251, on remand 939 F.Supp. 1115. Civil Rights 1502

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42 U.S.C.A. § 1983

Elements of employment discrimination claim under § 1983 are the same as those under Title VII. Hicks v. St. Mary's Honor Center, Div. of Adult Institutions of Dept. of Corrections and Human Resources of State of Mo., C.A.8 (Mo.) 1992, 970 F.2d 487, rehearing denied, certiorari granted 113 S.Ct. 954, 506 U.S. 1042, 122 L.Ed.2d 111, reversed 113 S.Ct. 2742, 509 U.S. 502, 125 L.Ed.2d 407, on remand 2 F.3d 264, on remand 2 F.3d 265, suggestion for rehearing denied.

If plaintiff can show constitutional violation by someone acting under color of state law, then plaintiff has cause of action under § 1983, regardless of Title VII's concurrent application. Starrett v. Wadley, C.A.10 (Okla.) 1989, 876 F.2d 808.

Title VII does not preempt action under § 1983 for violation of Fourteenth Amendment. Roberts v. College of the Desert, C.A.9 (Cal.) 1988, 870 F.2d 1411.

Although Title VII is exclusive remedy for violation of its own terms, injured public employee may pursue remedy under § 1983 as well as under Title VII when employer's conduct violates both Title VII and separate constitutional or statutory right. Johnston v. Harris County Flood Control Dist., C.A.5 (Tex.) 1989, 869 F.2d 1565, rehearing denied, certiorari denied 110 S.Ct. 718, 493 U.S. 1019, 107 L.Ed.2d 738.

Title VII did not provide exclusive remedy for employment discrimination claims based on race against state employer and thus nonpromoted employee's § 1983 action for violation of the Fourteenth Amendment was not preempted by Title VII. Keller v. Prince George's County, C.A.4 (Md.) 1987, 827 F.2d 952.

Requirement that Title VII plaintiff file discrimination charge with Equal Employment Opportunity Commission within 180 days after alleged unlawful employment practice could not be circumvented by utilizing § 1983 as vehicle for asserting Title VII claim. Foster v. Wyrick, C.A.8 (Mo.) 1987, 823 F.2d 218. Civil Rights 1505(2)

Where an employee establishes employer conduct which violates both section 2000e et seq. of this title and rights derived from another source, be it the Constitution or federal statute, which existed at time of section 2000e et seq. of this title, a claim based on the other source is independent and the plaintiff may seek remedies provided by this section in addition to those created by section 2000e et seq. of this title. Day v. Wayne County Bd. of Auditors, C.A.6 (Mich.) 1984, 749 F.2d 1199. Civil Rights 1312; Civil Rights 1502

Insofar as this section is used as parallel remedy for transgression of rights under the Equal Employment Opportunity Act, § 2000e et seq. of this title, and § 1981 of this title guaranteeing equal rights under the law, this section providing civil action for deprivation of rights under color of state law requires same elements of proof as the other two provisions. Whiting v. Jackson State University, C.A.5 (Miss.) 1980, 616 F.2d 116, rehearing denied 622 F.2d 1043. Civil Rights 1421

This section and § 1981 of this title provide no greater or lesser protection against employment discrimination practices than the Equal Employment Opportunity Act, § 2000e et seq. of this title. Carrion v. Yeshiva University, C.A.2 (N.Y.) 1976, 535 F.2d 722.

The Equal Employment Opportunity Act, 2000e et seq. of this title, does not preempt discrimination in employment field and thus did not preclude bringing of action based on sex discrimination under this section. Johnson v. City of Cincinnati, C.A.6 (Ohio) 1971, 450 F.2d 796, 62 O.O.2d 122.

Minority teachers did not have claim under Title VI for alleged disparate impact that licensing tests had on their certification, since there was no private right of action under Title VI and Title VI did not create right enforceable via § 1983. Gulino v. Board of Educ. of City School Dist. of City of New York, S.D.N.Y.2002, 236 F.Supp.2d 314, certification denied 234 F.Supp.2d 324, reversed in part 2002 WL 31887733.

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Conclusory allegations were insufficient to state civil rights conspiracy claim against private law firm for allegedly colluding with judges and municipal officers to deprive property owner of liberty and property rights in violation of due process through allegedly bogus actions enforcing town housing code and holding owner in contempt for continuing violation; sweeping allegations required involvement of virtually all of state judiciary and lacked any claimed motive on part of conspirators. Marcello v. Maine, D.Me.2006, 457 F.Supp.2d 55. Conspiracy 7.5(2)

Claims against county school district and school officials under §§ 1983 that could have been brought under Title VI were preempted by Title VI; although Title VI did not explicitly purport to limit §§ 1983 relief and Title VI offered administrative enforcement scheme and implied private right of action and damages that were more restrictive than those available through §§ 1983, congressional intent to foreclose such remedy could be inferred from creation of comprehensive statutory scheme. Alexander v. Underhill, D.Nev.2006, 416 F.Supp.2d 999. Civil Rights 1309

Federal employee could not bring discrimination claim under §§ 1983; Title VII was exclusive, preemptive administrative and judicial scheme for redress of federal employment discrimination. Roland v. Potter, S.D.Ga.2005, 366 F.Supp.2d 1233. Civil Rights 1312; Civil Rights 1502

A Title VII plaintiff is not precluded from bringing a concurrent §§ 1983 cause of action, such as a claim for denial of equal protection, so long as the §§ 1983 claim is based on a distinct violation of a constitutional right. Dawson v. County of Westchester, S.D.N.Y.2004, 351 F.Supp.2d 176. Civil Rights 1312; Civil Rights 1502

Plaintiffs cannot use § 1983 to bring equal protection claims regarding violations of their rights under Title VII and thereby bypass the comprehensive remedies created by Title VII. Sheaffer v. County of Chatham, M.D.N.C.2004, 337 F.Supp.2d 709. Civil Rights 1312; Civil Rights 1502

Court should not dismiss a First Amendment claim on technical argument that it was not brought through §§ 1983, and should instead deem a plaintiff's complaint to allege the First Amendment claim as one brought through §§ 1983 rather than as a direct action under the First Amendment. Davis v. Durham Mental Health Developmental Disabilities Substance Abuse Area Authority, M.D.N.C.2004, 320 F.Supp.2d 378. Civil Rights 1395(1)

Dismissal of former municipal employee's § 1981 claim against former employer, alleging wrongful termination on basis of race, was required, where employee also asserted § 1983 race discrimination claim against employer. Perry v. Metropolitan Suburban Bus Authority, E.D.N.Y.2004, 319 F.Supp.2d 338. Civil Rights 1312

A claim for violation of § 1981 rights by a state actor must be pled as a § 1983 claim based on a violation of § 1981. Timmons v. City of Hartford, D.Conn.2003, 283 F.Supp.2d 712. Civil Rights 1307; Civil Rights 1394

While plaintiffs are often precluded from pursuing § 1983 claims based on alleged violation of rights created by Title VII, there must be finding that right at issue existed exclusively as creation of Title VII. Hargrave v. County of Atlantic, D.N.J.2003, 262 F.Supp.2d 393. Civil Rights 1312; Civil Rights 1502

Virginia state college employee could simultaneously pursue claims under Title VII and § 1983 for racial discrimination and retaliatory discrimination in employment. Allen v. College of William & Mary, E.D.Va.2003, 245 F.Supp.2d 777.

Section 1983 cause of action for damages was African-American teacher's exclusive remedy for alleged violations of § 1981 by school district. Bluitt v. Houston Independent School Dist., S.D.Tex.2002, 236 F.Supp.2d 703. Civil Rights 1312

Elements of causes of action under § 1983 and Title VII are the same, where § 1983 is used as parallel remedy for

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violation of Title VII; to establish state employer's violation of Equal Protection Clause, plaintiff must prove discriminatory motive or purpose, inferred in same manner as under Title VII. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Civil Rights 1125; Civil Rights 1137

Section 1983 claim cannot be predicated on allegations of retaliation; Title VII provides exclusive remedy for such claims. Gamper v. State of Ala. Dept. of Corrections, M.D.Ala.1997, 968 F.Supp. 1483.

Employee can pursue remedy under § 1983 as well as under Title VII when employer's conduct violates both Title VII and separate constitutional or statutory right. Sharp v. City of Houston, S.D.Tex.1997, 960 F.Supp. 1164. Civil Rights 1502

Former assistant county attorney could bring sex discrimination claims against county and county officials under both Title VII and § 1983, where § 1983 claim stated distinct violation of former assistant county attorney's equal protection rights under Fourteenth Amendment. Lococo v. Barger, E.D.Ky.1997, 958 F.Supp. 290, affirmed in part, reversed in part 234 F.3d 1268. Civil Rights 1502

Employee may sue his or her public employer under both Title VII and § 1983 when § 1983 violation rests on claim of infringements of rights guaranteed by United States Constitution. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1502

City employee's failure to institute a Title VII cause of action for race and sex discrimination precluded employee from bringing action under § 1983 for violation of Fourteenth Amendment. Burtnick v. McLean, D.Md.1997, 953 F.Supp. 121. Civil Rights 1502

Concurrent causes of action for employment discrimination under Title VII and § 1983 are permitted. Madon v. Laconia School Dist., D.N.H.1996, 952 F.Supp. 44.

Title VII is not the exclusive remedy for intentional employment discrimination by municipal entity, inasmuch as § 1983 also provides remedy for employment discrimination as violation of Fourteenth Amendment's equal protection clause. Carpenter v. City of Northlake, N.D.Ill.1996, 948 F.Supp. 759. Civil Rights 1502

State employee's gender and race discrimination claims under §§ 1981 and 1983 could only be brought under Title VII and, therefore, were barred; state employee failed to identify any distinction between her §§ 1981 and 1983 discrimination claims and her Title VII claim. Messer v. Meno, W.D.Tex.1996, 936 F.Supp. 1280, affirmed in part, reversed in part 130 F.3d 130, rehearing and suggestion for rehearing en banc denied 149 F.3d 1181, certiorari denied 119 S.Ct. 794, 525 U.S. 1067, 142 L.Ed.2d 657. Civil Rights 1502

A plaintiff cannot use § 1983 to gain perceived advantages not available to a Title VII plaintiff, but a plaintiff can assert a claim under § 1983 if some law other than Title VII is the source of right alleged to have been denied. Cohen v. Litt, S.D.N.Y.1995, 906 F.Supp. 957. Civil Rights 1502

Discharged employee could not maintain cause of action under § 1983 predicated on retaliation since Title VII provided exclusive remedy in this context. Lightner v. Town of Ariton, Ala., M.D.Ala.1995, 902 F.Supp. 1489. Civil Rights 1502

Standards of proof which are employed in cases brought under Title VII also apply to employment actions brought under §§ 1981 and 1983. Stubblefield v. City of Jackson, Miss., S.D.Miss.1994, 871 F.Supp. 903. Civil Rights 1421

Plaintiff may demonstrate that sexual harassment occurred, for purposes of § 1983 cause of action for sexual harassment based on equal protection, by showing actionable harassment under Title VII. Faragher v. City of Boca

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Raton, S.D.Fla.1994, 864 F.Supp. 1552, affirmed in part, reversed in part 76 F.3d 1155, rehearing granted, opinion vacated 83 F.3d 1346, affirmed in part, reversed in part 111 F.3d 1530, certiorari granted 118 S.Ct. 438, 522 U.S. 978, 139 L.Ed.2d 337, reversed 118 S.Ct. 2275, 524 U.S. 775, 157 A.L.R. Fed. 663, 141 L.Ed.2d 662, on remand 166 F.3d 1152. Constitutional Law 224(3); Civil Rights 1183

Remedial nature of Title VII did not preclude police department employee's additional, § 1983 claim alleging sexual harassment where employee could establish both that conditions of her employment were affected on account of her sex (Title VII) and that she was intentionally discriminated against (§ 1983); though elements and evidence used to prove claims were similar, the two causes of action were not mutually exclusive. Dirksen v. City of Springfield, C.D.Ill.1994, 842 F.Supp. 1117. Civil Rights 1502

Amendments to Title VII which allow compensatory damages and jury trials in employment discrimination cases did not provide exclusive remedy or preempt § 1983 civil rights action; § 1983 continued to provide additional relief by allowing state limitations to apply and disposing of administrative filing requirement. Beardsley v. Isom, E.D.Va.1993, 828 F.Supp. 397, affirmed 30 F.3d 524. Civil Rights 1502

Title VII precluded bringing of § 1983 action against supervisor, following earlier decision in which Title VII had been found to bar § 1983 suit involving other supervisors, even though earlier action did not have collateral estoppel effect due to absence of supervisor as party in first action; claim was frivolous in that newly sued supervisor was in same type of role as others. Marrero Rivera v. Department of Justice of Com. of Puerto Rico, D.Puerto Rico 1993, 821 F.Supp. 65. Civil Rights 1502

Title VII was not exclusive federal remedy for county employee seeking redress for employment discrimination, and employee could sue under § 1983 as well, where § 1983 claim alleged constitutional violations not created by Title VII and employee was not seeking to avoid administrative machinery of Title VII by also pleading § 1983. Brown v. Polk County, Iowa, S.D.Iowa 1992, 811 F.Supp. 432. Civil Rights 1502

Employee's § 1983 claim would be dismissed where claim arose from same factual allegations as her Title VII claim and employee failed to identify independent constitutional or federal statutory right that allegedly had been violated by employer. Smith v. Denver Public School Bd., D.Colo.1991, 758 F.Supp. 1421. Civil Rights 1502

Black county employee's pursuit of Title VII claim did not preclude employee from also bringing claim under § 1983. Maddox v. County of San Mateo, N.D.Cal.1990, 746 F.Supp. 947. Civil Rights 1502

Title VII did not preclude § 1983 sex discrimination claim of teacher whose contract was not renewed. Suber v. Bulloch County Bd. of Educ., S.D.Ga.1989, 722 F.Supp. 736.

Although victims of sex discrimination must normally look to Title VII for relief, state employee could sue her state government employer for violations of Fourteenth Amendment through § 1983 and thus escape Title VII's comprehensive remedial scheme. Dunlop v. Colgan, N.D.Ill.1988, 687 F.Supp. 406.

Former female employees' claim that state agency engaged in sex discrimination in violation of Title VII did not preclude additional sex discrimination claim under § 1983. Wymer v. New York State Div. for Youth, W.D.N.Y.1987, 671 F.Supp. 210.

Co-workers cannot be sued under Title VII, and plaintiff cannot bring action under § 1983, based upon Title VII, against person who could not be sued directly under Title VII. Guy v. City of Phoenix, D.Ariz.1987, 668 F.Supp. 1342. Civil Rights 1527

Federal civil rights deprivation claim may be brought in tandem with Title VII employment discrimination claim based on same operative facts if deprivation claim is premised on independent constitutional basis. Young v.

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42 U.S.C.A. § 1983

Sedgwick County, Kan., D.Kan.1987, 660 F.Supp. 918. Civil Rights 1511

Individual could not bring action under 42 U.S.C.A. § 1983 to redress any violations or rights under Title VII of the Civil Rights Act and thereby avoid jurisdictional requirements of Title VII which she had not met since congressional intent to preclude recovery for Title VII violations under § 1983 could be presumed. Strama v. City of Chicago, N.D.Ill.1985, 617 F.Supp. 422. Civil Rights 1312; Civil Rights 1502

Section 2000e-16 of this title provides exclusive judicial remedy available to federal employee complaining about job-related discrimination; therefore, former employees of Federal Deposit Insurance Corporation could not bring civil rights action under this section. Castro v. U.S., D.C.Puerto Rico 1984, 584 F.Supp. 252, affirmed 775 F.2d 399. See, also, Giles v. Equal Employment Opportunity Commission, E.D.Mo.1981, 520 F.Supp. 1198.

District court that retained jurisdiction to resolve compliance issues following stipulated dismissal of § 1983 action by female correctional officers against sheriff's department, arising from policy of prohibiting cross-gender assignments of correctional officers in violation of equal protection, would not assume jurisdiction over matter before Equal Employment Opportunity Commission (EEOC) as result of officers' charge that department's failure to assign certain shifts based upon seniority violated Title VII; statutory basis and issues were different. Sheriff's Silver Star Ass'n of Oswego County, Inc. v. County of Oswego, N.D.N.Y.2003, 2003 WL 21877850, Unreported. Federal Courts 25

50. Civil rights conspiracy provisions, construction with other laws

A complaint charging conspiracy, carried into effect, by state's attorney, two deputy sheriffs and sheriff to injure, threaten and intimidate plaintiff because of his plea of not guilty to indictment for murder, need not be treated by court as filed strictly under § 1985 of this title, authorizing action for conspiracy to interfere with civil rights, but may be treated as stating cause of action for deprivation of such rights in violation of this section, if plaintiff was deprived of any rights, privileges or immunities secured by Constitution and laws. Lewis v. Brautigam, C.A.5 (Fla.) 1955, 227 F.2d 124. Civil Rights 1395(5)

Public employee's claim against defendant township board of education and individual members, alleging that defendants knowingly neglected or refused to prevent wrongs which were conspired to be done to him, in violation of his federal civil rights, should have been brought under § 1986, governing actions for failure to prevent conspiracies to violate federal civil rights, rather than under § 1983. Harrington v. Lauer, D.N.J.1995, 888 F.Supp. 616, on reconsideration in part 893 F.Supp. 352. Civil Rights 1126

This section relating to civil actions for deprivation of rights applies only to conduct under color of state law whereas § 1985 of this title giving right of action to recover damages for conspiracy to deprive persons of rights and privileges applies to purely private conspiracy. Flores v. Yeska, E.D.Wis.1974, 372 F.Supp. 35. Civil Rights 1324; Conspiracy 7.5(1)

Section 241 et seq. of Title 18 providing for punishment by fine or imprisonment for deprivation of certain federal rights, privilege or immunities have no application to a civil suit under this section. Shaffer v. Jennings, E.D.Pa.1970, 317 F.Supp. 446. See, also, Myers v. Couchara, D.C.Pa.1970, 313 F.Supp. 873. Civil Rights 1807

51. Civil Rights Jurisdiction Act, construction with other laws

The "rights, privileges and immunities" language in this section should be interpreted to have the same meaning as the identical words (in the singular) in § 1343 of Title 28. Eisen v. Eastman, C.A.2 (N.Y.) 1969, 421 F.2d 560, certiorari denied 91 S.Ct. 82, 400 U.S. 841, 27 L.Ed.2d 75. Civil Rights 1027; Federal Courts 220

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Where deprivations of rights under this section are alleged, the narrower words of § 1343 of Title 28 providing federal court jurisdiction for a civil action to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution or Act of Congress prevail over the broader language of this section. McClellan v. Shapiro, D.C.Conn.1970, 315 F.Supp. 484. Statutes 223.4

Remedies available to student attacking validity of regulation relating to length of students' hair were not supplanted by § 1343 of Title 28 conferring jurisdiction on federal courts in civil rights cases and were to be pursued in state rather than federal courts. Schwartz v. Galveston Independent School Dist., S.D.Tex.1970, 309 F.Supp. 1034. Courts 489(1)

52. Civil Rights Restoration Act, construction with other laws

Title IX preempted §§ 1983 claims against school officials which alleged that officials did not follow school district's sexual harassment policy, and they were deliberately indifferent toward plight of African American boys, as victims of sexual abuse by Caucasian teacher, since claims against officials essentially were identical to their claims against school district and Title IX provided sufficient statutory recourse for alleged discrimination. Doe v. Smith, C.A.7 (Ill.) 2006, 470 F.3d 331. Civil Rights 1309

Title IX did not provide the exclusive federal law remedy for action brought by organization of parents and female high school athletes against state high school athletic association, alleging that association's scheduling of high school sports seasons discriminated against female athletes, and thus, organization was not barred from seeking additional remedies under §§ 1983 for violation of the equal protection clause; there was no evidence that Congress intended to supplant §§ 1983 constitutional claims, despite implied private right of action found in Title IX, as the only enforcement mechanism expressly authorized by Title IX was the withdrawal of federal funds for the educational institution. Communities for Equity v. Michigan High School Athletic Ass'n, C.A.6 2006, 459 F.3d 676. Civil Rights 1309

Remedies provided under Title IX did not foreclose former female student's claim against state-university professor under §§ 1983, alleging violation of equal protection resulting from sexual harassment, pursuant to *Sea Clammers* doctrine; only possible effect of applying doctrine would have been to immunize professor from liability for alleged federal constitutional tort, which could not have been intended by Congress when it enacted Title IX. Delgado v. Stegall, C.A.7 (Ill.) 2004, 367 F.3d 668. Civil Rights 1309

Teacher's Title IX sex discrimination claim against public school preempted her § 1983 equal protection claims against school officials based on same alleged instance of discrimination. Waid v. Merrill Area Public Schools, C.A.7 (Wis.) 1996, 91 F.3d 857. Civil Rights 1312

Civil Rights Restoration Act does not strip state university of immunity for suits brought under § 1983, which does not specifically prohibit discrimination by recipients of federal financial assistance. Kaimowitz v. Board of Trustees of University of Illinois, C.A.7 (Ill.) 1991, 951 F.2d 765. Civil Rights 1376(5)

Section 1983 suits against individuals in their individual capacities are not subsumed by Title IX. Jones v. Indiana Area School Dist., W.D.Pa.2005, 397 F.Supp.2d 628. Civil Rights 1337

Right under Title IX to be free from discrimination on basis of sex and Fourteenth Amendment right to be free from violation of one's bodily integrity at hands of state actor are two distinct rights, even if same conduct is asserted to support claim on both grounds; thus, plaintiff who has asserted claim under Title IX is not necessarily precluded from also asserting claim under § 1983 for deprivation of constitutional right. Hackett v. Fulton County School Dist., N.D.Ga.2002, 238 F.Supp.2d 1330. Civil Rights 1067(1); Civil Rights 1309; Constitutional Law 278.5(1)

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42 U.S.C.A. § 1983

Availability of relief under Title IX, precluding gender discrimination in federally financed programs, barred § 1983 action by high school student against school district, alleging that her substantive due process rights were violated when she was forced to remain in school under supervision of athletic coach who had allegedly raped her, while school had knowledge of specific act and of other sexual improprieties on part of coach. Canty v. Old Rochester Regional School Dist., D.Mass.1999, 54 F.Supp.2d 66. Civil Rights 1309

Claim under Title IX does not preempt suit under § 1983 if underlying set of facts not only violates Title IX but also violates independent constitutional rights; preemption doctrine as applied to actions under § 1983 does not stand for proposition that federal statutory scheme can preempt independently existing constitutional rights having contours distinct from statutory claim. Carroll K. v. Fayette County Bd. of Educ., S.D.W.Va.1998, 19 F.Supp.2d 618. Civil Rights 1309

In action by high school student against school district and administrators on theory that policy of indifference allowed plaintiff to be sexually abused by coach, § 1983 claim was subsumed within claim under Title IX, which establishes comprehensive enforcement scheme. Seneway v. Canon McMillan School Dist., W.D.Pa.1997, 969 F.Supp. 325, appeal quashed 118 F.3d 1577. Civil Rights 1309

Title IX, forbidding sex discrimination in education program receiving federal financial assistance, did not preclude student from bringing § 1983 action against principal in her individual capacity to enforce student's rights under Title IX. Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist., N.D.Cal.1997, 964 F.Supp. 1369. Civil Rights 1309

Student could not proceed with sexual harassment claim against state university and its employees in their official capacities under § 1983 given that suit could be brought under Title IX and that Title IX has comprehensive enforcement scheme; § 1983 claims against employees in their individual capacities could, however, proceed. Mann v. University of Cincinnati, S.D.Ohio 1994, 864 F.Supp. 44. Civil Rights 1309; Civil Rights 1356

53. Education for All Handicapped Children Act, construction with other laws

Education for All Handicapped Children Act, section 1401 et seq. of Title 20, which establishes detailed procedures for administrative and judicial review of state's proposals to educate handicapped children creates a comprehensive and exclusive remedial scheme which precludes reliance upon a cause of action under this section for denial of appropriate education; student cannot assert a cause of action under this section by relying on a claim that the right to equal protection has been violated. Department of Educ., State of Hawaii v. Katherine D. By and Through Kevin and Roberta D., C.A.9 (Hawai'i) 1983, 727 F.2d 809, certiorari denied 105 S.Ct. 2360, 471 U.S. 1117, 86 L.Ed.2d 260. See, also, Hymes v. Harnett County Bd. of Ed., C.A.4 (N.C.) 1981, 664 F.2d 410; Silano v. Tirozzi, D.Conn.1987, 651 F.Supp. 1021; Gerasimou by Gerasimou v. Ambach, E.D.N.Y.1986, 636 F.Supp. 1504; M.R. v. Milwaukee Public Schools, E.D.Wis.1984, 584 F.Supp. 767; Rollison v. Biggs, D.C.Del.1983, 567 F.Supp. 964; Noe v. Amback, S.D.N.Y.1982, 542 F.Supp. 70. Schools 155.5(2.1)

54. Age Discrimination in Employment Act, construction with other laws

Claim of age discrimination under § 1983 is preempted by ADEA where facts alleged will not independently support a § 1983 claim. Lafleur v. Texas Dept. of Health, C.A.5 (Tex.) 1997, 126 F.3d 758.

Age Discrimination in Employment Act's (ADEA) comprehensive statutory scheme precluded state employee from bringing age discrimination suit against state employers under §§ 1983. Cataldo v. Moses, D.N.J.2004, 361 F.Supp.2d 420. Civil Rights 1502

Claim of age discrimination under §§ 1983 is preempted by ADEA where facts alleged will not independently support §§ 1983 claim. Aucoin v. Kennedy, E.D.La.2004, 355 F.Supp.2d 830. Civil Rights 1312; Civil

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42 U.S.C.A. § 1983

Rights 1502

A § 1983 claim asserting age discrimination is preempted by the ADEA as a matter of law. Nabozny v. NCS Pearson, Inc., D.Nev.2003, 270 F.Supp.2d 1201. Civil Rights 1312; Civil Rights 1502

Defendant is not automatically entitled as matter of right to list of names and addresses of government's witnesses prior to trial. U.S. v. Washington, S.D.N.Y.1996, 947 F.Supp. 87. Criminal Law 629(5)

Former employee's § 1983 claims against city, mayor, council members and city manager for age discrimination in violation of equal protection clause was preempted by ADEA. Ford v. City of Oakwood, Ga., N.D.Ga.1995, 905 F.Supp. 1063. Civil Rights 1502

55. Fair Housing Act of 1968, construction with other laws

Where suits under this section were commenced two years before Fair Housing Act of 1968, § 3601 et seq. of this title, was passed, relief under this section would not have to await proceedings thereunder. Sullivan v. Little Hunting Park, Inc., U.S.Va.1969, 90 S.Ct. 400, 396 U.S. 229, 24 L.Ed.2d 386.

Sua sponte dismissal of disabled tenants' pro se in forma pauperis complaint against apartment complex's owner, manager, and other tenants regarding handicapped parking spaces was abuse of discretion, even though complaint did not state claim under §§ 1983 or 1985, where court failed to address tenants' arguable claims under ADA and Fair Housing Act. Phibbs ex rel. Phibbs v. American Property Management, C.A.10 (Utah) 2003, 60 Fed.Appx. 738, 2003 WL 1384040, Unreported. Federal Civil Procedure 2734

56. Fair Labor Standards Act, construction with other laws

Recipient participating in Work Experience Program (WEP) as condition of continued receipt of New York State public assistance benefits could not use § 1983 to challenge state official's alleged FLSA violations, inasmuch as Congress evinced clear intent to preclude use of § 1983 for protection of rights secured by FLSA. Stone v. McGowan, N.D.N.Y.2004, 308 F.Supp.2d 79. Civil Rights 1052; Civil Rights 1136

Where cases cited by defendant in support of contention that sex discrimination complainant was obliged to exhaust her administrative remedies before bringing federal court suit arose under this section, cases were inapposite as regards action brought under the Equal Employment Opportunity Act, § 2000e et seq. of this title, and under the Fair Labor Standards Act of 1938, § 201 et seq. of Title 29. Shudtz v. Dean Witter & Co., Inc., S.D.N.Y.1976, 418 F.Supp. 14, motion granted 423 F.Supp. 48.

57. Family and Medical Leave Act, construction with other laws

Family and Medical Leave Act (FMLA) does not foreclose § 1983 suits, and thus § 1983 action is available for violations of FMLA; FMLA's enforcement provisions are not so comprehensive as to imply exclusivity, and FMLA does not contain detailed administrative procedure. Knussman v. State of Md., D.Md.1998, 16 F.Supp.2d 601. Civil Rights 1312

57A. HIPAA, construction with other laws

Health Insurance Portability and Accountability Act (HIPAA) did not preclude production of defendant's medical records and worker's compensation files in response to either a discovery request, subpoena or court order, where there was a protective order which adequately safeguarded the defendant's privacy. Hutton v. City of Martinez, N.D.Cal.2003, 219 F.R.D. 164. Witnesses 16

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42 U.S.C.A. § 1983

58. Federal question statute, construction with other laws

Former § 41(1) [now 1331] of Title 28 and this section had to be read together and neither was to be interpreted as abolishing the other. Hague v. Committee for Indus. Organization, U.S.N.J.1939, 59 S.Ct. 954, 307 U.S. 496, 83 L.Ed. 1423.

The technical considerations concerning "persons" amenable to suit under this section are not applicable to lawsuits brought pursuant to § 1331 of Title 28. Croy v. Skinner, N.D.Ga.1976, 410 F.Supp. 117. Federal Civil Procedure 103

Mere fact that a government subdivision is not subject to suit under this section because it is not a "person" within meaning of this section does not shield it from liability under § 1331 of Title 28 vesting district courts with general federal question jurisdiction. Panzarella v. Boyle, D.C.R.I.1975, 406 F.Supp. 787. Federal Courts 232

59. Full faith and credit provisions, construction with other laws

Civil rights statute does not create exception to statutory full faith and credit provision. Bolling v. City & County of Denver, Colo. By and Through McNichols, C.A.10 (Colo.) 1986, 790 F.2d 67. Judgment 828.4(2)

60. Johnson Act, construction with other laws

Johnson Act deprived federal courts of subject matter jurisdiction over § 1983 action in which information provider who used services offered by telecommunications company raised challenges under First and Fourteenth Amendments to order of New York Public Service Commission (PSC), which allowed discontinuation of services that were used by information provider after company had absorbed cost of making its equipment Y2K compliant in order to provide services for five years; however, Johnson Act did not bar action to extent that claims could be viewed solely as a challenge to only so much of PSC order which allowed discontinuation of service. Evans v. New York State Public Service Com'n, C.A.2 (N.Y.) 2002, 287 F.3d 43. Federal Courts 26.1

61. Labor-Management Relations Act, construction with other laws

Section 1983 claims of union representatives against public officials based primarily on violation of their federal rights of concerted action under NLRA were not precluded by NLRA enforcement scheme. Radcliffe v. Rainbow Const. Co., C.A.9 (Cal.) 2001, 254 F.3d 772, certiorari denied 122 S.Ct. 545, 534 U.S. 1020, 151 L.Ed.2d 423. Civil Rights 1312

Since coverage of the relevant parts of this subchapter is no broader than the constitutional protection, the provisions of this subchapter are not equivalent to the Labor-Management Relations Act, § 151 et seq. of Title 29, in the field of public employment. Hanover Tp. Federation of Teachers, Local 1954 (AFL-CIO) v. Hanover Community School Corp., C.A.7 (Ind.) 1972, 457 F.2d 456.

NLRA did not preempt §§ 1983 claims by nurse employed by Missouri corporation that provided medical services at county correctional facility in New York that corporation acted under color of state law to violate her constitutional rights under First and Fourteenth Amendments; NLRA did not provide comprehensive scheme for vindication of constitutional rights. Lagoy v. Correctional Medical Services, N.D.N.Y.2005, 358 F.Supp.2d 58. Civil Rights 1312; Labor And Employment 962; States 18.49

62. Motion attacking sentence, construction with other laws

Petitioner who sustained back injury while incarcerated could attempt to challenge the constitutionality of the

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conditions of his confinement under this section, but not, under § 2255 of Title 28, in the district court in which conviction was obtained. Jorgenson v. U. S., C.A.8 (Ark.) 1973, 477 F.2d 905. Civil Rights 1098

63. Prison Litigation Reform Act, construction with other laws

Congress enacted Prison Litigation Reform Act of 1995 (PLRA) primarily to curtail prisoners' § 1983 civil rights claims and actions under Federal Torts Claims Act (FTCA), most of which concerned prison conditions and many of which were routinely dismissed as legally frivolous. Santana v. U.S., C.A.3 (N.J.) 1996, 98 F.3d 752, as amended. Civil Rights 1090; United States 78(5.1)

Even if detainee suffered all of the psychological and emotional injuries that he alleged, Prison Litigation Reform Act (PLRA) precluded recovery against correctional officials under section 1983 because detainee did not allege physical injury. Brewster v. Nassau County, E.D.N.Y.2004, 349 F.Supp.2d 540. Civil Rights 1463

Section 1983 claim for inadequate provision of educational programs would be dismissed for failure to state a claim upon which relief may be granted where prisoner failed to comply with exhaustion requirement of Prison Litigation Reform Act (PLRA). A.N.R. ex rel. Reed v. Caldwell, M.D.Ala.2000, 111 F.Supp.2d 1294. Civil Rights 1311

Provision of Prison Litigation Reform Act (PLRA) barring federal action by prisoner for mental and emotional injury without prior showing of physical injury did not apply retroactively to inmate's pending § 1983 case; when inmate filed complaint, he was entitled to seek compensatory damages without suffering physical injury, and application of statute to pending cases would eliminate claims that were legally cognizable and attach new legal consequences to events completed before enactment of statute. Thomas v. Hill, N.D.Ind.1997, 963 F.Supp. 753. Civil Rights 1006

Inmate failed to exhaust a § 1983 claim of harassment against employees of the New York State Department of Correctional Services (DOCS), and thus, the claim was barred by the Prison Litigation Reform Act (PLRA); the inmate did not allege that he ever appealed the outcome of an investigation of his harassment claims. Rodney v. Goord, S.D.N.Y.2003, 2003 WL 21108353, Unreported. Civil Rights 209

Inmate failed to exhaust claim of excessive force against employees of the New York State Department of Correctional Services (DOCS) prior to bringing a § 1983 suit against them, and thus, the claim was barred by the Prison Litigation Reform Act (PLRA). Rodney v. Goord, S.D.N.Y.2003, 2003 WL 21108353, Unreported. Civil Rights 209

Inmate failed to exhaust claim challenging prison discipline prior to commencing his § 1983 suit against employees of the New York State Department of Correctional Services (DOCS), and thus, the claim was barred by the Prison Litigation Reform Act (PLRA); appeal of his Tier III hearing was not affirmed until 6 days after the § 1983 action was commenced. Rodney v. Goord, S.D.N.Y.2003, 2003 WL 21108353, Unreported. Civil Rights 209

Inmate failed to exhaust claim of a false misbehavior report prior to commencing his § 1983 suit against employees of the New York State Department of Correctional Services (DOCS), and thus, the claim was barred by the Prison Litigation Reform Act (PLRA); the inmate never alleged that he grieved the filing of the allegedly false report. Rodney v. Goord, S.D.N.Y.2003, 2003 WL 21108353, Unreported. Civil Rights 209

64. Public accommodations, discrimination provisions, construction with other laws

Where claim against county commissioners and superintendent of county home for discharging two individual employees from employment solely because of membership and activities in labor union did not allege

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discrimination because of race, color, religion, sex or national origin, adherence to the administrative procedure provided by § 2000a et seq. of this title was not required. Service Emp. Intern. Union, AFL-CIO v. Butler County, Pa., W.D.Pa.1969, 306 F.Supp. 1080. Civil Rights 1312

65. Railway Labor Act, construction with other laws

District court had jurisdiction to hear discharged commuter railroad employee's constitutional challenge to blood and urine testing which gave rise to his discharge, even though discharge had been upheld in compulsory and binding arbitration pursuant to Railway Labor Act; rights guaranteed by Fourth Amendment and under § 1983 and public policy favoring arbitration underlying Railway Labor Act required that employee be allowed to pursue contractual remedy under the Act and a separate cause of action under § 1983 independently of one another. Coppinger v. Metro-North Commuter R.R., C.A.2 (N.Y.) 1988, 861 F.2d 33. Civil Rights 1312

Section 163 of Title 45 providing that Act providing for mediation, conciliation, and arbitration and all Acts in conflict with Railway Labor Act, § 151 et seq. of Title 45, are repealed does not specifically repeal this section, in that § 163 of Title 45 makes no specific mention of this section or any other statute not dealing directly with transportation questions, and differences between this section and § 163 were insufficient to support finding of explicit repeal; also, this section was not preempted or impliedly repealed by the Railway Labor Act, in that § 152 of Title 45, providing for duty of carriers and employees to settle disputes was not viewed by Congress as replacing any statute but instead as a supplement to existing legislation which was viewed as inadequate; § 152 of Title 45 does not provide any elaborate or complete mechanism for settlement of disputes where no union has yet been certified, and thus the Railway Labor Act was not an exclusive remedy for employees, who alleged that their termination from employment was motivated by their efforts to promote union organization among employees. Hodges v. Tomberlin, S.D.Ga.1980, 510 F.Supp. 1280.

66. Rehabilitation Act of 1973, construction with other laws

Federal civil rights statute provided private right of action under Individuals with Disability Education Act (IDEA) and Rehabilitation Act on behalf of student who alleged that he was denied services to which he was entitled. W.B. v. Matula, C.A.3 (N.J.) 1995, 67 F.3d 484. Civil Rights 1330(2)

Former employees' claims that State agency violated employees' First Amendment right of free association could not have been brought in employees' Rehabilitation Act handicap discrimination suit and, therefore, employees were entitled to maintain First Amendment claims in civil rights action. Smith v. Barton, C.A.9 (Idaho) 1990, 914 F.2d 1330, certiorari denied 111 S.Ct. 2825, 501 U.S. 1217, 115 L.Ed.2d 995. Civil Rights 1312; Civil Rights 1502

Employee could base § 1983 action against state natural resources department, for alleged refusals to transfer employee due to disability, upon Rehabilitation Act; defendants failed to carry burden of demonstrating that Congress expressly withdrew § 1983 remedy. Bodiford v. State of Ala., M.D.Ala.1994, 854 F.Supp. 886. Civil Rights 1220

In the absence of congressional intent to contrary, Rehabilitation Act does not preclude action under § 1983 based on handicap discrimination. Rothschild v. Grottenthaler, S.D.N.Y.1989, 716 F.Supp. 796.

Rehabilitation Act was not exclusive remedy available to blind employment applicant who alleged she was denied employment because of a handicap; therefore, applicant could maintain § 1983 action and was not required to exhaust administrative remedies. Cordero-Martinez v. Aponte-Roque, D.Puerto Rico 1988, 685 F.Supp. 314. Civil Rights 1312; Civil Rights 1502

67. Revised Organic Act of Virgin Islands, construction with other laws

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42 U.S.C.A. § 1983

Revised Organic Act of the Virgin Islands, § 1541 of Title 48, providing that no tort action shall be brought against the government of the Virgin Islands or against any officer or employee thereof in his official capacity without consent of the legislature did not bar action for damages in the Virgin Islands against three police officers under this section. Ocasio v. Bryan, C.A.3 (Virgin Islands) 1967, 374 F.2d 11. Territories 32

Fact that almost two years passed between Baltimore police officer's hiring and her termination, while perhaps not enough time to altogether remove inference of Fourth Circuit's *Proud v. Stone* decision, sufficiently weakened inference to prevent dismissal of her gender discrimination/equal protection claim on that basis alone. Campbell v. Town of Southern Pines, M.D.N.C.2005, 401 F.Supp.2d 480. Civil Rights 1405

68. Rules of Decision Act, construction with other laws

The Rules of Decision Act, § 1652 of Title 28, does not mandate application of state law in actions brought under this section where the law to be applied is federal law albeit that state law is incorporated by reference. Jones v. Marshall, C.A.2 (Conn.) 1975, 528 F.2d 132. Federal Courts 411

69. Sherman Act, construction with other laws

This section does not prevent manufacturer from refusing to purchase equipment even if refusal is in violation of § 2 of Title 15. Raitport v. General Motors Corp., E.D.Pa.1973, 366 F.Supp. 328.

Scope of operations in civil rights field under this section, is at least as broad as that exercised by Congress in adoption of Sherman Act, §§ 1 to 7 of Title 15, or as in legislation affecting labor relations under National Labor Relations Act, § 151 et seq. of Title 29, and is broader than that exercised by Congress in its regulation of wages and hours of services under wage and hour laws. Heart of Atlanta Motel, Inc. v. U. S., N.D.Ga.1964, 231 F.Supp. 393, probable jurisdiction noted 85 S.Ct. 11, 379 U.S. 803, 13 L.Ed.2d 20, affirmed 85 S.Ct. 348, 379 U.S. 241, 13 L.Ed.2d 258. Civil Rights 1003

70. Social Security Act, construction with other laws

Requirement under state law that resident of homeless shelter contribute most of her Supplemental Security Income (SSI) benefits to the cost of her upkeep did not violate the "anti-attachment" or "anti-alienation" provisions of the Social Security Act, where resident voluntarily agreed to her placement in emergency housing under the terms and conditions as they were explained to her, and there was no evidence that her payment was not voluntary. Johnson v. Wing, C.A.2 (N.Y.) 1999, 178 F.3d 611, certiorari denied 120 S.Ct. 1177, 528 U.S. 1162, 145 L.Ed.2d 1085. Social Security And Public Welfare 139

Social Security Act did not confer on custodial parents individual right enforceable under §§ 1983 to have state disbursement unit distribute their child support payments within two business days; statutes did not contain the sort of "rights-creating" language essential to show the requisite congressional intent to create new rights and are focused on the entity regulated as opposed to the individuals allegedly protected. Walters v. Weiss, E.D.Ark.2003, 349 F.Supp.2d 1160, affirmed 392 F.3d 306. Civil Rights 1057

Section 1983 claim brought by class of social security disability claimants which alleged that state agency charged with making disability determinations violated claimants' right to equal protection was not barred by existence of statutory remedies in Social Security Act; although § 1983 and statutory remedies both provide remedy for allegedly wrongful conduct by state agency, each was intended to remedy violations of different rights and, thus, were capable of coexistence. Laird v. Ramirez, N.D.Iowa 1995, 884 F.Supp. 1265, on reconsideration 982 F.Supp. 1345. Civil Rights 1313

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42 U.S.C.A. § 1983

71. State Tax Injunction Act, construction with other laws

Civil rights suits filed under this section do not come within an exception to the State Tax Injunction Act, section 1341 of Title 28. Hawaiian Telephone Co. v. State Dept. of Labor and Indus. Relations, C.A.9 (Hawai'i) 1982, 691 F.2d 905. Courts 508(6)

Hawai'i provided plain, speedy, and efficient remedies by which taxpayer could challenge constitutionality of excise tax, and thus taxpayer's § 1983 claim was barred by Tax Injunction Act, where taxpayer could pay tax and then appeal to district board of review or directly to Tax Appeal Court, taxpayer could alternatively pay tax under protest and then commence action in Tax Appeal Court within 30 days, taxpayer could raise any constitutional objections in Tax Appeal Court, and if still aggrieved, taxpayer could appeal to the Hawai'i Supreme Court. Moore v. Kamikawa, D.Hawai'i 1995, 940 F.Supp. 260, affirmed 82 F.3d 423. Federal Courts 27

72. Telecommunication Act, construction with other laws

Rebuttable presumption arose that subsection of Telecommunications Act (TCA), that precluded state or local governments from having effect of prohibiting ability of any entity to provide any interstate or intrastate telecommunications service, created "federal right" enforceable under §§ 1983 by federally licensed provider of commercial mobile radio service, rather than just statutory right, since Congress intended TCA to benefit providers, albeit secondarily, enforcement of subsection did not strain judicial competence, and TCA unambiguously imposed binding obligation on municipalities because it stated definitive prohibition, not mere preference. Sprint Telephony PCS, L.P. v. County of San Diego, S.D.Cal.2004, 311 F.Supp.2d 898, opinion clarified 2004 WL 859333. Civil Rights 1041

A plaintiff cannot rely on the Telecommunications Act to bring a claim under § 1983. E. Spire Communications, Inc. v. Baca, D.N.M.2003, 269 F.Supp.2d 1310, affirmed 392 F.3d 1204. Civil Rights 108.1

Telecommunications Act contains a remedial scheme that is sufficiently comprehensive to indicate that Congress impliedly foreclosed resort to § 1983 with respect to rights granted to wireless telecommunications providers pertaining to siting of wireless facilities. Primeco Personal Communications v. City of Mequon, E.D.Wis.2003, 242 F.Supp.2d 567, affirmed 352 F.3d 1147. Civil Rights 1073; Civil Rights 1310

Although city, which denied wireless telecommunications provider's request to construct personal wireless communications tower, violated federal right, provider was not entitled to attorney fees under § 1983 for city's violation of Telecommunications Act (TCA), since TCA contained comprehensive enforcement scheme that implicitly supplanted § 1983 remedies; statute provided clear, detailed process that allowed quick and complete remedies, statute expressly allowed judicial review, statute provided private right of action, and § 1983 added no remedy except attorney fee award. National Telecommunication Advisors, Inc. v. City of Chicopee, D.Mass.1998, 16 F.Supp.2d 117. Civil Rights 1479; Telecommunications 1055

73. Tort Claims Act, construction with other laws

Whether suit, wherein it was alleged that discriminatory practices followed by certain defendants enabled defendant real estate vendors to extract excessive prices from Negro purchasers, was properly based on this section, as it was, or on state tort of interference with contract rights, suit against federal defendants was not barred on theory that Federal Tort Claims Act, §§ 1346(b) and 2671 et seq. of Title 28, afforded only mode of suit against them. Baker v. F & F Inv. Co., C.A.7 (Ill.) 1973, 489 F.2d 829. Civil Rights 1310

Federal Tort Claims Act was exclusive remedy for damages suit against United States arising from alleged negligence by Veterans Administration employees in loan servicing where no constitutional or statutory violations were alleged. Lacen-Remigio v. U.S., D.Puerto Rico 1992, 787 F.Supp. 34. United States 78(1)

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42 U.S.C.A. § 1983

74. Venue provisions, construction with other laws

This section and § 1985 of this title and §§ 241 and 242 of Title 18 creating civil claims or imposing criminal penalties for deprivation of constitutional rights are not laws providing for equal rights nor do they confer "color of authority" for exercise of those rights within § 1443 of Title 28. People of State of N. Y. v. Galamison, C.A.2 (N.Y.) 1965, 342 F.2d 255, certiorari denied 85 S.Ct. 1342, 380 U.S. 977, 14 L.Ed.2d 272. Removal Of Cases 70

Section 1391 of Title 28 making it possible to bring actions against government officials and agencies in district courts outside District of Columbia does not expand scope of coverage under this subchapter. Norton v. McShane, C.A.5 (Miss.) 1964, 332 F.2d 855, certiorari denied 85 S.Ct. 1345, 380 U.S. 981, 14 L.Ed.2d 274. Civil Rights 1003

75. Miscellaneous laws, construction with other laws

Individual may not enforce, through §§ 1983 action, protections provided by Uniformed Services Employment and Reemployment Rights Act (USERRA) against employment discrimination based on military service obligations; Congress did not mean for the comprehensive remedial scheme expressly authorized by USERRA to coexist with alternative remedy available in §§ 1983 action, and enforcement of USERRA through §§ 1983 would distort the litigation options and remedies created by USERRA. Morris-Hayes v. Board of Educ. of Chester Union Free School Dist., C.A.2 (N.Y.) 2005, 423 F.3d 153. Civil Rights 1312

National Bank Act (NBA) addresses the allocation of federal versus state regulatory power over national banks, and does not provide national banks with individual rights enforceable under §§ 1983. Wachovia Bank, N.A. v. Burke, C.A.2 (Conn.) 2005, 414 F.3d 305, petition for certiorari filed 2005 WL 2463529, miscellaneous rulings 126 S.Ct. 791, 163 L.Ed.2d 626. Civil Rights 1041

Plaintiff cannot plead violations of § 1983 to avoid the Johnson Act, which proscribes federal injunctions against utility rates made by state agency. U S West, Inc. v. Tristani, C.A.10 (N.M.) 1999, 182 F.3d 1202, certiorari denied 120 S.Ct. 845, 528 U.S. 1106, 145 L.Ed.2d 713. Federal Courts 28

Congress did not manifest intent that administrative remedies provided for under Job Training Partnership Act (JTPA) were exclusive recourse, barring § 1983 suit alleging that First Amendment rights of municipal consortium employees were violated when their contracts were not renewed in alleged retaliation for their support of losing candidates in election; there was no explicit grant of exclusivity, administrative procedures of JTPA were applicable to sections not relevant in present case, and there was no implication of intended exclusivity in legislative history. Torres v. Maldonado, D.Puerto Rico 2003, 257 F.Supp.2d 477. Civil Rights 1312; United States 127(2)

Savings clause of Clean Air Act (CAA), which provided plaintiffs with opportunity to seek relief for violations of their statutory or common law rights, did not vest federal district court with subject matter jurisdiction under §§ 1983 over manufacturer's CAA claims against Commissioner of New York State Department of Environmental Conservation and Attorney General of State of New York, since CAA had comprehensive remedial scheme and private cause of action had to be derived from separate statute in order to utilize savings clause, not CAA's procedural provisions. Sherwin-Williams Co. v. Crotty, N.D.N.Y.2004, 334 F.Supp.2d 187. Civil Rights 1313

Administrative enforcement scheme of Workforce Investment Act (WIA) did not impliedly foreclose ability of transitory employees to bring action against mayors of municipalities under § 1983 for discrimination in employment because of employees' political affiliation; WIA prohibited employment discrimination because of political affiliation and provided for enforcement by Secretary of Labor by referral to Attorney General for

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institution of civil action, and Secretary's compliance regulations set forth procedures for processing discrimination complaints, but neither WIA nor regulations provided comprehensive enforcement of private remedy through which aggrieved persons could seek redress by obtaining judicial review. Borrero-Rodriguez v. Montalvo-Vazquez, D.Puerto Rico 2003, 275 F.Supp.2d 127. Civil Rights 1126; Civil Rights 1312

Because the Aviation and Transportation Security Act (ATSA) does not afford an applicant for employment individual rights, it cannot be a basis for a § 1983 claim. Nabozny v. NCS Pearson, Inc., D.Nev.2003, 270 F.Supp.2d 1201. Civil Rights 1121

When statute has sufficient "rights-creating" language, so as to be enforceable under § 1983, statute focuses on conferring benefit or entitlement on an individual or class of individuals and does not focus on entity or person that statute intends to regulate; statutes that focus on person regulated rather than individuals protected create no implication of intent to confer rights on particular class of persons. Association of Community Organizations for Reform Now v. New York City Dept. of Educ., S.D.N.Y.2003, 269 F.Supp.2d 338. Civil Rights 1027

Fact that statute's provisions have only "aggregate focus" and are not concerned with whether needs of any particular person have been satisfied is indicative of Congress' intent not to create individual rights that are enforceable under § 1983. Association of Community Organizations for Reform Now v. New York City Dept. of Educ., S.D.N.Y.2003, 269 F.Supp.2d 338. Civil Rights 1027

Gun-Free Schools Act provides no basis for private suit under § 1983 for violation of Act. Niziol v. Pasco County Dist. School Bd., M.D.Fla.2002, 240 F.Supp.2d 1194.

Defendant in § 1983 civil rights action could not rely on right of privacy available explicitly under the California Constitution to withhold medical records from treating physician contained in worker's compensation file, as such could be abrogated where justified under federal law. Hutton v. City of Martinez, N.D.Cal.2003, 219 F.R.D. 164. Constitutional Law 82(7); Federal Civil Procedure 1598

By creating a comprehensive enforcement scheme within the Vietnam Era Veterans Readjustment Act for veterans working for the District of Columbia, Congress precluded any remedy under § 1983 for violation of retention rights under the Act in case of such veterans. Bridges v. Kelly, D.D.C.1997, 977 F.Supp. 503, affirmed 159 F.3d 635, 333 U.S.App.D.C. 45. Civil Rights 1126

Violation of Family Educational Rights and Privacy Act may be basis for civil rights claim under § 1983, even though FERPA does not provide private cause of action. Doe v. Knox County Bd. of Educ., E.D.Ky.1996, 918 F.Supp. 181. Civil Rights 1070

For purposes of motion to dismiss, prior arbitration award did not preclude employee's later civil rights and Title VII suit in federal court, since, taking employee's pleadings as true, arbitration related to employee's rights under collective bargaining agreement instead of to her civil rights claims, employee sought injunctive relief, attorney fees, and punitive fees in her federal court suit, and thus back pay and reinstatement awarded by prior arbitration award did not fully satisfy her claims, and, although arbitrator's award was confirmed by Rhode Island state court, state's court's review was procedural rather than on merits. Tang v. State of R.I., Dept. of Elderly Affairs, D.R.I.1995, 904 F.Supp. 69. Labor And Employment 1599

Section 1983 claims are not preempted by Title VII claims based on the same conduct. Tang v. State of R.I., Dept. of Elderly Affairs, D.R.I.1995, 904 F.Supp. 55.

Section 1983 was available as remedy for violation of Family Educational Rights and Privacy Act (FERPA), since language of FERPA revealed congressional intent to impose obligations directly on educational agencies or institutions, obligation on educational agencies or institutions was unambiguous, FERPA created enforceable

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federal right in favor of parent of educational disabled student and Congress had not foreclosed enforcement of the statute in the enactment itself. Belanger v. Nashua, New Hampshire, School Dist., D.N.H.1994, 856 F.Supp. 40. Civil Rights 1069; Civil Rights 1070

While § 3006A of Title 18, provides that attorneys may be appointed and compensated for their services when they represent state prisoners seeking relief by way of federal habeas corpus, there is no provision for appointment when prisoners present claims under this section, but there is no reason to ignore essential habeas corpus nature of such claims for purposes of § 3006A of Title 18; if statutes are to be construed broadly to protect rights of prisoners, a similar construction is appropriate to provide at least minimal compensation for those attorneys who endeavor to have those rights protected. McClain v. Manson, D.C.Conn.1972, 343 F.Supp. 382. Civil Rights 1485

Tax Injunction Act divested district court of jurisdiction over taxpayers' action to enjoin government officials from enforcing state tax laws by adding their names to a list of delinquent taxpayers or foreclosing on their real property, as New York courts provided a plain, speedy and efficient remedy for taxpayers' claims under §§ 1983 and the New York State Constitution. Schulz v. Williamson, C.A.2 (N.Y.) 2005, 145 Fed.Appx. 704, 2005 WL 1977803, Unreported, petition for certiorari filed 2006 WL 1078995. Federal Courts 27

76. Workforce Investment Act, construction with other laws

Employees who brought § 1983 action against municipal consortium, municipalities and personnel, alleging political discrimination, were not expressly precluded from bringing constitutional claims by statutory scheme of Workforce Investment Act (WIA), since WIA did not specify any grievance procedures to be followed in like circumstances, nor did it state that administrative remedies must be exhausted prior to filing suit under § 1983. Caraballo Seda v. Javier Rivera, D.Puerto Rico 2003, 261 F.Supp.2d 76. Civil Rights 1126; Civil Rights 1312

Employees who brought § 1983 action against municipal consortium, municipalities and personnel, alleging political discrimination, were not expressly precluded from bringing constitutional claims by regulatory scheme enacted under Workforce Investment Act (WIA), since consortium was not entity operating program or activity encompassed within WIA regulations, and mere availability of administrative mechanisms did not defeat employees' ability to invoke § 1983. Caraballo Seda v. Javier Rivera, D.Puerto Rico 2003, 261 F.Supp.2d 76. Civil Rights 1126; Civil Rights 1312

Employees who brought § 1983 action against municipal consortium, municipalities and personnel, alleging political discrimination, were not impliedly foreclosed from bringing constitutional claims by statutory scheme of Workforce Investment Act (WIA), since remedial devices provided within WIA were not sufficiently comprehensive to demonstrate congressional intent to preclude remedy of suits under § 1983; legislative history of WIA was silent with regards to discrimination claims, exhaustion of grievance procedures, or preclusion of § 1983 claims. Caraballo Seda v. Javier Rivera, D.Puerto Rico 2003, 261 F.Supp.2d 76. Civil Rights 1126; Civil Rights 1312

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101. Law governing generally

Under this section pertaining to proceedings in vindication of civil rights, federal courts are instructed to refer to state statutes when federal law provides no rule of decision for actions brought under this section, and federal courts are authorized to disregard an otherwise applicable state rule of law only if the state law is "inconsistent with the Constitution and laws of the United States". Board of Regents of University of State of N. Y. v. Tomanio, U.S.N.Y.1980, 100 S.Ct. 1790, 446 U.S. 478, 64 L.Ed.2d 440. Federal Courts 433

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42 U.S.C.A. § 1983

When it comes to suits for damages for abuse of power, federal officials are usually governed by local law. Wheeldin v. Wheeler, U.S.Cal.1963, 83 S.Ct. 1441, 373 U.S. 647, 10 L.Ed.2d 605. Federal Courts 431

State rule cannot be deemed inconsistent with federal law under § 1983 and disregarded simply because it extinguishes particular plaintiff's cause of action; it can be disregarded only if it is inconsistent with policies underlying § 1983--deterrence and compensation. Jund v. Town of Hempstead, C.A.2 (N.Y.) 1991, 941 F.2d 1271 . Federal Courts 411

Federal court considering § 1983 action must give preclusive effect to state court judgment to same extent that court in that state would. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Judgment 828.4(1)

Where federal suit is commenced before final decision by state court, state court judgment forecloses § 1983 litigant from raising grievances in federal court only if such claims have been pressed before, and decided by, state tribunal. Waste Management of Pennsylvania, Inc. v. Shinn, D.N.J.1996, 938 F.Supp. 1243, amended 969 F.Supp. 906. Judgment 828.16(1)

Prerequisite for viable civil rights claim is that defendant directed, or knew of and acquiesced in, deprivation of plaintiff's constitutional rights. Turiano v. Schnarrs, M.D.Pa.1995, 904 F.Supp. 400. Civil Rights 1335

Federal court defining role of state official for purposes of determining liability under § 1983 must look to the state law. Cofield v. Randolph County Com'n, M.D.Ala.1994, 844 F.Supp. 1499. Federal Courts 411

102. Federal right, law governing

To state § 1983 claim, plaintiff must point to specific federal right. Whiting v. Traylor, C.A.11 (Fla.) 1996, 85 F.3d 581. Civil Rights 1027

If there is no violation of a federal right, there is no basis for a civil rights action under § 1983 and no answer to a plea by public officer of qualified immunity. Hodge v. Jones, C.A.4 (Md.) 1994, 31 F.3d 157, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1027; Civil Rights 1376(1)

Federal civil rights statute was designed to deter state actors from using their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if deterrence failed. Bosley v. Kearney R-1 School Dist., W.D.Mo.1995, 904 F.Supp. 1006, affirmed 140 F.3d 776, rehearing and suggestion for rehearing en banc denied. Civil Rights 1004; Civil Rights 1324

103. State right, law governing

Violations of state laws do not, by themselves, permit claim under § 1983. Lilley v. State of Mo., E.D.Mo.1996, 920 F.Supp. 1035, affirmed 111 F.3d 135. Civil Rights 1027

Availability of adequate state remedies under Oregon Administrative Procedures Act precluded §§ 1983 suit for violation of procedural due process brought by nurse against members of the Oregon State Board of Nursing, following suspension of his registered nurse license and nurse practitioner certificate; Act permitted suspension of professional licenses without a pre-deprivation hearing and provided for judicial review of final agency orders. Corcoran v. Olson, C.A.9 (Or.) 2004, 102 Fed.Appx. 522, 2004 WL 957834, Unreported. Civil Rights 1321

104. Abatement or survival of action, law governing

Louisiana survivorship statute LSA-C.C.P. art. 428, which does not allow deceased's personal representative to be substituted as plaintiff in actions other than those for damage to property but allows action to survive only in favor

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of spouse, children, parents or siblings is not inconsistent with Constitution and laws of United States so that district court sitting in Louisiana was required to adopt as federal law Louisiana survivorship law which would have caused action under this section authorizing civil action for damages for deprivation of rights to abate upon death of plaintiff without leaving spouse, children, parents or siblings and district court was not free to create federal common law rule allowing action to survive. Robertson v. Wegmann, U.S.La.1978, 98 S.Ct. 1991, 436 U.S. 584, 56 L.Ed.2d 554, on remand 591 F.2d 1208. Federal Courts 401

Injuries alleged by plaintiff under this section in suit against police officers for violations of his constitutional rights during arrest, detention, pretrial proceedings and trial were not personal injuries within meaning of Indiana survival statute, IC 34-1-1-1, and therefore death of plaintiff of natural causes while incarcerated did not abate the cause of action. Blake v. Katter, C.A.7 (Ind.) 1982, 693 F.2d 677. Abatement And Revival 57

Since Congress did not provide rules of survivorship for actions under this section, district court acted properly in applying Alabama law to determine that decedent's right of action survived his death and that only party who could properly assert claim would be administratrix of his estate. Hess v. Eddy, C.A.11 (Ala.) 1982, 689 F.2d 977, certiorari denied 103 S.Ct. 3085, 462 U.S. 1118, 77 L.Ed.2d 1347. Federal Courts 401; Federal Courts 428

Cause of action under this section survives for the benefit of the estate, if the law of the forum state creates a right of survival. Davis v. Oregon State University, C.A.9 (Or.) 1978, 591 F.2d 493. Abatement And Revival 57

In order to determine whether civil rights action alleging that plaintiff was deprived of his personal freedom, of liberty to express his views and to practice his profession, and that he was embarrassed, humiliated, and put in fear of his life by actions of defendant municipal court judge survived death of plaintiff, resort had to be taken to state law. Dean v. Shirer, C.A.4 (S.C.) 1976, 547 F.2d 227. Federal Courts 401

In federal civil rights action, where person who has been deprived of his rights has died, action survives for benefit of estate if applicable state law creates such survival action. Spence v. Staras, C.A.7 (Ill.) 1974, 507 F.2d 554. Abatement And Revival 57

Decedent's § 1983 claim for excessive force resulting in instant death was personal cause of action and could be pursued in name of decedent's personal representative, even though Indiana's survival statute barred survival actions in cases involving instantaneous death; under such circumstances, survival statute was hostile to Constitution and laws of United States. Tracy For and on Behalf of Estate of Tracy v. Bittles, N.D.Ind.1993, 820 F.Supp. 396. Civil Rights 1332(4)

Federal law only provides a remedy for actions which deprive persons of civil rights and, hence, is controlling of inconsistent Texas law on wrongful death and survival to extent Texas law would permit recovery for actions which do not rise to level of a constitutional deprivation. Clift by Clift v. Fincannon, E.D.Tex.1987, 657 F.Supp. 1535. Federal Courts 411

The remedies available under the West Virginia wrongful death law, Code, 55-7- 8a(a), as applied to the facts of the case, suffice to meet the "deterrence of official misconduct" policy of this section and, hence, abate the claims under this section that were most analogous to the West Virginia laws. Jones v. George, S.D.W.Va.1982, 533 F.Supp. 1293. Federal Courts 401

A claim for deprivation of civil rights which accrued before death survives decedent where there is a state law providing for survival. Guyton v. Phillips, N.D.Cal.1981, 532 F.Supp. 1154. Abatement And Revival 57

105. Appellate procedure, law governing

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42 U.S.C.A. § 1983

Idaho appellate rule was not preempted by § 1983 to extent rule did not allow state officials to take interlocutory appeal from denial of qualified immunity; challenged rule was neutral state rule for administering state courts, application of rule primarily involved balancing of state interests, delaying appeal would not affect ultimate outcome of case, and right to immediate appeal in federal court was procedural right that did not apply in nonfederal forum. Johnson v. Fankell, U.S.Idaho 1997, 117 S.Ct. 1800, 520 U.S. 911, 138 L.Ed.2d 108. Courts 85(3); States 18.71

Police officers' actions during arrest of automobile passenger did not constitute conspiracy under § 1983, where passenger did not contend that officers communicated in any manner prior to alleged assault, and passenger alleged that only one officer performed false arrest and used excessive force. Veney v. Ojeda, E.D.Va.2004, 321 F.Supp.2d 733. Conspiracy 7.5(2)

African-American employee of city failed to state § 1983 conspiracy claim against city and its officials; complaint did not refer to agreement between supervisor and others to deprive employee of his constitutional rights, and complaint did not provide details of time and place and alleged effect of conspiracy on employee. Jessamy v. City of New Rochelle, New York, S.D.N.Y.2003, 292 F.Supp.2d 498. Conspiracy 18

106. Arrest, law governing

Because arresting officer followed procedures Federal Constitution prescribes for making arrests, his failure to accord arrestee additional procedures established by Illinois law did not matter for purposes of arrestee's § 1983 Fourth Amendment claim against officer; in other words, failure to afford hearing required by Illinois law, but not by Fourth Amendment, violated only that state law for purposes of § 1983 claim. Gordon v. Degelmann, C.A.7 (Ill.) 1994, 29 F.3d 295, rehearing and suggestion for rehearing en banc denied. Civil Rights 1088(4)

Police officer who had probable cause to make warrantless misdemeanor arrest under federal law could not be held liable in federal civil rights action on ground that the arrest violated state law because offense was not committed in officer's presence. Fields v. City of South Houston, Tex., C.A.5 (Tex.) 1991, 922 F.2d 1183, rehearing denied.

Detective was entitled to qualified immunity in arrestee's § 1983 action alleging that his arrest and detention on basis of false information violated his Fourth Amendment rights; a reasonable officer could have believed that probable cause supported the initial arrest, inasmuch as investigators had information that arrestee was the man recorded using an ATM machine at approximate time a murder victim's card had been used in that machine, and arrestee matched description of suspect seen fleeing scene of murder. Liser v. Smith, D.D.C.2003, 254 F.Supp.2d 89. Civil Rights 1376(6)

Primary issue of whether arrest was legal was a matter of Michigan state law in § 1983 action brought by arrestee against police department and police officers. Greenan v. Romeo Village Police Dept., E.D.Mich.1993, 819 F.Supp. 658. Federal Courts 404

107. Capacity to sue, law governing

A state disability statute will not affect a state prisoner's federal rights to sue in a civil rights case, despite the normal determination of capacity to sue by state law. Kaiser v. Cahn, C.A.2 (N.Y.) 1974, 510 F.2d 282. Federal Civil Procedure 101

108. Color of law, law governing

Whether certain conduct is "under color of state law" or "state action," for purposes of § 1983 and Fourteenth Amendment, is a question of federal, not state law. Gorenc v. Salt River Project Agr. Imp. and Power Dist., C.A.9 (Ariz.) 1989, 869 F.2d 503, certiorari denied 110 S.Ct. 256, 493 U.S. 899, 107 L.Ed.2d 205. Federal Courts

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42 U.S.C.A. § 1983

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State's determination that an association is a private association for purposes of state law does not limit federal courts in determining whether association has acted under color of state law and violated U.S.C.A.Const. Amend. 14. Robison v. Wichita Falls & North Texas Community Action Corp., C.A.5 (Tex.) 1975, 507 F.2d 245. Federal Courts 414

Rules of state law that private university operating state-supported New York State College of Ceramics under contract with the state cannot resist tort claims upon basis of state's sovereign immunity and that state is not liable for university's torts or breaches of contract do not determine whether state has so far involved itself in operation of such college that acts of its delegates constitute action "under color of" state law for purposes of U.S.C.A.Const. Amend. 14, which is a question of federal law. Powe v. Miles, C.A.2 (N.Y.) 1968, 407 F.2d 73. Civil Rights 1326(7); Constitutional Law 213(4)

Whether there is "color" of state law and whether there is conduct which deprives plaintiff in damage case under this section, of constitutional right, are federal and not state questions. Marshall v. Sawyer, C.A.9 (Nev.) 1962, 301 F.2d 639. Federal Courts 411

For purposes of 42 U.S.C.A. § 1983, because question whether defendant other than state itself should be equated with state is entirely matter of state's governmental structure, relevant inquiry must be made under state rather than federal law. Santiago v. Daley, N.D.Ill.1990, 744 F.Supp. 845. Federal Courts 418

109. Contribution, law governing

Federal law governed question of whether contribution was available in section 1983 case brought by former and present public employees alleging they were fired or harassed because of their political or union affiliations. Fishman v. DeMeo, E.D.Pa.1985, 604 F.Supp. 873. Federal Courts 431

Federal common law, not NMSA 1978, 41-31-1 et seq., governed issue of whether defendants were entitled to contribution from third-party defendant in civil rights action. Valdez v. City of Farmington, D.C.N.M.1984, 580 F.Supp. 19. Federal Courts 374

110. Custom or usage, law governing

Whether particular official has "final policymaking authority" for § 1983 purposes is question of state law. McMillian v. Monroe County, Ala., U.S.Ala.1997, 117 S.Ct. 1734, 520 U.S. 781, 138 L.Ed.2d 1. Federal Courts 411

Authority to make municipal policy, required to support municipal liability under § 1983, may be granted directly by legislative enactment or may be delegated by official who possesses such authority; in examining state law to determine such authority, court reviews relevant legal materials, including state and local positive law, as well as custom or usage having force of law. Rasche v. Village of Beecher, C.A.7 (Ill.) 2003, 336 F.3d 588. Civil Rights 1351(1)

Whether government employee has final policymaking authority in specific area of government operations for purposes of imposing local government liability under § 1983 is question of state law. Jett v. Dallas Independent School Dist., C.A.5 (Tex.) 1993, 7 F.3d 1241, rehearing denied. Federal Courts 411

Courts must turn to state law to determine whether individual official has final authority to establish municipal policy, for purposes of determining municipal liability under federal civil rights statute. Krmencik v. Town of Plattekill, N.D.N.Y.1991, 758 F.Supp. 103, affirmed 946 F.2d 882. Federal Courts 411

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42 U.S.C.A. § 1983

111. Defenses, law governing--Generally

This section provides a federal remedy for the redress of wrongs done under the color of state law and, as such, state law or the prevailing common law view is not decisive as to the availability of defenses; rather, the prevailing common law must be considered in light of policies and purposes of the civil rights action to determine whether importation of a defense, or allowance of a defense where the common law provides none, is appropriate. Landrum v. Moats, C.A.8 (Neb.) 1978, 576 F.2d 1320, certiorari denied 99 S.Ct. 282, 439 U.S. 912, 58 L.Ed.2d 258.

Federal, not state, law applies and determines adequacy of defenses asserted in civil rights action against law enforcement officers. Qualls v. Parrish, C.A.6 (Tenn.) 1976, 534 F.2d 690. Federal Courts 411

In an action under this section, claiming excessive force in effecting arrest, federal law determined adequacy of defenses asserted. Clark v. Ziedonis, C.A.7 (Wis.) 1975, 513 F.2d 79. Federal Courts 431

Federal courts may be guided, but are not bound, by the vagaries of state law with respect to the immunities and defenses available to state officers in civil rights suit for damages. Fidtler v. Rundle, C.A.3 (Pa.) 1974, 497 F.2d 794. Federal Courts 418

Federal court may resort to state law of torts to supply elements of civil rights claim, and defenses recognized by state common law may be raised. Scott v. Vandiver, C.A.4 (S.C.) 1973, 476 F.2d 238. Federal Courts 431

Privileges are to be narrowly, not expansively, construed, especially in federal civil rights actions, where assertion of privilege must overcome the fundamental importance of a law meant to insure each citizen from unconstitutional state action. Mason v. Stock, D.Kan.1994, 869 F.Supp. 828.

In interpreting the scope of this section, courts are not bound by state law of torts or the defense of privilege that law provides. Ayler v. Hopper, M.D.Ala.1981, 532 F.Supp. 198. Federal Courts 433

Where same conduct underlay both claim against social worker for deprivation of plaintiffs' civil rights and claim under state tort law of malicious prosecution, social worker's defenses against the two claims could differ if state law of malicious prosecution diverged from the law of malicious prosecution prevailing generally since prevailing view of tort law in the country, rather than the law of the forum, determined what defenses were available as regards claim under this section. Anthony v. White, D.C.Del.1974, 376 F.Supp. 567. Civil Rights 1371

112. ---- Immunity, defenses, law governing

Pursuant to supremacy clause, California litigation immunity statute did not apply to shield from liability in federal civil rights action attorneys accused of conspiring with judge to deprive party of constitutional rights, inasmuch as existence of immunities in action was matter of federal law. Kimes v. Stone, C.A.9 (Cal.) 1996, 84 F.3d 1121. Civil Rights 1375; States 18.23

Although federal, not state, law determines adequacy of defenses asserted in § 1983 action, a court may consider relevant state law in determining appropriate federal immunity standard to apply. Brown v. Griesenauer, C.A.8 (Mo.) 1992, 970 F.2d 431. Federal Courts 411

Statutory immunity from personal liability afforded prison officials under South Dakota law was not preempted by § 1983, in action by prisoner seeking damages based upon officials' alleged negligent failure to protect him from sexual assaults committed by another prisoner; preemption extended only to intentional violations of personal civil rights, as § 1983 was inapplicable to negligence claims. Webb v. Lawrence County, D.S.D.1996, 950 F.Supp. 960, affirmed 144 F.3d 1131. Prisons 10; States 18.15

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42 U.S.C.A. § 1983

Members of county board of elections who were sued under § 1983 for violating successful candidate's constitutional rights were not entitled to dismissal on grounds of qualified immunity under state law; in addition to fact that state law cannot immunize person against federal civil rights action, immunity defense would best be considered after some discovery had been conducted, not on motion to dismiss. Barley v. Luzerne County Bd. of Elections, M.D.Pa.1995, 937 F.Supp. 362. Civil Rights 1376(4); Federal Civil Procedure 1752.1; Federal Civil Procedure 1828

Maine Civil Rights Act employs federal standard for qualified immunity. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1735

State law that immunizes government conduct otherwise subject to suit under § 1983 is preempted by the Supremacy Clause of the Federal Constitution. Silva v. University of New Hampshire, D.N.H.1994, 888 F.Supp. 293. Civil Rights 1376(1); States 18.23

Absolute immunity granted by the Alabama Constitution to state officials in their official capacities did not provide them absolute immunity from suit brought by plaintiff under § 1983 for deprivation of federally guaranteed rights. Williams v. Alabama State University, M.D.Ala.1994, 865 F.Supp. 789, reversed 102 F.3d 1179, on remand 979 F.Supp. 1406. Civil Rights 1376(3)

Question of whether governing body's actions are legislative, administrative, or quasi-judicial, for purposes of determining immunity, is an issue of state law. Fry v. Board of County Com'rs of County of Baca, D.Colo.1991, 837 F.Supp. 330, affirmed 7 F.3d 936, rehearing denied. Federal Courts 418

113. Duty to protect, law governing

Determination of whether parole officials had a constitutional duty to protect people from parolee attack for purposes of civil rights action under 42 U.S.C.A. § 1983 is not to be determined on basis of state tort law. Nelson v. Missouri Osteopathic Foundation, W.D.Mo.1985, 626 F.Supp. 604. Federal Courts 411

114. Employment, law governing

Whether discharged school principal's employment contract entitled her to be discharged only for cause, or whether she was a probationary employee, terminable at will, was a question of state law which Court of Appeals, in § 1983 action, would leave to state courts. Coleman v. Reed, C.A.8 (Minn.) 1998, 147 F.3d 751, rehearing and suggestion for rehearing en banc denied. Civil Rights 1359

115. Evidence, law governing

Scope of evidentiary privilege in action under this section is question of federal law; state law may provide useful referent, but it is not controlling. Breed v. U. S. Dist. Court for Northern Dist. of California, C.A.9 1976, 542 F.2d 1114. Federal Courts 416

Mississippi and general tort law requirements respecting proof of causation were applicable to claim against police officers in action under this section, arising out of deaths and injuries from gunfire laid down by officers who were on college campus as result of student disorders. Burton v. Waller, C.A.5 (Miss.) 1974, 502 F.2d 1261, certiorari denied 95 S.Ct. 1356, 420 U.S. 964, 43 L.Ed.2d 442, rehearing denied 95 S.Ct. 1668, 421 U.S. 939, 44 L.Ed.2d 95 . Civil Rights 1420

Admissibility of evidence in an action under this section had to be determined under federal law. Morgan v. Labiak, C.A.10 (Colo.) 1966, 368 F.2d 338. Federal Courts 416

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42 U.S.C.A. § 1983

Federal court sitting in civil rights action had great latitude in choosing between federal common law and state rule in determining inadmissibility of evidence so as to choose rule which favors admissibility. Green v. Cauthen, D.C.S.C.1974, 379 F.Supp. 361. Federal Courts 416

Section 1983 action to recover for arrestee's death while in police custody impliedly waived Pennsylvania's privilege for arrestee's alcohol and drug abuse treatment records; possibility could not be ruled out during discovery that arrestee died as result of medical condition related to or brought about by history of alcohol problems. O'Boyle v. Jensen, M.D.Pa.1993, 150 F.R.D. 519.

Law of evidence governing actual trial in civil rights action as to privileged matters governed discovery examination under rule 26, Federal Rules of Civil Procedure, Title 28, so that at trial court was not required to apply state law as to privilege unless it chose to do so. Garrity v. Thomson, D.C.N.H.1979, 81 F.R.D. 633. Federal Courts 416

116. Exhaustion of remedies, law governing

Metropolitan Transit Authority (MTA) employee failed to state free speech and due process conspiracy claims under §§ 1983 where alleged coconspirators were all employees of MTA, the institutional defendant in action. Anemone v. Metropolitan Transp. Authority, S.D.N.Y.2006, 410 F.Supp.2d 255. Conspiracy 2

Arrestee was not entitled to award of attorney fees and costs as prevailing party, in police chief's malicious prosecution claim against him, arising out of arrestee's §§ 1983 claim against police chief, under Washington statute, providing for such award if defendant was entitled to immunity for claims based upon the communication to a government agency regarding any matter reasonably of concern to that agency, where arrestee did not prevail on defense of immunity. Gausvik v. Perez, E.D.Wash.2005, 396 F.Supp.2d 1173. Malicious Prosecution 77

Intracorporate conspiracy doctrine barred arrestee's § 1983 conspiracy claim against police officers arising from alleged false arrest and use of excessive force, where both officers were agents of same legal entity. Veney v. Ojeda, E.D.Va.2004, 321 F.Supp.2d 733. Conspiracy 2

Workforce Investment Act (WIA) did not impliedly preclude § 1983 actions for political discrimination or require exhaustion of administrative remedies before employee of municipal consortium operating under the WIA could bring such action. Torres Ramos v. Consorcio De La Montaña, D.Puerto Rico 2003, 286 F.Supp.2d 126. Civil Rights 1312

In actions under this section, it is a federal law which determines whether exhaustion of state administrative remedies is required since such matter rather goes to access to be given to litigants to come into federal courts under this section. Vistamar, Inc. v. Vazquez, D.C.Puerto Rico 1971, 337 F.Supp. 375. Federal Courts 411

117. In loco parentis, law governing

This section may be deemed in conflict with any broader state law construction of in loco parentis authority, a conflict which state law must lose by virtue of the Supremacy clause, U.S.C.A.Const. Art, 6 cl. 2. Picha v. Wielgos, N.D.Ill.1976, 410 F.Supp. 1214. States 18.23

118. Malicious prosecution, law governing

Liability for the tort of malicious prosecution under New York law also gives rise to liability under § 1983. Savino v. City of New York, C.A.2 (N.Y.) 2003, 331 F.3d 63. Civil Rights 1037

Malicious abuse of criminal process under New York law supports liability under § 1983. Savino v. City of New

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York, C.A.2 (N.Y.) 2003, 331 F.3d 63. Civil Rights 1034; Civil Rights 1088(5)

Claim of malicious prosecution brought under § 1983 is governed by state law. Russell v. Smith, C.A.2 (N.Y.) 1995, 68 F.3d 33. Federal Courts 431

A state law claim for malicious prosecution, on its own, is insufficient to constitute a claim under § 1983; in order to transform the malicious prosecution claim to a cognizable § 1983 claim, a plaintiff must establish that the defendants acted under color of state law, and deprived the plaintiff of a constitutional right. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1037; Civil Rights 1324

A § 1983 claim based on malicious prosecution cannot be maintained under the rubric of procedural due process where local tort law affords an anodyne for malicious prosecution. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1321

To state claim for malicious prosecution under federal civil rights statute, plaintiff must satisfy elements of state law malicious prosecution action. Cooper v. Smith, N.D.Ill.1996, 936 F.Supp. 515. Civil Rights 1037

To state claim for malicious prosecution as constitutional tort under § 1983, plaintiff must demonstrate that: requirements of state law cause of action for malicious prosecution have been met; malicious prosecution was committed by state actor; and plaintiff was deprived of liberty within meaning of Fourth Amendment. Treece v. Village of Naperville, N.D.Ill.1995, 903 F.Supp. 1251. Civil Rights 1037

A § 1983 claim based on malicious prosecution is governed by state law in the absence of federal rules of decision for adjudicating those claims. Goree v. Gunning, E.D.N.Y.1990, 738 F.Supp. 79. Federal Courts 431

119. Negligence, law governing

Liability of Mississippi convict farm supervisor for injuries to minor prisoner who was shot when gun being handled by trusty guard accidentally fired, based on claim that supervisor was negligent in failing to adequately train and supervise guard, rested upon Mississippi law applied by federal court under doctrine of pendent jurisdiction. Roberts v. Williams, C.A.5 (Miss.) 1971, 456 F.2d 819, certiorari denied 92 S.Ct. 83, 404 U.S. 866, 30 L.Ed.2d 110. Federal Courts 428

Under Pennsylvania law, indemnification clauses that placed emphasis on negligent conduct, and which contained no language referring to intentional conduct, did not apply to claim for indemnity in § 1983 action based on intentional conduct. Mahon v. City of Bethlehem, E.D.Pa.1995, 902 F.Supp. 76. Indemnity 30(1)

120. Notice of claim, law governing

Citizen was not required to provide notice of her § 1983 claims against police officers and chief pursuant to New York's notice of claims statute; statute did not apply to § 1983 claims. Ahern v. Neve, E.D.N.Y.2003, 285 F.Supp.2d 317. Municipal Corporations 741.25

Citizen was not required to provide notice of her § 1983 claims against police officers and chief pursuant to New York's notice of claims statute; statute did not apply to § 1983 claims. Ahern v. Neve, E.D.N.Y.2003, 285 F.Supp.2d 317. Municipal Corporations 741.25

Louisiana statute requiring that medical malpractice claim against health care provider arising from unintentional tort be presented to medical review panel did not apply to inmate's 1983 action asserting claim for intentional mistreatment arising from correctional officials' alleged failure to respond to his need for medical treatment. Thomas v. James, W.D.La.1993, 809 F.Supp. 448. Civil Rights 1319

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Illinois notice of claim requirements do not apply to federal civil rights actions. Johnson v. Panizzo, N.D.Ill.1987, 664 F.Supp. 336. Civil Rights 1316

Federal civil rights action brought under 42 U.S.C.A. § 1983 was not subject to provisions of New York state law [N.Y.McKinney's General Municipal Law §§ 50-e, 50-i] which require service of notice of claim within 90 days after claim arises as condition precedent to any tort action against municipality. Burroughs v. Holiday Inn, W.D.N.Y.1985, 621 F.Supp. 351. Municipal Corporations 741.25

Failure to comply with requirement of District of Columbia Code, D.C.C.E. § 12-309, that written notice be given within six months of an occurrence before a damage action may be maintained against the District was no bar to federal damage suit against the District for alleged infringement of plaintiff's constitutional rights in connection with his arrest and detention by District police. Lively v. Cullinane, D.C.D.C.1976, 451 F.Supp. 999. District Of Columbia 36

121. Parties, law governing

Although successful candidate is necessary party under New York law in suit to recover his position, federal law governed in procedural matters in action alleging that state officials, acting under color of state law, committed fraudulent acts in conduct of voter registration and subsequent general presidential election and that ballots cast by legitimate voters were debased and diluted by illegal votes. Donohue v. Board of Elections of State of N. Y., E.D.N.Y.1976, 435 F.Supp. 957. Federal Civil Procedure 211

Since complaint set forth causes of action under both this section and Nebraska tort law and since R.R.S.Neb.1943, § 25-321 authorizes suit against fictitious defendants, although there is no provision therefor in federal law, such state law provision would be applied to both the state and federal claims, especially since the latter were coupled with the state claims. Yellow Bird v. Barnes, D.C.Neb.1979, 82 F.R.D. 738. Civil Rights 1391

122. Persons entitled to maintain action, law governing

Nebraska law governed question whether mother of decedent had standing to bring civil rights action against city police officers to recover damages for the shooting death of her son as he fled from scene of burglary. Landrum v. Moats, C.A.8 (Neb.) 1978, 576 F.2d 1320, certiorari denied 99 S.Ct. 282, 439 U.S. 912, 58 L.Ed.2d 258. Federal Courts 431

State law controls whether plaintiff has sufficient interest in the property allegedly wrongfully deprived so as to have standing to sue under § 1983 for due process violation; if sufficient property interest is found, government cannot deprive plaintiff of that interest without due process. Petty v. Board of County Com'rs of County of Wyandotte, Kan., D.Kan.1996, 168 F.R.D. 46. Constitutional Law 278(1); Federal Courts 433

123. Persons liable, law governing

In § 1983 action, Court of Appeals would look to state law principles to determine whether employer was vicariously liable for actions of its independent contractor. Carroll v. Federal Exp. Corp., C.A.9 (Cal.) 1997, 113 F.3d 163, certiorari denied 118 S.Ct. 852, 522 U.S. 1076, 139 L.Ed.2d 753. Federal Courts 421

Whether particular official has final policy-making authority for § 1983 purposes is matter of state law; whether official acts on behalf of county or state is similarly question of state law. Owens v. Fulton County, C.A.11 (Ga.) 1989, 877 F.2d 947. Federal Courts 411

Whether doctrine of respondeat superior was available to hold warden, associate warden, and correctional officer liable for assault and battery upon prisoner by prison guard was a question of state law. Meredith v. State of Ariz.,

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C.A.9 (Ariz.) 1975, 523 F.2d 481. Federal Courts 421

Question of a sheriff's vicarious liability under this section for acts of his deputy is controlled by state law. Tuley v. Heyd, C.A.5 (La.) 1973, 482 F.2d 590. Federal Courts 433

This section authorizes application, under appropriate circumstances, of state laws pertaining to vicarious liability and liability created by statute. Hesselgesser v. Reilly, C.A.9 (Wash.) 1971, 440 F.2d 901. Federal Courts 411

Section 1983 provides cause of action against state officials for violation of federal statutory rights if Congress's intent to permit private enforcement actions is clear and unmistakable. Rabin v. Wilson-Coker, D.Conn.2003, 266 F.Supp.2d 332, reversed 362 F.3d 190. Civil Rights 1027

State statutes providing that no person or political subdivision of state would be liable for failure to provide adequate prison or jail facilities were preempted in connection with § 1983 action brought by former jail inmate against sheriff and board of county commissioners. McKenzie v. Crotty, D.S.D.1990, 738 F.Supp. 1287. Prisons 10; States 18.15

Issue of whether civil rights defendant is state official entitled to Eleventh Amendment immunity must be determined with reference to state law; among relevant considerations are role of officer or entity in State Constitution, whether entity has existence independent of state, whether any damages would necessarily be paid out of state treasury, and whether defendant is policymaker for county. Bailey v. Wictzack, M.D.Fla.1990, 735 F.Supp. 1016. Federal Courts 418

Whether official has final policy-making authority, for purposes of determining whether municipality may be held liable under § 1983 for constitutional injuries caused by official custom or policy but based on single incident, is question of state law, which court must determine as matter of law. Woods v. City of Michigan City, Ind., N.D.Ind.1988, 685 F.Supp. 1457, affirmed 940 F.2d 275. Civil Rights 1426; Federal Courts 411

124. Privileges, law governing

For purposes of evidentiary rule requiring application of state privilege law when state law supplies rule of decision for claim or defense, a § 1983 claim is a federal claim as to which federal law, not state law, supplies the rule of decision. Crowe v. County of San Diego, S.D.Cal.2003, 242 F.Supp.2d 740. Federal Courts 416

125. Property rights, law governing

In action by former prisoner of Department of Public Safety and Corrections against department officials for alleged denial of due process and equal protection in exclusion from prison's work release program, court would look to federal constitutional law to determine whether statute providing for work release program created legitimate claim or entitlement protected by due process clause. Welch v. Thompson, C.A.5 (La.) 1994, 20 F.3d 636. Constitutional Law 272(2)

State law defines parameters of plaintiff's property interest for purposes of § 1983. Key West Harbour Development Corp. v. City of Key West, Fla., C.A.11 (Fla.) 1993, 987 F.2d 723. Federal Courts 411

126. Public officials' role and status, law governing

Federal court defining role and status of public official for purposes of determining liability under § 1983 must look to state law. Free v. Granger, C.A.11 (Ala.) 1989, 887 F.2d 1552. Federal Courts 411

127. Remedies or relief, law governing--Generally

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42 U.S.C.A. § 1983

In federal civil rights actions, characterization of the remedy, as well as the nature of the cause of action, is a matter of federal, and not state, law. Williams v. Walsh, C.A.2 (Conn.) 1977, 558 F.2d 667. Federal Courts 411

Congress can foreclose a remedy under § 1983 either by forbidding it expressly in the statute itself, or impliedly, by creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983. Torres Ramos v. Consorcio De La Montaña, D.Puerto Rico 2003, 286 F.Supp.2d 126. Civil Rights 1027

In evaluating a federal civil rights claim that is deficient in providing suitable remedy and where the applicable state statute is inconsistent with federal claim, court should look to state statute in first instance, apply it where it is not inconsistent with federal law, and decline to apply those provisions that are incompatible. Williams v. City of Oakland, N.D.Cal.1996, 915 F.Supp. 1074. Federal Courts 411

Suit by former patient of public psychiatric center, seeking injunctive relief in § 1983 action alleging that center subjected him to illegal strip search pursuant to center's general search policy, fell within *Ex Parte Young* exception to Eleventh Amendment; complaint alleged ongoing violation of federal law and sought prospective relief. Aiken v. Nixon, C.A.2 (N.Y.) 2003, 80 Fed.Appx. 146, 2003 WL 22595837, Unreported. Federal Courts 272

128. ---- Contribution or indemnification, remedies or relief, law governing

City housing authority had no right of contribution against city in malicious prosecution action for improper processing of arrestee while she was in city custody on ground that New York law governing contribution was incorporated into § 1983 pursuant to § 1988 of Civil Rights Act; even if city and housing authority did contribute to same injury, § 1983 precluded imposing liability on city for mere negligence of its employees so that liability under New York contribution statute could not be incorporated under § 1983 pursuant to § 1988. Rosado v. New York City Housing Authority, S.D.N.Y.1989, 827 F.Supp. 179. Contribution 5(6.1)

129. ---- Damages, remedies or relief, law governing

Compensatory damages for deprivation of federal right are governed by federal standards, which means that both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal statutes. Sullivan v. Little Hunting Park, Inc., U.S.Va.1969, 90 S.Ct. 400, 396 U.S. 229, 24 L.Ed.2d 386. Civil Rights 1462

Although Illinois law would not permit recovery of punitive damages or damages for loss of prisoner's life in wrongful death action, federal common-law rules would apply in determining damages recoverable by administration of prisoner's estate in civil rights action arising from prisoner's death by cardiorespiratory arrest, and damages for loss of life, conscious pain and suffering experienced by prisoner prior to death, and punitive damages, upon showing of reckless or callous indifference, would be recoverable. Bass by Lewis v. Wallenstein, C.A.7 (Ill.) 1985, 769 F.2d 1173. Civil Rights 1463; Civil Rights 1465(1); Federal Courts 374

Protection afforded by this section was not intended by Congress to differ from state to state, and thus determination of damages is governed by federal common law, which must be fashioned to promote purposes underlying enactment of statute. Busche v. Burkee, C.A.7 (Wis.) 1981, 649 F.2d 509, certiorari denied 102 S.Ct. 396, 454 U.S. 897, 70 L.Ed.2d 212. Civil Rights 1459

Principles of common law torts govern recovery of damages in actions under this section. Keyes v. Lauga, C.A.5 (La.) 1981, 635 F.2d 330. Civil Rights 1459

In cases under this section the common law of a state may be used on issue of damages if it better serves policies expressed in the federal statutes. McDaniel v. Carroll, C.A.6 (Tenn.) 1972, 457 F.2d 968, certiorari denied 93 S.Ct.

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897, 409 U.S. 1106, 34 L.Ed.2d 687. Federal Courts 415

California survivorship statutes governed federal civil rights action where deceased plaintiff died of causes unrelated to incident, except insofar as state statute limited survivors' recovery of damages for pain and suffering, and, on a proper showing, administrator of plaintiff's estate could recover pain and suffering damages sustained by the decedent. Williams v. City of Oakland, N.D.Cal.1996, 915 F.Supp. 1074. Civil Rights 1462; Federal Courts 411

Alabama's statutory cap of $100,000 on damages recoverable against municipality was not applicable to suit against city and city council members under § 1983 and Title VII. Patrick v. City of Florala, M.D.Ala.1992, 793 F.Supp. 301. Civil Rights 1464; Civil Rights 1574; Municipal Corporations 743

North Carolina wrongful death statute was appropriate law for determining measure of damages in wrongful death action brought under civil rights statute, where there was no federal statutory law governing measure of damages in wrongful death actions brought pursuant to civil rights statute, and North Carolina statute was consistent with laws of United States. Bowling v. Oldham, M.D.N.C.1990, 753 F.Supp. 588. Federal Courts 411

Mother of arrestee allegedly shot in the head after his arrest, resulting in severe and permanent injury, stated civil rights claim against police officer for deprivation of constitutionally protected liberty interest in her son's continued society, even though forum state would not allow parent to recover for loss of society on basis of child's injuries. Hutson by Hutson v. Bell, N.D.Ill.1988, 702 F.Supp. 212. Civil Rights 1088(4)

Action by taxpayers seeking compensatory and punitive damages under this section for injuries allegedly caused by various county and state taxing officials in connection with overassessment of taxpayers' real property was not barred by Supreme Court decision providing that taxpayers must seek protection of their federal rights by state remedies, because interest and attorney fees are not recoverable in a state court refund procedure, so that the state court remedy was neither "adequate" nor "complete." North American Cold Storage Co. v. Cook County, N.D.Ill.1982, 531 F.Supp. 1003.

Determination of an award of damages for deprivation of constitutional right is guided by federal common law of damages. Manfredonia v. Barry, E.D.N.Y.1975, 401 F.Supp. 762. Civil Rights 1459

130. ---- Interest, remedies or relief, law governing

State law governed calculation of prejudgment interest in § 1983 claim. Pressey v. Patterson, C.A.5 (Tex.) 1990, 898 F.2d 1018, rehearing denied. Interest 56

Resort to state law on prejudgment issue is not required in federal civil rights case but, rather, since issue of prejudgment interest is closely allied with that of damages, federal rule should govern prejudgment interest in such cases. Furtado v. Bishop, C.A.1 (Mass.) 1979, 604 F.2d 80, on remand 84 F.R.D. 671, certiorari denied 100 S.Ct. 710, 444 U.S. 1035, 62 L.Ed.2d 672. Federal Courts 415; Interest 39(2.45)

131. ---- Set off, remedies or relief, law governing

Federal law should not be fashioned or created for purposes of determining if settlement obtained in civil rights action would be set off against compensatory damage award. Goad v. Macon County, Tenn., M.D.Tenn.1989, 730 F.Supp. 1425. Federal Courts 415

Connecticut law, rather than federal law, controlled issue of whether remaining defendants were entitled to setoff in § 1983 action, and, thus, remaining defendants were entitled to setoff to extent plaintiff failed to prove divisibility of his damages among several defendants and to extent court determined as matter of law that jury's award of

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damages was excessive in light of settlement proceeds previously paid by codefendants. Hoffman v. McNamara, D.Conn.1988, 688 F.Supp. 830. Civil Rights 1464; Federal Courts 411

132. Res judicata, law governing

Res judicata effect of state-court decisions in § 1983 actions is a matter of state law. Heck v. Humphrey, U.S.Ind.1994, 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383. Federal Courts 420

Full faith and credit statute's mandate that federal court give state-court judgment same preclusive effect as it would have under law of state where judgment was rendered applies in §§ 1983 action. Thornton v. City of St. Helens, C.A.9 (Or.) 2005, 425 F.3d 1158. Judgment 828.4(2)

Federal law, not state law, governed finality of federal habeas corpus judgment that had been appealed, for purposes of determining whether judgment had res judicata effect in inmate's separate civil rights action. Hawkins v. Risley, C.A.9 (Mont.) 1993, 984 F.2d 321. Habeas Corpus 901; Federal Courts 420

While plaintiff, a racehorse trainer who brought civil rights action seeking a mandatory injunction compelling defendant to admit him to its racetrack, had voluntarily dismissed three prior state court actions, the question whether that constituted a previous state adjudication which should bar his federal claims was a matter of state law on which a state adjudication would be preferable. Catrone v. Massachusetts State Racing Commission, C.A.1 (Mass.) 1976, 535 F.2d 669. Federal Courts 48

Malicious prosecution claim brought under § 1983 was barred by *Heck v. Humphrey*; although plaintiff's conviction was expunged and an order of acquittal entered, expunction under Louisiana law did not render prior conviction invalid. DelCambre v. Whittington, C.A.5 (La.) 2003, 72 Fed.Appx. 39, 2003 WL 21554877, Unreported. Civil Rights 1088(5)

133. Respondeat superior, law governing

Ohio R.C. § 311.05 providing for sheriff's responsibility for neglect of duty or misconduct in office of each of his deputies had no application to complainant's civil rights action against sheriff and deputy for allegedly unconstitutional strip-search of complainant by deputy, and thus did not control sheriff's liability, since there was federal case law concerning applicability of respondeat superior in actions pursuant to this section governing civil action for deprivation of rights and, if Ohio statute did apply, it would be clearly "inconsistent" with federal law concerning respondeat superior. Smith v. Jordan, S.D.Ohio 1981, 527 F.Supp. 167. Federal Courts 411

134. Retroactive effect of court decisions, law governing

State law did not apply when determining retroactive effect of United States Supreme Court decision that forum state's personal injury statute of limitations applies to § 1983 civil rights suit given that federal law provided rule for full retroactive effect of decision; state law could be "borrowed" when adjudicating civil rights claim only if federal law does not provide decisional principles. Lufkin v. McCallum, C.A.11 (Ala.) 1992, 956 F.2d 1104, certiorari denied 113 S.Ct. 326, 506 U.S. 917, 121 L.Ed.2d 246. Federal Courts 433

135. Search and seizure, law governing

Fact the Illinois by its Constitution and laws outlaws searches and seizures did not bar suit under this section by Illinois residents against police officers conducting an allegedly illegal search and seizure. Monroe v. Pape, U.S.Ill.1961, 81 S.Ct. 473, 365 U.S. 167, 5 L.Ed.2d 492.

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42 U.S.C.A. § 1983

136. Waiver of cause of action, law governing

Application of the waiver provision of the Ohio Court of Claims Act, under which former state employee's suit in the Court of Claims against the state was regarded as waiver of causes of action, including federal causes of action, against state officers and employees, was not invalid under the supremacy clause of the United States Constitution on theory that it thwarted broad remedial purpose underlying Civil Rights Act when it was claimed that discharge violated the constitutional rights, where Ohio statute did not purport to deprive employee of right to maintain federal civil rights action unless she chose to pursue the remedy, not otherwise available, of proceeding against the state under the Act. Leaman v. Ohio Dept. of Mental Retardation & Development Disabilities, C.A.6 (Ohio) 1987, 825 F.2d 946, certiorari denied 108 S.Ct. 2844, 487 U.S. 1204, 101 L.Ed.2d 882. States 18.23

137. Wrongful death, law governing

Under Indiana law, wrongful death claim is substitute for cause of action lost upon death of decedent but is not same claim; accordingly, decedent's estate cannot bring § 1983 claim under auspices of wrongful death statute. Tracy For and on Behalf of Estate of Tracy v. Bittles, N.D.Ind.1993, 820 F.Supp. 396. Civil Rights 1304; Death 7

Pursuant to § 1988 of this title, providing that law of forum state shall apply where necessary to provide suitable remedy for enforcement of this subchapter, wrongful death statute of forum state applied in federal civil rights action for wrongful death of plaintiff's decedent. Bailey v. Harris, E.D.Tenn.1974, 377 F.Supp. 401. Federal Courts 428

138. Miscellaneous laws, law governing

Both state tort claims and federal § 1983 claim asserted by property owner against contractor for federal agency were governed by state prescription law. Drury v. U.S. Army Corps of Engineers, C.A.5 (La.) 2004, 359 F.3d 366, rehearing and rehearing en banc denied 99 Fed.Appx. 565, 2004 WL 726918. Federal Courts 423; Federal Courts 425

In action under § 1983 for false arrest and malicious prosecution, Court of Appeals looks to New York law to determine what preclusive effect should be given to findings made at pretrial suppression hearing in criminal action when criminal action results in acquittal. Johnson v. Watkins, C.A.2 (N.Y.) 1996, 101 F.3d 792. Federal Courts 420

Federal law, and not state law, was source of rule governing whether tender back was required prior to initiation of § 1983 action based on claims purportedly released by release agreement and state rule of "tender back," assuming Oregon law required tender, would not be incorporated as the content of the federal rule; tender back requirement was neither indispensable to any scheme of justice nor indispensable prerequisite to litigation and rule announced in *Hogue*, that tender back is not required for suit under Federal Employers' Liability Act (FELA), was generalizable to suits under other federal compensatory statutes, and thus, federal law could not be deemed truly deficient. Botefur v. City of Eagle Point, Or., C.A.9 (Or.) 1993, 7 F.3d 152. Federal Courts 411

Whether city dog control officer, charged with violating owner's civil rights in removing her to police station when she refused to sign citation charging her with misdemeanor of allowing dog to run at large, had authority to issue the citation, which contained a promise to appear before a justice of the peace, was to be determined by reference to state statute; trial court was to determine whether, based on all facts and circumstances, need for "acknowledgment" of receipt of copy of the citation was implicitly required to establish proof of issuance and delivery, as required in case of misdemeanor citations. Allred v. Svarczkopf, C.A.10 (Utah) 1978, 573 F.2d 1146. Federal Courts 433

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42 U.S.C.A. § 1983

City's assertion of lien against proceeds of settlement obtained by mother in § 1983 action based on city's administration for children's services's (ACS) wrongful removal of her children from her custody for payment of public assistance that mother received after her involvement with ACS was not inconsistent with purpose and objectives of § 1983, and thus state law imposing lien was not preempted by § 1983, where there had been no judgment of liability, and amount of lien was only 14% of mother's portion of settlement. Colondres v. Scoppetta, E.D.N.Y.2003, 290 F.Supp.2d 376. Social Security And Public Welfare 11; States 18.79

Federal privilege law governed in civil rights action in which state law supplied rule of decision for plaintiffs' state-law defamation claim, but federal law provided rule of decision for § 1983 defamation-plus claim. Crowe v. County of San Diego, S.D.Cal.2003, 242 F.Supp.2d 740. Federal Courts 416

Federal common law governed assertion of official information privilege to protect police officer's home address from discovery in action brought pursuant to §§ 1983. Collens v. City of New York, S.D.N.Y.2004, 222 F.R.D. 249. Federal Courts 416

IV. LIMITATIONS LAW GOVERNING

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161. Limitations law governing generally

Court of Appeals applies federal law to determine when limitations period for § 1983 action begins to accrue. Ruiz-Sulsona v. University of Puerto Rico, C.A.1 (Puerto Rico) 2003, 334 F.3d 157. Federal Courts 427

Section 1983 claim may be timely even though based on unlawful act which occurred outside applicable limitations period. Whiting v. Traylor, C.A.11 (Fla.) 1996, 85 F.3d 581. Limitation Of Actions 58(1)

The accrual period for a § 1983 action starts when the plaintiff knows, or has reason to know, of the injury on which the action is based. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Limitation Of Actions 95(15)

Two-year statute of limitations for civil rights cases applies to claims arising under § 1985, as well as those arising under § 1983. Merrigan v. Affiliated Bankshares of Colorado, Inc., D.Colo.1991, 775 F.Supp. 1408, affirmed 956 F.2d 278, certiorari denied 113 S.Ct. 76, 506 U.S. 823, 121 L.Ed.2d 40. Civil Rights 1379; Conspiracy 16

162. State control and regulation, limitations law governing--Generally

Federal courts borrow forum state's general personal injury limitations period for § 1983 civil rights action. Ali v. Higgs, C.A.5 (Tex.) 1990, 892 F.2d 438. Civil Rights 1379

Federal courts look to applicable state limitations statute, including its tolling provisions, in determining timeliness of claims under civil rights provisions, but such adoption of state limitations period does not effect supplanting of federal rules governing procedure by which affirmative defenses, including defenses of limitations and laches, must be raised. Moore v. Tangipahoa Parish School Bd., C.A.5 (La.) 1979, 594 F.2d 489. Federal Civil Procedure

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755; Federal Courts 422.1; Federal Courts 427

To determine the applicable statute of limitations for a § 1983 claim, the court adopts relevant provisions from an analogous statute of limitations of the forum state. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Federal Courts 425

Federal courts look to applicable state statute of limitations to determine timeliness of civil rights claim. Desert State Life Management Services v. Association of Retarded Citizens of Albuquerque, D.N.M.1996, 939 F.Supp. 835. Federal Courts 425

Applicable statute of limitations for § 1983 actions differs from state to state. Harris v. Muchnicki, N.D.Ohio 1996, 932 F.Supp. 192, affirmed 101 F.3d 702. Federal Courts 425

Under North Carolina law, most relevant limitation period for § 1983 actions is three year period applicable to all liability created by statute, either state or federal, unless some other time is mentioned in statute creating it. Warlick v. Wilson, M.D.N.C.1995, 902 F.Supp. 90. Civil Rights 1379

Appropriate statute of limitations for civil rights actions under § 1983, arising in Kansas, is two years. Gee v. Duncanson, D.Kan.1994, 869 F.Supp. 874. Civil Rights 1379

Statute of limitations applicable to § 1983 action in New York is three years. Hood v. City of New York, S.D.N.Y.1990, 739 F.Supp. 196. Civil Rights 1379

163. ---- Accrual of action, state control and regulation, limitations law governing

Although applicable state statute of limitations supplies length of limitations period in § 1983 action, time of accrual of cause of action is matter of federal law under which cause of action accrues when plaintiff possesses sufficient facts about harm done that reasonable inquiry will reveal cause of action. Brooks v. City of Winston-Salem, N.C., C.A.4 (N.C.) 1996, 85 F.3d 178. Federal Courts 425; Federal Courts 427; Limitation Of Actions 95(15)

Although state law determines length of limitations period in federal civil rights action, determination of point at which period begins to run is governed solely by federal law. McCoy v. San Francisco, City & County, C.A.9 (Cal.) 1994, 14 F.3d 28. Federal Courts 427

Even though state statute of limitations is to be applied in suit under this section, question when federal cause of action accrues is matter of federal, not state, law; trial court therefore erred in applying Louisiana law to determine when cause of action accrued in civil rights suit against law enforcement officials and physicians, nurses, and hospital staff. Lavellee v. Listi, C.A.5 (La.) 1980, 611 F.2d 1129. Federal Courts 427

While time limitation in a civil rights unit is borrowed from state law, the federal rule fixes the time of accrual of the right of action; the federal rule establishes as a time of accrual that point in time when the plaintiff knows or has reason to know of the injury which is the basis of his action. Bireline v. Seagondollar, C.A.4 (N.C.) 1977, 567 F.2d 260, certiorari denied 100 S.Ct. 83, 444 U.S. 842, 62 L.Ed.2d 54. Federal Courts 427; Limitation Of Actions 95(15)

Limitations period for political discrimination action under §§ 1983 is governed by applicable state statute of limitations for personal injury actions; date of accrual, however, is federal law question. Camacho-Cardona v. Lopez Pena, D.Puerto Rico 2005, 360 F.Supp.2d 298. Civil Rights 1379; Federal Courts 425

Cause of action for civil rights claims under § 1983 accrued, and applicable three-year limitations period under

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New York law began to run, when plaintiff, who was an infant at time of alleged constitutional violations, turned 18 years of age. Perez v. County of Nassau, E.D.N.Y.2003, 294 F.Supp.2d 386. Limitation Of Actions 72(2)

Federal law governs time of accrual of § 1983 claims, which accrue when plaintiff knows or should know that his or her constitutional rights have been violated. McCall v. Board of Com'rs of County of Shawnee, KS, D.Kan.2003, 291 F.Supp.2d 1216. Federal Courts 427

Plaintiff must commence § 1983 claim arising in Florida within four years of allegedly unconstitutional or otherwise illegal act. Seacoast Sanitation Ltd., Inc. v. Broward County, Florida, S.D.Fla.2003, 275 F.Supp.2d 1370 . Civil Rights 1379

For purposes of determining when a claimant knew or had reason to know of the alleged injury so as to determine when a § 1983 claim accrued, courts look to the common law cause of action most closely analogous to the constitutional right at stake. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Limitation Of Actions 95(15)

Citizen's claims alleging that he was arrested and detained by police officers without probable cause, and that officers exerted excessive force in violation of the Fourth and Fourteenth Amendments, accrued on date events occurred when he was unlawfully arrested and detained, and thus citizen's § 1983 claims were untimely under Puerto Rico's one-year statute of limitation applicable to personal injury actions. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Limitation Of Actions 58(1)

A claim of malicious prosecution under § 1983 does not accrue until the termination of the criminal proceedings. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Limitation Of Actions 58(1)

Rule for when § 1983 action accrues depends on federal law. Gutierrez-Usera v. Puerto Rico Telephone Co., D.Puerto Rico 1997, 967 F.Supp. 35. Federal Courts 427

Federal law determines when § 1983 claim accrues. Hill v. Godinez, N.D.Ill.1997, 955 F.Supp. 945. Federal Courts 411

Although it is state law that determines length of statutory period for bringing § 1983 claim, it is federal law that determines when claim accrues. Hili v. Sciarotta, E.D.N.Y.1997, 955 F.Supp. 177, affirmed 140 F.3d 210. Federal Courts 422.1; Federal Courts 427

Although applicable limitation period for former student's § 1983 action against city and public school officials was determined as matter of state law, accrual date of § 1983 action was determined as matter of federal law. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Federal Courts 427

Although state law determines applicable limitation period for claims under § 1983, federal law determines date of accrual of such claim. Johnson v. Cullen, D.Del.1996, 925 F.Supp. 244. Federal Courts 427

Accrual of black female teacher's § 1983 claims against city board of education, board superintendent, board district superintendent, and high school principal for racial and sexual harassment and discrimination was governed by federal law. Long v. Board of Educ. of City of Philadelphia, E.D.Pa.1993, 812 F.Supp. 525, affirmed 8 F.3d 811. Federal Courts 427

While limitations period for § 1983 deprivation of civil rights action is determined by reference to state law, standard governing accrual of cause of action is determined by federal law. Burrell v. Newsome, C.A.5 (Tex.) 1989, 883 F.2d 416. See, also, Leonhard v. U.S., C.A.2 (N.Y.) 1980, 633 F.2d 599; Kaiser v. Cahn, C.A.2 (N.Y.) 1974, 510 F.2d 282; Lewis v. Clark, D.C.Md.1982, 534 F.Supp. 714; Wynne v. Codd, S.D.N.Y.1976, 435

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42 U.S.C.A. § 1983

F.Supp. 431.

164. ---- Personal injury, state control and regulation, limitations law governing

New Mexico three-year limitations statute governing actions for an injury to the person was the appropriate statute governing timeliness of section 1983 action to recover for injuries which plaintiff assertedly sustained when he was allegedly unlawfully arrested and beaten by state police officer. Wilson v. Garcia, U.S.N.M.1985, 105 S.Ct. 1938, 471 U.S. 261, 85 L.Ed.2d 254. Civil Rights 1382

In cases brought pursuant to § 1983, Court of Appeals applies forum state's statute of limitations period for personal injury actions, which in Puerto Rico is one year. Ruiz-Sulsona v. University of Puerto Rico, C.A.1 (Puerto Rico) 2003, 334 F.3d 157. Civil Rights 1379; Federal Courts 425

Limitations period for § 1983 action is governed by statute of limitations for personal injury actions in state in which claim accrues. Sanchez v. U.S., C.A.8 (Iowa) 1995, 49 F.3d 1329, rehearing denied. Federal Courts 425

Inmate's § 1983 complaint against prison official was governed by Illinois' two-year statute of limitations for personal injury actions. Farrell v. McDonough, C.A.7 (Ill.) 1992, 966 F.2d 279, rehearing denied, certiorari denied 113 S.Ct. 1059, 506 U.S. 1084, 122 L.Ed.2d 364. Civil Rights 1382

Civil rights suit brought by Puerto Rican employee claiming her transfer was on basis of political party affiliation was governed by limitations period for personal injury action in Puerto Rico, and also by tolling rules provided by Puerto Rican law. Rodriguez Narvaez v. Nazario, C.A.1 (Puerto Rico) 1990, 895 F.2d 38. Civil Rights 1383; Limitation Of Actions 58(1)

Statute of limitations for any § 1983 claim is state statute which limits actions for personal injuries. Cito v. Bridgewater Tp. Police Dept., C.A.3 (N.J.) 1989, 892 F.2d 23, rehearing denied. Civil Rights 1379

Virgin Islands' statute of limitations for personal injury actions applied to Virgin Islands territorial prisoner's civil rights action brought under Sections 1981, 1983 and 1985. Callwood v. Questel, C.A.3 (Virgin Islands) 1989, 883 F.2d 272. Conspiracy 16; Civil Rights 1382

Nebraska's four-year personal injury statute of limitations applied to arrestee's claim under § 1983, alleging he had been illegally interrogated and detained by various county officials. Bridgeman v. Nebraska State Pen, C.A.8 (Neb.) 1988, 849 F.2d 1076. Civil Rights 1382

Federal courts hearing claims under 1871 civil rights statute should borrow state limitations statute governing "personal injury" claims rather than "catchall" limitations period, limitations statute for damage to property or breach of contract, or limitations statute governing suits against public officials. Jones v. Preuit & Mauldin, C.A.11 (Ala.) 1985, 763 F.2d 1250, rehearing denied 772 F.2d 918, certiorari denied 106 S.Ct. 893, 474 U.S. 1105, 88 L.Ed.2d 926, on remand 634 F.Supp. 1520. Civil Rights 1379

Arrestee's §§ 1983 claims against State of Washington, State Patrol, and troopers, alleging false arrest and use of excessive force, were governed by Washington's three-year statute of limitations for personal injury actions, rather than Washington's two-year statute of limitations for actions for assault, assault and battery, or false imprisonment. Manning v. Washington, W.D.Wash.2006, 463 F.Supp.2d 1229. Civil Rights 1382

General limitations period of six years for civil actions under Maine law was applicable borrowed statute for determining timeliness of §§ 1983 civil rights claim alleging conspiracy to deprive property owner of his rights in housing code enforcement proceedings. Marcello v. Maine, D.Me.2006, 457 F.Supp.2d 55. Conspiracy 16

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California's prior one-year statute of limitation for personal injury actions, rather than its current two-year statute, was applicable in state inmate's §§ 1983 action, where limitations period had already expired when statute was amended, and legislature did not indicate that amendment applied retroactively except to victims of September 11, 2001 attack. Wade v. Ratella, S.D.Cal.2005, 407 F.Supp.2d 1196. Civil Rights 1382

Oregon's two-year state personal-injury statute of limitations applied to claims against school district under IDEA and §§ 504 of Rehabilitation Act, absent allegation of which claims were made possible by post-1990 amendments to those statutes such that four-year federal catchall statute of limitations applied. C.O. v. Portland Public Schools, D.Or.2005, 406 F.Supp.2d 1157. Schools 155.5(2.1)

New York's three-year personal injury statute of limitations applied to state employee's Fourteenth Amendment equal protection claims alleging sex discrimination and retaliation and Fourteenth Amendment due process claims alleging she was subjected to false disciplinary charges, all of which were brought under §§ 1983. Plumey v. New York State, S.D.N.Y.2005, 389 F.Supp.2d 491. Civil Rights 1383

Section 1983 claims are governed by relevant state statute of limitations for personal injury actions. Schneck v. Saucon Valley School Dist., E.D.Pa.2004, 340 F.Supp.2d 558. Civil Rights 1379; Federal Courts 425

Section 1983 claims are governed by a state's personal injury statute of limitations. Timmons v. City of Hartford, D.Conn.2003, 283 F.Supp.2d 712. Civil Rights 1379; Federal Courts 425

Statute of limitations applicable to § 1983 claims, that county's allegedly false allegations of sexual abuse against stepfather resulted in mother and stepfather being separated from daughter, was Virginia's two-year statute of limitations for personal actions for injury to person or property, accruing from date alleged injury was sustained. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1384; Limitation Of Actions 58(1)

New Mexico's three-year personal injury cause of action applies to claims brought under § 1983 in New Mexico. E. Spire Communications, Inc. v. Baca, D.N.M.2003, 269 F.Supp.2d 1310, affirmed 392 F.3d 1204. Civil Rights 1379

Section 1983 claims arising from municipal actors' seizure of owner's vehicle were governed by Massachusetts three-year statute of limitations for personal injury actions. Jonker v. Kelley, D.Mass.2003, 268 F.Supp.2d 81. Civil Rights 1381; Federal Courts 425

The most appropriate provision from a statute of limitation for a claim analogous to a § 1983 claim is the statute of limitations for personal injury cases. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1379

Under Puerto Rico law, one-year statute of limitations governing personal injury actions applied to citizen's § 1983 claim alleging that police officers' false arrest and malicious prosecution of him deprived him of his constitutional rights. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1382

In § 1983 actions, the applicable limitations period is found in the general or residual state statute of limitations for personal injury actions. Lyon v. Jones, D.Conn.2003, 260 F.Supp.2d 507, affirmed 91 Fed.Appx. 196, 2004 WL 628879. Civil Rights 1379; Federal Courts 425

When a § 1983 action is filed in the District of Connecticut, it is subject to a three-year statute of limitations. Lyon v. Jones, D.Conn.2003, 260 F.Supp.2d 507, affirmed 91 Fed.Appx. 196, 2004 WL 628879. Civil Rights 1379

Failure-to-promote claim filed under § 1983 accrued when employer determined that employee would not be

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promoted and sent her letter to that effect. Lyon v. Jones, D.Conn.2003, 260 F.Supp.2d 507, affirmed 91 Fed.Appx. 196, 2004 WL 628879. Limitation Of Actions 58(1)

Kansas' two-year limitations period for personal injury actions applied to former special investigator's § 1981 and § 1983 claims against executive director of Kansas Human Rights Commission (KHRC) in his individual capacity. Delatorre v. Minner, D.Kan.2002, 238 F.Supp.2d 1280. Civil Rights 1383

Statute of limitations for § 1983 claims brought in Oklahoma is two-year statute applicable to claims for injury to personal rights. Nunley v. Pioneer Pleasant Vale School Dist. No. 56, W.D.Okla.2002, 190 F.Supp.2d 1263. Civil Rights 1379; Federal Courts 425

Under § 1983, a claim must be commenced within statute of limitations period applicable to personal injury actions occurring in state in which federal court sits. Duamutef v. Morris, S.D.N.Y.1997, 956 F.Supp. 1112. Civil Rights 1379

Applicable statute of limitations for § 1983 civil rights action based on events occurring in Texas was the Texas two-year statute for personal injury claims. Wagner v. Texas A & M University, S.D.Tex.1996, 939 F.Supp. 1297. Civil Rights 1384

In § 1983 actions, federal courts apply statute of limitations governing state actions for personal injuries. Frazier v. City of Philadelphia, E.D.Pa.1996, 927 F.Supp. 881. Federal Courts 425

In Illinois, the statute of limitations applied to § 1983 actions is the two-year personal injury statute of limitations which begins when plaintiff knows or should have known that his constitutional rights were violated. Horton v. Marovich, N.D.Ill.1996, 925 F.Supp. 540. Civil Rights 1379; Limitation Of Actions 95(15)

Personal injury action is most analogous to § 1983 claim in Rhode Island and, thus, Rhode Island three-year statute of limitations for personal injury actions applied to § 1983 action. Tang v. State of R.I., Dept. of Elderly Affairs, D.R.I.1995, 904 F.Supp. 55. Civil Rights 1384

Wisconsin's six-year statute of limitations for action to recover damages for injury to character or rights of another, not arising on contract applied to former student's § 1983 action against elementary school teacher and school district, arising out of teacher's alleged sexual molestation of student. Doe v. Paukstat, E.D.Wis.1994, 863 F.Supp. 884. Civil Rights 1380

Claims brought pursuant to § 1983 are governed by limitations period applicable to state personal injury claims. Hamidian v. Occulto, M.D.Pa.1994, 854 F.Supp. 350. Civil Rights 1379

Claims brought under § 1983 are subject to state statute of limitations governing personal injury actions. Faison v. Sex Crimes Unit of Philadelphia, E.D.Pa.1994, 845 F.Supp. 1079. Civil Rights 1379; Federal Courts 425

Actions under federal civil rights statute are governed by personal injury statute of limitations in state where alleged injury occurred. Doe v. Board of Educ. of Hononegah Community High School Dist. No. 207, N.D.Ill.1993, 833 F.Supp. 1366. Civil Rights 1379

Civil rights claim under § 1983 was subject to Pennsylvania's two-year statute of limitations for personal injury claims. Hall v. City of Philadelphia, E.D.Pa.1993, 828 F.Supp. 365. Civil Rights 1384

Statute of limitations for action arising in New York pursuant to § 1983 is borrowed from New York's general statute of limitations for personal injury actions. Blankman v. County of Nassau, E.D.N.Y.1993, 819 F.Supp. 198, affirmed 14 F.3d 592. Civil Rights 1379

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42 U.S.C.A. § 1983

Statute of limitations applicable to § 1983 action is personal injury statute of limitations prescribed by state in which action arose. Farmer v. City of Fort Lauderdale, S.D.Fla.1993, 814 F.Supp. 1101. Civil Rights 1379

New York's three-year statute of limitations for personal injury actions applied to property owner's pro se civil rights claims. Darvoe v. Town of Trenton, N.D.N.Y.1992, 785 F.Supp. 305, affirmed 979 F.2d 845. Civil Rights 1381

Appropriate statute of limitations for bringing of § 1983 tort action against municipal corporations was New York's general three-year personal injury statute, rather than one-year statute specifically applying to municipal tort actions. Meiselman v. Richardson, E.D.N.Y.1990, 743 F.Supp. 143. Civil Rights 1384

Two-year Illinois statute of limitations for personal injury claims, rather than five-year statute of limitations for destruction or conversion of property, applied to § 1983 action challenging repossession of truck. Malone v. Ryan, C.A.7 (Ill.) 2002, 47 Fed.Appx. 410, 2002 WL 31083879, Unreported. Civil Rights 1381

Pennsylvania's general two-year statute of limitations for personal injury actions, and not tolling provision of statute providing that action arising from childhood sexual abuse may be brought within 12 years after the alleged child victim attains 18 years of age, applied to action brought by former juvenile inmate at county adult correctional facility against the county, under §§ 1983 and statute authorizing cause of action for conspiracy to interfere with civil rights, for damages arising from his alleged sexual abuse by adult inmates at the facility, where the alleged injuries occurred before the effective date of the tolling provision, and where the alleged victim was more than 30 years old when he filed his complaint. Getchey v. County of Northumberland, C.A.3 (Pa.) 2005, 120 Fed.Appx. 895, 2005 WL 22871, Unreported. Civil Rights 1382; Conspiracy 16; Limitation Of Actions 6(1)

Utah's four-year statute of limitations for general personal injury actions applied to employee's §§ 1983 and 1985 claims against employer. Buck v. Utah Labor Com'n., C.A.10 (Utah) 2003, 73 Fed.Appx. 345, 2003 WL 21916992, Unreported. Civil Rights 1383; Conspiracy 16

New York's three-year statute of limitations applicable to actions for personal injury governed prisoner's § 1983 due process claim. Muhammad v. Pico, S.D.N.Y.2003, 2003 WL 21792158, Unreported. Civil Rights 1382

Limitations period for § 1983 action commenced in Illinois was two years, which was Illinois' personal-injury period of most general application. Garner v. Cullinan, C.A.7 (Ill.) 2003, 66 Fed.Appx. 654, 2003 WL 21259754, Unreported, rehearing and rehearing en banc denied. Civil Rights 1379; Federal Courts 425

165. Federal statutory periods of limitations, limitations law governing

Federal Communications Act's two-year statute of limitations, section 415 of Title 47, applied to plaintiff's civil rights claims against telephone company which provided equipment to police department that allegedly conducted illegal wiretapping. Pavlak v. Church, C.A.9 (Idaho) 1984, 727 F.2d 1425. Federal Courts 425

Vehicle owner's § 1983 claim against municipal actors for violation of property interest and unreasonable seizure accrued on date her vehicle was seized, when she knew of her injuries, not subsequent date when she cleared title. Jonker v. Kelley, D.Mass.2003, 268 F.Supp.2d 81. Limitation Of Actions 95(15)

Judges confronting § 1983 actions must consult federal law in order to fix point in time from which limitations period begins to run. Jonker v. Kelley, D.Mass.2003, 268 F.Supp.2d 81. Federal Courts 427

Although the limitations period of a § 1983 claim is determined by state law, the date of accrual of a § 1983 claim is a federal law question. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Federal

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42 U.S.C.A. § 1983

Courts 425; Federal Courts 427

Where discriminatory practice is within both the Fair Housing Act of 1968, § 3601 et seq. of this title, and this chapter, the court should consider and apply the limitations of the specific act, the Fair Housing Act, § 3601 et seq. of this title, to the general act, this chapter. Warren v. Norman Realty Co., D.C.Neb.1974, 375 F.Supp. 478, affirmed 513 F.2d 730, certiorari denied 96 S.Ct. 105, 423 U.S. 855, 46 L.Ed.2d 81.

166. Power of courts, limitations law governing

Failure of Congress to enact general federal statute of limitations for civil rights actions reflects intent to have state limitation periods apply, but federal court may nevertheless fashion their own limitation periods whenever state statute of limitations threatens need of federal program for uniformity or discriminates against or overly burdens federal cause of action. Getz v. Bruch, E.D.Pa.1975, 400 F.Supp. 1033. Federal Courts 425

Federal district court had implied authority to create procedural limitations, or exceptions thereto, where, as with this section, no clear expression of Congressional intent exists as to limitations of actions. Taliaferro v. Dykstra, E.D.Va.1975, 388 F.Supp. 957. Limitation Of Actions 2(1)

167. Consistency with federal policies, limitations law governing

Utah's two-year limitations period for personal injury actions was inconsistent with policy of Civil Rights Act's broad remedial goals, and, thus, federal court would not borrow Utah law for limitations purposes in § 1983 suits and would instead apply four-year limitations period which governed other Utah injury actions. Adamson v. City of Provo, Utah, D.Utah 1993, 819 F.Supp. 934. Civil Rights 1384

Consideration of state law is appropriate in federal civil rights suit if there is no controlling federal law and the state law in question is not inconsistent with laws of United States and the Federal Constitution. Agresta v. Sambor, E.D.Pa.1988, 687 F.Supp. 162. Federal Courts 411

168. Characterization of claims, limitations law governing

Claims under this section are best characterized as personal injury actions, for limitations purposes. Wilson v. Garcia, U.S.N.M.1985, 105 S.Ct. 1938, 471 U.S. 261, 85 L.Ed.2d 254. Civil Rights 1379

Utah's two-year statute of limitations enacted specifically for § 1983 actions would not be applied to § 1983 action; by enacting specific statute of limitations for § 1983 actions alone, Utah legislature usurped role of federal law in characterizing essence of such actions and eliminated assurance that neutral rules of decision will apply to § 1983 actions in Utah. Arnold v. Duchesne County, C.A.10 (Utah) 1994, 26 F.3d 982, certiorari denied 115 S.Ct. 721, 513 U.S. 1076, 130 L.Ed.2d 626. Civil Rights 1398; Civil Rights 1379; States 18.23

For statute of limitations purposes, § 1983 claims are best characterized as personal injury actions; therefore, state's personal injury statute of limitations, assuming that state has but one such statute, should be applied to all § 1983 claims. Lounsbury v. Jeffries, C.A.2 (Conn.) 1994, 25 F.3d 131. Civil Rights 1379

169. Residual or multiple periods of limitations, limitations law governing

Action under this section in state with more than one statute of limitations is governed by residual or general personal injury statute of limitations, rather than statute of limitations for enumerated intentional torts. Owens v. Okure, U.S.N.Y.1989, 109 S.Ct. 573, 488 U.S. 235, 102 L.Ed.2d 594. Civil Rights 1379

Four-year federal "catch-all" statute of limitations, applicable to "a civil action arising under an Act of Congress

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enacted after the date of the enactment" of the limitations statute, did not apply to § 1983 action despite amendment of § 1983, after enactment of the limitations statute, to limit injunctive relief against judicial officers, as the amendment did not create a cause of action, and none of plaintiff's causes of action were based upon it in any way. Laurino v. Tate, C.A.10 (Kan.) 2000, 220 F.3d 1213. Civil Rights 1384

Connecticut statute of limitations covering personal injuries caused by negligent, reckless, or wanton conduct was not "residual" or "general" statute of limitations for § 1983 purposes, and Connecticut had but one such statute, which provided that action founded upon tort had to be brought within three years of date of act or omission; former statute contained no language suggesting that it applied to all actions not specifically provided for, including personal injury actions, and did not apply to all personal injury actions with certain specific exceptions; moreover, latter statute applied to every tort claim governed by statute of limitations unless there was explicit statutory provision. Lounsbury v. Jeffries, C.A.2 (Conn.) 1994, 25 F.3d 131. Civil Rights 1379

Federal courts adjudicating civil rights claims must borrow the state statute of limitations applicable to personal injury actions under the law of the forum state and, where state has more than one statute of limitations that applies to personal injury actions, federal court should borrow state's general or residual injury statute of limitations. Street v. Vose, C.A.1 (Mass.) 1991, 936 F.2d 38, certiorari denied 112 S.Ct. 948, 502 U.S. 1063, 117 L.Ed.2d 117. Civil Rights 1379; Federal Courts 425

Appropriate statute of limitations for § 1983 actions arising in Ohio is Ohio statute of limitations which requires actions for bodily injury to be filed within two years after their accrual, rather than statute providing that actions for intentional torts be brought within one year of their accrual. Browning v. Pendleton, C.A.6 (Ohio) 1989, 869 F.2d 989. See, also, Valerio v. Dahlberg, S.D.Ohio 1988, 716 F.Supp. 1031. Civil Rights 1379

Utah's four-year residual statute of limitations applicable to actions "for relief not otherwise provided for by law" applied to § 1983 claims. Whitehat v. College of Eastern Utah, D.Utah 2000, 111 F.Supp.2d 1161. Civil Rights 1384

Kansas residual two-year statute of limitations is applicable to claim for denial of due process. Elam v. Williams, D.Kan.1990, 753 F.Supp. 1530, affirmed 953 F.2d 1391. Civil Rights 1379

Civil rights claims arising under § 1983 are subject to Colorado's two-year residual statute of limitations. Arvia v. Black, D.Colo.1989, 722 F.Supp. 644. Civil Rights 1379

Utah's four-year residual statutory limit controlled employee's state constitutional claims against employer, where the Utah Constitution did not specify any express limitation period. Buck v. Utah Labor Com'n., C.A.10 (Utah) 2003, 73 Fed.Appx. 345, 2003 WL 21916992, Unreported. Civil Rights 1732

New York's residual statute of limitations of three years for personal injury actions, not its one-year statute applicable to intentional torts, applies to federal civil rights action under § 1983. Lucas v. Novogratz, S.D.N.Y.2002, 2002 WL 31844913, Unreported. Civil Rights 1379

170. Notification of claims provisions, limitations law governing

Alabama statutes requiring claimant to notify city clerk of potential tort claim within six months and to file sworn description of incident did not apply in § 1983 and Title VII actions against city. Patrick v. City of Florala, M.D.Ala.1992, 793 F.Supp. 301. Municipal Corporations 741.25

171. Commencement and running of period, limitations law governing

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42 U.S.C.A. § 1983

Federal law determines the date on which a §§ 1983 claim accrues. Nieves-Vega v. Ortiz-Quinones, C.A.1 (Puerto Rico) 2006, 443 F.3d 134. Federal Courts 427

In determining when § 1983 claim accrues, as well as what elements must be pled, court must seek help from common-law tort which is most analogous to claim in case before it. Whiting v. Traylor, C.A.11 (Fla.) 1996, 85 F.3d 581. Civil Rights 1034; Limitation Of Actions 58(1)

Federal law determines when a civil rights claim accrues. Thompson v. City of Shasta Lake, E.D.Cal.2004, 314 F.Supp.2d 1017. Federal Courts 427

County sheriff's alleged infringement of sheriff's department employees' First Amendment free speech rights when he allegedly made defamatory statements about the employees in retaliation for statements they made to outside law enforcement agencies concerning department's activities did not implicate liberty interest necessary to support retaliation claim under § 1983. Blume v. Meneley, D.Kan.2003, 283 F.Supp.2d 1178. Constitutional Law 90.1(7.2); Sheriffs And Constables 24

Where no discovery had been conducted with respect to Indian tribes' § 1983 claims against state raising land rights issues, striking of state's statute of limitations defense would be premature, as there was no way to determine when tribes had reason to know that cause of action accrued. Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York, N.D.N.Y.2003, 278 F.Supp.2d 313. Federal Civil Procedure 1112

Even though state law supplies statute of limitations in action under § 1983, accrual of action is governed by federal law; accrual ordinarily occurs when plaintiff knows, or has reason to know, of injury on which action is based. Future Development of Puerto Rico v. Estado Libre Asociado De Puerto Rico, D.Puerto Rico 2003, 276 F.Supp.2d 228. Federal Courts 425; Federal Courts 427; Limitation Of Actions 95(15)

Failure-to-promote claim filed under § 1983 accrued when employer determined that employee would not be promoted and sent her letter to that effect. Lyon v. Jones, D.Conn.2003, 260 F.Supp.2d 507, affirmed 91 Fed.Appx. 196, 2004 WL 628879. Limitation Of Actions 58(1)

Although state law governs the length of the statute of limitations period for § 1983 claims, federal law determines when a § 1983 cause of action accrues. McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Federal Courts 425

A § 1983 claim accrues, for limitations purposes, when alleged conduct has caused claimant harm, and claimant knows or has reason to know of allegedly impermissible conduct and resulting harm. Duamutef v. Morris, S.D.N.Y.1997, 956 F.Supp. 1112. Limitation Of Actions 95(15)

Three-year statute of limitations, on § 1983 claims against police officers, alleging that search of apartment violated Fourth Amendment, began to run on date that officers conducted search. Rueda v. City of New York, E.D.N.Y.2003, 2003 WL 21143084, Unreported. Limitation Of Actions 58(1)

172. Continuing violation, limitations law governing

The systemic pattern-or-practice method of continuing violation doctrine did not allow female steward to seek relief against California Horse Racing Board (CHRB) under §§ 1983 for alleged discriminatory events outside the applicable limitations period; while she argued that women were given unfavorable assignments over men for many years and cited deposition testimony of former steward and current CHRB director that women received "damaging" assignments in earlier year, she produced no evidence, statistical or otherwise, from which reasonable inference could be drawn that CHRB widely or routinely discriminated against females up to point in time that fell within limitations period. Berg v. California Horse Racing Bd., E.D.Cal.2006, 419 F.Supp.2d 1219. Limitation Of

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42 U.S.C.A. § 1983

Actions 58(1)

High school teacher's § 1983 First Amendment retaliation claim against school district, arising from district's refusal to grant requested sabbatical, accrued when teacher learned of refusal, not later when teacher submitted renewed request which was also denied; district's second refusal, insisting on same conditions for granting request that were imposed originally, was not fresh retaliatory act. Schneck v. Saucon Valley School Dist., E.D.Pa.2004, 340 F.Supp.2d 558. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

Employer's refusal to undo discriminatory decision is not fresh act of discrimination, for purposes of determining time of accrual of public employee's § 1983 First Amendment retaliation claim. Schneck v. Saucon Valley School Dist., E.D.Pa.2004, 340 F.Supp.2d 558. Limitation Of Actions 58(1)

Continuing violation exception to limitations period for filing § 1983 sexual harassment action typically applies to situations where there are specific discriminatory policies or mechanisms, such as discriminatory seniority lists for employment tests. Wise v. New York City Police Dept., S.D.N.Y.1996, 928 F.Supp. 355. Limitation Of Actions 58(1)

173. Tolling or suspension of period, limitations law governing--Generally

Relevant state tolling statutes are applicable to prisoners' civil rights suits. Bianchi v. Bellingham Police Dept., C.A.9 (Wash.) 1990, 909 F.2d 1316. Federal Courts 427

While accrual period for federal civil rights action is governed by federal law, tolling is governed by state law. Torres v. Superintendent of Police of Puerto Rico, C.A.1 (Puerto Rico) 1990, 893 F.2d 404. Federal Courts 427

In actions under this section, courts must not only apply appropriate state statute of limitations, but also must apply applicable state rule for tolling that statute of limitations. Rubin v. O'Koren, C.A.5 (Ala.) 1981, 644 F.2d 1023. Federal Courts 425; Federal Courts 427

Time limitation for civil rights actions is borrowed from state law because Congress did not set tolling period for such actions, but state law concerning time of accrual is in no sense loaned to body of federal civil rights law along with tolling period, but time of accrual of civil rights action is question of federal law. Cox v. Stanton, C.A.4 (N.C.) 1975, 529 F.2d 47. See, also, United Klans of America v. McGovern, C.A.5 (Ala.) 1980, 621 F.2d 152. Federal Courts 425

State law governs question whether an applicable state statute of limitations is tolled in an action brought under this section. Ammlung v. City of Chester, C.A.3 (Pa.) 1974, 494 F.2d 811. Federal Courts 427

There was no equitable tolling of student's causes of action against state university and professor for assault, negligence and emotional distress and for violations of § 1983 and Title IX of the Education Amendments of 1972, based on alleged sexual harassment, despite the student's contention that she was misled by the university's internal investigatory panel into waiting for issuance of its final decision, where student did not demonstrate any disability, lack of information or other circumstances which prevented her from filing claim in timely manner. Monger v. Purdue University, S.D.Ind.1997, 953 F.Supp. 260. Limitation Of Actions 104.5

While state law determines limitations period in § 1983 action, federal law determines when cause of action accrues, but where state statute of limitations is borrowed, state's rules for tolling the statute are borrowed as well. Wagner v. Texas A & M University, S.D.Tex.1996, 939 F.Supp. 1297. Federal Courts 427

State tolling provisions apply in determining timeliness of civil rights claim. Desert State Life Management

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Services v. Association of Retarded Citizens of Albuquerque, D.N.M.1996, 939 F.Supp. 835. Federal Courts 425

Massachusetts' principles for tolling three-year limitations period applicable to former student's § 1983 claim against public school officials and city applied such that if student's claim accrued when he was minor, commencement of three-year period would be deferred until he turned 18 years of age. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Limitation Of Actions 72(1)

In considering timeliness of prisoner's § 1983 civil rights action, federal courts apply not only forum state's general or residual statute of limitations for person injury actions, but also the forum state's tolling provisions unless those provisions are inconsistent with federal law, and if those provisions are inconsistent, federal courts may use equitable principles to fashion their own tolling provisions. Gartrell v. Gaylor, S.D.Tex.1994, 866 F.Supp. 325, affirmed 66 F.3d 322. Federal Courts 425; Federal Courts 427

In borrowing states' statutes of limitations for § 1983 civil rights actions, federal courts also borrow applicable tolling provisions. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Federal Courts 427

Though state statute of limitations was applicable to federal civil rights claim, question of when action accrued was one of federal law, but questions of tolling and application of the limitations period were governed by state law. Ivey v. DeKalb County Dept. of Public Safety, N.D.Ga.1987, 668 F.Supp. 1579. Federal Courts 427

174. ---- Capacity, tolling or suspension of period, limitations law governing

Appointment of guardian did not end mentally retarded twins' "incapacity," within meaning of New Mexico statute tolling limitations periods with regard to incapacitated persons; accordingly, civil rights claims brought by twins' guardian were timely. Desert State Life Management Services v. Association of Retarded Citizens of Albuquerque, D.N.M.1996, 939 F.Supp. 835. Limitation Of Actions 74(2)

Former police officer was not entitled by reason of insanity to tolling of statute of limitations applicable to her § 1983 action against county police department and county alleging harassment and intentional infliction of severe emotional distress; during period officer contended she was insane, she participated in personal injury lawsuit in which she was deposed and which she ultimately settled, sought maternity leave and applied for social security benefits with advice of counsel, and filed two applications for pistol permits in which she signed sworn statements stating that she did not suffer from mental illness. Wenzel v. Nassau County Police Dept., E.D.N.Y.1996, 914 F.Supp. 902. Limitation Of Actions 74(1)

175. ---- Consistency with federal policies, tolling or suspension of period, limitations law governing

Body of state statute of limitations tolling law that lacks provision for equitable tolling is inconsistent with provision of complete federal remedy under § 1983 and, thus, is overridden by federal doctrine of equitable tolling when § 1983 plaintiff is required to exhaust state remedies because his claim is in part claim for habeas corpus. Heck v. Humphrey, C.A.7 (Ind.) 1993, 997 F.2d 355, certiorari granted 114 S.Ct. 751, 510 U.S. 1068, 127 L.Ed.2d 69, affirmed 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383. Federal Courts 427

Once a federal court borrows a state statute of limitations, it should generally also borrow the related provisions pertaining to tolling and revival as interpreted under state law unless such an unmodified borrowing would be inconsistent with a strong federal policy under the federal cause of action. Williams v. Walsh, C.A.2 (Conn.) 1977, 558 F.2d 667. Federal Courts 427

In cases arising under Constitution or laws of the United States, a federal rule on tolling a state statute of limitations (when applicable) should be observed, if such rule clearly carries out intent of Congress or of the

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constitutional principle at stake. Mizell v. North Broward Hospital Dist., C.A.5 (Fla.) 1970, 427 F.2d 468. Federal Courts 424

Section 1983 actions import not only their statute of limitations, but also any applicable tolling mechanisms, not inconsistent with statutory purpose, from state law. Kulpa on Behalf of Kulpa v. Glass, N.D.N.Y.1995, 903 F.Supp. 321. Federal Courts 425; Federal Courts 427

Because federal courts in § 1983 actions resort to state tolling rules only to the extent necessary to fill gaps that Congress leaves, district court will apply state law only when federal law neglects the topic and only so long as state tolling rule is not inconsistent with federal law. Ill v. Roland, N.D.Ill.1993, 812 F.Supp. 855. Federal Courts 427

State statutes of limitations govern suits in federal courts arising under federal civil rights statute, § 1983, and state law governs questions of tolling unless the state tolling rules are inconsistent with federal law, but accrual period for the cause of action is governed by federal law. Reyes Coreano v. Puerto Rico Ports Authority, D.Puerto Rico 1992, 790 F.Supp. 36. Federal Courts 425; Federal Courts 427

176. ---- Concealment doctrine, tolling or suspension of period, limitations law governing

Equitable tolling of three-year statute of limitations was not warranted for § 1983 action against municipal actors by owner of vehicle alleging illegal seizure of vehicle, absent evidence that she missed filing deadline due to defective pleading filed during statutory period, or due to inducement or trickery by defendants. Jonker v. Kelley, D.Mass.2003, 268 F.Supp.2d 81. Limitation Of Actions 104.5

Student's causes of action against state university and professor for assault, negligence, and emotional distress and for violations of § 1983 and Title IX of the Education Amendments of 1972, based on alleged sexual harassment, were not tolled on theory of fraudulent concealment under Indiana law on theory that university panel misled student by giving her impression that she should wait for their issuance of final decision on internal complaint, which student contended that she never received, where student knew of her injury right after it occurred, university did not conceal its investigative process from student's view, and student did not exercise reasonable care and due diligence to discover the panel's findings. Monger v. Purdue University, S.D.Ind.1997, 953 F.Supp. 260. Limitation Of Actions 104(2)

Even if the federal concealment doctrine tolled the limitation period as to civil rights action for conspiracy culminating in groundless prosecution and coercion of plaintiffs, once the facts were discovered, McKinney's N.Y. CPLR 203(f) requiring commencement of action within two years after discovery was applicable. Cestaro v. Mackell, E.D.N.Y.1977, 429 F.Supp. 465, affirmed 573 F.2d 1288. Limitation Of Actions 104(1)

177. ---- Retroactive application of laws, tolling or suspension of period, limitations law governing

Prisoner's delay in filing § 1983 action against prison officials was unreasonable, and thus, Illinois statute excluding actions against correctional officials from any relief from limitations period via tolling applied retroactively to bar all of inmate's claims; prisoner did not file claim until 23 months after effective date of statute in question. Knox v. Lane, N.D.Ill.1989, 726 F.Supp. 200. Limitation Of Actions 6(1)

178. ---- Particular provisions applicable, tolling or suspension of period, limitations law governing

State statute that suspended limitations periods for persons under legal disability, including prisoners, until one year after disability has been removed was consistent with § 1983's remedial purpose and thus, inmate's § 1983 action was not time barred though it had been filed after expiration of three-year statute of limitations period for personal injury actions. Hardin v. Straub, U.S.Mich.1989, 109 S.Ct. 1998, 490 U.S. 536, 104 L.Ed.2d 582, on

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remand 878 F.2d 382. Limitation Of Actions 75

California civil rights plaintiffs, whose claims arose prior to *Wilson* decision which shortened statute of limitations from three years to one year, had a limitations period of one-year remaining on the date the tolling of the limitations period was ended, rather than the pre-*Wilson* three-year period; because post-*Wilson* one-year period would expire first, that was proper period to apply. McDougal v. County of Imperial, C.A.9 (Cal.) 1991, 942 F.2d 668. Civil Rights 1384

West's Ann.Code Civ.Proc. § 351 tolling period of limitations while defendant is absent from state after cause of action against him accrues, regardless of whether defendant is amenable to service of process during his absence, was not inconsistent with policies embodied in this section and was applicable to toll period of limitations in civil rights suit. Maurer v. Individually and as Members of Los Angeles County Sheriff's Dept., C.A.9 (Cal.) 1982, 691 F.2d 434. Federal Courts 427

Where court of appeals did not find rule of Va.Code 1950, § 8.01-229 on tolling statute of limitations to be inconsistent with federal law, court would follow it in civil rights action asserting search and seizure claim under this section. Cramer v. Crutchfield, C.A.4 (Va.) 1981, 648 F.2d 943. Federal Courts 427

Massachusetts renewal statute permitting plaintiff to commence new action for same cause within one year after determination of original action is interrelated with length of applicable statute of limitations, and thus applies to §§ 1983 actions brought in federal court. Corliss v. City of Fall River, D.Mass.2005, 397 F.Supp.2d 260. Federal Courts 427

Tolling of a statute of limitations under § 1983 is governed by state law. Iravedra v. Public Building Authority, D.Puerto Rico 2003, 283 F.Supp.2d 570. Federal Courts 427

179. ---- Particular provisions not applicable, tolling or suspension of period, limitations law governing

Michigan tolling statute respecting persons imprisoned when claim they are entitled to bring accrues, was inapplicable to prisoner's § 1983 action based on his transfer from one prison to another within Michigan system without due process hearing; application of lengthy tolling period was counterproductive to federal policy attempting to deal with § 1983 claims as promptly as practicable. Higley v. Michigan Dept. of Corrections, C.A.6 (Mich.) 1987, 835 F.2d 623. Federal Courts 427

Code Ga. § 3-801 which tolls the time for bringing an action while a person is imprisoned does not apply, as a matter of federal law to a civil rights action even though the Code Ga. § 3-1004 is applied to the civil rights action. Neel v. Rehberg, C.A.5 (Ga.) 1978, 577 F.2d 262. Federal Courts 427

Former librarian's timely filing of charge of employment discrimination and retaliation with Equal Employment Opportunity Commission (EEOC) did not toll statute of limitations on her § 1983, Title IX, and state-law negligent and intentional infliction of emotional distress, negligence, and discriminatory employment practices claims; those claims were separate, distinct and independent from her Title VII claims, Title VII administrative proceedings were not prerequisite to filing of those claims, and former librarian failed to demonstrate that procedures and remedies of those claims were wholly integrated with Title VII procedures and remedies. Linville v. State of Hawai'i, D.Hawai'i 1994, 874 F.Supp. 1095. Limitation Of Actions 105(1)

California Tort Claims Act section prohibiting person charged with criminal offense from bringing civil action for damages against peace officer or employer based upon conduct of peace officer relating to charges while charges are pending did not apply to actions of arrestee detainee under federal civil rights statutes to which California limitations periods apply, and accordingly, the Tort Claims Act section's provision for tolling of limitations periods did not apply; the Tort Claims Act section was plainly inconsistent with important federal policies underlying

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federal civil rights causes of action. Mangels v. City of Orange, C.D.Cal.1988, 678 F.Supp. 1452. Federal Courts 427; Limitation Of Actions 105(2)

180. Burden of proof, limitations law governing

Burden is on § 1983 plaintiff to prove that statute of limitations on his claim was tolled. Porter v. Charter Medical Corp., N.D.Tex.1997, 957 F.Supp. 1427. Limitation Of Actions 195(3)

181. Transferred actions, limitations law governing

Statute of limitations in state of transferee court applied in § 1983 action rather than statute of state of transferor court; venue was, from initiation of action, improper in transferor court. Davis v. Louisiana State University, C.A.5 (La.) 1989, 876 F.2d 412, rehearing denied. Federal Courts 145

182. Administrative actions, limitations law governing

Three-year look back period under §§ 1981, 1983, and Michigan's Elliott-Larson Act encompassed any Title VII claim for same allegedly wrongful act by employer, and thus, district court did not have to determine whether any claim or portion thereof was barred by Title VII's statute of limitations, where employees' administrative charges were filed less than one month prior to date case was filed. Kresnak v. City of Muskegon Heights, W.D.Mich.1997, 956 F.Supp. 1327. Civil Rights 1530

183. Arbitration, limitations law governing

Civil rights action brought by teachers seeking damages and equitable relief for violation of constitutional rights following arbitrator's determination of union's reduced service fees was governed by three-year statute of limitations applicable to personal injury actions, not the 21-day limitations period of the Michigan Uniform Arbitration Act or the three-month limitations period of the National Relations Act. Bromley v. Michigan Educ. Association-NEA, E.D.Mich.1993, 815 F.Supp. 220. Civil Rights 1383

184. Arrest, limitations law governing

Section 1983 action arising from alleged arrest without cause and beating was governed by New York's three-year residual statute of limitations for claims of personal injury not embraced by specific statutes, rather than the one year statute of limitations for intentional torts of assault, battery, false imprisonment, malicious prosecution, libel, slander, false words, and violation of right of privacy. Owens v. Okure, U.S.N.Y.1989, 109 S.Ct. 573, 488 U.S. 235, 102 L.Ed.2d 594. Civil Rights 1382

Civil rights claim seeking damages for allegedly unconstitutional warrantless arrest generally accrues when plaintiff knows or should know of injury, except in limited circumstances in which plaintiff's success on § 1983 claim that warrantless arrest was not supported by probable cause necessarily would implicate validity of plaintiff's conviction or sentence. Brooks v. City of Winston-Salem, N.C., C.A.4 (N.C.) 1996, 85 F.3d 178. Limitation Of Actions 95(15)

Arrestee's § 1983 action arising from police officer's alleged violations of Fourth and Fifth Amendments accrued when arrestee's conviction was reversed, since arrestee's Fourth and Fifth Amendment claims necessarily implied that conviction was unlawful, and claims thus could not have been raised prior to reversal; conviction was reversed on ground that officer lacked reasonable suspicion on which to detain and question arrestee and thereafter search his vehicle. Woods v. Candela, C.A.2 (N.Y.) 1995, 47 F.3d 545, certiorari denied 116 S.Ct. 54, 516 U.S. 808, 133 L.Ed.2d 18, on remand 921 F.Supp. 1140. Limitation Of Actions 58(1)

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Any claim for constitutional violation arising out of allegedly false arrest was subject to three-year Arkansas limitations statute for general personal injury, not by one-year state statute covering particular tort. Ketchum v. City of West Memphis, Ark., C.A.8 (Ark.) 1992, 974 F.2d 81. Civil Rights 1382

Delaware's two-year statute of limitations for personal injury claims applied to § 1983 claims against city, detective, and prosecutor by arrestee, who was held on rape charges, which were later dismissed for lack of probable cause. Gibbs v. Deckers, D.Del.2002, 234 F.Supp.2d 458. Civil Rights 1382

Civil rights claims for false arrest and imprisonment are governed by California's residual two-year statute of limitations period for personal injury actions, notwithstanding that state has more specific one-year limitations period for false arrest and imprisonment tort claims. Thompson v. City of Shasta Lake, E.D.Cal.2004, 314 F.Supp.2d 1017. Civil Rights 1382

Diversity action claiming federal civil rights violation arising out of arrest was subject to New Jersey's two-year statute of limitations for personal injury actions. Lodato v. Township of Evesham, D.N.J.1992, 782 F.Supp. 957. Civil Rights 1382

Arrestee's claims under § 1983 arising out of her arrest were time barred by Pennsylvania's two-year personal injury limitation applicable to § 1983 claims; claims accrued on date of her arrest, or, at least, on date of her release from confinement approximately one month later. Young v. City of Philadelphia, E.D.Pa.1990, 744 F.Supp. 673, affirmed 931 F.2d 53. Limitation Of Actions 58(1)

New York law on tolling did not apply to arrestee's § 1983 suit against state police department, its superintendent, and state troopers for alleged violations of his constitutional rights in the search of his person and vehicle, and in the alleged use of excessive force at the time of his arrest where the arrestee was not an infant, was not disabled by insanity, and was not serving a life sentence. Irizarry v. Whittel, S.D.N.Y.2002, 2002 WL 31760240, Unreported, on reconsideration 2003 WL 221736. Limitation Of Actions 72(1); Limitation Of Actions 74(1); Limitation Of Actions 75

Three-year South Dakota statute of limitations applied to § 1983 actions in which plaintiff alleged that various state officials and entities had discriminated against and harassed him because of his race when he was arrested and subsequently convicted of various offenses. Denoyer v. Dobberpuhl, C.A.8 (S.D.) 2000, 208 F.3d 217, Unreported. Civil Rights 1382

185. Assault and battery, limitations law governing

Oklahoma's two-year statute of limitations for injury to rights of another, not arising out of contract was applicable to § 1983 action brought against sheriffs and other county officials for physical violence and denial of medical care, and emotional distress, not Oklahoma's one-year statute of limitations for actions brought for assault or battery. Meade v. Grubbs, C.A.10 (Okla.) 1988, 841 F.2d 1512. Civil Rights 1382

University student's causes of action against university and professor for assault, negligence and emotional distress under Indiana law, and for violations of § 1983 and Title IX of the Education Amendments of 1972 accrued on date of the alleged incident, as student's immediate discussion of incident with roommate indicated that she knew event occurred and she had not repressed the memory. Monger v. Purdue University, S.D.Ind.1997, 953 F.Supp. 260. Limitation Of Actions 95(15)

186. Employment, limitations law governing--Generally

Kentucky's one-year personal injury statute of limitations applied to bar nurse's § 1983 action, which was based on alleged violation of due process rights as a result of disciplinary measures taken against her resulting from her

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attempt to stop what she maintained was an illegal abortion and which was filed nearly three years after final disciplinary decision. Collard v. Kentucky Bd. of Nursing, C.A.6 (Ky.) 1990, 896 F.2d 179. Civil Rights 1384

Six-year limitations period of Wisconsin's personal rights statute, rather than Wisconsin's three-year limitations period for personal injury actions, applied to county employee's civil rights action against her supervisors. Gray v. Lacke, C.A.7 (Wis.) 1989, 885 F.2d 399, rehearing denied, certiorari denied 110 S.Ct. 1476, 494 U.S. 1029, 108 L.Ed.2d 613. Civil Rights 1383

Claims by physician, under § 1983, that county hospital took retaliatory action against him because of his "whistleblower" activities would be untimely, to extent that retaliatory action was physician's suspension, which occurred more than two years before suit was commenced, but would be timely to extent that retaliatory action was physician's termination, which occurred within two-year period. Draghi v. County of Cook, N.D.Ill.1997, 985 F.Supp. 747. Civil Rights 1383

187. ---- Discrimination, employment, limitations law governing

White police officer failed to establish that city's refusal to promote white officers constituted continuing violation based on overarching policy of discrimination, and thus, claims of discrimination occurring outside three-year limitations period provided in §§ 1981, 1983, and Michigan's Elliott-Larsen Civil Rights Act were barred, where there was no evidence city had overarching discriminatory policy and officers offered evidence of series of unrelated, individual, discrete acts of alleged discrimination. Kresnak v. City of Muskegon Heights, W.D.Mich.1997, 956 F.Supp. 1327. Limitation Of Actions 58(1)

Black female teacher's § 1983 claims against city board of education, board superintendent, board district superintendent, and high school principal for racial and sexual harassment and discrimination respecting incidents which occurred more than two years prior to filing of teacher's complaint were time barred under Pennsylvania two-year personal injury statute of limitations. Long v. Board of Educ. of City of Philadelphia, E.D.Pa.1993, 812 F.Supp. 525, affirmed 8 F.3d 811. Civil Rights 1383

University employee's § 1983 and § 1981 employment discrimination actions were subject to three-year limitation period imposed by District of Columbia statute which applies to actions for which limitations period is not otherwise specifically provided. Holland v. Board of Trustees of University of District of Columbia, D.D.C.1992, 794 F.Supp. 420. Civil Rights 1383

188. Excessive force, limitations law governing

Six-year residual Mississippi statute of limitations applied to civil rights excessive force action, rather than one-year statute for intentional tort. Thomas v. City of New Albany, C.A.5 (Miss.) 1990, 901 F.2d 476. Civil Rights 1382

Federal district court in New York would apply New York's three-year statute of limitations governing personal injury actions in civil rights suit alleging excessive force during arrest. Perez v. Police Dept. of City of New York, S.D.N.Y.1994, 872 F.Supp. 49, affirmed 71 F.3d 405. Civil Rights 1382

189. Forfeiture, limitations law governing

Claim that civil forfeiture of vehicle violated owner's civil rights was more analogous to personal injury claim than to property claim and, thus, owner's § 1983 claim against state would be governed by state's one-year personal injury statute of limitations. Hill v. State of Tenn., M.D.Tenn.1994, 868 F.Supp. 221. Civil Rights 1381;

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42 U.S.C.A. § 1983

Civil Rights 1384

Owner's § 1983 claim challenging state's civil forfeiture of vehicle accrued on date on which owner received notice of state Supreme Court's denial of his request to appeal forfeiture, rather than on date of initial forfeiture decision, and thus filing of § 1983 claim within one year of notice from state Supreme Court rendered claim timely under applicable one-year limitations period for personal injury actions. Hill v. State of Tenn., M.D.Tenn.1994, 868 F.Supp. 221. Limitation Of Actions 58(1)

190. Fraud, limitations law governing

Claims of accused that, during criminal proceedings against him, he was deprived of his constitutional rights to effective assistance of counsel and due process, that prejudicial evidence was improperly admitted, and that transcripts of criminal proceedings were fraudulently altered were not grounded in fraud and were not governed by six-year statute of limitations for fraud. Jacobs v. Coiro, S.D.N.Y.1991, 764 F.Supp. 321. Fraud 38

191. Inverse condemnation, limitations law governing

New Jersey's two-year personal injury statute of limitations governed inverse condemnation claim asserted under § 1983. 287 Corporate Center Associates v. Township of Bridgewater, C.A.3 (N.J.) 1996, 101 F.3d 320. Eminent Domain 288(1)

If inverse condemnation claim asserted under Fifth Amendment were not subject to New Jersey's two-year statute of limitations for personal injury actions, it would at most be subject to New Jersey's six-year statute of limitations for actions at law for trespass to real property, for any tortious injury to real or personal property, or for taking, detaining, or converting personal property, rather than New Jersey's 20-year statute of limitations for actions at law for real estate. 287 Corporate Center Associates v. Township of Bridgewater, C.A.3 (N.J.) 1996, 101 F.3d 320. Eminent Domain 288(1)

192. Prisons and prisoners, limitations law governing--Generally

Pennsylvania two-year personal injury limitations period, rather than Pennsylvania four or six-year limitations period for contracts, governed federal pretrial detainees' civil rights claim alleging physical abuse and mistreatment of detainee housed at county jail pursuant to contract between United States Marshal's Service and county and, thus, claim was time barred, as all incidents alleged to support claim took place more than two years prior to filing of complaint. Kost v. Kozakiewicz, C.A.3 (Pa.) 1993, 1 F.3d 176. Civil Rights 1382

Pennsylvania's two-year statute of limitations for personal injury actions governed inmate's § 1983 suit alleging violation of his Eighth Amendment rights in denial of proper clothing and, thus, he could not recover for alleged deprivations occurring more than two years prior to date on which he filed suit. Young v. Berks County Prison, E.D.Pa.1996, 940 F.Supp. 121. Civil Rights 1382

193. ---- Disciplinary proceedings, prisons and prisoners, limitations law governing

Massachusetts' three-year statute of limitations for tort actions, rather than its 60-day limitation on certiorari action to remedy improprieties in prison disciplinary hearings, governed inmate's § 1983 claims arising from allegedly improper disciplinary proceedings. Duffy v. Massachusetts Dept. of Corrections, D.Mass.1990, 746 F.Supp. 232. Civil Rights 1382

The most appropriate state law statute of limitations for action brought pursuant to §§ 1981, 1983 and 1985(3), alleging denial of due process because of prison officials' failure to properly investigate incident in which prisoners were issued disciplinary tickets for failing to cooperate with facility procedures, was New York statute governing

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actions based on personal injury, providing for three-year limitation period. Salahuddin v. Coughlin, S.D.N.Y.1986, 647 F.Supp. 49. Civil Rights 1382; Conspiracy 16

194. ---- Medical care, prisons and prisoners, limitations law governing

Section 1983 action arising from warden's alleged denial of medical treatment to inmate was governed by one-year prescriptive period applicable to Louisiana personal injury actions, and not by ten-year prescriptive period for nontort, personal actions. Elzy v. Roberson, C.A.5 (La.) 1989, 868 F.2d 793. Civil Rights 1382

Virginia's two-year general statute of limitations for personal injury actions applied to § 1983 actions brought by prisoners in state of Virginia, rather than one-year statute of limitations governing personal injury actions by prisoners. Shelton v. Angelone, W.D.Va.2001, 148 F.Supp.2d 670, affirmed 49 Fed.Appx. 451, 2002 WL 31423846, certiorari denied 123 S.Ct. 1756, 538 U.S. 964, 155 L.Ed.2d 518. Civil Rights 1382

195. Search and seizure, limitations law governing

Rule that municipal liability under § 1983 requires proof of ratification or pattern and practice does not apply to Rehabilitation Act claims, which are governed by respondeat superior. Settlegoode v. Portland Public Schools, C.A.9 (Or.) 2004, 371 F.3d 503, certiorari denied 125 S.Ct. 478, 543 U.S. 979, 160 L.Ed.2d 356. Civil Rights 1351(1); Civil Rights 1528

Arrestee's § 1983 claim accrued on date of arrest to extent that claim charged warrantless arrest unsupported by probable cause; arrestee knew or should have known on day of his arrest both of injury resulting from his allegedly illegal seizure and who was responsible for any injury. Brooks v. City of Winston-Salem, N.C., C.A.4 (N.C.) 1996, 85 F.3d 178. Limitation Of Actions 95(15)

Under North Carolina law, plaintiff's § 1983 action arising out of deputy sheriff's alleged wrongful seizure and alleged use of excessive force was governed by three-year, not one-year, personal injury statute of limitations. Reagan v. Hampton, M.D.N.C.1988, 700 F.Supp. 850. Civil Rights 1382

Arrestee's civil rights claim based on warrantless search of his home and allegedly unlawful arrest on subsequent occasion was governed by Connecticut's three-year statute of limitations applicable to general personal injury actions. Mitchell v. City of Hartford, D.Conn.1986, 674 F.Supp. 60. Civil Rights 1382

196. Taxation, limitations law governing

New York three-year statute of limitations barred taxpayer's § 1983 action against United States based on conduct of Internal Revenue Service (IRS) revenue officer. Powers v. Karen, E.D.N.Y.1991, 768 F.Supp. 46, affirmed 963 F.2d 1522. Civil Rights 1384

New Jersey's two-year limitations period for injuries to person governed mortgagee's federal civil rights claim alleging that township's in rem tax foreclosure of subject property violated due process. Craig v. Ewing Township, D.N.J.1988, 678 F.Supp. 1106. Civil Rights 1384

197. Particular limitations cases, limitations law governing

Neighborhood association's civil rights action against county for alleged racial discrimination in the siting and permitting of solid waste landfill accrued at time county board of commissioners voted to select site as location for new landfill, not at time when county actually acquired ownership interest in landfill property; vote was the operative decision amounting to the alleged constitutional injury, public notice was given concerning meeting at which vote occurred, one plaintiff was present at meeting, and at least one plaintiff knew of county's earlier tabling

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of alternative site proposal allegedly affecting white residents. Rozar v. Mullis, C.A.11 (Ga.) 1996, 85 F.3d 556. Limitation Of Actions 95(15)

Neighborhood association's civil rights action against Georgia Environmental Protection Division (EPD) for alleged racial discrimination in the siting and permitting of solid waste landfill did not accrue at time county board of commissioners voted to select site as location for new landfill, and was thus not time barred, where defendant only became significantly involved in case later, during permitting process; if defendant committed any violations, those wrongs were most likely inflicted through impliedly discriminatory site suitability determination or impliedly discriminatory decision to issue final permit. Rozar v. Mullis, C.A.11 (Ga.) 1996, 85 F.3d 556. Limitation Of Actions 58(1)

Claims under §§ 1983 arising in North Carolina have a three-year statute of limitations. Guseh v. North Carolina Cent. University, M.D.N.C.2005, 423 F.Supp.2d 550. Civil Rights 1379

Under North Carolina law, a § 1983 claim is subject to a three-year limitations period. Spencer v. Town of Chapel Hill, M.D.N.C.2003, 290 F.Supp.2d 655. Civil Rights 1379

One-year statute of limitations period applies to § 1983 claims arising in Puerto Rico. Iravedra v. Public Building Authority, D.Puerto Rico 2003, 283 F.Supp.2d 570. Civil Rights 1379

Statute of limitations applicable to § 1983 claims, that county's allegedly false allegations of sexual abuse against stepfather resulted in mother and stepfather being separated from daughter, was Virginia's two-year statute of limitations for personal actions for injury to person or property, accruing from date alleged injury was sustained. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1384; Limitation Of Actions 58(1)

Complaint alleging § 1983 claim that plaintiff's constitutional rights were violated by filing of inaccurate presentence report would not be dismissed on ground that applicable statute of limitations had run, as complaint did not specify when plaintiff received copy of presentence report and stated only that he requested report in 1995 but never received it, and thus did not allow ascertainment of when cause of action accrued; although plaintiff stated in his memorandum of law in opposition to motion to dismiss that he had opportunity to see report at time of sentencing on 1989, court could not consider extraneous fact. Hili v. Sciarotta, E.D.N.Y.1997, 955 F.Supp. 177, affirmed 140 F.3d 210. Federal Civil Procedure 1754; Federal Civil Procedure 1832; Limitation Of Actions 180(7)

Former county employee's § 1983 claim, in which former employee claimed deprivation of rights resulting from alleged lack of proper training given to him for his newly-assigned road patrol deputy position with sheriff's department, accrued at very latest on date former employee had been injured when struck by vehicle while conducting traffic at accident site. Yanacos v. Lake County, Ohio, N.D.Ohio 1996, 953 F.Supp. 187. Limitation Of Actions 58(1)

Three-year limitations period, applicable to plaintiff's § 1983 personal injury action against city, police department, and off-duty police officer, began to run when he was shot by off-duty police officer. Baker v. New York City, E.D.N.Y.1996, 934 F.Supp. 533. Limitation Of Actions 58(1)

Limitations period applicable to § 1983 action arising from alleged NEPA violations in connection with harbor tunnel project accrued for limitations purposes when project received final approval from relevant state and federal authorities, even if supplemental environmental impact statements were merely segments of one integrated impact statement; decision to go forward with project, and rejection of all other alternatives, was final at time of final approval. Zarrilli v. Weld, D.Mass.1995, 875 F.Supp. 68. Limitation Of Actions 58(1)

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42 U.S.C.A. § 1983

Under Utah law, four-year statute of limitations for relief not otherwise provided for by law applied to claims of disappointed applicant for license to operate a sexually oriented business brought against state court judge under § 1983 and civil rights conspiracy statute, arising out of applicant's appearance in the judge's courtroom. Womble v. Salt Lake City Corp., C.A.10 (Utah) 2003, 84 Fed.Appx. 18, 2003 WL 22925276, Unreported. Civil Rights 1384; Conspiracy 16

Applying enlarged statute of limitations for personal injury actions under California law to plaintiff's § 1983 claims would not retroactively revive stale claims, but rather would impact on pending claims, given that enlarged limitations period went into effect 24 days before claims would have been barred under one-year limitations period previously in effect, and therefore, under California law, enlarged, two-year period applied to claims and claims were not time-barred. Jordan v. Herrera, C.D.Cal.2003, 2003 WL 22668840, Unreported. Limitation Of Actions 6(1); Limitation Of Actions 6(9)

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221. Persons within section generally

Section 1983 creates cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless individual defendant caused or participated in constitutional deprivation. Rasche v. Village of Beecher, C.A.7 (Ill.) 2003, 336 F.3d 588. Civil Rights 1335

Liability under this section does not apply to "every person." Stift v. Lynch, C.A.7 (Ill.) 1959, 267 F.2d 237. Civil Rights 1335

Because child was the one who allegedly suffered a constitutional deprivation and her sexual abuse at the hands of police officer was a wrong directed against her person, rather than her family relationships, mother could only bring suit under Section 1983 on behalf of child and not on her own behalf. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1332(4)

Actions may be maintained against individuals in their individual capacities under § 1983, so long as challenged actions were performed by individuals within the scope of their official duties. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1354

Only "persons" may be sued under this section giving cause of action for deprivation of civil rights. Martin v. Davison, W.D.Pa.1971, 322 F.Supp. 318. Civil Rights 1335

222. Capacity, persons within section

Government official in role of personal-capacity defendant is "person" subject to suit for damages under § 1983 for

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actions taken in her official capacity. Hafer v. Melo, U.S.Pa.1991, 112 S.Ct. 358, 502 U.S. 21, 116 L.Ed.2d 301. Civil Rights 1354

When governmental official is sued in his official and individual capacities for acts performed in each capacity, those acts are treated as transactions of two different legal personages. Johnson v. Board of County Com'rs for County of Fremont, C.A.10 (Colo.) 1996, 85 F.3d 489, rehearing denied, certiorari denied 117 S.Ct. 611, 519 U.S. 1042, 136 L.Ed.2d 536. Officers And Public Employees 114

Governor of West Virginia, Commissioner of Department of Corrections, and prison officials in their individual capacities were "persons" within meaning of § 1983. Goodmon v. Rockefeller, C.A.4 (W.Va.) 1991, 947 F.2d 1186. Civil Rights 1358

Term "person" in § 1983 does not include state or state officials acting in their official capacity. Jimenez v. New Jersey, D.N.J.2003, 245 F.Supp.2d 584. Civil Rights 1344; Civil Rights 1354

California State Board of Pharmacy's executive director, in her official capacity, was a "person" for purposes of §§ 1983 action brought by licensed pharmacist and wholesaler of pharmaceuticals, which did not seek any monetary damages, but only declaratory and injunctive relief to enjoin a violation of federal law allegedly arising from attempt revoke or suspend pharmacist's pharmaceutical license and wholesaler's permit. Adibi v. California State Bd. of Pharmacy, N.D.Cal.2005, 393 F.Supp.2d 999. Civil Rights 1360

A municipal liability claim under § 1983 against individual government agents must be pursued against them in their official capacity, and generally represents only another way of pleading an action against an entity of which an officer is an agent. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1354

States, and state officers, if sued in their official capacities for retrospective relief, are not "persons" subject to suit under § 1983; however, state employees in their individual capacities may be liable for damages under § 1983, even when conduct in question is related to their official duties. Morris v. Eversley, S.D.N.Y.2003, 282 F.Supp.2d 196. Civil Rights 1344; Civil Rights 1354

In order to determine whether a § 1983 defendant has been sued in defendant's individual or official capacity, a court looks to the complaint and to the course of the proceedings. Riebsame v. Prince, M.D.Fla.2003, 267 F.Supp.2d 1225, affirmed 91 Fed.Appx. 656, 2004 WL 177567, certiorari denied 125 S.Ct. 166, 543 U.S. 888, 160 L.Ed.2d 149. Civil Rights 1354

State official in his or her individual capacity, when sued for injunctive relief, is a "person" under § 1983. Scanlon v. Department of Mental Health, S.D.Miss.1993, 828 F.Supp. 421, appeal dismissed 20 F.3d 1170. Civil Rights 1354

State officials sued in their official capacities are not "persons" for purposes of § 1983. McCrum v. Elkhart County Dept. of Public Welfare, N.D.Ind.1992, 806 F.Supp. 203, reconsideration granted. Civil Rights 1354

State employees sued for monetary damages in their official capacity are not "persons" within meaning of that term as it appears in § 1983. Smith v. McCaughtry, E.D.Wis.1992, 801 F.Supp. 239. Civil Rights 1354

Individuals acting in their official capacities for state university were not "persons" subject to suit under §§ 1983. Kay v. Likins, C.A.9 (Ariz.) 2005, 160 Fed.Appx. 605, 2005 WL 3525618, Unreported. Civil Rights 1354

223. Athletic or interscholastic associations, persons within section

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Louisiana High School Athletic Association, being voluntary association of private, parochial and public high schools, and being not regularly constituted agency of state, nor its existence provided for by Constitution, statutes or regulations of state, was "person" within meaning of this section application of this section being not precluded by fact that conduct of association constituted state action for purposes of U.S.C.A.Const. Amend. 14; as to such defendant, there was "civil action authorized by law" within meaning of § 1343 of this title. Walsh v. Louisiana High School Athletic Ass'n, C.A.5 (La.) 1980, 616 F.2d 152, rehearing denied 621 F.2d 440, certiorari denied 101 S.Ct. 939, 449 U.S. 1124, 67 L.Ed.2d 109. Civil Rights 1337

Voluntary athletic association of public and parochial schools qualified as a "person" amenable to suit under this section. Wright v. Arkansas Activities Ass'n (AAA), C.A.8 (Ark.) 1974, 501 F.2d 25. Civil Rights 1337

224. Attorneys, persons within section--Generally

Former wife's attorneys in divorce case were not "state actors" against whom an allegation of deprivation of constitutional rights under color of law could be properly lodged in federal civil rights action. Catz v. Chalker, C.A.6 (Ohio) 1998, 142 F.3d 279, opinion amended on denial of rehearing 243 F.3d 234. Civil Rights 1326(10)

Defendant, acting as a private attorney, charged with making false statements in sanity hearing which resulted in plaintiff's commitment to mental institution, was not amenable to action based on this section. Cooper v. Wilson, C.A.6 (Ohio) 1962, 309 F.2d 153. Civil Rights 1326(10)

Attorney who, as a private practitioner, prepared papers filed as the first step in proceeding resulting in plaintiff's confinement in mental institution was not amenable to an action based on this section. Kenney v. Fox, C.A.6 (Mich.) 1956, 232 F.2d 288, certiorari denied 77 S.Ct. 84, 352 U.S. 855, 1 L.Ed.2d 66, certiorari denied 77 S.Ct. 84, 352 U.S. 856, 1 L.Ed.2d 66. Civil Rights 1375; Civil Rights 1326(10)

Attorney representing transit authority police officer in civil action was acting as a private citizen, not as state officer, at examination before trial and thus could not be held liable for any violation of arrestee's civil rights as result of allegedly false testimony given by the transit authority police officer at the examination. Bates v. New York City Transit Authority, E.D.N.Y.1989, 721 F.Supp. 1577. Civil Rights 1326(10)

Generally, an attorney, acting in a professional capacity on behalf of his clients in enforcing the clients' presumed rights, does not incur liability under this section if another's civil rights are violated pursuant to his advice. Tunheim v. Bowman, D.C.Nev.1973, 366 F.Supp. 1395. Civil Rights 1326(10)

225. ---- Prosecuting or state's attorneys, persons within section

Civil rights suit under § 1983 against city prosecutor in prosecutor's official capacity, alleging that prosecutor violated Ohio victim impact law by failing to notify murder victim's mother that reduced charge against perpetrator was being considered as part of plea agreement, was treated as suit against state and not cognizable under § 1983. Pusey v. City of Youngstown, C.A.6 (Ohio) 1993, 11 F.3d 652, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 2742, 512 U.S. 1237, 129 L.Ed.2d 862. Civil Rights 1358

Plaintiffs had no right of civil redress against assistant district attorney in connection with his initiation of criminal charges against plaintiffs, even if his actions were undertaken maliciously, intentionally, and in bad faith. Norton v. Liddel, C.A.10 (Okla.) 1980, 620 F.2d 1375. Civil Rights 1376(9)

District attorney, who made pretrial statement that crime with which petitioner was charged was "one of the most atrocious in the crime annals of the city," could not be held liable under this section for alleged denial of petitioner's right of access to courts and to bail in absence of proof establishing a connection between claimed

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"denial" and conduct on part of district attorney. Tunnell v. Wiley, C.A.3 (Pa.) 1975, 514 F.2d 971. Civil Rights 1088(5)

Federal civil rights suit against former county state's attorney was not precluded by state sovereign immunity; county state's attorney was county, not state position. Santiago v. Daley, N.D.Ill.1989, 726 F.Supp. 198, on reconsideration 744 F.Supp. 845. District And Prosecuting Attorneys 10

226. ---- United States attorneys, persons within section

Assistant United States attorney who was at all times acting in his official capacity and who did not engage in any unlawful conduct while so engaged was not liable for alleged violations of this section. Pugh v. Klinger, S.D.N.Y.1971, 340 F.Supp. 471. Civil Rights 1376(9)

227. Auditors, persons within section

Allegations by junior college that it was only institution receiving state Tuition Assistance Program (TAP) funds to be audited three times in six years, that state agencies ignored policies and regulations applicable to all other schools in relation to their audits of plaintiff college, and that disparate treatment was motivated by animus, ill-will, and bad faith on part of state Education Department in general and individual defendants in particular, were sufficient to state cause of action against state officials for violation of Equal Protection Clause by selective enforcement of audit requirements. Interboro Institute, Inc. v. Maurer, N.D.N.Y.1997, 956 F.Supp. 188. Civil Rights 1395(2)

County auditor, sued in capacity as such and not as individual, was not "person" within meaning of this section and was therefore not proper party defendant. Veres v. Monroe County, E.D.Mich.1973, 364 F.Supp. 1327, affirmed 542 F.2d 1177, certiorari denied 97 S.Ct. 2929, 431 U.S. 969, 53 L.Ed.2d 1065. Civil Rights 1360; Civil Rights 1391

228. District of Columbia, persons within section

District of Columbia was a suable entity under § 1983; District was a municipality, rather than a state or territory that was immune from suit under § 1983. Best v. District of Columbia, D.D.C.1990, 743 F.Supp. 44. Civil Rights 1350

District of Columbia is a "person" within meaning of civil rights statute, § 1983. Propert v. District of Columbia, D.D.C.1990, 741 F.Supp. 959. Civil Rights 1344

229. Bar associations, persons within section

Alabama State Bar was a properly suable entity in civil rights suit brought by attorneys who challenged disciplinary rules governing lawyer advertising. Foley v. Alabama State Bar, C.A.5 (Ala.) 1981, 648 F.2d 355. Attorney And Client 31

Bar association disciplinary committee whose chief counsel and law clerk allegedly committed due process violations that contributed to suspension of two attorneys was not a "person" amenable to § 1983 action by those suspended attorneys. Thaler v. Casella, S.D.N.Y.1997, 960 F.Supp. 691. Civil Rights 1350

Neither state legislature, state bar, nor state board of bar commissioners is "person," within meaning of federal civil rights statute pertaining to deprivation of federal constitutional or statutory rights by "person" acting under color of state law. McFarland v. Folsom, M.D.Ala.1994, 854 F.Supp. 862. Civil Rights 1344

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42 U.S.C.A. § 1983

Montana Supreme Court, Board of Bar Examiners and Commission on Practice, as agencies of state of Montana, were not "persons" amenable to suit under federal civil rights statute. Rothstein v. Montana State Supreme Court, D.Mont.1986, 638 F.Supp. 1311. Civil Rights 1350

State bar association, as agency of state, is not "person" within intendment of this section. Louis v. Supreme Court of Nevada, D.C.Nev.1980, 490 F.Supp. 1174. See, also, O'Connor v. State of Nev., D.C.Nev.1981, 507 F.Supp. 546, affirmed 686 F.2d 749, certiorari denied 103 S.Ct. 491, 459 U.S. 1071, 74 L.Ed.2d 633. Civil Rights 1344

230. Boards of assistance, persons within section

A county board of assistance is not a "person" within meaning of this section which provides that every "person" who under color of state law deprives another of constitutional rights shall be liable to the party injured. White v. Beal, E.D.Pa.1976, 413 F.Supp. 1141, affirmed 555 F.2d 1146. Civil Rights 1343

231. United States, persons within section

United States does not act under color of state law, nor can it be considered "person," for purposes of § 1983. International Islamic Community of Masjid Baytulkhaliq, Inc. v. U.S., D.Virgin Islands 1997, 981 F.Supp. 352, affirmed 176 F.3d 472, certiorari denied 120 S.Ct. 240, 528 U.S. 902, 145 L.Ed.2d 201. Civil Rights 1327; Civil Rights 1362

United States is not "person" under § 1983. U.S. v. Vital Health Products, Ltd., E.D.Wis.1992, 786 F.Supp. 761, affirmed 985 F.2d 563. Civil Rights 1362

Actions of federal Government or its officers are exempt from proscriptions of § 1983. John's Insulation, Inc. v. Siska Const. Co., Inc., S.D.N.Y.1991, 774 F.Supp. 156. Civil Rights 1362

United States cannot be sued under deprivation or conspiracy provisions of this section because it is not "person," within meaning of such provisions, and because provisions do not waive sovereign immunity. Morpurgo v. Board of Higher Ed. in City of New York, S.D.N.Y.1976, 423 F.Supp. 704. Civil Rights 1362; Conspiracy 13; United States 125(9)

232. Boards of education, persons within section

Board of education was not a legal entity, and therefore, was not subject to civil rights suit brought by discharged public school teacher. Michelin v. Jenkins, D.D.C.1989, 704 F.Supp. 1. Civil Rights 1349

233. Boards of examiners, persons within section

Police officers were not entitled to an award of attorney fees as prevailing parties, in arrestee's §§ 1983 claim against officers for unlawful arrest; arrestee's claim was not unjustified, and neither the claim nor the appeal was frivolous or vexatious. Mustafa v. City of Chicago, C.A.7 (Ill.) 2006, 442 F.3d 544. Federal Civil Procedure 2840

Board of Medical Examiners, agency of state, was not a "person" within this section proscribing any person from depriving another of rights under color of state law and Board could not be subject to suit for damages under this section. Hoke v. Board of Medical Examiners of State of N. C., W.D.N.C.1978, 445 F.Supp. 1313. Civil Rights 1350

The Pennsylvania State Board of Law Examiners is not a "person" within meaning of this section proscribing a

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deprivation of rights, but individual members of such board are "persons" under this section. Delgado v. McTighe, E.D.Pa.1977, 442 F.Supp. 725. Civil Rights 1344

234. Boards of regents, persons within section

University of California was state instrumentality for Eleventh Amendment purposes, so university board of regents was not "person" within meaning of federal civil rights statute § 1983 and not subject to suit under that statute. Thompson v. City of Los Angeles, C.A.9 (Cal.) 1989, 885 F.2d 1439. Civil Rights 1346; Federal Courts 268.1

Arizona Board of Regents was a "person" against which action could be maintained within meaning of this section. Harris v. Arizona Bd. of Regents, D.C.Ariz.1981, 528 F.Supp. 987. Civil Rights 1346

City University of New York and one of its senior colleges were effectively arms of state, and thus entitled to Eleventh Amendment immunity from §§ 1981 and 1983 claims by student who was arrested and prosecuted for sexually assaulting classmate; any damage award would be paid out of state treasury, and state exercised significant supervisory functions. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Federal Courts 269

235. Federal agencies, persons within section--Generally

Federal Deposit Insurance Corporation (FDIC) was not "person" within meaning of § 1983, and thus could not be held liable for its alleged conduct in acting in concert with Pennsylvania Secretary of Banking to deprive seized bank's shareholders of their substantive due process rights. Hindes v. F.D.I.C., C.A.3 (Pa.) 1998, 137 F.3d 148. Civil Rights 1364

National laboratory employees' §§ 1983 action was not cognizable against their employer, a limited liability company serving as independent contractor to Department of Energy; there were no allegations that employer, a private entity, was state or municipal entity acting under color of state law. Benjamin v. Brookhaven Science Associates, LLC, E.D.N.Y.2005, 387 F.Supp.2d 146. Civil Rights 1326(11)

Pro se parolee's § 1983 claim against United States Parole Commission, asserting entitlement to damages for violation of his civil rights by Commission's alleged application of harsher federal preponderance of the evidence standard to determine his suitability for release on parole, would be dismissed as not stating a viable claim against the Commission; §§ 1983 was only applicable to actions of state officials. Forrester v. U.S. Parole Com'n., D.D.C.2004, 310 F.Supp.2d 162. Civil Rights 1327

Federal Deposit Insurance Corporation (FDIC) is a federal agency, not a person subject to liability under §§ 1983. Elliott v. F.D.I.C., D.D.C.2004, 305 F.Supp.2d 79. Civil Rights 1362

City and county police officers who were assigned to drug task force operating under command of federal Drug Enforcement Administration (DEA) were federal employees for purposes of § 1983 claim, and were not amenable to suit under § 1983 as they were not state actors, and thus their county and city employers were also not amenable to suit. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. Civil Rights 1327

Government agencies are not "persons" liable for civil rights damages. Young v. Keohane, M.D.Pa.1992, 809 F.Supp. 1185. Civil Rights 1343

United States Postal Service (USPS) was federal agency, and thus pretrial detainee could not maintain §§ 1983 action against it for alleged violation of his constitutional rights. Dubois v. Abode, C.A.3 (N.J.) 2005, 142 Fed.Appx. 62, 2005 WL 1793449, Unreported, certiorari denied 126 S.Ct. 560, 163 L.Ed.2d 471. Civil Rights

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While § 1983 authorizes federal courts to hear suits against state and local officials, it cannot be used to review actions of federal government or its officers. Wallace v. Barnhart, E.D.Pa.2003, 2003 WL 21640568, Unreported. Civil Rights 1362

236. ---- Department of Housing and Urban Development, federal agencies, persons within section

Landowner that had brought §§ 1983 action against county challenging denial of its rezoning application, which had been dismissed on parties' stipulation after county rezoned property in question, was not entitled to attorney fee award as "prevailing party" under §§ 1988; landowner failed to show material alteration in legal relationship between parties, since there was no showing of actual settlement agreement, nor any other legal relationship between them. RHN Corp. v. Box Elder County, D.Utah 2006, 416 F.Supp.2d 1254. Civil Rights 1482

United States and Department of Housing and Urban Development (HUD) were not "persons" within meaning of § 1983. Hurt v. Philadelphia Housing Authority, E.D.Pa.1992, 806 F.Supp. 515. Civil Rights 1364

237. ---- Government National Mortgage Association, federal agencies, persons within section

Allegation that Government National Mortgage Association's foreclosure of mortgage under state law violated homeowners' civil rights did not state cause of action under this section, since such federal agency was not "person," within meaning of this section. Hoffman v. U. S. Dept. of Housing and Urban Development, C.A.5 (Tex.) 1975, 519 F.2d 1160. Civil Rights 1364

238. ---- Justice Department, federal agencies, persons within section

Since Congress has not declared that the organized crime and racketeering section of the Department of Justice or the Bureau of Alcohol, Tobacco and Firearms of the Department of Treasury are suable entities, no cause of action existed against such agencies based on alleged warrantless seizure of plaintiffs' books and records. J.D. Pflaumer, Inc. v. U.S. Dept. of Justice, E.D.Pa.1978, 450 F.Supp. 1125. United States 135

239. Clerks of court, persons within section

Clerk of county circuit court was state official and, thus, clerk was not "person" subject to civil rights suit in official capacity. Parsons v. Bourff, S.D.Ind.1989, 739 F.Supp. 1266. Civil Rights 1360

240. Clerks, persons within section

City clerk was a "person" within this section and action seeking to enjoin him from refusing to accept petition for nomination to city commission could be maintained. Alexander v. Kammer, E.D.Mich.1973, 363 F.Supp. 324. Civil Rights 1360

241. Commissions or commissioners, persons within section

California Public Utilities Commission was not "person" for purposes of § 1983 and thus could not be sued under that statute. Sable Communications of California Inc. v. Pacific Tel. & Tel. Co., C.A.9 (Cal.) 1989, 890 F.2d 184. Civil Rights 1350

242. Colleges or universities, persons within section

Board of trustees for state college was not a "person" subject to suit under federal civil rights statute. Gaby v.

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Board of Trustees of Community Technical Colleges, C.A.2 (Conn.) 2003, 348 F.3d 62. Civil Rights 1346

State college board of trustees, as arm of the state, was not a "person" covered by § 1983, and, thus, having sued only the board rather than the individual trustees, former faculty member failed to state a claim under § 1983. McLaughlin v. Board of Trustees of State Colleges of Colorado, C.A.10 (Colo.) 2000, 215 F.3d 1168. Civil Rights 1349

State university and its institute of communications research did not constitute suable "persons" within the meaning of § 1983. Kaimowitz v. Board of Trustees of University of Illinois, C.A.7 (Ill.) 1991, 951 F.2d 765. Civil Rights 1346

State university was a "person" for purposes of this section. Gay Student Services v. Texas A & M University, C.A.5 (Tex.) 1980, 612 F.2d 160, rehearing denied 620 F.2d 300, certiorari denied 101 S.Ct. 608, 449 U.S. 1034, 66 L.Ed.2d 495. Civil Rights 1346

Public universities and their corporate boards of regents, as political subdivisions of state, may not be sued under this section since they are not persons within meaning of such provision. Regents of University of Minnesota v. National Collegiate Athletic Ass'n, C.A.8 (Minn.) 1977, 560 F.2d 352, certiorari dismissed 98 S.Ct. 600, 434 U.S. 978, 54 L.Ed.2d 472. Civil Rights 1346

University of South Dakota and corporate body constituting its board of regents, both political subdivisions of State of South Dakota, may not be sued under this section since neither entity constitutes "person" within meaning of this section. Prostrollo v. University of South Dakota, C.A.8 (S.D.) 1974, 507 F.2d 775, certiorari denied 95 S.Ct. 1687, 421 U.S. 952, 44 L.Ed.2d 106. Civil Rights 1346

North Carolina state university, as alter ego of State of North Carolina, was immune from punitive damages under Title VII. Googerdy v. North Carolina Agr. and Technical State University, M.D.N.C.2005, 386 F.Supp.2d 618. Civil Rights 1577

University of Utah is an arm of the state and is therefore not a "person" within the meaning of § 1983, but individual faculty members could be sued for damages under § 1983 in their individual capacities, and to the extent plaintiff was seeking injunctive relief, he could sue the individual defendants in their official capacities. Roach v. University of Utah, D.Utah 1997, 968 F.Supp. 1446. Civil Rights 1346; Civil Rights 1356

State university was not a "person" within meaning of § 1983. Bartges v. University of North Carolina at Charlotte, W.D.N.C.1995, 908 F.Supp. 1312, affirmed 94 F.3d 641. Civil Rights 1346

President and board of trustees of state university in Wyoming were state actors, and District Court thus had jurisdiction over them in § 1983 action. Gressley v. Deutsch, D.Wyo.1994, 890 F.Supp. 1474. Civil Rights 1326(6)

State university was not a "person" within meaning of this section. Blanton v. State University of New York, C.A.N.Y.1973, 489 F.2d 377. See, also, Ndefru v. Kansas State University, D.Kan.1993, 814 F.Supp. 54.

City community college was not arm of New York state and, therefore, Eleventh Amendment immunity did not bar employment discrimination action under § 1983 and under New York's Executive Law. Moche v. City University of New York, E.D.N.Y.1992, 781 F.Supp. 160, affirmed 999 F.2d 538. Federal Courts 269

243. Corporations, persons within section

Corporation created by state constitution and composed of regents of university was not a "person" within meaning

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of this section and would not be a proper party to suit brought under this section. Sellers v. Regents of University of Cal., C.A.9 (Cal.) 1970, 432 F.2d 493, certiorari denied 91 S.Ct. 1194, 401 U.S. 981, 28 L.Ed.2d 333. Civil Rights 1387

Fact not-for-profit job service corporation received funding from the Commonwealth of Puerto Rico was not sufficient to establish that corporation's termination of former employee, allegedly without due process, was state action subject to § 1983 claim. Pol-Sella v. SER Jobs for Progress Nat., Inc., D.Puerto Rico 1998, 11 F.Supp.2d 170. Civil Rights 1326(11)

Virgin Islands power company could not be sued under § 1983, as it was "alter ego" of government of Virgin Islands, and thus not a "person" that could be sued. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1350

Correctional management corporation was person amenable to § 1983 suit. Staples v. Virginia Dept. of Corrections, E.D.Va.1995, 904 F.Supp. 487. Civil Rights 1339

Not only natural persons, but artificial entities, including corporations, are amenable to suit under this section. Croy v. Skinner, N.D.Ga.1976, 410 F.Supp. 117. Civil Rights 1335

A corporation is a "person" within meaning of this section and its jurisdictional counterpart. Comtronics, Inc. v. Puerto Rico Telephone Co., D.C.Puerto Rico 1975, 409 F.Supp. 800, affirmed 553 F.2d 701. Civil Rights 1329

244. Courts, persons within section

State court of criminal appeals was not a "person" which could be sued by defendants in criminal cases alleging that delays in adjudicating their appeals denied defendants their Sixth and Fourteenth Amendment rights. Harris v. Champion, C.A.10 (Okla.) 1995, 51 F.3d 901. Civil Rights 1348

State courts were not proper defendants in § 1983 action; courts were not "persons" under § 1983 and, if they were, action would be barred by Eleventh Amendment. Clark v. Clark, C.A.8 (Iowa) 1993, 984 F.2d 272, rehearing denied, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60. Civil Rights 1350; Federal Courts 265

Where the justice and clerks of the Appellate Division of New York were sued by attorney as individuals to enjoin conduct of disciplinary proceedings against him on ground that the institution of disciplinary proceeding was for the specific purpose of discouraging and preventing his exercise of his rights under U.S.C.A.Const. Amend. 1, federal court had jurisdiction under this section despite claim that the Appellate Division as a body was not a person within meaning of this section. Erdmann v. Stevens, C.A.2 (N.Y.) 1972, 458 F.2d 1205, certiorari denied 93 S.Ct. 126, 409 U.S. 889, 34 L.Ed.2d 147. Federal Courts 224

Appellate Division of Supreme Court of New York, as a part of the judicial arm of the State of New York, was not a "person" within purview of this section subjecting persons to suit based on alleged deprivation of constitutional rights. Zuckerman v. Appellate Division, Second Dept., Supreme Court of State of N. Y., C.A.2 (N.Y.) 1970, 421 F.2d 625. Civil Rights 1376(8)

Neither the New Jersey Supreme Court nor the New Jersey Board of Bar Examiners was a "person" under §§ 1983, for purposes of claim for damages against the court and board brought by applicant who sought to sit for the New Jersey Bar examination, whose application was denied because he had not met prerequisite of having graduated from an accredited law school. Onyiuke v. New Jersey State Supreme Court, D.N.J.2006, 435 F.Supp.2d 394. Civil Rights 1350

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42 U.S.C.A. § 1983

State court, which complaint sought to enjoin on ground that its policy of requiring signature of a release as a condition for participation in selective intervention program (SIP) for first time offenders, was not "person" within meaning of § 1983. Kinney v. City of Cleveland, N.D.Ohio 2001, 144 F.Supp.2d 908. Civil Rights 1348

State court is not a "person" subject to suit under § 1983. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1344

State court judge's § 1983 damage claims against another state court judge in his official capacity based on hiring and firing practices would be dismissed as effect of such a claim was to recover damages only from state court which was dismissed from case because state court was not a "person" subject to suit under § 1983. McCrea v. Zieba, N.D.Ohio 1996, 955 F.Supp. 808. Civil Rights 1349; Civil Rights 1359

State supreme court is not "person," within meaning of federal civil rights statute pertaining to deprivation of federal constitutional or statutory rights by "person" acting under color of state law. McFarland v. Folsom, M.D.Ala.1994, 854 F.Supp. 862. Civil Rights 1344

Supreme Court of Nevada was not "person" subject to suit under Civil Rights Act of 1871. O'Connor v. State of Nev., D.C.Nev.1981, 507 F.Supp. 546, affirmed 686 F.2d 749, certiorari denied 103 S.Ct. 491, 459 U.S. 1071, 74 L.Ed.2d 633. Civil Rights 1350

Neither state nor its Supreme Court was "person" within this section. Louis v. Supreme Court of Nevada, D.C.Nev.1980, 490 F.Supp. 1174. Civil Rights 1350

State court is not "person" subject to suit under § 1983. Brooks v. New York State Supreme Court, Appellate Div. First Dept., E.D.N.Y.2002, 2002 WL 31528632, Unreported, affirmed 76 Fed.Appx. 356, 2003 WL 21961174. Civil Rights 1344

245. Curators, persons within section

Curators of University of Missouri as public corporation, was itself not "person" amenable to suit under this section. Mackey v. Camp, W.D.Mo.1976, 415 F.Supp. 323. Civil Rights 1346

246. Governmental entities generally, persons within section

Governmental entities are "persons" for purposes of civil rights statute. Fleming v. Department of Public Safety, Com. of Northern Mariana Islands, C.A.9 (N.Mariana Islands)1988, 837 F.2d 401, certiorari denied 109 S.Ct. 222, 488 U.S. 889, 102 L.Ed.2d 212. Civil Rights 1343

Governmental units may be "persons" within meaning of this section. Kurek v. Pleasure Driveway and Park Dist. of Peoria, Ill., C.A.7 (Ill.) 1978, 583 F.2d 378, certiorari denied 99 S.Ct. 873, 439 U.S. 1090, 59 L.Ed.2d 57. Civil Rights 1343

If a governmental entity sued is not a juridical person or a separate corporate entity with power to sue and be sued, the suit is, in essence, one against the sovereign, and cannot stand without consent of the sovereign. McCoy v. Louisiana State Bd. of Ed., E.D.La.1964, 229 F.Supp. 735, reversed on other grounds 345 F.2d 720. States 191.10

247. States or commonwealths, persons within section

Neither state nor its officials acting in their official capacities are "persons" under federal civil rights statute. Will

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v. Michigan Dept. of State Police, U.S.Mich.1989, 109 S.Ct. 2304, 491 U.S. 58, 105 L.Ed.2d 45. Civil Rights 1344

The Government of the Commonwealth of the Northern Mariana Islands (CNMI) is not a "person" within meaning of § 1983. DeNieva v. Reyes, C.A.9 (N. Mariana Islands)1992, 966 F.2d 480. Civil Rights 1344

State was not "person" subject to suit under § 1983 for deprivation of civil rights under color of state law. Pontarelli v. Stone, C.A.1 (R.I.) 1991, 930 F.2d 104. Civil Rights 1349

State is a person within 42 U.S.C.A. § 1983 such that, where it has voluntarily waived its Eleventh Amendment immunity to suit in federal court, it may be held liable in the same respect as municipalities and local units of government. Della Grotta v. State. of R.I., C.A.1 (R.I.) 1986, 781 F.2d 343. Civil Rights 1344; Federal Courts 266.1

State cannot be sued under § 1983. Greene v. Rhode Island, D.R.I.2003, 289 F.Supp.2d 5, affirmed 398 F.3d 45. Civil Rights 1344

A state, its instrumentalities, and its officials, when sued in their official capacity, are not "persons" subject to suit under Section 1983. Torres Ocasio v. Melendez, D.Puerto Rico 2003, 283 F.Supp.2d 505. Civil Rights 1344; Civil Rights 1354

Individual states, their departments and agencies and their officials acting in their official capacities are not deemed "persons" subject to suit under § 1983. Hockaday v. Texas Dept. of Criminal Justice, Pardons and Paroles Div., S.D.Tex.1996, 914 F.Supp. 1439. Civil Rights 1344

State actors may be liable under federal civil rights statute if their nonfeasance of affirmative duties was substantial factor leading to denial of constitutionally protected liberty or property interest and officials displayed mental state of deliberate indifference with respect to those rights. Polite v. Casella, N.D.N.Y.1995, 901 F.Supp. 90. Civil Rights 1039

Commonwealth of Pennsylvania was not "person" for purposes of § 1983. Messa v. Rubin, E.D.Pa.1995, 897 F.Supp. 883. Civil Rights 1350

State is not person within meaning of federal civil rights statute. Hinds v. State of Tenn., W.D.Tenn.1995, 888 F.Supp. 854. Civil Rights 1344

Neither state nor its officials acting in their official capacities are "persons" under § 1983, and thus they are not subject to liability for deprivations of constitutional rights under that statute. Yoonessi v. State University of New York, W.D.N.Y.1994, 862 F.Supp. 1005, leave to appeal denied 56 F.3d 10, certiorari denied 116 S.Ct. 779, 516 U.S. 1075, 133 L.Ed.2d 730. Civil Rights 1344; Civil Rights 1354

Neither state nor state official sued in his or her official capacity is a "person" within the meaning of federal civil rights statute. Eisenberg v. District Attorney of County of Kings, E.D.N.Y.1994, 847 F.Supp. 1029. Civil Rights 1344; Civil Rights 1354

Officials of Commonwealth of Massachusetts and its Department of Correction were not "persons" amenable to suit for monetary damages under federal civil rights statute. Feliciano v. DuBois, D.Mass.1994, 846 F.Supp. 1033. Civil Rights 1358

Neither state nor state officials sued in their official capacities for damages are "persons" under § 1983. Haston v. Tatham, D.Utah 1994, 842 F.Supp. 483. Civil Rights 1344; Civil Rights 1354

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42 U.S.C.A. § 1983

States do not count as "persons" within meaning of § 1983, and thus Eleventh Amendment immunity bars suits against states for damages under that statute. Scelsa v. City University of New York, S.D.N.Y.1992, 806 F.Supp. 1126. Civil Rights 1344; Federal Courts 265

In wife's and infant's action against state, city and state court judges alleging that New York family court proceedings in which support order against their husband and father was increased in favor of child of former marriage was unconstitutional, state was not a proper defendant because it was not a "person" under this section providing for civil action for deprivation of rights; nor could city, whose only nexus with controversy was mayoral appointment of family court judges, be retained as a party. Wiesenfeld v. State of N. Y., S.D.N.Y.1979, 474 F.Supp. 1141. Civil Rights 1391

State was not a person, and thus, state prisoner was barred from asserting § 1983 action against state. Williams v. Kansas, C.A.10 (Kan.) 2003, 76 Fed.Appx. 278, 2003 WL 22255965, Unreported. Civil Rights 1348

248. Political subdivisions or arms of state generally, persons within section

Former employee of county sheriff's department could not recover attorney fees as prevailing party under §§ 1988 with respect to his claims against defendants other than corrections officer against whom former employee prevailed on civil rights claims arising from racially motivated assault, given that claims against other defendants, though also alleging racial discrimination in workplace, rested on distinct factual bases, and there was little factual overlap in allegations against corrections officer and other defendants. Patterson v. Balsamico, C.A.2 (N.Y.) 2006, 440 F.3d 104. Civil Rights 1482

States, political subdivisions, and arms of state government such as department of highways are not "persons" who may be sued under this section. Cheramie v. Tucker, C.A.5 (La.) 1974, 493 F.2d 586, certiorari denied 95 S.Ct. 126, 419 U.S. 868, 42 L.Ed.2d 107. Civil Rights 1344

South Dakota school district was not arm of state, and thus not immune from teacher's § 1983 action claiming violation of her free speech rights; under state law, school districts were local political subdivisions akin to municipal corporations. Wigg v. Sioux Falls School Dist. 49-5, D.S.D.2003, 274 F.Supp.2d 1084, affirmed in part, reversed in part 382 F.3d 807, rehearing and rehearing en banc denied. Civil Rights 1376(10)

Factors for determining whether agency is "arm of state," so as to be outside reach of § 1983, are: (1) whether money that would pay the judgment would come from state; (2) status of the agency under state law; and (3) what degree of autonomy agency has. Ballentine v. Virgin Islands Port Authority, D.Virgin Islands 1997, 955 F.Supp. 480. Civil Rights 1344

Determination of status of agency under state law, for purposes of determining whether agency is "arm of the state" so as to be outside reach of § 1983, involves consideration of how state law treats agency generally, whether agency is separately incorporated, whether agency can sue or be sued in its own right, and whether it is immune from state taxation. Ballentine v. Virgin Islands Port Authority, D.Virgin Islands 1997, 955 F.Supp. 480. Civil Rights 1344

States or governmental entities that are considered "arms of the state" for Eleventh Amendment purposes are not "persons" within meaning of § 1983 and consequently are not among those liable for violations of that civil rights statute. Reiff v. Philadelphia County Court of Common Pleas, E.D.Pa.1993, 827 F.Supp. 319. Civil Rights 1344

State agency or other political subdivision which carries out the state's business and which has immunity from lawsuits under Eleventh Amendment constitutes "arm of the state," and so is not a "person" under § 1983; however, political subdivision which is not provided immunity under Eleventh Amendment does not rise to level of

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"arm of the state," and so would be considered a "person" under § 1983. Rawlings v. Iowa Dept. of Human Services, S.D.Iowa 1993, 820 F.Supp. 423, on subsequent appeal 16 F.3d 1228. Civil Rights 1344

Arm of state cannot be defendant in action under § 1983. Canell v. Oregon Dept. of Justice, D.Or.1993, 811 F.Supp. 546. Civil Rights 1344

Action for damages under §§ 1983 against a state agency, and a state employee in her official capacity, were not permissible. Hull v. State of New Mexico Taxation and Revenue Department's Motor Vehicle Div., C.A.10 (N.M.) 2006, 179 Fed.Appx. 445, 2006 WL 1075617, Unreported. Civil Rights 1354

249. State agencies or instrumentalities, persons within section--Generally

State agencies are not "persons" for purposes of this section. Edelberg v. Illinois Racing Bd., C.A.7 (Ill.) 1976, 540 F.2d 279.

Term "person" in § 1983 does not include state or state officials acting in their official capacity. Jimenez v. New Jersey, D.N.J.2003, 245 F.Supp.2d 584. Civil Rights 1344; Civil Rights 1354

Genuine issue of material fact existed as to whether employer's proffered reason for terminating putative employee, namely its reorganization plan, was pretext for retaliating against her for investigating co-worker's viewing of pornography on computer, precluding summary judgment as to putative employee's Title VII retaliation claim. Litton v. Maverick Paper Co., D.Kan.2005, 388 F.Supp.2d 1261. Federal Civil Procedure 2497.1

A state cannot be sued under § 1983, and this rule applies to states or governmental entities that are considered arms of the state for Eleventh Amendment purposes. Carroll v. Ragaglia, D.Conn.2003, 292 F.Supp.2d 324, affirmed in part, reversed in part and remanded 109 Fed.Appx. 459, 2004 WL 2165397. Civil Rights 1344

State agency cannot be sued under § 1983 in either state or federal court. Nichols v. Danley, D.N.M.2003, 266 F.Supp.2d 1310. Civil Rights 1344; Federal Courts 269

Liability of state under § 1983 based on the state-created danger theory requires some direct action on the part of government officials which creates or enhances the danger. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997, 968 F.Supp. 1212. Civil Rights 1039

Neither state nor state Department of Children and Family Services was a "person" within meaning of § 1983. Ryan v. Illinois Dept. of Children & Family Services, C.D.Ill.1997, 963 F.Supp. 1490, reversed 185 F.3d 751. Civil Rights 1350

State and state officials acting in their official capacities are not "persons" within meaning of § 1983. Lilley v. State of Mo., E.D.Mo.1996, 920 F.Supp. 1035, affirmed 111 F.3d 135. Civil Rights 1344; Civil Rights 1354

State department with Eleventh Amendment immunity from suit is not a "person" within meaning of civil rights statute § 1983. Thompson by Jacobs v. Illinois Dept. of Mental Health and Developmental Disabilities, N.D.Ill.1990, 753 F.Supp. 219. Civil Rights 1344

State agencies are not "persons" within the meaning of this section and, hence, are not subject to suit under this section. Clark v. People of State of Mich., E.D.Mich.1980, 498 F.Supp. 159. Civil Rights 1344

State agencies were "persons" within meaning of this section. Atchison v. Nelson, D.C.Wyo.1978, 460 F.Supp.

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42 U.S.C.A. § 1983

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Neither the state court nor the state attorney general's office qualified as a "person" subject to liability under §§ 1983, for the purpose of attorneys' pro se civil rights action, alleging that various state court rulings violated his constitutional rights. Hawkins v. Supreme Court of N.J., C.A.3 (N.J.) 2006, 174 Fed.Appx. 683, 2006 WL 825481, Unreported. Civil Rights 1350

250. ---- Comptroller's offices, state agencies or instrumentalities, persons within section

Customer stated cause of action in complaint against store officials for §§ 1983 conspiracy by alleging, inter alia, that he was detained after making purchase in violation of his constitutional rights, that store had policy of selecting minorities for increased scrutiny, and that security guard's actions were carried out at direction of store owner and/or pursuant to contracts between store owner and security officials. Bishop v. Toys "R" Us-NY LLC, S.D.N.Y.2006, 414 F.Supp.2d 385. Conspiracy 18

Cause of action could not be stated under § 1983 against New York State Comptroller's Office of Unclaimed Funds; the agency was not a "person" within meaning of § 1983. Lieder v. New York State Comptroller's Office of Unclaimed Funds, E.D.N.Y.1993, 837 F.Supp. 512. Civil Rights 1350

251. ---- Corrections bureaus or departments, state agencies or instrumentalities, persons within section

Neither Arizona Department of Corrections (DOC) nor agency supervising its prison industries is an arm of the state, and thus neither entity is a "person" within meaning of § 1983. Hale v. State of Ariz., C.A.9 (Ariz.) 1993, 993 F.2d 1387, certiorari denied 114 S.Ct. 386, 510 U.S. 946, 126 L.Ed.2d 335. Civil Rights 1348

Commonwealth of Pennsylvania and Bureau of Corrections of that Commonwealth were not "persons" within use of that term in this section and hence were not subject to suit under its provisions. Curtis v. Everette, C.A.3 (Pa.) 1973, 489 F.2d 516, certiorari denied 94 S.Ct. 2409, 416 U.S. 995, 40 L.Ed.2d 774. Civil Rights 1348

State prisoner's official capacity claims against correctional officers for damages arising from alleged use of excessive force and other cruel and unusual punishments were subject to dismissal under Eleventh Amendment as claims against Illinois Department of Corrections (IDOC), an arm of State, and under civil rights statute as claims against entity that did not qualify as §§ 1983 "person." Thomas v. Walton, S.D.Ill.2006, 461 F.Supp.2d 786. Federal Courts 269

Eleventh Amendment immunity barred prisoner's § 1983 claims against state Department of Corrections and prison officials acting in their official capacities; neither state nor officials acting in official capacities were persons under § 1983. Damron v. North Dakota Com'r. of Corrections, D.N.D.2004, 299 F.Supp.2d 970, affirmed 127 Fed.Appx. 909, 2005 WL 1076645. Federal Courts 269

Texas Department of Criminal Justice was part of state agency, and thus could not be held liable under § 1983. Hockaday v. Texas Dept. of Criminal Justice, Pardons and Paroles Div., S.D.Tex.1996, 914 F.Supp. 1439. Civil Rights 1348

New Jersey Department of Corrections was state agency, and thus was not "person" for purposes of § 1983 suit brought by correctional officers and inmates. Csizmadia v. Fauver, D.N.J.1990, 746 F.Supp. 483. Civil Rights 1348; Civil Rights 1349

252. ---- Departments of Labor, state agencies or instrumentalities, persons within section

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Claimant could not maintain cause of action against Illinois Department of Labor for its decision to withhold from claimant state unemployment insurance benefits, because the Department is not a "person" for purposes of this section creating a cause of action against persons whose misconduct under color of state law violates the constitutional rights of another, and because while attorney fees may be awarded, payable by the state, when officials are sued in their official capacity, section 1988 of this title providing for such an award of fees does not provide an independent cause of action. Kostelic v. Bernardi, N.D.Ill.1982, 538 F.Supp. 620. Civil Rights 1350

Department of Labor as an arm of the executive, is the alter-ego of the government of Puerto Rico and, hence, the Department, is not a "person" within meaning of this section. Vazquez v. Ferre, D.C.N.J.1975, 404 F.Supp. 815, motion denied 410 F.Supp. 1385. Civil Rights 1364

253. ---- Environmental conservation or protection, state agencies or instrumentalities, persons within section

Mississippi Department of Wildlife, Fisheries, and Parks is not a "person" within the meaning of section 1983. Kinnison v. Mississippi Dept. of Wildlife, Fisheries, and Parks, S.D.Miss.1998, 990 F.Supp. 481. Civil Rights 1344

State agencies, South Carolina Department of Wildlife and Marine Resources and South Carolina Department of Health and Environmental Control, were not "persons" within meaning of § 1983, even if they waived Eleventh Amendment immunity. Bellamy v. Borders, D.S.C.1989, 727 F.Supp. 247. Civil Rights 1350

254. ---- Health departments, state agencies or instrumentalities, persons within section

Illinois Department of Mental Health could not be sued as "person" under this section. Yarbrough v. Illinois Dept. of Mental Health, N.D.Ill.1982, 538 F.Supp. 414. Civil Rights 1350

255. ---- Housing authorities, state agencies or instrumentalities, persons within section

Fact that judgment against Housing and Development Administration of New York City would fall on New York City did not, in itself, preclude finding that authority was a "person" within meaning of this section. Heese v. DeMatteis Development Corp., S.D.N.Y.1976, 417 F.Supp. 864. Civil Rights 1347

256. ---- Interstate agencies, state agencies or instrumentalities, persons within section

Interstate agency created by Illinois and Missouri to coordinate regional planning and development was treated like county or municipality under laws of both states and, therefore, agency was not entitled to states' Eleventh Amendment sovereign immunity and was "person" subject to suit under § 1983; agency engaged in proprietary functions in defined region with local governance and, most importantly, states were not liable for judgments against agency. Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp., C.A.8 (Mo.) 1991, 948 F.2d 1084, on remand. Civil Rights 1347; Federal Courts 270

Bi-State Development Agency of Missouri-Illinois Metropolitan District was branch of state, rather than local or municipal agency, and was not person subject to suit under § 1983 given amount of control state wielded over composition of Bi-State Commission and plans developed by it. Walker v. Bi-State Development Agency of Missouri-Illinois Metropolitan Dist., E.D.Mo.1991, 763 F.Supp. 409. Civil Rights 1350

257. ---- Justice departments, state agencies or instrumentalities, persons within section

Former prosecutor for Puerto Rico Department of Justice (PRDOJ) stated §§ 1983 claim in connection with his termination; Puerto Rico was considered a state for §§ 1983 purposes and complaint alleged actions attributed to

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officers of PRDOJ, and that firing was due to prosecutor's political affiliation, in retaliation for his protest against continuous work shifts, and without due process. Calderon-Garnier v. Sanchez-Ramos, D.Puerto Rico 2006, 439 F.Supp.2d 229. Civil Rights 1395(8)

Pennsylvania Department of Justice was not "person" within meaning of this section. Padgett v. Stein, M.D.Pa.1975, 406 F.Supp. 287. Civil Rights 1350

258. ---- Parks commissions, state agencies or instrumentalities, persons within section

The Maryland National Capital Park and Planning Commission was a state agency and, hence, was not a "person" subject to being named as a defendant in action under this section and § 1985 of this title for injunctive or monetary relief against a course of conduct by defendants and their agents designed to prevent any development of property to which plaintiffs held title as trustees. Ligon v. State of Md., D.C.Md.1977, 448 F.Supp. 935. Civil Rights 1347; Conspiracy 13

259. ---- Port authorities, state agencies or instrumentalities, persons within section

Public corporation created by Commonwealth of Northern Mariana Islands to operate and manage its ports was arm of Commonwealth, and therefore neither corporation nor officer thereof, in his official capacity, was person within meaning of § 1983; corporation served central government function in establishing, developing, operating, and managing ports, and, if corporation were faced with money judgment it could not pay, Commonwealth would have been compelled pay judgment to protect its economy and provide its citizens with essential seaport and airport services. Aguon v. Commonwealth Ports Authority, C.A.9 (N.Mariana Islands)2003, 316 F.3d 899. Civil Rights 1350; Civil Rights 1360

Delaware River Port Authority (DRPA) of Pennsylvania and New Jersey is a "person" subject to suit under federal civil rights statute. Peters v. Delaware River Port Authority of Pennsylvania and New Jersey, C.A.3 (Pa.) 1994, 16 F.3d 1346, rehearing and rehearing in banc denied, certiorari denied 115 S.Ct. 62, 513 U.S. 811, 130 L.Ed.2d 20, on remand 1995 WL 37614. Civil Rights 1343

Port authority formed under compact, approved by Congress, between Pennsylvania and New Jersey was not "arm or instrumentality" of either state and, thus, was "person" subject to suit under § 1983; port authority was financially self-sufficient and had no power to pledge credit or create state debt and it was not arm of the state under either state's law, even though it was not completely autonomous. Peters v. Delaware River Port Authority of Pennsylvania and New Jersey, E.D.Pa.1992, 785 F.Supp. 517. Civil Rights 1350

Political and labor organizations were prevailing parties in their §§ 1983 action to require state secretary of state to properly instruct county election boards on subject of provisional ballots required by Help America Vote Act (HAVA), and thus were entitled to attorney fee award, even though there was no specific evidence of particular voter who was benefited by injunction, where organizations prevailed on claim that HAVA provided right of action enforceable through §§ 1983 to compel secretary to satisfy civil right to cast provisional ballot under circumstances described in HAVA. Sandusky County Democratic Party v. Blackwell, C.A.6 (Ohio) 2006, 191 Fed.Appx. 397, 2006 WL 2188703, Unreported. Civil Rights 1482

260. ---- Regional authorities, state agencies or instrumentalities, persons within section

Regional Transportation District (RTD) was a "person" under § 1983, since RTD was not an arm of the state for Eleventh Amendment purposes. Elam Const., Inc. v. Regional Transp. Dist., D.Colo.1997, 980 F.Supp. 1418, affirmed 129 F.3d 1343, certiorari denied 118 S.Ct. 1363, 523 U.S. 1047, 140 L.Ed.2d 513. Civil Rights 1350

West Virginia Regional Jail Authority and Correctional Facility (RJACF) is in effect the "state" of West Virginia,

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and thus is not a "person" suable under § 1983; RJACF is created by state legislature to serve inmates and citizens of state, and was funded in large part by state and federal funds. Roach v. Burke, N.D.W.Va.1993, 825 F.Supp. 116. Civil Rights 1348

261. ---- Transportation authorities or departments, state agencies or instrumentalities, persons within section

Neither South Carolina Department of Highways and Public Transportation nor its officials acting in their official capacities were "persons" amenable to suit under § 1983. Manning v. South Carolina Dept. of Highway and Public Transp., C.A.4 (S.C.) 1990, 914 F.2d 44. Civil Rights 1350; Civil Rights 1360

Civil rights action against Illinois Department of Transportation, a state agency, failed for lack of federal court jurisdiction, since it was not a person for purposes of this section. Toledo, Peoria & Western R. Co. v. State of Ill., Dept. of Transp., C.A.7 (Ill.) 1984, 744 F.2d 1296, certiorari denied 105 S.Ct. 1751, 470 U.S. 1051, 84 L.Ed.2d 815. Federal Courts 269

State transportation department was not "person" subject to suit under § 1983. Vickroy v. Wisconsin Department of Transportation, C.A.7 (Wis.) 2003, 73 Fed.Appx. 172, 2003 WL 21782593, Unreported, certiorari denied 124 S.Ct. 1061, 540 U.S. 1107, 157 L.Ed.2d 892. Civil Rights 1350

262. ---- Welfare or human services departments, state agencies or instrumentalities, persons within section

Illinois Department of Commerce and Community Affairs (IDCCA), as part of state of Illinois, was not "person" within meaning of federal civil rights statutes. Small v. Chao, C.A.7 (Ill.) 2005, 398 F.3d 894. Civil Rights 1350

Nursing home could not bring § 1983 action against state Department of Public Welfare and Board of Public Welfare challenging Medicaid reimbursement rates; personhood was an essential element of § 1983 claim. Lett v. Magnant, C.A.7 (Ind.) 1992, 965 F.2d 251, rehearing denied. Civil Rights 1350

Iowa Department of Human Services was agency of state of Iowa, and so was not "person" within meaning of § 1983. Rawlings v. Iowa Dept. of Human Services, S.D.Iowa 1993, 820 F.Supp. 423, on subsequent appeal 16 F.3d 1228. Civil Rights 1350

263. ---- Miscellaneous state agencies or instrumentalities, persons within section

Neither State of Kansas nor Kansas State Gaming Agency (KSGA) was "person" that could be held liable under § 1983. Hartman v. Kickapoo Tribe Gaming Com'n, C.A.10 (Kan.) 2003, 319 F.3d 1230. Civil Rights 1344; Civil Rights 1350

California State Board of Pharmacy failed to offer any evidence that it was a State agency or arm of the State, as grounds for avoiding liability as a "person" under §§ 1983. Adibi v. California State Bd. of Pharmacy, N.D.Cal.2005, 393 F.Supp.2d 999. Civil Rights 1350

Colorado Public Utilities Commission (PUC), which was an alter ego of the state for Eleventh Amendment purposes, was not a "person" under §§ 1983. East West Resort Transp., LLC. v. Sopkin, D.Colo.2005, 371 F.Supp.2d 1253. Civil Rights 1350

Office of Legislative Auditor was not "person," within meaning of §§ 1983, against which action could be maintained under §§ 1983 by employee challenging Office policy, requiring "wearing the hat of the office" at all times except when alone at home, on ground of violation of his First Amendment rights. Levy v. Office of Legislative Auditor, M.D.La.2005, 362 F.Supp.2d 729. Civil Rights 1349

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42 U.S.C.A. § 1983

The parents of disabled student who was raped while enrolled in an alternative education plan could bring § 1983 civil rights action against the Connecticut Department of Education (CSDE) based upon alleged violations of IDEA, notwithstanding fact that the CSDE was a state agency, and a state agency is not a "person" within the meaning of § 1983; to disallow a § 1983 action for violations of the IDEA would be to deny parents any remedy under the Act. J.R. ex rel. R. v. Waterbury Bd. of Educ., D.Conn.2001, 272 F.Supp.2d 174. Civil Rights 1346

Division of Family Services (DFS), guardian ad litem's office, and DFS employees acting in their official capacities were not "persons" under federal civil rights statute. Schaffrath on Behalf of R.J.J. v. Thomas, D.Utah 1998, 993 F.Supp. 842, affirmed 189 F.3d 478. Civil Rights 1350; Civil Rights 1360

Neither New York Public Service Commission (PSC), as state agency, nor its employees acting in their official capacities were "persons" within meaning of § 1983 as required for § 1983 violation. Jemzura v. Public Service Com'n, N.D.N.Y.1997, 971 F.Supp. 702. Civil Rights 1350; Civil Rights 1360

State education agency was not "person" subject to liability for damages under § 1983. Messer v. Meno, W.D.Tex.1996, 936 F.Supp. 1280, affirmed in part, reversed in part 130 F.3d 130, rehearing and suggestion for rehearing en banc denied 149 F.3d 1181, certiorari denied 119 S.Ct. 794, 525 U.S. 1067, 142 L.Ed.2d 657. Civil Rights 1346

New York State Education Department, as a state agency, is not a "person" subject to suit under § 1983. Berkowitz By Berkowitz v. New York City Bd. of Educ., E.D.N.Y.1996, 921 F.Supp. 963. Civil Rights 1346

Section 1983 action would not lie against Alabama Department of Industrial Relations (ADIR) since state was not "person" for § 1983 purposes and ADIR was executive and administrative department of state. Griswold v. Alabama Dept. of Indus. Relations, M.D.Ala.1995, 903 F.Supp. 1492. Civil Rights 1350

County redevelopment authority was not "person" within meaning of this section, and suit against it under such provision would therefore be dismissed. Covert v. Redevelopment Authority of Huntingdon County, M.D.Pa.1978, 447 F.Supp. 270. Civil Rights 1347

South Carolina State Budget and Control Board, South Carolina State Personnel Division, South Carolina Single Cooperative Interagency Merit System and South Carolina Merit System Council was not "persons" which can be charged with liability under either this section or § 1981 of this title. Gourdine v. Ellis, D.C.S.C.1977, 435 F.Supp. 882. Civil Rights 1344

Because municipal assistance corporations for the City of New York and the New York State Emergency Control Board were instrumentalities of the state with financial responsibilities toward the city of New York, it was probable that neither agency was a "person" for purposes of this section. Tron v. Condello, S.D.N.Y.1976, 427 F.Supp. 1175. Civil Rights 1350

New York State Insurance Fund was not "person," and thus was not subject to liability under § 1983. Perry v. State Ins. Fund, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 351, 2003 WL 22879312, Unreported. Civil Rights 1350

264. Local governments, persons within section--Generally

Code enforcement officer did not have final policymaking authority, as required to support business owners' § 1983 claim that citations and warnings were issued against them in retaliation for exercise of their First Amendment rights in speaking out against village's golf and waterworks bond proposals; officer did not set zoning policy, enact zoning ordinance or determine what area of town required her concentrated scrutiny, rather, she simply had authority to issue tickets and citations. Rasche v. Village of Beecher, C.A.7 (Ill.) 2003, 336 F.3d 588.

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42 U.S.C.A. § 1983

Civil Rights 1351(3)

Municipality or local governmental body may be held liable under § 1983 for constitutional violation caused by custom or policy of the local governmental body, or by action taken or policy made by official with final policy-making authority. Denno v. School Bd. of Volusia County, M.D.Fla.1997, 959 F.Supp. 1481, affirmed in part, reversed in part and remanded 182 F.3d 780, rehearing granted and vacated 193 F.3d 1178, reversed in part on rehearing 218 F.3d 1267, rehearing and suggestion for rehearing en banc denied 235 F.3d 1347, certiorari denied 121 S.Ct. 382, 531 U.S. 958, 148 L.Ed.2d 295. Civil Rights 1351(1)

Local governing body can be sued directly under § 1983 for monetary, declaratory, or injunctive relief if alleged unconstitutional action implements or executes policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Civil Rights 1351(1)

Local governmental unit is subject to suit under § 1983 because it is deemed a "person" within meaning of that provision. Boyer v. Board of County Com'rs of County of Johnson County, D.Kan.1996, 922 F.Supp. 476, affirmed 108 F.3d 1388. Civil Rights 1343

Under § 1983, local governments can be sued only where action alleged to be unconstitutional implements or executes policy statement, ordinance, regulation or decision officially adopted and promulgated by that body's officers. Pryor-El v. Kelly, D.D.C.1995, 892 F.Supp. 261. Civil Rights 1351(1)

265. ---- Municipalities, local governments, persons within section

Municipalities and other local government units are included among those "persons" to whom this section applies; overruling *Monroe v. Pape*, 81 S.Ct. 473, 365 U.S. 167, 5 L.Ed.2d 492. Monell v. Department of Social Services of City of New York, U.S.N.Y.1978, 98 S.Ct. 2018, 436 U.S. 658, 56 L.Ed.2d 611.

While liability of municipalities under § 1983 does not turn on liability of individual officers, it is contingent on violation of constitutional rights. Sweaney v. Ada County, Idaho, C.A.9 (Idaho) 1997, 119 F.3d 1385. Civil Rights 1343

When private entity contracts with county to provide medical services to inmates, it performs function traditionally within exclusive prerogative of state, and in so doing, that entity becomes functional equivalent of municipality; thus, entity is liable under § 1983 for injury resulting from performance of that function only if injury resulted from entity's policy or custom. Buckner v. Toro, C.A.11 (Ga.) 1997, 116 F.3d 450, certiorari denied 118 S.Ct. 608, 522 U.S. 1018, 139 L.Ed.2d 495. Civil Rights 1326(4); Civil Rights 1339

Although municipalities are "persons" within meaning of § 1983, municipalities may only be held liable if constitutional harm suffered was result of official policy, custom, or pattern. Scott v. Moore, C.A.5 (Tex.) 1996, 85 F.3d 230, rehearing granted, opinion vacated, on rehearing 114 F.3d 51. Civil Rights 1351(1)

Local governmental unit or municipality may be sued as "person" under § 1983. Hervey v. Estes, C.A.9 (Wash.) 1995, 65 F.3d 784, rehearing and suggestion for rehearing en banc denied, amended on denial of rehearing. Civil Rights 1343

For §§ 1983 purposes, municipalities are deemed to be "persons" susceptible to suit. Batiste v. City of Beaumont, E.D.Tex.2005, 421 F.Supp.2d 969. Civil Rights 1343

Municipality may be liable under §§ 1983 when execution of its policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury. Fedor v. Kudrak,

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D.Conn.2006, 421 F.Supp.2d 473. Civil Rights 1351(1)

Municipalities and their officers are "persons" amenable to suit under §§ 1983. Figueroa-Garay v. Municipality of Rio Grande, D.Puerto Rico 2005, 364 F.Supp.2d 117. Civil Rights 1343; Civil Rights 1354

Municipalities are "persons" within the meaning of §§ 1983. Ashby v. Isle of Wight County School Bd., E.D.Va.2004, 354 F.Supp.2d 616. Civil Rights 1343

Municipal entities are deemed "persons" within the meaning of § 1983, and are therefore subject to liability for violations of such statute. Gonzalez-Caratini v. Garcia-Padilla, D.Puerto Rico 2003, 278 F.Supp.2d 189. Civil Rights 1343

Private entity that contracted with county to provide jail inmates with medical services was functionally equivalent to municipality for purposes of inmate's § 1983 suit alleging inadequate medical care; thus, claim required showing that entity was responsible for unconstitutional municipal custom or policy that was moving force behind inadequate care. Wall v. Dion, D.Me.2003, 257 F.Supp.2d 316. Civil Rights 1326(5); Civil Rights 1351(4)

Plaintiff who pursues § 1983 claim against municipality must show more than just alleged civil rights violation; at issue in such claim is city's deliberate indifference, and conduct of one of its employees, without more, generally cannot create jury question on that point. Torres v. McLaughlin, E.D.Pa.1997, 966 F.Supp. 1353, reversed 163 F.3d 169, certiorari denied 120 S.Ct. 797, 528 U.S. 1079, 145 L.Ed.2d 672. Civil Rights 1345; Civil Rights 1426

To sue municipality under § 1983, plaintiff must assert that existence of municipal policy or custom was cause of his injuries. Torres v. Knapich, S.D.N.Y.1997, 966 F.Supp. 194. Civil Rights 1351(1)

When execution of municipal government's policy or custom, whether made by its lawmakers or by those whose edicts and acts may fairly be said to represent official policy, inflicts injury, municipal government is responsible under § 1983. Torian v. City of Beckley, S.D.W.Va.1997, 963 F.Supp. 565. Civil Rights 1351(1)

Municipality is liable under § 1983 where municipal policymaker ratifies subordinate's decisions or acts; test is whether there is municipal policy or custom. Soto v. Schembri, S.D.N.Y.1997, 960 F.Supp. 751. Civil Rights 1351(1)

Municipality was not liable under § 1983 for decision by police officer to allow judicial candidate's spouse to remove flyers placed on car windshields by opponent of judge's election; although spouse allegedly removed flyers on several occasions, nothing indicated that police or village employees engaged in well-settled, widespread practice, and officer was not final policymaker on election pamphleteering. Chapman v. Village of Homewood, N.D.Ill.1997, 960 F.Supp. 127. Civil Rights 1351(4)

To hold municipality liable under § 1983, plaintiff must show that violation of his constitutional rights resulted from municipal policy or custom. Pravda v. City of Albany, N.Y., N.D.N.Y.1997, 956 F.Supp. 174. Civil Rights 1351(1)

A municipality may not be held liable under § 1983 for actions of its employees based on the theory of respondeat superior. Johnson v. City of New York, S.D.N.Y.1996, 940 F.Supp. 631. Civil Rights 1345

Municipality can only be held liable under § 1983 for acts which municipality itself is responsible, that is, those it has officially sanctioned or ordered. Boyer v. Board of County Com'rs of County of Johnson County, D.Kan.1996, 922 F.Supp. 476, affirmed 108 F.3d 1388. Civil Rights 1343

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42 U.S.C.A. § 1983

Municipalities are potentially liable in civil rights suit under § 1983 for policies and customs they consciously and purposefully adopt. Barney v. City of Greenville, Miss., N.D.Miss.1995, 898 F.Supp. 372. Civil Rights 1351(1)

Municipality can be found liable under § 1983 only where municipality itself causes constitutional violation at issue. Bowen v. City of Manchester, D.N.H.1991, 894 F.Supp. 561, affirmed 966 F.2d 13. Civil Rights 1343

266. ---- Boroughs, local governments, persons within section

Borough was not a "person" within meaning of this section and, therefore, was not a proper defendant in action by former police officer who sought preliminary and permanent injunctive relief in the form of reinstatement and back pay and a declaration that his termination was an unconstitutional denial of due process. Olson v. Borough of Homestead, W.D.Pa.1976, 417 F.Supp. 784, affirmed 568 F.2d 769. Civil Rights 1349

267. ---- Cities, local governments, persons within section

Village president did not have final policymaking authority with regard to zoning, as required to support business owners' § 1983 claim that citations and warnings were issued against them in retaliation for exercise of their First Amendment rights in speaking out against village's golf and waterworks bond proposals; policymaking authority was in board of trustees. Rasche v. Village of Beecher, C.A.7 (Ill.) 2003, 336 F.3d 588. Civil Rights 1351(3)

In order to succeed in § 1983 claim against city based on due process violation, plaintiff must show that city adhered to policy, practice or custom that caused him to be deprived of his constitutional rights. Perkins v. City of West Covina, C.A.9 (Cal.) 1997, 113 F.3d 1004, certiorari granted 118 S.Ct. 1690, 523 U.S. 1105, 140 L.Ed.2d 812, reversed 119 S.Ct. 678, 525 U.S. 234, 142 L.Ed.2d 636, on remand 167 F.3d 1286. Civil Rights 1351(1)

City was not liable under § 1983 to prospective purchaser for public corporation's policy requiring prospective purchasers of corporation's property to seek endorsement of alderperson within whose ward property was located; corporation was an entity entirely separate from city, there was no evidence that city adopted corporation's policy for city's own benefit, city did not involve itself in corporation's decision to sell corporation's property, and single alderperson had no final policy-making authority regarding sale of city property. Solomon Temple M.B. Church v. City of St. Louis, E.D.Mo.1997, 980 F.Supp. 1064. Civil Rights 1351(3)

City's alleged systematic inadequacies in processing citizen complaints did not constitute deliberate indifference giving rise to § 1983 liability in arrestee's action alleging civil rights violations relating to arrest and subsequent charges against him, absent evidence that such inadequacies constituted policy made as result of deliberate choice between alternatives, that, if inadequacies could be deemed policies, such policies were inadequate, or that city's choice of policy was made deliberately or recklessly, ignoring its deficiencies. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1351(4)

City qualified as "person" to whom § 1983 applied. Santa Fe Springs Realty Corp. v. City of Westminster, C.D.Cal.1995, 906 F.Supp. 1341.

268. ---- Counties, local governments, persons within section

Minority-owned construction firm failed to state § 1981 claim against county for violating county bidding procedures and excluding firm on basis of race from obtaining construction contract on county project, as it failed to allege that its rights were violated as a result of county "policy or custom"; although it alleged that county failed to enforce state and county bidding requirements, it did not allege that this failure to enforce constituted official policy or custom of county. Federation of African American Contractors v. City of Oakland, C.A.9 (Cal.) 1996, 96 F.3d 1204. Civil Rights 1395(1)

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42 U.S.C.A. § 1983

Kentucky county could be considered a "person" for purposes of § 1983. Smallwood v. Jefferson County Government, W.D.Ky.1991, 753 F.Supp. 657. Civil Rights 1350

269. ---- Districts, local governments, persons within section

Statutory transportation district was local governmental entity, not arm of the state, and district was thus "person" for purpose of § 1983 action alleging that actions of district's board of directors violated plaintiffs' First Amendment rights. Elam Const., Inc. v. Regional Transp. Dist., C.A.10 (Colo.) 1997, 129 F.3d 1343, certiorari denied 118 S.Ct. 1363, 523 U.S. 1047, 140 L.Ed.2d 513. Civil Rights 1350

270. ---- Towns, local governments, persons within section

Town was not liable, under § 1983, to 13-year-old girl and her family for violation of her Fourteenth Amendment liberty rights, occurring when police officer allegedly intimidated her into engaging in sexual activities with him; town could not be deemed to have foreseen obvious or actual danger that officer would attempt to capitalize on position of superiority over teenage girls arising from his status as law enforcement officer to extract sexual favors, and had no obligation to take measures to forestall that conduct. West By and Through Norris v. Waymire, C.A.7 (Ind.) 1997, 114 F.3d 646, certiorari denied 118 S.Ct. 337, 522 U.S. 932, 139 L.Ed.2d 261. Civil Rights 1352(4)

Civil rights action could be brought against both town and its mayor. McCulloch v. Glasgow, C.A.5 (Miss.) 1980, 620 F.2d 47. Civil Rights 1391

Town was not a "person" within this section. Ybarra v. Town of Los Altos Hills, C.A.9 (Cal.) 1974, 503 F.2d 250.

Town was subject to suit under this section. Martin v. Wray, E.D.Wis.1979, 473 F.Supp. 1131.

Complaint filed by corporation engaged in business of stone quarrying against township civic association and certain individual residents, alleging that defendants engaged in a concerted effort to terminate operation of plaintiff's business in violation of this section, had to be dismissed since township was not a "person" within meaning of provisions of this section. Miller & Son Paving, Inc. v. Wrightstown Tp. Civic Ass'n, E.D.Pa.1978, 443 F.Supp. 1268, affirmed 595 F.2d 1213, certiorari denied 100 S.Ct. 86, 444 U.S. 843, 62 L.Ed.2d 56. Federal Civil Procedure 1746

270A. Townships, persons within section

Township was "person," for purpose of civil rights claims of property owner against township alleging violation of its due process rights, since township had powers and duties of government. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Civil Rights 1347

271. Municipal agencies, persons within section

Arrestee who brought §§ 1983 action while he was incarcerated, and who was thereafter awarded one dollar in nominal damages for use of excessive force prior to his arrest, was entitled to attorney fees as provided by Prison Litigation Reform Act (PLRA), which limited attorney fee awards in prisoner suits to 150% of the money judgment. Robbins v. Chronister, C.A.10 (Kan.) 2006, 435 F.3d 1238. Civil Rights 1485

Term "persons" encompasses state and local officials sued in their individual capacities, private individuals and entities which acted under color of state law, and local governmental entities for purposes of § 1983 action; however, term "persons" does not encompass municipal departments. Vance v. County of Santa Clara,

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42 U.S.C.A. § 1983

N.D.Cal.1996, 928 F.Supp. 993. Civil Rights 1343

City housing authority was neither "department" or "agency" of city under Colorado law, and thus, city was not liable under § 1983 for authority's alleged discriminatory treatment of tenant of authority-owned apartment; city officials' limited authority to appoint commissioners for fixed terms and to remove them only for cause underscored independent nature of relationship between authority and city, tenant pointed to no evidence that city had any contact with him in matters pertaining to suit, and authority had power to choose legal counsel. Roe v. Housing Authority of City of Boulder, D.Colo.1995, 909 F.Supp. 814. Civil Rights 1347

Philadelphia Department of Public Health, a municipal agency, is a "person" amenable to suit under this section. Alexander v. Polk, E.D.Pa.1978, 459 F.Supp. 883.

272. County agencies, persons within section

County juvenile probation board was county agency rather than arm of the state, so that county could be held liable for civil rights violation based on policy of the board; state law tended to perceive the board as county agency, county, rather than state, was the major source of funding, board was primarily concerned with local, as opposed to statewide, problems, and board could set higher standards for operation of detention center than those set by state juvenile probation commission, which set minimum standards. Flores v. Cameron County, Tex., C.A.5 (Tex.) 1996, 92 F.3d 258, rehearing denied. Civil Rights 1351(4)

While county may be liable for the conduct of foster children under an in loco parentis theory under Ohio law, claim of licensed foster parents that county should be liable for harm inflicted on their natural children by foster children in their home was not cognizable under § 1983. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997, 968 F.Supp. 1212. Civil Rights 1057

County board of ethics was not entity separate from county that could be separately sued in § 1983 suit against county. Umhey v. County of Orange, N.Y., S.D.N.Y.1997, 957 F.Supp. 525. Civil Rights 1391; Counties 208

Failure of county welfare department to timely conduct, pursuant to Ohio R.C. § 2151.421, investigation of father's possible sexual abuse of his daughter did not result in termination by Domestic Relations Court of father's visitation rights, and thus county welfare department was not liable under § 1983 for deprivation of father's liberty interest in visitation, as domestic relations, which controls custody of minor children and awarding of visitation rights, is an entity separate and distinct from welfare department, having neither a direct nor indirect relationship with that department. Haag v. Cuyahoga County, N.D.Ohio 1985, 619 F.Supp. 262, affirmed 798 F.2d 1414. Civil Rights 1057

County agencies were subject to suit under this section. Gill v. Monroe County Dept. of Social Services, W.D.N.Y.1978, 79 F.R.D. 316, motion denied 95 F.R.D. 518.

273. Government officials generally, persons within section

Only direct acts or omissions of government officials, not acts of subordinates, will give rise to individual liability under § 1983. Coleman v. Houston Independent School Dist., C.A.5 (Tex.) 1997, 113 F.3d 528. Civil Rights 1355

Government officials who perform discretionary functions are not liable under § 1983 for civil damages to the extent that their conduct does not contravene clearly established statutory or constitutional rights of which reasonable person would have known. McLenagan v. Karnes, C.A.4 (Va.) 1994, 27 F.3d 1002, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

County police officer who was injured while working undercover when he was struck a police vehicle driven by another county officer who believed he was pursuing a robbery suspect failed to establish that county had a general custom of permitting the use of excessive force, so as to render it liable under §§ 1983 for his injury; plaintiff failed to provide any evidence that county should have been on notice that its officers were inadequately trained in the use of a vehicle as a weapon or were unlawfully using their vehicles as weapons. Perez v. Miami-Dade County, Florida, S.D.Fla.2004, 348 F.Supp.2d 1343, affirmed in part, vacated in part and remanded 168 Fed.Appx. 338, 2006 WL 372321. Civil Rights 1352(4)

To establish civil rights claim against public employee in his official capacity, plaintiff must show that unconstitutional policy or custom of employee caused alleged injury, and it is not sufficient that plaintiff demonstrate single unlawful act by nonpolicymaking employee. Jeffries v. Block, C.D.Cal.1996, 940 F.Supp. 1509 . Civil Rights 1351(1)

Government officials sued in their official capacity are "persons" under this section and may be sued for constitutional deprivations pursuant to governmental custom even though such a custom has not received formal approval through body's official decision-making channels. Woody v. City of West Miami, S.D.Fla.1979, 477 F.Supp. 1073. Civil Rights 1354

Action nominally filed against individual members of government agency in their official capacities cannot be maintained under this section providing action for deprivation of rights under color of state law where action seeks to utilize officials as conduit to treasury of agency itself and not as a "person" for purposes of jurisdiction under this section. Wade v. Mississippi Co-op. Extension Service, N.D.Miss.1976, 424 F.Supp. 1242. Civil Rights 1354

274. Supervisory officials, persons within section

Supervisory official may be held liable in federal civil rights action only if he was personally involved in constitutional deprivation, or if there was sufficient causal connection between official's wrongful conduct and constitutional violation. Jeffries v. Block, C.D.Cal.1996, 940 F.Supp. 1509. Civil Rights 1355

275. Federal officials, persons within section--Generally

Entitlement to relief under this section is available only against state actors, not against agents of the federal government. American Science & Engineering, Inc. v. Califano, C.A.1 (Mass.) 1978, 571 F.2d 58.

Actions of the federal government and its officials are beyond the purview of § 1983, which applies only to state actors acting under color of state law, but federal officials can be sued in their personal capacities under civil rights conspiracy statute. Benson v. U.S., N.D.Ill.1997, 969 F.Supp. 1129. Civil Rights 1327; Civil Rights 1362; Conspiracy 13

Taxpayer could not maintain action under § 1983 of Civil Rights Act against Internal Revenue Service (IRS) officer as § 1983 only entitled plaintiffs to relief against state actors, not federal actors. Del Elmer; Zachay v. Metzger, S.D.Cal.1997, 967 F.Supp. 398. Civil Rights 1327

Section 1983 does not extend to constitutional torts of federal officers unless they act in concert with state or local officials. McNally v. DeWitt, W.D.Ky.1997, 961 F.Supp. 1041. Civil Rights 1362

Inmates could not recover under § 1983 for alleged civil rights violations committed by federal officials. Inmates of MDC Guaynabo v. Franco, D.Puerto Rico 1995, 896 F.Supp. 248. Civil Rights 1364

Bivens actions, (i.e., constitutional torts) by federal employees against their supervisors concerning alleged

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job-related constitutional violations are not allowed and this is particularly true where there is employment relationship which is governed by comprehensive procedural and substantive provisions giving meaningful remedies against the United States. Rallis v. Stone, E.D.Mich.1993, 821 F.Supp. 466. United States 50.10(4)

Bivens, action is federal counterpart of § 1983 civil rights action. Shannon v. General Elec. Co., N.D.N.Y.1993, 812 F.Supp. 308.

An action brought pursuant to this section cannot lie against federal officers. Chodos v. F.B.I., S.D.N.Y.1982, 559 F.Supp. 69, affirmed 697 F.2d 289, certiorari denied 103 S.Ct. 741, 459 U.S. 1111, 74 L.Ed.2d 962, rehearing denied 103 S.Ct. 1451, 460 U.S. 1048, 75 L.Ed.2d 805. Civil Rights 1362

This section does not provide for suits against federal officials; thus, district court had no jurisdiction over federal defendants in civil rights case brought by inmate in federal custody. Anderson v. Luther, N.D.Ill.1981, 521 F.Supp. 91.

No action under this section lies against federal officials acting pursuant to federal law. Osorio v. Veterans Administration, D.C.Puerto Rico 1981, 514 F.Supp. 94, affirmed 676 F.2d 681. Civil Rights 1327

276. ---- Central Intelligence Agency officials, federal officials, persons within section

Central Intelligence Agency and director of the Agency were not subject to suit under this section. LaRouche v. City of New York, S.D.N.Y.1974, 369 F.Supp. 565. Civil Rights 1364

277. ---- Environmental Protection Agency officials, federal officials, persons within section

Corporation and its officers and employees could not maintain § 1983 action against employees of Environmental Protection Agency in their individual capacities, in absence of allegations to support bald statement that employees were acting under color of laws of New Hampshire, where employees never asserted to be other than agents of United States. Behre v. Thomas, D.N.H.1987, 665 F.Supp. 89, affirmed 843 F.2d 1385. Civil Rights 1327

278. State or commonwealth officials, persons within section--Generally

State officers who violate defendants' federal constitutional and statutory rights may be made to respond in damages not only for violation of rights conferred by federal equal civil rights laws but for violation of other federal constitutional and statutory rights as well. City of Greenwood, Miss. v. Peacock, U.S.Miss.1966, 86 S.Ct. 1800, 384 U.S. 808, 16 L.Ed.2d 944. Civil Rights 1027; States 79

Governor is a state official who, when sued in his official capacity for injunctive relief, would be a "person" under § 1983. Haley v. Pataki, C.A.2 (N.Y.) 1997, 106 F.3d 478. Civil Rights 1354

Neither states nor state officials in their official capacities are "persons" within the meaning of §§ 1983. Thomas v. Walton, S.D.Ill.2006, 461 F.Supp.2d 786. Civil Rights 1354

Neither state nor its officials acting in their official capacities are "persons" under §§ 1983, which provides cause of action only against persons who, under color of state law, deprive an individual of his constitutional rights. Ferguson v. Georgia Dept. of Corrections, M.D.Ga.2006, 428 F.Supp.2d 1339. Civil Rights 1354

Neither state nor its officials acting in their official capacities are "persons" under §§ 1983. Googerdy v. North Carolina Agr. and Technical State University, M.D.N.C.2005, 386 F.Supp.2d 618. Civil Rights 1354

State official in his or her official capacity, when sued for injunctive relief, is a "person" under §§ 1983;

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official-capacity actions for prospective relief are not treated as actions against State. Boone v. Pennsylvania Office of Vocational Rehabilitation, M.D.Pa.2005, 373 F.Supp.2d 484. Civil Rights 1354

Under the Eleventh Amendment, a state, its agencies, and agency officials acting in their official capacities are not "persons" for purposes of §§ 1983, and therefore are not subject to suit for money damages in the federal courts without the state's consent. Hudson v. Maloney, D.Mass.2004, 326 F.Supp.2d 206. Federal Courts 269

Puerto Rico officials, sued in their official capacity in employee's action alleging she was transferred from her position as Temporary Manager of Right to Work Administration (RWA) because of her political affiliation, were not "persons" subject to suit under § 1983. Torres Ocasio v. Melendez, D.Puerto Rico 2003, 283 F.Supp.2d 505. Civil Rights 1359

Claim of racial discrimination in contracting may be brought, under § 1983, against state officials in their individual capacities. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Civil Rights 1360

Eleventh Amendment did not bar former employee's § 1983 claims against agents of county board of education for prospective relief in their official capacities, and for damages against the individuals in their personal capacities, based on alleged denial of employee's First Amendment rights. Lewis v. Board of Educ. of Talbot County, D.Md.2003, 262 F.Supp.2d 608. Federal Courts 270; Federal Courts 272

When state officer violates federal constitutional mandates, even when carrying out state policy, he is stripped of his official or representative character and is subjected in his person to consequences of his individual conduct. Rumph v. State Workmen's Ins. Fund, E.D.Pa.1997, 964 F.Supp. 180. Civil Rights 1354

State officials acting in their official capacities are not "persons" within meaning of § 1983 in complaints for monetary damages and are not subject to suit in their official capacities under § 1983. Lowery v. Prince George's County, Md., D.Md.1997, 960 F.Supp. 952. Civil Rights 1354

State officials acting in their official capacities are not subject to suit under § 1983, as suit against state official in his or her official capacity is not suit against official, but rather, suit against official's office. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1354

State officials subject to "prospective injunctive relief" exception to Eleventh Amendment would be regarded as "persons" under § 1983, and thus § 1983 claims against them may be brought in federal or state court. Office of Hawai'ian Affairs v. Department of Educ., D.Hawai'i 1996, 951 F.Supp. 1484. Civil Rights 1354

Former Secretary of Education was not liable in § 1983 action alleging violation of due process clause or § 1985 action alleging a conspiracy to violate teacher's civil rights for her actions in suspending teacher after teacher repeatedly refused to accept her work assignment where Secretary notified teacher of her right to request informal hearing before suspension and cancellation of her teacher certificate, teacher was notified of informal hearing, hearing lasted for two days and teacher was apprised of charges against her. Reyes-Pagan v. Benitez, D.Puerto Rico 1995, 910 F.Supp. 38. Civil Rights 1133; Conspiracy 7.5(1)

State officer acting in his official capacity was a "person" under § 1983. Mille Lacs Band of Chippewa Indians v. State of Minn., D.Minn.1994, 853 F.Supp. 1118, affirmed 124 F.3d 904, rehearing and suggestion for rehearing en banc denied, certiorari granted 118 S.Ct. 2295, 524 U.S. 915, 141 L.Ed.2d 156, affirmed 119 S.Ct. 1187, 526 U.S. 172, 143 L.Ed.2d 270, certiorari denied 119 S.Ct. 1333, 526 U.S. 1038, 143 L.Ed.2d 497, certiorari denied 119 S.Ct. 1376, 526 U.S. 1060, 143 L.Ed.2d 535. Civil Rights 1360

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42 U.S.C.A. § 1983

For court to impose § 1983 civil rights liability for state's policy, custom, or practice, underlying violative acts must have been committed by state officials. Elliott v. New Miami Bd. of Educ., S.D.Ohio 1992, 799 F.Supp. 818. Civil Rights 1351(1)

It is the nature of act performed by state official, not the status of state official as such, that is determinative of applicability of this section. Myers v. Bull, E.D.Mo.1978, 462 F.Supp. 107, affirmed 599 F.2d 863, certiorari denied 100 S.Ct. 213, 444 U.S. 901, 62 L.Ed.2d 138. Civil Rights 1326(2)

279. ---- Immigration and naturalization officials, state or commonwealth officials, persons within section

Acting Chief of Immigration and Naturalization Office for Government of Commonwealth of Northern Mariana Islands (CNMI) was "person" under § 1983 for purposes of suit against him in his individual capacity. DeNieva v. Reyes, C.A.9 (N.Mariana Islands)1992, 966 F.2d 480. Civil Rights 1364

280. ---- Secretaries of health and social services, state or commonwealth officials, persons within section

State Secretary of Health and Social Services and Director of Social Services were "persons" within meaning of this section, even though they were being sued in their official capacities. Rochester v. White, C.A.3 (Del.) 1974, 503 F.2d 263. Civil Rights 1360

281. ---- State's attorneys, state or commonwealth officials, persons within section

Under state law, state's attorney was state official and thus was not "person" suable in his official capacity under § 1983. Houston v. Cook County, N.D.Ill.1990, 758 F.Supp. 1225. Civil Rights 1358

State inmate pleaded himself out of court on § 1983 conspiracy claim when he alleged conspiracy by state officials to violate his First, Ninth, and Fourteenth Amendment rights, but then alleged specific actions contradicting that claim by asserting that former governor had pursued policy restricting prisoner access to pornography for political reasons, successfully lobbied state legislature to change existing policy, and then had state's corrections department carry out new policy; such allegations did not support existence of agreement to deprive inmate of his constitutional rights, or suggest that state officials' acts deprived him of a constitutional right. McMillian v. Litscher, C.A.7 (Wis.) 2003, 72 Fed.Appx. 438, 2003 WL 21489717, Unreported. Conspiracy 18

282. District of Columbia officials, persons within section

This section does not apply to officers of the District of Columbia. Dellums v. Powell, C.A.D.C.1977, 566 F.2d 216, 184 U.S.App.D.C. 324, certiorari denied 98 S.Ct. 3147, 438 U.S. 916, 57 L.Ed.2d 1161, rehearing denied 99 S.Ct. 234, 439 U.S. 886, 58 L.Ed.2d 201. Civil Rights 1354

The District of Columbia and its officers were "persons" within meaning of § 1983, for purposes of automobile owner's action for declaratory relief and damages allegedly resulting from police department possession of her automobile as part of sting operation designed to combat motor vehicle theft. O'Callaghan v. District of Columbia, D.D.C.1990, 741 F.Supp. 273. Civil Rights 1348; Civil Rights 1358

283. Territories, persons within section

Neither the Territory of Guam nor an officer of the Territory acting in his official capacity is a "person" within meaning of § 1983. Ngiraingas v. Sanchez, U.S.Guam 1990, 110 S.Ct. 1737, 495 U.S. 182, 109 L.Ed.2d 163. Civil Rights 1344; Civil Rights 1354

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42 U.S.C.A. § 1983

Litigant was not entitled to injunctive relief under § 1983 to prevent Virgin Islands and its officials from allegedly further depriving him of his property without due process inasmuch as neither the territory of the Virgin Islands nor its officers acting in their official capacities were "persons" within the meaning of § 1983. Brow v. Farrelly, C.A.3 (Virgin Islands) 1993, 994 F.2d 1027, as amended. Civil Rights 1347; Civil Rights 1357

Neither the territory of Guam nor its employees acting in their official capacities are persons for purposes of federal civil rights statute. Bermudez v. Duenas, C.A.9 (Guam) 1991, 936 F.2d 1064. Civil Rights 1344; Civil Rights 1354

Territory is not "person" for purposes of § 1983, just as state is not "person." Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1344

Section 1983 does not apply to territories such as Virgin Islands. Lake v. V.I. Water and Power Authority, D.Virgin Islands 1994, 875 F.Supp. 283. Civil Rights 1344

284. Territory officials, persons within section

Governor of Guam was "person," within meaning of § 1983, when sued in his official capacity for prospective relief. Guam Soc. of Obstetricians and Gynecologists v. Ada, C.A.9 (Guam) 1992, 962 F.2d 1366, as amended, certiorari denied 113 S.Ct. 633, 506 U.S. 1011, 121 L.Ed.2d 564. Civil Rights 1360

For purposes of § 1983, territorial officials sued in their official capacities are not "persons" with respect to suits for retrospective damages, but are "persons" with respect to suits for prospective injunctive relief. Everett v. Schneider, D.Virgin Islands 1997, 989 F.Supp. 720. Civil Rights 1354

Officers and employees of territory such as the Virgin Islands acting in their official capacities may not be made defendants in § 1983 action. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1354

285. Local government officials, persons within section

Local government officials sued in their official capacities are "persons" for purposes of this section in those cases in which a local government would be suable in its own name. Monell v. Department of Social Services of City of New York, U.S.N.Y.1978, 98 S.Ct. 2018, 436 U.S. 658, 56 L.Ed.2d 611. Civil Rights 1354

The term "persons," for purposes of § 1983 section providing for liability of any person who subjects a citizen or other person to deprivation of any rights, privileges, or immunities secured by the Constitution and laws, includes local and state officers acting under color of state law. Carver v. Foerster, C.A.3 (Pa.) 1996, 102 F.3d 96. Civil Rights 1354

286. Municipal officials, persons within section

Municipal employee may partially or completely avoid liability for violations of civil rights by showing that he was acting within scope of his official duties; if he can show that his actions were pursuant to official policy, he can shift part of his liability to municipality. Dunton v. Suffolk County, State of N.Y., C.A.2 (N.Y.) 1984, 729 F.2d 903, amended on other grounds 748 F.2d 69. Civil Rights 1354

Like municipalities, municipal officials are liable for their own acts and for those of their agents; however, although municipal employees are agents of municipality, they are not necessarily agents of their superiors. Trotter

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v. City of Chicago, N.D.Ill.1983, 573 F.Supp. 1269. Municipal Corporations 170

287. City officials, persons within section

Officers in official capacity are legally indistinct from city itself, in civil rights suit. Cruz v. City of Wilmington, D.Del.1993, 814 F.Supp. 405. Civil Rights 1354

288. County officials, persons within section

Board of county commissioners was not liable in civil rights action for conduct of president of board in ruling a citizen out of order while citizen was addressing public meeting and then evicting him. Collinson v. Gott, C.A.4 (Md.) 1990, 895 F.2d 994. Civil Rights 1350

Claims against director of county social services department and its board of directors for violations of due process and equal protection in connection with administration of North Carolina's low-income home energy assistance program could only proceed under statute, which prohibits deprivation of federal constitutional rights under color of state law, where directors were local officials. Hunt v. Robeson County Dept. of Social Services, C.A.4 (N.C.) 1987, 816 F.2d 150.

289. Election officials, persons within section

Commissioners of election for county who were sued in their official capacities were "persons" within meaning of this section. Lytle v. Commissioners of Election of Union County, C.A.4 (S.C.) 1976, 541 F.2d 421, certiorari denied 98 S.Ct. 3122, 438 U.S. 904, 57 L.Ed.2d 1147. Civil Rights 1360

In action alleging that city councilman candidate was unconstitutionally denied access to the ballot and that voters in turn were unconstitutionally denied right to vote for him in which members of city board of elections were sued individually and as an entity, there was no problem as to whether plaintiffs had sued a "person" within meaning of this section and, similarly, whether intervenor state was immune was irrelevant since relief would run against city board of elections. Williams v. Sclafani, S.D.N.Y.1978, 444 F.Supp. 906, affirmed 580 F.2d 1046. Civil Rights 1350

289A. Employers

Fire protection district chairman and fire chief did not have to be employers to be potentially liable under §§ 1983 for acts of discrimination against district employee. Aucoin v. Kennedy, E.D.La.2004, 355 F.Supp.2d 830. Civil Rights 1359

290. Historical societies, persons within section

Since state historical society was a state educational institution and state agency, society was a "person" for purposes of this section, and, therefore, former curator of material culture for state historical society could maintain action based on allegedly wrongful dismissal against state historical society. Morrow v. Sudler, D.C.Colo.1980, 502 F.Supp. 1200. Civil Rights 1349

291. Hospitals, persons within section

County hospital was a "governmental entity" subject to liability under §§ 1983, where the hospital was created as a public trust pursuant to state law. Beedle v. Wilson, C.A.10 (Okla.) 2005, 422 F.3d 1059. Civil Rights 1326(1)

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42 U.S.C.A. § 1983

State action prerequisite of § 1983 was satisfied in action against hospital where hospital was financed by Commonwealth, its by-laws were approved by Secretary of Health, and its "governing body" or final decider was Secretary or Secretary's Regional Director. Davila-Lopes v. Zapata, C.A.1 (Puerto Rico) 1997, 111 F.3d 192, rehearing denied. Civil Rights 1326(7)

Mental hospital created by statute and maintained by state was state agency, and, as such, was not "person" subject to liability for damages under federal civil rights statute. Bushey v. Derboven, D.Me.1996, 946 F.Supp. 96. Civil Rights 1350

Intensive treatment center, where unit of prisoners was working when alleged § 1983 violations occurred, was not "person" subject to § 1983 claim. Gardner v. Beale, E.D.Va.1991, 780 F.Supp. 1073, affirmed 998 F.2d 1008. Civil Rights 1348

Where hospital was maintained and controlled by state and had little or no independent existence, neither hospital nor individual defendants in their official capacities were "persons" within meaning of this section. Gann v. Delaware State Hosp., D.C.Del.1982, 543 F.Supp. 268. Civil Rights 1350

Although hospital district organized pursuant to California's Local Hospital District Law, West's Ann.Cas. Health & Safety Code, § 32000 et seq. and West's Ann.Cal.Gov.Code, § 23500 et seq., was not a "person" within meaning of this section, the hospital board members, who were sued in their official capacities for monetary and equitable relief and who were individually named in the complaint, were "persons" within meaning of this section. Heath v. Redbud Hospital Dist., N.D.Cal.1977, 436 F.Supp. 766. Civil Rights 1360

292. Hotels, persons within section

Where there was nothing to show that hotel in which plaintiff, suing for false arrest and imprisonment, was arrested by deputy sheriffs who were carrying out an assignment of roaming rooming areas in hotels because of high burglary rate, had employed deputies or was in any way connected with their activities, action against hotel could not be maintained. Schulz v. Lamb, C.A.9 (Nev.) 1974, 504 F.2d 1009, on remand 416 F.Supp. 723. False Imprisonment 15(1)

293. Insurance funds, persons within section

Oklahoma State Insurance Fund was not "person" within purview of this section or § 1985 of this title. Boling v. National Zinc Co., N.D.Okla.1976, 435 F.Supp. 18.

294. Joint tortfeasors, persons within section

There can be no joint tortfeasors under this section unless it can be shown that defendants participated in specific acts complained of. Dykes v. Camp, E.D.Mo.1971, 333 F.Supp. 923. Civil Rights 1335

295. Judges, persons within section

Defendants in criminal cases could not maintain § 1983 action against individual judges on state court of criminal appeals, alleging that their Sixth and Fourteenth Amendment rights were denied through slow processing of appeals, except to extent that defendants were suing for prospective injunctive relief; judge was not a "person" who could be sued under § 1983. Harris v. Champion, C.A.10 (Okla.) 1995, 51 F.3d 901. Civil Rights 1358

Superior court judge who issued illegal bond schedule was an official of the state, rather than of the city or county as required to impose liability under § 1983 on city or county for wrongful detention of arrestee. Woods v. City of Michigan City, Ind., C.A.7 (Ind.) 1991, 940 F.2d 275. Civil Rights 1358

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Judge of Indiana Circuit Court and chief probation officer of such circuit court were "persons" who could be defendants in a civil rights suit. Drollinger v. Milligan, C.A.7 (Ind.) 1977, 552 F.2d 1220. Civil Rights 1358

Civil rights claims against Probate Court judge in his official capacity were barred by the Eleventh Amendment, and because, in his official capacity, he was not a "person" within the scope of §§ 1983. Collins v. West Hartford Police Dept., D.Conn.2005, 380 F.Supp.2d 83. Federal Courts 269

Under California law, municipal court judges were "state officials" at time they allegedly forced commissioner of consolidated superior and municipal courts to retire in violation of his First Amendment rights, and thus county could not be held responsible for their conduct under § 1983; California law gave State, not counties, direction and control over municipal court judges, and it was State that had granted municipal court judges discretion to hire and fire court commissioners. Meek v. County of Riverside, C.D.Cal.1997, 982 F.Supp. 1410, affirmed in part, dismissed in part 183 F.3d 962, certiorari denied 120 S.Ct. 499, 528 U.S. 1005, 145 L.Ed.2d 386. Civil Rights 1349; Judges 36

Black attorney's claim that judge presiding over state court case brought by attorney referred to him "in vicious derogatory terms in regards to his race and color," refused to allow him representation, and improperly dismissed state court suit stated claim under § 1983. Davidson v. Garry, E.D.N.Y.1996, 956 F.Supp. 265, affirmed 112 F.3d 503. Civil Rights 1395(1)

Prisoner's motion for leave to amend his civil rights complaint to add as defendant the New York State Appellate Division, First Department, charging the court with failure to provide him with adequate counsel for his appeal would be denied, since the Appellate Division was not a "person" for purposes of § 1983 and its justices could not be sued in their individual capacity for money damages under § 1983. Mathis v. Clerk of First Dept., Appellate Div., S.D.N.Y.1986, 631 F.Supp. 232. Federal Civil Procedure 258

296. Judicial entities, persons within section

State judicial entities are not "persons" within meaning of § 1983 and therefore cannot be sued under § 1983. Pokrandt v. Shields, E.D.Pa.1991, 773 F.Supp. 758. Civil Rights 1344

297. Libraries, persons within section

Juvenile inmate class was not a "prevailing party" in class action against state alleging violations of due process under First and Fourteenth Amendments, and violations of IDEA, and thus was not entitled to recover attorney fees under § 1988; although a settlement agreement was approved by the district court and the court retained jurisdiction to enforce the agreement, the only remedies available would be a breach of contract action or reinstatement of the dismissed action, but not a contempt remedy. Christina A. ex rel. Jennifer A. v. Bloomberg, C.A.8 (S.D.) 2003, 315 F.3d 990, rehearing and rehearing en banc denied. Civil Rights 1485; Schools 155.5(5)

District court had subject-matter jurisdiction of civil rights action by librarian against library board alleging violations of U.S.C.A.Const. Amends. 1, 5 and 14, inasmuch as library board was a "person" within meaning of this section. Layton v. Swapp, D.C.Utah 1979, 484 F.Supp. 958.

298. Military personnel, persons within section

Federal naval base police officers who continued to investigate incident involving alleged disorderly conduct incident at golf course on federal property by following the person off of the federally owned golf course and arresting him were still acting under color of federal law, rather than state law, for purposes of the arrestee's § 1983 action against the arresting officers, once they left the federally owned golf course. Case v. Milewski, C.A.7 (Ill.)

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42 U.S.C.A. § 1983

2003, 327 F.3d 564. Civil Rights 1327

Before passage of this section, there was no liability on part of military superiors for transgressions against rights of other military personnel, and by the passage of this section, Congress did not intend to create such rights. Martelon v. Temple, C.A.10 (Colo.) 1984, 747 F.2d 1348, certiorari denied 105 S.Ct. 2675, 471 U.S. 1135, 86 L.Ed.2d 694. Armed Services 33

District court would not dismiss state employees' constitutional claims against Illinois National Guard and officers as barred under *Bivens* or § 1983 where it was unable to determine whether their employment was of civilian or military nature. Bartley v. U.S. Dept. of Army, C.D.Ill.2002, 221 F.Supp.2d 934. Civil Rights 1376(10); United States 50.10(5)

Former service members' claims for injunctive relief against military superiors were nonjusticiable in § 1983 action alleging discharge from national guard on basis of race; allowing equitable relief against superiors would be disruptive to military service. Banks v. Commander of Detachment 1, First Battalion (M) of 121st Infantry of Georgia Army Nat. Guard, M.D.Ga.1992, 797 F.Supp. 984, affirmed 998 F.2d 1023. Militia 3

299. National Guard, persons within section

South Carolina National Guard was not a "person" within meaning of § 1983. Introini v. South Carolina Nat. Guard, D.S.C.1993, 828 F.Supp. 391. Civil Rights 1350

300. Newsmen or reporters, persons within section

In civil rights action brought by prisoners who alleged that newspaper article which reported statement of prison guards' union president deprived prisoners of equal protection of the laws and of other privileges and immunities under the Constitution, newspaper reporter and newspaper publisher could not be held liable for exercising their constitutionally protected rights as newsmen. Fitzpatrick v. Wert, W.D.N.Y.1977, 432 F.Supp. 601. Civil Rights 1374

301. Parole boards or officials, persons within section

Pennsylvania Board of Parole and Pardon could not be sued for damages by prisoner, bringing action under this section, since Board was not a "person" within meaning of this section. Thompson v. Burke, C.A.3 (Pa.) 1977, 556 F.2d 231, on remand 544 F.Supp. 173. Civil Rights 1348

A state parole board is not a "person" within this section. Madden v. New Jersey State Parole Bd., C.A.3 (N.J.) 1971, 438 F.2d 1189. See, also, Paige v. Pennsylvania Bd. of Parole, D.C.Pa.1970, 311 F.Supp. 940; Williams v. Craven, D.C.Cal.1967, 273 F.Supp. 649, certiorari denied 89 S.Ct. 242, 393 U.S. 916, 21 L.Ed.2d 201.

New York State Parole Commission and New York State Department of Correctional Services are agencies of New York, created and established by New York law, and therefore, State of New York, New York State Parole Commission, and Department of Correctional Services could not be sued under this section. Provet v. State of N. Y., S.D.N.Y.1982, 546 F.Supp. 492. Civil Rights 1348

302. Partnerships, persons within section

Conjugal partnerships made up of former employers and their wives under Puerto Rico law were "persons" for purposes of § 1983 and could be sued in former employee's civil rights suit for his allegedly unconstitutional patronage dismissal. Mercado-Vega v. Martinez, D.Puerto Rico 1986, 666 F.Supp. 3. Civil Rights 1340

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42 U.S.C.A. § 1983

303. Peer review organizations, persons within section

Plaintiff could not assert action under this section against peer review organization established under Medicare Act, section 1395 et seq. of this title, since organization was a federal, not state, entity, inasmuch as it was created by federal statute, it performed critical federal function of monitoring costs of services provided under Medicare Act, federal government actively regulated, directed and encouraged organization's actions and final determinations of organization are subject only to review by federal agency and federal courts. Smith v. North Louisiana Medical Review Ass'n, C.A.5 (La.) 1984, 735 F.2d 168.

304. Police commissioners, persons within section

Civil rights defendant was § 1983 "person" and lawsuit was not barred by the Eleventh Amendment where complaint expressly stated that defendant, head of state police, was being sued in his individual capacity. Kuhnert v. Fontenot, M.D.La.1996, 926 F.Supp. 79. Federal Courts 269

Retired ex-senior staff officers of New York City police department could not obtain monetary relief either from board of trustees of police pension fund or police commissioner, mayor and comptroller based on allegedly unconstitutional provisions of personnel order governing retroactive pay since neither the agency nor the officials were a "person" under this section, however, defendants were "persons" for purposes of declaratory relief. Wynne v. Codd, S.D.N.Y.1976, 435 F.Supp. 431. Civil Rights 1349; Declaratory Judgment 209

County police commissioner, county executive and county police officers who allegedly arrested plaintiff lecturer of birth control and plaintiff mother of 14-month-old child for endangering the welfare of the child by exposing the child to a lecture concerning birth control devices were "persons" suable for monetary damages within the meaning of this section because of alleged individual actions, under color of their respective positions in the county, engaging in acts in violation of civil rights and description in the complaint of the defendant's official positions did not transform the action into one against the county. Manfredonia v. Barry, E.D.N.Y.1971, 336 F.Supp. 765. Civil Rights 1358

305. Police departments, persons within section

Neither Guam nor Guam police department was "person" chargeable with violating territorial law under § 1983. Ngiraingas v. Sanchez, C.A.9 (Guam) 1988, 858 F.2d 1368, certiorari granted 110 S.Ct. 48, 493 U.S. 807, 107 L.Ed.2d 17, affirmed 110 S.Ct. 1737, 495 U.S. 182, 109 L.Ed.2d 163.

Because a municipal police department is not an independent legal entity, it is not subject to suit under §§ 1983. Nicholson v. Lenczewski, D.Conn.2005, 356 F.Supp.2d 157. Civil Rights 1348

Pennsylvania State Police (PSP) was not a "person" for purposes of female state trooper's § 1983 claim. Zelinski v. Pennsylvania State Police, M.D.Pa.2003, 282 F.Supp.2d 251, affirmed in part, vacated in part and remanded 108 Fed.Appx. 700, 2004 WL 1799234. Civil Rights 1349

In § 1983 actions, police departments cannot be sued in conjunction with municipalities, because the police departments are merely administrative agencies of the municipalities--not separate judicial entities. Pahle v. Colebrookdale Tp., E.D.Pa.2002, 227 F.Supp.2d 361. Civil Rights 1348

Police departments cannot be sued in conjunction with municipality in § 1983 actions since police department is merely arm of local municipality. Irvin v. Borough of Darby, E.D.Pa.1996, 937 F.Supp. 446. Civil Rights 1348

Under Florida law, city police department was not "person," and thus was not subject to suit or liability under §

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42 U.S.C.A. § 1983

1983. Pierre v. Schlemmer, M.D.Fla.1996, 932 F.Supp. 278. Civil Rights 1348

City police department was not "person" within meaning of Civil Rights Act and, therefore, was not suable under that statute. Hoffman v. Hunt, W.D.N.C.1994, 845 F.Supp. 340. Civil Rights 1348

City police department was not liable to inmate under § 1983 for alleged unnecessary force when they arrested inmate, as inmate made no response to, and court did not identify any law that contradicted, department's contention that it had no legal or corporate existence apart from city, and that department accordingly was not "person" subject to liability under § 1983. Higgenbottom v. McManus, W.D.Ky.1994, 840 F.Supp. 454. Civil Rights 1348

Municipal police department was not "person," for purposes of § 1983 action. PBA Local No. 38 v. Woodbridge Police Dept., D.N.J.1993, 832 F.Supp. 808. Civil Rights 1348

Municipal police department was not legal entity separate from parent city, and, thus, naming department as separate defendant was redundant in § 1983 action against city and department. Damron v. Pfannes, E.D.Mich.1992, 785 F.Supp. 644. Civil Rights 1389

As agency of the city, New York City police department is not a suable entity, and neither is the property clerk. East Coast Novelty Co., Inc. v. City of New York, S.D.N.Y.1992, 781 F.Supp. 999, reargument denied 141 F.R.D. 245. Municipal Corporations 1016

Neither municipal police department nor internal affairs division of police department was a suable entity, and thus neither was a proper party defendant in civil rights action against city and others. Curran v. City of Boston, D.Mass.1991, 777 F.Supp. 116. Municipal Corporations 1016

Neither city police department nor its building and zoning department were "persons" subject to liability for violating federal civil rights statute; rather, city itself was proper party. Post v. City of Fort Lauderdale, S.D.Fla.1990, 750 F.Supp. 1131. Civil Rights 1347; Civil Rights 1348

City police department is not a "person" within this section and thus was not a proper party to suit seeking declaration of unconstitutionality of ordinance prohibiting female employees of taverns from sitting with male patrons at the taverns. White v. Flemming, E.D.Wis.1974, 374 F.Supp. 267, affirmed 522 F.2d 730. Civil Rights 1350; Civil Rights 1391

Plaintiff who was allegedly assaulted by police officers was barred from asserting § 1983 claim against police precinct, as precinct was division of city police department, which lacked independent legal existence. Flemming v. New York City, S.D.N.Y.2003, 2003 WL 296921, Unreported. Civil Rights 1348

306. Police officers, persons within section

Law enforcement officers were not "persons" against whom § 1983 claims could be asserted, to extent they were being sued for monetary relief in their official capacities. Schwartz v. Pridy, E.D.Mo.1995, 874 F.Supp. 256, affirmed 94 F.3d 453. Civil Rights 1358

Superintendent of police force of New York Port Authority was "person" within meaning of this section and was proper party defendant in suit in which religious organization sought injunctive relief against enforcement of Authority's licensing regulations relating to dissemination of religious literature at airports controlled by Authority. International Soc. for Krishna Consciousness, Inc. v. New York Port Authority, S.D.N.Y.1977, 425 F.Supp. 681. Civil Rights 1360; Civil Rights 1391

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42 U.S.C.A. § 1983

307. Prison boards, persons within section

Under terms of city charter, city department of correction was not suable entity for purposes of pro se § 1983 claim concerning alleged violations of civil rights from placement in maximum security during pretrial detention. Adams v. Galletta, S.D.N.Y.1997, 966 F.Supp. 210. Civil Rights 1389; Municipal Corporations 1016

County prison board was not a "person" within purview of this section; thus complaint filed by former inmate against board could not be maintained under this section. Gahagan v. Pennsylvania Bd. of Probation and Parole, E.D.Pa.1978, 444 F.Supp. 1326. Civil Rights 1348

308. Prison officials, persons within section

Where harm complained-of by pretrial detainee is particular act or omission of one or more officials, action is characterized as "episodic act or omission case." Scott v. Moore, C.A.5 (Tex.) 1997, 114 F.3d 51. Prisons 4(4)

Governor of West Virginia, Commissioner of Department of Corrections, and prison officials in their individual capacities were "persons" within meaning of § 1983. Goodmon v. Rockefeller, C.A.4 (W.Va.) 1991, 947 F.2d 1186. Civil Rights 1358

Claims against prison officials for injunctive relief in their official capacities and all claims against them in their individual capacities were not barred by Eleventh Amendment, and were claims against a "person" within meaning of federal civil rights statute. Davie v. Wingard, S.D.Ohio 1997, 958 F.Supp. 1244, 166 A.L.R. Fed. 709. Civil Rights 1358; Federal Courts 269

Allegation that prison warden ordered inmate into general population identified warden as active participant, not merely supervisor, and warden would therefore not be dismissed from inmate's § 1983 suit. Bullock v. Barham, N.D.Ill.1997, 957 F.Supp. 154. Civil Rights 1395(7)

When inmate seeks damages from prison official or state official in his individual capacity under § 1983, inmate must demonstrate that official, in acting or failing to act, caused alleged constitutional deprivation. Gardner v. Wilson, C.D.Cal.1997, 959 F.Supp. 1224. Civil Rights 1358

309. Prisons, persons within section

Cook County jail is not a "person" for purposes of federal civil rights statute. Powell v. Cook County Jail, N.D.Ill.1993, 814 F.Supp. 757. Civil Rights 1348

Degree of state involvement in administration of local jails in Virginia mandates that local jails be considered "arms of state" for Eleventh Amendment purposes and, thus, not "persons" under § 1983; part of cost of judgments against employees of local jails is born by state, local jails receive substantial state funding, members of sheriff's office who administer jails are state officers, and state regulations sharply curtail local autonomy to run jails. McCoy v. Chesapeake Correctional Center, E.D.Va.1992, 788 F.Supp. 890. Civil Rights 1348; Federal Courts 269

City jail was not "person" amenable to suit under § 1983. Brooks v. Pembroke City Jail, E.D.N.C.1989, 722 F.Supp. 1294. Civil Rights 1348

County farms prison is not a "person" subject to suit under this section. Mitchell v. Chester County Farms Prison, E.D.Pa.1976, 426 F.Supp. 271. Civil Rights 1348

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310. Prosecutor's offices, persons within section

County prosecutor's office was not an entity subject to suit under this subchapter. Hancock v. Washtenaw County Prosecutor's Office, E.D.Mich.1982, 548 F.Supp. 1255. Civil Rights 1348

311. Retirement boards or systems, persons within section--Generally

Virginia Retirement System (VRS) was arm of the State entitled to immunity under Eleventh Amendment, and thus was not "person" which could be sued in federal civil rights action brought by prison inmate who alleged that VRS had wrongfully denied him disability retirement benefits. Sculthorpe v. Virginia Retirement System, E.D.Va.1997, 952 F.Supp. 307. Civil Rights 1348; Federal Courts 269

A state Public Employees Retirement System was not a "person" for purposes of liability under § 1983. Reiger v. Kansas Public Employees Retirement System, D.Kan.1990, 755 F.Supp. 360. Civil Rights 1349

312. ---- Teachers' retirement boards, retirement boards or systems, persons within section

Because neither the City of New York nor the New York City Teachers' Retirement Board was a "person" for purposes of this section, retired teacher could not maintain action against City and Board under this section to challenge investment of New York City teachers' retirement funds in obligations of the municipal assistance corporation. Tron v. Condello, S.D.N.Y.1976, 427 F.Supp. 1175. Civil Rights 1349

313. School activities associations, persons within section

High school activities association and its members were "persons" within meaning of this section. Baltic Independent School Dist. No. 115 of Minnehaha County, South Dakota v. South Dakota High School Activities Ass'n, D.C.S.D.1973, 362 F.Supp. 780. Civil Rights 1346

314. School boards, persons within section

Finding that municipalities, including school boards, are "persons" within this section does not imply that the same level of immunity must apply to municipalities as to individual officeholders; different "persons" under this section require different levels of immunity and rationale for individual immunity need not carry over to entity immunity. Bertot v. School Dist. No. 1, Albany County, Wyo., C.A.10 (Wyo.) 1979, 613 F.2d 245. Civil Rights 1376(4)

City school board and individual school board members were "persons" subject to suit under this section. O'Hern v. School Dist. of Springfield R-12, C.A.8 (Mo.) 1978, 578 F.2d 220. Civil Rights 1346

A school board is a "person" who may be held liable under section 1983. Myers v. Loudoun County School Bd., E.D.Va.2003, 251 F.Supp.2d 1262, affirmed 418 F.3d 395. Civil Rights 1346

School board, as municipal governmental entity, was "person" amenable to suit within meaning of § 1983. Cox v. McCraley, M.D.Fla.1998, 993 F.Supp. 1452. Civil Rights 1346

315. School committees, persons within section

Finances and affairs of defendant school committee were so intimately connected with those of city that school committee could not be considered to constitute a "person" independent of city against which a claim for compensatory and punitive damages could be asserted under this section and § 1985 of this title. Curran v. Portland Superintending School Committee, City of Portland, Me., D.C.Me.1977, 435 F.Supp. 1063. Civil Rights

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Where action against school committee for alleged deprivation of minor plaintiff's right to procedural due process was premised on precisely same cause of action, albeit under § 1331 of Title 28 governing general federal question jurisdiction, as that against individual committee members under this section and § 1343 of Title 28, and only pertinent distinction between two claims was that school committee was not a "person" for purposes of this section, action was not premature because plaintiff had not exhausted administrative remedies available under Rhode Island General Laws. Panzarella v. Boyle, D.C.R.I.1975, 406 F.Supp. 787. Civil Rights 1317

316. School districts, persons within section

Neither school district nor school directors of school district, acting in their official capacities, were "persons" under § 1983. Bennett v. School Directors of Dist. 204, N.D.Ill.1996, 941 F.Supp. 763, supplemented 1996 WL 649907. Civil Rights 1346; Civil Rights 1356

School district is not "person" that can sue within meaning of federal civil rights statute and may not bring action under statute alleging violation of its constitutional rights. School Dist. of Philadelphia v. Pennsylvania Milk Marketing Bd., E.D.Pa.1995, 877 F.Supp. 245. Civil Rights 1331(2)

School district and school officials in their official capacities were "persons" for purposes of civil rights claim of racial discrimination. Kelly v. Richland School Dist. 2, D.C.S.C.1978, 463 F.Supp. 216. Civil Rights 1359

317. School officials, persons within section

School superintendent was a "person" amenable to suit under this section for compensatory and punitive damages and for declaratory and injunctive relief as to use of corporal punishment in school system. Ingraham v. Wright, C.A.5 (Fla.) 1976, 525 F.2d 909, certiorari granted 96 S.Ct. 2200, 425 U.S. 990, 48 L.Ed.2d 815, affirmed 97 S.Ct. 1401, 430 U.S. 651, 51 L.Ed.2d 711. Civil Rights 1356

Trustees and administrators of state university, in their official capacities, were "person" against whom action could be brought under this section. Gay Students Organization of University of New Hampshire v. Bonner, C.A.1 (N.H.) 1974, 509 F.2d 652. Civil Rights 1356

School superintendent, sued as individual, is "person" within meaning of this section. Ingraham v. Wright, C.A.5 (Fla.) 1974, 498 F.2d 248, rehearing granted 504 F.2d 1379, on rehearing 525 F.2d 909, certiorari granted 96 S.Ct. 2200, 425 U.S. 990, 48 L.Ed.2d 815, affirmed 97 S.Ct. 1401, 430 U.S. 651, 51 L.Ed.2d 711. Civil Rights 1356

A municipal school superintendent was a "person" within meaning of this subchapter and federal district court had jurisdiction of action for injunctive relief founded upon this subchapter and U.S.C.A.Const. Amend. 14 § 1. Akron Bd. of Ed. v. State Bd. of Ed. of Ohio, C.A.6 (Ohio) 1974, 490 F.2d 1285, certiorari denied 94 S.Ct. 2644, 417 U.S. 932, 41 L.Ed.2d 236.

Community college president in his official capacity could be named as defendant in § 1983 claim. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1359

University president and academic dean were "persons" under § 1983 to extent that plaintiff sought injunctive relief from their official acts. Fernandez v. Wolff, N.D.Ill.1996, 919 F.Supp. 1120. Civil Rights 1356

In civil rights suit alleging that junior college and officials thereof violated plaintiff's constitutional rights by their actions associated with changing his job classification from registrar to teacher, the individual defendants, each

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being sued individually and in his official capacity, were all "persons" within the meaning of this section in both their individual and official capacities. Johnson v. San Jacinto Jr. College, S.D.Tex.1980, 498 F.Supp. 555. Civil Rights 1359

Dean of university center for health sciences, against whom former professors of medicine brought civil rights and antitrust action to challenge their dismissals from their teaching and administrative posts, was a "person" under this section, but, in absence of sufficient allegations to charge him with personal liability, was subject to being dismissed from action with respect to claim under this section. Gross v. University of Tennessee, W.D.Tenn.1978, 448 F.Supp. 245, affirmed 620 F.2d 109. Civil Rights 1359; Civil Rights 1390

Officials at college of city university system were "persons" within meaning of this section, and former employee of college was not precluded from bringing civil action against such officials. Savage v. Kibbee, S.D.N.Y.1976, 426 F.Supp. 760.

Under this section and § 1985 of this title, board of governors of state university was not a "person" within meaning of such sections and therefore could not be sued by professor who had brought complaint naming board of governors as party defendant and alleging that he had been victim of discrimination because of his national origin. Bennun v. Board of Governors of Rutgers, State University of New Jersey, D.C.N.J.1976, 413 F.Supp. 1274.

317A. School teachers, persons within section

Former public school teacher was not state actor, and thus, he could not be liable in plaintiff school teacher's §§ 1983 action, alleging violation of his constitutional rights, absent showing that teacher conspired with state actors to violate plaintiff teacher's constitutional rights. Jerrytone v. Musto, C.A.3 (Pa.) 2006, 167 Fed.Appx. 295, 2006 WL 162656, Unreported. Civil Rights 1326(6)

318. Sheriffs, persons within section

Section 1983 action brought to enjoin enforcement of allegedly unconstitutional state postjudgment garnishment procedures, which by statute were enforced only by county sheriffs, was properly brought against sheriffs in their official capacities. Chaloux v. Killeen, C.A.9 (Idaho) 1989, 886 F.2d 247. Civil Rights 1348

County sheriff was not liable in his official capacity under § 1983 for alleged beating of pretrial detainee by jail inmate where sheriff did not have any interaction with detainee and there was no evidence that he had any interaction with any jail officials who dealt with detainee. Gulett v. Haines, S.D.Ohio 2002, 229 F.Supp.2d 806. Civil Rights 1358

County sheriff was "person" subject to suit under § 1983, despite sheriff's contention that sheriff was considered state rather than local official under North Carolina law; state legislation regulating sheriff's departments was not so rampant as to make these departments arms of the state, sheriffs were traditionally law enforcement providers for counties, filling gap between State Highway Patrol and municipal police officers, and sheriffs' salaries were paid by counties who also paid any liability claim against them. Carter v. Good, W.D.N.C.1996, 951 F.Supp. 1235, reversed 145 F.3d 1323, certiorari denied 119 S.Ct. 509, 525 U.S. 1000, 142 L.Ed.2d 423. Civil Rights 1358

County sheriff could not be held liable in his individual capacity for prisoner's civil rights claims based on allegations that prisoner was detained without due process of law and that prisoner was beaten by fellow inmates due to inadequate guard supervision, in absence of any evidence that sheriff was personally involved in, or had knowledge of, prisoner's continued detention or alleged lack of supervision. Harrell v. Sheahan, N.D.Ill.1996, 937 F.Supp. 754. Civil Rights 1358

County sheriff was not municipality that any official-capacity liability of county defendants could be imputed to in

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federal civil rights claim. Robinson v. Howell, S.D.Ind.1995, 902 F.Supp. 836. Civil Rights 1358

Sheriff could not be held liable under civil rights statute for alleged Eighth Amendment violations in conditions of county jail where plaintiff inmate relied entirely on the supervisory capacity of sheriff as the basis for his claim. Prophete v. Gilless, W.D.Tenn.1994, 869 F.Supp. 537. Civil Rights 1358

319. Sheriff's departments, persons within section

City could not be held liable under §§ 1983 for any unreasonable detention and seizure of plaintiff who allegedly was beaten and arrested for creating public disturbance when he was having epileptic seizure, based on theory of inadequate training or supervision of police officers, absent showing of municipal policy or custom establishing disregard for plaintiff's constitutional rights, or showing that any failure to train resulted in injury to plaintiff. Adams v. City of Camden, D.N.J.2006, 461 F.Supp.2d 263. Civil Rights 1352(4)

County sheriff's department was not a "person" subject to an action under §§ 1983. Buchanan v. Williams, M.D.Tenn.2006, 434 F.Supp.2d 521. Civil Rights 1348

County sheriff's department was not entity that could be sued in civil rights suit. Davis v. Stanley, N.D.Ala.1987, 740 F.Supp. 815. Civil Rights 1348

320. Statutes, persons within section

County was not entitled to attorney fee award under federal civil rights attorney fee statute, in landowner's §§ 1983 action against county challenging denial of its rezoning application, on theory that, prior to stipulated dismissal of case, county had successfully moved to dismiss claims against individual defendants and against board of county commissioners and county planning commission; motions were peripheral, and entire suit was not frivolous. RHN Corp. v. Box Elder County, D.Utah 2006, 416 F.Supp.2d 1254. Civil Rights 1484

19 P.S.Pa. § 1180-1 et seq., which was challenged as unconstitutional, was not "person" within meaning of this section. Wilson v. Post Conviction Hearing Act of Com. of Pa., W.D.Pa.1971, 321 F.Supp. 1234.

321. Sureties, persons within section

Inasmuch as deputy sheriff was exempt from liability for damages under this section for executing 12-year-old California misdemeanor warrant, surety on his bond could not be held. Quinnette v. Garland, C.D.Cal.1967, 277 F.Supp. 999. Sheriffs And Constables 154

322. Tax officials, persons within section

Taxpayer could not maintain action under § 1983 of Civil Rights Act against taxpayer's debtor whose payments to taxpayer were seized by Internal Revenue Service (IRS), where debtor was not state actor. Del Elmer; Zachay v. Metzger, S.D.Cal.1997, 967 F.Supp. 398. Civil Rights 1326(1)

State or county tax official will be liable for damages under this section only if he violated plaintiff's clearly established constitutional rights intentionally or with reckless disregard of those rights; tax official must have personally acted with impermissible motivation or with such intentional and reckless disregard of plaintiff's clearly established constitutional rights that his action cannot be reasonably characterized as being in good faith. Bormann v. Tomlin, S.D.Ill.1978, 461 F.Supp. 193, affirmed 622 F.2d 592. Civil Rights 1032; Civil Rights 1376(3); Civil Rights 1376(4)

323. Unions, persons within section

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Teachers could not maintain § 1983 claim against teachers union, absent evidence to rebut union's assertion that it was a private, non-governmental entity. Murphy v. Board of Educ. of Rochester City School Dist., W.D.N.Y.2003, 273 F.Supp.2d 292, affirmed 106 Fed.Appx. 746, 2004 WL 1682887. Civil Rights 1326(11)

Prison guards' union was not a "person" within meaning of this section and thus claim against union in civil rights action brought by prisoners was not cognizable. Fitzpatrick v. Wert, W.D.N.Y.1977, 432 F.Supp. 601.

324. Miscellaneous persons within section

District court had jurisdiction of suit brought under this section by members of the Socialist Workers Party who challenged the denial of permission to personally sell socialist newspapers in New York City subway stations, since, irrespective of the status of the transit authority as an agency, the named individual defendants, acting in their official capacity, were "persons" within the meaning of the section. Wright v. Chief of Transit Police, C.A.2 (N.Y.) 1976, 527 F.2d 1262. Federal Courts 222

California Adult Authority was not "person" for purpose of this section. Olson v. California Adult Authority, C.A.9 (Cal.) 1970, 423 F.2d 1326, certiorari denied 90 S.Ct. 1717, 398 U.S. 914, 26 L.Ed.2d 78. See, also, Fleming v. California Adult Authority, C.A.9 (Cal.) 1970, 433 F.2d 991.

New York's state bar grievance committee, as part of judicial arm of state of New York, is not "person" amenable to suit under § 1983. Sassower v. Mangano, S.D.N.Y.1996, 927 F.Supp. 113, affirmed 122 F.3d 1057, certiorari denied 119 S.Ct. 170, 525 U.S. 872, 142 L.Ed.2d 139, rehearing denied 119 S.Ct. 582, 525 U.S. 1035, 142 L.Ed.2d 486. Civil Rights 1350

324A. Particular persons not within section

Appalachian ancestry is not recognized as protected status under §§ 1981 or §§ 1983. Higginbotham v. Ohio Dept. of Mental Health, S.D.Ohio 2005, 412 F.Supp.2d 806. Civil Rights 1009

VI. LIABILITY GENERALLY

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351. Liability generally

To establish § 1983 claim, plaintiff must demonstrate that conduct complained of was committed by person acting under state law and that conduct deprived him of rights, privileges or immunities secured by the Constitution. Piecknick v. Com. of Pa., C.A.3 (Pa.) 1994, 36 F.3d 1250. Civil Rights 1304

Person may become state actor liable under § 1983 by conspiring with state official, engaging in joint activity with state officials, or becoming so closely related to State that person's actions can be said to be those of State itself. Price v. State of Hawaii, C.A.9 (Hawai'i) 1991, 939 F.2d 702, rehearing denied, certiorari denied 112 S.Ct. 1479, 503 U.S. 938, 117 L.Ed.2d 622, certiorari denied 112 S.Ct. 1480, 503 U.S. 938, 117 L.Ed.2d 622. Civil Rights 1326(5)

Party against whom recovery is sought under this section must be "person" within meaning of this section and must not be cloaked with immunity. Fine v. City of New York, C.A.2 (N.Y.) 1975, 529 F.2d 70, on remand 71 F.R.D. 374. Civil Rights 1335

Res ipsa loquitur doctrine, typically applied in personal injury claims of ambiguous origin, could not serve as a basis for municipal liability under §§ 1983. Gast v. Singleton, S.D.Tex.2005, 402 F.Supp.2d 794. Civil Rights 1401

A plaintiff seeking to bring suit pursuant to § 1983 must demonstrate that it suffered a deprivation of a federally protected right. E. Spire Communications, Inc. v. Baca, D.N.M.2003, 269 F.Supp.2d 1310, affirmed 392 F.3d 1204. Civil Rights 1027

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42 U.S.C.A. § 1983

To succeed under § 1983, plaintiffs must establish: (1) that defendants violated a right secured by the Constitution or laws of the United States; (2) acted under color of state law in so doing; and (3) damages. Rinker v. Sipler, M.D.Pa.2003, 264 F.Supp.2d 181. Civil Rights 1304

Two essential elements are required for claim under § 1983 or statute conferring jurisdiction over civil rights actions on district courts: that defendants' conduct deprived plaintiff of rights, privileges, or immunities secured by United States Constitution or federal law; and that their conduct occurred under color of law. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1304

Section 1983 action against public officer in his or her official capacity is simply another way of suing public entity that officer represents. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1354

In order to succeed on claim under § 1983, plaintiffs must establish two elements: that conduct complained of was committed by person acting under color of state law and that this conduct deprived them of rights, privileges or immunities secured by the Constitution or federal laws. Wittmer v. Peters, C.D.Ill.1995, 904 F.Supp. 845, affirmed 87 F.3d 916, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 949, 519 U.S. 1111, 136 L.Ed.2d 837. Civil Rights 1304

Under § 1983, plaintiff must establish that actions complained of were done by person acting under color of state law and that those actions deprived plaintiff of rights, privileges, or immunities secured by Constitution or laws of United States. Davis v. Olin, D.Kan.1995, 886 F.Supp. 804. Civil Rights 1304

To establish valid § 1983 claim of violation of federal constitutional rights, plaintiff must show that conduct complained of was committed by person acting under state law and that conduct deprived inmate of rights, privileges, or immunities secured by Constitution. Oldham v. Chandler-Halford, N.D.Iowa 1995, 877 F.Supp. 1340 . Civil Rights 1304

A party must be a "person" to be sued under this section. Holladay v. State of Mont., D.C.Mont.1981, 506 F.Supp. 1317.

In order to impose liability upon defendant in supervisory governmental position for violation of one's civil rights, it must be established that defendant committed the violation, directed it to be done, or acquiesced in its commission with knowledge. Jones v. Members of Bd. of Police Com'rs, E.D.Mo.1977, 435 F.Supp. 797. Civil Rights 1401

Under this section suits may be maintained only against a "person" who under color of state law deprives another of his civil rights. Frye v. Lukehard, W.D.Va.1973, 364 F.Supp. 1379.

352. Tortious nature of actions, liability generally

Claims brought under this section should be read against the background of tort liability that makes a person responsible for the natural consequences of his actions. Davis v. Knud-Hansen Memorial Hospital, C.A.3 (Virgin Islands) 1980, 635 F.2d 179. Civil Rights 1304

This section provides civil remedy and should be read against background of tort liability which makes a man responsible for natural consequences of his actions. Rodriguez v. Jones, C.A.5 (Tex.) 1973, 473 F.2d 599, certiorari denied 93 S.Ct. 3023, 412 U.S. 953, 37 L.Ed.2d 1007. Civil Rights 1304

Under this section providing civil action for deprivation of rights there must be some degree of culpability involved before an action can be maintained. Baxter v. Birkins, D.C.Colo.1970, 311 F.Supp. 222. Civil Rights 1031

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353. Nature of relief sought, liability generally

"Official policy or custom" requirement generally applicable to § 1983 actions against municipal officials sued in their official capacities did not apply in action to enjoin enforcement of allegedly unconstitutional state laws, which by statute were enforced only by local officials; justification for limiting action for damages did not apply to suit seeking only prospective relief. Chaloux v. Killeen, C.A.9 (Idaho) 1989, 886 F.2d 247. Civil Rights 1351(1)

Suspended attorney's § 1983 action against state legal ethics committee sought prospective rather than retroactive relief and thus action could be maintained against state officials; attorney alleged that he was disciplined pursuant to unconstitutional statute. Sexton v. Arkansas Supreme Court Committee on Professional Conduct, W.D.Ark.1989, 725 F.Supp. 1051. Civil Rights 1360

Municipal and state officials, if sued in either their individual or official capacities for injunctive relief, are "persons" within meaning of this section. Cullen v. New York State Civil Service Commission, E.D.N.Y.1977, 435 F.Supp. 546, appeal dismissed 566 F.2d 846. Civil Rights 1354

State officials sued in their official capacities are "persons" for purposes of equitable relief under this section. Taliaferro v. Dykstra, E.D.Va.1975, 388 F.Supp. 957. Civil Rights 1354

354. Considerations governing liability generally

To establish supervisory liability under civil rights statute, supervisor must have actual or constructive knowledge that his subordinate was engaged in conduct that posed pervasive and unreasonable risk of constitutional injury, supervisor's response to that knowledge was so inadequate as to show deliberate indifference or tacit authorization of alleged offensive practices, and affirmative causal link existed between supervisor's inaction and particular constitutional injury suffered. Shaw v. Stroud, C.A.4 (N.C.) 1994, 13 F.3d 791, certiorari denied 115 S.Ct. 67, 513 U.S. 813, 130 L.Ed.2d 24, certiorari denied 115 S.Ct. 68, 513 U.S. 814, 130 L.Ed.2d 24. Civil Rights 1355

There is no respondeat superior liability under section § 1983. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1336

City was not liable under § 1983 for any constitutional violations resulting from participation of its emergency response team (ERT) in hostage-rescue training exercise at public high school, in which county ERT members allegedly seized staff members who were unaware of the exercise and used excessive force, absent any allegations that an unconstitutional city policy or custom caused plaintiffs injury or allegation that a city employee directly violated plaintiffs' constitutional rights. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1351(4)

Section 1983 action can involve two distinct legal tests: plaintiff who sues individual for injury allegedly caused by that individual must show that individual was acting under color of state law, but plaintiff who seeks recovery from municipality or other governmental entity for injury allegedly caused by individual must show that governmental entity in question had unconstitutional or illegal policy, practice, or custom. Rodriguez v. City of Milwaukee, E.D.Wis.1997, 957 F.Supp. 1055. Civil Rights 1324; Civil Rights 1351(1)

To establish supervisory liability under § 1983, plaintiff must show that supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed pervasive and unreasonable risk of constitutional injury to citizens like plaintiff, supervisor's response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of alleged offensive practices, and there was affirmative causal link between supervisor's inaction and particular constitutional injury suffered by plaintiff. Simmons v. Baker, E.D.Va.1994, 842 F.Supp. 883, reversed in part 47 F.3d 1370. Civil Rights 1355

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42 U.S.C.A. § 1983

Supervisory personnel cannot be held liable in federal civil rights action based only on their capacity as supervisors, and plaintiff must also show that defendants either personally participated in the alleged deprivation or caused deprivation to occur or that supervisors failed to properly train personnel and that the failure to train resulted in alleged deprivation. Harris v. Maloughney, D.Mont.1993, 827 F.Supp. 1488. Civil Rights 1355

In order to impose § 1983 liability against municipality, municipal policy must be identified, municipality responsible for promulgating policy must be established, execution of policy must be shown to have caused injury of which plaintiff has complained, and plaintiff must establish existence of policy by showing that municipality's decision maker with final authority regarding matter at hand and has issued proclamation, policy, or edict or that custom was established through course of conduct by practices of municipal officials which are so permanent and well-settled as to virtually constitute law. Barcume v. City of Flint, E.D.Mich.1993, 819 F.Supp. 631. Civil Rights 1351(1)

355. Causation, liability generally--Generally

Proper analysis requires separation of two different issues when claim under § 1983 is asserted against municipality: (1) whether plaintiff's harm was caused by constitutional violation, and (2) if so, whether city was responsible for that violation. Collins v. City of Harker Heights, Tex., U.S.Tex.1992, 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1343

Violation of federally secured right is remediable in damages only upon proof that violation proximately caused injury. Horn by Parks v. Madison County Fiscal Court, C.A.6 (Ky.) 1994, 22 F.3d 653, certiorari denied 115 S.Ct. 199, 513 U.S. 873, 130 L.Ed.2d 130. Civil Rights 1031

In order to establish violation of constitutional rights under § 1983, plaintiff must prove that defendant's unconstitutional action was the "cause in fact" of the plaintiff's injury; conduct is the cause in fact of a particular result if the result would not have occurred but for the conduct; similarly, if result would have occurred without the conduct complained of, such conduct cannot be the cause of fact of that particular result. Butler v. Dowd, C.A.8 (Mo.) 1992, 979 F.2d 661, certiorari denied 113 S.Ct. 2395, 508 U.S. 930, 124 L.Ed.2d 297. Civil Rights 1031

Supervisory liability under § 1983 may be shown by either supervisor's personal participation in acts that comprise constitutional violation or existence of causal connection linking supervisor's actions with violation. Lewis v. Smith, C.A.11 (Ala.) 1988, 855 F.2d 736. Civil Rights 1355

To succeed on cause of action under § 1983 plaintiffs must prove that defendant's actions were cause in fact and proximate cause of plaintiff's injury. Graham v. Baughman, C.A.8 (Iowa) 1985, 772 F.2d 441. See, also, Kraft v. Jacka, D.Nev.1987, 669 F.Supp. 333, affirmed 872 F.2d 862.

As with any other tort claim, there must be a showing in a section 1983 action of "a direct causal link" between the municipal policy or custom and the alleged constitutional deprivation before municipality may be held liable. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Civil Rights 1351(1)

Plaintiff who shows that city policy was result of deliberate indifference to individual's constitutional rights must still show direct causal link between that policy and constitutional deprivation in order to recover in § 1983 action, and policy must be moving force behind constitutional violation in order to allow recovery. Rodriguez v. City of Milwaukee, E.D.Wis.1997, 957 F.Supp. 1055. Civil Rights 1351(1)

There can be more than one legal cause of event giving rise to § 1983 action. Dugas v. Jefferson County, E.D.Tex.1996, 931 F.Supp. 1315, affirmed 127 F.3d 33. Civil Rights 1031

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Where supervisor sets in motion a series of acts by others, or knowingly refuses to terminate those acts, which result in violation of civil rights, liability will lie. Harris v. Maloughney, D.Mont.1993, 827 F.Supp. 1488. Civil Rights 1355

Any officials who cause citizen to be deprived of constitutional rights can be held liable under § 1983; requisite causal connection is satisfied if official set in motion a series of events that he knew or should reasonably have known would cause others to deprive plaintiff of constitutional rights. Study v. U.S., S.D.Ind.1991, 782 F.Supp. 1293. Civil Rights 1031

Supervisor can be held liable for civil rights violations where his conduct is causally related to constitutional violation committed by his subordinate. Heller v. Plave, S.D.Fla.1990, 743 F.Supp. 1553. Civil Rights 1336

To be liable under § 1983, there must be proof of "affirmative link" between defendants' constitutional violation and injury sustained. Ward v. City of San Jose, N.D.Cal.1990, 737 F.Supp. 1502, affirmed in part, reversed in part on other grounds 967 F.2d 280, amended on denial of rehearing. Civil Rights 1031

356. ---- Necessity of causation, liability generally

A municipality may not be held liable under this section prohibiting the deprivation of civil rights by state action absent a causal connection between its action or inaction and constitutional deprivations visited on the plaintiff. Berry v. McLemore, C.A.5 (Miss.) 1982, 670 F.2d 30. Civil Rights 1343

A municipality can be found liable under § 1983 only where the municipality itself causes the constitutional violation at issue; respondeat superior or vicarious liability will not attach under § 1983. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1345

To hold public employer liable under § 1983, there must be causal connection between city's responsibility and plaintiff's purported injuries. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Civil Rights 1351(1)

Although personal participation is not specifically required for liability under federal civil rights statute, there must be some causal connection between defendant named and injury allegedly sustained. Schebel v. Charlotte County, M.D.Fla.1993, 833 F.Supp. 889. Civil Rights 1335

Sheriff may be held liable under § 1983 in individual capacity only if sheriff caused or participated in constitutional deprivation; causal connection or affirmative link between conduct and defendant must exist. Sivard v. Pulaski County, N.D.Ind.1992, 809 F.Supp. 631, affirmed 17 F.3d 185. Civil Rights 1358

Dismissal of prisoner's suit against all but one prison official was warranted in case brought under civil rights law challenging determination of length of sentence to be served prior to parole eligibility; civil rights law permitted suit only against parties causing harm, and since only Board of Pardons could cause harm complained of, suit was limited to members of Board. Houtz v. Deland, D.Utah 1989, 718 F.Supp. 1497. Civil Rights 1358

Mayor and city councilmen were not liable in their individual capacities for civil rights violations allegedly committed against church by police, city sanitation and electric company, as alleged result of antagonistic "atmosphere" created through enacted city policy, absent showing that mayor and councilmen directed, authorized or had prior knowledge of such actions or of any other causal connection between officials' actions and alleged violations. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, S.D.Fla.1988, 688 F.Supp. 1522. Civil Rights 1358

357. ---- Acquiescence or inaction, causation, liability generally

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42 U.S.C.A. § 1983

Establishing required causation for supervisory liability under civil rights statute requires establishing affirmative causal link between supervisor's inaction and harm suffered by plaintiff. Shaw v. Stroud, C.A.4 (N.C.) 1994, 13 F.3d 791, certiorari denied 115 S.Ct. 67, 513 U.S. 813, 130 L.Ed.2d 24, certiorari denied 115 S.Ct. 68, 513 U.S. 814, 130 L.Ed.2d 24. Civil Rights 1355

Police superintendent's inactivity despite the notoriety of police officers' alleged activities in beating suspect would, if proved, permit inference that superintendent condoned or encouraged such conduct, which would meet the standard of affirmative causation for imposition of individual liability under civil rights statute. Wilson v. City of Chicago, N.D.Ill.1989, 707 F.Supp. 379. Civil Rights 1358; Civil Rights 1404

There must be affirmative link between incidents of misconduct and defendant to state claim under this section; defendants must expressly or otherwise acquiesce in constitutional deprivations of which complaint is made; this affirmative link requirement encompasses nonfeasance as well as misfeasance. Rivas v. State Bd. for Community Colleges and Occupational Ed., D.C.Colo.1981, 517 F.Supp. 467. Civil Rights 1394

358. ---- Custom or usage, causation, liability generally

Police sergeant's order that woman with Down Syndrome be seized and involuntarily hospitalized was not an "official municipal policy," as required to establish municipal liability, for purposes of woman's § 1983 claim against city and police officers in their official capacities alleging Fourth Amendment violations; although sergeant had discretion to determine how to handle the particular situation the woman presented, such discretion was insufficient to render the sergeant a final decision-maker. Anthony v. City of New York, C.A.2 (N.Y.) 2003, 339 F.3d 129. Civil Rights 1351(4)

To subject a county to liability under § 1983, plaintiff must show that constitutional violation occurred as result of county policy; plaintiff must demonstrate that municipal action was taken with requisite degree of culpability, and must demonstrate direct causal link between municipal action and the deprivation of federal rights. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1351(1)

Before city can be liable under § 1983, plaintiff must show either express policy that, when enforced, causes constitutional deprivation, widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute custom or usage with force of law, or allegation that constitutional injury was caused by person with final policymaking authority. Roach v. City of Evansville, C.A.7 (Ind.) 1997, 111 F.3d 544. Civil Rights 1351(1)

Municipality may be liable under § 1983 for deprivation of rights protected by Constitution or federal law only if deprivation is inflicted under official municipal policy. Campbell v. City of San Antonio, C.A.5 (Tex.) 1995, 43 F.3d 973. Civil Rights 1351(1)

Permanent and well-settled government custom of laxness or inaction must be moving force between constitutional violation in order for municipality to be subject to § 1983 liability. Tilson v. Forrest City Police Dept., C.A.8 (Ark.) 1994, 28 F.3d 802, certiorari denied 115 S.Ct. 1315, 514 U.S. 1004, 131 L.Ed.2d 196. Civil Rights 1351(1)

There must be an affirmative link between municipality policy and alleged constitutional violation for municipality to be held liable under federal civil rights statute, and proof of single incident of unconstitutional activity is not sufficient unless proof of the incident also includes proof that it was caused by an existing, unconstitutional municipal policy. Sivard v. Pulaski County, C.A.7 (Ind.) 1994, 17 F.3d 185. Civil Rights 1351(1)

Municipality may not be held liable under § 1983 solely because its employees inflicted injury on plaintiff, but

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rather plaintiff must show existence of municipal policy or custom, and direct causal link between policy or custom and injury alleged; when asserted policy consists of failure to act, plaintiff must demonstrate that municipality's inaction was result of deliberate indifference. Hinton v. City of Elwood, Kan., C.A.10 (Kan.) 1993, 997 F.2d 774. Civil Rights 1351(1)

Proof of the mere existence of an unlawful policy or custom is not enough to establish municipal liability under § 1983; plaintiff bears additional burden of proving that the municipal practice was the proximate cause of the injuries suffered; to establish the necessary causation, plaintiff must demonstrate a plausible nexus or affirmative link between municipality's custom and specific deprivation of constitutional rights at issue. Bielevicz v. Dubinon, C.A.3 (Pa.) 1990, 915 F.2d 845. Civil Rights 1351(1)

Municipality is liable under § 1983 if there is a direct causal connection between the municipality policies in question and the constitutional deprivation. Berry v. City of Muskogee, Okl., C.A.10 (Okla.) 1990, 900 F.2d 1489. Civil Rights 1351(1)

For purposes of condoned custom or usage theory of municipal liability, sufficiently close causal link between known but uncorrected custom or usage in specific constitutional violation is established if occurrence of that violation was made reasonably probable by permitted continuation of the custom. Spell v. McDaniel, C.A.4 (N.C.) 1987, 824 F.2d 1380, certiorari denied 108 S.Ct. 752, 484 U.S. 1027, 98 L.Ed.2d 765. Civil Rights 1352(1)

For a municipality to be liable under § 1983, the policymaker must have authorized policies that led to the violations or permitted practices that were so permanent and well settled as to establish acquiescence. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1351(1)

Estate and survivors of deceased prisoner, who committed suicide by asphyxiating himself with wool blanket, failed to show in civil rights lawsuit that official policy or custom of county department of corrections (DOC) was moving force behind alleged violation of prisoner's Eighth Amendment rights by corrections officers; even though policy did not preclude officers from giving blanket to suicidal inmate, DOC developed very thorough written suicide prevention policies, trained its personnel to carry out those policies, constructed protrusion-free rubber rooms, and installed monitoring equipment that allowed entire cells to be viewed. Estate of Sisk v. Manzanares, D.Kan.2002, 262 F.Supp.2d 1162. Civil Rights 1351(4)

In order to hold governmental entity liable under § 1983, plaintiff must show: (1) that constitutional tort was committed pursuant to official policy, custom or practice, and (2) causal link between policy, custom or practice and injury. Cain v. Tigard-Tualatin School Dist. 23J, D.Or.2003, 262 F.Supp.2d 1120. Civil Rights 1351(1)

School district may not be held liable in § 1983 action under theory of respondeat superior. Cain v. Tigard-Tualatin School Dist. 23J, D.Or.2003, 262 F.Supp.2d 1120. Civil Rights 1346

In order to determine whether actions of school board members give rise to entity liability under § 1983, jury must determine whether board's decisions have caused deprivation of rights at issue by policies which affirmatively command that it occur or by acquiescence in long-standing practice or custom which constitutes standard operating procedure of local entity. Cain v. Tigard-Tualatin School Dist. 23J, D.Or.2003, 262 F.Supp.2d 1120. Civil Rights 1351(2)

Even assuming that city, through the actions of police captain, violated plaintiff's Fourth Amendment rights by causing police department to unlawfully search and/or seize his person, plaintiff failed to establish claim for municipal liability under section 1983; plaintiff did not identify an official policy of the city which resulted in the allegedly unlawful search and seizure, nor did he identify a pervasive and well-settled custom or practice responsible for the allegedly unlawful search and seizure nor identify an official deemed to represent city's policy

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who participated in the allegedly unlawful search and seizure. Caruso v. City of Cocoa, Florida, M.D.Fla.2003, 260 F.Supp.2d 1191. Civil Rights 1351(4)

For city to be liable under § 1983 on ground that execution of one of its customs or policies deprives plaintiff of his or her constitutional rights, the policy or custom must be the moving force of the constitutional violation. Boone v. City of Burleson, N.D.Tex.1997, 961 F.Supp. 156. Civil Rights 1351(1)

Municipal custom, for purposes of § 1983, requires illegal practice to be widespread, i.e., involving series of decisions. Singer v. Denver School Dist. No. 1, D.Colo.1997, 959 F.Supp. 1325. Civil Rights 1351(1)

City council and mayor, not police chief, were final policy makers for purposes of determining whether city could be held liable for constitutional violations committed by police department employees, and thus municipal liability could be established only if those policy makers were deliberately indifferent to constitutional violations and if their deliberate indifference caused those violations; police chief departed from city policy if he ignored civilian complaints or dismissed complaints that were meritorious. Gonsalves v. City of New Bedford, D.Mass.1996, 939 F.Supp. 915. Civil Rights 1351(4)

In order to establish municipal liability under § 1983, plaintiff must establish municipal policy or custom was cause of alleged constitutional violation. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1351(1)

Direct causal link between municipal policy or custom and alleged constitutional deprivation must exist to impose § 1983 liability on municipal entity; it is not enough to allege and prove constitutional violation represents policy for which local government entity is responsible, but policy or custom must be deliberate or conscious choice by municipality's final policy-making official. McMillan v. Department of Interior, D.Nev.1995, 907 F.Supp. 322, affirmed 87 F.3d 1320, certiorari denied 117 S.Ct. 995, 519 U.S. 1132, 136 L.Ed.2d 875. Civil Rights 1351(1)

Inmate failed to establish § 1983 claim against sheriff's department, in action alleging violation of inmate's constitutional rights in connection with injuries allegedly inflicted by second inmate and deputy, absent allegation that department maintained policy or custom which proximately caused injuries. Edwards v. Harris County Sheriff's Dept., S.D.Tex.1994, 864 F.Supp. 633. Civil Rights 1395(7)

Local governmental entity is liable for damages under § 1983 only if plaintiff can show that alleged constitutional deprivation occurred as result of official policy or custom. Hines v. Sheahan, N.D.Ill.1994, 845 F.Supp. 1265. Civil Rights 1351(1)

359. ---- Ministerial acts, causation, liability generally

Neither county clerk nor members of county election commission were cause in fact of former city recorder's loss of election for recorder position, which recorder claimed should not have occurred for two more years due to city's classification, as clerk's and members' functions in election process were merely ministerial; thus, clerk and members could not be held liable for alleged deprivation of recorder's civil rights. Calloway v. Miller, C.A.8 (Ark.) 1998, 147 F.3d 778. Civil Rights 1032

360. ---- Supervisory personnel, causation, liability generally

Supervisor liability under § 1983 can be shown in one or more of the following ways: (1) actual direct participation in the constitutional violation; (2) failure to remedy a wrong after being informed through a report or appeal; (3) creation of a policy or custom that sanctioned conduct amounting to a constitutional violation, or allowing such a policy or custom to continue; (4) grossly negligent supervision of subordinates who committed a

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violation; or (5) failure to act on information indicating that unconstitutional acts were occurring. Richardson v. Goord, C.A.2 (N.Y.) 2003, 347 F.3d 431. Civil Rights 1355

Liability of supervisory officials under §§ 1983 cannot be premised on respondeat superior; rather, the plaintiff must establish fault and causation on the part of each defendant. Henderson v. New York, S.D.N.Y.2006, 423 F.Supp.2d 129. Civil Rights 1355

Municipal court judge was not liable under §§ 1983 for any Fourth Amendment violation that occurred when college professor, after allegedly being told he could not take notes in judge's courtroom, was detained by bailiff to another judge, where such bailiff was not under control of first judge. Goldschmidt v. Coco, N.D.Ill.2006, 413 F.Supp.2d 949. Civil Rights 1360

Fact that city police official was responsible for day-to-day operations of police department did not render official potentially liable in his individual capacity, based upon his supervisory role, in §§ 1983 action alleging inadequate supervision and discipline of officers who allegedly had used excessive force in effecting arrest; there was no showing that official individually had duty to oversee investigations into incidents of alleged misconduct, to discover results of such investigations, or to discipline officers upon resolution, no evidence that official was aware of specific arrest in question such that his inaction could have been result of deliberate indifference, and no showing that official's inaction was cause of alleged assault on arrestee. Robinson v. District of Columbia, D.D.C.2005, 403 F.Supp.2d 39.

The personal involvement of supervisory officials in their individual capacities, serving as a prerequisite to a damage award under §§ 1983, may be established by evidence that the officials: (1) participated directly in the alleged constitutional violation; (2) failed to remedy a wrong after being informed of a violation through a report or appeal; (3) created a policy or custom that sanctioned unconstitutional conduct, or allowed the continuance of such a policy or custom; (4) were grossly negligent in supervising subordinates who committed the alleged violations; or (5) failed to act on information indicating that unconstitutional acts were occurring. Veloz v. New York, S.D.N.Y.2004, 339 F.Supp.2d 505, affirmed 2006 WL 1082836. Civil Rights 1355

Police chief did not violate victim's constitutional rights, for purpose of § 1983 supervisory liability claim brought by estate of victim who had been shot and killed by police officer, although chief was aware of officer's substance abuse and violent and anti-social behavior and investigated officer's violent behavior toward victim on more than one occasion but did not arrest officer; officer was not on duty when incident occurred and department was not called or notified as to situation at victim's residence so as to require intervention by department. Burkhart v. Knepper, W.D.Pa.2004, 310 F.Supp.2d 734. Civil Rights 1358

To find supervisor liable under § 1983, plaintiff must show that: (1) supervisor's acts or omissions deprived plaintiff of constitutionally protected right; (2) such action or inaction amounted to reckless disregard or callous indifference to constitutional rights of others; and (3) there was affirmative link between street-level misconduct and action or inaction of supervisory official. Alsina Ortiz v. Laboy, D.Puerto Rico 2003, 286 F.Supp.2d 133, affirmed in part, vacated in part and remanded 400 F.3d 77. Civil Rights 1355

Given the lack of respondeat superior liability under § 1983, a supervisor's liability is not for the constitutional deprivation in itself but for distinct acts or omissions that are a proximate cause of said deprivation. Torres Ocasio v. Melendez, D.Puerto Rico 2003, 283 F.Supp.2d 505. Civil Rights 1355

To find a supervisor liable under § 1983, a plaintiff must show that: (1) that the supervisor's acts or omissions deprived the plaintiff of a constitutionally protected right, (2) that his action or inaction amounted to a reckless disregard or callous indifference to the constitutional rights of others, (3) that there was an affirmative link between the street level misconduct and the action or inaction of the supervisory official. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1355

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42 U.S.C.A. § 1983

For purposes of establishing supervisory liability under § 1983, there must be a causal connection between the supervisor's conduct and the subordinate's unconstitutional conduct; causal link may be found when the supervisor knows of, or tacitly approves of the conduct, or when he has actual or constructive notice of the ongoing violations but fails to take corrective measures such as better training and oversight. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1355

Sufficient causal connection between supervisor's wrongful conduct and constitutional violation, as required for imposition of liability under § 1983, may be established by showing that supervisor set in motion series of acts by others, which supervisor knew or reasonably should have known would cause others to inflict injury. Dennis v. Thurman, C.D.Cal.1997, 959 F.Supp. 1253. Civil Rights 1355

Prisoner failed to establish supervisors' liability for failure to train police officers, under §§ 1983, where prisoner was unable either to identify a failure to provide specific training that had a causal nexus with his injuries or to demonstrate that absence of that specific training could reasonably be said to reflect deliberate indifference to whether alleged constitutional deprivations occurred. Blacknall v. Citarella, C.A.3 (N.J.) 2006, 168 Fed.Appx. 489, 2006 WL 228588, Unreported. Civil Rights 1352(4)

361. ---- Time of policy, causation, liability generally

County sheriff could not be held liable under § 1983 on theory that he caused or implemented policy or custom which subjected arrestee's mother to deprivation of her rights, as he was not elected to office of sheriff until after events in question. Corbin v. Cannon, M.D.Fla.1993, 838 F.Supp. 561. Civil Rights 1358

362. ---- Particular cases causation present, liability generally

In civil rights action against county and county investigator for violation of constitutional right to privacy evidence was sufficient to establish that investigator was proximate cause of plaintiff's injury by disseminating excerpts from diary of plaintiff's wife, who had been murdered, to author of book about the murder, in light of investigator's own testimony that he kept excerpts in his files, was very good friends with author, and that he let author look through his files, while other detectives denied giving the information to author or having copy of diary. Sheets v. Salt Lake County, C.A.10 (Utah) 1995, 45 F.3d 1383, certiorari denied 116 S.Ct. 74, 516 U.S. 817, 133 L.Ed.2d 34. Civil Rights 1420

Wife and minor children of arrestee who was shot and killed by state trooper established causal link to harm suffered by arrestee to support claim of supervisory liability, though state trooper's supervisor was transferred 15 months before incident; arrestee's death was natural and foreseeable consequence of supervisor's failure to investigate or address pervasive violent propensities of one of his officers. Shaw v. Stroud, C.A.4 (N.C.) 1994, 13 F.3d 791, certiorari denied 115 S.Ct. 67, 513 U.S. 813, 130 L.Ed.2d 24, certiorari denied 115 S.Ct. 68, 513 U.S. 814, 130 L.Ed.2d 24. Civil Rights 1358

City police chief could be held liable in his individual capacity for alleged use of excessive force during search conducted by police officers if he set in motion series of acts by others, or knowingly refused to terminate series of acts by others, which he knew or reasonably should have known would cause others to inflict constitutional injury. Larez v. City of Los Angeles, C.A.9 (Cal.) 1991, 946 F.2d 630. Civil Rights 1358

Assistant district attorney who drafted affidavit for investigator was not an "impartial intermediary" whose independent decision could break the causal chain of sheriff's investigator's procurement of arrest warrant for aggravated kidnapping which formed basis of federal civil rights claim against investigator. Hale v. Fish, C.A.5 (La.) 1990, 899 F.2d 390. Civil Rights 1088(4)

Governor's alleged threat to cause state regulators to exercise greater scrutiny over coal company and its chairman,

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and chairman's public opposition to Governor's bond proposal, if proven, were causally related, as required for chairman to prove §§ 1983 retaliation claim based on chairman's speech, in that there was close temporal connection between those two alleged events. Blankenship v. Manchin, S.D.W.Va.2006, 410 F.Supp.2d 483. Mines And Minerals 92.10

Prison's health services director was not personally involved in any constitutional deprivations in connection with removal of prisoner's wheelchair, and thus was not liable under §§ 1983, where no medical records indicated that director participated in removal decision, failed to act as others he supervised committed constitutional violations, or was placed on notice that prisoner's care was inadequate and failed to remedy that wrong, and prisoner did not contact director regarding his treatment. Veloz v. New York, S.D.N.Y.2004, 339 F.Supp.2d 505, affirmed 2006 WL 1082836. Civil Rights 1358

Assistant city attorney, who drafted letter unconstitutionally denying permission for anti-abortion group and individuals to hold parade, and deputy police chief who signed letter, were liable under §§ 1983 despite claim that they did not personally cause denial of permit. Lippoldt v. Cole, D.Kan.2004, 311 F.Supp.2d 1263. Civil Rights 1358

363. ---- Particular cases causation not present, liability generally

Parolee who killed girl some five months after he had been released was in no sense agent of California Parole Board, and her death was too remote a consequence of parole officers' action in releasing him to hold them responsible under this section, where girl faced no special danger, as opposed to public at large. Martinez v. State of Cal., U.S.Cal.1980, 100 S.Ct. 553, 444 U.S. 277, 62 L.Ed.2d 481, rehearing denied 100 S.Ct. 1285, 445 U.S. 920, 63 L.Ed.2d 606. Civil Rights 1348; Civil Rights 1358

Administrator of arrestee's estate, who alleged that assault on arrestee was caused by city's policy allowing only officers trained in the use of recording equipment to operate it, failed to show how officer's failure to use the equipment "caused" the alleged assault, such that officer was liable under §§ 1983 in his official capacity; videotape of the incident could not have prevented or caused the assault. Elder-Keep v. Aksamit, C.A.8 (Neb.) 2006, 460 F.3d 979. Civil Rights 1358

Corrections facility's alleged failure to act affirmatively to improve conditions at the jail and alleged failure to act affirmatively to educate and warn inmates and corrections officers about Methicilin Resistant Staphylococcus aureus (MRSA) infections and to train them in infection prevention were not the "but for cause" of corrections officer's MRSA infection, as required for officer's §§ 1983 due process claim under the state created danger doctrine; officer chose to remain employed at the jail, in a position that obliged him to work amidst MRSA infections and from the outset of his employment, he was aware of the safety risks associated with working in a prison, and, he was on notice of the jail's standard operating procedures, which described proper methods of handling inmates with communicable diseases. Kaucher v. County of Bucks, C.A.3 (Pa.) 2006, 455 F.3d 418. Prisons 8

Village could not be held liable on failure to train claim in civil rights litigation where individual officers did not commit any violation of detainee's Fourth Amendment rights, such that no liability existed on underlying substantive claim. Thurman v. Village of Homewood, C.A.7 (Ill.) 2006, 446 F.3d 682. Civil Rights 1352(4)

Complaint examiners, who processed prisoner's initial complaint, and secretary for department of corrections, who handled prisoner's appeals from his complaints, were not liable to prisoner in his civil rights lawsuit under Eighth Amendment alleging deliberate indifference to his serious medical need, since they merely were non-medical, administrative employees and nothing indicated that they shirked their duty in any way or failed to appropriately handle the claims. Greeno v. Daley, C.A.7 (Wis.) 2005, 414 F.3d 645. Sentencing And Punishment 1546

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42 U.S.C.A. § 1983

Causation prong was unsatisfied in county jail inmate's §§ 1983 Eighth Amendment action against county alleging county board's custom of inadequate budgeting for sheriff's office and jail, resulting in understaffing, and in turn leading to failure to transport inmate to hospital during medical emergency and consequent paralysis; although injury to inmate may not have occurred "but for" budget decisions, there was no showing that those decisions were highly likely to inflict particular injury in question, especially since jail personnel were instructed to request ambulances to transport inmates with emergency medical needs if jail personnel were unable to do so. McDowell v. Brown, C.A.11 (Ga.) 2004, 392 F.3d 1283. Civil Rights 1351(4)

White male police officers could not demonstrate causal relationship between their failure to make sergeants' promotional list and alleged affirmative action policies, and thus they lacked standing to challenge their failure to make promotional list, since officers would not have made promotional list even in absence of alleged affirmative action policies; officers' test scores did not place them on original proposed list, and subsequent expansion of pool of candidates was offset by increase of number of officers on promotional list. Byers v. City of Albuquerque, C.A.10 (N.M.) 1998, 150 F.3d 1271. Civil Rights 1333(5); Civil Rights 1522

County police chief's decisions to discipline but not discharge officer and to return him to street duty after rape allegations against him were dropped could not, as a matter of law, be found the sufficiently direct cause of rape by the officer some ten years later. Jones v. Wellham, C.A.4 (Md.) 1997, 104 F.3d 620. Civil Rights 1358

No causal connection existed between conduct of municipal court presiding judge and termination of African-American bailiff who was Jehovah's Witness, as required for bailiff to maintain § 1983 action against presiding judge in his individual capacity. Kelly v. Municipal Courts of Marion County, Ind., C.A.7 (Ind.) 1996, 97 F.3d 902. Civil Rights 1359

In § 1983 action based on allegations that deputy had forced plaintiffs to undress and engage in various sex acts in his presence, chief of police department for which deputy had previously worked was not liable for his failure to recommend decertification of deputy after deputy had offered to fix traffic tickets for three women in exchange for sex; incident that led to suit occurred 17 months after deputy left chief's police department, deputy was clearly not acting as an agent of chief when deputy committed alleged subsequent acts, and chief was not aware that plaintiffs faced any special danger as distinguished from public at large. Doe v. Wright, C.A.8 (Ark.) 1996, 82 F.3d 265, rehearing and suggestion for rehearing en banc denied. Civil Rights 1088(1)

"Policy-as-effective-cause" theory of municipal liability, as asserted by county employee for deprivation of his substantive due process rights from actual physical assaults during his co-workers' general course of harassment, was not established based on deficiencies amounting to "policy" in county's training program for employees such as victim's coworkers who engaged in harassment, where no direct causal connection between specific training deficiencies and specific injury was demonstrated. McWilliams v. Fairfax County Bd. of Supervisors, C.A.4 (Va.) 1996, 72 F.3d 1191, certiorari denied 117 S.Ct. 72, 519 U.S. 819, 136 L.Ed.2d 32. Civil Rights 1351(5)

Administrator of Oregon Department of Corrections (DOC) Health Service Department and director of DOC could not be held liable for any violation of inmate's civil rights concerning blood sample taken for DNA data bank even though inmate had not been convicted of predicate offense under data bank statute, absent any evidence of causal connection between conduct of named state officials and order for inmate to provide blood sample. Rise v. State of Or., C.A.9 (Or.) 1995, 59 F.3d 1556, certiorari denied 116 S.Ct. 1554, 517 U.S. 1160, 134 L.Ed.2d 656. Civil Rights 1358

Village's corporation counsel was not liable under § 1983 for police officer's unlawful arrest of boyfriend on charge of criminal trespass when boyfriend refused to leave girlfriend's house at which he resided; village's corporation counsel did not detain boyfriend, order officer to do so or render legal opinion that arrest would be lawful, officer arrested boyfriend under state law rather than village ordinance and fellow officer, after consulting with assistant state's attorney, told other officers assembled for roll call that, if girlfriend complained, boyfriend could lawfully be

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arrested for criminal trespass unless he left voluntarily. Gordon v. Degelmann, C.A.7 (Ill.) 1994, 29 F.3d 295, rehearing and suggestion for rehearing en banc denied. Civil Rights 1088(4)

For purposes of § 1983 action against school officials by public high school students who were allegedly molested by other students, defendants did not create danger that eventuated violation of plaintiffs' constitutional rights; plaintiffs' allegations did not show that defendants either impermissibly limited freedom of plaintiffs to act on their own behalf or barred their access to outside support, nor did they demonstrate that defendants violated constitutional duty by creating or exacerbating danger posed by student defendants. D.R. by L.R. v. Middle Bucks Area Vocational Technical School, C.A.3 (Pa.) 1992, 972 F.2d 1364, certiorari denied 113 S.Ct. 1045, 506 U.S. 1079, 122 L.Ed.2d 354. Civil Rights 1066

Arrestee, who made charitable contribution so that the criminal charges against him would be nolled by the state, failed to show that the underlying criminal proceeding terminated in his favor, and so was barred from filing §§ 1983 false arrest or malicious prosecution claims. Birdsall v. City of Hartford, D.Conn.2003, 249 F.Supp.2d 163. Civil Rights 1088(4); Civil Rights 1088(5)

State prisoner's conclusory allegations did not establish an individual causal connection between any alleged constitutional infringement and any affirmative action or omission to act by prison officials, and, thus, officials were not liable under §§ 1983 for alleged violation of prisoner's constitutional rights committed by prison employees. Hayes v. Woodford, S.D.Cal.2006, 444 F.Supp.2d 1127. Civil Rights 1395(7)

Alleged actions by employee of Connecticut Department of Children and Families (DCF), of being instrumental in involuntary commitment of psychiatric patient's son and lying at custody hearing regarding son, if proven, could not be basis for liability of employee in her individual capacity under §§ 1983, in connection with patient's involuntary commitment for allegedly stalking television talk show host, inasmuch as such alleged actions were not connected to patient's involuntary commitment. Fisk v. Letterman, S.D.N.Y.2005, 401 F.Supp.2d 362. Civil Rights 1360

High school students' detention hearing broke chain of causation between arrest for alleged conspiracy to commit murder, based on plot for armed attack on school, and eventual prosecution, and thus county law enforcement officers who arrested students were not liable under § 1983 for alleged malicious prosecution absent evidence that they participated in advancing criminal proceedings against students beyond date of detention hearing. Smith v. Barber, D.Kan.2004, 316 F.Supp.2d 992. Civil Rights 1088(5); Civil Rights 1358

Municipality was not liable on § 1983 claim brought by estate of victim who had been shot and killed by police officer, although municipality was aware of officer's substance abuse and violent and anti-social behavior and investigated officer's violent behavior toward victim on more than one occasion but did not arrest officer; officer was not on duty when incident occurred and department was not called or notified as to situation at victim's residence so as to require intervention by department. Burkhart v. Knepper, W.D.Pa.2004, 310 F.Supp.2d 734. Civil Rights 1352(4)

Landowner who brought action against town, municipal employees and building inspector, stemming from town's demolition of dangerous structure on premises, failed to establish that building inspection was proximate cause of alleged injury stemming from demolition, as required to maintain § 1983 claim against inspector; inspector merely entered onto landowner's property to fulfill emergency orders of town board, and rendered report determining structure to be dangerous. Davis v. Town of Hempstead, E.D.N.Y.2003, 296 F.Supp.2d 376, affirmed in part, vacated in part and remanded 167 Fed.Appx. 235, 2006 WL 172216, on remand 2006 WL 656995. Civil Rights 1073

Purported "cover-up" undertaken by school district formerly employing teacher accused of sexually assaulting student, enabling teacher to obtain employment with school district by which he was employed at time of alleged

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sexual assault on student, did not amount to "but for" causation under § 1983; alleged sexual assault was too remote from actions taken by school district and its employees to have been caused by their actions. Doe v. Methacton School Dist., E.D.Pa.1996, 914 F.Supp. 101, affirmed 124 F.3d 185. Civil Rights 1066

To the extent that any violation of 16-year-old Jehovah's Witness patient's rights to bodily self-determination occurred when blood transfusion was ordered over his objection, the order issued by the judge was the proximate cause of injury, and hospital official could not be held liable for civil rights violation. Novak v. Cobb County-Kennestone Hosp. Authority, N.D.Ga.1994, 849 F.Supp. 1559, affirmed 74 F.3d 1173. Civil Rights 1045

Even if bailiff, consistent with alleged pattern of "sewer service" by bailiffs of common pleas court, falsely swore that he had served tenant with complaint and summons in landlord's action for nonpayment of rent, failure of tenant, who was represented by counsel, to appeal judgment and post bond, to satisfy judgment and bring action for damages, or to move out must be considered an intervening cause which cut off bailiff's liability, precluding recovery from bailiff either on tenant's claim under this section pertaining to deprivation of right or her state claim based on abuse of process. Jackson v. Weatherby, E.D.Mich.1981, 515 F.Supp. 492. Civil Rights 1056; Process 168

Property owner failed to establish that any action of licensed architect who inspected his property was proximate cause of injuries arising from demolition of building that town had deemed unsafe, as was required to maintain §§ 1983 action against architect. Davis v. Town of Hempstead, C.A.2 (N.Y.) 2006, 167 Fed.Appx. 235, 2006 WL 172216, Unreported. Civil Rights 1338

Architect, an Asian-American of Indian descent, was not subjected to intentional discrimination by school district's Minority Vendor Involvement Program (MVP), absent showing of causal connection between unconstitutional aspect of MVP and alleged injury, his failure to obtain architectural contract work with district, or other evidence of intentional discrimination. Virdi v. DeKalb County School Dist., C.A.11 (Ga.) 2005, 135 Fed.Appx. 262, 2005 WL 1389942, Unreported. Civil Rights 1070

364. Intent or knowledge, liability generally--Generally

In cases arising under section 1983, judgment against a public servant "in his official capacity" imposes liability on the entity that he represents provided the public entity receives notice and an opportunity to respond. Brandon v. Holt, U.S.Tenn.1985, 105 S.Ct. 873, 469 U.S. 464, 83 L.Ed.2d 878, on remand 645 F.Supp. 1261. Civil Rights 1448

For municipal liability to attach under § 1983, plaintiff must demonstrate actual or constructive knowledge of such custom attributable to governing body of municipality or to official to whom that body had delegated policy-making authority. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1352(1)

Proof that municipality's legislative body or authorized decisionmaker has intentionally deprived plaintiff of federally protected right necessarily establishes that municipality acted culpably, for purposes of liability under § 1983. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1351(1)

In order to state claim of racial discrimination under equal protection clause and § 1983, plaintiff must demonstrate that governmental official was motivated by intentional discrimination on basis of race. Coleman v. Houston Independent School Dist., C.A.5 (Tex.) 1997, 113 F.3d 528. Constitutional Law 215

Private defendants, at least those invoking ex parte prejudgment statutes, should not be held liable under § 1983,

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absent showing of malice and evidence that they either knew or should have known of statute's constitutional infirmity. Wyatt v. Cole, C.A.5 (Miss.) 1993, 994 F.2d 1113, certiorari denied 114 S.Ct. 470, 510 U.S. 977, 126 L.Ed.2d 421. Civil Rights 1056

Proof of actual knowledge of constitutional violation is not absolute prerequisite for imposing supervisory liability; reckless disregard will suffice to impose liability. Angarita v. St. Louis County, C.A.8 (Mo.) 1992, 981 F.2d 1537 . Civil Rights 1355

Language of this section requiring intent to deprive of equal protection, or equal privileges and immunities, requires that there be some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. Hamilton v. Chaffin, C.A.5 (Miss.) 1975, 506 F.2d 904. Conspiracy 7.5(1)

Specific intent to deprive person of his constitutional rights is not necessary to maintain civil rights action. Ingraham v. Wright, C.A.5 (Fla.) 1974, 498 F.2d 248, rehearing granted 504 F.2d 1379, on rehearing 525 F.2d 909, certiorari granted 96 S.Ct. 2200, 425 U.S. 990, 48 L.Ed.2d 815, affirmed 97 S.Ct. 1401, 430 U.S. 651, 51 L.Ed.2d 711. Civil Rights 1031

Improper motive is not prerequisite to suit under this section rendering person who deprives another citizen of any right, privilege or immunity secured by Constitution and law liable to party injured. Roberts v. Williams, C.A.5 (Miss.) 1971, 456 F.2d 819, certiorari denied 92 S.Ct. 83, 404 U.S. 866, 30 L.Ed.2d 110. Civil Rights 1031

Specific intent to violate constitutional rights is not a necessary element of cause of action under this section. Allison v. Wilson, C.A.9 (Cal.) 1970, 434 F.2d 646, certiorari denied 92 S.Ct. 43, 404 U.S. 863, 30 L.Ed.2d 107. See, also, Jenkins v. Averett, C.A.4 (N.C.) 1970, 424 F.2d 1228; Banks v. Perk, D.C.Ohio 1972, 341 F.Supp. 1175, affirmed in part, reversed in part on other grounds 473 F.2d 910; Jenkins v. Meyers, D.C.Ill.1972, 338 F.Supp. 383, affirmed 481 F.2d 1406; Bennett v. Gravelle, D.C.Md.1971, 323 F.Supp. 203, affirmed 451 F.2d 1011, certiorari dismissed 92 S.Ct. 2451, 407 U.S. 917, 32 L.Ed.2d 692; Baxter v. Birkins, D.C.Colo.1970, 311 F.Supp. 222; Penn v. Stumpf, D.C.Cal.1970, 308 F.Supp. 1238.

The key component of a political discrimination defense for any type of public employee, whether he be career, regular, irregular or transitory, is a lack of discriminatory animus by the defendants, which is a question of fact proper only for a jury to decide. Flores Camilo v. Alvarez Ramirez, D.Puerto Rico 2003, 283 F.Supp.2d 440. Civil Rights 1370; Civil Rights 1432

Proof of racially discriminatory intent, as evidenced by deliberate indifference, was required to hold public elementary school officials liable under § 1983 for their alleged violation of student's equal protection rights in the school environment when they allegedly failed to protect the student from racial harassment and assaults by other students. Crispim v. Athanson, D.Conn.2003, 275 F.Supp.2d 240. Constitutional Law 220(3); Schools 147

Under Title VII and § 1983, plaintiff's ultimate burden of proof requires showing by preponderance of evidence that defendants acted with discriminatory intent. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1421; Civil Rights 1544

In suit brought under this section, the first inquiry is whether plaintiff has been deprived of a right secured by the Constitution and laws; if there has been no such deprivation, state of mind of defendant is wholly immaterial. Baker v. McCollan, Tex.1979, 99 S.Ct. 2689, 443 U.S. 137, 61 L.Ed.2d 433, on remand 601 F.2d 903. See, also, Skipper v. Phipps, N.D.Fla.1980, 483 F.Supp. 1213. Civil Rights 1027

365. ---- Good faith, intent or knowledge, liability generally

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Primary effect of municipal university's temporary campus display of sculpture allegedly disparaging of Roman Catholic Church was not to foster such disparagement, precluding recovery, on grounds of improper effect, in faculty member's and student's §§ 1983 Establishment Clause action against university; although sculpture was prominently placed in area reserved for official use, it was one of 30 outdoor sculptures composing unified art exhibit, several of which were within sight of challenged piece. O'Connor v. Washburn University, C.A.10 (Kan.) 2005, 416 F.3d 1216, certiorari denied 126 S.Ct. 1469, 164 L.Ed.2d 247. Constitutional Law 84.5(6)

Private defendants sued on basis of their invocation of state attachment statute may be held liable for damages under § 1983 only if they failed to act in good faith in invoking unconstitutional state procedures, that is, if they either knew or should have known that statute upon which they relied was unconstitutional. Wyatt v. Cole, C.A.5 (Miss.) 1993, 994 F.2d 1113, certiorari denied 114 S.Ct. 470, 510 U.S. 977, 126 L.Ed.2d 421. Civil Rights 1056

Parents were not entitled to compensatory relief from agents and employees of Texas Department of Human Resources, who temporarily removed two infant children from family household at separate times, in action under this section absent a showing that those defendants were not acting in good faith. Dorsey v. Moore, C.A.5 (Tex.) 1983, 719 F.2d 1263. Civil Rights 1360

Law enforcement officer can be held liable for executing facially valid and regular warrant if officer acted in bad faith or with notice of infirmity. Hamrick v. City of Eustace, E.D.Tex.1990, 732 F.Supp. 1390. Civil Rights 1088(3)

366. ---- Scope of knowledge, intent or knowledge, liability generally

The less direct the supervision of the subordinate, the greater degree of actual knowledge or acquiescence by the supervisor which must be shown in order to impose liability on the supervisor under the federal civil rights statute. Smith v. Hill, D.C.Utah 1981, 510 F.Supp. 767. Civil Rights 1401

Under this section, extent of supervisors' knowledge of and participation in acts of their subordinates determines the scope of their liability for their subordinates' action. Crawford v. Dominic, E.D.Pa.1979, 469 F.Supp. 260. Civil Rights 1355; Officers And Public Employees 118

367. ---- Causation, intent or knowledge, liability generally

In civil rights action by foster child against placement agency for failing to supervise placement adequately, causal link between agency's alleged failure to supervise and continuation of abuse of foster child was clear, in that if agency had investigated the child's case with sufficient acuity and diligence to discover abuse, it would have been able to prevent further abuse by withdrawing her from home, and, therefore, key question was whether state of mind was such that agency could be meaningfully termed culpable, and for such requirement, deliberate indifference rather than intentional harm is appropriate yardstick. Doe v. New York City Dept. of Social Services, C.A.2 (N.Y.) 1981, 649 F.2d 134. Civil Rights 1057

Former president was subject to liability in action based on allegedly illegal surveillance only if he knew or reasonably should have known that action he took would violate the constitutional rights with the person affected or if he took action with malicious intention to cause a deprivation of constitutional rights or other injury. Clark v. U. S., S.D.N.Y.1979, 481 F.Supp. 1086, appeal dismissed 624 F.2d 3. Civil Rights 1364

368. ---- Collective body, intent or knowledge, liability generally

Alleged racially discriminatory motive of only one member of three-member majority of five-member village council which voted not to reappoint police chief could not give rise to municipal liability in chief's § 1983 action;

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evidence that other two members of majority shared improper motive was required. Mason v. Village of El Portal, C.A.11 (Fla.) 2001, 240 F.3d 1337. Civil Rights 1351(5)

369. ---- Custom or usage, intent or knowledge, liability generally

Evidence that city police officer acted illegally, albeit without knowledge or complicity of city, in attempting to extort money from father of drug suspect in exchange for "losing evidence," and that other officers attempted to obtain false testimony about father and his son in exchange for "a deal" with man who was arrested on unspecified charges did not support finding of liability under § 1983 against city based on "widespread practice" prong of municipal liability test. Roach v. City of Evansville, C.A.7 (Ind.) 1997, 111 F.3d 544. Civil Rights 1351(4)

To establish culpability for deprivation of public employee's substantive due process rights from actual physical assaults during his coworker's general course of harassment by tacit condonation, employee-victim must have proffered evidence that supervisors knew or reasonably should have known of comparable pattern of coworker conduct that was sufficiently widespread to pose pervasive and unreasonable risk of constitutional injury to employee, and that in face of that knowledge they took no action to stop it but remained deliberately indifferent to it. McWilliams v. Fairfax County Bd. of Supervisors, C.A.4 (Va.) 1996, 72 F.3d 1191, certiorari denied 117 S.Ct. 72, 519 U.S. 819, 136 L.Ed.2d 32. Civil Rights 1359

Mother of victim shot and killed by city police officer, in order to prevail on § 1983 claim against city, was not required to produce evidence of any deliberate or conscious choice by board of police commissioners to adopt unconstitutional policy or custom; mother asserted that city's failure to train officers appropriately and to discipline them when they violated policy amounted to deliberate indifference to rights of city inhabitants. Berry v. City of Detroit, C.A.6 (Mich.) 1994, 25 F.3d 1342, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 902, 513 U.S. 1111, 130 L.Ed.2d 786. Civil Rights 1352(4)

Police chiefs could be held liable for deprivation of police officer's due process rights arising from police department's custom of withholding relevant information from officers under investigation, where it was reasonable to infer that police chiefs were well aware of such pervasive activity in their department. Los Angeles Police Protective League v. Gates, C.A.9 (Cal.) 1990, 907 F.2d 879, rehearing denied. Civil Rights 1358

Superintendent of police department was liable as supervisor for civil rights deprivations arising out of shooting of driver of automobile which was departing as squad of plainclothes police officers approached with guns drawn, having alighted from an unmarked police car and having given no indication that they were police officers; superintendent had knowledge of numerous complaints against leader of squad and had taken no action, and had employed an inadequate disciplinary system permitting officers such as the squad leader to continue improper practices. Gutierrez-Rodriguez v. Cartagena, C.A.1 (Puerto Rico) 1989, 882 F.2d 553. Civil Rights 1358

In order to impose liability under this section on municipality for deprivation of rights pursuant to official policy by virtue of persistent, widespread practice of city officials or employees which is so common and well settled as to constitute custom that fairly represents municipal policy, actual or constructive knowledge of such custom must be attributable to the governing body of municipality or to official to whom that body has delegated policy-making authority. Bennett v. City of Slidell, C.A.5 (La.) 1984, 735 F.2d 861, certiorari denied 105 S.Ct. 3476, 472 U.S. 1016, 87 L.Ed.2d 612. Civil Rights 1351(1)

County could not be held responsible under § 1983 for prosecutorial misconduct on theory that it was part of a pattern of unconstitutional conduct so pervasive as to imply deliberate indifference despite actual or constructive knowledge; even if there were some instances of prosecutorial misconduct, they were limited to ultimately exonerated plaintiff's case and therefore were not enough to constitute a "pattern" which would have placed prosecutor on actual or constructive notice that he needed to do something in the way of training his staff. Gausvik v. Perez, E.D.Wash.2002, 239 F.Supp.2d 1047. Civil Rights 1352(4)

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42 U.S.C.A. § 1983

370. ---- Lawfulness of action, intent or knowledge, liability generally

In order for public officials to be liable under § 1983, contours of right which victim claims was violated must be sufficiently clear that reasonable official would understand what he was doing violated that right, that is unlawfulness of action must be clear in context of preexisting law. B Street Commons, Inc. v. Board of County Com'rs of El Paso County, D.Colo.1993, 835 F.Supp. 1266. Civil Rights 1376(2)

Official is liable under this section if he knew or reasonably should have known that action he took within his sphere of official responsibility would violate constitutional rights of person affected; fulcrum is existence, at time of official's action, of clearly established judicial decisions that make his action unconstitutional. Marrero v. City of Hialeah, Fla., S.D.Fla.1984, 581 F.Supp. 1207, affirmed 774 F.2d 1177. Civil Rights 1376(2)

371. ---- Number of incidents, intent or knowledge, liability generally

Sheriff was not personally liable under § 1983 for battery and false imprisonment inflicted upon debtor by deputy sheriff during attempt to collect debt on behalf of private creditor; even though debtor had allegedly complained to sheriff's secretary about prior harassment efforts of deputy in collecting debt, it was not clear that complaints reached sheriff's attention and report of single incident was not sufficient notice of improper activity. Wright v. Sheppard, C.A.11 (Fla.) 1990, 919 F.2d 665. Civil Rights 1358

Proving one incident of misconduct, however severe, cannot in and of itself engender municipal liability under §§ 1983. Pahle v. Colebrookdale Tp., E.D.Pa.2002, 227 F.Supp.2d 361. Civil Rights 1351(1)

A single, isolated violation of constitutional rights is not enough to show knowledge on behalf of municipality for purposes of imposing liability under § 1983 nor is a general laxness sufficient to demonstrate causal connection between a failure to control on behalf of the municipality and the harm suffered by plaintiff. Chalmers v. Petty, M.D.N.C.1991, 136 F.R.D. 399. Civil Rights 1352(1)

372. ---- Policy-making officials, intent or knowledge, liability generally

Knowledge on part of policymaker that a constitutional violation will most likely result from given official custom or policy is necessary element for municipal liability under section 1983. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1352(1)

Assuming that municipal police chief was policymaker, neither he nor city were deliberately indifferent to need to train police officers as to handling of suspects who suffered physical challenges or as to intervening against officers who utilized excessive force, so as to be liable under §§ 1983 for any excessive force used, in violation of Fourth Amendment, against 442-pound motorist after traffic stop; neither had actual or constructive knowledge of need for different training, and absence of training did not present obvious potential for violation or constitute moving force behind alleged violation. Reindl v. City of Leavenworth, Kansas, D.Kan.2006, 443 F.Supp.2d 1222. Civil Rights 1358

Motorist asserting Due Process violations regarding the suspension of his driver's license for non-payment of a fine failed to establish the personal involvement of the current or former commissioners of a city's department of motor vehicles, or of a police officer, in the alleged violations, thus precluding imposition of liability on those officials in the motorist's §§ 1983 suit; notice of the impending suspension was sent to the motorist by an automated system. Evans v. City of New York, S.D.N.Y.2004, 308 F.Supp.2d 316, affirmed 123 Fed.Appx. 433, 2005 WL 348377. Civil Rights 1358; Civil Rights 1360

Neither county nor county sheriff in his official capacity could be liable for decision of sheriff and county hiring

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committee not to place employee on jail officer eligibility list or decision of sheriff to terminate employee from her part-time county job, for purpose of employee's §§ 1981 and 1983 claims, alleging that decisions were made as result of employee's involvement in interracial marriage, absent evidence that the employment decisions were the result of an official county policy or custom, or that sheriff or committee members exercised final policymaking authority on behalf of county. Jones v. Adams County, Wisconsin, W.D.Wis.2003, 297 F.Supp.2d 1132. Civil Rights 1351(5); Civil Rights 1359

A § 1983 plaintiff bringing a claim under against a municipal defendant for deprivation of a federal right pursuant to an official policy, practice, or custom must do more than simply allege that such an official policy exists; he must also prove a course of action that was consciously chosen, or officially sanctioned or ordered. Riebsame v. Prince, M.D.Fla.2003, 267 F.Supp.2d 1225, affirmed 91 Fed.Appx. 656, 2004 WL 177567, certiorari denied 125 S.Ct. 166, 543 U.S. 888, 160 L.Ed.2d 149. Civil Rights 1351(1); Civil Rights 1394

Knowledge of deputy superintendent, assistant superintendent, and principal regarding students' claims that teacher sexually abused them and officials' failure to report claims to board of education or to superintendent at most was negligent inaction on their part and could not form basis of constitutional violation in § 1983 action against board; board liability could not rise from actions of those officials who were not imbued with policymaking authority. Thelma D. v. Board of Educ. of City of St. Louis, E.D.Mo.1990, 737 F.Supp. 541, affirmed 934 F.2d 929. Civil Rights 1352(2)

373. ---- Risk of harm, intent or knowledge, liability generally

To satisfy requirements of knowledge for supervisory liability under civil rights statute, plaintiff must show supervisor's knowledge of conduct engaged in by subordinate that poses pervasive and unreasonable risk of constitutional injury to plaintiff. Shaw v. Stroud, C.A.4 (N.C.) 1994, 13 F.3d 791, certiorari denied 115 S.Ct. 67, 513 U.S. 813, 130 L.Ed.2d 24, certiorari denied 115 S.Ct. 68, 513 U.S. 814, 130 L.Ed.2d 24. Civil Rights 1355

374. ---- Supervisory personnel, intent or knowledge, liability generally

Director of the state Department of Corrections was not liable in §§ 1983 claim brought by state prisoner with amputated leg, alleging violation of his Eighth and Fourteenth Amendment rights, in connection with correctional officials' alleged conduct in denying him a crutch, failing to provide safe shower facility, and failing to transfer him to another prison that could accommodate his needs, absent evidence that the director was actually aware of prisoner's situation or his complaints. Johnson v. Snyder, C.A.7 (Ill.) 2006, 444 F.3d 579. Civil Rights 1358

Supervisory police officials were not liable, on the basis of supervisory liability, in §§ 1983 action brought by plaintiffs allegedly subjected to a number of incidents of police harassment; only two of the contacts resulted in constitutional violations, and supervisors were not shown to have had contemporaneous knowledge of the incidents or of the existence of a pattern of incidents, except in one case, and in that case the supervisor was not in a position to stop the violation. Glass v. City of Philadelphia, E.D.Pa.2006, 455 F.Supp.2d 302. Civil Rights 1358

Inmate who sued state prison officials, alleging use of excessive force in incident at sallyport, failed to establish that prison commissioner exhibited deliberate indifference to his rights by failing to act on information that unconstitutional acts were occurring, as required to maintain claim for supervisory liability under §§ 1983; there was no reliable evidence that commissioner had actual or constructive notice of his subordinates committing constitutionally prohibited acts against inmate. Ziemba v. Thomas, D.Conn.2005, 390 F.Supp.2d 136. Civil Rights 1358

In a civil rights lawsuit, liability for deliberate indifference on the part of a supervisor may not be established by

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pointing to a single incident or isolated incidents, and, similarly, a supervisor cannot be held responsible for the deliberate criminal acts of his properly trained employees when he has no basis upon which to anticipate the misconduct; rather, it is a supervisor's continued inaction in the face of documented widespread abuses that provides an independent basis for finding that he either was deliberately indifferent or acquiesced in the constitutionally offensive conduct of his subordinates. Layman v. Alexander, W.D.N.C.2003, 294 F.Supp.2d 784. Civil Rights 1355

Fact questions existed as to whether supervisor of African-American employee at state agency acted with racially discriminatory intent toward employee and thereby aided in creation of hostile work environment, precluding summary judgment on qualified immunity grounds in employee's §§ 1981 and 1983 action; allegations included failure to take appropriate disciplinary action against employee's white subordinate who had behaved insubordinately. Hill v. Taconic Developmental Disabilities Services Office, S.D.N.Y.2003, 283 F.Supp.2d 955, affirmed 82 Fed.Appx. 254, 2003 WL 22879684. Federal Civil Procedure 2497.1

For supervisory liability to exist under § 1983, the supervisor's conduct or inaction must have been intentional, must have been grossly negligent, or must have amounted to a reckless or callous indifference to the constitutional rights of others. Torres Ocasio v. Melendez, D.Puerto Rico 2003, 283 F.Supp.2d 505. Civil Rights 1355

An important factor in evaluating a supervisor's liability for a subordinate officer's violation of a citizen's civil rights under § 1983 is whether the supervisor had notice of the alleged violations. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1355

To establish a supervisor's liability for a subordinate officer's alleged deprivation of a plaintiff's constitutional rights under § 1983, the plaintiff must affirmatively connect the supervisor's conduct to the subordinate's violative act or omission; this affirmative connection need not take the form of knowing sanction, but may include tacit approval of, acquiescence in, or purposeful disregard of, rights-violating conduct. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1355

To establish elements of supervisory liability under federal civil rights statute, plaintiff must show supervisor's knowledge of conduct engaged in by subordinate where the conduct poses pervasive and unreasonable risk of constitutional injury to the plaintiff. Jones v. Ziegler, D.Md.1995, 894 F.Supp. 880, affirmed 104 F.3d 620. Civil Rights 1355

375. ---- Time of knowledge, intent or knowledge, liability generally

Prison officials could not be held liable in action brought under this section, where, at the time of occurrence which gave rise to suit, opinion making prison officials' conduct unconstitutional had been announced but had not been published, where there was no basis for charging prison officials with knowledge of such opinion, and where officials had no reason to believe that they were violating a constitutional right. Withers v. Levine, C.A.4 (Md.) 1980, 615 F.2d 158, certiorari denied 101 S.Ct. 136, 449 U.S. 849, 66 L.Ed.2d 59. Civil Rights 1098

One essential requirement of an action under this section, is that the plaintiff show facts which indicate that the defendant, at time he acted, knew or as a reasonable man should have known that his acts were ones which would deprive the plaintiff of his constitutional rights or might lead to that result. Bowens v. Knazze, N.D.Ill.1965, 237 F.Supp. 826. Civil Rights 1031

376. ---- Particular cases intent or knowledge present, liability generally

City was liable under § 1983 for equal protection violations which occurred when city made certain transfers and promotions of African-American police officers; mayor, chief administrative officer, and superintendent of police each knew of and approved transfers and promotions. Police Ass'n of New Orleans Through Cannatella v. City of

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New Orleans, C.A.5 (La.) 1996, 100 F.3d 1159. Civil Rights 1351(5)

In action under civil rights statute against county and county investigator for violation of plaintiff's constitutional right of privacy by disclosing to author of book about murder of plaintiff's wife excerpts from wife's diary, evidence was sufficient to conclude that investigator intentionally, as opposed to negligently, disclosed the diary information to the author, who was a good friend of investigator and was allowed to look through investigator's files. Sheets v. Salt Lake County, C.A.10 (Utah) 1995, 45 F.3d 1383, certiorari denied 116 S.Ct. 74, 516 U.S. 817, 133 L.Ed.2d 34. Civil Rights 1420

County board of supervisors had constructive notice of proper procedures to acquire right-of-way across Indian land allotment as of date its agent was notified by Bureau of Land Management, and was also charged with knowledge of the laws, particularly those governing functions within its scope of responsibility, and thus the board's approval and recording of improper quitclaim deeds and its incorporation of road into county system without proper right-of-way deeds, especially after it had been notified that it had no valid right-of-way for the road, constituted reckless disregard of the constitutional rights of the beneficial owners of the land, supporting liability of county under civil rights statute. Hammond v. County of Madera, C.A.9 (Cal.) 1988, 859 F.2d 797. Civil Rights 1071

Attorney most likely was in better position than client to know whether state's garnishment was constitutional and in view of allegations that he refused to comply with client's directions to release plaintiffs' property, attorney could be liable under this section if on behalf of client he or she pursued garnishment or prejudgment attachment proceeding which he or she knew or reasonably should have known would violate clearly established constitutional or statutory rights of debtor. Buller v. Buechler, C.A.8 (S.D.) 1983, 706 F.2d 844. Civil Rights 1375

Former prisoner adequately stated that physicians violated his Fourth Amendment rights in his pretrial arrest and incarceration, in lawsuit under §§ 1983, on allegations that physicians, acting as county's coroner or "de facto" coroner, intentionally falsified victim's autopsy report which played material role in prisoner's arrest and prosecution. Marsh v. San Diego County, S.D.Cal.2006, 432 F.Supp.2d 1035. Civil Rights 1395(6)

Former transitory public employees established prima facie case that head of governmental agency knew or acquiesced in decision to not renew employees' contracts due to their political affiliation, in civil rights lawsuit under First Amendment alleging political discrimination, where such person had final responsibility for all hiring and firing, he signed employees' non-renewal letters, employees' political affiliation was known throughout agency, non-renewals occurred simultaneously, implying centralized action, and prima facie case for political discrimination could be built upon circumstantial evidence. Martinez-Baez v. Rey-Hernandez, D.Puerto Rico 2005, 394 F.Supp.2d 428. Civil Rights 1359

Governor, having knowledge of orders requiring release of inmates to cure unconstitutional overcrowding, was bound to respect and refrain from interfering with implementation of those orders, even though Governor was not party to orders or underlying action, and Governor's willful interference and refusal to comply with orders rendered him liable to inmates under § 1983. Tasker v. Moore, S.D.W.Va.1990, 738 F.Supp. 1005. Civil Rights 1096

377. ---- Particular cases intent or knowledge not present, liability generally

Evidence that city planning commission acted with unconstitutional motive, as required for municipal liability, was insufficient for submission to jury in developers' §§ 1983 action alleging that city violated developers' speech rights by denying tentative approval for their proposed building project because developer had run unsuccessfully against city's mayor, inasmuch as developers merely offered opinions of former building inspector that mayor influenced and controlled commission, and there was no evidence that commission knew of and ratified unconstitutional motive. Campbell v. Rainbow City, Ala., C.A.11 (Ala.) 2006, 434 F.3d 1306. Civil Rights 1428

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There was no evidence of racially discriminatory intent on part of city officials toward Native American co-owner of wrecking yard in officials' allegedly improper delay in acting on owners' application for city approval of state wrecking license renewal, precluding owners' §§ 1983 equal protection action against city; mere indifference to effects of decision on co-owner did not constitute discriminatory intent. Thornton v. City of St. Helens, C.A.9 (Or.) 2005, 425 F.3d 1158. Licenses 22

Municipal university did not have improper motive of disparagement of religion when it selected for temporary campus display sculpture allegedly hostile to Roman Catholic Church, nor when it displayed sculpture, nor when it retained sculpture in face of complaints, precluding recovery, on grounds of improper purpose, in faculty member's and student's §§ 1983 Establishment Clause action against university; there was no evidence of any motives other than aesthetic and educational ones in selection and placement, and likewise no evidence of endorsement of complainants' interpretation of sculpture in decision to retain it. O'Connor v. Washburn University, C.A.10 (Kan.) 2005, 416 F.3d 1216, certiorari denied 126 S.Ct. 1469, 164 L.Ed.2d 247. Constitutional Law 84.5(6)

Elementary school psychologist failed to show that education board's response to employment discrimination that allegedly resulted from gender stereotyping by school principal and district personnel director was clearly unreasonable under the circumstances, and thus to show that board evinced such deliberate indifference to alleged discrimination that it was subject to municipal liability under § 1983 and Equal Protection Clause as having intended for discrimination to occur, given that board appointed independent review panel to investigate psychologist's situation and panel recommended that tenure denial was merited. Back v. Hastings On Hudson Union Free School Dist., C.A.2 (N.Y.) 2004, 365 F.3d 107. Civil Rights 1352(5)

Without evidence in addition to the alleged racial epithets, football player's mother failed to come forward with sufficient claim from which a reasonable juror could infer racial animus by a state official, and therefore failed to establish that school defendants violated equal protection; while school officials may not have adequately responded to all of mother's numerous complaints of racial harassment, record did not show that the officials' inaction on some of the complaints rose to the level of an equal protection violation, and mother presented no evidence establishing that the alleged racial harassment went unpunished while other types of misconduct was punished or that the school did not document the racial harassment in its records. Priester v. Lowndes County, C.A.5 (Miss.) 2004, 354 F.3d 414, certiorari denied 125 S.Ct. 153, 543 U.S. 829, 160 L.Ed.2d 44. Constitutional Law 220(3); Schools 164

State hospital administrator was not liable under § 1983 to patient who was assaulted by hospital security officers in absence of evidence that administrator implicitly authorized, approved, or knowingly acquiesced in any of conduct which formed basis for complaint. Durham v. Nu'man, C.A.6 (Ky.) 1996, 97 F.3d 862, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1337, 520 U.S. 1157, 137 L.Ed.2d 496. Civil Rights 1037

High school principal could not be held personally liable to female student who brought § 1983 action alleging that principal acted with deliberate indifference or reckless disregard for her civil rights in connection with sexual assault committed against her by teacher, in absence of evidence that principal had any notice of sexual misconduct by teacher or that he was deliberately indifferent or tacitly authorized teacher's sexual abuse of plaintiff; although there might have been some negligence on part of principal in failing to adequately investigate rumors of inappropriate conduct by teacher, liability could not be predicated on negligence. Gates v. Unified School Dist. No. 449 of Leavenworth County, Kan., C.A.10 (Kan.) 1993, 996 F.2d 1035. Civil Rights 1356

State officials connected with mental health institutions could not be held liable under § 1983 to patient confined under the Illinois Sexually Dangerous Persons Act past the date on which psychiatrist decided patient was no longer in need of treatment; even if officials "should have known" of required release, officials asserted that they were not aware of the order for release. Pacelli v. deVito, C.A.7 (Ill.) 1992, 972 F.2d 871. Civil Rights 1037

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Evidence failed to show that police department employees knew or should have known that charge that police officer had stolen battery was false, and thus employees could not be held liable for violation of discharged officer's constitutional rights on that basis, where another officer had told police department employee that officer had stolen battery, and that employee stated that he believed that other officer was truthful. Los Angeles Police Protective League v. Gates, C.A.9 (Cal.) 1990, 907 F.2d 879, rehearing denied. Civil Rights 1421

Municipality, police chief, postmaster and two officers of National Guard did not violate rights of relatives of postal employees to associate with those employees by failing to take appropriate action to prevent employees from being killed and injured by gunman who had trapped them in post office; there was no evidence indicating that municipality or officials intended to deprive anyone of their associational rights. Bryson v. City of Edmond, C.A.10 (Okla.) 1990, 905 F.2d 1386. Constitutional Law 91; Militia 19; Postal Service 7(1)

Shopping center managers were not liable in § 1983 action for allegedly illegal arrests which took place on shopping center parking lots, even though managers requested assistance of officials to protect their property, and supported charges once made by proper officials; nothing suggested that managers had any role in, or even notice of, official decision to make those arrests. Morgan v. City of DeSoto, Tex., C.A.5 (Tex.) 1990, 900 F.2d 811, certiorari denied 111 S.Ct. 346, 498 U.S. 940, 112 L.Ed.2d 311. Civil Rights 1088(4)

City councilmen were not liable under this section for deprivation of civil rights of arrestee who was shot by city policeman where there was no evidence that any councilman acquired any specific knowledge of policeman's propensities for violence to and maltreatment of persons under arrest; city mayor likewise could not be said to have acquired knowledge of policeman's tendency toward violence and maltreatment of prisoners by virtue of fact that, during other judicial proceedings in which major presided as judge, there was evidence, disbelieved by mayor, that policeman had mistreated another prisoner. Russ v. Ratliff, C.A.8 (Ark.) 1976, 538 F.2d 799, certiorari denied 97 S.Ct. 740, 429 U.S. 1041, 50 L.Ed.2d 753. Civil Rights 1358

Absent evidence that school administrators had any knowledge that teacher was abusing middle school student prior to his arrest or that they failed to take any action in response to knowledge, school district's policies could not have played affirmative role in teacher's conduct, so as to give rise to civil rights liability on custom, policy, or practice claim. Kline ex rel. Arndt v. Mansfield, E.D.Pa.2006, 454 F.Supp.2d 258. Civil Rights 1352(2)

Prisoner's allegation that deputy prison superintendent ordered him placed in a housing unit with more stringent restrictions was not sufficient to establish superintendent's personal involvement in alleged due process violations, as required to establish §§ 1983 liability, absent evidence that superintendent had any involvement in or knowledge of the conditions of plaintiff's confinement there, particularly the alleged denial of food. Brooks v. Chappius, W.D.N.Y.2006, 450 F.Supp.2d 220. Civil Rights 1358

Citizen did not sufficiently allege that police officers' superintendent was liable under § 1983 for police officers' malicious prosecution of citizen under theory of supervisory liability; citizen's complaint outlined the legal standard of supervisory liability and alleged that supervisor failed to train and supervise officers, but did not establish that superintendent had notice of officers' purported violation of citizen's constitutional rights or connect superintendent's conduct to officers' actions. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1395(5)

Police officer was not liable, under § 1983, for failing to intervene to prevent fellow officer's alleged use of neck restraint against arrestee, where there was no evidence first officer knew or should have known of degree of force used by second officer to restrain arrestee or that arrestee cried out or indicated in any manner that restraint was causing him pain, and first officer denied that second officer was even restraining arrestee by the neck. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Section 1983 liability cannot attach to a supervisor merely because a subordinate violated someone's constitutional rights. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1355

No reasonable jury could find that social worker's conduct directly caused foster parent's license renewal and thereby caused foster child's murder by foster parent, and thus, social worker had no § 1983 liability; foster child was not assigned to social worker, there was no evidence that social worker had heard reports that child was abused or that social worker could have removed child from foster home, and there was no evidence that foster care license would have been revoked prior murder if social worker had investigated more fully the reports of abuse of other children he was alleged to have heard. Speed v. Ramsey County, D.Minn.1997, 954 F.Supp. 1392. Civil Rights 1057

Absence of evidence that sheriff had actual knowledge of substantial risk of serious harm to which sheriff was deliberately indifferent precluded individual liability of sheriff in § 1983 civil rights suit arising from death of pretrial detainee who was assaulted and killed by cellmate while both were on suicide watch; constructive knowledge to sheriff from county records documenting perpetrator's violent propensities was not sufficient. Clark v. McMillin, S.D.Miss.1996, 932 F.Supp. 789. Civil Rights 1088(4)

City's violation of § 1983 would not be intentional, absent showing that city knew that Justice Department manual precluded its requirement telecommunications devices for the deaf (TDDs) emit audible tone so that emergency phone calls could be transferred to city's TDD, hearing-impaired users of emergency telephone dispatch service and that the manual had force and effect of law. Ferguson v. City of Phoenix, D.Ariz.1996, 931 F.Supp. 688, affirmed 157 F.3d 668, as amended, certiorari denied 119 S.Ct. 2049, 526 U.S. 1159, 144 L.Ed.2d 216. Civil Rights 1462

School counselor did not "knowingly refuse" to terminate teacher's sexual predations, and, thus, could not be held liable on that basis under federal civil rights statute for teacher's alleged criminal sexual attack on student, where only evidence that counselor knew of teacher's sexual assaults on children in public schools consisted of report of incident that took place at least three years after alleged assault on student. Doe By and Through Knackert v. Estes, D.Nev.1996, 926 F.Supp. 979. Civil Rights 1356

Evidence that supervisor made comments to different people indicating that promotions in state agency were awarded on the basis of political patronage and that supervisor allegedly appointed a former state senator's chief of staff to personnel committee and consulted with her on personnel matters did not indicate that supervisor had actual knowledge of political discrimination and that he abstained from voting on personnel matters to allow the discrimination to continue and that this abstention fostered atmosphere that tolerated or encouraged political discrimination and thus, supervisor could not be held liable under § 1983. Christy v. Pennsylvania Turnpike Com'n, E.D.Pa.1996, 912 F.Supp. 146. Civil Rights 1359

State's secretary of corrections was not subject to liability under §§ 1983 or state law for allegedly improper inter-prison transfers of protective custody inmate, absent allegation that secretary had any knowledge of inmate's complaints and requests regarding his placement. Chavez v. Perry, C.A.10 (N.M.) 2005, 142 Fed.Appx. 325, 2005 WL 1635361, Unreported. Civil Rights 1358

378. Injury or damage, liability generally--Generally

Members of board of trustees for public library system and director of system waived argument that they were entitled to qualified immunity from Caucasian librarians' § 1983 action, alleging that their transfers were result of race discrimination, because reasonable public official in defendants' position would not have known transfers were adverse employment actions; at trial, defendants stipulated that transferring people because of their race was contrary to law of the United States. Bogle v. McClure, C.A.11 (Ga.) 2003, 332 F.3d 1347, rehearing and rehearing en banc denied 77 Fed.Appx. 510, 2003 WL 21804722, certiorari dismissed 124 S.Ct. 1168, 540 U.S.

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1158, 157 L.Ed.2d 1059. Federal Courts 616

Captain's conduct in allegedly giving female correctional officer less favorable work assignments did not constitute adverse employment action which could support officer's claims of sex discrimination and retaliation under § 1983 and civil rights conspiracy statute. Southard v. Texas Bd. of Criminal Justice, C.A.5 (Tex.) 1997, 114 F.3d 539. Civil Rights 1169; Conspiracy 7.5(1); Civil Rights 1249(1)

To extent that records maintained by state officials erroneously identified parents as child abusers for some period of time, when investigation had "ruled out" child abuse, this was not actionable under civil rights statute. Hodge v. Jones, C.A.4 (Md.) 1994, 31 F.3d 157, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1057

If defendants conspire to deprive plaintiff of his right of action, under this section, to seek redress for use of force in violation of U.S.C.A.Const. Amend. 14, he might have had actionable deprivation of federally protected rights, but in view of successful state tort action there was not cognizable injury or damage. Landrigan v. City of Warwick, C.A.1 (R.I.) 1980, 628 F.2d 736. Conspiracy 7.5(1)

Prison inmate lacked any injury, and therefore lacked standing to bring § 1983 action against state court judge for alleged violation of his due process rights for alleged collusion with state court clerk to deny inmate an appeal in connection with his second postconviction relief petition, where inmate filed document in state court to attempt to persuade the judge to assist him in perfecting his appeal, the judge interpreted the document as a third postconviction petition and denied it as untimely, and on inmate's appeal from that order, the state appellate court determined that the state court judge was correct in dismissing the second postconviction petition. Quarles v. Lineberger, E.D.Pa.2003, 264 F.Supp.2d 208, affirmed 100 Fed.Appx. 127, 2004 WL 1396362, certiorari denied 125 S.Ct. 874, 543 U.S. 1060, 160 L.Ed.2d 787. Civil Rights 1333(4)

If a governmental superior fails to perform an explicit statutory duty and constitutional injury occurs, liability may attach under this section. Penick v. Columbus Bd. of Ed., S.D.Ohio 1981, 519 F.Supp. 925, affirmed 663 F.2d 24, certiorari denied 102 S.Ct. 1713, 455 U.S. 1018, 72 L.Ed.2d 135. Civil Rights 1355

379. ---- Custom or usage, injury or damage, liability generally

Only when implementation of municipality's policy or custom is cause of injury may municipality be liable under § 1983. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1351(1)

Municipal liability under § 1983 may not be imposed merely because municipality employed person responsible for constitutional violation, but is triggered only when injuries were inflicted pursuant to government policy or custom. Brown v. City of Elba, M.D.Ala.1990, 754 F.Supp. 1551. Civil Rights 1351(1)

Inmate could not recover from District of Columbia for alleged constitutional violations in transferring inmate from one prison to another, absent any allegation that policy of District of Columbia caused harm. Nowlin v. Director, District of Columbia Dept. of Corrections, D.D.C.1988, 689 F.Supp. 26. Civil Rights 1351(4)

When execution of governmental policy or custom, whether it is formally adopted or informally but uniformly adhered to, inflicts injury, government as an entity may be held responsible under this section. Rucker v. Martin, W.D.Okla.1980, 505 F.Supp. 20. Civil Rights 1351(1)

Under this section, governmental entity may be liable for its employees' acts, but only if the injury is inflicted by execution of government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy. Owens v. Haas, E.D.N.Y.1978, 456 F.Supp. 1009, reversed on other grounds 601 F.2d 1242, certiorari denied 100 S.Ct. 483, 444 U.S. 980, 62 L.Ed.2d 407. Civil Rights 1351(1)

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42 U.S.C.A. § 1983

380. ---- Risk of harm, injury or damage, liability generally

In assessing whether official conduct at issue is arbitrary or conscience-shocking in constitutional sense, as will allow recovery in federal civil rights action based on substantive violation of plaintiff's due process rights, risk of harm must be weighed against justification for creating that risk, and conduct that is justified and therefore not arbitrary in one circumstance may be so unjustified as to be unconstitutional under different circumstances. Williams v. City and County of Denver, C.A.10 (Colo.) 1996, 99 F.3d 1009, rehearing granted, opinion vacated 140 F.3d 855, on rehearing 153 F.3d 730. Constitutional Law 253(1)

Establishing pervasive and unreasonable risk of harm for supervisory liability under civil rights statute requires evidence that conduct is widespread, or has been used on several different occasions, and that it poses unreasonable risk of constitutional injury. Shaw v. Stroud, C.A.4 (N.C.) 1994, 13 F.3d 791, certiorari denied 115 S.Ct. 67, 513 U.S. 813, 130 L.Ed.2d 24, certiorari denied 115 S.Ct. 68, 513 U.S. 814, 130 L.Ed.2d 24. Civil Rights 1355

In § 1983 Eighth Amendment case in which prison inmate claims that his right to medical care was violated due to supervisor's failure to train subordinates, "deliberate indifference" test to determine municipal liability differs from test applicable in individual liability cases; in municipal liability case, there is no subjective component, and inmate need only show objective risk of injury and failure to train. Ginest v. Board of County Com'rs. of Carbon County, D.Wyo.2004, 333 F.Supp.2d 1190. Civil Rights 1352(4)

381. Deliberate indifference, liability generally

State prison director was not deliberately indifferent to rights of inmate in authorizing, at warden's request, special team to conduct cell invasions to find loaded gun, and thus could have no supervisory liability for alleged use of excessive force, absent any showing suggesting that director was aware of substantial risk of serious harm to cellmate of targeted suspect and wanted to harm inmates or planned to ignore any harm done. Serna v. Colorado Dept. of Corrections, C.A.10 (Colo.) 2006, 455 F.3d 1146. Civil Rights 1358

City's release of personnel files of its police officers to criminal defendant's counsel without notice or any attempt to redact sensitive personal information did not rise to the level of deliberate indifference, as required to establish officers' §§ 1983 substantive due process claim; although city employee who released files admitted that she would not want her personal information released to a criminal defendant for personal safety reasons, the employee did not consider and disregard specific risk of harm to officers when she released the files in response to counsel's subpoena. Hart v. City of Little Rock, C.A.8 (Ark.) 2005, 432 F.3d 801, rehearing and rehearing en banc denied, certiorari denied 2006 WL 1521439. Constitutional Law 278.4(1)

In §§1983 action alleging that municipality's facially valid actions violated plaintiff's constitutional rights, plaintiff must demonstrate that municipality's lawful action was taken with deliberate indifference as to its known or obvious consequences. McDowell v. Brown, C.A.11 (Ga.) 2004, 392 F.3d 1283. Civil Rights 1343

Where alleged official policy or custom is facially innocuous, establishing requisite official knowledge of custom, as required for liability to attach under § 1983, requires that plaintiff establish that an official policy was promulgated with deliberate indifference to known or obvious consequences that constitutional violations would result. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1352(1)

In limited set of cases, plaintiff, unable to show pattern of constitutional violations, may establish "deliberate indifference," as required to establish culpability on part of official under § 1983, by showing single incident with proof of possibility of recurring situations that present obvious potential for violation of constitutional rights, but exception will apply only where facts giving rise to violation are such that it should have been apparent to

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policymaker that constitutional violation was highly predictable consequence of particular policy or failure to train. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1355

"Deliberate indifference" to one's constitutional rights, for purpose of § 1983 claim, is satisfied by something less than acts or omissions for very purpose of causing harm; rather, it implies at minimum actual knowledge of impending harm easily preventable, so that conscious, culpable refusal to prevent harm can be inferred from defendant's failure to prevent it. Dixon v. Godinez, C.A.7 (Ill.) 1997, 114 F.3d 640. Civil Rights 1039

Evidence that former director of state Department of Criminal Justice had known of correctional officers' allegations of sexual harassment by captain and of investigation reports prepared by department's Equal Employment Opportunity (EEO) office which rejected such allegations did not establish former director's deliberate indifference to the officers' constitutionally protected rights, and therefore former director was entitled to qualified immunity with regard to officers' sexual harassment and hostile work environment claims under § 1983 and civil rights conspiracy statute; former director had known that EEO office had independently investigated each complaint and he followed office's conclusions, EEO reports had contained earmarks of detailed investigation, and former director had asked regional director and director of personnel to investigate some questions raised by the reports. Southard v. Texas Bd. of Criminal Justice, C.A.5 (Tex.) 1997, 114 F.3d 539. Civil Rights 1376(10)

Past conduct of school teacher did not present former and current superintendents of county school district and high school principal with widespread pattern of constitutional violations such that actions or inactions of supervisors amounted to deliberate indifference to danger of teacher sexually abusing students, and thus, supervisors could not be held liable in their individual capacities in federal civil rights action brought by student who was sexually abused by teacher; while teacher had past record of improper conduct, supervisors did not approve or knowingly acquiesce in abuse, and had no knowledge of abuse. Doe v. Claiborne County, Tenn. By and Through Claiborne County Bd. of Educ., C.A.6 (Tenn.) 1996, 103 F.3d 495. Civil Rights 1352(2)

Physicians who treated state hospital patient after patient was assaulted by hospital security officers did not display deliberate indifference in treatment so as to be liable for § 1983 damages even though physicians initially failed to order tests which would have permitted diagnosis of broken arm where it was not readily apparent that arm was broken and patient received medical treatment after incident. Durham v. Nu'man, C.A.6 (Ky.) 1996, 97 F.3d 862, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1337, 520 U.S. 1157, 137 L.Ed.2d 496. Civil Rights 1045

In order to establish § 1983 liability in action against state official for injury to prison employee caused by inmate, employee must show that official participated in creating dangerous condition and acted with deliberate indifference to known or obvious danger in subjecting employee to it; only if official was deliberately indifferent does analysis then proceed further to decide whether the conduct amounts to constitutional violation. L.W. v. Grubbs, C.A.9 (Or.) 1996, 92 F.3d 894. Civil Rights 1125

Prison officials would be liable to inmate if they acted intentionally or with deliberate indifference to defendant's liberty interests in deciding to place him in protective segregation and increased security confinement; their motives for denying due process in form of a hearing were irrelevant to issue of their liability. Howard v. Grinage, C.A.6 (Mich.) 1996, 82 F.3d 1343. Prisons 10

Indifference which rises to level of being deliberate, reckless or callous, suffices to establish supervisor liability under Civil Rights Act. Gutierrez-Rodriguez v. Cartagena, C.A.1 (Puerto Rico) 1989, 882 F.2d 553. Civil Rights 1355

Estate of county jail inmate who was fatally assaulted by other inmates sufficiently alleged a §§ 1983 claim against the sheriff in his individual capacity; estate alleged that sheriff was directly liable under §§ 1983 for being

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deliberately indifferent in failing to supervise and train jail officers in the appropriate, lawful, and constitutional policies and procedures for providing a safe environment for inmates, and that sheriff was deliberately indifferent in fostering, encouraging, and knowingly accepting formal and informal jail policies condoning brutality among the inmates and indifference to proper supervision. Wilson v. Maricopa County, D.Ariz.2006, 463 F.Supp.2d 987.

Parents and child who sued foster care agency, stemming from assault that allegedly occurred while child was in foster care after removal, failed to establish that agency employee acted with requisite deliberate indifference necessary to support §§ 1983 claim; employee did not have reason to know of facts creating high degree of risk of physical harm to child, and did not deliberately fail to act in conscious disregard of or indifference to that risk. Phillips ex rel. Green v. City of New York, S.D.N.Y.2006, 453 F.Supp.2d 690. Civil Rights 1057

To give rise to a local government's §§ 1983 liability under *Monell*, a municipality's failure to train its officers must amount to deliberate indifference to the constitutional rights of its citizens. Matican v. City of New York, E.D.N.Y.2006, 424 F.Supp.2d 497. Civil Rights 1352(1)

A public official is sufficiently involved in a constitutional violation to support a §§ 1983 claim if she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent. Koutnik v. Brown, W.D.Wis.2004, 351 F.Supp.2d 871. Civil Rights 1354

Child failed to state cause of action in complaint for supervisory liability under § 1983, in connection with alleged taking of emergency custody of child by county child protective services supervisor and caseworker, absent allegation that, prior to date of taking custody, caseworker was engaging in pattern of egregious behavior posing risk of constitutional violation such that supervisor could fairly be described as deliberately indifferent to that risk, or that citizens were facing pervasive and unreasonable risk of constitutional violations. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1395(1)

A supervisor's continued inaction in the face of a subordinate's documented and widespread constitutional abuses may satisfy the deliberate indifference requirement to establish supervisory liability for a subordinate's constitutional injuries under § 1983. Mandsager v. University of North Carolina at Greensboro, M.D.N.C.2003, 269 F.Supp.2d 662. Civil Rights 1355

Graduate student who also served as teaching assistant in the department of counseling and educational development at state university did not plead sufficient facts to support § 1983 claim that dean of graduate school program was liable under theory of supervisory liability for professor's alleged sexual harassment of her in violation of her constitutional rights; she complained to dean after professor sexually propositioned her, and there was no allegation that professor committed any offensive acts toward her after she spoke to dean. Mandsager v. University of North Carolina at Greensboro, M.D.N.C.2003, 269 F.Supp.2d 662. Civil Rights 1356; Civil Rights 1359

In order to establish that a city's failure to train its employees constitutes deliberate indifference to plaintiffs' rights, as required to establish § 1983 claim against city, plaintiffs must show that the city had notice that its procedures were inadequate and likely to result in a violation of constitutional rights; this notice may be actual or implied. Fakorzi v. Dillard's, Inc., S.D.Iowa 2003, 252 F.Supp.2d 819. Civil Rights 1352(1)

"Deliberate indifference" to rights of citizens, sufficient to subject municipality to liability under § 1983, may be inferred from failure to supervise employees, such as when meaningful attempts to investigate repeated claims of excessive force are absent, but existence of repeated complaints, alone, is not sufficient; for deliberate indifference to be shown, municipality's response must amount to persistent failure to investigate complaints or discipline those whose conduct prompted complaints. Knicrumah v. Albany City School Dist., N.D.N.Y.2003, 241 F.Supp.2d 199. Civil Rights 1352(1); Civil Rights 1401

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School district was not deliberately indifferent to risk that teacher would sexually harass or molest students, as required to hold school district liable for teacher's deprivation of student's Fourteenth Amendment right to bodily integrity by acts of sexual misconduct; when it made decision to hire teacher, district did not have knowledge that teacher had conducted bogus scholarship programs to lure students to his home, as he did with student, or had committed similar acts against students at other schools. Hackett v. Fulton County School Dist., N.D.Ga.2002, 238 F.Supp.2d 1330. Civil Rights 1352(2)

Attorney arrested for criticizing an officer's conduct during the arrest of a third party and for refusing to leave the scene of the arrest failed to prove that the officer's supervisor had actual or constructive knowledge of the circumstances of the arrest, thus defeating the attorney's § 1983 claim against the supervisor; the supervisor arrived on the scene after the arrest had concluded, and evidence that he spoke to both of the officers on the scene was insufficient to establish deliberate indifference. Wilson v. Kittoe, W.D.Va.2002, 229 F.Supp.2d 520, affirmed 337 F.3d 392. Civil Rights 1358

Generally, only actions of school district officials with final policy-making authority can subject school district to "deliberate indifference" liability under § 1983. Mirelez v. Bay City Independent School Dist., S.D.Tex.1998, 992 F.Supp. 916. Civil Rights 1351(2)

Supervisor's "deliberate indifference" to plaintiff's rights, as required for supervisor to be liable under § 1983, is something more than ordinary negligence, is probably something more than gross negligence, can be described as "recklessness" in criminal-law sense, requires actual knowledge of impending harm, and is type of conduct that would offend evolving standards of decency in civilized society. Mendez Marrero v. Toledo, D.Puerto Rico 1997, 968 F.Supp. 27. Civil Rights 1355

County and county officials did not act with deliberate indifference to rights of plaintiffs such that they could be held liable under § 1983 failure-to-supervise theory in connection with alleged unauthorized removal of corneas from plaintiffs' relatives' bodies during autopsies; at time autopsies were performed, state law expressly permitted nonconsensual removal of corneas, and county and its officials could not know that federal court would later determine that that law violated due process rights of next of kin. Whaley v. County of Saginaw, E.D.Mich.1996, 941 F.Supp. 1483. Civil Rights 1352(6); Civil Rights 1360

To demonstrate deliberate indifference on part of government official to rights of individual, as will allow official to be held liable in federal civil rights action for conduct of subordinate which violates those rights, plaintiff must show unusually serious risk of harm, official's actual knowledge of, or at least willful blindness to, that elevated risk, and official's failure to take obvious steps to address that known, serious risk. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1355

Termination procedures followed by school district formerly employing teacher accused of sexually assaulting student in another district, even if constitutionally inadequate, did not encourage or further teacher's abuse of children as required for liability under civil rights statute. Doe v. Methacton School Dist., E.D.Pa.1996, 914 F.Supp. 101, affirmed 124 F.3d 185. Civil Rights 1066

Plaintiffs in § 1983 action complaining of actions of police officers while plaintiffs were collecting signatures to petitions failed to establish deliberate indifference by municipality with respect to training of officers. Tate v. Lau, D.Nev.1994, 865 F.Supp. 681. Civil Rights 1352(4)

Alleged failure of city to establish policy regarding high-speed pursuit by police officers as required by state law did not indicate deliberate indifference to rights of suspects or establish that city had policy or custom subjecting it to liability for § 1983 civil rights claim on behalf of motorcyclists who sustained fatal injuries in roadblock accident resulting from high-speed chase. Donovan v. City of Milwaukee, E.D.Wis.1992, 845 F.Supp. 1312, affirmed 17 F.3d 944. Civil Rights 1351(4)

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42 U.S.C.A. § 1983

382. Personal involvement in deprivation, liability generally--Generally

Since a §§ 1983 cause of action is against a person, in order to recover damages under §§ 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right. Johnson v. Snyder, C.A.7 (Ill.) 2006, 444 F.3d 579. Civil Rights 1335

Personal involvement in discriminatory conduct, for purposes of determining whether public official can be held liable under § 1983, can be shown through allegations of actual knowledge and acquiescence. Coleman v. Kaye, C.A.3 (N.J.) 1996, 87 F.3d 1491, certiorari denied 117 S.Ct. 754, 519 U.S. 1084, 136 L.Ed.2d 691. Civil Rights 1354

"Personal involvement," such as will support liability under § 1983, means direct participation, failure to remedy alleged wrong after learning of it, creation of policy or custom under which unconstitutional practices occurred, or gross negligence in managing subordinates. Black v. Coughlin, C.A.2 (N.Y.) 1996, 76 F.3d 72, on remand 15 F.Supp.2d 311. Civil Rights 1355; Civil Rights 1335

Defendant may be personally involved in constitutional deprivation within meaning of 42 U.S.C.A. § 1983 in several ways: defendant may have directly participated in infraction; supervisory official, after learning of violation through report or appeal, may have failed to remedy the wrong; supervisory official may be liable because he or she created policy or custom under which unconstitutional practices occurred or allowed such policy or custom to continue; and supervisory official may be personally liable if he or she was grossly negligent in managing subordinates who caused unlawful condition or event. Williams v. Smith, C.A.2 (N.Y.) 1986, 781 F.2d 319. Civil Rights 1354; Civil Rights 1355

A defendant will not be held liable under this section proscribing a deprivation of rights unless he was personally involved in causing the deprivation of a constitutional right or he either has or is charged with having actual knowledge that his subordinates are causing deprivations of constitutional rights. Triplett v. Azordegan, C.A.8 (Iowa) 1978, 570 F.2d 819. Civil Rights 1335

Defendants who were not personally involved in the deprivation of Eighth Amendment rights alleged by prison inmate in his §§ 1983 action, or who were not demonstrated to have acted in such manner as could be characterized as having a sufficient causal connection to inmate's alleged injury, were not liable. Wesley v. Davis, C.D.Cal.2004, 333 F.Supp.2d 888. Civil Rights 1358

To be liable in a § 1983 action, a defendant must have been personally involved in the alleged violation. Perkins v. Brown, E.D.N.Y.2003, 285 F.Supp.2d 279. Civil Rights 1335

Personal involvement of supervisory official for purposes of liability under § 1983 may be established by evidence that official: (1) participated directly in alleged constitutional violation; (2) failed to remedy wrong after being informed of violation through report or appeal; (3) created policy or custom under which unconstitutional practices occurred, or allowed continuance of such policy or custom; (4) was grossly negligent in supervising subordinates who committed wrongful acts; or (5) exhibited deliberate indifference to rights of others by failing to act on information indicating that unconstitutional acts were occurring. Hill v. Taconic Developmental Disabilities Services Office, S.D.N.Y.2003, 283 F.Supp.2d 955, affirmed 82 Fed.Appx. 254, 2003 WL 22879684. Civil Rights 1355

Supervisors present when constitutional violations take place are liable under § 1983 if they participate in the wrong or watch what is occurring and fail to intercede. Herrera v. Davila, D.Puerto Rico 2003, 272 F.Supp.2d 154 . Civil Rights 1355

Personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages

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under § 1983; one way of demonstrating personal involvement is by showing that the defendant personally participated in the alleged constitutional violation with knowledge of the facts that rendered the conduct illegal. Kantha v. Blue, S.D.N.Y.2003, 262 F.Supp.2d 90. Civil Rights 1335

"Personal involvement" of defendants in alleged constitutional deprivations for purposes of § 1983 action means direct participation or failure to remedy alleged wrong after learning of it, creation of policy or custom under which unconstitutional practices occurred, or gross negligence in managing subordinates. Adams v. Galletta, S.D.N.Y.1997, 966 F.Supp. 210. Civil Rights 1335; Civil Rights 1355

Liability against person in his individual capacity under § 1983 is predicated upon personal responsibility and, thus, he cannot be held liable unless he personally caused or participated in alleged constitutional deprivation. Ryan v. Illinois Dept. of Children & Family Services, C.D.Ill.1997, 963 F.Supp. 1490, reversed 185 F.3d 751. Civil Rights 1335

Direct participation is not necessary to hold official liable under § 1983; rather, any official who causes citizen to be deprived of her constitutional rights can also be held liable. Ryan v. Illinois Dept. of Children & Family Services, C.D.Ill.1997, 963 F.Supp. 1490, reversed 185 F.3d 751. Civil Rights 1354

Four ways exist in which defendant may be personally involved in federal civil rights violation, and thus may be held liable under statute: (1) by participating directly in deprivation, (2) by failing to remedy wrong after learning of violation through report or appeal, (3) by creating policy or custom under which unconstitutional practices occurred, or (4) in managing subordinates who caused deprivation in grossly negligent way. Show v. Patterson, S.D.N.Y.1997, 955 F.Supp. 182. Civil Rights 1355

Prison official's personal involvement in alleged deprivations of prisoner's constitutional rights, as prerequisite to award of monetary damages in § 1983 action, may occur in one of following ways: (1) direct participation in infraction; (2) failure by supervisory official to remedy wrong after learning of violation through report or appeal; (3) creation by supervisory official of policy or custom under which unconstitutional practices occurred, or allowance of such policy or custom to continue; (4) gross negligence by supervisory official in managing subordinates who caused unlawful condition or event; and (5) gross negligence or deliberate indifference to constitutional rights of prisoners by failing to act on information indicating that unconstitutional practices are taking place. Roucchio v. Coughlin, E.D.N.Y.1996, 923 F.Supp. 360. Civil Rights 1358

For state officer to be properly brought into suit individually under federal civil rights statute, officer must be shown to have been in some manner personally involved in alleged deprivation of rights. Feliciano v. DuBois, D.Mass.1994, 846 F.Supp. 1033. Civil Rights 1354

Defendant may be personally involved in causing constitutional deprivation, as required to support § 1983 claim against him if: defendant participated directly in alleged infraction; or, acting in supervisory capacity, defendant failed to remedy continuing or egregious wrong after learning of violation, created policy or custom under which unconstitutional practices occurred or allowed such policy or custom to continue, or was grossly negligent in managing subordinates who actually caused constitutional deprivation. Candelaria v. Coughlin, S.D.N.Y.1992, 787 F.Supp. 368, affirmed 979 F.2d 845. Civil Rights 1355

Individual liability under § 1983 of civil rights statute, regardless of particular constitutional theory, must be based upon personal responsibility; official is personally involved if he participates directly in constitutional deprivation, acts or fails to act with reckless disregard of plaintiff's constitutional rights, or if conduct that deprived plaintiff of his constitutional rights occurred at official's direction or with his knowledge and consent. Patrick v. Staples, N.D.Ind.1991, 780 F.Supp. 1528. Civil Rights 1354

Although defendant's direct participation in deprivation of civil rights is not required to prove § 1983 violation,

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some involvement in deprivation, such as knowledge, reckless indifference, or authorizing deprivation, is still necessary. De La Paz v. Peters, N.D.Ill.1997, 959 F.Supp. 909. Civil Rights 1335

Personal involvement can be shown through personal direction or through actual knowledge and acquiescence for purposes of principle that defendant must be personally involved in alleged wrongful conduct to be liable under § 1983. Saunders v. Horn, E.D.Pa.1996, 959 F.Supp. 689, report and recommendation adopted 960 F.Supp. 893. Civil Rights 1335

A city official need not have personally participated in a constitutional deprivation for causation to be established in civil rights action, but may be held liable if he breaches duty imposed by state or local law, and breach causes plaintiff's constitutional injury. McQurter v. City of Atlanta, Ga., N.D.Ga.1983, 572 F.Supp. 1401, appeal dismissed 724 F.2d 881. Civil Rights 1354

Under the "affirmative link" standard, government official may be liable under this section even lacking literal personal involvement if he breached a duty which proximately caused injury. Knight v. People of State of Colo., D.C.Colo.1980, 496 F.Supp. 779. Civil Rights 1354

To incur liability under this section, government official need not directly subject person to deprivation of constitutional rights; it is sufficient if official causes person to be subjected to such deprivation. Bradford v. Edelstein, S.D.Tex.1979, 467 F.Supp. 1361. Civil Rights 1027

Personal involvement prerequisite to liability under this section, namely, that defendant must personally and directly participate in acts which were allegedly violative of plaintiff's rights under federal law, is perhaps more correctly stated in terms of a causation test, that is, that defendant must have caused or subjected defendant to a deprivation of civil rights under color of state law. University of Missouri at Columbia-National Ed. Ass'n v. Dalton, W.D.Mo.1978, 456 F.Supp. 985. Civil Rights 1335

Liability under this section is personal. Duisen v. Administrator and Staff, Fulton State Hospital No. 1, Fulton, Mo., W.D.Mo.1971, 332 F.Supp. 125.

383. ---- Necessity, personal involvement in deprivation, liability generally

Arrestee could not recover on § 1983 claim against city and police chief for maintaining allegedly unconstitutional policy on use of police dogs, absent showing that individual arresting officers violated arrestee's constitutional rights through use of police dog to search and detain arrestee. Quintanilla v. City of Downey, C.A.9 (Cal.) 1996, 84 F.3d 353, certiorari denied 117 S.Ct. 972, 519 U.S. 1122, 136 L.Ed.2d 856. Civil Rights 1088(4)

Claim brought against city by parents and child, stemming from assault that allegedly occurred while child was at pre-placement facility after removal, would not be dismissed as matter of law on *Monell* grounds, where complained-of injuries were not solely attributable to named individual city employees, but instead arose from all those involved in child's care while she was at city's pre-placement facility after removal. Phillips ex rel. Green v. City of New York, S.D.N.Y.2006, 453 F.Supp.2d 690. Civil Rights 1351(6)

Genuine issue of material fact as to whether corrections officers' supervisor was personally involved in alleged violation of inmate's rights by failing to ensure that the officers allowed the inmate to shower on a regular basis precluded summary judgment on inmate's §§ 1983 claim against the supervisor. Roque v. Armstrong, D.Conn.2005, 392 F.Supp.2d 382. Federal Civil Procedure 2491.5

A § 1983 plaintiff alleging excessive force by police need not establish who, among a group of officers, directly participated in the attack and who failed to intervene. Jeffreys v. Rossi, S.D.N.Y.2003, 275 F.Supp.2d 463, affirmed 426 F.3d 549. Civil Rights 1088(2)

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42 U.S.C.A. § 1983

Commissioner of the state department of correctional services could not be liable for damages under the federal civil rights provision absent allegations of any personal involvement in the prisoner's placement in involuntary protective custody and his subsequent transfer to a maximum security facility. Gomez v. Coughlin, S.D.N.Y.1988, 685 F.Supp. 1291. Civil Rights 1358

This section does not require that only defendant who is immediate, direct, or precipitating cause of plaintiff's injury be liable, but, rather, direct personal involvement is not required, as language of statute, "subjects, or causes to be subjected," is broader than direct personal involvement, and includes failure to perform duty if that failure causes deprivation of protected rights. Knight v. People of State of Colo., D.C.Colo.1980, 496 F.Supp. 779. Civil Rights 1335

Personal involvement is a necessary element of a cause of action under this section and a superior official is not liable for the acts of his subordinates merely because he is the superior official. Ruffin v. Beal, E.D.Pa.1978, 468 F.Supp. 482. Civil Rights 1355

384. ---- Acquiescence or inaction, personal involvement in deprivation, liability generally

State hospital security officer who witnessed beating of shackled patient could be held liable under § 1983 without having actively participated in beating; officer had badge of authority and duty to protect patient from assault by other officers. Durham v. Nu'man, C.A.6 (Ky.) 1996, 97 F.3d 862, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1337, 520 U.S. 1157, 137 L.Ed.2d 496. Civil Rights 1037

Evidence was sufficient to support finding that county prosecutor had actual knowledge of discriminatory conduct against employee and acquiesced in it, and thus was liable to employee under § 1983. Coleman v. Kaye, C.A.3 (N.J.) 1996, 87 F.3d 1491, certiorari denied 117 S.Ct. 754, 519 U.S. 1084, 136 L.Ed.2d 691. Civil Rights 1421

Standard of liability for supervisor for failure to supervise is demonstrated deliberate indifference or tacit authorization of offensive acts. Tilson v. Forrest City Police Dept., C.A.8 (Ark.) 1994, 28 F.3d 802, certiorari denied 115 S.Ct. 1315, 514 U.S. 1004, 131 L.Ed.2d 196. Civil Rights 1355

Superintendent of Attica Correctional Facility was supervisory official who, after learning that inmate had been confined in special housing unit (SHU) for 67 days without hearing, failed to remedy the wrong and could not escape liability by denying personal involvement. Wright v. Smith, C.A.2 (N.Y.) 1994, 21 F.3d 496. Civil Rights 1358

Deputy sheriff could be held liable for violation of civil rights of apartment residents whose doors were broken down by police officers searching for a suspect even if he never kicked in any door nor entered any of the rooms. Melear v. Spears, C.A.5 (Tex.) 1989, 862 F.2d 1177. Civil Rights 1358

Corrections commissioner could not be held liable under §§ 1983 for alleged violation of inmate's constitutional rights on the sole basis that he did not act in response to letters sent by inmate protesting her placement in segregated confinement without sufficient process. Smart v. Goord, S.D.N.Y.2006, 441 F.Supp.2d 631. Civil Rights 1358

A supervisory official's personal involvement in an alleged constitutional deprivation, for purposes of a §§ 1983 claim against the official in his individual capacity, may be shown by evidence that: (1) the defendant participated directly in the alleged constitutional violation; (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong; (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom; (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts; or (5) the defendant exhibited

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deliberate indifference to others' rights by failing to act on information indicating that unconstitutional acts were occurring. Withrow v. Donnelly, W.D.N.Y.2005, 356 F.Supp.2d 273. Civil Rights 1355

To satisfy the personal involvement requirement of §§ 1983, a plaintiff need not show direct participation in the constitutional violation by the defendant; however, he must show that the defendant knew about the violation and facilitated it, approved it, condoned it or turned a blind eye for fear of what he or she might see. Koutnik v. Brown, W.D.Wis.2004, 351 F.Supp.2d 871. Civil Rights 1335

Officer may be liable under § 1983 not only for his personal use of excessive force, but also for his failure to intervene in appropriate circumstances to protect an arrestee from the excessive use of force by his fellow officers. Herrera v. Davila, D.Puerto Rico 2003, 272 F.Supp.2d 154. Civil Rights 1088(4)

City manager was subject to personal liability under § 1983, not only if he directed third party to deny newspaper publisher's First Amendment rights and publisher was arrested for installing newsrack without license, but also if he had actual knowledge of or acquiesced in such deprivation. Jacobsen v. Lambers, D.Kan.1995, 888 F.Supp. 1088. Civil Rights 1360

Supervising official may be personally involved in constitutional deprivation by failing to remedy wrong after learning of it. Fominas v. Kelly, W.D.N.Y.1990, 739 F.Supp. 139. Civil Rights 1355

Allegation that supervisors intentionally avoided taking any corrective action whatsoever after being repeatedly told of alleged sexual abuses against employee by her fellow staff attorneys in transit authority was sufficient on which to imply a discriminatory intent under equal protection clause and, hence, was sufficient to support a cause of action under personal responsibility requirement of the civil rights statute. Murphy v. Chicago Transit Authority, N.D.Ill.1986, 638 F.Supp. 464. Civil Rights 1395(8)

385. ---- Active or direct participation, personal involvement in deprivation, liability generally

Superintendent did not violate equal protection rights of elementary school psychologist who allegedly was denied tenure and then terminated based on impermissible gender stereotyping concerning employment suitability of mothers with young children, given lack of allegation that superintendent engaged directly in any discriminatory conduct and absence of evidence suggesting deliberate indifference by superintendent, who conducted his own inquiry into tenure question and investigated psychologist's claim of discrimination by principal and personnel director, precluding determination that superintendent meant to discriminate when he recommended against tenure. Back v. Hastings On Hudson Union Free School Dist., C.A.2 (N.Y.) 2004, 365 F.3d 107. Civil Rights 1359

State hospital nurse who refused shackled patient's request to use restroom and who witnessed subsequent beating of patient by hospital security officers could be held liable under § 1983 without having actively participated in beating; precedent holding police officers and correctional officers liable for failure to intervene was sufficient to place nurse, who caused conflict, on notice that she had duty to protect patient while under her charge. Durham v. Nu'man, C.A.6 (Ky.) 1996, 97 F.3d 862, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1337, 520 U.S. 1157, 137 L.Ed.2d 496. Civil Rights 1037

Necessary involvement to show supervisory liability under 42 U.S.C.A. § 1983 can be shown either through proof of personal direction or of actual knowledge and acquiescence. Andrews v. City of Philadelphia, C.A.3 (Pa.) 1990, 895 F.2d 1469. Civil Rights 1355

Even though personal involvement of defendants in alleged constitutional deprivations is prerequisite to award of damages under § 1983, their participation is not always necessary. Al-Jundi v. Estate of Rockefeller, C.A.2 (N.Y.) 1989, 885 F.2d 1060. Civil Rights 1336

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Because corrections employee had no authority to order prisoner's release or continued confinement in involuntary protective custody (IPC), he could not be found personally involved in determination to continue prisoner's confinement based on his IPC recommendation, and therefore he was not subject to §§ 1983 liability. Smart v. Goord, S.D.N.Y.2006, 441 F.Supp.2d 631. Civil Rights 1358

In regards to a defendant sued in his supervisory capacity under §§ 1983, personal involvement may be shown by evidence that (1) the defendant participated directly in the alleged constitutional violation, (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong, (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom, (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts, or (5) the defendant exhibited deliberate indifference to the rights of inmates by failing to act on information indicating that unconstitutional acts were occurring. Locicero v. O'Connell, S.D.N.Y.2006, 419 F.Supp.2d 521. Civil Rights 1355

Liability under §§ 1983 must be based on a defendant's personal involvement in the constitutional violation; in order to satisfy the personal involvement requirement, a plaintiff need not show direct participation, however, he must show that the defendant knew about the violation and facilitated it, approved it, condoned it or turned a blind eye for fear of what he or she might see. Borzych v. Frank, W.D.Wis.2004, 340 F.Supp.2d 955, reconsideration denied in part 2004 WL 2491597. Civil Rights 1335

Town attorney who served as advisor to board members, drafted release for terminated Assistant Building Inspector to sign to get his compensation, and investigated allegations regarding terminated employee's receipt of free wood while on duty in violation of town Code of Ethics was not liable under § 1983 for employee's termination, withholding of compensation based on his refusal to sign release, and town's subsequent failure to rehire employee; complained-of decisions were made by board vote, and town attorney was not voting member of board and did not have authority to require release of all claims or to rehire employee. Zdziebloski v. Town of East Greenbush, N.Y., N.D.N.Y.2004, 336 F.Supp.2d 194. Civil Rights 1359

In prison inmate's § 1983 complaint alleging cruel and unusual punishment, in violation of Eighth Amendment, corrections officers alleged to have been personally involved in at least one of the instances of constitutional deprivation were not entitled to dismissal of complaint; inmate alleged that denial of a noon meal and exercise periods during four days served in keeplock, as well as two 21-day periods of keeplock confinement, constituted cruel and unusual punishment. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1358

Under "state-created danger theory," if state actor affirmatively creates danger which harms plaintiff or renders him or her more vulnerable to that danger, it may be liable under § 1983 even though state actor does not directly harm plaintiff. Collier by Collier v. William Penn School Dist., E.D.Pa.1997, 956 F.Supp. 1209, reversed 191 F.3d 444. Civil Rights 1039

Supervisory official may be said to have been personally involved in alleged deprivation of inmate's constitutional rights, as required for inmate to maintain civil rights claim against official, if that official directly participated in infraction, official failed to remedy wrong after learning of violation through report or appeal, official created policy or custom under which unconstitutional practices occurred or allowed such policy or custom to continue, or official was grossly negligent in managing subordinates who caused unlawful condition or event. Garcia v. Senkowski, N.D.N.Y.1996, 919 F.Supp. 609. Civil Rights 1358

Town, town supervisor, zoning officer, town clerk, and court appointed receiver were not personally involved in alleged constitutional violations resulting from exposure of former county jail inmate to cigarette smoke while he was incarcerated for contempt based on failure to comply with court order issued in connection with town's efforts to close junkyard; accordingly, defendants could not be held liable under § 1983 for the alleged constitutional violations. Brown v. Costello, N.D.N.Y.1995, 905 F.Supp. 65, affirmed 101 F.3d 685. Civil Rights 1098

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42 U.S.C.A. § 1983

Official such as county sheriff is considered to be personally involved for purposes of liability under § 1983 in individual capacity: if he participates directly in constitutional deprivation; if he acts or fails to act with reckless disregard of plaintiff's constitutional right; or if conduct that deprived plaintiff of his or her constitutional rights occurred at his direction or with his knowledge and consent. Lile v. Tippecanoe County Jail, N.D.Ind.1992, 844 F.Supp. 1301. Civil Rights 1088(1)

Supervisory liability arises under § 1983 when there is a showing that supervisor encouraged specific incident of misconduct or in some other way directly participated in it. Timberlake by Timberlake v. Benton, M.D.Tenn.1992, 786 F.Supp. 676. Civil Rights 1355

Section 1983 liability does not require direct participation in deprivation of plaintiff's constitutional rights; personal responsibility may be established with evidence that officer acted with deliberate or reckless disregard of plaintiff's constitutional rights, or with evidence that conduct causing constitutional deprivation occurred at officer's direction or with his knowledge and consent. Tomasso v. City of Chicago, N.D.Ill.1991, 782 F.Supp. 1231 . Civil Rights 1335; Civil Rights 1355

Without direct participation by defendants, plaintiff seeking recovery for violation of civil rights must show that defendants failed to remedy a wrong after learning of the violation, created an unconstitutional policy, allowed an unconstitutional policy to continue, or acted with gross negligence in managing those who caused the wrong. Smith v. Meachum, D.Conn.1991, 764 F.Supp. 260. Civil Rights 1351(1); Civil Rights 1352(1)

Deputy sheriff did not have sufficient personal involvement in eviction of landowners from their property to be liable under §§ 1983 in landowners' suit for violation of their Fourth Amendment and due process rights, where at most he ordered the landowners to leave the area on third day of removal of property from the premises, and the evidence that he did even that much was conflicting. Hansen v. Cannon, C.A.7 (Ill.) 2004, 122 Fed.Appx. 265, 2004 WL 2829016, Unreported. Civil Rights 1357

386. ---- Custom or usage, personal involvement in deprivation, liability generally

Single unlawful discharge, if ordered by a person whose edicts or acts may fairly be said to represent official policy, can by itself support employment discrimination claim against municipality under equal protection principles and § 1983. Back v. Hastings On Hudson Union Free School Dist., C.A.2 (N.Y.) 2004, 365 F.3d 107. Civil Rights 1351(5); Constitutional Law 238.5

In order to impose liability under this section on various city officials, it was not necessary that the officials directed any particular action with respect to plaintiffs but only that they affirmatively promoted a policy sanctioning the type of action which caused due process violations. Duchesne v. Sugarman, C.A.2 (N.Y.) 1977, 566 F.2d 817. Civil Rights 1354

Director of New York City's Child Welfare Administration (CWA) was not personally involved in alleged abuse of foster children and thus was not liable in her personal capacity under §§ 1983, absent evidence that she personally established allegedly unconstitutional policies, affirmatively approved them, or was aware of them. Tylena M. v. Heartshare Children's Services, S.D.N.Y.2005, 390 F.Supp.2d 296. Civil Rights 1360

The causal connection between a supervisor's wrongful conduct and an alleged constitutional violation is sufficient, for purposes of a §§ 1983 action, if there is evidence that the supervisor implemented a policy so deficient that the policy itself is a repudiation of constitutional rights. Wesley v. Davis, C.D.Cal.2004, 333 F.Supp.2d 888. Civil Rights 1355

Public transportation authority could not be liable under § 1983 for supervisor's alleged sexually discriminatory action of holding pregnant employee's light duty request to higher evidentiary standard than other requests;

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authority did not have custom of holding all light duty requests by pregnant women to higher standard, and, although authority gave some discretion to supervisor in that regard, it did not delegate complete discretion to him. Ascolese v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1995, 902 F.Supp. 533, on reconsideration 925 F.Supp. 351. Civil Rights 1351(5)

Where subordinates act pursuant to policy or procedure adopted by their supervisor and their compliance with policy or procedure results in constitutional violation, promulgation of policy or procedure is sufficient personal participation in constitutional violation to give rise to individual liability on part of supervisory official in civil rights suit. Doe v. Angelina County, Texas, E.D.Tex.1990, 733 F.Supp. 245. Civil Rights 1355

387. ---- Sufficiency of personal involvement, personal involvement in deprivation, liability generally

Village police officer was not sufficiently connected to owner's estranged husband to transform husband's private seizure of owner's personal property into public seizure, for Fourth Amendment purposes, even though officer observed seizure and took no steps to stop husband, where owner was not present at her residence at time, husband's motivation appeared to have been to comply with instructions that police gave him earlier that day to call for police escort before retaking his belongings, there was no evidence that owner or her neighbor were deterred from calling police due to officer's presence, officer had never met or heard of husband, and there was nothing under circumstances to indicate to officer that husband was not entitled to enter residence, did not own television set, or would vandalize apartment. Pepper v. Village of Oak Park, C.A.7 (Ill.) 2005, 430 F.3d 805.

Former employee of the Puerto Rico Highway Authority (PRHA) who alleged that his termination constituted First Amendment political discrimination failed to state claim against members of the PRHA's Appeals Committee who were to hear his administrative complaints concerning termination, where claim consisted entirely of speculation about possible future conduct by officials and officials had nothing to do with termination decision. Cepero-Rivera v. Fagundo, C.A.1 (Puerto Rico) 2005, 414 F.3d 124. Civil Rights 1395(8)

Governor's involvement in decision and formulation and implementation of plan to retake prison from inmates and to rescue hostages was insufficient to establish § 1983 liability for injury to inmate, even though Governor was abreast of events; Governor ratified decision by New York State Commissioner of the Department of Correctional Services to abandon negotiations, to order state police to formulate plan to regain control of prison, and to approve commencement of actual retaking. Al-Jundi v. Estate of Rockefeller, C.A.2 (N.Y.) 1989, 885 F.2d 1060. Civil Rights 1358

Action of district attorney in obtaining indictment against individual who allegedly had already been acquitted on same charge did not sufficiently involve district attorney in arrest of individual pursuant to said indictment so as to render him liable for false arrest under this section, despite unsupported averments of conspiracy. Weathers v. Ebert, C.A.4 (Va.) 1974, 505 F.2d 514, certiorari denied 96 S.Ct. 1480, 424 U.S. 975, 47 L.Ed.2d 745. Civil Rights 1376(9)

Genuine issues of material fact as to whether fire marshals were involved in decision to seek to prosecute school custodian for storage of flammable or combustible materials at a school, whether there was probable cause to arrest custodian, and whether fire marshals acted with malice, precluded summary judgment for fire marshals on custodian's §§ 1983 claim for malicious prosecution. Brown v. Aybar, D.Conn.2006, 451 F.Supp.2d 374. Federal Civil Procedure 2491.5

By alleging superintendent's failure to release her from involuntary protective custody (IPC), prisoner alleged superintendent's personal involvement in the violation of her due process rights resulting from her confinement. Smart v. Goord, S.D.N.Y.2006, 441 F.Supp.2d 631. Civil Rights 1395(7)

Under New York law, state investigator who conducted investigation that led to unsuccessful prosecution of

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nursing assistant for abuse of nursing home patient did not initiate or continue criminal prosecution, a required element for malicious prosecution claim against him, notwithstanding his statement that he had "input" with prosecutors; investigator did not create false information, withhold evidence, or otherwise assume responsibility for prosecution in manner that would rebut presumption that proceedings were initiated by prosecutors. Mitchell v. Home, S.D.N.Y.2006, 434 F.Supp.2d 219. Malicious Prosecution 4

Chief of police was not liable, under § 1983, for alleged arrest without probable cause of high student, for plotting armed attack on school, since chief did not participate in arrest by members of county sheriff's department, and was in different room of student's house when he was arrested. Smith v. Barber, D.Kan.2004, 316 F.Supp.2d 992. Civil Rights 1358

Chief administrator of nursing home operated through county's Department of Human Services (DHS) was not individually liable under § 1983, absent evidence she was in any way involved in sexual harassment allegedly experienced by black female food service worker in dietary unit at nursing home, or evidence which established with appropriate specificity that she personally directed or had actual knowledge of racial harassment and hostility allegedly directed at that worker by food service manager and assistant manager and deputy director of county DHS. Hargrave v. County of Atlantic, D.N.J.2003, 262 F.Supp.2d 393. Civil Rights 1359

Commissioner of New York State Correctional Services did not have sufficient personal involvement in prison disciplinary hearing to be liable under § 1983 for hearing officer's alleged violation of inmate's due process rights in imposing punishment based on uncorroborated testimony of confidential informers. Zavaro v. Coughlin, W.D.N.Y.1991, 775 F.Supp. 84, affirmed 970 F.2d 1148. Civil Rights 1358

Mayor did not have sufficient personal involvement in eviction of landowners from their property to be liable under §§ 1983 in landowners' suit for violation of their Fourth Amendment and due process rights, where he apparently told contractor hired to remove the landowners' personal property from the premises that the landowners, who owned lot adjacent to that foreclosed on, owned just one property, and may even have done so without adequate investigation, but had no involvement in the seizure of their property. Hansen v. Cannon, C.A.7 (Ill.) 2004, 122 Fed.Appx. 265, 2004 WL 2829016, Unreported. Civil Rights 1357

388. ---- Supervisory personnel, personal involvement in deprivation, liability generally

State supervisor's approval of use of special team to conduct search of cells in response to report of loaded gun was insufficient to constitute failure to supervise that could give rise to supervisory liability when team, which had on-site commander, allegedly used excessive force. Serna v. Colorado Dept. of Corrections, C.A.10 (Colo.) 2006, 455 F.3d 1146. Civil Rights 1358

For a supervisor to be liable for actions of his subordinate under §§ 1983, the plaintiff must show an affirmative link between the subordinate and the supervisor, whether through direct participation or through conduct that amounts to condonation or tacit authorization. Velez-Rivera v. Agosto-Alicea, C.A.1 (Puerto Rico) 2006, 437 F.3d 145. Civil Rights 1355

Supervisor liability in a § 1983 action depends on a showing of some personal responsibility, and cannot rest on respondeat superior; to establish the liability of a supervisory official, a plaintiff must show the defendant's personal involvement in the alleged constitutional violations. Richardson v. Goord, C.A.2 (N.Y.) 2003, 347 F.3d 431. Civil Rights 1355

Supervisory official is liable for constitutional violations under § 1983 if he or she directly participated in violation, failed to remedy violation after learning of it through report or appeal, created custom or policy fostering violation or allowed custom or policy to continue after learning of it, or was grossly negligent in supervising subordinates who caused violation. Sealey v. Giltner, C.A.2 (N.Y.) 1997, 116 F.3d 47, on remand 997 F.Supp. 316

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42 U.S.C.A. § 1983

. Civil Rights 1355

Medical director of prison was not liable to prisoner for inadequate medical treatment following beating by prison guards, under § 1983; director's liability was premised on his duties as supervisor of prison physician who allegedly failed to treat prisoner, in violation of Eighth Amendment, and no affirmative link was established between alleged constitutional deprivation and director's personal participation, exercise of control or direction, or failure to supervise. Green v. Branson, C.A.10 (Okla.) 1997, 108 F.3d 1296. Civil Rights 1358

Municipal police chief, viewed as supervisor rather than policymaker, was not liable under §§ 1983 for any excessive force used by police officers against motorist, in violation of Fourth Amendment, in that he did not personally participate or acquiesce in any instances of excessive force, and there were no widespread and flagrant instances of unconstitutional conduct. Reindl v. City of Leavenworth, Kansas, D.Kan.2006, 443 F.Supp.2d 1222. Civil Rights 1358

Genuine issue of material fact existed as to whether prison director, captain, and deputy superintendent were personally involved in acts that allegedly deprived prisoner of his constitutional rights, as would preclude summary judgment for officials, on basis of qualified immunity, in prisoner's civil rights action under §§ 1983, if prisoner stated a claim under §§ 1983. Felton v. Lincoln, D.Mass.2006, 429 F.Supp.2d 226. Federal Civil Procedure 2491.5

Fact that director of police training academy did not personally teach course did not absolve him of supervisory liability under §§ 1983 for failure to adequately train officers concerning interactions between on-duty and off-duty officers. Young v. City of Providence, D.R.I.2005, 396 F.Supp.2d 125. Civil Rights 1359

An individual's general responsibility for supervising the operations of a prison is insufficient to establish personal involvement, as required in a §§ 1983 action alleging a deprivation of constitutional rights by prison personnel. Wesley v. Davis, C.D.Cal.2004, 333 F.Supp.2d 888. Civil Rights 1358

Genuine issues of material fact existed as to whether commissioners of children's services agency were involved in establishing or failing to correct alleged policies and customs underlying constitutional deprivations claimed by mother in connection with removal of her children, precluding summary judgment as to whether damages were available under §§ 1983. Velez v. Reynolds, S.D.N.Y.2004, 325 F.Supp.2d 293. Federal Civil Procedure 2491.5

Chancellor of university health center, who had no personal involvement in any alleged deprivations of constitutional rights of African-American employee and did not harass employee on basis of her race, could not be personally liable for damages, under § 1983; chancellor's position of high authority with center was not sufficient basis for imposition of personal liability on him. Ozenne v. University of Connecticut Health Care, D.Conn.2003, 292 F.Supp.2d 425. Civil Rights 1359

Chancellor of university health center, who had no personal involvement in any alleged deprivations of constitutional rights of Hispanic employee and did not personally harass her because she was Hispanic or Puerto Rican, could not be personally liable for damages, under § 1983; chancellor's position of high authority with center was not sufficient basis for imposition of personal liability on him. Delrio v. University of Connecticut Health Care, D.Conn.2003, 292 F.Supp.2d 412. Civil Rights 1359

Chancellor of university health center, who had no personal involvement in any alleged deprivations of constitutional rights of African-American employee and did not harass employee on basis of his race, could not be personally liable for damages, under § 1983; chancellor's position of high authority with center was not sufficient basis for imposition of personal liability on him. Oliver v. University of Connecticut Health Care, D.Conn.2003, 292 F.Supp.2d 398. Civil Rights 1359

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42 U.S.C.A. § 1983

Chancellor of university health center, who had no personal involvement in any alleged deprivations of constitutional rights of nurse's aide, could not be personally liable for damages, under § 1983; chancellor's position of high authority with center was not sufficient basis for imposition of personal liability on him. Sanchez v. University of Connecticut Health Care, D.Conn.2003, 292 F.Supp.2d 385. Civil Rights 1359

To establish supervisory official's personal involvement in deprivation of a federal right, plaintiff must demonstrate either (1) direct participation by the supervisory official; (2) a failure to remedy an alleged wrong after learning of the violation; (3) creation of a policy or custom under which the violation occurred; or (4) gross negligence in managing subordinates. Maxwell v. City of New York, S.D.N.Y.2003, 272 F.Supp.2d 285, reconsideration denied, affirmed in part, vacated in part and remanded 380 F.3d 106, supplemented 108 Fed.Appx. 10, 2004 WL 1800645. Civil Rights 1355

For a supervisor to be liable under § 1983, the plaintiff must show some affirmative conduct by the supervisor which played a role in the violation; such personal conduct may be shown by demonstrating that the supervisor participated in violating the plaintiff's rights, or that he directed others to violate them, or that he, as the person in charge, had knowledge of and acquiesced in his subordinates' violations. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1355

Public school director could not be held liable on supervisory liability theory under § 1983 for alleged acts of police officer temporarily assigned to the school who allegedly sexually abused a minor student at the school in violation of her due process rights where the director did not have any supervisory status over the police officer; her contact with the officers assigned to the school was very limited and she would only call to request one when the assigned guard failed to appear. Medina Perez v. Fajardo, D.Puerto Rico 2003, 263 F.Supp.2d 291. Civil Rights 1356; Civil Rights 1358

In prison inmate's § 1983 complaint alleging cruel and unusual punishment, in violation of Eighth Amendment, supervisory corrections officials alleged to have been personally involved in at least one of the instances of constitutional deprivation were not entitled to dismissal of complaint; officials were involved in hearings and appeals of infractions which allegedly resulted in unconstitutional denial of a noon meal and exercise periods during four days served in keeplock, as well as in two 21-day periods of keeplock confinement. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1358

Allegations by former patient of state psychiatric center and mental illness advocacy group that three of center's supervisory officials failed to train employees with respect to conducting patient searches, resulting in unconstitutional search of patient and potential risk of illegal searches of other center patients, stated sufficient personal involvement by the three officials to hold them liable in their individual capacities under § 1983. Aiken v. Nixon, N.D.N.Y.2002, 236 F.Supp.2d 211, affirmed 80 Fed.Appx. 146, 2003 WL 22595837. Civil Rights 1360

There are four ways in which supervisory official may be personally involved in alleged constitutional violation as required for imposition of damages in § 1983 claim against official: directly participating in infraction or being directly involved through ordering that action be taken, failing to remedy wrong after learning of violation, creating or allowing policy to continue under which violation occurred, or being grossly negligent in managing subordinates who caused violation. Jemzura v. Public Service Com'n, N.D.N.Y.1997, 961 F.Supp. 406. Civil Rights 1355

Personal involvement of supervisory defendant, permitting award of damages in civil rights action under § 1983, may be shown by evidence that: defendant participated directly in alleged constitutional violation; defendant, after being informed of violation through report or appeal, failed to remedy wrong; defendant created policy or custom under which unconstitutional practices occurred; or allowed continuance of such policy or custom; defendant was grossly negligent in supervising subordinates who committed wrongful acts; or defendant exhibited deliberate

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indifference to rights of plaintiffs by failing to act on information indicating that unconstitutional acts were occurring. Interboro Institute, Inc. v. Maurer, N.D.N.Y.1997, 956 F.Supp. 188. Civil Rights 1355

In order to be liable for violation of public employee's liberty interest under federal civil rights statute, supervisory official need not have participated personally in act, but there must be some causal connection between act of official and alleged violation, and supervisory failure must amount to gross negligence or conscious indifference, rather than mere negligence. Willbanks v. Smith County, Tex., E.D.Tex.1987, 661 F.Supp. 212. See, also, Hamrick v. Lewis, D.C.Del.1981, 515 F.Supp. 983. Civil Rights 1359

For supervisory official to be liable for civil rights violation, he must be personally involved, that is, the constitutional deprivation must take place at direction of supervisory official or with his knowledge and consent. Perry v. Elrod, N.D.Ill.1977, 436 F.Supp. 299. Civil Rights 1355

State prison commissioner and warden were not subject to supervisory liability under §§ 1983 for failing to remedy violations inmate complained of and failing to adequately supervise prison employees, absent evidence that commissioner or warden personally participated in constitutional violations, or were deliberately indifferent to inmate's rights. Ziemba v. Clark, C.A.2 (Conn.) 2006, 167 Fed.Appx. 831, 2006 WL 354422, Unreported. Civil Rights 1358

389. ---- Policy-making officials, personal involvement in deprivation, liability generally

State agency employee's coworkers other than agency head who had made ultimate decision to terminate employee could not be liable in employee's § 1983 First Amendment action alleging retaliation for making sexual harassment report; no conspiracy between agency head and coworkers was alleged. Johnson v. Louisiana, C.A.5 (La.) 2004, 369 F.3d 826. Civil Rights 1359

Municipal liability under § 1983 attaches where, and only where, deliberate choice to follow course of action is made from among various alternatives by official or officials responsible for establishing final policy with respect to subject matter in question; in order to have final policymaking authority, official must possess responsibility for making law or setting policy, that is, authority to adopt rules for conduct of government. Rasche v. Village of Beecher, C.A.7 (Ill.) 2003, 336 F.3d 588. Civil Rights 1351(1)

Borough could not be held liable under §§ 1983 for allegedly unlawful conduct of a non-party mayor in an action brought by a police officer challenging his non-selection for a promotional position where, under state law, the final decisionmaking authority rested with the borough council, not the mayor; fact that the council sought the recommendations of the mayor and apparently gave that recommendation substantial deference was their prerogative, but it did not change the conclusion that, pursuant to the borough code, the borough council and not the mayor was the decisionmaker with final, unreviewable discretion for the purposes of §§ 1983 liability. Dolly v. Borough of Yeadon, E.D.Pa.2006, 428 F.Supp.2d 278. Civil Rights 1351(5)

Under Maine law, school superintendent was not an authorized policymaker, as would support imposition of municipal liability under §§ 1983 against school district based upon superintendent's alleged retaliation against former school district employee, where superintendent did not have authority to develop and implement employment policies. Craig v. Maine School Administrative Dist. # 5, D.Me.2004, 350 F.Supp.2d 294. Civil Rights 1351(5)

Even if superintendent of school district and high school principal had official-policy making authority, they did not personally participate in alleged arrests without probable cause of high school students, for plotting armed attack on school, as required to hold school district liable under § 1983 for false arrest. Smith v. Barber, D.Kan.2004, 316 F.Supp.2d 992. Civil Rights 1351(2); Civil Rights 1351(4)

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Supervisors, defined loosely to encompass a wide range of officials who are themselves removed from the perpetration of subordinate officers' civil rights-violating behavior, may be liable under § 1983 for formulating a policy or engaging in conduct that leads to the subordinate officers' violation of a citizen's rights. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1355

Since board of education was empowered under Colorado law to be final policymaker for purposes of hiring and firing employees, board, as opposed to high school principal, held final policymaking authority with regard to termination of teacher's employment for § 1983 purposes. Singer v. Denver School Dist. No. 1, D.Colo.1997, 959 F.Supp. 1325. Civil Rights 1351(5)

Participation in or knowledge of incident involving deprivation of individual rights on part of city's policy-making officials is sufficient to impose liability on city itself. Riley v. City of Minneapolis, D.C.Minn.1977, 436 F.Supp. 954. Municipal Corporations 745

390. ---- Particular cases personal involvement present, personal involvement in deprivation, liability generally

Assistant city attorney's actions in drafting letter denying parade permits and advising deputy police chief to sign letter was substantial factor in violation of First Amendment rights and established causation under §§ 1983. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Municipal Corporations 747(1)

Supervisory police officer was sufficiently involved in search of apartment during which tenant was allegedly forced to remain naked to be subject to liability in tenant's subsequent civil rights action; officer planned and initiated search and participated in search once inside dwelling. Hall v. Shipley, C.A.6 (Tenn.) 1991, 932 F.2d 1147. Civil Rights 1358

Special FBI agent who was present when affidavit supporting warrant for aggravated kidnapping arrest was presented to state judge, possibly lending credibility to affidavit, and who took an active role in physical arrest of alleged kidnappers, had assisted state official in depriving arrestees of Fourth Amendment rights for purposes of arrestees' federal civil rights claim. Hale v. Fish, C.A.5 (La.) 1990, 899 F.2d 390. Civil Rights 1088(4)

Caseworkers and site supervisor of nonprofit corporation's home for young adults satisfied "personal involvement" criterion in resident's §§ 1983 action alleging failure to intervene in assault committed by second resident; defendants were present at scene of incident, and thus directly participated in alleged violation. Vega v. Fox, S.D.N.Y.2006, 457 F.Supp.2d 172. Civil Rights 1341

County District Attorney (DA) had sufficient personal involvement to be named as defendant in village police chief's §§ 1983 action although he was not chief's employer and did not participate in decision not to renew chief's contract; chief's allegations suggested that DA was personally involved in decision not to rehire chief and that statements made by DA to chief's prospective employers were connected to chief's loss of job. Hoffman v. Kelz, W.D.Wis.2006, 443 F.Supp.2d 1007. Civil Rights 1359

Former prisoner adequately stated that causal link existed between physicians' involvement in autopsy and prisoner's wrongful imprisonment for 21 years, in civil rights lawsuit under Fourth and Fourteenth Amendments, on allegations that physicians improperly exerted pressure, knowingly provided misinformation, concealed and destroyed exculpatory evidence, and were actively instrumental in causing legal proceedings to be brought against prisoner. Marsh v. San Diego County, S.D.Cal.2006, 432 F.Supp.2d 1035. Civil Rights 1395(7)

State higher education center official who was responsible for scheduling and assignment of location of special events on the campus was personally involved in events that violated First Amendment free speech rights of nonstudent group that was restricted from demonstrating at the campus's designated public forum area, as required to be held liable under §§ 1983, where he not only applied the center's unwritten regulation that assigned the group

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to an alternative area of the campus, but also was earlier involved in devising the regulation that was applied. Mason v. Wolf, D.Colo.2005, 356 F.Supp.2d 1147. Civil Rights 1356

Caseworker was personally involved in alleged constitutional deprivations against mother whose children were removed, as required for award of damages under §§ 1983, where she filed petitions charging mother with neglect and seeking extension of placement. Velez v. Reynolds, S.D.N.Y.2004, 325 F.Supp.2d 293. Civil Rights 1360

School district's director of special education had personal involvement in placement of student in private school, that school's termination of student, and subsequent development of new Individualized Education Plan (IEP), satisfying personal participation requirement for § 1983 action claiming director violated Individuals with Disabilities Education Act (IDEA). P.N. v. Greco, D.N.J.2003, 282 F.Supp.2d 221. Schools 63(3)

State psychiatric center program director's conduct of placing a standing order in patient's record, which ordered staff in crisis unit to carefully search patient whenever he appeared for admission, stated sufficient personal involvement by program director to state a § 1983 claim against her in her individual capacity for her implementation of center's allegedly unconstitutional policy for search of patients. Aiken v. Nixon, N.D.N.Y.2002, 236 F.Supp.2d 211, affirmed 80 Fed.Appx. 146, 2003 WL 22595837. Civil Rights 1360

Correctional officer who placed inmate in keeplock, without filing misbehavior report, with result that review officer never advised inmate of charges against him and no hearing was scheduled, was personally involved in alleged deprivation of inmate's due process rights, as required to support inmate's § 1983 claim against him. Schmelzer v. Norfleet, S.D.N.Y.1995, 903 F.Supp. 632. Civil Rights 1092

Inmate's complaint sufficiently alleged personal participation of Commission of Correction and warden in alleged constitutional wrong to sustain claim under § 1983 arising out of alleged sexual assault by another inmate. Johnson v. Meachum, D.Conn.1993, 839 F.Supp. 953. Civil Rights 1395(7)

Police chief had sufficient personal involvement in eviction of landowners from their property to be liable under §§ 1983 in landowners' suit for violation of their Fourth Amendment and due process rights, where the chief was present on third day of eviction crew's removal of personal property and ordered the landowners to leave or be arrested, and directed the eviction crew to continue moving property out of garage on separate lot after they had stopped when landowners objected. Hansen v. Cannon, C.A.7 (Ill.) 2004, 122 Fed.Appx. 265, 2004 WL 2829016, Unreported. Civil Rights 1357

If corrections official asked for the documents that prisoner wanted for his disciplinary hearing defense and official refused without good cause to provide them, she may have been personally involved in the deprivation of prisoner's due process hearing rights, and therefore subject to liability under § 1983. Muhammad v. Pico, S.D.N.Y.2003, 2003 WL 21792158, Unreported. Civil Rights 1358

Police officer's action of signing arrest reports was not sufficient personal involvement by officer in alleged violations of arrestee's rights to support holding her liable for arrestee's § 1983 and state law claims. Nance v. New York City Police Dept. ex rel. McKay Chung, E.D.N.Y.2003, 2003 WL 1955164, Unreported. Civil Rights 1358

391. ---- Particular cases personal involvement not present, personal involvement in deprivation, liability generally

Police chief was not liable under §§ 1983, for any constitutional violations that occurred in connection with search warrant requiring suspect to provide DNA sample as part of serial murder investigation, where police chief was not personally involved in the investigation or the procurement or execution of the warrant, and there was no showing

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that the police chief failed to supervise the police detectives who conducted the investigation. Kohler v. Englade, C.A.5 (La.) 2006, 470 F.3d 1104. Civil Rights 1358

State prison director's receipt of periodic reports about progress of special team that was attempting to retrieve loaded gun reportedly located in one of three cells was not direct participation in operation that might give rise to supervisory liability for team's alleged use of excessive force; evidence did not suggest that director directed application of force or used communications to instruct officers to behave unconstitutionally. Serna v. Colorado Dept. of Corrections, C.A.10 (Colo.) 2006, 455 F.3d 1146. Civil Rights 1358

Supervisors of members of parole board did not have authority to override board, and thus could not be liable under §§ 1983 for alleged violations of prisoner's due process and equal protection rights related to imposition of conditions on parole, since they had no personal involvement in the alleged deprivation. Mayorga v. Missouri, C.A.8 (Mo.) 2006, 442 F.3d 1128. Civil Rights 1358

City's street superintendents and mayor were entitled to qualified immunity, in African-American property owner's § § 1983 retaliation claim, alleging that city officials towed her sister's mobile home restaurant in retaliation for property owner filing suit challenging officials' failure to maintain drainage ditch along owner's property, absent showing that mayor or street superintendents had anything to do with the towing of the mobile home. Wilson v. Northcutt, C.A.8 (Ark.) 2006, 441 F.3d 586, rehearing and rehearing en banc denied. Civil Rights 1376(4)

Even assuming that a consultant for Puerto Rico Government Development Bank (GDB) had protected due process interest in the continuation of his employment contract, President of GDB was not liable, in consultant's §§ 1983 claim alleging that cancellation of his contract violated due process, absent showing that President was directly involved with the contract cancellation. Velez-Rivera v. Agosto-Alicea, C.A.1 (Puerto Rico) 2006, 437 F.3d 145. Civil Rights 1359

Neighboring county did not have legal custody of foster child, and thus it could not be liable under §§ 1983 to child under special relationship exception to rule that government ordinarily did not have substantive due process duty to protect private citizens from doing harm to each other; although neighboring county granted courtesy license that allowed foster child to be placed in home of foster parent and home of foster parent was in neighboring county, foster child, inter alia, lived in other county and attended school there, other county took him from his grandparents' custody after his involvement in petty crime, and it processed foster care application. Waubanascum v. Shawano County, C.A.7 (Wis.) 2005, 416 F.3d 658, certiorari denied 126 S.Ct. 1045, 163 L.Ed.2d 858. Constitutional Law 255(4)

Former employee of the Puerto Rico Highway Authority (PRHA) who alleged that his termination constituted First Amendment political discrimination failed to establish that various officials of the PRHA were personally and directly involved in alleged violation of his rights, as required to support his §§ 1983 claim against officials; claim against officials was a general and unsubstantiated conspiracy theory that they all conspired with Executive Director of the PRHA to provoke employee into confrontations in order to justify his dismissal. Cepero-Rivera v. Fagundo, C.A.1 (Puerto Rico) 2005, 414 F.3d 124. Conspiracy 19

In Puerto Rico municipal employees' political discrimination case under § 1983, stipulation that human resources director was strictly following orders and had no participation in act or official decision not to renew employees' contracts meant she could not be found individually liable for any constitutional violation associated with that decision. Gomez v. Rivera Rodriguez, C.A.1 (Puerto Rico) 2003, 344 F.3d 103. Stipulations 14(10)

Mayor and city attorney could not be held liable under § 1983 in civil rights claim brought by arrestee pro se alleging multiple constitutional violations, absent allegations of an affirmative link between the alleged deprivations and either the mayor or city attorney's personal participation, exercise of control or direction, or failure to supervise. Ledbetter v. City of Topeka, Kan., C.A.10 (Kan.) 2003, 318 F.3d 1183. Civil Rights

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42 U.S.C.A. § 1983

1358

State prisoner's two letters to state Department of Corrections commissioner concerning appeal from administrative segregation hearing and commissioner's responses, referring first letter to prison official for decision and informing prisoner that official had rendered decision, did not demonstrate requisite personal involvement on commissioner's part to make commissioner liable under § 1983 for alleged due process violations arising from prisoner's administrative segregation. Sealey v. Giltner, C.A.2 (N.Y.) 1997, 116 F.3d 47, on remand 997 F.Supp. 316. Civil Rights 1358

Prison administrators were not liable under § 1983 for prisoner's injury resulting from altercation with other prisoner that was not stopped by prison officials, even though administrators had helped develop training programs used at prison in years preceding incident, which acknowledged need for prison guards to be trained in use of nonlethal weapons to control prisoners, since administrators were neither personally involved in incident in which prisoner was injured nor ever supervised any guards involved in incident. Grimsley v. MacKay, C.A.10 (Utah) 1996, 93 F.3d 676. Civil Rights 1358

Commissioner of state department of correctional services could not be held liable under § 1983 for civil rights violations committed against prisoner, absent showing that commissioner personally participated in the violations. Black v. Coughlin, C.A.2 (N.Y.) 1996, 76 F.3d 72, on remand 15 F.Supp.2d 311. Civil Rights 1358

Relatives of alleged victim of police abuse failed to show that police superintendent was liable for death of alleged victim; no competent proof was presented of actual participation, policy of tolerating similar violations, or of deliberate indifference, and administrative complaints naming police officers were not related to charges in instant case so as to put superintendent on inquiry notice. Maldonado-Denis v. Castillo-Rodriguez, C.A.1 (Puerto Rico) 1994, 23 F.3d 576. Civil Rights 1358

Parole officer's supervisor was not personally involved in parole officer's decision to hold parolee pending revocation hearing and thus could not be held liable to parolee in civil rights suit. Mee v. Ortega, C.A.10 (Colo.) 1992, 967 F.2d 423. Civil Rights 1358

State prison official was not personally involved in treatment which inmate received after his classification to administrative segregation so as to make prison official liable under § 1983 for violation of inmate's Fourteenth Amendment rights due to failure to provide periodic review of inmate status. Hardin v. Straub, C.A.6 (Mich.) 1992, 954 F.2d 1193. Civil Rights 1358

Arrestee could not maintain action against chief of police alleging false arrest, illegal detention and malicious prosecution under § 1983; chief did not participate in any of activity leading up to the arrest, there was no evidence from which it could be inferred that chief was more than negligent in failing to investigate arrestee's claim of innocence and chief could not be held vicariously liable for conduct of subordinate officers. Sanders v. English, C.A.5 (La.) 1992, 950 F.2d 1152. Civil Rights 1358

Police chief could not be held liable in civil rights for actions of subordinates in making of arrest in the absence of any allegation that police chief was personally involved in incident. Hansen v. Black, C.A.9 (Idaho) 1989, 885 F.2d 642. Civil Rights 1358

Federal Government was not liable for allegedly wrongful execution of search warrant in civil rights action under § 1983, where federal agents were not present at time of search which was conducted by county officials, even though Drug Enforcement Administration had provided county information and had planned joint raid with county officials. Bergquist v. County of Cochise, C.A.9 (Ariz.) 1986, 806 F.2d 1364. Civil Rights 1364

Sheriff was not liable under 42 U.S.C.A. § 1983 for illegal arrest performed by his deputy, where sheriff was

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neither personally involved in arrest or detention of arrestee, nor was there causal connection between his acts and violation of arrestee's federal rights. Dennis v. Warren, C.A.5 (Miss.) 1985, 779 F.2d 245. Civil Rights 1358

Allegations that county executive received a letter from jail nurses regarding treatment of mentally ill jail inmates was insufficient to establish county executives' personal involvement in any alleged violation of inmates' constitutional rights, as required to state § 1983 claim against county executive. Atkins v. County of Orange, S.D.N.Y.2003, 251 F.Supp.2d 1225. Civil Rights 1358

High school principal, in his official capacity, could not be liable, under § 1983, for teacher's alleged use of excessive force against student in violation of student's rights under the Fourteenth Amendment; principal's only involvement in incident was his receipt of investigative report from school's director of security regarding incident. Knicrumah v. Albany City School Dist., N.D.N.Y.2003, 241 F.Supp.2d 199. Civil Rights 1356

Regional medical director of several prison facilities who denied prisoner treatment with Rebetron Therapy for his Hepatitis C based on mistaken diagnosis that prisoner also suffered from Hepatitis B, for which Rebetron Therapy was contraindicated, was not subject to civil rights liability on deliberate indifference claim based on error in his diagnosis and treatment recommendations, particularly where inmate was approved for Therapy one day later. Johnson v. Wright, S.D.N.Y.2002, 234 F.Supp.2d 352. Civil Rights 1358; Prisons 17(2); Sentencing And Punishment 1546

Director of state department of corrections and chief of prisoner classification and planning were not liable under § § 1983 for classification committee's classification of state inmate as sex offender based upon a prior dismissed rape charge, where director and chief had not been personally involved in classifying inmate as a sex offender, did not engage in any wrongful conduct that was causally connected to inmate's classification, and did not implement a policy so deficient that it was a repudiation of inmate's constitutional rights. Kritenbrink v. Crawford, D.Nev.2006, 457 F.Supp.2d 1139. Civil Rights 1358

Territorial corrections official who was in charge of corrections department's criminal records and who alerted department's legal division to fact that inmate's recorded good-time credits were incorrect, resulting in amendment of those records and inmate's immediate release, could not be liable in inmate's subsequent §§ 1983 action alleging that her term of imprisonment had been unconstitutionally prolonged; official had no direct contact with inmate and there was no showing of any action by him that could have resulted in violation of inmate's rights. Ayuso-Figueroa v. Rivera-Gonzalez, D.Puerto Rico 2005, 456 F.Supp.2d 309. Civil Rights 1358

Police sergeant who investigated and wrote report regarding arrest of felon in possession of firearms, and shooting of arrestee's pit bull, did not have degree of personal involvement required for liability in §§ 1983 action claiming that arresting officer and animal protection personnel violated arrestee Fourth Amendment rights. Chambers v. Doe, D.Del.2006, 453 F.Supp.2d 858. Civil Rights 1358

State prisoner's letter to prison superintendent, which complained about certain matters, and superintendent's denial of several grievances filed by prisoner concerning those matters did not demonstrate requisite personal involvement by superintendent to subject him to liability under §§ 1983 for alleged due process violations; superintendent denied grievances based on conclusions of investigation by department of corrections personnel, that there was no evidence to support the grievances. Brooks v. Chappius, W.D.N.Y.2006, 450 F.Supp.2d 220. Civil Rights 1358

Police officers who were not involved in initiating or pursuing citations against a motorist could not be held liable on the motorist's malicious prosecution claim. Siegel v. Miller, E.D.Pa.2006, 446 F.Supp.2d 346. Malicious Prosecution 3

Because the final determination whether to continue an inmate on involuntary protective custody (IPC) status was

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made by corrections superintendent rather than committee, and because committee members did not exercise de facto power over inmate's continued confinement, committee members had no personal involvement in any due process violation resulting from that decision. Smart v. Goord, S.D.N.Y.2006, 441 F.Supp.2d 631. Civil Rights 1358

Commissioner of the New York State Department of Correctional Services (DOCS) was not liable under §§ 1983 for allegedly inadequate mental health care received by state inmate, absent evidence that Commissioner participated in any of the alleged violations of the inmate's rights, that he knew of but failed to act on information about such violations, or that he was grossly negligent in supervising any subordinates who committed the wrongful acts. Goodson v. Evans, W.D.N.Y.2006, 438 F.Supp.2d 199. Civil Rights 1358

State university chancellor, who oversaw 27,000 employees, was not liable, in §§ 1983 suit, for alleged wrongful termination of wrestling coach, when there was no showing of personal involvement. Burch v. Regents of University of California, E.D.Cal.2006, 433 F.Supp.2d 1110. Civil Rights 1359

Commissioner of city agency having responsibility for foster placement of children lacked sufficient knowledge of, and had not personally participated in, placement of children in allegedly unfit foster homes, precluding liability in §§ 1983 action claiming deprivation of children's substantive due process rights. Richards v. City of New York, S.D.N.Y.2006, 433 F.Supp.2d 404. Civil Rights 1360

Supervisors of police officers did not personally participate in alleged malicious prosecution of arrestee by refusing to discipline police officers after arrestee filed complaint with internal affairs department, and thus municipality could not be liable on arrestee's §§ 1983 malicious prosecution claim under Colorado law; although officers allegedly filed false reports, supervisors did not assist in prosecution of arrestee and otherwise did not know about charge against arrestee until after it had been dismissed. Barton v. City and County of Denver, D.Colo.2006, 432 F.Supp.2d 1178. Civil Rights 1358

Mayor was not liable under §§ 1983 for subordinate city officials' alleged harassment of property owner, where there was no evidence that mayor directly participated in any unconstitutional conduct, and owner's only allegation against mayor was that he sent copies of correspondence from owner to various city employees. Petricca v. City of Gardner, D.Mass.2006, 429 F.Supp.2d 216. Civil Rights 1357

Employees of county environmental health department, who had investigated possible violations of environmental laws and permits by operators of septic tank pumping business, were not instrumental in initiating criminal prosecution of operators, precluding operators' §§ 1983 malicious prosecution claim against employees; district attorney alone had initiated prosecution, and employees' involvement, primarily consisting of referral of information to district attorney, was tangential to that decision. Ayala v. KC Environmental Health, E.D.Cal.2006, 426 F.Supp.2d 1070. Civil Rights 1358

In §§ 1983 malicious prosecution action against individual other than prosecutor, liability depends on whether defendant was actively instrumental in causing prosecution; presumption of prosecutorial independence can be overcome by showing that defendant, e.g., improperly exerted pressure on prosecutor, knowingly provided misinformation to him, concealed exculpatory evidence, or otherwise engaged in wrongful or bad-faith conduct instrumental in initiation of prosecution. Ayala v. KC Environmental Health, E.D.Cal.2006, 426 F.Supp.2d 1070. Civil Rights 1404

Supervisor of police officers who were deployed to neighborhood due to drug trafficking activity was not liable under §§ 1983 for officers' actions in allegedly assaulting certain neighborhood residents, absent evidence that he was personally involved in any action that might have deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. Nieves Cruz v. Com. of Puerto Rico, D.Puerto Rico 2006, 425 F.Supp.2d 188. Civil Rights 1358

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Commissioner of Correctional Services did not retaliate against corrections officer, in violation of section 1981 or section 1983, where Commissioner did not review officer's termination, and Commissioner was never notified of officer's allegations of retaliation against lieutenant. Henderson v. New York, S.D.N.Y.2006, 423 F.Supp.2d 129. Prisons 7

Police chief was not liable, in §§ 1983 action, for alleged false arrest and unlawful detention of bystander watching fight; required personal participation in altercation was not shown, and in any event bystander's plea of nolo contendere to charges arising out of altercation precluded any damages award. Reynolds v. Smythe, E.D.Pa.2006, 418 F.Supp.2d 724. Civil Rights 1358

Supervisory officials at state court clerk's office were not personally involved in processing father's visitation petition, and thus were not liable under §§ 1983 for alleged violation of father's constitutional rights as result of office's refusal to process petition, where officials were not personally responsible for docketing or filing custody and visitation petitions, were not contacted by clerks regarding any defects in father's petition, had no personal knowledge of any contact between lawyers representing mother and clerk's office, and had never seen father's petition. McKnight v. Baker, E.D.Pa.2006, 415 F.Supp.2d 559. Civil Rights 1360

Police officer who observed altercation between security guards at public hospital and illegally parked motorist when responding to call about the incident was not liable for alleged deprivation of motorist's rights under §§ 1983, where officer never touched nor arrested motorist, and his role in the events that transpired was merely to call for police assistance and to restrain motorist's wife from joining the altercation. Monge v. Cortes, D.Puerto Rico 2006, 413 F.Supp.2d 42. Civil Rights 1358

Puerto Rico teacher could not bring §§ 1983 claim against school director based on alleged deprivation of teacher's protected liberty interest from his suspension and referral to psychiatrist by former Secretary of Department of Education (DOE); although director had sent letter to DOE official requesting that teacher be mentally evaluated based on several alleged incidents of verbal aggression at school, director was not personally liable to teacher for any due process violations that Secretary's actions almost a year later may have entailed. Santiago-Rodriguez v. Rey, D.Puerto Rico 2005, 404 F.Supp.2d 400. Civil Rights 1356

Failure to connect county commissioners with any events leading up to suicide of jail detainee precluded individual capacity liability for being deliberately indifferent to detainee in violation of his due process rights. Gaston v. Ploeger, D.Kan.2005, 399 F.Supp.2d 1211. Civil Rights 1358

Town employee was not liable under §§ 1983 for violating equal protection and due process rights of citizen, who wanted to speak out against employee at town board meeting, when first selectman of town board of selectmen prevented citizen from making such comments, since employee did not have any personal involvement with decision of selectman. Piscottano v. Town of Somers, D.Conn.2005, 396 F.Supp.2d 187. Civil Rights 1360

Inmate who sued county sheriff, stemming from attack by other inmates while incarcerated, failed to establish that sheriff was personally involved in alleged Eighth Amendment deprivation, as required to maintain claim for supervisory liability under §§ 1983; sheriff was not present at facility at time of attack, and there were no facts showing that sheriff knew of attack and failed to act to prevent it, or promulgated or implemented policy so deficient that policy itself was moving force behind constitutional violation. Collins v. County of Kern, E.D.Cal.2005, 390 F.Supp.2d 964. Civil Rights 1358

City caseworker's supervisor was not personally involved in alleged abuse of foster children and thus was not liable in her personal capacity under §§ 1983, even if she was assigned specifically to children's cases, where she was not informed of violations prior to children's removal from foster home, did not create policy or custom under which unconstitutional practices occurred, and was not grossly negligent in supervising a subordinate who committed constitutional violations. Tylena M. v. Heartshare Children's Services, S.D.N.Y.2005, 390 F.Supp.2d 296. Civil

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42 U.S.C.A. § 1983

Rights 1360

Sheriff's deputies who arrived on the scene after arresting deputy had already apprehended arrestee did not participate in the arresting deputy's alleged use of excessive force, and thus, could not be liable, in arrestee's §§ 1983 claim. Marley v. Crawford County, Arkansas, W.D.Ark.2005, 383 F.Supp.2d 1129. Civil Rights 1358

Mayor's alleged lobbying of supervisor to terminate city employee was insufficient to establish mayor's participation in purported conspiracy to violate employee's civil rights, absent allegation that mayor acted out of racial animus toward employee or that mayor harbored any racial animus against employee. McLaurin v. New Rochelle Police Officers, S.D.N.Y.2005, 373 F.Supp.2d 385, subsequent determination 379 F.Supp.2d 475. Conspiracy 7.5(1)

Neither mayor's failure to file a declaratory judgment action challenging borough ordinance giving hiring preference to Native Americans nor his authorization of hiring under the ordinance demonstrated that he participated in decision not to hire unsuccessful applicant or, if he did, that he considered applicant's race or national origin, in violation of state and federal antidiscrimination laws. Welch v. North Slope Borough, D.Alaska 2005, 364 F.Supp.2d 1074. Civil Rights 1238; Civil Rights 1359; Civil Rights 1736

Amended complaint alleging that county clerk failed to turn over transcript of *Sandoval* hearing as part of conspiracy by city and city police department to violate pro se plaintiff's civil rights was insufficient to state §§ 1983 claim against the clerk, absent allegation of how the clerk was personally involved in alleged conspiracy, or the alleged "policy" of independent municipal corporation for whom clerk did not work and to whom he had no responsibility. McLaurin v. New Rochelle Police Officers, S.D.N.Y.2005, 363 F.Supp.2d 574. Conspiracy 18

Prisoner failed to state §§ 1983 claim against prison officials for allegedly failing to protect him from incident of verbal sexual harassment by prison guard or for denying his grievance, absent any allegation of officials' personal involvement in alleged sexual misconduct or allegation that misconduct continued after officials became aware of prisoner's grievance. Ornelas v. Giurbino, S.D.Cal.2005, 358 F.Supp.2d 955. Civil Rights 1358

Governor and other high ranking state officials were not subject to personal liability under §§ 1983 for allegedly wrongful removal of attorney from list maintained by state board of prison terms (BPT) from which attorneys were appointed to represent parolees in parole revocation proceedings, despite attorney's contentions that "the buck stops here," and "the fish rots from the head down," absent factual allegations showing officials' personal involvement in decision. Jacobson v. Schwarzenegger, C.D.Cal.2004, 357 F.Supp.2d 1198. Civil Rights 1360

State higher education center's vice president of administration could not be held liable under §§ 1983 for violation of nonstudent group's First Amendment free speech rights when the group was restricted from demonstrating at the campus's designated public forum area, where there was no evidence that the vice president was personally involved in any way with the determination to assign the group to an alternative area on the campus. Mason v. Wolf, D.Colo.2005, 356 F.Supp.2d 1147. Civil Rights 1356

Alleged conduct by commissioner of child welfare administration of responding to letters written by Jewish mother of foster care child regarding mother's concerns with administration's failure to place child in Jewish foster home and failing to take action on such complaints was insufficient to establish that commissioner was personally involved in alleged violations of mother's constitutional rights, as required to attribute liability to municipality in mother's § 1983 claim alleging violations of mother's First Amendment free exercise rights. Bruker v. City of New York, S.D.N.Y.2004, 337 F.Supp.2d 539. Civil Rights 1352(6)

Personal involvement by elected commissioner of Oregon Bureau of Labor and Industries (BOLI) was insufficient to hold him personally liable for alleged constitutional violations involving nonrenewal of farm and forest labor contractor's license; commissioner was not involved in either underlying investigation of alleged unlawful

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practices, including employment of untrained firefighters and wage and hour violations, or issuance of nonrenewal and penalty orders but instead had delegated relevant responsibilities to subordinates. Lumbreras v. Roberts, D.Or.2004, 319 F.Supp.2d 1191, affirmed 156 Fed.Appx. 952, 2005 WL 3304174. Civil Rights 1360

Chief of police did not personally participate in search of high school student's home, as required to hold chief liable under § 1983 for alleged violation of Fourth Amendment based on lack of probable cause; chief only stood inside doorway while sheriff's deputies searched home. Smith v. Barber, D.Kan.2004, 316 F.Supp.2d 992. Civil Rights 1358

Present and former village mayors and commissioners of public safety were not subject to liability under § 1983 for village constables' allegedly illegal detentions of motorists, absent allegation that mayors and commissioners personally participated in detentions. Brewer v. Village of Old Field, E.D.N.Y.2004, 311 F.Supp.2d 390. Civil Rights 1358

Prisoner failed to show in civil rights lawsuit that any acts or omissions by sheriff in his individual capacity amounted to reckless or callous indifference to prisoner's Eighth Amendment rights, where prisoner failed to affirmatively link any allegedly illegal conduct by corrections officers to any act, omission, or policy of sheriff; prisoner merely alleged that other corrections officers took actions which were against policy of correctional facility, or that officers violated past practices whereby correctional officers took reasonable steps to protect inmates during large scale altercations. Broner v. Flynn, D.Mass.2004, 311 F.Supp.2d 227. Civil Rights 1358

Prison superintendent and state corrections commissioner had insufficient personal involvement to be potentially liable in prison inmate's § 1983 Eighth Amendment action alleging corrections officers' assault on and retaliation against inmate; commissioner never saw inmate's letters containing allegations against officers, and superintendent received one letter alleging excessive force on part of officer involved in § 1983 action and forwarded it for investigation, resulting in finding that allegation was meritless, and did not receive notice of imminent assault by corrections officers or indications of substantial risk of serious harm from officers. Liner v. Goord, W.D.N.Y.2004, 310 F.Supp.2d 550. Civil Rights 1358

Department of Children and Families (DCF) officials who did not have anything to do with scheduling, continuance, or conduct of administrative hearing at which foster parent was deemed to have abused foster child could not be held liable under § 1983 for violating foster parent's Fourteenth Amendment procedural due process rights. Carroll v. Ragaglia, D.Conn.2003, 292 F.Supp.2d 324, affirmed in part, reversed in part and remanded 109 Fed.Appx. 459, 2004 WL 2165397. Civil Rights 1360

Part-time city employee, whose involvement in plaintiff's arrest and subsequent detention was limited to having issued misdemeanor citations to plaintiff which provided the basis for his arrest after plaintiff failed to appear for hearing, could not be held liable for violations of arrestee's due process rights resulting from arrestee's excessive detention. Bunyon v. Burke County, S.D.Ga.2003, 285 F.Supp.2d 1310. Civil Rights 1358

Police commissioner could not be held personally liable for alleged unconstitutional conditions of confinement that arrestee encountered in holding cell, even assuming personal knowledge of those alleged conditions, where holding cell was within jurisdiction of corrections department, rather than police department. Maxwell v. City of New York, S.D.N.Y.2003, 272 F.Supp.2d 285, reconsideration denied, affirmed in part, vacated in part and remanded 380 F.3d 106, supplemented 108 Fed.Appx. 10, 2004 WL 1800645. Civil Rights 1358

Conduct of superintendent of state mental health facility did not cause facility's alleged failure to comply with state law mandates regarding patient care, on § 1983 substantive due process confinement condition claim by patients who had been adjudicated not guilty by reason of insanity (NGRI); superintendent did not participate in direct patient care, was not involved in grievance process, did not control patient discharge, although he recommended discharge, and no evidence showed how state's general mandates regarding minimum levels of care gave

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superintendent power to make facility compliant. Neiberger v. Hawkins, D.Colo.2002, 239 F.Supp.2d 1140. Civil Rights 1360

Motorist failed to show that township chief of police was personally involved in alleged use of excessive force by township police officer during his arrest, as required to impose supervisory liability under § 1983; chief did not learn of incident until after motorist filed suit, and immediately investigated incident after learning of the suit. Pahle v. Colebrookdale Tp., E.D.Pa.2002, 227 F.Supp.2d 361. Civil Rights 1358

County employee who acted as homemaker, parental aid, and foster parent to children was not personally involved in alleged deprivation of mother's constitutional rights to visitation with the children, and therefore, was not liable under § 1983. Young v. County of Fulton, N.D.N.Y.1998, 999 F.Supp. 282, affirmed 160 F.3d 899. Civil Rights 1360

Neither warden's knowledge that subjective selection criteria had been used by interview panel to determine final applicant scores in promotion process nor his subsequent acceptance of such scores were sufficient, by themselves, to establish warden's individual or supervisory liability under § 1983 for alleged violation of equal protection rights of unsuccessful African-American promotion applicant. Beckett v. Department of Corrections of the State of Del., D.Del.1997, 981 F.Supp. 319. Civil Rights 1359

Police chief did not personally create or maintain policy or custom of tolerating or encouraging use of excessive force, so as to warrant § 1983 liability in individual capacity arising from officers' alleged use of excessive force on arrestee during booking; arrestee's bits and pieces of evidence evinced, at best, a lack of oversight on chief's part as to unrelated issues. Amato v. City of Saratoga Springs, N.D.N.Y.1997, 972 F.Supp. 120, affirmed in part, vacated in part 170 F.3d 311. Civil Rights 1358

Claimant's failure to present any evidence to establish that excessive force used by deputy during her arrest was pursuant to official policy or custom of sheriff precluded claim that arresting deputy personally and sheriff in his official capacity were liable for § 1983 claim. DuFour-Dowell v. Cogger, N.D.Ill.1997, 969 F.Supp. 1107, motion to amend denied 980 F.Supp. 955. Civil Rights 1358

Parish sheriff was not personally involved in alleged violation of constitutional rights of individual who was fatally shot by off-duty deputy sheriff with revolver issued by parish after child custody dispute, and thus, sheriff could not be held liable on that basis in federal civil rights action, even though sheriff had witnessed dispute between deputy and individual's attorney, in which deputy had threatened to bring lawsuit; at most, sheriff could be credited with acquiring suspicion that deputy might bring lawsuit, which could not be characterized as participation in shooting. Read v. Attaway, W.D.La.1996, 944 F.Supp. 480. Civil Rights 1088(1)

Supervising state trooper was qualifiedly immune from speeding motorist's action alleging that motorist's right to be free from unreasonable seizure was violated when state police set up roadblock to prevent his escape; roadblock was reasonable and, even if it were not, supervising trooper was not personally involved in acts which caused injury, and did not fail to supervise or train officers. Seekamp v. Michaud, D.Me.1996, 936 F.Supp. 23, affirmed 109 F.3d 802. Civil Rights 1376(6)

Prison warden had to be dismissed from inmates' civil rights lawsuit where complaints did not allege that warden participated in any of the alleged acts, or that he knew of such acts and acquiesced in their occurrence. Hancock v. Thalacker, N.D.Iowa 1996, 933 F.Supp. 1449. Civil Rights 1395(7)

Prison supervisors could not be deemed personally involved in medical staff's actions that inmate claimed to have violated his Eighth Amendment rights on the sole allegation that supervisors responded to inmate's letter complaining about his medical treatment. Abdush-Shahid v. Coughlin, N.D.N.Y.1996, 933 F.Supp. 168. Civil Rights 1358

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South Dakota Department of Game, Fish and Parks officials were not subject to supervisory liability under § 1983 for their subordinate's placement of spikes on hill to curtail hill climbing activities, which resulted in trucker's death when spikes punctured two of his tires, causing his truck to roll downhill; officials were not personally responsible for placement of spikes, and they did not even know about such devices. Furgeson v. Bisbee, D.S.D.1996, 932 F.Supp. 1185. Civil Rights 1360

Superintendent of correctional facility and commissioner of state Department of Corrections were not personally involved in violating inmate's Eighth Amendment rights by allegedly exposing him to asbestos and thus were not liable under § 1983; there was no evidence that either defendant was aware that there was asbestos in area where inmate was working or that they assigned him to work in that area, inmate did not allege that defendants had knowledge of asbestos prior to inmate's exposure, and there was no evidence of a policy or custom of exposing inmates to asbestos. Napoleoni v. Scully, S.D.N.Y.1996, 932 F.Supp. 559. Civil Rights 1358

Supervisor who played no part in transfer or transport of prisoner could not be held personally liable under § 1983 for alleged violation of constitutional rights. Wilson v. Cooper, N.D.Ill.1996, 922 F.Supp. 1286. Civil Rights 1358

Claimant could not maintain § 1983 action against governor for violations of her civil and constitutional rights when she was allegedly ordered to sign and file tax return against her will in marriage dissolution proceedings, where claimant did not allege that governor had any personal involvement in her alleged constitutional deprivation. Del Marcelle v. State of Wis., E.D.Wis.1995, 902 F.Supp. 859. Civil Rights 1360

Employee could not maintain § 1983 claim for sex discrimination, based on denial of request for light-duty work, against employer's chief administrative officer, since testimony indicated at most that officer and her subordinates collectively played role in considering request, not that officer herself did. Ascolese v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1995, 902 F.Supp. 533, on reconsideration 925 F.Supp. 351. Civil Rights 1340

City police department's issuance of four tickets to father for violating residential zoning ordinance, although improper, did not qualify as act of harassment or retaliation with respect to city, county attorney, mayor, and city chief of police, for purposes of family's § 1983 claim of conspiracy to retaliate against family for exercising their First Amendment rights, where it did not appear that any defendants were involved in decision to issue tickets. Libbra v. City of Litchfield, Ill., C.D.Ill.1995, 893 F.Supp. 1370. Conspiracy 7.5(2)

Commissioner of New York Department of Correctional Services (DOCS) was not liable under § 1983 for prison officials' misdiagnosis of inmate as having acquired immune deficiency syndrome (AIDS) and their removal of inmate from general prison population to AIDS Room; there was no evidence that commissioner was personally involved in misdiagnosis or decision to remove inmate to AIDS Room, and there was no evidence that commissioner was negligent in managing subordinates who were so involved. Timmons v. New York State Dept. of Correctional Services, S.D.N.Y.1995, 887 F.Supp. 576. Civil Rights 1358

State attorney general was not liable in civil rights action brought by city police officer who was acquitted of criminal charges that he had appropriated proceeds from parking meters; prosecutorial work had been done by others in his office, and he had been told only told essentials of case and been updated. Pansy v. Preate, M.D.Pa.1994, 870 F.Supp. 612, affirmed 61 F.3d 896. Civil Rights 1358

Prison warden was not liable for allegedly poor medical treatment inmate received, where there was no evidence that warden condoned or directly participated in allegedly unconstitutional treatment. Brown v. Thompson, S.D.Ga.1994, 868 F.Supp. 326. Civil Rights 1358

Inmate could not establish § 1983 liability on part of sheriff, in action alleging that inmate was injured by second inmate and deputy when fight between inmates arose, where inmate did not allege that sheriff was personally

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involved in alleged incident, that there was causal connection between act of sheriff and alleged constitutional deprivation, or that widespread abuse existed which gave sheriff knowledge of potential constitutional violations. Edwards v. Harris County Sheriff's Dept., S.D.Tex.1994, 864 F.Supp. 633. Civil Rights 1395(7)

Police officer who had no communication with arresting officer, who was his supervisor, from time arrest signal was given until arrestee arrived at jail could not have committed any Fourth Amendment violations arising from the arrest and, thus, was not liable, under § 1983, on arrestee's false arrest and excessive force claims. Frigo v. Guerra, N.D.Ill.1994, 860 F.Supp. 524. Civil Rights 1088(4)

Students failed to establish that school superintendent was individually liable under § 1983 for constitutional violations arising out of claim that security guard had assaulted and raped students in absence of evidence that superintendent had any personal involvement with events giving rise to complaint. Floyd v. Waiters, M.D.Ga.1993, 831 F.Supp. 867, affirmed 133 F.3d 786, vacated 119 S.Ct. 33, 525 U.S. 802, 142 L.Ed.2d 25, on remand 171 F.3d 1264. Civil Rights 1356

Neither sheriff in his individual capacity nor others who were not shown to have personal knowledge or involvement in treatment of detainee and her medical condition could be held liable for alleged violation of detainee's civil rights. Rubeck v. Sheriff of Wabash County, N.D.Ind.1993, 824 F.Supp. 1291. Civil Rights 1358

Tenured employee of public college failed to show that college's board of trustees, which was responsible for setting policy, coerced his resignation, so as to support his § 1983 claim of due process violation; board's only involvement in employee's resignation was fact that it held closed meeting to allow him to explain his position on charges at issue, and there was no evidence that board resolved to coerce employee into resigning, or to terminate him if he did not resign. Griffin v. Triton College, N.D.Ill.1993, 822 F.Supp. 1322. Civil Rights 1421

Neither township nor its police officer could be held liable under § 1983 to motorist injured in collision with officer from another jurisdiction while officers were involved in high-speed chase, absent showing that either township or its officer were proximate cause of motorist's injuries; township's officer, though participating in pursuit of suspect, was not involved in collision. Fulkerson v. City of Lancaster, E.D.Pa.1992, 801 F.Supp. 1476, affirmed 993 F.2d 876. Civil Rights 1088(4)

Incontinent prisoner failed to establish personal involvement of director of state Department of Corrections in prisoner's alleged deprivations of his Eighth Amendment rights as result of denial by prison medical staff of prisoner's request for daily showers, and thus prisoner could not maintain § 1983 civil rights action against director; director's mere position at Department of Corrections was insufficient to render director liable. De La Paz v. Peters, N.D.Ill.1997, 959 F.Supp. 909. Civil Rights 1358

Deputies who were at the scene where the alleged excessive force took place were not liable under §§ 1983, absent evidence that they were directly involved in the alleged use of excessive force. Bias v. Lundy, C.A.5 (La.) 2006, 188 Fed.Appx. 248, 2006 WL 1877275, Unreported. Civil Rights 1358

County sheriff could not be held liable under §§ 1983 in prisoner's action alleging civil rights violations, since sheriff had not personally participated in alleged violations, and purported harms were not result of any alleged policy or custom. Justice v. Wallace, C.A.10 (Okla.) 2006, 185 Fed.Appx. 745, 2006 WL 1704467, Unreported. Civil Rights 1358

Assuming roles of county airport authority employee and Public Utilities Commission (PUC) official in notifying police that limousine service operator's operating rights had been suspended made them personally involved in alleged violation of operator's Fourth Amendment rights, employee and officials were entitled to qualified immunity in §§ 1983 action; private citizen informed official that operator was operating his limousine service at

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airport with suspended PUC certificate, and after verifying information with PUC's Bureau of Transportation and Safety, official informed airport authority employee that operator had no insurance on file with PUC, and employee reasonably forwarded information to police. Joseph v. Allegheny County Airport Authority, C.A.3 (Pa.) 2005, 152 Fed.Appx. 121, 2005 WL 2562614, Unreported. Civil Rights 1376(3)

Deputy sheriff had sufficient personal involvement in eviction of landowners from their property to be liable under §§ 1983 in landowners' suit for violation of their Fourth Amendment and due process rights, where he was the vehicle identification officer who disposed of the landowners' cars, and told landowner, when landowner came to retrieve cars towed from the property, that he was a little guy who would have to pay towing and storage fees when the deputy sheriff felt like releasing the cars. Hansen v. Cannon, C.A.7 (Ill.) 2004, 122 Fed.Appx. 265, 2004 WL 2829016, Unreported. Civil Rights 1357

There was insufficient evidence of police officer's involvement in an arrest to support imposition of liability on the officer in the arrestee's §§ 1983 suit; the officer's "Good, he should go" comment upon seeing the arrestee handcuffed and being escorted away from a protest march scene, and the placement by an unknown third party of the officer's name in the "arresting officer" space on an investigation and arrest report were insufficient, given undisputed testimony of the officer that he had no personal involvement in the arrest. Bennett v. Schroeder, C.A.6 (Ohio) 2004, 99 Fed.Appx. 707, 2004 WL 1193963, Unreported. Civil Rights 1420

Absence of evidence placing two female police officers at scene at which emotionally disturbed man was shot and killed by police officers, or showing their involvement in alleged constitutional violations arising from incident, required dismissal of § 1983 claims against female officers. Busch v. City of New York, E.D.N.Y.2003, 2003 WL 22171896, Unreported. Civil Rights 1358

Prison official who ultimately denied prisoner's grievance alleging deliberate indifference by medical personnel at correctional facility from which prisoner had been transferred was not personally involved in the alleged deliberate indifference, and thus, he could not be liable for money damages under § 1983 for alleged violation of prisoner's Eighth Amendment rights. Graham v. Wright, S.D.N.Y.2003, 2003 WL 22126764, Unreported. Civil Rights 1358

Facts that certain corrections officers filed or reviewed a misbehavior report which formed basis of disciplinary charges and that both testified at hearing were insufficient, for purposes of § 1983, to find personal involvement in alleged disciplinary hearing due process violations. Muhammad v. Pico, S.D.N.Y.2003, 2003 WL 21792158, Unreported. Civil Rights 1358

Director of state department of corrections, and prison warden, lacked any personal involvement in alleged failure to protect inmate from attack by fellow inmate, as would allow recovery against director and warden under § 1983. Island v. Norris, C.A.8 (Ark.) 2000, 242 F.3d 375, Unreported. Civil Rights 1358

392. Conspiracy, liability generally--Generally

Conspiracy with state official and use of state official's office provides state action element of cause of action under this section. Goldschmidt v. Patchett, C.A.7 (Ill.) 1982, 686 F.2d 582. Conspiracy 7.5(3)

Cause of action based upon alleged conspiracy may be posited either upon § 1981 of this title or upon this section. Mizell v. North Broward Hospital Dist., C.A.5 (Fla.) 1970, 427 F.2d 468.

To establish a civil conspiracy under § 1983, plaintiff has the burden of showing (1) that two or more people entered into an agreement to violate the victim's civil rights, (2) that the alleged coconspirators shared in the general conspiratorial objective, and (3) that an overt act was committed in furtherance of the conspiracy that

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caused injury to him. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Conspiracy 7.5(1)

Unavailability of conspiracy claim under § 1985 does not preclude conspiracy claim under § 1983. Ahlers v. Schebil, E.D.Mich.1997, 966 F.Supp. 518. Conspiracy 7.5(1)

Elements of civil rights conspiracy claim are conspiracy for purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws or of equal privileges and immunities under the laws, and act in furtherance of conspiracy whereby person is either injured in his person or property or deprived of any right of a citizen of the United States; conspiracy must also be motivated by some racial or otherwise class-based, invidious discriminatory animus. Ippolito v. Meisel, S.D.N.Y.1997, 958 F.Supp. 155. Conspiracy 7.5(1)

Conspiracy claims are actionable under § 1983. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Conspiracy 7.5(1)

In order to state claim for conspiracy under § 1983, complaint must establish conspiracy in some detail and provide some factual basis supporting existence of conspiracy; conclusory statements suggesting conspiracy are not enough to state claim. Spiegel v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 891, affirmed 196 F.3d 717, as amended, rehearing denied, certiorari denied 120 S.Ct. 2688, 530 U.S. 1243, 147 L.Ed.2d 961. Conspiracy 18

Essential element in claim of conspiracy to deprive plaintiff of his constitutional rights is agreement to do so among alleged coconspirators. Sales v. Murray, W.D.Va.1994, 862 F.Supp. 1511. Conspiracy 7.5(1)

"Conspiracy" is agreement between two or more individuals, where one individual acts in furtherance of objective of conspiracy, which causes injury to person or property, or deprives person of exercising any right or privilege as United States citizen; conspiracy under § 1983 must further allege that injury was caused by person who is state actor, or whose conduct is chargeable to state. McKenzie v. Doctors' Hosp. of Hollywood, Inc., S.D.Fla.1991, 765 F.Supp. 1504, affirmed 974 F.2d 1347. Conspiracy 1.1; Conspiracy 7.5(3)

When a nonstate actor conspires with state officials to deprive an individual of his constitutional rights, action under § 1983 will lie against that nonstate actor. Smith v. U.S., C.D.Ill.1989, 723 F.Supp. 1300, affirmed 964 F.2d 630, rehearing denied, certiorari denied 113 S.Ct. 1015, 506 U.S. 1067, 122 L.Ed.2d 162. Civil Rights 1326(5)

Conspiracies to deprive one of his constitutional rights are actionable under this section, and a showing of class-based discrimination is not a prerequisite to liability. Pizzolato v. Perez, E.D.La.1981, 524 F.Supp. 914. Conspiracy 7.5(1)

The existence of a conspiracy to violate federal rights, when coupled with state action, is actionable under this section. Croy v. Skinner, N.D.Ga.1976, 410 F.Supp. 117. Conspiracy 7.5(3)

Action for conspiracy may be maintained under this section. Slavin v. Curry, C.A.5 (Tex.) 1978, 574 F.2d 1256, modified on other grounds, rehearing denied 583 F.2d 779. See, also, Birnbaum v. Trussell, C.A.2 (N.Y.) 1966, 371 F.2d 672; Cohen v. Norris, C.A.9 (Cal.) 1962, 300 F.2d 24; Sowell v. Israel, D.C.Wis.1980, 500 F.Supp. 209; Bricker v. Sceva Speare Memorial Hospital, D.C.N.H.1972, 339 F.Supp. 234.

393. ---- Necessary element of action, conspiracy, liability generally

Conspiracy may be charged as part of alleged civil rights violations as legal mechanism through which to impose liability on all defendants without regard to who committed particular act, but conspiracy claim is not actionable without actual violation of civil rights law. Hale v. Townley, C.A.5 (La.) 1995, 45 F.3d 914, rehearing and suggestion for rehearing en banc denied 51 F.3d 1047. Conspiracy 7.5(1)

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To claim under this section, giving civil action for deprivation of civil rights, conspiracy is not an indispensable element as it is under § 1985 of this title, expressly conferring action for conspiracy to interfere with civil rights, but it may be charged as legal mechanism through which to impose liability on each and all of defendants without regard to person doing particular act, and conspiracy is asserted in that situation on more or less traditional principles of agency, partnership, joint venture and the like. Nesmith v. Alford, C.A.5 (Ala.) 1963, 318 F.2d 110, rehearing denied 319 F.2d 859, certiorari denied 84 S.Ct. 489, 375 U.S. 975, 11 L.Ed.2d 420. Civil Rights 1434

Absence of allegations concerning conspiracy of police officers to cover-up beating and denial of medical care did not alter validity of civil rights claim based on cover-up, as conspiracy is not required to establish right to recover. Gonsalves v. City of New Bedford, D.Mass.1996, 939 F.Supp. 921. Civil Rights 1088(1)

Conspiracy is not necessary element of § 1983 claim, but proof of civil conspiracy may broaden scope of liability under § 1983 to include individuals who are part of conspiracy and who do not act directly to deprive plaintiff of federal statutory or constitutional rights. Pryor v. Cajda, N.D.Ill.1987, 662 F.Supp. 1114. Civil Rights 1304; Conspiracy 7.5(1)

394. ---- Actual violation, conspiracy, liability generally

To demonstrate conspiracy under § 1983, plaintiff must show actual abridgement of some federally-secured right. Torres-Rosado v. Rotger-Sabat, C.A.1 (Puerto Rico) 2003, 335 F.3d 1. Conspiracy 7.5(2)

For conspiracy to be actionable under this section, it must be found that there was not only agreement but actual deprivation of rights secured by U.S.C.A.Const. Amend. 14 and laws, the conspiracy merely supplying element of state action or imposing liability on one defendant for acts of others performed in pursuance of conspiracy. Landrigan v. City of Warwick, C.A.1 (R.I.) 1980, 628 F.2d 736. Conspiracy 7.5(1)

This section does not provide a cause of action for a conspiracy to deny due process, but there must be an actual denial of due process before a cause of action arises. Hanna v. Home Ins. Co., C.A.5 (Tex.) 1960, 281 F.2d 298, certiorari denied 81 S.Ct. 751, 365 U.S. 838, 5 L.Ed.2d 747, rehearing denied 81 S.Ct. 1905, 366 U.S. 955, 6 L.Ed.2d 1247. See, also, Jennings v. Nester, C.A.7 (Ill.) 1955, 217 F.2d 153, certiorari denied 75 S.Ct. 888, 349 U.S. 958, 99 L.Ed. 1281.

Section 1983 conspiracy claim is not actionable without actual violation of § 1983. Owens v. Board of Regents of Texas Southern University, S.D.Tex.1996, 953 F.Supp. 781. Conspiracy 7.5(1)

Conspiracy under § 1983 merely provides mechanism by which to plead or prove constitutional or statutory violation. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Conspiracy 7.5(2)

A conspiracy is actionable under § 1983, but only if the plaintiff can prove an actual deprivation of a constitutional right. Rhodes v. Mabus, S.D.Miss.1987, 676 F.Supp. 755. Conspiracy 7.5(1)

To maintain conspiracy action under § 1983, it is necessary that there have been an actual denial of due process or of equal protection by someone acting under color of state law. Mullinax v. McElhenney, N.D.Ga.1987, 672 F.Supp. 1449. Conspiracy 7.5(2)

There is no cause of action for conspiracy per se under civil rights statute, section 1983, nor is there a cause of action for conspiracy to deny due process; plaintiff must prove deprivation of a specifically protected constitutional right to sustain conspiracy claim. Dean Tarry Corp. v. Friedlander, S.D.N.Y.1987, 650 F.Supp. 1544, affirmed 826 F.2d 210. Conspiracy 7.5(2)

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42 U.S.C.A. § 1983

395. ---- Intent to violate rights, conspiracy, liability generally

To survive motion for summary judgment, plaintiff's evidence of Section 1983 conspiracy to deprive him of his First Amendment right to free speech must, at least, reasonably lead to inference that defendants positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan. Stein v. Janos, S.D.N.Y.2003, 269 F.Supp.2d 256. Federal Civil Procedure 2497.1

To establish prima facie case of civil conspiracy, plaintiff must demonstrate: express or implied agreement among defendants to deprive plaintiff of secured constitutional rights; and actual deprivation of those rights in form of overt acts in furtherance of agreement. Fantasia v. Kinsella, N.D.Ill.1997, 956 F.Supp. 1409. Conspiracy 1.1

Section 1983 plaintiff stated conspiracy claim against police officers involved in his arrest, who allegedly had agreement to deprive him of his federal rights; plaintiff allegedly heard one officer say to another that, "we are going to have to say we were chasing him," and plaintiff alleged that other officers were aware that that officer testified at grand jury, that his testimony was false, and that he had falsified documents in connection with his testimony. Crespo v. New York City Police Com'r, S.D.N.Y.1996, 930 F.Supp. 109. Conspiracy 18

Conspiracy cannot exist, for purposes of § 1983, where public officials are unaware of violative nature of their actions due to misrepresentations of private parties. Gilbert v. Feld, E.D.Pa.1992, 788 F.Supp. 854. Civil Rights 1326(5)

Conspiracy claims are not actionable under § 1983 unless the conspiracy is designed to violate plaintiff's constitutional rights. Spear v. Town of West Hartford, D.Conn.1991, 771 F.Supp. 521, affirmed 954 F.2d 63, certiorari denied 113 S.Ct. 66, 506 U.S. 819, 121 L.Ed.2d 33. Conspiracy 7.5(2)

In order to sustain § 1983 conspiracy claim, there must be some evidence of some concerted effort or plan between private associations and state actors to deny plaintiffs their constitutional rights. Lawline v. American Bar Ass'n, N.D.Ill.1990, 738 F.Supp. 288, affirmed 956 F.2d 1378, certiorari denied 114 S.Ct. 551, 510 U.S. 992, 126 L.Ed.2d 452. Conspiracy 7.5(1); Conspiracy 7.5(3)

396. ---- Pleadings, conspiracy, liability generally

If complaint makes only conclusory allegations of conspiracy under §§ 1983 or 1985 and fails to allege facts suggesting agreement or meeting of minds among defendants, court may properly dismiss complaint. Sales v. Murray, W.D.Va.1994, 862 F.Supp. 1511. Conspiracy 18

To plead civil rights conspiracy, plaintiffs must allege an express or implied agreement among defendants to deprive plaintiff of his constitutional rights and deprivation of those rights in the form of overt acts in furtherance of agreement. Carreon v. Baumann, N.D.Ill.1990, 747 F.Supp. 1290. Conspiracy 18

In order to plead a § 1983 conspiracy between private persons and state officials, plaintiffs must allege an agreement to deprive them of their constitutional rights; boilerplate allegations of such an agreement are insufficient. Theis v. Smith, N.D.Ill.1988, 676 F.Supp. 874. Conspiracy 18

To sustain § 1983 action against private individual, plaintiff must allege in complaint some evidence of concerted plan or agreement between private party and government officials, and mere allegations of conspiracy are not sufficient to withstand motion to dismiss. Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047, affirmed in part, reversed in part 151 F.3d 646. Civil Rights 1396

397. ---- Preclusion of claims, conspiracy, liability generally

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42 U.S.C.A. § 1983

Claim under statute [42 U.S.C.A. § 1985] prohibiting conspiratorial violations of civil rights could be maintained against alleged coconspirator, despite preclusion of claims against city and its official. Doyel v. City of Marianna, E.D.Ark.1985, 611 F.Supp. 857. Conspiracy 13

398. ---- Private actions, conspiracy, liability generally

Private party involved in conspiracy with state official may, even though not himself official of state, be liable under this section. Adickes v. S. H. Kress & Co., U.S.N.Y.1970, 90 S.Ct. 1598, 398 U.S. 144, 26 L.Ed.2d 142. Civil Rights 1326(5)

A § 1983 conspiracy claim may arise when a private actor conspires with a state actor to deprive a person of a constitutional right under color of state law. Dixon v. City of Lawton, Okl., C.A.10 (Okla.) 1990, 898 F.2d 1443. Conspiracy 7.5(1)

Private parties who corruptly conspire with state officials to maliciously prosecute an individual act under color of state law and can be sued by that individual under federal civil rights statute; plaintiff attempting to prove such a conspiracy must show that the parties reached an understanding to deny plaintiff his or her rights, the conspiratorial acts must impinge upon the federal right, and the plaintiff must prove an actionable wrong to support the conspiracy. N.A.A.C.P. v. Hunt, C.A.11 (Ala.) 1990, 891 F.2d 1555. Civil Rights 1326(5)

A private person does not conspire with a state official for purposes of this section merely by invoking an exercise of the state official's authority. Tarkowski v. Robert Bartlett Realty Co., C.A.7 (Ill.) 1980, 644 F.2d 1204. Conspiracy 7.5(1)

Private individuals who conspire with state officials are acting "under color of state law," for purposes of this section whether or not the state official is actually joined in the suit arising from such conspiracy. Slotnick v. Staviskey, C.A.1 (Mass.) 1977, 560 F.2d 31, certiorari denied 98 S.Ct. 1268, 434 U.S. 1077, 55 L.Ed.2d 783. Conspiracy 7.5(3)

Where state officers conspire with private individuals to defeat or prejudice litigant's rights in state court, litigant is thereby denied equal protection of laws by persons acting under color of state law, and cause of action is created cognizable by federal courts under this section. Dinwiddie v. Brown, C.A.5 (Tex.) 1956, 230 F.2d 465, certiorari denied 76 S.Ct. 1041, 351 U.S. 971, 100 L.Ed. 1490, rehearing denied 77 S.Ct. 29, 352 U.S. 861, 1 L.Ed.2d 72. Federal Courts 225

Shopping center owner did not conspire with a state official to commit an unlawful act, as would establish actions under color of state law on part of owner allowing recovery by shopping center tenant under § 1983, when owner accepted lump sum payment from state as part of settlement after state took portion of shopping center's common area through its eminent domain power for expansion of state highway; state was not obligated to apportion payment between owner and its tenant, but was required only to pay just compensation for value of property taken. Weingarten Realty Investors v. Albertson's, Inc., S.D.Tex.1999, 66 F.Supp.2d 825, affirmed 234 F.3d 28. Civil Rights 1326(5)

Private party can be liable under § 1983 if state officials and private party somehow reached understanding to deny plaintiff his or her constitutional rights; in such situation, state official's involvement provides requisite state action. Guy v. State of Ill., N.D.Ill.1997, 958 F.Supp. 1300. Civil Rights 1326(5)

Private defendant may only be held liable under § 1983 as willful participant in joint activity with State or its agents, and therefore, in order to recover from private defendant, plaintiff must demonstrate that private defendant collaborated or conspired with person acting under color of state law to violate plaintiff's constitutional rights; plaintiff bears burden of proof on this issue and must produce more than conclusory allegations or naked assertions

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of joint or conspiratorial action. Niemann v. Whalen, S.D.N.Y.1996, 911 F.Supp. 656. Civil Rights 1326(5); Civil Rights 1396; Civil Rights 1401

Farmer could not be held liable under civil rights statute for retaining truck and trailer during dispute over shipment of watermelons, absent evidence of conspiracy between farmer and any state actor, including deputy sheriffs who intervened in dispute between farmer and truck driver. Padgett v. Palmer, S.D.Miss.1994, 856 F.Supp. 1185, affirmed 58 F.3d 636. Civil Rights 1326(5)

Private parties are liable under § 1983 if they have reached agreement with state actor to violate individual's constitutional rights. Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047, affirmed in part, reversed in part 151 F.3d 646. Civil Rights 1326(5)

399. ---- Attorneys, conspiracy, liability generally

Although appointed counsel in state criminal prosecution does not act "under color of" state law in normal course of conducting defense, otherwise private person acts "under color of" state law when engaged in conspiracy with state officials to deprive another of federal rights. Tower v. Glover, U.S.Or.1984, 104 S.Ct. 2820, 467 U.S. 914, 81 L.Ed.2d 758. Civil Rights 1326(10)

Private parties who corruptly conspire with judge in conjunction with judge's performance of official judicial act are acting under color of state law for purposes of federal civil rights statute, even if judge himself is immune from civil liability. Kimes v. Stone, C.A.9 (Cal.) 1996, 84 F.3d 1121. Civil Rights 1341

Allegations that a public defender has conspired with judges or other state officials to deprive a prisoner of federally protected rights may state a claim under § 1983. Manis v. Sterling, C.A.8 (Mo.) 1988, 862 F.2d 679. Conspiracy 18

Conclusory allegations that court-appointed defense counsel in state criminal proceeding conspired with prosecution and state trial judge when he agreed to proceed on an altered indictment, when he gave the accused erroneous legal advice, and when he refused to provide the accused with an opportunity to examine personally certain exculpatory evidence were insufficient to establish attorney's involvement in conspiracy such that he could be held liable under § 1983. Mills v. Criminal Dist. Court No. 3, C.A.5 (Tex.) 1988, 837 F.2d 677. Conspiracy 18

Former defendant in a criminal case failed to state a cause of action against public defenders under civil rights statue [42 U.S.C.A. § 1983] for allegedly conspiring with state appellate judges to deny him a proper appeal, as allegations that public defender rendered ineffective assistance and that judges failed to take any corrective action when informed of this fact fell short of factually suggesting a mutual understanding or meeting of the minds in any conspiracy. Deck v. Leftridge, C.A.8 (Mo.) 1985, 771 F.2d 1168. Conspiracy 18

Where defendant's lawyer, investigator, and prosecutor allegedly conspired to deprive criminal defendant of his civil rights, private conduct was converted to "state action" for purposes of bringing action under this section. Black v. Bayer, C.A.3 (Pa.) 1982, 672 F.2d 309, certiorari denied 103 S.Ct. 230, 459 U.S. 916, 74 L.Ed.2d 182. Civil Rights 1326(5); Civil Rights 1326(10)

Although privately retained criminal counsel, private physician and hospital at which castration was performed, were not prima facie liable under this section for alleged misrepresentation as to side effects of castration, they could be held liable if the government defendants, including prosecuting attorneys who participated in plea bargain whereby plaintiff was allegedly permitted to plead guilty to a lesser offense than child molestation provided he consented to castration, were found to be without immunity for their participation in the bargain and the nongovernment defendants were found to have conspired with them. Briley v. State of Cal., C.A.9 (Cal.) 1977,

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42 U.S.C.A. § 1983

564 F.2d 849. Civil Rights 1339; Conspiracy 7.5(3)

Complaint alleging that defendant's attorney had special relationship with state court judge which he used to obtain favorable results for investor in state court suit against plaintiff failed to state cause of action for conspiracy to violate § 1983, absent any allegation that attorney acted through combination, agreement, understanding, plot, plan, or conspiracy with judge. Spencer v. Steinman, E.D.Pa.1997, 968 F.Supp. 1011. Conspiracy 18

Whether former wife's attorney, who petitioned for civil arrest of former husband based on his failure to pay alimony as ordered by state court divorce decree, engaged in joint action with state officials, for purpose of husband's § 1983 action against attorney arising from arrest, would be determined under higher standard requiring conspiracy among attorney and state officers involved, not lower standard requiring only "aid and assistance" by public officials, since state law remedies were available to husband. MacFarlane v. Smith, D.N.H.1996, 947 F.Supp. 572, affirmed 129 F.3d 1252. Civil Rights 1326(10)

Plaintiff made sufficient allegations of deprivation of rights and of state action to maintain § 1983 action against private attorneys, where plaintiff alleged that his defense attorney participated with assistant district attorney in plan to obtain unsupported felony conviction on sexual misconduct charges by depriving plaintiff of his right to effective assistance of counsel, and that private attorneys were willful participants in plan by then filing collateral civil suit on behalf of alleged victim; fact that overt acts attributed to private attorneys did not directly involve them with assistant district attorney did not deprive overall conspiracy of necessary element of state action. Jackson v. Faber, D.Me.1993, 834 F.Supp. 471. Civil Rights 1395(5)

An attorney appointed to represent the interests of a father did not "conspire" with state officials to deprive the father of his civil rights in violation of 42 U.S.C.A. § 1983 when the attorney refused to disclose the son's whereabouts to the father as required under the terms of a court order that the attorney, as an officer of the court, was bound to follow. Koenig v. Snead, D.Or.1991, 757 F.Supp. 41, affirmed 977 F.2d 589. Conspiracy 7.5(1)

In civil rights action against former husband and his attorney alleging that they were responsible for series of misrepresentations made to state court judge, as result of which former wife was incarcerated, in order to proceed to trial, former wife was required to allege that there existed between attorney and state official an understanding, agreement or conspiracy to deprive former wife of federal right. Celano v. Celano, E.D.Pa.1982, 537 F.Supp. 690. Conspiracy 18

Action lay against Attorney General and Assistant Attorney General under this section dealing with civil actions for deprivation of constitutional rights for alleged conspiracy to incarcerate plaintiffs illegally in mental institution. Scolnick v. Winston, S.D.N.Y.1963, 219 F.Supp. 836, affirmed 329 F.2d 716, certiorari denied 85 S.Ct. 49, 379 U.S. 825, 13 L.Ed.2d 35. Conspiracy 7.5(1)

400. ---- Judges, conspiracy, liability generally

Absence of evidence that judge serving as attorney for mother in custody proceedings conspired with judge hearing matter precluded §§ 1983 liability on part of judge serving as attorney. Plaisance v. Reese, E.D.La.2004, 353 F.Supp.2d 735. Conspiracy 19

Allegations of conspiratorial conduct between a state court judge and plaintiffs in a nonjury state court libel action stated a procedural due process violation which could be addressed in a § 1983 action; civil rights plaintiffs alleged covert ex parte meetings and telephone conversations during course of trial in which plaintiffs and judge conspired to produce a verdict based on extra-judicial considerations. Lipson v. Snyder, E.D.Pa.1988, 701 F.Supp. 541. Conspiracy 18

401. ---- Government officials, conspiracy, liability generally

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42 U.S.C.A. § 1983

Property owners' allegations that chairman of industrial and business development commission of town, town inspector of buildings, chairman of town planning board and former town attorney conspired to deprive property owners of equal protection of local zoning laws and to prefer the interest of owners of factory which adjoined property owners' land constituted valid cause of action under this section. Harrison v. Brooks, C.A.1 (Mass.) 1971, 446 F.2d 404. Conspiracy 18

Allegations in civil rights action that defendants acted individually and as members of conspiracy to deprive horse owner of her constitutional rights by ordering her horse returned to her after it was claimed in a "claiming race" and claiming price forfeited because of drug violation failed to state a claim under this clause, since Board of Stewards and State Racing Commission lawfully interpreted existing state law to require rescission of claiming contract. Boetti v. Ogden Suffolk Downs, Inc., D.C.Mass.1984, 587 F.Supp. 1048. Civil Rights 1395(1)

402. ---- Intracorporate conspiracy doctrine, liability generally

"Intracorporate conspiracy doctrine" bars a civil rights conspiracy case under § 1983 where proof of the discriminatory or retaliatory act reflects the collective judgment of two or more executives of the same firm. Rojicek v. Community Consol. School Dist. 15, N.D.Ill.1996, 934 F.Supp. 280. Conspiracy 2

Intracorporate conspiracy doctrine barred student's claim under federal civil rights statute against school administrators for allegedly agreeing with each other and with school counselors to disregard state law by not reporting to Illinois Department of Children and Family Services (DCFS) a teacher's alleged sexual abuse of female students, even though student named administrators in their individual as well as their official capacities. Doe v. Board of Educ. of Hononegah Community High School Dist. No. 207, N.D.Ill.1993, 833 F.Supp. 1366. Conspiracy 2

The "intra-corporate conspiracy doctrine" could not prevent imposition on members of single municipal lighting commission of liability under this section for alleged conspiracy to deprive plaintiffs of U.S.C.A.Const. Amend. 14 rights to be free from purposeful sex discrimination by paying plaintiffs less than males holding positions allegedly entailing "equal responsibilities." Stathos v. Bowden, D.C.Mass.1981, 514 F.Supp. 1288. Conspiracy 7.5(2)

403. ---- Miscellaneous conspiracies, conspiracy, liability generally

Catholic priest failed to state claim that district attorney and his employees conspired with private actors to release sexually oriented materials found in priest's room in violation of priest's constitutional rights; publication of material by some of private parties more than one year after issuance of subpoena at request of Catholic Church was too attenuated from initial state action to support agreement among parties. Cinel v. Connick, C.A.5 (La.) 1994, 15 F.3d 1338, certiorari denied 115 S.Ct. 189, 513 U.S. 868, 130 L.Ed.2d 122. Conspiracy 7.5(3)

Alleged conduct of former co-worker of police officer in approaching police officer's subsequent employers to urge that police officer be fired was not enough for police officer to establish his § 1983 claim against former co-worker based on alleged conspiracy with state actors. Mylett v. Jeane, C.A.5 (Tex.) 1989, 879 F.2d 1272, rehearing denied. Civil Rights 1326(11)

Complaint alleging that defendant conspired to violate plaintiff's constitutional rights so that plaintiff would be denied fair trial on criminal charges, and that defendant was guilty of libel, and that conspiracy was formed in retaliation for plaintiff's suit against defendant for libel, and that alleged errors occurred in criminal trials of plaintiff because of conspiracy failed to allege any violations of this section and § 1985 of this title. Kamsler v. Chicago Am. Pub. Co., C.A.7 (Ill.) 1965, 352 F.2d 57. Conspiracy 18

Mother could not recover under this section for damages allegedly resulting from conspiracy by defendants to take away her minor child, in absence of any evidence of common law conspiracy or conspiracy to deprive mother of

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equal protection of laws or any other constitutional right. Harris v. Turner, C.A.6 (Tenn.) 1964, 329 F.2d 918, certiorari denied 85 S.Ct. 202, 379 U.S. 907, 13 L.Ed.2d 180, rehearing denied 85 S.Ct. 673, 379 U.S. 985, 13 L.Ed.2d 578. Conspiracy 7.5(2)

Neighbor did not conspire with sheriff's department, and thus neighbor did not act under color of state law, where sheriff's department responded to call from neighbor, upon arriving at scene sheriff's department observed plaintiff with pick-axe, witnessed damaged timbers, investigated matter, including conversing with plaintiff, neighbor, and local lumber yard to ascertain value of timbers, and arrested plaintiff in response to neighbor's signing of criminal complaint. Serbalik v. Gray, N.D.N.Y.1998, 27 F.Supp.2d 127. Civil Rights 1326(9)

Police officers and police chief could be held liable to arrestee for § 1983 civil rights conspiracy based upon their claimed involvement in alleged post-arrest coverup; reasonable jury could view alleged falsification of police records and failure to properly investigate arrestee's arrest as efforts to deprive arrestee of his § 1983 right of action as to alleged use of excessive force. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Conspiracy 13

Landlord who obtained police officer's assistance to enter tenant's apartment to fix water leak that had resulted in lack of heat and water for entire building did not conspire with police officer to violate tenant's constitutional rights, and thus could not be liable for civil rights violation. Osipova v. Dinkins, S.D.N.Y.1995, 907 F.Supp. 94. Civil Rights 1326(5)

Prisoner failed to establish that prison officer conspired with other staff members to deprive prisoner of his constitutional rights by coercing confidential informants into making statements against prisoner during his hearing for possession of weapon charges, where prisoner neither identified purported conspirators, nor set forth any allegation of agreement on their part to deprive prisoner of his constitutional rights. Sales v. Murray, W.D.Va.1994, 862 F.Supp. 1511. Conspiracy 19

Private citizen who brought allegations of bribery to attention of prosecuting authorities did not participate in conspiracy with prosecutors to violate constitutional rights of subjects of bribery investigation; mere suggestion or request for investigation did not make citizen a conspirator, absent proof that he could have done or could have helped to do any acts which were objects of purported conspiracy. Sluys v. Gribetz, S.D.N.Y.1994, 842 F.Supp. 764, affirmed 41 F.3d 1503, certiorari denied 115 S.Ct. 1316, 514 U.S. 1005, 131 L.Ed.2d 197. Conspiracy 7.5(1)

Suburban-licensed airport limousine services did not enter agreement with city to exclude city-licensed airport limousine services from livery dispatch booths and did not engage in § 1983 conspiracy to deprive city services of constitutional rights, even though city decided to implement terminal system after meeting with representatives of suburban services; suburban services were forced to accept city's decision to implement some form of livery dispatch system and were not voluntary participants in joint venture with city; and city rejected suburban services' proposed contract to exclude city services from booths. Pontarelli Limousine, Inc. v. City of Chicago, N.D.Ill.1989, 704 F.Supp. 1503. Conspiracy 7.5(1)

Complaint did not state §§ 1983 claim for conspiracy to deprive former dog control officer of his liberty and property when former dog control officer asserted only that his former employer, which provided towns with animal control services, and towns and their officials "allegedly acted in a concerted effort," allegedly agreed not to hire former dog control officer and informed other municipalities and private entities to refrain from hiring former dog control officer, and allegedly engaged in overt acts to effect such common plan. Robbins v. Cloutier, C.A.2 (N.Y.) 2005, 121 Fed.Appx. 423, 2005 WL 290203, Unreported. Conspiracy 18

404. Respondeat superior, liability generally--Generally

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42 U.S.C.A. § 1983

Civil Rights Act of 1871 will not support a claim based on a respondeat superior theory of liability. Polk County v. Dodson, U.S.Iowa 1981, 102 S.Ct. 445, 454 U.S. 312, 70 L.Ed.2d 509. Civil Rights 1336

There is no respondeat superior liability in suit brought pursuant to § 1983. Nicholson v. Scoppetta, C.A.2 (N.Y.) 2003, 344 F.3d 154, certified question accepted 807 N.E.2d 283, 775 N.Y.S.2d 233, 1 N.Y.3d 538, certified question answered 820 N.E.2d 840, 787 N.Y.S.2d 196, 3 N.Y.3d 357, answer to certified question conformed to 116 Fed.Appx. 313, 2004 WL 2712425. Civil Rights 1336

Supervisor cannot be held liable under § 1983 on basis of respondeat superior; rather, misconduct of subordinate must be affirmatively linked to action or inaction of supervisor. Southard v. Texas Bd. of Criminal Justice, C.A.5 (Tex.) 1997, 114 F.3d 539. Civil Rights 1355

Employer cannot be held responsible under § 1983 for actions of its employees on basis of respondeat superior. Kelly v. Municipal Courts of Marion County, Ind., C.A.7 (Ind.) 1996, 97 F.3d 902. Civil Rights 1336

There is no respondeat superior liability under federal civil rights statute. Harris v. Ostrout, C.A.11 (Fla.) 1995, 65 F.3d 912. Civil Rights 1336

Respondeat superior liability is insufficient to sustain § 1983 action. Copeland v. Machulis, C.A.6 (Mich.) 1995, 57 F.3d 476. Civil Rights 1336

Doctrine of respondeat superior cannot serve as basis for imposing liability in federal civil rights action. Randle v. Parker, C.A.8 (Ark.) 1995, 48 F.3d 301. Civil Rights 1336

Respondeat superior generally does not apply in actions under this section or in Bivens-type actions. Ellis v. Blum, C.A.2 (N.Y.) 1981, 643 F.2d 68. Civil Rights 1336

An official's liability under this section authorizing civil actions for deprivation of constitutional rights may not be based on respondeat superior or vicarious liability. Thompson v. Bass, C.A.5 (Ala.) 1980, 616 F.2d 1259, certiorari denied 101 S.Ct. 399, 449 U.S. 983, 66 L.Ed.2d 245. Civil Rights 1355

Doctrine of respondeat superior does not apply to cases involving deprivation of civil rights under color of state law. Lessman v. McCormick, C.A.10 (Kan.) 1979, 591 F.2d 605. See, also, Henriksen v. Bentley, C.A.10 (Wyo.) 1981, 644 F.2d 852; Walters v. City of Ocean Springs, C.A.5 (Miss.) 1980, 626 F.2d 1317; DeShields v. U.S. Parole Commission, C.A.8 (Minn.) 1979, 593 F.2d 354; Freeman v. Trudell, E.D.Mich.1980, 497 F.Supp. 481; Drug Purchase, Inc. v. Dubroff, S.D.N.Y.1980, 485 F.Supp. 887; Jones v. Kneller, D.C.N.Y.1979, 482 F.Supp. 204; Allston v. Lewis, D.C.S.C.1979, 480 F.Supp. 328, affirmed 688 F.2d 829; Doores v. McNamara, D.C.Mo.1979, 476 F.Supp. 987; Jane D. v. Seurynck, D.C.S.C.1978, 473 F.Supp. 860, affirmed 603 F.2d 218; Light v. Blackwell, D.C.Ark.1979, 472 F.Supp. 333, affirmed 620 F.2d 307. Civil Rights 1336

Section 1983 will not support claim based on respondeat superior theory of liability. Jimenez v. New Jersey, D.N.J.2003, 245 F.Supp.2d 584. Civil Rights 1336

Respondeat superior does not apply in §§ 1983 actions. Caldwell v. Green, W.D.Va.2006, 451 F.Supp.2d 811. Civil Rights 1336

Doctrine of respondeat superior, tort principle that holds employer liable for acts of employee committed in course and scope of employment, does not apply in §§ 1983 context. Sherrod v. Palm Beach County School Dist., S.D.Fla.2006, 424 F.Supp.2d 1341. Civil Rights 1336

Since respondeat superior cannot provide a basis for liability under §§ 1983, a defendant may not be held liable

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merely because he held a high position of authority. Veloz v. New York, S.D.N.Y.2004, 339 F.Supp.2d 505, affirmed 2006 WL 1082836. Civil Rights 1336

Doctrine of respondeat superior standing alone does not suffice to impose liability for damages under §§ 1983 on a defendant acting in a supervisory capacity; evidence of a supervisory official's personal involvement in the challenged action is required. Van Eck v. Cimahosky, D.Conn.2004, 329 F.Supp.2d 265. Civil Rights 1355

The doctrine of respondeat superior, under which a supervisor may be held liable for an employee's actions, has no application to § 1983 actions. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Civil Rights 1336; Civil Rights 1355

The personal involvement of a supervisor necessary to hold the supervisor liable under § 1983 may be shown by evidence that: (1) the defendant participated directly in the alleged constitutional violation, (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong, (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom, (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts, or (5) the defendant exhibited deliberate indifference to the rights of inmates by failing to act on information indicating that unconstitutional acts were occurring. Porter v. Selsky, W.D.N.Y.2003, 287 F.Supp.2d 180, affirmed 421 F.3d 141. Civil Rights 1355

Supervisory liability under § 1983 may not be grounded upon a theory of respondeat superior. Torres Ocasio v. Melendez, D.Puerto Rico 2003, 283 F.Supp.2d 505. Civil Rights 1355

Supervisory liability under § 1983 is ultimately determined by pinpointing the persons in the decision-making chain whose deliberate indifference permitted the constitutional abuses to continue unchecked. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1355

The doctrine of respondeat superior, whereby liability is imposed on employers for the acts or omissions of their employees is inapposite in actions brought under § 1983. Herrera v. Davila, D.Puerto Rico 2003, 272 F.Supp.2d 154. Civil Rights 1336

The doctrine of respondeat superior may not be used under § 1983. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1336

Although there is no respondeat superior liability under section § 1983, the theory of supervisory liability allows a plaintiff to hold supervisors accountable for their own acts or omissions if (1) the supervisor's acts or omissions deprived the plaintiff of a constitutionally protected right, (2) his action or inaction amounted to a reckless disregard or callous indifference to the constitutional rights of others, and (3) there was an affirmative link between the street level misconduct and the action or inaction of the supervisory official. Medina Perez v. Fajardo, D.Puerto Rico 2003, 263 F.Supp.2d 291. Civil Rights 1355

There is no respondeat superior liability under section 1983. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1336

Constitutional violation by subordinate is predicate to supervisor's liability under § 1983; if subordinate did not violate plaintiff's constitutional rights, supervisor cannot be held liable. Mendez Marrero v. Toledo, D.Puerto Rico 1997, 968 F.Supp. 27. Civil Rights 1355

When monetary damages are sought under § 1983, general doctrine of respondeat superior does not suffice and showing of some personal responsibility of defendant is required. Porter v. Coughlin, W.D.N.Y.1997, 964 F.Supp.

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97, reconsideration denied 287 F.Supp.2d 180, affirmed 421 F.3d 141. Civil Rights 1336

Doctrine of *respondeat superior* has no application in § 1983 cases. Alley v. Angelone, E.D.Va.1997, 962 F.Supp. 827. Civil Rights 1336

Federal civil rights statute does not create respondeat superior liability. Davie v. Wingard, S.D.Ohio 1997, 958 F.Supp. 1244, 166 A.L.R. Fed. 709. Civil Rights 1336

Doctrine of respondeat superior does not apply in § 1983 actions. Williams v. Morris, W.D.Va.1996, 956 F.Supp. 679. Civil Rights 1336

Supervisor cannot be held liable on basis of respondeat superior for acts of his inferiors under § 1983. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1355

Although supervisor may incur liability for civil rights violation, there is no strict supervisor liability under § 1983; for supervisor to incur liability based on conduct of subordinates, it is not enough for plaintiff to show that defendant was in charge of other state actors who actually committed violation, nor is supervisor responsible for violations of which supervisor had no knowledge. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1355

Respondeat superior is not valid basis for imposition of liability under federal civil rights statute, and cannot be used as substitute for necessary personal involvement. Show v. Patterson, S.D.N.Y.1997, 955 F.Supp. 182. Civil Rights 1336

Superior officer cannot be held vicariously liable under § 1983 on respondeat superior theory. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1355

Respondeat superior theory of recovery is unavailable in § 1983 suits. Weimer v. City of Johnstown, N.Y., N.D.N.Y.1996, 931 F.Supp. 985. Civil Rights 1336

Individual will not be held vicariously liable under doctrine of respondeat superior pursuant to § 1983 simply by virtue of that individual having position of authority. Mandala v. Coughlin, E.D.N.Y.1996, 920 F.Supp. 342. Civil Rights 1355

In an action under § 1983, doctrine of respondeat superior does not apply. Sherk v. Lieback, M.D.Pa.1995, 909 F.Supp. 960. Civil Rights 1336

Liability under § 1983 may generally not be premised on theory of respondeat superior. McGuinness v. DuBois, D.Mass.1995, 891 F.Supp. 25, affirmed 86 F.3d 1146. Civil Rights 1336

There is no respondeat superior liability under § 1983. Franklin v. Gilless, W.D.Tenn.1994, 870 F.Supp. 792. Civil Rights 1336

Supervisor must know about conduct and facilitate, approve of, condone, or turn blind eye to it to be liable under § 1983 for acts of subordinates. Antonelli v. Sheahan, N.D.Ill.1994, 863 F.Supp. 756, affirmed in part, reversed in part 81 F.3d 1422. Civil Rights 1355

There is no "respondeat superior liability" in the ordinary sense of that concept under federal civil rights statute, that is, defendant supervisor cannot be held liable for constitutional violations of subordinate merely by virtue of defendant's status as supervisor. Feliciano v. DuBois, D.Mass.1994, 846 F.Supp. 1033. Civil Rights 1336; Civil Rights 1355

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Respondeat superior is not acceptable basis for liability under § 1983. Durmer v. O'Carroll, C.A.3 (N.J.) 1993, 991 F.2d 64. Dockerty-Bostron v. Waukesha County, E.D.Wis.1990, 744 F.Supp. 877.

405. ---- Causation, respondeat superior, liability generally

While doctrine of respondeat superior cannot be invoked in § 1983 cases, supervisory officials may be held liable in certain circumstances for constitutional injuries inflicted by their subordinates; liability in those circumstances is not premised on respondeat superior but on recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in constitutional injuries. Reid v. Kayye, C.A.4 (N.C.) 1989, 885 F.2d 129. Civil Rights 1355

A suit under this section against police supervisory officers cannot be based on the theory of respondeat superior and an action will not lie against supervisory officers for failure to prevent police misconduct, absent showing of direct responsibility for the improper action, and what is required is a causal connection between the misconduct and the official sued. Harris v. Pirch, C.A.8 (Mo.) 1982, 677 F.2d 681. Civil Rights 1358

Superiors of Federal Bureau of Investigation agent who, in violation of Bureau regulations, disclosed arrest record of plaintiff to a security officer of plaintiff's employer were not monetarily liable to plaintiff, under the doctrine of respondeat superior, for the agent's action, even assuming that plaintiff was deprived of some constitutional right, as there was nothing in the record to show that any defendant instigated the investigation of plaintiff, directed its course, or participated or acquiesced therein, as there was no proof of lack of training or of declaration wrongful policy, and as, in sum, plaintiff failed to establish the "affirmative link" required by Supreme Court's "Rizzo" decision. Kite v. Kelley, C.A.10 (Colo.) 1976, 546 F.2d 334. Civil Rights 1363

Genuine issue of material fact, as to whether supervisor fired city mechanical inspector because he was speaking out about cronyism in the department, rather than because of insubordination or lying, precluded summary judgment for supervisor on inspector's §§ 1983 First Amendment retaliation claim due to inspector's inability to show that his constitutionally protected speech was a substantial or motivating factor in termination decision and that supervisor would not have taken the same action in any event. Donnell v. City of Cedar Rapids, Iowa, N.D.Iowa 2006, 437 F.Supp.2d 904. Federal Civil Procedure 2497.1

A city cannot be held liable for a constitutional violation under §§ 1983 solely for employing a tortfeasor because it cannot be held liable on a respondeat superior theory; instead, there must be a direct causal link between the policy and the alleged constitutional violation such that the municipality's deliberate conduct can be deemed the moving force behind the violation. Ali v. City of Louisville, W.D.Ky.2005, 395 F.Supp.2d 527. Civil Rights 1351(1)

Affirmative link between acts of supervisor and acts of subordinate, as required for supervisor to be liable under § 1983, contemplates proof that supervisor's conduct led inexorably to constitutional violation. Mendez Marrero v. Toledo, D.Puerto Rico 1997, 968 F.Supp. 27. Civil Rights 1355

There was no causal connection between acts of correctional facility and of its manager and alleged civil rights violation committed by facility employee, as required for inmates to recover under *Bivens* for sexual harassment perpetrated by employee, where employee met or exceeded all requirements for employment at the facility and signed document acknowledging that he would abide by facility had policy not to discriminate on basis of sex, and facility had implemented grievance procedures for inmates to follow if they had complaints about their treatment. Smith v. U.S., M.D.Fla.1995, 896 F.Supp. 1183. United States 50.10(3)

Condominium association did not directly cause citizen's arrest of resident of complex by resident manager, and thus, association was not liable for unlawful arrest under § 1983; resident made no showing that association participated in or directed citizen's arrest, knew of citizen's arrest and failed to act to prevent it, or failed to

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properly train or supervise resident manager or permitted custom or policy of unlawful arrest by its employees. Fraser v. County of Maui, D.Hawai'i 1994, 855 F.Supp. 1167. Civil Rights 1088(4)

Under certain circumstances, supervisory officials can be held liable under § 1983 for constitutional injuries inflicted by their subordinates; supervisory liability is not premised on respondeat superior, but on recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be causative factor in constitutional injuries they inflict on those committed to their care. McNeal v. Harper, E.D.Va.1993, 816 F.Supp. 421. Civil Rights 1355

Section 1983 claims require that plaintiff establish both defendant's fault and causal connection between defendant's actions and plaintiff's injuries; thus, liability of supervisory official under § 1983 cannot be premised on principle of respondeat superior. Herrera v. Scully, S.D.N.Y.1993, 815 F.Supp. 713. Civil Rights 1355

Pharmacies could not be held liable under § 1983 for actions of their employees in allegedly furnishing false information to state in connection with its investigation of doctor's prescription-writing practices, where no evidence was presented that pharmacies had authorized, supervised, caused or participated in their employees' alleged misrepresentations, and doctor's claims against pharmacies were all based on invalid respondeat superior theory. Taliaferro v. Voth, D.Kan.1991, 774 F.Supp. 1326. Civil Rights 1341

406. ---- Custom or usage, respondeat superior, liability generally

Protection of municipality from being held liable under § 1983 on respondeat superior theory does not encompass "immunity from suit"; unlike various government officials, municipalities do not enjoy immunity from suit, either absolute or qualified, under § 1983, and they can be sued under that section, but merely cannot be held liable unless policy or custom caused constitutional injury. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, U.S.Tex.1993, 113 S.Ct. 1160, 507 U.S. 163, 122 L.Ed.2d 517, on remand 993 F.2d 1177. Civil Rights 1351(1); Civil Rights 1376(4)

Municipal liability in § 1983 action may not be premised on employment of tort-feasor with liability imposed under respondeat superior theory; municipalities can be held liable only when injury was inflicted by execution of government's policy or custom. Cannon v. City and County of Denver, C.A.10 (Colo.) 1993, 998 F.2d 867. Civil Rights 1345; Civil Rights 1351(1)

Municipalities may be held liable under § 1983 for actions which result in deprivation of constitutional rights, but cannot be held liable on respondeat superior theory; municipal liability is incurred under § 1983 only when execution of government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts injury. Davis v. Mason County, C.A.9 (Wash.) 1991, 927 F.2d 1473, certiorari denied 112 S.Ct. 275, 502 U.S. 899, 116 L.Ed.2d 227. Civil Rights 1345; Civil Rights 1351(1)

To impose supervisory liability under §§ 1983 on government contractor for actions of its employees, plaintiff must show that there was specific supervisory practice or procedure that contractor failed to employ, and that: (1) existing custom and practice without that specific practice or procedure created unreasonable risk of constitutional violation, (2) contractor was aware that this unreasonable risk existed, (3) contractor was indifferent to that risk, and (4) contractor's failure to follow that practice or procedure resulted in plaintiff's injury. Green v. First Correctional Medical, D.Del.2006, 430 F.Supp.2d 383. Civil Rights 1336

County could not be held liable under §§ 1983 for clerk of county court's alleged discriminatory treatment of plaintiffs based on their national origin in violation of equal protection, absent allegation that clerk acted pursuant to any formal or informal policy or custom of county. Cichowski v. Sauk County, W.D.Wis.2006, 409 F.Supp.2d 1098. Civil Rights 1351(6)

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42 U.S.C.A. § 1983

African-American employee of city police department failed to establish municipal liability for city's alleged constitutional violations related to employee's suspension, as required to support employee's claim under § 1983 against city; city had not adopted a policy to discriminate or retaliate against African-American police officers, and chief and captain who imposed suspension were not final policy makers. Jones v. City of Wilmington, D.Del.2004, 299 F.Supp.2d 380. Civil Rights 1351(5)

Child failed to state cause of action in complaint for supervisory liability under § 1983, in connection with alleged taking of emergency custody of child by county child protective services supervisor and caseworker, absent allegation that, prior to date of taking custody, caseworker was engaging in pattern of egregious behavior posing risk of constitutional violation such that supervisor could fairly be described as deliberately indifferent to that risk, or that citizens were facing pervasive and unreasonable risk of constitutional violations. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1395(1)

One way to establish existence of policy or custom sufficient to impose § 1983 liability on municipal government is to show that individuals, from whose actions liability arises, have final decision-making authority. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Civil Rights 1351(1)

There is no § 1983 liability under respondeat superior without a showing that the allegedly illegal acts were committed pursuant to an official policy or custom. Lovanyak v. Cogdell, E.D.N.Y.1996, 955 F.Supp. 172. Civil Rights 1351(1)

Municipality and its supervisory employees cannot be held liable for civil rights violations committed by municipal employees based solely upon respondeat superior; to establish liability, plaintiff must establish existence of municipal policy or custom which caused deprivation of constitutional rights, and will prevail by proving existence of municipal policy or custom which is facially unconstitutional, or existence of constitutional policy which is unconstitutionally applied because employee has not been adequately trained out of deliberate indifference to rights of persons with whom employee comes into contact. Bennett v. Town of Riverhead, E.D.N.Y.1996, 940 F.Supp. 481. Civil Rights 1345

When municipality itself is cause of constitutional deprivation, liability may lie against municipality in federal civil rights action; however, municipality may not be held liable on basis of respondeat superior, but only when constitutional injury is inflicted by execution of government's policy or custom, which must be moving force of constitutional violation. Hilliard v. Walker's Party Store, Inc., E.D.Mich.1995, 903 F.Supp. 1162. Civil Rights 1345

Liability under § 1983 is not vicariously imposed under doctrine of respondeat superior; municipal policy or custom must be moving force behind constitutional violation. Elk v. Townson, S.D.N.Y.1993, 839 F.Supp. 1047. Civil Rights 1345

407. ---- Deliberate indifference, respondeat superior, liability generally

Sheriff's practice of delegating to others such duties as reading mail and responding to communications regarding jail inmates did not amount to deliberate indifference to pre-trial detainee's serious medical needs, as required to be held individually liable for pre-trial detainee's death in §§ 1983 action brought by pre-trial detainee's sister under the Due Process clause. Vaughn v. Greene County, Ark., C.A.8 (Ark.) 2006, 438 F.3d 845. Civil Rights 1358

In the context of a failure-to-supervise claim for municipal liability under § 1983, deliberate indifference may be established by showing that policymaking officials deliberately ignored an obvious need for supervision; in the failure-to-train context, on the other hand, plaintiffs must establish that the officials consciously disregarded a risk of future violations of clearly established constitutional rights by badly trained employees. Amnesty America v.

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42 U.S.C.A. § 1983

Town of West Hartford, C.A.2 (Conn.) 2004, 361 F.3d 113. Civil Rights 1352(1)

Municipality shows deliberate indifference to rights of persons with whom police come into contact, as required to hold municipality liable for police officers' violation of constitutional rights under when it fails to train officers to handle recurring situation that presents obvious potential for constitutional violation and failure to train results in constitutional violation. Dunn v. City of Elgin, Illinois, C.A.7 (Ill.) 2003, 347 F.3d 641, rehearing denied. Civil Rights 1352(4)

Wardens were not liable under civil rights statute for alleged deliberate indifference of prison physicians to inmate's serious medical needs, where wardens insured that inmate received medical treatment and there was no suggestion why they should not have been entitled to rely on their health care providers' expertise. Miltier v. Beorn, C.A.4 (Va.) 1990, 896 F.2d 848. Civil Rights 1358

There was no support for finding that supervisors of school bus driver were grossly negligent or deliberately indifferent to constitutional rights of school district students, such as was necessary to hold them liable in federal civil rights action on respondeat superior theory for actions of school bus driver, in connection with injuries sustained by student during fight on school bus. Lopez v. Houston Independent School Dist., C.A.5 (Tex.) 1987, 817 F.2d 351. Civil Rights 1418

City firefighter did not establish that fire chief was deliberately indifferent to her complaint that assistant fire chief had sexually harassed her, as would be required for fire chief, as supervisor, to incur liability under §§ 1983; when firefighter made oral complaint, fire chief followed departmental procedures by requesting firefighter's allegations in writing, and when he was informed, in writing, that no complaint would be filed, it was not unreasonable for him to consider the matter settled. Hogan v. City of El Dorado, W.D.Ark.2006, 455 F.Supp.2d 876. Civil Rights 1359

Genuine issues of material fact as to whether city police chief was deliberately indifferent to life-threatening risks associated with police department policy requiring off-duty officers to be always armed and always on-duty, and whether chief failed to ensure adequate training of officers to avoid misidentification of off-duty officers precluded summary judgment on qualified immunity grounds in §§ 1983 action against chief alleging that failure to train resulted in death of off-duty officer in friendly fire incident. Young v. City of Providence, D.R.I.2005, 396 F.Supp.2d 125. Federal Civil Procedure 2491.5

City was not liable under §§ 1983, pursuant to failure-to-train theory, for any excessive force by police officers in fatally shooting mentally ill homeless person, in that city did not fail to act in response to repeated complaints, and it could not be held responsible for one act of failure to properly apply training it gave officers. Ali v. City of Louisville, W.D.Ky.2005, 395 F.Supp.2d 527. Civil Rights 1352(4)

Police chief's approval of internal affairs investigation that absolved officers of any fault in connection with traffic stop, detention, and search did not demonstrate deliberate indifference necessary to establish municipal liability under §§ 1983; alleged violations had already taken place, and there was no evidence that chief had actual knowledge of alleged prior constitutional violations, or of custom or policy of using excessive force for which chief failed to take any remedial steps. Cole v. Doe 1 thru 2 Officers of City of Emeryville Police Dept., N.D.Cal.2005, 387 F.Supp.2d 1084. Civil Rights 1352(4)

Sheriff was not deliberately indifferent by failing to have a formal review process in place following incidents of arresting deputy's use of force, and thus, sheriff was not liable in his individual capacity for failure to properly supervise deputy, for purpose of arrestee's §§ 1983 excessive force action; there were no prior citizen complaints or allegations of unfitness for duty involving deputy. Marley v. Crawford County, Arkansas, W.D.Ark.2005, 383 F.Supp.2d 1129. Civil Rights 1358

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42 U.S.C.A. § 1983

Arrestee's allegations that police superintendent acted with deliberate indifference and failed to properly sanction or discipline police officers for violation of citizens' constitutional rights, thereby causing police officers to engage in unlawful conduct, and that superintendent was grossly negligent in training, supervision, and discipline of officers, were sufficient to state claim against superintendent for supervisory liability under §§ 1983. Hernandez-Lopez v. Pereira, D.Puerto Rico 2005, 380 F.Supp.2d 30. Civil Rights 1395(6)

Detainee, who suffered a serious head or brain injury following a blow, failed to establish §§ 1983 official capacity claim against sheriff for failure to implement policies and procedures additional to those implemented regarding the monitoring and care of unconscious inmates since detainee failed to show to that such failure constituted deliberate indifference or led to his injuries. Layman ex rel. Layman v. Alexander, W.D.N.C.2004, 343 F.Supp.2d 483. Civil Rights 1352(4)

Genuine issues of material fact existed as to whether supervisors of Puerto Rico agency acted with reckless or callous indifference to public employee's complaints of harassment in the workplace, precluding summary judgment in their favor on public employee's § 1983 claims seeking to hold supervisors liable for supervisee's political discrimination under the First Amendment. Velez-Herrero v. Guzman, D.Puerto Rico 2004, 330 F.Supp.2d 62. Federal Civil Procedure 2497.1

Detainee failed to establish that city was deliberately indifferent as to whether police officers implemented express city policy that, under certain circumstances, officers stopping vehicles for investigative purposes were to surround vehicle and order driver out at gunpoint while shouting commands laced with profanities, in unconstitutional manner, as required to hold city liable under § 1983 for stop of detainee; detainee presented no evidence of pattern of constitutional violations caused by use of sensory-overload tactic. Brown v. City of Milwaukee, E.D.Wis.2003, 288 F.Supp.2d 962. Civil Rights 1351(4); Civil Rights 1352(4)

"Deliberate indifference," which supports imposition of liability on supervisory official under § 1983, requires more than negligence, but less than conduct undertaken for the very purpose of causing harm. Morris v. Eversley, S.D.N.Y.2003, 282 F.Supp.2d 196. Civil Rights 1355

For purposes of § 1983 claim based on failure to train, plaintiff demonstrates deliberate indifference only if she establishes a strong likelihood, rather than mere possibility, that constitutional violation that she suffered resulted from defendants' failure to train. Harper v. Southeast Alabama Medical Center, M.D.Ala.1998, 998 F.Supp. 1289. Civil Rights 1352(1)

City's alleged failure to supervise and discipline police officers engaged in misconduct did not constitute deliberate indifference giving rise to § 1983 liability in arrestee's action alleging civil rights violations relating to arrest and subsequent charges against him, absent sufficient evidence of any identifiable policy regarding supervision and discipline of officers in connection with type of claims asserted by arrestee. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1352(4)

Supervisory official displays reckless or callous indifference to rights of others, as required for imposition of supervisory liability under federal civil rights statute, when it would be manifest to any reasonable official that his or her conduct was very likely to violate individual's constitutional rights. Fernandez v. Rapone, D.Mass.1996, 926 F.Supp. 255. Civil Rights 1355

Allegations by plaintiff, who had been sentenced to term of imprisonment after she had failed to pay fines imposed following her convictions for violating town ordinances, were insufficient to establish that policy of town in seeking imprisonment established deliberate indifference to her civil rights as would allow imposition of liability against town and its attorney in his official capacity; no showing had been made that town attorney's position in seeking imprisonment was result of overarching policy or failure to train attorney rather than handling of single case. Fahle v. Braslow, E.D.N.Y.1996, 913 F.Supp. 145, affirmed 111 F.3d 123. Civil Rights 1351(4); Civil

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42 U.S.C.A. § 1983

Rights 1352(4)

School superintendent and school officials were not deliberately indifferent to parents' reports of sexual misconduct, religious proselytizing and interference with family relationship by teacher, as required to impose liability under § 1983; although superintendent may have been negligent in failing to recognize high risk to students, he did act and investigate, although, arguably, inadequately. Shepard v. Kemp, M.D.Pa.1995, 912 F.Supp. 120. Civil Rights 1066; Civil Rights 1070

Plaintiffs alleging supervisory liability under § 1983 have heavy burden of proving that supervisor was deliberately indifferent to or tacitly authorized practices amounting to pervasive and unreasonable risk of harm from some specified source, and thus plaintiff ordinarily cannot meet this burden by pointing only to single incident or isolated incidents of subordinates' misconduct. McNeal v. Harper, E.D.Va.1993, 816 F.Supp. 421. Civil Rights 1355

Former county employee, a court security officer, failed to prove that the response of her former boss, a sheriff, to her complaint that she was sexually harassed by a fellow officer was so inadequate as to show deliberate indifference to or tacit authorization of the alleged conduct, as required for imposition of supervisory liability under §§ 1983; one day after learning of the complaint, the sheriff put the alleged offender on administrative leave, and shortly thereafter contacted an independent fact-finder to conduct an investigation into the matter, following which the sheriff immediately asked the alleged offender to resign. Mikkelsen v. DeWitt, C.A.4 (S.C.) 2005, 141 Fed.Appx. 88, 2005 WL 1655026, Unreported. Civil Rights 1359

408. ---- Intent or knowledge, respondeat superior, liability generally

Sheriff did not have sufficient notice of possible constitutional deprivations, as would support holding sheriff personally liable, under §§ 1983, for deputy sheriff's violation of elementary school student's Fourth Amendment rights by handcuffing student following student's alleged making of physical threat toward teacher, absent evidence of widespread and obvious handcuffed detentions of students by the deputy involved or other deputy sheriffs. Gray ex rel. Alexander v. Bostic, C.A.11 (Ala.) 2006, 458 F.3d 1295. Civil Rights 1358

Female student offered no evidence that state-university professor's superiors intentionally treated her differently from other similarly-situated students after she reported professor's alleged sexual harassment, as required to support student's "class of one" theory of discrimination under § 1983. Hayut v. State University of New York, C.A.2 (N.Y.) 2003, 352 F.3d 733, 197 A.L.R. Fed. 659. Civil Rights 1067(3)

Genuine issues of material fact existed as to whether supervisory police officer was aware of, and concealed complaints about, a subordinate's alleged racial profiling and illegal search and seizure practices, discouraged other officers from testifying as to the alleged misconduct, failed to take any disciplinary action, and indicated to officers that he would protect the subordinate from reprimands or sanctions, precluding summary judgment for supervisory officer in §§ 1983 action alleging Fourth and Fourteenth Amendment violations. Johnson v. Anhorn, E.D.Pa.2006, 416 F.Supp.2d 338. Federal Civil Procedure 2491.5

Child failed to state cause of action for supervisory liability under § 1983 in complaint, against directors of county department of family services and mental health center, absent allegations with respect to directors' role in decision to remove child, or allegation that directors had knowledge of decision to remove. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1395(1)

Absent showing that county knew its training of sheriff deputies on recognition of mental disorders that would support detention of patients for psychiatric evaluations under state statute was so deficient as to create unjustifiable risk to citizens that they would be detained in violation of their Fourth Amendment rights, county could not be liable under § 1983 for deputies' alleged unconstitutional conduct of detaining hospital patient for psychiatric evaluation, without probable cause to believe she had a mental disorder. Harvey v. Alameda County

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Medical Center, N.D.Cal.2003, 280 F.Supp.2d 960, affirmed 123 Fed.Appx. 823, 2005 WL 662645. Civil Rights 1352(6)

Inmates stated § 1983 claim against supervisors of correctional facilities, in prison overcrowding case; inmates alleged that supervisors had direct knowledge of various allegedly unconstitutional conditions that resulted in harm to inmates or persisted in promoting policies that inevitably resulted in unconstitutional conditions. Ingalls v. Florio, D.N.J.1997, 968 F.Supp. 193. Civil Rights 1395(7)

To demonstrate supervisor's deliberate indifference, as required for supervisor to be liable under § 1983, plaintiff must show that supervisor had culpable state of mind. Mendez Marrero v. Toledo, D.Puerto Rico 1997, 968 F.Supp. 27. Civil Rights 1355

Supervisory officer may be held liable under § 1983 for failing to intervene to stop discriminatory conduct of other employees if supervisor had actual or constructive knowledge of gender discriminatory policy and that he permitted to conduct to continue, or was grossly negligent in his management of subordinates who promoted the conduct. Wise v. New York City Police Dept., S.D.N.Y.1996, 928 F.Supp. 355. Civil Rights 1359

Correctional facility and its manager were not liable for acts of facility employee, even if such acts amounted to inhumane conditions of confinement, absent showing that facility and manager knew about employee's conduct and did nothing to stop it. Smith v. U.S., M.D.Fla.1995, 896 F.Supp. 1183. Prisons 10

Elementary school principal did not violate disciplined student's substantive due process rights, under supervisory liability theory, absent showing that principal had notice of acts creating pervasive and unreasonable risk of harm or that principal's corrective inaction amounted to deliberate indifference or tacit authorization of offensive practices; principal was aware of only one prior disciplinary incident involving teacher in question, and had reprimanded teacher for that incident. Meyer by Wyrick v. Litwiller, W.D.Mo.1990, 749 F.Supp. 981. Constitutional Law 278.5(6); Schools 176

Absent showing of knowledge or accountability, chief-of-police could not be held liable under theory of respondeat superior for unlawful searches conducted by off-duty policemen of rock concert patrons at public auditorium, which searches were instigated by auditorium manager and members of auditorium commission. Stroeber v. Commission Veteran's Auditorium, S.D.Iowa 1977, 453 F.Supp. 926. Civil Rights 1358

409. ---- Number of incidents, respondeat superior, liability generally

Single incident, or series of isolated incidents, usually provides insufficient basis upon which to assign supervisory liability in action based on alleged Eighth Amendment violations. Howard v. Adkison, C.A.8 (Mo.) 1989, 887 F.2d 134, rehearing denied. Civil Rights 1358

County can be held liable under §§ 1983 for a single decision by a policymaker. Shape v. Barnes County, N.D., D.N.D.2005, 396 F.Supp.2d 1067. Civil Rights 1351(1)

410. ---- Personal involvement in deprivation, respondeat superior, liability generally

State prison director's approval of use of special team to conduct cell invasions to retrieve gun believed to be in one of cells was not a direct participation in cell removals for which he might have supervisory liability for alleged excessive force violation occurring when officers acted contrary to authorized, constitutionally appropriate procedures. Serna v. Colorado Dept. of Corrections, C.A.10 (Colo.) 2006, 455 F.3d 1146. Civil Rights 1358

Patient's allegations that nurse's aide assisted county hospital supervisor during the same hours that the supervisor worked and that the supervisor was present, in charge, and working with the aide on the dates on which patient was

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allegedly sexually assaulted was insufficient to state a §§ 1983 claim against the supervisor for violations of constitutional rights, absent any allegations that the supervisor engaged in any intentional or deliberate acts against the patient or that she personally directed the violation or had actual knowledge of the violations and acquiesced in its continuance. Beedle v. Wilson, C.A.10 (Okla.) 2005, 422 F.3d 1059. Civil Rights 1360

Female student offered no evidence that state-university professor's superiors participated in any of professor's alleged sexual harassment or that they knew or should have known of harassment of other students by other professors, as required to hold superiors liable under § 1983 for professor's harassment in violation of student's equal protection rights. Hayut v. State University of New York, C.A.2 (N.Y.) 2003, 352 F.3d 733, 197 A.L.R. Fed. 659. Civil Rights 1356

Under § 1983, liability cannot be imposed on supervising officers under respondeat superior theory of liability; instead, supervising officers can be held liable under § 1983 only if they play an affirmative part in the alleged deprivation of constitutional rights, by setting in motion a series of acts by others which supervisor knew, or reasonably should have known, would cause others to inflict the constitutional injury. Graves v. City of Coeur D'Alene, C.A.9 (Idaho) 2003, 339 F.3d 828. Civil Rights 1355

Members of county board of supervisors could not be held liable under § 1983, without having personally participated in violating county employees' constitutional rights. Weisbuch v. County of Los Angeles, C.A.9 (Cal.) 1997, 119 F.3d 778. Civil Rights 1359

Federal civil rights statute requires personal involvement in, rather than mere respondeat superior responsibility for, any alleged constitutional deprivation. Hendricks v. Coughlin, C.A.2 (N.Y.) 1997, 114 F.3d 390. Civil Rights 1336

Supervisory personnel cannot be held liable under § 1983 for actions of subordinate under theory of respondeat superior; they may be held liable, however, if they personally participated in acts comprising alleged constitutional violation or instigated or adopted policy violating constitutional rights. Adams v. Poag, C.A.11 (Ga.) 1995, 61 F.3d 1537, rehearing and suggestion for rehearing en banc denied 70 F.3d 1287. Civil Rights 1355

Warden of federal medical center could not be held liable under doctrine of respondeat superior for alleged inadequate treatment of federal prisoner, and some showing of personal involvement by the warden in the alleged negligent acts was required. Sanders v. U.S., C.A.8 (Mo.) 1985, 760 F.2d 869. Civil Rights 1364

Although this section proscribing the deprivation of rights must be read against background of tort liability that makes a man responsible for the natural consequences of his actions, liability will only lie where it is affirmatively shown that official charged acted personally in the deprivation of the plaintiff's rights, and doctrine of respondeat superior has no application under this provision. Vinnedge v. Gibbs, C.A.4 (Va.) 1977, 550 F.2d 926. Civil Rights 1355

Under §§ 1983, a supervisor may be liable only if there exists either: (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. Strong v. Woodford, C.D.Cal.2006, 428 F.Supp.2d 1082. Civil Rights 1355

Where defendant is employed in supervisory capacity, personal involvement in violations of plaintiff's constitutional rights, showing of which is required for recovery under § 1983, can include (1) direct participation in alleged violation, (2) failure to remedy wrong after learning of it, (3) creation or maintenance of policy or custom under which unconstitutional practices occurred, (4) gross negligence in supervising subordinates who committed unconstitutional acts, and (5) exhibiting deliberate indifference by failing to act on information indicating that constitutional violations were occurring. Hayes v. Sweeney, W.D.N.Y.1997, 961 F.Supp. 467. Civil Rights 1355

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42 U.S.C.A. § 1983

Supervisor can be liable in civil rights action for employee's violation of plaintiffs constitutional rights if supervisor either encouraged specific incident of misconduct or in some other way directly participated in it. Kelly v. Wehrum, S.D.Ohio 1997, 956 F.Supp. 1369. Civil Rights 1355

Supervisory liability under federal civil rights statute may not be predicated upon theory of respondeat superior; supervisor may be found liable only on basis of his or her own acts or omissions, and plaintiff must show that supervisor's conduct or inaction amounted to reckless or callous indifference to constitutional rights of others. Fernandez v. Rapone, D.Mass.1996, 926 F.Supp. 255. Civil Rights 1355

Supervisors cannot be liable under § 1983 unless they actually participated in the allegedly wrongful act or unless causal connection exists between their acts and the alleged violation. Smith v. U.S., M.D.Fla.1995, 896 F.Supp. 1183. Civil Rights 1355

Agents of the Federal Bureau of Investigation (FBI) could not be liable under § 1983 under theory of respondeat superior for actions of undercover informant who through his business activities defrauded plaintiffs where agents were not alleged to have been directly involved in the informant's activities. Norris v. Davis, W.D.Ky.1993, 826 F.Supp. 212. Civil Rights 1364

Superintendent of correctional facility could not be held liable on § 1983 civil rights claim for failing to protect inmate from another inmate diagnosed as having AIDS (Acquired Immune Deficiency Syndrome), absent any allegation of personal involvement; concept of respondeat superior could not be basis of claim. Cameron v. Metcuz, N.D.Ind.1989, 705 F.Supp. 454. Civil Rights 1358

411. ---- Corporations, respondeat superior, liability generally

Though private company had entered into lease agreement with state so that lands on which plaintiff had been arrested by state game and fish rangers were established as a game and fish management area, respondeat superior would provide no right of recovery against the company under this section based on alleged false arrest and malicious prosecution by the rangers, nor did the contractual lease agreement constitute concerted action with the state such as is necessary to make out an independent cause of action against the private individual under this section. Howell v. Tanner, C.A.5 (Ga.) 1981, 650 F.2d 610, rehearing denied 659 F.2d 1079, certiorari denied 102 S.Ct. 1775, 456 U.S. 918, 72 L.Ed.2d 178, certiorari denied 102 S.Ct. 1777, 456 U.S. 919, 72 L.Ed.2d 180. Civil Rights 1339

Private corporation could not be held liable under a theory of respondeat superior in §§ 1983 action. Lassoff v. New Jersey, D.N.J.2006, 414 F.Supp.2d 483. Civil Rights 1336

Charitable corporation that maintained residential facility for juveniles and that received child for temporary placement from county pending resolution of the child's mother's petition alleging that the child was a person in need of supervision (PINS) could not be held liable, under §§ 1983, on respondeat superior theory, for alleged violation of the child's Jewish mother's First Amendment right to raise her child in the religion of her choice when the child, while living at the residential facility, was baptized in a Christian church while on an outing with a counselor at the residential facility who took the child to his church. Whalen v. Allers, S.D.N.Y.2003, 302 F.Supp.2d 194. Civil Rights 1341

Corporation could not be held vicariously liable under this section for conduct of its agent under doctrine of respondeat superior. Price v. Parks-Belk, Inc., E.D.Tenn.1976, 72 F.R.D. 84. Civil Rights 1341

Corporations that were named as defendants to inmate's § 1983 claim that alleged corporations' employees had violated his constitutional right to be free from cruel and unusual punishment could not be vicariously liable for

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acts of their servants under § 1983. Baker v. Simmons, C.A.10 (Kan.) 2003, 65 Fed.Appx. 231, 2003 WL 21008830, Unreported. Civil Rights 1339

412. ---- Independent contractors, respondeat superior, liability generally

Security consultant to family planning clinic was independent contractor rather than employee, and clinic thus was not subject to respondeat superior liability for his actions in antiabortion protestors' § 1983 suit, where consultant billed for his services, was not on salary, did not receive any benefits or any training from clinic, and was not provided with instruction on how he was to perform his services. Powell v. City and County of Denver, Colo., D.Colo.1997, 973 F.Supp. 1198. Civil Rights 1341

413. ---- Governmental units, respondeat superior, liability generally

Local government entities, while considered potentially liable "persons" under §§1983, cannot be liable on theory of respondeat superior. McDowell v. Brown, C.A.11 (Ga.) 2004, 392 F.3d 1283. Civil Rights 1345

Governmental liability under § 1983 may not be proven under respondeat superior doctrine, but must be founded upon evidence that government unit itself supported a violation of constitutional rights. Bielevicz v. Dubinon, C.A.3 (Pa.) 1990, 915 F.2d 845. Civil Rights 1345

Doctrine of respondeat superior is not available in *Bivens* constitutional tort actions against United States or in § 1983 actions. Marsden v. Federal Bureau of Prisons, S.D.N.Y.1994, 856 F.Supp. 832. Civil Rights 1336; United States 50.2

Respondeat superior liability does not by itself warrant finding of liability on part of governmental unit in § 1983 employment discrimination action. Long v. Board of Educ. of City of Philadelphia, E.D.Pa.1993, 812 F.Supp. 525, affirmed 8 F.3d 811. Civil Rights 1345

414. ---- Local governments, respondeat superior, liability generally

Governmental body is liable for damages under federal civil rights statute for constitutional violations resulting from official policy or custom; local government is responsible when execution of government's policy or custom, whether made by its lawmakers or those whose edicts or acts may fairly be said to represent the official policy, inflicts injury, but local government may not be held liable for unconstitutional acts of its nonpolicy-making employees, and thus, may not be held liable on theory of respondeat superior. Flores v. Cameron County, Tex., C.A.5 (Tex.) 1996, 92 F.3d 258, rehearing denied. Civil Rights 1351(1)

Respondeat superior is not basis for imposing civil rights liability on local governments. White by Swafford v. Gerbitz, C.A.6 (Tenn.) 1989, 892 F.2d 457. Civil Rights 1345

Local governmental liability under this section cannot be grounded on the doctrine of respondeat superior. Walden v. Wishengrad, C.A.2 (N.Y.) 1984, 745 F.2d 149. See, also, Smith v. City of Oklahoma City, C.A.10 (Okl.) 1983, 696 F.2d 784; Phelan v. Corning, N.D.N.Y.1983, 568 F.Supp. 904. Civil Rights 1345

Georgia city and county, which were consolidated into a single local government entity, could not be held liable under §§ 1983 for the acts and policies of sheriff and his deputies in connection with multi-jurisdictional narcotics task force since local government did not control sheriff's law enforcement policies with regard to task force operations, and sheriff did not act as a final local government policymaker with respect to those operations. Beaulah v. Muscogee County Sheriff's Deputies, M.D.Ga.2006, 447 F.Supp.2d 1342. Civil Rights 1351(4)

If a policy statement, ordinance, regulation, or decision officially adopted and promulgated by a municipality's

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officers directly caused a constitutional violation, then the municipal body may be sued directly pursuant to §§ 1983. Ashby v. Isle of Wight County School Bd., E.D.Va.2004, 354 F.Supp.2d 616. Civil Rights 1351(1)

415. ---- Municipalities, respondeat superior, liability generally

A municipality cannot be held liable for violation of civil rights solely because employee is a tortfeasor; a municipality cannot be held liable under this section on a respondeat superior theory. Monell v. Department of Social Services of City of New York, U.S.N.Y.1978, 98 S.Ct. 2018, 436 U.S. 658, 56 L.Ed.2d 611. Civil Rights 1345

City was not liable under §§ 1983, for any constitutional violations that occurred in connection with search warrant requiring suspect to provide DNA sample as part of serial murder investigation, absent showing that alleged violations were caused by city's policy, practice, or custom. Kohler v. Englade, C.A.5 (La.) 2006, 470 F.3d 1104. Civil Rights 1351(4)

There is no respondeat superior theory of municipal liability, so a city may not be held vicariously liable under §§ 1983 for the actions of its agents; rather, a municipality may be held liable only if its policy or custom is the "moving force" behind a constitutional violation. Sanford v. Stiles, C.A.3 (Pa.) 2006, 456 F.3d 298. Civil Rights 1351(1)

A municipality may not be held liable for an alleged civil rights violation where there was no underlying constitutional violation by any of its officers. Camuglia v. The City of Albuquerque, C.A.10 (N.M.) 2006, 448 F.3d 1214. Civil Rights 1345

Vermont statute requiring actions against town officers to be brought against town in which officer serves could not make all Vermont municipalities susceptible to respondeat superior liability for the §§ 1983 violations of their employees. Coon v. Town of Springfield, Vt., C.A.2 (Vt.) 2005, 404 F.3d 683. Civil Rights 1345

Respondeat superior is unavailable against municipality under § 1983. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1345

A unit of municipal government may be held liable under § 1983 only for its own policies, not for the improper acts of its agents and employees. Nisenbaum v. Milwaukee County, C.A.7 (Wis.) 2003, 333 F.3d 804. Civil Rights 1351(1)

Under § 1983, a municipality may not be held liable on a theory of respondeat superior; instead, the plaintiff must show that the unconstitutional actions of an employee were representative of an official policy or custom of the municipal institution, or were carried out by an official with final policy making authority with respect to the challenged action. Ledbetter v. City of Topeka, Kan., C.A.10 (Kan.) 2003, 318 F.3d 1183. Civil Rights 1345; Civil Rights 1351(1)

Municipalities may not be held liable under § 1983 under either theory of respondeat superior or vicarious liability. Scott v. Moore, C.A.5 (Tex.) 1996, 85 F.3d 230, rehearing granted, opinion vacated, on rehearing 114 F.3d 51. Civil Rights 1345

For purposes of municipal liability under § 1983, proof of existence of municipal policy or custom does not require plaintiff to demonstrate numerous similar violations. Hall v. Marion School Dist. No. 2, C.A.4 (S.C.) 1994, 31 F.3d 183. Civil Rights 1351(1)

Municipality had no *Monell* liability under § 1983 for decision of police officers to transport critically wounded

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shooting victim to hospital in police wagon rather than waiting for ambulance crew, where officers did not violate victim's substantive due process rights under state-created danger doctrine and no municipal policy by itself deprived victim of his rights. Hansberry v. City of Philadelphia, E.D.Pa.2002, 232 F.Supp.2d 404. Civil Rights 1351(4)

Town was not municipally liable under §§ 1983 for constitutional torts allegedly committed against arrestee by police officers, absent evidence that the alleged unconstitutional acts of the officers were the product of an official policy, custom, or practice. Ostroski v. Town of Southold, E.D.N.Y.2006, 443 F.Supp.2d 325. Civil Rights 1351(4)

No liability attaches to a governmental agency under §§ 1983 pursuant to a mere respondeat superior theory; rather, there must be a direct causal link between the municipal policy or custom and the alleged constitutional deprivation. Walsh v. Town of Lakeville, D.Mass.2006, 431 F.Supp.2d 134. Civil Rights 1351(1)

Under §§ 1983, a municipality cannot be held liable solely because it employs a tortfeasor, or, in other words, a municipality cannot be held liable under §§ 1983 on a respondeat superior theory; instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §§ 1983. Dolly v. Borough of Yeadon, E.D.Pa.2006, 428 F.Supp.2d 278. Civil Rights 1351(1)

Doctrine of respondeat superior is insufficient to support a §§ 1983 claim against a municipal employer, as are conclusory assertions of a custom or policy in the absence of factual allegations or inferences. Prowisor v. Bon-Ton, Inc., S.D.N.Y.2006, 426 F.Supp.2d 165. Civil Rights 1394

In order to impose liability against a municipality pursuant to §§ 1983, a plaintiff must allege that the violation of his constitutional rights was part of a governmental custom, policy, ordinance, regulation or decision. Feliciano v. County of Suffolk, E.D.N.Y.2005, 419 F.Supp.2d 302. Civil Rights 1351(1)

Municipalities may not be held liable for constitutional violations of their employees in §§ 1983 suit based on respondeat superior theory of liability. Rodriguez-Rodriguez v. Ortiz-Velez, D.Puerto Rico 2005, 405 F.Supp.2d 162, subsequent determination 405 F.Supp.2d 170. Civil Rights 1345

A municipality cannot be held liable in a §§ 1983 action under a theory of respondeat superior for the actions of its employees or agents. Ibrahim v. District of Columbia, D.D.C.2004, 357 F.Supp.2d 187. Civil Rights 1345

A municipality cannot be held liable under §§ 1983 under the doctrine of respondeat superior. Ashby v. Isle of Wight County School Bd., E.D.Va.2004, 354 F.Supp.2d 616. Civil Rights 1345

County did not ratify deputy sheriff's allegedly improper conduct, so as subject itself to potential *Monell* municipal liability under §§ 1983, when it issued report "exonerating" deputy's decision to draw, or attempt to draw, gun on motorist based on deputy's report that he acted with reasonable suspicion and out of safety concerns. Martiszus v. Washington County, D.Or.2004, 325 F.Supp.2d 1160. Civil Rights 1351(4)

A municipality cannot be held liable under § 1983 for the acts of an employee if there is no underlying constitutional violation. Schroeder v. Kochanowski, D.Kan.2004, 311 F.Supp.2d 1241. Civil Rights 1345

A city, as a municipality, does not bear respondeat superior liability for the constitutional torts of its employees; municipal liability under § 1983 attaches only when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury complained of. Jones v. City of Wilmington, D.Del.2004, 299 F.Supp.2d 380. Civil Rights 1345; Civil Rights 1351(1)

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42 U.S.C.A. § 1983

Allegations by business owner that city manager and city mayor ordered police officers to shut down his business, and that officers followed the order, carried out multiple raids on his business resulting in constitutional violations, and that officers harassed him and tried to force him to leave town stated claim for municipal liability under § 1983. Dickerson v. City of Denton, E.D.Tex.2004, 298 F.Supp.2d 537. Civil Rights 1351(4); Civil Rights 1351(6)

Certain failures to act, such as failures to train or supervise subordinates, may evince municipal policy, so as to support imposition of liability on municipality under § 1983, where municipal decisionmakers continue to adhere to approach that they know or should know has failed to prevent constitutional violations, but for plaintiff to prevail, decisionmakers' decision must reflect deliberate indifference to risk that violation of particular constitutional or statutory right will follow decision. Houghton v. Cardone, W.D.N.Y.2003, 295 F.Supp.2d 268. Civil Rights 1352(1)

Municipality cannot be held liable under § 1983 on a respondeat superior theory; liability is only imposed on a government when that government, under color of some official policy, causes an employee to violate another's constitutional rights. Massey v. Town of Windsor, D.Conn.2003, 289 F.Supp.2d 160. Civil Rights 1345; Civil Rights 1351(1)

Municipalities cannot be held liable under § 1983 pursuant to a theory of respondeat superior for the constitutional violations of their employees acting within the scope of their employment. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1345

Although municipality or municipal agency may not be liable under § 1983 for unconstitutional actions of its employees under doctrine of respondeat superior, it may be held responsible for its own conduct caused by unconstitutional policies. Gagne v. DeMarco, D.Conn.2003, 281 F.Supp.2d 390. Civil Rights 1351(1)

A municipal policy or custom, required for municipal liability under § 1983, may be established by evidence that the deprivations were the result of: (1) a formally adopted rule or policy; (2) a pattern of unconstitutional conduct which suggests a custom or usage; or (3) the acts or omissions of an officer with final policy-making authority. Gonzalez-Caratini v. Garcia-Padilla, D.Puerto Rico 2003, 278 F.Supp.2d 189. Civil Rights 1351(1)

Municipal liability under § 1983 may not be based on respondeat superior principles; rather, it is only when municipal employees are acting pursuant to a municipal policy or custom which results in a deprivation of federally protected rights that liability attaches. Gonzalez-Caratini v. Garcia-Padilla, D.Puerto Rico 2003, 278 F.Supp.2d 189. Civil Rights 1345; Civil Rights 1351(1)

A municipality or governmental entity cannot be found liable under § 1983 on a respondeat superior theory; such liability can be imposed only for injuries inflicted pursuant to an official governmental policy or custom. Gausvik v. Perez, E.D.Wash.2002, 239 F.Supp.2d 1047. Civil Rights 1345; Civil Rights 1351(1)

A municipality cannot be found liable in a § 1983 action unless its officers violated the plaintiff's constitutional rights. Flowers v. Fiore, D.R.I.2003, 239 F.Supp.2d 173, affirmed 359 F.3d 24. Civil Rights 1345

Police chief, mayor and city could not be held liable under § 1983 for alleged negligent supervision of municipal employee in responding to complaints of alleged criminal conduct by automobile dealership; negligent conduct was insufficient to impose municipal supervisor liability. Wesley v. Don Stein Buick, Inc., D.Kan.1997, 985 F.Supp. 1288, vacated in part 996 F.Supp. 1299. Civil Rights 1358

There is no municipal respondeat superior liability under § 1983, and municipality can only be held liable if municipal policy or custom caused the constitutional injury. Suarez v. Camden County Bd. of Chosen Freeholders, D.N.J.1997, 972 F.Supp. 269. Civil Rights 1345

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42 U.S.C.A. § 1983

Doctrine of respondeat superior does not apply to municipal entity in § 1983 action. Ferguson v. City of Montgomery, M.D.Ala.1997, 969 F.Supp. 674, affirmed 141 F.3d 1189. Civil Rights 1345

Municipality may not be held liable under federal civil rights statute for the alleged unconstitutional actions of its nonpolicy making employees solely on the basis of respondeat superior. Merriman v. Town of Colonie, N.Y., N.D.N.Y.1996, 934 F.Supp. 501, affirmed 112 F.3d 504. Civil Rights 1345

Although municipal liability does not attach under § 1983 under theory of respondeat superior, law allows plaintiff to impute police chief's conduct to town to make municipality liable provided police chief is policymaker within town's hierarchy. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1351(4)

Monell decision that municipalities would not be held liable solely on theory of respondeat superior exempts city from paying damages in respondeat superior for acts of its employees, but it does not exempt city from cost of defense. Daniels v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 901. Civil Rights 1345; Municipal Corporations 220(1)

Municipal liability would attach where police, while exercising their discretion, so often violate constitutional rights that need for further training must have been plainly obvious to policy makers who were deliberately indifferent to need. Spiegel v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 891, affirmed 196 F.3d 717, as amended, rehearing denied, certiorari denied 120 S.Ct. 2688, 530 U.S. 1243, 147 L.Ed.2d 961. Civil Rights 1352(4)

Municipality cannot be held liable under § 1983 on respondeat superior theory. Oliver by Hines v. McClung, N.D.Ind.1995, 919 F.Supp. 1206. Civil Rights 1345

Federal civil rights statute does not impose liability upon municipality or its supervisory officials solely on basis of respondeat superior, and in order to establish municipality's liability on basis of acts by its lower echelon employees, violation of constitutional rights based on policy or custom must be demonstrated; inference that constitutionally deficient policy exists may be drawn from circumstantial proof, such as evidence that municipality so failed to train its employees as to display deliberate indifference to constitutional rights of those within its jurisdiction. Fahle v. Braslow, E.D.N.Y.1996, 913 F.Supp. 145, affirmed 111 F.3d 123. Civil Rights 1351(1); Civil Rights 1401

Municipality cannot be held liable under § 1983 on basis of respondeat superior. Velez v. City of New London, D.Conn.1995, 903 F.Supp. 286. Civil Rights 1345

Municipality liability under § 1983 for actions of police officers may not be premised on principles of respondeat superior; rather, to establish liability on behalf of entity, it must be shown that actions of officers were unconstitutional and were taken pursuant to custom or policy of entity. Roberts v. City of Forest Acres, D.S.C.1995, 902 F.Supp. 662. Civil Rights 1348

Although municipality can incur § 1983 liability if its allegedly unconstitutional action implements or executes municipal policy or custom, municipality cannot be held liable under § 1983 on respondeat superior theory; in other words, municipality cannot incur § 1983 liability merely by employing someone who violates plaintiff's federal rights. Garg v. Albany Indus. Development Agency, N.D.N.Y.1995, 899 F.Supp. 961, affirmed 104 F.3d 351. Civil Rights 1345

Municipalities cannot be held liable under § 1983 under a respondeat superior theory; thus, municipality is not liable solely because it employs a tort-feasor; instead, it is only when execution of municipality's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the municipality as an entity is responsible under § 1983. Keathley v. Vitale, E.D.Va.1994,

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42 U.S.C.A. § 1983

866 F.Supp. 272. Civil Rights 1345

For a valid claim of municipal liability under § 1983, municipality itself must be wrongdoer rather than one of its employees because § 1983 liability cannot be based on respondeat superior theory. Velaire v. City of Schenectady, N.Y., N.D.N.Y.1994, 862 F.Supp. 774. Civil Rights 1345

No respondeat superior liability exists for municipality under § 1983. Gallardo v. Board of County Com'rs, Kearny County Kan., D.Kan.1994, 857 F.Supp. 783. Civil Rights 1345

Municipality cannot be held liable under civil rights law on basis of respondeat superior theory. Bowen v. City of Manchester, C.A.1 (N.H.) 1992, 966 F.2d 13. See, also, Baugh v. City of Milwaukee, E.D.Wis.1993, 823 F.Supp. 1452, motion to amend denied 829 F.Supp. 274, affirmed 41 F.3d 1510; Fields v. District of Columbia Dept. of Corrections, D.D.C.1992, 789 F.Supp. 20.

416. ---- Cities, respondeat superior, liability generally

City could not be held liable on respondeat superior theory in civil rights action based on actions of off-duty police officer that it employed. Robles v. City of Fort Wayne, C.A.7 (Ind.) 1997, 113 F.3d 732. Civil Rights 1348

Imposing § 1983 liability on city for county's policy of permitting only fire department divers to rescue drowning victim would effectively and improperly be based on respondeat superior theory; city and county had properly agreed to leave county with sole responsibility for emergency services on lake; and city was not merely trying to escape legal liability. Ross v. U.S., C.A.7 (Ill.) 1990, 910 F.2d 1422, rehearing denied, on remand 764 F.Supp. 1308. Civil Rights 1360

City cannot be held liable for violation of constitutional rights on theory of respondeat superior. Los Angeles Police Protective League v. Gates, C.A.9 (Cal.) 1990, 907 F.2d 879, rehearing denied. Civil Rights 1345

City could not be held liable on theory of respondeat superior for city police officers' violations of civil rights. Wise v. Bravo, C.A.10 (Colo.) 1981, 666 F.2d 1328. Civil Rights 1348

City could not be held liable in restaurant owner's §§1983 action against city and restaurant inspector alleging due process violations arising from inspector's decision to temporarily close restaurant, where inspector had been found not to have committed any due process violations. Camuglia v. City of Albuquerque, D.N.M.2005, 375 F.Supp.2d 1311. Civil Rights 1350

City was not liable under §§ 1983, pursuant to respondeat superior theory, for any constitutional violations that occurred in connection with search warrant requiring suspect to provide DNA sample, inasmuch as alleged violation was not caused by any city policy or custom. Kohler v. Englade, M.D.La.2005, 365 F.Supp.2d 751. Civil Rights 1351(4)

Given the significant autonomy Commissioner of the Human Resource Administration (HRA) had in deciding whether to certify organization's proposal, and fact that twenty-five percent of funding came from City, Commissioner was not acting as arm of the state when he withdrew certification for contractor as vendor for state's contracts, and thus city could be subject to liability on §§ 1983 claim that Commissioner denied certification in retaliation for contractor's exercise of its First Amendment rights. Housing Works, Inc. v. Turner, S.D.N.Y.2005, 362 F.Supp.2d 434. Civil Rights 1351(6)

Municipality may not be held liable under § 1983 under theory of respondeat superior; instead, municipal liability may result only from enforcement of municipal policy or custom. Smith v. Barber, D.Kan.2004, 316 F.Supp.2d 992. Civil Rights 1345; Civil Rights 1351(1)

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42 U.S.C.A. § 1983

Estate of victim who had been shot and killed by off-duty police officer failed to state § 1983 supervisory liability claim that police chief violated victim's constitutional rights, for failure to plead causal connection between chief's alleged de facto policy of deliberate indifference and victim's death at hands of officer. Burkhart v. Knepper, W.D.Pa.2004, 310 F.Supp.2d 734. Civil Rights 1395(5)

City was responsible under § 1983 for mayor's violation of police officer's due process rights in predetermining outcome of officer's pretermination hearing; mayor's conduct in ordering that officer be terminated regardless of what transpired at hearing constituted deliberate choice to follow course of action made from among various alternatives, and mayor was the city official responsible for establishing final policy with respect to the subject matter. Wagner v. City of Memphis, W.D.Tenn.1997, 971 F.Supp. 308. Civil Rights 1351(5)

Lack of evidence of inadequate training or supervision of officers cooperating in investigation of police corruption precluded § 1983 claim against city based on allegedly deliberate indifference to rights of police officer who was shot during argument with cooperating officer; possibility that cooperating officer would shoot another officer was not highly predictable, cooperating officer did not need to be trained not to relieve stress by shooting fellow officers, and city did instruct supervisors to monitor cooperating officers for signs of stress. Morrissey v. City of New York, S.D.N.Y.1997, 963 F.Supp. 270. Civil Rights 1352(4)

Section 1983 plaintiff cannot rely on theory of respondeat superior to hold city liable for individual actions of its police officers. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Civil Rights 1345

City's alleged failure to supervise and discipline police officers who violate civil rights of others did not "shock the conscience" and thus did not support arrestee's substantive due process claim based on city's own conduct, in connection with arrest for driving under influence of alcohol (DUI) and charge of resisting arrest. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1352(4)

City may incur direct § 1983 liability based on unconstitutional act by employee if municipal policy amounts to deliberate indifference to rights of public with whom municipal employee comes in contact, regardless of whether policy itself is constitutional. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1351(1)

In his § 1983 civil rights claims against defendants, each of whom was municipal corporation or affiliated arm of local government, plaintiff could not prevail on theory of respondeat superior, that is, simply by demonstrating tortious behavior of employee or other agent. Britton v. City of Erie, Pa., W.D.Pa.1995, 933 F.Supp. 1261, affirmed 100 F.3d 946. Civil Rights 1345

There was no evidence that policymaker knew to "moral certainty" that city emergency workers would face situation involving refusal of medical treatment by disabled individual unable to speak, that training would have made any difference to outcome, since individual was unable to breathe and had to be taken to hospital with working ventilator, or that this was sort of case where wrong choice would "frequently" cause deprivation of constitutional rights, as required to support § 1983 claim against city for any constitutional violation committed by its emergency workers in transporting individual to hospital against his wishes. Green v. City of New York, S.D.N.Y.2004, 2004 WL 213009, Unreported. Civil Rights 1352(6)

City could not be held liable pursuant to § 1983 under respondeat superior theory for police officers' allegedly negligent failure to obtain positive identification from individual who impersonated plaintiff, even if officers' negligence resulted in plaintiff's wrongful arrest and detention, absent evidence of existence of municipal policy or custom, and of direct causal link between policy or custom and plaintiff's injury. Sanchez v. City of Albuquerque, C.A.10 (N.M.) 2003, 65 Fed.Appx. 241, 2003 WL 21027948, Unreported. Civil Rights 1351(4)

417. ---- Counties, respondeat superior, liability generally

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42 U.S.C.A. § 1983

Alabama counties are not liable under theory of respondeat superior for sheriff's official acts that are tortious. McMillian v. Monroe County, Ala., U.S.Ala.1997, 117 S.Ct. 1734, 520 U.S. 781, 138 L.Ed.2d 1. Counties 146

County's liability under § 1983 may not be based on doctrine of respondeat superior. Grech v. Clayton County, Ga., C.A.11 (Ga.) 2003, 335 F.3d 1326. Civil Rights 1345

Under § 1983, county cannot be held liable on theory of respondeat superior merely due to its employment of tort-feasor. Esteves v. Brock, C.A.5 (Tex.) 1997, 106 F.3d 674, rehearing and suggestion for rehearing en banc denied 114 F.3d 1185, certiorari denied 118 S.Ct. 91, 522 U.S. 828, 139 L.Ed.2d 47. Civil Rights 1345

Holding county liable for sheriff's abuse of powers inherent in his role as chief policymaker for how peace would be kept in county would not run afoul of rule against respondeat superior liability on part of county in civil rights for actions of its employees, despite county's contention that it did not authorize sheriff to violate law. Turner v. Upton County, Tex., C.A.5 (Tex.) 1990, 915 F.2d 133, certiorari denied 111 S.Ct. 788, 498 U.S. 1069, 112 L.Ed.2d 850. Civil Rights 1351(4)

Under Tennessee law, county deputy sheriff acted for the county when he seized judgment debtor's automobile and its contents pursuant to writ of execution, and, thus, county could be liable under §§ 1983 for deputy sheriff's alleged violation of automobile owner's constitutional rights under the Fourth and Fourteenth Amendments. Buchanan v. Williams, M.D.Tenn.2006, 434 F.Supp.2d 521. Civil Rights 1347

County board of commissioners was not liable under §§ 1983 for any wrongful termination of deputy sheriff; board had no responsibility for conduct of sheriff, who was state official, and in any event wrongful conduct, consisting of alleged defamation, was not done pursuant to any policy or custom of board. Hughes v. Keath, D.Kan.2004, 328 F.Supp.2d 1161. Civil Rights 1351(5)

A county may be held liable under § 1983 only for its own unconstitutional or illegal policies and not for its employees' tortious acts; a county will only be liable if its employees committed a constitutional violation, and its official policy or custom was the moving force behind the alleged injury alleged. Estate of Sisk v. Manzanares, D.Kan.2002, 262 F.Supp.2d 1162. Civil Rights 1345; Civil Rights 1351(1)

County liability for damages under § 1983 cannot attach on basis of respondeat superior. Bland v. Madison County, Fla., N.D.Fla.1995, 895 F.Supp. 1515. Civil Rights 1345

Warden of county prison did not have final policy-making authority necessary to hold county liable under § 1983 for his alleged wrongful actions. Kis v. County of Schuylkill, E.D.Pa.1994, 866 F.Supp. 1462. Civil Rights 1351(4)

County could not be held liable in § 1983 action solely on basis of respondeat superior. Shoop v. Dauphin County, M.D.Pa.1991, 766 F.Supp. 1327, affirmed 945 F.2d 396, certiorari denied 112 S.Ct. 1178, 502 U.S. 1097, 117 L.Ed.2d 422. Civil Rights 1345

418. ---- Towns, respondeat superior, liability generally

Respondeat superior could not serve as basis for imposing liability on town under § 1983, based on action of its police officers. Armao v. American Honda Motor Co., D.Conn.1996, 917 F.Supp. 142. Civil Rights 1345

Where only liability alleged against town in civil rights suit was premised on theory of respondeat superior, town was immune from liability under this section providing for civil action for deprivation of rights. Hedrick v. Blake, D.C.Del.1982, 531 F.Supp. 156. Civil Rights 1345

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419. ---- City council members, respondeat superior, liability generally

City councilmen could not be held liable for police chief's allegedly tortious action solely on the basis of respondeat superior. Bowen v. Watkins, C.A.5 (Miss.) 1982, 669 F.2d 979. Civil Rights 1358

420. ---- Parole commissions, respondeat superior, liability generally

Where monetary damages were sought in action by prisoner against Parole Commission, regional commissioner and parole examiners alleging denial of meaningful parole consideration, general doctrine of respondeat superior would not suffice for imposition of liability against Commission and commissioner, and some showing of personal responsibility was required; thus, in absence of allegation of personal responsibility, claim for money damages against Commission and commissioner was properly dismissed. DeShields v. U. S. Parole Commission, C.A.8 (Minn.) 1979, 593 F.2d 354. Pardon And Parole 56

421. ---- Police commissioners, respondeat superior, liability generally

Police chief's awareness that officer twice executed warrant to search arrestees' motel room was insufficient basis upon which to impose liability on chief and village in arrestees' subsequent § 1983 action for unlawful search and seizure and false arrest, even if double execution rendered search warrant invalid; when officer executed search warrant second time, chief knew that officer also carried valid arrest warrants. Simms v. Village of Albion, N.Y., C.A.2 (N.Y.) 1997, 115 F.3d 1098. Civil Rights 1348; Civil Rights 1358

Police department and its police chief could not be held liable under § 1983 for officer's false arrest of arrestee, as there was no evidence that police department or its chief had approved of officer's decision to arrest arrestee based on limited information in his possession. Ortega v. Christian, C.A.11 (Fla.) 1996, 85 F.3d 1521. Civil Rights 1348; Civil Rights 1358

In § 1983 action, police chief was not liable in his capacity as officer's supervisor for alleged illegal arrest of father for child abuse. Ripson v. Alles, C.A.8 (Iowa) 1994, 21 F.3d 805, rehearing denied. Civil Rights 1358

Police chief could not be held liable for misconduct of other officers who were defendants in suit under this section, just because he was their supervisor, since doctrine of respondeat superior, which makes employer liable without fault on his part for torts committed by his employees in furtherance of their employment, is not applicable in actions under § 1983. McKinnon v. City of Berwyn, C.A.7 (Ill.) 1984, 750 F.2d 1383, on remand. Civil Rights 1358

Attorney arrested for criticizing an officer's conduct during the arrest of a third party and for refusing to leave the scene of the arrest failed to prove that the officer's supervisor had actual or constructive knowledge of the circumstances of the arrest, thus defeating the attorney's § 1983 claim against the supervisor; the supervisor arrived on the scene after the arrest had concluded, and evidence that he spoke to both of the officers on the scene was insufficient to establish deliberate indifference. Wilson v. Kittoe, W.D.Va.2002, 229 F.Supp.2d 520, affirmed 337 F.3d 392. Civil Rights 1358

Members of sheriff's department could not be held liable on respondeat superior grounds for mistaken arrest of plaintiff by two police officers pursuant to attachment issued by juvenile court, nor could county be held liable absent showing that county was negligent in training and supervision of its employees. Johnson v. Turner, W.D.Tenn.1994, 855 F.Supp. 228, affirmed 125 F.3d 324, rehearing and suggestion for rehearing en banc denied. Civil Rights 1352(4); Civil Rights 1358

422. ---- Police officers, respondeat superior, liability generally

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42 U.S.C.A. § 1983

City and city police department were not liable for decision of deputy police chief and police lieutenant to summarily arrest all violators of city ticket scalping ordinance and subject them to standard processing routine at detention center, for purpose of § 1983 action alleging that arrests and detentions pursuant to ticket scalping ordinance violated the Fourth Amendment, where deputy and lieutenant did not have authority to set official policy under state law, and there was no showing that chief of police or other policymaker was involved in decision. Chortek v. City of Milwaukee, C.A.7 (Wis.) 2004, 356 F.3d 740, certiorari denied 125 S.Ct. 44, 543 U.S. 811, 160 L.Ed.2d 14. Civil Rights 1351(4)

City was not subject to liability under §§ 1983 in connection with its police officers' alleged warrantless entry, false arrest, and use of excessive force, despite arrestee's contention that city failed to properly respond to his citizen complaint, where officer conducted thorough investigation, which included interviews of parties and relevant witnesses and polygraph of arresting officer, and police captain and chief found officer's report to be accurate under circumstances. Thorne v. Steubenville Police Officer, S.D.Ohio 2006, 463 F.Supp.2d 760. Civil Rights 1352(4)

Supervisors and state official were not liable under §§ 1983, on the basis of respondeat superior, for death of individual who was shot and killed by officers during police raid of housing project, absent any evidence that supervisors and officials had formulated a policy or engaged in a practice that led to the alleged violations; fact that supervisors had supervisory authority over officers who conducted the raid was not enough to establish liability. Martinez-Rivera v. Sanchez Ramos, D.Puerto Rico 2006, 430 F.Supp.2d 47. Civil Rights 1358

City could have no civil rights liability where arrestee's constitutional rights had not been violated by officers. Ingram v. City of Los Angeles, C.D.Cal.2006, 418 F.Supp.2d 1182. Civil Rights 1348

State trooper who allegedly committed torts himself and who was not a supervisor of any kind to any person could not be held liable under §§ 1983 under respondeat superior theory. Lassoff v. New Jersey, D.N.J.2006, 414 F.Supp.2d 483. Civil Rights 1358

City police chief's reliance on subordinate to adequately train recruits did not absolve chief from supervisory liability under §§ 1983 for alleged failure to ensure necessary training regarding on-duty/off-duty interactions between police officers, where chief was ultimately responsible for ensuring proper training and for continued implementation of department's always armed/always on-duty policy. Young v. City of Providence, D.R.I.2005, 396 F.Supp.2d 125. Civil Rights 1359

Police department superintendent and police sergeant were not liable under §§ 1983 as supervisors for acts allegedly committed by police officers who assaulted individuals when they attempted to file a complaint at police station, absent evidence of a known pattern of previous police misconduct or lack of training, or that superintendent and sergeant committed grossly unconstitutional actions or more importantly, how were they personally involved in the alleged unconstitutional actions. Vega v. Vivoni, D.Puerto Rico 2005, 389 F.Supp.2d 160. Civil Rights 1358

Police chief was not liable under §§ 1983, pursuant to respondeat superior theory, for any constitutional violations that occurred in connection with search warrant requiring suspect to provide DNA sample, where police chief played no role in suspect's arrest. Kohler v. Englade, M.D.La.2005, 365 F.Supp.2d 751. Civil Rights 1358

Sheriff deputies' detention of hospital patient, pursuant to state statute, for psychiatric evaluation, after she allegedly became unruly in emergency room while awaiting treatment for suspected heart attack, was not the result of county's policy of providing insufficient training to its deputies on communication skills, and thus county could not be liable under § 1983 for deputies' alleged violations of patient's Fourth Amendment rights to be free from unreasonable seizures and uses of force. Harvey v. Alameda County Medical Center, N.D.Cal.2003, 280 F.Supp.2d 960, affirmed 123 Fed.Appx. 823, 2005 WL 662645. Civil Rights 1352(6)

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42 U.S.C.A. § 1983

Sheriff's deputy who ordered unconstitutional strip search of nonviolent minor arrestee who had posted bond was not shielded from civil liability in arrestee's § 1983 action for illegal search simply because he acted upon direction of policy-making superiors. Dugas v. Jefferson County, E.D.Tex.1996, 931 F.Supp. 1315, affirmed 127 F.3d 33. Civil Rights 1088(4)

423. ---- Prison officials, respondeat superior, liability generally

Evidence that state prison warden was informed that mentally ill inmate had been placed in restraints was insufficient to impose supervisory liability on the warden in inmate's §§ 1983 action; there was no evidence that the warden was notified at any point other than early in the 22-hour period that inmate was restrained, at which time warden would have had no reason to question the need for the restraint. Ziemba v. Armstrong, C.A.2 (Conn.) 2005, 430 F.3d 623. Civil Rights 1358

Prison guard was not liable in federal civil rights action for injuries suffered by prisoner who was attacked by fellow inmate and who alleged that failure of guards to protect him violated his rights under Eighth Amendment where guard was not involved in decision to release inmate who had attacked prisoner from his cell and was unaware that altercation was going to occur, was included as defendant merely because he was shift supervisor, and there was no evidence to show sufficient personal involvement by guard or deliberate indifference or tacit authorization by him of conduct complained of by other guards. Randle v. Parker, C.A.8 (Ark.) 1995, 48 F.3d 301. Civil Rights 1093

Doctrine of respondeat superior does not apply to civil rights action against prison official for Eighth Amendment violation, but whether superintendent actually controls or fails to properly supervise a subordinate may be a relevant inquiry. LaMarca v. Turner, C.A.11 (Fla.) 1993, 995 F.2d 1526, certiorari denied 114 S.Ct. 1189, 510 U.S. 1164, 127 L.Ed.2d 539. Civil Rights 1358

Respondeat superior was not basis for liability under § 1983, and thus, chief medical officer of prison hospital could not be held liable for inmate's claims of inadequate treatment by other medical personnel. Smith v. Marcantonio, C.A.8 (Mo.) 1990, 910 F.2d 500. Civil Rights 1358

Corrections director and state prison warden could not be held liable in state prisoner's civil rights suit alleging use of excessive force by prison guards, since doctrine of respondeat superior was inapplicable to action and no other basis of liability for director and warden was alleged. Williams v. Luna, C.A.5 (Tex.) 1990, 909 F.2d 121. Civil Rights 1358

Supervisors at prison are not liable for Eighth Amendment claims brought under § 1983 under respondeat superior theory. Howard v. Adkison, C.A.8 (Mo.) 1989, 887 F.2d 134, rehearing denied. Civil Rights 1358

Warden was not liable under §§ 1983 for correctional officers' alleged use of excessive force against inmate, even if warden instructed officers on how to use expandable baton, where there was no evidence that warden ordered officers' conduct against inmate or knew of conduct and failed to intercept, or that officers used baton during incident. Wilkins v. Ramirez, S.D.Cal.2006, 455 F.Supp.2d 1080. Civil Rights 1358

Prisoner's allegations that any prison official's liability was based on his or her status as a supervisor of another official who violated prisoner's rights and that supervisors generally were responsible for the management of the prison or the prison mail system did not state a claim under §§ 1983. Strong v. Woodford, C.D.Cal.2006, 428 F.Supp.2d 1082. Civil Rights 1395(7)

California state prison inmate who could not recover in §§ 1983 action from defendant California Department of Corrections (CDC) director and prison warden on respondeat theory based on alleged actions of subordinates would be granted leave to amend claims against those defendants, as it was possible that inmate could cure

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deficiencies in his complaint by pleading additional facts showing personal involvement by director and warden in alleged violation of First Amendment right to free exercise of religion of inmate, who was follower of Islam and did not consume pork, but was allegedly misled into consuming unlabeled pork product. Lewis v. Mitchell, S.D.Cal.2005, 416 F.Supp.2d 935. Federal Civil Procedure 1838

Prison warden was not liable under §§ 1983 through the doctrine of respondeat superior for alleged violations of pretrial detainee's Eighth Amendment rights where the detainee showed only that he filed grievances, did not show any evidence that the warden had either personal knowledge of, or in any way acquiesced to, the detainee's situation, and failed to allege anything but the mere supervisory function of the warden. Brookins v. Williams, D.Del.2005, 402 F.Supp.2d 508. Civil Rights 1358

Prison officials were entitled to respondeat superior defense to inmate's §§ 1983 action alleging unconstitutional conditions of confinement, where inmate failed to provide evidence suggesting personal involvement on behalf of officials with respect to any of his claims; officials' alleged involvement was predicated solely on their names being explicitly listed on complaint. Brown v. Williams, D.Del.2005, 399 F.Supp.2d 558. Civil Rights 1358

Fact that supervisor promotes policy which infringes upon constitutional rights of inmate can be "affirmative link" connecting supervisor to suing inmates, for purposes of § 1983 action. Ingalls v. Florio, D.N.J.1997, 968 F.Supp. 193. Civil Rights 1090

Inmate who was slashed by second inmate after correctional officer allegedly told other inmates that inmate was a "snitch" did not have viable § 1983 claim against superintendent and captain of correctional facility, where superintendent and captain were not personally involved in actions that lead to slashing and superintendent and captain responded to inmate's letter requesting help. Watson v. McGinnis, S.D.N.Y.1997, 964 F.Supp. 127. Civil Rights 1358

Supervisory liability could not be imposed on prison officials for alleged constitutional violations occurring when inmates were strip searched following contact visits; officials did not personally participate in the searches, and there was no evidence that they were deliberately indifferent to inmates' rights. Fernandez v. Rapone, D.Mass.1996, 926 F.Supp. 255. Civil Rights 1358

Commissioner of Department of Correctional Services was not protected from liability under § 1983 for knowing about, but not taking any action to prevent, alleged retaliation by superintendent of correctional facility against inmate for exercising his constitutional right to petition government for redress of grievances, where there was no evidence regarding Commissioner's actual beliefs about superintendent's behavior toward inmate. Pacheco v. Comisse, N.D.N.Y.1995, 897 F.Supp. 671. Civil Rights 1358

State prison wardens cannot be held liable under § 1983 on basis of any respondeat superior theory, but can nonetheless still be culpable for conduct of their subordinates if personally involved in that conduct; personal involvement can take form of formulating and directing unconstitutional policy or of facilitating, condoning or consciously ignoring known unconstitutional conduct. Burton v. Kuchel, N.D.Ill.1994, 865 F.Supp. 456. Civil Rights 1358

Supervisory liability for prisoner's medical needs requires showing that supervisory officials failed to provide prisoner with needed medical care or deliberately interfered with prison doctor's performance. Shanton v. Detrick, N.D.W.Va.1993, 826 F.Supp. 979, affirmed 17 F.3d 1434. Prisons 10

County could not be held liable for alleged due process violation arising out of defamatory statements purportedly made about deputy superintendent of county correctional facility in connection with deputy superintendent's forced early retirement, given absence of evidence that anyone whose actions could be said to represent official policy disseminated defamatory statements. Pierce v. Netzel, C.A.2 (N.Y.) 2005, 148 Fed.Appx. 47, 2005 WL 2176010,

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42 U.S.C.A. § 1983

Unreported. Civil Rights 1351(5)

424. ---- Private owners, respondeat superior, liability generally

Restaurant owner was not liable in § 1983 action for violations of restaurant employees' right to be free from unreasonable searches and right to privacy, in action arising from detention and search of employees following discovery that money was missing from cash register; claim was based solely on owner's status as owner, and liability under § 1983 could not be based on respondeat superior. Raines v. Shoney's, Inc., E.D.Tenn.1995, 909 F.Supp. 1070, reconsideration denied 916 F.Supp. 719. Civil Rights 1340

425. ---- School districts, respondeat superior, liability generally

For purposes of determining whether school district was liable in teacher's § 1983 action alleging that her dismissal violated First Amendment, question of which district employees maintained final policy-making authority was question of state law to which Court of Appeals applied its independent judgment. Hall v. Marion School Dist. No. 2, C.A.4 (S.C.) 1994, 31 F.3d 183. Federal Courts 755

School district could not be held liable under this section for alleged constitutional violations in reassignment and discharge of school principal where the sole theory of liability was respondeat superior. Padway v. Palches, C.A.9 (Cal.) 1982, 665 F.2d 965. Civil Rights 1349

Independent school districts are liable for the actions of their boards of trustees, not on the basis of respondeat superior but because the only way a school district can act, practically as well as legally, is by and through its board of trustees. Kingsville Independent School Dist. v. Cooper, C.A.5 (Tex.) 1980, 611 F.2d 1109. Schools 55

Since the only way that the school district could act was by and through its board of trustees, school district could be found liable in civil rights action based on unconstitutional action taken by the board of trustees despite the contention that it was being held liable on a respondeat superior theory. Stoddard v. School Dist. No. 1, Lincoln County, Wyo., C.A.10 (Wyo.) 1979, 590 F.2d 829. Civil Rights 1346

Parent of public school student, as next friend of student, failed to state a claim against school district under §§ 1983 for violation of student's right to equal protection, based on actions of school principal in prohibiting students from speaking Spanish in school, since parent did not allege that principal had final authority under state law to establish policy with respect to students speaking Spanish. Rubio v. Turner Unified School Dist. No. 202, D.Kan.2006, 453 F.Supp.2d 1295. Civil Rights 1351(2)

Teacher's alleged sexual harassment of high school student fell short of sexual molestation or assault required to hold district superintendent and principal liable under §§ 1983 in their supervisory capacity for teacher's alleged substantive due process violation. Gilliam v. USD # 244 School Dist., D.Kan.2005, 397 F.Supp.2d 1282. Civil Rights 1356

426. ---- Sheriffs, respondeat superior, liability generally

Sheriff could not be held liable for deputy sheriff's violation of elementary school student's Fourth Amendment rights on ground that, under Alabama law, a deputy sheriff was the agent and alter ego of the sheriff, since such alter ego theory was equivalent of respondeat superior liability, which was not a permissible basis to support supervisory liability under §§ 1983. Gray ex rel. Alexander v. Bostic, C.A.11 (Ala.) 2006, 458 F.3d 1295. Civil Rights 1358

Sheriff may not be held liable in civil rights action based solely on theory of respondeat superior or vicarious liability. Palmer v. Sanderson, C.A.9 (Wash.) 1993, 9 F.3d 1433. Civil Rights 1358

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42 U.S.C.A. § 1983

Sheriff who was sued in his official capacity could not be held liable under §§ 1983 on a respondeat superior theory for alleged constitutional violations committed by sheriff's deputies when conducting traffic stop during which vehicle's passenger died from cardiac arrest; rather, passenger's mother was required to show that sheriff implemented a policy so deficient that the policy itself was a repudiation of constitutional rights and was the moving force of the constitutional violation. Oliver v. Prator, W.D.La.2006, 438 F.Supp.2d 676. Civil Rights 1358

427. ---- State officials, respondeat superior, liability generally

State's attorney general and other officials not directly involved in child sexual abuse investigation or in placement of investigated individual's name in state registry of child abusers could not be liable in individual's § 1983 due process action challenging placement without hearing; respondeat superior or vicarious liability for allegedly unconstitutional actions of officials' subordinates could not form basis for liability. Smith ex rel. Smith v. Siegelman, C.A.11 (Ala.) 2003, 322 F.3d 1290, rehearing and rehearing en banc denied 71 Fed.Appx. 824, 2003 WL 21432580. Civil Rights 1358

State officials do not incur § 1983 liability for acts of their subordinates under respondeat superior theory of liability, but rather are subject to suit only if they play affirmative part in alleged deprivation of constitutional rights. Rise v. State of Or., C.A.9 (Or.) 1995, 59 F.3d 1556, certiorari denied 116 S.Ct. 1554, 517 U.S. 1160, 134 L.Ed.2d 656. Civil Rights 1355

The doctrine of respondeat superior does not apply to § 1983 actions, and thus, a state employee cannot be held liable under § 1983 absent a showing that he was personally involved in the violation of the plaintiff's constitutional rights. Porter v. Selsky, W.D.N.Y.2003, 287 F.Supp.2d 180, affirmed 421 F.3d 141. Civil Rights 1336; Civil Rights 1354

Virginia governor could not be held responsible under this section for conduct of state troopers he dispatched to strike scene, as respondeat superior theory was not applicable under this section. United Steelworkers of America, AFL-CIO-CLC v. Dalton, E.D.Va.1982, 544 F.Supp. 291. Civil Rights 1358

The doctrine of respondeat superior does not apply in situations involving state officials. Totaro v. Lyons, D.C.Md.1980, 498 F.Supp. 621. States 112.1(1)

428. Vicarious liability, liability generally--Generally

Actor may be held liable under § 1983 for those consequences attributable to reasonably foreseeable intervening forces, including acts of third parties. Warner v. Orange County Dept. of Probation, C.A.2 (N.Y.) 1996, 115 F.3d 1068, on remand 968 F.Supp. 917. Civil Rights 1031

Under § 1983, supervisor may be found liable on basis of his own acts or omissions; such liability can arise out of participation in a custom that leads to violation of constitutional rights, or by acting with deliberate indifference to constitutional rights of others. Diaz v. Martinez, C.A.1 (Puerto Rico) 1997, 112 F.3d 1. Civil Rights 1355

Under § 1983, supervisory officials are not liable for actions of subordinates under any theory of vicarious liability. Hansen v. Black, C.A.9 (Idaho) 1989, 885 F.2d 642. Civil Rights 1355

If state law imposes liability upon a public official for the acts of his subordinates, vicarious liability can also be imposed upon him under this section. Johnson v. Duffy, C.A.9 (Cal.) 1978, 588 F.2d 740. Civil Rights 1355

Under Massachusetts Civil Rights Act's (MCRA) counterpart of § 1983, violation element of legal test for liability is not satisfied unless claimant also proves that violation was accomplished by threats, intimidation, or coercion.

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Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1036

There can be no vicarious liability in federal civil rights action under respondeat superior theory, and allegations of participation or actual knowledge and acquiescence must be made with appropriate particularity. Youse v. Carlucci, E.D.Pa.1994, 867 F.Supp. 317. Civil Rights 1336; Civil Rights 1394

Vicarious liability is not available under federal civil rights statute. Unterberg v. Correctional Medical Systems, Inc., E.D.Pa.1992, 799 F.Supp. 490. Civil Rights 1336

Vicarious liability is not recognized in § 1983 actions. Jacobs v. Dujmovic, D.Colo.1990, 752 F.Supp. 1516, affirmed 940 F.2d 1392, certiorari denied 113 S.Ct. 123, 506 U.S. 840, 121 L.Ed.2d 78, rehearing denied 113 S.Ct. 641, 506 U.S. 1015, 121 L.Ed.2d 571. Civil Rights 1336

Theory of vicarious or superiors' liability is unavailable in § 1983 actions. Martin v. O'Grady, N.D.Ill.1990, 738 F.Supp. 1191. Civil Rights 1336

429. ---- Causation, vicarious liability, liability generally

Section 1983 does not impose vicarious or respondeat superior liability on prison warden, and if warden were not personally involved in acts causing alleged constitutional deprivation, prisoner had to allege some other act by warden that caused the violation to support claim against warden in his individual capacity, but complaint alleged no causal connection between any alleged constitutional deprivation and any action or inaction, beyond perhaps mere negligence, on part of defendant warden. Painter v. Whitley, E.D.La.1988, 686 F.Supp. 150.

In civil action alleging deprivation of rights, public officials cannot be held vicariously liable for wrongdoing of others; thus, misconduct by subordinates or third parties cannot be imputed to an official who played no part in causing deprivation of constitutional rights. Redmond v. Baxley, E.D.Mich.1979, 475 F.Supp. 1111. Civil Rights 1355

430. ---- Intent or knowledge, vicarious liability, liability generally

A supervisor may be held individually liable under §§ 1983 if a failure to properly supervise and train the offending employee caused a deprivation of constitutional rights; the plaintiff must demonstrate that the supervisor was deliberately indifferent to or tacitly authorized the offending acts which requires a showing that the supervisor had notice that the training procedures and supervision were inadequate and likely to result in a constitutional violation. Wever v. Lincoln County, Nebraska, C.A.8 (Neb.) 2004, 388 F.3d 601. Civil Rights 1355

Alleged discriminatory intent of school district superintendent could not be imputed to school principal, for purpose of principal's motion for summary judgment based on qualified immunity, as to claims against principal in her individual capacity in action by "acting" assistant principal who alleged racial discrimination; individual liability under § 1983 may not be predicated on doctrine of respondeat superior or on acts and omissions of individual's superiors. Coleman v. Houston Independent School Dist., C.A.5 (Tex.) 1997, 113 F.3d 528. Civil Rights 1359; Civil Rights 1376(10)

Constitution does not make public employees strictly, let alone vicariously, liable for injuries that befall their charges; unless they know about problem and intend that it continue, they violate neither due process clause nor cruel and unusual punishments clause, and to be held liable, they must act because of, and not merely in spite of, the objectionable consequences. Pacelli v. deVito, C.A.7 (Ill.) 1992, 972 F.2d 871. Constitutional Law 299.1; Sentencing And Punishment 1580; Officers And Public Employees 114

County sheriff was not vicariously liable for any deprivation of pretrial detainee's constitutional right to personal

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security in his placement in cell with homosexual who subsequently raped him, where there was no evidence that sheriff was personally apprised of telephone call from third person who informed prison officials of the threats against pretrial detainee by cellmate. Redman v. County of San Diego, C.A.9 (Cal.) 1991, 942 F.2d 1435, certiorari denied 112 S.Ct. 972, 502 U.S. 1074, 117 L.Ed.2d 137. Civil Rights 1358

Even if chairman of nonprofit partnership, composed of several municipalities, that administered federal funds for implementation of Workforce Investment Act (WIA) programs, knew of, overtly or tacitly approved of, or purposely disregarded alleged political discrimination against partnership's former employees, municipalities that were members of partnership could not be held liable under §§ 1983 on grounds that chairman was also mayor of one of the municipalities; partnership and municipalities were separate and distinct legal entities, and employees were not municipal employees nor were they under contract with municipalities. Caraballo-Seda v. Rivera-Toro, D.Puerto Rico 2005, 392 F.Supp.2d 144. Civil Rights 1349

431. ---- Personal involvement, vicarious liability, liability generally

Supervisory officials cannot be held vicariously liable under § 1983 for their subordinates' actions; they may be held liable only if they affirmatively participate in acts that caused constitutional deprivation or implement unconstitutional policies that causally result in plaintiff's injury. Mouille v. City of Live Oak, Tex., C.A.5 (Tex.) 1992, 977 F.2d 924, rehearing denied, certiorari denied 113 S.Ct. 2443, 508 U.S. 951, 124 L.Ed.2d 660. Civil Rights 1355

Vicarious liability cannot be basis for recovery against sheriff for acts of his subordinates in suit under this section; liability may be found only if there is personal involvement of officer being sued. Watson v. Interstate Fire & Cas. Co., C.A.5 (La.) 1980, 611 F.2d 120. Civil Rights 1358

Liability under § 1983 cannot be imposed vicariously or under traditional grounds of respondeat superior; direct, personal involvement by defendant in conduct depriving plaintiff of his rights or active knowledge and acquiescence on defendant's part must be alleged. Gilmore v. Jeffes, M.D.Pa.1987, 675 F.Supp. 219. Civil Rights 1336

432. ---- Custom or usage, vicarious liability, liability generally

County department of public welfare that took custody of children to determine whether they were in need of services so as to warrant their placement in foster homes could not be held vicariously liable to children's mother for social worker's handling of case, absent showing that department had unconstitutional policy that caused mothers' injuries. Millspaugh v. County Dept. of Public Welfare of Wabash County, C.A.7 (Ind.) 1991, 937 F.2d 1172, certiorari denied 112 S.Ct. 638, 502 U.S. 1004, 116 L.Ed.2d 656. Civil Rights 1351(6)

There was no evidence of municipal policy or custom required to hold municipality vicariously liable under § 1983 for police officers' arrest of young men they mistook for burglary suspects and their use of excessive force during the arrest. Wedemeier v. City of Ballwin, Mo., C.A.8 (Mo.) 1991, 931 F.2d 24. Civil Rights 1351(4)

Mayor could not be held liable under § 1983 for isolated actions of individual employees within city jail that were contrary to jail policy or otherwise outside what should have been the mayor's control and attention; there was no vicarious liability for such acts. Johnson-El v. Schoemehl, C.A.8 (Mo.) 1989, 878 F.2d 1043. Civil Rights 1376(4)

Public corporation's liability under this section does not lie solely because it employs tort-feasor; there must be a showing either of official sanction of agent's acts or of culpable negligence, or impliedly or tacitly authorized, approved or encouraged discriminatory conduct as matter of course on part of employer in failing to correct known slurs or other discriminatory acts of its employees. White v. Washington Public Power Supply System, C.A.9 (

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Wash.) 1982, 692 F.2d 1286. Civil Rights 1350

"Custom or usage" may constitute basis for municipal liability under § 1983, even in absence of express policy or of act committed by final policymaker; however, isolated acts committed by nonpolicymaking officials generally do not amount to "custom," which implies habitual practice of course of action that characteristically is repeated under like circumstances. Chapman v. Village of Homewood, N.D.Ill.1997, 960 F.Supp. 127. Civil Rights 1351(1)

For purposes of municipal liability under § 1983, which officials have final policy-making authority for municipality on particular issue is question of state law, to be decided by judge by referring to state and local law, as well as custom or usage having force of law. Kis v. County of Schuylkill, E.D.Pa.1994, 866 F.Supp. 1462. Federal Courts 411

433. ---- Training and supervision, vicarious liability, liability generally

Need for training deputy sheriffs as to detention of students was not so obvious that failure to do so constituted deliberate indifference to students' Fourth Amendment rights, as would warrant holding sheriff personally liable, under §§ 1983, for deputy sheriff's violation of elementary school student's Fourth Amendment rights by handcuffing student following student's alleged making of physical threat toward teacher. Gray ex rel. Alexander v. Bostic, C.A.11 (Ala.) 2006, 458 F.3d 1295. Civil Rights 1358

Municipality's alleged actions of failing to properly train officers in the use of deadly force did not violate suspect's constitutional rights, as required to establish municipal liability in §§ 1983 action brought by wife of suspect who was shot and killed by police officer; evidence demonstrated that officers attended annual in-service courses, where they studied, among other subjects, relevant court opinions, the officer who fired the fatal shot testified that he was present at those sessions, and officers were directed to become familiar with updated policy manual, which covered the continuum of force. Carswell v. Borough of Homestead, C.A.3 (Pa.) 2004, 381 F.3d 235, certiorari denied 126 S.Ct. 236, 163 L.Ed.2d 219, rehearing denied, rehearing denied 126 S.Ct. 724, 163 L.Ed.2d 621. Civil Rights 1352(4)

Surviving relative of individual shot and killed by security guard employed by city housing agency to patrol agency-managed housing project failed to establish deliberate indifference on part of agency in her §§1983 due process action against agency based on argument that training received by guard was inadequate for particular conditions faced by guards at project; there was no evidence guards at project faced extraordinary situations compared to other security guards, and no evidence that guards at project faced conditions comparable to those faced by security guards in other cities who had received much more training. Larkin v. St. Louis Housing Authority Development Corp., C.A.8 (Mo.) 2004, 355 F.3d 1114. Civil Rights 1352(3)

Official is liable under § 1983 for failure to train only where plaintiff establishes that: (1) official failed to train or supervise officers involved, (2) there is causal connection between alleged failure to supervise or train and alleged violation of plaintiff's rights, and (3) failure to train or supervise constituted deliberate indifference to plaintiff's constitutional rights. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1355

In determining adequacy of training provided to police by city, focus must be on the program, not whether particular officers were adequately trained. Palmquist v. Selvik, C.A.7 (Ill.) 1997, 111 F.3d 1332, rehearing and suggestion for rehearing en banc denied. Civil Rights 1352(4)

Student failed to show that school district did not adequately train its employees or that inadequate training amounted to deliberate indifference to rights of persons with whom employees come into contact as would support student's claim that school inadequately trained its employees with regard to implementation of school district

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regulation prohibiting gang symbols. Stephenson v. Davenport Community School Dist., C.A.8 (Iowa) 1997, 110 F.3d 1303, rehearing and suggestion for rehearing en banc denied. Civil Rights 1352(2)

In order to find supervisory official personally liable for unconstitutional acts of his subordinate, it must be shown that he was responsible for supervising the wrongdoer, that a duty to instruct the subordinate to prevent constitutional harm arose from the surrounding circumstances, and that the plaintiff was harmed in the manner threatened as result of official's failure to instruct; receding from *Carter v. Carlson*, 144 U.S.App.D.C. 388, 447 F.2d 358. Haynesworth v. Miller, C.A.D.C.1987, 820 F.2d 1245, 261 U.S.App.D.C. 66. United States 50.2

Sheriff could not be held liable in his individual capacity under §§ 1983 under a supervisor liability theory or a failure to train theory for deputies constitutional violations in stopping vehicle without arguable reasonable suspicion and detaining occupants without arguable probable cause; there was no evidence that sheriff personally participated in the stop of the vehicle or that the deputies were following specific directions from sheriff regarding the stop, detention, or use of force, there was no history of widespread abuse that would have put sheriff on notice of a need to correct the deputies nor any policy or custom that resulted in deliberate indifference to constitutional rights. Beaulah v. Muscogee County Sheriff's Deputies, M.D.Ga.2006, 447 F.Supp.2d 1342. Civil Rights 1358

In action brought by occupants of apartment who were injured when police threw flash-bang device into apartment while executing search warrant, city was not subject to municipal liability under §§ 1983 for inadequacy of police training, absent showing of any specific deficiency in city's training regime, pursuant to which officers were trained, that could have caused the injuries occupants sustained. Taylor v. City of Middletown, D.Conn.2006, 436 F.Supp.2d 377. Civil Rights 1352(4)

Material issues of fact existed as to whether city failed to adequately train its police officers with respect to proper procedure for submitting search warrants to Internet service providers (ISPs) to obtain subscriber information, precluding summary judgment for town on §§ 1983 claim for alleged failure to train that was asserted by Internet service subscriber whose non-content subscriber information was obtained from his ISP by police officers through unsigned search warrant. Freedman v. American Online, Inc., D.Conn.2005, 412 F.Supp.2d 174. Federal Civil Procedure 2491.5

A mistake by a police officer does not establish the inadequacy of a city's training program, as required to hold the city liable under §§ 1983 for inadequate training. Gast v. Singleton, S.D.Tex.2005, 402 F.Supp.2d 794. Civil Rights 1352(4)

Allegations that state officials and police department officials had established inadequate policies and procedures and that officials were responsible for employees that they supervised as part of their duties, stated supervisory liability claim against officials under §§ 1983 arising out of plaintiff's arrest and prosecution for rape, robbery, and weapons law violations. Nunez Gonzalez v. Vazquez Garced, D.Puerto Rico 2005, 389 F.Supp.2d 214. Civil Rights 1395(6)

City was not liable under § 1983 for any Fourth Amendment violations committed by police officers in stopping automobile, conducting pat-down search of passenger, and shooting passenger, where officers were required to attend 40 hours of job-related training and continuing education, and there was no evidence that city had policy or custom of deliberate indifference with respect to excessive force. Holeman v. City of New London, D.Conn.2004, 330 F.Supp.2d 99, reversed in part, appeal dismissed in part 425 F.3d 184. Civil Rights 1352(4)

Governmental defendants could not be held liable under § 1983 on theories of failure to supervise or policy and custom for mistaken identity arrest made pursuant to a valid arrest warrant without some evidence supporting arrestee's view of what a proper identification of arrestees/insurance against wrongful arrest training/policy would look like. Jordan v. Fournier, D.Me.2004, 324 F.Supp.2d 242. Civil Rights 1351(4); Civil Rights

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42 U.S.C.A. § 1983

1352(4)

There was no basis for independent municipal liability against city for alleged violation of minister's First Amendment rights arising from his arrests for obstructing highways and passageways while preaching the gospel; city did not adopt with deliberate indifference a policy of inadequately training its officers on First Amendment issues. Victory Outreach Center v. Melso, E.D.Pa.2004, 313 F.Supp.2d 481. Civil Rights 1352(4)

For a supervisor to be found individually liable under § 1983 for a failure to properly supervise and train an offending employee, the plaintiff must demonstrate that the failure to provide that specific training could reasonably be said to reflect deliberate indifference to or tacit authorization of offending acts. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1355

County could not be held liable for correctional officer's sexual assault on jail inmate on basis of failure to train, where officer had received training on written policies prohibiting improper personal conduct or commission of any felony, and officer had received specific training on what was appropriate supervision of, and conduct with, jail inmates. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Civil Rights 1352(4)

To establish deliberate indifference required for § 1983 claim based on failure to train, plaintiff must show that policymaker knows to moral certainty that her employees will confront given situation, that situation either presents employee with difficult choice of sort that training or supervision will make less difficult or that there is history of employees mishandling the situation, and that wrong choice by employee will frequently cause deprivation of citizen's constitutional rights. Harper v. Southeast Alabama Medical Center, M.D.Ala.1998, 998 F.Supp. 1289. Civil Rights 1352(1)

All that is required for municipality to prevail on § 1983 claim based on theory of inadequate training is compliance with state mandated training standard for its officers. Huong v. City of Port Arthur, E.D.Tex.1997, 961 F.Supp. 1003. Civil Rights 1352(1)

Supervisors of legal assistants who erroneously issued notice of income withholding for child support were not liable for failure to adequately train and supervise their subordinates, where legal assistants were merely negligent and, thus, violated no constitutional right of father. Roush v. Justice, S.D.W.Va.1996, 949 F.Supp. 449, affirmed 149 F.3d 1170. Child Support 442

To establish liability of local governmental entity under § 1983 for failure to adequately train employees to report and to prevent sexual abuse of students, student must prove entity's failure to train its employees in relevant respect evidenced deliberate indifference to rights of students. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1352(2)

For supervisory liability to attach under § 1983, plaintiff must identify specific supervisory practice or procedure that defendants failed to employ, show that existing custom and practice created unreasonable risk of constitutional deprivation, that defendants were aware unreasonable risk existed, that they were indifferent to that risk, and that plaintiff's harm resulted from defendant's failure to adopt specific practice or procedure. Wagner v. Com. of Pa., W.D.Pa.1995, 937 F.Supp. 510. Civil Rights 1355

Former police chief was not liable for failing to adequately train and supervise police officers and others, who allegedly deliberately interfered with pretrial detainee's safety resulting in due process violation and, therefore, chief was entitled to qualified immunity from § 1983 action by detainee's estate after detainee hanged himself with shackles left chained to bars of cell; chief had no direct contact with detainee, no knowledge that he had threatened to commit suicide, and estate offered no evidence that chief either knew or should have known of risk generally that pretrial detainees might commit suicide. Estate of Olivas By and Through Miranda v. City and County of

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Denver, D.Colo.1996, 929 F.Supp. 1329. Civil Rights 1358; Civil Rights 1376(6)

Need for more or better training alone, sufficient to avoid alleged injury caused by use of excessive force in carrying out arrest, does not trigger supervisor's § 1983 liability. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1358

For purposes of establishing deliberate indifference in § 1983 action brought in connection with alleged sexual misconduct of teacher toward student, member of board of education, superintendent and principal had implied notice that failure to train would likely result in violation of constitutional rights; in light of clear constitutional rights of students to be free from sexual abuse, which was well established by 1987-88, and potentially disastrous consequences of violation of those rights, need to train was patently obvious. Bolon v. Rolla Public Schools, E.D.Mo.1996, 917 F.Supp. 1423. Civil Rights 1352(2)

Under § 1983, supervisor is generally not liable under theory of vicarious liability for actions of subordinate that amount to constitutional deprivation unless supervisor was personally involved in wrongful conduct or unless that supervisor implements policy so deficient that policy itself is repudiation of constitutional rights and is moving force of constitutional violation. Fickes v. Jefferson County, E.D.Tex.1995, 900 F.Supp. 84. Civil Rights 1355

To recover under § 1983 from city for alleged failure adequately to train police officer, plaintiff must show that inadequate training represented city policy and that need for better training was so obvious and so likely to result in constitutional violation that municipality can be said to have been deliberately indifferent to the need; there must also be direct causal link between policy, custom, or deficient training and alleged constitutional violation. Schilling v. Swick, W.D.Mich.1994, 868 F.Supp. 904. Civil Rights 1352(4)

To hold supervisory official liable under § 1983, plaintiff must identify with particularity what supervisory official failed to do that demonstrates his deliberate indifference, and demonstrate close causal relationship between identified deficiency and ultimate injury. Kis v. County of Schuylkill, E.D.Pa.1994, 866 F.Supp. 1462. Civil Rights 1355

Supervisory officials cannot be vicariously liable for actions of subordinates. Baker v. Putnal, S.D.Tex.1994, 865 F.Supp. 389, affirmed in part, reversed in part 75 F.3d 190. Civil Rights 1355

Mere negligence in training employees will not create § 1983 claim against city; instead, failure to train must amount to "deliberate indifference" to rights of persons with whom police come into contact. Malignaggi v. County of Gloucester, D.N.J.1994, 855 F.Supp. 74. Civil Rights 1352(4)

In order for municipality to be liable for damages under § 1983, decision makers must have acted in unconstitutional manner, either individually or collectively, and either directly or through failure to provide proper training or other preconditions for avoiding unconstitutional acts. Suss v. American Soc. for Prevention of Cruelty to Animals, S.D.N.Y.1994, 855 F.Supp. 66. Civil Rights 1343; Civil Rights 1352(1)

Arrestee failed to state claim against municipality arising out of its alleged failure to train officers properly, which allegedly led to his being shot in leg during chase, where plaintiff did not show that purported failure to train was cause of his injuries. Deodatti Colon v. Rosado Rivera, D.Puerto Rico 1993, 846 F.Supp. 156. Civil Rights 1352(4)

While supervisory officials may incur liability under § 1983 without personal involvement in particular act of subordinate, there must be evidence establishing improper training or supervision of subordinate officers so as to constitute breach of duty owed by superior; supervisory officer may not be held liable under vicarious liability theory standing alone. Braud v. Painter, M.D.La.1990, 730 F.Supp. 1. Civil Rights 1355

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Supervisory officials may be liable under § 1983 if alleged deprivation resulted from failure to properly train or supervise personnel, or from policy or custom for which official was responsible. Dennis v. Thurman, C.D.Cal.1997, 959 F.Supp. 1253. Civil Rights 1355

Jury verdict that city police officers did not use excessive force against arrestee or conduct an illegal search of arrestee warranted dismissal of arrestee's claims against city and police chief for promulgating allegedly invalid policies, procedures, and customs, in §§ 1983 action; any verdict against police chief or city could not be harmonized with jury verdict on excessive force and illegal search claims against officers. Coleman v. Rieck, C.A.8 (Neb.) 2005, 154 Fed.Appx. 546, 2005 WL 3068056, Unreported. Civil Rights 1424

Absent constitutional violation on the part of law enforcement officers who shot armed individual who advanced on one officer after being repeatedly advised to drop his knives, officers' supervisor could not be liable under §§ 1983 for individual's death. Huggins v. Weider, C.A.4 (S.C.) 2004, 105 Fed.Appx. 503, 2004 WL 1729793, Unreported. Civil Rights 1358

434. ---- Municipalities, vicarious liability, liability generally

Municipality cannot be held vicariously liable under § 1983 for its employees' unconstitutional acts. Wedemeier v. City of Ballwin, Mo., C.A.8 (Mo.) 1991, 931 F.2d 24. Civil Rights 1345

Vicarious liability under the common law doctrine of respondeat superior cannot be imposed against a municipality in a §§ 1983 case. Batiste v. City of Beaumont, E.D.Tex.2005, 421 F.Supp.2d 969. Civil Rights 1345

When an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality for purposes of establishing municipal liability under §§ 1983; similarly, when a subordinate's decision is subject to review by the municipality's authorized policymakers, they have retained the authority to measure the official's conduct for conformance with their policies. Russo v. City of Hartford, D.Conn.2004, 341 F.Supp.2d 85. Civil Rights 1351(1)

Municipality cannot be held vicariously liable under § 1983 for unconstitutional actions of its employees under theory of respondeat superior, but rather to obtain judgment against municipality, plaintiff must prove that municipality itself supported violation of rights alleged; thus, § 1983 liability attaches to municipality only when execution of government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts constitutional injury complained of. Hargrave v. County of Atlantic, D.N.J.2003, 262 F.Supp.2d 393. Civil Rights 1345; Civil Rights 1351(1)

Municipality cannot be held liable under § 1983 for purported constitutional civil rights violations under ordinarily applicable principles of either vicarious liability or respondeat superior. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1345

Municipalities are liable under federal civil rights statutes only if their policies cause constitutional tort; they are not vicariously liable for constitutional torts of their agents. Warzon v. Drew, E.D.Wis.1994, 855 F.Supp. 1017, affirmed 60 F.3d 1234. Civil Rights 1345

435. ---- Cities, vicarious liability, liability generally

City is not vicariously liable under § 1983 for constitutional torts of its agents; it is only liable when it can be fairly said that city itself is wrongdoer. Collins v. City of Harker Heights, Tex., U.S.Tex.1992, 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1345

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42 U.S.C.A. § 1983

City was not liable for alleged violation of firefighters' First Amendment rights, based on city manager's decision to initiate administrative disciplinary proceedings against firefighters, allegedly in retaliation for their political affiliation, where city manager had absolute immunity, and sole basis for asserting municipal liability against city was city manager's alleged status of chief policymaker for city. Contes v. Porr, S.D.N.Y.2004, 345 F.Supp.2d 372. Civil Rights 1349

City, whose police officers stopped a vehicle with six passengers, was not liable in passengers' § 1983 action alleging violation of their Fourth Amendment rights due to city's alleged policy of targeting vehicles, where passengers failed to establish that officers violated their constitutional rights. Lewis v. City of Topeka, Kansas, D.Kan.2004, 305 F.Supp.2d 1209. Civil Rights 1348

Baltimore City, as entity distinct from its police department under Maryland law, did not wield enough control over police department to be subject to liability under § 1983 for department's actions regarding warrantless search. Chin v. City of Baltimore, D.Md.2003, 241 F.Supp.2d 546. Civil Rights 1348

City cannot be held vicariously liable under § 1983 for conduct of its employees. Schilling v. Swick, W.D.Mich.1994, 868 F.Supp. 904. Civil Rights 1345

City and county could not be held vicariously liable on theory of respondeat superior in civil rights action based on alleged unconstitutional arrest by two of its police officers. Tokuhama v. City and County of Honolulu, D.Hawai'i 1989, 751 F.Supp. 1385. Civil Rights 1348

436. ---- Counties, vicarious liability, liability generally

That county could be liable not only for participation in civil rights conspiracy by county sheriff, who was county's final policymaker in area of law enforcement, but could be held directly or vicariously liable as well for actions of sheriff's alleged coconspirator would not violate rule against imposing vicarious liability when sole nexus between employer and tort is fact of employer-employee relationship. Turner v. Upton County, Tex., C.A.5 (Tex.) 1990, 915 F.2d 133, certiorari denied 111 S.Ct. 788, 498 U.S. 1069, 112 L.Ed.2d 850. Conspiracy 13

County was not liable under § 1983 for alleged racial and sexual harassment of black female food service worker at dietary unit of nursing home operated through county's Department of Human Services (DHS), absent evidence that food service manager or assistant manager or deputy director of county's DHS, the named individual defendants in action, possessed final decisionmaking authority with regard to county's anti-harassment policies, practices and procedures. Hargrave v. County of Atlantic, D.N.J.2003, 262 F.Supp.2d 393. Civil Rights 1351(5)

For purposes of arrestee's § 1983 civil rights action alleging malicious prosecution and Fourth Amendment violation, county, as governmental entity, could not be held vicariously liable for acts of its employees, even if they were violative of individual civil rights under § 1983. Sanders v. Fort Bend County, Tex., S.D.Tex.1996, 932 F.Supp. 894. Civil Rights 1348

County could not be subjected to vicarious liability under § 1983; it could not be liable solely because it employed a tort-feasor. Wilde v. County of Kandiyohi, D.Minn.1993, 811 F.Supp. 446, affirmed 15 F.3d 103. Civil Rights 1345

437. ---- Towns, vicarious liability, liability generally

Alleged tort liability of county arising from its alleged unlawful refusal to issue occupancy permits to developers for condominiums in question was not a basis for invoking civil rights statute to obtain monetary relief against

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newly developed town as a successor to county on basis of vicarious liability; aside from fact that county remained in existence. Lodestar Co. v. Mono County, E.D.Cal.1986, 639 F.Supp. 1439.

City and two townships could not be held vicariously liable for alleged wrong which occurred while their police officers were arresting, "booking," and incarcerating plaintiff because officers were engaged in police activity which is a government function entitled to immunity, notwithstanding plaintiff's contention that conduct of officers in using excessive force during arrest was nongovernmental. Smith v. Yono, E.D.Mich.1985, 613 F.Supp. 50. Civil Rights 1376(3)

Municipalities may be held vicariously liable for official acts of its employees. Mui v. Dietz, N.D.Ill.1983, 559 F.Supp. 485. Municipal Corporations 745

438. ---- Corporations, vicarious liability, liability generally

Private corporate employer may not be vicariously liable for civil rights violations of its employees. Temple v. Albert, S.D.N.Y.1989, 719 F.Supp. 265. Civil Rights 1336

439. ---- Hotels, vicarious liability, liability generally

Hotel could be vicariously liable for acts of its security guard if security guard violated plaintiff's constitutional rights by detaining plaintiff and by signing complaint against him. Carr v. City of Chicago, N.D.Ill.1987, 669 F.Supp. 1418. Civil Rights 1341

440. ---- Police officers, vicarious liability, liability generally

Police interrogator could be held liable under §§ 1983 for allegedly violating police officer's Fifth Amendment rights by threatening officer's termination to compel statements that were later used against officer at trial, even though only representative of state who "used" statements at trial was prosecutor, where prosecution was natural consequence of interrogator's action. McKinley v. City of Mansfield, C.A.6 (Ohio) 2005, 404 F.3d 418, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 1026, 163 L.Ed.2d 854. Civil Rights 1358; Civil Rights 1359

Property owner's Fourth Amendment claim against police officers, arising from their allegedly negligent execution of search warrant at property, was personal, and could not be asserted vicariously. Bonds v. Cox, C.A.6 (Tenn.) 1994, 20 F.3d 697. Civil Rights 1332(4)

Desk officer at police station, chief of police, and county were not liable for strip search of pretrial detainee, absent evidence that desk officer participated in that search or that search policy promulgated by chief was unconstitutional; chief could not be vicariously liable for acts of his subordinates or on basis of failure to adequately supervise or control their conduct. Abshire v. Walls, C.A.4 (Md.) 1987, 830 F.2d 1277. Civil Rights 1358

Arrestee did not state civil rights claim against supervisors in connection with arresting officers' alleged illegal detention of arrestee in not taking him before judge prior to his incarceration, absent some connection between alleged illegal confinement and supervisors' alleged deficiencies in selecting and training officers and alleged indifference to officers' actions. Garcia Rodriguez v. Andreu Garcia, D.Puerto Rico 2005, 403 F.Supp.2d 174. Civil Rights 1358

While even one action by a chief policy-maker can constitute a "policy" for purposes of *Monell*, which holds municipalities liable under §§ 1983 for violations of federal law that occur pursuant to official governmental

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policy, not every action of a chief policy-maker automatically becomes "policy" for *Monell* purposes. Travis v. Village of Dobbs Ferry, S.D.N.Y.2005, 355 F.Supp.2d 740. Civil Rights 1351(1)

Even if officer's fatal shooting of victim amounted to constitutional deprivation, this single incident was not enough to establish § 1983 liability on part of city; officer had completed, when hired, all minimum training requirements set by state, police department had policies and practices requiring that excessive force never be used, and victim's relatives failed to show that city was deliberately indifferent in adopting or failing to adopt regulations related to use of force. Huong v. City of Port Arthur, E.D.Tex.1997, 961 F.Supp. 1003. Civil Rights 1351(4); Civil Rights 1352(4)

Police officers who were not present at time of arrest were entitled to qualified immunity from arrestee's § 1983 claim alleging that arrestee was illegally detained while arresting officer prepared complaint for resisting arrest, which arrestee claimed was "trumped up" charge, as officers who were not present would have no reason to suspect that resisting arrest charge was not legitimate. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1376(6)

Police officer who does not prevent fellow officer's use of allegedly excessive force despite having had opportunity to intervene may be held liable in federal civil rights action. Crawford By and Through Crawford v. City of Kansas City, Kan., D.Kan.1997, 952 F.Supp. 1467. Civil Rights 1088(2)

Police chief could not be held directly liable in his individual capacity for actions of other members of police department which occurred when he was not present. Handle v. City of Little Rock, E.D.Ark.1991, 772 F.Supp. 434. Civil Rights 1358

Police officers who participated in executing search warrant but who were not accused of striking civil rights plaintiff were not derivatively liable for the actions of the officers who were accused of striking the plaintiff. Willis v. Freeman, C.A.7 (Ill.) 2003, 83 Fed.Appx. 803, 2003 WL 22852988, Unreported. Civil Rights 1358

441. ---- Prison officials, vicarious liability, liability generally

Alleged unreasonable restraint of mentally ill inmate that may have been partly attributable to prison guards' failure to know of his psychiatric problems was not itself sufficient to support imposition of supervisory liability on state corrections commissioner; restraint was not a function of any inadequate training or other supervisory failure, but resulted from staff miscommunication in failing to forward inmate's full psychiatric records at time that he was transferred from one prison facility to another. Ziemba v. Armstrong, C.A.2 (Conn.) 2005, 430 F.3d 623. Civil Rights 1358

Vicarious civil rights liability could not be imposed on warden for guard's negligence and possible deliberate indifference to inmate's right to be free from violent attacks, in leaving post and permitting prisoner who had previously been involved in altercations with inmate to enter inmate's cell and stab him with homemade weapon. Bailey v. Wood, C.A.8 (Minn.) 1990, 909 F.2d 1197. Civil Rights 1358

Texas Commission on Jail Standards could not be held vicariously liable under Section 1983 for acts of county officials in maintenance of their jails. Bush v. Viterna, C.A.5 (Tex.) 1986, 795 F.2d 1203. Civil Rights 1348

Inmate failed to state retaliation claim against wardens who allegedly failed to stop corrections officer's harassment of him for failing to serve as prison informant or "snitch," absent any evidence of their personal involvement; supervisory liability did not exist under §§ 1983, and one warden's alleged motivation, a single event occurring almost 20 years earlier, was too remote. David v. Hill, S.D.Tex.2005, 401 F.Supp.2d 749. Civil Rights 1358

There was no causal connection between actions or inactions of prison inspector who was responsible for

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investigating incidents of alleged abuse of inmates by prison guards and reporting his findings to others and alleged unconstitutional beating of inmate by guards, and thus, inspector was not liable on §§ 1983 supervisory liability claim brought by estate of inmate who died after alleged beating, since inspector was neither responsible for nor had authority to prevent or correct problems relating to abusive guards. Valdes v. Crosby, M.D.Fla.2005, 390 F.Supp.2d 1084, affirmed 2006 WL 1474726. Civil Rights 1358

Warden of prison was subject to supervisory liability under §§ 1983 for infliction of cruel and unusual punishment on inmate, and denial of due process, occurring when inmate was placed on mattress, with arms and legs restrained, and strap across his chest, for period of 47 hours and 20 minutes, with occasional breaks, even though warden had no involvement with particular case; warden had read incident reports of eight similar cases of inordinate five-point restraint, without taking corrective action. Sadler v. Young, W.D.Va.2004, 325 F.Supp.2d 689, reversed 118 Fed.Appx. 762, 2005 WL 19486. Civil Rights 1358

Supervisory prison officials may be held liable under statute that prohibits deprivation of constitutional right under color of state law, if they have direct responsibility for actions of employees who engage in misconduct, but are not vicariously liable. LaMarca v. Turner, S.D.Fla.1987, 662 F.Supp. 647, appeal dismissed 861 F.2d 724. Civil Rights 1358

There was no evidence that supervisory prison officials were responsible for training or supervising other correctional officers, or reasonably should have known or did know that any correctional officer would inflict impermissible injury on inmate or otherwise treat inmate in constitutionally deficient manner, thus precluding inmate from establishing requisite causal connection for imposition of § 1983 liability on supervisory officials in connection with injuries sustained during course of cell extraction. Dennis v. Thurman, C.D.Cal.1997, 959 F.Supp. 1253. Civil Rights 1358

442. ---- Sheriffs, vicarious liability, liability generally

Sheriff may not be held liable in civil rights action based solely on theory of respondeat superior or vicarious liability. Palmer v. Sanderson, C.A.9 (Wash.) 1993, 9 F.3d 1433. Civil Rights 1358

Sheriff was not vicariously liable under section 1983 for acts of his deputies. Nagle v. Lee, C.A.5 (La.) 1987, 807 F.2d 435, on remand 686 F.Supp. 148. Civil Rights 1358

Sheriff's department and county could not be held liable under § 1983 under failure to train theory for off-duty deputy sheriff's shooting of his girlfriend's former boyfriend who had broken into girlfriend's house, where only evidence in support of theory was affidavit of "expert" stating his opinion that deputy should not have been trained as police officer. Hudson v. Maxey, E.D.Mich.1994, 856 F.Supp. 1223. Civil Rights 1352(4)

Sheriff was not vicariously liable under § 1983 for acts of his deputy. Williams v. Divittoria, E.D.La.1991, 760 F.Supp. 564. Civil Rights 1358

443. ---- State officials, vicarious liability, liability generally

Under provision of this section that citizen whose constitutional rights have been violated may sue a state official for redress, state official cannot be held vicariously liable on grounds of respondeat superior for torts of subordinates. Walker v. University of Pittsburgh, W.D.Pa.1978, 457 F.Supp. 1000. Civil Rights 1355

444. ---- Sureties, vicarious liability, liability generally

Surety on bail bond could be found liable under this section on basis of vicarious liability for a beating and robbery allegedly administered by its agents. Hill v. Toll, E.D.Pa.1970, 320 F.Supp. 185. Civil Rights 1339

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42 U.S.C.A. § 1983

445. ---- Stores, vicarious liability, liability generally

Department store could not be held vicariously liable under this section for actions of its officer. Draeger v. Grand Central, Inc., C.A.10 (Utah) 1974, 504 F.2d 142.

446. ---- Particular cases vicarious liability not established, liability generally

In the absence of testimony that village policymakers were aware of the alleged need for additional training for their police officers in dealing with persons exhibit aberrant behavior, there was no showing that city's actions were cause of deprivation of civil rights of person who was shot by police officers during confrontation. Palmquist v. Selvik, C.A.7 (Ill.) 1997, 111 F.3d 1332, rehearing and suggestion for rehearing en banc denied. Civil Rights 1352(4)

Failure to establish primary liability on part of police officers, for alleged misconduct, precluded secondary claim for misconduct arising out of police conduct, brought by civil rights claimant against borough council, police department and mayor. Mayer v. Gottheiner, D.N.J.2005, 382 F.Supp.2d 635. Civil Rights 1348

Movie owner, which allegedly directed behavior of its manager and made rules as to whom to eject from theater, could not be held vicariously liable under Section 1983 for actions of off-duty police officers it employed in allegedly beating and ill treating plaintiffs at cinema manager's office. Barton v. Gulf States Entertainment, M.D.La.1987, 655 F.Supp. 782. Civil Rights 1341

Private hospital could not be held vicariously liable under § 1983 for any constitutional violation committed by its paramedics who responded to 911 call and transported individual with communications disability to hospital against his wishes. Green v. City of New York, S.D.N.Y.2004, 2004 WL 213009, Unreported. Civil Rights 1341

447. Successor liability, liability generally

Section 1983 judgment against Louisiana clerk of court in his personal and official capacities was binding upon successor clerk of court in his official capacity absent showing that notice to prior clerk of court was inadequate or improper, or that prior clerk was denied opportunity to respond to plaintiffs' allegations. Gegenheimer v. Galan, C.A.5 (La.) 1991, 920 F.2d 307. Civil Rights 1448

448. Mistake or ignorance, liability generally

Federal officials will not be liable for mere mistakes in judgment, whether the mistake is one of fact or one of law; but there is no substantial basis for holding that executive officers generally may with impunity discharge their duties in a way that is known to them to violate the Constitution or in a manner that they should know transgresses a clearly established constitutional rule. Butz v. Economou, U.S.N.Y.1978, 98 S.Ct. 2894, 438 U.S. 478, 57 L.Ed.2d 895, on remand 466 F.Supp. 1351. United States 50.1

449. Omissions or inaction, liability generally--Generally

Members of governing board cannot be vicariously liable under section 1983 for conduct by employees, or for failing to overrule that conduct. Weisbuch v. County of Los Angeles, C.A.9 (Cal.) 1997, 119 F.3d 778. Civil Rights 1355

To impose liability on local governmental entity for failing to act to preserve constitutional rights, § 1983 plaintiff must establish: that he possessed constitutional right of which he was deprived; that municipality had a policy;

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that this policy amounted to deliberate indifference to plaintiff's constitutional right; and that policy was moving force behind constitutional violation. Oviatt By and Through Waugh v. Pearce, C.A.9 (Or.) 1992, 954 F.2d 1470. Civil Rights 1351(1)

Although acts or omissions of no one employee of local government may violate an individual's constitutional rights, the combined acts or omissions of several employees acting under governmental policy or custom may violate an individual's constitutional rights; governing *Monell* rule of municipal liability does not require that a jury find an individual defendant liable before it can find a local government body liable under section 1983. Garcia v. Salt Lake County, C.A.10 (Utah) 1985, 768 F.2d 303. Civil Rights 1351(1)

This section authorizing civil action for deprivation of civil rights against person acting under color of law is applicable in case of acts of omission as well as commission. Azar v. Conley, C.A.6 (Ohio) 1972, 456 F.2d 1382. Civil Rights 1039

Police officer was not liable, under § 1983, for his alleged failure to prevent fellow officer from intentionally wrenching arrestee's neck, after arrestee kick first officer in the right upper thigh; according to first officer's uncontradicted testimony, the kick happened so quickly that he was mainly concerned with assessing whether he was injured and preventing further kicks. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1088(4)

Acts of omission, as well as commission, can serve as the basis for finding an unconstitutional policy or custom actionable under § 1983. Gausvik v. Perez, E.D.Wash.2002, 239 F.Supp.2d 1108. Civil Rights 1351(1)

Governmental inaction or individual nonfeasance is not actionable if failure to take any steps does not make another worse off. Pinder v. Commissioners of Cambridge in City of Cambridge, D.Md.1993, 821 F.Supp. 376, affirmed 33 F.3d 368, rehearing granted and vacated, on rehearing 54 F.3d 1169, certiorari denied 116 S.Ct. 530, 516 U.S. 994, 133 L.Ed.2d 436. Municipal Corporations 723

Mere inaction or acquiescence by government in private wrongful conduct will not convert private right of action into government action, for purposes of civil rights claim. New Hampshire Podiatric Medical Ass'n v. New Hampshire Hosp. Ass'n, D.N.H.1990, 735 F.Supp. 448. Civil Rights 1325

Under this section, liability for omission to act requires showing of exceptional circumstances and conduct so grossly incompetent, inadequate or excessive as to shock the conscience or to be intolerable to basic fairness. Davis v. Oklahoma Dept. of Corrections, W.D.Okla.1980, 516 F.Supp. 5. Civil Rights 1401

450. ---- Duty or responsibility to act, omissions or inaction, liability generally

In action alleging that state social workers failed to protect a minor Native American child from abuse by his natural parents, any allegation that social workers misjudged danger to child, or erred in concluding that they had to defer to Bureau of Indian Affairs (BIA) in assessing and responding to that danger, did not violate child's equal protection rights or discriminate against him; equal protection was not implicated by allegations of negligence or mistake. Roe ex rel. Roe v. Keady, C.A.10 (Kan.) 2003, 329 F.3d 1188. Constitutional Law 242.1(4); Indians 6.6(1)

Liability under §§ 1983 for nonfeasance of affirmative duties by governmental custodian requires that: (1) omissions were substantial factor leading to denial of constitutionally protected liberty or property interest, and (2) officials in charge of agency being sued displayed deliberate indifference. Phillips ex rel. Green v. City of New York, S.D.N.Y.2006, 453 F.Supp.2d 690. Constitutional Law 278(1)

A state may be liable under Due Process Clause of Fourteenth Amendment for failure to protect person or property

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from private actions only if placed in a custodial relationship with the individual or if the state created the danger that resulted in harm to the individual; however, a state actor may be subject to liability for an action by private actors if the state actor directed, aided, or abetted the violation, and an officer has the duty to intercede on behalf of a private individual whose constitutional rights are being violated in the officer's presence. Merriman v. Town of Colonie, N.Y., N.D.N.Y.1996, 934 F.Supp. 501, affirmed 112 F.3d 504. Constitutional Law 254(4)

The greater the duty a supervisor has to control those employees who actually committed constitutional violation, the less specific knowledge of offending conduct supervisor will be required to have; once duty is established, failure to act is actionable under this section. Santiago v. City of Philadelphia, E.D.Pa.1977, 435 F.Supp. 136. Civil Rights 1355

451. ---- Deliberate indifference, omissions or inaction, liability generally

Genuine issue of material fact existed as to whether three members of jail staff acted with deliberate indifference by failing to seek outside assistance for ten minutes after finding arrestee hanging in jail cell, precluding summary judgment in §§ 1983 action related to arrestee's suicide. Bradich ex rel. Estate of Bradich v. City of Chicago, C.A.7 (Ill.) 2005, 413 F.3d 688. Federal Civil Procedure 2491.5

Evidence that district attorney's office occasionally had to request documents from sheriff's office, that sheriff did not maintain log of all documents sent to district attorney, and that record-keeper for sheriff had no formal training, was insufficient to establish deliberate indifference or knowledge on part of sheriff that *Brady* violation, such as one which resulted in suspect's wrongful conviction and imprisonment for murder, would be highly likely consequence of manner in which sheriff's office managed its records or transferred records to district attorney, as required to impose liability on sheriff under § 1983. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1358

City's failure to train its police officers for off-duty security positions did not amount to deliberate indifference to rights of persons with whom police officers came in contact and could not form basis for municipal liability under federal civil rights statute in action brought by arrestee who was allegedly assaulted by off-duty officer, absent evidence of pattern of constitutional violations occurring while police officers were performing off-duty security work. Robles v. City of Fort Wayne, C.A.7 (Ind.) 1997, 113 F.3d 732. Civil Rights 1352(4)

To meet deliberate indifference standard for liability under § 1983, failure to train police adequately must reflect deliberate or conscious choice made by city policymakers; plaintiff must also show that city's policy actually caused constitutional injury. Fagan v. City of Vineland, C.A.3 (N.J.) 1994, 22 F.3d 1283. Civil Rights 1352(4)

To succeed on a §§ 1983 claim on a failure to intervene theory, a plaintiff must prove that the defendant failed to intervene with deliberate or reckless disregard for the plaintiff's constitutional right. Koutnik v. Brown, W.D.Wis.2004, 351 F.Supp.2d 871. Civil Rights 1039

Alleged conduct by commissioner of child welfare administration of failing to act in response to Jewish mother's complaints regarding administration's failure to place her child with a Jewish foster family did not amount to deliberate indifference, as required for commissioner to be liable in his personal capacity in mother's § 1983 claim alleging violation of her First Amendment free exercise rights. Bruker v. City of New York, S.D.N.Y.2004, 337 F.Supp.2d 539. Civil Rights 1360

Official may be personally liable for constitutional violation of another's rights under § 1983 if he acts or fails to act with deliberate or reckless disregard of plaintiff's constitutional rights. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1354

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42 U.S.C.A. § 1983

Civil rights plaintiff may satisfy burden of proving deliberate indifference on part of municipality to use of excessive force by demonstrating that need for more supervision to protect against excessive force was obvious, which in turn may be demonstrated by existence of repeated complaints of civil rights violations, and corresponding absence or inadequacy of investigations or actions by municipality to prevent future incidents. Galindez v. Miller, D.Conn.2003, 285 F.Supp.2d 190. Civil Rights 1352(4)

Mother of public elementary school student failed to establish deliberate indifference on part of school principal and teacher, as required to hold them liable under § 1983 for their alleged violation of the student's equal protection rights when they allegedly failed to protect the student from racial harassment and assaults by other students, where the allegations were based on several incidents where other students shut the door on him just as he was entering or exiting a doorway and made sarcastic comments as if to suggest they were unaware of his presence when they closed the door; there was virtually nothing to suggest that the incidents were racially motivated, and the offending students were punished. Crispim v. Athanson, D.Conn.2003, 275 F.Supp.2d 240. Constitutional Law 220(3); Schools 147

Failure of municipality to adopt policy cannot serve as basis for § 1983 liability unless municipality's inaction amounts to deliberate indifference; when need for policy action is so obvious and likelihood of violation of constitutional rights so high, policy makers of local government entity are deliberately indifferent to the need. McMillan v. Department of Interior, D.Nev.1995, 907 F.Supp. 322, affirmed 87 F.3d 1320, certiorari denied 117 S.Ct. 995, 519 U.S. 1132, 136 L.Ed.2d 875. Civil Rights 1351(1)

Government official may be held personally liable, even absent direct participation in unlawful activity, if official acted or failed to act with deliberate or reckless disregard for plaintiff's rights. Martin v. O'Grady, N.D.Ill.1990, 738 F.Supp. 1191. Officers And Public Employees 114

African-American municipal employee failed to establish that municipality's management was deliberately indifferent to his complaints, which he claimed was factual basis for establishing municipality's liability for alleged disparate treatment and racial harassment/hostile work environment; municipality's policies provide procedures for employee complaints about prohibited discriminatory conduct, employee delayed filing an internal complaint under these policies and, once he did, municipality conducted an investigation including interviews with employee, supervisors, and co-workers. Mitchell v. City and County of Denver, C.A.10 (Colo.) 2004, 112 Fed.Appx. 662, 2004 WL 2287756, Unreported. Civil Rights 1352(5)

452. ---- Intent or knowledge, omissions or inaction, liability generally

Department of Family Services case worker and supervisors were not liable under §§ 1983 for substantive due process violation to father of child who died of abusive head trauma while in foster care, absent showing that case worker and supervisors were not only aware of facts from which an inference could have been drawn that a substantial risk of serious harm to child existed, but actually drew such an inference, or that they acted intentionally to harm child. James ex rel. James v. Friend, C.A.8 (Mo.) 2006, 458 F.3d 726. Infants 17

City's chief inspector was entitled to qualified immunity, in African-American property owner's §§ 1983 retaliation claim, alleging that inspector order the towing of property owner's sister's mobile home restaurant in retaliation for owner filing suit challenging officials' failure to maintain drainage ditch along owner's property, absent showing that inspector was aware of owner's lawsuit, or that mobile home restaurant was owned by property owner's sister. Wilson v. Northcutt, C.A.8 (Ark.) 2006, 441 F.3d 586, rehearing and rehearing en banc denied. Civil Rights 1376(4)

Issues of fact existed as to whether territorial corrections official in charge of making recommendations as to granting of good-time credits should have been aware of fact that inmate's recorded credits were incorrect, and as to whether official's inaction resulted in prolonging inmate's incarceration, precluding summary judgment in

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inmate's §§ 1983 action alleging that too-long sentence violated her constitutional rights. Ayuso-Figueroa v. Rivera-Gonzalez, D.Puerto Rico 2005, 456 F.Supp.2d 309. Federal Civil Procedure 2491.5

In "custom" cases, governmental liability under § 1983 is attributed through a policymaker's actual or constructive knowledge of and acquiescence in the unconstitutional custom or practice. Gausvik v. Perez, E.D.Wash.2002, 239 F.Supp.2d 1108. Civil Rights 1351(1)

Liability under this section may be imposed on an official who knowingly acquiesces in the misconduct of others. King v. Cuyler, E.D.Pa.1982, 541 F.Supp. 1230. Civil Rights 1354

Arrestee failed to establish that police officer, who remained in booking room when fellow officers took arrestee to holding cell where alleged assault occurred, had active, personal involvement in alleged assault and conspiracy, as required to sustain a civil rights claim against booking officer; there was no evidence that officer who booked arrestee had any knowledge of alleged assault by fellow officers, and no evidence suggesting that booking officer was informed by her colleagues of alleged assault. McFeeter v. Jones, C.A.6 (Ohio) 2004, 104 Fed.Appx. 552, 2004 WL 1597969, Unreported. Civil Rights 1358

453. ---- Number of incidents, omissions or inaction, liability generally

Allegations by state inmates that prison conditions failed to comply with constitutional standards as result of more than 40 unrelated incidents of assault by different corrections officers or other inmates occurring over 10 years at 13 separate facilities did not establish the existence of a policy or practice existing throughout the system, or within a single state department of correctional services (DOCS) facility, sufficient to state a § 1983 claim for constitutional violations. Webb v. Goord, C.A.2 (N.Y.) 2003, 340 F.3d 105, certiorari denied 124 S.Ct. 1077, 540 U.S. 1110, 157 L.Ed.2d 897. Civil Rights 1351(4)

City was not liable for negligently failing to correct detective's mistaken identification of person as suspect who sold him crack cocaine, or preventing mistake from occurring; her description of only single incident in which detective was mistaken in his identification was not type of persistent, often repeated violation amounting to custom or policy required for § 1983 municipal liability. Campbell v. City of San Antonio, C.A.5 (Tex.) 1995, 43 F.3d 973. Civil Rights 1351(4)

A single incident or isolated incidents are normally insufficient to establish supervisory inaction upon which liability under this section may be based. Avery v. Burke County, C.A.4 (N.C.) 1981, 660 F.2d 111. Civil Rights 1352(1)

454. ---- Grievance procedures, omissions or inaction, liability generally

In determining whether officials exhibit acquiescence in unconstitutional action so as to be liable under 42 U.S.C.A. § 1983, officials' establishment of grievance mechanism which plaintiff has used and about which plaintiff does not complain does not necessarily absolve officials from liability; functional analysis of workings of grievance process and relation of official to such process is appropriate test. Kendel v. Orr, D.Kan.1985, 628 F.Supp. 326. Civil Rights 1359

455. ---- Appointment of counsel, omissions or inaction, liability generally

Claimed omission on part of state district judge, in allegedly failing to appoint counsel to defend indigent defendant in timely fashion, was omission in his capacity as agent of state and would not support § 1983 claim against county. Clanton v. Harris County, Tex., C.A.5 (Tex.) 1990, 893 F.2d 757. Civil Rights 1088(5)

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42 U.S.C.A. § 1983

456. ---- Use of force, omissions or inaction, liability generally

Deputy sheriff who did nothing when another deputy used excessive force against woman who protested her husband's arrest could be held liable in civil rights action for injuries suffered by the woman. Thomas v. Frederick, W.D.La.1991, 766 F.Supp. 540. Civil Rights 1358

457. ---- Particular cases omission or inaction not present, omissions or inaction, liability generally

Secretary of Labor could not be held liable for alleged violation of plaintiff's constitutional rights arising out of her termination from employment by city, even though plaintiff's salary had been paid from funds made available to city under Comprehensive Employment and Training Act of 1973, § 801 et seq. of Title 29, where plaintiff did not allege any actual omissions by Secretary or any employee of Department of Labor relating to termination of her employment, Secretary was not even informed of dismissal until almost three years later when suit was filed, and city defendants, in deciding to discharge plaintiff, were not acting as servants of Secretary and therefore their actions were not attributable to him. De Tore v. Local No. 245 of Jersey City Public Emp. Union, C.A.3 (N.J.) 1980, 615 F.2d 980, on remand 511 F.Supp. 171. Civil Rights 1363

City police detective had no duty under federal law or constitution to investigate criminal activity or actions of police officers responding to reports of suspected criminal activity, and thus detective could not be held liable under § 1983 for failing to investigate arresting officer's alleged use of excessive force. Hale v. Vance, S.D.Ohio 2003, 267 F.Supp.2d 725. Civil Rights 1088(2); Civil Rights 1358

458. Authority to act, liability generally--Generally

Police chief could be held personally liable for damages flowing from police officer's formal termination by city manager, although only manager had actual authority to fire officer and chief's authority was technically limited to suspending officer or recommending his termination; manager, as well as investigating entities that made recommendations to manager, listened to chief's recommendation and relied on that recommendation for dismissal to some extent, so chief could be held liable to officer on claim that dismissal violated officer's First Amendment rights. Wulf v. City of Wichita, C.A.10 (Kan.) 1989, 883 F.2d 842, rehearing denied. Civil Rights 1359

Officers and supervising psychiatrist of state mental institution, who had imposed work program on inmate and had power to alter program, were liable to suit under this section, even though they were state administrative officials, on account of their allegedly having subjected inmate to involuntary servitude, peonage or slavery. Jobson v. Henne, C.A.2 (N.Y.) 1966, 355 F.2d 129. Civil Rights 1358

Determination as to who is a decisionmaker for the purposes of §§ 1983 municipal liability is not a decision for the jury, but is for the court to decide as a matter of law. Dolly v. Borough of Yeadon, E.D.Pa.2006, 428 F.Supp.2d 278. Civil Rights 1426

Boards vested with power to terminate juvenile probation officers were ultimate repository of power to terminate employees and thus had ultimate liability, pursuant to § 1983 for any attendant violation of employee's constitutional rights. Denton v. Morgan, N.D.Tex.1996, 940 F.Supp. 1015, affirmed 136 F.3d 1038, rehearing denied. Civil Rights 1349

Only those municipal officials who have final policymaking authority may by their actions subject municipality to § 1983 liability. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1351(1)

If mayor possessed final decisionmaking authority for appointment of town's police chief and his decisions to discharge black police officer and hire white officer as police chief were induced by racial prejudice, then town could be held liable for this conduct under § 1983. Lightner v. Town of Ariton, Ala., M.D.Ala.1995, 902 F.Supp.

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42 U.S.C.A. § 1983

1489. Civil Rights 1351(5)

Sheriff was not liable to former deputy sheriff under § 1983 claim for deprivation of due process respecting deputy sheriff's termination; sheriff did not have power to terminate deputy sheriff and, thus, could not deprive deputy sheriff of due process. Heideman v. Wirsing, W.D.Wis.1992, 840 F.Supp. 1285, affirmed 7 F.3d 659. Civil Rights 1126

459. ---- Scope of authority, authority to act, liability generally

Claims for injunctive relief against various federal agents involved in conducting investigation of targets' financial affairs were not barred by sovereign immunity, in view of allegation that federal defendants acted outside scope of their statutory authority and outside constitutional limits. Liffiton v. Keuker, C.A.2 (N.Y.) 1988, 850 F.2d 73. United States 50.10(3)

Where federal officials act in complicity with state officials to deprive person of constitutional rights, such federal officials may be liable in damages under this section, notwithstanding sovereign immunity doctrine, where constitutional violation or ultra vires act is alleged and where remedy would not impose intolerable burden on government functions, outweighing any consideration of private harm. Telegraph Sav. and Loan Ass'n v. Federal Sav. and Loan Ins. Corp., N.D.Ill.1981, 564 F.Supp. 862. Civil Rights 1376(1)

460. ---- Abuse or misuse of authority, authority to act, liability generally

Section 1983 does not require proof of abuse of governmental power separate and apart from proof of constitutional violation; although statute provides citizen with effective remedy against those abuses of state power that violate federal law, it does not provide remedy for abuses that do not violate federal law, and does not draw any distinction between abusive and nonabusive federal violations. Collins v. City of Harker Heights, Tex., U.S.Tex.1992, 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1027; Civil Rights 1031

Motorist's allegation that police officer misused power represented by his police badge did not "shock the conscience" and did not give rise to substantive due process violation that would be actionable in federal civil rights action. Braley v. City of Pontiac, C.A.6 (Mich.) 1990, 906 F.2d 220. Civil Rights 1088(3)

Parents' complaint, seeking damages for death of their son ascribed to gross negligence of city and its employees in the operation of waste treatment plant at which son worked, failed to state a claim upon which relief could be granted under section 1983, in that son was not coerced to perform his tasks at plant, and his attempt to rescue co-worker was not controlled by factors attributed to a misuse of power made possible only because city was clothed with authority of state law. Rankin v. City of Wichita Falls, Tex., C.A.5 (Tex.) 1985, 762 F.2d 444. Civil Rights 1395(1)

Under this section authorizing civil actions for deprivation of constitutional rights under color of state law, action taken "under color of" state law is not limited only to that action taken by state officials pursuant to state law; rather, it includes misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. Brown v. Miller, C.A.5 (Miss.) 1980, 631 F.2d 408. Civil Rights 1324

Provisions of this section authorizing civil action for deprivation of civil rights against person acting under color of law extend to unauthorized abuse of authority by public officials. Azar v. Conley, C.A.6 (Ohio) 1972, 456 F.2d 1382. Civil Rights 1326(2)

Acting "under color of state law" requires that the defendant in a § 1983 action have exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. Schorr

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v. Borough of Lemoyne, M.D.Pa.2003, 265 F.Supp.2d 488. Civil Rights 1324

The state action inquiry is necessarily fact-bound in a § 1983 action, but any approach a court uses must remain focused on the heart of the state action inquiry, which is to discern if the defendant exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. Schorr v. Borough of Lemoyne, M.D.Pa.2003, 265 F.Supp.2d 488. Civil Rights 1325

461. ---- Legislative authority, authority to act, liability generally

Public television stations did not cause any constitutional violation and, thus, could not be held liable under § 1983 for unlawful delegation of legislative authority and for biased decision maker created under statutes establishing Pennsylvania's state-funded public television network and providing that seven of 22-member commission be drawn from governing boards of member stations; any deprivation was caused by Pennsylvania legislature, not by stations. Independence Public Media of Philadelphia, Inc. v. Pennsylvania Public Television Network Com'n, E.D.Pa.1992, 808 F.Supp. 416, reconsideration denied 813 F.Supp. 335. Civil Rights 1054

462. ---- Harassment, authority to act, liability generally

Harassment is cognizable claim under § 1983 only if it is carried out in order to induce someone to give up substantive constitutional right or to deprive a person of a constitutional right. Mullinax v. McElhenney, N.D.Ga.1987, 672 F.Supp. 1449. Civil Rights 1036

Where the plaintiff, a decorator, averred that he was charged with and arrested for criminal violations of building, construction and zoning regulations without just or probable cause, and that the purpose was to harass and drive him out of business and out of the area, a proper due process claim was alleged against borough councilman and building inspector. Di Maggio v. O'Brien, E.D.Pa.1980, 497 F.Supp. 870. Civil Rights 1395(6)

463. Duty or responsibility to act, liability generally--Generally

A state officer named in a suit under this section must be in some manner responsible for alleged deprivation of rights. Dommer v. Crawford, C.A.7 (Ind.) 1981, 653 F.2d 289.

County was not liable, under § 1983, for its alleged failure to adequately investigate incident in which arrestee's neck was broken, where there was no evidence county regularly failed to investigate claims made against its officers. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1352(4)

464. ---- Law enforcement, duty or responsibility to act, liability generally

Genuine issues of material fact existed as to whether town failed to supervise its police officers, and as to whether police chief witnessed and encouraged acts of brutality, precluding summary judgment as to whether town was liable for any excessive force that occurred during arrests of anti-abortion protestors. Amnesty America v. Town of West Hartford, C.A.2 (Conn.) 2004, 361 F.3d 113. Federal Civil Procedure 2491.5

Officers in municipal police department could be liable under § 1983 for detaining arrestee for too long without arraignment, even though they were not responsible for delay in arraignment; officers were under no obligation to continue to hold arrestee for unreasonable period of time. Wayland v. City of Springdale, Ark., C.A.8 (Ark.) 1991, 933 F.2d 668. Civil Rights 1088(4)

In order to impose personal liability on sheriff under § 1983 of the federal civil rights statutes plaintiffs must

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establish that sheriff was either personally involved in wrongful acts, or that he breached a duty imposed by state law. Quinones v. Durkis, S.D.Fla.1986, 638 F.Supp. 856. Civil Rights 1358

465. ---- Supervisory personnel, duty or responsibility to act, liability generally

If supervisor with authority over subordinate knows that subordinate is violating someone's rights but fails to act to stop subordinate from doing so, factfinder may usually infer that supervisor acquiesced in subordinate's conduct, as required for liability under § 1983; but if actual supervisory authority is lacking, mere inaction, in most circumstances, does not reasonably give rise to similar inference. Robinson v. City of Pittsburgh, C.A.3 (Pa.) 1997, 120 F.3d 1286. Civil Rights 1355

To succeed on supervisory liability claim under § 1983, plaintiff not only must show deliberate indifference or its equivalent, but also must affirmatively connect supervisor's conduct to subordinate's violative act or omission. Maldonado-Denis v. Castillo-Rodriguez, C.A.1 (Puerto Rico) 1994, 23 F.3d 576. Civil Rights 1355

Upper level supervisory prison officials could not be held liable based on theory of direct responsibility to supervise in inmate's § 1983 action, where jury did not find lower level and more closely involved supervisors liable. Sanders v. Brewer, C.A.8 (Ark.) 1992, 972 F.2d 920. Civil Rights 1358

Nonprofit organization that performed mental health intake in referral services for county was not liable under § 1983 for alleged due process violation involving severely retarded adult choking to death on sandwich at community building facility to which he had been referred; choking victim's personal liberty was not substantially curtailed by state, and organization did not have responsibility for supervising daily activities at facility, and did not have employment or even contractual relationship with facility. Fialkowski v. Greenwich Home for Children, Inc., C.A.3 (Pa.) 1990, 921 F.2d 459, rehearing denied. Civil Rights 1326(5)

Inadequate policies regarding supervision of police officers may serve as a basis for municipal §§ 1983 liability. Batiste v. City of Beaumont, E.D.Tex.2005, 421 F.Supp.2d 969. Civil Rights 1352(4)

Detainee stated a claim for supervisory liability against police chief pursuant to §§ 1983 by alleging that three subordinate police officers, who also were defendants, were acting pursuant to orders and directives of police chief, that members of the police department subjected detainee and other persons to a pattern of conduct consisting of using taser gun and beatings at the time of making an arrest or intimidation during arrest and booking procedures, solely on account of race, and that despite the fact that he knew or should have known of the fact that this pattern of conduct was being carried out, the police chief made no effort stop the conduct. Batiste v. City of Beaumont, E.D.Tex.2005, 421 F.Supp.2d 969. Civil Rights 1395(6)

Once a supervisory official has constructive or actual knowledge of the alleged deprivations of a citizen's civil rights by a subordinate officer, the supervisor's failure to stop the conduct may constitute a constitutional violation for which the supervisor may be liable under § 1983. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1355

A supervisor may be held liable under § 1983 for what he does, or fails to do, if, having received constructive or actual notice of a subordinate's alleged violation of the constitutional rights of a citizen, the supervisor's behavior demonstrates deliberate indifference to the conduct that is violative of constitutional rights. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1355

Protester's allegations that police officials did not implement a sound policy to prevent civil rights violations to citizens and that other police officers showed clear and manifest favoritism toward non-statehood supporters and against pro-Americans were insufficient to support an equal protection claim for supervisory liability under § 1983; protester merely pointed to one incident where he alone was arrested and such an isolated episode, without

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more, was insufficient to substantiate the existence of a widespread custom. Ramos Bonilla v. Vivoni, D.Puerto Rico 2003, 259 F.Supp.2d 135. Civil Rights 1358

It is not the judicial duty of presiding judge of Missouri state circuit court to train and supervise the other judges of the court in the performance of their duties, and civil rights liability cannot be imposed for failure to do so. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1360

Section 1983 creates cause of action based on personal liability and predicated on fault, such that for supervisory official to be liable under § 1983, that official must have had direct responsibility for improper action and there must be causal connection or affirmative link between misconduct complained of and official sued. Spiegel v. Cortese, N.D.Ill.1997, 966 F.Supp. 684. Civil Rights 1355

In order to hold supervisory official liable for violation of civil rights by another, plaintiff must identify with particularity what the supervisory official failed to do that demonstrates deliberate indifference, and must demonstrate close link between alleged failure and alleged injury. Carrigan v. State of Del., D.Del.1997, 957 F.Supp. 1376. Civil Rights 1355

Whether particular municipal official has policymaking authority so that official's actions may subject municipality to § 1983 liability is question of state law to be resolved by trial judge. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1426; Federal Courts 411

Supervisory personnel are liable under § 1983 upon showing of constitutional violation when: supervisor's conduct or inaction amounts to either deliberate, reckless or calloused indifference to constitutional rights of others, and affirmative link exists between street level constitutional violation and acts or omissions of supervisory officials. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1355

466. ---- Warning, duty or responsibility to act, liability generally

Property owners had no claim under § 1983 against state deputy attorney general for failing to warn property owners that their property was unsuitable for type of sewage disposable system set forth on reissue permit, which allegedly caused property owners to spend large sums of money to construct dwellings on such property; state official's conduct was at most negligent, rather than actively seeking to deprive owners of their properties or grossly negligent in failing to prevent loss to them. Cole v. Finsel, M.D.Pa.1988, 691 F.Supp. 841. Civil Rights 1073

467. ---- Collective bargaining agreements, duty or responsibility to act, liability generally

Fire department employee did not state section 1983 procedural due process claim against chairman of city finance committee with respect to city's discontinuance of payment of his medical expenses, absent evidence that either finance committee or chairman had responsibility for considering or paying employee's medical expenses under collective bargaining agreement. Cushing v. City of Chicago, C.A.7 (Ill.) 1993, 3 F.3d 1156. Civil Rights 1359

468. ---- Colleges or universities, duty or responsibility to act, liability generally

Where university regulations did not place responsibility on board of trustees for dismissal of nontenured members, and board took no action in connection with dismissal of assistant professor who following denial of tenure was serving his terminal year, inaction of board of trustees did not render them liable in their individual capacities in civil rights suit brought by assistant professor, who claimed that termination procedures did not comport with procedural due process and that he was discharged for constitutionally impermissible reasons. Prebble v. Brodrick, C.A.10 (Wyo.) 1976, 535 F.2d 605. Civil Rights 1359

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42 U.S.C.A. § 1983

Attorney General was appropriate defendant in student organization's § 1983 action challenging state statute which prohibited state university's use of public funds to support organization that "fosters or promotes a lifestyle or actions prohibited by the sodomy and sexual misconduct laws," notwithstanding Attorney General's contention that university officials were responsible for enforcement of statute at university; Attorney General was chief law enforcement officer of state and, thus, ultimately responsible for enforcement, and officials allegedly relied on Attorney General's opinion in continuing their enforcement of statute. Gay Lesbian Bisexual Alliance v. Evans, M.D.Ala.1993, 843 F.Supp. 1424. Constitutional Law 44.1

469. ---- Education, schools and students, duty or responsibility to act, liability generally

School district employee failed to rebut presumption that his retirement was voluntary, in his lawsuit alleging that school district was state actor that deprived him of his constitutional rights by violating his Fourteenth Amendment due process property and liberty interests; although employee was not represented by counsel and his options were imperfect, he did not present evidence of how advice of counsel would have altered his decision about retiring, he chose to resign, he understood the nature and ramifications of choice before him, he had reasonable amount of time in which to decide whether to retire, and he had control over effective date of his resignation. Speziale v. Bethlehem Area School Dist., E.D.Pa.2003, 266 F.Supp.2d 366. Constitutional Law 278.5(3); Schools 63(1)

Teacher had affirmative duty to report sexual abuse of students and, thus, student's complaint which alleged that teacher failed to report sexual abuse of student by another teacher in violation of student's constitutional rights stated cause of action under § 1983; teacher had duty to report sexual abuse under provision of Texas Child Abuse Reporting Act. Doe v. Rains Independent School Dist., E.D.Tex.1994, 865 F.Supp. 375, reversed 66 F.3d 1402, rehearing denied. Civil Rights 1395(2); Infants 13.5(1)

Compulsory school attendance did not impose upon state affirmative duty under Fourteenth Amendment to protect student from assault by other student so as to make school board, its superintendent and high school principal liable under § 1983 to student who was physically attacked by fellow student in school. Russell by Russell v. Fannin County School Dist., N.D.Ga.1992, 784 F.Supp. 1576, affirmed 981 F.2d 1263. Civil Rights 1065

470. ---- Prisons and prisoners, duty or responsibility to act, liability generally

City police dispatcher was not liable to estate of arrestee who committed suicide in his cell, under federal civil rights statute, even though dispatcher was aware that arrestee had exhibited suicidal tendencies in the past; dispatcher had no obligations with respect to care of prisoners. Williams v. Borough of West Chester, Pa., C.A.3 (Pa.) 1989, 891 F.2d 458, rehearing denied. Civil Rights 1091

Former and current pretrial detainees could not maintain civil rights action against state officials for alleged failure to redress unconstitutional conditions and violations of state law that existed in county jail where state officials had no duty under North Carolina law to remedy challenged jail conditions and their inaction could not be seen as a cause of those conditions. Reid v. Kayye, C.A.4 (N.C.) 1989, 885 F.2d 129. Civil Rights 1098

Correctional captain responsible for monitoring prisoners, who confiscated card passed by one prisoner to another, was not liable to prisoner who passed card, in civil rights action by prisoner who alleged that imposition of disciplinary sanctions on him for violating rule proscribing engaging in gang activity based on passing of card violated his due process rights; corrections captain merely responded to immediate concerns of prison security and could not ultimately be said to have been responsible for impositions of sanctions against prisoner. Rios v. Lane, C.A.7 (Ill.) 1987, 812 F.2d 1032, certiorari denied 107 S.Ct. 3222, 483 U.S. 1001, 97 L.Ed.2d 729. Civil Rights 1358

Alleged failure of Texas Commission on Jail Standards to carry out its duty to promulgate minimum standards of

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construction, maintenance, and operation for county jails was not cause of alleged constitutional violations by county jails where the Commission had no obligation to extirpate constitutionally substandard conditions or activities in county jails, and thus, alleged failure of Commission to perform its duties was not basis for Section 1983 relief in favor of county jail inmates against the Commission. Bush v. Viterna, C.A.5 (Tex.) 1986, 795 F.2d 1203. Civil Rights 1098

471. State created danger, liability generally

Link between high school student's suicide and conduct of school district and guidance counselor was far too attenuated to have created a danger to student, as was required to impose liability in a state-created danger case, under the due process clause; student visited counselor on only two occasions, once when counselor initially called student into her office and again when student asked her who she had received note from, there was no evidence student was agitated by these meetings, or that they contributed in any way to his suicidal feelings, there was no evidence suggesting student relied on counselor for support or guidance, and counselor did not in any way interfere with mother's parental relationship with student. Sanford v. Stiles, C.A.3 (Pa.) 2006, 456 F.3d 298. Schools 147

Genuine issues of material fact as to whether social worker with New Mexico's Children, Youth And Families Department exercised her professional judgment by failing to investigate several suspicious events during the period that she was directly responsible for child, precluding summary judgment in favor of social worker on claim seeking to hold her liable for substantive due process violation under "special relationship" theory based on abuse of child by prospective adoptive parents. Johnson ex rel. Estate of Cano v. Holmes, C.A.10 (N.M.) 2006, 455 F.3d 1133. Federal Civil Procedure 2491.5

County did not create danger for foster child when it issued "courtesy" foster care license to foster parent without performing nation-wide background check on foster parent, for purpose of foster child's civil rights claim under special relationship exception to rule that government ordinarily did not have substantive due process duty to protect private citizens from doing harm to each other, since county did not know who would be placed in home by neighboring county when it issued that license, neighboring county retained legal custody of child, and county was not required to monitor foster parent's license after particular child was placed in home. Waubanascum v. Shawano County, C.A.7 (Wis.) 2005, 416 F.3d 658, certiorari denied 126 S.Ct. 1045, 163 L.Ed.2d 858. Infants 17

Woman whose ex-boyfriend attempted to kill her could not establish state-created danger by city police department's failure to protect her, as would allow imposition of municipal liability in woman's § 1983 action, though police failed to investigate tip that ex-boyfriend's private investigator was soliciting people to murder woman; city did not create danger to woman, but at most left her in already dangerous situation. Piotrowski v. City of Houston, C.A.5 (Tex.) 2001, 237 F.3d 567, rehearing en banc denied 251 F.3d 159, certiorari denied 122 S.Ct. 53, 534 U.S. 820, 151 L.Ed.2d 23. Civil Rights 1088(1)

As matter of law, daycare operator and school district which leased classroom space to operator did not act with willful disregard for or deliberate indifference to safety of daycare teacher who was killed by third party, by their act of allowing construction workers to use unlocked back entrance for access to school building in which classroom was located, for purpose of establishing liability of operator and district under state-created danger theory, absent allegation that defendants knew of threat posed by third party. Morse v. Lower Merion School Dist., C.A.3 (Pa.) 1997, 132 F.3d 902. Civil Rights 1039

School did not create "special danger" that would render school board and school principal liable for shooting of student by third parties while student was waiting for his ride home following school-sponsored function, even if school prohibited students from using telephone in school administration office, as no school policy required student to wait at edge of school parking lot, where student was shot and killed, rather than inside or near school

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building, and there was no relationship between school and assailants. Mitchell v. Duval County School Bd., C.A.11 (Fla.) 1997, 107 F.3d 837. Schools 89.2; Schools 147

County did not deprive plaintiffs, who were injured when bridge collapsed, of their due process rights by offering bridge as tourist location, where plaintiffs did not allege affirmative act of government placing them on bridge, county did not create danger that caused bridge to collapse, and county did nothing to place plaintiffs in position of danger. Carlton v. Cleburne County, Ark., C.A.8 (Ark.) 1996, 93 F.3d 505. Bridges 37; Constitutional Law 291.6

City police officer engaged in no affirmative conduct that placed a vehicle passenger in greater peril than existed before the officer spoke to the driver of the vehicle prior to an accident resulting in the driver's conviction for vehicular manslaughter and driving under the influence, thus defeating the passenger's claim, in a §§ 1983 suit, that the officer violated her Fourteenth Amendment right to substantive due process under the state-created danger doctrine; officer's conduct was limited to (1) speaking to the driver, (2) asking the driver for his identification to determine whether the driver was old enough to smoke, and (3) giving the driver a cigarette. Jamison v. Storm, W.D.Wash.2006, 426 F.Supp.2d 1144. Constitutional Law 253(1)

Execution of sting operation by city and its police officers in a way that drug dealer learned that confidential informant had set him up created a state-created danger, for purposes of determining whether informant could support §§ 1983 claim based on officer's violation of his substantive due process rights. Matican v. City of New York, E.D.N.Y.2006, 424 F.Supp.2d 497. Municipal Corporations 740(1)

Failure of state investigative social worker to intervene in foster child placement arrangement upon evidence of abusive conditions could not support state-created danger theory in §§ 1983 claim against social worker alleging due process violation, even though foster parent killed child after adopting her, where transfer of custody had taken place before abuse investigation, and investigation showed no evidence of bruising, scratches, scarring, or signs of abuse. Johnson ex rel. Cano v. Homes, D.N.M.2004, 377 F.Supp.2d 1039. Civil Rights 1039

To rely on the state-created danger doctrine to impose §§ 1983 liability for due process violation, plaintiff must be able to articulate an action taken by a state actor that creates or substantially enhances a risk that plaintiff will be harmed by a private actor. Sloane v. Kanawha County Sheriff Dept., S.D.W.Va.2004, 342 F.Supp.2d 545. Constitutional Law 253(1)

Complaints against city, police benevolent association, and individual officers by administrators of estates of pedestrians killed by officer who was driving while intoxicated stated § 1983 claim for violation of substantive due process right to be free of state-created danger; defendants allegedly created environment in which officer felt he could drink and drive with impunity and without fear of legal sanction by failing to initiate disciplinary action against officer who repeatedly drank on precinct property with fellow officers including supervisory personnel, and who drove while intoxicated on day of accident, and by establishing and implementing policy in precinct under which officers charged with misconduct were provided with assistance to specifically aid them in avoiding legal sanction. Small v. City of New York, E.D.N.Y.2003, 274 F.Supp.2d 271, opinion clarified on denial of reconsideration 304 F.Supp.2d 401. Constitutional Law 253(1); Municipal Corporations 747(3)

Co-administratrices pleaded sufficient facts to state claim against county probation office and probation officers through state created danger exception, in §§1983 action under Fourteenth Amendment, by alleging that defendants knew that parolee had violent propensities towards women, that he was romantically involved with woman whom he later murdered, and that defendants knew that parolee had gotten married, and that defendants' actions and omissions after parolee's release from prison created opportunity to harm decedent. Petrone v. Pike County Probation Dept., M.D.Pa.2002, 240 F.Supp.2d 317. Civil Rights 1395(7)

Mother's allegation that her daughter was abducted and assaulted after leaving school bus by individual placed in

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nearby foster home by county youth services organization was insufficient to establish that county created harm to daughter, as required to support § 1983 action against county; complaint failed to demonstrate that county's placement of individual in foster home increased risk that child victim would suffer harm or that county workers knew that perpetrator posed credible danger to others, and complaint failed to allege that county acted with willful disregard for or deliberate indifference to foreseeable risk of harm to child's safety. Pearson v. Miller, M.D.Pa.1997, 988 F.Supp. 848. Civil Rights 1395(1)

The "state-created danger" theory did not provide basis for § 1983 claim against county based on alleged failure of county department of human services to provide licensed foster parents with information about dangerous behaviors of foster children placed in their care; only affirmative act on the part of the department was to arrange for the placement of the children, which was not a one-sided undertaking forced upon the parents, and evidence failed to establish that the alleged failure to inform parents about the background of the foster children rendered them or their natural children more vulnerable to injury than they would have been if they had that information, given the information they did have. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997, 968 F.Supp. 1212. Civil Rights 1057

Police officer's action of taking his former wife and others hostage was not foreseeable by city or police officials, and they thus could not be held liable under § 1983 pursuant to state-created danger theory, even though officer was permitted to retain service revolver used to effect hostage taking and former wife had made domestic violence complaints against officer, where her complaints were spread over period of time and were unspecific, and the most specific and recent reported incident apparently was negligently overlooked by official who was carrying heavy workload. Hansell v. City of Atlantic City, C.A.3 (N.J.) 2002, 46 Fed.Appx. 665, 2002 WL 31011142, Unreported. Civil Rights 1088(2)

472. Special relationship, liability generally--Generally

Class of persons who stand in "special relationship with the state," such that they enjoy clearly established constitutional right to protection from known threats of harm by private actors, is limited to those persons who are involuntarily confined or otherwise restrained against their will pursuant to government order or by the affirmative exercise of state power. Walton v. Alexander, C.A.5 (Miss.) 1995, 44 F.3d 1297. Civil Rights 1376(2)

City was not liable to victim involved in automobile accident with driver who was suffering from epileptic seizure at time of accident, for failing to have reported previous accidents allegedly involving seizures suffered by same driver to state driver's license authorities; epileptic driver was not acting as agent of city, nor was there special relationship between city and epileptic driver or between city and accident victim, and while epileptic driver was definite danger behind wheel of motor vehicle, he was no more a danger to victim than to any other citizen on city's street. Jones v. City of Carlisle, Ky., C.A.6 (Ky.) 1993, 3 F.3d 945, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 1218, 510 U.S. 1177, 127 L.Ed.2d 564. Automobiles 157

City which was legal guardian of child and which involuntarily placed child in foster care had special relationship with child and therefore, city could be held liable under § 1983 for child's death caused by minor nephew of foster parent; for all practical purposes, child was not free to leave her foster care placement and it was irrelevant whether child's foster parent or child's killer acted under color of state law. Lewis v. Neal, E.D.Pa.1995, 905 F.Supp. 228. Civil Rights 1057

473. ---- Parole boards or officials, special relationship, liability generally

Complaint alleging that negligent failure of state corrections employees who were responsible for postrelease supervision of parolee to reincarcerate parolee rendered them liable under this section for parolee's subsequent criminal acts against plaintiffs failed to state a claim for relief since plaintiffs, who were simply members of general

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public with no special custodial or other relationship with state, had no federal constitutional right to be protected by the state from parolee's acts. Fox v. Custis, C.A.4 (Va.) 1983, 712 F.2d 84. Civil Rights 1395(1)

Complaint alleging that failure of Department of Corrections personnel and Parole Board to extradite escaped prisoner denied due process did not state claim upon which relief could be granted under § 1983 in action brought by son of woman prisoner apparently married and administrator of estates of woman and her two daughters, although prisoner killed woman he apparently married and her two daughters and abducted and sexually abused woman's son; special relationship of woman and her children with prisoner had been alleged, but there was no allegation as to how the familial relationship placed woman and her children, as distinguished from public at large, in special danger. Massey v. Grant, W.D.Mich.1988, 679 F.Supp. 711, affirmed 875 F.2d 865. Civil Rights 1395(7)

Actions of members of State Department of Corrections, in releasing parolee, were too remote from deaths of victims murdered by parolee to hold members liable in civil rights action, absent showing that special relationship existed between the parties. Beck v. Kansas University Psychiatry Foundation, D.Kan.1987, 671 F.Supp. 1563. Civil Rights 1097

Parole officials may be liable under § 1983 for granting or inadequately supervising convicted criminal's parole, but only where they assume "special relationship" to person who was injured as result of their actions. Doe v. United Social and Mental Health Services, Inc., D.Conn.1987, 670 F.Supp. 1121. Civil Rights 1039

474. ---- Prison officials, special relationship, liability generally

Victim of assault and rape by prisoner who escaped from county detention center failed to establish that danger to her resulting from prisoner leaving center was any greater than that faced by general public in area, and so victim could not maintain § 1983 civil rights action against duty jailer who was responsible for supervising prisoner while prisoner was out of cell; knowledge of center employees that several years prior to rape, prisoner had touched wives of sheriff and his deputy on rear, while shopping at the local grocery store did not establish history of sexual violence toward elderly women as would create unique risk of harm to victim or special duty to protect her. Davis v. Fulton County, Ark., C.A.8 (Ark.) 1996, 90 F.3d 1346, rehearing and suggestion for rehearing en banc denied. Civil Rights 1098

County officials could not be held liable under § 1983 for murders committed by escaped county prisoner; prisoner was not agent of county, authorities had no reason to believe that victims were in any greater danger than public at large, and there was no "special relationship" between county and victims which created affirmative duty of care and protection. Commonwealth Bank & Trust Co., N.A. v. Russell, C.A.3 (Pa.) 1987, 825 F.2d 12. Civil Rights 1098

Employees of Alabama Department of Youth Services were not liable under section 1983 to victim who was raped in her home by criminal who six months before had been convicted and imprisoned for breaking and entering her home and who, prior to committing rape, had been released by Department employees, even though victim had been instrumental in obtaining the prior conviction and detention, even though employees, in releasing criminal, may have failed to fulfill certain duties of employment under Alabama law, and even if victim may have had state tort action against employees for such failures, where there was no "special relationship" such as would impose duty on state to protect victim, as distinct from public at large, or to warn her of release of criminal. Jones v. Phyfer, C.A.11 (Ala.) 1985, 761 F.2d 642, rehearing denied 768 F.2d 1353. Civil Rights 1088(1)

475. ---- School officials, special relationship, liability generally

Title IX does not immunize a defendant from §§ 1983 liability who uses his position in a federally funded education program to sexually harass and abuse students. Doe v. Smith, C.A.7 (Ill.) 2006, 470 F.3d 331. Civil

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42 U.S.C.A. § 1983

Rights 1309

No special relationship existed between high school student who committed suicide and school district or guidance counselor, which would support §§ 1983 action under the due process clause, as student's parent decided where his education would take place. Sanford v. Stiles, C.A.3 (Pa.) 2006, 456 F.3d 298. Schools 147

Tennessee statute providing that school is in loco parentis to student did not give rise to special relationship between school district and student creating duty under due process clause on part of district to protect student, and thus, student could not recover on that basis in federal civil rights action brought after she was sexually abused by teacher. Doe v. Claiborne County, Tenn. By and Through Claiborne County Bd. of Educ., C.A.6 (Tenn.) 1996, 103 F.3d 495. Constitutional Law 278.5(5.1); Schools 89.3

For purposes of § 1983 action against school officials by high school students who were allegedly molested by other students, no "special relationship" based upon restraint of liberty existed between defendants and plaintiffs; under Pennsylvania law, students' parents remained their primary caretakers, despite students' presence in school. D.R. by L.R. v. Middle Bucks Area Vocational Technical School, C.A.3 (Pa.) 1992, 972 F.2d 1364, certiorari denied 113 S.Ct. 1045, 506 U.S. 1079, 122 L.Ed.2d 354. Civil Rights 1066

School board did not delegate the authority to make policy for graduation ceremonies to high school principal, as required to subject school district to municipal liability in §§ 1983 action brought by student stemming from student's exclusion from singing religious song at graduation ceremony; school board expected principals to act in accordance with policy of separation of church and state and specifically retained the right to have the final policymaking authority through its grievance procedures. Ashby v. Isle of Wight County School Bd., E.D.Va.2004, 354 F.Supp.2d 616. Civil Rights 1351(2)

Student seeking to impose liability on school district under § 1983 for district employee's violation of student's constitutional right must rely on either "special relationship" or "deliberate indifference" theory. Mirelez v. Bay City Independent School Dist., S.D.Tex.1998, 992 F.Supp. 916. Civil Rights 1060

Despite mandatory attendance policy and fact that school has *loco parentis* authority over children, state did not owe student duty of protection sufficient to support § 1983 claim based on student's sexual harassment by fellow student; student failed to allege any special relationship between herself and the school, or that school officials placed her in dangerous situation. Aurelia D. v. Monroe County Bd. of Educ., M.D.Ga.1994, 862 F.Supp. 363, affirmed in part, reversed in part 74 F.3d 1186, rehearing granted, opinion vacated 91 F.3d 1418, on rehearing 120 F.3d 1390, certiorari granted in part 119 S.Ct. 29, 524 U.S. 980, 141 L.Ed.2d 789, reversed 119 S.Ct. 1661, 526 U.S. 629, 143 L.Ed.2d 839, on remand 206 F.3d 1377. Civil Rights 1067(3)

475A. ---- Miscellaneous, special relationship, liability generally

District of Columbia code provisions requiring District firefighters to give one month's notice or obtain mayor's permission before resigning, forbidding firefighters from leaving the District unless on leave of absence, and requiring them to reside within the District did not sufficiently deprive firefighters of liberty to establish a special relationship between District and firefighters, so as to give District a heightened obligation to firefighters and thus, render District fire chief susceptible to liability under §§ 1983 to firefighters who were injured in fire for a substantive due process violation by deliberate indifference to enforcement of department's standard operating procedures, as opposed to intentional conduct. Estate of Phillips v. District of Columbia, C.A.D.C.2006, 455 F.3d 397, 372 U.S.App.D.C. 312. Constitutional Law 278.4(1)

476. Negligence, liability generally--Generally

Negligent act of state official which results in unintended harm to life, liberty, or property, does not implicate due

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process clause. Campbell v. City of San Antonio, C.A.5 (Tex.) 1995, 43 F.3d 973. Constitutional Law 255(1); Constitutional Law 278(1)

Mere negligence and self-aggrandizing motives are not actionable under § 1983. Buckey v. County of Los Angeles, C.A.9 (Cal.) 1992, 968 F.2d 791, certiorari denied 113 S.Ct. 599, 506 U.S. 999, 121 L.Ed.2d 536, certiorari denied 113 S.Ct. 600, 506 U.S. 999, 121 L.Ed.2d 536. Civil Rights 1031

Negligence by state supervisory official under some circumstances may itself violate constitutionally protected right and thereby create colorable claim under 42 U.S.C.A. § 1983. Western World Ins. Co., Inc. v. Harford Mut. Ins. Co., C.A.4 (Md.) 1986, 784 F.2d 558. Civil Rights 1355

Individual city employees could not be held liable under 42 U.S.C.A. § 1983 for a merely negligent conduct which allegedly caused arrestee's death by asphyxiation while arrestee was restrained in "stretch" hold position. Owens v. City of Atlanta, C.A.11 (Ga.) 1986, 780 F.2d 1564. Civil Rights 1088(4)

Negligent conduct of person acting under color of state law may be basis for relief under this section. Puckett v. Cox, C.A.6 (Tenn.) 1972, 456 F.2d 233. Civil Rights 1031

Negligence alone is a legally insufficient grounds for a constitutional deprivation of rights, as would support a claim under §§ 1983. Caldwell v. Green, W.D.Va.2006, 451 F.Supp.2d 811. Civil Rights 1031

There is no liability for negligence under § 1983. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Civil Rights 1031

Section 1983 liability cannot be based on mere negligence. Wise v. New York City Police Dept., S.D.N.Y.1996, 928 F.Supp. 355. Civil Rights 1031

Deprivation of rights of involuntarily committed individuals by virtue of mere negligence is insufficient for § 1983 liability; liability may be imposed only when decision by professional is such substantial departure from accepted professional judgment, practice, or standards as to demonstrate that person responsible actually did not base decision on such judgment. Gilbert v. Texas Mental Health and Mental Retardation, E.D.Tex.1996, 919 F.Supp. 1031. Civil Rights 1037

Liability under § 1983 must be predicated upon deliberate deprivation of constitutional rights by defendant, and not negligence. Foote v. Spiegel, D.Utah 1995, 903 F.Supp. 1463, affirmed in part, reversed in part, dismissed in part 118 F.3d 1416, on remand 995 F.Supp. 1347. Civil Rights 1031

Negligent conduct on behalf of state official does not amount to violation of federal civil rights statute; deprivation of constitutional rights must be intentional or deliberate. Ruiz v. Herrera, S.D.N.Y.1990, 745 F.Supp. 940. Civil Rights 1031

Where a government official's act causing injury to life, liberty, or property is merely negligent, no procedure for compensation is constitutionally required. Rogers v. Isom, E.D.Va.1989, 709 F.Supp. 115. Civil Rights 1376(1)

Negligence on part of state officials is insufficient to implicate individual's constitutional rights for purposes of § 1983. Magnuson v. Cassarella, N.D.Ill.1992, 812 F.Supp. 824. See, also, Soto v. Chardon, D.C.Puerto Rico 1981, 514 F.Supp. 339, affirmed in part, reversed in part on other grounds 681 F.2d 42, certiorari granted 103 S.Ct. 339, 459 U.S. 987, 74 L.Ed.2d 382, certiorari denied 103 S.Ct. 343, 459 U.S. 989, 74 L.Ed.2d 384, affirmed 103 S.Ct. 2611, 462 U.S. 650, 77 L.Ed.2d 74.

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42 U.S.C.A. § 1983

Case for negligence is not cognizable claim under this section which provides for civil action for deprivation of rights. O'Neal v. Evans, S.D.Ga.1980, 496 F.Supp. 867.

This section imposing liability for violations of rights protected by the Constitution was not intended to apply to suit brought by or on behalf of any person injured or killed because of negligent actions of state officials. Heard v. Lafourche Parish School Bd., E.D.La.1979, 480 F.Supp. 231. Civil Rights 1332(1)

Showing of mere negligence will not suffice to show deprivation of constitutional dimension required for claim to be cognizable under § 1983. Braud v. Painter, M.D.La.1990, 730 F.Supp. 1. See, also, Robinson v. Cuyler, D.C.Pa.1981, 511 F.Supp. 161; Smith v. Hill, D.C.Utah 1981, 510 F.Supp. 767; Loopman v. Hurley, D.C.N.H.1979, 475 F.Supp. 98; Joyner v. McClellan, D.C.Md.1975, 396 F.Supp. 912.

In order to be actionable under provisions of this section more than an isolated incident of negligent failure to afford a citizen his constitutional rights must have been involved. Taylor v. Grindstaff, D.C.Tenn.1978, 467 F.Supp. 4. See, also, Barnes v. Armour, E.D.Tenn.1974, 392 F.Supp. 1240.

477. ---- Violation of right as result, negligence, liability generally

Magistrate judge did not abuse his discretion in determining that inmate's allegations amounted to a claim of negligence and did not raise nonfrivolous constitutional claim and therefore, judge properly dismissed inmate's in forma pauperis (IFP) § 1983 failure to protect claim as frivolous. Neals v. Norwood, C.A.5 (Tex.) 1995, 59 F.3d 530. United States Magistrates 21

Negligence by a state official under some circumstances may itself violate constitutionally protected right, and when it does, it is actionable under this section. Withers v. Levine, C.A.4 (Md.) 1980, 615 F.2d 158, certiorari denied 101 S.Ct. 136, 449 U.S. 849, 66 L.Ed.2d 59. Civil Rights 1031

Action under this section may be based on negligence when it leads to a deprivation of rights. McCray v. State of Md., C.A.4 (Md.) 1972, 456 F.2d 1. Civil Rights 1031

Although negligent deprivation of constitutional right is actionable under § 1983, important distinction is to be made between constitutional deprivation that happens to be negligent, and negligent act that is not constitutional deprivation because applicable constitutional provision is not violated by mere negligence. Edwards v. Cabrera, N.D.Ill.1994, 861 F.Supp. 664, reversed 58 F.3d 290. Civil Rights 1031

Negligence is cognizable under this section although the alleged wrong conduct on part of defendant must be performed under color of state law and must deprive the plaintiff of a right secured by the Constitution and the laws of the United States. Watson v. McGee, S.D.Ohio 1981, 527 F.Supp. 234. Civil Rights 1031; Civil Rights 1304

In order for negligence to provide grounds for civil rights suit, it must be shown to have resulted in violation of some constitutional right. LeBlanc v. Foti, E.D.La.1980, 487 F.Supp. 272. Civil Rights 1027

While every negligent act committed under color of law will not give rise to a civil rights claim, a negligent act which amounts to the deprivation of a right, privilege or immunity secured by the Constitution or laws of the United States is within the terms of this section, and thus an individual who is unlawfully deprived of his liberty because of a negligent act committed under color of state law can bring a civil rights claim. Culp v. Devlin, E.D.Pa.1977, 437 F.Supp. 20. Civil Rights 1027

Inmate injured while playing basketball in jail recreation yard when he fell as he tried to avoid large hole, could not maintain § 1983 action for his injuries; inmate alleged only that hole was present in yard, that it was a dangerous

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condition and that there was absence of warning present, but did not allege malicious behavior or clearly recognized constitutional right. Burrell v. Griffith, E.D.Tex.1994, 158 F.R.D. 104. Civil Rights 1098

478. ---- Due process claims, negligence, liability generally

The due process clause is not implicated by a state official's negligent act causing unintended loss of or injury to life, liberty or property. Daniels v. Williams, U.S.Va.1986, 106 S.Ct. 662, 474 U.S. 327, 88 L.Ed.2d 662, concurring opinion 106 S.Ct. 677, 474 U.S. 327, 88 L.Ed.2d 662. See, also, Salas v. Carpenter, C.A.5 (Tex.) 1992, 980 F.2d 299; Lavoie v. Town of Hudson, D.N.H.1990, 740 F.Supp. 88; Timko v. City of Hazleton, M.D.Pa.1986, 665 F.Supp. 1130. Constitutional Law 255(1); Constitutional Law 278(1)

District of Columbia Department of Consumer and Regulatory Affairs' (DCRA) temporary suspension of building permit for contaminated soil remediation facility did not constitute substantial and malicious infringement of District law as required to establish violation of owner's substantive due process rights for purposes of his § 1983 claim against District, but rather at most involved negligence, in light of director's discretionary authority to revoke building permit summarily if he determined that owner's prior civil violation for storage of contaminated soil on premises posed threat to health and safety. Tri-County Industries, Inc. v. District of Columbia, D.D.C.1996, 932 F.Supp. 4, vacated 104 F.3d 455, 322 U.S.App.D.C. 412. Constitutional Law 278.1; Environmental Law 432

Negligent conduct by municipal law enforcement officials which causes or contributes to death or bodily injury of a person in custody may violate victim's substantive due process rights under the Fourteenth Amendment so as to provide a civil rights cause of action under 42 U.S.C.A. § 1983 for the constitutional violation. Holland v. Breen, D.C.Mass.1985, 623 F.Supp. 284. Civil Rights 1088(4)

479. ---- Deliberate indifference, negligence, liability generally

High school student did not demonstrate that alleged failure by school and school district to supervise and discipline teachers by adequately investigating claims of excessive force against students and punishing teachers for such actions amounted to "deliberate indifference" to student's rights, as required to impose liability on school and school district, under §§ 1983, for teacher's alleged use of excessive force against student in violation of the Fourteenth Amendment. Knicrumah v. Albany City School Dist., N.D.N.Y.2003, 241 F.Supp.2d 199. Civil Rights 1352(2)

Fact that armed security guard employed by city housing agency to patrol agency-managed housing project had received his security guard license from local law enforcement agency after three-day training course did not constitute notice to agency of failure to train so likely to result in violation of constitutional rights that need for more training was patently obvious, precluding finding of deliberate indifference on part of agency in surviving relative's §§1983 due process action against agency following guard's shooting of individual during altercation at project. Larkin v. St. Louis Housing Authority Development Corp., C.A.8 (Mo.) 2004, 355 F.3d 1114. Civil Rights 1352(3)

School district's failure to conduct additional training of employees to recognize signs of abuse could not render it liable under §§ 1983 for middle school teacher's sexual abuse of student, absent showing that additional training would have prevented student's abuse or had any causal nexus to abuse, or showing that their failure to conduct such training reflected deliberate indifference; unsubstantiated rumors of prior incidents involving coach, against whom sexual touching charge was dropped, and administrator, whose accuser later recanted, were insufficient to show indifference. Kline ex rel. Arndt v. Mansfield, E.D.Pa.2006, 454 F.Supp.2d 258. Civil Rights 1352(2)

Although mere negligence by supervisory official is insufficient basis for claim of civil rights violation committed by subordinates, deliberate indifference manifested by actual intent or by recklessness, provides a sufficient

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foundation. Perry v. Elrod, N.D.Ill.1977, 436 F.Supp. 299. Civil Rights 1355

480. ---- Gross negligence, liability generally

Gross negligence on the part of state actors is not sufficient to impose liability under state-created danger theory; rather, to establish a violation of substantive due process rights, plaintiffs must demonstrate at least deliberate indifference to the state-created danger on the part of the state actors, and "deliberate indifference" is more than negligence or carelessness, and is the equivalent of recklessly disregarding a known risk of harm. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997, 968 F.Supp. 1212. Civil Rights 1039; Constitutional Law 253(1)

Supervisor who is grossly negligent in permitting his subordinates to engage in gender discrimination can be held liable under § 1983. Wise v. New York City Police Dept., S.D.N.Y.1996, 928 F.Supp. 355. Civil Rights 1359

Allegation of gross negligence will not support § 1983 claim. Gonzalez v. City of Chicago, N.D.Ill.1995, 888 F.Supp. 887. Civil Rights 1394

Failure of state to chain defendant's wrist to his waist and failure to have bailiff sit closer to parties during proceedings in which former wife sought protective order against husband was at most negligence and not gross negligence or recklessness as necessary to allow former wife who was attacked by husband to sue state or state actors. Dorris v. County of Washoe, D.Nev.1995, 885 F.Supp. 1383, affirmed 107 F.3d 15. States 79; States 112.2(2)

Civil rights plaintiff must show that defendant deprived him of life, liberty or property through deliberate intent or arguably through gross negligence; lack of due care is not enough and a "pure accident" will not qualify. Presnick v. Santoro, D.Conn.1993, 832 F.Supp. 521. Civil Rights 1031

Allegations of gross negligence are sufficient to state claim under § 1983. Ryan v. Burlington County, D.N.J.1987, 674 F.Supp. 464, affirmed and remanded on other grounds 860 F.2d 1199, certiorari denied 109 S.Ct. 1745, 490 U.S. 1020, 104 L.Ed.2d 182. Civil Rights 1031

The "gross negligence" which must be shown to impose liability under this section is an extreme departure from the ordinary standard of care characterized by conscious indifference to, or reckless disregard of, the right of others; it is callous indifference to the predictable consequences of one's behavior and one's conduct; such a showing requires evidence of near recklessness or shockingly unjustified and unreasonable action. Smith v. Hill, D.C.Utah 1981, 510 F.Supp. 767. Civil Rights 1031

481. ---- Recklessness, negligence, liability generally

Actions of representative of public employer's Equal Employment Opportunity Office (EEOO), in urging employee to drop second sexual harassment complaint against coworker, did not constitute deliberate, reckless, or callous indifference to coworker's misconduct, as required to impose supervisory liability under § 1983; EEOO representative acted based on her perception that coworker had not engaged in any further harassment after having been disciplined following EEOO's disposition of employee's first complaint, and EEOO did take prompt action on second complaint. Sanchez v. Alvarado, C.A.1 (Puerto Rico) 1996, 101 F.3d 223, rehearing denied. Civil Rights 1359

For defendant to be reckless in constitutional sense, it is not enough to show that state actor should have known of danger his actions created, but rather, plaintiff must demonstrate that defendant had actual knowledge of impending harm which he consciously refused to prevent. Hill v. Shobe, C.A.7 (Ind.) 1996, 93 F.3d 418. Civil Rights 1039

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State mental health administrators did not act recklessly in conscious disregard of known and serious risk by deciding to eliminate special unit in mental hospital that was reserved for criminally insane, for purposes of § 1983 claim under creation of danger theory seeking recovery for death of activity therapist killed by patient who was transferred from special unit; in response to difficult allocational decisions precipitated by budgetary constraints, administrators set up procedures to address arguably known risk and delegated assignment process to clinical experts. Uhlrig v. Harder, C.A.10 (Kan.) 1995, 64 F.3d 567, certiorari denied 116 S.Ct. 924, 516 U.S. 1118, 133 L.Ed.2d 853. Civil Rights 1039; Civil Rights 1126

Even if officer could have foreseen that fugitive would have driven away from officer and caused accident that injured bystanders, officer's action of waking fugitive who was sleeping behind wheel of parked car was at most negligence and not "reckless indifference" required for bystanders to state § 1983 claim. Webber v. Mefford, C.A.10 (Okla.) 1994, 43 F.3d 1340. Civil Rights 1088(1)

Police chief could not be held liable for officers' forced entry into bathroom to obtain custody of armed individual who was dying of drug overdose who had previously threatened life of anyone who entered bathroom and had ceased communications where there was no evidence that decision to make forced entry violated federal law or was even reckless or ill advised. Medrano v. City of Los Angeles, C.A.9 (Cal.) 1992, 973 F.2d 1499, certiorari denied 113 S.Ct. 2415, 508 U.S. 940, 124 L.Ed.2d 638. Civil Rights 1088(3)

Genuine issue of material fact as to whether city police chief and director of public safety acted with reckless indifference to city police officer's First Amendment and due process rights by increasing disciplinary action against officer for violation of department policy without procedural due process and in retaliation for officer's protected activity of participating in internal investigation of alleged criminal wrongdoing precluded summary judgment on officer's claim for punitive damages under §§ 1983. Reilly v. City of Atlantic City, D.N.J.2006, 427 F.Supp.2d 507. Federal Civil Procedure 2497.1

Mere negligence is insufficient for personal liability for constitutional violation; plaintiff must demonstrate that official knowingly, willfully, or recklessly caused alleged deprivation by his action or failure to act. Spiegel v. Cortese, N.D.Ill.1997, 966 F.Supp. 684. Civil Rights 1031

Liability under § 1983 may be imposed based on allegations of recklessness. Irvin v. Borough of Darby, E.D.Pa.1996, 937 F.Supp. 446. Civil Rights 1031

Evidence in suit against social workers by parents of children who were allegedly abused while in foster care failed to establish that social workers knew of any propensity for abuse by the foster parents or intentionally or even recklessly failed to take action upon receiving mother's complaints so as to give rise to due process violation. Pfoltzer v. County of Fairfax, E.D.Va.1991, 775 F.Supp. 874, affirmed 966 F.2d 1443. Civil Rights 1422

Allegations of gross negligence or reckless disregard do not state claim under due process clause. Morton v. City of Little Rock, E.D.Ark.1989, 728 F.Supp. 543, affirmed 934 F.2d 180. Civil Rights 1394

Where constitutional deprivation alleged in civil rights case based on deprivation of rights finds its source solely within due process clause of U.S.C.A.Const. Amend. 14, degree of culpability must exceed simple negligence and amount to gross negligence or recklessness. Popow v. City of Margate, D.C.N.J.1979, 476 F.Supp. 1237. Civil Rights 1028

482. ---- Supervision, negligence, liability generally

Commissioners of state departments of children and families (DCF) and social services (DSS) were not subject to liability under §§ 1983 for failing to properly supervise their employees in connection with child welfare investigations and proceedings, despite parents' contention that employees submitted false information to juvenile

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courts, absent allegations as to content of that information, what additional or correct information should have been submitted, or how that information would have resulted in juvenile court reaching different conclusions. Inkel v. Connecticut Dept. of Children and Families, D.Conn.2006, 421 F.Supp.2d 513. Civil Rights 1360

Parent and natural guardian, on behalf of four-year old, non-verbal, autistic child, could assert *Monell/Canton* claim against school district, school board, and superiors of teacher for failure to train by adopting policies of discriminatory nature and non-compliance with law, since setting discriminatory policies and failure to adequately train subordinates at multiple levels could result in independent liability of those individuals and entities. Roe ex rel. Preschooler II v. Nevada, D.Nev.2004, 332 F.Supp.2d 1331. Civil Rights 1352(2)

Gross negligence is not enough to impose supervisory liability for civil rights violations; rather, supervisors must know about the conduct and facilitate it, approve it, condone it, or turn blind eye for fear of what they might see, or, in other words, they must act either knowingly or with deliberate, reckless indifference. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Civil Rights 1355

No cause of action exists under § 1983 for negligent supervision of employees. Sappington v. Ulrich, E.D.Tex.1994, 868 F.Supp. 194. Civil Rights 1355

Negligent supervision is not a basis for liability under this section. Shirey v. Bensalem Tp., E.D.Pa.1980, 501 F.Supp. 1138.

Negligent supervision does not suffice as basis for liability under this section, but, rather, greater degree of personal culpability is required. Jones v. City of Philadelphia, E.D.Pa.1980, 491 F.Supp. 284. Civil Rights 1335

483. ---- Municipal liability, negligence, liability generally

Mere negligence is insufficient to establish municipal liability under § 1983. Collins v. City of Harker Heights, Tex., C.A.5 (Tex.) 1990, 916 F.2d 284, certiorari granted 111 S.Ct. 1579, 499 U.S. 958, 113 L.Ed.2d 644, affirmed 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1343

Common-law negligence does not provide a basis for liability in a §§ 1983 action against a municipality. Batiste v. City of Beaumont, E.D.Tex.2005, 421 F.Supp.2d 969. Civil Rights 1352(1)

A plaintiff may establish municipal liability under §§ 1983 by showing that a municipal policy or custom existed as a result of the municipality's deliberate indifference to the violation of constitutional rights, either by inadequate training or supervision. Russo v. City of Hartford, D.Conn.2004, 341 F.Supp.2d 85. Civil Rights 1352(1)

City's conduct before incident in which woman alleged sexual assault during course of gynecological examination by city department of health physician was neither "gross negligence" nor "deliberate indifference" so as to expose city to liability under statute governing deprivation of civil rights, where assault was first of its type brought to city's attention, and city's chaperone policy was consistent with that of Chicago medical community. Jones v. City of Chicago, N.D.Ill.1985, 608 F.Supp. 994, affirmed 787 F.2d 200. Civil Rights 1352(6)

484. Joint and several liability, liability generally

Prison guards could not be held jointly and severally liable to prisoners under §§ 1983 for alleged excessive force during cell transfer and transport procedure, where prisoners had failed to establish that any of the guards violated their constitutional rights; prisoners failed to establish that each and every guard touched them, much less that any of the guards used excessive force. Harper v. Albert, C.A.7 (Ill.) 2005, 400 F.3d 1052. Civil Rights 1358

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42 U.S.C.A. § 1983

Police officers could not be held jointly and severally liable for unlawful arrests and imposition of cruel and unusual punishment where injuries to various arrestees were in no sense indivisible, but were personal, individual and discreet and each could be apportioned with reasonable certainty to either one officer or the other. Dean v. Gladney, C.A.5 (Tex.) 1980, 621 F.2d 1331, certiorari denied 101 S.Ct. 1521, 450 U.S. 983, 67 L.Ed.2d 819. Civil Rights 1358

City police officers and fire chief, who played no part in decision of city police chief to send racial protest demonstrators to state penitentiary where they were incarcerated in cells containing inadequate hygienic facilities, were not jointly and severally liable with superintendent under this section for infliction of summary punishment without due process. Anderson v. Nosser, C.A.5 (Miss.) 1972, 456 F.2d 835, certiorari denied 93 S.Ct. 53, 409 U.S. 848, 34 L.Ed.2d 89. Civil Rights 1358

"Joint action" theory did not permit conclusion that private television station was acting under color of law when it broadcast court proceedings despite religious objections of parties to those proceedings, and thus station could not be held liable to those parties under Religious Freedom Restoration Act of 1993 (RFRA) or § 1983, where no public actors were aware of the objections. Brownson v. Bogenschutz, E.D.Wis.1997, 966 F.Supp. 795. Civil Rights 1326(5)

Police officer who did not deliver allegedly fatal blow to plaintiff's decedent during arrest could be held jointly liable under § 1983 with officer who did deliver blow either on basis of participation in infliction of excessive force or failure to take reasonable steps to protect plaintiff's decedent from use of excessive force causing death, or even on basis of dragging plaintiff's decedent in his mortally wounded limp state along ground to police car and shoving him into back seat. Mathis v. Parks, E.D.N.C.1990, 741 F.Supp. 567. Civil Rights 1348

School system was jointly and severally liable with superintendent for superintendent's abuse of his official authority in reassigning central office employees in violation of constitutional rights under the First Amendment, even though the board of education did not intend to violate the employees' rights but merely followed impermissibly motivated recommendations by the superintendent. Bundren v. Peters, E.D.Tenn.1989, 732 F.Supp. 1486. Civil Rights 1349

485. Individual capacity, liability generally

Under Eleventh Amendment, detainee at state facility for sexually violent persons who brought §§1983 due process and equal protection action against facility employees, arising from detainee's beating at hands of fellow resident, could not seek monetary damages from employees in their official capacities, but could seek monetary damages from employees in their individual capacities. Brown v. Budz, C.A.7 (Ill.) 2005, 398 F.3d 904. Federal Courts 269

By commencing § 1983 action against state officials solely in their official capacity, parolee forewent any claim for damages. Williams v. Wisconsin, C.A.7 (Wis.) 2003, 336 F.3d 576. Civil Rights 1358

Personal or individual capacity suits seek to impose personal liability upon government official for actions he takes under color of state law, while official capacity suit is only another way of pleading action against entity of which officer is agent. Johnson v. Board of County Com'rs for County of Fremont, C.A.10 (Colo.) 1996, 85 F.3d 489, rehearing denied, certiorari denied 117 S.Ct. 611, 519 U.S. 1042, 136 L.Ed.2d 536. Civil Rights 1354

State officials can be held liable in individual capacities under § 1983, even if those officials are performing governmental duties when committing alleged wrongs. Price v. State of Hawaii, C.A.9 (Hawai'i) 1991, 939 F.2d 702, rehearing denied, certiorari denied 112 S.Ct. 1479, 503 U.S. 938, 117 L.Ed.2d 622, certiorari denied 112 S.Ct. 1480, 503 U.S. 938, 117 L.Ed.2d 622. Civil Rights 1354

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42 U.S.C.A. § 1983

Under § 1983, plaintiff may sue state officer in individual capacity for alleged wrongs committed by officer in his official capacity. Price v. Akaka, C.A.9 (Hawai'i) 1990, 928 F.2d 824, rehearing denied, certiorari denied 112 S.Ct. 436, 502 U.S. 967, 116 L.Ed.2d 455. Civil Rights 1354

Personal capacity suits seek to impose individual liability upon government officers for actions taken under color of state law; thus, on the merits, to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right. Estate of Phillips v. District of Columbia, D.D.C.2003, 257 F.Supp.2d 69, motion to vacate denied 355 F.Supp.2d 212. Civil Rights 1326(2); Civil Rights 1354

Members of county highway committee could not be held liable in their personal capacities for any violation of private contractor's constitutional rights occurring when county refused to sell road salt and other materials to contractor in alleged retaliation for his comments, absent evidence from which it could be inferred that the committee members were responsible for decision. Schmidt v. Lincoln County, State of Wisconsin, W.D.Wis.2003, 249 F.Supp.2d 1124. Civil Rights 1360

Lack of showing of any personal involvement, on part of state attorney general, precluded individual capacity suit seeking monetary judgment for false arrest on federal charges and false imprisonment in federal facility. Channer v. Murray, D.Conn.2003, 247 F.Supp.2d 182. Civil Rights 1358

Parent of public school student, as next friend of student, stated a claim against school principal and teacher in their personal capacities under §§ 1983 for violation of student's right to equal protection, based on actions of principal and teacher in prohibiting students from speaking Spanish in school; parent alleged that with no exceptions, principal and teacher prohibited students from speaking Spanish on school grounds, and that risk of discipline for violating that prohibition fell disproportionately on students who spoke Spanish and limited English. Rubio v. Turner Unified School Dist. No. 202, D.Kan.2006, 453 F.Supp.2d 1295. Schools 164

Former Wisconsin Department of Corrections (WDOC) employee failed to state §§ 1983 claim against WDOC where he did not allege that any formal departmental policy violated his constitutional rights, but employee's superiors could be held liable under §§ 1983 in their individual capacities for constitutional violations alleged. Salas v. Wisconsin Dept. of Corrections, W.D.Wis.2006, 429 F.Supp.2d 1056. Civil Rights 1359

Before finding that civil rights defendant is sued in his individual capacity, court considers whether the pleadings offer defendant adequate notice that his personal assets are at stake in the proceeding. Smith v. Central Dauphin School Dist., M.D.Pa.2005, 419 F.Supp.2d 639. Civil Rights 1394

Corporate government contractor could assert a claim against state official alleging the deprivation of a reputation-plus type of liberty interest. Coleman & Williams, Ltd. v. Wisconsin Dept. of Workforce Development, E.D.Wis.2005, 401 F.Supp.2d 938. Civil Rights 1331(6)

Parents of autistic student could not sue teacher and principal, in their individual capacities, under §§ 1983 for violations of the Americans with Disabilities Act (ADA) or Rehabilitation Act; parents could not sue teacher and principal, in their individual capacities, directly under ADA or the Rehabilitation Act, and thus, parents could not use §§ 1983 to do what they could not do directly under these statutes, namely establish individual liability. Stevenson v. Independent School District No. I-038 of Garvin County, Oklahoma, W.D.Okla.2005, 393 F.Supp.2d 1148. Schools 155.5(2.1)

An employer's agent may not be held individually liable under Title VII, however, individual liability is possible under §§ 1983 and New York's Human Rights Law. Dawson v. County of Westchester, S.D.N.Y.2004, 351 F.Supp.2d 176. Civil Rights 1113; Civil Rights 1340; Civil Rights 1736

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42 U.S.C.A. § 1983

Individuals may not be held personally liable under Title VII, the ADA, the Rehabilitation Act, or the ADEA. Murphy v. Board of Educ. of Rochester City School Dist., W.D.N.Y.2003, 273 F.Supp.2d 292, affirmed 106 Fed.Appx. 746, 2004 WL 1682887. Civil Rights 1113

State employees in their individual capacities may be liable for damages under § 1983, even when the conduct in question is related to their official duties. McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Civil Rights 1354

Where arrestees' § 1983 claim alleging that police chief failed to train officers in use of handcuffs did not specify whether chief was being sued in his individual or official capacity, he was deemed sued in his official capacity only, rendering claim against him redundant to failure to train claim against city. Fakorzi v. Dillard's, Inc., S.D.Iowa 2003, 252 F.Supp.2d 819. Civil Rights 1395(6)

Sheriff had no civil rights liability in individual capacity for officers' alleged use of excessive force in fatally shooting homeowner during execution of warrant, where he did not participate in warrant's execution and there was no evidence that, as a supervisor, he implicitly authorized, approved, or knowingly acquiesced in allegedly unconstitutional conduct. Wingrove v. Forshey, S.D.Ohio 2002, 230 F.Supp.2d 808. Civil Rights 1358

Employee of Territory of Virgin Islands who inflicts injury while acting in his or her official capacity may only be sued under § 1983 in his or her individual capacity. Jarvis v. Government of Virgin Islands, D.Virgin Islands 1996, 919 F.Supp. 177. Civil Rights 1354

Inmate's § 1983 suit against state prison official, alleging deprivation of due process at disciplinary proceeding, was not barred by Eleventh Amendment; officer was being sued in his individual capacity. Bunting v. Nagy, S.D.N.Y.2003, 2003 WL 21305339, Unreported. Federal Courts 269

486. Official capacity, liability generally

Statement in prior decision that officials acting in their official capacities were not 'persons' under § 1983 was best understood as reference to capacity in which state officer was being sued, not capacity in which officer inflicted alleged injury; statement did not make § 1983 relief unavailable against state officers, sued in their individual capacities, for damages arising from official acts. Hafer v. Melo, U.S.Pa.1991, 112 S.Ct. 358, 502 U.S. 21, 116 L.Ed.2d 301. Civil Rights 1360

Detainee at state facility for sexually violent persons who brought §§ 1983 due process action against facility employees, alleging failure to protect detainee from beating at hands of fellow resident, could not assert failure-to-train claim against employees in their individual capacities; such claim could only be asserted against employees in their official capacities. Brown v. Budz, C.A.7 (Ill.) 2005, 398 F.3d 904. Civil Rights 1358

Under Puerto Rico law, mayor's employment decisions ipso facto constituted official policy of municipality, and thus, liability of municipality could not be divorced from mayor's liability in his official capacity, for purposes of municipal employee's civil rights action alleging political discrimination claim. Rivera-Torres v. Ortiz Velez, C.A.1 (Puerto Rico) 2003, 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Civil Rights 1351(5); Civil Rights 1359

Person sued in his official capacity has no stake, as individual, in outcome of litigation. Johnson v. Board of County Com'rs for County of Fremont, C.A.10 (Colo.) 1996, 85 F.3d 489, rehearing denied, certiorari denied 117 S.Ct. 611, 519 U.S. 1042, 136 L.Ed.2d 536. Officers And Public Employees 114

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42 U.S.C.A. § 1983

Supreme Court holding, that state or state officials were not considered "persons" under § 1983, does not apply when state official in his or her official capacity is sued for prospective relief. Chaloux v. Killeen, C.A.9 (Idaho) 1989, 886 F.2d 247. Civil Rights 1354

When civil rights complaint is unclear as to whether defendants are sued in their official or individual capacities, court looks to both the complaint and the course of the proceedings to determine the liability plaintiff seeks to impose. Smith v. Central Dauphin School Dist., M.D.Pa.2005, 419 F.Supp.2d 639. Civil Rights 1394

To the extent that inmate purported to sue prison officials under §§1983 in their official capacities, the Eleventh Amendment's bar against suits brought in federal court by a state's own citizens deprived the district court of jurisdiction. Gonzalez v. Narcato, E.D.N.Y.2005, 363 F.Supp.2d 486. Federal Courts 269

Section 1983 actions against individuals in their official capacities are not sustainable since identity of the individual is subsumed in governmental entity's identity. Cordray v. County of Lincoln, D.N.M.2004, 320 F.Supp.2d 1171. Civil Rights 1354

A municipal liability claim under § 1983 against individual government agents must be pursued against them in their official capacity, and generally represents only another way of pleading an action against an entity of which an officer is an agent. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1354

County sheriff and correctional facility officer were liable in their official capacities for any damages attributable to their not affording jail inmate opportunity to make statement prior to being confined in 24-hour keeplock, where denying inmate that opportunity was consistent with standard policy followed in jail, as set forth in rules and infraction notice. McCann v. Phillips, S.D.N.Y.1994, 864 F.Supp. 330. Civil Rights 1358

Fact that suits against officials in their official capacity are nothing more than actions against governmental entity of which the individual was agent did not mandate dismissal of either borough or borough police chief from § 1983 action; it would be possible for borough to be liable, but for police chief to be liable only in his personal capacity, and multiple defendants, whether corporate, municipal, or individual, are commonplace in § 1983 cases. Coffman v. Wilson Police Dept., E.D.Pa.1990, 739 F.Supp. 257. Civil Rights 1389

Since municipalities are potentially liable under this section, it follows that local governmental officials sued in their official capacities are "persons" under this section in those cases in which a local government would be suable in its own name. Ohland v. City of Montpelier, D.C.Vt.1979, 467 F.Supp. 324. Civil Rights 1354

487. Supervisory personnel, liability generally

Liability under § 1983 cannot be premised upon the doctrine of respondeat superior; therefore, a supervisor is only liable for constitutional violations of his subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them. Lavender v. Lampert, D.Or.2002, 242 F.Supp.2d 821. Civil Rights 1336; Civil Rights 1355

Supervisory personnel cannot be held vicariously liable under § 1983 for the acts of subordinates, but may be independently liable where a reasonable person in the supervisor's position would have known that his conduct infringed the plaintiff's rights and the supervisor's conduct was causally related to the subordinate's constitutional violation. McCurry v. Moore, N.D.Fla.2002, 242 F.Supp.2d 1167. Civil Rights 1355

Documentation of widespread abuses are necessary to establish a supervisor's liability under §§ 1983 for constitutional violations by a subordinate, and the plaintiff cannot satisfy his burden of proof by pointing to a single incident or isolated incidents. Caldwell v. Green, W.D.Va.2006, 451 F.Supp.2d 811. Civil Rights 1355

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Issue of whether corrections official was liable on grounds of supervisory liability was for jury in corrections officer's §§ 1983 claim against official stemming from injuries sustained during a practical joke gone awry perpetrated by co-workers. Givens v. O'Quinn, W.D.Va.2006, 447 F.Supp.2d 593. Civil Rights 1429

Official with no hiring, firing, or disciplinary power over any supervisory staff or personnel of correctional facilities or no direct power to control or direct customs and policies of facilities has no personal involvement in unconstitutional conduct, and claim under § 1983 cannot be sustained as to that individual. Morris v. Eversley, S.D.N.Y.2003, 282 F.Supp.2d 196. Civil Rights 1358

Elements for establishing supervisory liability under § 1983 are that: (1) supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed pervasive and unreasonable risk of constitutional injury to citizens like plaintiff; (2) supervisor's response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of alleged offensive practices; and (3) there was affirmative causal link between supervisor's inaction and particular constitutional injury suffered by plaintiff. Jennings v. University of North Carolina at Chapel Hill, M.D.N.C.2002, 240 F.Supp.2d 492. Civil Rights 1355

Supervisory liability may be imposed under § 1983 when an official has actual or constructive notice of unconstitutional practices and demonstrates gross negligence or deliberate indifference by failing to act. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Civil Rights 1355

High school principal was not liable under § 1983 for teacher's deprivation of student's Fourteenth Amendment right to bodily integrity by acts of sexual misconduct, since there was not sufficient evidence that there was such widespread abuse of students by teachers at high school that principal should have been placed on notice that corrective action was required. Hackett v. Fulton County School Dist., N.D.Ga.2002, 238 F.Supp.2d 1330. Civil Rights 1356

Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory; in order for a supervisory public official to be held liable for a subordinate's constitutional tort, the official must either be the moving force behind the constitutional violation or exhibit deliberate indifference to the plight of the person deprived. Figalora v. Smith, D.Del.2002, 238 F.Supp.2d 658. Civil Rights 1355

Three-part test is applied for determining whether supervisory official can be held liable for conduct of subordinate in federal civil rights action: plaintiff must show that supervisor failed to train or supervise subordinate, that causal connection existed between failure to supervise or train and violation of plaintiff's rights, and that such failure to supervise or train amounted to gross negligence or deliberate indifference. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1355

Supervisory official may be liable under § 1983 only if he was personally involved in constitutional deprivation, or if there was sufficient causal connection between supervisor's wrongful conduct and constitutional violation. Gardner v. Wilson, C.D.Cal.1997, 959 F.Supp. 1224. Civil Rights 1355

488. Subordinate personnel, liability generally

Former city manager's legitimate, nonretaliatory motive in upholding termination or discipline of city firefighters during final step of multitiered termination process did not shield his subordinates, or those found to be subordinates' coconspirators, from liability on firefighters' First Amendment retaliation claims, inasmuch as jury could reasonably have found that former city manager would not have terminated or disciplined firefighters if fire chief and assistant city manager, whose conduct was found to have been motivated by firefighters' protected conduct, had not brought charges against firefighters. Gilbrook v. City of Westminster, C.A.9 (Cal.) 1999, 177 F.3d 839, amended on denial of rehearing, certiorari denied 120 S.Ct. 614, 528 U.S. 1061, 145 L.Ed.2d 509. Civil Rights 1359

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42 U.S.C.A. § 1983

489. Contractors, liability generally

County could not be held liable under § 1983 for the selection and/or funding of a contract public defender; county discharged its basic constitutional obligation under *Gideon* by contracting with private law firm to provide legal services to indigent criminal defendants, and if firm made decisions about plaintiff's criminal representation based on economic self-interest, the fault for firm's ethical violation could not be blamed on county. Gausvik v. Perez, E.D.Wash.2002, 239 F.Supp.2d 1047. Civil Rights 1088(5); Civil Rights 1351(4)

Private doctor who provides medical services to inmates pursuant to contract with prison may be held liable in civil rights suit. Hetzel v. Swartz, M.D.Pa.1995, 909 F.Supp. 261. Civil Rights 1326(8)

490. Corporate veil, liability generally

Officers of land companies which allegedly discriminated against black purchasers in respect to prices and terms could be held liable for the companies' alleged violations of plaintiffs' civil rights, since the general rule that a corporation and its stockholders are deemed separate entities is subject to the qualification that the separate identity may be disregarded in "exceptional situations" such as the instant case. Clark v. Universal Builders, Inc., N.D.Ill.1976, 409 F.Supp. 1274. Civil Rights 1338

491. Professional discretion and judgment, liability generally

Defendants are not removed from purview of § 1983 action simply because they are professionals acting in accordance with professional discretion and judgment; there is no rule that professionals are subject to suit under § 1983 unless professional was exercising custodial or supervisory authority. West v. Atkins, U.S.N.C.1988, 108 S.Ct. 2250, 487 U.S. 42, 101 L.Ed.2d 40. Civil Rights 1335

VII. COLOR OF LAW GENERALLY

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Zoning, ordinances 583

521. Color of law generally

Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful. American Mfrs. Mut. Ins. Co. v. Sullivan, U.S.Pa.1999, 119 S.Ct. 977, 526 U.S. 40, 143 L.Ed.2d 130. Civil Rights 1325

To state claim under § 1983, plaintiff must allege violation of rights secured by Constitution and laws of United States, and must show that alleged deprivation was committed by person acting under color of state law. West v. Atkins, U.S.N.C.1988, 108 S.Ct. 2250, 487 U.S. 42, 101 L.Ed.2d 40. Civil Rights 1304

On the merits, to establish personal liability of a public official in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right, but more is required in an official-capacity action, for the governmental entity is liable under § 1983 only when the entity itself is a "moving force" behind the deprivation. Kentucky v. Graham, U.S.Ky.1985, 105 S.Ct. 3099, 473 U.S. 159, 87 L.Ed.2d 114, on remand 791 F.2d 932. Civil Rights 1354

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42 U.S.C.A. § 1983

Under traditional definition of "acting under color of state law," defendant in § 1983 action must have exercised power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law. David v. City and County of Denver, C.A.10 (Colo.) 1996, 101 F.3d 1344, rehearing denied, certiorari denied 118 S.Ct. 157, 522 U.S. 858, 139 L.Ed.2d 102. Civil Rights 1324

Actionable § 1983 claim must allege deprivation of rights secured by Constitution by person acting under color of state law. Scott v. Moore, C.A.5 (Tex.) 1996, 85 F.3d 230, rehearing granted, opinion vacated, on rehearing 114 F.3d 51. Civil Rights 1304

Suit under § 1983 may be dismissed if defendants' conduct did not occur under color of state law. Leeds v. Meltz, C.A.2 (N.Y.) 1996, 85 F.3d 51. Civil Rights 1324

Liability under § 1983 requires proof that conduct complained of was committed by person acting under color of state law and deprived person of rights, privileges, or immunities secured by Constitution or laws of the United States. Yang v. Hardin, C.A.7 (Ill.) 1994, 37 F.3d 282. Civil Rights 1304

To state successful claim under § 1983, plaintiff must identify right secured by United States Constitution and deprivation of that right by person acting under color of state law. Adams v. Metiva, C.A.6 (Mich.) 1994, 31 F.3d 375. Civil Rights 1304

To establish civil rights liability, plaintiff must show that he has been deprived of federal constitutional or statutory right by person acting under color of law. Cullen v. Margiotta, C.A.2 (N.Y.) 1987, 811 F.2d 698, certiorari denied 107 S.Ct. 3266, 483 U.S. 1021, 97 L.Ed.2d 764. Civil Rights 1304

Generally, this section applies only to deprivations of civil rights under color of state law. Gonzalez v. Department of Army, C.A.9 (Cal.) 1983, 718 F.2d 926. Civil Rights 1304

Even if activity ostensibly designed to influence public policy has real purpose not to induce governmental action but to injure the plaintiff directly, activity is not actionable under this section unless taken under color of state law. Gorman Towers, Inc. v. Bogoslavsky, C.A.8 (Ark.) 1980, 626 F.2d 607. Civil Rights 1374

This section relating to deprivation of rights, privileges, or immunities secured by Constitution and laws gives remedy at law or in equity to any person for infringement of his civil rights by one who acts under color of state authority. Kellerman v. Askew, C.A.5 (Fla.) 1976, 541 F.2d 1089. Civil Rights 1304

One may not recover under this section authorizing civil action for deprivation of civil rights on the basis of acts not done "under color of law." Azar v. Conley, C.A.6 (Ohio) 1972, 456 F.2d 1382. Civil Rights 1324

If conduct challenged by plaintiff constitutes "state action" for purpose of Fourteenth Amendment claim, then that conduct is also action "under color of state law" for purpose of §§ 1983 and 1985 claims. Willis v. Town of Marshall, W.D.N.C.2003, 293 F.Supp.2d 608. Civil Rights 1325; Conspiracy 7.5(3)

To state a claim under § 1983, the plaintiff must allege that the defendants, while acting under color of state law, deprived her of a federal constitutional or statutory right. Hellman v. Gugliotti, D.Conn.2003, 279 F.Supp.2d 150. Civil Rights 1304

Section 1983 does not create a cause of action in and of itself; it provides redress for certain violations of rights arising under the federal constitution or laws of the United States which are caused by persons acting under color of state law. Mosley v. Yaletsko, E.D.Pa.2003, 275 F.Supp.2d 608. Civil Rights 1305

In order to succeed on § 1983 claim, plaintiff must prove: (1) that he was deprived of right secured by federal

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constitution or laws of United States; and (2) that he was subjected to this deprivation by person acting under color of state law. Hale v. Vance, S.D.Ohio 2003, 267 F.Supp.2d 725. Civil Rights 1304

To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law. Schorr v. Borough of Lemoyne, M.D.Pa.2003, 265 F.Supp.2d 488. Civil Rights 1304

Claim under § 1983 requires that plaintiff establish deprivation of constitutional right under color of state law. Bland v. New York, E.D.N.Y.2003, 263 F.Supp.2d 526. Civil Rights 1304

There can be no state action or acting under color of law, for purpose of § 1983 claim, if challenged conduct is not related in some meaningful way either to defendant employee's governmental status or to performance of employee's duties. Teta v. Packard, N.D.Ill.1997, 959 F.Supp. 469. Civil Rights 1326(2)

Where § 1983 action is brought only against government entity and not its employee who allegedly caused injury, court may consider issue of whether employee was acting under color of state law, although its determination as to that issue is not dispositive of whether governmental entity may be held liable. Rodriguez v. City of Milwaukee, E.D.Wis.1997, 957 F.Supp. 1055. Civil Rights 1326(1)

In employment context, officers and employees of states and their agencies, instrumentalities and political subdivisions will generally be acting "under color of law" for purposes of civil rights claims when their actions are in furtherance or fulfillment of tasks and obligations assigned to them, or made possible by power conferred upon them by government. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1326(11)

To state § 1983 claim, complaint must allege that defendant, acting under color of state law, deprived plaintiff of rights secured by the Constitution or laws of the United States; first step in any such claim is to identify the specific constitutional right allegedly infringed. Roe v. Office of Adult Probation, D.Conn.1996, 938 F.Supp. 1080, vacated 125 F.3d 47. Civil Rights 1394

Plaintiff claiming violation of rights under § 1983 is required to demonstrate that person deprived him of federal law, and that such person acted under color of state law. Johnson v. Cullen, D.Del.1996, 925 F.Supp. 244. Civil Rights 1304

For defendant to be liable under § 1983, plaintiff must establish that objectionable acts were performed by state actor. Wilcher v. City of Wilmington, D.Del.1996, 924 F.Supp. 613, affirmed in part, vacated in part 139 F.3d 366, on remand 60 F.Supp.2d 298. Civil Rights 1325

Traditional definition of acting under color of state law requires that defendant in § 1983 action have exercised power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law. Forbes v. Rhode Island Broth. of Correctional Officers, D.R.I.1996, 923 F.Supp. 315. Civil Rights 1324

Initial inquiry in § 1983 action includes following: whether conduct complained of was committed by person acting under color of state law; and whether this conduct deprived person of his rights, privileges, or immunities secured by Constitution. Richmond v. Cagle, E.D.Wis.1996, 920 F.Supp. 955. Civil Rights 1304

In order to prevail under § 1983, plaintiff must prove that person acting under color of state law has deprived plaintiff of rights secured by constitution or other federal laws. Miller v. City of Columbus, S.D.Ohio 1996, 920 F.Supp. 807. Civil Rights 1304

Successful § 1983 action requires showing that conduct complained of was committed by person acting under color

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of state law and deprived complainant of rights, privileges, or immunities secured by constitution or laws of United States. Medina v. Minerva, M.D.Fla.1995, 907 F.Supp. 379. Civil Rights 1304

To state viable § 1983 claim, plaintiff must allege that conduct complained of was committed by person acting under color of state law and that said conduct deprived plaintiff of right, privilege, or immunity secured by Constitution or by laws of United States. Turiano v. Schnarrs, M.D.Pa.1995, 904 F.Supp. 400. Civil Rights 1304

In order to prevail on § 1983 claim, plaintiff must prove that she was deprived of federal right by someone acting under color of state law. Verney v. Pennsylvania Turnpike Com'n, M.D.Pa.1995, 903 F.Supp. 826. Civil Rights 1304

To state claim under § 1983, plaintiff must allege that right secured by Constitution and laws of United States was violated and that alleged deprivation was committed by person acting under color of law. Jones v. Moran, N.D.Cal.1995, 900 F.Supp. 1267. Civil Rights 1394

In order to establish claim under § 1983, plaintiffs must prove that defendants acted under cloak of state authority when they took alleged actions against plaintiffs and that actions deprived plaintiffs of right or rights secured by Constitution or by federal law. Pettco Enterprises, Inc. v. White, M.D.Ala.1995, 896 F.Supp. 1137, affirmed 98 F.3d 1353, certiorari denied 117 S.Ct. 1248, 520 U.S. 1117, 137 L.Ed.2d 329. Civil Rights 1325

Federal civil rights statute operates as vehicle for imposing liability against any person who, acting under color of state law, violates individual's federally protected rights. Dawson v. Prince George's County, D.Md.1995, 896 F.Supp. 537. Civil Rights 1304

To recover under § 1983, plaintiff must show that alleged violation occurred under color of state law. Glendora v. Cablevision Systems Corp, S.D.N.Y.1995, 893 F.Supp. 264. Civil Rights 1304

To recover on claim brought under federal civil rights statute, plaintiff must establish that defendants were acting under color of state law and that their conduct deprived plaintiff of rights secured by Constitution. Wade v. Byles, N.D.Ill.1995, 886 F.Supp. 654, affirmed 83 F.3d 902, certiorari denied 117 S.Ct. 311, 519 U.S. 935, 136 L.Ed.2d 227. Civil Rights 1304

To properly state § 1983 claim, plaintiff must allege deprivation of right guaranteed by Constitution or laws of United States by defendant acting under color of state law. Frazier v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1994, 868 F.Supp. 757. Civil Rights 1394

To state claim under federal civil rights statute, complaint must state facts sufficient to show both that conduct complained of was committed by person acting under color of state law and that conduct deprived plaintiff of right or privilege secured by Constitution or laws of United States and provide defendant with adequate notice to frame answer; this can be done by alleging time and place of deprivation and persons responsible. Youse v. Carlucci, E.D.Pa.1994, 867 F.Supp. 317. Civil Rights 1394

Person acts under color of state law, for purposes of § 1983 claim, when his or her actions are fairly attributable to state, that is, where person's official character is such as to lend weight of state to his or her decisions. Faragher v. City of Boca Raton, S.D.Fla.1994, 864 F.Supp. 1552, affirmed in part, reversed in part 76 F.3d 1155, rehearing granted, opinion vacated 83 F.3d 1346, affirmed in part, reversed in part 111 F.3d 1530, certiorari granted 118 S.Ct. 438, 522 U.S. 978, 139 L.Ed.2d 337, reversed 118 S.Ct. 2275, 524 U.S. 775, 157 A.L.R. Fed. 663, 141 L.Ed.2d 662, on remand 166 F.3d 1152. Civil Rights 1326(2)

Section 1983 regulates relationship between state officials and individuals and, thus, threshold question in § 1983

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action is whether defendant was state actor, acting in official capacity. Doe v. William Shapiro, Esquire, P.C., E.D.Pa.1994, 852 F.Supp. 1246. Civil Rights 1326(2)

To successfully state claim under § 1983, plaintiff must identify right secured by United States Constitution and deprivation of that right by person acting under color of state law. Mackey v. Cleveland State University, N.D.Ohio 1993, 837 F.Supp. 1396. Civil Rights 1304

To maintain § 1983 action, plaintiff must demonstrate that he has been deprived, under color of state law, of rights secured by constitution or laws of United States. B.M.H. by C.B. v. School Bd. of City of Chesapeake, Va., E.D.Va.1993, 833 F.Supp. 560. Civil Rights 1304

In any § 1983 action, plaintiff must establish that conduct complained of was committed by person acting under color of state law, and that conduct deprived person of his rights, privileges, or immunities secured by Constitution of the United States. Jones v. Chieffo, E.D.Pa.1993, 833 F.Supp. 498, affirmed 22 F.3d 301. Civil Rights 1304

To state valid cause of action under § 1983, plaintiff must allege deprivation of right, privilege, or immunity secured by Constitution and laws of United States while defendant was acting under color of state law. Kirwan v. Larned Mental Health, D.Kan.1993, 816 F.Supp. 672. Civil Rights 1394; Civil Rights 1396

Party seeking recovery under 42 U.S.C.A. § 1983 must prove both that conduct alleged occurred under color of state law and that conduct alleged resulted in deprivation of some constitutional right. Wilson v. Township of Middletown, Susquehanna County, Pa., M.D.Pa.1992, 810 F.Supp. 125. Civil Rights 1304

521A. Particular actors clothed with authority

Private hospital which accepted involuntarily committed mentally disabled patients was clothed with the authority of state law and acting under color of state law for purposes of a § 1983 claim brought by parents related to death of their son after he eloped from hospital following his involuntary commitment; involuntary commitments at hospital were processed through the county funded program pursuant to the hospital's contractual duty to provide the service and by virtue of the contract the hospital was obligated to treat confined mentally disabled persons. Schorr v. Borough of Lemoyne, M.D.Pa.2003, 265 F.Supp.2d 488. Civil Rights 1326(5)

522. Nature of activities performed, color of law generally

Fact that state's employee's role parallels one in private sector is not, by itself, reason to conclude that former is not acting under color of state law within meaning of § 1983 in performing his duties. West v. Atkins, U.S.N.C.1988, 108 S.Ct. 2250, 487 U.S. 42, 101 L.Ed.2d 40. Civil Rights 1326(2)

When distinguishing private violence from violence attributable to state action, for purposes of a §§ 1983 action, an actor's conduct will be attributed to the state when it occurs in the course of performing an actual or apparent duty of his office, or is such that the actor could not have behaved in that way but for the authority of his office. Givens v. O'Quinn, W.D.Va.2006, 447 F.Supp.2d 593. Civil Rights 1326(2)

It is nature of act performed by state officials, not status of state officials as such that is determinative of applicability of this section. Phillips v. Rockefeller, S.D.N.Y.1970, 321 F.Supp. 516, affirmed 435 F.2d 976. Civil Rights 1326(2)

Hourly rates of $120.00 for prevailing defendants' lead attorney, $110.00 for associate attorneys, and $50.00 for paralegal services were reasonable for purpose of calculating prevailing defendants' award of attorney fees, in §

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1983 false arrest claim. Carrion v. City of New York, S.D.N.Y.2003, 2003 WL 22519438, Unreported. Civil Rights 1488

523. Nature of rights deprived, color of law generally

Recognition or nonrecognition of state action is not governed by the nature of the constitutional rights asserted in complaint under this section. O'Neill v. Grayson County War Memorial Hospital, C.A.6 (Ky.) 1973, 472 F.2d 1140 . Civil Rights 1396

524. Knowledge, color of law generally

In order to show that person has acted under color of a statute, for purpose of provision of this section affording civil action for deprivation of rights, it is essential that he act with knowledge of and pursuant to statute. Adickes v. S. H. Kress & Co., U.S.N.Y.1970, 90 S.Ct. 1598, 398 U.S. 144, 26 L.Ed.2d 142. Civil Rights 1324

Action with knowledge of and pursuant to state law is a minimal requirement to satisfy the under color of state law test for jurisdiction purposes under this section where the alleged state action is based on a private party's actions and such party has no authority or pretence of authority to act as state's agent and is not compelled to act for the state. Gresham Park Community Organization v. Howell, C.A.5 (Ga.) 1981, 652 F.2d 1227. Civil Rights 1326(4)

State action under this section governing deprivation of civil rights will lie only where a federal defendant invokes a state remedy that he knows to be unconstitutional and the defendant either is a state officer or the remedy is among those questionable prejudgment remedies used by private creditors. District 28, United Mine Workers of America, Inc. v. Wellmore Coal Corp., C.A.4 (Va.) 1979, 609 F.2d 1083. Civil Rights 1326(9)

One essential element for taking action under color of state law, within meaning of this section, is that the person act with knowledge of and pursuant to a state law, statute, etc. Adams v. Southern California First Nat. Bank, C.A.9 (Cal.) 1973, 492 F.2d 324, certiorari denied 95 S.Ct. 325, 419 U.S. 1006, 42 L.Ed.2d 282.

Private defendants may be held liable for damages under civil rights statute only if they fail to act in good faith in invoking unconstitutional state procedures, that is, if they either knew or should have known that statute on which they relied was unconstitutional; such test has both objective and subjective component. Britt v. Whitehall Income Fund '86, M.D.Ga.1993, 891 F.Supp. 1578. Civil Rights 1326(9)

525. Compliance with law distinguished, color of law generally

To violate this section an act need not have been made in compliance with law but merely "under color of law". U. S. v. Wiseman, C.A.2 (N.Y.) 1971, 445 F.2d 792, certiorari denied 92 S.Ct. 346, 404 U.S. 967, 30 L.Ed.2d 287.

526. Abuse of authority, color of law generally

Defendant in section 1983 suit acts under color of state law when he abuses position given to him by state. West v. Atkins, U.S.N.C.1988, 108 S.Ct. 2250, 487 U.S. 42, 101 L.Ed.2d 40. Civil Rights 1324; Civil Rights 1326(2)

Current wife acted under state law for § 1983 purposes when, as an employee of county district attorney's office, current wife illegally used DA office's medical eligibility data system (MEDS) computer system to find her husband's ex-wife at a battered women's shelter in order to serve ex-wife papers relating to child custody issues, since current wife's actions, though improper, related to the performance of her official duties; current wife abused her responsibilities and acted under pretense of her county employment by asserting her state-authorized passcode

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to enter into MEDS database. McDade v. West, C.A.9 (Cal.) 2000, 223 F.3d 1135. Civil Rights 1326(2)

527. State action, color of law generally--Generally

State action for purposes of § 1983 claim may be found if private party has acted with help of or in concert with state officials, if private party has been delegated power traditionally exclusively reserved to state, or if there is sufficiently close nexus between state and challenged action of private entity so that action of latter may fairly be treated as that of state itself. McKeesport Hosp. v. Accreditation Council for Graduate Medical Educ., C.A.3 (Pa.) 1994, 24 F.3d 519. Civil Rights 1326(4); Civil Rights 1326(5)

State action within meaning of civil rights statute [42 U.S.C.A. § 1983] can be found only when it can be said that state is responsible for specific conduct of which plaintiff complains. Daigle v. Opelousas Health Care, Inc., C.A.5 (La.) 1985, 774 F.2d 1344. Civil Rights 1325

The action inhibited by this section is only such action as may fairly be said to be state action under U.S.C.A.Const. Amend. 14. Harley v. Oliver, C.A.8 (Ark.) 1976, 539 F.2d 1143. Civil Rights 1325

"State action" is required in order that there be a proper claim under this section relating to civil actions for deprivation of rights, and there must be state action in order that there be a deprivation of rights secured by U.S.C.A.Const. Amend. 14. Hall v. Garson, C.A.5 (Tex.) 1970, 430 F.2d 430. Civil Rights 1325; Constitutional Law 213(2)

Rights of action under this section are limited in their scope to situations where things done have had at least some attribute of state authorization or warrant for having been engaged in. Wallach v. Cannon, C.A.8 (Mo.) 1966, 357 F.2d 557. Civil Rights 1325; Conspiracy 1.1

To make out a claim under § 1983, a plaintiff must demonstrate that the conduct of which he is complaining has been committed under color of state or territorial law and that it operated to deny him a right or rights secured by the Constitution and laws of the United States; the plaintiff must also establish that it was the acts of the defendant which caused the constitutional deprivation. Mosley v. Yaletsko, E.D.Pa.2003, 275 F.Supp.2d 608. Civil Rights 1304

To constitute state action for purposes of § 1983, first, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible, and second, the party charged with the deprivation must be a person who may fairly be said to be a state actor; what is fairly attributable is a matter of normative judgment, and the criteria lack rigid simplicity no one fact can function as a necessary condition across the board for finding state action. Schorr v. Borough of Lemoyne, M.D.Pa.2003, 265 F.Supp.2d 488. Civil Rights 1325

In order to determine which state action test should be applied to a given set of facts in a § 1983 action, courts must carefully investigate the circumstances of each case. Schorr v. Borough of Lemoyne, M.D.Pa.2003, 265 F.Supp.2d 488. Civil Rights 1325

The Massachusetts Civil Rights Act (MCRA) is coextensive with § 1983, except that the Federal statute requires State action, whereas its State counterpart does not, and the derogation of secured rights must occur by threats, intimidation or coercion. Sietins v. Joseph, D.Mass.2003, 238 F.Supp.2d 366. Civil Rights 1325; Civil Rights 1719

Traditional definition of acting "under color of state law," for purposes of § 1983, requires that defendant in § 1983 action have exercised power which is possessed by virtue of state law and made possible only because

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wrongdoer is clothed with authority of state law. Rodriguez v. City of Milwaukee, E.D.Wis.1997, 957 F.Supp. 1055. Civil Rights 1324

For state action to be present for purposes of § 1983, deprivation must be caused by exercise of some right or privilege created by state or by rule of conduct imposed by state or by person for whom state is responsible, and party charged with deprivation must be person who may fairly be said to be a state actor. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1325

In cases brought under § 1983, "under color of" state law is treated as equivalent to "state action" requirement of Fourteenth Amendment. Johnson v. Cullen, D.Del.1996, 925 F.Supp. 244. Civil Rights 1325

To constitute "state action" for purpose of stating claim under § 1983, deprivation must be caused by exercise of some right or privilege created by state or by person for whom state is responsible, and party charged with deprivation must be person who may fairly be said to be state actor. Palace v. Deaver, E.D.Pa.1993, 838 F.Supp. 1016. Civil Rights 1325

State action is necessary element of § 1983 and Fourteenth Amendment claims. Lawline v. American Bar Ass'n, N.D.Ill.1990, 738 F.Supp. 288, affirmed 956 F.2d 1378, certiorari denied 114 S.Ct. 551, 510 U.S. 992, 126 L.Ed.2d 452. Civil Rights 1325; Constitutional Law 213(2); Constitutional Law 254(2)

Cause of action pursuant to this section requires state action, which in majority of cases is supplied by fact that named defendants are state officials acting on behalf of state. White v. Beal, E.D.Pa.1978, 447 F.Supp. 788. Civil Rights 1326(2)

Court would treat suit against postal employee, alleging deprivation of Fourth Amendment rights, as *Bivens* action against federal employee, when originally erroneously brought as § 1983 action available only against state actors. Rueda v. City of New York, E.D.N.Y.2003, 2003 WL 21143084, Unreported. United States 50.20

528. ---- Form of action, state action, color of law generally

State action in any form whether by statute, act of executive department of state or local government, or otherwise will not be permitted to impede, delay or frustrate proceedings to protect rights guaranteed to members of all races under U.S.C.A.Const. Amend. 14. Bradley v. Milliken, C.A.6 (Mich.) 1970, 433 F.2d 897. Constitutional Law 213(1)

529. ---- Nature of standard, state action, color of law generally

Test for determining whether a given act or actions of an entity constitute state action within meaning of this section is not an inflexible standard. Bach v. Mount Clemens General Hospital, Inc., E.D.Mich.1978, 448 F.Supp. 686.

530. ---- Totality of circumstances, state action, color of law generally

It is "totality of the circumstances" which must be considered in testing for presence of "state action." Barrett v. United Hospital, S.D.N.Y.1974, 376 F.Supp. 791, affirmed 506 F.2d 1395. Civil Rights 1325

531. ---- Federal actors, state action, color of law generally

Where all defendants in federal prisoner's suit were federal employees and his claims arose out of treatment of prisoner in federal prison, there was no "state action" that would support § 1983 claim. Risley v. Hawk,

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D.D.C.1996, 918 F.Supp. 18, affirmed 108 F.3d 1396, 323 U.S.App.D.C. 367, rehearing denied. Civil Rights 1327

532. ---- Color of law compared, state action, color of law generally

In action brought against state official under 1871 civil rights statute, statutory requirement of action "under color of state law" and the "state action" requirement of Fourteenth Amendment are identical. Lugar v. Edmondson Oil Co., Inc., U.S.Va.1982, 102 S.Ct. 2744, 457 U.S. 922, 73 L.Ed.2d 482. Civil Rights 1325

Statutory "under color of law" requirement of Civil Rights Act of 1871 is equivalent, although not identical, to the constitutional doctrine of state action. Cobb v. Georgia Power Co., C.A.11 (Ga.) 1985, 757 F.2d 1248. Civil Rights 1325

Technically, the state action requirement of this section refers not to color of state law requirement but to requirement that the right be secured by the Constitution and laws of the United States; to demonstrate that an action under color of state law, it might be sufficient to show that a private party acted with knowledge of and pursuant to a state statute but to demonstrate that an individual has been deprived of the Federal Constitution right to equal protection or due process, it is necessary to show that state action caused the deprivation. Dieffenbach v. Attorney General of Vermont, C.A.2 (Vt.) 1979, 604 F.2d 187. Civil Rights 1325; Civil Rights 1326(4)

Generally, "state action" and "under color of law" are perceived as alternative ways of expressing same legal principle. Greco v. Orange Memorial Hospital Corp., C.A.5 (Tex.) 1975, 513 F.2d 873, rehearing denied 515 F.2d 1183, certiorari denied 96 S.Ct. 433, 423 U.S. 1000, 46 L.Ed.2d 376. Civil Rights 1325

"State action" requirement of U.S.C.A.Const. Amend. 14 and the "under color of state law" requirement of this section are substantially the same. Ouzts v. Maryland Nat. Ins. Co., C.A.9 (Nev.) 1974, 505 F.2d 547, certiorari denied 95 S.Ct. 1681, 421 U.S. 949, 44 L.Ed.2d 103.

"Under color of" law provision of this section is congruent to the "state action" concept. Perez v. Sugarman, C.A.2 (N.Y.) 1974, 499 F.2d 761. Civil Rights 1325

A prerequisite to the vesting of federal jurisdiction for an alleged wrong under this section is a deprivation of a right guaranteed by the Constitution and laws of the United States, and such deprivation must be "under color of law," that is, there must be state action. Watson v. Kenlick Coal Co., Inc., C.A.6 (Ky.) 1974, 498 F.2d 1183, certiorari denied 95 S.Ct. 2639, 422 U.S. 1012, 45 L.Ed.2d 677. Federal Courts 222

Subjecting all behavior that conforms to state law to U.S.C.A.Const. Amend. 14 would emasculate the "state action" concept of this section. Adams v. Southern California First Nat. Bank, C.A.9 (Cal.) 1973, 492 F.2d 324, certiorari denied 95 S.Ct. 325, 419 U.S. 1006, 42 L.Ed.2d 282. Civil Rights 1325

Any actions found to be "under color of state law" for § 1983 purposes will also satisfy "state action" requirement for Fourteenth Amendment purposes, as terms "state action" and "under color of state law" are functional equivalents. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1325; Constitutional Law 254(2)

Conduct that constitutes "state action" for purposes of Fourteenth Amendment's due process clause also is conduct "under color of state law" for purposes of § 1983 actions. Baltz v. Shelley, N.D.Ill.1987, 661 F.Supp. 169. See, also, Church of Human Potential, Inc. v. Vorsky, D.N.J.1986, 636 F.Supp. 93; Fuller v. Hurley, W.D.Va. 1983, 559 F.Supp. 313. Civil Rights 1325

533. ---- Merger with color of law, state action, color of law generally

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42 U.S.C.A. § 1983

Where deprivations of rights under the Fourteenth Amendment are alleged in § 1983 action, Fourteenth Amendment's state-action requirement and § 1983's under-color-of-state-law requirement merge. American Mfrs. Mut. Ins. Co. v. Sullivan, U.S.Pa.1999, 119 S.Ct. 977, 526 U.S. 40, 143 L.Ed.2d 130. Civil Rights 1325; Constitutional Law 254(2)

In § 1983 actions alleging deprivation of due process rights, Fourteenth Amendment's "state action" requirement and "under color of state law" requirement of § 1983 collapse into single inquiry. Landry v. A-Able Bonding, Inc., C.A.5 (Tex.) 1996, 75 F.3d 200. Civil Rights 1325

If state official allegedly abuses his or her authority in violation of state law and suit is brought under § 1983, "state action" and "under color of state law" prongs of test for liability collapse into single inquiry. Figueroa v. Fernandez, D.Puerto Rico 1996, 921 F.Supp. 889. Civil Rights 1326(2)

534. ---- Neutrality test, state action, color of law generally

The neutrality test for determining whether there is state action under U.S.C.A.Const. Amend. 14 is inapposite where state gives special support to nominally private party or, for other purposes, markedly restricts alternatives to dominion by a private party. Lavoie v. Bigwood, C.A.1 (N.H.) 1972, 457 F.2d 7. Constitutional Law 254(4)

535. ---- Common law codification, state action, color of law generally

Mere codification of common law is not sufficient to constitute significant state involvement for purpose of this section. Shirley v. State Nat. Bank of Connecticut, C.A.2 (Conn.) 1974, 493 F.2d 739, certiorari denied 95 S.Ct. 329, 419 U.S. 1009, 42 L.Ed.2d 284. Civil Rights 1326(1)

Merely enacting into statutory form what had been the accepted practice for years, and a limited involvement that might be sufficient for racial cases, did not command a finding of "state action" within meaning of this section in an economic due process case. Adams v. Southern California First Nat. Bank, C.A.9 (Cal.) 1973, 492 F.2d 324, certiorari denied 95 S.Ct. 325, 419 U.S. 1006, 42 L.Ed.2d 282. Civil Rights 1325

More than the statutory ratification of a previously existing common law practice is necessary to provide the factor of "state action" required under this section governing deprivation of civil rights when due process is involved in commercial repossessions. Mayhugh v. Bill Allen Chevrolet, W.D.Mo.1973, 371 F.Supp. 1, affirmed 496 F.2d 16, certiorari denied 95 S.Ct. 328, 419 U.S. 1006, 42 L.Ed.2d 283. Civil Rights 1325

536. ---- Delegation of authority, state action, color of law generally

Delegation, if any, by State Board of Medicine to private accrediting body for graduate medical training programs was insufficient state action to support hospital's § 1983 due process claim against accrediting body for withdrawal of accreditation for hospital's surgery program, in light of fact that Board remained ultimately responsible for approving such residency programs under Pennsylvania's Medical Practice Act of 1985. McKeesport Hosp. v. Accreditation Council for Graduate Medical Educ., C.A.3 (Pa.) 1994, 24 F.3d 519. Civil Rights 1326(6)

Detainee' petition, construed liberally, stated a claim under §§ 1983 against city by alleging that the city's policy-making authority in police matters was delegated to its police chief, that a pattern of widespread abuse existed in the use of force generally, and taser guns in particular, against black citizens, and that police chief's failure to intervene and stop such abuse was an act of omission amounting to an actionable policy of inadequate supervision which was a moving force behind the alleged violation of constitutional rights. Batiste v. City of Beaumont, E.D.Tex.2005, 421 F.Supp.2d 969. Civil Rights 1395(6)

Neighbors did not act under color of state law by filing complaint with town about landowner's potentially

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malfunctioning septic system, by loaning bucket and hose to town's director of building and code enforcement, watching him perform dye test, observing dye in landowner's basement, and reporting this observation to director; even if code and building enforcement was traditional public function, function was not delegated to neighbors by director's request that they watch for dye in lake, as director retained responsibility for conducting and monitoring test, and determined whether landowner's septic system passed test. Serbalik v. Gray, N.D.N.Y.1998, 27 F.Supp.2d 127. Civil Rights 1326(9)

City housing authority's contract with private security company did not delegate police power to that company and did not make security guard it employed a state actor for purposes of civil rights claim; there was no evidence that authority employed security company pursuant to its statutory power to establish police force, and primary duty of contract security guards was to control access in and out of authority's building and give people information and assistance. Wade v. Byles, N.D.Ill.1995, 886 F.Supp. 654, affirmed 83 F.3d 902, certiorari denied 117 S.Ct. 311, 519 U.S. 935, 136 L.Ed.2d 227. Civil Rights 1326(4)

Combination of hotel's available statutory remedy of initiating criminal process and arrest of plaintiffs for nonpayment of hotel bill with custom of permitting private hotel's attorney to act as state prosecutor constituted delegation of sovereign power and gave rise to state action, within this section. Voytko v. Ramada Inn of Atlantic City, D.C.N.J.1978, 445 F.Supp. 315. Civil Rights 1326(9)

Contractor providing towns with animal control services and contractor's director did not engage in state action, for purposes of §§ 1983, in terminating employment of dog control officer, who was at-will employee of contractor notwithstanding his contention that he was "peace officer" or otherwise a state employee; although state statute authorized municipality to hire dog control officer directly, towns did not do so. Robbins v. Cloutier, C.A.2 (N.Y.) 2005, 121 Fed.Appx. 423, 2005 WL 290203, Unreported. Civil Rights 1326(11)

537. ---- Violation of constitution and laws, state action, color of law generally

Misuse of state law is not state action for purposes of Fourteenth Amendment. Starnes v. Capital Cities Media, Inc., C.A.7 (Ill.) 1994, 39 F.3d 1394. Constitutional Law 254(2)

"State right or privilege" prong of § 1983 state action requirement was satisfied in principal's action against bail bond agency and individual bondsmen, alleging that bondsmen had assaulted principal while arresting him; action alleged constitutional deprivations caused by exercise of privilege created by state, since state law authorized licensed bondsmen to arrest principals. Green v. Abony Bail Bond, M.D.Fla.2004, 316 F.Supp.2d 1254. Civil Rights 1326(9)

Private misuse of state procedures or violations of state law does not amount to state action necessary to raise constitutional claim under § 1983. Roemer v. Security Bancshares, Inc., D.Kan.1997, 978 F.Supp. 988. Civil Rights 1326(9)

Actions taken by officer in his or her official capacity are deemed to have occurred "under color of law" even if they violate state law and are not in furtherance of state policy. Irvin v. Borough of Darby, E.D.Pa.1996, 937 F.Supp. 446. Civil Rights 1326(2)

This section is concerned with violation of only state law, and mere state action does not satisfy requirements of this section; and it is only when violation of state law results in infringement of federally protected right that cause of action can be maintained under this section. Stern v. New Haven Community Schools, E.D.Mich.1981, 529 F.Supp. 31. Civil Rights 1027

The "state action" required by this section, must rise to the level of a violation of specific constitutional guarantees. Loewen v. Turnipseed, N.D.Miss.1980, 488 F.Supp. 1138. Civil Rights 1325

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538. ---- Inaction by state, state action, color of law generally

Proposed sale by warehouseman of goods in storage was not properly attributable to the State, for purposes of establishing 'state action' under Fourteenth Amendment, on asserted ground that state had authorized and encouraged action in enacting provision of Uniform Commercial Code permitting such action, since a State's mere acquiescence in a private action does not convert that action into that of the state. Flagg Bros., Inc. v. Brooks, U.S.N.Y.1978, 98 S.Ct. 1729, 436 U.S. 149, 56 L.Ed.2d 185. Constitutional Law 254(5); Warehousemen 33

Under some circumstances, state actor's failure to intervene renders him or her culpable under § 1983. Yang v. Hardin, C.A.7 (Ill.) 1994, 37 F.3d 282. Civil Rights 1039

Unexercised authority under state law is not action "under color of state law" for purpose of this section. Brown v. Chaffee, C.A.10 (Kan.) 1979, 612 F.2d 497. Civil Rights 1324

State's passive acquiescence in private banks' setting off against funds of depositors the indebtedness incurred on bank credit cards did not render the setoff action under color of state law within this section. Fletcher v. Rhode Island Hospital Trust Nat. Bank, C.A.1 (R.I.) 1974, 496 F.2d 927, certiorari denied 95 S.Ct. 320, 419 U.S. 1001, 42 L.Ed.2d 277. Civil Rights 1326(9)

Action or failure to act by member of municipal board in his or her official capacity is "state action," within meaning of § 1983. Gibbs-Alfano v. Ossining Boat & Canoe Club, Inc., S.D.N.Y.2000, 86 F.Supp.2d 382. Civil Rights 1326(2)

Actions of county and its employees, the sheriff's department, in failing to remove automobiles from side of road which were blocking civil rights plaintiff's move of his house did not rise to the level of state action, for purposes of civil rights statute; real cause of halt in movement of the house and in sheriff's subsequent inaction was a dispute over width of plaintiff's parkway, and plaintiff never alleged that county or sheriff acted in a racially biased, arbitrary or capricious manner. Hibbing v. Sofarelli, M.D.Fla.1990, 733 F.Supp. 1470, affirmed in part, vacated in part on other grounds 931 F.2d 718. Civil Rights 1326(8)

Mere inaction or acquiescence by government in private wrongful conduct will not convert private action into government action. Sauls v. Bristol-Myers Co., S.D.N.Y.1978, 462 F.Supp. 887. Civil Rights 1325

539. ---- Joint participation, state action, color of law generally

Operators of sports arena, by seeking police help in dealing with ticket scalpers, did not engage in any joint action with municipal police, precluding § 1983 claim against operators brought by individual allegedly falsely arrested under scalping ordinance. Arlotta v. Bradley Center, C.A.7 (Wis.) 2003, 349 F.3d 517. Civil Rights 1326(5)

Conduct of radio personality and owners of radio and television stations in organizing, sponsoring, and broadcasting gubernatorial debate was not transformed into "state action," for purposes of excluded candidate's § 1983 claims, as result of personality's acceptance of state university's offer to hold debate at university and assistance provided by university and its president in organizing and promoting debate; state university and president did not coerce or control conduct of personality and owners, nor did assistance provided amount to delegation of state authority. DeBauche v. Trani, C.A.4 (Va.) 1999, 191 F.3d 499, certiorari denied 120 S.Ct. 1451, 529 U.S. 1033, 146 L.Ed.2d 337. Civil Rights 1326(5)

Store was not liable for its private security guards' conduct in detaining store customer they suspected of shoplifting, in customer's §§ 1983 action, alleging unlawful arrest and malicious prosecution; neither store or security guards acted in concert with state actor, and guards merely called police to have suspected shoplifter

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arrested. Prowisor v. Bon-Ton, Inc., S.D.N.Y.2006, 426 F.Supp.2d 165. Civil Rights 1326(5)

Facts that (1) Board of Nursing was state agency, (2) notice of employee's suspension was made pursuant to state law, (3) hospital and its nurses were licensed by state, and (4) hospital's receipt of government funds required it to treat uninsured patients did not establish state action under "nexus or joint action" test for purposes of nursing shift supervisor's §§ 1983 claim against hospital alleging it suspended her in limitation of her speech rights for making statements that were critical of United States President and of hospital's handling of young patient without health insurance. Connolly v. H.D. Goodall Hosp., Inc., D.Me.2005, 353 F.Supp.2d 84, affirmed 427 F.3d 127, on remand 2006 WL 270222. Civil Rights 1326(11)

Private family intervention crisis service was "state actor," subject to suit under §§ 1983 for violation of federally protected rights of parent whose child was seized, by virtue of acting in concert with county youth services department in implementing restrictions on parent's custody of child. Bowser v. Blair County Children and Youth Services, W.D.Pa.2004, 346 F.Supp.2d 788. Civil Rights 1326(5)

To act "under color of" state law for § 1983 purposes does not necessarily require that the defendant be an officer of the state; rather, it is enough that the defendant is a willful participant in joint action with the state or its agents. Mosley v. Yaletsko, E.D.Pa.2003, 275 F.Supp.2d 608. Civil Rights 1326(5)

Parents stated claim that foster parent was state actor, amenable to suit under § 1983 for alleged abuse of their child, under entwinement doctrine, when they alleged that state agents knew of abuse and collaborated with foster parent to cover up her activities. Howard v. Malac, D.Mass.2003, 270 F.Supp.2d 132. Civil Rights 1326(5)

In determination of whether joint participation state action has occurred for purposes of § 1983 action, the appropriate inquiry is whether plaintiff's allegations raise any claim that state, through its agents or laws, has established formal procedure or working relationship that drapes private actors with power of state. Spencer v. Steinman, E.D.Pa.1997, 968 F.Supp. 1011. Civil Rights 1326(5)

Nonprofit corporation formed to run county fair satisfied control element of state action required for civil rights liability, though corporate board was elected by its members, where its statutory characterization was as agent of county, county had to approve all contracts entered into by corporation, and its budget had to be approved by both county board and State Department of Agriculture. Clark v. County of Placer, E.D.Cal.1996, 923 F.Supp. 1278. Civil Rights 1326(1)

540. ---- State compulsion, state action, color of law generally

State statutory requirement that hospitals report nursing suspensions to Board of Nursing was insufficient "state compulsion" for finding of state action needed for nursing shift supervisor to state §§ 1983 claim in relation to hospital's suspension of her for statements she made in media that were critical of United States President and of hospital's handling of young patient without health insurance. Connolly v. H.D. Goodall Hosp., Inc., D.Me.2005, 353 F.Supp.2d 84, affirmed 427 F.3d 127, on remand 2006 WL 270222. Civil Rights 1326(11)

University, in terminating public safety officers, was not coerced or significantly encouraged to act by city, and thus university was not "state actor" under state compulsion test, as required for officers to maintain § 1983 claim against university; although city retained some control over university police hiring activities, it had no rule or regulation that required university to suspend or terminate officers, and city did not participate in investigation or decision-making process concerning officers at issue. Allocco v. City of Coral Gables, S.D.Fla.2002, 221 F.Supp.2d 1317, affirmed 88 Fed.Appx. 380, 2003 WL 22768944. Civil Rights 1326(11)

Medical center employee who served as preceptor to state university student during nursing practicum did not qualify as state actor under state compulsion test for determining whether private party acted under color of state

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law for § 1983 purposes, given absence of evidence suggesting that anyone associated with university or its nursing college exercised any coercive power over employee, so as to render her actions as preceptor fairly attributable to the state. Siskaninetz v. Wright State University, S.D.Ohio 2001, 175 F.Supp.2d 1018. Civil Rights 1326(6)

Employer's alleged refusal to pay employee who did not have social security number was not result of state compulsion, such that refusal would qualify under state compulsion test as state action for purposes of employee's § 1983 claim that employer violated his constitutional rights to exercise his religious beliefs and to be free of involuntary servitude. Sanders v. Prentice-Hall Corp. System, Inc., W.D.Tenn.1997, 969 F.Supp. 481, affirmed 178 F.3d 1296. Civil Rights 1326(11)

541. ---- Nexus test, state action, color of law generally

Fact that city required festival organizer to coordinate with city agencies regarding regulation of alcoholic beverages, advertising, traffic, and security at festival held in city park did not establish close nexus between city and organizer, so as to make organizer a state actor that could be held liable for violating constitutional rights of street preacher ejected from area outside festival entrance; by conditioning lease, park use agreement, and city council resolution on organizer's compliance with city regulations and authorities, city and organizer clearly established separate spheres of responsibility for festival period. Lansing v. City of Memphis, C.A.6 (Tenn.) 2000, 202 F.3d 821. Constitutional Law 82(5)

Mere fact that hospital served public and treated patients pursuant to federal and state law did not give rise to "public function" for purposes of suspended employee's attempt to establish state action so she could bring §§ 1983 claim against hospital. Connolly v. H.D. Goodall Hosp., Inc., D.Me.2005, 353 F.Supp.2d 84, affirmed 427 F.3d 127, on remand 2006 WL 270222. Civil Rights 1326(11)

The traditional definition of action under color of state law requires that one liable under § 1983 have exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. Mosley v. Yaletsko, E.D.Pa.2003, 275 F.Supp.2d 608. Civil Rights 1324

City did not so far insinuate itself into position of interdependence with university that it was joint participant in university's termination of public safety officers, and thus university was not "state actor" under nexus/joint action test, as required for officers to maintain § 1983 claim against university; city and university were distinct and separate legal entities, university had authority to hire and fire its own employees, university maintained and repaired its own facilities, and university made its own personnel rules, regulations, and procedures. Allocco v. City of Coral Gables, S.D.Fla.2002, 221 F.Supp.2d 1317, affirmed 88 Fed.Appx. 380, 2003 WL 22768944. Civil Rights 1326(11)

Motion picture production company's lease of public facilities from state did not qualify under symbiotic relationship or nexus test as state action for purposes of motion picture extra's § 1983 claim that company violated his constitutional rights to exercise his religious beliefs and to be free of involuntary servitude by refusing to pay him because he did not have social security number. Sanders v. Prentice-Hall Corp. System, Inc., W.D.Tenn.1997, 969 F.Supp. 481, affirmed 178 F.3d 1296. Civil Rights 1326(11)

University was not liable to terminated professor under § 1983, absent facts establishing nexus between termination and any state action. Commodari v. Long Island University, C.A.2 (N.Y.) 2003, 62 Fed.Appx. 28, 2003 WL 1785893, Unreported. Civil Rights 1326(11)

542. Judicial action, color of law generally--Generally

Losing in state court is not state action for purpose of civil rights jurisdiction; hence, fact that state judge who rendered challenged injunction and sheriff who would enforce it were named as defendants in civil rights suit did

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not mean that the requisite state action jurisdictional requirement was met, especially absent allegations that the judge did anything but render an arguably incorrect decision or that the sheriff did anything at all. Gresham Park Community Organization v. Howell, C.A.5 (Ga.) 1981, 652 F.2d 1227. Federal Courts 244

Whatever other judicial action may constitute "state action," for purposes of alleging constitutional deprivation in claim for relief under this section, failure of procedural due process does. Dahl v. Akin, C.A.5 (Tex.) 1980, 630 F.2d 277, certiorari denied 101 S.Ct. 1977, 451 U.S. 908, 68 L.Ed.2d 296. Civil Rights 1325

A state's judicial proceedings can be a form of actionable "state action" for purposes of this section. Watson v. Kenlick Coal Co., Inc., C.A.6 (Ky.) 1974, 498 F.2d 1183, certiorari denied 95 S.Ct. 2639, 422 U.S. 1012, 45 L.Ed.2d 677. Civil Rights 1325

When private actor conspires with state judge to deprive plaintiff of his or her constitutional rights, the state action required in order for plaintiff to maintain § 1983 action against private actor is present even if alleged conspirator is state judge who is himself or herself immune from suit for damages under § 1983. Spencer v. Steinman, E.D.Pa.1997, 968 F.Supp. 1011. Civil Rights 1326(5)

State action to which this section is applicable encompasses state judicial action, and thus fact that a state trial court has ruled on federal constitutional grounds in issue does not mean that a federal court is precluded from reconsidering those issues in an action brought to enjoin a pending state proceeding because of alleged violations of a plaintiff's constitutional rights of substantive and procedural due process. Brown v. Jones, N.D.Tex.1979, 473 F.Supp. 439. Federal Courts 42

"State action" under this section includes judicial action. Lamb Enterprises, Inc. v. Kiroff, N.D.Ohio 1975, 399 F.Supp. 409, reversed on other grounds 549 F.2d 1052, certiorari denied 97 S.Ct. 2926, 431 U.S. 968, 53 L.Ed.2d 1064.

543. ---- Enforcement of judicial decisions, judicial action, color of law generally

Even assuming that plaintiff's former wife's custody of their children derived from orders or decrees of one or more Maryland state courts, former wife's actions, whether pursuant to those orders or decrees or otherwise, did not constitute "state action" for purposes of this section. Nouse v. Nouse, D.C.Md.1978, 450 F.Supp. 97. Civil Rights 1326(9)

Action of state and county officers with respect to enforcement of state Supreme Court decision in condemnation case would be under color of state law, although individual defendants, generally, played no active part in state court proceedings. Sotomura v. Hawaii County, D.C.Hawai'i 1975, 402 F.Supp. 95. Civil Rights 1326(2)

544. ---- Filing of pleadings, judicial action, color of law generally

Village police officers did not act under "color of state law" in allegedly persuading attorney to file defamatory citizen's complaint with city about city police officer's conduct in alleged retaliation for city police officer's filing of federal civil rights complaint against them, as required to show civil rights conspiracy; filing of citizen's complaint did not require power possessed only by virtue of state law, and no showing was made as to content of complaint or nature of any communications between officers and attorney. Thurman v. Village of Homewood, C.A.7 (Ill.) 2006, 446 F.3d 682. Civil Rights 1326(8)

Judicial enforcement of Illinois privilege against defamation suit for relevant statements made in judicial proceeding did not constitute state action for purposes of § 1983 action brought against attorney by former judge due to publication of allegedly defamatory statements made by attorney in pleadings on former judge's motion to disqualify attorney from representing former judge's wife in divorce case; for state action, public and private actors

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had to share common and unconstitutional goal. Starnes v. Capital Cities Media, Inc., C.A.7 (Ill.) 1994, 39 F.3d 1394. Civil Rights 1326(10)

Defendant, by filing private criminal complaint pursuant to Pennsylvania Rule of Criminal Procedure, merely called attention of attorney for Commonwealth to alleged violation of the law, so that defendant's filing of complaint did not constitute "state action" as required for action under this section. Weisman v. Sherry, M.D.Pa.1981, 514 F.Supp. 728. Civil Rights 1326(4)

Generally, the filing of a suit between private parties in state court is not state action. Fallis v. Dunbar, N.D.Ohio 1974, 386 F.Supp. 1117, affirmed 532 F.2d 1061. Civil Rights 1326(9)

545. ---- Forum provided by state, judicial action, color of law generally

The fact that the state of Pennsylvania provided a forum for suit to enjoin author from distributing or permitting others to distribute general history allegedly containing false and defamatory statements about reader's father, a Pennsylvania industrial magnate, was not such "state action" as would entitle the author to federal injunctive relief under this section. Stevens v. Frick, C.A.2 (N.Y.) 1967, 372 F.2d 378, certiorari denied 87 S.Ct. 2034, 387 U.S. 920, 18 L.Ed.2d 973.

That the state provided the court in which defendant filed an action against plaintiff that resulted in a dismissal was not such as to establish state action necessary for filing of an action for alleged deprivation of civil rights under color of state law. Weisser v. Medical Care Systems, Inc., E.D.Pa.1977, 432 F.Supp. 1292. Civil Rights 1326(9)

State's providing machinery and a forum for hearing of private disputes does not constitute required state action for purposes of U.S.C.A.Const. Amend. 14 with respect to claim under this section. Mullarkey v. Borglum, S.D.N.Y.1970, 323 F.Supp. 1218. Civil Rights 1326(9)

546. ---- Commitment orders or proceedings, judicial action, color of law generally

"Procedure" constitutes inherently judicial responsibility, and complaint that plaintiff's daughter and her husband had secured plaintiff's confinement in mental hospital through court proceedings by which plaintiff was deprived of due process was sufficient to allege state deprivation of liberty and property without due process of law, for purposes of stating claim for relief under this section, though it yet remained to be determined whether constitutional injury had been caused by persons acting "under color of" state law. Dahl v. Akin, C.A.5 (Tex.) 1980, 630 F.2d 277, certiorari denied 101 S.Ct. 1977, 451 U.S. 908, 68 L.Ed.2d 296. Civil Rights 1395(1)

547. ---- Custody orders or proceedings, judicial action, color of law generally

Court order placing custody of child with State Department of Public Welfare for purpose of providing chemotherapy treatment to child and providing that either child's privately retained physician or any board-certified hematologist of parents' choosing was to supervise chemotheraphy treatment did not clothe child's privately retained physician with the authority of state law necessary to transform him into state agent so as to authorize a civil rights action for damages against physician charging violation of parents' alleged constitutional right to determine child's medical treatment arising out of state custody decree. Green v. Truman, D.C.Mass.1978, 459 F.Supp. 342. Civil Rights 1326(9)

548. ---- Eviction of tenants, judicial action, color of law generally

The requisite "state action" to render the retaliatory eviction of tenant actionable under this section was present in that landlords were utilizing the state court to evacuate the tenant from a federally subsidized housing development

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built and operated pursuant to federal housing laws. Walton v. Darby Town Houses, Inc., E.D.Pa.1975, 395 F.Supp. 553. Civil Rights 1326(9)

Action of public housing authorities in adjudging tenants undesirable tenants and in ordering their eviction because of crimes committed by children of tenants no longer living with them in project was "state action" within meaning of this section. Tyson v. New York City Housing Authority, S.D.N.Y.1974, 369 F.Supp. 513. Civil Rights 1326(1)

549. ---- Guardianship orders or proceedings, judicial action, color of law generally

Mere existence of state guardianship order for church member, though erroneously issued, did not transform conduct of "deprogrammer" into "state action" under 42 U.S.C.A. § 1983. Colombrito v. Kelly, C.A.2 (N.Y.) 1985, 764 F.2d 122. Civil Rights 1326(1)

Use of Oklahoma state court to obtain appointment of temporary guardian over adult plaintiff for purpose of religious deprogramming was insufficient to constitute state action for purpose of claim against religious deprogrammer under this section as court allowed itself to be used without fully realizing the results which would follow and it could not be said that the issuing judge, who was not a defendant, was a coconspirator. Taylor v. Gilmartin, C.A.10 (Okla.) 1982, 686 F.2d 1346, certiorari denied 103 S.Ct. 788, 459 U.S. 1147, 74 L.Ed.2d 994, certiorari denied 103 S.Ct. 3570, 463 U.S. 1229, 77 L.Ed.2d 1411, rehearing denied 104 S.Ct. 37, 463 U.S. 1249, 77 L.Ed.2d 1456. Civil Rights 1326(9)

Prison employees' treatment of black female captain as "snitch" did not rise to level of pervasiveness sufficient to sustain hostile work environment claim under Title VII, where treatment lasted only three or four months, and there was no allegation that adverse treatment was result of her race or gender. Hayes v. Kerik, E.D.N.Y.2006, 414 F.Supp.2d 193. Civil Rights 1185

Genuine issues of material fact existed as to whether white employee of city parks department was subjected to racially hostile environment, in light of city's concession that working environment was "racially charged," alleged racial slurs against employee, and evidence that black workers felt pressured not to socialize or work with employee, precluding summary judgment in Title VII action. Brantley v. City of Macon, M.D.Ga.2005, 390 F.Supp.2d 1314. Federal Civil Procedure 2497.1

550. ---- Temporary restraining orders, judicial action, color of law generally

Even if state court order temporarily restraining defaulting debtor from disposing of any property he then owned, in addition to the secured property, violated debtor's right to due process, private creditor's use of state forum to obtain such order did not constitute state action for purpose of this section. Torres v. First State Bank of Sierra County, C.A.10 (N.M.) 1978, 588 F.2d 1322. Civil Rights 1326(9)

551. ---- Miscellaneous judicial actions, color of law generally

State court decision upholding validity of lease provision that no assignment would be effective without lessor's prior consent, with provision construed to entitle lessor to refuse its consent for any reason except those prohibited by this section, did not constitute requisite state action to support claim against lessor, which allegedly refused consent solely because assignee was a female; even if lessor's refusal was motivated by a constitutionally impermissible purpose, any deprivation suffered as consequence was completed prior to state court proceedings and state court action did not effectuate a discriminatory purpose which could not have been secured but for court action. Girard v. 94th St. & Fifth Ave. Corp., S.D.N.Y.1975, 396 F.Supp. 450, affirmed 530 F.2d 66, certiorari denied 96 S.Ct. 2173, 425 U.S. 974, 48 L.Ed.2d 798. Civil Rights 1326(9)

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552. Administrative action, color of law generally

Michigan Commissioner of Insurance's action in ordering private nonprofit health care corporation to cease and desist its marketing practices with respect to its health care benefits constituted "state action," thus, district court had subject matter jurisdiction over civil rights claims. Blue Cross and Blue Shield of Michigan v. Baerwaldt, W.D.Mich.1984, 593 F.Supp. 39. Civil Rights 1326(2)

553. Group action, color of law generally

Section 1983 looks to personal action in deprivation of constitutional rights, rather than damage alleged by a chain of various responsibility; furthermore, this personal action must be fairly attributable to the state, so that the "under color of state law" requirement of § 1983 parallels the state action requirement of the Fourteenth Amendment. Sullivan v. State of N.J., Div. of Gaming Enforcement, D.C.N.J.1985, 602 F.Supp. 1216, affirmed 853 F.2d 921. Civil Rights 1325; Civil Rights 1335

554. Capacity, color of law generally

District Court's disregard of jury finding that municipality had no policies that allowed or encouraged adverse employment decisions at issue in municipal employee's civil rights action did not unfairly prejudice municipality, where jury also found that mayor's unlawful actions were under color of authority of the state, and inconsistency resulted from fact that jury was unaware that, under Puerto Rico law, mayor's actions were ipso facto "policy" of municipality. Rivera-Torres v. Ortiz Velez, C.A.1 (Puerto Rico) 2003, 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Federal Courts 913

Plaintiff in civil rights suit could not maintain official capacity claims against county employees following the court's dismissal of plaintiff's claims against the county due to plaintiff's failure to establish the existence of a municipal custom or policy. Allen v. Dubois, D.Me.2005, 365 F.Supp.2d 49. Civil Rights 1360

In making legal determination on issue of whether officer had acted in his official capacity during incident in which officer's friend allegedly assaulted restaurant patron, so as to determine whether officer acted under color of state law under § 1983, officer's stated intent was factor to consider but was not sole determinant; decision required evaluation of the totality of circumstances based on officer's objective, visible conduct. Neuens v. City of Columbus, S.D.Ohio 2003, 275 F.Supp.2d 894. Civil Rights 1326(8)

Individuals sued in their personal capacities under §§ 1983 or 1985 are not immune from suit in federal court even if performing acts within their authority and necessary to fulfilling governmental responsibilities. Lewis v. Board of Educ. of Talbot County, D.Md.2003, 262 F.Supp.2d 608. Federal Courts 269

Condemnation notices and citations issued by borough's fire marshal and assistant building inspector were issued "under color of state law," as required to establish § 1983 claim alleging that such notices and citations were in retaliation for protected activity; fire marshal and inspector were acting in their official capacity when inspecting the properties, observing the alleged violations and writing the citations. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Civil Rights 1326(2)

Actions by an official in his/her official capacity are "under color of state law" for purposes of § 1983 even if they are not in furtherance of state policy and even if they violate state law. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Civil Rights 1326(2)

555. Private action, color of law generally--Generally

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42 U.S.C.A. § 1983

Where private individual is a defendant in § 1983 action, there must be showing that private party and the state actor jointly deprived plaintiff of her civil rights. Alexis v. McDonald's Restaurants of Massachusetts, Inc., C.A.1 (Mass.) 1995, 67 F.3d 341, on remand 1996 WL 463675. Civil Rights 1326(5)

Merchant, as private actor, did not act under color of state law by making request to police officer to detain customer on suspicion of shoplifting, for purpose of customer's claim under §§ 1983, since there was no evidence that merchant had understanding that police would detain, arrest, or prosecute every person that merchant identified as suspected shoplifter. Hester v. Wal-Mart Stores, Inc., D.Kan.2004, 348 F.Supp.2d 1252, withdrawn from bound volume, vacated 356 F.Supp.2d 1195. Civil Rights 1326(4)

Under Section 1983, private parties may be liable for violations of constitutional rights while acting under color of state law. Lightfoot v. District of Columbia, D.D.C.2004, 339 F.Supp.2d 78, clarified on denial of reconsideration 355 F.Supp.2d 414, stay denied 2006 WL 175222, stay granted 2006 WL 573869, reversed and remanded 448 F.3d 392. Civil Rights 1326(4)

Former employee was precluded from bringing § 1983 action against former employer related to his termination, where employer was not a state actor. Soto v. Island Finance, Inc., D.Puerto Rico 2004, 338 F.Supp.2d 299, affirmed 418 F.3d 114. Civil Rights 1326(11)

Company was not state actor, and thus was not subject to liability under § 1983 for personal injuries allegedly sustained by truck driver while unloading cargo for company, absent allegation that company acted under color of state law. Poucher v. Intercounty Appliance Corp., E.D.N.Y.2004, 336 F.Supp.2d 251. Civil Rights 1326(11)

Township manager did not act "under color of state law" in connection with his dispute with neighbor, and thus neighbor could not state claim under § 1983, even though manager tried to curry favor with judge in criminal prosecution of neighbor by emphasizing his position as public employee, where manager explicitly wrote victim impact statement as private citizen. Nadig v. Nagel, E.D.Pa.2003, 272 F.Supp.2d 509. Civil Rights 1326(9)

Providing false information to police officer is not, by itself, sufficient to state claim against private party under § 1983. Boykin v. Bloomsburg University of Pennsylvania, M.D.Pa.1995, 893 F.Supp. 409, affirmed 91 F.3d 122, certiorari denied 117 S.Ct. 739, 519 U.S. 1078, 136 L.Ed.2d 678. Civil Rights 1326(5)

Private individual, who questioned former director of dental services of state psychiatric facility in connection with workers' compensation investigation, one year after director of dental services' resignation could not be sued under § 1983, as none of his actions were under color of state law; there was no factual basis provided in complaint to support conclusory allegation that private individual was sent by employees of State Department of Mental Hygiene to harass former director of dental services. Koch v. Mirza, W.D.N.Y.1994, 869 F.Supp. 1031. Civil Rights 1396

This section is based solely on power given to Congress in U.S.C.A.Const. Amend. 14 and does not touch purely private action. Boyd v. Shawnee Mission Public Schools, Unified School Dist. No. 512, Johnson County, D.C.Kan.1981, 522 F.Supp. 1115. Civil Rights 1005; Civil Rights 1325

This section does not reach purely private conduct. Adkins v. Adkins, S.D.W.Va.1978, 459 F.Supp. 406.

This section providing civil remedy for deprivation of constitutional and civil rights where deprivation is alleged to have occurred under color of state law does not protect individuals against individual invasion of constitutional rights. Ehn v. Price, N.D.Ill.1974, 372 F.Supp. 151. Civil Rights 1325

Private action cannot form the basis for relief under this section. Edwards v. Philadelphia Elec. Co., E.D.Pa.1974, 371 F.Supp. 1313, affirmed 510 F.2d 969. Civil Rights 1325

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This section may not be circumvented by ruse of denominating private that which is truly public. Sims v. Order of United Commercial Travelers of America, D.C.Mass.1972, 343 F.Supp. 112. Civil Rights 1326(4)

This section does not extend to all controversies between individual citizens, but only to deprivations of constitutional rights arising from the actions of persons acting under color of state law. Palermo v. Rockefeller, S.D.N.Y.1971, 323 F.Supp. 478. See, also, Dahl v. Akin, C.A.5(Tex.)1980, 630 F.2d 277, certiorari denied 101 S.Ct. 1977, 451 U.S. 908, 68 L.Ed.2d 296. Civil Rights 1324

This section is applicable only where deprivation is accomplished under color of law and does not protect one from invasion of his private rights by individual action. Schetter v. Heim, E.D.Wis.1969, 300 F.Supp. 1070. Civil Rights 1325

Private actors cannot be sued under § 1983 or a *Bivens* theory. Sato v. Plunkett, N.D.Ill.1994, 154 F.R.D. 189. Action 2; Civil Rights 1326(4)

There was no evidence that minor had a special relationship with state, as required to support minor's § 1983 claim against New York State Canal Corporation and New York State Thruway Authority alleging defendants violated her rights by allowing her to work at lock and by allowing her to be sexually assaulted by employee; employee was not acting under color of state law. Rose v. Zillioux, C.A.2 (N.Y.) 2003, 84 Fed.Appx. 107, 2003 WL 22849850, Unreported. Civil Rights 1039; Civil Rights 1326(2)

556. ---- Discrimination, private action, color of law generally

This section does not provide remedy for private acts of racial discrimination. Gonzalez v. Southern Methodist University, C.A.5 (Tex.) 1976, 536 F.2d 1071, rehearing denied 543 F.2d 756, certiorari denied 97 S.Ct. 1688, 430 U.S. 987, 52 L.Ed.2d 383. Civil Rights 1325

Civil rights statute, § 1983, was inapplicable to employment discrimination suit against a private employer. Harris v. Home Sav. Ass'n, W.D.Mo.1989, 730 F.Supp. 298. Civil Rights 1326(11)

Purely private action, whether discriminatory or not, is not prohibited by this section governing civil action for deprivation of rights under color of state law. Bailey v. Boilermakers Local 667 of Intern. Broth. of Boilermakers, N.D.W.Va.1979, 480 F.Supp. 274. Civil Rights 1325

Under this section and U.S.C.A.Const. Amend. 14, full range of discriminatory conduct is proscribed if, and only if, that action is taken by a party acting under color of state law; in other words, private discrimination is not actionable under this section and U.S.C.A.Const. Amend. 14. Kennedy Park Homes Ass'n v. City of Lackawanna, W.D.N.Y.1970, 318 F.Supp. 669, affirmed 436 F.2d 108, certiorari denied 91 S.Ct. 1256, 401 U.S. 1010, 28 L.Ed.2d 546. Civil Rights 1326(4); Constitutional Law 213(4)

Private discrimination is not inequality before the law unless there is some manipulation of the law or its agencies to give sanction or sanctuary for doing so, and accordingly, plaintiff who was allegedly wrongfully arrested on shoplifting charge was not denied equal protection because her treatment by store manager, store detective, and others was not the treatment that would have been or should have been accorded a person in similar circumstances. Weyandt v. Mason's Stores, Inc., W.D.Pa.1968, 279 F.Supp. 283. Constitutional Law 250.2(1)

557. Statute, ordinance, regulation, custom or usage generally, color of law generally

Plaintiff suing under statute providing civil action for deprivation of rights must prove that defendant deprived him of right secured by Constitution and laws of United States and that defendant deprived him of this constitutional right under color of a statute, ordinance, regulation, custom, or usage of a state or territory; second element

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requires that plaintiff show that defendant acted under color of state law. Adickes v. S. H. Kress & Co., U.S.N.Y.1970, 90 S.Ct. 1598, 398 U.S. 144, 26 L.Ed.2d 142. Civil Rights 1304

Before recovery can be allowed in civil action for deprivation of rights, plaintiff must prove that defendant has deprived him of right secured by Constitution or laws of United States under color of statute, ordinance, regulation, custom or usage of any state or territory; thus plaintiff must show that defendant acted under color of law. Davis v. Paul, C.A.6 (Ky.) 1974, 505 F.2d 1180, certiorari granted 95 S.Ct. 1556, 421 U.S. 909, 43 L.Ed.2d 773, reversed on other grounds 96 S.Ct. 1155, 424 U.S. 693, 47 L.Ed.2d 405, rehearing denied 96 S.Ct. 2194, 425 U.S. 985, 48 L.Ed.2d 811. Civil Rights 1401

One may seek redress, pursuant to this section, for the deprivation of rights, privileges or immunities secured by the Constitution or laws of the United States only when such deprivation occurs under color of any statute, ordinance, regulation, custom, or usage, of any state or territory. Penthouse Intern. LTD. v. Putka, N.D.Ohio 1977, 436 F.Supp. 1220. Civil Rights 1324

558. Statutes, color of law generally--Generally

State officials acting pursuant to a state statute are acting "under color of state" for purposes of a federal civil rights provision regardless of whether state law gave them any discretion in carrying out their duties. Jackson v. Galan, C.A.5 (La.) 1989, 868 F.2d 165, rehearing granted. Civil Rights 1326(2)

Unless state statute compels private party to act in a certain way, that party's action will not constitute "state action" for purposes of invoking subject-matter jurisdiction of this section. Waters v. St. Francis Hospital, Inc., C.A.5 (Fla.) 1980, 618 F.2d 1105. Civil Rights 1326(7)

Individual's conduct is engaged in under color of state law if clothed with authority of state and purporting to act thereunder, whether or not conduct complained of was authorized or, indeed, even if it was proscribed by state law. Roberts v. Acres, C.A.7 (Ill.) 1974, 495 F.2d 57. Civil Rights 1326(4)

A person acts "under color of state law," within meaning of 42 U.S.C.A. § 1983, when exercising power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. Church of Human Potential, Inc. v. Vorsky, D.N.J.1986, 636 F.Supp. 93. Civil Rights 1324

If a policy of state neutrality is expressed in statutory form, such does not necessarily tint the discriminatory acts of discriminating persons with "color" of state law. Larsen v. Kirkham, D.C.Utah 1980, 499 F.Supp. 960, affirmed, certiorari denied 104 S.Ct. 157, 464 U.S. 849, 78 L.Ed.2d 144. Civil Rights 1324

While mere existence of statute acknowledging legality of private conduct is not sufficient to bring conduct "under color of state law," statute authorizing conduct which would otherwise be impermissible provides for "state action." Tedeschi v. Blackwood, D.C.Conn.1976, 410 F.Supp. 34. Civil Rights 1325

559. ---- Legislative resolution, statutes, color of law generally

Resolution of state senate creating committee for purpose of investigating "riotous and unlawful activities" on state university campus was a "statute" for purposes of this section subjecting every person who, under color of statute, subjects any citizen to deprivation of rights, and in any event, action against investigating committee was maintainable on theory that committee acted under implied power or "usage" by which legislature was authorized to conduct investigations. Goldman v. Olson, W.D.Wis.1968, 286 F.Supp. 35. Civil Rights 1326(6)

560. ---- Commitment, statutes, color of law generally

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Husband's initiation of and participation in hospitalization and guardianship process that led to wife's involuntary commitment to mental institution was not sufficient to render him state actor for purposes of wife's civil rights claim; although husband had to comply with requirements of state statutes, private commitment remained private action, and there was no indication that state compelled or encouraged commitment. Harvey v. Harvey, M.D.Ga.1990, 749 F.Supp. 1118, affirmed 949 F.2d 1127. Civil Rights 1326(9)

Psychiatrist's issuance of a certificate which resulted in plaintiff's continued involuntary confinement at hospital was not sufficient to constitute state action for purposes of this section. Landry v. Odom, E.D.La.1983, 559 F.Supp. 514. Civil Rights 1326(1)

In view of RSA N.H. 135-B:19, 135-B:20 delegating to private physicians the right to commit a person whom they determine creates a potentially serious likelihood of danger to himself or others as a result of mental illness clothes the physician with state authority so substantial in nature as to render his actions in issuing an emergency diagnostic detention certificate "state action" for purposes of this section. Kay v. Benson, D.C.N.H.1979, 472 F.Supp. 850. Civil Rights 1326(4)

561. ---- Custody, statutes, color of law generally

Invocation of state statute, which required that any time custody of illegitimate child is relinquished by mother, father's parental rights will be automatically cut off unless notice of paternity previously has been filed by biological father, by private individual such as adoption agency or attorney constitutes state action for purposes of § 1983 civil rights action brought by biological father for purposes of regaining custody of infant. Swayne v. L.D.S. Social Services, D.Utah 1987, 670 F.Supp. 1537. Civil Rights 1326(9); Civil Rights 1326(10)

562. ---- Hospital privileges, grant or revocation of, statutes, color of law generally

Private hospital's revocation of physician's hospital privileges did not involve "state action" necessary to state § 1983 claim, though state legislation authorized revocation and made available optional review of procedural fairness in state court system. Wong v. Stripling, C.A.5 (Miss.) 1989, 881 F.2d 200. Civil Rights 1326(7)

Physician complaining of revocation of staff privileges at hospital did not show state action by showing that hospital was licensed and regulated by state and that it received funds from medicaid and medicare. Sarin v. Samaritan Health Center, C.A.6 (Mich.) 1987, 813 F.2d 755. Civil Rights 1326(7)

Texas Medical Practices Act under which members of medical peer review committee were granted immunity from civil liability as result of report or investigation on physician's incompetency did not make actions of hospitals in suspending physician's staff privileges at hospitals, state action for purposes of statute creating federal cause of action for denial of civil rights under color of state law. Goss v. Memorial Hosp. System, C.A.5 (Tex.) 1986, 789 F.2d 353. Civil Rights 1326(7)

Hospital's termination of physician's professional privileges did not involve state action for purposes of asserting claim under statute governing deprivation of civil rights, where state was involved only to point of encouraging hospital to comply with its regulations controlling abuses in medicare and medicaid programs, and hospital's fear that private organization, acting under contract with United States to perform functions of professional standards review organization, could terminate hospital's medicare and medicaid payments because of inefficient health care was a too slim basis to predicate finding of state action. Carter v. Norfolk Community Hosp. Ass'n, Inc., C.A.4 (Va.) 1985, 761 F.2d 970. Civil Rights 1326(1); Civil Rights 1326(7)

For purposes of physician's civil rights suit challenging the probationary sanctions imposed by hospital, and the related actions by hospital and its employees, the hospital's receipt of governmental funds, the extensive governmental regulation, and localized geographic monopoly enjoyed by the hospital did not establish state action

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required for a suit under this section, since physician made no allegation that those facts involved the state in any significant manner in the specific conduct of which he complained. Loh-Seng Yo v. Cibola General Hosp., C.A.10 (N.M.) 1983, 706 F.2d 306. Civil Rights 1326(7)

Because F.S.A. § 395.065 authorizing hospitals to revoke staff privileges for good cause merely codified right which hospital had at common law, private hospital's placing conditions on surgeon's staff privileges did not constitute "state action" for purpose of invoking this section. Waters v. St. Francis Hospital, Inc., C.A.5 (Fla.) 1980, 618 F.2d 1105. Civil Rights 1326(7)

563. ---- Inspections, statutes, color of law generally

Town building inspector, who was acting under authority of state law when he required a proposed outpatient abortion facility to obtain a special use permit to operate a hospital, was liable for monetary damages caused by his actions. P.L.S. Partners, Women's Medical Center of Rhode Island, Inc. v. City of Cranston, D.R.I.1988, 696 F.Supp. 788. Civil Rights 1326(2); Civil Rights 1357

564. ---- Liens, statutes, color of law generally

Commercial relocator's retention of a trespassing vehicle, removed from private property pursuant to request from or contract with private landowner, until relocator received money payment from vehicle's owner, as permitted by Illinois S.H.A. ch. 95 1/2 , ¶ 18a-501, did not constitute an act by state actors properly attributable to the state of Illinois upon which action under 42 U.S.C.A. § 1983 could be maintained. Hinman v. Lincoln Towing Service, Inc., C.A.7 (Ill.) 1985, 771 F.2d 189. Civil Rights 1326(9)

Retention of automobiles by garagemen pursuant to Pennsylvania's common law garageman's lien did not constitute action under color of state law for purposes of this section and did not constitute state action for purposes of U.S.C.A.Const. Amend. 14 § 1. (Per Garth, Circuit Judge, with three Judges concurring and three Judges concurring specially). Parks v. "Mr. Ford", C.A.3 (Pa.) 1977, 556 F.2d 132. Civil Rights 1326(9); Constitutional Law 254(5)

Foreclosure sale to satisfy warehouseman's lien was conducted "under color of state law" within meaning of this section where it took place by virtue of provisions of NDCC 41-07-16 which did not require warehouseman to prove either his lien or amount due under it. Cox Bakeries of North Dakota, Inc. v. Timm Moving & Storage, Inc., C.A.8 (N.D.) 1977, 554 F.2d 356. Civil Rights 1326(9)

Warehouseman's proposed sale of stored goods pursuant to West's Ann.Com.Code § 7210 for failure to pay storage costs did not constitute "state action," inasmuch as enactment of West's Ann.Com.Code § 7210 together with regulation of private activity thereunder did not significantly involve state in private warehouseman's lien enforcement; thus owner of storage goods suing for injunctive and declaratory relief from proposed extrajudicial sale did not state claim for deprivation of any rights under color of state law. Melara v. Kennedy, C.A.9 (Cal.) 1976, 541 F.2d 802. Civil Rights 1326(9); Civil Rights 1396

565. ---- Picketing, statutes, color of law generally

Growers, as private litigants, "acted under color of state law" for purposes of § 1983 liability when they sought temporary restraining order under Texas mass picketing statutes, where action arose out of deep seated community hostility, attorneys hired to represent growers were also criminal district attorneys, and attorneys sought advice from Attorney General on unconstitutionality of mass picketing statutes, which advice could only be solicited under Texas Law by public officials in their public capacity. Howard Gault Co. v. Texas Rural Legal Aid, Inc., C.A.5 (Tex.) 1988, 848 F.2d 544.

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42 U.S.C.A. § 1983

566. ---- Reports, statutes, color of law generally

Making representations to a state official, even in a report required by law, is not acting "under color of law" within this section creating right of action for deprivation of rights. Schatte v. International Alliance of Theatrical Stage Emp. and Moving Picture Mach. Operators of U.S. and Canada, C.A.9 (Cal.) 1950, 182 F.2d 158, rehearing denied 183 F.2d 685, certiorari denied 71 S.Ct. 64, 340 U.S. 827, 95 L.Ed. 608, rehearing denied 71 S.Ct. 194, 340 U.S. 885, 95 L.Ed. 643. Civil Rights 1326(1)

567. ---- Self-help and seizure generally, statutes, color of law generally

Provision of McKinney's N.Y. Uniform Commercial Code § 7-210, permitting a self-help sale by warehouseman of goods entrusted to him for storage does not delegate to storage company an exclusive prerogative of the sovereign thus constituting sale by warehouseman "state action" for purposes of U.S.C.A.Const. Amend. 14, since such statute is not only means remaining for resolving the purely private dispute. Flagg Bros., Inc. v. Brooks, U.S.N.Y.1978, 98 S.Ct. 1729, 436 U.S. 149, 56 L.Ed.2d 185. Constitutional Law 254(5)

Hotel manager's seizure under Arizona statute of the belongings of tenants following eviction of tenants for nonpayment of rent constituted action taken "under color of state law", within the scope of this section. Culbertson v. Leland, C.A.9 (Ariz.) 1975, 528 F.2d 426. Civil Rights 1326(9)

On issue of state action requirement for action under this section, private repossessions are not infused with "state action" merely because state enacted 12A P.S. § 9-503 pertaining to so-called self-help repossessions. Gibbs v. Titelman, C.A.3 (Pa.) 1974, 502 F.2d 1107, certiorari denied 95 S.Ct. 526, 419 U.S. 1039, 42 L.Ed.2d 316. Civil Rights 1326(9)

State's passage of "self-help" remedies under which bank seized borrower's funds and collateral in form of accounts receivable without foreclosure or notice did not so significantly involve state in the procedures followed by bank as to constitute an act under color of state law giving rise to a claim under this section. Bichel Optical Laboratories, Inc. v. Marquette Nat. Bank of Minneapolis, C.A.8 (Minn.) 1973, 487 F.2d 906. Civil Rights 1326(9)

Use of self-help procedures under the Uniform Commercial Code does not constitute "state action" for purposes of this section. Sciolino v. Marine Midland Bank-Western, W.D.N.Y.1979, 463 F.Supp. 128. Civil Rights 1326(9)

568. ---- Attachment or garnishment, statutes, color of law generally

Debtor who was subjected to prejudgment attachment procedure under state law was deprived of his property through state action, corporate creditor and its president having acted under color of state law in participating in that deprivation, and thus debtor presented valid cause of action against corporation and its president under this section insofar as debtor challenged constitutionality of Virginia Code 1950, § 8.01-533 but not insofar as he alleged only misuse or abuse of that section. Lugar v. Edmondson Oil Co., Inc., U.S.Va.1982, 102 S.Ct. 2744, 457 U.S. 922, 73 L.Ed.2d 482. Civil Rights 1326(9)

Allegations in complaint, that ex parte attachment order obtained by private creditor under an allegedly unconstitutional Puerto Rico attachment statute violated debtors' due process rights, did not sufficiently allege requisite "state action" to make out claim under § 1983, where debtors did not allege how state attachment procedures violated their due process rights, but complained only of creditor's alleged improper motives and misrepresentations in seeking attachment, and of Puerto Rico court's alleged incorrect assessment of evidence. Gonzalez-Morales v. Hernandez-Arencibia, C.A.1 (Puerto Rico) 2000, 221 F.3d 45. Civil Rights 1326(9)

Attorneys' use of Pennsylvania garnishment procedure and clients' instruction to them to do so made both of them

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state actors for purposes of § 1983. Jordan v. Fox, Rothschild, O'Brien & Frankel, C.A.3 (Pa.) 1994, 20 F.3d 1250, on remand 1995 WL 141465. Civil Rights 1326(9); Civil Rights 1326(10)

A private creditor's misuse of state prejudgment attachment and garnishment statutes by falsely representing that the statutory requisites for such relief were satisfied did not constitute "state action" for purposes of federal civil rights claim, and, thus, debtor failed to meet the under color of state law requirement for bringing of such claim. Gene Thompson Lumber Co., Inc. v. Davis Parmer Lumber Co., Inc., C.A.11 (Ga.) 1993, 984 F.2d 401. Civil Rights 1326(9)

Where defendants' pursuit of garnishment action apparently denied plaintiffs the proceeds from sale of their property for three months, there was "taking" for purposes of action under this section as against contention that because garnishment papers were served on auctioneer before auction began the auctioneer did not have possession or control of any of plaintiffs' property. Buller v. Buechler, C.A.8 (S.D.) 1983, 706 F.2d 844. Civil Rights 1071

In suit under this section alleging that private party debt claimants in state court action maliciously invoked prejudgment attachment procedures, there was "state action" in ultimate taking of property charged as deprivation of constitutionally secured rights, but question whether specific action charged to private defendants as contributing cause of that deprivation was taken under color of state law was properly referable only to specific conduct chargeable to particular defendants i.e., their invocation of and participation as litigants in judicial proceedings resulting in challenged seizure of plaintiff's property, and test of application of this section was whether private actors by such conduct could be said to have engaged or participated jointly with those state officials whose overt involvement supplied state action element. (Per Phillips, Circuit Judge, with two Judges concurring in result and three Judges dissenting.) Lugar v. Edmondson Oil Co., Inc., C.A.4 (Va.) 1981, 639 F.2d 1058, certiorari granted 101 S.Ct. 3078, 452 U.S. 937, 69 L.Ed.2d 951, affirmed in part, reversed in part 102 S.Ct. 2744, 457 U.S. 922, 73 L.Ed.2d 482. Civil Rights 1326(9)

Plaintiff had no cause of action under § 1983 for private party's alleged illegal use of Virginia attachment procedure, and to extent plaintiff claimed that private party violated his constitutional rights by invoking Virginia's attachment procedures, plaintiff was challenging facial validity of attachment statute where there was no allegation that any state official abused his authority by applying properly invoked attachment procedures in manner contrary to state law. Keystone Builders, Inc. v. Floor Fashions of Virginia, Inc., W.D.Va.1993, 829 F.Supp. 181. Civil Rights 1326(9)

Use by attorney and law firm of state garnishment procedures did not support finding of state action, an essential element of federal civil rights claim, and pleadings failed to indicate any colorable basis to infer that alleged breach of fiduciary duty to class plaintiffs equated to state action. Winslow v. Romer, D.Colo.1991, 759 F.Supp. 670. Civil Rights 1326(10)

Prejudgment garnishment was "state action" and plaintiff in garnishment was acting under power of state law, for purposes of this section where such garnishment proceeding was possible only because of state law, though state employee and not plaintiff actually served garnishment writ. McMeans v. Schwartz, S.D.Ala.1971, 330 F.Supp. 1397. Civil Rights 1326(9)

569. ---- Distraint, statutes, color of law generally

Distraint of plaintiff's personal effects pursuant to authority of M.G.L.A. c. 255 § 23, allowing boarding house keepers, without court order, to take and maintain possession of lodger's property while charges for fare and board are outstanding did not involve such significant action on part of state or its instrumentalities as to be cognizable under this subchapter governing deprivation of civil rights under color of state law, notwithstanding plaintiff's characterization of distraint as a "public function" which the state was actively "encouraging." Davis v. Richmond,

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C.A.1 (Mass.) 1975, 512 F.2d 201. Civil Rights 1326(9)

570. ---- Eviction of tenants, statutes, color of law generally

Use of state procedure for improper purpose of evicting month-to-month tenant in retaliation for exercise of constitutional rights would not be "state action," for purposes of provision of this section. Higbee v. Starr, C.A.8 (Ark.) 1983, 698 F.2d 945. Civil Rights 1326(9)

Private landlord's posting of a notice of distraint under the Pennsylvania Landlord and Tenant Act, 68 P.S. § 250.101 et seq., on subleased premises, depriving sublessee of its property on the premises, did not constitute state action such that landlord could be liable to the sublessee under this section. Luria Bros. & Co., Inc. v. Allen, C.A.3 (Pa.) 1982, 672 F.2d 347. Civil Rights 1326(9)

Eviction of tenant pursuant to R.S.A.N.H. 540:2 affording landlords methods of vindicating property rights without inquiring as to landlords' motive in doing so or without accepting evidence of their motive if offered constituted "purely private action," even though landlords sought eviction because of tenant's exercise of rights under U.S.C.A.Const. Amend. 1 and eviction did not constitute a state action within U.S.C.A.Const. Amend. 14. Lavoie v. Bigwood, C.A.1 (N.H.) 1972, 457 F.2d 7. Constitutional Law 254(4)

After portion of tenants' civil rights claim as it related to police officer's assisting landlords in evicting mobile home tenants for nonpayment of rent was settled and dismissed, landlords' detention of tenants' property under authority of Indiana innkeepers' lien as applied to mobile homes did not constitute state action so as to support § 1983 claim; statutory expansion of common-law innkeepers' lien to include mobile home owners did not provide basis for existence of state action, and statutes merely allowed mobile home owners to exercise self-help remedies and did not compel procedures landlords used to detain property. Jenner v. Shepherd, S.D.Ind.1987, 665 F.Supp. 714. Civil Rights 1326(9)

571. ---- Foreclosure, statutes, color of law generally

Fact that state permits use of foreclosure procedures and subsequent sheriff sales as execution of judgment is not sufficient to constitute state action for purposes of § 1983. Harper v. Federal Land Bank of Spokane, C.A.9 (Or.) 1989, 878 F.2d 1172, certiorari denied 110 S.Ct. 867, 493 U.S. 1057, 107 L.Ed.2d 951. Civil Rights 1326(9)

572. ---- Repossession, statutes, color of law generally

Police officer who was present at site during self-help repossession of collateral by creditor did not know and should not reasonably have known that his actions or failure to act translated into participation in private foreclosure to degree tantamount to state action under § 1983, and thus, officer was immune in debtor's § 1983 action, where officer's presence at site was intended to observe and monitor peaceful statutory repossession of personal property under Michigan self-help statute and his language and conduct in addressing employee of debtor while creditor's employees effected foreclosure demonstrated objective good faith actions not inconsistent with his assigned duties of viewing statutorily permitted repossession of property. Haverstick Enterprises, Inc. v. Financial Federal Credit, Inc., C.A.6 (Mich.) 1994, 32 F.3d 989. Civil Rights 1376(6)

For purposes of determining whether damage action could be brought against it under this section, bank's participation in Illinois' statutory procedure for selling automobile after it is repossessed did not constitute "state action" either under theory that, by statute, state delegated its powers to bank, or because of aid, assistance and involvement of state officials in bank's actions. Gibson v. Dixon, C.A.7 (Ill.) 1978, 579 F.2d 1071. Civil Rights 1326(9)

Significant state action such as to permit purchaser of washing machine to bring civil rights action against seller to

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recover actual and punitive damages for allegedly wrongful repossession of machine was not present either by virtue of fact that repossession was accomplished under V.T.C.A., Bus. & C. § 9.503 or because purchaser's home was broken into during repossession. Calderon v. United Furniture Co., C.A.5 (Tex.) 1974, 505 F.2d 950. Civil Rights 1326(9)

Repossession of automobile pursuant to KRS 355.9-503 did not constitute action of this section. Gary v. Darnell, C.A.6 (Ky.) 1974, 505 F.2d 741.

Creditor's resort to remedy of self-help repossession as provided for by contract was not "state action" for purposes of application of this section or U.S.C.A.Const. Amend. 14 because of mere existence of T.C.A. § 47-9- 503. Turner v. Impala Motors, C.A.6 (Tenn.) 1974, 503 F.2d 607.

On issue of state action requirement for action under this section, private repossessions are not infused with "state action" merely because a state issues a certificate of ownership to secured party enabling it to transfer automobile to third-party purchaser at a sale following repossession. Gibbs v. Titelman, C.A.3 (Pa.) 1974, 502 F.2d 1107, certiorari denied 95 S.Ct. 526, 419 U.S. 1039, 42 L.Ed.2d 316. Civil Rights 1326(9)

Bank's actions, pursuant to UCC provisions in repossessing automobile upon nonpayment of note secured by automobile and in selling automobile at private sale did not involve such state action as to constitute action taken under color of state law and did not give rise to cause of action under this section. Nichols v. Tower Grove Bank, C.A.8 (Mo.) 1974, 497 F.2d 404. Civil Rights 1326(9)

Actions of Nebraska and Missouri in passing statutes authorizing self-help repossession of automobiles following defaults in payments of installment contracts did not make dealers' actions in repossessing automobile acts under color of state law and did not create a cause of action under this section. Nowlin v. Professional Auto Sales, Inc., C.A.8 (Neb.) 1974, 496 F.2d 16, certiorari denied 95 S.Ct. 328, 419 U.S. 1006, 42 L.Ed.2d 283. Civil Rights 1326(9)

Peaceful repossession of plaintiff's automobile by assignee of conditional seller, in accordance with terms of conditional sales contract providing for such repossession upon default, did not constitute state action within meaning of this section, since decision to repossess was entirely that of seller's assignee, was authorized by the agreement and the state played no significant role. Shirley v. State Nat. Bank of Connecticut, C.A.2 (Conn.) 1974, 493 F.2d 739, certiorari denied 95 S.Ct. 329, 419 U.S. 1009, 42 L.Ed.2d 284. Civil Rights 1326(9)

Prejudgment self-help repossession of secured property, as provided for in the security agreements between creditors and debtors and as authorized under West's Ann.Cal.Com.Code, §§ 9503, 9504, did not involve sufficient "state action" to establish a federal cause of action under this section. Adams v. Southern California First Nat. Bank, C.A.9 (Cal.) 1973, 492 F.2d 324, certiorari denied 95 S.Ct. 325, 419 U.S. 1006, 42 L.Ed.2d 282.

At some point, as police involvement in repossession of vehicle becomes increasingly important, repossession by private individuals assumes character of state action, for purposes of establishing due process or § 1983 violation. Barrett v. Harwood, N.D.N.Y.1997, 967 F.Supp. 744, affirmed 189 F.3d 297, certiorari denied 120 S.Ct. 2719, 530 U.S. 1262, 147 L.Ed.2d 984. Civil Rights 1326(9)

Where law enforcement officers were merely present throughout entire repossession operation with object of preventing breach of peace, and officers never actually aided in repossession, officers' presence fell shy of creating "action under color of state law" necessary to state claim under statute governing deprivation of civil rights. Wright v. National Bank of Stamford, N.D.N.Y.1985, 600 F.Supp. 1289, affirmed 767 F.2d 909. Civil Rights 1326(8)

M.S.A. § 629.366 was only a self-help provision designed to help merchant protect his property and provide him

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with immunity for certain actions and only permitted detention of suspected shoplifter for limited purpose but did not grant merchant authority to arrest, and thus actions of store security employee in confronting suspected shoplifter were not under "color of state law" within this section proscribing the deprivation of rights. Battle v. Dayton-Hudson Corp., D.C.Minn.1975, 399 F.Supp. 900. Civil Rights 1326(9)

573. ---- Reversion, statutes, color of law generally

Section 1983 claim against private owners of land that allegedly was no longer used as sailors home and allegedly reverted to State of Hawaii pursuant to conveyance by provisional government of Hawaii could be found to be meritless and frivolous and could be found to justify award of attorney fees under civil rights statute and Rule 11, even though state action concept can be murky. Price v. State of Hawaii, C.A.9 (Hawai'i) 1991, 939 F.2d 702, rehearing denied, certiorari denied 112 S.Ct. 1479, 503 U.S. 938, 117 L.Ed.2d 622, certiorari denied 112 S.Ct. 1480, 503 U.S. 938, 117 L.Ed.2d 622. Civil Rights 1484; Federal Civil Procedure 2771(5)

574. ---- Shoplifting, statutes, color of law generally

Absent some compulsion or some overt state involvement, no state action could be found in connection with store employees' detention of plaintiffs and search of their purses because of mere existence of Louisiana statute which insulates merchants from liability for detention of persons reasonably believed to be shoplifters, and which does not compel merchants to detain them but merely permits them to do so under certain circumstances. White v. Scrivner Corp., C.A.5 (La.) 1979, 594 F.2d 140. Civil Rights 1326(7)

Department store's decision to employ "special patrolman" involved utilization for store's benefit of state law enforcement authority sufficient to satisfy § 1983's "under color" of state law requirement in action by subsequently acquitted shoplifting suspect for wrongful arrest. Rojas v. Alexander's Dept. Store, Inc., E.D.N.Y.1986, 654 F.Supp. 856. Civil Rights 1326(1)

Ill.Rev.Stat., ch. 38, § 16A-5, authorizing any merchant to detain any person he has reasonable grounds to believe has committed retail theft, did not in itself convert conduct of private parties acting under its authority into state action and, hence, was not a basis for establishing a cause of action under this section on ground that the defendants, who were private parties not holding any governmental or official positions, acted under color of state law in effecting an allegedly unlawful arrest of plaintiff. Davis v. Carson Pirie Scott & Co., N.D.Ill.1982, 530 F.Supp. 799. Civil Rights 1326(9)

575. ---- Usury, statutes, color of law generally

Action of retailer in allegedly not following mandate of state Supreme Court granting prospective relief under state usury statutes, SDCL 54-3-7, 54- 3-12, to revolving charge account customers would not give rise to state action within meaning of this section on theory that the state Supreme Court was supporting retailer's actions. Ellingson v. Sears, Roebuck & Co., D.C.S.D.1973, 363 F.Supp. 1344. Civil Rights 1326(1)

576. ---- Voting and elections, statutes, color of law generally

Procedures outlined in reconsideration section of Florida statute governing access to presidential preference primary ballot in Florida constituted "state action" for purposes of civil rights action brought by presidential candidates whose names were not included on ballot after reconsideration alleging that reconsideration process violated their constitutional rights; state-created procedures, not autonomous political parties, made final determination as to who would appear on ballot. Duke v. Smith, C.A.11 (Fla.) 1994, 13 F.3d 388. Civil Rights 1326(1)

577. ---- Workers' compensation, statutes, color of law generally

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42 U.S.C.A. § 1983

Workers' compensation claimants' characterization of their § 1983 claim that private insurers' withholding of benefits for disputed medical treatment pending "utilization review" pursuant to Pennsylvania law deprived claimants of rights under Fourteenth Amendment, as "facial" or "direct" challenge to utilization review procedures, did not relieve claimants of their obligation to establish that insurers were state actors within meaning of Fourteenth Amendment. American Mfrs. Mut. Ins. Co. v. Sullivan, U.S.Pa.1999, 119 S.Ct. 977, 526 U.S. 40, 143 L.Ed.2d 130. Constitutional Law 254(4)

There was no joint participation between state of Texas and worker's examining physician and workers' compensation insurer, vis-a-vis Texas workers' compensation law, as required for § 1983 claim alleging that worker's benefits were terminated based on physician's uninformed diagnosis. Barnes v. Lehman, C.A.5 (Tex.) 1988, 861 F.2d 1383. Civil Rights 1326(5)

578. ---- Wrongful birth, statutes, color of law generally

Neither Pennsylvania Wrongful Birth Statute nor the Pennsylvania's denial of wrongful birth cause of action encourages negligent behavior by doctors or laboratories providing fetal screening diagnostic services, as needed to convert physicians and laboratories into state actors for purposes of § 1983 civil rights claim by parents of child born with undiagnosed spinabifida; Pennsylvania law did not provide significant encouragement to private doctors and laboratories to infringe on woman's right to make informed choice regarding her pregnancy. Flickinger v. Wanczyk, E.D.Pa.1994, 843 F.Supp. 32. Civil Rights 1326(4)

579. ---- Miscellaneous statutes, color of law generally

Transit authority acted under color of state law, for purposes of § 1983 claim asserted against it, when it pulled from city buses an advertisement mocking mayor based on conclusion of mayor's office that advertisement violated New York statute prohibiting use of living person's name for trade purposes without that person's written consent. New York Magazine, Div. of Primedia Magazines, Inc. v. Metropolitan Transit Authority, S.D.N.Y.1997, 987 F.Supp. 254, affirmed in part, vacated in part 136 F.3d 123, certiorari denied 119 S.Ct. 68, 525 U.S. 824, 142 L.Ed.2d 53. Civil Rights 1326(1)

Where U.C.A.1953, 34-35-1 et seq. provided religious schools with no more relevant freedom to discriminate on basis of religion than they possessed under either common law of Utah or under § 2000e et seq. of this title, it could not be said that the exemption constituted "state action" for purposes of a claim under this section providing for civil action for deprivation of rights. Larsen v. Kirkham, D.C.Utah 1980, 499 F.Supp. 960, affirmed, certiorari denied 104 S.Ct. 157, 464 U.S. 849, 78 L.Ed.2d 144. Civil Rights 1326(11)

In petitioning California court for ex parte conservatorship order, plaintiff's parents and program allegedly engaged in business of "legal deprogramming" were exercising a power not conferred by statute upon select few but upon all citizens of state, and thus their resort to state court for such order did not constitute action under color of law for purposes of this section. Baer v. Baer, N.D.Cal.1978, 450 F.Supp. 481. Civil Rights 1326(9)

Existence of Maine "conscience law" providing that no physician or hospital that refuses to permit the performance of an abortion shall be liable to any person for damages allegedly arising from such refusal did not so involve State of Maine in private hospital's abortion policy as to constitute the latter "state action" where the Maine statute neither prohibited nor required the performance of abortions but was neutral in meaning and effect and had no direct or indirect impact on the hospital's abortion policies. Jones v. Eastern Maine Medical Center, D.C.Me.1978, 448 F.Supp. 1156. Civil Rights 1326(4)

580. Ordinances, color of law generally--Generally

Actions of officials pursuant to municipal ordinances are under color of state law. Allied Artists Pictures Corp. v.

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Alford, W.D.Tenn.1976, 410 F.Supp. 1348.

581. ---- Licenses, ordinances, color of law generally

County's unsuccessful attempt to secure injunction under allegedly unconstitutional ordinance that required licensing of assemblies of more than 250 people did not itself deprive rock concert promoters of First Amendment rights under color of state law, where ordinance was not plainly unconstitutional, where enforcement action was not pretext for suppression of expressive activity based on content, and where county merely sought to enforce ordinance believed to be constitutional. Andree v. Ashland County, C.A.7 (Wis.) 1987, 818 F.2d 1306. Civil Rights 1088(1)

582. ---- Towing, ordinances, color of law generally

Private towing operator could not be held liable for violation of automobile owner's civil rights because of his towing of owner's vehicle from private property pursuant to defective city ordinance where tower had no occasion to doubt validity of the regularly adopted ordinance, which ordinance had not previously been called into question. Huemmer v. Mayor and City Council of Ocean City, C.A.4 (Md.) 1980, 632 F.2d 371. Civil Rights 1341

583. ---- Zoning, ordinances, color of law generally

Town planning and zoning commission acted under color of state law, for purposes of § 1983, when it denied request by personal wireless service provider for special permit to reconstruct church steeple, and install cellular telecommunications facility within steeple, and thus, commission's denial of request, which violated Telecommunications Act of 1996 and thus deprived provider of its federally guaranteed rights, provided basis for recovery by provider on § 1983 claim. Cellco Partnership v. Town Plan and Zoning Com'n of Town of Farmington, D.Conn.1998, 3 F.Supp.2d 178. Civil Rights 1326(2)

City's passage of comprehensive zoning ordinance constituted "state action" under § 1983. Burkhart Advertising, Inc. v. City of Auburn, Ind., N.D.Ind.1991, 786 F.Supp. 721. Civil Rights 1326(7)

584. ---- Miscellaneous ordinances, color of law generally

Actions, by city park use permit holders who sought to exclude street preachers from permitted areas, were not state conduct, under § 1983, on facial and as-applied challenges to city ordinance provisions prohibiting First Amendment activities such as distribution of literature in areas of city's parks for which short-term permits had previously issued for private or public events, even if city authorized exclusionary conduct, assisted it by citations and other enforcement actions by police, and retained ultimate control over permitted areas by power to revoke permit. Diener v. Reed, M.D.Pa.2002, 232 F.Supp.2d 362, affirmed 77 Fed.Appx. 601, 2003 WL 22326515. Civil Rights 1326(7)

Zoning and planning board member removed as chairperson failed to allege municipal policy or custom that caused her injury to support her claim of municipal liability under § 1983 on ground that mayor deprived her of First Amendment rights, where she failed to allege express municipal ordinance, pled no facts supporting allegation that custom existed, and failed to allege that mayor was policymaker for purposes of removal of chairperson. Dulceak v. Paxson, N.D.Ill.1992, 803 F.Supp. 164. Civil Rights 1395(1)

Decision by city commission and board of county commissioners to bar county board of health from contracting with Planned Parenthood for family planning services involved state action under § 1983 and equal protection clause, whether decision was resolution or ordinance. Planned Parenthood of Kansas, Inc. v. City of Wichita, D.Kan.1990, 729 F.Supp. 1282. Civil Rights 1326(2); Constitutional Law 213(2)

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42 U.S.C.A. § 1983

585. Regulations, color of law generally

Statute authorizing county political committees to remove members who give support to candidate for another party did not convert committee's private action in removing homosexual members for purportedly giving such support into state action for purposes of federal civil rights suit under state compulsion test for finding state action; statute in no way compelled members to remove other members because of their sexual orientation. Johnson v. Knowles, C.A.9 (Cal.) 1997, 113 F.3d 1114, certiorari denied 118 S.Ct. 559, 522 U.S. 996, 139 L.Ed.2d 401. Civil Rights 1326(7)

"State action" within this section may be premised upon rulings and regulations of administrative or regulatory agencies as well as upon legislative or judicial action. Palmer v. Columbia Gas of Ohio, Inc., C.A.6 (Ohio) 1973, 479 F.2d 153, 72 O.O.2d 337. Civil Rights 1326(1)

Mere fact that persons are engaged in highly regulated business does not mean that they become state actors for civil rights purposes. Lovell v. Peoples Heritage Sav. Bank, D.Me.1991, 776 F.Supp. 578. Civil Rights 1326(7)

586. Constitutions of states, color of law generally

Court would assume that this section extends to a deprivation of rights under color of a state Constitution, although it might be argued with some force that the enumeration of "statute, ordinance, regulation, custom, or usage," purposely was confined to inferior sources of law. Giles v. Harris, U.S.Ala.1903, 23 S.Ct. 639, 189 U.S. 475, 47 L.Ed. 909.

Plaintiff who prevailed at trial on civil rights claim that officer recklessly violated her civil rights, but was awarded only nominal damages of $1, and was unsuccessful on other claims either at trial or summary judgment stage, would be awarded four-fifths of fees requested for litigation at pretrial stage to reflect claims that were dismissed at that stage, and one-third of fees requested for remaining litigation, given limited success achieved. Lockhart-Bembery v. Town of Wayland Police Dept., D.Mass.2006, 447 F.Supp.2d 11. Civil Rights 1487

Section 1983 did not provide vehicle to hold police officer and municipal police department liable for alleged violations of state constitution, based on officer's actions in accidentally shooting motor vehicle passenger in the head while trying to extract passenger from vehicle. Tallman v. Elizabeth Police Dept., W.D.Ky.2004, 344 F.Supp.2d 992, affirmed 167 Fed.Appx. 459, 2006 WL 166610. Civil Rights 1088(1)

Clause authorizing redress against "deprivation under color of any state law" may also mean "deprivation under color of any state Constitution". Gannon v. Action, E.D.Mo.1969, 303 F.Supp. 1240, affirmed in part, remanded in part on other grounds 450 F.2d 1227. Civil Rights 1324

587. Court orders, color of law generally

Present and former state Commissioners of Public Safety were not individually liable for violating rights of Ku Klux Klan members who had been subjected to indiscriminate weapons searches at Klan rallies; Commissioners obtained state court orders banning weapons at rallies, and applicable law was not adequately clear and settled so as to warrant award of damages. Wilkinson v. Forst, C.A.2 (Conn.) 1987, 832 F.2d 1330, certiorari denied 108 S.Ct. 1593, 485 U.S. 1034, 99 L.Ed.2d 907, on remand 717 F.Supp. 49. Civil Rights 1358

Mental hospital employees who acted pursuant to facially valid court order and who had no reason to believe that mental commitment proceedings deprived patient of due process were not liable to patient under this section. Sebastian v. U. S., C.A.8 (Ark.) 1976, 531 F.2d 900, certiorari denied 97 S.Ct. 153, 429 U.S. 856, 50 L.Ed.2d 133. Civil Rights 1376(1)

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42 U.S.C.A. § 1983

Prothonotary of Superior Court of Pennsylvania was not liable to prisoner under this section for refusing to accept for filing certain papers, where action of prothonotary was pursuant to superior court order. Lockhart v. Hoenstine, C.A.3 (Pa.) 1969, 411 F.2d 455, certiorari denied 90 S.Ct. 378, 396 U.S. 941, 24 L.Ed.2d 244. Clerks Of Courts 72

Prison warden and Director of Ohio Department of Rehabilitation and Corrections, who were not responsible for crediting inmate's sentence in any event, could not be held liable in damages in inmate's § 1983 action for simply carrying out mandate of sentencing court. Wright v. Baker, N.D.Ohio 1994, 849 F.Supp. 569. Civil Rights 1098

Where bank and bank's attorney merely complied with court order to produce certain records in connection with prosecution for failure to file federal income tax returns, bank and its attorney could not be held liable for participation in enforcement of Internal Revenue Service summons. Jarvis v. Roberts, W.D.Tex.1980, 489 F.Supp. 924. Civil Rights 1341

Though individuals who administered school district boundary changes were state officials, where their acts were ministerial in nature and were accomplished only pursuant to order of state Supreme Court, officials could not be said to have committed acts to further or effect transfer of affected areas so as to be held liable under this section for alleged violations of constitutional rights. Board of Ed. of Independent School Dist. No. 53 of Oklahoma County, Okl. v. Board of Ed. of Independent School Dist. No. 52 of Oklahoma County, Okl., W.D.Okla.1975, 413 F.Supp. 342, affirmed 532 F.2d 730, certiorari denied 97 S.Ct. 253, 429 U.S. 894, 50 L.Ed.2d 176. Civil Rights 1356

588. Prejudgment remedies, color of law generally

Before judicial prejudgment remedy can be basis of cause of action under this section, constitutional question must exist concerning state's prejudgment remedy procedure and if constitutional question does not exist there is no state action and no deprivation of rights secured by Constitution. Coltharp v. Cutler, D.C.Utah 1976, 419 F.Supp. 924. Civil Rights 1326(9)

589. Foreclosure, color of law generally

There was no significant state involvement in the conduct of a trustee's sale under Missouri law of extrajudicial foreclosure and thus no state action for purpose of § 1983 civil rights claim. Mildfelt v. Circuit Court of Jackson County, Mo., C.A.8 (Mo.) 1987, 827 F.2d 343. Civil Rights 1326(9)

Fact that Louisiana permitted foreclosure and subsequent sale of land as execution of judgment obtained in private adversary proceeding was not sufficient to raise issue of state action in plaintiffs' action alleging that the foreclosure proceedings constituted deprivation of their constitutional rights under color of state law; foreclosure on the mortgage was a purely private dispute, immune from coverage of the statute lacking a showing of further state involvement. Earnest v. Lowentritt, C.A.5 (La.) 1982, 690 F.2d 1198. Civil Rights 1326(9)

Foreclosure and sale of property pursuant to deed of trust agreement did not have requisite "significant state involvement" to constitute act under color of state law within this section. Hoffman v. U. S. Department of Housing and Urban Development, D.C.Tex.1974, 371 F.Supp. 576, affirmed 519 F.2d 1160. Civil Rights 1326(9)

590. Power of sale, color of law generally

No state action is involved in the exercise of the power of sale given in a mortgage so that civil rights action cannot be maintained on the basis of the sale or the manner in which it was handled. Dieffenbach v. Buckley,

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D.C.N.H.1979, 464 F.Supp. 670. Civil Rights 1326(9)

591. Land grants, color of law generally

Alleged discriminatory actions of trustees of community land grant in leasing common lands within grant were not within provision of this section governing deprivation of civil rights "under color of state law," notwithstanding whether trustees were considered by state to form a quasi-municipal corporation, where common lands within grant were private and not open to public and state, in providing statutory machinery for election and qualification of trustees, sought only to direct creation of an organization to manage and control grant and did not otherwise seek to supervise private functions of trustees by approving matters and considerations leading up to execution of leases. Mondragon v. Tenorio, C.A.10 (N.M.) 1977, 554 F.2d 423, certiorari denied 98 S.Ct. 305, 434 U.S. 905, 54 L.Ed.2d 193. Civil Rights 1326(1)

592. Commonwealth or territory, color of law generally

Deprivations of equal protection under color of laws or regulations of Commonwealth of Puerto Rico are redressible under this section. Rivas Tenorio v. Liga Atletica Interuniversitaria, C.A.1 (Puerto Rico) 1977, 554 F.2d 492. Civil Rights 1028

Puerto Rico is a "state" for the purposes of this section which provides redress against any person who under color of "state" statute or regulation deprives any citizen or other person within the jurisdiction of the United States of rights or privileges secured by the Constitution and laws. Berrios v. Inter Am. University, C.A.1 (Puerto Rico) 1976, 535 F.2d 1330. Civil Rights 1325

Alleged actions of residence for abused children and its employees, of carrying out policy preventing child from visiting with her parents, after employees had been told to do so by county child protective services caseworker, if proven, were taken under color of state law for purposes of § 1983, even if residence was private institution. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1326(4)

Complaint of parent of minor, filed on the minor's behalf, alleging that police officer assigned to the minor's school, acting under color of state law, sexually molested the minor in violation of her substantive due process right to bodily integrity, stated a valid § 1983 claim against the officer. Medina Perez v. Fajardo, D.Puerto Rico 2003, 263 F.Supp.2d 291. Constitutional Law 278.5(5.1); Municipal Corporations 747(3)

Trust Territory of the Pacific Islands was not "State or Territory" under this section. Thompson v. Kleppe, D.C.Hawai'i 1976, 424 F.Supp. 1263. Civil Rights 1325

This section and its jurisdictional counterpart are as applicable with respect to the Commonwealth of Puerto Rico as they are with respect to any state of the union. Comtronics, Inc. v. Puerto Rico Telephone Co., D.C.Puerto Rico 1975, 409 F.Supp. 800, affirmed 553 F.2d 701. Territories 33

593. District of Columbia, color of law generally

Barr Amendment, which prohibited use of any funds in District of Columbia Appropriations Act to conduct ballot initiative on legalization of marijuana, although passed by Congress, applied only to the District of Columbia and was be treated as a statute of the District of Columbia for the purposes of § 1983 action for violation of constitutional or federal statutory rights under the color of a "statute of any State or the District of Columbia." Turner v. D.C. Board of Elections and Ethics, D.D.C.2001, 170 F.Supp.2d 1, vacated 354 F.3d 890, 359 U.S.App.D.C. 332, rehearing en banc denied, certiorari denied 125 S.Ct. 55, 543 U.S. 817, 160 L.Ed.2d 24. Civil Rights 1326(7)

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42 U.S.C.A. § 1983

594. Federal law, color of law generally--Generally

Actions of soldiers during Vietnam War were not taken under the color of state law, thus residents of village in Vietnam were precluded from bringing §§ 1983 action against soldiers on their own behalf and as representatives of deceased victims and survivors of a massacre during War. Van Tu v. Koster, C.A.10 (Utah) 2004, 364 F.3d 1196, certiorari denied 125 S.Ct. 88, 543 U.S. 874, 160 L.Ed.2d 124. Civil Rights 1327

Postal Service was not subject to suit under § 1983, which did not allow for suit based upon actions taken under color of federal law. Flamingo Industries (USA) Ltd. v. U.S. Postal Service, C.A.9 (Cal.) 2002, 302 F.3d 985, certiorari granted 123 S.Ct. 2215, 538 U.S. 1056, 155 L.Ed.2d 1104, reversed 124 S.Ct. 1321, 540 U.S. 736, 158 L.Ed.2d 19, on remand 366 F.3d 789. Civil Rights 1327; Civil Rights 1364

This section which creates remedy to redress a deprivation, under color of state law, of any right, privilege or immunity secured by the Constitution and laws of the United States is directed to state wrongdoing only. Williams v. Rogers, C.A.8 (N.D.) 1971, 449 F.2d 513, certiorari denied 92 S.Ct. 976, 405 U.S. 926, 30 L.Ed.2d 799. Civil Rights 1325

Section § 1983 provides relief against defendants who act under color of state, not federal, law. Khan v. U.S., E.D.N.Y.2003, 271 F.Supp.2d 409. Civil Rights 1327

Section 1983 does not provide basis for suit for actions taken under color of federal law. Meyer v. Reno, D.D.C.1996, 911 F.Supp. 11. Civil Rights 1327

Liability under § 1983 will not attach for action taken under color of federal law. Rourke v. U.S., E.D.Pa.1988, 744 F.Supp. 100, affirmed 909 F.2d 1477. Civil Rights 1327

Generally, plaintiffs may seek relief, pursuant to federal civil rights statute, for violation by state actors of federal statute that creates substantive rights in plaintiffs, so long as Congress has not expressly or impliedly foreclosed enforcement under statute. McNeill v. New York City Housing Authority, S.D.N.Y.1989, 719 F.Supp. 233. Civil Rights 1027

Requisite for pursuing remedy under this section is that defendant act under color of state law; thus that civil right remedy was not available to plaintiff who complained about actions of federal officers acting under color of federal law. Pugh v. Internal Revenue Service, E.D.Pa.1979, 472 F.Supp. 350. Civil Rights 1327

This section authorizing action against person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory deprives another of constitutional right does not extend to persons acting under color of federal law. Williams v. Wright, D.C.Or.1976, 432 F.Supp. 732. Civil Rights 1327

This section applies only to individuals acting under state, as opposed to federal law. Stockheimer v. Underwood, W.D.Wis.1977, 428 F.Supp. 192. Civil Rights 1327

Conduct alleged to be in violation of this section must occur under color of state law; and if the conduct is practiced by a citizen or organization acting privately and not under color of state law, or by a citizen or organization acting under color of federal law, then there is no civil rights claim and no federal jurisdiction. Syrek v. Pennsylvania Air Nat. Guard, W.D.Pa.1974, 371 F.Supp. 1349. Civil Rights 1327; Civil Rights 1326(4); Federal Courts 222

This section applies to officers acting under color of state law, not federal law. Davidson v. Kane, E.D.Va.1972, 337 F.Supp. 922. Civil Rights 1327

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42 U.S.C.A. § 1983

Provisions of this section relating to deprivation of citizen's property implement U.S.C.A.Const. Amends. 13 and 14 , rather than U.S.C.A.Const. Amend. 5, and protect against oppressive state action rather than federal excesses. Vigil v. U. S., D.C.Colo.1968, 293 F.Supp. 1176, affirmed 430 F.2d 1357.

This section grants cause of action against those acting under color of state law and not against those acting under color of federal law. Johnson v. District of Southern Mo. Com'rs, W.D.Mo.1966, 258 F.Supp. 669, affirmed 368 F.2d 184. Civil Rights 1327

Claims under § 1983 only lie against persons acting under color of state law; claims against federal agencies or their officers are not cognizable. Caraveo v. Nielsen Media Research, Inc., S.D.N.Y.2003, 2003 WL 169767, Unreported, report and recommendation adopted in part, rejected in part 2003 WL 1745064, affirmed 96 Fed.Appx. 738, 2004 WL 608590. Civil Rights 1327; Civil Rights 1362

595. ---- Mixed federal and state programs, federal law, color of law generally

Actions of state administrators of a "mixed" federal and state program may, as a matter of law, be actions "under color of state law" as required for application of this section. Rowe v. State of Tenn., C.A.6 (Tenn.) 1979, 609 F.2d 259. Civil Rights 1327

596. ---- Conspiracy with state, federal law, color of law generally

Joint conspiracy between federal and state officials may carry same consequences under this section as joint action by state officials and private persons. Kletschka v. Driver, C.A.2 (N.Y.) 1969, 411 F.2d 436. Conspiracy 7.5(1)

To extent that alleged illegal actions of federal officials were carried out under color of state law, this section provided adequate and exclusive remedy, but action under Constitution could be asserted against federal officials for any conduct which was not undertaken in complicity with state officials. Hampton v. Hanrahan, N.D.Ill.1981, 522 F.Supp. 140. Civil Rights 1322; Civil Rights 1327

597. ---- Executive orders, federal law, color of law generally

This section was inapplicable to support claim that district court had jurisdiction of Maryland corporation's action to enjoin Social Security Administration Commissioner, Civil Service Commission, and Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services] to enforce regulations adopted pursuant to Executive Order concerning equal opportunity in federal employment. Congress of Racial Equality (Target City Project) v. Commissioner, Social Sec. Administration, D.C.Md.1967, 270 F.Supp. 537.

598. ---- Lien statutes, federal law, color of law generally

Actions of federal officials taken pursuant to federal law cannot form the basis of a claim under 42 U.S.C.A. § 1983; hence, since defendant was an Internal Revenue Service employee acting under color of federal law while issuing a third-party collection summons and authorizing a federal tax lien, § 1983 was inapplicable to employee's acts. Church of Human Potential, Inc. v. Vorsky, D.N.J.1986, 636 F.Supp. 93. Civil Rights 1327

599. ---- Social Security, federal law, color of law generally

State officials who sent pretermination notices to social security disability benefits recipient were acting under color of federal law, rather than state law, so that claim for damages could not be predicated on this section. Ellis v. Blum, C.A.2 (N.Y.) 1981, 643 F.2d 68. Civil Rights 1327

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State's conduct in administering its medicaid program could be properly characterized as being "under color of state law," as was necessary for state to be liable in federal civil rights action challenging administration, in that only federal involvement in program was triggered by state's request to receive matching funds; state could not be characterized as purely passive actor so as to preclude federal civil rights liability. Mitson By and Through Jones v. Coler, S.D.Fla.1987, 670 F.Supp. 1568.

Since social security benefits are composed entirely of federal funds and state agencies function solely as agents of federal government, a denial of benefits would not be under color of state law, so that suit under this section claiming such denial would fail. Lynn v. U.S. Dept. of Health and Human Services, S.D.N.Y.1984, 583 F.Supp. 532. Civil Rights 1327

600. ---- Taxes, federal law, color of law generally

Trustees of local union vacation fund, who paid funds held in vacation fund on taxpayer's behalf to Internal Revenue Service pursuant to two tax levies in compliance with federal law on tax liens, were not liable to taxpayer under the civil rights statute, 42 U.S.C.A. § 1983. Carman v. Parsons, C.A.11 (Fla.) 1986, 789 F.2d 1532. Civil Rights 1341

Actions complained of by taxpayer, namely, levying of his wages by Internal Revenue Service, were taken pursuant to federal law by federal agents and private parties, and therefore taxpayer failed to state cause of action against defendants under this section because this section only provides redress for actions taken under color of state law. Zernial v. U.S., C.A.5 (Tex.) 1983, 714 F.2d 431. Civil Rights 1396

601. ---- Miscellaneous federal laws, color of law generally

Card dealer failed to state cause of action under § 1983 in complaint against National Indian Gaming Commission (NGIC) and its chairman, arising from suspension of her gaming license without hearing and tribe's failure to adopt certain gaming ordinance, where complaint alleged only actions taken under color of federal law. Hartman v. Kickapoo Tribe Gaming Com'n, C.A.10 (Kan.) 2003, 319 F.3d 1230. Civil Rights 1327

Joint participation of government necessary to give rise to state action to support a federal civil rights claim need not entail anything more than invoking aid of state officials to take advantage of state-created procedures, but the private defendant must make use of state procedures with the overt and significant assistance of state officials. Cobb v. Saturn Land Co., Inc., C.A.10 (Okla.) 1992, 966 F.2d 1334. Civil Rights 1326(5)

Federal prisoner, who brought action against United States Parole Commission for unspecified damages for period of alleged excess custody, could not claim jurisdiction under this section, since such provision did not apply when Commission was acting under color of federal law. Hubbert v. U. S. Parole Commission, C.A.7 (Ill.) 1978, 585 F.2d 857. Civil Rights 1097

Allegations that movie theater operators and motion picture producers acted under color of federal law to deny close-captioned movies to hearing impaired viewers failed to state § 1983 claim for violation of Free Speech and Assembly Clauses of First Amendment, absent showing of state action; operators and producers did not engage in activities that were traditionally associated with sovereign governments, nor was there sufficient nexus between operators and producers and government as would subject operators and producers to limitations of the Constitution. Todd v. American Multi-Cinema, Inc., S.D.Tex.2003, 222 F.R.D. 118. Civil Rights 1327; Constitutional Law 90.1(6); Constitutional Law 91

602. Approval by Federal government, color of law generally

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Requirement of federal approval of Interstate Compact creating regional planning agency did not foreclose finding that agency's conduct was "under color of state law" within meaning of this section. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, U.S.Nev.1979, 99 S.Ct. 1171, 440 U.S. 391, 59 L.Ed.2d 401, on remand 474 F.Supp. 901. Civil Rights 1326(7)

Requisite "significant state involvement" for bringing action under 42 U.S.C.A. § 1983 governing deprivation of civil rights was missing in airline passenger's action against airline carrier and airport authority for search at airport, where both carrier and authority were required to present their respective security plans to Federal Aviation Administration for final approval, and although authority was required to be cognizant of carrier's security program in order to accommodate its planning, authority did not regulate program, but merely functioned as conduit of information. Wagner v. Metropolitan Nashville Airport Authority, C.A.6 (Tenn.) 1985, 772 F.2d 227. Civil Rights 1327; Civil Rights 1326(7)

Federal approval of state statutory and regulatory scheme did not render state's administration of its program any less "state action" within meaning of this section. Lidie v. State of Cal., C.A.9 (Cal.) 1973, 478 F.2d 552. Civil Rights 1327

603. Conspiracy, color of law generally

Employee terminated by private employer could not establish "state action," required for her § 1983 claim, by alleging conspiracy between employer and appeals referee for state employment security commission (ESC) to conceal material facts and evidence pertaining to employee's unemployment claim, where complaint failed to plead any facts suggesting that employer and referee reached a meeting of the minds, and neither employer nor its managers acted under color of state law. Howard v. Food Lion, Inc., M.D.N.C.2002, 232 F.Supp.2d 585. Civil Rights 1396

Private parties willfully participating in conspiracy with state officials are acting under color of law, for purposes of § 1983. DiBenedetto v. City of Chicago, N.D.Ill.1994, 873 F.Supp. 106. Civil Rights 1326(5)

VIII. ATTRIBUTION OF PRIVATE ACTIONS TO STATE

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631. Attribution of private actions to state generally

Ultimate issue in determining whether person is subject to suit under federal statute governing civil action for deprivation of rights is same question posed in cases arising under Fourteenth Amendment, i.e., whether alleged infringement of federal rights is "fairly attributable to the state." Rendell-Baker v. Kohn, U.S.Mass.1982, 102 S.Ct. 2764, 457 U.S. 830, 73 L.Ed.2d 418. Civil Rights 1325

For "fair attribution" of action to state, as required by § 1983, deprivation must be caused by exercise of state-created right or privilege, by state-imposed rule of conduct, or by person for whom state is responsible, and party charged with deprivation must be fairly described as state actor. Landry v. A-Able Bonding, Inc., C.A.5 (Tex.) 1996, 75 F.3d 200. Civil Rights 1325

Generally there may be a finding of "state action or action under color of state law," within meaning of this section, when a private party's action occurred in conjunction with the business in which the state may be considered a partner or joint venturer in a profit-making field, when a state statute or custom or usage compels the result, when a state agency affirmatively orders or specifically approves the activity in the course of its regulatory rule making, or when a private agency in effect is acting on behalf of and furnishing a typical government service. Jackson v. Metropolitan Edison Co., C.A.3 (Pa.) 1973, 483 F.2d 754, certiorari granted 94 S.Ct. 1407, 415 U.S. 912, 39 L.Ed.2d 466, affirmed 95 S.Ct. 449, 419 U.S. 345, 42 L.Ed.2d 477. Civil Rights 1326(4)

Danger creation exception to rule that state actors could be held liable under §§ 1983 only for their own acts, and not for acts of third parties, applied to Fourteenth Amendment due process claim against state, school district, and school board brought by parent and natural guardian, on behalf of four-year old, non-verbal, autistic child who also suffered from tuberous sclerosis, a genetic disorder that caused tumors to form in many different organs including brain, eyes, heart, kidneys, skin, and lungs, on allegations that preschooler on four occasions was made to walk from bus to classroom without shoes, preschooler was slapped by teacher or taken by his hands and forced to slap himself, and preschooler was "slammed" in a chair by teacher. Roe ex rel. Preschooler II v. Nevada, D.Nev.2004, 332 F.Supp.2d 1331. Constitutional Law 278.5(5.1); Schools 89.2

Section 1983's "color of state law" requirement excludes from the reach of § 1983 all merely private conduct, no matter how discriminatory or wrongful, but includes within its scope apparently private actions which have a sufficiently close nexus with the state to be fairly treated as that of the state itself. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1325

The ultimate issue in determining whether a person is subject to suit under § 1983 is the same question posed in cases arising under the Fourteenth Amendment: is the alleged infringement of federal rights fairly attributable to the State? Schorr v. Borough of Lemoyne, M.D.Pa.2003, 265 F.Supp.2d 488. Civil Rights 1325

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There are three discrete tests to determine whether there has been "state action" within meaning of § 1983 and Fourteenth Amendment: first test determines whether private entity exercises powers that are traditionally exclusive prerogative of state; the second test addresses whether private entity has acted in concert or with help of state officials; last inquiry involves situations in which state has so far insinuated itself into position of interdependence with acting party that it must be recognized as joint participant in challenged activity. Johnson v. Cullen, D.Del.1996, 925 F.Supp. 244. Civil Rights 1326(4); Constitutional Law 254(4)

Conduct by private entity may constitute "state action" for purposes of § 1983 in three types of situation, when: there is sufficiently close nexus between state and challenged action of regulated entity such that those actions may be fairly treated as those of state; when state has regulated entity to such extent that action must in law be deemed to be that of state; and when private entity exercises power traditionally exclusive to state. Davis v. Hudgins, E.D.Va.1995, 896 F.Supp. 561, affirmed 87 F.3d 1308, certiorari denied 117 S.Ct. 1440, 520 U.S. 1172, 137 L.Ed.2d 546. Civil Rights 1326(4); Civil Rights 1326(7)

Whether person is subject to § 1983 suit turns upon ultimate question of whether alleged infringement of federal rights is fairly attributable to state. Davis v. Olin, D.Kan.1995, 886 F.Supp. 804. Civil Rights 1325

There are three criteria that court may apply to determine if conduct by private actor is attributable to the state so as to satisfy "state action" requirement for purposes of § 1983 action and if none of these elements are present, there is no "state action" and the elements are: (1) if state has exercised coercive power or has provided such significant encouragement, either overt or covert, that choice must in law be deemed to be that of the state; (2) when heavy regulation of private actor exists, there must be sufficiently close nexus between state and challenged action of the regulated entity so that action of the latter may be fairly treated as that of the state itself; (3) in public function area, there can be state action if private group is serving public function that has been traditionally the exclusive prerogative of the state. Federspiel v. Ohio Republican Party State Cent. Committee, S.D.Ohio 1994, 867 F.Supp. 617, affirmed 85 F.3d 628. Civil Rights 1326(4); Civil Rights 1326(7)

Private party can be held to be "state actor," for purposes of § 1983 claim involving deprivation of constitutional rights by such actor, where there is sufficiently close nexus between state and challenged action of private party so that action of party may be fairly treated as action of state itself, when private party has exercised powers that are traditionally exclusive prerogative of state, or when state has exercised coercive power or has provided such significant encouragement, either overt or covert, so that action of private party must in law be deemed to be that of state. Lewis v. Law-Yone, N.D.Tex.1993, 813 F.Supp. 1247. Civil Rights 1326(4)

Fair attribution test of whether conduct of private individual allegedly depriving a party of his federal rights may be attributed to state for purposes of civil rights statute has two components: a state policy and a state actor. Boulter v. Jordan, D.Colo.1990, 733 F.Supp. 85. Civil Rights 1326(4)

First question in determining whether conduct of private actor may be attributable to the state in a § 1983 action is whether the claimed deprivation has resulted from the exercise of a right or a privilege having its source in a state authority and the second question is whether, under the facts, defendant who is a private party may be appropriately characterized as a state actor. Steele v. Stephan, D.Kan.1986, 633 F.Supp. 950. Civil Rights 1326(4)

Performance of a public function, significant involvement of state in private activity, or state enforcement of agreements affecting private parties may confer "state action" upon private parties for purposes of suit under this section. Vuksta v. Bethlehem Steel Corp., D.C.Pa.1982, 540 F.Supp. 1276, affirmed 707 F.2d 1405, certiorari denied 104 S.Ct. 121, 464 U.S. 835, 78 L.Ed.2d 119. See, also, Arment v. Commonwealth Nat. Bank, E.D.Pa.1981, 505 F.Supp. 911. Civil Rights 1326(4)

In resolving question of existence vel non of state action in civil rights case, the following are to be examined: private entity's degree of dependence on governmental aid; extent and intrusiveness of governmental regulation

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involved; whether or not aid is given to all similar institutions or is suggestive of government's approval of activity challenged in particular case; whether or not institution under attack performs public function, and legitimacy of organization's claim to be regarded as private in character, in associational or constitutional terms. Ludtke v. Kuhn, S.D.N.Y.1978, 461 F.Supp. 86. Civil Rights 1326(4); Civil Rights 1326(7)

Private, individual conduct may be found to constitute state action (1) where state courts enforce an agreement affecting private parties, (2) where the state "significantly" involves itself with the private party and, (3) where there is private performance of a government function. Magill v. Avonworth Baseball Conference, C.A.3 (Pa.) 1975, 516 F.2d 1328. See, also, Sament v. Hahnemann Medical College and Hospital of Philadelphia, E.D.Pa.1976, 413 F.Supp. 434, affirmed 547 F.2d 1164. Civil Rights 1325; Civil Rights 1326(4)

Factors important to determination of "state action" by private organization are the degree to which the organization is dependent upon governmental aid; the extent and intrusiveness of the governmental regulatory scheme; whether that scheme connotes governmental approval of the activity or whether the assistance is merely provided to all without such connotations; the extent to which the organization serves a public function or acts as a surrogate for the state; and whether the organization has legitimate claims to recognition as a "private" organization in associational or other constitutional terms; and each of the factors is material and no one factor is conclusive. Jackson v. Statler Foundation, C.A.N.Y.1974, 496 F.2d 623. See, also, Rackin v. University of Pennsylvania, E.D.Pa.1974, 386 F.Supp. 992. Civil Rights 1325; Civil Rights 1326(7)

632. Facts of each case as controlling, attribution of private actions to state

Determination of whether there is sufficient "state action" by nonstate persons, rendering applicable this section, must be made by sifting facts and weighing circumstances case by case. Sims v. Jefferson Downs, Inc., C.A.5 (La.) 1980, 611 F.2d 609. Civil Rights 1325

Determining whether there has been sufficient "state action" to give rise to a claim under this section requires a sifting of the circumstances of each case. Life Ins. Co. of North America v. Reichardt, C.A.9 (Cal.) 1979, 591 F.2d 499, on remand 485 F.Supp. 56. Civil Rights 1325

No easy answer exists to the question whether particular discriminatory conduct is "private" or has such a state involvement or nexus as to permit relief under this section creating a federal cause of action against persons whose misconduct under color of state law violates the constitutional rights of another; rather, the facts in each case must be sifted and the circumstances weighed before a determination as to whether "state action" exists can be made. Broderick v. Associated Hospital Service of Philadelphia, C.A.3 (Pa.) 1976, 536 F.2d 1. Civil Rights 1325

Question whether utility company is acting under color of state law, within purview of this section, when it terminates service to individual customer for alleged nonpayment of bills can only be determined by examination of facts of each particular case. Palmer v. Columbia Gas of Ohio, Inc., C.A.6 (Ohio) 1973, 479 F.2d 153, 72 O.O.2d 337. Civil Rights 1326(7)

In order to determine whether nongovernmental entity has engaged in "state action" within meaning of this section, courts must carefully sift facts and circumstances. Trivits v. Wilmington Institute, D.C.Del.1976, 417 F.Supp. 160. Civil Rights 1325

633. Wrongfulness of conduct, attribution of private actions to state

Purely private conduct, no matter how wrongful, is not within protective orbit of this section. Ouzts v. Maryland Nat. Ins. Co., C.A.9 (Nev.) 1974, 505 F.2d 547, certiorari denied 95 S.Ct. 1681, 421 U.S. 949, 44 L.Ed.2d 103. Civil Rights 1326(4)

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This section preserves constitutional rights from infringement by persons who act under federal statute or authority but not from infringement by private citizens who commit wrongful acts, however willful and malicious they may be. Spampinato v. M. Breger & Co., C.A.2 (N.Y.) 1959, 270 F.2d 46, certiorari denied 80 S.Ct. 409, 361 U.S. 944, 4 L.Ed.2d 363, rehearing denied 80 S.Ct. 597, 361 U.S. 973, 4 L.Ed.2d 553.

Bail bondsmen who allegedly assaulted principal while arresting him were not state actors under "nexus/joint action" test for potential private-party liability under § 1983, even though bondsmen's authority to arrest derived from state law; bondsmen received no instructions, directions, aid, comfort, succor or anything else from state in pursuing principal, but acted unilaterally for their own private financial interest, and did not identify themselves as agents of state. Green v. Abony Bail Bond, M.D.Fla.2004, 316 F.Supp.2d 1254. Civil Rights 1326(9)

This section proscribes state action only, and private action however wrongful cannot form basis for relief under this section. Brownley v. Gettysburg College, M.D.Pa.1972, 338 F.Supp. 725. Civil Rights 1325

Conduct involving exercise of some power possessed only by virtue of private citizenship, even when wrongful, does no violence to rights protected by this section. Elders v. Consolidated Freightways Corp. of Del., D.C.Minn.1968, 289 F.Supp. 630. Civil Rights 1325

634. State compulsion, attribution of private actions to state

Absent indication that there existed any coercion or encouragement of a state entity, official or agent in the complained of conduct by condominium board and board members, owners of condominium unit did not demonstrate state action, for purposes of their §§ 1983 claim against condominium board and board members, under the state compulsion test. Miller v. Board of Managers of Whispering Pines at Colonial Woods Condominium II, E.D.N.Y.2006, 457 F.Supp.2d 126. Civil Rights 1326(4)

School bus driver sufficiently alleged "state action" component of §§ 1983 claim against school defendants where he alleged that his private employer did not want to fire him and only did so at the direction of a school district official. Fernandez v. Taos Municipal Schools Bd. of Educ., D.N.M.2005, 403 F.Supp.2d 1040. Civil Rights 1396

State did not so significantly encourage actions of advocate for family violence victims in purportedly giving false information to the police and requesting police to obtain a warrant to search alleged abuser's home for guns, so as to make advocate and private agency she was employed by "state actors" for purposes of civil rights suit; statute compelling state, local and private agencies to cooperate with Victim Advocate referred only to public official occupying that position, not private contractors; moreover, even assuming that advocate attempted to compel police to take action, this did not make her state actor, absent evidence that State exercised coercive power over advocate or provided significant encouragement, either overt or covert, for her actions. Szekeres v. Schaeffer, D.Conn.2004, 304 F.Supp.2d 296. Civil Rights 1326(4)

Applicant failed to state cause of action against under § 1983 against private company which had been contracted by Transportation Security Administration (TSA) to administer employment screening tests, where he failed to allege an independent substantive basis for such claim. Nabozny v. NCS Pearson, Inc., D.Nev.2003, 270 F.Supp.2d 1201. Civil Rights 1395(8)

Although private defendants were not performing a public function when they acted to involuntarily confine plaintiff in mental hospital, genuine issues of material fact existed as to whether public defendants compelled the private defendants to take action and as to whether the private defendants conspired with public defendants in violation of plaintiff's due process rights so as to render the private defendants state actors for purposes of plaintiff's § 1983 claim, precluding summary judgment in favor of private defendants. Ruhlmann v. Ulster County Dept. of Social Services, N.D.N.Y.2002, 234 F.Supp.2d 140. Federal Civil Procedure 2491.5

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State compulsion test, for determining whether private conduct is attributable to state for purposes of § 1983, requires that state, or political subdivision thereof, exercise such coercive power over private actor to take a particular action that the choice was really state's and not private actor's. Sanders v. Prentice-Hall Corp. System, Inc., W.D.Tenn.1997, 969 F.Supp. 481, affirmed 178 F.3d 1296. Civil Rights 1326(4)

Under state compulsion test for determining whether private entity's conduct is fairly attributable to the state for § 1983 purposes, private company providing administrative and management services to city hospital was not acting "under color of state law" for § 1983 purposes when it terminated employee who was hired by company to serve as administrator of city hospital; hospital did not exercise any coercive power, either overt or covert, over company's decision to terminate employee and hospital had no involvement in the decision to terminate employee. Perdue v. Quorum Health Resources, Inc., M.D.Tenn.1996, 934 F.Supp. 919. Civil Rights 1326(11)

635. Symbiotic relationship with state, attribution of private actions to state--Generally

To prevail under the symbiotic relationship test, a §§ 1983 plaintiff must show that the State has so far insinuated itself into a position of interdependence with the private defendant that it must be recognized as a joint participant in the challenged activity. Mitchell v. Home, S.D.N.Y.2005, 377 F.Supp.2d 361. Civil Rights 1326(5)

Section 1983 "color of state law" criterion was unsatisfied in action brought by residents of private low-income housing facility challenging owner's rule prohibiting residents from having overnight guests, where city, state, and federal officials were not involved in promulgation and enforcement of rule, or even aware of it; significant levels of federal and state funding for facility, including its private security service which enforced rule, and regulatory requirements overseen by city, did not amount to "symbiotic relationship." Young v. Halle Housing Associates, L.P., S.D.N.Y.2001, 152 F.Supp.2d 355.

Under the symbiotic relationship/nexus test for determining whether private party's conduct is attributable to the state for purposes of § 1983, private company which provided administrative and management services to city hospital was not acting "under color of state law" for § 1983 purposes when it terminated employee who was hired by company to serve as administrator of hospital; employee failed to allege symbiotic relationship or nexus and there was no intimate involvement of hospital in decision to terminate employee. Perdue v. Quorum Health Resources, Inc., M.D.Tenn.1996, 934 F.Supp. 919. Civil Rights 1326(11)

Private day school located in federal office building was not federal actor, as required to support father's claim that school violated his First Amendment rights when it deprived him of access to his son's records; although father claimed that school officials violated the Family Educational Rights and Privacy Act (FERPA) and that federal employees acted at school's behest when they escorted him from building, his allegations failed to show there was "symbiotic" relationship between school and federal government. Williams v. Discovery Day School, E.D.Pa.1996, 924 F.Supp. 41. Constitutional Law 82(10); Schools 8

Cable television company that cancelled cable television program was not "state actor" for § 1983 purposes under either state-function approach or symbiotic relationship approach, for purposes of cable television programmer's § 1983 action against company; ownership and operation of entertainment facility were not powers traditionally exclusively reserved to state, nor were they functions of sovereignty, and symbiotic relationship did not exist between state and company. Glendora v. Cablevision Systems Corp, S.D.N.Y.1995, 893 F.Supp. 264. Civil Rights 1326(4)

Volunteer fire company was not "state actor" under symbiotic relationship test for purposes of § 1983 action against company for allegedly failing to adopt prudent practices in admitting members to company, in view of evidence that company had title to buildings and equipment, with municipality having only reversionary interest, that only indicia of state involvement between company and municipality where financial assistance and routine state regulation, and that company was self-governing and set its own standards. Mark v. Borough of Hatboro,

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E.D.Pa.1994, 856 F.Supp. 966, affirmed 51 F.3d 1137, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 165, 516 U.S. 858, 133 L.Ed.2d 107. Civil Rights 1326(1)

Private action is transformed into "state action" for purposes of § 1983 under symbiotic relationship test when state has so far insinuated itself into position of interdependence with private party that it must be recognized as joint participant in challenged activity; in sum, symbiotic relationship test seeks to establish whether overall interest of government and private actor overlapped to such extent as to virtually coincide. Chan v. City of New York, S.D.N.Y.1992, 803 F.Supp. 710, affirmed 1 F.3d 96, certiorari denied 114 S.Ct. 472, 510 U.S. 978, 126 L.Ed.2d 423. Civil Rights 1326(5)

For § 1983 purposes, economic association between private defendant and state is not conclusive evidence that defendant's conduct amounts to state action; rather, there must be "symbiotic relationship," i.e., close nexus between defendant and state, such as when defendant performs traditionally public function. Domenech Fernandez v. Diversified Information Systems Corp., D.Puerto Rico 1991, 762 F.Supp. 1544, affirmed 957 F.2d 44. Civil Rights 1326(5)

An independent organization may be found to have state involvement under this section if it is involved in a symbiotic relationship with state government, or if there is nexus between challenged action and state regulatory scheme. Baker v. Cincinnati Metropolitan Housing Authority, S.D.Ohio 1980, 490 F.Supp. 520, affirmed 675 F.2d 836. Civil Rights 1326(4)

Under symbiotic relationship concept satisfying requirement of state action under this section, state action can only be effected by act of sovereign, not by plethora of private power and focus is not on private deprivation but on state authorization. Weiss v. Willow Tree Civic Ass'n, S.D.N.Y.1979, 467 F.Supp. 803. Civil Rights 1325

State action may be found under this section governing deprivation of civil rights if state and private institution have entered into a "symbiotic relationship" in which state has so far insinuated itself into a position of interdependence with private party that it must be recognized as a joint participant in challenged activity, or there is a sufficiently close nexus between state and challenged action of regulated entity so that action of latter may be fairly treated as that of state itself. Milner v. National School of Health Technology, E.D.Pa.1976, 409 F.Supp. 1389. Civil Rights 1326(5)

Finding of "state action" is proper when state and private party enter into "symbiotic relationship" conferring mutual benefits, a relationship sufficiently close that a state can be said to be the "partner" of the private party. Isaacs v. Board of Trustees of Temple University of Com. System of Higher Ed., E.D.Pa.1974, 385 F.Supp. 473. Civil Rights 1326(5)

The state must become a symbiotic partner with private enterprise in order for civil rights action for deprivation of rights under color of state law to lie. Ellingson v. Sears, Roebuck & Co., D.C.S.D.1973, 363 F.Supp. 1344. Civil Rights 1326(5)

636. ---- Education, schools and students, symbiotic relationship with state, attribution of private actions to state

"Symbiotic relationship" did not exist between nonprofit, privately operated school for maladjusted high school students and state so as to render school subject to suit under federal statute governing civil action for deprivation of rights, notwithstanding that virtually all of school's income was derived from government funding, where school's fiscal relationship with state was not different from that of many contractors performing services for government. Rendell-Baker v. Kohn, U.S.Mass.1982, 102 S.Ct. 2764, 457 U.S. 830, 73 L.Ed.2d 418. Civil Rights 1326(7)

State university's profits from leasing its activities center to concert promoter and assistance it may have obtained

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in enforcing its policies prohibiting alcohol, drugs, and video and tape recorders from center were insufficient to establish symbiotic relationship between university, concert promoter, and private firm providing security for concert to satisfy state action requirement for § 1983 action by concertgoers alleging that they were subjected to unreasonable pat-down searches in violation of Fourth Amendment. Gallagher v. Neil Young Freedom Concert, C.A.10 (Utah) 1995, 49 F.3d 1442. Civil Rights 1326(4)

Under symbiotic relationship test, relationship between Commonwealth of Pennsylvania and university which was "state-aided" but not "state-related" was insufficient to establish "state action" required to support imposition of § 1983 liability on university for revocation of resident physician's medical degree; neither receipt of state funds nor conditions appended to them required Commonwealth's extensive involvement with university, which retained autonomy of private institution operating in state-regulated field. Imperiale v. Hahnemann University, C.A.3 (Pa.) 1992, 966 F.2d 125. Civil Rights 1326(6)

Pennsylvania had so far insinuated itself into position of interdependence with two universities that "symbiotic relationship" existed between Commonwealth and universities, and actions taken by those two institutions were, therefore, actions taken under color of state law and were subject to scrutiny under this section. Krynicky v. University of Pittsburgh, C.A.3 (Pa.) 1984, 742 F.2d 94, certiorari denied 105 S.Ct. 2018, 471 U.S. 1015, 85 L.Ed.2d 300. Civil Rights 1326(6)

Fact that City of Providence conveyed, in 1948, a building to postgraduate school, that school granted to the state an easement in other property for historical purposes, that five of the 43 directors of the school were state and local officials serving ex officio, that school received federal funds channelled through the state council on arts, and that there were statutory requirements for annual report and visitation rights for the state department of education did not create such a symbiotic relationship between the school and the state so as to make conduct of school in denying tenure to female teacher attributable to the state. Lamb v. Rantoul, C.A.1 (R.I.) 1977, 561 F.2d 409. Civil Rights 1326(11)

Private day school located in federal office building was not a state actor, as required to support father's civil rights claim arising when he was allegedly denied access to his son's records, where state was not responsible for choosing any of the school's officers or agents, was not responsible for setting school's tuition and was not required to fund school absent act of state legislature. Williams v. Discovery Day School, E.D.Pa.1996, 924 F.Supp. 41. Civil Rights 1326(6)

637. ---- Employment, symbiotic relationship with state, attribution of private actions to state

Pennsylvania's characterization of foster parents as employees of the county children and youth services agency that designated them foster parents did not automatically make foster parents state actors for purposes of foster child's §§1983 action against them alleging deprivation of Fourteenth Amendment right to be free from physical harm. Leshko v. Servis, C.A.3 (Pa.) 2005, 423 F.3d 337. Constitutional Law 254(2)

There was not a symbiotic relationship between the Puerto Rico Maritime Shipping Authority and private management company, for purposes of finding indirect state action in discharge of management company's employees for purposes of civil rights action, although management contract was clearly beneficial to the Authority, where the company was essentially independent in the conduct of its daily affairs and there was nothing to suggest that the Authority profited in any way from discriminatory practice allegedly utilized by the company. Rodriguez-Garcia v. Davila, C.A.1 (Puerto Rico) 1990, 904 F.2d 90. Civil Rights 1326(11)

For purposes of claims of former employees that their rights under U.S.C.A.Const. Amends. 1, 4, 5, 6, and 14 had been violated by unauthorized searches and by discharges, company which was responsible for providing the necessary personnel, materials, transportation, logistics, management, and services required to support United States Sinai Field Mission, which was to play a dominant part in the Mission, which was required to work closely

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with the governments of Israel and Egypt, and whose employees were immunized from all local criminal, civil, tax, and custom laws was engaged in state action under both the public function and symbiosis theory. Dobyns v. E-Systems, Inc., C.A.5 (Tex.) 1982, 667 F.2d 1219. Constitutional Law 82(5); Constitutional Law 254(4); Searches And Seizures 33

Employer and its chief executive officer were not liable under §§1983 for alleged racial discrimination, where they were not alleged to be officers of the state, and employee did not allege any collaboration between them and agents of the state. Matthews v. Marten Transp., Ltd., W.D.Wis.2005, 354 F.Supp.2d 899. Civil Rights 1326(11)

Mere fact that person who molested child was teacher employed by school district at time of sexual assault was insufficient to show "state action" required to support civil rights action under § 1983 against school district and school officials where the molestations occurred five to six months after the teacher/student relationship had ended by virtue of child's withdrawal from the school, and while teacher was visiting child's home and family on his own volition, with permission of child's mother, and pursuant to personal relationship that he had developed with the family. Becerra v. Asher, S.D.Tex.1996, 921 F.Supp. 1538, affirmed 105 F.3d 1042, rehearing and suggestion for rehearing en banc denied 111 F.3d 894, supplemented on denial of rehearing, certiorari denied 118 S.Ct. 82, 522 U.S. 824, 139 L.Ed.2d 40. Civil Rights 1326(6)

Fact that area bridge and tunnel authority subsidized private employer hired to count toll receipts and fact that authority was employer's only major client was not proof of "symbiotic relationship" which would allow finding that actions of private employer were those of state actor for purposes of § 1983 action. Atkinson v. B.C.C. Associates, Inc., S.D.N.Y.1993, 829 F.Supp. 637. Civil Rights 1326(11)

For purposes of § 1983 action brought by employees of private corporation which provided auxiliary services to public and nonpublic school students, state statute governing wages and benefits for public school employees did not create symbiotic relationship between corporation and Commonwealth; corporation was independent contractor whose services could be discontinued by local school board by simply not renewing contract, corporation was not created by state statute, was not part of public school system, and was not instrumentality of Commonwealth, neither corporation itself nor its operation were established by law, and there was no indication that corporation enjoyed contractual relationship with Commonwealth. Denchy v. Education and Training Consultants of Pa., Inc., E.D.Pa.1992, 803 F.Supp. 1055. Civil Rights 1326(11)

Railroad employee failed to sufficiently allege facts that would fulfill either "symbiotic relationship test" or "close nexus test" for finding that railroad was acting under color of state law when it allegedly caused employee to be prosecuted criminally, discharged him, and published allegedly libelous letter, and thus employee failed to state claim for such actions under federal civil rights statute, where employee merely alleged that railroad was corporation organized under various New York laws, including Public Authorities Law. Hannah v. Metro-North Commuter R. Co., S.D.N.Y.1990, 753 F.Supp. 1169. Civil Rights 1396

638. ---- Gambling and wagering, symbiotic relationship with state, attribution of private actions to state

Action of purchasers of harness racing facility in perpetrating fraud on industrial development agency, in representing that purchasers intended to continue operation of track, did not give rise to state action such as would support § 1983 action against purchasers by horse breeders' association and its members; there was no symbiotic relationship between purchasers and the agency. Standardbred Owners Ass'n v. Roosevelt Raceway Associates, L.P., C.A.2 (N.Y.) 1993, 985 F.2d 102. Civil Rights 1326(1)

Racing magazine publisher seeking injunction prohibiting nonprofit racing association from limiting publisher's access to association's racetracks established likelihood of proving state action under symbiotic relationship test, where association was in real sense merely conduit through which money passed from betting public to state's coffers, state legislature placed power, prestige, and good name of state behind association in order to assure

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betting public that racing and wagering were conducted legitimately, and state was entangled with association's board of trustees and its property. Stevens v. New York Racing Ass'n, Inc., E.D.N.Y.1987, 665 F.Supp. 164. Civil Rights 1326(1)

639. Nexus between state and challenged activity generally, attribution of private actions to state

Although contract between county and private employer that operated correctional facility allowed county to regulate employees to some degree, contract did not establish nexus between county and employer's decision to fire employee, as required for employee to bring § 1983 action against employer on grounds that firing was state action; contract required employer to follow regulations for training and monitoring of employees and gave county right to preclude employment of any particular individual, but did not regulate termination or disciplinary processes. George v. Pacific-CSC Work Furlough, C.A.9 (Cal.) 1996, 91 F.3d 1227, certiorari denied 117 S.Ct. 746, 519 U.S. 1081, 136 L.Ed.2d 684. Civil Rights 1326(11)

"Nexus test" for establishing state action in § 1983 claim insures that state will be held liable for constitutional violations only if it is responsible for specific conduct of which plaintiff complains. Gallagher v. Neil Young Freedom Concert, C.A.10 (Utah) 1995, 49 F.3d 1442. Civil Rights 1325

"Nexus test" for determining whether private conduct is fairly attributable to the state for § 1983 purposes requires sufficiently close relationship, such as through state regulation or contract, between the state and the private actor so that the action taken may be attributed to the state. Ellison v. Garbarino, C.A.6 (Tenn.) 1995, 48 F.3d 192. Civil Rights 1326(4); Civil Rights 1326(7)

Under state compulsion test, nexus/joint action test, and public function test, private physicians and private hospital who involuntarily admit mentally disturbed person pursuant to Massachusetts statute do not act "under color of state law" and, thus, are not subject to suit under § 1983. Rockwell v. Cape Cod Hosp., C.A.1 (Mass.) 1994, 26 F.3d 254. Civil Rights 1326(4)

For purposes of § 1983 claim, under "governmental nexus test," private party acts under color of state law if there is sufficiently close nexus between state and challenged action of regulated entity so that action of latter may be fairly treated as that of state itself. Lopez v. Department of Health Services, C.A.9 (Ariz.) 1991, 939 F.2d 881. Civil Rights 1326(7)

Nursing home's claim against nurse surveyor, an employee of Wisconsin Department of Health and Human Services, arising out of her malicious filing of "notice of violations" against nursing home and agency's subsequent placement of nursing home on "suspension of referrals" list, the legal effect of which was to preclude state social service agencies and departments from referring patients to nursing home, did not state a cognizable claim under this section, as nexus between infringement upon nursing home's constitutionally protected rights, namely, placement on list, and nurse surveyor's issuance of the notice of violations was simply too attenuated to permit finding that she subjected or caused nursing home to be subjected to deprivation of due process. Cameo Convalescent Center, Inc. v. Senn, C.A.7 (Wis.) 1984, 738 F.2d 836, certiorari denied 105 S.Ct. 780, 469 U.S. 1106, 83 L.Ed.2d 775. Civil Rights 1395(1)

Absent sufficient state connexity i. e., sufficient connection of the state with a particular aspect of defendant's conduct so that the act is treated as that of the state itself, a nonstate defendant's private conduct is not actionable under this section. Sims v. Jefferson Downs, Inc., C.A.5 (La.) 1980, 611 F.2d 609. Civil Rights 1326(4)

Mere state action is insufficient to support a cause of action under this section; there must be a sufficient nexus between the state action and the private discrimination. Life Ins. Co. of North America v. Reichardt, C.A.9 (Cal.) 1979, 591 F.2d 499, on remand 485 F.Supp. 56. Civil Rights 1325

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42 U.S.C.A. § 1983

State involvement in any manner in activities of private institution does not necessarily establish state action required for civil rights action for deprivation of rights; its existence depends on whether there is sufficiently close nexus between state and challenged action of private entity so that action of latter may be fairly treated as that of state itself. Graseck v. Mauceri, C.A.2 (N.Y.) 1978, 582 F.2d 203, certiorari denied 99 S.Ct. 1048, 439 U.S. 1129, 59 L.Ed.2d 91. Civil Rights 1326(4)

Parents stated claim that foster parent was state actor, amenable to suit under § 1983 for alleged abuse of their child, under nexus doctrine, when they alleged that state agents knew of abuse and collaborated with foster parent to cover up her activities. Howard v. Malac, D.Mass.2003, 270 F.Supp.2d 132. Civil Rights 1326(4)

Standard for determining existence of state action, for purposes of § 1983 action, is whether there is sufficiently close nexus between state and challenged action of defendants so that action of latter may be fairly treated as that of state itself. Eggert v. Tuckerton Volunteer Fire Co. No. 1, D.N.J.1996, 938 F.Supp. 1230. Civil Rights 1325

To find state action for § 1983 purposes, there must be sufficient nexus between alleged act and the state. Federspiel v. Ohio Republican Party State Cent. Committee, S.D.Ohio 1994, 867 F.Supp. 617, affirmed 85 F.3d 628. Civil Rights 1325

"Close nexus test" for determining whether there is state action in § 1983 action inquires whether state can be deemed responsible for specific conduct of which plaintiff complains. Mark v. Borough of Hatboro, E.D.Pa.1994, 856 F.Supp. 966, affirmed 51 F.3d 1137, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 165, 516 U.S. 858, 133 L.Ed.2d 107. Civil Rights 1326(1)

In determining whether state action exists for purpose of action under this section, relevant inquiry is whether there is sufficient nexus between state and challenged activity, or whether state had sufficiently insinuated itself in position of interdependence with defendant so that it is joint participant in activity. Lyon v. Temple University of Com. System of Higher Ed., E.D.Pa.1981, 507 F.Supp. 471. Civil Rights 1325

For purposes of bringing an action pursuant to this section, there must be a sufficiently close nexus between state and challenged action of regulated entity so that action of latter may be fairly treated as that of state itself. Johnson v. Heinemann Candy Co., Inc., E.D.Wis.1975, 402 F.Supp. 714. Civil Rights 1326(7)

640. Concerted or joint action with state officials, attribution of private actions to state--Generally

Joint action with state official to accomplish prejudgment deprivation of constitutionally protected property interest will support claim against private party under 1871 civil rights statute. Lugar v. Edmondson Oil Co., Inc., U.S.Va.1982, 102 S.Ct. 2744, 457 U.S. 922, 73 L.Ed.2d 482. Civil Rights 1326(5)

Genuine issue of material fact as to whether landlord opened tenant's apartment door at the direction of police officer precluded summary judgment in favor of police officer, on issue of whether officer was a state actor, in tenant's §§ 1983 claim, alleging violation of her Fourth Amendment rights in connection with warrantless entry into tenant's apartment to enable her former boyfriend to obtain his belongings. Harvey v. Plains Tp. Police Dept., C.A.3 (Pa.) 2005, 421 F.3d 185, certiorari denied 126 S.Ct. 2325. Federal Civil Procedure 2491.5

Customer who was arrested by police officer for violating Massachusetts criminal trespass statute did not establish § 1983 claim against restaurant's manager, absent evidence of joint discriminatory action between manager and officer--whether by plan, prearrangement, conspiracy, custom, or police--to deprive customer of any right secured by the Constitution or laws of the United States. Alexis v. McDonald's Restaurants of Massachusetts, Inc., C.A.1 (Mass.) 1995, 67 F.3d 341, on remand 1996 WL 463675. Civil Rights 1326(5)

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Pat-down searches by private security officers before concert at public university auditorium did not satisfy joint action test for state action under § 1983, where there was no evidence that university officials jointly participated in pat-down searches. Gallagher v. Neil Young Freedom Concert, C.A.10 (Utah) 1995, 49 F.3d 1442. Civil Rights 1326(5)

Generally, private use of state-sanctioned remedies will not rise to level of state action, for purpose of imposing § 1983 liability; however, state action will be found when private parties make extensive use of state procedures with overt, significant assistance of state officials. Apostol v. Landau, C.A.7 (Ill.) 1992, 957 F.2d 339, rehearing denied. Civil Rights 1326(9)

Private contractor that provided mental health services for jail was not engaged in joint action with warden when contractor discharged counselor allegedly for disclosing sexual abuse of female inmates by jail personnel, was not acting pursuant to delegated authority, and did not act under color of state law within meaning of § 1983, even though warden wanted counselor discharged; no government employees were shown to have knowledge of sexual abuse disclosures. Cunningham v. Southlake Center For Mental Health, Inc., C.A.7 (Ind.) 1991, 924 F.2d 106. Civil Rights 1326(8)

Mere furnishing of information to police officers does not constitute joint action under color of state law which renders private citizen liable under this subchapter. Benavidez v. Gunnell, C.A.10 (Utah) 1983, 722 F.2d 615. Civil Rights 1326(5)

Joint conduct sufficient to support finding that private parties acting with state officials in unlawful conduct are acting under "color of law" exists when the private and public parties act with the common understanding or a meeting of the minds. McNally v. Pulitzer Pub. Co., C.A.8 (Mo.) 1976, 532 F.2d 69, certiorari denied 97 S.Ct. 150, 429 U.S. 855, 50 L.Ed.2d 131. Civil Rights 1326(5)

Conduct which is part private and part governmental must be more strictly scrutinized in determining whether conduct constitutes "state action" when claims of racial discrimination are made. Jackson v. Statler Foundation, C.A.2 (N.Y.) 1973, 496 F.2d 623, amended, on remand. Civil Rights 1325

State action for § 1983 purposes did not exist under joint activity test with respect to actions taken by state employees credit union in connection with former employee's termination and post-termination efforts to collect on former employee's past-due loans, inasmuch as credit union's receipt of peripheral services from state, for which credit union reimbursed state, did not render state joint participant in challenged actions, and state did not receive any benefits from either former employee's termination or credit union's attempts to collect delinquent loans. Hauschild v. Nielsen, D.Neb.2004, 325 F.Supp.2d 995. Civil Rights 1326(9); Civil Rights 1326(11)

Former employer's conduct in merely providing law enforcement authorities with employee's personnel records, which led to employee's subsequent criminal conviction and discharge, did not constitute joint action with state rendering former employer liable under § 1983; state made independent decision to pursue criminal prosecution against employee, and former employer's termination of employee was singularly private act. Heaning v. NYNEX-New York, S.D.N.Y.1996, 945 F.Supp. 640. Civil Rights 1326(5)

If private party acted with help of or in concert with state officials, private actor may be liable under § 1983 based on state action; state action may also be found when private party has been delegated power traditionally exclusively reserved to state, or if there is sufficiently close nexus between state and challenged action of regulated entity so that action of latter may fairly be treated as action of state itself. Budnick v. Baybanks, Inc., D.Mass.1996, 921 F.Supp. 30. Civil Rights 1326(5)

Generally speaking, acts of private persons may constitute actions under color of state law for purposes of § 1983 action when private persons act jointly with state officials, or when their conduct may be chargeable to state.

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Rullan v. Council of Co-Owners of McKinley Court Condominium, D.Puerto Rico 1995, 899 F.Supp. 857. Civil Rights 1326(4); Civil Rights 1326(5)

Genuine issues of material fact existed as to whether store acted jointly with city police department in conducting surveillance of store's bathrooms for homosexual activity and whether store should be held liable in a § 1983 action brought by arrestee, precluding summary judgment. Gilbert v. Sears, Roebuck and Co., M.D.Fla.1995, 899 F.Supp. 597. Federal Civil Procedure 2491.5

Former band director could not recover under § 1983 from assistant superintendent/business manager of school district, for jointly engaging with high school principal, who was alleged to be state actor, and intentionally or recklessly interfering with band director's continued expectation of employment by giving false and misleading information to principal about band director's disciplinary actions toward assistant superintendent's son and encouraging principal to force band director to resign; mere allegation that assistant superintendent was jointly engaged with state actor was insufficient to state claim of state action based on joint action, and providing information and encouraging state actor to act in certain way, without more, does not constitute joint action. Howard v. Board of Educ. of Sycamore Community Unit School Dist. No. 427, N.D.Ill.1995, 876 F.Supp. 959. Civil Rights 1326(11)

A private party's adherence to the law, or a state-tolerated disregard for the law, does not support a joint action or conspiracy claim sufficient to establish the "under color of state law" element of a cause of action under civil rights statute. Patty v. New England Tel. & Tel. Co., A Nynex Co., D.R.I.1990, 745 F.Supp. 806. Civil Rights 1326(5)

Federal officials who are not acting in concert with state agents are not considered to be state actors for purposes of § 1983 and thus are not acting under color of state law. Yocum v. Dixon, C.D.Ill.1990, 729 F.Supp. 616. Civil Rights 1327

Even a considerable degree of cooperation between a private party and the state does not, standing alone, justify a finding that challenged action occurred under state law or that civil rights action for deprivation of rights could thus be maintained. Jones v. Taibbi, D.C.Mass.1981, 508 F.Supp. 1069. Civil Rights 1326(5)

Federal inmate could not bring §§ 1983 action against private attorney for refusing to represent him, absent allegation that attorney was state actor, that attorney had acted together with or had obtained significant aid from state officials, or that attorney's conduct was otherwise chargeable to state. Nagy v. Spence, C.A.10 (Wyo.) 2006, 172 Fed.Appx. 847, 2006 WL 766926, Unreported. Civil Rights 1326(10)

Church hierarchs were not "state actors," for purposes of action brought against them under § 1983 by former parishioners of suppressed congregations, where there was no joint participation between hierarchs and any state officials in disposing of parish property; fact that hierarchs' authority to suppress parishes and dispose of parish property flowed from general state property law, and existence of state law mandating state deference to hierarchs' exercise of authority over church property, merely reflected constitutionally compelled prohibition against state meddling in religious affairs. St. Matthew's Slovak Roman Catholic Congregation v. Most Reverend Wuerl, C.A.3 (Pa.) 2004, 106 Fed.Appx. 761, 2004 WL 1618530, Unreported. Civil Rights 1326(5)

641. ---- Immunity of officials, concerted or joint action with state officials, attribution of private actions to state

Fact that a state official is immune from liability under this section does not mean that his actions are not sufficiently improper to fall within rule that acts of private parties acting jointly with state agents constitute state action for purposes of this section. Gresham Park Community Organization v. Howell, C.A.5 (Ga.) 1981, 652 F.2d 1227. Civil Rights 1326(5)

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42 U.S.C.A. § 1983

In determining whether a private individual, actively conspiring with an absolutely immune state official with the intent to purposely and knowingly deprive another of his rights secured under the Constitution and laws of the United States, is acting under color of law as required by this section, the critical inquiry is whether plaintiff has demonstrated the existence of a significant nexus or entanglement between the absolutely immune state official and the private party in relation to the steps taken by each to fulfill the objects of their conspiracy. Norton v. Liddel, C.A.10 (Okla.) 1980, 620 F.2d 1375. Conspiracy 7.5(3)

When private persons engage in prohibited conduct with nonimmune state officials, they are acting under color of state law for purposes of this section. Grow v. Fisher, C.A.7 (Ind.) 1975, 523 F.2d 875. Civil Rights 1326(5)

Police officer ordering strip search of arrestee was not entitled to qualified immunity from arrestee's suit claiming violation of Fourth Amendment; no reasonable officer could possibly conclude, as had officer in present case, that strip search could be conducted merely because arrest had been on drug charges, without further particularized reasonable belief that arrestee was secreting drugs, and search did not comport with county policy. Sarnicola v. County of Westchester, S.D.N.Y.2002, 229 F.Supp.2d 259. Civil Rights 1376(6)

Even if chief of police and mayor would enjoy a qualified immunity with respect to suit by police officer under this section, joint participation by fraternal order of policeman and three fellow officers in a conspiracy with them would imbue such other defendants with "color of state law" within meaning of this section. Shoemaker v. Allender, E.D.Pa.1981, 520 F.Supp. 266.

Where public defendants, as municipal corporations, were not "persons" within this section, and were thus immune from suit, private defendants could not be found to have acted "under color of State law" on basis of joint activity with the public defendants. Russell v. Town of Mamaroneck, S.D.N.Y.1977, 440 F.Supp. 607. Civil Rights 1326(5)

642. ---- Knowledge and intent, concerted or joint action with state officials, attribution of private actions to state

To act under color of state law for purposes of this section does not require that the defendant be an officer of the state; it is enough that he is a willful participant in joint action with the state or its agents; private persons, jointly engaged with state officials in the challenged action, are acting under color of law for purposes of this section. Dennis v. Sparks, U.S.Tex.1980, 101 S.Ct. 183, 449 U.S. 24, 66 L.Ed.2d 185. Civil Rights 1326(5)

Private person who discriminates on basis of race with knowledge of and pursuant to state-enforced custom requiring such discrimination is participant in joint activity with state and is acting under color of custom, for purposes of this section. Adickes v. S. H. Kress & Co., U.S.N.Y.1970, 90 S.Ct. 1598, 398 U.S. 144, 26 L.Ed.2d 142. Civil Rights 1326(7)

Private individual may be subject to liability under § 1983 if he or she willfully collaborated with official state actor in deprivation of federal right, while state actor may be subject to liability for action physically undertaken by private actors in violation of plaintiff's liberty or property rights if state actor directed or aided and abetted the violation. Dwares v. City of New York, C.A.2 (N.Y.) 1993, 985 F.2d 94. Civil Rights 1326(5); Civil Rights 1354

For purposes of § 1983 claim, under "joint action test," private party acts under color of state law if he is willing participant in joint action with state or its agents. Lopez v. Department of Health Services, C.A.9 (Ariz.) 1991, 939 F.2d 881. Civil Rights 1326(5)

Nothing more than understanding and willful participation between private and state defendants is necessary to show kind of joint activity that will subject private parties to § 1983 liability. Bendiburg v. Dempsey, C.A.11 (Ga.) 1990, 909 F.2d 463, certiorari denied 111 S.Ct. 2053, 500 U.S. 932, 114 L.Ed.2d 459. Civil Rights 1326(5)

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Joint actions between state and private citizens exist and private parties are acting "under color of law," for purposes of § 1983, where private party is willful participant in joint action with state or its agents. Collins v. Womancare, C.A.9 (Cal.) 1989, 878 F.2d 1145, certiorari denied 110 S.Ct. 865, 493 U.S. 1056, 107 L.Ed.2d 949. Civil Rights 1326(5)

Private parties act under color of state law, for purpose of § 1983 liability, if they willfully participate in joint action with state official to deprive others of constitutional rights. United Steelworkers of America v. Phelps Dodge Corp., C.A.9 (Ariz.) 1989, 865 F.2d 1539, certiorari denied 110 S.Ct. 51, 493 U.S. 809, 107 L.Ed.2d 20, on subsequent appeal 896 F.2d 403. Civil Rights 1326(5)

Private racetrack's general manager was willful participant in joint activity with state or its agents where general manager solicited use of state power to enforce unlawful private unilateral eviction of horse trainer who held valid license from Louisiana State Racing Commission and, without participation by stewards, who were state officials, there could have been no eviction and no claim under 42 U.S.C.A. § 1983. Sims v. Jefferson Downs Racing Ass'n, Inc., C.A.5 (La.) 1985, 778 F.2d 1068. Civil Rights 1326(5)

To act under "color of" state law for purposes of this section does not require that defendant be an officer of state; private parties may incur liability for their conduct when individual actor is a willful participant in joint activity with state or its agents. Annunziato v. The Gan, Inc., C.A.2 (Conn.) 1984, 744 F.2d 244. See, also, Martin-Marietta Corp. v. Bendix Corp., C.A. 6 (Mich.) 1982, 690 F.2d 558; Gresham Park Community Organization v. Howell, C.A. 5 (Ga.) 1981, 652 F.2d 1227; Fraser v. Schultze, N.D.Ill.1987, 663 F.Supp. 512; Baltz v. Shelley, N.D.Ill.1987, 661 F.Supp. 169. Civil Rights 1326(5)

Mere fact that defendant, rather than plaintiff, was hired for position as town assessor did not establish that defendant "acted" or that any act was "under color of state law," as elements of §§ 1983 claims for violation of First Amendment rights of political affiliation and free speech and for violation of equal protection rights. Bailey v. Town of Evans, New York, W.D.N.Y.2006, 443 F.Supp.2d 427. Civil Rights 1359

Store manager's lodging of complaint with police that employee had in the past threatened he "had a gun and was going to shoot the place up," which allegedly caused police officers to escort employee to store parking lot and search his car, did not amount to "willful collaboration" giving rise to §§ 1983 liability. Johns v. Home Depot U.S.A., Inc., S.D.N.Y.2004, 221 F.R.D. 400. Civil Rights 1326(11)

642A. ---- Particular cases action joint, concerted or joint action with state officials, attributions of private actions to state

Casino patron's allegations that two of casino's private security guards acted in concert with state trooper during joint custodial questioning of patron, denying patron assistance of counsel, were sufficient to state a §§ 1983 claim against security guards. Lassoff v. New Jersey, D.N.J.2006, 414 F.Supp.2d 483. Civil Rights 1326(5)

643. ---- Conspiracy, concerted or joint action with state officials, attribution of private actions to state

Incoming mayor and council-elect did not conspire with city attorney to deprive city clerk of his job, in violation of city clerk's protected interest in completing appointed term, as required under the joint action theory to establish that incoming mayor and council-elect were acting under the color of state law for purposes of clerk's §§ 1983 action alleging that he was deprived of his job without due process; although city attorney advised the council-elect about the possible legal implications of their decision not to reappoint the clerk, no evidence indicated that attorney advised the council-elect to terminate the clerk and the attorney actually tried to persuade the council to reappoint the clerk. Burrell v. City of Mattoon, C.A.7 (Ill.) 2004, 378 F.3d 642. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

Hotel could not be held liable for civil rights conspiracy on basis of respondeat superior liability for joint actions taken by its employee with sheriff's deputies in arresting and detaining hotel patrons. Zivojinovich v. Ritz Carlton Hotel Co., LLC, M.D.Fla.2006, 445 F.Supp.2d 1337. Conspiracy 13

Class member's mere belief, based on his "experience" that such meetings may occur during litigation, that an ex parte chambers meeting, at which state trial court judge and attorneys conspired to allow attorneys to obtain excessive attorney fees as part of class action settlement in antitrust litigation in state court, must have occurred, did not establish that attorneys, as private parties, engaged jointly with a state official with respect to challenged action, as basis for meeting state action requirement for §§ 1983 claim against attorneys. Copple v. Astrella & Rice, P.C., N.D.Cal.2006, 442 F.Supp.2d 829. Civil Rights 1422

New York state teacher who was terminated from position as Special Projects (SP) Coordinator stated §§ 1983 conspiracy claim against union official by alleging he acted in concert with other defendants to deprive her of her constitutional rights and performed overt act in furtherance of their goal by coercing her to sign letter forcing her to give up her contractual and due process rights in connection with disciplinary proceedings, which allegedly led to her termination from that position. Peres v. Oceanside Union Free School Dist., E.D.N.Y.2006, 426 F.Supp.2d 15. Conspiracy 7.5(2)

Mother's attorney who reported information to police in connection with investigation of father for fleeing with child was not liable to father under §§ 1983 for alleged arrest and detention without probable cause; merely reporting information to the police did not make attorney an interdependent joint actor with them, the encouragement that domestic violence advocate gave to continue gathering information did not make attorney a state actor, and attorney's cooperation with police did not establish conspiracy to deprive father of civil rights. Meuse v. Stults, D.Mass.2006, 421 F.Supp.2d 358. Civil Rights 1326(10)

Failure to show that police officer, called at time separated wife and friend searched house owned by recently deceased husband, conspired in search, precluded existence of state actor required to bring §§ 1983 claim that search violated Fourth Amendment privacy rights of owner's girlfriend, who was continuing one year, four month period of residency. Ostensen v. Suffolk County, E.D.N.Y.2005, 378 F.Supp.2d 140. Searches And Seizures 33

Alleged violations of due process and equal protection rights of former employee of state employees credit union did not result from exercise of coercive power by state, and therefore challenged actions by credit union's president and member of its board of directors in connection with former employee's termination and credit union's post-termination loan collection efforts did not qualify as state action for § 1983 purposes, given absence of evidence that either state or state agent or employee had any input or communication with credit union regarding former employee's termination by and subsequent interaction with credit union, much less exercised any coercive influence. Hauschild v. Nielsen, D.Neb.2004, 325 F.Supp.2d 995. Civil Rights 1326(9); Civil Rights 1326(11)

To establish conspiracy under Section 1983 to deprive plaintiff of his First Amendment right to free speech, plaintiff must prove either by direct or circumstantial evidence (1) agreement between two or more state actors, or state actor and private entity, (2) to act in concert to inflict unconstitutional injury, and (3) overt act done in furtherance of that goal. Stein v. Janos, S.D.N.Y.2003, 269 F.Supp.2d 256. Conspiracy 7.5(2)

Evidence that wife and her sister appeared together with police officers at marital home where husband lived, for purpose of carrying out court order which permitted wife to retrieve various household items from home for use while divorce proceeding was pending, and required presence of officers, was insufficient to establish that there was a conspiracy between wife, her sister, and officers to violate husband's constitutional rights against search and seizure, for purposes of establishing liability under §1983. Todd v. City of Natchitoches, Louisiana, W.D.La.2002, 238 F.Supp.2d 793, appeal dismissed 72 Fed.Appx. 969, 2003 WL 21997581. Conspiracy 7.5(2); Conspiracy

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42 U.S.C.A. § 1983

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644. Governmental character of action, attribution of private actions to state

Neither this section nor U.S.C.A.Const. Amend. 14 erects shield against merely private conduct, however discriminatory or wrongful, but conduct which is formally private may become so entwined with governmental policies or so impregnated with governmental character as to become subject to the limitations placed upon state action. Barrett v. United Hospital, S.D.N.Y.1974, 376 F.Supp. 791, affirmed 506 F.2d 1395. Civil Rights 1325

Conduct that is formally private may become so entwined with governmental policies or so impregnated with a governmental character as to become state action within this section. Pendrell v. Chatham College, W.D.Pa.1974, 370 F.Supp. 494. Civil Rights 1325

645. Exclusive government function, attribution of private actions to state

Indian Health Service (IHS) clinical psychologist who practiced on Indian reservation was not a state actor under § 1983 on theory that in participating in placing Indian child in protective custody she was performing a function exclusively reserved to the states, even assuming that her conduct could be viewed as removing the child from her mother's custody; tribal agreement with state under which social services were provided to reservation children specifically provided that a reservation child could not be removed from her home or maintained in a place other than her home except pursuant to tribal law provisions, and that tribal social service agency and its agents and employees were not agents of the state. E.F.W. v. St. Stephen's Indian High School, C.A.10 (Wyo.) 2001, 264 F.3d 1297. Civil Rights 1326(9)

Under exclusive government function approach for detecting presence of action under color of state law for purposes of § 1983, public funding and service to the public were insufficient by themselves to show that volunteer first aid squad was performing exclusive government function in its treatment of arrestee such that squad was acting under color of state law for purposes of § 1983 liability. Groman v. Township of Manalapan, C.A.3 (N.J.) 1995, 47 F.3d 628. Civil Rights 1326(7)

In determining whether action performed by alleged state actor is an exclusive state function, to provide basis for § 1983 liability, function must be of type which state could not be permitted to escape its responsibilities by delegation. Johnson v. Pinkerton Academy, C.A.1 (N.H.) 1988, 861 F.2d 335, rehearing denied. Civil Rights 1325

646. Public or governmental function, attribution of private actions to state--Generally

In certain instances, the actions of private entities may, within meaning of this section, be considered to be infused with "state action," if those private parties are performing a function which is public or governmental in nature and which would have to be performed by the government but for the activities of the private parties. Perez v. Sugarman, C.A.2 (N.Y.) 1974, 499 F.2d 761. Civil Rights 1326(4)

Private entity may be considered to be infused with "state action," supporting entity's potential liability under §§ 1983, if it is performing function public or governmental in nature and which would have to be performed by government but for entity's activities. Vega v. Fox, S.D.N.Y.2006, 457 F.Supp.2d 172. Civil Rights 1326(4)

"Public function test" for determining whether a party is a state actor for purposes of § 1983 action is satisfied if private party performs a function that is traditionally exclusive prerogative of state. Okunieff v. Rosenberg, S.D.N.Y.1998, 996 F.Supp. 343, affirmed 166 F.3d 507, certiorari denied 120 S.Ct. 1002, 528 U.S. 1144, 145 L.Ed.2d 945. Civil Rights 1326(4)

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Public function test for determining in § 1983 action that private entity has engaged in state action holds that state action may be established when private entity acts in capacity of state by engaging in activity that has traditionally been exclusive prerogative of state. Chumbley v. Gashinski, M.D.Fla.1997, 983 F.Supp. 1406, affirmed in part, reversed in part 196 F.3d 1260. Civil Rights 1326(4)

To hold a private party liable under this section, plaintiffs must establish that private party's actions are properly attributable to the state and hence constitute "state action," but private party can be held liable for discriminatory acts if, in performing the acts, it asserts powers or rights traditionally exclusively reserved to the state. Stewart v. Hannon, N.D.Ill.1979, 469 F.Supp. 1142. Civil Rights 1326(4)

Delegation of a public function to a private citizen or tolerance of private performance of a public function is indicative but not determinative of existence of state action for this section. Jacobs v. Huie, N.D.Tex.1976, 447 F.Supp. 478. Civil Rights 1326(4); Constitutional Law 254(2)

In respect to this section, questions of "state action" generally arise when the state has somehow involved itself in the activity under scrutiny or when a private entity has assumed a state or public function. Baron v. Carson, N.D.Ill.1976, 410 F.Supp. 299. Civil Rights 1325; Civil Rights 1326(4)

The public function-state action theory holds that when the state delegates the performance of essential governmental functions to an otherwise private entity, the performance of that function cloaks that entity with the aura of the state, and the entity's action in discharging that function are taken under color of law. Player v. State of Ala. Dept. of Pensions and Sec., M.D.Ala.1975, 400 F.Supp. 249, affirmed 536 F.2d 1385. Civil Rights 1326(4)

"State action" for purposes of this section does not exist merely because individual or institution in question performs "public function" that the state, in its own panoply of activities, performs. Isaacs v. Board of Trustees of Temple University of Com. System of Higher Ed., E.D.Pa.1974, 385 F.Supp. 473. Civil Rights 1325

Private conduct will not support action under this section but private persons performing traditionally public functions may become liable. Magro v. Lentini Bros. Moving & Storage Co., E.D.N.Y.1971, 338 F.Supp. 464, affirmed 460 F.2d 1064, certiorari denied 92 S.Ct. 2074, 406 U.S. 961, 32 L.Ed.2d 349, rehearing denied 92 S.Ct. 2505, 408 U.S. 932, 33 L.Ed.2d 345. Civil Rights 1325; Civil Rights 1326(4)

647. ---- Banking and lending, public or governmental function, attribution of private actions to state

In action under this section brought by borrowers against lenders, with whom wage assignment agreements had been entered into, seeking a judgment declaring New York wage assignment statute, McKinney's N.Y.Personal Property Law, § 46 et seq., to be unconstitutional as violative of the process clause of U.S.C.A.Const. Amend. 14, there was no "state action" on theory that the statute vested the lenders with a function traditionally performed by the state, since the wage assignment function has always been that of a private levy without a prior court order and there was no "state action" on theory that state was entwined with and had become a partner of the creditor finance companies, where the companies were not recipients of state aid by grant or loan and where their facilities were privately owned. Bond v. Dentzer, C.A.2 (N.Y.) 1974, 494 F.2d 302, certiorari denied 95 S.Ct. 65, 419 U.S. 837, 42 L.Ed.2d 63. Civil Rights 1326(9)

648. ---- Citizen's arrests, public or governmental function, attribution of private actions to state

Airline employee's alleged "citizen's arrest" of airline pilot for trespass did not make employee a "state actor," for purposes of pilot's § 1983 claim against airline and employee. Carey v. Continental Airlines, Inc., C.A.10 (Okla.) 1987, 823 F.2d 1402. Civil Rights 1326(1)

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That police officer informed resident manager of condominium complex about offense of harassment, gave him copy of statute defining offense, and advised him about procedures for making citizen's arrest after discussing matter with his supervisor was sufficient to establish that, upon officer's advice, resident manager exercised his right under state law to make citizen's arrest and satisfied state policy requirement for resident manager's liability under § 1983 as "state actor." Fraser v. County of Maui, D.Hawai'i 1994, 855 F.Supp. 1167. Civil Rights 1326(9)

Person making arrest is acting under color of law, within this section, if he is in fact acting as public officer. Bryant v. Donnell, W.D.Tenn.1965, 239 F.Supp. 681. Civil Rights 1326(8)

649. ---- Commitment of persons, public or governmental function, attribution of private actions to state

Because physicians and hospitals confining persons pursuant to mental commitment statute are exercising power historically exercised by government, such acts constitute state action. Brown v. Jensen, D.C.Colo.1983, 572 F.Supp. 193. Civil Rights 1326(1)

650. ---- Contracting of function, public or governmental function, attribution of private actions to state

State contractor and its employees are not "state actors" simply because they are carrying out state sponsored program and contractor is being compensated therefor by state; nor does fact that activity being performed is public function render contractor and its employees state actors. Black by Black v. Indiana Area School Dist., C.A.3 (Pa.) 1993, 985 F.2d 707. Civil Rights 1326(1)

Victim advocate and not-for-profit corporation for which she worked were not subject to §§ 1983 liability as "state actors" under public function doctrine based on their provision of services to family violence victims in working with courts, absent any evidence that victim support services were exclusive prerogative of state. Szekeres v. Schaeffer, D.Conn.2004, 304 F.Supp.2d 296. Civil Rights 1326(4)

651. ---- Custody of children, public or governmental function, attribution of private actions to state

Foster parents, by providing care to child in foster home, did not perform a traditionally and exclusively public function under Pennsylvania law, and thus, they were not state actors for purposes of foster child's §§1983 action against them alleging deprivation of Fourteenth Amendment right to be free from physical harm; foster child's care was not delivered in institutional setting, hands-on care of foster children was not exclusively governmental, but could be tendered by families, private organizations, or public agencies, and placing children in foster homes traditionally was function of private organizations in Pennsylvania. Leshko v. Servis, C.A.3 (Pa.) 2005, 423 F.3d 337. Constitutional Law 254(4)

In accepting and retaining custody of children alleged to have been "neglected" or "abandoned," private child-caring institutions perform a "public function" and there is thus "state action" within meaning of this section. Perez v. Sugarman, C.A.2 (N.Y.) 1974, 499 F.2d 761. Civil Rights 1326(1)

Fact questions existed as to whether nonprofit corporation that operated home for young adults transitioning out of foster care or psychiatric facilities was entwined with state, precluding summary judgment, on nonstate-actor grounds, in 19-year-old resident's §§ 1983 action against nonprofit and individual employees alleging failure to intervene in assault committed by second resident; care of mentally disabled, abused or neglected young adults was within duty of state under New York law, nonprofit's public function was directly related to specific acts alleged, and home was originally developed with state support. Vega v. Fox, S.D.N.Y.2006, 457 F.Supp.2d 172. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

Private foster care agency acted under color of state law for purposes of foster child's §§ 1983 claim based on injuries he sustained while in foster care when it assisted county in the child's placement, regardless of whether child was forcibly taken from his home. Harris ex rel. Litz v. Lehigh County Office of Children & Youth Services, E.D.Pa.2005, 418 F.Supp.2d 643. Civil Rights 1326(5)

Non-profit provider of foster care services performed function that was exclusively prerogative of the state, and provider and its officers and employees were thus "state actors" for purposes of § 1983 action arising from death of involuntarily removed child. Donlan v. Ridge, E.D.Pa.1999, 58 F.Supp.2d 604. Civil Rights 1326(1)

Minor children placed by state in private facility failed to allege sufficient state action to state § 1983 claim against facility operator and related individuals based upon condition of facility and alleged failure to provide adequate security, supervision, and food, where service contract did not link state to challenged actions, there were no allegations in complaint to demonstrate that state directed commission of alleged wrongdoing or do show that state controlled, operated, or owned facility, and complaint contained no factual basis for inference of agreement or conspiracy between state and private individuals; it was not sufficient to allege that symbiotic relationship exist between state and facility or that state employees routinely visited facility to enforce applicable regulations. Letisha A. by Murphy v. Morgan, N.D.Ill.1994, 855 F.Supp. 943. Civil Rights 1396

652. ---- Detention, public or governmental function, attribution of private actions to state

Store and its employees, whose central motivation in detaining persons that they believed were stealing property was self-protection, not altruism, did not perform public functions in detaining plaintiffs as suspected shoplifters, in searching their purses and in detaining them after gun was found that would meet under-color-of-law requirement of this section. White v. Scrivner Corp., C.A.5 (La.) 1979, 594 F.2d 140. Civil Rights 1326(1)

653. ---- Education, public or governmental function, attribution of private actions to state

Teammate's alleged conduct in committing racially motivated attack on football player could not be fairly attributable to the state so as to satisfy state action requirement for holding school district officials liable under § 1983 for due process violation; record showed no evidence of an agreement between teammate and football coach, and school's inaction and indifference in responding to either player's history of racial abuse at the school or teammate's assault did not rise to the level of legal action under the fair attribution standard. Priester v. Lowndes County, C.A.5 (Miss.) 2004, 354 F.3d 414, certiorari denied 125 S.Ct. 153, 543 U.S. 829, 160 L.Ed.2d 44. Constitutional Law 254(4)

Nothing in the Puerto Rico Constitution or in the educational policy of Puerto Rico made higher education at a private university in Puerto Rico a public function or called into question the traditional status of private colleges and universities, despite contention that provision of Puerto Rico Constitution that "every person has the right to an education," taken in conjunction with the Commonwealth's regulation and support of higher education, warranted conclusion that higher education was a public function and that university was thus subject to standards of lawful activity applicable to public institutions. Berrios v. Inter Am. University, C.A.1 (Puerto Rico) 1976, 535 F.2d 1330 . Colleges And Universities 2

Illinois' declaration of the importance of higher education, i.e., that it is a public function, could not convert activities of private university, which allegedly discriminated against female faculty member, on basis of sex, into powers traditionally exclusively reserved to the state and, hence, state action. Cohen v. Illinois Institute of Technology, C.A.7 (Ill.) 1975, 524 F.2d 818, certiorari denied 96 S.Ct. 1683, 425 U.S. 943, 48 L.Ed.2d 187. Civil Rights 1326(11)

Since meaningful regulation of the intercollegiate aspect of higher education is beyond effective reach of any one state, a college athletic association by taking upon itself the role of coordinator and overseer of college athletics, in

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the interest of both the individual student and his institution, is performing a "traditional governmental function" and is thereby subject to federal civil rights jurisdiction. Parish v. National Collegiate Athletic Ass'n, C.A.5 (La.) 1975, 506 F.2d 1028. Federal Courts 222

Private university did not perform such a "public function" as to render its regulation of student demonstrations on football field, not open freely to public, "state action" for purposes of U.S.C.A.Const. Amend. 14, but the action of the private university in establishing demonstration guidelines and in enforcing them with respect to students in a state supported institution which university operated under contract with state of New York, constituted "state action" for purposes of U.S.C.A.Const. Amend. 14. Powe v. Miles, C.A.2 (N.Y.) 1968, 407 F.2d 73.

State statute permitting public-school students to initiate prayer at various compulsory and noncompulsory school events constituted "state action" within meaning of § 1983, even though statute authorized private parties to take action. Ingebretsen v. Jackson Public School Dist., S.D.Miss.1994, 864 F.Supp. 1473, affirmed 88 F.3d 274, rehearing and rehearing en banc denied, certiorari denied 117 S.Ct. 388, 519 U.S. 965, 136 L.Ed.2d 304. Civil Rights 1326(6)

Private college did not assume all attributes of governmental subdivision, nor was education such a uniquely public function as to warrant finding that private college was engaged in "state action" within purview of this section. Lorentzen v. Boston College, D.C.Mass.1977, 440 F.Supp. 464, affirmed 577 F.2d 720, certiorari denied 99 S.Ct. 1254, 440 U.S. 924, 59 L.Ed.2d 478, rehearing denied 99 S.Ct. 2021, 441 U.S. 917, 60 L.Ed.2d 391. Civil Rights 1326(6)

Private college was not subject to liability under § 1983, absent showing that state had ceded governmental functions to college that state would otherwise have been obligated to perform, or that state had effectively assumed control of its policies and operations. Phillips v. Sage Colleges, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 340, 2003 WL 22513580, Unreported. Civil Rights 1326(6)

654. ---- Employment, public or governmental function, attribution of private actions to state

Non-profit anti-poverty corporation was not "state actor," and thus was not subject to liability under §§ 1983 in former employee's wrongful discharge case, even though corporation received 95% of its funding from government, one-third of its board members were public officials, and corporation served general public, where services provided by corporation were not exclusive province of state. Ashby v. Economic Opportunity Com'n of Nassau County, Inc., E.D.N.Y.2004, 351 F.Supp.2d 27. Civil Rights 1326(11)

University, in terminating public safety officers, did not perform function that was traditionally exclusive prerogative of state, and thus university was not "state actor" under public function test, as required for officers to maintain § 1983 claim against university; although university served public function by providing officers on campus, termination concerned strictly personnel matters. Allocco v. City of Coral Gables, S.D.Fla.2002, 221 F.Supp.2d 1317, affirmed 88 Fed.Appx. 380, 2003 WL 22768944. Civil Rights 1326(11)

655. ---- Fire protection, public or governmental function, attribution of private actions to state

Genuine issue of material fact as to whether volunteer fire company and its officers expressly, or effectively, expelled member precluded summary judgment in member's § 1983 action on issue of whether there was "action" by state. Eggert v. Tuckerton Volunteer Fire Co. No. 1, D.N.J.1996, 938 F.Supp. 1230. Federal Civil Procedure 2491.5

Volunteer fire company was not "state actor" under public function test for purposes of § 1983 action against company for allegedly failing to adopt or follow prudent practices in admitting members to company, in view of evidence that municipality exercised no control over company, that company elected its own officers, whom

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municipality agreed to recognize, that municipality provided no input into recruitment or training practices and was completely uninvolved with all personnel matters, and that company prepared its own budget, subject to approval by municipality. Mark v. Borough of Hatboro, E.D.Pa.1994, 856 F.Supp. 966, affirmed 51 F.3d 1137, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 165, 516 U.S. 858, 133 L.Ed.2d 107. Civil Rights 1326(1)

Municipality's policy or lack of policy regarding volunteer fire company's screening of new applicants was not actionable under § 1983, where fire fighting function was not exclusive governmental function, where company was private autonomous association, and where municipality had absolutely no control over company's membership screening practices. Mark v. Borough of Hatboro, E.D.Pa.1994, 856 F.Supp. 966, affirmed 51 F.3d 1137, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 165, 516 U.S. 858, 133 L.Ed.2d 107. Civil Rights 1351(5)

Volunteer firefighting company was not state actor, for purposes of § 1983 action by one of its members; fire fighting in Maryland was traditionally the province of volunteers, not the state or its subdivisions, despite various statutes, charters, and the like dealing with the subject. Haavistola v. Community Fire Co. of Rising Sun, D.Md.1994, 839 F.Supp. 372. Civil Rights 1326(11)

Fact that function of town volunteer fire department, to provide fire fighting and ambulance services for the town, was clearly affected with the public interest was not sufficient to establish that the department was carrying on a "public function" and, therefore, was an agency of the state so as to be liable for civil rights violations. Janusaitis v. Middlebury Volunteer Fire Dept., D.C.Conn.1979, 464 F.Supp. 288, affirmed 607 F.2d 17. Civil Rights 1326(1)

Voluntary fire department is performing function normally governmental in nature for purposes of this section providing civil action for deprivation of right under color of statute, ordinance regulation, custom or usage of any state or territory. Everett v. Riverside Hose Co. No. 4, Inc., S.D.N.Y.1966, 261 F.Supp. 463. Civil Rights 1326(1)

656. ---- Medical care, public or governmental function, attribution of private actions to state

It is physician's function within state system, providing treatment to prison inmates, not precise terms of his employment, that determines whether his actions can fairly be attributed to state under this section. West v. Atkins, U.S.N.C.1988, 108 S.Ct. 2250, 487 U.S. 42, 101 L.Ed.2d 40. Civil Rights 1326(8)

Former prisoner stated that close nexus existed between government and challenged action of physicians from hospital, for purpose of determining in civil rights lawsuit under Fourth and Fourteenth Amendments whether private individuals had been acting under color of state law, on allegations that county delegated public function of county coroner in child death cases to physicians and autopsy and related activities by physicians resulted in prisoner's wrongful imprisonment for 21 years. Marsh v. San Diego County, S.D.Cal.2006, 432 F.Supp.2d 1035. Civil Rights 1326(8)

Under the public function test for determining whether private entity's conduct is attributable to the state for § 1983 purposes, employer which was a private corporation providing administrative and management services to city hospital was not acting "under color of state law" for § 1983 purposes when it terminated employee who was hired by employer to serve as administrator of hospital; management of hospital services was not a power which has traditionally been exclusively reserved to the state and hospitals which are supported by municipalities are often given the freedom to contract with public or private companies to provide services. Perdue v. Quorum Health Resources, Inc., M.D.Tenn.1996, 934 F.Supp. 919. Civil Rights 1326(11)

Although private corporation which provided psychological counseling and mental health services and certified

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social worker employed by corporation as psychotherapist performed "public function," alleged misconduct of psychotherapist with respect to patient who sought counseling would not be considered state action for purposes of § 1983 civil rights action on public function theory; the public function which was performed had not traditionally been exclusive prerogative of state. Faulk v. Ludwig, W.D.Pa.1990, 732 F.Supp. 591. Civil Rights 1326(4)

Fact that private, nonprofit health care facility had agreed to provide free medical assistance to indigents and that it provided an essential public service in that it was the largest and best equipped hospital in the area did not suffice to establish that the hospital performed a "public function" and was thus an instrumentality of the state so as to make its policy on elective nontherapeutic abortions "state action" for purposes of this section. Jones v. Eastern Maine Medical Center, D.C.Me.1978, 448 F.Supp. 1156. Civil Rights 1326(4)

"Public function" exception to usual test of "state action" did not apply to function of private hospital in hiring and firing of doctors, nurses and other staff personnel. Barrett v. United Hospital, S.D.N.Y.1974, 376 F.Supp. 791, affirmed 506 F.2d 1395. Civil Rights 1325

657. ---- Maritime shipping, public or governmental function, attribution of private actions to state

Maritime shipping industry is not a traditional public function even though, in Puerto Rico, maritime shipping services are essential and thus may be regarded as a public function, with result that public function analysis did not provide basis for finding indirect state action, for purposes of civil rights statute, by a private company which had contracted to provide management services to the Puerto Rico Maritime Shipping Authority. Rodriguez-Garcia v. Davila, C.A.1 (Puerto Rico) 1990, 904 F.2d 90. Civil Rights 1326(4)

658. ---- Police, public or governmental function, attribution of private actions to state

Delegation of police powers, a governmental function, to otherwise private individuals or groups renders such individual agents for instrumentalities of the state for purpose of holding that their actions are performed "under color of state authority" and within purview of this section. Henderson v. Fisher, C.A.3 (Pa.) 1980, 631 F.2d 1115, on remand 506 F.Supp. 579. Civil Rights 1326(4)

Dependency of citizens and private organizations on the state for certain services on which the state had an effective monopoly, such as police and fire protection, does not alone convert activities of private individuals or private organizations using such services into state action. Magill v. Avonworth Baseball Conference, C.A.3 (Pa.) 1975, 516 F.2d 1328. Civil Rights 1326(7)

Decision of city police commissioner and deputy commissioners to terminate police officer, whether regarded as termination for disciplinary purposes during probation as city claimed, or as termination reflecting retaliatory action for officer's public criticisms as she claimed, was "official action" of city, resulting in § 1983 liability of city. Walton v. Safir, S.D.N.Y.2000, 122 F.Supp.2d 466. Civil Rights 1351(5)

City housing authority's employment of private security guard to implement its visitation policy did not give rise to inference that it encouraged guard to engage in challenged activity of allegedly shooting victim, as required for guard to be state actor under federal civil rights statute. Wade v. Byles, N.D.Ill.1995, 886 F.Supp. 654, affirmed 83 F.3d 902, certiorari denied 117 S.Ct. 311, 519 U.S. 935, 136 L.Ed.2d 227. Civil Rights 1326(4)

Calling police or security force to a function does not make that function state action for purposes of § 1983. Federspiel v. Ohio Republican Party State Cent. Committee, S.D.Ohio 1994, 867 F.Supp. 617, affirmed 85 F.3d 628. Civil Rights 1326(8)

659. ---- Prisons and prisoners, public or governmental function, attribution of private actions to state

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42 U.S.C.A. § 1983

Private entity that operated correctional facility did not "become the government" for employment purposes, as required for employee to bring § 1983 lawsuit against it, notwithstanding that it was granted certain powers and privileges under the law to allow it to function adequately as prison. George v. Pacific-CSC Work Furlough, C.A.9 (Cal.) 1996, 91 F.3d 1227, certiorari denied 117 S.Ct. 746, 519 U.S. 1081, 136 L.Ed.2d 684. Civil Rights 1326(11)

Private jail corporation that was sued by pretrial detainee alleging civil rights violations, stemming from attack while incarcerated, was potentially liable under §§ 1983, since corporation performed same public functions as municipal entity in maintaining jail facilities. Stephens v. Correctional Services Corp., E.D.Tex.2006, 428 F.Supp.2d 580. Civil Rights 1326(8)

Actions of a private company operating a corrections facility under a state contract did not qualify as "state action" under the public function test, as urged by a former employee in support of a §§ 1983 claim that her termination violated her rights under the Fourteenth Amendment; it was undisputed that the state had no input in, and no regulation applicable to, the company's internal personnel actions. Bell v. Management & Training Corp., C.A.6 (Ohio) 2005, 122 Fed.Appx. 219, 2005 WL 280465, Unreported. Civil Rights 1326(8); Civil Rights 1326(11)

660. ---- Speech regulation, public or governmental function, attribution of private actions to state

Private entity's regulation of free speech activities on city-owned land leased by private entity was "public function," and thus, private entity engaged in "state action," for purposes of street preachers' § 1983 action against private entity to enjoin entity from such regulation, where that land was traditional public forum, private entity engaged in exclusive regulation of free speech on that land, and city retained little, if any, power over free speech policies governing the land. Lee v. Katz, C.A.9 (Or.) 2002, 276 F.3d 550, certiorari denied 122 S.Ct. 2358, 536 U.S. 905, 153 L.Ed.2d 180, on remand 2004 WL 1211921.

661. ---- Wiretapping, public or governmental function, attribution of private actions to state

There was no "state action" for civil rights purposes on ground that telephone company in installing pen register was performing "public function", in view of want of any evidence that state law enforcement officers had ordered telephone company to acquire the information in question or had delegated responsibility to telephone company for developing prosecution. Von Lusch v. C & P Tel. Co., D.C.Md.1978, 457 F.Supp. 814. Civil Rights 1326(7)

662. ---- Particular functions public, public or governmental function, attribution of private actions to state

Typical examples of "public function test" for determining whether private conduct is fairly attributable to the state for § 1983 purposes include running elections and eminent domain. Ellison v. Garbarino, C.A.6 (Tenn.) 1995, 48 F.3d 192. Civil Rights 1326(4)

Exclusively governmental functions, the performance of which will make private party accountable under § 1983, fall within narrow, carefully confined category such as administration of elections, operation of company town, eminent domain, peremptory challenges in jury selection, and, in limited circumstances, operation of municipal park. United Auto Workers, Local No. 5285 v. Gaston Festivals, Inc., C.A.4 (N.C.) 1995, 43 F.3d 902. Civil Rights 1326(4)

Where private corporation undertakes to perform duties which have been largely within province of the state, and wherein it receives substantial sums of money from state for performance of such duties, there exists a sufficient relationship between it and the state to make the private corporation subject to suit for violation of individual's civil rights. Kentucky Ass'n for Retarded Citizens v. Conn, W.D.Ky.1980, 510 F.Supp. 1233, affirmed 674 F.2d 582,

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certiorari denied 103 S.Ct. 457, 459 U.S. 1041, 74 L.Ed.2d 609. Civil Rights 1326(7)

663. ---- Particular functions not public, public or governmental function, attribution of private actions to state

Assemblyman's actions in securing ouster of homosexual members of county central committee of political party were not taken under color of state law where they were not related to the performance of his duties as public official, rather than as ex officio member of committee; mere fact that prestige of his office may have enhanced his influence over committee was not enough to convert his actions into state action. Johnson v. Knowles, C.A.9 (Cal.) 1997, 113 F.3d 1114, certiorari denied 118 S.Ct. 559, 522 U.S. 996, 139 L.Ed.2d 401. Civil Rights 1326(2)

Organization, management, and promotion of municipal festival were not within domain of functions exercised traditionally and exclusively by government and, thus, activities of private organizer of festival were not "state action" for which organizer could be held accountable under § 1983, even if festival could be compared to ongoing management of public park. United Auto Workers, Local No. 5285 v. Gaston Festivals, Inc., C.A.4 (N.C.) 1995, 43 F.3d 902. Civil Rights 1326(4)

Alleged discriminatory decision to publish disparaging articles about white attorney because of his representation of black clients did not constitute act involving "public function" which would allow attorney to bring action under federal civil rights statute. Phelps v. Wichita Eagle-Beacon, C.A.10 (Kan.) 1989, 886 F.2d 1262. Civil Rights 1326(4)

Fact that a business serves the public does not transform private action with otherwise insignificant state involvement into action under color of state law. Scott v. Eversole Mortuary, C.A.9 (Cal.) 1975, 522 F.2d 1110. Civil Rights 1326(4)

Fact that condominium board was allegedly sole provider of water to the complex and operated and maintained waste water treatment plant did not constitute state action, for §§ 1983 purposes, under the public function test; the supplying of utility service was not traditionally the exclusive prerogative of the state, and a heavily regulated, privately-owned utility was not necessarily a state actor. Miller v. Board of Managers of Whispering Pines at Colonial Woods Condominium II, E.D.N.Y.2006, 457 F.Supp.2d 126. Civil Rights 1326(7)

Former husband had no cause of action under §§ 1983 against ex-wife, wife's lawyer, and purchaser and current occupant of marital residence, for alleged violations of the Fourth and Fourteenth Amendments resulting when wife and lawyer allegedly effected sale of marital residence by submitting perjurious affidavits to city sheriff, although they used city sheriff in lieu of husband to effect sale of residence, where they were private citizens, not state actors, and sale of privately-owned residence was a purely private transaction. Tornheim v. Eason, S.D.N.Y.2004, 348 F.Supp.2d 209, subsequent determination 363 F.Supp.2d 674, affirmed 2006 WL 897865. Civil Rights 1326(9); Civil Rights 1326(10)

"Public function" analysis finding state action by private entity for purposes of § 1983 when private entity is the functional equivalent of a municipal corporation was not applicable to planned community association, where association had the authority to maintain the community's roads and utilities, and collect dues to fund such maintenance, but could do little else. Kalian at Poconos, LLC v. Saw Creek Estates Community Ass'n, Inc., M.D.Pa.2003, 275 F.Supp.2d 578. Civil Rights 1326(4)

Even assuming that state constitution mandated provision of low-cost housing for needy, such mandate did not satisfy § 1983 "color of state law" criterion in action brought by residents of private low-income housing facility challenging owner's rule prohibiting residents from having overnight guests; public function doctrine applied only to functions exclusively associated with the sovereign and delegated to private actors. Young v. Halle Housing Associates, L.P., S.D.N.Y.2001, 152 F.Supp.2d 355. Civil Rights 1326(4)

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42 U.S.C.A. § 1983

Motion picture production company's alleged use of state courtrooms, lease of state property, and employment of state officers did not constitute exercise of powers traditionally exclusively reserved to state, so as to qualify under public function test as state action for purposes of motion picture extra's § 1983 claim that company violated his constitutional rights to exercise his religious beliefs and to be free of involuntary servitude by refusing to pay him because he did not have social security number. Sanders v. Prentice-Hall Corp. System, Inc., W.D.Tenn.1997, 969 F.Supp. 481, affirmed 178 F.3d 1296. Civil Rights 1326(11)

Lack of action "under color of state law" precluded claim under 42 U.S.C.A. § 1983 against individual who caused civil rights claimant to be arrested in dispute concerning work to be performed for her when she was acting in a purely private capacity and was not exercising a traditional state function. Zebrowski v. Denckla, E.D.N.Y.1986, 630 F.Supp. 1307. Civil Rights 1326(4)

Existence of common law repairman's lien conferring right of retention, and of statutory remedy of sale did not so infuse otherwise private acts of detention and sale with state involvement that they, in turn, became state action within U.S.C.A.Const. Amend. 14 or conduct "under color of state law" within this section, notwithstanding contention that state action was present under doctrines of "public function" and "authorization and encouragement." Parks v. "Mr. Ford", E.D.Pa.1974, 386 F.Supp. 1251, post-trial motions denied 68 F.R.D. 305, reversed on other grounds 556 F.2d 132. Civil Rights 1326(9)

Hospital's mobile crisis team that attempted involuntary commitment of citizen on emergency basis was not a private party exercising powers traditionally reserved to the state, and thus, was not a "state actor" under the public function test, for purposes of civil rights statute, where traditional authority for involuntary commitment was not exclusive to the state in Ohio, and there was evidence that private actors had authority to commit people involuntarily for around two hundred years, which predated precursors to civil rights law. Ellison v. University Hospital Mobile Crisis Team, C.A.6 (Ohio) 2004, 108 Fed.Appx. 224, 2004 WL 1543951, Unreported. Civil Rights 1326(4); Civil Rights 1326(9)

664. Sanction by state, attribution of private actions to state

For purposes of statute affording civil action for deprivation of rights, settled practices of state officials may, by imposing sanctions or withholding benefits, transform private predilections into compulsory rules of behavior no less than legislative pronouncements. Adickes v. S. H. Kress & Co., U.S.N.Y.1970, 90 S.Ct. 1598, 398 U.S. 144, 26 L.Ed.2d 142. Civil Rights 1326(7)

665. Use of remedies or procedures, attribution of private actions to state

Private misuse of state statute, without more, is not state action that would subject private party to § 1983 liability. Osipova v. Dinkins, S.D.N.Y.1995, 907 F.Supp. 94. Civil Rights 1326(4)

Mere action by private party under state statute, without more, is insufficient to convert party into state actor and satisfy state action requirement for civil rights liability. Clapp v. LeBoeuf, Lamb, Leiby & MacRae, S.D.N.Y.1994, 862 F.Supp. 1050, affirmed 54 F.3d 765, certiorari denied 116 S.Ct. 380, 516 U.S. 944, 133 L.Ed.2d 303. Civil Rights 1326(9)

666. Use of courts, attribution of private actions to state--Generally

Mere recourse to state or local court procedures does not, by itself, amount to "joint activity" with state that would be sufficient to subject private party to liability under § 1983; "joint activity" theory requires, at minimum, some overt and significant state participation in challenged action. Hoai v. Vo, C.A.D.C.1991, 935 F.2d 308, 290 U.S.App.D.C. 142, rehearing denied, certiorari denied 112 S.Ct. 1578, 503 U.S. 967, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 504 U.S. 936, 118 L.Ed.2d 602. Civil Rights 1326(9)

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Use of courthouse is not "state action" for purposes of this section, and thus carrier's forcible entry and detainer action did not satisfy this section. Bloomer Shippers Ass'n v. Illinois Cent. Gulf R. Co., C.A.7 (Ill.) 1981, 655 F.2d 772. Civil Rights 1326(9)

Passing an unconstitutional statute in a state legislature and enforcing it in state courts is action fairly attributable to the state, and can subject private litigants who make use of the statute to liability under § 1983. Yanaki v. Iomed, Inc., D.Utah 2004, 319 F.Supp.2d 1261, affirmed 415 F.3d 1204, certiorari denied 126 S.Ct. 1910. Civil Rights 1326(9)

Filing of state court lawsuit, including mailing summons and complaint, filing lis pendens, and requesting transferor to appear for deposition, were not sufficient "state action" to permit federal civil rights lawsuit against attorneys who filed original state court complaint; state's role was passive and did not encourage commencement and prosecution of civil litigation, and attorneys were not willful participants in joint action with state. Parker v. Byrd & Wiser, S.D.Miss.1996, 947 F.Supp. 245. Civil Rights 1326(10)

Plaintiff's use of enforcement mechanisms of federal courts, allegedly causing deprivation of defendant's First Amendment rights, was not "under color of state law" and, thus, could not be basis for defendant's § 1983 counterclaim. Texaco Refining and Marketing Inc. v. Davis, D.Or.1993, 835 F.Supp. 1223, affirmed 45 F.3d 437, certiorari denied 115 S.Ct. 2000, 514 U.S. 1127, 131 L.Ed.2d 1001. Civil Rights 1327

667. ---- Abuse of process, use of courts, attribution of private actions to state

If state merely allows private litigants to use its courts, there is no "state action" within meaning of § 1983 unless there is corruption of judicial power by private litigant. McCartney v. First City Bank, C.A.5 (Tex.) 1992, 970 F.2d 45. Civil Rights 1326(9)

Absent indications of improper motive or abuse of state-powered process, person who invokes and follows statutory procedure not then declared unconstitutional cannot be liable in damages under this section because no state action is involved when state merely opens its tribunals to private litigants and because no improper motive can be attributed to persons who avail themselves of presumably constitutional state enactments; however, person who abuses statutory procedure, even if it is presumptively constitutional, may be found to have deprived another of federal due process rights. Hollis v. Itawamba County Loans, C.A.5 (Miss.) 1981, 657 F.2d 746. Civil Rights 1326(9)

For purposes of § 1983 claim, use of state discovery rules to obtain search order in separate civil litigation, which permitted search of plaintiff's home and seizure of plaintiff's property, was not caused by use of a privilege created by state, and thus was not state action. Yanaki v. Iomed, Inc., D.Utah 2004, 319 F.Supp.2d 1261, affirmed 415 F.3d 1204, certiorari denied 126 S.Ct. 1910. Civil Rights 1326(9)

668. ---- Litigant status, use of courts, attribution of private actions to state

Participation by a private party in litigation, without more, does not constitute state action, a necessary precondition to a claim under this section. Slotnick v. Garfinkle, C.A.1 (Mass.) 1980, 632 F.2d 163. Civil Rights 1326(9)

Mere fact that private individuals were complainants and witnesses in a criminal action which itself was prosecuted under color of law did not make their complaining or testifying anything other than the action of private persons not acting under color of law, and thus not within the scope of this section. Grow v. Fisher, C.A.7 (Ind.) 1975, 523 F.2d 875. Civil Rights 1326(9); Civil Rights 1326(10)

Neither plaintiff nor her attorney acted under color of state law in initiating contempt proceeding against defendant

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in divorce case, and civil rights action against them was properly dismissed. Glasspoole v. Albertson, C.A.8 (Minn.) 1974, 491 F.2d 1090. Civil Rights 1326(9); Civil Rights 1326(10)

The inappropriate use by private litigants of a constitutional statute or rule does not constitute state action for the purposes of § 1983. Yanaki v. Iomed, Inc., D.Utah 2004, 319 F.Supp.2d 1261, affirmed 415 F.3d 1204, certiorari denied 126 S.Ct. 1910. Civil Rights 1326(9)

Individual who instituted and prevailed in state court suit in which purported purchaser of real property was required to transfer title to him was not a "state actor," for purposes of this section, by instituting legal proceedings that resulted in a judgment by a state organ that allegedly deprived purchaser of a constitutionally protected right, and therefore purchaser could not maintain suit under this section against that individual. Franco v. Marin County, N.D.Cal.1984, 579 F.Supp. 1032, affirmed 762 F.2d 1017. Civil Rights 1326(9)

A private litigant does not act "under color of state law" merely by bringing a lawsuit in state court. International Molders and Allied Workers, AFL-CIO v. Buchanan Lumber Birmingham, N.D.Ala.1978, 459 F.Supp. 950, affirmed 618 F.2d 782. Civil Rights 1326(9)

Mere filing of complaint by private citizens does not constitute "state action" for civil rights purposes. Von Lusch v. C & P Tel. Co., D.C.Md.1978, 457 F.Supp. 814. Civil Rights 1326(9)

669. ---- Prejudgment remedies, use of courts, attribution of private actions to state

Resort to state courts by private parties does not amount to action under color of law and does not raise constitutional question within meaning of this subchapter; state court prejudgment remedies fall into one of the exceptions to this general rule. Coltharp v. Cutler, D.C.Utah 1976, 419 F.Supp. 924. Civil Rights 1326(9)

670. ---- Eviction actions, use of courts, attribution of private actions to state

In bringing eviction proceeding in state court, lessor and related parties were not state actors and did not act under color of state law, and thus could not be liable to lessee for wrongful eviction under § 1983; lessee did not allege that litigants abused the state judicial process in bringing the proceeding, nor did lessee show any nexus between his injuries and the eviction. Eidson v. Arenas, M.D.Fla.1995, 910 F.Supp. 609. Civil Rights 1326(9)

Filing an eviction action in state court was not action by landlord under color of state law within this section and did not give rise to claim upon which relief could be granted even if eviction action was in retaliation for tenants' having insisted upon their rights. Fallis v. Dunbar, N.D.Ohio 1974, 386 F.Supp. 1117, affirmed 532 F.2d 1061. Civil Rights 1326(9)

671. Use of public facilities, attribution of private actions to state

Private organizer of municipal festival was not afforded and did not assume sufficient control over any municipal powers and, thus, its activities were not "state action" for which organizer could be held accountable under § 1983; organizer needed permit, indicating that city retained control over use of public property and facilities, city provided essential services to support festival, permit required organizer to comply with city regulations, city reserved right to reopen streets in area, and organizer did not attempt to exercise all power conferred upon it by permit when it denied union's request for booth space to distribute literature during festival. United Auto Workers, Local No. 5285 v. Gaston Festivals, Inc., C.A.4 (N.C.) 1995, 43 F.3d 902. Civil Rights 1326(7)

Mere use of a public park by a private organization does not satisfy the state action nexus test so as to constitute the private action as state action. Magill v. Avonworth Baseball Conference, C.A.3 (Pa.) 1975, 516 F.2d 1328.

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Civil Rights 1326(4)

No governmental action was involved in state political party's decision to invite some, but not all, qualified primary candidates to debate on state university campus so as to support one qualified candidate's civil rights claims and demand for injunctive relief. Koczak v. Grandmaison, D.N.H.1988, 684 F.Supp. 763.

672. Use of state name, attribution of private actions to state

Although the use of a state's name may give rise to an appearance of state involvement in challenged activities, unless the appearance of state support either facilitates the activity in question or provides evidence that the institution is, in fact, a state instrumentality, use of the state's name is of no relevance in determining whether the challenged action is state action. Cohen v. Illinois Institute of Technology, C.A.7 (Ill.) 1975, 524 F.2d 818, certiorari denied 96 S.Ct. 1683, 425 U.S. 943, 48 L.Ed.2d 187. Civil Rights 1326(7)

673. Ministerial acts, attribution of private actions to state

Apparently, an automatic ministerial act suffices to transform what would otherwise be private action into the "affirmative command" of the state for purpose of state action requirement of this section. Dieffenbach v. Attorney General of Vermont, C.A.2 (Vt.) 1979, 604 F.2d 187. Civil Rights 1325

674. Aid, comfort or incentive from state, attribution of private actions to state--Generally

Fact that festival organizer received a small part of its funding from government sources did not convert its decisions to state action, as would be required to hold organizer liable for violating constitutional rights of street preacher ejected from area outside festival entrance; organizer never received more than three percent of its revenues from government sources during the period at issue, and such limited public support was not enough to impute organizer's actions to the state. Lansing v. City of Memphis, C.A.6 (Tenn.) 2000, 202 F.3d 821. Constitutional Law 82(5)

A private person's conduct may be fairly attributed to the state and be actionable under §§ 1983, if the state has so far insinuated itself into a position of interdependence with a private person that the two must be recognized as a joint participants in the challenged activity; a plaintiff may invoke this interdependence theory of state action only where a private defendant is aligned so closely with the state that the undertow pulls them both inexorably into the grasp of §§ 1983. Meuse v. Stults, D.Mass.2006, 421 F.Supp.2d 358. Civil Rights 1326(5)

The "under color of" provision of this section encompasses only such private conduct as is supported by state, and private person does not act "under color of state law" unless he derives some aid, comfort or incentive, either real or apparent, from the state. Jenkins v. White Castle Systems, Inc., N.D.Ill.1981, 510 F.Supp. 981. Civil Rights 1326(4)

In order to attribute acts of private party to government so as to render private party subject to suit under this section, government must exercise its power in aid of private conduct and thus provide means whereby private party commits act generally associated with power exercised by sovereign. Fuzie v. Manor Care, Inc., N.D.Ohio 1977, 461 F.Supp. 689. Civil Rights 1326(4)

Satisfaction of "under color of state law" language of this section requires that private conduct involved must be significantly and affirmatively supported by state action in such manner that private person derives real or apparent "aid, comfort or incentive" from state. Weiss v. J. C. Penney Co., Inc., N.D.Ill.1976, 414 F.Supp. 52. Civil Rights 1325

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675. ---- Threshold of aid, aid, comfort or incentive from state, attribution of private actions to state

There is no precise formula for determining threshold at which reception of aid or regulation by state cloaks private actions with color of state law. Chrisman v. Sisters of St. Joseph of Peace, C.A.9 (Or.) 1974, 506 F.2d 308. Civil Rights 1326(7)

676. ---- Contracts with state, aid, comfort or incentive from state, attribution of private actions to state

Acts of private contractors, who build roads, bridges, dams, ships, or submarines for government, do not become acts of government by reason of their significant or even total engagement in performing public contracts. Rendell-Baker v. Kohn, U.S.Mass.1982, 102 S.Ct. 2764, 457 U.S. 830, 73 L.Ed.2d 418. Civil Rights 1326(4)

Private medical contractor was not liable under § 1983 for injury suffered by jail inmate when he was not scheduled for surgery on severed tendons during his incarceration absent showing that injury was result of policy or custom of contractor. Johnson v. Karnes, C.A.6 (Ohio) 2005, 398 F.3d 868. Civil Rights 1339

Fact that private entity contracts with government or receives governmental funds or other kinds of governmental assistance does not automatically transform conduct of that entity into state action required for § 1983 liability. Gallagher v. Neil Young Freedom Concert, C.A.10 (Utah) 1995, 49 F.3d 1442. Civil Rights 1326(5); Civil Rights 1326(7)

Pharmacy was not liable under § 1983 to federal pretrial detainees by virtue of supplying allegedly inferior product to detainee for use in treating his lice infestation; pharmacy did not act under color of state law because it contracted with private, intermediary third party and had no contact with state actor and pharmacy's alleged action did not deprive detainee of any federal rights. Kost v. Kozakiewicz, C.A.3 (Pa.) 1993, 1 F.3d 176. Civil Rights 1326(8)

State contractor and its employees are not "state actors" simply because they are carrying out state sponsored program and contractor is being compensated therefor by state; nor does fact that activity being performed is public function render contractor and its employees state actors. Black by Black v. Indiana Area School Dist., C.A.3 (Pa.) 1993, 985 F.2d 707. Civil Rights 1326(1)

For purposes of judging whether civil rights action lay under this section, employer's actions did not constitute state action despite contentions that employer received substantial income from contracts with state and certain beneficial tax treatment. Tucker v. Harley Davidson Motor Co., E.D.Wis.1978, 454 F.Supp. 738. Civil Rights 1326(11)

677. ---- Financial assistance, aid, comfort or incentive from state, attribution of private actions to state

Decision to terminate employee by unincorporated organization funded through federal Job Training Partnership Act (JTPA) was not state action that could support federal civil rights action; although organization received federal funds that were distributed by the Governor of Pennsylvania and was under contract with the Pennsylvania Department of Labor and Industry, the organization did not receive state funding, its employees were not paid by the state, and employees did not participate in any employment or pension benefits offered by the state. Boyle v. Governor's Veterans Outreach & Assistance Center, C.A.3 (Pa.) 1991, 925 F.2d 71.

Fact that corporation was incorporated for the specific purpose of providing management services for an agency of the government of Puerto Rico did not establish financial or regulatory nexus with the government of Puerto Rico so as to satisfy state action requirement of civil rights statute, even though corporation's sole business was the performance of public contracts, nor was such nexus established by fact that management contract and sales agreement granted the government agency significant control over the operations of the corporation, where

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corporation was given complete freedom to hire most employees and approval by government agency of choices of top executives could not be unreasonably withheld. Rodriguez-Garcia v. Davila, C.A.1 (Puerto Rico) 1990, 904 F.2d 90. Civil Rights 1326(11)

Salt River Project Agricultural Improvement and Power District, although designated as a political subdivision under Arizona Constitution, was not a "state actor" when it discharged an employee; in area of hiring and firing its employees, District, which was privately owned, privately run, and not financed in any way by the state except for some tax exemptions, acted as a private company. Gorenc v. Salt River Project Agr. Imp. and Power Dist., C.A.9 (Ariz.) 1989, 869 F.2d 503, certiorari denied 110 S.Ct. 256, 493 U.S. 899, 107 L.Ed.2d 205. Civil Rights 1326(11)

In determining whether university was so intertwined with the Commonwealth as to be subject to standards of lawful activity applicable to public institutions, district court properly refused to take into account financial assistance from the federal government to the university. Berrios v. Inter Am. University, C.A.1 (Puerto Rico) 1976, 535 F.2d 1330. Civil Rights 1326(6)

678. ---- Implicit agreements, aid, comfort or incentive from state, attribution of private actions to state

If there was explicit or implicit agreement that local police officers would not interfere with abduction of member of religious group for purpose of deprogramming, parents of member and deprogrammers who carried out abduction could be held liable along with police officers for any violation of this section. Cooper v. Molko, N.D.Cal.1981, 512 F.Supp. 563. Civil Rights 1339

679. ---- Monopoly status, aid, comfort or incentive from state, attribution of private actions to state

In suit brought against private utility corporation, which held a certificate of public convenience issued by the Pennsylvania Utilities Commission, by customer who sought damages under this section for the termination of her electric service allegedly before she was afforded notice, a hearing and an opportunity to pay any amounts found due, the alleged monopolistic status of the utility was not determinative in considering whether its termination of service to the petitioner was "state action" for purposes of U.S.C.A. Const.Amend. 14. Jackson v. Metropolitan Edison Co., U.S.Pa.1974, 95 S.Ct. 449, 419 U.S. 345, 42 L.Ed.2d 477. Constitutional Law 254(4)

Fact that private corporation enjoys an economic monopoly which is protected and regulated by state does not necessarily bring its every act within purview of this section. Martin v. Pacific Northwest Bell Telephone Co., C.A.9 (Or.) 1971, 441 F.2d 1116, certiorari denied 92 S.Ct. 89, 404 U.S. 873, 30 L.Ed.2d 117. Civil Rights 1326(7)

Monopoly status and heavy regulation by state do not in themselves comprise action "under color of state law" within purview of this section. Boling v. National Zinc Co., N.D.Okla.1976, 435 F.Supp. 18. Civil Rights 1326(7)

Water salesman's generalized assertion that distributor of natural spring water retaliated against him for filing race and national origin discrimination suit against it was insufficient to state cause of action; salesman did not give any explanation as to when or how distributor engaged in retaliation. O'Diah v. New York City, S.D.N.Y.2003, 2003 WL 22093482, Unreported. Civil Rights 1395(8); Civil Rights 1532

680. ---- Pension funds, aid, comfort or incentive from state, attribution of private actions to state

Private school's participation in state-operated teacher pension fund did not render school a state actor sufficient to impose § 1983 liability on it for firing teacher for wearing a beard in violation of school rules. Johnson v. Pinkerton Academy, C.A.1 (N.H.) 1988, 861 F.2d 335, rehearing denied. Civil Rights 1326(11)

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681. ---- Rent subsidies, aid, comfort or incentive from state, attribution of private actions to state

Fact that apartment complex had been constructed on designated urban renewal site, was financed by FHA-insured mortgage, that managing corporation was recipient of certain tax exemptions, rent supplement subsidies and other financial assistance from city, state and federal authorities, and that daily operations were ultimately supervised by city housing authority and Federal Housing Administration, indicated sufficient government participation in project so as to bring any discriminatory operational practices within ambit of constitutional prohibition. Colon v. Tompkins Square Neighbors, Inc., S.D.N.Y.1968, 294 F.Supp. 134. Constitutional Law 213(4)

682. ---- Tax exemptions, aid, comfort or incentive from state, attribution of private actions to state

Fact that private hospital was recipient of federal funds under the Hill-Burton Act, § 600 et seq. of this title, and that it received both state and federal tax advantages as a nonprofit corporation did not constitute state action under this section for purpose of determining whether hospital's refusal to allow licensed chiropractic physician to use its clinical laboratory facilities constituted invidious discrimination. Aasum v. Good Samaritan Hospital, C.A.9 (Or.) 1976, 542 F.2d 792. Civil Rights 1326(7)

Provision of 13 percent of hospital's construction costs since 1961 through Hill-Burton and Department of Health Education and Welfare [now Department of Health and Human Services] programs, exemption from taxes, and regulation by state, did not provide basis for finding that hospital, which was not the only hospital in the area, acted under color of state law within purview of this section in denying woman patient a sterilization. Chrisman v. Sisters of St. Joseph of Peace, C.A.9 (Or.) 1974, 506 F.2d 308. Civil Rights 1326(7)

Finding of state action within purview of this section governing civil action for deprivation of rights may not be grounded, without more, on tax-exempt status, on financial contribution, on financial assistance to private university, on government regulation, or on presence of both financial involvement and regulation by government. Weise v. Syracuse University, N.D.N.Y.1982, 553 F.Supp. 675. Civil Rights 1326(7)

Holding of prehearing unitization conferences at private club, i.e., those conferences required prior to application for formal hearing before Commission of Conservation of Louisiana Department of Natural Resources, did not constitute significant "state action" for purpose of civil rights challenge to club's males only policy as such conferences were set by private parties at a place of their own choosing in that rules of procedures required only that such conferences be held in the state and after becoming aware of club's policy the commissioner ordered that no official meetings be scheduled at facilities which were not open to all citizens alike; further, fact that club enjoyed a tax-exempt status; and, had liquor license issued by State of Louisiana, was insufficient to involve the state, for "state action" purposes, in membership and service policies of the club, which had a males only policy. Whitten v. Petroleum Club of Lafayette, W.D.La.1981, 508 F.Supp. 765. Civil Rights 1326(4)

683. ---- Miscellaneous aid, comfort or incentive from state, attribution of private actions to state

Absence of state action precluded Fourth and Fourteenth Amendment claims arising from private actors' removal of volunteer fire company's rescue truck and other items for delivery to other volunteer fire company; assuming that police officer was present when the property was taken, there was no evidence that he provided the type of assistance necessary to lend state authority to the conduct of the private actors. Breiner v. Litwhiler, M.D.Pa.2003, 245 F.Supp.2d 614, affirmed 98 Fed.Appx. 75, 2004 WL 557335. Civil Rights 1326(9); Constitutional Law 254(4)

Nebraska statute authorizing its Attorney General to represent medical services provider in the same manner as a state officer or employee in state prisoner's civil rights action under §§ 1983 did not make physician a state employee for purposes of statute governing tort claims against state employees. Smith v. Clarke, C.A.8 (Neb.) 2006, 458 F.3d 720. Health 800

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Factors that courts take into consideration, in determining whether a police officer's involvement in a repossession of an automobile by a private party constitutes state action, as required for a viable §§ 1983 claim, include intervening at more than one step, failing to depart before completion of the repossession, standing in close proximity to the creditor, and unreasonably recognizing the documentation of one party over another. Marcus v. McCollum, C.A.10 (Okla.) 2004, 394 F.3d 813. Civil Rights 1326(8); Civil Rights 1326(9)

Tow truck operator was not state actor, and towing of car was not state action, for purpose of car owner's § 1983 lawsuit against operator alleging procedural due process and equal protection violations under Fourteenth Amendment, although private person, who requested tow, consulted with officers prior to incident, police officers were present during towing of car, and officers told car owner that her car was going to be towed and towing without her cooperation could possibly cause damage to car; tow truck operator was not called by officers to tow car, officers did not give order to tow, and officers did nothing more than lend their presence as peace keeping measure. Longmoor v. Nilsen, D.Conn.2004, 312 F.Supp.2d 352. Constitutional Law 213(4); Constitutional Law 254(4)

State did not compel actions of victim advocate for family violence victims in purportedly giving false information to the police and requesting police to obtain a warrant to search alleged abuser's home for guns, and thus victim advocate and her private agency could not be deemed "state actors" subject to §§ 1983 liability, where agency provided services under contract with another private entity, statute did not mandate police request, and there was no evidence of any state control or involvement beyond referral of victim to victim advocate, even though state might be viewed as third-party beneficiary of agreement between two private agencies. Szekeres v. Schaeffer, D.Conn.2004, 304 F.Supp.2d 296. Civil Rights 1326(5)

Alleged inaccessibility to wheelchair users of items in grocery store was attributable to grocery store, not state, and therefore grocery store was not state actor for purposes of wheelchair user's §§ 1983 claims, notwithstanding grocery store's sale of state lottery ticket forms and receipt of money from state for ticket sales. Douris v. Genuardi's Family Markets, Inc., C.A.3 (Pa.) 2005, 132 Fed.Appx. 425, 2005 WL 1307799, Unreported. Civil Rights 1326(7)

684. Authority granted by state, attribution of private actions to state-- Generally

Traditional definition of "acting under color of state law" requires that defendant in § 1983 action have exercised power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law. Parker v. Boyer, C.A.8 (Mo.) 1996, 93 F.3d 445, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1081, 519 U.S. 1148, 137 L.Ed.2d 216. Civil Rights 1324

Before private persons can be considered state actors for purposes of § 1983, state must significantly contribute to constitutional deprivation, for example by authorizing its own officers to invoke force of law in aid of private persons' request. Jordan v. Fox, Rothschild, O'Brien & Frankel, C.A.3 (Pa.) 1994, 20 F.3d 1250, on remand 1995 WL 141465. Civil Rights 1326(5)

Where grievances alleged by plaintiff had no incidence of state authorization, warrant, sanction, or sanctuary for being done, and whatever alleged fraud may have been perpetrated on plaintiff was purely private and was without any touch of state law, state instrumentalities, or state manifestations of sanction or sanctuary in relation to its being done, action could not be maintained under this section. Wallach v. Cannon, C.A.8 (Mo.) 1966, 357 F.2d 557. Civil Rights 1326(1); Conspiracy 1.1

In order to determine whether actions taken by officers were under color of state law, court must look to source of power or authority which was allegedly abused and determine if such power or authority existed by virtue of grant from the state. Temple v. Albert, S.D.N.Y.1989, 719 F.Supp. 265. Civil Rights 1326(2)

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685. ---- Scope of authority generally, authority granted by state, attribution of private actions to state

Teacher's violation of state statute, requiring that sexual abuse of children be reported within 48 hours, did not constitute "state action" required to sustain § 1983 action; in order for state action to be involved, teacher would have to possess authority, i.e., either as teacher or citizen, exercise control over alleged abuser, a fellow teacher, and she did not. Doe v. Rains County Independent School Dist., C.A.5 (Tex.) 1995, 66 F.3d 1402, rehearing denied. Civil Rights 1326(6)

Informal, behind the scenes exertion of state authority is as much within scope of this section as more usual examples of formal and open action leading to denial of federal rights. Kletschka v. Driver, C.A.2 (N.Y.) 1969, 411 F.2d 436.

Under § 1983, individuals may be held liable for otherwise "state" actions where those individuals violate Federal Constitution and plaintiffs seek nominal damage remedy; in individual capacity suit, individual charged with liability must have acted in manner outside scope of his respective office or, if within scope, acted in arbitrary manner, grossly abusing lawful powers of office. Florida Paraplegic Ass'n v. Martinez, S.D.Fla.1990, 734 F.Supp. 997. Civil Rights 1354

Although it is true that state officials can act under color of state law for purposes of § 1983 action even if they overstep their authority, such rule has no application where official has no colorable authority to act in jurisdiction in which he purports to act. Firman v. Abreu, S.D.N.Y.1988, 691 F.Supp. 811. Civil Rights 1326(2)

Defendant in suit under this section acts "under color of state law" when he acts within authority of his office. Johnson v. Cushing, D.C.Minn.1980, 483 F.Supp. 608. Civil Rights 1326(2)

A state or local official who exceeds his lawful authority may still be acting under color of law for purposes of this section. Hoopes v. City of Chester, E.D.Pa.1979, 473 F.Supp. 1214. Civil Rights 1326(2)

Officer or employee of state or one of political subdivisions thereof is deemed to be acting under "color of law" as to those deprivations of rights committed in fulfillment of tasks and obligations assigned to him. Atkins v. Lanning, N.D.Okla.1976, 415 F.Supp. 186, affirmed 556 F.2d 485. Civil Rights 1326(2)

Under this section, any person who, under color of law, deprives another of his federal constitutional rights is liable to the injured party at law or in equity, and if a person acts under color of law, it is irrelevant whether the official was acting within or without the scope of his employment by common law standards. Smyth v. Lubbers, W.D.Mich.1975, 398 F.Supp. 777. Civil Rights 1326(2)

To come under "color of state law" within this section, a state officer's conduct may not be authorized and may even be patently illegal. Simon v. Lovgren, D.C.Virgin Islands 1973, 368 F.Supp. 265. Civil Rights 1326(2)

686. ---- Apparent authority, authority granted by state, attribution of private actions to state

Action taken by state official who is cloaked with official power and who purports to be acting under color of official right is state action and is taken under color of state law whether or not action is in fact in excess of authority actually delegated to official under state law. Lopez v. Vanderwater, C.A.7 (Ill.) 1980, 620 F.2d 1229, certiorari dismissed 101 S.Ct. 601, 449 U.S. 1028, 66 L.Ed.2d 491. Civil Rights 1326(2)

Finding of state action cannot be based solely upon plaintiff's beliefs concerning employee's activity no matter how well-founded those beliefs were. White v. Scrivner Corp., C.A.5 (La.) 1979, 594 F.2d 140. Civil Rights 1325

A state officer is not necessarily acting in his official capacity merely because he is clothed in official garb.

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Robinson v. Davis, C.A.4 (N.C.) 1971, 447 F.2d 753, certiorari denied 92 S.Ct. 1204, 405 U.S. 979, 31 L.Ed.2d 254. Civil Rights 1326(2)

Defendants' conduct is under "color of state law" within this section if defendants were clothed with authority of state and were purporting to act thereunder, whether or not conduct was authorized or, indeed, even if it was proscribed by state law. Marshall v. Sawyer, C.A.9 (Nev.) 1962, 301 F.2d 639. See, also, Basista v. Weir, C.A. 3 (Pa.) 1965, 340 F.2d 74; Cohen v. Norris, C.A. 9 (Cal.) 1962, 300 F.2d 24; Watkins v. Oaklawn Jockey Club, D.C.Ark.1949, 86 F.Supp. 1006, affirmed 183 F.2d 440. Civil Rights 1324

Action taken by state official in purported exercise of authority conferred by state is action "under color of" a statute, etc., within this section. Wall v. King, C.A.1 (Mass.) 1953, 206 F.2d 878, certiorari denied 74 S.Ct. 275, 346 U.S. 915, 98 L.Ed. 411.

Municipality may be held liable where it has, in some way, affirmatively adopted a policy or custom, albeit one that is required by the state, which is the driving force behind a civil rights violation. Conroy v. City of Philadelphia, E.D.Pa.2006, 421 F.Supp.2d 879. Civil Rights 1351(1)

Question of whether official was acting in his official capacity at the time of the acts complained of is not controlling for purposes of determining whether he was acting under color of state law; the proper inquiry focuses on the source of authority for the defendant's conduct and, if the state has clothed the defendant with apparent authority to act, he is acting under color of state law. Kedra v. City of Philadelphia, E.D.Pa.1978, 454 F.Supp. 652 . Civil Rights 1326(2)

"State action" is generally found to exist for purposes of this section when what is involved is the exercise of power possessed only because the wrongdoer is clothed with the authority of state law. Bellnier v. Lund, N.D.N.Y.1977, 438 F.Supp. 47. Civil Rights 1325

There are two methods by which a private individual may be construed as acting under color of state law and therefore be held liable under this section: private individual may be found to be clothed with authority of the state so as to render his actions substantially identical to actions taken by the state or the individual may jointly engage or conspire with state officials to deprive another of constitutionally protected rights. Dennis v. Hein, D.C.S.C.1976, 413 F.Supp. 1137. Civil Rights 1326(4)

687. ---- Employment, authority granted by state, attribution of private actions to state

Actions of Virgin Islands power company and its employees, in deciding that switch needed to be changed and assigning employee to perform that work, constituted action under "color of law" for purposes of civil rights claims, as power company was created by Virgin Islands legislature and authority to make work assignments and personnel decisions stemmed directly from authority provided under Virgin Islands Code. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1326(7)

688. ---- Proprietary capacity, authority granted by state, attribution of private actions to state

Textile plant operator stated claim under § 1983 against city, alleging that operator had been overcharged for public enterprise services of water, sewer, gas, and electricity by city, despite contention that § 1983 did not provide remedy for wrong committed by municipal official acting in proprietary, rather than governmental, capacity. General Textile Printing and Processing Corp. v. City of Rocky Mount, E.D.N.C.1995, 908 F.Supp. 1295 . Civil Rights 1054

This section relating to deprivation of rights under color of state law does not apply to officials of nonfederal

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governmental unit when they act in proprietary and not governmental capacity. Sherman v. City of Pasadena, C.D.Cal.1973, 367 F.Supp. 1115. Civil Rights 1326(2)

689. ---- Ultra vires actions, authority granted by state, attribution of private actions to state

Community college was not liable, under § 1983, for alleged violations of college administrators' civil rights where ultra vires actions of university president, rather than any action on part of board of trustees, were responsible for university's failure to transfer administrators into academic positions they requested. Chonich v. Wayne County Community College, C.A.6 (Mich.) 1992, 973 F.2d 1271, rehearing denied, certiorari denied 114 S.Ct. 2740, 512 U.S. 1236, 129 L.Ed.2d 860. Civil Rights 1349

Actions of state and local officers may be "under color of law" for purposes of § 1983 even if they perform acts in excess of their authority or without authority. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1326(2)

690. ---- Self-proclamation of authority, authority granted by state, attribution of private actions to state

Private association's self-proclaimed authority to act as sheriff's posse comitatus and wearing of badges substantially identical in design and appearance to badges worn by sheriff's deputies did not constitute actions taken "under color of state law" within purview of this section. Canlis v. San Joaquin Sheriff's Posse Comitatus, C.A.9 (Cal.) 1981, 641 F.2d 711, certiorari denied 102 S.Ct. 510, 454 U.S. 967, 70 L.Ed.2d 383. Civil Rights 1326(1)

This section requires some vesting of authority by state to create liability of a defendant and a defendant's self-proclaimed authority will not suffice; wrongdoer must actually represent state whereby his act is act of state or there is no action under color of state law. Warren v. Cummings, D.C.Colo.1969, 303 F.Supp. 803.

691. ---- Subpoena, authority granted by state, attribution of private actions to state

Issuance of subpoena by State Personnel Board of Review is an act of state so that, when such subpoena is caused to be issued by a private litigant or attorney pursuant to the subpoena privilege granted by the state, such action is "state action" for purposes of U.S.C.A.Const. Amend. 14 § 1 and action "under color of state law" for purposes of this section, it is not the status of the attorney as attorney which is determinative, rather it is fact that he has invoked direct power of the state. Timson v. Weiner, S.D.Ohio 1975, 395 F.Supp. 1344. Civil Rights 1326(10); Constitutional Law 254(2)

692. ---- Supervisory personnel, authority granted by state, attribution of private actions to state

Authority of defendants over plaintiff could have been "under color of state law" within this section where, though it was not contended that defendants, who were national guard technicians, possessed any direct civilian supervisory authority over plaintiff, defendants exercised some control over scheduling and assignment of past tasks as a technician so as to demonstrate that they might have had some authority over plaintiff which they could have misused. Rowe v. State of Tenn., C.A.6 (Tenn.) 1979, 609 F.2d 259. Civil Rights 1326(11)

Male state trooper did not enjoy a position of authority over female state trooper, and therefore, male trooper was not acting under color of state law during the time that he allegedly sexually harassed female trooper, as required for her § 1983 claim; male trooper could neither alter female trooper's workload nor would she face charges of insubordination if she failed to follow male trooper's orders. Zelinski v. Pennsylvania State Police, M.D.Pa.2003, 282 F.Supp.2d 251, affirmed in part, vacated in part and remanded 108 Fed.Appx. 700, 2004 WL 1799234. Civil Rights 1326(11)

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Supervisors acted under color of state law in sexually harassing lifeguards, for purposes of § 1983 action; supervisory authority over lifeguards lent weight of city to supervisors' decisions and conduct toward lifeguards. Faragher v. City of Boca Raton, S.D.Fla.1994, 864 F.Supp. 1552, affirmed in part, reversed in part 76 F.3d 1155, rehearing granted, opinion vacated 83 F.3d 1346, affirmed in part, reversed in part 111 F.3d 1530, certiorari granted 118 S.Ct. 438, 522 U.S. 978, 139 L.Ed.2d 337, reversed 118 S.Ct. 2275, 524 U.S. 775, 157 A.L.R. Fed. 663, 141 L.Ed.2d 662, on remand 166 F.3d 1152. Civil Rights 1326(11)

693. ---- Misuse of authority, authority granted by state, attribution of private actions to state

Police officers and police dispatcher did not use their positions as policemen to accomplish prank in which they staged armed robbery of store clerk, and thus officers were not liable to clerk under § 1983. Haines v. Fisher, C.A.10 (Wyo.) 1996, 82 F.3d 1503. Civil Rights 1088(1)

This section covers some actions taken by private citizens; misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action taken "under color" of state law. Culbertson v. Leland, C.A.9 (Ariz.) 1975, 528 F.2d 426. Civil Rights 1326(4)

Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law, is action taken "under color of any statute", within this section. Henig v. Odorioso, C.A.3 (Pa.) 1967, 385 F.2d 491, certiorari denied 88 S.Ct. 1269, 390 U.S. 1016, 20 L.Ed.2d 166, rehearing denied 88 S.Ct. 1814, 391 U.S. 929, 20 L.Ed.2d 671. See, also, Basista v. Weir, C.A. 3 (Pa.) 1965, 340 F.2d 74; Baldwin v. Morgan, C.A.Ala.1958, 251 F.2d 780; Geach v. Moynahan, C.A.Ill.1953, 207 F.2d 714; Picking v. Pennsylvania R. Co., C.C.A.Pa.1945, 151 F.2d 240, rehearing denied 152 F.2d 753; Nugent v. Sheppard, D.C.Ind.1970, 318 F.Supp. 314; Peake v. Philadelphia County, Pa., D.C.Pa.1968, 280 F.Supp. 853; Weyandt v. Mason's Stores, Inc., D.C.Pa.1968, 279 F.Supp. 283; Jones v. Citizens and Southern Nat. Bank of S.C., D.S. S.C.1967, 262 F.Supp. 506; Roberts v. Pepersack, D.C.Md.1966, 256 F.Supp. 415, certiorari denied 88 S.Ct. 175, 389 U.S. 877, 19 L.E.2d 165; Kregger v. Posner, D.C.Mich.1966, 248 F.Supp. 804; Fullerton v. Monongahela Connecting R. Co., D.C.Pa.1965, 242 F.Supp. 622; Beauregard v. Wingard, D.C.Cal.1964, 230 F.Supp. 167; Roberts v. Trapnell, D.C.Pa.1962, 213 F.Supp. 49; Thompson v. Baker, D.C.Ark.1955, 133 F.Supp. 247; Condra v. Leslie & Clay Coal Co., D.C.Ky.1952, 101 F.Supp. 774; Siegel v. Ragan, D.C.Ill.1949, 88 F.Supp. 996, affirmed 180 F.2d 785, certiorari denied 70 S.Ct. 1015, 339 U.S. 990, 94 L.Ed. 1390, rehearing denied 71 S.Ct. 12, 340 U.S. 847, 95 L.Ed. 621; Gordan v. Garrson, D.C.Ill.1948, 77 F.Supp. 477.

The "color of law" inquiry, for purposes of determining right to bring civil rights action, centers on whether person affiliated with state government or political subdivision has used his position to deprive another of his constitutional rights. Colon v. Lomelo, S.D.Fla.1983, 575 F.Supp. 664. Civil Rights 1326(2)

For action to be considered as taken "under color of state law" as required for right of action for deprivation of constitutionally secured rights, it was necessary that there be misuse of power possessed by virtue of state law and made possible only because defendant is clothed with authority of state law. Montgomery v. White, E.D.Tex.1969, 320 F.Supp. 303. Civil Rights 1324

Misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law is "action under color of state law." Harbert v. Rapp, D.C.Okl.1976, 415 F.Supp. 83. See, also, Timo v. Associated Indem. Corp., D.C.Okl.1976, 412 F.Supp. 1056; Augenti v. Cappellini, M.D.Pa.1979, 84 F.R.D. 73. Civil Rights 1324

694. Miscellaneous authority, attribution of private actions to state

There was no direct state action in connection with sale of management corporation by agency of the government of Puerto Rico prior to discharge of two employees of the corporation, so as to support a civil rights action; the

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decision of the government agency to sell the corporation could not be considered the requisite action where there was no evidence that the political views of the discharged employees, which allegedly motivated the discharge, were a motivating, much less a deciding, factor in the decision to sell the corporation. Rodriguez-Garcia v. Davila, C.A.1 (Puerto Rico) 1990, 904 F.2d 90. Civil Rights 1326(11)

State of Ohio's authorization of Ohio Republican Party State Central Committee's power to choose which committee shall be recognized as the rightful county central or executive committee did not make Republican Party and the state intertwined, such that actions of the party were "state action" for purposes of § 1983. Federspiel v. Ohio Republican Party State Cent. Committee, S.D.Ohio 1994, 867 F.Supp. 617, affirmed 85 F.3d 628. Civil Rights 1326(1)

Driver employed by private transportation company, under contract with Chicago transit authority to provide transportation services, could not be regarded as acting under color of state law when he attempted to rape two minor passengers, and thus, driver was not liable to minors under § 1983; assuming that driver was clothed in authority of state when performing his duties as transit worker, attempt to rape two young girls was not act even remotely related to performance of his job. Thomas v. Cannon, N.D.Ill.1990, 751 F.Supp. 765. Civil Rights 1326(4)

Prisoner failed to comply with local rule requiring plaintiff to file completed form for in forma pauperis motion with his complaint; thus, United States District Court clerk was acting within scope of her authority in returning prisoner's petitions, and could not be liable in prisoner's § 1983 action. Fixel v. U.S., D.Nev.1990, 737 F.Supp. 593, affirmed 930 F.2d 27. Civil Rights 1056

Private actors' transfer of fire truck and equipment, from old volunteer fire company to new company, was not state action, precluding suit under §§ 1983. Breiner v. Litwhiler, C.A.3 (Pa.) 2004, 98 Fed.Appx. 75, 2004 WL 557335, Unreported. Civil Rights 1326(9)

695. Approval, acquiescence or concurrence by state, attribution of private actions to state

Life insurer's conversion from a mutual company to a stock company pursuant to state statute authorizing such conversion was not "state action" required to support claim under § 1983; although conversion was approved by state's superintendent of insurance, superintendent merely found that insurer met statutorily mandated standards for granting such reorganization, and there was no allegation that state ordered or coerced insurer into reorganizing. Tancredi v. Metropolitan Life Ins. Co., C.A.2 (N.Y.) 2003, 316 F.3d 308, certiorari denied 123 S.Ct. 2610, 539 U.S. 942, 156 L.Ed.2d 628. Civil Rights 1326(4); Civil Rights 1326(7)

School board's refusal to review school superintendent's decision to terminate former school district employee was not sufficient to show that board ratified superintendent's decision, as support imposition of municipal liability under §§ 1983. Craig v. Maine School Administrative Dist. # 5, D.Me.2004, 350 F.Supp.2d 294. Civil Rights 1349

State's mere approval of or acquiescence in initiatives of private party is not sufficient to establish state action under § 1983; state can normally be held responsible for private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that choice in law must be deemed to be that of state. Integrated Information Service, Inc. v. Mountain States Tel. & Tel. Co., D.Neb.1990, 739 F.Supp. 488. Civil Rights 1326(5)

The "under color of state law" requisite for bringing claim within civil rights statute can be fulfilled if plaintiff can show that state official and private persons reached an understanding between themselves to deprive plaintiff of rights guaranteed under the Constitution. Boulter v. Jordan, D.Colo.1990, 733 F.Supp. 85. Civil Rights 1326(5)

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Voluntary concurrence of state in a decision of organization or other body, not a state, state instrumentality or sovereign equivalent, does not make the acts of the organization "state action" in a constitutional sense; rather, it is the concurrence by the state, its instrumentality or sovereign equivalent that is state action which must be measured by due process and equal protection requirements. McDonald v. National Collegiate Athletic Ass'n, C.D.Cal.1974, 370 F.Supp. 625. Constitutional Law 213(4); Constitutional Law 254(3)

696. Influence, involvement or control by state generally, attribution of private actions to state

Even where governmental regulation and funding of an ostensibly private organization are present, state action will not be found for purposes of federal civil rights action absent evidence of state influence, involvement, or control over challenged personnel decisions. MacDonald v. Eastern Wyoming Mental Health Center, C.A.10 (Wyo.) 1991, 941 F.2d 1115. Civil Rights 1326(11)

697. Significance of state involvement, attribution of private actions to state

"State compulsion test" for determining whether private conduct is fairly attributable to the state for § 1983 purposes requires proof that the state significantly encouraged or somehow coerced the private party, either overtly or covertly, to take particular action so that the choice is really that of the state. Ellison v. Garbarino, C.A.6 (Tenn.) 1995, 48 F.3d 192. Civil Rights 1326(4)

Enforcement of "no camera" rider contained in contracts between performers and private promoter of musical events at city civic center, by employees of civic center, constituted sufficient state involvement so as to constitute action "under color of state law" within meaning of the Civil Rights Act. D'Amario v. Providence Civic Center Authority, C.A.1 (R.I.) 1986, 783 F.2d 1, on remand 639 F.Supp. 1538. Civil Rights 1326(4)

Neither general government involvement nor even extensive detailed state regulation is sufficient for a finding of "state action" sufficient to support assertion of federal jurisdiction under this section; rather, the state must affirmatively support and be directly involved in the specific conduct which is being challenged. Cannon v. University of Chicago, C.A.7 (Ill.) 1976, 559 F.2d 1063, certiorari granted 98 S.Ct. 3142, 438 U.S. 914, 57 L.Ed.2d 1159, reversed on other grounds99 S.Ct. 1946, 441 U.S. 677, 60 L.Ed.2d 560, on remand 605 F.2d 560. Civil Rights 1326(7)

Only when state has significantly involved itself with invidious discrimination is there a violation of this section. Aasum v. Good Samaritan Hospital, C.A.9 (Or.) 1976, 542 F.2d 792. Civil Rights 1325

In respect to this section for "state action" to be found where the impetus for the discrimination is private, the record must demonstrate that the state has become significantly involved with the discriminatory action alleged. Broderick v. Associated Hospital Service of Philadelphia, C.A.3 (Pa.) 1976, 536 F.2d 1. Civil Rights 1325

Although the degree to which a state's involvement through regulation concerns the allegedly discriminatory activity complained of is relevant in determining whether state action should be found, it is not a sine qua non. Weise v. Syracuse University, C.A.2 (N.Y.) 1975, 522 F.2d 397. Civil Rights 1326(7)

Although application of the state involvement test in determining whether private, individual conduct constitutes state action is on a case-by-case basis, the polestar of analysis is whether the state involvement in the challenged action is "significant." Magill v. Avonworth Baseball Conference, C.A.3 (Pa.) 1975, 516 F.2d 1328. Civil Rights 1325

Only when the state becomes to some significant extent involved in the conduct of the affairs of a private institution can that conduct be classified as state action and thus run afoul of U.S.C.A.Const. Amend. 14.

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Ascherman v. Presbyterian Hospital of Pac. Medical Center, Inc., C.A.9 (Cal.) 1974, 507 F.2d 1103. Constitutional Law 213(4); Constitutional Law 254(4)

Finding that state action is present is insufficient; state action must rise to the level of significant involvement. Turner v. Impala Motors, C.A.6 (Tenn.) 1974, 503 F.2d 607.

In order to be regulable under constitutional standards through this section or § 1331 of Title 28, the very activity of a private entity which a plaintiff challenges must be supported by state action which significantly fosters or encourages such activity. Driscoll v. International Union of Operating Engineers, Local 139, C.A.7 (Wis.) 1973, 484 F.2d 682, certiorari denied 94 S.Ct. 1490, 415 U.S. 960, 39 L.Ed.2d 575. Federal Courts 191; Federal Courts 222

Private entities are subject to civil rights laws only if their activities are significantly affected with state involvement and mere existence of some government tie to private organization is not sufficient to support finding of state action where state has not sufficiently involved itself in invidious discrimination and, moreover, state must be involved in more than some activity of the offending institution itself; it must have been involved with activity that caused injury to plaintiff. Feldman v. Jackson Memorial Hospital, S.D.Fla.1981, 509 F.Supp. 815, affirmed 752 F.2d 647, certiorari denied 105 S.Ct. 3504, 472 U.S. 1029, 87 L.Ed.2d 635. Civil Rights 1326(4)

698. Inspections by state, attribution of private actions to state

Fact that State Board of Health inspected hospital did not constitute state action within meaning of this section for purpose of determining whether private hospital's refusal to allow licensed chiropractic physician to use clinical laboratory facilities constituted invidious discrimination. Aasum v. Good Samaritan Hospital, C.A.9 (Or.) 1976, 542 F.2d 792. Civil Rights 1326(7)

699. Licensing by state, attribution of private actions to state--Generally

Merely acting under state license is not state action within this section. Ouzts v. Maryland Nat. Ins. Co., C.A.9 (Nev.) 1972, 470 F.2d 790, on rehearing 505 F.2d 547, certiorari denied 95 S.Ct. 1681, 421 U.S. 949, 44 L.Ed.2d 103. See, also, Dreyer v. Jalet, D.C.Tex.1972, 349 F.Supp. 452, affirmed 479 F.2d 1044; Montanez v. Colegio de Tecnicos de Refringeracion y Aire Acondicionado de Puerto Rico, D.C.Puerto Rico 1972, 343 F.Supp. 890; Van Daele v. Vinci, D.C.Ill.1968, 294 F.Supp. 71. Civil Rights 1326(7)

Existence of state licensing scheme does not necessarily make licensee's actions those of state for either U.S.C.A.Const. Amend. 14 purposes or purposes of this section. Jenkins v. White Castle Systems, Inc., N.D.Ill.1981, 510 F.Supp. 981. Civil Rights 1326(7)

On question of presence of action under color of state law to support action under this section, mere fact that defendant holds state licenses which permit it to conduct its business is immaterial, unless state is otherwise connected with challenged conduct. Holmes v. Elks Club, Inc., M.D.Fla.1975, 389 F.Supp. 854. Civil Rights 1326(7)

Bare grant by a state of a license to do certain acts does not make all subsequent conduct of the licensee action taken under "color" of state law, within meaning of this section. Hatfield v. Williams, N.D.Iowa 1974, 64 F.R.D. 71. Civil Rights 1326(7)

700. ---- Professional or occupational licenses, licensing by state, attribution of private actions to state

City acted under color of law, as required to establish prima facie case under § 1983, in abrogating occupational

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license previously issued for supervised residential program for ex-offenders and in prohibiting continued use of motel property for housing program participants. Bannum, Inc. v. City of Fort Lauderdale, C.A.11 (Fla.) 1990, 901 F.2d 989, on remand 996 F.Supp. 1230. Civil Rights 1326(7)

701. ---- Attorneys, licensing by state, attribution of private actions to state

Although states license lawyers to practice and although lawyers are deemed officers of the court, such is insufficient basis for concluding that lawyers act "under color of state law" for purposes of this section. Henderson v. Fisher, C.A.3 (Pa.) 1980, 631 F.2d 1115, on remand 506 F.Supp. 579. Civil Rights 1326(10)

702. ---- Child-care institutions, licensing by state, attribution of private actions to state

Alleged actions of residence for abused children and its employees, of carrying out policy preventing child from visiting with her parents, after employees had been told to do so by county child protective services caseworker, if proven, were taken under color of state law for purposes of § 1983, even if residence was private institution. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1326(4)

The licensing of child-care institutions which allegedly discriminated against black children did not make actions of the institutions "state action" where none of the regulations or licensing requirements related to the admissions practices of the institutions or defined the types of children which could be accepted. Player v. State of Ala. Dept. of Pensions and Sec., M.D.Ala.1975, 400 F.Supp. 249, affirmed 536 F.2d 1385. Civil Rights 1326(7)

703. ---- Hospitals, licensing by state, attribution of private actions to state

State licensing of private hospital defendants was not sufficient state action nexus to permit civil rights action against private hospitals and physicians for excluding podiatrist from membership on hospital medical staffs. Feldman v. Jackson Memorial Hospital, S.D.Fla.1981, 509 F.Supp. 815, affirmed 752 F.2d 647, certiorari denied 105 S.Ct. 3504, 472 U.S. 1029, 87 L.Ed.2d 635. Civil Rights 1326(7)

704. ---- Liquor licenses, licensing by state, attribution of private actions to state

Bar's liquor license did not make it "state actor" for purposes of § 1983. Comiskey v. JFTJ Corp., C.A.8 (Mo.) 1993, 989 F.2d 1007, rehearing denied. Civil Rights 1326(7)

705. ---- Physicians, licensing by state, attribution of private actions to state

South Carolina's grant of license to practice medicine did not establish adequate nexus between state and defendant physician to convert his behavior into that of the state for purpose of U.S.C.A.Const.Amend. 14 or this section. Sumpter v. Harper, C.A.4 (S.C.) 1982, 683 F.2d 106. Civil Rights 1326(7)

Former prisoner stated that physician acted under color of state law, for purpose of prisoner's civil rights claims under Fourth and Fourteenth Amendments that were based, in part, upon autopsy that resulted in his wrongful imprisonment for 21 years, on allegations that physician signed report as person licensed to practice medicine as deputy coroner for county that prosecuted prisoner. Marsh v. San Diego County, S.D.Cal.2006, 432 F.Supp.2d 1035. Civil Rights 1326(8)

706. ---- Private detectives, licensing by state, attribution of private actions to state

Fact that defendants, two of whom were licensed under state Private Detective Act, were authorized by state statute to detain plaintiff whom they suspected of shoplifting did not mean that defendants were acting "under color of

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state law", and damages could not be recovered on theory defendants had violated this section. Weyandt v. Mason's Stores, Inc., W.D.Pa.1968, 279 F.Supp. 283. Civil Rights 1326(9)

707. ---- Racetracks, licensing by state, attribution of private actions to state

Harness racehorse driver failed to show symbiotic relationship between state and private owner of racetrack licensed by state to conduct parimutuel wagering as would render owner's exclusion of driver state action for § 1983 purposes; state had neither proprietary interest in racetrack nor direct financial stake in racetrack's success. Hadges v. Yonkers Racing Corp., C.A.2 (N.Y.) 1990, 918 F.2d 1079, certiorari denied 111 S.Ct. 1583, 499 U.S. 960, 113 L.Ed.2d 648. Civil Rights 1326(7)

Fact that defendant operated a race track under a license from the State Racing Commission did not make it an administrative agency of the state so as to render its action in operating the race track and excluding or ejecting persons therefrom "state action" within the provisions of U.S.C.A.Const. Amend. 14 and this section granting a cause of action for violation of such rights. Watkins v. Oaklawn Jockey Club, W.D.Ark.1949, 86 F.Supp. 1006, affirmed 183 F.2d 440. Constitutional Law 254(4)

708. ---- Restaurants, licensing by state, attribution of private actions to state

Restaurant incorporated for profit and open to the public during all of its business hours acted under color of state law within meaning of this section in refusing to serve women from 11:00 a.m. to 1:30 p.m. Monday through Friday, in view of licensing arrangement with state Department of Liquor Control. Bennett v. Dyer's Chop House, Inc., N.D.Ohio 1972, 350 F.Supp. 153, 33 Ohio Misc. 153, 62 O.O.2d 269. Civil Rights 1326(7)

Acts of corporation which operated public restaurant on park property of city under license from Commissioner of Parks, who had meticulous control over operations of corporation, were acts of an instrumentality of state and within ambit of protection afforded by U.S.C.A.Const. Amend. 14 against deprivation of civil rights and where organization's dinner scheduled at restaurant was cancelled by restaurant owners allegedly solely because of unpopularity of views held by organization and its members, organization could maintain action under this section for alleged deprivation of rights under U.S.C.A.Const. Amend. 14. Anderson v. Moses, S.D.N.Y.1960, 185 F.Supp. 727. Civil Rights 1326(7); Constitutional Law 213(4)

709. Corporate charters, attribution of private actions to state

Fact that unincorporated association of private citizens filed charter with county recorder's office did not render association's actions taken "under color of state law" within purview of this section. Canlis v. San Joaquin Sheriff's Posse Comitatus, C.A.9 (Cal.) 1981, 641 F.2d 711, certiorari denied 102 S.Ct. 510, 454 U.S. 967, 70 L.Ed.2d 383. Civil Rights 1326(1)

Congressional chartering of corporation was insufficient to establish "state action" for purposes of employee's action against corporation for alleged wrongful discharge in alleged violation of rights protected by U.S.C.A.Const. Amend. 1. Yiamouyiannis v. Chemical Abstracts Service, C.A.6 (Ohio) 1978, 578 F.2d 164, certiorari denied 99 S.Ct. 573, 439 U.S. 983, 58 L.Ed.2d 654. Civil Rights 1326(11)

Every private corporation, whether profitable or charitable, is chartered by the state; unless the charter contains a special authorization or directive to engage in the challenged conduct, the fact that it is granted by the state is of no significance for purpose of determining whether the challenged action is state action. Cohen v. Illinois Institute of Technology, C.A.7 (Ill.) 1975, 524 F.2d 818, certiorari denied 96 S.Ct. 1683, 425 U.S. 943, 48 L.Ed.2d 187. Civil Rights 1326(4)

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710. Leases by state, attribution of private actions to state

Leasing of land by a hospital from a state agency is insufficient to convert a private hospital into one acting "under color of" state law within this section. Spencer v. Community Hospital of Evanston, N.D.Ill.1975, 393 F.Supp. 1072. Civil Rights 1326(7)

711. Regulation by state, attribution of private actions to state--Generally

Existence of governmental regulations, standing alone, does not provide required nexus for state action in § 1983 claim. Gallagher v. Neil Young Freedom Concert, C.A.10 (Utah) 1995, 49 F.3d 1442. Civil Rights 1326(7)

Mere fact that business is regulated by state law or agency does not convert its dealings into acts "under color of state law" and thus disabled employee, whose complaint established that defendant insurer made contract with private employer in Montana and that she was claiming benefit under that contract, failed to show requisite state action to state claim under this section against insurer. Freier v. New York Life Ins. Co., C.A.9 (Mont.) 1982, 679 F.2d 780. Civil Rights 1396

State action for purposes of this section can be found either when state and entity whose activities are challenged are joint participants in a symbiotic relationship, in which case all of the entity's actions are state actions and a nexus between the state regulation and the action need not be shown, or when the entity is pervasively regulated by the state and sufficient nexus exists between the state and the challenged activity. Benner v. Oswald, C.A.3 (Pa.) 1979, 592 F.2d 174, certiorari denied 100 S.Ct. 62, 444 U.S. 832, 62 L.Ed.2d 41. Civil Rights 1326(7)

Mere fact of state regulation alone does not transform what is essentially private action into "state action" for purposes of this section creating a federal cause of action against persons whose misconduct under color of state law violates the constitutional rights of another. Broderick v. Associated Hospital Service of Philadelphia, C.A.3 (Pa.) 1976, 536 F.2d 1. Civil Rights 1326(7)

Mere existence of detailed regulation of private entity does not make every act or even every regular act, of the private firm, the action of the state; unless it is alleged that the regulatory agency has encouraged the practice in question, or at least given its affirmative approval to the practice, the fact that a business or an institution is subject to regulation is not of decisive importance. Cohen v. Illinois Institute of Technology, C.A.7 (Ill.) 1975, 524 F.2d 818, certiorari denied 96 S.Ct. 1683, 425 U.S. 943, 48 L.Ed.2d 187. Civil Rights 1326(7)

Nondiscriminatory regulation of a business by the State does not transform the activities of a private party into state action for purposes of this section. Scott v. Eversole Mortuary, C.A.9 (Cal.) 1975, 522 F.2d 1110. Civil Rights 1326(7)

Pervasive state regulation, without more, is insufficient to constitute state action. Magill v. Avonworth Baseball Conference, C.A.3 (Pa.) 1975, 516 F.2d 1328. Civil Rights 1326(7)

Regulation alone does not make actions of the regulated party state action for purposes of § 1983 action. Federspiel v. Ohio Republican Party State Cent. Committee, S.D.Ohio 1994, 867 F.Supp. 617, affirmed 85 F.3d 628. Civil Rights 1326(7)

Mere fact that a business is subject to state regulation does not by itself convert its action into that of state for purposes of bringing an action pursuant to this section. Johnson v. Heinemann Candy Co., Inc., E.D.Wis.1975, 402 F.Supp. 714. Civil Rights 1326(7)

711A. ---- Agriculture, regulation by state, attribution of private actions to state

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Prospective exhibitors who sued county agricultural society, stemming from ban of livestock at county fair following positive test for prohibited substance, failed to establish strong likelihood of nexus between state and challenged action for purposes of §§ 1983 claim, as required to obtain temporary restraining order (TRO); although state regulated or funded county agricultural society, record did not otherwise contain facts from which nexus could have been inferred. Farmer v. Pike County Agr. Society, S.D.Ohio 2005, 411 F.Supp.2d 838. Civil Rights 1457(7)

712. ---- Banks or banking, regulation by state, attribution of private actions to state

Banks' setting off against funds of depositors their indebtedness on bank credit cards was not action under color of state law within this section, although banks were closely regulated by state, in absence of showing that state gave special support to defendant banks restricted depositors' alternatives or contributed in any way to banks' operation. Fletcher v. Rhode Island Hospital Trust Nat. Bank, C.A.1 (R.I.) 1974, 496 F.2d 927, certiorari denied 95 S.Ct. 320, 419 U.S. 1001, 42 L.Ed.2d 277. Civil Rights 1326(9)

In action under this section brought by borrowers against lenders, with whom wage assignment agreements had been entered into, seeking a judgment declaring New York wage assignment statute, McKinney's N.Y. Personal Property Law, § 46 et seq., to be unconstitutional as violative of the process clause of U.S.C.A.Const. Amend. 14, there was no "state action" on theory that state had become a partner or joint venturer with the lenders by reason of state licensing regulations, since state receives no revenue from the licensing of lenders and since they do not enjoy any monopoly in the lending of money on the security of wage assignments. Bond v. Dentzer, C.A.2 (N.Y.) 1974, 494 F.2d 302, certiorari denied 95 S.Ct. 65, 419 U.S. 837, 42 L.Ed.2d 63. Civil Rights 1326(9)

No elaborate financial or regulatory nexus existed between government employee savings association and government of Puerto Rico and, thus, association's conduct was not state action for purposes of § 1983 claims; although created by law and regulated by government, association was funded by its members and governed by board of directors which was elected by delegates of members and managed organization without interference from government agencies. Velazquez v. Asociacion De Empleados Del Estado Libre Asociado De Puerto Rico, D. Puerto Rico 1995, 892 F.Supp. 42, affirmed 84 F.3d 487. Civil Rights 1326(7)

Mere fact that national banking associations are regulated by federal government does not make them subject to civil rights actions. C.A.R. Leasing, Inc. v. First Lease, Inc., N.D.Ill.1975, 394 F.Supp. 306. Civil Rights 1326(7)

713. ---- Corporations, regulation by state, attribution of private actions to state

Generally, fact that a corporation is subject to some degree of state regulation, or is granted some special rights or privileges by the state, is not enough to convert the essentially administrative or business actions of the corporation into that state action which this section proscribes. Palmer v. Columbia Gas Co. of Ohio, N.D.Ohio 1972, 342 F.Supp. 241, 32 Ohio Misc. 16, 61 O.O.2d 31, affirmed 479 F.2d 153, 72 O.O.2d 337. Civil Rights 1326(7)

Complaint against private corporations by individuals who sought damages for personal injuries, medical expenses, and damage to property allegedly resulting from defendants' polluting the air, did not allege quantum of state or municipal regulatory involvement necessary to clothe defendants with mantle of state so as to permit action under this section. Tanner v. Armco Steel Corp., S.D.Tex.1972, 340 F.Supp. 532. Civil Rights 1396

714. ---- Credit unions, regulation by state, attribution of private actions to state

Pervasive entwinement did not exist between state and state employees credit union, such that actions taken by credit union's president and board member in connection with former employee's termination for violating credit union loan policies and credit union's post-termination pursuit of normal collection efforts on former employee's

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past-due loans qualified as state action under § 1983, even though credit union was organized under state law and regularly audited by state, credit union's purpose was to provide services to state employees, and credit union received some peripheral services from state for which credit union reimbursed state. Hauschild v. Nielsen, D.Neb.2004, 325 F.Supp.2d 995. Civil Rights 1326(9); Civil Rights 1326(11)

Where state had only power to regulate credit union and it was not alleged that state in any way sanctioned alleged discriminatory policies or encouraged discrimination by the credit union but merely permitted it to continue to exist, by not requiring surrender of its charter, there was no state action which was legal cause of deprivation of civil rights, and no cause of action under this section. Ingram v. Dunn, N.D.Ga.1974, 383 F.Supp. 1043, affirmed 514 F.2d 1070. Civil Rights 1326(7)

715. ---- Education, regulation by state, attribution of private actions to state

No special relationship existed between public elementary school student and the state at the time of alleged harms to the student arising from principal's and teacher's alleged failure to protect the student from racial harassment and assaults by other students so as to create a duty on the part of the principal and teacher under the due process clause to protect the student, where, under state law, it was up to the parents of compulsory-school-age children to decide whether education would take place in the home, or in public or private school, and where there was no showing that the principal's and teacher's actions created a danger or made the student more vulnerable to attacks. Crispim v. Athanson, D.Conn.2003, 275 F.Supp.2d 240. Constitutional Law 278.5(5.1); Schools 147

University did not act pursuant to city rule or regulation in terminating public safety officers, and thus terminations did not involve "state action," as required for officers to maintain § 1983 claim against university; agreement between city and university specifically provided that officers would not be subject to city trial board hearings, but would instead be disciplined pursuant to university policy. Allocco v. City of Coral Gables, S.D.Fla.2002, 221 F.Supp.2d 1317, affirmed 88 Fed.Appx. 380, 2003 WL 22768944. Civil Rights 1326(11)

No sufficiently close nexus between action of private university dental school in suspending student for desecrating cadaver and state existed as would allow suspension to be considered "state action" under nexus/state compulsion test and support action by student alleging that suspension deprived him of rights under Federal and State Constitutions where state regulation of school's handling of cadavers and school's participation in governmentally regulated projects were not even remotely connected to disciplinary process which resulted in student's expulsion and there was no act of government which motivated disciplinary action. Tynecki v. Tufts University School of Dental Medicine, D.Mass.1994, 875 F.Supp. 26. Civil Rights 1326(6); Constitutional Law 254(4)

Commonwealth's regulation of university through accreditation council established under state statute did not so involve it in university disciplinary procedures as to make those procedures subject to constitutional scrutiny under this section, where regulation of the accreditation council did not trench on university's discretion to follow whatever policy it wished, but required only that some general policy be publicly announced. Berrios v. Inter American University, D.C.Puerto Rico 1975, 409 F.Supp. 769, affirmed 535 F.2d 1330, appeal dismissed 96 S.Ct. 2665, 426 U.S. 942, 49 L.Ed.2d 1180. Civil Rights 1326(7)

716. ---- Environment, regulation by state, attribution of private actions to state

Alleged deprivation of surface owners' constitutional rights by reason of mineral owners' strip mining of the property was not, for purposes of this section committed under color of law, since the environmental laws and regulations of Kentucky are not sufficient to constitute a necessary degree of state involvement, nor can the decisions of the Kentucky court of appeals interpreting "broad form" deeds in unrelated cases be construed as "state action." Watson v. Kenlick Coal Co., Inc., C.A.6 (Ky.) 1974, 498 F.2d 1183, certiorari denied 95 S.Ct. 2639, 422 U.S. 1012, 45 L.Ed.2d 677. Civil Rights 1326(7)

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717. ---- Medical care, regulation by state, attribution of private actions to state

A mental health center could not be considered a state actor for purposes of a § 1983 action merely because of pervasive state regulation and monitoring of the center's personnel standards and its receipt of state funds, absent evidence tending to prove that the state was involved in center's decision to discharge employees. MacDonald v. Eastern Wyoming Mental Health Center, C.A.10 (Wyo.) 1991, 941 F.2d 1115. Civil Rights 1326(11)

Even if state regulates hospital, regulation does not establish requisite state action to support § 1983 claim against hospital. Purgess v. Sharrock, S.D.N.Y.1992, 806 F.Supp. 1102, supplemented. Civil Rights 1326(7)

It is not a hospital's receipt of hospital money under Hill-Burton program that converts private action into state action for purpose of this section, rather it is the elaborate and intricate pattern of governmental regulations, for which a hospital becomes subject in return for federal aid, that may render the hospital's conduct state action. Manning v. Greensville Memorial Hospital, E.D.Va.1979, 470 F.Supp. 662. Civil Rights 1326(7)

Where applicable federal regulations did not in any way encourage alleged improper conduct of private nursing home toward medicaid recipient, regulations could not be basis for characterizing nursing home's action as state action so as to subject it to civil rights suit by recipient. Fuzie v. Manor Care, Inc., N.D.Ohio 1977, 461 F.Supp. 689. Civil Rights 1326(7)

718. ---- Nursing homes, regulation by state, attribution of private actions to state

In awarding attorney fee to civil rights plaintiff under §§ 1988, district court did not make sufficiently specific findings of fact or provide adequate explanation respecting how it determined number of attorney hours that were related to plaintiff's successful claims against one defendant, rather than unsuccessful claims against other defendants, such that Court of Appeals could not determine, on appeal, whether district court's assessment of the evidence was clearly erroneous, warranting remand for more definite statement of how district court reached its conclusion with respect to its award of fees and expenses. Patterson v. Balsamico, C.A.2 (N.Y.) 2006, 440 F.3d 104. Federal Courts 947

Existence of state regulation of nursing home industry and receipt of state funding by private nursing home did not create state action that would support suit under civil rights statute [42 U.S.C.A. § 1983] against nursing home operator and employees to recover for death of nursing home patient as an alleged result of beatings sustained in nursing home. Daigle v. Opelousas Health Care, Inc., C.A.5 (La.) 1985, 774 F.2d 1344. Civil Rights 1326(7)

Under symbiotic relationship test, private nursing home was not state actor subject to terminated employee's §§ 1983 action arising from patient-abuse investigation by office of New York's Attorney General (OAG) and subsequent criminal prosecution, inasmuch as State did not have interdependent relationship with nursing home such that they could be considered joint participants. Mitchell v. Home, S.D.N.Y.2005, 377 F.Supp.2d 361. Civil Rights 1326(11)

719. ---- Postal services, regulation by state, attribution of private actions to state

There was no evidence of affirmative state approval of rule adopted by parcel delivery service relating to grooming requirements of its employees which would have made any deprivation of civil rights arising out of the grooming standards a matter of state action. Howe v. United Parcel Service, Inc., S.D.Iowa 1974, 379 F.Supp. 667. Civil Rights 1421

720. ---- Racing and racetracks, regulation by state, attribution of private actions to state

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Race track's denying stalling privileges to a professional trainer, allegedly resulting in loss of employment, constituted "state action" for purpose of suit under this section, considering particularly intrusive nature of Louisiana's regulation of horse racing and participation of racing secretary, an official having functions directly under control of both state officials and track management, in the decision to deny stalling and considering secretary's intimate and continuous involvement in actual day-to-day management of racing-related activities at the otherwise private track. Roberts v. Louisiana Downs, Inc., C.A.5 (La.) 1984, 742 F.2d 221. Civil Rights 1326(7)

Where raceway president performed as private individual discharging his corporate duties in attempting to exclude driver trainer from race, and raceway was private corporation, president's attempted exclusion of driver trainer did not constitute "state action" for purposes of driver trainer's action under this section, notwithstanding that state heavily regulated horse racing industry and derived revenue from race track operations. Bier v. Fleming, C.A.6 (Ohio) 1983, 717 F.2d 308, certiorari denied 104 S.Ct. 1283, 465 U.S. 1026, 79 L.Ed.2d 686. Civil Rights 1326(7)

State of Florida did not engage in "state action" with regard to business of greyhound racing by virtue of its extensive regulation of such business, its sharing in business' revenues, or its allocation of dog track racing days; greyhound breeder and racer therefore could not proceed under this section against partners of private greyhound kennel club on his allegations that such partners violated his civil rights by refusing to renew his booking contract to race his greyhound dogs at such club, and that such partners' conduct was attributable to State for purposes of U.S.C.A.Const. Amend. 14. Fulton v. Hecht, C.A.5 (Fla.) 1977, 545 F.2d 540, rehearing denied 548 F.2d 355, certiorari denied 97 S.Ct. 1682, 430 U.S. 984, 52 L.Ed.2d 379, rehearing denied 97 S.Ct. 2941, 431 U.S. 975, 53 L.Ed.2d 1073. Civil Rights 1326(7)

Racetrack owner's exclusion of licensed driver, trainer and horse owner from track did not constitute state action, and thus did not give rise to § 1983 liability; though track was heavily regulated and licensed by state, track's exercise of its retained common-law right to exclude certain persons was based on its own business judgment without involvement of state officials. Hadges v. Yonkers Racing Corp., S.D.N.Y.1990, 733 F.Supp. 686, affirmed 918 F.2d 1079, certiorari denied 111 S.Ct. 1583, 499 U.S. 960, 113 L.Ed.2d 648. Civil Rights 1326(7)

721. ---- Solicitors or solicitation, regulation by state, attribution of private actions to state

State fair operators' requirement that solicitation of money for religious purposes be restricted to a booth was "state action" for purposes of this section. International Soc. for Krishna Consciousness, Inc. v. Barber, N.D.N.Y.1980, 506 F.Supp. 147, reversed on other grounds 650 F.2d 430. Civil Rights 1326(1)

722. ---- Television, regulation by state, attribution of private actions to state

City ordinance governing cable television which required that private corporation which installed and operated cable television system not discriminate on basis of sex did not cause otherwise private action to be under color of state law, as purpose of regulation was to protect city from suit; therefore, discharge by corporation of female employee under circumstances employee claimed constituted sex discrimination did not state cause of action under this section. Cox v. Athena Cablevision, E.D.Tenn.1982, 558 F.Supp. 258. Civil Rights 1326(11)

723. ---- Utilities, regulation by state, attribution of private actions to state

Private corporate utility company was not brought within purview of "state action" merely because it was state regulated; employee's complaint against such utility therefore did not state cause of action under this subchapter. McLellan v. Mississippi Power & Light Co., C.A.5 (Miss.) 1976, 526 F.2d 870, vacated in part 545 F.2d 919. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

Extensive state regulation of telephone company, standing alone, was insufficient to convert otherwise private business operation into "state action" for purposes of this section, and thus black citizens of county could not recover against telephone company under this section requiring that defendants have acted under color of state law in order for liability to be imposed. White v. Walnut Hill Tel. Co., W.D.Ark.1979, 84 F.R.D. 138. Civil Rights 1326(7)

IX. CUSTOM OR USAGE

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751. Custom or usage generally

To establish liability on part of county under § 1983, plaintiff had to demonstrate policy or custom that caused alleged constitutional deprivation. Brooks v. George County, Miss., C.A.5 (Miss.) 1996, 84 F.3d 157, certiorari denied 117 S.Ct. 359, 519 U.S. 948, 136 L.Ed.2d 251. Civil Rights 1351(1)

Municipalities and other local governments, such as counties, may be sued under §§ 1983 for constitutional torts, and such a local government may be held liable where its action itself violates federal law, or it directs an employee to do so; in order to establish liability, the government official must have committed a constitutional violation, and the entity itself must have been the "moving force" behind the alleged deprivation, so the entity's "policy or custom" must have contributed toward the constitutional violation. Keehner v. Dunn, D.Kan.2005, 409 F.Supp.2d 1266. Civil Rights 1351(1)

Police officers were not entitled to summary judgment on constitutional claims on basis of qualified immunity where disputed issues of fact concerning the existence of exigent circumstances remained with respect to unlawful entry claim, where genuine issues of fact concerning the reasonableness of force employed by officers with respect to excessive force claim, and where factual issues remained underlying malicious prosecution and First Amendment retaliation claims. Webster v. City of New York, S.D.N.Y.2004, 333 F.Supp.2d 184. Federal Civil Procedure 2491.5

For purposes of municipal liability for enforcement of unconstitutional policy, policy may be established by either a policy or decision adopted by the municipality or a single act of a municipal official with final policymaking authority. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Civil Rights 1351(1)

Plaintiff must meet two requirements to maintain a § 1983 claim grounded upon unconstitutional municipal custom or practice: custom or practice must be attributable to municipality, in that it is so well settled and widespread that policymaking officials of municipality can be said to have either actual or constructive knowledge of it, and the custom must have been cause of and "the moving force" behind deprivation of constitutional rights. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Civil Rights 1351(1)

For purposes of imposing governmental liability under § 1983, "custom" differs from "policy" in that it is not necessary that the custom has received formal approval through the municipality's official decisionmaking channels. Gausvik v. Perez, E.D.Wash.2002, 239 F.Supp.2d 1108. Civil Rights 1351(1)

Freight company's failure to have a policy regarding its employees' interactions with law enforcement officials in connection with a controlled pickup of drug shipment did not make it liable under § 1983 for acts of those employees in alleged violation of arrestee's constitutional rights; company's policymakers did not know to a moral certainty that its employees would confront that given situation. Mejia v. City of New York, E.D.N.Y.2002, 228 F.Supp.2d 234. Civil Rights 1339

City was not liable under § 1983 for any constitutional violations resulting from participation of its emergency response team (ERT) in hostage-rescue training exercise at public high school, in which county ERT members allegedly seized staff members who were unaware of the exercise and used excessive force, absent any allegations that an unconstitutional city policy or custom caused plaintiffs injury or allegation that a city employee directly violated plaintiffs' constitutional rights. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1351(4)

In order to establish liability of governmental body under § 1983, based on government policy or custom, plaintiffs must identify the policy at issue, connect the policy to the governmental body, and show that their injuries were incurred because of the execution of that policy. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997,

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42 U.S.C.A. § 1983

968 F.Supp. 1212. Civil Rights 1351(1)

Policies of government entity, required for § 1983 liability, are not limited to formal guidelines or practices that have been reduced to writing; widespread practice may be so permanent and well settled as to constitute custom. Reynolds v. Glynn County Bd. of Educ., S.D.Ga.1996, 968 F.Supp. 696, affirmed 119 F.3d 11. Civil Rights 1351(1)

Five avenues are available to establish official policy and to impose § 1983 liability on municipal body: (1) actions by municipal legislative bodies are official policies; (2) actions by municipal agencies or boards exercising authority delegated by municipal legislative body may be official policy; (3) actions by those with final decision-making authority in municipality are official policy; (4) official policy may be proven by demonstrating a policy of inadequate training or supervision; and (5) official policy may be shown by proving existence of a custom by a municipality or political subdivision. Torian v. City of Beckley, S.D.W.Va.1997, 963 F.Supp. 565. Civil Rights 1351(1)

To hold city liable under § 1983, plaintiff must prove that city had custom, policy or practice which was responsible for inflicting plaintiff's constitutional injury; plaintiff must show direct causal link between city policy or custom at issue and alleged constitutional deprivation. Bogle v. City of Warner Robins, M.D.Ga.1997, 953 F.Supp. 1563. Civil Rights 1351(1)

In order to prove municipal liability under federal civil rights statute, plaintiff must prove that alleged constitutional violation resulted from official policy or unofficial custom; "policy" is made when decisionmaker possessing final authority to establish municipal policy with respect to action issues official proclamation, policy, or edict, while "custom" arises when, though not authorized by law, such practices by state officials are so permanent and well-settled as to virtually constitute law, and may also be established by evidence of knowledge and acquiescence. Torres v. Kuzniasz, D.N.J.1996, 936 F.Supp. 1201. Civil Rights 1351(1)

Municipal liability under § 1983 may be predicated upon a showing that government employee's unconstitutional action implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers or is visited pursuant to governmental "custom" even though such "custom" has not received formal approval through body's official decisionmaking channels and the term "custom" includes persistent and widespread practices, permanent and well settled practices, and deeply embedded traditional ways of carrying out policy. Hammer v. Hillsborough County Through Bd. of County Com'rs, M.D.Fla.1996, 927 F.Supp. 1540. Civil Rights 1351(1)

In order to hold city liable for § 1983 violations, plaintiff must plead and prove official policy or custom that causes plaintiff to be subjected to denial of right guaranteed under Constitution. Canney v. City of Chelsea, D.Mass.1996, 925 F.Supp. 58. Civil Rights 1351(1)

To hold municipality liable under § 1983 for unconstitutional acts of its employees, plaintiff must plead and prove that his constitutional rights were violated, that alleged actions by employees were result of official policy, custom, or practice of municipal defendant, and that policy, custom, or practice caused plaintiff's alleged injuries; proof of single incident of unconstitutional activities is insufficient to demonstrate existence of policy. Nocera v. New York City Fire Com'r, S.D.N.Y.1996, 921 F.Supp. 192. Civil Rights 1351(1)

Plaintiff in federal civil rights action may establish existence of municipal policy or custom, as will potentially allow imposition of liability against municipality, in two ways; policy or custom is established where decision-maker with final authority regarding matter at hand issues official proclamation, policy, or edict, or through course of conduct when, though not authorized by law, such practices of municipal officials are so permanent and well-settled as to virtually constitute law. Hilliard v. Walker's Party Store, Inc., E.D.Mich.1995, 903 F.Supp. 1162. Civil Rights 1351(1)

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For § 1983 purposes, "custom" requires proof of more than random acts or isolated events; there must be proof of permanent and well settled practice which although not authorized by written or express municipal policy, constitutes usage with force of law. Anthony v. County of Sacramento, E.D.Cal.1995, 898 F.Supp. 1435. Civil Rights 1351(1)

Local government entities such as municipalities are liable for civil rights violations if those violations result from implementation of their official policy or are due to governmental "custom"; municipal liability can be found for constitutional deprivations due to governmental custom even though that custom has not received formal approval through government's official decision-making channels. Robertson v. Johnson County, Ky., E.D.Ky.1995, 896 F.Supp. 673. Civil Rights 1351(1)

To establish existence of practice or custom sufficient to hold municipality liable under § 1983 for act of its employee, it is generally necessary to show persistent and widespread practice; actual or constructive knowledge of such customs must be attributed to governing body of municipality, and, normally, random acts or isolated incidents are insufficient to establish custom or policy. Crenshaw v. City of Defuniak Springs, N.D.Fla.1995, 891 F.Supp. 1548. Civil Rights 1351(1)

A public employee can establish municipal liability under § 1983 in either of two ways: (1) by showing that decision maker possessed final authority to establish municipal policy with respect to action ordered, or (2) by showing that her injury was the result of a municipal custom, defined as a wise practice, that although not authorized by written law or express municipal policy, is so permanent and well-settled as to constitute a custom or usage with the force of law. Lawrence v. Metro Dade County, Fla., S.D.Fla.1994, 872 F.Supp. 957. Civil Rights 1351(1)

For § 1983 liability of municipal body or employees, actions must be taken pursuant to institutional policy, practice or custom. Fox Fuel, a Div. of Keroscene, Inc. v. Delaware County Schools Joint Purchasing Bd., E.D.Pa.1994, 856 F.Supp. 945. Civil Rights 1351(1)

For purposes of actions brought against counties under this section subjecting to liability every person who, under color of any custom, or usage, of any state subjects, or causes to be subjected, any citizen of the United States to deprivation of any rights, privileges, or immunities secured by Constitution and laws, "custom" of county is deeply imbedded traditional way of carrying out county policy, and "usage" is regular and repeated response to situation. Knight v. Carlson, E.D.Cal.1979, 478 F.Supp. 55. Civil Rights 1351(1)

Although this subchapter requires that the defendants have acted under color of state law, it is not necessary that the alleged acts involved be enforcement of a state statute or regulation; a persistent practice by state officials can constitute action under "color of state law." Vazquez v. Ferre, D.C.N.J.1975, 404 F.Supp. 815, motion denied 410 F.Supp. 1385. Civil Rights 1326(2)

A "custom or usage" for purpose of this section providing for federal action for deprivation of rights requires state involvement and is not simply a practice that reflects longstanding social habits, generally observed by the people in a locality. Ellingson v. Sears, Roebuck & Co., D.C.S.D.1973, 363 F.Supp. 1344. Civil Rights 1325

For a plaintiff to bring a § 1983 claim against a municipal defendant, such as a county, a plaintiff must allege facts demonstrating the existence of an officially adopted policy or custom of the municipal defendant that caused plaintiff injury, and a direct and deliberate causal connection between that policy or custom and the deprivation of a federally protected right. Conway v. Garvey, S.D.N.Y.2003, 2003 WL 22510384, Unreported, affirmed 117 Fed.Appx. 792, 2004 WL 2786380. Civil Rights 1351(1); Civil Rights 1394

752. Force of law, custom or usage

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42 U.S.C.A. § 1983

"Custom or usage of a state", for purpose of this section affording civil action to one deprived of rights under color of such custom or usage, must have force of law by virtue of persistent practices of state officials. Adickes v. S. H. Kress & Co., U.S.N.Y.1970, 90 S.Ct. 1598, 398 U.S. 144, 26 L.Ed.2d 142. Civil Rights 1324

Intravenous drug user, as participant in needle exchange program, adequately pleaded personal involvement by police commissioner, in § 1983 action under Fourth Amendment, where user otherwise adequately pleaded that city and police chief had policy or custom of violating constitutional rights of needle exchange participants by falsely arresting and prosecuting them, and personal involvement included creating policy or custom under which unconstitutional practices occurred, or allowed such a policy or custom continue. L.B. v. Town of Chester, S.D.N.Y.2002, 232 F.Supp.2d 227. Civil Rights 1395(6)

Indian tribe could not be liable under § 1983 for actions of employee who arrested and removed newspaper reporter from Indian lands, absent allegations that policy or custom of Indian tribe caused injuries underlying reporter's claims arising from allegedly false arrest. Armstrong v. Mille Lacs County Sheriffs Dept., D.Minn.2002, 228 F.Supp.2d 972, affirmed 63 Fed.Appx. 970, 2003 WL 21212166. Civil Rights 1351(4)

Municipal liability under § 1983 may be supported by either official policy or practices of state officials so permanent and well settled as to constitute custom or usage with force of law. Cox v. District of Columbia, D.D.C.1993, 821 F.Supp. 1, as amended, affirmed 40 F.3d 475, 309 U.S.App.D.C. 219. Civil Rights 1351(1)

Neither gross negligence nor deliberate indifference are proper test for adjudging civil rights claim against municipality; rather, test is whether municipality promulgated unconstitutional policy or custom having force of law which was moving force of constitutional violation. Brown v. City of Clewiston, S.D.Fla.1986, 644 F.Supp. 1407, affirmed 848 F.2d 1534. Civil Rights 1351(1)

Monell requires plaintiff to prove existence of policy or custom which is of long standing so as to have force of law causing unconstitutional deprivation of claimant's civil rights. Roman v. Appleby, E.D.Pa.1983, 558 F.Supp. 449. Civil Rights 1401

753. Formal approval of policy, custom or usage

Local governments may be sued for constitutional deprivations visited pursuant to governmental custom even though such a custom has not received formal approval through the body's official decision-making channels. Monell v. Department of Social Services of City of New York, U.S.N.Y.1978, 98 S.Ct. 2018, 436 U.S. 658, 56 L.Ed.2d 611. Civil Rights 1351(1)

Local governing body may be sued under § 1983 for causing constitutional tort through act of its officer, if officer committed act pursuant to official formally adopted policy or official policy of established usage or custom. Adkins v. Board of Educ. of Magoffin County, Ky., C.A.6 (Ky.) 1993, 982 F.2d 952. Civil Rights 1351(1)

Municipality cannot be held liable under federal civil rights statute solely because it employs a tort-feasor; however, local governments like every other "person" under the statute may be sued for constitutional deprivations visited pursuant to governmental "custom"; it is not necessary that such custom receive formal approval through official decision-making channels. Garza v. City of Omaha, C.A.8 (Neb.) 1987, 814 F.2d 553. See, also, Avery v. Burke County, C.A.4 (N.C.) 1981, 660 F.2d 111; Martin v. New York City Dept. of Correction, S.D.N.Y.1981, 522 F.Supp. 169. Civil Rights 1351(1)

Act performed pursuant to "custom" that has not been formally approved by appropriate decisionmaker may fairly subject municipality to liability, under § 1983, on the theory that relevant practice is so widespread as to have the force of law. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1351(1)

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Paul D. Coverdell Teacher Protection Act of 2001 did not insulate school officials from liability for alleged gross negligence and flagrant indifference to rights of high school student, who was forcibly removed from school to police station after she failed to identify herself. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Schools 63(3)

Intravenous drug user, as participant in needle exchange program, adequately pleaded personal involvement by police commissioner, in § 1983 action under Fourth Amendment, where user otherwise adequately pleaded that city and police chief had policy or custom of violating constitutional rights of needle exchange participants by falsely arresting and prosecuting them, and personal involvement included creating policy or custom under which unconstitutional practices occurred, or allowed such a policy or custom continue. L.B. v. Town of Chester, S.D.N.Y.2002, 232 F.Supp.2d 227. Civil Rights 1395(6)

To prove that municipal policy or custom caused his injuries, civil rights plaintiff must allege existence of formal policy which is officially endorsed by municipality, actions taken or decisions made by government officials responsible for establishing municipal policies which caused alleged violation of plaintiff's civil rights, practice so persistent and widespread to be custom or usage and imply constructive knowledge of policy-making officials, or failure by official policy-makers to properly train or supervise subordinates to such extent that it amounts to deliberate indifference to rights of those with whom municipal employees will come into contact. Moray v. City of Yonkers, S.D.N.Y.1996, 924 F.Supp. 8. Civil Rights 1351(1); Civil Rights 1352(1)

It is not necessary that municipality enact formal policy, in order for imposition of liability in federal civil rights action based on failure to train employees to be appropriate, when there exists unconstitutional custom that amounts to policy, and plaintiff is not required to produce evidence of deliberate or conscious choice to adopt unconstitutional policy or custom; it may happen that in light of duties assigned to specific employees need for more or different training is so obvious, and inadequacy so likely to result in violation of constitutional rights, that policymakers can reasonably be said to have been deliberately indifferent to need. Hilliard v. Walker's Party Store, Inc., E.D.Mich.1995, 903 F.Supp. 1162. Civil Rights 1352(1)

Local governments can be sued for constitutional deprivations that are pursuant to governmental custom or usage, even though such custom has not received formal approval. Rowson v. County of Arlington, Va., E.D.Va.1992, 786 F.Supp. 555. Civil Rights 1351(1)

Not only can municipality be sued for allegedly unconstitutional action which implements or executes policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers, but it can also be sued for constitutional deprivations pursuant to governmental custom even though such custom has not received formal approval through body's official decision-making channels; however, civil rights liability may not be imposed upon municipality under theory of respondeat superior. Agresta v. City of Philadelphia, E.D.Pa.1988, 694 F.Supp. 117. Civil Rights 1351(1)

754. Inference of policy, custom or usage

It was reversible error, in action under Civil Rights Act of 1861 [42 U.S.C.A. § 1983] to hold city liable for fatal shooting of plaintiff's husband by police officer, to instruct that city could be held liable if a municipal policy caused the claimed deprivation of constitutional rights and that jury could infer from a single, unusually excessive use of force that it was attributable to inadequate training or supervision amounting to deliberate indifference or gross negligence on part of the city officials in charge, notwithstanding that plaintiff introduced independent evidence of inadequate training. (Per Justice Rehnquist with the Chief Justice and two Justices concurring and three Justices concurring in judgment.) City of Oklahoma City v. Tuttle, U.S.Okla.1985, 105 S.Ct. 2427, 471 U.S. 808, 85 L.Ed.2d 791, rehearing denied 106 S.Ct. 16, 473 U.S. 925, 87 L.Ed.2d 695. Civil Rights 1351(4); Civil Rights 1437

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Receipt of notice of Appeals Council's decision on Social Security benefits by either claimant or claimant's attorney, whichever occurs first, triggers 60-day limitations period for filing civil action to challenge decision. Bess v. Barnhart, C.A.8 (Ark.) 2003, 337 F.3d 988. Social Security And Public Welfare 146

Plaintiff in § 1983 action against municipality need not show that municipality had explicitly stated rule or regulation; inference that policy existed may be drawn from circumstantial proof, such as evidence that municipality customarily failed to train its employees and displayed deliberate indifference to constitutional rights of those within its borders or that municipality repeatedly failed to make meaningful investigation into charges that police officers used excessive force in violation of civil rights. Powell v. Gardner, C.A.2 (N.Y.) 1989, 891 F.2d 1039. Civil Rights 1351(4); Civil Rights 1401

Municipal policy or custom sufficient to predicate municipal liability under this section may be inferred from continued inaction in face of a known history of widespread constitutional deprivations on part of city employees or, under quite narrow circumstances, from manifest propensity of a general, known course of employee conduct to cause constitutional deprivations to an identifiable group of persons having a special relationship to state. Milligan v. City of Newport News, C.A.4 (Va.) 1984, 743 F.2d 227. Civil Rights 1351(1)

Single act of city commission, in denying synagogue's application for special exception to allow operation of place of worship in single-family district, pursuant to zoning ordinance that was unconstitutionally vague, constituted municipal policy or practice sufficient to impose liability on city under §§ 1983 for violation of synagogue's right to free exercise of religion. Hollywood Community Synagogue, Inc. v. City of Hollywood, Fla., S.D.Fla.2006, 436 F.Supp.2d 1325. Civil Rights 1351(3)

In federal civil rights action against municipality, a municipal policy may be inferred from informal acts or omissions of supervisory municipal officials but mere assertion of municipal policy is inadequate to show such a policy and generally, a single incident by nonpolicy makers will not raise an inference of existence of a policy; policy or custom can be inferred from evidence that municipality so failed to train its employees as to display a deliberate indifference to the constitutional rights of those within its jurisdiction but plaintiff must do more than state that there was a failure to train. Merriman v. Town of Colonie, N.Y., N.D.N.Y.1996, 934 F.Supp. 501, affirmed 112 F.3d 504. Civil Rights 1401

Former city fire fighter's allegations, that he was subject to derogatory and ethnic slurs and anonymous threats on basis of his religion, and that such acts were "condoned, permitted, encouraged and/or ratified" by his supervisors and high officials in fire department, were sufficient to support inference that conduct complained of was part of official policy or custom so as to support § 1983 claim against city. Diem v. City and County of San Francisco, N.D.Cal.1988, 686 F.Supp. 806. Civil Rights 1405

755. Capacity, custom or usage

Suit under § 1983 against state official in her official capacity should be treated as suit against state, and because real party in interest in official-capacity suit is state and not named official; state's "policy or custom" must have played part in violation of federal law. Hafer v. Melo, U.S.Pa.1991, 112 S.Ct. 358, 502 U.S. 21, 116 L.Ed.2d 301. Civil Rights 1351(1)

Sheriff's deputy and assistant district attorney who were not acting pursuant to official custom or policy in arresting and charging father with rape of daughter, on what later proved to be fabricated complaint of daughter, could not be held liable in their official capacities in § 1983 action alleging constitutional torts. Donovan v. Briggs, W.D.N.Y.2003, 250 F.Supp.2d 242. Civil Rights 1358

City and public school officials, in their official capacities, were not liable to former student under § 1983 for governmental custom of failing to supervise its employees to prevent or stop sexual abuse of student; aside from

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two occasions, all sexual contact was alleged to have occurred off school property, no other students were alleged to have engaged in sexual conduct with teacher, there was no evidence of existence of any continuing, widespread, persistent pattern of sexual abuse by subordinates, and there was no evidence school committee showed deliberate indifference to sexual contact or manifested tacit authorization of such misconduct after notice that it was occurring. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Civil Rights 1352(2)

Liability could not be imposed on city, or its police chief and police officers, in their official capacities, under § 1983, absent showing by detainee that her injuries from being sprayed with mace by officer were result of unconstitutional policy or custom of city. Wallace v. City of Columbus, S.D.Ohio 2002, 2002 WL 31844688, Unreported. Civil Rights 1351(4); Civil Rights 1358

756. Number of incidents, custom or usage

Proof of a single instance of unconstitutional activity is not sufficient to impose civil rights liability on a city under the *Monell* rule, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker; otherwise, existence of the unconstitutional policy and its origin must be separately proved and where policy relied on is not itself unconstitutional considerably more proof than the single incident is necessary in every case to establish both the requisite fault on part of the municipality and the causal connection between the "policy" and the constitutional deprivation. (Per Justice Rehnquist with the Chief Justice and two Justices concurring and three Justices concurring in judgment.) City of Oklahoma City v. Tuttle, U.S.Okla.1985, 105 S.Ct. 2427, 471 U.S. 808, 85 L.Ed.2d 791, rehearing denied 106 S.Ct. 16, 473 U.S. 925, 87 L.Ed.2d 695. See, also, Lavoie v. Town of Hudson, D.N.H.1990, 740 F.Supp. 88; Anderson v. City of New York, S.D.N.Y.1987, 657 F.Supp. 1571. Civil Rights 1351(1)

Allegations of isolated incident are not sufficient to show existence of custom or policy such as would subject municipality to § 1983 liability. Fraire v. City of Arlington, C.A.5 (Tex.) 1992, 957 F.2d 1268, rehearing denied, certiorari denied 113 S.Ct. 462, 506 U.S. 973, 121 L.Ed.2d 371. Civil Rights 1351(1)

Generally, isolated incident of police misconduct by subordinate officers is insufficient to establish municipal policy or custom required to hold municipality vicariously liable under § 1983; by the same token a single deviation from written, official policy does not prove conflicting custom or usage. Wedemeier v. City of Ballwin, Mo., C.A.8 (Mo.) 1991, 931 F.2d 24. Civil Rights 1351(4)

Isolated misconduct of fire department's director of personnel and medical director in refusing to furnish retirement board of fireman's annuity and benefit fund with medical certificate that fire fighter contended was condition precedent to award of disability benefits was the type of random and unauthorized act which, even if deliberate, was not an act of their municipal employer. Schroeder v. City of Chicago, C.A.7 (Ill.) 1991, 927 F.2d 957. Municipal Corporations 747(3)

A single act by a municipality may give rise to civil liability under civil rights statute if it is shown that the officials of the municipality responsible for establishing the challenged policy made a calculated choice to follow the course of action deeded unconstitutional. Pachaly v. City of Lynchburg, C.A.4 (Va.) 1990, 897 F.2d 723. Civil Rights 1351(1)

Although an inference of an unconstitutional policy may not be taken from a single incident, a single incident may be enough to establish municipal liability under federal civil rights provision so long as action taken that caused the loss was pursuant to a policy of the municipality. Ruge v. City of Bellevue, C.A.8 (Neb.) 1989, 892 F.2d 738. Civil Rights 1351(1)

Plaintiff cannot prove existence of municipal policy or custom for purposes of civil rights action under § 1983

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based solely on occurrence of single incident of unconstitutional action by nonpolicymaking employee. Davis v. City of Ellensburg, C.A.9 (Wash.) 1989, 869 F.2d 1230. Civil Rights 1351(1)

Statements by publicly-employed physicians and nurse, as to how often city corrections officers had been referred to psychiatric hospital for evaluation, including physician's statement he had referred officers to hospital 30 times when he had been concerned about "dangerousness," because "[t]hat's what we do here," and "[i]t's generally what the doctors do," did not establish policy or custom of detaining correction officers without finding of dangerousness or with finding of dangerousness made on basis of criteria substantially below standards generally accepted in medical community, and, thus, physicians were not liable in their official capacities for due process violations under §§ 1983. Algarin v. New York City Dept. of Correction, S.D.N.Y.2006, 460 F.Supp.2d 469. Civil Rights 1359

An isolated incident or a meager history of isolated incidents is insufficient to prove the existence of an official policy or custom, as required for municipal liability under § 1983. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1351(1)

Evidence of a single incident cannot establish the existence of a policy or custom, for purposes of § 1983 claim against a municipality. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1351(1)

Handful of isolated and unrelated incidents, apart from female police officer's own experiences in attempting to transfer to canine unit of police department, was insufficient to establish liability of county under § 1983 on a municipal custom theory for any alleged discrimination in excluding woman from special units such as canine unit given that female officer was not able to tie the incidents to gender discrimination. Lawrence v. Metro Dade County, Fla., S.D.Fla.1994, 872 F.Supp. 957. Civil Rights 1351(5)

Actions of police officers in confining plaintiff, who was collecting petition signatures in front of public building, to area outlined by red line in front of building, provided no basis to impose § 1983 liability on municipality; even if officers gave plaintiffs incorrect understanding of when they could collect signatures, that did not qualify as practice so permanent and well settled as to constitute custom or usage with force of law. Tate v. Lau, D.Nev.1994, 865 F.Supp. 681. Civil Rights 1351(4)

Even assuming that social worker's alleged conduct in spreading malicious stories about parents and threatening to take children away from them was unconstitutional, county social services agency could not be held liable therefor, where parents failed to allege more than a single instance of activity or existence of notice of prior misbehavior. Rinderer v. Delaware County Children and Youth Services, E.D.Pa.1987, 703 F.Supp. 358. Civil Rights 1352(6)

Police officer, who was transferred to another unit, failed to establish that a city policy existed which "propelled" police officials to "punish" her after her mother lodged complaints on her behalf, and therefore city was not liable on *Monell* claims. Martinez v. City of New York, S.D.N.Y.2003, 2003 WL 2006619, Unreported, affirmed 82 Fed.Appx. 253, 2003 WL 22879401. Civil Rights 1351(5)

757. Pattern of conduct, custom or usage

Social Security disability claimant's failure to receive timely notice of administrative denial of benefits did not warrant equitable tolling of limitations period for filing civil action to challenge denial, where untimely notice was result of claimant's failure to notify Administration of change of address. Bess v. Barnhart, C.A.8 (Ark.) 2003, 337 F.3d 988. Social Security And Public Welfare 146

Municipal liability in § 1983 action for improper custom may not be predicated on isolated or sporadic incidents;

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rather, it must be founded upon practices of sufficient duration, frequency and consistency that conduct has become traditional method of carrying out policy. Trevino v. Gates, C.A.9 (Cal.) 1996, 99 F.3d 911, certiorari denied 117 S.Ct. 1249, 520 U.S. 1117, 137 L.Ed.2d 330. Civil Rights 1351(1)

To prove official governmental custom of failing to receive, investigate, and act upon complaints of sexual misconduct of school district's employees so as to render district liable under § 1983 to parents of female handicapped student who had been sexually abused by school van driver, parents had to show: existence of continuing, widespread, persistent pattern of unconstitutional misconduct by governmental entity's employees; deliberate indifference to or tacit authorization of such conduct by governmental entity's policymaking officials after notice to officials of that misconduct; and that plaintiff was injured by acts pursuant to governmental entity's custom, i.e., that custom was moving force behind constitutional violation. Larson by Larson v. Miller, C.A.8 (Neb.) 1996, 76 F.3d 1446. Civil Rights 1352(2)

Government policy or custom used to anchor municipal liability, under § 1983, for alleged constitutional violation by municipal employees need not be contained in explicitly adopted rule or regulation, rather, policy can be shown when practices are persistent and widespread, such that they could be so permanent and well settled as to constitute a custom or usage with the force of law. Dean v. New York City Transit Authority, E.D.N.Y.2004, 297 F.Supp.2d 549. Civil Rights 1351(1)

Municipal custom or usage may serve as a basis for the imposition of municipal liability under § 1983, and the existence of such a custom may be found in persistent and widespread practices of municipal officials which, although not authorized by written law, are so permanent and well-settled as to have the force of law. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1351(1)

Civil rights activists who brought § 1983 action against city, stemming from their arrests by police officers while attempting to film traffic stops, adequately alleged that city had pattern or practice of retaliating against those who criticized police activity, since their allegations referred to multiple retaliatory actions by officers, and thus they stated a claim for § 1983 municipal liability against the city. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1395(6)

One incident of unconstitutional conduct by a city employee cannot be a basis for finding an agency-wide custom, for purposes of imposition of municipal liability under § 1983. Davis v. City of New York, S.D.N.Y.2002, 228 F.Supp.2d 327, affirmed 75 Fed.Appx. 827, 2003 WL 22173046. Civil Rights 1351(1)

Plaintiff seeking to impose liability upon municipality under § 1983 must prove that constitutional harm suffered was result of municipal policy or custom; to establish such "policy or custom," plaintiff must allege specific pattern or series of incidents supporting general allegation of custom or policy, and alleging one specific incident in which plaintiff suffered deprivation will not suffice. Brown v. Costello, N.D.N.Y.1995, 905 F.Supp. 65, affirmed 101 F.3d 685. Civil Rights 1351(1)

Chicago transit authority's knowledge of prior incidence of rape of passenger by employee of contractor of authority was insufficient to establish "pattern of conduct or series of acts" which would establish custom or policy of inaction on part of authority or second contractor which would make them liable, under § 1983, for second contractor's employee's attempted rape of two female passengers. Thomas v. Cannon, N.D.Ill.1990, 751 F.Supp. 765. Civil Rights 1341; Civil Rights 1351(6)

Young black men adequately stated basis for holding city liable for incident in which police officers allegedly ordered them into squad car, drove them around, verbally abused them, and then dropped them off in neighborhood known to be hostile to blacks; allegations of failure to discipline officers involved in use of excessive force showed pattern of conduct on part of city. McLin By and Through Harvey v. City of Chicago, N.D.Ill.1990, 742

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42 U.S.C.A. § 1983

F.Supp. 994. Civil Rights 1395(5)

To establish municipal policy or custom sufficient for municipal liability under civil rights statute, plaintiff must allege specific pattern or series of incidents that support general allegation of custom or policy; alleging one specific incident in which plaintiff suffered deprivation will not suffice. Doe v. Bobbitt, N.D.Ill.1987, 665 F.Supp. 691. Civil Rights 1351(1)

Supervisory personnel may expose themselves to civil rights liability by knowing and acquiescing in unconstitutional conduct by subordinates, but such unconstitutional conduct, without actual knowledge of the specific wrong being committed, can only result in liability under Civil Rights Act of 1871 when there has been a pattern or practice of constitutional violations. Gann v. Schramm, D.C.Del.1985, 606 F.Supp. 1442. Civil Rights 1355

758. Official policy, custom or usage

Liability under § 1983 attaches where deprivation of right protected by the Constitution or by federal law is caused by an official policy, and official policy can be found in following forms: (1) policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by municipality's lawmaking officers or by official to whom the lawmakers have delegated policy-making authority, or (2) persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute custom that fairly represents municipal policy. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1351(1)

County is liable under § 1983 only when county's official policy causes constitutional violation. Grech v. Clayton County, Ga., C.A.11 (Ga.) 2003, 335 F.3d 1326. Civil Rights 1351(1)

Plaintiff may establish that county's official policy caused constitutional violation, as required to hold county liable under § 1983, by identifying either (1) officially promulgated county policy, or (2) unofficial custom or practice of county shown through repeated acts of final policymaker for county. Grech v. Clayton County, Ga., C.A.11 (Ga.) 2003, 335 F.3d 1326. Civil Rights 1351(1)

Plaintiff alleging that county's official policy caused constitutional violation, as required to hold county liable under § 1983, (1) must show that county has authority and responsibility over governmental function in issue, and (2) must identify those officials who speak with final policymaking authority for county concerning act alleged to have caused particular constitutional violation in issue. Grech v. Clayton County, Ga., C.A.11 (Ga.) 2003, 335 F.3d 1326. Civil Rights 1351(1)

High school principal's decision to deny student permission to sing religious song at graduation ceremony did not rise to the level of official policy, as required to subject school board to municipal liability in student's §§ 1983 action, absent evidence that prohibition of student-presented religious songs had happened at any previous time or that prohibitions of such songs was so pervasive throughout the school district as to constituted custom or usage. Ashby v. Isle of Wight County School Bd., E.D.Va.2004, 354 F.Supp.2d 616. Civil Rights 1351(2)

An "official policy" of a municipality, for purpose of imputing municipal liability under § 1983, may include: an express oral or written policy, decisions of a person with final policymaking authority, an omission, such as a failure to properly train law enforcement officers, that manifests deliberate indifference to the rights of citizens, or a practice that is so persistent and widespread as to constitute a custom or usage with the force of law. Cole v. Summey, M.D.N.C.2004, 329 F.Supp.2d 591. Civil Rights 1351(1); Civil Rights 1352(4)

For purposes of § 1983, a "policy" is a deliberate choice to follow a course among other alternatives. Hedgepeth v.

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Washington Metropolitan Area Transit, D.D.C.2003, 284 F.Supp.2d 145, motion denied 2004 WL 595070, affirmed 386 F.3d 1148, 363 U.S.App.D.C. 260. Civil Rights 1351(1)

For purposes of civil rights statute, "official policy" consists of guidelines constraining free exercise of discretion by subordinate government agents. Moenius v. Stevens, D.Md.1988, 688 F.Supp. 1054. Civil Rights 1351(1)

759. Omissions or inaction, custom or usage

Official policy rendering local government liable under § 1983 for deprivation of rights for injury caused by policy or custom made by law makers may be established by omission of supervisory officials as well as from their affirmative acts. Battista v. Cannon, M.D.Fla.1996, 934 F.Supp. 400. Civil Rights 1351(1)

760. Authority to make policy, custom or usage--Generally

Deputy executive director and manager of public transit authority who were immediately responsible for placement of employee on leave of absence and his eventual termination were not decision makers with final authority to establish public transit authority policy, and therefore public transit authority was not liable for actions of such officials in employee's subsequent § 1983 action which alleged he was not allowed to return to work in retaliation for exercising his free speech rights, where deputy executive director and manager reported directly or indirectly to the public transit authority's executive director, and there was no evidence that the public transit authority board had conferred policymaking authority on such officials. Radic v. Chicago Transit Authority, C.A.7 (Ill.) 1996, 73 F.3d 159, certiorari denied 116 S.Ct. 2505, 517 U.S. 1247, 135 L.Ed.2d 195. Civil Rights 1351(5)

Codirectors of four-county drug enforcement task force did not possess final policymaking authority with regard to investigation and arrest of individual, for purposes of her § 1983 claim for unlawful arrest; although they held positions of authority within their respective law enforcement departments and as codirectors of task force, nothing in record suggested that either was vested with policymaking authority. Eversole v. Steele, C.A.7 (Ind.) 1995, 59 F.3d 710, rehearing denied. Civil Rights 1351(4)

For purposes of municipality's liability under § 1983 for official's actions, officials can derive their authority to make final policy from customs or legislative enactments, or such authority can be delegated to them by other officials who have final policy-making authority. Feliciano v. City of Cleveland, C.A.6 (Ohio) 1993, 988 F.2d 649, certiorari denied 114 S.Ct. 90, 510 U.S. 826, 126 L.Ed.2d 57. Civil Rights 1351(1)

In § 1983 proceeding, municipality is liable for acts of its "final policy-making authority" and may also be liable for actions of employee who is not final policy-making authority if widespread practice exists to end that there is "custom or usage with the force of law" or final policy maker ratifies subordinate's recommendation, and basis for it, thus rendering final decision chargeable to municipality. Butcher v. City of McAlester, C.A.10 (Okla.) 1992, 956 F.2d 973. Civil Rights 1351(1)

Only conduct of municipal officials whose decisions constrain discretion of subordinates constitutes acts of municipality for purposes of municipal liability under § 1983; however, it is not necessary that responsible decision maker be specifically identified by plaintiff's evidence to establish municipal liability; practices so permanent and well settled as to have the force of law are ascribable to municipal decision makers. Bielevicz v. Dubinon, C.A.3 (Pa.) 1990, 915 F.2d 845. Civil Rights 1345

Where particular course of action is authorized by municipality's authorized decision makers, it represents policy readily attributed to governmental entity, and in § 1983 case, there is no need to resort to proof of policy's multiple applications to attribute its existence to municipality. Ross v. U.S., C.A.7 (Ill.) 1990, 910 F.2d 1422, rehearing denied, on remand 764 F.Supp. 1308. Civil Rights 1351(1)

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If employee inflicts constitutional injury when executing government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, government as an entity is responsible under § 1983. Flanagan v. Munger, C.A.10 (Colo.) 1989, 890 F.2d 1557. Civil Rights 1351(1)

County sheriff, as agent of state, could not set policies regarding use or force on county jail inmates that could provide jurisdictional basis for inmates' § 1983 suit against county for deprivation of constitutional rights. Hammond v. Gordon County, N.D.Ga.2002, 316 F.Supp.2d 1262. Civil Rights 1351(4)

An official represents government policy, for purposes of section 1983, if he or she has final policy making authority, and whether an official is a final policymaker is a question of state law to be determined by the trial court. Caruso v. City of Cocoa, Florida, M.D.Fla.2003, 260 F.Supp.2d 1191. Civil Rights 1351(1); Civil Rights 1426; Federal Courts 411

In general, final policy making authority is lacking, for purposes of section 1983, when an official's decisions are subject to meaningful administrative review. Caruso v. City of Cocoa, Florida, M.D.Fla.2003, 260 F.Supp.2d 1191 . Civil Rights 1351(1)

Regional security manager and a cartage supervisor for freight company did not have final policymaking authority for purposes of imposing §§ 1983 liability on company for acts of those employees in connection with a controlled pickup of drug shipment in alleged violation of arrestee's constitutional rights; both employees were subject to review by their superiors and there was no evidence that there was a custom of not reviewing the decisions of those employee as to controlled pickups. Mejia v. City of New York, E.D.N.Y.2002, 228 F.Supp.2d 234. Civil Rights 1339

"Custom" of local government body, sufficient to impose liability on body under § 1983 for violation of federally protected rights, is some action or position taken by someone with final policy making authority in that area of the local government's business. Ghassomians v. Ashland Independent School Dist., E.D.Ky.1998, 55 F.Supp.2d 675. Civil Rights 1351(1)

City can be held liable for § 1983 civil rights violations if final decision makers participate in establishing policy which directly or indirectly results in constitutional violation, even though municipality is not normally responsible for unauthorized actions of lower level employees. Brown v. City of Margate, S.D.Fla.1993, 842 F.Supp. 515, affirmed 56 F.3d 1390. Civil Rights 1351(1)

For purposes of civil rights claim against municipality, custom is not precondition to municipality's liability, and policy may be made by decision of municipal employee with authority to act. Santella v. Grishaber, N.D.Ill.1987, 654 F.Supp. 428. Civil Rights 1351(1)

761. ---- Acquiescence or inaction by final policy maker, authority to make policy, custom or usage

Evidence was sufficient for reasonable jury to have concluded that public transit authority board acquiesced in practice or custom of terminating white per diem professional independent contractors, so as to support transit authority's § 1983 liability under reverse discrimination theory, even though general counsel who had taken allegedly discriminatory actions lacked policy-making authority, as transit authority board made final decisions regarding hiring and firing of per diem independent contractors, board was aware of inordinate number of reverse discrimination grievances and did not limit general counsel's authority in personnel matters. McNabola v. Chicago Transit Authority, C.A.7 (Ill.) 1993, 10 F.3d 501. Civil Rights 1421

Single isolated incident of wrongdoing by nonpolicy maker is generally insufficient to establish municipal acquiescence in unconstitutional conduct, so as to support imposition of municipal liability under § 1983. Cornfield by Lewis v. Consolidated High School Dist. No. 230, C.A.7 (Ill.) 1993, 991 F.2d 1316. Civil Rights 1352(1)

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Police Commissioner, who was policy maker for Police Department, did not authorize or acquiesce in conduct which constituted sexual discrimination; thus, city could not be held liable for that discrimination under § 1983. Andrews v. City of Philadelphia, C.A.3 (Pa.) 1990, 895 F.2d 1469. Civil Rights 1351(5)

762. ---- Agreements concerning, authority to make policy, custom or usage

Where city and county had agreed that city would operate jail facility owned by county, duty to manage and operate facility belonged to city, and custom or policy which it chose to implement did not become that of the county for purposes of holding county liable for violation of inmates' civil rights, where city had separate statutory authority to house prisoners. Deaton v. Montgomery County, Ohio, C.A.6 (Ohio) 1993, 989 F.2d 885. Civil Rights 1351(4); Prisons 1

763. ---- Delegation of authority, authority to make policy, custom or usage

County Sheriff, as part of a standing policy to request legal advice from district attorney, did not delegate his authority over service and execution of court orders to assistant district attorney, so as to make assistant district attorney's advice to deputy sheriff that deputy could seize mother's children while executing protective order official county policy, for purposes of mother's civil rights claim; although sheriff and his deputies usually followed advice of district attorney, there was no evidence that sheriff required deputies to follow that advice. Hollingsworth v. Hill, C.A.10 (Okla.) 1997, 110 F.3d 733. Civil Rights 1351(6)

That independent school district's board of trustees may have delegated to superintendent final decision in cases of protested individual employee transfers did not mean that it had delegated to superintendent status of policymaker, much less final policymaker, whose actions could form basis for imposing § 1983 liability upon district. Jett v. Dallas Independent School Dist., C.A.5 (Tex.) 1993, 7 F.3d 1241, rehearing denied. Civil Rights 1351(5)

Delegation by local governmental entity of decision making to another official arises when the subordinate's decision is couched as a policy statement expressly approved by the policymaking entity or when the decision manifests a customary usage of which the entity must have been aware, and entity may be held liable for violation of civil rights by the official in such circumstances. Ware v. Unified School Dist. No. 492, Butler County, State of Kan., C.A.10 (Kan.) 1990, 902 F.2d 815. Civil Rights 1351(1)

Very fine line exists between delegating final policymaking authority to official, for which municipality may be held liable, and entrusting discretionary authority to official, for which no municipal liability attaches, which distinction lies in amount of authority retained by authorized policymakers; incomplete delegation of authority, i.e., right of review is retained, will not result in municipal liability, whereas absolute delegation of authority may result in municipal liability. (Per Floyd R. Gibson, Senior Circuit Judge, with three Circuit Judges and the Chief Judge concurring and one Circuit Judge concurring in a separate opinion.) Williams v. Butler, C.A.8 1988, 863 F.2d 1398, certiorari denied 109 S.Ct. 3215, 492 U.S. 906, 106 L.Ed.2d 565. Civil Rights 1351(1)

Firing of police officer who exercised his rights under U.S.C.A. Const.Amend. 1 was an official act for which city was liable under this section, where city had delegated to city manager ultimate responsibility for personnel decisions so that city manager's actions did not have to be approved by city council and represented "official city policy." McKinley v. City of Eloy, C.A.9 (Ariz.) 1983, 705 F.2d 1110. Civil Rights 1351(5)

If school board approves superintendent's decision to transfer outspoken teacher, knowing of superintendent's retaliatory motive for doing so, governmental entity itself may be liable under §§ 1983; but if school board lacks such awareness of basis for decision, it has not ratified illegality and so district itself is not liable. Sherrod v. Palm Beach County School Dist., S.D.Fla.2006, 424 F.Supp.2d 1341. Civil Rights 1349

Genuine issue of material fact as to whether reinstatement of African-American nursing instructor as chairperson of

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nursing department was appropriate remedy for alleged retaliation in violation of § 1981 precluded summary judgment for board of trustees of state technical college on grounds of laches arising from hiring of innocent replacement. Smith v. Paladino, W.D.Ark.2004, 317 F.Supp.2d 884. Federal Civil Procedure 2497.1

African-American nursing instructor's allegation that board of trustees of state technical college delegated official policy-making authority to provost to remove department chairpersons was sufficient to state claim that racial and retaliatory animus that allegedly motivated provost's demotion of instructor from position as chairperson of nursing department resulted from "policy or custom" of board, as required to seek reinstatement from individual board members, in their official capacities, in §§ 1983 action alleging retaliation in violation of § 1981. Smith v. Paladino, W.D.Ark.2004, 317 F.Supp.2d 884. Civil Rights 1359

Mere failure to investigate the basis of a subordinate's discretionary decisions does not amount to a delegation of policymaking authority for purposes of imposition of municipal liability under § 1983, especially where the wrongfulness of the subordinate's decision arises from a retaliatory motive or other unstated rationale. Davis v. City of New York, S.D.N.Y.2002, 228 F.Supp.2d 327, affirmed 75 Fed.Appx. 827, 2003 WL 22173046. Civil Rights 1351(1)

Since county auditor had final authority on personnel decisions in auditor's office, county council provided funds with which auditor hired and paid his employees, and county delegated and vested final authority and discretion on actual personnel choices to auditor, his decisions and acts, including the termination of plaintiff from her position as supervisor of branch of county auditor's office for political reasons, had to be viewed as official acts of county, and thus auditor in his official capacity in county was liable for plaintiff's deprivation of a constitutionally protected interest. DeLaCruz v. Pruitt, N.D.Ind.1984, 590 F.Supp. 1296. Civil Rights 1351(5)

764. ---- Number of decisions by final policy makers, authority to make policy, custom or usage

Municipal liability may be imposed under 42 U.S.C.A. § 1983 for a single decision by municipal policymakers under appropriate circumstances. Pembaur v. City of Cincinnati, U.S.Ohio 1986, 106 S.Ct. 1292, 475 U.S. 469, 89 L.Ed.2d 452, on remand 792 F.2d 57. Civil Rights 1351(1)

Municipal liability under § 1983 may be premised upon single illegal act by municipal officer only when challenged act may fairly be said to represent official policy, such as when that municipal officer possesses final policymaking authority over relevant subject matter. Morro v. City of Birmingham, C.A.11 (Ala.) 1997, 117 F.3d 508, rehearing and suggestion for rehearing en banc denied 127 F.3d 42, certiorari denied 118 S.Ct. 1299, 523 U.S. 1020, 140 L.Ed.2d 465. Civil Rights 1351(1)

Local governmental entities are only liable under § 1983 for acts of local officials pursuant to official government policy; there must have been execution of government policy either by lawmaker or by person whose edicts or acts may fairly be said to represent official policy, and single decision by local official is official policy only when official has final policy making authority under state law. Guidry v. Broussard, C.A.5 (La.) 1990, 897 F.2d 181, rehearing denied 902 F.2d 955. Civil Rights 1351(1)

Where action is directed by those who establish governmental policy, municipality is equally responsible under § 1983 whether that action is to be taken only once or to be taken repeatedly. Wagner v. City of Memphis, W.D.Tenn.1997, 971 F.Supp. 308. Civil Rights 1351(1)

Single incident unaccompanied by supporting history will likely be inadequate basis for inferring custom or usage by city that can be basis for § 1983 liability on part of city, unless actor or actors involved have been given official policy-making authority. Boone v. City of Burleson, N.D.Tex.1997, 961 F.Supp. 156. Civil Rights 1351(1)

Single act of governmental official or employee does not give rise to municipal liability for alleged civil rights

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violations unless act was taken pursuant to or caused by official policy or unless official or employee was one who possessed final authority to establish municipal policy with respect to conduct at issue. Simpkins v. Bellevue Hosp., S.D.N.Y.1993, 832 F.Supp. 69. Civil Rights 1351(1)

Municipal liability under § 1983 may attach to single decision of municipal officer only when decision maker possesses final authority to establish municipal policy with respect to action ordered. Dawes v. Pellechia, E.D.N.Y.1988, 688 F.Supp. 842. Civil Rights 1351(1)

765. ---- Ratification by final policy maker, authority to make policy, custom or usage

City council members' vote to indemnify individual police officers for punitive damage judgments entered against them in excessive force case did not amount to ratification of officers' action of shooting robbery suspect, and thus city was not subject to municipal liability in § 1983 action brought by daughter of suspect on basis that it ratified officers' actions. Trevino v. Gates, C.A.9 (Cal.) 1996, 99 F.3d 911, certiorari denied 117 S.Ct. 1249, 520 U.S. 1117, 137 L.Ed.2d 330. Civil Rights 1348

City director of public safety did not, as final policymaker, ratify actions of city chief of police who allegedly unconstitutionally tested city police academy cadets for drugs so as to render city liable to cadets under § 1983, despite facts that chief informed director of his intention to drug test cadets and that director fired cadets based upon results of drug test; there was no showing that director or any other official expressly ratified decision. Feliciano v. City of Cleveland, C.A.6 (Ohio) 1993, 988 F.2d 649, certiorari denied 114 S.Ct. 90, 510 U.S. 826, 126 L.Ed.2d 57. Civil Rights 1351(5)

Failure of prison guards' supervisors to take any remedial or disciplinary action following inmate's stabbing by another inmate did not ratify guards' failure to prevent stabbing or conditions leading to stabbing, so as to permit supervisors to be held liable in civil rights action; prisons' internal affairs division investigated stabbing and prepared incident report, which supervisor submitted to district attorney and disciplinary board. Walker v. Norris, C.A.6 (Tenn.) 1990, 917 F.2d 1449, rehearing denied. Civil Rights 1358

City was not liable to city police officer who was terminated for exercising his First Amendment rights, where city manager who was official policymaker whose actions could bind city did not violate officer's constitutional rights when he decided to terminate officer, although police chief who recommended firing of officer was liable; chief was not official policymaker, and manager did not ratify chief's unlawful decision. Wulf v. City of Wichita, C.A.10 (Kan.) 1989, 883 F.2d 842, rehearing denied. Civil Rights 1351(5)

Even though county board of supervisors delegated responsibility for acquisition of rights-of-way to subordinates, the board ratified misconduct of the subordinates with respect to establishment of roads on Indian land allotment, giving rise to county's liability under civil rights statute, where the board accepted and approved documents obtained by right-of-way agent without ever questioning agent as to their propriety and even approved an improper deed several years after it incorporated road into the county system. Hammond v. County of Madera, C.A.9 (Cal.) 1988, 859 F.2d 797. Civil Rights 1347

School board's vote to discharge teacher did not ratify superintendent's retaliation against teacher for engaging in protected speech, and thus school district was not liable under §§ 1983 for superintendent's violation of teacher's First Amendment rights under ratification theory, where there was no evidence that any member of district board was aware of superintendent's retaliatory motive. Sherrod v. Palm Beach County School Dist., S.D.Fla.2006, 424 F.Supp.2d 1341. Civil Rights 1349

School board did not ratify high school principal's decision to exclude student from singing a song at graduation that had religious themes but to allow another student to give a speech with alleged religious themes, as required to subject school board to liability in student's §§ 1983 claim for equal protection violations, absent evidence that any

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member of the board was even aware of the contents of the other student's speech, or any other student presentation, prior to the actual delivery of that speech at the graduation ceremony. U.S.C.A. Const.Amend. 5; Ashby v. Isle of Wight County School Bd., E.D.Va.2004, 354 F.Supp.2d 616. Civil Rights 1351(2)

Police chief did not ratify alleged constitutional violations by detective, who allegedly deliberately fabricated evidence of sexual abuse by means of excessive coercion of children during interviews, so as to create municipal liability under §§ 1983, absent evidence that he had actual or constructive knowledge of violations. Doggett v. Perez, E.D.Wash.2004, 348 F.Supp.2d 1179. Civil Rights 1351(4)

766. ---- Reviewability of decisions, authority to make policy, custom or usage

Municipal official does not have final policymaking authority over particular subject matter, such that his decisions could be basis for municipal liability under § 1983, when that official's decisions are subject to meaningful administrative review. Morro v. City of Birmingham, C.A.11 (Ala.) 1997, 117 F.3d 508, rehearing and suggestion for rehearing en banc denied 127 F.3d 42, certiorari denied 118 S.Ct. 1299, 523 U.S. 1020, 140 L.Ed.2d 465. Civil Rights 1351(1)

City manager's termination of unclassified employee for retaliatory reasons subjected city to § 1983 liability, where city's charter eliminated authority of any official or body to review city manager's decision. Martinez v. City of Opa-Locka, Fla., C.A.11 (Fla.) 1992, 971 F.2d 708. Civil Rights 1349

Existence of meaningful review by city counsel indicated that city officials who suspended employee were not, in that respect, final policymakers, as required for city to be liable under § 1983 for their single decision. Worsham v. City of Pasadena, C.A.5 (Tex.) 1989, 881 F.2d 1336. Civil Rights 1351(5)

County's department heads did not exercise final policymaking authority in area of personnel matters, and thus county was not subject to liability under § 1983 for department heads' allegedly discriminatory failure to promote African-American employee, where department heads did not have any final authority to establish hiring policy, county and collective bargaining agreement's (CBA) grievance process allowed employee to challenge their decisions, and county retained right to review hiring decisions. Stewart v. Board of Com'rs for Shawnee County, Kan., D.Kan.2004, 320 F.Supp.2d 1143. Civil Rights 1351(5)

Mayor was not final policy-maker for city in connection with personnel matters and, thus, city could not be held liable based solely on mayor's actions in discharging fire chief; all of mayor's employment decisions were subject to review by entire city council. Payung v. Williamson, M.D.Ga.1990, 747 F.Supp. 705. Civil Rights 1351(5)

767. Official policy makers, custom or usage--Generally

Local government is liable under § 1983 for its policies that cause constitutional torts; these policies may be set by government's lawmakers, or by those whose edicts or acts may fairly be said to represent official policy. McMillian v. Monroe County, Ala., U.S.Ala.1997, 117 S.Ct. 1734, 520 U.S. 781, 138 L.Ed.2d 1. Civil Rights 1351(1)

For purposes of imposing § 1983 liability upon municipality, challenged action must have been taken pursuant to policy adopted by official or officials responsible under state law for making policy in that area of city's business. (Per Justice O'Connor with the Chief Justice and two Justices concurring and three Justices concurring in the judgment.) City of St. Louis v. Praprotnik, U.S.Mo.1988, 108 S.Ct. 915, 485 U.S. 112, 99 L.Ed.2d 107, on remand 879 F.2d 1573, rehearing denied. Civil Rights 1351(1)

Identification of policymaking officials, for purposes of § 1983 analysis, is question of state law. Hyland v. Wonder, C.A.9 (Cal.) 1997, 117 F.3d 405, opinion amended on denial of rehearing 127 F.3d 1135, certiorari

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denied 118 S.Ct. 1166, 522 U.S. 1148, 140 L.Ed.2d 177. Federal Courts 411

For purposes of municipal liability under § 1983, alleged policymaker must have final policymaking authority with respect to action alleged to have caused particular constitutional or statutory violation; official or entity may be final policymaker with respect to some actions but not others, more than one official or body may be final policymaker with respect to particular action, and final policymaking authority may be shared. McMillian v. Johnson, C.A.11 (Ala.) 1996, 88 F.3d 1573, certiorari granted 117 S.Ct. 554, 519 U.S. 1025, 136 L.Ed.2d 436, affirmed 117 S.Ct. 1734, 520 U.S. 781, 138 L.Ed.2d 1. Civil Rights 1351(1)

Imposition of municipal liability based on a policy requires a decision by a final policymaker, not a "principal" one. Church v. City of Huntsville, C.A.11 (Ala.) 1994, 30 F.3d 1332. Civil Rights 1351(1)

To succeed on theory that governmental official has caused constitutional infringement because of establishment of unconstitutional policy, plaintiff must demonstrate that the official against whom liability is asserted has the power, vesting either formally or as a practical matter, to formulate that policy and has exercised that policy-making authority to generate improper practices. Haynesworth v. Miller, C.A.D.C.1987, 820 F.2d 1245, 261 U.S.App.D.C. 66. United States 50.20

Genuine issue of fact, as to whether allegedly unconstitutional termination of public employee could be attributed to person or entity with municipal decisionmaking authority, precluded summary judgment in §§ 1983 case on ground that termination was not product of municipal custom or policy as established by conduct of decisionmaker. Waters v. City of Chicago, N.D.Ill.2006, 416 F.Supp.2d 628. Federal Civil Procedure 2497.1

A "policymaker," for purpose of § 1983 municipal liability, is an individual who is held responsible, through actual or constructive knowledge, for enforcing a policy that caused plaintiff's injuries. Dickerson v. City of Denton, E.D.Tex.2004, 298 F.Supp.2d 537. Civil Rights 1351(1)

For the purpose of distinguishing between the acts of employees and acts of the municipality to support liability for constitutional violations resulting from an official policy or custom under § 1983, a policy is made when a decision maker who possesses final authority issues an official proclamation or edict. American Marine Rail NJ, LLC v. City of Bayonne, D.N.J.2003, 289 F.Supp.2d 569. Civil Rights 1351(1)

Individuals who have municipal policymaking authority, so as to subject municipality to § 1983 liability, can be identified by their receipt of such authority through express legislative grant or through their delegation of policymaking authority from those to whom power has been expressly granted. Soto v. Schembri, S.D.N.Y.1997, 960 F.Supp. 751. Civil Rights 1351(1)

Acts of single official with final policy-making authority can be sufficient to establish municipal liability under § 1983. Franklin v. District of Columbia, D.D.C.1997, 960 F.Supp. 394, supplemented 1997 WL 403418, vacated in part 163 F.3d 625, 333 U.S.App.D.C. 334, rehearing denied, rehearing and rehearing en banc denied 168 F.3d 1360, 335 U.S.App.D.C. 60. Civil Rights 1351(1)

To be "final policymaker" whose act can subject municipality to liability under § 1983, government official must have final authority to establish municipal policy with respect to action ordered. Chapman v. Village of Homewood, N.D.Ill.1997, 960 F.Supp. 127. Civil Rights 1351(1)

Assuming, arguendo, that former city employee's allegations against city receiver and other city officials were true, employee failed to show that there was policy or custom that originated with city officials, a failure which was fatal to his § 1983 claim against city; even if city officials were shown to have been part of alleged retaliation against employee, they would have been powerless to act since their authority to do so had been taken by legislature and delegated to city receiver through Receivership Act. Canney v. City of Chelsea, D.Mass.1996, 925 F.Supp. 58.

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42 U.S.C.A. § 1983

Civil Rights 1351(5)

In order to impose § 1983 liability on municipality, it is not enough to allege and prove that constitutional violation represents policy for which local government entity is responsible; policy or custom must be deliberate or conscious choice by municipality's final policy-making official. Tate v. Lau, D.Nev.1994, 865 F.Supp. 681. Civil Rights 1351(1)

Municipal liability may result in civil rights action for single act of high-ranking governmental official where official is policy maker for government. Washington v. Lake County, Ill., N.D.Ill.1989, 717 F.Supp. 1310. Civil Rights 1351(1)

Policy or custom may be attributed to municipality for purposes of imposing liability under § 1983 if it is created or ratified by official of such rank that he or she could be said to be acting on behalf of municipality. Easterling v. City of Glennville, S.D.Ga.1986, 694 F.Supp. 911. Civil Rights 1351(1)

City or other governmental entity may be held accountable under § 1983 for deprivations of federal rights only if alleged constitutional deprivation was result of municipal custom or policy, or took place pursuant to instructions of final or authorized decision maker. In re Scott County Master Docket, D.Minn.1987, 672 F.Supp. 1152, affirmed 868 F.2d 1017. Civil Rights 1351(1)

768. ---- Attorneys, official policy makers, custom or usage

In ordering deputy sheriffs to enter physician's clinic to serve capiases on third parties in an investigation of alleged welfare fraud, county prosecutor was acting as final decision maker for county; therefore, county could be held liable under 42 U.S.C.A. § 1983 for alleged violation of physician's Fourth Amendment [U.S.C.A. Const.Amend. 4] rights. Pembaur v. City of Cincinnati, U.S.Ohio 1986, 106 S.Ct. 1292, 475 U.S. 469, 89 L.Ed.2d 452, on remand 792 F.2d 57. Civil Rights 1348

District attorney qualified as "municipal policymaker," and any deliberate indifference by whom to plaintiff's constitutional rights might render municipality liable under § 1983. Walker v. City of New York, C.A.2 (N.Y.) 1992, 974 F.2d 293, certiorari denied 113 S.Ct. 1387, 507 U.S. 961, 122 L.Ed.2d 762, certiorari denied 113 S.Ct. 1412, 507 U.S. 972, 122 L.Ed.2d 784. Civil Rights 1351(4)

Acts of county district attorney in prosecuting sexual assault case as representative of state could not fairly be said to represent official policy of county, and thus there was no local custom or policy to form basis for holding county liable for alleged unconstitutional bias of prosecutors. Michels v. Greenwood Lake Police Dept., S.D.N.Y.2005, 387 F.Supp.2d 361. Civil Rights 1351(4)

Deputy county attorney was "authorized decisionmaker" in federal civil rights claim for matters involving child abuse interview where he was attorney responsible for child abuse matters in county attorney's office and office was specifically authorized by statute to represent state in proceedings involving rights and interests of juveniles. J.B. v. Washington County, D.Utah 1995, 905 F.Supp. 979, affirmed 127 F.3d 919. Civil Rights 1351(4)

Assistant county district attorneys, even if they were municipal policymakers, were subordinates to county district attorney and their decisions to seek criminal indictment against city police officers arising out of search and to proceed with grand jury presentation in particular fashion were individual exercises of judgment and did not reflect municipal policy so as to preclude liability against assistant district attorneys in their official capacities under § 1983. Feerick v. Sudolnik, S.D.N.Y.1993, 816 F.Supp. 879, affirmed 2 F.3d 403. Civil Rights 1351(4)

769. ---- Cities, official policy makers, custom or usage

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42 U.S.C.A. § 1983

Police officer stated cause of action under § 1983 against city, based on respondeat superior liability for alleged acts of city manager and police chief of suspending him in violation of his free speech rights for engaging in secondary employment without permission; officer alleged that city delegated authority to chief and city manager to formulate employment policies, that acts complained of represented official policy, and that chief's decision to uphold denial of permission was final decision. Edwards v. City of Goldsboro, C.A.4 (N.C.) 1999, 178 F.3d 231. Civil Rights 1395(8)

Where plaintiff in federal civil rights action against city alleges that city's policy is itself unconstitutional denial of substantive due process, liability against city is sought not derivatively on basis of unconstitutional conduct by individual officer, but directly on basis of unconstitutional nature of city's policy itself. Williams v. City and County of Denver, C.A.10 (Colo.) 1996, 99 F.3d 1009, rehearing granted, opinion vacated 140 F.3d 855, on rehearing 153 F.3d 730. Civil Rights 1351(1)

Even assuming that crime victim's "state-created danger" theory raised cognizable constitutional claim against city under § 1983, victim failed to allege facts implicating city itself, as required to impose municipal liability for claimed substantive due process violation, absent allegation of causal link between city policy or custom and alleged state-created danger; victim alleged that police officers increased threat to her life through their actions and inactions after informant notified them that he had been solicited to murder her, but she did not allege that increased danger resulted from city's policies. Piotrowski v. City of Houston, C.A.5 (Tex.) 1995, 51 F.3d 512. Civil Rights 1395(5)

City policy "causes" constitutional injury, for purposes of determining city's liability under § 1983, where it is moving force behind constitutional violation or where city itself is wrongdoer. Chew v. Gates, C.A.9 (Cal.) 1994, 27 F.3d 1432, certiorari denied 115 S.Ct. 1097, 513 U.S. 1148, 130 L.Ed.2d 1065. Civil Rights 1351(1)

City could not be liable under §§ 1983 for police chief's decisions to hire and retain police officer, who allegedly used excessive force against arrestee in violation of the Fourth Amendment, where any decisions made by city with respect to the hiring and discipline of its police officers were vested with city council, so that chief's decisions were subject to meaningful administrative review. Reed v. City of Lavonia, M.D.Ga.2005, 390 F.Supp.2d 1347. Civil Rights 1351(4)

A city may be held liable under § 1983 for violation of the First Amendment if the acts in question were undertaken pursuant to official policy or custom. Telemundo of Los Angeles v. City of Los Angeles, C.D.Cal.2003, 283 F.Supp.2d 1095. Civil Rights 1351(1)

Plaintiff seeking to hold city liable under § 1983 for acts of its employees can prove the existence of a municipal policy or custom with proof that: (1) a municipal official with final policymaking authority directly committed or commanded the constitutional violation; (2) a policy maker indirectly caused the misconduct of a subordinate municipal employee by acquiescing in a longstanding practice or custom which may fairly be said to represent official policy; or (3) a municipal policymaker failed to adequately train their subordinates, if such failure amounts to "deliberate indifference" to the rights of the individuals who interact with the municipal employees. Hennessy v. City of Long Beach, E.D.N.Y.2003, 258 F.Supp.2d 200. Civil Rights 1351(1); Civil Rights 1352(1)

For purposes of a § 1983 action, the existence of a municipal policy or custom may be shown where the allegedly unconstitutional action implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by the municipality's officers, by persistent and widespread constitutional violations so pervasive that acquiescence of policy makers may be presumed, by circumstantial proof, such as evidence that the municipality's failure to train its employees displayed a deliberate indifference to constitutional rights, or by actions taken by persons whose activities reflect official policy. Maneely v. City of Newburgh, S.D.N.Y.2003, 256 F.Supp.2d 204. Civil Rights 1351(1); Civil Rights 1352(1)

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Developers who paid bribes to city officials for permits and approval could not maintain federal civil rights claims against city as there was no direct causal link between alleged municipal policy of demanding bribes and alleged constitutional violation; any substantive or procedural deprivations were fault of developers as once bribery payment was made, developers became causal link and essentially waived any further right to protest using federal civil rights statute. Roma Const. Co., Inc. v. aRusso, D.R.I.1995, 906 F.Supp. 78, reversed 96 F.3d 566, on remand 1998 WL 156708. Civil Rights 1351(3)

City could not be held liable under § 1983 for constitutional violations resulting from sexual abuse of child while she was in foster care, absent showing by child as to what person, group of people, or official office was responsible for alleged custom, policy, or practice of failing to adequately review social workers' reports. Wendy H. By and Through Smith v. City of Philadelphia, E.D.Pa.1994, 849 F.Supp. 367. Civil Rights 1351(6)

City could not be liable under § 1983 as official policymaker responsible for approving or condoning actions of police officers who allegedly beat plaintiff, even if failure of police report to identify officers in connection with beating supported contention that official policy of racial discrimination existed; Missouri statute indicated that neither city nor its agents had authority to make official policy concerning actions of board of police commissioners or individual police officers. Crigler v. City of St. Louis, Mo., E.D.Mo.1991, 767 F.Supp. 197. Civil Rights 1351(4)

770. ---- City councils, official policy makers, custom or usage

City and city council member's alleged denial of equal access to television broadcast corporation seeking to broadcast official ceremony was state action undertaken pursuant to official policy or custom, as would support corporation's municipal liability claim under § 1983 against city, alleging that city violated its First Amendment free speech rights, where city had longstanding practice of sponsoring ceremony and partnering exclusively with corporation's competitor to broadcast it, and denial of equal access was committed or ratified by an official with final policy-making authority. Telemundo of Los Angeles v. City of Los Angeles, C.D.Cal.2003, 283 F.Supp.2d 1095. Civil Rights 1326(7); Civil Rights 1351(6)

Person serving as city manager and Recorder's Court judge was not liable, as ultimate policy-maker, for police officers' alleged use of excessive force in arresting bar patron; final policies on question were developed by city council. Mizell v. Lee, M.D.Ga.1993, 829 F.Supp. 1338. Civil Rights 1351(4)

City council, rather than chief of police, had final authority to set policy in area of arrest procedure, for purposes of arrestee's action against city under § 1983 for police chief's alleged use of excessive force. Ingram v. Lee, M.D.Ga.1993, 829 F.Supp. 1333, vacated 862 F.Supp. 368. Civil Rights 1351(4)

City could be held liable under federal civil rights statute for actions of its city council in allegedly wrongfully withholding sanitary landfill license; city council was final policymaker in area of granting such licenses. Browning-Ferris Industries of St. Louis, Inc. v. City of Maryland Heights, Mo., E.D.Mo.1990, 747 F.Supp. 1340. Civil Rights 1351(3)

City council, rather than mayor, city administrator and two police chiefs, was "final policymaker" for city on personnel matters, so that city, absent showing that city council had ratified allegedly unlawful retaliatory actions of these other parties or delegated authority to them, was not liable under §§ 1983 for any actions taken against police officers by mayor, city administrator or police chiefs in alleged retaliation for officers' exercise of their free speech and due process rights; city council had final authority to review any discipline imposed on officers and had not, in fact, accepted discipline imposed by city administrator at mayor's request, but had adjusted discipline as it thought appropriate. Dempsey v. City of Baldwin, C.A.10 (Kan.) 2005, 143 Fed.Appx. 976, 2005 WL 2002512, Unreported. Civil Rights 1351(5)

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42 U.S.C.A. § 1983

771. ---- City officials, official policy makers, custom or usage

Borough mayor had final policy-making authority to constructively discharge borough manager, as required for municipal liability to attach in manager's §§ 1983 claims against borough alleging deprivation of a liberty interest in reputation without due process and violation of the First Amendment, notwithstanding fact that mayor did not have the power to fire the borough manager outright; mayor's constructive discharge of the manager was final in the sense that it was not reviewable by any other person or any other body or agency in the borough, that is, there was no one above the mayor who had the power to curtail his conduct or prevent him from harassing the manager to the point where the manager had no alternative but to leave his position. Hill v. Borough of Kutztown, C.A.3 (Pa.) 2006, 455 F.3d 225.

Alleged constitutional violation by city alderman, in harassing and abusing plaintiff, did not result from any policy or custom of municipality so as to impose liability on municipality under § 1983; alderman's actions were not taken with city knowledge, a single alderman had no final decisionmaking power for city, alderman had no authority to be engaged in police functions or taxicab regulations, and thus any actions of alderman regarding these matters were so far beyond scope of his responsibilities as alderman that they negated any causal link between city's conduct and plaintiff's rights. Waters v. City of Morristown, TN, C.A.6 (Tenn.) 2001, 242 F.3d 353. Civil Rights 1351(6)

City manager and public safety director's termination decisions were subject to meaningful administrative review by city civil service board and thus manager and director were not final policymakers, as required for city to be liable, under § 1983, for their decision to terminate fire department employee; although employees had to request review, Board was empowered to reverse terminations and there was no evidence that Board merely rubber-stamped decisions of appointing authorities. Scala v. City of Winter Park, C.A.11 (Fla.) 1997, 116 F.3d 1396. Civil Rights 1351(5)

City's public safety director was not acting as a "policymaker" when he took adverse personnel actions against police officers, and thus, city was not liable under § 1983 for director's actions; city's administrative regulations declared that city council and city manager, not director, retained exclusive right to decide most appropriate means of utilizing city personnel, and authority of the other officials in city to countermand director's personnel decisions was more than titular. Morrash v. Strobel, C.A.4 (Va.) 1987, 842 F.2d 64. Civil Rights 1351(5)

City manager was only official who possessed policymaking power in termination proceedings sufficient to hold city accountable under 42 U.S.C.A. § 1983, where city code designated city manager as administrative head of municipal government, empowered city manager to appoint or remove all subordinate employees, provided that city manager seek advice of city commission before appointing or removing department heads, but did not limit his authority with regard to hiring or firing other subordinate employees, city manager acted in lieu of governing body in deciding whether to fire employee, and his authority in that area was exclusive. Neubauer v. City of McAllen, Tex., C.A.5 (Tex.) 1985, 766 F.2d 1567. Civil Rights 1351(5)

When constitutional rights are alleged to have been violated by a city employee's single tortious decision or course of action, inquiry as to whether §§ 1983 suit may be brought against city focuses on whether the actions of the employee in question may be said to represent the conscious choices of the city itself, on grounds that employee was one of city's authorized policymakers. Wallace v. Suffolk County Police Dept., E.D.N.Y.2005, 396 F.Supp.2d 251. Civil Rights 1351(1)

Genuine issue of material fact existed as to whether first selectman of town board of selectmen had authority to set policy on who spoke at board meetings, and on what topics, precluding summary judgment in civil rights case against municipality under free speech clause of First Amendment. Piscottano v. Town of Somers, D.Conn.2005, 396 F.Supp.2d 187. Federal Civil Procedure 2491.5

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County commission was not liable, under §§ 1983, to dog owner for failure of county prosecuting attorney, county sheriff, and county deputy sheriff to investigate alleged theft of dog by deputy sheriff's cousin, where there was no evidence of an official policy or custom of the county commission regarding the issue at hand. Curry v. Weiford, N.D.W.Va.2005, 389 F.Supp.2d 704, appeal dismissed 133 Fed.Appx. 50, 2005 WL 1220816. Civil Rights 1351(4)

Corporation counsel did not have responsibility for, let alone final authority over, city's issuance of code violations to city residents, and thus, counsel's alleged conduct in directing various city agencies to issue violations against property owners was not sufficient to establish municipal liability under §§ 1983. Moran v. City of New Rochelle, S.D.N.Y.2004, 346 F.Supp.2d 507. Civil Rights 1351(3)

Mayor, city administrator, and police chiefs were not final policymakers on personnel matters, and city thus could not be held liable under § 1983 for any actions taken by them in retaliation against police officers in violation of their speech and due process rights, where city council had final policymaking authority, and, although officials in question had discretionary authority to supervise, discipline, and suspend employees, such authority was subject to review by city council. Dempsey v. City of Baldwin City, Kan., D.Kan.2004, 333 F.Supp.2d 1055, affirmed 143 Fed.Appx. 976, 2005 WL 2002512. Civil Rights 1351(5)

Plaintiff must meet two requirements to maintain a § 1983 claim grounded upon unconstitutional municipal custom or practice: custom or practice must be attributable to municipality, in that it is so well settled and widespread that policymaking officials of municipality can be said to have either actual or constructive knowledge of it, and the custom must have been cause of and "the moving force" behind deprivation of constitutional rights. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Civil Rights 1351(1)

Mayor who ordered removal of flagpole from city cemetery, after it had been installed by Confederate war memorial association, was acting as final decision-maker on behalf of city when he took actions, and thus mayor's actions were imputed to city for purposes of association's § 1983 claim against city; mayor acted as policy-maker when he made decision to remove flagpole, and decision was final since flagpole was in fact removed. Jackson v. City of Stone Mountain, N.D.Ga.2002, 232 F.Supp.2d 1337. Civil Rights 1351(6)

City manager lacked final policy-making authority with regard to employment matters, and city thus could not be held liable under § 1983 for his action of terminating employee, where city's personnel manual provided for review that could set aside his employment decision, and city charter restricted his role in employment policy formulation to that of recommendation, leaving final policy making to city commission. Scala v. City of Winter Park, M.D.Fla.1996, 971 F.Supp. 528, affirmed 116 F.3d 1396. Civil Rights 1351(5)

Municipal liability may attach in § 1983 action for single decision by municipal policymaker where policymaker possesses final authority to establish municipal policy with respect to action ordered. Pirela v. Village of North Aurora, N.D.Ill.1997, 966 F.Supp. 661. Civil Rights 1351(1)

Inspector general of city, which was established to investigate performance of governmental employees, did not have final policymaking authority, and, thus, city could not be held liable under § 1983 for wrongful conduct of employees of inspector general investigating governmental employee misconduct; city council, not inspector general, had final policymaking authority. Angara v. City of Chicago, N.D.Ill.1995, 897 F.Supp. 355. Civil Rights 1351(5)

City's managing director had sufficient authority to implicate city in § 1983 action for director's apparent concurrence in decision to let fire burn after bomb was dropped on house following police officers' failed attempt to execute search and arrest warrants on members of organization within house. In re City of Philadelphia Litigation, E.D.Pa.1994, 849 F.Supp. 331, affirmed in part, reversed in part, dismissed in part 49 F.3d 945, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 176, 516 U.S. 863, 133 L.Ed.2d

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116, on remand 910 F.Supp. 212, on remand 938 F.Supp. 1264. Civil Rights 1351(4)

In civil rights action by assistant chief fire marshal against city, mayor, public safety director, and fire chief, latter three defendants were policymakers of city, as they jointly possessed final authority regarding employment of fire department members; thus, their official acts were deemed policy of city for purposes of § 1983 liability. Myers v. City of Fort Wayne, Ind., N.D.Ind.1990, 729 F.Supp. 625. Civil Rights 1351(5)

When mayor denied applicant's application for liquor license without a hearing or reasons, he was acting pursuant to authority given him by city council and thus his actions were to be viewed as those of the city. Katris v. City of Waukegan, N.D.Ill.1980, 498 F.Supp. 48. Civil Rights 1350

Mayor could not be held liable under § 1983 on city council employee's claim that mayor retaliated against employee for her exercise of First Amendment rights, where it was city council, not mayor, that was decisionmaker with regard to terms and conditions of her employment. Poppy v. City of Willoughby Hills, C.A.6 (Ohio) 2004, 96 Fed.Appx. 292, 2004 WL 771281, Unreported. Civil Rights 1351(5)

Citizen, who was prosecuted for littering and dumping, could not assert civil rights claims against city officials in their official capacities, where those claims were essentially against the city, but no municipal policy had been identified which would impose liability on the city. Cochran v. Municipal Court of City of Barberton, Summit County, C.A.6 (Ohio) 2003, 91 Fed.Appx. 365, 2003 WL 23095546, Unreported. Civil Rights 1360

Head of city's department of parks and recreation was final policy maker whose acts could fairly be said to represent city's official policy, and thus city could be held liable under § 1983 for department head's alleged institution of illegal policy of harassing employees for exercising their First Amendment rights, where city charter vested city's executive and administrative power in its departments, and provided that head of each department "shall exercise the powers and perform the duties vested in and imposed upon the department," and department head had final say regarding hiring and firing of employees. Shehee v. City of Wilmington, C.A.3 (Del.) 2003, 67 Fed.Appx. 692, 2003 WL 21061233, Unreported. Civil Rights 1351(5)

772. ---- Constables, official policy makers, custom or usage

Elected constable of Texas county did not occupy a policy-making position so as to expose county to civil rights liability for his unconstitutional acts where constable had duty to make arrests and serve warrants and process, but did not have authority to define objectives and choose means of achieving them. Rhode v. Denson, C.A.5 (Tex.) 1985, 776 F.2d 107, rehearing denied 778 F.2d 790, certiorari denied 106 S.Ct. 2891, 476 U.S. 1170, 90 L.Ed.2d 978.

773. ---- County officials, official policy makers, custom or usage

County sheriff was not county policymaker for his law enforcement conduct and policies regarding warrant information on state computer systems or training and supervision of his employees in that regard, as required to hold county liable under § 1983 for alleged false arrest and violation of due process arising from arrest of arrestee on expired bench warrant which had not been withdrawn from computer systems. Grech v. Clayton County, Ga., C.A.11 (Ga.) 2003, 335 F.3d 1326. Civil Rights 1351(4); Civil Rights 1352(4)

Although chief juvenile probation officer of county may have become de facto policymaker with respect to the juvenile detention facility, he had not been delegated final policy-making authority and county could not be held liable for civil rights violations resulting from his decisions. Flores v. Cameron County, Tex., C.A.5 (Tex.) 1996, 92 F.3d 258, rehearing denied. Civil Rights 1351(4)

Absent showing that members of county highway committee had final policymaking authority on behalf of county

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regarding the sale of road salt and other materials, county could not be held liable under civil rights statute for board members' alleged role in refusing to sell materials to private contractor in retaliation for his comments at county board meeting. Schmidt v. Lincoln County, State of Wisconsin, W.D.Wis.2003, 249 F.Supp.2d 1124. Civil Rights 1351(6)

There was no evidence of an official county policy or custom, as required to hold county liable under §§ 1983 for alleged violation of homeowner's and his family's constitutional rights arising from alleged harassment by county police officers, notwithstanding the homeowner's and his family's allegation that they complained to county's police chief about the alleged harassment and that he failed to take any action to stop it. Kashaka v. Baltimore County, Maryland, D.Md.2006, 450 F.Supp.2d 610. Civil Rights 1352(4)

Former county employee who brought action against county legislature, alleging disclosure of her sexual harassment accusations and identity to news media, failed to allege that constitutional violations were caused by official policy or custom, as required to state §§ 1983 claim; complaint averred wrongdoing by only one member of legislature, and failed to ascribe any aspect of his conduct to legislature as whole, its policies or customs, or to allege condonation by its members. Nassau County Employee "L" v. County of Nassau, E.D.N.Y.2004, 345 F.Supp.2d 293. Civil Rights 1351(5)

County commissioner could not be held liable under §§ 1983 in prisoner's action alleging civil rights violations, since commissioner had no policymaking authority at jail, and there were no allegations that commissioner had personally participated in alleged violations. Justice v. Wallace, C.A.10 (Okla.) 2006, 185 Fed.Appx. 745, 2006 WL 1704467, Unreported. Civil Rights 1358

774. ---- Hospital officials, official policy makers, custom or usage

Officers' alleged conduct of illegally detaining involuntary committee before state writ authorizing his detention was signed did not support § 1983 liability against county, given that officers were not official policy makers for county, and therefore their conduct could not bind county under § 1983, and committee failed to allege facts showing that he was illegally detained pursuant to official county policy or custom. Bass v. Parkwood Hosp., C.A.5 (Miss.) 1999, 180 F.3d 234. Civil Rights 1351(6)

Hospital district could be found liable to discharged x-ray technician under this section, since the discharge was pursuant to a policy of hospital district and was effected by hospital's administrator, who was the person whose edicts and acts could fairly have been said to represent official policy. Kay v. North Lincoln Hosp. Dist., D.C.Or.1982, 555 F.Supp. 527. Civil Rights 1351(5)

775. ---- Judges, official policy makers, custom or usage

City would not be liable under §§ 1983 for municipal judge's decision to incarcerate mother for her daughter's truancy, since the judicial order was not a final policy decision. Granda v. City of St. Louis, C.A.8 (Mo.) 2007, 472 F.3d 565. Civil Rights 1351(2)

County probate judge was not delegated final policy making authority for terminating probate office clerks, and thus, county, county commission, and county commission members, in their official capacities, were not liable under § 1983 for judge's decision to terminate clerk, where county policies and practices provided for review of county official's decision to terminate employee. Johnson v. Waters, M.D.Ala.1997, 970 F.Supp. 991. Civil Rights 1351(5)

Maryland county circuit court judges were not "policy makers" for counties in which they sat, for purposes of § 1983 liability; thus, counties could not be liable for acts of judges of their respective circuit courts in relation to custody dispute. Williams v. Anderson, D.Md.1990, 753 F.Supp. 1306. Civil Rights 1351(6)

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776. ---- Municipalities, official policy makers, custom or usage

City administration for children's services' (ACS) practice of removing children from custody of their mothers under New York law based on mothers' failure to prevent children from witnessing domestic violence against mothers constituted policy or practice, as required to hold city liable under § 1983, if practice violated mothers' or children's constitutional rights. Nicholson v. Scoppetta, C.A.2 (N.Y.) 2003, 344 F.3d 154, certified question accepted 807 N.E.2d 283, 775 N.Y.S.2d 233, 1 N.Y.3d 538, certified question answered 820 N.E.2d 840, 787 N.Y.S.2d 196, 3 N.Y.3d 357, answer to certified question conformed to 116 Fed.Appx. 313, 2004 WL 2712425. Civil Rights 1351(6)

Municipal judge did not act as a policymaker, and thus could not render city liable under § 1983 on pretrial detainee's claim that he was arrested on an invalid warrant issued by judge; the judge's authority to issue arrest warrants was circumscribed by his judicial duty to follow state law, and any procedural trailblazing on his part, i.e. allowing a signature stamp to be used without personally reviewing the warrant, was not done under the auspices of the City and could not be interpreted as promulgating municipal policy. Ledbetter v. City of Topeka, Kan., C.A.10 (Kan.) 2003, 318 F.3d 1183. Civil Rights 1351(4)

"Municipal policy," for which municipality may be held liable under § 1983, is decision that is officially adopted by municipality, or created by official of such rank that he or she could be said to be acting on behalf of municipality. Sewell v. Town of Lake Hamilton, C.A.11 (Fla.) 1997, 117 F.3d 488, certiorari denied 118 S.Ct. 852, 522 U.S. 1075, 139 L.Ed.2d 753. Civil Rights 1351(1)

Municipality can be sued directly under § 1983 where action pursuant to municipal policy or custom causes constitutional tort. Fagan v. City of Vineland, C.A.3 (N.J.) 1994, 22 F.3d 1283. Civil Rights 1351(1)

In order to hold a municipality liable under §§ 1983, a plaintiff must allege a link between the constitutional violation and an identifiable municipal policy, practice or custom. Prowisor v. Bon-Ton, Inc., S.D.N.Y.2006, 426 F.Supp.2d 165. Civil Rights 1351(1)

Town did not have any municipal civil rights liability for alleged violations of divorcing husband's equal protection rights based on actions of police officers in refusing to allow him to remove silverware set from home of his wife in retrieving personal items or in refusing to investigate, arrest wife, or issue search warrant when husband later complained that wife had stolen pieces from silverware set, given facts that alleged discrimination arose from single incident of alleged unconstitutional activity, that there was no proof of official policy of not pursuing criminal complaints arising between spouses or ex-spouses, and that police officers were not municipal policymakers. Fedor v. Kudrak, D.Conn.2006, 421 F.Supp.2d 473. Civil Rights 1351(6)

City could not be held liable, under §§ 1983, for threats allegedly made by mayor to coerce author into abandoning writing project, absent claim that mayor was acting in his official capacity or that city had notice of mayor's conduct but tacitly approved or was deliberately indifferent to it. Wright v. City of Las Vegas, Nevada, S.D.Iowa 2005, 395 F.Supp.2d 789. Civil Rights 1352(6)

City was not liable under §§ 1983 for alleged surreptitious video and audio surveillance of employees, absent claim that official policy or custom caused the alleged harm or allegation of municipal action deliberately indifferent to a known consequence that would cause plaintiffs harm; bare assertion that supervisors named as individual defendants were "of high enough order in the City" was insufficient. Williams v. City of Tulsa, OK, N.D.Okla.2005, 393 F.Supp.2d 1124. Civil Rights 1421

Allegations by arrestee that magistrate judge issued a warrant for her arrest and charged her with violation of domestic protective order, even though the sheriff had not yet served the arrestee with notice of the protective order against her, that arrestee was held in custody for some portion of a day until her case was dismissed, and that the

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magistrate later refused to issue a warrant another person's arrest and demanded that arrestee leave his office, did not state § 1983 claim for civil rights violations against municipality; although magistrate and sheriff were municipal employees, there was no allegation of any official municipal policy or of any act taken by an official with authority to make municipal policy decisions. Cole v. Summey, M.D.N.C.2004, 329 F.Supp.2d 591. Civil Rights 1351(4)

In the § 1983 context, a municipal policy is established when it is officially adopted, whether through the execution of a policy statement, ordinance, regulation, or decision officially adopted by the body's officers. Hedgepeth v. Washington Metropolitan Area Transit, D.D.C.2003, 284 F.Supp.2d 145, motion denied 2004 WL 595070, affirmed 386 F.3d 1148, 363 U.S.App.D.C. 260. Civil Rights 1351(1)

To establish municipal liability in an action under § 1983 for unconstitutional acts by a municipal employee below the policymaking level, a plaintiff must show that the violation of his constitutional rights resulted from a municipal policy or custom. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439 . Civil Rights 1351(1)

If challenged action is directed by official with final policymaking authority, municipality may be liable under § 1983 even in absence of broader policy. Gagne v. DeMarco, D.Conn.2003, 281 F.Supp.2d 390. Civil Rights 1351(1)

A single incident involving only municipal actors below the policymaking level, generally will not suffice to raise an inference of the existence of a municipal custom or policy, as required to establish municipal liability in civil rights action. Hernandez v. City of Rochester, W.D.N.Y.2003, 260 F.Supp.2d 599. Civil Rights 1351(1)

Genuine issues of material fact, as to whether consensual sexual relationships between correctional officers and female jail inmates were so widespread that policymaking officials had constructive knowledge of them yet did nothing, precluded summary judgment on claim that sexual assault on female jail inmate by correctional officer was result of municipal custom or practice of ignoring sexual misbehavior. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Federal Civil Procedure 2491.5

Borough's assistant building inspector and code official who issued citations to landlord was not a policy-making official, as would render borough liable under § 1983 for any due process violations resulting from the citations. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Civil Rights 1351(3)

For purposes of determining if municipality can be held liable under § 1983 for acts of its agents, once a court finds that a government official is a policy-maker, it is for the jury to determine whether the policy-maker's decisions have caused the deprivation of rights at issue by policies that command that it occur, or by acquiescence in a long-standing practice or custom which constitutes the standard operating procedure of the local government. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Civil Rights 1426

Municipality can be held directly liable under § 1983 when execution of municipality's policy or custom, whether made by its law makers or those whose edicts or acts may fairly be said to represent official policy, inflicts constitutional injury; this is direct, not vicarious, liability premised on existence of some policy fairly attributable to municipal government itself. Cook v. Board of County Com'rs of County of Wyandotte, D.Kan.1997, 966 F.Supp. 1049. Civil Rights 1351(1)

If government official who possesses final policymaking authority in certain area makes decision, that decision constitutes municipal policy for § 1983 purposes and will be understood as act which municipality officially sanctioned. Singer v. Denver School Dist. No. 1, D.Colo.1997, 959 F.Supp. 1325. Civil Rights 1351(1)

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Municipality is liable under § 1983 when execution of government's policy or custom, whether made by its lawmakers or those who edicts or acts may fairly be said to represent official policy, inflicts injury. Wohl v. City of Hollywood, S.D.Fla.1995, 915 F.Supp. 339. Civil Rights 1351(1)

Municipality cannot be held liable for employees' unconstitutional acts unless those acts were taken pursuant to municipal policy, custom or usage. Lindsay v. City of Philadelphia, E.D.Pa.1994, 863 F.Supp. 220. Civil Rights 1351(1)

Municipality cannot be liable under § 1983 in absence of official policy or custom. Nichols v. City of Jackson, S.D.Miss.1994, 848 F.Supp. 718. Civil Rights 1351(1)

777. ---- Police commissioners, official policy makers, custom or usage

Actions taken by superintendent of police in his official capacity were sufficient to impose liability on county in § 1983 action by county police officers who alleged that they were deprived of their property rights in continued employment when their resignations were coerced; superintendent had final policymaking authority in county police department, was highest ranking police official in county, was responsible for entire department, and was responsible for drafting and approving many of department's general orders. Angarita v. St. Louis County, C.A.8 (Mo.) 1992, 981 F.2d 1537. Civil Rights 1351(5)

City could be held liable if police chief and city manager were found to have violated black police officer's rights by firing him as long as state law assigned to chief and manager final authority to make personnel decisions for police department. Brown v. City of Fort Lauderdale, C.A.11 (Fla.) 1991, 923 F.2d 1474. Civil Rights 1349

City's municipal code did not provide meaningful review of police chief's policy decisions or actions with respect to determination to undertake inquiry of other agencies concerning particular individual, so that city could be held liable for any violation of civil rights as the result of police chief's action in that regard. Patrick v. City of Overland Park, Kan., D.Kan.1996, 937 F.Supp. 1491. Civil Rights 1351(4)

"Policymaker," for purposes of making municipality liable in § 1983 action for conduct of police chief, need not have official authority to make final decisions, and such authority can be implied from continued course of knowing acquiescence by governing body in exercise of policymaking authority by agency or official. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1351(4)

In § 1983 action alleging gender-based discrimination on part of municipality in de facto policy of treating domestic violence disputes less seriously than other complaints, jury instruction identifying chief of police as final policymaker was erroneous; no evidence was presented identifying final policymaker and trial court lacked authority to implicitly take judicial notice that chief of police was municipality's final policymaker. Ricketts v. City of Columbia, Mo., W.D.Mo.1993, 856 F.Supp. 1337, affirmed 36 F.3d 775, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1838, 514 U.S. 1103, 131 L.Ed.2d 757. Civil Rights 1437; Evidence 23(1)

In order for police chief to be held liable to plaintiff, in suit against chief in his official capacity under § 1983, plaintiff must show that chief established and/or maintained pattern, practice or policy, the enforcement of which deprived plaintiff of specified constitutional right. Johnson v. Ft. Pierce Police Dept., S.D.Fla.1994, 849 F.Supp. 1543. Civil Rights 1358

778. ---- Police officers, official policy makers, custom or usage

In action by deputy police inspector challenging retaliatory employment decisions by county police commissioner,

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under First Amendment, commissioner's position, which gave him authority to set department-wide personnel policies, provided sufficient basis for holding county liable, under § 1983, for commissioner's adverse decisions with respect to inspector. Mandell v. County of Suffolk, C.A.2 (N.Y.) 2003, 316 F.3d 368. Civil Rights 1351(5)

Male police sergeant did not act as "official policymaker" for city when he allegedly made sexual demands on female officer and thus, municipal liability under § 1983 could not be predicated upon his actions; although sergeant was supervisor, he was not official responsible for establishing final policy with respect to subject matter in question. Collins v. City of San Diego, C.A.9 (Cal.) 1988, 841 F.2d 337. Civil Rights 1351(5)

Genuine issues of material fact as to which of police officer's supervisors had authority to make decision about what disciplinary action to take for officer's violation of police department procedure, and as to which supervisor actually made decision, precluded summary judgment on former city police officer's §§ 1983 claim that he was deprived of procedural due process because someone other than person vested with authority to make final disciplinary decisions made decision as to his discipline. Reilly v. City of Atlantic City, D.N.J.2006, 427 F.Supp.2d 507. Federal Civil Procedure 2497.1

Detective who ordered plaintiff's arrest and detention did not have authority to establish policy for District of Columbia regarding any aspect of arrests and detentions, as required to hold District liable under §§ 1983 for detective's single act of alleged false arrest or imprisonment. McKnight v. District of Columbia, D.D.C.2006, 412 F.Supp.2d 127. Civil Rights 1351(4)

City police chief possessed final policymaking authority on police department training issues, and thus chief's actions on training issues could constitute policy and subject city to *Monell* liability under §§ 1983, even though city charter gave commissioner of public safety ultimate authority over department, where commissioner testified that he "shared" department policymaking responsibility with chief, that he delegated authority for training to chief, and that chief's attitude was "obstacle" regarding reforms within department, and chief testified that he was ultimately responsible for ensuring that all officers in his chain of command were properly trained. Young v. City of Providence, D.R.I.2005, 396 F.Supp.2d 125. Civil Rights 1352(4)

Terminated police officer stated §§ 1983 claims against Utah municipality related to alleged violation of her equal protection rights from police chief's decisions to remove her from strike force, refuse her promotion, and fire her, even though officer did not claim that city had official policy of discrimination and even if chief's actions were subject to review by committee, facts discovered during litigation could demonstrate that chief had final decisionmaking authority. Sivulich-Boddy v. Clearfield City, D.Utah 2005, 365 F.Supp.2d 1174. Civil Rights 1395(8)

For purposes of establishing municipality's liability under §§ 1983, detective was a not a policymaker by virtue of his assignment as detective in charge of crimes against persons, including investigation of child abuse; there was no proof that city somehow delegated final policymaking authority to detective, who simply made discretionary decisions as an employee of the city. Doggett v. Perez, E.D.Wash.2004, 348 F.Supp.2d 1179. Civil Rights 1351(4)

County's training materials did not evince an official policy of permitting sheriff deputies to detain individuals, under state statute, for psychiatric evaluation in absence of probable cause to believe detainees had mental disorders, as required to hold county liable, under § 1983, for deputies' alleged violation of hospital patient's Fourth Amendmenprt rights to be free from unreasonable seizures that occurred when she was detained for psychiatric evaluation, allegedly without probable cause. Harvey v. Alameda County Medical Center, N.D.Cal.2003, 280 F.Supp.2d 960, affirmed 123 Fed.Appx. 823, 2005 WL 662645. Civil Rights 1351(6)

City was not liable under § 1983 for alleged excessive force by police officers, where alleged victims failed to

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show that city engaged in policy or custom of failing to adequately train its police officers, or that city engaged in persistent, repeated, and constant violations of constitutional rights by virtue of this alleged failure to train. Boone v. City of Burleson, N.D.Tex.1997, 961 F.Supp. 156. Civil Rights 1352(4)

Allegations of two incidents of aggravated police misconduct in executing search warrants, one very aggravated, i.e., search of wrong address that was improperly expanded beyond its stated object, even though officers should have known they were searching wrong residence, without any imposition of discipline by city was sufficient to support claim against city under § 1983 for constitutional violations caused by city's official policies, including unwritten customs; failure to impose discipline in case of two incidents of aggravated police misconduct could support inference that there was policy against discipline and it was inferable that lack of discipline and its deterrent effect was municipal policy that caused, in some sense, bad acts alleged in complaint. Daniels v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 901. Civil Rights 1351(4)

County could not be held liable under § 1983 on theory of municipal policy for police department's canine unit's alleged exclusion of women; neither officer in charge of canine unit, commander of special patrol unit, nor director of public safety had final policy-making authority to establish eligibility requirements for positions in unit, although director of public safety had been delegated authority to establish specific employment policies for police department, his decisions were constrained by ordinances and resolutions passed by board of county commissioners and administrative orders in policies promulgated by county manager, and there was no showing that any county official above rank of police department captain had knowledge or reason to know that canine unit was customarily excluding women. Lawrence v. Metro Dade County, Fla., S.D.Fla.1994, 872 F.Supp. 957. Civil Rights 1351(5)

779. ---- Fire departments, official policy makers, custom or usage

Terminated female volunteer firefighter/paramedic sufficiently alleged that her constitutional injury with respect to sex discrimination was caused by official with final policymaking authority so as to state § 1983 claim against fire protection district board of trustees and volunteer fire department; firefighter/paramedic alleged that department was headed by department chief, who was final policy maker, that chief interviewed male applicants for paid position but did not offer firefighter/paramedic an interview or consider her application, and that chief terminated her from volunteer position. Vickery v. Minooka Volunteer Fire Dept., N.D.Ill.1997, 990 F.Supp. 995. Civil Rights 1395(8)

780. ---- Prison officials, official policy makers, custom or usage

Official conduct and decisions of director of city bureau of corrections, at least in those areas in which he was final authority or ultimate repository of city power, had to necessarily be considered those of one whose edicts or acts may fairly be said to represent official policy for which city might be held responsible in suit by former prison guard alleging that she was constructively discharged for exercising her rights under U.S.C.A.Const. Amend. 1. Schneider v. City of Atlanta, C.A.5 (Ga.) 1980, 628 F.2d 915. Civil Rights 1351(5)

Arrestee who brought action against county, stemming from his lengthy detention prior to initial court appearance, established that sheriff and jail administrator, as officials with final policymaking authority, adopted detention policy for which county was responsible, as required to maintain § 1983 claim against county; sheriff had custody, rule, and charge of jail and all prisoners within county, sheriff was authorized to appoint jail administrator for whose conduct he was responsible, and both officers developed county's official policies and procedures. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1351(4)

781. ---- School boards, official policy makers, custom or usage

School district could not be liable in high school student's § 1983 Establishment Clause claim arising from school

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board member's recitation, on his own initiative, of Christian prayer at graduation ceremony; district policy or custom was not shown either by inclusion of prayer in rehearsal for ceremony, which led to district's cancellation of planned prayer due to objections and in turn led to board member's recitation to protest cancellation, nor by district's failure to disclaim recitation. Doe ex rel. Doe v. School Dist. of City of Norfolk, C.A.8 (Neb.) 2003, 340 F.3d 605, rehearing and rehearing en banc denied. Civil Rights 1351(2)

Special education teacher sufficiently alleged government policy adopted by school district and school board to assert municipal liability claim against those entities in §§ 1983 action arising from alleged campaign against special education teachers; teacher alleged existence of unwritten administrative policy to cut services to special education pupils and to punish and intimidate special education teachers who advocated for pupils as well as action by board authorizing superintendent to harass certain teachers. Montanye v. Wissahickon School Dist., E.D.Pa.2004, 327 F.Supp.2d 510. Civil Rights 1351(5)

High school student and parents who brought action against school district and football coach, stemming from coach's purported mistreatment of student in retaliation for parents' criticism, alleged facts showing that district's policy and custom of acquiescing in coach's behavior caused constitutional injuries to student and parents, as required to state claim for entity liability under § 1983; district's failure to discipline or terminate coach, despite repeated complaints of abuse, was alleged to have become customary. Cain v. Tigard-Tualatin School Dist. 23J, D.Or.2003, 262 F.Supp.2d 1120. Civil Rights 1351(2)

School board, its superintendent, and principal were not liable in their official capacities, under § 1983, for principal's alleged unconstitutional acts associated with high school student's forcible removal from school to police station after she failed to identify herself; principal's actions were not taken pursuant to official board policy or custom. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1351(2)

School district did not have policy or custom of authorizing or condoning discriminatory employment practices by its principal or other employees, as required to impose liability on district under § 1983, arising out of termination of African-American teacher; district had official policy prohibiting discrimination, and district's practice of gathering data on teachers when disciplinary measures or termination were being considered was not applied in discriminatory manner. Bluitt v. Houston Independent School Dist., S.D.Tex.2002, 236 F.Supp.2d 703. Civil Rights 1351(5)

Mailing of letters to school board employees was not officially-adopted policy or unofficially adopted custom of school board sufficient to serve as basis for imposition of municipal liability on school board under § 1983 for alleged constitutional violations resulting from mailing of letters to particular employees indicating board's suspicion that they had violated district policy against drug and/or alcohol abuse, absent any indication that mailing of such letters was custom so entrenched and long-standing as to carry force of law. Cox v. McCraley, M.D.Fla.1998, 993 F.Supp. 1452. Civil Rights 1351(5)

Policies and customs of school board were relevant in school employee's § 1983 action against board, where Georgia law required that all school personnel be employed only upon recommendation of superintendent and subsequent approval by school board; when board approved hiring recommendation, it acted as official policy maker for school district. Reynolds v. Glynn County Bd. of Educ., S.D.Ga.1996, 968 F.Supp. 696, affirmed 119 F.3d 11. Civil Rights 1351(5)

Though high school student alleged only a single incident of alleged wrongful conduct, in disciplining him for displaying Confederate flag, allegations of "unwritten ban" of Confederate flags and symbols was sufficient to allege governmental custom or policy to support § 1983 claim against school board and school administrators in their official capacities. Denno v. School Bd. of Volusia County, M.D.Fla.1997, 959 F.Supp. 1481, affirmed in part, reversed in part and remanded 182 F.3d 780, rehearing granted and vacated 193 F.3d 1178, reversed in part

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on rehearing 218 F.3d 1267, rehearing and suggestion for rehearing en banc denied 235 F.3d 1347, certiorari denied 121 S.Ct. 382, 531 U.S. 958, 148 L.Ed.2d 295. Civil Rights 1395(2)

Board of education, through its policies and customs, was moving force behind alleged due process violations resulting from use of isolation as form of student punishment, and therefore, county could be held liable for such alleged violations and was not entitled to summary judgment; board created system which allowed alleged abuses to occur. Orange v. County of Grundy, E.D.Tenn.1996, 950 F.Supp. 1365. Civil Rights 1351(2)

Junior high student, alleging violation of constitutional rights arising from strip search, failed to present evidence of such pattern or series of incidents sufficient to impose § 1983 liability on school board based upon custom or practice of such unconstitutional conduct; students pointed to only two prior searches, neither of which was nearly as intrusive as one at issue and deposition testimony regarding two prior searches failed to indicate that they were in fact illegal. Oliver by Hines v. McClung, N.D.Ind.1995, 919 F.Supp. 1206. Civil Rights 1418

Former school teacher, who brought § 1983 action against board of education and principal, failed to establish the existence of board's religion or profanity rules, for purposes of establishing that implementation of such rules violated First Amendment rights, where teacher acknowledged that board did not have written policy to restrict unconstitutionally the academic freedom or freedom of speech of teachers in its employ and presented no evidence indicating existence of such policies. Sekor v. Capwell, D.Conn.1995, 889 F.Supp. 34. Civil Rights 1421

Single allegedly unlawful act by supervisory employee of school board in denying director's position to female employee could not serve as basis for imposing liability on board under § 1983; supervisor did not have final policy-making authority over any of board's business, and state law vested board with exclusive authority over management and operation of school system. Green v. Fairfax County School Bd., E.D.Va.1993, 832 F.Supp. 1032, affirmed 23 F.3d 400. Civil Rights 1351(5)

School building inspectors, area manager for school board's buildings division, and division's director were not policy-making employees, and, thus, § 1983 liability for inspectors' alleged scheme to extort kickbacks from contractor could not be imposed on board on basis of alleged policymaking by the officials; statute grants policymaking power and authority exclusively to board. Nu-Life Const. Corp. v. Board of Educ. of City of New York, E.D.N.Y.1992, 809 F.Supp. 171, affirmed in part, vacated in part on other grounds 28 F.3d 1335. Civil Rights 1351(6)

Board of education could not be held liable under civil rights statutes in action brought by school bus driver who was decertified as result of decision of school board employee, absent showing that employee had final authority to determine policy with respect to procedures of decertification hearings or with respect to decertification decision. Hill v. New York City Bd. of Educ., E.D.N.Y.1992, 808 F.Supp. 141. Civil Rights 1351(5)

New York community school district superintendent was policymaker whose decision to transfer principal, if made in her official capacity, could impose liability on Board of Education under § 1983. Hurdle v. Board of Educ. for City of N.Y., S.D.N.Y.2003, 2003 WL 22080721, Unreported, affirmed on other grounds 113 Fed.Appx. 423, 2004 WL 2413499, certiorari denied 125 S.Ct. 1646, 544 U.S. 921, 161 L.Ed.2d 479. Civil Rights 1351(5)

781A. ---- State officials, official policy makers, custom or usage

Under Georgia law, sheriff is state officer for law enforcement purposes generally, and thus not county policymaker, as required to hold county liable under § 1983 for sheriff's constitutional violations. (Per Hull, Circuit Judge, with Chief Circuit Judge and four Circuit Judges concurring, three Circuit Judges concurring specially, and three Circuit Judges concurring in judgment). Grech v. Clayton County, Ga., C.A.11 (Ga.) 2003, 335 F.3d 1326. Civil Rights 206(3)

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42 U.S.C.A. § 1983

782. ---- School officials, official policy makers, custom or usage

Despite student's allegation that assistant principal's previous altercation with an opposing football coach and the way it was handled by the school administration created a policy, practice, or custom of deliberate indifference to physical abuse of students generally, student failed to allege a direct casual connection between any such practice and her injury allegedly resulting when assistant principal pushed her on the shoulder after she was brought to his office for disciplinary reasons, for purposes of establishing liability of the school district under § 1983, as the previous conduct was not sufficiently similar to draw a direct causal connection to student's injury. Gottlieb ex rel. Calabria v. Laurel Highlands School Dist., C.A.3 (Pa.) 2001, 272 F.3d 168. Civil Rights 1351(2)

School district did not delegate to principal the policymaking authority over school's response to allegations of sexual abuse, for purpose of holding district liable for alleged abuse under § 1983, even if district had no formal policy for addressing allegations of sexual abuse, and principals were given discretion to handle individual allegations of sexual abuse. Doe on Behalf of Doe v. Dallas Independent School Dist., C.A.5 (Tex.) 1998, 153 F.3d 211. Civil Rights 1351(2)

Superintendent did not act as "final policymaker" in denying school board employee continued public employment, where decision was not pursuant to board policies, and where decision required board approval under Kentucky law and, thus, superintendent's actions were not those of school board and board could not be held liable for any violations of employee's § 1983 rights. Adkins v. Board of Educ. of Magoffin County, Ky., C.A.6 (Ky.) 1993, 982 F.2d 952. Civil Rights 1351(5)

School district could not be held liable under § 1983 for superintendent's alleged isolated act of advising teacher not to speak publicly on issue of students' standardized test scores, in violation of First Amendment, because superintendent did not have final policy-making authority to order teachers to curtail their speech. Partee v. Metropolitan School Dist. of Washington Tp., C.A.7 (Ind.) 1992, 954 F.2d 454, rehearing denied. Civil Rights 1351(5)

Vision specialist employed by agency providing educational services to eleven school districts sufficiently demonstrated existence of policy, practice or custom for purposes of her §§ 1983 claim, against school district and officials following her involuntary transfer to another district after she engaged in protected speech; top-level officials of school district and agency directed and complied with request to transfer agency employee after she had raised issues of public concern. Jones v. Indiana Area School Dist., W.D.Pa.2005, 397 F.Supp.2d 628. Civil Rights 1351(5)

Absent proof of existence of official custom or policy authorizing strip searches, school district was not liable for alleged violation of student's right to be free of use of excessive force during detention or search when school employees allegedly required special education student to submit to strip search without the consent of her parent following her sexual assault by another student. Teague ex rel. C.R.T. v. Texas City Independent School Dist., S.D.Tex.2005, 386 F.Supp.2d 893. Civil Rights 1351(2)

School board was not liable, under § 1983, for implementation of policy allowing teacher to sexually harass female elementary school students, in violation of their equal protection and due process rights; highest ranking school official with knowledge that teacher had history of sexual harassment lacked authority to formulate policy that would bind district. Rasnick v. Dickenson County School Bd., W.D.Va.2004, 333 F.Supp.2d 560. Civil Rights 1351(2)

New York Commissioner of Education was final policymaker with regard to school board elections, and thus school district was not subject to liability under § 1983 for school district officials' decision to interpret results of malfunctioning voting machines and to then reset machines before they could be inspected. Gilmore v. Amityville Union Free School Dist., E.D.N.Y.2004, 305 F.Supp.2d 271. Civil Rights 1351(2)

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42 U.S.C.A. § 1983

Texas law places final policymaking authority for an independent school district in its board of trustees only, and thus school district could not be liable, under § 1983, for single unconstitutional action of non-policymaking employee. Bluitt v. Houston Independent School Dist., S.D.Tex.2002, 236 F.Supp.2d 703. Civil Rights 1351(1)

While there were numerous incidents and rumors concerning teacher's relationship with students, none of them implicated school superintendent or school district to degree that it could be concluded that failure to train, supervise, oversee, discipline, or remedy, constituted policy, practice or custom that played affirmative role in bringing about those incidents, as required to impose liability under § 1983; there was no evidence of concealment, of encouragement or acceptance of improper behavior of teacher and there was absence of teacher complaints or intimidation or discouragement of student complainants. Shepard v. Kemp, M.D.Pa.1995, 912 F.Supp. 120. Civil Rights 1351(2); Civil Rights 1356

783. ---- Sheriffs, official policy makers, custom or usage

Sheriff's broad discretion to set policy and county attorney's testimony that sheriff had exclusive authority to fire deputy sheriff supported finding that sheriff had discretionary, policy-making authority necessary to hold county liable for discharging deputy sheriff in violation of his First Amendment free speech right; deputy was discharged for writing letter to judge concerning sentencing of convicted defendant. Buzek v. County of Saunders, C.A.8 (Neb.) 1992, 972 F.2d 992. Civil Rights 1351(5)

Dorchester County sheriff in managing and operating county jail in Maryland essentially acted in guise of county official and held final county policy-making authority over county jail, so if sheriff were without funds to satisfy settled upon attorney fee in inmates' federal civil rights suit, county, rather than state, was required to satisfy sheriff's obligation. Dotson v. Chester, C.A.4 (Md.) 1991, 937 F.2d 920. Civil Rights 1485

Sheriff was official policymaker regarding law enforcement practices for purposes of § 1983 municipal liability claim arising from deputies' use of excessive force while arresting citizens, even though sheriff did not have final authority over all employment practices; training of officers on use of force was type of law enforcement practice that fell squarely within sheriff's policymaking authority under Washington law. Davis v. Mason County, C.A.9 (Wash.) 1991, 927 F.2d 1473, certiorari denied 112 S.Ct. 275, 502 U.S. 899, 116 L.Ed.2d 227. Civil Rights 1351(4)

Although county sheriff was state employee, sheriff was exercising county power with final authority when he hired and promoted chief jailer who subsequently kidnapped and raped arrestee, and county could be held liable for any constitutional violations arising from sheriff's actions; county rather than state had responsibility for running county jail and could not avoid liability by vesting power over jail to sheriff. Parker v. Williams, C.A.11 (Ala.) 1989, 862 F.2d 1471. Civil Rights 1348

County was liable in § 1983 action for acts of county sheriff in terminating deputy, where sheriff was separately elected under Florida Constitution but, in his capacity as sheriff, had absolute authority over appointment and control of deputies and sheriff's and deputies' salaries were paid by local taxation and according to budget approved by county commissioners. Lucas v. O'Loughlin, C.A.11 (Fla.) 1987, 831 F.2d 232, certiorari denied 108 S.Ct. 1595, 485 U.S. 1035, 99 L.Ed.2d 909. Civil Rights 1349

Deputy sheriff stated §§ 1983 claim against sheriff defendants for acts of former sheriff who allegedly terminated her; sheriff had final decisionmaking authority in that regard. Briggs v. Waters, E.D.Va.2006, 455 F.Supp.2d 508. Civil Rights 1351(5)

County could be held directly liable under §§ 1983 for any violations of terminated jail employee's constitutional rights, even if sheriff/county jail administrator was not final policymaker in that regard, where board of

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commissioners had discussed employee's termination and denied employee's reinstatement request, thereby ratifying termination decision. Shape v. Barnes County, N.D., D.N.D.2005, 396 F.Supp.2d 1067. Civil Rights 1351(5)

Arrestee stated claim against sheriff in his personal capacity for violation of his Fourth Amendment right to be free from unreasonable seizures in detaining him for eight days without judicial probable cause determination pursuant to alleged policy, over which sheriff was final decisionmaker, of not ascertaining whether such determinations had been made. Lingenfelter v. Board of County Com'rs of Reno County, Kan., D.Kan.2005, 359 F.Supp.2d 1163. Civil Rights 1358

Deputy county sheriff's actions were specifically ratified and approved by county sheriff for purposes of federal civil rights claim, and constituted county policy, procedure or custom, where sheriff testified he approved of what deputy did as being in accordance with policies, procedures and practices, as sheriff's approval was chargeable to county. J.B. v. Washington County, D.Utah 1995, 905 F.Supp. 979, affirmed 127 F.3d 919. Civil Rights 1351(4)

City was not liable under § 1983 for allegedly unconstitutional employment practices of sheriff, where, under Virginia law, sheriff was constitutional officer with sole and exclusive discretion to hire and fire deputies. Olivo v. Mapp, E.D.Va.1993, 838 F.Supp. 259. Civil Rights 1349

784. ---- Miscellaneous official policy makers, custom or usage

Manager of loss prevention at amusement park did not exercise final policymaking authority concerning arrests effected by officers of special park police department, either as a matter of state and local positive law, or of custom or usage having force of law, and thus, manager's decision to acquiesce in intention of sergeant of police department to effect arrest of park patron, after she was falsely identified by park employees as individual who had previously passed bad checks at park, was not based on official policy, and could not support recovery by patron against park operator under § 1983. Austin v. Paramount Parks, Inc., C.A.4 (Md.) 1999, 195 F.3d 715. Civil Rights 1339

Physician's assistant was acting as final policymaker for county with respect to medical affairs at road prison, for purposes of imposing § 1983 liability based on deliberate indifference he displayed to prisoner's medical needs. Mandel v. Doe, C.A.11 (Fla.) 1989, 888 F.2d 783. Civil Rights 1351(4)

Based on the fact that under Pennsylvania law the solicitor lacked independent authority and derived all of his power from the mayor or council, it did not appear that borough's solicitor was a "policymaker" for purposes of officer's §§ 1983 claim alleging that the borough filed criminal charges against him in retaliation for his pursuit of posttermination remedies in violation of his First Amendment rights. Koltonuk v. Borough of Laureldale, E.D.Pa.2006, 443 F.Supp.2d 685. Civil Rights 1351(5)

Private employers are not liable under § 1983 for the constitutional torts of their employees unless the plaintiff proves the action pursuant to an official policy of some nature caused a constitutional tort. Goodnow v. Palm, D.Vt.2003, 264 F.Supp.2d 125. Civil Rights 1336

Under Ohio law, municipal court supervisor did not and could not act as policy-maker for city when she disciplined municipal court employee, as was required to establish city's liability to employee under § 1983; even though city played significant role in employment of both supervisor and employee, including issuing paychecks and offering health and insurance plan, supervisor lacked final authority to demote employee, and her decision was subject to approval of municipal court judges. Mace v. City of Akron, N.D.Ohio 1998, 989 F.Supp. 949. Civil Rights 1351(5)

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Assuming county airport authority exercised authority over airport police, who stopped limousine service operator and asked for his insurance information, operator failed to identify an organizational policy or custom of authority, the implementation of which resulted in a violation of his Fourth Amendment rights, as was required to maintain §§ 1983 action. Joseph v. Allegheny County Airport Authority, C.A.3 (Pa.) 2005, 152 Fed.Appx. 121, 2005 WL 2562614, Unreported. Civil Rights 1351(4)

Under Illinois law, mayor, in his capacity as local liquor commissioner, was not "final policymaker" with regard to liquor licensing, and thus city could not be held liable under § 1983 for alleged violations of bar owners' constitutional rights arising out of mayor's refusal to renew bar's liquor license; city, not mayor, had power to pass ordinances, regulations, and resolutions regarding liquor licensing, and state law charged local liquor commissioner only with administration of laws. Gianessi v. City of Pekin, C.A.7 (Ill.) 2002, 52 Fed.Appx. 265, 2002 WL 31641568, Unreported. Civil Rights 1351(6)

785. Time of policy, custom or usage

Even if town officials adopted supervisor's assault on plaintiff as town policy by virtue of their inaction at time of assault, which occurred in their presence, by their failure to accept supervisor's resignation and by failing to cooperate with authorities investigating the assault, the town could not be held liable under § 1983 in that town policy would have been created after the assault. Borek v. Town of McLeansboro, S.D.Ill.1986, 629 F.Supp. 657. Civil Rights 1351(6)

786. Random and unauthorized actions, custom or usage--Generally

Parratt /Hudson doctrine, under which random and unauthorized deprivation of plaintiff's property will not violate procedural due process if state provides adequate postdeprivation remedy, did not bar due process claims brought by judgment debtor's girlfriend arising out of search of storage facility and safe deposit boxes held in girlfriend's name; defendants' conduct was not random or unauthorized, but rather was taken under state court orders allowing court-appointed receiver to take possession of judgment debtor's property and to search storage units, and predeprivation provision of notice and hearing to parties specifically named in state court's orders was not infeasible. Davis v. Bayless, C.A.5 (Tex.) 1995, 70 F.3d 367. Civil Rights 1321; Constitutional Law 319.5(1)

School officials' authorization of sexually explicit AIDS (Acquired Immune Deficiency Syndrome) awareness assembly at public high school, without following school policy and state law requiring that parents be given advance notice and opportunity to opt out of sex education programs, was "random and unauthorized" act, for which *Parratt -Hudson* doctrine precluded § 1983 claim alleging violation of procedural due process when teenagers were compelled to attend the assembly, where state could not have predicted, or provided any reasonable predeprivation measures to forestall, officials' deprivation of teenagers' and parents' assumed liberty interest in freedom from exposure to content of assembly and in being afforded opportunity to opt out. Brown v. Hot, Sexy and Safer Productions, Inc., C.A.1 (Mass.) 1995, 68 F.3d 525, certiorari denied 116 S.Ct. 1044, 516 U.S. 1159, 134 L.Ed.2d 191. Civil Rights 1317

Parratt /Hudson doctrine, under which state actor's random and unauthorized deprivation of plaintiff's property does not result in violation of procedural due process right if state provides adequate postdeprivation remedy, did not foreclose adjudication of § 1983 suit alleging that district attorneys (DAs) and assistant DAs conspired to violate due process rights of owner of seized car by failing to timely institute forfeiture proceeding against car, as "random and unauthorized" element necessary for application of doctrine was absent; although actions of DAs in delaying for nearly three years was unreasonable, such actions were not in conflict with their statutory authority, which did not specify time period within which to bring forfeiture proceeding, and it was alleged that defendants were following their common practice. Alexander v. Ieyoub, C.A.5 (La.) 1995, 62 F.3d 709. Civil Rights 1319

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Claimant alleging that police chief had told her neighbor that he could shoot cats straying onto his property could not maintain § 1983 action for damages based upon deprivation of her Fourteenth Amendment property rights in her cat when neighbor shot animal; chief's advice, if given, would be random and unauthorized conduct for which state provided adequate postdeprivation remedy. Cathey v. Guenther, C.A.5 (Tex.) 1995, 47 F.3d 162. Civil Rights 1319

Alleged action by Louisiana Agriculture Commissioner, who was elected head of the Louisiana Department of Agriculture (LDOA) and who enjoyed considerable authority, and other officials were "random and unauthorized" actions for which crop duster had adequate postdeprivation remedies, and thus, crop duster could not maintain civil rights suit against Commissioner and his employees for alleged procedural due process violations by engaging in ex parte contacts with committee members and soliciting perjured testimony to present to them. Johnson v. Louisiana Dept. of Agriculture, C.A.5 (La.) 1994, 18 F.3d 318, rehearing denied. Civil Rights 1321

Complaint of stockholder in cooperative building, alleging that building's board of directors caused random and unauthorized deprivations of his property interest in violation of state law, failed to state § 1983 claim inasmuch as New York law provided adequate remedy. Katz v. Klehammer, C.A.2 (N.Y.) 1990, 902 F.2d 204. Civil Rights 1318

Hospital corporation and its founder had adequate remedies under state law to redress alleged due process violations in connection with application for certificate of need to build hospital and, therefore, could not bring § 1983 action, even if state remedy would provide less relief or benefit than § 1983; defendants' allegedly intentional acts were random and were not taken pursuant to established state procedures. Huron Valley Hosp., Inc. v. City of Pontiac, C.A.6 (Mich.) 1989, 887 F.2d 710. Civil Rights 1321

School board's termination of teacher without hearing, while believing that teacher was probationary and not entitled to one, was not a "random and unauthorized action" which would avoid § 1983 liability under *Parratt* even though termination was potentially in violation of state statute. Matthiessen v. Board of Educ. of North Chicago Community High School Dist. 123, Lake County, Ill., C.A.7 (Ill.) 1988, 857 F.2d 404. Civil Rights 1133

Plaintiffs who can establish nothing more than unintended irregularities in conduct of state elections are barred from obtaining relief under § 1983 in federal court, provided that adequate and fair state remedy exists, and rather, to state claim under § 1983, plaintiffs must allege willful action by state officials intended to deprive individuals of their constitutional right to vote. Dickie v. Rabbit, D.Mass.1997, 956 F.Supp. 67. Civil Rights 1032; Civil Rights 1321

State officials may not characterize their conduct as random and unauthorized, for purposes of § 1983 civil rights claim, if state has delegated to them power and authority to effect the very deprivation complained of. Gall v. City of Vidor, Tex., E.D.Tex.1995, 903 F.Supp. 1062. Civil Rights 1315

State actor's random and unauthorized deprivation of plaintiff's property does not result in due process violation, as required to proceed with § 1983 civil rights claim, if state provides adequate postdeprivation remedy. Gall v. City of Vidor, Tex., E.D.Tex.1995, 903 F.Supp. 1062. Civil Rights 1318

Random acts or isolated incidents are usually insufficient to establish municipal "custom or policy," for purpose of holding municipality liable for its employees' acts under § 1983. Gomez v. Metro Dade County, Fla., S.D.Fla.1992, 801 F.Supp. 674. Civil Rights 1351(1)

Former sheriff's department corrections officer had no § 1983 claim for violation of procedural due process against his supervisors arising out of his suspension where supervisors' actions were random and unauthorized and state provided officer not only with proper predeprivation procedure but also with remedy if such process was not afforded due to unforeseen negligence or even maliciousness of supervisors. Jones v. Doria, N.D.Ill.1991, 767

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42 U.S.C.A. § 1983

F.Supp. 1432. Civil Rights 1320

Motorcyclist who lost thumb and forefinger when arresting officer jerked him from fallen but still running motorcycle following high-speed chase could not maintain civil rights action under 42 U.S.C.A. § 1983 for a claim of denial of procedural due process, where officer's acts were random and unauthorized and at most constituted a negligent deprivation of motorcyclist's liberty and where Ohio provided adequate postdeprivation remedy in light of statute [Ohio R.C. § 2743.02(A)(1)] waiving state's Eleventh Amendment immunity to extent that motorcyclist could proceed against the state for damages in the Court of Claims. Johnson v. Pike, N.D.Ohio 1985, 624 F.Supp. 390. Civil Rights 1088(4)

787. ---- Post deprivation procedures, random and unauthorized actions, custom or usage

Inmate of Nebraska prison, whose packages containing mail order hobby materials were lost when normal procedure for receipt of mail packages was not followed, failed to state claim for relief under this section, since, although he had been deprived of property under color of state law, he did not suffer such deprivation without due process of law inasmuch as deprivation did not occur as a result of some established state procedure, and moreover, Nebraska had tort claims procedure which provided remedy to persons who had suffered tortious loss at hands of state, and which prisoner did not use. Parratt v. Taylor, U.S.Neb.1981, 101 S.Ct. 1908, 451 U.S. 527, 68 L.Ed.2d 420. Civil Rights 1098; Civil Rights 1319

Evidence that county had policy which allegedly authorized county officials to euthanize animals deemed to be sick or injured would not preclude application of *Parratt/Hudson* doctrine, barring relief under §§ 1983 for procedural due process claims if the officials' conduct was random and unauthorized and a meaningful postdeprivation remedy was available, to §§ 1983 procedural due process claim asserted by owner of dogs and cats that were seized and euthanized without prior hearing, contrary to state law; owner failed to show that policy was in place at time that dogs and cats were seized, that officials relied upon that policy, or that policy actually sanctioned officials' conduct in performing the euthanization. Bogart v. Chapell, C.A.4 (S.C.) 2005, 396 F.3d 548. Animals 43.1; Constitutional Law 293

Under *Parratt /Hudson* doctrine, prisoners could not maintain § 1983 civil rights action on basis of coercive conduct of jail's medical personnel in allegedly requiring prisoners to sign charge document to allow prison to charge prisoners' accounts for prisoners to receive medical services, despite their exempt status as indigents, since state had adequate postdeprivation remedy. Myers v. Klevenhagen, C.A.5 (Tex.) 1996, 97 F.3d 91. Civil Rights 1319

"*Parratt/Hudson* doctrine" barred § 1983 claim against police officer based on his participation in alleged deprivation of property without due process when he met with partners seeking to remove partnership property from resigning partner's office; police department had policy of neutrality in civil matters, officer met with partners with understanding that they had court documents authorizing removal but thereafter learned that partners had no such documents, and department could not have, through additional safeguards, foreseen partners' conduct or prevented officer's violation of neutrality policy in face of partners' conduct, and state law offered postdeprivation remedy to resigning partner. Charbonnet v. Lee, C.A.5 (La.) 1992, 951 F.2d 638, certiorari denied 112 S.Ct. 2994, 505 U.S. 1205, 120 L.Ed.2d 871. Civil Rights 1318

Intentional, substantive violations of constitutional rights are not subject to rule of *Parratt* that existence of adequate state remedy forecloses federal civil rights claim based on procedural violations of constitutional rights. Morello v. James, C.A.2 (N.Y.) 1987, 810 F.2d 344. Civil Rights 1315

Availability of postdeprivation state law remedy for alleged violations of constitutional rights, concerning placement in maximum security during pretrial detention, was not sufficient basis to dismiss § 1983 complaint as matter of law, where deprivation at issue was allegedly neither random nor unauthorized and where city officials

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involved did not show that predeprivation hearing would not have been possible or practicable. Adams v. Galletta, S.D.N.Y.1997, 966 F.Supp. 210. Civil Rights 1319

Parratt doctrine permits dismissal of procedural due process claims brought under federal civil rights statute based on fact that state provides claimant adequate postdeprivation remedy if deprivation was unpredictable or random, predeprivation process was impossible or impracticable, and state actor was not authorized to take action that deprived plaintiff of property or liberty. Spruytte v. Govorchin, W.D.Mich.1997, 961 F.Supp. 1094. Civil Rights 1315

788. Acquiescence or inaction, custom or usage

City's failure to repeal unconstitutional portion of disorderly conduct ordinance against unreasonable noise was municipal policy or custom partially causing allegedly unconstitutional arrest for unreasonable noise and fighting language, and, thus, city was improperly dismissed from § 1983 suit. Buffkins v. City of Omaha, Douglas County, Neb., C.A.8 (Neb.) 1990, 922 F.2d 465, rehearing denied, certiorari denied 112 S.Ct. 273, 502 U.S. 898, 116 L.Ed.2d 225. Civil Rights 1351(6)

School district could be held liable for acts of band teacher in conducting prayers prior to practices and concerts where school board members knew of the practice yet took no official steps to correct it, individual members expressed support for the prayers, and one member urged objecting parent to drop the issue. Steele v. Van Buren Public School Dist., C.A.8 (Ark.) 1988, 845 F.2d 1492. Civil Rights 1346; Civil Rights 1352(2)

School board did not act with deliberate indifference to teacher's First Amendment rights in approving his termination, and thus school district was not liable under §§ 1983 for superintendent's retaliation against teacher for having engaged in protected speech, where teacher had been observed by administrators and professional staff over extended period of time during site-assistance plans at two different schools, findings from both site-assistance plans indicated that teacher's job performance did not meet professional standards, and members of school board did not have reasonable cause to believe that investigation was inadequate or deficient. Sherrod v. Palm Beach County School Dist., S.D.Fla.2006, 424 F.Supp.2d 1341. Civil Rights 1352(5)

Supervisory officials can be held liable under this section for conduct of their subordinates if plaintiff can show that the supervisory officials had some specific knowledge of unconstitutional conduct and intentionally acquiesced in the conduct by failing to establish proper procedures or train and supervise the subordinates adequately. Dobson v. Green, E.D.Pa.1984, 596 F.Supp. 122. Civil Rights 1355

Sheriff's failure to act to correct harmful conditions which are substantially likely to violate plaintiff's rights may constitute implicit acquiescence in or approval of employee conduct resulting from those conditions so as to give rise to cause of action under this section providing for civil action for deprivation of rights. Doe v. Burwell, S.D.Ohio 1982, 537 F.Supp. 186. Civil Rights 1355

State can be held liable for violating constitutional rights of local school children in state through racial discrimination if, through custom or practice, unlawful acts of subordinates are intentionally condoned by inaction when a foreseeable consequence of such inaction is an intrusion on constitutional rights and inaction is proximate cause of the injustice. Penick v. Columbus Bd. of Ed., S.D.Ohio 1981, 519 F.Supp. 925, affirmed 663 F.2d 24, certiorari denied 102 S.Ct. 1713, 455 U.S. 1018, 72 L.Ed.2d 135. Civil Rights 1351(2)

One type of inaction involving neglect or refusal to enforce laws already on the books, or a systematic maladministration of those laws, can qualify as a "custom" within the scope of this section. Mayes v. Elrod, N.D.Ill.1979, 470 F.Supp. 1188. Civil Rights 1039

789. Checks, custom or usage

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42 U.S.C.A. § 1983

Maker of dishonored check failed to demonstrate existence of municipal policy of seeking criminal charges to force payment of checks even when city employees know that person issuing such check did not know check was insufficient when made, as was necessary to establish city's liability in § 1983 action for alleged unlawful arrest and prosecution; maker did not allege any other specific incidents involving illegal arrest of any other person and did not present any factual allegations to support her theory of existence of municipal policy. Culpepper v. Biggers, E.D.Ark.1990, 742 F.Supp. 528. Civil Rights 1351(4)

790. Child care services, custom or usage

Genuine issues of material fact existed as to whether city had policy or custom of removing children from their mothers based on mothers being victims of domestic abuse, precluding summary judgment as to whether city could be liable in §§ 1983 action alleging due process and other constitutional violations. Velez v. Reynolds, S.D.N.Y.2004, 325 F.Supp.2d 293. Federal Civil Procedure 2491.5

Municipal policies or customs could have proximately caused alleged constitutional violations connected with removal of child from her home, as required for municipality to be liable under § 1983, inasmuch as alleged policy of severing contact between children and families, or failure to properly train county employees, could have caused county child protective services worker to institute "no parental contact" restriction. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1351(6); Civil Rights 1352(6)

Complaint stated cause of action against officials of Illinois Department of Children and Family Services with respect to placement of siblings who were wards of the court by alleging that they enforced and maintained policies regarding sibling visitation notwithstanding their knowledge that those policies were causing severe emotional harm to the siblings. Aristotle P. v. Johnson, N.D.Ill.1989, 721 F.Supp. 1002. Civil Rights 1395(1)

New York City Department of Social Services was not liable for violating civil rights of mother and grandmother of allegedly abused child by retaining child beyond effective date of retention order where mother and grandmother did not allege that Department was acting pursuant to any custom, policy, practice, or regulation. Lester v. Brezenoff, E.D.N.Y.1982, 548 F.Supp. 616, affirmed 722 F.2d 728. Civil Rights 1351(6)

Father's allegations that Administration for Children's Services (ACS) adopted and pursued racially motivated policies, practices, customs, and procedures pursuant to which his children were removed from his custody and placed in foster care, where there was no threat of imminent danger to children's life or health, on the basis of incompletely investigated allegations of neglect or abuse, made a sufficient allegation of a municipal "policy" for imposition of § 1983 liability on ACS. Southerland v. Giuliani, C.A.2 (N.Y.) 2001, 4 Fed.Appx. 33, 2001 WL 127293, Unreported. Civil Rights 1395(1)

791. Commencement of actions, custom or usage

Initiation by court officer of private criminal prosecution of plaintiff pursuant to city policy permitting private individuals to commence criminal actions did not constitute state action under § 1983; state's mere acquiescence in private action did not convert that action into state action, district attorney's office did not have policy of conducting unconstitutional prosecutions itself, nor did it ratify any unconstitutional prosecutions brought by private citizens. Rochez v. Mittleton, S.D.N.Y.1993, 839 F.Supp. 1075. Civil Rights 1326(9)

792. Construction contracts, custom or usage

Minority-owned construction firm failed to state § 1983 claim against county on ground that county deprived it, without due process, of property interest in contract to perform general contracting work on county project, as complaint failed to allege that county acted pursuant to "policy or custom"; although it alleged that county failed to comply with California public bidding procedures, it did not allege that failure constituted official policy or custom

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of county. Federation of African American Contractors v. City of Oakland, C.A.9 (Cal.) 1996, 96 F.3d 1204. Civil Rights 1395(1)

793. Deliberate indifference, custom or usage

Assuming school district's "Suicide Referral Process" constituted a "policy" or "custom" of the district, which could form the basis for holding district liable under §§ 1983 for a constitutional violation of the policy, parent of high school student who committed suicide failed to prove district disregarded a known or obvious consequence of its action in counseling student; there was no evidence of a pattern of student suicides in district, evidence that the policy had failed in the past, or evidence that student's reasons for taking his own life were related to guidance counselor's intervention, which was undertaken in accordance with school policy. Sanford v. Stiles, C.A.3 (Pa.) 2006, 456 F.3d 298. Civil Rights 1352(2)

In order for § 1983 plaintiff to establish municipal liability on theory that facially lawful municipal action has led employee to violate plaintiff's rights, plaintiff must demonstrate that municipal action was taken with deliberate indifference as to its known or obvious consequences. Rasche v. Village of Beecher, C.A.7 (Ill.) 2003, 336 F.3d 588. Civil Rights 1352(1)

Deliberate indifference requirement is not related to the degree of fault that may be an element of the ultimate constitutional violation at issue but, rather, exists as a necessary fault basis for imposing direct, not vicarious, municipal liability for any constitutional violation by municipal employees that is caused by policy decisions. Jones v. Wellham, C.A.4 (Md.) 1997, 104 F.3d 620. Civil Rights 1351(1)

City could be held liable under civil rights statute only if procedural deficiency alleged with respect to impoundment and sale of vehicle either was direct manifestation of city's formal policy or informal custom, or resulted from failure to train city personnel that, under the circumstances, evidenced a deliberate indifference to citizens' rights sufficient, in itself, to constitute a policy or custom of the city. Summers v. State of Utah, C.A.10 (Utah) 1991, 927 F.2d 1165. Civil Rights 1351(6); Civil Rights 1352(6)

Genuine issues of material fact existed as to whether municipality had practices or customs to operate emergency response vehicles at unnecessary and excessive speeds, to only slow down and prepare to stop-rather than stopping-when approaching a negative right-of-way intersection, and to select only the most direct route when selecting an emergency response route, precluding summary judgment for municipality in §§ 1983 action alleging a violation of the substantive due process rights of the motorist struck by the fire truck. Becerra ex rel. Perez v. Unified Government of Wyandotte County/Kansas City, Kansas, D.Kan.2004, 342 F.Supp.2d 974, reversed 432 F.3d 1163, petition for certiorari filed 2006 WL 1130534. Federal Civil Procedure 2491.5

Determination that school district and school officials took reasonable measures in response to reports of pupils' racial harassment of Asian-American elementary student rendered it unnecessary to consider whether officials acted in violation of student's constitutional rights pursuant to a district policy, practice, or custom under § 1983; officials were determined not to have acted with deliberate indifference toward student's rights under § 1983, and § 1983 did not create independent substantive constitutional rights but was rather a vehicle for enforcing such rights. Yap v. Oceanside Union Free School Dist., E.D.N.Y.2004, 303 F.Supp.2d 284. Civil Rights 1305; Civil Rights 1351(2); Civil Rights 1352(2)

City's alleged failures to implement various procedures amount to policy or practice, and may provide basis for liability in § 1983 action, only if plaintiffs show that city was deliberately indifferent to others' constitutional rights; standard is stringent, and single incident is ordinarily not enough to prove that city, through inaction, has unconstitutional policy or practice. Rodriguez v. City of Milwaukee, E.D.Wis.1997, 957 F.Supp. 1055. Civil Rights 1351(1)

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42 U.S.C.A. § 1983

Civilian complaint review board's (CCRB) consistent and utter failure to abide by statutory deadlines for hearing cases brought by citizens involving excessive force complaints against police officers became "custom" of deliberate indifference to citizens' complaints of excessive force; although CCRB was mandated to schedule hearing within 30 days of citizen's complaint, that requirement was virtually ignored since promulgation. Cox v. District of Columbia, D.D.C.1993, 821 F.Supp. 1, as amended, affirmed 40 F.3d 475, 309 U.S.App.D.C. 219. Civil Rights 1352(4)

If municipality acts with "deliberate indifference" in establishing practice or custom, as required for liability under § 1983, then it expects or reasonably anticipates injuries to its citizens as a result of practice or custom. Lincoln Nat. Health and Cas. Ins. Co. v. Brown, M.D.Ga.1992, 782 F.Supp. 110. Civil Rights 1351(1)

794. Discrimination, custom or usage

Firefighter failed to establish custom or practice of discrimination on basis of union activity for purposes of imposing § 1983 liability on city despite lack of formal approval through official decisionmaking channels; he failed to show that practice was so widespread and permanent that, even though city's written policy was one of union neutrality, city in fact pursued policy of opposing union activity. Greensboro Professional Fire Fighters Ass'n, Local 3157 v. City of Greensboro, C.A.4 (N.C.) 1995, 64 F.3d 962. Civil Rights 1351(5)

Disproportionate impact of municipal custom on one gender is only relevant in § 1983 action against city to extent it reflects discriminatory purpose. Ricketts v. City of Columbia, Mo., C.A.8 (Mo.) 1994, 36 F.3d 775, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1838, 514 U.S. 1103, 131 L.Ed.2d 757. Civil Rights 1351(1)

County could not be held liable under § 1983 for any alleged sexual discrimination against county secretary; there was no indication that county attorney's individual acts relating to secretary were officially sanctioned or ordered and specific acts of county attorney did not rise to level of policy or custom within county attorney's office. Sauers v. Salt Lake County, C.A.10 (Utah) 1993, 1 F.3d 1122. Civil Rights 1351(5)

Chief of police could not be held liable in his individual capacity for subordinates' conduct in discharging black employee; evidence of chief's failure to enact written policy prohibiting use of racial slurs, even in light of his awareness of general complaints of racial discrimination and use of racial epithets, was not substantial evidence such that reasonable minds could disagree as to whether causal connection existed between chief's action and deprivation of employee's rights. Busby v. City of Orlando, C.A.11 (Fla.) 1991, 931 F.2d 764. Civil Rights 1359

Absence of evidence that county maintained racial discriminatory policies and customs precluded county's liability under § 1983 based on allegations that county engaged in pattern, policy, or practice of race discrimination by disciplining corrections officer more severely than non-African American employees, in violation of Equal Protection Clause. Moreland v. Miami-Dade County, S.D.Fla.2002, 255 F.Supp.2d 1304, appeal after remand from federal court 879 So.2d 23, rehearing denied. Civil Rights 1351(5)

Plaintiff failed to establish that city had policy to discriminate against African-Americans by not offering them employment and by firing them without cause; mayor, in deciding to hire African-American police officer, conditionally offered plaintiff job despite fact that his test scores were inferior to those of two Caucasian male candidates, and city refused to grant plaintiff permanent position on police force only after it was revealed he had misrepresented scope of his prior criminal record. Watson v. City of Salem, D.N.J.1995, 934 F.Supp. 643. Civil Rights 1351(5)

Hispanic police lieutenant failed to show widespread custom or practice of discrimination by city employees against Hispanics as result of their national origin in any respect as necessary to impose civil rights liability on city.

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42 U.S.C.A. § 1983

Garza v. City of Inglewood, C.D.Cal.1991, 761 F.Supp. 1475, affirmed 967 F.2d 586. Civil Rights 1351(5)

795. Education, schools and students, custom or usage--Generally

White former athletic director and head football coach at public high school could prevail on his claim for damages against the school district based on alleged discrimination by black superintendent and white principal only if athletic director could show that alleged violation of his "right to make contracts" protected by § 1981 was caused by a custom or policy of the school district. Jett v. Dallas Independent School Dist., U.S.Tex.1989, 109 S.Ct. 2702, 491 U.S. 701, 105 L.Ed.2d 598, on remand 7 F.3d 1241, rehearing denied. Civil Rights 1351(5)

County school board did not have custom that was moving force behind student's arrest for distributing anonymous pamphlet containing essay in which author "wondered what would happen" if he shot principal, teachers, or other students, such that school board could be liable to student for any constitutional violations connected with arrest, inasmuch as school board police exercised independent judgment before arresting, and made arrests in only 14.91% of incidents reported to them. Cuesta v. School Bd. of Miami-Dade County, Fla., C.A.11 (Fla.) 2002, 285 F.3d 962. Civil Rights 1351(2)

Mother of child who died following seizure on school bus could not establish § 1983 liability on part Board of Education or its officers on grounds of practice, policy, or custom of taking home children who had seizures without medical intervention, absent evidence that defendants, by deliberate choice, adopted and maintained such practice; bus driver's statement that on separate occasion Board employee had merely taken child home was not enough to establish custom, practice, or policy. Sargi v. Kent City Bd. of Educ., C.A.6 (Ohio) 1995, 70 F.3d 907. Civil Rights 1351(2)

Punitive and preventative actions taken by school district, school superintendent, and school principal in response to reports of pupils' racially-motivated verbal and physical abuse of Asian-American elementary student, and district's denial of student's request for school transfer or to skip a grade, were not so inadequate so as to shock the conscience, as required for district and officials to be liable under § 1983 for alleged violations of student's due process rights; officials took reasonable measures to prevent abuse and imposed discipline on allegedly abusive pupils, and district's decision not to break well-established transfer and class-acceleration rules was reasonable. Yap v. Oceanside Union Free School Dist., E.D.N.Y.2004, 303 F.Supp.2d 284. Constitutional Law 278.5(5.1); Schools 154(1); Schools 163

When student attempts to hold school district liable under § 1983 for sexual abuse by teacher based on custom or policy of failure to act to prevent abuse, student must establish: (1) existence of clear and persistent pattern of sexual abuse by school employees, (2) notice or constructive notice of abuse to district or school board, (3) district's tacit approval of conduct, or deliberate indifference from failure to correct problem, and (4) that district's failure to act was moving force behind violation of student's constitutional rights. Hackett v. Fulton County School Dist., N.D.Ga.2002, 238 F.Supp.2d 1330. Civil Rights 1352(2)

School district was not liable under § 1983 for teacher's deprivation of student's Fourteenth Amendment right to bodily integrity by acts of sexual misconduct, since there was not sufficient evidence that district had any custom or policy that was driving force behind teacher's actions; even if district was negligent in its failure to detect fabrications and omissions on teacher's employment application, failure to conduct thorough background check in one instance did not equate to custom or policy of hiring sexual predators through failure to conduct proper background checks. Hackett v. Fulton County School Dist., N.D.Ga.2002, 238 F.Supp.2d 1330. Civil Rights 1352(2)

School district was not liable, under § 1983, for violation of high school student's due process right to be free from unjustified intrusion on personal security, occurring when student was sexually harassed by track coach; there was no policy of condoning such practice, and coach was not district official capable of creating policy through his own

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conduct. K.P., ex rel. S.C. v. Corsey, D.N.J.2002, 228 F.Supp.2d 547, reversed in part 77 Fed.Appx. 611, 2003 WL 22338566. Civil Rights 1351(2)

One-time decision by school district, through school board, not to hire certified athletic trainer to attend to health and safety of students participating in school-sponsored sports, did not constitute official policy of school district, as would potentially support recovery in § 1983 action brought after high school football player collapsed following practice and later died. Burden v. Wilkes-Barre Area School Dist., M.D.Pa.1998, 16 F.Supp.2d 569. Civil Rights 1351(5)

There was no evidence that school district engaged in unofficial policy or custom of delaying tutoring services, as required to support handicapped student's § 1983 claim that district's delay in providing tutoring to her was a deliberate deprivation of her right to receive free appropriate public education. Hoekstra By and Through Hoekstra v. Independent School Dist. No. 283, St. Louis Park, Minn., D.Minn.1996, 916 F.Supp. 941, affirmed 103 F.3d 624, certiorari denied 117 S.Ct. 1852, 520 U.S. 1244, 137 L.Ed.2d 1054. Civil Rights 1351(2)

Action taken against teacher at direction of superintendent of schools represented official policy of board of education under New York law, and thus board was liable for violation of teacher's First Amendment rights. Rothschild v. Board of Educ. of City of Buffalo, W.D.N.Y.1991, 778 F.Supp. 642. Civil Rights 1351(5)

Evidence did not support contention, made on behalf of elementary school students who were allegedly verbally and physically abused by their teacher, that school district had policy or custom of retaining teachers who engaged in abusive disciplinary tactics by transferring them instead of firing them and by discouraging complaints; therefore, school district could not be held liable in § 1983 action. Gonzales v. Brown, S.D.Tex.1991, 768 F.Supp. 581. Civil Rights 1418

Board of education could be held liable under federal civil rights statute for alleged single act of discrimination against teacher; decision to request teacher's resignation was within school board's exclusive power, and thus represented act of official government policy. Haag v. Board of Educ., N.D.Ill.1987, 655 F.Supp. 1267. Civil Rights 1351(5)

796. ---- Corporal punishment, education, schools and students, custom or usage

Individuals charged with misdemeanors were subjected to sufficient deprivation of liberty to constitute "seizure" necessary to support their § 1983 malicious prosecution claims against police officer, even though they were never placed in custody and no restrictions were placed on their right to travel, where they were required to submit to processing and to attend court hearings as result of charges. Roskos v. Sugarloaf Tp., M.D.Pa.2003, 295 F.Supp.2d 480. Civil Rights 1088(5)

To sustain § 1983 claims against municipality and its officials in their official capacity, plaintiff has to establish that allegedly unconstitutional acts were official policy or custom of municipality, and allegations based upon respondeat superior are insufficient to support cause of action under § 1983. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1345; Civil Rights 1351(1)

Student who claimed his constitutional rights were violated by teacher's alleged overuse of physical force could not maintain § 1983 action against school district, school superintendent, and school principal; there was no evidence to indicate that school's policy concerning use of physical force by teachers was "moving force" that would have caused teacher to act with malice. Thrasher v. General Cas. Co. of Wisconsin, W.D.Wis.1990, 732 F.Supp. 966. Civil Rights 1351(2); Civil Rights 1356

797. ---- Textbooks, education, schools and students, custom or usage

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Even if parent suffered constitutional deprivation when she was arrested on school premises while attempting to give her child a private reading lesson from textbook she did not find objectionable, parent was not entitled to recover in civil rights action against city, school board and school and city officials in their official capacities, since alleged deprivations were not proximately caused by custom or policy of city or board; parent failed to produce evidence as to how board's policy of requiring all students to use only approved textbooks led to constitutional deprivation or how city participated in arrest. Frost v. Hawkins County Bd. of Educ., C.A.6 (Tenn.) 1988, 851 F.2d 822, certiorari denied 109 S.Ct. 529, 488 U.S. 981, 102 L.Ed.2d 561. Civil Rights 1351(2); Civil Rights 1351(4)

798. Employment, custom or usage--Generally

African-American bus driver, who was terminated for unfitness for duty, failed to establish any *Monell* liability against her former employer since there was no proof of any custom, policy or practice to treat the her differently from white bus operators nor were there any discriminatory actions by employer or any policymaker of employer. Perry v. Metropolitan Suburban Bus Authority, E.D.N.Y.2005, 390 F.Supp.2d 251. Civil Rights 1351(5)

County was not subject to liability under §§ 1983 in connection with private non-profit corporation's decision to terminate its employee, despite employee's contention that county encouraged corporation to terminate her employment, absent allegation that there was causal connection between any county policy or custom and alleged violation of her civil rights, or that county exercised any influence or control over corporation's decision to terminate her. Ashby v. County of Nassau, E.D.N.Y.2004, 351 F.Supp.2d 30. Civil Rights 1351(5)

Employee of transportation authority failed to allege municipal policy or custom of violating employees' due process rights, and thus failed to state cause of action in complaint against authority under §§ 1983. Palumbo v. Manhattan and Bronx Surface Transit Operating Authority, S.D.N.Y.2004, 346 F.Supp.2d 493. Civil Rights 1351(5)

Because city manager, the only city official authorized to make policy on personnel matters, had not ratified the decision to transfer police officer, city could not be held liable under §§ 1983 for allegedly unconstitutional transfer of officer, who had not identified any policy enacted by the city manager or the city commission designed to retaliate against officer or anyone similarly situated, in retaliation for officer's complaints about a superior interfering with an ongoing murder investigation. Pino v. City of Miami, S.D.Fla.2004, 315 F.Supp.2d 1230. Civil Rights 1351(5)

Male homosexual co-worker's claim that his complaint of harassment was "brushed off" and female co-worker's claim that no one investigated her complaints about male employee's mistreatment did not give rise to an inference of a policy or custom of unlawful retaliation by county, as required for white male employee's § 1983 claim. Kulikowski v. Board of County Com'rs of County of Boulder, D.Colo.2002, 231 F.Supp.2d 1053. Civil Rights 1405

African American coemployees' alleged use of term "nigger" when referring to fellow African Americans was not policy and practice of District of Columbia Department of Corrections, and Department was not liable to African American employee on his § 1983 discrimination claim; Department had detailed grievance procedure to address discrimination charges, and employee's claim, which was unique and rarely seen, was not persistent problem that had been brought frequently to attention of Department's management and ignored. Ridley v. District of Columbia, D.D.C.1996, 945 F.Supp. 333. Civil Rights 1351(5)

Even if town terminated park manager's employment improperly, park manager failed to identify any conduct that could constitute a custom, policy or practice of the town which led to the deprivation of his employment and as such, park manager failed to establish § 1983 municipal liability claim. Krennerich v. Inhabitants of Town of Bristol, D.Me.1996, 943 F.Supp. 1345. Civil Rights 1351(5)

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Hispanic-American former city employee failed to establish a citywide policy or custom of race discrimination and, therefore, failed to establish city's § 1983 liability; employee failed to alleged or otherwise establish that city or individual city employees engaged in conduct causing deprivations of rights at issue by policies which would affirmatively command that discrimination occur, or by acquiescence in longstanding practice or custom which would constitute standard operating procedure of city, but merely alleged the occurrence of random remarks or isolated incidents, and employee alleged that violative discriminatory conduct occurred in relation to her and not as a custom or policy of city. Underwood v. City of Fort Myers, M.D.Fla.1995, 890 F.Supp. 1018. Civil Rights 1351(5)

Plaintiff, who alleged that officers of municipality actively participated in selection of African American as Deputy Director of Emergency Ambulance Bureau of District of Columbia Fire Department on basis of his race, stated § 1983 claim against municipality, since he alleged that selection resulted from policy adopted and promulgated by municipality's officers. Zervas v. District of Columbia, D.D.C.1993, 817 F.Supp. 148. Civil Rights 1395(8)

Complaint by terminated housing authority employee failed to allege facts sufficient to establish municipal liability on the part of the authority under civil rights statute, where no facts were alleged which implicated the authority's board in plaintiff's termination and it was not claimed that the board promulgated an unconstitutional termination policy but that certain authority employees failed to follow or honor the due process provisions set forth in the authority's manual and where, though complaint implicated some fairly high-ranking officials, the applicable statute did not specifically vest any of those officials with final policy-making authority over personnel matters. Parker v. Chicago Housing Authority, N.D.Ill.1989, 730 F.Supp. 115. Civil Rights 1395(8)

Allegations that former employee was terminated from position with city's commission on human rights in violation of constitutional rights, that she was terminated by deputy director who acted pursuant to mandate issued by acting director, and that acting director was responsible for establishing final policy with respect to employment with commission satisfied requirement for imposition of municipal liability under section 1983 that constitutional deprivation was caused by governmental official acting in accordance with municipal policy, and thus stated cause of action against city. Walker v. City of Chicago, N.D.Ill.1986, 645 F.Supp. 269. Civil Rights 1395(8)

Dismissed teacher's § 1983 claims of deprivation of due process could not be maintained against the board of education where teacher could not show that a policy or practice of the board caused the alleged deprivation. Flynn v. New York City Bd. of Educ., S.D.N.Y.2002, 2002 WL 31175229, Unreported. Civil Rights 1351(5)

799. ---- Demotions, employment, custom or usage

Police officers' allegations that they were transferred from prestigious positions to street jobs and passed over for promotions after speaking with coworkers and union representatives about deputy inspector's order forbidding officers from conducting follow-up investigations or assisting detective bureau without inspector's direct authorization failed to show that city had policy or custom that caused officers' injuries, as required to state § 1983 claim against city. Gustafson v. Jones, C.A.7 (Wis.) 1997, 117 F.3d 1015. Civil Rights 1351(5)

Whether firefighter was demoted by budget ordinance of city, which abolished training captain's position and created new lieutenant's position into which firefighter was demoted, or by city manager, who informed firefighter that the training captain's position was abolished and that firefighter was being demoted to his former rank of lieutenant, city was subject to liability under this section for firefighter's demotion. Williams v. City of Valdosta, C.A.11 (Ga.) 1982, 689 F.2d 964. Civil Rights 1349

800. ---- Leaves of absence, employment, custom or usage

Alleged policy of a Department of Social Services and the Board of Education of the City of New York in requiring pregnant employees to take unpaid leaves of absence before those leaves are required for medical reasons

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involved official policy as the moving force of the alleged constitutional violation so that those bodies could be sued and held liable for the equitable relief of back pay under this section. Monell v. Department of Social Services of City of New York, U.S.N.Y.1978, 98 S.Ct. 2018, 436 U.S. 658, 56 L.Ed.2d 611. Civil Rights 1351(5)

801. ---- Promotions, employment, custom or usage

Fire chief's decision not to promote firefighter, allegedly based on his union activity, did not implement municipal policy, for purposes of § 1983 liability; "final policymaking authority" over employer-employee relations in city rested only with city council and city manager, record showed that city manager had adopted official policy of neutrality toward union activities of city employees, and thus firefighter and union could not establish that city formally adopted municipal policy embodying anti-union animus,or that fire chief was authorized to adopt such a policy. Greensboro Professional Fire Fighters Ass'n, Local 3157 v. City of Greensboro, C.A.4 (N.C.) 1995, 64 F.3d 962. Civil Rights 1351(5)

New police superintendent's allegedly discriminatory demotions and promotions of senior staff did not establish municipal policy that could serve as basis for imposing municipal liability; if superintendent did discriminate on basis of race or politics, he violated rather than implemented municipal policy calling for merit selection and banning discrimination on basis of race or politics. Auriemma v. Rice, C.A.7 (Ill.) 1992, 957 F.2d 397. Civil Rights 1351(5)

County's failure to promote any African-American employees until lawsuit was filed did not establish custom of discriminatory employment practices, and thus did not subject county to liability under § 1983 based on failure to promote African-American employee, where county had official policy against discrimination and promoting equal opportunity employment and affirmative action, percentage of black males in civilian labor force was similar to percentage of county employees, there was no evidence of discrimination against county's other African-American employee, and employee was later promoted to position. Stewart v. Board of Com'rs for Shawnee County, Kan., D.Kan.2004, 320 F.Supp.2d 1143. Civil Rights 1351(5)

City could not be held liable for single employment decision of city clerk not to promote city employee, for purposes of determining municipal liability under § 1983 for alleged discrimination based on age in violation of equal protection; city clerk merely exercised discretion in carrying out officially pronounced policy of city, inasmuch as city council established policies applying to selection of candidate, established selection committee comprised in part of its members, and then directed to city clerk a list of acceptable candidates according to that policy. Mummelthie v. City of Mason City, Ia., N.D.Iowa 1995, 873 F.Supp. 1293, affirmed 78 F.3d 589. Civil Rights 1351(5)

802. ---- Retaliatory discharge, employment, custom or usage

City employee failed to prove existence of unconstitutional municipal policy which resulted in series of employment actions against employee, including his ultimate layoff in retaliation for his appealing original job decision to civil service commission, so as to impose liability against city under § 1983, where aldermen and mayor enacted no ordinances designed to retaliate, and employee's own attempts from adverse personnel decision repeatedly brought him at least partial relief. (Per Justice O'Connor with the Chief Justice and two Justices concurring and three Justices concurring in the judgment.) City of St. Louis v. Praprotnik, U.S.Mo.1988, 108 S.Ct. 915, 485 U.S. 112, 99 L.Ed.2d 107, on remand 879 F.2d 1573, rehearing denied. Civil Rights 1351(5)

Mayor's discretionary hiring and firing decisions in executing layoffs of city employees during budgetary cutback constituted municipal policy for which civil rights liability could be imposed on city. Gronowski v. Spencer, C.A.2 (N.Y.) 2005, 424 F.3d 285. Civil Rights 1351(5)

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42 U.S.C.A. § 1983

Constructive discharge of city assistant fire chief, who was forced to retire for making statements protected by First Amendment, was pursuant to final policy attributable to city, for purposes of determining whether city was liable under § 1983; assistant fire chief appealed to civil service commission which ruled against him on ground he had voluntarily retired, and such determination was substantive and marked end of city's appeals process. Meyers v. City of Cincinnati, C.A.6 (Ohio) 1994, 14 F.3d 1115, rehearing and suggestion for rehearing en banc denied. Civil Rights 1351(5)

City employee who was transferred and laid off failed to establish that city was liable under § 1983; supervisors responsible for transfer and lay off were not vested with final policymaking authority in area of personnel administration and lay offs and no evidence existed of an unconstitutional municipal policy authorizing or otherwise permitting any form of retaliatory action for exercising right to appeal adverse employment decisions to Civil Service Commission. Praprotnik v. City of St. Louis, C.A.8 1989, 879 F.2d 1573, rehearing denied. Civil Rights 1351(5)

School district's vote to discharge teacher did not reflect policy of retaliating against teachers who engaged in protected speech, and thus district could not be held liable under §§ 1983 for superintendent's retaliation against teacher for having engaged in protected speech, where district terminated teacher for unsatisfactory performance during two site-assistance plans at different schools, and there was no proof of retaliatory animus by majority of district or of custom or practice of retaliation against outspoken teachers. Sherrod v. Palm Beach County School Dist., S.D.Fla.2006, 424 F.Supp.2d 1341. Schools 147.12

County sheriff was final policymaker for his department, providing basis for claim that county had illegal policy under which sheriff could terminate assistant county jail administrator in retaliation for exercising First Amendment rights, and providing basis for § 1983 action against county. Shepard v. Wapello County, Iowa, S.D.Iowa 2003, 303 F.Supp.2d 1004. Civil Rights 1351(5)

Allegations of three former county employees that their former supervisor had deprived them of equal protection when she had discharged them while not discharging similarly situated individuals who had not filed workers' compensation claims, disability claims or made complaints regarding county's unauthorized activities were sufficient to allege county custom, for purposes of stating § 1983 claim against county. Langford v. County of Cook, N.D.Ill.1997, 965 F.Supp. 1091. Civil Rights 1395(8)

Discharged employees' allegation that county hospital authority had policy or custom of discharging employees who complained about illegal activities at the county hospital authority was insufficient to state § 1983 claim against county hospital authority and county hospital authority officials in their official capacities; discharged employees did not allege county hospital authority implicitly authorized, approved or knowingly acquiesced in unconstitutional conduct of its officials. Ketron v. Chattanooga-Hamilton County Hosp. Authority, E.D.Tenn.1996, 919 F.Supp. 280. Civil Rights 1395(8)

City transit authority was not liable under § 1983 for failing to return employee to work following disability leave, allegedly in retaliation for his exercise of free speech regarding proper method of fabricating parts used to repair elevated train structure; supervisors who allegedly made final decision not to return employee to work had no authority to establish official policy, and employee failed to produce evidence from which jury could conclude that authority had custom or practice of retaliating against employees. Radic v. Chicago Transit Authority, N.D.Ill.1995, 878 F.Supp. 1130, affirmed 73 F.3d 159, certiorari denied 116 S.Ct. 2505, 517 U.S. 1247, 135 L.Ed.2d 195. Civil Rights 1351(5)

Former police department employee failed to establish municipal liability in her § 1983 action alleging that she was discharged due to her handicap and in retaliation for filing industrial injury claim, notwithstanding contention that "entire cadre of supervision" in department was involved in discharge decision; it was city's official policy not to discriminate against handicapped persons or those who receive workers' compensation, and there was no evidence

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of unwritten policy to discriminate. Kelley v. City of Mesa, D.Ariz.1994, 873 F.Supp. 320. Civil Rights 1351(5)

Former state employees adequately pleaded existence of municipal custom, policy or practice so as to state § 1983 claim against agency commissioner in his official capacity for retaliatory discharge, where they alleged that they were discharged from positions with department by commissioner for political reasons, and that commissioner was delegated authority to make final decisions regarding employment of department employees. Busa v. Barnes, N.D.Ill.1986, 646 F.Supp. 615, reconsideration denied 646 F.Supp. 619. Civil Rights 1395(8)

Employee failed to show that she suffered adverse employment action through constructive termination, in § 1983 lawsuit under First Amendment free speech clause claiming retaliation, since employee did not produce any admissible evidence which would have permitted rational trier of fact to find that constructive termination occurred. Quoka v. City of West Haven, C.A.2 (Conn.) 2003, 64 Fed.Appx. 830, 2003 WL 21223422, Unreported. Civil Rights 1123; Constitutional Law 90.1(7.2)

803. ---- Hostile environment, employment, custom or usage

Municipality did not have custom or widespread practice of condoning sexual harassment, for purpose of employee's equal protection claim in lawsuit under §§ 1983 that was based upon alleged sexual harassment by male co-worker, where employee's allegations related to one harasser and two supervisors, one supervisor responded to employee's complaint almost immediately by transferring him to another job site and reporting him to municipality's sexual harassment office (SHO), and SHO investigated complaint and municipality suspended male co-worker without pay for nearly one month. Valentine v. City of Chicago, C.A.7 (Ill.) 2006, 452 F.3d 670. Civil Rights 1351(4)

To establish racial and sexual hostile work environment claims, under §§ 1983 and 1981, New York State Human Rights Law (NYCHRL), and New York City Human Rights Law (NYCHRL), plaintiff must establish that, in context of her relationship with her employer, workplace was permeated with discriminatory intimidation that was sufficiently severe or pervasive to alter the conditions of her work environment, and if plaintiff does not subjectively perceive environment to be abusive, conduct has not actually altered conditions of the plaintiff's employment. Bland v. New York, E.D.N.Y.2003, 263 F.Supp.2d 526. Civil Rights 1147; Civil Rights 1185

Incidents of hostility towards female county employee who complained about female supervisor's discriminatory behavior toward white male employee and the general lack of morale in the department did not support an inference of widespread or customary retaliation, as required for white male employee's municipal liability claim under § 1983. Kulikowski v. Board of County Com'rs of County of Boulder, D.Colo.2002, 231 F.Supp.2d 1053. Civil Rights 1405

Female clerical employee of municipal housing authority failed to establish existence of sexual harassment hostile work environment, in violation of Title VII and New York Human Relations Law, or under § 1983, when she alleged that supervisor said he was buying erectile dysfunction medication in order to be with employee, once blocked her passage down hallway, asked her to date him, and whispered in her ear; incidents were not sufficiently frequent or egregious to establish hostile environment, especially given informal atmosphere of office. Parisi v. Buffalo Mun. Housing Authority, W.D.N.Y.2003, 2003 WL 21382893, Unreported. Civil Rights 1185

804. ---- Investigation of complaints, employment, custom or usage

Male homosexual co-worker's claim that his complaint of harassment was "brushed off" and female co-worker's claim that no one investigated her complaints about male employee's mistreatment did not give rise to an inference of a policy or custom of unlawful retaliation by county, as required for white male employee's § 1983 claim.

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42 U.S.C.A. § 1983

Kulikowski v. Board of County Com'rs of County of Boulder, D.Colo.2002, 231 F.Supp.2d 1053. Civil Rights 1405

804A. ---- Political affiliation, employment, custom or usage

Genuine issue of material fact as to whether county executive, deputy county executive, and hiring officials for federally funded regional workforce development system had policy of basing system's hiring decision on applicants' political party affiliation precluded summary judgment in former employee's §§ 1983 action alleging that failure to hire her violated her First Amendment right to free association on ground that there was no evidence of officials' personal involvement. Krause v. Buffalo and Erie County Workforce Development Consortium, Inc., W.D.N.Y.2006, 425 F.Supp.2d 352. Federal Civil Procedure 2497.1

805. Execution of judgments, custom or usage

Actions of judgment creditors, in unlawfully using facially constitutional execution of judgment statute to levy upon property of sureties on supersedeas bond without obtaining judgment against sureties on the bond, did not constitute "state policy" and, thus, were not fairly attributable to the State of Iowa so as to permit sureties to recover damages from judgment creditors under § 1983 for deprivation of their property without due process. Roudybush v. Zabel, C.A.8 (Iowa) 1987, 813 F.2d 173. Civil Rights 1326(9)

806. Freedom of speech, custom or usage

Municipal liability under § 1983 was established by police commissioner's knowing approval of request to transfer female and male detectives and sergeant for engaging in protected activity of free speech and association by speaking against gender discrimination concerning female detective. Keenan v. City of Philadelphia, C.A.3 (Pa.) 1992, 983 F.2d 459, rehearing denied. Civil Rights 1352(5)

Where defendants, who suspended county employee for making speech at county board meeting, attributed employee's suspensions to his failure to abide by county's chain-of-command policy, and where individual defendants were acting in their official capacities pursuant to their interpretation of that policy, county and county board were liable under this section for the damages resulting from the suspensions. Czurlanis v. Albanese, C.A.3 (N.J.) 1983, 721 F.2d 98. Civil Rights 1351(5)

Genuine issues of material fact existed as to whether private university had a custom of allowing its security guards to violate First and Fourth Amendment rights of evangelists speaking to assembled groups on campus, and as to whether or not university and its security guards conspired with the city police officers in asking evangelist to move, and arresting him when he failed to move, precluding summary judgment in favor of either university or evangelist on his §§ 1983 claims. Victory Outreach Center v. Melso, E.D.Pa.2004, 371 F.Supp.2d 642. Federal Civil Procedure 2491.5

Town manager could establish, through his actions, policy regarding hiring of police chiefs that would support liability of municipality for §§ 1983 claim that police lieutenant was denied interim appointment as chief in retaliation for his exercise of First Amendment freedom of speech rights. Putnam v. Town of Saugus, Mass., D.Mass.2005, 365 F.Supp.2d 151. Civil Rights 1351(5)

City building inspector established that city had a custom or policy of violating individuals' First and Fourteenth Amendment rights, as required for inspector's § 1983 claim against city after he was terminated; inspector was counseled for publicly voicing his concerns with the building department and for publicly disagreeing with his supervisor, and director of public safety made decision to terminate building inspector. Hoover v. Radabaugh, S.D.Ohio 2000, 123 F.Supp.2d 412, affirmed in part, appeal dismissed in part 307 F.3d 460. Civil Rights 1351(5)

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42 U.S.C.A. § 1983

Software program developer failed to state claim under § 1983 that city violated her right to free speech and assembly arising out of incident in which city's director of libraries withdrew city's sponsorship of developer's speech to be given on city property where developer did not allege that director acted pursuant to policy or practice of city. Davis v. City of Palo Alto, N.D.Cal.1996, 930 F.Supp. 1375. Civil Rights 1351(6)

Corporation that managed city park, a quasi-municipality, could not escape liability for First Amendment violation by claiming reliance in good faith on its own policy. Nemo v. City of Portland, D.Or.1995, 910 F.Supp. 491. Civil Rights 1373; Civil Rights 1376(4)

There was no evidence that township embraced any policy of silencing citizens at public hearings or that it directly or by knowing inaction condoned council president's conduct of not permitting plaintiff to speak, as required to impose liability on township; nor could president's isolated act be considered an exercise of policy-making power by one in power to make policy for the township. Wilkinson v. Bensalem Tp., E.D.Pa.1993, 822 F.Supp. 1154. Civil Rights 1351(6)

City was liable under § 1983 for violating city fire fighter's First Amendment rights by refusing to permit fire fighter to address city council at public meeting; city charter provision requiring city employees to deal with city council only through city manager represented official policy of city and enforcement of prohibition at meeting was made by entity which possessed final decision-making authority over area in question. Pesek v. City of Brunswick, N.D.Ohio 1992, 794 F.Supp. 768. Civil Rights 1376(10)

Town could be held liable for police chief's violation of news photographer's First Amendment rights at accident scene; under New Hampshire law, police chief's conduct represented town policy. Connell v. Town of Hudson, D.N.H.1990, 733 F.Supp. 465. Civil Rights 1351(4)

807. Harassment, custom or usage

Employee failed to demonstrate that her supervisor's harassment and assault occurred as result of a municipal custom or policy as would support municipal liability under § 1983 where there was no indication that either city or supervisor's superiors knew of supervisor's alleged womanizing, and record did not reveal that, prior to alleged assault, employee or anyone else had ever complained about supervisor to city or to employee's superiors. Kern v. City of Rochester, C.A.2 (N.Y.) 1996, 93 F.3d 38, certiorari denied 117 S.Ct. 1335, 520 U.S. 1155, 137 L.Ed.2d 494. Civil Rights 1351(5)

City could not be held liable under § 1983 to female employees of police department for former police chief's alleged sexual harassment of them, where there was no allegation or evidence suggesting city had official policy favoring harassment and, in fact, there was evidence city had written policy expressly forbidding it, aldermanic form of government did not authorize police chief to hire or fire employees nor to make official policy as a matter of state law, there was no indication that former police chief materially changed employment duties or status as part of his harassment but, rather, case exemplified a situation where former police chief was committing private, rather than public, acts of sexual harassment, and city did not acquiesce to former police chief's actions but, rather, took steps that resulted in preventing further harassment. Lankford v. City of Hobart, C.A.10 (Okla.) 1996, 73 F.3d 283 . Civil Rights 1351(5)

Defendant's alleged sexual harassment of female employee of county assessor's office occurring before defendant became assessor, while he was still employee's co-worker, was not actionable under § 1983; defendant had no supervisory authority over employee before he became assessor, and there was no allegation of policy or custom of allowing sexual harassment in assessor's office. Noland v. McAdoo, C.A.10 (Okla.) 1994, 39 F.3d 269. Civil Rights 1190; Civil Rights 1351(5)

Sexually harassing acts of male county assessor toward female employee were not official policy for which county

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was liable under § 1983; whereas assessor's ability to hire and fire necessarily carried with it official authority and sanction, the other acts of sexual harassment complained of were private rather than official acts. Starrett v. Wadley, C.A.10 (Okla.) 1989, 876 F.2d 808. Civil Rights 1351(5)

City was liable under § 1983 to dispatcher hired by fire department, for ongoing sexual harassment to which dispatcher was subjected by her supervisors, where fire department had no policy against sexual harassment, where management officials responsible for working conditions at department knew of harassment, and where no corrective action was taken. Bohen v. City of East Chicago, Ind., C.A.7 (Ind.) 1986, 799 F.2d 1180, on remand 666 F.Supp. 154. Civil Rights 1352(5)

If city impliedly or tacitly authorized, approved or encouraged harassment of individual, it promulgated "official policy" such that it could be liable under this section; "official policy" may be inferred from informal acts or omissions of supervisory municipal officials. Turpin v. Mailet, C.A.2 (Conn.) 1980, 619 F.2d 196, certiorari denied 101 S.Ct. 577, 449 U.S. 1016, 66 L.Ed.2d 475. Civil Rights 1351(1)

City could not be held liable under this section for alleged harassment and unlawful searches and seizures by municipal police officers in absence of any evidence that the city "acted" through its policies, formally or informally adopted, to deprive plaintiff of his constitutional rights. Reimer v. Short, C.A.5 (Tex.) 1978, 578 F.2d 621, certiorari denied 99 S.Ct. 1425, 440 U.S. 947, 59 L.Ed.2d 635. Civil Rights 1351(4)

City was not liable for alleged pattern of harassment of plaintiffs by police officers, even if police commissioner could be deemed to have had knowledge of the harassment and to have failed to prevent it; city's process for investigating complaints against police officers was commensurate with the best practices employed by other police departments of similar size. Glass v. City of Philadelphia, E.D.Pa.2006, 455 F.Supp.2d 302. Civil Rights 1352(4)

Genuine issue of material fact, as to whether sexual harassment was so widespread as to be departmental policy or custom, precluded summary judgment on female county police officer's §§ 1983 claims against county; officer offered evidence of harassment over extended period by multiple officers and she and other female officers had repeatedly complained of harassment to their supervisors. Ensko v. Howard County, Md., D.Md.2006, 423 F.Supp.2d 502. Federal Civil Procedure 2497.1

Borough was not liable, in §§ 1983 suit claiming invasion of federal rights of borough tax collector, due to lack of policy or custom under which member of borough council ordered collector's office relocated to borough building garage, accused collector of stealing from colleague and sending member threatening letter, and ordered surveillance camera installed to cover collector's desk. Konopka v. Borough of Wyoming, M.D.Pa.2005, 383 F.Supp.2d 666. Civil Rights 1351(5)

City employee's allegation that city had delayed five months, after employee first complained about sexual harassment by city alderman, before it took corrective action in passing ordinance prohibiting sexual harassment of employees by elected officials was not sufficient to establish city custom or policy of nonresponsiveness to harassment complaints, for purposes of holding city liable under § 1983 for alderman's harassment. Jarman v. City of Northlake, N.D.Ill.1997, 950 F.Supp. 1375. Civil Rights 1351(5)

County could not be held liable under § 1983 for sexual harassment claim of former employee by supervisor from county sheriff's office due to official policy of county; county had official policy against sexual harassment and employee had not presented evidence that supervisor's sexual harassment of her was in accordance with official policy of county. Farris v. Board of County Com'rs of Wyandotte County, Kan., D.Kan.1996, 924 F.Supp. 1041. Civil Rights 1351(5)

A district court can find liability under § 1983 for hostile work environment on the part of responsible supervisors

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for failing properly to investigate and address allegations of sexual harassment when, through this failure, the conduct becomes an accepted custom or practice of the public employer. Cohen v. Litt, S.D.N.Y.1995, 906 F.Supp. 957. Civil Rights 1189; Civil Rights 1359

Failure of municipality's policy-making officials to take action to prevent or stop sexual harassment could constitute deliberate indifference even in absence of actual knowledge of particular acts against employee; failure to inform employees of policy against sexual harassment and to institute procedures for reporting and investigating allegations could create extremely high risk that constitutional violations involving sexual harassment would occur. Reynolds v. Borough of Avalon, D.N.J.1992, 799 F.Supp. 442. Civil Rights 1352(5)

Chief of police, deputy chief of police and township clerk adequately responded to civilian dispatcher's sexual harassment allegations, precluding liability under § 1983. Foster v. Township of Hillside, D.N.J.1992, 780 F.Supp. 1026, affirmed 977 F.2d 567. Civil Rights 1189

City had no informal policy or custom condoning police chief's alleged sexual harassment of a female subordinate, thus precluding imposition of liability under §§ 1983; city had a comprehensive sexual harassment policy, of which all employees were aware, and there was an immediate response by the mayor after the subordinate lodged her complaint. Howard v. City of Robertsdale, C.A.11 (Ala.) 2006, 168 Fed.Appx. 883, 2006 WL 304552, Unreported. Civil Rights 1351(5)

808. Hiring, training or supervision, custom or usage--Generally

Under certain circumstances, municipality can be held liable in civil rights action under § 1983 for constitutional violations resulting from its failure to train municipal employees. City of Canton, Ohio v. Harris, U.S.Ohio 1989, 109 S.Ct. 1197, 489 U.S. 378, 103 L.Ed.2d 412. Civil Rights 1352(1)

For purposes of rule that failure to train subordinate municipal employees will trigger §§ 1983 municipal liability where the failure to train amounts to deliberate indifference to the rights of members of the public with whom the employees will interact, where municipal employees in exercising their discretion so often violate constitutional rights that the need for further training must have been plainly obvious to the city policymakers, deliberate indifference will be found. Green v. City of New York, C.A.2 (N.Y.) 2006, 465 F.3d 65. Civil Rights 1352(1)

Claim of inadequate training, supervision, and policies under § 1983 cannot be made out against supervisory authority absent finding of constitutional violation by person supervised. Webber v. Mefford, C.A.10 (Okla.) 1994, 43 F.3d 1340. Civil Rights 1351(1); Civil Rights 1352(1)

To sustain a cause of action based on a theory of "supervisory liability," brought under § 1983, a plaintiff must establish that (1) the behavior of the supervisor's subordinates results in a constitutional violation and (2) the supervisor's action or inaction was affirmatively linked to the behavior in the sense that it could be characterized as supervisory encouragement, condonation or acquiescence or gross negligence of the supervisor amounting to deliberate indifference. Ramos Bonilla v. Vivoni, D.Puerto Rico 2003, 259 F.Supp.2d 135. Civil Rights 1355

The inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of the persons with whom the police come into contact. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1352(4)

To assert violation of substantive due process for failure to develop policies or afford training for detection and investigation of alleged incidents of child abuse, students must show that: (1) policy or failure to have one was inadequate; (2) school supervisory officials were deliberately indifferent in adopting or failing to adopt policy; and (3) inadequate policy or failure to have policy directly caused students' injury. Does v. Covington County

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School Bd. of Educ., M.D.Ala.1996, 930 F.Supp. 554. Constitutional Law 278.5(5.1)

Supervisor may be liable under § 1983 for permitting proper procedures to be ignored or failing to adequately supervise personnel. United Steelworkers of America v. Milstead, D.Ariz.1988, 705 F.Supp. 1426. Civil Rights 1355

Supervisory liability cannot automatically be ruled out in a § 1983 action and a supervisor or supervising body may be held liable under that statute for failure to adequately supervise or control or where the supervising defendant is responsible for a policy or custom which results in the deprivation of rights. McAdoo v. Toll, D.C.Md.1985, 615 F.Supp. 1309. See, also, Cooke v. City of New York, S.D.N.Y.1984, 578 F.Supp. 179; Smith v. Jorden, S.D.Ohio 1981, 527 F.Supp. 167. Civil Rights 1355

809. ---- Causation, hiring, training or supervision, custom or usage

Student who had been sexually assaulted by teacher failed to show that alleged custom of county school board in allowing "good old boys network" to operate was proximate cause of assault, and thus, could not recover in federal civil rights action against board; even assuming that claimed "network" did constitute custom for purposes of municipal liability, no direct causal connection existed between such a custom or policy and sexual abuse which occurred. Doe v. Claiborne County, Tenn. By and Through Claiborne County Bd. of Educ., C.A.6 (Tenn.) 1996, 103 F.3d 495. Civil Rights 1351(2)

Negligent hiring or supervision of municipal employees is proscribed under Monell, but such negligence must be proximate cause of § 1983 injury. Van Ort v. Estate of Stanewich, C.A.9 (Cal.) 1996, 92 F.3d 831, certiorari denied 117 S.Ct. 950, 519 U.S. 1111, 136 L.Ed.2d 837. Civil Rights 1345

For purposes of municipal liability under civil rights laws, claims of inadequate training require proof that failure to train was policy or deliberate choice made by municipality and that there is direct link between municipality's policy and constitutional violation. Bowen v. City of Manchester, C.A.1 (N.H.) 1992, 966 F.2d 13. Civil Rights 1352(1)

Liability may be imposed on municipality under § 1983 upon showing of deliberate indifference exhibited by pattern of inadequate training, supervision, and discipline of police officers, provided there is causal connection between such inadequacies and risk of harm to others. Parker v. District of Columbia, C.A.D.C.1988, 850 F.2d 708, 271 U.S.App.D.C. 15, certiorari denied 109 S.Ct. 1339, 489 U.S. 1065, 103 L.Ed.2d 809. Civil Rights 1352(4)

Parents and child who sued city failed to establish §§ 1983 claim based on inadequate training, stemming from assault that allegedly occurred while child was at pre-placement facility after removal, where there was no triable issue of fact that facility workers were inadequately trained, that such lack of training caused child's injuries, and that city acted with deliberate indifference in disregarding risk posed by lack of training. Phillips ex rel. Green v. City of New York, S.D.N.Y.2006, 453 F.Supp.2d 690. Civil Rights 1352(6)

Municipality's alleged failure to train employees can be the basis for liability under §§ 1983 when the municipality inadequately trains or supervises its employees, the failure to train or supervise is a municipal policy, and that policy causes the employees to violate a citizen's constitutional rights. Payne v. DeKalb County, N.D.Ga.2004, 414 F.Supp.2d 1158. Civil Rights 1352(1)

School district was not liable under §§ 1983 for injury sustained by special education student who fell on icy sidewalk leading from the regular school bus into high school since there was no showing that alleged constitutional violation was causally linked to an actual policy, custom, or failure to train; practice of assigning only high school students utilizing wheelchairs to ride the wheelchair accessible buses did not constitute a

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municipal custom of denying any form of special education transportation to all students who qualified for it and no showing that school district Defendants actually chose a training policy with deliberate indifference toward special education children. Ms. K v. City of South Portland, D.Me.2006, 407 F.Supp.2d 290. Civil Rights 1352(2)

Former employee who brought action against county official, alleging sexual harassment by former supervisor, failed to allege causal connection between alleged failure to supervise supervisor and her injury, as required to state §§ 1983 claim in official's individual capacity; official's review of supervisor's background would not have rendered sexual misconduct foreseeable. Nassau County Employee "L" v. County of Nassau, E.D.N.Y.2004, 345 F.Supp.2d 293. Civil Rights 1359

Allegation that school district had policy of not hiring employees who had previously been terminated due to reduction in force (RIF) was insufficient to state § 1983 claim by former employee who claimed that he was not rehired because of gender and national origin discrimination; alleged policy was not cause of complained-of discrimination. Pyne v. District of Columbia, D.D.C.2002, 298 F.Supp.2d 7. Civil Rights 1351(5)

Motorcyclist who was injured during high-speed pursuit by police officer failed to establish § 1983 claim against municipality for failure to adequately train police officers as to high-speed pursuits, absent causal connection between municipality's alleged failure and injury that occurred. Carroll v. Borough of State College, M.D.Pa.1994, 854 F.Supp. 1184, affirmed 47 F.3d 1160. Civil Rights 1352(4)

810. ---- Intent or knowledge, hiring, training or supervision, custom or usage

Where official policy or practice is unconstitutional on its face, it necessarily follows, in determining liability under § 1983, that policymaker was not only aware of specific policy, but was also aware that constitutional violation will most likely occur. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1351(1)

Town, sued for violation of plaintiff's civil rights when he was shot by a police officer, would not be automatically liable based on finding of gross negligence on part of police chief in training officer, absent showing whether town knew of chief's violation of statute mandating police officer training and town could only be found liable if it or the town manager, who had responsibility for hiring of police officers and had some supervisory authority over the chief, knew or should have known that the chief was not training his police officers properly and then failed to take reasonable measures to rectify the situation. Voutour v. Vitale, C.A.1 (Mass.) 1985, 761 F.2d 812, certiorari denied 106 S.Ct. 879, 474 U.S. 1100, 88 L.Ed.2d 916. Civil Rights 1352(4)

Personal representative of the estate of a police shooting victim failed to prove that city had notice that its actions or inactions regarding the supervision of the shooting police officer would likely result in an unconstitutional or improper shooting, so as to warrant imposition of municipal liability under §§ 1983, even though the city had institutional knowledge of the officer's history of at least eight shootings, resulting in five deaths, in four separate events, as well as a record of threats and abuse; no shooting was ever found to be improper, the officer was disciplined and required to take additional training, and several years had passed since his last discharge of a firearm. Estate of Smith v. Silvas, D.Colo.2006, 414 F.Supp.2d 1015.

School personnel who exhibit deliberate indifference by failing to take appropriate action when they have knowledge that the abuse is occurring can be held liable under § 1983. Medina Perez v. Fajardo, D.Puerto Rico 2003, 263 F.Supp.2d 291. Civil Rights 1356

Supervisory liability, for purposes of a claim brought under § 1983, does not require a showing that the supervisor had actual knowledge of the offending behavior; rather, a supervisor may be held liable if he formulates a policy or engages in a practice that leads to a civil rights violation committed by another. Ramos Bonilla v. Vivoni,

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42 U.S.C.A. § 1983

D.Puerto Rico 2003, 259 F.Supp.2d 135. Civil Rights 1355

Even if police department maintained an unwritten policy of allowing its gang task force (GTF) officers to conduct unconstitutional searches of private residences, city could not be held liable under § 1983 for shooting death of occupant of apartment during warrantless entry and search on basis of a failure to provide adequate training and supervision to the gang task force officers; there was no evidence showing that city policymakers had actual or constructive knowledge that GTF officers were expected to conduct narcotics investigations for which they needed specialized training or standard operating procedures that differed from those to which they were already subject as patrol officers, or that GTF officers were in fact conducting such narcotics investigations, or that city policymakers had actual knowledge that the city's training program failed to prevent its GTF officers from engaging in tortious conduct, and there was no evidence that city was deliberately indifferent to a lack of adequate supervision for the GTF. Pineda v. City of Houston, S.D.Tex.2000, 124 F.Supp.2d 1057, dismissed 252 F.3d 1355, affirmed 291 F.3d 325, rehearing denied, certiorari denied 123 S.Ct. 892, 537 U.S. 1110, 154 L.Ed.2d 782. Civil Rights 1352(4)

City officials may be found "deliberately indifferent," as required to establish municipal liability under § 1983, where policy or training program is, on its face, clearly inadequate and likely to give rise to constitutional violation or, while not plainly deficient, policy or training program has in past so often led to violations of constitutional rights similar to those claimed that need for further training must have been plainly obvious to city policy makers. Brown v. City of Elba, M.D.Ala.1990, 754 F.Supp. 1551. Civil Rights 1351(1); Civil Rights 1352(1)

To hold a city liable under § 1983 for failure to properly train its police force, plaintiff must show that municipality knew to high degree of certainty that some constitutional violation would occur unless a more effective training policy was implemented, and that city shirked its responsibility to the public by demonstrating a deliberate indifference to need for more effective training. Cawthon v. City of Greenville, N.D.Miss.1990, 745 F.Supp. 377. Civil Rights 1352(4)

811. ---- Deliberate indifference, hiring, training or supervision, custom or usage

Plaintiff must demonstrate that municipal hiring decision reflects deliberate indifference to risk that violation of particular constitutional or statutory right will follow decision in order to establish that municipality acted with deliberate indifference and may be held liable in § 1983 action based on inadequate screening, and only where adequate scrutiny of applicant's background would lead reasonable policymaker to conclude that plainly obvious consequence of decision to hire applicant would be deprivation of third party's federally protected right can official's failure to adequately scrutinize applicant's background constitute "deliberate indifference." Board of County Com'rs of Bryan County, Okl. v. Brown, U.S.Tex.1997, 117 S.Ct. 1382, 520 U.S. 397, 137 L.Ed.2d 626, rehearing denied 117 S.Ct. 2472, 520 U.S. 1283, 138 L.Ed.2d 227, on remand 117 F.3d 239. Civil Rights 1345

Incident reports of alleged abuse by substitute teachers in school district were insufficient to establish that school district was deliberately indifferent, in failing to train or supervise student teachers, for purpose of elementary school student's §§ 1983 claim against school district, arising out of substitute teacher's alleged corporal punishment of student; although 10 incident reports documented some type of corporal punishment, only two incidents were serious, and those two incidents did not put district on notice of problem with its training and supervision of student teachers, as district operated 127 schools with over 69,000 students. Ellis ex rel. Pendergrass v. Cleveland Mun. School Dist., C.A.6 (Ohio) 2006, 455 F.3d 690. Civil Rights 1352(2)

Proof of "deliberate indifference," as required to establish culpability on part of municipality under § 1983, generally requires showing of more than single instance of lack of training or supervision causing a violation of constitutional rights, instead, deliberate indifference generally requires that plaintiff demonstrate at least pattern of similar violations arising from training that is so clearly inadequate as to be obviously likely to result in constitutional violation. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied,

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certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1352(1)

Where proper response is obvious to all without training or supervision, then failure to train or supervise is generally not "so likely" to produce wrong decision as to support inference of deliberate indifference by city policymakers to need to train or supervise; thus, failure to train or supervise in such circumstances will not lead to municipal liability under § 1983. Sewell v. Town of Lake Hamilton, C.A.11 (Fla.) 1997, 117 F.3d 488, certiorari denied 118 S.Ct. 852, 522 U.S. 1075, 139 L.Ed.2d 753. Civil Rights 1352(1)

Inadequacy of school bus driver training can form the basis of liability under § 1983 only when that failure to train constitutes deliberate indifference to rights of those students with whom school bus driver comes into contact; showing of "deliberate indifference" requires showing of something more culpable than negligent failure to recognize high risk of harm. Sargi v. Kent City Bd. of Educ., C.A.6 (Ohio) 1995, 70 F.3d 907. Civil Rights 1352(2)

Only where municipality's failure to train its employees in relevant respect evidences deliberate indifference to rights of its inhabitants can such shortcoming be properly thought of as city policy or custom that is actionable under § 1983; mere allegation that municipality failed to train its employees properly is insufficient to establish municipal custom or policy. Neighbour v. Covert, C.A.2 (N.Y.) 1995, 68 F.3d 1508, certiorari denied 116 S.Ct. 1267, 516 U.S. 1174, 134 L.Ed.2d 214. Civil Rights 1352(1)

Failure of sheriff and county to adequately train police officers in proper procedures for conducting strip searches of female arrestees did not constitute deliberate indifference to training needs, as required to serve as basis for § 1983 liability in action brought by two female plaintiffs who were subjected to strip search incident to their arrest for possession of marijuana, but rather was consistent with county's well-established policy prohibiting warrantless strip searches of temporary detainees, which, at time of arrest, included all female arrestees. Warner v. Grand County, C.A.10 (Utah) 1995, 57 F.3d 962. Civil Rights 1352(4); Civil Rights 1358

Three requirements must be met before municipality's failure to train or supervise its employees will constitute "deliberate indifference" to constitutional rights of citizens sufficient to subject municipality to liability under § 1983 when employees violate plaintiff's constitutional rights; plaintiff must show that municipal policymaker knew to moral certainty that municipal employees would confront given situation, that situation would present employees with difficult choice, or choice that employees had history of mishandling, and that wrong choice will frequently cause deprivation of constitutional rights. Walker v. City of New York, C.A.2 (N.Y.) 1992, 974 F.2d 293, certiorari denied 113 S.Ct. 1387, 507 U.S. 961, 122 L.Ed.2d 762, certiorari denied 113 S.Ct. 1412, 507 U.S. 972, 122 L.Ed.2d 784. Civil Rights 1352(1)

County jail inmate who was injured in cell and allowed to remain in a paralyzed condition for 18 hours before medical help was provided did not establish that sheriff had adopted deliberately indifferent policy of inadequate screening of personnel, even though two of his jailers had been treated for suicidal depression and alcoholism; sheriff had been furnished with letters from their doctors indicating fitness to return to work, and they had satisfactory work records. Benavides v. County of Wilson, C.A.5 (Tex.) 1992, 955 F.2d 968, certiorari denied 113 S.Ct. 79, 506 U.S. 824, 121 L.Ed.2d 43. Civil Rights 1358

Immediate supervisor of police officer in charge of squad which fired upon driver of parked automobile after he had attempted to leave as officers were approaching him in plain clothes from unmarked police vehicle with drawn pistols, displayed indifference equivalent to recklessness or callousness required for liability for civil rights deprivation statute; he was aware that there had been numerous civilian complaints against lead officer, and that the officer had a reputation for a violent character in mistreating citizens. Gutierrez-Rodriguez v. Cartagena, C.A.1 (Puerto Rico) 1989, 882 F.2d 553. Civil Rights 1358

Municipality's failure to train its employees can only be considered actionable municipal policy, and therefore able

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to support civil rights violation, when failure to train, supervise, or discipline its employees evidences deliberate or conscious indifference to citizens' constitutional rights. Walter v. Pike County, Pennsylvania, M.D.Pa.2006, 2006 WL 3437384. Civil Rights 1352(1)

To establish that municipality's failure to train employees evidenced a deliberate indifference to the rights of its inhabitants, §§ 1983 plaintiff must present some evidence that the municipality knew of a need to train and/or supervise in a particular area and the municipality made a deliberate choice not to take any action, which may be demonstrated in one of two ways: (1) where a pattern of constitutional violations exists such that the municipality knows or should know that corrective measures are needed, and (2) where municipal employees face clear constitutional duties in recurrent situations even without prior incidents to place the municipality on notice. Payne v. DeKalb County, N.D.Ga.2004, 414 F.Supp.2d 1158. Civil Rights 1352(1)

Single incident is insufficient to establish existence of policy amounting to deliberate indifference, and thus insufficient to support §§ 1983 inadequate training/supervision claim against municipality. Robinson v. District of Columbia, D.D.C.2005, 403 F.Supp.2d 39. Civil Rights 1352(1)

Municipality's deliberately indifferent failure to train, for purposes of §§ 1983 claim, is not established by: (1) presenting evidence of shortcomings of individual; (2) proving that otherwise sound training program occasionally was negligently administered; or (3) showing, without more, that better training would have enabled officer to avoid injury-causing conduct. Davis ex rel. Davis v. Borough of Norristown, E.D.Pa.2005, 400 F.Supp.2d 790. Civil Rights 1352(1)

Only where the failure to train or supervise amounts to a deliberate indifference to the rights of persons with whom the police come into contact may the inadequacy of police training or supervision serve as the basis for a §§ 1983 claim; moreover, a plaintiff alleging municipal liability under §§ 1983 must show there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. Nauman v. Bugado, D.Hawai'i 2005, 374 F.Supp.2d 893. Civil Rights 1352(4)

Genuine issues of material fact existed as to whether fire department customs and practices of traveling at excessive speeds, failing to stop at negative right-of-way intersections, and choosing the most direct route regardless of possible danger, were the moving force behind a collision of a fire truck with an automobile which resulted in the death of the automobile's driver, precluding summary judgment for municipality in §§ 1983 action alleging a violation of the substantive due process rights of the driver of the automobile. Becerra ex rel. Perez v. Unified Government of Wyandotte County/Kansas City, Kansas, D.Kan.2004, 342 F.Supp.2d 974, reversed 432 F.3d 1163, petition for certiorari filed 2006 WL 1130534. Federal Civil Procedure 2491.5

City was not deliberately indifferent in training its police officers to handle free speech issues, and thus city was not liable under §§ 1983 for officers' violation of protesters' First Amendment rights during parade, despite letter from protesters' attorney requesting that city police officers receive training regarding protection of unpopular messages, where officers completed state-mandated training, which included training on First Amendment issues, and there was no evidence of pervasive pattern of inadequate training in area of protecting First Amendment rights. Grove v. City of York, Penn., M.D.Pa.2004, 342 F.Supp.2d 291. Civil Rights 1352(4)

Arrestee's claims, arising from allegedly improper training and supervision of assistant district attorneys in connection with impermissibly suggestive showup identification of arrestee, failed to support §§ 1983 claim on motion for summary judgment because deliberate indifference could not be established; there was no showing that there was possibility of proving history of assistant district attorneys mishandling evidence of showup identification, which, as in instant case, took place in jail cell and followed arrest based on police witnessing commission of crime. Wray v. City of New York, E.D.N.Y.2004, 340 F.Supp.2d 291. Civil Rights 1352(4)

In case asserting §§ 1983 claim against municipality based on failure to train police officers, need for enhanced

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training must be so obvious, and inadequacy of training so likely to result in violation of constitutional rights, that jury could reasonably attribute to policymakers a deliberate indifference to training needs. Rex v. City of Milwaukee, E.D.Wis.2004, 321 F.Supp.2d 1008. Civil Rights 1352(4)

Merely showing that a municipal officer engaged in less than careful scrutiny of an applicant resulting in a generalized risk of harm is not enough to meet the rigorous requirements of deliberate indifference necessary to impose Section 1983 liability on a municipality based on inadequate hiring theory; municipal liability in the hiring context requires a finding that particular officer was highly likely to inflict the particular injury suffered by the plaintiff. Murphy v. Bitsoih, D.N.M.2004, 320 F.Supp.2d 1174. Civil Rights 1352(1)

City police department's alleged failure to adequately investigate single incident of officers' use of excessive force against fellow officer misidentified as perpetrator of armed robbery and carjacking, and departmental memorandum of agreement, were insufficient to establish existence of municipal policy, as required to state claim under § 1983 for department's alleged demonstration of deliberate indifference to officer's constitutional rights; single incident was insufficient to establish city's liability, and memorandum that did not cite specific examples of misconduct was merely evidence of department's awareness of prior problem and an effort to improve city's practices relating to investigation and discipline of police misconduct. Byrd v. District of Columbia, D.D.C.2003, 297 F.Supp.2d 136, affirmed 2004 WL 885228. Civil Rights 1352(4); Civil Rights 1352(5)

Where municipality, in face of objectively obvious need for more or better training or supervision of its employees, fails to take action, custom or policy that deprived plaintiff of his constitutional rights may be inferred in determining whether to hold municipality liable under § 1983 for inadequate training or supervision of its employees. Jessamy v. City of New Rochelle, New York, S.D.N.Y.2003, 292 F.Supp.2d 498. Civil Rights 1352(1)

Assuming that new police chief's failure to act in his first weeks in office to remedy city's alleged unconstitutional policy or custom regarding use of excessive force was a violation of a clearly established constitutional right, he was entitled to qualified immunity from § 1983 excessive force claim of police detainee; it was reasonable for the chief, given that he had only recently been appointed head of the department, not to have acted yet to address the alleged problem. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Civil Rights 1376(6)

If a municipal employee violates another's constitutional rights, the municipality can be held liable under § 1983 if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional violation, providing the failure to train amounts to deliberate indifference. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1352(1)

Policy or custom that permits unconstitutional practices to occur or continue, which would support imposition of liability in § 1983 action on supervisory officials, may be inferred from acts or omissions of supervisory officials serious enough to amount to gross negligence or deliberate indifference to constitutional rights of the plaintiff. Morris v. Eversley, S.D.N.Y.2003, 282 F.Supp.2d 196. Civil Rights 1355

To establish municipal liability under § 1983 with proof that a policymaker failed to adequately train their subordinates so as to establish that the municipality acted with deliberate indifference to an individual's civil rights, deliberate indifference can be proven with evidence that the municipality was given notice of the possibility that its employees were violating citizens' constitutional rights, and failed to make any meaningful investigation into the charges or failed to discipline subordinates who violated civil rights. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1352(1)

To establish deliberate indifference, as required for a supervisor to be held liable under § 1983, a plaintiff must show that the supervisor had notice that training procedures and supervision were inadequate and were likely to result in a constitutional violation. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx.

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127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1355

Supervisory liability under § 1983 is premised upon a showing that the supervisory official was deliberately indifferent or exhibited reckless disregard to the conduct by his subordinate that violated plaintiff's constitutional rights. Medina Perez v. Fajardo, D.Puerto Rico 2003, 263 F.Supp.2d 291. Civil Rights 1355

To demonstrate deliberate indifference of a supervisor for purpose of establishing supervisory liability under § 1983, a plaintiff must show (1) a grave risk of harm, (2) the defendant's actual or constructive knowledge of that risk, and (3) his failure to take easily available measures to address the risk. Medina Perez v. Fajardo, D.Puerto Rico 2003, 263 F.Supp.2d 291. Civil Rights 1355

Given fairly particularized training police officers received at police academy in use of neck restraints and other specific defense tactics, county's force policy was reasonable, did not exhibit a deliberate indifference to rights of county's citizenry, and was insufficient to establish that county disregarded a known risk that its officers would ignore their training at the police academy and improperly utilize neck restraints while in action on the field, for purposes of § 1983. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1351(4); Civil Rights 1351(2)

Allegations that a particular officer was improperly trained are insufficient to prove liability, as are claims that a particular injury could have been avoided with better training; only where a municipality's failure or to train or supervise its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants can such a shortcoming be properly thought of as a city policy or custom that is actionable under § 1983. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1352(1)

County's alleged failure to provide additional training on the use of neck restraints was so not unreasonable as to constitute deliberate indifference toward arrestee, for purposes of § 1983; in all likelihood, any training provided by county would have been duplicative of training already received by the officers at police academy, and there was no evidence of any prior incidents involving neck restraints by county officers, so as to require corrective measures. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1352(4)

To demonstrate deliberate indifference, for purposes of establishing supervisory liability under § 1983, a plaintiff must show (1) a grave risk of harm; (2) the defendant's actual or constructive knowledge of that risk; and (3) his failure to take easily available measures to address the risk. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1355

Complaint was sufficient to state a claim against superintendent under § 1983 based on failure to properly evaluate, select, train, instruct and supervise police officer, who sexually molested female student; superintendent's alleged negligence could have resulted in deliberate indifference if superintendent knew or had reason to know that officer was prone to such improper behavior. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1395(5)

City did not act with deliberate indifference consistent with an official custom or policy in allegedly failing to adequately train police dog that bit arrestee, and thus city was not liable in arrestee's §§ 1983 action, where city extensively trained dog for use by police force and there was no showing that city was aware of dog's alleged vicious tendencies. Chatman v. City of Johnstown, PA., C.A.3 (Pa.) 2005, 131 Fed.Appx. 18, 2005 WL 1127125, Unreported. Civil Rights 1352(4)

Evidence did not support jury's finding that police department had policy of retaliation against individuals for challenging incumbent in political party's primary, criticizing police department, speaking out on issues of public

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concern, or any combination thereof, so as to support imposition of municipal liability on city in § 1983 suit brought by former police officer claiming retaliation in violation of his First Amendment rights; evidence did not show that police commissioner knew about any retaliation against officer by his subordinates, or show that he was deliberately indifferent. Davis v. City of New York, C.A.2 (N.Y.) 2003, 75 Fed.Appx. 827, 2003 WL 22173046, Unreported. Civil Rights 1421

Conclusory allegation of citizen in civil rights action, that "these officers did not have the proper training or supervision, if they did they would have acted in Gross negligence," failed to allege facts that municipality acted with deliberate indifference and that police officers' actions were directly caused by inadequacy in training or supervision by the municipality. Canady v. Unified Government of Wyandotte County/Kansas City, KS, C.A.10 (Kan.) 2003, 68 Fed.Appx. 165, 2003 WL 21399030, Unreported. Civil Rights 1395(5)

Detainee did not show that city or county acted with "deliberate indifference" to rights of persons with whom police came into contact, as required to succeed on failure to train claim against city or county under § 1983, arising out of incident in which detainee was sprayed with mace by police officer and denied immediate medical care. Wallace v. City of Columbus, S.D.Ohio 2002, 2002 WL 31844688, Unreported. Civil Rights 1352(4)

City's alleged negligence in training its employees to distinguish between races when preparing affidavits and warrants for arrest could not form basis for liability in arrestee's §1983 false arrest action; there was no showing of deliberate indifference, i.e. obvious need for more or different training together with high likelihood of violations of constitutional rights from inadequate training. White v. Oklahoma ex rel. Tulsa County Office of Dist. Attorney, N.D.Okla.2002, 250 F.Supp.2d 1319. Civil Rights 1352(4)

Criminal defendant failed to establish that city displayed deliberate indifference by failing to train or to supervise police officers, and thus, city was not liable in § 1983 action, where first officer was exonerated of charge at departmental hearing, defendant provided no evidence about nature of charges against second officer other than charge concerning covering badge numbers which was pursued in disciplinary proceeding and did not demonstrate propensity for violence, and defendant provided no evidence that third officer's discharging firearm was reckless. Velasquez v. City of New York, S.D.N.Y.1997, 960 F.Supp. 776. Civil Rights 1352(4)

Evidence that 17 complaints had been filed by individuals against one or more sheriff deputies over five-year period was insufficient to demonstrate sheriff's deliberate indifference to false arrests, for purposes of § 1983 action against sheriff by arrestee who was acquitted of drug charges for which he was arrested; there was no evidence of civil rights complaint that was not properly investigated, nor any instance where discipline should have been, but was not, meted out by sheriff, and arrestee did not cite single inadequacy in sheriff's rules governing discipline of deputies or defect in rules governing use of informants. Lewis v. Meloni, W.D.N.Y.1996, 949 F.Supp. 158. Civil Rights 1358

Municipality and police chief were not deliberately indifferent, for purposes of claim under federal civil rights statute, in failing to train police officers regarding restraining and transporting individuals, including the mentally ill, where all officers were trained, consistent with state law enforcement procedures, in how to deal with potentially emotionally disturbed individuals, use of verbalization skills, taking emotionally disturbed individuals into custody for mental observation, handcuffing, use of force, and monitoring individual when handcuffed, plaintiff failed to assert specific training deficiency known to municipality or police chief, and plaintiff failed to identify pattern of unconstitutional conduct so pervasive as to imply actual or constructive knowledge of conduct on part of municipality or police chief. Estate of Phillips v. City of Milwaukee, E.D.Wis.1996, 928 F.Supp. 817, affirmed 123 F.3d 586, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1052, 522 U.S. 1116, 140 L.Ed.2d 115. Civil Rights 1352(4)

Circumstances under which municipal liability will attach to claim that municipality failed to adequately train its police officers are fairly limited: inadequacy of police training may serve as basis for § 1983 liability only where

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failure to train amounts to deliberate indifference to rights of persons with whom police come into contact. Pyka v. Village of Orland Park, N.D.Ill.1995, 906 F.Supp. 1196. Civil Rights 1352(4)

Once plaintiff who brings federal civil rights action based on alleged failure of city to train its employees has identified specific training deficiency, plaintiff must establish that inadequacy is result of "deliberate indifference"; "deliberate indifference" standard is not state-of-mind requirement independent of that necessary to state violation of underlying constitutional right, but is test employed to determine when inadequate training can justifiably be said to represent city policy. Hilliard v. Walker's Party Store, Inc., E.D.Mich.1995, 903 F.Supp. 1162. Civil Rights 1352(1)

City did not maintain policy or custom of deliberate indifference to safety of its citizenry which came into contact with members of its police department and thus was not liable, under § 1983, to bystanders allegedly injured when officer fired at fleeing suspect; city's policy forbade officers from applying deadly force unless threat posed by assailant to officer or public outweighed risk, to public, from use of deadly force, and evidence did not support inference that city ever disregarded policy or failed to train officers to conform their conduct to policy. Porter v. Jameson, M.D.Ala.1995, 889 F.Supp. 1484. Civil Rights 1351(4)

Municipality's guidelines addressing police officers' conduct during high-speed pursuits did not constitute deliberate indifference on part of municipality policy makers with respect to possible violations of constitutional rights resulting from such pursuits, where guidelines directed pursuing officers to weigh necessity of immediate apprehension against danger created and to abandon pursuit if concerns did not justify its continuance; thus, motorcyclist injured during high-speed pursuit could not maintain § 1983 action against municipality on grounds of deficient guidelines. Carroll v. Borough of State College, M.D.Pa.1994, 854 F.Supp. 1184, affirmed 47 F.3d 1160 . Civil Rights 1352(4)

County was immune from suit under both Maine and Federal Civil Rights Acts in action brought by husband of victim who was shot and killed in her home by police officers during attempt to execute warrantless entry and arrest, where sheriff who was county's primary policymaker was not deliberately indifferent to need to provide additional training to police officers and thus alleged failure to provide such training could not justifiably be said to represent county policy. Hegarty v. Somerset County, D.Me.1994, 848 F.Supp. 257, stay granted 25 F.3d 17, affirmed in part and remanded 53 F.3d 1367, certiorari denied 116 S.Ct. 675, 516 U.S. 1029, 133 L.Ed.2d 524. Civil Rights 1376(4); Civil Rights 1737

812. ---- Negligence, hiring, training or supervision, custom or usage

County did not deprive swimmer of his right to life for purposes of civil rights statute on ground that it grossly negligently trained one of its lifeguards who then failed in attempt to rescue swimmer from peril of ocean, which was not peril created by governmental agency. Bradberry v. Pinellas County, C.A.11 (Fla.) 1986, 789 F.2d 1513. Civil Rights 1039

No act or omission of city in areas of recruiting, hiring, training, supervising, or disciplining police officer constituted reckless conduct or gross negligence that would render city liable under civil rights statute [42 U.S.C.A. § 1983] to survivors of fellow police officer shot and killed by first officer while in pursuit of a fleeing suspect. McKenna v. City of Memphis, C.A.6 (Tenn.) 1986, 785 F.2d 560. Civil Rights 1088(1)

City could not be held liable under §§ 1983 for any unreasonable detention and seizure of plaintiff who allegedly was beaten and arrested for creating public disturbance when he was having epileptic seizure, based on theory of negligent hiring of police officer, absent showing of facts in officer's background indicating that obvious consequence of hiring him would be violation of specific rights assertedly violated. Adams v. City of Camden, D.N.J.2006, 461 F.Supp.2d 263. Civil Rights 1352(4)

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42 U.S.C.A. § 1983

Parents and child who sued city failed to establish §§ 1983 claim based on inadequate hiring, stemming from assault that allegedly occurred while child was at pre-placement facility after removal, where each facility employee who worked directly with children prepared employment application and submitted to criminal background check, and all facility employees were cleared through State Central Register. Phillips ex rel. Green v. City of New York, S.D.N.Y.2006, 453 F.Supp.2d 690. Civil Rights 1352(6)

It was not plainly obvious that janitor at county courthouse would rape minor performing community service at courthouse, and thus county was not liable under §§ 1983 for negligent hiring of janitor, even though background check would have revealed numerous convictions, where criminal record did not indicate that janitor had any history of violence towards women, violence towards minors, kidnapping, or any type of sexual assault. Doe v. Patton, E.D.Ky.2005, 381 F.Supp.2d 595, reconsideration denied, affirmed 2006 WL 959812. Civil Rights 1352(6)

Negligence was not adequate basis for imposing liability upon municipality under § 1983, where motorcyclist alleged that city's failure to adequately train police officers as to methods for conducting high-speed pursuits resulted in constitutional injury to motorcyclist; motorcyclist was required to show deliberate indifference as to constitutional rights on part of municipality's policy makers. Carroll v. Borough of State College, M.D.Pa.1994, 854 F.Supp. 1184, affirmed 47 F.3d 1160. Civil Rights 1352(4)

Supervisor may be liable under § 1983 where there is complete failure to train subordinate employees or where training offered is so reckless or grossly negligent that future misconduct is nearly inevitable. Wilson v. State of Kan., D.Kan.1993, 816 F.Supp. 670. Civil Rights 1355

There was no showing of gross negligence on the part of city in connection with its training of officers in methods to check accuracy of information on which they base arrest of persons for failing to register as sex offenders, so that city could not be held liable by arrest by one officer who had allegedly failed to make sufficient checks before arresting the plaintiff. Kirk v. Hesselroth, N.D.Cal.1988, 707 F.Supp. 1149, affirmed 914 F.2d 262. Civil Rights 1352(4)

813. ---- Arrests, hiring, training or supervision, custom or usage

Village could not be held liable to former police officer under §§ 1983 when village officials did not violate former officer's constitutional rights and former officer did not identify official village policy under which officials were supposed to have acted. Voyticky v. Village of Timberlake, Ohio, C.A.6 (Ohio) 2005, 412 F.3d 669. Civil Rights 1351(5)

Absent showing that alleged inadequacy of training of police commander was result of deliberate or conscious choice such as is necessary to establish municipal policy, municipality could not be held liable for shooting of plaintiff's decedent in his home on theory that city failed to train commander adequately in proper procedures for arresting suspects in their homes. Alexander v. City and County of San Francisco, C.A.9 (Cal.) 1994, 29 F.3d 1355, certiorari denied 115 S.Ct. 735, 513 U.S. 1083, 130 L.Ed.2d 638. Civil Rights 1352(4)

City's failure to train police officers regarding arrest procedures was proper basis for liability in civil rights action arising from injuries sustained by arrestee. Rymer v. Davis, C.A.6 (Ky.) 1985, 775 F.2d 756, certiorari denied 107 S.Ct. 1369, 480 U.S. 916, 94 L.Ed.2d 685. Civil Rights 1352(4)

Police supervisory officers could not be held liable under this section for alleged failure in supervisory and training functions to prepare officer properly for making of arrest involved, absent showing of direct responsibility for improper action of last-mentioned officer in shooting plaintiff while trying to handcuff him with cocked revolver in hand. Wilson v. Beebe, C.A.6 (Mich.) 1980, 612 F.2d 275. Civil Rights 1088(4)

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Genuine issues of material fact, regarding whether borough had policy or custom of arresting and detaining juveniles for underage drinking, precluded summary judgment on minor child's *Monell* claim against borough under §§ 1983, stemming from his arrest and detention after dropping bottles of beer that he was holding and fleeing from officer. Davis ex rel. Davis v. Borough of Norristown, E.D.Pa.2005, 400 F.Supp.2d 790. Federal Civil Procedure 2491.5

City could not be liable under §§ 1983 for failure to supervise and train police officer, who allegedly used excessive force on arrestee by hitting arrestee with baton, on the proper use of his baton, where city had official policy that no officer could use or carry a baton unless he had been properly certified by a training officer or the police training academy on its use, officer received such training, and there was no showing that city had notice that officer required additional training or supervision. Reed v. City of Lavonia, M.D.Ga.2005, 390 F.Supp.2d 1347. Civil Rights 1352(4)

Complaint alleging unreasonable arrest by officer was sufficient to state § 1983 claim against municipal employer for inadequate training; complaint alleged that officer's conduct was caused by or was in conformity with official policy of city, thereby providing city with fair notice of claim. McGrath v. MacDonald, D.Mass.1994, 853 F.Supp. 1. Civil Rights 1395(6)

814. ---- Discipline of subordinates, hiring, training or supervision, custom or usage

Minor child who sued borough and police officers, alleging constitutional violations in connection with his arrest and detention, failed to establish that borough had policy or custom of inadequately training its officers in use of force, as required to maintain *Monell* claim against borough under §§ 1983; child did not show how alleged failure to train reflected deliberate or conscious choice by borough, in light of officers' training with respect to force continuum. Davis ex rel. Davis v. Borough of Norristown, E.D.Pa.2005, 400 F.Supp.2d 790. Civil Rights 1352(4)

Failure to discipline subordinate for unconstitutional conduct gives rise to separate constitutional claim against superior under § 1983 only if failure to discipline is result of custom or policy. Greiner v. City of Champlin, D.Minn.1993, 816 F.Supp. 528, rescinded 27 F.3d 1346. Civil Rights 1355

815. ---- Disclosure of information, hiring, training or supervision, custom or usage

District attorney was not liable under §§ 1983 or 1985 for failure to train prosecutors under his supervision based upon prosecutors' alleged failure to disclose exculpatory evidence in criminal trial, as required by *Brady*; although prosecutors had failed to disclose exculpatory evidence in a small number of cases during 25-year period, the office had handled tens of thousands of criminal cases during that period, and there was no evidence that district attorney's training or supervision was obviously inadequate and plainly would result in violations of constitutional rights. Cousin v. Small, C.A.5 (La.) 2003, 325 F.3d 627, certiorari denied 124 S.Ct. 181, 540 U.S. 826, 157 L.Ed.2d 48. Civil Rights 1358; Conspiracy 13

Physician who obtained writ of habeas corpus based on state's failure to produce confidential informant essential to his entrapment defense to charge of selling cocaine, which led to his acquittal on retrial, failed to state valid § 1983 claim that city violated his civil rights by failing to train prosecutors to produce confidential informants, as city could not be held liable for exercise of trial court's discretion in refusing to compel identification based on determination that disclosure was immaterial to defense. DiBlasio v. City of New York, C.A.2 (N.Y.) 1996, 102 F.3d 654. Civil Rights 1088(5)

County's alleged failure to train employee as to confidentiality of presentence reports of youthful offenders did not amount to policy or custom for which county or employee in official capacity could be held liable in § 1983 action; youthful offender relied only upon one alleged incident of improper disclosure and did not allege that county

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repeatedly ignored or failed to investigate prior, illicit disclosures by probation personnel. Soucie v. County of Monroe, W.D.N.Y.1990, 736 F.Supp. 33. Civil Rights 1352(6)

Borough was liable to family members for police officer's public disclosure of fact that husband/father was infected with Acquired Immune Deficiency Syndrome (AIDS) virus because it failed to adequately train officers about AIDS and need to keep identity of AIDS carriers confidential; failure to provide officers with any training despite knowledge that other departments had taken such precautions due to nature of disease and public perceptions amounted to deliberate indifference to privacy rights of family members. Doe v. Borough of Barrington, D.N.J.1990, 729 F.Supp. 376. Civil Rights 1352(4)

816. ---- High speed chase, hiring, training or supervision, custom or usage

City police department's policy relating to high speed pursuits was not unconstitutional, and there was no evidence of additional incidents of allegedly unconstitutional actions stemming from policy, to impose municipal liability for police officer's actions in blocking path of fleeing motorcycle with his squad car. Donovan v. City of Milwaukee, C.A.7 (Wis.) 1994, 17 F.3d 944. Civil Rights 1351(4)

Municipality policy makers were not liable for alleged failure to train police officers in pursuit techniques under § 1983; officer involved in pursuit at issue testified that he received instruction and training on pursuit driving, including practice driving sessions, and in determining when pursuit should be abandoned due to safety concerns, and criticism of expert on behalf of plaintiff injured during police pursuit was not supported by facts and did not support conclusion that policy makers were deliberately indifferent. Carroll v. Borough of State College, M.D.Pa.1994, 854 F.Supp. 1184, affirmed 47 F.3d 1160. Civil Rights 1352(4)

Representatives of motorcycle passenger killed during high speed chase with police officer clearly alleged that town provided no specialized training to its law enforcement officers on subject of high speed chases which supported inference of deliberate indifference to rights of public and stated claim of inadequate training against town which could serve as basis for § 1983 liability. Frye v. Town of Akron, N.D.Ind.1991, 759 F.Supp. 1320. Civil Rights 1395(5)

Failure of police sergeant to order termination of highspeed chase did not give rise to liability under § 1983 where motorcyclist posed danger, pursuit may have been attempt to mitigate potential harm that might result from his actions, chase was justified in order to ascertain license plate of motorcycle, state trooper knew location of motorist at all times, and sergeant did not know of any intention by town constable to establish roadblock. Stanulonis v. Marzec, D.Conn.1986, 649 F.Supp. 1536. Civil Rights 1088(1)

817. ---- Municipalities, hiring, training or supervision, custom or usage

Monell civil rights claim does not provide a separate cause of action for the failure by the government to train its employees; it extends liability to a municipal organization where that organization's failure to train, or the policies or customs that it has sanctioned, led to an independent constitutional violation. Segal v. City of New York, C.A.2 (N.Y.) 2006, 459 F.3d 207. Civil Rights 1352(1)

City was liable under § 1983 for administration for children's services' (ACS) practice of removing children from custody of their mothers under New York law based on mothers' failure to prevent children from witnessing domestic violence against mothers, if such practice violated mothers' or children's constitutional rights, based on failure to train ACS employees; city policy-makers knew that ACS staff would face instances where children had seen their mother battered, that there was history of removals in that circumstance, and that wrong choices in those circumstances would cause ACS to deprive parents and children of their constitutional rights. Nicholson v. Scoppetta, C.A.2 (N.Y.) 2003, 344 F.3d 154, certified question accepted 807 N.E.2d 283, 775 N.Y.S.2d 233, 1 N.Y.3d 538, certified question answered 820 N.E.2d 840, 787 N.Y.S.2d 196, 3 N.Y.3d 357, answer to certified

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question conformed to 116 Fed.Appx. 313, 2004 WL 2712425. Civil Rights 1352(6)

Woman with Down Syndrome failed to establish that city had a deliberate policy of failing to train or supervise its officers in how to act with non-violent disabled individuals, as required to establish municipal liability, for purposes of woman's § 1983 claims against city and police officers in their official capacities alleging Fourth Amendment violations occurred when she was seized and involuntarily hospitalized by officers; even if the officer's conduct indicated that the officer personally was untrained in this area, the evidence made available through discovery showed that the city did have training procedures in place to assist its officers in interacting with non-violent disabled individuals. Anthony v. City of New York, C.A.2 (N.Y.) 2003, 339 F.3d 129. Civil Rights 1352(4)

Claim of violation of § 1983, which is based on persistent, widespread practice of city officials or employers, may in appropriate case also encompass allegations that policymaker failed to act affirmatively, including failure adequately to train subordinate. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1352(1)

In order to hold municipality liable under § 1983 for its employees' acts, plaintiff must show that policy of hiring or training caused those acts, and such showing requires proof that training or hiring procedures of municipality's policymaker were inadequate, municipality's policymaker was deliberately indifferent in adopting hiring or training policy, and inadequate hiring or training policy directly caused plaintiff's injuries. Baker v. Putnal, C.A.5 (Tex.) 1996, 75 F.3d 190. Civil Rights 1351(1); Civil Rights 1352(1)

Township, county and district attorney's office were entitled to municipal immunity as to civil rights action brought by family of murdered township officer, alleging that defendants failed to protect officer despite threats from perpetrator; family failed to identify municipal policy or custom that resulted in alleged violations, family did not allege failure to train employees, and risk for harm to public due to lack of employee training was not obvious. Walter v. Pike County, Pennsylvania, M.D.Pa.2006, 2006 WL 3437384. Civil Rights 1376(9)

City was not liable under §§ 1983 for its police officers' alleged use of excessive force in effectuating plaintiff's arrest where there was no formal policy allowing the use of excessive force, and no showing that police chief, as a final policy-making authority, ratified or condoned the officers' alleged actions. Phillips v. City of Fairfield, E.D.Cal.2005, 406 F.Supp.2d 1101, reconsideration denied 2006 WL 335472. Civil Rights 1351(4)

A municipality may not be held liable under §§ 1983 where the officer's conduct did not actually violate the plaintiff's constitutional rights, even if the municipality has a custom or policy which authorizes or causes constitutional violations. Aguilera v. Baca, C.D.Cal.2005, 394 F.Supp.2d 1203. Civil Rights 1351(1)

Mere assertion that municipality has custom or policy that results in constitutional deprivation, for purpose of §§ 1983 claim against municipality, is insufficient in absence of allegations of fact tending to support, at least circumstantially, such inference. Bradley v. Village of Greenwood Lake, S.D.N.Y.2005, 376 F.Supp.2d 528. Civil Rights 1417

County was not liable under §§ 1983 for failure to discipline or properly supervise individual responsible for forgery of declination letter that removed candidate from the list of eligible candidates for position in police department; there was no evidence of a history of county employees mishandling preservation of authentic declination letters, and whether to forge declination letters was not a difficult choice for county employees, as might require county to put procedure in place to detect such forged letters. Gallo v. Suffolk County Police Dept., E.D.N.Y.2005, 360 F.Supp.2d 502. Civil Rights 1352(5)

A municipality may not be held liable under §§ 1983 solely because it employs a tortfeasor; rather, a municipal "policy" or "custom" must have caused the plaintiff's injury. Perez v. Miami-Dade County, Florida, S.D.Fla.2004,

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348 F.Supp.2d 1343, affirmed in part, vacated in part and remanded 168 Fed.Appx. 338, 2006 WL 372321. Civil Rights 1345; Civil Rights 1351(1)

If a municipal employee violates another's constitutional rights, the municipality can be held liable under § 1983 if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional violation, providing the failure to train amounts to deliberate indifference. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1352(1)

Proof of repeated complaints against the accused official followed by the failure of any meaningful attempt on the part of the municipality to investigate or prevent further incidents is proper evidence of the failure to supervise, train and discipline so as to constitute a basis for imposition of § 1983 liability against municipality. Dejesus v. Village of Pelham Manor, S.D.N.Y.2003, 282 F.Supp.2d 162. Civil Rights 1352(1)

A plaintiff must produce some evidence from which it can be inferred that the municipality had a custom or practice of failing to make a meaningful investigation into a charge that one of its employees had violated citizens' constitutional rights, or failed to discipline subordinates who violated civil rights, to establish municipal liability for failing to adequately train subordinates to the extent that the failure amounted to deliberate indifference to the rights of citizens under § 1983; mere conclusory allegations are insufficient when unsupported by facts showing that policymakers were aware of the constitutional violations and failed to properly respond. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1417

A municipality may be liable under § 1983 for deficient policies regarding hiring and training where: (1) the municipality's hiring and training practices are inadequate, and (2) the municipality was deliberately indifferent to the rights of others in adopting them, such that the failure to train reflects a deliberate or conscious choice by the municipality. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1352(1)

Municipality was not liable to arrestee under § 1983 for failure to train police, where evidence of its deliberate indifference was primarily jury verdicts or settlements in handful of excessive force cases and ensuing police department request for review by U.S. Department of Justice, all occurring after incident involving alleged use of excessive force that was premise of lawsuit; although underlying events giving rise to jury verdicts occurred before her arrest and thus might help to establish causation, plaintiff arrestee did not produce evidence that police chief or other municipal policymakers knew or should have known before her arrest that officers were misbehaving to degree that failure to institute excessive force training after earlier events but before her arrest showed deliberate indifference. Forbis v. City of Portland, D.Me.2003, 270 F.Supp.2d 57. Civil Rights 1352(4)

Municipality was not liable under § 1983 for shooting death of house occupant, due to failure to properly train police officers in use of deadly force, when shooting officer had received state mandated training on subject, despite claim that training was inferior to that given in adjacent state. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Civil Rights 1352(4)

Municipality was not liable under § 1983 for any excessive force applied by police officer, who shot and killed occupant of house who was to receive mental health evaluation, on grounds that municipality had not adequately trained officer in using deadly force when dealing with emotionally disturbed persons; police had been present at 2,000 prior evaluations, performed without violence, and there was general training involving the emotionally disturbed. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Civil Rights 1352(4)

Municipality cannot be held liable in § 1983 civil rights action for actions of employee, whether on a failure to train theory or a municipal custom and policy theory, unless employee is found liable on the underlying substantive constitutional claim. Friedman v. City of Overland, E.D.Mo.1996, 935 F.Supp. 1015. Civil Rights 1345

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42 U.S.C.A. § 1983

Supervisor's alleged conduct toward two African-American municipal employees over seven years did not reach the level of a policy or custom of discriminatory employment practices at municipal agency, as was required to establish municipality's liability for alleged disparate treatment and racial harassment/hostile work environment; although employee alleged supervisor made four racial comments to the other African-American employee, caused delay in filing his paperwork for a training session, reported employees for driving violations, and gave employees unfavorable assignments, he did not claim municipality had an official written policy of racism. Mitchell v. City and County of Denver, C.A.10 (Colo.) 2004, 112 Fed.Appx. 662, 2004 WL 2287756, Unreported. Civil Rights 1351(5)

818. ---- Narcotics, hiring, training or supervision, custom or usage

Director of human services did not implement municipal policy by ordering juvenile detention center counselor to submit to a drug test, and thus there was no municipal liability under § 1983, where final policymaking authority with regard to the employee substance abuse policy rested with the director of personnel and the city manager. Hassell v. City of Chesapeake, Virginia, E.D.Va.1999, 64 F.Supp.2d 573, affirmed 230 F.3d 1352. Civil Rights 1351(5)

Lack of nexus between pretrial arrestee's death in cell from prior drug ingestion and town's failure to provide drug training to its police officers precluded town's liability for arrestee's death. Carapellucci v. Town of Winchester, D.Mass.1989, 707 F.Supp. 611. Civil Rights 1088(4)

819. ---- Police officers, hiring, training or supervision, custom or usage

Finding of culpability on part of municipality in § 1983 action based on failure to perform adequate screening prior to hiring of employee cannot depend on mere probability that any officer inadequately screened will inflict any constitutional injury; rather, it must depend on finding that particular employee in question was highly likely to inflict particular injury suffered by plaintiff, and connection between background of particular applicant and specific constitutional violation alleged must be strong. Board of County Com'rs of Bryan County, Okl. v. Brown, U.S.Tex.1997, 117 S.Ct. 1382, 520 U.S. 397, 137 L.Ed.2d 626, rehearing denied 117 S.Ct. 2472, 520 U.S. 1283, 138 L.Ed.2d 227, on remand 117 F.3d 239. Civil Rights 1088(1)

City had no civil rights liability for officers' conducting mock arrest of airline employee at behest of her supervisors, where allegedly unconstitutional seizure neither implemented nor executed official policy, ordinance, regulation, or decision by city or any municipal custom. Fuerschbach v. Southwest Airlines Co., C.A.10 (N.M.) 2006, 439 F.3d 1197. Civil Rights 1351(4)

Suspect who brought §§ 1983 failure to train claim against city, related to his being shot with beanbag propellant during riot, failed to submit any facts from which Court of Appeals could infer that city failed to train officers in use of beanbags; suspect submitted no evidence regarding number of incidents of beanbag misuse, any delays in implementing agreement regarding use of beanbags, and officer went through annual trainings regarding use of beanbags. Ciminillo v. Streicher, C.A.6 (Ohio) 2006, 434 F.3d 461. Civil Rights 1420

Woman bringing § 1983 action against city for its alleged failure to prevent her ex-boyfriend and his private investigator from hiring police officers to harass her could not establish a city policy of inadequate investigation into police officer wrongdoing and inadequate discipline of police officers, though city failed to investigate hired officers upon woman's complaints; woman could not establish pattern of failing to investigate complaints. Piotrowski v. City of Houston, C.A.5 (Tex.) 2001, 237 F.3d 567, rehearing en banc denied 251 F.3d 159, certiorari denied 122 S.Ct. 53, 534 U.S. 820, 151 L.Ed.2d 23. Civil Rights 1352(4)

To hold municipality liable under § 1983 for failure to train and supervise police officer, it is not enough to show that situation will arise and that taking wrong course in that situation will result in injuries to citizens; rather, there

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must be likelihood that failure to train or supervise will result in officer making wrong decision. Sewell v. Town of Lake Hamilton, C.A.11 (Fla.) 1997, 117 F.3d 488, certiorari denied 118 S.Ct. 852, 522 U.S. 1075, 139 L.Ed.2d 753. Civil Rights 1352(4)

City's actions in hiring police officer who had poor driving record despite concerns raised by some officials in hiring process, and failing to require officer to take remedial training following nine incidents of unacceptable driving after he was hired, while not to be condoned, did not shock the conscience as would allow recovery in federal civil rights action against municipality based on substantive due process violation created by city's own conduct after officer hit and fatally injured motorist while speeding through intersection against red light and without using siren while responding to nonemergency call. Williams v. City and County of Denver, C.A.10 (Colo.) 1996, 99 F.3d 1009, rehearing granted, opinion vacated 140 F.3d 855, on rehearing 153 F.3d 730. Civil Rights 1088(1); Civil Rights 1352(4)

Off-duty deputy's private actions in assaulting and attempting to rob victims were intervening causes which precluded any county liability under § 1983 for alleged negligent hiring and supervision even though deputy's disciplinary record may have put his supervisors on alert that he could be violent and prone to use excessive, even illegal, force while performing his duties; county could not reasonably have foreseen that deputy would become free-lance criminal and attack victims as he did. Van Ort v. Estate of Stanewich, C.A.9 (Cal.) 1996, 92 F.3d 831, certiorari denied 117 S.Ct. 950, 519 U.S. 1111, 136 L.Ed.2d 837. Civil Rights 1348

Police chief could not be held liable under section 1983 for failing to properly supervise or train police officer; three prior incidents involving the officer offered by the plaintiff did not sufficiently prove that the chief failed to supervise or that the chief knew that the officer had a propensity for improper use of force and the evidence overwhelmingly indicated that the chief properly trained the officer. Hinshaw v. Doffer, C.A.5 (Tex.) 1986, 785 F.2d 1260. Civil Rights 1358

Under federal statute, 42 U.S.C.A. § 1983, governing civil action for deprivation of rights, city could be liable for failure of police officers to receive basic training at state school where state police officers were trained. Rock v. McCoy, C.A.10 (Okla.) 1985, 763 F.2d 394. Civil Rights 1352(4)

City was not liable to arrestee under §§ 1983 for failure to train city police officers who made allegedly false arrest, absent showing that there was more than the single incident of arrestee's arrest, or that anyone at the policymaking level was involved in the arrest. Damiano v. City of Amsterdam, N.D.N.Y.2006, 2006 WL 3721047. Civil Rights 1352(4)

City could not be held liable under §§ 1983 for any unreasonable detention and seizure of plaintiff who allegedly was beaten and arrested for creating public disturbance when he was having epileptic seizure, based on theory of inadequate training or supervision of police officers, absent showing of municipal policy or custom establishing disregard for plaintiff's constitutional rights, or showing that any failure to train resulted in injury to plaintiff. Adams v. City of Camden, D.N.J.2006, 461 F.Supp.2d 263. Civil Rights 1352(4)

City that had established arrest policies was not deliberately indifferent to rights of detainees, as required to establish municipal civil rights liability for failure to train or supervise it officers, absent any showing that it had prior knowledge of past unconstitutional acts by its officers. Burr v. Burns, S.D.Ohio 2006, 439 F.Supp.2d 779. Civil Rights 1352(4)

After-the-fact evidence, and supervisors' alleged failure to take appropriate remedial action in response to police officers' filing of false police reports, was inadequate in civil rights lawsuit to show that municipality had policy of covering up police misconduct by refusing to hold police officers responsible for illegal searches, seizures, and use of excessive force, which allegedly violated citizens' Fourth Amendment rights. Barton v. City and County of Denver, D.Colo.2006, 432 F.Supp.2d 1178. Civil Rights 1352(4)

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County's alleged failure to train officers on the legal definition of simple assault did not demonstrate deliberate indifference to §§ 1983 plaintiff's constitutional rights; fact that officers could not give perfect definitions of the crime did not mean that they were inadequately trained. Payne v. DeKalb County, N.D.Ga.2004, 414 F.Supp.2d 1158. Civil Rights 1352(4)

Personal representative of the estate of a police shooting victim failed to prove that city failed to properly train its police officers on how to react when confronted by a citizen with a knife, so as to support imposition of municipal liability under §§ 1983; there was no evidence that the city knew about the alleged multitude of ways that police training could have been improved, or that the need for improvement was so obvious as to imply deliberate indifference. Estate of Smith v. Silvas, D.Colo.2006, 414 F.Supp.2d 1015. Civil Rights 1352(4)

Arrestee sufficiently pled claims against District of Columbia under §§ 1983 and common law for negligent failure to train and supervise police officers, where arrestee alleged that District had duty to properly train, supervise, investigate and correct improper actions of officers, that police chief and District "recklessly" breached that duty, and that breach was direct and proximate cause of substantial and severe injuries sustained by arrestee when officers attacked him without provocation, and eventually assaulted and battered crowd of bystanders that witnessed melee and questioned officers about their conduct. Kivanc v. Ramsey, D.D.C.2006, 407 F.Supp.2d 270. Civil Rights 1395(6)

Absence of any underlying violation, or evidence that municipality had policy, practice or custom of encouraging discrimination, precluded claim that municipality was liable in §§ 1983 action when police department rejected application for police officer position for nondiscriminatory reason that applicant had psychological problems. Rivera v. City of New York, S.D.N.Y.2005, 392 F.Supp.2d 644. Civil Rights 1351(5)

City could not be liable under §§ 1983 for failure to supervise and train police officer, who allegedly used excessive force on arrestee by hitting arrestee with baton, on the proper use of his baton, where city had official policy that no officer could use or carry a baton unless he had been properly certified by a training officer or the police training academy on its use, officer received such training, and there was no showing that city had notice that officer required additional training or supervision. Reed v. City of Lavonia, M.D.Ga.2005, 390 F.Supp.2d 1347. Civil Rights 1352(4)

Arrestees who sued county, alleging that police officers used excessive force in breaking up party at arrestee's home, failed to establish that county had custom or policy giving rise to alleged liability, as required to maintain §§ 1983 claims; arrestees presented no evidence regarding existence of similar incidents or quality of training by county. Raphael v. County of Nassau, E.D.N.Y.2005, 387 F.Supp.2d 127. Civil Rights 1352(4)

Shopper, who was allegedly assaulted while at shopping mall food court by off-duty police officers moonlighting as mall security guards, alleged statistical evidence that along with the incident alleged and prior complaints against security guard which raised a material question of fact regarding police department policy or custom of acquiescence in unconstitutional conduct, precluding summary judgment in favor of city on shopper's §§ 1983 claim based on city's failure to train its employees. Wahhab v. City of New York, S.D.N.Y.2005, 386 F.Supp.2d 277. Federal Civil Procedure 2491.5

City, whose police officers came to assistance of anther city's officers who had subdued detainee, was liable for failure to train its officers to provide medical care to detainee where city's officers were not informed as to the details and proper interpretation of cities' mutual aid agreement regarding responsibility for medical care. Estate of Owensby v. City of Cincinnati, S.D.Ohio 2004, 385 F.Supp.2d 626, affirmed and remanded 414 F.3d 596, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 2023. Civil Rights 1352(4)

Genuine issues of material fact as to the existence of an official policy or custom of the county regarding the use of police batons or flashlights during physical confrontations, and as to whether arrestee was subdued or resisting

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arrest at the time he allegedly sustained a blow or blows to the head from arresting sheriff's deputy, precluded summary judgment in favor of county, in arrestee's §§ 1983 excessive force claim and his battery claim under Arkansas law. Marley v. Crawford County, Arkansas, W.D.Ark.2005, 383 F.Supp.2d 1129. Federal Civil Procedure 2515

Estate of detainee who died after being stopped by police and shot stated claim for relief under §§1983 against members of city Board of Police Commissioners by alleging that Board members, pursuant to official policy or custom, intentionally and with deliberate indifference failed to instruct and supervise officers who stopped detainee in the use of deadly force. McNeal v. Zobrist, D.Kan.2005, 365 F.Supp.2d 1166. Civil Rights 1395(6)

City's decision to hire police detective did not reflect a conscious disregard for a high risk that detective would deliberately fabricate evidence in violation of arrestees' constitutional rights, so as to support municipal liability under §§ 1983; arrestees' evidence did not establish that detective was less than forthright with the police department about his previous encounters with the law. Doggett v. Perez, E.D.Wash.2004, 348 F.Supp.2d 1179. Civil Rights 1352(4)

In light of strong statement of Court of Appeals, on arrestee's appeal of denial of habeas relief, with respect to inadequate police activity, arrestee's claim under §§ 1983 that city failed to train and supervise police officers about appropriate identification procedures, would not be dismissed on motion for summary judgment, even though police had at least arguable probable cause to arrest him and confirm their arrest by police station showup. Wray v. City of New York, E.D.N.Y.2004, 340 F.Supp.2d 291. Federal Civil Procedure 2491.5

City was not subject to liability under §§ 1983 as result of city's alleged negligent supervision of police officer in connection with arrest, absent evidence of official policy, custom, or pattern. Kling v. Harris Teeter Inc., W.D.N.C.2002, 338 F.Supp.2d 667, affirmed 86 Fed.Appx. 662, 2004 WL 238337. Civil Rights 1352(4)

County policymaker's awareness of need for training for situation in which wrong choice by county employee would frequently cause deprivation of citizen's constitutional rights was not established by grand jury's failure to indict arrestee, police officers' failure to interview secretaries at school at which arrest and underlying incident occurred, police officer's request that arrestee leave school or be arrested, or county district attorney's conduct in providing arrestee with copy of grand jury proceeding at her request, and therefore arrestee did not establish municipal culpability and causation required to support failure to train claim against county and county police department under §§ 1983. Arum v. Miller, E.D.N.Y.2004, 331 F.Supp.2d 99. Civil Rights 1352(4)

Plaintiff may prove her §§ 1983 claim against municipality for failure to train police officers by showing that municipality failed to train officers to handle situation likely to recur and with obvious potential for constitutional violation, or that municipality failed to provide further training after learning of pattern of constitutional violations by officers. Rex v. City of Milwaukee, E.D.Wis.2004, 321 F.Supp.2d 1008. Civil Rights 1352(4)

City and police officers in their official capacities could not be held liable under Section 1983 on excessive force claims based on theories of inadequate supervision and hiring; victim's estate identified no specific facts demonstrating that city had custom or policy of allowing officers to ignore the chain of command, acted with "deliberate indifference" towards its citizens or that the city had actual or constructive notice that its action or failure to act was substantially certain to result in a constitutional violation nor was there a showing that city's hiring practices were defective in general or with respect to particular officers who allegedly used excessive force. Murphy v. Bitsoih, D.N.M.2004, 320 F.Supp.2d 1174. Civil Rights 1352(4); Civil Rights 1358

The inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of the persons with whom the police come into contact. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1352(4)

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42 U.S.C.A. § 1983

Survivors of students who were shot and killed in their school library and student who was shot and killed outside of school during a school shooting spree failed to state a claim against law enforcement officers for supervisory liability under § 1983, absent an initial showing of an underlying constitutional violation on the part of officers' subordinates and colleagues. Rohrbough v. Stone, D.Colo.2001, 189 F.Supp.2d 1088. Civil Rights 1358

Rigorous standards of culpability and causation must be applied to ensure that municipality will not be held liable under § 1983 solely for actions of its employee, and in particular, that particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on city, for officer's shortcomings may have resulted from factors other that faulty training program. Palacios v. City of Oakland, N.D.Cal.1997, 970 F.Supp. 732, affirmed 152 F.3d 928. Civil Rights 1352(1)

Municipalities were not deliberately indifferent in training individual police officers who detained motorist during traffic stop by disseminating their procedures on how to prevent violations of constitutional rights during search and seizure in writing, following up with on-the-job training, and giving officers opportunity to ask questions at monthly meetings. Gardner v. Village of Grand River, Ohio, N.D.Ohio 1997, 955 F.Supp. 817. Civil Rights 1352(4)

Police superintendent was not liable to § 1983 plaintiff who was beaten in a bar by police officer, on theory of supervisory liability, despite claim that superintendent failed to implement proper disciplinary system for identifying officers likely to violate individual rights; though officer in question had eight prior complaints against him, all complaints were made at least two years before superintendent took position, only one complaint could even seriously raise question regarding officer's propensity for violence, no evidence was presented as to whether superintendent, who oversaw approximately 15,000 officers, actually saw complaints, and no evidence was presented as to supervision techniques or the average officer's disciplinary record. Munoz v. Toledo Davila, D.Puerto Rico 1997, 954 F.Supp. 455. Civil Rights 1358

There was no evidence that defendant sheriff had unconstitutional policy or custom to fail to supervise or train his deputies, and thus, he was not liable in § 1983 action by arrestee who was allegedly "set up" by deputy and informant on drug charges of which he was ultimately acquitted; sheriff submitted his department's guidelines for use in handling of informants, substantive training materials used for training his deputies, detailed rules and procedures implemented by his department to discipline deputies who violate federal, state or local rules or otherwise engage in misconduct, and list of numerous training programs that deputy in question attended during his employment with sheriff's department. Lewis v. Meloni, W.D.N.Y.1996, 949 F.Supp. 158. Civil Rights 1358

In § 1983 civil rights action arising from plaintiff's arrest, prosecution, and eventual acquittal on sexual assault charge, city was not liable for alleged inadequate training of police officers in proper witness interview, preparation, and investigation technique in absence of specific facts showing that city was deliberately indifferent toward training officers and that inadequate training caused violations of plaintiff's constitutional rights. Pierzynowski v. Police Dept. City of Detroit, E.D.Mich.1996, 941 F.Supp. 633. Civil Rights 1352(4)

Motorist and occupant of vehicle failed to present sufficient evidence to establish municipal liability under § 1983 based on alleged general failure to adequately train police officers involved in arresting them; motorist and occupant did not identify any specific policies to which police officers' alleged violations could be attributed. Griffin v. City of Clanton, Ala., M.D.Ala.1996, 932 F.Supp. 1359. Civil Rights 1352(4)

Section 1983 plaintiff, who was shot by police officer while in process of demonstrating expressed intent to kill officer by throwing metal bar at officer, failed to establish that shooting officer or other officers present received inadequate training or supervision, so as to support municipal liability claim against city; shooting officer had received extensive training in appropriate use of deadly force, he knew that he was to shoot only if he or another person was in danger of serious injury and, even then, only as last resort, and officers had been instructed by superiors to withdraw from scene and were attempting to do so when plaintiff indicated his intention to kill

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shooting officer. McRae v. Tena, D.Ariz.1996, 914 F.Supp. 363, affirmed on other grounds 113 F.3d 1241. Civil Rights 1352(4)

Suspect's parents and administratrix of suspect's estate sufficiently pleaded existence of municipal policy to state civil rights claim under § 1983 against village for police officer's use of deadly force against suspect, where they alleged that village improperly and inadequately trained and instructed members of village police force, including specific officer, in proper exercise of self-restraint in use of violence against persons being apprehended. Javid v. Scott, S.D.N.Y.1996, 913 F.Supp. 223. Civil Rights 1395(6)

"Official policy or custom," for purposes of § 1983 claim for municipal liability, can encompass inadequate police training if failure to train amounts to deliberate indifference to rights of persons with whom police come into contact. Velez v. City of New London, D.Conn.1995, 903 F.Supp. 286. Civil Rights 1352(4)

Alleged cooperation agreement by which District of Columbia undertook to have United States Park Police patrol areas normally patrolled by Metropolitan Police Department was insufficient to impose liability, under borrowed servant doctrine, against District of Columbia on theory that District violated arrestee's Fourth and Fifth Amendment rights by failing to properly train and supervise officers who shot arrestee in chase, leading to his death; agreement did not alter jurisdiction or responsibilities of Park Police officers patrolling those areas, officers continued to perform duties entrusted them by their general employer, and there was no division of control or authority that would have permitted District to order officers to act to arrest someone or to veto their actions. Estate of Carter v. District of Columbia, D.D.C.1995, 903 F.Supp. 165. Civil Rights 1352(4); District Of Columbia 26

Evidence, in arrestee's action seeking to impose liability against police chief under federal civil rights statute for injuries sustained when police officers used excessive force and denied him medical attention after he resisted alcohol confiscation at public fireworks display, supported findings that chief created policy of fostering constitutional violations or allowed such policy to exist; evidence concerned investigation of arrestee's complaint, training of police staff, indexing and filing of complaints, open and obvious tolerance of violative conduct, and countenancing and advancing of nonaccountability by officers. Hogan v. Franco, N.D.N.Y.1995, 896 F.Supp. 1313 . Civil Rights 1420

Failure of police chiefs to discharge officer at the time of prior allegations of sexual misconduct did not impose pervasive and unreasonable risk of constitutional injury to woman who was subsequently raped by the officer so as to allow imposition of supervisory liability under federal civil rights statute. Jones v. Ziegler, D.Md.1995, 894 F.Supp. 880, affirmed 104 F.3d 620. Civil Rights 1359

Arrestee who was arrested as part of undercover operation to reduce crimes against persons before, during, and after parades failed to prove that failure to train police officers was the result of deliberate indifference on part of the city such that city was liable for officers' actions under § 1983; it was not plainly obvious that plan would result in arrests of citizens without probable cause. Beech v. City of Mobile, S.D.Ala.1994, 874 F.Supp. 1305. Civil Rights 1352(4)

Police officers' failure to incarcerate intoxicated and angry bar patron who later shot his house guest after he returned home did not establish § 1983 liability of city and its police chief for failure to train, absent showing that city was deliberately indifferent in adopting its training policy or that inadequate policy caused the shooting. Newsom v. Stanciel, N.D.Miss.1994, 850 F.Supp. 507. Civil Rights 1352(4)

Municipality is liable under civil rights statute where municipality's failure to train its police amounts to deliberate indifference to rights of persons with whom police come in contact. Lucas v. New York City, S.D.N.Y.1994, 842 F.Supp. 101. Civil Rights 1352(4)

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42 U.S.C.A. § 1983

Townships were not liable under federal civil rights statute for alleged inadequate training and supervision of township police officers, absent any proof they had custom or policy in that regard. McGill v. Mountainside Police Dept., D.N.J.1989, 720 F.Supp. 418. Civil Rights 1352(4)

820. ---- Prisons and prisoners, hiring, training or supervision, custom or usage

Evidence was insufficient to establish that state corrections commissioner was deliberately indifferent to mentally ill inmate's constitutional rights or was grossly negligent in training subordinates who allegedly violated those rights, as required to impose supervisory liability in §§ 1983 action arising when inmate was allegedly placed in four-point restraints for 22 hours, beaten, and denied medical care; commissioner was not informed of inmate's restraint and was unaware of any beatings until long after the fact, and training he promulgated and supervised did not materially deviate from accepted training practices. Ziemba v. Armstrong, C.A.2 (Conn.) 2005, 430 F.3d 623. Civil Rights 1358

County jail's staffing problems, allegedly resulting from county board's custom of inadequate budgeting for sheriff's office and jail, did not satisfy "custom or policy" prong of inmate's §§1983 Eighth Amendment action against county alleging failure to transport him to hospital during medical emergency and consequent paralysis; jail had policy to call ambulance to transport inmates with emergency medical needs if jail personnel were unable to do so, inmate presented no evidence of any other occasion when understaffing contributed to medical condition, inmate neither identified any pattern of injuries linked to board's budget decisions nor alleged defective accounting practices, and there was no evidence that board was aware of any health consequences of its budget decisions. McDowell v. Brown, C.A.11 (Ga.) 2004, 392 F.3d 1283. Civil Rights 1351(4)

County delegated to jail's director its power to establish final employment policy with respect to discipline of officers, as required for county to be liable in inmate's § 1983 action alleging that she was raped by corrections officer in violation of her Eighth Amendment rights; jail had approximately 262 employees, director had authority to promulgate jail policy which set forth rules of conduct for jail personnel, and no proven mechanism existed through which his decisions not to discipline officers could be reviewed. Ware v. Jackson County, Mo., C.A.8 (Mo.) 1998, 150 F.3d 873, rehearing and suggestion for rehearing en banc denied. Civil Rights 1351(5)

City was not liable in § 1983 action arising from injuries suffered by arrestee who died on theory of policy of inadequate training of officers, inadequate medical treatment of prisoners, or deliberate indifference to use of excessive force; no evidence to establish existence of policy or custom of inadequate medical treatment of prisoners was introduced other than arrest and subsequent death of arrestee, no evidence regarding inadequacy of training of city's police officers was introduced, and no probative evidence that city acquiesced in officers' use of excessive force was produced, although it was argued city's officers had used excessive force on prior occasions. Davis v. City of Ellensburg, C.A.9 (Wash.) 1989, 869 F.2d 1230. Civil Rights 1352(4)

Sheriff was liable under § 1983 to lawfully arrested prisoner who was twice beaten severely while in custody and complete control of sheriff's officers, as sheriff had not required appropriate training and discipline of his officers, and there had been no serious investigation of the incident by either sheriff or his deputies. Marchese v. Lucas, C.A.6 (Mich.) 1985, 758 F.2d 181, certiorari denied 107 S.Ct. 1369, 480 U.S. 916, 94 L.Ed.2d 685. Civil Rights 1358

Material issues of fact, as to whether county sheriff in charge of jail adequately trained officials in jail detainee suicide prevention, precluded summary judgment on individual capacity nonliability for violating due process rights of detainee who committed suicide. Gaston v. Ploeger, D.Kan.2005, 399 F.Supp.2d 1211. Federal Civil Procedure 2491.5

Man arrested and detained after failing to appear for hearing on citation failed to show that municipal policy or custom contributed to alleged civil rights violations by detention officers, as required to maintain §§ 1983 claim

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against city; policy manual stated that staff were required to receive training in legitimate use of force and restraints, and that no correctional officer was permitted to work with inmates until and unless such training was successfully completed. Niemyjski v. City of Albuquerque, D.N.M.2005, 379 F.Supp.2d 1221. Civil Rights 1352(4)

Village could not be held liable under § 1983 for alleged failure to train village police officers who allegedly violated motorist's Fourth Amendment rights when they stopped motorist on suspicion of driving while impaired or under the influence of alcohol and/or drugs, and who searched his car incident to the stop, solely on the basis of its employment of the officers, and in the absence of evidence of any kind regarding the official policies or the customs and practices of the village police department. Warner v. Village of Goshen Police Dept., S.D.N.Y.2003, 256 F.Supp.2d 171. Civil Rights 1352(4)

District of Columbia's failure to actively supervise improper sexual activities involving entire prison population violated female inmate's civil rights under § 1983 and District of Columbia law. Newby v. District of Columbia, D.D.C.1999, 59 F.Supp.2d 35. Civil Rights 1098; Prisons 17(1)

Allegations against city in connection with death of jailed arrestee from drug overdose did not establish existence of "official policy" such that city was subject to liability under § 1983; arrestee had already taken overdose at time of her arrest, and city was not constitutionally required to train jailers to recognize ambiguous signs of drug overdose. Morris v. City of Alvin, Tex., S.D.Tex.1997, 950 F.Supp. 804. Civil Rights 1351(4)

Prison officials were liable for civil rights violation of female prisoners who were subject to sexual harassment, notwithstanding official policies regarding sexual misconduct, as the harassment was the result of governmental custom and officials failed to properly train employees in the area of sexual harassment. Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia, D.D.C.1994, 877 F.Supp. 634, vacated in part, modified in part 899 F.Supp. 659, remanded 93 F.3d 910, 320 U.S.App.D.C. 247, rehearing denied, certiorari denied 117 S.Ct. 1552, 520 U.S. 1196, 137 L.Ed.2d 701, on remand 968 F.Supp. 744. Civil Rights 1358

821. ---- Searches and seizures, hiring, training or supervision, custom or usage

SWAT team's unconstitutional entry into citizen's apartment was not shown to be pursuant to official policy of city and thus evidence was insufficient to support jury's verdict in favor of citizen in § 1983 action; evidence established that police officers received basic training at law enforcement academies and additional training regarding search warrant and that city required officers to adhere to state law in executing warrantless searches and thus it could not be said that need for enhanced training was so obvious and that inadequacy of training was so likely to result in violation of constitutional rights that jury could reasonably attribute to policymakers deliberate indifference to those training needs. Tapia v. City of Greenwood, C.A.7 (Ind.) 1992, 965 F.2d 336, rehearing denied. Civil Rights 1420

822. ---- Sexual abuse, hiring, training or supervision, custom or usage

Director of youth services for Georgia Department of Human Resources, who had responsibilities for statewide youth services, was entitled to qualified immunity in action brought by youth detention center juvenile detainee for alleged delay in providing medical attention for juvenile who had been sexually abused by detention center employees; director did not regularly visit center in question, did not supervise center's employees directly, and, while director was responsible for screening of employees to determine if they were eligible for state employment, employees in question did not have criminal records. Hill v. Dekalb Regional Youth Detention Center, C.A.11 (Ga.) 1994, 40 F.3d 1176. Civil Rights 1376(3)

Acts of sexual molestation committed against elementary school students by elementary school teacher during summer vacation when students and teacher were engaged in fund-raising activities for summer basketball camp

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constituted too remote a consequence of school district's hiring and investigation policy three years earlier to impose liability upon school district under federal civil rights law, notwithstanding that teacher coached boys' basketball during school year and that students in question were members of teacher's class; only connection between district and basketball camp was that district approved use of high school facility for camp, permitted distribution of promotional materials concerning camp, and consented to use of outside elementary school basketball court to raise funds for children who could not otherwise afford to attend camp, foreclosing conclusion that there was "state action" involved, that teacher was "acting under color of state law," or that school district's hiring and investigation policy was moving force behind deprivation of students' constitutionally protected rights even though school superintendent received report shortly after teacher's hiring that he had molested nonstudent and even though teacher had in fact been convicted of sodomy some ten years before his hiring. D.T. by M.T. v. Independent School Dist. No. 16 of Pawnee County, Okl., C.A.10 (Okla.) 1990, 894 F.2d 1176, certiorari denied 111 S.Ct. 213, 498 U.S. 879, 112 L.Ed.2d 172. Civil Rights 1326(6); Civil Rights 1351(2)

School board's alleged practice and custom of avoiding and ignoring complaints of sexual abuse of students, and alleged failure to train personnel in prevention or investigation of sexual abuse, supported former middle school student's §§ 1983 claim against school board alleging violation of his right to not be sexually abused during the school day while in the care of the school board. Doe v. Faerber, M.D.Fla.2006, 446 F.Supp.2d 1311. Civil Rights 1352(2)

Minor ordered to perform community service at county courthouse who sued county and employees, stemming from her sexual assault by janitor, failed to establish evidence of any official policy or widespread practice that resulted in constitutional tort, as required to maintain §§ 1983 claim; despite testimony at janitor's criminal trial by county employee that she was concerned about minor's allegedly provocative dress and conduct, there was nothing to suggest that it was plainly obvious to county that janitor would rape minor. Doe v. Patton, E.D.Ky.2005, 377 F.Supp.2d 615, affirmed 2006 WL 959812. Civil Rights 1351(6)

Former employee who brought action against county, alleging sexual harassment by supervisor, failed to allege nexus between supervisor's background and his alleged misconduct, as required to state §§ 1983 claim based on improper hiring; notwithstanding supervisor's purported bankruptcy and outstanding judgments, nothing alleged in complaint would have made it plainly obvious from screening of background that he would engage in sexual misconduct. Nassau County Employee "L" v. County of Nassau, E.D.N.Y.2004, 345 F.Supp.2d 293. Civil Rights 1352(5)

Institutional defendants could not be held liable under customs prong of § 1983 with respect to instructor's sexual harassment of student at school of nurse anesthesia absent evidence showing that any of actions taken by instructor or other employees were pursuant to customs of institutional defendants. Saville v. Houston County Healthcare Authority, M.D.Ala.1994, 852 F.Supp. 1512. Civil Rights 1351(2)

If village fails to train its police officers in proper procedure for handling referrals and arrests in sexual abuse cases, such that its failure to train amounts to deliberate indifference to plaintiffs' rights, village may be held liable under § 1983. Fittanto v. Klein, N.D.Ill.1992, 788 F.Supp. 1451. Civil Rights 1352(4)

823. ---- Social workers, hiring, training or supervision, custom or usage

County's human services board was not liable under this section to plaintiffs, on basis of supervisor's failure to train or supervise social workers, for conduct of social workers in initiating commitment proceedings against plaintiffs based on unverified information, later disproven, from plaintiffs' minor child that they were alcoholics, as it was an unforeseeable first-time incident. Dick v. Watonwan County, C.A.8 (Minn.) 1984, 738 F.2d 939. Civil Rights 1352(6)

Showing was not made that municipality inadequately trained caseworkers, allowing for substantive due process

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denial liability when children were placed in allegedly unsatisfactory foster care, when only claim was that one caseworker had not been trained as social worker. Richards v. City of New York, S.D.N.Y.2006, 433 F.Supp.2d 404. Civil Rights 1352(6)

Closure of courtroom during preliminary injunction hearing was not warranted, in action for infringement of pharmaceutical drug patent, absent showing of overriding reason; issues presented in hearing could be argued adequately without disclosure of trade secrets or of specific confidential business information which patentee was seeking to protect. Barr Laboratories, Inc. v. KOS Pharmaceuticals, Inc., S.D.N.Y.2005, 362 F.Supp.2d 421. Patents 303

Genuine issue of material fact as to whether county had policy of removing children from home of non-offending parent in absence of exigent circumstances precluded summary judgment in favor of county on claim brought under §§ 1983 by children and adults responsible for their welfare, where evidence demonstrated that county considered non-offending parent's failure to admit veracity of unproven allegations of abuse or neglect to be emergency warranting removal of child, based upon non-offending parent's presumed failure to be protective. Parkes v. County of San Diego, S.D.Cal.2004, 345 F.Supp.2d 1071. Federal Civil Procedure 2491.5

824. ---- Suicide prevention, hiring, training or supervision, custom or usage

City's failure to train officers regarding detection of jail detainees having suicidal tendencies did not rise to level of custom or policy so as to hold city liable for death of arrestee who hung himself in city's lockup, notwithstanding city's additional failure to remodel detention facilities and its practice of leaving facility unsupervised after another prisoner's suicide three years earlier; although evidence indicated city was negligent, there was no evidence that even if police officers who came into contact with arrestee had been trained in screening for suicidal detainees, they could have prevented detainee's suicide. Bowen v. City of Manchester, C.A.1 (N.H.) 1992, 966 F.2d 13. Civil Rights 1351(4)

Alleged deficiencies in training of police officers on suicide prevention did not cause suicide of young male detainee in his cell, and, thus, municipality could not be held liable under § 1983, even though detainee halted in response to police officer's command during chase, and even though detainee closed his eyes at police station during lulls in processing; nothing indicated that detainee appeared intoxicated or under the influence of drugs at time of arrest or during detention. Dorman v. District of Columbia, C.A.D.C.1989, 888 F.2d 159, 281 U.S.App.D.C. 146. Civil Rights 1088(4)

In § 1983 action against city brought by surviving spouse of DWI arrestee who hung himself in city jail cell using his belt, spouse had not established deliberate policy promulgated by city to inadequately train its jail personnel; even though city did not send its personnel to Tennessee Corrections Institute jailer's school, city did provide its own training program for jailers, and nothing about arrestee's behavior or attitude following his arrest indicated likelihood of suicide. Beddingfield v. City of Pulaski, Tenn., C.A.6 (Tenn.) 1988, 861 F.2d 968, rehearing denied. Civil Rights 1351(4)

City was not liable under §§ 1983 for deliberate indifference to serious medical needs of intoxicated pre-trial detainee who committed suicide in holding cell, based on alleged failure to train officers to properly monitor detainees, absent identification of any specific training that city was aware of, but did not give, that would have prevented suicide. Cruise v. Marino, M.D.Pa.2005, 404 F.Supp.2d 656. Civil Rights 1352(4)

No policy of town, needed to give rise to § 1983 civil rights liability, existed when Chief of Police and other municipal decision-makers made decisions in response to hostage situation in effort to prevent plaintiff from committing suicide or hurting others, and taking plaintiff for medical evaluation. White v. Town of Chapel Hill, M.D.N.C.1995, 899 F.Supp. 1428, affirmed 70 F.3d 1264. Civil Rights 1351(4)

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42 U.S.C.A. § 1983

825. ---- Use of force, hiring, training or supervision, custom or usage

Police department was not liable under § 1983 for injuries arrestee suffered when he was bitten by police dog due to inadequate training of its officers; arrestee's own actions in attempting to move when he was told not to caused his injury, record contained no evidence that dog was inadequately trained, record contained evidence of extensive training for canine officer and there was no evidence that this training was inadequate to tasks which officer was required to perform or that inadequate training caused arrestee's injuries. Matthews v. Jones, C.A.6 (Ky.) 1994, 35 F.3d 1046. Civil Rights 1352(4)

It was not necessary for city to have policy condoning unprovoked shooting of citizens in order for it to be liable under § 1983 for police officer's unconstitutional use of deadly force against suspect; rather, if concededly valid policy was applied unconstitutionally by officer, city could be held liable if officer had not been adequately trained and constitutional wrong was caused by that failure to train. Zuchel v. City and County of Denver, Colo., C.A.10 (Colo.) 1993, 997 F.2d 730, rehearing denied. Civil Rights 1352(4)

Chief of police and city could be held liable in civil rights action brought on behalf of person who was shot nine times by police officer, even if the officer was exonerated; chief and city could be held liable for improper training or improper procedure, in that they put officer on street who was so badly trained and instructed he let his baton be taken away from him and then had to kill an armed civilian to save his own life. Hopkins v. Andaya, C.A.9 (Cal.) 1992, 958 F.2d 881, as amended. Civil Rights 1352(4); Civil Rights 1358

Even if police officers received only three to four hours of training in use of Tazer guns and lacked information as to Tazer's voltage and its precise effect on human body, such facts were insufficient to establish deliberate indifference to rights of persons with whom police came into contact, as was necessary to hold city liable under § 1983 in action brought by citizen against whom Tazer gun was used by police. Mateyko v. Felix, C.A.9 (Cal.) 1990, 924 F.2d 824, certiorari denied 112 S.Ct. 65, 502 U.S. 814, 116 L.Ed.2d 40. Civil Rights 1352(4)

Even assuming arguendo that arrestee's Fourth Amendment rights were violated, there was no basis to impute liability for officers' actions to police chief; arrestee presented no evidence that chief initiated a policy or custom requiring or permitting use of excessive force in performance of police duties, no evidence of other incidents similar to the instant case to suggest that alleged use of undue force was a standard practice of the department, no evidence to show that chief encouraged or tacitly condoned use of excessive force by those under his supervision, and no evidence that chief was grossly negligent in managing the defendant officers, but, instead, merely described the alleged conduct of defendant officers and speculated that the conduct resulted from improper supervision by chief. Birdsall v. City of Hartford, D.Conn.2003, 249 F.Supp.2d 163. Civil Rights 1358

To prevail on §§ 1983 claim against municipality for failure to train and supervise officers regarding uses of force, plaintiffs must show that need for more or different training is so obvious, and inadequacy so likely to result in violation of constitutional rights, that municipal policymakers can reasonably be said to have been deliberately indifferent to need. Massasoit v. Carter, M.D.N.C.2006, 439 F.Supp.2d 463. Civil Rights 1352(4)

City's reliance on appropriate training of its police officers in the use of non-deadly weapons, including pepper spray, did not amount to an unconstitutional policy that could subject city to liability under §§ 1983 for police officer's alleged use of excessive force in spraying motorist with pepper spray while attempting to arrest him during traffic stop. Davis v. City of Albia, S.D.Iowa 2006, 434 F.Supp.2d 692. Civil Rights 1351(4)

City and city officials were not liable under §§ 1983 for failing to properly train and supervise police officer who fatally shot driver after driver fled on foot from scene of investigative stop of his vehicle, since city police officers, including officer who shot driver, attended training sessions at which they were instructed on firearms and use of force, and there was no evidence that officer was acting in accordance with official policy or custom of city when he shot driver. Remillard v. City of Egg Harbor City, D.N.J.2006, 424 F.Supp.2d 766. Civil Rights 1358

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42 U.S.C.A. § 1983

Arrestee allegedly subjected to excessive force stated a §§ 1983 claim against a county on the theory that he was injured as a result of an official custom or policy; complaint alleged that a deputy sheriff used excessive force and caused the arrestee's injury, and liability against the county defendants was premised upon allegations that by failing to train and supervise deputies they encouraged the practice which led to the arrestee's injury. Harris v. Adams, S.D.Ohio 2005, 410 F.Supp.2d 707. Civil Rights 1395(6)

Police chief was not liable to arrestee under § 1983, as supervisor of arresting officers who allegedly used excessive force; chief's public comments made after date of arrest, his endorsement of investigation of arrestee's complaint, and parking incident at airport the following year were insufficient evidence that chief's deliberate indifference caused officers in question to behave the way they did, and there was insufficient evidence that chief failed to deal properly with prior excessive force complaints against officers. Forbis v. City of Portland, D.Me.2003, 270 F.Supp.2d 57. Civil Rights 1358

Driver of car involved in incident in which reserve city police officer struck car and occupant with his flashlight failed to state viable claim against city under § 1983 for failure to supervise officer; there was no showing of other similar incidents involving officer or any other reserve officer, and evidence, which at best demonstrated that city failed to supervise officer on night in question, was insufficient to allow reasonable finders of fact to conclude that city failed to supervise because of deliberate indifference to rights of citizens. Burgess v. West, D.Kan.1993, 817 F.Supp. 1520. Civil Rights 1352(4)

826. Hospitals, custom or usage

Hospital officers could be sued under this section on account of hospital policy excluding fathers from delivery room and action could be maintained against public hospital directly under U.S.C.A.Const. Amend. 14. Fitzgerald v. Porter Memorial Hospital, C.A.7 (Ind.) 1975, 523 F.2d 716, certiorari denied 96 S.Ct. 1518, 425 U.S. 916, 47 L.Ed.2d 768. Civil Rights 1360; Civil Rights 1391

826A. Medical care

City was not liable under §§ 1983 to estate of patient who was transported to hospital against his will by city personnel, absent showing that city had widespread custom and practice of failing to properly evaluate a nonverbal individual's refusal to accept medical treatment, or that city failed to fulfill its obligation to train personnel in evaluating nonverbal refusals of medical treatment. Green v. City of New York, C.A.2 (N.Y.) 2006, 465 F.3d 65. Civil Rights 1352(6)

827. Impoundment or towing of motor vehicles, custom or usage

City could be held liable for violation of plaintiff's due process rights by adopting municipal judge's impoundment order as city policy, and for subsequent impoundment of plaintiff's automobile without giving plaintiff notice of opportunity for prompt postseizure hearing. Coleman v. Watt, C.A.8 (Ark.) 1994, 40 F.3d 255. Civil Rights 1351(6)

Police department officials were not liable in their individual capacity to automobile owner whose vehicle was towed, impounded, and sold without notice to him; officials did not act with deliberate or reckless disregard for owner's constitutional rights by their approval and implementation of policy of notification by first-class mail of owners of impounded vehicles that were more than seven years old. Kohn v. Mucia, N.D.Ill.1991, 776 F.Supp. 348 . Civil Rights 1088(3)

828. Judicial duties, custom or usage

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42 U.S.C.A. § 1983

County was not liable, under § 1983, for juvenile court judge's alleged acts of interpreting and applying constitutionally flawed paternity and child support statutes, or interpreting and applying constitutionally adequate statutes in constitutionally flawed manner, as memorandum issued by judge regarding initiation of attachment pro corpus was not policy, but merely restatement of state law, and judge's actions were not policies but were judicial decisions reviewable on appeal. Johnson v. Turner, C.A.6 (Tenn.) 1997, 125 F.3d 324, rehearing and suggestion for rehearing en banc denied. Civil Rights 1351(6)

City judge's alleged furtherance of city's unwritten policy of refusing to provide counsel to indigents by failing to advise indigent defendants of their rights did not make judge a municipal decision maker, as required to impose civil rights liability on city; under Montana law, trial judge's obligation to address rights of defendant arose from membership in state judiciary. Eggar v. City of Livingston, C.A.9 (Mont.) 1994, 40 F.3d 312, certiorari denied 115 S.Ct. 2566, 515 U.S. 1136, 132 L.Ed.2d 818. Civil Rights 1348

Sentencing misdemeanor defendant to jail without benefit of counsel by municipal judge did not subject city to liability under § 1983 for alleged civil rights violation given that alleged violation of constitutional rights resulted from judge's judicial duties and not city's official policy. Johnson v. Moore, C.A.5 (Miss.) 1992, 958 F.2d 92. Civil Rights 1351(4)

City had no policy regarding municipal judge's judicial duties and was not liable under section 1983 for municipal judge's acts in refusing to accept defendant's two motor club cards in lieu of cash bail. Carbalan v. Vaughn, C.A.5 (Tex.) 1985, 760 F.2d 662, certiorari denied 106 S.Ct. 529, 474 U.S. 1007, 88 L.Ed.2d 461. Civil Rights 1351(4)

829. Jury selection, custom or usage

Decision to exclude all blind persons from jury service and to reject plaintiff, who was blind, from jury service were result of official policy of District of Columbia Superior Court and, thus, District was subject to § 1983 liability. Galloway v. Superior Court of District of Columbia, D.D.C.1993, 816 F.Supp. 12. Civil Rights 1351(6)

830. Law enforcement, custom or usage--Generally

Board of Police Commissioners was not liable for allegedly improper traffic stop based on drug courier profile, as matter of law, since plaintiffs failed to present evidence that custom or practice of unconstitutionally stopping motorists based on drug courier profiles existed within department or that Board either authorized or remained indifferent to such practice. Ryan v. Board of Police Com'rs of City of St. Louis, C.A.8 (Mo.) 1996, 96 F.3d 1076, rehearing denied. Civil Rights 1351(4)

Pretrial detainee established that sheriff, who was final county policymaker with respect to all law enforcement decisions, had policy of failing to keep records to facilitate payment of wages to pretrial detainees who engaged in work during period of detention, in accordance with sheriff's statutory duty; thus, county was liable for sheriff's actions in depriving detainee of property right in such wages in violation of due process. Brooks v. George County, Miss., C.A.5 (Miss.) 1996, 84 F.3d 157, certiorari denied 117 S.Ct. 359, 519 U.S. 948, 136 L.Ed.2d 251. Civil Rights 1351(4)

Town was not liable to store clerk under § 1983 for prank in which police officers staged an armed robbery of clerk; town had standard operating procedures that prohibited type of activity surrounding challenged conduct, and clerk failed to establish that staged robbery in any way implemented or executed a policy statement, ordinance, regulation, or decision officially adopted and promulgated or that official policy was the moving force behind alleged constitutional violation. Haines v. Fisher, C.A.10 (Wyo.) 1996, 82 F.3d 1503. Civil Rights 1351(4)

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42 U.S.C.A. § 1983

To prevail on her § 1983 civil rights claim against city under Fourth Amendment, custodial detainee had to show that city adhered to policy, practice, or custom that caused her to be deprived of her constitutional rights, in detainee's action arising from her detention for four hours for identification following citation for boarding train without proof of payment of fare. Pierce v. Multnomah County, Or., C.A.9 (Or.) 1996, 76 F.3d 1032, certiorari denied 117 S.Ct. 506, 519 U.S. 1006, 136 L.Ed.2d 397. Civil Rights 1351(4)

Customary practices, if widespread among police employees, are sufficient basis for municipal liability under § 1983. Sloman v. Tadlock, C.A.9 (Cal.) 1994, 21 F.3d 1462. Civil Rights 1351(4)

Failure of city and police department to maintain cross-indexed filing system, under which all complaints were placed in police officer's personnel file, did not evidence municipal policy condoning police misconduct and did not make city and police chief liable under § 1983. Sarus v. Rotundo, C.A.2 (N.Y.) 1987, 831 F.2d 397. Civil Rights 1351(4)

Municipality's failure to correct constitutionally offensive actions of its police department may rise to level of custom or policy, for which municipality can be held liable under section 1983, if municipality tacitly authorizes actions or displays deliberate indifference towards police misconduct. Brooks v. Scheib, C.A.11 (Ga.) 1987, 813 F.2d 1191. Civil Rights 1352(4)

City and its prisons could not be held liable under § 1983 for violating due process rights of convict who allegedly was cleared of wrongdoing by police investigation conducted after his conviction when convict did not identify municipal policy or custom that resulted in alleged denial of due process, and did not identify either municipal agent with authority to create such a policy or evidence that such agent knew of policy's unconstitutional consequences. Berthesi v. Pennsylvania Bd. of Probation, E.D.Pa.2003, 246 F.Supp.2d 434. Civil Rights 1351(4)

Arrestee failed to state §§ 1983 claims against city and city police department when complaint contained only conclusory allegations regarding existence of formal or de facto policy on city's part respecting alleged violations of arrestee's constitutional rights, without alleging any facts tending to support inference that formal practice or custom endorsed by city actually existed. Williams v. City of Mount Vernon, S.D.N.Y.2006, 2006 WL 800963. Civil Rights 1395(6)

Arrestee did not show that there was unconstitutional action that implemented or executed policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers, by demonstrating that one police officer was overruled by superior officer, and thus police department was not liable on arrestee's *Monell* civil rights claim under free speech clause of First Amendment. Fogel v. Grass Valley Police Dept., E.D.Cal.2006, 415 F.Supp.2d 1084. Civil Rights 1351(4)

Claims against police officer in his official capacity are treated as claims against the municipality, and to prevail on civil rights claim, a plaintiff must establish a direct causal link between the city's policy or custom and the alleged constitutional deprivation. Wallace v. City of Shelby, N.D.Ohio 1997, 968 F.Supp. 1204. Civil Rights 1351(4); Civil Rights 1358

Municipal corporation was not liable under § 1983 in connection with search of house where controlled buy occurred, where there was no evidence indicating either a policy of inadequate training or supervision of police officers or showing an official custom of condoning unconstitutional acts. Torian v. City of Beckley, S.D.W.Va.1997, 963 F.Supp. 565. Civil Rights 1351(4); Civil Rights 1352(4)

In § 1983 action against municipality, plaintiff need not demonstrate that municipality had formal rule or regulation that caused constitutional deprivation; rather, plaintiff may establish policy or custom by demonstrating that municipality was alerted to possibility that its employees were engaged in constitutional violations but responded

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with deliberate indifference, which may be inferred from failure to supervise or from proof of repeated complaints of constitutional violations that are followed by no meaningful attempt on municipality's part to investigate or to forestall further incidents. Velasquez v. City of New York, S.D.N.Y.1997, 960 F.Supp. 776. Civil Rights 1352(1)

Arrestee who made no allegations that officers' allegedly unconstitutional actions constituted policy or practice of their respective municipalities did not state claim for damages against officers in their official capacities. Ippolito v. Meisel, S.D.N.Y.1997, 958 F.Supp. 155. Civil Rights 1395(6)

No showing was made that particular policy of parish sheriff had actually caused constitutional injury suffered by individual who was fatally shot by off-duty deputy sheriff with revolver issued by sheriff's department, as would allow recovery in federal civil rights action brought by survivor of individual against sheriff in his official capacity; no allegation was made that sheriff had established or failed to establish particular policy which caused constitutional violation, and in any event insufficient evidence existed to demonstrate causal link to deputy's later shooting of individual. Read v. Attaway, W.D.La.1996, 944 F.Supp. 480. Civil Rights 1351(4)

Illinois police officers acted under color of law, as needed for arrestee to state § 1983 civil rights claim based on alleged use of excessive force by arresting officers, even if officers lacked actual authority to make arrest in Indiana. Rambo v. Daley, N.D.Ill.1994, 851 F.Supp. 1222. Civil Rights 1326(8)

Genuine issues of material fact existed as to whether city could be held liable, under Massachusetts Civil Rights Act, for city and police department officials' alleged attempts to threaten, intimidate, and coerce police officer who, as president of police officers' union, had publicly criticized policies and officials of both department and city; Massachusetts statute was explicitly patterned after section 1983, and under section 1983 municipality may be sued directly for civil rights violations accomplished pursuant to unconstitutional policy or governmental custom. Broderick v. Roache, D.Mass.1992, 803 F.Supp. 480. Federal Civil Procedure 2491.5

831. ---- Causation, law enforcement, custom or usage

Fact that a municipal "policy" might lead to police misconduct is hardly sufficient to satisfy the Monell requirement for municipal liability under Civil Rights Act of 1861 (42 U.S.C.A. § 1983) that the particular policy be the "moving force" behind a constitutional violation; there must at least be an affirmative link between the training and adequacies alleged in the particular constitutional violation at issue. (Per Justice Rehnquist with the Chief Justice and two Justices concurring and three Justices concurring in judgment.) City of Oklahoma City v. Tuttle, U.S.Okla.1985, 105 S.Ct. 2427, 471 U.S. 808, 85 L.Ed.2d 791, rehearing denied 106 S.Ct. 16, 473 U.S. 925, 87 L.Ed.2d 695. Civil Rights 1351(4)

Genuine issue of material fact existed as to whether homeless citizens' personal property was discarded as part of city's official policy, precluding summary judgment for city and county in §§ 1983 claim brought by homeless citizens alleging violations of their Fifth and Fourteenth Amendment rights to due process, stemming from the destruction of their personal property during community service clean-up activities of homeless sites. Cash v. Hamilton County Dept. of Adult Probation, C.A.6 (Ohio) 2004, 388 F.3d 539, rehearing en banc denied, certiorari denied 126 S.Ct. 396, 163 L.Ed.2d 274, certiorari denied 126 S.Ct. 545, 163 L.Ed.2d 499, on remand 2006 WL 314491. Federal Civil Procedure 2491.5

Evidence that chief of police and city police department knew that arrestee had been incarcerated and that neither department nor chief of police had promulgated any written procedures to guide criminal investigation did not establish liability on part of chief of police and department for arrestee's incarceration for period of 14 months without charges being filed against him; plaintiff was required to show that chief of police's lack of action caused his deprivation of liberty and that some departmental custom was moving force behind his incarceration. Tilson v. Forrest City Police Dept., C.A.8 (Ark.) 1994, 28 F.3d 802, certiorari denied 115 S.Ct. 1315, 514 U.S. 1004, 131

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42 U.S.C.A. § 1983

L.Ed.2d 196. Civil Rights 1351(4); Civil Rights 1358

Former prisoner's *Monell* claims sufficiently alleged that physicians' wrongful conduct, with regard to autopsy as coroner or "de facto" coroners, conformed to governmental policy and deprived prisoner of his constitutional right against unlawful seizure, on allegations that county established or followed policies, procedures, customs, or practices which were moving force and cause of deprivation of prisoner's constitutional rights, since allegations pointed to conspiratorial acts and intentional wrongdoing. Marsh v. San Diego County, S.D.Cal.2006, 432 F.Supp.2d 1035. Civil Rights 1395(7)

Genuine issues of material fact existed as to whether city maintained series of policies and practices with regard to implementation of parade ordinance that may have caused deprivation of protest organization's free speech and/or procedural due process rights, precluding summary judgment as to whether city was liable under §§ 1983 for police officers' decision to require protesters to march on sidewalk after granting them permit to march in street. Seattle Affiliate of October 22nd Coalition to Stop Police Brutality, Repression and Criminalization of a Generation v. City of Seattle, W.D.Wash.2006, 430 F.Supp.2d 1185. Federal Civil Procedure 2491.5

City and county law enforcement officers were not liable in their official capacities, in former tenant's §§ 1983 action, for alleged violation of tenant's federal due process rights by allegedly violating Minnesota statute giving a residential tenant 24 hours to leave and take personal property from leased premises when writ of recovery is executed, where county and city did not employ a custom, pattern, or practice that resulted in deprivation of constitutional right. Pahnke v. Anderson Moving and Storage, D.Minn.2005, 393 F.Supp.2d 892. Civil Rights 1357

Arrestee's conclusory allegation that he was arrested pursuant to city's custom of racial discrimination and profiling was insufficient to establish that unconstitutional policy existed, or that there was direct causal link between custom and alleged constitutional deprivation, and thus was insufficient to support arrestee's §§ 1983 claim against city. Llerando-Phipps v. City of New York, S.D.N.Y.2005, 390 F.Supp.2d 372. Civil Rights 1395(6)

African-American citizen's civil rights claim against city, alleging that city had informal policy of encouraging police officers to ignore constitutional rights of African-Americans and that city permitted existence of customary department-wide code of silence intended to shield illegal acts of police officers, stated federal civil rights claim against municipality, even though claims allegedly did not demonstrate causal link between allegations and violation of particular citizen's constitutional rights; such detailed factual allegations were not required for complaint to withstand motion to dismiss. Britton v. Maloney, D.Mass.1995, 901 F.Supp. 444. Civil Rights 1395(5)

If arrestee failed to show that county police officer violated constitutional rights, his civil rights claim against county would fail but, even if he proved claim against officer, he would have to show that actions of officer were proximately caused by custom, practice, or policy of county. Dawson v. Prince George's County, D.Md.1995, 896 F.Supp. 537. Civil Rights 1351(4)

Municipalities and their supervisory personnel are not liable for civil rights violations caused by individual law enforcement officers unless plaintiff demonstrates affirmative causal link between misconduct of officer and adoption of plan or policy showing authorization or approval of such misconduct; it is plaintiff's obligation to prove direct nexus between alleged constitutional torts and official authorization or approval thereof by adoption of plan or policy. Fillmore v. Ordonez, D.Kan.1993, 829 F.Supp. 1544, affirmed 17 F.3d 1436. Civil Rights 1351(4); Civil Rights 1358

Motorist who was falsely arrested failed to show affirmative link between his arrest and any city policy or custom that deprived persons of their civil rights so as to establish § 1983 claim against city; although motorist provided some evidence that police training could have been improved, record was devoid of any facts to support allegation

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of deliberate city policy to deprive any person of their constitutional rights, city mandated annual training for all police officers, each officer received copy of law enforcement handbook and was instructed to become familiar with its contents, efforts were made to disseminate changes in the law to officers on a regular basis, and fact that particular officer may have been unsatisfactorily trained did not alone suffice to fasten liability on city, for shortcomings may have resulted from factors other than faulty training program. Mahon v. City of Largo, Fla., M.D.Fla.1993, 829 F.Supp. 377. Civil Rights 1351(4)

Deprivation suffered by owners of automobiles held by police as part of sting operation to combat motor vehicle theft resulted from established, governmental procedure and not random action on part of lower level district employee; police chief sanctioned operation, authorized its implementation, and was aware that owners would not be notified of recovery of vehicles or allowed to repossess vehicles until operation ended. O'Callaghan v. District of Columbia, D.D.C.1990, 741 F.Supp. 273. Civil Rights 1351(4)

Complaint alleging that police officers burst into plaintiff's apartment fully armed and pushed him from a second-story balcony, causing him severe injuries, sufficiently alleged that the incident was a proximate result of municipal policy or custom, as required for municipal liability under § 1983. Bell v. City of Miami, S.D.Fla.1990, 733 F.Supp. 1475. Civil Rights 1395(6)

Absent showing that arrestee's injuries were the result of a policy or custom of the city, city could not be held liable under civil rights law for violating arrestee's constitutional rights to be free from illegal search and seizure, wrongful arrest, and excessive force. Feinthel v. Payne, C.A.6 (Ohio) 2004, 121 Fed.Appx. 60, 2004 WL 3021780, Unreported. Civil Rights 1351(4)

To state a municipal liability claim under *Monell*, a plaintiff must allege the existence of a municipal policy or custom and a causal link between the execution of that policy or custom and the injury suffered. Aultman v. Padgett, E.D.Pa.2003, 2003 WL 22358445, Unreported. Civil Rights 1351(1)

832. ---- Arrests, law enforcement, custom or usage

County could not be liable under §§ 1983 for county sheriff's alleged conduct in unlawfully arresting motorist for violation of the Arkansas careless driving statute, where there was no showing that county had policy, official or otherwise, of unlawfully arresting motorists for careless driving. Robinson v. White County, AR, C.A.8 (Ark.) 2006, 452 F.3d 706. Civil Rights 1351(4)

City was not liable for an accidental shooting by police officer under §§ 1983 on either an unconstitutional policy or custom theory or on a failure to train or supervise theory; officer's conduct in drawing his weapon in an attempt to effectuate a felony arrest, which was followed by the accidental discharge of the weapon, did not constitute an unreasonable seizure or otherwise violate the Fourth Amendment or other constitutional rights, and there was no showing that city had policy or custom of displaying lethal force to effectuate felony arrest, or that city failed to train or supervise officer properly. McCoy v. City of Monticello, C.A.8 (Ark.) 2005, 411 F.3d 920. Civil Rights 1351(4); Civil Rights 1352(4)

Arrestee failed to show that police officers who arrested him for breaking into a house, in which he was renting a room, were acting pursuant to any official policy or custom of the city, as required to establish city's liability, in arrestee's §§ 1983 wrongful arrest claim. U.S.C.A. Const.Amend. 4; Radvansky v. City of Olmsted Falls, C.A.6 (Ohio) 2005, 395 F.3d 291. Civil Rights 1351(4)

Arrestee who sued town under § 1983, claiming that police officer's alleged sexual molestation of arrestee resulted from failure to train and supervise, failed to show "deliberate indifference" on part of town; officer's proper response to situation would have been obvious to all without training or supervision. Sewell v. Town of Lake

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Hamilton, C.A.11 (Fla.) 1997, 117 F.3d 488, certiorari denied 118 S.Ct. 852, 522 U.S. 1075, 139 L.Ed.2d 753. Civil Rights 1352(4)

Civil rights plaintiff failed to show that his arrest stemmed from any kind of official policy in sheriff's department as would support § 1983 action for violation of his Fourth Amendment rights against sheriff, city, police chief and police officer after he was arrested pursuant to arrest warrant which court had failed to quash or recall even though matter had been resolved; sheriff testified that similar incident had not occurred in past 18-year period in sheriff's office. Harris v. City of Marion, Ind., C.A.7 (Ind.) 1996, 79 F.3d 56. Civil Rights 1351(4)

Section 1983 plaintiff's encounters with defendant police officers did not amount to "seizure" under Fourth Amendment; only two officers approached plaintiff at her place of employment, neither made show of force, they did not physically touch plaintiff or limit her freedom in any way, they did not ask plaintiff to accompany them to police station, but rather requested that she come to station later that day by herself, and plaintiff voluntarily went to police station and was not in custody at store or at police station. Neighbour v. Covert, C.A.2 (N.Y.) 1995, 68 F.3d 1508, certiorari denied 116 S.Ct. 1267, 516 U.S. 1174, 134 L.Ed.2d 214. Arrest 68(4)

Doctor bringing civil rights action in connection with his arrest and search of his medical office failed to present evidence sufficient to raise inference that policy of illegal arrests and searches existed in county, precluding imposition of liability on county or county sheriff's department. Forster v. County of Santa Barbara, C.A.9 (Cal.) 1990, 896 F.2d 1146. Civil Rights 1404

Evidence that police officer arresting bank robbery suspect was following policies or customs of city was sufficient to impute conduct of police officers to city, so as to render city liable under civil rights statute for arrest without probable cause. Clipper v. Takoma Park, Md., C.A.4 (Md.) 1989, 876 F.2d 17, rehearing denied, rehearing denied 898 F.2d 18. Civil Rights 1419

Municipality was liable under § 1983 for injuries sustained by persons, who were beaten by police officers, on basis of unconstitutional municipal custom; testimonial evidence showed that police department had longstanding widespread and facially unconstitutional practice of breaking down doors without warrant when arresting felons, there was evidence that police chief should have known of unconstitutional arrest practice, and there was evidence that plaintiffs' injuries occurred as a direct and immediate consequence of unconstitutional municipal custom. Bordanaro v. McLeod, C.A.1 (Mass.) 1989, 871 F.2d 1151, certiorari denied 110 S.Ct. 75, 493 U.S. 820, 107 L.Ed.2d 42. Civil Rights 1351(4)

Clerk of court was not liable to arrestee under 42 U.S.C.A. § 1983 for failure of deputy clerk to follow office policy and give required notice to police department that outstanding charges against arrestee had been dismissed, which failure resulted in wrongful arrest of arrestee. Thibodeaux v. Arceneaux, C.A.5 (La.) 1985, 768 F.2d 737. Civil Rights 1358

Fact that arrest for outstanding parking tickets was made by city police officers outside city's corporate boundaries did not render city liable, as a matter of law, to arrestee for violation of his constitutional rights because arrest was unlawful in absence of sufficient evidence of municipal policy or custom on extraterritorial arrests. Smith v. City of Oklahoma City, C.A.10 (Okla.) 1983, 696 F.2d 784. Civil Rights 1088(4)

Absence of any municipal policy or custom leading to arrest precluded municipal liability for alleged false arrest by city police officers. Bourguignon v. Guinta, D.Conn.2003, 247 F.Supp.2d 189, affirmed 78 Fed.Appx. 763, 2003 WL 22427932. Civil Rights 1351(4)

City could not be liable in § 1983 false arrest action based on allegation that one of city's employees had negligently transposed descriptive information about suspect onto arrest warrant affidavit; there was no showing that city was "moving force" behind violation. White v. Oklahoma ex rel. Tulsa County Office of Dist. Attorney,

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42 U.S.C.A. § 1983

N.D.Okla.2002, 250 F.Supp.2d 1319. Civil Rights 1348

Showing that police officer telephoned lieutenant, after resident of house rejected first request that he exit bathroom, where he had barricaded himself, did not establish that officer was acting pursuant to policy or custom, creating municipal liability under §§ 1983 for subsequent wrongful arrest occurring immediately after conversation. Policky v. City of Seward, Neb., D.Neb.2006, 433 F.Supp.2d 1013. Civil Rights 1351(4)

Even if county employee violated male arrestee's right to equal protection in domestic violence matter, county was not liable under §§ 1983 for violating arrestee's right to equal protection, since county had no policy, practice or custom of subjecting males to disparate and discriminatory treatment with respect to domestic violence matters. Bloomquist v. Albee, D.Me.2006, 421 F.Supp.2d 162. Civil Rights 1351(6)

Officer's allegedly intentional delay in processing paperwork needed for arrestee to obtain probable cause hearing did not give rise to municipal liability that delay was result of any municipal policy or custom; there was no evidence that municipal procedures for processing warrantless arrests resulted in pattern of unreasonable delays in probable cause hearings, or of any pattern of official tolerance by city concerning such delays. Smith v. Eggbrecht, W.D.Ark.2005, 414 F.Supp.2d 882. Civil Rights 1352(4)

Rape suspect who sued city after his charges were dismissed for lack of evidence failed to establish that city had policy resulting in violation of his constitutional rights, as required to maintain §§ 1983 claims against city; suspect's arrest and commencement of proceedings against him constituted single incident, and there was no evidence of inadequacies in city's training of its police and assistant district attorneys. Smith v. City of New York, S.D.N.Y.2005, 388 F.Supp.2d 179. Civil Rights 1352(4)

Failure of town meeting participant to show that town maintained policy or custom condoning use of excessive force in making arrests precluded liability of town for alleged excessive force used in forcibly removing him from meeting at which he was allegedly disorderly. Nolan v. Krajcik, D.Mass.2005, 384 F.Supp.2d 447. Civil Rights 1351(4)

Alleged instance of misconduct in which police detective used arrestee as bait to capture fugitive, who was arrestee's son, did not rise to level of showing a clear and persistent pattern of illegal activity, as would establish a municipal policy or custom supporting arrestee's municipal liability claim under §§ 1983 against city, alleging that her Fourth Amendment right to be free from arrest without probable cause was violated. Butts v. City of Bowling Green, W.D.Ky.2005, 374 F.Supp.2d 532, reconsideration denied 2005 WL 2099805. Civil Rights 1351(4)

Business owners and relative did not state civil rights claim against town absent allegation that arrest of owners' relative and alleged attempts to close down their business were result of official policy or custom. Cardillo v. Cardillo, D.R.I.2005, 360 F.Supp.2d 402. Civil Rights 1351(4); Civil Rights 1351(6)

City and its police department were not directly liable under §§ 1983 to arrestee for allegedly unconstitutional acts of police officers who made the arrest, absent proof that city had an official policy or custom directing employees to act illegally or unconstitutionally. Grays v. City of New Rochelle, S.D.N.Y.2005, 354 F.Supp.2d 323. Civil Rights 1351(4)

County sheriff, as county official with policy-making authority, did not make decision to arrest five high school students for conspiracy to commit murder based on plot to attack school, or participate in arrests, and thus county could not be held liable under § 1983 for alleged false arrests. Smith v. Barber, D.Kan.2004, 316 F.Supp.2d 992. Civil Rights 1351(4)

There was no evidence that city had policy or custom or tolerating inappropriate police behavior, precluding municipal liability in resident's § 1983 Fourth Amendment action against officers and city alleging unreasonable

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entry into his home and excessive force in course of arrest for supplying alcohol to minors. Radloff v. City of Oelwein, N.D.Iowa 2003, 284 F.Supp.2d 1145, affirmed 380 F.3d 344, certiorari denied 125 S.Ct. 967, 543 U.S. 1090, 160 L.Ed.2d 900. Civil Rights 1351(4)

Police officers' custom of subjecting arrestees to a "perp walk" supported arrestee's civil liability action under § 1983 against city, seeking monetary damages for alleged violation of his constitutional rights arising from "perp walk" following his arrest, in which officer instructed him to stand on precinct steps while he was videotaped for local news. Lyde v. New York City, S.D.N.Y.2001, 145 F.Supp.2d 350. Civil Rights 1351(4)

City could not be held liable for alleged wrongful arrest and prosecution of arrestee suspected of distributing drugs, absent allegations or proof that alleged constitutional deprivation was done pursuant to governmental policy or custom. Tyler v. State of N.Y., W.D.N.Y.1997, 953 F.Supp. 63. Civil Rights 1351(4)

City's admission, pursuant to request for admissions, that police officer acted pursuant to city's official policies, customs, practices, and procedures when arresting § 1983 civil rights plaintiff for violating residential antipicketing ordinance was not ratification of officer's alleged unconstitutional arrest of plaintiff; admissions merely acknowledged that officers acted pursuant to existing policies and training. Copper v. City of Fargo, D.N.D.1995, 905 F.Supp. 703. Federal Civil Procedure 1684

Arrestee failed to prove that city had a policy or custom of arresting protestors without probable cause during an international conference of business leaders, thus precluding imposition of liability on city in the arrestee's § 1983 suit; the only policy or custom the record supported was that, during the conference, the officers should be "thick-skinned" and arrest as a last resort. Bennett v. Schroeder, C.A.6 (Ohio) 2004, 99 Fed.Appx. 707, 2004 WL 1193963, Unreported. Civil Rights 1351(4)

Claimant alleging violation of his Fourth Amendment rights, in connection with his arrest and prosecution for disorderly conduct and public urination, failed to establish basis for municipal liability; there was no official policy or custom condoning improper arrest conduct, nor was there evidence of failure to train regarding appropriate use of force in effecting arrests. Lazaratos v. Ruiz, S.D.N.Y.2003, 2003 WL 22283832, Unreported. Civil Rights 1351(4); Civil Rights 1352(4)

Action brought by arrestee against police chief in his official capacity had to be treated as action against municipality, and therefore arrestee was required to identify municipal policy or custom that caused his alleged constitutional deprivation in support of § 1983 claim against chief. Murray v. Town of Mansura, C.A.5 (La.) 2003, 76 Fed.Appx. 547, 2003 WL 22135637, Unreported. Civil Rights 1358

Mother of a minor criminal suspect, who died during a police chase when he fell from a roof, disclosed no policy or custom of unconstitutional practices in the city police department, thus precluding imposition of municipal liability under § 1983; outside of the conclusory allegations contained in the complaint, the mother presented no evidence of a policy or custom. Sepulveda v. City of New York, S.D.N.Y.2003, 2003 WL 22052870, Unreported. Civil Rights 1420

There was no evidence that any injury arrestee suffered resulted from policy or custom, as required to support his § 1983 claims against city, arising from his arrest and prosecution for loitering and engaging in acts that annoy or molest children and from his subsequent arrest for loitering. Moorehead v. San Francisco Police Dept., N.D.Cal.2003, 2003 WL 21518108, Unreported. Civil Rights 1351(4)

833. ---- Arrest warrants, law enforcement, custom or usage

City's alleged custom of not ensuring the accuracy of officer arrest warrant affidavits could not form the basis of §§ 1983 claim against city by arrestee when there was no showing that detective submitted a materially false affidavit

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or otherwise caused arrest without probable cause. George v. City of Wichita, Kan., D.Kan.2004, 348 F.Supp.2d 1232. Civil Rights 1352(4)

Arrestee failed to state civil rights claims against law enforcement officers, county attorneys, and county commissioners, in their official capacities, where arrestee had not alleged any policy or practice of government entity that lead to alleged violation of his civil rights. Dees v. Vendel, D.Kan.1994, 856 F.Supp. 1531, reconsideration denied. Civil Rights 1351(4)

City could not be held liable under § 1983 for wrongful arrest, where city police officer served a facially valid arrest warrant, and there was no allegation of official municipal policy or custom relating to execution of the warrant. Theis v. Smith, N.D.Ill.1988, 676 F.Supp. 874. Civil Rights 1351(4)

City was not subject to federal civil rights liability as result of arrests made pursuant to municipal arrest warrants, which were improperly signed by municipal court clerk pursuant to instructions of city attorney; improper arrests were not made according to official policy, in that there was no evidence that city lawmakers attempted to delegate to city attorney authority to establish procedure for issuing warrants and there was no evidence of consistent, widespread practice or custom which caused illegal arrests. Joiner v. City of Ridgeland, Miss., S.D.Miss.1987, 669 F.Supp. 1362. Civil Rights 1351(4)

County attorney was not liable to arrestee under § 1983 based on attorney's assistance to police officer in preparing complaint to be used in obtaining arrest warrant for plaintiff; there was no county policy under which attorney acted, and there was no showing that attorney, with the single act of preparing complaint for police officer to sign, even if acting as a policy maker for the county, acted with deliberate indifference. Kane v. Lewis and Clark County, Mont., C.A.9 (Mont.) 2004, 111 Fed.Appx. 870, 2004 WL 2286914, Unreported. Civil Rights 1351(4)

834. ---- Blood testing, law enforcement, custom or usage

Even if town was grossly negligent for not having blood test policy to check drunk driving arrestees for drug intoxication, arresting police officers could not be held liable for their failure to do so as violation of arrestee's substantive due process; arrestee died in cell due to ingestion of alcohol, glutethimide and large quantity of codeine of which officers were unaware. Carapellucci v. Town of Winchester, D.Mass.1989, 707 F.Supp. 611. Civil Rights 1088(4)

835. ---- Deputization, law enforcement, custom or usage

South Carolina sheriff's common law powers to summon bystanders infused his custom of using county employees in manhunts with force of law so that employees directed by sheriff to engage in manhunt were temporary state law enforcement officers acting under color of state law when they assaulted plaintiff. Scott v. Vandiver, C.A.4 (S.C.) 1973, 476 F.2d 238. Civil Rights 1326(8)

Private citizens who complained to local authorities about neighbor's alleged activities which gave rise to neighbor's arrest and prosecution on hate crime charges were not "state actors," for purposes of § 1983 action, where there was no evidence that private citizens were deputized or otherwise jointly engaged with local authorities in prosecuting neighbor. Goehring v. Wright, N.D.Cal.1994, 858 F.Supp. 989. Civil Rights 1326(5)

836. ---- Discrimination, law enforcement, custom or usage

Any discrimination in violation of equal protection clause by city in providing protective services on basis of gender or individual's status as victim of domestic abuse was not imputable to city by virtue of policy or custom, and thus, city could not be held liable in § 1983 action brought after woman who had made reports of domestic

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abuse, her brother, and her friend were murdered by woman's boyfriend. Semple v. City of Moundsville, N.D.W.Va.1997, 963 F.Supp. 1416, affirmed 195 F.3d 708, certiorari denied 120 S.Ct. 1243, 528 U.S. 1189, 146 L.Ed.2d 102. Civil Rights 1351(4)

County's policy regarding charging of hate crimes, as contained in internal memorandum from district attorney, was broadly enforceable against everyone, not merely alleged neo-Nazis or heterosexuals, and thus, policy did not establish selective enforcement by county of hate crime statutes against classes of person so as to state claim under § 1983. Goehring v. Wright, N.D.Cal.1994, 858 F.Supp. 989. Civil Rights 1088(5)

Where government's failure to protect citizen is alleged to be based on discriminatory policy or custom, citizen may state claim against municipality under civil rights statute. Merced v. City of New York, S.D.N.Y.1994, 856 F.Supp. 826. Civil Rights 1351(1)

837. ---- Domestic violence, law enforcement, custom or usage

County sheriff's decision to remove home-schooled child from her home to obtain interview with child outside of her parents' presence during investigation of suspected child abuse was "policy, procedure or custom" of county, as required to support parent's civil rights claim. J.B. v. Washington County, C.A.10 (Utah) 1997, 127 F.3d 919. Civil Rights 1351(4)

Police officers' alleged use of excessive force in responding to incident of domestic violence was insufficient to establish that city or city police department had widespread practice of abusing men of color who dated white women, and thus city and police department could not be held liable under §§ 1983 for officers' alleged constitutional violation, where incident involved only actors below the policy-making level. McLaurin v. New Rochelle Police Officers, S.D.N.Y.2005, 373 F.Supp.2d 385, subsequent determination 379 F.Supp.2d 475. Civil Rights 1351(4)

There was genuine issue of fact, precluding summary judgment, in civil rights action brought against county based on claim that county's actual policy for handling domestic violence complaints against its officers differed from policies stated in county sheriff's department policy and procedure manual, despite contention of county that its policy was reasonable. Rideau v. Jefferson County, E.D.Tex.1995, 899 F.Supp. 298. Federal Civil Procedure 2491.5

By repeatedly shielding police officer from arrest for child abuse and from full investigation of his abusive behavior, municipal policy or custom protecting police officers from complaints of domestic violence may have permitted or encouraged officer to continue in his child abuse, as required to impose liability on city under § 1983 for child's injuries. Sherrell By and Through Wooden v. City of Longview, E.D.Tex.1987, 683 F.Supp. 1108. Civil Rights 1351(4); Civil Rights 1352(4)

Ex-wife failed to allege facts establishing an unconstitutional policy on the part of the borough relating to the handling of domestic relations disputes, or that the borough failed to properly train its police to handle domestic relations disputes and to apply the law in an impartial manner, and thus, she failed to state a § 1983 claim against the borough; at best, her allegations described isolated incidents involving ongoing domestic relations and custody disputes between her and her ex-husband, and she did not allege that the borough's decisionmakers actually knew of, and yet disregarded, an excessive risk to her health or safety. Garrison v. Yeadon, E.D.Pa.2003, 2003 WL 21282115, Unreported. Civil Rights 1395(5)

838. ---- Filing of charges, law enforcement, custom or usage

Teachers at performing arts center, who were unaware of hostage-rescue training exercise at adjoining public high school conducted by city and county emergency response teams (ERTs), could not establish § 1983 claim against

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county for alleged illegal seizure and excessive force by county ERT members when they encountered teachers during exercise; teachers did not allege existence of any county policy or custom that caused their injuries. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1351(4)

Arrestee failed to state civil rights claims against city based on wrongful filing of charges where arrestee failed to allege a constitutional violation arose from execution of established policy of the city; furthermore, arrestee failed to state claim against city based on its refusal to accept the filing of charges against the individual who filed a complaint against arrestee where arrestee did not allege existence of a custom of policy of city regarding refusal to accept countercharges. Langford v. City of Omaha, D.Neb.1989, 755 F.Supp. 1460, appeal dismissed 978 F.2d 1263. Civil Rights 1398

839. ---- High speed chase, law enforcement, custom or usage

Injuries suffered during automobile accident do not amount to Fourteenth Amendment violations merely because accident occurred in context of high-speed automobile chase by police. Webber v. Mefford, C.A.10 (Okla.) 1994, 43 F.3d 1340. Constitutional Law 253(1)

Municipality was not liable for injuries sustained by bicyclist when struck by suspected felon during high speed automobile chase, absent evidence that municipality maintained policy or course of conduct authorizing or condoning reckless, high speed chases that were deliberately indifferent to rights of innocent bystanders. Medina v. City and County of Denver, C.A.10 (Colo.) 1992, 960 F.2d 1493, rehearing denied. Civil Rights 1351(4)

Municipality policy makers' awareness of incident in which motorcyclist was killed during prior high-speed pursuit was not evidence that policy makers were deliberately indifferent to possible constitutional violations which may occur during high-speed pursuits by failing to adopt more stringent guidelines limiting or forbidding such pursuits; single incident was not sufficient to impose liability under § 1983, so motorcyclist injured in subsequent high-speed pursuit could not maintain § 1983 claim. Carroll v. Borough of State College, M.D.Pa.1994, 854 F.Supp. 1184, affirmed 47 F.3d 1160. Civil Rights 1352(4)

Police department's established rules regarding high-speed chases and training of individual police officers involved in chase of moped negated any municipal liability for death of moped driver involved in high speed chase. Dawes v. Pellechia, E.D.N.Y.1988, 688 F.Supp. 842. Civil Rights 1351(4)

840. ---- Indictments, law enforcement, custom or usage

Given that, under New York law, elected district attorney's powers and duties in connection with prosecution of criminal proceeding are the same as those of an assistant attorney general appointed to handle such a prosecution, and that a county has no right to establish policy concerning how either official should prosecute violations of state penal laws, county could not be said to be responsible or therefore liable in § 1983 action for prosecutor's preparation of indictment in erroneous belief that vote of grand jury had been to indict. Baez v. Hennessy, C.A.2 (N.Y.) 1988, 853 F.2d 73, certiorari denied 109 S.Ct. 805, 488 U.S. 1014, 102 L.Ed.2d 796.

841. ---- Illegal or unlawful entry, law enforcement, custom or usage

In the absence of any evidence that city's alleged policy violated federal law, plaintiffs did not have cause of action under federal civil rights statute against city based on alleged custom, practice or policy of allowing forced entry as method of dealing with armed person who was overdosing on drugs and who had ceased communications; record failed to support conclusory allegations that practice was reckless or ill advised. Medrano v. City of Los Angeles, C.A.9 (Cal.) 1992, 973 F.2d 1499, certiorari denied 113 S.Ct. 2415, 508 U.S. 940, 124 L.Ed.2d 638. Civil Rights 1351(4)

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42 U.S.C.A. § 1983

City could not be held liable to parking monitor under § 1983 for police officer's entry into her apartment in violation of monitor's Fourth Amendment rights for its failure to require that it be notified after the fact of employee's entry of another employee's residence to check employee's safety and health, where there was nothing demonstrating widespread custom or practice of entry into employee residences under similar circumstances of which city was aware or any strong likelihood of deprivation of rights would have caused reasonable person to take preventive measures. Sims v. Mulcahy, C.A.7 (Wis.) 1990, 902 F.2d 524, certiorari denied 111 S.Ct. 249, 498 U.S. 897, 112 L.Ed.2d 207. Civil Rights 1351(5)

County was liable under § 1983 for deprivation of hotel lessee's Fourth Amendment rights pursuant to sheriff's department's custom or practice of authorizing its officers, at any hour of the day or night, to be hired by private parties to carry out seizures, without any inquiry into the legality of such actions; it was sheriff's department's presence and active involvement in unlawful repossession of hotel which gave it both the appearance of legality and converted it into state action, and county's rental of its official authority regardless of the circumstances was indifferent to the Constitution. Open Inns, Ltd. v. Chester County Sheriff's Dept., E.D.Pa.1998, 24 F.Supp.2d 410. Civil Rights 1351(3); Civil Rights 1351(4)

Absent any indication that city or villages had policy statement, ordinance, regulation, or decision officially adopted and promulgated, city and villages could not be held liable for civil rights violations that allegedly occurred when police officers unlawfully entered residence and made arrests. Owusu v. Grzyb, N.D.Ill.1990, 749 F.Supp. 897. Civil Rights 1351(4)

842. ---- Inaction, law enforcement, custom or usage

City was not liable for police officers' failure to render medical care to or seek medical care for husband that suffered heart attack, in § 1983 action brought by deceased husband's wife, because city had no express policy or widespread practice to deprive citizens of their constitutional rights, and husband suffered no constitutional injury at hands of city police officers. Cowgill v. City of Marion, N.D.Ind.2000, 127 F.Supp.2d 1047. Civil Rights 1351(4)

843. ---- Investigatory stops, law enforcement, custom or usage

Police officer who made decision to use sensory-overload tactic to conduct *Terry* stop of detainee was not final city policymaker, so as to make city liable under § 1983 for unreasonable use of tactic in violation of Fourth Amendment; officer's use of tactic was pursuant to city policy, on which city trained its police officers, and identified circumstances under which it was to be used. Brown v. City of Milwaukee, E.D.Wis.2003, 288 F.Supp.2d 962. Civil Rights 1351(4)

City was not liable under § 1983 for any Fourth Amendment violation that occurred when police officers allegedly searched and handcuffed motorist after observing him resting in his automobile, inasmuch as any violation was not caused by city ordinance authorizing officers to stop persons suspected of committing or being about to commit a crime; if officers violated ordinance the ordinance could not have been cause of any constitutional violation, and if officers complied with ordinance there could have been no constitutional violation in light of fact that ordinance restated federal search and seizure law. Acheampong v. City of Chicago, N.D.Ill.2001, 128 F.Supp.2d 560. Civil Rights 1351(4)

844. ---- Interrogation, law enforcement, custom or usage

Material issue of genuine fact existed as to whether city had a policy of coercing confessions out of female suspects by threatening to have Department of Children and Family Services (DCFS) take away their children, precluding summary judgment in favor of city on female suspect's §§ 1983 claim based on theories of both failure to train and refusing to correct complained-of behavior. Sornberger v. City of Knoxville, Ill., C.A.7 (Ill.) 2006, 434 F.3d 1006.

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42 U.S.C.A. § 1983

Federal Civil Procedure 2491.5

Mother of minor who was interrogated in his bedroom by police officer who allegedly entered without mother's knowledge or consent stated § 1983 claim against town on basis of custom and policy, as result of alleged final decisions made by municipal policymakers (police chief and police commissioner) in condoning police misconduct towards minors and selectively ignoring civilian complaints. Johns v. Town of East Hampton, E.D.N.Y.1996, 942 F.Supp. 99. Civil Rights 1351(4)

Assistant state's attorney was not liable in his official capacity under § 1983 for violating arrestee's constitutional rights during interrogation, absent allegations that assistant state's attorney acted in accordance with official policy or custom. Johnson v. Carroll, N.D.Ill.1988, 694 F.Supp. 500. Civil Rights 1358

845. ---- Investigations, law enforcement, custom or usage

Witnesses to police shooting who were detained following the shooting failed to establish county's policy or custom to train its officers concerning the constitutional limitations on detention of witnesses in connection with police shooting investigations, as required to establish municipal liability under §§ 1983. Walker v. City of Orem, C.A.10 (Utah) 2006, 451 F.3d 1139. Civil Rights 1352(4)

There was no evidence of course of conduct by District of Columbia of deficient investigations into use of force incidents, as required to support §§ 1983 claim that District's failure to adequately investigate use of force incidents led to officer's shooting of plaintiff during "buy/bust" operation. McKnight v. District of Columbia, D.D.C.2006, 412 F.Supp.2d 127. Civil Rights 1352(4)

City was not liable for any "custom" of police officers deliberately fabricating evidence of sexual abuse by means of excessive coercion of children during interviews, absent evidence that police chief had actual or constructive knowledge of and acquiesced in an unconstitutional custom or practice. Doggett v. Perez, E.D.Wash.2004, 348 F.Supp.2d 1179. Civil Rights 1352(4)

City police chief's failure to take corrective action or to initiate investigation after receiving letter from protesters' attorney did not amount to policy, practice, or custom of city, and thus was insufficient to create municipal liability in protesters' §§ 1983 action arising from confiscation of signs by police officers during parade, even if officers' actions violated protesters' First Amendment rights, absent showing of additional harm. Grove v. City of York, Penn., M.D.Pa.2004, 342 F.Supp.2d 291. Civil Rights 1352(4)

Facts that sheriff's department investigator did not normally confer with anyone before beginning an investigation and that she never looked up the laws on prostitution before her investigation of attorney did not comprise a "policy" or a "custom" by which county could be liable under §§ 1983 to attorney, whose conviction of two counts of attempt to patronize prostitution was overturned on appeal. Cawood v. Haggard, E.D.Tenn.2004, 327 F.Supp.2d 863, affirmed 125 Fed.Appx. 700, 2005 WL 773946. Civil Rights 1351(4)

County officials' investigation of consumer complaints against electronics store and subsequent filing of consumer fraud lawsuit by county agency satisfied "official policy or custom" component of store owner's § 1983 equal protection action against county. Hassoun v. Cimmino, D.N.J.2000, 126 F.Supp.2d 353. Civil Rights 1351(6)

City was not liable, in §§ 1983 action brought by murder victim's family, for any violation of First Amendment privacy rights through police officer's disclosure, to people not involved in murder investigation, of nude photographs of victim; no city policy drove the officer's actions. Donohue v. Hoey, C.A.10 (Colo.) 2004, 109 Fed.Appx. 340, 2004 WL 2095661, Unreported, certiorari denied 125 S.Ct. 1641, 544 U.S. 921, 161 L.Ed.2d 478. Civil Rights 1351(4)

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42 U.S.C.A. § 1983

Police department had written policy governing investigations of complaints against officers, such that alleged conspiracy not to investigate and discipline officers for their treatment of plaintiff during his arrest was not result of policy or custom, as required for officers to be liable in their official capacities in § 1983 action. Shelton v. City of Taylor, E.D.Mich.2001, 2001 WL 1525367, Unreported, affirmed 92 Fed.Appx. 178, 2004 WL 231777. Conspiracy 13

846. ---- Malicious prosecutions, law enforcement, custom or usage

Arrestee's pro se civil rights complaint based on his allegations that he was victim of false arrest was not claim against city police department that required him to identify municipal policy or custom that caused his injury, where complaint accused two unnamed city police officers of false arrest, and arrestee later named one of the officers in letter responding the police department's motion to dismiss. Johnson v. Johnson, C.A.10 (Utah) 2006, 466 F.3d 1213. Civil Rights 1395(6)

Washington Metropolitan Area Transit Authority passenger's allegations, that the WMATA, by its malicious prosecution and abuse of process after passenger was arrested for allegedly failing to pay fare, violated his constitutional rights, were insufficient to state cause of action under § 1983; there was no allegation that passenger was subjected to such alleged wrongs pursuant to any established policy or practice. Dant v. District of Columbia, C.A.D.C.1987, 829 F.2d 69, 264 U.S.App.D.C. 284. Civil Rights 1395(6)

Intravenous drug user, as participant in needle exchange program, adequately pleaded personal involvement by police commissioner, in § 1983 action under Fourth Amendment, where user otherwise adequately pleaded that city and police chief had policy or custom of violating constitutional rights of needle exchange participants by falsely arresting and prosecuting them, and personal involvement included creating policy or custom under which unconstitutional practices occurred, or allowed such a policy or custom continue. L.B. v. Town of Chester, S.D.N.Y.2002, 232 F.Supp.2d 227. Civil Rights 1395(6)

Arrestee did not show that municipality had policy of maliciously prosecuting persons mistreated by police officers, on evidence that police officers filed false police reports and their supervisors did not discipline them for doing so, for purpose of claim under §§ 1983, where police officers did not file false police reports pursuant to municipal policy, and their conduct was not directed or authorized by individual with final policy-making authority for municipality. Barton v. City and County of Denver, D.Colo.2006, 432 F.Supp.2d 1178. Civil Rights 1352(4)

County could not be liable in §§ 1983 malicious prosecution action brought against it and employees of its environmental health department by former defendants prosecuted for violations of environmental laws based in part on information employees had supplied to district attorney; there was no evidence of express departmental policy or widespread practice to cause alleged constitutional deprivation, no causal relationship was shown between any such policy and alleged injuries, no constitutional violation was shown given criminal court's preliminary finding of probable cause, and employees were not policymakers. Ayala v. KC Environmental Health, E.D.Cal.2006, 426 F.Supp.2d 1070. Civil Rights 1351(4)

Plaintiff alleging false arrest and malicious prosecution failed to make out a claim for municipal liability under civil rights statute, § 1983, where he alleged only that he was harmed by individual employees of police department and Department of Corrections and did not allege that violation of constitutional rights was caused by official custom, practice, or policy promulgated by municipal policymaker. Bailey v. New York City Police Dept., E.D.N.Y.1996, 910 F.Supp. 116. Civil Rights 1351(4)

Individual who was indicted, charged, and twice tried for intimidation stated § 1983 malicious prosecution claim on which relief could be granted against municipality based on alleged unconstitutional action implementing

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custom, policy, or practice; complaint alleged police officer solicited bribe, filed several false charges, and gave false testimony before grand jury, and that police officer had reputation for that type of misconduct, and individual also claimed that city failed to properly instruct, supervise, control and discipline police officers regarding correct procedures for investigation and reporting of circumstances of alleged crime. Treece v. Village of Naperville, N.D.Ill.1995, 903 F.Supp. 1251. Civil Rights 1395(5)

847. ---- Reports, law enforcement, custom or usage

Alleged city policy, of not training police officers to report that motorists involved in accident were undergoing epileptic seizures, to state drivers licensing authorities, did not constitute violation of civil rights of accident victim injured by motorist undergoing seizure; city's alleged failure to train or supervise was not "moving force" behind the injuries, which were directly caused by epileptic seizure. Jones v. City of Carlisle, Ky., C.A.6 (Ky.) 1993, 3 F.3d 945, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 1218, 510 U.S. 1177, 127 L.Ed.2d 564. Civil Rights 1352(4)

848. ---- Restraints, law enforcement, custom or usage

Evidence that county police officers had a widespread custom of using hog-tie restraint on suspects was insufficient to establish that county was liable under § 1983 for death of arrestee, resulting from officers' use of hog-tie position to restrain arrestee; there was no evidence that county persistently employed hog-tie restraint in an unconstitutional manner. Garrett v. Unified Government of Athens-Clarke County, M.D.Ga.2003, 246 F.Supp.2d 1262, reversed in part 378 F.3d 1274. Civil Rights 1351(4)

849. ---- Roadblocks, law enforcement, custom or usage

Since subordinate state troopers' seizure of speeding motorist by use of roadblock was reasonable in the circumstances, constitutional violation by subordinate, as required to impose supervisory liability under § 1983, could not be established in motorist's § 1983 action which alleged that troopers used excessive force in seizing him. Seekamp v. Michaud, C.A.1 (Me.) 1997, 109 F.3d 802. Civil Rights 1358

City could not be held liable to owner of roller skating rink under civil rights statute for roadblock which was set up outside rink on "soul night" to allegedly harass owner's black clientele where city did not have any express policies, aside from those generally established by chief of police, relevant to installation of roadblock. Wilson v. City of North Little Rock, C.A.8 (Ark.) 1986, 801 F.2d 316. Civil Rights 1351(4)

850. ---- Wiretapping, law enforcement, custom or usage

Police department personnel stated a § 1983 cause of action against city based on city's interception of telephone communications over police department's private line by alleging that interception violated Fourth and Fourteenth Amendments and that decision by police chief and city manager to depart from "official" policy and surreptitiously intercept police department's private line became city policy. Amati v. City of Woodstock, Ill., N.D.Ill.1993, 829 F.Supp. 998. Civil Rights 1395(5)

851. ---- Use of force, law enforcement, custom or usage

Although administrator of arrestee's estate argued that police officer's failure to follow city's use-of-force policy caused constitutional deprivation of arrestee's rights, she failed to show that city's use-of-force policy caused the alleged constitutional deprivation, as was required to hold officer liable under §§ 1983 in his official capacity; administrator did not dispute the evidence that city's policies on force and training practices were designed to ensure that its officers exercised any use of force in a lawful manner. Elder-Keep v. Aksamit, C.A.8 (Neb.) 2006, 460 F.3d 979. Civil Rights 1358

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City, whose police department followed regulations governing the proper use of deadly force, was not liable under §§ 1983 for injuries to unarmed suspect, whose constitutional rights were violated by properly trained police officers who shot him while he was retreating from the scene of an apparent arson; city was not deliberately indifferent to the rights of its citizens, and city did not have custom of allowing police officers unfettered discretion to employ deadly force. Whitfield v. Melendez-Rivera, C.A.1 (Puerto Rico) 2005, 431 F.3d 1. Civil Rights 1352(4)

There are three ways in which a municipality can be held liable under §§ 1983; there must be: (1) an express policy that would cause a constitutional deprivation if enforced; (2) a common practice that is so widespread and well settled as to constitute a custom or usage with the force of law even though it is not authorized by written law or express policy; or (3) an allegation that a person with final policy-making authority caused the constitutional injury. Lawrence v. Kenosha County, C.A.7 (Wis.) 2004, 391 F.3d 837. Civil Rights 1351(1)

Letter that motorist received from sheriff in response to citizen's complaint, which stated that "[w]e find [deputy sheriff] was identified appropriately with what we [sic] was wearing and acted within proper authority to ask for your identification and to stop your vehicle from moving and pursue the action he did to remove you from the vehicle when you were not willing to cooperate," did not show that county ratified and approved actions of deputy sheriff, for purpose of civil rights action against county and deputy sheriff under Fourth Amendment which alleged claims of excessive force based upon deputy's conduct in forcibly removing him from his vehicle. Lawrence v. Kenosha County, C.A.7 (Wis.) 2004, 391 F.3d 837. Civil Rights 1348

Municipality did not violate citizen's Fourth Amendment right to be free from unreasonable search by not having written policy on use of flash-bang devices by law enforcement officials, for purpose of citizen's *Monell* claim that municipality made deliberate or conscious choice to fail to train its employees adequately, since officers who made decision to use flash-bang and deploy the device were both trained on use of flash-bangs. Boyd v. Benton County, C.A.9 (Or.) 2004, 374 F.3d 773. Civil Rights 1352(4)

County's use of military police officer to accompany county investigator during drug investigation, or its lack of oversight of officer's choice of weapon, could not establish existence of policy or custom to use military to enforce law in violation of Posse Comitatus Act or any other policy and custom that caused military officer to accidentally shoot arrestee, as required to impose municipal liability in civil rights action. Riley v. Newton, C.A.11 (Ga.) 1996, 94 F.3d 632, certiorari denied 117 S.Ct. 955, 519 U.S. 1114, 136 L.Ed.2d 842. Civil Rights 1351(4)

Arrestee who was bitten by police dog failed to state facts giving rise to excessive use of force claim against county under § 1983 absent evidence that officer used dog to apprehend arrestee pursuant to county policy governing use of police dogs and absent evidence that county had no regulations governing use of police dogs and that lack of regulations was functional equivalent of policy of permitting unregulated use of police dogs; county could not be held liable for excessive use of force of one of its police officers in the absence of some policy or custom resulting in the excessive use of force. Matthews v. Jones, C.A.6 (Ky.) 1994, 35 F.3d 1046. Civil Rights 1351(4)

City police department's general order listing felonies for which it was permissible to use deadly force to apprehend fleeing felon was official "policy" of city for purposes of imposing municipal liability in § 1983 action by father of unarmed burglary suspect killed by police officer, notwithstanding city's contention that it had no choice but to follow state statute which authorized "use of all the necessary means" to effect arrest of fleeing felon; director of department signed order and mayor was involved in decision to include all types of burglary in order, and city was not bound to follow statute in that it could and did adopt more restrictive deadly force policy than that allowed by statute. Garner v. Memphis Police Dept., C.A.6 (Tenn.) 1993, 8 F.3d 358, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 1219, 510 U.S. 1177, 127 L.Ed.2d 565. Civil Rights 1351(4)

City was not liable under § 1983 to plaintiff allegedly assaulted by two on-duty plain-clothed police officers who erroneously believed that plaintiff was stealing his own car; plaintiff's bald allegations regarding nine instances of

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alleged use of excessive force by police officers between 1963 and 1988 were insufficient to show unconstitutional city policy or custom. Smith v. City of Joliet, C.A.7 (Ill.) 1992, 965 F.2d 235. Civil Rights 1420

Evidence presented by arrestee was sufficient to establish that city police department had custom or policy of avoiding, ignoring, and covering-up complaints of physical and sexual abuse committed by police officers and, therefore, city could be held liable for police's alleged false arrest and rape of arrestee; there was evidence that police department took no action on previous "use of force" reports found by arresting officer, that department did not investigate complaints filed by another person about repeated requests for sexual favors, and that police chief would open investigation only when citizens filed written complaints, which would be deemed substantiated only when officer's guilt was proven beyond reasonable doubt. Parrish v. Luckie, C.A.8 (Ark.) 1992, 963 F.2d 201. Civil Rights 1420

Fact that county police officers who restrained arrestee in hog-tie position, which resulted in arrestee's death from positional asphyxiation, were not reprimanded for their treatment of arrestee, and fact that excessive force complaints had previously been lodged against some of the arresting officers, did not establish that county had a custom or policy of failing to discipline officers who used excessive force, as required to establish that county was liable under § 1983 for death of arrestee. Garrett v. Unified Government of Athens-Clarke County, M.D.Ga.2003, 246 F.Supp.2d 1262, reversed in part 378 F.3d 1274. Civil Rights 1352(4)

Evidence of more than dozen complaints of excessive force and improper police conduct in one year was insufficient to establish that city had policy of indifference to excessive use of force, as was necessary to subject city to liability under §§ 1983 for officer's alleged use of excessive force against arrestee, absent evidence of circumstances surrounding those incidents, or of corresponding figures from other police departments. Thorne v. Steubenville Police Officer, S.D.Ohio 2006, 463 F.Supp.2d 760. Civil Rights 1352(4)

Allegation that police officer used excessive force in arresting public elementary school student for disrupting school activities supported mother's municipal liability claim under §§ 1983 against city, alleging that municipal policy or custom caused student's loss of constitutionally protected right. James v. Frederick County Public Schools, D.Md.2006, 441 F.Supp.2d 755. Civil Rights 1351(4)

County did not have pattern or practice of employing excessive force during arrests, and thus county was not liable under §§ 1983 for deputy sheriff's shooting of suspects during traffic stop, despite evidence of four incidents, two lawsuits, and lapses in paperwork procedures, where none of prior incidents involved use of excessive force, there was no evidence that failure to file reports would lead deputies to believe that use of excessive force was condoned, and alleged force used in prior incidents was different from force used in current suit. Massasoit v. Carter, M.D.N.C.2006, 439 F.Supp.2d 463. Civil Rights 1351(4)

One prior incident in which police officer had used pepper spray on another person stopped for a traffic offense was not sufficient to demonstrate a municipal custom that could subject city to liability under §§ 1983 for the officer's alleged use of excessive force in spraying motorist with pepper spray while attempting to arrest him during traffic stop. Davis v. City of Albia, S.D.Iowa 2006, 434 F.Supp.2d 692. Civil Rights 1351(4)

City police department was not subject to liability under §§ 1983 as result of state trooper's alleged use of excessive force during arrest, absent evidence that anyone other than trooper was involved in incident, or that department had employment or agency relationship with trooper. Yarnall v. Mendez, D.Del.2006, 433 F.Supp.2d 432. Civil Rights 1348

Even assuming that the county's training program on arresting persons exhibiting signs of excited delirium syndrome was somehow deficient, county was not liable in §§ 1983 excessive force claim brought by personal representative of estate of arrestee, who died of heart attack during struggle with county officers, after exhibiting aggressive and psychotic behavior; fact that more or better training was needed was insufficient to demonstrate

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deliberate indifference to arrestee's rights, and cause of arrestee's death was not officers' lack of training. Gregory v. County of Maui, D.Hawai'i 2006, 414 F.Supp.2d 965. Civil Rights 1352(4)

There was no evidence of other incidents of excessive force, or statistical evidence, as required to support §§ 1983 claim by victim of police shooting that District of Columbia effectively tolerated pattern of excessive force by its officers. McKnight v. District of Columbia, D.D.C.2006, 412 F.Supp.2d 127. Civil Rights 1420

Police chief could not be held liable under §§ 1983 in his individual capacity for failure to train or supervise officer who allegedly used excessive force in arresting plaintiff; evidence that officer was investigated and exonerated on six prior excessive force claims did not demonstrate acquiescence and ratification by chief of officer's use of force, there was no expert testimony that chief created or maintained a policy whereby civilian complaints of excessive force were meaningless, and no showing that chief acted in any way to condone the use of excessive force against the plaintiff or others. Phillips v. City of Fairfield, E.D.Cal.2005, 406 F.Supp.2d 1101, reconsideration denied 2006 WL 335472. Civil Rights 1358

Municipality was not subject to liability under §§ 1983 for police officer's alleged use of excessive force, absent evidence that there was custom by municipal police officers to use excessive force against town citizens, or that officer was not properly trained in performance of her duties and that such failure to train was official policy promulgated by municipal authorities. Rodriguez-Rodriguez v. Ortiz-Velez, D.Puerto Rico 2005, 405 F.Supp.2d 162, subsequent determination 405 F.Supp.2d 170. Civil Rights 1352(4)

Memorandum of agreement between Department of Justice (DOJ) and city concerning required policies and practices for city's police officers' use of force, resulting from city-requested DOJ investigation into police department's history of use of force which had found higher-than-average use of excessive force, did not establish city policy or custom of deliberate indifference toward excessive force that could form basis for city's liability in arrestee's widow's §§ 1983 failure-to-train/supervise action; memorandum, which preceded arrest giving rise to widow's action, demonstrated that city was not indifferent to problems within department, and widow offered no statistical evidence or evidence of other failures to investigate and discipline officers for excessive force. Robinson v. District of Columbia, D.D.C.2005, 403 F.Supp.2d 39. Civil Rights 1352(4)

Alderman stated claim of liability, on part of town, in §§ 1983 action stating that police used excessive force in arresting him after his refusal to leave meeting, through allegations that there was custom of condoning force, and that town had no policies or procedures in place to curb excessive force in case of arrests. King v. Jefferies, M.D.N.C.2005, 402 F.Supp.2d 624. Civil Rights 1395(6)

Patient, who alleged that she suffered injuries when officer allegedly used excessive force to get patient into ambulance to be transported to hospital for a mental health evaluation, did not establish §§ 1983 claim against city, given that patient presented no evidence of a city policy or custom that caused a constitutional violation. Thomas v. City of Seattle, W.D.Wash.2005, 395 F.Supp.2d 992. Civil Rights 1351(6)

Family and estate of deceased shooting suspect that sued city, stemming from suspect's death at hands of SWAT team, failed to establish that city had policy or custom of deliberate indifference for public's rights or allowing for unlawful entry or use of deadly force, as required to establish municipal liability under §§ 1983; police department received extensive training, was nationally accredited, was required to undergo firearms requalification every year, and had unblemished record. Estate of Bing v. City of Whitehall, Ohio, S.D.Ohio 2005, 373 F.Supp.2d 770. Civil Rights 1352(4)

County police officer who was injured while working undercover when he was struck a police vehicle driven by another county officer who believed he was pursuing a robbery suspect failed to establish that county had a policy of permitting excessive force by its police officers, and thus was liable under §§ 1983; county had an official policy which prohibited intentionally striking a suspect with a car except in limited, lawful circumstances, and thus even if

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plaintiff was intentionally struck, it was not pursuant to municipal policy. Perez v. Miami-Dade County, Florida, S.D.Fla.2004, 348 F.Supp.2d 1343, affirmed in part, vacated in part and remanded 168 Fed.Appx. 338, 2006 WL 372321. Civil Rights 1351(4)

City and police officers in their official capacities could not be held liable on claims of encouraging or condoning the use of excessive police force since victim's estate showed no policy or custom of encouraging or condoning the use of excessive police force and did not provide any specific facts showing that the alleged custom was the moving force behind the officers' use of excessive force against victim. Murphy v. Bitsoih, D.N.M.2004, 320 F.Supp.2d 1174. Civil Rights 1351(4); Civil Rights 1358

Passengers in vehicle which was stopped by police failed to establish that city endorsed a policy or custom of using excessive force, as required to support their § 1983 claim against city; city police department policy was to use amount of force necessary to bring an incident under control, and officers were taught to use minimum force necessary to execute an arrest. Lewis v. City of Topeka, Kansas, D.Kan.2004, 305 F.Supp.2d 1209. Civil Rights 1351(4)

County review board's determination that police officer's shooting of suspect did not violate police department's use of force regulations was reasonable, and thus county was not subject to liability under § 1983 in suspect's excessive force suit, despite evidence that suspect had his hands up at time he was shot, where evidence indicated that suspect and accomplice had taken hostages in their car, they were known to be armed, suspect opened car door quickly and lunged out, officer could not see suspect's right hand, and shot came from car. Kanae v. Hodson, D.Hawai'i 2003, 294 F.Supp.2d 1179. Civil Rights 1351(4)

Citizen injured by a police officer may establish the pertinent custom or policy for municipal civil rights liability by showing that the municipality, alerted to the possible use of excessive force by its police officers, exhibited deliberate indifference. Galindez v. Miller, D.Conn.2003, 285 F.Supp.2d 190. Civil Rights 1352(4)

Town was not liable for failure to train and supervise police officers, under theory of supervisory liability, in § 1983 action by motorist allegedly beaten by police officers, where motorist presented evidence of only three prior incidents of police misconduct, which was insufficient to establish custom, policy or practice. Noel v. Town of Plymouth, Mass., D.Mass.1995, 895 F.Supp. 346. Civil Rights 1352(4)

Evidence was sufficient to establish that custom or policy of county sheriff caused violation of arrestee's civil rights when he was allegedly beaten by deputy sheriff at time of his arrest, as required to hold sheriff liable; evidence indicated that sheriff's department did not follow policies of its accreditation manual in investigating use of force and customarily charged suspects against whom force was used with obstruction of justice. Colvin v. Curtis, M.D.Fla.1993, 860 F.Supp. 1503, vacated 62 F.3d 1316. Civil Rights 1420

District court properly determined it did not need to reach issue of whether county could be liable on arrestee's claims under § 1983 alleging county created customs and policies which encouraged the use of excessive force during arrest, where court found no individual liability against officers of sheriff's department involved in arrest. Barboa v. Baird, C.A.10 (N.M.) 2003, 81 Fed.Appx. 301, 2003 WL 22719562, Unreported, certiorari denied 124 S.Ct. 2916, 542 U.S. 941, 159 L.Ed.2d 820. Civil Rights 1351(4)

Allegations by plaintiff that he was kicked, punched, and choked by city police officers who stopped and searched him, and that he was injured as a result of the assault did not state § 1983 claim against city, absent allegation that city had policy or custom that caused deprivation of plaintiff's rights. Flemming v. New York City, S.D.N.Y.2003, 2003 WL 296921, Unreported. Civil Rights 1351(4)

City was not liable under § 1983 for excessive force allegedly applied to arrestee when he was given "rough ride" to police station where there was no showing that city had policy of giving such rides, or that they were condoned.

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42 U.S.C.A. § 1983

Hughes v. Shestakov, E.D.Pa.2002, 2002 WL 1742666, Unreported, affirmed 76 Fed.Appx. 450, 2003 WL 22234866. Civil Rights 1351(4)

Police department had written policy against use of excessive force in arrests, and no evidence suggested existence of an unwritten custom or policy allowing use of such force, and therefore even if officers used excessive force when arresting plaintiff, such force did not result from a custom or policy of the police department or the city, as required for officers to be liable in their official capacities in § 1983 action. Shelton v. City of Taylor, E.D.Mich.2001, 2001 WL 1525367, Unreported, affirmed 92 Fed.Appx. 178, 2004 WL 231777. Civil Rights 1358

851A. Deliberate indifference, law enforcement, custom or usage

Even if borough had explicit policy or procedure in place directing borough police officers to allow drivers who had passed a battery of field sobriety tests and yet appeared intoxicated to continue to operate a motor vehicle, such a policy fell far short of amounting to deliberate indifference to the rights of people with whom the police come into contact, and thus, borough was not liable under §§ 1983 for citizen's death in car accident after he was stopped by officers, given field sobriety tests, and released to continue driving. Hoffman v. Borough of Avalon, W.D.Pa.2006, 446 F.Supp.2d 395. Civil Rights 1352(4)

852. Searches and seizures, custom or usage--Generally

City incurred no §§ 1983 liability from its failure to accord post-deprivation hearing to impounded vehicle owner, even if unidentified person at city hall told owner that he had no basis to complain about impoundment, where such comment was directly contrary to city's official policy of providing post-deprivation hearings upon request. Miranda v. City of Cornelius, C.A.9 (Or.) 2005, 429 F.3d 858. Civil Rights 1352(3)

Owners of home erroneously searched by police officer pursuant to warrant authorizing search of house next door could not recover in section 1983 action against officer in his official capacity, absent any showing that officer's conduct was result of any "policy or custom" of city. Collins v. City of Detroit, C.A.6 (Mich.) 1986, 780 F.2d 583. Civil Rights 1358

Arrestee stated claim against sheriff in official capacity for violation of his Fourth Amendment right to be free from unreasonable seizures in detaining him for eight days without judicial probable cause determination; facts could conceivably be produced that sheriff's alleged policy or custom of not effectuating probable cause determinations for detainees who were arrested without a warrant was a substantial factor in bringing about alleged violation. Lingenfelter v. Board of County Com'rs of Reno County, Kan., D.Kan.2005, 359 F.Supp.2d 1163. Civil Rights 1395(6)

District of Columbia police department did not have policy or practice of condoning violations of police regulation requiring authorization of property owner before towing vehicles, precluding District liability for due process violation arising out of tow ordered by police without authorization. Qutb v. Ramsey, D.D.C.2003, 285 F.Supp.2d 33. Civil Rights 1351(4)

Even if police department maintained an unwritten policy of allowing its gang task force officers to conduct unconstitutional searches of private residences, city could not be held liable under § 1983 for shooting death of occupant of apartment during warrantless entry and search since there was no evidence from which a reasonable trier of fact could conclude either that municipal policymakers knew about that pattern of unconstitutional misconduct or that the warrantless entries and searches were so numerous or flagrant that constructive knowledge of them should be imputed to municipal policymakers. Pineda v. City of Houston, S.D.Tex.2000, 124 F.Supp.2d 1057, dismissed 252 F.3d 1355, affirmed 291 F.3d 325, rehearing denied, certiorari denied 123 S.Ct. 892, 537 U.S. 1110, 154 L.Ed.2d 782. Civil Rights 1351(4)

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42 U.S.C.A. § 1983

Inmate failed to show that county sheriff, in his official capacity, was responsible for unconstitutional policy permitting illegal search of cells and disposal of property, as required to support § 1983 claim against sheriff. Stewart v. Block, C.D.Cal.1996, 938 F.Supp. 582. Civil Rights 1358

City was not liable, under § 1983, for violating citizens' Fourth Amendment right to be free of unreasonable searches and seizures when police officers allowed television station personnel to accompany them and film execution of search warrant, absent evidence of official policy, unwritten policy, or custom to allow media personnel access to private premises in which search warrants are executed. Parker v. Clarke, E.D.Mo.1995, 905 F.Supp. 638, clarified 910 F.Supp. 460, affirmed in part, reversed in part 93 F.3d 445, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1081, 519 U.S. 1148, 137 L.Ed.2d 216. Civil Rights 1351(4)

Approval to conduct search of jail guard beyond simple pat-down, given by administrator of jail pursuant to jail regulations, did not constitute official sanctioning of searches by District of Columbia, so as to impose liability on district under § 1983. Profitt v. District of Columbia, D.D.C.1991, 790 F.Supp. 304. Civil Rights 1351(5)

City's failure to set policy governing highly intrusive police action can render city's actions as culpable under § 1983 as if they had policy permitting unreasonable searches themselves; local governing body does not shield itself from liability by acting through omission and, thus, when city provides no guidance to officers regarding such intrusive actions as strip searches, it must face consequences of its inaction by being subject to suit. Timberlake by Timberlake v. Benton, M.D.Tenn.1992, 786 F.Supp. 676. Civil Rights 1352(4)

District of Columbia could be liable under civil rights statute if its official policies and practices provided for destruction of seized vehicles without postseizure notice or hearing. Propert v. District of Columbia, D.D.C.1990, 741 F.Supp. 959. Civil Rights 1348

Middle school teacher could not be held liable in civil rights action for allegedly unconstitutional searches carried out at direction of principal, absent evidence of any indifference or tacit approval of the searches on the teacher's part; teacher promptly investigated searches in question, inquired into principal's policies concerning student searches, discussed searches with legal counsel, and recommended to principal that he narrow scope of future searches by conducting more extensive investigations beforehand. Burnham v. West, E.D.Va.1987, 681 F.Supp. 1160, supplemented 681 F.Supp. 1169. Civil Rights 1356

Homeowner failed to establish that city had an official policy regarding warrantless searches of homes, as was required to establish liability under §§ 1983 on part of city, based on alleged constitutional violation by city police officers; there was no evidence of a persistent, widespread practice of officers insisting on warrantless searches of homes or of any practice of even arguably unconstitutional searches of residences or businesses. Payne v. City of Olive Branch, C.A.5 (Miss.) 2005, 130 Fed.Appx. 656, 2005 WL 995950, Unreported. Civil Rights 1351(4)

853. ---- Search warrants, searches and seizures, custom or usage

Police officers' practice of not seeking warrants prior to conducting searches of suspects' homes during critical incidents was city's official policy for purpose of imposing municipal liability upon city in § 1983 action by suspect whose home was illegally searched in violation of Fourth Amendment; city deliberately allocated resources to development of response plan for critical incidents, and city failed to establish its claim that plan had to be approved by particular official. O'Brien v. City of Grand Rapids, C.A.6 (Mich.) 1994, 23 F.3d 990, rehearing and suggestion for rehearing en banc denied. Civil Rights 1351(4)

Evidence failed to show that city had custom of issuing defective administrative search warrants for police officers' homes, and thus city could not be held responsible on grounds of custom for issuance of search warrant and for disciplining officer for refusing to obey it. Los Angeles Police Protective League v. Gates, C.A.9 (Cal.) 1990, 907

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F.2d 879, rehearing denied. Civil Rights 1420

Genuine questions of material fact, regarding whether city policy or procedure led to alleged constitutional violations stemming from execution of search warrant at Latino-owned business, precluded summary judgment on § § 1983 claims brought by business owners, employees, and customers against city and police officers. Panaderia La Diana, Inc. v. Salt Lake City Corp., D.Utah 2004, 342 F.Supp.2d 1013. Federal Civil Procedure 2491.5

Police department's policy of entering homes pursuant to verbal court orders bore causal relationship to constitutional harms allegedly suffered by parents and children, as required for city to be vicariously liable under § 1983, where police, following departmental policy, made warrantless, unconsented entry into home and assisted in seizure of children where no exigent circumstances existed. O'Donnell v. Brown, W.D.Mich.2004, 335 F.Supp.2d 787. Civil Rights 1351(4)

Drafting of criminal complaints and proposed warrants by municipality's district attorney's office and actions by municipalities' sheriff's departments and police departments in executing arrest and search warrants did not constitute "municipal custom" sufficient to impose § 1983 liability on municipalities, as actions constituted nondiscretionary duties imposed upon municipal officials by state statutes. Thompson v. Rock County, W.D.Wis.1986, 648 F.Supp. 861. Civil Rights 1351(4)

854. ---- Body cavity searches, searches and seizures, custom or usage

County, which jointly operated prison facility, which assisted in its design and construction, and which had considerable input in its procedures and duty to implement its policies, was a proper defendant in suit by prison inmate against prison officials alleging that his constitutional rights were violated when body cavity searches were conducted in full view of clerical workers, other inmates, or other bystanders, even though county officials claim that viewings were inadvertent. Canell v. Beyers, D.Or.1993, 840 F.Supp. 1378. Civil Rights 1389

855. ---- Strip searches, searches and seizures, custom or usage

City was not liable for allegedly illegal strip search of female arrestee, based on city's alleged failure to properly train police force as to uniform policy on strip searches; police officers were supplied with policy guidelines, and there was no evidence of any other incidents which would have put city on notice that its approach was inadequate. Swain v. Spinney, C.A.1 (Mass.) 1997, 117 F.3d 1. Civil Rights 1352(4)

Student subjected to strip search failed to state claim establishing deliberate indifference by school district, so as to support imposition of liability on "failure to train" theory, despite one alleged previous strip search and subsequent endorsement by school board president of strip searches of students conducted with parental consent. Cornfield by Lewis v. Consolidated High School Dist. No. 230, C.A.7 (Ill.) 1993, 991 F.2d 1316. Civil Rights 1352(2)

Inmates of jail facility which was owned by county and operated by city did not show deliberate indifference on the part of county to city's policy of strip searching inmates, so that county was not liable. Deaton v. Montgomery County, Ohio, C.A.6 (Ohio) 1993, 989 F.2d 885. Civil Rights 1352(4)

Single isolated decision by school board to ratify warrantless strip search of student conducted in accordance with constitutionally valid strip search policy was insufficient to establish liability of school board under § 1983, where board believed employees were justified in conducting search of student and there was no history that policy had been repeatedly or even sporadically misapplied by school officials in past. Williams by Williams v. Ellington, C.A.6 (Ky.) 1991, 936 F.2d 881. Civil Rights 1351(2)

Misdemeanor arrestee's allegations that arresting officer was present in room and laughed while defendant was subjected to strip and body-cavity searches by other officers did not establish sufficient personal participation by

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arresting officer in any illegal searches as required for arrestee to recover under § 1983 against arresting officer; arresting officer was not supervisor of officers at cellblock, nor in a position to tell them what to do about search, and testified that he turned his head when booking officers asked arrestee to drop his pants. Dettelis v. City of Buffalo, W.D.N.Y.1998, 3 F.Supp.2d 341, affirmed 166 F.3d 1200. Civil Rights 1358

856. Service of process, custom or usage

Actions of city police in assisting county sheriff's deputies in attempting to serve capiases on physician's employees at physician's office were not acting as city officials or in pursuance of specific city policy so as to render city liable for county's violation of physician's civil rights in conducting warrantless and unreasonable search and seizure; city police were only acting as agents of county attorney. Pembaur v. City of Cincinnati, S.D.Ohio 1987, 672 F.Supp. 286, vacated on other grounds 882 F.2d 1101, on remand 745 F.Supp. 446. Civil Rights 1351(4)

Plaintiff police officer and his family failed to demonstrate that city had a policy or custom which was responsible for conduct of defendant police officers in gaining entry into plaintiff officer's home without consent in an attempt to serve subpoena on plaintiff officer to appear before grand jury investigating police misconduct, and therefore city was not liable to plaintiffs under 42 U.S.C.A. § 1983 for violation of plaintiffs' Fourth Amendment rights. Reed v. Schneider, E.D.N.Y.1985, 612 F.Supp. 216. Civil Rights 1351(4)

857. Licenses and permits, custom or usage--Generally

City could not be held liable under this section for delays of builder's liquor license and occupancy permit and termination of his electric service at instances of city attorney and building inspector where neither of such employees had any policy-making authority, city council declared no express policy about complained of acts, and there was no evidence in record of persistent practice in city by which some builders were favored over others. Bennett v. City of Slidell, C.A.5 (La.) 1984, 728 F.2d 762, rehearing denied 735 F.2d 861, certiorari denied 105 S.Ct. 3476, 472 U.S. 1016, 87 L.Ed.2d 612. Civil Rights 1351(6)

Bald assertion of business owner who brought §§ 1983 action against city after city revoked his business occupancy permit for alleged code violations, alleging that he was singled out and prosecuted without any substantiated evidence of local ordinance violations, that he had shown that the city's practice was so widespread with respect to his situation as to constitute the policy of the city and for §§ 1983 liability to attach, was insufficient to establish existence of a municipal policy or custom underlying the complained of municipal conduct, as required under §§ 1983. Bennett v. City of Biddeford, D.Me.2005, 364 F.Supp.2d 1. Civil Rights 1419

Anti-abortion association and members that brought § 1983 action against city and officials, stemming from denial of parade permits, failed to present significant evidence demonstrating that city had permanent and well-settled practice of denying permits, and thus could not maintain action against city; association merely alleged that city could have used "same excuse" to deny any parade application ever presented. Lippoldt v. City of Wichita, Kansas, D.Kan.2003, 265 F.Supp.2d 1228. Civil Rights 1351(6)

City could be held liable under federal civil rights statute on theory that it engaged in known pattern of constitutionally offensive conduct when it denied license to landfill operator; city permitted its planning and zoning commission to deny application for license to operate landfill even though its ordinances required it to do so, and submitted 69 summons to landfill operator's employees although it was aware that operator had application pending before it. Browning-Ferris Industries of St. Louis, Inc. v. City of Maryland Heights, Mo., E.D.Mo.1990, 747 F.Supp. 1340. Civil Rights 1351(3)

858. ---- Firearms, licenses and permits, custom or usage

Complaint which alleged that, when sheriff and police chief processed application for permit to carry concealed

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weapon, they executed policies and customs established by "directive and/or practice" of governmental entities and which alleged that denial of the application violated constitutional rights stated a claim under this section against the governmental entities. Guillory v. Orange County, C.A.9 (Cal.) 1984, 731 F.2d 1379. Civil Rights 1395(1)

859. ---- Liquor, licenses and permits, custom or usage

Bar owner failed to establish village's municipal liability, arising from the decisions by either the village mayor or the village police chief to suspend bar owner's liquor license, temporarily close the bar, and impose a fine on the owner, in bar owner's §§ 1983 action, alleging due process and equal protection violations, absent showing that either mayor or police chief instituted a policy under the Illinois Liquor Control Act, which mandated suspension, closing, and fines, under certain circumstances. Killinger v. Johnson, C.A.7 (Ill.) 2004, 389 F.3d 765. Civil Rights 1351(6)

If interference with liquor licensees' business was policy orchestrated at highest level of government in village, village would be liable to licensees in civil rights action. Reed v. Village of Shorewood, C.A.7 (Ill.) 1983, 704 F.2d 943. Civil Rights 1351(6)

860. ---- Parades, licenses and permits, custom or usage

Even though town had no applicable parade ordinance or formal permit system, its custom and practice of always consenting to parades on town's streets was the equivalent of "state action" for purposes of this section prohibiting deprivation of constitutional rights by custom or usage and by statute, ordinance or regulation. North Shore Right to Life Committee v. Manhasset Am. Legion Post No. 304, Town of North Hempstead, E.D.N.Y.1978, 452 F.Supp. 834. Civil Rights 1326(1)

860A. ---- Miscellaneous, licenses and permits, custom or usage

Claim that municipality had custom of requiring mitigation payments before issuing building permit, without allegation that custom amounted to bribery in land-use context, was insufficient to give rise to §§ 1983 liability on official capacity claim against alleged municipal policymaker. Mongeau v. City of Marlborough, D.Mass.2006, 462 F.Supp.2d 144. Civil Rights 1351(3)

In house owner's §§ 1983 action against city challenging nonissuance of certain permits needed for relocation, city was not potentially liable by virtue of actions of its planning director; there was no showing of formal policy or longstanding practice or custom that planning director had followed involving permits, and no showing that planning director was final policymaker, either in general or with regard to relocations. Emmert Industrial Corp. v. City of Milwaukie, D.Or.2006, 450 F.Supp.2d 1164. Civil Rights 1351(3)

861. Liens, custom or usage

Pamphlet produced by city district attorney's office of consumer fraud, briefly outlining rights of both landlords and tenants, could not be characterized as promoting or encouraging use of landlord's lien, and thus, even assuming that county adopted contents of pamphlet as policy, policy was not one to lead to deprivation of constitutional rights so as to support § 1983 action against county. Jacobs v. Dujmovic, D.Colo.1990, 752 F.Supp. 1516, affirmed 940 F.2d 1392, certiorari denied 113 S.Ct. 123, 506 U.S. 840, 121 L.Ed.2d 78, rehearing denied 113 S.Ct. 641, 506 U.S. 1015, 121 L.Ed.2d 571. Civil Rights 1351(3)

862. Perjury, custom or usage

Township was not liable under § 1983 for any violation of arrestee's constitutional rights by arresting officer's alleged perjury, absent showing of official policy of township of encouraging its law enforcement officers to

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perjure themselves in pretrial proceedings, that failure to train officer rose to level of deliberate indifference or that perjury by township police officers was so wide-spread that a duty to supervise was triggered. Keehl v. DeBottis, E.D.Mich.1991, 776 F.Supp. 1216, affirmed 983 F.2d 1067. Civil Rights 1351(4); Civil Rights 1352(4)

863. Prisons and prisoners, custom or usage--Generally

County could be held liable under § 1983 for custom or policy established by private corporation it hired to manage and operate its detention center; operation of center was significant public function, over which county retained oversight responsibilities. Herrera v. County of Santa Fe, D.N.M.2002, 213 F.Supp.2d 1288. Civil Rights 1351(4)

City could not be held liable to prisoner under federal civil rights statute, where prisoner merely alleged that city was liable for actions of its police officers, and not for any policies executed or implemented by them. Carman v. Burgess, W.D.Mo.1991, 763 F.Supp. 419. Civil Rights 1351(4)

864. ---- Intent or knowledge, prisons and prisoners, custom or usage

Prison official could be liable for failure to respond to inmate's medical needs on the basis of evidence that he personally ignored the inmate's complaint and referred inmate's complaints of not getting medication to the head nurse whom he knew was wrongly altering and destroying some of the inmate's prescriptions. Hill v. Marshall, C.A.6 (Ohio) 1992, 962 F.2d 1209, rehearing denied, certiorari denied 113 S.Ct. 2992, 509 U.S. 903, 125 L.Ed.2d 687. Civil Rights 1420

County jail inmate failed to show any causal connection between alleged receipt of dirty drinking water or sleeping on floor and actions of director of county jail sufficient to hold director personally liable in § 1983 action; there was no evidence of widespread history of substandard drinking water or inmates' sleeping on floor without mattresses sufficient to put director on notice of objectionable conditions. Brown v. Crawford, C.A.11 (Fla.) 1990, 906 F.2d 667, certiorari denied 111 S.Ct. 2056, 500 U.S. 933, 114 L.Ed.2d 461. Civil Rights 1358

Warden of medium security prison could not be held liable to inmate who was stabbed by fellow prisoner in his cell block on theory that warden's actions constituted deliberate or wanton indifference to inmate's constitutional right to be free of cruel and unusual punishment as guaranteed by Eighth Amendment; even assuming there was possible departure from proper level of staffing in inmate's cell block at time of incident, warden had no notice or knowledge of any danger to inmate or of any particular problems in his cell block, and there was no evidence of pervasive risk of harm to prisoners at time of incident. McGhee v. Foltz, C.A.6 (Mich.) 1988, 852 F.2d 876. Civil Rights 1358

Genuine issues of material fact, regarding extent to which state prison supervisor knew of prison officials' allegedly retaliatory acts against inmate and attempted or failed to remedy situation, precluded summary judgment on inmate's §§ 1983 claim against supervisor, alleging deliberate indifference to inmate's constitutional rights. Ziemba v. Thomas, D.Conn.2005, 390 F.Supp.2d 136. Federal Civil Procedure 2491.5

Arrestee who brought action against sheriff, stemming from his lengthy detention prior to initial court appearance, failed to establish that sheriff possessed requisite level of personal knowledge and awareness of detention to hold him individually liable, as required to maintain § 1983 claim; sheriff did not know that arrestee was in jail, did not find out until much later that arrestee had been held for 38 days, and did not know that arrestee had submitted grievance forms to jail administrator complaining about length of his confinement. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1358

865. ---- Negligence, prisons and prisoners, custom or usage

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42 U.S.C.A. § 1983

Single instance in which bus driver allegedly acted recklessly in driving corrections department bus, causing single bus accident, did not establish existence of municipal policy supporting city's §§ 1983 liability to prisoner allegedly injured in accident. Carrasquillo v. City of New York, S.D.N.Y.2004, 324 F.Supp.2d 428. Civil Rights 1351(4)

Department of Corrections Commissioner and prison warden were not liable to inmate in civil rights action arising out of alleged assault of inmate; inmate set forth only one incident where alleged negligence resulted in injury to him, and one incident did not establish gross negligence in supervision of inferior officers. Bellamy v. McMickens, S.D.N.Y.1988, 692 F.Supp. 205. Civil Rights 1358

866. ---- Deliberate indifference, prisons and prisoners, custom or usage

City could not be liable for jail staffs' failure to comply with rule requiring close monitoring of intoxicated prisoners in §§ 1983 action against city related to intoxicated arrestee's suicide in jail; city's policy requiring staff to check intoxicated prisoners every 15 minutes was adequate, there was no allegation that city systematically failed to enforce its policies, and record did not imply that suicide rates in city's jail was abnormally high. Bradich ex rel. Estate of Bradich v. City of Chicago, C.A.7 (Ill.) 2005, 413 F.3d 688. Civil Rights 1352(4)

In prisoner suicide case, in order to prevail on claim that jail official infringed on pretrial detainee's substantive due process rights in violation of § 1983, plaintiff must show that jail official displayed a deliberate indifference to detainee's taking of his own life by failing to respond appropriately to a strong likelihood, rather than a mere possibility, of self-inflicted harm. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Constitutional Law 262

While county's violation of consent decree that arose out of voluntary settlement of prior jail-conditions lawsuit, in failing to provide second, nighttime jailer to staff jail during hours that pretrial detainee committed suicide, was relevant, in § 1983 action, to whether plaintiff had establish requisite deliberate indifference, this violation of consent decree, standing alone, did not establish deliberate indifference. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1088(4); Federal Civil Procedure 2397.6

To establish a defendant's deliberate indifference in § 1983 action arising out of prisoner's suicide, plaintiff must show that defendant: (1) had subjective knowledge of risk of serious harm; and (2) disregarded that risk, (3) by conduct that was more than mere negligence; moreover, in case of a county defendant, plaintiff must point to some policy that demonstrates county's deliberate indifference. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1098

County's failure to fund second, nighttime jailer during hours that pretrial detainee committed suicide, while in violation of consent decree entered in prior jail-conditions lawsuit, did not rise to level of deliberate indifference to a strong likelihood that suicide would result, as required to subject county to liability for the suicide under § 1983, where prior lawsuit was not concerned with risk of prisoner suicides, and no evidence was presented that, prior to suicide which formed basis of present § 1983 action, any prisoner had ever committed suicide in county jail. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1352(4)

County sheriff's policy of having only one nighttime jailer during hours that pretrial detainee committed suicide, while in violation of consent decree entered in prior jail-conditions suit, did not rise to level of deliberate indifference to a strong likelihood that suicide would result, as required to subject sheriff to liability for the suicide under § 1983, where prior lawsuit was not concerned with risk of prisoner suicides, and no evidence was presented that, prior to suicide which formed basis of present § 1983 action, any prisoner had ever committed suicide in county jail. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82

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42 U.S.C.A. § 1983

Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1358

Evidence did not establish that deputy sheriff was deliberately indifferent to inmate's safety by failing to respond to inmate's complaints about harassment, and therefore deputy was not liable under § 1983 for sexual assault on inmate in which cellmate inserted toothbrush into inmate's anus while inmates were pushed together to separate them from another inmate being removed from cell; even though inmate testified that he told deputy that cellmate was harassing and sexually assaulting him, inmate contradicted himself on whether he told deputy of harassment before or after assault. Doe v. Sullivan County, Tenn., C.A.6 (Tenn.) 1992, 956 F.2d 545, certiorari denied 113 S.Ct. 187, 506 U.S. 864, 121 L.Ed.2d 131. Civil Rights 1420

Even if jail medical personnel were deliberately indifferent to pretrial detainee's serious medical needs, county could not be held liable under §§ 1983; there was no showing that any alleged deliberately indifferent policies of county contributed to or exacerbated any other inmates' medical condition, or that county had a "deliberate intent" to implement inadequate screening policies, allow or encourage an inadequate record-keeping process, implement a policy of inadequate staffing of medical personnel at the jail or have a policy of inadequately training or supervising medical personnel, and detainee had not demonstrated a sufficient causal link between the alleged implementation of the county policies under attack and his injuries. Dukes v. Georgia, N.D.Ga.2006, 428 F.Supp.2d 1298. Civil Rights 1351(4)

Prison officials of District of Columbia did not have policy or custom which would have subjected them to liability under §§ 1983 on allegations brought by prisoner of District of Columbia that prison officials in Virginia violated his right to access to courts and committed religious discrimination against him while in Virginia under prisoner custody arrangement, since officials of District of Columbia were not deliberately indifferent, they did not know, and they should not have known of risk that constitutional violations would have occurred. Ibrahim v. District of Columbia, D.D.C.2004, 357 F.Supp.2d 187. Civil Rights 1352(4)

Absent evidence of other incidents or prisoner complaints, prisoner, who testified that guards at pretrial detention facility did not follow county policies designed to ensure his safety, failed to demonstrated a custom of failure to follow county policies such that county could be held liable under §§ 1983 for Eighth Amendment violation. Thompson v. Spears, S.D.Fla.2004, 336 F.Supp.2d 1224, affirmed 129 Fed.Appx. 497, 2005 WL 901871. Civil Rights 1351(4)

Arrestee who brought action against county, stemming from his lengthy detention prior to initial court appearance, established that county's detention policy was deliberately indifferent to his constitutional rights, as required to maintain § 1983 claim against county; county's policy, under which sheriff's office submitted names of those confined in jail to court and then waited for court to schedule hearing, resulted in 38-day delay for arrestee, in contravention of his Fourth Amendment right to judicial determination of probable cause as prerequisite to extended restraint of liberty following arrest. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1352(4)

Hispanic prisoners in District of Columbia's correctional institutions did not establish § 1983 municipal liability claim; prisoners did not demonstrate that substantial majority of incidents upon which they relied to establish racially hostile environment were, in fact, racially motivated, they did not show that final policymakers were deliberately indifferent to racial violence against Hispanics by other inmates or correctional officers, and they did not establish deliberate indifference as to training. Franklin v. District of Columbia, D.D.C.1997, 960 F.Supp. 394, supplemented 1997 WL 403418, vacated in part 163 F.3d 625, 333 U.S.App.D.C. 334, rehearing denied, rehearing and rehearing en banc denied 168 F.3d 1360, 335 U.S.App.D.C. 60. Civil Rights 1351(4); Civil Rights 1352(4)

Female prisoner who was sexually assaulted in jail by sheriff's deputy could not show that prison officials were subjectively and "deliberately indifferent" to her rights, so as to support federal civil rights action against county,

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where there was no evidence that county knew of and disregarded excessive risk to prisoner's rights; prior to prisoner's complaint, no incident of any abusive conduct on part of particular deputy was ever reported to jail supervisors, and thus supervisors could not have known of risk. Thomas v. Galveston County, S.D.Tex.1997, 953 F.Supp. 163. Civil Rights 1093

Corrections officials were not deliberately indifferent to inmate's rights to due process and to be free from cruel and unusual punishment in failing to ensure that facility's policies and procedures governing inmate classification and recreation were followed, even though failure to follow them resulted in attempted strangulation of inmate by prisoner who was known to be extremely dangerous and who should not have been permitted to leave his cell unescorted; policies and procedures did not themselves cause harm suffered by inmate, and failure to communicate and follow policies and procedures did not rise above level of negligence. Schwartz v. County of Montgomery, E.D.Pa.1994, 843 F.Supp. 962, affirmed 37 F.3d 1488. Constitutional Law 272(2); Sentencing And Punishment 1537; Prisons 17(4)

867. ---- Refusal to remedy, prisons and prisoners, custom or usage

Although there was no policy statement permitting deplorable conditions at prison, where those conditions remained because prison officials customarily refused to provide prisoners with living environment that satisfied constitutional minimum, they could be held liable for civil rights violation. Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia, D.D.C.1994, 877 F.Supp. 634, vacated in part, modified in part 899 F.Supp. 659, remanded 93 F.3d 910, 320 U.S.App.D.C. 247, rehearing denied, certiorari denied 117 S.Ct. 1552, 520 U.S. 1196, 137 L.Ed.2d 701, on remand 968 F.Supp. 744. Civil Rights 1358

868. ---- Personal involvement, prisons and prisoners, custom or usage

Prison superintendent was not liable under § 1983 for alleged violations of inmate's rights; superintendent denied his involvement in many of the alleged violations and inmate agreed that superintendent did not participate in alleged violations and stated that he had sued superintendent only because of his superintendent's position. McDowell v. Jones, C.A.8 (Mo.) 1993, 990 F.2d 433. Civil Rights 1358

State prison official was not personally involved in assigning inmate to "top lock" upon his arrival at prison so as to be liable under § 1983 for denial of inmate's Fourteenth Amendment rights due to failure to provide prior hearing pursuant to Michigan Administrative Code. Hardin v. Straub, C.A.6 (Mich.) 1992, 954 F.2d 1193. Civil Rights 1358

Shift supervisor and watch commander at county jail facility was not liable to pretrial detainee who was raped by homosexual inmate, where shift supervisor had no hand in devising policies which allegedly caused violation of personal security rights and there was no evidence that he had acted personally in any way or directed others to act to cause inmates injuries. Redman v. County of San Diego, C.A.9 (Cal.) 1991, 942 F.2d 1435, certiorari denied 112 S.Ct. 972, 502 U.S. 1074, 117 L.Ed.2d 137. Civil Rights 1358

Prison warden, who merely received letter from inmate challenging findings in support of inmate's placement in segregation on ground that he was denied counsel, was not sufficiently personally involved in hearing process to be liable under section 1983 for any procedural defects in the hearing where his sole involvement was to review merits of inmate's assignment to segregation. Wright v. Collins, C.A.4 (Md.) 1985, 766 F.2d 841. Civil Rights 1358

Prison officials could not be held liable in action under this section for alleged violations of inmate's constitutional rights by confiscating his property and allowing members of inmate gang to harass him, in absence of any allegation that such officials were personally responsible for confiscation or permitting harassment. Harris v. Greer, C.A.7 (Ill.) 1984, 750 F.2d 617. Civil Rights 1358

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42 U.S.C.A. § 1983

Insofar as plaintiffs' damages claim against prison administrator under this section rested on allegations of conditions beyond his personal control, namely, the overcrowding in prison and insufficient number of guards, it failed to make out grounds for recovery. Pinto v. Nettleship, C.A.1 (Puerto Rico) 1984, 737 F.2d 130. Civil Rights 1395(7)

Prison lieutenant was not liable for pretrial detainee's placement in lockdown without protections afforded by due process clause, despite detainee's allegations that he wrote lieutenant about his lockdown, that lieutenant did not respond, and that it was lieutenant's job to hear any appeals; detainee failed to prove that lieutenant played any part individually in punishment given detainee. Dean v. Thomas, S.D.Miss.1996, 933 F.Supp. 600. Civil Rights 1358

Inmate who was allegedly assaulted by one corrections officer and threatened by another failed to state claim under § 1983 against City Department of Corrections official and prison warden; complaint did not indicate that defendants even knew that incident took place, let alone were personally involved, there was no allegation that incident resulted from either policy or custom that defendants created or enforced, and there was no allegation that either incident was attributable to defendants' grossly negligent conduct. Tarafa v. Manigo, S.D.N.Y.1995, 897 F.Supp. 172. Civil Rights 1395(7)

869. ---- Confiscation of property, prisons and prisoners, custom or usage

Prison authorities could not be held liable for damages for confiscation of inmate's religious writings on basis of this section, where inmate neither joined official alleged to have confiscated writings nor alleged that official's act was pursuant to established county practice, policy or custom. Slay v. State of Ala., C.A.5 (Ala.) 1981, 636 F.2d 1045, rehearing denied 642 F.2d 1210. Civil Rights 1098

870. ---- Force against prisoners, prisons and prisoners, custom or usage

Correctional officers' alleged violation of county policies regarding use of force and use of pepper spray in subduing inmate could not give rise to civil rights liability on part of county, absent any allegation that policies themselves were unconstitutional. Johnson v. Blaukat, C.A.8 (Mo.) 2006, 453 F.3d 1108. Civil Rights 1351(4)

Allegations that correction facility supervisor expressly authorized officers to maintain custom and practice authorizing use of physical force against detainees without just cause was sufficient to state claim of personal liability for violation of detainee's due process rights, under §§ 1983. Jean-Laurent v. Wilkerson, S.D.N.Y.2006, 438 F.Supp.2d 318. Civil Rights 1395(6)

Inmate who sued state prison officials, alleging use of excessive force in incident at sallyport, failed to establish that prison commissioner allowed policy and custom of use of excessive force on prisoners, as required to maintain claim for supervisory liability under §§ 1983; there was no reliable evidence that commissioner created or allowed continuance of environment in which violation of inmates' constitutional rights was encouraged and tolerated. Ziemba v. Thomas, D.Conn.2005, 390 F.Supp.2d 136. Civil Rights 1358

Prisoner failed to allege that any excessive force used against him in violation of his civil rights was product of official policy or custom of city police department, or that person responsible for challenged conduct was final policymaker, and so did not state § 1983 civil rights cause of action against department. Patterson v. Wauwatosa Police Dept., E.D.Wis.1996, 930 F.Supp. 1293. Civil Rights 1351(4)

Inmate's father failed to establish in § 1983 action that training of guards and use of firearm caused death of escaping inmate, that policy on use of deadly force deprived inmate of constitutional rights, or that administrator

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and supervisors were grossly negligent or deliberately indifferent. Ryan Robles v. Otero de Ramos, D.Puerto Rico 1989, 729 F.Supp. 920. Civil Rights 1093

871. ---- Lock downs, prisons and prisoners, custom or usage

City could be held liable for death of inmate, who was killed by other inmates, on the basis of evidence that he had expressed fear for his safety because he had implicated the other inmates in a crime for which they were convicted, that his wife had informed an unidentified jail employee of the inmate's fears, that city's policy of not locking down prisoners at night was reckless and departure from accepted standards, that contraband control policy did not require wire brooms, such as that used to kill the inmate, to be inventoried or used on a check-out basis, and that the policy of not separating crime partners was extremely dangerous. Berry v. City of Muskogee, Okl., C.A.10 (Okla.) 1990, 900 F.2d 1489. Civil Rights 1093; Civil Rights 1351(4)

872. ---- Mail, prisons and prisoners, custom or usage

Supervisor of jail official who was allegedly negligent in opening inmate's mail from attorney outside inmate's presence could not be held liable in official capacity in § 1983 suit; no unconstitutional policy or practice was in effect at the jail. Bryant v. Winston, E.D.Va.1990, 750 F.Supp. 733. Civil Rights 1358

873. ---- Medical care, prisons and prisoners, custom or usage

Evidence that police officers placed in custody inmates who were experiencing symptoms of after-effects of methamphetamine use did not establish that county had official practice of booking inmates who were hallucinating without providing medical care, for purpose of *Monell* policy or custom official-capacity claim under §§ 1983. Grayson v. Ross, C.A.8 (Ark.) 2006, 454 F.3d 802. Civil Rights 1351(4)

Genuine issue of material fact as to whether county had widespread practice or custom of inordinate delay in providing methadone treatment to inmates precluded summary judgment in action alleging that county was liable under §§ 1983 for inmate's death in county jail due to sudden withdrawal from his prescribed methadone medication. Davis v. Carter, C.A.7 (Ill.) 2006, 452 F.3d 686. Federal Civil Procedure 2491.5

County was not liable under §§ 1983 for injury caused detainee when he was not scheduled for surgery on his severed tendons while incarcerated absent any evidence that his injury was result of jail custom or policy. Johnson v. Karnes, C.A.6 (Ohio) 2005, 398 F.3d 868. Civil Rights 1351(4)

Jail inmate, who was denied access to physician and to his medication for sebaceous cysts on his scalp and who went for eight months without treatment of his skin condition, despite obtaining court orders directing treatment, failed to establish that county had inadequate procedures, did not adequately train its personnel, or had other policy or custom causing inmate to be denied medical care, and thus could not maintain action against county sheriff and other county officials in their official capacity under § 1983; county presented evidence of procedures designed to prevent inmates with medical needs from falling through the cracks as inmate did, including evidence that inmates had access to nurses and paramedics on daily basis to whom they could report missed appointments. Holmes v. Sheahan, C.A.7 (Ill.) 1991, 930 F.2d 1196, certiorari denied 112 S.Ct. 423, 502 U.S. 960, 116 L.Ed.2d 443. Civil Rights 1420

County could not be held liable for jail officials' deliberate indifference to prisoner's serious medical needs based on failure to provide medication more frequently than prison-wide schedule of every six hours where county's existing policy requiring provision of medicine between six-hour scheduled dispensations when needed was not followed. Johnson v. Hardin County, Ky., C.A.6 (Ky.) 1990, 908 F.2d 1280. Civil Rights 1351(4)

Arrestee, whose jaw was allegedly broken by arresting officer, failed to prove sheriff's department had deliberate

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policy of not training its jailers and police officers in proper medical treatment of prisoners so as to warrant imposition of municipal liability under deprivation of civil rights statute, where department had adopted standard policy for rendering medical care to prisoners, jailers were required to discuss with prisoner his medical problem and obtain explanation, and jailers had all been trained in CPR and some were emergency medical technicians. Vukadinovich v. McCarthy, C.A.7 (Ind.) 1990, 901 F.2d 1439, rehearing denied, certiorari denied 111 S.Ct. 761, 498 U.S. 1050, 112 L.Ed.2d 780. Civil Rights 1352(4)

County sheriff could not be held personally liable in his official capacity under §§ 1983 to detainee who was allegedly denied medications and medical treatment while he was incarcerated at county jail, absent evidence that there was an unconstitutional county custom or policy to deprive inmates of medical treatment, or that sheriff, as the final policymaker, instituted such a policy or acted with deliberate indifference to detainee's medical needs. Tatum v. Simpson, D.Colo.2005, 399 F.Supp.2d 1159. Civil Rights 1358

A single incident possibly amounting to a violation of a detainee's rights to medical care did not amount to proof of a municipal policy or custom of constitutional violation so as to warrant municipal §§ 1983 liability under *Monell*. Hollenbaugh v. Maurer, N.D.Ohio 2005, 397 F.Supp.2d 894. Civil Rights 1351(4)

A "policy" or "custom" may exist, for purposes of determining whether a prison medical provider is liable under §§ 1983 for deliberate indifference to a serious medical need, where the policymaker has failed to act affirmatively at all, though the need to take some action to control the agents of the government is so obvious, and the inadequacy of the existing practice so likely to result in the violation of constitutional rights, that the policymaker can reasonably be said to have been deliberately indifferent to the need. Jackson v. First Correctional Medical Services, D.Del.2005, 380 F.Supp.2d 387. Civil Rights 1352(4)

City was not liable under §§ 1983 based on alleged inadequate medical care received by city prisoner who purportedly was seriously injured in bus accident while being transported to court, given absence of allegation that city had policy to deny prisoners adequate medical care. Carrasquillo v. City of New York, S.D.N.Y.2004, 324 F.Supp.2d 428. Civil Rights 1351(4)

Every jail guard was almost certain to be in charge of inmates with serious medical conditions, and thus allegation that city sheriff failed to ensure that guards at city jail were adequately trained to recognize and adequately respond to serious medical conditions presented by inmates under their charge was sufficient to state cognizable failure to train claim in § 1983 suit alleging that jail guards failed to recognize and respond to inmate's bacterial meningitis, regardless of whether there was pattern of deliberate indifference exhibited by jail guards to meningitis or other serious illnesses. Brown v. Mitchell, E.D.Va.2004, 308 F.Supp.2d 682. Civil Rights 1358

Even if insulin-dependent diabetic pretrial detainee could show that jail officials were deliberately indifferent to his serious medical condition by giving him only one shot of insulin during a period of approximately 48 hours, county sheriff's office could not be held liable for the constitutional violation since detainee did not establish the existence of a "policy or custom" based on treatment decisions by the sheriff's office or the nurses at the jail; county did not make its nurses into "policy-makers" who possessed final authority to establish municipal policy for the sheriff's office with respect to the care of pretrial detainees, but rather the nurses were not free to ignore the official policies of the sheriff's office, or free from review or supervision by the responsible doctor. Engelleiter v. Brevard County Sheriff's Dept., M.D.Fla.2003, 290 F.Supp.2d 1300. Civil Rights 1351(4)

Reports of court appointed monitor regarding pervasive failure of private medical services company to provide medical care to inmates of county jail, together with company's internal memoranda, were sufficient to establish custom of violating inmates' constitutional right to medical treatment, and, thus, to establish company's potential liability in § 1983 action arising out of failure to provide treatment for inmate with history of cardiac illness. Nelson v. Prison Health Services, Inc., M.D.Fla.1997, 991 F.Supp. 1452. Civil Rights 1351(4)

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42 U.S.C.A. § 1983

Genuine issues of material fact, precluding summary judgment for county sheriff in § 1983 action by estate and survivors of manic depressive arrestee who died from chronic malnutrition and dehydration on his eighth day in jail, existed as to whether sheriff was aware of inmate's condition and failed to investigate or procure medical or psychiatric assistance, whether sheriff had in place policy that inmates were given medical and/or psychiatric care only upon his approval, whether sheriff was unavailable to approve such medical care, and whether sheriff adequately trained his employees. Duffey v. Bryant, M.D.Ga.1997, 950 F.Supp. 1168. Federal Civil Procedure 2491.5

874. ---- Overcrowding, prisons and prisoners, custom or usage

Even though jail was overcrowded and county was under district court directions to upgrade facility to alleviate overcrowding, county and county executive were not liable under civil rights statute for assault on detainee when another detainee poured hot water from coffee urn over him during argument in day room; any possible connection between the conditions at the jail on the assault were too attenuated to permit recovery, as there was no demonstration of connection between overcrowding and the assault or even an allegation that, absent the overcrowding, plaintiff would not have been with the assailant in the day room. Best v. Essex County, New Jersey Hall of Records, C.A.3 (N.J.) 1993, 986 F.2d 54. Civil Rights 1093

City's housing of inmates in grossly overcrowded, poorly ventilated, and unsanitary jail facility was so likely to result in inmate sickness and suffering that there was obvious likelihood of constitutional deprivations to identifiable group of persons having special relationship to city, and thus city's failure to remedy jail conditions could constitute cognizable official policy or custom for purposes of imposing municipal liability under § 1983 for inmate's death, where city was aware that inmate had compromised immune system, and inmate died of bacterial infection. Brown v. Mitchell, E.D.Va.2004, 308 F.Supp.2d 682. Civil Rights 1352(4)

Overcrowding in District of Columbia jail is result of policy, practice, or custom of the district so that District of Columbia Government and its various employees in their official capacity may be sued for civil rights violations arising out of the overcrowding. Marsh v. Barry, D.D.C.1988, 705 F.Supp. 12, on subsequent appeal 926 F.2d 1184, 288 U.S.App.D.C. 311. Civil Rights 1351(4)

875. ---- Pretrial detainees, prisons and prisoners, custom or usage

Policy not to inform detainees of their bail status until they asked, if found to have been followed by city jail, would satisfy the first element for municipal liability under § 1983, the existence of punitive municipal policy or custom. Gaylor v. Does, C.A.10 (Colo.) 1997, 105 F.3d 572. Civil Rights 1351(4)

To succeed in holding a municipality accountable for a jailer's violation of pretrial detainee's due process right to be secure in his basic human needs, such as medical care and safety, when an episodic act or omission of state jail official is at issue, detainee must show that municipal employee's act resulted from municipal policy or custom adopted or maintained with objective deliberate indifference to detainee's constitutional rights. Hare v. City of Corinth, Miss., C.A.5 (Miss.) 1996, 74 F.3d 633, on remand 949 F.Supp. 456. Civil Rights 1351(4)

County, through its sheriff, was deliberately indifferent to right of detainees not to be incarcerated without prompt pretrial procedures, as required to establish municipal liability under § 1983, where sheriff knew that some inmates could not communicate their plight or were out of touch with their families or lawyers and that from time to time some inmates remained incarcerated for period of time because they missed their arraignments. Oviatt By and Through Waugh v. Pearce, C.A.9 (Or.) 1992, 954 F.2d 1470. Civil Rights 1088(4)

Although detention of arrestee for more than five days without bringing him before judicial officer for probable cause determination might have violated arrestee's Fourth Amendment rights, civil rights claim asserted under § 1983 against county based on that detention was properly dismissed, where arrestee alleged no facts suggesting that

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the alleged constitutional deprivation occurred as result of county policy or custom. Thompson v. City of Los Angeles, C.A.9 (Cal.) 1989, 885 F.2d 1439. Civil Rights 1395(6)

Police officers' conduct in leaving a highly intoxicated pretrial detainee in a cell with his hands handcuffed behind his back was not undertaken pursuant to any city policy or custom, as required for imposition of municipal liability in the detainee's §§ 1983 suit, brought in connection with injuries sustained in a fall; city had rather detailed written policies restricting the use of handcuffs, and an officer testified that if an arrestee was too intoxicated to be booked, it was the usual practice to put the arrestee in a cell until he/she sobered up and, during that period, the handcuffs would be removed unless the detainee was acting violently. Carroll v. City of Quincy, D.Mass.2006, 441 F.Supp.2d 215. Civil Rights 1351(4)

Jail administrator's summary judgment affidavit, stating that he "became aware that the jail staff were not always following the policy and were, at least on some occasions, conducting strip searches in violation of policy" did not support inference in favor of county officials, as nonmovants, that jail personnel were following policy more often than not; such an inference would have been unreasonable, since affidavit did not address practices of other corrections officers. Tardiff v. Knox County, D.Me.2006, 425 F.Supp.2d 159. Federal Civil Procedure 2491.5

City was not liable under §§ 1983 for deliberate indifference to serious medical needs of intoxicated pre-trial detainee who committed suicide in holding cell, based on its policies for identifying detainees at increased risk for suicide, where city did not have history of numerous suicides by detainees, city had policies for removing harmful items from detainees, and, following previous suicide in holding cell, city took corrective action by placing video monitor in cell. Cruise v. Marino, M.D.Pa.2005, 404 F.Supp.2d 656. Civil Rights 1351(4)

County sheriff was responsible, in his individual capacity, for Fourth Amendment violations arising from strip searches of all detainees alleged to have committed misdemeanors, without showing of reasonable suspicion that they were harboring contraband on or within their bodies; sheriff was aware of custom of universal misdemeanor suspect strip searches, and did not take effective action to halt practice. Tardiff v. Knox County, D.Me.2005, 397 F.Supp.2d 115. Civil Rights 1358

Arrestee failed to prove a continuing, widespread, persistent custom or practice of unconstitutional overdetention of arrestees pending release on bail, despite an alleged sign posted in a waiting area, alerting inmates that they could expect delays of up to eight hours in processing their releases. Sizer v. County of Hennepin, D.Minn.2005, 393 F.Supp.2d 796, affirmed 162 Fed.Appx. 681, 2006 WL 133525. Civil Rights 1351(4)

In light of testimony indicating a policy both to tell and not to tell an arrestee his bail or fine amount, genuine issue of material fact existed concerning which policy was actually the policy of the city, precluding summary judgment in favor of both city and arrestee on arrestee's § 1983 claim to hold city liable for an unconstitutional policy of excessive detention of pre-trial detainees arrested on bench warrants and not accepting bail from pre-trial detainees arrested on misdemeanor charges. Bunyon v. Burke County, S.D.Ga.2003, 285 F.Supp.2d 1310. Federal Civil Procedure 2491.5

In light of testimony indicating a policy both to tell and not to tell an arrestee his bail or fine amount, genuine issue of material fact existed concerning which policy was actually the policy of the city, precluding summary judgment in favor of both police chief and arrestee on arrestee's § 1983 claim to hold police chief liable for an unconstitutional policy of excessive detention of pre-trial detainees arrested on bench warrants and not accepting bail from pre-trial detainees arrested on misdemeanor charges. Bunyon v. Burke County, S.D.Ga.2003, 285 F.Supp.2d 1310. Federal Civil Procedure 2491.5

Arrestee who brought action against county, stemming from his lengthy detention prior to initial court appearance, established that county's detention policy caused his constitutional injury, as required to maintain § 1983 claim

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against county; county deferred to court to schedule arrestees' initial appearance hearings as matter of policy, which caused county to detain arrestee for 38 days before he was taken before court, in contravention of Fourth Amendment right to judicial determination of probable cause as prerequisite to extended restraint of liberty following arrest. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1351(4)

Even if individual officials were liable under § 1983 for attempted suicide of pretrial detainee, city could not have been held liable for any failure to adopt additional measures to prevent suicide of pretrial detainees where city had taken measures to prevent suicides and did not communicate any message of tacit approval or acquiescence. Litz v. City of Allentown, E.D.Pa.1995, 896 F.Supp. 1401. Civil Rights 1088(4); Civil Rights 1351(4)

Finding that county was not liable under § 1983 to arrestee was not clear error at bench trial on arrestee's claim for damages allegedly resulting from constitutional violations when he was detained in county jail for nine days after he was arrested on domestic violence charge and did not post bail; arrestee never alleged existence of county policy or custom in complaint, and trial court found that county was not operating pursuant to official policy or custom. Wu v. Salt Lake County Com'n, C.A.10 (Utah) 2004, 91 Fed.Appx. 53, 2004 WL 38326, Unreported, certiorari denied 125 S.Ct. 294, 543 U.S. 850, 160 L.Ed.2d 81. Civil Rights 1420

876. ---- Privacy, prisons and prisoners, custom or usage

Sheriff was not liable under § 1983 for his subordinates' alleged violation of inmate's constitutional rights when inmate's genitals were allegedly exposed to members of opposite sex, where sheriff had instituted precautions to prevent such unreasonable exposure by placing curtains on showers and taking steps to ensure that female officers walked cell block only at regular intervals so that their appearance could, to some extent, be anticipated. Strickler v. Waters, C.A.4 (Va.) 1993, 989 F.2d 1375, certiorari denied 114 S.Ct. 393, 510 U.S. 949, 126 L.Ed.2d 341. Civil Rights 1098

877. ---- Release, prisons and prisoners, custom or usage

In the absence of finding that director of Bureau of Corrections was aware that prevailing custom and practice was for records officers to ignore complaints about prisoners with respect to their release dates or that he approved failure to follow designated procedures in such cases, he could not be held liable for denial of due process to inmate who was held beyond the expiration of his term on theory that he established or maintained a process which did not comport with due process. Sample v. Diecks, C.A.3 (Pa.) 1989, 885 F.2d 1099. Civil Rights 1358

878. ---- Sexual abuse, prisons and prisoners, custom or usage

Evidence that continuing, widespread, and persistent pattern of unconstitutional conduct existed at county jail, for purposes of determining whether county was liable in inmate's § 1983 action alleging that her Eighth Amendment rights were violated when corrections officer raped her, was sufficient for submission to jury; inmate presented evidence of corrections officer's conduct spanning five months and involving extortion, deception, and repeated sexual acts, culminating in rape of inmate, and evidence of other acts of sexual misconduct by jail employees. Ware v. Jackson County, Mo., C.A.8 (Mo.) 1998, 150 F.3d 873, rehearing and suggestion for rehearing en banc denied. Civil Rights 1429

County could not be held liable under § 1983 to former female inmates who were sexually assaulted by jailer for adopting policy of permitting single jail officer to be on duty when second jailer was sick or on vacation or for failing to adopt policies to supervise jailers and protect women prisoners; no previous incidents of sexual harassment or assault of female inmates had occurred to provide notice to county that its one-jailer policy and failure to adopt related policies would result in injuries alleged, and sexual assault of female inmates was not plainly obvious consequence of absence of policies or having one male jailer on duty. Barney v. Pulsipher, C.A.10

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42 U.S.C.A. § 1983

(Utah) 1998, 143 F.3d 1299. Civil Rights 1352(4)

Jury question was presented as to whether jail officials were acting pursuant to county policies or customs when placing pretrial detainee in cell with alleged "aggressive homosexual," who subsequently raped him and whether that policy or custom exacerbated danger posed by aggressive homosexual to general prison population to such extent that it amounted to deliberate indifference to pretrial detainee's personal security in violation of § 1983. Redman v. County of San Diego, C.A.9 (Cal.) 1991, 942 F.2d 1435, certiorari denied 112 S.Ct. 972, 502 U.S. 1074, 117 L.Ed.2d 137. Civil Rights 1429

County was not liable in §§ 1983 action for violations of county jail inmate's rights under Eighth and Fourteenth Amendments, arising out of sexual assaults by female corrections officer; conduct of officer was not undertaken pursuant to any county policy or custom, and county did not have respondeat superior liability. White v. Ottinger, E.D.Pa.2006, 442 F.Supp.2d 236. Civil Rights 1351(4)

Female prisoner did not show requisite official policy or custom necessary to establish federal civil rights violation on part of county arising out of sexual assault committed upon her by sheriff's deputy in jail where county had specific policies against very occurrences reported by prisoner, and policies appeared to work in practice as well as in theory. Thomas v. Galveston County, S.D.Tex.1997, 953 F.Supp. 163. Civil Rights 1351(4)

879. ---- Solitary confinement or segregation of prisoners, prisons and prisoners, custom or usage

Commissioner of New York State Department of Correctional Services could be held liable in § 1983 suit commenced by female inmates for alleged violation of their Eighth Amendment rights arising from confinement conditions in solitary unit to extent he failed to develop and implement programs and policies regarding treatment of mentally ill inmates or delegated that responsibility to others whom he then failed to supervise adequately. Langley v. Coughlin, S.D.N.Y.1989, 709 F.Supp. 482, appeal dismissed 888 F.2d 252. Civil Rights 1358

880. ---- Suicide, prisons and prisoners, custom or usage

Mere opportunity for suicide, without more, is insufficient to impose liability under § 1983 on those charged with care of prisoners. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1098

Police chief's failure to have written policy for handling of suicidal jail inmates did not constitute deliberate indifference to medical needs of jailed arrestee, as required for arrestee's estate, in its civil rights suit arising out of arrestee's suicide while in jail, to overcome chief's qualified immunity from claims against him in his individual capacity; chief's unwritten policy for handling of "unstable" inmates was sufficient. Belcher v. City of Foley, Ala., C.A.11 (Ala.) 1994, 30 F.3d 1390. Civil Rights 1376(7)

City did not act with deliberate indifference towards plight of suicidal detainees in implementing policies for the safe incarceration of inmates and was thus not liable under federal civil rights statute on that basis for prisoner's suicide by hanging; at most, policies were not strictly followed on night of her death, or she would not have had access to garden hose normally used to wash down jail floors. Evans v. City of Marlin, Tex., C.A.5 (Tex.) 1993, 986 F.2d 104, rehearing denied. Civil Rights 1351(4)

Police chief was not liable in civil rights suit arising out of jail detainee's suicide, despite his knowledge of earlier detainee's suicide in lockup, his responsibility for policy of sending jail houseman to pick up recent arrestees, leaving police station unsupervised, his failure to implement more effective monitoring system in lockup and his failure to order training in suicidal screening; chief's conduct, while perhaps negligent, was not deliberately indifferent to risk that another detainee would commit suicide. Bowen v. City of Manchester, C.A.1 (N.H.) 1992, 966 F.2d 13. Civil Rights 1358

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County could not be held liable for violating civil rights of detainee who committed suicide absent any indication that it had policy amounting to deliberate indifference to potential suicides among detainees, either implemented by inadequately training its officers or by maintaining unsafe jail. Elliott v. Cheshire County, N.H., C.A.1 (N.H.) 1991, 940 F.2d 7. Civil Rights 1351(4)

County could not be held liable under §§ 1983 official capacity claim for suicide of pretrial detainee in county jail, once it had been determined that there was no underlying constitutional violation by any of its officers. Keehner v. Dunn, D.Kan.2005, 409 F.Supp.2d 1266. Civil Rights 1348

Material issues of fact, as to whether county's policy regarding heroin detoxification in county jail posed substantial risk to detainee who committed suicide, that county was aware of that risk, and that policy was moving force behind the alleged constitutional right of inmate to have addiction adequately addressed, precluded summary judgment in §§ 1983 action alleging deprivation of detainee's substantive due process rights. Estate of Abdollahi v. County of Sacramento, E.D.Cal.2005, 405 F.Supp.2d 1194. Federal Civil Procedure 2491.5

It was not shown that county had a custom of overcrowding and understaffing its jail, or that such a custom played a direct and substantial role in a pretrial detainee's hanging in a suicide attempt, thus precluding imposition of liability on the county in a §§ 1983 suit; county's failure to operate at times at 70% capacity or less did not equate to widespread, persistent, unconstitutional misconduct, nor was it shown that the county's operational capacity was the moving force behind the suicide attempt. Drake ex rel. Cotton v. Koss, D.Minn.2005, 393 F.Supp.2d 756, affirmed 439 F.3d 441, rehearing granted and vacated, on rehearing 445 F.3d 1038, rehearing and rehearing en banc denied. Civil Rights 1351(4)

Purported policies or customs, specifically county's policy not to maintain adequate staffing, jailers' policy not to review detainees' arrest files, and sheriff's policy not to review an investigator's work, would not support imposition of municipal liability in § 1983 suit arising from jailed detainee's suicide, particularly as review of investigator's report, which mentioned a suicide threat by the detainee, would not have charged the jailers or the sheriff with knowledge that the detainee was at particular risk for suicide during his detention; his statement was made to his wife four days before he turned himself in and immediately after his wife confronted him with her suspicions regarding his sexual activity and told him to leave. Wade v. Tompkins, C.A.8 (Ark.) 2003, 73 Fed.Appx. 890, 2003 WL 22053145, Unreported. Civil Rights 1351(4)

881. ---- Training and supervision, prisons and prisoners, custom or usage

Failure to train can amount to deliberate indifference, for purposes of imposing § 1983 liability on supervisory official, when need for more or different training is obvious, such as when there exists history of abuse by subordinates that might put supervisor on notice of need for corrective measures, and when failure to train is likely to result in violation of constitutional right. Belcher v. City of Foley, Ala., C.A.11 (Ala.) 1994, 30 F.3d 1390. Civil Rights 1352(1)

Detainee of correctional facility stated §§ 1983 claim of liability for use of excessive force against supervisors who allegedly stood by observing beating of detainee, and took no action to stop it. Jean-Laurent v. Wilkerson, S.D.N.Y.2006, 438 F.Supp.2d 318. Civil Rights 1395(6)

County was not liable, in §§ 1983 action, for violating substantive due process rights of jail detainee through inadequate training of jail personnel, when county had policy of periodic observation of cell occupants, and guard, lacking knowledge that detainee was suicidal, made no observations, falsely entering on duty logs that he had done so. Estate of Abdollahi v. County of Sacramento, E.D.Cal.2005, 405 F.Supp.2d 1194. Civil Rights 1352(4)

City was not liable under §§ 1983 for deliberate indifference to serious medical needs of intoxicated pre-trial detainee who committed suicide in holding cell, based on alleged failure to train officers to identify detainees at

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risk for suicide, absent evidence that officers, had they had such training, would have been able to prevent such suicide. Cruise v. Marino, M.D.Pa.2005, 404 F.Supp.2d 656. Civil Rights 1352(4)

County could not be held liable for correctional officer's sexual assault on jail inmate on basis of failure to train, where officer had received training on written policies prohibiting improper personal conduct or commission of any felony, and officer had received specific training on what was appropriate supervision of, and conduct with, jail inmates. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Civil Rights 1352(4)

882. ---- Miscellaneous prison policies, prisons and prisoners, custom or usage

Evidence was insufficient to hold prison guards' supervisors liable in civil rights action arising from inmate's stabbing death on theory that supervisors formulated flawed policies regarding installation of door to inmate's unit and consumption of alcohol by inmates; although unit door prevented inmate from escaping into prison yard and inmate who attacked him was intoxicated, there was no evidence that policy concerning door caused attack or that supervisors were responsible for informal policy permitting prisoners to produce and consume alcoholic beverages. Walker v. Norris, C.A.6 (Tenn.) 1990, 917 F.2d 1449, rehearing denied. Civil Rights 1420

County jail inmate, who was allegedly assaulted by guard and others, failed to show that county had policy or custom of inadequately supervising its personnel, failing to remedy known unconstitutional conduct, or of placing inmates in general population when it was known that placing was not safe, and thus, failed to establish claim under 42 U.S.C.A. § 1983 against county; only evidence inmate presented was evidence relating to his own treatment in jail. Williams v. Mensey, C.A.8 (Mo.) 1986, 785 F.2d 631. Civil Rights 1420

Inmate who sued county, stemming from attack by other inmates while incarcerated at county facility, failed to establish that county had custom or policy that was moving force behind alleged Eighth Amendment violations, as required to maintain claim for municipal liability under §§ 1983; there was no evidence that county had policy of placing inmates in situations where they were likely to be attacked or doing nothing when inmates were attacked. Collins v. County of Kern, E.D.Cal.2005, 390 F.Supp.2d 964. Civil Rights 1351(4)

State-established jail authority acted under "color of state law" with regard to excessive force claims of immigration detainee held at its facilities pursuant to federal contract, where his injuries resulted from authority's alleged failure properly to train its guards and condonation their policy of using excessive force, and federal government's contract did not specify how authority was to supervise its guards. Jarno v. Lewis, E.D.Va.2003, 256 F.Supp.2d 499. Civil Rights 1326(8)

Inmates in county jail failed to demonstrate that actions by state officials, taken under color of state law, in any way caused existing or past constitutionally deficient conditions at county jails so as to support § 1983 claim; county and its officials had primary responsibility for maintenance and operation of jail under statutory scheme, even though state had discretion under statute to enforce minimum jail standards, it had no affirmative duty, and state officials could not be held liable on theory of supervisory or vicarious liability; thus it could not be said that actions of state officials were cause of alleged civil rights violations. Reid v. Johnston County, E.D.N.C.1988, 688 F.Supp. 200, affirmed 885 F.2d 129. Civil Rights 1098; Civil Rights 1348; Civil Rights 1358

883. Probation, custom or usage

County fiscal court could not be held liable for deprivation of liberty stemming from conduct of county probation officer absent proof that probation officer's conduct implemented or executed policy of county fiscal court or that officer acted pursuant to custom even though custom had not been formerly approved by court. Vinson v. Campbell County Fiscal Court, C.A.6 (Ky.) 1987, 820 F.2d 194. Civil Rights 1351(4)

884. Repossessions, custom or usage

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City could not be vicariously liable for alleged actions of its police officers during course of repossession of plaintiffs' automobile by creditor's agents as there was no governmental custody, plan or scheme to provide official assistance or aid in repossession of automobile by private parties pursuant to their private contractual arrangements. Menchaca v. Chrysler Credit Corp., C.A.5 (Tex.) 1980, 613 F.2d 507, rehearing denied 622 F.2d 1043, certiorari denied 101 S.Ct. 358, 449 U.S. 953, 66 L.Ed.2d 217. Civil Rights 1351(4)

In ruling on motion for summary judgment filed by correctional facility officers, jail superintendent, and county sheriff in civil rights action filed by pro se inmate who alleged that officers violated his civil rights pursuant to § 1983, district court would accept properly supported facts contained in officers' statement as true for purposes of granting motion for summary judgment; inmate did not file statement of undisputed material facts in compliance with local rule. Govan v. Campbell, N.D.N.Y.2003, 289 F.Supp.2d 289. Federal Civil Procedure 2547.1

Plaintiff did not establish § 1983 Fourth Amendment excessive force claim against county with respect to sheriff's execution of writ of possession for the premises and removal of plaintiff; plaintiff did not establish that county had unconstitutional policy or custom permitting use of excessive force or unreasonable seizure in executing writs of possession and lack of warrant did not constitute excessive force since, pursuant to statute, writ of possession could be effectuated without a warrant. Busch v. Torres, C.D.Cal.1995, 905 F.Supp. 766. Civil Rights 1088(2); Civil Rights 1351(4)

885. Rescue attempts, custom or usage

Municipality could not be held liable under § 1983 for its policy of prohibiting rescue attempts by unauthorized civilians; policy was not unconstitutional where it involved choice without single right answer and it was not product of reckless indifference to value of life or designed to cause harm. Ross v. U.S., N.D.Ill.1988, 697 F.Supp. 974, affirmed in part, reversed in part on other grounds 910 F.2d 1422, rehearing denied, on remand 764 F.Supp. 1308. Civil Rights 1351(6)

886. Safety standards, custom or usage

There was no Fourth Amendment violation when police officers conducting raid ordered persons who were approaching the house to "get down" and had them remain on the ground until the situation was under control; actions were justified by right of police to detain occupant of house they have a warrant to search and as an investigatory stop. Baker v. Monroe Tp., C.A.3 (N.J.) 1995, 50 F.3d 1186, rehearing and suggestion for rehearing in banc denied. Arrest 63.5(9); Searches And Seizures 147.1

School district could not be held liable in civil rights action for teacher's allegedly allowing student to use tablesaw without safety guard, absent any indication that school district had policy of allowing students to use tablesaws without safety guard; one expert's opinion that use of tablesaw without safety hatch was act of "conscious indifference" was insufficient to establish unconstitutional policy. Grubbs v. Aldine Independent School Dist., S.D.Tex.1989, 709 F.Supp. 127. Civil Rights 1351(2)

887. Sexual abuse, custom or usage--Generally

School board could not be held liable in § 1983 suit brought by female high school student who was sexually assaulted by teacher, in absence of evidence of policy adopted by board or existence and maintenance of board custom of failure to receive, investigate or act on complaints of violations of female students' constitutional rights to be free of sexual abuse at hands of school district employees; prior to assault, record demonstrated that board knew only that another female student was infatuated with teacher and that teacher had encouraged her, but there was no complaint that teacher had sexually assaulted other student. Gates v. Unified School Dist. No. 449 of Leavenworth County, Kan., C.A.10 (Kan.) 1993, 996 F.2d 1035. Civil Rights 1352(2)

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42 U.S.C.A. § 1983

School district's conscious decision to transfer teacher accused of molesting student to another school, rather than remove him from classroom or report incident to state Department of Human Resources, as school district's sexual abuse policy required and past practice portended, constituted official "policy" upon which school district's liability could be predicated in § 1983 action brought by student molested after transfer; municipality may be held liable for courses of action tailored to specific situation and not intended to control decisions in later situations, and existence of well-established, officially adopted policy will not insulate municipality from liability where policymaker departs from formal rules. Gonzalez v. Ysleta Independent School Dist., C.A.5 (Tex.) 1993, 996 F.2d 745, rehearing and rehearing en banc denied 20 F.3d 471. Civil Rights 1351(2)

School superintendent did not establish or maintain policy which contributed to school bus driver's alleged sexual molestation of girls on school bus and, thus, superintendent was not liable under § 1983; superintendent had previously responded promptly to charges that assistant principal had sexually abused junior high school student, and, upon earlier complaint that same school bus driver had molested student, superintendent responded promptly to complaint, driver was confronted, and those who had been exposed to known facts were convinced that no sexual abuse had occurred. Black by Black v. Indiana Area School Dist., C.A.3 (Pa.) 1993, 985 F.2d 707. Civil Rights 1356

Mayor's personal actions in sexually abusing two minors did not constitute an official policy of city, even if mayor used the powers of his office to carry out the abuse and even though mayor was final policymaker for city, and thus, city was not liable to minors under §§ 1983 for alleged deprivation of their constitutional rights. Doe v. City of Waterbury, D.Conn.2006, 453 F.Supp.2d 537. Civil Rights 1351(6)

888. ---- Deliberate indifference, sexual abuse, custom or usage

Student who alleged that she had been sexually abused by teacher failed to establish deliberate indifference on part of county board of education in failing to act to prevent such abuse, and thus, could not recover in federal civil rights action against board; no evidence was presented which showed that board had custom reflecting deliberate, intentional indifference to sexual abuse of students. Doe v. Claiborne County, Tenn. By and Through Claiborne County Bd. of Educ., C.A.6 (Tenn.) 1996, 103 F.3d 495. Civil Rights 1351(2)

Director of youth detention center was entitled to qualified immunity in action brought by juvenile detainee following delay of four hours in acquiring medical attention for juvenile, who informed supervisor that he had blood in his underwear, but did not inform supervisor that he had been sexually abused by detention center employees; director was not present at center when incident occurred, procedures and policies director instituted were formulated to minimize risk of such an assault, and fact that policies and procedures were ineffective in this instance did not demonstrate necessary callous indifference in policymaking to hold director personally or individually liable. Hill v. Dekalb Regional Youth Detention Center, C.A.11 (Ga.) 1994, 40 F.3d 1176. Civil Rights 1376(1)

High school principal could be found to have been deliberately indifferent to teacher's sexual misconduct with student based on evidence that he had received numerous reports of teacher's inappropriate conduct with female students over the years and with plaintiff specifically, that he regularly dismissed the reports and parents' complaints, that he did not record incidents, and that he declined to discuss incident involving plaintiff with plaintiff, her parents, the teacher, or the superintendent. Doe v. Taylor Independent School Dist., C.A.5 (Tex.) 1994, 15 F.3d 443, certiorari denied 115 S.Ct. 70, 513 U.S. 815, 130 L.Ed.2d 25. Civil Rights 1356

School district was not liable under § 1983 for physical and sexual abuse of handicapped student bus passengers by driver; reports that driver had in isolated cases struck, kissed or fondled children did not indicate custom of deliberate indifference or tacit authorization of unconstitutional conduct by driver. Jane Doe A By and Through Jane Doe B v. Special School Dist. of St. Louis County, C.A.8 (Mo.) 1990, 901 F.2d 642. Civil Rights 1352(2)

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42 U.S.C.A. § 1983

Arrestee who had been sexually assaulted by police office established that city failed to take any remedial action with regard to physical and sexual abuse by police officers, amounting to deliberate indifference to abuse, rather than negligence, and thus proved existence of municipal custom sufficient to support municipal liability under § 1983; arrestee presented evidence of a number of incidents of sexual misconduct by various officers, especially officer who had arrested arrestee, and that city officials in positions of authority had been repeatedly notified of offensive acts. Harris v. City of Pagedale, C.A.8 (Mo.) 1987, 821 F.2d 499, certiorari denied 108 S.Ct. 504, 484 U.S. 986, 98 L.Ed.2d 502, rehearing denied 108 S.Ct. 1066, 484 U.S. 1083, 98 L.Ed.2d 1027. Civil Rights 1352(4)

Genuine issue of material fact, as to whether police chief's inaction in response to female county police officer's complaints of sexual harassment constituted deliberate indifference which resulted in her continued harassment, precluded summary judgment for police chief on §§ 1983 claims. Ensko v. Howard County, Md., D.Md.2006, 423 F.Supp.2d 502. Federal Civil Procedure 2497.1

Female city employee's allegations that director of her department investigated another employee's previous sexual harassment complaints himself instead of referring them to human resources director did not establish that city had a policy of tolerating sexual harassment, as required to bring § 1983 sexual harassment claim against city; department director did not have final authority to establish sexual harassment policy, and neither director's actions or actions of city rose to level of "deliberate indifference" required to prove existence of a city policy. Delaney v. City of Hampton, E.D.Va.1997, 999 F.Supp. 794, affirmed 135 F.3d 769. Civil Rights 1351(5)

Woman who was raped by police officer did not establish policy of deliberate indifference by county to sexual assaults by police officers, so as to allow county to be held liable under federal civil rights statute, where failure to prosecute officer for prior alleged misconduct was due to determination that there was insufficient evidence to obtain a conviction and when police chief imposed punishment for another prior incident involving the officer. Jones v. Ziegler, D.Md.1995, 894 F.Supp. 880, affirmed 104 F.3d 620. Civil Rights 1352(4)

Actions taken or not taken by school officials in response to reports of special education teacher's conduct amounted to custom, practice or policy of deliberate indifference to teacher's actions and to junior high special education student's constitutional rights for purposes of student's § 1983 action wherein he alleged that he suffered sexual, physical and verbal abuse by teacher; complaints made to school officials by teachers and other staff members disclosed sexual overtones of teacher's classroom comments and actions, physical violence in which teacher reportedly engaged in class, teacher's continued giving of late detention, his driving students home and his contact with students after school hours and school officials knew that teacher taught special education students who might not fully understand inappropriateness of teacher's actions and who might be more reluctant than mainstream students to report teacher misconduct. C.M. v. Southeast Delco School Dist., E.D.Pa.1993, 828 F.Supp. 1179. Civil Rights 1351(2)

889. Shoplifting, custom or usage

In order to establish requisite state action in police officer's arresting store customer and taking her to police station for booking after store's security officers detained her on suspicion of shoplifting, customer had to prove "customary" or "pre-existing" arrangement between store and police for detaining suspected shoplifters. Hernandez v. Schwegmann Bros. Giant Supermarkets, Inc., C.A.5 (La.) 1982, 673 F.2d 771. Civil Rights 1404

A detention by store employees is "under color of state law," for purposes of this section proscribing a deprivation of rights, if it is demonstrated that the store employees and the police were acting in concert and that the store and the police had a customary plan which resulted in the detention. Duriso v. K-Mart No. 4195, Division of S. S. Kresge Co., C.A.5 (Tex.) 1977, 559 F.2d 1274. Civil Rights 1326(1)

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42 U.S.C.A. § 1983

890. Signs, banners or billboards, custom or usage

Rule banning cars bearing roof rack political signs from city employee's parking lot was not official policy, as would trigger municipal liability under § 1983; superintendent and manager who told employee not to park in lot was not final authority, and ban was not product of city's legislative body. Silva v. Worden, C.A.1 (Mass.) 1997, 130 F.3d 26. Civil Rights 1351(5)

City involved in lease of professional baseball stadium could be liable under § 1983 for enforcement of baseball team's unconstitutionally vague banner policy, permitting fans to hang signs only if they were in "good taste"; city council approved public assembly license for baseball team, which included security plan under which all security personnel were under senior city police sergeant; city had policy of allowing on duty and off duty police officers to enforce baseball team's regulations in stadium, including banner policy, and city's policy to enforce banner policy was affirmatively linked to alleged denial of fan's constitutional rights through alleged confiscation of his religious sign. Aubrey v. City of Cincinnati, S.D.Ohio 1993, 815 F.Supp. 1100, remanded 65 F.3d 168. Civil Rights 1351(3)

Neither state officials' adoption of policy prohibiting all fixed signs on State House grounds nor application of that policy to an organization was unconstitutional, and thus, state officials could not be held liable in civil rights action for their actions in adopting or applying policy; policy was content-neutral, aesthetic interest advanced in support of policy was valid one justifying reasonable restriction on speech, and absolute prohibition of fixed signs was least restrictive means of preventing aesthetic harm posed by signs, and therefore, curtailed no more speech than was necessary to accomplish its purpose. Grass Roots Organizing Workshop (GROW) v. Campbell, D.S.C.1988, 704 F.Supp. 644. States 88; Constitutional Law 90.3

891. Tenancy by entirety, custom or usage

Tenancy by entirety is custom or usage enforced by persistent practices of state officials sufficient to satisfy state action prerequisites for civil rights actions. D'Ercole v. D'Ercole, D.C.Mass.1976, 407 F.Supp. 1377. Civil Rights 1326(1)

892. Witnesses, custom or usage

Homeless man who was arrested and detained by city police detective pending his testimony in murder prosecution failed to establish that city adhered to a policy regarding handling of material witnesses that violated his civil rights, as was required to hold city liable in action under § 1983. White by Swafford v. Gerbitz, C.A.6 (Tenn.) 1989, 892 F.2d 457. Civil Rights 1351(4)

Decisions made by sheriff and county prosecutor in course of their duties with respect to incarceration of material witness constituted county policy, so that county was liable under § 1983 for actions taken pursuant to those decisions; sheriff and prosecutor made policy with regard to operation of their offices and discharge of their duties, and county commissioners had no authority to override their decisions except in budgetary matters. Stone v. Holzberger, S.D.Ohio 1992, 807 F.Supp. 1325, affirmed 23 F.3d 408. Civil Rights 1351(4)

893. Zoning, custom or usage

Corporate owner of rental properties and its shareholders properly pled governmental custom/policy to support federal civil rights suit under § 1983 where they alleged that board of county commissioners knew of failure of code enforcement officer and of failure of building and zoning department to employ proper procedures for code enforcement and established custom and policy which deprived corporation and its shareholders of their rights under Federal Constitution and laws. WAM Properties, Inc. v. Desoto County, Florida, M.D.Fla.1991, 758 F.Supp. 1468. Civil Rights 1395(3)

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42 U.S.C.A. § 1983

County could not be held liable under § 1983 for alleged constitutional violations in connection with denial of zoning permit to operate adult entertainment establishment, where denial was not the result of county's policy, but was mandated by state statute prohibiting such establishment with 2,800 feet of church or school. Lui v. Commission on Adult Entertainment Establishments of State of Delaware, D.Del.2003, 213 F.R.D. 166, affirmed in part, reversed in part and remanded 369 F.3d 319, on remand 2004 WL 1635526. Civil Rights 1351(3)

894. Miscellaneous customs or usages

School district could not be liable in high school student's § 1983 Establishment Clause claim arising from school board member's recitation, on his own initiative, of Christian prayer at graduation ceremony; district policy or custom was not shown either by inclusion of prayer in rehearsal for ceremony, which led to district's cancellation of planned prayer due to objections and in turn led to board member's recitation to protest cancellation, nor by district's failure to disclaim recitation. Doe ex rel. Doe v. School Dist. of City of Norfolk, C.A.8 (Neb.) 2003, 340 F.3d 605, rehearing and rehearing en banc denied. Civil Rights 1351(2)

Discretionary act of one town official in approving construction plans for lot across from homeowners' lot after others officials assured homeowners that the lot was unbuildable did not give rise to municipal liability under §§ 1983 or Massachusetts Civil Rights Act (MCRA) where there was no evidence that the town had an official policy or custom that violated, or was deliberately indifferent to, homeowners' constitutional rights; even if town official was an official policymaker, his informal act of telling homeowners that lot was unbuildable did not rise to the level of an official municipal policy or custom. Sampson v. Town of Salisbury, D.Mass.2006, 441 F.Supp.2d 271. Civil Rights 1737

Genuine issue of material fact as to whether decisions to deny utility and sewer services to owners of beachfront properties constituted city's "official policy" precluded summary judgment in owners' §§ 1983 action against city on ground that owners' alleged harm was not attributable to city. Mikeska v. City of Galveston, S.D.Tex.2004, 328 F.Supp.2d 671, vacated and remanded 419 F.3d 431, withdrawn and superseded on denial of rehearing 2006 WL 1529729. Federal Civil Procedure 2491.5

Demonstrators who brought civil rights action against city and courthouse square management company, challenging ordinance under which they were excluded from square, demonstrated that city's policy was to have ordinance enforced as written, as required to establish municipal liability under §§ 1983; company managed square on behalf of city, company contracted to provide security within square, and exclusion ordinance was enforced in square. Yeakle v. City of Portland, D.Or.2004, 322 F.Supp.2d 1119, reconsideration denied 2004 WL 1396365. Civil Rights 1351(6)

County could not be liable in arrestee's §§1983 Eighth Amendment action alleging that bail of $1 million, enhanced from $50,000 listed in county's felony bail schedule, was excessive; there was no showing that county had custom or policy of violating state statutes concerning how bail enhancements could be obtained, given that statutes did not preclude county's challenged practice of using probable cause declaration in support of enhancement request, and given absence of statutory limit on county's seeking enhancement. Galen v. County of Los Angeles, C.D.Cal.2004, 322 F.Supp.2d 1045. Civil Rights 1351(4)

City police department patrol guide which unconstitutionally required police officers to arrest individuals at request of transit officers provided basis upon which to impose § 1983 liability on city in civil rights action brought by accused whom police officers arrested without probable cause pursuant to such policy. Wu v. City of New York, S.D.N.Y.1996, 934 F.Supp. 581. Civil Rights 1351(4)

Claimant could not maintain § 1983 action against county official in her official capacity for alleged violations of her civil and constitutional rights when she was allegedly ordered to sign tax return against her will in marriage dissolution proceedings, where claimant did not allege that her alleged constitutional injuries were caused by any

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policy or practice employed by county. Del Marcelle v. State of Wis., E.D.Wis.1995, 902 F.Supp. 859. Civil Rights 1351(6)

School board members' release, pursuant to South Dakota statutory requirement, of board meeting minutes, including personally identifiable information respecting publicly funded, out-of-state schooling of autistic student, to third parties without students' parents' consent was not done under official policy or custom of school board so as to render school board liable under § 1983 to student and parents for violation of Family Educational Rights and Privacy Act (FERPA), where decision to so publish minutes was solely attempt to accommodate conflicting statutory requirements. Maynard v. Greater Hoyt School Dist. No. 61-4, D.S.D.1995, 876 F.Supp. 1104. Civil Rights 1351(2)

Former female police officer's testimony that in the late 1970s female officers perceived that they were not welcome in special units and plaintiff female officer's testimony that in 1984 she and other members of female officers' association brought their concerns to attention of county manager and director of public safety was insufficient to establish that widespread practice or custom to exclude women from specialized units actually existed within police department in 1988 when plaintiff requested that she be transferred to canine unit, for purposes of determining whether county was liable under § 1983 on basis of municipal custom. Lawrence v. Metro Dade County, Fla., S.D.Fla.1994, 872 F.Supp. 957. Civil Rights 1420

Board of county commissioners' public authorization of lawsuit against corporate owner of rental properties for asserted code violations constituted act of official governmental policy, for purposes of subsequent civil rights suit brought under § 1983 against board by corporation and its shareholders. WAM Properties, Inc. v. Desoto County, Florida, M.D.Fla.1991, 758 F.Supp. 1468. Civil Rights 1351(3)

Owners and operators of funeral homes stated claim under § 1983 and Fourteenth Amendment against county hospital and administrator and trustees for deprivation of property and liberty without due process based on allegations that county officials had failed to follow an official county policy whereby funeral home owners would receive half of all coroner cases from a county hospital. Bussell v. Stahl, D.Wyo.1987, 669 F.Supp. 381. Civil Rights 1395(1); Constitutional Law 275(1)

Existence of county regulation establishing fees for water meters did not demonstrate an unconstitutional policy or custom of false arrests, so as to give rise to §§ 1983 claim by purchaser of "as is" house who was charged for installation of a new water meter and arrested for theft of utility services. Sherman v. County of Maui, C.A.9 (Hawai'i) 2006, 191 Fed.Appx. 535, 2006 WL 1876875, Unreported. Civil Rights 1351(4)

Property owners failed to prove that village, in destroying buildings in which they claimed an interest, operated pursuant to an unconstitutional policy or custom requiring officials to violate the constitutional rights of its citizens, thus defeating the owners' claims of race and national origin discrimination. Myers v. Village of Alger, Ohio, C.A.6 (Ohio) 2004, 102 Fed.Appx. 931, 2004 WL 1379946, Unreported. Civil Rights 1351(3)

Absence of allegation or evidence that city operated pursuant to unconstitutional policy or custom requiring its police officers to violate constitutional rights of its citizens precluded city's § 1983 liability to motorist based on police officer's alleged violation of motorist's rights. Vintilla v. City of Rocky River, C.A.6 (Ohio) 2004, 96 Fed.Appx. 274, 2004 WL 422723, Unreported, certiorari denied 125 S.Ct. 61, 543 U.S. 821, 160 L.Ed.2d 31, rehearing denied, rehearing denied 125 S.Ct. 645, 543 U.S. 1015, 160 L.Ed.2d 486. Civil Rights 1351(4)

Absent identification of official policy or custom that caused deprivation of a constitutional right, state prisoner's argument that director of property room for a criminal court was liable under civil rights laws in his official capacity was without merit. Treece v. Louisiana, C.A.5 (La.) 2003, 74 Fed.Appx. 315, 2003 WL 21697189, Unreported. Civil Rights 1358

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42 U.S.C.A. § 1983

42 U.S.C.A. § 1983, **42 USCA § 1983**

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42 U.S.C.A. § 1983

Effective: October 19, 1996

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

➞§ 1983. Civil action for deprivation of rights

<Notes of Decisions for 42 USCA § 1983 are displayed in four separate documents. Notes of Decisions for subdivisions X to XXVIII are contained in this document. For text of section, historical notes, references, and Notes of Decisions for subdivisions I to IX, see first document for 42 USCA § 1983. For Notes of Decisions for subdivisions XXIX to end, see 42 USCA § 1983, post.>

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921. Particular persons under color of law generally

All-encompassing language of Civil Rights Act of 1871 referring to "(e)very person" who, under color of law, deprives another of federal constitutional or statutory rights is not to be taken literally. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Civil Rights 1335

Sheriff was not entitled to quasi-judicial immunity for detaining arrestee for eight days without judicial probable cause determination, notwithstanding initial appearance at which bond was set, absent evidence as to substance and circumstances of judge's order. Lingenfelter v. Board of County Com'rs of Reno County, Kan., D.Kan.2005, 359 F.Supp.2d 1163. Civil Rights 1376(6); Civil Rights 1376(8)

Standard for causation in § 1983 action against persons acting under color of state law is legal, or proximate, causation; accordingly, inquiry into causation must focus on duties and responsibilities of each of the individual defendants whose acts or omissions are alleged to have resulted in constitutional deprivation. Andre v. Castor, M.D.Fla.1997, 963 F.Supp. 1158, affirmed in part, reversed in part 144 F.3d 55. Civil Rights 1031

922. Private persons, particular persons under color of law

Private citizen who received a letter from husband of patient inquiring as to whether she had been sexually assaulted while a patient at county hospital could not be held liable in husband's §§ 1983 claim for conspiracy to violate his constitutional rights, stemming from citizen's communication with hospital, where citizen exerted no influence over the hospital, her judgment was not substituted for that of the hospital, and she did not participate in the hospital's decision to file libel suit against husband. Beedle v. Wilson, C.A.10 (Okla.) 2005, 422 F.3d 1059. Conspiracy 7.5(1)

Nongovernmental private defendants may not be held liable for plaintiff's arrest under § 1983, even if made without probable cause, unless their actions were "state action," and if deprivation occurred under color of state law. Daniel v. Ferguson, C.A.5 (Tex.) 1988, 839 F.2d 1124. Civil Rights 1326(4)

A cause of action under this section which imposes liability on any person who under color of state law deprives any citizen or other person within the jurisdiction of the United States of rights or privileges secured by the Constitution and laws requires that a state, not a private party, act to deprive one of constitutionally protected rights. Berrios v. Inter Am. University, C.A.1 (Puerto Rico) 1976, 535 F.2d 1330. Civil Rights 1326(4)

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Within meaning of this section, a private person may act under color of law. Shirley v. State Nat. Bank of Connecticut, C.A.2 (Conn.) 1974, 493 F.2d 739, certiorari denied 95 S.Ct. 329, 419 U.S. 1009, 42 L.Ed.2d 284. Civil Rights 1326(4)

Village attorney's filing of defamation lawsuit in state court against village resident who repeatedly criticized his performance was not an exercise of his state-granted power, and thus, attorney was not acting under color of state law as required for § 1983 liability; village attorney's First Amendment right to access courts to settle civil claim was not a power that stemmed solely from his position. O'Bradovich v. Village of Tuckahoe, S.D.N.Y.2004, 325 F.Supp.2d 413. Civil Rights 1326(10)

Church and its officials were not "acting under color of state law," as required for elder to state meritorious §§ 1983 claim for alleged violation of his due process and equal protection rights in appeal to governing body of church regarding his employment; church officials were not state actors, and Bill of Rights protected persons against government action, not internal church proceedings. Baker v. AME Church Judicial Council, N.D.Ind.2004, 320 F.Supp.2d 786. Civil Rights 1326(11)

Bail bonding is private function, and thus bail bondsmen are not state actors under "public function test" for potential private-party liability under § 1983; right of bondsmen to apprehend their principals arises out of contract rather than statute, and bail bonding has never been exclusive privilege of sovereign. Green v. Abony Bail Bond, M.D.Fla.2004, 316 F.Supp.2d 1254. Civil Rights 1326(9)

Private conduct is state action for purposes of § 1983 where there exists a sufficiently close nexus between the State and the challenged action of the private entity so that the action of the latter may be fairly treated as that of the State itself; the close nexus is ordinarily present when it is proven that the state has exercised coercive power over a private decision or has provided such significant encouragement, either overt or covert, that the choice in law must be deemed to be that of the state. Ruhlmann v. Ulster County Dept. of Social Services, N.D.N.Y.2002, 234 F.Supp.2d 140. Civil Rights 1326(4)

While § 1983 generally does not extend to conduct of private individuals, private individual may be subject to § 1983 liability if individual acted under color of state law by exercising power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law. Copeland v. Northwestern Memorial Hosp., N.D.Ill.1997, 964 F.Supp. 1225. Civil Rights 1326(4)

Activity of private individual can be deemed to be "under color of law" for purposes of § 1983 where private party has acted together with or has obtained significant aid from state officials, or his conduct is otherwise chargeable to the state; however, a private action is not converted into one under color of state law merely by some tenuous connection to the state action, and the issue is not whether the state was involved in some way in the relevant events but whether the action taken can be fairly attributed to the state itself. D'Aurizio v. Palisades Park, D.N.J.1997, 963 F.Supp. 387, affirmed 151 F.3d 1024, certiorari denied 119 S.Ct. 166, 525 U.S. 870, 142 L.Ed.2d 135. Civil Rights 1326(5)

In most contexts, § 1983 "acting under color of state law" inquiry is identical to "state action" requirement under Fourteenth Amendment; activity of actor who is not state or municipal official can nevertheless be deemed to be under color of law if private party acts together with or obtains significant aid from state officials, or if such party's conduct is otherwise chargeable to state. D'Aurizio v. Palisades Park, D.N.J.1997, 963 F.Supp. 378, affirmed 151 F.3d 1024, certiorari denied 119 S.Ct. 166, 525 U.S. 870, 142 L.Ed.2d 135. Civil Rights 1325; Civil Rights 1326(5)

Joint action between private party and state actor may render private person liable under § 1983. Chapman v. Village of Homewood, N.D.Ill.1997, 960 F.Supp. 127. Civil Rights 1326(5)

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Private citizen may be subject to liability under § 1983 only if he willfully collaborated with an official state actor in deprivation of a federal right. Pravda v. City of Albany, N.Y., N.D.N.Y.1997, 956 F.Supp. 174. Civil Rights 1326(5)

Private individuals act "under color of" state law, and thus are subject to suit under § 1983, only where jointly engaged with public official in deprivation of federal rights. Nielsen v. Village of Lake in the Hills, N.D.Ill.1996, 948 F.Supp. 786. Civil Rights 1326(5)

Terminated employee could not maintain § 1983 claim against former employer, absent showing that employer was public, as opposed to private, actor. Cagle v. Unisys Corp., S.D.N.Y.2003, 2003 WL 21939705, Unreported. Civil Rights 1326(11)

Motel manager could not be liable under § 1983 for allegedly falsely accusing prisoner of breaking into a trailer and illegally confiscating prisoner's personal property, where manager was private individual, engaging in purely private conduct. Bryant v. Motel 6 Manager, N.D.Cal.2003, 2003 WL 21767461, Unreported. Civil Rights 1326(4)

Motel manager could not be liable under §§ 1983 for allegedly falsely accusing prisoner of breaking into a trailer and illegally confiscating prisoner's personal property, where manager was private individual, engaging in purely private conduct. Bryant v. Motel 6 Manager, N.D.Cal.2003, 2003 WL 21767461, Unreported. Civil Rights 1326(4)

Union was not liable to terminated college professor under § 1983, inasmuch as union was private actor and did not engage in state action. Commodari v. Long Island University, C.A.2 (N.Y.) 2003, 62 Fed.Appx. 28, 2003 WL 1785893, Unreported. Civil Rights 1326(11)

Salesperson, who claimed that she was victim of harassment and adverse employment actions because of her personality traits, and because she was perceived as too aggressive, failed to state cause of action for discrimination under Title VII because she failed to establish her membership in any protected group. Zainalizadeh v. Neiman Marcus Group, N.D.Cal.2002, 2002 WL 31007465, Unreported.

Private corporation could not be held liable under § 1983 for alleged discrimination against salesperson due to her religion since it was not a state actor and there was no evidence that it conspired with state actors to deprive salesperson of her constitutional rights. Zainalizadeh v. Neiman Marcus Group, N.D.Cal.2002, 2002 WL 31007465, Unreported. Civil Rights 1326(11)

922A. Private companies, particular persons under color of law

Private information technology company was not acting under color of state law when it adopted requirement that employees provide their social security numbers, precluding §§ 1983 action by employee terminated for failure to provide number. McCauley v. Computer Aid Inc., E.D.Pa.2006, 447 F.Supp.2d 469. Civil Rights 1326(11)

923. Accounting firms, particular persons under color of law

Private accounting firm whose work did not depend primarily on government contracts did not become a state actor for purposes of this section simply because it was performing an audit for state agency at time that firm and two state officials allegedly defamed plaintiff, interfered with contract, and violated due process and rights under U.S.C.A. Const.Amend. 1. McGillicuddy v. Clements, C.A.1 (N.H.) 1984, 746 F.2d 76. Civil Rights 1326(4)

924. Administrators, particular persons under color of law

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Conduct of independent administrator appointed to oversee remedial provisions of consent decree in litigation involving alleged influence of organized crime on union did not amount to "state action" that could have permitted union officers and members to maintain constitutional challenges to discipline. U.S. v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, S.D.N.Y.1991, 777 F.Supp. 1123. Constitutional Law 254(4)

925. Agricultural societies, particular persons under color of law

Trade association that included farmers and growers involved in the poultry business did not act under the color of state law when it purchased flocks of poultry allegedly infected with avian influenza and then destroyed the flocks, as required for poultry producers' §§ 1983 claim alleging violations of due process; the final decision about quarantine and depopulation rested solely with the Secretary of Agriculture who exercised that authority after considering the recommendation of the Commonwealth's veterinarian, and, poultry producer clearly knew that he could wait for the results of more definitive tests for his flocks, but nevertheless agreed to depopulate them in the absence of a formal order from the Pennsylvania Department of Agriculture to do so and he was compensated for all of the birds that were destroyed as well as for costs of depopulation and clean up. Reichley v. Pennsylvania Dept. of Agriculture, C.A.3 (Pa.) 2005, 427 F.3d 236. Civil Rights 1326(4)

Where state fair was a public function which presented a public forum frequently used by political, religious, and civil groups, where state statute authorized the creation of a state fair board as an executive state agency, where the promotion of fairs and exhibits was governed by state law, where the sponsoring agricultural society received money from the board for capital improvements and for prizes, and where board leased office space from agricultural society and the state police protected the general public attending the fair, actions taken by the agricultural society were state action for purposes of U.S.C.A.Const. Amends. 1 and 14. Edwards v. Maryland State Fair and Agr. Soc., D.C.Md.1979, 476 F.Supp. 153, affirmed in part, reversed in part on other grounds 628 F.2d 282. Constitutional Law 254(4)

926. American Legion, particular persons under color of law

In organizing Memorial Day parade on town streets, American Legion stood in place of town, clothed with its authority, so that its denial of request by antiabortion group to march in parade constituted "state action" within meaning of this section. North Shore Right to Life Committee v. Manhasset Am. Legion Post No. 304, Town of North Hempstead, E.D.N.Y.1978, 452 F.Supp. 834. Civil Rights 1326(1)

927. Arbitrators, particular persons under color of law

Neither arbitrators nor dispute resolution company qualified as state actors, precluding §§ 1983 claim brought by investor alleging that by precluding evidence he sought to present at his arbitration hearing the arbitrator defendants refused to grant him Due Process and violated his civil rights. Weinraub v. Glen Rauch Securities, Inc., S.D.N.Y.2005, 399 F.Supp.2d 454, affirmed 2006 WL 1236149. Constitutional Law 254(4)

Actions of private arbitrator, appointed pursuant to collective bargaining agreement between city and police association for purposes of determining employment related dispute in which city was party, were not undertaken under color of state law and were not attributable to city, for purposes of former police officer's § 1983 action against city. McDaniels v. City of Philadelphia, E.D.Pa.1999, 56 F.Supp.2d 578. Civil Rights 1326(9)

928. Associations or organizations, particular persons under color of law-- Generally

In light of uncontradicted affidavit showing that Alabama Education Association was not state agency but voluntary group of teachers, administrators and supervisors supported solely by dues paid by its members, and that

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many employees of state school system were not members, insufficient state involvement existed to bring transfer of employee from one supervisory position to another by the association, allegedly in violation of his civil rights, within the ambit of this section and U.S.C.A.Const. Amend. 14. Harris v. Hubbert, C.A.5 (Ala.) 1979, 588 F.2d 167. Civil Rights 1326(11); Constitutional Law 213(4)

Reality of an association's purpose, organization and activities and not the appellation given it by the state determines whether association has acted under color of state law in violation of U.S.C.A.Const. Amend. 14. Robison v. Wichita Falls & North Texas Community Action Corp., C.A.5 (Tex.) 1975, 507 F.2d 245. Civil Rights 1326(1)

Charitable organization that maintained residential facility for juveniles and that received child for temporary placement from county pending resolution of the child's parent's petition alleging that the child was a person in need of supervision (PINS) was a "state actor" for purposes of the parent's § 1983 suit alleging violation of the parent's First Amendment freedom of religion rights. Whalen v. Allers, S.D.N.Y.2003, 302 F.Supp.2d 194. Civil Rights 1326(1)

Ambulance association was not acting under color of state law in allegedly refusing to render assistance to shooting victim, for purposes of amenability to civil rights suit under § 1983, on theory that there was a symbiotic relationship between it and the state, even though association was extensively regulated and received financial support from the government through Medicaid and Medicare fees, where association was private, nonprofit organization, its board and staff members were not government officials nor appointed by government officials, and its membership consisted of volunteers. McKinney v. West End Voluntary Ambulance Ass'n, E.D.Pa.1992, 821 F.Supp. 1013. Civil Rights 1326(7)

Taxicab association formed for purposes of regulating taxicab service at airport was not acting under color of state law and could not be liable for violations of civil rights under this section where board of directors consisted of representatives from each of the taxicab companies, no members of airport board or employees of airport attended association board meetings or had any voice in its deliberations or actions, and its only connection with state was requirement in taxicab licenses that each taxicab doing business on airport property participate in sharing cost of starter system for fair distribution of taxicabs. Watkins v. Reed, E.D.Ky.1983, 557 F.Supp. 278, affirmed 734 F.2d 17. Civil Rights 1326(7)

929. ---- Advisory organization, associations or organizations, particular persons under color of law

Neither official of local branch of national minority rights advisory organization nor volunteer member of neighborhood watch program who provided him with copy of tape recording of telephone conversation involving police administrator were employed by or agents of state, county, or city, as required to satisfy "under color of state law" requirement for cause of action against them under § 1983. Spetalieri v. Kavanaugh, N.D.N.Y.1998, 36 F.Supp.2d 92. Civil Rights 1326(4)

930. ---- Athletic or interscholastic associations, associations or organizations, particular persons under color of law

State high school association which was a purely voluntary association with a membership made up 85% by public schools had sufficient public character to confer state action for purposes of § 1983. Griffin High School v. Illinois High School Ass'n, C.A.7 (Ill.) 1987, 822 F.2d 671. Civil Rights 1326(6)

Adoption of rules by the National Collegiate Athletic Association which limited transfer student's ability to participate in intercollegiate athletics was not action "under color of state law" for purposes of student's § 1983 action; regulation of intercollegiate athletics is not a function traditionally exclusively reserved to the state; moreover, student presented no evidence that any state-supported university caused, directed or controlled the

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implementation of the rules. Graham v. National Collegiate Athletic Ass'n, C.A.6 (Ky.) 1986, 804 F.2d 953. Civil Rights 1326(6)

Activities of college athletic association having as members some 800 public and private colleges were the equivalent of "state action" for purposes of this section and U.S.C.A.Const. Amend. 14 and, therefore, bylaw promulgated by the association was to be tested under U.S.C.A.Const. Amend. 14 as if it were an enactment of a state legislature. Hennessey v. National Collegiate Athletic Ass'n, C.A.5 (Ala.) 1977, 564 F.2d 1136. Civil Rights 1326(6); Constitutional Law 213(4); Constitutional Law 254(4)

National Collegiate Athletic Association activities constituted governmental action for purposes of constitution and civil rights action. Regents of University of Minnesota v. National Collegiate Athletic Ass'n, C.A.8 (Minn.) 1977, 560 F.2d 352, certiorari dismissed 98 S.Ct. 600, 434 U.S. 978, 54 L.Ed.2d 472. Civil Rights 1326(6)

Tennessee Secondary Schools Athletic Association (TSSAA) was a state actor, subject to suit under § 1983 for violation of federal constitutional or statutory rights, even though it was an incorporated non-profit corporation; its membership was largely composed of public schools, its governing units were entirely comprised of public school personnel, and state recognized its rules and regulations as binding upon conduct of secondary school athletics. Brentwood Academy v. Tennessee Secondary Schools Athletic Ass'n, M.D.Tenn.1998, 13 F.Supp.2d 670, reversed 180 F.3d 758, rehearing en banc denied 190 F.3d 705, certiorari granted 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069, reversed 121 S.Ct. 924, 531 U.S. 288, 148 L.Ed.2d 807, on remand 262 F.3d 543. Civil Rights 1326(6)

Actions of voluntary interscholastic athletic associations, of which public schools comprise part of membership, constitute "state action," for purposes of § 1983. Dennin v. Connecticut Interscholastic Athletic Conference, Inc., D.Conn.1996, 913 F.Supp. 663, vacated, appeal dismissed 94 F.3d 96. Civil Rights 1326(6)

931. ---- Bar associations, associations or organizations, particular persons under color of law

Private bar associations did not engage in state action by formulating disciplinary rules adopted by Illinois Supreme Court and federal district court so as to be subject to § 1983 claim alleging that rules were unconstitutional. Lawline v. American Bar Ass'n, C.A.7 (Ill.) 1992, 956 F.2d 1378, certiorari denied 114 S.Ct. 551, 510 U.S. 992, 126 L.Ed.2d 452. Civil Rights 1326(10)

Section 1983 suit for monetary, injunctive, and declaratory relief could not be maintained against presidents of state bar association absent showing of sufficiently close nexus between state bar and state bar association to establish association and its presidents as state actors. Perry v. Barnard, S.D.Ind.1989, 745 F.Supp. 1394, affirmed 911 F.2d 736. Civil Rights 1326(10)

932. ---- Mental health associations, associations or organizations, particular persons under color of law

Neither the fact that mental health association, against whose president, medical director and executive committee a former staff psychiatrist brought suit under this section receives governmental funds and may be subject to state regulation, nor the fact that it is the sole entity in the North Shore receiving referrals from state mental health hospitals for out-patient care, converted its activities into those of the state for purposes of jurisdiction under this section. Baron v. Carson, N.D.Ill.1976, 410 F.Supp. 299. Federal Courts 222

933. ---- Civic associations, associations or organizations, particular persons under color of law

Private organizer of festival was not "state actor," and thus was not subject to liability under §§ 1983 for expelling motorcycle club member for violating festival's dress code, even though festival was held in city park, and festival security used city police officer to aid in expelling members. Villegas v. City of Gilroy, N.D.Cal.2005, 363

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F.Supp.2d 1207. Civil Rights 1326(4)

Fact that alleged acts of civic association and its members in conspiring and acting to harass and delay Hasidic Jews who sought to establish housing development on land they owned in New York were joined in by municipal official would not establish state action requirement for civil rights action under this section where plaintiff failed to join municipal official in action. Weiss v. Willow Tree Civic Ass'n, S.D.N.Y.1979, 467 F.Supp. 803. Civil Rights 1326(5)

934. ---- Homeowners, associations or organizations, particular persons under color of law

Condominium association did not act under color of state law when its board of directors enacted rule barring all canvassing or distributing of materials to individual units other than those materials related to political campaigning, and thus, unit occupant did not have viable § 1983 action against association and board for First Amendment free speech violation, despite claim that association had powers traditionally associated with the state, as association had power to make rules, conduct hearings, issue decisions, and impose fines and liens. Goldberg v. 400 East Ohio Condominium Ass'n, N.D.Ill.1998, 12 F.Supp.2d 820. Civil Rights 1326(4)

Illinois statute providing that no condominium rule or regulation may impair any rights guaranteed by First Amendment is not an acknowledgment by Illinois that condominium associations are state actors subject to § 1983 suit; statute simply prohibits associations from unduly restricting ordinary political speech or activities. Goldberg v. 400 East Ohio Condominium Ass'n, N.D.Ill.1998, 12 F.Supp.2d 820. Civil Rights 1326(4)

Condominium penthouse owners' § 1983 complaint did not contain any allegations supporting their claim that council of co-owners of condominium (co-owners) acted under color of state law in prior lawsuit brought by co-owners against penthouse owners pursuant to state property law, and thus penthouse owners' failed to allege essential element of their § 1983 claim against co-owners. Rullan v. Council of Co-Owners of McKinley Court Condominium, D.Puerto Rico 1995, 899 F.Supp. 857. Civil Rights 1396

Homeowners association's alleged removal of "for sale" signs from landowner's property and enforcement of deed restriction did not involve state action necessary for violation of First and Fourteenth Amendments and action under §§ 1983. Barr v. Camelot Forest Conservation Ass'n., Inc., C.A.3 (Pa.) 2005, 153 Fed.Appx. 860, 2005 WL 2891771, Unreported, certiorari denied 2006 WL 927038. Constitutional Law 254(4)

935. ---- Parent-teacher associations, associations or organizations, particular persons under color of law

That community school boards are authorized to establish parents' or parent-teacher associations under New York Education Law does not make the officers of the parents' or parent-teacher associations "public officials" for purpose of state action requirement. Buck v. Board of Elections of City of New York, C.A.2 (N.Y.) 1976, 536 F.2d 522. Civil Rights 1326(6)

936. ---- Professional associations, associations or organizations, particular persons under color of law

Suit brought under § 1983 against realtor's association, by former attorney for state professional licensing bureau, alleging that he was wrongfully terminated after disclosing to association existence of quota system governing initiation of disciplinary proceedings, would be dismissed, for failure to show that association was acting under color of state law. Grigsby v. Kane, M.D.Pa.2003, 250 F.Supp.2d 453. Civil Rights 1326(4)

Physician's complaint alleging that investigation undertaken by peer review committee of county medical society into claims that he was overcharging for his services went beyond legitimate necessity by inquiring into the merits of his underlying procedures failed to state a cause of action under this section, since the actions of the peer review committee, as implemented by its chairman, were not undertaken under color of state law. Greenfield v. Kanwit,

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S.D.N.Y.1982, 546 F.Supp. 220, affirmed 714 F.2d 113. Civil Rights 1396

University chapter of professors association and its chapter president could not be held liable for violating this subchapter by depriving suspended teacher of his civil rights under color of state law, where president and association acted in opposition to state by taking up teacher's grievance and the representation was not sham or result of collusion, and their acts could not be held to be those of state merely because association had entered into collective bargaining agreement with university and conformed to it. Victor v. Brickley, E.D.Mich.1979, 476 F.Supp. 888. Civil Rights 1326(11)

Homeowners' association was not "state actor," capable of being sued under § 1983 by real estate developer claiming that association's actions taken in opposition to subdivision application violated due process rights of members. Chapel Farm Estates, Inc. v. Moerdler, S.D.N.Y.2003, 2003 WL 21998964, Unreported. Civil Rights 1326(4)

937. ---- Religious organizations, associations or organizations, particular persons under color of law

Young Men's Christian Association does not act under color of state law when evicting occupants of its rooms, for purpose of determining Association's liability under federal civil rights statute; Association is private, charitable, and not-for-profit corporation, Association does not enjoy any special powers granted by any governmental authority to facilitate eviction of tenant or otherwise ease its operations, and Association does not receive substantial funding from state sufficient to justify deeming its actions those of state. Studifin v. New York City Police Dept.--License Div.--Firearms Control Section, S.D.N.Y.1990, 728 F.Supp. 990. Civil Rights 1326(4)

Fact that church's youth services organization received and relied heavily on state funding, had referrals made to it by state agencies, and was engaged in welfare programs which were traditionally a public function dealt with by government agencies was insufficient to bring its actions under color of state law for purposes of civil rights claim. Wright v. Methodist Youth Services, Inc., N.D.Ill.1981, 511 F.Supp. 307. Civil Rights 1326(7)

Church leader and arrestee's former attorney were not state actors and thus could not be sued under § 1983. Murray v. Town of Mansura, C.A.5 (La.) 2003, 76 Fed.Appx. 547, 2003 WL 22135637, Unreported. Civil Rights 1326(4); Civil Rights 1326(10)

937A. ---- Miscellaneous, associations or organizations, particular persons under color of law

Animal protection organization, which seized animals of owner and arrested owner on animal cruelty charges, was not deemed government entity for purpose of § 1983 state action requirement; government did not create organization by special law, it did not create it to further governmental objectives, and government did not retain permanent authority to appoint majority of its directors, rather, organization was privately funded, not-for-profit organization without any state funding or oversight. Fabrikant v. French, N.D.N.Y.2004, 328 F.Supp.2d 303. Civil Rights 1326(1); Civil Rights 1326(7)

938. Attorneys, particular persons under color of law--Generally

Private attorney who recommended that client seek help from county victim/witness program with regard to problems she was experiencing with her ex-husband and subsequently talked to county prosecutor about client and ex-husband was not state actor subject to liability in ex-husband's civil rights action; attorney merely recommended that client seek legal assistance from government agency and answered law enforcement official's questions regarding case. Miller v. Compton, C.A.8 (Ark.) 1997, 122 F.3d 1094. Civil Rights 1326(10)

Conduct of retained counsel does not rise to level of "state action" within meaning of § 1983. Lemmons v. Law Firm of Morris and Morris, C.A.10 (Okla.) 1994, 39 F.3d 264. Civil Rights 1326(10)

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Attorneys who represented civil rights plaintiff in criminal proceedings, whether appointed or retained, did not act under color of state law and, thus, were not subject to suit under § 1983. Myers v. Vogal, C.A.8 (Iowa) 1992, 960 F.2d 750. Civil Rights 1326(10)

Attorney does not act "under color of law" within meaning of § 1983 when he or she acts as representative of client in court. Hoai v. Vo, C.A.D.C.1991, 935 F.2d 308, 290 U.S.App.D.C. 142, rehearing denied, certiorari denied 112 S.Ct. 1578, 503 U.S. 967, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 504 U.S. 936, 118 L.Ed.2d 602. Civil Rights 1326(10)

Conduct of counsel, either retained or appointed, in representing clients does not constitute action under color of state law for purposes of a violation of civil rights statute. Bilal v. Kaplan, C.A.8 (Ark.) 1990, 904 F.2d 14. Civil Rights 1326(10)

Conduct of former wife's attorneys in allegedly violating, either intentionally or negligently, notice provisions of New York's contempt law in seeking to obtain maintenance arrearages and execution of documents required by default divorce decree did not constitute "state action" for purpose of this section, since state did not sanction abuse of its otherwise valid law, and could prevent it no more than it could stop a private party from committing a crime or tort. Dahlberg v. Becker, C.A.2 (N.Y.) 1984, 748 F.2d 85, certiorari denied 105 S.Ct. 1845, 470 U.S. 1084, 85 L.Ed.2d 144. Civil Rights 1326(10)

By employing subpoena duces tecum power of state of Oklahoma to obtain medical records of one of parties in child custody proceeding, attorney did not act under color of state law for purposes of civil rights litigation brought against attorney by said party. Barnard v. Young, C.A.10 (Okla.) 1983, 720 F.2d 1188. Civil Rights 1326(10)

Private attorney who had been appointed by federal district court to represent Arkansas inmates against Arkansas Department of Corrections was not acting "under color of state law" for purposes of this section, and same was true even though state funds paid his fees. Chambers v. Kaplan, C.A.8 (Ark.) 1981, 648 F.2d 1193. Civil Rights 1326(10)

Attorney for party in civil litigation who obtained court order permitting him to enter the other party's home and seal certain files upon a showing that there was reason to believe that the other party had not complied with the terms of the discovery order was not acting under color of state law for purposes of this section. Lindley v. Amoco Production Co., C.A.10 (Okla.) 1981, 639 F.2d 671. Civil Rights 1326(10)

Participation by six attorneys as counsel, parties and potential witnesses in civil contempt proceeding did not constitute state action required as a precondition to action brought under this section. Slotnick v. Garfinkle, C.A.1 (Mass.) 1980, 632 F.2d 163. Civil Rights 1326(10)

Actions of privately retained counsel are not considered "state action" and therefore cannot form the basis of a claim under this section. Dunn v. Hackworth, C.A.8 (Mo.) 1980, 628 F.2d 1111. Civil Rights 1326(10)

Conduct of counsel in representing clients does not constitute action under color of state law for purposes of jurisdiction under this section. Lamb v. Farmers Ins. Co., Inc., C.A.8 (Mo.) 1978, 586 F.2d 96. Civil Rights 1326(10)

Conduct of counsel, either retained or appointed, in representing clients does not constitute action under color of state law for purposes of this section. Harkins v. Eldredge, C.A.8 (Mo.) 1974, 505 F.2d 802. Civil Rights 1326(10)

Law firm that sought to hold property owner in contempt for failing to comply with earlier judgment in housing code enforcement action was not a "state actor" by virtue of its successful resort to state court on behalf of its

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municipal client, so as to permit civil rights against firm, absent nexus between actions of law firm and state judiciary, any indication that state delegated its judicial functions to private law firm, or indication that relationship between law firm and state judiciary was symbiotic. Marcello v. Maine, D.Me.2006, 457 F.Supp.2d 55. Civil Rights 1326(10)

Advocate whose job with private agency was to work with victims of family violence was not "state actor" for purposes of civil rights liability for allegedly providing false information to police that led to issuance of warrant to search alleged abuser's home for guns, where her conduct was not fairly attributable to state. Szekeres v. Schaeffer, D.Conn.2004, 304 F.Supp.2d 296. Civil Rights 1326(4)

Private law firm was not "state actor," and thus was not liable under § 1983 for alleged conspiracy with city officials to deprive land developer of clearly established rights, due to its actions as attorney for city and in hiring developer's former attorney, absent evidence that city was in position of interdependence with firm. Florida Country Clubs, Inc. v. Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., M.D.Fla.2000, 98 F.Supp.2d 1356. Civil Rights 1326(10)

Actions of attorney who was alleged only to have acted in capacity of private, retained attorney admitted to practice before circuit court and who was alleged to have failed to inform clients of their right to represent themselves did not constitute "state action." Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1326(10)

Attorney's status under Connecticut law as Commissioner of the Superior Court did not make his alleged wrongful acts attributable to State for purposes of federal civil rights claim. Harvey v. Harvey, D.Conn.1996, 931 F.Supp. 127, affirmed 108 F.3d 329. Civil Rights 1326(10)

Private attorney acting on behalf of client is not "state actor" for purposes of § 1983. Williams v. Dark, E.D.Pa.1993, 844 F.Supp. 210, affirmed 19 F.3d 645. Civil Rights 1326(10)

Private attorney who represented tax sale purchasers in their forcible entry and detainer action did not, as officer of court, "act under color of state law" within meaning of federal civil rights statute. Hirsch v. Copenhaver, D.Wyo.1993, 839 F.Supp. 1524, affirmed 46 F.3d 1151. Civil Rights 1326(10)

Although attorney is officer of court, he does not act under "color of law" within meaning of this section when he participates in the trial of a person charged with crime. U. S. ex rel. Gittlemacker v. Com. of Pa., E.D.Pa.1968, 281 F.Supp. 175, affirmed 413 F.2d 84, certiorari denied 90 S.Ct. 696, 396 U.S. 1046, 24 L.Ed.2d 691. See, also, Peake v. Philadelphia County, Pa., D.C.Pa.1968, 280 F.Supp. 853. Civil Rights 1326(10)

Civil rights plaintiff, claiming that the alleged malpractice of his attorney in his age discrimination case against the state violated his due process rights and equal protection rights, failed to show that his attorney was a state actor, where attorney was not acting on behalf of the state when he was representing plaintiff; thus, plaintiff could not succeed on his civil rights claim against his attorney. Wasko v. Silverberg, C.A.10 (N.M.) 2004, 103 Fed.Appx. 332, 2004 WL 1345105, Unreported, certiorari denied 125 S.Ct. 901, 543 U.S. 1067, 160 L.Ed.2d 800. Constitutional Law 213(4); Constitutional Law 254(4)

939. ---- Defense attorneys or public defenders, particular persons under color of law

Even though defective performance of defense counsel may cause the trial process to deprive an accused of his liberty in an unconstitutional manner, the lawyer who may be responsible for the unconstitutional state action does not himself act under "color of state law" within meaning of this section, a conclusion compelled by character of the office performed by defense counsel. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Civil Rights 1326(10)

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Defendant could not maintain action under this section alleging ineffective assistance of public defenders who represented him, as public defenders performing traditional functions of defense attorneys were not acting under color of governmental authority for purposes of this section. Polk County v. Dodson, U.S.Iowa 1981, 102 S.Ct. 445, 454 U.S. 312, 70 L.Ed.2d 509. See, also, Black v. Bayer, C.A.3(Pa.) 1982, 672 F.2d 309, certiorari denied 103 S.Ct. 230, 459 U.S. 916, 74 L.Ed.2d 182; Holsey v. Chandler, D.C.D.C.1984, 598 F.Supp. 368; Bruce v. Fletcher, W.D.Mo.1984, 584 F.Supp. 5; Harris v. Beynon, N.D.Ill.1983, 570 F.Supp. 690; Jordan-Bey v. Musich, E.D.Mo.1983, 561 F.Supp. 361, affirmed 718 F.2d 1106.

Court-appointed attorneys performing lawyer's traditional functions as counsel to defendant do not act "under color of state law" and therefore are not subject to suit under § 1983. Rodriguez v. Weprin, C.A.2 (N.Y.) 1997, 116 F.3d 62. Civil Rights 1326(10)

Defendants in criminal actions bringing § 1983 suit against state indigent defendant system, alleging that delays in processing of appeals violated their Sixth and Fourteenth Amendment rights, did not satisfy § 1983 requirement that constitutional deprivation be committed by person acting under color of state law; public defender did not so act when performing traditional lawyer functions as counsel to defendants in criminal proceedings. Harris v. Champion, C.A.10 (Okla.) 1995, 51 F.3d 901. Civil Rights 1326(10)

Retained defense counsel was not acting under color of state law with respect to his role in issuance of injunction, as part of plea bargain, prohibiting defendant from operating illicit massage parlors and from engaging in any activities promoting prostitution, and thus could not be liable to operator under civil rights statute [42 U.S.C.A. § 1983]. Russell v. Millsap, C.A.5 (Tex.) 1985, 781 F.2d 381, certiorari denied 107 S.Ct. 103, 479 U.S. 826, 93 L.Ed.2d 53. Civil Rights 1326(10)

Assistant state appellate defender who had been assigned to handle convicted defendant's direct criminal appeal did not act under color of state law in representing defendant on appeal, and thus, defendant's action under this section against appellate defender for allegedly refusing to pursue various issues was properly dismissed. Cornes v. Munoz, C.A.7 (Ill.) 1983, 724 F.2d 61. Civil Rights 1326(10)

Court-appointed attorneys who represented a client on state criminal charges were not acting under color of state law in representing the client, and thus, they were not subject to liability to client under §§ 1983 on claims arising out of that representation. Puckett v. Carter, M.D.N.C.2006, 454 F.Supp.2d 448. Civil Rights 1326(10)

Public appellate defender had not been acting under color of state law when she allegedly inadequately represented state prisoner by not timely filing his habeas petition, since filing habeas petition was lawyer's traditional function as counsel to criminal defendant. Stroman v. South Carolina Office of Appellate Defense, D.S.C.2005, 447 F.Supp.2d 515. Civil Rights 1326(10)

Attorney was not acting under color of state law when she worked as client's personal lawyer in criminal prosecution against client, and, thus, attorney could not be liable under §§ 1983 for allegedly depriving client of his Sixth Amendment right to effective assistance of counsel. Villaran v. Soto, D.Puerto Rico 2005, 404 F.Supp.2d 416. Civil Rights 1326(10)

State public defender did not act under color of state law for purposes of §§ 1983 when providing representation to indigent client in criminal matter, and thus client could not seek damages against public defender under §§ 1983 based on his allegedly fraudulent actions in connection with plea agreement. Carter v. Bennett, W.D.Wis.2005, 395 F.Supp.2d 745. Civil Rights 1326(10)

When representing an indigent defendant in a state criminal proceeding, the public defender does not act under color of state law for the purposes of §§ 1983 because he is not acting on behalf of the State; however, if a public defender conspires with a state official to deprive a criminal defendant of his constitutional rights, public defender

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is deemed to have been acting under color of state law. Nicholson v. Lenczewski, D.Conn.2005, 356 F.Supp.2d 157. Civil Rights 1326(10)

Attorney who had served as criminal defendant's private attorney did not act under color of state law, and thus could not be held liable under § 1983 by pastor who had provided spiritual guidance to defendant, after which he entered into agreement in which defendant turned over media rights to her life story to pastor, and who alleged that attorney had threatened to destroy his credibility if he did not rescind contract and turn over defendant's media rights to attorney. Deleo v. Rudin, D.Nev.2004, 328 F.Supp.2d 1106. Civil Rights 1326(10)

Prisoner's claim that public defender provided ineffective assistance in state prosecution was not cognizable as federal civil rights claim, as public defender was not acting under color of state law in acting as counsel. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Civil Rights 1326(10)

Legal Aid Society attorney who represented criminal harassment defendant was not acting under color of state law by obtaining psychological examination of defendant, precluding defendant's federal Constitutional claims against Society and attorney based on examination; attorney's action was in preparation for trial, and there was no evidence of conspiracy with district attorney or police. Daniel v. Safir, E.D.N.Y.2001, 135 F.Supp.2d 367. Civil Rights 1326(10)

Actions of capital collateral representative and his or her assistants, attorneys who represent indigent defendants sentenced to death, in representing defendants in criminal proceedings are generally not under color of state law, and thus cannot serve as basis for civil rights action against attorneys. Medina v. Minerva, M.D.Fla.1995, 907 F.Supp. 379. Civil Rights 1326(10)

Court-appointed counsel for defendant did not act under color of state law in representing defendant, and defendant thus could not maintain § 1983 action against counsel based on claim of ineffective assistance of counsel, notwithstanding claim that counsel took no action on behalf of defendant or claim that counsel conspired with state actors, which was not alleged in complaint. Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047, affirmed in part, reversed in part 151 F.3d 646. Civil Rights 1326(10)

Court-appointed attorneys did not act under color of law and therefore were not amenable to suit under this section pertaining to deprivation of rights under color of state law. Jackson v. Salon, C.A.1(Mass.) 1980, 614 F.2d 15. See, also, Cerbone v. Westchester County, D.C.N.Y.1981, 508 F.Supp. 780; Polk v. Lewis, S.D.N.Y.1980, 499 F.Supp. 302.

Criminal defendant's conclusory allegations that public defenders in his case conspired with judges and district attorneys to pursue his malicious prosecution were insufficient, even at the pleadings stage, to establish that public defenders were acting under color of state law, for purposes of §§ 1983. Tapp v. Champagne, C.A.2 (N.Y.) 2006, 164 Fed.Appx. 106, 2006 WL 197485, Unreported. Conspiracy 18

Prisoner's defense attorneys could not be liable to prisoner for damages under §§ 1983, as they did not act under color of state law. Harmon v. Delaware Secretary of State, C.A.3 (Del.) 2005, 154 Fed.Appx. 283, 2005 WL 2982216, Unreported. Civil Rights 1326(10)

Private attorney who represented defendant in criminal proceedings did not act under color of state law, and thus was not subject to defendant pursuant to §§ 1983. Winters v. Devecka, C.A.3 (Pa.) 2005, 130 Fed.Appx. 612, 2005 WL 1122649, Unreported. Civil Rights 1326(10)

Disbarred attorney's counsel at disbarment proceedings was not a state actor as required for liability under § 1983 for alleged racial discrimination in the disbarment. Brooks v. Ross, C.A.2 (N.Y.) 2003, 76 Fed.Appx. 356, 2003 WL 21961174, Unreported. Civil Rights 1326(10)

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42 U.S.C.A. § 1983

Court-appointed public defender did not act under color of state law when performing lawyer's traditional functions as counsel to defendant in criminal proceeding, and thus, public defender was not subject to § 1983 liability. Taylor v. Windsor Locks Police Dept., C.A.2 (Conn.) 2003, 71 Fed.Appx. 877, 2003 WL 21697441, Unreported. Civil Rights 1326(10)

Court-appointed attorney for criminal defendant was not acting under color of state law, as required to state § 1983 claim, when he allegedly engaged in unethical conduct. Crawford v. Sherrer, N.D.Cal.2003, 2003 WL 21018238, Unreported. Civil Rights 1326(10)

Attorney appointed by court to represent indigent criminal defendant was not a "state actor" amenable to suit under § 1983. Waller v. Morris, C.A.8 (Ark.) 2000, 230 F.3d 1365, Unreported. Civil Rights 1326(10)

Public defender who had represented plaintiff in underlying criminal proceedings was not a "state actor" amenable to suit under § 1983. White v. Rogers, C.A.8 (Ark.) 2000, 221 F.3d 1346, Unreported. Civil Rights 1326(10)

940. ---- Prosecuting or state's attorneys, particular persons under color of law

Alleged concealment by former prosecuting attorney, during trial and subsequent incarceration of defendant, of his knowledge that confession had been drug induced was not an act under color of state law and thus could not afford basis for action under this section proscribing a deprivation of rights, where at time of alleged concealment prosecuting attorney was no longer acting as the prosecuting attorney in defendant's case which had been transferred to another county. Triplett v. Azordegan, C.A.8 (Iowa) 1978, 570 F.2d 819. Civil Rights 1326(10)

Assistant state's attorney who signed petition in initiating prior judicial inquiry into mental condition of person did not act under color of law within provision of this section making liable any person who, under color of law, subjects another to deprivation of rights secured by Constitution and laws; and that he added official title to signature was of no import, as he acted not in his official position but as private citizen in signing petition. Byrne v. Kysar, C.A.7 (Ill.) 1965, 347 F.2d 734, certiorari denied 86 S.Ct. 902, 383 U.S. 913, 15 L.Ed.2d 668, rehearing denied 86 S.Ct. 1348, 384 U.S. 914, 16 L.Ed.2d 367, rehearing denied 86 S.Ct. 1891, 384 U.S. 994, 16 L.Ed.2d 1011. Civil Rights 1326(2)

State's attorney and sheriff, who aided vendor in removing personal property from property acquired by purchasers, were "persons" acting under color of state law within meaning of § 1983. Kennedy v. Widdowson, D.Md.1992, 804 F.Supp. 737. Civil Rights 1357

Public defender did not act under color of state law, for purposes of § 1983, when he represented defendant during state court trial on drug charges. Garner v. Cole, C.A.8 (Ark.) 2000, 205 F.3d 1345, Unreported. Civil Rights 1326(10)

941. ---- United States Attorneys, particular persons under color of law

Acting United States Attorney was not "acting under color of state law," for purposes of § 1983 action, when he allegedly transmitted to nonincumbent candidate for Pennsylvania Auditor General confidential list of state employees in Auditor General's Office whose employment or positions were believed to have been purchased through unlawful payments, inasmuch as candidate was not state actor at time of alleged concerted and conspiratorial conduct; where neither party who allegedly conspired was state official, there was no state actor to supply even colorable basis for investing federal actor with state mantle. Melo v. Hafer, C.A.3 (Pa.) 1990, 912 F.2d 628, rehearing denied, certiorari granted 111 S.Ct. 1070, 498 U.S. 1118, 112 L.Ed.2d 1176, affirmed 112 S.Ct. 358, 502 U.S. 21, 116 L.Ed.2d 301. Civil Rights 1327

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42 U.S.C.A. § 1983

942. Auditors, particular persons under color of law

Pennsylvania's Auditor General was subject to personal-capacity suit for damages under § 1983 for allegedly improper discharge of commonwealth employees, though she made employment decisions in her official capacity; requirement of action under color of state law meant that Auditor General could be liable for discharging employees precisely because of her authority as Auditor General, and novel proposition that this same official authority insulated her from suit could not be accepted. Hafer v. Melo, U.S.Pa.1991, 112 S.Ct. 358, 502 U.S. 21, 116 L.Ed.2d 301. Civil Rights 1326(11); Civil Rights 1359

Private health care providers that participated in patient's involuntary mental health commitment were not state actors, and thus were not subject to liability under §§ 1983, even though patient was indigent covered by state's health insurance system, and providers received funds from state and sought court authorization for commitment pursuant to state statutory scheme, where statutory scheme did not compel or encourage involuntary commitment, state was not involved in decisions concerning commitment, and neither involuntary commitment nor provision of health care services to indigents were functions reserved exclusively to state. Estades-Negroni v. CPC Hosp. San Juan Capestrano, C.A.1 (Puerto Rico) 2005, 412 F.3d 1. Civil Rights 1326(7); Civil Rights 1326(9)

Employees of reinsurer did not act as agents of investigator employed by state's attorney when they conducted audit of broker, so as to support Fourth Amendment claim brought by broker's owner in §§ 1983 action; although investigator specifically requested that certain files be reviewed by the auditors and knew that the auditors would report their findings back to him, reinsurer initiated its own investigation in part to look into the possibility of fraud and serve its own interests, and was not rewarded for its cooperation with the investigator. Mutual Medical Plans, Inc. v. County of Peoria, C.D.Ill.2004, 309 F.Supp.2d 1067. Searches And Seizures 33

943. Banks, particular persons under color of law

Account holder's allegation that officers and employees of private bank improperly turned over money from account to Internal Revenue Service did not state claim under § 1983, as actions of officers and employees were taken under federal, not state, law. Smith v. Kitchen, C.A.10 (Colo.) 1997, 156 F.3d 1025. Civil Rights 1327

Agreement by banks and bank employees to open noninterest bearing account for inmate's prison income was not sufficient state action to support inmate's § 1983 claim against banks and employees, even assuming that inmate had constitutional right to earn interest on prison income. Mitchell v. Kirk, C.A.8 (Mo.) 1994, 20 F.3d 936. Civil Rights 1326(8)

Even if taxpayer were able to prove that, as alleged, after he had been informed by internal revenue agents that if he did not pay penalty for late payment of federal employment taxes within ten days his assets would be levied upon without further notice and even if taxpayer were to prove that he informed the agents and the bank in which he had an account that, if the account was levied upon he would bring legal action against them, and the agents then levied on the account and the bank transferred the assets to the United States, none of the persons against whom taxpayer brought action had acted under color of state law, and defendants had not violated taxpayer's constitutional and civil rights. Kotmair v. Gray, C.A.4 (Md.) 1974, 505 F.2d 744. Civil Rights 1327

Allegation that bank and its employees acted with county law enforcement officials in connection with farm repossession in such way as to be liable under § 1983 for alleged constitutional violations in course of arrest of plaintiff, who attempted to stop repossession, were based solely on charges involving bank employees' "private misuse of statute by private actor," and thus, bank and employees were not liable, as pleadings and affidavits failed to establish existence of conspiracy or any plans of joint participation with public officials that would indicate that bank or its employees acted "under color" of state law. Bahr v. County of Martin, D.Minn.1991, 771 F.Supp. 970. Civil Rights 1396

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42 U.S.C.A. § 1983

Bank and related individuals involved in seizure of judgment debtor's property, pursuant to execution of judgment, were not state actors, and thus could not be held liable under § 1983 or for alleged due process violations. Elsman v. Standard Federal Bank, C.A.6 (Mich.) 2002, 46 Fed.Appx. 792, 2002 WL 31007987, Unreported, on remand 238 F.Supp.2d 903. Civil Rights 1326(9); Constitutional Law 254(5)

944. Bank officials, particular persons under color of law

Bank officer's misrepresenting to debtor the contents of temporary restraining order did not constitute state action for purposes of this section since such misrepresentation was by a private individual and although order had number of attachments and might have been formidable reading the creditor was in possession of such order and was not entitled to take representation of the bank employee as the authoritative word of the state court. Torres v. First State Bank of Sierra County, C.A.10 (N.M.) 1978, 588 F.2d 1322. Civil Rights 1326(4)

Depositor who challenged bank's conversion from a mutual association to a stock corporation on constitutional grounds sufficiently alleged that bank director was a "state actor" within meaning of § 1983; plaintiff alleged that defendants, including director, met and corresponded informally with Maine Superintendent of Banking to develop an unconstitutional conversion procedure and ease approval of bank's inequitable conversion plan; depositor also alleged that, with director's knowledge and consent, defendants lobbied the Maine legislature for passage of an unconstitutional statute; finally, depositor claimed that bank was so heavily regulated by the state that it could be considered as a quasi-public entity in its own right. Lovell v. One Bancorp, D.Me.1988, 690 F.Supp. 1090, appeal dismissed 878 F.2d 10. Civil Rights 1396

944A. Lenders and repossesors

Lender's merely following procedure established by state law for repossession of vehicle when not all payments were allegedly made did not transform private party's activity into state action under civil rights statute, and thus, district court lacked federal question jurisdiction over borrower's action against lender, alleging that repossession was an unlawful seizure under Fourth Amendment. Elliott v. Chrysler Financial, C.A.10 (N.M.) 2005, 149 Fed.Appx. 766, 2005 WL 2114181, Unreported. Federal Courts 222

945. Boards of education, particular persons under color of law

Board of education, president of state junior college, and two deans of college were acting "under color of state law" within meaning of this section when they denied associate professor tenure and renewal of teaching contract at junior college. Smith v. Losee, C.A.10 (Utah) 1973, 485 F.2d 334, certiorari denied 94 S.Ct. 2604, 417 U.S. 908, 41 L.Ed.2d 212. Civil Rights 1326(11)

Board of education and teachers' organization which entered into contract which required all teachers to either join the organization or pay a fee equivalent to its membership dues were acting under color of state law when they allegedly denied certain teachers their right of freedom of association. Holman v. Board of Ed. of City of Flint, E.D.Mich.1975, 388 F.Supp. 792. Civil Rights 1326(11)

946. Boards of public works, particular persons under color of law

For purposes of violations of this section, members of board of public works and city controller with respect to the building and financing of a new multilane road were acting under color of state law. Love v. Navarro, E.D.Cal.1967, 262 F.Supp. 520. Civil Rights 1326(2)

947. Boards of recreation, particular persons under color of law

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42 U.S.C.A. § 1983

Conduct of corporation and its officers and superintendent of city board of recreation, which suspended minors from hockey program, did not constitute state action within meaning of 42 U.S.C.A. § 1983 where city's only involvement with corporation was that corporation used city skating rink and was given 20% reduction in hourly rate, city permitted all associations and groups, public and private, to skate at reduced rate at city skating rink, and city did not supervise, oversee or regulate the corporation. Giannattasio v. Stamford Youth Hockey Ass'n, Inc., D.C.Conn.1985, 621 F.Supp. 825. Civil Rights 1326(2); Civil Rights 1326(4)

Action of Board of Recreation of City of Baltimore with respect to segregation of races in athletic activities in public parks under authority delegated by state within its police power was not under "color" of authority and did not constitute a "conspiracy to injure" within meaning of § 1985 of this title, creating cause of action for deprivation of civil rights. Boyer v. Garrett, D.C.Md.1949, 88 F.Supp. 353, affirmed 183 F.2d 582, certiorari denied 71 S.Ct. 293, 340 U.S. 912, 95 L.Ed. 659. Civil Rights 1326(1); Conspiracy 7; Conspiracy 7.5(3)

948. Boards of trade, particular persons under color of law

Chicago Board of Trade proceedings involving disciplinary action against one of its members did not constitute state action resulting in denial of due process or the equal protection of the laws to member who was suspended but who did not obtain a final adjudication of his right by a state court, and proceeding raised no federal question. Rosee v. Board of Trade of City of Chicago, C.A.7 (Ill.) 1963, 311 F.2d 524, certiorari denied 83 S.Ct. 1693, 374 U.S. 806, 10 L.Ed.2d 1031. Federal Courts 177

949. Boards of trustees, particular persons under color of law

Suit under this section would not lie against private citizen, who was head of political faction which allegedly dominated school board politics and who allegedly directed school board to take adverse action against several teachers, absent showing of any state action on his part, either individually or in concert with board of trustees or other school officials. Guerra v. Roma Independent School Dist., S.D.Tex.1977, 444 F.Supp. 812. Civil Rights 1326(11)

Actions of president and members of village board of trustees in reducing number of voting precincts from 32 to 6 for purpose of election, in providing for precincts grossly unequal in number of registered voters, and in failing to provide sufficient election judges or adequate voting facilities were "under color of" statutes of state and ordinances of village within this section. Ury v. Santee, N.D.Ill.1969, 303 F.Supp. 119. Civil Rights 1326(2)

950. Bus drivers, particular persons under color of law

School bus driver, bus company, and its president were not "state actors," and thus were not liable in § 1983 action by school children and their parents who alleged that driver sexually molested girls on bus; while bus company and its employees were carrying out state program at state expense, they were not performing function that had been traditionally exclusive prerogative of state, and there was no state regulation that compelled or even influenced alleged unconstitutional conduct. Black by Black v. Indiana Area School Dist., C.A.3 (Pa.) 1993, 985 F.2d 707. Civil Rights 1326(6)

That bus driver was allegedly not acting under state law to enforce segregation of passengers when he ordered passenger to change her seat did not preclude bus company's liability for violation of passenger's civil rights. Flemming v. South Carolina Elec. & Gas Co., C.A.4 (S.C.) 1956, 239 F.2d 277. Civil Rights 1326(7)

Bus driver for special school district, having allegedly deprived handicapped children of their constitutional rights by either beating or sexually abusing them, acted "under color of state law" for purposes of civil rights statute when special school district was obligated to provide free transportation to handicapped students enrolled in district and

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in connection therewith employed former bus driver. Doe A v. Special School Dist. of St. Louis County, E.D.Mo.1986, 637 F.Supp. 1138. Civil Rights 1326(6)

951. Cemetery owners, particular persons under color of law

Where cemetery owners controlled, managed and operated cemetery as private, religious cemetery, entirely free from any contract, arrangement, or supervision by any public body, there was no state action and cemetery owners could not be held liable under this section or § 1981 of this title. Save Our Cemeteries, Inc. v. Archdiocese of New Orleans, Inc., C.A.5 (La.) 1978, 568 F.2d 1074, rehearing denied 572 F.2d 320, certiorari denied 99 S.Ct. 120, 439 U.S. 836, 58 L.Ed.2d 133. Civil Rights 1326(1)

952. Child care institutions, particular persons under color of law

Adoption center and adoptive parents did not act under color of Utah law, as required in putative father's action alleging that adoption of child was due process violation, even though adoption decree was issued by a state court; adoptive process was not an exclusive state function, there was no nexus nor any close union between the state and either the adoptive parents or the adoption center, and there was no substantial cooperative action between state officials and the private parties, or state participation in alleged constitutional deprivation. Johnson v. Rodrigues, C.A.10 (Utah) 2002, 293 F.3d 1196, certiorari denied 123 S.Ct. 893, 537 U.S. 1111, 154 L.Ed.2d 783. Civil Rights 1326(9)

Private child care institutions which fell within the New York statutory definition of "authorized agencies" empowered to care for and have custody of children from state and city officials were acting under color of state law, for purpose of liability for civil rights violations. Duchesne v. Sugarman, C.A.2 (N.Y.) 1977, 566 F.2d 817. Civil Rights 1326(7)

Agencies' decisions as to acceptance and care of children placed with them by city pursuant to foster care program had sufficiently close nexus with state, for purpose of natural parents' section 1983 action, where city and state retained ultimate responsibility for children's welfare, and agencies' decisions were directly circumscribed by state and/or city regulations. Wilder v. Bernstein, S.D.N.Y.1986, 645 F.Supp. 1292, affirmed 848 F.2d 1338. Civil Rights 1326(1)

State by licensing and regulating child-care institution operated by sheriffs' association did not so identify itself with the discriminatory admissions policies of the institution as to give rise to claim against institution under this section. Player v. State of Ala. Dept. of Pensions and Sec., M.D.Ala.1975, 400 F.Supp. 249, affirmed 536 F.2d 1385. Civil Rights 1326(7)

953. Cities, particular persons under color of law

Conduct of city in delegating its authority to set housing standards for residential properties and its power of eminent domain to redevelopment corporation was under color of state law for purposes of federal civil rights statute, 42 U.S.C.A. § 1983. Williams v. City of St. Louis, C.A.8 (Mo.) 1986, 783 F.2d 114. Civil Rights 1326(1)

City was not liable under §§ 1983 to suspect who was interrogated during murder investigation for allegedly improper custodial interrogation, absent evidence of a city policy, custom or practice that condoned detective's alleged improper actions during course of interrogation. Arline v. City of Jacksonville, M.D.Fla.2005, 359 F.Supp.2d 1300. Civil Rights 1351(4)

To prevail in civil rights action, city employee would have to establish that city deprived him of constitutional right

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and that city's actions were taken under color of state law. Chernov v. City of Hollywood, S.D.Fla.1993, 819 F.Supp. 1070, affirmed 19 F.3d 1446. Civil Rights 1125; Civil Rights 1326(11)

City did not act under color of state law, as required for § 1983 action, by merely obtaining injunction prohibiting gift shop owner from distributing certain pamphlets, absent allegation of conspiracy between city officials and state judge who issued injunction. Mabe v. City of Galveston Park Bd. of City of Galveston, Tex., S.D.Tex.1986, 635 F.Supp. 105. Civil Rights 1326(1)

City was not liable under §§ 1983 for injuries sustained by jail inmate who was raped by jail trustee and jailer, where there was no evidence that municipal policy caused assaults, city had policies to protect inmate safety, attackers were properly investigated and trained before assuming duties at jail, there was no failure to supervise, there was no evidence of earlier complaints of sexual misconduct, inmate's complaint was promptly investigated, and her attackers were punished. Lazarus v. City of Dumas, Ark., C.A.8 (Ark.) 2005, 123 Fed.Appx. 266, 2005 WL 405841, Unreported. Civil Rights 1351(4); Civil Rights 1352(4)

954. City officials, particular persons under color of law

City manager was acting "under color of state law" for purposes of § 1983 when he raped city employee in her apartment, where manager used his authority to sexually harass employee during and after work hours, held her job and job benefits over her head, and he ultimately used his authority as city manager and her boss to create the opportunity to be alone with her and to rape her. Griffin v. City of Opa-Locka, C.A.11 (Fla.) 2001, 261 F.3d 1295, certiorari denied 122 S.Ct. 1789, 535 U.S. 1033, 152 L.Ed.2d 648, certiorari denied 122 S.Ct. 1789, 535 U.S. 1034, on subsequent appeal 67 Fed.Appx. 582, 2003 WL 21067103, on subsequent appeal 67 Fed.Appx. 584, 2003 WL 21068364. Civil Rights 1326(2)

Harassing and abusive conduct by city alderman, who was veterinarian, towards veterinary assistant was not action taken under color of state law under § 1983; alderman was pursuing his purely personal, private interests, and because of close relationship with assistant and his status as employer, he would have been in same position to harass and abuse assistant even if he had not been an alderman. Waters v. City of Morristown, TN, C.A.6 (Tenn.) 2001, 242 F.3d 353. Civil Rights 1326(2)

City officials were acting in the color of state law when repossessing restaurant premises which city leased to individual, even if the lease was a proprietary function rather than a governmental function. Gentry v. City of Lee's Summit, Mo., C.A.8 (Mo.) 1993, 10 F.3d 1340. Civil Rights 1326(9)

Failure of city and governing officials to dismantle fence across public street was action taken "under color of state law" within meaning of this section. Jennings v. Patterson, C.A.5 (Ala.) 1974, 488 F.2d 436. Civil Rights 1326(1)

City mayor and police officer were acting under color of state law, as required in order for private citizen to commence §§ 1983 action against them for false arrest, when they telephoned assistant prosecutor seeking issuance of arrest warrant for stalking, after citizen photographed officer in police station, and warrant was issued during middle of night; while mayor and officer claimed they were asserting their rights as ordinary citizens, expedited processing of complaints, unavailable to general public, occurred because of their status as public officers. Pomykacz v. Borough of West Wildwood, D.N.J.2006, 438 F.Supp.2d 504. Civil Rights 1326(8)

Town supervisor who fired town clerk during radio broadcast, and telephoned her to tell her that she would be fined for building a deck without a permit, was acting under color of law, as required to support § 1983 action brought by clerk against town and supervisor. Emanuele v. Town of Greenville, S.D.N.Y.2001, 143 F.Supp.2d 325 . Civil Rights 1326(2); Civil Rights 1326(11)

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42 U.S.C.A. § 1983

City council members acted under "color of state law" within meaning of § 1983, when they denied liquor license application. Arrington v. Dickerson, M.D.Ala.1995, 915 F.Supp. 1503. Civil Rights 1326(7)

Where all of defendants were city officials responsible for administration of public employment, they were acting under color of state law for purposes of civil rights action brought by employee who alleged that he had been suspended from employment in violation of his rights under U.S.C.A.Const. Amends. 1 and 14 § 1. Crawford v. City of Houston, Texas, S.D.Tex.1974, 386 F.Supp. 187. Civil Rights 1326(11)

955. City council members, particular persons under color of law

Town councilwoman acted under color of state law when she allegedly engaged in sexual harassment of male employee after he terminated their romantic relationship, as required for employee to state § 1983 claim for violation of his equal protection rights; councilwoman's power over employee derived from her position on the town board. Perks v. Town of Huntington, E.D.N.Y.2003, 251 F.Supp.2d 1143. Civil Rights 1326(11)

City councilmen and mayor who, without affording procedural due process to policemen, terminated their positions were acting under color of law by virtue of their offices as city councilmen and mayor. Bell v. Gayle, N.D.Tex.1974, 384 F.Supp. 1022. Civil Rights 1326(11)

956. Clerks of court, particular persons under color of law

Court clerk could not be liable for alleged policy of failing to send court order dismissing charges against pretrial detainee to either detainee or his counsel, in § 1983 action by detainee who was held for eight months after charges against him were dropped; judge, not clerk, was final policymaker as to record keeping and administration of court, and clerk had no duty to send such orders. Brooks v. George County, Miss., C.A.5 (Miss.) 1996, 84 F.3d 157, certiorari denied 117 S.Ct. 359, 519 U.S. 948, 136 L.Ed.2d 251. Civil Rights 1358

Court clerk's ministerial act of accepting and filing settlement documents did not significantly assist alleged conspiracy by homicide victim's parents, their attorneys, liability insurer, and its attorneys to settle wrongful death action against insureds without their consent, and, thus, state action was lacking for § 1983 action by insureds. Gaskell v. Weir, C.A.9 (Cal.) 1993, 10 F.3d 626. Civil Rights 1326(9)

Clerk of New York City civil court is an employee of an agency of a subdivision of New York State, and acts "under color of state law" within meaning of this section; thus defendant process servers, by causing clerk to enter default judgments against persons to which false affidavits of service related, would be culpable to the same extent as the clerk would be if the clerk had the same knowledge as was possessed by defendants as to the falsity of the papers. U. S. v. Wiseman, C.A.2 (N.Y.) 1971, 445 F.2d 792, certiorari denied 92 S.Ct. 346, 404 U.S. 967, 30 L.Ed.2d 287. Civil Rights 1808

957. Clubs, particular persons under color of law

Where private yacht club had been in existence longer than city from which it leased bay bottom land underlying the club's dock facilities, where the club had made use of the bay bottom at its present location for more than 30 years prior to time that city first asserted ownership of the bay bottom land, where the club was not created for purposes of evading this section, and where city's only connection with the operation of the private club was its lease of the bay bottom land to the club for $1 per year, the actions of the private club in excluding blacks and members of the Jewish religion did not constitute "state action" or action taken "under color of state law." Golden v. Biscayne Bay Yacht Club, C.A.5 (Fla.) 1976, 530 F.2d 16, certiorari denied 97 S.Ct. 186, 429 U.S. 872, 50 L.Ed.2d 152. Civil Rights 1326(1)

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Analysis of nature, value and proportion of state aid to private corporation, which was organized to promote playing of baseball among school age youngsters but which did not allow female participation, did not end inquiry for purpose of determining whether there was significant state involvement, since it was possible the state could be significantly involved in one aspect of the private organization while it was insignificantly involved in a different aspect; hence, court would narrow its state action inquiry to state involvement in corporation's policy of excluding females. Magill v. Avonworth Baseball Conference, C.A.3 (Pa.) 1975, 516 F.2d 1328. Civil Rights 1326(7)

Any action of private club and its president, involved in the operation of summer baseball league on city property, in enforcing a discriminatory policy pursuant to city directive or policy was taken "under color of law" within meaning of this section and was clearly within the power of the court to enjoin. Goodloe v. Davis, C.A.5 (Miss.) 1975, 514 F.2d 1274. Civil Rights 1326(4)

While the "mere use" of city parks and playgrounds is not enough to clothe private groups with a public character for purposes under U.S.C.A.Const. Amend. 14 § 1 the rationing of otherwise freely accessible recreational facilities creates a "stronger case" for state action than if the facilities are simply available to all comers without condition or reservation. Fortin v. Darlington Little League, Inc., C.A.1 (R.I.) 1975, 514 F.2d 344. Civil Rights 1326(4)

White Roman Catholic allegedly expelled from private country club for advocating suspension of club's exclusionary policy which denied membership to Jews was not deprived of any right or interest under color of state law or by reason of a state action, within contemplation of this section. MacDonald v. Shawnee Country Club, Inc., C.A.6 (Ohio) 1971, 438 F.2d 632, certiorari denied 91 S.Ct. 2255, 403 U.S. 932, 29 L.Ed.2d 711, rehearing denied 92 S.Ct. 31, 404 U.S. 875, 30 L.Ed.2d 121. Civil Rights 1050

Racial discrimination complaint against private boat club adequately asserted action under color of state law, as required for § 1983 claim, by alleging that club paid nominal annual fee for use of town land, that town benefited from license agreement with club, that club's license expressly stated that it agreed to operate license for accommodation of public, and that town was apprised about club's allegedly discriminatory conduct. Gibbs-Alfano v. Ossining Boat & Canoe Club, Inc., S.D.N.Y.1999, 47 F.Supp.2d 506. Civil Rights 1396

958. Coaches, particular persons under color of law

Compliance with National Collegiate Athletic Association (NCAA) regulations alone does not transform an assistant basketball coach at a university into a state actor. Thomas v. Pearl, C.D.Ill.1992, 793 F.Supp. 838, affirmed 998 F.2d 447, rehearing denied, certiorari denied 114 S.Ct. 688, 510 U.S. 1043, 126 L.Ed.2d 655. Civil Rights 1326(6)

959. Commissions or commissioners, particular persons under color of law-- Generally

Where insurance commissioner's approval of the form of disability insurance policies, which were allegedly discriminatory against women, was pro forma rather than an approval after full investigation, where the commissioner placed no official imprimatur on the practice of which plaintiff complained, and where private insurance carriers decided whether and to whom such policies would issue, there was insufficient "state action" to state a claim under this section. Life Ins. Co. of North America v. Reichardt, C.A.9 (Cal.) 1979, 591 F.2d 499, on remand 485 F.Supp. 56. Civil Rights 1326(7)

Since members of county hospital commission held office as result of governmental appointment and administered public facilities, their actions were susceptible of being regarded as having been taken under color of law, thus rendering applicable to them provisions of this section and § 1985 of this title. Meredith v. Allen County War Memorial Hospital Commission, C.A.6 (Ky.) 1968, 397 F.2d 33. Civil Rights 1326(2)

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State Corporation Commission (SCC) was acting under color of state law, as required for § 1983 suit challenging under First Amendment constitutional provision under which SCC denied church right to incorporate, even though provision barred general assembly from allowing incorporation. Falwell v. Miller, W.D.Va.2002, 203 F.Supp.2d 624. Civil Rights 1326(7)

In that the Ohio Expositions Commission which prohibited religious societies from proselytizing their beliefs through roving solicitation on state fairgrounds was a creature of statute and received portion of its budget for operating state fair from Ohio General Assembly, there was sufficient state action to support a claim by religious societies under this section authorizing a civil action against one who, under color of state law, subjects another person to deprivation of rights. International Soc. for Krishna Consciousness, Inc. v. Evans, S.D.Ohio 1977, 440 F.Supp. 414. Civil Rights 1326(1)

960. ---- Baseball, commissions or commissioners, particular persons under color of law

Terms of city's lease of its stadium to baseball team caused baseball commissioner's policy excluding accredited female sports reporters from locker rooms of stadium's clubhouse to be state action within U.S.C.A.Const. Amend. 14, where advertising and massive publicity about team and individual ballplayers were essential to profitability of stadium lease entered into pursuant to special legislative provisions, stadium was maintained and improved with use of public funds and annual rentals to be paid city for use of stadium depended directly on drawing power of team's games. Ludtke v. Kuhn, S.D.N.Y.1978, 461 F.Supp. 86. Constitutional Law 254(4)

961. ---- Nuclear Regulatory, commissions or commissioners, particular persons under color of law

Plaintiff, who brought action seeking injunction ordering United States Nuclear Regulatory Commission members to revoke licenses of all nuclear fuel cycle facilities within Commission's jurisdiction because defendants' licensing of such facilities allegedly deprived plaintiff of life without due process and failed to assure adequate protection of public health and safety in violation of applicable statutes could not maintain action as a civil rights action pursuant to this section governing civil action for deprivation of rights, since none of acts of which plaintiff complained were performed under color of state law for purposes of this section. Honicker v. Hendrie, M.D.Tenn.1979, 465 F.Supp. 414. Federal Courts 222

962. ---- Parks, commissions or commissioners, particular persons under color of law

Where former chief deputy commissioner of parks, conservation and recreation for county was dismissed by county commissioner of parks acting in his capacity as commissioner at direction of county executive, requisite state action to bring civil rights action was established. Ecker v. Cohalan, E.D.N.Y.1982, 542 F.Supp. 896. Civil Rights 1326(11)

963. ---- Public service, commissions or commissioners, particular persons under color of law

Facts that only offending railroad could be criminally punished for failure to obey State Public Service Commission order requiring race segregation in waiting rooms, that order could not apply to interstate passengers and terminal facilities, and that no city ordinance purported to forbid unsegregated waiting rooms, did not prevent action of State Public Service Commissioners and city commissioners in attempting to enforce segregation from being "under color of state law" for purposes of U.S.C.A.Const. Amend. 14 and this section as basis for relief to Negroes. Baldwin v. Morgan, C.A.5 (Ala.) 1958, 251 F.2d 780. Civil Rights 1326(7); Constitutional Law 213(1)

964. ---- Utilities, commissions or commissioners, particular persons under color of law

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42 U.S.C.A. § 1983

Under Illinois law, village's emergency telephone system board had final policymaking authority with respect to whether police department telephone line would be connected to emergency telephone system so that calls could be recorded, and therefore village could not be held liable, under § 1983, for police chief's conduct in having line secretly connected to emergency telephone system's recording equipment and taping private calls of department employees for personal reasons. Abbott v. Village of Winthrop Harbor, C.A.7 (Ill.) 2000, 205 F.3d 976, rehearing and rehearing en banc denied. Civil Rights 1351(4)

Action of state Public Utility Commissioners in promulgating regulation under which utility filed rules permitting disconnecting customer was not "state action." Lucas v. Wisconsin Elec. Power Co., C.A.7 (Wis.) 1972, 466 F.2d 638, certiorari denied 93 S.Ct. 928, 409 U.S. 1114, 34 L.Ed.2d 696. Civil Rights 1326(7)

Fact that electric utility was public utility subject to considerable state regulation did not by itself support finding of "state action" as necessary for action under color of law required for violation of § 1983, for purposes of business partner's suit against utility, New York Public Service Commission (PSC), and their employees, alleging that utility's failure to extend electrical distribution lines to farm for free and Commission's failure to compel utility to do so amounted to denial of equal protection and due process. Jemzura v. Public Service Com'n, N.D.N.Y.1997, 971 F.Supp. 702. Civil Rights 1326(7)

When commissioners of a state public utility commission act in their official capacity they are acting under color of state law within meaning of this subchapter. Edwards v. Philadelphia Elec. Co., E.D.Pa.1974, 371 F.Supp. 1313, affirmed 510 F.2d 969. Civil Rights 1326(7)

965. Company towns, particular persons under color of law

For state action to be found from private party's control of property that amounts to creation of company town, private party must assume plenary control and complete governmental power over property; it is not enough that facilities be devoted to public function or that party opens its property to public in general. United Auto Workers, Local No. 5285 v. Gaston Festivals, Inc., C.A.4 (N.C.) 1995, 43 F.3d 902. Civil Rights 1326(4)

Complaint, under this section and § 245 of Title 18 protecting recipients of federal statutory benefits from interference by third parties, and other statutes alleged sufficient facts from which it could be concluded that residential community operated by company was a "company town" within principle that rights of owner who opens up his property for use by public in general become circumscribed by statutory and constitutional rights of those who use it, and accordingly that, when company acted, it did so under color of state law. Illinois Migrant Council v. Campbell Soup Co., C.A.7 (Ill.) 1975, 519 F.2d 391, on remand 438 F.Supp. 222. Civil Rights 1326(11)

966. Conservatories, particular persons under color of law

Termination of employment of tenured professor at music teaching center at university level would be state action for purposes of maintaining action under this section, where the center was subsidized by annual appropriations by Commonwealth Legislature, and the other defendants involved in termination were a public corporation, whose only stockholder was a public corporation and government instrumentality, and individuals who were all employees of such business entities and all acting within their respective official capacities at all times material; thus termination of employment without a hearing violated due process of law. King v. Conservatorio de Musica de Puerto Rico, D.C.Puerto Rico 1974, 378 F.Supp. 746. Civil Rights 1326(11); Constitutional Law 278.5(3)

967. Consultants, particular persons under color of law

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42 U.S.C.A. § 1983

Telecommunications provider lacked standing to seek declaratory judgment that consultant to town violated Telecommunications Act and Constitution by submitting for town's approval illegal draft ordinance regulating communications towers; necessary requirement that provider be facing future harms was not satisfied, as town had rescinded ordinance in question, and provider was no longer serving town, obviating prospects of future problems. Omnipoint Communications Inc. v. Comi, N.D.N.Y.2002, 233 F.Supp.2d 388. Declaratory Judgment 300

Architect serving as consultant to town planning board was not acting "under color of state law," precluding suit under § 1983 alleging that he violated federally protected rights of real property owner when he reviewed and rejected plans for proposed large drug store on premises for noncompliance with architectural design district ordinance. R-Goshen LLC v. Village of Goshen, S.D.N.Y.2003, 289 F.Supp.2d 441, affirmed 115 Fed.Appx. 465, 2004 WL 2278555. Civil Rights 1326(7)

Employer's benefits consultant was not state actor, as required for it to be liable under § 1983. Rodriguez v. Puerto Rico Marine Management, Inc., D.Puerto Rico 1997, 975 F.Supp. 115. Civil Rights 1326(11)

968. Contractors, particular persons under color of law

Private physician under contract with a state to provide medical care to inmates acts "under color of state law," for purposes of § 1983, when undertaking his duties to treat an inmate. Farrow v. West, C.A.11 (Ala.) 2003, 320 F.3d 1235. Civil Rights 1326(8)

Actions of defendant who was employed by private entity which had contract with state to oversee rehabilitation of prison inmates were fairly attributable to the state, and so defendant was state actor for purposes of § 1983 action; defendant was performing a traditional state function in his management of prison print shop, and was clothed with authority of the state. Flint ex rel. Flint v. Kentucky Dept. of Corrections, C.A.6 (Ky.) 2001, 270 F.3d 340, rehearing en banc denied. Civil Rights 1326(8)

City's independent contractor in city's employee assistance program for employees testing positive for drug use, and contractor's employee, were not acting under color of state law, and thus were not liable under § 1983, in referring city employee to treatment program he found offensive to his religious beliefs, on theory they conspired with city, as city employee failed to present sufficient evidence of agreement and concerted action to satisfy the joint action test, though contractor and its employee reported city employee's non-compliance to the city, aware that this would likely prompt city to begin termination proceedings, and though city might have considered advice of contractor's employee as a factor in its ultimate decision to discipline city employee, where city retained complete authority to enforce its drug policy. Sigmon v. CommunityCare HMO, Inc., C.A.10 (Okla.) 2000, 234 F.3d 1121. Civil Rights 1326(11)

Under close nexus test, municipal contractor was state actor so as to permit laborers under contract to establish § 1983 claim for contractor's failure to pay prevailing wage as required by Housing and Community Development Act (HCDA); facts alleged and supported by contracts relied on permitted inference that contractor could not pay wages at level required by HCDA because of strictures imposed by municipal defendants. Chan v. City of New York, C.A.2 (N.Y.) 1993, 1 F.3d 96, certiorari denied 114 S.Ct. 472, 510 U.S. 978, 126 L.Ed.2d 423. Civil Rights 1326(11)

Management company which contracted to provide management services for the Puerto Rico Maritime Shipping Authority and which was first purchased and later sold by the Authority was not, at least after its sale, an arm of the Puerto Rico government for purposes of state action requirements of civil rights statutes. Rodriguez-Garcia v. Davila, C.A.1 (Puerto Rico) 1990, 904 F.2d 90. Civil Rights 1326(1)

Prison guards at privately operated prison did not act under color of state law for purposes of potential § 1983 liability in maintaining custody of exclusively federal prisoners, and thus pretrial detainee could not maintain civil

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rights suit against guards for failure to protect him from other inmates; guards were not exercising power possessed by virtue of state law nor one that had been traditionally exclusively reserved to state. Sarro v. Cornell Corrections, Inc., D.R.I.2003, 248 F.Supp.2d 52, 119 A.L.R.5th 593. Civil Rights 1327; Civil Rights 1326(8)

Private foster care agency was acting under color of state law, for purposes of §§ 1983 claims brought by parents and child against agency under New York law, stemming from assault that allegedly occurred while child was in foster care after removal; actions at issue related to handling of children placed with agency by city and would have been performed by city had agency not undertaken them. Phillips ex rel. Green v. City of New York, S.D.N.Y.2006, 453 F.Supp.2d 690. Civil Rights 1326(4)

Private organizations were acting under "color of state law," and consequently subject to suit under §§ 1983, when they entered into contract to provide religious services to inmates in state prison, and allegedly violated Establishment Clause in process. Americans United For Separation of Church and State v. Prison Fellowship Ministries, S.D.Iowa 2006, 432 F.Supp.2d 862. Civil Rights 1326(8)

Regional sales manager who contracted with California state prison to provide food used by prison employees to prepare meals for inmates was not "state actor," and so was not subject to §§ 1983 suit by inmate who was follower of Islam and did not eat pork, but who was allegedly misled into consuming pork in unlabeled foods in violation of his First Amendment right to free exercise of religion; that manager's company did business with state was not sufficient to implicate him as state actor. Lewis v. Mitchell, S.D.Cal.2005, 416 F.Supp.2d 935. Constitutional Law 84.5(14)

Internal independent contractor for counseling and consulting services in administrative and human resources matters for Puerto Rico Government Development Bank (GDB) could not be considered government official acting under color of state law whose conduct in issuing report indicating that employee's appointment was null and void violated employee's constitutional rights, and in any event, even if she were considered a government official acting under color of state law, she was entitled to qualified immunity in terminated employee's § 1983 action, absent showing that her actions were not objectively reasonable. Velez Rivera v. Agosto Alicea, D.Puerto Rico 2004, 334 F.Supp.2d 72, affirmed 437 F.3d 145. Civil Rights 1326(11); Civil Rights 1376(10)

Private law firm and its attorneys, who contracted with county to provide public defender services, were not "state actors" for § 1983 purposes. Gausvik v. Perez, E.D.Wash.2002, 239 F.Supp.2d 1047. Civil Rights 1326(10)

Head chaplain at county jail, who was employed by private company which contracted with county to provide ministry services, was acting under color of state law, and thereby satisfied state action requirement for purposes of § 1983, when interacting with female inmate; county delegated to a private corporation its duty under state law to provide religious services to inmates and granted that entity broad access to inmates when providing such services. Paz v. Weir, S.D.Tex.2001, 137 F.Supp.2d 782. Civil Rights 1326(8)

Private company that was awarded state contract to administer motorcycle safety program was not acting under color of state law when it purportedly made decision to not offer position of state coordinator to individual named in bid, and thus alleged failure to hire individual for exercise of free speech rights did not present cognizable § 1983 claim; company maintained control over its own internal hiring process. Halstead v. Motorcycle Safety Foundation, Inc., E.D.Pa.1999, 71 F.Supp.2d 455. Civil Rights 1326(11)

Business relationship alone was insufficient to show that construction company working under state contract to renovate prison acted under color of state law under § 1983 as to allegations of deliberate indifference to plaintiff's constitutional rights on theory that state officials directed, controlled or encouraged its actions. White v. Cooper, N.D.Ill.1999, 55 F.Supp.2d 848. Civil Rights 1326(8)

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42 U.S.C.A. § 1983

Correctional medical service contractually obligated to provide county inmates with medical care mandated by the Eighth Amendment was providing functions traditionally exclusive prerogative of state, and, therefore, could be held liable for constitutional violations under § 1983. Higgins v. Correctional Medical Services of Illinois, Inc., N.D.Ill.1998, 8 F.Supp.2d 821, affirmed 178 F.3d 508, rehearing and suggestion for rehearing en banc denied. Civil Rights 1326(8)

Private residential juvenile treatment center providing 24-hour care for trouble juveniles was "state actor" for purposes of civil rights statute prohibiting deprivation of federal constitutional rights by state actor under color of law; under contract state totally delegated its responsibility for protection of life, health and well-being of juveniles to treatment center. Lemoine v. New Horizons Ranch and Center, Inc., N.D.Tex.1998, 990 F.Supp. 498. Civil Rights 1326(5)

Employees of rape crisis center acted "under color of state law" for purposes of civil rights action under § 1983 where, pursuant to contract between the center and school system, employees came into the school to conduct program for education and benefit of the students, essentially standing in the shoes of teachers. Wojcik v. Town of North Smithfield, D.R.I.1995, 874 F.Supp. 508, affirmed 76 F.3d 1. Civil Rights 1326(6)

Contractor's decision to fire school bus driver based on driver's decertification by board of education was not "state action" that could support driver's civil rights claim against contractor based on his discharge. Hill v. New York City Bd. of Educ., E.D.N.Y.1992, 808 F.Supp. 141. Civil Rights 1326(11)

As against motion to dismiss, allegations in civil rights action based on claim that labor unions, subcontractors, and others in the building industry engaged in discriminatory employment practices, justified conclusion that subcontractors acted under color of state law and engaged in conspiracy. Byrd v. Local Union No. 24, Intern. Broth. of Elec. Workers, D.C.Md.1974, 375 F.Supp. 545. Civil Rights 1396; Conspiracy 18

969. Cooperatives, particular persons under color of law

Assignee of proprietary lease to floor of apartment building, who brought suit against cooperative apartment corporation and its directors alleging that their refusal to consent to the assignment to plaintiff was solely because she is a female, failed to establish a cause of action under this section, since this section requires misconduct under color of state law in violation of the constitutional rights of another, but the state's involvement in the case, to wit, state court enforcement of the lease provision requiring consent of the board of directors to any assignment, did not amount to approval of the allegedly discriminatory conduct and did not constitute "state action." Girard v. 94th St. & Fifth Ave. Corp., C.A.2 (N.Y.) 1976, 530 F.2d 66, certiorari denied 96 S.Ct. 2173, 425 U.S. 974, 48 L.Ed.2d 798. Civil Rights 1326(9)

970. Corporations, particular persons under color of law--Generally

Private tobacco company that sold its products to officers and inmates in state prison did not thereby become "state actor," that could be held liable under § 1983 when tobacco smoke adversely affected asthmatic prisoner. Steading v. Thompson, C.A.7 (Ill.) 1991, 941 F.2d 498, certiorari denied 112 S.Ct. 1206, 502 U.S. 1108, 117 L.Ed.2d 445. Civil Rights 1326(5)

While it may be true, for purposes of action under this section, that private corporation acts under color of state law when it exercises its power of eminent domain, same may not be true where private corporation acquires property under threatened exercise of its eminent domain power. Vikse v. Basin Elec. Power Co-op., C.A.8 (N.D.) 1983, 712 F.2d 374. Civil Rights 1326(4)

Action taken by private corporation is not necessarily or automatically "state action," for purposes of application of

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this section, merely because corporation is chartered by state, or because corporation has state conferred monopoly, or because activities of corporation are strictly regulated by state, or because functions performed by corporation serve public convenience and necessity; before action in question can properly be characterized as "state action," there must be sufficiently close nexus between state and challenged action of regulated entity so that action of latter may be fairly treated as that of state itself. Briscoe v. Bock, C.A.8 (Mo.) 1976, 540 F.2d 392. Civil Rights 1326(4)

Privately owned and operated corporation was not "state actor," for purpose of former employee's §§ 1983 claims under First and Fourteenth Amendments that his supervisors treated him differently than others similarly situated for purpose of "chilling" any exercise of his free speech rights and that they "conspired with themselves and others to deny plaintiff due process." Pighee v. L'Oreal USA Products], Inc., E.D.Ark.2005, 351 F.Supp.2d 885. Constitutional Law 90.1(7.1); Constitutional Law 254(4)

Private corporation cannot be held liable under § 1983. Slagel v. Shell Oil Refinery, C.D.Ill.1993, 811 F.Supp. 378, affirmed 23 F.3d 410, rehearing denied, certiorari denied 115 S.Ct. 611, 513 U.S. 1031, 130 L.Ed.2d 520, rehearing denied 115 S.Ct. 958, 513 U.S. 1137, 130 L.Ed.2d 900. Civil Rights 1326(4)

971. ---- Non-profit corporations, particular persons under color of law

County legal aid society was not "state actor" amenable to suit by terminated attorney under § 1983, given lack of governmental control over or interference with society's affairs, notwithstanding receipt of substantial government funds by society. Schnabel v. Abramson, C.A.2 (N.Y.) 2000, 232 F.3d 83. Civil Rights 1326(11)

Employer, a corporation serving as center for independent living for persons with disabilities, was not a state actor and, therefore, former employee could not maintain claims against employer under § 1983 and Minnesota Constitution based upon employee's termination, although employer depended upon government for nearly all its funding, performed uniquely public functions, and was subject to extensive governmental regulation and licensing, where government did not control or dictate employer's personnel decisions. Nichols v. Metropolitan Center for Independent Living, Inc., C.A.8 (Minn.) 1995, 50 F.3d 514. Civil Rights 1326(11)

Private, nonprofit corporation which provided shelter and supportive services for domestic violence victims did not act "under color of law" as required to render it liable to corporation's former employee under § 1983 arising from her termination, despite county's provision of financial support for corporation and membership of county official on corporation's board of directors; board had nothing to do with decision to terminate employee and official had only one of 21 votes on board. Watts-Means v. Prince George's Family Crisis Center, C.A.4 (Md.) 1993, 7 F.3d 40 . Civil Rights 1326(11)

Nonprofit corporation incorporated under Texas Non-Profit Corporation Act, consisting of cities and counties in three-county area, which was organized to provide services, such as nutrition, housing and transportation for the elderly, was not acting "under color" of state law when it dismissed deputy director, considering that extended regulation by state was virtually nonexistent since state did not regulate corporation beyond regulation imposed on all Texas incorporated nonprofit corporations, that the state lacked the authority to dictate or even propose personnel changes and was not a participant in the decision to dismiss deputy director, and that services provided by corporation for the elderly were not traditional state functions; moreover, even though corporation did receive substantial portion of its monies from different levels of government, less than 10 percent came from state or local governments. Cassiano v. Amigos Del Valle, Inc., C.A.5 (Tex.) 1985, 776 F.2d 1300. Civil Rights 1326(11)

Private not-for-profit corporation which provided advocate to help victims of family violence through court processes was not instrumentality of state or "state actor" subject to §§ 1983 liability, even though it was paid for advocacy services with funds that another private corporation received through a contract with state; public funding was at best indirect and resulted from subcontract between two private entities, there was no substantial control by

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state over its management generally or in performance of its duties, and corporation was not created by state law to achieve state objectives. Szekeres v. Schaeffer, D.Conn.2004, 304 F.Supp.2d 296. Civil Rights 1326(7)

Nonprofit corporation that operated prison program did not act under color of state law when rejecting inmate's application, precluding § 1983 civil rights claim. Byrd v. Moseley, D.D.C.1996, 942 F.Supp. 642. Civil Rights 1326(8)

Private, not-for-profit organization, which contracted with various state agencies in exchange for funding and provided direct services to professionals and clients in criminal and juvenile justice systems and related human services systems, was not a "state actor" against whom African-American employee could assert a claim under First Amendment or § 1983, where employees were not eligible for city or state benefits, employer's board of directors was comprised solely of private individuals, and employer's function in advocating for release of juvenile offenders was outside exclusive province of state and contrary to public function of incarcerating and detaining such offenders. Henderson v. Center for Community Alternatives, S.D.N.Y.1996, 911 F.Supp. 689. Civil Rights 1326(4); Constitutional Law 82(5)

972. ---- Public corporations, particular persons under color of law

Suspects believed to have menaced patrons of store with guns failed to establish liability on part of village when bringing § 1983 action alleging false arrest and illegal searches by police, despite officers' alleged admission that they were operating in accordance with village policy; there was no refutation of possibility that police overstepped valid policy in detaining suspects and conducting searches. Ray v. Village of Woodridge, N.D.Ill.2002, 221 F.Supp.2d 906. Civil Rights 1351(4)

Actions of employees of private corporation which operated detention facility owned by public corporation created by city pursuant the Rhode Island Municipal Detention Facility Corporations Act could not be deemed state action under the symbiotic relationship test, considering that management of prisons is not an exclusive public function, that private corporation was not financed by the state, and that any judgment rendered against employees of private corporation would not be paid out of the state treasury. Lawson v. Liburdi, D.R.I.2000, 114 F.Supp.2d 31. Civil Rights 1326(8)

Public corporation providing gas distribution services to a number of municipalities was a public entity and thus a state actor for purposes of its former employee's federal civil rights claim; corporation was wholly controlled by various municipalities through their governing body, board members were appointed and regularly elected by member municipalities and were removable by them, was exempt from paying interest on customer deposits, was classified as a "state and local employer," for federal labor regulations, and was almost completely exempt from all state, county and municipal and other taxation as well as usury and interest statutes. Newton v. Southeast Alabama Gas Dist., M.D.Ala.1989, 708 F.Supp. 1254. Civil Rights 1326(11)

For purposes of establishing right of action under this section, for private corporations, proprietary municipal corporations, and employees and agents thereof, may be deemed to act under color of law. Penthouse Intern. LTD. v. Putka, N.D.Ohio 1977, 436 F.Supp. 1220.

973. ---- Internet companies, corporations, particular persons under color of law

Private corporation, operating as Internet domain name registrar pursuant to agreements with federal government agency, was federal actor not subject to civil rights suit under § 1983, which applied only to state actors. Island Online, Inc. v. Network Solutions, Inc., E.D.N.Y.2000, 119 F.Supp.2d 289. Civil Rights 1327; Civil Rights 1364

974. Counties, particular persons under color of law

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Alabama sheriff, when executing his law enforcement duties in course of criminal investigation, represented State of Alabama, not county in which he acted as law enforcement official; thus, county was not liable for allegedly unconstitutional actions that sheriff took during investigation. McMillian v. Monroe County, Ala., U.S.Ala.1997, 117 S.Ct. 1734, 520 U.S. 781, 138 L.Ed.2d 1. Civil Rights 1348

County's detention policy was deliberately indifferent to substantive due process rights of arrestee who was detained for 38 days prior to initial court appearance, so that county was liable under §§ 1983; policy involved sheriff's office submitting names of those confined in jail to court and then waiting for court to schedule hearing, which improperly delegated the responsibility of bringing arrestees promptly to court for first appearance, and ignored the lack of authority for long-term confinement. Hayes v. Faulkner County, Ark., C.A.8 (Ark.) 2004, 388 F.3d 669. Arrest 70(2); Civil Rights 1352(4); Constitutional Law 262

County could not be liable in unsuccessful female school board candidate's § 1983 equal protection suit, alleging gender bias on part of foreman of grand jury that was charged with providing recommendations for filling board vacancy, absent showing that foreman exercised coercive effect on remainder of jury, majority of whose members voted to recommend someone other than female candidate; jury, not foreman, was policymaking entity. Dixon v. Burke County, Ga., C.A.11 (Ga.) 2002, 303 F.3d 1271. Civil Rights 1351(2)

County was not liable in § 1983 action for county social worker's acts of depriving mother of custody of her children without protecting her rights; mother did not claim that it was county's official policy to dispose of child custody issues without hearing each of the child's parents, and social worker and prosecutor involved in case were not final decisionmakers in county. Holloway v. Brush, C.A.6 (Ohio) 2000, 220 F.3d 767. Civil Rights 1351(6)

County was not liable under § 1983 for prosecutor's use of peremptory strikes in racially discriminating manner in claimant's trial, inasmuch as, under Texas law, prosecutor and county district attorney were acting as advocates for state and enforcing state law when prosecutor committed conduct violating claimant's constitutional rights, and such actions, which were integral part of prosecutorial function of enforcing state criminal law, could not fairly be attributed to county. Esteves v. Brock, C.A.5 (Tex.) 1997, 106 F.3d 674, rehearing and suggestion for rehearing en banc denied 114 F.3d 1185, certiorari denied 118 S.Ct. 91, 522 U.S. 828, 139 L.Ed.2d 47. Civil Rights 1348

Under Alabama law, sheriff does not exercise county power when he engages in law enforcement activities and thus is not final policymaker for county in area of law enforcement; therefore, county could not be held liable under § 1983 for alleged constitutional violations occurring in criminal prosecution. McMillian v. Johnson, C.A.11 (Ala.) 1996, 88 F.3d 1573, certiorari granted 117 S.Ct. 554, 519 U.S. 1025, 136 L.Ed.2d 436, affirmed 117 S.Ct. 1734, 520 U.S. 781, 138 L.Ed.2d 1. Civil Rights 1351(4)

State, rather than county, was responsible for enforcing provision of California Rules of Court placing duty for proper training and supervision of municipal court judges on presiding judge and for actions of presiding judge in failing to adequately train municipal court commissioner; thus, county could not be held liable to traffic violator in § 1983 action alleging that county failed to train or supervise commissioner. Franceschi v. Schwartz, C.A.9 (Cal.) 1995, 57 F.3d 828. Civil Rights 1350; Court Commissioners 1

Illinois sheriffs are independently elected officials not subject to control of county, and thus county was properly dismissed from § 1983 action arising from citizen's arrest in courthouse for wearing air-filtration mask. Ryan v. County of DuPage, C.A.7 (Ill.) 1995, 45 F.3d 1090. Civil Rights 1348; Sheriffs And Constables 1

County in which juvenile detention center, under state control, was located was not liable for alleged violation of juvenile detainee's Eighth Amendment rights because policies and procedures implemented by county to protect juveniles from sexual assaults remained unchanged after center was transferred to the state; following transfer, county had no control over center. Hill v. Dekalb Regional Youth Detention Center, C.A.11 (Ga.) 1994, 40 F.3d

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42 U.S.C.A. § 1983

1176. Civil Rights 1351(4)

County could not be held liable when county attorney and guardian ad litem obtained ex parte order staying referee's decision requiring child who had allegedly been sexually abused to be returned to her mother's home, absent evidence that order was result of decision to follow county policy regarding such orders. McCuen v. Polk County, Iowa, C.A.8 (Iowa) 1990, 893 F.2d 172. Civil Rights 1351(6)

Homeowners association which voluntarily dismissed its state court action contesting county's grant of zoning change to landowner when landowner filed $6 million counterclaim for frivolous litigation could not maintain action under § 1983 against county, individual county commissioners or county attorney based on allegation that threat of frivolous litigation claim violated association's right to petition, inasmuch as county defendants took no action that deprived association of any constitutionally protected interests, and county defendants were not chargeable with landowner's actions. Dunwoody Homeowners Ass'n, Inc. v. DeKalb County, Ga., C.A.11 (Ga.) 1989, 887 F.2d 1455. Civil Rights 1056

Official acts of county satisfy "under color of state law" component of this section. Kohl Indus. Park Co. v. Rockland County, C.A.2 (N.Y.) 1983, 710 F.2d 895. Civil Rights 1326(1)

County was potentially liable in inmates' § 1983 action alleging sheriff's deliberate indifference to county jail's inmates' medical needs; sheriff, who was statutorily responsible for inmates' medical care, was policymaker empowered to establish policies binding on county. Ginest v. Board of County Com'rs. of Carbon County, D.Wyo.2004, 333 F.Supp.2d 1190. Civil Rights 1351(4)

North Carolina sheriff's alleged decisions to terminate deputy sheriffs in retaliation for their failure to work on sheriff's reelection campaign could not be attributed to county as policy, and county thus was not liable in deputies' § 1983 action, where sheriff had final policymaking authority on employment decisions, and county board of commissioners had minimal input into employment matters. Harter v. Vernon, M.D.N.C.1996, 953 F.Supp. 685, affirmed 101 F.3d 334, rehearing en banc denied, certiorari denied 117 S.Ct. 2511, 521 U.S. 1120, 138 L.Ed.2d 1014, on reconsideration 980 F.Supp. 162. Civil Rights 1351(5)

County can be held liable in prisoner's § 1983 civil rights case only if alleged constitutional violation occurred as result of county's official customs, policies or practices as respondeat superior does not apply to § 1983 suits against municipalities. Harrell v. Sheahan, N.D.Ill.1996, 937 F.Supp. 754. Civil Rights 1351(4)

County could not be held liable under § 1983 for alleged sexual harassment of court administrator, for alleged due process violations, or for alleged retaliation against administrator, through elimination of her position, in violation of First Amendment; there was no county policy authorizing lack of due process, retaliatory discharge, or sexual harassment, county had policy against discrimination, judges, who allegedly participated in violations, were state officers, county commissioners did not eliminate position, did not know of administrator's alleged protected conduct, and did not have any direct supervision of court office, and, even assuming that commissioners had authority to ratify judges' action, they did not ratify alleged improper basis for those actions. Keenan v. Allan, E.D.Wash.1995, 889 F.Supp. 1320, affirmed 91 F.3d 1275. Civil Rights 1351(5)

County was not liable under § 1983 for alleged unconstitutional search and seizure of automobile, where civil rights plaintiff failed to make any allegations indicating that county had custom, policy, or practice which allowed or encouraged illegal searches and seizures. Jalili-Khiabani v. Oakland County, E.D.Mich.1994, 864 F.Supp. 30, vacated 66 F.3d 326. Civil Rights 1395(6)

975. County officials, particular persons under color of law

Actions of county clerk in accepting and recording lien materials prepared by defendant and issuing filing notices

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to plaintiff were not substantial enough to bring plaintiff's claim against defendant arising out of the lien process within the ambit of federal civil rights statute. Cobb v. Saturn Land Co., Inc., C.A.10 (Okla.) 1992, 966 F.2d 1334. Civil Rights 1326(9)

County attorney was authorized decision maker for county in area of county attorney's office, and therefore county and its officials could be held liable under § 1983 for county attorney's allegedly discriminatory decision to discharge assistant county attorney. Lococo v. Barger, E.D.Ky.1997, 958 F.Supp. 290, affirmed in part, reversed in part 234 F.3d 1268. Civil Rights 1351(5)

Assertions that acts of sexual abuse of plaintiff took place on county property while defendant, director of emergency services for county, was acting in official capacity and on duty did not suffice to demonstrate that defendant was acting under color of state law for purposes of civil rights statute, absent any allegation of facts as to the circumstances that would demonstrate that the abuse was somehow related to the performance of the duties of defendant's office. Long v. Mercer County, Ill., C.D.Ill.1992, 795 F.Supp. 873. Civil Rights 1326(2)

976. Credit reporting agencies, particular persons under color of law

Subject of credit reporting agency report to employer, which falsely stated that subject had been convicted of felony, could not maintain § 1983 action against agency; employee could not establish that any action taken by agency had been under color of state law. Wiggins v. Equifax Services, Inc., D.D.C.1993, 848 F.Supp. 213. Civil Rights 1326(11)

976A. Crime victims, particular persons under color of law

Conduct of alleged burglary victims, in assisting city police officer in restraining alleged perpetrator, in retrieving officer's handcuffs, and in allowing officer to use their cell phone to call for backup, did not constitute state action, as element for §§ 1983 claim against alleged burglary victims for use of excessive force during arrest of alleged perpetrator. Mickle v. Ahmed, D.S.C.2006, 444 F.Supp.2d 601. Civil Rights 1326(5)

977. Custodial institutions, particular persons under color of law

To be actionable under this section plaintiffs had to establish that defendant, a private for-profit custodial institution, was acting under color of state law when it allegedly refused to procure readily available medical treatment which would have saved resident's life. Doyle v. Unicare Health Services, Inc., Aurora Center, N.D.Ill.1975, 399 F.Supp. 69, affirmed 541 F.2d 283. Civil Rights 1404

978. Dentists, particular persons under color of law

Dentist was not acting under color of state law when she engaged in alleged indifference to state inmate's medical needs, and thus, inmate could not maintain civil rights action against dentist; although dentist was employed by state on full-time basis to render dental care to inmates, she was not under supervision or direction of any person in the performance of her services nor was her performance in any way based on standards set forth by state. Greenstein v. Huffman, W.D.Va.1986, 684 F.Supp. 434. Civil Rights 1326(8)

979. Department of Housing and Urban Development, particular persons under color of law

Indian tribe and others could not maintain action under this section against Department of Housing and Urban Development and other federal officials arising from foreclosure on housing project, in that alleged violation was not the product of conspiracy between state and federal officials because state officials did not play significant role in challenged actions. Little Earth of United Tribes, Inc. v. U.S. Dept. of Housing and Urban Development, D.C.Minn.1983, 584 F.Supp. 1292. Civil Rights 1327

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42 U.S.C.A. § 1983

980. Department of Veterans Affairs, particular persons under color of law

No action under this section lay against the Veterans Administration because of its denial of service connected disability benefits, since the agency did not act under color of state law. Osorio v. Veterans Administration, D.C.Puerto Rico 1981, 514 F.Supp. 94, affirmed 676 F.2d 681. Civil Rights 1327

981. Detectives, particular persons under color of law

Detective as agent of company was acting "under color of any statute, ordinance, regulation, custom, or usage, of any state" within meaning of this section when alleged constitutional deprivations occurred in form of petitioner's arrest by detective under Professional Thieves Act, 18 P.S.Pa. § 4821. DeCarlo v. Joseph Horne & Co., W.D.Pa.1966, 251 F.Supp. 935. Civil Rights 1326(9)

982. Dispatcher, particular persons under color of law

Involvement of city's emergency medical services (EMS) dispatcher prior to patient's civil commitment at private hospital licensed by State of New York to provide psychiatric services did not convert her commitment into state action under § 1983; sole role played by EMS dispatcher in events leading to patient's commitment was to contact hospital in response to patient's call, and there was no allegation that the dispatcher's decision to contact hospital as opposed to any other hospital, public or private, was in any way connected to a diagnosis of patient's mental health. Doe v. Harrison, S.D.N.Y.2003, 254 F.Supp.2d 338. Civil Rights 1326(9)

983. Drug rehabilitation centers, particular persons under color of law

No state action was involved in dismissal of plaintiff by private, nonprofit corporation involved in treatment of drug addiction, where decision was made by corporation's officials, who were private individuals not acting under any compulsion of state regulation, notwithstanding facts that treating individuals with drug problems serves the public and that corporation received county, state and federal funding. Greene v. McMillan, N.D.Ohio 1983, 573 F.Supp. 632. Civil Rights 1326(11)

Attorney advocacy groups were not state actors for purposes of §§1983. Cicchini v. Blackwell, C.A.6 (Ohio) 2005, 127 Fed.Appx. 187, 2005 WL 673479, Unreported. Civil Rights 1326(10)

984. Alcoholic rehabilitation centers, particular persons under color of law

Alcohol rehabilitation center and individual employees could not be liable for alleged violations of patient's civil rights concerning treatment provided to patient, absent any evidence that center or employees acted under color of state law; although city used center and center received most of its funding from state, no evidence indicated that state controlled how and under what circumstances treatment would be administered by center. Scout v. City of Gordon, D.Neb.1994, 849 F.Supp. 687. Civil Rights 1326(7)

985. Election officials, particular persons under color of law

Voters who were precluded from voting in island school board election, after Board of Elections for Commonwealth of the Northern Mariana Islands implemented voter challenge procedures that treated members of two political parties differently, stated § 1983 claims against board members in their individual capacities when voters alleged that board members, "not as individuals, but under the color and presence of the statute and regulations of the Commonwealth and under the authority of their office as individual members of the Board in the Commonwealth" violated their constitutional rights. Charfauros v. Board of Elections, C.A.9 (N.Mariana

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Islands)2001, 249 F.3d 941, amended on denial of rehearing. Civil Rights 1395(1); Civil Rights 1396

Recall committee defendants were not state actors within the meaning of §§ 1983, for purposes of former elected trustee's §§ 1983 claim that recall election, allegedly based on trustee's refusal to recite the Pledge of Allegiance at meetings of the town board of trustees, violated his rights under the First Amendment; although the committee defendants did invoke Colorado recall election law, no evidence suggested that the committee defendants worked with or received aid from town or were otherwise considered state actors. Habecker v. Town of Estes Park, Colorado, D.Colo.2006, 452 F.Supp.2d 1113. Civil Rights 1326(9)

Since statutory scheme existing in New York for election and subsequent certification of presidential electors expressly provides for certification by the Secretary of State and governor's confirming signature, ministerial act of certifying presidential electors was performed pursuant to state authority and thus state action requirement was met in action alleging that state officials, acting under color of state law, committed fraudulent acts in conduct of voter registration and subsequent general presidential election and that ballots cast by legitimate voters were debased and diluted by illegal votes. Donohue v. Board of Elections of State of N. Y., E.D.N.Y.1976, 435 F.Supp. 957. Civil Rights 1326(2)

Where certification of winner of New York election to office of United States senator was pursuant to federal, not state, law, state officials were not acting pursuant to state law within purview of this section. Phillips v. Rockefeller, S.D.N.Y.1970, 321 F.Supp. 516, affirmed 435 F.2d 976. Civil Rights 1327

986. Employers, particular persons under color of law

An administrator of an organization running a head start program was not acting under color of state law when he terminated an employee, so as to allow the employee to sue the organization under § 1983, even though the organization was heavily regulated by the state; the employee failed to show the existence of a nexus between the state and her discharge sufficient to allow the discharge to be deemed an act of the state. Dowe v. Total Action Against Poverty in Roanoke Valley, C.A.4 (Va.) 1998, 145 F.3d 653. Civil Rights 1326(11)

There was no principled basis for attributing state action to employer who had investigated threatening phone calls made to supervisor and turned over information to police who later arrested employee for purposes of § 1983 action against employer; officers who applied for arrest warrant independently exercised reasonable profession judgment in applying for warrant, magistrate judge acted autonomously and within the range of her judicial competence in issuing arrest warrant, and district attorney acted autonomously in prosecuting case. Roche v. John Hancock Mut. Life Ins. Co., C.A.1 (Mass.) 1996, 81 F.3d 249. Civil Rights 1326(9)

Participation of defendant employer in arrest of plaintiff employee was not actionable under this section where defendant did nothing more than supply information to police officers, who then acted on their own initiative in arresting plaintiff, and did not, therefore, deprive plaintiff of any right under color of state law. Butler v. Goldblatt Bros., Inc., C.A.7 (Ill.) 1978, 589 F.2d 323, certiorari denied 100 S.Ct. 82, 444 U.S. 841, 62 L.Ed.2d 53. Civil Rights 1088(4)

Private employer's discharge of supervisory employees because of their union membership involved no state action and thus, provided no grounds for recovery under this section. Rodriguez v. Conagra, Inc., C.A.1 (Puerto Rico) 1976, 527 F.2d 540. Civil Rights 1326(11)

Employment discrimination plaintiff had no §§ 1983 claim against private corporate employer that was not acting under color of any state law when it allegedly violated her "civil rights." McCreary v. Vaughan-Bassett Furniture Co., Inc., M.D.N.C.2005, 412 F.Supp.2d 535, report and recommendation adopted. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

Former law firm employee failed to state § 1983 claim against senior partner of law firm who allegedly sexually harassed her, where she did not allege any state action or that senior partner was state actor. Yaba v. Cadwalader, Wickersham & Taft, S.D.N.Y.1996, 931 F.Supp. 271. Civil Rights 1326(11)

Supervisor's alleged illegal actions against employee, which were taken within line and scope of his employment, were not committed as state employer, as required for employee to maintain § 1983 civil rights action against supervisor; employer was not affiliated in any way with state. Lynn v. United Technologies Corp., Inc., M.D.Ala.1996, 916 F.Supp. 1217. Civil Rights 1326(11)

Employee's claim, that employer's managers circulated and discussed, and aided and assisted consumer reporting agencies in distributing, erroneous consumer report relating to employee, did not state cognizable claim for violation of § 1983, absent allegation of state action. Wiggins v. Hitchens, D.D.C.1994, 853 F.Supp. 505. Civil Rights 1396

Employers could not be held liable in civil rights action under § 1983 for termination of employee where business was private entity which did not act under color of state law. Olsen v. Lane, M.D.Fla.1993, 832 F.Supp. 1525. Civil Rights 1326(11)

Private employer and its agents who had no association or special relationship with state could not be regarded as "state actors" against whom § 1983 claim could be asserted. Flagg v. Control Data, E.D.Pa.1992, 806 F.Supp. 1218, affirmed 998 F.2d 1002, certiorari denied 114 S.Ct. 710, 510 U.S. 1052, 126 L.Ed.2d 676. Civil Rights 1326(11)

Employer was not transformed into state actor, as required to support employee's claims of constitutional torts and civil rights violations, by requiring employee to submit to drug test; federal Government's encouragement of compliance with Drug Free Workplace Act did not transform activity into state action. Mares v. Conagra Poultry Co., Inc., D.Colo.1991, 773 F.Supp. 248, affirmed 971 F.2d 492. Civil Rights 1327; Civil Rights 1326(11)

Employee's failure to allege that her employer acted in any respect other than as wholly private actor was fatal to employee's § 1983 claim. Gray v. Toshiba America Consumer Products, Inc., M.D.Tenn.1997, 959 F.Supp. 805. Civil Rights 1396

987. Engineers, particular persons under color of law

Allegations that private structural engineering firm and one of its engineers, employed by county in connection with public construction project, were intimately involved in county commissioners' administration of project, that engineer participated in county commissioners' meeting at which government contractor announced problem with county's specifications for project and his intent to publicize them, and that engineer participated in meeting at which commissioners decided to terminate government contractor's contract sufficiently established that engineering firm and its engineer acted under color of state law for purposes of civil rights suit. Skepton v. Bucks County, Pa., E.D.Pa.1986, 628 F.Supp. 177. Civil Rights 1326(5)

Inasmuch as malapportioned divisions were created by state engineer acting under state law, and divisions had been maintained by board of directors also purporting to act under state law, action challenging malapportionment was within this section. Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., E.D.Cal.1972, 342 F.Supp. 144, probable jurisdiction noted 92 S.Ct. 2496, 408 U.S. 920, 33 L.Ed.2d 331, affirmed 93 S.Ct. 1224, 410 U.S. 719, 35 L.Ed.2d 659. Civil Rights 1326(1)

988. Family members, particular persons under color of law--Generally

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Family members who sought to have conservator appointed did not engage in state action under a joint action theory by petitioning for appointment of conservator where judge who made appointment did not allow family members to substitute their judgment for his own. Smith v. Wood, E.D.Pa.1986, 649 F.Supp. 901. Civil Rights 1326(9)

989. ---- Foster parents, family members, particular persons under color of law

Pennsylvania's comprehensive regulation of foster care, and funding of that care together with its counties, did not establish a sufficiently close nexus between foster parents and Pennsylvania to result in foster parents' decisions being deemed to be the Commonwealth's so as to make them state actors for purposes of foster child's §§1983 action against them alleging deprivation of Fourteenth Amendment right to be free from physical harm. Leshko v. Servis, C.A.3 (Pa.) 2005, 423 F.3d 337. Constitutional Law 254(4)

Foster parents were not state actors who could be held liable under civil rights statute for violation of substantive due process rights of two foster children arising from alleged child abuse; although State's regulation of foster parenting arguably placed it in symbiotic relationship with foster parents for purposes of nexus/joint action test for state actors, relationship forbade rather than encouraged child abuse, and State's extension of Torts Claim Act to foster parents did not make it joint venturer with foster parents in effecting conduct underlying complaint. Rayburn ex rel. Rayburn v. Hogue, C.A.11 (Ga.) 2001, 241 F.3d 1341. Civil Rights 1326(5); Civil Rights 1326(7)

Foster mother in whose care child had died was not rendered state actor by fact that state statutes and regulations created and governed foster care, by state's reimbursement of foster parents' expenses, or by fact that state agency had placed child in foster mother's home, and thus natural mother had no § 1983 cause of action against foster mother; showing of state's joint participation in abuse of child, or entwinement of abusive conduct with that of state actors, was required. Marr ex rel. Marr v. Schofield, D.Me.2004, 307 F.Supp.2d 130. Civil Rights 1326(5); Civil Rights 1326(7)

Foster parents were not "state actors" for purposes of § 1983 under the public function test, the state compulsion test, or the symbiotic relationship test; sufficiently close nexus between state and challenged action was lacking even though foster parents were required to be licensed and received reimbursement from state. Lintz v. Skipski, W.D.Mich.1992, 807 F.Supp. 1299, reconsideration denied 815 F.Supp. 1066, affirmed 25 F.3d 304, certiorari denied 115 S.Ct. 485, 513 U.S. 988, 130 L.Ed.2d 397. Civil Rights 1326(7)

Foster parents do not act under color of state law for purposes of § 1983 claim. McCrum v. Elkhart County Dept. of Public Welfare, N.D.Ind.1992, 806 F.Supp. 203, reconsideration granted. Civil Rights 1326(1)

Foster parents who allegedly abused plaintiffs' children were not "state actors" for purpose of § 1983. Pfoltzer v. County of Fairfax, E.D.Va.1991, 775 F.Supp. 874, affirmed 966 F.2d 1443. Civil Rights 1326(1)

990. ---- Parents, family members, particular persons under color of law

Divorced father who was trying to see that his son received proper medical attention was not engaged in state action and was not liable to mother under this section for damages for emotional distress suffered by mother when she was temporarily denied custody of child. Harley v. Oliver, C.A.8 (Ark.) 1976, 539 F.2d 1143. Civil Rights 1326(9)

Father did not state § 1983 cause of action against mother, in connection with custody dispute, as he had failed to show mother acting "under color of state law"; claims that mother was carrying out custody orders of various state court judges was insufficient. Snyder v. Talbot, D.Me.1993, 836 F.Supp. 26. Civil Rights 1326(9)

991. ---- Spouses, family members, particular persons under color of law

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42 U.S.C.A. § 1983

Ex-husband's complaint contained sufficient allegations of concerted action with state officials to support claim against ex-wife under § 1983, despite ex-wife's status as private party, based on allegations depicting joint action by ex-wife and constable in effectuating recovery of vehicle in ex-husband's possession; complaint alleged, inter alia, that county constable acted "at the instance and request" of ex-wife in assisting her to seize vehicle, and that ex-wife was thus "acting under color of state law" for purposes of the lawsuit. Abbott v. Latshaw, C.A.3 (Pa.) 1998, 164 F.3d 141, certiorari denied 119 S.Ct. 2393, 527 U.S. 1035, 144 L.Ed.2d 794. Civil Rights 1396

Plaintiff's wife did not qualify as "state actor," and, thus, viable claim could not be established against wife under federal civil rights statute with regard to violation of plaintiff's due process rights upon service and execution of civil protection order (CPO), even though wife utilized Ohio statute in seeking CPO. Kelm v. Hyatt, C.A.6 (Ohio) 1995, 44 F.3d 415. Civil Rights 1326(9)

Wife of sheriff of small Colorado county did not act under color of law for purpose of liability under this section when she struck plaintiff, who along with another had entered back seat of patrol car and began to fight, where wife had merely accompanied husband on his rounds and had no official capacity and incident occurred when the sheriff happened on a street brawl and attempted to quell it. Price v. Baker, C.A.10 (Colo.) 1982, 693 F.2d 952. Civil Rights 1326(1)

Husband and his attorney in state court child custody proceeding did not act under color of state law for purposes of civil rights action against them for allegedly jointly engaging in conspiracy with state officials to deprive mother and daughter of their civil rights; mother was not able to demonstrate that she was wrongfully deprived of physical custody of her daughter, since she still had opportunity to be heard in pending state trial court proceeding, and mother and daughter did not allege single plan, that alleged co-conspirators shared in general conspiratorial objective, or that overt act was committed in furtherance of conspiracy that caused injury to them, as required for conspiracy. Offutt v. Kaplan, N.D.Ill.1995, 884 F.Supp. 1179. Civil Rights 1326(5); Civil Rights 1326(10)

Former wife's participation in state divorce proceeding was wholly insufficient to meet state action requirement of § 1983. Larsen v. Larsen, D.Utah 1987, 671 F.Supp. 718, affirmed 871 F.2d 1095, certiorari denied 110 S.Ct. 135, 493 U.S. 844, 107 L.Ed.2d 94. Civil Rights 1326(9)

Former wife's participation in Washington State court litigation and her current custody of son pursuant to the Washington court's order did not constitute action taken "under color of state law" for purpose of former husband's cause of action under this section arising from inconsistent child custody decrees entered by Florida and Washington State courts. McDougald v. Jenson, N.D.Fla.1984, 596 F.Supp. 680, affirmed 786 F.2d 1465, certiorari denied 107 S.Ct. 207, 479 U.S. 860, 93 L.Ed.2d 137, rehearing denied 107 S.Ct. 614, 479 U.S. 1001, 93 L.Ed.2d 611. Civil Rights 1326(9)

992. Federal Deposit Insurance Corporation, particular persons under color of law

Federal Deposit Insurance Corporation, whose sole power and authority is by virtue of federal legislation, cannot act under color of state law and therefore is not subject to suit under this section. Jones v. Citizens and Southern Nat. Bank of S. C., D.C.S.C.1967, 262 F.Supp. 506. Civil Rights 1327

993. Federal government, particular persons under color of law

This section does not apply to actions of federal government. Rodriguez v. Ritchey, C.A.5 (Fla.) 1977, 556 F.2d 1185, certiorari denied 98 S.Ct. 894, 434 U.S. 1047, 54 L.Ed.2d 799. Civil Rights 1362

Actions involving only federal government are beyond scope of this section. Rodriguez v. Conagra, Inc., C.A.1 (Puerto Rico) 1976, 527 F.2d 540. Civil Rights 1327

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Section 1983 does not apply to action of federal government or its officers. Murray v. U.S. Dept. of Justice, E.D.N.Y.1993, 821 F.Supp. 94, affirmed 14 F.3d 591. Civil Rights 1362

Actions of the federal government or its officers acting under color of federal law are exempt from proscriptions of this section prohibiting deprivation of civil rights under color of state law. Powell v. Kopman, S.D.N.Y.1981, 511 F.Supp. 700. Civil Rights 1327

This section creating a federal cause of action against person whose misconduct under color of state law violates the constitutional rights of another does not apply to the federal government. Etheridge v. Schlesinger, E.D.Va.1973, 362 F.Supp. 198. Civil Rights 1362

994. Federal Home Loan Banks, particular persons under color of law

No jurisdiction over federal home loan bank existed under this section, relative to civil rights complaint filed by discharged bank teller, since federal home loan banks have been defined as "federal instrumentalities" and, accordingly, there could be no "state action." Vazquez v. Bayamon Federal Savings and Loan Ass'n of Puerto Rico, D.C.Puerto Rico 1980, 506 F.Supp. 113. Civil Rights 1327

995. Federal officials, particular persons under color of law--Generally

Section 1983 provides remedy only for deprivation of constitutional rights by person acting under color of law of any state or territory or District of Columbia, and not for deprivation of rights by federal officials acting under color of federal law. Daly-Murphy v. Winston, C.A.9 (Cal.) 1987, 837 F.2d 348. Civil Rights 1327

This section covers only deprivations of rights under color of state law, and individual defendants who were federal officials, acting under color of federal law rather than state law, were not subject to suit under this section. Broadway v. Block, C.A.5 (La.) 1982, 694 F.2d 979. Civil Rights 1327

When federal officials are engaged in a conspiracy with state officials to deprive constitutional rights, state officials provide requisite state action to make entire conspiracy actionable under this section. Hampton v. Hanrahan, C.A.7 (Ill.) 1979, 600 F.2d 600, certiorari granted in pt.,judgment reversed in pt. on other grounds 100 S.Ct. 1987, 446 U.S. 754, 64 L.Ed.2d 670, rehearing denied 101 S.Ct. 33, 448 U.S. 913, 65 L.Ed.2d 1176, rehearing denied 101 S.Ct. 33, 448 U.S. 913, 65 L.Ed.2d 1177, on remand 499 F.Supp. 640, on remand 522 F.Supp. 140. Conspiracy 7.5(3)

This section does not apply to federal officers acting under color of federal law. Campbell v. Amax Coal Co., C.A.10(Wyo.) 1979, 610 F.2d 701. Soldevila v. Secretary of Agriculture of U. S., C.A.1 (Puerto Rico) 1975, 512 F.2d 427.

Violations of federal civil rights by federal officers will not give rise to cause of action under this section providing cause of action for persons deprived of their federal civil rights under color of state law. Robison v. Wichita Falls & North Texas Community Action Corp., C.A.5 (Tex.) 1975, 507 F.2d 245. Civil Rights 1327

Suit will not lie under this section against federal official acting under color of federal law. Roots v. Callahan, C.A.5 (Fla.) 1973, 475 F.2d 751. Civil Rights 1327

This section does not apply to federal officers. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, C.A.2 (N.Y.) 1972, 456 F.2d 1339. See, also, Black v. U.S., D.C.N.Y.1975, 388 F.Supp. 805, affirmed 534 F.2d 524; Casey v. Ciccone, D.C.Mo.1969, 306 F.Supp. 698; Swanson v. Willis, D.C.Alaska 1953, 114 F.Supp. 434.

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42 U.S.C.A. § 1983

This section rendering liable persons who deprive others of civil rights acting "under color of any statute" of "any state" reaches state action only and does not provide basis for suit against federal officials. Savage v. U. S., C.A.8 (Minn.) 1971, 450 F.2d 449, certiorari denied 92 S.Ct. 1327, 405 U.S. 1043, 31 L.Ed.2d 585, rehearing denied 92 S.Ct. 2048, 406 U.S. 951, 32 L.Ed.2d 339. Civil Rights 1327

Section 1983 does not provide cause of action against federal officials acting under color of federal law. Lartey v. U.S. Dept. of Justice, W.D.La.1992, 790 F.Supp. 130. Civil Rights 1327

996. ---- Bureau of Prisons, federal officials, particular persons under color of law

Though prisoner, who was sentenced as a young adult offender under Youth Corrections Act, § 5005 et seq. of Title 18, and who contended that government failed to provide him treatment and segregation required by Act, did not have private cause of action under this section because defendants, consisting of United States Bureau of Prisons Director and prison warden, were federal officials, prisoner did have cause of action and damages remedy which could be implied directly under Constitution because due process clause of U.S.C.A.Const. Amend. 5 was violated by reason of liberty interest created in § 5011 of Title 18 governing segregation and treatment of committed youth offenders. Micklus v. Carlson, C.A.3 (Pa.) 1980, 632 F.2d 227. Prisons 10

Inmate's claims against federal prison officials, who allegedly violated his civil rights during his incarceration, involved claims against federal employees or entities from whom inmate was not entitled to relief under § 1983; inmate alleged that officials acted under color of federal law by violating his rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Khan v. U.S., E.D.N.Y.2003, 271 F.Supp.2d 409. Civil Rights 1327

997. ---- Drug Enforcement Administration, federal officials, particular persons under color of law

In an action for damages brought against the United States and its agents arising out of an incident that occurred when federal agents and state police members of a federal narcotics task force stopped the plaintiff in his automobile on a public street, allegedly in the mistaken belief that he was a known fugitive, plaintiffs' fourth and eighth causes of action, asserting claims under U.S.C.A.Const. Amend. 14 and this section, had to be dismissed as against the individual federal defendants because applicable only to the state and to state action. Ricca v. U. S., E.D.N.Y.1980, 488 F.Supp. 1317. Federal Civil Procedure 1750

998. ---- Federal Bureau of Investigation, federal officials, particular persons under color of law

Agents of Federal Bureau of Investigation (FBI) were not acting under color of state law, precluding suit by estate of murder victim against United States under §§ 1983, when they did not follow up on telephone call from alleged bank robber, expressing wish to turn himself in, and caller committed homicide on following day. McCloskey v. Mueller, D.Mass.2005, 385 F.Supp.2d 74, affirmed 446 F.3d 262. Civil Rights 1327

There could be no redress in the form of civil damages against special agent of Federal Bureau of Investigation under this section, or even under common law of torts. U. S. ex rel. Brzozowski v. Randall, E.D.Pa.1968, 281 F.Supp. 306.

999. ---- Federal Communications Commission, federal officials, particular persons under color of law

Even if California officials may have violated pastor's rights under U.S.C.A. Const.Amend. 1 in course of their investigation of church's television and radio stations, mere fact that they may have shared with employees of Federal Communications Commission information unlawfully procured did not mean that Commission employees acted "under color of state law" to deprive pastor of his rights under U.S.C.A. Const.Amend. 1. Scott v. Rosenberg, C.A.9 (Cal.) 1983, 702 F.2d 1263, certiorari denied 104 S.Ct. 1439, 465 U.S. 1078, 79 L.Ed.2d 760.

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42 U.S.C.A. § 1983

Civil Rights 1327

1000. ---- Internal Revenue Service, federal officials, particular persons under color of law

Taxpayer had no cause of action against Internal Revenue Service under this section which allows party to bring civil action for constitutional deprivations against persons acting under color of state law since Service is federal agency and its agents performed no acts under color of state law. Stonecipher v. Bray, C.A.9 (Ariz.) 1981, 653 F.2d 398, certiorari denied 102 S.Ct. 1006, 454 U.S. 1145, 71 L.Ed.2d 297. Civil Rights 1327

Officials of Internal Revenue Service could not be held liable under this section allowing a plaintiff to redress the deprivation of civil rights by authorities who act under color of state law since the claimed deprivation occurred while federal officials were acting under color of federal law. Seibert v. Baptist, C.A.5 (Ala.) 1979, 594 F.2d 423, on rehearing 599 F.2d 743, certiorari denied 100 S.Ct. 1851, 446 U.S. 918, 64 L.Ed.2d 271, rehearing denied 100 S.Ct. 3030, 447 U.S. 930, 65 L.Ed.2d 1125. Civil Rights 1327; Conspiracy 7.5(3)

Internal revenue agents who, pursuant to § 6331 of Title 26 caused levy to be placed on taxpayer's bank account to collect penalty for late payment of federal employment taxes and private bank employees who obeyed the federal law assisting in the levy were not acting "under color of state law" and thus were not subject to suit for deprivation of civil rights while acting under color of state law. Kotmair v. Gray, C.A.4 (Md.) 1974, 505 F.2d 744. Civil Rights 1327

Internal Revenue Service employee was not acting under color of state law when he provided tax return information to state officials, so that no civil rights claim could be maintained against him. Smith v. U.S., C.D.Ill.1989, 723 F.Supp. 1300, affirmed 964 F.2d 630, rehearing denied, certiorari denied 113 S.Ct. 1015, 506 U.S. 1067, 122 L.Ed.2d 162. Civil Rights 1327

1001. ---- Justice Department, federal officials, particular persons under color of law

Officials of United States Department of Justice who were acting under color of federal law could not be liable under this section. Norton v. McShane, C.A.5 (Miss.) 1964, 332 F.2d 855, certiorari denied 85 S.Ct. 1345, 380 U.S. 981, 14 L.Ed.2d 274.

This section is not a proper basis on which to assert a cause of action for an alleged civil rights violation perpetrated under color of federal law and, hence, this section provided no right of action against federal agents for violation of U.S.C.A.Const. Amend. 4 rights resulting from alleged warrantless seizure of books and records. J.D. Pflaumer, Inc. v. U.S. Dept. of Justice, E.D.Pa.1978, 450 F.Supp. 1125.

1002. ---- Police, federal officials, particular persons under color of law

Officer employed by United States Government Printing Office did not act under color of District of Columbia law when he made arrest for violation of District statute proscribing disorderly conduct, and thus could not be held liable to arrestee under §§ 1983; officer's power to make arrest came solely from federal law, which gave him concurrent jurisdiction with local police. Williams v. U.S., C.A.D.C.2005, 396 F.3d 412, 364 U.S.App.D.C. 382. Civil Rights 1327

Allegations that United States Marshal for District of Columbia Superior Court acted jointly with District officials in policing the conduct of protestors and that Marshal and his deputies derived their authority over protesters from cooperative agreements with the District were sufficient to allege that Marshal was a state actor for purpose of §§ 1983 claims brought by protestors, who were arrested and allegedly unlawfully strip searched. Bame v. Clark, D.D.C.2006, 2006 WL 3591924. Civil Rights 1396

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42 U.S.C.A. § 1983

Allegations that former U.S. Marshal and the District of Columbia acted in concert with the purpose of executing a jointly developed unconstitutional policy of strip searching all female but not male pre-presentment arrestees without individualized suspicion stated claim that marshal was "state actor" for purpose of arrestees' §§ 1983 claim against former marshal. Johnson v. District of Columbia, D.D.C.2006, 461 F.Supp.2d 48. Civil Rights 1327

Neither the National Institutes of Health Police Department (NIHPD), a federal entity, nor an NIHPD detective were acting pursuant to state or local law when executing arrest warrant for crimes committed against the National Institutes of Health (NIH) and, thus, neither could be liable therefor under §§ 1983. Jones v. National Institutes of Health Police Dept., D.D.C.2005, 404 F.Supp.2d 1. Civil Rights 1327

United States park police officer was not acting under color of District of Columbia law when he took arrestee into custody for trespassing on restricted park property, though officer might have relied on District of Columbia criminal provisions in effecting arrest pursuant to Assimilative Crimes Act; Act served to transform District of Columbia law into federal law, so that arrest was clearly made under color of federal law. Richardson v. U.S. Dept. of Interior, D.D.C.1990, 740 F.Supp. 15. Civil Rights 1327

Since this section applies to officers acting under color of state law, not federal law, this section did not give plaintiffs, who alleged that they were assaulted and falsely arrested and imprisoned, a cause of action against individual members of national airport police force. Davidson v. Kane, E.D.Va.1972, 337 F.Supp. 922. Civil Rights 1327

1003. ---- Postal Service, federal officials, particular persons under color of law

Alleged acts of federal postal inspectors in connection with investigation which resulted in arrest of plaintiff failed to make out federal cause of action for violation of this section. Sopp v. Gehrlein, W.D.Pa.1964, 236 F.Supp. 823. Civil Rights 1088(4)

1004. ---- Miscellaneous federal officials, particular persons under color of law

Secretary of Health and Human Services did not act under color of state law in implementing regulations governing states' collection of Aid to Families with Dependent Children (AFDC) overpayments, although AFDC program was based on scheme of "cooperative federalism," and AFDC recipients who challenged regulations thus could not establish claim under § 1983 and were not entitled to award of attorney's fees under civil rights statute and Equal Access to Justice Act (EAJA); Secretary did not exercise state authority and did not conspire with state officials to deprive recipients of their rights. Strickland on Behalf of Strickland v. Shalala, C.A.6 (Ohio) 1997, 123 F.3d 863. Civil Rights 1327; Civil Rights 1479; United States 147(11.1)

Agent could not have acted under color of state law, within this section, at place which was outside his jurisdiction as municipal police officer, and his actions were necessarily taken pursuant to federal authority, in view of his assignment to federal agency. Askew v. Bloemker, C.A.7 (Ill.) 1976, 548 F.2d 673. Civil Rights 1327

Where, at time they allegedly conspired to violate plaintiff's civil and constitutional rights by using perjured testimony to obtain his conviction and by seizing certain property in violation of U.S.C.A.Const. Amend. 4 defendants were federal officers acting under color of federal law, plaintiff did not have a cause of action for damages under this section. Bethea v. Reid, C.A.3 (N.J.) 1971, 445 F.2d 1163, certiorari denied 92 S.Ct. 747, 404 U.S. 1061, 30 L.Ed.2d 749. Conspiracy 7.5(3)

Secretary of federal Department of Transportation (DOT), and Division Administrator for Alabama Division of Federal Highway Administration (FHA) whose role in selection of consultants was limited to projects receiving federal funding, were not acting under color of state or local law, and thus, were not subject to liability in federal civil rights action brought by operator of surveying company who alleged that he been discriminated against based

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on his race and had been deprived of equal opportunity in contracting with Alabama Department of Transportation (DOT). Wright v. Butts, M.D.Ala.1996, 953 F.Supp. 1343. Civil Rights 1327; Civil Rights 1326(2)

Employee of Department of Housing and Urban Development (HUD) was not a state actor, for purposes of § 1983 claim, when he allegedly acted to further conspiracy to have tenants bring false sexual harassment claims against landlord; any actions he took would have been in his official capacity as HUD investigator, which made him a federal rather than state actor. Shuttlesworth v. Housing Opportunities Made Equal, S.D.Ohio 1994, 873 F.Supp. 1069. Civil Rights 1327

Federal agents were "acting under color of state law" for purposes of § 1983 when they effected search and arrest of federal employee pursuant to capias issued under state law, to enforce decision of state court; it was not necessary that there be some conspiracy with state officials. Terrell v. Petrie, E.D.Va.1991, 763 F.Supp. 1342, affirmed 952 F.2d 397. Civil Rights 1327

Antinuclear demonstrators had no action under § 1983 for alleged conspiracy involving private parties and federal officers; involvement of state or local officials was required to state § 1983 claim. Thomas v. News World Communications, D.D.C.1988, 681 F.Supp. 55. Conspiracy 7.5(3)

1005. Finance companies, particular persons under color of law

Finance company which repossessed debtor's pickup truck upon debtor's default under security agreement did not act under color of state law for purposes of invoking this section nor was there "state action" within meaning of U.S.C.A.Const. Amend. 14 where the finance company was not a governmental agency and did not invoke state powers and processors. Kinch v. Chrysler Credit Corp., E.D.Tenn.1973, 367 F.Supp. 436. Civil Rights 1326(9)

1006. Fire departments, particular persons under color of law

Volunteer fire department was not a "state actor" for purposes of § 1983 action against it for dismissal of members in violation of their civil rights; volunteer department was not carrying on strictly public function, nor was there symbiotic relationship between city and association sufficient to make association actions those of city. Yeager v. City of McGregor, C.A.5 (Tex.) 1993, 980 F.2d 337, rehearing denied, certiorari denied 114 S.Ct. 79, 510 U.S. 821, 126 L.Ed.2d 47. Civil Rights 1326(11)

Although town took no active part in disciplinary proceedings of volunteer fire department, actions of department in dismissing fireman constituted "state action" and could not offend U.S.C.A.Const. Amend. 1 because of exclusively governmental nature of function performed by volunteer fire department. Janusaitis v. Middlebury Volunteer Fire Dept., C.A.2 (Conn.) 1979, 607 F.2d 17. Civil Rights 1326(11); Constitutional Law 82(5)

For purposes of § 1983 claim, volunteer fire company's governmental function of fire protection was "state action," even if company was private, not-for-profit corporation. Gibson v. Hurleyville Fire Co. No. 1, S.D.N.Y.1998, 1 F.Supp.2d 329. Civil Rights 1326(4)

Volunteer fire department was "state actor" that could be subject to § 1983 liability for allegedly disciplining, suspending and discharging employee in violation of his First Amendment rights; department was subject to extensive regulation by state, received substantial public funding, performed public function that was historically prerogative of state and often within province of state, and was state actor under two Maryland statutes which confer inherently sovereign powers upon volunteer firefighters. Goldstein v. Chestnut Ridge Volunteer Fire Co., D.Md.1997, 984 F.Supp. 367, affirmed 218 F.3d 337, certiorari denied 121 S.Ct. 882, 531 U.S. 1126, 148 L.Ed.2d 790, certiorari denied 121 S.Ct. 1096, 531 U.S. 1152, 148 L.Ed.2d 969. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

Volunteer fire company was "state actor" for purposes of § 1983 claim brought by member who claimed that company's ban or expulsion of him violated his constitutional rights; under New Jersey law, provision of firefighting was governmental function, volunteer fire companies were treated as public entities, borough had significant control over company's membership and activities, and borough provided financial resources and owned fire trucks. Eggert v. Tuckerton Volunteer Fire Co. No. 1, D.N.J.1996, 938 F.Supp. 1230. Civil Rights 1326(11)

1007. Foundations, particular persons under color of law

Where condition of parole required parolee to attend alcohol and drug rehabilitation foundation, where condition was between parolee and state, not state and foundation, where foundation was not required to accept parolee into its program and, if it did so, it did so on its own terms, not that of the state, where foundation did not have power unilaterally to revoke parole, and where only possible connection between state and foundation was the parole condition, there was no action by foundation under color of state law, for purposes of this section and thus complaint alleging that foundation converted parolee's personal property and money under color of state law and in violation of his constitutional rights failed to state cause of action. Tilbe v. Entitas Foundation, Inc., D.C.Nev.1980, 499 F.Supp. 817. Civil Rights 1396

1008. Garbage collectors, particular persons under color of law

City's refusal to collect garbage from black homeowner who continued to leave garbage on street that had been abandoned by city and become private property, instead of leaving it at either of two other locations that also provided access to her property, was not racially motivated discrimination in supply of city services as would support her § 1983 action against city; derogatory racial remarks made to homeowner when she requested that her garbage be collected at site on abandoned street did not establish racial motivation for refusal to collect garbage in light of city's lack of authority to enter private property to collect homeowner's garbage, and homeowner's failure to show that initial decision to abandon street was motivated by discriminatory intent, and homeowner did not show existence of policy or custom on part of city of discrimination against black people in supply of city services. Crenshaw v. City of Defuniak Springs, N.D.Fla.1995, 891 F.Supp. 1548. Civil Rights 1052

1009. Guardians, particular persons under color of law

A guardian ad litem is not acting under color of state law for purposes of § 1983. Meeker v. Kercher, C.A.10 (N.M.) 1986, 782 F.2d 153. Civil Rights 1326(1)

Guardian appointed by state of North Carolina as fiduciary for young, incompetent adult, who, from birth, had been ward of state or of guardian appointed by state was "state actor" under 42 U.S.C.A. § 1983 where his authority was right or privilege created by state, guardian had custody of ward and guardian acted together with or obtained significant aid from state officials. Thomas S. v. Morrow, C.A.4 (N.C.) 1986, 781 F.2d 367, certiorari denied 106 S.Ct. 1992, 476 U.S. 1124, 90 L.Ed.2d 673, certiorari denied 107 S.Ct. 235, 479 U.S. 869, 93 L.Ed.2d 161. Civil Rights 1326(1)

Parents failed to meet state actor requirement, in their action seeking reestablishment of patient's artificial life support, for §§ 1983 claim under Free Exercise Clause and claim under Religious Land Use and Institutionalized Persons Act (RLUIPA), inasmuch as defendants, namely hospice and daughter's guardian, were not state actors, and fact that claims were adjudicated by state court judge did not provide requisite state action. Schiavo ex rel. Schindler v. Schiavo, M.D.Fla.2005, 357 F.Supp.2d 1378, affirmed 403 F.3d 1223, rehearing en banc denied 403 F.3d 1261, stay denied 125 S.Ct. 1692, 544 U.S. 945, 161 L.Ed.2d 518. Civil Rights 1326(9)

Guardian ad litem, appointed by state juvenile court for child who reported that she had been sexually abused by stepfather, was not acting under color of state law, on § 1983 substantive due process failure to protect claim by

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administrator of child's estate; guardian performed traditional lawyer functions before the juvenile court. Sophapmysay v. City of Sergeant Bluff, Iowa, N.D.Iowa 2002, 218 F.Supp.2d 1027. Civil Rights 1326(1); Civil Rights 1326(10)

State public defender who allegedly failed to perform duties as guardian ad litem for child who testified against her stepfather in sexual abuse trial was acting under "color of state law," subjecting her to liability in § 1983 action brought after stepfather murdered child, which alleged failure to protect child in violation of due process clause. Sophapmysay v. City of Sergeant Bluff, N.D.Iowa 2000, 126 F.Supp.2d 1180. Civil Rights 1326(10)

Inmate's limited guardian did not act under color of state law in consenting to forcible administration of medication to inmate, and guardian thus could not be held liable under § 1983; guardian was appointed solely for purpose of consent to medication, consent to medication was not power traditionally exclusively reserved to state, state exercised no coercive power over guardian's independent judgment, and state was not intimately involved in guardian's conduct. Holley v. Deal, M.D.Tenn.1996, 948 F.Supp. 711. Civil Rights 1326(1)

Father bringing § 1983 civil rights action against mother and others, alleging deprivation of civil rights in connection with custody dispute, could not claim that "state action" requirement was satisfied by alleged conspiracy between defendants and guardian ad litem for child; although appointed by court, guardian ad litem's responsibilities were to advance best interest of child, and not to enforce any state mandate regarding child. Snyder v. Talbot, D.Me.1993, 836 F.Supp. 19. Civil Rights 1326(5)

1010. Hospitals, particular persons under color of law--Generally

Allegations by parents of infant born with severe brain damage that the hospital where infant was born operated pursuant to licensing and authority of state and federal governments, and that hospital and hospital social worker were acting under color of state law at the time of the alleged constitutional violations, were insufficient to establish that hospital and social worker were state actors at the time of the alleged constitutional violations, as required to state §§ 1983 claim. Kottmyer v. Maas, C.A.6 (Ohio) 2006, 436 F.3d 684, rehearing and rehearing en banc denied. Civil Rights 1396

Hospital which was owned and administered by private corporation was not a "state actor" under § 1983 when hospital and its employees tested newborn child's urine for methadone, held and treated child for possible methadone withdrawal when urine tested positive and medically cleared child after negative confirmatory test, but thereafter, hospital was state actor when it informed Child Welfare Administration (CWA) of new test result and held child pending CWA's response. Kia P. v. McIntyre, C.A.2 (N.Y.) 2000, 235 F.3d 749, certiorari denied 122 S.Ct. 51, 534 U.S. 820, 151 L.Ed.2d 21. Civil Rights 1326(4)

Mentally retarded woman and her husband stated claim under § 1983 against woman's parents, hospital, and physicians when she alleged that they participated in her nonconsensual sterilization, given allegations, in support of state action element of claim, that hospital was organized and existed under state law, was licensed by appropriate state agencies, receiving federal funding and favorable tax treatment, was built on land conveyed by local government and shared profits with local government, routinely accepted social security income payments for sterilization of mentally retarded individuals during relevant period, was, in relevant period, governed by board selected by local government, and, at relevant time, operated under board's policy by which board condoned and advanced woman's sterilization. Lake v. Arnold, C.A.3 (Pa.) 1997, 112 F.3d 682, as amended. Civil Rights 1396

Under state compulsion test, nexus test, and public function test, private hospital and private physicians who admit mentally ill person pursuant to Tennessee involuntary commitment statute are not state actors and thus are not subject to suit under federal civil rights statute. Ellison v. Garbarino, C.A.6 (Tenn.) 1995, 48 F.3d 192. Civil Rights 1326(9)

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Hospital was not a "state actor" for purposes of § 1983 claim, and could not be considered as such solely because it received medicare and medicaid funds and was subject to state regulation. Wheat v. Mass, C.A.5 (La.) 1993, 994 F.2d 273, rehearing denied. Civil Rights 1326(7)

Registered nurse's firing by private nonprofit health services corporation which operated hospital pursuant to lease agreement with public hospital authority was not "state action" for purposes of nurse's § 1983 action under "nexus/joint action test," even though lease required corporation to serve general public, including indigent patients, and to provide county auditor with financial report; lease relieved authority of all liabilities, gave corporation sole discretion to hire and fire employees, provided that corporation was governing body of hospital and its medical staff, mandated that corporation maintain and repair leased property at its own expense, required corporation to maintain insurance, conferred upon corporation authority to make and enforce rules, and demanded that corporation hold authority harmless, and corporation and authority were separate and distinct entities under state law. Willis v. University Health Services, Inc., C.A.11 (Ga.) 1993, 993 F.2d 837, certiorari denied 114 S.Ct. 468, 510 U.S. 976, 126 L.Ed.2d 420. Civil Rights 1326(11)

Private mental hospital was not state actor, for purposes of patient's allegation that she was victim of conspiracy to commit her to the institution, on basis that commitment process was traditional public function; involuntary commitment in Georgia is not function so reserved to state that action under commitment statute transforms private actor into "state actor." Harvey v. Harvey, C.A.11 (Ga.) 1992, 949 F.2d 1127. Civil Rights 1326(4)

Termination of radiology technician at public county hospital by supervisor of health care corporation that contracted to provide hospital management services constituted state action, for purposes of federal civil rights action. Carnes v. Parker, C.A.10 (Okla.) 1991, 922 F.2d 1506. Civil Rights 1326(11)

Private hospitals, which were distinct and separate entities from state university, were not state actors for §§ 1983 purposes under the symbiotic relationship or close nexus test. Untracht v. Fikri, W.D.Pa.2006, 454 F.Supp.2d 289. Civil Rights 1326(6)

Private hospital which provided emergency medical services to prisoner was not a "state actor" for purposes of §§ 1983, where hospital did not voluntarily assume function of the state by accepting correctional facility's delegation of its duty to provide emergency medical care to prisoner, and hospital did not impliedly contract with correctional facility to provide emergency medical services when it treated prisoner, given that it was federally mandated to do so by the Emergency Medical Treatment and Active Labor Act (EMTALA). Sykes v. McPhillips, N.D.N.Y.2006, 412 F.Supp.2d 197. Civil Rights 1326(8)

Private hospital was not a state actor for §§ 1983 purposes with respect to its alleged policy of charging disparate rates for uninsured patients; hospital's billing practices for uninsured patients were not compelled by the government, but only were based upon "perceived requirements" of federal and state laws, hospital was not performing a function that was traditionally the exclusive province of the government, and the regulations and subsidies related to health care were insufficient to create the necessary "symbiotic relationship" to make hospital a state actor. Sabeta v. Baptist Hosp. of Miami, Inc., S.D.Fla.2005, 410 F.Supp.2d 1224. Civil Rights 1326(7)

Hospital, which treated plaintiff's wife, and wife's insurer were purely private entities, such that plaintiff failed to establish that he was deprived, under color of state law, of any right secured by the Constitution or laws of the United States, as required in his § 1983 action. Estate of Williams- Moore v. Alliance One Receivables Management, Inc., M.D.N.C.2004, 335 F.Supp.2d 636. Civil Rights 1326(4)

Hospital did not act under color of state law, as required for § 1983 liability, in providing an allegedly untimely response to an information request from the Kentucky State Medical Board (KSMB) about a psychiatrist, or in submitting allegedly defamatory information to the Alaska State Medical Board (ASMB); it was not shown how the State-mandated peer review process implicated the hospital's actions, State law immunities for conduct

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undertaken in connection with the peer review process did not establish state action, and hospital did not exercise powers traditionally the exclusive prerogative of the State. Croy v. A.O. Fox Memorial Hosp., N.D.N.Y.1999, 68 F.Supp.2d 136. Civil Rights 1326(7)

Private hospital and its employees were not "state actors" under "traditional exclusive governmental function" test, for purposes of § 1983 action alleging that they violated patient's due process rights when they allegedly ignored patient's advance medical directive (AMD) and undertook extreme medical measures to resuscitate him; provision of hospital services was not traditional public function exclusively reserved to state. Klavan v. Crozer-Chester Medical Center, E.D.Pa.1999, 60 F.Supp.2d 436. Civil Rights 1326(4)

Hospital at which individual had presented himself after he had "blacked out" and then gone on cocaine binge was not acting under color of state law, and thus, could not be held liable under § 1983 in action brought by individual who was taken into police custody after he made statements to hospital personnel regarding his involvement in crimes; only link between hospital and city was that city police officers went to hospital to arrest individual and nurse told officers that hospital was holding individual. Copeland v. Northwestern Memorial Hosp., N.D.Ill.1997, 964 F.Supp. 1225. Civil Rights 1326(1)

Private, nonprofit hospital which conducted peer reviews consistent with internal guidelines and state and federal law was not "state actor," and thus, physician who alleged that he had been denied staff privileges on basis of his race could not prevail in federal civil rights action, even though hospital did receive federal funds; hospital was not controlled or even influenced by state or federal officials, regulation did not create "nexus" between government and hospital, health care services are not exclusive or traditional public function, and no symbiotic relationship existed between hospital and government. Benjamin v. Aroostook Medical Center, D.Me.1996, 937 F.Supp. 957, affirmed 113 F.3d 1, certiorari denied 118 S.Ct. 602, 522 U.S. 1016, 139 L.Ed.2d 490. Civil Rights 1326(7)

State's designation of private hospital as emergency receiving and treatment facility for mentally ill did not make hospital state actor in dealing with psychiatric patient, for purposes of § 1983; state's designation neither converted hospital into state-operated medical facility nor deputized affiliated private physicians as state's agents. Trimble v. Androscoggin Valley Hosp., Inc., D.N.H.1994, 847 F.Supp. 226. Civil Rights 1326(7)

Absent any evidence showing state action or deprivation of constitutional right as result of hospital's termination of physician's contract and revocation of his medical staff privileges without hearing, physician could not recover under § 1983, where hospital was private corporation and individual defendants were agents and officers of hospital. Cogan v. Harford Memorial Hosp., D.Md.1994, 843 F.Supp. 1013. Civil Rights 1326(4)

1011. ---- Board of directors, hospitals, particular persons under color of law

Where board of directors of private hospital, which operated on premises leased from county, had exclusive control of medical policy, neither county nor state had sought to regulate or influence medical policy and in particular had remained neutral with respect to performance or nonperformance of elective abortions, there was no "state action" involved in policy and federal court was without jurisdiction under this section. Greco v. Orange Memorial Hospital Corp., C.A.5 (Tex.) 1975, 513 F.2d 873, rehearing denied 515 F.2d 1183, certiorari denied 96 S.Ct. 433, 423 U.S. 1000, 46 L.Ed.2d 376. Federal Courts 222

1012. ---- Board of governors, hospitals, particular persons under color of law

Facts that five of nine members of hospital's board of governors were responsible to the public under hospital's charter by virtue of one member being a county judge and four others being appointed by county commissioners and that hospital received 14 percent of its budget from county tax levy and federal funds were sufficient to give hospital character of a "public agency" subject to suit under this section. Chiaffitelli v. Dettmer Hospital, Inc.,

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42 U.S.C.A. § 1983

C.A.6 (Ohio) 1971, 437 F.2d 429. Civil Rights 1350

1013. ---- Board of trustees, hospitals, particular persons under color of law

Private hospital board's action in restricting physician's staff privileges was not state action for purposes of imposing liability on the hospital under this section where, even though hospital received public funding, was subject to extensive state regulation, had two public officials serving on its board of trustees, and had been purchased by county and then leased back to the board of trustees through financial arrangement authorized by state statute, neither state nor county had become involved in daily operation of the hospital or retained coercive control over the hospital. Crowder v. Conlan, C.A.6 (Ky.) 1984, 740 F.2d 447. Civil Rights 1326(7)

1014. ---- Committees, hospitals, particular persons under color of law

Actions of medical executive committee of hospital which involved meeting in closed session to investigate charges against doctor, finding that doctor had been guilty of professional misconduct, and determining that warning should be issued deprived doctor of an interest in liberty which was protected by U.S.C.A.Const. Amend. 14 against state action without due process of law. Hoberman v. Lock Haven Hospital, M.D.Pa.1974, 377 F.Supp. 1178. Constitutional Law 275(1.5)

State was not involved with hospital's peer review committee's decision to deny reappointment of ophthalmologist to hospital's medical staff, barring hospital's liability in § 1983 claim by ophthalmologist arising from denial; although state statutes regulated hospital's risk management, and reporting requirements, it did not mandate a system for health care providers to implement with respect to their peer review functions, and in fact required hospitals to make their own staffing decisions according to their own bylaws, and hospital's power to deny reappointment to medical staff existed before the state's regulatory scheme was promulgated. Conner v. Salina Regional Health Center, Inc., C.A.10 (Kan.) 2003, 56 Fed.Appx. 898, 2003 WL 295545, Unreported. Civil Rights 1326(7)

1015. ---- Directors, hospitals, particular persons under color of law

Medical director of public hospital's radiation oncology department could fairly be said to be state actor, for purposes of § 1983, when supervising medical center employees, even though he was not hospital employee but worked under contract; medical director was obligated by contract with state to provide patient care, supervision over hospital staff in provision of patient care, and training of hospital staff, and medical director was only person to whom employees could look for orders and training. Nieto v. Kapoor, C.A.10 (N.M.) 2001, 268 F.3d 1208. Civil Rights 1326(11)

Executive director of public hospital, which was established by operation of Georgia law, and clinical director of anesthesia were county officials acting under color of state law, for purposes of action brought by anesthesiologist under §§ 1983 and 1985 to recover for alleged deprivation of property or liberty interests in connection with selection of anesthesiologist's competitor for clinical director position and with restrictions on scheduling of requests for anesthesiologist's services; executive director and clinical director were integrally involved in management and administration of the hospital. Faucher v. Rodziewicz, C.A.11 (Ga.) 1990, 891 F.2d 864. Civil Rights 1326(11); Conspiracy 7.5(3)

Civil rights action did not lie under this section in favor of adoptee against director of adoption department of hospital, on allegations that director had wrongfully refused to provide adoptee with access to his adoption records, since director acted as private individual, not state official, and not under color of state law. Rhodes v. Laurino, E.D.N.Y.1978, 444 F.Supp. 170, affirmed 601 F.2d 1239. Civil Rights 1326(4)

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State actor requirement was satisfied in § 1983 action against human resources director of hospital under contract to city, brought by hospital employee terminated from position as nurse at city prison; termination, which was relayed to employee by director with explanation that "[i]n light of the ... decision by [city corrections department to revoke employee's access to prison] we have no alternative," was fairly attributable to city corrections official's revocation of employee's access. Pierce v. Marano, S.D.N.Y.2002, 2002 WL 1858772, Unreported. Civil Rights 1326(11)

1016. ---- Employees, hospitals, particular persons under color of law

Defendants as agents and employees of state hospital were acting under color of state law with respect to their responsibilities for care, custody and control of inmate. Spence v. Staras, C.A.7 (Ill.) 1974, 507 F.2d 554. Civil Rights 1326(2)

Hospital did not act under color of state law when it detained for evaluation a passenger who had been removed from an airplane by police after making cell phone calls reporting that she was being held hostage, and thus was not liable in passenger's §§ 1983 action; fact that hospital employees received information from the officers did not establish persuasion or inducement sufficient to constitute state compulsion and did not establish concerted or joint action, and hospital's act of detaining the passenger was not an exclusively governmental power. Turturro v. Continental Airlines, S.D.N.Y.2004, 334 F.Supp.2d 383. Civil Rights 1326(4); Civil Rights 1326(5)

Hospital paramedics acted in concert with city police and fire fighters in connection with detention of allegedly mentally ill person pursuant to Wyoming's Emergency Detention statute, thus providing "state action" required for imposition of § 1983 liability; Wyoming statute stated that mentally ill person could be detained when "police officer" or medical examiner had reasonable cause to believe person was dangerous, and there was evidence that hospital acted in concert with police and fire departments in effecting detention. Moore v. Wyoming Medical Center, D.Wyo.1993, 825 F.Supp. 1531. Civil Rights 1326(5)

State did not have sufficiently close relationship to hospital's mobile crisis team (MCT), which had attempted involuntary commitment of citizen on emergency basis, so as to be a joint participant and/or interdependent with the MCT, and thus, MCT was not a "state actor" for purposes of civil rights law, where police department had referred to MCT a complaint that was presumed to be a medical rather than a criminal issue, and although MCT members were state-certified, that did not transform them as private medical providers into state actors for purposes of civil rights law. Ellison v. University Hospital Mobile Crisis Team, C.A.6 (Ohio) 2004, 108 Fed.Appx. 224, 2004 WL 1543951, Unreported. Civil Rights 1326(5); Civil Rights 1326(9)

1017. ---- Officials, hospitals, particular persons under color of law

Hospital and its staff who committed patient to psychiatric institution against her will were not state actors for § 1983 action purposes, since the New York Mental Hygiene Law (MHL) neither compelled nor encouraged involuntary commitment; even though MHL provided legal framework under which physicians could involuntarily commit patient by creating procedures and standards for commitment, it left decision to commit completely to physician's discretion. Okunieff v. Rosenberg, S.D.N.Y.1998, 996 F.Supp. 343, affirmed 166 F.3d 507, certiorari denied 120 S.Ct. 1002, 528 U.S. 1144, 145 L.Ed.2d 945. Civil Rights 1326(9)

Even if hospital had been fully owned and operated by state, such would not have made all the actions performed by its officers "under color of law" within purview of this section. Hoover v. Holston Valley Community Hosp., E.D.Tenn.1981, 545 F.Supp. 8. Civil Rights 1326(1)

Actions of officials of county general hospital, which was public institution supported by public funds and administered by county employees, in formulating and implementing hospital rules prohibiting elective abortions in hospital amounted to action under color of state law for purposes of giving federal district court jurisdiction under

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this subchapter over action to enjoin enforcement of rule. Doe v. Mundy, E.D.Wis.1974, 378 F.Supp. 731, stay denied 95 S.Ct. 28, 419 U.S. 813, 42 L.Ed.2d 40, affirmed 514 F.2d 1179. Federal Courts 224

1018. Health clinics, particular persons under color of law

Abortion clinic was not "state actor," precluding damages from being assessed against it in anti-abortion activist's § 1983 action, alleging that injunction obtained by clinic prohibiting picketing violated activists constitutional rights; although clinic initiated state court proceedings to obtain injunction, and clinic workers called county sheriff to report picketing, injunction specified that sheriff had obligation to actively enforce injunction, and clinic did not obtain injunction in bad faith or with knowledge that it would be unconstitutional. Gottfried v. Medical Planning Services, Inc., C.A.6 (Ohio) 2002, 280 F.3d 684, rehearing and suggestion for rehearing en banc denied. Civil Rights 1326(9)

Former employee of private health clinic failed to show that clinic was acting under color of state law in terminating his employment contract, and, thus, failed to state § 1983 due process or equal protection claim arising out of termination, where clinic was not acting in area that was exclusive prerogative of state and fact that clinic received about half of its funding from federal government was not sufficient to satisfy state actor requirement. Griswold v. New Madrid County Group Practice, Inc., E.D.Mo.1997, 969 F.Supp. 1218, affirmed 141 F.3d 1168. Civil Rights 1326(11)

1018A. Hospices

Parents failed to meet state actor requirement, in their action seeking reestablishment of patient's artificial life support, for §§ 1983 claim under Free Exercise Clause and claim under Religious Land Use and Institutionalized Persons Act (RLUIPA), inasmuch as defendants, namely hospice and daughter's guardian, were not state actors, and fact that claims were adjudicated by state court judge did not provide requisite state action. Schiavo ex rel. Schindler v. Schiavo, M.D.Fla.2005, 357 F.Supp.2d 1378, affirmed 403 F.3d 1223, rehearing en banc denied 403 F.3d 1261, stay denied 125 S.Ct. 1692, 544 U.S. 945, 161 L.Ed.2d 518. Civil Rights 1326(9)

1019. Hotels, particular persons under color of law

Hotel employees did not act "under color of state law" when they contacted state child welfare authorities to report suspected child abuse by hotel guest, and thus hotel and employees were not subject to liability under §§ 1983 for guest's subsequent arrest and prosecution. Mione v. McGrath, S.D.N.Y.2006, 435 F.Supp.2d 266. Civil Rights 1326(4)

Hotel owner, as a private corporation, could not be held liable under this section for actions of its security guards, there being no state action. Chesler v. Doe, N.D.Ohio 1982, 532 F.Supp. 1033. Civil Rights 1326(4)

Where no state action was involved in hotel bar's refusal to serve unescorted woman solely because of her sex, woman did not have cause of action for declaration that such refusal was illegal, discriminatory and unconstitutional and enjoining the hotel bar from continuing their policy of refusing to serve unescorted women under the equal protection clause of U.S.C.A.Const. Amend. 14 or under this section or § 1985 of this title granting causes of action for deprivation of rights. DeCrow v. Hotel Syracuse Corp., N.D.N.Y.1968, 288 F.Supp. 530. Civil Rights 1326(1)

1020. Housing officials, particular persons under color of law

In order for federal court to have jurisdiction over tenants' claims under this section against housing authority and its officers, the officers must have acted under power of state law. Bogan v. New London Housing Authority, D.C.Conn.1973, 366 F.Supp. 861. Federal Courts 222

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42 U.S.C.A. § 1983

1021. Indians, particular persons under color of law

Suit under §§ 1983 was not available to redress alleged deprivations of farm lessee's constitutional rights by tribal officials while officials were acting under color of tribal law, as opposed to state law. Burrell v. Armijo, C.A.10 (N.M.) 2006, 456 F.3d 1159. Civil Rights 1326(1)

Fact that Indian tribe had chosen to adopt framework of state law to cover gaps in tribal code did not make tribe a state actor for purposes of this section. R.J. Williams Co. v. Fort Belknap Housing Authority, C.A.9 (Mont.) 1983, 719 F.2d 979, certiorari denied 105 S.Ct. 3476, 472 U.S. 1016, 87 L.Ed.2d 612. Civil Rights 1326(1)

Acts of Indian tribal officials, although performed with assistance of deputy sheriffs of counties, were not imbued with requisite state action to support action under this section, where there were no allegations that county authorities had requested their assistance, that such assistance had ever occurred before or that tribe and state had long-standing agreement to offer assistance through customary procedures or that such tribal officials were delegated police power by state or were attempting to enforce state rather than tribal law. Bruette v. Knope, E.D.Wis.1983, 554 F.Supp. 301. Civil Rights 1326(5)

Suit by individual members of St. Regis Mohawk Tribe against certain tribal leaders, who refused to step down after a recall vote, was not authorized under this section for reason that members failed to show that leaders acted "under color of law." Barnes v. White, N.D.N.Y.1980, 494 F.Supp. 194. Civil Rights 1326(1)

1022. Informants for police, particular persons under color of law

Police informant, who stole check from person with whom he shared apartment and then killed her, was not acting under color of state law to be liable as state actor under § 1983, where his informant activities were limited to obtaining evidence against drug dealers. Hiser v. City of Bowling Green, C.A.6 (Ohio) 1994, 42 F.3d 382, certiorari denied 115 S.Ct. 1984, 514 U.S. 1120, 131 L.Ed.2d 871. Civil Rights 1326(1)

1023. Insurers, particular persons under color of law

Mere fact that insurer considered insured's criminal arrest when deciding to deny insured's claim under fire policy did not establish nexus necessary for finding state action to support § 1983 cause of action. Galvan v. Cameron Mut. Ins. Co., C.A.8 (Mo.) 1987, 831 F.2d 804. Civil Rights 1326(1)

Character of insurer as plaintiff in state court action is not sufficient to consider insurer's activity as being "under color of state law" for purposes of this section. Wartman v. Branch 7, Civil Division, County Court, Milwaukee County, State of Wis., C.A.7 (Wis.) 1975, 510 F.2d 130. Civil Rights 1326(9)

Insurance company's action of electing to convert from mutual company to stock company was not transmuted into "state action," for purposes of § 1983 claim by insurance superintendent's approval of demutualization plan under New York statutory scheme; superintendent's approval did not constitute "overt, significant assistance" by state official sufficient to justify finding state action on part of company, as superintendent did not coerce proposed activity, significantly encourage it, turn decision to demutualize into "joint activity" between state and insurance company, make company a state agent, delegate to company a public function, or render the state "entwined" in company's management or control. Tancredi v. Metropolitan Life Ins. Co., S.D.N.Y.2001, 149 F.Supp.2d 80, affirmed 316 F.3d 308, certiorari denied 123 S.Ct. 2610, 539 U.S. 942, 156 L.Ed.2d 628. Civil Rights 1326(4); Civil Rights 1326(7)

Alleged discriminatory conduct by property insurer and others in favoring approved contractors to perform repairs did not involve state action, and thus was not redressable under § 1983. Bologna v. Allstate Ins. Co., E.D.N.Y.2001, 138 F.Supp.2d 310. Civil Rights 1326(4)

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42 U.S.C.A. § 1983

Private workers' compensation insurers were not "state actors" who could be sued by workers' compensation claimants under § 1983 for alleged deprivation of medical benefits, although procedural scheme created by Pennsylvania workers' compensation law was the product of state government and statute had its source in state authority, given that decision to cease paying medical benefits due to a dispute was entirely up to insurer acting independently of any state involvement. Sullivan v. Barnett, E.D.Pa.1996, 913 F.Supp. 895. Civil Rights 1326(4)

Insurer and an insurance claims auditing service had not acted under color of state law, so as to be amenable to suit by insured under § 1983, even though insurance coverage in question was mandated by state law and applications for benefits were submitted to insurers on forms mandated by Pennsylvania Insurance Department; decisions to refer claims to auditing service for assessment and to refuse payments were made and executed without state involvement. Brownell v. State Farm Mut. Ins. Co., E.D.Pa.1991, 757 F.Supp. 526. Civil Rights 1326(7)

1024. Judges, particular persons under color of law

Juvenile court judge did not act under color of state law when he used his judicial stationery to write personal letter of support for high school coach accused of improprieties, so as to support § 1983 liability for alleged retaliation against parent who made complaints against coach; that letter was written on judicial stationery was insufficient, alone, to show that sending of letter was done under color of state law, content of letter made it apparent that letter was written in judge's capacity as father, rather than as judge, and there was no indication that judge intended or expected letter to come to parent's attention. Tierney v. Vahle, C.A.7 (Ill.) 2002, 304 F.3d 734. Civil Rights 1326(6)

Judges adjudicating cases pursuant to state statutes may not be sued under § 1983 in a suit challenging the state law. Grant v. Johnson, C.A.9 (Or.) 1994, 15 F.3d 146. Civil Rights 1376(8)

Conclusory allegation that superior court judge improperly abandoned his judicial role by permitting residents in housing development to draft final judgment against live-in, elder-care facility within the development was insufficient to establish state action required to pursue § 1983 claim. Casa Marie, Inc. v. Superior Court of Puerto Rico for Dist. of Arecibo, C.A.1 (Puerto Rico) 1993, 988 F.2d 252. Civil Rights 1396

Juror about whom state trial judge had commented to a news reporter in a published interview after singling juror out in open court as only juror to vote against death penalty in murder trial could not recover under civil rights statute for judge's out-of-court conduct, as it did not involve deprivation of a constitutionally protected interest. Emory v. Peeler, C.A.11 (Ga.) 1985, 756 F.2d 1547. Civil Rights 1088(5)

Use by judge, who was able to take his prosecutorial acts against plaintiff because he was cloaked with office of judge, of that office to prosecute plaintiff constituted action under color of state law within meaning of this section even though such acts were not judicial acts and were taken in absence of all jurisdiction. Lopez v. Vanderwater, C.A.7 (Ill.) 1980, 620 F.2d 1229, certiorari dismissed 101 S.Ct. 601, 449 U.S. 1028, 66 L.Ed.2d 491. Civil Rights 1326(2)

State judicial officer is acting under color of state law when he evicts from his courtroom one who is there on court business. Gregory v. Thompson, C.A.9 (Ariz.) 1974, 500 F.2d 59. Civil Rights 1326(2)

Judge was not state actor, for §§ 1983 purposes, when he acted in his capacity as private attorney, and was subject to suit under §§ 1983 only if he conspired with state actor to deprive plaintiffs of their constitutional rights. Plaisance v. Reese, E.D.La.2004, 353 F.Supp.2d 735. Civil Rights 1326(10); Conspiracy 7.5(3)

Arrestee's allegations that justice of peace made improper use of his official position to direct arrest, imprisonment,

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and prosecution of arrestee sufficed to establish action "under color of law" for purposes of arrestee's § 1983 action. Bordages v. McElroy, S.D.Tex.1996, 952 F.Supp. 499. Civil Rights 1326(2)

State judge was not acting under color of state law for purposes of civil rights claim when judge's dog allegedly put its nose under skirt of courthouse visitor, although judge was able to have his dog with him in the courthouse only because of his official position. Monsky v. Moraghan, D.Conn.1997, 950 F.Supp. 476. Civil Rights 1326(2)

Section 1983 plaintiff failed to show that defendant state court judge acted "under color of state law" when he allegedly unleashed his dog in courthouse to commit offensive acts upon plaintiff and other women; judge did not abuse power he possessed by virtue of state law, as his choice to bring his dog to work appeared to stem from personal pursuits. Monsky v. Moraghan, D.Conn.1996, 947 F.Supp. 53, motion to amend denied 950 F.Supp. 476, affirmed 127 F.3d 243, certiorari denied 119 S.Ct. 66, 525 U.S. 823, 142 L.Ed.2d 52. Civil Rights 1326(2)

Failure of state judge, acting by and through his state authority, to advise indigents of their right to appointed counsel and to appoint such counsel when those indigents were threatened with possible incarceration for their failure to make court-ordered child support payments involved state action invoking the jurisdiction of the federal district court pursuant to U.S.C.A. Const.Amend. 6 and Amend. 14 and the Civil Rights Act of 1871, 42 U.S.C.A. § 1983. Johnson v. Zurz, N.D.Ohio 1984, 596 F.Supp. 39. Civil Rights 1326(2); Constitutional Law 254(2)

1025. Judgment creditors, particular persons under color of law

Judgment creditor, who uses Pennsylvania's procedure for executing on confessed judgment, acts under color of law and becomes a state actor, for purposes of § 1983 claim. Jordan v. Fox, Rothschild, O'Brien & Frankel, C.A.3 (Pa.) 1994, 20 F.3d 1250, on remand 1995 WL 141465. Civil Rights 1326(9)

Judgment creditor and its collection representative acted under color of state law, for purposes of § 1983 claim, when they obtained and executed writ of assistance in order to conduct inventory of contents in judgment debtors' home; creditor and collection representative had exercised their rights under state rules and procedures when obtaining and executing writ, and they had invoked authority and aid of county sheriffs in executing writ. Owens v. Swan, D.Utah 1997, 962 F.Supp. 1436. Civil Rights 1326(9)

1026. Judicial review boards, particular persons under color of law

When enforcing either Pennsylvania Rules of Professional Conduct or Code of Judicial Conduct, Disciplinary Board of Supreme Court, its chief counsel, and Judicial Inquiry and Review Board act under color of state law. Stretton v. Disciplinary Bd. of Supreme Court of Pennsylvania, E.D.Pa.1991, 763 F.Supp. 128, affirmed in part, vacated in part 944 F.2d 137, rehearing denied. Civil Rights 1326(2)

1027. Juvenile homes, particular persons under color of law

State's placement of children, removed from custody of their natural parents, in privately owned group facility does not convert owner of facility into state actor, such that owner could be held liable under § 1983. Letisha A. by Murphy v. Morgan, N.D.Ill.1994, 855 F.Supp. 943. Civil Rights 1326(4)

Private children's home that contracted to provide care for juvenile placed by state, and home's director, were state actors for purposes of federal civil rights suit. McAdams v. Salem Children's Home, N.D.Ill.1988, 701 F.Supp. 630 . Civil Rights 1326(5)

1028. Juvenile officers, particular persons under color of law

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42 U.S.C.A. § 1983

Defendant's mere status as a state juvenile officer, without more, did not transform his representation of plaintiff, in a criminal matter, into "state action" for purposes of this section. Dunn v. Hackworth, C.A.8 (Mo.) 1980, 628 F.2d 1111. Civil Rights 1326(10)

1029. Laboratories, particular persons under color of law

Private forensic research laboratory could not be liable under § 1983, since scientific testing of physical evidence was not traditional state function. Nygren v. Predovich, D.Colo.1986, 637 F.Supp. 1083. Civil Rights 1326(4)

1030. Labor boards, particular persons under color of law

Puerto Rico Labor Relations Board's refusal to protest private employer's discharge of supervisory employees because of their union membership was not state action providing basis for recovery under this section, particularly because that Board was without power to prohibit discharge of supervisors because of their union membership. Rodriguez v. Conagra, Inc., C.A.1 (Puerto Rico) 1976, 527 F.2d 540. Civil Rights 1326(11)

1031. Land developers, particular persons under color of law

Defendant, a private developer and sponsor of urban renewal plan, which had allegedly participated for its own benefit with city in scheme allegedly amounting to a de facto taking of plaintiffs' properties in renewal area willfully violating for its own gain rights secured by U.S.C.A.Const. Amend. 5 and Amend. 14, could act "under color" of state law and thus be held liable under this section. Archer Gardens, Ltd. v. Brooklyn Center Development Corp., S.D.N.Y.1979, 468 F.Supp. 609. Civil Rights 1326(4)

Fact that educational facilities and state and county offices were available to families of purchasers of various state property, that state was involved in zoning and land use regulations affecting developers' property rights, that developers had been granted privilege of operating in corporate form, that developers were licensed to engage in business and made use of services of numerous other businesses which were licensed and regulated by state, that plans of developers to accomplish building of homes must be approved by Building Commissioner, that developers were protected in their operations by various state laws and zoning laws, banking and lending laws and numerous laws affecting transfer and development of real property, and that developers intended to and would construct and maintain streets for use by public in general and intended to impose restrictive covenants in deeds of conveyance authorizing assessments for street maintenance, garbage collections and other services similar to those provided by municipalities, did not preclude developers from refusing to sell house to Negroes on theory that developers were engaged in "state action" and would be invested with governmental powers. Jones v. Alfred H. Mayer Co., E.D.Mo.1966, 255 F.Supp. 115, affirmed 379 F.2d 33, certiorari granted 88 S.Ct. 479, 389 U.S. 968, 19 L.Ed.2d 459, reversed on other grounds 88 S.Ct. 2186, 392 U.S. 409, 20 L.Ed.2d 1189, 47 O.O.2d 43.

1032. Landlords, particular persons under color of law

Action taken by landlord was "under color of state law" for purposes of tenants' action under this section where, in evicting tenants, landlords were accompanied by police officer who later privately approached tenants and recommended that they leave, thereby creating appearance that police sanctioned eviction. Howerton v. Gabica, C.A.9 (Idaho) 1983, 708 F.2d 380. Civil Rights 1326(9)

District court abused its discretion in dismissing, without leave to amend, tenant's action challenging adults-only rental policy of apartment under this section and U.S.C.A.Const. Amend. 14 on grounds that it violated his right to raise a family and discriminated against families with children, since tenant's allegations, if proved, would place county in position of interdependence such that it was joint participant with owner of apartment, thus satisfying state action requirement. Halet v. Wend Inv. Co., C.A.9 (Cal.) 1982, 672 F.2d 1305. Federal Civil Procedure 1788.6

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42 U.S.C.A. § 1983

Actions of private landlord of a retirement home were not performed under color of state law, for purposes of resident's claim under §§ 1983, seeking to preliminarily enjoin landlord from enforcing "House Rule" which prohibited rude or abusive behavior toward home's residents and staff, on ground that it was an unconstitutional restriction on speech, where House Rules or their enforcement were not compelled or influenced by regulations, and no government entity had any role in promulgation or enforcement of House Rules. Kabbani v. Council House, Inc., W.D.Wash.2005, 406 F.Supp.2d 1189. Civil Rights 1326(7)

Private landlord of a retirement home was not a state actor, and, thus, tenant seeking to preliminarily enjoin landlord from enforcing "House Rule" which prohibited rude or abusive behavior toward home's residents and staff, on ground that it was an unconstitutional restriction on speech, failed to show requisite likelihood of success on the merits, although landlord received substantial money from federal housing assistance program and was subject to federal regulations, where House Rules or their enforcement were not compelled or influenced by regulations, and no government entity had any role in promulgation or enforcement of House Rules. Kabbani v. Council House, Inc., W.D.Wash.2005, 406 F.Supp.2d 1189. Constitutional Law 90.1(1)

Civil rights action by lessee arising from eviction proceedings against him must be dismissed for failure to state claim, where lessee failed to establish causal connection between institution of eviction proceedings and his injuries, and proceedings were commenced by private litigants, who did not act under color of state law. Eidson v. Arenas, M.D.Fla.1994, 155 F.R.D. 215. Federal Civil Procedure 1788.6

1033. Landowners, particular persons under color of law

Owners of land that allegedly reverted to State when it was no longer used as sailors home did not act under color of state law and could not be held liable under § 1983; there were no allegations that landowners conspired with or engaged in joint activity with state officials, that landowners were closely related to State, or that landowners were performing public functions or were highly regulated. Price v. State of Hawaii, C.A.9 (Hawai'i) 1991, 939 F.2d 702, rehearing denied, certiorari denied 112 S.Ct. 1479, 503 U.S. 938, 117 L.Ed.2d 622, certiorari denied 112 S.Ct. 1480, 503 U.S. 938, 117 L.Ed.2d 622. Civil Rights 1326(1)

1034. Leagues, particular persons under color of law

Actions of private sporting organization in revoking plaintiff's right to play in basketball league due to noncompliance with citizenship eligibility rule was not state action, where there was no evidence that government encouraged or affirmatively induced defendants' conduct, regulation of amateur sports was not traditionally an exclusive function of the commonwealth and there was no symbiotic relationship between defendants and commonwealth. Ponce v. Basketball Federation of Com. of Puerto Rico, C.A.1 (Puerto Rico) 1985, 760 F.2d 375. Civil Rights 1326(4)

Fact that eight of nine professional hockey league member teams played their home games in stadia owned by various municipalities alone was insufficient to establish requisite level of state involvement necessary to state a claim under this section proscribing the deprivation of rights. Neeld v. American Hockey League, W.D.N.Y.1977, 439 F.Supp. 459. Civil Rights 1326(1)

1035. Legal aid, particular persons under color of law

Allegation of former parole revokee that his former counsel was employed by a private, nonprofit state-funded corporation which provided legal assistance to indigent inmates in state prison system was insufficient to establish that the former counsel acted under color of state law, as required for the former counsel to be held liable in former parole revokee's § 1983 action for alleged violation of the former parole revokee's Eighth and Fourteenth Amendment rights. Young v. McKune, D.Kan.2003, 280 F.Supp.2d 1250, affirmed 85 Fed.Appx. 723, 2004 WL 95875. Civil Rights 1326(10)

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Legal Aid is not "state actor," for purposes of § 1983. Respass v. New York City Police Dept., E.D.N.Y.1994, 852 F.Supp. 173. Civil Rights 1326(10)

1036. Legislators, particular persons under color of law

In view of fact that position of Speaker of the New Jersey General Assembly was provided for in the New Jersey Constitution and that the Speaker's powers of committee appointment and removal were set out in General Assembly rules passed by the Assembly, action of the Speaker in removing Assembly member from his position on a certain assembly committee was "state action" for purposes of U.S.C.A.Const. Amend. 14 and this chapter. Gewertz v. Jackman, D.C.N.J.1979, 467 F.Supp. 1047. Civil Rights 1326(2)

1037. Lessees, particular persons under color of law

Trade show promoters, as lessees of convention center, were engaged in "state action," within meaning of § 1983, in prohibiting publisher's attempts to distribute its "show dailies" in walkways leading to convention center; promoters leased convention center from city and promoters were effectuating government policy as set forth in their leases. Hampton Intern. Communications, Inc. v. Las Vegas Convention and Visitors Authority, D.Nev.1996, 913 F.Supp. 1402. Civil Rights 1326(1)

Although state leased land, buildings and ski lifts to private lodge for rent based in part on percentage of gross receipts from operation of ski lift, action of private promotion corporation, promoting skiing in area, in arranging reduced rates for member lodges with respect to use of ski lifts and ski instruction but excluding non-member lodges from plan was a "state action" within U.S.C.A.Const. Amend. 14, and this section. D. D. B. Realty Corp. v. Merrill, D.C.Vt.1964, 232 F.Supp. 629. Civil Rights 1326(4); Constitutional Law 213(4)

Refusal of corporation, which operated restaurant in airport terminal building of city under lease from city, to serve Negroes except on a segregated basis was "state action" and violative of rights of Negro, who was refused service on same basis as white passengers, as a citizen under the equal protection clause of U.S.C.A.Const. Amend. 14, and Negro was entitled to injunctive relief in class action. Coke v. City of Atlanta, Ga., N.D.Ga.1960, 184 F.Supp. 579. Constitutional Law 216; Federal Civil Procedure 186.15

1038. Libraries, particular persons under color of law

Discharge of public library employee involved state action within reach of U.S.C.A.Const. Amend. 14 so that civil rights action for deprivation of rights could be maintained, where library derived over 90 percent of its revenues from tax sources, local governments which furnished revenue were represented on library's governing board by ex officio members holding public office, library enjoyed tax exempt status, and structure, organization and management of board of managers of library system was mandated by state legislation. Chalfant v. Wilmington Institute, C.A.3 (N.J.) 1978, 574 F.2d 739. Civil Rights 1326(11)

1039. License and permit authorities, particular persons under color of law--Generally

Where private association which licensed both drivers and tracks involved in harness racing received no state funds and chose its own officers and directors, and no state officials or agents were involved with government or operation of the association and it was not "regulated" by state laws, there was no "state action" even if state required harness driver to have driver's license from association before he would be permitted to drive in harness race in the state. Bailey v. McCann, C.A.5 (Fla.) 1977, 550 F.2d 1016. Civil Rights 1326(7)

A private national organization which certified physician assistants, receiving no financial support from any government and operating in all respects on a completely independent basis, was not a state actor and did not act under color of state law within the meaning of federal civil rights statutes. Gilliam v. National Com'n for

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Certification of Physician Assistants, Inc., E.D.Pa.1989, 727 F.Supp. 1512, affirmed 898 F.2d 140, certiorari denied 110 S.Ct. 1950, 495 U.S. 920, 109 L.Ed.2d 312. Civil Rights 1326(4)

1040. ---- Boards of examiners, license and permit authorities, particular persons under color of law

Members of Board of Examiners of Veterinary Medicine of Puerto Rico were acting under color of state law, for purposes of federal civil rights statute, when they initially denied licensure to veterinarian. Martinez-Velez v. Simonet, D.Puerto Rico 1989, 726 F.Supp. 891, affirmed 919 F.2d 808. Civil Rights 1326(7)

1041. Litigants, particular persons under color of law

As a general proposition, private citizens are not state actors for purposes of "color of law" requirement of this section governing civil action for deprivation of rights, and this includes litigants and their attorneys in state civil proceedings. Antelman v. Lewis, D.C.Mass.1979, 480 F.Supp. 180. Civil Rights 1326(4); Civil Rights 1326(9); Civil Rights 1326(10)

Where probate judge in issuing guardianship order and any officers carrying out that order were immune from suit, private defendants who secured the order were not acting under color of state law for purposes of this section. Rankin v. Howard, D.C.Ariz.1978, 457 F.Supp. 70, reversed on other grounds 633 F.2d 844, certiorari denied 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed.2d 326. Civil Rights 1326(9)

The use of state courts by private litigants and their attorneys did not, by itself, amount to state action, for purpose of a claim under § 1983. Sterling v. Trotter, S.D.Ohio 2002, 2002 WL 31409437, Unreported. Civil Rights 1326(9); Civil Rights 1326(10)

Complainant was not "state actor," for purposes of § 1983, due to fact that she invoked New York Family Court Act (FCA) to obtain temporary orders of protection (TOP), where statute was not facially unconstitutional; statute provided that TOP could issue only upon showing of good cause, following judicial review of application. Rosen v. County of Suffolk, C.A.2 (N.Y.) 2002, 53 Fed.Appx. 578, 2002 WL 31819617, Unreported, on remand 305 F.Supp.2d 229. Civil Rights 1326(9)

1042. Mayors, particular persons under color of law

Borough manager's actions of relaying his and other workers' complaints concerning the mayor to the borough council was not protected speech, as required for manager's First Amendment retaliation claim against mayor, given that the manager reported the conduct to the borough council pursuant to his official duties and thus he was not acting as a citizen when he made the reports. Hill v. Borough of Kutztown, C.A.3 (Pa.) 2006, 455 F.3d 225. Municipal Corporations 156

Landlord was not a "state actor" in connection with her conduct in opening tenant's apartment door, and thus, she was not liable, in tenant's §§ 1983 Fourth Amendment action, arising from boyfriend's entry into apartment in order to obtain belongings; if landlord opened the door on her own for boyfriend, she did not act jointly with police officer who was present, if landlord opened door with officer's permission, the conduct was not coerced by any state official, and if she acted on officer's order to open the door, she was not a willful participant in the state action, so she did not act jointly with officer. Harvey v. Plains Tp. Police Dept., C.A.3 (Pa.) 2005, 421 F.3d 185, certiorari denied 126 S.Ct. 2325. Civil Rights 1326(5)

Under Puerto Rico law, mayor is government official ultimately responsible for employment decisions of municipality; hence, mayor's employment decisions constitute official policy of municipality for purposes of determining municipal liability under § 1983. Acevedo-Garcia v. Monroig, C.A.1 (Puerto Rico) 2003, 351 F.3d 547. Civil Rights 1351(5)

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Any action taken by village mayor to cause house to burn to the ground was not effectuated "under color of state law," so as to support homeowner's § 1983 claim, when homeowner did not explain how such an act was related to any official duty or activity of mayor as such, or in his capacity as village fire chief, nor did homeowner contend that mayor used cloak of his authority as mayor or fire chief, or any indicia of his office, to set fire. Honaker v. Smith, C.A.7 (Ill.) 2001, 256 F.3d 477. Civil Rights 1326(2)

Physician's allegations against mayor, to effect that she employed power of her office to damage physician's ability to practice medicine, did not state adequate state involvement to support § 1983 action; none of mayor's claimed actions such as making false statements about physician and coordinating false newspaper articles was related to power of mayor's office. Manax v. McNamara, C.A.5 (Tex.) 1988, 842 F.2d 808. Civil Rights 1396

Mayor's acts in causing arrest of university president for interfering with construction of city sewer line across university property were committed "under color of state law" where mayor had been put in full control of the sewer line project by city council and the mayor, sitting as magistrate, prepared and presented arrest warrant to himself based on report from city councilman who was mayor pro tem and caused warrant to be served by city's chief law enforcement officer. Thomas v. Sams, C.A.5 (Tex.) 1984, 741 F.2d 783, certiorari denied 105 S.Ct. 3476, 472 U.S. 1017, 87 L.Ed.2d 612. Civil Rights 1326(2)

Acts of mayor in removing police chief's paychecks from town warrant book and keeping them at his telephone company office in order to collect police chief's debt to the telephone company were under color of state law justifying police chief's recovery of actual damages against mayor and his telephone company, in an action under this section authorizing civil actions for deprivation of constitutional rights under color of state law, inasmuch as mayor had access to police chief's paychecks solely because he held the office of mayor. Brown v. Miller, C.A.5 (Miss.) 1980, 631 F.2d 408. Civil Rights 1326(11)

Mayor was not acting under color of state law when he assaulted worker for opposing political party, and thus was not subject to liability under §§ 1983, even though mayor told police officer not to intervene because he would "take charge of this," officer hit worker with her baton after assault began, and mayor was surrounded by municipal employees who participated in assault, where mayor walked to site of assault, did not make use of any trappings of his position, and did not order officer or employees to help him. Rodriguez-Rodriguez v. Ortiz-Velez, D.Puerto Rico 2005, 405 F.Supp.2d 162, subsequent determination 405 F.Supp.2d 170. Civil Rights 1326(2)

City mayor who allegedly made threats to coerce author into abandoning writing project could not be held liable under §§ 1983 absent claim that mayor acted under color of law; none of mayor's alleged actions were taken in his capacity as mayor. Wright v. City of Las Vegas, Nevada, S.D.Iowa 2005, 395 F.Supp.2d 789. Civil Rights 1326(2)

1043. Medical certification boards, particular persons under color of law

Foreign-trained physician failed to state civil rights conspiracy action against private corporation, which prepared and administered test for board certification for medical subspecialties, and its two senior officers, based on his failure to pass qualifying examination for endocrinology and metabolism subspecialties; complaint failed to allege requisite element that corporation and officers acted under color of state law and failed to allege that officers were acting in individual, not official, capacity. Goussis v. Kimball, E.D.Pa.1993, 813 F.Supp. 352. Conspiracy 18

1044. Medical examiners, particular persons under color of law

Medical examiner for county jail who allegedly advised plaintiff at bargaining sessions resulting in plea bargain whereby plaintiff was allowed to plead guilty to a lesser offense than child molestation in return for his consent to castration was acting under "color of state law" within meaning of this section; while serving as medical examiner and advising at the bargaining stage, the physician was clearly clothed with the authority of state law satisfying the

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"state action" requirement. Briley v. State of Cal., C.A.9 (Cal.) 1977, 564 F.2d 849. Civil Rights 1326(8)

Where physician who examined prisoner at county jail was acting in his official capacity as a county health officer in treating the prisoner, the treatment was "state action" within meaning of this section and the physician was not immune from suit under the Act. Robinson v. Jordan, C.A.5 (Tex.) 1974, 494 F.2d 793. Civil Rights 1326(8)

Coroner who allegedly signed certificate for commitment stating that he had observed and examined person when he had not done so and who acted pursuant to statute providing for commitment of persons to mental hospital by coroner was not acting as a physician but as state official and under "color of law" and was liable for damages under this section. Delatte v. Genovese, E.D.La.1967, 273 F.Supp. 654. Civil Rights 1326(2)

1045. Mental health facilities, particular persons under color of law

Mental healthcare facility, its owner, and mental health professionals were not state actors by virtue of their involvement in application for involuntary examination pursuant to Pennsylvania mental health law, as required to support involuntary committee's §§ 1983 claims for violation of due process rights; Pennsylvania law did not coerce defendants to file application, but, rather, permitted filing of application for emergency examination, defendants did not operate as willful participants in joint activity with Commonwealth or its agents, but, rather, were alleged to have failed to comply with law of Commonwealth, defendants were not controlled by agency of Commonwealth, conduct of applying for emergency commitment was not public function, and defendants were not entwined with Commonwealth, nor did they have symbiotic relationship with it. Benn v. Universal Health System, Inc., C.A.3 (Pa.) 2004, 371 F.3d 165. Constitutional Law 254(4)

Private hospital and hospital personnel were not "state actors," for purposes of § 1983 claims based on their involuntary detention of claimant pursuant to state involuntary commitment statutes, inasmuch as involuntary commitment statutory scheme was permissive, not mandatory, and granted private physicians complete medical discretion in determining whether individual should be involuntarily committed. S.P. v. City of Takoma Park, Md., C.A.4 (Md.) 1998, 134 F.3d 260. Civil Rights 1326(4)

Fact that mental health facility derived significant portion of its funding from county government did not make facility "state actor" within meaning of § 1983. Wolotsky v. Huhn, C.A.6 (Ohio) 1992, 960 F.2d 1331. Civil Rights 1326(7)

Although private defendants were not performing a public function when they acted to involuntarily confine plaintiff in mental hospital, genuine issues of material fact existed as to whether public defendants compelled the private defendants to take action and as to whether the private defendants conspired with public defendants in violation of plaintiff's due process rights so as to render the private defendants state actors for purposes of plaintiff's § 1983 claim, precluding summary judgment in favor of private defendants. Ruhlmann v. Ulster County Dept. of Social Services, N.D.N.Y.2002, 234 F.Supp.2d 140. Federal Civil Procedure 2491.5

Out-of-state residential placement of severely retarded and mentally ill adults constituted state action for § 1983 purposes under the "close nexus test," even though plaintiffs were not in state custody in state-operated institutions, where state was intimately involved in plaintiffs' institutionalization from the time it gave its approval when plaintiffs were children and state provided subsidies for their original placements in out-of-state residential care ever since. Brooks v. Pataki, E.D.N.Y.1995, 908 F.Supp. 1142, stay denied 908 F.Supp. 1157, vacated 84 F.3d 1454, certiorari denied 117 S.Ct. 480, 519 U.S. 992, 136 L.Ed.2d 375. Civil Rights 1326(7)

Regardless of "private" status of community mental health centers, they were sufficiently involved with state to be considered state actors for purpose of civil rights claim. Birl v. Wallis, M.D.Ala.1985, 619 F.Supp. 481. Civil Rights 1326(4)

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42 U.S.C.A. § 1983

1046. Mining companies, particular persons under color of law

Widows and dependents of deceased coal miners could not maintain action under this section for death of miners in coal mine explosion as there did not appear to be any state action involved. Kaznoski v. Consolidated Coal Co., W.D.Pa.1974, 368 F.Supp. 1022, affirmed 506 F.2d 1051.

1047. Mortgagees, particular persons under color of law

Mortgagee that used Illinois statutory procedure to obtain writ of assistance to enforce judgment after obtaining judgment of foreclosure against mortgagor and directed sheriff's office to execute writ of assistance by forcibly evicting tenants from property they had rented from mortgagor was sufficiently alleged by tenants to be state actor to support civil rights action under § 1983 against mortgagee. Scott v. O'Grady, N.D.Ill.1991, 760 F.Supp. 1288, affirmed 975 F.2d 366, rehearing denied, certiorari denied 113 S.Ct. 2421, 508 U.S. 942, 124 L.Ed.2d 643. Civil Rights 1396

1048. Mortuaries, particular persons under color of law

Fact that county had contracted with mortuary to provide services which it would otherwise have had to provide in a county morgue and that mortuary benefited thereby did not make mortuary's refusal to provide funeral services to Indian relatives of deceased Indians a denial of civil rights taken under color of state law. Scott v. Eversole Mortuary, C.A.9 (Cal.) 1975, 522 F.2d 1110. Civil Rights 1326(5)

1049. Moving companies, particular persons under color of law

Moving companies acted "under color of state law" within meaning of this section when, as agents of sheriffs, they removed tenants' personal property from leased premises during enforcement of writs of restitution. Wegwart v. Eagle Movers, Inc., E.D.Wis.1977, 441 F.Supp. 872, motion denied 467 F.Supp. 573. Civil Rights 1326(9)

1050. Municipal officials, particular persons under color of law

A municipal employee sufficiently alleged that his superiors were acting under the color of state law when they allegedly supplied false information to police officer who then arrested the employee for disorderly conduct to defeat municipality's motion to dismiss employee's civil rights' action, even if the superiors acted in excess of their authority; superiors allegedly abused their authority by securing arrest of the employee without justification at a municipality-owned facility. Yeksigian v. Nappi, C.A.7 (Ill.) 1990, 900 F.2d 101. Civil Rights 1396

Wisconsin municipal ambulance service and its board of directors acted "under color of state law" in terminating executive director, for purposes of his §§ 1983 claim; service was creation of entities that were themselves creatures of state law, four-fifths of board members were elected officials, municipal representatives would not be eligible to serve on board were they not members of municipal governments and acted as representatives of their respective municipalities, insuring availability of ambulance services was required function of municipality, and member municipalities were otherwise entwined in service's establishment, operation, management and finances. Framsted v. Municipal Ambulance Service, Inc., W.D.Wis.2004, 347 F.Supp.2d 638. Civil Rights 1326(11)

To establish that municipal officers are personally liable under § 1983, plaintiff does not have to show that defendant acted pursuant to custom or policy, but rather that defendant deprived plaintiff of constitutional right while acting under color of state law. Lara v. City of Chicago, N.D.Ill.1997, 968 F.Supp. 1278. Civil Rights 1354

City corrections officers failed to demonstrate that city Department of Corrections (DOC) officials who had made

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decision to transfer them in alleged violation of their First Amendment rights had policymaking power, so as to subject city, DOC and DOC officials in their official capacities to § 1983 liability; there was no evidence of delegation of policymaking power, and city charter vested policymaking authority with respect to personnel decisions only in mayor, city council and personnel director, not agency heads. Soto v. Schembri, S.D.N.Y.1997, 960 F.Supp. 751. Civil Rights 1351(5)

Whether actions of municipality leading to pretrial detainee's suicide were ultra vires was irrelevant in determining whether municipal employees who treated detainee were acting under color of state law for purposes of maintaining civil rights action following detainee's death. Danese v. Asman, E.D.Mich.1987, 670 F.Supp. 729, reversed on other grounds 875 F.2d 1239, rehearing denied, certiorari denied 110 S.Ct. 1473, 494 U.S. 1027, 108 L.Ed.2d 610. Civil Rights 1326(8)

1051. National Guard, particular persons under color of law

Actions of Adjutant General of Wisconsin Air National Guard in discharging commander were "actions under color of state law" for purposes of determining Guard's liability to commander under § 1983; state officers were exercising their state authority to effectuate termination of state militia personnel. Knutson v. Wisconsin Air Nat. Guard, C.A.7 (Wis.) 1993, 995 F.2d 765, certiorari denied 114 S.Ct. 347, 510 U.S. 933, 126 L.Ed.2d 311. Civil Rights 1327

Air National Guard technician supervisory personnel and New Jersey Adjutant General acted under color of state law for purposes of § 1983 when participating in personnel decisions resulting in dismissal of ANG technicians, notwithstanding National Guard's unusual "hybrid" status as an agency with both federal and state characteristics and that Adjutant General acted as federal agent and exercised authority pursuant to federal regulations in dismissing the technicians, as National Guard Technicians Act of 1968 left the Guard's administrative authority largely at state level. Johnson v. Orr, C.A.3 (N.J.) 1986, 780 F.2d 386, certiorari denied 107 S.Ct. 107, 479 U.S. 828, 93 L.Ed.2d 56. Civil Rights 1327; Civil Rights 1326(11)

Where decision to discharge National Guard member was within authority of state pursuant to KRS 38.140 as granted by section 1101.18(b) of appendix to Title 32, and National Guard officers were officers of state militia until called into active federal duty, National Guard officers' discharge of member for misconduct and unfitness constituted action under color of state law for purposes of member's action under this section, notwithstanding that discharge was based upon procedural and substantive rules which were actually promulgated by Air Force. Schultz v. Wellman, C.A.6 (Ky.) 1983, 717 F.2d 301. Civil Rights 1327

Officials of state national guard acted under color of state law, as required to allow recovery in § 1983 action based on their actions, when they disciplined commander of national guard base, who held dual status as federal technician and member of state national guard, and allegedly forced his retirement based on his violation of federal anti-nepotism regulation. Bradley v. Stump, W.D.Mich.1997, 971 F.Supp. 1149, affirmed 149 F.3d 1182. Civil Rights 1327; Civil Rights 1326(11)

1052. Newspapers and reporters, particular persons under color of law

Newspaper could not be compelled to accept and print advertising in the exact form submitted even though such advertising was not legally obscene or otherwise unlawful, and despite contention by movie producer whose advertising copy had been altered that newspaper had attained substantial monopoly in its area and thus occupied quasi-public position, and that screening, censoring or otherwise changing producer's proffered copy violated constitutional guarantees of free speech, press, and due process, as newspaper's action was not in fact state action and was not subject to fairness doctrine applicable to broadcasting. Associates & Aldrich Co. v. Times Mirror Co., C.A.9 (Cal.) 1971, 440 F.2d 133. Newspapers 6.1

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42 U.S.C.A. § 1983

Newspaper publisher and its editor, alleged to have conspired against plaintiff to deprive him of his constitutional rights during investigatory and trial proceedings which culminated in his conviction, a conviction which was subsequently vacated, were chargeable only as private citizens and could not be said to have acted "under color of any state law" and, therefore, this section, affording protection against deprivation of civil rights by state action, was not applicable to them, absent a conspiracy with one so acting. Sheppard v. E. W. Scripps Co., C.A.6 (Ohio) 1970, 421 F.2d 555, certiorari denied 91 S.Ct. 238, 400 U.S. 941, 27 L.Ed.2d 245. Conspiracy 7.5(3)

Newspaper editor and publisher were not state actors by virtue of their accepting allegedly false political advertisements and their delivery of newspapers containing those advertisements to subscribers, absent any indication that they were coerced into doing so by state actors, and thus their conduct could not form basis for holding them civilly liable under § 1983 for alleged violation of federal criminal conspiracy statute. Vander Linden v. Wilbanks, D.S.C.2000, 128 F.Supp.2d 900. Civil Rights 1326(4); Conspiracy 7.5(3)

Actions by journalists in publishing newspaper article do not constitute requisite "state action" to support state action claims under § 1983. Idema v. Wager, S.D.N.Y.2000, 120 F.Supp.2d 361, affirmed 29 Fed.Appx. 676, 2002 WL 243119. Civil Rights 1326(4)

Since news reporters were private parties, prison inmate had no grounds for civil rights suit against them for violation of his right of privacy under the Fourth Amendment in broadcast concerning his lawsuits and rapes by fellow inmates. Jones v. Warden of Stateville Correctional Center, N.D.Ill.1995, 918 F.Supp. 1142. Civil Rights 1326(4)

State court judge sufficiently pleaded conspiracy between county officials, township board member, newspaper and its reporters to support § 1983 cause of action against the newspaper and its reporters, where judge alleged that the defendants had conspired to deprive the judge of his property and liberty interest without due process of law, by circulating and publishing oral and written statements erroneously representing that the judge had committed a misdemeanor by erecting barriers on public roadway. Lewis v. News-Press & Gazette Co., W.D.Mo.1992, 782 F.Supp. 1338. Civil Rights 1396

Newspapers and their employees, as private parties, did not act under color of state law, and, thus, were not liable under §§ 1983 for alleged constitutional violations. Lewis v. City of Trenton Police Dept., C.A.3 (N.J.) 2006, 175 Fed.Appx. 552, 2006 WL 988545, Unreported. Civil Rights 1326(4)

1053. Notary publics, particular persons under color of law

Officers who allegedly slammed head of alderman against brick wall and concrete floor, in process of arresting him for refusal to leave board meeting when ordered to do so, were aware that their conduct constituted excessive force, precluding claim they were entitled to qualified immunity from Fourth Amendment action brought by alderman. King v. Jefferies, M.D.N.C.2005, 402 F.Supp.2d 624. Civil Rights 1376(6)

Justice of the peace and notary public was acting under color of law when he pretended to possess the power of deputy sheriff and caused plaintiff to submit to his pretended official custody, inasmuch as it was because he was possessed of the power of notary that he was able to "get-at" plaintiff. Krueger v. Miller, E.D.Tenn.1977, 489 F.Supp. 321, affirmed 617 F.2d 603. Civil Rights 1326(8)

1054. Nurses, particular persons under color of law

Nurses on psychiatric ward where pretrial detainee committed suicide by asphyxiating himself with plastic bag from garbage can could not be found liable in § 1983 civil rights action alleging deliberate indifference to detainee's medical needs; there was no evidence that nurses had any input into psychiatrist's classification of

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detainee as a potential suicide risk, as opposed to a high risk requiring greater precautions, and there was no evidence that nurses observed any behavior that required them to ask one of hospital's doctor's to reevaluate detainee or change his classification. Estate of Cole by Pardue v. Fromm, C.A.7 (Ind.) 1996, 94 F.3d 254, certiorari denied 117 S.Ct. 945, 519 U.S. 1109, 136 L.Ed.2d 834. Civil Rights 1088(4)

Fact that hospital was municipally owned did not make all actions performed by head nurse of hospital in discharge of her duties "under color of law" so as to entitle plaintiff nurse to bring action against the head nurse for alleged denial of civil rights by way of impaired free speech and reduced employment opportunities. Place v. Shepherd, C.A.6 (Tenn.) 1971, 446 F.2d 1239. Civil Rights 1326(11)

Nurses employed by private company that provided medical services for county jail were state actors subject to liability in § 1983 action arising from failure to provide medical treatment to inmate with history of cardiac illness who displayed symptoms of heart attack while incarcerated. Nelson v. Prison Health Services, Inc., M.D.Fla.1997, 991 F.Supp. 1452. Civil Rights 1326(8)

Inmate failed to show that registered nurse hired as full time employee of Department of Corrections to provide nursing care to inmates was acting under color of state law when she responded to inmate's medical complaints and thus inmate's complaint did not state claim against nurse for violation of inmates Eighth Amendment rights under § 1983. Smith v. Huffman, W.D.Va.1987, 670 F.Supp. 176. Civil Rights 1396

1055. Nursing home operators, particular persons under color of law

Decision of private nursing home, a medicaid provider, to discharge patient was not under "color of state law", and thus patient, who brought action on behalf of class members against various Mississippi state officials challenging administration of medicaid program, failed to state a claim upon which relief could be granted. Taylor v. St. Clair, C.A.5 (Miss.) 1982, 685 F.2d 982, rehearing denied 692 F.2d 757.

State action such as to permit nursing home to be held accountable under this section for employment discrimination was not shown by fact that nursing home received medicare and Veterans Administration benefits or by virtue of action of state inspector who, noting that registered nurse's eyesight had deteriorated, asked what nursing home intended to do about it. Trageser v. Libbie Rehabilitation Center, Inc., C.A.4 (Va.) 1978, 590 F.2d 87, certiorari denied 99 S.Ct. 2895, 442 U.S. 947, 61 L.Ed.2d 318. Civil Rights 1326(11)

Care of the elderly and infirm has traditionally been function associated with family, not with sovereignty, and thus operation of nursing home did not constitute a public function so as to provide requisite state action for former personnel director's civil rights suit. Musso v. Suriano, C.A.7 (Wis.) 1978, 586 F.2d 59, certiorari denied 99 S.Ct. 1534, 440 U.S. 971, 59 L.Ed.2d 788. Civil Rights 1326(1)

Under state compulsion test, private nursing home was not state actor subject to terminated employee's §§ 1983 action arising from patient-abuse investigation by office of New York's Attorney General (OAG) and subsequent criminal prosecution, inasmuch as OAG did not exercise coercive conduct over nursing home or any of its employees. Mitchell v. Home, S.D.N.Y.2005, 377 F.Supp.2d 361. Civil Rights 1326(11)

Participation of nursing home trade associations in task force with state to encourage nursing care facilities to optimize medicare coverage was not "state action," as needed for medicare patients of skilled nursing facilities to state § 1983 civil rights claim, where associations had no authority or responsibility to promulgate new regulations or implement state policy. Conrad v. Perales, W.D.N.Y.1993, 818 F.Supp. 559. Civil Rights 1326(5)

1056. Orphanages, particular persons under color of law

Actions of employees of private orphanage, to whom plaintiffs' daughter was committed, did not constitute a

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misuse of power derived from an actual vesting of authority by the state and did not constitute actions "under color of state law" in the sense used in this section. Henig v. Odorioso, C.A.3 (Pa.) 1967, 385 F.2d 491, certiorari denied 88 S.Ct. 1269, 390 U.S. 1016, 20 L.Ed.2d 166, rehearing denied 88 S.Ct. 1814, 391 U.S. 929, 20 L.Ed.2d 671. Civil Rights 1326(4)

1057. Paramedics, particular persons under color of law

City fire department paramedics acted under color of state law, as required for § 1983 liability, by failing to provide medical attention to arrestee who had been handcuffed behind his back while intoxicated with alcohol and cocaine, thrown to the ground face-down, and beaten; although paramedics' role paralleled role of paramedics in the private sector, paramedics had possessed state authority and purported to act under that authority. Ramirez v. City of Chicago, N.D.Ill.1999, 82 F.Supp.2d 836. Civil Rights 1326(2)

1058. Parcel services, particular persons under color of law

Fact that state had not adopted policy specifically prohibiting parcel delivery service from adopting grooming standards for its employees did not mean that any deprivation of civil rights which may have been inflicted upon the employees by the adoption of the standards was inflicted under color of state law. Howe v. United Parcel Service, Inc., S.D.Iowa 1974, 379 F.Supp. 667. Civil Rights 1326(11)

1059. Parole boards or officials, particular persons under color of law

Members of the United States Parole Commission are amenable to suit under §§ 1983 for actions taken pursuant to the District of Columbia Revitalization Act, as actions taken under color of federal statute applicable exclusively to the District of Columbia. Fletcher v. District of Columbia, C.A.D.C.2004, 370 F.3d 1223, 361 U.S.App.D.C. 499, vacated on rehearing 391 F.3d 250, 364 U.S.App.D.C. 1, rehearing en banc denied. Civil Rights 1327

Parole board members could not be held liable in their official capacities under § 1983 for allegedly basing parole decisions on unconstitutional or retaliatory considerations, absent finding that improper actions were sufficiently widespread and approved to represent implementation of official formal or informal custom or policy of board. Johnson v. Rodriguez, C.A.5 (Tex.) 1997, 110 F.3d 299, rehearing and suggestion for rehearing en banc denied 117 F.3d 1419, certiorari denied 118 S.Ct. 559, 522 U.S. 995, 139 L.Ed.2d 400. Civil Rights 1351(4)

For purposes of civil rights suit, state parole officer was acting under color of state law, whether he was off duty or on duty, in arresting defendant for reckless driving; officer was carrying handcuffs and gun issued by state and was acting within geographical area in which he had authority to make arrest for offense committed in his presence. Oliver v. Cuttler, E.D.N.Y.1997, 968 F.Supp. 83. Civil Rights 1326(8)

Kansas Adult Authority's authorization of parolee's final discharge was not requisite state action to support civil rights claim arising after parolee killed two victims; although Authority was aware of parolee's violent history and continuous psychiatric problems, and allegedly failed to consider those factors in granting parolee's unconditional release, there was no evidence that parolee posed danger to victims. Beck v. Kansas University Psychiatry Foundation, D.Kan.1987, 671 F.Supp. 1563. Civil Rights 1326(8)

"Color of state law" requirement for action under this section included regulations of parole board setting forth conduct violative of parole agreement. Ambrek v. Clark, E.D.Pa.1968, 287 F.Supp. 208.

1060. Parolees, particular persons under color of law

Parole of criminal would not support action against Parole Board under 42 U.S.C.A. § 1983 by relatives of individual killed by parolee after release absent special relationship between criminal and victim or victim and

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state; parolee was not state officer and could not be said to be acting under color of state law. Janan v. Trammell, C.A.6 (Tenn.) 1986, 785 F.2d 557. Civil Rights 1088(1); Civil Rights 1326(8)

Estate of woman who was allegedly murdered by inmate less than 24 hours after inmate was granted early release, as result of Arkansas State Board of Corrections invocation of Prison Overcrowding Emergency Powers Act, failed to state cause of action under § 1983 for deprivation of her life and liberty interest in personal security; inmate had been released from state custody prior to alleged crime and was acting only as private individual, and although prison officials may have been negligent or even reckless in releasing inmate, prison officials were under no constitutionally mandated duty to protect private citizens from inmate's actions once he was freed. Wells v. Walker, E.D.Ark.1987, 671 F.Supp. 624, affirmed 852 F.2d 368, rehearing denied, certiorari denied 109 S.Ct. 1121, 489 U.S. 1012, 103 L.Ed.2d 184. Civil Rights 1395(7)

1061. Perjurers, particular persons under color of law

Although defendant police officer's alleged role in scheme with special prosecutor and district attorney in making the false statements which provided basis for criminal process possibly could have been performed by private citizen, defendant could be liable under this section for deprivation of rights under color of state law, even if he was acting in private capacity in concert with special prosecutor and district attorney. Jennings v. Shuman, C.A.3 (Pa.) 1977, 567 F.2d 1213. Civil Rights 1326(8)

Purported robbery victim did not act under color of state law when he allegedly lied in recounting shooting incident to police and when he testified in court, and his alleged acts could not fairly be considered as acts of conspiracy tending to deprive plaintiff of equal protection, for purposes of civil rights action. Barnes v. Dorsey, E.D.Mo.1973, 354 F.Supp. 179, affirmed 480 F.2d 1057. Civil Rights 1326(10); Conspiracy 7.5(3)

1062. Physicians, particular persons under color of law

A physician who was under contract with state to provide medical services to inmates at state prison hospital on part-time basis acted under color of state law, within meaning of § 1983, when he treated inmate; such conduct was fairly attributable to state. West v. Atkins, U.S.N.C.1988, 108 S.Ct. 2250, 487 U.S. 42, 101 L.Ed.2d 40. Civil Rights 1326(8)

Contract services provided by licensed private physician to county in the detention and examination of person brought into treatment facility by police officers as possible mental patient constituted "state action" within the meaning of § 1983, under close nexus/joint action test, though service contract and county hospital's policies anticipated that the psychiatrist on call would exercise clinical judgment and physician had statutory obligation to order the detention of persons whom he believed to be a danger to themselves or others, as physician and the county through its employees had undertaken a complex and deeply intertwined process of evaluating and detaining individuals who were believed to be mentally ill and a danger to themselves or others. Jensen v. Lane County, C.A.9 (Or.) 2000, 222 F.3d 570. Civil Rights 1326(5)

Doctors who examined state employee to determine fitness for duty were not "state actors" who could be sued under § 1983; at the time of diagnosis they were private doctors, who contracted with state on particular occasion to examine employee, and there was no evidence of any agreement between doctors and state acknowledging shared goal. Collyer v. Darling, C.A.6 (Ohio) 1996, 98 F.3d 211, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 2439, 520 U.S. 1267, 138 L.Ed.2d 199. Civil Rights 1326(11)

Nurses and psychiatrist on psychiatric ward could be liable in § 1983 civil rights action for suicide of a pretrial detainee being treated there if they were deliberately indifferent to a substantial suicide risk. Estate of Cole by Pardue v. Fromm, C.A.7 (Ind.) 1996, 94 F.3d 254, certiorari denied 117 S.Ct. 945, 519 U.S. 1109, 136 L.Ed.2d 834. Civil Rights 1088(4)

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Emergency room physician's actions in admitting patient to private hospital when she was brought in by police officers and in certifying patient under state commitment statute for involuntary mental health examinations did not constitute state action simply because state police officers responded by transporting patient to another facility, and thus physician was not liable in patient's § 1983 action based on her involuntary commitment. Pino v. Higgs, C.A.10 (N.M.) 1996, 75 F.3d 1461. Civil Rights 1326(4)

Outside physician who treated prisoner under referral from prison physician, but who was not under contract with prison, had no obligation to accept prisoner as patient, and provided treatment at private facility using his own equipment, nevertheless acted "under color of state law," for purposes of § 1983, because he assumed his state's constitutional obligation to provide medical care to prisoner. Conner v. Donnelly, C.A.4 (Va.) 1994, 42 F.3d 220. Civil Rights 1326(8)

Private physician who is under contract to provide obligatory medical services to county jail is considered to be acting under color of state law for § 1983 purposes. Leeks v. Cunningham, C.A.11 (Fla.) 1993, 997 F.2d 1330, certiorari denied 114 S.Ct. 609, 510 U.S. 1014, 126 L.Ed.2d 573. Civil Rights 1326(8)

Private physician unaffiliated with private mental hospital and patient's husband were not transformed into state actors, for purposes of patient's civil rights action arising out of her involuntary commitment, on basis that they conspired with alleged state actors, the hospital and another physician, to have patient committed; none of the alleged state actors were in fact state actors, and thus all parties retained their private status. Harvey v. Harvey, C.A.11 (Ga.) 1992, 949 F.2d 1127. Civil Rights 1326(5)

Physician who provided emergency medical services to prisoner was not a "state actor" for purposes of §§ 1983, where physician provided the medical services in private hospital, not correctional facility in which prisoner had been detained, and physician was not under contract to render medical services to prisoner, but, rather, he was legally obligated to do so by the Emergency Medical Treatment and Active Labor Act (EMTALA). Sykes v. McPhillips, N.D.N.Y.2006, 412 F.Supp.2d 197. Civil Rights 1326(8)

Physician was not liable to acquitted murder suspect under §§ 1983 for reporting to Sheriff's officers that alleged murder victim was possible victim of child abuse, absent evidence that physician and officers reached any understanding to deprive suspect of his constitutional rights. Arline v. City of Jacksonville, M.D.Fla.2005, 359 F.Supp.2d 1300. Civil Rights 1326(5)

Genuine issues of material fact existed underlying issues as to as to whether private physician defendants complied with substantive admission/confinement requirements of New York Mental Hygiene Law in involuntarily admitting plaintiff to mental hospital, as to whether plaintiff was actually "admitted," and whether he was given written notice upon such admission, and whether plaintiff had capacity to consent to admission, precluding summary judgment in favor of either side on false arrest/imprisonment claims under federal and New York law. Ruhlmann v. Ulster County Dept. of Social Services, N.D.N.Y.2002, 234 F.Supp.2d 140. Federal Civil Procedure 2515

Two private physicians acted under color of state law in confining patient to hospital involuntarily, and continuing confinement, as required to support patient's claim under § 1983 that confinement violated due process clause; private physicians relied on conclusion of county physician that patient required hospitalization in admitting patient to hospital, and private physicians could not have involuntarily hospitalized patient under New York law without county physician's certification. Tewksbury v. Dowling, E.D.N.Y.2001, 169 F.Supp.2d 103. Civil Rights 1326(4)

Private physician is not exercising governmental authority, as required to convert physician's action into state action for § 1983 purposes, when he or she uses medical judgment in assessing dangerousness of individual for commitment purposes despite fact that physician is licensed by the state. Okunieff v. Rosenberg, S.D.N.Y.1998, 996 F.Supp. 343, affirmed 166 F.3d 507, certiorari denied 120 S.Ct. 1002, 528 U.S. 1144, 145 L.Ed.2d 945. Civil

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42 U.S.C.A. § 1983

Rights 1326(7)

Under state compulsion test, hospital and physician were not state actors and were therefore not acting under color of state law in catheterizing arrestee, whom police officer brought to hospital for blood test, so that they were not liable for § 1983 claims arising out of catheterization; physician ordered urine sample for medical reasons based on his own judgment, idea of using catheter was given to him by nurse, rather than officer, and officer merely assisted in catheterization after it had been ordered. Rudy v. Village of Sparta, W.D.Mich.1996, 990 F.Supp. 924, affirmed 129 F.3d 1265. Civil Rights 1326(4)

Private physician, providing services to private residential juvenile treatment center, which in turn had contract with state to assume all of state's custodial responsibilities for troubled juveniles sent to it by state, was "state actor" subject to suit under § 1983 for deprivation of constitutional rights of juvenile. Lemoine v. New Horizons Ranch and Center, Inc., N.D.Tex.1998, 990 F.Supp. 498. Civil Rights 1326(5)

Physician and his spouse did not become "state actors" for purposes of § 1983 by prosecuting action against abortion activists and organizations for intentional infliction of emotional distress, tortious interference with business relationships, invasion of privacy, and related torts and by obtaining temporary injunctions against activists and organizations; hardships and restrictions imposed on activists and organizations were natural consequences of litigations process, injunction was issued by independent judicial officer after five-day evidentiary hearing, injunction was subsequently affirmed on appeal, there was no evidence of corruption of judicial power or conspiracy with judge, that physician and spouse acted unilaterally to compel state official to enforce illegal court order, or that injunction was based on prohibitory state statute or rule. Tompkins v. Cyr, N.D.Tex.1995, 878 F.Supp. 911. Civil Rights 1326(9)

1063. Political caucuses, particular persons under color of law

Caucus which is a body composed of all state senate members of same political party, which conducts sessions in state house on state property and attended by elected and appointed officials, which is serviced by state paid employees and which decides the course of legislation before it reaches the floor of state senate exercises legislative power; thus, action by caucus is "state action" within meaning of this section. Ammond v. McGahn, D.C.N.J.1975, 390 F.Supp. 655, reversed on other grounds 532 F.2d 325. Civil Rights 1326(1)

1064. Political parties or committees, particular persons under color of law

Political party was not acting under color of state law when it refused to refund gubernatorial candidate's $200 filing fee or when it acted to expel him from his positions within party, as required to support candidate's § 1983 claim. Lindstedt v. Missouri Libertarian Party, C.A.8 (Mo.) 1998, 160 F.3d 1197, rehearing denied, certiorari denied 120 S.Ct. 128, 528 U.S. 850, 145 L.Ed.2d 109. Civil Rights 1326(1)

Actions of members of county central committee of political party in securing ouster of homosexual members were not state action under public function test where their actions did not interfere with election for public office, but instead removed persons elected to private position within party. Johnson v. Knowles, C.A.9 (Cal.) 1997, 113 F.3d 1114, certiorari denied 118 S.Ct. 559, 522 U.S. 996, 139 L.Ed.2d 401. Civil Rights 1326(4)

Fact that state officials made hiring decisions in compliance with rules and recommendations of Republican party members did not turn party members' conduct into state action for purposes of civil rights claims brought by unsuccessful job applicants, where party members had no actual hiring authority. Vickery v. Jones, C.A.7 (Ill.) 1996, 100 F.3d 1334, certiorari denied 117 S.Ct. 1553, 520 U.S. 1197, 137 L.Ed.2d 701. Civil Rights 1326(11)

County Republican party officials' refusal to allow newly elected Republican precinct executives to participate in

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election of their respective ward chairman was not state action, and thus the executives could not recover attorney fees after party agreed to hold new elections rather than dispute merits of officials' civil rights suit, even though county central committee had been delegated power to appoint county officials, and even though selection of ward chairman together constituted county executive committee, which took care of matters that arose between central committee meetings; actions of county central committee in electing ward chairman is not under color of state law merely because central committee has some governmental duties, and executive committee had no control over central committee. Banchy v. Republican Party of Hamilton County, C.A.6 (Ohio) 1990, 898 F.2d 1192. Civil Rights 1326(1); Civil Rights 1479

Absent contention that defendant's position as Democratic party precinct captain made her de facto governmental official, plaintiff had no claim against her under this section. McKinney v. George, C.A.7 (Ill.) 1984, 726 F.2d 1183. Civil Rights 1326(1)

State convention of political party constituted "state action" within meaning of U.S.C.A.Const. Amend. 14 and this section in view of 15 Del.C. §§ 101, 3116, 3301(c), pertaining to nomination of candidates by parties. Redfearn v. Delaware Republican State Committee, C.A.3 (Del.) 1974, 502 F.2d 1123, on remand 393 F.Supp. 372.

Party nominee for clerk of court was not acting under color of state law at time of alleged election irregularities which violated unsuccessful candidate's constitutional rights, as would support unsuccessful candidate's claims under § 1983 against nominee, although nominee was a chief deputy at city attorney's office at time of alleged irregularities, where his alleged actions underlying unsuccessful candidate's claims did not involve his position within local government. White-Battle v. Democratic Party of Virginia, E.D.Va.2004, 323 F.Supp.2d 696, affirmed 134 Fed.Appx. 641, 2005 WL 1444221, certiorari denied 126 S.Ct. 1152, 163 L.Ed.2d 1002. Civil Rights 1326(10)

County committee of political party was a state actor, for purpose of § 1983 liability, when it adopted rule providing that party members could witness candidate petitions for listing on party's primary ballot only in districts where they were enrolled to vote and resided, even if no state enabling act permitted committee to enact such a rule, and even though plaintiffs in action challenging the rule as a violation of their First and Fourteenth Amendment rights dismissed from the suit, without prejudice, the city elections board that could sanction a candidate for violating the rule; committee acted under color of state law in purporting to restrict ability of candidates for state elections to obtain petition signatures required by state law for access to primary ballot. Yassky v. Kings County Democratic County Committee, E.D.N.Y.2003, 259 F.Supp.2d 210. Civil Rights 1326(1)

Borough's Republican Municipal Chairman was not official acting "under color of state law" for purposes of former school custodian's claim under § 1983 concerning his termination; chairman was not public official, did not act together with or obtain significant aid from state officials with respect to custodian's termination, and was not present at Board of Education meeting at which budget eliminating custodian's position was adopted. D'Aurizio v. Palisades Park, D.N.J.1997, 963 F.Supp. 378, affirmed 151 F.3d 1024, certiorari denied 119 S.Ct. 166, 525 U.S. 870, 142 L.Ed.2d 135. Civil Rights 1326(1)

Former state employee failed to state civil rights claim against members of political party alleging that they maintained and operated patronage system in which political and financial supporters of party were favored with respect to employment as highway maintainers; party merely provided information to state officials concerning individuals' voting records and financial contributions and advocated hiring of particular individuals, party members did not make actual hiring decisions, and there was no allegation that state officials delegated responsibility to party members. Vickery v. Jones, S.D.Ill.1994, 856 F.Supp. 1313, affirmed 100 F.3d 1334, certiorari denied 117 S.Ct. 1553, 520 U.S. 1197, 137 L.Ed.2d 701. Civil Rights 1116(2)

Decision by state Democratic party to prohibit candidates for statewide offices from distributing literature written

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and produced by third party independent of candidate's campaign at endorsement meeting was not "state action" needed to state § 1983 civil rights claim by gubernatorial candidate who desired to distribute material prepared by notorious national political figure; meeting at which restriction applied did not determine which candidates appeared on primary ballot, and, thus, involved purely internal affairs of political party. Valenti v. Pennsylvania Democratic State Committee, M.D.Pa.1994, 844 F.Supp. 1015. Civil Rights 1326(1)

Private citizens and political action committees which solicited signatures on initiative petition on department store owner's property without owner's permission were not state actors for purposes of § 1983 civil rights action by owner, even though owner was prevented from prosecuting solicitors for criminal trespass and participating in legislative process served public function. Fred Meyer, Inc. v. Casey, D.Or.1992, 781 F.Supp. 1511, affirmed 67 F.3d 1412, certiorari denied 116 S.Ct. 1545, 517 U.S. 1156, 134 L.Ed.2d 648. Civil Rights 1326(4)

County republican party officers' allegation that they were removed from party because they were evangelical christians did not state actionable claim under § 1983, absent any allegations that removal was performed "under color of law." Blank v. Heineman, D.Neb.1991, 771 F.Supp. 1013. Civil Rights 1396

Filling of post of ward leader of political party did not constitute "state action" within meaning of U.S.C.A.Const. Amend. 14, § 1 or "action under color of state law" within meaning of this subchapter so as to allow maintenance of an action under such statute or constitutional provision based on improper procedures in filling of such post. McMenamin v. Philadelphia County Democratic Executive Committee of Philadelphia, E.D.Pa.1975, 405 F.Supp. 998. Civil Rights 1326(1); Constitutional Law 213(1); Constitutional Law 254(2)

In view of analogy between state convention process for nominating party candidates and state primary election system for nominating party candidates for public office, state action requirement for application of this section to the state convention process was met. Maxey v. Washington State Democratic Committee, W.D.Wash.1970, 319 F.Supp. 673. Civil Rights 1326(1)

1065. Police, particular persons under color of law--Generally

Police officer did not act under color of state law for purposes of § 1983 when, after allegedly gaining access to apartment on pretense of discussing police business and then leaving apartment upon occupant's request, he allegedly forcibly burst front door open and raped occupant; although his alleged initial entry was probably conducted under color of state law, he was no different from any other ruffian when he allegedly forcibly reentered after occupant had fully closed door. Almand v. DeKalb County, Ga., C.A.11 (Ga.) 1997, 103 F.3d 1510, rehearing and suggestion for rehearing en banc denied 114 F.3d 1204, certiorari denied 118 S.Ct. 411, 522 U.S. 966, 139 L.Ed.2d 314. Civil Rights 1326(8)

Police officers, who had allegedly sexually harassed dispatcher employed by different governmental entity, could not be held liable under § 1983 for violation of dispatcher's equal protection rights; absent existence of authority over dispatcher, officers' conduct was private act, not perpetrated "under color of state law." Woodward v. City of Worland, C.A.10 (Wyo.) 1992, 977 F.2d 1392, rehearing denied, certiorari denied 113 S.Ct. 3038, 509 U.S. 923, 125 L.Ed.2d 724. Civil Rights 1326(11)

Police officer who was on medical roll as mentally unfit for duty at time he shot victim was not acting under color of state law and thus, victim's estate could not maintain § 1983 action against officer on behalf of victim; upon receipt of specific order issued to officer not to exercise any police power, officer had absolutely no authority to act. Gibson v. City of Chicago, C.A.7 (Ill.) 1990, 910 F.2d 1510. Civil Rights 1326(8)

For purposes of civil rights action by arrestee, corrections officer who made arrest was acting under "color of law" at time of arrest; in making arrest, officer used handcuffs issued by City Department of Corrections, officer placed

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arrestee in police car and accompanied him throughout evening to local precinct, hospital, and central booking. Rivera v. La Porte, C.A.2 (N.Y.) 1990, 896 F.2d 691. Civil Rights 1326(8)

Failure of county to train police officers that custom-made vehicles often had noncorresponding vehicle identification numbers on same vehicle, which resulted in arrest of owner of custom-made vehicle, did not constitute inadequate training which would have rendered county liable in civil rights action. Merritt v. County of Los Angeles, C.A.9 (Cal.) 1989, 875 F.2d 765. Civil Rights 1352(4)

Police detective was not entitled to qualified immunity from liability in arrestee's § 1983 claim based on detective's actions in failing to transmit to prosecutor exculpatory statement by suspect regarding arrestee's lack of involvement in robbery, absent showing that detective's actions were consistent with what a reasonable officer would have done under the circumstances. Murvin v. Jennings, D.Conn.2003, 259 F.Supp.2d 180. Civil Rights 1376(6)

Deciding whether police officer acted under color of state law, for purposes of § 1983 action, should turn largely on nature of specific acts police officer performed, rather than on merely whether he was actively assigned at that moment to performance of police duties. Rodriguez v. City of Milwaukee, E.D.Wis.1997, 957 F.Supp. 1055. Civil Rights 1326(8)

Failure of village or police department to take disciplinary action against police officer for allegedly unconstitutional stop of vehicle provided insufficient basis for imposing municipal liability under § 1983 for acts of officer. Dill v. Village of Gowanda, W.D.N.Y.1997, 952 F.Supp. 989. Civil Rights 1352(4)

In determining whether police officer is acting under color of state law, as required for plaintiff to maintain § 1983 action against officer, more is required than simple determination that officer was on duty, wearing uniform, or driving patrol car when challenged incident occurred; liability may be found if police officer invokes real or apparent power of police department or performs duties prescribed generally for police officers. Martin v. Lociccero, W.D.N.Y.1995, 917 F.Supp. 178. Civil Rights 1326(8)

Plaintiff in civil rights action under § 1983 failed to establish any basis for municipal liability based on claims of assault, attempted murder, and conspiracy to commit murder by police officer, where plaintiff did not allege any causal connection between any policy of the city or police department and alleged violations of his civil rights, but instead alleged that the officer was a rogue police officer who did not "follow and respect the rules of his office." Orraca v. City of New York, S.D.N.Y.1995, 897 F.Supp. 148. Civil Rights 1395(5)

Police officers who purported to arrest motorist outside their jurisdiction acted under color of state law for purposes of § 1983 notwithstanding their lack of actual authority to make such arrest and their subjective knowledge that they lacked such authority; the traffic stop, use of firearms in effecting the arrest, and ensuing physical restraint, including handcuffing, were made possible only by the fact that officers were clothed with state power. Keller v. District of Columbia, E.D.Va.1993, 809 F.Supp. 432. Civil Rights 1326(8)

Arrestee sufficiently alleged that police officers were acting under color of state law by means of authority given to them by state as employees of municipal police department, when they allegedly fabricated charges on which arrest was based so that arrestee would be confined and they would be able to steal $100,000 in property and legal documents from his apartment, to satisfy under color of state law element of § 1983 claim. Brown v. State's Attorney, N.D.Ill.1992, 783 F.Supp. 1149. Civil Rights 1396

Police officer was not acting under color of state law, as required for § 1983 claim, when he allegedly was involved in physical altercation with another officer while on duty; conduct did not occur in course of officer's official duties, actual or otherwise. Rosenfeld v. Egy, D.Mass.2003, 2003 WL 222119, Unreported, affirmed 346 F.3d 11. Civil Rights 1326(8); Civil Rights 1326(11)

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42 U.S.C.A. § 1983

1066. ---- Cadets, police, particular persons under color of law

Police cadets, who were paid employees of police department, who participated in plaintiff's arrest, who accompanied him and officer to police station for booking, who discussed charging decision with desk officer, who subsequently gave their superior officer a written report of the incident, and who did everything except perform actual arrest, could have been acting under color of state law for purposes of this section. Street v. Surdyka, C.A.4 (Md.) 1974, 492 F.2d 368. Civil Rights 1326(8)

1067. ---- Campus police, particular persons under color of law

Acts of campus police of University of Pittsburgh, who arrested plaintiff, were performed under color of state authority within purview of this section; not only has Pennsylvania legislature declared that the university derives its authority from the state but it has delegated to campus police the very powers which the municipal police force of Pittsburgh possesses. Henderson v. Fisher, C.A.3 (Pa.) 1980, 631 F.2d 1115, on remand 506 F.Supp. 579. Civil Rights 1326(8)

The State, in form of police security officers and other private college officials who also held part-time jobs with town, would not be held, for purposes of this section, to have participated directly in action whereby college students were requested to appear at a hearing during a drug investigation, at which hearing they were questioned, where record showed that students who were summoned by security officers knew that such officers were fellow students who were acting in their part-time capacity as security officers, and where such officers and college officials testified that the officers were acting pursuant to instructions of the college officials and not as policemen of the town. Robinson v. Davis, C.A.4 (N.C.) 1971, 447 F.2d 753, certiorari denied 92 S.Ct. 1204, 405 U.S. 979, 31 L.Ed.2d 254. Civil Rights 1376(6)

1068. ---- Chief of police, particular persons under color of law

Police chief did not act knowingly, or with reckless disregard for conduct of police officer, and so was not liable in § 1983 civil rights action for actions of officer who, during traffic stop, administered one violent poke and push to motorist, even if officer deprived motorist of his constitutional right to not be subjected to unreasonable seizure by use of excessive force; contact between officer and motorist was not so prolonged that chief could know or be indifferent to officer. Lanigan v. Village of East Hazel Crest, Ill., C.A.7 (Ill.) 1997, 110 F.3d 467. Civil Rights 1358

Police chief was not liable as supervisor in § 1983 action for wrongful arrest brought by arrestee who was arrested for writing on sidewalk, even if police chief had been advised of similar, past incidents between police and arrestee concerning arrestee's writing on sidewalks, where police chief was not involved in arrest and there was no evidence of a policy instituted by police chief that repudiated arrestee's constitutional rights. Mackinney v. Nielsen, C.A.9 (Cal.) 1995, 69 F.3d 1002. Civil Rights 1358

Owner of towing and wrecker service stated First Amendment claim against city chief of police, arising from revocation of permission for owner to use police radio frequency in business after owner complained to chief of police respecting bidding procedure for abandoned vehicles towing contract with city; complaint sufficiently alleged that chief of police violated owner's First Amendment rights and that any reasonable official in chief's position should have so realized. Blackburn v. City of Marshall, C.A.5 (Tex.) 1995, 42 F.3d 925. Civil Rights 1395(5)

Police chief's failure instantly to release detainees, who had been placed in custody of police chief pursuant to a valid arrest warrant, after telephone call from assistant district attorney did not create liability for violation of detainees' civil rights since police chief's action in continuing to detain prisoners after call was not without color of legal authority and there was no authority for district attorney to order detainees' release. Brewer v. Blackwell,

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C.A.5 (La.) 1982, 692 F.2d 387. Civil Rights 1088(4)

Chief of police was not acting under color of law and thus was not liable under this section when he allegedly assaulted his sister-in-law on the premises of the municipal police station while on duty following argument over family and political matters, during which sister-in-law was neither arrested nor threatened with arrest. Delcambre v. Delcambre, C.A.5 (La.) 1981, 635 F.2d 407. Civil Rights 1326(8)

Genuine issues of material fact, regarding whether police chief acted under color of state law by supervising his officers to participate in attempted repossession at restaurant, precluded summary judgment on restaurant owner's § § 1983 claim against chief. Pruitt v. Pernell, E.D.N.C.2005, 360 F.Supp.2d 738, affirmed 2006 WL 870638. Federal Civil Procedure 2491.5

Police chief was operating under color of state law within meaning of § 1983 when he allegedly tried to dissuade couple from filing criminal complaint against him for instigating verbal dispute by offering couple his business card which they could use to avoid any future problems with police officers, as he acted in conformity with his official capacity as police chief. Banisaied v. Clisham, D.Conn.1998, 992 F.Supp. 128. Civil Rights 1326(8)

Refusal to provide motion picture exhibitors with review board to pass on obscenity of films displayed or with guidelines or opinions as to propriety of exhibition of those films and submission of films to members of city attorney's staff or district attorney's office for determination as to obscenity prior to arresting exhibitors fell within scope and course of authority, duties, and responsibilities of city police chief and sheriff. Schackman v. Arnebergh, C.D.Cal.1966, 258 F.Supp. 983, appeal dismissed 87 S.Ct. 1622, 387 U.S. 427, 18 L.Ed.2d 865, rehearing denied 88 S.Ct. 16, 389 U.S. 893, 19 L.Ed.2d 204. Municipal Corporations 182; Sheriffs And Constables 86

Former police chief could not be held individually liable under § 1983 for incident after he left office in which arresting officers allegedly used excessive force in arresting motorist, where chief did not personally promulgate any policy or practice responsible for harming motorist, and chief did not have power to deploy, train, supervise, or discipline any officer once he left office. Fitzpatrick v. Gates, C.D.Cal.2003, 2003 WL 22385397, Unreported. Civil Rights 1358

1069. ---- Commissioners, police, particular persons under color of law

Current Commissioner of Department of Public Safety (CDPS) and his predecessor in that position, were amenable to suit under § 1983 in their personal capacities, as at time of their alleged sexual harassment of police officer they were conducting themselves as supervisors for public employer, and thus were acting under color of state law. Annis v. County of Westchester, N.Y., C.A.2 (N.Y.) 1994, 36 F.3d 251, on remand 939 F.Supp. 1115. Civil Rights 1326(11)

In denying provisional police officer's request for an extension of time in which to complete basic course at police academy, deputy commissioner of the New York State Division of Criminal Justice Services (DCJS) acted as final policymaker, as required to hold DCJS liable under § 1983; deputy commissioner was responsible for determining what constituted exigent circumstances for the purposes of granting an extension. Lathrop v. Onondaga County, N.D.N.Y.2002, 220 F.Supp.2d 129. Civil Rights 1351(5)

Actions of commissioner and officers of state police in issuing any transfer order to state police officer in the course of their duties would constitute conduct "under color of state law" within meaning of this section. Ruhlman v. Barger, W.D.Pa.1976, 435 F.Supp. 447. Civil Rights 1326(11)

1070. ---- Deputies, police, particular persons under color of law

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Off-duty deputy acted neither within scope of authority nor under pretense of state law when he assaulted and attempted to rob victims in their home so as to impose § 1983 liability on county even though one victim allegedly recognized officer when victim opened door; deputy did not show badge, deputy put on nylon mask and pointed gun at victim, deputy used gun and physical force to enter house, and victim shouted "it's a robbery." Van Ort v. Estate of Stanewich, C.A.9 (Cal.) 1996, 92 F.3d 831, certiorari denied 117 S.Ct. 950, 519 U.S. 1111, 136 L.Ed.2d 837. Civil Rights 1326(8); Civil Rights 1348

Deputy's mere physical presence on automobile dealer's premises to serve temporary restraining order obtained by private creditor did not constitute state action for purposes of this section, however, had he colluded with creditor's officer to misrepresent contents of the order it would have been a different matter. Torres v. First State Bank of Sierra County, C.A.10 (N.M.) 1978, 588 F.2d 1322. Civil Rights 1326(8); Civil Rights 1326(9)

Off-duty deputy sheriff was not acting under color of law at time he shot his girlfriend's former boyfriend as required for liability of sheriff's department and county under § 1983, despite facts that deputy had his off-duty gun drawn when boyfriend broke into girlfriend's house, deputy asked boyfriend if boyfriend knew what deputy did for a living, boyfriend told deputy to arrest him, and deputy told boyfriend to get down on floor, absent evidence that, in defending his girlfriend, deputy was acting pursuant to duty imposed by department regulations. Hudson v. Maxey, E.D.Mich.1994, 856 F.Supp. 1223. Civil Rights 1326(8)

Deputy sheriffs did not have duty to force farmer who had retained truck and trailer during dispute over watermelon shipment to return truck and trailer to its owner, so as to subject county to civil rights liability; deputies had been dispatched to keep peace in potentially violent confrontation and did not have burden of deciding legal issue of who was entitled to disputed property. Padgett v. Palmer, S.D.Miss.1994, 856 F.Supp. 1185, affirmed 58 F.3d 636. Civil Rights 1088(1)

This section does not apply to automobile collision case wherein one of the parties was a state official or acting under color of state law and there was no right of action thereunder on behalf of individual who was struck and killed by police automobile being driven by deputy sheriff engaged in high speed pursuit of another automobile, notwithstanding claims of reckless, wanton or intentional misconduct. Ellsworth v. Mockler, N.D.Ind.1983, 565 F.Supp. 110. Civil Rights 1358

Actions of sheriff's deputies in arresting and detaining wife overnight in jail for her alleged interference with officers in their attempt to arrest her husband were under "color of state law" within purview of this section. Lamb v. Cartwright, E.D.Tex.1975, 393 F.Supp. 1081, affirmed 524 F.2d 238. Civil Rights 1326(8)

1071. ---- Crime reporting, police, particular persons under color of law

Allegations that defendants, acting as private individuals, conspired with and directed officers to cause felony theft warrant to be issued and served against plaintiff, that defendants and officers knew information was false, and that officers' arrest of plaintiff for theft was made possible because of their authority as law enforcement officers to investigate crimes and make arrests met "under color of law" requirement of 42 U.S.C.A. § 1983, and thus stated claim upon which relief could be granted. Mark v. Furay, C.A.7 (Ill.) 1985, 769 F.2d 1266, on remand. Civil Rights 1396

Private individual did not act "under color of state law" in reporting alleged criminal conduct by arrestee, and signing a complaint against arrestee, and thus, private individual could not be liable to arrestee under §§ 1983, for alleged unlawful arrest, unlawful search and seizure of arrestee's property, and malicious prosecution; county attorney exercised independent judgment in its decision to prosecute, and although police secured a search warrant based on private individual's statements, the private individual did not control the execution of the warrant or any discovery of contraband, there was no showing that the searches were an abuse of state power, decision to arrest was made by police, and there was no evidence that private individual and police or prosecutor shared a common,

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unconstitutional goal. Lane v. Johnson, D.Kan.2005, 385 F.Supp.2d 1146. Civil Rights 1326(5)

Mere reporting of suspected criminal activity to law enforcement officials does not constitute the type of joint action with state officials capable of transforming private party into state actor for purposes of § 1983. Fleeger v. Bell, D.Nev.2000, 95 F.Supp.2d 1126, 173 A.L.R. Fed. 717, affirmed 23 Fed.Appx. 741, 2001 WL 1491252. Civil Rights 1326(5)

Fact that a private party executed a sworn complaint which forms the basis for an arrest is not, in itself, sufficient to render the party a state actor for purposes of § 1983 liability; rather, for private party to be deemed a state actor, plaintiff must show that the police in effecting the arrest acted in accordance with a preconceived plan to arrest plaintiff merely because he was designated for arrest by the private party, without independent investigation. Lewis v. Continental Airlines, Inc., S.D.Tex.1999, 80 F.Supp.2d 686. Civil Rights 1326(5)

1072. ---- Highway patrol-officers, police, particular persons under color of law

When a highway patrolman crosses state line to obtain custody of suspect and returns suspect without extradition to state which officer serves, he is acting under color of law; this rule follows even when challenged acts constitute an abuse of the authority conveyed upon officer. Wirth v. Surles, C.A.4 (S.C.) 1977, 562 F.2d 319, certiorari denied 98 S.Ct. 1509, 435 U.S. 933, 55 L.Ed.2d 531. Civil Rights 1326(8)

State highway patrolman who arrested motorist for driving under the influence of liquor and for resisting arrest was acting "under color of" state law within this section even though his actions may have been in excess of his authority. Stringer v. Dilger, C.A.10 (Colo.) 1963, 313 F.2d 536. Civil Rights 1326(8)

South Carolina Highway Patrol is not a "person" for purposes of this section. Cribb v. Pelham, D.C.S.C.1982, 552 F.Supp. 1217. Civil Rights 1348

1073. ---- Off-duty police officers, particular persons under color of law

For purposes of arrestee's §§ 1983 action against arresting officer, officer was acting under color of law throughout his encounter with arrestee; although officer was off-duty and working as security guard at ballpark when he told arrestee to stop his loud heckling of baseball players, and then removed arrestee from bleachers, officer was wearing his police uniform and carrying his official weapons, he told arrestee after arrestee persisted in his behavior that they could "either do this the easy way or the hard way," he grabbed arrestee by the shirt and the arm and put him in the "escort position" before forcibly removing him from bleachers, and then he arrested arrestee for disorderly conduct and resisting arrest. Swiecicki v. Delgado, C.A.6 (Ohio) 2006, 463 F.3d 489.

Off-duty police officer who displayed his shield, identified himself as a police officer to arrestee, and drew his firearm acted under color of law in taking arrestee into custody, for purposes of arrestee's § 1983 action against officer. Jocks v. Tavernier, C.A.2 (N.Y.) 2003, 316 F.3d 128. Civil Rights 1326(8)

City police officer who struck and killed pedestrian while driving under the influence of alcohol, allegedly following party in police district parking lot, was acting as private citizen rather than police officer, and therefore accident did not violate pedestrian's federally protected rights; although finding that police officer acted under color of state law was not foreclosed by his off-duty status, complaint did not allege that officer acted under color of law, officer was driving own vehicle while drunk and outside city, and complaint did not allege that officer was engaged in police activity, displayed police power, or possessed any indicia of his office at time of accident. Latuszkin v. City of Chicago, C.A.7 (Ill.) 2001, 250 F.3d 502. Civil Rights 1326(8)

Police officer who was off-duty and spending the night at boyfriend's home when she called 911 to report that his ex-girlfriend was banging on door and window of home was not acting under color of state law when she called

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police and reported the incident, as required for ex-girlfriend's § 1983 claim against officer; officer did not physically arrest, restrain, or attempt to restrain ex-girlfriend, and her actions were functionally equivalent to any private citizen calling for police assistance. Redding v. St. Eward, C.A.6 (Mich.) 2001, 241 F.3d 530. Civil Rights 1326(8)

Even though police officer was working off duty as a shopping mall security guard, she was acting "under color of state law," for § 1983 purposes, when she shot a shoplifting suspect; she was wearing a police uniform, ordered the suspect repeatedly to stop, and sought to arrest him. Abraham v. Raso, C.A.3 (N.J.) 1999, 183 F.3d 279. Civil Rights 1326(8)

Police officer was not "acting under color of state law" when he took minor to his farm to ride all-terrain vehicles and sexually assaulted her, and thus conduct did not support liability under § 1983; officer was neither acting nor purporting to act in official capacity or to exercise his responsibilities pursuant to state law, and was off-duty, not wearing uniform or badge, not carrying gun, and was driving personal vehicle. Roe v. Humke, C.A.8 (Ark.) 1997, 128 F.3d 1213. Civil Rights 1326(8)

Municipal police officer may, in appropriate circumstance, be said to have acted under color of state law even while working off duty as private security officer. Robles v. City of Fort Wayne, C.A.7 (Ind.) 1997, 113 F.3d 732. Civil Rights 1326(8)

Police officer who was on medical leave when he shot and killed bar patron during fight outside bar was not then acting "under color of state law," thus precluding patron's relatives' recovery in § 1983 action against members of police department; even though officer displayed his police identification and commented to patrons that he was there to keep peace, officer's statement that because he was officer he could "look dirty" at patron fell so far outside his official capacity that it did not constitute reasonable pretense that he was acting as police officer, and any possibility that patron was intimidated by officer's claims of official status was belied by fact that, just before shooting, patron invited officer to engage in private brawl outside bar. Parrilla-Burgos v. Hernandez-Rivera, C.A.1 (Puerto Rico) 1997, 108 F.3d 445. Civil Rights 1326(8)

That police officer was not on duty at his primary job of police officer at time of altercation with patron of fast food restaurant, but was instead working as private security guard for restaurant, did not preclude finding that officer acted "under color of state law" at time of altercation, such that a patron would be unable to state § 1983 claim, where patron alleged that officer was wearing his police uniform and displayed his badge, that he was wearing a gun, that his marked squad car was parked just outside, and that he charged patron with, among other things, resisting peace officer. Pickrel v. City of Springfield, Ill., C.A.7 (Ill.) 1995, 45 F.3d 1115. Civil Rights 1326(8)

Police officers were not acting under color of state law when they engaged in an altercation with one officer's brother-in-law and, thus, brother-in-law could not maintain action against police officers under § 1983 for alleged assault; officers were off-duty when altercation occurred and out of their official jurisdiction, altercation began when one officer accused brother-in-law of hitting officer's sister, officer's partner then intervened to support him, and two officers attempted to leave at end of altercation. Barna v. City of Perth Amboy, C.A.3 (N.J.) 1994, 42 F.3d 809. Civil Rights 1326(8)

Off-duty police officer who, while drunk in his own home, used his own personal weapon to shoot a guest, did not act under color of state law, as required to support federal civil rights claim; when officer pointed his gun at guest, he was not acting in accordance with police regulation, and was not invoking authority of police department. Pitchell v. Callan, C.A.2 (Conn.) 1994, 13 F.3d 545. Civil Rights 1326(8)

New York City police officer who shot and seriously wounded his wife and then committed suicide by shooting himself was not acting under color of state law since his actions were not committed in performance of any actual

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or pretended duty and, thus, wife could not recover under this section, providing for civil action for deprivation of rights. Bonsignore v. City of New York, C.A.2 (N.Y.) 1982, 683 F.2d 635. Civil Rights 1326(8)

Off-duty city police officer who assisted in alleged illegal repossession action at restaurant was not acting under color of state law, for purpose of restaurant owner's §§ 1983 action; officer was not wearing his uniform or badge, was not carrying firearm, did not assert his authority as officer, and allegedly was unaware of any property dispute involving restaurant. Pruitt v. Pernell, E.D.N.C.2005, 360 F.Supp.2d 738, affirmed 2006 WL 870638. Civil Rights 1326(8)

Off-duty police officer was acting in private capacity, and not under color of state law as required to support patron's claim against officer under § 1983, at time officer's friends allegedly assaulted patron of restaurant, even though officer stated he intended to act pursuant to his duty to prevent a breach of the peace when he pulled friend out of restaurant; officer neither told anyone nor gave any non-verbal indication that he was a police officer, was out of uniform and did not display police-issued gun, badge, or engage in affirmative conduct to prevent incident, and after assault officer did not arrest or charge his friends or report incident to on-duty officers but instead helped them flee the scene. Neuens v. City of Columbus, S.D.Ohio 2003, 275 F.Supp.2d 894. Civil Rights 1326(8)

Defendant police officer was not acting under color of state law, as required for liability in § 1983 action, when he allegedly punched another police officer, even though he was carrying his service revolver and a police department regulation provided that officers were on duty 24 hours a day; defendant was off-shift, out of uniform, and not carrying a badge or other official identification, defendant was restrained and handcuffed by other officers, defendant was acting on personal pursuit by trying to rush to hospital to which injured family members had been taken, and defendant's identification of himself as a police officer was not done in furtherance of any official police duties. Gueits-Colon v. De Jesus, D.Puerto Rico 2001, 177 F.Supp.2d 128, reconsideration denied 181 F.Supp.2d 48. Civil Rights 1326(8)

Police officer's actions in dispute with building contractor were not state action nor committed under color of state law, for purposes of § 1983 action; officer was not in his territorial jurisdiction, was involved in purely personal dispute and not motivated by his police duties, never attempted to make an arrest and did not threaten to have contractor arrested, and made no use in dispute of his police equipment or authority to harass contractor. Garner v. Wallace, E.D.Tex.2001, 139 F.Supp.2d 801. Civil Rights 1326(8)

Private company that hired county police officer to direct traffic at its construction site was not acting under color of state law when officer made an arrest at the site, as required to hold company liable under § 1983 for officer's excessive force during arrest; company did not tell officer how to perform his job directing traffic or how to arrest people who interfered with such job, and officer was not hired to police the site or make arrests. Otani v. City and County of Haw., D.Hawai'i 1998, 126 F.Supp.2d 1299, affirmed 246 F.3d 675. Civil Rights 1326(5)

Off-duty police officer's actions following automobile collision between officer and citizen, consisting of directing citizen to move his car to nearby parking lot, did not constitute "state action," as required to support citizen's § 1983 action against city and officer based on officer's subsequent alleged assault of citizen. Pickard v. City of Girard, N.D.Ohio 1999, 70 F.Supp.2d 802. Civil Rights 1326(8)

Store acted under color of state law by hiring off-duty police officer, who was armed and in uniform to act as security guard, for purposes of customer's action claiming that her civil rights were violated when she was wrongfully detained by officer as suspected shoplifter; employment relationship gave store and officer an overlapping identity and interest, and sufficiently involved the state in store's actions so as to bring those actions under color of state law. Groom v. Safeway, Inc., W.D.Wash.1997, 973 F.Supp. 987. Civil Rights 1326(5)

Off-duty police officers who had traveled to city in another state and became intoxicated while they were carrying their police handguns were not acting under color of state law, for purposes of § 1983, at time of their involvement

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in fatal shooting; city requirement that off-duty officers must at all times preserve the peace did not compel officers to act like police outside jurisdiction, officers were not authorized to act as police in state they were visiting, and while officers had identified themselves as police officers, they did not so wield their influence that they could be deemed to have acted under color of state law. Rodriguez v. City of Milwaukee, E.D.Wis.1997, 957 F.Supp. 1055. Civil Rights 1326(8)

Town police officer was not acting under color of law, and therefore he could not be liable under §§ 1983 for alleged violation of Fourth Amendment relating to warrantless entry into and search of home based on report that minor might be consuming alcohol; officer was off duty and was acting as concerned stepparent of minor, and his only acts were knocking on door and calling police. Galindo v. Town of Silver City, C.A.10 (N.M.) 2005, 127 Fed.Appx. 459, 2005 WL 762120, Unreported. Civil Rights 1326(8)

1074. ---- Suppliers, police, particular persons under color of law

Company which manufactured pepper spray used by state police in pilot study to test police needs in situation where use of some force was justified was not a state actor such that it deprived person, who was sprayed with pepper spray by police of federal statutory or constitutional rights while acting under color of state law; there was no evidence that manufacturer or marketer and distributor of pepper spray did anything more than provide state police with product and possibly receive feedback on its use. Murphy v. Cuomo, N.D.N.Y.1996, 913 F.Supp. 671. Civil Rights 1326(4)

1075. ---- Miscellaneous, police, particular persons under color of law

Police officers were not so involved in aiding title holder's repossession of boat from purported owner under contract for deed that the deprivation of the boat was state action, for purposes of the Fourteenth Amendment's due process guarantee, where officers were not asked to accompany title holder to purported owner's house to ensure repossession went smoothly, and they did not arrive with him; rather, officers were summoned to purported owner's house to resolve breach of the peace that was in progress, and, before officers arrived, title holder had gained access to boat and was already in process of repossessing it. Moore v. Carpenter, C.A.8 (Mo.) 2005, 404 F.3d 1043. Constitutional Law 254(5); Municipal Corporations 747(3)

Under Alabama law, coverage in city's liability insurance policy for violations of constitutional or civil rights did not conflict with and render ambiguous definition of "insured" to include employees only while acting within scope of their duties; thus, policy's coverage was not illusory, and consequently police officer and second city employee who allegedly sexually assaulted arrestees were not "insureds" for purposes of arrestees' §§1983 action against officer and employee, based on finding that their alleged conduct was outside scope of their duties. Employers Mut. Cas. Co. v. Mallard, C.A.11 (Ala.) 2005, 402 F.3d 1085. Insurance 2272

City could not be held liable to shooting victims for due process violation under state-created danger theory, though assault rifle used by shooter had been obtained by and was being stored in his house by his father, a police officer, absent showing of any specific knowledge by police of potential for harm to known victim, or that police used their authority to create opportunity that would not have otherwise existed. Morin v. Moore, C.A.5 (Tex.) 2002, 309 F.3d 316, rehearing denied 57 Fed.Appx. 213, 2003 WL 151180. Constitutional Law 253(1); Municipal Corporations 747(3)

Police officer was not acting under color of state law, for purposes of § 1983, when he threatened to bring defamation lawsuit against motorist who filed complaint about officer's conduct during traffic stop, even though officer's lawsuit relied on state statute allowing peace officers to bring defamation actions against those who filed false complaints against them, inasmuch as threatened defamation action was personal to officer and would redress his alleged reputational injury, and mere fact that enabling statute existed was insufficient to make action which officer privately elected to take thereunder "state action." Gritchen v. Collier, C.A.9 (Cal.) 2001, 254 F.3d 807.

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42 U.S.C.A. § 1983

Civil Rights 1326(8)

Police officer who was hired by corporation to provide security acted under color of state law, for purposes of civil rights law, in preventing former corporate officer from entering corporate offices to retrieve his personal property; police officer identified himself as city police officer, and threatened to use authority conveyed to him by virtue of his status to arrest corporate officer if he did not vacate corporate premises. Laughlin v. Olszewski, C.A.5 (Tex.) 1996, 102 F.3d 190. Civil Rights 1326(8)

Girlfriend, a police officer who threated her estranged lover with physical harm by members of city police department and used her friendship with another officer to influence investigation of lover's complaint against her, acted under "color of law" for purposes of §§ 1983 liability. Stack v. Perez, D.Conn.2003, 248 F.Supp.2d 106. Civil Rights 1326(8)

City police officer acted "under color of law" in assisting festival security in expelling motorcycle club members from city park, and thus was subject to liability under §§ 1983, despite city's contention that officer merely agreed to stand by in case of trouble, where officer was armed and uniformed, officer approached members at direction of festival security officer, and members obeyed officer because she was in uniform. Villegas v. City of Gilroy, N.D.Cal.2005, 363 F.Supp.2d 1207. Civil Rights 1326(8)

City police officers who assisted in alleged illegal repossession action at restaurant were acting under color of state law, for purpose of restaurant owner's §§ 1983 action; officers were in their uniforms, were carrying firearms and driving police cruisers, and allegedly threatened to arrest owner several times as events unfolded at restaurant. Pruitt v. Pernell, E.D.N.C.2005, 360 F.Supp.2d 738, affirmed 2006 WL 870638. Civil Rights 1326(8)

New York statute granting authority to peace officers of duly incorporated society for prevention of cruelty to animals to take certain actions to prevent animal cruelty did not convert individual peace officers, who seized owner's animals and arrested owner on animal cruelty charges, or society itself, into state actors, as required for owner to assert §§ 1983 claims against them; society did not act on behalf of state, it was not clothed with authority of state law, New York had not ceded governmental functions to society, nor had it assumed control of society's policies and operations. Fabrikant v. French, N.D.N.Y.2004, 328 F.Supp.2d 303. Civil Rights 1326(8)

Depending on extent of his involvement, police officer's conduct in escorting private individual into locked building, over building owner's protests and without warrant, to retrieve items allegedly belonging to individual from storekeeper's premises without notice to storekeeper could constitute state action for purposes of federal civil rights action alleging deprivation of storekeeper's rights under Due Process Clause. Yeomans v. Wallace, D.Conn.2003, 291 F.Supp.2d 70. Civil Rights 1326(8)

Hispanic owner of seized identification card that was photographed for newspaper article regarding fake identification and shoplifting was barred from asserting §§ 1983 or 1981 claims against town police department, absent showing that officer who provided card to newspaper reporter violated owner's constitutional rights, or that town had any related policy or custom concerning officer's conduct. Olivera v. Town of Woodbury, New York, S.D.N.Y.2003, 281 F.Supp.2d 674, affirmed 99 Fed.Appx. 298, 2004 WL 1147072. Civil Rights 1351(4)

Fact that a supervising police officer gave another officer authority to go to motorist's home to issue traffic citations, which resulted in officer's alleged use of excessive force against motorist and issuance of improper citation for resisting arrest, did not render city liable under § 1983 for officer's actions; there was no evidence that supervising officer was a policy-making official. Hummel v. City of Carlisle, S.D.Ohio 2002, 229 F.Supp.2d 839. Civil Rights 1351(4)

Allegation that individual falsely represented to neighbor that he was retired police officer was insufficient to make individual "state actor" for purposes of neighbor's § 1983 action, even if complainant's purpose in having neighbor

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arrested was to prevent him from disclosing that individual was not retired police officer, absent evidence that individual was involved in state's decision to arrest and prosecute neighbor. Torgerson v. Writsel, E.D.N.Y.2000, 109 F.Supp.2d 107, affirmed 121 Fed.Appx. 893, 2005 WL 195103. Civil Rights 1326(4); Civil Rights 1326(8)

Private repossession company did not receive substantial assistance from uniformed police officers who observed repossession of owner's vehicles, and thus, repossession company was not "state actor" for purposes of § 1983 action alleging that repossession violated owners' due process rights; officers were present to preserve peace and not to assist in repossession, officers largely remained at distance which prevented them from even hearing what was being said, and even though one officer's statement to owner that repossession company had "repo order" was legally inaccurate, it did not provide mantle of authority that enhanced repossession company's power. Sherry v. Associates Commercial Corp., W.D.Pa.1998, 60 F.Supp.2d 470, affirmed 191 F.3d 445. Civil Rights 1326(9)

Retired police officer alleging retaliation for protected speech, i.e., reporting an alleged assault by another officer, a corporal, failed to prove that the corporal abused the power of his office so as to satisfy color of law requirement under §§ 1983; title of corporal was one of seniority, not of supervisory rank, and while that seniority allowed the corporal to assign the officer to a particular patrol area on at least one occasion, the officer himself had performed this assignment duty when he was the senior officer on a shift. Chernavsky v. Township of Holmdel Police Dept., C.A.3 (N.J.) 2005, 136 Fed.Appx. 507, 2005 WL 1394865, Unreported. Civil Rights 1326(11)

1076. Poll-watchers, particular persons under color of law

Conduct of poll-watchers was made possible only because they were clothed with authority of state law; thus civil rights action under this section was appropriate redress for any misuse of that power and plaintiff, who while attempting to aid and advise some poll-watchers, was allegedly assaulted by defendant poll-watchers was entitled to maintain action thereunder. Tiryak v. Jordan, E.D.Pa.1979, 472 F.Supp. 822. Civil Rights 1326(1)

1077. Polygraph examiners, particular persons under color of law

Polygraph examiner, who administered test to applicant for police officer position, could be held liable for questioning of applicant regarding her sex life which violated her privacy and associational interests, even though examiner contended that he was an independent contractor rather than state employee under civil rights law. Thorne v. City of El Segundo, C.A.9 (Cal.) 1983, 726 F.2d 459, certiorari denied 105 S.Ct. 380, 469 U.S. 979, 83 L.Ed.2d 315. Civil Rights 1340

1078. Prisons, particular persons under color of law

Jail was not a "person," and therefore not amenable to suit under § 1983. Preval v. Reno, E.D.Va.1999, 57 F.Supp.2d 307, affirmed in part, modified in part, vacated in part 203 F.3d 821. Civil Rights 1348

1079. Prison chaplains, particular persons under color of law

Prison chaplain was not state actor, for purposes of § 1983, when he prohibited inmate, who practiced Messianic Judaism, from attending Protestant activities at prison; although paid by the state, chaplain's decision to excommunicate inmate, to emphasize gravity of inmate's teaching that salvation was possible other than through Jesus Christ and to induce true repentance, was inherently ecclesiastical function, and there was no evidence that religious doctrine was subterfuge or that excommunication was used to impose prison administrators' will. Montano v. Hedgepeth, C.A.8 (Iowa) 1997, 120 F.3d 844. Civil Rights 1326(8)

Volunteer chaplain at state prison was "state actor" for purposes of inmate's § 1983 action alleging that volunteer

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chaplain and others denied inmate equal participation in chapel services; volunteer chaplain's right to conduct services in prison chapel was privilege created by state, and he signed agreement to abide by prison's regulations and policies, including prison's regulation that guaranteed all inmates freedom to practice religion, subject to security restrictions. Phelps v. Dunn, C.A.6 (Ky.) 1992, 965 F.2d 93. Civil Rights 1326(8)

1080. Prison guards or officials, particular persons under color of law

Prison custodian is not guarantor of prisoner's safety, and mere fact that prisoner is harmed will not subject custodian to liability under § 1983. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1358; Prisons 10

Prison maintenance worker was not acting under color of state law when he punched inmate in nose, and so inmate could not maintain civil rights action against worker; incident, which occurred during horseplay between worker and inmate that included worker and inmate teasing each other regarding their personal attributes, involved purely private aim and no misuse of state authority. Harris v. Rhodes, C.A.5 (Tex.) 1996, 94 F.3d 196. Civil Rights 1326(8)

County jailer, in allegedly flourishing and threatening to use his gun against executive director of multi-county jail, acted under color of state law within meaning of civil rights statute, where jailer had authority or power to carry the gun in the jail only because he was the elected jailer of the county; that jailer acted against a fellow public employee was of no matter. Cassady v. Tackett, C.A.6 (Ky.) 1991, 938 F.2d 693. Civil Rights 1326(8)

Prison psychiatrist's refusal to testify in murder prosecution against inmate was not sufficient by itself to expose psychiatrist to civil rights liability; psychiatrist essentially acted as private individual in refusing to testify, not under color of his authority as prison employee, and inmate's proper remedy was motion to subpoena, not civil rights action. Taylor v. List, C.A.9 (Nev.) 1989, 880 F.2d 1040. Civil Rights 1311; Civil Rights 1326(8)

For purpose of maintaining federal civil rights action under 42 U.S.C.A. § 1983, Director of Department of Corrections, warden, and record officer supervisor had clearly acted under color of state law when they calculated prisoner's release date, and prisoner clearly had constitutionally protected liberty interest in being released from prison before end of his term for good behavior. Toney-El v. Franzen, C.A.7 (Ill.) 1985, 777 F.2d 1224, certiorari denied 106 S.Ct. 2909, 476 U.S. 1178, 90 L.Ed.2d 994. Civil Rights 1326(8)

Section 1983 action against prison records officers who analyzed prisoner's sentence was appropriate avenue to remedy prisoner's alleged wrongful detention due to misinterpretation of sentencing statutes; prison records officers were acting under color of state law in analyzing sentence, and alleged wrongful custody in prison involved deprivation of constitutional right. Haygood v. Younger, C.A.9 (Cal.) 1985, 769 F.2d 1350, certiorari denied 106 S.Ct. 3333, 478 U.S. 1020, 92 L.Ed.2d 739. Civil Rights 1098; Civil Rights 1326(8)

Jail supervisor did not violate female corrections officer's civil rights, as he was not acting under color of state law when he reported her alleged assault of him at bar; he was off-duty and out of uniform when she allegedly grabbed his genitals, and he did not arrest, restrain, or attempt to restrain her or to direct ensuing investigation. Hendricks v. Office of Clermont County Sheriff, S.D.Ohio 2005, 415 F.Supp.2d 782. Civil Rights 1326(11)

Inmate's claims under §§ 1983, 1985, and 1986 against various correctional facility officials in their individual and official capacities, seeking monetary, declaratory, and injunctive relief for officials' alleged violation of inmate's constitutional rights during his incarceration, failed to state a claim under *Bivens* insofar as inmate sued officials in their official capacity for monetary relief. Khan v. U.S., E.D.N.Y.2003, 271 F.Supp.2d 409. United States 50.10(3)

Client rights facilitator employed by state correctional facility had insufficient personal involvement in allegedly

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unconstitutional practice of secluding civilly committed sexual offenders to incur § 1983 liability; at most, facilitator merely communicated seclusion policy to inmates. West v. Macht, E.D.Wis.2002, 235 F.Supp.2d 966, affirmed 333 F.3d 745. Civil Rights 1358

State drivers license examiner acted under color of state law while supervising prisoner while she was on work release at drivers license examination center, and thus could be held liable under § 1983 for violating prisoner's Eighth Amendment rights by forcing her to have sex with him in exchange for increased privileges; work release contract gave examiner control of prisoner, and prisoner was not free to leave while on work release and could be subject to punishment if she disobeyed examiner's commands. Smith v. Cochran, N.D.Okla.2001, 216 F.Supp.2d 1286, affirmed 339 F.3d 1205. Civil Rights 1326(8)

Corrections officer who raped prisoner was acting under color of state law, as required to give rise to § 1983 claims, even though private firm ran correctional facility; officer exercised coercive authority over prisoner through his employment, used his employment status to gain access to her prison cell, and state was directly involved in aspects of prison life. Giron v. Corrections Corp. of America, D.N.M.1998, 14 F.Supp.2d 1245. Civil Rights 1326(8)

Prison officials acting in their official capacity are acting under color of state law for purposes of § 1983 action. Richmond v. Cagle, E.D.Wis.1996, 920 F.Supp. 955. Civil Rights 1326(8)

Private operator of county jail could be held liable for constitutional violations under "public function" theory in civil rights action brought by arrestee. Blumel v. Mylander, M.D.Fla.1996, 919 F.Supp. 423. Civil Rights 1326(8)

Prison officials that were not directly involved in moving inmate into "bubble cell" could not be held liable to inmate in civil rights action based on deliberate indifference claim. Killen v. McBride, N.D.Ind.1994, 907 F.Supp. 302, affirmed 70 F.3d 1274. Civil Rights 1358

District of Columbia corrections officials are persons acting under color of state law for purposes of federal civil rights action. Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia, D.D.C.1994, 877 F.Supp. 634, vacated in part, modified in part 899 F.Supp. 659, remanded 93 F.3d 910, 320 U.S.App.D.C. 247, rehearing denied, certiorari denied 117 S.Ct. 1552, 520 U.S. 1196, 137 L.Ed.2d 701, on remand 968 F.Supp. 744. Civil Rights 1354

Prisoner could not recover against prison guards on excessive force claim under cruel and unusual clause of Eighth Amendment for another guard's alleged acts of shoving him against wall and punching him in stomach where they did not participate in single violent act against prisoner. Burton v. Kuchel, N.D.Ill.1994, 865 F.Supp. 456. Sentencing And Punishment 1548

Alleged conduct of correction officer in coming to inmate's cell while off duty, and making sexual demands, and in throwing feces and urine at inmate after inmate rejected demands could not have been taken "under color of state law," and could not be basis of § 1983 action. Rembert v. Holland, W.D.Mich.1990, 735 F.Supp. 733. Civil Rights 1326(8)

Correctional facility wardens and administrators were not "persons" under § 1983 and could not be held liable in their official capacities in suit brought by inmate under § 1983, seeking damages for officials' alleged demonstration of deliberate indifference to his medical needs in violation of his Eighth Amendment right to be free from cruel and unusual punishment. Baker v. Simmons, C.A.10 (Kan.) 2003, 65 Fed.Appx. 231, 2003 WL 21008830, Unreported. Civil Rights 1358

Allegations by estate of prison food service employee murdered by prisoner that warden made intentional decision

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to institute practice that contravened state-wide policy, and provided untethered knife without adequate supervision to prisoner who had recent history of committing violent crimes with knives, were sufficient to state § 1983 claim under "state-created danger" theory of liability to hold warden liable for substantive due process violation; warden's alleged conduct was sufficient to shock judicial conscience. Waller v. Trippett, C.A.6 (Mich.) 2002, 49 Fed.Appx. 45, 2002 WL 31296347, Unreported. Constitutional Law 278.4(1); Prisons 10

1081. Prisoners, particular persons under color of law

Prison guard who was taken captive and raped by inmate could not show breach of due process clause, for purposes of a civil rights claim; it was not prison officials who took guard captive and assaulted her, it was inmate, and inmate was not acting under color of any state statute, ordinance, regulation, custom or usage. Nobles v. Brown, C.A.6 (Mich.) 1992, 985 F.2d 235. Constitutional Law 278.4(1); Prisons 10

State prison inmate's claim in in forma pauperis § 1983 action, that a fellow inmate violated her right to be free from cruel and unusual punishment by pouring hot water on her, was frivolous, requiring dismissal; fellow inmate did not act under color of state law, and alleged assault was private conduct not actionable under § 1983. Figalora v. Smith, D.Del.2002, 238 F.Supp.2d 658. Federal Civil Procedure 2734

County officials' actions of allowing prisoner to work in an unsupervised work detail, and then to remain at large after his escape, did not deprive plaintiffs' sons of life and liberty, as required in § 1983 action alleging deprivation of due process; escaped prisoner was not a state agent, but a third party, when he shot at plaintiffs' sons, killing one of them, and county was not aware that the victims, as opposed to the public at large, faced any special danger. Gaston v. Houston County, Texas, E.D.Tex.2002, 196 F.Supp.2d 445. Constitutional Law 255(2); Counties 146

Allegations that state prison inmate's cellmate caused the inmate's typing paper to be confiscated by prison officials by telling prison officials that another cellmate had concealed weapon in the cell did not demonstrate that cellmate was acting under color of state law, as required to state cognizable claim under § 1983. Goodell v. Anthony, E.D.Mich.2001, 157 F.Supp.2d 796. Civil Rights 1326(8)

1082. Probation officers, particular persons under color of law

False imprisonment, rising to constitutional deprivation of liberty, was not occasioned by Virginia probation officer's alleged failure to assist probationer in investigating refusal of officials at veterans hospital to issue him periodic passes, which refusal violated probation conditions, since the probation officer did not falsely imprison probationer or deprive him of his liberty, even if hospital officials were substituted as defendants in suit under this section, federal relief would not lie since any deprivations by those officials would not have been under color of state law. Lee v. Baroski, W.D.Va.1975, 404 F.Supp. 1394. Civil Rights 1037; False Imprisonment 5

1083. Process servers, particular persons under color of law

Although two defendants, in their capacity as process servers, may have acted with requisite state action for actions to be maintained against them for deprivation of rights under color of state law, the actions could not be maintained under this section, where no default judgment was entered against plaintiff in first suit and, pursuant to stipulation, she filed answer and counterclaim, and, in the second suit, issue was joined in consolidated hearing before special master, so that plaintiff had notice and opportunity to be heard on all claims and was not deprived of any rights secured by Constitution or laws of the United States. Wilkins v. Rogers, C.A.4 (S.C.) 1978, 581 F.2d 399. Civil Rights 1037

Defendant process servers who executed false affidavits of service and caused default judgments to be entered

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against persons without notice and who were charged with violating this section did not engage in state action directly, but did engage in "state action" on theory that they performed a "public function," and fact that defendants sought to take advantage of authority to perform act of public power by signing blank affidavits of service without actually effecting service did not remove their activities from the "public" classification. U. S. v. Wiseman, C.A.2 (N.Y.) 1971, 445 F.2d 792, certiorari denied 92 S.Ct. 346, 404 U.S. 967, 30 L.Ed.2d 287. Civil Rights 1808

Claimed denial of due process as result of asserted false affidavit executed by process server could constitute action under color of state law for purposes of federal civil rights suit. Carrasco v. Klein, E.D.N.Y.1974, 381 F.Supp. 782. Civil Rights 1326(1)

1084. Protestors, particular persons under color of law

Chippewa Indians could not bring action under federal civil rights statute against protestors for interference with their treaty-guaranteed right to spear walleye, since protestors' acts did not constitute state action, and there was no evidence of conspiracy between protestors and sheriffs to violate Indians' rights. Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc., W.D.Wis.1991, 759 F.Supp. 1339. Civil Rights 1326(5)

1085. Psychotherapists, particular persons under color of law

Private therapist hired by mother to treat her children, who made report of her suspicions of child abuse to Division of Family and Child Services and who was present when police detective interviewed children regarding alleged abuse, was not "state actor" whose actions could be fairly attributed to state in order to state claim under § 1983, where therapist had no formal arrangement with county prosecutor's office or with any other governmental agency and played only insignificant role in detective's interviews. Lowe v. Aldridge, C.A.11 (Ga.) 1992, 958 F.2d 1565. Civil Rights 1326(4)

University security officer's psychologist was not state actor for purposes of § 1983 claim; psychologist was engaged in private practice and was not formally associated with university, and university security officer conceded that university did not refer him to psychologist. Layser v. Morrison, E.D.Pa.1995, 935 F.Supp. 562. Civil Rights 1326(4)

1085A. Psychiatrists, particular persons under color of state law

Psychiatrist in private practice did not become "state actor," for purposes of claim under §§ 1983, by occasionally performing hypnosis sessions at request of law enforcement, sometimes without compensation; although psychiatrist conducted 200 hypnosis sessions for police over 17 years in private practice, he was not under contract and his services were rendered only about once per month on average. Reasonover v. St. Louis County, Mo., C.A.8 (Mo.) 2006, 447 F.3d 569. Civil Rights 1326(5)

1086. Public authorities, particular persons under color of law--Generally

"State action" requirement of § 1983 was satisfied, for purposes of action by physician who was not reappointed, by involvement of hospital authority, which was public corporation created by statute to serve public purpose, even though public corporate hospital authority had no direct input on day-to-day operation of hospital, where hospital authority's repayments of bonds it issued and mortgages it entered into were dependent on successful operation of hospital, authority continued to finance hospital, authority was informed of decisions, including decision to terminate plaintiff physician's privileges, and authority was lessor of facility and continued to hold purse strings. Jatoi v. Hurst-Euless-Bedford Hosp. Authority, C.A.5 (Tex.) 1987, 807 F.2d 1214, modified on denial of rehearing 819 F.2d 545, certiorari denied 108 S.Ct. 709, 484 U.S. 1010, 98 L.Ed.2d 660. Civil Rights 1326(7)

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1087. ---- Housing authorities, public authorities, particular persons under color of law

Tenants in public housing development could assert section 1983 claims against local housing authorities based upon failure to establish utility allowance in compliance with Housing Act and accompanying HUD regulations. Hill v. Ogburn, C.A.11 (Fla.) 1987, 812 F.2d 679.

Actions of City of Newport, Kentucky Housing Authority in terminating the executive director, who allegedly was denied substantive and procedural due process, satisfied the requisite "state action" element for a claim under Civil Rights Act of 1871. Salisbury v. Housing Authority of City of Newport, E.D.Ky.1985, 615 F.Supp. 1433. Civil Rights 1396

1088. ---- Hospital authorities, public authorities, particular persons under color of law

Denial, by private healthcare management company, of physician's request for staff membership and surgical privileges at public hospital did not constitute state action under nexus/joint action test for purposes of physician's § 1983 action, even though county hospital authority received direct financial benefits from management company, agreed to indemnify management company for any liability arising from its management of hospital, and authorized management company to extend staff membership and clinical privileges in name of hospital authority; hospital authority did not participate in decision to deny physician's application, there was no evidence that hospital authority benefitted financially from application denial, and creation of agency relationship between hospital authority and management company was insufficient to transform management company into state actor. Patrick v. Floyd Medical Center, C.A.11 (Ga.) 2000, 201 F.3d 1313. Civil Rights 1326(5)

1089. ---- Regional planning authorities, public authorities, particular persons under color of law

Tahoe Regional Planning Authority's operation constituted conduct "under color of state law" within meaning of this section. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, U.S.Nev.1979, 99 S.Ct. 1171, 440 U.S. 391, 59 L.Ed.2d 401, on remand 474 F.Supp. 901.

1090. ---- Sports and exhibition authorities, public authorities, particular persons under color of law

Licensee could not, on basis of conduct of members of New York Racing Association's (NYRA) board in their individual capacities, allege existence of symbiotic relationship between NYRA and State of New York so as to make NYRA a state actor for purposes of § 1983. Murphy v. New York Racing Ass'n, Inc., S.D.N.Y.1999, 76 F.Supp.2d 489. Civil Rights 1326(5)

Policy of New Jersey Sports and Exhibition Authority forbidding the solicitation of money and the distribution of literature and other goods at sports complex in exchange for a solicited donation was "under color of state law" so as to support a claim under this section for deprivation of rights, notwithstanding that Authority may have been engaged in business activities of a private sector nature, where the Authority's "certificate of incorporation" established it as a "public body corporate and politic * * * as an instrumentality of the State," action taken by members of Authority was subject to veto by governor, and Authority could not have withstood state challenge of its enabling act without determination that it was public entity and state instrumentality. International Soc. for Krishna Consciousness, Inc. v. New Jersey Sports and Exposition Authority, D.C.N.J.1981, 532 F.Supp. 1088, affirmed 691 F.2d 155. Civil Rights 1326(1)

1091. ---- Transit authorities, public authorities, particular persons under color of law

Adoption of general policy of testing for drugs or alcohol immediately after an on-the-job accident or unusual operating incident was exercise of "governmental function" by metropolitan transit authority, as rule was certainly

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grounded in social, political, and regulatory activities of authority; thus, authority was immune from suit for constitutional and civil rights claims of employees discharged after substance testing following operating incident. Sanders v. Washington Metropolitan Area Transit Authority, C.A.D.C.1987, 819 F.2d 1151, 260 U.S.App.D.C. 359 . Civil Rights 1376(10); Municipal Corporations 724

Even if commuter railroad was municipal entity constituting person within meaning of § 1983, railroad was not liable for actions of its employee under doctrine of respondeat superior, absent any showing that final policymaker was involved in employee's alleged wrongful acts or that wrongful act occurred as result of official policy or custom. Kelly v. Metro-North Commuter R.R., S.D.N.Y.1999, 37 F.Supp.2d 233. Civil Rights 1351(1)

Alabama Department of Transportation violated contractor's rights under Federal Highway Act under color of state law when it rejected contractor's initial low bid and resolicited federally funded highway project, thus giving contractor claim under § 1983, though Federal Highway Administration forced rejection of bid by improperly refusing to concur in award, causing state to face forfeiture of over $8 million in federal highway funds. Clark Const. Co., Inc. v. Pena, M.D.Ala.1996, 930 F.Supp. 1470. Civil Rights 1041

Employer which counted money for bridge and tunnel authority was not "state actor" and thus former employee could not recover on § 1983 claim based on violation of constitutional rights for being fired after testing positive for cocaine use during random urinalysis; authority did not require that private employer perform drug testing, and participation by authority was limited to commercial functions. Atkinson v. B.C.C. Associates, Inc., S.D.N.Y.1993, 829 F.Supp. 637. Civil Rights 1326(11)

Private corporation's operation of regional transport services for Chicago transit authority did not make corporation "state actor" for purposes of 42 U.S.C.A. § 1983, as mass transportation is not area traditionally exclusive prerogative of state; thus, under public function test, corporation could not be liable as state actor to minors whom corporation's driver attempted to rape. Thomas v. Cannon, N.D.Ill.1990, 751 F.Supp. 765. Civil Rights 1326(4)

1092. Public employees, particular persons under color of law

Generally, public employee acts under color of state law within meaning of § 1983 while acting in his official capacity or while exercising his responsibilities pursuant to state law. West v. Atkins, U.S.N.C.1988, 108 S.Ct. 2250, 487 U.S. 42, 101 L.Ed.2d 40. Civil Rights 1326(2)

Genuine issue of material fact existed as to whether supervisor of municipal employee acted under color of state law, precluding summary judgment on employee's equal protection claim in lawsuit under §§ 1983 that was based upon alleged sexual harassment by co-worker. Valentine v. City of Chicago, C.A.7 (Ill.) 2006, 452 F.3d 670. Federal Civil Procedure 2497.1

Current wife acted under state law for § 1983 purposes when, as an employee of county district attorney's office, current wife illegally used DA office's medical eligibility data system (MEDS) computer system to find her husband's ex-wife at a battered women's shelter in order to serve ex-wife papers relating to child custody issues, since current wife's actions, though improper, related to the performance of her official duties; current wife abused her responsibilities and acted under pretense of her county employment by asserting her state-authorized passcode to enter into MEDS database. McDade v. West, C.A.9 (Cal.) 2000, 223 F.3d 1135. Civil Rights 1326(2)

In certain instances co-employees may exercise de facto authority over sexual harassment victims such that they act under color of law for purposes of § 1983. David v. City and County of Denver, C.A.10 (Colo.) 1996, 101 F.3d 1344, rehearing denied, certiorari denied 118 S.Ct. 157, 522 U.S. 858, 139 L.Ed.2d 102. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

Public works employee named as defendant in §§ 1983 action was not acting "under color of state law" at time of alleged rape of public library employee in library, regardless of fact alleged rape occurred on town property and even if alleged victim was engaged in work-related activities; both town employees were off-duty and had agreed to meet outside of work for drinks, and public works employee was not performing any duties related to his employment and was not exercising any authority granted by state. Priller v. Town of Smyrna, D.Del.2006, 430 F.Supp.2d 371. Civil Rights 1326(2)

Janitor at county courthouse was acting "under color of state law" at time he allegedly raped minor performing community service at courthouse, for purposes of minor's §§ 1983 suit against janitor, even if janitor had not been specifically ordered to oversee minor during her community service, where factual evidence demonstrated that janitor's actions occurred during his employment, at his place of employment, and by virtue of his official position. Doe v. Patton, E.D.Ky.2005, 381 F.Supp.2d 595, reconsideration denied, affirmed 2006 WL 959812. Civil Rights 1326(2)

Public employee will be subject to liability for damages under § 1983 if he knew or reasonably should have known that action he took within sphere of his official responsibility would violate constitutional rights of plaintiff, or if he took action with malicious intention to cause depravation of constitutional rights or other injury to plaintiff. Pandolfi de Rinaldis v. Llavona, D.Puerto Rico 1999, 62 F.Supp.2d 426. Civil Rights 1031

Employee of New York State Canal Corporation was not acting under color of state law and thus employee's supervisors, Corporation and New York State Thruway were not liable in minor's § 1983 action alleging her rights were violated by allowing her to work with employee on a lock and by allowing employee to sexually assault her at lock; employee did not exercise power possessed by virtue of state law and made possible only because the he was clothed with the authority of state law. Rose v. Zillioux, C.A.2 (N.Y.) 2003, 84 Fed.Appx. 107, 2003 WL 22849850, Unreported. Civil Rights 1326(2); Civil Rights 1350; Civil Rights 1360

1093. Purchasers at tax sales, particular persons under color of law

Purchaser of real property at tax sale did not act "under color of state law," either by purchasing that property or by filing quiet title action in state court to gain possession thereof; there was no preexisting debt between delinquent taxpayer and purchaser, and suit did not attempt any seizure of property with cooperation of state officials. Tunstall v. Office of Judicial Support of Court of Common Pleas of Delaware County, C.A.3 (Pa.) 1987, 820 F.2d 631. Civil Rights 1326(1)

Police officer's endorsement of report regarding interview of mayor about crime involving mayor's grandson did not address "matter of public concern," and, therefore, was not subject to First Amendment free speech protection; report was nothing other than type of report that was regularly filed, and identity of suspect did not turn suspect's statement into speech on matter of public concern. Kelly v. City of Mount Vernon, S.D.N.Y.2004, 344 F.Supp.2d 395. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Purchaser of property that was sold by IRS to satisfy a federal tax lien allegedly owed by its owner was not a state actor subject to liability under § 1983. Brown v. I.R.S., C.A.6 (Ky.) 2001, 3 Fed.Appx. 272, 2001 WL 92120, Unreported. Civil Rights 1327; Civil Rights 1326(1)

1094. Railroad officials, particular persons under color of law

Railroad police officer, when acting as member of the railroad police force, was acting pursuant to statutorily conferred right by the state for railroad to appoint and maintain a police force, and thus was a state actor for civil rights statute purposes. Roby v. Skupien, N.D.Ill.1991, 758 F.Supp. 471. Civil Rights 1326(8)

1095. Receivers, particular persons under color of law

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42 U.S.C.A. § 1983

Defendant who allegedly disrupted judgment debtor's financial transactions without notice while acting in his capacity as court-appointed receiver was acting under color of state law for purposes of judgment debtor's civil rights action. Lebbos v. Judges of Superior Court, Santa Clara County, C.A.9 (Cal.) 1989, 883 F.2d 810. Civil Rights 1326(4)

Receiver of corporation appointed by state court acts under color of state law within contemplation of this section. Hohensee v. Grier, M.D.Pa.1974, 373 F.Supp. 1358, affirmed 524 F.2d 1403, certiorari denied 96 S.Ct. 2659, 426 U.S. 940, 49 L.Ed.2d 392, rehearing denied 97 S.Ct. 196, 429 U.S. 874, 50 L.Ed.2d 158. Civil Rights 1326(9)

1096. Referees, particular persons under color of law

This section applied to alleged conduct of referee and administrative official of juvenile court in assaulting plaintiff during traffic violation proceedings over which referee presided, and civil rights action was not subject to dismissal on ground that alleged assault was not "under color of state law" because such an attack was conduct without scope of referee's power and not an abuse of the power he possessed by virtue of state law. Lucarell v. McNair, C.A.6 (Ohio) 1972, 453 F.2d 836. Civil Rights 1326(2)

1097. Restaurant employees or owners, particular persons under color of law

The existence of state statutes, Code 1950, §§ 24-120, 37-182, 38.1-597, 53-42, 58-790, 58-880, requiring racial segregation in other contexts or the history of custom of treating Negroes in state as inferiors did not, in absence of showing of significant state involvement, establish actionable claim of Negro for damages based upon refusal of private restaurant owner to serve him. Williams v. Howard Johnson's Inc. of Washington, C.A.4 (Va.) 1963, 323 F.2d 102. Civil Rights 1326(4)

Under this section creating a civil action against any person who under color of any statute, etc., deprives any United States citizen of any rights and privileges secured by the Constitution and laws, in order to constitute conduct under "color of law", defendant's refusal to serve plaintiff must be state action, and there must be a deprivation of a right, privilege or immunity "secured by the Constitution and laws" of the United States. Williams v. Hot Shoppes, Inc., C.A.D.C.1961, 293 F.2d 835, 110 U.S.App.D.C. 358, certiorari denied 82 S.Ct. 1562, 370 U.S. 925, 8 L.Ed.2d 505, rehearing denied 83 S.Ct. 16, 371 U.S. 854, 9 L.Ed.2d 91. Civil Rights 1304

In § 1983 action, plaintiffs sufficiently alleged that restaurant owner was a state actor by alleging that owner called police after plaintiffs refused to leave restaurant, that police arrived 30 minutes later and engaged owner in a 20-minute conversation, and that officer arrested one plaintiff after conversation ended abruptly; it would have been reasonable to infer that during conversation, owner urged officers to arrest plaintiffs, without probable cause, in furtherance of what became the shared goal of depriving plaintiffs of rights guaranteed by Americans With Disabilities Act (ADA). Bang v. Utopia Restaurant, S.D.N.Y.1996, 923 F.Supp. 46. Civil Rights 1396

Persons who were allegedly excluded from restaurant because of race did not have claim against the restaurant based on the Fifth or Fourteenth Amendments or federal civil rights statutes, as there was no showing of color of law. Bermudez Zenon v. Restaurant Compostela, Inc., D.Puerto Rico 1992, 790 F.Supp. 41. Civil Rights 1326(4); Constitutional Law 213(4); Constitutional Law 254(4)

That public agency was landlord of restaurant which allegedly had dress code that violated waitresses' rights to equal protection did not constitute state action so as to permit suit under this section relating to civil action for deprivation of rights. Marentette v. Michigan Host, Inc., E.D.Mich.1980, 506 F.Supp. 909. Civil Rights 1326(11)

1098. Schools, particular persons under color of law--Generally

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42 U.S.C.A. § 1983

School district board of education was not an arm of State of New York entitled to Eleventh Amendment immunity in former substitute teacher's §§ 1983 action alleging discriminatory and retaliatory discharge; New York law construed boards of education in New York as municipal corporations, board members were elected locally, school district was funded by state and local property taxes, state treasury was not obliged to pay directly any judgment against a local board, and there would not be clear injury to sovereign dignity of State of New York by allowing local boards of education to be sued in federal court. Woods v. Rondout Valley Central School Dist. Bd of Educ., C.A.2 (N.Y.) 2006, 466 F.3d 232. Federal Courts 270

No special relationship existed between school district and its students during a school-sponsored football practice held outside of the time during which students were required to attend school for non-voluntary activities; therefore no state action existed under Section 1983 so as to enable school district officials to be held liable for due process violation arising from coaches' failure to protect football player from racially motivated attack committed during practice by teammate. Priester v. Lowndes County, C.A.5 (Miss.) 2004, 354 F.3d 414, certiorari denied 125 S.Ct. 153, 543 U.S. 829, 160 L.Ed.2d 44. Constitutional Law 254(4); Constitutional Law 278.5(5.1); Schools 164

Denial of tenure to teacher at postgraduate school which received approximately $90,000 of its total income of $7,700,000 from the state, with the largest amount of state assistance being given to museum operated by the school, which had five of its 43 directors as state or local officials, designated ex officio, and which had the obligation to file annual reports and to allow inspections by the state was not "state action." Lamb v. Rantoul, C.A.1 (R.I.) 1977, 561 F.2d 409. Civil Rights 1326(11)

Regional educational service center and two officials engaged in state action when they discharged an employee, and were thus subject to the scope of the Fourteenth Amendment and § 1983. Jenkins v. Area Cooperative Educ. Services, D.Conn.2003, 248 F.Supp.2d 117, modified on reconsideration 2004 WL 413267. Civil Rights 1326(11); Constitutional Law 213(2); Constitutional Law 254(2)

School policy banning "props" from senior portraits in yearbook, which effectively precluded publication of photograph of high school senior wearing trap shooting attire and holding shotgun, constituted state action upon which §§ 1983 claim could be based. Douglass v. Londonderry School Bd., D.N.H.2005, 413 F.Supp.2d 1. Civil Rights 1326(6)

School personnel who exhibit deliberate indifference by failing to take appropriate action when they have knowledge that abuse of student is occurring can be held liable under § 1983 for failure to protect. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1065

Defendant's position as Secretary of Education, in and of itself, was insufficient to establish supervisory liability under § 1983 for sexual abuse of female student by police officer assigned to school. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1356

A school board is a "person" who may be held liable under section 1983. Myers v. Loudoun County School Bd., E.D.Va.2003, 251 F.Supp.2d 1262, affirmed 418 F.3d 395. Civil Rights 1346

High school activity association engaged in "state action" for purposes of § 1983 where it was primarily created and funded by public secondary schools and where schools delegated responsibility of supervising and regulating interscholastic activities. Pottgen v. Missouri State High School Activities Ass'n, E.D.Mo.1994, 857 F.Supp. 654, reversed 40 F.3d 926, rehearing and suggestion for rehearing en banc denied. Civil Rights 1326(6)

Discharge of a vocational counselor from school which operated as an alternative high school for students who had trouble functioning in a traditional high school setting did not constitute state action of purposes of federal jurisdiction, though school was funded in large part by local, state and federal sources and subject to extensive

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regulation, and though plaintiff counselor's position was funded by the Massachusetts Committee on Criminal Justice, which was established pursuant to state statute and comprised of various state officials of appointees, where there were no regulations or conditions which related to suspension or termination of individuals employed by the school and the Committee was involved only with decision as to whether plaintiff should be replaced and not whether she should be terminated. Rendell-Baker v. Kohn, D.C.Mass.1980, 488 F.Supp. 764, affirmed 641 F.2d 14, certiorari granted 102 S.Ct. 385, 454 U.S. 891, 70 L.Ed.2d 205, affirmed 102 S.Ct. 2764, 457 U.S. 830, 73 L.Ed.2d 418. Civil Rights 1326(11)

Connection between the Maryland School for the Blind and the state of Maryland was sufficiently substantial so as to constitute its decision to terminate enrollment of 18-year-old, legally blind, multiple handicapped child "state action" for purposes of U.S.C.A.Const. Amend. 14, § 1 and this subchapter. Taylor v. Maryland School for Blind, D.C.Md.1976, 409 F.Supp. 148, affirmed 542 F.2d 1169. Civil Rights 1326(6); Constitutional Law 254(4)

1099. ---- Colleges or universities, schools, particular persons under color of law

State-university professor was state actor, as required to support female student's claim under § 1983 that professor violated her equal protection rights by engaging in sexual harassment. Hayut v. State University of New York, C.A.2 (N.Y.) 2003, 352 F.3d 733, 197 A.L.R. Fed. 659. Constitutional Law 213(2)

Actions of male cadets at The Citadel, a state-supported military college, in allegedly engaging in gender-based harassment and discrimination designed to force a female cadet to withdraw from the college, were not fairly attributable to the State of South Carolina, so as to be considered to have been taken under color of state law for purposes of liability under § 1983, on ground the State provides financial assistance to The Citadel and extensively regulates its military program; while the actions of the cadets may have been made possible by the system established by the state, the cadets did not receive significant encouragement and did not exercise the state's coercive powers in so acting. Mentavlos v. Anderson, C.A.4 (S.C.) 2001, 249 F.3d 301, certiorari denied 122 S.Ct. 349, 534 U.S. 952, 151 L.Ed.2d 264. Civil Rights 1326(7)

Yale College was not state actor, for purposes of § 1983, though institution was created by special state law, it furthered governmental objectives, and governor and lieutenant governor were ex officio board members, absent showing that state controlled board; governor and lieutenant governor were only two of nineteen board members. Hack v. President and Fellows of Yale College, C.A.2 (Conn.) 2000, 237 F.3d 81, certiorari denied 122 S.Ct. 201, 534 U.S. 888, 151 L.Ed.2d 142. Civil Rights 1326(6)

Law student failed to state cause of action against school or law professor under civil rights provision creating remedy when federal rights were violated under color of state law where neither school nor professor were acting under color of state law. Radcliff v. Landau, C.A.9 (Cal.) 1989, 883 F.2d 1481, mandate clarified 892 F.2d 51. Civil Rights 1395(2)

Employment decision by private university which had a "symbiotic relationship" with state would make employment decisions state action for purposes of federal civil rights law. Molthan v. Temple University of Com. System of Higher Educ., C.A.3 (Pa.) 1985, 778 F.2d 955. Civil Rights 1326(11)

Claim of sex discrimination in awarding of grades at law school of defendant college was not cognizable under this section governing deprivation of civil rights under color of state law where college was not a public institution and was not sufficiently intertwined with the Commonwealth of Massachusetts to meet the "state action" requirement of the section. Rice v. President and Fellows of Harvard College, C.A.1 (Mass.) 1981, 663 F.2d 336, certiorari denied 102 S.Ct. 1976, 456 U.S. 928, 72 L.Ed.2d 444. Civil Rights 1326(6)

There was sufficient state involvement in Pennsylvania State University's selection of trustees to constitute "state

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action" within meaning of this section. Benner v. Oswald, C.A.3 (Pa.) 1979, 592 F.2d 174, certiorari denied 100 S.Ct. 62, 444 U.S. 832, 62 L.Ed.2d 41.

College of veterinary medicine and its professors could not be characterized as state actors for purposes of former student's § 1983 claim, which arose when student was expelled after twice failing her first year exam; notwithstanding the college's strong state ties, including statutory creation, and receiving some state funding, the state did not have direct operational authority over the administration of the college, employees of the college were not classified as members of the state civil service, and the vast majority of the day-to-day operations at the college were expressly committed to its private discretion, such as creating the academic curriculum, hiring faculty, maintaining discipline and formulating educational policies. Curto v. Smith, N.D.N.Y.2003, 248 F.Supp.2d 132, affirmed in part, appeal dismissed in part 87 Fed.Appx. 788, 2004 WL 287290, affirmed 93 Fed.Appx. 332, 2004 WL 539234, certiorari denied 125 S.Ct. 1689, 544 U.S. 935, 161 L.Ed.2d 504, miscellaneous rulings 125 S.Ct. 1653, 544 U.S. 919, 161 L.Ed.2d 475, rehearing denied 125 S.Ct. 2293, 544 U.S. 1057, 161 L.Ed.2d 1105. Civil Rights 1326(6)

Student association of state university was "state actor," which could be sued under §§ 1983 for violating First and Fourteenth Amendments rights of student organization members by manner in which association allocated monies collected through imposition of mandatory student activities fund contributions; association members worked closely with university employees in collection and allocation process. Amidon v. Student Ass'n of State University of New York, N.D.N.Y.2005, 399 F.Supp.2d 136. Civil Rights 1326(6)

Former state university students could maintain §§ 1983 claim against university officials, in their official capacities, seeking injunction requiring removal from their records of entries relating to their allegedly unlawful disciplining, despite claim that entries were made in past and official capacity injunctions could be obtained only with respect to prospective activities; if allowed to remain, disciplinary records could have adverse future consequences to students. Gomes v. University of Maine System, D.Me.2004, 304 F.Supp.2d 117. Civil Rights 1356; Civil Rights 1452

Board of trustees for state university was not "person" within meaning of § 1983 and could not be sued thereunder for alleged employment discrimination by former employee. Navarro v. UIC Medical Center, N.D.Ill.2001, 165 F.Supp.2d 785, on reconsideration in part. Civil Rights 1349

Athletic apparel manufacturer's contractual relationship with private college did not constitute "state action" sufficient to support § 1983 action against manufacturer, where there was no state action as to college, and no link between alleged state action and manufacturer's activities that allegedly deprived plaintiff of his rights. Keady v. Nike, Inc., S.D.N.Y.2000, 116 F.Supp.2d 428, affirmed in part, vacated in part 23 Fed.Appx. 29, 2001 WL 1168334. Civil Rights 1326(4)

Private university's decision to terminate student from graduate dentistry program did not qualify as "state action," subject to the requirements of equal protection and due process, where termination was for failure to meet university's academic research requirements under standards set by the university, though student contended that the university faculty failed to set standards that complied with federal law regarding human research, where the termination decision was not made by the federally required institutional review board (IRB) itself, was not affirmatively mandated or governed by federal law, and the IRB did not work in tandem with the university to decide to dismiss the student. Missert v. Trustees of Boston University, D.Mass.1999, 73 F.Supp.2d 68, affirmed 248 F.3d 1127. Constitutional Law 213(4); Constitutional Law 254(4)

Yale College could not be considered a state actor for purposes of § 1983, though complaint alleged that State of Connecticut designated the Governor and Lieutenant Governor as ex officio Fellows of Yale College, where complaint did not allege that the State of Connecticut has retained permanent authority to appoint a majority of the members of the Yale Corporation or any governing body at Yale University; the Governor and Lieutenant

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Governor constitute only two of the nineteen members. Hack v. President and Fellows of Yale College, D.Conn.1998, 16 F.Supp.2d 183, affirmed 237 F.3d 81, certiorari denied 122 S.Ct. 201, 534 U.S. 888, 151 L.Ed.2d 142. Civil Rights 1326(6)

State-supported university's level of sponsorship of debate broadcast by radio and TV stations, by allowing use of its facilities and promoting debate, was insufficient to render university president a state actor in his individual capacity, and thus could not support civil rights claim against him by candidate who was excluded from debate by private organizers. DeBauche v. Virginia Commonwealth University, E.D.Va.1998, 7 F.Supp.2d 718, affirmed 191 F.3d 499, certiorari denied 120 S.Ct. 1451, 529 U.S. 1033, 146 L.Ed.2d 337. Civil Rights 1326(6)

Private university which had affiliation agreement with city university to extend many of city university classes to private university students was not state actor, and its actions with regard to private university professor were not under color of state law for purposes of professor's § 1983 claim against university, despite fact that city university provided space, personnel and facilities to university and New York Board of Regents or city officials regulated actions of university. Tavolini v. Mount Sinai Medical Center, S.D.N.Y.1997, 984 F.Supp. 196, affirmed 198 F.3d 235. Civil Rights 1326(11)

Community college was accountable for race discrimination accomplished through department chairperson, who possessed authority to recommend nonrenewal of African-American instructor's contract. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1133

Private college that operated campus police training program pursuant to Pennsylvania law did not act under color of state law and, therefore, § 1983 action by former student in program against college and its officials failed; college did not receive state funds to run program. Gardiner v. Mercyhurst College, W.D.Pa.1996, 942 F.Supp. 1055. Civil Rights 1326(6)

1100. ---- Committees, schools, particular persons under color of law

Action taken by members of a school committee with respect to hiring and renewing contracts of teachers and supervisory personnel as well as with respect to fixing their salaries is action taken under "color of state law". Needleman v. Bohlen, D.C.Mass.1974, 386 F.Supp. 741. Civil Rights 1326(11)

Suspension of tenured teacher, voted by members of school committee of town, was action taken under color of state law within meaning of this section. Wood v. Goodman, D.C.Mass.1974, 381 F.Supp. 413, affirmed 516 F.2d 894. Civil Rights 1326(11)

1101. ---- Employees, schools, particular persons under color of law

Head Start parents council's decision to terminate employee was not fairly attributable to federal government, as required to support employee's *Bivens* claim that termination violated her constitutional rights; although federal regulations authorized council, specified its composition, and gave it authority to approve termination decisions, regulations did not compel or influence termination decision, pre-school education function carried out by Head Start was not normally carried out by federal government, and federal government did not profit from termination decision. Morse v. North Coast Opportunities, Inc., C.A.9 (Cal.) 1997, 118 F.3d 1338. United States 50.10(4)

Parents of eighth grade student failed to show nexus between school officials' failure to check criminal background of middle school janitor and janitor's assault and rape of student as would support failure to protect theory of liability under § 1983 due to failure to check criminal background, where parents did not show that janitor had either prior record of violent crime or had been previously reported to school officials for misbehavior towards students. Doe v. Hillsboro Independent School Dist., C.A.5 (Tex.) 1997, 113 F.3d 1412.

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Actions of school employee's coworkers in teasing him about his participation in grand jury investigation of school board and in conducting a mock hanging of the employee was not state action for federal civil rights purposes. Hughes v. Halifax County School Bd., C.A.4 (Va.) 1988, 855 F.2d 183, certiorari denied 109 S.Ct. 867, 488 U.S. 1042, 102 L.Ed.2d 991. Civil Rights 1326(11)

Under symbiotic relationship/nexus test, employee of private medical center was not acting under "color of state law," for purposes of § 1983, when she served as preceptor for state university student during nursing practicum, even if state university or its faculty member relied upon employee's evaluation of student's performance in deciding to dismiss student from university's nursing college, inasmuch as university was not compelled to accept evaluation or to discharge student from college based on that evaluation, but rather was free to use information with which employee provided it as it desired. Siskaninetz v. Wright State University, S.D.Ohio 2001, 175 F.Supp.2d 1018. Civil Rights 1326(6)

Sexually discriminatory comments and actions directed against female medical resident were made by senior residents clothed with supervisory powers by nature of policy of resident program and, thus, residents were acting directly under color of state law for purposes of female resident's § 1983 claim against medical school staff. Lipsett v. University of Puerto Rico, D.Puerto Rico 1991, 759 F.Supp. 40. Civil Rights 1326(6); Civil Rights 1326(11)

1102. ---- Teachers, schools, particular persons under color of law

Teacher at public school arguably was acting under color of law, for purpose of student's §§ 1983 claim alleging violation of his substantive due process and equal protection rights by teacher's sexual abuse, when juvenile court at delinquency hearing released student to teacher's custody with express agreement that teacher would take student to register for school, but teacher took student to his home for further sexual abuse; teacher's opportunity to molest student that day was made possible because teacher used his authority to persuade juvenile court judge to release student to his custody. Doe v. Smith, C.A.7 (Ill.) 2006, 470 F.3d 331. Civil Rights 1326(6)

Teacher was not acting under color of state law, for purposes of § 1983 liability, when she allegedly allowed someone to use her private telephone to make telephone call which, although purportedly retaliatory, did not mention teacher or make use of her public position to overawe, intimidate, or otherwise magnify effect of private action. Tierney v. Vahle, C.A.7 (Ill.) 2002, 304 F.3d 734. Civil Rights 1326(6)

Teacher was acting under color of state law when he committed sexual misconduct against high school student, as required to support student's claims for invasion of his bodily integrity in violation of Fourteenth Amendment under § 1983, even though all events at issue in student's action took place at teacher's home after school hours; teacher not only had opportunity to meet student as result of his position as teacher, but he also used his position to give stamp of legitimacy to fictitious scholarship program that he created solely as scheme to lure students to his home, and probably no one other than student's teacher could have persuaded student that there was scholarship and that student had to work on experiments with teacher to qualify. Hackett v. Fulton County School Dist., N.D.Ga.2002, 238 F.Supp.2d 1330. Civil Rights 1326(6)

1103. ---- Faculty councils, schools, particular persons under color of law

Where no one could become member of high school honor society unless he was student of public school system, only faculty members and the principal could serve on the governing council, all members of the council were under contract to the board of trustees of the public school district and facilities and property of the school were available for use by the honor society, a member of the faculty council of the society was acting under "color of law" within meaning of this section in a proceeding to dismiss a student member. Warren v. National Ass'n of Secondary School Principals, N.D.Tex.1974, 375 F.Supp. 1043. Civil Rights 1326(6)

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42 U.S.C.A. § 1983

1104. ---- Private schools, particular persons under color of law

Regulation giving state agency power to approve persons hired as vocational counselors by nonprofit, privately operated school for maladjusted high school students was not sufficient to make decision to discharge, made by private management, "state action" subject to suit under this section. Rendell-Baker v. Kohn, U.S.Mass.1982, 102 S.Ct. 2764, 457 U.S. 830, 73 L.Ed.2d 418. Civil Rights 1326(11)

Private school specializing in treatment and education of juvenile sex offenders was not "state actor," for purposes of § 1983 suit by juvenile alleging that he was subjected to physical and psychological abuse, based on detailed requirements contained in contract under which school accepted student in return for payment by city human services department; requirements did not compel or even influence complained of conduct, which involved alleged horseplay on part of school's staff. Robert S. v. Stetson School, Inc., C.A.3 (Pa.) 2001, 256 F.3d 159. Civil Rights 1326(7)

The facts that the United States Congress has recognized The Citadel as a "senior military college" entitled to certain federal benefits and that the South Carolina legislature has bestowed special consideration to its upon employees and governing members do not establish that the State of South Carolina delegated a traditional, exclusive governmental function to The Citadel or to its non-enlisted, non-military student cadets, such that the actions of the cadets should be considered governmental action by the State itself, for purposes of § 1983 liability. We disagree. Mentavlos v. Anderson, C.A.4 (S.C.) 2001, 249 F.3d 301, certiorari denied 122 S.Ct. 349, 534 U.S. 952, 151 L.Ed.2d 264. Civil Rights 1326(6)

Private high school was not a state actor for purposes of § 1983 after teacher was fired for wearing a beard in violation of school rules; lack of state's exclusive duty to educate high school aged children and lack of state direction and control of school demonstrated that school was a private actor. Johnson v. Pinkerton Academy, C.A.1 (N.H.) 1988, 861 F.2d 335, rehearing denied. Civil Rights 1326(11)

Owners and operators of private school for youths with behavioral problems were acting "under color of state law," as required for former students to be able to bring action under this section against school for alleged violations of their civil rights occurring as result of the school's use of "behavioral-modification" program, where many students were placed at school involuntarily by juvenile courts and other state agencies, detailed contracts were drawn up by school administrator and agreed to by local school districts placing youths at the school, there was significant state funding of tuition, and there was extensive state regulation of educational program at the school. Milonas v. Williams, C.A.10 (Utah) 1982, 691 F.2d 931, certiorari denied 103 S.Ct. 1524, 460 U.S. 1069, 75 L.Ed.2d 947. Civil Rights 1326(7)

While teachers at a small, nonprofit school, offering a high school program to students who have had difficulty completing an ordinary high school, claimed that their rights under U.S.C.A.Const. Amend. 1 were violated when they were discharged, their action under this section failed for lack of "state action"; although most funding for the school came from government sources, although the school was extensively regulated, and although it was authorized to issue a diploma certified by town school committee, the school did not conduct its activities on public property or within public facilities, there was no suggestion of a subterfuge to avoid constitutional obligations through creation of a sham private entity, the school was not treated by the state as being a public school, and no director of the school was a state officer. Rendell-Baker v. Kohn, C.A.1 (Mass.) 1981, 641 F.2d 14, certiorari granted 102 S.Ct. 385, 454 U.S. 891, 70 L.Ed.2d 205, affirmed 102 S.Ct. 2764, 457 U.S. 830, 73 L.Ed.2d 418. Civil Rights 1326(11)

Private school was not acting "under color of state law," when it terminated student placed there by public school district without following procedures mandated by Individuals with Disabilities Education Act (IDEA), precluding § 1983 action against co-executive director for violating IDEA. P.N. v. Greco, D.N.J.2003, 282 F.Supp.2d 221. Civil Rights 1326(6)

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Private high school in Maine, which had contracted to educate publicly funded students, was not state actor when disciplining student, for purpose of imposing § 1983 liability; school was not performing exclusive public function, and public officials were not significantly involved in management of school in general or in disciplining of student in particular. Logiodice v. Trustees of Maine Central Institute, D.Me.2001, 170 F.Supp.2d 16, affirmed 296 F.3d 22, certiorari denied 123 S.Ct. 882, 537 U.S. 1107, 154 L.Ed.2d 778. Civil Rights 1326(6)

Private English educational institution did not act under color of state law in expelling student, and therefore student did not have claim under section 1983. Park v. Oxford University, N.D.Cal.1997, 35 F.Supp.2d 1165, affirmed 165 F.3d 917. Civil Rights 1326(6)

Private school, its board of trustees, and its principal were not "state actors," as required for students to recover under § 1983 in actions alleging failure to provide adequate education; even assuming that, under Alabama Constitution, there was fundamental right to adequate education, students did not challenge state's education requirements, but defendants' alleged failure to meet minimal requirement of providing adequate education and, thus, it was private action, not state action, that was being challenged. Nobles v. Alabama Christian Academy, M.D.Ala.1996, 917 F.Supp. 786. Civil Rights 1326(6)

Law school, which was a division of a private Catholic university, was not a state actor for purposes of § 1983 on basis of fact that the courses offered were created with the specific intention of following a set of standards prescribed by and ruled over by the state Court of Appeals and the American Bar Association. Spychalsky v. Sullivan, E.D.N.Y.2003, 2003 WL 22071602, Unreported, affirmed 96 Fed.Appx. 790, 2004 WL 1157714. Civil Rights 1326(6)

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1105. ---- Newspapers, schools, particular persons under color of law

Publication of high school newspaper and yearbook were not traditional governmental functions that would warrant attributing editorial decisions of students who ran newspaper and yearbook to school officials, for purpose of § 1983 claim brought by advertiser whose advertisement was refused by students and who claimed violation of his First Amendment rights. Yeo v. Town of Lexington, C.A.1 (Mass.) 1997, 131 F.3d 241, certiorari denied 118 S.Ct. 2060, 524 U.S. 904, 141 L.Ed.2d 138. Civil Rights 1326(6)

College student newspaper's refusal to print roommate advertisements stating homosexual orientation of advertisers was not "state action" so as to allow advertisers to state claim against newspaper for infringement of constitutional rights, even though publications committee which was responsible for newspaper's policy was created by university's board of regents and appointed by chancellor, and newspaper depended heavily on state for financing and operating space. Sinn v. The Daily Nebraskan, C.A.8 (Neb.) 1987, 829 F.2d 662. Colleges And Universities 9.45(4); Constitutional Law 82(5)

1106. ---- Students, schools, particular persons under color of law

Football player's mother's complaint failed to allege that teammate conspired with or acted in concert with state actors, and therefore failed to state § 1983 claim against teammate who allegedly committed racially motivated attack on player; complaint alleged that football coaches either ignored or encouraged and/or allowed teammate's behavior but did not allege an agreement between teammate and the coaches to commit an illegal act, nor did it allege specific facts to show an agreement. Priester v. Lowndes County, C.A.5 (Miss.) 2004, 354 F.3d 414,

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certiorari denied 125 S.Ct. 153, 543 U.S. 829, 160 L.Ed.2d 44. Civil Rights 1326(6); Civil Rights 1396

Male cadets at The Citadel, a state-supported military college, did not act "under color of state law," within the meaning of § 1983 when they allegedly engaged in gender-based harassment and discrimination designed to force a female cadet to withdraw from the college, on theory the state had delegated to college and its corps of cadets powers traditionally exclusively reserved to the state, as The Citadel is not analogous to the service academies of the United States military, and is not in the business of training soldiers for military service; rather, its mission is to educate civilian students and produce community leaders, which is not the exclusive prerogative of a State, nor does its use of a military-style environment fairly compel the conclusion that the college has been delegated the sovereign function of training young men and women for the military. Mentavlos v. Anderson, C.A.4 (S.C.) 2001, 249 F.3d 301, certiorari denied 122 S.Ct. 349, 534 U.S. 952, 151 L.Ed.2d 264. Civil Rights 1326(6)

Male cadets at The Citadel, a state-supported military college, who allegedly engaged in gender-based harassment and discrimination designed to force a female cadet to withdraw from the college were not "state actors" for purposes of § 1983 on ground that The Citadel, as a state-supported college, is governed by state officials whose powers are defined by statute and receives financial assistance and other support from the state; The Citadel's receipt of state financial assistance renders it no different in any material respect from the other state-supported institutions of higher learning in the state, and no special state assistance, financial or otherwise, was provided to the students. Mentavlos v. Anderson, C.A.4 (S.C.) 2001, 249 F.3d 301, certiorari denied 122 S.Ct. 349, 534 U.S. 952, 151 L.Ed.2d 264. Civil Rights 1326(7)

Refusal to publish photograph of high school senior wearing trap shooting attire and holding shotgun in senior portrait section of the yearbook did not constitute state action upon which §§ 1983 claim could be based, in that students who made such decision were yearbook's editors rather than randomly-selected students, and editors were not coerced or influenced by school officials, but were told that decision was theirs and that principal would support any decision they made. Douglass v. Londonderry School Bd., D.N.H.2005, 413 F.Supp.2d 1. Civil Rights 1326(6)

Upperclass cadets at military-style public college were not state actors, for purpose of determining whether their alleged mistreatment of female freshman was constitutional violation within meaning of § 1983; although cadets' actions may have been made possible by system established by state-supported college, they did not receive significant encouragement and did not exercise state's coercive powers. Mentavlos v. Anderson, D.S.C.2000, 85 F.Supp.2d 609, affirmed 249 F.3d 301, certiorari denied 122 S.Ct. 349, 534 U.S. 952, 151 L.Ed.2d 264. Civil Rights 1326(6)

Student editors of law school's newspaper were not "state actors" for purposes of § 1983, absent showing of control over the paper by law school administration, faculty, and staff. Leeds v. Meltz, E.D.N.Y.1995, 898 F.Supp. 146, affirmed 85 F.3d 51. Civil Rights 1326(6)

Public school district could not be liable in § 1983 civil rights action for alleged harassment and assaults against high school student by classmates under theory that school policy, practice, or custom condoned or encouraged such abuse since students who committed underlying violative acts were private actors who were not in any way connected with state. Elliott v. New Miami Bd. of Educ., S.D.Ohio 1992, 799 F.Supp. 818. Civil Rights 1351(2)

1107. School boards, particular persons under color of law

Under Virginia law, city school board was final authority over disciplinary matters, and thus board could not be held liable under § 1983 based on decision of superintendent and high school principal to retain coach, as their decision did not constitute official municipal policy. Riddick v. School Bd. of City of Portsmouth, C.A.4 (Va.) 2000, 238 F.3d 518. Civil Rights 1351(5)

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42 U.S.C.A. § 1983

Student who had been sexually abused by teacher failed to establish specific duty to act under Tennessee law on part of members of county school board, and thus, could not establish that alleged failure to act on part of board members occurred under color of state law and could not recover in federal civil rights action against board members in their individual capacities based on their failure to act; board members had no individual supervisory responsibilities, and were unable to act in a legal sense except as constituent members of board. Doe v. Claiborne County, Tenn. By and Through Claiborne County Bd. of Educ., C.A.6 (Tenn.) 1996, 103 F.3d 495. Civil Rights 1326(6)

Individual school board employees were not liable under § 1983 for damages arising out of physical and sexual abuse by bus driver of handicapped student passengers; evidence of isolated incidents of driver striking, kissing and fondling students did not support finding that employees had notice of a pattern of acts by bus driver violating constitutional rights of students or that they were deliberately indifferent to or tacitly authorized physical and sexual abuse of students. Jane Doe A By and Through Jane Doe B v. Special School Dist. of St. Louis County, C.A.8 (Mo.) 1990, 901 F.2d 642. Civil Rights 1418

Where school board member gained entry to guidance counselor's office by securing the aid of a janitor with a passkey and janitor would not have unlocked the door had he not recognized such person as a member of the school board, board member's search of counselor's desk was an action under color of state law for purpose of this section. Gillard v. Schmidt, C.A.3 (N.J.) 1978, 579 F.2d 825. Civil Rights 1326(6)

Under Texas law as of 1993, board of trustees of school district, not superintendent, was final policymaker for purposes of liability of the district in civil rights action under § 1983; though superintendent may have been delegated as final decisionmaker in cases in which individual employees protested reassignment, this did not mean he was delegated status of final policymaker. Hill v. Silsbee Independent School Dist., E.D.Tex.1996, 933 F.Supp. 616. Civil Rights 1351(5)

1108. School districts, particular persons under color of law

School district personnel decisions by the body entrusted with such decisions are "officially adopted and promulgated" and, therefore, civil rights suits challenging such decisions are not precluded by the rule forbidding suits based on decisions that are not "officially adopted and promulgated" by a governing body. Kingsville Independent School Dist. v. Cooper, C.A.5 (Tex.) 1980, 611 F.2d 1109. Civil Rights 1326(11)

Where school district which had certain land transferred to it from a second school district did nothing to accomplish the transfer of the land and did not seek or promote the transfer and was not empowered by state law to prevent it, the transfer, which resulted from election initiated by petition of private citizens, did not constitute state action for purposes of this section. Board of Ed. of Independent School Dist. No. 53 of Oklahoma County, Oklahoma v. Board of Ed. of Independent School Dist. No. 52 of Oklahoma County, Oklahoma, C.A.10 (Okla.) 1976, 532 F.2d 730, certiorari denied 97 S.Ct. 253, 429 U.S. 894, 50 L.Ed.2d 176. Civil Rights 1326(6)

Special relationship between teacher and school officials, school board, and school district was not required for finding of latter's liability under § 1983 for school principal's sexual assault upon teacher, if principal was acting under color of state law. Barkauskie v. Indian River School Dist., D.Del.1996, 951 F.Supp. 519. Civil Rights 1066

Public school district could not be liable in § 1983 civil rights action for alleged harassment and assaults against high school student by classmates under theory that school policy, practice, or custom condoned or encouraged such abuse since students who committed underlying violative acts were private actors who were not in any way connected with state. Elliott v. New Miami Bd. of Educ., S.D.Ohio 1992, 799 F.Supp. 818. Civil Rights 1351(2)

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42 U.S.C.A. § 1983

1109. School officials, particular persons under color of law

Even one decision by a school superintendent, if s/he were a final policymaker, would render his or her decision district policy for purposes of establishing school district's liability under §§ 1983. McGreevy v. Stroup, C.A.3 (Pa.) 2005, 413 F.3d 359. Civil Rights 1351(2)

Failure of defendant school officials to renew employment contract of public school teacher who had not attained tenure status constituted "action taken under color of state law" within this section governing deprivation of a constitutional right as a result of action taken under color of state law, where stipulation was made that defendants' acts were done pursuant to state law. Orr v. Trinter, C.A.6 (Ohio) 1971, 444 F.2d 128, 29 Ohio Misc. 149, 58 O.O.2d 467, certiorari denied 92 S.Ct. 2847, 408 U.S. 943, 33 L.Ed.2d 767, rehearing denied 93 S.Ct. 95, 409 U.S. 898, 34 L.Ed.2d 157. Civil Rights 1326(11)

Acts of high school principal and vice principal in refusing to permit student to run for office of copresident of the student council were not "under color of" any state law regulation, custom or usage, though the school was public, where the refusal was based on letter, which in vulgar and obscene language, characterized the principal as a "Nazi" and the student council as a "farce", where the refusal was under approved high school constitution and bylaws which had been adopted by the student body, and where there was no suggestion of discrimination or of enforcement of any state policy or custom denying high school students freedom of expression. Palacios v. Foltz, C.A.10 (N.M.) 1971, 441 F.2d 1196. Civil Rights 1326(6)

High school superintendent's alleged actions, upon his receipt of investigative report regarding incident in which teacher allegedly used excessive force against student in violation of student's Fourteenth Amendment rights, of telling principal to cooperate in investigation and to inform him if any new developments arose, and informing attorney for school of incident were not sufficient to support imposition of liability on superintendent, in his official capacity, under § 1983, for teacher's actions. Knicrumah v. Albany City School Dist., N.D.N.Y.2003, 241 F.Supp.2d 199. Civil Rights 1356

School district's director of pupil services was acting under color of state law, as required for § 1983 claim, when he allegedly struck mother of a disabled student while she was looking through her son's educational records; alleged assault occurred in director's office while director and the mother and were discussing her son's bus transportation to and from school. Arum v. Miller, E.D.N.Y.2003, 273 F.Supp.2d 229. Civil Rights 1326(6)

School board, its superintendent, and principal were not liable in their official capacities, under § 1983, for principal's alleged unconstitutional acts associated with high school student's forcible removal from school to police station after she failed to identify herself; principal's actions were not taken pursuant to official board policy or custom. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1351(2)

State university officials acting in their official capacities were not "persons" under § 1983, to extent plaintiffs were seeking money damages, but were "persons" to extent plaintiffs were seeking injunctive relief. Jennings v. University of North Carolina at Chapel Hill, M.D.N.C.2002, 240 F.Supp.2d 492. Civil Rights 1356

Public school supervisor's reliance upon parochial school principal for evaluations of performance of public school employee, who worked as auxiliary services clerk at parochial school, did not make principal's actions fairly attributable to the state, for purposes of nexus test for determining whether private party's actions was state action which was actionable under § 1983; clerk was an employee of public school district, under a contract that could only be renewed or not be renewed by district's school board. Kelly v. Forest Hills Local School Dist. Bd. of Educ., S.D.Ohio 1998, 19 F.Supp.2d 797. Civil Rights 1326(11)

Cause of action against superintendent in his official capacity in connection with reassignment of teacher away

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from coaching duties, allegedly in retaliation for exercise of free speech rights, was tantamount to suit against the school district itself, and thus superintendent could not be held liable under § 1983 in official capacity absent official policy or custom of retaliating against employees for exercise of First Amendment rights. Hill v. Silsbee Independent School Dist., E.D.Tex.1996, 933 F.Supp. 616. Civil Rights 1351(5)

University professor could maintain civil rights action against university's interim president, vice-president, dean, and department head in their individual capacities, seeking declaratory relief and monetary damages for alleged interference with professor's right to exercise his Hindu religion and for alleged promotion of Christian religion; professor adequately alleged that officials were "persons" who acted under color of state law. Chaudhuri v. State of Tenn., M.D.Tenn.1991, 767 F.Supp. 860. Civil Rights 1396; Declaratory Judgment 314

Teacher failed to show that chancellor and board of education, the true final policymakers, played role in terminating her due to antiunion animus, such that City of New York could be held liable, based on municipal policy, under § 1983 for violation of teacher's First Amendment free association rights; there was no basis to infer that chancellor or board members were knowing participants in conspiracy to terminate teacher for her union activities. McDonald v. Board of Educ. of City of New York, S.D.N.Y.2003, 2003 WL 21782685, Unreported. Civil Rights 1351(5)

District superintendent did not have final authority to approve discontinuance of teacher's probationary service, such that City of New York could be held liable under § 1983 based on municipal policy for depriving teacher of her First Amendment free association rights; procedure for removal of teachers in period of probationary service was statutory, and superintendent's own actions confirmed he was not final policymaker with respect to employment decisions concerning teachers in his district. McDonald v. Board of Educ. of City of New York, S.D.N.Y.2003, 2003 WL 21782685, Unreported. Civil Rights 1351(5)

1110. Security guards or officers, particular persons under color of law

Paper mill's personnel who conducted dog-sniff search of employees' vehicles which were parked in mill's parking lot were not acting under color of state law, as required for employees to maintain §§ 1983 action against mill alleging violation of Fourth Amendment right to be free from unreasonable searches and seizures. Bastible v. Weyerhaeuser Co., C.A.10 (Okla.) 2006, 437 F.3d 999. Civil Rights 1326(11)

Hospital security guard was not "state actor," for purpose of former employee's civil rights claim against hospital under Fourth Amendment alleging use of excessive force, although security guard had status as special policeman under Chicago municipal code; security guard did not, and was not authorized to, carry firearm, guard was not expected or authorized to carry out functions of police officer, and guard did not use force until he had been physically assaulted by employee and legitimately feared for his safety and safety of other persons present. Johnson v. LaRabida Children's Hosp., C.A.7 (Ill.) 2004, 372 F.3d 894. Civil Rights 1326(8)

For purposes of determining whether medical center security personnel could be state actors under § 1983, based on their alleged status as "special Chicago police officers" pursuant to Chicago ordinance, no legal difference existed between privately employed special officer with full police powers and a regular Chicago police officer. Payton v. Rush-Presbyterian-St. Luke's Medical Center, C.A.7 (Ill.) 1999, 184 F.3d 623, on remand 82 F.Supp.2d 901. Civil Rights 1326(8)

Private security guard at city housing authority (CHA) building was not performing exclusive state function when he shot plaintiff, and thus guard was not state actor and plaintiff could not maintain § 1983 action against guard and private security company; guard's function as lobby security guard with limited powers was not traditionally exclusive function of state, and contracted security guards were not part of statutorily authorized police force. Wade v. Byles, C.A.7 (Ill.) 1996, 83 F.3d 902, certiorari denied 117 S.Ct. 311, 519 U.S. 935, 136 L.Ed.2d 227. Civil Rights 1326(4)

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University center's operations manual provision that officers from university provide security at center events, center's executive director's responsibility for final decisions regarding support personnel at center events, and observation of searches by uniformed officers from university's department of public safety did not establish sufficiently close nexus between university and pat-down searches conducted by private security firm hired by promoters of concert at university's center for those searches to be considered state action under § 1983. Gallagher v. Neil Young Freedom Concert, C.A.10 (Utah) 1995, 49 F.3d 1442. Civil Rights 1326(5)

Conduct of provider of sniffer-dog services, dog handlers, and school officials in reporting dog's alert to car in school's parking lot to police was not attributable to state for purposes of car owner's civil rights action; school officials turned matter over to police once dog alerted the car, and neither officials nor dog handlers had reason to believe that investigating officer would act unlawfully. Jennings v. Joshua Independent School Dist., C.A.5 (Tex.) 1989, 877 F.2d 313, certiorari denied 110 S.Ct. 3212, 496 U.S. 935, 110 L.Ed.2d 660. Civil Rights 1326(6); Civil Rights 1326(4)

For purposes of this section, state action is present when private security guards act in concert with police officers or pursuant to customary procedures agreed to by police departments, particularly when state statute authorizes merchants to detain suspected shoplifters. El Fundi v. Deroche, C.A.8 (Minn.) 1980, 625 F.2d 195. Civil Rights 1326(5)

Allegations of customer's complaint, that security guard who detained him had been sworn in as "special patrolman" by City and/or State of New York, and was thus "quasi-peace officer act[ing] under color of law," sufficiently alleged state action, as required to state cause of action under §§ 1983. 42 U.S.C.A. §§ 1983; NYC Admin. Bishop v. Toys "R" Us-NY LLC, S.D.N.Y.2006, 414 F.Supp.2d 385. Civil Rights 1396

Security guards at Puerto Rico public hospital were state actors at time they were involved in altercation with motorist who illegally parked at hospital while picking up his wife, as required to support motorist's §§ 1983 claim against them, where guards were employed by public corporation created as an instrumentality of the Government of the Commonwealth of Puerto Rico that administered medical and other professional services provided in parts of the hospital. Monge v. Cortes, D.Puerto Rico 2006, 413 F.Supp.2d 42. Civil Rights 1326(1)

New York statute which allows as a defense to torts such as false imprisonment a retailer's reasonable detention of a person attempting to commit larceny on its premises did not convert department store security guard into "state actor," for purposes of §§ 1983 liability for alleged violation of 14-year-old girls' Fourth Amendment rights when guard forced the girls to strip to their underclothes after the guard caught them shoplifting, even though the guard called police who then arrested the girls on the strength of the guard's statements. Guiducci v. Kohl's Dept. Stores, E.D.N.Y.2004, 320 F.Supp.2d 35. Civil Rights 1326(9)

Private store security guards were not acting under color of state law, as required for imposition of § 1983 liability on the store, when they detained a store patron suspected of improperly using an employee discount, even though a police officer, who was apparently on private duty, was present in the apprehension; the guards did not have any special authority under state law to arrest the patron, and there was no evidence of a plan or concert of action between a police officer and the security guards. Josey v. Filene's, Inc., D.Conn.2002, 187 F.Supp.2d 9. Civil Rights 1326(4); Civil Rights 1326(5)

Mere fact that shopping mall's lead security officer had police powers pursuant to state statute, consisting of authority to write parking tickets at mall and to arrest people suspected of committing crimes within mall common areas and parking lot, did not mean that private security guards subordinate to lead officer acted under color of state law for purposes of § 1983 action. Allen v. Columbia Mall Inc., D.Md.1999, 47 F.Supp.2d 605. Civil Rights 1326(8)

Private security officer who made citizen's arrest of motorist in casino parking lot for driving while intoxicated,

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allegedly at request of Highway Patrol officers because they had not seen the motorist driving on highway, was acting under "color of state law" for purposes of civil rights statute if the Highway Patrol officers so far insinuated themselves into position of interdependence with the security officer that they must be recognized as joint participants in the arrest. Baugus v. Brunson, E.D.Cal.1995, 890 F.Supp. 908. Civil Rights 1326(5)

Travelers who were involved in dispute at airport regarding inspection for possible tax violations of large, unmarked boxes they were attempting to bring into Puerto Rico failed to show that either airline's or private security firm's personnel were state actors, as was necessary to assert claim under § 1983. Salas Garcia v. Cesar Perez, D.Puerto Rico 1991, 777 F.Supp. 137. Civil Rights 1326(4)

No "state action" necessary to support federal claim under § 1983 would exist based on private security guard's arrest of retail customer for misconduct at store, absent police personnel or department involvement; however, customer claimed that security guard also processed customer's arrest at police department minutes later, thereby potentially establishing "state action." McFadden v. Grand Union, S.D.N.Y.1994, 154 F.R.D. 61. Civil Rights 1326(4)

1111. Sheriffs, particular persons under color of law--Generally

A Georgia sheriff is an agent of the county, rather than an agent of the state, and thus is not entitled to immunity under Eleventh Amendment with respect to § 1983 action brought in federal court against sheriff in his official capacity. Manders v. Lee, C.A.11 (Ga.) 2002, 285 F.3d 983, rehearing granted, opinion vacated 300 F.3d 1298, opinion after grant of rehearing 338 F.3d 1304, certiorari denied 124 S.Ct. 1061, 540 U.S. 1107, 157 L.Ed.2d 892. Federal Courts 270

California sheriff, in overseeing and managing local jail, represented county in which he acted as law enforcement official, not State of California, and therefore, county would be subject to liability under § 1983 for sheriff's alleged overdetention of detainees. Streit v. County of Los Angeles, C.A.9 (Cal.) 2001, 236 F.3d 552, certiorari denied 122 S.Ct. 59, 534 U.S. 823, 151 L.Ed.2d 27. Civil Rights 1348; Sheriffs And Constables 99

Sheriff and other members of county sheriff's department could not be held liable in their official capacity under § 1983, as they were employees of Alabama; suit was prohibited by Eleventh Amendment, as Alabama was real party in interest. Dean v. Barber, C.A.11 (Ala.) 1992, 951 F.2d 1210. Federal Courts 269

Sheriff's and deputy sheriff's practice of providing inmate, who was convicted felon, with marked and fully equipped patrol car for unsupervised use was action taken under color of state law, for purposes of satisfying color of state law requirement for section 1983 claim. Nishiyama v. Dickson County, Tenn., C.A.6 (Tenn.) 1987, 814 F.2d 277. Civil Rights 1326(8)

If sheriff and his deputies conspired with company's competitors in scheme to put company out of business, their part of scheme being to serve summons and complaint and garnishment issued out of Indian tribal court and known by them to be invalid, sheriff and deputies would have been acting under color of state law within purview of this section. A & A Concrete, Inc. v. White Mountain Apache Tribe, C.A.9 (Ariz.) 1982, 676 F.2d 1330. Civil Rights 1326(8)

County sheriff, as person primarily responsible under state law for general management and administration of county jail, had federal duty to provide proper supervision over and to adequately train staff regarding inmate health and safety; thus, sheriff was potentially liable, under Cruel and Unusual Punishments Clause via § 1983, for any failure to train that amounted to deliberate indifference to those concerns. Ginest v. Board of County Com'rs. of Carbon County, D.Wyo.2004, 333 F.Supp.2d 1190. Civil Rights 1352(4)

Determination of whether a county sheriff acted as a state official when performing challenged actions, so that a

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suit against sheriff in his official capacity is barred by Eleventh Amendment, or as county official, so that suit is not barred by Eleventh Amendment, depends on state law. Leon v. County of San Diego, S.D.Cal.2000, 115 F.Supp.2d 1197. Federal Courts 418

Mere provision of moral support by law enforcement officer to private wrongdoers does not rise to level of state action, as will make officer's actions ones taken "under color of state law" which will support § 1983 action, absent affirmative acts of assistance or intervention on behalf of wrongdoers. Hall v. Doering, D.Kan.1998, 997 F.Supp. 1464. Civil Rights 1326(7); Civil Rights 1326(8)

County sheriff's control over county department of corrections is action taken under color of state law for purposes of section 1983 civil rights action. Harrell v. Sheahan, N.D.Ill.1996, 937 F.Supp. 754. Civil Rights 1326(8)

1112. ---- Out of jurisdiction, sheriffs, particular persons under color of law

That deputy county sheriff shot suspect in a Wisconsin county other than the county in which he was employed did not compel finding that deputy was acting as private citizen, as opposed to police officer, and that he thus was not acting under color of law so as to be potentially liable under § 1983. Deering v. Reich, C.A.7 (Wis.) 1999, 183 F.3d 645, certiorari denied 120 S.Ct. 532, 528 U.S. 1021, 145 L.Ed.2d 412. Civil Rights 1326(8)

1113. Shopping centers, particular persons under color of law

Shopping mall was not state actor, for purposes of suspected shoplifters' § 1983 action against mall alleging racial discrimination and unlawful search and seizure, based on mall's past request that county police review its security plan, its instruction to security guards to call police when requested by merchants, and its arrangement for police officers to act as mall security guards in event of unexpected absences among regular guards. Allen v. Columbia Mall Inc., D.Md.1999, 47 F.Supp.2d 605. Civil Rights 1326(5)

Shopping centers and other similarly situated privately owned facilities are not the functional equivalent of public municipal facilities for purposes of state action requirements of U.S.C.A.Const. Amend. 14 § 1 and this section. Curtis v. Rosso & Mastracco, Inc., E.D.Va.1976, 413 F.Supp. 804. Civil Rights 1326(1); Constitutional Law 254(4)

1114. Social workers, particular persons under color of law

Caseworker for state Division of Youth and Family Services (DYFS) was not deliberately indifferent to substantive due process right of minor in DYFS custody to protection in home of family with whom minor was staying with DYFS approval, and caseworker thus was not liable, in § 1983 action, for abuse of minor by member of that family, absent evidence that caseworker violated any state requirement or DYFS policy or procedure in conducting investigation of family, or evidence of specific information placing caseworker on notice that family warranted more detailed investigation. Nicini v. Morra, C.A.3 (N.J.) 2000, 212 F.3d 798. Civil Rights 1057

Social therapist employed with nonpublic organization did not act under color of state law, either as state actor or in exercising state-created right or privilege, by informing police that individual may have been mentally ill, by recommending to police officers that individual be taken to hospital for psychiatric evaluation, and by agreeing with emergency room doctor that individual needed further evaluation, and thus therapist could not be held liable in § 1983 action brought by individual. Pino v. Higgs, C.A.10 (N.M.) 1996, 75 F.3d 1461. Civil Rights 1326(4)

Social workers performing functions that were inherently governmental in nature in investigating child abuse reports acted under "color of law" and therefore were amenable to suit under civil rights statute. Frazier v. Bailey, C.A.1 (Mass.) 1992, 957 F.2d 920. Civil Rights 1326(1)

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42 U.S.C.A. § 1983

Private social service agency with whom workfare recipient was placed by State Department of Social Services to fulfill his work obligations was not acting under color of state law, so it could not be held liable under federal civil rights statutes for his sexual misconduct with children while working for the agency. Simescu v. Emmet County Dept. of Social Services, C.A.6 (Mich.) 1991, 942 F.2d 372. Civil Rights 1326(5)

Absent showing that child welfare worker, who filed dependency and neglect petition against natural father, was responsible for natural father's alleged deprivation of due process in termination hearing, the child welfare worker could not be liable under this section. Martin v. Aubuchon, C.A.8 (Mo.) 1980, 623 F.2d 1282. Civil Rights 1088(1)

Aunt's § 1983 claim that county social workers arbitrarily deprived her of her physical and emotional well-being through their handling of nephew's custody issues failed to allege constitutional violation. Santos v. County of Los Angeles Department of Children and Family Services, C.D.Cal.2004, 299 F.Supp.2d 1070. Civil Rights 1057

Negligent violation of West Virginia's child support enforcement statute did not render Child Support Enforcement Division (CSED) employees liable for damages under § 1983. Roush v. Justice, S.D.W.Va.1996, 949 F.Supp. 449, affirmed 149 F.3d 1170. Civil Rights 1057

Section 1983 does not provide remedy for plaintiff who alleges that social service workers did not act competently. Mason v. Waukesha County, E.D.Wis.1994, 855 F.Supp. 282, affirmed 48 F.3d 1222. Civil Rights 1052

1115. State officials, particular persons under color of law

Even when officer of the state is named as defendant in § 1983 lawsuit, court must refrain from automatically assuming existence of state action, but must stay focused upon whether conduct at issue is fairly attributable to state. Montano v. Hedgepeth, C.A.8 (Iowa) 1997, 120 F.3d 844. Civil Rights 1326(2)

Evidence in § 1983 action supported finding that employee of Washington State Employment Security office acted "under color of state law" when he raped Hmong refugees who contacted him about obtaining employment; jury could have found that each refugee was raped during meeting with employee about obtaining work and that Hmong refugees have been entirely reliant on government aid and are in awe of government officials. Dang Vang v. Vang Xiong X. Toyed, C.A.9 (Wash.) 1991, 944 F.2d 476. Civil Rights 1422

Fact that state official's position as Auditor General cloaked her with authority to fire state employees did not compel finding that state employees sued her in her official capacity, such that § 1983 claim could not be brought, but rather merely supported undisputed proposition that official acted under color of state law in discharging employees; employees were not limited to suing state official in her personal capacity only if allegedly unconstitutional actions were not taken in her official capacity. Melo v. Hafer, C.A.3 (Pa.) 1990, 912 F.2d 628, rehearing denied, certiorari granted 111 S.Ct. 1070, 498 U.S. 1118, 112 L.Ed.2d 1176, affirmed 112 S.Ct. 358, 502 U.S. 21, 116 L.Ed.2d 301. Civil Rights 1359

Wisconsin Department of Natural Resources conservation warden did not act under color of state law by providing deputy sheriffs with description of his encounter with plaintiffs, which led to their arrest, nor did he engage in joint action with officers, as required for warden to incur § 1983 liability. Hughes v. Meyer, C.A.7 (Wis.) 1989, 880 F.2d 967, rehearing denied, certiorari denied 110 S.Ct. 2172, 495 U.S. 931, 109 L.Ed.2d 501. Civil Rights 1326(8)

State officers acting under color of state authority are "persons" who may be defendants in a civil rights suit. Drollinger v. Milligan, C.A.7 (Ind.) 1977, 552 F.2d 1220. Civil Rights 1354

Mere assertion that one is state officer does not necessarily mean that he is acting under color of state law, for

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purposes of this section. Askew v. Bloemker, C.A.7 (Ill.) 1976, 548 F.2d 673. Civil Rights 1326(2)

Genuine issue of material fact existed as to whether state racing secretary was a state actor, precluding summary judgment for racing secretary in action brought by racehorse owner under § 1983 alleging that racing secretary deprived owner of due process when he was excluded from racetrack. Gill v. Delaware Park, LLC, D.Del.2003, 294 F.Supp.2d 638. Federal Civil Procedure 2491.5

Director of state department could not be individually liable under § 1983 for alleged violation of First Amendment rights of applicant for position with department, which occurred when applicant was allegedly denied position due to her political affiliation; director was not personally involved in denial of employment to applicant, and direct involvement of director could not be inferred by virtue of director's position or his delegation of hiring decisions to subordinates. Lupo v. Voinovich, S.D.Ohio 2002, 235 F.Supp.2d 782. Civil Rights 1359

Former state employee's allegations that former governor used his position to facilitate his sexual harassment of her while at hotel on state business, that governor made inquiries about her job and indicated that he had influence over her ultimate superior and instructed her to keep quiet after she rejected his alleged advances and that she was transferred to another position after she refused governor's advances, were sufficient to show that governor acted under color of state law for purposes of stating § 1983 sexual harassment claim under Equal Protection Clause. Jones v. Clinton, E.D.Ark.1997, 974 F.Supp. 712, appeal dismissed 161 F.3d 528. Civil Rights 1326(11)

State agency official did not have sufficient personal involvement in termination of employee to be liable under § 1981 or § 1983 based upon fact that "Step 3" hearing on discharge was conducted by agency employee based upon delegated authority. Yohannan v. Patla, N.D.Ill.1997, 971 F.Supp. 323. Civil Rights 1359

Acts of state officials in ambit of their personal pursuits are not state action under § 1983; thus, public employee's private conduct, outside scope of his employment and unaided by any indicia of actual or ostensible state authority, is not conduct occurring under color of state law. Teta v. Packard, N.D.Ill.1997, 959 F.Supp. 469. Civil Rights 1326(2)

Test of whether action has been taken under "color of law" within this section can rarely be satisfied in the case of anyone other than an officer of the state. Rodriguez v. Conagra, Inc., D.C.Puerto Rico 1974, 387 F.Supp. 951, affirmed 527 F.2d 540. Civil Rights 1324

The indispensable element in determinating whether or not an action was under color of state law is a test which can rarely be satisfied when action is taken by one not a state official. Oller v. Bank of America, N.D.Cal.1972, 342 F.Supp. 21. See, also, Warren v. Cummings, D.C.Colo.1969, 303 F.Supp. 803; Weyandt v. Mason's Stores, Inc., D.C.Pa.1968, 279 F.Supp. 283; Pritt v. Johnson, D.C.Pa.1967, 264 F.Supp. 167. Civil Rights 1324

Wife of Ohio governor did not act under color of state law, as required for liability under §§ 1983, when wife allegedly made public speeches and issued press releases expressing concern about company's alcohol-infused gelatin product, given that, under Ohio law, spouse of governor was not elected or appointed state official, and that company did not allege that wife's actions were taken pursuant to specific law or were attributable to governor's office. BPNC, Inc. v. Taft, C.A.6 (Ohio) 2005, 147 Fed.Appx. 525, 2005 WL 1993426, Unreported. Civil Rights 1326(4)

1116. State and local agencies or instrumentalities, particular persons under color of law--Generally

Actions of state agencies administering federally-funded programs is action "under color of state law" for purpose of this section. Tongol v. Usery, C.A.9 (Cal.) 1979, 601 F.2d 1091. Civil Rights 1326(7)

Civil rights action under this section does not lie against administrative agency. Alexander v. California Court

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Director of Correction, Adult Authority, C.A.9 (Cal.) 1970, 433 F.2d 360.

Local governmental bodies which are considered arms of the state, for purposes of Eleventh Amendment immunity from suit, are not "persons," subject to suit under § 1983. Pierce v. Delta County Dept. of Social Services, D.Colo.2000, 119 F.Supp.2d 1139. Civil Rights 1344

Pennsylvania Property and Casualty Insurance Guaranty Association was a instrumentality of the state and its operatives were state actors, and thus, PPCIGA and its operatives were subject to claimant's § 1983 suit alleging that PPCIGA acted under color of state law to deprive her of her constitutionally-protected property right in her insurance policies, where PPCIGA was created by special statute, for purpose of pursuing state objectives, including avoiding financial loss to claimants and policyholders resulting from insurer insolvencies and assisting in detection and prevention of insurer insolvencies, and PPCIGA was controlled by state, in that Commissioner of Department of Insurance of the Commonwealth of Pennsylvania had virtually limitless authority to supervise and regulate PPCIGA. Sotack v. Pennsylvania Property and Cas. Ins. Guar. Ass'n, E.D.Pa.2000, 104 F.Supp.2d 471. Civil Rights 1326(7)

County Head Start program was not governmental entity for purposes of constitutional litigation and was not acting under color of law in discharging plaintiff; despite receiving extensive federal funding and despite pervasive federal regulation, federal and state officials lacked control of Head Start programs' personnel decisions adequate to render personnel actions in such programs "under color of law," and Head Start programs neither performed functions that were traditionally the exclusive prerogative of government nor had the symbiotic relationship with government necessary to be considered state actors. Moglia v. Sullivan County Head Start, Inc., S.D.N.Y.1997, 988 F.Supp. 366, affirmed 159 F.3d 1347. Civil Rights 1327; Civil Rights 1326(11)

State defendants sued by claimants for social security benefits, who alleged that they were injured as result of improper procedures followed by state Department of Social Services, acted under color of state law for purposes of liability under § 1983 as human services agencies in Oregon were created by Oregon law and were empowered to act by Oregon law and not federal law. Sorenson v. Concannon, D.Or.1994, 893 F.Supp. 1469. Civil Rights 1327

Administrative bodies may not arbitrarily deny rights guaranteed by federal Constitution and Acts of Congress, when denial is made under color of state law even though the body is clothed with discretion in the matter. Johnson v. Branch, E.D.N.C.1965, 242 F.Supp. 721, reversed and remanded on other grounds 364 F.2d 177, certiorari denied 87 S.Ct. 706, 385 U.S. 1003, 17 L.Ed.2d 542.

1117. ---- Courts, state and local agencies or instrumentalities, particular persons under color of law

The Commonwealth of Pennsylvania First Judicial District and Municipal Court within that district were not "persons" within § 1983; though these entities were largely funded locally, they were not independent of the Commonwealth and could not be regarded as having significant autonomy from the Pennsylvania Supreme Court. Callahan v. City of Philadelphia, C.A.3 (Pa.) 2000, 207 F.3d 668. Civil Rights 1350

1118. ---- Community action agencies, state and local agencies or instrumentalities, particular persons under color of law

Community action agency's discharge of its employee was not action taken under "color of State law," for purposes of this section, even though public officials or their representatives sat on board of such agency and even though they received substantial public funds where such public officials' actions in personnel matters were not subject to state regulation and state was not involved in particular discharge at issue. Joseph v. Community Action Commission to Help Economy, Inc., S.D.N.Y.1980, 503 F.Supp. 73. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

1119. ---- Community development agencies, state and local agencies or instrumentalities, particular persons under color of law

Nonprofit community agency did not act under color of state law, for purpose of incurring section 1983 liability, when it discharged teacher's aide in Headstart Program, though agency received significant federal and state funding, because none of its specific personnel decisions were controlled by state or federal regulations. Nail v. Community Action Agency of Calhoun County, C.A.11 (Ala.) 1986, 805 F.2d 1500. Civil Rights 1326(11)

Director of city's community development agency established that actions of decision-making authorities of the city were under color of state law within meaning of statute granting right to maintain civil action for deprivation of rights, where city and community development agency were local instrumentalities of state and decisions regarding discharge of director were made by officials having final authority. Allen v. City of Yonkers, S.D.N.Y.1992, 803 F.Supp. 679. Civil Rights 1326(11)

Action wherein former teacher employed by Project Headstart established pursuant to Economic Opportunity Act, § 2701 et seq. of this title, sought injunctive and monetary relief against community development agency and others for alleged violation of rights under U.S.C.A.Const. Amends. 5 and 14 was not cognizable under this section governing deprivation of civil rights in absence of required state action, albeit claims that extensive oversight and regulation of local head start programs by state made actions of heard start administrators state action and that Project Headstart performed a governmental function synonymous with that performed by state. Kelley v. Action for Boston Community Development, Inc., D.C.Mass.1976, 419 F.Supp. 511. Civil Rights 1326(11)

1120. ---- Sports regulation, state and local agencies or instrumentalities, particular persons under color of law

State agency's regulation of harness racing, even though substantial, and fact that state had stake in video lotteries on racetrack premises did not mean that state had symbiotic relationship with private track owner, as required to support trainer's § 1983 action against track owner based on owner's exclusion of trainer from track. Crissman v. Dover Downs, Inc., D.Del.2000, 83 F.Supp.2d 450, reversed 239 F.3d 357, rehearing denied 2001 WL 617503, vacated 254 F.3d 467, on rehearing 289 F.3d 231, certiorari denied 123 S.Ct. 131, 537 U.S. 886, 154 L.Ed.2d 147. Civil Rights 1326(5); Civil Rights 1326(7)

1121. ---- Zoning boards, state and local agencies or instrumentalities, particular persons under color of law

Township zoning board acted under color of state law, as required for liability under § 1983, when it conducted hearing at which board found mobile homes to be violative of township zoning ordinance and when it issued order requiring landlord to issue notices to quit to the tenants. Ruiz v. New Garden Tp., E.D.Pa.2002, 232 F.Supp.2d 418, reversed 376 F.3d 203. Civil Rights 1326(2)

1122. States, particular persons under color of law

This section is directed at individuals acting under color of state law, not individual states. Aubuchon v. State of Mo., C.A.8 (Mo.) 1980, 631 F.2d 581, certiorari denied 101 S.Ct. 1358, 450 U.S. 915, 67 L.Ed.2d 341.

1123. Stenographers, particular persons under color of law

Privately employed stenographer who was also a notary public did not act under color of state law, as required for liability under civil rights statute [42 U.S.C.A. § 1983], when she recorded and transcribed depositions of witnesses as part of discovery process in a civil action. Kaufman v. McCrory Stores Div. of McCrory Corp., M.D.Pa.1985, 613 F.Supp. 1179, affirmed 792 F.2d 138, certiorari denied 107 S.Ct. 84, 479 U.S. 820, 93 L.Ed.2d 37. Civil Rights 1326(1)

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42 U.S.C.A. § 1983

1124. Store employees or owners, particular persons under color of law

Department store that had suspected shoplifter arrested was not state actor, for purpose of imposing §§ 1983 liability, even though officers did not conduct independent investigation prior to making arrest and acknowledged that they had never refused to arrest anyone whom store accused of shoplifting, absent showing of police policy of arresting anyone accused by store. Wilson v. McRae's, Inc., C.A.7 (Ill.) 2005, 413 F.3d 692. Civil Rights 1326(4)

Private merchant was not "state actor" for purposes of civil rights liability for arrest of customer by off-duty police officer acting as security guard subsequent to report of suspected shoplifting made by another employee, where officer conducted independent investigation, including independent observation of customer and completion of his own incident report, and did not form intent to arrest customer until she left store, returned, and confronted officer. Morris v. Dillard Dept. Stores, Inc., C.A.5 (La.) 2001, 277 F.3d 743. Civil Rights 1326(4)

Evidence in § 1983 action established action of store under color of state law when detaining customer and initiating shoplifting prosecution; store manager testified to store's practice to work with police department in prosecuting shoplifters; store security guard was employee of police department and telephoned police after unfruitful search of customer's purse; police and prosecuting attorney relied on guard's incomplete version of facts to justify detaining, searching, and prosecuting customer; and state statute permitted detention of suspected shoplifter. Murray v. Wal-Mart, Inc., C.A.8 (Ark.) 1989, 874 F.2d 555. Civil Rights 1420

Store employees' search of plaintiffs' purses, which was no more than an extension of detention for suspected shoplifting, and detention of plaintiffs after gun was found in one purse did not constitute performance of functions exclusively reserved to the state that rendered employees subject to treatment as state actors for purposes of this section. White v. Scrivner Corp., C.A.5 (La.) 1979, 594 F.2d 140. Civil Rights 1326(1)

In order for store owner to be liable for damages under this section for fostering a detention of customers without probable cause, customers had to establish that the store owner was acting under color of state law by showing that the police and store managers were acting in concert and that the store managers and police had a customary plan whose result was detention in present case. Smith v. Brookshire Bros., Inc., C.A.5 (Tex.) 1975, 519 F.2d 93, certiorari denied 96 S.Ct. 1115, 424 U.S. 915, 47 L.Ed.2d 320. Civil Rights 1406

Pharmacy patron claiming that he was deprived of certain constitutional rights because the pharmacy owner, through an employee, engaged in racial profiling, discriminated against him, unlawfully detained him, and required him to place his belongings on the store counter, in violation of his Fourth and Fourteenth Amendment rights, failed to state a claim under §§ 1983, as the pharmacy was not acting under color of state law. Caldwell v. CVS Corp., D.N.J.2006, 443 F.Supp.2d 654. Civil Rights 1326(4)

Actions of store employees in requesting presence of shopping mall security guards, who were dispatched by lead security officer who was state actor, and conducting search of suspected shoplifters in presence of guards, did not constitute state action for purposes of suspected shoplifters' § 1983 action against employees alleging racial discrimination and unlawful search and seizure. Allen v. Columbia Mall Inc., D.Md.1999, 47 F.Supp.2d 605. Civil Rights 1326(5)

Delaware statute authorizing commercial establishments to detain suspected shoplifters for reasonable period for purpose of calling police did not transform store employees into state actors, for purposes of § 1983 claim brought by black customer who claimed she was wrongfully stopped and interrogated on suspicion of shoplifting. Lewis v. J.C. Penney Co., Inc., D.Del.1996, 948 F.Supp. 367. Civil Rights 1326(9)

Assuming that private party who invokes state statute which is later adjudged to be unconstitutional is state actor and that Georgia statute providing for arrest of person whose conduct threatens peace or property was

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unconstitutional, storage facility and its resident manager who obtained warrant for arrest of person who was parking car so as to block functioning of security gate around facility were not liable under civil rights statute, on ground that they were acting in good faith, where the statute had never been held unconstitutional, defendants relied on advice of counsel in swearing out arrest warrant, and there was no evidence that they were aware that statute was constitutionally infirm. Britt v. Whitehall Income Fund '86, M.D.Ga.1993, 891 F.Supp. 1578. Civil Rights 1088(4)

Automobile dealership was not a state actor, and thus was not liable under §§ 1983 for allegedly violating prospective purchaser's constitutional rights in connection with its repeated denials of his application for credit to purchase a vehicle. Elliott v. Chrysler Financial, C.A.10 (N.M.) 2005, 124 Fed.Appx. 610, 2005 WL 428918, Unreported. Civil Rights 1326(4)

1125. Sureties, particular persons under color of law

Bail bondsman was a "state actor" who could be sued under § 1983 for personal injury and property damage he allegedly caused in seeking to apprehend fugitive from justice, where bondsman was exercising powers conferred on him by state law, obtained significant aid from police officer, who was unquestionably exercising state authority, and was licensed by the state. Jackson v. Pantazes, C.A.4 (Md.) 1987, 810 F.2d 426. Civil Rights 1326(9)

Where state law provided that any foreign bondsman, before removing its principal from California, must appear before magistrate and submit an affidavit of facts supporting the request for an arrest warrant and where state law made criminal any arrest of a fugitive not pursuant to such an order, actions of foreign bondsman and its agents in arresting principal in California and removing him to Nevada to face charges for which bond was given could not be viewed as merely exceeding the authority granted under state law but rather were taken completely outside of state law, so that no action for deprivation of civil rights could be premised on bondsman and its agents having operated under color of state law. Ouzts v. Maryland Nat. Ins. Co., C.A.9 (Nev.) 1974, 505 F.2d 547, certiorari denied 95 S.Ct. 1681, 421 U.S. 949, 44 L.Ed.2d 103. Civil Rights 1326(9)

Genuine issue of material fact as to whether surety bail bond agent and bail enforcement agent were acting under color of state law when they searched home precluded summary judgment on homeowners' §§ 1983 claim against bond agent and enforcement agent, alleging unreasonable search. Tirreno v. Mott, D.Conn.2006, 453 F.Supp.2d 562. Federal Civil Procedure 2491.5

Bail bondsmen's search for surety without any aid from police was not chargeable to state and, thus, bondsmen were not state actors for purpose of determining whether they acted under color of state law despite state statute which recognizes bondsmen's authority to arrest sureties as statute merely permitted and did not compel bondsmen to arrest fugitives. Hunt v. Steve Dement Bail Bonds, Inc., W.D.La.1996, 914 F.Supp. 1390, affirmed 96 F.3d 1443. Civil Rights 1326(9)

Bail bondsman was acting under color of state law when he participated in arrest pursuant to warrant for arrest of fugitive with same name as arrestee; bail bondsman acted pursuant to statutory and common-law privilege granted under state law, and it could be found that police officers were acting pursuant to bail bondsman's direction and not that bail bondsman was acting as private citizen who assisted police. Bailey v. Kenney, D.Kan.1992, 791 F.Supp. 1511. Civil Rights 1326(9)

Surety on bail bond, whose agents arrested principal pursuant to state statute according bail bondsmen right to order a portion of their business affairs by use of physical coercion, was acting "under color of law" for purposes of this section. Hill v. Toll, E.D.Pa.1970, 320 F.Supp. 185. Civil Rights 1326(9)

Bounty hunter acting as agent of bondsman was not state actor when he arrested fugitive without assistance from

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law enforcement officers, and thus bounty hunter was not subject to federal; civil rights liability for his alleged use of excessive force. McCoy v. Johnson, N.D.Ga.1997, 176 F.R.D. 676. Civil Rights 1326(9)

1126. Tax collectors, particular persons under color of law

Claims against tax collector, who was sued individually and not in his official capacity, could not be maintained where it was not averred that he committed any wrongful acts or misused his position or power as collector. Long v. Kistler, E.D.Pa.1981, 524 F.Supp. 225. Taxation 2824

1127. Television and radio stations, particular persons under color of law

Television network employees did not improperly influence or control exercise of judgment by police and medical officials in connection with psychiatric patient's involuntary commitment, which followed allegations that she stalked talk show host, and network employees thus were not state actors and could not be liable under §§ 1983, inasmuch as commitment was conducted pursuant to legal process carried out over extended period of time, and police officers, doctors and other state officials acted independently of network employees. Fisk v. Letterman, S.D.N.Y.2005, 401 F.Supp.2d 362. Civil Rights 1326(9)

Cable television service provider's proposed change to its time-slot allocation system for public access programs did not constitute state action, for purpose of imposing §§ 1983 liability. Morrone v. CSC Holdings Corp., E.D.N.Y.2005, 363 F.Supp.2d 552. Civil Rights 1326(4)

Broadcast television network did not act under color of state law when it aired FBI "wanted" poster and interview with FBI agent, as would support action under § 1983 brought against network by suspect who was later acquitted of kidnapping, where suspect failed to allege that network cooperated closely with any state authorities; FBI was an arm of federal government, not state government. Meuse v. Pane, D.Mass.2004, 322 F.Supp.2d 36. Civil Rights 1327

Cable television system operator was not state actor when it objected to condominium association's plan to allow satellite television system operator to co-locate equipment, and thus could not be held liable under § 1983 for any resulting violation of association's constitutional rights; although cable operator was licensed and regulated by government, its ownership of equipment in question arose via private contract. CSC Holdings, Inc. v. Westchester Terrace at Crisfield Condominium, S.D.N.Y.2002, 235 F.Supp.2d 243. Civil Rights 1326(7)

Public, educational, and governmental cable channel (PEG) was "state actor," for purposes of claims under § 1983 by program providers that specific portions of PEG's policies and procedures manual violated providers' rights under First and Fourteenth Amendments; PEG was created as part of license agreement between town and local cable provider, it was created to further political objectives, and town retained right to appoint members of access group that managed PEG. Demarest v. Athol/Orange Community Television, Inc., D.Mass.2002, 188 F.Supp.2d 82 . Constitutional Law 82(5); Constitutional Law 254(2)

City was not liable under § 1983 for alleged violation of cable show producer's First Amendment rights as result of his exclusion from public access production facilities by association that operated facilities, where city itself took no action in matter, had no policy or custom that permitted association to violate producer's rights, and required association to comply with all applicable laws. Jersawitz v. People TV, N.D.Ga.1999, 71 F.Supp.2d 1330. Civil Rights 1351(6)

Private TV and radio stations did not act "under color of law" when radio personality excluded minor party candidate from political debate, even though state university jointly "sponsored" event, where university's involvement was limited to providing facilities and some promotion and didn't include participation in decision to exclude candidate. DeBauche v. Virginia Commonwealth University, E.D.Va.1998, 7 F.Supp.2d 718, affirmed

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191 F.3d 499, certiorari denied 120 S.Ct. 1451, 529 U.S. 1033, 146 L.Ed.2d 337. Civil Rights 1326(5)

Fact that state Supreme Court rule generally authorized private television stations to broadcast court proceedings did not imply that particular station was acting under color of law when it broadcast certain proceedings despite religious objections of parties to those proceedings, and thus station could not be held liable to those parties under Religious Freedom Restoration Act of 1993 (RFRA) or § 1983, as rule only provided guidelines to regulate private conduct in public forum and did not direct or even encourage television stations to broadcast court proceedings. Brownson v. Bogenschutz, E.D.Wis.1997, 966 F.Supp. 795. Civil Rights 1326(7)

Private radio station which was regulated by Federal Communications Commission (FCC) and which cancelled show it had planned to put on during festival was not acting under color of state law, as would allow shopkeeper in nearby area who alleged that he lost profits after show and festival were cancelled to recover in federal civil rights action against station; no nexus or interdependence existed between State and station's cancellation of show, activities of radio station are not public function, and no state law, regulation, or custom compelled cancellation. Cevallos v. City of Los Angeles, C.D.Cal.1996, 914 F.Supp. 379. Civil Rights 1326(7)

Television station personnel who were allowed to ride along with police officers and film execution of search warrant were not state actors for purposes of § 1983 liability; personnel were present to gather news and prepare report for broadcast and did not participate in execution of search, while police were engaged in law enforcement activity and did not participate in filming of objects and events in house. Parker v. Clarke, E.D.Mo.1995, 905 F.Supp. 638, clarified 910 F.Supp. 460, affirmed in part, reversed in part 93 F.3d 445, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1081, 519 U.S. 1148, 137 L.Ed.2d 216. Civil Rights 1326(5)

Television network and program's producers were not acting under color of state law when they filmed and aired program showing motorist's arrest and search, and thus could not be held liable under §§ 1983 for invasion of motorist's privacy. Mitchell v. Langley, C.A.10 (Kan.) 2006, 172 Fed.Appx. 900, 2006 WL 833112, Unreported. Civil Rights 1326(4)

1128. Testing services, particular persons under color of law

Private corporation that employed phlebotomist under independent contractor agreement was not liable under policy, custom, or practice theory for phlebotomist's alleged violation of rape suspect's Fourth Amendment rights while performing "sex kit" examination upon him pursuant to corporation's contract with city; suspect did not identify any specific policy, custom or practice of corporation's that injured him or was unconstitutional, nor did suspect even identify or show longstanding policy, custom, or practice that constituted corporation's standard "sex kit" examination procedure. Robinson v. City of San Bernardino Police Dept., C.D.Cal.1998, 992 F.Supp. 1198. Civil Rights 1339

Testing service that performed teacher certification test for state was not state actor, as required to support civil rights claim brought by applicant whose test score was not reported to state because service questioned its validity; service acted only as medium for conveying examination results, and had no authority to determine certification or make any judgment as to qualifications of applicants. Tolleson v. Educational Testing Service, D.S.C.1992, 832 F.Supp. 158. Civil Rights 1326(11)

Private firm's preparation and grading of principalship examination pursuant to contract with board of education could not be viewed as "state action" for purpose of this section, where private firm's role was but part of the hiring process and such intermediate decisions as were made by the private firm did not involve individuals, while the final hiring decisions remained in the hands of state agents. Stewart v. Hannon, N.D.Ill.1979, 469 F.Supp. 1142. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

1129. Title examiners, particular persons under color of law

Title search was not action under color of law or otherwise within scope of this section. Billingsley v. Seibels, N.D.Ala.1976, 433 F.Supp. 1, affirmed 556 F.2d 276, certiorari denied 98 S.Ct. 1499, 435 U.S. 929, 55 L.Ed.2d 524, rehearing denied 98 S.Ct. 2257, 436 U.S. 914, 56 L.Ed.2d 416. Civil Rights 1326(1)

1130. Tow operators, particular persons under color of law

Owner of towing service and city were not liable under this section for actions of owner of towing service in pursuing owner of impounded vehicle after owner of towing service heard a stolen car report, although owner of towing service was acting for state when he initially towed car, since evidence was undisputed that owner of towing service was not performing city towing service when he tried to stop impounded vehicle, and police had not requested or authorized his assistance. Weinrauch v. Park City, C.A.10 (Utah) 1984, 751 F.2d 357. Civil Rights 1338

Towing service and operator acted as agents of sheriff and thus acted under color of state law so as to be subject to liability under civil rights statute, though they exercised no discretion and simply followed orders of deputy sheriff in towing car which had been seized. Bins v. Artison, E.D.Wis.1989, 721 F.Supp. 1034, on subsequent appeal 924 F.2d 1061, on remand 764 F.Supp. 129. Civil Rights 1326(5)

By asserting mechanic's lien on and taking title to arrestee's car, which had been towed following arrest for traffic offenses, towing company played integral part in depriving arrestee of property without due process of law and was thus liable under § 1983; towing company had acted under color of state law in towing vehicle and city had failed to provide arrestee with postdeprivation remedies. Katona v. City of Cheyenne, D.Wyo.1988, 686 F.Supp. 287. Civil Rights 1326(9)

Towing and seizure of abandoned, unregistered, and dangerously parked motor vehicle by either police or private garage constituted "state action" under this section in that vehicle could be towed pursuant to C.G.S.A. § 14-150 only at request of state agent. Tedeschi v. Blackwood, D.C.Conn.1976, 410 F.Supp. 34. Civil Rights 1326(1); Civil Rights 1326(5)

1131. Towns, particular persons under color of law

Genuine issues of material fact as to whether town had policy or procedure for transmitting exculpatory information to prosecuting attorneys, whether the policy or lack thereof constituted a conscious disregard or deliberate indifference to the constitutional and statutory rights of criminal suspects, and whether the general training of police officers was sufficient to insure that officers followed the statutory and constitutional requirement for disclosure of exculpatory material, precluded summary judgment in arrestee's § 1983 claim against town, arising out of his prosecution and continued incarceration. Murvin v. Jennings, D.Conn.2003, 259 F.Supp.2d 180. Federal Civil Procedure 2491.5

Town was not responsible for judge's conduct performed in his judicial capacity such that town was not liable in arrestee's § 1983 and § 1985 action; judge was not policymaker for town. Estes-El v. Town of Indian Lake, N.D.N.Y.1997, 954 F.Supp. 527. Civil Rights 1351(4)

1132. Trusts or trustees, particular persons under color of law

That no sale, mortgage or other alienation of common lands within community land grant could be made by trustees of grant without authorization of a state district judge was not in itself sufficient to establish that trustees were acting "under color of state law" when they allegedly committed acts of discrimination in leasing common

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lands within grant where it was clear that there was no intermixture of private and public matters or functions in respect to leasing. Mondragon v. Tenorio, C.A.10 (N.M.) 1977, 554 F.2d 423, certiorari denied 98 S.Ct. 305, 434 U.S. 905, 54 L.Ed.2d 193. Civil Rights 1326(1)

In applying for and obtaining enactment of shellfishing ordinance, the town of East Hampton trustees and the town board were acting jointly and together acted "under color of state law" for purposes of this section. Hassan v. Town of East Hampton, E.D.N.Y.1980, 500 F.Supp. 1034. Civil Rights 1326(5)

Holder of deed of trust, acting pursuant to contract provisions contained in deed, did not become representative of state or political subdivision by posting notices and holding foreclosure proceedings permitted by state law, and action therefore did not lie under this section in favor of owner of land subject to foreclosure for deprivation of property without due process of law. Leisure Estates of America, Inc. v. Carmel Development Co., S.D.Tex.1974, 371 F.Supp. 556. Civil Rights 1326(9)

1133. Unions, particular persons under color of law

Fact that union constitution encourages and reinforces collective bargaining agreement between union and public employer is insufficient to bring union's enactment of constitution under rubric of state action, such that union's internal governing rules would be subject to First Amendment prohibitions, and such that union would be subject to § 1983 action. Messman v. Helmke, C.A.7 (Ind.) 1998, 133 F.3d 1042. Civil Rights 1326(11); Constitutional Law 82(5)

Employee for union president failed to show that her supervisor was acting under color of state law when he allegedly deprived employee of her right to equal protection by sexually harassing her under § 1983; although president was city employee, at time of alleged harassment he was acting only in his capacity as union president, he did not hold his position as president by virtue of any action by city, and in this capacity, he performed functions solely for benefit of union. Kern v. City of Rochester, C.A.2 (N.Y.) 1996, 93 F.3d 38, certiorari denied 117 S.Ct. 1335, 520 U.S. 1155, 137 L.Ed.2d 494. Civil Rights 1326(11)

While union was private entity and board of education, in withholding "agency fee" from its employees' wages, was acting as union's agent, when public employer assists union in coercing public employees to finance political activities, that is state action; and when private entity such as union acts in concert with public agency to deprive people of their fundamental constitutional rights, it is liable under this section along with agency. Hudson v. Chicago Teachers Union Local No. 1, C.A.7 (Ill.) 1984, 743 F.2d 1187, certiorari granted 105 S.Ct. 2700, 472 U.S. 1007, 86 L.Ed.2d 716, affirmed 106 S.Ct. 1066, 475 U.S. 292, 89 L.Ed.2d 232, on remand 117 F.R.D. 413. Civil Rights 1326(11)

Resort by coal companies and railroad to state judicial process to obtain temporary injunctions against picketing activity of various labor organizations did not, in circumstances, transform an otherwise private entity into an arm of state so as to establish a cause of action for declaratory, injunctive, and monetary relief under this section governing deprivation of civil rights under color of state law. District 28, United Mine Workers of America, Inc. v. Wellmore Coal Corp., C.A.4 (Va.) 1979, 609 F.2d 1083. Civil Rights 1326(11)

Union which represented terminated municipal bus driver was neither a state actor nor acting under color of state law for §§ 1983 purposes; there was no evidence that union's conduct was jointly undertaken with bus company since union contested the right of company to refer the matter for an independent medical evaluation and went to arbitration to protect the driver's rights, and union represented driver in opposition to company at administrative hearings. Perry v. Metropolitan Suburban Bus Authority, E.D.N.Y.2005, 390 F.Supp.2d 251. Civil Rights 1326(11)

Union representing county employees was not "state actor" as result of its adversarial negotiations with county for

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collective bargaining agreement (CBA), and thus was not subject to liability under § 1983 as result of removal of class of employees from bargaining unit in CBA. McGovern v. Local 456, Intern. Broth. of Teamsters, Chauffeurs & Warehousemen & Helpers of America, AFL--CIO, S.D.N.Y.2000, 107 F.Supp.2d 311. Civil Rights 1326(11)

Allegations by union employees that union participated in secret negotiations to abrogate collective bargaining agreement and bar union employees from working on public project and took actions to have union employees removed from seniority list and reduce their work activities failed to show conspiracy between private union, union local and union officials and public benefit corporation operating public project sufficient to state § 1983 claim for deprivation of employee's liberty interests without due process. Sacco v. Pataki, S.D.N.Y.1997, 982 F.Supp. 231, affirmed 278 F.3d 93. Conspiracy 18

Grievance chairman who represented union and its members with respect to disputes with state of Rhode Island and who was paid by state was state actor for purposes of § 1983 action alleging that he negligently allowed employee's appeal of grievance to lapse before appeal board. Forbes v. Rhode Island Broth. of Correctional Officers, D.R.I.1996, 923 F.Supp. 315. Civil Rights 1326(11)

Union did not act under color of state law in allegedly conspiring with state actors to retaliate against teacher for exercising First Amendment rights, and thus was not liable under § 1983; teacher failed to proffer any evidence supporting his allegations that school superintendent compelled or encouraged union president to deny teacher's requests to take complaints against school committee to arbitration. Storlazzi v. Bakey, D.Mass.1995, 894 F.Supp. 494, affirmed 68 F.3d 455. Civil Rights 1326(11)

Public employees' union was not subject to suit under federal civil rights statute unless state action was imputed to it through its alleged concerted action with public employer. Loftus v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1994, 843 F.Supp. 981. Civil Rights 1326(11)

Local union's representation of public employees did not make it "state actor" for purposes of § 1983. Marrero v. City of NY, S.D.N.Y.2003, 2003 WL 1621921, Unreported. Civil Rights 1326(11)

1134. Utilities, particular persons under color of law

In suit brought against private utility corporation by customer who sought damages under this section for the termination of her electric service allegedly before she was afforded notice, a hearing, and an opportunity to pay any amounts found due, "state action" for purposes of U.S.C.A.Const. Amend. 14 was not present on theory that the utility provided an essential public service required to be supplied on a reasonably continuous basis and thus performed a "public function," since the furnishing of utility services are neither state functions nor municipal duties. Jackson v. Metropolitan Edison Co., U.S.Pa.1974, 95 S.Ct. 449, 419 U.S. 345, 42 L.Ed.2d 477. Constitutional Law 254(4)

Terminated employee of construction contractor at electric utility's nuclear power plant failed to show that utility was standing in for state or local authorities when it decided to bar defendant from plant as required for utility to be liable to employee under § 1983, despite contention that utility conducted its undercover investigation in close cooperation with county narcotics task force, in employee's action against utility, arising from utility's decision to bar employee from plant after investigation linked employee to conversations at plant as to off-site drug transaction; employee needed to prove not merely that utility had close relationship with task force, but also that relationship encompassed utility's plant-access decisions. Mathis v. Pacific Gas and Elec. Co., C.A.9 (Cal.) 1996, 75 F.3d 498. Civil Rights 1326(11)

Fact that public utility was subject to extensive state regulation, without more, was insufficient to infuse its conduct

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with state action; therefore, employees of contractors, which performed work for utility at nuclear power plant, raised no colorable claim against public utility under § 1983 arising out of public utility's denying employees access to plant because they either failed psychological tests or were suspected of illegal drug use or sales. Mathis v. Pacific Gas and Elec. Co., C.A.9 (Cal.) 1989, 891 F.2d 1429. Civil Rights 1326(7)

For purposes of 42 U.S.C.A. § 1983, telephone company acted under color of state law in seeking to implement state regulatory procedure that would require it to withhold telephone service to sexually explicit message service; telephone company's conduct of repeatedly requesting law enforcement agents to undertake action that would trigger procedure that would violate customer's First Amendment rights satisfied joint participation requirement for state action. Sable Communications of California Inc. v. Pacific Tel. & Tel. Co., C.A.9 (Cal.) 1989, 890 F.2d 184. Civil Rights 1326(7)

Private telephone company did not engage in state action, and thus could not be liable in criminal defendant's action alleging federal Constitutional violations, by releasing defendant's phone records to district attorney; company acted under subpoena, making release a privileged act, and there was no evidence of conspiracy between company and state. Daniel v. Safir, E.D.N.Y.2001, 135 F.Supp.2d 367. Constitutional Law 82(5)

Massachusetts Municipal Wholesale Electric Company (MMWEC) was political subdivision and public corporation established for purposes of essential public function of joint action and planning, and thus there was sufficient nexus between state and MMWEC to satisfy § 1983 state action requirement, and thus to allow nonunion MMWEC employee to maintain § 1983 claim challenging union's alleged unconstitutional imposition of agency service fee without adequate procedural protections. Sheridan v. International Broth. Elec. Workers, Local 455, D.Mass.1996, 940 F.Supp. 368. Civil Rights 1326(11)

1135. Warehousemen, particular persons under color of law

Actions by warehouseman in enforcing lien on stored property through sale which was not required to be preceded by any hearing were private actions not taken "under color of state law" and property owners thus did not state claim for relief under this section especially where storage contract entered into between property owners and warehouseman specified that warehouseman would have a general lien upon all stored property and would have the right to sell the property upon default. Smith v. Bekins Moving & Storage Co., E.D.Pa.1974, 384 F.Supp. 1261. Civil Rights 1326(9)

1136. Witnesses, particular persons under color of law

Although when a private party gives testimony in open court in a criminal trial he is not acting "under color of law" for purpose of this section, it is conceivable that nongovernmental witnesses can act "under color of law" by conspiring with the prosecutor or other state officials. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Conspiracy 7.5(3)

Because witnesses always testify in a personal capacity and are not acting under color of law when they testify, their perjury cannot, except in most extraordinary circumstances, be considered to be pursuant to official policy and basis of municipal liability in action under this section. Cloutier v. Town of Epping, C.A.1 (N.H.) 1983, 714 F.2d 1184. Civil Rights 1351(6)

Police officer's reliance upon information provided by citizens who witnessed events does not convert informing party into state actor for purposes of state action requirement of civil rights action under this section. Hernandez v. Schwegmann Bros. Giant Supermarkets, Inc., C.A.5 (La.) 1982, 673 F.2d 771. Civil Rights 1326(1)

Testimony given in criminal proceeding by assistant United States attorney was not "state action" or "official conduct" for purposes of this section. Blevins v. Ford, C.A.9 (Cal.) 1978, 572 F.2d 1336. Civil Rights

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Witnesses who testify at criminal trial are not acting under color of state law within this section. Bennett v. Passic, C.A.10 (Utah) 1976, 545 F.2d 1260. Civil Rights 1326(10)

Witness who testifies in state court proceeding has not acted "under color of state law" for purposes of § 1983, even if witness is state employee who has perjured himself. McArthur v. Bell, E.D.N.Y.1992, 788 F.Supp. 706. Civil Rights 1326(10)

1137. Miscellaneous particular persons under color of law

State compulsion test did not support finding that private organizer of festival in city park operated as state actor in ejecting street preacher from area outside festival entrance, so as to subject organizer to liability for violating preacher's constitutional rights, based on preacher's contention that city attorney's office had corresponded with organizer's attorney regarding preacher, where letter from city attorney's office was simply an offer to assist in determination of constitutional legal boundaries for protected speech, and a request that organizer consider the issue when planning the next year's event. Lansing v. City of Memphis, C.A.6 (Tenn.) 2000, 202 F.3d 821. Constitutional Law 82(5)

Member of town board did not act under color of state law, as required to support civil rights claim, when, before he was elected, he met with town chief of police and urged chief to retire. Carlos v. Santos, C.A.2 (N.Y.) 1997, 123 F.3d 61. Civil Rights 1326(2)

Policies and actions of private arts festival committee which held weekend festival in public park were not actions of city and, thus, city could not be held liable under Civil Rights Act of 1871 for actions of committee even though city permitted committee to adopt and enforce rules for festival which limited who could distribute literature at festival. Reinhart v. City of Brookings, C.A.8 (S.D.) 1996, 84 F.3d 1071. Civil Rights 1326(4)

Allegations by physicians that persons engaged in campaign to force state board of medical examiners to withdraw physician's medical license were insufficient to support § 1983 claim; alleged actions by private parties providing information to state and pressing for state action against physician, without more, did not suffice to make private entities liable under § 1983 as state actors. Manax v. McNamara, C.A.5 (Tex.) 1988, 842 F.2d 808. Civil Rights 1396

Individual who made "citizen's arrest" of plaintiff because he believed plaintiff was a looter, and who subsequently transported plaintiff to police station and reported such suspected criminal activity to police officer, was neither state actor himself nor was he jointly engaged in alleged constitutional deprivation such that he could be held liable under § 1983; individual was acting as private citizen when he made "citizen's arrest," and although individual was insistent when he brought plaintiff to police station, police officer himself made decision as to whether plaintiff should be charged with offense and, if so, what offense should be charged. Lee v. Town of Estes Park, Colo., C.A.10 (Colo.) 1987, 820 F.2d 1112. Civil Rights 1326(5)

Humane society was not state actor, as required for suit under §§ 1983, by arrestee claiming that police violated his constitutional rights by killing his pit bull in course of arrest, and that humane society violated his rights in manner of disposal of dog's body; society was private voluntary organization. Chambers v. Doe, D.Del.2006, 453 F.Supp.2d 858. Civil Rights 1326(4)

Unsupported accusations that town mechanic acted with police department to have his brother arrested and to deprive uncle of fruits of his business was insufficient to show that nephew acted under color of state law as required to impose civil rights liability on nephew individually, absent showing of cooperation between mechanic and public defendants. Cardillo v. Cardillo, D.R.I.2005, 360 F.Supp.2d 402. Civil Rights 1326(2)

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Reporter's allegations of efforts by newspaper publisher, which was her former employer, to keep her from speaking out about publisher's alleged deal with district attorney, which resulted in removal of reporter from investigation concerning district attorney's office, and allegations that publisher retaliated against her for continuing to press issue with her superiors by transferring her to dead-end job, failed to show that there was nexus between publisher's actions and any state actor, as required to state claim under §§ 1983 against publisher; there were no allegations that district attorney was even aware of these events, much less that he was directly involved in them. Rivoli v. Gannett Co., Inc., W.D.N.Y.2004, 327 F.Supp.2d 233. Civil Rights 1326(11)

Village clerk was not acting under color of state law when she submitted sworn affidavit in support of village attorney's complaint in defamation suit against village resident who repeatedly criticized his performance, as required for § 1983 liability. O'Bradovich v. Village of Tuckahoe, S.D.N.Y.2004, 325 F.Supp.2d 413. Civil Rights 1326(10)

Cruise ship operator did not act under color of state law when it removed Iranian passengers from ship and barred them from future cruises, and thus operator was not subject to liability under § 1983, even though Customs official determined that gas canister removed with passengers did not belong to them and ship used port operated by county; operation of passenger cruise ships was not traditionally exclusive prerogative of state, operator did not act pursuant to specific state law or policy, government did not coerce operator to remove passengers, and operator's actions toward passengers had no nexus with its contract with county. Afkhami v. Carnival Corp., S.D.Fla.2004, 305 F.Supp.2d 1308. Civil Rights 1326(4)

Actions of lender, trustee and purchaser, in foreclosing upon borrowers' property under deed of trust and evicting borrowers from property, was not "under color of" state law, as required for § 1983 action. Heinemann v. Jim Walter Homes, Inc., N.D.W.Va.1998, 47 F.Supp.2d 716, affirmed 173 F.3d 850. Civil Rights 1326(9)

Radio personality was not acting under color of state law in excluding minor party candidate from political debate based on limited involvement of state university in offering its facilities for debate that he had organized. DeBauche v. Virginia Commonwealth University, E.D.Va.1998, 7 F.Supp.2d 718, affirmed 191 F.3d 499, certiorari denied 120 S.Ct. 1451, 529 U.S. 1033, 146 L.Ed.2d 337. Civil Rights 1326(5)

Locksmith, who let a partner into shop after another partner had changed locks, was not state actor for federal civil rights purposes where locksmith was a private company whose employee was hired and paid by ousted partner, and where, although the police were present at the scene, they did not hire locksmith and did not direct the locksmith to take any action regarding the lock; locksmith had refused to let ousted partner into shop until police verified partner's identification and papers, and after officer made identification officer left scene. Merriman v. Town of Colonie, N.Y., N.D.N.Y.1996, 934 F.Supp. 501, affirmed 112 F.3d 504. Civil Rights 1326(4)

City was liable as a matter of law for under § 1983 for actions of urban rehabilitation standards board (URSB) with regard to demolition hearing for alleged nuisance property; both URSB administrator and URSB were acting under color of state law at time of actions, property owner was not given notice of demolition hearing and URSB and administrator were aware of that fact at hearing, URSB failed to accord owner due process despite knowledge that she had protected property interest in building, as it was clear that owner's name was all over file relating to property, she had appeared at previous hearing before board and it was her failure to comply with previous board order that caused demolition hearing to be set, owner's tenant testified at hearing as to how owner was maintaining building and renting out apartments, and every indication at hearing was that owner owned, maintained and rented out units at targeted property, despite results of title search ordered by URSB administrator. Swann v. City of Dallas, N.D.Tex.1996, 922 F.Supp. 1184, affirmed 131 F.3d 140. Civil Rights 1071

Steel company did not act under color of state law in allegedly discriminating against employee, and thus was not subject to suit under § 1983. Pacourek v. Inland Steel Co., N.D.Ill.1994, 858 F.Supp. 1393. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

For purposes of § 1983, animal protection agency, a private entity, was "state actor" during attempted rescue of cat trapped between two adjacent walls of two buildings, one of which was occupied by plaintiff's company; animal protection workers got city fire fighters to break through wall without seeking warrant or attempting to reach building owner. Suss v. American Soc. for Prevention of Cruelty to Animals, S.D.N.Y.1993, 823 F.Supp. 181. Civil Rights 1326(5)

Women's center that allegedly conspired with town to bring Racketeer Influenced and Corrupt Organizations Act (RICO) action against newspaper publisher and editor who had written editorial critical of police actions in suppressing antiabortion demonstrations at the women's center was a private entity with no authority to act under color of law and was not subject to liability under § 1983. Spear v. Town of West Hartford, D.Conn.1991, 771 F.Supp. 521, affirmed 954 F.2d 63, certiorari denied 113 S.Ct. 66, 506 U.S. 819, 121 L.Ed.2d 33. Civil Rights 1326(5)

Plaintiff's allegations against private parcel delivery service failed to demonstrate how any deprivation of a constitutional right was attributable to the state, under the public function test, the state compulsion test, and the nexus/joint action test, as was required to maintain civil rights action under §§ 1983; although plaintiff compared service to the United States Postal Service, private service was not performing a function which was traditionally the exclusive prerogative of the state, no conduct was encouraged or coerced by the state, and plaintiff did not allege an interdependent relationship between service and the state. Shortz v. United Parcel Service, C.A.11 (Ala.) 2006, 2006 WL 1208053, Unreported. Civil Rights 1396

Civil rights suit arising out of damage to plaintiff's automobile could not be maintained against defendant who was not state actor. Wasko v. Moore, C.A.10 (N.M.) 2005, 122 Fed.Appx. 403, 2005 WL 226241, Unreported. Civil Rights 1326(1)

Individual's pro se § 1983 action against president of federally owned but privately managed and operated laboratory, alleging that president acting under color of state law violated his constitutional rights by designing nuclear weapons at the laboratory, was frivolous, warranting dismissal under statute governing in forma pauperis proceedings; individual identified no state law involved in president's activities and failed to allege facts establishing that president personally caused a constitutional violation. Doran v. Robinson, C.A.10 (N.M.) 2003, 72 Fed.Appx. 778, 2003 WL 21716431, Unreported. Federal Civil Procedure 2734

Owners and managers of housing developments did not operate under color of state law, and thus were not subject to § 1983 liability for their allegedly discriminatory provision of building maintenance services, even though properties' mortgages were federally-financed and subject to regulatory oversight by federal government, absent showing that federal government exercised any power or influence over owners and managers in any way to force or encourage them to act in manner that violated tenants' rights. Neal v. Martinez, S.D.N.Y.2003, 2003 WL 260524, Unreported. Civil Rights 1326(7)

XI. DEPRIVATION OF CONSTITUTIONAL OR STATUTORY RIGHTS GENERALLY

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42 U.S.C.A. § 1983

To state a claim for relief in an action brought under § 1983, plaintiffs must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law. American Mfrs. Mut. Ins. Co. v. Sullivan, U.S.Pa.1999, 119 S.Ct. 977, 526 U.S. 40, 143 L.Ed.2d 130. Civil Rights 1304

Section 1983 is not itself source of substantive rights, but merely provides method for vindicating federal rights elsewhere conferred. (Per Chief Justice Rehnquist, with three Justices joining, two Justices concurring and two Justices concurring in judgment.) Albright v. Oliver, U.S.Ill.1994, 114 S.Ct. 807, 510 U.S. 266, 127 L.Ed.2d 114, rehearing denied 114 S.Ct. 1340, 510 U.S. 1215, 127 L.Ed.2d 688. Civil Rights 1305

This section creates no substantive rights but merely provides remedies for deprivations of rights established elsewhere. (Per Justice Rehnquist with the Chief Justice and two Justices concurring and three Justices concurring in judgment.)--City of Oklahoma City v. Tuttle, U.S.Okla.1985, 105 S.Ct. 2427, 471 U.S. 808, 85 L.Ed.2d 791, rehearing denied 106 S.Ct. 16, 473 U.S. 925, 87 L.Ed.2d 695. Civil Rights 1305

Civil Rights Act of 1871 only provides a remedy and does not itself create any substantive rights. Wilson v. Garcia, U.S.N.M.1985, 105 S.Ct. 1938, 471 U.S. 261, 85 L.Ed.2d 254. Civil Rights 1305

Two, and only two, allegations are required in order to state a section 1983 cause of action: (1) plaintiff must allege that some person has deprived him of federal right, and (2) plaintiff must allege that the person who has deprived him of that right acted under color of state or territorial law. Gomez v. Toledo, U.S.Puerto Rico 1980, 100 S.Ct. 1920, 446 U.S. 635, 64 L.Ed.2d 572. Civil Rights 1394; Civil Rights 1396

Civil rights statute providing liability for deprivation of rights under color of law is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes. Baker v. McCollan, U.S.Tex.1979, 99 S.Ct. 2689, 443 U.S. 137, 61 L.Ed.2d 433, on remand 601 F.2d 903. Civil Rights 1305

If plaintiffs show that a federal statute creates a right, the right is presumptively enforceable under § 1983; plaintiffs do not have the burden of showing an intent to create a private remedy because § 1983 generally supplies a remedy for the vindication of rights secured by federal statutes. Sandusky County Democratic Party v. Blackwell, C.A.6 (Ohio) 2004, 387 F.3d 565. Civil Rights 1027

Physician assistant's claim arising from Idaho State Board of Medicine's billing statement sent to her counsel for costs and fees incurred with respect to her public records request was not cognizable under § 1983; physician assistant did not allege that she paid the bill, nor did she allege how sending the bill amounted to a constitutional or legal violation under § 1983. Olsen v. Idaho State Bd. of Medicine, C.A.9 (Idaho) 2004, 363 F.3d 916. Civil Rights 1032

A plaintiff is not required to satisfy the requirements of an analogous common law tort in order to state a claim actionable under § 1983. Pierce v. Gilchrist, C.A.10 (Okla.) 2004, 359 F.3d 1279. Civil Rights 1034

As general proposition, plaintiffs may bring cause of action pursuant to § 1983 to remedy violations of both Federal Constitution and federal statutes. Holbrook v. City of Alpharetta, Ga., C.A.11 (Ga.) 1997, 112 F.3d 1522. Civil Rights 1027

Critical inquiry in § 1983 action is whether plaintiff has been deprived of right secured by Federal Constitution and laws. Allen v. City of Portland, C.A.9 (Or.) 1995, 73 F.3d 232, as amended. Civil Rights 1027

Section 1983 itself does not create any substantive rights, but merely provides relief against those who, acting under color of law, violate federal rights created elsewhere. Reynolds v. School Dist. No. 1, Denver, Colo.,

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42 U.S.C.A. § 1983

C.A.10 (Colo.) 1995, 69 F.3d 1523. Civil Rights 1305

Section 1983 furnishes cause of action for violation of federal rights created by Constitution. Annis v. County of Westchester, N.Y., C.A.2 (N.Y.) 1994, 36 F.3d 251, on remand 939 F.Supp. 1115. Civil Rights 1304

Not all unlawful deprivations of liberty were intended to be protected by this section prohibiting deprivations of civil rights under color of state law. Lessman v. McCormick, C.A.10 (Kan.) 1979, 591 F.2d 605. Civil Rights 1031

Section 1983 draws no distinction between abusive and nonabusive federal violations, and does not require proof of abuse of governmental power separate and apart from proof of constitutional violations; although the statute provides citizens with a remedy for abuses of state power that do violate federal law, it does not provide a remedy for abuses that do not. O'Bradovich v. Village of Tuckahoe, S.D.N.Y.2004, 325 F.Supp.2d 413. Civil Rights 1027; Civil Rights 1031

There is a strong presumption that Congress intended to allow § 1983 suits and the burden of establishing the contrary rests on the defendants. Torres Ramos v. Consorcio De La Montaña, D.Puerto Rico 2003, 286 F.Supp.2d 126. Civil Rights 1027; Civil Rights 1401

The required showing that a § 1983 defendant's conduct deprived a person of rights, privileges or immunities secured by the Constitution or laws of the United States has two aspects: (1) there must have been an actual deprivation of the plaintiff's federally protected rights, and (2) there must have been a causal connection between the defendant's conduct and the deprivation of the plaintiff's federal rights. Torres Ocasio v. Melendez, D.Puerto Rico 2003, 283 F.Supp.2d 505. Civil Rights 1031

One cannot go into court and claim a violation of § 1983, for § 1983 does not protect anyone against anything; the pleader must also allege an independent substantive basis for his claim, whether grounded in a federal constitutional or statutory right. Nabozny v. NCS Pearson, Inc., D.Nev.2003, 270 F.Supp.2d 1201. Civil Rights 1027; Civil Rights 1394

"Plus" portion of § 1983 deprivation-plus claim, which transforms tort into federal constitutional claim, may be met by either the denial of a right specifically secured by the Bill of Rights, such as the right to free speech or counsel, or the denial of a state-created property or liberty interest, such that the Fourteenth Amendment's Due Process Clause is violated. Crowe v. County of San Diego, S.D.Cal.2003, 242 F.Supp.2d 740. Civil Rights 1029; Civil Rights 1028

One cannot go into court and claim "violation of § 1983," for § 1983 by itself does not protect anyone against anything rather, § 1983 provides remedy for violations of all rights, privileges, or immunities secured by Constitution and laws of United States. Rural Water System No. 1 v. City of Sioux Center, Iowa, N.D.Iowa 1997, 967 F.Supp. 1483, affirmed 202 F.3d 1035, rehearing and rehearing en banc denied, certiorari denied 121 S.Ct. 61, 531 U.S. 820, 148 L.Ed.2d 28. Civil Rights 1305

In determining whether plaintiffs may maintain § 1983 claim based on federal statute, court must first decide if case really involves a federal right, as opposed to simply a claimed violation of federal law; if court is satisfied that plaintiffs have asserted an enforceable right, court must then consider whether Congress has foreclosed enforcement of that right under § 1983. Evelyn V. v. Kings County Hosp. Center, E.D.N.Y.1997, 956 F.Supp. 288. Civil Rights 1027

Section 1983 creates no substantive rights; rather, it provides remedy for deprivation of rights established elsewhere in the Constitution or federal laws. Scott v. State Pilotage Com'n, S.D.Ala.1996, 924 F.Supp. 1140. Civil Rights 1305

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42 U.S.C.A. § 1983

First inquiry in every § 1983 case is whether there has been deprivation of right secured by Constitution or laws of United States. Richmond v. Cagle, E.D.Wis.1996, 920 F.Supp. 955. Civil Rights 1027

First inquiry in § 1983 action is to isolate precise constitutional violation with which defendants are charged; once constitutional violations are identified, court's threshold inquiry is whether defendants are entitled to qualified immunity for their alleged conduct. Pyka v. Village of Orland Park, N.D.Ill.1995, 906 F.Supp. 1196. Civil Rights 1376(1)

Area for which this section provides redress is not restricted to those rights or interests that warrant due process protection, but includes all civil rights created or insured by United States Constitution and all federal laws, but rights arising from state or local governments are not protected by the statute. DeWalt v. Barger, M.D.Pa.1980, 490 F.Supp. 1262. Civil Rights 1027

1162. Discrimination as prerequisite to maintenance of action, deprivation of constitutional or statutory rights generally

This section is not limited to dealing with racial or religious discrimination. Scher v. Board of Ed. of Town of West Orange, C.A.3 (N.J.) 1970, 424 F.2d 741. See, also, Martynn v. Darcy, D.C.La.1971, 333 F.Supp. 1236.

This section proscribing the deprivation of rights affords protection against violation of any rights secured by constitution, not merely those stemming from racial or other types of class-based discrimination. Evans v. Town of Watertown, D.C.Mass.1976, 417 F.Supp. 908. See, also, Hahn v. Sargent, D.C.Mass.1975, 388 F.Supp. 445, affirmed 523 F.2d 461, certiorari denied 96 S.Ct. 1495, 425 U.S. 904, 47 L.Ed.2d 754. Civil Rights 1027

1163. Substantive rights, deprivation of constitutional or statutory rights generally

Plaintiff's claim under both § 1981 of this title which grants equal rights and this section which provides for civil actions based on deprivation of those rights must be grounded on violation of right of substance, and not merely on theoretical speculation that some right has been infringed. Holmes v. Finney, C.A.10 (Kan.) 1980, 631 F.2d 150. Civil Rights 1027

Allegations of personal representative of involuntarily committed resident that operator of adult foster care home and one of its staff leaders, in her official capacity, violated resident's constitutionally-protected substantive due process rights by failing to keep her "reasonably safe" during her morning shower, resulting in severe burns over more than half of her body from which she later died, stated a claim under §§ 1983. Smith v. AuSable Valley Community Mental Health Services, E.D.Mich.2006, 431 F.Supp.2d 743. Health 699

In §§ 1983 action where it was not clear which substantive right plaintiffs were attempting to couple with defamation claim, appropriate course was for district court to dismiss §§ 1983 claim based on alleged substantive due process violation, without prejudice to plaintiffs' ability to amend complaint to specify substantive rights allegedly violated. Heller v. Fulare, W.D.Pa.2005, 371 F.Supp.2d 743. Federal Civil Procedure 1788.6; Federal Civil Procedure 1838

1164. Personal rights, deprivation of constitutional or statutory rights generally

Bystander who witnesses police action, but who is not himself an object of that action, is unable to assert the kind of deliberate deprivation of his or her rights necessary to state due process claim under federal civil rights statute. Archuleta v. McShan, C.A.10 (N.M.) 1990, 897 F.2d 495. Civil Rights 1332(4)

Rights protected under this section are not limited to what are commonly termed "personal" rights; relief under this section is limited only by the confines of U.S.C.A.Const. Amend. 14. Hobby v. Bradley, N.D.Ill.1975, 388

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42 U.S.C.A. § 1983

F.Supp. 1338. Civil Rights 1027

1165. Public rights, deprivation of constitutional or statutory rights generally

Claims against justices of state Supreme Court and state bar officials relating to regulation of practice of law and officials' failure to protect the public from attorney's fraudulent activities only related to duties owed to public at large, and thus could not form basis of claim under § 1983. Burcher v. McCauley, E.D.Va.1994, 871 F.Supp. 864. Civil Rights 1039; Civil Rights 1072

1166. Property rights, deprivation of constitutional or statutory rights generally

The right to enjoy property without unlawful deprivation, no less than right to speak or right to travel, is, in truth, a personal right, whether property in question be welfare check, home or savings account. Lynch v. Household Finance Corp., U.S.Conn.1972, 92 S.Ct. 1113, 405 U.S. 538, 31 L.Ed.2d 424, rehearing denied 92 S.Ct. 1611, 406 U.S. 911, 31 L.Ed.2d 822, on remand 360 F.Supp. 720. Constitutional Law 87

State deprivations of property rights are cognizable under this section. Uptown People's Community Health Services Bd. of Directors v. Board of Com'rs of Cook County, C.A.7 (Ill.) 1981, 647 F.2d 727, certiorari denied 102 S.Ct. 328, 454 U.S. 866, 70 L.Ed.2d 167. Civil Rights 1071

This section has application to cases involving deprivation of property rights, but state action is still required. Turner v. Impala Motors, C.A.6 (Tenn.) 1974, 503 F.2d 607. Civil Rights 1325

A deprivation of civil rights is primarily the violation of personal rights rather than property rights. Marlowe v. Fisher Body, C.A.6 (Mich.) 1973, 489 F.2d 1057, on remand. Civil Rights 1029

This section protects personal civil rights and not natural rights stemming from ownership of personal property. Martin v. King, C.A.10 (Colo.) 1969, 417 F.2d 458.

Suit for enforcement of civil rights is not necessarily beyond scope of this section because enforcement may possibly affect property interests, where those interests are incidental or ancillary to basic personal right. Bradford Audio Corp. v. Pious, C.A.2 (N.Y.) 1968, 392 F.2d 67. Civil Rights 1029; Civil Rights 1071

Law enforcement officer was not liable on arrestee's §§ 1983 claim that officer violated his due process rights by disseminating false information about him, absent evidence that arrestee was deprived of a liberty or property interest. Bloomquist v. Albee, D.Me.2006, 421 F.Supp.2d 162. Municipal Corporations 189(1)

Deprivation of a property right does not constitute a civil right violation unless the deprivation violates a federal right and is fairly attributable to the state. Chicarelli v. Plymouth Garden Apartments, E.D.Pa.1982, 551 F.Supp. 532. Civil Rights 1325

Civil action for deprivation of rights provides a cause of action, in law or in equity, for deprivation of property rights. Cowart v. City of Ocala, Fla., M.D.Fla.1979, 478 F.Supp. 774. Civil Rights 1071

Property rights are protected by U.S.C.A.Const. Amend. 14 and violation thereof can be redressed by suits under this section relating to deprivation of constitutional rights under color of state law. Hofferber v. First Nat. Bank of Guymon, Oklahoma, W.D.Okla.1977, 437 F.Supp. 788. Civil Rights 1071; Constitutional Law 277(1)

Property rights are basic civil rights and are protected not only by the Constitution but also by this section. Comtronics, Inc. v. Puerto Rico Telephone Co., D.C.Puerto Rico 1975, 409 F.Supp. 800, affirmed 553 F.2d 701. Civil Rights 1071

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This section may be invoked where property rights are concerned as well as when personal rights are at issue. Donohoe Const. Co., Inc. v. Maryland-National Capital Park and Planning Commission, D.C.Md.1975, 398 F.Supp. 21. Civil Rights 1071

1167. Severity of violation, deprivation of constitutional or statutory rights generally

This section making every person who, under color of state statute, deprives any citizen of constitutional right liable to party injured is aimed at reprehensible action. Striker v. Pancher, C.A.6 (Ohio) 1963, 317 F.2d 780. Civil Rights 1031

Before equal protection clause can be basis for relief under this section, facts must show significant violation of constitutional right. Fant v. Fisher, W.D.Okla.1976, 414 F.Supp. 807. Civil Rights 1028

Neither U.S.C.A.Const. Amend. 4 nor this section permits "slight infringement" of constitutional rights. Smyth v. Lubbers, W.D.Mich.1975, 398 F.Supp. 777.

To support civil liability for violation of this section prohibiting deprivation of civil rights by one acting under color of state law, acts challenged must do more than offend some fastidious squeamishness or private sentimentalism, but must shock the conscience or constitute force that is brutal. Sheffey v. Greer, E.D.Ill.1975, 391 F.Supp. 1044. Civil Rights 1031; Civil Rights 1035

1168. State law violation, deprivation of constitutional or statutory rights generally--Generally

Plaintiff must allege a deprivation of a federally protected right in order to set forth a prima facie case under this section; violation of state law alone does not give rise to a cause of action under this section. Williams v. Treen, C.A.5 (La.) 1982, 671 F.2d 892, certiorari denied 103 S.Ct. 762, 459 U.S. 1126, 74 L.Ed.2d 977. See, also, New York Airlines, Inc. v. Dukes County, D.C.Mass.1985, 623 F.Supp. 1435; Hundert v. Bieszczat, N.D.Ill.1981, 526 F.Supp. 1051. Civil Rights 1394

Although state standards may sometimes serve as a useful guide in a federal court's determination and redress of constitutional deprivations, a violation of state law, without more, will not justify federal judicial intervention. Smith v. Sullivan, C.A.5 (Tex.) 1980, 611 F.2d 1039. Federal Courts 43

To invoke jurisdiction of the federal courts under this section and to be entitled to relief therefrom, a plaintiff must allege more than the mere failure of state officials to follow state law; to state a federal cause of action on which relief can be granted, plaintiff must allege violation of some federally protected or constitutionally guaranteed right. Moore v. Kusper, C.A.7 (Ill.) 1972, 465 F.2d 256. Federal Courts 244

This section pertaining to civil action for deprivation of rights is not concerned with mere violations of state law. Sigler v. Lowrie, C.A.8 (Neb.) 1968, 404 F.2d 659, certiorari denied 89 S.Ct. 2010, 395 U.S. 940, 23 L.Ed.2d 456. See, also, Long Grove Country Club Estates, Inc. v. Village of Long Grove, N.D.Ill.1988, 693 F.Supp. 640; Ervin v. Blackwell, W.D.Mo.1983, 585 F.Supp. 680, affirmed 733 F.2d 1282. Civil Rights 1027

Under this section, cause of action arises only where right created by federal Constitution or laws has been violated, and violation of state law is not sufficient. Ortega v. Ragen, C.A.7 (Ill.) 1954, 216 F.2d 561, certiorari denied 75 S.Ct. 786, 349 U.S. 940, 99 L.Ed. 1268. See, also, Canell v. Oregon Dept. of Justice, D.Or.1993, 811 F.Supp. 546. Civil Rights 1027

Federal civil rights statute imposes liability for violations of rights protected by the Constitution and laws of the United States, not for violations arising solely out of state or common-law principles; some official conduct may

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clearly violate state law but may not rise to the level of constitutional injury, and the proper remedy in those cases is suit in state court under traditional contract, tort, agency, or other common-law theory. Fluent v. Salamanca Indian Lease Authority, W.D.N.Y.1994, 847 F.Supp. 1046. Civil Rights 1034; Civil Rights 1315

It is not the role of federal court under federal civil rights statute to remedy violations of state law. Burke v. Sheboygan County Human Services, E.D.Wis.1992, 790 F.Supp. 194. Civil Rights 1027

Alleged violation of state law, unaccompanied by some more precise claim of federal right than general claim of lack of due process, is not sort of deprivation cognizable under § 1983. Housley v. North Panola Consol. School Dist., N.D.Miss.1987, 656 F.Supp. 1087. See, also, Ervin v. Blackwell,W.D.Mo. 1983, 585 F.Supp. 680, affirmed 733 F.2d 1282. Civil Rights 1027

Question for decision in an action under this section is whether defendant's conduct, independent of its lawfulness or unlawfulness at state law, was sufficiently egregious as to be constitutionally tortious. Ayler v. Hopper, M.D.Ala.1981, 532 F.Supp. 198. Civil Rights 1034

Under this section creating federal cause of action against those who, acting under color of state law, cause a deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States, it is the violation of federal constitutional rights which may be redressed, not violation of state law. Morrison v. Fox, W.D.Pa.1979, 483 F.Supp. 390. Civil Rights 1027

Violations of state law do not give rise to a claim for federal relief under this section. Croy v. Skinner, N.D.Ga.1976, 410 F.Supp. 117. Civil Rights 1027

1169. ---- Federal right based on state law, state law violation, deprivation of constitutional or statutory rights generally

Violation of state law is not cognizable under § 1983 unless state statute supplies basis for the claim of a constitutional right. Schepp v. Fremont County, Wyo., D.Wyo.1988, 685 F.Supp. 1200, affirmed 900 F.2d 1448. Civil Rights 1027

1170. ---- Federal law violation as result, state law violation, deprivation of constitutional or statutory rights generally

Allegation that New York authorities violated state regulations in reducing medicaid reimbursement rate could not provide basis for claim under this section by medicaid provider, notwithstanding contention that state medicaid plan had to conform with section 1396a of this title and that, therefore, any violation of state regulations constituted a violation of federal law. Oberlander v. Perales, C.A.2 (N.Y.) 1984, 740 F.2d 116. Civil Rights 1395(1)

Violation of state law by state official, without more, is not violation of federal right to procedural due process; but when state officials' violation of state law causing imposition of cruel and unusual punishment, federal cause of action arises under this section. Miller v. Carson, C.A.5 (Fla.) 1977, 563 F.2d 757. Civil Rights 1029; Constitutional Law 318(1)

Proof that state procedural law was violated does not by itself constitute a deprivation of due process, for purposes of § 1983 suit, since federal constitutional standards rather than state law define the requirements of procedural due process. McAllister v. New York City Police Dept., S.D.N.Y.1999, 49 F.Supp.2d 688. Constitutional Law 251.5

Fact that federal regulation governing Aid to Families with Needy Children (AFNC) program merely indicated that state must process AFNC applications within reasonable time not to exceed 45 days, but that state selected 30

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day time limit, did not compel finding that 30-day time limit did not create federal right secured by § 1983; state did not have wide latitude of discretion to comply with regulation, and regulation incorporated state's time limit by stating that applicant must receive check or be notified within time prescribed by state regulations. Robidoux v. Kitchel, D.Vt.1995, 876 F.Supp. 575. Civil Rights 1052

Rights which derive solely from state law cannot be the subject of a claim for relief under this section; it is only when a violation of state law results in an infringement of a federally protected right that a cause of action may be said to exist. State of Mo. ex rel. Gore v. Wochner, E.D.Mo.1979, 475 F.Supp. 274, affirmed 620 F.2d 183, certiorari denied 101 S.Ct. 218, 449 U.S. 875, 66 L.Ed.2d 96. See, also, Boyer v. State of Wis., D.C.Wis.1972, 345 F.Supp. 564. Civil Rights 1027

Mere violation of state law did not state constitutional claim under §§ 1983, and therefore state inmate's §§ 1983 claim alleging that state's DNA collection statute was incorrectly applied to him, in violation of his due process rights, was frivolous, supporting dismissal under in forma pauperis (IFP) statute. Brown v. Williams, C.A.5 (La.) 2005, 124 Fed.Appx. 907, 2005 WL 673493, Unreported. Federal Civil Procedure 2734

1171. ---- Constitution of state, state law violation, deprivation of constitutional or statutory rights generally

Claim that regulations of California Department of Alcoholic Beverage Control that regulate type of entertainment that might be presented in bars and nightclubs that it licensed exceed the constitutional authority of the Department as matter of state law was not cognizable in action under Civil Rights Act challenging the constitutionality of the regulations. California v. LaRue, U.S.Cal.1972, 93 S.Ct. 390, 409 U.S. 109, 34 L.Ed.2d 342, rehearing denied 93 S.Ct. 1351, 410 U.S. 948, 35 L.Ed.2d 615. Civil Rights 1047

Business owners' claim for damages against state trooper who allegedly violated their civil rights and discriminated against them in violation of Massachusetts Constitution by deliberately making it difficult for them to operate business because of their hiring of employees of Russian heritage was not cognizable under § 1983; section 1983 did not provide remedy for violation of a right based on a state constitution. Lecrenski Bros. Inc. v. Johnson, D.Mass.2004, 312 F.Supp.2d 117. Civil Rights 1088(1)

There was no private right of action for alleged violations of search and seizure provision of New York State Constitution where plaintiffs had viable § 1983 false arrest claim that could vindicate any violation of plaintiffs' Fourth Amendment right to be free from unreasonable searches and seizures. Coakley v. Jaffe, S.D.N.Y.1999, 49 F.Supp.2d 615, affirmed 234 F.3d 1261. Searches And Seizures 85

Claim that Governor lacked authority to order joint deployment of National Guard members and police officers and that specific acts of defendant police officers violated scope of Governor's decree were claims for violations of local laws or regulations, and thus were insufficient to support § 1983 claim. Mendez Marrero v. Toledo, D.Puerto Rico 1997, 968 F.Supp. 27. Civil Rights 1088(1)

Transgression of protection of State Constitution may not form basis of § 1983 claim. Magnuson v. Cassarella, N.D.Ill.1992, 812 F.Supp. 824. Civil Rights 1027

1172. ---- Statutes of state, state law violation, deprivation of constitutional or statutory rights generally

Assertion that defendant lawyers, judges and clerks of court misused Illinois statutes in Illinois court as a shield for commission of allegedly criminal and tortious conduct did not assert a denial of rights under U.S.C.A.Const. Amend. 14 or a claim upon which relief could be granted under this section. Brown v. Dunne, C.A.7 (Ill.) 1969, 409 F.2d 341. Civil Rights 1395(1); Constitutional Law 253(1)

Claim that state and privately and publicly employed social workers violated Michigan Child Protection Act was

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not cognizable in federal civil rights action. Bartell v. Lohiser, E.D.Mich.1998, 12 F.Supp.2d 640, affirmed 215 F.3d 550. Civil Rights 1057

Assuming that state statute governing administration of county law libraries granted right of access to libraries to members of the public, deprivation of such right was not cognizable under § 1983, since it was not right secured by constitution or laws of United States. Roberts v. Childs, D.Kan.1997, 956 F.Supp. 923, reconsideration denied 1997 WL 83398, affirmed 125 F.3d 862. Civil Rights 1056

Even if defendant police chief "screamed" at plaintiff mother and threatened to arrest her for trespassing after she parked in her minor child's paternal grandparents' driveway with intention of taking child to child's father's funeral, mother failed to show that police chief violated § 1983 by aiding and abetting violation of Wisconsin criminal laws that prohibit unlawful detention of children; evidence showed that, at time of incident in question, mother consented to arrangement whereby her child would attend father's funeral with her brothers and grandparents and, while that arrangement may not have been entirely satisfactory to mother, she did not convey any dissatisfaction to her mother, to police chief, or to child's grandparents. Van Loo v. Braun, E.D.Wis.1996, 940 F.Supp. 1390. Civil Rights 1088(1)

Violation of state statute is not sufficient, standing alone, to establish violation of constitutional right needed to prevail in § 1983 civil rights claim. Ms. B. v. Montgomery County Emergency Service, Inc., E.D.Pa.1992, 799 F.Supp. 534, affirmed 989 F.2d 488, certiorari denied 114 S.Ct. 174, 510 U.S. 860, 126 L.Ed.2d 133. Civil Rights 1027

Violation of a state statute does not in and of itself establish a constitutional violation. Molgaard v. Town of Caledonia, E.D.Wis.1981, 527 F.Supp. 1073, affirmed 696 F.2d 58. Constitutional Law 254(2)

A violation of the Pennsylvania Unfair Trade Practice and Consumer Protection Law, 73 P.S.Pa. § 201-2 et seq., does not give rise to an action under this section, as it is a state law claim involving no federally secured right. Ruman v. Com. of Pa., Dept. of Revenue, M.D.Pa.1979, 462 F.Supp. 1355, affirmed 612 F.2d 574, certiorari denied 100 S.Ct. 2939, 446 U.S. 964, 64 L.Ed.2d 823. Civil Rights 1041

Failure to follow dictates of state statute does not, by itself, constitute a civil rights violation. Robinson v. Leahy, N.D.Ill.1975, 401 F.Supp. 1027. Civil Rights 1027

Prisoner's allegations of violations under the Kansas constitution were not cognizable under §§ 1983. Hood v. Kansas Prisoner Health Services, Inc., C.A.10 (Kan.) 2006, 2006 WL 1230688, Unreported. Civil Rights 1098

Claims of violation of New York criminal law were not cognizable in § 1983 action. Hansel v. Brazell, C.A.2 (N.Y.) 2004, 85 Fed.Appx. 237, 2004 WL 25257, Unreported. Civil Rights 1029

1173. ---- Uniform state laws, state law violation, deprivation of constitutional or statutory rights generally

Even if police officers violated Uniform Extradition Act, extradited arrestee had no claim against officers under § 1983 for such violation; Act was not law of United States and was not enacted pursuant to agreement or compacts between any states, but rather, was promulgated by conference of commissioners in uniform state laws and adopted by approximately ten states thereafter. Giano v. Martino, E.D.N.Y.1987, 673 F.Supp. 92, affirmed 835 F.2d 1429. Civil Rights 1088(4)

1174. ---- State compacts, state law violation, deprivation of constitutional or statutory rights generally

A state compact is transformed into federal law, and thus may be the basis for a § 1983 action, when (1) it falls

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within the scope of the Constitution's Compact Clause, (2) it has received congressional consent, and (3) its subject matter is appropriate for congressional legislation. Ghana v. Pearce, C.A.9 (Or.) 1998, 159 F.3d 1206. Civil Rights 1029; States 6

1175. ---- Tort law of state, state law violation, deprivation of constitutional or statutory rights generally

Civil rights statute providing liability for deprivation of rights under color of law imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law; remedy for the latter type of injury must be sought in state court under traditional tort law principles. Baker v. McCollan, U.S.Tex.1979, 99 S.Ct. 2689, 443 U.S. 137, 61 L.Ed.2d 433, on remand 601 F.2d 903. Civil Rights 1034; Civil Rights 1315

Many harms which are caused by state actor do not fall within scope of § 1983, which is not intended to turn Fourteenth Amendment into a font of tort law that supersedes tort systems already available under individual state laws. Gregory v. City of Rogers, Ark., C.A.8 (Ark.) 1992, 974 F.2d 1006, certiorari denied 113 S.Ct. 1265, 507 U.S. 913, 122 L.Ed.2d 661. Civil Rights 1034

Action under § 1983 may not be based alone on violation of state law or on state tort. Clark v. Link, C.A.4 (N.C.) 1988, 855 F.2d 156. Civil Rights 1027; Civil Rights 1034

Not all state law torts are constitutional violations for which this section provides remedy; this section creates species of tort liability only for deprivations, under color of state law, of federal statutory or constitutional rights. Sampley v. Ruettgers, C.A.10 (Wyo.) 1983, 704 F.2d 491. Civil Rights 1034

Existence of state tort claim does not negate entitlement of a litigant to federal civil rights action as well. Howell v. Tanner, C.A.5 (Ga.) 1981, 650 F.2d 610, rehearing denied 659 F.2d 1079, certiorari denied 102 S.Ct. 1775, 456 U.S. 918, 72 L.Ed.2d 178, certiorari denied 102 S.Ct. 1777, 456 U.S. 919, 72 L.Ed.2d 180. Civil Rights 1034

A valid cause of action under this section is not alleged simply by assertion that common law tort was committed by state official; rather, to have meritorious claim, plaintiff must allege that he was deprived of some constitutional right. Cramer v. Crutchfield, C.A.4 (Va.) 1981, 648 F.2d 943. Civil Rights 1394

This section giving right of action for deprivation of rights occasioned while the actor is acting under color of state law is not a general tort statute but imposes liability only for the violation of rights secured by the Constitution and laws of the United States and, hence, does not grant a cause of action for every injury wrongfully inflicted by a state officer. Shillingford v. Holmes, C.A.5 (La.) 1981, 634 F.2d 263, on remand 512 F.Supp. 656. See, also, Jordan v. Five Unamed Police Officers and Agents, E.D.La.1981, 528 F.Supp. 507. Civil Rights 1027; Civil Rights 1326(2)

Although this section may be analyzed as a "species of tort," violation of local law does not necessarily mean that federal rights have been invaded. Williams v. Kelley, C.A.5 (Ga.) 1980, 624 F.2d 695, rehearing denied 632 F.2d 895, certiorari denied 101 S.Ct. 3009, 451 U.S. 1019, 69 L.Ed.2d 391. Civil Rights 1027

Conduct which merely engenders common law tort liability, without infringing on constitutionally protected interests, is not a sufficient basis to support a cause of action under this section. Beker Phosphate Corp. v. Muirhead, C.A.5 (Fla.) 1978, 581 F.2d 1187. See, also, Lovelace v. Leechburg Area School Dist., D.C.Pa.1970, 310 F.Supp. 579. Civil Rights 1034

This section does not provide a remedy for mere common-law torts. Street v. Surdyka, C.A.4 (Md.) 1974, 492 F.2d 368. See, also, Owens v. Swift Agr. and Chemical Corp., D.C.Va.1979, 477 F.Supp. 91, affirmed 612 F.2d 1309; Bolden v. Mandel D.C.Md.1974, 385 F.Supp. 761. Civil Rights 1034

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A tort committed by state official acting under color of law is not, in and of itself, sufficient to show an invasion of a person's right under this section. Kent v. Prasse, C.A.3 (Pa.) 1967, 385 F.2d 406. See, also, Patricia B .v. Jones, D.C.Pa.1978, 454 F.Supp. 18; McCarther v. Grady County, Okl., D.C.Okl.1977, 437 F.Supp. 831. Civil Rights 1034

Negligence is a state law tort, not a constitutional violation, and must therefore be brought pursuant to state law. Maxwell v. City of New York, S.D.N.Y.2003, 272 F.Supp.2d 285, reconsideration denied, affirmed in part, vacated in part and remanded 380 F.3d 106, supplemented 108 Fed.Appx. 10, 2004 WL 1800645. Civil Rights 1034

Not every state law tort becomes federally cognizable constitutional tort under civil rights statute simply because it is committed by state actor. Wallace by Wallace v. Batavia School Dist. 101, N.D.Ill.1994, 870 F.Supp. 222, affirmed 68 F.3d 1010. Civil Rights 1034

Allegations of tortious conduct are insufficient to sustain a violation of this subchapter; rather, the wrong must be of a federally protected right. Samuels v. Department of Correction, N. Y. C., E.D.N.Y.1982, 548 F.Supp. 253. Civil Rights 1394

Commission of a state tort simply because it is done by a state official does not amount to cause of action under this section. O'Brien's Estate v. Wilkins, N.D.Fla.1981, 511 F.Supp. 707.

There is close relationship between tort law and this section, but some violations of tort law will not be cognizable under this section while this section will reach certain conduct that may not be tortious at common law. Marrapese v. State of R. I., D.C.R.I.1980, 500 F.Supp. 1207. Civil Rights 1034

Tortious conduct by a state prison official is not sufficient to establish an invasion of rights guaranteed by the Constitution. Hayes v. Cuyler, E.D.Pa.1979, 475 F.Supp. 1347. Civil Rights 1090

Not every tort recognized under state law is sufficient to pass the constitutional threshold so as to allow the maintenance of an action under this section. Brainerd v. Potratz, N.D.Ill.1976, 421 F.Supp. 836. Civil Rights 1034

This section is not designed to be a font of federal tort law; fact that a tort may have been committed by state officials does not mean that a federal right has been invaded. Roach v. Kligman, E.D.Pa.1976, 412 F.Supp. 521. Civil Rights 1034

This section does not provide remedy for mere common-law torts, even when committed under color of state law. Taylor v. Nichols, D.C.Kan.1976, 409 F.Supp. 927, affirmed 558 F.2d 561. Civil Rights 1034

1176. ---- Orders of state courts, state law violation, deprivation of constitutional or statutory rights generally

Fact that New York State law provided remedy for partially overlapping tort of malicious prosecution did not preclude arrestee from pursuing § 1983 action against arresting officers, arising from "seizure" that resulted from post-arraignment order that arrestee not leave State of New York and requirement that he attend court appointments. Murphy v. Lynn, C.A.2 (N.Y.) 1997, 118 F.3d 938, certiorari denied 118 S.Ct. 1051, 522 U.S. 1115, 140 L.Ed.2d 114. Civil Rights 1319

County's alleged failure to completely comply with municipal court's expungement order presented only a question of state law, and thus did not form basis for claim for relief under this section. Bird v. Summit County, Ohio, C.A.6 (Ohio) 1984, 730 F.2d 442. Civil Rights 1029

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1177. ---- Determination of state law, state law violation, deprivation of constitutional or statutory rights generally

Mere mutual mistakes of state law do not rise to the level of constitutional violations, and deprivation of a right secured by the Constitution or laws of the United States is a prerequisite to an action under this section. Crocker v. Hakes, C.A.5 (Ga.) 1980, 616 F.2d 237. Civil Rights 1027

Mere erroneous determination by state agency charged with enforcement of state law does not present substantial federal question. Stenson v. State of N. Y., S.D.N.Y.1976, 422 F.Supp. 38. Federal Courts 12.1

1178. ---- Application of state law, state law violation, deprivation of constitutional or statutory rights generally

In general, misapplication of state law by state official does not give rise to action for infringement of constitutional rights; it merely entitles plaintiff to bring action for violation of state law. Esteves-Jimenez v. Sosa Llorens, D.Puerto Rico 1992, 789 F.Supp. 508. Civil Rights 1315

Commission of error by state court in applying state law which deprives federal plaintiff of property does not raise federal constitutional question for purpose of action under this section. Coltharp v. Cutler, D.C.Utah 1976, 419 F.Supp. 924. Civil Rights 1071

1179. Federal law violation generally, deprivation of constitutional or statutory rights generally

Civil Rights Act of 1871 does not create a remedy for all conduct that may result in violation of rights, privileges or immunities secured by the Constitution and laws. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Civil Rights 1031

To establish claim under this section proscribing a deprivation of rights, plaintiff must have suffered the deprivation of federally protected rights, privileges or immunities as result of action taken and such deprivation must have been caused by a person acting under color of state law. Parratt v. Taylor, U.S.Neb.1981, 101 S.Ct. 1908, 451 U.S. 527, 68 L.Ed.2d 420. See, also, Brown v. Miller, C.A.5 (Miss.) 1980, 631 F.2d 408; Triplett v. Azordegan, C.A.8 (Iowa) 1978, 570 F.2d 819; Jacobson v. Tahoe Regional Planning Agency, C.A.9 (Nev.) 1977, 566 F.2d 1353, affirmed in part, reversed in part on other grounds 99 S.Ct. 1171, 440 U.S. 391, 59 L.Ed.2d 401, on remand 474 F.Supp. 901; Baldwin v. Appalachian Power Co., C.A.4 (W.Va.) 1977, 556 F.2d 241; Basista v. Weir, C.A.3 (Pa.) 1965, 340 F.2d 74; Marland v. Heyse, C.A.10 (Colo.) 1963, 315 F.2d 312; Jones v. Taibbi, D.C.Mass.1981, 508 F.Supp. 1069; Becker v. Evans, D.C.Pa.1979, 478 F.Supp. 729; Bradford v. Edelstein, D.C.Tex.1979, 467 F.Supp. 1361; Taylor v. Grindstaff, D.C.Tenn.1978, 467 F.Supp. 4.

First inquiry in suit under 1871 civil rights statute is whether plaintiff has been deprived of rights secured by Constitution and laws of the United States. Martinez v. State of Cal., U.S.Cal.1980, 100 S.Ct. 553, 444 U.S. 277, 62 L.Ed.2d 481, rehearing denied 100 S.Ct. 1285, 445 U.S. 920, 63 L.Ed.2d 606. Civil Rights 1027

To establish § 1983 civil rights cause of action for federal statute violation, statute must create enforceable right and Congress must not have foreclosed use of § 1983. Audette v. Sullivan, C.A.6 (Mich.) 1994, 19 F.3d 254. Civil Rights 1027

To bring action under § 1983, plaintiff must show both existence of federal constitutional or statutory right and some deprivation of these federal rights as a result of official action. Willhauck v. Halpin, C.A.1 (Mass.) 1991, 953 F.2d 689, rehearing denied. Civil Rights 1304

Civil rights statute [42 U.S.C.A. § 1983] protects only against violation of federally protected rights. Casines v. Murchek, C.A.11 (Fla.) 1985, 766 F.2d 1494, rehearing denied 773 F.2d 1239. Civil Rights 1027

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This section neither provides a general remedy for the alleged torts of state officials nor opens the federal courthouse doors to relieve the complaints of all who suffer injury at the hands of the state or its officers; it affords a remedy only to those who suffer, as a result of state action, deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States. White v. Thomas, C.A.5 (Tex.) 1981, 660 F.2d 680, certiorari denied 102 S.Ct. 1731, 455 U.S. 1027, 72 L.Ed.2d 148. See, also, Juncker v. Tinney, D.C.Md.1982, 549 F.Supp. 574; Sell v. Price, S.D.Ohio 1981, 527 F.Supp. 114. Civil Rights 1027; Civil Rights 1034

In order to state a claim upon which relief can be granted under this section, complaint must show the deprivation of a right that is secured by the Constitution or laws of the United States. Bradt v. Smith, C.A.5 (Tex.) 1981, 634 F.2d 796, certiorari denied 102 S.Ct. 125, 454 U.S. 830, 70 L.Ed.2d 106. See, also, Reilly v. Leonard, D.C.Conn.1978, 459 F.Supp. 291; Giannaris v. Frank, D.C.Ill.1974, 387 F.Supp. 570. Civil Rights 1394

In determining whether plaintiff stated claim cognizable under this section, it was necessary to inquire first whether plaintiff had been deprived of rights secured by Constitution and laws and, in order to determine whether rights were "secured by" U.S.C.A.Const. Amend. 14, to find allegation that state was "involved in" their deprivation. Dahl v. Akin, C.A.5 (Tex.) 1980, 630 F.2d 277, certiorari denied 101 S.Ct. 1977, 451 U.S. 908, 68 L.Ed.2d 296. Civil Rights 1394

In order to state claim upon which relief can be granted for deprivation of civil rights, one must allege that he, himself, sustained deprivation of right, privilege or immunity secured to him by Constitution and laws of United States. Inmates v. Owens, C.A.4 (Va.) 1977, 561 F.2d 560. Civil Rights 1394

This section does not create a remedy for every wrong committed under color of state law; only deprivations of rights secured by the Constitution and laws of the United States are actionable. Ohio Inns, Inc. v. Nye, C.A.6 (Ohio) 1976, 542 F.2d 673, certiorari denied 97 S.Ct. 1583, 430 U.S. 946, 51 L.Ed.2d 794. See, also, Santiago-De-Castro v. Morales-Medina, D.Puerto Rico 1990, 737 F.Supp. 729, affirmed 943 F.2d 129. Civil Rights 1027

In addition to allegation of requisite degree of culpability, plaintiffs, who seek to recover under this section must show violation of federally secured rights. Williams v. Field, C.A.9 (Cal.) 1969, 416 F.2d 483, certiorari denied 90 S.Ct. 1252, 397 U.S. 1016, 25 L.Ed.2d 431.

Amended complaint which sought to recover claimed monetary loss based upon fraud and deceit did not invoke jurisdiction of federal court in nondiversity action; in order to do so the amended complaint must allege facts which show that plaintiffs were subjected to the deprivation of a right, privilege or immunity secured by the Constitution and laws of the United States. Sanders v. Erreca, C.A.9 (Cal.) 1967, 377 F.2d 960, certiorari denied 88 S.Ct. 776, 389 U.S. 1039, 19 L.Ed.2d 828. Federal Courts 243

Cause of action pursuant to § 1983 to address violation of federal statute is not available where governing statute provides exclusive remedy for violations of its terms. Rural Water System No. 1 v. City of Sioux Center, Iowa, N.D.Iowa 1997, 967 F.Supp. 1483, affirmed 202 F.3d 1035, rehearing and rehearing en banc denied, certiorari denied 121 S.Ct. 61, 531 U.S. 820, 148 L.Ed.2d 28. Civil Rights 1027

In order to state cognizable claim under federal civil rights statute, plaintiff must present facts which held that defendants, while acting under color of state law, deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States; statute is not in itself a source of substantive rights and provides only a remedy, with the substantive rights to be found in the Constitution or the federal law. Nicholson v. Moran, D.R.I.1993, 835 F.Supp. 692. Civil Rights 1304; Civil Rights 1305

Civil rights claims are valid only against officials who, acting under color of state law, violate either United States Constitution or federal statute. Carey on Behalf of Carey v. Maine School Administrative Dist. No. 17, D.Me.1990,

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42 U.S.C.A. § 1983

754 F.Supp. 906. Civil Rights 1304

Section 1983 provides redress only for infringement of rights secured by Constitution and laws of United States, and thus, threshold requirement in virtually every § 1983 action is identification of which constitutional right plaintiff seeks to vindicate. Ryan v. Burlington County, D.N.J.1987, 674 F.Supp. 464, affirmed and remanded on other grounds 860 F.2d 1199, certiorari denied 109 S.Ct. 1745, 490 U.S. 1020, 104 L.Ed.2d 182. Civil Rights 1027

To show a violation of this section, plaintiffs must show that they were deprived by conduct fairly attributable to state of a right secured by the Constitution and laws of the United States. Chicarelli v. Plymouth Garden Apartments, E.D.Pa.1982, 551 F.Supp. 532. Civil Rights 1401

Complaint states a claim under this section if it states a claim under any constitutional or statutory provision other than due process clause, if it alleges that the deprivation has resulted from application of an established state procedure, if the deprivation has resulted from a random and unauthorized act of the defendants and plaintiff does not have state remedies which satisfy the requirements of due process or if the complaint states a claim of violation of substantive due process rights. Juncker v. Tinney, D.C.Md.1982, 549 F.Supp. 574. Civil Rights 1395(1)

In order to state a valid claim under this section, pleader must allege an independent substantive basis, grounded either in a federal constitutional or statutory right. Schwartzberg v. Califano, S.D.N.Y.1979, 480 F.Supp. 569. Civil Rights 1396

Assertion of a deprivation of rights, privileges or immunities secured by the Constitution or laws of the United States is a prerequisite to recovery under this section. Ruffin v. Beal, E.D.Pa.1978, 468 F.Supp. 482.

Rights protected by this section rendering a person who deprives another of a right or privilege liable to injured party are public ones, created or adopted by the federal constitution or by Congress; the federal rights entail a person's civil rights and personal liberties, including nondiscrimination, voting, free speech and freedom of assembly, equal protection and due process in safeguarding proprietary rights, as well as personal liberties. Dorak v. Shapp, M.D.Pa.1975, 403 F.Supp. 863. Civil Rights 1029; Civil Rights 1028

1180. Constitutional violation, deprivation of constitutional or statutory rights generally--Generally

When multiple violations of Constitution are alleged in civil rights suit, each constitutional provision is examined by court in turn, and court does not generally as preliminary matter identify the claim's dominant character. Soldal v. Cook County, Ill., U.S.Ill.1992, 113 S.Ct. 538, 506 U.S. 56, 121 L.Ed.2d 450, on remand 986 F.2d 1425. Civil Rights 1303

First Amendment, equal protection and due process clauses of Fourteenth Amendment, and other provisions of Federal Constitution afford protection to employees who serve government as well as to those who are served by them, and § 1983 provides cause of action for all citizens injured by abridgement of those protections. Collins v. City of Harker Heights, Tex., U.S.Tex.1992, 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1027; Constitutional Law 82(11); Constitutional Law 238.5; Constitutional Law 278.4(1)

If plaintiff suffered injury barred by Federal Constitution, he had remedy for damages under 1871 civil rights statute. City of Los Angeles v. Lyons, U.S.Cal.1983, 103 S.Ct. 1660, 461 U.S. 95, 75 L.Ed.2d 675. Civil Rights 1304

Presence or absence of congressional authorization for suits against federal officials is relevant to the question of whether to infer a right of action for damages for a particular violation of the Constitution. Butz v. Economou, U.S.N.Y.1978, 98 S.Ct. 2894, 438 U.S. 478, 57 L.Ed.2d 895, on remand 466 F.Supp. 1351. United States

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42 U.S.C.A. § 1983

127(1)

It is constitutional deprivation under color of state law, and not force used in effecting the deprivation or extent of injury suffered, that provides basis for action under this section. Pritchard v. Perry, C.A.4 (S.C.) 1975, 508 F.2d 423. Civil Rights 1324

Absence of any violated constitutional rights precluded liability of city in §§ 1983 action, for being moving force behind allegedly wrongful killing of arrestee's dog, and cover up of details. Chambers v. Doe, D.Del.2006, 453 F.Supp.2d 858. Civil Rights 1348

First inquiry in any §§ 1983 suit is whether the plaintiff has been deprived of a right secured by the Constitution and laws; if there has been no such deprivation, the state of mind of the defendant is wholly immaterial. World Wide Street Preachers' Fellowship v. Town of Columbia, W.D.La.2006, 411 F.Supp.2d 671. Civil Rights 1027

Person "subjects" another to deprivation of constitutional right, for purpose of § 1983 claim, if he does affirmative act, or omits to perform act which he is legally required to do, that caused deprivation of which complaint is made. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1031; Civil Rights 1335

A city's failure to follow its own internal policies does not amount to a constitutional violation under § 1983. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1031

County's alleged failure to follow its own probation policies for new officers was not a per se constitutional violation, for purposes of arrestee's § 1983 claim. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1088(4)

Personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1335

When § 1983 provides a remedy, an implied cause of action grounded on the Constitution is not available. Dix v. City of New York, S.D.N.Y.2002, 2002 WL 31175251, Unreported. Civil Rights 1322

1181. ---- Necessary element of action, constitutional violation, deprivation of constitutional or statutory rights generally

A public official is liable under this section providing liability for deprivation of rights under color of law only if he causes plaintiff to be subjected to deprivation of his constitutional rights. Baker v. McCollan, U.S.Tex.1979, 99 S.Ct. 2689, 443 U.S. 137, 61 L.Ed.2d 433, on remand 601 F.2d 903. Civil Rights 1326(2)

Causes of action under civil rights statute are not limited to claims based on constitutional or equal rights violations. West Virginia University Hospitals, Inc. v. Casey, C.A.3 (Pa.) 1989, 885 F.2d 11, rehearing denied, certiorari granted 110 S.Ct. 1294, 494 U.S. 1003, 108 L.Ed.2d 472, certiorari denied 110 S.Ct. 3213, 496 U.S. 936, 110 L.Ed.2d 661, affirmed 111 S.Ct. 1138, 499 U.S. 83, 113 L.Ed.2d 68. Civil Rights 1027

Violation under this section must be predicated on a deprivation of constitutional rights. Bird v. Summit County, Ohio, C.A.6 (Ohio) 1984, 730 F.2d 442. Civil Rights 1027

Where no constitutional violation was shown, there was no claim under this section. Gearheart v. Federal Reserve Bank of Cleveland, C.A.6 (Ohio) 1975, 516 F.2d 353, certiorari denied 96 S.Ct. 274, 423 U.S. 927, 46 L.Ed.2d 254

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. Civil Rights 1027

Deprivation of constitutional rights by defendant acting under color of state law must be proved in order to recover under this section. Greco v. Orange Memorial Hospital Corp., C.A.5 (Tex.) 1975, 513 F.2d 873, rehearing denied 515 F.2d 1183, certiorari denied 96 S.Ct. 433, 423 U.S. 1000, 46 L.Ed.2d 376. Civil Rights 1401

State officials can only be held accountable under this section in federal courts for conduct and actions taken pursuant to their official duties where a clear showing is made of a violation of some federal constitutional right. Cole v. Smith, C.A.8 (Minn.) 1965, 344 F.2d 721. Civil Rights 1376(3)

Even if Pennsylvania city housing authority employee asserted constitutional claim for age discrimination independent from ADEA claim, he had not shown he was deprived of a constitutional right. Alba v. Housing Authority of City of Pittston, M.D.Pa.2005, 400 F.Supp.2d 685. Civil Rights 1207

In order to be awarded relief in a civil rights action, plaintiff must establish that a particular defendant has caused a deprivation of a right guaranteed by the Federal Constitution and that that person acted under color of state law. Jackson v. Dillon, E.D.N.Y.1981, 518 F.Supp. 618. Civil Rights 1304

A civil rights complaint must show a deprivation of a right or immunity protected by the federal Constitution. Coyle v. Hughs, W.D.Okla.1977, 436 F.Supp. 591. Civil Rights 1394

This section is federal remedy which protects only federal constitutional rights. Somers v. Strader, M.D.N.C.1977, 435 F.Supp. 1184.

An essential element of an actionable civil rights complaint is the establishment of a constitutional deprivation. Mitchell v. Hendricks, E.D.Pa.1977, 431 F.Supp. 1295. See, also, Shaffer v. Jennings, D.C.Pa.1970, 314 F.Supp. 588. Civil Rights 1027

1182. ---- Recognized right, constitutional violation, deprivation of constitutional or statutory rights generally

Both the statutory § 1983 claim and the judicially created *Bivens* claim provide remedies rather than substantive rights; plaintiff must allege a violation of a recognized constitutionally created right. Jacob v. Curt, D.R.I.1989, 721 F.Supp. 1536, affirmed 898 F.2d 838. Civil Rights 1305; Civil Rights 1394; United States 50.1

1183. ---- Commerce clause, constitutional violation, deprivation of constitutional or statutory rights generally

Suits for violations of the commerce clause may be brought under § 1983. Dennis v. Higgins, U.S.Neb.1991, 111 S.Ct. 865, 498 U.S. 439, 112 L.Ed.2d 969. Civil Rights 1041

Commerce clause, U.S.C.A. Const. Art. 1, § 8, cl. 3, does not secure rights cognizable under this section. Consolidated Freightways Corp. of Delaware v. Kassel, C.A.8 (Iowa) 1984, 730 F.2d 1139, certiorari denied 105 S.Ct. 126, 469 U.S. 834, 83 L.Ed.2d 68.

Employee of Florida Fish and Wildlife Conservation Commission did not violate alleged right of seaplane operator under Commerce Clause of United States Constitution to engage in lawful business by alleged wrongful issuance of citation and threats of arrest under Florida Manatee Sanctuary Act (FMSA) for operation of seaplane in "Manatee Slow Speed Zone," for purpose of employee's assertion of qualified immunity in civil rights lawsuit, since neither Florida legislature, agency, nor any other governmental body took legislative action that would have impinged upon operator's right to engage in lawful business activity. Tague v. Florida Fish and Wildlife Conservation Com'n, M.D.Fla.2005, 390 F.Supp.2d 1195, affirmed 154 Fed.Appx. 129, 2005 WL 2981921. Environmental Law 530

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42 U.S.C.A. § 1983

Solid waste generator's and solid waste hauler's action against county alleging that waste-disposal ordinances improperly increased price of disposal contracts for generators and decreased fees for haulers in violation of Commerce Clause and Due Process Clause had to be brought via § 1983, rather than being pled as direct claim under Constitution. Seacoast Sanitation Ltd., Inc. v. Broward County, Florida, S.D.Fla.2003, 275 F.Supp.2d 1370. Civil Rights 1322

Commerce Clause was not implicated in taxicab companies' and operators' § 1983 action alleging that city's relocation of ordinance-created taxi stands without notice violated due process; each plaintiff operated within city, and none was out-of-state entity allegedly being discriminated against by state. Fortuna's Cab Service, Inc. v. City of Camden, D.N.J.2003, 269 F.Supp.2d 562. Commerce 82.20

Parties to proposed merger, who sought preliminary injunctive relief, were likely succeed on merits of their claims that Puerto Rico Secretary of Justice's imposition of certain conditions on them before approving their transaction constituted selective and vindictive enforcement in violation of Equal Protection Clause and violation of Commerce Clause; requirement that acquiring corporation maintain a high level of purchases from local suppliers, distributors and manufacturers fell within the type of protectionist state policies subject to the "virtually invalid per se rule," Secretary's intent in denying approval of the merger on the basis of parties' failure to submit to her requests was to punish them for their defiance to her demands, and Secretary also violated parties' right to equal protection when she attempted to extract from them a consent decree that in effect amended the labor laws applicable to them as employers. Wal-Mart Stores, Inc. v. Rodriguez, D.Puerto Rico 2002, 238 F.Supp.2d 395, remanded 322 F.3d 747, vacated. Injunction 138.42

Section 1983 action brought by builders and dealers of manufactured homes, claiming that county officials acting under color of state law had deprived them of their right under commerce clause to engage in interstate commerce free of state regulatory interference by applying local construction and safety codes to federally-certified manufactured home, stated valid cause of action which was not precluded by comprehensive enforcement scheme. Bollack v. City of Mitchell, S.D., D.S.D.1996, 935 F.Supp. 1042. Civil Rights 1081

This section was not intended to and does not provide a remedy for a dormant claim under U.S.C.A. Const. Art. 1, § 8, cl. 3 and, hence, attorney fees were not recoverable under section 1988 of this title on behalf of trucking firm which prevailed on its commerce clause challenge to state ban on 65-foot twin trailer trucks on interstate highways. Consolidated Freightways Corp. of Delaware v. Kassel, S.D.Iowa 1983, 556 F.Supp. 740, affirmed 730 F.2d 1139, certiorari denied 105 S.Ct. 126, 469 U.S. 834, 83 L.Ed.2d 68. Civil Rights 1479

Allegations that state Insurance Department violated insurance agent's alleged rights under the First Amendment to do business and to associate, under the First and Fourteenth Amendments to pursue his chosen profession, and under the Commerce Clause to further his business ends, by revoking agent's license, which was subsequently restored after judicial review, did not state specific constitutional violation sufficient to state §§ 1983 claim based on malicious use of civil process. Wyatt v. Keating, C.A.3 (Pa.) 2005, 130 Fed.Appx. 511, 2005 WL 834462, Unreported. Civil Rights 1395(1)

Sexual orientation discrimination will not support conspiracy claim under § 1985. Dix v. City of New York, S.D.N.Y.2002, 2002 WL 31175251, Unreported. Conspiracy 7.5(2)

1184. ---- Contracts clause, constitutional violation, deprivation of constitutional or statutory rights generally

Entertainers showed that municipality intended to enter into agreement with them for use of municipal theater, on motion by municipality in lawsuit under § 1983 to set aside preliminary and permanent injunction, where municipality received 50% deposit from entertainers, First Amendment prohibited municipality from unilaterally rejecting any application by entertainers, and municipality did not otherwise indicate that it did not have valid contract with entertainers at time of purported "cancellation." Producciones Gran Escenario, Inc. v. Ruiz, D.Puerto

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Rico 2004, 310 F.Supp.2d 440. Civil Rights 1451; Civil Rights 1457(2); Constitutional Law 90.1(4); Municipal Corporations 721(3)

To show violation of contracts clause of United States Constitution, plaintiff must establish that state impaired its contract, and that impairment was substantial. MSA Realty Corp. v. State of Ill., N.D.Ill.1992, 794 F.Supp. 267, affirmed 990 F.2d 288. Constitutional Law 154(1)

Hearing aid dealer had no claim against state employees under contract clause of U.S.C.A.Const. Art. 1, § 10, cl. 1, based on their alleged conspiracy to interfere with his contract relations by instructing buyers not to pay purchase obligations and informing bank, as assignee of installment contracts, that the contracts had been fraudulently obtained and that dealer might lose his license, even if the employees were acting under color of state law, especially absent even any intimation that the employees participated in, or contributed to, enactment of state legislation impairing contractual rights and obligations. Poirier v. Hodges, M.D.Fla.1978, 445 F.Supp. 838. Conspiracy 7.5(3)

This section was intended to cover only rights, privileges and immunities secured by U.S.C.A.Const. Amend. 14, and did not include right against impairment of obligation of contract guaranteed by U.S.C.A.Const. Art. 1, § 10, cl. 1. Pudlik v. Public Service Co. of Colo., D.C.Colo.1958, 166 F.Supp. 921. Civil Rights 1041

1185. ---- Full faith and credit clause, constitutional violation, deprivation of constitutional or statutory rights generally

This section is an appropriate basis on which to raise a claim that courts of a state are denying rights asserted under Full Faith and Credit Clause, U.S.C.A.Const. Art. 4, § 1, and implementing statute, § 1738 of Title 28. Lamb Enterprises, Inc. v. Kiroff, N.D.Ohio 1975, 399 F.Supp. 409, reversed on other grounds 549 F.2d 1052, certiorari denied 97 S.Ct. 2926, 431 U.S. 968, 53 L.Ed.2d 1064. Civil Rights 1029

1186. ---- Privileges and immunities clause, constitutional violation, deprivation of constitutional or statutory rights generally

Nonresident's rights under privileges and immunities clause were violated when county board of appeals relied on residency to determine taxi license applicants' familiarity with geographic area to be served; nonresident offered undisputed evidence that residency did not in fact provide type of familiarity that would advance competent taxi service and, even if residency was valid indicator of familiarity, board failed to establish that it could not determine familiarity through other means, such as written examination, that did not infringe constitutional protections. O'Reilly v. Board of Appeals of Montgomery County, Md., C.A.4 (Md.) 1991, 942 F.2d 281. Automobiles 78; Constitutional Law 207(2)

1187. ---- Extradition clause, constitutional violation, deprivation of constitutional or statutory rights generally

This section establishes remedy for improper extradition in violation of U.S.C.A.Const. Art. 4, § 2, cl. 2 and § 3182 of Title 18. Brown v. Nutsch, C.A.8 (Neb.) 1980, 619 F.2d 758.

Citizen could prove no set of facts which would entitle him to relief under § 1983 related to his alleged unlawful extradition to Florida; federal law and Mississippi law did not mandate release of fugitive after 30 days or entitle citizen to a hearing prior to extradition to Florida, citizen had no constitutional right to be finger printed, photographed, or interviewed by a criminal investigator, and verbal abuse did not rise to the level of a constitutional violation. Ellis v. Hargrove, C.A.5 (Miss.) 2003, 75 Fed.Appx. 229, 2003 WL 22080743, Unreported. Civil Rights 1088(1)

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1188. ---- Supremacy clause, constitutional violation, deprivation of constitutional or statutory rights generally

Supremacy clause does not of its own force create federal rights enforceable under this section; the clause is not itself a source of federal rights, but secures federal rights by according them priority when they come in conflict with state law. Golden State Transit Corp. v. City of Los Angeles, U.S.Cal.1989, 110 S.Ct. 444, 493 U.S. 103, 107 L.Ed.2d 420, on remand 895 F.2d 1281. Civil Rights 1029

While the Supremacy Clause, of its own force, does not create any rights enforceable under § 1983, the federal documentation provisions governing the use of vessels in the coastwise trade, confer a right in the form of a license to operate freely in each state's waters subject only to the legitimate exercise of a state's police powers, giving vessel owner standing to assert its Supremacy Clause claim under § 1983 in challenging Virginia statutes limiting such operation. Waste Management Holdings, Inc. v. Gilmore, C.A.4 (Va.) 2001, 252 F.3d 316, certiorari denied 122 S.Ct. 1203, 535 U.S. 904, 152 L.Ed.2d 142. Civil Rights 1071; Civil Rights 1331(6)

Even if there was intentional violation of supremacy clause, Art. 6, cl. 2 by municipality in enactment of ordinance, plaintiff did not thereby have claim under this section. Pirolo v. City of Clearwater, C.A.11 (Fla.) 1983, 711 F.2d 1006, rehearing denied 720 F.2d 688. Civil Rights 1032

Federal Supremacy Clause, of its own force, does not create rights enforceable under § 1983, but only secures federal rights by according them priority whenever they come in conflict with state law. Beechwood Restorative Care Center v. Leeds, W.D.N.Y.2004, 317 F.Supp.2d 248, affirmed in part, vacated in part and remanded 436 F.3d 147. Civil Rights 1029; States 18.23

Violation of Supremacy Clause does not give rise to § 1983 claim, since Supremacy Clause is not the source of any substantive federal rights, rather it secures federal rights by giving them priority when they conflict with state law; such remedy would depend on whether federal statute that preempts state law creates a federal right. Northern Nat. Gas Co. v. Munns, S.D.Iowa 2003, 254 F.Supp.2d 1103. Civil Rights 1029

Violation of supremacy clause does not give right of action recognized under federal civil rights deprivation statute. Faux-Burhans v. County Com'rs of Frederick County, D.Md.1987, 674 F.Supp. 1172, affirmed 859 F.2d 149, certiorari denied 109 S.Ct. 869, 488 U.S. 1042, 102 L.Ed.2d 992. Civil Rights 1029

Even if it prevailed on its claims that village ordinance was preempted by federal statute, pursuant to supremacy clause, and violated commerce clause, association was not entitled to declaration that village was liable for damages under 42 U.S.C.A. § 1983 for costs and expenses incurred by association members in complying with ordinance, in that alleged violations of supremacy and commerce clauses were not cognizable under § 1983. Pesticide Public Policy Foundation v. Village of Wauconda, Ill., N.D.Ill.1985, 622 F.Supp. 423, affirmed 826 F.2d 1068. Civil Rights 1029; Civil Rights 1041

1189. ---- First amendment generally, constitutional violation, deprivation of constitutional or statutory rights generally

Allegations by attorney and accounting corporation hired under contract to assist Puerto Rico municipality in recovery of municipal taxes, that the failure of municipal officials to pay them for services already rendered was due solely to partisan political change of administration, and the fact that attorney and accounting corporation had different political affiliation from officials, stated §§ 1983 claim against municipal officials for First Amendment retaliation, absent any allegation that officials had some legitimate policy-making interest in not paying attorney and accounting corporation. Ramirez v. Arlequin, C.A.1 (Puerto Rico) 2006, 447 F.3d 19. Territories 23

Newsrack vendor who placed his newsracks at interstate highway rest areas failed to establish that Illinois Department of Transportation's (IDOT) newsrack regulation, requiring him to pay state five cents per publication

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sold, infringed upon his First Amendment right to freedom of expression, for purpose of vendor's §§ 1983 claim, absent evidence that vendor ever paid the five-cent fee or that mere threat of fee stifled his expression. Jacobsen v. Illinois Dept. of Transp., C.A.7 (Ill.) 2005, 419 F.3d 642. States 88

Allegations by operators of medical facilities that the Secretary of Health of the Commonwealth of Puerto Rico sold a hospital to a medical school, instead of to the operators, as part of Puerto Rico's health care facility privatization program, when the operators were interested in buying it, in retaliation for operators' prior conduct of availing themselves of judicial remedies following the Secretary's denial of their applications for certain permits, failed to state First Amendment retaliation claim against Secretary, absent allegations that Secretary rejected an actual bid submitted by operators to buy hospital, or otherwise took a retaliatory action or made a retaliatory decision against them, and absent allegations that Secretary's decision was substantially attributable to operators' protected conduct. Centro Medico del Turabo, Inc. v. Feliciano de Melecio, C.A.1 (Puerto Rico) 2005, 406 F.3d 1 . Civil Rights 1395(1)

Elected New York City community school board member stated colorable First Amendment claim against chancellor who allegedly removed her in retaliation for her stated political views; member represented neither policymaking staffer fired for her allegiance to previous administration nor policymaking staffer let go for her boss's political affiliations and allegiances. Velez v. Levy, C.A.2 (N.Y.) 2005, 401 F.3d 75. Constitutional Law 90.1(7.3); Constitutional Law 91; Schools 53(5)

Objections by employee of state mental health facility to a potential transfer within the facility to an allegedly more dangerous department was not protected speech, for purposes of employee's §§ 1983 claim alleging First Amendment retaliation. Carreon v. Illinois Dept. of Human Services, C.A.7 (Ill.) 2005, 395 F.3d 786. Constitutional Law 90.1(7.2); Health 266

Genuine issues of material fact as to whether city employee was fired in retaliation for writing a letter accusing administration of unlawful and corruptive practices precluded summary judgment on the basis of qualified immunity for city labor relations officer in employee's § 1983 suit alleging First Amendment violations. Johnson v. Ganim, C.A.2 (Conn.) 2003, 342 F.3d 105. Federal Civil Procedure 2497.1

High school student and parent had standing to challenge school board member's unwelcome and unexpected recitation of Christian prayer during graduation ceremony, as well as school district's and superintendent's potential involvement. Doe ex rel. Doe v. School Dist. of City of Norfolk, C.A.8 (Neb.) 2003, 340 F.3d 605, rehearing and rehearing en banc denied. Schools 178

Enactment of zoning ordinances did not amount to express policy which caused constitutional violation when enforced against business, as required to support business owners' § 1983 claim that citations and warnings were issued against them in retaliation for exercise of their First Amendment rights in speaking out against village's golf and waterworks bond proposals. Rasche v. Village of Beecher, C.A.7 (Ill.) 2003, 336 F.3d 588. Civil Rights 1351(3)

Since former teacher's § 1983 action alleging that his termination for belonging to group that advocated sexual relations between men and boys violated First Amendment involved constitutional issues, Court of Appeals' review was de novo. Melzer v. Board of Education of City School Dist. of City of New York, C.A.2 (N.Y.) 2003, 336 F.3d 185, certiorari denied 124 S.Ct. 1424, 540 U.S. 1183, 158 L.Ed.2d 87. Federal Courts 776

Agent of Puerto Rico Justice Department's Special Investigations Bureau (SIB) waived issues of whether district court erred in denying her motion for extension of time to respond to her superiors' motion for summary judgment in action under §§ 1983 and 1985, alleging retaliation for speech on matter of public concern and termination without due process, and denying agent's motion to reconsider grant of summary judgment, by failing to offer any sustained argument on appeal. Torres-Rosado v. Rotger-Sabat, C.A.1 (Puerto Rico) 2003, 335 F.3d 1. Federal

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42 U.S.C.A. § 1983

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The threshold question in evaluating public employee First Amendment § 1983 claims is whether the speech is about a matter of public concern. Catletti ex rel. estate of Catletti v. Rampe, C.A.2 (N.Y.) 2003, 334 F.3d 225. Constitutional Law 90.1(7.2)

A government employee's First Amendment right to speak on issues of public concern without retaliation, if the speech did not disrupt the administration of the government, was clearly established at the time county employee was fired, barring county officials' use of qualified immunity as a defense, in county employee's § 1983 claim, alleging that he was fired in retaliation for testifying truthfully at another trial about problems with county prison's mental health services. Catletti ex rel. estate of Catletti v. Rampe, C.A.2 (N.Y.) 2003, 334 F.3d 225. Civil Rights 1376(10)

Community college officials who banned faculty member from campus were not entitled to qualified immunity from liability in faculty member's § 1983 free speech and association claim; as member of community, faculty member had same First Amendment right of access to campus as other community members, there was no showing that the ban was a narrowly-drawn restriction to serve compelling interest, and rights were clearly establish at time officials banned him. Putnam v. Keller, C.A.8 (Neb.) 2003, 332 F.3d 541, rehearing and rehearing en banc denied. Civil Rights 1376(10)

Dissenting city council member, as elected policymaker exempt from civil service protection, was not engaged in conduct protected by First Amendment when he continued to affiliate with minority coalition of council, and thus no First Amendment violation occurred when council majority fired dissenting member's aide following dissenting member's vote against proposed budget, since firing was in retaliation both for vote and for affiliation; in turn, fired aide had no § 1983 third party claim of First Amendment retaliation against city, mayor, and majority members. Camacho v. Brandon, C.A.2 (N.Y.) 2003, 317 F.3d 153. Constitutional Law 90.1(7.2); Constitutional Law 91; Municipal Corporations 156

Whistleblower mechanisms provided by Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) do not preclude public employee from suing under § 1983 for violation of his or her First Amendment rights. Charvat v. Eastern Ohio Regional Wastewater Authority, C.A.6 (Ohio) 2001, 246 F.3d 607, rehearing en banc denied. Civil Rights 1312

Freedom of worship, freedom of speech, and freedom of the press are privileges and immunities secured by the "due process of law" clause of U.S.C.A.Const. Amend. 14 and are within ambit of this section relating to cause of action for deprivation of rights, privileges, or immunities secured by the Constitution and laws. Oney v. Oklahoma City, C.C.A.10 (Okla.) 1941, 120 F.2d 861. See, also, Douglas v. City of Jeannette, Pa., C.C.A.Pa.1942, 130 F.2d 652, affirmed 63 S.Ct. 877, 319 U.S. 157, 87 L.Ed. 1324, rehearing denied 63 S.Ct. 1170, 319 U.S. 782, 87 L.Ed. 1726; City of Manchester v. Leiby, C.C.A.N.H.1941, 117 F.2d 661, certiorari denied 61 S.Ct. 838, 313 U.S. 562, 85 L.Ed. 522.

Plaintiff's allegations that she was qualified for position as town assessor, that the person hired by town to serve as assessor was not qualified for the position, and that plaintiff was not selected for the position because town board members preferred the other person's political affiliations, stated a claim against town board members, in §§ 1983 action, for violation of First Amendment right of political affiliation. Bailey v. Town of Evans, New York, W.D.N.Y.2006, 443 F.Supp.2d 427. Taxation 2436

Former city police chief did not have direct cause of action against mayor, claiming that mayor's threat to fire him because he lived beyond city limits was violation of his equal protection and substantive due process rights, and as threat was allegedly in response to chief's backing of another mayoral candidate, in violation of chief's First Amendment rights; chief was required to proceed by way of action under §§ 1983. Wilson v. Moreau, D.R.I.2006,

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42 U.S.C.A. § 1983

440 F.Supp.2d 81. Civil Rights 1322

Parent of learning-disabled student stated claim under §§ 1983 for violation of her First Amendment rights. C.O. v. Portland Public Schools, D.Or.2005, 406 F.Supp.2d 1157. Civil Rights 1395(2)

In context of First Amendment political discrimination claim, showing of political animus requires more than merely juxtaposing protected characteristic, such as someone else's politics, with fact that public employee was treated unfairly. Santiago-Rodriguez v. Rey, D.Puerto Rico 2005, 404 F.Supp.2d 400. Constitutional Law 82(11)

Request that Puerto Rico public employee remove photograph of president of opposition party, to which employee belonged, was not a constitutional deprivation for which employee could recover under §§ 1983; in making that request, officials were merely executing in good faith the demands of Puerto Rico statute closely approximating counterpart federal prohibition of on-the-job political activity in Hatch Act and accompanying regulation. Sanchez v. Public Building Authority, D.Puerto Rico 2005, 402 F.Supp.2d 393. Territories 23

Alleged misconduct of town employee during work hours involved topic of public concern, for purpose of First Amendment free speech civil rights claim of citizen who was denied right to make statement at town board meeting, since employee was paid by town, had set work schedule, and provided important services to town. Piscottano v. Town of Somers, D.Conn.2005, 396 F.Supp.2d 187. Towns 26

With regard to police department members' report of police chief's alleged acquisition of testing and answer materials prior to certification examination, allegations that township supervisor had taken steps to initiate investigation of members by Pennsylvania State Police and Office of Attorney General (OAG) constituted basis for claim of retaliation under First Amendment and §§ 1983. Heller v. Fulare, W.D.Pa.2005, 371 F.Supp.2d 743. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Public school district's non-public forum, consisting of policy under which certain groups were permitted to submit flyers for teachers' distribution to elementary school students to take home to their parents, was reasonable and thus comported with First Amendment's free speech guarantee; district chose to limit number of submitting organizations to five categories involved in activities of traditional educational relevance, including parent-teacher associations, day care operators and organized youth sports leagues, and other organizations had substantial alternative channels of communication with students including bulletin boards and open-house displays. Child Evangelism Fellowship of Md., Inc. v. Montgomery County Public Schools, D.Md.2005, 368 F.Supp.2d 416. Schools 72

California Rule of Professional Conduct prohibiting filing or maintaining frivolous and unsupported claims did not violate First Amendment; State's interest in preventing the filing of frivolous lawsuits and those meant merely to harass another outweighed an attorney's right to engage in that kind of speech. Canatella v. Stovitz, N.D.Cal.2005, 365 F.Supp.2d 1064. Attorney And Client 32(11); Constitutional Law 90.1(1.5)

Genuine issue of material fact as to whether state prison officials imposed new prerequisites for parole upon inmate because of her pursuit of administrative and legal relief from officials' efforts to compel her to participate in sex offender treatment program precluded summary judgment on inmate's First Amendment retaliation claim. Wolfe v. Pennsylvania Dep't of Corrections, E.D.Pa.2004, 334 F.Supp.2d 762. Federal Civil Procedure 2491.5

Reporter's allegations that newspaper publisher, which was her former employer, and district attorney entered agreement, which led publisher to remove reporter from investigation concerning district attorney's office, failed to state claim under §§ 1983 against publisher; reporter's First Amendment rights were not violated by publisher's decision not to publish her stories, and there was no state interference or coercion involved, rather, there was suggestion in complaint that publisher may have decided to "cool" investigation because editors viewed district

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attorney and his office as good sources for news and they did not want to alienate him, for fear of losing those sources. Rivoli v. Gannett Co., Inc., W.D.N.Y.2004, 327 F.Supp.2d 233. Civil Rights 1326(11); Constitutional Law 90.1(8)

Recreational dancer who was banned from city's concert venue, due to allegedly lewd conduct, failed to establish that her dancing was form of expression protected by First Amendment, as required to maintain § 1983 action against city; although dancer asserted that she was "performer" at pertinent events, she did not allege that she attended events in different capacity than other attendees. Willis v. Town of Marshall, W.D.N.C.2003, 293 F.Supp.2d 608. Constitutional Law 90.4(3); Municipal Corporations 721(2)

Asserted chaos and disruption in the functioning of state government that might result if an elected official were removed and replaced without the certainty that a majority of those voters who chose to participate in the recall process actually voted to recall the officer was not a compelling state interest, as required to justify, against First Amendment free speech and Fourteenth Amendment due process and equal protection challenge, statutory requirement that no vote cast in recall election be counted for any candidate unless the voter also voted on the recall question itself, absent demonstration that chaos would result without the requirement or how the requirement would stem the flow of any chaos and disruption. Partnoy v. Shelley, S.D.Cal.2003, 277 F.Supp.2d 1064, as modified on reconsideration. Constitutional Law 90.1(1.2); Constitutional Law 225.2(6); Constitutional Law 274.2(3); States 52

State statute exempting private schools whose religious convictions would be violated from requirement that all schools start the day with either the Pledge of Allegiance or national anthem, did not violate Establishment Clause; statute simply accommodated needs of certain religious sects by alleviating a special burden, demonstrating a benevolent neutrality permitting religious exercise to exist without state sponsorship. Circle School v. Phillips, E.D.Pa.2003, 270 F.Supp.2d 616, affirmed in part 381 F.3d 172. Constitutional Law 84.5(4.1); Schools 8

Fact question as to whether state officials conspired with village officials to retaliate against village employee for his statements at building inspectors' conference precluded summary judgment on his section 1983 claim for violation of his First Amendment rights arising out of disciplinary charges brought against employee, followed by suspension. Stein v. Janos, S.D.N.Y.2003, 269 F.Supp.2d 256. Federal Civil Procedure 2497.1

To establish a § 1983 claim of unlawful First Amendment retaliation, a public employee must prove that (1) he spoke out on a matter of public concern, (2) the employee's interest in expressing himself on this matter was not outweighed by any injury the speech could cause to the government's interest, and (3) his protected speech was a substantial factor motivating the adverse employment action. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Constitutional Law 90.1(7.2)

Former employee who brought § 1983 action against Puerto Rico Department of Justice and former co-employees, alleging wrongful discharge, was "prevailing party" in action, since jury expressly found that employee's First Amendment rights had been violated by two of four defendants, and thus was entitled to award of attorney's fees, subject to reduction of attorney's $200 hourly rate commensurate with $150 rate prevailing in local community. Tejada-Batista v. Fuentes-Agostini, D.Puerto Rico 2003, 263 F.Supp.2d 321, reconsideration denied 267 F.Supp.2d 156. Civil Rights 1482; Civil Rights 1488

Inmate's rights were not effectively chilled by officials' alleged conduct of retaliating for inmate's filing of grievances, as required in § 1983 claim for First Amendment violation; inmate continued to file grievances despite alleged retaliatory actions. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Constitutional Law 91; Prisons 13(6)

Police officers' arrest of protester during political demonstration did not violate protester's First Amendment rights,

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as required to support protester's § 1983 claim alleging discrimination on the basis of his political affiliation, where protester was the only person that was arrested during the whole demonstration. Ramos Bonilla v. Vivoni, D.Puerto Rico 2003, 259 F.Supp.2d 135. Arrest 63.1; Constitutional Law 91

To prevail on a First Amendment retaliation claim under § 1983, a plaintiff must show that: (1) his actions were protected by the Constitution or federal law; and (2) the defendant's conduct complained of was in response to that protected activity. Rivera v. Goord, S.D.N.Y.2003, 253 F.Supp.2d 735. Constitutional Law 82(3)

Even exercise of right to petition government may result in abuse actionable under § 1983. Fox News Network, L.L.C. v. Time Warner Inc., E.D.N.Y.1997, 962 F.Supp. 339. Civil Rights 1032; Civil Rights 1374

President of local police officer's union failed to show a conversation between assistant city solicitor and police captains "chilled" president's exercise of his rights to speak freely and to petition the government for redress of grievances so as to constitute a deprivation of his First Amendment rights for purposes of his § 1983 claim; president was not terminated and president's free speech activities critical of mayor continued after supposed conversation allegedly occurred. Therrien v. Hamilton, D.Mass.1994, 849 F.Supp. 110. Civil Rights 1126

U.S.C.A.Const. Amend. 14 protects against deprivation of rights of free speech and free assembly and of equal protection of the laws generally and those deprived of such rights are entitled to redress under this section. Anderson v. Moses, S.D.N.Y.1960, 185 F.Supp. 727. Civil Rights 1028; Constitutional Law 225.1; Civil Rights 1029

Intermediate-scrutiny standard of review applied in §§1983 First Amendment action brought by operators of theater against city challenging ordinance requiring that theater's security team include off-duty officer; ordinance was intended to prevent criminal activity associated with theater, and thus amounted to regulation directed against secondary effects of speech. Terminello v. City of Passaic, C.A.3 (N.J.) 2004, 118 Fed.Appx. 577, 2004 WL 2850114, Unreported. Constitutional Law 90.1(6)

Prison inmate sufficiently stated civil rights claim against corrections officer by alleging that officer confiscated inmate's letter to his attorney and thereby violated his First Amendment right to send mail; inmate needed only to allege nature of claim in order to satisfy liberal requirements of notice pleading. Walker v. Page, C.A.7 (Ill.) 2003, 66 Fed.Appx. 52, 2003 WL 21018002, Unreported. Civil Rights 1395(7)

Speech of case work specialist, who stated in closed and confidential meeting that she would testify in favor of family reunification at impending court hearing, was not of "public concern," and, consequently, she was not entitled to relief in her § 1983 lawsuit under First Amendment against employer, Wyoming Department of Family Services (DFS), who terminated her employment because district attorney's office disagreed with her position about reuniting that family, since social worker was not subpoenaed and she was not prevented from testifying. Burley v. Wyoming Dept. of Family Services, C.A.10 (Wyo.) 2003, 66 Fed.Appx. 763, 2003 WL 1880640, Unreported. Constitutional Law 90.1(7.2); Infants 17

Federal district court should not have dismissed, on ground of failure to state a claim, college professor's civil rights claim, which alleged that college officials abridged his right to freedom of speech by requiring him to cease all philosophical counseling activities on the campus, where the court did not have sufficient information on the basis of the complaint alone to make a determination of whether protected speech was involved, and since the term "philosophical counseling activities" was not self-defining. Marinoff v. City College of New York, C.A.2 (N.Y.) 2003, 63 Fed.Appx. 530, 2003 WL 1228032, Unreported, on remand 357 F.Supp.2d 672. Civil Rights 1395(8)

1190. ---- Establishment of religion, constitutional violation, deprivation of constitutional or statutory rights generally

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Although Ten Commandments were undoubtedly religious and monument inscribed with them and displayed on grounds of Texas State Capitol therefore had religious significance for purposes of resident's §§ 1983 action alleging that monument violated First Amendment's Establishment Clause, the Ten Commandments also had undeniable historical meaning. (Per Chief Justice Rehnquist, with three Justices joining and one Justice concurring in judgment). Van Orden v. Perry, U.S.2005, 125 S.Ct. 2854, 162 L.Ed.2d 607. Constitutional Law 84.5(11); States 88

Reasonable observer would not have understood, as stated or as applied, that principal or primary effect of municipality's holiday display policy for its public schools, which permitted menorah, star and crescent, and other holiday symbols to be used in combination, but completely prohibited nativity scene, was to endorse Judaism or Islam or to communicate to children who practiced either of those faiths that they were favored members of their school and civic communities, while communicating to Christian children or others that they were somehow inferior, for purpose of parent's civil rights claim under establishment clause of First Amendment. Skoros v. City of New York, C.A.2 (N.Y.) 2006, 437 F.3d 1. Schools 72

Prisoner's §§ 1983 claim that prayer requirement of sex offender's class, which he was required to complete as condition of parole, violated the First Amendment, was a claim under the Establishment Clause, not the Free Exercise Clause, and thus remand was required, where district court found that prisoner did not have serious belief, and therefore wrongly analyzed the claim under the Free Exercise Clause. Munson v. Norris, C.A.8 (Ark.) 2006, 435 F.3d 877, rehearing and rehearing en banc denied. Prisons 4(14)

Genuine issues of material fact as to whether involvement of staff members at state-funded private alcoholic treatment facility in Alcoholics Anonymous (A.A.) programs offered at facility rose to level of inculcation of religious beliefs in clients participating in programs, and thus resulted in impermissible governmental religious indoctrination in violation of First Amendment's establishment clause, precluded summary judgment in § 1983 action. DeStefano v. Emergency Housing Group, Inc., C.A.2 (N.Y.) 2001, 247 F.3d 397. Federal Civil Procedure 2491.5

Religious content of Alcoholics Anonymous (A.A.) meetings was reasonably foreseeable to county probation department when it recommended A.A. attendance as probation condition, and thus, actions of those who conducted meetings was not, under New York law, superseding cause that would relieve county probation department of liability in probationer's § 1983 action alleging that compelled A.A. attendance violated his First Amendment establishment clause rights due to A.A.'s religious content; parties stipulated prior to trial that probation department, when it formulated its policy of recommending A.A., was aware of program's Twelve Steps and of their religious character. Warner v. Orange County Dept. of Probation, C.A.2 (N.Y.) 1996, 115 F.3d 1068, on remand 968 F.Supp. 917. Civil Rights 1098

Town defendants' actions in granting recall petition and conducting recall election were not unconstitutional under the First Amendment, for purposes of former elected trustee's claim under §§ 1983, alleging that the recall petition was based on his refusal to recite the Pledge of Allegiance at meetings of the town board of trustees; although the former trustee had constitutional rights to free expression and free exercise of religion, he had no right to serve as a representative to individuals who were of a different mind set. Habecker v. Town of Estes Park, Colorado, D.Colo.2006, 452 F.Supp.2d 1113. Municipal Corporations 156

Municipality's denial of citizen's request to place nativity scene or creche alongside existing holiday decorations on grassy area owned by municipality was not reasonable under establishment clause of First Amendment, since municipality had allowed Orthodox Jewish synagogue to display menorah on that area, citizen's request was denied precisely because of viewpoint expressed in her proposed display, and no compelling reason was given for denial of citizen's request. Snowden v. Town of Bay Harbor Islands, Florida, S.D.Fla.2004, 358 F.Supp.2d 1178. Constitutional Law 84.5(11); Municipal Corporations 721(1)

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42 U.S.C.A. § 1983

Former detainee in county jail had standing to seek relief under §§ 1983 against former county sheriff in connection with his promulgation of detainee rules for county jail, where former detainee demonstrated actual and concrete invasion of legally protected interest, sufficient nexus existed between requirement that detainee read, sign, and agree to follow detainee rules modeled after Ten Commandments and offense offered to detainee by having religious tenets forced upon her in guise of secular rules of behavior and her uncertainty as to whether she might inadvertently violate rules, and redress was available for injury alleged, in form of nominal damages for constitutional tort. Byar v. Lee, W.D.Ark.2004, 336 F.Supp.2d 896. Civil Rights 1333(4)

County probation department violated establishment clause by requiring motorist, who had been convicted of alcohol-related driving offense, to attend program for recovery from alcoholism, Alcoholics Anonymous (AA), meetings as condition of probation; motorist's attendance was coerced since failure to attend could have resulted in confinement, AA meetings were functional equivalent of religious exercise, given central theme of higher power in AA literature and Christian prayer during meetings, and compelling attendance tended to establish state religious faith. Warner v. Orange County Dept. of Probation, S.D.N.Y.1994, 870 F.Supp. 69, remanded 115 F.3d 1068, on remand 968 F.Supp. 917. Constitutional Law 84.5(1); Sentencing And Punishment 1977(2)

Motorist stated claim against county Department of Probation in § 1983 suit alleging that requirement that he attend Alcoholics Anonymous (AA) program, as condition of probation for alcohol-related driving offense, violated First Amendment's Establishment Clause; it was adequately alleged that AA chapter whose meetings motorist would be required to attend had objectionable religious component, and that motorist, who faced threat of incarceration if he failed to comply with condition, was susceptible to coercive pressure that allegedly occurred at these meetings. Warner v. Orange County Dept. of Probation, S.D.N.Y.1993, 827 F.Supp. 261. Civil Rights 1395(5)

1191. ---- Free exercise of religion, constitutional violation, deprivation of constitutional or statutory rights generally

Although Ten Commandments were undoubtedly religious and monument inscribed with them and displayed on grounds of Texas State Capitol therefore had religious significance for purposes of resident's §§ 1983 action alleging that monument violated First Amendment's Establishment Clause, the Ten Commandments also had undeniable historical meaning. (Per Chief Justice Rehnquist, with three Justices joining and one Justice concurring in judgment). Van Orden v. Perry, U.S.2005, 125 S.Ct. 2854, 162 L.Ed.2d 607. Constitutional Law 84.5(11); States 88

Display of monument inscribed with Ten Commandments on government property, to wit, grounds of Texas State Capitol, which was challenged as violative of First Amendment's Establishment Clause, was typical of unbroken history of official acknowledgment by all three branches of government dating back to 1789 of role of religion in American life.(Per Chief Justice Rehnquist, with three Justices joining and one Justice concurring in judgment). Van Orden v. Perry, U.S.2005, 125 S.Ct. 2854, 162 L.Ed.2d 607. Constitutional Law 84.5(11); States 88

Preliminary injunction preventing counties from displaying a revised display of the Ten Commandments that included other historical documents in courthouse was adequately supported by evidence that the counties' purpose was to emphasize and celebrate the Commandments' religious message, in violation of the First Amendment. McCreary County, Ky v. American Civil Liberties Union of Ky, U.S.Ky.2005, 125 S.Ct. 2722, 162 L.Ed.2d 729. Civil Rights 1457(2)

Public school's use of menorah in assigned holiday display project to teach child about diverse cultures and traditions through common theme of celebration, under municipality's holiday display policy, which permitted menorah, star and crescent, and other holiday symbols to be used in combination, but completely prohibited nativity scene, did not violate First Amendment Free Exercise civil rights of Christian parent or her child. Skoros v. City of New York, C.A.2 (N.Y.) 2006, 437 F.3d 1. Schools 72

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Fact issue existed as to whether state prison inmate's participation in Muslim holiday feast of Eid-ul-Fitr was central or important to inmate's practice of Islam, precluding summary judgment, on "substantial burden" grounds, in inmate's § 1983 Free Exercise Clause action arising from corrections officials' refusal to serve feast to inmate in high-security area. Ford v. McGinnis, C.A.2 (N.Y.) 2003, 352 F.3d 582. Federal Civil Procedure 2491.5

Member of Texas State Board of Dental Examiners' alleged statement "who did she think she is" with regard to applicant's request for special accommodation because of her religion, standing alone, did not support applicant's § 1983 claim for religious discrimination; although alleged remark might reflect hostility towards those who request special accommodations or may even reflect hostility towards applicant as individual, statement was not probative of whether applicant was victim of religious discrimination and applicant failed to tie this statement to any adverse action taken by examiners, let alone any action that was motivated by discriminatory animus. Burns-Toole v. Byrne, C.A.5 (Tex.) 1994, 11 F.3d 1270, certiorari denied 114 S.Ct. 2680, 512 U.S. 1207, 129 L.Ed.2d 814, rehearing denied 115 S.Ct. 12, 512 U.S. 1270, 129 L.Ed.2d 912. Civil Rights 1072

Allegations of motorist who was denied Colorado driver's license because he refused to be photographed were sufficient to state civil rights claim; motorist alleged that he had joined a religious group which prohibited its members from allowing photographs to be taken of them, and that Colorado did not require a photograph on a driver's license in all instances. Dennis v. Charnes, C.A.10 (Colo.) 1984, 805 F.2d 339, on remand 646 F.Supp. 158. Civil Rights 1395(1)

Foster parents lacked clearly established right to exercise their religious beliefs about punishment of foster care child and thus could not maintain civil rights action against state officials who opposed their final adoption of foster child because of dispute over foster parents' use of corporal punishment. Backlund v. Barnhart, C.A.9 (Wash.) 1985, 778 F.2d 1386. Civil Rights 1057; Civil Rights 1376(3)

Municipality's denial of citizen's request to place nativity scene or creche on light poles along street was reasonable under free speech clause of First Amendment, since municipality had controlled content of lighted banners placed on its light poles at all times and it had never taken any steps to expand reach of forum to access by private citizens. Snowden v. Town of Bay Harbor Islands, Florida, S.D.Fla.2004, 358 F.Supp.2d 1178. Constitutional Law 90.1(4); Municipal Corporations 703(1)

Prisoner of District of Columbia pleaded predicate constitutional violation of religious discrimination under First Amendment, Religious Freedom Restoration Act (RFRA), and Virginia Bill of Rights, for purpose of his allegations against municipality under §§ 1983 on theory of agency, for acts committed by Virginia prison officials while in Virginia under prisoner custody arrangement, on allegations that he was threatened with disciplinary action as result of his desire to engage in what he believed was conduct proscribed by his faith. Ibrahim v. District of Columbia, D.D.C.2004, 357 F.Supp.2d 187. Civil Rights 1741

Neither commissioner of county department of social services (DSS) nor DSS employee could be held personally liable under §§ 1983 for alleged violation of Jewish parent's First Amendment right to raise her child in the religion of her choice when the child, while in temporary custody of county DSS pending resolution of the parent's petition alleging that the child was a person in need of supervision (PINS), was baptized in Christian church while on an outing, where, although they placed the child with a juvenile residential facility, they had no knowledge that the child was Jewish, did not personally participate in the events complained of, and did not learn of the alleged violation until long afterward. Whalen v. Allers, S.D.N.Y.2003, 302 F.Supp.2d 194. Civil Rights 1360

Prison chaplain could not rely on prison report containing facts outside the pleadings to support his motion to dismiss state prisoner's § 1983 claim, alleging that chaplain violated his First Amendment right to freely exercise his religion by intentionally interfering with prisoner's ability to observe a religious holiday. Wares v. VanBebber, D.Kan.2002, 231 F.Supp.2d 1120. Federal Civil Procedure 1832

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1192. ---- Speech and expression, constitutional violation, deprivation of constitutional or statutory rights generally

Deputy district attorney did not speak as a citizen when, pursuant to his official duties as a calendar deputy, he wrote a disposition memorandum in which he recommended dismissal of a pending criminal case on the basis of purported governmental misconduct, and so his speech was not protected by the First Amendment; when he went to work and performed the tasks he was paid to perform, district attorney acted as a government employee, not as a citizen, and fact that his duties sometimes required him to speak or write did not prohibit his supervisors from evaluating his performance. Garcetti v. Ceballos, U.S.2006, 126 S.Ct. 1951, 164 L.Ed.2d 689. District And Prosecuting Attorneys 3(1)

Speech by attorney for the Oklahoma Indigent Defense System (OIDS), objecting to her supervisor and co-workers about the OIDS procedure for approval of expert witnesses, did not disrupt the workplace, and thus, did not outweigh employer's interest in promoting the efficiency of its public services, for purpose of attorney's §§ 1983 free speech claim against public employer, where attorney did not refuse to follow the approval procedure, and there was no showing that attorney could have expressed her concerns through less disruptive internal channels. McFall v. Bednar, C.A.10 (Okla.) 2005, 2005 WL 896453, amended and superseded 407 F.3d 1081. States 53

Deputy police chief's conduct in signing letter on behalf of chief denying parade permits was a substantial factor in denial of the permits in violation of First Amendment and established causation under §§ 1983. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Municipal Corporations 747(3)

Municipal officials were motivated by reasonable concern for potentially disruptive effects on relationship between police and fire departments and minority communities, for purpose of civil rights claim of police and fire department employees under First Amendment free speech clause, when municipal officials terminated employment of those employees for deliberately donning "blackface" while off-duty and parading through streets in mocking stereotypes of African-Americans, since effective police and fire service presupposed respect for members of those communities. Locurto v. Giuliani, C.A.2 (N.Y.) 2006, 447 F.3d 159. Municipal Corporations 198(2)

Outdoor common areas, including sidewalks and sitting areas, clearly within the boundaries of the campus of state university were "unlimited designated public fora," for purpose of street preacher's §§ 1983 claim, challenging the university's policy restricting use of those areas as violative of his free speech rights; purpose of university was not to provide forum for all persons to talk about all topics at all times, but rather to support education, the university opened up the common areas to both university entities and non-university entities as places of expression, and there was no showing that the university intended to limit the use of the common areas to a particular type of speech or speaker. Bowman v. White, C.A.8 (Ark.) 2006, 444 F.3d 967. Constitutional Law 90.1(1.4)

Supervisor's allegedly retaliatory comments to special investigator for Pennsylvania Office of Inspector General (OIG), including telling him to go with the flow and not permitting him to speak to anyone about investigation into pharmacist without supervisor's permission, did not rise to level of harassment, under First Amendment, in retaliation for his speaking out about pharmaceutical industry; comments were aimed at getting investigator to focus on investigation to which he was assigned instead of focusing on his own wide-ranging concerns about pharmaceutical industry as a whole, and investigator suffered no alteration in his employment benefits, pay, or job classification as a result of speaking out about potential corruption in pharmaceutical industry. McKee v. Hart, C.A.3 (Pa.) 2006, 436 F.3d 165. Constitutional Law 90.1(7.2)

School's alleged refusal to allow mother to participate meaningfully in her role as chairperson in school committee, by depriving her of necessary information for competent evaluation of school's budget proposals and removing her from school for passing out flyers inviting parents to committee meeting, in retaliation for mother's assertion of her First Amendment rights by advocating for her son's education rights under the IDEA supported mother's §§ 1983

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retaliation claim against school district. Mosely v. Board of Educ. of City of Chicago, C.A.7 (Ill.) 2006, 434 F.3d 527. Schools 63(3)

Municipality's implementation of English-only policy did not violate First Amendment free speech rights of Spanish-speaking Hispanic employees, since mere act of speaking in Spanish did not constitute speech on matter of public concern, use of Spanish was not intended to communicate ethnic pride or opposition to discrimination, speech precluded by English-only rule did not include communications on matters of public concern, and English-only rule was not intended to limit communications on matters of public concern. Maldonado v. City of Altus, C.A.10 (Okla.) 2006, 433 F.3d 1294. Municipal Corporations 218(3)

Director of clinical program at state university law school's alleged denial of representation of prospective client based on prospective client's prior criticism of clinic's use of public funds, related to clinic's position in lawsuit challenging public display of Ten Commandments, supported prospective client's §§ 1983 claim alleging violation of his First Amendment free speech rights. Wishnatsky v. Rovner, C.A.8 (N.D.) 2006, 433 F.3d 608, rehearing and rehearing en banc denied. Constitutional Law 90.1(1.4)

Sheriffs' deputies' alleged campaign of harassment against voter referendum sponsors, including issuance of false traffic citations, attempts to obtain arrest warrants on trumped-up charges, and mailing of flyers depicting sponsors as criminals terrorizing county, violated sponsors' right against retaliation for exercise of their free speech rights; such conduct would likely have deterred persons of ordinary firmness from exercise of their First Amendment rights. Bennett v. Hendrix, C.A.11 (Ga.) 2005, 423 F.3d 1247, petition for certiorari filed 2006 WL 295203. Sheriffs And Constables 99

Husband of patient stated a §§ 1983 claim against county hospital and its policy makers for violation of his First Amendment rights, by alleging that hospital filed state libel action against husband in retaliation for husband's action of mailing of letters to numerous local residents inquiring whether anyone else had been sexually assaulted, as alleged by patient, and that the hospital initiated the state law libel action with knowledge that husband's statements against the hospital were not made with malice and with the purposes and effect of chilling his speech and violating his First Amendment rights. Beedle v. Wilson, C.A.10 (Okla.) 2005, 422 F.3d 1059. Torts 437

Noncustodial divorced parent's previous criticisms of school and school district at public meetings constituted protected speech, and thus could serve as basis for parent's §§ 1983 First Amendment action against district and against school principal alleging that principal had failed to adequately protect his children and had denied parent's access to educational records in retaliation for criticisms. Crowley v. McKinney, C.A.7 (Ill.) 2005, 400 F.3d 965, certiorari denied 126 S.Ct. 750, 163 L.Ed.2d 573. Constitutional Law 90.1(1.4); Records 31; Schools 89.2

Factors in determining whether public employee's interest in speech outweighs government's interest in promoting efficiency, in employee's § 1983 First Amendment retaliation action, are whether statement in question: (1) impairs discipline by superiors or harmony among co-workers; (2) has detrimental impact on close working relationships for which personal loyalty and confidence are necessary; or (3) impedes performance of speaker's duties or interferes with regular operation of enterprise. Johnson v. Louisiana, C.A.5 (La.) 2004, 369 F.3d 826. Constitutional Law 90.1(7.2)

Petition circulators' allegations that they were threatened with arrest for soliciting signatures for referendum petition on public sidewalk that was near polling place, but outside 100-foot "campaign-free zone" created by state statute, stated § 1983 claim for violation of free speech rights. United Food & Commercial Workers Local 1099 v. City of Sidney, C.A.6 (Ohio) 2004, 364 F.3d 738. Constitutional Law 90.1(4); Elections 211

Allegations that petition circulators were threatened with arrest for soliciting signatures for referendum petition on public sidewalk that was near polling place but was outside of 100-foot campaign-free zone established by state

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law were sufficient to state §§ 1983 claim based on violation of circulators' First Amendment free speech rights. United Food & Commercial Workers Local 1099 v. City of Sidney, C.A.6 (Ohio) 2004, 359 F.3d 432, withdrawn from bound volume, rehearing denied, amended and superseded 364 F.3d 738. Elections 211

Under *Pickering* balancing test, even though appointed city manager's speech during city council election campaign, in favor of one faction of his party and against members of competing faction of same party, concerned matter of public interest, speech was not protected by First Amendment, precluding terminated manager's §§ 1983 action against competing faction's incoming council members who voted to fire him; manager's campaigning impaired reconstituted council's interest in efficient operations, given sensitive, high-level policymaking nature of manager's position. Curinga v. City of Clairton, C.A.3 (Pa.) 2004, 357 F.3d 305. Constitutional Law 90.1(7.2); Municipal Corporations 156

State university's outright ban on non-students handing out leaflets in paved area between university building and public sidewalk, which court, in non-students' § 1983 action against university, determined to be unconstitutional because area was public forum, did not violate court order in prior case holding that outright ban on non-students distributing leaflets was unconstitutional with respect to university seminar that was open to public, who were invited to verbally participate, and, thus, non-students were not entitled to injunctive relief in their § 1983 action; issue in prior case was whether university had created "designated public forum" at particular time and place, whereas issue in subsequent case was whether paved area was traditional public forum. Brister v. Faulkner, C.A.5 (Tex.) 2000, 214 F.3d 675, certiorari denied 121 S.Ct. 442, 531 U.S. 985, 148 L.Ed.2d 447. Civil Rights 1452

State university professors' right to engage in expression relating to their academic interests, through display in history department display case, did not have to be balanced against university's right to suppress speech in name of workplace efficiency and harmony under balancing test applicable to determinations of whether public employer has properly discharged or disciplined employee for engaging in speech, in professors' § 1983 action against university chancellor, absent showing by chancellor that suppressed conduct substantially interfered with efficiency of workplace or university's educational mission. Burnham v. Ianni, C.A.8 (Minn.) 1997, 119 F.3d 668. Colleges And Universities 8(1); Constitutional Law 90.1(7.3)

To establish § 1983 claim of retaliation for exercise of free speech, plaintiffs must prove that defendants were acting under color of state law, plaintiffs' speech activities were protected under First Amendment, and plaintiffs' exercise of their protected right was substantial or motivating factor in defendants' actions. Harrington v. Harris, C.A.5 (Tex.) 1997, 118 F.3d 359, rehearing and suggestion for rehearing en banc denied 122 F.3d 1068, certiorari denied 118 S.Ct. 603, 522 U.S. 1016, 139 L.Ed.2d 491. Civil Rights 1032; Civil Rights 1326(1)

Statement made by angry high school student to school guidance counselor "if you don't give me this schedule change, I'm going to shoot you," could be considered by reasonable person in guidance counselor's position to be serious expression of intent to harm or assault, and, thus, was not entitled to First Amendment protection for purposes of student's § 1983 action arising out of student's three-day suspension for threatening counselor. Lovell By and Through Lovell v. Poway Unified School Dist., C.A.9 (Cal.) 1996, 90 F.3d 367. Constitutional Law 90.1(1.4); Schools 177

To establish retaliation claim under § 1983, plaintiff initially must show that his or her conduct was protected by First Amendment and that defendants' conduct was motivated by or substantially caused by his or her exercise of free speech. Bernheim v. Litt, C.A.2 (N.Y.) 1996, 79 F.3d 318. Civil Rights 1243

Noncustodial fathers challenging procedures followed by Supreme Court Advisory Committee on Child Support Guidelines stated civil rights cause of action arising out of Committee chairman's refusal to allow them to tape-record meeting; in order for limitation to be valid "time, place and manner" restriction on fathers' rights to obtain information, it would have to be content-neutral, and restriction might not satisfy requirement, as it was directed only at persons known to be unhappy with Committee, and if valid "time, place and manner" restriction

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was not involved, prohibition would be subject to "strict scrutiny" test, and Committee might lose. Blackston v. State of Ala., C.A.11 (Ala.) 1994, 30 F.3d 117. Civil Rights 1395(1)

Underlying proceedings initiated against crop duster by Louisiana Department of Agriculture (LDOA) for violation of state pesticide laws did not terminate in crop duster's favor, as required for a common-law tort of malicious prosecution, and thus, crop duster could not maintain civil rights claim against Louisiana officials for alleged violation of his First Amendment rights by officials' purported attempts to stifle his exercise of free speech; crop duster alleged that officials targeted him for prosecution because he would not acquiesce to mistreatment inflicted upon him by LDOA, and crop duster appealed five of his administrative penalties, and, although four appeals ended in decreased punishment, none ended with finding of not guilty. Johnson v. Louisiana Dept. of Agriculture, C.A.5 (La.) 1994, 18 F.3d 318, rehearing denied. Civil Rights 1037

Plaintiff's allegations that town board members intentionally treated her differently than similarly situated individuals for the purpose of impacting her First Amendment rights of political affiliation and free speech stated a claim, in §§ 1983 action, for equal protection violation relating to town's failure to hire plaintiff for position as town assessor. Bailey v. Town of Evans, New York, W.D.N.Y.2006, 443 F.Supp.2d 427. Taxation 2436

Genuine issue of material fact existed as to whether statement on automobile, that driver was "a fucking suicide bomber communist terrorist!" with "W.O.M.D. on Board," was "true threat" not protected speech under First Amendment, precluding summary judgment on civil rights claim. Fogel v. Grass Valley Police Dept., E.D.Cal.2006, 415 F.Supp.2d 1084. Federal Civil Procedure 2491.5

Police officers did not prohibit anti-abortion demonstration, but merely tried on content-neutral grounds to move the protesters away from a highway intersection for the safety of drivers as well as the protesters, leaving protesters ample alternative means of communication; thus there was no First Amendment violation which could support §§ 1983 action. World Wide Street Preachers' Fellowship v. Town of Columbia, W.D.La.2006, 411 F.Supp.2d 671. Municipal Corporations 703(2)

Proposed amendment of school district employee's §§ 1983 complaint to add retaliatory discharge claim would not be futile, insofar as employee alleged he was speaking on matter of public concern when he complained to district superintendent about racial bullying and harassment of his children. Dockery v. Unified School Dist. No. 231, D.Kan.2006, 406 F.Supp.2d 1219. Federal Civil Procedure 851

Allegedly defamatory comments of town mayor and town attorney at public hearing regarding resident against whose property a tax foreclosure sale was conducted did not chill resident's First Amendment rights so as to support §§ 1983 claim, since resident did in fact address the hearing; resident had constitutional right only to speak, not to be believed or to exclude others from expressing contrary views. Balaber-Strauss v. Town/Village of Harrison, S.D.N.Y.2005, 405 F.Supp.2d 427. Municipal Corporations 980(3)

Independent contractor's letter to special education committee, expressing support for continuing services for special education student at an integrated day care center, did not address an issue of public concern and was therefore not constitutionally protected speech, as required for contractor's civil rights claim alleging she was fired by county in retaliation for writing the letter; letter concerned whether one student should receive his preschool services and whether he was progressing at his present level of services, and was not an issue of general concern for the public. McGuire v. Warren, S.D.N.Y.2005, 404 F.Supp.2d 530. Counties 127

County did not demonstrate that Texas anti-solicitation statute directed toward bail bondsmen, which prohibited telephone calls during 24 hours after arrest, directly and materially advanced state's interest in preventing harassment, in civil rights lawsuit alleging violation commercial speech under First Amendment, on evidence that multiple independent bondsmen contact family of arrestee by telephone at any hour to notify family of potential bail bond services; statute did not prevent multiple calls from occurring after expiration of 24 hour period and there

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was no evidence that families would have preferred to forgo knowledge of family member's arrest within 24 hours. Pruett v. Harris County Bail Bond Bd., S.D.Tex.2005, 400 F.Supp.2d 967, entered 2005 WL 3047787, motion denied 2005 WL 3047786, subsequent determination 2005 WL 3047789. Constitutional Law 90.1(9)

Alleged misconduct of town employee during work hours involved topic of public concern, for purpose of First Amendment free speech civil rights claim of citizen who was denied right to make statement at town board meeting, since employee was paid by town, had set work schedule, and provided important services to town. Piscottano v. Town of Somers, D.Conn.2005, 396 F.Supp.2d 187. Towns 26

Producer and distributor of wild rice failed to establish that state wild rice council used any monies collected from check-off fees from sales of wild rice to advertise wild rice, as required to support their §§ 1983 action against council and its commissioner alleging that collection of fees violated their First Amendment right to free speech. J.W. DeWit Farms, Inc. v. Minnesota Cultivated Wild Rice, D.Minn.2005, 393 F.Supp.2d 847. Civil Rights 1422

Fact that plaintiff filed §§ 1983 suit against state police officers was insufficient to demonstrate that her First Amendment rights had not been chilled by officers' actions, so as to preclude her First Amendment retaliation claims against officers, where plaintiff claimed that officers repeatedly resisted her attempts to have them enforce orders of protection she had obtained against her neighbors, arrested her eleven times, none of which led to conviction, and involuntarily transported her to psychological evaluations, where it was determined that she was not suffering from any psychological disorder. Jackson v. New York State, N.D.N.Y.2005, 381 F.Supp.2d 80. States 112.2(2)

High school student's loud reference to assistant principal as a "dick" after he took away student's unopened food and refused to give it back immediately was not protected by First Amendment; statement was insubordinate speech directed toward school official and did not concern political issue or matter of public concern, but instead was directed at private grievance. Posthumus v. Board of Educ. of Mona Shores Public Schools, W.D.Mich.2005, 380 F.Supp.2d 891. Schools 169

If an employee asserting a First Amendment §§ 1983 retaliation claim can prove that she was engaged in a constitutionally protected activity, she was subjected to adverse action or deprived of some benefit, and the protected speech was a substantial or motivating factor in the adverse action, the burden shifts to the employer to prove, by a preponderance, that it would have taken the same action even in the absence of the protected conduct. Phillips v. Ingham County, W.D.Mich.2005, 371 F.Supp.2d 918. Civil Rights 1405; Civil Rights 1421

With regard to police department members' §§ 1983 claim based on First Amendment retaliation for their report of police chief's alleged acquisition of testing and answer materials prior to certification examination, "public charges" against members were not actionable under §§ 1983, although they could be basis for state law defamation suit. Heller v. Fulare, W.D.Pa.2005, 371 F.Supp.2d 743. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Requested placement of Nativity scene banners or lighted displays on light poles along street, and display of unattended nativity on grassy area owned by municipality, constituted private religious speech protected by free speech clause of First Amendment. Snowden v. Town of Bay Harbor Islands, Florida, S.D.Fla.2004, 358 F.Supp.2d 1178. Constitutional Law 90.1(4); Municipal Corporations 703(1); Municipal Corporations 721(1)

User of public library had First Amendment right to receive information which was impeded by library's action of permanently barring him from using library's computers which could access internet, as required for user to bring § § 1983 action against library alleging violation of procedural due process of law. Miller v. Northwest Region Library Bd., M.D.N.C.2004, 348 F.Supp.2d 563. Constitutional Law 90.1(9); Municipal Corporations

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Property owners failed to show that city officials' adverse actions were motivated by any speech of owners, as would support owners' claim under §§ 1983 alleging retaliation for speech protected by the First Amendment, where at least some of the adverse actions were taken before owners engaged in protected speech. Moran v. City of New Rochelle, S.D.N.Y.2004, 346 F.Supp.2d 507. Constitutional Law 90.1(1)

College vice president's action in canceling scheduled student event with four days' notice, allegedly based on his aversion toward proposed speaker, did not violate students' constitutional rights under the First, Fifth, and Fourteenth Amendments, as would support students' action under §§ 1983 against college and its personnel, where event went on as planned after a student demonstration. Ford v. Reynolds, E.D.N.Y.2004, 326 F.Supp.2d 392, affirmed 167 Fed.Appx. 248, 2006 WL 354636. Colleges And Universities 9.45(1); Constitutional Law 90.1(1.4); Constitutional Law 278.5(5.1)

City employee was engaging in conduct protected by both First Amendment and Title VII, when she filed ethics complaint with city, challenging promotion of supervisor who had allegedly sexually harassed fellow employee, even though action of city, rather than action of supervisor, was being challenged. Thomas v. Ragland, W.D.Wis.2004, 324 F.Supp.2d 950. Civil Rights 1244; Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

Letter of reprimand issued to police officer, and placement of reprimand in his personnel file, was caused by protected speech of police officer, which occurred in form of letter to editor that presented safety issues related to inadequate security at night clubs and asked that town board of selectmen act on issue, since letter to editor was substantial factor in decision of police chief to discipline officer by issuing reprimand. Bates v. Mackay, D.Mass.2004, 321 F.Supp.2d 173. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Parent of high school student did not engage in constitutionally protected activity under Petition Clause by filing lawsuits against school district and school officials alleging negligence and other state-law torts violative of parent's private rights, and not alleging bigger pattern of official misconduct; thus, lawsuits could not form basis for parent's §§ 1983 First Amendment retaliation action against officials alleging that student was suspended because of them. Van Deelen v. Shawnee Mission Unified School Dist. # 512, D.Kan.2004, 316 F.Supp.2d 1052. Constitutional Law 91; Schools 177

Municipality intended to dedicate theater to broad range of expressive activities compatible with "public forum," for purpose of §§ 1983 claim of entertainers under free speech clause of First Amendment, although political rallies were prohibited from theater, since government-owned theaters were generally public in nature, and ordinance stated that facility was designed for number of "public uses" and for promotion of "culture, education and recreation, offering moments of leisure and relaxation to the general public," and that it was intended for development of "cultural activities of a musical or literary as well as of a theatrical type." Producciones Gran Escenario, Inc. v. Ruiz, D.Puerto Rico 2004, 310 F.Supp.2d 440. Constitutional Law 90.1(4)

Temporary employee failed to state First Amendment retaliation claim against temporary staffing firm where speech alleged was private grievance relating to her personal desire not to be reassigned to different position; grievance did not involve matter of public concern or government action. Ganthier v. North Shore-Long Island Jewish Health System, E.D.N.Y.2004, 298 F.Supp.2d 342. Constitutional Law 90.1(7.2); Officers And Public Employees 66

Police detective failed to allege that he spoke on matter of public concern, or that he suffered actionable adverse employment action, as required to support First Amendment claim against police department pursuant to § 1983 in which he alleged he was removed from emergency response team (ERT) after he received written reprimand for engaging in conduct unbecoming an officer; detective's claim that his removal from ERT was in direct response to

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false allegations against him that he argued with supervising sergeant in public did not describe constitutionally protected speech, detective's alleged speech of grieving his ERT removal was not matter of public concern but rather reflected his personal dissatisfaction with status quo, and sergeant's subsequent tracking of his time off did not constitute adverse employment action. Barton v. City of Bristol, D.Conn.2003, 294 F.Supp.2d 184. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Fact issue existed as to whether city official removed banners promoting gay pride parade because he thought city's permission for sponsoring organization to display banners had elapsed, rather than because official had received criticism about banners' content, precluding summary judgment in organization's § 1983 First Amendment action against city and official. Cimarron Alliance Foundation v. City of Oklahoma City, Okla., W.D.Okla.2002, 290 F.Supp.2d 1252. Federal Civil Procedure 2491.5

Port Authority employee failed to establish prima facie case of retaliatory discharge in violation of First Amendment; although filing of Equal Employment Opportunity Commission (EEOC) complaints that at least in part resulted in Consent Decree was constitutionally protected conduct, her speech activity was not substantial or motivating factor in her failure to be promoted or have her position upgraded. Zezulewicz v. Port Authority of Allegheny County, W.D.Pa.2003, 290 F.Supp.2d 583. Constitutional Law 90.1(7.2); Navigable Waters 14(2)

Motorist's husband's free speech was not chilled by state trooper's allegedly retaliatory issuance of traffic citation to motorist after husband accused trooper of mishandling collision investigation, precluding motorist's § 1983 First Amendment action against trooper; husband continued to argue with trooper after issuance of citation and also recounted events and his opinions of them to trooper's superior when making subsequent complaint. Persaud v. McSorley, S.D.N.Y.2003, 275 F.Supp.2d 490. Automobiles 349(14.1); Constitutional Law 90.1(1)

Speech by police and fire department employees who participated in parade float that was aimed to comment on racial integration in the community involved matter of greater public concern than private speech, and required consideration of employees' attendant interests in expressing themselves on such a matter in determining whether they were discharged by city in violation of § 1983, allegedly out of fear of negative public reaction to controversial expressive activity, for exercising the right of free speech under the First Amendment. Locurto v. Giuliani, S.D.N.Y.2003, 269 F.Supp.2d 368, reversed and remanded 447 F.3d 159. Constitutional Law 90.1(7.2); Municipal Corporations 185(1); Municipal Corporations 198(2)

Genuine issues of material fact, as to whether job applicant's protected speech disrupted, or had the potential to disrupt, the functioning of Connecticut city housing authority, whether such disruption even occurred, and whether applicant was not hired because of disruption or because of content of his speech, precluded summary judgment for authority and its executive director on applicant's First Amendment retaliation claim based on finding, under *Pickering-Connick* balancing test, that authority's interests outweighed those of applicant. Ruscoe v. Housing Authority of City of New Britain, D.Conn.2003, 259 F.Supp.2d 160. Federal Civil Procedure 2497.1

Prisoner's conduct while participating in release program, in speaking to press, protesting and handing out pamphlets outside of courthouse, running a website, and producing and appearing in television commercials, all in favor of legalization of marijuana, was conduct protected by First Amendment, for purposes of determining whether his participation in release program was unconstitutionally terminated in retaliation for his activities while on release. Forchion v. Intensive Supervised Parole, D.N.J.2003, 240 F.Supp.2d 302. Constitutional Law 90.1(1); Constitutional Law 90.1(1.1); Constitutional Law 90.1(9); Sentencing And Punishment 2006

Allegations that female supervisors verbally insulted male county employee and that they sought his termination and mischaracterized his performance in evaluations in order to effect it did not give rise to constitutional claims for First Amendment retaliation or violations of equal protection, for purposes of employee's § 1983 claims against

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individual supervisors. Kulikowski v. Board of County Com'rs of County of Boulder, D.Colo.2002, 231 F.Supp.2d 1053. Constitutional Law 90.1(7.2); Constitutional Law 224(3); Counties 67

Female manager's alleged encouragement of male manager to terminate white male county employee and her alleged involvement in written reprimands that preceded employee's termination did not constitute First Amendment retaliation for employee's complaints about the management of county's domestic violence shelter. Kulikowski v. Board of County Com'rs of County of Boulder, D.Colo.2002, 231 F.Supp.2d 1053. Constitutional Law 90.1(7.2); Counties 67

Statements by former village employee regarding village's alleged practice of unlawfully requiring employees to work outside of their civil service classifications without additional compensation focused solely on his personal employment situation, and thus were not protected under First Amendment so as to support claim for conspiracy or retaliation under § 1983. Herbil Holding Co. v. Brook, E.D.N.Y.2000, 84 F.Supp.2d 369. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

Attendee of public meeting of county master plain steering committee stated claim against co-chair under § 1983 for violating her first amendment free speech rights, regardless of whether the forum was a designated public forum or a nonpublic forum, where she alleged that co-chair acquiesced in decision to terminate public meeting in the midst of attendee's group address on the topic of county hog farming solely on ground of the viewpoint attendee expressed. Thompson v. Huntington, S.D.Ind.1999, 69 F.Supp.2d 1071. Civil Rights 1395(1)

Cable television company, which contended that cities violated its First Amendment rights by wrongfully rejecting its cable television franchise requests, stated First Amendment violation claim under § 1983 against cities, despite contention that company lacked constitutional right to use public domain to disseminate its messages by cable television; facing incomplete factual record and area of law that was at best unsettled, district court was unable to find beyond doubt that company could prove no set of facts supporting its claim which would entitle it to relief. Classic Communications, Inc. v. Rural Telephone Service Co., Inc., D.Kan.1996, 956 F.Supp. 896. Civil Rights 1395(1)

Operator of restaurant-lounge which alleged that mayor and liquor commissioner of village harassed establishment on "disc jockey nights," attempting to suppress music played on those nights, in order to reduce number of black patrons, failed to state First Amendment free expression claim; complaint failed to establish nexus between harassment and alleged monetary loss and the First Amendment, and pleaded nothing more than attempt at deprivation of First Amendment rights; although operator alleged that it suffered monetary losses, it did not state that it stopped disc jockey nights or that harassment interrupted its business. R & V Pine Tree, Inc. v. Village of Forest Park, N.D.Ill.1996, 947 F.Supp. 342. Civil Rights 1395(1)

Allegation that public official and law enforcement officers attempted to intimidate official's son-in-law from testifying against official stated claim for violation of civil rights under § 1983, as allegations described paradigm example of abuse of official power intended to silence citizen protest. Gerakaris v. Champagne, D.Mass.1996, 913 F.Supp. 646. Civil Rights 1088(1)

Actions of police officers in issuing citation to plaintiff who was collecting signatures to petition did not amount to violation of First Amendment rights; plaintiffs showed no deterrence of speech, nor that such deterrence was substantial or motivating factor in officer's conduct. Tate v. Lau, D.Nev.1994, 865 F.Supp. 681. Constitutional Law 90.1(1.1)

Pro se litigant did not state § 1983 claim for First Amendment violation with respect to authorities' efforts to close his topless donut shop since nudity is not recognized as communicative expression. Cortese v. Black, D.Colo.1993, 838 F.Supp. 485. Constitutional Law 90.4(2)

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42 U.S.C.A. § 1983

Allegations that town in authorizing filing of suit against newspaper publisher and editor who had written editorial critical of police actions in attempting to disband antiabortion demonstration produced chilling effect on First Amendment rights were insufficient to establish cognizable constitutional deprivation; there was no allegation that editor stopped writing editorials or that publisher stopped publication during time they were parties to lawsuit. Spear v. Town of West Hartford, D.Conn.1991, 771 F.Supp. 521, affirmed 954 F.2d 63, certiorari denied 113 S.Ct. 66, 506 U.S. 819, 121 L.Ed.2d 33. Civil Rights 1395(1)

Allegations of employees of county office that office director's tape-recording of their conversations violated their rights under First and Fourteenth Amendments, that they had suffered embarrassment as result of disclosure of tape-recordings and that their ability to work had been impeded by adverse publicity resulting from incident were sufficient to state § 1983 damages claim against county. Dorris v. Absher, M.D.Tenn.1997, 959 F.Supp. 813, affirmed in part, reversed in part 179 F.3d 420. Civil Rights 1395(8)

Even if breach of the peace ordinance under which plaintiff was arrested were held to be unconstitutionally overbroad, thus offending the freedom of speech clause of U.S.C.A. Const.Amend. 1, or unconstitutionally vague, plaintiff would not be entitled to recover damages where the speech which led to invocation of the ordinance consisted of face-to-face threats of harm addressed to children, and thus was plainly without constitutional protection. Hearn v. Hudson, W.D.Va.1982, 549 F.Supp. 949. Civil Rights 1088(4)

Even if private developer's actions in seeking to evict adult bookstores from building it was renovating and in opposing bookstore's application for licenses for peep shows amounted to state action under this section, developer's actions did not violate bookstore's constitutional rights where developer's actions merely prohibited bookstores from conducting their businesses in renovated building and did not prevent bookstores from pursuing businesses elsewhere. Fantasy Book Shop, Inc. v. City of Boston, D.C.Mass.1982, 531 F.Supp. 821. Civil Rights 1326(4)

School district's initial permission for plaintiff to speak at a public school assembly was not a "valuable governmental benefit," and thus its subsequent revocation of that permission could not violate plaintiff's First Amendment rights to free speech, free exercise of religion, and related associational rights, where district was not going to pay plaintiff anything for speaking. Carpenter v. Dillon Elementary School Dist. 10, C.A.9 (Mont.) 2005, 149 Fed.Appx. 645, 2005 WL 2271720, Unreported. Schools 72

Assistant county attorney's interest in exercising his right to free speech by publicly criticizing county prosecutor's decision to seek purchase of new building was outweighed by prosecutor's interest in having trusted advisors, for purposes of assistant county's attorney's §§ 1983 claim alleging he was fired in retaliation for exercising his right to free speech. Muti v. Schmidt, C.A.3 (N.J.) 2004, 118 Fed.Appx. 646, 2004 WL 2998746, Unreported. Constitutional Law 90.1(7.2); Counties 67

Mayor's reviewing time sheets of city council employee, requesting keys to her office to inspect records kept there, or installing a security camera in the hall outside her office did not adversely affect her employment and, thus, did not deter her from exercising her rights under the First Amendment; city council employee could have reasonably expected people to seek access to public files kept in her office and could have reasonably expected to encounter video cameras in hallways. Poppy v. City of Willoughby Hills, C.A.6 (Ohio) 2004, 96 Fed.Appx. 292, 2004 WL 771281, Unreported. Constitutional Law 82(11); Municipal Corporations 218(3)

District court erred, in § 1983 action, in finding, when ruling on a motion to dismiss, that village employees did not interfere with political activist's right to free speech when they interfered with his leafleting activities; court engaged in impermissible factfinding in determining that employees were merely enforcing reasonable time, place, and manner restrictions on activist's speech, and court also erred in finding that activist had sufficient alternative channels of communication open to him. Chapman v. Stricker, C.A.7 (Ill.) 2003, 81 Fed.Appx. 77, 2003 WL 22717969, Unreported. Federal Civil Procedure 1831

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42 U.S.C.A. § 1983

Issue of whether state prison officials retaliated against correctional officer because of his statements to investigators regarding use of excessive force by fellow officers against inmates was for jury in officer's § 1983 action alleging First Amendment retaliation, in light of evidence that fellow officer referred to him as "snitch," supervisor made officer change his report regarding use of excessive force and precluded officer from presenting it to investigators, prison's human resources director removed officer from his position after he reported fellow officer's harassment and made him undergo psychological testing, and commission of correction had negative attitude towards officer for reporting incident. Bounds v. Taylor, C.A.3 (Del.) 2003, 77 Fed.Appx. 99, 2003 WL 22325312, Unreported. Civil Rights 1430

Government interests of aesthetics and safety were insufficient justification for ordinance that regulated display of political signs, in context of candidate's application for temporary restraining order in § 1983 lawsuit brought by candidate for elective office alleging violation of his right to free speech. Lawless v. Lower Providence Township, E.D.Pa.2002, 2002 WL 31356304, Unreported. Civil Rights 1457(7)

In seeking preliminary injunction against town's enforcement of ordinance banning billboards, billboard owner did not show either likelihood of success on the merits, or existence of sufficiently serious questions going to the merits, on claim that ordinance was unconstitutional because it facially discriminated against non-commercial speech, inasmuch as ordinance appeared to be at least neutral in its treatment of commercial and non-commercial speech, and had provisions which permitted signs containing certain types of non-commercial speech on at least a temporary basis. Richards "Of Course", Inc. v. Town of DeWitt, N.D.N.Y.1985, 1985 WL 669278, Unreported. Civil Rights 1457(4)

1193. ---- Public concern, constitutional violation, deprivation of constitutional or statutory rights generally

Deputy district attorney did not speak as a citizen when, pursuant to his official duties as a calendar deputy, he wrote a disposition memorandum in which he recommended dismissal of a pending criminal case on the basis of purported governmental misconduct, and so his speech was not protected by the First Amendment; when he went to work and performed the tasks he was paid to perform, district attorney acted as a government employee, not as a citizen, and fact that his duties sometimes required him to speak or write did not prohibit his supervisors from evaluating his performance. Garcetti v. Ceballos, U.S.2006, 126 S.Ct. 1951, 164 L.Ed.2d 689. District And Prosecuting Attorneys 3(1)

Allegation in African-American police chief's complaint, that city was motivated by race when it issued gag order prohibiting him from speaking to media about investigation into his alleged corruption and misuse of power, was sufficient to set forth claim in § 1983 free speech action that he was restricted from speaking about matters of public concern. Jackson v. City of Columbus, C.A.6 (Ohio) 1999, 194 F.3d 737, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(8)

County employee's reports of sexual harassment by county official's assistant were matters of public concern, for purposes of § 1983 claim for discharge in violation of her free speech rights, as such harassment constituted discrimination by person exercising authority in name of those exercising public authority and would have been relevant to electorate's evaluation of performance of public official, and nothing in form or context deprived them of value to process of self-governance. Azzaro v. County of Allegheny, C.A.3 (Pa.) 1997, 110 F.3d 968. Civil Rights 1244

Employee's bald unadorned public endorsement of particular company to manage public hospital was not of sufficient public concern to warrant First Amendment protection as premise of retaliatory termination claim under § 1983, since it offered no reasons or explanation at all for opinion, and was neither expose of government ineptitude, waste or corruption nor recitation of reasons, arguments or facts supporting retention of management. Withiam v. Baptist Health Care of Oklahoma, Inc., C.A.10 (Okla.) 1996, 98 F.3d 581. Constitutional Law 90.1(7.2)

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42 U.S.C.A. § 1983

Public employee's statements about political patronage practices and her statements and reports about employees using their position for partisan political activities constituted speech on matters of "public concern" for purposes of determining whether her conduct was entitled to First Amendment protection, despite claim that employee lacked any factual basis for her statements; some of employee's statements were critical of political patronage employment practices in general, and defendants pointed to nothing in record that contradicted employee's statements and reports. Williams v. Com. of Ky., C.A.6 (Ky.) 1994, 24 F.3d 1526, certiorari denied 115 S.Ct. 358, 513 U.S. 947, 130 L.Ed.2d 312. Constitutional Law 90.1(7.2); Officers And Public Employees 66

To make successful claim for wrongful retaliation under First Amendment and § 1983, plaintiff must prove that: statement that brought on retaliation is one of public concern; constitutionally protected expression is substantial or motivational factor in employer's adverse decision or conduct; and interest of plaintiff/employee in commenting on matter of public concern outweighs state's interest in maintaining efficient public services. Sanchez v. City of Santa Ana, C.A.9 (Cal.) 1990, 936 F.2d 1027, amended on denial of rehearing, certiorari denied 112 S.Ct. 417, 502 U.S. 957, 116 L.Ed.2d 437, on remand 928 F.Supp. 1494. Constitutional Law 90.1(7.2); Constitutional Law 90.1(7.2)

Phrase "legitimate public concern," defining scope of public employee's statements on issues protected by U.S.C.A. Const.Amend. 1, did not encompass probationary state employee's complaints about his own situation, and thus did not give rise to cognizable U.S.C.A. Const.Amend. 1 claim under this section. Jones v. State of Ga., C.A.11 (Ga.) 1984, 725 F.2d 622, rehearing denied 729 F.2d 1468, certiorari denied 105 S.Ct. 380, 469 U.S. 979, 83 L.Ed.2d 316, rehearing denied 105 S.Ct. 941, 469 U.S. 1181, 83 L.Ed.2d 954. Constitutional Law 90.1(7.2)

Letter by independent contractor, which provided housing for people with HIV and AIDS, to Commissioner of the Human Resource Administration (HRA), informing her that its clients were in danger of becoming homeless if it were forced to close its program due to city's failure to negotiate contract and reimburse it for its expenses, addressed matter of public concern, falling under protection of First Amendment, which was not removed by mere fact that contractor had personal interest in negotiating contract with city. Housing Works, Inc. v. Turner, S.D.N.Y.2005, 362 F.Supp.2d 434. Constitutional Law 91; Municipal Corporations 156

Police officer's refusal to re-classify crimes as per police commissioner's request did not address "matter of public concern," and, therefore, was not subject to First Amendment free speech protection; although refusal may have been inspired by issue of legitimate public concern, classification of crimes was part of officer's duties and he did not voice his opposition in any cognizable way that could have come within ambit of protected speech. Kelly v. City of Mount Vernon, S.D.N.Y.2004, 344 F.Supp.2d 395. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Police officer's endorsement of report regarding interview of mayor about crime involving mayor's grandson did not address "matter of public concern," and, therefore, was not subject to First Amendment free speech protection; report was nothing other than type of report that was regularly filed, and identity of suspect did not turn suspect's statement into speech on matter of public concern. Kelly v. City of Mount Vernon, S.D.N.Y.2004, 344 F.Supp.2d 395. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Internal report written by police officer regarding gambling at night club, detailing what actions had been taken and stating that those issues were brought to attention of police commissioner, did not address "matter of public concern," and, therefore, was not subject to First Amendment free speech protection; no effort was being made to bring pervasive or systematic cover-up in police department to attention of relevant authorities or to public, since report was not addressed to supervisor of commissioner. Kelly v. City of Mount Vernon, S.D.N.Y.2004, 344 F.Supp.2d 395. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Alleged supervisory tolerance of harassment of county corrections officer by his coworkers, based on officer's

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reporting of fellow officer's misconduct, was a "matter of public concern" for purposes of officer's First Amendment retaliation claim under § 1983. Baron v. Hickey, D.Mass.2003, 242 F.Supp.2d 66. Constitutional Law 90.1(7.2); Prisons 7

Landlord's refusal to allow borough authorities access to rental property in order to conduct a warrantless inspection was not a "protected activity" under the First Amendment, for purposes of landlord's retaliation claim under § 1983, absent evidence that refusal was a matter of public concern rather than a purely private dispute. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Constitutional Law 82(6.1); Health 392

Issue of whether former state administrative law judge's (ALJ) rulings were matters of "public concern" that were protected by the First Amendment, or instead speech regarding "parochial concerns" of an employee, could not be resolved at employer's motion to dismiss ALJ's § 1983 claim alleging that her termination violated her free speech rights. Harrison v. Coffman, E.D.Ark.1999, 35 F.Supp.2d 722. Constitutional Law 46(3)

To establish claim of retaliation in violation of First Amendment to support § 1983 action, public employee must show that her speech addressed matters of public concern and that her interest, as a citizen, in commenting on matters of public concern outweighed interest of state, as an employer, in promoting efficiency of public services it performs. Hall v. Missouri Highway and Transp. Com'n, E.D.Mo.1998, 995 F.Supp. 1001, affirmed 235 F.3d 1065 . Constitutional Law 90.1(7.2)

To establish § 1983 liability for infringement upon First Amendment right to speech, it is not enough for public employee to merely show that adverse employment action followed protected speech. Mace v. City of Akron, N.D.Ohio 1998, 989 F.Supp. 949. Civil Rights 1032

Police officer failed to allege that his protest to police department official that his transfer was in retaliation for his knowledge of supervisor's misconduct and association with known prostitute involved matter of public concern, and, thus, it was not entitled to First Amendment protection, where his alleged complaint to official was in form of one-to-one private conversation, and voiced solely in personal terms and for personal reasons. Lara v. City of Chicago, N.D.Ill.1997, 968 F.Supp. 1278. Constitutional Law 90.1(7.2)

Subject matter of city transit authority (TA) employee's threatened lawsuit, alleging ongoing policy of system-wide retaliation against membership in and activities on behalf of union designed to chill employees' free speech and free associational activities, was matter of public concern, and thus, employee's filing of action, alleging TA director of labor relations' offer to place employee in exchange for waiver of claim violated First Amendment, implicated public concern and properly formed basis for § 1983 action. Scott v. Goodman, E.D.N.Y.1997, 961 F.Supp. 424, affirmed 191 F.3d 82. Civil Rights 1249(1)

Letter to Pennsylvania governor from attorney examiner with the Department of Public Welfare's (DPW) Office of Hearings and Appeals (OH&A) stating that he was unlawfully suspended by OH&A Director, that Director lacked competence, and that situation at DPW was "critical and may be laid directly at the feet" of Director who was appointed by the previous gubernatorial administration addressed matter of public concern and, therefore, was protected speech for purposes of attorney's § 1983 First Amendment retaliatory discharge claim; letter did not seek review of decision to suspend attorney or to prevent his termination and much of the content of the letter was taken from memorandum drafted by member of governor's transition team. Sullivan v. Houstoun, M.D.Pa.1996, 928 F.Supp. 521. Constitutional Law 90.1(7.2); States 53

Public employee alleging retaliation for exercise of First Amendment rights must show that expressions which allegedly provoked retaliatory action relate to matters of public concern. Baker v. Mecklenburg County, W.D.N.C.1994, 853 F.Supp. 889, affirmed 48 F.3d 1215. Constitutional Law 90.1(7.2)

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Statements made by city director of emergency medical services (EMS), that his team was understaffed and ill-equipped, were matter of public concern under First Amendment, for purpose of § 1983 lawsuit alleging retaliatory termination; since public relied on EMS every day, EMS personnel routinely dealt with life or death situations, and over 500 emergency calls were missed in one year, statements were type of protected speech that was designed to raise awareness of potential threats to public health and safety of community. Lloyd v. City of Bethlehem, E.D.Pa.2002, 2002 WL 31341093, Unreported. Constitutional Law 90.1(7.2); Municipal Corporations 156

1194. ---- Press, constitutional violation, deprivation of constitutional or statutory rights generally

University dean's actions of calling publishing company and directing that school newspaper not be published until approved by a university official violated students' First Amendment rights for purposes of § 1983 action brought by student editors against dean; even though the student editors made the decision not to send further issues of the newspaper to the publisher, the dean's call made it unlikely that the publisher would print a copy without approval due to risk of not being paid by the university and a late printing of the paper would have been futile because students were already out of town on winter break when approval was given. Hosty v. Carter, C.A.7 (Ill.) 2003, 325 F.3d 945, rehearing granted, opinion vacated. Colleges And Universities 9.45(4); Constitutional Law 90.1(1.4)

Town's initiation of suit against newspaper publisher and editor who had written editorial critical of police actions in suppressing antiabortion demonstrations, and meeting between town's attorneys and attorneys for women's center at which demonstrations took place, did not constitute conduct so egregious as to shock the conscience so as to give rise to substantive due process violation cognizable under § 1983. Spear v. Town of West Hartford, D.Conn.1991, 771 F.Supp. 521, affirmed 954 F.2d 63, certiorari denied 113 S.Ct. 66, 506 U.S. 819, 121 L.Ed.2d 33. Constitutional Law 253(1); Towns 44

A state court imposing a ban on taking of photographs by representatives of the press and newspapermen within the court room is reasonable and proper and geared to achieve dignity and decorum in the court room, and is not an unreasonable impingement upon free speech under U.S.C.A.Const. Amends. 1 and 14, or violation of this section. Tribune Review Pub. Co. v. Thomas, W.D.Pa.1957, 153 F.Supp. 486, affirmed 254 F.2d 883. Civil Rights 1056; Constitutional Law 268(6)

Ordinance and resolutions enacted by city council of city of Pawtucket denying right of any person to examine city records having to do with tax cancellations or abatements without express permission of city council are invalid as an abridgement of the freedom of speech and of the press, notwithstanding that enactments contain no penal provisions. Providence Journal Co. v. McCoy, D.C.R.I.1950, 94 F.Supp. 186, affirmed 190 F.2d 760, certiorari denied 72 S.Ct. 200, 342 U.S. 894, 96 L.Ed. 669. Constitutional Law 274.1(2.1)

1195. ---- Assembly, constitutional violation, deprivation of constitutional or statutory rights generally

That members of Delaware State Medical Society and state and municipal officers prevented plaintiff, a retired medical doctor, academician, and scientific researcher, from holding meetings and disseminating information for lawful purpose, was sufficient for plaintiff to maintain suit for injunction under this section as a suit for protection of rights and privileges guaranteed by due process clause of U.S.C.A.Const. Amend. 14. Ghadiali v. Delaware State Medical Soc., D.C.Del.1939, 28 F.Supp. 841. Constitutional Law 274(2); Injunction 94

1196. ---- Association, constitutional violation, deprivation of constitutional or statutory rights generally

Ohio election statute requiring independent congressional candidates to file statement of candidacy and nominating petition on the day preceding the primary election did not impose a severe burden on independent candidates' or voters' First Amendment associational rights, so that strict scrutiny did not apply to §§ 1983 claim brought by

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prospective congressional candidate alleging that the statute violated the First Amendment. Morrison v. Colley, C.A.6 (Ohio) 2006, 467 F.3d 503. Constitutional Law 91

Evidence was sufficient for jury to conclude in civil rights lawsuit that mayor designed and implemented privatization of Puerto Rico municipal sanitation department in discriminatory manner in violation of First Amendment political affiliation rights of career employees, where administration implemented privatization in manner that violated multiple separate requirements of local law, witnesses testified of explicit statements by mayor of his intent to discriminate, municipal workers hired in place of career employees since privatization were affiliated with mayor's party, and jury easily could have concluded that mayor's testimony was not credible. Borges Colon v. Roman-Abreu, C.A.1 (Puerto Rico) 2006, 438 F.3d 1. Civil Rights 1430

Genuine issues of material fact existed as to whether State tax officials' imposition of tax liens on property of Indian tribal members was in retaliation for those members' business association with a non-tribal gasoline distributor, precluding summary judgment for officials in tribal members' §§ 1983 action alleging violation of their First Amendment right to freedom of association; officials' quick decision to impose the liens could chill a reasonable person from associating with an outside distributor, and extreme delay in releasing the liens could evidence a retaliatory motive. Perez v. Ellington, C.A.10 (N.M.) 2005, 421 F.3d 1128. Federal Civil Procedure 2491.5

State's compelling interest in promoting welfare of school children would have precluded recovery by sno-cone vendor for deprivation of civil rights due to his being prohibited from selling sno-cones to students at area schools, even if prohibition infringed upon vendor's free association rights under First Amendment. Rivers v. Campbell, C.A.11 (Fla.) 1986, 791 F.2d 837. Civil Rights 1070

Alternative means of engaging in harmless associations with inmates existed for state prison inmate that would not result in gang validation through associations and resultant housing in secure unit, under California Department of Corrections and Rehabilitation (CDCR) regulations, by associating with inmates who had not been validated as gang members or associates, in determining whether regulations violated state prison inmate's First and Fourteenth Amendment associational rights as alleged in inmate's §§ 1983 action. Stewart v. Alameida, N.D.Cal.2006, 418 F.Supp.2d 1154. Prisons 13(5)

City and its officials' passage of zoning ordinance prohibiting maintenance of farm animals, allegedly in retaliation for speech by property owners, injured owners' daughter and son-in-law, as would support daughter and son-in-law's claim under §§ 1983 alleging violation of their First Amendment right of intimate association, although daughter and son-in-law purchased property from owners a year after ordinance was passed, where ordinance caused property owners to incur additional costs of relocating their horses and supporting their upkeep at a different location. Moran v. City of New Rochelle, S.D.N.Y.2004, 346 F.Supp.2d 507. Constitutional Law 91; Zoning And Planning 82

Political activist's fiancee's association with activist, which was strictly personal and not political, was not protected by Free Association Clause, precluding fiancee's §§ 1983 First Amendment action against city officials alleging that her Section 8 housing subsidy was cancelled in retaliation for activist's political activities. Leon v. Sanchez-Bermudez, D.Puerto Rico 2004, 332 F.Supp.2d 407. Constitutional Law 91; United States 82(3.4)

Political candidates who brought action against county election board, seeking to enjoin third-party delivery of absentee ballots, failed to allege that board's procedures restricted their ability to be placed on ballot for upcoming election or placed unconstitutional conditions on their right to become candidates, as required to state claims for restrictions of rights of free association and equal protection. Pierce v. Allegheny County Bd. of Elections, W.D.Pa.2003, 324 F.Supp.2d 684. Constitutional Law 91; Constitutional Law 225.2(6); Elections 216.1

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Riding motorcycles, going to parties, and bonding with friends did not involve matters of public concern, and thus state correctional officers failed to establish serious questions as to merits of their claim that disciplinary actions based on their association with motorcycle gang violated their First Amendment right to freedom of association, so as to entitle them to preliminary injunction barring state from effecting those employment actions, even if gang had message of acceptance of non-mainstream individuals, of nonconformance to society's rules, and of values of biking and brotherhood, where purpose of officers' association with gang was entirely social in nature, gang had national reputation for violence and crime, and state had serious problems with gang violence in prisons. Piscottano v. Murphy, D.Conn.2004, 317 F.Supp.2d 97. Civil Rights 1457(6)

Civil service employee did not show that his dismissal was related to his political affiliation, as required to establish § 1983 political discrimination claim, under the First Amendment; although employee was a known member of a different political party than party to which his supervisors belonged, government employer claimed that employee was fired because he cashed a check made out to his political party while performing his official duties, in violation of employee rules regarding conflict of interest, and employee failed to show that employer's articulated reason was a fabrication to hide the discriminatory nature of the discharge. Alicea v. Puerto Rico Tourism Co., D.Puerto Rico 2003, 270 F.Supp.2d 243, affirmed 396 F.3d 46. Constitutional Law 91; Officers And Public Employees 69.7

Driver had no federal civil rights claim for violation of his associational rights arising out of officer's alleged expression of racial animus and violent behavior in arresting him for reckless driving in front of two passengers, allegedly because driver was associating with members of class of person against whom officer had unlawful animus; there was no allegation that passengers and driver were engaged in any activity other than social capacity which did not come within confines of associational rights protected by First Amendment. Oliver v. Cuttler, E.D.N.Y.1997, 968 F.Supp. 83. Civil Rights 1088(4)

In § 1983 action against municipal officials in their individual capacities based on their failure to assign certain boat-mooring space to permit holder, permit holder failed to state cause of action in complaint for deprivation of freedom of association; permit holder failed to allege that he wished to associate with other mooring lessees for any expressive purpose. Glatt v. Chicago Park Dist., N.D.Ill.1994, 847 F.Supp. 101. Civil Rights 1395(1)

Allegation that police officer commented to black plaintiff's "white female friends" that plaintiff was a pimp and/or involved with prostitution activities did not state civil rights claim for violation of right to free association; action was in fact nothing more than a defamation claim in disguise. Holley v. Schreibeck, E.D.Pa.1991, 758 F.Supp. 283, affirmed 944 F.2d 897, certiorari denied 112 S.Ct. 880, 502 U.S. 1035, 116 L.Ed.2d 784. Civil Rights 1395(5)

Threat of harm, under color of state law, for continued association and involuntary organization, might constitute an impermissible infringement on constitutional rights, e.g., by chilling a right of association. Park Hills Music Club, Inc. v. Board of Ed. of City of Fairborn, Greene County, State of Ohio, S.D.Ohio 1981, 512 F.Supp. 1040. Constitutional Law 91

1197. ---- Petition, constitutional violation, deprivation of constitutional or statutory rights generally

City residents' First Amendment rights to petition the government were not implicated by provision of Arizona Constitution making referendum power that was reserved to Arizona citizens inapplicable to laws passed under declaration of emergency, and therefore First Amendment did not provide basis for residents' § 1983 claims against city and city officials arising from passage of city ordinances under emergency declaration. Stone v. City of Prescott, C.A.9 (Ariz.) 1999, 173 F.3d 1172, certiorari denied 120 S.Ct. 170, 528 U.S. 870, 145 L.Ed.2d 144. Constitutional Law 91; Municipal Corporations 108.6

Genuine issue of material fact existed as to whether town planning board received and began processing site plan

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application submitted by developer of proposed subdivision, precluding partial summary judgment, as to issue of liability, for developer on its claim that board's refusal to receive and process its application, because of its commencement and maintenance of Article 78 proceeding against board, violated its rights to free speech and to petition the government under the First Amendment. Ridgeview Partners, LLC v. Entwistle, S.D.N.Y.2005, 354 F.Supp.2d 395. Federal Civil Procedure 2491.5

Child's father was not deprived of his First Amendment right to petition the government for redress, or of his due process rights, when employee of the district attorney's office told him to stop leaving voice-mail messages in the night accusing employees of discrimination in failing to prosecute child's mother for domestic violence. Burrell v. Anderson, D.Me.2005, 353 F.Supp.2d 55. Constitutional Law 91; Constitutional Law 253(1); District And Prosecuting Attorneys 10

Noerr-Pennington doctrine, barring imposition of liability when persons seek to induce executive, legislative or judicial action, did not apply to claim by bakery owner that neighbor who attended meetings for purpose of finding persons willing to complain about operations of bakery violated his constitutional rights; activity could not be construed as effort to influence official action. Pellegrino Food Products Co., Inc. v. City of Warren, W.D.Pa.2000, 136 F.Supp.2d 391. Civil Rights 1374; Constitutional Law 91

Executive sessions of town selectboard were not "public fora," and thus, town's former zoning administrator/assessor had no First Amendment right to attend meetings, and her exclusion from meeting only violated state law which could not form basis of federal claim under §§ 1983. Berlickij v. Town of Castleton, C.A.2 (Vt.) 2005, 146 Fed.Appx. 533, 2005 WL 2114090, Unreported. Towns 26

1198. ---- Second amendment, constitutional violation, deprivation of constitutional or statutory rights generally

Firearm owner failed to state a Second Amendment claim under § 1983 against village and its police officials and assistant state's county attorneys, based upon the officials' and attorneys' alleged violation of owner's right to keep and bear arms; Second Amendment did not regulate state conduct, but rather federal conduct. Manos v. Caira, N.D.Ill.2001, 162 F.Supp.2d 979. Weapons 1

Claim that state statute restricting firearms use by alleged domestic abusers violated their Second Amendment right to bear arms could not be brought under § 1983; Second Amendment barred action by federal government only, as it had never been made applicable to states through Fourteenth Amendment. Nollet v. Justices of Trial Court of Com. of Mass., D.Mass.2000, 83 F.Supp.2d 204, affirmed 248 F.3d 1127. Civil Rights 1029; Constitutional Law 274(2); Weapons 3

No violation of Second Amendment right to bear arms occurred when state police surrounded alleged hostage taker's apartment and asked that hostage taker exit with gun disabled and, thus police officers were entitled to qualified immunity in subsequent § 1983 civil rights suit; right to bear arms is unenforceable against state action. White v. Town of Chapel Hill, M.D.N.C.1995, 899 F.Supp. 1428, affirmed 70 F.3d 1264. Civil Rights 1376(6); Weapons 1

1199. ---- Fourth amendment, constitutional violation, deprivation of constitutional or statutory rights generally

Arrests for underage possession of alcoholic beverages, under District of Columbia statute that unambiguously made underage possession a civil rather than criminal offense, could not have been based on probable cause, and therefore arrestees' Fourth Amendment claim against arresting officers and related parties was cognizable via §§ 1983. John Doe v. Metropolitan Police Dept. of Dist. of Columbia, C.A.D.C.2006, 445 F.3d 460. Civil Rights 1088(4)

High school student who, following questioning by assistant principal regarding alleged nonconsensual sexual

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touching of another student, was told to remain in conference room under assistant principal's direction for several hours was "seized" within meaning of the Fourth Amendment, for purposes of his §§ 1983 claim against school district, school board and administrators. Shuman ex rel. Shertzer v. Penn Manor School Dist., C.A.3 (Pa.) 2005, 422 F.3d 141. Schools 169.5

Allegations by manager of office that was subject to search warrant that he was frisked by a police officer when he attempted to enter the office while police were executing the warrant, and that officer lacked reasonable suspicion to believe he was carrying a weapon or was engaged in criminal activity, stated claim against officer for violation of manager's Fourth Amendment right to be free from unreasonable searches and seizures. Denver Justice And Peace Committee, Inc. v. City Of Golden, C.A.10 (Colo.) 2005, 405 F.3d 923, certiorari dismissed 126 S.Ct. 1164, 163 L.Ed.2d 1016. Civil Rights 1395(6)

Fourth Amendment, rather than Fourteenth Amendment due process clause, applied to § 1983 action brought on behalf of second-grade student whose head was taped to a tree by school vice-principal for disciplinary purposes. Doe ex rel. Doe v. Hawaii Dept. of Educ., C.A.9 (Hawai'i) 2003, 334 F.3d 906, on remand 351 F.Supp.2d 998. Constitutional Law 278.5(6); Schools 169.5

Second-grade student's allegations in § 1983 action, that school vice-principal taped his head to a tree for five minutes for disciplinary purposes, were sufficient to find a violation of student's Fourth Amendment search and seizure rights, for purposes of analyzing vice-principal's qualified immunity claim. Doe ex rel. Doe v. Hawaii Dept. of Educ., C.A.9 (Hawai'i) 2003, 334 F.3d 906, on remand 351 F.Supp.2d 998. Civil Rights 1376(5); Schools 169.5

Individual's allegations that he was forcibly removed from his parents' home by county employees, without a court order, when he was a minor due to relatives' unspecified allegations of child neglect stated § 1983 claim for unreasonable seizure under the Fourth Amendment. Brokaw v. Mercer County, C.A.7 (Ill.) 2000, 235 F.3d 1000. Civil Rights 1395(1)

Travel agent stated actionable § 1983 claim against arresting officers for violation of his Fourth Amendment rights after he was arrested for theft for refusing to return customer's passport to her until she paid for services allegedly performed by agent; agent may have had a good faith belief in claiming security interest in customer's passport. Guzell v. Hiller, C.A.7 (Ill.) 2000, 223 F.3d 518. Civil Rights 1395(6)

Act of jail supervisor and corrections officer in giving key to probationer's apartment to probation officer, after probationer's arrest for violating parole for offense separate from offense underlying probation, did not violate probationer's right to be free from unreasonable searches and seizures, because terms of probation order reasonably provided that probationer was subject to warrantless search of his home at any time by any law enforcement officer; thus, supervisor and corrections officer were entitled to qualified immunity in probationer's resulting § 1983 action. Rowe v. Lamb, C.A.8 (Neb.) 1997, 130 F.3d 812, rehearing denied. Sentencing And Punishment 1993

Allegation of judgment debtor's girlfriend that judgment creditors' attorney and law firm effected warrantless entry into girlfriend's home and seized personal property in ostensible satisfaction of judgment debtor's debt was sufficient to state substantive due process claim under Fourth Amendment, and thus *Parratt -Hudson* doctrine, which would preclude procedural due process claim if state provided adequate postdeprivation remedy for state actor's random and unauthorized deprivation of plaintiff's property, did not negate girlfriend's claims for violation of due process. Davis v. Bayless, C.A.5 (Tex.) 1995, 70 F.3d 367. Civil Rights 1321; Constitutional Law 278(1)

Two a.m. search of birthing clinic during which parents and newborn were rousted, photographed, and ordered to stay on couch in waiting room for more than three hours was unreasonable, as needed to support parents' § 1983

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civil rights claim, even though search was conducted pursuant to warrant based on suspected practicing of medicine without license. Hummel-Jones v. Strope, C.A.8 (Mo.) 1994, 25 F.3d 647, rehearing and suggestion for rehearing en banc denied. Civil Rights 1088(3); Searches And Seizures 143.1; Civil Rights 1088(4)

Deputy sheriffs' warrantless, nonconsensual entry into plaintiff's home to effect arrest, constituting violation of substantive rights under U.S.C.A. Const.Amend. 4, could form predicate for action under this section, regardless of availability of state tort remedies to redress the illegal arrest. Augustine v. Doe, C.A.5 (La.) 1984, 740 F.2d 322. Civil Rights 1319

After arrestee's appearance before the Magistrate Judge following her warrantless arrest, arrestee was released on bond, and although she contested her charges, and purported to suffer from stress and anxiety, these events did not constitute a "seizure" for Fourth Amendment purposes in connection with arrestee's §§ 1983 Fourth Amendment malicious prosecution claim. Love v. Oliver, N.D.Ga.2006, 450 F.Supp.2d 1336. Civil Rights 1088(5)

Police sergeant's alleged fabrication of evidence of officer's misconduct did not implicate officer's Fourth Amendment rights, and thus officer did not state claim against sergeant under §§ 1983 for fabrication of evidence, where officer was not arrested, detained, indicted, or otherwise subjected to criminal prosecution. Rolon v. Henneman, S.D.N.Y.2006, 443 F.Supp.2d 532. Civil Rights 1056

Fourth Amendment analysis applied to parolee's excessive force claims against parole officers. Turner v. White, E.D.N.Y.2005, 443 F.Supp.2d 288. Pardon And Parole 68

County was liable under §§ 1983 for violating Fourth Amendment rights of jail detainees, alleged to have committed misdemeanors, through awareness that there was custom of universal strip searching, without showing of suspicion that detainee was harboring contraband on or in his or her body, and failure to take effective corrective action. Tardiff v. Knox County, D.Me.2005, 397 F.Supp.2d 115. Civil Rights 1351(4)

Police did not have probable cause to arrest 17-year-old for refusing to allow them entry into home to investigate alleged child neglect, and arrest thus violated his right to be free of unreasonable seizure, where police had no warrant to enter house and no exception to warrant requirement applied. O'Donnell v. Brown, W.D.Mich.2004, 335 F.Supp.2d 787. Arrest 63.4(15)

Motorist could not bring damages action under §§ 1983 against state or police officers in their official capacities, claiming that stop and subsequent arrest on drunk driving and drug charges violated his Fourth Amendment rights. Wiggins v. Rhode Island, D.R.I.2004, 326 F.Supp.2d 297. Civil Rights 1348; Civil Rights 1358

Genuine issue of material fact as to whether city's operational policy or lack of such policy regarding issuance of no-knock search warrants resulted in deprivation of occupants' Fourth Amendment rights precluded summary judgment for defendant city in occupants' action arising from city officers' entry into occupants' residence, which was incorrectly identified in search warrant and subjected to no-knock search. Solis v. City of Columbus, S.D.Ohio 2004, 319 F.Supp.2d 797. Federal Civil Procedure 2491.5

Father's allegations that Connecticut Department of Children and Families (DCF) and its employees created a neglect petition that contained false information regarding him were insufficient to state a Fourth Amendment cause of action under section 1983 since father did not allege that he was seized. Skalaban v. Department of Children and Families, D.Conn.2004, 314 F.Supp.2d 101. Civil Rights 1057

Allegations in 51-year-old female African-American former town employee's complaint that there were numerous instances in which she was treated markedly differently than other younger, white, and non-disabled employees, and that she had complied with all procedural requisites, having exhausted her administrative remedies and having received a right to sue notice from the proper administrative agencies, stated a § 1983 claim against town for

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violation of the Fourteenth Amendment. Massey v. Town of Windsor, D.Conn.2003, 289 F.Supp.2d 160. Civil Rights 1395(8)

Officer's seizure of gun from passenger area of automobile following roadside stop of automobile was appropriate and lawfully within the confines of the Fourth Amendment as both seizure of contraband within plain view and as a search incident to a roadside stop conducted for the sole purpose of ensuring the officer's safety, and thus could not serve as basis for § 1983 action against officer; as officer approached the passenger area, she observed the driver slip a gun between the bench and back of the front seat of the car. Mosley v. Yaletsko, E.D.Pa.2003, 275 F.Supp.2d 608. Arrest 63.5(9); Civil Rights 1088(4); Searches And Seizures 69

Fourth Amendment could not be applied to hold police officer liable in § 1983 action for allegedly violating arrestee's Fourth Amendment rights by failing to rescue him from retention pond after he escaped from custody, as the Fourth Amendment did not guarantee a right to be seized. Purvis v. City of Orlando, M.D.Fla.2003, 273 F.Supp.2d 1321. Arrest 70(1)

Civil rights activists who brought § 1983 action against police officers, stemming from their arrests while attempting to film traffic stops, had no reasonable expectation of privacy in camcorder, video tape, micro-cassette recorder, and micro-cassette tape searched by officers, since activists were publicly protesting police activity in public forum, and thus officers were entitled to qualified immunity as to activists' Fourth Amendment claim. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1376(6); Searches And Seizures 26

Material issues of fact, as to whether driver exiting automobile following high speed chase posed threat of harm and whether officers could reasonably believe firing of 49 shots at him was necessary to subdue driver, precluded summary judgment that officers had qualified immunity from claim they used excessive force in arresting him, in violation of Fourth Amendment. Parker v. Town of Swansea, D.Mass.2003, 270 F.Supp.2d 92. Federal Civil Procedure 2491.5

Police did not violate Fourth Amendment rights of house occupant when they stepped on lawn to question him regarding claims of bizarre and potentially dangerous conduct, made by neighbors, while occupant was chopping wood. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Arrest 63.1

Citizen's claims that did not clearly articulate alleged constitutional violations at issue in support of § 1983 claim, but rather alleged that police officers deprived him of his civil rights by using excessive force, arresting him without probable cause, initiating baseless charges against him, and failing to divulge exculpatory evidence in court, would be construed as Fourth and Fourteenth Amendment claims of excessive force, unlawful arrest and detention, and malicious prosecution. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1395(5); Civil Rights 1395(6)

Citizen's contention that he was detained by police officers pursuant to improper criminal proceedings was sufficient to state a violation of malicious prosecution under the Fourth Amendment, in violation of § 1983; citizen alleged that he was detained after the initiation of criminal proceedings because he was unable to post the required bond, that his detention was predicated on officers' failure to divulge exculpatory evidence, and that his post-arraignment detention placed definitive restrictions on his liberty. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1088(4); Civil Rights 1088(5)

Prison officials were not entitled to qualified immunity from arrestee's § 1983 claims, arising from their alleged conduct of arresting and searching his body cavities after he was informed that drug dog had falsely alerted on him and he requested to speak to warden; officials' alleged conduct, if proven, would have violated arrestee's Fourth Amendment rights to be free from unlawful arrest, unreasonable searches, and excessive force, and arrestee's rights were clearly established at time. Lynn v. O'Leary, D.Md.2003, 264 F.Supp.2d 306. Civil Rights 1376(1)

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42 U.S.C.A. § 1983

Police detective was not entitled to qualified immunity from liability in § 1983 claim brought by arrestee on grounds that detective had no personal involvement in the alleged constitutional deprivation, involving failure to transmit exculpatory statement that arrestee was not involved in offense to prosecutor, where evidence showed that detective had access to other detective's incident report containing exculpatory information, but he nonetheless notified other officers of outstanding arrest warrant so that it could proceed with arrest. Murvin v. Jennings, D.Conn.2003, 259 F.Supp.2d 180. Civil Rights 1376(6)

African-American motorists, who brought action challenging New Jersey State Police practice of racial profiling on the New Jersey Turnpike, stated claims against Attorney General and Superintendent of the State Police under § 1983; motorists alleged that they were victims of selective enforcement of motor vehicle laws which violated their rights to due process and equal protection and their Fourth Amendment rights, and that defendants were intimately aware of racial profiling and acted with deliberate indifference towards resolving it. White v. Williams, D.N.J.2002, 179 F.Supp.2d 405.

Violation of local law, e.g., state tort law, is not enough to state claim for relief under this section, and there must be deprivation of federal constitutional or statutory rights, but deprivation of plaintiff's rights under U.S.C.A.Const. Amend. 4 amount to constitutional tort, and either warrantless arrest or warrantless search without probable cause will support action for damages under this section. Wright v. City of Reno, D.C.Nev.1981, 533 F.Supp. 58. Civil Rights 1027; Civil Rights 1088(4)

Inmates' § 1983 Fourth Amendment action challenging Department of Corrections' policy of conducting suspicionless strip searches of inmates returning from judicial proceedings declaring them releasable was "hybrid" class action maintainable based both on appropriateness of equitable relief and on predominance of common questions; complaint challenged blanket policy and practice so that Department's actions were "generally applicable to class," inmates sought declaratory and injunctive relief, common questions of whether Department had conducted suspicionless searches and whether they violated constitution predominated, and class action was superior since trying claims individually could waste judicial resources. Bynum v. District of Columbia, D.D.C.2003, 217 F.R.D. 43. Federal Civil Procedure 186.10

Company failed to state §§ 1983 claim for alleged violation of Fourth Amendment right to be free from unreasonable searches and seizures based on search of company's office, and resulting seizure of its business records, conducted pursuant to warrant issued upon allegedly false affidavit, given company's failure to identify any statements in affidavit believed to be false, to identify which state officials, if any, stated a deliberate falsehood or showed reckless disregard for the truth in warrant application, and to show how any allegedly false statements were material to finding of probable cause. BPNC, Inc. v. Taft, C.A.6 (Ohio) 2005, 147 Fed.Appx. 525, 2005 WL 1993426, Unreported. Civil Rights 1395(6)

For purposes of §§ 1983 action brought by property owners who alleged that their Fourth Amendment rights were violated when state conservation officers entered their property without a warrant and took photographs of owners' partially-constructed new home, officers' act of taking photographs with an ordinary camera was not akin to thermal-imaging, and therefore no unlawful search occurred. Dean v. Duckworth, C.A.8 (Mo.) 2004, 99 Fed.Appx. 760, 2004 WL 878448, Unreported. Searches And Seizures 13.1

Suspect's civil rights claim that he was illegally arrested, without probable cause and without a warrant, in violation of his constitutional rights should not have been dismissed for failure to state claim on which relief could be granted, where defendants had not yet answered complaint, and record was devoid of evidence that there was probable cause to arrest him for homicide after he was pulled over for driving without license plates on his vehicle. Brown v. Sudduth, C.A.5 (Miss.) 2004, 93 Fed.Appx. 674, 2004 WL 725207, Unreported. Federal Civil Procedure 1788.6

1200. ---- Fifth amendment, constitutional violation, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Police sergeant's failure to read *Miranda* warnings to suspect before questioning him at hospital while he was being treated for bullet wounds he received from another officer did not violate suspect's constitutional rights, and thus could not be grounds for § 1983 action against sergeant. Chavez v. Martinez, U.S.2003, 123 S.Ct. 1994, 538 U.S. 760, 155 L.Ed.2d 984, on remand 337 F.3d 1091. Civil Rights 1088(4); Criminal Law 412.2(3)

Double Jeopardy clause was not violated, for purpose of prisoner's civil rights claim, by "punishing" prisoner twice for his escape, once by serving sentence for escape at county jail and then again when he was placed in administrative segregation by department of corrections (DOC), since Double Jeopardy clause applied only to proceedings that were "essentially criminal" in nature and prison disciplinary sanctions, such as administrative segregation, did not implicate double jeopardy protections. Fogle v. Pierson, C.A.10 (Colo.) 2006, 435 F.3d 1252. Double Jeopardy 24

A suspect suffers a violation of her right to be free from self-incrimination when her un-warned confession is used to initiate a criminal prosecution against her, but charges are dropped before that confession can ever be introduced at trial, and violation is actionable under §§ 1983. Sornberger v. City of Knoxville, Ill., C.A.7 (Ill.) 2006, 434 F.3d 1006. Criminal Law 518(1)

Agency's cancellation of Puerto Rico dairy farmer's milk production quota did not constitute taking of personal property under Fifth Amendment for which he would have been entitled to compensation from government, since quota cancellation was sanction for farmer's milk adulteration; cancellation was no different from any other fine or forfeiture imposed consequent to engaging in some harmful activity. Gonzalez-Alvarez v. Rivero-Cubano, C.A.1 (Puerto Rico) 2005, 426 F.3d 422. Eminent Domain 2.6

Police officers' alleged failure to give plaintiff her *Miranda* warnings prior to questioning her did not, standing alone, form basis for liability under § 1983; *Miranda* warnings are procedural safeguard rather than right explicitly stated in Fifth Amendment, and remedy for *Miranda* violation is exclusion from evidence of any ensuing self-incriminating statements, not § 1983 action. Neighbour v. Covert, C.A.2 (N.Y.) 1995, 68 F.3d 1508, certiorari denied 116 S.Ct. 1267, 516 U.S. 1174, 134 L.Ed.2d 214. Civil Rights 1088(4)

Remedy for alleged *Miranda* violation is exclusion from evidence of any compelled self-incrimination, not civil rights action. Brock v. Logan County Sheriff's Dept. of Arkansas, C.A.8 (Ark.) 1993, 3 F.3d 1215. Civil Rights 1088(4)

State inmate established entitlement to preliminary injunction in §§ 1983 action, which barred prison officials from requiring, as part of sexual offender counseling program, that participants divulge history of sexual conduct, including illegal acts for which no criminal charges had been filed, on allegations that he was threatened with loss of, and in fact did lose, good time credits as direct and automatic result of his refusal to give up his Fifth Amendment privilege against self-incrimination and participate in program. Donhauser v. Goord, N.D.N.Y.2004, 317 F.Supp.2d 160. Civil Rights 1457(5)

Indian tribe's alleged loss of aboriginal title was not compensable taking under Fifth Amendment. Greene v. Rhode Island, D.R.I.2003, 289 F.Supp.2d 5, affirmed 398 F.3d 45. Eminent Domain 2.43

Officer's failure to read *Miranda* warnings to arrestee prior to questioning him about whether he had a license for the gun that was discovered in his automobile did not violate defendant's Fifth Amendment rights, and thus could not be grounds for § 1983 action against officer, where arrestee's statements were suppressed at his trial, and he was thus not compelled to be a witness against himself in a criminal proceeding. Mosley v. Yaletsko, E.D.Pa.2003, 275 F.Supp.2d 608. Civil Rights 1088(4); Criminal Law 412.2(3)

Criminal investigation of police officer who was charged with second degree murder of police sergeant had not ripened into indictment against city as proponent of stay of § 1983 claim, and thus city did not establish stay was

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necessary to protect it from undermining its Fifth Amendment privilege against self-incrimination or from exposing the basis of a criminal defense, pending criminal prosecution of officer for sergeant's murder, so as to be entitled to stay of § 1983 action brought by sergeant's estate alleging city was liable for conduct of officer who shot sergeant. Hicks v. City of New York, E.D.N.Y.2003, 268 F.Supp.2d 238. Action 69(5)

Former inmate stated cause of action in complaint under § 1983 for deprivation of protections of double jeopardy clause, where he alleged that bill he was paying to county for costs of his incarceration was disproportionate to damage he had caused. Grove v. Kadlic, D.Nev.1997, 968 F.Supp. 510. Civil Rights 1395(7)

Tax Injunction Act, prohibiting federal courts from enjoining levy of any tax under state law where speedy and efficient remedy may be had in state courts, precluded federal court from exercising jurisdiction over plaintiff's § 1983 claim alleging that Nevada violated double jeopardy clause by assessing tax deficiencies and penalties on him for sale of controlled substances after his conviction and sentencing for same; state remedy was speedy and efficient within meaning of Act. Laform v. State of Nev. Dept. of Taxation, D.Nev.1996, 962 F.Supp. 1307. Federal Courts 27

Nature of constitutional right at issue in just compensation claim for taking under Fifth Amendment requires that property owner utilize procedures for obtaining compensation before bringing § 1983 action. McCormack Sand Co. v. Town of North Hempstead Solid Waste Management Authority, E.D.N.Y.1997, 960 F.Supp. 589. Civil Rights 1318

While detainee subject to custodial interrogation has right to counsel under Fifth Amendment, remedy for violation of detainee's rights is exclusion from evidence of any compelled self-incrimination, not civil rights action under § 1983. Craig v. St. Martin Parish Sheriff, W.D.La.1994, 861 F.Supp. 1290. Civil Rights 1088(4)

Inmate failed to prove that he suffered a violation of his Fifth Amendment right to avoid self-incrimination where he refused to admit guilt on sex offenses, as required for admission into a sex offender treatment program (SOTP), which "program refusal" eventually resulted in his reclassification to a lower credit-earning class; this type of choice was not compulsion of self-incriminating testimony. DeYonghe v. Ward, C.A.10 (Okla.) 2005, 121 Fed.Appx. 335, 2005 WL 165449, Unreported. Criminal Law 393(1)

1200A. ---- Sixth amendment, constitutional violation, deprivation of constitutional or statutory rights generally

The *Sea Clammers* rule did not bar terminated teacher's § 1983 race and retaliation claims; rather than being governed exclusively by Title VII, race claim rested on violation of Fourteenth Amendment right to equal protection, and it was possible to infer that retaliation was based on exercise of teacher's First Amendment rights. Joyner v. School Dist. of Philadelphia, E.D.Pa.2004, 313 F.Supp.2d 495. Civil Rights 1312; Civil Rights 1502; Schools 147.12

District court did not have federal question jurisdiction over prisoner's lawsuit against attorney alleging violation of his Sixth Amendment rights, although attorney represented prisoner in federal criminal case, since attorney was not state actor. Fermin v. Moriarty, S.D.N.Y.2003, 2003 WL 21787351, Unreported. Federal Courts 175

1201. ---- Fifteenth amendment, constitutional violation, deprivation of constitutional or statutory rights generally

Illinois constitutional provision denying incarcerated felons the right to vote was facially neutral state action which did not violate Fifteenth Amendment prohibition against states denying or abridging right to vote based on race, color, or previous condition of servitude; mere fact that many incarcerated felons happened to be black or latino was insufficient grounds to implicate Fifteenth Amendment. Jones v. Edgar, C.D.Ill.1998, 3 F.Supp.2d 979. Constitutional Law 82(8); Elections 18

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42 U.S.C.A. § 1983

1202. ---- Eighth amendment, constitutional violation, deprivation of constitutional or statutory rights generally

Prisoner's allegation that he was subject to unprovoked attack by prison security guards stated cognizable claim under § 1983 for violation of Eighth Amendment. Pelfrey v. Chambers, C.A.6 (Ohio) 1995, 43 F.3d 1034, certiorari denied 115 S.Ct. 2269, 515 U.S. 1116, 132 L.Ed.2d 273. Civil Rights 1395(7)

Section 1983 was proper vehicle for death-sentenced prisoner's Eighth Amendment challenge to Virginia's lethal injection procedure; prisoner was not challenging lethal injection in general. Walker v. Johnson, E.D.Va.2006, 448 F.Supp.2d 719. Civil Rights 1088(5)

Arrestees' excessive force civil rights claims were not actionable under Eighth Amendment, regardless of arrestees' criminal history or probation status, since Eighth Amendment's protections did not attach until after conviction and sentence and none of arrestees were incarcerated prisoners at time of incident. Logan v. City of Pullman, E.D.Wash.2005, 392 F.Supp.2d 1246. Sentencing And Punishment 1442

Neither United States Constitution nor any federal statute gave city prisoner right to non-negligent driving by city employees, and therefore prisoner's claims that driver of corrections department bus violated prisoner's Eighth Amendment rights by causing him injury through alleged negligent or reckless operation of bus were not cognizable under §§ 1983, even when considered in light of allegation that bus driver, in driving recklessly, was deliberately indifferent to prisoner's health and safety; rather, such claims fell under purview of state tort law. Carrasquillo v. City of New York, S.D.N.Y.2004, 324 F.Supp.2d 428. Civil Rights 1098; Prisons 17(1); Sentencing And Punishment 1536

Section 1983 cause of action against Connecticut Department of Children and Families (DCF) and its employees premised on the Eighth Amendment could not be maintained by father, who alleged that defendants created a neglect petition that contained false information regarding him, where there had been no adjudication of guilt. Skalaban v. Department of Children and Families, D.Conn.2004, 314 F.Supp.2d 101. Sentencing And Punishment 1587

Prison official's receipt of inmate complaints, without more, is insufficient to establish an official's supervisory liability under § 1983, for purposes of Eighth Amendment deliberate indifference claim. Brooks v. Berg, N.D.N.Y.2003, 270 F.Supp.2d 302, vacated in part 289 F.Supp.2d 286. Civil Rights 1358

Inmate's § 1983 complaint alleging cruel and unusual punishment failed to state Eighth Amendment violations; allegations of verbal abuse and hostile conduct did not rise to level of a constitutional violation, and allegations of unconstitutional confinement conditions consisting of the denial of one noon meal, denial of exercise while on keeplock confinement, and being confined to his cell for periods of four, 21, and 21 days, were insufficient, without more, to establish a claim of cruel and unusual punishment. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Prisons 17(1); Sentencing And Punishment 1538; Sentencing And Punishment 1541; Sentencing And Punishment 1553

County jail inmate's failure to allege blanket custom or policy of not medically treating inmates with hepatitis C did not preclude his § 1983 Eighth Amendment claim against private entities that contracted with county to provide inmates with medical services, in which he alleged that he had been denied adequate dental care by dentist's refusal to treat him due to his hepatitis C; even absent blanket policy, if inmate could demonstrate that contractor's employee was final policymaker with respect to treatment and decided not to treat pursuant to unconstitutional custom or policy, contractors could be liable. Wall v. Dion, D.Me.2003, 257 F.Supp.2d 316. Civil Rights 1351(4)

Eighth Amendment could only be invoked by persons convicted of crimes and not by driver and passengers as basis for § 1983 claim arising from alleged wrongful police stop. Alexander v. Haymon, S.D.Ohio 2003, 254

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42 U.S.C.A. § 1983

F.Supp.2d 820. Sentencing And Punishment 1433

Motorist did not have viable § 1983 claim based on Eighth Amendment in connection with traffic stop and arrest; Eighth Amendment's cruel and unusual punishment provision applies only to those convicted of crimes, and motorist's own testimony indicated that her only complaint regarding physical force was that officer shoved her or pushed her into patrol car. Wynn v. Morgan, E.D.Tenn.1994, 861 F.Supp. 622. Civil Rights 1088(4); Sentencing And Punishment 1442

There was adequate basis for holding prison officials liable for damages in civil rights action for deprivation under color of state law of inmate's constitutional right to be free from cruel and unusual punishment in connection with inmate's confinement in hospital isolation cell under conditions violative of his constitutional rights. Strachan v. Ashe, D.C.Mass.1982, 548 F.Supp. 1193. Civil Rights 1095

In § 1983 lawsuit under Eighth Amendment against medical services provider, district court's decision to not appoint counsel for indigent prisoner was not abuse of discretion, since prisoner clearly understood fundamental issues in his case and presented them intelligently and coherently both in his pleadings and at trial, issues were not particularly complex, he did not present any special circumstances, and he had little chance of success on the merits. Herman v. Correctional Medical Services, Inc., C.A.10 (Wyo.) 2003, 66 Fed.Appx. 183, 2003 WL 21235499, Unreported. Civil Rights 1445

Court's instruction was a correct explanation of objective component of inmate's Eighth Amendment excessive force claim under § 1983; jury was informed that objective prong was satisfied if the plaintiff shows that he suffered some harm as a result of the use of force by the defendant, and that plaintiff need not show that he has suffered significant injury, but at the same time not every push or shove violated a prisoner's constitutional rights. Amaker v. Coombe, S.D.N.Y.2003, 2003 WL 21222534, Unreported. Prisons 13(4); Sentencing And Punishment 1548

1203. ---- Ninth amendment, constitutional violation, deprivation of constitutional or statutory rights generally

Ninth Amendment does not provide independent basis for relief under § 1983 because it is rule of construction rather than source of individual rights. Clynch v. Chapman, D.Conn.2003, 285 F.Supp.2d 213. Civil Rights 1029; Constitutional Law 82(2)

Ninth Amendment does not guarantee any constitutional right sufficient to support claim under § 1983. DeLeon v. Little, D.Conn.1997, 981 F.Supp. 728. Civil Rights 1029

Ninth Amendment did not confer substantive rights that could be enforced in §§ 1983 action against State, state officials, and physicians. P.J. ex rel. Jensen v. Utah, D.Utah 2006, 2006 WL 1702585, Unreported. Constitutional Law 82(2)

1204. ---- Thirteenth amendment, constitutional violation, deprivation of constitutional or statutory rights generally

Pharmacy patron detained on suspicion of shoplifting failed to state a claim of involuntary servitude under the Thirteenth Amendment; the actions of the pharmacy constituted neither compulsory labor nor physical coercion, and police told him that he was "free to go." Caldwell v. CVS Corp., D.N.J.2006, 443 F.Supp.2d 654. False Imprisonment 5

Even if disbarred attorney's Thirteenth Amendment claim was treated as an equal protection challenge under § 1983, attorney failed to demonstrate that he was treated less favorably than similarly situated individuals during disciplinary proceedings. Thomas v. Knight, D.D.C.2003, 257 F.Supp.2d 86, affirmed 2003 WL 22239653.

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42 U.S.C.A. § 1983

Attorney And Client 47.1; Constitutional Law 230.3(9)

Government attorney investigating sexual harassment claim of government employee did not violate employee's Thirteenth Amendment rights in connection with investigation; when applicable in context of employment discrimination Thirteenth Amendment has been found to apply only to race discrimination, and no such allegations were made in present case. Marrero Rivera v. Department of Justice of Com. of Puerto Rico, D.Puerto Rico 1993, 821 F.Supp. 65. Civil Rights 1506; Constitutional Law 83(2)

1205. ---- Fourteenth amendment generally, constitutional violation, deprivation of constitutional or statutory rights generally

The constitutional privileges and immunities protected by this section include those secured by due process and equal protection clauses of U.S.C.A.Const. Amend. 14 as well as by privileges and immunities clause of that amendment. Hague v. Committee for Indus. Organization, U.S.N.J.1939, 59 S.Ct. 954, 307 U.S. 496, 83 L.Ed. 1423. See, also, Powell v. Workmen's Compensation Bd. of State of N.Y., C.A.2 (N.Y.) 1964, 327 F.2d 131; Ghadiali v. Delaware State Medical Soc., D.C.Del.1939, 28 F.Supp. 841.

Arrestee's §§ 1983 false confession claim could not be recharacterized as a violation of his Fourteenth Amendment due process right to a fair trial; the false confession claim was based on alleged unfair interrogation tactics, which did not implicate fair trial rights. Wallace v. City of Chicago, C.A.7 (Ill.) 2006, 440 F.3d 421, certiorari granted in part 2006 WL 776675. Criminal Law 519(9)

City building inspector did not exceed the scope of store owner's consent to conduct an electrical inspection of the premises, for purpose of owner's §§ 1983 claim against inspector; the request for the inspection was the result of a citizen complaint of unsafe electrical conditions, and although inspector stated that the power had to be shut off, this statement was made only after inspector observed multiple electrical violations. Aida Food and Liquor, Inc. v. City of Chicago, C.A.7 (Ill.) 2006, 439 F.3d 397. Searches And Seizures 186

Discipline of black corrections officers for involvement in scheme to provide jail inmates with drugs, while charges against white officers were dropped, was not a deprivation of black officers' Fourth Amendment rights, as would support their malicious prosecution claim under §§ 1983 against county and county jail officials, where black officers were charged in a civil administrative proceeding, and were never taken into custody, imprisoned, physically detained, or seized. Washington v. County of Rockland, C.A.2 (N.Y.) 2004, 373 F.3d 310. Arrest 68(3)

Harassment of an employee because of her faith, whatever guise it assumes, may constitute religious discrimination under the Equal Protection Clause of the Fourteenth Amendment sufficient to support § 1983 claim. Rivera v. Puerto Rico Aqueduct and Sewers Authority, C.A.1 (Puerto Rico) 2003, 331 F.3d 183, rehearing denied. Constitutional Law 238(2)

Section 1983 protects all rights guaranteed by Fourteenth Amendment. Matthias v. Bingley, C.A.5 (Tex.) 1990, 906 F.2d 1047, modified on denial of rehearing on other grounds 915 F.2d 946. Civil Rights 1028

In order to maintain an action under this section plaintiffs must allege facts showing that defendants acted to deprive them of rights, privileges, and immunities secured by U.S.C.A.Const. Amend. 14. Spears v. Robinson, C.A.8 (Mo.) 1970, 431 F.2d 1089. Civil Rights 1394

This section providing civil action for deprivation of rights embraces deprivation of both due process of law and equal protection of laws, it contemplates such deprivation through unconstitutional application of law by conspiracy or otherwise and it permits damages, including punitive damages. Mansell v. Saunders, C.A.5 (Fla.) 1967, 372 F.2d 573. Civil Rights 1460; Civil Rights 1465(1)

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42 U.S.C.A. § 1983

Lebanese citizen, as legal resident of United States, did not have viable cause of action against police officers for denying citizen access to judicial process, based on officers' alleged cover-up of beating of citizen by off-duty police officers and impeding citizen's efforts to obtain legal redress, where citizen could not identify underlying cause of action and remedy unique to that cause of action and relief was available under other claims that remained pending; citizen could not pursue deprivation of access claim that sought same damages remedy as was available through his other claims based simply on use of different legal theory. Mazloum v. District of Columbia, D.D.C.2006, 442 F.Supp.2d 1. Civil Rights 1311

Husband who had been accused of domestic abuse stated §§ 1983 claim against judicial branch and Department of Children and Families (DCF) personnel for conspiracy to fabricate evidence against him and suppress evidence favorable to him; DCF investigator allegedly pressured wife to sign a service agreement to stay away from husband and obtain a temporary restraining order (TRO) and allegedly threatened to remove children, another investigator allegedly filled investigative report with false charges of abuse, victim's advocate allegedly pressured wife to sign an application for a TRO based on false charges and allegedly threatened to take away children, and another advocate allegedly refused to acknowledge his wife's recantation and sought to obtain from her more false evidence by using a potential perjury prosecution as a threat. Greene v. Wright, D.Conn.2005, 389 F.Supp.2d 416. Conspiracy 7.5(2)

None of the expressly enumerated privileges and immunities of federal citizenship, protected by the privileges and immunities clause of Fourteenth Amendment, were violated when retired state court judge was denied appointment as judicial hearing officer; any violated right would be unprotected property right. Levine v. McCabe, E.D.N.Y.2005, 357 F.Supp.2d 608. Constitutional Law 207(1); Reference 39

In the absence of specific factual allegations that police officer intended to cause harm in allowing arrestee to escape custody or that officer herded or forced arrestee to retention pond, officer could not be held liable in § 1983 action for an alleged Fourteenth Amendment due process violation after subsequent chase led to arrestee's drowning in retention pond. Purvis v. City of Orlando, M.D.Fla.2003, 273 F.Supp.2d 1321. Civil Rights 1395(6)

To make the determination of what due process is required in a school residency case, a court must balance, first, the private interest that will be affected by the official action, second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. D.L. v. Unified School Dist. # 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090. Constitutional Law 278.5(7)

Warden of county prison was not subject to supervisory liability under § 1983, pursuant to due process clause or equal protection clause, in connection with denial of detainee's request for fingerprint analysis of shank found in his cell, where detainee offered no support beyond his deposition testimony for claim that shank was planted, detainee was responsible for contraband found in his cell under doctrine of constructive possession, and hearing officer was within his discretion in finding guard more credible than detainee. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1358

Commonwealth provided adequate post deprivation remedy to dietary supplement supplier, claiming that Department of Consumer Affairs improperly banned product advertising as false, precluding claim under § 1983 that Department violated supplier's procedural due process rights. Herbal Sensations, Inc. v. Rivera, D.Puerto Rico 2003, 270 F.Supp.2d 234. Civil Rights 1321

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42 U.S.C.A. § 1983

Graduate student who also served as teaching assistant in the department of counseling and educational development at state university alleged sufficient facts to support a violation of her right to be free from sexual harassment under the Fourteenth Amendment, as required to determine whether qualified immunity protected university's dean of graduate school and education department head from liability for § 1983 claims for taking actions in response to her complaints of harassment that allegedly violated her constitutionally protected rights; she alleged that department head's only response to her complaint of professor's sexual harassment was statement that "William will be William," and that when she later spoke to dean about professor, dean suggested that by making complaint against highly regarded faculty member she had chosen not to receive her graduate degree. Mandsager v. University of North Carolina at Greensboro, M.D.N.C.2003, 269 F.Supp.2d 662. Civil Rights 1376(5); Civil Rights 1376(10)

Corporation engaged in spring water business and its owner alleged facts sufficient to find town liable for constitutional violations under § 1983, where they alleged that it was the policy or plan of the town zoning board of appeals to destroy their spring water business, that the plan manifested itself through the board's decisions regarding their use of the subject property, and that decisions resulted ultimately in issuance and continuation of cease and desist order, rendering their business operations illegal. Gavlak v. Town of Somers, D.Conn.2003, 267 F.Supp.2d 214. Civil Rights 1395(3)

Citizen's § 1983 claim based on police officer's malicious prosecution of him could not be based on denial of substantive due process under Constitution, as there is no substantive due process right to be free from malicious prosecution. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1088(5); Constitutional Law 253(1)

To state a § 1983 claim for deprivation of property without due process in violation of the Fourteenth Amendment, plaintiff must show (1) that she has a constitutionally protected property interest, and (2) that she has been deprived of that interest by state action; once elements are established, question turns to what process is due and whether it has been provided. Echtenkamp v. Loudon County Public Schools, E.D.Va.2003, 263 F.Supp.2d 1043. Constitutional Law 278(1)

Police officers were entitled to qualified immunity from liability in § 1983 claim brought by arrestee, on grounds that officers had no personal involvement in the alleged constitutional deprivation, involving failure to transmit suspect's exculpatory statement that arrestee was not involved in offense to prosecutor; officers' involvement was limited to either notarizing suspect's written statement, notarizing arrest warrant application for arrestee, witnessing the suspect's interview with detective, or picking up the detective's report on arrestee and delivering it to the court. Murvin v. Jennings, D.Conn.2003, 259 F.Supp.2d 180. Civil Rights 1376(6)

Damage to reputation alone does not rise to the level of a constitutional violation redressable under § 1983; if the damage to reputation were so great that it significantly limits either the person's associational or employment opportunities, there would be a deprivation of liberty. Russoli v. Salisbury Tp., E.D.Pa.2000, 126 F.Supp.2d 821. Civil Rights 1038

In context of § 1983 claim based on random, unauthorized acts by state employees, due process clause of Fourteenth Amendment is not violated when state employee intentionally deprives individual of property or liberty, so long as state provides meaningful postdeprivation remedy. Adams v. Galletta, S.D.N.Y.1997, 966 F.Supp. 210. Civil Rights 1315

To state cause of action under this section requires allegation of facts which constitute deprivation under color of state authority a right guaranteed by U.S.C.A.Const. Amend. 14. Schorle v. City of Greenhills, S.D.Ohio 1981, 524 F.Supp. 821. Civil Rights 1396

Not every injury inflicted by an agent of state or local government may be redressed in federal court under

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U.S.C.A.Const. Amend. 14 and this section. Gordon Jr. College Chapter of Am. Ass'n of University Professors v. Board of Regents of University System of Georgia, N.D.Ga.1980, 484 F.Supp. 614. Federal Courts 178.5; Federal Courts 222

Among the rights "secured" by the Constitution, and thus within the ambit of this section, are those embraced within the terms of U.S.C.A.Const. 14. Samuel v. Busnuck, D.C.Md.1976, 423 F.Supp. 99. Civil Rights 1028

Section 1983 protects rights of individuals to be free from violations of their procedural due process under Fourteenth Amendment. Ward v. Temple University, E.D.Pa.2003, 2003 WL 21281768, Unreported. Civil Rights 1028

Section 1983 provided remedy for violation of plaintiff's rights under Fourteenth Amendment, and thus plaintiff did not have implied cause of action grounded directly on Fourteenth Amendment. Lehman v. Doe, C.A.2 (N.Y.) 2003, 66 Fed.Appx. 253, 2003 WL 21191033, Unreported, certiorari denied 124 S.Ct. 1508, 540 U.S. 1219, 158 L.Ed.2d 154. Civil Rights 1322

The 96 days that it took state court clerk, following grant of detainee's motion to suppress, to prepare record and transmit it to appellate court was not excessive and did not violate due process, even though state rule allotted 63 days. Potts v. Brown, C.A.7 (Ill.) 2003, 66 Fed.Appx. 635, 2003 WL 21054647, Unreported. Constitutional Law 271; Criminal Law 1106(2)

1206. ---- Due process clause generally, constitutional violation, deprivation of constitutional or statutory rights generally

Allegations by construction contractor that the Puerto Rico Public Housing Authority (PRPHA) wrongfully deprived contractor of its bid award for a housing development project based on a false determination that contractor was a nonresponsible bidder, that contractor had been effectively debarred from future government-funded construction projects, that the PRPHA projects were funded by the United States Department of Housing and Urban Development (HUD), and that HUD was fully aware of the PRPHA's disregard of award procedures, but did nothing to correct it, did not state a *Bivens* civil rights action for violation of contractor's due process rights against federal HUD officials, absent any allegation of a connection between the alleged wrongful deprivation and HUD officials. Redondo-Borges v. U.S. Dept. of Housing and Urban Development, C.A.1 (Puerto Rico) 2005, 421 F.3d 1. United States 50.10(1)

Perfect parity in origin of both "stigma" and "plus" is not required to state infringement of "stigma-plus" liberty interest under Due Process Clause. Velez v. Levy, C.A.2 (N.Y.) 2005, 401 F.3d 75. Constitutional Law 255(1)

Even if test results and handwritten notes underlying state crime laboratory reports in rape case and were exculpatory and materially favorable under *Brady*, laboratory technicians were not liable in accused's § 1983 damages action, where technicians' failure to disclose the test results and notes was consistent with laboratory policy of only sending the actual reports to the prosecutor, and there was no showing that nondisclosure was in bad faith. Villasana v. Wilhoit, C.A.8 (Mo.) 2004, 368 F.3d 976, rehearing and rehearing en banc denied, certiorari denied 125 S.Ct. 1345, 543 U.S. 1153, 161 L.Ed.2d 117. Civil Rights 1088(5)

Detectives' allegedly false account of arrestee's interrogation, indicating that arrestee had confessed to murdering his parents, was not violation of *Brady*, as would have supported claim for denial of due process under § 1983; problem was not that evidence useful to arrestee was concealed, but rather that detectives allegedly gave false evidence. Gauger v. Hendle, C.A.7 (Ill.) 2003, 349 F.3d 354, rehearing and rehearing en banc denied. Constitutional Law 268(5); Criminal Law 700(3)

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42 U.S.C.A. § 1983

Sex offender group therapy program for persons civilly confined under the Illinois Sexually Dangerous Persons Act, did not violate privilege against compelled self-incrimination, or due process clause, for purpose of § 1983 claim against state officials; even though persons who refused to participate in program would not qualify for release and dismissal of underlying criminal charges, participation was voluntary, any incriminating statements made during therapy could be suppressed at criminal trial, and state's use of program was not outside professional therapeutic norms. Allison v. Snyder, C.A.7 (Ill.) 2003, 332 F.3d 1076, certiorari denied 124 S.Ct. 486, 540 U.S. 985, 157 L.Ed.2d 377. Constitutional Law 255(5); Criminal Law 393(1); Mental Health 465(3)

Release of bank robbery arrestee's name to news media by city chief of police did not violate arrestee's due process rights. Olinger v. Larson, C.A.8 (S.D.) 1998, 134 F.3d 1362, rehearing and suggestion for rehearing en banc denied. Arrest 70(1); Constitutional Law 262

Former county employee sufficiently alleged § 1983 violations by four individual defendants for refusing to make available information that would give him opportunity to mount defense against false allegations of graft and attempting to intimidate him into admitting to wrongdoing; his complaint sufficiently set forth claim that his discharge violated § 1983 by depriving him of his due process and First Amendment rights. Ortez v. Washington County, State of Or., C.A.9 (Or.) 1996, 88 F.3d 804. Civil Rights 1395(8)

Lack of ascertainable standards is violation of due process actionable under this section. Barnes v. Merritt, C.A.5 (Ga.) 1967, 376 F.2d 8. Civil Rights 1028; Constitutional Law 251.4

Reasonable officer in state trooper's position could have believed, at the time trooper acted, that making community notifications respecting out-of-state sexual offender who had transferred his parole to Pennsylvania, pursuant to state's Megan's law and state parole board's discretionary authority, did not violate offender's due process rights, and therefore trooper was entitled to qualified immunity from § 1983 liability on grounds that notifications violated due process. Lines v. Wargo, W.D.Pa.2003, 271 F.Supp.2d 649. Civil Rights 1376(6)

Due process principles underlying *Brady* support a DNA testing right in both the pre-trial and post-conviction settings. Wade v. Brady, D.Mass.2006, 460 F.Supp.2d 226. Constitutional Law 270.5

Parents and child who brought civil rights action against city lacked due process claim based on negligent supervision, stemming from assault that allegedly occurred while child was at pre-placement facility after removal, where there was no evidence that any city employees assaulted child, or that supervisor knew of and disregarded risk to child's health and safety. Phillips ex rel. Green v. City of New York, S.D.N.Y.2006, 453 F.Supp.2d 690. Infants 17

African-American operated charter school, which claimed that school board unconstitutionally terminated its charter contract, failed to sufficiently plead a cause of action for procedural due process; school did not allege a constitutionally protected liberty or property interest, nor did it allege a constitutionally inadequate process. Wilbesan Charter School, Inc. v. School Bd of Hillsborough County, FL, M.D.Fla.2006, 447 F.Supp.2d 1292. Civil Rights 1395(2)

In alleging a violation of due process pursuant to §§ 1983, the "procedural due process" component focuses on the adequacy of procedures provided by the state or municipality in effecting the deprivation of liberty or property, while "substantive due process" zeroes in on the limits of what a state actor may do to an individual irrespective of any procedural protections provided. Dodd v. Sheppard, D.R.I.2006, 436 F.Supp.2d 326. Constitutional Law 278(1)

Making of derogatory remarks, the infliction of verbal abuse, and other potentially tortious conduct did not automatically implicate the Due Process Clause simply because the actor was employed by a local health services district or was a member of its medical staff; furthermore, interference with, or even the breach of a district

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contract with a health services provider, caused by a district official or staff acting under his direction, did not necessarily result in a constitutional deprivation of "liberty" or "property" that was actionable under §§ 1983. MacArthur v. San Juan County, D.Utah 2005, 416 F.Supp.2d 1098. Torts 245

Partners in partnership had not been deprived of due process, for purpose of their lawsuit under §§ 1983, by conduct of opponent's counsel in obtaining order in state court lawsuit which allowed opponent to inspect and make mold assessment in partnership real property which was subject of state lawsuit and which prevented partners from modifying that property or entering premises during that one day inspection, since partners were given opportunity to file written objection before order issued. U.S.C.A. Const.Amend 14; Guimbellot v. Rowell, E.D.La.2004, 356 F.Supp.2d 644. Constitutional Law 305(3); Pretrial Procedure 403

Genuine issue of material fact existed as to whether town planning board received and began processing site plan application submitted by developer of proposed subdivision, precluding partial summary judgment, as to issue of liability, for developer on its claim that board's refusal to receive and process its application deprived it of a protected property right, namely, delivery of fundamental governmental services, in violation of the Due Process Clause of the Fourteenth Amendment. Ridgeview Partners, LLC v. Entwistle, S.D.N.Y.2005, 354 F.Supp.2d 395. Federal Civil Procedure 2491.5

Custodial parents, who could not identify binding obligation under Title IV-D of Social Security Act or state laws that required state to distribute child support in specific manner they desired, did not show deprivation of liberty or property interest protected by the Due Process Clause that would be enforceable in §§ 1983 action. Walters v. Weiss, E.D.Ark.2003, 349 F.Supp.2d 1160, affirmed 392 F.3d 306. Child Support 465; Constitutional Law 299.3

Requiring patient civilly committed for treatment under sex offender program to undergo polygraph examination as condition of remaining in particular treatment program did not violate patient's substantive due process rights under Fourteenth Amendment. Laxton v. Watters, W.D.Wis.2004, 348 F.Supp.2d 1024. Constitutional Law 255(5); Mental Health 465(3)

Parents and children were not provided with procedural due process in connection with child protective services agency removing them from their home, where order of family court intake referee authorizing removal was verbal, rather than written as required by Michigan law, and hearing and court review following removal was not adequate post-deprivation remedy, given fact that it would have been possible to get valid written removal order prior to removal. O'Donnell v. Brown, W.D.Mich.2004, 335 F.Supp.2d 787. Constitutional Law 274(5); Infants 192

Former convict's allegations that police defendants coerced and fabricated his confession and withheld that fact from prosecutors, judges, and defense counsel sufficiently alleged deprivation of constitutionally guaranteed due process rights, and such claim was not barred by *Newsome* decision prohibiting § 1983 malicious prosecution claims. Patterson v. Burge, N.D.Ill.2004, 328 F.Supp.2d 878. Civil Rights 1395(5)

Father's complaint alleging that Connecticut Department of Children and Families (DCF) and its employees made false allegations in a neglect petition did not state a due process violation since there was no factual allegation indicating actual interference with the custody of his child. Skalaban v. Department of Children and Families, D.Conn.2004, 314 F.Supp.2d 101. Civil Rights 1395(1)

Recreational dancer who was banned from city's concert venue, due to allegedly lewd conduct, failed to establish that ban deprived her of substantive due process rights to freedom of movement and travel, as required to maintain § 1983 action against city, since ban simply prohibited dancer from entering one particular building, rather than impeding her ability to move freely from nation to nation or neighborhood to neighborhood. Willis v. Town of Marshall, W.D.N.C.2003, 293 F.Supp.2d 608. Constitutional Law 291.6; Municipal Corporations 721(2)

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State Highway and Transportation District's awareness of history of suicides on bridge and opening of bridge to pedestrians without a suicide barrier was insufficient to constitute affirmative conduct on the part of the state in placing suicide victim in danger, such as to impose duty on state under Fourteenth Amendment due process clause to protect victim who died after jumping off bridge, required to support § 1983 action for deprivation of victim's right to life or right of victim's mother to familial companionship. Estate of Imrie v. Golden Gate Bridge Highway and Transp. Dist., N.D.Cal.2003, 282 F.Supp.2d 1145. Constitutional Law 291; States 112.2(2)

No claim lies under § 1983 for due process violations made under color of federal law; *Bivens* provides the appropriate basis for such a claim. North Carolina ex rel. Haywood v. Barrington, M.D.N.C.2003, 256 F.Supp.2d 452. Civil Rights 1327; United States 50.1

In order to state a successful claim for violation of due process pursuant to § 1983, plaintiff must demonstrate (1) an interest included within the Fourteenth Amendment's protections for property or liberty and (2) that the state deprived him of that protected interest without requisite notice or some type of hearing. Swinehart v. McAndrews, E.D.Pa.2002, 221 F.Supp.2d 552, affirmed 69 Fed.Appx. 60, 2003 WL 21357242. Constitutional Law 277(2); Constitutional Law 278.4(1); Sheriffs And Constables 87

City's release to newspaper of police officer's self-report of a diagnosis of post-traumatic stress disorder, which he had made several years prior to involvement in fatal shooting, did not violate officer's right to privacy as protected by Due Process Clause; information in question was not the kind that made it more likely that officer's security or that of his family would be invaded by members of the public receiving it, even those with a particular motive to dislike him. Smith v. City of Dayton, Ohio, S.D.Ohio 1999, 68 F.Supp.2d 911. Constitutional Law 278.4(1); Records 30

Pro se § 1983 claimant could not maintain actionable due process claim for failure to videotape criminal proceeding as written transcripts were uniformly approved as acceptable means of recording legal proceedings, and in cases where those transcripts were missing or inaccurate there were sufficient state procedures to ensure fair appellate review. Molina v. Kaye, E.D.N.Y.1996, 956 F.Supp. 261. Civil Rights 1088(5); Civil Rights 1319

Action by Pennsylvania capital inmates seeking injunctive and declaratory relief concerning which statute of limitations would govern their federal habeas corpus claims asserted sufficient violation of federal right to support § 1983 claim; uncertainty about whether Pennsylvania was "opt-in" state so that inmates would have to bring federal habeas petitions within 180 days under Antiterrorism and Effective Death Penalty Act rather than within general one-year period deprived inmates of their due process rights, violated Eighth Amendment's requirement for heightened procedural safeguards in capital cases, and violated equal protection on ground that non-capital prisoners knew that one-year limitations period applied to their federal habeas petitions. Death Row Prisoners of Pennsylvania v. Ridge, E.D.Pa.1996, 948 F.Supp. 1258. Constitutional Law 249(3); Constitutional Law 306(6); Sentencing And Punishment 1790; Habeas Corpus 332.1

Civil rights claim predicated on violation of due process must involve invasion of recognized life, liberty, or property interest. Polite v. Casella, N.D.N.Y.1995, 901 F.Supp. 90. Constitutional Law 255(1); Constitutional Law 278(1)

In combination with due process clause of Fourteenth Amendment, § 1983 allows plaintiffs to assert three kinds of federal claims, claims for deprivation by state officials of specific protections defined in bill of rights, claims under substantive component of due process clause relating to arbitrary wrongful government action, and claims under procedural component of due process clause relating to deprivations of life, liberty, or property without due process of law. Hodge v. Carroll County Dept. of Social Services, D.Md.1992, 812 F.Supp. 593, reversed in part, vacated in part 31 F.3d 157, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1028

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42 U.S.C.A. § 1983

To state claim for relief under this section, plaintiff need only allege that defendant deprived her, under color of state law, of right secured by Constitution and laws of the United States, and claim that plaintiff was deprived of her liberty interest under due process clause of U.S.C.A. Const.Amend. 14 was sufficient as source for court's jurisdiction under this section. Flowers v. Webb, E.D.N.Y.1983, 575 F.Supp. 1450. Civil Rights 1394

There are two distinct requirements for recovery for the violation of due process rights in an action brought either under U.S.C.A.Const. Amend. 14 or this section, defendant must have acted under color of state law, and defendant's actions must have deprived plaintiff of a federally secured liberty or property interest. Ohland v. City of Montpelier, D.C.Vt.1979, 467 F.Supp. 324. Civil Rights 1304

Consideration of claim under this section need not be automatic just because claims of due process are involved; it is denial of a right secured under Constitution or laws of the United States that is cognizable under this section. Downing v. Arnold, D.C.N.H.1978, 461 F.Supp. 54.

While "property" or "liberty" interests protected by due process clause of U.S.C.A.Const. Amend. 14 and this section ordinarily must flow from a guarantee under state law or the Constitution, protection may also be accorded to rights of less specific origin under this section. Heese v. DeMatteis Development Corp., S.D.N.Y.1976, 417 F.Supp. 864. Civil Rights 1027

Death-sentenced prisoner's allegations that Louisiana's clemency procedure violated the Eighth and Fourteenth Amendments because the governor rarely granted clemency to violent offenders failed to state a claim under §§ 1983. Sepulvado v. Louisiana Bd. of Pardons and Parole, C.A.5 (La.) 2006, 171 Fed.Appx. 470, 2006 WL 707024, Unreported. Sentencing And Punishment 1575

State prisoner had no due process liberty interest in sex offender treatment. Maimon v. Rea, C.A.9 (Or.) 2005, 127 Fed.Appx. 295, 2005 WL 752237, Unreported. Constitutional Law 272(2); Prisons 17(2)

Louisiana prisoner's allegations that prison warden illicitly confiscated his typewriter did not state claim for violation of due process, in light of availability of post-deprivation tort cause of action under Louisiana law which was sufficient to satisfy requirements of due process. Phillips v. Stalder, C.A.5 (La.) 2004, 100 Fed.Appx. 315, 2004 WL 1255333, Unreported. Constitutional Law 272(2); Convicts 3

Juvenile offender's younger brother had no constitutionally protected liberty or property interest in offender's records, and thus could not claim that city's release of records to scientists conducting psychiatric study of offenders' brothers violated his due process rights. Johnson ex rel. Johnson v. Columbia University, S.D.N.Y.2003, 2003 WL 22743675, Unreported. Constitutional Law 255(4); Constitutional Law 277(1); Infants 133

1207. ---- Procedural due process, constitutional violation, deprivation of constitutional or statutory rights generally

State prisoner had no due process right of post-conviction access to the biological evidence presented at his capital murder trial under *Brady v. Maryland* and its progeny for the purpose of performing DNA testing thereon; the evidence in question had not been suppressed but, instead, was available and used at prisoner's trial some 20 years earlier, prisoner received a fair trial in which overwhelming evidence was presented against him, including his confession to the victim's burglary, rape, and murder, prisoner did not contend that he was actually innocent of the crime of conviction, capital murder during a burglary, but only that he did not know whether he was guilty or innocent, and the DNA testing that prisoner sought to perform could not have shown that he was actually innocent of the capital murder. Grayson v. King, C.A.11 (Ala.) 2006, 460 F.3d 1328. Criminal Law 1590

Parents of infant child who had been removed from home without notice or hearing by caseworker with state's child

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and family services agency stated §§ 1983 procedural due process claim against caseworker and others, seeking damages for mental and emotional distress, even assuming that removal would still have occurred with prior notice and hearing; parents alleged emotional distress from caseworker's actions themselves, e.g. "[it was like] being attacked by a terrorist," and "I wonder when they're going to strike again." Gomes v. Wood, C.A.10 (Utah) 2006, 451 F.3d 1122. Infants 17

Though discharged public employee need not use the term "name-clearing hearing" to satisfy hearing-request requirement for seeking remedy, under §§ 1983, for deprivation of liberty in violation of due process clause, the employee must still petition the employer in a manner that can be construed as asking for an opportunity to clear his name. Bledsoe v. City of Horn Lake, Miss., C.A.5 (Miss.) 2006, 449 F.3d 650. Constitutional Law 278.4(5)

Allegations by attorney and accounting firm hired under contract by Puerto Rico municipality to assist in recovery of municipal taxes, that the municipal officials refused to pay them for services rendered, in breach of their contract, did not state procedural due process claim against officials, absent allegation that there was no complete and adequate remedy available under state law for the breach of contract. Ramirez v. Arlequin, C.A.1 (Puerto Rico) 2006, 447 F.3d 19. Territories 23

Alabama recipients of state-collected Title IV-D child support payments were not deprived of procedural due process absent showing that they had been deprived of any payments to which they were entitled or that notices from state, regarding either its handling of payments or recipients' entitlement to hearing and procedures for obtaining one, were inadequate. Arrington v. Helms, C.A.11 (Ala.) 2006, 438 F.3d 1336, rehearing and rehearing en banc denied 2006 WL 1112954. Constitutional Law 299.3

City incurred no §§ 1983 liability from its failure to accord post-deprivation hearing to impounded vehicle owner, where failure was inadvertent and not result of any deliberate inaction under city policy. Miranda v. City of Cornelius, C.A.9 (Or.) 2005, 429 F.3d 858. Civil Rights 1352(3)

State department of agriculture did not violate poultry producers' procedural due process rights by failing to issue notice and an opportunity for a hearing before the quarantine and depopulation of producers' flocks, due to suspected avian influenza infection; it was undisputed that avian influenza endangered the health of poultry sold for human consumption, or that it threatened public health and prompt action that included quarantining suspected flocks to prevent further contamination was required. Reichley v. Pennsylvania Dept. of Agriculture, C.A.3 (Pa.) 2005, 427 F.3d 236. Constitutional Law 293

Public school teacher failed to state "stigma-plus" procedural due process claim where he did not allege that school board made any false statements that stigmatized him, either publicly or in materials in his personnel file; negative inferences drawn by townsfolk from teacher's "suspension" were insufficient. O'Connor v. Pierson, C.A.2 (Conn.) 2005, 426 F.3d 187. Schools 147.31

To establish a procedural due process claim under §§ 1983, plaintiff must allege first that it has a property interest as defined by state law and, second, that defendants, acting under color of state law, deprived it of that property interest without constitutionally adequate process. SFW Arecibo, Ltd. v. Rodriguez, C.A.1 (Puerto Rico) 2005, 415 F.3d 135, certiorari denied 126 S.Ct. 829, 163 L.Ed.2d 706. Constitutional Law 278(1)

Animal owner did not possess a viable §§ 1983 procedural due process claim, arising out of the euthanization by county officials of more than two hundred dogs and cats seized from her residential property, in contravention of state law which required a hearing prior to euthanization; the euthanization was unforeseeable, since state law expressly prohibited it without state court adjudication, predeprivation process by county officials was impossible, since state law already provided for a hearing, the euthanization as carried out by officials was unauthorized, and there was meaningful postdeprivation remedy for the loss available under state law. Bogart v. Chapell, C.A.4

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42 U.S.C.A. § 1983

(S.C.) 2005, 396 F.3d 548. Animals 43.1; Constitutional Law 293

Genuine issues of material fact as to whether department of adult probation was part of the state court system and whether the state or the county would pay damages for a constitutional violation perpetrated by the department precluded summary judgment on Eleventh Amendment immunity grounds for county in suit brought by homeless citizens pursuant to §§ 1983 alleging due process violations stemming from the destruction of their personal property by adult probationers during community service clean-up activities of homeless sites. Cash v. Hamilton County Dept. of Adult Probation, C.A.6 (Ohio) 2004, 388 F.3d 539, rehearing en banc denied, certiorari denied 126 S.Ct. 396, 163 L.Ed.2d 274, certiorari denied 126 S.Ct. 545, 163 L.Ed.2d 499, on remand 2006 WL 314491. Federal Civil Procedure 2491.5

A plaintiff cannot raise a § 1983 procedural due process claim where the loss of property resulted from the random and unauthorized actions of a state actor which made the provision of pre-deprivation process impossible or impracticable, and an adequate state post-deprivation remedy exists; conversely, when the deprivation is caused by established state procedures, the existence of an adequate remedy at state law does not extinguish a procedural due process claim. Gonzales v. City of Castle Rock, C.A.10 (Colo.) 2004, 366 F.3d 1093, certiorari granted 125 S.Ct. 417, 543 U.S. 955, 160 L.Ed.2d 316, miscellaneous rulings 125 S.Ct. 945, 543 U.S. 1047, 160 L.Ed.2d 767, miscellaneous rulings 125 S.Ct. 1413, 543 U.S. 1185, 161 L.Ed.2d 187, reversed 125 S.Ct. 2796, 162 L.Ed.2d 658, on remand 144 Fed.Appx. 746, 2005 WL 2438875. Constitutional Law 278(1)

District court's sua sponte dismissal for frivolousness, pursuant to the screening provision of the Prison Litigation Reform Act (PLRA), of prisoner's § 1983 action against police officers, arising out of officers' refusal to return prisoner's seized motor vehicle, was not warranted; prisoner alleged that he was unable to reclaim his vehicle despite following procedures suggested by various state employees, which stated claim for due process violation, and complaint did not present dispositive defense on its face. Larkin v. Savage, C.A.2 (N.Y.) 2003, 318 F.3d 138. Civil Rights 1395(7)

County officials' decision to interview child about suspected child abuse in shelter care center following overnight stay, rather than interviewing child privately at her home or immediately interviewing her at the shelter care center, did not violate procedural due process, although child's father was able to speak privately with child before interview; procedures employed were reasonably calculated to balance competing interests and to achieve interview with child untainted by either parent's influence. J.B. v. Washington County, C.A.10 (Utah) 1997, 127 F.3d 919. Constitutional Law 274(5); Infants 192

Even assuming liberty or property interest of private vocational school were impacted by state student aid commission's revocation of school's eligibility to participate in student loan program established by the Higher Education Act, Act's procedures provided school with sufficient process, and thus school did not suffer due process violation upon which to base § 1983 action. Dumas v. Kipp, C.A.9 (Cal.) 1996, 90 F.3d 386. Colleges And Universities 9.25(2); Constitutional Law 278.5(1)

Procedural due process claim is not actionable unless no adequate postdeprivation remedy is available under state law. Perez-Ruiz v. Crespo-Guillen, C.A.1 (Puerto Rico) 1994, 25 F.3d 40. Constitutional Law 251.5

A deprivation of procedural due process is an independent constitutional tort, actionable under this section governing civil action for deprivation of rights with or without proof of actual injury. Burt v. Abel, C.A.4 (S.C.) 1978, 585 F.2d 613, on remand 466 F.Supp. 1234. Civil Rights 1028

Allegation that local official used his powers to ensure that land-locked property would not be developed did not rise to deprivation of procedural due process redressable in civil rights action, even if official's actions rose to level of bad faith refusal to follow state law in local administrative matters, where Massachusetts state courts provided remedies for correcting alleged errors in blocking development. Mongeau v. City of Marlborough, D.Mass.2006,

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42 U.S.C.A. § 1983

462 F.Supp.2d 144. Zoning And Planning 353.1

Property owner was not denied procedural due process when state court authorized substituted service in case seeking imposition of remedial contempt sanction for owner's noncompliance with order in housing code enforcement action, as personal service had been attempted and substituted service was authorized under Maine rules under facts suggesting that property owner deliberately avoided attempts at personal service. Marcello v. Maine, D.Me.2006, 457 F.Supp.2d 55. Contempt 55

Owner of undeveloped property stated procedural due process civil rights claim against township, on basis that it was deprived of property as result of established state procedure that itself violated due process rights, on allegations that township unilaterally changed rules applicable to development to which property belonged without providing public with both notice and opportunity to debate such change. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Zoning And Planning 194.1

New Jersey civil commitment statute, which allows temporary involuntary civil commitment for up to 20 days before adversary hearing is held, does not violate procedural due process; statute provides procedural safeguards to protect liberty interests, including certification by two doctors that patient is danger to himself or to others, prohibition of holding patient for more than 72 hours unless neutral judge finds probable cause to believe patient is danger to himself or to others, assistance of counsel, and entitlement to file petition for writ of habeas corpus. Alston v. Parker, D.N.J.2006, 452 F.Supp.2d 597. Mental Health 32

New York school custodian terminated for disciplinary reasons during pendency of his application for disability retirement benefits stated §§ 1983 claim against school district and board of education for violation of procedural due process based on deprivation of his protected property interest in those benefits without notice and opportunity to be heard; after state determined he was entitled to those benefits and retroactively established his disability retirement date as last day of his employment with district, he applied for those benefits but district failed to respond to his application and his later inquiries, and court could not determine before discovery whether defendants' alleged nonfeasance in that regard occurred within context of established procedures or was "random and unauthorized" act. Jackson v. Roslyn Bd. of Educ., E.D.N.Y.2006, 438 F.Supp.2d 49. Civil Rights 1395(8)

Health services district's exercise of supervisory power to grant, limit or deny practice privileges at government-sponsored medical facilities, by requiring physician to apply for and obtain full provisional privileges under the medical staff bylaws, did not deny a substantive constitutional liberty or property right to practice medicine or to make contracts with patients for physician's professional services. MacArthur v. San Juan County, D.Utah 2005, 416 F.Supp.2d 1098. Health 271

Parents of disabled student, who sued child protective services (CPS) employees, stemming from removal based on teacher's report of suspected sexual abuse, failed to establish that their procedural due process rights were violated by lack of hearing prior to removal, where such action was properly based on CPS investigation, information obtained from teachers, and medical examination of student. Martin v. Texas Dept. of Protective and Regulatory Services, S.D.Tex.2005, 405 F.Supp.2d 775. Infants 17

Arrestee who alleged that he was denied right to appear before judge after his arrest pursuant to warrant stated due process claim. Garcia Rodriguez v. Andreu Garcia, D.Puerto Rico 2005, 403 F.Supp.2d 174. Constitutional Law 262

Township officials did not deprive daycare center developer of procedural due process by enforcing conditional use permit conditions imposed by board of supervisors; developer neither requested that board waive or reconsider conditions, nor sought available judicial review of conditions. Aardvark Childcare and Learning Center, Inc. v. Township of Concord, E.D.Pa.2005, 401 F.Supp.2d 427. Zoning And Planning 388

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Employers satisfied state university hospital employee physician's procedural due process rights by providing him with sufficient opportunity to be heard at meaningful time and in meaningful manner regarding charges against him that led to revocation of his clinical privileges; although employers denied employee's request to postpone three-day hearing due to his shoulder surgery a month earlier, and although employee chose not to attend first two days of hearings, employers provided him with transcript of proceedings and gave him opportunity to submit written response to testimony, make statements, and call witnesses, and employee failed to show that participants in peer review process were biased. Benjamin v. Schuller, S.D.Ohio 2005, 400 F.Supp.2d 1055. Health 273

Middle school students and parents who sued school district, school board, and officials, stemming from students' expulsions due to BB gun shooting incident near bus stop, failed to allege that they were substantially prejudiced by defendants' actions, as required to state procedural due process claims under §§ 1983; students admitted to engaging in misconduct that formed basis of their expulsions when they pleaded guilty to felony second-degree assault. S.K. v. Anoka-Hennepin Independent School Dist. No. 11, D.Minn.2005, 399 F.Supp.2d 963. Schools 177

Where plaintiff's §§ 1983 claim is based on deprivation of notice, in violation of Due Process Clause of Fourteenth Amendment, plaintiff must demonstrate that defendant acted deliberately or recklessly in failing to provide notice; deprivation that is merely negligent is not sufficient. Buntin v. City of New York, S.D.N.Y.2005, 395 F.Supp.2d 104. Constitutional Law 251.6

Inmate who sued against county and sheriff's department, stemming from attack by other inmates while incarcerated, failed to allege that defendants took any significant property interest from him without hearing, as required to maintain procedural due process claim. Collins v. County of Kern, E.D.Cal.2005, 390 F.Supp.2d 964. Civil Rights 1395(7)

Allegations in high school student's complaint against school district, that school administrators failed to adhere to state statutes and administrative rules governing student due process in connection with his 31-day suspension, were sufficient to state §§ 1983 claim, notwithstanding asserted availability of postdeprivation tort remedies to redress the school district's wrongs. Waln By and Through Waln v. Todd County School Dist., D.S.D.2005, 388 F.Supp.2d 994. Civil Rights 1395(2)

Plaintiffs were required to allege deprivation of liberty or property interest to state §§ 1983 cause of action for violation of procedural due process; damage to reputation alone was not actionable under §§ 1983. Heller v. Fulare, W.D.Pa.2005, 371 F.Supp.2d 743. Civil Rights 1038; Constitutional Law 255(1); Constitutional Law 278(1)

Minor children alleged deprivation and gross negligence required to state cause of action under §§ 1983, in complaint against present and former directors of New Jersey's Division of Youth and Family Services (DYFS), for deprivation of their procedural due process rights, arising from their alleged malnourishment in adoptive home. K.J. ex rel. Lowry v. Division of Youth and Family Services, D.N.J.2005, 363 F.Supp.2d 728. Constitutional Law 255(4); Infants 17

Civil committee confined as a sexually violent predator (SVP) at state hospital was barred from bringing civil conspiracy claims under §§ 1983 against hospital employees who allegedly prepared "false or misleading forensic documents" used in his civil commitment proceeding, since such claims implied invalidity of his civil commitment, which had not been set aside. Hubbs v. Alamao, C.D.Cal.2005, 360 F.Supp.2d 1073. Conspiracy 7.5(2)

To succeed on procedural due process claim under §§ 1983, plaintiff must prove that: (1) he had property interest under state law, and (2) defendants, acting under color of state law, deprived him of that property interest without following procedures required by federal constitutional law. Patterson v. Tortolano, D.Mass.2005, 359 F.Supp.2d 13. Civil Rights 1324; Constitutional Law 278(1)

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42 U.S.C.A. § 1983

Procedural due process rights of Puerto Rico "career" employee were not violated by lack of procedural safeguards accompanying transfer where employee stayed at her same rank and salary. Velez-Herrero v. Guzman, D.Puerto Rico 2004, 330 F.Supp.2d 62. Constitutional Law 278.4(5); Territories 23

Evidence of Oregon Bureau of Labor and Industries (BOLI) officials' actual bias against holders of farm and forest labor license was insufficient, for purposes of claimed violation of procedural due process right to unbiased tribunal; while order suspending license based on contractors' alleged use of untrained firefighters was issued during harvesting season it was also peak wildfire season, official's statements that licenseholder had reputation for violence and dishonesty did not show unconstitutional bias and merely reflected her judgments regarding his credibility, failure of suspension order to expressly state it was issued to protect public safety did not create reasonable inference of bias and, more fundamentally, nonparty BOLI officials made ultimate recommendation and decision and issued order. Lumbreras v. Roberts, D.Or.2004, 319 F.Supp.2d 1191, affirmed 156 Fed.Appx. 952, 2005 WL 3304174. Constitutional Law 287.2(1); Licenses 38

Allegation that there was a delay in postdeprivation remedies provided to state employee who worked as chief legal counsel for the state department of revenue after he was demoted, without more, did not establish that delay was an unreasonable one, for purposes of employee's due process claim. Evans v. Morgan, W.D.Wis.2004, 307 F.Supp.2d 1036. Constitutional Law 278.4(5); States 53

Police detective did not have protected property interest in membership in police department's emergency response team (ERT) or its attendant benefits of overtime pay and prestige, as was required to state § 1983 claim against city police department for denial of procedural due process following his removal from ERT after he received written reprimand for violating departmental code of conduct; right to overtime was not a constitutionally protected property interest, detective's wish that he work overtime as ERT member was at best an expectation rather than an entitlement because he identified no contractual, regulatory, or statutory provision entitling him to work overtime, and detective retained his rank and base pay after being removed from ERT. Barton v. City of Bristol, D.Conn.2003, 294 F.Supp.2d 184. Constitutional Law 277(2)

Section 1983 complaint of county corrections officers, asserting that the manner in which an internal investigation into incident in which they allegedly used improper force against an inmate and subsequent disciplinary hearings were conducted was biased and corrupt, alleged sufficient facts to state a procedural due process claim, even though their employment was governed by a collective bargaining agreement providing for a multi-step grievance procedure and arbitration. Keim v. County of Bucks, E.D.Pa.2003, 275 F.Supp.2d 628. Civil Rights 1312; Civil Rights 1395(8)

To recover under § 1983 for procedural due process claim for deprivation of liberty, governmental employee must show that (1) false statement, (2) of stigmatizing nature, (3) attending governmental employee's discharge, (4) was made public, (5) by governmental employer, (6) without meaningful opportunity for employee name clearing hearing. Cromer v. Crowder, S.D.Fla.2003, 273 F.Supp.2d 1329. Constitutional Law 278.4(5)

To state a claim for a violation of procedural due process, plaintiffs must show that a defendant deprived them of a liberty or property interest without due process of law. D.L. v. Unified School Dist. # 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090. Constitutional Law 255(1); Constitutional Law 278(1)

Any civil rights claim that claimant had against county defendants for violation of due process arising from federal administrative forfeiture of currency, which had been effectuated in partnership with state law enforcement officers, arising from state officers' alleged forgery of "Assent to Forfeiture" form was to be brought under *Bivens*, not § 1983; suit was one against procedural defects in federal forfeiture brought about by acts of local police officers acting under color of federal law. North Carolina ex rel. Haywood v. Barrington, M.D.N.C.2003, 256

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42 U.S.C.A. § 1983

F.Supp.2d 452. Civil Rights 1327

Random and unauthorized deprivation of property is not a cognizable claim under § 1983 when a state's post-deprivation remedies are adequate to protect a plaintiff's procedural due process rights. McCormick v. City of Lawrence, Kansas, D.Kan.2003, 253 F.Supp.2d 1172, affirmed 99 Fed.Appx. 169, 2004 WL 882146. Civil Rights 1318

Procedural due process violation is not complete unless and until state fails to provide due process; state may cure procedural deprivation by providing later procedural remedy, and only when state refuses to do so does constitutional violation actionable under § 1983 arise. Jackson v. City of Stone Mountain, N.D.Ga.2002, 232 F.Supp.2d 1337. Constitutional Law 251.5

Although it was unclear whether African-American child care provider satisfied eligibility requirements for entering into contract with the Ohio Department of Human Services (DHS) to provide government subsidized child care, and while it was thus unclear whether she had any entitlement to such a contract of kind sufficient to support procedural due process claim, she did have established right in being notified of her ability to file civil rights complaint upon denial of subsidy contract, as required under federal regulation governing this subsidy program, and could maintain procedural due process claim under civil rights statute to extent that DHS failed to provide required notification. Belcher v. Ohio Dept. of Human Services, S.D.Ohio 1999, 48 F.Supp.2d 729. Constitutional Law 276(2); Social Security And Public Welfare 194

Article 78 proceeding under New York law provided adequate postdeprivation remedy for county employee who alleged that he was deprived of employment-based property and liberty interests when county coerced him into foregoing arbitration hearing and accepting demotion, precluding his due process claims under § 1983. Monroe v. Schenectady County, N.D.N.Y.1997, 1 F.Supp.2d 168, affirmed 152 F.3d 919. Constitutional Law 278.4(5); Counties 67

Terminated college professor did not state claim for denial of procedural due process in claiming she was discharged without notice and opportunity for hearing; her allegations that colleagues in her department approached university provost with claim she tried to intimidate them did not rise to level of allegations of dishonesty or immorality required to trigger notice and hearing requirement. Stein v. Kent State University Bd. of Trustees, N.D.Ohio 1998, 994 F.Supp. 898, affirmed 181 F.3d 103. Colleges And Universities 8.1(5); Constitutional Law 278.5(4)

Plaintiff, whose name appeared on list of "habitual drunkards" distributed by county deputy prosecuting attorney to alcoholic beverage permittees with warning that state habitual drunkard statute would be enforced, was not deprived of any constitutionally protected interest, so as to require procedural due process, where permittees were told, three days after receiving it, to disregard letter, and plaintiff was not refused right to purchase alcohol at any time after distribution of letter. Collins v. Hall, N.D.Ind.1997, 991 F.Supp. 1065. Constitutional Law 255(2); Intoxicating Liquors 161

Before court may consider § 1983 claim alleging lack of procedural due process, plaintiff must plead and prove inadequacy of state procedures, including state tort remedies. Swales v. Township of Ravenna, N.D.Ohio 1997, 989 F.Supp. 925. Civil Rights 1315

Customer did not have civil rights claim against police and other city defendants for alleged violation of due process by refusing timely to provide her with a copy of statement made to complain about her treatment by automobile dealership and by refusing to take the necessary steps to bring criminal charges, absent any showing that she was deprived of life, liberty or property. Wesley v. Don Stein Buick, Inc., D.Kan.1997, 985 F.Supp. 1288, vacated in part 996 F.Supp. 1299. Civil Rights 1088(1)

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Failure to give parents notice of intended interviews with child about possible abuse, to secure parents' permission for interviews, or to allow parents to be present during interviews protected State's very strong interests in protecting child and learning in timely fashion what the child had to relate about the matter, without being possibly limited by presence of his parents, and that interest was paramount to personal interests of parents in preventing false accusations. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Infants 17

Disciplined high school student never suffered a deprivation of procedural due process sufficient to sustain a § 1983 claim, where she did not resort to otherwise available means of redress, but complained only that she was denied any notice of any further rights of review beyond meeting with superintendent. Kicklighter v. Evans County School Dist., S.D.Ga.1997, 968 F.Supp. 712, affirmed 140 F.3d 1043. Civil Rights 1317

Tape showing failure of male officer with county sheriff's department to respond to wired female detainee's attempts to contact him during night following officer's alleged sexual assault of her was exculpatory evidence, so that county employees's failure to disclose that evidence to officer violated his due process rights. Ahlers v. Schebil, E.D.Mich.1997, 966 F.Supp. 518. Constitutional Law 268(5); Criminal Law 700(3)

Since neither inmate nor prison officials had explained what conditions of confinement inmates in general prison population face, court could not adequately compare conditions in general population to conditions inmate faced and, thus, would not recommend dismissing inmate's § 1983 procedural due process claim against prison officials based on inmate not having liberty interest created by state law. Saunders v. Horn, E.D.Pa.1996, 959 F.Supp. 689, report and recommendation adopted 960 F.Supp. 893. Civil Rights 1098

Housing authority would be liable under this section governing civil actions for deprivation of rights if employee demonstrated that the procedures followed in her termination, which procedures complied with official policies, failed to meet applicable due process standards. Young v. Peoria Housing Authority, C.D.Ill.1979, 479 F.Supp. 1093. Civil Rights 1349

Steamship pilot, who agreed to sanctions being imposed by pilots' association without utilizing a hearing or other state processes, failed to show a clearly-established procedural-due-process violation by pilots' association. Nance v. New Orleans and Baton Rouge Steamship Pilots' Ass'n, C.A.5 (La.) 2006, 2006 WL 925532, Unreported. Pilots 2.5

Requiring transit police sergeant to pay for police radio that was stolen from his personal vehicle while it was parked outside his residence did not violate due process, so as to give rise to a claim under §§ 1983, since he was provided with notice of the transportation authority's investigation into the matter and offered numerous opportunities to present his side of the case. Hall v. Septa, C.A.3 (Pa.) 2006, 167 Fed.Appx. 902, 2006 WL 236463, Unreported. Municipal Corporations 185(3)

Allegations that parents whose children were removed from home by county social worker were not allowed to recover children after safety plan providing for children's placement with friends had been initiated, despite parents' best efforts to do so, that continued deprivation of children was involuntary, and that parents were effectively denied prompt hearing on children's placement supported claim against social worker for violating parents' procedural due process rights. Smith v. Williams-Ash, C.A.6 (Ohio) 2005, 2005 WL 3304101, Unreported. Infants 17

Delays of 65 days and 89 days, respectively, between filing of informations and defendant's arraignment on charges of receipt of stolen property and assault had no impact on defendant's liberty so as to support his in forma pauperis § 1983 claim for violation of his due process rights, and thus, the claim was properly dismissed as frivolous, where he was appropriately restrained in jail by his parole violation detention during the periods of delay. Robertson v. Price City Police Dept., C.A.10 (Utah) 2003, 83 Fed.Appx. 286, 2003 WL 22925271, Unreported. Constitutional Law 265.5; Criminal Law 577.11(3); Federal Civil Procedure 2734

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42 U.S.C.A. § 1983

State prisoner failed to state § 1983 claim for due process violation based on filing of false sentence computation data form, since prisoner did not have constitutionally protected right not to have false documents filed against him; filing of false documents and assertion of false accusations did not, by themselves, implicate protected liberty interest with respect to terms or conditions of confinement. Peterson v. Tomaselli, S.D.N.Y.2003, 2003 WL 22213125, Unreported. Constitutional Law 272(2); Prisons 12

State prisoner has no constitutionally guaranteed immunity from being falsely or wrongly accused of conduct which may result in deprivation of protected liberty interest; as long as prisoner is afforded procedural due process in disciplinary hearing, allegations of fabricated charge fail to state claim under § 1983. Verwolf v. Hamlet, N.D.Cal.2003, 2003 WL 22159055, Unreported. Constitutional Law 272(2)

State prisoner failed to state civil rights claim that his rights under the Due Process Clause were violated by prison officials who allegedly falsely convicted him in disciplinary proceeding and placed him extended lockdown, absent evidence that prisoner's placement in extended lockdown presented an atypical or significant hardship beyond the ordinary incidents of prison life, giving rise to a constitutionally protected liberty interest that would trigger due-process guarantees. Fisher v. Wilson, C.A.5 (La.) 2003, 74 Fed.Appx. 301, 2003 WL 21654031, Unreported. Constitutional Law 272(2); Prisons 13(5)

In § 1983 lawsuit, arrestee stated claim that state trooper violated his due process rights on allegations that he was not driving under influence of alcohol, and that trooper destroyed result slips from alcohol breath testing machine to later sustain false claim that arrestee did not cooperate in providing breath samples. Ankele v. Hambrick, E.D.Pa.2003, 2003 WL 21223821, Unreported, affirmed 136 Fed.Appx. 551, 2005 WL 1532436. Automobiles 349(14.1); Constitutional Law 262

1208. ---- Substantive due process, constitutional violation, deprivation of constitutional or statutory rights generally

Parent of junior high school student who died after falling ill on school band trip failed to state §§ 1983 substantive due process claim against school band director upon which relief could be granted, since complaint did not identify one of the limited circumstances in which state official might have constitutional duty to attend to citizen's medical needs; complaint did not allege band trip was compulsory, or assert student was prohibited from leaving trip at any time if parent made arrangements, complaint did not allege director or any chaperone denied student opportunity to contact parent by telephone, or prevented family from communicating with student during trip, and there was no claim student's voluntary participation evolved into involuntary commitment during trip. Lee v. Pine Bluff School Dist., C.A.8 (Ark.) 2007, 472 F.3d 1026. Schools 147

Police chief's directive to wear riot helmets, rather than a more protective face mask, during police training exercises was not conscience-shocking conduct, as required for officer's substantive due process claim under §§ 1983 alleging that his right to bodily integrity was violated when a training exercise bullet went under his helmet and injured his eye. Moore v. Guthrie, C.A.10 (Colo.) 2006, 438 F.3d 1036. Municipal Corporations 182

Fact that counselor at prison criticized prisoner's interracial marriage did not amount to due process violation, as required to support prisoner's §§ 1983 action against prison officials, even though prisoner was removed from sex offenders' class which he needed to complete as condition of parole, where all the therapists and counselors involved in program voted to remove prisoner from program and prisoner was removed for failing to make progress. Munson v. Norris, C.A.8 (Ark.) 2006, 435 F.3d 877, rehearing and rehearing en banc denied. Prisons 4(5)

Bystander hit by emergency response vehicle in process of responding to emergency call cannot sustain §§ 1983 claim under substantive due process clause without alleging intent to harm. Perez v. Unified Government of

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Wyandotte County/Kansas City, Kan., C.A.10 (Kan.) 2005, 432 F.3d 1163, petition for certiorari filed 2006 WL 1130534. Constitutional Law 253(1)

When state officials implicitly or explicitly communicate to a private person that he or she will not be arrested, punished, or otherwise interfered with while engaging in misconduct that is likely to endanger the life, liberty or property of others, those officials can be held liable under §§ 1983 for injury caused by the misconduct, for violation of substantive due process rights. Pena v. DePrisco, C.A.2 (N.Y.) 2005, 432 F.3d 98. Constitutional Law 278(1)

County did not create danger for foster child by not investigating allegation of sexual abuse against foster parent after issuing "courtesy" foster care license to foster parent, for purpose of foster child's civil rights claim under special relationship exception to rule that government ordinarily did not have substantive due process duty to protect private citizens from doing harm to each other, since county did not know who would be placed in home by neighboring county when it issued that license, neighboring county retained legal custody of child, and county was not required to monitor foster parent's license after particular child was placed in home. Waubanascum v. Shawano County, C.A.7 (Wis.) 2005, 416 F.3d 658, certiorari denied 126 S.Ct. 1045, 163 L.Ed.2d 858. Infants 17

Elementary school teacher stated a claim under §§ 1983 for alleged violations by superintendent of his constitutional right to rear his child by alleging that superintendent not only conditioned his full-time employment on where teacher's son attended school, but also terminated him once his son was removed from public school; teacher provided detailed description of the alleged violations and clarified any possible confusion in his response to motion for summary judgment. Barrett v. Steubenville City Schools, C.A.6 (Ohio) 2004, 388 F.3d 967, rehearing en banc denied, certiorari denied 126 S.Ct. 334, 163 L.Ed.2d 47. Civil Rights 1395(8)

Actions of District of Columbia officials in laying off several hundred correctional officers while relocating inmates to District's jail in response to congressional appropriations and mandates did not amount to executive abuse of power which shocked the conscience, as required to support substantive due process claim of correctional officers' union under § 1983 although union claimed that the officials acted with deliberate indifference to the safety of its members, it failed to demonstrate that an assault by an inmate was an unforeseeable risk of its members' employment. Fraternal Order of Police Dept. of Corrections Labor Committee v. Williams, C.A.D.C.2004, 375 F.3d 1141, 363 U.S.App.D.C. 1. Constitutional Law 275(5); Prisons 7

Genuine issues of material fact as to whether supervisors at county juvenile detention center, as policymakers therefor, developed inadequate policies and customs for dealing with detainee's mental health needs and safety precluded summary judgment for supervisors on detainee's claim for violation of substantive due process brought under §§ 1983. A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, C.A.3 (Pa.) 2004, 372 F.3d 572 . Federal Civil Procedure 2491.5

A successful §§ 1983 claim based on a violation of the Eighth Amendment requires the plaintiff to prove two things: (1) that the harm to the prisoner was objectively, sufficiently serious and a substantial risk to his health or safety, and (2) that the individual defendants were deliberately indifferent to the prisoner's health and safety. Matos ex rel. Matos v. O'Sullivan, C.A.7 (Ill.) 2003, 335 F.3d 553. Sentencing And Punishment 1532; Sentencing And Punishment 1533

Public school custodial employees could not show that school officials deprived them of constitutionally protected rights in violation of the due process clause, in ordering employees to remove asbestos-containing materials under carpeting, for purposes of § 1983 claim, arising from employees' alleged injuries due to asbestos exposure, absent evidence that officials made deliberate decision to inflict pain or bodily injury on employees or that officials engaged in arbitrary conduct intentionally designed to punish employees. Upsher v. Grosse Pointe Public School System, C.A.6 (Mich.) 2002, 285 F.3d 448, certiorari denied 123 S.Ct. 88, 537 U.S. 880, 154 L.Ed.2d 135.

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42 U.S.C.A. § 1983

Constitutional Law 278.5(2.1); Schools 89.7

Prison's restriction in refusing to allow prisoner to artificially inseminate his wife was not reasonably related to asserted legitimate penological interest of treating men and women inmates equally to the extent possible, for purposes of determining whether regulation violated male prisoner's due process rights; women could not avail themselves of opportunity male prisoner narrowly sought, to provide semen specimen to his mate, and men could not do what wife of male prisoner was likely capable of doing, that is conceive and give birth after receiving sperm from marital partner. Gerber v. Hickman, C.A.9 (Cal.) 2001, 264 F.3d 882, rehearing granted, opinion vacated 273 F.3d 843, on rehearing 291 F.3d 617, certiorari denied 123 S.Ct. 558, 537 U.S. 1039, 154 L.Ed.2d 462. Constitutional Law 272(2); Prisons 4(5)

Allegation that gym teacher assaulted student stated claim for violation of student's substantive due process right to be free of excessive force; force allegedly used far surpassed anything that could reasonably be characterized as serving legitimate government ends, such as student discipline, classroom control or self-defense, and alleged assault was extremely violent. Johnson v. Newburgh Enlarged School Dist., C.A.2 (N.Y.) 2001, 239 F.3d 246. Civil Rights 1395(2)

If the behavior of a governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience, a court considering a § 1983 claim against that official on that basis must next determine whether there exist historical examples of recognition of the claimed liberty protection at some appropriate level of specificity, and a plaintiff whose claim is not susceptible to proper analysis with reference to a specific constitutional right may still state a claim under § 1983 for a violation of his or her Fourteenth Amendment substantive due process right, and have the claim judged by the constitutional standard which governs that right. Morris v. Dearborne, C.A.5 (Tex.) 1999, 181 F.3d 657, rehearing and rehearing en banc denied 196 F.3d 1259, on remand 69 F.Supp.2d 868. Civil Rights 1032

Protections of substantive due process have been conferred primarily upon matters relating to marriage, family, procreation, and right to bodily integrity. Spiegel v. Rabinovitz, C.A.7 (Ill.) 1997, 121 F.3d 251, certiorari denied 118 S.Ct. 565, 522 U.S. 998, 139 L.Ed.2d 405. Constitutional Law 274(2); Constitutional Law 274(5)

Substantive due process right to bodily integrity can be violated without proof of arrest, apprehension, or "special relationship." Haberthur v. City of Raymore, Missouri, C.A.8 (Mo.) 1997, 119 F.3d 720. Constitutional Law 274(2)

Substantive due process violation resulting from official conduct, which will allow recovery in federal civil rights action, requires that defendant act with reckless intent, and that defendant's conduct shock the conscience. Williams v. City and County of Denver, C.A.10 (Colo.) 1996, 99 F.3d 1009, rehearing granted, opinion vacated 140 F.3d 855, on rehearing 153 F.3d 730. Constitutional Law 253(1)

A plaintiff states a claim for substantive due process violation by alleging that state has violated an independent substantive right, and it is clear that right is violated no matter what process precedes, accompanies, or follows the unconstitutional action. Casines v. Murchek, C.A.11 (Fla.) 1985, 766 F.2d 1494, rehearing denied 773 F.2d 1239. Civil Rights 1028

Allegations that local official raised unlawful barriers to the development of property, without more, did not rise to level of substantive due process violation. Mongeau v. City of Marlborough, D.Mass.2006, 462 F.Supp.2d 144. Zoning And Planning 353.1

Allegation of school secretary that superintendent, board of education, and school district shared her medical records with unauthorized persons was sufficient to state outrageous and arbitrary government conduct, required for substantive due process claim, in §§ 1983 action, as release of medical records would clearly infringed upon

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secretary's privacy and confidentiality rights. Burns v. Cook, N.D.N.Y.2006, 458 F.Supp.2d 29. Schools 89.7

Inspector's denial of property owner's zoning permit application was not arbitrary and capricious, and thus denial was not in violation of owner's substantive due process civil rights, where inspector denied owner's permit application because owner did not comply with number of elements of township zoning resolution. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Zoning And Planning 378.1

African-American operated charter school, which claimed that school board unconstitutionally terminated its charter contract, sufficiently set forth the elements of its claim for selective enforcement; school alleged that it was similarly situated to white-operated charter schools having fire code and safety violations, that school board treated it differently by subjecting it to more stringent enforcement standards, and that the disparate enforcement was based on race and invidious or in bad faith. Wilbesan Charter School, Inc. v. School Bd of Hillsborough County, FL, M.D.Fla.2006, 447 F.Supp.2d 1292. Civil Rights 1395(2)

Mother, who alleged that social worker deliberately took custody of her newborn child without prior judicial authorization, stated a claim for a violation of her right to due process under the Fourteenth Amendment. Brown v. Montana, D.Mont.2006, 442 F.Supp.2d 982. Infants 17

High school principal did not violate student's substantive due process rights by calling him out of class in order to permit police officers to question him. Burreson v. Barneveld School Dist, W.D.Wis.2006, 434 F.Supp.2d 588. Schools 169

Pretrial detainee stated a §§ 1983 claim for violation of his Fourteenth Amendment due process rights against county defendants; detainee's claims that excessive force used by a deputy, in conjunction with defendants' knowledge of the practice of tolerating excessive force, constituted a due process violation, and that the policy of toleration and failure by defendants to investigate the alleged abuse resulted in the detainee's injury, met the fair notice pleading standard. Harris v. Adams, S.D.Ohio 2005, 410 F.Supp.2d 707. Civil Rights 1395(6)

Township's failure to render decision until 65 days beyond 20-day statutory deadline, on owner's application for reconstruction permits for renovation of apartment buildings, did not constitute procedural due process violation, on theory that such action served to block owner's access to appeal process; state statutes clearly provided that inaction on construction application could be treated as denial, permitting administrative appeal, and owner did appeal. Cherry Hill Towers, L.L.C. v. Township of Cherry Hill, D.N.J.2006, 407 F.Supp.2d 648. Health 392

Parents of disabled student, who sued child protective services (CPS) employees failed to establish that removal based on teacher's report of suspected sexual abuse constituted substantive due process violation based on deliberate indifference to student's medical needs; after removal, employees turned over student's available medicine to foster caregivers, and when caregivers reported that student did not have enough medication, employees promptly acted. Martin v. Texas Dept. of Protective and Regulatory Services, S.D.Tex.2005, 405 F.Supp.2d 775. Infants 17

No Fourteenth Amendment due process violation was stated merely by allegations of defamatory statements made by town officials or investigatory conduct of town detectives in connection with circumstances underlying tax foreclosure sale of plaintiff's property; no property interest was taken without due process as a result of the statements or conduct, which occurred after the sale, and any claimed violation of bankruptcy stay was for resolution in the Bankruptcy Court, not by way of a §§ 1983 claim. Balaber-Strauss v. Town/Village of Harrison, S.D.N.Y.2005, 405 F.Supp.2d 427. Constitutional Law 285

State police department was not deliberately indifferent in automatically disqualifying African-American cadet applicant because of his past criminal activity, and thus department's procedures did not shock the conscience,

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precluding applicant's substantive due process claim; cadet hiring criteria, including automatic disqualification factors, had been specifically accepted by federal district court as part of consent decree in earlier race discrimination action, and factors had been applied to applicants of all races including those arrested but not convicted. Foxworth v. Pennsylvania State Police, E.D.Pa.2005, 402 F.Supp.2d 523, reconsideration denied 2005 WL 3470601. States 53

Township officials' alleged obstruction of daycare center developer's efforts to obtain necessary permits was not so conscience shocking as to amount to substantive due process violation; there was no evidence that alleged misconduct was unrelated to officials' exercise of their statutory authority to determine requirements necessary for approval of land use within township. Aardvark Childcare and Learning Center, Inc. v. Township of Concord, E.D.Pa.2005, 401 F.Supp.2d 427. Zoning And Planning 388

Middle school students and parents who sued school district, school board and officials, stemming from students' expulsions due to BB gun shooting incident, failed to allege that defendants' actions were arbitrary and capricious, as required to state substantive due process claims under §§ 1983; expulsions of students for one year after shooting another student near bus stop were not egregious, irrational, or motivated by ill-will, in light of seriousness of incident. S.K. v. Anoka-Hennepin Independent School Dist. No. 11, D.Minn.2005, 399 F.Supp.2d 963. Schools 177

Teacher's alleged conduct of inappropriately putting his arm around student, improperly touching her by leaning over her desk, and rubbing up against her one time when he pressed his torso into her back while she was making copies in administrative office did not rise to level of shocking the conscience so as to violate student's substantive due process right to bodily integrity. Gilliam v. USD # 244 School Dist., D.Kan.2005, 397 F.Supp.2d 1282. Schools 147

Alleged conduct by county sheriff, registrar of county board of elections, and member of the board, in inquiring into whether elector who assisted with absentee ballots for county was a convicted felon, did not violate elector's substantive due process rights under the Fourteenth Amendment; although elector alleged that he suffered damage to his reputation, and an associated decrease in business at his store as result of the rumor that he was a convicted felon, there was no evidence showing a decrease in business, the officials did not start the rumor or repeat it, and they merely discussed the situation with others due to their concern that the absentee ballots could be invalid if the rumor were true, so that their conduct did not shock the conscience. Moore v. Nelson, M.D.Ga.2005, 394 F.Supp.2d 1365. Sheriffs And Constables 99

Where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing those claims. Aguilera v. Baca, C.D.Cal.2005, 394 F.Supp.2d 1203. Constitutional Law 252.5

Police officers had purpose to cause harm against all patrons of restaurant and nightclub unrelated to any legitimate use of force by officers, thereby satisfying "shocks the conscience" standard necessary for substantive due process violation in lawsuit under §§ 1983, where patrons suffered from exposure to pepper spray but officers refused to provide assistance to injured patrons, refused to allow patrons to assist one another, and tried to keep patrons from exiting building after pepper spray was used. Logan v. City of Pullman, E.D.Wash.2005, 392 F.Supp.2d 1246. Municipal Corporations 747(3)

Plaintiff's general allegation of harm flowing solely from coercive police interrogation, i.e., "plaintiff was harmed" as "direct result" of police detective's violation of plaintiff's due process rights, was sufficient to meet harm requirement for stating a claim under §§ 1983 against detective for violation of substantive due process. McConkie v. Nichols, D.Me.2005, 392 F.Supp.2d 1, affirmed 446 F.3d 258. Civil Rights 1395(5)

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City restaurant inspector did not violate substantive due process when he temporarily closed restaurant based on exterminator's use of spray fogger to emit pesticide in restaurant; even if inspector made a poor decision, evidence indicated that his actions were in accord with his responsibility for protecting public health, rather than arbitrary, capricious, or without a rational basis. Camuglia v. City of Albuquerque, D.N.M.2005, 375 F.Supp.2d 1299, affirmed 448 F.3d 1214. Food 3

Allegations supported high school student's §§ 1983 claim against city and city school district for violation of his substantive due process right to bodily integrity arising from incident in which student was attacked and beaten by large group of students, given city and district's alleged policies or customs of concealing information about violence in schools, failing to address school safety concerns, failing to train employees to avoid violations of constitutional rights, and cultivating atmosphere in which municipal employees would fail to report incidents of school violence. Gremo v. Karlin, E.D.Pa.2005, 363 F.Supp.2d 771. Civil Rights 1351(2); Civil Rights 1352(2)

Minor children stated cause of action under §§ 1983, in complaint against present and former directors of New Jersey's Division of Youth and Family Services (DYFS), for deprivation of their substantive due process rights, arising from their alleged malnourishment in adoptive home. K.J. ex rel. Lowry v. Division of Youth and Family Services, D.N.J.2005, 363 F.Supp.2d 728. Constitutional Law 255(4); Infants 17

City committed no substantive due process violation against minor child who fell through open manhole and drowned, precluding city's liability under §§ 1983 to child's survivors; child was never in custody of city, and any reckless indifference or gross negligence by city did not rise to level of shocking the conscience. Ramos Pinero v. Commonwealth of Puerto Rico, D. Puerto Rico 2005, 359 F.Supp.2d 56. Constitutional Law 255(4); Municipal Corporations 767

Genuine issues of material fact existed as to whether fire chief was deliberately indifferent to the adequacy of the training given to the drivers of fire trucks, and whether that indifference was causally connected to the actions of the driver of a fire truck which struck an automobile in an intersection, resulting in the death of the driver of the automobile, precluding summary judgment for municipality in §§ 1983 action alleging a violation of the substantive due process rights of the fatally injured motorist. Becerra ex rel. Perez v. Unified Government of Wyandotte County/Kansas City, Kansas, D.Kan.2004, 342 F.Supp.2d 974, reversed 432 F.3d 1163, petition for certiorari filed 2006 WL 1130534. Federal Civil Procedure 2491.5

State officials' conduct in revoking nursing home's operating certificate and refusing transfer of establishment approval was rationally related to state's legitimate interest in regulation of nursing homes and did not violate nursing home owners' substantive due process rights so as to support section 1983 claim. Beechwood Restorative Care Center v. Leeds, W.D.N.Y.2004, 317 F.Supp.2d 248, affirmed in part, vacated in part and remanded 436 F.3d 147. Constitutional Law 287.2(1); Health 276

Developer's claim that township officials denied his plans with intent to harm and restrict his ability to carry out his business on parcel of land he leased stated claim under § 1983 that met the "shocks the conscience" standard for substantive due process violation. Nicolette v. Caruso, W.D.Pa.2003, 315 F.Supp.2d 710. Constitutional Law 278.2(1); Zoning And Planning 378.1

Developer's claim that township officials denied his plans with intent to harm and restrict his ability to carry out his business on parcel of land he leased stated claim under §§ 1983 that met the "shocks the conscience" standard for substantive due process violation. Nicolette v. Caruso, W.D.Pa.2003, 315 F.Supp.2d 710. Constitutional Law 278.2(1); Zoning And Planning 378.1

Police detective's conclusory allegation that police department removed him from emergency response team (ERT) after he received written reprimand for violating department code of conduct did not demonstrate that department

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behaved so outrageously that it shocked the conscience, as was required to support substantive due process claim under § 1983; departmental order clearly contemplated that officers could be removed from ERT. Barton v. City of Bristol, D.Conn.2003, 294 F.Supp.2d 184. Constitutional Law 278.4(3); Municipal Corporations 185(1)

A wrongful arrest is not a sufficient substantive due process violation to support a § 1983 claim. Forest v. Pawtucket Police Dept., D.R.I.2003, 290 F.Supp.2d 215, affirmed 377 F.3d 52, certiorari denied 125 S.Ct. 1315, 543 U.S. 1149, 161 L.Ed.2d 111. Civil Rights 1088(4)

Applicants have a constitutionally protected due process interest in government benefits for which they have applied. Lewis v. New Mexico Dept. of Health, D.N.M.2003, 275 F.Supp.2d 1319. Constitutional Law 277(1)

Allegations by heir of motorist, who was killed as result of injuries he sustained in collision with fire truck operated by municipal employee, that employee chose a route in responding to a fire call that was not necessary to accomplish response goal, that he knew the call did not require him to drive fire truck through red light at a high rate of speed, and that he knew his conduct created high risk of serious injury and death to motorists, if ultimately proved, rose to level of conduct that would shock the conscience, and thus stated a claim against employee for a violation of substantive due process under § 1983. Becerra v. Unified Government of Wyandotte County/Kansas City, Kansas, D.Kan.2003, 272 F.Supp.2d 1223. Automobiles 175(1); Automobiles 175(4); Constitutional Law 253(1)

By sexually molesting child, police officer, who was acting under color of state law, violated child's substantive due process right to bodily integrity, and therefore could be held liable under Section 1983. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Constitutional Law 274(5); Municipal Corporations 747(3)

Allegations by survivors of children who died in house fire that city neglected to repair defective fire equipment, causing delay in efforts to rescue children and resulting in their death, were sufficient to state §1983 claim for violation of substantive due process. Hill v. City of Houston, S.D.Tex.1998, 991 F.Supp. 847. Civil Rights 1395(1)

Social workers had no constitutionally protected duty to protect a 14-year-old foster child from consensual sex with the teenage son of her foster parents, and thus could not be held liable for violation of substantive due process when she became pregnant, even assuming they had knowledge of the relationship; alleged "major disruption and added expense" caused by pregnancy did not rise to level of threat to her physical or psychological safety. Andrea L. by Judith B. v. Children and Youth Services of Lawrence County, W.D.Pa.1997, 987 F.Supp. 418. Constitutional Law 255(4); Infants 17

Plaintiffs properly set forth substantive due process basis for relief under § 1983, by alleging that city defendants emboldened participants in neighborhood unrest, which arose from death of African-American child, and increased danger to Hasidic Jewish community by failing to arrest individuals for unlawful assembly and by ignoring pleas for assistance by individuals and community at large. Estate of Rosenbaum by Plotkin v. City of New York, E.D.N.Y.1997, 975 F.Supp. 206. Constitutional Law 253(1); Municipal Corporations 747(3)

To establish § 1983 substantive due process claim, plaintiff had to demonstrate that it had property or property interest, that state deprived it of this property or property interest, and that state's action fell so beyond outer limits of legitimate governmental action that no process could cure deficiency. City-Wide Asphalt Paving, Inc. v. Alamance County, M.D.N.C.1997, 966 F.Supp. 395. Constitutional Law 277(1); Constitutional Law 278(1)

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42 U.S.C.A. § 1983

Property owner did not state § 1983 claim for deprivation of substantive due process based on violations of state created land use rights; state created rights were not subject to substantive due process. Coletta v. City of North Bay Village, S.D.Fla.1997, 962 F.Supp. 1486. Constitutional Law 278.2(1); Zoning And Planning 1

While substantive due process claim under section 1983 of the civil rights statutes does not require that a specific constitutional guarantee be violated, in order to hold municipality liable, official's action must be such that it shocks the conscience or offends the community's sense of fair play and decency; not all unlawful force used by state officials arises to the level of a constitutional violation merely because the defendant is a state official and the force used by the official is unconstitutionally excessive only if it is arbitrary and a raw abuse of power. Porter v. City of Detroit, E.D.Mich.1986, 639 F.Supp. 589. Civil Rights 1032; Civil Rights 1035

Conduct sufficiently shocking to the conscience to require invalidation of a conviction on due process grounds will support a cause of action under this section. Robinson v. Vaclavik, E.D.Mo.1979, 477 F.Supp. 75. Civil Rights 1088(5)

Consistently stated official policy of company running short-term juvenile correction center, to require both articulation of legitimate reason for room change and evidence of detrimental behavior on part of roommate before room can be changed, was not constitutionally infirm under due process clause, despite juvenile's allegations on § 1983 claim that company had policy to ignore student's concerns and to maintain student in assigned room until morning. Burton v. Youth Services Intern., Inc., D.Md.1997, 176 F.R.D. 517. Constitutional Law 255(4); Infants 275

Where state actor willfully violates any one of the enumerated rights guaranteed within Bill of Rights, separate finding that action "shocks the conscience" or is "egregious abuse of governmental power" is unnecessary to establish civil rights claim, as willful violation of enumerated constitutional right is a constitutional tort, and additional requirement of some additional factor, such as "shocks the conscience" applies only when dealing with one of the unenumerated rights guaranteed by substantive due process. Riley v. Coutu, E.D.Mich.1997, 172 F.R.D. 228. Civil Rights 1032

Transportation authority's order requiring transit police sergeant to pay for police radio that was stolen from his personal vehicle while it was parked outside his residence did not shock the conscience, so as to violate substantive due process and give rise to a claim under §§ 1983. Hall v. Septa, C.A.3 (Pa.) 2006, 167 Fed.Appx. 902, 2006 WL 236463, Unreported. Municipal Corporations 185(1)

County social worker's alleged conduct in thwarting parents' attempts to have children returned to parents' home, after children were removed due to unsanitary conditions, and in effectively denying parents prompt hearing on children's placement did not rise to the level of conscience-shocking behavior, and thus did not support substantive due process claim. Smith v. Williams-Ash, C.A.6 (Ohio) 2005, 2005 WL 3304101, Unreported. Infants 17

Absence of showing that state failed to provide adequate post-deprivation remedy for cases of malicious prosecution precluded §§ 1983 claim for violation of purported substantive due process right to be free from malicious prosecution. BPNC, Inc. v. Taft, C.A.6 (Ohio) 2005, 147 Fed.Appx. 525, 2005 WL 1993426, Unreported. Constitutional Law 253(1)

While police officer who ran over a victim lying in the road was undoubtedly negligent in falling asleep at the wheel and failing to determine what he had run over, this behavior was not so outrageous as to shock the contemporary conscience, as required for the victim's survivors to prevail on their §§ 1983 substantive due process claim. Hayes v. Garcia, C.A.10 (N.M.) 2005, 123 Fed.Appx. 858, 2005 WL 165445, Unreported, certiorari denied 126 S.Ct. 71, 163 L.Ed.2d 95. Constitutional Law 253(1); Municipal Corporations 747(3)

Denial of desk appearance tickets to arrestees was not so arbitrary as to support their § 1983 claim of a substantive

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due process violation; rather than being irrational, the decision not to issue desk appearance tickets was based in part, according to police chief, on a decision that the arrestees, participants in a demonstration, were violating police directives, were a threat to police and public safety, would potentially continue their illegal activity, and were part of an uncontrollable group. Bryant v. City of New York, S.D.N.Y.2003, 2003 WL 22861926, Unreported, affirmed 404 F.3d 128. Arrest 70(1); Constitutional Law 265

Material issues of fact existed as to whether officers' conduct during encounter that resulted in fatal shooting of emotionally disturbed individual "shocked the conscience," precluding summary judgment for officers, city, and city officials on substantive due process claim asserted by individual's family members and administrator of his estate pursuant to § 1983. Busch v. City of New York, E.D.N.Y.2003, 2003 WL 22171896, Unreported. Federal Civil Procedure 2491.5

1209. ---- Availability of state remedy, constitutional violation, deprivation of constitutional or statutory rights generally

If the claim is that there has been a violation of the substantive component of the due process clause of the Fourteenth Amendment, plaintiff may maintain federal civil rights action irrespective of whether there is a state remedy available. Dugan v. Brooks, C.A.6 (Ohio) 1987, 818 F.2d 513. Civil Rights 1315

Existence of state postdeprivation remedies has no bearing on whether plaintiff has a constitutional claim under § 1983 based on deprivation of substantive due process. Gilmere v. City of Atlanta, Ga., C.A.11 (Ga.) 1985, 774 F.2d 1495, certiorari denied 106 S.Ct. 1970, 476 U.S. 1115, 90 L.Ed.2d 654, certiorari denied 106 S.Ct. 1993, 476 U.S. 1124, 90 L.Ed.2d 673. Civil Rights 1315

Any due process violation occurring when supervisors forced state trooper to use his annual leave while suspended without pay pending disciplinary investigation was alleviated by adequate post-deprivation remedies, and could not form basis for due process claim; trooper had opportunity to use employee grievance procedure or to pursue claim for lost leave in state court. Myers v. Shaver, W.D.Va.2003, 245 F.Supp.2d 805. Constitutional Law 278.4(5); States 60.2

Federal district court lacked jurisdiction over §1983 action claiming that municipal landlord violated constitutional rights of tenants by offering building to neighborhood entrepreneur rather than making arrangement for management by tenants; constitutional claims could and should have been raised in Article 78 proceeding. Reyes v. Erickson, S.D.N.Y.2003, 238 F.Supp.2d 632. Civil Rights 1318

Although litigant is not required to exhaust state remedies before initiating § 1983 actions for alleged violations of procedural due process, litigant's access to meaningful state post-deprivation procedures may preclude claims of procedural due process violation. Hadad v. Croucher, N.D.Ohio 1997, 970 F.Supp. 1227. Civil Rights 1315

Assuming that motorist's arrest based on police officers' mistaken belief that he was named in felony warrant implicated deprivation of liberty interests under color of law, adequate state law tort remedies were available to motorist, barring procedural due process claim under federal civil rights statute. Gardner v. Village of Grand River, Ohio, N.D.Ohio 1997, 955 F.Supp. 817. Civil Rights 1319

Constitutional issues may be decided in proceeding under New York law governing review of administrative decisions, and such proceeding is adequate for due process purposes even if petitioner cannot recover same relief that he could in suit under § 1983. Federico v. Board of Educ. of Public Schools of Tarrytowns, S.D.N.Y.1997, 955 F.Supp. 194. Civil Rights 1316; Constitutional Law 46(3)

Assuming, arguendo, that State Insurance Fund Corporation's actions deprived employer of cognizable property interest, employer's unsupported allegations failed to substantiate that available remedies under Puerto Rico law

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were inadequate to redress any deprivation resulting from Fund's denial of its workers' compensation coverage, for purposes of Fund's motion for summary judgment in employer's § 1983 action, alleging that Fund's conduct deprived employer of procedural due process. Sears, Roebuck de Puerto Rico, Inc. v. Soto-Rios, D.Puerto Rico 1996, 920 F.Supp. 266. Federal Civil Procedure 2491.5

Rule that plaintiff need not exhaust his or her state administrative remedies before commencing an action under § 1983 is inapplicable and exception exists, where plaintiffs allege claims based on violations of procedural due process; for such claims, existence of state remedies is relevant because constitutional violation actionable under § 1983, deprivation of a protected interest without due process of law, does not occur until and unless the state fails to provide due process. Simmons v. Chemung County Dept. of Social Services, W.D.N.Y.1991, 770 F.Supp. 795, affirmed 948 F.2d 1276. Civil Rights 1316

A civil rights plaintiff may maintain a substantive due process claim even though there are state tort remedies available. Sheets v. Indiana Dept. of Corrections, S.D.Ind.1986, 656 F.Supp. 733. Civil Rights 1315

A party may maintain a procedural due process § 1983 case in federal court if he alleges and proves that there was a constitutional violation under color of law and: state did not have any remedy; or state had a remedy but it was deemed inadequate; or state had an adequate remedy in form, both procedurally and in damages, but state did not apply it or it misapplied its remedy. Haag v. Cuyahoga County, N.D.Ohio 1985, 619 F.Supp. 262, affirmed 798 F.2d 1414. Civil Rights 1394

Motorist could not bring § 1983 action against sheriff's deputies under Fifth Amendment's Takings Clause, challenging seizure of his automobile, without first seeking compensation in state court for his alleged losses. Wos v. Sheahan, C.A.7 (Ill.) 2002, 57 Fed.Appx. 694, 2002 WL 31863858, Unreported. Civil Rights 1319; Eminent Domain 277

1210. ---- Equal protection generally, constitutional violation, deprivation of constitutional or statutory rights generally

Conclusory assertions that nursing home was a "better than average nursing home subjected to worse-than-average treatment," and that nursing home was subjected to "harsher-than-usual penalties" and "shorter-than-usual timetables" were insufficient to show dissimilar treatment among those similarly situated so as to give rise to equal protection claim against state regulator which revoked nursing home's operating certificate; furthermore, nursing home failed to establish a difference in treatment at the hands of regulators before the nursing home operators' skirmishes with regulators began and afterward. Beechwood Restorative Care Center v. Leeds, C.A.2 (N.Y.) 2006, 436 F.3d 147. Civil Rights 1395(1)

For purpose of consideration of civil rights complaint under statute that governed proceedings in forma pauperis, state prisoner's equal protection claim, that there were no relevant differences between him and other similarly situated inmates who were or were not placed in administrative segregation that reasonably might have accounted for their different treatment, was not plausible or arguable, since prison had same discretion in determining length of segregation as it did in determining initial placement in segregation. Fogle v. Pierson, C.A.10 (Colo.) 2006, 435 F.3d 1252. Prisons 13(5)

Section 1983 claim predicated on the violation of a right guaranteed by the Constitution, such as the right to equal protection of the laws, is viable if brought absent a companion Title VII employment discrimination claim. Thigpen v. Bibb County, Ga., Sheriff's Dept., C.A.11 (Ga.) 2000, 223 F.3d 1231. Civil Rights 1312; Civil Rights 1502

When state actor turns blind eye to equal protection clause's command, aggrieved parties can seek relief pursuant to § 1983; to establish liability under § 1983, plaintiff must show that defendants acted with nefarious

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discriminatory purpose and discriminated against plaintiff based on plaintiff's membership in definable class. Nabozny v. Podlesny, C.A.7 (Wis.) 1996, 92 F.3d 446. Constitutional Law 211(1); Civil Rights 1028

Redress for denial of equal protection is available under this section. French v. Heyne, C.A.7 (Ind.) 1976, 547 F.2d 994. Civil Rights 1028

It is proper for person adversely affected to bring action under this section on grounds that he has been denied his rights under equal protection clause of U.S.C.A.Const. Amend. 14. Shock v. Tester, C.A.8 (Ark.) 1969, 405 F.2d 852, certiorari denied 89 S.Ct. 1641, 394 U.S. 1020, 23 L.Ed.2d 45, rehearing denied 89 S.Ct. 2004, 395 U.S. 941, 23 L.Ed.2d 460. Civil Rights 1028

This section encompasses the equal protection clause of U.S.C.A.Const. Amend. 14. Moss v. Hornig, C.A.2 (Conn.) 1963, 314 F.2d 89.

School custodian who was terminated for disciplinary reasons during pendency of application for disability retirement benefits but was later found by state to be retroactively entitled to those benefits failed to state claim against school district and board of education for violation of equal protection clause under "class of one" theory in connection with defendants' failure to respond to his benefits application, where he did not allege that he was treated differently than similarly situated individuals. Jackson v. Roslyn Bd. of Educ., E.D.N.Y.2006, 438 F.Supp.2d 49. Civil Rights 1395(8)

White male former county police officer stated equal protection claim against county; although he was not and did not argue to be a member of any suspect or identifiable class, he sufficiently alleged his equal protection rights were violated by selective, malicious, and arbitrary treatment. Longo v. Suffolk County Police Dept. County of Suffolk, E.D.N.Y.2006, 429 F.Supp.2d 553. Counties 67

Equal protection rights of horse-drawn carriage operator were not violated when competitor secured all but four permits and prevailed upon city not to eliminate cap on total number of permits, blocking claimant from expanding his business; ordinance imposing license requirement and cap did not create discriminatory classification, and maintenance of cap, on health and safety grounds, did not show discriminatory application. Avalon Carriage Service Inc. v. City of St. Augustine, FL, M.D.Fla.2006, 417 F.Supp.2d 1279. Constitutional Law 241

White female, who was over sixty years old and married to a Mexican-American, who left emergency room without being seen by physician did not have an equal protection claim against emergency room nurse since there was no evidence that she was "turned away" from examination and treatment and that such action was taken with an intent or purpose to discriminate against the her based upon her membership in a protected class. MacArthur v. San Juan County, D.Utah 2005, 416 F.Supp.2d 1098. Health 657

Eleventh Amendment immunity was inapplicable to civil rights claim of Puerto Rico property owner under equal protection clause of Fourteenth Amendment against Department of Transportation and Public Works (DTPW) and its officials, which alleged selective enforcement of lawful local regulations, where owner did not sue either Commonwealth of Puerto Rico or any of its instrumentalities, Eleventh Amendment immunity did not bar issuance of injunctive relief against official capacity defendants, and any damage award would not have been paid from Commonwealth's coffers, but rather from defendants' own assets, because defendants also were sued in their individual capacities. Sistemas Urbanos, Inc. v. Lugo Ramos, D.Puerto Rico 2006, 413 F.Supp.2d 96. Federal Courts 269

Plaintiffs stated an equal protection claim under the Fourteenth Amendment against clerk of county circuit court based on allegations that clerk singled them out for poor service in the clerk's office in making them wait longer, refusing to file their documents and directing them to a window displaying the phrase "ashes of our difficult clients" because of their nationality. Cichowski v. Sauk County, W.D.Wis.2006, 409 F.Supp.2d 1098.

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42 U.S.C.A. § 1983

Constitutional Law 215.2

Police officer's complaint did not adequately allege §§ 1983 claim for municipal liability against District of Columbia for violation of equal protection component of Fifth Amendment due process; one supervisor's decision to require officer to perform police duties without accommodating his medical condition, a susceptibility to seizures, and another supervisor's subsequent issuance of notice of proposed suspension of his motor vehicle permit had a reasonably conceivable rational basis, and thus did not give rise to a Fifth Amendment equal protection violation. Mitchell v. Yates, D.D.C.2005, 402 F.Supp.2d 222. District Of Columbia 7

Township officials' imposition of conditions for granting occupancy permit for daycare center did not violate developer's equal protection rights, absent showing that other, similarly situated developers were treated more favorably. Aardvark Childcare and Learning Center, Inc. v. Township of Concord, E.D.Pa.2005, 401 F.Supp.2d 427. Zoning And Planning 388

State university hospital employee physician's allegations that employers revoked his medical privileges by employing policies and standards that differed from standard hospital procedures were sufficiently specific to state a cognizable "class of one" equal protection claim. Benjamin v. Schuller, S.D.Ohio 2005, 400 F.Supp.2d 1055. Civil Rights 1395(8)

Civil committee confined as a sexually violent predator (SVP) at state hospital was barred from bringing claim under §§ 1983 against hospital employee, alleging that he was denied equal protection of law when employee subjected him to "fraudulent screening process" leading to his civil commitment, since claim implied invalidity of his civil commitment, which had not been set aside. Hubbs v. Alamao, C.D.Cal.2005, 360 F.Supp.2d 1073. Civil Rights 1037

Failure to identify any person who was more favorably treated precluded selective enforcement equal protection denial claim by retired judge who was not appointed judicial hearing officer, under state law. Levine v. McCabe, E.D.N.Y.2005, 357 F.Supp.2d 608. Constitutional Law 238.5; Reference 39

Genuine issue of material fact existed as to whether town planning board received and began processing site plan application submitted by developer of proposed subdivision, precluding partial summary judgment, as to issue of liability, for developer on its claim that board deprived it of due process, in violation of the Fourteenth Amendment, by imposing an impermissible unconstitutional condition on the exercise of its power. Ridgeview Partners, LLC v. Entwistle, S.D.N.Y.2005, 354 F.Supp.2d 395. Federal Civil Procedure 2491.5

In light of mother's injuries, and what she told officers investigating a report of domestic violence, employees of district attorney's office were not motivated by gender bias when they prosecuted child's father, even though they did not prosecute mother despite having evidence that she lied to police and might have initiated the altercation, and therefore father was not deprived of equal protection; father never filed a complaint against mother and never told police she had assaulted him. Burrell v. Anderson, D.Me.2005, 353 F.Supp.2d 55. Constitutional Law 224(5); Criminal Law 37.10(2)

Owner of registered firearms was not subjected to "class of one" equal protection violation when he was arrested for threatening, and houses of family members were searched for weapons; evidence was lacking that police singled owner out due to his legal possession of firearms. Walczyk v. Rio, D.Conn.2004, 339 F.Supp.2d 385. Arrest 63.4(15); Constitutional Law 250.1(1)

Department of Environmental Conservation (DEC) employee's complaint alleging that other DEC employees had removed exculpatory statement from official report of his snowmobile accident adequately stated claim for denial of equal protection, even though complaint did not use actual words "similarly situated"; complaint could be fairly read as alleging that other DEC officers had been subject of accident or other investigations in which defendants

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participated, and that defendants did not deliberately remove exculpatory information from their reports in those investigations. Bullock v. Gerould, W.D.N.Y.2004, 338 F.Supp.2d 446. Civil Rights 1395(8)

No violation of equal protection based on selective enforcement of informal policies regarding witness protection was shown with respect to claim arising from police department's failure to protect minority witness and her son, who were murdered by brother of person against whom she was to testify; there was no indication that similarly situated non-minorities were treated differently pursuant to the informal policies regarding witness protection. Clarke v. Sweeney, D.Conn.2004, 312 F.Supp.2d 277. Constitutional Law 215.2; Municipal Corporations 740(1)

School district officials were not deliberately indifferent to complaints of pupils' racial harassment, name-calling, and physical abuse of Asian-American elementary student, so as to be liable for violating his Fourteenth Amendment right to equal protection under § 1983; even if student experienced large amount of racial abuse, it was undisputed that student and his parents brought incidents to attention of school superintendent and principal who took action by having informal talks with allegedly abusive pupils, suspending pupils' lunch, bus, and recess privileges, and measures taken were not so inadequate so as to permit inference of officials' discriminatory intent. Yap v. Oceanside Union Free School Dist., E.D.N.Y.2004, 303 F.Supp.2d 284. Constitutional Law 220(3); Schools 63(3)

Under rational basis test, no equal protection violation occurred as result of placement of inmate, who was of alleged female gender but was anatomically situated as a male due to the presence of a penis, in segregated confinement for a period of 438 days, with concomitant severely limited privileges, solely because of the condition and status of ambiguous gender; prison officials' actions were rationally related to the legitimate purposes of ensuring the safety of inmate and other inmates and security of the facility. DiMarco v. Wyoming Dept. of Corrections Div. of Prisons, Wyo. Women's Center, D.Wyo.2004, 300 F.Supp.2d 1183. Constitutional Law 224(5); Constitutional Law 250.3(2); Prisons 13(5)

County employee was not precluded from pursuing sexual and racial harassment claims under § 1983, where she alleged conduct that not only violated statutory protections of Title VII but could also amount to deprivation of equal protection rights afforded under Fourteenth Amendment. Hargrave v. County of Atlantic, D.N.J.2003, 262 F.Supp.2d 393. Civil Rights 1312; Civil Rights 1502

City commissioners' alleged labeling of developer as "litigious," and their denial of his redevelopment proposal allegedly to punish him for seeking state court injunction against another developer's proposal did not amount to purposeful discrimination as required to establish an equal protection claim under § 1983, absent any factual proof in support of the allegations. Klauber v. City of Sarasota, M.D.Fla.2002, 235 F.Supp.2d 1263, affirmed 350 F.3d 1301. Civil Rights 1419

Allegations that female supervisors verbally insulted male county employee and that they sought his termination and mischaracterized his performance in evaluations in order to effect it did not give rise to constitutional claims for First Amendment retaliation or violations of equal protection, for purposes of employee's § 1983 claims against individual supervisors. Kulikowski v. Board of County Com'rs of County of Boulder, D.Colo.2002, 231 F.Supp.2d 1053. Constitutional Law 90.1(7.2); Constitutional Law 224(3); Counties 67

Allegations by survivors of children who died in house fire that city fire department failed to maintain and repair vehicles at station located in predominantly black neighborhood, for benefit of more affluent neighborhoods served by other stations, were sufficient to state claim under § 1983 for equal protection violation. Hill v. City of Houston, S.D.Tex.1998, 991 F.Supp. 847. Civil Rights 1395(1)

Police officer failed to state equal protection claim against city and various police officials, where his complaint did not aver that defendants took any action against him because of his membership in protected class, but rather

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that he was retaliated against for protesting his transfer into uniformed patrol unit. Lara v. City of Chicago, N.D.Ill.1997, 968 F.Supp. 1278. Civil Rights 1395(8)

Sexual harassment and sex discrimination charges may be asserted by public employees against their employers as equal protection claims under § 1983. Murray v. Kutzke, N.D.Ill.1997, 967 F.Supp. 337. Civil Rights 1169; Civil Rights 1182

Plaintiff may recover on equal protection claim based on theory of selective enforcement when it is established that plaintiff, compared with others similarly situated, was selectively treated and that selective treatment was motivated by intention to discriminate on basis of impermissible considerations, such as race or religion, to punish or inhibit exercise of constitutional rights, or by malicious or bad faith intent to injure plaintiff. Homan v. City of Reading, E.D.Pa.1997, 963 F.Supp. 485. Constitutional Law 211(3)

Cancer patients whom government allegedly subjected to radiation experiments under guise that they were receiving cancer treatment stated equal protection claim under § 1983; patients alleged that experiments were directed predominantly at blacks, and development of record was necessary to determine universe of people from which defendant physicians could have chosen their subjects and whether racial composition of that group was similar to racial composition of subjects of experiments. In re Cincinnati Radiation Litigation, S.D.Ohio 1995, 874 F.Supp. 796. Civil Rights 1395(1); Constitutional Law 215.2

It is proper for a person adversely affected by state action to bring a cause of action under this section on grounds of denial of equal protection. Keker v. Procunier, E.D.Cal.1975, 398 F.Supp. 756. Civil Rights 1028

Steamship pilot, who was suspended by pilots' association, failed to demonstrate an equal-protection violation; although pilot asserted that he received different punishment than other pilots for similar infractions because of his political affiliation, he failed to show other pilots were both similarly situated and treated differently. Nance v. New Orleans and Baton Rouge Steamship Pilots' Ass'n, C.A.5 (La.) 2006, 2006 WL 925532, Unreported. Pilots 2.5

Owners of store which possessed a city issued liquor permit failed to establish that city which issued permit and city council members had a discriminatory intent in opposing proposed buyers of store and permit, as required to support owner's § 1983 action against city and members alleging they violated the Equal Protection Clauses of the Fifth and Fourteenth Amendments by opposing two different prospective buyers of store and permit, though not interfering with other similarly situated businesses; owners had agreed to an order with city that disqualified both prospective buyers. Saleh v. City of Warren, Ohio, C.A.6 (Ohio) 2004, 86 Fed.Appx. 866, 2004 WL 162557, Unreported. Constitutional Law 230.3(5); Intoxicating Liquors 103(2)

African-American and Native American descendants of people buried in cemetery failed to state equal protection claim against city, whose failure to preserve cemetery was alleged to be discriminatory, absent identification of any similarly situated, non-minority parties who were treated differently. Tshaka v. Benepe, E.D.N.Y.2003, 2003 WL 21243017, Unreported. Civil Rights 1395(1)

1211. ---- Suspect classifications, constitutional violation, deprivation of constitutional or statutory rights generally

State prisoner need not allege the presence of a suspect classification or the infringement of a fundamental right in order to state claim under equal protection clause; the lack of fundamental constitutional right or the absence of suspect class merely affects court's standard of review, it does not destroy the cause of action. Durso v. Rowe, C.A.7 (Ill.) 1978, 579 F.2d 1365, certiorari denied 99 S.Ct. 1033, 439 U.S. 1121, 59 L.Ed.2d 82. Civil Rights 1395(7)

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Absent any allegation of improper classification or discrimination among citizens, there is no judicially cognizable equal protection cause of action. Shortino v. Wheeler, C.A.8 (Mo.) 1976, 531 F.2d 938. Constitutional Law 211(1)

By failing to identify any similarly situated inmates who were treated differently from him, inmate failed to state a "class of one" equal protection claim with respect to prison disciplinary proceeding in which he was found guilty of using drugs. Alicea v. Howell, W.D.N.Y.2005, 387 F.Supp.2d 227. Civil Rights 1395(7)

When equal protection violation is alleged against an individual, plaintiff must allege and prove that the individual herself intentionally discriminated due to impermissible classification such as race. Baugh v. City of Milwaukee, E.D.Wis.1993, 823 F.Supp. 1452, motion to amend denied 829 F.Supp. 274, affirmed 41 F.3d 1510. Civil Rights 1397

1212. ---- Discriminatory intent, constitutional violation, deprivation of constitutional or statutory rights generally

Unlike Title VII claimant, plaintiff asserting equal protection claim under § 1983 must show intent to discriminate based on plaintiff's membership in particular class. Trautvetter v. Quick, C.A.7 (Ind.) 1990, 916 F.2d 1140.

Procedures employed by legislature did not violate Equal Protection Clause or Civil Rights Act, for purposes of § 1983 challenge to state's congressional, State Senate, and State House redistricting plans, absent any evidence that legislature was motivated by discrimination against blacks or Hispanics in deciding what redistricting software or allocation methodology to use, where and when to hold public hearings, what type of notice to provide, or whether to consider input from citizens and minority-party legislators in drawing plans. Martinez v. Bush, S.D.Fla.2002, 234 F.Supp.2d 1275. Constitutional Law 215.3; States 27(4.1); United States 10

Material issues of fact, as to whether city parks official intentionally discriminated against black representatives of nonprofit organization by denying presence of vendors when granting meeting permit and refusing to clean up park, precluded summary judgment that parks department had not violated representatives' equal protection rights. Epileptic Foundation v. City and County of Maui, D.Hawai'i 2003, 300 F.Supp.2d 1003. Federal Civil Procedure 2491.5

Government officers who have been sued for constitutional violations cannot be held liable for mere mistakes in judgment, but only for conduct that they knew or reasonably should have known would violate constitutional rights of plaintiffs, or actions taken with malicious intention to cause deprivation of constitutional rights. Groom v. Fickes, S.D.Tex.1997, 966 F.Supp. 1466, affirmed 129 F.3d 606. Civil Rights 1376(2)

Arrestee who alleged that his rights were violated when police used his photograph in identification array after they had been ordered, pursuant to New York law, to release photograph to him upon termination of prior criminal proceeding in his favor did not state § 1983 equal protection claim; there was no evidence that police purposefully discriminated against arrestee based on his being member of some identifiable or suspect class, and arrestee did not claim to be member of any class. Grandal v. City of New York, S.D.N.Y.1997, 966 F.Supp. 197. Civil Rights 1088(1)

Without presence of willful or intentional conduct of governmental officials which undermines voting process, irregularity in state election will not rise to level of constitutional claim cognizable under § 1983. Dickie v. Rabbit, D.Mass.1997, 956 F.Supp. 67. Civil Rights 1032

African American citizen who brought § 1983 action alleging that Georgia statute describing state flag and continued display of the Georgia state flag, which contains symbol used in Confederate flag, denied him equal protection of the laws as guaranteed by the Fourteenth Amendment had to come forward with evidence demonstrating both that racial animus motivated passage of the statute and that the statute had resulted in some

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kind of disparate effect on African Americans in order to withstand State of Georgia's motion for summary judgment. Coleman v. Miller, N.D.Ga.1996, 912 F.Supp. 522, affirmed 117 F.3d 527, rehearing and suggestion for rehearing en banc denied 127 F.3d 42, certiorari denied 118 S.Ct. 1199, 523 U.S. 1011, 140 L.Ed.2d 328. Federal Civil Procedure 2491.5

In order to establish a violation of the equal protection clause enforceable under this section, there must be proof that a discriminatory intent or purpose was a motivating factor in the official action; for purpose of proving such discriminatory intent, the discriminatory impact of a facially neutral policy is probative but not determinative. Acha v. Beame, S.D.N.Y.1977, 438 F.Supp. 70, affirmed 570 F.2d 57. Civil Rights 1401

Purposeful discrimination is essential to claim based on denial of equal protection of laws but not to claim based on this section governing civil action for deprivation of rights. Selico v. Jackson, S.D.Cal.1962, 201 F.Supp. 475. Civil Rights 1033(1); Constitutional Law 225.1

Plaintiffs would have to demonstrate that defendant employer acted with discriminatory intent or purpose in order to make out a violation of equal protection clause, whereas claim under this section could rest on proof of disparate impact alone. Molthan v. Temple University?of Com. System of Higher Ed., E.D.Pa.1979, 83 F.R.D. 368. Civil Rights 1544

1212A. ---- Ex post facto laws, constitutional violation, deprivation of constitutional or statutory rights generally

Decision to schedule prisoner's parole hearing outside the three-year period in place at the time of his conviction did not constitute a continuing violation of prisoner's constitutional rights against Ex Post Facto laws so as to render timely his § 1983 action challenging retroactive application of a new Georgia parole policy, which was filed more than two years after the parole board changed its policy. Brown v. Georgia Bd. of Pardons & Paroles, C.A.11 (Ga.) 2003, 335 F.3d 1259. Limitation Of Actions 58(1)

Genuine issue of material fact as to whether, prior to enactment of parole statute that placed special emphasis on public safety, state parole board repeatedly denied inmates parole based on their failure to complete sex offender treatment program precluded summary judgment on inmate's claim that application of statute to her violated Ex Post Facto Clause. Wolfe v. Pennsylvania Dep't of Corrections, E.D.Pa.2004, 334 F.Supp.2d 762. Federal Civil Procedure 2491.5

1213. ---- Unequal application of law, constitutional violation, deprivation of constitutional or statutory rights generally

Simple showing of unequal application of law does not make out violation of this section. Birnbaum v. Trussell, C.A.2 (N.Y.) 1966, 371 F.2d 672.

Genuine issue of material fact existed as to whether citizen was intentionally treated differently from other persons similarly situated, precluding summary judgment on civil rights claim of citizen who was prohibited from speaking at board meeting about alleged misconduct of town employee during work hours. Piscottano v. Town of Somers, D.Conn.2005, 396 F.Supp.2d 187. Federal Civil Procedure 2491.5

Members of historical preservation group, who entered site of historic building which was being demolished by city, and attempted to stop demolition crew hired by city from commencing demolition, were not similarly situated to demolition workers, so that actions of city in arresting group members and charging them with trespass and disorderly conduct, but not charging workers, could not support equal protection claim under § 1983 based on selective enforcement of the laws; group members were trespassing at site, while demolition workers were invitees authorized to carry out work. Yajure v. DiMarzo, S.D.N.Y.2001, 130 F.Supp.2d 568. Constitutional Law 250.1(3); Criminal Law 37.10(2)

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White motorist stopped by police for straightforward traffic offenses and Hispanic arrestee stopped for possible felony involving stolen license plates were not similarly situated and, thus, different degrees of force used to effect stops did not support arrestee's § 1983 claim based on denial of equal protection. Cuautle v. Tone, C.D.Ill.1994, 851 F.Supp. 1236. Civil Rights 1088(4)

Mere inconsistency in prison management that adversely affects prisoner as individual does not in itself establish violation of equal protection clause. De La Paz v. Peters, N.D.Ill.1997, 959 F.Supp. 909. Constitutional Law 250.3(2)

1214. Treaty violation, deprivation of constitutional or statutory rights generally--Generally

Section of Vienna Convention on Consular Relations (VCCR), giving foreign nationals a right of consular notification in event of arrest or detention, provides private right of action enforceable by individuals through § 1983. Standt v. City of New York, S.D.N.Y.2001, 153 F.Supp.2d 417, 175 A.L.R. Fed. 685. Civil Rights 1330(4); Treaties 13

Convention on International Civil Aviation and bilateral air service agreements, entered into for purpose of promoting commercial airline services between the contracting states, could not be basis for § 1983 claim brought by domestic and international air carriers operating out of Los Angeles airport alleging that city, by imposing unreasonable landing fees, deprived them of rights guaranteed by the Constitution and laws of the United States; these treaties conferred no individual rights on carriers. Air Transport Ass'n of America v. City of Los Angeles, C.D.Cal.1994, 844 F.Supp. 550. Civil Rights 1029

1215. ---- Indian treaties, treaty violation, deprivation of constitutional or statutory rights generally

Indian tribe's challenge to application of California timber yield tax to purchasers of tribal timber fell outside scope of federal civil rights statute, and tribe was not entitled to attorney's fees as prevailing party; while right to tribal self-government qualified as substantial claim, it was protected by treaty and federal judicial decisions, not specifically grounded in constitutional or federal statute. Hoopa Valley Tribe v. Nevins, C.A.9 (Cal.) 1989, 881 F.2d 657, certiorari denied 110 S.Ct. 1523, 494 U.S. 1055, 108 L.Ed.2d 763. Civil Rights 1032; Civil Rights 1482

Provision of treaty between Indian tribe and United States government providing for setting aside of land for exclusive use of tribe but not providing for state jurisdiction over criminal offenses committed within or civil causes of action arising within did not secure to Indians a "right, privilege, or immunity" which could be vindicated in a civil rights action. Quinault Tribe of Indians of Quinault Reservation in State of Wash. v. Gallagher, C.A.9 (Wash.) 1966, 368 F.2d 648, certiorari denied 87 S.Ct. 1684, 387 U.S. 907, 18 L.Ed.2d 626. Civil Rights 1029

1216. Statutory violation, deprivation of constitutional or statutory rights generally--Generally

Section 1983 is generally and presumptively available remedy for claimed violations of federal law, apart from exceptional cases such as those in which particular statutory provision is so manifestly precatory that it cannot fairly be read to impose binding obligation on governmental unit, or its terms are so vague and amorphous that determining whether deprivation might have occurred would strain judicial competence, and cases in which Congress has made clear that violation of statute will not give rise to § 1983 liability, either by express words or by provision of comprehensive alternative enforcement scheme. Livadas v. Bradshaw, U.S.Cal.1994, 114 S.Ct. 2068, 512 U.S. 107, 129 L.Ed.2d 93, on remand 30 F.3d 1252. Civil Rights 1027

Action under § 1983 is not available to enforce violation of federal statute if Congress has foreclosed such enforcement of statute in enactment itself and if statute does not create enforceable rights, privileges, or immunities within meaning of § 1983. Suter v. Artist M., U.S.Ill.1992, 112 S.Ct. 1360, 503 U.S. 347, 118 L.Ed.2d 1, on

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remand 968 F.2d 1218. See, also, Wehunt v. Ledbetter, C.A.11 (Ga.) 1989, 875 F.2d 1558, rehearing denied 888 F.2d 1398, certiorari denied 110 S.Ct. 1472, 494 U.S. 1027, 108 L.Ed.2d 609; Korenyi v. Department of Sanitation of City of New York E.D.N.Y., 1988, 699 F.Supp. 388; Vantage Healthcare Corp. v. Virginia Bd. of Medical Assistance Services, E.D.Va.1988, 684 F.Supp. 1329. Civil Rights 1027

Section 1983 which provides cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of United States does not apply where federal statute allegedly violated does not create enforceable rights, privileges or immunities or where Congress has foreclosed such enforcement of statute in enactment itself. Wilder v. Virginia Hosp. Ass'n, U.S.Va.1990, 110 S.Ct. 2510, 496 U.S. 498, 110 L.Ed.2d 455. Civil Rights 1027

Availability of section 1983 remedy turns on whether relevant federal statute, by its terms or as interpreted, creates obligations sufficiently specific and definite to be within competence of judiciary to enforce, is intended to benefit putative plaintiff, and is not foreclosed by express provision or other specific evidence from statute itself. Golden State Transit Corp. v. City of Los Angeles, U.S.Cal.1989, 110 S.Ct. 444, 493 U.S. 103, 107 L.Ed.2d 420, on remand 895 F.2d 1281. Civil Rights 1027

If there is a state deprivation of a "right" secured by a federal statute, this section provides a remedial cause of action unless the state actor demonstrates by express provision or other specific evidence from the statute itself that Congress intended to foreclose private enforcement. Wright v. City of Roanoke Redevelopment and Housing Authority, U.S.Va.1987, 107 S.Ct. 766, 479 U.S. 418, 93 L.Ed.2d 781. Civil Rights 1330(1)

Even if a plaintiff demonstrates that a federal statute creates an individual right, there is only a rebuttable presumption that the right is enforceable under § 1983; to establish that the presumption cannot be rebutted, courts must look to whether Congress intended to foreclose a remedy under § 1983 either expressly, by forbidding recourse to § 1983 in the statute itself, or impliedly, by creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983. Schwier v. Cox, C.A.11 (Ga.) 2003, 340 F.3d 1284, on remand 412 F.Supp.2d 1266. Civil Rights 1027

Section 1983 is not available to enforce a violation of a federal statute where Congress has foreclosed enforcement in the enactment itself and where the statute did not create enforceable rights, privileges, or immunities within the meaning of § 1983. Endsley v. City of Chicago, C.A.7 (Ill.) 2000, 230 F.3d 276, rehearing denied, certiorari denied 121 S.Ct. 1604, 532 U.S. 972, 149 L.Ed.2d 470. Civil Rights 1027

In inquiring as to whether particular statute creates rights enforceable under § 1983, court examines whether particular statutory provisions create specific enforceable rights, rather than considering statute and purported rights on more general level. Legal Services of Northern California, Inc. v. Arnett, C.A.9 (Cal.) 1997, 114 F.3d 135. Civil Rights 1027

In determining whether a federal administrative regulation defines right enforceable under 42 U.S.C.A. § 1983, factors to consider include: (1) whether provision was intended to benefit plaintiff; (2) whether provision creates binding obligation on governmental unit, rather than merely expressing congressional preference; and (3) whether interest asserted is sufficiently specific as to be within competence of judiciary to enforce. Loschiavo v. City of Dearborn, C.A.6 (Mich.) 1994, 33 F.3d 548, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1099, 513 U.S. 1150, 130 L.Ed.2d 1067. Civil Rights 1027

Plaintiff alleging violation of federal statute will not be permitted to sue under § 1983 if statute does not create enforceable rights, privileges, or immunities. Miller by Miller v. Whitburn, C.A.7 (Wis.) 1993, 10 F.3d 1315. See, also, Hill v. Ibarra, C.A.10 (Colo.) 1992, 954 F.2d 1516. Civil Rights 1027

Where federal statute provides its own comprehensive enforcement scheme, Congress intended to foreclose right of

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action under § 1983. Williams v. School Dist. of Bethlehem, Pa., C.A.3 (Pa.) 1993, 998 F.2d 168, rehearing denied, certiorari denied 114 S.Ct. 689, 510 U.S. 1043, 126 L.Ed.2d 656. Civil Rights 1027

Section 1983 does not afford remedy where governing statute provides exclusive remedy for violations of its own terms. Foster v. Wyrick, C.A.8 (Mo.) 1987, 823 F.2d 218. See, also, Uniformed Firefighters Ass'n, Local 94, IAFF, AFL-CIO v. City of New York, S.D.N.Y.1981, 512 F.Supp. 289, affirmed 676 F.2d 20, certiorari denied 103 S.Ct. 84, 459 U.S. 838, 74 L.Ed.2d 79. Civil Rights 1307

Congress can foreclose a remedy under § 1983 either by forbidding it expressly in the statute itself, or impliedly, by creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983. Torres Ramos v. Consorcio De La Montaña, D.Puerto Rico 2003, 286 F.Supp.2d 126. Civil Rights 1027

The application of § 1983 is not limited to constitutional violations but may be used to enforce statutory rights. B.H. v. Southington Bd. of Educ., D.Conn.2003, 273 F.Supp.2d 194, modified on reconsideration 2004 WL 51001 . Civil Rights 1027

While § 1983 actions generally may be based on purely statutory violations of federal law as well as on constitutional claims, this is not the case when statute at issue explicitly forecloses such enforcement or provides such comprehensive remedial scheme that it is implied that statute itself is exclusive remedy. Krocka v. Bransfield, N.D.Ill.1997, 969 F.Supp. 1073, affirmed 203 F.3d 507. Civil Rights 1027

Plaintiff alleging violation of federal statute will be permitted to sue under § 1983 unless statute does not create enforceable rights, privileges, or immunities within meaning of § 1983, or unless Congress has foreclosed such enforcement of statute in enactment itself. Confederated Tribes and Bands of Yakama Indian Nation v. Lowry, E.D.Wash.1996, 968 F.Supp. 531, vacated 176 F.3d 467. Civil Rights 1027

Plaintiff cannot pursue remedies under § 1983 based on violation of federal statutory rights or privileges unless statute creates enforceable right and Congress has not specifically foreclosed remedy under § 1983. Moody Emergency Medical Services, Inc. v. City of Millbrook, M.D.Ala.1997, 967 F.Supp. 488. Civil Rights 1027

In determining whether statutory provision creates privately enforceable right under § 1983, court considers whether plaintiff is intended beneficiary of statute, whether plaintiff's asserted interests are not so vague and amorphous as to be beyond competence of the judiciary to enforce, and whether statute imposes binding obligation on the state. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Civil Rights 1027

Factors pertinent to determination of whether § 1983 case based on federal statute involves a federal right, and may thus be maintained under § 1983, include whether statutory provision in question creates obligations binding on governmental unit as opposed to stating congressional preference for certain conduct, whether interest plaintiffs assert is sufficiently specific and definite to be within competence of judiciary to enforce, and whether provision in question is intended to benefit plaintiffs. Evelyn V. v. Kings County Hosp. Center, E.D.N.Y.1997, 956 F.Supp. 288 . Civil Rights 1027

In determining whether federal statute creates right, privilege or immunity enforceable under § 1983, court applies three-part test: (1) court ascertains whether provision in question was intended to benefit plaintiff; (2) court ascertains whether provision reflects merely congressional preference for certain kind of conduct rather than binding obligation on governmental unit; and (3) court ascertains whether provision is too vague and amorphous, such that it is beyond competence of judiciary to enforce. Greenstein by Horowitz v. Bane, S.D.N.Y.1993, 833 F.Supp. 1054. Civil Rights 1027

Two-prong test under which court first determines whether case really involves a federal court "right" as opposed to simply a claimed violation of federal law, and then determines whether Congress has foreclosed its enforcement

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under civil rights statute, § 1983, is a useful tool in considering whether private plaintiff can sue under § 1983 to enforce statutory rights, but in applying this test, courts must look carefully at precise language of any statute relied on by plaintiffs as source of right they seek to enforce, and right at issue must be unambiguously conferred by the statute. Evelyn V. v. Kings County Hosp. Center, E.D.N.Y.1993, 819 F.Supp. 183. Civil Rights 1027

This section pertaining to deprivation of rights under color of state law provides cause of action to redress deprivation by state officials of rights created by federal statutes. Thompson v. Binghamton Housing Authority, N.D.N.Y.1982, 546 F.Supp. 1158. Civil Rights 1326(1)

This section does not provide cause of action for deprivations of all federal statutory rights, but instead provides cause of action only for deprivations of federal statutory rights which provide for "equal rights" or "protection of civil rights." First Nat. Bank of Omaha v. Marquette Nat. Bank of Minneapolis, D.C.Minn.1979, 482 F.Supp. 514, affirmed 636 F.2d 195, certiorari denied 101 S.Ct. 1761, 450 U.S. 1042, 68 L.Ed.2d 240. Civil Rights 1027

Under this section governing civil action for deprivation of rights, a plaintiff can generally sue to enforce federal statutory rights as well as constitutional rights. Boxall v. Sequoia Union High School Dist., N.D.Cal.1979, 464 F.Supp. 1104. Federal Courts 220

In determining whether statute confers individual right enforceable under § 1983, court considers whether statute: (1) contains rights-creating language that is individually focused, (2) addresses needs of individual instead of having system-wide or aggregate focus, and (3) lacks enforcement mechanism through which aggrieved individual can obtain review. Kenny A. ex rel. Winn v. Perdue, N.D.Ga.2003, 218 F.R.D. 277. Civil Rights 1027

1217. ---- Construction of statutes, statutory violation, deprivation of constitutional or statutory rights generally

Statutory provisions must be analyzed in detail, in light of entire legislative enactment, to determine whether language created rights, privileges, and immunities enforceable within meaning of this section. Suter v. Artist M., U.S.Ill.1992, 112 S.Ct. 1360, 503 U.S. 347, 118 L.Ed.2d 1, on remand 968 F.2d 1218. Civil Rights 1027

Violation of federal right that has been found to be implicit in statute's language and structure is as much direct violation of right as is violation of right that is clearly set forth in text of statute, for section 1983 purposes. Golden State Transit Corp. v. City of Los Angeles, U.S.Cal.1989, 110 S.Ct. 444, 493 U.S. 103, 107 L.Ed.2d 420, on remand 895 F.2d 1281. Civil Rights 1027

1218. ---- Preemptive effect, statutory violation, deprivation of constitutional or statutory rights generally

Fact that federal statute has preempted certain state action does not preclude possibility that the same federal statute may create federal right for which this section provides remedy. Golden State Transit Corp. v. City of Los Angeles, U.S.Cal.1989, 110 S.Ct. 444, 493 U.S. 103, 107 L.Ed.2d 420, on remand 895 F.2d 1281. Civil Rights 1027

Cable programmer and trade association representing cable operating companies had cause of action under § 1983 to enjoin prosecution of cable operators under Puerto Rico's obscenity statute via claim that obscenity statute was partially preempted by Cable Communications Policy Act; protection from liability provided cable operators by Act for content of leased access channel programming is "immunity" created by federal law and enforceable by courts, Act does not expressly preclude actions brought under § 1983, and remedial provisions of Act did not create "comprehensive remedial scheme" leaving no room for additional private remedies under § 1983, as none of those provisions afforded remedy against state actors. Playboy Enterprises, Inc. v. Public Service Com'n of Puerto Rico, C.A.1 (Puerto Rico) 1990, 906 F.2d 25, certiorari denied 111 S.Ct. 388, 498 U.S. 959, 112 L.Ed.2d 399. Civil Rights 1088(5); Civil Rights 1454

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42 U.S.C.A. § 1983

Preemptive effect of federal legislation ordinarily does not create rights for purposes of section 1983. New York Airlines, Inc. v. Dukes County, D.C.Mass.1985, 623 F.Supp. 1435. Civil Rights 1029

1219. ---- Adoption Assistance and Child Welfare Act, statutory violation, deprivation of constitutional or statutory rights generally

"Reasonable efforts" clause of Adoption Assistance and Child Welfare Act, which created federal reimbursement program for expenses incurred by States in administering foster care and adoption services, did not create right, privilege, or immunity enforceable under this section; requirement that State have plan providing for reasonable efforts to prevent removal of children from their homes and facilitate reunification of families affected State's eligibility for federal reimbursement and Act did not contain any guidance for how to measure "reasonable efforts." Suter v. Artist M., U.S.Ill.1992, 112 S.Ct. 1360, 503 U.S. 347, 118 L.Ed.2d 1, on remand 968 F.2d 1218. Civil Rights 1057

Provision of Adoption Assistance and Child Welfare Act of 1980 assuring each foster child under state supervision a dispositional hearing to be held no later than eighteen months after the original placement [to] determine the future status of the child (including whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should be continued in foster care on a permanent or long-term basis) did not create a right enforceable by foster parents under federal civil rights statute; even if provision in question was intended to benefit foster parents, it reflected merely a congressional preference instead of a binding obligation. Procopio v. Johnson, C.A.7 (Ill.) 1993, 994 F.2d 325. Civil Rights 1057

Foster parents have private right of action under § 1983 to enforce rights afforded under Adoption Assistance and Child Welfare Act. Timmy S. v. Stumbo, C.A.6 (Ky.) 1990, 916 F.2d 312. Civil Rights 1330(6)

Adoption Assistance and Child Welfare Act did not create federal statutory right to "meaningful visitation" enforceable under § 1983. Scrivner v. Andrews, C.A.6 (Ky.) 1987, 816 F.2d 261. Civil Rights 1057

Provisions of Adoption Assistance and Child Welfare Act (AACWA) requiring state to provide case plan for each child receiving foster care to ensure quality services by agencies did not provide private right of action for damages under § 1983. Whitley v. New Mexico Children, Youth & Families Dept., D.N.M.2001, 184 F.Supp.2d 1146. Civil Rights 1057; Civil Rights 1330(6)

Provisions of Adoption Assistance and Child Welfare Act requiring a written case plan with mandated elements, a periodic review system, and a State plan providing for establishment of a State authority responsible for maintaining standards for foster family homes and child care institutions created rights which were enforceable under Section 1983. Brian A. ex rel. Brooks v. Sundquist, M.D.Tenn.2000, 149 F.Supp.2d 941. Civil Rights 1057

"Reasonable efforts" clause of Adoption Assistance and Child Welfare Act, creating federal reimbursement program for expenses incurred by states in administering foster care and adoption services, does not create enforceable right under federal civil rights statute or implied cause of action on beneficiaries' behalf. Baby Neal v. Casey, E.D.Pa.1993, 821 F.Supp. 320, vacated in part, remanded 43 F.3d 48, reconsideration denied 1995 WL 728589. Action 3; Civil Rights 1057

Rights under section of Adoption Assistance and Child Welfare Act providing that for state to be eligible for payments under Act, state must have plan pursuant to which "reasonable efforts" will be made prior to placement of child in foster care, to prevent or eliminate need for removal of child from home, and to make it possible for child to be returned to his home, may be enforced under statute prohibiting deprivation of civil rights under color of state law; term "reasonable efforts" is not too ambiguous to be enforceable. Norman v. Johnson, N.D.Ill.1990, 739 F.Supp. 1182. Civil Rights 1057

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Rights granted by the Adoption Assistance and Child Welfare Act, such as the right to be placed in the least restrictive, most family like setting, right to have state agencies make reasonable efforts to reunify families, and the right to meaningful sibling visitation, are too amorphous to be enforced in federal civil rights action. Aristotle P. v. Johnson, N.D.Ill.1989, 721 F.Supp. 1002. Civil Rights 1057

Children who have been removed from their families and placed in the custody of state social services agency are entitled to enforce their right to case review system and case plan under Adoption Assistance and Child Welfare Act through § 1983 action. B.H. v. Johnson, N.D.Ill.1989, 715 F.Supp. 1387. Civil Rights 1331(6)

Adoption Act created individual rights in foster children, enforceable under § 1983, to placement in foster homes conforming to national professional standards; foster children were clearly intended beneficiaries of Act, since language of Act focused on needs of individual foster children, Act lacked enforcement mechanism, and Act was not too vague and amorphous to be enforced by judiciary. Kenny A. ex rel. Winn v. Perdue, N.D.Ga.2003, 218 F.R.D. 277. Civil Rights 1057

1220. ---- Age Discrimination in Employment Act, statutory violation, deprivation of constitutional or statutory rights generally

City police officer could not maintain action for age discrimination under § 1983, notwithstanding that officer couched claim in terms of violation of equal protection clause of Fourteenth Amendment without reference to Age Discrimination in Employment Act; officer's claims fell within scope of specific and comprehensive administrative remedies provided for by Age Discrimination in Employment Act. Zombro v. Baltimore City Police Dept., C.A.4 (Md.) 1989, 868 F.2d 1364, rehearing denied, certiorari denied 110 S.Ct. 147, 493 U.S. 850, 107 L.Ed.2d 106.

A § 1983 claim asserting age discrimination is preempted by the ADEA as a matter of law. Nabozny v. NCS Pearson, Inc., D.Nev.2003, 270 F.Supp.2d 1201. Civil Rights 1312; Civil Rights 1502

Plaintiff, a government employee, was precluded from bringing cause of action under this section and sections 1981 and 1985 of this title for age discrimination, since Congress intended to preempt alternative means of redressing age discrimination in federal employment when it enacted the Age Discrimination in Employment Act, section 621 et seq. of Title 29. Giles v. Equal Employment Opportunity Commission, E.D.Mo.1981, 520 F.Supp. 1198. Civil Rights 1207

1221. ---- Aid to Families with Dependent Children provisions, statutory violation, deprivation of constitutional or statutory rights generally

Statute requiring states to reevaluate standard of need (SON) and payment schedule under Aid to Families with Dependent Children (AFDC) program at least once every three years did not create right enforceable in recipients under federal civil rights statutes. Stanberry v. Sherman, C.A.10 (Wyo.) 1996, 75 F.3d 581. Social Security And Public Welfare 194.1

Maintenance of effort obligation imposed on states by Medicare Catastrophic Act of 1988 did not create federal right enforceable by recipients of Aid to Families with Dependent Children (AFDC) and, thus, AFDC recipients could not bring § 1983 civil rights claim challenging decision by State of Michigan to reduce payment levels and eliminating optional Medicaid program; maintenance of effort provision does not prohibit lowering AFDC levels nor require state to maintain AFDC benefit levels at certain amount. Audette v. Sullivan, C.A.6 (Mich.) 1994, 19 F.3d 254. Civil Rights 1052

Title IV-D of the Social Security Act, dealing with child support enforcement, conferred private cause of action under § 1983 upon recipients of Aid to Families with Dependent Children (AFDC) to challenge state's refusal to assist them in obtaining child support enforcement from absent parents living on Indian reservations. Howe v.

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Ellenbecker, C.A.8 (S.D.) 1993, 8 F.3d 1258, certiorari denied 114 S.Ct. 1373, 511 U.S. 1005, 128 L.Ed.2d 49. Civil Rights 1330(6)

Custodial parents and their children failed to state a cause of action under civil rights statute, § 1983, in suit to enforce provisions of Social Security Act requiring states to adopt plans for child support enforcement in order to maintain eligibility for receipt of federal Aid to Families with Dependent Children funds, where plaintiffs sought no monetary relief but only a "hurry-up" order from federal court and alleged no acts of noncompliance beyond those already unearthed in audit by the Secretary of Health and Human Services (HHS). Carelli v. Howser, C.A.6 (Ohio) 1991, 923 F.2d 1208, rehearing denied.

Private cause of action under this section exists as against state for noncompliance with case plan and review obligations under section 671 of Title 42, relating to assistance for children in state foster family home care system; remedial provision in the chapter, authorizing withholding or reduction of federal funding in event of noncompliance, does not limit availability of relief under other provisions. Lynch v. Dukakis, C.A.1 (Mass.) 1983, 719 F.2d 504. Civil Rights 1330(6)

Under this section, there is a remedy to redress violations of provision of § 602 of this title, relating to confidentiality of information concerning the AFDC recipients. Louise B. v. Coluatti, C.A.3 (Pa.) 1979, 606 F.2d 392.

Right to prompt decision on application for food stamp and Aid to Families with Needy Children (AFNC) benefits was civil right protected by § 1983; regulations specifying deadlines reflected intent to benefit entire plaintiff class in that they affected both eligible and noneligible applicants, regulations created binding obligation of compliance on states and did not merely express congressional preference, and regulations were not beyond competency of jury to enforce. Robidoux v. Kitchel, D.Vt.1995, 876 F.Supp. 575. Civil Rights 1052

Title IV-D of the Social Security Act, dealing with child support enforcement, created enforceable right in Aid to Families with Dependent Children (AFDC) recipients, and recipients had standing to bring § 1983 action to enforce claims for Title IV-D child support enforcement services. Howe v. Ellenbecker, D.S.D.1991, 774 F.Supp. 1224, affirmed 8 F.3d 1258, certiorari denied 114 S.Ct. 1373, 511 U.S. 1005, 128 L.Ed.2d 49. Civil Rights 1331(6); Social Security And Public Welfare 194

Extensive federal auditing powers did not foreclose private right of enforcement under § 1983 for state's alleged violations Social Security Act section requiring state to adopt plan for child support enforcement as condition for receiving federal Aid to Families with Dependent Children funds; there was no express indication of Congress' intent to foreclose private enforcement action. Carelli v. Howser, S.D.Ohio 1990, 733 F.Supp. 271, reversed on other grounds923 F.2d 1208, rehearing denied. Civil Rights 1330(6)

This section rendering liable to the party injured every person who under color of state law subjects any person to deprivation of any rights, privileges, or immunities secured by the Constitution and laws did not afford remedy to Aid to Families with Dependent Children recipients who claimed they had been deprived of rights or privileges under § 301 et seq. of this title because of inconsistent state statute and regulation and who alleged no deprivation of any rights, privileges, or immunities secured by the Constitution. Wynn v. Indiana State Dept. of Public Welfare, N.D.Ind.1970, 316 F.Supp. 324. Civil Rights 1395(1)

1222. ---- Airport and Airway Improvement Act, statutory violation, deprivation of constitutional or statutory rights generally

Car rental company's Airport and Airway Improvement Act (AAIA) cause of action against municipal airport commission could not be enforced under § 1983, where AAIA was not intended to benefit concessionaires such as car rental companies and contained no explicit or implicit private right of action. Four T's, Inc. v. Little Rock Mun.

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42 U.S.C.A. § 1983

Airport Com'n, C.A.8 (Ark.) 1997, 108 F.3d 909. Civil Rights 1330(6)

Airport and Airway Improvement Act (AAIA) section and Federal Aviation Administration (FAA) regulation, requiring airport operator to allow aircraft owners to fuel their own aircraft, were enforceable under § 1983. Cedarhurst Air Charter, Inc. v. Waukesha County, E.D.Wis.2000, 110 F.Supp.2d 891. Civil Rights 1029

Action could not be brought under § 1983 based upon alleged violation of Airway and Airport Improvement Act. Northeast Jet Center, Ltd. v. Lehigh-Northampton Airport Authority, E.D.Pa.1991, 767 F.Supp. 672. Civil Rights 1029

Hearing provisions of Airport Improvement Act did not create any rights actionable under federal civil rights statute. Beachy v. Board of Aviation Com'rs of City of Kokomo, Ind., S.D.Ind.1988, 699 F.Supp. 742. Civil Rights 1029

Exception to availability of section 1983 remedy where Congress specifically intended to foreclose enforcement under section 1983 by creating comprehensive remedial scheme in statute itself, does not bar action under section 1983 for alleged violation of 49 U.S.C.A. § 2210(a) [Airport and Airway Improvement Act of 1982, § 511(a), 49 U.S.C.A. § 2210(a)] requiring that airport be made available without unjust discrimination, since Act itself contains no independent enforcement mechanism. New York Airlines, Inc. v. Dukes County, D.C.Mass.1985, 623 F.Supp. 1435. Civil Rights 1313

1223. ---- Americans with Disabilities Act, statutory violation, deprivation of constitutional or statutory rights generally

Developmentally disabled individuals stated § 1983 claim against state under integration mandate of Americans with Disabilities Act (ADA) by alleging that they unnecessarily received services in institutional rather than integrated setting and that state had failed to provide community services even when such services were most appropriate to plaintiffs' needs; plaintiffs had not requested services that would have required fundamental alteration to system. Rolland v. Cellucci, D.Mass.1999, 52 F.Supp.2d 231. Civil Rights 1395(1)

Provision of independent safety monitoring required by mentally impaired Medicaid home care services recipients would not meaningfully alter New York's task-based assessment (TBA) Medicaid program for personal care services, as would render provision of monitoring an unreasonable accommodation not required by the ADA or Rehabilitation Act; New York's pre-TBA definition of program included provision of such monitoring. Rodriguez v. DeBuono, S.D.N.Y.1999, 44 F.Supp.2d 601, reversed 197 F.3d 611, certiorari denied 121 S.Ct. 156, 531 U.S. 864, 148 L.Ed.2d 104. Civil Rights 1053

Police officer could not maintain § 1983 claim against police department doctor based on claim that doctor violated his statutory rights under ADA by ordering officer to submit results of blood test to determine level of psychotropic medication in officer's system; officer could not avoid ADA's remedial scheme and its comprehensive enforcement procedure by simply casting claim under § 1983. Krocka v. Bransfield, N.D.Ill.1997, 969 F.Supp. 1073, affirmed 203 F.3d 507. Civil Rights 1312; Civil Rights 1502

Children who brought § 1983 action against city children's welfare officials for allegedly mishandling children's cases sufficiently alleged that defendants failed to take modest affirmative steps to ensure that children had meaningful access to child welfare system, and that defendants thereby violated Americans with Disabilities Act (ADA) and Rehabilitation Act; defendants allegedly failed to promptly assess one child's acquired immune deficiency syndrome (AIDS)-related illness, transferred him from one inappropriate placement to another including group home that lacked medical staff needed to monitor his condition, and maintained goal of independent living in his case plan until his death, and another child allegedly remained in group home unequipped to address his neurological problems. Marisol A. by Forbes v. Giuliani, S.D.N.Y.1996, 929 F.Supp. 662, motion to certify

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allowed 1996 WL 419887, motion denied 104 F.3d 524, certiorari denied 117 S.Ct. 1694, 520 U.S. 1211, 137 L.Ed.2d 821, affirmed 126 F.3d 372. Civil Rights 1395(1)

Claim under Federal civil rights statute may be predicated on violation of the Americans with Disabilities Act, even though that Act provides its own remedies. Independent Housing Services of San Francisco v. Fillmore Center Associates, N.D.Cal.1993, 840 F.Supp. 1328. Civil Rights 1029

Police officer could not assert cause of action under § 1983 for alleged violations of Title VII and Americans with Disabilities Act as result of city police department's requirement that she disclose mental health records created during her ongoing treatment for depression as condition for full reinstatement following suicide attempt, absent any assertion of violation on grounds different from those available under employment discrimination statutes. Thompson v. City of Arlington, Tex., N.D.Tex.1993, 838 F.Supp. 1137. Civil Rights 1312; Civil Rights 1502

Semiquadriplegic inmate could premise claim under federal civil rights statute upon claims under Americans with Disabilities Act (ADA), since enforcement of ADA was not limited to available administrative remedies and procedures, and ADA creates enforceable rights for individuals with disabilities. Noland v. Wheatley, N.D.Ind.1993, 835 F.Supp. 476. Civil Rights 1029; Civil Rights 1090

Private right of action was available under federal civil rights statute for Americans with Disabilities Act (ADA) violations alleged by disabled persons' advocacy group that sued metropolitan transit authority; although ADA contained express private means of redress, it did not invalidate or limit remedies, rights, and procedures of any federal law providing greater protection for rights of individuals with disabilities. Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority, D.D.C.2006, 2006 WL 3704656. Civil Rights 1313

1224. ---- Appropriations laws, statutory violation, deprivation of constitutional or statutory rights generally

Rider to appropriations bill, which prohibited use of federal funds to demolish certain enumerated low-income housing projects, did not create any private rights in favor of residents of enumerated project, such as might support § 1983 claim against housing authority for allegedly violating statute. Resident Council of Allen Parkway Village v. U.S. Dept. of Housing & Urban Development, C.A.5 (Tex.) 1993, 980 F.2d 1043, rehearing denied, certiorari denied 114 S.Ct. 75, 510 U.S. 820, 126 L.Ed.2d 43. Civil Rights 1082

1225. ---- Atomic Energy Act, statutory violation, deprivation of constitutional or statutory rights generally

Chemical company could rely on civil rights statute to enforce provisions of Atomic Energy Act, including those mandating exclusive federal regulatory scheme for radiation hazards. Kerr-McGee Chemical Corp. v. City of West Chicago, C.A.7 (Ill.) 1990, 914 F.2d 820. Civil Rights 1029

1226. ---- Aviation Act, statutory violation, deprivation of constitutional or statutory rights generally

Section of Federal Aviation Act (FAA) defining "public" aircraft did not create right, enforceable in § 1983 action by private medical air transport company complaining of state's use of state-owned helicopters to provide free service. Evac, LLC v. Pataki, N.D.N.Y.2000, 89 F.Supp.2d 250. Civil Rights 1048

Federal Aviation Act section governing airspace control and facilities that provides Secretary of Transportation authority to develop plans for and formulate policy with respect to use of navigable airspace, to acquire and maintain air navigation facilities, and to prescribe air traffic rules and regulations was not intended to benefit air carriers, so did not provide federal right enforceable through federal civil rights statute § 1983 by carriers; benefits which Act section provided air carriers accrued to members of general public. O'Connell Management Co., Inc. v.

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Massachusetts Port Authority, D.Mass.1990, 744 F.Supp. 368. Civil Rights 1029

1227. ---- Bankruptcy Code, statutory violation, deprivation of constitutional or statutory rights generally

Probable cause existed to issue arrest warrant for sexual assault, and thus arresting officer enjoyed qualified immunity in arrestee's §§ 1983 unreasonable seizure action, even though officer when applying for warrant had omitted from application telephone call logs and other records furnished by arrestee's friend, purportedly indicating alleged victim's history of erratic behavior and demands for hush money from friend and arrestee; even viewed in light most favorable to arrestee, omitted information was not sufficiently exculpatory to outweigh alleged victim's positive identification, accuracy of which was not in question since alleged victim knew arrestee. Russo v. Voorhees Tp., D.N.J.2005, 403 F.Supp.2d 352. Criminal Law 213

This section may be used to redress deprivation of a right guaranteed by any federal statute, including the Bankruptcy Code, Title 11, and § 2809(a)(5) of this title. In re Maya, Bkrtcy.E.D.Pa.1981, 8 B.R. 202.

1228. ---- Cable Communications Policy Act, statutory violation, deprivation of constitutional or statutory rights generally

Federal regulation protecting right of antenna users to receive satellite signals for home viewing did not confer a federal right upon cable services company that installed satellite dishes without obtaining building permits and variances required under city ordinance; thus, regulation did not give company standing to bring civil rights action against city for damages incurred as result of those violations. Camco Cable Services, Inc. v. City of Lauderhill, S.D.Fla.1998, 13 F.Supp.2d 1329. Civil Rights 1331(6); Telecommunications 1285

Provision of the Cable Communications Policy Act that cable operators shall not exercise any editorial control over cable channels dedicated to public access creates a substantive right cognizable under § 1983. Missouri Knights of the Ku Klux Klan v. Kansas City, Mo., W.D.Mo.1989, 723 F.Supp. 1347. Civil Rights 1029

1229. ---- Child Abuse Prevention and Treatment Act, statutory violation, deprivation of constitutional or statutory rights generally

Child Abuse Prevention and Treatment Act (CAPTA) provisions that create eligibility requirements and implementing regulations for grants to assist States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs do not create rights enforceable in § 1983 action; neither CAPTA nor regulations mandate particular means of investigation or state what type of actions must be taken to protect abused or neglected children. Tony L. By and Through Simpson v. Childers, C.A.6 (Ky.) 1995, 71 F.3d 1182, certiorari denied 116 S.Ct. 1834, 517 U.S. 1212, 134 L.Ed.2d 938. Civil Rights 1057

Child Abuse Prevention and Treatment Act does not give rise to enforceable private right of action under federal civil rights statute. Baby Neal v. Casey, E.D.Pa.1993, 821 F.Supp. 320, vacated in part, remanded 43 F.3d 48, reconsideration denied 1995 WL 728589. Civil Rights 1330(6)

1230. ---- Child Nutrition Act, statutory violation, deprivation of constitutional or statutory rights generally

Federal regulation requiring notice to recipients in cases of suspension or termination of benefits under supplemental food program for women, infants and children creates right that is enforceable under this section. Alexander v. Polk, C.A.3 (Pa.) 1984, 750 F.2d 250. Civil Rights 1055

1231. ---- Child Welfare Act, statutory violation, deprivation of constitutional or statutory rights generally

Foster care provider reimbursement provisions of the Child Welfare Act (CWA) were framed in mandatory rather

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than precatory terms, as would weigh in favor of finding that non-profit organization that represented interests of foster care service providers had private right of action against Interim Director of the California Department of Social Services (DSS), in his official capacity, and Deputy Director of the Children and Family Services Division of DSS (CFS), in her official capacity, to enforce the provisions under §§ 1983, where CWA required states to have an approved plan providing for foster care maintenance payments. California Alliance of Child and Family Services v. Allenby, N.D.Cal.2006, 459 F.Supp.2d 919. Civil Rights 1057

Provisions in Child Welfare Act requiring states to have case review system, including various procedural safeguards, created privately enforceable right which former foster care beneficiary could assert in § 1983 suit; foster care beneficiary was intentional beneficiary of Act, statute's terms were not so vague and amorphous that their enforcement would strain judicial competence and Act unambiguously imposed specific requirement on states if they accepted federal funds. Occean v. Kearney, S.D.Fla.2000, 123 F.Supp.2d 618. Civil Rights 1057

1232. ---- Civil rights laws generally, statutory violation, deprivation of constitutional or statutory rights generally

Congress did not intend violations of public accommodations title of 1964 Civil Rights Act be enforced through damages provisions of Civil Rights Act of 1871. Adickes v. S. H. Kress & Co., U.S.N.Y.1970, 90 S.Ct. 1598, 398 U.S. 144, 26 L.Ed.2d 142. Civil Rights 1046

When § 1983 is used as parallel remedy for violation of Title VII, elements of two causes of action are the same. Cromer v. Crowder, S.D.Fla.2003, 273 F.Supp.2d 1329. Civil Rights 1118

Minority teachers did not have claim under Title VI for alleged disparate impact that licensing tests had on their certification, since there was no private right of action under Title VI and Title VI did not create right enforceable via § 1983. Gulino v. Board of Educ. of City School Dist. of City of New York, S.D.N.Y.2002, 236 F.Supp.2d 314, certification denied 234 F.Supp.2d 324, reversed in part 2002 WL 31887733.

1233. ---- Consolidated Farm and Rural Development Act, statutory violation, deprivation of constitutional or statutory rights generally

Provision of Consolidated Farm and Rural Development Act providing rural water districts receiving government loans with exclusive right to provide service within their boundaries gives rise to private right of action enforceable against state actor under § 1983, as statute does not foreclose such remedy and no enforcement mechanism is provided by statute. Rural Water Dist. No. 1, Ellsworth County, Kansas v. City of Wilson, Kansas, C.A.10 (Kan.) 2001, 243 F.3d 1263, on remand 211 F.Supp.2d 1324. Civil Rights 1052; Civil Rights 1330(6)

1234. ---- Conspiracy provisions, statutory violation, deprivation of constitutional or statutory rights generally

Sections 241 and 242 of Title 18 proscribing conspiracy against rights of citizens and deprivation of rights under color of law provided no basis for civil suit under this section. Aldabe v. Aldabe, C.A.9 (Cal.) 1980, 616 F.2d 1089 . Conspiracy 7.5(1)

A conspiracy by state actors, other than police, involved with the justice system to fabricate and suppress evidence in order to effectuate a criminal conviction works a corruption of the truth-seeking function of the trial process and is actionable under §§ 1983. Greene v. Wright, D.Conn.2005, 389 F.Supp.2d 416. Conspiracy 7.5(2)

Section 1983 does not punish conspiracy; rather, as a practical matter, proof of civil conspiracy simply broadens scope of liability under § 1983 to include individuals who were part of conspiracy but did not act directly to deprive plaintiff of his or her constitutional rights. Libbra v. City of Litchfield, Ill., C.D.Ill.1995, 893 F.Supp. 1370 . Conspiracy 7.5(1)

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Section 1983 did not punish conspiracy, absent an actual denial of a civil right, and, thus, motorist could not recover on claim of conspiracy to deprive him of civil rights, as he had failed to allege constitutional violation of his rights to travel and to due process in connection with enforcement of traffic laws against him. U.S. ex rel. Verdone v. Circuit Court for Taylor County, W.D.Wis.1993, 851 F.Supp. 345. Conspiracy 7.5(2)

1235. ---- Communications Act, statutory violation, deprivation of constitutional or statutory rights generally

Section 1983 was not available to enforce independent political candidate's claims under equal time provision of Federal Communications Act as that provision contained remedy for its violation, i.e., a petition to Federal Communications Commission (FCC). Forbes v. Arkansas Educational Television Communication Network Foundation, C.A.8 (Ark.) 1994, 22 F.3d 1423, rehearing denied, rehearing withdrawn, certiorari denied 115 S.Ct. 500, 513 U.S. 995, 130 L.Ed.2d 409, certiorari denied 115 S.Ct. 1962, 514 U.S. 1110, 131 L.Ed.2d 853. Civil Rights 1029

Federal Communications Act granted no right enforceable under § 1983 to amateur licensee to erect antennas or antennas of particular height. Howard v. City of Burlingame, C.A.9 (Cal.) 1991, 937 F.2d 1376. Civil Rights 1072

For African-American cable television programmer to succeed on his § 1983 civil rights equal protection claim against city, city council, and city cable television access authority, alleging that defendants acted with intent to discriminate when they eliminated city cable television system's public access channel, mere showing that decision had disproportionate effect on African-Americans was not sufficient to demonstrate requisite proof of racially discriminatory intent or purpose. Britton v. City of Erie, Pa., W.D.Pa.1995, 933 F.Supp. 1261, affirmed 100 F.3d 946. Civil Rights 1422

"Ham" radio operator had no remedy under § 1983 for city's alleged deprivation of his rights resulting from denial of special permit authorizing erection of radio antenna exceeding 25 feet in height; Federal Communications Act forecloses private enforcement, and Act does not create enforceable rights under § 1983. Howard v. City of Burlingame, N.D.Cal.1989, 726 F.Supp. 770, affirmed 937 F.2d 1376. Civil Rights 1073; Telecommunications 1135

1236. ---- Consumer Credit Protection Act, statutory violation, deprivation of constitutional or statutory rights generally

Debtor could not maintain a 1983 action based on violation of statute setting maximum limit on wages which can be garnished; administrative remedy provided by statute was exclusive. Burris v. Mahaney, M.D.Tenn.1989, 716 F.Supp. 1051. Civil Rights 1313

1237. ---- Demonstration Cities and Metropolitan Development Act, statutory violation, deprivation of constitutional or statutory rights generally

In view of facts that Demonstration Cities and Metropolitan Development Act of 1966, section 3301 et seq. of this title clearly lacks a sufficiently comprehensive remedial scheme that would evidence a congressional intent to preclude a suit under this section as a remedy for its violation and Act provides no express or implied private right of action, an action under this section was a proper vehicle for plaintiffs to enforce rights under Act. Members of Bridgeport Housing Authority Police v. City of Bridgeport, D.C.Conn.1982, 564 F.Supp. 2.

1238. ---- Developmentally Disabled Assistance and Bill of Rights Act, statutory violation, deprivation of constitutional or statutory rights generally

Developmental Disabilities Assistance and Bill of Rights Act did not create an individual federal right that could

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be enforced in §§ 1983 action. Smith v. AuSable Valley Community Mental Health Services, E.D.Mich.2006, 431 F.Supp.2d 743. Civil Rights 1052

Involuntarily committed mentally retarded persons residing at state operated institution had rights under sections of Disabled Assistance Act imposing requirements of protection and advocacy system and individual habilitation plans and those rights were enforceable under § 1983. Nicoletti v. Brown, N.D.Ohio 1987, 740 F.Supp. 1268.

Plaintiffs, institutionalized mentally retarded children and young adults, could state claim based upon this section governing civil action for deprivation of rights for state officials defendants' alleged noncompliance with provisions of four federal statutes in issue, which consisted of Developmentally Disabled Assistance and Bill of Rights Act, §§ 6001 to 6081 of this title, Education for All Handicapped Children Act, §§ 1401 to 1461 of Title 20, Rehabilitative Act, § 794 of Title 29, proscribing discrimination against handicapped persons in programs which receive federal financial assistance, and Community Mental Health Centers Act. Medley v. Ginsberg, S.D.W.Va.1980, 492 F.Supp. 1294. Federal Courts 244

1239. ---- Equal Employment Opportunity Act, statutory violation, deprivation of constitutional or statutory rights generally

Allegation of Title VII violation cannot provide sole basis for § 1983 claim, and plaintiff cannot bootstrap untimely Title VII claim by bringing § 1983 action based only on statutory violation of Title VII. Arrington v. Cobb County, C.A.11 (Ga.) 1998, 139 F.3d 865, as amended, rehearing denied. Civil Rights 1502

Although § 1983 may not be used to assert violations of Title VII, it remains available for assertion of constitutional and statutory rights which existed prior to and independent of Title VII. McCauley v. Greensboro City Bd. of Educ., M.D.N.C.1987, 714 F.Supp. 146. Civil Rights 1312

1240. ---- Extradition statutes, statutory violation, deprivation of constitutional or statutory rights generally

Allegations that state or federal extradition statutes have been violated may state a claim under federal civil rights statute. Crenshaw v. Checchia, E.D.Pa.1987, 668 F.Supp. 443. Civil Rights 1395(6)

1241. ---- Family Educational Rights and Privacy Act, statutory violation, deprivation of constitutional or statutory rights generally

Provisions of Family Educational Rights and Privacy Act (FERPA) prohibiting federal funding of educational institutions that had policy or practice of releasing education records to unauthorized persons created no personal rights to enforce under § 1983; abrogating Falvo v. Owasso Independent School Dist. No. I-011, 233 F.3d 1203, Brown v. Oneonta, 106 F.3d 1125. Gonzaga University v. Doe, U.S.2002, 122 S.Ct. 2268, 536 U.S. 273, 153 L.Ed.2d 309.

Though it is an open question whether the Family Educational Rights and Privacy Act (FERPA) provides private parties with a cause of action enforceable under § 1983, the Supreme Court had subject-matter jurisdiction in an action by a private party asserting a claim under FERPA, because the party's federal claim was not so completely devoid of merit as not to involve a federal controversy. Owasso Independent School Dist. No. I-011 v. Falvo, U.S.2002, 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896. Federal Courts 445

Section 1983 could not be used to assert alleged violation of provisions of Family Education and Privacy Rights Act (FERPA) prohibiting disclosure of student records. Shockley v. Svoboda, C.A.7 (Ill.) 2003, 342 F.3d 736. Civil Rights 1070

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42 U.S.C.A. § 1983

Records-access provisions of Family Education Rights and Privacy Act (FERPA) created no personal rights enforceable under § 1983. Taylor v. Vermont Dept. of Educ., C.A.2 (Vt.) 2002, 313 F.3d 768. Civil Rights 1070

School district's alleged violation of Family Education Rights and Privacy Act (FERPA) provision precluding educational institutions from receiving federal funds if they permit improper disclosure of educational records was actionable under § 1983, as FERPA was intended to protect privacy of students and their parents, and imposed binding, enforceable obligation on schools, and remedy provided by FERPA, namely, termination of funding, was not sufficiently comprehensive to raise inference of congressional intent to foreclose a § 1983 remedy. Falvo v. Owasso Independent School Dist. No. I-011, C.A.10 (Okla.) 2000, 233 F.3d 1203, certiorari granted 121 S.Ct. 2547, 533 U.S. 927, 150 L.Ed.2d 715, reversed 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896, opinion vacated in part, reinstated in part 288 F.3d 1236. Civil Rights 1070

Family Education Rights and Privacy Act (FERPA) did not provide for private right of action, enforceable through § 1983, allowing special needs student and his parents to sue school district for sending confidential education records information to private school which had been educating student. P.N. v. Greco, D.N.J.2003, 282 F.Supp.2d 221. Civil Rights 1069; Civil Rights 1070

Family Educational Rights and Privacy Act (FERPA) is not enforceable through private lawsuits, either directly under the statute or via § 1983. Curto v. Smith, N.D.N.Y.2003, 248 F.Supp.2d 132, affirmed in part, appeal dismissed in part 87 Fed.Appx. 788, 2004 WL 287290, affirmed 93 Fed.Appx. 332, 2004 WL 539234, certiorari denied 125 S.Ct. 1689, 544 U.S. 935, 161 L.Ed.2d 504, miscellaneous rulings 125 S.Ct. 1653, 544 U.S. 919, 161 L.Ed.2d 475, rehearing denied 125 S.Ct. 2293, 544 U.S. 1057, 161 L.Ed.2d 1105. Action 3; Civil Rights 127.1

Plaintiffs may assert § 1983 claims premised on Family Educational Rights and Privacy Act (FERPA) violations. Krebs v. Rutgers, D.N.J.1992, 797 F.Supp. 1246.

1242. ---- Family and Medical Leave Act, statutory violation, deprivation of constitutional or statutory rights generally

Family and Medical Leave Act (FMLA) provides comprehensive enforcement scheme which forecloses § 1983 claim to enforce the Act. Jolliffe v. Mitchell, W.D.Va.1997, 971 F.Supp. 1039.

1243. ---- Federal Aid in Fish Restoration Act, statutory violation, deprivation of constitutional or statutory rights generally

Provision of regulation under Federal Aid in Sport Fish Restoration Act authorizing Secretary of Interior to terminate projects funded under Act for noncompliance with Act's requirements was not sufficiently comprehensive remedial scheme to indicate that Congress impliedly foreclosed § 1983 action for violation of Act; remedial scheme was not so comprehensive as to leave no room for additional private remedies. Buckley v. City of Redding, Cal., C.A.9 (Cal.) 1995, 66 F.3d 188, amended on denial of rehearing. Civil Rights 1029

Federal Aid in Sportfish Recreation Act does not create a federal right enforceable under § 1983 to equal access for boats of common horsepower ratings at boat launch facilities constructed or maintained under Act; regulations promulgated under Act, which require states to allocate at least 10% of funds apportioned by Act for recreational boating facilities, and accommodate power boats with common horsepower ratings, did not "flesh out" right created by Act, but imposed obligations in order to further broad objectives of Act. Kissimmee River Valley Sportsmans Ass'n v. City of Lakeland, M.D.Fla.1999, 60 F.Supp.2d 1289, affirmed 250 F.3d 1324, certiorari denied 122 S.Ct. 613, 534 U.S. 1040, 151 L.Ed.2d 537. Civil Rights 1029

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1244. ---- Flag code, statutory violation, deprivation of constitutional or statutory rights generally

Civil rights violation cannot be premised on claimed violation of flag code. Sadlier v. Payne, D.Utah 1997, 974 F.Supp. 1411. Civil Rights 1029

1245. ---- Public Utility Regulatory Policies Act, statutory violation, deprivation of constitutional or statutory rights generally

Section 1983 claim could not be based on violation of PURPA, which contained its own specific remedies. North American Natural Resources, Inc. v. Michigan Public Service Com'n, W.D.Mich.1999, 73 F.Supp.2d 804, vacated 252 F.3d 808, rehearing en banc denied. Civil Rights 1029

1246. ---- Federal Insecticide, Fungicide, and Rodenticide Act, statutory violation, deprivation of constitutional or statutory rights generally

Former county employee's § 1983 claims against county and certain of its employees in their official capacities alleging violations of Freedom of Information Act, Privacy Act and Whistleblower Act were properly dismissed; those statutes applied only to federal government. Ortez v. Washington County, State of Or., C.A.9 (Or.) 1996, 88 F.3d 804. Counties 67; Records 31; Records 51

Use of 42 U.S.C.A. § 1983 to enforce Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.A. § 136 et seq.] would undermine balance, completeness and structural integrity of Act's express enforcement scheme and, therefore, plaintiffs could not maintain private action through § 1983 to enforce Act. Almond Hill School v. U.S. Dept. of Agriculture, C.A.9 (Cal.) 1985, 768 F.2d 1030.

1247. ---- Freedom of Information Act, statutory violation, deprivation of constitutional or statutory rights generally

Former county employee's § 1983 claims against county and certain of its employees in their official capacities alleging violations of Freedom of Information Act, Privacy Act and Whistleblower Act were properly dismissed; those statutes applied only to federal government. Ortez v. Washington County, State of Or., C.A.9 (Or.) 1996, 88 F.3d 804. Counties 67; Records 31; Records 51

1247A. ---- Drivers Privacy Protection Act, statutory violation, deprivation of constitutional or statutory rights generally

People who seek the disclosure of information under the Driver's Privacy Protection Act (DPPA) have no private right of action; statute expressly authorizes private suits only by persons whose information has been disclosed improperly, and statute does not create person-specific rights or an individual entitlement, as required for §§ 1983 to provide a remedy against state actors in the absence of express statutory authorization. McCready v. White, C.A.7 (Ill.) 2005, 417 F.3d 700. Records 31

1248. ---- Grant provisions, statutory violation, deprivation of constitutional or statutory rights generally

Congress must confer enforceable rights, privileges, or immunities unambiguously when it intends to impose conditions on grant of federal moneys before rights, privileges, and immunities may be enforceable under this section. Suter v. Artist M., U.S.Ill.1992, 112 S.Ct. 1360, 503 U.S. 347, 118 L.Ed.2d 1, on remand 968 F.2d 1218. Civil Rights 1029

1249. ---- Hawaii Admission Act, statutory violation, deprivation of constitutional or statutory rights generally

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Hawaii Admission Act [set out as a note preceding section 491 of Title 48] created rights enforceable in § 1983 action by Hawaii natives; natives were beneficiaries of public trust created by Congress. Price v. Akaka, C.A.9 (Hawai'i) 1993, 3 F.3d 1220, as amended, certiorari denied 114 S.Ct. 1645, 511 U.S. 1070, 128 L.Ed.2d 365. Civil Rights 1029

Hawaiian Admission Act, Mar. 18, 1959, §§ 1 et seq., 4, 73 Stat. 4, does not contain sufficiently comprehensive enforcement scheme to foreclose a remedy under this section to native Hawaiians who sought to replace acreage lost when county constructed flood control project which used approximately 25 acres of land held in trust for benefit of native Hawaiians, without exchanging an equivalent acreage. Keaukaha-Panaewa Community Ass'n v. Hawaiian Homes Com'n, C.A.9 (Hawai'i) 1984, 739 F.2d 1467. Civil Rights 1330(3)

Neither the text nor the legislative history of the Admission Act, relating to the statehood of Hawaii, indicated any Congressional intent to create a private right of action, and thus, the Admission Act conferred no individual rights enforceable under §§ 1983, for alleged breaches of the public trust established in the Admission Act. Day v. Apoliona, D.Hawai'i 2006, 451 F.Supp.2d 1133. Civil Rights 1029

Provision of Hawaii Admission Act [set out as a note preceding section 491 of Title 48] requiring State of Hawaii to hold home lands as public trust for betterment of conditions of native Hawaiians created federal right enforceable under § 1983. Han v. Department of Justice, D.Hawai'i 1993, 824 F.Supp. 1480, affirmed 45 F.3d 333 . Civil Rights 1029

1250. ---- Health Maintenance Organization Act, statutory violation, deprivation of constitutional or statutory rights generally

Even assuming that health maintenance organizations (HMOs) were intended beneficiaries of section of Health Maintenance Organization Act (HMOA) requiring states and their political subdivisions to provide their employees with option of joining a federally qualified HMO, qualified HMO that was not offered by parish school board to its employees as health care benefit plan option had no right of action under § 1983 for school board's alleged improper denial of its federal statutory rights; neither the statute itself nor the regulations promulgated thereunder specified ascertainable standards for distinguishing among several qualified HMOs when more than one requested inclusion in health care benefit plan options offered to public entity's employees. Travelers Health Network of Louisiana v. Orleans Parish School Bd., E.D.La.1994, 842 F.Supp. 236. Civil Rights 1042; Civil Rights 1136

1250A. ---- Help America Vote Act, statutory violation, deprivation of constitutional or statutory rights generally

Provision of the Help America Vote Act requiring participating states to ensure that local voting jurisdictions have voting systems in place that comply with certain mandated features for all federal elections did not create a federal right enforceable against state officials under §§ 1983. Taylor v. Onorato, W.D.Pa.2006, 428 F.Supp.2d 384. Civil Rights 1029

1251. ---- Highways laws, statutory violation, deprivation of constitutional or statutory rights generally

Class of users of newly reconstructed bridge could assert private right of action under § 1983 against state official to enforce federal law prohibiting collection of tolls on federally funded bridges. Clallam County v. Department of Transp., of State of Wash., C.A.9 (Wash.) 1988, 849 F.2d 424, certiorari denied 109 S.Ct. 790, 488 U.S. 1008, 102 L.Ed.2d 782. Civil Rights 1330(6)

1252. ---- Hospital Survey and Construction Act, statutory violation, deprivation of constitutional or statutory rights generally

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Hill-Burton Act is sufficiently comprehensive to demonstrate Congressional intent to preclude remedy under federal civil rights statute for medical facility's failure to comply with "assurances" to provide uncompensated services to patients unable to pay. White v. Moses Taylor Hosp., M.D.Pa.1991, 763 F.Supp. 776. Civil Rights 1313

1252A. ---- Health Care Quality Improvement Act, statutory violation, deprivation of constitutional or statutory rights generally

Absence of showing that Congress intended to provide private right of action to enforce Health Care Quality Improvement Act (HCQIA) precluded §§ 1983 action by physicians' association, seeking to preclude disclosure of malpractice payment information. Medical Soc. of New Jersey v. Mottola, D.N.J.2004, 320 F.Supp.2d 254. Civil Rights 1040

1253. ---- Housing laws generally, statutory violation, deprivation of constitutional or statutory rights generally

For purposes of determining whether participants in federal Housing Act voucher program could bring private action under §§ 1983 to challenge calculation of their utility allowance by public housing authorities, applicable section of United States Housing Act and implementing regulations pertaining to utility allowance were not so vague and amorphous as to be beyond competence of judiciary to enforce. Johnson v. Housing Authority Of Jefferson Parish, C.A.5 (La.) 2006, 442 F.3d 356, petition for certiorari filed 2006 WL 1635396. Civil Rights 1082

On appeal from district court's decision granting city residents injunctive relief in their putative class action alleging violations of their rights from city officials' administration of low income Home Energy Assistance Program (HEAP), Court of Appeals would decline to decide whether Low Income Home Energy Assistance Act (LIHEAA) created private right of action enforceable through §§ 1983, given difficulty of question and fact that district court's ruling on that issue was not necessary to its grant of injunctive relief. Kapps v. Wing, C.A.2 (N.Y.) 2005, 404 F.3d 105. Federal Courts 753

Section of Housing and Community Development Act (HCDA), stating objective of providing decent housing and suitable living environment for persons of low and moderate income, and stating specific objective of eliminating detrimental conditions through code enforcement, did not unambiguously impose a binding obligation on states, and thus did not create federal right enforceable through § 1983 suit on the part of home purchaser for town's alleged negligent administration of HCDA funds; section merely set forth general goals for programs funded by HCDA. King v. Town of Hempstead, C.A.2 (N.Y.) 1998, 161 F.3d 112. Civil Rights 1082

Fair Housing Act and its implementing regulations did not confer on visitors to housing project any enforceable rights that could form basis of § 1983 claim against housing authority for personal injuries suffered when decayed tree collapsed on visitors, as obligations of housing authority to maintain housing project in safe condition did not run to nonresidents. Gracia v. Brownsville Housing, C.A.5 (Tex.) 1997, 105 F.3d 1053, rehearing and suggestion for rehearing en banc denied 114 F.3d 1185, certiorari denied 118 S.Ct. 171, 522 U.S. 865, 139 L.Ed.2d 114. Civil Rights 1082

Existence of administrative remedy does not preclude enforcement in federal civil rights action of statute conferring right directly on tenants of public housing. Mungiovi v. Chicago Housing Authority, C.A.7 (Ill.) 1996, 98 F.3d 982, rehearing denied. Civil Rights 1082; Civil Rights 1310

The Housing Authority of the city of Charleston did not violate this section by refusing to remedy deficiencies at public housing project in violation of declarations of policy in various housing acts, in that there is no constitutional right to housing and sections 1437, 1441 and 1601 of Title 42 do not create any legally cognizable rights in tenants of programs funded under such sections. Perry v. Housing Authority of City of Charleston, C.A.4

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(S.C.) 1981, 664 F.2d 1210. Civil Rights 1082

Quality Housing and Work Responsibility Act (QHWRA) provision requiring disbursements of federal housing grants to "affirmatively further fair housing" created private cause of action, enforceable through § 1983, by which African-American residents of public housing project could challenge county's plan to revitalize public housing communities pursuant to Urban Revitalization Demonstration Program (HOPE VI). Reese v. Miami-Dade County, S.D.Fla.2002, 210 F.Supp.2d 1324.

Landlord did not have property right, under Low Income Housing Act, to participate in low-income tenant rental program, sufficient to sustain suit under § 1983 claiming wrongful denial of that right. Roth v. City of Syracuse, N.D.N.Y.2000, 96 F.Supp.2d 171, affirmed 4 Fed.Appx. 86, 2001 WL 178033. Civil Rights 1082

Plaintiffs who could not bring a private suit under federal housing law provisions could not maintain action by simply restyling their grievances as a civil rights statute action for violation of the same statutes. Hernandez v. Pierce, S.D.N.Y.1981, 512 F.Supp. 1154. Civil Rights 1330(3)

1254. ---- Housing and Community Development Act, statutory violation, deprivation of constitutional or statutory rights generally

Action for violation of provision of Housing and Community Development Act, 42 U.S.C.A. 5301 et seq., requiring public contractors to pay prevailing wage to all laborers and mechanics was available to plaintiff laborers under this section; laborers and mechanics are intended beneficiaries of obligation cast in mandatory terms which is readily quantifiable by reference to stated benchmark as set by federal official, and section 5310 of Title 42 does not recognize regulatory scheme of such comprehensiveness as to manifest affirmative congressional intent to preclude invocation of this section as a remedy. Chan v. City of New York, C.A.2 (N.Y.) 1993, 1 F.3d 96, certiorari denied 114 S.Ct. 472, 510 U.S. 978, 126 L.Ed.2d 423. Civil Rights 1136

1255. ---- Individuals with Disabilities Education Act, statutory violation, deprivation of constitutional or statutory rights generally

Section 1983 cannot be used to escape strictures on damages under IDEA, which preclude both punitive damages and general compensatory damages, where §§ 1983 claim is premised on right created by the IDEA. Diaz-Fonseca v. Puerto Rico, C.A.1 (Puerto Rico) 2006, 451 F.3d 13. Schools 155.5(5)

IDEA provides comprehensive enforcement scheme for protecting children's right to free appropriate public education and thus precludes § 1983 suit as remedy for IDEA violations; abrogating, L.C. v. Utah State Board of Education, 57 F.Supp.2d 1214. Padilla ex rel. Padilla v. School Dist. No. 1 in City and County of Denver, Colo., C.A.10 (Colo.) 2000, 233 F.3d 1268. Civil Rights 1069; Civil Rights 1309

Learning disabled student failed to state claim for damages under § 1983 for any violation of his rights secured by Education of Handicapped Act (EHA); student could not recover general damages under EHA for school athletic association's denying him hardship exemption from rule which prohibited transfer students from participating in sports for one year. Crocker v. Tennessee Secondary School Athletic Ass'n, C.A.6 (Tenn.) 1992, 980 F.2d 382. Civil Rights 1069

Private right of action under § 1983 is available to remedy violation of the Education of the Handicapped Act. Mrs. W. v. Tirozzi, C.A.2 (Conn.) 1987, 832 F.2d 748, on remand 706 F.Supp. 164. Schools 155.5(2.1)

Where local educational agency allegedly deprived handicapped child of due process by effectively denying that child access to the heart of the Education of the Handicapped Act administrative machinery, the impartial due

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process hearing, action could be brought under section 1983. Manecke v. School Bd. of Pinellas County, Fla., C.A.11 (Fla.) 1985, 762 F.2d 912, rehearing denied 770 F.2d 1084, certiorari denied 106 S.Ct. 809, 474 U.S. 1062, 88 L.Ed.2d 784. Schools 155.5(2.1)

Rights created by Individuals with Disabilities Education Act (IDEA) could not be enforced in action under §§ 1983; IDEA's enforcement scheme was so comprehensive as to preclude its enforcement through §§ 1983. Alex G. ex el. Stephen G. v. Board of Trustees of Davis Joint Unified School Dist., E.D.Cal.2004, 332 F.Supp.2d 1315. Civil Rights 1069; Civil Rights 1309; Schools 155.5(2.1)

State department of education (DOE) was not subject to monetary damages in § 1983 action alleging violation of disabled student's rights under Individuals with Disabilities Education Act (IDEA). Zahran ex rel. Zahran v. New York Dept. of Educ., N.D.N.Y.2004, 306 F.Supp.2d 204. Civil Rights 1346

Violation of procedural safeguards of the IDEA by school board and school officials entitled disabled student to IDEA remedies, but did not rise to level of constitutional violation, so as to support student's § 1983 claims. Smith ex rel. Duck v. Isle of Wight County School Bd., E.D.Va.2003, 284 F.Supp.2d 370, affirmed in part, reversed in part and remanded 402 F.3d 468. Civil Rights 1069; Schools 155.5(5)

A plaintiff may enforce the rights granted by the IDEA by way of an action seeking money damages pursuant to § 1983. B.H. v. Southington Bd. of Educ., D.Conn.2003, 273 F.Supp.2d 194, modified on reconsideration 2004 WL 51001. Schools 155.5(2.1)

A plaintiff may enforce the rights granted by the IDEA by way of an action seeking money damages pursuant to § 1983. B.H. v. Southington Bd. of Educ., D.Conn.2003, 273 F.Supp.2d 194, modified on reconsideration 2004 WL 51001. Schools 155.5(2.1)

Statutory violations of Individuals with Disabilities Education Act (IDEA) may be enforced in an action brought under Section 1983. Goleta Union Elementary School Dist. v. Ordway, C.D.Cal.2001, 166 F.Supp.2d 1287, reconsideration denied 248 F.Supp.2d 936.

Parents claiming that individualized education provided for their autistic child was deficient, due to lack of training of teachers, could not bring claim under § 1983 seeking compensatory and punitive damages for violation of Individuals with Disabilities Education Act (IDEA); under facts of case, parents were limited to remedies available under IDEA. Andrew S. ex rel. Margaret S. v. School Committee of Town of Greenfield, Mass., D.Mass.1999, 59 F.Supp.2d 237. Civil Rights 1309

Handicapped student's claims alleging violation of § 1983 was duplicative of claim under Individuals with Disabilities Education Act and, absent claim that Constitution or Treaties of United States have been violated, claim would be dismissed. Chuhran v. Walled Lake Consol. Schools, E.D.Mich.1993, 839 F.Supp. 465, affirmed 51 F.3d 271. Civil Rights 1309; Schools 155.5(1)

Complaint alleging that school board violated the Individuals with Disabilities Education Act (IDEA) by disclosing confidential information stated cause of action under civil rights statute, even though IDEA does not expressly provide for private cause of action. Sean R. by Dwight R. v. Board of Educ. of Town of Woodbridge, D.Conn.1992, 794 F.Supp. 467. Civil Rights 1395(2)

Parents of handicapped children stated § 1983 claim against Connecticut Board of Education for alleged violations of Education of the Handicapped Act stemming from Board's failure to make bona fide attempts to resolve their complaints and for failing to fully implement and conduct informal complaint resolution procedures as required by federal regulations. Mrs. W. v. Tirozzi, D.Conn.1989, 706 F.Supp. 164. Schools 155.5(2.1)

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42 U.S.C.A. § 1983

Handicapped child was not entitled to relief under § 1983 for violation of child's rights under Education of the Handicapped Act, where violation outside of scope of Act was neither alleged nor established. Taylor by Holbrook v. Board of Educ. of Copake-Taconic Hills Cent. School Dist., N.D.N.Y.1986, 649 F.Supp. 1253. Schools 155.5(2.1)

Parents claiming that school district and State Department of Education violated the Education for All Handicapped Children Act in failing to reimburse costs of education for handicapped children could maintain action under civil rights statute, 42 U.S.C.A. § 1983, only to extent that complaint alleged procedural due process violations and only to the extent of alleged damages based on that deprivation. John H. v. Brunelle, D.N.H.1986, 631 F.Supp. 208. Schools 155.5(2.1)

Allegations that parents of handicapped student were denied information about student's education and opportunity to observe his education and progress and that school district administrator and superintendent and others failed to notify parents of their legal rights and remedies under federal and state law did not state claim for relief under this section; Education of the Handicapped Act, section 1400 et seq. of Title 20, was intended to be exclusive remedy for such claims. Daniel B. v. Wisconsin Dept. of Public Instruction, E.D.Wis.1984, 581 F.Supp. 585, affirmed 776 F.2d 1051, certiorari denied 106 S.Ct. 1462, 475 U.S. 1083, 89 L.Ed.2d 719. Schools 155.5(2.1)

Absent a violation of U.S.C.A.Const. Amend. 14, a violation of § 1401 et seq. of Title 20, the Education for All Handicapped Children Act, or a violation of § 701 et seq. of Title 29, the Rehabilitation Act, no claim for a handicapped child exists under this section. Pinkerton v. Moye, W.D.Va.1981, 509 F.Supp. 107.

1256. ---- Justice System Improvement Act, statutory violation, deprivation of constitutional or statutory rights generally

Provision of Justice System Improvement Act requiring office of justice programs to safeguard accuracy and security of criminal history information did not create any right enforceable by arrestee through § 1983 claim against sheriff and county for improper disclosure of arrest records from federal database to private citizen; provision imposed compliance obligations only on federal agency, and created privately enforceable right in individual such as arrestee only to receive copy of criminal history information maintained pursuant to statute for his review and possible correction in event of erroneous information. Cline v. Rogers, C.A.6 (Tenn.) 1996, 87 F.3d 176, certiorari denied 117 S.Ct. 510, 519 U.S. 1008, 136 L.Ed.2d 400. Civil Rights 1088(4)

1257. ---- Juvenile Justice and Delinquency Prevention Act, statutory violation, deprivation of constitutional or statutory rights generally

Alleged violation of Juvenile Justice and Delinquency Prevention Act in temporarily lodging juvenile in adult jail constituted deprivation of a right, privilege or immunity, actionable under § 1983; plan requirement that juveniles not be detained in adult facilities unless no acceptable alternative was available was intended to benefit juveniles, requirement was defined with sufficient detail to be judicially enforceable and requirement created binding obligation. Horn by Parks v. Madison County Fiscal Court, C.A.6 (Ky.) 1994, 22 F.3d 653, certiorari denied 115 S.Ct. 199, 513 U.S. 873, 130 L.Ed.2d 130. Civil Rights 1088(4)

Juvenile who was incarcerated for four days in county jail for alleged unauthorized use of motor vehicle had right of action under § 1983 for infringements of his rights under Juvenile Justice Act and Maine law; juvenile alleged no services were provided to him, no effort to place him in least restrictive alternative was made, and that he was subjected to visual and verbal contact with adult prisoners. Grenier By and Through Grenier on Behalf of Grenier v. Kennebec County, Me., D.Me.1990, 748 F.Supp. 908.

Provisions of Juvenile Justice and Delinquency Prevention Act setting out requirements for state plans dealing with juvenile offenders created enforceable rights, for purposes of juveniles' § 1983 action seeking to enforce

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compliance with those provisions; provisions in question expressed a clear legislative intent to confer a special benefit upon the distinct class of detained juveniles and imposed duty upon state to assure that the requirements of those provisions were met or would be met by the proper deadline. Hendrickson v. Griggs, N.D.Iowa 1987, 672 F.Supp. 1126, appeal dismissed 856 F.2d 1041. Civil Rights 1057; Infants 272

1258. ---- Land and Water Conservation Fund Act, statutory violation, deprivation of constitutional or statutory rights generally

Land and Water Conservation Fund Act (LWCF Act) does not create rights, privileges, or immunities enforceable by individuals within meaning of § 1983, whether against state or federal defendants. Sportsmen's Wildlife Defense Fund v. U.S. Dept. of Interior, D.Colo.1999, 40 F.Supp.2d 1192. Civil Rights 1029

1259. ---- Lead-Based Paint Poisoning Prevention Act, statutory violation, deprivation of constitutional or statutory rights generally

Lead-Based Paint Poisoning Prevention Act (LPPPA) and United States Housing Act (USHA) were intended to benefit residents of public housing project, for purposes of determining if enforceable right existed under § 1983. Aristil v. Housing Authority of City of Tampa, Fla., M.D.Fla.1999, 54 F.Supp.2d 1289. Civil Rights 1082

1260. ---- Low Income Home Energy Assistance Act, statutory violation, deprivation of constitutional or statutory rights generally

In passing Low Income Home Energy Assistance Act, Congress did not intend to confer private rights enforceable under § 1983; participation in block grant program was voluntary on parts of state, and there was a pervasive emphasis on maintaining limited federal role. Cabinet for Human Resources, Com. of Ky. v. Northern Kentucky Welfare Rights Ass'n, C.A.6 (Ky.) 1992, 954 F.2d 1179, rehearing and rehearing en banc denied. Civil Rights 1082

1261. ---- Magnuson Fishery Conservation and Management Act, statutory violation, deprivation of constitutional or statutory rights generally

Action under § 1983 provides mechanism to address state interference with federally protected fishing rights under Magnuson Act. Bateman v. Gardner, S.D.Fla.1990, 730 F.Supp. 1570, affirmed 922 F.2d 848, certiorari denied 111 S.Ct. 2053, 500 U.S. 932, 114 L.Ed.2d 459. Civil Rights 1071

1262. ---- Medicaid provisions, statutory violation, deprivation of constitutional or statutory rights generally

Congress did not foreclose enforcement of Medicaid Act under § 1983; Medicaid Act did not expressly preclude resort to § 1983, nor did it create remedial scheme that was sufficiently comprehensive to demonstrate congressional intent to preclude remedy of suits under § 1983. Wilder v. Virginia Hosp. Ass'n, U.S.Va.1990, 110 S.Ct. 2510, 496 U.S. 498, 110 L.Ed.2d 455.

Private right of action under §§ 1983 did not exist to enforce Medicaid provision that required state plan for medical assistance to include reasonable standards, comparable for all groups, for determining eligibility for, and extent of, medical assistance under that plan, since provision, among other things, was not framed in terms of individuals benefited, focus was on standards themselves and on their aggregate impact, rather than on benefits to individuals, and provision provided guidance only regarding financial means of potential beneficiary. Lankford v. Sherman, C.A.8 (Mo.) 2006, 451 F.3d 496. Civil Rights 1052

Medicaid provision that required states to make medical assistance available presumptively conferred individual federal rights that could be privately enforced through §§ 1983 action, since states were required under provision

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to provide particularly specified benefits to particularly specified types of individuals; language of provision was unmistakably focused on specific individuals benefited, provision supplied concrete and objective standards for enforcement, provision was expressly worded in mandatory, not precatory terms, and Medicaid Act did not expressly foreclose §§ 1983 right. Watson v. Weeks, C.A.9 (Or.) 2006, 436 F.3d 1152. Civil Rights 1052

Medicaid statute requiring states to provide medical assistance covering medical services from an intermediate care facility for persons with mental retardation with reasonable promptness unambiguously conferred individual federal rights that could be privately enforced through §§ 1983 action. Sabree ex rel. Sabree v. Richman, C.A.3 (Pa.) 2004, 367 F.3d 180. Civil Rights 1052

Medicaid recipients, who had earned income and who were terminated from Medicaid when state enacted a statute reducing Medicaid eligibility limits, could bring §§ 1983 action for breach of federal statute providing for transitional medical assistance. Rabin v. Wilson-Coker, C.A.2 (Conn.) 2004, 362 F.3d 190. Civil Rights 1052

Statute requiring that state Medicaid plans provide that medical assistance "shall be furnished with reasonable promptness to all eligible individuals" conferred federal right enforceable under § 1983 with regard to State model Medicaid waiver plans. Bryson v. Shumway, C.A.1 (N.H.) 2002, 308 F.3d 79, on remand 2004 WL 613027.

Pharmacists, as Medicaid providers, could not assert under § 1983 a claim that state's Medicaid reimbursement plan violated section of the Medicaid Act providing that "methods and procedures" must assure that payments to providers produce "efficiency," "economy," "quality of care," and adequate access to providers, as Congress, in that section, did not intend to benefit providers. Pennsylvania Pharmacists Ass'n v. Houstoun, C.A.3 (Pa.) 2002, 283 F.3d 531, certiorari denied 123 S.Ct. 100, 537 U.S. 821, 154 L.Ed.2d 30. Civil Rights 1052

Patients whose records were seized from their psychiatrist's office pursuant to warrant duly issued in connection with Medicaid fraud investigation had no grounds to claim constitutional violation of the right to "privacy" arising from seizure of records, given state's compelling interest in ending fraud in Medicaid program and lack of evidence that scope of search could have been narrowed. F.E.R. v. Valdez, C.A.10 (Utah) 1995, 58 F.3d 1530. Constitutional Law 82(7)

Medicaid statute and corresponding regulation providing that state must make various assurances that are satisfactory to Secretary of Health and Human Services to obtain home care waiver imposed binding obligations upon participating states for purposes of determining whether applicant for home care waiver could bring § 1983 action for alleged violations of Medicaid Act, where assurances served to protect health and welfare of home care Medicaid recipients and where there was nothing vague or amorphous about what statute or corresponding regulations required of participating states. Wood v. Tompkins, C.A.6 (Ohio) 1994, 33 F.3d 600, rehearing and suggestion for rehearing en banc denied. Civil Rights 1052

Language of equal access provision of federal Medicaid statute was sufficiently specific to be enforceable in civil rights action brought by recipients and providers against state that was reducing its reimbursement rates; requiring access equal to that of "general population" meant that Medicaid recipients were entitled to access equal to that of insured population, and requiring payments consistent with efficiency, economy, and quality of care provided objective benchmark for measuring accessibility. Arkansas Medical Soc., Inc. v. Reynolds, C.A.8 (Ark.) 1993, 6 F.3d 519. Civil Rights 1052

Medicaid provider had no property interest subject to due process protections in payments for claims pending investigation of their legality under either Medicaid Act or New York Department of Social Service regulations so as to state § 1983 individual capacity claim against Commissioner of Department of Social Services. Yorktown Medical Laboratory, Inc. v. Perales, C.A.2 (N.Y.) 1991, 948 F.2d 84. Constitutional Law 277(1)

Social Security Act does not reflect congressional intent to foreclose private enforcement of hospitals' Medicaid

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reimbursement rights under civil rights statute, despite provision of administrative remedy and subjection of all state Medicaid plans to review by the Secretary of Health and Human Services, which may result in suspension or reduction of federal payments. West Virginia University Hospitals, Inc. v. Casey, C.A.3 (Pa.) 1989, 885 F.2d 11, rehearing denied, certiorari granted 110 S.Ct. 1294, 494 U.S. 1003, 108 L.Ed.2d 472, certiorari denied 110 S.Ct. 3213, 496 U.S. 936, 110 L.Ed.2d 661, affirmed 111 S.Ct. 1138, 499 U.S. 83, 113 L.Ed.2d 68. Civil Rights 1330(6)

Nonprofit organization composed of public and private health care providers had right actionable under § 1983 to challenge Virginia's procedures for reimbursing hospitals for cost of treating Medicaid patients; language and history of relevant reimbursement provision implied congressional intent to allow providers right of action against state's failure to comply with federal Medicaid requirements. Virginia Hosp. Ass'n v. Baliles, C.A.4 (Va.) 1989, 868 F.2d 653, rehearing denied, certiorari granted in part 110 S.Ct. 49, 493 U.S. 808, 107 L.Ed.2d 18, affirmed 110 S.Ct. 2510, 496 U.S. 498, 110 L.Ed.2d 455. Civil Rights 1052

Class suit for declaratory and injunctive relief on ground that state's plan for medical assistance, by failing to provide transportation to and from the providers of medical services deprived recipients of medical assistance secured by the Social Security Act, § 301 et seq. of this title, qualified under this section, even if regarded as being wholly statutorily based. Blue v. Craig, C.A.4 (N.C.) 1974, 505 F.2d 830. Civil Rights 1052

Medicaid provision that required a Medicaid-funded state plan to make medical assistance available to certain individuals, including recipients under age 21, created private right of action enforceable under §§ 1983 for foster children with unmet mental health needs in custody of county department of children and family services (DCFS), who alleged that state was required by Medicaid Act to provide wraparound services and therapeutic foster care to them. Katie A. v. Bonta, C.D.Cal.2006, 433 F.Supp.2d 1065. Civil Rights 1057

Provisions of Medicaid Act, requiring states to provide medical services in an intermediate care facility for persons with mental retardation with reasonable promptness, unambiguously confer individual federal rights enforceable under §§ 1983. Michelle P. ex rel. Deisenroth v. Holsinger, E.D.Ky.2005, 356 F.Supp.2d 763. Civil Rights 1052

Provision of Medicaid Act requiring state medical assistance plans to provide for a means of ensuring that eligible individuals under the age of 21 are informed of and provided early and periodic screening, diagnosis, and treatment (EPSDT) services, including certain dental services afforded individual medical assistance recipients rights that were enforceable under § 1983. Clark v. Richman, M.D.Pa.2004, 339 F.Supp.2d 631. Civil Rights 1052

Medicaid Act provisions requiring participating states to reimburse health care providers did not create any rights on part of providers to receive payments, enforceable under § 1983. Planned Parenthood of Cent. Tex. v. Sanchez, W.D.Tex.2003, 280 F.Supp.2d 590, remanded 403 F.3d 324. Civil Rights 1052

Medicaid Act provisions requiring participating states to reimburse health care providers did not create any rights on part of providers to receive payments, enforceable under §§ 1983. Planned Parenthood of Cent. Tex. v. Sanchez, W.D.Tex.2003, 280 F.Supp.2d 590, remanded 403 F.3d 324. Civil Rights 1052

Medicaid applicant was not intended beneficiary of Boren Amendment, requiring states to adopt reasonable and adequate Medicaid rates, and thus she had no rights of action under § 1983 based on Boren Amendment for denial or failure to timely approve her Medicaid application. Hall v. Prince George's County, D.Md.2002, 189 F.Supp.2d 320. Civil Rights 1052

Section of Medicaid Act requiring state plan for medical assistance to provide procedures relating to utilization of, and payment for, care and services available under plan as necessary to safeguard against unnecessary utilization of such care and services did not create enforceable right which health care providers could assert under § 1983;

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section was intended to benefit general public and not medical service providers, provided only vague standards, and did not unambiguously impose binding obligation. Prestera Center For Mental Health Services, Inc. v. Lawton, S.D.W.Va.2000, 111 F.Supp.2d 768. Civil Rights 1052

Poor children entitled to benefits under the Early Screening, Diagnosis and Treatment program (EPSDT) of Medicaid could bring § 1983 suit against State of Texas, asserting that required benefits were not being provided; statute was intended to benefit children, statute made compliance with its provisions mandatory for any state choosing to participate in program, and statute was clear enough to allow for judicial interpretation and enforcement. Frew v. Gilbert, E.D.Tex.2000, 109 F.Supp.2d 579, stay denied 2000 WL 33795091, vacated 300 F.3d 530, certiorari granted in part 123 S.Ct. 1481, 538 U.S. 905, 155 L.Ed.2d 223, reversed 124 S.Ct. 899, 540 U.S. 431, 157 L.Ed.2d 855, on remand 376 F.3d 444. Civil Rights 1052

Medicaid provision calling for furnishing with reasonable promptness of Medicaid benefits to eligible individuals created federal right enforceable under § 1983; eligible individuals were class intended to be protected by provision, statute as supplemented by regulations was not impermissibly vague as to what constituted reasonable promptness, and provision was mandatory in nature, rather than precatory. Boulet v. Cellucci, D.Mass.2000, 107 F.Supp.2d 61. Civil Rights 1052

Statutory requirement under Medicaid Act that state provide waiver services with reasonable promptness created federal right enforceable by Medicaid-eligible individuals under § 1983; statute was intended to benefit such individuals, right was not too vague for enforcement, and statute imposed binding obligation on states. Lewis v. New Mexico Dept. of Health, D.N.M.2000, 94 F.Supp.2d 1217, affirmed 261 F.3d 970. Civil Rights 1052

Medicaid patient could sue state agency under § 1983 for breaching its obligation under the balance billing provision of the Medicaid statute; patient was an intended third-party beneficiary of the provision, patient's asserted interests were within the competence of the judiciary to enforce, and agency was a governmental unit which could be sued under section 1983. Mallo v. Public Health Trust of Dade County, Fla., S.D.Fla.2000, 88 F.Supp.2d 1376. Civil Rights 1052

Developmentally disabled individuals stated § 1983 claim against state for violation of reasonable promptness provision of Medicaid statute by alleging that state had not sought necessary waiver of reasonable promptness requirement and had not provided services to plaintiffs in timely manner. Rolland v. Cellucci, D.Mass.1999, 52 F.Supp.2d 231. Civil Rights 1395(1)

New York State Medicaid home care applicants and recipients challenging state's task-based assessment (TBA) program on grounds that it did not include safety monitoring as an independent task could bring § 1983 action to enforce Medicaid regulations mandating that each service be sufficient to achieve its purpose and precluding denial of services based on diagnosis. Rodriguez v. DeBuono, S.D.N.Y.1999, 44 F.Supp.2d 601, reversed 197 F.3d 611, certiorari denied 121 S.Ct. 156, 531 U.S. 864, 148 L.Ed.2d 104. Civil Rights 1052

Pharmacists and representative nonprofit corporation did not have enforceable right under equal access provision of medicaid statute to challenge state agency's setting of variable dispensing fee; statutory requirement that payments be consistent with 'efficiency, economy, and quality of care' created no enforceable right. Florida Pharmacy Ass'n v. Cook, N.D.Fla.1998, 17 F.Supp.2d 1293. Health 487(2)

No enforceable § 1983 rights are created by the statute requiring state Medicaid plans to establish or designate a single agency to administer or supervise the plan, nor by the statute's implementing regulation. Graus v. Kaladjian, S.D.N.Y.1998, 2 F.Supp.2d 540. Civil Rights 1052

No enforceable § 1983 rights are created by the regulation requiring Medicaid administering agencies to continue furnishing benefits "regularly" to all eligible individuals, nor by the statutes requiring state Medicaid plans to

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ensure that eligibility is determined and benefits are provided with "simplicity" and in "the best interests of recipients" according to "reasonable standards," as these provisions are merely amorphous, vague, and general statements of the Medicaid program's overall goals. Graus v. Kaladjian, S.D.N.Y.1998, 2 F.Supp.2d 540. Civil Rights 1052

Owner of pharmacies which participated in Pennsylvania state Medicaid reimbursement plan could bring § 1983 action seeking enforcement of Medicaid regulations governing state advisory committee and adoption of plan regulations; federal regulations and statutes in question contain mandatory language and create enforceable rights, and fact that state law provided remedy did not prevent resort to § 1983. Rite Aid of Pennsylvania, Inc. v. Houstoun, E.D.Pa.1997, 998 F.Supp. 522. Civil Rights 1052

Equal access provision of Medicaid Act imposed binding obligation on state to develop reimbursement plan that ensured participation of enough health care providers so that Medicaid recipients have access to services and care at least to extent available to insured population in same geographic area, supporting private right of action under § 1983. Moody Emergency Medical Services, Inc. v. City of Millbrook, M.D.Ala.1997, 967 F.Supp. 488. Civil Rights 1052; Civil Rights 1330(6)

Section 1983 supplies partial remedy for Boren Amendment violations, which may be augmented by private right of action. Oregon Ass'n of Homes for Aging, Inc. v. State of Or. By and Through Dept. of Human Resources, Senior and Disabled Services Div., D.Or.1994, 884 F.Supp. 382. Civil Rights 1052

Mentally retarded and developmentally disabled persons who received Medicaid had private action under § 1983 against Ohio officials and state agencies for alleged violations of federal statutes and regulations governing preadmission and annual resident review; provisions were intended to benefit recipients, provisions imposed binding obligations on state, and provisions were not vague or amorphous in character. Martin v. Voinovich, S.D.Ohio 1993, 840 F.Supp. 1175. Civil Rights 1330(6)

Mentally and physically disabled persons residing in facilities certified as Intermediate Care Facilities for the Mentally Retarded (ICF/MR's) could seek enforcement of medicaid provisions of Title XIX of Social Security Act pursuant to 42 U.S.C.A. § 1983; federal right is provided by Social Security Act and language found in implementing regulations is sufficiently mandatory to constitute binding obligation on part of state. Conner v. Branstad, S.D.Iowa 1993, 839 F.Supp. 1346. Health 507

Jurisdiction existed in § 1983 civil rights suit to prevent state from implementing reduction in reimbursement rates to Medicaid providers of obstetric and pediatric care as well as types of therapy for children, even if suit was based on equal access provision of Social Security Act. Arkansas Medical Soc., Inc. v. Reynolds, E.D.Ark.1992, 834 F.Supp. 1097. Federal Courts 228

Freedom of choice provision of Social Security Act, requiring that state medical assistance plan permit recipients to choose providers, did not create rights in suppliers of health care products and, thus, could not be basis for "federal right" needed to support § 1983 civil rights claim challenging validity of Georgia statute requiring suppliers to locate within state or within 50 miles of state border. Nutritional Support Services, L.P. v. Miller, N.D.Ga.1993, 826 F.Supp. 467. Civil Rights 1052; Health 507

Section of Social Security Act requiring that state Medicaid plans provide necessary safeguards to assure that health care is provided in manner consistent with best interests of recipients would not support statutory rights claim under civil rights statute, § 1983, by recipients against municipal hospital; statutory terms were too general and vague to permit judicial enforcement and regulations thereunder were not promulgated to particularize patient rights privately enforceable under § 1983, but were relevant to consideration by the Secretary of Health and Human Services (HHS) of whether accredited hospital qualified for participation in Medicaid or Medicare program. Evelyn V. v. Kings County Hosp. Center, E.D.N.Y.1993, 819 F.Supp. 183. Civil Rights 1052

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42 U.S.C.A. § 1983

Provision of the Medicaid Act requiring states to insure that payments are consistent with efficiency, economy, and quality of care does not create a right enforceable under federal civil rights statute. Fulkerson v. Commissioner, Maine Dept. of Human Services, D.Me.1992, 802 F.Supp. 529. Civil Rights 1052

West Virginia hospital which provided care for medicaid recipients had cause of action under civil rights statute for violations of Social Security Act by Pennsylvania officials with respect to officials' medicaid reimbursement program, whether or not a constitutional challenge existed. West Virginia University Hospitals, Inc. v. Casey, M.D.Pa.1988, 701 F.Supp. 496, affirmed in part, vacated in part and reversed in part on other grounds 885 F.2d 11, rehearing denied, certiorari granted 110 S.Ct. 1294, 494 U.S. 1003, 108 L.Ed.2d 472, certiorari denied 110 S.Ct. 3213, 496 U.S. 936, 110 L.Ed.2d 661, affirmed 111 S.Ct. 1138, 499 U.S. 83, 113 L.Ed.2d 68. Civil Rights 1052

Medicaid provider could not maintain § 1983 civil rights action against state to challenge amendment to state's medicaid plan which eliminated payment of return on equity capital to proprietary providers of health care services; Medicaid Act did not give medicaid provider tangible right, privilege, or immunity concerning return on equity or its elimination, nothing in legislative history of Medicaid Act invested medicaid provider with § 1983 enforceable rights, and nothing in administrative regulations gave medicaid provider right to pursue § 1983 claim. Vantage Healthcare Corp. v. Virginia Bd. of Medical Assistance Services, E.D.Va.1988, 684 F.Supp. 1329. Civil Rights 1052

Long-term care facility was not an intended beneficiary of the Medicaid program and, thus, could not institute section 1983 action in federal district court against Connecticut Department of Income Maintenance and its Commissioner, challenging Connecticut reimbursement system for skilled nursing facilities as violative of Federal Medicaid Act. Arden House, Inc. v. Heintz, D.C.Conn.1985, 612 F.Supp. 81.

This section furnished a remedy for private psychiatrist's claim that refusal of New York State officials to approve medicaid reimbursement for services of ancillary personnel working under psychiatrist's direction violated Social Security Act, § 301 et seq. of this title, and implementing regulations, and Act did not itself provide an exclusive remedy for violation of its terms. Yapalater v. Bates, S.D.N.Y.1980, 494 F.Supp. 1349, affirmed 644 F.2d 131, certiorari denied 102 S.Ct. 1255, 455 U.S. 908, 71 L.Ed.2d 447. Civil Rights 1055

Alleged violation by state and county departments of public aid of § 1396 et seq. of this title compelling statewide program and equal services to all persons within any group eligible for programs of grants to states for medical assistance, by the payment of reduced benefits to medically indigent persons in Chicago and Cicero, Illinois, was actionable under this section. Raner v. Edelman, N.D.Ill.1973, 365 F.Supp. 504. Civil Rights 1055

Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) of Medicaid Act created individual rights in foster children, enforceable under § 1983, to screening services at intervals that met standards of medical and dental practice and when medically necessary; eligible children under age 21, including foster children, were clearly intended beneficiaries of EPSDT, since language of EPSDT focused on needs of individual children, EPSDT lacked enforcement mechanism, and EPSDT was not too vague and amorphous to be enforced by judiciary. Kenny A. ex rel. Winn v. Perdue, N.D.Ga.2003, 218 F.R.D. 277. Civil Rights 1052; Civil Rights 1057

Medicaid applicants who alleged that they suffered a deprivation of their rights under the Medicare Act with respect to notice and processing time of their applications, that state agency "acting under color of law" caused the deprivation, and that the deprivation resulted from a custom, policy or practice, stated a claim under § 1983. Padron v. Feaver, S.D.Fla.1998, 180 F.R.D. 448. Civil Rights 1395(1); Civil Rights 1396

1263. ---- Medicare provisions, statutory violation, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Federal statute providing that State plan for medical assistance must provide such methods of administration as are found by Secretary of Health and Human Services (HHS) to be necessary for proper and efficient operation of plan was intended only to guide State in structuring its efforts to provide care and services to Medicaid recipients, and therefore did not give Medicaid recipients enforceable right to "methods of administration; thus, recipients could not rely on that statute in § 1983 action seeking to enforce Federal regulation requiring State Medicaid plans to ensure necessary transportation for recipients to and from providers. Harris v. James, C.A.11 (Ala.) 1997, 127 F.3d 993. Civil Rights 1052; Health 479

Conclusion that accredited provider of "home health services" under section 1395 et seq. of this title had no implied private right of action against state medical university under section 1395a of this title entitling insured individuals to obtain health services from any qualified institution compelled conclusion that provider likewise had no cause of action under this section, even assuming that university acted under color of state law, as there was no violation either of Constitution or any federal statute. Home Health Services, Inc. v. Currie, C.A.4 (S.C.) 1983, 706 F.2d 497. Civil Rights 1330(6)

Bivens' claim, for federal officials' acting under color of federal law, arising out of Health Care Financing Administration's (HCFA's) allegedly improperly motivated termination of nursing home's Medicare-Medicaid provider agreement was precluded, as the Medicare Act provided meaningful remedy for such claims. Beechwood Restorative Care Center v. Leeds, W.D.N.Y.2004, 317 F.Supp.2d 248, affirmed in part, vacated in part and remanded 436 F.3d 147. United States 50.10(1)

States are not required to use reasonable efforts to ensure that state hospitals participating in Medicaid program operate in compliance with established state standards, and thus patients who sought and obtained medical care at participating hospital did not have cause of action under § 1983 against state officials for failing to take steps reasonably necessary to ensure that hospital complied with established state health standards. Evelyn V. v. Kings County Hosp. Center, E.D.N.Y.1997, 956 F.Supp. 288. Civil Rights 1045

Cost-sharing provision of Social Security Act with respect to Medicare "Part B" services for "Qualified Medicare Beneficiaries" (QMBs) created right that was sufficiently specific and definite to qualify as right enforceable under civil rights statute by association of rehabilitation agencies providing such services and was not beyond competence of judiciary to enforce. Rehabilitation Ass'n of Virginia, Inc. v. Kozlowski, E.D.Va.1993, 838 F.Supp. 243, affirmed 42 F.3d 1444, certiorari denied 116 S.Ct. 60, 516 U.S. 811, 133 L.Ed.2d 23. Civil Rights 1052

1263A. ---- Mental Health Rights and Advocacy, statutory violation, deprivation of constitutional or statutory rights generally

Federal statute communicating congressional preference for right to a humane treatment environment affording reasonable protection from harm and appropriate privacy to mental health patients with regard to personal needs did not create an individual federal right that could be enforced in §§ 1983 action. Smith v. AuSable Valley Community Mental Health Services, E.D.Mich.2006, 431 F.Supp.2d 743. Civil Rights 1045

1264. ---- National Labor Relations Act, statutory violation, deprivation of constitutional or statutory rights generally

Existence of a comprehensive enforcement scheme including exclusive jurisdiction by the National Labor Relations Board to prevent and remedy unfair labor practices by employers and unions did not preclude a § 1983 action based on governmental interference with labor and management rights; the NLRB had no authority to address conduct protected by the National Labor Relations Act against governmental interference. Golden State Transit Corp. v. City of Los Angeles, U.S.Cal.1989, 110 S.Ct. 444, 493 U.S. 103, 107 L.Ed.2d 420, on remand 895 F.2d 1281. Civil Rights 1312

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Prosecutor did not violate Fourth Amendment or NLRA rights of union representative who was being prosecuted for trespass when prosecutor saw representative glaring at her from street corner near courthouse and asked police to question him because she thought he might be carrying a bomb. Radcliffe v. Rainbow Const. Co., C.A.9 (Cal.) 2001, 254 F.3d 772, certiorari denied 122 S.Ct. 545, 534 U.S. 1020, 151 L.Ed.2d 423. Arrest 63.5(5); District And Prosecuting Attorneys 10; Labor And Employment 1023

1265. ---- National School Lunch Act, statutory violation, deprivation of constitutional or statutory rights generally

Federal education funding statutes did not provide individual districts with cause of action under § 1983 against state officials for their alleged failure to disburse immediately to districts funds distributed to state; districts were not intended beneficiaries of funding statutes--Individuals With Disabilities Education Act (IDEA), Vocational Education Act, National School Lunch Act, and Child Nutrition Act, and any provisions of funding statutes directed toward districts were too vague and amorphous to be judicially enforceable and did not create binding obligations on state defendants to either immediately disburse funds or pay interest on reimbursements. Board of Educ. of Tp. High School Dist. No. 205 v. Leininger, N.D.Ill.1993, 822 F.Supp. 516. Civil Rights 1069; Schools 19(1)

Where students at numerous elementary schools claimed that their right to equal protection of laws had been denied by state officials, acting in their capacities as officials, acted arbitrarily and irrationally in selecting which schools would offer lunches and failed to treat equally those pupils who had greatest need for lunches in violation of National School Lunch Act, § 1751 et seq. of this title, and U.S.C.A.Const. Amend. 14, federal court had jurisdiction to hear constitutional claim and grant relief. Ayala v. District 60 School Bd. of Pueblo, Colo., D.C.Colo.1971, 327 F.Supp. 980. Federal Courts 177

1266. ---- National Voter Registration Act, statutory violation, deprivation of constitutional or statutory rights generally

Private persons cannot support § 1983 claim based upon alleged violation of National Voter Registration Act (NVRA); NVRA provides detailed and exclusive method of enforcement. National Coalition for Students with Disabilities Educ. and Legal Defense Fund v. Allen, E.D.Va.1997, 961 F.Supp. 129, reversed 152 F.3d 283. Civil Rights 1029

1267. ---- Native American Graves Protection and Repatriation Act, statutory violation, deprivation of constitutional or statutory rights generally

Private companies, law firms, and private employees who were involved in construction of golf course on alleged burial grounds of the Lipan Apache tribe were not liable to lineal descendant under § 1983 for failing to return human remains, absent any allegation that private entities and employees had acted in concert with any governmental entity to deprive him of his rights. Castro Romero v. Becken, C.A.5 (Tex.) 2001, 256 F.3d 349. Civil Rights 1326(5)

1268. ---- Older Americans Act, statutory violation, deprivation of constitutional or statutory rights generally

For purpose of determining availability of private right of action under § 1983, potential service provider rejected from inclusion in program for provision of legal services under Older Americans Act (OAA) was not "intended beneficiary" of OAA; Congress intended statutory provisions at issue to be for benefit of elders in need of services rather than for benefit of each group competing for grant thereunder, OAA's conveyance of benefits on selected grantees did not indicate Congressional intent to benefit rejected grantees, and rejected provided would not necessarily benefit from injunction requiring agencies to comply with OAA selection criteria. Legal Services of Northern California, Inc. v. Arnett, C.A.9 (Cal.) 1997, 114 F.3d 135. Civil Rights 1330(6)

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1269. ---- Omnibus Crime Control and Safe Streets Act, statutory violation, deprivation of constitutional or statutory rights generally

Although plaintiff had right, under section 3789g of this title prohibiting release of certain statistical and criminal history information for purposes unrelated to law enforcement, his use of this section as a remedy was foreclosed by enactment of Privacy Act, section 552a of Title 5, which applies only to agencies of the United States government, and thus action under this section could not be maintained to remedy violations of the first mentioned section 3789g of this title by state and local officials. Polchowski v. Gorris, C.A.7 (Ill.) 1983, 714 F.2d 749. Civil Rights 1040

1270. ---- Parental Kidnapping Prevention Act, statutory violation, deprivation of constitutional or statutory rights generally

Civil rights complaint alleging that plaintiff's former husband, officers and employees of Tennessee County sheriff's department, and others conspired to deprive plaintiff of custody of her children, which had been awarded to her under terms of Texas divorce decree, failed to state a cause of action under the Parental Kidnapping Prevention Act of 1980 [28 U.S.C.A. § 1738A] since that statute pertains to interstate jurisdictional disputes involving conflicting custody decrees, and acts of Tennessee defendants neither failed to enforce nor modified Texas decree. Hooks v. Hooks, C.A.6 (Tenn.) 1985, 771 F.2d 935. Conspiracy 18

1271. ---- Privacy act, statutory violation, deprivation of constitutional or statutory rights generally

Rights conferred by section of Privacy Act barring agencies from denying any right because of individual's refusal to disclose his social security account number could be enforced by a private right of action under § 1983. Schwier v. Cox, C.A.11 (Ga.) 2003, 340 F.3d 1284, on remand 412 F.Supp.2d 1266. Civil Rights 1040

A private plaintiff may not maintain a § 1983 action against a state official, in either her official or individual capacity, to remedy alleged violations of the Privacy Act's prohibition against denying a right provided by law because of an individual's refusal to disclose a social security number. Dittman v. California, C.A.9 (Cal.) 1999, 191 F.3d 1020, certiorari denied 120 S.Ct. 2717, 530 U.S. 1261, 147 L.Ed.2d 982. Civil Rights 1040

1272. ---- Procurement provisions, statutory violation, deprivation of constitutional or statutory rights generally

Express provision for enforcement of federal procurement standards relating to supply of foodstuffs to school district by Secretary forecloses implied private right of action under civil rights statutes [42 U.S.C.A. §§ 1983, 1985] by disappointed bidder to challenge award of contract to supply foodstuffs. Sowell's Meats and Services, Inc. v. McSwain, C.A.4 (S.C.) 1986, 788 F.2d 226. Civil Rights 1330(6)

1273. ---- Protection and Advocacy for Mentally Ill Individuals Act, statutory violation, deprivation of constitutional or statutory rights generally

Restatement of Bill of Rights for Mental Health Patients which provides that it is the sense of Congress that each state should review and revise, if necessary, its laws to ensure that mental health patients receive required protection and services is merely precatory, and creates no enforceable federal rights. Monahan v. Dorchester Counseling Center, Inc, C.A.1 (Mass.) 1992, 961 F.2d 987, as amended. Action 3; Mental Health 51.5

Protection and Advocacy for Mentally Ill Individuals Act did not create an individual federal right that could be enforced in §§ 1983 action. Smith v. AuSable Valley Community Mental Health Services, E.D.Mich.2006, 431 F.Supp.2d 743. Civil Rights 1029

Protection and Advocacy for Mentally Ill Individuals Act (PAMII) contains no express statement or comprehensive

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remedial scheme foreclosing a § 1983 enforcement action. Protection & Advocacy For Persons With Disabilities v. Armstrong, D.Conn.2003, 266 F.Supp.2d 303, 191 A.L.R. Fed. 661. Civil Rights 1029

Restatement of Bill of Rights for Mental Health Patients did not create federal rights which were enforceable in § 1983 civil rights action. Monahan v. Dorchester Counseling Center, Inc., D.Mass.1991, 770 F.Supp. 43, affirmed 961 F.2d 987, as amended. Civil Rights 1029

1274. ---- Rehabilitation Act, statutory violation, deprivation of constitutional or statutory rights generally

Regulations promulgated by Department of Housing and Urban Development (HUD) with respect to accessibility of housing, pursuant to §§ 504 of the Rehabilitation Act, did not construe or articulate personal rights created by statute, as required for finding that private right of action or cause of action under §§ 1983 existed against city housing authority for enforcement thereof; regulations were generally directed at housing authority's conduct and obligations as grantee, rather than being phrased in terms of any beneficiary's entitlement, related to institutional policy and practice rather than to individual instances of discrimination, and had systemwide focus. Three Rivers Center for Independent Living v. Housing Authority of City of Pittsburgh, C.A.3 (Pa.) 2004, 382 F.3d 412. Civil Rights 1021; Civil Rights 1330(6)

Client failed to state cognizable § 1983 claim with respect to failure of New York Vocational Educational Services for Individuals with Disabilities (VESID) to maintain client's rehabilitation services during his state administrative appeals, since there was no federal requirement to provide "status quo" benefits at time of client's appeal, and client alleged only that state did not comply with its own regulations regarding "status quo" benefits. Doe v. Pfrommer, C.A.2 (N.Y.) 1998, 148 F.3d 73. Civil Rights 1053

Disabled individual could challenge, under § 1983, state rehabilitation agency's policy of disfavoring graduate school assistance and favoring vocational objectives which required no graduate level training on grounds that policy violated Title I of Rehabilitation Act, which provides for vocational assistance and was enacted under spending clause; Rehabilitation Act created enforceable right to individualized written rehabilitation program (IWRP) consistent with individual's unique strengths and abilities, and Congress did not foreclose enforcement of Title I. Mallett v. Wisconsin Div. of Vocational Rehabilitation, C.A.7 (Wis.) 1997, 130 F.3d 1245. Civil Rights 1069

Disabled client who was receiving rehabilitation from state, in accordance with applicable sections of Rehabilitation Act of 1973, could bring § 1983 action challenging state's policy prohibiting reimbursement for "factory-installed" automotive equipment; statute provided measuring rod for compliance by specifically listing goods and services that states must furnish to eligible clients, any discretion states had in providing services was limited, and Congress did not intend to foreclose enforcement of sections under § 1983. Marshall v. Switzer, C.A.2 (N.Y.) 1993, 10 F.3d 925, on remand 900 F.Supp. 604. Civil Rights 1021; Civil Rights 1053

Where plaintiff did not prevail in her private action under Rehabilitation Act of 1973, section 794 of Title 29, prohibiting discrimination against otherwise qualified handicapped individuals, this section was not available to her to remedy the violation. Norcross v. Sneed, W.D.Ark.1983, 573 F.Supp. 533, affirmed 755 F.2d 113. Civil Rights 1029

Where the factors do not conclusively show that the Rehabilitation Act of 1973, section 701 et seq. of Title 29, was intended to provide the exclusive means of asserting and protecting the rights secured by the Act, it is proper to apply the general rule and allow an action under this section. Sanders by Sanders v. Marquette Public Schools, W.D.Mich.1983, 561 F.Supp. 1361. See, also, Philipp v. Carey, N.D.N.Y.1981, 517 F.Supp. 513. Civil Rights 1307

Handicapped person could not maintain cause of action under this section for alleged violations of the

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Rehabilitation Act of 1973, section 701 et seq. of Title 29, since court had foreclosed private enforcement of the Act, under either section 793 or 794 of Title 29, in case in which it was not shown that the program alleged to be discriminatory was funded by the federal government for the purpose of providing employment. Moxley v. Vernot, S.D.Ohio 1982, 555 F.Supp. 554. Civil Rights 1117

Blind individual alleging that New Jersey Commission for Blind and Visually Impaired and the Commission's executive director unlawfully denied him rehabilitative services and benefits to which he was entitled under the Rehabilitation Act of 1973, section 720 et seq. of Title 29, was entitled to enforce provisions of Act against defendants under this section creating a federal cause of action against persons whose misconduct under color of state law violates the constitutional rights of another, because statutory provisions upon which individual placed primary reliance created rights enforceable under this section, and because Congress did not intend to foreclose a remedy under this section for enforcement of the Act. Ryans v. New Jersey Com'n For The Blind and Visually Impaired, D.C.N.J.1982, 542 F.Supp. 841. Civil Rights 1053

Private right of action was unavailable under federal civil rights statute for Rehabilitation Act violations alleged by disabled persons' advocacy group that sued metropolitan transit authority, since act incorporated express private means of redress that was not overcome by any provision providing for greater protection via other federal statutes. Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority, D.D.C.2006, 2006 WL 3704656. Civil Rights 1313

1275. ---- Resources Conservation and Recovery Act, statutory violation, deprivation of constitutional or statutory rights generally

The comprehensive remedial devices in the Resource Conservation and Recovery Act of 1976 foreclosed a claim under § 1983. Garcia v. Cecos Intern., Inc., C.A.1 (Puerto Rico) 1985, 761 F.2d 76.

Resource Conservation and Recovery Act's (RCRA) statutory scheme was sufficiently comprehensive to preclude cause of action under § 1983. Leland v. Moran, N.D.N.Y.2002, 235 F.Supp.2d 153, affirmed 80 Fed.Appx. 133, 2003 WL 22533185.

1276. ---- Safe Schools Act, statutory violation, deprivation of constitutional or statutory rights generally

School authorities did not violate Safe Schools Act by showing deliberate indifference to elementary school student attacked by bullies, so as to be subject to suit under § 1983; authorities were not under notice of potential liability under Act, as its primary purpose was to provide funding to ensure school safety and there was no decision involving its use to impose liability for injuries to students. Stevenson ex rel. Stevenson v. Martin County Bd. of Educ., E.D.N.C.1999, 93 F.Supp.2d 644, affirmed 3 Fed.Appx. 25, 2001 WL 98358, certiorari denied 122 S.Ct. 54, 534 U.S. 821, 151 L.Ed.2d 23. Civil Rights 1065; Schools 89.11(1)

1277. ---- Social Security Act generally, statutory violation, deprivation of constitutional or statutory rights generally

Provision of Title IV-D of Social Security Act governing distribution of state-collected child support did not, when read as a whole, create federal right individually enforceable under §§ 1983 to state's strict compliance with statute's terms on part of custodial parents, given that statute, which focused on relationships between different federal programs and provided guidelines for state agencies, was not couched in mandatory terms. Walters v. Weiss, C.A.8 (Ark.) 2004, 392 F.3d 306. Civil Rights 1057

Provisions of Title IV-D of Social Security Act which set forth enforcement obligations which must be met by a state plan for child and spousal support, and federal regulations setting forth guidelines states must use in locating

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noncustodial parents and standards for monitoring compliance with support obligations, do not give rise to a federal right that is enforceable through private cause of action under § 1983. Clark v. Portage County, Ohio, C.A.6 (Ohio) 2001, 281 F.3d 602. Civil Rights 1057; Civil Rights 1330(6)

Social Security Act (SSA) does not preclude private action pursuant to § 1983 to compel state agency to apply proper standards to initial disability determinations. Laird v. Stilwill, N.D.Iowa 1997, 982 F.Supp. 1345. Civil Rights 1313; Civil Rights 1330(6)

Alleged deprivation of Social Security disability claimants' right to have disability determinations made by doctors was not itself injury sufficient to support cause of action under § 1983. Goodnight v. Chater, D.Utah 1997, 960 F.Supp. 1538. Civil Rights 1052

This section could be used by two needy homeless families to enforce their purported right to emergency shelter under section 601 et seq. of this title. Koster v. Webb, E.D.N.Y.1983, 598 F.Supp. 1134.

Various federal and state judges were entitled to judicial immunity in civil rights action brought by recipient of social security disability benefits, alleging that judges violated his constitutional rights by ignoring evidence of his disability. Spearman v. U.S., C.A.7 (Ill.) 2003, 80 Fed.Appx. 513, 2003 WL 22535208, Unreported. Civil Rights 1376(8)

1278. ---- Sportfish Recreation Act, statutory violation, deprivation of constitutional or statutory rights generally

Federal Aid in Sportfish Recreation Act does not create federal right, enforceable under § 1983, to equal access for boats of common horsepower ratings at boat launch facilities constructed or maintained under Act; portion of regulation promulgated under Act, allegedly requiring funded facilities to accommodate power boats with common horsepower ratings, was too far removed from Congressional intent to create enforceable right itself. Kissimmee River Valley Sportsman Ass'n v. City of Lakeland, C.A.11 (Fla.) 2001, 250 F.3d 1324, certiorari denied 122 S.Ct. 613, 534 U.S. 1040, 151 L.Ed.2d 537. Civil Rights 1029

1279. ---- Telecommunications Act, statutory violation, deprivation of constitutional or statutory rights generally

Individual may not enforce, through §§ 1983 action, limitations placed by Telecommunications Act (TCA) on regulation by local zoning authorities of facilities for wireless communications; Congress did not mean the judicial remedy expressly authorized by TCA to coexist with alternative remedy available in §§ 1983 action, and enforcement of TCA through §§ 1983 would distort the scheme of expedited judicial review and limited remedies created by TCA. City of Rancho Palos Verdes, Cal. v. Abrams, U.S.2005, 125 S.Ct. 1453, 544 U.S. 113, 161 L.Ed.2d 316, on remand 406 F.3d 1094. Civil Rights 1073; Civil Rights 1310

Section 1983 remedies, including right to attorney fees for prevailing party under § 1988, are unavailable in suit to enforce rights granted by Telecommunications Act; Act's conferral of right to sue is presumed to entitle successful plaintiff to usual remedies, which do not include attorney fees. PrimeCo Personal Communications, Ltd. Partnership v. City of Mequon, C.A.7 (Wis.) 2003, 352 F.3d 1147. Civil Rights 1073; Civil Rights 1310; Civil Rights 1479

Telecommunications Act of 1996 creates a comprehensive remedial scheme that furnishes private judicial remedies, so that a claim for a violation of Act may not be asserted under § 1983. Nextel Partners Inc. v. Kingston Tp., C.A.3 (Pa.) 2002, 286 F.3d 687.

Issue of whether city's ordinance, resolution, and franchise agreement with telecommunications carrier imposed burden on interstate commerce incommensurate with local benefits secured involved fact question that could not be resolved on motion to dismiss carrier's §§ 1983 claim against city for violation of dormant Commerce Clause.

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Qwest Communications Corp. v. City of New York, E.D.N.Y.2005, 387 F.Supp.2d 191. Federal Civil Procedure 1831

County failed to rebut presumption that subsection of Telecommunications Act (TCA), that precluded state or local governments from having effect of prohibiting ability of any entity to provide any interstate or intrastate telecommunications service, created federal right enforceable under §§ 1983 by federally licensed provider of commercial mobile radio service, rather than just statutory right; subsection of TCA and §§ 1983 were not incompatible, remedy under TCA statute governing removal of barriers to entry was not comprehensive in nature, and savings clause in TCA was broad, sweeping, and gave clear indication that Congress intended to leave federal laws untouched and unaltered. Sprint Telephony PCS, L.P. v. County of San Diego, S.D.Cal.2004, 311 F.Supp.2d 898, opinion clarified 2004 WL 859333. Civil Rights 1041

Remedy was available under § 1983 for town zoning board's violation of the Telecommunications Act, resulting from its decision to deny wireless communications services provider's zoning variance application to build wireless communications tower, which constituted "effective prohibition" of provision of wireless communications services in town; Act did not provide comprehensive enforcement scheme intended to supplant § 1983 remedy, Act created substantive rights, and enforcement of provider's rights under Act through § 1983 action did not strain judicial competence. Omnipoint Holdings, Inc. v. Town of Westford, D.Mass.2002, 206 F.Supp.2d 166. Civil Rights 1073

Action under § 1983, seeking vindication for violation of federal constitutional or statutory rights, may not be based solely upon violation of Telecommunications Act. Nextel Communications of Mid-Atlantic, Inc. v. Town of Randolph, D.Mass.2002, 193 F.Supp.2d 311.

Telecommunications Act's (TCA) proscription of prohibition or effective prohibition of personal wireless services is not enforceable via § 1983, since Act itself provides complete private enforcement scheme. Sprint Spectrum, L.P. v. Town of Ogunquit, D.Me.2001, 175 F.Supp.2d 77.

Violation of Telecommunications Act (TCA) can support suit under § 1983 for violation of federal rights. SBA Communications Inc. v. Zoning Com'n of Town of Franklin, D.Conn.2001, 164 F.Supp.2d 280.

Local public service commission's imposition of requirements on incumbent local exchange carrier (ILEC) which violated Federal Telecommunications Act of 1996 was not actionable under § 1983; Act's provisions were designed to foster competition, not benefit ILECs. Verizon North, Inc. v. Strand, W.D.Mich.2000, 140 F.Supp.2d 803, affirmed in part and vacated in part 309 F.3d 935, certiorari denied 123 S.Ct. 1649, 538 U.S. 946, 155 L.Ed.2d 488. Civil Rights 1041

Telecommunications service provider did not have property right in obtaining zoning permit to erect wireless telecommunications tower, and thus local authority's denial of permit was not violation of procedural or substantive due process, regardless of how egregious its conduct; both federal and local law gave authority discretion to make zoning decisions. Vertical Broadcasting, Inc. v. Town of Southampton, E.D.N.Y.2000, 84 F.Supp.2d 379. Constitutional Law 277(1)

Allegation that state education officials impeded effort by public utility licensed by Federal Communications Commission (FCC) to provide telecommunications services by denying its application to install cell site on roof of high school stated § 1983 claim for violation of utility's rights under Telecommunications Act of 1996. Sprint Spectrum L.P. v. Mills, S.D.N.Y.1999, 65 F.Supp.2d 161. Civil Rights 1395(1)

For purposes of determining whether it created federal right that could support § 1983 claim, section of Telecommunications Act, which stated that provisions governing removal of barriers to entry did not affect local government's right to manage public rights-of-way and to require reasonable compensation, on competitively

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neutral and nondiscriminatory basis, for use of rights-of-way, did not impose any mandatory obligation on local government. Cablevision of Boston, Inc. v. Public Imp. Com'n of City of Boston, D.Mass.1999, 38 F.Supp.2d 46, affirmed 184 F.3d 88. Civil Rights 1041

1280. ---- United States Housing Act, statutory violation, deprivation of constitutional or statutory rights generally

Nothing in the Housing Act or the Brooke Amendment evidenced that Congress intended to preclude a § 1983 claim by tenants living in low-income housing projects alleging that city redevelopment and housing authority overbilled them for utilities and thereby violated rent ceiling imposed by the Amendment and implementing regulations of the Department of Housing and Urban Development. Wright v. City of Roanoke Redevelopment and Housing Authority, U.S.Va.1987, 107 S.Ct. 766, 479 U.S. 418, 93 L.Ed.2d 781.

Tenants of federally subsidized housing could not redress via § 1983 alleged violations of United States Housing Act and its implementing regulations establishing Section 8 moderate rehabilitation program housing quality standards; Act placed conditions upon property owners' receipt of federal assistance rather than conferring rights on class of tenants, and used imprecise language, i.e. "decent, safe, and sanitary." Banks v. Dallas Housing Authority, C.A.5 (Tex.) 2001, 271 F.3d 605. Civil Rights 1082

Tenants in federal public housing have neither a § 1983 cause of action nor an implied private right of action to enforce rent provisions of the Brooke Amendment. Nelson v. Greater Gadsden Housing Authority, C.A.11 (Ala.) 1986, 802 F.2d 405. Civil Rights 1330(3); United States 82(3.5)

Individual public housing tenant could not bring action under the civil rights act of 1871 [42 U.S.C.A. § 1983] for public landlord's random and unauthorized failure to maintain properly her dwelling unit on theory that such action violates provision of the United States Housing Act which calls for decent, safe, and sanitary dwellings. (Friedman, J., did not join holding.) Samuels v. District of Columbia, C.A.D.C.1985, 770 F.2d 184, 248 U.S.App.D.C. 128, on remand 650 F.Supp. 482. Civil Rights 1331(3)

Housing Act provision concerning housing quality standards and implementing regulations did not create enforceable federal right, as required to support action under § 1983 alleging that city housing authority violated statute and regulations brought by tenants of public housing development on behalf of estate of their two-year-old grandson who was killed in fire in development; statute set standards for distribution of federal funds, but did not create individual entitlement to public housing unit in particular condition, and right asserted was too vague and amorphous, since it would have varied depending on content of local and state building codes. Hill v. San Francisco Housing Authority, N.D.Cal.2002, 207 F.Supp.2d 1021. Civil Rights 1082

Private cause of action was available under § 1983 to residents of public housing project for alleged violation of regulation, promulgated under United States Housing Act, requiring that a public housing lease reasonably accommodate tenants' guests; tenants were clearly within class of persons whom regulation was intended to benefit, regulation was not too vague for effective interpretation and enforcement, and use of "shall" in regulation indicated it was mandatory rather than merely precatory. Diggs v. Housing Authority of City of Frederick, D.Md.1999, 67 F.Supp.2d 522. Civil Rights 1330(3)

Section of United States Housing Act which sets out terms public housing authority lease must contain does not create private right of action or enforceable rights under federal civil rights statute. Thomas v. Chicago Housing Authority, N.D.Ill.1997, 981 F.Supp. 558. Action 3; Civil Rights 1082

Policy declarations in United States Housing Act, seeking to promote decent, safe, and sanitary housing, did not create rights in public housing tenants that could be enforced through § 1983 civil rights claim; disputed statute set forth policy language and did not contain unambiguous language establishing disputed rights. Imes v. Philadelphia

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Housing Authority, E.D.Pa.1996, 928 F.Supp. 526. Civil Rights 1082

United States Housing Act and accompanying regulations, requiring public housing authorities to include obligation to maintain dwelling unit and project in decent, safe, and sanitary condition, established residents' right to have lease include required protections, but did not create rights to maintenance or repair that could be enforced in § 1983 civil rights suit. Imes v. Philadelphia Housing Authority, E.D.Pa.1996, 928 F.Supp. 526. Civil Rights 1082

Section 8 Existing Housing Program statutory admission preferences for Certificate Program and Voucher Program were mandatory, self-executing and accorded "right" enforceable under § 1983 in favor of families perceived by Congress to be in greatest need of housing assistance. Drake v. Pierce, W.D.Wash.1988, 691 F.Supp. 264.

Housing assistance participant had implied private right of action to redress alleged violation of federal regulations under Housing Act in action brought pursuant to § 1983. Holly v. Housing Authority of New Orleans, E.D.La.1988, 684 F.Supp. 1363. Civil Rights 1330(3)

Requirement that public housing agency use leases which obligate public housing agency to maintain housing project in decent, safe, and sanitary condition did not give residents of housing project right to bring action in federal court based on alleged breach of underlying lease and, therefore, was not actionable under 42 U.S.C.A. § 1983, relating to deprivation of civil rights. Edwards v. District of Columbia, D.D.C.1985, 628 F.Supp. 333, affirmed 821 F.2d 651, 261 U.S.App.D.C. 163. Civil Rights 1082; Civil Rights 1330(3)

1281. ---- Uniform Relocation Assistance and Real Property Acquisition Policies Act, statutory violation, deprivation of constitutional or statutory rights generally

Provision of Relocation Assistance Act for uniform policy on real property acquisition practices does not create rights actionable under federal civil rights statute. Beachy v. Board of Aviation Com'rs of City of Kokomo, Ind., S.D.Ind.1988, 699 F.Supp. 742. Civil Rights 1071

By embarking pursuant to highway project, upon program of displacement of plaintiffs and class they represented without providing adequate relocation facilities and other assistance required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, § 4601 et seq. of this title, state defendants had, acting under color of state law, deprived plaintiffs and the class of rights, privileges or immunities secured by law, thus they violated this section and plaintiffs were entitled to award of attorney fee under § 1988 of this title. La Raza Unida of Southern Alameda County v. Volpe, N.D.Cal.1977, 440 F.Supp. 904. Civil Rights 1479

1282. ---- Vietnam Era Veterans' Readjustment Assistance Act, statutory violation, deprivation of constitutional or statutory rights generally

Alleged violation of Veterans' Reemployment Rights Act could not support civil rights suit under § 1983. Grady v. El Paso Community College, C.A.5 (Tex.) 1992, 979 F.2d 1111. Civil Rights 1120

Allegations that city police officials maintained policy prohibiting membership in active reserves or National Guard by police officers and requiring police recruits to resign from active reserve participation stated § 1983 claim for violation of Vietnam Era Veterans' Readjustment Assistance Act and stated claim for violation of New Hampshire statute prohibiting discrimination against members of or those expressing interest in National Guard. Boyle v. Board of Police Com'rs of City of Portsmouth, D.N.H.1989, 717 F.Supp. 23. Armed Services 122(3); Civil Rights 1395(8)

1283. ---- Water Pollution Control Act, statutory violation, deprivation of constitutional or statutory rights

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generally

Existence of express remedies contained in Federal Water Pollution Control Act, § 1251 et seq. of Title 33, and Marine Protection, Research, and Sanctuaries Act of 1972, § 1401 et seq. of Title 33, demonstrated Congressional intent to supplant any remedy that otherwise would be available under this section. Middlesex County Sewerage Authority v. National Sea Clammers Ass'n, U.S.N.J.1981, 101 S.Ct. 2615, 453 U.S. 1, 69 L.Ed.2d 435.

Suit may not be brought under general federal question jurisdiction or the federal civil rights statute to enforce the Clean Water Act. City of Las Vegas, Nevada v. Clark County, Nevada, C.A.9 (Nev.) 1984, 755 F.2d 697.

This section may, absent other constraints, provide protection for rights secured by Federal Water Pollution Control Act, § 1251 et seq. of Title 33. Chesapeake Bay Foundation, Inc. v. Virginia State Water Control Bd., E.D.Va.1980, 501 F.Supp. 821.

1284. ---- Wiretapping act, statutory violation, deprivation of constitutional or statutory rights generally

Plaintiffs were barred, in their § 1983 action alleging unconstitutional use of wiretapping, from recovery under Federal Wiretapping Statute; defendants were local officials who obtained wiretap order from state judge, and California Wiretapping Statute was not preempted by federal law. Whitaker v. Garcetti, C.D.Cal.2003, 291 F.Supp.2d 1132. States 18.81; Telecommunications 1433

County employees' claims against county and county official under federal wiretapping statute did not preclude their § 1983 claims as to those same defendants, notwithstanding fact that claims arose out of same tape-recording incident, as employees' § 1983 claims were based on alleged violation of constitutional, rather than statutory, rights. Dorris v. Absher, M.D.Tenn.1997, 959 F.Supp. 813, affirmed in part, reversed in part 179 F.3d 420. Civil Rights 1311

1285. ---- Miscellaneous statutes, statutory violation, deprivation of constitutional or statutory rights generally

Alleged violations of Interstate Corrections Compact (ICC) procedures were not violations of federal law, and therefore not actionable under §§ 1983. Smith v. Cummings, C.A.10 (Kan.) 2006, 445 F.3d 1254. Civil Rights 1095

Allegations in civil rights complaint filed by Virgin Islands taxpayer, that Virgin Islands' method of valuing real property subject to taxation based upon its replacement cost and declaration value did not result in property tax which was based on "actual value" of property involved, in violation of federal statute governing property taxation in the Virgin Islands, adequately alleged federal claim, over which federal court could exercise jurisdiction. Bluebeard's Castle, Inc. v. Government of Virgin Islands, C.A.3 (Virgin Islands) 2003, 321 F.3d 394, certiorari denied 124 S.Ct. 153, 540 U.S. 823, 157 L.Ed.2d 44. Federal Courts 1023

Real estate appraiser could maintain cause of action under § 1983 for alleged violation by state officials of federal statute that required state to allow out-of-state appraisers to engage temporarily in the business of appraising, if certain requirements were met; appraiser, who alleged that he qualified as temporary real estate appraiser under statute, was intended beneficiary of statute, statute imposed binding obligations on state, and appraiser's purported right to temporary license was enforceable by the judiciary. Groten v. California, C.A.9 (Cal.) 2001, 251 F.3d 844. Civil Rights 1071; Civil Rights 1073

Federal regulation requiring local Head Start agencies to establish and implement written personnel policies for staff that had to include procedures for termination of employment did not create right under §§ 1983 that was enforceable by terminated teacher; she was not member of class of Head Start Act's intended beneficiaries, and no statutory provision conferred personal right to continued employment in Head Start program. Holocheck v.

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Luzerne County Head Start, Inc., M.D.Pa.2005, 385 F.Supp.2d 491. Civil Rights 1133

Residential Lead-Based Paint Hazard Reduction Act (RLPHRA) and Community Development Act (CDA) do not encompass privately enforceable rights under § 1983. Mair v. City of Albany, New York, N.D.N.Y.2004, 303 F.Supp.2d 237. Civil Rights 1082

Workforce Investment Act (WIA) provisions prohibiting discrimination based on political affiliation or belief and requiring adoption of implementing regulations did not expressly bar § 1983 action for political discrimination brought by former employee of municipal consortium operating under the WIA. Torres Ramos v. Consorcio De La Montaña, D.Puerto Rico 2003, 286 F.Supp.2d 126. Civil Rights 1126

Private right of action, enforceable through § 1983, exists in relation to Home Energy Assistance Program (HEAP) statute, despite voluntary nature of state's participation in HEAP program. Kapps v. Wing, E.D.N.Y.2003, 283 F.Supp.2d 866, affirmed in part, vacated in part 404 F.3d 105. Civil Rights 1082

Natural Gas Act (NGA) did not confer on natural gas pipeline company a right not be regulated by states, enforceable under § 1983, since NGA had no individualized, rights-creating language in favor of natural gas pipeline company. Northern Nat. Gas Co. v. Munns, S.D.Iowa 2003, 254 F.Supp.2d 1103. Civil Rights 1029

Violations of Omnibus Budget Reconciliation Act (OBRA) and Nursing Home Reform Act (NHRA) may form basis for § 1983 claim. Tinder v. Lewis County Nursing Home Dist., E.D.Mo.2001, 207 F.Supp.2d 951.

1286. Regulation violation, deprivation of constitutional or statutory rights generally

Private parties cannot enforce regulations under §§ 1983 when the regulations do more than define or flesh out the content of a specific right conferred upon the plaintiffs by the enabling statute and instead give the statute a scope beyond that Congress contemplated; under §§ 1983, therefore, regulations give rise to a right of action only insofar as they construe a personal right that a statute creates. Three Rivers Center for Independent Living v. Housing Authority of City of Pittsburgh, C.A.3 (Pa.) 2004, 382 F.3d 412. Civil Rights 1027

Disparate-impact regulations promulgated by Environmental Protection Agency (EPA) under Title VI of Civil Rights Act of 1964 did not create right enforceable via § 1983, since alleged federal right, freedom from disparate-impact discrimination in administration of programs or activities receiving EPA assistance regardless of discriminatory intent, did not appear explicitly in authorizing statute, which concerned agencies' effectuation of Act's intentional discrimination provision. South Camden Citizens in Action v. New Jersey Department of Environmental Protection, C.A.3 (N.J.) 2001, 274 F.3d 771, certiorari denied 122 S.Ct. 2621, 536 U.S. 939, 153 L.Ed.2d 804, on remand 254 F.Supp.2d 486. Civil Rights 1055

If statute itself confers specific right upon plaintiff, and valid regulation merely further defines or fleshes out content of that right, then statute--in conjunction with regulation--may create federal right as further defined by regulation, so that regulation may be enforceable under § 1983; however, if regulation defines content of statutory provision that creates no federal right under three-prong "federal right" test, or if regulation goes beyond explicating specific content of statutory provision and imposes distinct obligations in order to further broad objectives underlying statutory provision, regulation is too far removed from Congressional intent to constitute "federal right" enforceable under § 1983. Harris v. James, C.A.11 (Ala.) 1997, 127 F.3d 993. Civil Rights 1027

A regulatory violation, like a violation of state law, is not inherently sufficient to support a § 1983 claim. Boveri v. Town of Saugus, C.A.1 (Mass.) 1997, 113 F.3d 4. Civil Rights 1031

Allegation by tenants of federally-funded public housing that public housing officials had violated applicable

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Department of Housing and Urban Development regulations stated cognizable claim under the civil rights act of 1871 [42 U.S.C.A. § 1983], where allegation was that officials had systematically failed to provide public housing tenants with administrative grievance procedures mandated by the United States Housing Act. Samuels v. District of Columbia, C.A.D.C.1985, 770 F.2d 184, 248 U.S.App.D.C. 128, on remand 650 F.Supp. 482. Civil Rights 1395(3)

Declaratory ruling by Federal Communications Commission (FCC) did not unambiguously, with explicit rights-creating terms, indicate congressional intent to confer individual rights to construct radio towers on amateur radio operators, even though such persons belonged to class that would benefit from limited federal preemption of local zoning laws established under ruling, and therefore ruling did not create rights enforceable by amateur radio operators under § 1983. Bosscher v. Township of Algoma, W.D.Mich.2003, 246 F.Supp.2d 791. Civil Rights 1073

Regulation allowing health care providers to apply for Medicaid grant did not create any federal right enforceable under § 1983. Planned Parenthood of Cent. Tex. v. Sanchez, W.D.Tex.2003, 280 F.Supp.2d 590, remanded 403 F.3d 324. Civil Rights 1052

Even if agency regulations could establish federal right enforceable under § 1983, regulations governing manufacture and control of investigational biological drugs used in clinical trials and establishing protections for human research subjects would not give rise to private right of action; regulations were not phrased in terms of persons benefitted, regulations were designed to control aggregate behavior of research facilities, investigators, and drug manufacturers by subjecting them to overarching standards of conduct, and enforcement sections of the regulations provided for regulatory action. Wright v. Fred Hutchinson Cancer Research Center, W.D.Wash.2002, 269 F.Supp.2d 1286, reconsideration denied. Civil Rights 1029; Civil Rights 1045

Airport and Airway Improvement Act (AAIA) section and Federal Aviation Administration (FAA) regulation, requiring airport operator to allow aircraft owners to fuel their own aircraft, were enforceable under § 1983. Cedarhurst Air Charter, Inc. v. Waukesha County, E.D.Wis.2000, 110 F.Supp.2d 891. Civil Rights 1029

State's alleged failure to obtain advance federal approval of proposed change in pharmacy dispensing fee did not give rise to § 1983 claim by pharmacists; source of alleged requirement was regulation and not statute, and any requirement of advance notice was not intended to benefit health care providers. Florida Pharmacy Ass'n v. Cook, N.D.Fla.1998, 17 F.Supp.2d 1293. Civil Rights 1052

Federal regulation alone does not create federal right for purposes of § 1983 cause of action. Brantley By and Through Brantley v. Independent School Dist. No. 625, St. Paul Public Schools, D.Minn.1996, 936 F.Supp. 649. Civil Rights 1027

Class consisting of Medicaid recipients who, as result of agency error or delay, incurred out-of-pocket expenses for authorized Medicaid services and were not provided full reimbursement for those expenses had right under federal corrective action regulation which was enforceable under § 1983; Medicaid recipients were intended beneficiaries of corrective action regulation and whether or not payments were made directly to recipients was irrelevant, participating states were bound by regulation to make corrective payments promptly and recipients sought their out-of-pocket expenditures, a definite and precise mathematical amount, such that their asserted interest was not too vague and amorphous as to be beyond competence of judiciary to enforce. Greenstein by Horowitz v. Bane, S.D.N.Y.1993, 833 F.Supp. 1054. Civil Rights 1052

Allegation that Oklahoma officials violated Boren Amendment and its implementing regulations because Oklahoma's 1992 Medicaid nursing facility rate did not properly take into account economic trends and conditions, and was based solely on budgetary considerations was sufficient to state claim against officials, based on violation of nursing facilities' procedural right to findings and assurances that rates are reasonable and adequate to cover

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costs of care. Oklahoma Nursing Home Ass'n v. Demps, W.D.Okla.1992, 792 F.Supp. 721. Health 487(3)

1287. Court order violation, deprivation of constitutional or statutory rights generally

Consent decrees are not automatically enforceable through civil actions under § 1983. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253 . Civil Rights 1056; Federal Civil Procedure 2397.6

Federal civil rights action is not appropriate means by which to seek enforcement of consent decree; remedial decrees do not create or enlarge constitutional rights, or create rights secured by laws sufficient to serve as basis for civil rights liability, and allowing enforcement of consent decrees in civil rights actions would discourage prison officials from agreeing to such benefits. Klein v. Zavaras, C.A.10 (Colo.) 1996, 80 F.3d 432, rehearing denied. Civil Rights 1056; Civil Rights 1090; Federal Civil Procedure 2397.6

Consent decree may not be enforced through damage claim under § 1983. DeGidio v. Pung, C.A.8 (Minn.) 1990, 920 F.2d 525. Civil Rights 1056; Federal Civil Procedure 2397.6

Federal court order requiring at least three men to be assigned to each prison disciplinary unit could not alone serve as basis for liability under the civil rights statute, § 1983, to correctional officer injured in altercation with inmate, even though correctional officer was only guard working on particular cell block at time of his injury. Galloway v. State of La., C.A.5 (La.) 1987, 817 F.2d 1154. Civil Rights 1126

1288. Property interest, deprivation of constitutional or statutory rights generally--Generally

For purposes of showing protection of due process clause necessary to bring § 1983 claim, typical claim of entitlement is based on specific statutory or contractual provision and even rules or mutually explicit understandings may support due process claim of entitlement; property interest may be created by state statute, administrative rule, or explicit understanding. Adamson v. City of Provo, Utah, D.Utah 1993, 819 F.Supp. 934. Constitutional Law 277(1)

State law must provide plaintiff with a legitimate claim of entitlement and not simply a unilateral expectation of receiving alleged property in order for plaintiff to recover under this section for deprivation of a constitutionally protected right. Genesco Entertainment, a Div. of Lymutt Industries, Inc. v. Koch, S.D.N.Y.1984, 593 F.Supp. 743 . Civil Rights 1071

1289. ---- Application approval, property interest, deprivation of constitutional or statutory rights generally

Wrecking yard owners who had not obtained city approval of their application for state wrecking license renewal lacked protectable property interest in renewal, precluding §§ 1983 due process action against city alleging improper delays in approval; governing state statute gave city discretion to deny renewal application for noncompliance with local regulations, and thus city approval was condition precedent to reissuance. Thornton v. City of St. Helens, C.A.9 (Or.) 2005, 425 F.3d 1158. Constitutional Law 277(1)

Applicant for renewal of bail bond license had no valid license, and thus no property interest in license which was protected by due process, when county bail bond board refused to consider renewal application; applicant had sought renewal based on judicial decision to reinstate her expired license, but, before board refused consideration, decision had been reversed on appeal and writ of error denied by state supreme court. Burns v. Harris County Bail Bond Bd., C.A.5 (Tex.) 1998, 139 F.3d 513, rehearing denied. Bail 60; Constitutional Law 277(1)

Landfill applicant, which had received favorable recommendation from county's technical review and solid waste management committees, still had no "constitutionally protected property interest" in having its application

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approved such as might provide basis for § 1983 claim, where committees' recommendation was not binding on county board that reviewed landfill application. Michigan Environmental Resources Associates, Inc. v. Macomb County, E.D.Mich.1987, 669 F.Supp. 158, affirmed 875 F.2d 865. Constitutional Law 277(1)

Property owners, who had obtained a conditional approval from town to effect that plans submitted for mobile home park were acceptable as far as they went but that other matters had to be addressed prior to approval, had only a unilateral expectation that the plans might be approved and had no constitutionally protected property interest under Wisconsin law in completion of project in accordance with such plan; such a constitutionally protected property interest did not subsequently arise when town board reaffirmed its conditional approval before owners had complied with several of the conditions. Molgaard v. Town of Caledonia, E.D.Wis.1981, 527 F.Supp. 1073, affirmed 696 F.2d 58. Constitutional Law 278.2(1)

1290. ---- Bar admission, property interest, deprivation of constitutional or statutory rights generally

Individuals who never applied for bar admission did not have due process liberty or property interest in practice of law and, thus, individuals could not maintain § 1983 action against judges and attorneys respecting actions taken against unauthorized practice of law. Ippolito v. State of Fla., M.D.Fla.1993, 824 F.Supp. 1562. Constitutional Law 277(1); Constitutional Law 287.2(5)

1291. ---- Bond acceptance, property interest, deprivation of constitutional or statutory rights generally

Bail bonding agent did not have protected liberty or property interest under due process clause in having her bail bonds accepted at county jail, and thus was not entitled to notice or a hearing before being removed from county's list of approved bail bondsmen by county sheriff. Baldwin v. Daniels, C.A.5 (Miss.) 2001, 250 F.3d 943, rehearing denied. Bail 60; Constitutional Law 277(1); Constitutional Law 296(1)

1292. ---- Contracts, property interest, deprivation of constitutional or statutory rights generally

Construction contractor did not have protected property interest in his status as responsible bidder for government agency construction contracts, and thus, alleged wrongful determination by Puerto Rico Public Housing Authority (PRPHA) that contractor was not a responsible bidder, which allegedly resulted in loss of future contracting work with government, did not violate contractor's procedural due process rights. Redondo-Borges v. U.S. Dept. of Housing and Urban Development, C.A.1 (Puerto Rico) 2005, 421 F.3d 1. Territories 25

Unsuccessful bidder on contract to provide pay telephone service in city prison did not have property interest in its bid that was protected by due process clause, as would potentially support § 1983 claim; bidder was not awarded bid by city council, statements of city official could not constitute acceptance of bid due to his lack of authority to do so, and bidder could not show an abuse of the unfettered discretion that was held by city officials in awarding bid. Michigan Paytel Joint Venture v. City of Detroit, C.A.6 (Mich.) 2002, 287 F.3d 527. Constitutional Law 277(1)

Foster care facility's contract with department of health and human services was not a protected property interest under the due process clause, for purposes of § 1983 action brought by operator of facility against child abuse detective after contract was cancelled, where the contract was terminable at will and therefore did not have the permanence of tenure, and the parties did not have a dependency relationship similar to that created by welfare benefits. Omni Behavioral Health v. Miller, C.A.8 (Neb.) 2002, 285 F.3d 646, rehearing and rehearing en banc denied. Constitutional Law 277(1)

Electric membership corporations failed to state § 1983 claims against Georgia Department of Corrections officials for substantive due process violations, arising from award of contracts to electric utility for provision of electric service to new prison, alleging that officials violated state law competitive bidding requirements and deprived

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corporations of property right, as § 1983 substantive due process claims arising from nonlegislative deprivations of state-created property interests were not cognizable. Flint Elec. Membership Corp. v. Whitworth, C.A.11 (Ga.) 1995, 68 F.3d 1309, modified 77 F.3d 1321. Constitutional Law 276(2); States 98

Nonprofit administrator of Supplemental Food Program for Women, Infants and Children (WIC) had no "property interest" in funding beyond date existing contract expired, for purposes of § 1983 civil rights claim alleging violation of due process rights by state's decision to not renew contract. Southeast Kansas Community Action Program Inc. v. Secretary of Agriculture of U.S., C.A.10 (Kan.) 1992, 967 F.2d 1452. Constitutional Law 277(2)

Alleged simple breach of contract between laundry service and state university hospital did not establish necessary deprivation by university of constitutionally protected property interest, within scope of § 1983 civil rights action. Medical Laundry Services, a Div. of OPLCO, Inc. v. Board of Trustees of University of Alabama, C.A.11 (Ala.) 1990, 906 F.2d 571. Civil Rights 1041

Absent property interest in nontermination of contract to maintain city's parking meters, contractor had no federal claim against city for deprivation of property based upon city's premature termination of contract, even if city had initially decided to proceed under default provision of contract or even if contractor was constructively terminated prior to notification of city's subsequent decision to terminate under unconditional termination provision; contractor's remedy, if any, was state claim for breach of contract. S & D Maintenance Co., Inc. v. Goldin, C.A.2 (N.Y.) 1988, 844 F.2d 962. Civil Rights 1041; Municipal Corporations 254

Independent contractor did not have a property interest in her contract with the government to provide special education services, as required for contractor's §§ 1983 claim under the Fourteenth Amendment alleging she was denied due process, where the contract provided that the agreement could be terminated without cause. McGuire v. Warren, S.D.N.Y.2005, 404 F.Supp.2d 530. Constitutional Law 277(1)

Existence of a state contract, by itself, does not confer upon the contracting parties a due process-protected property interest, and breach of contract is not per se actionable under §§ 1983. Behavioral Healthcare Partners, Inc. v. Gonzalez-Rivera, D.Puerto Rico 2005, 392 F.Supp.2d 191. Constitutional Law 277(1)

Attorney hired by Puerto Rico municipality to represent it in legal action for recovery of deficiencies in the payment of municipal taxes for commercial activities, and accounting corporation hired by municipality to provide investigative, managerial, and technical accounting services in aid of that legal action, did not have property interests in their professional services contracts with municipality, as required to establish §§ 1983 claim that municipality and mayor deprived them of due process rights by failing to pay them for services rendered under their contracts. Ramirez v. Arlequin, D.Puerto Rico 2005, 357 F.Supp.2d 416, affirmed in part, reversed in part 447 F.3d 19. Constitutional Law 276(2); Constitutional Law 277(1); Territories 23

Municipality did not infringe upon entrepreneur's due process rights by terminating his five-year lease agreement with municipality without hearing, since contract expressly allowed for early termination of contract for a party's failure to comply with its terms and conditions, among which was timely payment of rent, and entrepreneur failed to comply with terms and conditions of lease agreement. Colon Rodriguez v. Lopez Bonilla, D.Puerto Rico 2004, 344 F.Supp.2d 333. Constitutional Law 291.6; Municipal Corporations 722

Low bidder on county construction contract did not have property right to awarding of contract which would have given rise to § 1983 cause of action where Texas County Purchasing Act gave county right to reject all bids and rebid project. DRT Mechanical Corp. v. Collin County, Tex., E.D.Tex.1994, 845 F.Supp. 1159. Constitutional Law 277(1)

Automobile salvager did not have constitutionally protected interest in his informal, unwritten towing agreement

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with township, and so he failed to state cognizable § 1983 civil rights cause of action based on claim that township police chief deprived him of his constitutional right to procedural due process in revoking his towing privileges without hearing; at most salvager had garden variety contract with township, rather than a constitutionally protected entitlement. Garner v. Township of Wrightstown, E.D.Pa.1993, 819 F.Supp. 435, affirmed 16 F.3d 403. Civil Rights 1088(1)

Breaches or nonrenewals of contracts do not amount to deprivation of property without due process actionable under § 1983. Cook v. Board of Sup'rs of Lowndes County, Miss., N.D.Miss.1992, 806 F.Supp. 610. Constitutional Law 278(1.3)

Contract awarded by city housing authority for rehabilitation of low income housing units did not create property interest protectible under Fourteenth Amendment, and, thus, contractor could not prevail on its claim that termination without notice and hearing deprived it of property without due process and violated equal protection. Linan-Faye Const. Co. Inc. v. Housing Authority of City of Camden, D.N.J.1992, 797 F.Supp. 376, affirmed 49 F.3d 915, rehearing and rehearing in banc denied. Constitutional Law 225.4; Constitutional Law 277(1); Constitutional Law 278(1.3); Municipal Corporations 354

Constitutionally protected property interests can be created by explicit or implied contractual terms. Pack v. O'Quinn, E.D.Ky.1990, 747 F.Supp. 358. Constitutional Law 277(1)

Operator of automobile races had a cognizable constitutional property interest in license agreement with owner of amusement park where races were held; license agreement was renewed annually as a matter of course, and agreement specifically limited circumstances under which it could be terminated to certain events; operator's interest, although arguably a revocable license within meaning of Pennsylvania law, was much more than meager, transitory or uncertain. LARA, Inc. v. South Whitehall Tp., E.D.Pa.1989, 729 F.Supp. 415. Constitutional Law 277(1)

Even assuming that unsuccessful bidder on state contract had been deprived of a property interest, such interest could not be vindicated under this section. Estey Corp. v. Matzke, N.D.Ill.1976, 431 F.Supp. 468. Civil Rights 1041

Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) of Medicaid Act created individual rights in foster children, enforceable under § 1983, to screening services at intervals that met standards of medical and dental practice and when medically necessary; eligible children under age 21, including foster children, were clearly intended beneficiaries of EPSDT, since language of EPSDT focused on needs of individual children, EPSDT lacked enforcement mechanism, and EPSDT was not too vague and amorphous to be enforced by judiciary. Kenny A. ex rel. Winn v. Perdue, N.D.Ga.2003, 218 F.R.D. 277. Civil Rights 1052; Civil Rights 1057

1293. ---- Development rights, property interest, deprivation of constitutional or statutory rights generally

Even if Puerto Rico planning board deprived real estate developers of protected property interest when board revoked developers' land use permit for shopping center development, adequate post-deprivation procedures existed, in form of administrative and judicial review of board's decision, and therefore developers' procedural due process rights were not violated. SFW Arecibo, Ltd. v. Rodriguez, C.A.1 (Puerto Rico) 2005, 415 F.3d 135, certiorari denied 126 S.Ct. 829, 163 L.Ed.2d 706. Zoning And Planning 471.5

Private developer which had sought to build housing and retail properties on city land pursuant to redevelopment project under Florida Community Redevelopment Act (CRA) did not have property interest protected by due process clause arising out of redevelopment project even though city commission had formally approved its redevelopment proposal, and could not recover in federal civil rights action against city after approval for plan was

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terminated; under CRA, city commission's final decisions about selection of proposals and execution of contracts were fully discretionary. Circa Ltd. v. City of Miami, C.A.11 (Fla.) 1996, 79 F.3d 1057. Constitutional Law 277(1); Municipal Corporations 325

For purposes of developer's § 1983 action against city, developer acquired no "property interest" to redevelop naval base that United States offered to sell city; Florida Community Redevelopment Act, which provided for creation of agency to supervise redevelopment of annex, did not alone create protected property interest and, although developer and city executed several agreements, only agreement which city and agency signed stated that developer would acquire no vested property right. Key West Harbour Development Corp. v. City of Key West, Fla., C.A.11 (Fla.) 1993, 987 F.2d 723. Constitutional Law 277(1)

Developer did not have any protected property interest in letter of credit given to village or in funds underlying it, and thus could not be denied due process when village drew on letter of credit due to developer's failure to provide replacement letter, in light of qualifications imposed on developer's expectations by development contract and village subdivision ordinance. Union Pacific R. Co. v. Village of South Barrington, N.D.Ill.1997, 958 F.Supp. 1285 . Constitutional Law 277(1); Constitutional Law 278.2(1)

1294. ---- Estoppel rights, property interest, deprivation of constitutional or statutory rights generally

Equitable doctrine premised on statutory ambiguity, which state court of equity applied to estop municipality from relying on its right to deny landowner's application for special exception, did not give rise to cognizable property right under § 1983, since it did not rise to level of either certainty or very strong likelihood that application would have been granted, which is necessary to state legitimate claim of entitlement. Biser v. Town of Bel Air, C.A.4 (Md.) 1993, 991 F.2d 100, certiorari denied 114 S.Ct. 182, 510 U.S. 864, 126 L.Ed.2d 141. Constitutional Law 277(1)

Landowner did not have "protectable property interest" in building permits, and thus, Florida law did not provide landowner with right to recover money damages for county's rescission of permits; if landowner acquired any right at all as result of his reliance on permits, it was right to pursue equitable estoppel under proper circumstances. Marine One, Inc. v. Manatee County, C.A.11 (Fla.) 1989, 877 F.2d 892, rehearing denied 898 F.2d 1490. Civil Rights 1073; Constitutional Law 277(1)

Provision of Pennsylvania Constitution prohibiting governmental agencies' use of expunged criminal convictions in consideration of application for "license, certificate, registration or permit" was not applicable to state police department, since it was not licensing agency; thus, provision could not create protected property interest, for due process purposes, on part of applicant for cadet position who had past expunged theft conviction and who was automatically disqualified for past criminal activity. Foxworth v. Pennsylvania State Police, E.D.Pa.2005, 402 F.Supp.2d 523, reconsideration denied 2005 WL 3470601. States 53

1295. ---- Franchises, property interest, deprivation of constitutional or statutory rights generally

Unsuccessful bidder for municipal solid waste disposal franchise did not have protected property right in franchise, and thus could not sustain § 1983 claim that city violated its due process rights by alleged arbitrary award of contract; inasmuch as unsuccessful bidder's bid contemplated initial use of city landfill, contrary to bidding specification that another landfill be used, bidder could not have had legitimate expectation of being awarded contract. L & H Sanitation, Inc. v. Lake City Sanitation, Inc., C.A.8 (Ark.) 1985, 769 F.2d 517. Civil Rights 1041

Once city adopted cable communications franchise agreement ordinance and issued requests for proposals to interested parties soliciting sealed bids, it was under a statutory obligation to exercise its discretion in a nonarbitrary way in granting franchise to "best responsible bidder" in full compliance with specifications unless

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city decided not to make any award; therefore, corporation promoting cable system sufficiently alleged a property interest in award of its contract for purposes of bringing a civil rights action. Teleprompter of Erie, Inc. v. City of Erie, W.D.Pa.1981, 537 F.Supp. 6. Civil Rights 1395(1)

1296. ---- Housing, property interest, deprivation of constitutional or statutory rights generally

Farm workers who lived in employer-owned housing without rent, lease, or other formal arrangement governing their occupancy had no protected property interest in housing upon which to premise action under this section against employer who evicted them and county deputies who assisted in eviction. Martinez v. Sonoma-Cutrer Vineyards, N.D.Cal.1983, 577 F.Supp. 451, affirmed 791 F.2d 167. Civil Rights 1087; Civil Rights 1088(1)

1297. ---- Inspections, property interest, deprivation of constitutional or statutory rights generally

Homeowners did not have protected property interest in competently conducted building inspections which could form basis of § 1983 claim, absent any showing that government building inspectors served as owners' guarantor of contract specification compliance; government building inspector served general public welfare. Gillies v. Utah County, D.Utah 1991, 765 F.Supp. 692. Civil Rights 1081

1298. ---- Leases, property interest, deprivation of constitutional or statutory rights generally

Lessee of city parking lots had no property interest in any extensions of leases to warrant protection under Fourteenth Amendment's due process clause, even though lessee expected renewal of leases, where two-year leases expired on specified date, and city had discretion to award leases to any private party, including competitor of lessee. Downtown Auto Parks, Inc. v. City of Milwaukee, C.A.7 (Wis.) 1991, 938 F.2d 705, certiorari denied 112 S.Ct. 640, 502 U.S. 1005, 116 L.Ed.2d 657. Constitutional Law 277(1); Municipal Corporations 722

Plaintiff concert promoter's alleged entitlement to delivery of a duly executed contract for lease of stadium did not give rise to level of a constitutionally protected property right, and thus it could not recover compensatory and punitive damages under this section against municipal defendants for deprivation of that right. Genesco Entertainment, a Div. of Lymutt Industries, Inc. v. Koch, S.D.N.Y.1984, 593 F.Supp. 743. Civil Rights 1041

1299. ---- Medicaid, property interest, deprivation of constitutional or statutory rights generally

Physician lacked a sufficient property interest in his classification as an approved medical provider for state Medicaid program, sufficient to support a § 1983 action for reinstatement and damages. Senape v. Constantino, C.A.2 (N.Y.) 1991, 936 F.2d 687. Constitutional Law 277(1)

Provisions of Medicaid Act requiring state medical assistance programs to make medical assistance available to all eligible individuals, including certain dental services, and requiring medical assistance to be furnished with reasonable promptness to all eligible individuals afforded individual medical assistance recipients rights that were enforceable through § 1983. Clark v. Richman, M.D.Pa.2004, 339 F.Supp.2d 631. Civil Rights 1052

Statute conferring obligation on states participating in the Medicaid program to deem newborn infants to have applied for medical assistance as of date of their birth and to hold such infants eligible as of date of birth created private right enforceable under § 1983; actual effect of statute's mandatory language was to create binding obligation on states themselves to treat infants of eligible mothers in a certain fashion. Wellington v. District of Columbia, D.D.C.1994, 851 F.Supp. 1. Civil Rights 1052; Civil Rights 1330(6)

1300. ---- Motor vehicles, property interest, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Evidence of plaintiff's property interest in a vehicle, sufficient to support a due process claim under § 1983 arising from county officials' allegedly improper retention and use of vehicle after its initial seizure as evidence, could take a number of forms, including proof that plaintiff had made, or contributed to, installment payments on the vehicle, or proof that the vehicle was marital property as defined by New York law, though title certificate showed that vehicle belonged to plaintiff's wife. Pangburn v. Culbertson, C.A.2 (N.Y.) 1999, 200 F.3d 65. Constitutional Law 277(1)

Although vehicle owners have substantial property interest in use of their automobiles under § 1983, city ordinances allowing seizures of vehicles which arresting officers have probable cause to believe contain controlled substance or unregistered firearms or violate sound device restrictions provided owners with notice of and right to preliminary post-deprivation hearing, final hearing and ability to petition Illinois circuit courts for writ of certiorari to review findings of municipality's administrative body, and, thus, adequately protected owners' procedural due process rights. Towers v. City of Chicago, N.D.Ill.1997, 979 F.Supp. 708, affirmed 173 F.3d 619, certiorari denied 120 S.Ct. 178, 528 U.S. 874, 145 L.Ed.2d 150. Civil Rights 1319

1301. ---- National guard, property interest, deprivation of constitutional or statutory rights generally

Court of Appeals would certify to Rhode Island Supreme Court issues of first impression concerning whether terminated Rhode Island Army National Guard (RIANG) commissioned officer who sued state and state actor under § 1983, seeking reinstatement, fit within definition of "staff corps and departments" as used in Rhode Island statute which provides that, absent resignation, disability, or dismissal for cause, commissioned officers in such departments shall hold their positions until they reach age of 60, whether officer thus had enforceable property interest in his position, and whether he was deprived of such entitlement without due process. Wigginton v. Centracchio, C.A.1 (R.I.) 2000, 205 F.3d 504. Federal Courts 392

National guard regulations designed to assure procedural fairness in internal investigations did not confer or create protected property interest, such as would support Section 1983 claim by national guard employee who was transferred to other base in alleged violation of rules. Sebra v. Neville, C.A.9 (Cal.) 1986, 801 F.2d 1135. Civil Rights 1135

1302. ---- Project participation, property interest, deprivation of constitutional or statutory rights generally

City's refusal to allow general contractor to participate in redevelopment projects sponsored or approved by city did not violate contractor's civil rights in that contractor did not have property interest in continuing to participate in publicly financed projects. Eastway Const. Corp. v. City of New York, C.A.2 (N.Y.) 1985, 762 F.2d 243, on remand 637 F.Supp. 558. Civil Rights 1041

1303. ---- Public employment, property interest, deprivation of constitutional or statutory rights generally

Former state employee, who asserted that his discharge for cause from his position as deputy director of the Utah Department of Corrections deprived him of his property interest in eligibility for reappointment to a career service position, which he would be entitled to under Utah law if terminated without cause, failed to establish that he suffered an injury in fact, and therefore lacked standing to file § 1983 lawsuit for deprivation of due process, absent showing of any intention, desire, or plan to continue his employment in a career service position with the state of Utah. Morgan v. McCotter, C.A.10 (Utah) 2004, 365 F.3d 882. Civil Rights 1333(5)

Allegations by former assistant high school principal, who was terminated after his required state certification lapsed, that school board and school district destroyed his freedom to take advantage of other employment opportunities failed to state due process claim under § 1983 for harm to reputation; loss of future employment

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opportunities was insufficient to establish protected liberty interest. Moiles v. Marple Newtown School Dist., E.D.Pa.2002, 2002 WL 1964393, Unreported. Constitutional Law 278.5(3); Schools 147.28

1304. ---- Retirement benefits and pensions, property interest, deprivation of constitutional or statutory rights generally

Retired county sheriff's deputies had protected property interest in group health insurance coverage at same premium rate as for active deputies, as required for deputies' §§1983 action against county alleging that their insurance premiums had been raised above those for active deputies without due process; state statute expressly provided that continued group coverage be provided to retirees at same premium rate. Germano v. Winnebago County, Ill., C.A.7 (Ill.) 2005, 403 F.3d 926, rehearing and rehearing en banc denied. Constitutional Law 277(2)

The entitlement to disability retirement is a constitutionally protected property interest for purposes of § 1983. Russell v. Dunston, C.A.2 (N.Y.) 1990, 896 F.2d 664, certiorari denied 111 S.Ct. 50, 498 U.S. 813, 112 L.Ed.2d 26 . Constitutional Law 277(2)

Former police officer did not possess a property interest in retirement payments, as required for § 1983 claim alleging due process violations stemming from city's alleged failure to assist him in meeting statutory prerequisites for receipt of pension benefits and denial of his request to vest benefits, where the statute and ordinance defining his rights to retirement payments expressly conditioned receipt on satisfaction of certain criteria, including notice of an intention to vest at least 30 days prior to the retiree's termination date, with which officer failed to comply. Pappas v. City of Lebanon, M.D.Pa.2004, 331 F.Supp.2d 311. Constitutional Law 277(2)

State agency and its officials did not deprive employee of protected property right to participate in state early retirement incentive program, in violation of employee's due process rights, when program was available to employees at facility at which employee worked only if there were appropriate transfer matches with employees in designated at-risk positions at facilities targeted for staffing reductions, and employee did not establish availability of such transfer matches for her position. Cooper v. N.Y.S. Department of Mental Health, C.A.2 (N.Y.) 2003, 67 Fed.Appx. 641, 2003 WL 21246561, Unreported. Constitutional Law 278.4(4); States 64.1(3)

1305. ---- Riparian rights, property interest, deprivation of constitutional or statutory rights generally

Negligent actions by Indiana Department of Natural Resources (IDNR), in draining reservoir at fish hatchery to perform repair work on dam, did not support inference that IDNR officials engaged in the draw-down recklessly or for a nefarious purpose, and thus property owners who claimed that their property rights were damaged by the negligent draw-down were not entitled to recover on their due process claim under § 1983; the government's alleged failure to use due care was not redressable under due process theory. Greenfield Mills, Inc. v. O'Bannon, N.D.Ind.2002, 189 F.Supp.2d 893, affirmed in part, reversed in part and remanded 361 F.3d 934, on remand 2005 WL 1563433. Constitutional Law 302; Waters And Water Courses 176

Riparian landowners' interests in real property were not kinds of interests protected by this section. Guthrie v. Alabama By-Products Co., N.D.Ala.1971, 328 F.Supp. 1140, affirmed 456 F.2d 1294, certiorari denied 93 S.Ct. 1352, 410 U.S. 946, 35 L.Ed.2d 613, rehearing denied 93 S.Ct. 1524, 411 U.S. 910, 36 L.Ed.2d 201. Civil Rights 1071

1306. ---- Title to property, property interest, deprivation of constitutional or statutory rights generally

Regardless of ultimate success of landowners' claim of title to strip of property taken by town for construction of street, conflict between their arguable unencumbered title and town's arguable easement was sufficient to create significant property interest entitling landowners to due process hearing prior to taking and denial of such hearing

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was actionable wrong independent of uncompensated taking. McCulloch v. Glasgow, C.A.5 (Miss.) 1980, 620 F.2d 47. Constitutional Law 281

1307. ---- Utilities, property interest, deprivation of constitutional or statutory rights generally

Issue remaining, on determining that gas utility and its managing agents acted "under color of state law" in terminating gas service to plaintiffs without adequate notice and an opportunity for prior evidentiary hearing, was whether interest of plaintiffs in continued utility service was "property" entitled to constitutional protection and, if so, whether postpayment/posttermination procedures for adjustment of billing disputes satisfied requirements of due process. Dawes v. Philadelphia Gas Commission, E.D.Pa.1976, 421 F.Supp. 806. Constitutional Law 278(1.3)

Electric service customer had a "property" interest in electric service which was terminated for nonpayment of a disputed bill. Condosta v. Vermont Elec. Co-op., Inc., D.C.Vt.1975, 400 F.Supp. 358. Electricity 11.1(1)

1308. ---- Zoning and land use, property interest, deprivation of constitutional or statutory rights generally

Owner of undeveloped property did not have protected property right in applied for zoning certificate, or planned unit development plan and corresponding standards for development of particular area, that could have supported substantive due process civil rights claim, where township zoning resolution granted commission broad discretion to determine whether to grant or deny applications for zoning permits. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Constitutional Law 277(1)

Landowners did not have a protected property interest in plat approval for the development of a commercial plaza, as required for their due process claim against city planning commission, given that the subdivision regulations vested broad discretion with the planning commission at both the preliminary plat approval stage and the final plat approval stage. Pennington v. Teufel, N.D.W.Va.2005, 396 F.Supp.2d 715, affirmed 169 Fed.Appx. 161, 2006 WL 460921. Constitutional Law 277(1)

Local environmental quality board did not violate landowners' procedural due process rights when it approved final environmental impact statement (EIS) for highway project; although landowners claimed that EIS did not adequately address stormwater runoff onto their property, they actively participated in the various stages of board's decision-making process, and there was no indication that judicial review of an improper EIS was unavailable. Castro Rivera v. Fagundo, D.Puerto Rico 2004, 310 F.Supp.2d 428, affirmed 129 Fed.Appx. 632, 2005 WL 1058894, certiorari denied 126 S.Ct. 425, 163 L.Ed.2d 324. Constitutional Law 278.1; Environmental Law 605

Property owners did not have constitutionally protected property interest in obtaining zoning change for their property or in receipt of certificates of occupancy, so that denial or withholding of these privileges was not a taking under Fifth Amendment which would support § 1983 action. Frooks v. Town of Cortlandt, S.D.N.Y.1998, 997 F.Supp. 438, affirmed 182 F.3d 899. Eminent Domain 2.10(6); Zoning And Planning 375.1

Person does not have constitutionally cognizable property interest in another person's land use merely because that use may adversely affect market value of his own property. Woodward & Lothrop, Inc. v. Neall, D.Md.1993, 813 F.Supp. 1158. Constitutional Law 277(1)

1309. ---- Miscellaneous interests, property interest, deprivation of constitutional or statutory rights generally

Sale of hospital by Secretary of Health of the Commonwealth of Puerto Rico to a medical school, as part of Puerto Rico's health care facility privatization program, did not deprive medical facility operators of a protected property interest, as required to demonstrate Secretary's violation of operators' procedural and substantive due process

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rights; although operators wrote to Secretary expressing an interest in purchasing the hospital, they had no legal right to acquire it, since Puerto Rico statutes explicitly allowed Secretary to sell hospital to medical schools without following the usual bidding protocol. Centro Medico del Turabo, Inc. v. Feliciano de Melecio, C.A.1 (Puerto Rico) 2005, 406 F.3d 1. Constitutional Law 291.6; Territories 25

Restaurant seller who was excluded from restaurant by off-duty city police officers who assisted restaurant purchaser in transferring the premises to purchaser, changing the locks, and closing down the restaurant, without court order or eviction notice, failed to establish that the policies and actions of the city and police chief evidenced deliberate indifference to the rights of property sellers, barring § 1983 action against city and police chief, on grounds of deliberate indifference. Dixon v. Lowery, C.A.8 (Ark.) 2002, 302 F.3d 857. Civil Rights 1351(3); Civil Rights 1357

Common law rights, combined with statutory right under California law to control disposition of their children's bodies, created in parents a property interest in the corneas of their deceased children protected by the Due Process Clause of the Fourteenth Amendment. Newman v. Sathyavaglswaran, C.A.9 (Cal.) 2002, 287 F.3d 786, certiorari denied 123 S.Ct. 558, 537 U.S. 1029, 154 L.Ed.2d 444. Constitutional Law 277(1)

Claimants failed to allege sufficient ownership interest in vehicles registered to third parties to state claim for deprivation of due process against North Carolina revenue officer who seized vehicles to satisfy drug tax. Lynn v. West, C.A.4 (N.C.) 1998, 134 F.3d 582, certiorari denied 119 S.Ct. 47, 525 U.S. 813, 142 L.Ed.2d 36. Civil Rights 1395(1)

City's refusal of request by lessors of vendor kiosk located in public market on city-owned property to enlarge their kiosk did not deprive lessors of any property interest, precluding lessors' §§ 1983 procedural due process claim. Rodriguez Cruz v. Trujillo, D.Puerto Rico 2006, 443 F.Supp.2d 240. Municipal Corporations 720

Once solid waste collection contract with county expired of its own terms, contractor's mere anticipation that it would again be awarded the contract for the succeeding term was not an interest protected by procedural due process, and even if it had been, there was no procedural inadequacy in bid process that awarded contract to another bidder. Sartaine v. Pennington, E.D.Ky.2006, 410 F.Supp.2d 584. Counties 126

Since victim of fatal police shooting could not suffer specific harms to his employment, education, professional licensing or insurance opportunities, and no longer had a protectable liberty interest in his reputation under New York law that survived his death, victim had no cause of action under §§ 1983 for harm to his reputation based on dissemination of information about his criminal record to the press following the shooting. Sylvester v. City of New York, S.D.N.Y.2005, 385 F.Supp.2d 431. Libel And Slander 72

A parent has a fundamental liberty interest in the companionship and society of his or her child and the state's interference with that liberty interest without due process of law is remediable under § 1983. Estate of Imrie v. Golden Gate Bridge Highway and Transp. Dist., N.D.Cal.2003, 282 F.Supp.2d 1145. Civil Rights 1057; Constitutional Law 274(5)

Even though there is no constitutional right to an education at public expense, a student's legitimate entitlement to a public education as a property interest which is protected by the due process clause may not be taken away without adherence to the minimum procedures required by that clause. D.L. v. Unified School Dist. # 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090. Constitutional Law 278.5(7)

Students in Kansas had property and liberty interest under due process clause in continuing to attend school until they had opportunity to be heard on residency issue. D.L. v. Unified School Dist. # 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392

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F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090. Constitutional Law 277(1); Constitutional Law 278.5(7); Schools 153

Failure of school district to provide students with predeprivation due process hearing, after they were suspended for not being residents of school district, violated procedural due process rights of students and parents, since school district's denial of due process hearing to students implicated property and liberty interests of students and parents, suspension was for indefinite period of time, i.e., for "as long as plaintiffs were not residents" of district, risk that district erred in determining plaintiffs' residency was high, and hearing would not have been burdensome to school. D.L. v. Unified School Dist. # 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090. Constitutional Law 278.5(7); Schools 153

Decedent's surviving siblings sufficiently alleged they had constitutionally protected property interest in deceased relative's body, for purposes of § 1983 claim against county coroner and photographer alleging that photographer's taking of pictures of decedent's body while he was in county morgue denied them due process, even if photographer did not mutilate corpse and merely took photographs; siblings' property interest in decedent's corpse included right not to have corpse photographed for commercial purposes without their permission. Melton v. Board of County Com'rs of Hamilton County, Ohio, S.D.Ohio 2003, 267 F.Supp.2d 859. Constitutional Law 277(1)

Decedent's surviving siblings sufficiently alleged the deprivation of a constitutionally protected property interest by photographer's taking of pictures of decedent's body for commercial purposes and without siblings' permission while he was in county morgue, for purposes of § 1983 claim against county coroner and photographer; siblings alleged that photographer posed, touched, manipulated, photographed, and violated the corpse of decedent. Melton v. Board of County Com'rs of Hamilton County, Ohio, S.D.Ohio 2003, 267 F.Supp.2d 859. Constitutional Law 278(1.3); Dead Bodies 9

Municipal judge in Texas who was suspended from the bench with pay was not deprived of protected property interest, as required to state § 1983 claim for violation of his due process rights; judge continued to receive his salary and failed to cite any Texas law that recognized a protected property interest in the duties and responsibilities of a municipal judge. Richards v. City of Weatherford, N.D.Tex.2001, 145 F.Supp.2d 786, affirmed 275 F.3d 46. Constitutional Law 277(2); Judges 11(1)

Shopkeeper who alleged that actions of city in cancelling festival due to size of crowd prevented him from selling sporting goods and caused him to lose profits did not have property interest in selling goods for profit which was protected by due process clause, and could not recover on that basis in federal civil rights action; shopkeeper had alleged no protected interest under state law, regulation, statute, or contract, and had only unilateral expectation that he would be able to sell goods. Cevallos v. City of Los Angeles, C.D.Cal.1996, 914 F.Supp. 379. Constitutional Law 277(1)

Cancer patients whom government allegedly subjected to radiation experiments, but who were told that they were receiving cancer treatment, stated procedural due process claim against government and university physicians by alleging that defendants' conduct in concealing true purpose and dangers associated with experiments deprived them of property right, i.e., their ability to pursue wrongful death claim under Ohio law. In re Cincinnati Radiation Litigation, S.D.Ohio 1995, 874 F.Supp. 796. Colleges And Universities 8(1); Constitutional Law 278(1.3); United States 78(9)

Plaintiff's complaint alleging deprivation of property and defining her property as "the right to be free" did not state property interest for purposes of due process; while the right to be free, as defined by plaintiff, may have constituted liberty interest, it was not property. Magnuson v. Cassarella, N.D.Ill.1992, 812 F.Supp. 824. Constitutional Law 277(1)

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42 U.S.C.A. § 1983

Action alleging that county sheriff had referred all official wrecker and towing business to one individual, thereby excluding other wreckers from any business of type in question, failed to state claim under section 1983, since allegations pertained only to deprivation of unilateral expectation of benefit rather than deprivation of property interest. Walker County Wrecker and Storage Ass'n, Inc. v. Walker County, S.D.Tex.1984, 604 F.Supp. 28. Civil Rights 1395(1)

State prison inmate's reputation, allegedly damaged by state corrections officials' filing of false misconduct report and related disciplinary sanctions, was not protected liberty or property interest, precluding inmate's §§1983 due process action against officials. Seville v. Martinez, C.A.3 (Pa.) 2005, 130 Fed.Appx. 549, 2005 WL 1099359, Unreported, certiorari denied 126 S.Ct. 252, 163 L.Ed.2d 230. Constitutional Law 272(2); Constitutional Law 277(1); Prisons 13(6)

Physician did not possess a protected property interest in continued public hospital staff membership, and thus was not entitled to due process prior to the suspension of membership. Moore v. Middlebrook, C.A.10 (Colo.) 2004, 96 Fed.Appx. 634, 2004 WL 928262, Unreported. Constitutional Law 277(1); Health 273

1310. Racial discrimination, deprivation of constitutional or statutory rights generally--Generally

Rights protected by § 1983 are coextensive with equal protection clause's guarantee against racial discrimination. Associated General Contractors of California, Inc. v. Coalition for Economic Equity, C.A.9 (Cal.) 1991, 950 F.2d 1401, certiorari denied 112 S.Ct. 1670, 503 U.S. 985, 118 L.Ed.2d 390. Civil Rights 1028

Right of persons not to be subjected to racial discrimination in government programs is a right courts will protect. Norwalk CORE v. Norwalk Redevelopment Agency, C.A.2 (Conn.) 1968, 395 F.2d 920. Constitutional Law 215

Allegation that plaintiff was discriminated against because he was Norwegian did not state a claim for discrimination based on racial animus. Bauge v. Jernigan, D.Colo.1987, 671 F.Supp. 709. Civil Rights 1395(1)

1311. ---- Armed forces, racial discrimination, deprivation of constitutional or statutory rights generally

Damage suits are not an appropriate method of enforcing constitutional rights that may be violated by alleged racially motivated local transfers of reserve military personnel where there is no suggestion of significant actual harm. Jones v. Reagan, C.A.7 (Ill.) 1983, 696 F.2d 551. Civil Rights 1033(2)

1312. ---- Assignment of appointed counsel, racial discrimination, deprivation of constitutional or statutory rights generally

Where state procedure for assignment of counsel applied to all indigent defendants regardless of race or color, Negro defendants in state criminal prosecution were not denied equal rights under the law because they were not permitted to select their court-appointed counsel from panel of attorneys available for service to indigents. Baker v. People of State of N. Y., S.D.N.Y.1969, 299 F.Supp. 1265. Civil Rights 1088(5)

1313. ---- Assignment of rights, racial discrimination, deprivation of constitutional or statutory rights generally

Person who leased home to Negro and as part of transaction assigned membership share in nonstock corporation organized to operate community park and playground for residents of area in which home was located was entitled to seek redress under this section for refusal of corporation to approve assignment of membership share. Sullivan v. Little Hunting Park, Inc., U.S.Va.1969, 90 S.Ct. 400, 396 U.S. 229, 24 L.Ed.2d 386. Civil Rights 1331(6)

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1314. ---- Condemnation, racial discrimination, deprivation of constitutional or statutory rights generally

I.C.A. § 306.1 et seq., which is available for use in condemnations for secondary road purposes, does not deny white citizens of any "rights, privileges or immunities" secured by the Constitution within meaning of this section. Cahill v. Cedar County, Iowa, N.D.Iowa 1973, 367 F.Supp. 39, affirmed 95 S.Ct. 21, 419 U.S. 806, 42 L.Ed.2d 35. Civil Rights 1071

1315. ---- Contracts, racial discrimination, deprivation of constitutional or statutory rights generally

City's nonselection of firm owned by African-American, on second bid for towing contract, was not discriminatory, in violation of § 1983, despite bidder's claim that city manipulated specifications of second bid to exclude it from consideration; bidder was not qualified under original specifications, which were drawn up before city was aware of owner's race, and whatever spurred change of specifications for second bid, it could not have been racial animus, since city could have satisfied any urge to exclude bidder under original specifications. Cardinal Towing & Auto Repair, Inc. v. City of Bedford, Tex., C.A.5 (Tex.) 1999, 180 F.3d 686. Civil Rights 1041

Government contractor satisfactorily pleaded a stigma-plus due process claim under §§ 1983 against state official in her personal capacity; contractor alleged that official made stigmatizing statements about it including statements that it "gave a false picture" of and "provided extremely inaccurate information" about state agency's finances, and that, incidental thereto and without a hearing, official personally caused contractor to be removed from agency's list of approved accountants and auditors, thereby eliminating it from future government contracting. Coleman & Williams, Ltd. v. Wisconsin Dept. of Workforce Development, E.D.Wis.2005, 401 F.Supp.2d 938. Civil Rights 1395(1)

Claim of racial discrimination in contracting may be brought, under § 1983, against state officials in their individual capacities. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Civil Rights 1360

City's compliance with state court injunction requiring it to stop payment on check to African-American contractor was not pretext for racial discrimination, and thus did not violate contractor's rights under §§ 1981 and 1983, where competitor's success in underlying state court action would have voided contract, city attorney had good faith belief that issues in litigation would be resolved expeditiously, and contractor failed to intervene in action. Cook v. City of Cuthbert, Georgia, M.D.Ga.2002, 195 F.Supp.2d 1371. Civil Rights 1041

Plaintiff, a black refuse collector, could not recover against city official on claim of racial discrimination, in civil rights action, in connection with failure to award plaintiff contract for spring and fall cleanup, absent evidence that decision to give contract to another had been based, in whole or in part, upon plaintiff's race, notwithstanding that bids may have been let incorrectly in that no specifications had been given. Scott v. Clark, E.D.Mo.1977, 436 F.Supp. 569. Civil Rights 1041

1316. ---- Development rights, racial discrimination, deprivation of constitutional or statutory rights generally

Complaint seeking declaratory and injunctive relief and monetary damages against officials of the Seneca Nation of Indians and against corporation presently negotiating with the Nation to locate a factory in an industrial park to be developed by the Nation on its reservation stated no claim under this section relating to equal rights under the law and property rights of citizens, since this subchapter prohibits only racially motivated deprivation of the rights enumerated therein, whereas the complaint contained no allegation of racial discrimination. Seneca Constitutional Rights Organization v. George, W.D.N.Y.1972, 348 F.Supp. 51. Civil Rights 1395(1)

1317. ---- Dining facilities, racial discrimination, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Action for damages on basis that plaintiff, a Negro, had been assaulted by a defendant with automobile in furtherance of conspiracy of all defendants and in keeping with local custom and practice to deprive plaintiff of his civil rights in use of cafe which was place of public accommodation and at which place police officers were present was maintainable under this section relating to civil action for deprivation of rights. Sherrod v. Pink Hat Cafe, N.D.Miss.1965, 250 F.Supp. 516. Conspiracy 1.1; Conspiracy 7.5(1)

Action of restaurant operator, through one in apparent authority at door of restaurant, in refusing service on basis of race or color was violation of constitutional rights of Negroes to equal protection. Brooks v. City of Tallahassee, Fla., N.D.Fla.1961, 202 F.Supp. 56. Constitutional Law 216

1318. ---- Dismissal of actions, racial discrimination, deprivation of constitutional or statutory rights generally

Dismissal of Negro's state action for personal injuries was shown to have resulted from dilatory tactics of plaintiff's attorney and his failure and refusal to proceed with trial on day set for hearing more than two years after her action was filed and charge that dismissal was motivated by racial discrimination was without support in record. Andrews v. Murphy, C.A.6 (Mich.) 1965, 349 F.2d 114, certiorari denied 86 S.Ct. 589, 382 U.S. 999, 15 L.Ed.2d 486. Civil Rights 1422

State, rather than county, was responsible for conversion of data from local court systems to system through which state published court records on the Internet, and therefore county could not be held liable under §§ 1983 for alleged defamation of convict that resulted from misreporting of convict's criminal history due to conversion problems. LeMoine v. Milwaukee County, C.A.7 (Wis.) 2005, 132 Fed.Appx. 53, 2005 WL 1220477, Unreported. Civil Rights 1348

Detectives with a city police department failed to state a claim against the city regarding alleged discrimination against black and Hispanic undercover officers in the failure to provide sufficient safety measures to undercover officers, which allegedly affected minority members disproportionately; it was not reasonable to infer that sergeants in charge intentionally placed fellow police officers in peril because the officers were Black or Hispanic. Tamayo v. City of New York, S.D.N.Y.2003, 2003 WL 21448366, Unreported. Civil Rights 1395(8); Civil Rights 1532

1319. ---- Employment, racial discrimination, deprivation of constitutional or statutory rights generally

Connecticut public school teacher seeking reinstatement had protected privacy right in medical records sought by school board. O'Connor v. Pierson, C.A.2 (Conn.) 2005, 426 F.3d 187. Schools 147.47

Evidence failed to establish that Negro welder and others similarly situated were subject to racial discrimination by dyeing machine manufacturer in matters of employment, classification, wages, promotion or other incidence of employment, in violation of this section. Brown v. Gaston County Dyeing Mach. Co., W.D.N.C.1970, 325 F.Supp. 541, affirmed in part, reversed in part on other grounds 457 F.2d 1377, certiorari denied 93 S.Ct. 319, 409 U.S. 982, 34 L.Ed.2d 246. Civil Rights 1421

1320. ---- Fire protection, racial discrimination, deprivation of constitutional or statutory rights generally

Plaintiffs' allegations that city, through its codes services unit and pursuant to policy and custom of racial discrimination, improperly singled plaintiffs out based on race by enforcing city ordinances before fire in plaintiffs' warehouse, declaring warehouse a public nuisance after fire, and by not treating white owners of nearby building in similar manner were sufficient to state equal protection selective enforcement claim, despite claim that there was no evidence in "undisputed factual record" to establish requisite intentional discrimination. Homan v. City of Reading, E.D.Pa.1997, 963 F.Supp. 485. Civil Rights 1395(3)

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42 U.S.C.A. § 1983

Estates and relatives of black victims of fatal house fire failed to prove violation of equal protection rights from alleged city policy of racial discrimination through inferior housing inspections; there was no evidence that inspectors were overloaded in black areas, that quality of services in those areas suffered, or that policy of poor inspections existed but, rather, statistical data established that quantity of inspections in black neighborhoods was far greater than in white neighborhoods. Baugh v. City of Milwaukee, E.D.Wis.1993, 823 F.Supp. 1452, motion to amend denied 829 F.Supp. 274, affirmed 41 F.3d 1510. Civil Rights 1419

1321. ---- Housing, racial discrimination, deprivation of constitutional or statutory rights generally

City's attempt to persuade Department of Housing and Urban Development (HUD) and potential purchaser, a United States citizen of Indian-Muslim descent, to cancel purchase agreement for apartment building by stating that city was contemplating the use of its eminent-domain power did not constitute invidious racial or religious discrimination actionable under § 1983, where the city treated both the potential purchaser and a second set of buyers, who were Caucasian, non-Muslim, out-of-state citizens, the same. Shaikh v. City of Chicago, C.A.7 (Ill.) 2003, 341 F.3d 627. Civil Rights 1041

Plaintiffs, challenging plan adopted by Boston Housing Authority to select tenants for a public housing failed to make out a claim for relief under this section, § 2000-d of this title, or equal protection clause of U.S.C.A.Const. Amend. 14 absent showing of an invidious purpose to discriminate against whites, especially as plan arose out of ongoing state court litigation, there was no allegation that officials involved in formulating the plan were motivated in any way by a desire to discriminate against whites and there was no allegation that there were any departures from normal procedures for obtaining court approval. Schmidt v. Boston Housing Authority, D.C.Mass.1981, 505 F.Supp. 988. Civil Rights 1082; Constitutional Law 215.2

Cause of action under this section, if any, is derived from racial discrimination in rental of property and arises at time of discrimination. Bush v. Kaim, N.D.Ohio 1969, 297 F.Supp. 151, 17 Ohio Misc. 259, 46 O.O.2d 329, 46 O.O.2d 363. Civil Rights 1304

History of tension, threats of violence and violence could not excuse city housing authority's established policy of racial segregation. Gautreaux v. Chicago Housing Authority, N.D.Ill.1969, 296 F.Supp. 907. Civil Rights 1082

A "controlled occupancy pattern", a plan by which subdivision developer and its parent corporation intended to sell homes in subdivision to whites and Negroes on a quota basis according to the population ratio for whites and non-Caucasians in the area, requiring, as conditions precedent to sales, that purchasers execute separate resale agreements which were not to be recorded but which would give developer exclusive right, upon resale, to select purchasers so that initial integration ratio would be continued, constituted racial discrimination in violation of U.S.C.A.Const. Amends. 5 and 14, unenforceable in any court of law or equity, and was not protected by this section. Progress Development Corp. v. Mitchell, N.D.Ill.1960, 182 F.Supp. 681, affirmed in part, reversed in part on other grounds 286 F.2d 222. Civil Rights 1076; Constitutional Law 220.5(2); Constitutional Law 278(1.3)

1322. ---- In forma pauperis denials, racial discrimination, deprivation of constitutional or statutory rights generally

Denial of leave to proceed in forma pauperis on grounds that similar actions were pending and intervening transfer of plaintiff had rendered certain questions moot did not result in discrimination against petitioner on account of his race. Richey v. Wilkins, C.A.2 (N.Y.) 1964, 335 F.2d 1.

1323. ---- Sales, racial discrimination, deprivation of constitutional or statutory rights generally

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Private school failed to prove that school district's rejection of its offers to buy property on which private school held right of first refusal was based on racial animus so as to violate equal protection under § 1983; private school had no direct, "smoking gun" evidence of discriminatory intent on part of school district, because student body was predominantly black and Latino, any actions which would have affected school necessarily impacted more heavily on one race than another but history of interaction between school district and private school did not support finding of discriminatory motive, and deal appeared to fall apart over relatively minor provision because school district would not allow private school to inspect property as other potential buyers were allowed to do. Board of Managers of Glen Mills Schools v. West Chester Areas School Dist., E.D.Pa.1993, 838 F.Supp. 1035, affirmed in part, reversed in part 52 F.3d 313. Civil Rights 1418

Sale of real property that was foreclosed by public improvement sale following notice by publication did not violate this section and § 1982 of this title, absent allegations of racial discrimination. Billingsley v. Seibels, N.D.Ala.1976, 433 F.Supp. 1, affirmed 556 F.2d 276, certiorari denied 98 S.Ct. 1499, 435 U.S. 929, 55 L.Ed.2d 524, rehearing denied 98 S.Ct. 2257, 436 U.S. 914, 56 L.Ed.2d 416. Civil Rights 1071

1324. ---- Street maintenance, racial discrimination, deprivation of constitutional or statutory rights generally

City's unwritten policy of making dead-end streets lowest priority for street paving discriminated against black citizens of city, in that there was a far higher percentage of such streets in black community, and implementation of policy was inequitable and discriminatory, serving to exacerbate a system which already burdened black community unduly. Johnson v. City of Arcadia, Fla., M.D.Fla.1978, 450 F.Supp. 1363. Civil Rights 1054

1325. ---- Swimming pools, racial discrimination, deprivation of constitutional or statutory rights generally

Plaintiffs who allegedly were refused admission to swimming pool of privately owned amusement park open to public upon payment of fees, and who were allegedly ejected from park by park management aided and abetted by borough chief of police, because their party included Negroes, were thereby denied equal protection of the laws guaranteed by U.S.C.A.Const. Amend. 14, were denied right to make or enforce contracts, and were denied privileges and immunities of citizenship. Valle v. Stengel, C.A.3 (N.J.) 1949, 176 F.2d 697. Civil Rights 1047

1326. ---- Transportation, racial discrimination, deprivation of constitutional or statutory rights generally

In action by passenger against bus company for alleged violation of her civil rights, evidence on behalf of plaintiff that she took seat in second row of bus when it was vacated by white woman and was immediately ordered by driver to rise and go to rear was sufficient to take case to jury. Flemming v. South Carolina Elec. & Gas Co., C.A.4 (S.C.) 1956, 239 F.2d 277. Civil Rights 1431

1327. ---- Union elections, racial discrimination, deprivation of constitutional or statutory rights generally

While plaintiff, a white, ran for office in defendant union on a slate with predominantly black candidates and was replaced as a union steward by a black union member, none of those facts, if proven, would even approximate racial discrimination within this section governing deprivation of civil rights under color of state law. Mills v. National Distillers Products Co., S.D.Ohio 1977, 435 F.Supp. 72. Civil Rights 1255

1328. ---- Utilities, racial discrimination, deprivation of constitutional or statutory rights generally

Claim that black customers of electric company were required to pay greater security deposits than white customers solely on account of their race was not cognizable under this section but was cognizable under § 1981 of this Title providing that all persons shall have same rights to make and enforce contracts. Cody v. Union Elec., C.A.8 (Mo.) 1975, 518 F.2d 978, on remand 410 F.Supp. 307. Civil Rights 1033(2); Civil Rights 1326(7); Civil

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42 U.S.C.A. § 1983

Rights 1041

Complaint alleging that telephone company refused to provide black citizens of county with telephone service on basis of their race stated claim under civil rights provisions. White v. Walnut Hill Tel. Co., W.D.Ark.1979, 84 F.R.D. 138. Civil Rights 1395(1)

1329. ---- Welfare benefits, racial discrimination, deprivation of constitutional or statutory rights generally

An adverse decision against applicants for Aid to Families with Dependent Children by "fair hearing" referee or by commissioner is not of itself evidence of racial discrimination. Gray v. Department of Social Services of State of N. Y., S.D.N.Y.1969, 305 F.Supp. 435. Civil Rights 1055

1330. ---- Zoning and land use, racial discrimination, deprivation of constitutional or statutory rights generally

That a greater percentage of blacks than whites were affected by refusal of village to rezone a piece of property in order to permit construction of a housing development for low and moderate income persons did not necessarily mean that the refusal had the type of racially discriminatory effect that required invocation of compelling interest tests. Metropolitan Housing Development Corp. v. Village of Arlington Heights, C.A.7 (Ill.) 1975, 517 F.2d 409, certiorari granted 96 S.Ct. 560, 423 U.S. 1030, 46 L.Ed.2d 404, reversed on other grounds 97 S.Ct. 555, 429 U.S. 252, 50 L.Ed.2d 450, on remand 558 F.2d 1283. Civil Rights 1082

Town zoning ordinances, banning apartments and setting minimum one-acre requirement for residential development, were maintained with racially discriminatory intent, and thus violated federal civil rights laws; ordinances disproportionately harmed African Americans, town had history of discouraging African Americans from moving within its borders, and ordinances did not serve town's claimed interests. Dews v. Town of Sunnyvale, Tex., N.D.Tex.2000, 109 F.Supp.2d 526. Civil Rights 1081

Race discrimination was not cause of city's refusal to annex noncontiguous housing project that was predominantly black, making it unnecessary for federal court to override state law and order annexation, where state law prohibited annexation of noncontiguous parcels at time city refused to annex project. Burton v. City of Belle Glade, S.D.Fla.1997, 966 F.Supp. 1178, affirmed in part, reversed in part 178 F.3d 1175, rehearing and rehearing en banc denied 193 F.3d 525. Civil Rights 1082

1331. ---- Miscellaneous claims, racial discrimination, deprivation of constitutional or statutory rights generally

Where complaint alleged that defendants' wrongful acts had injured "residents of the Negro neighborhoods," "negro and minorities, low income and unemployed," "the Black community in North St. Louis," "minority contractors" and the like, but did not allege that any named plaintiffs were injured or were in these groups, or that any injured persons were members of plaintiff associations, plaintiffs failed to allege a case or controversy and, therefore, federal district court was without jurisdiction to consider plaintiffs' contention that public bus system was administered in racially discriminatory manner. Urban Contractors Alliance of St. Louis v. Bi-State Development Agency, C.A.8 (Mo.) 1976, 531 F.2d 877. Federal Courts 244

Section 1983 permitted action based upon alleged violations of the disparate impact implementing regulations promulgated by Environmental Protection Agency (EPA) under Title VI; EPA's implementing regulations, which prohibited recipients of federal funding from using "criteria or methods of administering [their] programs" which had the effect of subjecting individuals to discrimination, were intended to benefit the putative plaintiffs, the right asserted by plaintiffs, to be free of discrimination resulting from the adverse disparate impact of a facially neutral policy implemented by a recipient of federal funding, was neither vague, nor amorphous, and was well within the competence of the judiciary to enforce, the provision allegedly creating the right was couched in mandatory terms, and the generalized enforcement power of the EPA to enforce Title VI and the implementing regulations

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promulgated thereunder was insufficient to meet the high threshold established for regulations which may be deemed so comprehensive that they demonstrate a Congressional intent to foreclose recourse to § 1983. South Camden Citizens in Action v. New Jersey Dept. of Environmental Protection, D.N.J.2001, 145 F.Supp.2d 505, stay granted, stay granted in part 2001 WL 34131402, reversed 274 F.3d 771, certiorari denied 122 S.Ct. 2621, 536 U.S. 939, 153 L.Ed.2d 804, on remand 254 F.Supp.2d 486. Civil Rights 1055

Spoliation of evidence doctrine did not support patient's § 1983 claim that alcohol rehabilitation center and individual employees discriminated against him on basis of fact that patient was Native American, absent any evidence that center's records were intentionally destroyed, fraudulently misplaced, or otherwise secreted by center or employees; records were stored after center closed for lack of funding, and were destroyed some time later to make file cabinets available for another party. Scout v. City of Gordon, D.Neb.1994, 849 F.Supp. 687. Civil Rights 1045

In ordering removal of rock by plaintiff, a black resident, from corner of his driveway, city officials could not be held to have violated any of plaintiff's constitutional rights. Scott v. Clark, E.D.Mo.1977, 436 F.Supp. 569. Nuisance 78

1332. Sex discrimination, deprivation of constitutional or statutory rights generally--Generally

To state claim of sex discrimination under § 1983, plaintiff must show following elements: membership in protected class, that plaintiff was qualified for position at issue, that defendant made adverse employment decision despite plaintiff's qualifications, and that plaintiff was replaced with person not member of protected class. Southard v. Texas Bd. of Criminal Justice, C.A.5 (Tex.) 1997, 114 F.3d 539. Civil Rights 1169

Sex discrimination is covered by § 1983. Annis v. County of Westchester, N.Y., C.A.2 (N.Y.) 1994, 36 F.3d 251, on remand 939 F.Supp. 1115. Civil Rights 1011

Claim that professor and administrators of university had deprived female university student of benefits of program supported by federal financing, in violation of Title IX, could be maintained under § 1983, despite claim that Title IX itself was exclusive remedy for wrongs in question; Congress did not intend to make Title IX exclusive remedy when provision was drafted to penalize only institutions actually receiving funding. Hayut v. State University of New York, N.D.N.Y.2000, 127 F.Supp.2d 333. Civil Rights 1309

To bring successful § 1983 sex discrimination claim for denial of equal protection, plaintiff must prove existence of purposeful discrimination on basis of gender. Verney v. Dodaro, M.D.Pa.1995, 872 F.Supp. 188, affirmed 79 F.3d 1140. Civil Rights 1166

Allegations of classifications based upon sex are cognizable under this section. Keker v. Procunier, E.D.Cal.1975, 398 F.Supp. 756.

This section does not ban discrimination on basis of sex. Knott v. Missouri Pac. R. Co., E.D.Mo.1975, 389 F.Supp. 856, affirmed 527 F.2d 1249.

1333. ---- Contracts, sex discrimination, deprivation of constitutional or statutory rights generally

There was insufficient justification for board of education's gender-based set aside policy for construction contractors; there was no evidence that women actually suffered disadvantage related to classification. Main Line Paving Co., Inc. v. Board of Educ., School Dist. of Philadelphia, E.D.Pa.1989, 725 F.Supp. 1349. Schools 80(2)

1334. ---- Miscellaneous claims, sex discrimination, deprivation of constitutional or statutory rights generally

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Principle that gender-based stereotyped remarks can be evidence that gender played part in adverse employment decision, for purposes of discrimination claim, applies as much to the supposition that a woman will conform to a gender stereotype, and thus be unsuitable for her job, as to the supposition that a woman is unqualified for a position because she does not conform to a gender stereotype. Back v. Hastings On Hudson Union Free School Dist., C.A.2 (N.Y.) 2004, 365 F.3d 107. Civil Rights 1166; Civil Rights 1542

Female physician who served at Clinic Chief at District of Columbia health clinic failed to establish prima facie case of discrimination under §§ 1983 based on longstanding understaffing at clinic where she worked, as she failed to establish inference of discrimination based on sex; inadequate staffing affected other clinic employees, male and female, as well, and events surrounding clinic's merger with another, including inability to retain added employees, further undermined any reasonable inference of sex discrimination. Turner v. District of Columbia, D.D.C.2005, 383 F.Supp.2d 157. Civil Rights 1405

No claim was stated on behalf of public school student against school district and principal based on allegations that student was sexually assaulted on school property by other students on two occasions, under Title IX or § 1983, absent allegations that school district responded to sexual harassment claims differently based on sex. Piwonka v. Tidehaven Independent School Dist., S.D.Tex.1997, 961 F.Supp. 169. Civil Rights 1066; Civil Rights 1067(3)

Complaint which sought declaratory judgment that ordinance which prohibited female employees of taverns, but not male employees, from sitting with patrons of the opposite sex stated a cause of action under this section. White v. Flemming, E.D.Wis.1974, 374 F.Supp. 267, affirmed 522 F.2d 730. Declaratory Judgment 315

1335. Socioeconomic discrimination, deprivation of constitutional or statutory rights generally

For purposes of claim that discrimination in medical treatment of infants born with form of spina bifida based on socioeconomic factors violated their rights to due process and equal protection, there was no evidence of discriminatory harm; evidence indicated only that team of health professionals at hospital considered socioeconomic factors in making treatment recommendation and not that factors affected outcome of recommendations in individual cases, i.e., that infants' socioeconomic status was factor that caused recommendation that they receive only supportive care. Johnson by Johnson v. Thompson, C.A.10 (Okla.) 1992, 971 F.2d 1487, certiorari denied 113 S.Ct. 1255, 507 U.S. 910, 122 L.Ed.2d 654. Civil Rights 1422

1336. Aliens and nationality discrimination, deprivation of constitutional or statutory rights generally

Vietnamese stateless person who had entered the Commonwealth of the Northern Mariana Islands (CNMI) on tourist entry permit and had been denied political asylum and refugee status from both CNMI and the United States and had been ordered deported but refused to cooperate did not have a federal constitutional right to employment within the CNMI. Tran v. Com. of Northern Mariana Islands, D.N.Mar.I.1991, 780 F.Supp. 709, affirmed 993 F.2d 884. Aliens 4

1337. Disability discrimination, deprivation of constitutional or statutory rights generally

Special needs high school senior who received highest weighted grade point average in her class was not required, before challenging policy amendment allowing the designation of multiple valedictorians as violating § 1983, ADA, and Rehabilitation Act, to exhaust remedies under the Individuals with Disabilities Education Act (IDEA); student did not challenge her accommodations under the IDEA, but rather, discrimination because of those accommodations. Hornstine v. Township of Moorestown, D.N.J.2003, 263 F.Supp.2d 887. Civil Rights 1309; Schools 155.5(3)

Action brought by handicapped person charging arbitrary, unreasonable and discriminatory classification of

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handicapped persons is cognizable under both this section and U.S.C.A.Const. Amend. 14. Nodleman v. Aero Mexico, C.D.Cal.1981, 528 F.Supp. 475. Civil Rights 1017

1338. Threat to violate rights, deprivation of constitutional or statutory rights generally

Mere verbal threats made by state-actor do not generally constitute § 1983 claim, as constitution does not protect against all intrusions on one's peace of mind, and fear or emotional injury which results solely from verbal harassment or idle threats is generally not sufficient to constitute invasion of identified liberty interest. King v. Olmsted County, C.A.8 (Minn.) 1997, 117 F.3d 1065. Civil Rights 1036

Prosecutor's statement to mother of minor who was alleged victim of criminal sexual assault, that if mother did not cooperate with interview and prosecution, prosecutor would contact social services agency to investigate her household, did not constitute an improper threat to a witness so as to support accused's subsequent § 1983 civil rights action; statement came after mother, who had originally testified to daughter's informing her of sexual incident, changed her story and took daughter back to accused's home, leading prosecutor to believe mother was being pressured by family members. Pierzynowski v. Police Dept. City of Detroit, E.D.Mich.1996, 941 F.Supp. 633 . Civil Rights 1088(5)

Mere alleged threats by police officers to violate bank customers' due process rights were insufficient to support § 1983 action, absent any actual violation of due process. Arnold v. Truemper, N.D.Ill.1993, 833 F.Supp. 678. Civil Rights 1088(1)

State actor's threat to violate citizen's constitutional rights is not actionable under § 1983. Flanigan v. Kent County Sheriff's Dept., W.D.Mich.1993, 817 F.Supp. 660. Civil Rights 1036

1339. Retaliation, deprivation of constitutional or statutory rights generally

A §§ 1983 case brought by a public employee alleging retaliation based on assertion of First Amendment rights does not require an adverse employment action within the meaning of the antidiscrimination statutes, such as Title VII; any deprivation under color of law that is likely to deter the exercise of free speech is actionable. Mosely v. Board of Educ. of City of Chicago, C.A.7 (Ill.) 2006, 434 F.3d 527. Constitutional Law 90.1(7.2)

Issue of whether former agent for special investigations bureau of the Puerto Rico Department of Justice was discharged because of his protected speech disclosing mismanagement and possible corruption in the department, rather than for stated reason of a prior, expunged, domestic abuse conviction, was for jury in §§ 1983 claim brought by agent alleging that he was discharged in retaliation of his protected speech. Tejada-Batista v. Morales, C.A.1 (Puerto Rico) 2005, 424 F.3d 97. Civil Rights 1430

To state a prima facie claim of First Amendment retaliation under §§ 1983, a public employee must offer some tangible proof that (1) her speech was constitutionally protected; (2) she suffered an adverse employment action; and (3) a causal relationship between the two existed in that the speech was a substantial or motivating factor for the adverse employment action. Burkybile v. Bd. of Educ. of Hastings-On-Hudson Union Free School Dist., C.A.2 (N.Y.) 2005, 411 F.3d 306, certiorari denied 126 S.Ct. 801, 163 L.Ed.2d 628. Constitutional Law 90.1(7.2)

Any lawsuit brought by an employee against a public employer qualifies as a protected "petition" under the First Amendment so long as it is not sham litigation. Hill v. City of Scranton, C.A.3 (Pa.) 2005, 411 F.3d 118. Constitutional Law 91

Teacher's prior lawsuit alleging that school district retaliated against her for assisting another employee in bringing gender discrimination action, and for being identified as a witness in that action, was speech on a matter of public concern for purposes of her First Amendment retaliation claim; prior lawsuit was predicated on speech about

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gender discrimination against a fellow employee that directly implicated the access of the courts to truthful testimony. Konits v. Valley Stream Cent. High School Dist., C.A.2 (N.Y.) 2005, 394 F.3d 121, on remand 2006 WL 224188. Constitutional Law 90.1(7.3); Schools 147.12

To establish a First Amendment retaliation claim under §§ 1983, the plaintiff must show (1) he engaged in a protected activity or speech, (2) the government official took adverse action against him that would chill a person of ordinary firmness from continuing in the activity, and (3) the adverse action was motivated at least in part by the exercise of the protected activity or speech. Revels v. Vincenz, C.A.8 (Mo.) 2004, 382 F.3d 870, rehearing denied, certiorari denied 126 S.Ct. 371, 163 L.Ed.2d 140, rehearing denied 126 S.Ct. 721, 163 L.Ed.2d 618. Constitutional Law 82(3); Constitutional Law 90.1(1)

State agency head acted reasonably in terminating employee who had reported sexual harassment of employee's coworkers by employee's supervisor, and thus could not be liable in employee's § 1983 First Amendment retaliation action; internal investigator's report stated that alleged victims all denied harassment and that employee was angry because supervisor had demoted him, there was no evidence of bias on part of agency head or investigator, and employee failed to present any evidence in support of his allegations when asked to do so by agency head, and thus agency head's interest in promoting efficiency clearly outweighed employee's interest in commenting on matter of public concern. Johnson v. Louisiana, C.A.5 (La.) 2004, 369 F.3d 826. Constitutional Law 90.1(7.2); States 53

Accurate but irrelevant information about personal matters publicly aired by government officials intent on penalizing a citizen for exercising her First Amendment rights is cognizable under § 1983. Mattox v. City of Forest Park, C.A.6 (Ohio) 1999, 183 F.3d 515, rehearing denied. Civil Rights 1040

To assert cause of action under § 1983 for retaliation for exercise of federally protected right, plaintiff must show that he or she engaged in protected activity, that adverse employment action followed and that there was causal connection between the activity and adverse action. Southard v. Texas Bd. of Criminal Justice, C.A.5 (Tex.) 1997, 114 F.3d 539. Civil Rights 1243

Owner of towing and wrecker service stated First Amendment claim against city, arising from revocation of permission for owner to use police radio frequency in business after owner complained to city chief of police respecting bidding procedure for abandoned vehicles towing contract with city; complaint sufficiently alleged violation of owner's First Amendment rights, or at least ratification, by city's policymakers. Blackburn v. City of Marshall, C.A.5 (Tex.) 1995, 42 F.3d 925. Civil Rights 1395(1); Civil Rights 1395(5)

Professor failed to establish sufficiently serious questions going to the merits of her §§ 1983 claim against university administrators, alleging that she was suspended for refusing to undergo a psychiatric examination in retaliation for her testimony at hearing on colleague's race discrimination claim against university, and for her filing of action against administrators, in violation of First Amendment, to make them a fair ground for litigation, as required for professor to be entitled to preliminary injunction to prevent administrators from requiring her to undergo psychiatric examination in order to keep her position, since she failed to present any evidence of a causal connection between her testimony or the filing of the action and her suspension. Appel v. Spiridon, D.Conn.2006, 2006 WL 3479414.

Only retaliatory conduct that would deter a similarly situated individual from exercising his or her constitutional rights constitutes an adverse action for a claim of First Amendment retaliation; otherwise, the retaliatory act is simply de minimus and outside the ambit of constitutional protection. Lyons v. Wall, D.R.I.2006, 464 F.Supp.2d 79. Constitutional Law 82(3)

Nurse's allegedly retaliatory act in refusing to administer to state prisoner a single dose of an over-the-counter pain reliever was de minimis, for purposes of prisoner's First Amendment retaliation claim, in civil rights action under §§

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1983 alleging that he was denied needed pain medication in retaliation for two lawsuits he had previously brought against Department of Correctional Services (DOCS) personnel, where depriving prisoner of one dose of non-narcotic pain reliever, leading to at most several hours of discomfort, did not rise to level of a constitutional violation, and a person of ordinary firmness would not be deterred from exercising his constitutional right to file grievances and lawsuits simply because he had to wait a few hours for access to his non-narcotic pain medication. Davidson v. Bartholome, S.D.N.Y.2006, 460 F.Supp.2d 436. Prisons 17(2)

Prisoner stated First Amendment retaliation claims against prison library defendants for destroying his typewriter in retaliation for his filing of grievances and lawsuits; although prisoner's causal connection allegations were largely conclusory and his pleadings contained few, if any, specific facts relating to defendants' involvement in the typewriter's destruction, the multiple and diverse forms of damage to the typewriter suggested malicious conduct by someone at prison and supported a reasonable inference that the individual or individuals responsible were retaliating against prisoner for his filing of grievances and lawsuits. Collins v. Goord, S.D.N.Y.2006, 438 F.Supp.2d 399. Civil Rights 1395(7)

Teacher who was terminated from position as Special Projects (SP) Coordinator stated First Amendment retaliation claim under §§ 1983 by alleging that, after she complained about school district's financial improprieties, she was removed from that position so that she could no longer report on any such improprieties. Peres v. Oceanside Union Free School Dist., E.D.N.Y.2006, 426 F.Supp.2d 15. Schools 147.12

Governor's alleged threat to cause state regulators to exercise greater scrutiny over coal company and its chairman, in retaliation for chairman's public opposition to Governor's bond proposal, if proven, adversely affected chairman's constitutionally protected speech, as required for chairman to prove §§ 1983 retaliation claim, in that such alleged factual scenario forced chairman to choose between exercising his speech rights or scaling back such exercise to protect his business affairs. Blankenship v. Manchin, S.D.W.Va.2006, 410 F.Supp.2d 483. Mines And Minerals 92.10

In First Amendment retaliation case, an "adverse employment action" is an act that is reasonably likely to deter employees from engaging in constitutionally protected speech; it is not necessary that plaintiff demonstrate the loss of a valuable governmental benefit or privilege. Neveu v. City of Fresno, E.D.Cal.2005, 392 F.Supp.2d 1159. Constitutional Law 90.1(7.2)

Attorney employed by police department was not speaking out on matters of public concern, as required in order to have First Amendment protection from retaliation in §§ 1983 action, when he expressed criticism of department's equal employment opportunity unit in cases he was handling, and then spoke out in opposition to criticism he received after first remarks. Hoffman v. Baltimore Police Dept., D.Md.2005, 379 F.Supp.2d 778. Municipal Corporations 185(1)

To establish retaliation by a state actor for the exercise of a constitutional right, a §§ 1983 plaintiff must, as a threshold matter, prove that the conduct that allegedly prompted the defendants to retaliate was itself constitutionally protected, and that the defendants took some "adverse action" against him; thereafter, plaintiff bears burden of proving that his constitutionally protected conduct was at least a "substantial or motivating factor" in the defendants' decision to take their adverse action, and then burden shifts to defendants to prove, by a preponderance of the evidence, that they properly would have performed the challenged action even if the plaintiff had not engaged in constitutionally protected conduct. Wilson v. City of Fountain Valley, C.D.Cal.2004, 372 F.Supp.2d 1178. Civil Rights 1401; Civil Rights 1417

Allegations by provider of special education and therapy services that provider's director complained to county director of department of public health and coordinator of special education services regarding county's use of unlicensed competitors to provide such services, that the department director and the coordinator subsequently encouraged three of provider's employees to establish a competitor, that shortly thereafter the county began to

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transfer Special Education Itinerant Teacher (SEIT) session hours away from provider to that competitor, and that the department director and coordinator controlled the process by which such hours were assigned, were sufficient to state a §§ 1983 First Amendment retaliation claim against county. Dorsett-Felicelli, Inc. v. County of Clinton, N.D.N.Y.2005, 371 F.Supp.2d 183. Civil Rights 1351(2); Counties 120

City's refusal to renew business license for restaurant, citation of landowner for signage violation, and demand for debris removal, alleged to be in retaliation against landowner in response to his opposition to taking of land for nonpayment of taxes, did not rise to level of violation of landowner's due process rights, when there was no evidence of fundamental irregularity, racial animus or the like, and there was ample opportunity to litigate claims in state court. Matney v. City of North Adams, D.Mass.2005, 359 F.Supp.2d 20. Constitutional Law 278.2(1); Constitutional Law 287.2(1); Food 3; Municipal Corporations 602

Correctional officer stated First Amendment retaliation claim against correctional officials by alleging that they engaged in coordinated effort to make him scapegoat for alleged use of excessive force against prisoner and that, in response to his filing of lawsuit claiming that he was unfairly denied representation in prisoner's civil suit, he was shortly thereafter transferred to another institution, subjecting him to diminished career and promotional opportunities and financial losses. Mangiafico v. Blumenthal, D.Conn.2005, 358 F.Supp.2d 6. Constitutional Law 91; Prisons 7

Routine official reports of police officer, discussing internal issues through internal reporting system as part of his assigned duties, did not address "matter of public concern," with regard to officer's claim of retaliation in violation of his First Amendment free speech rights, since officer was not speaking as citizen. Kelly v. City of Mount Vernon, S.D.N.Y.2004, 344 F.Supp.2d 395. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Police department statement to press about pending case did not address "matter of public concern," with respect to police officer who released it and who claimed retaliation in violation of his First Amendment free speech rights, since statement was approved by commissioner, and it was made pursuant to department policy and as part of daily practice of sharing such information with media. Kelly v. City of Mount Vernon, S.D.N.Y.2004, 344 F.Supp.2d 395. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

High school student-athletes' complaints about basketball team's coach, which concerned coach's purported harsh language and intimidating manner and took form of petition for coach's removal and other communications with school and district officials, did not constitute protected speech, and thus could not serve as basis for §§ 1983 First Amendment retaliation action after students were suspended from team in wake of their refusal to participate in road trip with coach; speech was not political in nature and did not touch on matter of public concern, but rather constituted merely private grievance. Pinard v. Clatskanie School Dist. GJ, D.Or.2004, 319 F.Supp.2d 1214, affirmed in part, reversed in part and remanded 446 F.3d 964. Constitutional Law 90.1(1.4); Schools 164

Employer's motion for summary judgment on employee's claim of racial discrimination and retaliation under Title VII and § 1983 was premature, where employer had not been permitted sufficient development of the record by employer's assertion that employment records of other employees were confidential and not allowing employee to examine them to determine whether or not he was treated differently from employees who were not African-American. Jones v. City of Wilmington, D.Del.2004, 299 F.Supp.2d 380. Federal Civil Procedure 2553

Inmate's § 1983 complaint adequately pleaded claim for retaliation; inmate was specific when pleading the First Amendment activity engaged in, his filing of grievances, as well as the resulting consequences he faced, keeplock confinement with reduction in privileges for periods of four days, 21 days and 21 days, and in at least one instance defendants' documents revealed that a misbehavior report was issued in response to inmate's filing of a grievance. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

Citations and condemnation orders issued by fire chief and fire marshal against corporate owner of rental properties and its president were not issued in retaliation for president's participation in lawsuits against the city, or president's public criticism of building code enforcement policies, for purposes of § 1983 claim alleging First Amendment violations; fire chief had no knowledge of president's comments regarding building code enforcement policies, and president did not even begin criticizing the policies until more than one month after the last citation complained of was written and more than 10 months after action was filed, fire chief did not know that corporate owner and its president were plaintiffs in lawsuits against city, and neither fire chief nor fire marshal were appreciably inconvenienced by the process of defending those lawsuits. Grimm v. Sweeney, E.D.Pa.2003, 249 F.Supp.2d 571. Constitutional Law 90.1(1); Municipal Corporations 739(1)

Allegations by owners of rental property that borough's assistant building inspector improperly issued citation for owners' refusal to inspect one of its properties in retaliation for owners' membership in associations that filed suits against borough stated prima facie case of retaliation in violation of the First Amendment under § 1983. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Constitutional Law 91; Health 392

State action taken in retaliation for exercise of constitutionally protected right can form basis for § 1983 claim, even if action would have been proper in other circumstances. Blue v. Koren, S.D.N.Y.1994, 865 F.Supp. 169, reversed 72 F.3d 1075. Civil Rights 1031

Mere fact that state inmate's group petition was confiscated after he filed grievances and litigation against warden was insufficient to establish retaliatory motive in §§ 1983 action against corrections officials, given inmate's long history of filings without any adverse action. West v. Hautamaki, C.A.7 (Wis.) 2006, 172 Fed.Appx. 672, 2006 WL 535570, Unreported. Civil Rights 1092

Speakers scheduled for a "Black Student Day" event at a college failed to state a First Amendment retaliation claim in connection with the college's refusal to pay promised honoraria, absent an allegation of any causal connection between the refusal and their own expressive conduct; payment was withheld based on the fact that the student-organizers had contravened an acting president's decision to decline authorization for outside speakers. Ford v. Reynolds, C.A.2 (N.Y.) 2006, 167 Fed.Appx. 248, 2006 WL 354636, Unreported. Civil Rights 1395(2)

Prior supervisor's alleged grabbing and restraining of state employee did not involve an important condition of employment, as required to establish First Amendment claim of retaliation under §§ 1983. Clark v. Alabama, C.A.11 (Ala.) 2005, 141 Fed.Appx. 777, 2005 WL 1317037, Unreported. States 53

By admitting that they had refused to allow their daughter to participate on either high school swimming team or swimming team of private swim club because they did not want person serving as coach for both teams to be around daughter, parents conceded that daughter did not participate in swimming due to their decision, and not because of any retaliatory action by club or school district arising from parents' complaints about coach or related lawsuits, precluding liability of club and district under §§ 1983 for alleged retaliation. Tierney v. Quincy School Dist. No. 172, C.A.7 (Ill.) 2005, 125 Fed.Appx. 711, 2005 WL 513481, Unreported, rehearing and rehearing en banc denied. Evidence 264

Police officer from another police force, serving on interview committee participating in selection of new officer for township police force, did not retaliate against two other committee members who were officers of township force, due to their support of black candidate; there was no evidence that outside officer participated in any adverse actions. Simril v. Township of Warwick, E.D.Pa.2003, 2003 WL 1204442, Unreported. Civil Rights 1359

1340. Public official status, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Any claimed right which stemmed from petitioner's status as mayor under state law could not be asserted in federal action for damages for deprivation of rights secured by Constitution. Egan v. City of Aurora, Ill., U.S.Ill.1961, 81 S.Ct. 684, 365 U.S. 514, 5 L.Ed.2d 741, on remand 291 F.2d 706. Civil Rights 1029

1341. Municipal ordinances generally, deprivation of constitutional or statutory rights generally

Although, under § 1983, it is possible for a municipality to be held independently liable for a constitutional violation even in situations where none of its employees are liable, there can be no municipal liability unless there is a violation of the plaintiff's constitutional rights. Dintino v. Echols, E.D.Pa.2003, 243 F.Supp.2d 255, affirmed 91 Fed.Appx. 783, 2004 WL 474134. Civil Rights 1345

Landlord plaintiffs' proposed amended complaint, which challenged enactment and enforcement of a city ordinance which required that rental properties be licensed in certain residential areas, sufficiently set forth an as-applied procedural due process claim under the Fourteenth Amendment; proposed amended complaint identified five landlord plaintiffs who received notices of violations, one landlord plaintiff whose request for a hearing was "ignored," and one landlord plaintiff whom city required to make extensive repairs without an opportunity to challenge the requirement. Jones v. Wildgen, D.Kan.2004, 349 F.Supp.2d 1358. Civil Rights 1395(3)

Criminal proceedings brought in city court against religious proselytizer for violation of city noise ordinance were not brought in bad faith or in retaliation for proselytizer's previous successful lawsuit against city attacking old noise ordinance, as required to preclude application of *Younger* abstention doctrine to proselytizer's § 1983 action to enjoin city from enforcing certain sections of newly-revised noise ordinance; series of correspondence between proselytizer and city showed that city made good faith efforts to accommodate proselytizer after previous noise ordinance was struck down as unconstitutional and despite city's service of multiple summonses upon proselytizer, and criminal proceedings in city court were, for all practical proceedings, just one proceeding, not repetitive and harassing. Toback v. City of Long Beach, E.D.N.Y.1996, 948 F.Supp. 167. Federal Courts 54

Municipal ordinances and their enforcement may be challenged in actions under this section. Cobb v. Beame, S.D.N.Y.1975, 402 F.Supp. 19.

1342. State court proceedings generally, deprivation of constitutional or statutory rights generally

To make out a cause of action under this section, state court proceedings must have been a complete nullity with a purpose to deprive a person of his property without due process of law. Sarelas v. Sheehan, C.A.7 (Ill.) 1963, 326 F.2d 490, certiorari denied 84 S.Ct. 1334, 377 U.S. 932, 12 L.Ed.2d 296. See, also, Johnson v. Stone, C.A.Ill.1959, 268 F.2d 803; Bottone v. Lindsley, C.A.Colo.1948, 170 F.2d 705, certiorari denied 69 S.Ct. 810, 336 U.S. 944, 93 L.Ed. 1101. Civil Rights 1056

Procedural error under state law does not rise to a constitutional level for purposes of this section. Tyrrell v. Taylor, E.D.Pa.1975, 394 F.Supp. 9, modified on other grounds 535 F.2d 823. Civil Rights 1027

No violation of this section is made out so long as a procedurally fair trial on a civil issue is provided in the state court and neither does a mere irregularity in the state court proceeding confer jurisdiction under this section. Surowitz v. New York City Emp. Retirement System, S.D.N.Y.1974, 376 F.Supp. 369. Civil Rights 1315

1343. Necessity of bringing action, deprivation of constitutional or statutory rights generally

Possibility that plaintiff, aggrieved by city building inspector's issuance of a building permit to plaintiff's next door neighbor to convert a tool shed into a small apartment, would have to bring his own state court action to enforce a board of zoning appeals decision in his favor did not violate his constitutional rights. Crocker v. Hakes, C.A.5 (Ga.) 1980, 616 F.2d 237. Civil Rights 1073

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42 U.S.C.A. § 1983

1344. Clerks, deprivation of constitutional or statutory rights generally

Alleged negligence of clerk of circuit court in county in failing to notify Department of Safety that motorist had not been convicted of driving a motor vehicle while under the influence of an intoxicant, an offense for which motorist had admittedly been arrested and which resulted in suspension of motorist's driver's license, constituted no denial of equal protection cognizable under this section. Barnes v. Armour, E.D.Tenn.1974, 392 F.Supp. 1240. Civil Rights 1072

1345. Appearance required, deprivation of constitutional or statutory rights generally

Where a person summoned to appear in a Virginia county court to answer a misdemeanor charge, sent his lawyer to represent him vicariously and judge directed accused to respond to process in person and issued a capias for his attachment and accused was arrested and incarcerated, accused was not deprived of due process of the law in transgression of this section. Souther v. Reid, E.D.Va.1951, 101 F.Supp. 806. Constitutional Law 262

Denial of state inmate's request to personally appear at his trial in §§ 1983 action was not abuse of discretion, given that court arranged for inmate's appearance by video and inmate had no absolute right to attend the trial in person. Times v. Jones, C.A.9 (Ariz.) 2005, 137 Fed.Appx. 56, 2005 WL 1491485, Unreported. Convicts 6

1346. Access to courts, deprivation of constitutional or statutory rights generally

Texas district court clerk's policy of not accepting cost bonds if surety thereon was not listed in Federal Register, unless appellant could provide $1,000 in cash in lieu of bond or audited financial statement showing assets noted in petition, did not implicate constitutionally guaranteed right of access to courts actionable under § 1983. Able v. Bacarisse, C.A.5 (Tex.) 1998, 131 F.3d 1141. Appeal And Error 380; Constitutional Law 328

To establish violation of constitutional right of access to courts, plaintiff must demonstrate that defendant caused "actual injury," i.e., took or was responsible for actions that hindered plaintiff's efforts to pursue legal claim. Monsky v. Moraghan, C.A.2 (Conn.) 1997, 127 F.3d 243, certiorari denied 119 S.Ct. 66, 525 U.S. 823, 142 L.Ed.2d 52. Constitutional Law 328

Interference with or deprivation of right of access to the courts is actionable under § 1983. Graham v. National Collegiate Athletic Ass'n, C.A.6 (Ky.) 1986, 804 F.2d 953. Civil Rights 1056

Denial of access to the courts violates a recognized constitutional right, and conceivably could be the basis of a suit pursuant to this section, and thus action which prevents an individual from communicating with the court could constitute denial of access to the court. Henriksen v. Bentley, C.A.10 (Wyo.) 1981, 644 F.2d 852. Civil Rights 1056

Japanese national's rights to use the court and to petition government for redress of grievances were guaranteed by and enforceable under this section. Inada v. Sullivan, C.A.7 (Ill.) 1975, 523 F.2d 485. Civil Rights 1056

Deprivation of materials necessary to afford reasonable access to the courts violates the due process clause of U.S.C.A.Const. Amend. 14 and a federal court has jurisdiction of claim for damages based on such deprivation. Sigafus v. Brown, C.A.7 (Ill.) 1969, 416 F.2d 105. Constitutional Law 305(2); Federal Courts 178.5

Borough tax collector was not denied access to courts, in violation of his constitutional rights, when authorities allegedly suppressed evidence that would have allowed him to establish that illegal search resulted in evidence supporting his arrest for making unconsented to conversation recordings; necessary invalidation of conviction had not occurred, and in any event collector had no evidence in support of his evidence tampering claims. Konopka v. Borough of Wyoming, M.D.Pa.2005, 383 F.Supp.2d 666. Taxation 2831

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42 U.S.C.A. § 1983

Allegations that police officers conspired to select sobriety test that fellow officer who struck and killed pedestrians was likely to "beat," delayed administration of that test, intimidated witnesses, and destroyed material evidence at scene of crime, limiting plaintiffs' ability to disprove comparative negligence defense and their ability to prove extent of victims' conscious pain and suffering and their entitlement to punitive damages, stated claim under § 1983 for denial of access to courts; plaintiffs specifically identified both the cause of action supposed to have been lost and the remedy being sought. Small v. City of New York, E.D.N.Y.2003, 274 F.Supp.2d 271, opinion clarified on denial of reconsideration 304 F.Supp.2d 401. Civil Rights 1395(5)

Litigant did not conspire with bailiff to deny opponent access to court in state alienation of affection action, and thus litigant and bailiff were not subject to liability under § 1983, despite opponent's allegation that judge's order to search all persons in courtroom was result of agreement between litigant and bailiff, where existence of agreement was based on hearsay and speculation, and hearing continued after search. Byrd v. Hopson, W.D.N.C.2003, 265 F.Supp.2d 594, affirmed 108 Fed.Appx. 749, 2004 WL 1770261. Conspiracy 7.5(2); Conspiracy 19

Plaintiff, who was charged with criminal offense under state law, was not denied constitutional right of access to courts based on alleged denial of access to county law library, where plaintiff was not in state's custody. Roberts v. Childs, D.Kan.1997, 956 F.Supp. 923, reconsideration denied 1997 WL 83398, affirmed 125 F.3d 862. Constitutional Law 328; Counties 107

To deny access to courts, defendants need not literally bar courthouse door or attack plaintiffs' witnesses; right of access is lost where officials shield from public and victim's family key facts which would form basis of family's claim for redress. Love v. Bolinger, S.D.Ind.1996, 927 F.Supp. 1131. Constitutional Law 328

Bus passenger who had brought action against transit authority in connection with which authority had placed passenger under surveillance to determine if passenger's injuries were as severe as she claimed could not recover in federal civil rights action based on allegation that surveillance amounted to violation of her right of access to courts where surveillance occurred only in public places and without passenger's knowledge and passenger presented no evidence that surveillance caused either deprivation of or interference with her right of access or prejudiced her in any way. Frazier v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1995, 907 F.Supp. 116, affirmed 91 F.3d 123. Civil Rights 1056

Cancer patients stated claim against government and government officials for violation of right of access to courts, by alleging that government subjected patients to radiation experiments, but told them they were receiving cancer treatment; in 20 to 30 years since experiments, crucial evidence may have been lost, many witnesses may have died or otherwise have become unavailable, and many witnesses' memories had faded. In re Cincinnati Radiation Litigation, S.D.Ohio 1995, 874 F.Supp. 796. Constitutional Law 305(2); United States 50.10(1); United States 78(9)

Government officials' interference with plaintiff's constitutional right of access to courts can give rise to cause of action under federal civil rights statute. Doe v. Board of Educ. of Hononegah Community High School Dist. No. 207, N.D.Ill.1993, 833 F.Supp. 1366. Civil Rights 1056

The right of access to the courts is protected by the due process clause of U.S.C.A.Const. Amend. 14, and is also part of the right to petition protected by U.S.C.A.Const. Amend. 1. Crews v. Petrosky, W.D.Pa.1981, 509 F.Supp. 1199. Constitutional Law 91; Constitutional Law 305(2)

1347. Jurisdiction, deprivation of constitutional or statutory rights generally

Plaintiff was not denied due process so as to give rise to cause of action against state court judges and justices under this section merely because state courts, not claimed to have been invidiously motivated, or to have indulged in sham proceedings rendered judgment against plaintiff in wrongful death action on jurisdictional grounds, though

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apparently plaintiff was not granted evidentiary hearing on questions of convenience of alternative forums and her good faith in joining Illinois residents as defendants. Adkins v. Underwood, C.A.7 (Ill.) 1975, 520 F.2d 890, certiorari denied 96 S.Ct. 452, 423 U.S. 1017, 46 L.Ed.2d 389. Civil Rights 1056

City court judge and marshal, who challenged state statute which reduced territorial jurisdiction of the court, restricted personnel of the court, and reduced pay of judge and marshal, had no claim cognizable under this section. Dupont v. Kember, M.D.La.1980, 501 F.Supp. 1081. Civil Rights 1032

1348. Service of process, deprivation of constitutional or statutory rights generally

Kansas statute under which a defendant had sought to serve plaintiff by publication in replevin action was constitutional, and, thus, no civil rights violation was shown, particularly where defendant's actions, even if arguably in violation of due process rights, were not taken under color of state law and did not involve state action. Siefkes v. Nichols, D.Kan.1992, 788 F.Supp. 477. Civil Rights 1326(9); Replevin 42

Defects in confession of judgment proceeding, including failure to properly sign complaint and affidavit and irregularities in mailing of notice, which indicated noncompliance with rules of civil procedure, did not in and of themselves constitute a violation of this section. Chicarelli v. Plymouth Garden Apartments, E.D.Pa.1982, 551 F.Supp. 532. Civil Rights 1056

1349. Calendars and dockets, deprivation of constitutional or statutory rights generally

Jail officials could not be held responsible under this section for unjustifiable delays caused by crowded criminal docket. Collins v. Schoonfield, D.C.Md.1973, 363 F.Supp. 1152. Civil Rights 1358

1350. Continuances, deprivation of constitutional or statutory rights generally

Decedent's nephew, who was unsuccessful in challenging aunt's will in state court, failed to state a claim under this section against either his aunt's estate, executor of the estate, state trial judge who dismissed the action or clerk of the state court for denying him his "day in court" by refusing a fourth continuance in state probate suit. Hagerty v. Succession of Clement, C.A.5 (La.) 1984, 749 F.2d 217, certiorari denied 106 S.Ct. 333, 474 U.S. 968, 88 L.Ed.2d 317. Civil Rights 1395(1)

1351. Dismissal of actions, deprivation of constitutional or statutory rights generally

Sole right of complainant who sought to discipline judge and members of bar was to make and submit complaint, and allegedly improper dismissal of such complaint could not give rise to action for deprivation of civil rights, even apart from questions of immunity. Ginsburg v. Stern, W.D.Pa.1954, 125 F.Supp. 596, affirmed 225 F.2d 245. Civil Rights 1072

Dismissal of arrestee's §§ 1983 action for failure to prosecute was not warranted when arrestee's counsel acted quickly and effectively in their efforts to gain appointment of administrator to represent arrestee's estate following arrestee's death in unrelated accident, public administrator promptly filed cross-motion for substitution upon appointment to represent arrestee's estate, delay that occurred in case prior to arrestee's death was attributable to both arrestee and defendants and prejudice from delay in appointment of administrator was felt equally by all, and dismissal would punish parties without blame for delay. Kernisant v. City of New York, E.D.N.Y.2005, 225 F.R.D. 422. Federal Civil Procedure 1763

1352. Subpoenas, deprivation of constitutional or statutory rights generally

A city's issuance of subpoena for wage and salary records of resident of government subsidized housing project,

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and city police detective's service of subpoena on resident's private employer, were not causally connected to resident's subsequent discharge by employer so as to give rise to § 1983 claim against city and officer; city issued subpoena in conjunction with investigation of improper rent subsidies at project and while subpoena may have been triggering event leading to discharge, it had no effect on employer's discharge decision in that resident was terminated when she admitted she forged her supervisors' signatures on letters which helped her get rent subsidy. Dawson v. City of Kent, N.D.Ohio 1988, 682 F.Supp. 920, affirmed 865 F.2d 257. Civil Rights 1032

1353. Depositions, deprivation of constitutional or statutory rights generally

Alleged misuse of state power on compulsory process to inflict personal injury upon plaintiff, when he appeared for taking of his deposition in connection with his private state court litigation in which state did no more than furnish forum, having no interest whatsoever in outcome, constituted no denial of rights under U.S.C.A.Const. Amend. 14 and could give rise to no claim upon which relief could be granted under this section. Skolnick v. Martin, C.A.7 (Ill.) 1963, 317 F.2d 855, certiorari denied 84 S.Ct. 199, 375 U.S. 908, 11 L.Ed.2d 146, rehearing denied 84 S.Ct. 440, 375 U.S. 960, 11 L.Ed.2d 319. Civil Rights 1037; Constitutional Law 309(3)

1354. Interrogatories, deprivation of constitutional or statutory rights generally

In civil rights action brought by attorney challenging disbarment of attorney, denial of attorney's discovery against justices of Iowa Supreme Court and Grievance Commission members was not denial of due process in that interrogatories were attempt to obtain mental impressions of Commission and court in decisionmaking process. Matter of Randall, C.A.8 (Iowa) 1981, 640 F.2d 898, certiorari denied 102 S.Ct. 361, 454 U.S. 880, 70 L.Ed.2d 189. Constitutional Law 305(3)

1355. Hearing, deprivation of constitutional or statutory rights generally

Where state prisoner was indicted by properly convened grand jury, he was not deprived of civil rights by lack of state preliminary hearing on question of probable cause to support pretrial detention. Carter v. Kilbane, C.A.6 (Ohio) 1975, 519 F.2d 1370. Civil Rights 1088(5); Criminal Law 223

1356. Bias and prejudice of judge, deprivation of constitutional or statutory rights generally

Motorists who were arrested for exceeding posted speed limit stated § 1983 cause of action for denial of due process against mayor and city by alleging that motorists had right to have contested traffic cases heard in court of proper jurisdiction and right to have disinterested and impartial judge, rather than mayor, hear and decide contested traffic cases. Rose v. Village of Peninsula, N.D.Ohio 1993, 839 F.Supp. 517. Civil Rights 1395(6)

1357. Comments of counsel, deprivation of constitutional or statutory rights generally

Slanderous remarks made by attorney during state court appearances to defend another attorney's claim against his clients for attorney fees did not rise to level of unfair trial in federal constitutional sense so as to give rise to right in the other attorney to pursue action under this section. Arch v. Papadakos, W.D.Pa.1984, 575 F.Supp. 1271, affirmed 751 F.2d 375. Civil Rights 1038

1358. Witnesses, deprivation of constitutional or statutory rights generally

The Civil Rights Act of 1871 does not allow recovery of damages against a private party for testimony in a judicial proceeding. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Civil Rights 1056

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42 U.S.C.A. § 1983

Arrestee failed to state § 1983 claim against prosecutors arising from their payments and promises of lenience to witnesses for allegedly false statements inculpating arrestee; arrestee did not allege concealment at trial of payments and promises, and payments and promises themselves did not violate due process clause. Buckley v. Fitzsimmons, C.A.7 (Ill.) 1994, 20 F.3d 789, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 740, 513 U.S. 1085, 130 L.Ed.2d 642, on remand 1996 WL 10899. Civil Rights 1395(6); Constitutional Law 268(10); Criminal Law 700(1)

1359. Privileges, deprivation of constitutional or statutory rights generally

As a creature of state law, the attorney-client privilege cannot be asserted as a basis for recovery under this section. Bradt v. Smith, C.A.5 (Tex.) 1981, 634 F.2d 796, certiorari denied 102 S.Ct. 125, 454 U.S. 830, 70 L.Ed.2d 106. Civil Rights 1056

1360. Instructions, deprivation of constitutional or statutory rights generally

Defendant acquitted on criminal charges stated due process claim for denial of fair trial on ground that police officer and deputy district attorney had intimidated judge into changing his jury instructions; fact of acquittal spoke only to amount of damages suffered and was irrelevant to whether defendant had cause of action for alleged violation, which was complete when judge changed jury instructions. Haupt v. Dillard, C.A.9 (Nev.) 1994, 17 F.3d 285, as amended. Civil Rights 1395(5); Constitutional Law 268(8)

1361. Settlement and compromise, deprivation of constitutional or statutory rights generally

Because arrestee who asserted that he was induced by fraud to enter into settlement agreement with transit authority and police officer was entitled to seek to have the settlement set aside on the basis of fraudulent misrepresentation, he was not denied any property by the settlement without due process. Bates v. New York City Transit Authority, E.D.N.Y.1989, 721 F.Supp. 1577. Compromise And Settlement 19(1); Constitutional Law 278(1); Constitutional Law 278(2)

1362. Failure to rule, deprivation of constitutional or statutory rights generally

State court's failure to act within three years on inmate's motion for postconviction relief may have amounted to a deprivation of constitutional rights and may have given rise to a cognizable claim for injunctive relief under this section. McMillan v. Chief Judge, Circuit Court of Greene County, C.A.8 (Mo.) 1983, 711 F.2d 108, certiorari denied 104 S.Ct. 724, 464 U.S. 1048, 79 L.Ed.2d 185. Civil Rights 1088(5)

A failure to act on a postconviction motion for relief in state court for a substantial period of time may give rise to a cognizable claim under this section prohibiting the deprivation of civil rights under color of state law. Pool v. Wyrick, C.A.8 (Mo.) 1983, 703 F.2d 1064. Civil Rights 1098

1363. Decisions, deprivation of constitutional or statutory rights generally

Federal courts do not guarantee citizen against loss of private civil action due to alleged irregularities in trial thereof in state court. Skolnick v. Spolar, C.A.7 (Ill.) 1963, 317 F.2d 857, certiorari denied 84 S.Ct. 195, 375 U.S. 904, 11 L.Ed.2d 145, rehearing denied 84 S.Ct. 439, 375 U.S. 960, 11 L.Ed.2d 318. Constitutional Law 304.1

Child of ward failed to state civil rights claim against guardian and guardian's attorney for deprivation of due process, even assuming Puerto Rico trial court judge erred in its rulings and that guardian and attorney took advantage of that situation to breach fiduciary duties and steal or mismanage funds or real property owned by ward, where ward's child failed to allege that state court procedures were not in place to correct such errors, or that procedures in place were not adequate. Perkins-Leverock v. Ramirez-Ramirez, D.Puerto Rico 1991, 762 F.Supp.

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42 U.S.C.A. § 1983

19. Civil Rights 1395(3)

Federal district court did not have jurisdiction to review a final decision of a state appellate court; thus, it could not entertain a civil rights action based on an allegation that the decision of that court deprived one of the parties of equal protection. National Carloading Corp. v. Shulman, N.D.Ga.1983, 570 F.Supp. 3. Courts 509

1364. Judicial remedies, deprivation of constitutional or statutory rights generally

Section 1983 plaintiffs, one of whom was struck by stray bullet allegedly fired by off-duty police officer during target practice with other off-duty officers, failed to establish that alleged conspiracy of silence by off-duty officers and investigating officers as to source of bullet deprived plaintiffs of their constitutional right to seek judicial relief for their injury; actual circumstances surrounding shooting were revealed publicly within six months of incident, plaintiffs were granted access to records of task force's investigation for use in their own legal action, and there were no allegations that plaintiffs had been prevented from pursuing tort action in state court or that value of such action had been reduced by cover-up. Vasquez v. Hernandez, C.A.7 (Ill.) 1995, 60 F.3d 325, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 1545, 517 U.S. 1156, 134 L.Ed.2d 648. Civil Rights 1088(1)

1365. Judgments, deprivation of constitutional or statutory rights generally

Fact that arbitrary judgment of state court may abridge Constitution does not necessarily mean that such judgment gives rise to claim for violation of constitutional and civil rights in federal district court; if to review such judgment for constitutional violations of that character is essentially exercise of appellate jurisdiction, federal district court, whose jurisdiction is strictly original, has no power to entertain such suit. Reynolds v. State of Ga., C.A.5 (Ga.) 1981, 640 F.2d 702, rehearing denied 645 F.2d 72, certiorari denied 102 S.Ct. 326, 454 U.S. 865, 70 L.Ed.2d 165. Federal Courts 178.5; Federal Courts 221; Federal Courts 1131.1

1366. Injunctions, deprivation of constitutional or statutory rights generally

Complaint alleging that without notice a temporary restraining order had been procured by bank from New Mexico court under New Mexico Rules of Civil Procedure, § 21-1-1(65, 66)(b), N.M.S.A. (1953 Comp.), that in reliance on that order the bank with cooperation of deputy sheriff wrongfully deprived plaintiff of property and wrongfully put him out of business while acting under color of state law in violation of procedural due process, and asserting that bank acted in a wrongful, wanton and reckless manner in obtaining and using order was sufficient to state violation of this section. Torres v. First State Bank of Sierra County, C.A.10 (N.M.) 1977, 550 F.2d 1255. Civil Rights 1395(1)

1367. Attachment, deprivation of constitutional or statutory rights generally

Owner of property whose rents were seized pursuant to Pennsylvania foreign attachment procedures was not entitled to recover damages under civil rights law on theory that, at time of seizure, constitutionality of such foreign attachment procedure was doubtful in light of Supreme Court decision holding Pennsylvania replevin law, Pa.R.C.P. Nos. 1251-1279, unconstitutional as violative of due process, even though foreign attachment provisions were subsequently held unconstitutional. G. H. McShane Co., Inc. v. McFadden, C.A.3 (Pa.) 1977, 554 F.2d 111, certiorari denied 98 S.Ct. 178, 434 U.S. 857, 54 L.Ed.2d 129. Civil Rights 1071

Mere allegedly unlawful seizure of money under court order did not give rise to cause of action under this section. Bradford Audio Corp. v. Pious, C.A.2 (N.Y.) 1968, 392 F.2d 67. Civil Rights 1088(3)

Given shortcomings in procedure established by sheriff for seizure of property pursuant to execution of judgment, in failing to provide means for determining ownership of property prior to seizure, improper seizure of race car not

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belonging to the judgment debtor was sufficiently foreseeable that it was incumbent upon sheriff to provide owner with postdeprivation hearing, and this was not accomplished by requiring the owner to pay towing or storage charges or, alternatively, to commence a state lawsuit. Bins v. Artison, E.D.Wis.1989, 721 F.Supp. 1034, on subsequent appeal 924 F.2d 1061, on remand 764 F.Supp. 129. Sheriffs And Constables 113(1)

Plaintiff who alleged that prejudgment attachment of his vehicle was not performed in accordance with requirements of K.S.A. § 60-703 but expressly disavowed any attack under the due process clause of U.S.C.A. Const. Amend. 14 on K.S.A. § 60-703 failed to present valid cause of action under this section governing civil action for deprivation of rights. Long v. Citizen's Bank & Trust Co. of Manhattan, Kan., D.C.Kan.1983, 563 F.Supp. 1203. Civil Rights 1395(3)

Even if there had been some irregularity or violation of Alabama law by retention of automobile by the sheriff's department following filing of a personal property exemption by plaintiff's husband, infractions involved did not rise to level necessary to state a cause of action under section governing civil action for deprivation of rights, in that actions of sheriff or defendant did not amount to deprivation of plaintiff's due process rights. Satterfield v. Clark, M.D.Ala.1981, 514 F.Supp. 1323, affirmed 685 F.2d 1387. Civil Rights 1071

1368. Garnishment, deprivation of constitutional or statutory rights generally

Depositor failed to state § 1983 claim against bank which debited funds from his bank account and remitted these funds to another pursuant to writ of garnishment served on bank based upon sanctions award entered by state court; depositor's attack against bank was improper attempt to attack a valid state court judgment, federal district court was not the proper forum for such attack, and § 1983 action against bank appeared to have been filed for purpose of retaliating against the proper enforcement of a writ of garnishment. Ortman v. Thomas, E.D.Mich.1995, 894 F.Supp. 1104, affirmed 99 F.3d 807. Civil Rights 1071

Father's assertions that actions of West Virginia Department of Human Services (DHS) and DHS paralegal were illegal because they suggested "illegally high and usurious amount from plaintiff's weekly net income" did not allege federal constitutional deprivation, as required to state § 1983 claim. Roush v. Roush, S.D.W.Va.1991, 767 F.Supp. 1344, affirmed 952 F.2d 396, certiorari denied 112 S.Ct. 1948, 504 U.S. 913, 118 L.Ed.2d 552. Civil Rights 1395(1); Civil Rights 1395(3)

Fact that statute setting maximum limit upon wages which can be garnished included no private remedy did not preclude § 1983 action for violating dictates of Fourteenth Amendment by failing to give adequate notice of garnishment. Burris v. Mahaney, M.D.Tenn.1989, 716 F.Supp. 1051. Civil Rights 1313

Judgment debtor stated claim upon which relief could be granted in his civil rights action raising due process challenge to Indiana's postjudgment garnishment statute; judgment debtor's bank account contained social security funds that were exempt under federal law and freeze had been placed on account without giving judgment debtor notice of freeze or of his right to claim exemptions under federal law and without hearing. Jones v. Marion County Small Claims Court, Lawrence Tp. Div., S.D.Ind.1988, 701 F.Supp. 1414. Civil Rights 1395(1)

Louisiana community property procedure, under which wife's wages could be garnished for debts of husband although she was not named as party defendant or served with prejudgment or postjudgment process, or notified of garnishment, was actionable under 42 U.S.C.A. § 1983 as unconstitutional deprivation of property without due process of law in violation of Fourteenth Amendment. Jackson v. Galan, E.D.La.1986, 631 F.Supp. 409. Civil Rights 1071

Where civil rights complaint alleged the garnishment procedures used in Utah violated Utah laws relating to prejudgment garnishment and violated U.S.C.A.Const. Amend. 14 § 1 complaint did not attack Utah prejudgment attachment and garnishment procedures as applied or on their face merely alleged that those procedures were not

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followed and was insufficient to state a claim under this subchapter. Coltharp v. Cutler, D.C.Utah 1976, 419 F.Supp. 924. Civil Rights 1395(1)

1369. Repossession, deprivation of constitutional or statutory rights generally

In determining whether police involvement in repossession of motor vehicle constitutes "state action," ultimate inquiry is whether police officers were actively involved in the repossession; such active police intervention occurs when officer assists in effectuating repossession over objection of debtor or so intimidates debtor as to cause debtor to refrain from exercising his or her legal right to resist repossession. Barrett v. Harwood, N.D.N.Y.1997, 967 F.Supp. 744, affirmed 189 F.3d 297, certiorari denied 120 S.Ct. 2719, 530 U.S. 1262, 147 L.Ed.2d 984. Civil Rights 1326(9)

Since protections of U.S.C.A.Const. Amend. 4 applied to search by defendants who, acting pursuant to Michigan court rule, broke into home of plaintiffs and seized a television set, plaintiffs may have been deprived of a right, privilege or immunity secured by the Constitution, so that court had jurisdiction to decide the case brought under this section. Miloszewski v. Sears Roebuck & Co., W.D.Mich.1972, 346 F.Supp. 119. Federal Courts 221

Creditor-landlord's execution and seizure of commercial space leased by Chapter 11 debtor-tenant, based on confessed judgment for possession that had neither been set aside or reversed and, thus, was enforceable under Pennsylvania law, did not result in deprivation of property without due process of law, and so did not give rise to § 1983 claim. In re Okan's Foods, Inc., Bkrtcy.E.D.Pa.1998, 217 B.R. 739. Constitutional Law 315; Execution 8

1370. Liens, deprivation of constitutional or statutory rights generally

Individuals whose motor vehicles were retained by private repairmen when they refused to pay the amounts which the repairmen claimed were owed for the repairs, one of whom eventually paid the amount demanded and regained possession of his automobile, another of whom regained possession of his vehicle through agreement of counsel after action was initiated, and two of whom never regained possession of their vehicles but had abandoned them as worthless, had live claims against the repairmen under this section. (Per Garth, Circuit Judge, with three Judges concurring and three Judges concurring specially.) Parks v. "Mr. Ford", C.A.3 (Pa.) 1977, 556 F.2d 132. Civil Rights 1071

The "common law liens" which the plaintiff caused to be filed on real property owned by the defendants, consisting of borough and its officers, in action which failed to state a claim for relief under this section were null and void and would be canceled. Eagle v. Kenai Peninsula Borough, D.C.Alaska 1980, 489 F.Supp. 138. Liens 16

Because buyer of used car voluntarily delivered car to car dealer upon experiencing mechanical difficulty with car, no seizure ever occurring, and buyer authorized disassembly of car to ascertain problem, which service car dealer in fact performed, there was no deprivation of buyers' rights under this section authorizing civil action for deprivation of rights, as result of car dealer's refusal to release car until buyers paid for services performed. Turner v. Roy Bridges Motors, Inc., N.D.Ala.1977, 436 F.Supp. 613. Civil Rights 1071; Constitutional Law 319.5(1)

1371. Foreclosures, deprivation of constitutional or statutory rights generally--Generally

There was no as applied violation of due process rights of homeowner, when mortgagee commenced foreclosure action after mortgagor fell behind in payments, and filed lis pendens notice in property records, even though mortgagee was not afforded pre-filing notice and opportunity to present defenses to foreclosure; underlying issues were relatively easy to resolve, bonding requirement provided recourse to mortgagor in post-filing challenges to

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notice, and there was public interest in discouraging transfer of real property with undisclosed encumbrances. Diaz v. Pataki, S.D.N.Y.2005, 368 F.Supp.2d 265. Constitutional Law 312(4); Lis Pendens 18

Use of state law to foreclose is not sufficient to allege a claim under civil rights statute. Kolb v. Naylor, N.D.Iowa 1987, 658 F.Supp. 520. Civil Rights 1326(9)

1372. ---- Personal property, foreclosures, deprivation of constitutional or statutory rights generally

Any removal and/or destruction of mortgagor's personal property from the premises after they were sold pursuant to the power of sale contained in the mortgage did not amount to a constitutional violation so as to permit the mortgagor to maintain an action against the mortgagee for violation of his civil rights. Dieffenbach v. Buckley, D.C.N.H.1979, 464 F.Supp. 670. Civil Rights 1071

1373. Records and transcripts, deprivation of constitutional or statutory rights generally

Criminal defendant was not entitled to damages in civil rights action based on his complaint that trial transcript was inaccurate, absent allegation that inaccuracies deprived him of fair and adequate appellate review of conviction. Tedford v. Hepting, C.A.3 (Pa.) 1993, 990 F.2d 745, certiorari denied 114 S.Ct. 317, 510 U.S. 920, 126 L.Ed.2d 264. Civil Rights 1088(5)

Pennsylvania Rules of Appellate Procedure set forth proper procedures that must be followed in order to correct alleged discrepancies in record; these procedures, rather than federal civil rights action against court reporter, provided party claiming that trial testimony was incorrectly transcribed with remedy. Cook v. Smith, E.D.Pa.1993, 812 F.Supp. 561. Civil Rights 1311

Party seeking an order under this section requiring state to furnish free copy of court records and trial transcript must state a claim of constitutional dimension that is neither frivolous nor moot and must specify with sufficient clarity those portions of proceedings questioned in order that initial determination of relevance can be made. Lucas v. Com. of Virginia, Circuit Court of Page County Twenty-Sixth Judicial Circuit, W.D.Va.1974, 387 F.Supp. 370. Federal Civil Procedure 2734

State prisoner who brought civil rights action to compel state to provide him with parts of trial transcript and who alleged that prosecution witness made in-court identification of prisoner from photographs at the same time that prisoner was seated in the courtroom stated valid constitutional claim entitling prisoner to that portion of transcript which recorded the in-court identification. Pollard v. Kidd, E.D.Va.1974, 383 F.Supp. 1056, affirmed 530 F.2d 969. Civil Rights 1395(5)

1374. Appeals, deprivation of constitutional or statutory rights generally

Allegations in state court defendant's pro se complaint, that state trial judge had acted out of spite or annoyance in refusing to sign journal entry to permit defendant to appeal, was sufficient to state claim under § 1983 for violation of defendant's due process rights. Olson v. Hart, C.A.10 (Kan.) 1992, 965 F.2d 940. Conspiracy 18

Where appeals are provided for there must be no arbitrary discrimination, and if a plaintiff in action under this section can show that he was not allowed to appeal his conviction while others in his position were, he would show deprivation of his right to equal protection of laws. Ortega v. Ragen, C.A.7 (Ill.) 1954, 216 F.2d 561, certiorari denied 75 S.Ct. 786, 349 U.S. 940, 99 L.Ed. 1268. Constitutional Law 250.2(5)

State law in fact authorized stay pending appeal of fine imposed upon criminal conviction, and thus complaint failed to state § 1983 cause of action, despite convicted defendant's belief that he could not appeal without first paying the fine. Crist v. Town Court, S.D.N.Y.1994, 156 F.R.D. 85, affirmed 57 F.3d 1064. Civil Rights

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1088(5)

1375. Contempt of court, deprivation of constitutional or statutory rights generally

Persons who alleged that they had been held in contempt after cursory hearing for failing to make child support payments did not state civil rights action against county for its alleged "tolerance" of practices of support division administrator in referring to the incarceration as "punishment for contempt" and allegedly discouraging them from seeking court-appointed counsel. Pompey v. Broward County, C.A.11 (Fla.) 1996, 95 F.3d 1543. Civil Rights 1395(1)

Civil rights of party confined for contempt of court were not violated by reason of fact that during his periods of incarceration while his appeal was pending he had been assigned prison number, given prison orientation course, and required to perform hard labor. Rhodes v. Meyer, C.A.8 (Neb.) 1964, 334 F.2d 709, certiorari denied 85 S.Ct. 263, 379 U.S. 915, 13 L.Ed.2d 186. Civil Rights 1098

1376. Criminal prosecutions generally, deprivation of constitutional or statutory rights generally

While principles of judicial economy, as well as proper state-federal relations, preclude federal courts from exercising equitable jurisdiction to enjoin ongoing state prosecutions, when genuine threat of prosecution exists, litigant is entitled to resort to federal forum to seek redress for alleged deprivation of federal rights. Wooley v. Maynard, U.S.N.H.1977, 97 S.Ct. 1428, 430 U.S. 705, 51 L.Ed.2d 752. Courts 508(7)

Any coercive involvement of members of State Supreme Court in inducing municipal court judge to testify before grand jury did not constitute "extraordinary circumstances" warranting federal intervention in state criminal proceeding growing out of such grand jury testimony, on ground that because of formidable supervisory powers of Supreme Court the petitioner could not obtain a fair trial, since not only did petitioner have right to disqualify trial and appellate judges and seek temporary assignment of Supreme Court judges but four of the six court members who participated in alleged coercion were no longer on the court and of the two remaining members only one was active in conduct complained of. Kugler v. Helfant, U.S.N.J.1975, 95 S.Ct. 1524, 421 U.S. 117, 44 L.Ed.2d 15, rehearing denied 95 S.Ct. 2425, 421 U.S. 1017, 44 L.Ed.2d 686, rehearing denied 95 S.Ct. 2426, 421 U.S. 1017, 44 L.Ed.2d 686. Courts 508(7)

Civil rights claim under § 1983 brought by individual convicted of murder against defendants who participated in criminal proceedings had sufficiently accrued, where individual's conviction was reversed on direct appeal due to use of tainted evidence; pending retrial of murder charge would not likely be affected by civil rights suit, as state had indicated intent to refrain from using tainted evidence on retrial. Davis v. Zain, C.A.5 (Tex.) 1996, 79 F.3d 18 . Civil Rights 1088(5)

To establish case under 42 U.S.C.A. § 1983, individual who was charged with and acquitted of perjury in Florida was required to show not merely mistake in prosecution or even common law tort, but violation of constitutional right by Maryland county investigator who participated in investigation. McLaughlin v. Alban, C.A.D.C.1985, 775 F.2d 389, 249 U.S.App.D.C. 339. Civil Rights 1404

Plaintiff who claimed that he was convicted of robbery as result of unconstitutional photograph identification used by the police did not have claim against city under §§1983 for malicious prosecution, where criminal proceeding had not ended in plaintiff's favor, and he instead was convicted, the conviction was affirmed on appeal, and a petition for allocatur was denied. Bush v. City of Philadelphia, E.D.Pa.2005, 367 F.Supp.2d 722. Civil Rights 1088(5)

Plaintiff's alleged prosecution and sentencing as an adult at time he was actually a juvenile did not violate plaintiff's constitutional rights, as required to support claim under §§ 1983 against individuals involved in his prosecution,

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where plaintiff was unaware of his actual birthdate until after his release from prison and believed he was an adult at the time, and there was no indication that anyone involved in his criminal prosecution knew otherwise. Jordan v. New York, W.D.N.Y.2004, 343 F.Supp.2d 199. Infants 68.5

Members of Nebraska Liquor Control Commission had no direct responsibility for any deprivation of Native Americans' rights, as required to impose liability under § 1983 for alleged due process violation from minimal enforcement of criminal laws and Nebraska Liquor Control Act when victims were Native Americans; Commission had no jurisdiction over law enforcement activities related to violent crimes, and Act did not charge Commission members with organizing and executing "standard law enforcement" activities. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Civil Rights 1358

Inmate could not challenge constitutionality of state conviction and sentence in § 1983 action. Martinez v. Ensor, D.Colo.1997, 958 F.Supp. 515. Civil Rights 1088(5)

Inmate could not maintain action against police officers for allegedly prosecuting him with false testimony to retaliate against him for his exercise of First Amendment rights, where his conviction had not been reversed or otherwise invalidated. Duamutef v. Morris, S.D.N.Y.1997, 956 F.Supp. 1112. Civil Rights 1088(5)

To recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, § 1983 plaintiff must prove that conviction has been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal authorized to make such determinations, or called into question by federal court's issuance of writ of habeas corpus. Duamutef v. Morris, S.D.N.Y.1997, 956 F.Supp. 1112. Civil Rights 1088(5)

Former prisoner convicted of child rape, and later released because of a DNA test which excluded him as the perpetrator, failed to establish, for purpose of §§ 1983 claim, that his *Brady* rights were violated by prosecutor's alleged failure to turn over victim's underwear to him for testing, where prisoner conceded that it was unclear whether testing available at the time of his trial would have excluded him, and prisoner had access to rape kit containing underwear, which was entered into evidence at trial. Bullock v. City of Chicago, C.A.7 (Ill.) 2004, 118 Fed.Appx. 75, 2004 WL 2676597, Unreported, rehearing denied. Criminal Law 700(3)

1377. Unconstitutionality of statute or ordinance, deprivation of constitutional or statutory rights generally

A criminal misdemeanor prosecution under an ordinance later determined to be constitutionally invalid did not give rise to a civil rights statute injury, on theory that the plaintiffs were deprived of a constitutionally protected interest in avoiding criminal prosecution; plaintiffs sustained no deprivation other than that suffered as a result of criminal prosecution. Richardson v. City of South Euclid, C.A.6 (Ohio) 1990, 904 F.2d 1050, rehearing denied, certiorari denied 111 S.Ct. 691, 498 U.S. 1032, 112 L.Ed.2d 681. Civil Rights 1088(5)

Abortion protestors arrested under municipal noise ordinance later found to be unconstitutional in unrelated lawsuit would not be entitled to recover damages from municipality under § 1983, to the extent that they created a noise level so loud as to be constitutionally subject to prohibition under reasonable time, place and manner regulation; under such circumstances, noise ordinance would not be unconstitutional as applied to them. Noelker v. City of Kansas City, Mo., W.D.Mo.1992, 802 F.Supp. 268. Civil Rights 1088(4)

Arrest and prosecution pursuant to unconstitutional ordinance is violation of federal civil rights statute. Waters v. McGuriman, E.D.Pa.1987, 656 F.Supp. 923. Civil Rights 1088(4); Civil Rights 1088(5)

1378. Investigations, deprivation of constitutional or statutory rights generally

Police officers' lie about status of investigation of missing person complaint was at most grossly negligent and was

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not sufficient to impose upon them § 1983 liability for death of victim following her abduction by private actor. Gazette v. City of Pontiac, C.A.6 (Mich.) 1994, 41 F.3d 1061. Civil Rights 1088(1)

Proceedings before Massachusetts Commission Against Discrimination (MCAD) did not deprive defendant of a liberty interest, as required to state § 1983 claim against MCAD's chairman; plaintiff was afforded an investigation of his allegations and opportunity to present his case before MCAD, and MCAD proceedings were conducted in full accordance with state law. Johnson v. Rodriguez, C.A.1 (Mass.) 1991, 943 F.2d 104, rehearing denied, certiorari denied 112 S.Ct. 948, 502 U.S. 1063, 117 L.Ed.2d 117. Civil Rights 1706; Constitutional Law 318(2)

In light of V.A.T.S. Nat.Res.Code §§ 88.091-88.093 permitting Railroad Commission to inspect oil lease property and related records and plaintiff oil producers' lack of property rights in oil pipeline, oil flowing through it, or land on which "drop meter" installed by agent of Commission was located, oil producer's allegations that Commission agent and oil companies violated their rights under U.S.C.A. Const. Amend. 4 by installing "drop meter" and coming on oil leasehold to search for evidence of alleged criminal conduct on part of producers failed to state cause of action under this section. Wheeler v. Cosden Oil and Chemical Co., C.A.5 (Tex.) 1984, 734 F.2d 254, rehearing denied 744 F.2d 1131. Civil Rights 1395(1)

Claim that defendant prosecuting attorney subjected plaintiffs to interrogation by state police, county grand jury and Federal Bureau of Investigation was not actionable under this section. Kaylor v. Fields, C.A.8 (Ark.) 1981, 661 F.2d 1177. Civil Rights 1395(5)

Where state investigatory commission might conduct inquiry vis-á-vis individual or association in bad faith with purpose of harassment and of ultimately making and publicizing findings with respect to guilt of such individual in transgression of commission's statutory mandate, court would have power to protect person whose civil rights are being violated. Freeman and Bass, P. A. v. State of N. J. Commission of Investigation, C.A.3 (N.J.) 1973, 486 F.2d 176. Civil Rights 1088(1)

Alleged failure of county prosecutor to investigate arrestee's proposed cross-complaint against arrestee's former wife in the same manner or on the same basis as former wife's complaint against arrestee did not violate equal protection; prosecutor reviewed cross-complaint pursuant to county policy, and his decision not to prosecute it did not demonstrate existence of an official policy prohibiting cross-complaints or even an unwritten policy or custom to that effect. Staley v. Grady, S.D.N.Y.2005, 371 F.Supp.2d 411. District And Prosecuting Attorneys 8

Allegation by correctional officer that prosecuting attorney present at police interview with prisoner occurring prior to existence of probable cause to prosecute correctional officer for assisting prisoner to escape advised police about how to conduct their escape investigation was speculative assertion based upon inference which was not reasonably supportable, and hence could not serve as basis for § 1983 claim against prosecuting attorney; it was not reasonable to infer from prosecuting attorney's performance of traditional prosecutorial role that he gave police advice on matter reserved to discretion of investigating officer, and regardless of prosecutor's motive, it could not be presumed that his attitude was such that it affected entire investigation as though he were active participant. Rhodes v. Smithers, S.D.W.Va.1995, 939 F.Supp. 1256, affirmed 91 F.3d 132. Civil Rights 1404

Fourteenth Amendment due process rights of government employee were not violated by investigation of her sexual harassment claims undertaken by government attorney; claims had to affect employee's liberty interest in career appointment, and none of attorney's actions had that effect, since they all came after employee had been transferred to less desirable position. Marrero Rivera v. Department of Justice of Com. of Puerto Rico, D.Puerto Rico 1993, 821 F.Supp. 65. Civil Rights 1506; Constitutional Law 278.4(1)

Evidence in action by defendant in state court proceeding to enjoin further prosecution established that state prosecutor undertook his investigation of the defendant's purported participation in conspiracy to assassinate the

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president of the United States with the specific intent to deprive the defendant of his rights under U.S.C.A.Const. Amends. 1, 5 and 14. Shaw v. Garrison, E.D.La.1971, 328 F.Supp. 390, affirmed 467 F.2d 113, certiorari denied 93 S.Ct. 467, 409 U.S. 1024, 34 L.Ed.2d 317. Civil Rights 1420; Injunction 128(10)

1379. Wiretapping, deprivation of constitutional or statutory rights generally

Under this section authorizing suit to redress deprivation under color of state law of any rights secured by Constitution, subject of wiretaps had cause of action against state and local officials for violation of his rights under U.S.C.A.Const. Amend. 4 resulting from dissemination of information gained from allegedly illegal wiretaps. Wright v. State of Fla., C.A.5 (Fla.) 1974, 495 F.2d 1086. Civil Rights 1326(8)

Plaintiffs were barred, in their § 1983 action alleging unconstitutional use of wiretapping, from pursuing money damages on a judicial deception theory, inasmuch as any finding that the wiretap orders were procured by way of false and misleading statements would have the effect of undermining the legality of the wiretap and tainting fatally plaintiffs' convictions in state court. Whitaker v. Garcetti, C.D.Cal.2003, 291 F.Supp.2d 1132. Civil Rights 1088(3)

1380. Informants, deprivation of constitutional or statutory rights generally

Confidential informant was not entitled to monetary damages from former Attorneys General and other state officials for alleged deprivation of right to interstate travel based on defendants' alleged inducement causing informant to become an informant, even if informant's role as an informant forced him to refrain from travelling in public; informant took a position in a casino of his own free will and voluntarily entered into agreement to provide information to state, and thus it was the informant's decision, and not anything that defendants did, that presented the risk that someone from defendant's past would recognize him. G-69 v. Degnan, D.N.J.1990, 745 F.Supp. 254, clarified on denial of reconsideration 748 F.Supp. 274. Civil Rights 1088(1)

1381. Abuse of process, deprivation of constitutional or statutory rights generally

Proof of abuse of process alone cannot support finding of liability under federal civil rights statute. Santiago v. Fenton, C.A.1 (Mass.) 1989, 891 F.2d 373. Civil Rights 1056

Where civil rights plaintiff's complaint against constable, who had arrested him under Mississippi fee system for constables which compensated constables ten dollars for each charge they made which resulted in conviction, Miss.Code Ann. § 25-7-27, concerned only constable's motive and not lack of probable cause, and motive related solely to what was generally authorized and contemplated by Mississippi law and was not related to personal or class characteristics of arrestee or to his conduct apart from that giving rise to probable cause for arrest, there was no abuse of process so as to give rise to damage action against constable under this section. Brown v. Edwards, C.A.5 (Miss.) 1984, 721 F.2d 1442. Civil Rights 1088(5)

Assertedly malicious issuance of summons without probable cause, on basis of complaint sworn out by building inspector, relative to alleged ordinance violation, did not rise to level of unconstitutional deprivation of liberty without due process or unreasonable seizure, so as to justify maintenance of action under this section, at least in circumstances where defendant named in the summons was also charged with building code violation, which was a valid charge and of which he was found guilty; there being a legitimate compulsion to appear before the court on the valid charge, no deprivation of constitutional rights occurred by fact of additional compulsion, albeit based on assertedly invalid charge, to make the same appearance. Nesmith v. Taylor, C.A.5 (Tex.) 1983, 715 F.2d 194. Civil Rights 1088(3)

An allegation of the systematic misuse of legal procedure, based on an unsuccessful state administrative appeal and an unsuccessful state judicial review of a state development of regional impact, was not a federally cognizable

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cause of action under this section. Beker Phosphate Corp. v. Muirhead, C.A.5 (Fla.) 1978, 581 F.2d 1187. Civil Rights 1037

Alleged tortious conduct of private individuals in filing complaint against plaintiff without probable cause, assaulting him, and threatening and harassing him was not sufficient to show violation of plaintiff's constitutional rights for purposes of action under this section. Grow v. Fisher, C.A.7 (Ind.) 1975, 523 F.2d 875. Civil Rights 1034

Alleged interference by police officers with plaintiffs' lawsuit, by means of stops and detentions of plaintiffs, prior to trial, allegedly intended to intimidate potential witnesses, could not serve as a basis for damages attributable to city's unconstitutional custom of investigatory detentions; alleged harassment did not cause any witness to refrain from testifying. Glass v. City of Philadelphia, E.D.Pa.2006, 455 F.Supp.2d 302. Civil Rights 1351(4)

Arrestee failed to state claims for abuse of process against county, city, and detective under § 1983 and New York law when arrestee did not allege that defendants issued either civil or criminal process to compel arrestee to perform an act or to forbear from any action, and did not allege that defendants used the process to obtain a collateral objective. Anderson v. County of Nassau, E.D.N.Y.2004, 297 F.Supp.2d 540. Civil Rights 1395(6); Process 168

Plaintiff pursuing § 1983 action that is also the common-law tort of abuse of process must allege more than would be necessary to state claim for abuse of process; facts pleaded must be sufficient to assert arguably a constitutional injury. Kleiss v. Short, S.D.Iowa 1992, 805 F.Supp. 726, affirmed 995 F.2d 229. Civil Rights 1056

Liability under § 1983 may not be predicated on claim for malicious abuse of process. Spear v. Town of West Hartford, D.Conn.1991, 771 F.Supp. 521, affirmed 954 F.2d 63, certiorari denied 113 S.Ct. 66, 506 U.S. 819, 121 L.Ed.2d 33. Civil Rights 1056

Substantive misuse of procedure authorized by state law for obtaining possession of real property by confession pursuant to instrument authorizing confession by judgment by landlord and others alleged by tenants, i.e., the initiation of procedures maliciously and without probable cause, did not form basis of civil rights liability, in that private misuse of state procedure did not constitute state action and private action was not so clothed with authority of state law as to be considered state action. Chicarelli v. Plymouth Garden Apartments, E.D.Pa.1982, 551 F.Supp. 532. Civil Rights 1326(9)

This section governing deprivation of civil rights under color of state law affords plaintiff no cause of action for alleged abuse or misuse of process since it relates to state action and not that of individual persons or corporations. Weisser v. Medical Care Systems, Inc., E.D.Pa.1977, 432 F.Supp. 1292. Civil Rights 1325

State, rather than county, was responsible for conversion of data from local court systems to system through which state published court records on the Internet, and therefore county could not be held liable under §§ 1983 for alleged defamation of convict that resulted from misreporting of convict's criminal history due to conversion problems. LeMoine v. Milwaukee County, C.A.7 (Wis.) 2005, 132 Fed.Appx. 53, 2005 WL 1220477, Unreported. Civil Rights 1348

Prisoner's claims regarding alteration of police report and failure to investigate the altered evidence did not involve the use of "legal process," as was required to state claim for abuse of process in §§ 1983 action against several police officers, prosecutors, public defenders, and witnesses involved in state murder prosecution. Holly v. Boudreau, C.A.7 (Ill.) 2004, 103 Fed.Appx. 36, 2004 WL 1435210, Unreported. Civil Rights 1088(5)

There was no abuse of process, under New York law, when police officer instituted proceedings for disorderly conduct and public urination against claimant; necessary showing of ulterior motive or collateral advantage, or

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unusual detriment to claimant, was not made. Lazaratos v. Ruiz, S.D.N.Y.2003, 2003 WL 22283832, Unreported. Process 171

1382. Entrapment, deprivation of constitutional or statutory rights generally

While entrapment may be proper defense in criminal action, police officer's participation in such activity does not constitute constitutional violation which can form basis for § 1983 claim. Lehman v. Kornblau, E.D.N.Y.2001, 134 F.Supp.2d 281. Civil Rights 1088(1)

As there was no federal constitutional right to be free from entrapment, plaintiffs' claims that prosecuting attorney and certain private parties engaged in scheme to illegally entrap them for crime of attending dogfight failed to state cause of action under this section. Schieb v. Humane Soc. of Huron Valley, E.D.Mich.1984, 582 F.Supp. 717. Civil Rights 1395(5)

1383. Malicious prosecution, deprivation of constitutional or statutory rights generally--Generally

To prove malicious prosecution under § 1983, a plaintiff must show that: (1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. Estate of Smith v. Marasco, C.A.3 2003, 318 F.3d 497, on remand 2004 WL 633276. Civil Rights 1088(5)

Plaintiff in § 1983 action who alleged only that (1) he was arrested by police detectives and charged with first degree murder and armed robbery, (2) that defendants illegally seized him and lacked probable cause to arrest him, (3) that he suffered bodily and emotional harm, and (4) that defendants maliciously prosecuted him in violation of Fourth and Fourteenth Amendments, pled only false arrest, and did not state § 1983 claim based on malicious prosecution; no allegation was made that detectives had committed any improper acts after arresting him without probable cause. Sneed v. Rybicki, C.A.7 (Ill.) 1998, 146 F.3d 478. Civil Rights 1088(5)

Arrestee's malicious prosecution claim against assistant state attorney did not constitute constitutional tort cognizable under § 1983, inasmuch as alleged subsequent eviction, adverse employment status, and loss of income were not deprivations of constitutionally protected property interests. Spiegel v. Rabinovitz, C.A.7 (Ill.) 1997, 121 F.3d 251, certiorari denied 118 S.Ct. 565, 522 U.S. 998, 139 L.Ed.2d 405. Civil Rights 1037

While there is an embarrassing diversity of judicial opinion on question of whether malicious prosecution claim is actionable under § 1983, most lower courts recognize some form of malicious prosecution action under § 1983. Taylor v. Meacham, C.A.10 (Utah) 1996, 82 F.3d 1556, certiorari denied 117 S.Ct. 186, 519 U.S. 871, 136 L.Ed.2d 125. Civil Rights 1037

In order to state a claim under civil rights statute, § 1983, against private party for malicious prosecution, plaintiff must plead and offer sufficient evidence to support conspiracy between private and public actors. Davis v. Union Nat. Bank, C.A.7 (Ill.) 1994, 46 F.3d 24, certiorari denied 115 S.Ct. 1696, 514 U.S. 1065, 131 L.Ed.2d 560. Civil Rights 1326(5); Civil Rights 1396

To state claim for malicious prosecution, plaintiff must show that defendant commenced criminal proceeding against him, that proceeding ended in plaintiff's favor, that defendant did not have probable cause to believe that plaintiff was guilty of crime charged, and that defendant acted with actual malice. Cook v. Sheldon, C.A.2 (N.Y.) 1994, 41 F.3d 73. Malicious Prosecution 0.5; Civil Rights 1088(5)

Malicious prosecution does not constitute a deprivation of liberty or property within the meaning of the due

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process clause. Albright v. Oliver, C.A.7 (Ill.) 1992, 975 F.2d 343, certiorari granted 113 S.Ct. 1382, 507 U.S. 959, 122 L.Ed.2d 757, affirmed 114 S.Ct. 807, 510 U.S. 266, 127 L.Ed.2d 114, rehearing denied 114 S.Ct. 1340, 510 U.S. 1215, 127 L.Ed.2d 688. Constitutional Law 255(2); Constitutional Law 278(1.3)

This section does not provide remedy against unfounded or even malicious claims or suits in state court. Buckley Towers Condominium, Inc. v. Buchwald, C.A.5 (Fla.) 1979, 595 F.2d 253. Civil Rights 1037

Tort of malicious prosecution does not constitute a civil rights violation. Paskaly v. Seale, C.A.9 (Cal.) 1974, 506 F.2d 1209. See, also, Williams v. DiVittoria, E.D.La.1991, 777 F.Supp. 1332; Curtis v. Rosso & Mastracco, Inc., D.C.Va.1976, 413 F.Supp. 804; Hahn v. Sargent, D.C.Mass.1975, 388 F.Supp. 445, affirmed 523 F.2d 461, certiorari denied 96 S.Ct. 1495, 425 U.S. 904, 47 L.Ed.2d 754. Civil Rights 1037

Prosecution of person for offending against other townspeople by maintaining cattle in town without a permit in violation of nuisance ordinance does not constitute a civil rights violation even if it is malicious. Martin v. King, C.A.10 (Colo.) 1969, 417 F.2d 458. Civil Rights 1088(5)

Commencement and prosecution of unfounded criminal prosecution may constitute not only malicious prosecution under state law but violation of this section as well. Nesmith v. Alford, C.A.5 (Ala.) 1963, 318 F.2d 110, rehearing denied 319 F.2d 859, certiorari denied 84 S.Ct. 489, 375 U.S. 975, 11 L.Ed.2d 420. Civil Rights 1088(5)

Section 1983 malicious prosecution claim requires two inquiries: (1) whether a defendant's conduct was tortious under state law, and (2) whether a plaintiff's injuries resulted from a deprivation of liberty guaranteed by the Fourth Amendment. Weinstock v. Wilk, D.Conn.2003, 296 F.Supp.2d 241, adhered to on reconsideration 2004 WL 367618. Civil Rights 1037

Arrestee asserted § 1983 claims against county, its district attorney, sheriff, and sheriff officers with sufficient specificity to satisfy notice-pleading requirements; although it was somewhat difficult to discern which of arrestee's constitutional rights were violated, who violated them, or when they were violated from the pleadings, it was possible to discern the gist of some of his claims, e.g., that officers jointly used excessive force, and that he was falsely arrested and maliciously prosecuted by district attorney. Houghton v. Cardone, W.D.N.Y.2003, 295 F.Supp.2d 268. Civil Rights 1395(5); Civil Rights 1395(6)

A § 1983 claim for violation of procedural due process rights requires that a plaintiff allege that he or she was deprived of a property interest under color of state law without due process. Keim v. County of Bucks, E.D.Pa.2003, 275 F.Supp.2d 628. Civil Rights 1395(1); Civil Rights 1396

Malicious prosecution claim, under § 1983, by former inmate against state and county defendants, was viable only to extent former inmate was wrongfully arrested and detained for period prior to initial appearance before neutral magistrate; Fourth Amendment malicious prosecution claim only provided remedy for wrong committed before appearance before neutral magistrate, although common law malicious prosecution claim provided remedy for wrongs committed both before and after appearance before magistrate. Gray v. Maryland, D.Md.2002, 228 F.Supp.2d 628. Civil Rights 1088(5)

Claim of malicious prosecution under § 1983 involves a two-step inquiry: first, court must determine whether plaintiff's injuries were caused by a deprivation of liberty in violation of Fourth Amendment; second, if court finds that plaintiff suffered a constitutional injury, it must determine whether defendant's conduct was tortious under state law. Fincher v. County of Westchester, S.D.N.Y.1997, 979 F.Supp. 989. Civil Rights 1037

Inmate could not maintain § 1983 action for malicious prosecution and perjured testimony, which directly called into question validity of his conviction and sentence, where his conviction had not been reversed or otherwise invalidated. Duamutef v. Morris, S.D.N.Y.1997, 956 F.Supp. 1112. Civil Rights 1088(5)

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42 U.S.C.A. § 1983

To assert § 1983 claim for malicious prosecution, plaintiff must show that defendant initiated criminal proceeding, proceeding terminated in plaintiff's favor, proceeding was initiated without probable cause, and defendant acted maliciously or for purpose other than in interest of justice. Irvin v. Borough of Darby, E.D.Pa.1996, 937 F.Supp. 446. Civil Rights 1088(5)

Malicious prosecution is constitutional tort, actionable under § 1983. Cornett v. Longois, E.D.Tex.1994, 871 F.Supp. 918. Civil Rights 1037

There is no cause of action for malicious prosecution grounded in right of substantive due process under Fourteenth Amendment. Smith v. Holtz, M.D.Pa.1994, 856 F.Supp. 227, on reconsideration 879 F.Supp. 435, affirmed 87 F.3d 108, certiorari denied 117 S.Ct. 611, 519 U.S. 1041, 136 L.Ed.2d 536. Civil Rights 1037

To bring successful § 1983 claim for malicious prosecution, plaintiff is required to establish defendant initiated criminal prosecution which ended in plaintiff's favor and which was initiated without probable cause, and defendant acted maliciously or for a purpose other than bringing defendant to justice; failure to satisfy any of these criteria requires dismissal of claim. Hamidian v. Occulto, M.D.Pa.1994, 854 F.Supp. 350. Civil Rights 1037

Malicious prosecution claim may fall within § 1983 only if plaintiff alleges injuries amounting to deprivation of liberty or property without due process. Theodorou v. Tanner, N.D.Ill.1994, 842 F.Supp. 326. Civil Rights 1037

Tort of malicious prosecution is sufficient to make out constitutional deprivation under § 1983. Cox v. County of Suffolk, E.D.N.Y.1993, 827 F.Supp. 935. See, also, Doe v. Smith, S.D.N.Y.1988, 704 F.Supp. 1177. Civil Rights 1037

Malicious prosecution by itself is not punishable under § 1983 because it does not allege a constitutional injury. Kleiss v. Short, S.D.Iowa 1992, 805 F.Supp. 726, affirmed 995 F.2d 229. See, also, Davis v. Frapolly, N.D.Ill.1989, 747 F.Supp. 451; Davis v. Frapolly, N.D.Ill.1989, 717 F.Supp. 614; Rosales v. Lewis, D.C.Iowa 1978, 454 F.Supp. 956. Civil Rights 1037

Claim that plaintiffs were maliciously prosecuted for criminal trespass after they refused to vacate property as ordered by writ of possession failed to state violation of any federally protected right so as to give rise to cause of action under § 1983. Naliielua v. State of Hawaii, D.Hawai'i 1991, 795 F.Supp. 1015, affirmed 963 F.2d 379. Civil Rights 1088(5)

Federal civil rights action will lie for malicious prosecution. Wyland v. James, N.D.Tex.1977, 426 F.Supp. 304. Civil Rights 1088(5)

Not all conduct which might amount to state-defined tort of malicious prosecution will necessarily amount to a denial of due process under U.S.C.A.Const. Amend. 14, § 1 which is actionable under this section. Atkins v. Lanning, N.D.Okla.1976, 415 F.Supp. 186, affirmed 556 F.2d 485. Civil Rights 1037

Malicious prosecution claim brought under §§ 1983 cannot be based on substantive due process. Gavlock v. Deniker, M.D.Pa.2005, 2005 WL 1273582, Unreported. Civil Rights 1037

1384. ---- Criminal or civil prosecution, malicious prosecution, deprivation of constitutional or statutory rights generally

Investigator employed by state's attorney did not "commence" criminal proceeding, as element of malicious prosecution under Illinois law, when he was sole witness before grand jury that returned indictment; although investigator arguably withheld potentially exculpatory evidence from the grand jury, it was the state's attorney, with

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undisputed full disclosure of the information developed by investigator, who decided to present the case to the grand jury, request the indictment, and present the prosecution's case at trial. Mutual Medical Plans, Inc. v. County of Peoria, C.D.Ill.2004, 309 F.Supp.2d 1067. Malicious Prosecution 3

Citizen's claim that civil proceeding against him to recover assistance benefits that township had paid to him was malicious prosecution was not cognizable under civil rights statute where only damages that citizen alleged were emotional. Zisis v. St. Joseph Tp. of Allen County, N.D.Ind.1997, 979 F.Supp. 806. Civil Rights 1037

Where § 1983 plaintiff is not arrested, detained or taken into custody and neither his person nor property is searched, in order to properly plead § 1983 claim based on malicious prosecution, allegedly malicious prosecution must be criminal rather than civil in nature. Lacara v. Town of Islip, E.D.N.Y.1992, 791 F.Supp. 69. Civil Rights 1037

1385. ---- Constitutional magnitude of deprivation generally, malicious prosecution, deprivation of constitutional or statutory rights generally

With respect to constitutional tort of malicious prosecution, when the fabrication of evidence results in a constitutional deprivation, the official's responsibility for that deprivation does not hinge on the exact stage of investigatory or prosecutorial process at which the fabrication occurred. Pierce v. Gilchrist, C.A.10 (Okla.) 2004, 359 F.3d 1279. Civil Rights 1088(5)

An action for malicious prosecution may be brought under this section if, acting under color of state law, defendant has subjected plaintiff to deprivation of constitutional magnitude. Hampton v. Hanrahan, C.A.7 (Ill.) 1979, 600 F.2d 600, certiorari granted in part,judgment reversed in part on other grounds 100 S.Ct. 1987, 446 U.S. 754, 64 L.Ed.2d 670, rehearing denied 101 S.Ct. 33, 448 U.S. 913, 65 L.Ed.2d 1176, rehearing denied 101 S.Ct. 33, 448 U.S. 913, 65 L.Ed.2d 1177, on remand 499 F.Supp. 640, on remand 522 F.Supp. 140. Civil Rights 1037

Former prisoner stated malicious prosecution claim against physicians under California law, in lawsuit under §§ 1983, on allegations that physicians, acting as coroner or "de facto" coroners, wrongfully caused charges of child abuse and homicide to be filed against him fraudulently and in bad faith, county and physicians conspired to engage in malicious conduct with purpose of depriving him of his constitutional right to be free from unlawful seizure, and prisoner was released in interest of justice due to factual innocence from wrongful incarceration after 21 years. Marsh v. San Diego County, S.D.Cal.2006, 432 F.Supp.2d 1035. Civil Rights 1088(5)

In order to transform malicious prosecution claim into claim that is cognizable pursuant to §§ 1983 in state that has remedy for malicious prosecution, plaintiff must demonstrate deprivation of separate and independent constitutional right; plaintiff has to establish that criminal charges at issue must have imposed some deprivation of liberty consistent with concept of seizure. Sanchez Ramos v. Puerto Rico Police Dept., D.Puerto Rico 2005, 392 F.Supp.2d 167. Civil Rights 1088(5)

Commercial businesses did not have claim for constitutional tort founded on malicious prosecution by virtue of issuance of parking summonses that were ultimately dismissed under regulations permitting limited parking of commercial vehicles in restricted zones; obvious rational connection existed between enforcement policies and parking regulations, where vast majority of tickets were not contested, such that there was no issue that probable cause for issuance of summonses existed, and there was likewise no issue of malice, absent evidence that ticketing volume increased or policies harshened because of their complaints. All Aire Conditioning, Inc. v. City of New York, S.D.N.Y.1997, 979 F.Supp. 1010, affirmed 166 F.3d 1199. Civil Rights 1037

When malicious prosecution constitutes seizure of plaintiff, it is actionable as constitutional tort under § 1983. Velasquez v. City of New York, S.D.N.Y.1997, 960 F.Supp. 776. Civil Rights 1037

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While common law elements of malicious prosecution are "starting point" for analysis of malicious prosecution claim under § 1983, plaintiff must ultimately prove that his Fourth Amendment right to be free from unreasonable seizures has been violated by defendant's conduct. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1037

Where malicious prosecution is pleaded as federal claim under federal civil rights statute, plaintiff must allege and prove, as an additional element of claim, "some post-arraignment deprivation of liberty that rises to level of constitutional violation." Murphy v. Lynn, S.D.N.Y.1995, 903 F.Supp. 629. Civil Rights 1088(5)

Malicious prosecution alone does not give rise to a § 1983 action; plaintiff must show that the malicious prosecution subjected him to a deprivation of constitutional magnitude. Yaworski v. Pate, N.D.Ill.1989, 717 F.Supp. 624. Civil Rights 1037

Conduct that may give rise to an action for malicious prosecution may also constitute a violation of this section if, acting under color of state law, the defendant has thereby subjected the plaintiff to a deprivation of constitutional magnitude. Pyles v. Keane, S.D.N.Y.1976, 418 F.Supp. 269. Civil Rights 1088(5)

1386. ---- Federal rights violated, malicious prosecution, deprivation of constitutional or statutory rights generally

Malicious prosecution by itself is not punishable under § 1983 because it does not allege constitutional injury; malicious prosecution can form basis for § 1983 action only if defendant's conduct also infringes some provision of Constitution or federal law. Gunderson v. Schlueter, C.A.8 (Minn.) 1990, 904 F.2d 407. Civil Rights 1037

Although malicious prosecution generally does not constitute a deprivation of life, liberty or property without due process of law and, therefore, is not cognizable under this section, an exception exists for malicious prosecutions conducted with intent of denying a person equal protection or which otherwise subject a person to a denial of constitutional rights. Cline v. Brusett, C.A.9 (Mont.) 1981, 661 F.2d 108. See, also, Bell v. Brennan, E.D.Pa.1983, 570 F.Supp. 1116. Civil Rights 1037

1387. ---- Egregiousness of conduct, malicious prosecution, deprivation of constitutional or statutory rights generally

To state cause of action for malicious prosecution under federal civil rights statute, complaint must assert that malicious conduct was so egregious that it violated substantive or procedural due process. Torres v. Superintendent of Police of Puerto Rico, C.A.1 (Puerto Rico) 1990, 893 F.2d 404. Civil Rights 1395(1)

Even if § 1983 plaintiff had been able to establish all the elements for claim of malicious prosecution, his proper avenue of relief was state tort action, rather than claim under § 1983; only when misuse of legal proceeding is so outrageous as to subject aggrieved individual to deprivation of constitutional dimension does § 1983 provide remedy for claim of malicious prosecution, 42 U.S.C.A. § 1983. Coogan v. City of Wixom, C.A.6 (Mich.) 1987, 820 F.2d 170. Civil Rights 1088(5)

Neither U.S.C.A.Const. Amend. 14 nor this section was designed to redress injuries incurred by reason of unfounded or malicious claims/suits brought in state court, where adequate state remedies are available to the aggrieved parties; nevertheless, if the misuse of legal procedure is so egregious as to subject the aggrieved individual to a deprivation of constitutional dimension, and the tort-feasor is acting under color of state law, this section may be employed. Norton v. Liddel, C.A.10 (Okla.) 1980, 620 F.2d 1375. Civil Rights 1032; Civil Rights 1326(9); Civil Rights 1315

1388. ---- Retaliation for and discouragement of protected activities, malicious prosecution, deprivation of constitutional or statutory rights generally

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For purposes of establishing First Amendment violation in § 1983 civil rights action, citizens group was required to show that government entities acted with retaliatory intent, and for the purpose of deterring exercise of First Amendment freedoms, when they filed counterclaim in response to committee's state court lawsuit seeking declaratory judgment against defendants for failure to follow proper procedures with respect to proposed solid waste incinerator; moreover, if committee proved retaliatory intent, defendants could still avoid liability by persuading jury that they would have filed counterclaim even in the absence of the impermissible reason. Greenwich Citizens Committee, Inc. v. Counties of Warren and Washington Indus. Development Agency, C.A.2 (N.Y.) 1996, 77 F.3d 26. Constitutional Law 82(3)

Fact that civil rights plaintiffs were prosecuted for illegal gambling only after filing § 1983 suits against law enforcement officials did not, by itself, establish reasonable inference of retaliatory intent and, thus, directed verdict against plaintiff was appropriate in light of extensive and uncontroverted direct evidence proffered by defendants that they intended to seek indictments against plaintiffs prior to date civil rights suit was filed. Enlow v. Tishomingo County, Miss., C.A.5 (Miss.) 1995, 45 F.3d 885. Civil Rights 1404

State may have many legitimate reasons for bringing criminal prosecution, and it is only when state's purpose in bringing criminal proceedings is to retaliate for protected conduct that plaintiff's rights are violated, and plaintiff must prove that retaliation was major motivating factor and played prominent role in the decision to prosecute. Smith v. Hightower, C.A.5 (Tex.) 1982, 693 F.2d 359. Courts 508(7)

Bystander witnessing fight could not bring §§ 1983 claim that police retaliated against him for engaging in protected activity, when his alleged resistance to orders of police that he get off sidewalk resulted in his arrest and subsequent plea of nolo contendere in criminal proceedings; plea prevented claim that activities were protected. Reynolds v. Smythe, E.D.Pa.2006, 418 F.Supp.2d 724. Civil Rights 1088(4)

Defendant who was charged with drug offenses after she sold cocaine to undercover detective could not prevail on retaliation claim under § 1983, based on actions of police in allegedly withholding exculpatory evidence from district attorney, since defendant's underlying conduct was criminal in nature, and thus not constitutionally protected. Labensky v. County of Nassau, E.D.N.Y.1998, 6 F.Supp.2d 161, affirmed 173 F.3d 845. Civil Rights 1088(5)

Prosecution under state criminal laws to discourage civil rights activities and not in bona fide effort to vindicate criminal laws may entitle persons prosecuted to relief. Carmichael v. Allen, N.D.Ga.1966, 267 F.Supp. 985. Courts 508(7)

1389. ---- Liberty loss generally, malicious prosecution, deprivation of constitutional or statutory rights generally

Plaintiff alleging a conspiracy involving police officer to maliciously prosecute him by issuing parking tickets failed to state a cause of action under § 1983, where under Michigan law, at no time was plaintiff in danger of imprisonment; rather, plaintiff's potential loss was limited to monetary loss and inconvenience of contesting the tickets. Vasquez v. City of Hamtramck, C.A.6 (Mich.) 1985, 757 F.2d 771. Conspiracy 7.5(1)

For malicious prosecution claim under §§ 1983, plaintiff must demonstrate sufficient post-arraignment liberty restraint to implicate plaintiff's Fourth Amendment rights. Davis v. City of New York, S.D.N.Y.2005, 373 F.Supp.2d 322. Civil Rights 1088(5)

Officers' alleged conspiracy to prosecute plaintiff maliciously did not deprive plaintiff of any right protected by the Fourth Amendment, and therefore, did not support plaintiff's conspiracy claim under § 1983; although plaintiff was forced to make appearances in court regarding wayward petitions filed against him, he was not imprisoned as a result of the alleged conduct, nor was he even detained for a minimal period of time. Ousley v. Town of Lincoln

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through its Finance Director, D.R.I.2004, 313 F.Supp.2d 78. Conspiracy 7.5(2)

Plaintiff in § 1983 action alleging malicious prosecution on assault charge failed to allege a compensable emotional injury, where plaintiff was already incarcerated and serving long sentence when charged and convicted of assault, sentence on assault charge was set aside, and plaintiff did not claim that he suffered any loss of liberty because of assault conviction. Cain v. Com. of Va., E.D.Va.1997, 982 F.Supp. 1132. Civil Rights 1088(5)

Former inmate could not maintain § 1983 claim for malicious prosecution in violation of Fourth Amendment based on pre-incarceration time period, where he did not have to post any money bail to be released, he was not prohibited from traveling outside state under conditions of his bond, and the only "restraints" on his liberty were having to appear in state court for his preliminary hearings, arraignment, and trial. Torres v. McLaughlin, E.D.Pa.1997, 966 F.Supp. 1353, reversed 163 F.3d 169, certiorari denied 120 S.Ct. 797, 528 U.S. 1079, 145 L.Ed.2d 672. Civil Rights 1088(5)

Inmate's incarceration from his conviction until his release was cognizable deprivation of liberty under Fourth Amendment that could serve as basis for § 1983 claim alleging malicious prosecution. Torres v. McLaughlin, E.D.Pa.1997, 966 F.Supp. 1353, reversed 163 F.3d 169, certiorari denied 120 S.Ct. 797, 528 U.S. 1079, 145 L.Ed.2d 672. Civil Rights 1088(5)

Conduct which would result in liability for false imprisonment or malicious prosecution at common law will result in liability under this section when engaged in by someone acting under color of state law, since such conduct occasions a deprivation of liberty without due process of law. Pagano v. Hadley, D.C.Del.1982, 553 F.Supp. 171. Civil Rights 1088(4); Civil Rights 1088(5)

Although plaintiff set out requisite elements for common law tort action for malicious prosecution, this section did not give property owner who suffered no actual loss of liberty in connection with proceedings instituted against him and who at worst, suffered irritating and vexatious experience at hands of city building inspectors, a cause of action. Henry v. City of Minneapolis, D.C.Minn.1981, 512 F.Supp. 293. Civil Rights 1037

Arrestee did not sufficiently allege a deprivation of liberty, arising from his attending a two-day trial on charges of making terroristic threats, as was required to succeed on malicious prosecution claim under §§ 1983; attendance at trial was not a seizure under the Fourth Amendment, and arrestee was in court for his trial on additional charges of stalking and harassment, of which he was found guilty. Shelley v. Wilson, C.A.3 (Pa.) 2005, 152 Fed.Appx. 126, 2005 WL 2596872, Unreported. Civil Rights 1088(5)

1390. ---- Arrest, detention or incarceration, malicious prosecution, deprivation of constitutional or statutory rights generally

Claim for wrongful arrest under Fourth Amendment is cognizable in § 1983 action. McCullah v. Gadert, C.A.7 (Ill.) 2003, 344 F.3d 655. Civil Rights 1088(4)

Plaintiff in § 1983 action did not have a constitutional claim, under the Fourth Amendment or otherwise, for malicious prosecution separate from his Fourth Amendment claims for unreasonable seizure, arrest without probable cause, and false imprisonment; any damages resulting from a Fourth Amendment violation, including loss or expense by reason of a resulting prosecution, could be recovered on the latter claims. Frantz v. Village of Bradford, C.A.6 (Ohio) 2001, 245 F.3d 869. Civil Rights 1088(5)

Where goal of alleged conspiracy was extortion to be accomplished by bringing prosecution against plaintiff without probable cause and for an improper purpose and injuries allegedly caused by defendants' actions include a deprivation of liberty concomitant to arrest and to pendency of criminal process, such deprivations without due process constituted an injury actionable under this section providing action for deprivation of rights under color of

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state law. Jennings v. Shuman, C.A.3 (Pa.) 1977, 567 F.2d 1213. Conspiracy 18

Civil rights plaintiff, who could not show that he was ever seized by police within meaning of Fourth Amendment, could not pursue malicious prosecution claim under § 1983, which was simply a claim founded on a Fourth Amendment seizure which incorporated elements of state tort claim. Myers v. Shaver, W.D.Va.2003, 245 F.Supp.2d 805. Civil Rights 1088(5)

Casino patron failed to state a §§ 1983 claim against state trooper based on malicious prosecution where he did not allege any seizure or limitation on his liberty in connection with his malicious prosecution claim; patron simply appeared in court on criminal charges as directed. Lassoff v. New Jersey, D.N.J.2006, 414 F.Supp.2d 483. Civil Rights 1088(5)

Genuine issue of material fact as to whether approximately two-and-a-half-hour post-acquittal detention by sheriff's office of detainee following his acquittal of murder charges was reasonable precluded summary judgment on detainee's §§ 1983 claim against city alleging that city's policies and procedures related to transporting and releasing detainees following acquittal at trial violated his Fourth Amendment rights. Arline v. City of Jacksonville, M.D.Fla.2005, 359 F.Supp.2d 1300. Federal Civil Procedure 2491.5

When a §§ 1983 claim for an alleged Fourth Amendment violation is based on an arrest that is made as part of a prosecution, it does not accrue until that prosecution terminates in the plaintiff's favor. Joseph v. Kimple, S.D.Ga.2004, 343 F.Supp.2d 1196, affirmed 391 F.3d 1276. Limitation Of Actions 58(1)

Neurologist's §§ 1983 malicious prosecution claim against officials of Utah's Medicaid Fraud Control Unit (MFCU), based on investigation and prosecution of neurologist for "upcoding," i.e., the practice of improperly billing Medicaid for a more expensive service than was actually provided to the patient, would be reviewed under due process standard of the Fourteenth Amendment, rather than reasonableness standard of the Fourth Amendment, where neurologist was never incarcerated. Becker v. Kroll, D.Utah 2004, 340 F.Supp.2d 1230. Constitutional Law 253(1); Health 981; Searches And Seizures 23

Officers had probable cause to arrest arrestee for menacing and harassment based on allegations of complainant and complainant's girlfriend that arrestee threatened them while brandishing gun and had assaulted girlfriend, notwithstanding that officers did not check complainant's criminal history and that girlfriend declined offer of emergency personnel to take her to hospital for medical treatment. Golub v. City of New York, S.D.N.Y.2004, 334 F.Supp.2d 399. Arrest 63.4(8)

In civil rights cases involving claim of false arrest or prosecution without probable cause, a court must put aside allegedly false information, supply any omitted information, and determine whether the contents of the corrected affidavit would have supported a finding of probable cause; if at the conclusion of the analysis probable cause remains, no constitutional violation of arrestee's Fourth Amendment rights has occurred. Weinstock v. Wilk, D.Conn.2003, 296 F.Supp.2d 241, adhered to on reconsideration 2004 WL 367618. Civil Rights 1088(4); Civil Rights 1088(5)

Motorist did not suffer a Fourth Amendment "seizure as a consequence of a legal proceeding," and therefore could not prove a § 1983 malicious prosecution claim against trooper who arrested him for driving under the influence of alcohol (DUI); motorist was in custody for approximately thirty to forty-five minutes at the state police barracks, was never incarcerated, restricted to a geographic area, compelled to contact pre-trial services, or deprived of his driver's license. Ankele v. Hambrick, E.D.Pa.2003, 286 F.Supp.2d 485, affirmed 136 Fed.Appx. 551, 2005 WL 1532436. Civil Rights 1088(5)

Allegedly excessive force used by police officers while making arrest could not serve as basis for arrestee's § 1983 malicious prosecution claim against officers alleging violation of substantive due process; any excessive force was

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not in connection with judicial process, but instead followed upon it. Wilson v. Lyons, D.Me.2003, 270 F.Supp.2d 73. Civil Rights 1088(5)

Arrestee's claim for malicious prosecution was not cognizable under § 1983, even if charge was terminated in his favor with entry of a nolle prosequi; claim did not allege a constitutional violation, inasmuch as officer had probable cause for arrest based on what he was advised when he arrived at scene. Shultz v. Smith, D.Md.2003, 264 F.Supp.2d 278. Civil Rights 1088(5)

To prevail on claim of malicious prosecution under § 1983, plaintiff must show some deprivation of liberty consistent with concept of "seizure." Fincher v. County of Westchester, S.D.N.Y.1997, 979 F.Supp. 989. Civil Rights 1037

Prisoner who had been imprisoned for murder he did not commit did not state § 1983 malicious prosecution claim against police officer who had initially arrested him for unrelated robbery, thereby placing him at police station where another officer then claimed prisoner might have been involved in the murder; prisoner did not allege that arresting officer's real motive in arresting him was to have him charged with murder or that the two officers had conspired to finger him for murder. Newsome v. James, N.D.Ill.1997, 968 F.Supp. 1318. Civil Rights 1088(5)

Police officers were entitled to qualified immunity on arrestee's claim that officers' alleged issuance of ticket for driving under influence of alcohol (DUI) after receiving test results indicating that arrestee had no trace of alcohol in his blood was malicious prosecution in violation of § 1983; DUI citation did not violate arrestee's Fourth Amendment rights since arrestee was not kept in custody solely on DUI charge and was never prosecuted on that citation. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1376(6)

For malicious prosecution to be actionable under § 1983 as constitutional tort, it must be coupled with incarceration or other palpable consequences. Jones v. Village of Villa Park, N.D.Ill.1993, 815 F.Supp. 249. Civil Rights 1037

Malicious prosecution, which was intertwined with elements of arrest without probable cause, use of excessive force, and fairly extensive detention, implicated deprivation of constitutional rights and was actionable under § 1983. Pryor v. Cajda, N.D.Ill.1987, 662 F.Supp. 1114. Civil Rights 1088(5)

Fact that guilty plea to conspiracy, in full satisfaction of all charges against him, was result of compromise, to which inmate had agreed, did not constitute termination of criminal proceeding in favor of inmate, as required for claim of malicious prosecution against city police officers. Almonte v. Florio, S.D.N.Y.2004, 2004 WL 60306, Unreported. Malicious Prosecution 35(2)

Police had probable cause under New York law to arrest videographer for disorderly conduct as he attempted to reenter courthouse, in order to film court proceedings, after being escorted out of building by guards, precluding claim of malicious prosecution under either §§ 1983 or state law; videographer repeatedly attempted to reenter, coming into physical contact with guards and blocking courthouse entrance. Posr v. Killackey, S.D.N.Y.2003, 2003 WL 22962191, Unreported. Civil Rights 1088(5); Malicious Prosecution 18(2)

Apartment dweller was never placed in custody when police entered his apartment following up on complaint of assault lodged by fellow resident, precluding § 1983 claim of false arrest in violation of his constitutional rights; while officer allegedly pointed finger at resident and said "arrest him," officers' attention was devoted to other occupant of apartment. Fernandez v. City of New York, S.D.N.Y.2003, 2003 WL 21756140, Unreported. Civil Rights 1088(4)

Although arrestee could not use § 1983 to collaterally attack his criminal conviction, which was not reversed, expunged, invalidated, or impugned by grant of a writ of habeas corpus, arrestee was not precluded from

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maintaining false arrest claim under § 1983, since sole basis for conviction was not evidence seized as result of illegal arrest; Fourth Amendment wrongful arrest claim would not inevitably undermine arrestee's conviction because he could wage successful wrongful arrest claim and still have perfectly valid conviction. Lucas v. Novogratz, S.D.N.Y.2002, 2002 WL 31844913, Unreported. Civil Rights 1088(4)

1391. ---- Business, contract, employment or status loss, malicious prosecution, deprivation of constitutional or statutory rights generally

If private investigator could show that police chief had established procedure of prosecuting groundless criminal actions against private security officers in order to harass them and force them out of business, that procedure in itself would violate due process and investigator could state claim under 42 U.S.C.A. § 1983. Bacon v. Patera, C.A.6 (Ohio) 1985, 772 F.2d 259. Civil Rights 1088(5); Constitutional Law 275(1)

Pharmacist's claim of malicious prosecution against state narcotics agents, was cognizable under this section where prosecution of pharmacist caused him to lose his license to practice pharmacy thereby depriving him of right to engage in his occupation. Shepard v. Byrd, N.D.Ga.1984, 581 F.Supp. 1374. Civil Rights 1037

1392. ---- Family relations disrupted, malicious prosecution, deprivation of constitutional or statutory rights generally

Complaint alleging that county through its employees conducted child protective proceedings, upon lawful referral of erroneous determination that infant had been subjected to sexual abuse, in a way which plaintiffs contended amounted to malicious prosecution stated a claim under this section, since preliminary protective orders obtained by county employees disrupted familial relationships of plaintiff, thereby clearly implicating federally protected rights. Whelehan v. Monroe County, W.D.N.Y.1983, 558 F.Supp. 1093. Civil Rights 1395(1)

1393. ---- Legitimacy of proceedings, malicious prosecution, deprivation of constitutional or statutory rights generally

Facts alleged with respect to alleged falsification of evidence by an employee of county which led to plaintiff's indictment and arrest, though perhaps serving as a basis for a civil action for malicious prosecution or for a criminal charge of perjury, did not establish a violation of constitutional magnitude and hence, did not provide a basis for holding county, sheriff, and deputy sheriff liable under this section on theory of reckless supervision where requirements of procedural due process were met by grand jury before plaintiff was deprived of his liberty. Witt v. Harbour, W.D.Va.1980, 508 F.Supp. 378, affirmed 644 F.2d 883, certiorari denied 102 S.Ct. 359, 454 U.S. 879, 70 L.Ed.2d 188. Civil Rights 1395(6)

Conduct for which plaintiff instituted claims for malicious prosecution and abuse of process resulted in deprivation of liberty or property only as result of or attendant to legitimate proceedings, and there was thus no deprivation of due process of law under U.S.C.A.Const. Amend. 14 and no claim was stated which would be actionable under this section. Cramer v. Crutchfield, E.D.Va.1980, 496 F.Supp. 949, affirmed 648 F.2d 943. Civil Rights 1395(1)

1394. ---- Guilty plea, malicious prosecution, deprivation of constitutional or statutory rights generally

State guilty plea conviction that was subsequently vacated had no preclusive effect in § 1983 action for malicious prosecution. Spurlock v. Whitley, M.D.Tenn.1997, 971 F.Supp. 1166, affirmed 167 F.3d 995. Judgment 828.8

Defendant who had entered guilty plea during state court trial on drug charges could not seek to overturn plea in subsequent § 1983 action against state court judge, prosecutor, and other officials. Garner v. Cole, C.A.8 (Ark.)

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2000, 205 F.3d 1345, Unreported. Civil Rights 1088(5)

1395. ---- Guilt or innocence of plaintiff, malicious prosecution, deprivation of constitutional or statutory rights generally

Under *Heck*'s favorable termination rule, person who has been convicted of crime cannot recover damages for alleged violation of his constitutional rights that arose from same facts attendant to charge of which he was convicted, unless he proves that his conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal authorized to make such determinations, or called into question by federal court's issuance of writ of habeas corpus. Ballard v. Burton, C.A.5 (Miss.) 2006, 444 F.3d 391. Civil Rights 1088(5)

Entry by member of campus ministry group into Pennsylvania's Accelerated Rehabilitative Disposition (ARD) program, which permitted expungement of criminal record upon successful completion of probationary term, was not favorable termination of his disorderly conduct charge, and his subsequent §§ 1983 claim against state university officials, alleging constitutional violations in connection with his arrest, thus was barred by *Heck v. Humphrey*, inasmuch as ARD program imposed several burdens not consistent with innocence, including probation and restitution; abrogating *Williams v. Borough of Norristown*, 1995 WL 422684. Gilles v. Davis, C.A.3 (Pa.) 2005, 427 F.3d 197. Civil Rights 1088(5)

Fact that plaintiff's conviction and sentence were ultimately "vacated, set aside and held for naught" because DNA analysis demonstrated that he could not have been the source of the semen found on the rape victim constitutes a termination of the original action in favor of the plaintiff for purposes of subsequent § 1983 claim based on constitutional tort of malicious prosecution. Pierce v. Gilchrist, C.A.10 (Okla.) 2004, 359 F.3d 1279. Civil Rights 1088(5)

For purpose of determining whether § 1983 claim for malicious prosecution could be brought by physician who, after obtaining writ of habeas corpus, was acquitted of sale of cocaine on retrial, criminal proceeding did not terminate when initial conviction for sale was overturned by writ but when physician was again convicted of possession on retrial and, thus, prosecution did not end in failure, indicating physician's innocence, where connected acts of possession of cocaine and its sale to undercover officers were charged in single indictment and physician conceded both acts. DiBlasio v. City of New York, C.A.2 (N.Y.) 1996, 102 F.3d 654. Civil Rights 1088(5)

Criminal prosecution against individual terminated favorably to that individual, for purpose of her subsequent malicious prosecution action under § 1983, where prosecutor nolle prossed charges against individual under agreement with individual's common-law husband by which husband would enter rehabilitative program; although individual benefitted from husband's compromise, individual did not herself enter any compromise or give up any consideration for grant of nolle prosequi, and no evidence indicated that individual knew that her acceptance of grant of nolle prosequi would deprive her of ability to file malicious prosecution claim. Hilfirty v. Shipman, C.A.3 (Pa.) 1996, 91 F.3d 573. Malicious Prosecution 35(2)

Favorable termination of criminal proceedings is essential element of claim for malicious prosecution; thus, claim does not accrue until proceedings are terminated. Morrison v. Jones, C.A.4 (Va.) 1977, 551 F.2d 939. Limitation Of Actions 55(1); Malicious Prosecution 34

Voluntary dismissal of criminal charges failed to satisfy favorable termination element of malicious prosecution claim under California law; court had denied defendants' motion to dismiss one count before prosecutor voluntarily dismissed it in the interests of justice, and prosecutor averred that he dismissed other count as incidental to prosecution rather than for lack of evidence, and thus indicia of innocence were absent. Ayala v. KC Environmental Health, E.D.Cal.2006, 426 F.Supp.2d 1070. Malicious Prosecution 35(1)

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42 U.S.C.A. § 1983

Prison inmate could proceed with §§ 1983 action against prison, seeking damages for loss of good time credits following disciplinary proceeding allegedly violating his due process rights, even though suit was challenge to sentence, ordinarily requiring completion of habeas corpus proceeding reversing revocation before §§ 1983 action could proceed, under Supreme Court's *Heck v. Humphrey* decision; release of inmate precluded habeas proceeding, improperly leaving him with due process rights but without remedy. Dible v. Scholl, N.D.Iowa 2006, 410 F.Supp.2d 807. Civil Rights 1311

Heck, which prohibited civil rights claim where judgment in favor of plaintiff would necessarily imply invalidity of his conviction or sentence, barred §§ 1983 claim for false arrest where plaintiff's Connecticut convictions for possession of narcotics and assault on a police officer remained valid; recovery by plaintiff for false arrest would undermine the convictions, which were based on evidence obtained due to allegedly false arrest. Powell v. Scanlon, D.Conn.2005, 390 F.Supp.2d 172. Civil Rights 1088(4)

Fact issue existed as to whether state prosecutor's entry of nolle prosequi had been made in exchange for defendant's providing something of benefit to state or victim, and in turn as to whether entry constituted termination of prosecution in defendant's favor, precluding summary judgment in defendant's subsequent §§ 1983 malicious prosecution action against arresting officers. Holman v. Cascio, D.Conn.2005, 390 F.Supp.2d 120. Federal Civil Procedure 2491.5

Entry of a nolle prosequi in the underlying criminal case against § 1983 plaintiff did not preclude her claim for false arrest. Colon v. Ludemann, D.Conn.2003, 283 F.Supp.2d 747. Civil Rights 1088(4)

Dismissal on remand of plaintiff's resisting arrest charge on speedy trial grounds, following reversal of conviction on such charge due to incorrect jury instructions, constituted termination of proceeding in plaintiff's favor, for purposes of establishing plaintiff's malicious prosecution claim in § 1983 action. Hansel v. Sheridan, N.D.N.Y.1998, 991 F.Supp. 69. Malicious Prosecution 35(1)

Dismissal of count of criminal information against homeowner, alleging criminal violation of zoning ordinance, on ground that homeowner had received variance from town, was sufficiently favorable determination and indicative of homeowner's innocence to overcome motion to dismiss homeowner's § 1983 claim of malicious prosecution. Willner v. Town of North Hempstead, E.D.N.Y.1997, 977 F.Supp. 182. Civil Rights 1088(5)

Common law rule, equally applicable to § 1983 actions asserting false arrest, false imprisonment, or malicious prosecution, was and is that plaintiff can under no circumstances recover if she was convicted of offense for which she was arrested. White v. Tamlyn, E.D.Mich.1997, 961 F.Supp. 1047. Civil Rights 1037; Civil Rights 1088(4)

To maintain § 1983 claim for unconstitutional conviction or imprisonment where success on such claim would necessarily imply invalidity of outstanding or potential conviction, there must first be "final" termination of criminal proceeding in favor of plaintiff. Michaels v. State of N.J., D.N.J.1996, 955 F.Supp. 315. Civil Rights 1088(5)

Dismissal of underlying charges, for resisting peace officer and battery, with leave to reinstate was "termination" in favor of plaintiff in subsequent civil rights suit seeking damages for malicious prosecution; statute of limitations had expired on criminal charges, barring further prosecution. Jenkins v. Meginnis, N.D.Ill.1996, 931 F.Supp. 567. Malicious Prosecution 35(1)

Plaintiff's allegations against county and law enforcement personnel involved in his arrest and prosecution did not establish conduct so egregious and unconscionable as to amount to substantive due process violation so that plaintiff could claim in his subsequent civil rights action that case came within exception to general rule requiring favorable termination of underlying criminal proceedings in order to state false arrest or malicious prosecution

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claim. Nowosad v. English, E.D.N.Y.1995, 903 F.Supp. 377. Civil Rights 1395(5)

Adjournment in contemplation of dismissal does not constitute a "termination in a complainant's favor" for purposes of claim for deprivation of civil rights through false arrest or malicious prosecution; like a consent decree, it involves the consent of both prosecution and accused and leaves open the question of the accused's guilt. Miloslavsky v. AES Engineering Soc., Inc., S.D.N.Y.1992, 808 F.Supp. 351, affirmed 993 F.2d 1534, certiorari denied 114 S.Ct. 68, 510 U.S. 817, 126 L.Ed.2d 37. Civil Rights 1037; Malicious Prosecution 35(1)

Arrestee's acquittals on charges of criminal possession of weapon and menacing could not serve as basis for civil rights claim based on malicious prosecution where arrestee was also convicted of resisting arrest, disorderly conduct, and harassment in connection with same incident involving confrontation with police. Goree v. Gunning, E.D.N.Y.1990, 738 F.Supp. 79. Civil Rights 1088(5)

Malicious prosecution claim under § 1983 could not be asserted based on allegations of false arrest for battery where civil rights claim for false arrest for the battery was proceeding and the two allegations did not constitute separate claims. Quinn v. Cain, N.D.Ill.1989, 714 F.Supp. 938. Civil Rights 1088(4)

In order to maintain a § 1983 cause of action for malicious prosecution, plaintiff must show that proceedings against him terminated in such way as to suggest his innocence. Rhodes v. Mabus, S.D.Miss.1987, 676 F.Supp. 755. Malicious Prosecution 35(1)

Prisoner could not maintain malicious prosecution claim against city and police officers, under § 1983, as proceeding resulting from defendants' alleged malicious prosecution did not terminate in prisoner's favor but instead resulted in prisoner's federal conviction. Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047, affirmed in part, reversed in part 151 F.3d 646. Civil Rights 1088(5)

Disposition of a criminal case through successful completion of pretrial intervention under N.J.S.A. 2C:43-12, 2C:43-13, which results in dismissal of complaint, indictment or accusation against participant with prejudice, is not a termination favorable to the accused for purposes of a Section 1983 civil rights action for malicious prosecution or a state tort claim based on that same cause of action. Lindes v. Sutter, D.C.N.J.1985, 621 F.Supp. 1197. Malicious Prosecution 35(1)

In order to recover in civil rights action on his claim for malicious prosecution, plaintiff was required to establish that prior statement of prosecution terminated in its favor and, hence, was required to show that prior action disposed of charges in a matter inconsistent with guilt; an indecisive disposition, such as a hung jury, would not suffice because a prosecution based on probable cause cannot deprive an individual of his civil rights. Haefner v. Lancaster County, E.D.Pa.1981, 520 F.Supp. 131, affirmed 681 F.2d 806, certiorari denied 103 S.Ct. 165, 459 U.S. 874, 74 L.Ed.2d 136, affirmed 709 F.2d 1492. Civil Rights 1406

Although prison inmate's conviction at adjustment committee hearing was reversed by regional administrator, reversal on procedural grounds was not sufficient to satisfy essential elements of malicious prosecution cause of action that proceedings terminate in a manner not unfavorable to the plaintiff. Kelly v. Cooper, E.D.Va.1980, 502 F.Supp. 1371. Malicious Prosecution 37

Decision in arrestee's favor on his §§ 1983 claims for false arrest and malicious prosecution would necessarily imply that arrestee's state court conviction and sentence for resisting arrest were unlawful, and thus arrestee's claims were barred under *Heck v. Humphrey*, where conviction and sentence had not been reversed, invalidated, or called into question by issuance of writ of habeas corpus. Marable v. West Pottsgrove Tp., C.A.3 (Pa.) 2006, 176 Fed.Appx. 275, 2006 WL 1024578, Unreported. Civil Rights 1088(5)

Dismissal of defiant trespass charge against former tenant, subsequent to his eviction and arrest after refusing to

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leave premises, was not reversal in tenant's favor, for purposes of tenant's §§ 1983 claims against former landlord and city police for unconstitutional conviction or imprisonment, since tenant's conviction for disorderly conduct remained valid. Lynn v. Desiderio, C.A.3 (Pa.) 2005, 159 Fed.Appx. 382, 2005 WL 3439915, Unreported. Civil Rights 1088(5)

Arrestee's claims against California narcotics officer who testified against arrestee in state court in Pennsylvania, in arrestee's civil rights action under §§ 1983, alleging several constitutional violations arising out of his arrest and prosecution, were barred by Supreme Court's ruling in *Heck v. Humphrey*, under which civil rights plaintiff must show that conviction has been invalidated or called into question before challenging conduct whose unlawfulness would render conviction invalid, where success on arrestee's claims against narcotics officer would imply the invalidity of his conviction, since his arrest and conviction were based on evidence gathered from search and seizure that state courts ratified. James v. York County Police Dept., C.A.3 (Pa.) 2005, 160 Fed.Appx. 126, 2005 WL 3313029, Unreported.

Prisoner's due process claims for damages regarding the denial of parole were barred by the rule in *Heck v. Humphrey* since such claims necessarily implicated the validity of the parole decision, which had not been shown to have been invalidated. Poole v. D.O.C., C.A.3 (Pa.) 2005, 153 Fed.Appx. 816, 2005 WL 2662387, Unreported. Civil Rights 1097

Arrestee did not have a cognizable §§ 1983 claim against Pennsylvania State Police troopers for damages for malicious prosecution for stalking and harassment, where neither his conviction nor sentence for those crimes had been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus. Shelley v. Wilson, C.A.3 (Pa.) 2005, 152 Fed.Appx. 126, 2005 WL 2596872, Unreported. Civil Rights 1088(5)

Malicious prosecution claimant, acquitted of assault charges for which he was arrested and bringing § 1983 claim that his constitutional rights were violated, failed to satisfy requirement that he show exoneration, as required by New York law, even though he was acquitted of assault charges for which he was arrested; he was convicted of second harassment, arising out of same incident. Fernandez v. City of New York, S.D.N.Y.2003, 2003 WL 21756140, Unreported. Civil Rights 1088(5)

Arrestee's prosecution did not terminate in his favor, as required for his malicious prosecution claim, where arrestee, who was arrested on outstanding warrant and for possession of marijuana, was given adjournment in contemplation of dismissal (ACD) that required him to perform community service and to attend alcohol treatment program. Nance v. New York City Police Dept. ex rel. McKay Chung, E.D.N.Y.2003, 2003 WL 1955164, Unreported. Malicious Prosecution 35(1)

1396. ---- Probable cause for charges, malicious prosecution, deprivation of constitutional or statutory rights generally

Fact that probable cause existed for the arrest did not preclude police department forensic chemist's liability for constitutional tort of malicious prosecution if her alleged withholding of exculpatory evidence and fabrication of inculpatory evidence became one of the inseparable bases for the charges against plaintiff and the district attorney's decision to proceed to trial. Pierce v. Gilchrist, C.A.10 (Okla.) 2004, 359 F.3d 1279. Civil Rights 1088(5)

Police had probable cause to make arrest for knowing possession of stolen property based on observation of stolen vehicle, witness's statement that "Tony" owned vehicle and lived in building where defendant resided, defendant's admission that his name was "Tony" and he owned vehicle, and defendant's presentation of insurance card from stolen vehicle with owner's name on it; thus, arrest did not support arrestee's subsequent § 1983 claims of false arrest and false imprisonment. Boyd v. City of New York, C.A.2 (N.Y.) 2003, 336 F.3d 72. Arrest 63.4(15)

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42 U.S.C.A. § 1983

District court erred when, in response to question from jury during deliberation in section 1983 action brought by demonstrator against police officers, it instructed that if jury found probable cause supporting any of three charges of disorderly conduct, resisting arrest and assault alleged against demonstrator, no liability for malicious prosecution could be found as to any of charges filed; if rule were one followed by district court, officer with probable cause as to lesser offense could tack on more serious, unfounded charges knowing that probable cause on lesser offense would insulate him from liability for malicious prosecution on other offenses. Posr v. Doherty, C.A.2 (N.Y.) 1991, 944 F.2d 91. Federal Civil Procedure 1975

Prosecution based on probable cause which resulted in hung jury did not deprive defendant of his civil rights within meaning of this section. Singleton v. City of New York, C.A.2 (N.Y.) 1980, 632 F.2d 185, certiorari denied 101 S.Ct. 1368, 450 U.S. 920, 67 L.Ed.2d 347. Civil Rights 1326(9)

Arrestee's allegations that, during traffic stop, his obvious physical condition was indicative of a stroke, that two witnesses allegedly requested that arrestee receive medical attention, and that one of the arresting officers commented that arrestee looked like he was having a stroke, was sufficient to establish question as to whether officers had probable cause to arrest, and thus stated a claim under §§ 1983 for false arrest. Aguilera v. County of Nassau, E.D.N.Y.2006, 453 F.Supp.2d 601. Civil Rights 1395(6)

Arrestee who had been misidentified by informant as a drug dealer failed to allege facts to establish a lack of probable cause or malice, as required under Virginia law to state claim for malicious prosecution, in civil rights action under §§ 1983 against county deputy sheriff, where deputy sheriff's belief of information regarding drug sale was entirely reasonable, and deputy sheriff did not intend to have the wrong person prosecuted for crimes described by informant. Caldwell v. Green, W.D.Va.2006, 451 F.Supp.2d 811. Civil Rights 1088(5)

Genuine issue of material fact existed as to whether it was objectively reasonable for police officers to believe that probable cause existed to prosecute arrestee for resisting arrest, precluding summary judgment for officers, on basis of qualified immunity, on arrestee's malicious prosecution claim in civil rights action under §§ 1983. Ostroski v. Town of Southold, E.D.N.Y.2006, 443 F.Supp.2d 325. Federal Civil Procedure 2491.5

Probable cause existed for suspect's prosecution for rape, robbery, and murder, and thus city was not liable under § § 1983 or New York law for malicious prosecution, even though murder charge was dropped, and suspect was ultimately acquitted of other charges, where grand jury indicted suspect for crimes, judge reviewed grand jury minutes and found that there was sufficient legal evidence to sustain grand jury's indictment, and there was no evidence that police detective provided any false testimony to grand jury. Golden v. City of New York, E.D.N.Y.2006, 418 F.Supp.2d 226. Malicious Prosecution 24(7)

City attorneys had probable cause to prosecute plaintiff on traffic violation, precluding plaintiff's claim under §§ 1983 for malicious prosecution, where the plaintiff was initially found guilty in the municipal court, although she later successfully appealed her case in the district court. King v. Knoll, D.Kan.2005, 399 F.Supp.2d 1169. Civil Rights 1088(5)

Police detective who arrested rape suspect at hospital, based upon alleged victim's in-person identification of suspect and her description of alleged rape, could not be held liable under §§ 1983 for malicious prosecution after charges were dismissed for lack of evidence; detective had probable cause for suspect's arrest, and there was no evidence that detective was involved with criminal proceeding against suspect after he signed affidavit for criminal complaint. Smith v. City of New York, S.D.N.Y.2005, 388 F.Supp.2d 179. Civil Rights 1358

Existence of probable cause for an arrest extinguishes any potential claim under § 1983 for false arrest or false imprisonment. Patterson v. Burge, N.D.Ill.2004, 328 F.Supp.2d 878. Civil Rights 1088(4)

Probable cause existed for the prosecution of a motorist for driving with a suspended license, thus defeating his

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malicious prosecution claim; district attorney's office obtained an abstract of the motorist's city department of motor vehicles (DMV) record that showed that the he paid a fine two days after he was arrested for driving with a suspended license, and that confirmed that his license was suspended on the date of his arrest; the fact that the district attorney's office thereafter chose not to pursue the prosecution did not negate the probable cause that had existed. Evans v. City of New York, S.D.N.Y.2004, 308 F.Supp.2d 316, affirmed 123 Fed.Appx. 433, 2005 WL 348377. Malicious Prosecution 18(7); Malicious Prosecution 24(1)

Even assuming motorist was seized for purposes of the Fourth Amendment, trooper who arrested him for driving under the influence of alcohol (DUI) was not liable on motorist's § 1983 malicious prosecution claim because trooper had probable cause to arrest motorist for DUI. Ankele v. Hambrick, E.D.Pa.2003, 286 F.Supp.2d 485, affirmed 136 Fed.Appx. 551, 2005 WL 1532436. Civil Rights 1088(5)

Genuine issue of material fact as to whether police officers acted with reasonable suspicion in stopping motorist, such that officers acted with probable cause in charging and filing criminal complaints against motorist for driving under influence (DUI), precluded summary judgment in motorist's § 1983 malicious prosecution action against officers. Clynch v. Chapman, D.Conn.2003, 285 F.Supp.2d 213. Federal Civil Procedure 2491.5

Claim for malicious prosecution under § 1983 requires that plaintiff show lack of probable cause for commencing proceeding. Taylor v. City of New York, E.D.N.Y.2003, 269 F.Supp.2d 68, clarified 2003 WL 21781941. Civil Rights 1037

Genuine issues of material fact as to whether there was probable cause for commencing narcotics prosecution precluded summary judgment on § 1983 claim for malicious prosecution. Taylor v. City of New York, E.D.N.Y.2003, 269 F.Supp.2d 68, clarified 2003 WL 21781941. Federal Civil Procedure 2491.5

Arrestee could not show lack of probable cause for commencing criminal proceeding, as required to establish § 1983 malicious prosecution claim, where police officer had probable cause to arrest, and there was no additional evidence presented between the arrest and the dismissal of the charges that dissipated the probable cause. Hernandez v. City of Rochester, W.D.N.Y.2003, 260 F.Supp.2d 599. Civil Rights 1088(5)

Claimant's failure to present any evidence to establish want of probable cause to prosecute him on robbery charge or malice on part of police officer involved with prosecution, as required to establish malicious prosecution claim under Missouri law, precluded him from establishing his § 1983 claim based on malicious prosecution of robbery charge. Lemons v. Lewis, D.Kan.1997, 969 F.Supp. 657. Civil Rights 1088(5)

Grand jury testimony of internal revenue agent leading to defendant's indictment for bank and tax fraud was objectively reasonable and thus did not serve as basis for § 1983 action alleging malicious prosecution; in view of evidence that defendant took worthless stock deduction on income tax form for stock, yet later represented that he still owned that stock and that it was worth $15,000, agent believed positions taken by defendant were inconsistent and in violation of the law. Groom v. Fickes, S.D.Tex.1997, 966 F.Supp. 1466, affirmed 129 F.3d 606. Civil Rights 1088(5)

Section 1983 claim for malicious prosecution required that plaintiff demonstrate lack of probable cause to make initial arrest and show that proceedings terminated in her favor. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. Civil Rights 1088(5)

Officer had probable cause to arrest suspect for reckless endangerment in the second degree under New York law, and thus city and city officials were not liable under § 1983 for false arrest and malicious prosecution; as officer arrived upon scene, he noticed that victim was limping, and victim told officer that suspect had driven over victim's foot during an argument over a parking spot. Pravda v. City of Albany, N.Y., N.D.N.Y.1997, 956 F.Supp. 174. Civil Rights 1088(4)

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Prosecutors had probable cause to believe a sexual assault on minor occurred and that defendant had committed the assault, thus precluding arrestee's subsequent recovery for malicious prosecution in § 1983 civil rights action; preliminary examination was held where complaining witness and her mother testified to the incident, and arrestee did not substantiate allegation he was prosecuted solely because he was Native American. Pierzynowski v. Police Dept. City of Detroit, E.D.Mich.1996, 941 F.Supp. 633. Civil Rights 1088(5)

Mutual and experienced determination by judicial officer of § 1983 plaintiff's guilt of failing to give information and render aid conclusively established existence of probable cause, thereby defeating her § 1983 claim for malicious prosecution. Hamidian v. Occulto, M.D.Pa.1994, 854 F.Supp. 350. Civil Rights 1037

No evidence indicated that police chief acted with malice in charging middle school students with disorderly conduct and/or inciting a riot in connection with incident in which two students were fighting near school and, therefore, police chief could not be held liable under § 1983 for alleged malicious prosecution; even if existence of probable cause was doubtful, that did not establish malice. C-1 by P-1 v. City of Horn Lake, Miss., N.D.Miss.1990, 775 F.Supp. 940. Civil Rights 1088(5)

Action will not lie under federal civil rights statute for malicious prosecution where there has been determination that charges filed were based on probable cause. Winslow v. Romer, D.Colo.1991, 759 F.Supp. 670. Civil Rights 1037

In order to succeed either on malicious prosecution claim or claim of due process violation based on alleged want of probable cause on part of state trooper in endorsing two traffic citations against plaintiffs the plaintiff, who brought civil rights suit, was required to prove that trooper lacked probable cause. Curran v. Dural, E.D.Pa.1981, 512 F.Supp. 699. Civil Rights 1407; Malicious Prosecution 15

Evidence that arrestee's state conviction was affirmed on appeal, that arrestee's habeas petition challenging the conviction was denied, and that court of appeals denied motion for a certificate of appealability was sufficient evidence of probable cause to arrest, defeating arrestee's § 1983 claim for false arrest against police department. Gwathney v. New York City Police Dept., C.A.2 (N.Y.) 2004, 96 Fed.Appx. 57, 2004 WL 1013317, Unreported. Civil Rights 1420

Arrestee failed to proffer sufficient evidence to rebut presumption of probable cause that arose from his indictment, as would support his malicious prosecution claim under § 1983 against city police department and two police officers, alleging that officers fabricated line-up identifications and issued false criminal complaint against him, where he presented no evidence establishing that indictment was procured through use of allegedly tainted evidence; even if officers used racial epithets during arrest and told arrestee that they would falsify evidence and manipulate line-ups in order to implicate him, as arrestee alleged, probable cause did not depend on officers' subjective biases. Simmons v. New York City Police Dept., C.A.2 (N.Y.) 2004, 97 Fed.Appx. 341, 2004 WL 909705, Unreported. Civil Rights 1088(5)

Police had probable cause to arrest apartment resident for assaulting fellow resident, precluding § 1983 claim of malicious prosecution in violation of his constitutional rights; son of fellow resident claimed resident had struck father in face, and there was blood in fellow resident's apartment. Fernandez v. City of New York, S.D.N.Y.2003, 2003 WL 21756140, Unreported. Civil Rights 1088(5)

Court officer did not engage in malicious prosecution under New York law, and consequently deprive video camera operator of a protected liberty interest, supporting § 1983 action, when he arrested operator for being disorderly, triggering criminal proceeding later dropped on speedy trial grounds; operator's conduct in vigorously opposing ejection from courthouse, after being informed he could not videotape proceedings, provided probable cause for arrest. Posr v. Killackey, S.D.N.Y.2003, 2003 WL 21716321, Unreported. Malicious Prosecution 18(2)

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Probable cause existed for prosecution of indicted sexual assault defendant, despite his protestations of innocence, and thus arresting officer could not be held personally liable under § 1983 for malicious prosecution, absent showing that indictment had been obtained in bad faith. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Civil Rights 1088(5)

Arresting officer's determination that he had probable cause to pursue prosecution of indicted sexual assault suspect was objectively reasonable, and thus he was entitled to qualified immunity from § 1983 liability arising out of allegedly malicious prosecution; officer was entitled to rely on victim's complaint, absent showing that it was inherently incredible. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Civil Rights 1376(6)

1397. ---- Repeated prosecutions, malicious prosecution, deprivation of constitutional or statutory rights generally

Motorist failed to prove that current and former commissioners of a city's department of motor vehicles (DMV) and a police officer acted with actual malice in connection with his prosecution for driving with a suspended license, thus defeating his malicious prosecution claim against them; DMV's alleged failure to alert the district attorney of the fact that the motorist had paid his fine was insufficient evidence to infer malicious intent. Evans v. City of New York, S.D.N.Y.2004, 308 F.Supp.2d 316, affirmed 123 Fed.Appx. 433, 2005 WL 348377. Malicious Prosecution 31

Single criminal prosecution, brought in good faith, is not violation of any federally guaranteed civil rights. Martinez v. Com. of Puerto Rico, D.C.Puerto Rico 1972, 343 F.Supp. 897. Civil Rights 1088(5)

1398. ---- Particular claims, malicious prosecution, deprivation of constitutional or statutory rights generally

County undersheriff did not provide misleading presentation of material facts to prosecutor who decided to prosecute shareholder in land-owning corporation for Oklahoma offense of felony pointing of firearm, as required for undersheriff to be liable to shareholder under §§ 1983 for false arrest or malicious prosecution; undersheriff did not conceal or withhold shareholder's statement, but passed it along to prosecutor along with statements of complaining witnesses, and additional facts relating to whether complaining witnesses had been trespassing were not relevant to probable cause to arrest shareholder for threatening them with a firearm. Grubbs v. Bailes, C.A.10 (Okla.) 2006, 445 F.3d 1275. Civil Rights 1088(5)

Wrongfully convicted plaintiff, who alleged that police department forensic chemist maliciously withheld exculpatory evidence and fabricated inculpatory evidence, stated claim under § 1983 for constitutional tort of malicious prosecution; fact that forensic chemist neither initiated nor filed the charges against plaintiff did not preclude the claim. Pierce v. Gilchrist, C.A.10 (Okla.) 2004, 359 F.3d 1279. Civil Rights 1088(5); Civil Rights 1358

Probable cause existed for arrest warrant issued against former county sheriff's department employee on charges of forgery and embezzlement and for grand jury's indictment on such charges, and therefore former employee's § 1983 claim for malicious prosecution was to be dismissed, where affidavit filed in support of arrest warrant alleged that former employee signed sheriff's name to county check without sheriff's authorization and with intent to defraud county, that former employee presented such check to bank for payment and that former employee converted cash from confidential informant fund for her own use with intent to deprive sheriff's office of the cash, former employee admitted to signing the check without sheriff's approval, and it was undisputed that money was missing from confidential informant fund which former employee was entrusted to administer. Wolford v. Lasater, C.A.10 (N.M.) 1996, 78 F.3d 484. Civil Rights 1088(5)

Allegations by individual who had been arrested and held in jail for 23 months following indictment on murder

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charges until his acquittal, and who failed to timely bring wrongful arrest action against police detectives, that arrest and murder charge, and incarceration, were without probable cause, that he was indicted solely on basis of detectives' statements, and that certain detectives testified at hearing to quash arrest were insufficient to state claim for malicious prosecution against detectives under federal civil rights statute; wrongful arrest claim was time-barred, and only remaining claim, that detectives testified before grand jury and at hearing on motion to quash, failed to allege malicious prosecution under Illinois law. Reed v. City of Chicago, C.A.7 (Ill.) 1996, 77 F.3d 1049, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(5); Malicious Prosecution 47

Allegation that several police officers beat arrestee without physical provocation, that one officer was present during the beating and might have participated, and that the officer then fabricated several charges against the arrestee in order to justify the injuries that the arrestee received did not meet the standards for malicious prosecution claim under federal civil rights statute. Ayala-Martinez v. Anglero, C.A.1 (Puerto Rico) 1992, 982 F.2d 26. Civil Rights 1088(5)

Allegations that municipal tax clerk's supervisor maliciously brought baseless accusations against her that resulted her trial and acquittal on theft charges stated civil rights claim for malicious prosecution impacting her right to be free of unreasonable seizures, as it could be inferred from allegations that warrant was issued for her arrest and seizure. Luthy v. Proulx, D.Mass.2006, 464 F.Supp.2d 69. Civil Rights 1395(8)

Police sergeant's filing of false disciplinary charges against police officer did not implicate officer's Fourth Amendment rights, and thus officer did not state claim against sergeant under §§ 1983 for malicious prosecution, where officer did not face criminal charges, and was not arrested or otherwise detained. Rolon v. Henneman, S.D.N.Y.2006, 443 F.Supp.2d 532. Civil Rights 1037

County health department employee's mention of possibility of restitution to victim of alleged fraud if victim testified against alleged perpetrators did not constitute bad-faith conduct instrumental in conspiracy-to-defraud prosecution, so as to make employee potentially liable in alleged perpetrators' subsequent §§ 1983 malicious prosecution action; alleged perpetrators characterized employee's comment was wrongful inducement, but prosecutor, not employee, initiated prosecution, and there was no showing of fraud, corruption, perjury or fabricated evidence. Ayala v. KC Environmental Health, E.D.Cal.2006, 426 F.Supp.2d 1070. Civil Rights 1358

Police officer who sued city and police officials, stemming from his arrest and prosecution for reckless endangerment while off-duty, failed to establish that proceeding lacked probable cause, as required to maintain claim for malicious prosecution under §§ 1983 and New York law; officer admitted to operating motorcycle in reckless manner while fleeing police by improperly changing lanes while traveling in excess of speed limit, and by driving in excess of speed limit while traveling southbound in northbound lane. Winn v. McQuillan, S.D.N.Y.2005, 390 F.Supp.2d 385. Malicious Prosecution 18(2)

Heck, which prohibited civil rights claim where judgment in favor of plaintiff would necessarily imply invalidity of his conviction or sentence, did not bar §§ 1983 claim against police officers for excessive force since plaintiff's Connecticut conviction for assault on a police officer would not necessarily be impugned by a finding of excessive force. Powell v. Scanlon, D.Conn.2005, 390 F.Supp.2d 172. Civil Rights 1088(2)

Basis for dismissal of indictment charging arrestee with second-degree attempted murder was inconsistent with innocence when, after jury was selected, assistant district attorney advised court that victim-complainant could not be located and that prosecution could not proceed, and therefore resulting dismissal of indictment was not favorable termination of criminal proceeding required to establish malicious prosecution claim under § 1983. Rivas v. Suffolk County, E.D.N.Y.2004, 326 F.Supp.2d 355. Civil Rights 1088(5)

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42 U.S.C.A. § 1983

Motorist failed to prove that current and former commissioners of a city's department of motor vehicles (DMV) and a police officer were personally involved in his prosecution for driving with a suspended license, thus defeating his malicious prosecution claim against them, despite his claim that it was the custom and policy of the DMV not to inform the district attorney when individuals, like the motorist, paid fines and reinstated previously suspended licenses; the fact that the motorist paid the fine was reflected on the abstract of the his DMV record, and there was no evidence that the defendants encouraged or instigated the continued prosecution of the motorist despite the fact that he had paid his fine. Evans v. City of New York, S.D.N.Y.2004, 308 F.Supp.2d 316, affirmed 123 Fed.Appx. 433, 2005 WL 348377. Malicious Prosecution 3

Because parent consented to have criminal charges against him nolled, prosecutor's nolle of criminal charges filed against parent for violating restraining order prohibiting him from entering public schools was not a final disposition in parent's favor, as required as element of malicious prosecution claim under civil rights statute. Assegai v. Bloomfield Bd. of Educ., D.Conn.2004, 308 F.Supp.2d 65, affirmed 165 Fed.Appx. 932, 2006 WL 304793. Civil Rights 1088(5)

Alleged city and county customs or practices of coercing criminal defendants into waiving probable cause hearings and appointing attorneys who compromised rights of indigent defendants did not establish pattern or practice of engaging in malicious prosecution, or affect arrestee who did not waive his probable cause hearing or allege that attorney was appointed for him, and thus did not support municipal liability against city and county on arrestee's claims for malicious prosecution under § 1983. Anderson v. County of Nassau, E.D.N.Y.2004, 297 F.Supp.2d 540 . Civil Rights 1351(4)

Citizen's § 1983 claim based on police officer's malicious prosecution of him could not be based on denial of procedural due process available under Constitution, where Puerto Rico tort law offered procedural relief for his claim. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1319

Officer who initially encountered carjacking suspect was not liable to § 1983 plaintiff for malicious prosecution, where officer's only involvement with prosecution came when officer was asked to look at photographic lineup and pick out picture of suspect, and there was no evidence that officer gave false information inculpating plaintiff or that officer actively encouraged arrest or prosecution of plaintiff. Morales v. Busbee, D.N.J.1997, 972 F.Supp. 254, appeal dismissed 156 F.3d 1225. Civil Rights 1088(5)

Prisoner who had been imprisoned for murder he did not commit stated viable § 1983 malicious prosecution claim against police officer who, following prisoner's arrest for unrelated robbery, claimed he noticed resemblance between prisoner and sketch of murderer. Newsome v. James, N.D.Ill.1997, 968 F.Supp. 1318. Civil Rights 1395(5)

Deputy sheriff who had responded to call of domestic disturbance and had taken into custody individual who was involuntarily committed following drunken episode did no more than testify at probable cause hearing and did not initiate care and treatment of individual, and thus, county and sheriff could not be held liable in § 1983 action based on malicious prosecution under Kansas law. Gaschler v. Scott County, Kan., D.Kan.1997, 963 F.Supp. 971, affirmed 141 F.3d 1184. Civil Rights 1037

Plaintiff nursery school teacher whose child molestation convictions were reversed on appeal and ultimately dismissed failed to state § 1983 and malicious prosecution claims against city; claims asserted and facts alleged were limited to investigation and prosecution of plaintiff by county prosecutor's office, and complaint was bereft of allegations linking city to such activities. Michaels v. State of N.J., D.N.J.1996, 955 F.Supp. 315. Civil Rights 1395(5); Malicious Prosecution 47

Allegations that plaintiff was issued two summonses to appear in state court as result of alleged violation of town code and that summonses were later dismissed were insufficient to establish § 1983 claim for malicious

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prosecution; plaintiff's only constraint was that he had to appear in court at specified time and incur related legal expenses. Subirats v. D'Angelo, E.D.N.Y.1996, 938 F.Supp. 143. Civil Rights 1037

Lessee's second amended complaint did not state cause of action for malicious prosecution in violation of § 1983 based on state court eviction proceeding where lessee failed to allege legal causation by lessor and related parties who had brought the eviction proceeding, lessee failed to allege that defendants in second amended complaint were in original proceeding, and lessee failed to allege the bona fide termination of the proceeding in his favor. Eidson v. Arenas, M.D.Fla.1995, 910 F.Supp. 609. Civil Rights 1395(3)

Arrestee who claimed that police officer's conduct in wrongfully arresting him deprived him of liberty by requiring him to spend time and money preparing legal defense and to stand trial for two days did not suffer deprivation of liberty sufficient to prevail claim for malicious prosecution under civil rights statute. Williams v. Weber, D.Kan.1995, 905 F.Supp. 1502, reconsideration overruled. Civil Rights 1088(5)

Arrestee stated § 1983 cause of action for wrongful prosecution against police detective, by alleging that police detective, acting in his capacity as police officer under color of law, procured prosecution of arrestee by concealing from grand jury evidence showing lack of probable cause for prosecution, that detective acted for sole purpose of having arrestee prosecuted, that concealment resulted in arrestee's indictment, arrest, and prosecution in absence of probable cause, and that prosecution was terminated by nolle prosequi order; it was not necessary for arrestee to allege that detective actually, physically arrested him. Lewis v. McDorman, W.D.Va.1992, 820 F.Supp. 1001, affirmed 28 F.3d 1210. Civil Rights 1395(6)

Automobile salvager failed to state cognizable § 1983 claim for malicious prosecution and malicious abuse of process based on police and grand jury investigations of his business operations, where no criminal charges were ever brought against salvager and he was never arrested, "process" against salvager consisted of one interview, with his attorney present, and production of his business records pursuant to subpoena, and salvager failed to establish that he was deprived of constitutionally protected interest by investigation. Garner v. Township of Wrightstown, E.D.Pa.1993, 819 F.Supp. 435, affirmed 16 F.3d 403. Civil Rights 1088(1); Civil Rights 1088(5)

Person whose name was used by police to identify criminal suspect stated § 1983 claim for malicious prosecution as result of use of name in commencement of criminal prosecution. Sergio v. Doe, E.D.Pa.1991, 769 F.Supp. 164. Civil Rights 1395(5)

State prisoner's claim for malicious prosecution, based on assertion that altered police report coerced his guilty plea to murder charge, was not constitutional claim, as was required to maintain §§ 1983 action against police officers, prosecutors, public defenders, and witnesses in criminal prosecution. Holly v. Boudreau, C.A.7 (Ill.) 2004, 103 Fed.Appx. 36, 2004 WL 1435210, Unreported. Civil Rights 1088(5)

Failure to show that police sought collateral advantage or corresponding detriment to arrestee, as required under New York law, precluded § 1983 claim that police abused process by charging arrestee with assault, violating arrestee's constitutional rights. Fernandez v. City of New York, S.D.N.Y.2003, 2003 WL 21756140, Unreported. Civil Rights 1088(5)

Prosecutor's decision to dismiss driving while intoxicated (DWI) and endangering a welfare of a child (EWC) charges against school bus driver and to charge driver with reckless driving was appropriate, following prosecutor's receipt of negative blood test results, on driver's § 1983 malicious prosecution claim against town; prior to receiving test results, probable cause supported DWI and EWC charges, and undisputed evidence showed that driver had been driving erratically. Otero v. Town of Southampton, C.A.2 (N.Y.) 2003, 59 Fed.Appx. 409, 2003 WL 1025795, Unreported. Civil Rights 1088(5)

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42 U.S.C.A. § 1983

Jail inmate's civil rights claims that police officers and prosecutors committed misconduct that led to his prosecution for murder, and that his defense attorneys provided him with ineffective assistance of counsel, if true, would call into question validity of his criminal charges, and thus, prisoner was barred from asserting claims in action under § 1983. Givens v. City and County of San Francisco, N.D.Cal.2002, 2002 WL 31478180, Unreported. Civil Rights 1088(5)

Police officer's § 1983 claim for false arrest and malicious prosecution against village, police department, police officers and investigators could not be sustained, since defendants neither effectuated officer's arrest for perjury, arising out of his testimony at administrative hearing, nor prosecuted officer for perjury. Tartaglione v. Pugliese, S.D.N.Y.2002, 2002 WL 31387255, Unreported, affirmed 89 Fed.Appx. 304, 2004 WL 474011. Civil Rights 1349; Civil Rights 1359

1399. Assistance of counsel, deprivation of constitutional or statutory rights generally--Generally

Failure, in good faith, to furnish a defendant the benefit of counsel does not automatically constitute a violation of this section. Striker v. Pancher, C.A.6 (Ohio) 1963, 317 F.2d 780.

Inmate, as pro se litigant proceeding in forma pauperis against prison's health care provider under §§ 1983, had no constitutional or statutory right to representation by counsel. Daniels v. Correctional Medical Services, Inc., D.Del.2005, 380 F.Supp.2d 379, affirmed 2006 WL 623039. Federal Civil Procedure 1951

Defendants' failure to preserve exculpatory blood samples did not deprive nursing home owners and employee of effective assistance of counsel, as required to state claim under § 1983, particularly where criminal charges were dismissed and plaintiffs were not denied due process. Nygren v. Predovich, D.Colo.1986, 637 F.Supp. 1083. Civil Rights 1088(1)

1400. ---- Choice of counsel, assistance of counsel, deprivation of constitutional or statutory rights generally

Civil rights in forma pauperis complaint which alleged that bar examiners conspired with each other to prevent former law professor from representing his student in action against the bar examiners who had not allowed the student to sit for the bar exam was not frivolous, as it alleged interference with relationship to chosen counsel which operated as a substantial impediment to meaningful access to the courts. Alexander v. Macoubrie, C.A.8 (Mo.) 1992, 982 F.2d 307. Federal Civil Procedure 2734

Police officers named as defendants in civil rights action did not have any property interest in reimbursed representation of their choice that was secured by more than an abstract need or desire which would have supported an action under this section. Suffolk County Patrolmen's Benevolent Ass'n, Inc. v. Suffolk County, E.D.N.Y.1984, 595 F.Supp. 1471, affirmed 751 F.2d 550. Civil Rights 1136

1401. ---- Effective assistance, assistance of counsel, deprivation of constitutional or statutory rights generally

Public defender, acting as public administrator, did not violate criminal defendant's clearly established rights when his administrative decisions allocating limited resources allegedly resulted in violation of defendant's Sixth Amendment right to counsel, entitling public defender to qualified immunity in defendant's civil rights action; assistant public defender, rather than public defender acted as defendant's lawyer, and there was no established right to administrative decisions affecting investigation or expert witnesses. Rowe v. Schreiber, C.A.11 (Fla.) 1998, 139 F.3d 1381. Civil Rights 1375; Civil Rights 1376(2)

Inmate's failure to show that his conviction had been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal authorized to make such determination, or called into question by federal court's

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issuance of writ of habeas corpus was fatal to inmate's claim for money damages, under § 1983, based on allegations of ineffective assistance and state trial court deficiencies. Johnson v. McElveen, C.A.5 (La.) 1996, 101 F.3d 423. Civil Rights 1088(5)

Complaint of one penitentiary inmate, who was black, that his court-appointed trial attorney had failed to object to all white jury selection, had forced inmate to testify against himself and had declined to appeal case and complaint of second inmate that his court-appointed attorney had not adequately prepared case and had refused to review inmate's witnesses or to appeal, at most, sounded in tort and the alleged conduct was not so outrageous as to violate U.S.C.A.Const. Amend. 6 right to counsel; thus inmates were not entitled to maintain actions on theory of denial of rights under color of state law. Brown v. Schiff, C.A.10 (N.M.) 1980, 614 F.2d 237, certiorari denied 100 S.Ct. 2164, 446 U.S. 941, 64 L.Ed.2d 795. Civil Rights 1088(5); Criminal Law 641.13(2.1)

Claim that person convicted under state law suffered injury as result of failure of public defender who represented him to meet minimum constitutional standards could not be asserted in civil rights action but could be asserted in habeas corpus proceeding. Gardner v. Luckey, C.A.5 (Fla.) 1974, 500 F.2d 712, rehearing denied 505 F.2d 734, certiorari denied 96 S.Ct. 73, 423 U.S. 841, 46 L.Ed.2d 61. Civil Rights 1088(5)

Claim for damages against court-appointed counsel in state prosecution alleging improper representation which prevented the party from seeking rehearing of appeal and from seeking certiorari and mitigation of convictions was no more than a tort claim for malpractice and did not state a claim cognizable under this section. O'Brien v. Colbath, C.A.5 (Fla.) 1972, 465 F.2d 358. Civil Rights 1395(5)

Even if county public defender's office was acting under color of state law, within the meaning of this section, when it undertook to represent plaintiff on appeal from denial of postconviction relief, plaintiff had no federal claim against public defender for allegedly willfully misrepresenting him on appeal where plaintiff did not desire services of the defender and was permitted to file his own brief in the state appellate court. Wardrop v. Dean, C.A.3 (Pa.) 1972, 459 F.2d 1030. Civil Rights 1088(5)

In § 1983 action brought by plaintiff charged with criminal offense under state law, plaintiff's claims for damages arising from alleged deprivation of right to effective assistance of counsel or right to represent himself were not cognizable; claims were not actionable unless they resulted in plaintiff's being convicted on pending criminal charges, and even then plaintiff would have no claim for damages unless and until criminal conviction against him was invalidated. Roberts v. Childs, D.Kan.1997, 956 F.Supp. 923, reconsideration denied 1997 WL 83398, affirmed 125 F.3d 862. Civil Rights 1088(5)

State prisoner could not maintain action against his former attorneys for allegedly violating his constitutional rights by ineffectively assisting him in criminal proceedings which resulted in his incarceration directly under U.S.C.A.Const. Amend. 14, since this section was prisoner's exclusive remedy for any violations of his constitutional right. Bartee v. Yanoff, E.D.Pa.1981, 514 F.Supp. 96, affirmed 672 F.2d 309, certiorari denied 103 S.Ct. 230, 459 U.S. 916, 74 L.Ed.2d 182. Civil Rights 1094

Public defendant's actions in defending criminal defendant were not done under color of state law, and thus counsel could not be held liable § 1983 for ineffective assistance. Kearley v. Parrish, C.A.5 (Miss.) 2004, 84 Fed.Appx. 445, 2004 WL 34809, Unreported, certiorari denied 124 S.Ct. 2174, 541 U.S. 1049, 158 L.Ed.2d 742. Civil Rights 1326(10)

1402. Grand jury, deprivation of constitutional or statutory rights generally--Generally

Where police office had not been indicted and, if he was indicted in the future, his constitutional rights would be protected by the trial process, officer, whose lack of opportunity to defend against allegations contained in report of judge acting as one-man grand jury concerning certain police action did not deprive him of his constitutional

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rights, failed to state a claim under this section based on alleged lack of procedural safeguards afforded at trial. Cafano v. Cimmino, D.C.Conn.1980, 501 F.Supp. 397, affirmed 636 F.2d 1200. Civil Rights 1395(1)

1403. ---- Selections of jurors, grand jury, deprivation of constitutional or statutory rights generally

Absent evidence of intentional discrimination, prima facie case of discrimination exists when plaintiff has shown that substantial disparities in representation on grand jury exist between appropriate identifiable groups and entire population of grand jury eligibles in county, and that there is either clear and easy opportunity for defendants to discriminate or demonstration that, at least in part, disparity originates at point in selection process where defendants invoke subjective judgments rather than objective criteria. Johnson v. Durante, E.D.N.Y.1975, 387 F.Supp. 149. Civil Rights 1422

1404. Indictment or information, deprivation of constitutional or statutory rights generally

Absence of evidence that indictment for attempted murder was obtained against arrestee through fraud, perjury, suppression of evidence, or other governmental misconduct precluded arrestee from overcoming presumption of probable cause arising from indictment, and thus barred county defendants' liability on arrestee's malicious prosecution claim under § 1983. Rivas v. Suffolk County, E.D.N.Y.2004, 326 F.Supp.2d 355. Civil Rights 1404

State inmate did not have viable § 1983 claim based on allegation that creation and enforcement of state law authorizing initiation of criminal proceedings by information in lieu of grand jury indictment violated Fifth Amendment's proscription against criminal prosecutions begun other than by grand jury; Fifth Amendment's grand jury indictment requirement does not apply through Fourteenth Amendment to states. Martinez v. Shapp, E.D.Pa.1994, 859 F.Supp. 170. Civil Rights 1088(5)

State prisoner could not recover under this section on theory that he was convicted of first-degree murder on an illegally altered or amended information, absent factual showing contrary to assertion by defendant clerk of circuit court and defendant prosecutors that original information had contained words "deliberately, on purpose and of his malice aforethought" and that absence of such words in copy of information sent to prisoner after his conviction was due to a scrivener's error. McCormick v. Ross, E.D.Mo.1974, 377 F.Supp. 1176, affirmed 506 F.2d 1205. Civil Rights 1404

1405. False arrest and imprisonment, deprivation of constitutional or statutory rights generally--Generally

Village mayor, police chief, and investigating officer intended to charge and convict former village police officer of crime of theft in office when they subjected him to legal proceeding, and did not pervert such proceeding to achieve ulterior purpose, and thus were not liable for abuse of process under either Ohio or federal law, assuming that claim for abuse of process was cognizable constitutional claim redressable under §§ 1983. Voyticky v. Village of Timberlake, Ohio, C.A.6 (Ohio) 2005, 412 F.3d 669. Process 171

Plaintiff was not required to identify the charges upon which he was arrested in order to carry his burden of proving his §§ 1983 unconstitutional false arrest claim. Davis v. Rodriguez, C.A.2 (Conn.) 2004, 364 F.3d 424. Civil Rights 1088(4)

False arrest is unreasonable seizure, prohibited by Fourth Amendment, and actionable under § 1983. Gauger v. Hendle, C.A.7 (Ill.) 2003, 349 F.3d 354, rehearing and rehearing en banc denied. Civil Rights 1088(4)

Action under § 1983 in which prisoner alleged that police officers had used excessive force in arresting him did not require overturning his conviction on drug charges, which was based in part on evidence seized in a search that

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accompanied arrest, and thus was not barred by *Heck v. Humphrey*; police might have used excessive force in effecting a perfectly lawful arrest. Robinson v. Doe, C.A.7 (Ill.) 2001, 272 F.3d 921, rehearing and rehearing en banc denied, certiorari denied 122 S.Ct. 1976, 535 U.S. 1084, 152 L.Ed.2d 1033. Civil Rights 1088(4)

Mayor violated constitutional rights of commissioners on city's land clearance authority and housing authority by having commissioners arrested when they refused to refrain from meeting until it was determined that their appointments were legal and therefore city, as well as mayor, could be held liable to the commissioners under § 1983. Hollins v. Powell, C.A.8 (Mo.) 1985, 773 F.2d 191, certiorari denied 106 S.Ct. 1635, 475 U.S. 1119, 90 L.Ed.2d 181. Civil Rights 1347

For purpose of claim under this section based on alleged false imprisonment by defendant county judge, the judge's acts were "illegal" in that although under state law the judge, who claimed to be acting as a "conservator of the peace," had power to arrest and to commit pending trial, the judge did more, in that he acted as complaining witness, and "arresting officer," although plaintiff was not formally arrested, as well as finder of fact and judge, all without benefit of counsel, and all of which actions were taken without regard of U.S.C.A.Const. Amend. 14 or state constitutional requirements, such as bail as of right. Harper v. Merckle, C.A.5 (Fla.) 1981, 638 F.2d 848, certiorari denied 102 S.Ct. 93, 454 U.S. 816, 70 L.Ed.2d 85. Civil Rights 1326(2)

Department store could be held liable on false arrest or false imprisonment claim. Draeger v. Grand Central, Inc., C.A.10 (Utah) 1974, 504 F.2d 142.

Where bus driver did not physically or verbally attempt to detain or threaten plaintiff passenger, whom he suspected of previously assaulting him, until the arrival of police, there was no false imprisonment of plaintiff by driver. Armstead v. Escobedo, C.A.5 (Tex.) 1974, 488 F.2d 509. False Imprisonment 5

False imprisonment can be the type of "constitutional tort" cognizable under this section. Anderson v. Nosser, C.A.5 (Miss.) 1971, 438 F.2d 183, modified on denial of reargument 456 F.2d 835, certiorari denied 93 S.Ct. 53, 409 U.S. 848, 34 L.Ed.2d 89. Civil Rights 1037

This section does not create a cause of action for false imprisonment unless such imprisonment is in pursuance of a systematic policy of discrimination against a class or group of persons. Truitt v. State of Ill., C.A.7 (Ill.) 1960, 278 F.2d 819, certiorari denied 81 S.Ct. 109, 364 U.S. 866, 5 L.Ed.2d 88. See, also, Bradford v. Lefkowitz, D.C.N.Y.1965, 240 F.Supp. 969. Civil Rights 1088(4)

Arrest for disorderly conduct, while clearly a seizure within meaning of the Fourth Amendment, was not made pursuant to warrant and occurred prior to filing of criminal complaint, and thus arrest could not serve as basis for arrestee's § 1983 malicious prosecution claim. Mantz v. Chain, D.N.J.2002, 239 F.Supp.2d 486. Civil Rights 1088(5)

Bald allegations by arrestee, that police officers arrested her pursuant to an arrest warrant, and that she was arrested for a crime she did not commit, did not state §§ 1983 claim for false arrest or malicious prosecution, under the Fourth Amendment, absent further allegations that the affidavit supporting the warrant contained false statements or omitted exculpatory information, or that the officers unreasonably relied on the warrant. Hines v. Proper, M.D.Pa.2006, 442 F.Supp.2d 216. Civil Rights 1395(6)

Parents of disabled student who sued child protective services (CPS) employees failed to establish that removal based on teacher's report of suspected sexual abuse constituted false imprisonment under §§ 1983, where such action was properly based on employees' reasonable belief that there was real and imminent threat to student, and that state's interest in preventing abuse was furthered by removing child from home during investigation. Martin v. Texas Dept. of Protective and Regulatory Services, S.D.Tex.2005, 405 F.Supp.2d 775. Civil Rights 1069

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42 U.S.C.A. § 1983

Pro se arrestee asserted claims for false arrest and unlawful imprisonment against city and detective, pursuant to § 1983 and New York law, when he alleged that city and detective arrested him, that he was aware of and did not "agree" to arrest, that arrest was made without just cause, and that city had policy, custom, practice, and usage of condoning systemic practice of racial and class profiling of individuals with prior criminal records that resulted in malicious intent to falsely arrest and unlawfully imprison arrestee without just cause. Anderson v. County of Nassau, E.D.N.Y.2004, 297 F.Supp.2d 540. Civil Rights 1395(6); False Imprisonment 20(1); Municipal Corporations 747(3)

Arrestee, by alleging that he was falsely arrested by sheriff deputies and that deputies used excessive force, including spraying him with mace in the eyes, when they arrested him, sufficiently stated § 1983 claims against deputies; complaint contained factual allegations surrounding incident in question. Houghton v. Cardone, W.D.N.Y.2003, 295 F.Supp.2d 268. Civil Rights 1395(6)

Judgment in state inmate's favor on his request for restoration of good time credit which he could have earned but for his allegedly unconstitutional confinement in close custody program while pretrial detainee would implicate length of inmate's sentence, and therefore under *Heck v. Humphrey* request was not cognizable under § 1983 until determination revoking good time credit was invalidated in state courts. Torres v. Stewart, D.Conn.2003, 263 F.Supp.2d 463. Civil Rights 1092

Inmate could not proceed with claim against police officer for false arrest without first demonstrating that his conviction had been reversed or invalidated. Duamutef v. Morris, S.D.N.Y.1997, 956 F.Supp. 1112. Civil Rights 1088(4)

Alleged false arrest victim stated cause of action against supervisor of jail for deprivation of Fourth and Fourteenth Amendment rights; there was evidence that victim had repeatedly informed police that he was not subject of arrest warrant, and supervisor made no effort to verify his claim over period of almost two months. Brown v. Stewart, W.D.Pa.1996, 910 F.Supp. 1064. Civil Rights 1395(6)

There is no cause of action under § 1983 for false imprisonment until state sentence under which prisoner is confined is set aside. Hinds v. State of Tenn., W.D.Tenn.1995, 888 F.Supp. 854. Civil Rights 1090

Deprivation of liberty suffered by plaintiff in connection with his arrest for failing to register as a sex offender and subsequent trial was not effected without due process and therefore did not give rise to violation of this section, in that he did not complain that he was not given a fair trial on his charges of failing to register or that he had no opportunity to file complaint in state court alleging false imprisonment or malicious prosecution, and any deprivation of liberty he might have suffered was minimal because he was afforded procedural due process and subsequently cleared of charges of failing to register. Kirk v. People of State of Cal., N.D.Cal.1984, 592 F.Supp. 46. Civil Rights 1088(4); Civil Rights 1088(5)

County official and subordinate social workers acted with probable cause in causing the arrest of plaintiff, a released insanity acquitee, and recommitment to mental institution, and therefore plaintiff could not maintain a § 1983 claim for false arrest based on underlying New York law; there was sufficient evidence that plaintiff's mental state had deteriorated to the point where he posed a danger to himself or others at the time official issued the removal order based, in part, upon his conversations with social workers, plaintiff's past history of mental illness and violence, his noncompliance with his order of conditions, and the clinical evidence pointing to his decompensation. Vallen v. Connelly, S.D.N.Y.2004, 2004 WL 555698, Unreported. Civil Rights 1037; Civil Rights 1088(4)

That inmate was indicted for conspiracy in fourth degree for attempted robbery, and subsequently pleaded guilty to this charge, precluded any claim for false arrest against city police officers based on other charges in indictment. Almonte v. Florio, S.D.N.Y.2004, 2004 WL 60306, Unreported. False Imprisonment 7(5)

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42 U.S.C.A. § 1983

Arrestee's claim against state game and fish officer for malicious prosecution, on ground that the officer knowingly made false statements in his incident report and at arrestee's criminal trial in an attempt to obtain a conviction for evading, eluding and/or obstructing an officer and for driving off of an established road, was not cognizable under § 1983 even though arrestee was acquitted on all but the driving off of an established road offense, where the driving off-road offense and the evading and eluding offense arose out of the same events, and the charges were based on the same finding of probable cause and the same testimony at trial. Wheeler v. Scarafiotti, C.A.10 (N.M.) 2004, 85 Fed.Appx. 696, 2004 WL 37976, Unreported. Civil Rights 1088(5)

There was probable cause to arrest videographer for harassment of court official, under New York law, as videographer attempted to pass through door of courthouse on way to film court proceeding, precluding §§ 1983 claim of false arrest in violation of Fourth Amendment, and under New York law; videographer knowingly made physical contact with official, while trying to gain entrance. Posr v. Killackey, S.D.N.Y.2003, 2003 WL 22962191, Unreported. Civil Rights 1088(4); False Imprisonment 13

1405A. ---- Law governing, false arrest and imprisonment, deprivation of constitutional or statutory rights generally

Liability for false arrest under New York law gives rise to liability under § 1983. Savino v. City of New York, C.A.2 (N.Y.) 2003, 331 F.3d 63. Civil Rights 1088(4)

1406. Extradition, deprivation of constitutional or statutory rights generally--Generally

If extradition itself was justified, even though the procedures used to accomplish it were deficient, extraditee cannot maintain civil rights action to recover for any injury caused by extradition; he can, however, recover for any injury, such as emotional distress, that was caused by deprivation of due process itself and may recover nominal damages even if unable to demonstrate actual injury. Harden v. Pataki, C.A.11 (Ga.) 2003, 320 F.3d 1289. Civil Rights 1088(1); Civil Rights 1461; Civil Rights 1462; Civil Rights 1463; Civil Rights 1465(1)

Violation of extradition law can serve as basis for § 1983 action, even though extradition law in question is state law, where this violation of state law causes the deprivation of rights protected by the Constitution and statutes of the United States. Harden v. Pataki, C.A.11 (Ga.) 2003, 320 F.3d 1289. Civil Rights 1088(1)

Complaint stated § 1983 claim against city for failure to train employees when it alleged that city failed to train and supervise its employees properly, including police, to take some efforts to identify person in custody before processing detainee for extradition, that city maintained deliberately indifferent official policy of rounding up persons for arrest or extradition without verifying their identities, and that, pursuant to such policy, mentally disabled city resident was improperly extradited to another state, where he was incarcerated for two years. Lee v. City of Los Angeles, C.A.9 (Cal.) 2001, 250 F.3d 668. Civil Rights 1395(6)

Criminal suspect has no prearrest extradition rights, violation of which can give rise to cause of action under § 1983. Ortega v. City of Kansas City, Kan., C.A.10 (Kan.) 1989, 875 F.2d 1497, rehearing denied, certiorari denied 110 S.Ct. 325, 493 U.S. 934, 107 L.Ed.2d 315. Civil Rights 1088(4)

Fact that defendants in civil rights suit were alleged to have had "knowledge" of the illegal extradition and ignored it did not constitute a violation of plaintiff's constitutional rights by defendants as officials of demanding state. Waits v. McGowan, C.A.3 (N.J.) 1975, 516 F.2d 203. Civil Rights 1088(4)

Fugitive may bring civil rights action against proper state officials to remedy alleged unconstitutional departures from proper extradition process. Bradley v. Extradition Corp. of America, W.D.La.1991, 758 F.Supp. 1153. Civil

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42 U.S.C.A. § 1983

Rights 1088(1)

1407. ---- Habeas corpus, extradition, deprivation of constitutional or statutory rights generally

Although there is federal right to challenge extradition, and denial of that right can be basis of civil rights claim, challenge as to extradition must be made by petition for writ of habeas corpus where permissible scope of challenge is very narrow. Good v. Allain, C.A.5 (Miss.) 1987, 823 F.2d 64. Habeas Corpus 525.1

1408. ---- Guilt or innocence, extradition, deprivation of constitutional or statutory rights generally

State officials were not required to make determination of guilt or innocence of accused held for extradition and dismissal of charges against accused following extradition did not furnish accused with cause of action against them under this section. Smith v. Ellington, C.A.6 (Tenn.) 1965, 348 F.2d 1021, certiorari denied 86 S.Ct. 589, 382 U.S. 998, 15 L.Ed.2d 486, rehearing denied 86 S.Ct. 1207, 383 U.S. 954, 16 L.Ed.2d 216. Extradition And Detainers 39; False Imprisonment 7(5)

1409. ---- Waiver, extradition, deprivation of constitutional or statutory rights generally

Once a fugitive has been brought within custody of the demanding state, legality of extradition is no longer the proper subject of any legal attack; hence, although extradition papers were rubber stamped with signatures of requesting state officials, instead of being personally signed, the subject's civil rights were not violated where such papers were never executed since he voluntarily waived extradition and returned to the demanding state. Siegel v. Edwards, C.A.5 (La.) 1978, 566 F.2d 958. Civil Rights 1088(4); Extradition And Detainers 42

While there was a dispute as to specific advice given to plaintiff before he signed waiver of extradition as a condition precedent to his parole, where there was no dispute as to fact that plaintiff generally understood consequences of his waiver, civil rights liability of defendant authorities could not be predicated on a failure to show that waiver was knowingly made after plaintiff was specifically advised as to various rights which he would surrender in waiver. Pierson v. Grant, C.A.8 (Iowa) 1975, 527 F.2d 161. Civil Rights 1088(4)

Where, even though formal extradition procedures were not followed, plaintiff was taken into custody and transferred pursuant to order prepared by plaintiff's attorney and signed by judge of criminal court of state, and where plaintiff subsequently waived extradition, there was no cognizable cause of action under 1871 civil rights statute. Martin v. Sams, E.D.Tenn.1984, 600 F.Supp. 71. Civil Rights 1088(4)

Plaintiff stated no claim under this section against police officer who allegedly threatened plaintiff, while in custody, to sign an extradition waiver, but who in fact merely informed plaintiff that if he did not sign the waiver, it would take 40 days to obtain a "Governor's warrant" to extradite him; thus, the officer merely stated that plaintiff would be taken to California sooner or later. Dunkin v. Lamb, D.C.Nev.1980, 500 F.Supp. 184. Civil Rights 1395(5)

1410. Bail, deprivation of constitutional or statutory rights generally-- Generally

Police officers could not be held liable in civil rights action based on arrestee's claim of violation of her right against excessive bail where arrestee made no allegation and pleaded no set of facts that suggested that police officers had any involvement, directly or as supervisors, in alleged violation of her right against excessive bail. Ellis v. City of Fairburn, Ga., N.D.Ga.1994, 852 F.Supp. 1568, reversed 50 F.3d 1039. Civil Rights 1395(6)

Parolee did not have cognizable Eighth Amendment claim against sheriff who contacted parolee's parole officer after parolee's arrest, resulting in parole arrest and detain order being issued against parolee by another parole officer, or against sheriff's department, despite parolee's claim that sheriff lied to parolee's parole officer; parolee

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had no constitutional right to be released on bond or bail and arrest warrant was supported by probable cause based on parolee's violation of parole rules by being charged with burglary, theft, and misdemeanor criminal damage to property, by possessing firearms, and by being outside assigned parole district without permission. Harris v. Roberts, D.Kan.1993, 817 F.Supp. 895. Sentencing And Punishment 1574

In civil rights action brought against county sheriff by prisoner who was formerly incarcerated at county jail, prisoner failed to establish that county sheriff improperly prevented allegedly excessive $20,000 bond, which was imposed upon burglary charge, from being reduced, in view of affidavit of magistrate indicating that sheriff did not request nor suggest the amount of bond. Cook v. Brockway, N.D.Tex.1977, 424 F.Supp. 1046, affirmed 559 F.2d 1214. Civil Rights 1420

Arrestee's claim that a change in his bail from $100 to $200 was "arbitrary" and violated his rights was not grounded in a federal constitutional right, so as to support a claim under § 1983. Mayer v. City of New Rochelle, S.D.N.Y.2003, 2003 WL 21222515, Unreported. Civil Rights 1088(4)

1411. ---- Bondsmen, bail, deprivation of constitutional or statutory rights generally

Accused whose bail had been revoked at request of bondsmen was not deprived of any federally protected rights. Smith v. Rosenbaum, C.A.3 (Pa.) 1972, 460 F.2d 1019. Civil Rights 1088(5)

Common sense, which dictated that there existed possibility that individual might flee or hurt law enforcement officer after becoming aware of unexecuted arrest warrant, did not demonstrate that Texas anti-solicitation statute directed toward bail bondsmen, which prohibited bail bonding companies from soliciting persons who were subject of unexecuted arrest warrant, directly and materially advanced state's interest in preserving safety of public and of law enforcement officers, in civil rights lawsuit alleging violation commercial speech under First Amendment, since there was no data showing that persons subject to outstanding warrant absconded, obstructed justice, or injured officer after they became aware of warrant. Pruett v. Harris County Bail Bond Bd., S.D.Tex.2005, 400 F.Supp.2d 967, entered 2005 WL 3047787, motion denied 2005 WL 3047786, subsequent determination 2005 WL 3047789. Bail 60

Allegation of isolated incident of negligence on part of bondsman in refusing to "re-sign" plaintiff's bond for his release on state criminal charge after plaintiff had failed to appear in state court on date set for such appearance did not constitute a deprivation of any rights, privileges or immunities secured by Constitution and laws of United States within this section. Lemmons v. Tranbraw, E.D.Tenn.1976, 425 F.Supp. 496. Civil Rights 1395(5)

Fact that surety overcharged plaintiff on bail bond premium and that bail was forfeited did not give rise to a claim for federal relief under this section or § 1985(3) of this title. Croy v. Skinner, N.D.Ga.1976, 410 F.Supp. 117. Civil Rights 1041; Conspiracy 7.5(1)

1412. Speedy trial, deprivation of constitutional or statutory rights generally

A state may not be required to respond as a defendant in a civil rights complaint by an accused seeking a speedy trial in the state courts. U. S. ex rel. Barber v. Com. of Pa., C.A.3 (Pa.) 1970, 429 F.2d 518. Civil Rights 1389

The state's attorney for an Illinois county could not be sued in federal district court under this section for alleged failure to afford plaintiff a speedy trial of pending criminal charges. Phillips v. Nash, C.A.7 (Ill.) 1962, 311 F.2d 513, certiorari denied 83 S.Ct. 1700, 374 U.S. 809, 10 L.Ed.2d 1033. District And Prosecuting Attorneys 10

Fourth Amendment right to judicial determination of probable cause as prerequisite to extended restraint of liberty following arrest extended to individual arrested under validly executed warrant; 38-day detention constituted "unnecessary delay" under Arkansas criminal procedural rule governing pretrial detentions. Hayes v. Faulkner

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County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Arrest 70(2)

Denial of constitutional right to a speedy trial does not alone justify or permit federal pretrial intervention in the state criminal process. Clark v. Zimmerman, M.D.Pa.1975, 394 F.Supp. 1166. Courts 508(7)

1413. Jury trial, deprivation of constitutional or statutory rights generally--Generally

Right to trial by jury under Sixth and Fourteenth Amendments could not serve as basis for municipal judge's § 1983 claim against city council that denied his reappointment, where he did not allege that he was deprived of right to jury trial, but rather that he was prevented from asserting right to jury trial of those issued speeding tickets and brought before him in court. Salmon v. Miller, E.D.Tex.1996, 951 F.Supp. 103. Civil Rights 1128

Refusal of jury trial in state proceedings is not denial of either due process or equal protection, and cannot serve as basis for 42 U.S.C.A. § 1983 civil rights action in federal court. Ruley v. Nevada Bd. of Prison Com'rs, D.Nev.1986, 628 F.Supp. 108. Civil Rights 1056; Constitutional Law 249(7); Constitutional Law 313

1414. ---- Selection of jurors, jury trial, deprivation of constitutional or statutory rights generally

In § 1983 action against police officer, juror's deliberate concealment during voir dire of his relationship with other police officers did not require new trial, despite plaintiff's contention that juror's concealment deprived him of opportunity to exercise peremptory strike against juror; plaintiff was entitled to new trial only if juror's correct response during voir dire would have provided valid basis for challenge of juror for cause, and plaintiff admitted that juror's relationship with police officers would not have justified challenge for cause. Zerka v. Green, C.A.6 (Mich.) 1995, 49 F.3d 1181. Federal Civil Procedure 2337

Federal court should not undertake to enforce state laws governing jury selection process in absence of clear showing of inability to obtain relief through state judicial processes. Simmons v. Jones, C.A.5 (Ga.) 1975, 519 F.2d 52. Courts 490

Where 37.9 percent of persons in master jury pool of more than 2700 names were women, their presence in substantial numbers was established precluding any further discussion in civil rights action concerning alleged infringement of rights of females to serve on grand and petit juries in county. Thompson v. Sheppard, C.A.5 (Ga.) 1974, 490 F.2d 830, rehearing denied 502 F.2d 1389, certiorari denied 95 S.Ct. 1415, 420 U.S. 984, 43 L.Ed.2d 666. Civil Rights 1058

1415. Perjury, deprivation of constitutional or statutory rights generally-- Generally

Civil Rights Act of 1871 does not authorize a convicted state defendant to assert a damages claim against a police officer for giving perjured testimony at the criminal trial. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Civil Rights 1088(5)

Evidence failed to establish that police detective and investigator for district attorney's office made false statements in affidavits they submitted to magistrate to obtain arrest of private investigator for intimidating a witness; thus, detective and investigator did not violate private investigator's right to due process of law by swearing out affidavits in support of his arrest and by arresting him nor did their actions otherwise give rise to a cause of action under Section 1983. St. John v. Justmann, C.A.10 (N.M.) 1985, 771 F.2d 445. Civil Rights 1088(4)

Where plaintiff prevailed in state tort action, and there was no indication that he was damaged by allegedly perjurious testimony given by defendants in trial of such action, such alleged perjury was not actionable. Landrigan v. City of Warwick, C.A.1 (R.I.) 1980, 628 F.2d 736. Civil Rights 1056

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42 U.S.C.A. § 1983

Allegation that misleading and fabricated evidence was presented to grand jury, if properly pleaded, could state actionable wrong if FBI agents and insurance company involved in investigation of alleged racketeering knowingly or with reckless disregard for truth presented false evidence to grand jury; negligent conduct, however, would not be actionable. Clayton v. Prudential Ins. Co. of America, S.D.Tex.1982, 554 F.Supp. 628. United States 50.10(3)

Police officers violated plaintiff's rights under U.S.C.A.Const. Amend. 14 by their false accusations and testimony regarding plaintiff's possession of a concealed gun. Spears v. Conlisk, N.D.Ill.1977, 440 F.Supp. 490. Civil Rights 1088(1)

1416. ---- Suborning of perjury, deprivation of constitutional or statutory rights generally

Evidence failed to establish that police detective was involved in plan to suborn perjury and to deprive defendant of fair trial and that detective violated civil rights statutes, even though detective had conducted rough interrogation of plaintiff, had told plaintiff's sister on morning of arrest that plaintiff needed no attorney, had attended murder victim's autopsy, and had performed certain other tasks at request of district attorney. Venegas v. Wagner, C.A.9 (Cal.) 1987, 831 F.2d 1514. Civil Rights 1420; Conspiracy 19

Unless federal officials were immune from suit, action could be maintained for damages for alleged falsification of document offered into evidence against plaintiff in criminal prosecution, for giving false testimony under oath, and for soliciting fraudulent testimony, all in violation of plaintiff's constitutional rights. U. S. ex rel. Moore v. Koelzer, C.A.3 (N.J.) 1972, 457 F.2d 892. Civil Rights 1088(5)

1417. Sentence and punishment, deprivation of constitutional or statutory rights generally--Generally

Federal court lacked jurisdiction to stay death row inmate's execution, based upon alleged defect in clemency review proceedings, pursuant to federal civil rights statute. Beets v. Texas Bd. of Pardons & Paroles, C.A.5 (Tex.) 2000, 205 F.3d 192. Civil Rights 1098

Civil rights action in which injunction is sought provides appropriate vehicle for challenge by death row inmate to state clemency procedures on basis that such procedures fail to comport with due process. Woodard v. Ohio Adult Parole Authority, C.A.6 (Ohio) 1997, 107 F.3d 1178, certiorari granted 117 S.Ct. 2507, 521 U.S. 1117, 138 L.Ed.2d 1011, reversed 118 S.Ct. 1244, 523 U.S. 272, 140 L.Ed.2d 387, on remand 145 F.3d 1335. Civil Rights 1090

Plaintiff who had fully discharged sentences resulting from challenged convictions could not use an action under this section providing cause of action for deprivation of federally protected rights to attack the integrity of such criminal convictions. Cavett v. Ellis, C.A.5 (Tex.) 1978, 578 F.2d 567. Civil Rights 1088(5)

The demand for vacation of sentence is improper in an action under this section. Owens v. Oakes, C.A.4 (N.C.) 1978, 568 F.2d 355. Civil Rights 1088(5)

Pro se inmate alleged sufficient facts to establish correctional officials' §§ 1983 liability for violation of his Fourteenth Amendment right to procedural due process in the alleged miscalculation of his prison sentence and resulting incarceration for 65 days beyond mandatory release date; officials deprived inmate of protected liberty interest in being released on mandatory release date by allegedly ignoring his requests to recalculate his sentence, and even though it was unclear whether inmate alleged his incarceration was due to officials' predeprivation mistakes or inadequate postdeprivation procedures, complaint when liberally construed stated valid procedural due process claim. Russell v. Lazar, E.D.Wis.2004, 300 F.Supp.2d 716. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

Where four named defendants had not ever been asked to approve or recommend sentence reduction for prisoner who assertedly furnished prison administration with information pertaining to, inter alia, escape plots and the abuse of dangerous drugs, defendants could in no way be held liable for any violation of prisoner's civil rights which may have arisen from fact that corrections officials refused to order reduction in prisoner's incarceration as reward for the services. Marshall v. Godwin, W.D.Va.1976, 408 F.Supp. 1202. Civil Rights 1358

Challenge to method by which inmate sentenced to death will be executed may be brought pursuant to §§ 1983. Cooper v. Rimmer, N.D.Cal.2004, 2004 WL 231325, Unreported, affirmed 379 F.3d 1029. Civil Rights 1088(5)

Convict's § 1983 suit seeking damages against public defender and declaratory relief against state court judges arising from allegedly unconstitutional sentence was barred by *Heck v. Humphrey*, where sentence had not been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal, or called into question by federal court's issuance of writ of habeas corpus. Andrews v. Superior Court of California, N.D.Cal.2004, 2004 WL 114972, Unreported. Civil Rights 1088(5)

1418. ---- Cruel and unusual punishment, sentence and punishment, deprivation of constitutional or statutory rights generally

Alleged violation of state inmate's Fourteenth Amendment right to due process occurred at the moment he was deprived of his property interest in funds derived from his veteran's disability benefits check without notice and a predeprivation hearing; therefore, inmate's procedural due process claim would not be rendered moot even if he ultimately was successful in recovering seized funds pursuant to claim asserted under federal statute prohibiting attachment, levy, or seizure of veteran's disability benefits, but rather inmate would still be entitled to nominal damages on a successful procedural due process claim even though unable to prove actual injury from the deprivation of his property interest in funds. Higgins v. Beyer, C.A.3 (N.J.) 2002, 293 F.3d 683. Civil Rights 1461; Constitutional Law 46(1)

Death row inmate's complaint alleging that his veins were such that, with anesthesia protocol that he believed would be used at his execution, the state would have to use a cut-down procedure or some other surgically invasive procedure to access his veins, and that such conduct would violate the Eighth Amendment, stated claim under §§ 1983, notwithstanding certain broad contentions. Boyd v. Beck, E.D.N.C.2005, 404 F.Supp.2d 879. Sentencing And Punishment 1796

Prisoner seeking to challenge the method of his execution, rather than the validity of the death sentence itself, may bring a suit challenging that method under §§ 1983; suit that seeks to enjoin a particular means of effectuating a sentence of death does not directly call into question the fact or validity of the sentence itself and therefore does not raise a challenge to a conviction more properly addressed by the federal habeas statute. Ross ex rel. Ross v. Rell, D.Conn.2005, 392 F.Supp.2d 224. Civil Rights 1311

Inmate alleged sufficient facts necessary to establish correctional officials' §§ 1983 liability for his incarceration for 65 days beyond mandatory release date in violation of the Eighth Amendment; inmate alleged that he informed officials that his sentence had been miscalculated and requested a recalculation but they deliberately ignored his request, thus causing him to be unjustifiably detained. Russell v. Lazar, E.D.Wis.2004, 300 F.Supp.2d 716. Sentencing And Punishment 1531

Claims that are purely based on negligence when brought under Eighth Amendment cannot be basis for relief under § 1983. Lawhorn v. Duckworth, N.D.Ind.1987, 736 F.Supp. 1501, affirmed 902 F.2d 37. Civil Rights 1090

In context of civil rights claims for infliction of cruel and unusual punishment, something more than negligence is predicate for damages liability. Strachan v. Ashe, D.C.Mass.1982, 548 F.Supp. 1193. Civil Rights 1090

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42 U.S.C.A. § 1983

1419. ---- Concurrent or consecutive sentences, sentence and punishment, deprivation of constitutional or statutory rights generally

Whether sentences are to run consecutively or concurrently is within the discretion of the state trial judge and federal district court has no power under this section to review his decision unless in violation of some constitutional prescription. Green v. Ballou, W.D.Va.1975, 391 F.Supp. 806, affirmed 551 F.2d 306. Courts 509

1420. ---- Credits, sentence and punishment, deprivation of constitutional or statutory rights generally

Inmate could not bring action against state prison officials under § 1983 for their failure to give him credit on state sentence for time he served on federal conviction that was later reversed on appeal, even if they violated state statute by not giving inmate his credit sooner, as violation of state law, without more, does not state claim under Federal Constitution or § 1983. Bagley v. Rogerson, C.A.8 (Iowa) 1993, 5 F.3d 325, rehearing and suggestion for rehearing en banc denied. Civil Rights 1090

1421. ---- Presentence reports, sentence and punishment, deprivation of constitutional or statutory rights generally

Inmate could not maintain action for intentional infliction of emotional distress, under either Pennsylvania law or § 1983, with respect to disclosure in presentence report of her confidential medical and mental health information; disclosure was not "outrageous," but, rather, necessary to assist sentencing court, prison system, and child welfare system in providing appropriate care to inmate and her family, information was not disclosed to general public, and inmate offered no expert medical testimony to support claim that disclosure caused severe emotional distress. Faison v. Parker, E.D.Pa.1993, 823 F.Supp. 1198. Civil Rights 1463; Damages 57.25(4)

1422. ---- Probation, sentence and punishment, deprivation of constitutional or statutory rights generally

Grandfather's claim that the state of Indiana, by virtue of the conditions of probation it imposed on his daughter-in-law, deprived him of his constitutionally protected interest in the nurturing and development of his grandchild was actionable under this subchapter. Drollinger v. Milligan, C.A.7 (Ind.) 1977, 552 F.2d 1220. Civil Rights 1098

Convicted felons did not state viable § 1983 claim based on allegation that $50 monthly assessment they were required to pay as condition of participating in intensive probation program amounted to excessive fine under Eighth Amendment; there was nothing under federal law per se that makes monthly $50 assessment excessive, and none of felons were incarcerated because of their inability to pay assessment. Harper v. Forrest County, Mississippi, S.D.Miss.1994, 859 F.Supp. 251, affirmed 55 F.3d 633. Civil Rights 1395(7)

Failure of Virginia probation officer to act on probationer's complaint regarding alleged refusal of officials of veterans administration hospital behavior modification program to issue him periodic passes to leave the hospital, which refusal violated conditions of probation, did not necessarily constitute a denial of access to the courts, warranting relief in suit under this section; sentencing court was available to clear up any case of noncompliance with its probation order and officer's failure to aid probationer did not block access to the courts but only caused that access to become more attractive and necessary. Lee v. Baroski, W.D.Va.1975, 404 F.Supp. 1394. Civil Rights 1091

1423. Expungement of criminal record, deprivation of constitutional or statutory rights generally

Inmate seeking expungement of state court conviction failed to state claim under § 1983 in that right to expungement of state records was not federal constitutional right. Eutzy v. Tesar, C.A.8 (Neb.) 1989, 880 F.2d 1010. Civil Rights 1098

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District court did not err in denying plaintiff's request to expunge records of state convictions obtained against him on ground that convictions were unconstitutionally invalid, in view of fact that a lower federal court is prohibited from ordering the editing of state public records in the absence of special circumstances. Cavett v. Ellis, C.A.5 (Tex.) 1978, 578 F.2d 567. Criminal Law 1226(3.1)

Even though the defendant had served the sentence imposed for his convictions, the maintenance of his criminal records continued to operate to his detriment so that he was entitled to have court consider his claim that his state conviction was invalid on federal constitutional grounds and to consider his request for expungement of the state criminal records. Shipp v. Todd, C.A.9 (Mont.) 1978, 568 F.2d 133. Criminal Law 1226(3.1)

1424. Administrative proceedings, deprivation of constitutional or statutory rights generally

Where no binding administrative order could be or was entered as result of state labor agency hearing on wage claim filed against employer and employer was not deprived of his property interest in retaining amount of wage claim and penalties in that he ultimately prevailed in civil action to enforce administrative order to pay claim, hearing at which presiding officer allegedly treated employer in insulting and arrogant manner, failed to allow him to present effective defense and rendered a decision against employer on claim which presiding officer allegedly knew was false did not give rise to civil rights action by employer for damages based on denial of due process. Paskaly v. Seale, C.A.9 (Cal.) 1974, 506 F.2d 1209. Civil Rights 1120

1425. Crime victims, deprivation of constitutional or statutory rights generally--Generally

City was not liable under § 1983 to wife and children of murder victim for negligent hiring, after victim was stabbed to death by city employee's son, where employee had found victim's address on city computer system and stole knife from police department evidence room; although city had not screened employee's background when it hired her, there was no evidence that there was anything in employee's background that would have caused relevant policy-makers to conclude that the plainly obvious consequences of the decision to hire her would be the deprivation of a third party's federally protected right. Abdeljalil v. City of Fort Worth, N.D.Tex.1999, 55 F.Supp.2d 614, affirmed 234 F.3d 28. Civil Rights 1035; Civil Rights 1350

Allegation of robbery of civil rights plaintiff's personal property did not rise to level of constitutional violation. Clark v. Brandom, W.D.Mo.1976, 415 F.Supp. 883. Civil Rights 1395(1)

1426. ---- Prevention of crimes, crime victims, deprivation of constitutional or statutory rights generally

City housing authority could not be held liable under § 1983 for injury suffered by resident of public housing when he was shot by another resident who bore grudge against him, even assuming that housing authority's failure to move assailant, as promised, played causal role in plaintiff's injury, notwithstanding plaintiff's argument that city had him in the functional equivalent of custody, and that state statute promised him safe housing; city's provision of subsidized housing services could not be considered custody, and any remedy for violation of state statute lay in state court. Dawson v. Milwaukee Housing Authority, C.A.7 (Wis.) 1991, 930 F.2d 1283. Civil Rights 1082

Witnesses under subpoena who have received police protection for a brief period are not denied a constitutional right to substantive due process if not provided with continued protection. Clarke v. Sweeney, D.Conn.2004, 312 F.Supp.2d 277. Constitutional Law 253(1)

Evidence failed to support tenant's allegation that city housing and preservation department violated civil rights statute or Fourteenth Amendment in connection with alleged failure to take action preventing drug sales on premises; director of department's narcotics control unit testified that premises were considered narcotic problem building and that his unit had started four to five eviction proceedings. Muina v. New York Dept. of Housing,

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42 U.S.C.A. § 1983

S.D.N.Y.1991, 761 F.Supp. 7. Civil Rights 1419

1427. ---- Prosecution of perpetrators, crime victims, deprivation of constitutional or statutory rights generally

Mother and child failed to state § 1983 cause of action against Puerto Rican judge and prosecutor who allegedly used their influence to quash arrest of father for failure to provide child support; plaintiffs had no cause of action as victims under § 1983 for failure to prosecute crime, inasmuch as there was no federal constitutional right to have criminal wrongdoers brought to justice; nor were they deprived of discernable property right by quashing of arrest, since conviction of father would have led either to jail or fine and prospect that prosecution would have resulted in payment of support was only speculative. Nieves-Ramos v. Gonzalez-De-Rodriguez, D.Puerto Rico 1990, 737 F.Supp. 727. Civil Rights 1088(5)

Alleged victim of assault and attempted murder failed to state cognizable civil rights conspiracy claim against justice court judges, prosecutor and justice court clerk to prevent state prosecution of alleged perpetrators; victim had no federal constitutional right to have criminal wrongdoers brought to justice. Johnson v. Craft, S.D.Miss.1987, 673 F.Supp. 191. Conspiracy 18

1428. ---- Escaped prisoners, crime victims, deprivation of constitutional or statutory rights generally

Escaped inmate's alleged rape of woman at location over 50 miles from inmate's rehabilitation facility two months and nine days after inmate's escape did not constitute "state action," for purposes of satisfying required "state action" element of woman's § 1983 civil rights claim, which was based on alleged gross negligence of county officials in maintaining rehabilitation facility so as to permit inmate's escape; no special relationship existed between woman and the county or between woman and inmate. Ketchum v. Alameda County, C.A.9 (Cal.) 1987, 811 F.2d 1243. Civil Rights 1326(8)

1429. ---- Furloughed prisoners, crime victims, deprivation of constitutional or statutory rights generally

Parents of daughter, who was killed by inmate driving fully equipped official patrol car with the authorization of the sheriff and deputy sheriff and using apparent authority of patrol car to pull over daughter's car prior to beating daughter to death, established claim that conduct of sheriff and deputy sheriff deprived daughter of constitutionally protected interest in life; inmate remained in custody of the sheriff's department before, during, and after the murder, and sheriff and deputy sheriff failed to respond to dispatcher's report alerting them to the possibility that inmate was using patrol car to stop vehicles traveling county roads. Nishiyama v. Dickson County, Tenn., C.A.6 (Tenn.) 1987, 814 F.2d 277. Civil Rights 1088(4)

1430. ---- Probationers, crime victims, deprivation of constitutional or statutory rights generally

Probation officer's supervision of probationer did not deprive murder victim of due process, despite contentions that officer accepted unreasonably heavy caseload, failed to make home visits, and failed to recognize that probationer's mental condition was worsening; probation officer's supervision of probationer did not create or increase harm to probationer's victims or somehow make them more vulnerable, and officer never had any knowledge of substantial risk of serious harm to any of probationer's victims. Weinberger v. State of Wis., W.D.Wis.1995, 906 F.Supp. 485, affirmed 105 F.3d 1182, certiorari denied 118 S.Ct. 336, 522 U.S. 932, 139 L.Ed.2d 261. Constitutional Law 254(4); Courts 55

1431. State created danger, deprivation of constitutional or statutory rights generally

State did not deprive murder witness of her substantive due process right to life or liberty, for purpose of estate's §§ 1983 lawsuit under state-created danger theory, by assuring witness that she would be protected after she was

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subjected to numerous threats upon her life and then by failing to provide that requested protection; state's promises, whether false or merely unkept, did not deprive witness of liberty to act on her own behalf and state did not force witness, against her will, to become dependent upon it, and state did not take away witness's power to decide whether to testify. Rivera v. Rhode Island, C.A.1 (R.I.) 2005, 402 F.3d 27. Constitutional Law 255(2); States 112.2(2)

State social worker's alleged failure to investigate numerous bruises on child and allegations that father abused child, together with social worker's recommendation to court that father assume legal custody, were sufficient to state § 1983 due process claim based on state-created danger theory. Currier v. Doran, C.A.10 (N.M.) 2001, 242 F.3d 905, certiorari denied 122 S.Ct. 543, 534 U.S. 1019, 151 L.Ed.2d 421. Civil Rights 1395(1)

City placed undercover police officers and their family members in special danger, such that officers could maintain due process tort action against city under § 1983 in absence of special relationship between city and either officers or alleged drug conspirators, when city released private information from officers' personnel files to counsel for alleged drug conspirators; officers had investigated alleged conspirators, and conspirators had demonstrated propensity for violence. Kallstrom v. City of Columbus, C.A.6 (Ohio) 1998, 136 F.3d 1055, rehearing and suggestion for rehearing en banc denied, on remand 165 F.Supp.2d 686. Civil Rights 1039; Civil Rights 1040

To state substantive due process claim based on "state-created danger theory," plaintiff must show that: (1) harm ultimately caused was foreseeable and fairly direct; (2) state actor acted with degree of culpability that shocks conscience; (3) relationship between state and plaintiff existed such that plaintiff was foreseeable victim of defendant's acts, or member of discrete class of persons subjected to potential harm brought about by state's actions, as opposed to member of public in general; and (4) state actor affirmatively used his authority in way that created danger to citizen, or that rendered citizen more vulnerable to danger than had state not acted at all. Carmichael v. Pennsauken Tp. Bd. of Educ., D.N.J.2006, 462 F.Supp.2d 601. Constitutional Law 253(1)

State corrections department officials who heard department employee complain that she had unexpectedly found herself alone with inmate janitor in department business office, including official who allegedly promised that situation would not recur, did not affirmatively place employee in position of danger she would not otherwise have faced by failing to prevent inmate's future presence in office, and thus could not be liable under state-created danger theory in employee's §§1983 substantive due process action against officials arising from inmate's subsequent sexual assault upon employee in office; officials did not act knowingly to create or enhance danger, since inmate had been assigned to janitorial duties in office almost one month prior to employee's complaint. Erickson v. Wisconsin Dept. of Corrections, W.D.Wis.2005, 358 F.Supp.2d 709, motion to certify appeal denied 2005 WL 552168. Constitutional Law 278.4(1); Prisons 10

Danger creation exception to rule that state actors could be held liable under § 1983 only for their own acts, and not for acts of third parties, applied to Fourteenth Amendment due process claim against state, school district, and school board brought by parent and natural guardian, on behalf of four-year old, non-verbal, autistic child who also suffered from tuberous sclerosis, a genetic disorder that caused tumors to form in many different organs including brain, eyes, heart, kidneys, skin, and lungs, on allegations that preschooler on four occasions was made to walk from bus to classroom without shoes, preschooler was slapped by teacher or taken by his hands and forced to slap himself, and preschooler was "slammed" in a chair by teacher. Roe ex rel. Preschooler II v. Nevada, D.Nev.2004, 332 F.Supp.2d 1331. Constitutional Law 278.5(5.1); Schools 89.2

Complaint failed to state claim that school personnel created or enhanced danger to victims of school attack, in violation of victims' due process rights; although victims were members of limited and specifically definable group, and risk of harm was obvious and known to several personnel, risk was neither immediate nor proximate, and any acts or omissions by personnel pursuant to risk did not rise to level of shocking conscience of court. Castaldo v. Stone, D.Colo.2001, 192 F.Supp.2d 1124, reconsideration denied 191 F.Supp.2d 1196. Constitutional

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42 U.S.C.A. § 1983

Law 278.5(1); Schools 89.2

For purposes of civil rights claim that police officers ordered mother to drive out of town with her children in the car when officers knew that she was under influence of high dosage of medication, the children, as plaintiffs, adequately identified constitutional right that was allegedly violated, in that the Due Process Clause places affirmative duties to protect or care for individuals on the State if State has affirmatively placed individuals in dangerous position which they would not otherwise have faced. Mason v. Barker, E.D.Ark.1997, 977 F.Supp. 941. Civil Rights 1395(5)

Under "state-created danger" theory, constitutional violation might occur if the state creates danger that deprives individual of Fourteenth Amendment rights, where harm ultimately caused was foreseeable and fairly direct, state actor acted in willful disregard for plaintiff's safety, there existed some relationship between the state and plaintiff, and state actors used their authority to create opportunity that otherwise would not have existed for third party's crime to occur. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Constitutional Law 253(1)

State-created danger doctrine, pursuant to which, by increasing individual's risk of harm or rendering him or her more vulnerable to danger, state official violates individual's Fourteenth Amendment right to substantive due process, was clearly established as required for doctrine to be basis of liability under Civil Rights Act, on date police officers shot individual after officers returned gun to him despite individual's anxious behavior, and knowledge of officers that he suffered from psychological problems. DiJoseph v. City of Philadelphia, E.D.Pa.1997, 953 F.Supp. 602, new trial denied 968 F.Supp. 244. Civil Rights 1376(6)

1432. Special relationship, deprivation of constitutional or statutory rights generally

Co-administratrices did not state claim against county probation office and probation officers through special relationship exception to general rule that state and its officials did not have affirmative obligation to protect citizens from violent acts of private individuals, in § 1983 action under Fourteenth Amendment, since defendants, through their affirmative conduct, did not place decedent in custodial environment or otherwise restrain her personal liberty. Petrone v. Pike County Probation Dept., M.D.Pa.2002, 240 F.Supp.2d 317. Constitutional Law 253(1); Courts 55

County law enforcement officers had "special relationship" with teacher, who had been shot by students in school massacre but whose wounds were survivable during time period after which officers knew that shooters had died, giving rise to substantive due process duty to protect and care for him, since officers affirmatively delayed and prevented rescue or medical help from reaching teacher despite officers' knowledge of identity of teacher, his increasingly serious condition, and his precise location. Sanders v. Board of County Com'rs of County of Jefferson, Colorado, D.Colo.2001, 192 F.Supp.2d 1094. Constitutional Law 253(1); Counties 148

Survivors of a student who was shot and killed outside of his high school during a shooting spree failed to state a § 1983 claim against law enforcement officers for violation of substantive due process based on the special relationship doctrine, absent allegations that the student was in the custody or under the control of the officers. Rohrbough v. Stone, D.Colo.2001, 189 F.Supp.2d 1088. Civil Rights 1395(5)

No "special relationship" existed between woman, who had made report to police that she had been sexually assaulted by police officer and who participated in internal affairs office sting operation aimed at officer, and police department, as would give rise to duty on part of police to protect woman under due process clause, and woman could not recover on that basis in federal civil rights action based on allegations that she was again sexually assaulted by officer during sting; woman was not in custody of State, but voluntarily participated in sting operation. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Constitutional Law 255(2); Municipal Corporations 747(3)

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State has "special relationship," giving rise to § 1983 civil rights liability for actions of third parties, when state has directly prevented plaintiff from taking action to protect him or herself. Elliott v. New Miami Bd. of Educ., S.D.Ohio 1992, 799 F.Supp. 818. Civil Rights 1039

1433. Autopsies, deprivation of constitutional or statutory rights generally

Adequate state postdeprivation process was available under Louisiana law to remedy injuries asserted by parents in complaint against deputy coroner who performed unauthorized medical experimentation on dead body of infant, with respect to quasi-property rights possessed by parents in body of their infant daughter under Louisiana law, and parents accordingly had not suffered constitutional invasion of any property right for purposes of federal civil rights statute through deprivation without procedural due process of property interest in body of their child after death. Arnaud v. Odom, C.A.5 (La.) 1989, 870 F.2d 304, certiorari denied 110 S.Ct. 159, 493 U.S. 855, 107 L.Ed.2d 117. Constitutional Law 278(1.3)

Right to autopsy report and examination on part of parents of minor who died while incarcerated in county jail is not right, privilege or immunity secured by Constitution or laws of United States for purposes of application of deprivation provision of this section. Black v. Cook, W.D.Okla.1977, 444 F.Supp. 61. Civil Rights 1057

1434. Assault and battery, deprivation of constitutional or statutory rights generally

Malicious infliction of bodily injury constitutes deprivation of a property interest within due process for purposes of this section. Howell v. Tanner, C.A.5 (Ga.) 1981, 650 F.2d 610, rehearing denied 659 F.2d 1079, certiorari denied 102 S.Ct. 1775, 456 U.S. 918, 72 L.Ed.2d 178, certiorari denied 102 S.Ct. 1777, 456 U.S. 919, 72 L.Ed.2d 180. Civil Rights 1035

Degree of force exerted and extent of physical injury inflicted that together amount to a constitutional deprivation warranting relief under this section must be determined by the facts of the given case. Shillingford v. Holmes, C.A.5 (La.) 1981, 634 F.2d 263, on remand 512 F.Supp. 656. Civil Rights 1035

Person who was subjected to an assault and battery by person acting under color of state law can have a claim for relief under this section. Meredith v. State of Ariz., C.A.9 (Ariz.) 1975, 523 F.2d 481. Civil Rights 1035

Person who allegedly was shot by acting mayor could not pursue procedural due process claim under civil rights statute [42 U.S.C.A. § 1983], though acting mayor's actions could in allegedly shooting plaintiff during confrontation concerning drinking beer in public place could be deemed official action, where the action was nonetheless not taken pursuant to established state procedure and there were adequate postdeprivation remedies available in the form of state claims of assault and intentional infliction of emotional distress. Brooks v. Miller, N.D.Miss.1985, 620 F.Supp. 957. Civil Rights 1321

1435. Extortion, deprivation of constitutional or statutory rights generally

Fact finder could infer that developers' payments to town officials were made pursuant to coercive extortion by those officials and thus did not constitute the voluntary payment of bribe with corrupt intent, so that there was causal link between officials' coercive extortion and developers' losses, allowing recovery under civil rights statute. Roma Const. Co. v. aRusso, C.A.1 (R.I.) 1996, 96 F.3d 566, on remand 1998 WL 156708. Civil Rights 1401

1436. Conversion, deprivation of constitutional or statutory rights generally

Even assuming that creditor bank converted judgment debtor's property when property was sold at execution sale, judgment debtor had available state law tort claim and could not maintain civil rights action based on conversion;

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civil rights statute was not intended to federalize state tort claim. Huxall v. First State Bank, C.A.10 (Okla.) 1988, 842 F.2d 249. Civil Rights 1034; Civil Rights 1056

1437. Trespass, deprivation of constitutional or statutory rights generally

Landowners who had no gate or "no trespassing" sign at entrance to their property had no reasonable expectation of privacy with respect to the premises and thus did not suffer any violation of constitutional rights such as could give rise to civil rights claim when sheriff and humane society member came upon the property in order to inform landowners that the humane society had received complaints about the owners' dog-breeding business. Avenson v. Zegart, D.C.Minn.1984, 577 F.Supp. 958. Civil Rights 1088(3)

Duck hunters, who were stopped by deputy as they carried their boat over strip of land between lake and pond and were told that they were trespassing on private property of landowner by whom deputy was employed, did not show a violation of this section providing liability for deprivation of rights under color of law, where hunters introduced no sworn evidence to support inference that they had a federal right to use of such land as state sovereignty land, that the land in question was state sovereignty land, and that landowner's title to such land was defeated by hunters' right of use. Skipper v. Phipps, N.D.Fla.1980, 483 F.Supp. 1213. Civil Rights 1088(4)

Claims for prima facie tort, negligence, conversion, trespass. and interference with contract rights made against bank holder of mortgage over plaintiff's leasehold interest, and against receiver, who had been appointed upon an ex parte application, his agent and bank officers, stated claims under this section proscribing a deprivation of rights on basis of claim that receiver and others had acted without authority with respect to premises of plaintiff not subject to mortgage. City Partners, Ltd. v. Jamaica Sav. Bank, E.D.N.Y.1978, 454 F.Supp. 1269. Civil Rights 1395(3)

A trespass to property, negligent or intentional, is merely a common law tort and does not infringe the Federal Constitution. Kao v. Red Lion Municipal Authority, M.D.Pa.1974, 381 F.Supp. 1163. See, also, Com. of Pa. ex rel. Feiling v. Sincavage, D.C.Pa.1970, 313 F.Supp. 967, affirmed 439 F.2d 1133. Trespass 1

1438. Emotional distress, deprivation of constitutional or statutory rights generally

Mental and emotional distress caused by denial of procedural due process itself is compensable under this section, but neither the likelihood of such injury nor the difficulty of proving it is so great as to justify awarding compensatory damages without proof that such injury actually was caused. Carey v. Piphus, U.S.Ill.1978, 98 S.Ct. 1042, 435 U.S. 247, 55 L.Ed.2d 252. Civil Rights 1032; Civil Rights 1463

For plaintiff to recover for nonphysical injury under § 1983, there is no requirement that defendant's conduct be outrageous or that plaintiff's injury be extreme. Chatman v. Slagle, C.A.6 (Ohio) 1997, 107 F.3d 380. Civil Rights 1463

Claims of physical and emotional distress were not actionable under this section. Robinson v. McCorkle, C.A.3 (N.J.) 1972, 462 F.2d 111, certiorari denied 93 S.Ct. 529, 409 U.S. 1042, 34 L.Ed.2d 492. Civil Rights 1034

Prison inmate who sought to recover for emotional distress which allegedly resulted after his name was wrongfully printed in newspaper as having died in prison fire failed to make prior showing of physical injury, and thus could not recover under § 1983. Orum v. Haines, N.D.W.Va.1999, 68 F.Supp.2d 726. Civil Rights 1098

Count stating claim for intentional infliction of emotional distress was not a claim cognizable under this section but was merely common law cause of action recognized by Michigan law. Stern v. New Haven Community Schools, E.D.Mich.1981, 529 F.Supp. 31. Civil Rights 1034

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Mental distress caused by a denial of procedural due process is compensable under this section; the injury may be purely mental or emotional--concurrent physical injury need not occur. James v. Board of School Com'rs of Mobile County, Ala., S.D.Ala.1979, 484 F.Supp. 705. Civil Rights 1463; Damages 57.9; Damages 57.11

1439. Wrongful death, deprivation of constitutional or statutory rights generally

Widows and dependents of deceased coal miners could not maintain action under this section for death of miners in coal mine explosion as no federal constitutional or statutory rights had been violated. Kaznoski v. Consolidated Coal Co., W.D.Pa.1974, 368 F.Supp. 1022, affirmed 506 F.2d 1051. Civil Rights 1035; Civil Rights 1326(1)

1440. Loss of consortium, deprivation of constitutional or statutory rights generally

Parents could not recover for loss of consortium of their son under the Pennsylvania wrongful death statute related to wrongful death action against hospital where son was involuntarily committed, but parents could recover for loss of consortium of son related to their civil rights claim stemming from same events. Schorr v. Borough of Lemoyne, M.D.Pa.2003, 265 F.Supp.2d 488. Civil Rights 1462; Death 88

Allegations that motorist's wife suffered loss of consortium under state law as result of physical and emotional injuries allegedly sustained by her husband when he was arrested by police officer were insufficient to allege violations of wife's due process rights necessary to support claim for loss of consortium under §§1983; complaint gave no hint that wife planned to make novel argument that her own constitutional rights were violated. Pahle v. Colebrookdale Tp., E.D.Pa.2002, 227 F.Supp.2d 361. Civil Rights 1395(6); Husband And Wife 209(4)

Spouse may not bring loss of consortium action under § 1983, since derivative claims are not actionable under § 1983 and there is no constitutional right to spousal consortium. Winton v. Board of Com'rs of Tulsa County, Okl., N.D.Okla.2000, 88 F.Supp.2d 1247. Civil Rights 1332(1); Constitutional Law 82(10)

Ex parte temporary restraining order that required husband to avoid his home and children for seven days deprived him of property and liberty without due process, where wife's petition contained no allegation of a risk of immediate harm, but only alleged that husband had assaulted her two weeks earlier and there had been previous assaults. Blazel v. Bradley, W.D.Wis.1988, 698 F.Supp. 756. Breach Of The Peace 20; Constitutional Law 274(5); Constitutional Law 312(4)

Loss of consortium is a state law tort which does not rise to level of a constitutional violation sufficient to maintain claim under this section. Stanley v. City of New York, E.D.N.Y.1984, 587 F.Supp. 393. Civil Rights 1034

Right to consortium was not within spectrum of interests guaranteed by the federal Constitution or federal law and thus was not cognizable in action for deprivation of civil rights arising from arrest of wife's husband. Walters v. Village of Oak Lawn, N.D.Ill.1982, 548 F.Supp. 417. Civil Rights 1088(4)

Mother's loss of consortium claim arising out of teacher's alleged sexual misconduct against her son was not redressable under § 1983 or Title IX since it did not represent an injury based on a deprivation of mother's rights, privileges or immunities. Hart v. Paint Valley Local School Dist., S.D.Ohio 2002, 2002 WL 31951264, Unreported. Parent And Child 7(1)

1440A. Loss of society and companionship

Parents of adult son who was fatally shot by law enforcement officer had no constitutional right under due process

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clause to recover for the loss of society and companionship of son, absent state action directed at interfering with parent-child relationship; overruling *Bell v. City of Milwaukee*, 746 F.2d 1205. Russ v. Watts, C.A.7 (Ill.) 2005, 414 F.3d 783, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 1065, 163 L.Ed.2d 861. Death 88

1441. Marriage, deprivation of constitutional or statutory rights generally

A due process complaint based on prisoners' interest in marriage states a claim under § 1983. Martin v. Snyder, C.A.7 (Ill.) 2003, 329 F.3d 919, rehearing denied. Civil Rights 1098

Marriage is a fundamental right and is entitled to the constitutionally guaranteed right of privacy. Newborn v. Morrison, S.D.Ill.1977, 440 F.Supp. 623. Constitutional Law 82(10)

1442. Familial association, deprivation of constitutional or statutory rights generally

Alleged civil right of suspect to familial association was not violated by prosecutor and police officers as result of wrongful prosecution of suspect and her incarceration, where prosecutor and police officers did not have intent to interfere with relationship between suspect and her daughter. Reasonover v. St. Louis County, Mo., C.A.8 (Mo.) 2006, 447 F.3d 569. Municipal Corporations 747(3)

Allegations by parents of infant born with severe brain damage that county children's services agency and county social worker initiated an investigation into child abuse allegations against parents did not state §§ 1983 claim against county agency or social worker for violation of parents' due process right to familial integrity. Kottmyer v. Maas, C.A.6 (Ohio) 2006, 436 F.3d 684, rehearing and rehearing en banc denied. Infants 17

Complaint by mentally disabled former prisoner and his mother, alleging, inter alia, that mother began searching for her son after his arrest, and that unknown employees of police department told her they had no record of her son, when in fact they knew or should have known that they had falsely arrested him and caused him to be extradited, and further alleging that reckless, intentional, and deliberate acts and omissions of city and police officials constituted direct and legal cause of deprivation of their constitutionally protected rights, stated cause of action under First and Fourteenth Amendments for denial of right of familial association. Lee v. City of Los Angeles, C.A.9 (Cal.) 2001, 250 F.3d 668. Civil Rights 1395(6)

County officials did not impermissibly interfere with rights of familial association of mother and child when they removed child from her parents' home to interview her about suspected child abuse, absent evidence that county officials intended or directed their conduct at familial relationship of mother and child with knowledge that such conduct would adversely affect that relationship. J.B. v. Washington County, C.A.10 (Utah) 1997, 127 F.3d 919. Constitutional Law 82(10); Infants 192

County's alleged threat to remove other children from home if parents did not cooperate with respect to placement of first child, and county's alleged promises that first child would receive apartment, car, clothes, and new school, did not unconstitutionally interfere with parent's right to familial relations; county social workers' conduct, though seemingly inappropriate, did not effectively deprive parents of free choice. King v. Olmsted County, C.A.8 (Minn.) 1997, 117 F.3d 1065. Constitutional Law 82(10); Infants 17

Prison officials' failure to prevent suicide of detainee in protective custody did not violate detainee's minor daughter's right to familial associational privacy, and thus, afforded her no right of recovery under § 1983; daughter had no liberty interest protected by due process clause in her familial relationship with her father. Manarite By and Through Manarite v. City of Springfield, C.A.1 (Mass.) 1992, 957 F.2d 953, certiorari denied 113 S.Ct. 113, 506 U.S. 837, 121 L.Ed.2d 70. Civil Rights 1098; Constitutional Law 82(10); Constitutional Law 274(5)

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42 U.S.C.A. § 1983

Junior Reserve Officers' Training Corps (JROTC) Senior Aerospace Science Instructor (ASI) did not interfere with high school instructor's right to familial or marital association through accusation that instructor had sexual relations with cadet's mother in the armory, absent evidence that senior instructor acted with specific intent to interfere with instructor's marital relations with his wife. Trujillo v. Board of Educ. of Albuquerque Public Schools, D.N.M.2005, 377 F.Supp.2d 994. Schools 147.12

Parent could not bring suit under § 1983, against state department of youth services and specified employees, being sued in their official capacities, for alleged violation of her constitutional rights in connection with search of her living quarters and interview with her allegedly neglected children. Coleman v. State of New Jersey Div. of Youth and Family Services, D.N.J.2003, 246 F.Supp.2d 384. Civil Rights 1350; Civil Rights 1360

Mother of deceased inmate did not have a cognizable constitutional claim under § 1983 for alleged violation of her right to familial association relating to denial of right to accompany and protect her son while he was ill at hospital; in denying access to her son, government did not interfere with any private decision or interfere with her right to rear young child. Gonzalez Rodriguez v. Alvarado, D.Puerto Rico 2001, 134 F.Supp.2d 451. Constitutional Law 272(2); Constitutional Law 274(5); Prisons 4(6)

State's temporary removal of children from parents' home, while state investigated allegations that father was alcoholic, had exposed children to pornography, and might have been dangerous to children, did not amount to violation of parents' due process rights to familial association, which would be potentially actionable under § 1983. Strail ex rel. Strail v. Department of Children, Youth and Families of State of R.I., D.R.I.1999, 62 F.Supp.2d 519. Constitutional Law 274(5); Infants 192

Foster parents failed to state a claim under § 1983 for invasion of their familial relationship with their natural children, which they alleged was disrupted by their children's psychological problems caused by assaults by foster children, absent allegation of intent on the part of county defendants to interfere with this relationship. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997, 968 F.Supp. 1212. Civil Rights 1057

Wife of man who was arrested, but who was not present when he was arrested, was not deprived of her civil rights; thus, her § 1983 claim had to be dismissed. Johnson v. City of New York, S.D.N.Y.1996, 940 F.Supp. 631. Civil Rights 1088(4)

To state claim for interference with familial relationships under § 1983, defendant must have intended to violate rights of family survivor; intent to violate rights of victim are not transferable to establish intent to deprive surviving family members of their personal constitutional rights. Sollars v. City of Albuquerque, D.N.M.1992, 794 F.Supp. 360. Civil Rights 1032

Siblings could not recover under § 1983 for loss of their associational rights; even if siblings could be beneficiaries of action under Illinois Wrongful Death Act, deprivation of their interest in sibling association was not of constitutional significance. McBride v. Lindsay, N.D.Ill.1989, 718 F.Supp. 24. Civil Rights 1332(1)

Right of association protected by United States Constitution does not extend so far as to allow action under this section for death of one's brother. Beck v. Kansas University Psychiatry Foundation, D.C.Kan.1984, 580 F.Supp. 527, reconsideration denied 671 F.Supp. 1552.

Family members and administrator of estate of man shot and killed by police could not recover for loss of rights to familial relationship pursuant to Fourteenth Amendment and § 1983 where man shot was independent adult living alone and there was no evidence of purposeful intent on part of officers to interfere with familial relationship. Busch v. City of New York, E.D.N.Y.2003, 2003 WL 22171896, Unreported. Civil Rights 1088(2); Constitutional Law 274(5); Municipal Corporations 747(3)

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42 U.S.C.A. § 1983

1443. Divorce, deprivation of constitutional or statutory rights generally-- Generally

Husband's "marital rights" were not unconstitutionally violated by state court's act in granting divorce to wife. Killian v. City of Philadelphia, E.D.Pa.1974, 377 F.Supp. 988. Civil Rights 1032

1444. ---- Alimony and support, divorce, deprivation of constitutional or statutory rights generally

Possibility that plaintiff's civil rights might be infringed in state support proceeding which had not taken place did not give rise to cause of action under this section. Thompson v. Groshens, E.D.Pa.1972, 342 F.Supp. 516, affirmed 475 F.2d 127, certiorari denied 94 S.Ct. 127, 414 U.S. 825, 38 L.Ed.2d 58. Federal Courts 13.10

1445. Parent-child relationship, deprivation of constitutional or statutory rights generally

The ordinary dispute between a parent and child does not arise as a civil rights issue since it would lack the requisite state action in support of one side or the other, but in those situations where there is state involvement, the outcome of the parent-child conflict often turns on whether the state chooses to exercise its discretionary power to favor one side or the other, a result which is often determined by state law and state decision, not by constitutional mandate. Schleiffer v. Meyers, C.A.7 (Ind.) 1981, 644 F.2d 656, certiorari denied 102 S.Ct. 110, 454 U.S. 823, 70 L.Ed.2d 96. Civil Rights 1326(1)

Social workers did not violate substantive due process rights of parent, when they indicated dissatisfaction with condition of home and indicated they would continue investigation of whether children were being neglected, while mentioning belief that one child was victim of unreported sexual abuse and their understanding that parent's husband committed suicide after she was caught with another man; adverse conduct was insufficiently egregious. Coleman v. State of New Jersey Div. of Youth and Family Services, D.N.J.2003, 246 F.Supp.2d 384. Constitutional Law 274(5); Infants 17

Disruption in parent-child relations allegedly caused by high school officials' deliberate indifference to locker room videotaping scheme did not rise to level of infringing upon parents' constitutionally protected interest in companionship and society of their children; constitutional protection was only for termination of parent-child relationships or interference so intrusive as to be equivalent of termination. Harry A. v. Duncan, D.Mont.2005, 351 F.Supp.2d 1060. Constitutional Law 82(10); Schools 89.4

For purposes of rule that governmental action that affects the parent-child relationship only incidentally can not be challenged under the Due Process Clause of the Fourteenth Amendment, "incidental injury" is that injury where the offending conduct is directed toward the children themselves and not the parent-child relationship. Baynard v. Lawson, E.D.Va.1999, 76 F.Supp.2d 688. Constitutional Law 274(5)

1446. Birth certificates, deprivation of constitutional or statutory rights generally

Parents possessed identifiable liberty interests in personal information Rhode Island registrar of vital statistics requested parents to provide on live birth work sheets and registrar, by insisting that parents supply him with the personal information under threat of otherwise refusing to provide their children with birth certificates, violated parents' substantive due process rights rendering state liable for money damages. deLeiris v. Scott, D.R.I.1986, 642 F.Supp. 1552. Civil Rights 1040; Constitutional Law 274(5)

1447. Naming of children, deprivation of constitutional or statutory rights generally

Refusal of the registrar of births to accept the fused surname "Jebef" as the surname of child born to Alena Jech and Adolf Befurt was a deprivation under color of state law of a right secured by the Constitution to the child and

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his parents. Jech v. Burch, D.C.Hawai'i 1979, 466 F.Supp. 714. Constitutional Law 274(5)

1448. Custody of children, deprivation of constitutional or statutory rights generally--Generally

When the state places a child in state-regulated foster care, the state has entered into a special relationship with that child which imposes upon it certain affirmative duties, because foster children, like the incarcerated or the involuntarily committed, are thereby placed in a custodial environment and are unable to seek alternative living arrangements, and the state's failure to perform such duties can give rise, under sufficiently culpable circumstances, to liability under § 1983. Nicini v. Morra, C.A.3 (N.J.) 2000, 212 F.3d 798. Civil Rights 1057; Infants 17

Parents possess a constitutionally protected liberty interest in the companionship and society of their children, and state's interference with such liberty interest without due process of law is remediable under § 1983; declining to follow *White v. Talboys*, 573 F.Supp. 49; *Jackson v. Marsh*, 551 F.Supp. 1091; and *Dohaish v. Tooley*, 670 F.2d 934. Kelson v. City of Springfield, C.A.9 (Or.) 1985, 767 F.2d 651. Constitutional Law 274(5)

An apparent violation of state law in connection with the removal of children from the custody of their natural parent is not necessarily a basis for a claim under this section; there must also be a constitutional deprivation. Duchesne v. Sugarman, C.A.2 (N.Y.) 1977, 566 F.2d 817. Civil Rights 1057

Allegations that judge serving as attorney for mother in custody proceeding had interest in outcome of case and had influence over judge hearing case, that judge-attorney influenced or prejudiced proceedings, and that damages were sought against judge-attorney for conspiring to or aiding and abetting or contributing to kidnap of child did not support §§ 1983 claim that judge-attorney conspired with judge hearing case. Plaisance v. Reese, E.D.La.2004, 353 F.Supp.2d 735. Conspiracy 18

No constitutional violation occurred as to scalding of minor child allegedly due to county employee's failure to adequately test water system in home of guardian with whom child was placed following jailing of child's parent, as required to support parent's § 1983 action against county, absent showing that any county representative was aware of specific risk to child. Hoisington v. County of Sullivan, S.D.N.Y.1999, 55 F.Supp.2d 212. Civil Rights 1057

Parent who is wrongfully deprived of physical custody of his or her children without due process of law has cause of action under federal civil rights statute. Sipka v. Soet, D.Kan.1991, 761 F.Supp. 761, appeal dismissed 940 F.2d 1539. Civil Rights 1057

Parents' claim that alleged baby switching by hospital violated their civil rights raised question for trier of fact despite hospital's assertion that no constitutionally protected right to raise one's own offspring existed. Twigg v. Hospital Dist. of Hardee County, Fla., M.D.Fla.1990, 731 F.Supp. 469. Civil Rights 1431

1449. ---- Adoption, custody of children, deprivation of constitutional or statutory rights generally

Adoptive parents of five "hard to place" children failed to state claim in their § 1983 complaint that state interfered with parents' "fundamental interests" in deciding to adopt by placing children in their home without developing complete information about children's backgrounds and without releasing all available information to parents, and thus did not demonstrate deprivation of liberty interests; Constitution did not require state to develop and present additional information to prospective parents and to train them about how to care for handicapped children. Griffith v. Johnston, C.A.5 (Tex.) 1990, 899 F.2d 1427, rehearing denied 904 F.2d 705, certiorari denied 111 S.Ct. 712, 498 U.S. 1040, 112 L.Ed.2d 701. Civil Rights 1395(1)

Family preservation services provisions of Adoption Assistance and Child Welfare Act did not unambiguously

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confer on plaintiffs rights or entitlements which were enforceable through private action under § 1983. E.F. By and Through Mississippi Protection and Advocacy System, Inc. v. Scafidi, S.D.Miss.1994, 851 F.Supp. 249, affirmed 110 F.3d 793, certiorari denied 118 S.Ct. 65, 522 U.S. 816, 139 L.Ed.2d 27. Civil Rights 1330(6)

Prospective adoptive parents could not maintain constitutional claims for interference with their or their prospective adoptive child's right to family association arising out of failure of Children and Youth Services to adequately disclose medical information about child, where adoption of child was never completed, as required under Pennsylvania law to convey protected status of parents. Young v. Francis, E.D.Pa.1993, 820 F.Supp. 940. Constitutional Law 82(10); Infants 17

Alleged misrepresentations made during adoptive process that child "came from good physical and mental stock" did not violate any of adoptive mother's federal constitutional rights and, thus, mother could not maintain action under § 1983; no fundamental right of familial association was implicated by conduct that occurred before adoption and adoption was a matter of uniquely state law which set forth no provision for protecting "rights" of adoptive parents to obtain "suitable" child. Collier v. Krane, D.Colo.1991, 763 F.Supp. 473. Civil Rights 1057

Adoption Act created individual rights in foster children, enforceable under § 1983, to individual case plan containing specific mandated elements and to have that plan implemented; foster children were clearly intended beneficiaries of Act, since language of Act focused on needs of individual foster children, Act lacked enforcement mechanism, and Act was not too vague and amorphous to be enforced by judiciary. Kenny A. ex rel. Winn v. Perdue, N.D.Ga.2003, 218 F.R.D. 277. Civil Rights 1057

1450. ---- Foster care, custody of children, deprivation of constitutional or statutory rights generally

State law, that required county to perform background checks on foster parent before placing foster child in home, could not provide basis to impose special relationship duty upon county, as exception to rule that government ordinarily did not have substantive due process duty under §§ 1983 to protect private citizens from doing harm to each other. Waubanascum v. Shawano County, C.A.7 (Wis.) 2005, 416 F.3d 658, certiorari denied 126 S.Ct. 1045, 163 L.Ed.2d 858. Infants 17

Child's removal from mother's home by county social worker and permanent placement outside home was justified, precluding social worker's liability to mother under § 1983; although child's allegations of abuse implicated only child's stepfather, who purportedly informed social worker that he would leave house if necessary for child to remain, social worker indicated that mother was hostile to child with respect to allegations, juvenile court found that prima facie case was established for child's detention out of home, family reunification was attempted, and mother opted not to appeal from court orders requiring child's four-year placement in foster care. Mabe v. San Bernardino County, Dept. of Public Social Services, C.A.9 (Cal.) 2001, 237 F.3d 1101. Infants 17; Infants 177

State and county social services agencies did not have affirmative duty to protect child who was in agencies' legal custody when his father abducted and killed him during an unsupervised visit, so that child's mother failed to state § 1983 claim against the agencies' officers and employees for violation of the child's substantive due process rights; child was in physical custody of mother, mother had control over child, consented to father's visits, and had access to courts if she was displeased with unsupervised visitation, and, after placing child in mother's home, child did not rely solely upon state for his physical needs and safety, but, rather, state's sole responsibility was to monitor and arrange child's visitations with father. Wooten v. Campbell, C.A.11 (Ga.) 1995, 49 F.3d 696, rehearing denied 58 F.3d 642, certiorari denied 116 S.Ct. 379, 516 U.S. 943, 133 L.Ed.2d 302. Constitutional Law 274(5); Infants 17

Child welfare workers "shuttling" of child among numerous foster homes, without more, was not a basis for

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liability under federal civil rights provision. K.H. Through Murphy v. Morgan, C.A.7 (Ill.) 1990, 914 F.2d 846, on remand 765 F.Supp. 432. Civil Rights 1057

Foster child's allegations that Florida Department of Children and Families (DCAF) employees' gross dereliction of duties as officers of state in placing him in foster home and allowing his adoption resulted in unremitting and intense abuse, including brutalization with beatings, persistent malnourishment, dehydration, neglected illness, mace, and being bound, were sufficient to plead cognizable violation of child's Fourteenth Amendment liberty interest in physical safety. Omar ex rel. Cannon v. Lindsey, M.D.Fla.2003, 243 F.Supp.2d 1339, affirmed 334 F.3d 1246. Constitutional Law 255(4); Infants 17

Domestic partner of mother whose child was placed in foster care stated claim under § 1983 that state officials failed to observe their own internal polices, violating partner's equal protection rights, by not offering her and mother family treatment plan, and individual treatment plan for child, and denying visitation rights, that would have been available had partner been half of traditional heterosexual couple. Zavatsky v. Anderson, D.Conn.2001, 130 F.Supp.2d 349. Civil Rights 1395(1)

Pennsylvania Child Welfare Law did not create rights secured by federal constitution or statutes, and alleged violations of Law by provider of foster care services were not actionable under § 1983. Donlan v. Ridge, E.D.Pa.1999, 58 F.Supp.2d 604. Civil Rights 1057

Neither caseworker nor her supervisor were involved in screening, training, or investigation of foster parent applicants, and thus, they could not be held liable in § 1983 suit for violating foster children's substantive due process rights by failing to properly screen foster parents who physically abused those children; caseworker's responsibilities only included monitoring foster children after they had been placed with foster parents, and supervisor had no responsibility to perform actual screening or investigating of foster parents. Miracle by Miracle v. Spooner, N.D.Ga.1997, 978 F.Supp. 1161. Civil Rights 1057; Civil Rights 1360

County department of human services, in placing foster child with licensed foster parents, did not have constitutional duty, based on due process, to disclose all the information in its records concerning harmful behavior of the children, and thus was not subject to § 1983 claim for compensation for damages resulting from injuries caused by the foster children, and department employees were entitled to qualified immunity. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997, 968 F.Supp. 1212. Civil Rights 1376(4); Constitutional Law 274(5); Infants 17

Children who had been removed from their families and placed in custody of state social services agency stated viable substantive due process claim against agency to be free from unreasonable and unnecessary intrusions upon their physical and emotional well-being and to be provided with adequate food, shelter, clothing and medical care and minimally adequate training. B.H. v. Johnson, N.D.Ill.1989, 715 F.Supp. 1387. Civil Rights 1395(1)

Provision of funds by county, which was not charged with responsibility for foster care placement or regulation, did not create special relationship between former ward of state and county so as to give rise to constitutional duty on part of county to protect former ward; therefore, former ward could not maintain civil rights cause of action against county for alleged gross negligence in placing her in a foster care home. Atchley v. Du Page County, N.D.Ill.1986, 638 F.Supp. 1237. Civil Rights 1057

Genuine issues of material fact existed as to whether city had policy resolving any ambiguity concerning the safety of a child in favor of removal of the child from a foster home, whether city acted pursuant to such policy in effectuating an emergency removal of children from foster home without a hearing, and whether post-deprivation procedures provided a sufficient opportunity for foster parent to explain or defend her care of the children, precluding summary judgment in favor of city or foster parent on foster parent's due process claim. Johnson v. City of New York, S.D.N.Y.2003, 2003 WL 1826122, Unreported. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

1451. ---- Visiting rights, custody of children, deprivation of constitutional or statutory rights generally

Genuine issue of material fact existed as to whether state family court officials violated father's constitutional rights by refusing to process his ex parte petition for visitation, precluding summary judgment for officials on father's claim under §§ 1983 grounded on family court officials' alleged failure to process his petition. McKnight v. Baker, E.D.Pa.2004, 343 F.Supp.2d 422. Federal Civil Procedure 2491.5

Childrens' allegation that foster care contractors violated their constitutional right in maintaining their family relations by refusing to permit siblings to visit one another was sufficient to state civil rights claim. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Civil Rights 1395(1)

Father claiming that former wife's false accusations of child abuse resulted in denial of his visitation rights did not have constitutionally protected parental liberty interest in continued companionship and association with his child that would be cognizable in civil rights action; even assuming that such interest existed, father did not allege type of permanent, physical separation from child necessary to show constitutional deprivation for purposes of civil rights claim. Norton v. Cobb, N.D.Ohio 1990, 744 F.Supp. 798. Constitutional Law 254.1; Constitutional Law 274(5)

Siblings who were wards of the court stated cause of action for denial of substantive due process against officials of Illinois Department of Children and Family Services by alleging that they were supporting policies of foster homes in which some of the children had been placed which did not allow any visitation with their siblings and that they had failed to facilitate visits between siblings when the foster parents expressed their willingness to cooperate. Aristotle P. v. Johnson, N.D.Ill.1989, 721 F.Supp. 1002. Civil Rights 1395(1)

1452. ---- Child abuse, custody of children, deprivation of constitutional or statutory rights generally

State's seizure of allegedly abused child did not violate parents' right to equal protection under state law, based on allegation that state's investigation was biased because of parents' poverty and relative lack of education, absent showing of causal connection between allegedly biased investigations and any injury resulting from removal of child from parents' custody. Donald v. Polk County, C.A.7 (Wis.) 1988, 836 F.2d 376. Constitutional Law 225.1; Infants 192

State owed duty of care to children abused by foster parents, as required to support § 1983 action for violation of children's substantive due process rights, despite biological parents' consent to placement of children into foster care. Miracle by Miracle v. Spooner, N.D.Ga.1997, 978 F.Supp. 1161. Civil Rights 1057

Allegations in federal civil rights action by mother of child, who was beaten to death by her father after she had been returned to father's custody following placement in custody of county child services department, that treatment of child by department violated child's rights as child was entitled under federal Aid to Families with Dependent Children (AFDC) statutes and regulations to benefits which are protected by Constitution did not state claim for relief; mother had provided no authority that statutes and regulations provide basis for recovery. Ford v. Johnson, W.D.Pa.1995, 899 F.Supp. 227. Civil Rights 1057

G.S.N.C. § 7A-284, which provides that if it appears that child is in danger, subject to such serious neglect as may endanger his health or morals or that best interest of child requires that court assume immediate custody of child prior to hearing, parent can be deprived of custody for at least five days before hearing is held, is constitutionally defensible means to protect state's interest in protecting and caring for neglected children and does not deprive parents of custody without due process. Newton v. Burgin, W.D.N.C.1973, 363 F.Supp. 782, affirmed 94 S.Ct. 889, 414 U.S. 1139, 39 L.Ed.2d 96. Constitutional Law 255(4); Infants 132

1453. ---- Maintenance of family, custody of children, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

County probation officer and county deputy sheriff who forcibly removed minor child from his parents' home due to unspecified allegations of child neglect were subject to individual liability for Fourth Amendment violations in child's § 1983 action brought after he achieved age of majority. Brokaw v. Mercer County, C.A.7 (Ill.) 2000, 235 F.3d 1000. Civil Rights 1360

Allegations that state social worker directed county employees to forcibly remove minor child from his parents' home were sufficient to subject social worker to individual liability for Fourth Amendment violations in child's § 1983 action brought after he achieved age of majority. Brokaw v. Mercer County, C.A.7 (Ill.) 2000, 235 F.3d 1000 . Civil Rights 1395(1)

Five "hard to place" adopted children failed to state that state violated their liberty interests despite their allegations that state, as previous custodial parent, failed to maximize their personal psychological development by providing postadoption services to them and adoptive parents; due process clause did not require affirmative acts by state. Griffith v. Johnston, C.A.5 (Tex.) 1990, 899 F.2d 1427, rehearing denied 904 F.2d 705, certiorari denied 111 S.Ct. 712, 498 U.S. 1040, 112 L.Ed.2d 701. Civil Rights 1395(1); Constitutional Law 274(5)

Parents' right, under Wisconsin law, to receive social services was not constitutionally protected right, and thus parents failed to establish essential element for their § 1983 claim following state's seizure of their allegedly abused child. Donald v. Polk County, C.A.7 (Wis.) 1988, 836 F.2d 376. Civil Rights 1057

Mother who alleged that employees of New Mexico Department of Human Services who brought parental rights termination proceeding against her acted in bad faith by not assisting her to alter her homelife so that she could be reunited with her children failed to state a § 1983 cause of action absent evidence of a federal right to such assistance. Pepper v. Alexander, D.C.N.M.1984, 599 F.Supp. 523. Civil Rights 1395(1)

1454. ---- Notice and hearing, custody of children, deprivation of constitutional or statutory rights generally

Parents were not denied procedural due process though Department of Social Services took their allegedly abused child into custody without prior notice or opportunity for hearing, absent showing of actual damages resulting from postdeprivation notice and hearing, which resulted in judicial determination that removal was justified. Donald v. Polk County, C.A.7 (Wis.) 1988, 836 F.2d 376. Constitutional Law 274(5)

The "liberty" protected by due process clause of U.S.C.A.Const. Amend. 14 includes right to custody of one's minor children, and it would be deprivation of such "liberty" without due process of law for persons acting under color of state law permanently to separate children from their parents without notice and hearing. Ellis v. Hamilton, C.A.7 (Ind.) 1982, 669 F.2d 510, certiorari denied 103 S.Ct. 488, 459 U.S. 1069, 74 L.Ed.2d 631. Constitutional Law 274(5)

Complaint alleging that guardian ad litem appointed for child was involved in improperly depriving parents of custody of their child without a hearing stated a cause of action under this section. Roe v. Borup, E.D.Wis.1980, 500 F.Supp. 127. Civil Rights 1395(1)

1455. Sterilization, deprivation of constitutional or statutory rights generally

In evaluating physician's conduct with respect to alleged conspiracy to sterilize plaintiff, a deaf mute, against her will, cognizance was to be taken of extraordinary degree of helplessness of plaintiff and whether conduct was wanton or reckless when considered in context of ability of plaintiff to protect herself. Downs v. Sawtelle, C.A.1 (Me.) 1978, 574 F.2d 1, certiorari denied 99 S.Ct. 278, 439 U.S. 910, 58 L.Ed.2d 255. Conspiracy 7.5(2)

Woman's averments that defendants permanently deprived her of ability to bear children by performing sterilization

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operation alleged denial of civil rights. Cox v. Stanton, C.A.4 (N.C.) 1975, 529 F.2d 47. Civil Rights 1395(1)

Complaint alleging violation of plaintiff's civil rights by virtue of failure to notify them of their sterilization under Virginia involuntarily sterilization statute and to otherwise provide information and assistance as might be appropriate stated claim on which relief could be granted under this section. Poe v. Lynchburg Training School and Hospital, W.D.Va.1981, 518 F.Supp. 789. Civil Rights 1395(1)

1456. Conservators and guardians, deprivation of constitutional or statutory rights generally

Speculation and conclusory statements were insufficient to support § 1983 civil rights claim based on allegations that guardian and attorney conspired to control probate court proceedings and thereby, violated due process by requiring claimant to return valid gifts made by ward; gift recipient failed to present evidence of conspiracy. Worrall v. Irwin, S.D.Ohio 1994, 890 F.Supp. 696. Conspiracy 19

Alleged private misuse of West's Ann.Prob.Code, § 1751 by plaintiff's parents and deprogramming foundation in allegedly knowingly and fraudulently misusing conservatorship/guardianship process with ulterior purpose to obtain custody of plaintiff so that they could "spirit him to Arizona, imprison him and subject him to brainwashing and mind-control in an effort to dissuade him of his religious beliefs" presented neither denial of constitutional rights under U.S.C.A.Const. Amend. 14 nor claim upon which relief could be granted under this section. Baer v. Baer, N.D.Cal.1978, 450 F.Supp. 481. Civil Rights 1037; Constitutional Law 255(2)

1457. Child abuse, deprivation of constitutional or statutory rights generally--Generally

Although child who had suffered permanent brain damage from father's beating had been deprived of liberty within meaning of due process clause, state welfare authorities did not share responsibility for that deprivation in federal constitutional sense by virtue of their failure to remove child from abusing father's custody; child had no federal constitutional right to effective protection from his father, and fact that authorities may have brought about trivial increase in probability that child would be severely injured did not enable conclusion that state had deprived child of his right to bodily integrity. DeShaney by First v. Winnebago County Dept. of Social Services, C.A.7 (Wis.) 1987, 812 F.2d 298, certiorari granted 108 S.Ct. 1218, 485 U.S. 958, 99 L.Ed.2d 419, affirmed 109 S.Ct. 998, 489 U.S. 189, 103 L.Ed.2d 249. Civil Rights 1057; Constitutional Law 254(2); Constitutional Law 255(4)

State did not have baby in its custody or its control such that it had to provide basic human necessities to baby as would create special relationship between baby and state, and so state owed no substantive due process duty to protect baby from abuse. Powell v. Department of Human Resources of State of Ga., S.D.Ga.1996, 918 F.Supp. 1575, affirmed 114 F.3d 1074. Constitutional Law 253(1); Infants 17

County department of social services and its employees were not obligated to protect abused children from their mother's boyfriend, a private actor, for purposes of civil rights claim based on deprivation of liberty without due process; though their actions in connection with abuse report might have been negligent under Wisconsin common law, they were not constitutionally reckless. Doe by Nelson v. Milwaukee County, E.D.Wis.1989, 712 F.Supp. 1370, affirmed 903 F.2d 499. Civil Rights 1057

Mother of juvenile who died of gastric asphyxiation, allegedly as result of punitive use of "baskethold" at children's home, stated claim under federal civil rights statute against home and its director based on alleged policy of allowing continued use of baskethold by inadequately trained individuals. McAdams v. Salem Children's Home, N.D.Ill.1988, 701 F.Supp. 630. Civil Rights 1395(1)

S.C.Code 1976, §§ 20-7-640, 20-7-650, outlining general responsibilities of state Department of Social Services

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and county board of department of social services with respect to reporting and referral of cases of child abuse, promulgation of programs, facilitation of research and training of investigative personnel did not amount to "regulation" of conduct of parent child abuser or coercion or significant encouragement of his or her conduct so as to provide required "state action" under U.S.C.A. Const. Amend. 14 in context of civil action for deprivation of rights brought by administratrix of estate of child for alleged failure to protect child from physical abuse inflicted upon her by her parents. Jensen v. Conrad, D.C.S.C.1983, 570 F.Supp. 91, affirmed 747 F.2d 185, certiorari denied 105 S.Ct. 1754, 470 U.S. 1052, 84 L.Ed.2d 818. Civil Rights 1326(1)

1458. ---- Investigations, child abuse, deprivation of constitutional or statutory rights generally

Employees of state agency who were ordered to assist mother in care of her child did not have constitutional duty to protect child from private violence and, thus, employees were not liable in § 1983 action which alleged that employees' reckless indifference to child's safety resulted in child being beaten by father's lover's son, where there was no evidence that employees knowingly placed child in position of danger. Bank of Illinois v. Over, C.A.7 (Ill.) 1995, 65 F.3d 76. Civil Rights 1057; Constitutional Law 253(1)

Exigent circumstances did not justify warrantless entry into children's home in response to child neglect report, where any perceived danger resulting from young children being left under supervision of 12-year-old and authorities' inability to contact parents was merely speculative and insufficiently serious, there was no indication that any potential harms would imminently come to fruition, and child protective services caseworker testified that he saw only "potential for harm." O'Donnell v. Brown, W.D.Mich.2004, 335 F.Supp.2d 787. Searches And Seizures 42.1

Biological parents of children who were physically abused, and one killed, by foster parents failed to prove that caseworker's supervisor was deliberately indifferent to children's welfare, as required for imposition of § 1983 liability for violation of children's substantive due process rights, even if supervisor did conspire with caseworker to falsify records after child's death; evidence showed only that supervisor knew caseworker had failed to return phone calls to several foster parents or to turn in her records of home visits in timely fashion. Miracle by Miracle v. Spooner, N.D.Ga.1997, 978 F.Supp. 1161. Civil Rights 1360

Township mental health board that funded children's advocacy center did not act with deliberate indifference to rights of arrestee who was arrested as result of interview of child witness by center's director concerning arrestee's alleged acts of sexual abuse, based on board's alleged failure to verify director's qualifications; board relied on director's stated qualifications and recommendation of social services provider that administered center. Fittanto v. Children's Advocacy Center, N.D.Ill.1993, 836 F.Supp. 1406. Civil Rights 1352(6)

1459. ---- Register of child abusers, deprivation of constitutional or statutory rights generally

State social services agency's placement of father's name in register of suspected child abusers did not deprive father of constitutionally protected liberty or property interest; father's employment prospects had not suffered, and his relationship with his family was not altered as result. Glasford v. New York State Dept. of Social Services, S.D.N.Y.1992, 787 F.Supp. 384. Constitutional Law 274(5); Constitutional Law 277(1)

1460. ---- Reporting requirements, child abuse, deprivation of constitutional or statutory rights generally

Neither private hospital, public hospital, county, municipality nor their employees were liable under § 1983 for their alleged failure to properly report alleged child abuse committed by foster parents, after child had been privately placed in home by parents. Milburn by Milburn v. Anne Arundel County Dept. of Social Services, C.A.4 (Md.) 1989, 871 F.2d 474, rehearing denied, certiorari denied 110 S.Ct. 148, 493 U.S. 850, 107 L.Ed.2d 106. Civil Rights 1057

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Illinois requirement that tenured teacher-school psychologist and others in similar positions of responsibility promptly report child abuse to state agency did not unconstitutionally infringe school psychologist's federal constitutional right of confidentiality derived from student's right to privacy; Illinois had compelling state interest in protecting abused children. Pesce v. J. Sterling Morton High School, Dist. 201, Cook County, IL, C.A.7 (Ill.) 1987, 830 F.2d 789. Constitutional Law 82(7); Infants 12(9)

Adoption Assistance and Child Welfare Act (AACWA) section requiring that state plans provide for reporting of known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of an adopted child, does not confer an implied private cause of action against individual public employees for money damages enforceable under §§ 1983, absent unambiguous Congressional intent to create such an enforceable private right of action. Johnson ex rel. Estate of Cano v. Holmes, D.N.M.2004, 377 F.Supp.2d 1084 . Infants 17

Alleged violation by state officials of federal regulation requiring that state agency which administers child support enforcement program provide an alleged father, as appropriate, the opportunity to voluntarily acknowledge paternity did not create a right which support obligees could individually enforce under § 1983. Brinkley v. Hill, S.D.W.Va.1997, 981 F.Supp. 423. Civil Rights 1057

Missouri child abuse reporting statute created no duty in nonsupervisory public school teacher to report alleged sexual misconduct by fellow teacher toward female students to law enforcement or child protective agencies such as would support students' § 1983 action against the nonsupervisory teacher. Thelma D. v. Board of Educ. of City of St. Louis, E.D.Mo.1987, 669 F.Supp. 947. Civil Rights 1057

1461. Child support, deprivation of constitutional or statutory rights generally

Federal statute setting terms for distribution of state-collected Title IV-D child support payments does not provide support recipients with individual rights, enforceable against state under §§ 1983. Arrington v. Helms, C.A.11 (Ala.) 2006, 438 F.3d 1336, rehearing and rehearing en banc denied 2006 WL 1112954. Civil Rights 1057

Provision of Title IV-D of Social Security Act, stating that "an amount collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows," did not create federal right to state distribution of child support payments in strict compliance with statute that was individually enforceable by custodial parents under §§ 1983, even though statute reflected some congressional intent to benefit custodial parents, inasmuch as right to strict compliance was not unambiguously imposed as binding obligation on the states, and was too vague and amorphous for judicial enforcement. Walters v. Weiss, C.A.8 (Ark.) 2004, 392 F.3d 306. Civil Rights 1057

Social security statute that requires state to adopt plan for child support enforcement in order to participate in Aid to Families with Dependent Children (AFDC) program created individual federal civil rights claim where statutory and regulatory scheme created binding obligations upon state, provided highly detailed requirements and administrative procedures state must follow and detailed criteria for measuring compliance with statute; phrase "substantial compliance" was not what created enforceable rights but right was enforceable, where state could meet substantial compliance standard only by satisfying concrete requirements specified in statutory and regulatory scheme. Freestone v. Cowan, C.A.9 (Ariz.) 1995, 68 F.3d 1141, certiorari granted 116 S.Ct. 1671, 517 U.S. 1186, 134 L.Ed.2d 775, motion to dismiss denied 117 S.Ct. 38, 518 U.S. 1058, 135 L.Ed.2d 1129, vacated 117 S.Ct. 1353, 520 U.S. 329, 137 L.Ed.2d 569, on remand 116 F.3d 412. Civil Rights 1057

Custodial parents failed to state claim against agency responsible for overseeing state's child support enforcement services based on alleged misappropriation of child support arrearages, given absence of affirmative allegation that any parent had previously received public assistance or that state had improperly appropriated child support arrearage payments to reimburse itself for those prior payments. Hughlett v. Romer-Sensky, C.A.6 (Ohio) 2004,

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42 U.S.C.A. § 1983

98 Fed.Appx. 360, 2004 WL 435890, Unreported. Civil Rights 1395(1)

Although complaint failed to tie parents' claims against state agency to specific provisions of federal law, it alleged both existence of such rights, by asserting that parents had right to receive distribution of all collected child support payments belonging to them within two business days of receipt by state and without deduction of administrative fees, and deprivations thereof, and therefore district court was required to consider whether underlying statutes conferred upon parents federal rights enforceable under §§ 1983 in deciding motion seeking dismissal. Hughlett v. Romer-Sensky, C.A.6 (Ohio) 2004, 98 Fed.Appx. 360, 2004 WL 435890, Unreported. Federal Civil Procedure 1788.6

1462. Education, deprivation of constitutional or statutory rights generally

Stewart B. McKinney Homeless Assistance Act, which was passed in response to critically urgent needs of homeless, confers on homeless children educational rights enforceable under § 1983; state undertakes well-defined obligations when it elects to accept funds under Act, as Act not only informs state in great detail on how its plan must be implemented, it imposes obligations that are independent of plan, nothing in Act suggests that its beneficiaries may not invoke § 1983 to enforce their rights, and courts are competent to ensure fulfillment of statutory requirement that school be selected in accordance with "best interest" of homeless child. Lampkin v. District of Columbia, C.A.D.C.1994, 27 F.3d 605, 307 U.S.App.D.C. 155, certiorari denied 115 S.Ct. 578, 513 U.S. 1016, 130 L.Ed.2d 493, on remand 879 F.Supp. 116. Civil Rights 1070

Child's right to get best possible education was not a right, privilege, or immunity secured by the Constitution, and thus mother and her minor children could not maintain § 1983 action against child's foster parent for allegedly refusing to allow mother's child to attend public school of her choice, even if foster parent were considered a state actor for § 1983 purposes. P.G. v. Ramsey County, D.Minn.2001, 141 F.Supp.2d 1220. Constitutional Law 206(1)

Elementary school student's due process property right to receive public school education was not violated, giving rise to claim under § 1983, when he voluntarily left public school to attend private school after repeated beatings at hands of bullies. Stevenson ex rel. Stevenson v. Martin County Bd. of Educ., E.D.N.C.1999, 93 F.Supp.2d 644, affirmed 3 Fed.Appx. 25, 2001 WL 98358, certiorari denied 122 S.Ct. 54, 534 U.S. 821, 151 L.Ed.2d 23. Constitutional Law 278.5(5.1); Schools 148(1)

1463. Trusts, deprivation of constitutional or statutory rights generally-- Generally

This section was never designed nor intended to redress breach by a trustee of his equitable duties to the trust beneficiaries. Siegel v. Ragen, C.A.7 (Ill.) 1950, 180 F.2d 785, certiorari denied 70 S.Ct. 1015, 339 U.S. 990, 94 L.Ed. 1391, rehearing denied 71 S.Ct. 12, 340 U.S. 847, 95 L.Ed. 621. Civil Rights 1071

1464. ---- Indians, trusts, deprivation of constitutional or statutory rights generally

Even if there was right on part of individual Indians to have United States government hold their land in trust for them, it was not right secured by U.S.C.A.Const. Amend. 14 or by any federal statute passed by Congress under authority thereof, and hence denial was not actionable under this section. Chase v. McMasters, D.C.N.D.1975, 405 F.Supp. 1297. Civil Rights 1071

1465. Involuntary commitment, deprivation of constitutional or statutory rights generally--Generally

Where state mental hospital's superintendent, as an agent of the state, knowingly confined mental patient who was not dangerous and who was capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends, superintendent violated patient's constitutional right to "liberty." O'Connor

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v. Donaldson, U.S.Fla.1975, 95 S.Ct. 2486, 422 U.S. 563, 45 L.Ed.2d 396, on remand 519 F.2d 59. Constitutional Law 83(1)

Even if subjective intent were relevant in evaluating patient's due process claim against doctors who participated in his involuntary commitment to a New York mental health facility, patient failed to establish that defendant doctors acted for non-medical or otherwise improper reasons in having him temporarily committed; while patient cited evidence that one doctor told patient's sister that the doctor could not commit patient on the basis of sister's description of the alleged contents of a letter that she had not seen, as well as evidence that a doctor told patient that the doctor had no reason to keep him in the hospital, it was entirely speculative to leap from that evidence to a conclusion that patient was committed for reasons other than the doctors' conclusion that he posed an imminent danger to himself or others. Olivier v. Robert L. Yeager Mental Health Center, C.A.2 (N.Y.) 2005, 398 F.3d 183. Civil Rights 1422

Patient's allegation that she was involuntarily committed to private mental hospital stated a claim for deprivation of constitutional right; involuntary commitment implicates liberty interest protected by due process clause of Fourteenth Amendment. Harvey v. Harvey, C.A.11 (Ga.) 1992, 949 F.2d 1127. Civil Rights 1395(1); Constitutional Law 255(5)

Deputy sheriff's deposition testimony that he believed he called sheriff concerning involuntary emergency commitment of plaintiff for observation but that he wasn't sure did not establish a causal connection between commitment and the sheriff for purpose of holding sheriff liable under this section and, in any event, in view of authority of V.A.M.S. § 202.123 (Repealed) for involuntary commitment without a hearing there was no basis for liability unless it was alleged that the sheriff advised deputy to commit plaintiff regardless of her condition or in contravention of V.A.M.S. § 202.123 (Repealed), which was not alleged to be unconstitutional. Harris v. Pirch, C.A.8 (Mo.) 1982, 677 F.2d 681. Civil Rights 1395(5); Civil Rights 1422

Where disabled person had suffered severe brain damage and was unable to provide for his food, clothing and shelter, he was difficult to control, violent, destructive, and threat to the safety of others, and his father had served substantial prison term and had history of psychiatric problems, involuntary commitment of disabled person, rather than placing him with his father, did not violate disabled person's civil rights. Schlette v. Burdick, C.A.9 (Cal.) 1980, 633 F.2d 920. Civil Rights 1037

Neither provision of United States Constitution enumerating powers of Congress, Article IV, nor the First, Sixth, and Eighth Amendments conferred causes of action, either directly, through Fourteenth Amendment, or through section 1983, for harms allegedly suffered by patient involuntarily committed to hospital and psychiatric center for nearly two months. Davenport v. Saint Mary Hosp., E.D.Pa.1986, 633 F.Supp. 1228. Civil Rights 1037

As to plaintiff's claim that he and his wife agreed to defendants' request for voluntary and involuntary commitment due solely to defendants' deliberate misrepresentations concerning their authority to order plaintiff's involuntary commitment, that defendants failed to advise him of his right to challenge his involuntary status and prevented him from doing so, that he was deprived of proper medical and psychiatric care and was forcibly subjected to harmful medication and physically and emotionally abusive treatment while in defendants' custody, plaintiff alleged acts which constituted deprivation of his federal constitutional rights, privileges or immunities and which were therefore actionable under this section. Ruffler v. Phelps Memorial Hospital, S.D.N.Y.1978, 453 F.Supp. 1062. Civil Rights 1395(1)

1466. ---- Procedures generally, involuntary commitment, deprivation of constitutional or statutory rights generally

Involuntarily committed psychiatric patient failed to show that state hospital administrator blocked reclassification opportunities and denied patient conditional releases, placement in less-secure facilities and other privileges

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because of patient's filing of grievances against hospital staff, as would prove patient's First Amendment retaliation claim; patient admitted that he could not say that administrator denied him privileges because of his grievances, patient acknowledged that he frequently disengaged from treatment, which was a factor in determining his entitlement to privileges, and there was no showing that administrator took any adverse action against patient. Revels v. Vincenz, C.A.8 (Mo.) 2004, 382 F.3d 870, rehearing denied, certiorari denied 126 S.Ct. 371, 163 L.Ed.2d 140, rehearing denied 126 S.Ct. 721, 163 L.Ed.2d 618. Constitutional Law 91; Mental Health 51.1

Allegations in plaintiff's complaint, that he was admitted to mental treatment facilities on strength of voluntary admission forms he signed while heavily medicated, disoriented, and apparently suffering from psychotic disorder, that he was never provided with court-ordered evaluation necessary for involuntary placement, and that he was released only 152 days later, stated cause of action against facility and other defendants for violation of procedural due process rights in violation of § 1983. (Per Johnson, Circuit Judge, with five Judges concurring and two Judges specially concurring.) Burch v. Apalachee Community Mental Health Services, Inc., C.A.11 (Fla.) 1988, 840 F.2d 797, certiorari granted 109 S.Ct. 1337, 489 U.S. 1064, 103 L.Ed.2d 807, affirmed 110 S.Ct. 975, 494 U.S. 113, 108 L.Ed.2d 100. Civil Rights 1395(1)

Persons involuntarily confined in state mental institution could challenge the constitutionality of state commitment procedures under this section on basis of claim that unconstitutional procedures in their continued confinement were a violation of their civil rights, and they were not required to bring habeas corpus proceedings subject to requirement of exhaustion of state remedies, where they were not asking for immediate release from confinement and would not be entitled to such immediate release even if they prevailed. Chancery Clerk of Chickasaw County, Miss. v. Wallace, C.A.5 (Miss.) 1981, 646 F.2d 151. Civil Rights 1313; Civil Rights 1321

In absence of authorities directly in point, it was proper to test civil rights claim that plaintiff had been denied his right to due process when he was committed to state hospital without a hearing while a prisoner in state correctional institution by reference to precedents which had determined constitutional parameters of involuntary civil commitment procedures in New York. Mignone v. Vincent, S.D.N.Y.1976, 411 F.Supp. 1386. Civil Rights 1091

1467. ---- Notice and hearing, involuntary commitment, deprivation of constitutional or statutory rights generally

State hospital's court commitment procedure utilized in individual's admission in commitment proceeding which admittedly violated a liberty interest protected by the Fourteenth Amendment constituted an "established state procedure" and thus, predeprivation hearing was required under the Fourteenth Amendment due process clause, and availability of postdeprivation remedy in state court did not preclude relief under § 1983, where, although the procedure utilized violated both the state's Involuntary Commitment Act [16 Del.C. § 5001 et seq.] and the state hospital's internal regulations, the state hospital in fact observed its usual procedure for court commitments. Hicks v. Feeney, C.A.3 (Del.) 1985, 770 F.2d 375, on remand 124 F.R.D. 79. Civil Rights 1037

Commitment of plaintiff to a state hospital without benefit of a prior hearing while confined to a state correctional institution did not operate to violate plaintiff's due process rights and, therefore, did not state a claim under this section where a compelling state interest was established in that there was an immediate threat of harm to self, others or society. Mignone v. Vincent, S.D.N.Y.1976, 411 F.Supp. 1386. Civil Rights 1395(7); Constitutional Law 272(2)

1468. ---- Competency to stand trial, involuntary commitment, deprivation of constitutional or statutory rights generally

Unless state agreed to furnish state prisoner, committed as mentally incompetent by state court prior to trial to hospital for the criminally insane, with copies of documents relating to examination and findings by psychiatrists

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involved at time of original commitment and copies of psychiatric reports and examinations relating to prisoner's mental condition by all doctors who have examined him in state hospital for purpose of pursuing state court remedies he could seek relief in federal court under this section. U. S. ex rel. Hill v. Johnston, S.D.N.Y.1971, 321 F.Supp. 818. Civil Rights 1091

Where order committing plaintiff to state hospital until competent to defend pending felony charges rule was valid on its face and complied with requirements of McKinney's N.Y.Code Cr.Proc. § 662-b, and plaintiff did not contend that he was presently competent to stand trial on felony charges, and he had not taken steps for a number of years to secure his release or dismissal of criminal charges presently pending against him, he could not recover damages in civil rights action against Commissioner of the New York State Department of Correction and Charge Officer of hospital. King v. McGinnis, S.D.N.Y.1968, 289 F.Supp. 466. Civil Rights 1321

1469. ---- Cost of confinement, involuntary commitment, deprivation of constitutional or statutory rights generally

Patient's interest in patient deposit fund and disability insurance benefits, affected as they were by order entered without notice to patient at hearing at which patient was not present, would serve as basis for civil rights suit under this section alleging that order requiring him to pay cost of his own involuntary confinement at state mental hospital violated his constitutional rights. Fayle v. Stapley, C.A.9 (Ariz.) 1979, 607 F.2d 858. Civil Rights 1037; Civil Rights 1052

1470. Mental health hospitals and patients, deprivation of constitutional or statutory rights generally--Generally

Where patient who had been involuntarily committed to mental health facility pursuant to New York law failed to establish that defendant doctors violated his due process rights, mental health facility that employed the doctors could not be held derivatively liable for any such violation. Olivier v. Robert L. Yeager Mental Health Center, C.A.2 (N.Y.) 2005, 398 F.3d 183. Civil Rights 1341; Health 783

Individual admitted to private chemical dependency unit pursuant to emergency certificate provided for by Louisiana statute on ground he was so gravely disabled as to be unable to care for himself or that he was potentially dangerous to himself or others did not have civil rights cause of action under 42 U.S.C.A. § 1983 against private institution based on alleged deprivation of his rights by institution employees during his course of treatment, where there was neither evidence nor allegation that state's authority was linked to the specific conduct of private employees which was complained of, even though state might have forced confinement and treatment of individual. Jarrell v. Chemical Dependency Unit of Acadiana, C.A.5 (La.) 1986, 791 F.2d 373. Civil Rights 1326(4)

Genuine issues of material fact existed underlying issues as to as to whether private physician defendants complied with substantive admission/confinement requirements of New York Mental Hygiene Law in involuntarily admitting plaintiff to mental hospital, as to whether plaintiff was actually "admitted," and whether he was given written notice upon such admission, and whether plaintiff had capacity to consent to admission, precluding summary judgment in favor of either side on false arrest/imprisonment claims under federal and New York law. Ruhlmann v. Ulster County Dept. of Social Services, N.D.N.Y.2002, 234 F.Supp.2d 140. Federal Civil Procedure 2515

Claims that Secretary of state Department of Public Welfare violated rights of involuntarily committed disabled persons under Americans with Disabilities Act (ADA) and Rehabilitation Act by keeping them institutionalized when they should have been transferred to community living situations could be brought under § 1983. Frederick L. v. Department of Public Welfare, E.D.Pa.2001, 157 F.Supp.2d 509.

Claim by mentally retarded adult, who had been housed in residential facilities operated by non-profit corporation, that corporation had violated Maryland regulations governing home and community-based services, alleged

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violation of state law, rather than federal right, and thus could not support claim under § 1983, even though adult claimed that corporation was required to comply with federal Medicaid Waiver program and its regulations, and that violations of state regulations showed lack of compliance with federal regulations. Brown, by Brown v. Kennedy Krieger Institute, Inc., D.Md.1998, 997 F.Supp. 661. Civil Rights 1052

Right to placement in intermediate care facility for the mentally retarded (ICF-MR) for individuals with conditions related to mental retardation, but who are not diagnosed as mentally retarded, was a federal right sufficient for Medicaid claimant to state § 1983 claim against state officials for denying his claim; claimant would have personally benefited from placement in such a facility with funding from state and federal government. Parry By and Through Parry v. Crawford, D.Nev.1998, 990 F.Supp. 1250. Civil Rights 1052

Right of class of patients institutionalized for mental illness in mental health facilities operated by state to "minimally adequate services" in "minimally adequate setting," as requested in complaint against state under § 1983, was limited to training and services necessary to preserve patients' liberty interests in safety and freedom from unnecessary restraints, and did not include general right to training or services. K.L. v. Edgar, N.D.Ill.1996, 948 F.Supp. 44. Mental Health 51.5

In context of § 1983 action brought by mother/guardian of adult son/ward, mother/guardian had no constitutionally based right of action against any medical or supervisory personnel involved in son/ward's care at state facility for mentally retarded in view of son/ward's status as voluntarily committed mental patient as opposed to involuntarily committed patient. Duvall v. Cabinet for Human Resources, E.D.Ky.1996, 920 F.Supp. 111. Civil Rights 1037

Complaint of involuntarily committed mentally retarded persons residing at state operated institution, which contained allegations indicating that there had been a total failure on part of defendants to exercise professional judgment where residents were concerned with regard to providing reasonably safe conditions of confinement, freedom from unreasonable bodily restraint and minimally adequate training, was sufficient to state cause of action for violation of residents' liberty interests under due process clause of Fourteenth Amendment. Nicoletti v. Brown, N.D.Ohio 1987, 740 F.Supp. 1268. Civil Rights 1395(1)

Challenges to conditions of confinement of mentally retarded residents of State Training Center are proper subjects of civil action for deprivation of rights. Davis v. Buckley, E.D.Va.1981, 526 F.Supp. 985. Civil Rights 1037

1471. ---- Injuries to patients generally, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Voluntary mental health patient who was injured when he jumped out of van driven by employee of the Commonwealth of Massachusetts as he was being transported back to group home from mental health center failed to state claim under the Civil Rights Act for denial of substantive due process based on failure to provide restraints in van; because the Commonwealth did not commit patient involuntarily, it did not affirmatively act to restrain his liberty, so as to trigger corresponding due process duty to assume special responsibility for his protection. Monahan v. Dorchester Counseling Center, Inc, C.A.1 (Mass.) 1992, 961 F.2d 987, as amended. Constitutional Law 255(5); Health 703(2)

Parents of profoundly retarded resident of community living arrangement stated claim under federal civil rights statute against operator of arrangement as result of resident's choking death, based on alleged deprivation of resident's constitutional rights to safety and life through negligence and gross negligence. Fialkowski v. Greenwich Home for Children, Inc., E.D.Pa.1987, 683 F.Supp. 103. Civil Rights 1395(1)

1472. ---- Assaults against patients, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Although failure of staff of state mental hospital to prevent pattern of attacks, injuries, or violent behavior is actionable under § 1983, right to protection is not activated by isolated mishap, or called into question by each bruise that patient may suffer. Shaw by Strain v. Strackhouse, C.A.3 (Pa.) 1990, 920 F.2d 1135, 118 A.L.R. Fed. 755. Civil Rights 1054

Mental hospital had duty to protect patients from injury by another patient, and involuntarily institutionalized persons had constitutional right to safe and humane living environment, but, in order for female patient's claim of negligence against hospital officials to be actionable under this section, more than isolated event of unconsented touching by male patient was required. Knight v. People of State of Colo., D.C.Colo.1980, 496 F.Supp. 779. Civil Rights 1039; Health 700

1473. ---- Communications with outsiders, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Complaint stated a cause of action against hospital insofar as it could be construed to allege that minor, who entered hospital as a voluntary mental patient, became a de facto involuntary patient, that hospital's rule precluding communication between minor and her parents was utterly nontherapeutic and medically illegitimate, and that such rule was a condition of her receipt of state-provided medical services. Doe By and Through Doe v. Public Health Trust of Dade County, C.A.11 (Fla.) 1983, 696 F.2d 901. Mental Health 51.20

Oregon statute providing that every mentally ill person "shall" have right to communicate freely by sending and receiving sealed mail created protected liberty interest for all persons committed to custody of state so that any decision to censor or withhold delivery of patient's mail had to be accompanied by minimum procedural safeguards. Martyr v. Mazur-Hart, D.Or.1992, 789 F.Supp. 1081. Mental Health 32

1474. ---- Medical care, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Involuntarily confined patient did not have a § 1983 claim against physician at state hospital for violation of due process rights based on physician's alleged failure to administer drug to block side effects of Thorazine and failure to monitor patient for adverse side effects when patient's expert asserted only that hospital personnel had to either prescribe a side effect blocker or monitor patient for side effects and staff did monitor patient. Kulak v. City of New York, C.A.2 (N.Y.) 1996, 88 F.3d 63. Civil Rights 1037

Physician at state mental hospital was not deliberately indifferent to health and safety of patient who was strangled in his bed by another patient, in violation of the Fourteenth Amendment, by failing to restrain patient who had earlier threatened to "kill someone"; physician spoke with patient after he had made threats and believed that he was not homicidal or suicidal, but rather, was acting out as was his usual practice, and she did not believe he was a danger to himself or others. Coley v. Castillo, M.D.Ga.2000, 115 F.Supp.2d 1383. Constitutional Law 255(5); Health 700

Person with paranoid schizophrenia could not recover in § 1983 civil rights action under state created danger theory for injuries she inflicted on herself by injecting insulin into her eyes where acts or omissions of state-associated mental health care facility, which allegedly resulted in her having access to instrumentalities used to inflict her injuries, constituted, at the most, negligence, rather than deliberate indifference. Randolph v. Cervantes, S.D.Miss.1996, 950 F.Supp. 771, affirmed 130 F.3d 727, rehearing and suggestion for rehearing en banc denied 140 F.3d 1040, certiorari denied 119 S.Ct. 65, 525 U.S. 822, 142 L.Ed.2d 51. Civil Rights 1045

Psychiatric attendants who cared for involuntarily committed mental patient on day she died of hypothermia in state hospital were not "professionals" and thus were subject only to deliberate indifference standard for purposes

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of civil rights claim. Clark v. Donahue, S.D.Ind.1995, 885 F.Supp. 1164. Civil Rights 1037

1475. ---- Medication, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Complaint of involuntarily committed patient in mental institution alleging that he had been forced to take antipsychotic medication stated more than mere disagreement with type of medication prescribed, but rather, alleged that patient was being forced, against his will, to take medication and stated claim cognizable under this section. Johnson v. Silvers, C.A.4 (Md.) 1984, 742 F.2d 823. Civil Rights 1395(1)

1476. ---- Privacy of patients, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Because state-created liberty interests are entitled to protection of federal due process clause, full scope of involuntarily committed mental patient's due process rights relating to unwanted administration of antipsychotic drugs may depend in part on substantive liberty interests created by state as well as federal law. Mills v. Rogers, U.S.Mass.1982, 102 S.Ct. 2442, 457 U.S. 291, 73 L.Ed.2d 16, on remand 738 F.2d 1. Federal Courts 411

Constitutional right to privacy of civil committee confined as a sexually violent predator (SVP) at state hospital was not violated when hospital employees reviewed his medical records in assessing whether he was an SVP; state had compelling governmental interest in identifying, confining, and treating SVPs, who had been diagnosed as sexually violent and represented distinct threat to health and safety of public, which outweighed committee's right to privacy in his medical records. Hubbs v. Alamao, C.D.Cal.2005, 360 F.Supp.2d 1073. Constitutional Law 82(10); Mental Health 21

1477. ---- Theft of patient's property, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Alleged theft of government check owned by involuntary patient in Florida state hospital was not basis for civil rights action. Collins v. State of Fla., C.A.5 (Fla.) 1970, 432 F.2d 60. Civil Rights 1054

1478. ---- Treatment, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Section 1983 substantive due process claim by patients of state mental health facility, pursuant to adjudications of not guilty by reason of insanity (NGRI), that they would have been rehabilitated and released if they had not been subjected to systemic deficiencies giving rise to substandard care and treatment, against facility and state officials, did not appear to merely replace state tort law, and thus weighed in favor of finding that officials' alleged actions shocked the conscience; patients relied on evidence that officials knew of assaults, overcrowding, understaffing, and insufficient care at facility. Neiberger v. Hawkins, D.Colo.2002, 239 F.Supp.2d 1140. Constitutional Law 255(5); Mental Health 439.1

Mental patient who was member of minority and deaf failed to state claim that state hospital denied him substantive due process right to minimal level of care and training; while creating fact issue as to whether there were past shortcomings in those areas, there was no showing patient was currently suffering from their effects. Wilson by Hinn v. State of N.C., E.D.N.C.1997, 981 F.Supp. 397. Civil Rights 1395(1)

State's alleged failure to provide mental health patient with adequate psychiatric care and treatment, including adequate supervision, was not intentional conduct which "shocked the conscience" and, thus, was not substantive due process violation necessary to support § 1983 civil rights claim. Monahan v. Dorchester Counseling Center, Inc., D.Mass.1991, 770 F.Supp. 43, affirmed 961 F.2d 987, as amended. Constitutional Law 255(5); Mental

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42 U.S.C.A. § 1983

Health 51.5

In suit for damages resulting from alleged violations of the constitutional rights of plaintiff, an emotionally and mentally disordered person who, until 1977, was a ward of the Illinois Department of Children and Family Services, plaintiff could not recover money damages for acts alleged to have occurred before 1974 since the right to adequate treatment was not a well-settled constitutional right until 1974. Nichols v. Laymon, N.D.Ill.1980, 506 F.Supp. 267. Mental Health 475.1

1479. ---- Assaults by patients, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Failure of staff of state mental institution to increase level of supervision of profoundly retarded adult resident or ward in which resident lived from levels that had proven adequate for over decade after two sexual assaults were perpetrated against other residents of institution in preceding few months amounted at most to negligence, and thus, was not actionable under § 1983 as due process violation absent any evidence of more general security problem at institution or that risk of ongoing harm suggested by prior assaults was focused specifically on individual resident or other residents of his ward. Shaw by Strain v. Strackhouse, C.A.3 (Pa.) 1990, 920 F.2d 1135, 118 A.L.R. Fed. 755. Civil Rights 1054

There was no substantive due process violation entitling plaintiff, who was stabbed by patient at state hospital five weeks after latter's release, to recovery under this section against hospital superintendent and physician who allegedly negligently released the patient where it was not alleged that patient singled plaintiff out of general public or that if patient harbored such hostility the defendants knew or had reason to know of it and it was not alleged that the patient was acting under color of state law at time of the attack. Holmes v. Wampler, E.D.Va.1982, 546 F.Supp. 500. Civil Rights 1039

Assault in which male mental patient attacked, kissed and "felt up" female patient without her consent while both were fully clothed was not of sufficient degree to rise to level of unconstitutional deprivation of civil rights, where, although state hospital officials were on notice that sexually harassing behavior was occurring at state hospital, officials did take measures to correct situation, and did not acquiesce in continuing acts or omissions which had effect of producing pattern of sexual assaults, and state took measures to prosecute male patient for his sexual assault upon female patient. Knight v. People of State of Colo., D.C.Colo.1980, 496 F.Supp. 779. Civil Rights 1039

Assuming that members of the Illinois Department of Mental Health had a state law duty to supervise released patients, any breach of that duty would give rise at most to a state law tort claim and not to liability under this section with respect to violent action taken by one released from confinement by the Department. Bowers v. DeVito, N.D.Ill.1980, 486 F.Supp. 742, affirmed 686 F.2d 616. Civil Rights 1039

1480. ---- Homicides by patients, mental health hospitals and patients, deprivation of constitutional or statutory rights generally

Allegations that Commonwealth of Puerto Rico, state Department of Health, hospitals where assailant was allegedly treated, various doctors and others permitted gross and inexcusable negligence by failing to provide necessary and proper medical care, treatment and surveillance to mentally ill assailant and that such conduct was proximate cause of stabbing death of victim failed to state cause of action under § 1983; although decision to treat assailant as ambulatory patient was action by state, assailant's criminal action could not be considered state action and state was not aware that victim, as distinguished from public at large, faced any special danger so that victim's death was too remote a consequence of state's action to hold state responsible. Igartua-Olivieri v. Com. of Puerto Rico, D.Puerto Rico 1988, 690 F.Supp. 122. Civil Rights 1396

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42 U.S.C.A. § 1983

1481. Medical service, deprivation of constitutional or statutory rights generally

Parents of child who suffered injury in childbirth failed to establish that interest protected by due process clause was at stake, or that there was governmental conduct that shocked conscience, as required to maintain § 1983 civil rights action against physicians who performed birth procedure. Frances-Colon v. Ramirez, C.A.1 (Puerto Rico) 1997, 107 F.3d 62. Civil Rights 1057

Paramedic's decision to summon police assistance before or instead of offering patient opportunity to sign release indicating his desire not to be treated did not support § 1983 claim against paramedic for failure to respect patient's refusal of treatment, in light of volatile and erratic behavior of highly intoxicated patient, and absent any allegation that patient ever actually received any forced medical treatment. Sheik-Abdi v. McClellan, C.A.7 (Ill.) 1994, 37 F.3d 1240, certiorari denied 115 S.Ct. 937, 513 U.S. 1128, 130 L.Ed.2d 882. Civil Rights 1088(1)

Indigent patient's allegations that hospital and ambulance service were under contract with state to provide medical services to indigent citizens and that they refused to provide medical services to him because of his indigent status stated claim under § 1983; under either joint action or government nexus analysis, allegations set forth claim that hospital and ambulance service acted under color of state law and that they violated patient's right to equal protection. Lopez v. Department of Health Services, C.A.9 (Ariz.) 1991, 939 F.2d 881. Civil Rights 1395(1); Civil Rights 1396

Constitution did not of its own force support § 1983 action against fire department dispatcher based on dispatcher's refusal to send rescue squad after two requests by telephone, although woman for whom assistance had been requested died; state did not cause woman's diseases or otherwise propel her into danger, state did not take woman into custody, state did not hinder woman from seeking other sources of aid, and she could have called private ambulance or asked others to take her to local hospital, so state did not violate woman's rights under the due process clause. Archie v. City of Racine, C.A.7 (Wis.) 1988, 847 F.2d 1211, certiorari denied 109 S.Ct. 1338, 489 U.S. 1065, 103 L.Ed.2d 809. Civil Rights 1039

States and municipalities are not constitutionally required to provide medical services for citizens, except for persons who are in custody of state or otherwise in special need of state care and protection. Tank v. Chronister, D.Kan.1996, 941 F.Supp. 969. Health 461

Allegations that city's policies, practices, or customs in inadequately training and supervising emergency personnel caused delays in response time to emergency call did not demonstrate that city violated specific constitutional right and thus did not state § 1983 claim. Regalbuto v. City of Philadelphia, E.D.Pa.1995, 937 F.Supp. 374, affirmed 91 F.3d 125, certiorari denied 117 S.Ct. 435, 519 U.S. 982, 136 L.Ed.2d 333. Civil Rights 1395(1)

Allegations by plaintiff that physicians at municipal hospital where he was born had acted with reckless disregard and deliberate indifference to his rights by inducing labor and delivering plaintiff vaginally with Simpson forceps, even though plaintiff's mother told physicians that she could not give birth vaginally and was to deliver by caesarean section, failed to state violation of plaintiff's due process rights for purposes of federal civil rights action; plaintiff had no general liberty interest in bodily integrity or adequate medical treatment, mother had not been taken into custody by state, and conduct, while possibly grossly negligent, did not "shock the conscience." Colon v. Ramirez, D.Puerto Rico 1996, 913 F.Supp. 112, affirmed 107 F.3d 62. Constitutional Law 274(2); Health 684

Ambulance driver's conduct of driving through red light while responding to emergency cardiac call which resulted in collision with plaintiff's vehicle did not shock the conscience, and thus did not rise to level of violation of substantive due process cognizable under § 1983. Parton v. City of Bentonville, W.D.Ark.1995, 901 F.Supp. 1440 . Automobiles 175(1); Constitutional Law 253(1)

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42 U.S.C.A. § 1983

Due process clause of Fourteenth Amendment does not grant right to state-provided emergency ambulance service, and, thus, heirs of person who died, allegedly as result of failure to receive ambulance service, did not have cause of action against city under § 1983, even if city had policy of denying ambulance service to those outside of city limits. Handley v. City of Seagoville, Tex., N.D.Tex.1992, 798 F.Supp. 1267. Constitutional Law 252.5; Municipal Corporations 747(4)

Allegation that fire department's ambulance service exhibited poor response time in rendering emergency medical care did not, by itself, establish violation of right entitled to constitutional protection under § 1983. Griggs v. Lexington Police Dept., D.Mass.1987, 672 F.Supp. 36, affirmed 867 F.2d 605. Civil Rights 1395(1)

Lieutenant with city emergency medical services (EMS) responding to 911 call for help did not violate Fourteenth Amendment right to refuse medical treatment of individual with Amyotrophic Lateral Sclerosis (ALS) when he transported individual to hospital even though individual, who was unable to speak, had allegedly communicated by other means to his wish not to go to hospital; crisis atmosphere in home which lacked working mechanical ventilator necessary for individual to be able to breathe would reasonably have caused lieutenant to conclude that this was not setting in which individual could make informed and competent decision regarding his treatment. Green v. City of New York, S.D.N.Y.2004, 2004 WL 213009, Unreported. Constitutional Law 274(2); Health 909

1482. Drug testing and approval, deprivation of constitutional or statutory rights generally

Failure of state university to experiment with drug or to endorse it did not create cause of action under this section. Rutherford v. American Medical Ass'n, C.A.7 (Ill.) 1967, 379 F.2d 641, certiorari denied 88 S.Ct. 787, 389 U.S. 1043, 19 L.Ed.2d 835, rehearing denied 88 S.Ct. 1027, 390 U.S. 975, 19 L.Ed.2d 1195. Civil Rights 1070; Civil Rights 1039; Federal Courts 221

1483. Licenses, deprivation of constitutional or statutory rights generally--Generally

Statute governing deprivation of civil rights does not guarantee person right to bring federal suit for denial of due process in every proceeding in which he is denied license or permits, but rather, statute entitles person to sue only for deprivation of any rights, privileges, or immunities secured by Constitution and laws. Yale Auto Parts, Inc. v. Johnson, C.A.2 (Conn.) 1985, 758 F.2d 54. Civil Rights 1072

For purposes of this section, cases involving denials or revocations of licenses can be viewed about equally well as complaining of a deprivation of the personal liberty to pursue the profits or emoluments deriving therefrom. Eisen v. Eastman, C.A.2 (N.Y.) 1969, 421 F.2d 560, certiorari denied 91 S.Ct. 82, 400 U.S. 841, 27 L.Ed.2d 75.

1484. ---- Adoption and foster care, licenses, deprivation of constitutional or statutory rights generally

Adoption agency which alleged that it was deprived of property interest in its operating license by state agency could not maintain § 1983 action alleging violation of procedural due process; deprivation was random and unauthorized and meaningful postdeprivation remedies were available under Illinois law. Easter House v. Felder, C.A.7 (Ill.) 1990, 910 F.2d 1387, certiorari denied 111 S.Ct. 783, 498 U.S. 1067, 112 L.Ed.2d 846. Civil Rights 1326(7)

Any property interest foster parents had in foster home care license was not deprived without due process of law by suspension of license; State provided postdeprivation tort remedy to foster parents which was sufficient to fully compensate them for any property lost, and very procedural default of which foster parents complained was corrected through state procedures. Joshua v. Newell, C.A.9 (Wash.) 1989, 871 F.2d 884, certiorari denied 110 S.Ct. 545, 493 U.S. 994, 107 L.Ed.2d 542. Constitutional Law 230.3(1); Infants 226

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42 U.S.C.A. § 1983

Private adoption agency was deprived of property interest for purposes of federal civil rights provision through its former employee's use of its files and its name, as a part of conspiracy with state officials to transfer adoption agency's license to former employee's adoption agency. Easter House v. Felder, C.A.7 (Ill.) 1988, 852 F.2d 901, rehearing granted, vacated on other grounds 861 F.2d 494, on rehearing 879 F.2d 1458, vacated on other grounds 110 S.Ct. 1314, 494 U.S. 1014, 108 L.Ed.2d 490, on remand 910 F.2d 1387. Civil Rights 1072; Civil Rights 1071

1485. ---- Billiard parlors, licenses, deprivation of constitutional or statutory rights generally

Village could be held liable in action under this section for denial of billiard parlor operator's liberty interest to engage in legal business without arbitrary interference, where, though amusement device ordinance did not reach operation of conventional pool tables, council member nonetheless apparently asserted inherent municipal power to approve new business within the village irrespective of any existing regulatory ordinance and solely upon unmotivated and unreasonable opinions of the business. Sanderson v. Village of Greenhills, C.A.6 (Ohio) 1984, 726 F.2d 284. Civil Rights 1350

1486. ---- Charities, licenses, deprivation of constitutional or statutory rights generally

Ordinance prohibiting solicitation and collection of funds for charitable purposes except under direction of city council, but expressly permitting one named charity to conduct annual campaign for funds, was repugnant to U.S.C.A.Const. Amend. 14 as applied to plaintiff charity, in that it did not contain definite standards governing action of city council in granting or withholding permit for charitable fund raising and exemption of named charity constituted deprivation of equal protection. Adams v. City of Park Ridge, C.A.7 (Ill.) 1961, 293 F.2d 585. Constitutional Law 250.5; Constitutional Law 238(1)

1487. ---- Drivers, licenses, deprivation of constitutional or statutory rights generally

United States Supreme Court's *Parratt* decision is restricted to cases where it is impossible for the state to provide predeprivation procedural due process before a person is unpredictably deprived of his liberty or property interest, and did not bar suit by motorist who alleged that she was denied due process in proceedings which resulted in revocation of her driver's license. Plumer v. State of Md., C.A.4 (Md.) 1990, 915 F.2d 927. Civil Rights 1318; Civil Rights 1321

Chicago Public Vehicle License Commission failed to accord applicant due process when it denied him a public chauffeur's license on basis of 14-year-old psychiatric records and without checking applicant's present mental condition or showing him the "evidence against him." Freitag v. Carter, C.A.7 (Ill.) 1973, 489 F.2d 1377. Constitutional Law 287.3

If officials treat in good faith the suspension of an automobile operator's license as a matter of ordinary procedure, even if they might be thought to have been overdemanding in their requirements for reinstatement of license, licensee has no federal claim, but if officials employ their official powers for purpose of injuring the licensee, rather than to serve proper ends of their governmental duties, licensee might well have a claim under this section. Moran v. Bench, C.A.1 (Mass.) 1965, 353 F.2d 193, certiorari denied 86 S.Ct. 1341, 384 U.S. 906, 16 L.Ed.2d 359 . Civil Rights 1072

Commissioner of Virginia Department of Motor Vehicles acted properly pursuant to Virginia statutory authority in including information regarding driver's state conviction for driving under the influence (DUI) in driver's record, requiring driver to meet conditions for license reinstatement, and revoking driver's license, even assuming that, as driver alleged in § 1983 action, he was wrongfully convicted and Commissioner knew or should have known that; Commissioner had no authority to stray from statutory provisions. Edwards v. Oberndorf, E.D.Va.2003, 309 F.Supp.2d 780, affirmed 63 Fed.Appx. 756, 2003 WL 21224212. Automobiles 144.1(1.11); Automobiles

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144.2(1); Automobiles 144.3

Motorist's due process rights were not violated in connection with suspension of his driver's license for failure to pay a fine imposed by an administrative tribunal, despite his claims that he never received a notice indicating that his license would be suspended as of a specified date unless he paid his fine by that date, and that the notice should have provided additional information as to procedures by which he could appeal or contest the suspension; defendant officials acted reasonably in providing for the notice to be sent by regular mail to the motorist's current address on file, and the motorist was afforded a hearing on his underlying speeding violation, could have appealed his conviction on that offense, and was given 14 days to pay the fine imposed as a result of the conviction. Evans v. City of New York, S.D.N.Y.2004, 308 F.Supp.2d 316, affirmed 123 Fed.Appx. 433, 2005 WL 348377. Automobiles 144.2(2.1); Constitutional Law 287.3

1488. ---- Food vendors, licenses, deprivation of constitutional or statutory rights generally

Refusal of village officials to issue individual a renewal license for her mobile food vending business was not a basis for alleging a conspiracy claim under civil rights statute when individual was required by Illinois law to obtain a certificate of registration from the Illinois Department of Revenue in order to lawfully engage in retail sale of tangible personal property and, without such a certificate, had no right of which she could be deprived by village officials. Vaden v. Village of Maywood, Ill., C.A.7 (Ill.) 1987, 809 F.2d 361, certiorari denied 107 S.Ct. 2489, 482 U.S. 908, 96 L.Ed.2d 381. Conspiracy 7.5(2)

1489. ---- Fortune tellers, licenses, deprivation of constitutional or statutory rights generally

City council's denial of request for conditional use permit to operate fortune telling and palmistry business, a business permitted with a license specified under the city code, was arbitrary, irrational, and unconstitutional. Marks v. City Council of City of Chesapeake, Va., E.D.Va.1988, 723 F.Supp. 1155, affirmed 883 F.2d 308. Zoning And Planning 384.1

1490. ---- Gambling, licenses, deprivation of constitutional or statutory rights generally

Gaming Commission's notification to all state licensees, that gaming license applicants were no longer able to conduct business in gaming industry in the state, did not invade applicants' constitutional liberty interest in reputation, and thus did not give rise to § 1983 liability, in that Commission's letter did not state any reasons for denial and did not even state that applicants had been declared unsuitable. Kraft v. Jacka, C.A.9 (Nev.) 1989, 872 F.2d 862. Civil Rights 1038; Constitutional Law 287.2(1)

1491. ---- Gun dealers, licenses, deprivation of constitutional or statutory rights generally

Plaintiff could not obtain damages under this section, a tort statute, albeit a constitutional tort statute--for the loss of his municipal license as a gun seller, when sections 922 and 923 of Title 18 forbade him to sell guns. Baer v. City of Wauwatosa, C.A.7 (Wis.) 1983, 716 F.2d 1117. Civil Rights 1034; Civil Rights 1072

1492. ---- Liquor, licenses, deprivation of constitutional or statutory rights generally

Even assuming that city's current liquor license revocation process amounted to a procedural deprivation, gentlemen's clubs whose liquor licenses were the subjects of revocation hearings did not have procedural due process claim cognizable in federal civil rights action, where state provided adequate means by which to remedy any allegedly unlawful deprivation, by means of petition for certiorari to review city's liquor license decision. Foxy Lady, Inc. v. City of Atlanta, Ga., C.A.11 (Ga.) 2003, 347 F.3d 1232. Constitutional Law 287.2(3); Intoxicating Liquors 108.1

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Municipal ordinance, that restricted sale or consumption of alcohol on premises of businesses that served as venues for adult entertainment, was reasonable attempt to reduce or eliminate undesirable "secondary effects" associated with barroom adult entertainment, in § 1983 lawsuit under free speech clause of First Amendment; regulation of alcohol was within city's general police powers, regulation did not have any impact on tavern's ability to offer nude or semi-nude dancing to its patrons, and liquor prohibition was no greater than was essential to further city's substantial interest in combating secondary effects resulting from combination of nude and semi-nude dancing and alcohol. Ben's Bar, Inc. v. Village of Somerset, C.A.7 (Wis.) 2003, 316 F.3d 702. Constitutional Law 90.4(5); Intoxicating Liquors 15

Fact that California Department of Alcoholic Beverage Control initially denied liquor license did not preclude applicants from recovering in civil rights action against city officials whose protests were intended to, and did, cause Department to delay issuance of license, in view of evidence that it was Department's policy to sustain official protest if there was any color of merit to it, at least in the first instance, and in view of testimony of Department's regional director that if city officials had not protested he would have recommended initial issuance of license. Flores v. Pierce, C.A.9 (Cal.) 1980, 617 F.2d 1386, certiorari denied 101 S.Ct. 218, 449 U.S. 875, 66 L.Ed.2d 96. Civil Rights 1072

Where, about a week after beer license was issued to plaintiff, city council rescinded approval of license pending full consideration of facts by alcohol control committee at public hearing and notified plaintiff of hearing and, at the time, city had valid ordinance permitting reconsideration of prior council action in such a matter, plaintiff was not denied procedural due process or deprived of civil rights. Turner v. Thompson, C.A.5 (Ga.) 1970, 421 F.2d 771, certiorari denied 90 S.Ct. 1839, 398 U.S. 937, 26 L.Ed.2d 269. Civil Rights 1072; Constitutional Law 287.2(3)

Denial, under color of state statute, Code §§ 58-103, 58-1031, of application for retail liquor dealer's license in manner which did not meet constitutional standards of due process and equal protection constituted deprivation of rights within this section. Hornsby v. Allen, C.A.5 (Ga.) 1964, 326 F.2d 605, rehearing denied 330 F.2d 55.

Once governing authority promulgates an ordinance which outlines standards for issuance of malt-beverage license, applicants for such license possess a protectible property interest that may be basis for due process claim. McCollum v. City of Powder Springs, Ga., N.D.Ga.1989, 720 F.Supp. 985. Constitutional Law 277(1)

Liquor permits were not contracts and created no vested rights, but rather were merely temporary permits subject to revocation by power authorizing their existence, and therefore state employees' alleged conduct in interfering with or denying company opportunity to market its alcohol-infused gelatin product, by delaying approval of liquor license, did not deprive company of constitutionally protected right. BPNC, Inc. v. Taft, C.A.6 (Ohio) 2005, 147 Fed.Appx. 525, 2005 WL 1993426, Unreported. Intoxicating Liquors 99

1493. ---- Optometrists, licenses, deprivation of constitutional or statutory rights generally

Optometrist, who had availed himself of state court procedure to attack constitutionality of S.D.C.Supp. 27.0701 under which his license was revoked, could not, after failing to appeal to United States Supreme Court from adverse decision of state Supreme Court, procure in the federal district court either injunctive relief or damages for alleged civil rights violation, predicated upon alleged unconstitutionality. Norwood v. Parenteau, C.A.8 (S.D.) 1955, 228 F.2d 148, certiorari denied 76 S.Ct. 852, 351 U.S. 955, 100 L.Ed. 1478. Courts 508(2.1); Judgment 828.21(1); Judgment 828.21(1)

1494. ---- Physicians, licenses, deprivation of constitutional or statutory rights generally

Physician was not entitled to instruction that he could recover damages in § 1983 action under theory that chief administrative officer of state board of medical licensure and discipline deprived him of his property interest in

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medical license without due process by imposing additional restrictions on his authority to supervise nurse midwives at hospital; conduct that may have have deprived him of his rights was precisely the type of unauthorized and not foreseeable official conduct that state could not have prevented through imposition of predeprivation remedies. Lowe v. Scott, C.A.1 (R.I.) 1992, 959 F.2d 323. Civil Rights 1439

Physician alleged malicious or reckless taking of his property by the Nevada State Board of Medical Examiners and its individual members, acting under color of official right, and thus alleged cause of action under civil rights statute for deprivation of property secured by the Constitution of the United States, where physician alleged that the Board delayed for 17 months in providing verification to the Ohio Board of Medical Examiners that physician was in good standing, thereby rendering him unable to obtain a medical license in Ohio and preventing him from practicing in that state after he had accepted a position there, closed his practice in Nevada, and moved to Ohio. Mishler v. Nevada State Bd. of Medical Examiners, C.A.9 (Nev.) 1990, 896 F.2d 408. Civil Rights 1395(3); Civil Rights 1396

State Medical Board of Examiners' alleged violation of its own internal rules, with respect to appointment of examiner who presided over license revocation hearing, did not result in any due process deprivation that district court could address in § 1983 action brought by obstetrician whose license was revoked. Ramirez v. Ahn, C.A.5 (Tex.) 1988, 843 F.2d 864, rehearing denied 849 F.2d 1471, certiorari denied 109 S.Ct. 1545, 489 U.S. 1085, 103 L.Ed.2d 849. Civil Rights 1072

Physician whose license was revoked stated § 1983 claim against Commissioner of Education of the State of New York by alleging that Commissioner violated physician's due process and equal protection rights by disciplining him more severely than Hearing Committee had recommended, without having heard and seen witnesses who testified before Committee. Blake v. Ambach, S.D.N.Y.1987, 691 F.Supp. 646. Civil Rights 1395(1)

1495. ---- Physician staff privileges, licenses, deprivation of constitutional or statutory rights generally

Psychiatrist's property interest, under New York law, in clinical staff privileges at state psychiatric center was clearly established in 1982, when alleged deprivation of that interest occurred, for purposes of qualified immunity claimed by staff doctors allegedly liable for deprivation, given clarity of existing rule governing when benefit was property interest protected by due process, unanimity of case law in other circuits, and absence of contrary statements by Second Circuit Court of Appeals. Greenwood v. New York, Office of Mental Health, C.A.2 (N.Y.) 1998, 163 F.3d 119, on remand 2000 WL 1336281. Civil Rights 1376(3)

Health services district's exercise of supervisory power to grant, limit or deny practice privileges at government-sponsored medical facilities, by requiring physician to apply for and obtain full provisional privileges under the medical staff bylaws, did not deny a substantive constitutional liberty or property right to practice medicine or to make contracts with patients for physician's professional services. MacArthur v. San Juan County, D.Utah 2005, 416 F.Supp.2d 1098. Health 271

Complaint in which physician alleged that hospital and hospital officials had violated his First Amendment free speech rights through conspiracy of retaliatory harassment, which included refusal to recommend renewal of hospital privileges, was insufficient to state cognizable § 1983 claim against hospital's senior director of administrative services, as complaint did not mention administrator as member of board or hospital or as individual who engaged in retaliatory actions; allegation that administrator was member of hospital was too vague and conclusory to withstand motion to dismiss. Franzon v. Massena Memorial Hosp., N.D.N.Y.1997, 977 F.Supp. 160. Civil Rights 1395(1)

Physician who sued hospital and its various members based on revocation of staff privileges was not restricted to recovery of nominal damages in § 1983 claim, despite hospital's argument that physician would have been suspended for same period even if proper due process hearing had been accorded, where hospital bylaws entitled

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physician to present evidence to medical staff before adverse action could be finalized and physician's alleged offense was not listed as one warranting automatic suspension under bylaws. Medeiros v. Randolph County Hosp. Ass'n, Inc., M.D.Ala.1997, 968 F.Supp. 1469. Civil Rights 1464

1496. ---- Real estate, licenses, deprivation of constitutional or statutory rights generally

Plaintiff, who sought damages for decision of the Connecticut Real Estate Commission to deny his application for real estate license because he was a minor, was not entitled to recover under this section, even though actions of defendants, who were all officials of the Connecticut Real Estate Commission, which was established by state statute, were alleged to have been taken in exercise of their official duties, where plaintiff was not denied equal protection since there was a rational basis for distinction, and where plaintiff was not denied due process since he was afforded a hearing in which he was represented by counsel, was allowed to present evidence and was given right to cross-examine witnesses. Smith v. Walsh, D.C.Conn.1981, 519 F.Supp. 853. Civil Rights 1072

1497. ---- Utilities, licenses, deprivation of constitutional or statutory rights generally

Actions of county and its executive in seeking to influence Nuclear Regulatory Commission's decision regarding license for nuclear power facility were not in and of themselves an unlawful interference with the licensing process so as to permit utility to maintain civil rights action alleging that it was denied its federally protected right to seek license for facility. Citizens for an Orderly Energy Policy, Inc. v. Suffolk County, E.D.N.Y.1985, 604 F.Supp. 1084. Civil Rights 1072

1498. ---- Notice and hearing, licenses, deprivation of constitutional or statutory rights generally

Applicant for license for sidewalk cafe in New York City was not denied due process of law when it was not permitted to address members of Board of Estimate of City of New York when they held executive session prior to public hearing on such application, but was required to make its statements only at public hearing, where bureaucratic functionaries often substituted for board members. Fertile Land, Ltd. v. Beame, S.D.N.Y.1977, 445 F.Supp. 548. Constitutional Law 287.2(1); Food 3

1499. ---- Miscellaneous licenses, deprivation of constitutional or statutory rights generally

Action of members of city's board of aldermen in allowing new licensee to sell up to 18 used cars, after having limited former licensee to 15 cars, was not nearly grave enough to trigger constitutional concern under the equal protection clause, for purposes of § 1983 claim, where there was no evidence that the new licensee had engaged in four years of license violations, as former licensee undisputably did. Collins v. Nuzzo, C.A.1 (Mass.) 2001, 244 F.3d 246. Constitutional Law 230.3(1); Licenses 7(1)

Applicant who sought renewal of her license to act as bail bondsman's agent was not entitled to relief based on claims that county bail bond board violated her due process rights when it postponed vote on renewal due to deficiencies in application, given that applicant never appeared before board to seek approval of corrected application, despite invitation to do so, and chose not to exercise her right to appeal board's decision under Texas law. Burns v. Harris County Bail Bond Bd., C.A.5 (Tex.) 1998, 139 F.3d 513, rehearing denied. Civil Rights 1321

Owners of nursing home which had operating certificate revoked by New York State Department of Health (DOH) and sought money damages only did not sufficiently assert violation of Federal Supremacy Clause for which they could recover under § 1983, even though owners claimed DOH interfered with federal administrative process applicable to nursing homes participating in Medicare-Medicaid program, or intruded into area reserved for federal authorities by holding "premature" hearing; owners pointed to no specific federal right or federally-granted benefit or privilege that was denied them or interfered with by DOH officials. Beechwood Restorative Care Center v.

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Leeds, W.D.N.Y.2004, 317 F.Supp.2d 248, affirmed in part, vacated in part and remanded 436 F.3d 147. Civil Rights 1072; Health 276; States 18.15

Genuine issue of material fact as to validity of solid waste disposal license agreement between out-of-state disposal business and county utilities authority precluded summary judgment in business' § 1983 action against county arising out of New Jersey's "self-sufficiency" policy on solid waste disposal. Waste Management of Pennsylvania, Inc. v. Shinn, D.N.J.1996, 938 F.Supp. 1243, amended 969 F.Supp. 906. Federal Civil Procedure 2491.5

Louisiana officials were not liable for violating plaintiffs' civil rights by temporarily suspending their warehouse licenses without according adequate procedural safeguards where postdeprivation state remedies were provided which were adequate in light of fact that suspension of the licenses was not caused by conduct pursuant to established state procedure but rather by random and unauthorized action. Delahoussaye v. Seale, W.D.La.1985, 605 F.Supp. 1525, affirmed 788 F.2d 1091. Civil Rights 1072

Absent any allegation as to legitimate entitlement to stevedore license, stevedore company did not have valid due process claim against marine terminal operators in connection with denial of such license; company failed to allege entitlement to license under either state or federal law, and failed to allege anything more than expectation of license. Maritrend, Inc. v. Galveston Wharves, S.D.Tex.1993, 152 F.R.D. 543. Constitutional Law 287.2(1)

1500. Hospital privileges, deprivation of constitutional or statutory rights generally

Even though physician's initial criticisms of county hospital were protected by First Amendment as matter of public concern, medical staff had sufficient foundation to recommend that physician's privileges at hospital be temporarily suspended pending peer review, even in absence of protected speech; physician had engaged in course of disruptive behavior over period of three to four years, which included nonprotected personal attacks on various people connected with hospital. Smith v. Cleburne County Hosp., C.A.8 (Ark.) 1989, 870 F.2d 1375, rehearing denied, certiorari denied 110 S.Ct. 142, 493 U.S. 847, 107 L.Ed.2d 100. Constitutional Law 90.1(1); Health 273

Hospital's entering into exclusive contract with professional medical corporation for provision of anesthesiology services on a 24-hour-per-day, seven-day-per-week basis was reasonable and justified by community's and hospital's needs, and did not violate civil rights of physician who was denied anesthesiology privileges at hospital. Capili v. Shott, C.A.4 (W.Va.) 1980, 620 F.2d 438. Civil Rights 1032

If defendants, commissioner of hospitals of city, deputy commissioner and president of union local, conspired to bring about removal of physician from his position with city hospital and to deny him hearing on notice prior to discharge while he was falsely being charged with anti-Negro bias and with abusing Negro subordinates and if department of hospitals advised other city hospitals by letter not to employ physician, defendants would be guilty of violating this section providing civil action for deprivation of rights in that they would have deprived physician of due process. Birnbaum v. Trussell, C.A.2 (N.Y.) 1966, 371 F.2d 672. Civil Rights 1128

Surgeon's allegations that, at time hospital's medical executive committee and surgical case review committee recommended suspension of his medical privileges at hospital, some of the committees' members were his surgical competitors who had been involved in dispute over his hiring of additional surgeons were sufficient to state due process claim in his action against hospital under §§1983. Braswell v. Haywood Regional Medical Center, W.D.N.C.2005, 352 F.Supp.2d 639. Constitutional Law 275(1.5); Health 273

County medical center and private corporation providing physicians to center had not violated discharged physician's due process rights by revoking staff privileges without hearing; there was no absolute property right as to practicing privileges, none was provided for in contract, and in fact understanding of parties was such that physician knew he could lose staff privileges if discharged by employer. Bloom v. Hennepin County,

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D.Minn.1992, 783 F.Supp. 418. Constitutional Law 275(1.5); Health 273

Podiatrist was not deprived of federal civil rights by being denied staff membership on public hospital's medical staff. Feldman v. Jackson Memorial Hospital, S.D.Fla.1981, 509 F.Supp. 815, affirmed 752 F.2d 647, certiorari denied 105 S.Ct. 3504, 472 U.S. 1029, 87 L.Ed.2d 635. Civil Rights 1032; Civil Rights 1054

Requirement that a physician carry malpractice insurance as a condition of his employment at hospital is not per se unreasonable and does not violate physician's civil rights, and, a hospital which requires a physician to carry malpractice insurance as a condition of his employment at hospital must be afforded wide discretion in setting a proper amount. Pollock v. Methodist Hospital, E.D.La.1975, 392 F.Supp. 393.

1501. Medical malpractice, deprivation of constitutional or statutory rights generally

If claim arising out of alleged inadequate treatment of patient at state mental hospital was only one of negligence or malpractice at most, this section authorizing action for deprivation of rights would not afford relief. Goodman v. Parwatikar, C.A.8 (Mo.) 1978, 570 F.2d 801. Civil Rights 1037

Medical malpractice action will not lie under this section. Bass v. Sullivan, C.A.5 (Ala.) 1977, 550 F.2d 229, certiorari denied 98 S.Ct. 195, 434 U.S. 864, 54 L.Ed.2d 138. Civil Rights 1034

To state claim under this section, plaintiff was bound to allege that conduct fairly attributable to state had resulted in deprivation of rights secured by Constitution, and allegations that plaintiff received inadequate medical care by incompetent staff of hospital and that notwithstanding staff's assurance that they would comply with her instructions to baptize newborn child the staff nevertheless failed to do so and child still unbaptized died shortly thereafter failed to show either deprivation of constitutional right or conduct fairly attributable to state. Korevec v. Warren Hosp., E.D.Pa.1983, 559 F.Supp. 29, affirmed 729 F.2d 1447. Civil Rights 1395(1)

1502. Law practice, deprivation of constitutional or statutory rights generally--Generally

License to practice law, continuation of such license, regulation of practice, and procedure for disbarment and discipline, are within province of states. Saier v. State Bar of Mich., C.A.6 (Mich.) 1961, 293 F.2d 756, certiorari denied 82 S.Ct. 388, 368 U.S. 947, 7 L.Ed.2d 343. Attorney And Client 3; Attorney And Client 32(3); Attorney And Client 34

Right to practice law in state courts was not privilege granted by federal Constitution or laws within this section. Mitchell v. Greenough, C.C.A.9 (Wash.) 1938, 100 F.2d 184, rehearing denied 100 F.2d 1006, certiorari denied 59 S.Ct. 788, 306 U.S. 659, 83 L.Ed. 1056.

States cannot exclude person from practice of law in manner or for reasons that contravene due process or equal protection, and state may not, under guise of regulating legal profession, ignore constitutional rights. Louis v. Supreme Court of Nevada, D.C.Nev.1980, 490 F.Supp. 1174. Constitutional Law 230.3(9); Constitutional Law 287.2(5)

1503. ---- Bar admission generally, law practice, deprivation of constitutional or statutory rights generally

Attorney who was admitted to state bars of two states having comity with North Carolina had no comity barrier to comity admission to North Carolina's bar, did not risk exclusion from practice of law by state action in North Carolina by virtue of state's comity requirement, and suffered no injury in fact from that requirement, and thus could not challenge constitutionality of comity requirement in §§ 1983 action. Morrison v. Board of Law Examiners of State of North Carolina, E.D.N.C.2005, 360 F.Supp.2d 751, reversed 2006 WL 1644010. Attorney And Client 10; Constitutional Law 42.1(6)

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42 U.S.C.A. § 1983

Requirement of Oregon Board of Bar Examiners that applicant for admission to Oregon Bar disclose expunged offenses was a rational and reasonable method by which to promote the state purpose of determining moral character of applicant and such requirement did not violate applicant's constitutional rights. Wilson v. Wilson, D.C.Or.1976, 416 F.Supp. 984, affirmed 97 S.Ct. 1540, 430 U.S. 925, 51 L.Ed.2d 768. Attorney And Client 5

1504. ---- Bar examination, law practice, deprivation of constitutional or statutory rights generally

Even if the district court had subject-matter jurisdiction to determine whether South Carolina bar examiners acted arbitrarily and capriciously in failing two black applicants, such applicants, who satisfied all requirements for admission to South Carolina bar except that they received failing scores on bar examination, but who showed factually only that two other applicants at other times appeared to have received more favorable treatment in grading than that which was afforded them, were not entitled to individual relief in action challenging constitutionality of South Carolina bar exam as applied. Richardson v. McFadden, C.A.4 (S.C.) 1977, 563 F.2d 1130, certiorari denied 98 S.Ct. 1606, 435 U.S. 968, 56 L.Ed.2d 59. Attorney And Client 6

In absence of showing that applicant had been denied admission to state bar for a constitutionally impermissible reason, applicant was not entitled to have federal court overrule judgment of state board of law examiners on theory that, in light of applicant's background, it was impossible for him to have failed bar examination five times and, therefore, he must have passed and should be so certified. Whitfield v. Illinois Bd. of Law Examiners, C.A.7 (Ill.) 1974, 504 F.2d 474. Attorney And Client 7; Injunction 83

California committee of bar examiners refusal to certify applicant to California Supreme Court for admission to bar because of his failure to pass essay type bar examination was not a deprivation of rights, privileges or immunities secured by the Constitution or laws of the United States which would permit applicant to institute a suit under this section. Chaney v. State Bar of Cal., C.A.9 (Cal.) 1967, 386 F.2d 962, certiorari denied 88 S.Ct. 1262, 390 U.S. 1011, 20 L.Ed.2d 162, rehearing denied 88 S.Ct. 1803, 391 U.S. 929, 20 L.Ed.2d 670, certiorari denied 99 S.Ct. 1262, 440 U.S. 927, 59 L.Ed.2d 483. Civil Rights 1072

Allegations that Justices of Louisiana Supreme Court engaged in unethical conduct in disposition of applicant's petition for writ allowing him to take bar exam, in that Justices had conflict of interest as members of State Bar Association before them as adversary party, had private communications with members of Association regarding petition, allowed Association to file pleadings without serving copies thereof on applicant and that this conduct went so far as to deny applicant fair hearing in violation of due process, did not state claim for deprivation of civil rights. Moity v. Louisiana State Bar Ass'n, E.D.La.1976, 414 F.Supp. 180, affirmed 537 F.2d 1141, rehearing denied 540 F.2d 1085. Civil Rights 1395(1)

1505. ---- Discipline of attorneys, law practice, deprivation of constitutional or statutory rights generally

Disbarred lawyers failed to state § 1983 claim against another attorney; upon his assignment to Attorney Discipline Board (ADB) panel to hear complaints against plaintiff lawyer, defendant attorney immediately disqualified himself because of his firm's involvement with litigation concerning plaintiff, and defendant played no role in this litigation. Ortman v. Thomas, E.D.Mich.1995, 894 F.Supp. 1104, affirmed 99 F.3d 807. Civil Rights 1072

Neither the civil rights nor the constitutional question jurisdiction of a federal court may be construed as authorizing the court to pass upon a procedure employed by state courts to discipline attorneys who practice before them or to interfere with their judgments in such matters. Mildner v. Gulotta, E.D.N.Y.1975, 405 F.Supp. 182, affirmed 96 S.Ct. 1489, 425 U.S. 901, 47 L.Ed.2d 751. Federal Courts 172; Federal Courts 221

1506. ---- Legal malpractice, law practice, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Even if city attorney committed legal malpractice under state law in representing both fire department recruit and members of police and fire merit commission in state law civil suit brought against them for intentional tort, and even if attorney was a state actor, such conduct did not rise to the level of creating a violation of recruit's due process rights so as to render attorney liable under civil rights statute. Hutcherson v. Smith, C.A.7 (Ind.) 1990, 908 F.2d 243. Constitutional Law 278.4(1); Municipal Corporations 170

Claim that defendant, as counsel for plaintiff in state murder prosecution, was liable for malpractice and negligence in permitting plaintiff to be tried without valid grand jury indictment having been returned against him amounted to no more than a tort claim for malpractice and as such was not cognizable under this section. Smith v. Clapp, C.A.3 (N.J.) 1970, 436 F.2d 590. Civil Rights 1326(10)

Complaint alleging that defendant attorney inadequately represented plaintiff's interests in certain cases was, in effect, action for legal malpractice, and was not cognizable under this section since there was total absence of state action required by that provision. Sommer v. Rankin, E.D.N.Y.1978, 449 F.Supp. 66. Civil Rights 1395(1)

Complaint in action which was essentially a legal malpractice action stated claim for deprivation of rights under this section. Strain v. Citizens Bank & Trust Co., E.D.La.1975, 68 F.R.D. 697. Civil Rights 1395(1)

1507. ---- Miscellaneous claims, law practice, deprivation of constitutional or statutory rights generally

Mere abstract need or desire to represent state criminal defendant did not rise to level of a constitutionally protected property right invoking due process protection in connection with refusal to permit out-of-state counsel to undertake the desired representation. Bundy v. Rudd, C.A.5 (Fla.) 1978, 581 F.2d 1126, certiorari denied 99 S.Ct. 1992, 441 U.S. 905, 60 L.Ed.2d 373. Constitutional Law 277(1)

Attorney did not have federally protected right not to be opposed by pleadings ghost written by undisclosed attorney, when suing party allegedly appearing pro se, precluding suit against undisclosed attorney under § 1983. Shalaby v. Jacobowitz, N.D.Cal.2003, 2003 WL 1907664, Unreported, affirmed 138 Fed.Appx. 10, 2005 WL 1220523. Civil Rights 1056

1508. Employment, deprivation of constitutional or statutory rights generally--Generally

County employee did not have § 1983 cause of action against his employer, supervisor, or others in his department, based on claim that his position was abolished as a result of his running for public office, in violation of his First and Fourteenth Amendment rights, where employee's position with county was replaced at least a month before employee began campaign, and employee did not contend that he told anyone before that time that he was going to run for office. Nisenbaum v. Milwaukee County, C.A.7 (Wis.) 2003, 333 F.3d 804. Constitutional Law 82(11); Constitutional Law 278.4(3); Counties 67

Allegations of child care providers' former employees that "indicated" findings made during Illinois Department of Children and Family Services' (DFCS) child neglect investigations effectively precluded them from obtaining employment in child-care services because state laws strongly discouraged or effectively prohibited hiring of individual recorded in central register sufficiently alleged violation of liberty interest to pursue occupation in field of their choice, as required to support their civil rights claims against DFCS employees. Doyle v. Camelot Care Centers, Inc., C.A.7 (Ill.) 2002, 305 F.3d 603. Civil Rights 1395(8)

Employee of private nonprofit corporation providing treatment and support to alcohol and drug abusers stated a claim under § 1983 that he was deprived of his property interest in continued employment when state and federal agents intentionally coerced corporation to fire him, by conditioning further funding of corporation on requirement that he be fired. Merritt v. Mackey, C.A.9 (Or.) 1987, 827 F.2d 1368. Civil Rights 1395(8)

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42 U.S.C.A. § 1983

Denial of employment by private hospitals, even if such denial inhibited free speech, as result of alleged conspiracy with head nurse of municipal hospital following plaintiff-nurse's criticisms of hospital practices did not state cause of action for deprivation of civil rights, or constitute denial of equal protection, where there was alleged no racial or class-based discrimination. Place v. Shepherd, C.A.6 (Tenn.) 1971, 446 F.2d 1239. Conspiracy 1.1; Constitutional Law 238(2)

Equal protection clause was not appropriate vehicle for employment retaliation claim, by retired judge, that he was denied appointment as judicial hearing officer in retaliation for his conduct while on bench; suit should have been brought under First Amendment or Title VII. Levine v. McCabe, E.D.N.Y.2005, 357 F.Supp.2d 608. Civil Rights 1502

Municipal employee established prima facie case that defendant municipality's denial of proposed transfer of employee to position in Commonwealth department was political discrimination in violation of First Amendment; employee and defendant mayor were political rivals in sensationalistic mayoral campaign, mayor made public statements that employee, his political opponent, was a rat, a thief, and a crook, and mayor's secretary allegedly told employee that his transfer request was unimportant to the mayor. Rivera Torres v. Ortiz Velez, D.Puerto Rico 2002, 306 F.Supp.2d 76, appeal denied 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Constitutional Law 82(11); Territories 23

Workforce Investment Act (WIA) provisions prohibiting discrimination based on political affiliation or belief and requiring adoption of implementing regulations did not expressly bar § 1983 action for political discrimination brought by former employee of municipal consortium operating under the WIA. Torres Ramos v. Consorcio De La Montaña, D.Puerto Rico 2003, 286 F.Supp.2d 126. Civil Rights 1126

Workforce Investment Act (WIA) regulations requiring that recipients of financial assistance under WIA establish local grievance procedures and providing other safeguards did not expressly foreclose § 1983 claims by employees against municipal consortium alleging political discrimination. Delgado-Greo v. Trujillo, D.Puerto Rico 2003, 270 F.Supp.2d 189, appeal dismissed as improvidently granted 395 F.3d 7. Civil Rights 1126; Civil Rights 1320

In action under § 1983, existence of legitimate, constitutionally protectable claim of entitlement to property interest in continued employment is to be determined in accordance with state law. Anderson-Free v. Steptoe, M.D.Ala.1997, 970 F.Supp. 945. Federal Courts 411

Even if applicant for position as director of private real estate school had entitlement to whatever protection substantive due process afforded, applicant did not establish that Pennsylvania Real Estate Commission acted in arbitrary and capricious manner in denying application; after reading letters of recommendation, Commission could rationally have concluded that applicant did not have adequate experience in area of educational supervision and administration to properly run real estate school such that students' investments and public trust would be well served, and Commission could rationally have concluded that applicant's term as school board member did not provide him with sufficient experience in educational supervision and administration to run real estate school. Black v. Barnes, M.D.Pa.1991, 776 F.Supp. 1000. Colleges And Universities 7

N.J.S.A. Const. Art. 1, par. 1 providing, inter alia, that all persons have certain natural and unalienable rights, among which are those of enjoying and defending life and property, does not guarantee a person's expectation in holding a particular job, and therefore store customer, who was detained by store personnel when suspected of shoplifting, was not deprived of any constitutional right to property when actions of store owner subsequent to incident led to loss of his job, and thus customer could not maintain action under this section against store owner on that basis. Gipson v. Supermarkets General Corp., D.C.N.J.1983, 564 F.Supp. 50. Civil Rights 1037; Constitutional Law 88

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42 U.S.C.A. § 1983

Former police officers' speech to the media on alleged corruption in the police department, including allegations that police chief "fixed" parking tickets, that chief helped friends receive lower fines for moving violations, and that chief received an undeserved bonus, concerned matters of public concern, for purposes of officers' §§ 1983 claim alleging retaliation in violation of the First Amendment. Graham v. City of Mentor, C.A.6 (Ohio) 2004, 118 Fed.Appx. 27, 2004 WL 2711031, Unreported, rehearing en banc denied, certiorari denied 126 S.Ct. 340, 163 L.Ed.2d 51. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Allegations by former assistant high school principal, who was terminated after his required state certification lapsed, that school board and school district destroyed his freedom to take advantage of other employment opportunities failed to state due process claim under § 1983 for harm to reputation; loss of future employment opportunities was insufficient to establish protected liberty interest. Moiles v. Marple Newtown School Dist., E.D.Pa.2002, 2002 WL 1964393, Unreported. Constitutional Law 278.5(3); Schools 147.28

County employee's right not to be retaliated against for filing charge of discrimination was created by employment discrimination statutes, not by Constitution, and thus her claim that county retaliated against her could not be brought under § 1983. Blunt v. McKinstry, C.A.7 (Wis.) 2002, 54 Fed.Appx. 227, 2002 WL 31856363, Unreported. Civil Rights 1249(1)

1509. ---- Migrant workers, employment, deprivation of constitutional or statutory rights generally

This section could be utilized by migrant workers to seek redress for denial of rights of an essentially personal nature, touching such things as living and eating conditions and work at starvation levels and in degrading poverty, as against contention that this section was not available since type of rights which plaintiffs alleged they were denied or deprived of were not those protected under this section. Gomez v. Florida State Employment Service, C.A.5 (Fla.) 1969, 417 F.2d 569. Civil Rights 1120

1510. ---- Safety of work environment, employment, deprivation of constitutional or statutory rights generally

California governor did not violate federal law by notifying Secretary of Department of Labor of California's withdrawal of state Occupational, Safety and Health plan, as needed to recover award of attorney fees incurred in civil rights action under § 1988, since federal law regulated duties and responsibilities of federal officials only, and governor did not act in concert with federal officials to deprive California workers of federal rights to notice and hearing for withdrawal of California plan. Cabrera v. Martin, C.A.9 (Cal.) 1992, 973 F.2d 735. Civil Rights 1479

1511. ---- Unemployment benefits, deprivation of constitutional or statutory rights generally

Unemployment compensation claimant did not establish § 1983 claim that Kansas Employment Security Board of Review deprived him of due process by denying him unemployment benefits; claimant's claims made their way through agency procedure and through every level of the state court system and the process that claimant received was all that he was due. Blackford v. Kansas Employment Sec. Bd. of Review, D.Kan.1996, 938 F.Supp. 739, affirmed 113 F.3d 1245. Civil Rights 1321

State's use of United States Department of Labor figures in determining areas of high persistent unemployment in connection with administering state policy of not providing unemployment benefits to claimants who moved to such area was proper. Galvan v. Catherwood, S.D.N.Y.1971, 324 F.Supp. 1016, affirmed 490 F.2d 1255, certiorari denied 94 S.Ct. 2652, 417 U.S. 936, 41 L.Ed.2d 240.

Where recipient of unemployment insurance had been accorded due process in state proceedings in accordance with state law before it was finally affirmed by state courts that he had made false statements in connection with

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application and was not totally unemployed as required by law, no deprivation of federal constitutional rights was shown, despite recipient's contention that he had been found guilty of fraud and misrepresentation without due process of law and in violation of his constitutional rights. Saffioti v. Catherwood, S.D.N.Y.1969, 305 F.Supp. 989, affirmed 417 F.2d 971, certiorari denied 90 S.Ct. 988, 397 U.S. 956, 25 L.Ed.2d 140, rehearing denied 90 S.Ct. 1273, 397 U.S. 1031, 25 L.Ed.2d 545, rehearing denied 90 S.Ct. 1701, 398 U.S. 915, 26 L.Ed.2d 82. Constitutional Law 278.7(3)

1512. ---- Workers' compensation, employment, deprivation of constitutional or statutory rights generally

Workers' compensation claimant failed to state claim against Connecticut Workers' Compensation Commission and Commissioner under § 1983 based on alleged violation of equal protection rights; claimant failed to allege membership in constitutionally protected suspect or quasi-suspect group and actions taken by Commission and Commissioner were taken in accordance with Connecticut workers' compensation system and statutes regulating payment of benefits, a scheme rationally related to Connecticut's legitimate interest in regulating costs of workers' compensation. Gyadu v. Workers' Compensation Com'n, D.Conn.1996, 930 F.Supp. 738, affirmed 129 F.3d 113, certiorari denied 119 S.Ct. 49, 525 U.S. 814, 142 L.Ed.2d 38. Civil Rights 1395(1)

Claimants' complaint, alleging that recent amendments to state's Workers' Compensation Act denied them due process of law in that amendments had prevented them from obtaining hearing on claims stated cause of action under section 1983, though denial of hearing was only "temporary" until such time as special magistrates could be appointed and trained to hear claims. Michigan Injured Workers v. Blanchard, W.D.Mich.1986, 647 F.Supp. 571. Civil Rights 1395(1)

1513. Firefighters, deprivation of constitutional or statutory rights generally

Revocation of membership in volunteer fire department, whether such membership was right or privilege, was kind of injury that could support action under 1871 civil rights statute. Adams v. Bain, C.A.4 (Va.) 1982, 697 F.2d 1213 . Civil Rights 1032

1514. Military service, deprivation of constitutional or statutory rights generally--Generally

No remedy for civil rights claims against state officials under § 1983 is available for injuries that arise out of or in the course of activity incident to military service, and the same is true under kindred statutes, including the federal whistleblower statute; such claims are not justiciable. Wright v. Park, C.A.1 (Me.) 1993, 5 F.3d 586. Civil Rights 1032

1515. ---- National guard, military service, deprivation of constitutional or statutory rights generally

Injury to Alabama National Guard officer when he was not retained pursuant to annual review by selective retention board (SRB) was incident to service in the Alabama Guard, and thus was nonjusticiable, precluding injunctive and declaratory relief on theory officer was subjected to racial discrimination and denied equal protection and due process. Speigner v. Alexander, C.A.11 (Ala.) 2001, 248 F.3d 1292, certiorari denied 122 S.Ct. 647, 534 U.S. 1056, 151 L.Ed.2d 565. Civil Rights 1455

National guard member did not have a property or liberty interest protected by the due process clause in continued military service in the national guard, nor did he have constitutionally protected right to reenlist, and in view of Congress' mandate that a technician be discharged if his military enlistment expired, national guard member, barred from reenlisting, failed to state § 1983 claim regarding action barring his reenlistment and his termination as civilian technician. Holdiness v. Stroud, C.A.5 (La.) 1987, 808 F.2d 417. Constitutional Law 277(2)

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42 U.S.C.A. § 1983

National guard member's action alleging that his nonretention was the result of discrimination was actionable under this section even though nonretention was accomplished under guidance of federal regulation where one of the named defendants was the state governor as commander-in-chief of the National Guard, other defendants were part of the state militia, state legislature had set up extensive statutory scheme to organize and regulate its National Guard and the federal regulation appeared to be limited in effect to presenting statement of policy to guide state national guard commanders and did not divest state officers of any authority under state law they might hold. Gant v. Binder, D.C.Neb.1984, 596 F.Supp. 757, affirmed 766 F.2d 358. Civil Rights 1327

Civil rights action by air national guard officer challenging the withdrawal of his federal recognition as guard member and officer was appropriate for judicial review, where substantial claims of infringement of due process and free speech rights were raised, potential injury to officer was substantial if review was refused in that it would result in loss of both his military and civil position of guard technician, interference with military functions would be slight and issues raised did not involve specialized military expertise or discretion but required only interpretation of statutes and regulations and application of basic constitutional principles. Bollen v. National Guard Bureau, W.D.Pa.1978, 449 F.Supp. 343. Civil Rights 1032

1516. Security guards, deprivation of constitutional or statutory rights generally

Corporate security agency, alleging that the Private Detective Act of Puerto Rico deprived it of liberty and property without due process on ground that prohibitions therein apply to it but not to guards or detectives employed other than by security agents was asserting a right encompassed by this section. Wackenhut Corp. v. Union De Tronquistas De Puerto Rico, Local 901, D.C.Puerto Rico 1971, 336 F.Supp. 1058. Civil Rights 1028

1517. Cable television, deprivation of constitutional or statutory rights generally

Jury could conclude that cable television company's decision to shut down its operations for a few days in reaction to notice from city building inspector giving it and its customers 15 days to cease use of the cable television system was a reasonable reaction and that the damages resulting from the shutdown were thus a result of the violation of its civil rights by the city in sending the violation notices. Video Intern. Production, Inc. v. Warner-Amex Cable Communications, Inc., C.A.5 (Tex.) 1988, 858 F.2d 1075, rehearing denied 866 F.2d 1417, certiorari denied 109 S.Ct. 1955, 490 U.S. 1047, 104 L.Ed.2d 424, certiorari denied 109 S.Ct. 3189, 491 U.S. 906, 105 L.Ed.2d 697. Civil Rights 1073; Civil Rights 1462

Independent television programmer that brought action against cable television company, city and state, stemming from company's purported refusal to cablecast programs without revised access user contract, failed to establish that company's actions violated federal Cable Act, and thus programmer could not maintain § 1983 claim against city and state, since programmer was not deprived of any right, privilege, or immunity secured by constitution or laws of United States. Goldberg v. Cablevision Systems Corp., E.D.N.Y.2003, 281 F.Supp.2d 595. Civil Rights 1041; Telecommunications 1246

1518. Collective bargaining, deprivation of constitutional or statutory rights generally

For purposes of asserting actionable claim under § 1983, right to bargain collectively belongs not only to union but also to individual employee. Livadas v. Aubry, C.A.9 (Cal.) 1991, 987 F.2d 552, amended on denial of rehearing, certiorari granted 114 S.Ct. 907, 510 U.S. 1083, 127 L.Ed.2d 97, motion granted 114 S.Ct. 1395, 511 U.S. 1016, 128 L.Ed.2d 69, motion granted 114 S.Ct. 1535, 511 U.S. 1028, 128 L.Ed.2d 188, reversed 114 S.Ct. 2068, 512 U.S. 107, 129 L.Ed.2d 93, on remand 30 F.3d 1252. Civil Rights 1331(5)

1519. Competition with private businesses, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Absent discriminatory intent, there was no violation of this section resulting from city's competing with rubbish collection business by entering business of rubbish collection. Heille v. City of St. Paul, Minn., D.C.Minn.1981, 512 F.Supp. 810, affirmed 671 F.2d 1134. Civil Rights 1052

1520. Contracts, deprivation of constitutional or statutory rights generally--Generally

Contractor did not allege viable § 1983 claim premised on deprivation of property without due process by alleging that state university failed to give it contractually required notice of cancellation of contract prior to expiration of contract term; contractor's claim was premised on simple breach of contract, and such breach did not rise to level of constitutional deprivation. Dover Elevator Co. v. Arkansas State University, C.A.8 (Ark.) 1995, 64 F.3d 442. Civil Rights 1041

Fact that funds used by private, nonprofit corporation to conduct mosquito spraying program were derived from public participation of funds and assessments for areas actually sprayed did not convert its status to that of "public corporation;" thus, dusting pilot failed to establish right under State Preference Act [W.S.1977, § 16-6-102] to award of contract from corporation on ground that he was lowest bidder, and thus did not have property right to support his action under § 1983. Wright v. No Skiter Inc., C.A.10 (Wyo.) 1985, 774 F.2d 422. Civil Rights 1041

A simple breach of contract claim does not give rise to a claim under §§ 1983. Gannett Fleming West, Inc. v. Village of Angel Fire, D.N.M.2004, 375 F.Supp.2d 1104. Civil Rights 1041

Legal aid provider's agreement with city giving city right to reduce provider's caseload and to transfer that caseload to other entities was legitimate waiver of any rights pursuant to National Labor Relations Act (NLRA) that provider might have asserted in challenge to city's issuance of requests for proposals (RFPs) for contracts to provide legal representation for indigent criminal defendants. Legal Aid Society v. City of New York, S.D.N.Y.2000, 114 F.Supp.2d 204, reconsideration denied 2001 WL 11063. Labor And Employment 1286

Breach of contract claim does not give rise to § 1983 constitutional claim. Boyce v. Augusta-Richmond County, S.D.Ga.2000, 111 F.Supp.2d 1363. Civil Rights 1041

Not all injuries resulting from official misconduct give rise to constitutional violation which is cognizable in action under § 1983, and ordinary breach of contract by state officers, for example, does not necessarily establish constitutional violation. McCormack Sand Co. v. Town of North Hempstead Solid Waste Management Authority, E.D.N.Y.1997, 960 F.Supp. 589. Civil Rights 1041

State may not through one of its creatures, punish or discriminate against corporation for its willingness, past or present, to make contracts with blacks; and if it does so, then person so punished or discriminated against has § 1983 right of action. Pisello v. Town of Brookhaven, E.D.N.Y.1996, 933 F.Supp. 202. Civil Rights 1041

Ordinary breach of contract is not actionable under § 1983. Blackwell v. Mayor and Com'rs of Delmar, D.Md.1993, 841 F.Supp. 151. Civil Rights 1041

Independent contractor could not state actionable claim that First Amendment rights were violated by alleged retaliatory termination of his trash hauling contract with county, where contract was neither necessary condition for contractor to do business nor guarantee that contractor would receive trash hauling business from cities within county. Umbehr v. McClure, D.Kan.1993, 840 F.Supp. 837, reversed 44 F.3d 876, rehearing denied, certiorari denied 115 S.Ct. 2616, 515 U.S. 1161, 132 L.Ed.2d 859, certiorari granted 115 S.Ct. 2639, 515 U.S. 1172, 132 L.Ed.2d 878, motion granted 116 S.Ct. 416, 516 U.S. 962, 133 L.Ed.2d 334, affirmed and remanded 116 S.Ct. 2342, 518 U.S. 668, 135 L.Ed.2d 843, dissenting opinion 116 S.Ct. 2361, 518 U.S. 668, 135 L.Ed.2d 843. Counties 129

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Parratt-Hudson doctrine did not apply to Illinois Department of Public Aid's (IDPA) cancellation of contract under which health maintenance organization (HMO) provided services to Illinois Medicaid recipients where Illinois law vested in Department authority to effect deprivation complained of and concomitant duty to initiate procedural safeguards to guard against risk of deprivation. MEDCARE HMO v. Bradley, N.D.Ill.1992, 788 F.Supp. 1460. Civil Rights 1321

Breach of contract claim was not actionable in federal civil rights action, even if independent public contractor's sole stockholder claimed that he was deprived of his civil rights when contract had been terminated. Rivera Diaz v. Puerto Rico Telephone Co., D.Puerto Rico 1989, 724 F.Supp. 1069. Civil Rights 1041

1521. ---- Availability of state remedy, contracts, deprivation of constitutional or statutory rights generally

State court action for breach of contract provided general contractor with all of the process that was due under federal constitutional principles; contractor was not entitled to predeprivation hearing before withholding of payments on construction contract and thus did not have § 1983 claim for deprivation of rights without due process of law. North Star Contracting Corp. v. Long Island Rail Road Co., E.D.N.Y.1989, 723 F.Supp. 902. Civil Rights 1321; Constitutional Law 312(4)

1522. ---- Affirmative action programs, contracts, deprivation of constitutional or statutory rights generally

Contractor which had previously been certified as a "concrete contractor" under a city's minority business enterprise program was afforded due process when the city proposed to limit certification so as to exclude the contractor's operation as a "concrete supplier"; a certification committee reviewed the contractor's evidence and, following denial of certification as a "concrete supplier," the contractor was given an opportunity to appeal and received an explanation of reasons for the denial. Baja Contractors, Inc. v. City of Chicago, C.A.7 (Ill.) 1987, 830 F.2d 667, certiorari denied 108 S.Ct. 1301, 485 U.S. 993, 99 L.Ed.2d 511. Constitutional Law 276(2)

Unsuccessful bidder for city contract, joint venture, contractors' association, and another contractor failed to establish causal connection between rejection of bids and affirmative action program of Pennsylvania Convention Center Authority and, therefore, were not entitled to monetary damages; rejection of bids resulted from legitimate construction decisions, not purchaser's alleged lack of compliance with affirmative action requirements. General Bldg. Contractors Ass'n, Inc. v. City of Philadelphia, E.D.Pa.1991, 762 F.Supp. 1195. Civil Rights 1471

1523. ---- Interference with contract rights, contracts, deprivation of constitutional or statutory rights generally

Conclusory allegation by construction contractor that contractor was effectively debarred from government contracting for period of seven years did not establish pattern or practice of exclusion by the Puerto Rico Public Housing Authority (PRPHA), as would state §§ 1983 claim against PRPHA officials for procedural due process deprivation of protected property interest, where allegation was not supported by any showing that contractor bid on any PRPHA contracts, except one for which the contractor's bid award was annulled, during the alleged seven-year period of debarment. Redondo-Borges v. U.S. Dept. of Housing and Urban Development, C.A.1 (Puerto Rico) 2005, 421 F.3d 1. Civil Rights 1395(3)

Maryland Apprenticeship and Training Council's refusal to register contractor's apprenticeship program did not constitute interference in labor-management dispute actionable under § 1983. Associated Builders and Contractors, Inc. Baltimore Metropolitan Chapter v. O'Connor, D.Md.1999, 75 F.Supp.2d 440. Civil Rights 1072

Plaintiffs alleging that Department of Hawaiian Home Lands and named persons interfered with oral contract between plaintiffs and widow of plaintiffs' grandfather under which plaintiffs would take over homestead following grandfather's death failed to state violation of federal rights essential to suit under § 1983. Naliielua v. State of

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Hawaii, D.Hawai'i 1991, 795 F.Supp. 1015, affirmed 963 F.2d 379. Civil Rights 1071

Tow truck operator who was prevented by police from towing vehicle did not have § 1983 action based upon deprivation of property rights; if officers had acted within scope of their employment, there was no actionable deprivation of property as there had been no allegation of unreasonable conduct, and if officers were not acting within scope of their employment operator had adequate postdeprivation remedy in form of state action for tortious interference with contract. Hoagy Wrecker Service, Inc. v. City of Fort Wayne, N.D.Ind.1991, 776 F.Supp. 1350. Civil Rights 1088(1); Civil Rights 1319

1524. ---- Subcontractors, contracts, deprivation of constitutional or statutory rights generally

Subcontractors who were denied access to future contracts with government telephone company could not maintain § 1983 action alleging violation of Fourteenth Amendment due process right; subcontractors did not have legitimate claim or entitlement to continue receiving contract awards. Mojica v. Galarza, D.Puerto Rico 1991, 761 F.Supp. 217. Civil Rights 1041

1525. Franchises, deprivation of constitutional or statutory rights generally

Even though towing company's complaint alleging defamation by state police officers at least minimally touched on matter of public concern and even assuming that complaint was substantial motivating factor in decision by state police to terminate company's towing assignments, and that company's status was elevated to level of state employee or franchisee, there was no violation of First Amendment rights in light of evidence that towing company's assignments would have been terminated even absent such complaint. White Plains Towing Corp. v. Patterson, C.A.2 (N.Y.) 1993, 991 F.2d 1049, certiorari denied 114 S.Ct. 185, 510 U.S. 865, 126 L.Ed.2d 144. Constitutional Law 90.1(7.2)

1526. Antitrust, deprivation of constitutional or statutory rights generally

Activity protected by *Noerr-Pennington* could not form basis of § 1983 liability. Boulware v. State of Nev., Dept. of Human Resources, C.A.9 (Nev.) 1992, 960 F.2d 793. Civil Rights 1374

1527. Banks and banking, deprivation of constitutional or statutory rights generally

Allegations in depositors' complaint, that the Director of the Nebraska Department of Banking and Finance had fraudulently induced them to deposit money in insolvent bank by requiring bank to advertise that deposits were insured up to $30,000, were not sufficient to state procedural due process claim; depositors did not allege any loss resulting from state system itself, which state could reasonably anticipate and guard against. Weimer v. Amen, C.A.8 (Neb.) 1989, 870 F.2d 1400. Civil Rights 1395(1)

Operating subsidiary of national bank did not have right to bring § 1983 suit against Connecticut Banking Commissioner, claiming that its right to conduct mortgage lending activities was harmed; while Congress showed intent to confer right in passing statute restricting visitation of national banks to national bank inspectors, there was no showing of any similar Congressional intent to establish actionable right underlying regulation placing subsidiaries under federal regulatory control. Wachovia Bank, N.A. v. Burke, D.Conn.2004, 319 F.Supp.2d 275, affirmed in part, reversed in part and remanded 414 F.3d 305, petition for certiorari filed 2005 WL 2463529, miscellaneous rulings 126 S.Ct. 791, 163 L.Ed.2d 626. Action 3

Complaint alleging that federally chartered thrift institution conspired with Federal Savings and Loan Insurance Corporation to wrongfully obtain receivership of state-chartered thrift institution and sell assets of that institution to the federal association did not bring the latter under jurisdiction of this subchapter, because this subchapter did not

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apply to the purely private conduct of the federally chartered association. First Sav. & Loan Ass'n v. First Federal Sav. & Loan Ass'n of Hawaii, D.C.Hawai'i 1982, 547 F.Supp. 988. Conspiracy 7.5(3)

Claims in which national bank and its state-chartered operating subsidiary asserted preemption interests against Commissioner of California Department of Corporations conflated operating subsidiary's federal interests with the state obligations to which operating subsidiary subjected itself as California licensee in a manner that caused federal interests of bank and operating subsidiary to lack judicially manageable standard, and therefore claims were not cognizable under § 1983 and did not support award of attorney fees under § 1988. National City of Indiana v. Boutris, E.D.Cal.2003, 2003 WL 21536818, Unreported. Civil Rights 1072; Civil Rights 1479

1528. Bonds, deprivation of constitutional or statutory rights generally

In view of fact that issuance of industrial revenue bonds was discretionary, and that approval of other bond applications did not in itself create a legitimate expectation of entitlement to issuance of bonds on part of developer, community development corporation's refusal to issue bonds did not deprive developer of a property right that was actionable under civil rights statute [42 U.S.C.A. § 1983]. Riverview Investments, Inc. v. Ottawa Community Imp. Corp., C.A.6 (Ohio) 1985, 769 F.2d 324, opinion supplemented on denial of rehearing 774 F.2d 162. Civil Rights 1073

1529. Alcoholic beverages, deprivation of constitutional or statutory rights generally

Property owner could not recover under § 1983 for city's alleged violation of due process rights in selling alcoholic beverages on city property which adjoined his land while at the same time withdrawing police protection from land; property owner did not allege deprivation of any fundamental right and offered no evidence to refute defendant's contention that all of the acts complained of satisfied rational basis test. Russell v. City of Kansas City, Kan., D.Kan.1988, 690 F.Supp. 947. Civil Rights 1088(1)

1530. Dining facilities, deprivation of constitutional or statutory rights generally

Patrons who alleged that they were peaceable, quiet, clean and neatly dressed when they attempted to secure service at proprietor's tavern-restaurant and that proprietor obtained assistance of two police officers in evicting patrons after patrons refused to leave when requested to do so by proprietor stated cause of action under this section. Nanez v. Ritger, E.D.Wis.1969, 304 F.Supp. 354. Civil Rights 1395(1)

1531. Insurance, deprivation of constitutional or statutory rights generally

Neither insurer nor its parent companies became state actors, as required to support policyholder's § 1983 claim, by taking advantage of provisions in state law that authorized conversion from mutual to stock form or by seeking and obtaining permission from Commissioner of Insurance. Gayman v. Principal Financial Services, Inc., C.A.7 (Ill.) 2002, 311 F.3d 851, rehearing and rehearing en banc denied, certiorari denied 123 S.Ct. 2610, 539 U.S. 943, 156 L.Ed.2d 629. Civil Rights 1326(7); Civil Rights 1326(9)

Not every allegedly unjustifiable refusal by state superintendent of insurance to conduct a hearing with respect to true claim of insurance rate discrimination would constitute sufficient basis for an action under this section. Shaw v. Harnett, C.A.2 (N.Y.) 1978, 587 F.2d 109. Civil Rights 1042

Section of Civil Rights Act of 1866 that is aimed at remedying racial discrimination relating to property did not apply to discrimination in issuing insurance contracts, as section did not apply to contract rights. Hunter v. American General Life and Acc. Ins. Co., D.S.C.2005, 375 F.Supp.2d 442, subsequent determination 384 F.Supp.2d 888. Insurance 1519

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Despite fact that African-Americans were charged higher premiums by insurer than were Caucasians for the same life insurance coverage, insurer was not liable for race discrimination under Sections 1981 and 1982 since record established that insurer's differential in the pricing of premiums for life insurance between African-American and Caucasians was based on risk, not race. Guidry v. Pellerin Life Ins. Co., W.D.La.2005, 364 F.Supp.2d 592. Civil Rights 1042; Civil Rights 1071

Since any dissatisfied policy holder can institute a breach of contract suit in a state court of the State of Maryland to have his respective assertions of violation of contract rights determined, beneficiary under life policy who sought to recover dividends for year in which insured died could not show that alleged failure of State Insurance Commissioner to enforce rules relating to dividends against the insurer deprived the beneficiary of property without due process and thus beneficiary did not have standing to bring action against State Insurance Commissioner based on Commissioner's alleged failure to perform statutory duty. Paturzo v. Home Life Ins. Co., D.C.Md.1974, 382 F.Supp. 357. Federal Courts 223

1532. Lotteries, deprivation of constitutional or statutory rights generally

Plaintiff's action challenging payment terms of New York State Lottery failed to state a claim upon which relief could be granted under this section which prohibits deprivation of civil rights under color of state law where plaintiff did not set forth any authority for proposition that she had a right to a lump-sum payment of the lottery prize, and all lottery tickets at time in question specifically stated that any player who submitted his ticket for validation agreed to abide by lottery rules and regulations. Zapata v. Quinn, S.D.N.Y.1982, 564 F.Supp. 23, affirmed 707 F.2d 691. Civil Rights 1395(1)

1533. Transportation, deprivation of constitutional or statutory rights generally

While county may have been under a legal duty to maintain existing roads and to ensure the safety of those roads even where they cross fords, the county had no general duty to undertake construction of a bridge over creek, which under normal circumstances was safe to ford; accordingly, the county commissioner's administrative decision not to construct such bridge was not compensable under this section in action brought against county by parents of two children who drowned while attempting to cross rain-swollen ford at creek with their mother. Dollar v. Haralson County, Ga., C.A.11 (Ga.) 1983, 704 F.2d 1540, certiorari denied 104 S.Ct. 399, 464 U.S. 963, 78 L.Ed.2d 341. Bridges 20(1); Civil Rights 1039

Provision of Interstate Commerce Commission Termination Act (ICCTA) prohibiting state and local regulation of any motor carrier's "price, route, or service" created no personal rights enforceable under § 1983, precluding tow truck operators' action seeking damages based on county's policy of charging operators for cost of identifying and notifying owners of impounded vehicles. Henry's Wrecker Service Co. of Fairfax County, Inc. v. Prince George's County, D.Md.2002, 214 F.Supp.2d 541. Civil Rights 1048; Civil Rights 1088(1)

Interstate transporter of infectious medical waste showed violation of civil rights by state Public Service Commission when transporter was threatened with criminal prosecution if it did not obtain certificate of convenience and necessity from the West Virginia Public Service Commission. Medigen of Kentucky, Inc. v. Public Service Com'n of West Virginia, S.D.W.Va.1992, 787 F.Supp. 602. Civil Rights 1088(5)

Motor carriers and trucking industry trade associations could not maintain civil rights action against Commissioner of Tennessee Department of Transportation based on allegation that Commission intended under color of state law to deprive them of right to operate trucks on interstate route passing through Nashville, where, despite statute purporting to prohibit operation of trucks on route, no trucks otherwise complying with law had been banned from interstate route since it was opened to traffic. Evans v. Burnley, M.D.Tenn.1988, 695 F.Supp. 365.

1534. Motor vehicles, deprivation of constitutional or statutory rights generally--Generally

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42 U.S.C.A. § 1983

Vehicle owners stated claim under § 1983 against city, whether such claim was grounded in procedural due process or in Fourth Amendment, by alleging that city issued baseless parking tickets in order to increase revenues; however, under New York law, plaintiffs would also be required to plead that the underlying proceedings were terminated in their favor. C.A.U.T.I.O.N., Ltd. v. City of New York, S.D.N.Y.1995, 898 F.Supp. 1065. Civil Rights 1395(5)

Motorists arrested for exceeding posted speed limit stated § 1983 claim against town and police officer for violation of due process rights by alleging that mayor and police officer were enforcing village ordinance which changed posted speed limit without first securing permission of Ohio Director of Transportation, as required by Ohio law, and that this was done for purpose of increasing village's revenues. Rose v. Village of Peninsula, N.D.Ohio 1993, 839 F.Supp. 517. Civil Rights 1395(6)

1535. ---- Accidents, motor vehicles, deprivation of constitutional or statutory rights generally

Motor vehicle accidents caused by public officials or employees do not rise to threshold of constitutional violation as required to support civil rights action, absent showing that official knew accident was imminent but consciously and culpably refused to prevent it; it is insufficient to show that public official acted in face of recognizable but generic risk to public at large. Hill v. Shobe, C.A.7 (Ind.) 1996, 93 F.3d 418. Automobiles 196; Civil Rights 1395(5)

City street sweeper's collision with child on bicycle did not rise to level of constitutional deprivation sufficient to support claim under § 1983. Freeman v. Elgin Sweeper Co., C.A.11 (Ga.) 1989, 885 F.2d 825, rehearing denied 892 F.2d 89, certiorari denied 110 S.Ct. 1929, 495 U.S. 907, 109 L.Ed.2d 293. Civil Rights 1035

Alleged negligent, grossly negligent, and reckless conduct of state officials in hiring and supervising state contractor, and in failing to utilize adequate lighting, warning, and traffic control devices at accident site, did not violate any right of estate and survivors of persons killed at site to postdeprivation procedural due process, where decedents' survivors and estate had available procedure against state officials in state courts under Maryland Tort Claims Act. Smith v. Bernier, D.Md.1988, 701 F.Supp. 1171.

1536. ---- Towing, motor vehicles, deprivation of constitutional or statutory rights generally

Towing company owner was entitled to remedy under § 1983 for city's violation of federal statute barring local regulation of towing industry; city's enforcement of ordinance requiring that all tow drivers in city obtain special towing license violated owner's federal right under statute not to be so regulated, and statute did not have comprehensive enforcement mechanism precluding § 1983 relief due to unlawful local regulation of towing industry. Petrey v. City of Toledo, C.A.6 (Ohio) 2001, 246 F.3d 548. Civil Rights 1072

Unregistered automobile's owner was not entitled to recover any damages he might have suffered as result of tow in civil rights action under § 1983, where towing of the automobile was proper, without pretowing notice or hearing, pursuant to state statute authorizing towing of vehicle found upon public lands that has been unregistered for more than one year. Scofield v. City of Hillsborough, C.A.9 (Cal.) 1988, 862 F.2d 759. Civil Rights 1054; Civil Rights 1071

Plaintiff could maintain suit under this section for alleged deprivation of property rights in connection with towing and impoundment of his stolen car, even though personal liberties were not involved. Bunkley v. Watkins, C.A.5 (Fla.) 1978, 567 F.2d 304. Civil Rights 1071

Even if city was justified in ordering that arrestee's car be towed away to storage lot, failing to give arrestee any opportunity before or after towing to dispute towing or cost of recovering car and failing to tell arrestee where car was being taken or how he could regain possession of it rendered city liable under § 1983 for permanent

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deprivation of property without due process of law; towing company later foreclosed lien and obtained title to arrestee's car. Katona v. City of Cheyenne, D.Wyo.1988, 686 F.Supp. 287. Civil Rights 1088(4)

Car owner alleging deprivation of his constitutional rights based on towing of vehicles parked on his property under invalid municipal "nuisance vehicle" ordinance established "actual injury" sufficient to support § 1983 claim against city and others, since question of whether required predeprivation hearing would have prevented the towing was merely speculative and since present location of owner's vehicles or whether they still existed subsequent to towing was not known. Kness v. City of Kenosha, Wis., E.D.Wis.1987, 669 F.Supp. 1484. Civil Rights 1333(3)

1537. ---- Taxis and limousines, motor vehicles, deprivation of constitutional or statutory rights generally

City of Chicago did not violate civil rights of city-licensed airport limousine services by excluding them from delivery dispatch booths used by suburban-licensed services at O'Hare International Airport; city rationally could have ordered suburban services to operate out of booths following 1973 study indicating that those services were largely responsible for traffic congestion and illegal solicitation at airport, and even if it was city policy after 1982 to let city-licensed services sue to have booths at airport, that policy did not violate equal protection. Pontarelli Limousine, Inc. v. City of Chicago, N.D.Ill.1990, 735 F.Supp. 782, affirmed 929 F.2d 339, rehearing denied. Aviation 229; Civil Rights 1048; Constitutional Law 234.6

1538. Negligence, deprivation of constitutional or statutory rights generally

Unavailability of negligence as a basis for claims under §§ 1983 precluded suit by claimant that he was negligently arrested for extorting money from police. Dawkins v. Williams, N.D.N.Y.2006, 413 F.Supp.2d 161. Civil Rights 1088(4)

Allegation of former public utility executive who was subject of state criminal prosecution that district attorney and district attorney's office acted negligently during investigation and prosecution of executive did not support executive's § 1983 claim against district attorney and district attorney's office, as mere negligence does not amount to deprivation of constitutional rights. Smith v. Gribetz, S.D.N.Y.1997, 958 F.Supp. 145. Civil Rights 1088(5)

Negligent action that results in injury is not a violation of the due process clause and hence is not actionable under federal civil rights statute. Marshall v. Fairman, N.D.Ill.1997, 951 F.Supp. 128. Civil Rights 1032; Constitutional Law 253(1)

Claim for gross negligence brought against state department of transportation by patron of highway rest area who was injured when she slipped on icy stairway was not cognizable under §§ 1983. Polaski v. Colorado Dept. of Transp., C.A.10 (Colo.) 2006, 198 Fed.Appx. 684, 2006 WL 2147526, Unreported. Civil Rights 1054

1539. Vessels, deprivation of constitutional or statutory rights generally

State conservation officer, who checked plaintiff's boat because it did not have a current registration sticker, could not be held liable under this section where there was no showing that he acted in abusive and malicious manner in derogation of plaintiff's constitutional rights, especially as it was undisputed that plaintiff did not have a current registration sticker and was operating vessel without proper safety equipment. Prochaska v. Marcoux, C.A.10 (Colo.) 1980, 632 F.2d 848, certiorari denied 101 S.Ct. 2316, 451 U.S. 984, 68 L.Ed.2d 841. Civil Rights 1072

While city code enforcement officers should not have been granted qualified immunity regarding their eviction of elderly residents without a pre-eviction hearing, prior to resolution of the factual question of how severe the

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allegedly unsanitary conditions at the residence were, the error in granting immunity was harmless in light of a subsequent jury determination, at a trial of claims against the city, that the officers did not violate the residents' constitutional due process rights by ordering an immediate vacation of the premises. Sell v. City of Columbus, C.A.6 (Ohio) 2005, 127 Fed.Appx. 754, 2005 WL 742745, Unreported, rehearing en banc denied. Civil Rights 1376(4); Federal Courts 893

1540. Parking garages, deprivation of constitutional or statutory rights generally

For purposes of § 1983 action brought against city and its parking authority by tenant who operated underground parking garage, city's mayor and managing director knew or recklessly disregarded relevant facts that disclosed that tenant's underground parking garage was not in imminent danger of collapse when mayor summarily decided to close it; mayor closed garage without conducting any load tests to determine whether structure was unsafe, load tests performed by tenant and independent engineers immediately before and after closing revealed that garage could withstand several times the necessary capacity, garage was closed less than three weeks after tenant had complied with specific repairs previously ordered by city, and garage had considerably more value to city if city could relieve itself of tenant's lease. Parkway Garage, Inc. v. City of Philadelphia, C.A.3 (Pa.) 1993, 5 F.3d 685, as amended, rehearing en banc denied, on remand 1994 WL 412430. Civil Rights 1071

Claim by tenants operating parking garage on city property that they were denied due process as guaranteed by U.S.C.A. Const.Amend. 14 because they were not properly served with notice of summary eviction proceeding failed to raise constitutional questions sufficient to invoke jurisdiction of federal district court under this section, where summary procedure was constitutional on its face. Brody v. Moan, S.D.N.Y.1982, 551 F.Supp. 443. Civil Rights 1071

1541. Publishing, deprivation of constitutional or statutory rights generally

Write-in candidate and political party did not have constitutional right to compel newspaper to publish material they deemed newsworthy and they were not entitled to damages if newspaper chose not to publish the material when requested; thus, write-in candidate and political party did not suffer deprivation of any federal right at hands of newspaper editor which would have entitled them to relief under civil rights statute. Christian Populist Party of Arkansas v. Secretary of State of State of Ark., E.D.Ark.1986, 650 F.Supp. 1205. Civil Rights 1029

Newspaper's alleged refusal to honor plaintiffs' request that certain information referred to by plaintiffs be published did not give rise to civil rights cause of action against newspaper, as newspaper had no duty to publish such information. Tosta v. Hooks, E.D.Pa.1983, 568 F.Supp. 616. Civil Rights 1032

1542. Racetracks, deprivation of constitutional or statutory rights generally--Generally

The Constitution does not create property interest, and hence, if customer had property interest in being admitted to racetrack, it must derive from a statute, legal rule or mutually explicit understanding that entitles him to attend races there. Rodic v. Thistledown Racing Club, Inc., C.A.6 (Ohio) 1980, 615 F.2d 736, 16 O.O.3d 386, certiorari denied 101 S.Ct. 535, 449 U.S. 996, 66 L.Ed.2d 294.

Where claim by assistant trainer of thoroughbred race horses that he was deprived by defendants of constitutionally protected rights was essentially based on allegation that plaintiff had not received a due process hearing concerning defendants' refusal to allow him access to certain race tracks, and where, under Pennsylvania law, plaintiff could not be permanently excluded from any race track without a hearing and hearing procedures were at all times and remained available to him, plaintiff's complained of exclusion was only temporary and did not constitute a deprivation of liberty or property cognizable under this section. Whetzler v. Krause, E.D.Pa.1976, 411 F.Supp. 523, affirmed 549 F.2d 797. Civil Rights 1047

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42 U.S.C.A. § 1983

1543. ---- Notice and hearing, racetracks, deprivation of constitutional or statutory rights generally

Where gist of complaint of racetrack patron who was expelled was not that his expulsion was wrongful but that it was done without a hearing, the complaint did not allege a denial of liberty on which to base a due process claim. Rodic v. Thistledown Racing Club, Inc., C.A.6 (Ohio) 1980, 615 F.2d 736, 16 O.O.3d 386, certiorari denied 101 S.Ct. 535, 449 U.S. 996, 66 L.Ed.2d 294. Civil Rights 1395(1)

1544. Utilities, deprivation of constitutional or statutory rights generally--Generally

City's conditioning landlords' receipt of water service on satisfaction of past due charges for services rendered to their tenants did not raise question of substantive due process violation for purposes of landlords' § 1983 action. Mansfield Apartment Owners Ass'n v. City of Mansfield, C.A.6 (Ohio) 1993, 988 F.2d 1469. Constitutional Law 291.6; Waters And Water Courses 203(13)

Homeowners whose water was nearly turned off by city when they refused to allow city to inspect their home for illegal sewer connections failed to allege that they were deprived of constitutionally protected liberty or property interest, and in absence of such allegation, could not recover in § 1983 action by alleging deficiencies in city's compliance proceedings. Magnuson v. City of Hickory Hills, C.A.7 (Ill.) 1991, 933 F.2d 562. Civil Rights 1395(1)

Drawing a boundary of utility district so as to exclude landowner's land did not violate his civil rights by denying him the right to vote in elections in the district. Mahone v. Addicks Utility Dist. of Harris County, C.A.5 (Tex.) 1988, 836 F.2d 921. Civil Rights 1032

1545. ---- Notice and hearing, utilities, deprivation of constitutional or statutory rights generally

Complaint under this section alleging that power company, under county auspices, had removed electric fuse and meter from, and cut off electrical power to, plaintiff's residence without notice, resulting in destruction of his food, pets and appliances, in violation of due process clause, was sufficient to invoke federal jurisdiction. Keniston v. Roberts, C.A.9 (Cal.) 1983, 717 F.2d 1295. Federal Courts 221

Complaint alleging that gas utility and its managing agent acted to violate procedural due process rights of plaintiffs by terminating gas service without adequate notice and an opportunity for a prior evidentiary hearing was sufficient to state a cause of action under this section. Dawes v. Philadelphia Gas Commission, E.D.Pa.1976, 421 F.Supp. 806. Civil Rights 1395(1)

1546. Title to property, deprivation of constitutional or statutory rights generally

This section was inapplicable to action to remove cloud on titles alleged to be due to claims of city under its charter and under acts of state legislature. Devine v. City of Los Angeles, U.S.Cal.1906, 26 S.Ct. 652, 202 U.S. 313, 50 L.Ed. 1046.

1547. Condemnation, deprivation of constitutional or statutory rights generally--Generally

To be basis for federal relief, claim of civil rights organization, whose property was being condemned for school that its federal civil rights would be denied in state court must be based on state Constitution, statute, municipal ordinance, rule of court or regulatory provisions binding on state court expressly denying such federal rights. Sunflower County Colored Baptist Ass'n v. Trustees of Indianola Municipal Separate School Dist., C.A.5 (Miss.) 1966, 369 F.2d 795. Civil Rights 1071

Complaint alleging that water management district endorsed adoption of allegedly illegal county ordinances which

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allegedly resulted in taking of plaintiff's land was insufficient to allege actionable conduct under color of state law for purposes of civil rights statute. Bensch v. Metropolitan Dade County, S.D.Fla.1994, 855 F.Supp. 351. Civil Rights 1395(3)

Claims of homeowners and residents that conduct of city, superintendent of public works, and city engineer and mayor in failing to adequately maintain lift station resulting in flooding of their property constituted partial taking of their property without adequate compensation stated a claim under this subchapter. Dutton v. City of Crest Hill, N.D.Ill.1982, 547 F.Supp. 38. Civil Rights 1395(1)

Where Puerto Rico officers had approved portions of resort project centered around thermal springs and where resolution merely provided for compensation for value of land and buildings contained within 25 cuerdas on which thermal springs were located but did not provide for any compensation for taking of vested rights of corporation in developing its total project or for diminution in value of remainder of corporation's land, action under resolution was unconstitutional taking of corporation's property which arbitrarily deprived corporation of its rights under this section. Hotel Coamo Springs, Inc. v. Hernandez Colon, D.C.Puerto Rico 1976, 426 F.Supp. 664. Civil Rights 1071

1548. ---- Availability of state remedy, condemnation, deprivation of constitutional or statutory rights generally

Ohio action in mandamus, without any mandated procedures governing inverse condemnation, is not reasonable, certain and adequate procedure for obtaining compensation, after property has been physically taken in violation of appropriations statutes, such that landowner would have to pursue mandamus action before bringing action for compensation under § 1983. Kruse v. Village of Chagrin Falls, Ohio, C.A.6 (Ohio) 1996, 74 F.3d 694, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 71, 519 U.S. 818, 136 L.Ed.2d 31. Eminent Domain 277

In view of the fact that Missouri courts have long recognized the theory of inverse condemnation, and have allowed a cause of action for it, plaintiffs claim that provisions of ordinance regulating massage parlors amounted to taking could represent only a pendent state claim and did not state a cause of action under § 1983. JBK, Inc. v. City of Kansas City, Mo., W.D.Mo.1986, 641 F.Supp. 893. Civil Rights 1318

1549. ---- Purpose of condemnation, deprivation of constitutional or statutory rights generally

Elimination of urban blight and economic revitalization of city were legitimate public purposes underlying adoption of urban renewal plan and, thus, condemnation of property within area did not violate property owners' civil rights. Oberndorf v. City and County of Denver, C.A.10 (Colo.) 1990, 900 F.2d 1434, certiorari denied 111 S.Ct. 129, 498 U.S. 845, 112 L.Ed.2d 97. Eminent Domain 18.5

Economic revitalization of downtown was legitimate public purpose underlying urban renewal project and, thus, there was no unconstitutional "taking" of private property in violation of the due process or equal protection clauses of the United States Constitution in connection with project, in view of determination that city's actions in enacting urban renewal project were taken pursuant to clearly articulated and affirmatively expressed state policy as embodied in Colorado's urban renewal law. Oberndorf v. City and County of Denver, D.Colo.1988, 696 F.Supp. 552, affirmed 900 F.2d 1434, certiorari denied 111 S.Ct. 129, 498 U.S. 845, 112 L.Ed.2d 97. Eminent Domain 2.10(2)

Property owner and lessee who alleged that condemnation of their property for use in redevelopment project, ostensibly designed to eradicate blight in Times Square in New York City and to revitalize area culturally and commercially, was in fact unconstitutional private taking for economic benefit of private developer, in that plaintiffs' property was not blighted, failed to state claim for relief under section 1983, since overall project for area was rationally related to serving public purpose of eliminating blight, and plaintiffs failed to allege public

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fraud or to allege that project existed solely to benefit private developer, rather than merely that project was shaped in such a way as to make it more profitable for him. Rosenthal & Rosenthal Inc. v. New York State Urban Development Corp., S.D.N.Y.1985, 605 F.Supp. 612, affirmed 771 F.2d 44, certiorari denied 106 S.Ct. 1204, 475 U.S. 1018, 89 L.Ed.2d 317. Civil Rights 1395(3)

Allegation that governmental officials acted in bad faith and in arbitrary and capricious manner in effecting a taking of property for an ostensibly public use asserted no more than an abuse of discretion and did not rise to level of constitutional deprivation which could support section 1983 action. Pastan v. City of Melrose, D.C.Mass.1985, 601 F.Supp. 201. Civil Rights 1071

1550. ---- Inverse condemnation, deprivation of constitutional or statutory rights generally

Property owners' inverse condemnation claim under § 1983 against city was action at law, which entitled property owner to trial by jury, considering nature of action and owner's request for compensatory or legal damages. Del Monte Dunes at Monterey, Ltd. v. City of Monterey, C.A.9 (Cal.) 1996, 95 F.3d 1422, rehearing granted 118 F.3d 660, rehearing en banc denied 127 F.3d 1149, certiorari granted 118 S.Ct. 1359, 523 U.S. 1045, 140 L.Ed.2d 509, affirmed 119 S.Ct. 1624, 526 U.S. 687, 143 L.Ed.2d 882. Jury 14(1)

Action for inverse condemnation is cognizable under this section. MacLeod v. Santa Clara County, C.A.9 (Cal.) 1984, 749 F.2d 541, certiorari denied 105 S.Ct. 2705, 472 U.S. 1009, 86 L.Ed.2d 721. Civil Rights 1071

That interest in property may have been taken without just compensation by Delaware would not enable property owner and its tenant to bring federal civil rights action against Delaware officials, based on Fourteenth Amendment's requirement of procedural due process; plaintiffs had no right to notice, hearing, or compensation prior to taking by inverse condemnation due to alleged restraint on alienation, as there was adequate mechanism for obtaining compensation. Abbiss v. Delaware Dept. of Transp., D.Del.1989, 712 F.Supp. 1159. Civil Rights 1071; Constitutional Law 281

1551. ---- Delay as taking of property, condemnation, deprivation of constitutional or statutory rights generally

Owner of tract of land and holder of option to purchase that tract, whose subdivision applications state courts on appeal ultimately determined should have been granted, could not recover damages in action under this section on theory that delay which occurred in prosecuting their appeal from town planning board's denial of the subdivision applications rose to the level of a taking of property requiring just compensation. Alton Land Trust v. Town of Alton, C.A.1 (N.H.) 1984, 745 F.2d 730. Civil Rights 1073

Property owner's allegations, that expense of building improvements increased during city's unlawful delay in granting variance, and that he lost use of improvements for period of delay, were insufficient to establish constitutionally impermissible temporary taking for which damages could be recovered. Moore v. City of Costa Mesa, C.D.Cal.1987, 678 F.Supp. 1448. Eminent Domain 293(1)

1552. ---- Abstention, condemnation, deprivation of constitutional or statutory rights generally

Doctrine of abstention was applicable under reasoning of *Burford* to law school's § 1983 action against city for alleged taking of private property without just compensation; land use planning was area of uniquely local concern and was subject of extensive regulatory scheme which included provisions for challenge to zoning decisions. Northern Virginia Law School, Inc. v. City of Alexandria, E.D.Va.1988, 680 F.Supp. 222. Federal Courts 48

1553. ---- Exhaustion of state remedies, condemnation, deprivation of constitutional or statutory rights generally

Taking is not "without just compensation" in violation of Fifth Amendment, and thus is not actionable under §

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1983, unless plaintiff has exhausted all state remedies that may provide just compensation. Frooks v. Town of Cortlandt, S.D.N.Y.1998, 997 F.Supp. 438, affirmed 182 F.3d 899. Civil Rights 1318; Eminent Domain 277

Failure of homeowner, who was temporarily forced to abandon his home by order of county officials, to seek compensation through state procedures precluded him from recovering damages from county officials by asserting taking claim under just compensation clause of Fifth Amendment. Miller v. Campbell County, Wyo., D.Wyo.1989, 722 F.Supp. 687, affirmed 945 F.2d 348, certiorari denied 112 S.Ct. 1174, 502 U.S. 1096, 117 L.Ed.2d 419. Eminent Domain 277

Until plaintiff alleging unconstitutional taking pursues state law remedies, federal courts must assume that state courts will interpret state law in line with United States Supreme Court's "fundamental constitutional commands" concerning just compensation. Mitchell v. Mills County, Iowa, S.D.Iowa 1987, 673 F.Supp. 332, affirmed 847 F.2d 486.

Federal civil rights action based upon alleged conspiracy to deny equal protection and procedural and substantive process rights through taking of property in violation of public use clause was not ripe for decision absent final taking and, even if it had been final, absent determination in state court whether taking was for public or private use, through available condemnation procedures, where circuit court had not granted a fee simple title as provided in state's quick-taking statute. HMK Corp. v. Chesterfield County, E.D.Va.1985, 616 F.Supp. 667. Federal Courts 13.10

1554. ---- Consequential damages, condemnation, deprivation of constitutional or statutory rights generally

If town unlawfully took landowner's property without hearing and without just compensation and landowner suffered heart attack as consequence, landowner could recover from town damages arising from heart attack. McCulloch v. Glasgow, C.A.5 (Miss.) 1980, 620 F.2d 47. Eminent Domain 302

1555. Demolition of buildings, deprivation of constitutional or statutory rights generally

Affidavit of property owner's expert offered in opposition to city's motion for summary judgment, stating that city officials acted hastily in ordering demolition of owner's building, and without resorting to available means of determining true condition of building, was insufficient to establish that officials acted arbitrarily and in bad faith, as required to maintain substantive due process claim under § 1983. Harris v. City of Akron, C.A.6 (Ohio) 1994, 20 F.3d 1396, rehearing denied, certiorari denied 115 S.Ct. 512, 513 U.S. 1001, 130 L.Ed.2d 419. Federal Civil Procedure 2539

Allegations by building owners that city had demolished building pursuant to "fast-track" program for demolition of buildings posing hazard to community, prior to which owners received only notice that city would demolish building if it was not repaired, demolished, or securely boarded by owner within 30 days, and that owners had taken action to board up and then repair building within 30 days, were sufficient to state § 1983 claim based on deprivation of their property without provision of notice required by due process clause. McCullough v. City of Chicago, N.D.Ill.1997, 971 F.Supp. 1247. Civil Rights 1395(3)

City's demolition of property before owner's right to appeal demolition order expired did not violate substantive due process and could not be basis for § 1983 civil rights claim. Aubuchon v. Com. of Mass. by and through State Bldg. Code Appeals Bd., D.Mass.1996, 933 F.Supp. 90. Constitutional Law 320; Municipal Corporations 628

Owners of homes damaged or destroyed by fires that started in abandoned houses owned or controlled by city could not show that alleged unconstitutional policy of city of not maintaining, securing, or tearing down abandoned

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houses caused owners' losses, and thus, owners could not maintain § 1983 claim against city and officials; fires were set by private citizens who trespassed on municipal property, rather than city officials. Saldana v. City of Camden, D.N.J.1989, 727 F.Supp. 891. Civil Rights 1351(3)

Allegations that New York City acted negligently in demolishing unsafe buildings, destroying personal property stored in buildings, did not state claim under Fourteenth Amendment or section 1983; complaint did not allege that City knew that personal property was stored in buildings or that City acted intentionally or with reckless disregard of owners' rights. Friedman v. New York City Dept. of Housing and Development Admin., S.D.N.Y.1988, 688 F.Supp. 896, affirmed 876 F.2d 890, certiorari denied 110 S.Ct. 2570, 495 U.S. 961, 109 L.Ed.2d 752. Civil Rights 1395(3)

1556. Nuisance, deprivation of constitutional or statutory rights generally

Town marshal's execution of town ordinance declaring that maintenance of cattle within town limits was nuisance, in strict compliance with ordinance's abatement provision, by issuing citation notifying owner of steers, charged with violation of ordinance, that his steers would he impounded if not removed within 24 hours and impounding steers when owner refused to remove them, was not within ambit of this section. Martin v. King, C.A.10 (Colo.) 1969, 417 F.2d 458. Civil Rights 1088(1)

Padlocking of nightclub property on order of a court in a nuisance proceeding instituted under law of Tennessee does not deprive owner of property of his federal right to due process of law or any other right he has under the Federal Constitution. Wilson v. Winstead, E.D.Tenn.1978, 470 F.Supp. 263. Constitutional Law 278(1.3)

1557. Animal control, deprivation of constitutional or statutory rights generally

Alleged failure of district attorney and humane society officer to provide horse owner with notice and opportunity for hearing prior to termination of ownership interest on basis of neglect violated procedural due process; termination of ownership rights five days after letter to bailee was predictable since statute requires owner to redeem seized animal within five days after notice or humane society may treat it as stray, and requiring opportunity for hearing at end of five-day redemption period was not impossible or excessive. Porter v. DiBlasio, C.A.7 (Wis.) 1996, 93 F.3d 301. Animals 41; Constitutional Law 293

City animal control officer's warrantless entry into abandoned residence and seizure of dogs did not violate Fourth Amendment, needed for § 1983 civil rights claim by owner; Texas law permits animal control officer to enter property without warrant after receiving report of animal abuse and viewing animals from outside premises, and to impound mistreated and abandoned animals. Gall v. City of Vidor, Tex., E.D.Tex.1995, 903 F.Supp. 1062. Searches And Seizures 79

Town constable's destruction of owner's dogs did not violate owner's substantive due process rights on theory that constable's conduct shocked the conscience and amounted to invasion of owner's personal security because it lead to emotional distress manifested in fear that owner could be killed with impunity. Engsberg v. Town of Milford, W.D.Wis.1985, 601 F.Supp. 1438, affirmed 785 F.2d 312. Constitutional Law 293

Where dog owner knew her dog was at pound and knew she could, as she did, get him back following morning, there was no deprivation of property which rose to constitutional level cognizable under this section. Kostiuk v. Town of Riverhead, E.D.N.Y.1983, 570 F.Supp. 603. Civil Rights 1071

1558. Flood control, deprivation of constitutional or statutory rights generally

Even assuming legitimacy of county's purpose in requiring drainage system, application of design criteria by singling out developer to provide entire drainage system may not be rational under Equal Protection Clause.

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Christopher Lake Development Co. v. St. Louis County, C.A.8 (Mo.) 1994, 35 F.3d 1269, rehearing and suggestion for rehearing en banc denied. Constitutional Law 228.2; Zoning And Planning 382.2

Although only people who were offered opportunity to have bulkheads built to avoid or minimize damage to property adjacent to drainage canal due to soil and bank erosion were those property owners along canal who had been in attendance at neighborhood meetings, and no notice was mailed to any of other property owners along canal, in view of ongoing attempts by parish to solve drainage problems, not only along other canals but along subject canal as well, mere fact that some property owners were not given notice of program offered to others was not evidence of constitutional violation that would bring suit within purview of this section governing civil action for deprivation of rights; failure to give notice at best constituted isolated incident which did not indicate kind of systematic abuse required for cause of action under this section. Boihem v. Drainage & Sewerage Dept. of Jefferson Parish, E.D.La.1983, 558 F.Supp. 1275. Civil Rights 1071

1559. Pollution, deprivation of constitutional or statutory rights generally

Even if county officials did not cooperate with landowner with respect to claim that county road project and adjacent drainage ditch caused surface water from toxic chemical site and cattle feed lot on other side of road to flow onto landowner's property, failed to check out fish kill, and did not give landowner same drainage control assistance as neighbors received, it could not reasonably be concluded that county went about drainage improvement with intent of flooding landowner's land, and thus the damage allegedly caused did not amount to a constitutional deprivation on which a federal civil rights action could be based, despite conclusory allegations that the county acted recklessly and maliciously. Mitchell v. Mills County, Iowa, C.A.8 (Iowa) 1988, 847 F.2d 486. Civil Rights 1071

Alleged unlawful conduct on part of individuals which was said to have resulted in release or threat of release of hazardous substances at site, when conduct occurred before owner took title to property and at a time when present owner's interest therein was no different from that of any other member of general public, was not a basis for owner to state a cause of action against individuals under statute governing deprivation of civil rights under color of state law. State of N.Y. v. Shore Realty Corp., E.D.N.Y.1986, 648 F.Supp. 255. Civil Rights 1032; Civil Rights 1071

1560. Smoking, deprivation of constitutional or statutory rights generally

Cause of action under this section was not stated by complaint by nonsmokers alleging that they were deprived of constitutional rights by policy of Louisiana superdome in allowing patrons to smoke tobacco products within superdome. Gasper v. Louisiana Stadium and Exposition Dist., E.D.La.1976, 418 F.Supp. 716, affirmed 577 F.2d 897, rehearing denied 581 F.2d 267, certiorari denied 99 S.Ct. 846, 439 U.S. 1073, 59 L.Ed.2d 40. Civil Rights 1395(1)

1561. Fire protection, deprivation of constitutional or statutory rights generally

Genuine issue of material fact, precluding summary judgment for city in § 1983 action by homeowner who was allegedly directed to vacate his home after it was declared "dangerous," existed as to whether city fire chief's actions or inactions with respect to requirement that he notify and hold hearing regarding decision to direct plaintiff to vacate his home constituted deprivation of plaintiff's due process rights. Capozzi v. City of Olean, N.Y., W.D.N.Y.1995, 910 F.Supp. 900. Federal Civil Procedure 2491.5

The State of New York, the New York State Police Department and the Superintendent of State Police, in his official capacity, could not be liable under this section for deprivations of civil rights which allegedly occurred when police and fire protection was withdrawn from an Indian reservation. Thompson v. State of N. Y., N.D.N.Y.1979, 487 F.Supp. 212. Civil Rights 1348

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42 U.S.C.A. § 1983

1562. Zoning and land use, deprivation of constitutional or statutory rights generally--Generally

City landowners' claim that certain zoning ordinances violated their vested property rights constituted matter of state law not actionable under this section. Scott v. City of Sioux City, Iowa, C.A.8 (Iowa) 1984, 736 F.2d 1207, certiorari denied 105 S.Ct. 1864, 471 U.S. 1003, 85 L.Ed.2d 158. Civil Rights 1073

Zoning dispute was a matter within the jurisdiction of the state courts of Ohio, as the record in the case revealed no deprivation of any rights, privileges or immunities secured by the Constitution or any laws of the United States. Studen v. Beebe, C.A.6 (Ohio) 1978, 588 F.2d 560. Federal Courts 219.1

Property management company and its sole shareholder were afforded procedural due process in connection with seizure of their offices by town and town officials for alleged zoning violations, and therefore company and shareholder could not maintain § 1983 claim against town and town officials for deprivation of procedural due process, though company and shareholder were not provided with advance notice of temporary restraining order effecting such seizure, as state law did not prohibit company's and shareholder's participation in subsequent hearing regarding issuance of preliminary injunction, town did not have unfettered right under state law to obtain temporary restraining order, and shareholder utilized post deprivation remedies provided by state law. Pisello v. Town of Brookhaven, E.D.N.Y.1996, 933 F.Supp. 202. Constitutional Law 278.2(2); Zoning And Planning 784

To prove that zoning regulation violates substantive due process in context of civil rights action, plaintiffs must show that they were deprived of constitutionally protected interest and that deprivation was result of abuse of government power sufficient to raise ordinary tort to stature of constitutional violation. Moore v. City of Edgewood, M.D.Fla.1992, 790 F.Supp. 1561, affirmed 985 F.2d 578, affirmed 985 F.2d 579. Constitutional Law 278.2(1)

Zoning decision affecting rights in property may be challenged as deprivation of due process and equal protection under U.S.C.A.Const. Amend. 14. Cowart v. City of Ocala, Fla., M.D.Fla.1979, 478 F.Supp. 774. Civil Rights 1073

1563. ---- Building permits, zoning and land use, deprivation of constitutional or statutory rights generally

City did not deprive property owner of due process by denying permit to build marina in area which had been zoned to prohibit storage facilities; even if city's interpretation of ordinance had been arbitrary and capricious, owner had no protectible property interest in building permit under Florida law, and thus its denial could not form basis for due process claim. Mackenzie v. City of Rockledge, C.A.11 (Fla.) 1991, 920 F.2d 1554. Constitutional Law 278.2(1); Zoning And Planning 384.1

Landowners and developer could not assert procedural due process claim under § 1983 arising out of denial of building permit, inasmuch as Illinois law provided unsuccessful applicants for building permits with sufficient state remedy to cure the sort of random and unauthorized denial of which developer and landowners complained. New Burnham Prairie Homes, Inc. v. Village of Burnham, C.A.7 (Ill.) 1990, 910 F.2d 1474. Constitutional Law 42.2(1)

Accepting allegations in plaintiffs' complaint as true, actions of county and its officials in wrongfully issuing building permit upon land which they knew or should have known was unsuitable for septic tank system, resulting in inability of plaintiffs to use dwelling as a residence, as part of established custom to award building permits improperly and in furtherance of conspiracy to develop unusable land as residential property in order that officials might derive unjust profit were not sufficient to raise tort alleged to stature of constitutional violation, and thus plaintiffs failed to state a cognizable § 1983 claim based on violation of substantive due process. Rymer v. Douglas County, C.A.11 (Ga.) 1985, 764 F.2d 796. Civil Rights 1395(3)

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42 U.S.C.A. § 1983

Where city council properly restricted area to nonresidential use, council's denial of building permit to make repairs for residential use after housing inspector sent notice that repairs were required or buildings would be demolished did not deny plaintiff property owners due process or entitle them to recover under this section. Elmwood Properties, Inc. v. Conzelman, C.A.7 (Ill.) 1969, 418 F.2d 1025, certiorari denied 90 S.Ct. 1498, 397 U.S. 1063, 25 L.Ed.2d 684. Civil Rights 1073; Constitutional Law 278.2(1)

Township's delay of 65 days beyond statutory response deadline in approving reconstruction permits for owner's renovation of apartment buildings did not shock the conscience, precluding recovery in owner's §§ 1983 substantive due process action against township; actual delay was not significant, township's alleged improper motive to coerce owner into using union labor did not rise to level of gross misconduct, and township had legitimate concerns about whether renovation plans complied with disabled-access requirements. Cherry Hill Towers, L.L.C. v. Township of Cherry Hill, D.N.J.2006, 407 F.Supp.2d 648. Health 392

Allegation that the city commissioner of buildings intentionally failed to follow the law due to political reasons, in granting a building permit to a third party, and that this intentional act resulted in the violation of plaintiff's right to due process, failed to state a claim under § 1983, as New York provides adequate appellate procedures to contest the grant of a building permit and plaintiff had the full opportunity to take advantage of them, though it failed to do so. Hi Pockets, Inc. v. Music Conservatory of Westchester, Inc., S.D.N.Y.2002, 192 F.Supp.2d 143. Constitutional Law 278.2(2); Zoning And Planning 378.1

Building construction company, its president, and president's real estate company could not lawfully perform contracts for construction and sale of condominiums, in that they lacked general contracting and real estate broker licenses required under state law, and therefore alleged actions of village and village officials in revoking and refusing to reissue necessary permits, halting project until allegedly improper fine was paid, and requiring companies and president to withdraw from condominium projects did not violate due process or equal protection. Carrico v. Village of Sugar Mountain, W.D.N.C.2000, 114 F.Supp.2d 422, affirmed 13 Fed.Appx. 79, 2001 WL 687591. Constitutional Law 228.2; Constitutional Law 278.2(1); Zoning And Planning 469

District of Columbia Department of Consumer and Regulatory Affairs' (DCRA) temporary suspension of building permit for contaminated soil remediation facility did not violate owner's procedural due process rights for purposes of his § 1983 claim against District, in light of owner's history of noncompliance with environmental, building and zoning laws and safety concerns concerning illegal presence of contaminated soil at site, which justified interim suspension to allow gathering of further information of facility's impact on surrounding community, and in light of availability of adequate post-deprivation remedies with which to challenge suspension; owner could have sought expedited administrative hearing within 72 hours of suspension, could have sought direct review of suspension in Court of Appeals, or could have sued for injunctive relief or writ of mandamus. Tri-County Industries, Inc. v. District of Columbia, D.D.C.1996, 932 F.Supp. 4, vacated 104 F.3d 455, 322 U.S.App.D.C. 412. Constitutional Law 278.1; Environmental Law 432

Section §§ 1983 claims that owner of real property asserted against village, officials, and consulting architect, challenging lateness and conditional nature of permission to build large drugstore on premises, were not ripe for adjudication, where, following village planning board's indication that proposal did not conform to zoning provisions, owner and planning board continued to discuss possible modifications to plan, and owner did not press board to a final determination, but instead, brought suit. R-Goshen LLC v. Andrews, C.A.2 (N.Y.) 2004, 115 Fed.Appx. 465, 2004 WL 2278555, Unreported. Federal Courts 13.10; Federal Courts 13.25

1564. ---- Development approvals, zoning and land use, deprivation of constitutional or statutory rights generally

Developer failed to establish, in his civil rights action alleging violation of equal protection clause, that county commissioners' denial of his application for special zoning designation was based on his status as nonresident of county, even though activist at hearing on application stated that she wanted to know where developer "came from"

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and that "outside people" were developing county; ten other citizens testified at hearing, there was no other comment or question on subject of developer's out-of-county residence, commissioner noted irrelevance of activist's comments, and, in ensuing debate among commissioners, no reference was made to activist's comments. Sylvia Development Corp. v. Calvert County, Md., C.A.4 (Md.) 1995, 48 F.3d 810. Civil Rights 1073

In absence of claim that plans would have been accepted at time acceptance was denied because private school with possible interest in land had not consented and inadequate number of plans had been submitted, developers who later complied with requirement and still later withdrew plans because of adoption of setback requirement which nullified plans had no cause of action against members of planning board. Cote v. Seaman, C.A.1 (Mass.) 1980, 625 F.2d 1. Civil Rights 1073

Housing developer did not state due process claim against city and city officials for denial of his right to practice his profession by alleging string of incidents involving arbitrary enforcement of city code against his development projects that made his work more difficult, but did not preclude him from engaging in his occupation. Thompson v. City of Shasta Lake, E.D.Cal.2004, 314 F.Supp.2d 1017. Constitutional Law 278.2(1); Health 392

City commission had rational basis for denying developer's proposed redevelopment project, and thus, the denial did not violate the developer's equal protection rights, where the denial was based on the commission's legitimate concerns, such as the size and scope of the proposal, the underlying liability of the city to pay for such a large development, and the concerns of citizens in the community, among others. Klauber v. City of Sarasota, M.D.Fla.2002, 235 F.Supp.2d 1263, affirmed 350 F.3d 1301. Constitutional Law 228.2; Zoning And Planning 381.5

Giving effect to referendum of citizens of city disapproving city ordinance that had approved site plan for low income housing, as city council members were required to do by city charter, did not violate equal protection rights of low income families with children, given traditional deference to referenda, absent evidence of discriminatory of intent or purpose. Buckeye Community Hope Foundation v. City of Cuyahoga Falls, N.D.Ohio 1997, 970 F.Supp. 1289. Constitutional Law 228.2; Zoning And Planning 136

Landowners failed to state substantive due process claim under § 1983 in connection with denial of permit for toxic and hazardous waste disposal facility by Puerto Rico Planning Board, even if Board did intentionally delay consideration of project and intentionally denied permit despite landowners' compliance with requirements of document addressing public policy and criteria for siting of hazardous and toxic waste disposal facilities. Nestor Colon Medina & Sucesores, Inc. v. Custodio, D.Puerto Rico 1991, 758 F.Supp. 784, affirmed in part, vacated in part on other grounds 964 F.2d 32. Civil Rights 1395(3)

Property owners had no constitutional entitlement to privately develop property zoned "P" for public use so as to make defendants' refusal to allow plaintiffs to develop their property as proposed reach constitutional dimension required for action under 42 U.S.C.A. § 1983. Culebra Enterprises Corp. v. Rios, D.C.Puerto Rico 1985, 613 F.Supp. 146. Civil Rights 1073

1565. ---- Enforcement, zoning and land use, deprivation of constitutional or statutory rights generally

Developer failed to state § 1983 cause of action against city, mayor, and city council members when it alleged that city deprived it of property, without due process of law, by enforcing invalid zoning ordinance against it; mere violation of state law did not automatically give rise to federal substantive due process claim and even if city knowingly enforced invalid zoning ordinance in bad faith, bad-faith violation of state law remained only a violation of state law. Chesterfield Development Corp. v. City of Chesterfield, C.A.8 (Mo.) 1992, 963 F.2d 1102. Civil Rights 1073

Property owners would not show equal protection violation by county commission's alleged failure to enforce

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zoning ordinance against nearby junkyard absent showing that junkyard had been the only one that commission refused to move against and that refusal to file suit against it constituted a denial of a right, privilege or immunity secured by Federal Constitution; to the contrary, denial alleged was of right to receive benefit of zoning ordinance which was secured solely by state laws. Muckway v. Craft, C.A.7 (Ind.) 1986, 789 F.2d 517. Civil Rights 1073

Resource Conservation and Recovery Act's (RCRA) statutory scheme was sufficiently comprehensive to preclude cause of action under § 1983. Leland v. Moran, N.D.N.Y.2002, 235 F.Supp.2d 153, affirmed 80 Fed.Appx. 133, 2003 WL 22533185.

City's enforcement of dangerous buildings ordinance against Hispanic owners was not motivated by discriminatory intent, and thus did not violate owners' equal protection rights, even if they were the only Hispanic building owners in town and theirs was only building demolished under ordinance, where city had neutral, legitimate safety reasons, in that city had received numerous complaints, bricks had fallen off building, engineers had reported that building was hazard to general public, and city's mayor had attempted to help owners obtain funds to fix building. Valdivia v. City of Villisca, S.D.Iowa 2001, 460 F.Supp.2d 978. Municipal Corporations 628

1566. ---- Family dwelling limitations, zoning and land use, deprivation of constitutional or statutory rights generally

Village zoning ordinance limiting, with certain exceptions, the occupancy of one-family dwellings to traditional families or to groups of not more than two unrelated persons is not aimed at transients, involves no procedural disparity inflicted on some but not on others, involves no deprivation of any "fundamental" right, bears a rational relationship to a permissible state objective, and constitutes valid land-use legislation addressed to family needs, notwithstanding claims that the ordinance is unconstitutional as violative of equal protection and rights of association, travel and privacy. Village of Belle Terre v. Boraas, U.S.N.Y.1974, 94 S.Ct. 1536, 416 U.S. 1, 39 L.Ed.2d 797. Constitutional Law 82(7); Constitutional Law 83(4.1); Constitutional Law 91; Constitutional Law 228.2; Zoning And Planning 66

Ordinances zoning certain neighborhoods "single-family residential" and defining "family" as "one person living alone, or two or more persons related by blood, marriage or legal adoption, or a group not exceeding four persons living as a single housekeeping unit" were not unconstitutional as discriminatory. Palo Alto Tenants' Union v. Morgan, C.A.9 (Cal.) 1973, 487 F.2d 883, certiorari denied 94 S.Ct. 2608, 417 U.S. 910, 41 L.Ed.2d 214. Zoning And Planning 34

1567. ---- Occupancy certificates, zoning and land use, deprivation of constitutional or statutory rights generally

Township officials' alleged delay in granting occupancy permit for daycare center did not amount to unconstitutional regulatory taking, absent showing that delay denied developer all economic use of land, or that limited use it was able to make was permanent rather than temporary. Aardvark Childcare and Learning Center, Inc. v. Township of Concord, E.D.Pa.2005, 401 F.Supp.2d 427. Eminent Domain 2.10(6)

Property owners had no right of action under this section to compel city to issue certificate of occupancy for three-family house or to restrain it from attacking validity of previously issued certificate of occupancy; the freedom claimed to be lost or impaired was the result of an alleged infringement of a property right, i.e., the alleged unlawful revocation of the prior certificate, therefore, the loss of freedom was dependent on the infringement of a property right and not within the jurisdiction of the act. Walsh v. City of Long Beach, E.D.N.Y.1974, 379 F.Supp. 954. Civil Rights 1071

1568. ---- Open spaces, zoning and land use, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Citizens and taxpayers who alleged impermissible bias or political animus on part of county officials affecting county-owned open spaces and water resources failed to assert property right necessary to support § 1983 civil rights action based on county's lease of county-owned property; no plaintiff owned land or held lease on property in question. Blankman v. County of Nassau, E.D.N.Y.1993, 819 F.Supp. 198, affirmed 14 F.3d 592. Civil Rights 1071

1569. ---- Preexisting uses, zoning and land use, deprivation of constitutional or statutory rights generally

City's action in refusing to issue permit for landfill that had existed prior to city's incorporation denied landfill operator vested property right and constituted taking of private property without compensation. Browning-Ferris Industries of St. Louis, Inc. v. City of Maryland Heights, Mo., E.D.Mo.1990, 747 F.Supp. 1340. Constitutional Law 101; Eminent Domain 2.27(1); Environmental Law 358

1570. ---- Rezoning, zoning and land use, deprivation of constitutional or statutory rights generally

City was not liable to developer for inequitable precondemnation activities absent showing that, as result of city's zoning changes, there was no economically viable use for land. Kaiser Development Co. v. City and County of Honolulu, C.A.9 (Hawai'i) 1990, 913 F.2d 573, certiorari denied 111 S.Ct. 1414, 499 U.S. 947, 113 L.Ed.2d 467, certiorari denied 111 S.Ct. 1430, 499 U.S. 954, 113 L.Ed.2d 484. Eminent Domain 63

County's decision to rezone landowner's property from desert land accommodating commercial uses to residential deprived landowner of protected property interest, and thus landowner was entitled to constitutional due process prior to deprivation. Harris v. County of Riverside, C.A.9 (Cal.) 1990, 904 F.2d 497. Constitutional Law 278.2(2); Zoning And Planning 191

Landowners failed to show that city council members acted irrationally or arbitrarily in rejecting landowners' rezoning plan to have their land rezoned from single-family residential to planned development district, despite landowners' argument that city officials acted solely on partisan political reasons unrelated to merits of landowners' proposal; thus, landowners were not entitled to damages and injunctive relief under § 1983. Greenbriar, Ltd. v. City of Alabaster, C.A.11 (Ala.) 1989, 881 F.2d 1570, rehearing denied 893 F.2d 346. Zoning And Planning 167.1

Genuine issue of material fact existed as to whether town planning board received and began processing site plan application submitted by developer of proposed subdivision, precluding partial summary judgment, as to issue of liability, for developer on its claim that board's refusal to receive and process its application was a denial of its right to petition the government under the First Amendment. Ridgeview Partners, LLC v. Entwistle, S.D.N.Y.2005, 354 F.Supp.2d 395. Federal Civil Procedure 2491.5

1571. ---- Variances, zoning and land use, deprivation of constitutional or statutory rights generally

Town was not liable under §§ 1983 for any equal protection violation that occurred in connection with property owner's permit applications, absent evidence that town, through members of its board of health acting in their official capacities, had any municipal custom or policy of deliberate indifference to commission of constitutional violations of kind alleged. Walsh v. Town of Lakeville, D.Mass.2006, 431 F.Supp.2d 134. Civil Rights 1352(3)

Participation of township zoning board's assistant secretary, who had met briefly with landowner's tenant two years earlier and asked him if he was interested in purchasing secretary's son's property for his business, in hearings regarding landowner's application for use variance to allow tenant to continue his business was insufficient to support allegation that determination that property was in violation of municipal zoning ordinance and denial of use variance were based upon unlawful criteria, and so violated landowner's right to substantive due process.

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Deblasio v. Zoning Bd. of Adjustment for Tp. of West Amwell, D.N.J.1993, 820 F.Supp. 876, affirmed in part, reversed in part 53 F.3d 592, certiorari denied 116 S.Ct. 352, 516 U.S. 937, 133 L.Ed.2d 247. Constitutional Law 278.2(2); Zoning And Planning 543

Landowners' allegations that town and others conspired to deny landowners' application for special zoning permit to construct radio tower on their property did not implicate any fundamental constitutional rights and failed to state civil rights cause of action under 42 U.S.C.A. § 1983; even assuming that town engaged in arbitrary or adversarial tactics in land use dispute, those tactics did not create issues of constitutional dimension. Carter v. Rollins Cablevision of Massachusetts, Inc., D.C.Mass.1985, 618 F.Supp. 425, amendment denied 634 F.Supp. 944. Conspiracy 18

1572. ---- Abortion clinics, zoning and land use, deprivation of constitutional or statutory rights generally

For purposes of constitutional challenge, preexisting city zoning ordinance, which permitted medical clinic in subject area only if it did not include rooms for major surgery, was not abortion specific, especially since validity of land use scheme was not contested and it was the definition of abortion as major surgery which was the defect of which applicant for certificate of occupancy complained and there was no direct regulation of a fundamental right. Bossier City Medical Suite, Inc. v. City of Bossier City, W.D.La.1980, 483 F.Supp. 633. Zoning And Planning 76

1573. ---- Dance halls, zoning and land use, deprivation of constitutional or statutory rights generally

Proprietor's civil rights did not authorize operation of teenagers' dance hall business for profit in violation of zoning ordinances enacted under the police power for welfare of the community. Mosher v. Beirne, C.A.8 (Mo.) 1966, 357 F.2d 638. Civil Rights 1073

Property owners' protected property interest under Fourteenth Amendment to use their property for lawful purpose unrestricted by arbitrary and discriminatory governmental zoning action was not satisfied by city's ultimate issuance of permit to operate teenage dance facility, and thus did not preclude property owners from bringing civil rights action alleging constitutional violations with respect to application process. Zaintz v. City of Albuquerque, D.N.M.1990, 739 F.Supp. 1462. Civil Rights 1318; Constitutional Law 278.2(1)

1574. ---- Interstate commerce, zoning and land use, deprivation of constitutional or statutory rights generally

Engagement in business involving interstate commerce does not excuse noncompliance with valid zoning ordinances, and no civil rights action exists by reason of enforcement of lawful ordinance. Wallach v. City of Pagedale, Mo., C.A.8 (Mo.) 1966, 359 F.2d 57. Civil Rights 1073; Zoning And Planning 762

Connecticut officials' environmental protection-motivated moratorium on operation of high-voltage fiber optic cable running to New York, which allegedly unreasonably delayed and interfered with supply of electric power to residents of New York, potentially constituted imposition of burden on interstate commerce incommensurate with local benefits secured, in violation of dormant Commerce Clause, as required to support New York county officials' §§ 1983 action against Connecticut officials. Levy v. Rowland, E.D.N.Y.2005, 359 F.Supp.2d 267. Commerce 52.10; Commerce 62.1; Electricity 8.6

1575. ---- Low-income housing, zoning and land use, deprivation of constitutional or statutory rights generally

Absent showing that adequate low-cost housing was unavailable in county in areas not in town but accessible to poor persons' jobs and social services utilized by the poor, city was not required to show compelling interest to justify large-lot zoning ordinance even if ordinance discriminated against the poor. Ybarra v. Town of Los Altos Hills, C.A.9 (Cal.) 1974, 503 F.2d 250. Zoning And Planning 63

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42 U.S.C.A. § 1983

1576. ---- Notice and hearing, zoning and land use, deprivation of constitutional or statutory rights generally

County was required by procedural due process to hold a pre-deprivation hearing before vacating developer's approved plats based on his alleged creation of environmental problems by stripping buffer area of vegetation in violation of permits; county effectively deprived developer of economic value of property and rendered nugatory his prior effort to develop it, informal hearing would have entailed only minor administrative costs, and there was marked absence of any alternative procedural safeguards. Weinberg v. Whatcom County, C.A.9 (Wash.) 2001, 241 F.3d 746. Constitutional Law 278.2(2); Zoning And Planning 471.5

While plaintiff, complaining of the issuance of a building permit to his next door neighbor to convert a tool shed into a small apartment, argued that he was deprived of his property without due process of law when the city council refused to enforce the zoning board's decision for plaintiff, it was apparent that plaintiff was afforded due process and was continuing to receive due process; he was granted a hearing before the city council and, as result of his petition in state court, he received a hearing before the board of zoning appeals, and he continued to have the right to seek relief in state court for further review and enforcement. Crocker v. Hakes, C.A.5 (Ga.) 1980, 616 F.2d 237. Constitutional Law 278.2(2)

1577. ---- Miscellaneous claims, zoning and land use, deprivation of constitutional or statutory rights generally

City's enactment of ordinance purportedly barring mineral lessee from drilling within 1,000 feet of lake that served as city's main source of water was rationally related to city's interest in protecting its water supply and, thus, did not violate lessee's substantive due process rights, even though the ordinance was subsequently deemed preempted by state law. Energy Management Corp. v. City of Shreveport, C.A.5 (La.) 2006, 467 F.3d 471. Mines And Minerals 92.13

As applicant for land use permit did not suffer damage to protected interest in business goodwill as result of any damage to reputation flowing from investigative report issued by district attorney, applicant was not deprived of liberty in violation of due process under stigma-plus test of *Paul v. Davis*, as no deprivation of protected property interest existed. WMX Technologies, Inc. v. Miller, C.A.9 (Cal.) 1999, 197 F.3d 367. Constitutional Law 278.2(1); Zoning And Planning 438

Landowners in residential zone stated claim against municipal officials for retaliating against landowners for exercising First Amendment rights by complaining about alleged zoning violations by adjoining landowner in industrial zone; residential landowners began exercising First Amendment rights in 1981, officials then allegedly failed to enforce zoning code and noise ordinance and granted permit and variances, and the detailed allegations provided chronology from which inference could be drawn that officials were motivated by landowners' exercise of rights. Gagliardi v. Village of Pawling, C.A.2 (N.Y.) 1994, 18 F.3d 188. Civil Rights 1395(3)

Wireless telecommunications company had remedy under § 1983 for violation by town zoning board of appeals (ZBA) of Telecommunications Act; the ZBA acted under color of state law, as a local zoning board, and by violating the Telecommunications Act's prohibition against unreasonable discrimination with effect of prohibiting services, the ZBA deprived company of its federally guaranteed rights. Nextel Partners, Inc. v. Town of Amherst, NY, W.D.N.Y.2003, 251 F.Supp.2d 1187. Civil Rights 1073; Civil Rights 1326(7)

Payday loan business was not entitled to relief on its due process challenge to municipal ordinance, which required nighttime closing of loan stores, for purpose of its request for preliminary injunction in § 1983 lawsuit under Fourteenth Amendment, since due process claim rested on same ground as unavailing equal protection claim, i.e., that ordinance had no rational basis, and business otherwise did not assert it was denied any procedural rights to which it was entitled. Payday Loan Store of Wisconsin, Inc. v. City of Madison, W.D.Wis.2004, 339 F.Supp.2d 1058. Constitutional Law 296(1); Consumer Credit 4

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Even assuming that local environmental quality board did not adequately consider issue of stormwater runoff when it approved environmental impact statement for highway project, such approval did not violate substantive due process; such conduct did not rise to the level of an egregious abuse of governmental power which was shocking to the court. Castro Rivera v. Fagundo, D.Puerto Rico 2004, 310 F.Supp.2d 428, affirmed 129 Fed.Appx. 632, 2005 WL 1058894, certiorari denied 126 S.Ct. 425, 163 L.Ed.2d 324. Constitutional Law 278.1; Environmental Law 604(7); Environmental Law 605

Federal Court of Appeals' determination that state's scheme for challenging zoning determinations satisfied procedural due process requirements precluded suit under § 1983 claiming that town zoning hearings board rejection of application to build tower for mobile telephone systems was arbitrary and capricious and resulted in denial of due process. Omnipoint Communications, Inc. v. Penn Forest Tp., M.D.Pa.1999, 42 F.Supp.2d 493. Constitutional Law 278.2(2); Zoning And Planning 431

To plead substantive due process claim, developer, landowners and bank were required to allege separate constitutional violation or inadequacy of state law remedies and action by city and officials in invidious or irrational manner in preventing residential developments. Standard Bank & Trust Co. v. Village of Orland Hills, N.D.Ill.1995, 891 F.Supp. 446. Constitutional Law 278.2(1); Zoning And Planning 590

District court would not impermissibly serve as super zoning board in ruling on property owners' § 1983 claim that city unconstitutionally delegated its land use authority to neighborhood review board; determination of whether unlawful delegation took place did not require court to analyze each imposition of substantive conditions on property owners' proposal for remodeling of home and determine, using its independent judgment, whether conditions best served public interest. Schulz v. Milne, N.D.Cal.1994, 849 F.Supp. 708. Civil Rights 1073

A developer's failure to complete a project within 18 months and failure to show that the delay was beyond its control, as required by zoning ordinance, did not preclude the developer from bringing a civil rights suit based on town's alleged violation of the developer's due process rights by refusing to extend expired site plan approval; town failed to offer any reasonable explanation for its actions, which had effect of freezing development as a cottage court with two duplexes rather than permitting completion of the planned cottage court with three duplexes. Mays-Ott Co., Inc. v. Town of Nags Head, E.D.N.C.1990, 751 F.Supp. 82. Civil Rights 1073

1578. Taxes, deprivation of constitutional or statutory rights generally

Determination that state taxpayers may recover damages under this subchapter because of unconstitutional administration of state tax system would be fully as intrusive upon state administration of tax laws as equitable actions which are barred by principles of comity. Fair Assessment in Real Estate Ass'n, Inc. v. McNary, U.S.Mo.1981, 102 S.Ct. 177, 454 U.S. 100, 70 L.Ed.2d 271. Federal Courts 27

Decision of county tax assessor, to reassess game farm and recreational area without similarly reassessing other properties, was objectively reasonable, for purpose of Indian tribe's class-of-one equal protection civil rights claim, where assessor received letter from Bureau of Indian Affairs (BIA) containing unusually detailed information about agricultural and non-agricultural income of that property, which justified reclassification, such information was not readily available about other similar properties, and it was not irrational for assessor to await outcome of litigation by tribe before pursuing similar cases. Jicarilla Apache Nation v. Rio Arriba County, C.A.10 (N.M.) 2006, 440 F.3d 1202. Taxation 2128

Tax Injunction Act barred § 1983 action by African-American purchaser of tax liens seeking damages arising from county treasurer's alleged misrepresentation of value of properties because of purchaser's race. Wright v. Pappas, C.A.7 (Ill.) 2001, 256 F.3d 635, rehearing denied. Federal Courts 27

Property owners failed to state § 1983 cause of action against city based on alleged illegal tax assessments in the

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absence of any allegation that taxes were imposed either in discriminatory manner or contrary to procedures provided by Wisconsin law. Bowman v. City of Franklin, C.A.7 (Wis.) 1992, 980 F.2d 1104, rehearing denied, certiorari denied 113 S.Ct. 2417, 508 U.S. 940, 124 L.Ed.2d 639, rehearing denied 114 S.Ct. 14, 509 U.S. 941, 125 L.Ed.2d 766. Civil Rights 1395(1)

State imposition of license and fuel taxes on company which contracted with tribe to perform logging operations on Indian reservation, although held invalid under the Supremacy Clause because it was deemed to interfere in general way with authority and policies of federal government, did not "violate" any federal statute, and thus did not form basis for § 1983 claim or award of attorney fees under § 1988. White Mountain Apache Tribe v. Williams, C.A.9 (Ariz.) 1985, 810 F.2d 844. Civil Rights 1032; Civil Rights 1479; Civil Rights 1072

Even assuming that employer acted under color of state law in withholding state taxes from taxpayer's wages, his complaint failed to state a claim under this section, which allows a party to bring civil action for constitutional deprivations against persons acting under color of state law, since employer's actions in withholding taxes prior to hearing did not deprive him of any constitutional right. Stonecipher v. Bray, C.A.9 (Ariz.) 1981, 653 F.2d 398, certiorari denied 102 S.Ct. 1006, 454 U.S. 1145, 71 L.Ed.2d 297. Civil Rights 1136

Tax Injunction Act and principles of comity barred county taxpayers' federal suit under § 1983 against members of county board of supervisors, seeking refund of payments made to county under unconstitutional solid waste disposal fee; federal action to refund previously-paid taxes interfered with state's system of taxation and revenue collection, taxpayers had plain, speedy, and efficient remedy available in state court, and disposal fee was a tax for purposes of the Act, given that it was broad-based and designed to enhance county's revenue and provision of general welfare services. Indian Creek Monument Sales v. Adkins, W.D.Va.2004, 301 F.Supp.2d 555. Courts 508(6); Federal Courts 27

Virgin Islands' methods of valuing real property subject to taxation did not result in property tax which was based on actual value of property involved, as required by federal statute, since only cost approach was used to value improvements on all commercial properties, use of mass appraisals approach assessed real property at an average of one-and-one-half times its actual, market value, and replacement cost method of valuation used no reliable market research or documentation to support that cost had any relationship to actual cost of construction in current market; under replacement cost method, assessor used 110 year straight-line depreciation to subtract accumulated depreciation from replacement cost valuation, reset effective year of a building's construction, rather than using actual year of construction, and used unreliable estimates of actual value of underlying land, which were added to depreciated cost of improvements to obtain assessment value. Berne Corp. v. Government of Virgin Islands, D. Virgin Islands 2003, 262 F.Supp.2d 540, modified 276 F.Supp.2d 435, affirmed 105 Fed.Appx. 324, 2004 WL 1443889, opinion clarified 313 F.Supp.2d 522. Taxation 2515; Taxation 2516

Virgin Islands property taxpayers were entitled to permanent injunction on real property tax assessments, since tax assessor violated their civil rights by systematically employing a method of assessment not calculated to determine the actual value of their properties; public interest weighed in favor of ordering executive arm of Virgin Islands Government to comply with federal law and enjoining it permanently from violating that law, and competing harms weighed in plaintiffs' favor against allowing continued illegal property tax assessments, since harm to Government was discounted by fact that it had been given, and declined to take, every opportunity to fix numerous problems at Office of Tax Assessor without court injunction. Berne Corp. v. Government of Virgin Islands, D.Virgin Islands 2003, 262 F.Supp.2d 540, modified 276 F.Supp.2d 435, affirmed 105 Fed.Appx. 324, 2004 WL 1443889, opinion clarified 313 F.Supp.2d 522. Taxation 2712

Berne Settlement agreed to by Government of Virgin Islands, which affected all real property owners in Virgin Islands, including residential and agricultural property, to correct inequities of property tax system was ordered to be specifically performed by Government, due to system's invalidation as violative of federal law, to ensure that all real property in Virgin Islands subject to property tax be appraised, assessed and taxed at actual, market values in

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accordance with federal statute and the Uniform Standards of Professional Appraisal Practice (USPAP), since defendants materially breached the *Berne* Settlement by failing to fund reappraisal project adequately, by failing to adopt recommendations of special master, and by failing to correct mass appraisal practice and procedure in order to enable special master to certify that such procedures were proper and to verify through random sampling that corrected mass appraisal computer program would produce actual value assessments. Berne Corp. v. Government of Virgin Islands, D.Virgin Islands 2003, 262 F.Supp.2d 540, modified 276 F.Supp.2d 435, affirmed 105 Fed.Appx. 324, 2004 WL 1443889, opinion clarified 313 F.Supp.2d 522. Specific Performance 62; Taxation 2571

Government of Virgin Islands materially breached settlement with real property taxpayers by failing to fund reappraisal project adequately, by failing to adopt recommendations of special master, and by otherwise failing to correct mass appraisal practice and procedure that would enable special master to certify such procedures to be proper and to verify through random sampling that corrected mass appraisal computer program produced actual value assessments. Berne Corp. v. Government of Virgin Islands, D.Virgin Islands 2003, 262 F.Supp.2d 540, modified 276 F.Supp.2d 435, affirmed 105 Fed.Appx. 324, 2004 WL 1443889, opinion clarified 313 F.Supp.2d 522. Taxation 2571

Developer failed to state a claim under § 1983 against officers and employees of the Puerto Rico Institute of Culture (PRIC) and the Collection Center for Municipal Income (CRIM), in their individual capacities, in connection with PRIC's denial of an endorsement for tax exemption, though those defendants were clearly acting under color of state law, as denial of the application for the endorsement did not mean that developer was deprived of his property rights, and there were no convincing facts indicating that the defendants' conduct was causally connected to the developer's deprivation. Lugo Rodriguez v. Puerto Rico Institute of Culture, D.Puerto Rico 2002, 221 F.Supp.2d 229, affirmed 98 Fed.Appx. 15, 2004 WL 964272, certiorari denied 125 S.Ct. 416, 543 U.S. 958, 160 L.Ed.2d 321. Civil Rights 1071

Virgin Islands statute prescribing factors that tax assessor must evaluate in computing "actual value" of real property subject to taxation did not supersede federal statute governing valuation of Virgin Islands real property for tax purposes, and thus taxpayer was not barred from bringing suit under § 1983 to enforce its rights under federal statute. Equivest St. Thomas, Inc. v. Government of Virgin Islands, D.Virgin Islands 2002, 208 F.Supp.2d 545, affirmed 321 F.3d 394, certiorari denied 124 S.Ct. 153, 540 U.S. 823, 157 L.Ed.2d 44. Civil Rights 1071; Statutes 55; Taxation 2514

Federal statute governing valuation of Virgin Islands real property for tax purposes created federally protected right actionable under § 1983: statute provided that property "shall" be assessed based on actual value, and was thus mandatory; statute created interest, namely use of actual value to compute property taxes, sufficiently specific to be judicially enforceable; and statute was intended to benefit taxpayers. Berne Corp. v. Government of Virgin Islands, D.Virgin Islands 2000, 120 F.Supp.2d 528, appeal dismissed 105 Fed.Appx. 324, 2004 WL 1443889. Civil Rights 1071

No *Bivens* action automatically arises from failure of an agent to follow Internal Revenue Service (IRS) procedures, including failure to identify a person as a target of investigation. Groom v. Fickes, S.D.Tex.1997, 966 F.Supp. 1466, affirmed 129 F.3d 606. Internal Revenue 4457

Employer's payment of workers' compensation premium was legitimate tax and, therefore could not be taking or fine, for purposes of employer's § 1983 action alleging that State Insurance Fund Corporation's conduct violated Constitution's takings clause as well as prohibition against excessive fines. Sears, Roebuck de Puerto Rico, Inc. v. Soto-Rios, D.Puerto Rico 1996, 920 F.Supp. 266. Fines 1.3; Eminent Domain 2.21

Internal Revenue Code provision granting tax credits for construction of low-income housing, which listed several criteria that state housing authority was to take into account when allocating tax credits, but did not provide

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guidance as to how criteria were to be weighed or measured by state housing finance authority, was too vague and amorphous to create judicially enforceable rights under § 1983. DeHarder Inv. Corp. v. Indiana Housing Finance Authority, S.D.Ind.1995, 909 F.Supp. 606. Civil Rights 1082

Civil rights action is not proper vehicle for redress claims of excessive taxation in violation of U.S.C.A.Const.Amend. 14, § 1. Cloutier v. Town of Epping, D.C.N.H.1982, 547 F.Supp. 1232, affirmed 714 F.2d 1184. Civil Rights 1032

Act of defendants, consisting of borough and its officers, in withholding federal income tax from plaintiff's paycheck did not result in a violation of rights protected by U.S.C.A.Const. Amends. 4 and 5 and, hence, was not a basis for a claim cognizable under this section governing deprivation of civil rights under color of state law. Eagle v. Kenai Peninsula Borough, D.C.Alaska 1980, 489 F.Supp. 138. Civil Rights 1126

Action for tax assessment discrimination was cognizable under this section and was not barred by § 1341 of Title 28. North American Cold Storage Co. v. Cook County, N.D.Ill.1979, 468 F.Supp. 424.

1578A. Injunction, taxes, deprivation of constitutional or statutory rights generally

Tax Assessor for Government of the Virgin Islands would be enjoined from assessing any of named plaintiff's real properties until a reliable and credible system could be established to appraise real property consistently at its actual, market value, under District Court's supplemental jurisdiction, and Government of the Virgin Islands would be enjoined from issuing any tax bills until an assessment system could be in place to reliably and credibly appraise real property at its actual, market value, and enjoined from seeking to collect any property tax bills issued on commercial property as of tax year 1999; provision for retroactive adjustment had to cover both overpayments, which could be credited against future property taxes, and underpayments, for which taxpayers would be billed retroactively. Berne Corp. v. Government of Virgin Islands, D.Virgin Islands 2003, 262 F.Supp.2d 540, modified 276 F.Supp.2d 435, affirmed 105 Fed.Appx. 324, 2004 WL 1443889, opinion clarified 313 F.Supp.2d 522. Taxation 2712; Taxation 2878(2)

1579. Medicaid, deprivation of constitutional or statutory rights generally--Generally

Provision of Medicaid statute, requiring participating state to ensure that medical services for eligible beneficiaries were accessible and available, and requiring reimbursement rates for services in general be sufficient to enlist enough providers, did not confer private right of action to compel enforcement of that provision under §§ 1983 by association of Home and Community-Based Services (HCBS) providers; provision never established an "identifiable class" of rights-holders. Mandy R. ex rel. Mr. and Mrs. R. v. Owens, C.A.10 (Colo.) 2006, 464 F.3d 1139. Civil Rights 1052

Requirement of Medicaid Act that state agency provide recipient with medical assistance for prescribed disposable incontinence underwear under program for "early and periodic screening, diagnostic, and treatment services" (EPSDT) was enforceable under §§ 1983; pertinent statutes contained "rights-creating" language, right asserted was not so vague and amorphous that its enforcement would strain judicial competence, and statute unambiguously imposed EPSDT obligations on participating states. S.D. ex rel. Dickson v. Hood, C.A.5 (La.) 2004, 391 F.3d 581 . Civil Rights 1052

Provision of Boren Amendment that required states to "take into account" costs of providing specialized rehabilitative services in formulating their Medicaid plans conferred on operators of residential nursing facility right to have cost of rehabilitative services taken into account that was enforceable under § 1983. Concourse Rehabilitation & Nursing Center Inc. v. Whalen, C.A.2 (N.Y.) 2001, 249 F.3d 136. Civil Rights 1052

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Congress did not intend for third-party liability provisions of federal Medicaid statutes to confer a benefit upon health care providers, but rather sought to protect Medicaid program from paying for health care in situations in which third party had legal obligation to pay for care, and did not grant providers the right to collect payment from third parties as compensatory benefit in exchange for duties imposed upon them; therefore, provisions did not support private cause of action for health care providers under § 1983. Wesley Health Care Center, Inc. v. DeBuono, C.A.2 (N.Y.) 2001, 244 F.3d 280. Civil Rights 1052; Civil Rights 1330(6); Health 496(1)

Letter sent by federal Health Care Financing Administration (HCFA) which allegedly continued "reasonable and adequate" standard for Medicaid reimbursement rates, as had applied under since-repealed Boren Amendment, did not give rise to a federal right enforceable under § 1983 by operator of nursing homes who participated in Medicaid program. HCMF Corp. v. Allen, C.A.4 (Va.) 2001, 238 F.3d 273, certiorari denied 121 S.Ct. 2522, 533 U.S. 916, 150 L.Ed.2d 694. Civil Rights 1052

Federal regulation requiring State Medicaid plan to specify that Medicaid agency will ensure necessary transportation for recipients to and from providers did not define content of any specific right conferred upon Medicaid recipients by Congress; thus, regulation was not enforceable in § 1983 action. Harris v. James, C.A.11 (Ala.) 1997, 127 F.3d 993. Civil Rights 1052

Medicaid providers and recipients could enforce Medicaid statute, as amended by Hyde Amendment, through § 1983; providers and recipients were intended beneficiaries of Amendment, which contained sufficient mandatory language to impose binding obligation on states to fund certain abortions. Little Rock Family Planning Services, P.A. v. Dalton, C.A.8 (Ark.) 1995, 60 F.3d 497, certiorari denied 116 S.Ct. 777, 516 U.S. 1074, 133 L.Ed.2d 728, certiorari granted in part, reversed in part 116 S.Ct. 1063, 516 U.S. 474, 134 L.Ed.2d 115. Civil Rights 1052

Regulation, providing that states had to "[c]ontinue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible," created right to uninterrupted benefits that was enforceable under § 1983; regulation expanded on eligible individuals' enforceable right to receive Medicaid that was contained in Social Security Act. Rabin v. Wilson-Coker, D.Conn.2003, 266 F.Supp.2d 332, reversed 362 F.3d 190. Civil Rights 1052

Statute providing for Medicaid benefits, requiring state administering agencies to provide assistance with reasonable promptness to all eligible individuals, conferred federal rights to benefits enforceable under §§ 1983. M.K.B. v. Eggleston, S.D.N.Y.2006, 445 F.Supp.2d 400. Civil Rights 1052

Medicaid statutory provisions requiring state Medicaid plans to provide system for applying for aid and to furnish aid with reasonable promptness and mandating that states set reasonable reimbursement rates and implement effective reimbursement procedures did not evidence Congressional intent to create individual rights enforceable by Medicaid providers through §§ 1983. Bio-Medical Applications of NC, Inc. v. Electronic Data Systems Corp., E.D.N.C.2006, 412 F.Supp.2d 549. Civil Rights 1052

Medicaid Act provisions that required states to provide Medicaid services with reasonable promptness to eligible individuals, to ensure that services provided to certain categories of individuals were sufficient in amount, duration, and scope compared to others, and to include reasonable standards for determining eligibility, created private right of action for Medicaid recipients to maintain §§ 1983 claims against Massachusetts Division of Medical Assistance (DMA), alleging that DMA's policy and practice of denying doctor-recommended breast reduction surgery violated their rights under federal law; all three sections contained rights-creating language and identified discrete classes of beneficiaries. Mendez v. Brown, D.Mass.2004, 311 F.Supp.2d 134. Civil Rights 1052

Statute that required state Medicaid plan to provide efficient, economical, quality medical care and adequate access to providers did not create private right of action under § 1983 on part of individuals with developmental

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disabilities who were dissatisfied with state's funding of community care facilities; statute did not employ "no person shall" language, effect of conferring benefit was not enough to warrant recognition of private right, there was no specific monetary entitlement conferred upon Medicaid recipients, and statute spoke only of state's obligation to develop methods and procedures for providing medical services. Sanchez v. Johnson, N.D.Cal.2004, 301 F.Supp.2d 1060, affirmed 416 F.3d 1051. Civil Rights 1053

Implied right of action existed under the Medicaid Act and its regulations for enrollees in Tennessee's managed health care program, including Medicaid recipients and uninsured and uninsurable applicants who were covered or sought to be covered under program, to enforce regulatory requirement that proposed amendments to state's program had to be reviewed by medical care advisory committee (MCAC), as well as Medicaid's other due process regulations, in § 1983 action; Medicaid Act was intended to benefit enrollees, requirement of MCAC review was not vague or amorphous, and MCAC placed binding obligation on state. Rosen v. Tennessee Com'r of Finance and Admin., M.D.Tenn.2002, 280 F.Supp.2d 743, as amended, opinion set aside 2003 WL 22383610. Civil Rights 1052

Regulation allowing health care providers to apply for Medicaid grant did not create any federal right enforceable under § 1983. Planned Parenthood of Cent. Tex. v. Sanchez, W.D.Tex.2003, 280 F.Supp.2d 590, remanded 403 F.3d 324. Civil Rights 1052

Medicaid statute setting forth circumstances in which State would not be held in non-compliance with other provisions of Social Security Act by reason of its restriction of Medicaid provider from program did not confer any private rights, enforceable under § 1983, on service administering agencies. Belen Consol. Schools v. Otten, D.N.M.2003, 259 F.Supp.2d 1203. Civil Rights 1052; Civil Rights 1330(6)

Section 1983 did not provide intended beneficiaries a private cause of action against state or state officers for breach of Medicaid requirements concerning provision of early and periodic screening, diagnosis, and treatment (EPSDT) services. Westside Mothers v. Haveman, E.D.Mich.2001, 133 F.Supp.2d 549, reversed 289 F.3d 852, certiorari denied 123 S.Ct. 618, 537 U.S. 1045, 154 L.Ed.2d 516, on remand 368 F.Supp.2d 740. Civil Rights 1052; Civil Rights 1330(6)

Medicaid recipients had no § 1983 cause of action to recover portion of state's share of multi-state tobacco settlement proceeds; enforcement of alleged right to proceeds, derived from Medicaid Act provision governing distribution of "remainder" to recipients, would be practically impossible. Strawser v. Lawton, S.D.W.Va.2001, 126 F.Supp.2d 994, affirmed 290 F.3d 720, certiorari denied 123 S.Ct. 618, 537 U.S. 1045, 154 L.Ed.2d 516. Civil Rights 1052

Disabled recipient of Medicaid, who received medical assistance under Iowa's plan and was denied benefits for sex reassignment surgery, was entitled to enforce Medicaid statute requiring state plan for medical assistance to have reasonable standards prior to approval of plan by Secretary of Department of Health and Human Services in § 1983 action; recipient was intended beneficiary of statute, which created right that was specified with sufficient clarity to allow for judicial enforcement and was sufficiently mandatory to create binding obligation on state, and Congress did not foreclose § 1983 enforcement in Medicaid statute. Smith v. Palmer, N.D.Iowa 1998, 24 F.Supp.2d 955. Civil Rights 1052

Failure to process Medicaid applications within 45 days for applicants who did not seek benefits on basis of foster care or disability and qualified through District of Columbia Non-Public Assistance (NPA) Program was substantial and resulted from course deliberately pursued by official policymakers, and, thus, District and its officials could be held liable under § 1983, even though Income Maintenance Administration (IMA) had undertaken initiatives to improve application processing in multinational section; reports by IMA demonstrated delays for over 45 days for 60% of pending applications in one group and 54% of applications in another group at end of 1993, during later period, average monthly percentages of applications pending for more than 45 days were

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still 19.8% and 10.6%, and random sample indicated failure to meet deadline approximately 36% of the time and 58% of the time. Salazar v. District of Columbia, D.D.C.1996, 954 F.Supp. 278. Civil Rights 1052; Civil Rights 1351(6)

Hospitals could bring § 1983 action against state for injury arising from state's failure to develop appropriate methods and procedures relating to payment of outpatient services under Medicaid. Illinois Hosp. Ass'n v. Edgar, N.D.Ill.1991, 765 F.Supp. 1343. Civil Rights 1052

Complaint alleging that medicaid recipients had been deprived of their federal statutory and constitutional rights by copayment regulations promulgated by Pennsylvania in that process by which Pennsylvania had reduced their entitlement to a government benefit in which they asserted a property interest was allegedly inadequate stated essential element of state action to permit maintenance of suit under this section. Lacey v. Cohen, E.D.Pa.1984, 596 F.Supp. 1010, affirmed 774 F.2d 1152. Civil Rights 1395(1)

Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) of Medicaid Act created individual rights in foster children, enforceable under § 1983, to assistance for cost of care to which they had right under Medicaid; eligible children under age 21, including foster children, were clearly intended beneficiaries of EPSDT, since language of EPSDT focused on needs of individual children, EPSDT lacked enforcement mechanism, and EPSDT was not too vague and amorphous to be enforced by judiciary. Kenny A. ex rel. Winn v. Perdue, N.D.Ga.2003, 218 F.R.D. 277. Civil Rights 1052; Civil Rights 1057

1580. ---- Tobacco settlement money, medicaid, deprivation of constitutional or statutory rights generally

Amendment to Medicaid act giving states authority to dispose of tobacco settlement monies as they "determined appropriate" was a clear-cut Congressional statement that foreclosed existence of an implied private right of action by Medicaid recipients, under § 1983, seeking to divert tobacco settlement money. Barton v. Summers, C.A.6 (Tenn.) 2002, 293 F.3d 944, rehearing and suggestion for rehearing en banc denied. Civil Rights 1052; Civil Rights 1330(6)

1581. Welfare benefits, deprivation of constitutional or statutory rights generally--Generally

Right of action created by this section relating to deprivation, under color of state law, of a right secured by the Constitution and laws of the United States encompasses claims which are based solely on statutory violations of federal law and apply to claim that claimants had been deprived of welfare benefits to which they were entitled. Maine v. Thiboutot, U.S.Me.1980, 100 S.Ct. 2502, 448 U.S. 1, 65 L.Ed.2d 555. Civil Rights 1052

AFDC recipient voluntarily participating in job opportunities and basic skills training program (JOBS program) had no private right of action under § 1983 to enforce statutory provision requiring state agencies to "guarantee" child care; while child care provision was intended to benefit individuals such as recipient, it did not impose binding obligation upon states to provide child care to such volunteers on unlimited basis in light of cross-reference to section requiring that AFDC recipients be allowed to voluntarily participate in JOBS program to extent that "state resources otherwise permit," and that section's cross-reference to child care guarantee provision only in portion addressing individuals required to participate in JOBS program, not in subclause discussing voluntary participation. Maynard v. Williams, C.A.11 (Fla.) 1996, 72 F.3d 848. Civil Rights 1052; Civil Rights 1330(6)

Failure of state officials to act upon public assistance applications within 30 days of filing thereof denied the applicants due process, equal protection and their civil rights, notwithstanding the large volume of applications and the inability of state Welfare Department to employ sufficient number of competent case workers, where there was no indication that delays were caused by any fault of the applicants and there were courses which could have been pursued by the state Welfare Department which would have greatly minimized the delays. Like v. Carter, C.A.8

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(Mo.) 1971, 448 F.2d 798, certiorari denied 92 S.Ct. 1309, 405 U.S. 1045, 31 L.Ed.2d 588, on remand 353 F.Supp. 405. Civil Rights 1055; Constitutional Law 250.4; Constitutional Law 278.7(3)

State agency violated civil rights statute by denying applicant food stamp eligibility to which he was entitled under federal law. Velez v. Coler, M.D.Fla.1991, 767 F.Supp. 253, affirmed 978 F.2d 647, 118 A.L.R. Fed. 749.

Arizona authorities did not violate state prisoner's constitutional rights, for purpose of civil rights claim, by allegedly not cooperating in Pennsylvania criminal investigation relating to alleged abuse of prisoner's daughter and by allegedly denying daughter state services, since prisoner did not have general right to governmental aid and Arizona authorities did not act intentionally to discriminate against prisoner based upon membership in protected class. Trimble v. Arizona Child Protective Services, C.A.9 (Ariz.) 2005, 150 Fed.Appx. 621, 2005 WL 2277592, Unreported. Civil Rights 1098

1582. ---- Food stamps, welfare benefits, deprivation of constitutional or statutory rights generally

Food Stamp Act provisions, requiring that administering state agency promptly determine eligibility of applicant households, and promptly provide coupons, conferred federal rights to benefits enforceable under §§ 1983. M.K.B. v. Eggleston, S.D.N.Y.2006, 445 F.Supp.2d 400. Civil Rights 1052

Submissions supporting prospective welfare beneficiaries' allegations that certain changes in city's food stamp and Medicaid procedures threatened to endanger numerous individuals in need of public assistance were sufficient to establish risk of immediate and irreparable harm, as required to support preliminary injunction. Reynolds v. Giuliani, S.D.N.Y.1999, 35 F.Supp.2d 331, modified in part 43 F.Supp.2d 492. Injunction 147

Private cause of action may be brought under § 1983 to enforce no-cost prohibition of Food Stamp Act, under which costs of documents or systems required to convert to computerized system for distributing food stamp benefits may not be imposed on retailers participating in food stamp program; retail stores are specifically mentioned in statute and are intended beneficiaries, right protected is not vague and amorphous, and statute unambiguously imposed binding obligation not to shift costs to retailers. Pennsylvania Food Merchants Ass'n v. Houstoun, M.D.Pa.1998, 999 F.Supp. 611. Civil Rights 1052; Civil Rights 1330(6)

State's delays in processing applications for food stamp and Aid to Families with Needy Children (AFNC) programs were not caused merely by workers' negligence such that, arguably, Commissioner of Department of Welfare could not be held liable under § 1983; consistent failure rate of 8 to 10 percent in meeting deadlines transcended mere negligence, and Commissioner recognized that problem existed but took no action. Robidoux v. Kitchel, D.Vt.1995, 876 F.Supp. 575. Civil Rights 1052

1582A. ---- Women Infant and Children (WIC) Program, welfare benefits, deprivation of constitutional or statutory rights, generally

Department of Agriculture regulations, which were phrased in terms of imperatives that state agencies must follow in their selection of vendors for Special Supplemental Nutrition Program for Woman, Infants and Children (WIC program), did not confer private rights upon WIC vendors so as to permit them to sue for compliance under §§ 1983; regulations' focus on the "policy and practice" that state agencies were to follow in their administration of the WIC program was inconsistent with an intent to create individual rights enforceable under §§ 1983, and nothing in the regulations suggested an intent to include vendors among the group specifically identified by Congress as the intended beneficiaries of the WIC program. Morningside Supermarket Corp. v. New York State Dept. of Health, S.D.N.Y.2006, 432 F.Supp.2d 334. Civil Rights 1052

1583. ---- Notice and hearing, welfare benefits, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

County workfare participant had no due process claim against county board for denying him public assistance benefits without hearing, where county did provide workers' compensation and disability benefits to participants in work program, and participant never applied for those benefits. Brogan v. San Mateo County, C.A.9 (Cal.) 1990, 901 F.2d 762. Civil Rights 1321

1584. Homelessness, deprivation of constitutional or statutory rights generally

Eighth Amendment ban against cruel and unusual punishment was violated by city's arrests of homeless persons under various ordinances prohibiting them from lying down, sleeping, standing, sitting or performing other essential, life-sustaining activities in any public place at any time. Pottinger v. City of Miami, S.D.Fla.1992, 810 F.Supp. 1551. Sentencing And Punishment 1453

1585. Housing, deprivation of constitutional or statutory rights generally-- Generally

Regulations promulgated by Department of Housing and Urban Development (HUD) with respect to accessibility of housing, pursuant to §§ 504 of the Rehabilitation Act, did not construe or articulate personal rights created by statute, as required for finding that private right of action or cause of action under §§ 1983 existed against city housing authority for enforcement thereof; regulations were generally directed at housing authority's conduct and obligations as grantee, rather than being phrased in terms of any beneficiary's entitlement, related to institutional policy and practice rather than to individual instances of discrimination, and had systemwide focus. Three Rivers Center for Independent Living v. Housing Authority of City of Pittsburgh, C.A.3 (Pa.) 2004, 382 F.3d 412. Civil Rights 1021; Civil Rights 1330(6)

Developer's affirmative fair housing and marketing plan for filling residential rental units, which limited preference for former residents of urban renewal area at issue in order to increase minorities' ability to rent such units in accordance with federal fair housing requirements, did not violate equal protection principles, because units which were not subject to preference for former residents were available to all applicants regardless of race. Raso v. Lago, C.A.1 (Mass.) 1998, 135 F.3d 11, certiorari denied 119 S.Ct. 44, 525 U.S. 811, 142 L.Ed.2d 34. Civil Rights 1082; Constitutional Law 220.5(1)

Simply because management of low and moderate income housing project has been previously apprised of some facts and has made tentative judgments without full hearing cannot by itself justify charge of prejudice and inability of management to fairly review facts more adequately developed. Wilson v. Lincoln Redevelopment Corp., C.A.8 (Mo.) 1973, 488 F.2d 339. Civil Rights 1082

Proposed amended complaint failed to demonstrate that ordinance's occupancy limit and permit system was arbitrary and capricious and therefore violative of substantive due process since city, which justified ordinance as vehicle to protect the integrity of single family districts, articulated a rational basis for the occupancy limit and permit system. Jones v. Wildgen, D.Kan.2004, 349 F.Supp.2d 1358. Constitutional Law 278.2(1); Zoning And Planning 66; Zoning And Planning 86

Regulatory provisions pertaining to Department of Housing and Urban Development's (HUD) requirements for the contents and maintenance of administrative plans were not enforceable under § 1983. Langlois v. Abington Housing Authority, D.Mass.2002, 234 F.Supp.2d 33. Civil Rights 1082

Allegations by property management company and its sole shareholder that town and town officials engaged in pattern of harassment against them, including refusing to issue permits for building in which they sought to locate their offices and singling out their minority-occupied properties for inspection, in retaliation for their work in providing housing to low income minorities were not sufficient to state § 1983 claim for violation of substantive due process. Pisello v. Town of Brookhaven, E.D.N.Y.1996, 933 F.Supp. 202. Constitutional Law 278.3; Health 392

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42 U.S.C.A. § 1983

Allegations by nonminority sole shareholder of property management company which provided housing to low income minorities that town and town officials sought to curtail his business by seizing his office space, issuing false press release, refusing to process his landlord's building permits, inspecting minority-occupied properties he managed in absence of any complaints and delaying social service applications of his minority clients were sufficient to state § 1981 claim against town and town officials. Pisello v. Town of Brookhaven, E.D.N.Y.1996, 933 F.Supp. 202. Civil Rights 1395(3)

Federal regulations mandating that resident councils at public housing development be "democratically elected," and that such elections be "fair," did not provide private right of action under § 1983 for resident who alleged that he was elected president of resident council, but that defendant housing authority and its employees harassed him and undermined his ability to have tenant meetings; he did not claim that housing authority recognized resident council that was not democratically elected, but rather, contended that his election to position of president had not been honored, and, because he was not "resident council" of apartments, he could not contend that housing authority must recognize him as tenants' representative. Mungiovi v. Chicago Housing Authority, N.D.Ill.1995, 914 F.Supp. 207, affirmed 98 F.3d 982, rehearing denied. Civil Rights 1082; Civil Rights 1330(3)

1586. ---- Construction contractors, housing, deprivation of constitutional or statutory rights generally

A homeowner alleging inadequate and unworkmanlike construction by private contractor who sought to rehabilitate homeowner's property using funds provided through federal loan program did not have a private right of action under this section against city as administrator of the loan program. Rousseau v. City of Philadelphia, E.D.Pa.1984, 589 F.Supp. 961. Civil Rights 1055

1587. ---- Damage to leased premises, housing, deprivation of constitutional or statutory rights generally

In view of lease provision allowing damage assessments only upon fault of tenants of city housing authority, tenants were entitled to expect continued enjoyment of low-cost housing benefits without unwarranted assessments and that expectation was sufficient to implicate due process protection; thus tenants could maintain suit on theory that housing authority and its director had illegally assessed plaintiffs and similarly situated low-income tenants for damage to their apartments, when assessments were made without finding that tenants were at fault, without providing notice of grounds for assessments and without giving notice of opportunity to challenge assessments. Chavez v. City of Santa Fe Housing Authority, C.A.10 (N.M.) 1979, 606 F.2d 282. Civil Rights 1082; Constitutional Law 278.3

1588. ---- Dislocation benefits, housing, deprivation of constitutional or statutory rights generally

Tenants who were displaced as a result of downtown development authority's acquisition of building stated cause of action under 42 U.S.C.A. § 1983 for violation of equal protection of laws with respect to their claim that other tenants similarly situated received benefit of relocation as provided by Florida statute. Ward v. Downtown Development Authority, C.A.11 (Fla.) 1986, 786 F.2d 1526. Civil Rights 1395(3)

1589. ---- Eviction, housing, deprivation of constitutional or statutory rights generally

Claim of tenants, who received adequate due process prior to issuance of eviction orders and had ample notice that they would be evicted, that they were entitled to demand possession of certain property during eviction, was not constitutionally cognizable and thus did not rise to level of § 1983 violation. McGruder v. Will, C.A.5 (Tex.) 2000, 204 F.3d 220, rehearing denied. Civil Rights 1077

This section does not empower a federal judge to interfere with a "state" landlord's decision not to renew a lease simply because he thinks the decision harsh or unwise; he is authorized to do this only if the tenant has been deprived of due process of law. Lopez v. Henry Phipps Plaza South, Inc., C.A.2 (N.Y.) 1974, 498 F.2d 937. Civil

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42 U.S.C.A. § 1983

Rights 1038

Tenant's interest in not being evicted is sufficiently "personal," as opposed to being only a property right, to be within protection of this section. McGuane v. Chenango Court, Inc., C.A.2 (N.Y.) 1970, 431 F.2d 1189, certiorari denied 91 S.Ct. 1238, 401 U.S. 994, 28 L.Ed.2d 532. Civil Rights 1077

Tenants who rented units in mortgaged property from mortgagor ten days before entry of foreclosure judgment had valid leasehold interest in property under Illinois law that constituted legitimate entitlement protected by due process clause for purposes of civil rights suit brought by tenants after they were evicted; mortgagee did not obtain sheriff's deed to property until after tenants had rented it. Scott v. O'Grady, N.D.Ill.1991, 760 F.Supp. 1288, affirmed 975 F.2d 366, rehearing denied, certiorari denied 113 S.Ct. 2421, 508 U.S. 942, 124 L.Ed.2d 643. Constitutional Law 277(1)

Eviction of tenant in retaliation for exercise of rights under U.S.C.A.Const. Amend. 1 is actionable under this section. Walton v. Darby Town Houses, Inc., E.D.Pa.1975, 395 F.Supp. 553.

Public housing tenant was entitled to damages for violation of her civil rights, where tenant was physically removed from her residence, without due process of law, on two occasions, and incidents resulted in loss of at least portion of tenant's modest stock of household goods and other personal property. In re Adams, Bkrtcy.E.D.Pa.1989, 94 B.R. 838. Civil Rights 1082

Landlords, who obtained judgment for possession but who delayed in enforcing execution and attempted to allow debtors to become current in rent, did not create a new tenancy in the debtors and landlords' utilization of an execution to evict debtors was not in bad faith or based on an improper motive so as to constitute a violation of debtors' civil rights under color of state law. Matter of Pickus, Bkrtcy.D.Conn.1980, 8 B.R. 114. Civil Rights 1326(9); Landlord And Tenant 285(6)

1590. ---- Inspections, housing, deprivation of constitutional or statutory rights generally

Housing inspections conducted under false pretenses and warrantless searches were not appropriately addressed in civil rights suit as violations of substantive due process as such conduct was actionable under Fourth Amendment. Jones v. City of Youngstown, N.D.Ohio 1997, 980 F.Supp. 908, appeal dismissed 182 F.3d 917. Constitutional Law 278.1; Constitutional Law 319.5(1); Health 380; Searches And Seizures 85

Even if county negligently conducted building inspection on homes in certain residential development and even if such conduct constituted a tort, purchasers, who alleged that county's actions caused them to pay more for their homes than they were worth and to incur additional expenses both in attempts to correct the defects and in meeting extraordinary operating expenses, did not sustain an injury cognizable under this section or under U.S.C.A.Const. Amend. 14. Wooters v. Jornlin, D.C.Del.1979, 477 F.Supp. 1140, affirmed 622 F.2d 580, certiorari denied 101 S.Ct. 528, 449 U.S. 992, 66 L.Ed.2d 289. Civil Rights 1081

1591. ---- Personal property, housing, deprivation of constitutional or statutory rights generally

Complaint seeking $10,000 compensatory damages for period for which plaintiffs were deprived of their medicines and other belongings when hotel manager, allegedly under color of state law, seized their belongings without notice or hearing following eviction was cognizable under this section. Culbertson v. Leland, C.A.9 (Ariz.) 1975, 528 F.2d 426. Civil Rights 1395(1)

This section providing that district courts have original jurisdiction of civil actions relating to civil rights and elective francise was applicable to suit challenging constitutionality of Vernon's Ann.Civ.St. art. 5238a giving landlord a lien on personal goods of tenants and authorizing landlord to enforce that lien by peremptory seizure of

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the property, since rights that petition sought to protect were not merely property rights but included the right of the individual to be secure in his home and free from invasion of that home without any prior procedure to protect his interests. Hall v. Garson, C.A.5 (Tex.) 1970, 430 F.2d 430. Federal Courts 223

Former tenants raised substantial constitutional issue by claim that due process rights were violated when landlord, following eviction, sold their household belongings pursuant to Delaware statute, despite contention that loss of the property was not attributable to "state action," as sale was predicated upon a state court judgment and issuance of warrant of removal, and Del.C. § 5715(d) created irrebuttable presumption that goods were abandoned after 30 days and risk of erroneous deprivation of the goods was high. Mombro v. Louis Capano & Sons, Inc., D.C.Del.1981, 526 F.Supp. 1237. Constitutional Law 46(2)

1592. ---- Rent, housing, deprivation of constitutional or statutory rights generally

There was no basis for claim of statutory violation under this section in suit arising from failure of apartment complex developer and State Housing Development Authority to apply for and implement rent supplement program or alternative. Weems v. Pierce, C.D.Ill.1982, 534 F.Supp. 740. Civil Rights 1082

Tenants residing in unsubsidized housing constructed under program administered by Department of Housing and Urban Development were not deprived of a property right when their rents were increased. Rodriguez v. Towers Apartments, Inc., D.C.Puerto Rico 1976, 416 F.Supp. 304.

1593. ---- Site selection, housing, deprivation of constitutional or statutory rights generally

Where for more than nine months no committee of city council had conducted hearings as to acquisition of real property by housing authority for dwelling units in conformity with prior judgment order, failure to conduct hearings was unjustified and effectively prevented authority from providing additional dwelling units, thereby thwarting correction of state-imposed segregation and denying equal protection to plaintiffs, city would be ordered to file addresses of sites and housing authority would be required to begin procedures appropriate to acquire such sites and to provide dwelling units. Gautreaux v. Chicago Housing Authority, N.D.Ill.1972, 342 F.Supp. 827, affirmed 480 F.2d 210, certiorari denied 94 S.Ct. 895, 414 U.S. 1144, 39 L.Ed.2d 98, certiorari denied 94 S.Ct. 896, 414 U.S. 1144, 39 L.Ed.2d 98. Civil Rights 1448

1594. ---- Uninhabitability, housing, deprivation of constitutional or statutory rights generally

Homeowner's inability to use his home for seven days after village building inspector posted home as uninhabitable amounted to constitutionally significant deprivation for purposes of homeowner's civil rights suit. McGee v. Bauer, C.A.7 (Ill.) 1992, 956 F.2d 730. Civil Rights 1081

Public housing authority's alleged violations of state law warranty of habitability, lease agreements, and consent decree concerning repairs of tenant units were not violation of public housing tenants' federal or constitutional rights required to bring § 1983 civil rights suit. Imes v. Philadelphia Housing Authority, E.D.Pa.1996, 928 F.Supp. 526. Civil Rights 1082

Property owner's procedural due process rights were violated by municipal officials who boarded up several rental units on owner's property without giving him notice or opportunity to be heard before they took such action; although the units severely needed many significant improvements, there was no evidence of an emergency or lifesaving situation. Smith v. Village of Maywood, N.D.Ill.1988, 699 F.Supp. 157, stay granted. Constitutional Law 278.3; Health 373

1595. ---- Utilities, housing, deprivation of constitutional or statutory rights generally

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42 U.S.C.A. § 1983

Tenants in private housing authority buildings had right of action under § 1983 to challenge authority's determination as to what constituted reasonable allowance for utilities subject to the statutory 30% of income maximum rental charge, and what could be assessed as a surcharge for excess utility usage, both as to adequacy of substantive determinations and adequacy of procedural notice, hearing and appeals procedures. Dorsey v. Housing Authority of Baltimore City, C.A.4 (Md.) 1993, 984 F.2d 622. Civil Rights 1082

1596. ---- Vouchers, housing, deprivation of constitutional or statutory rights generally

Holders of rental assistance voucher under federal housing program had property right to continued participation in program, as required to maintain action under § 1983 challenging city housing authority's refusal to extend time period for use of vouchers. Chesir v. Housing Authority of City of Milwaukee, E.D.Wis.1992, 801 F.Supp. 244. Civil Rights 1082; Constitutional Law 277(1)

1597. Defamation, libel or slander, deprivation of constitutional or statutory rights generally--Generally

To establish a claim under this section and the Fourteenth Amendment more must be involved than simple defamation by a state official. Paul v. Davis, U.S.Ky.1976, 96 S.Ct. 1155, 424 U.S. 693, 47 L.Ed.2d 405, rehearing denied 96 S.Ct. 2194, 425 U.S. 985, 48 L.Ed.2d 811. Civil Rights 1038

Defamation by state actors is not actionable under § 1983, because reputation is not deemed property within meaning of due process clause. Smart v. Board of Trustees of University of Illinois, C.A.7 (Ill.) 1994, 34 F.3d 432, certiorari denied 115 S.Ct. 941, 513 U.S. 1129, 130 L.Ed.2d 885, certiorari denied 117 S.Ct. 1443, 520 U.S. 1173, 137 L.Ed.2d 549. Civil Rights 1038; Constitutional Law 277(1)

Conclusory allegation of reputational injury fails to state cause of action under civil rights statute absent cognizable stigma and ensuing loss of tangible interest. Hodge v. Jones, C.A.4 (Md.) 1994, 31 F.3d 157, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1395(1)

Slander is not constitutional tort, actionable under § 1983, as person's interest in his reputation is neither liberty nor property interest for purposes of due process clause; however, injury to reputation may produce loss of liberty or property, such as loss of employment. Buckley v. Fitzsimmons, C.A.7 (Ill.) 1994, 20 F.3d 789, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 740, 513 U.S. 1085, 130 L.Ed.2d 642, on remand 1996 WL 10899. Civil Rights 1038

Although neither defamation nor malicious prosecution as such is actionable under Constitution, either tort can be link in chain showing deprivation of liberty or property without due process of law. Mahoney v. Kesery, C.A.7 (Wis.) 1992, 976 F.2d 1054. Civil Rights 1038; Civil Rights 1037

Mere defamation by itself does not constitute a cause of action for deprivation of a constitutional right. Clark v. Solem, C.A.8 (S.D.) 1980, 628 F.2d 1120. Civil Rights 1038

This section does not give rise to a cause of action for slander. Azar v. Conley, C.A.6 (Ohio) 1972, 456 F.2d 1382. See, also, Church v. Hamilton, C.A.3 (Pa.) 1971, 444 F.2d 105; Peoples Cab Co. v. Bloom, D.C.Pa.1971, 330 F.Supp. 1235, affirmed 472 F.2d 163. Civil Rights 1038

A claim for relief based on alleged libel was concerned solely with a right arising out of state law and had no connection with any right federally protected by this section. Association for the Preservation of Freedom of Choice, Inc. v. Simon, C.A.2 (N.Y.) 1962, 299 F.2d 212. Federal Courts 221

Generally to state defamation claim under § 1983, in addition to alleging defamation, plaintiff must allege that defamation occurred in course of termination of governmental employment or was coupled with deprivation of a

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legal right or status; deleterious effects which flow directly from sullied reputation, which include impact that defamation might have on job prospects, or romantic aspirations, friendships, self-esteem, or any other typical consequence of a bad reputation, would normally be insufficient to state claim. Houghton v. Cardone, W.D.N.Y.2003, 295 F.Supp.2d 268. Civil Rights 1038

To hold defendant liable for defamation-plus under § 1983, plaintiff must show that injury to reputation allegedly suffered as a result of defamatory statements was inflicted "in connection with" a federally protected right, or that alleged injury to reputation "caused the denial of" a federally protected right. Crowe v. County of San Diego, S.D.Cal.2003, 242 F.Supp.2d 740. Civil Rights 1038

The constricture that damage to reputation is not actionable under § 1983 unless it is accompanied by some more tangible interests cannot be avoided by alleging that defamation by public official occurred in retaliation for exercise of First Amendment right. Guy v. State of Ill., N.D.Ill.1997, 958 F.Supp. 1300. Civil Rights 1038

Plaintiff's assertion of defamation claim based upon member of racing commission's alleged slanted, distorted, and untrue account of plaintiff's alleged involvement in fixed race at raceway and in fixing races in general did not allege general deprivation of federal or constitutional right as required to state civil rights cause of action. Cirasuola v. Westrin, E.D.Mich.1996, 915 F.Supp. 909, affirmed 124 F.3d 196. Civil Rights 1038

Publication by state university official of messages which referred to arrest and criminal charges against university employee and letter to students and their families on status of pending charges was not cognizable in § 1983 action. Boykin v. Bloomsburg University of Pennsylvania, M.D.Pa.1995, 893 F.Supp. 378, affirmed 91 F.3d 122, certiorari denied 117 S.Ct. 739, 519 U.S. 1078, 136 L.Ed.2d 678. Civil Rights 1126

Action for defamation cannot be transformed into federal claim under § 1983. Hodge v. Carroll County Dept. of Social Services, D.Md.1992, 812 F.Supp. 593, reversed in part, vacated in part 31 F.3d 157, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1038

Rights to be free from defamation and invasion of privacy are not federally guaranteed rights, but rather, if they exist at all, are state rights; thus, they cannot form basis of § 1983 action. Brooks v. American Broadcasting Companies, Inc., N.D.Ohio 1990, 737 F.Supp. 431, affirmed in part, vacated in part on other grounds 932 F.2d 495 . Civil Rights 1040; Civil Rights 1038

Slander or defamation does not constitute basis upon which relief may be granted under § 1983. Solomon v. Dixon, E.D.N.C.1989, 724 F.Supp. 1193, affirmed 904 F.2d 701, rehearing denied. Civil Rights 1038

Defamation by state official does not result in deprivation of "liberty" or "property" protected by Fourteenth Amendment, absent state law extending any legal guaranty of present enjoyment of one's reputation, beyond providing remedy and tort for damage thereto. Thomas v. News World Communications, D.D.C.1988, 681 F.Supp. 55. Constitutional Law 255(2); Constitutional Law 278(1.3)

Defamation and related common-law causes of action do not, standing alone, give rise to claim under this section. Stern v. Sommerville Communications Corp., E.D.Mich.1981, 529 F.Supp. 29. Civil Rights 1038

No action lies under this section providing for civil action for deprivation of rights for mere damage to reputation. In re Selcraig, C.A.5 (Tex.) 1983, 705 F.2d 789. See, also, Estes v. Tuscaloosa County, Ala., C.A.11 (Ala.) 1983, 696 F.2d 898; Holladay v. State of Mont., D.C.Mont.1981, 506 F.Supp. 1317.

Publication of defamatory remarks, even where defendant is alleged to have made the statements with knowledge of their falsity, is outside the scope of the constitutionally protected right to privacy. Reilly v. Leonard, D.C.Conn.1978, 459 F.Supp. 291. Constitutional Law 82(7)

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Defamatory statements and malicious conduct on the part of state officials do not standing alone, establish a constitutional violation for which relief may be obtained under this section. Christensen v. Rice, E.D.Wis.1978, 456 F.Supp. 419. Civil Rights 1038

A defamation does not become a deprivation of liberty merely because the defamer is an individual acting under color of state law, and a person so defamed is not entitled to any due process protections prior to the time that the alleged defamatory conduct takes place; instead, he must subsequently resort to state law remedies. Harris v. Harvey, E.D.Wis.1977, 436 F.Supp. 143. Constitutional Law 255(2)

Libel or slander by a state official, even if malicious, does not generate cause of action under this section, for the right to be free of defamation and to secure the redress for its infliction is within the province of state law and is not an incident of federal citizenship. Cook v. Brockway, N.D.Tex.1977, 424 F.Supp. 1046, affirmed 559 F.2d 1214. Civil Rights 1038

This section governing deprivation of civil rights under color of state law does not give rise to a cause of action for defamation. Weisser v. Medical Care Systems, Inc., D.C.Pa.1977, 432 F.Supp. 1292. See, also, Duff v. Sherlock, D.C.Pa.1977, 432 F.Supp. 423; Morris v. Danna, D.C.Minn.1976, 411 F.Supp. 1300, affirmed 547 F.2d 436; Everett v. City of Chester, D.C.Pa.1975, 391 F.Supp. 26; Hahn v. Sargent, D.C.Mass.1975, 388 F.Supp. 445, affirmed 523 F.2d 461, certiorari denied 96 S.Ct. 1495, 425 U.S. 904, 47 L.Ed.2d 754; Jervey v. Martin, W.D.Va.1972, 336 F.Supp. 1350.

Defamation alone is not sufficient to create an action under § 1983. Lee v. Donnaruma, C.A.2 (N.Y.) 2003, 63 Fed.Appx. 39, 2003 WL 21105326, Unreported. Civil Rights 1038

1598. ---- Equal protection, defamation, libel or slander, deprivation of constitutional or statutory rights generally

Allegedly racially motivated campaign by county judge to discredit and damage city police lieutenant, which campaign was perpetrated under color of state law, constituted denial of equal protection and, hence, was cognizable under this section and was not outside its scope as a mere libel action. Harris v. Harvey, C.A.7 (Wis.) 1979, 605 F.2d 330, certiorari denied 100 S.Ct. 1331, 445 U.S. 938, 63 L.Ed.2d 772. Civil Rights 1326(2); Constitutional Law 219.1

1599. ---- Business, contract, employment or status loss, defamation, libel or slander, deprivation of constitutional or statutory rights generally

Any damage to reputation of applicant for landfill permit, arguably flowing from allegedly defamatory statements in district attorney's investigative report prepared in connection with application, that did not otherwise impinge on protected property interest, did not become redressable in federal civil rights claim simply because reputational damage was to business, and arguably might affect applicant's business relations with others and thus its business goodwill; injury to business goodwill that did not go beyond injury to business reputation was insufficient to satisfy requirement that constitutionally protected property interest be at stake. WMX Technologies, Inc. v. Miller, C.A.9 (Cal.) 1999, 197 F.3d 367. Civil Rights 1038

Terminated basketball coach stated facts in complaint sufficient to establish that allegedly defamatory statements by university officials were made in course of termination, for purposes of his claim that officials deprived him of liberty interest without due process; seven to nine-day interval between termination and publication of statements did not attenuate temporal connection between statements and termination. Campanelli v. Bockrath, C.A.9 (Cal.) 1996, 100 F.3d 1476, on remand 1997 WL 325422. Civil Rights 1395(8)

Local rule limiting release of information before and during criminal trial did not protect against loss of employment or business goodwill, and thus, could not be used as basis of defamation claim that prosecutor violated

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federal statutory right by making statements erroneously implying that arrestee was laundering illegally-gotten money. Aversa v. U.S., C.A.1 (R.I.) 1996, 99 F.3d 1200. Civil Rights 1038

Business and reputation losses alone do not constitute "plus" that is required to transform ordinary defamation claim into § 1983 claim. Buckey v. County of Los Angeles, C.A.9 (Cal.) 1992, 968 F.2d 791, certiorari denied 113 S.Ct. 599, 506 U.S. 999, 121 L.Ed.2d 536, certiorari denied 113 S.Ct. 600, 506 U.S. 999, 121 L.Ed.2d 536. Civil Rights 1038

To extent that defamatory statements made by state prosecutor injured plaintiff's good will in business without due process of law, plaintiffs can recover for such injury in an action under this section. Marrero v. City of Hialeah, C.A.5 (Fla.) 1980, 625 F.2d 499, certiorari denied 101 S.Ct. 1353, 450 U.S. 913, 67 L.Ed.2d 337. Civil Rights 1038

Mere fact that persons other than terminated probationary police officer, her supervisors, and persons to whom supervisors' disclosure of employment-related facts would have been privileged were aware that officer had been terminated due to allegation that she had tested positive for marijuana was insufficient to permit inference that supervisors had been responsible for disclosure, as required to permit officer to maintain defamation action under § 1983 against supervisors, in absence of any evidence that supervisors or their privileged confidants had disclosed reason for officer's termination to anyone. Ryan v. Carroll, S.D.N.Y.1999, 67 F.Supp.2d 356. Civil Rights 1405

Alleged harm to attorneys' in-state law practices resulting from accusations of criminal misconduct by public officials and private citizen did not amount to significant alteration of "some other right or status" so as to satisfy "stigma-plus" test and support due process claim premised on deprivation of liberty or property interest. McDonough v. O'Rourke, S.D.Fla.1995, 897 F.Supp. 1445. Constitutional Law 277(1); Constitutional Law 287.2(5); Libel And Slander 9(3)

Even if defendants who signed press release issued by Nevada conference of police and sheriffs acted under color of state law, conduct was not shown to have resulted in deprivation of constitutional rights on theory plaintiff was no longer "at liberty to interact with the community on the same level" as he used to because he had been labeled a gangster, or on theory plaintiff suffered deprivation of property interest because his clientele had dropped off due to his damaged reputation. Tate v. Lau, D.Nev.1994, 865 F.Supp. 681. Civil Rights 1088(1)

When loss of employment was simply an extended and indirect consequence of defamation, tort claim under Massachusetts law, rather than § 1983 claim, was most appropriate route of recovery. Concannon v. Capuano, D.Mass.1994, 840 F.Supp. 178. Civil Rights 1320

Automobile salvager failed to prove "reputation plus" damages necessary to give rise to cognizable § 1983 civil rights claim for relief based on allegedly defamatory statements relating to police and grand jury investigations of his business operation, notwithstanding fact that his township towing privileges were temporarily revoked; salvager alleged that police chief revoked towing privileges to retaliate for salvager's failure to cooperate in investigation, not because chief believed that salvager was operating illegal salvage business, salvager did not have constitutionally protected interest in towing privileges, and salvager failed to establish that he suffered monetary or professional damages due to allegedly defamatory statements. Garner v. Township of Wrightstown, E.D.Pa.1993, 819 F.Supp. 435, affirmed 16 F.3d 403. Civil Rights 1038

Former township employee and his wife did not have right or status guaranteed by state law or Constitution which had been extinguished as result of any alleged harm to their reputations resulting from Attorney General investigation into alleged conflict of interest so as to state claim under § 1983 for violation of due process; fact that plaintiff was unable to obtain employment in his chosen field for almost two years following his voluntary resignation from government job after defendants made accusations of conflict of interest allegedly to derail his

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candidacy for public office was not evidence of lost right. Lahaza v. Azeff, E.D.Pa.1992, 790 F.Supp. 88. Constitutional Law 275(1)

State court judge's interest in his real property and his interest in continued employment in his chosen profession were, in combination, sufficient to establish "tangible interest" beyond defamation, and thus judge stated cause of action under § 1983 against newspaper and reporters that published allegedly erroneous representation that judge had committed misdemeanor by erecting barriers on public roadway. Lewis v. News-Press & Gazette Co., W.D.Mo.1992, 782 F.Supp. 1338. Civil Rights 1395(3)

Alleged conspiracy by members of county board of tax assessors to damage former chairman's reputation was not actionable under § 1983; damage to reputation, alone, was not deprivation of liberty or property interest, and chairman had no constitutionally protected property interest in position. Smith v. Turner, N.D.Ga.1991, 764 F.Supp. 632. Conspiracy 7.5(2)

Plaintiff has no liberty or property interest in his reputation and, unless accompanied by tangible loss of privileges or benefits, reputational injury inflicted by state is not actionable under § 1983. Huffaker v. Bucks County Dist. Attorney's Office, E.D.Pa.1991, 758 F.Supp. 287. Civil Rights 1038; Constitutional Law 254.1; Constitutional Law 277(1)

An incorporator and director of not-for-profit corporation engaged in child protection activities did not have viable civil rights claim against public officials who purportedly defamed him in his work; although it was alleged that defamation would interfere with enforcement of child protection laws and limit career opportunities of director, there was no allegation that defamation had caused director to actually lose his position, as required to create harm to constitutionally protected right. Katz v. Molic, S.D.N.Y.1989, 727 F.Supp. 114, affirmed 909 F.2d 1473. Civil Rights 1038

Claims by manufacturer and distributor of Kosher food products that director of Kosher Law Enforcement Division of New York State Department of Agriculture and Markets deprived manufacturer of its property and liberty without due process of law, based on damage to its reputation, was insufficient to permit manufacturer to maintain § 1983 suit, absent damage to some more tangible interests. National Foods, Inc. v. Rubin, S.D.N.Y.1989, 727 F.Supp. 104. Civil Rights 1038

"Tangible injury" which, when combined with injury to reputation as result of defamation by public official, will be considered injury to a liberty or property interest protected by the due process clause does not include interference with business opportunity but only loss of employment, loss of government contract, or some other change of status vis-a-vis the governmental entity responsible for the defamatory remarks. Dower v. Dickinson, N.D.N.Y.1988, 700 F.Supp. 640. Constitutional Law 277(2); Constitutional Law 278.4(1)

For purposes of motion to dismiss, officers and employees of state agency violated information management company's Fourteenth Amendment liberty interest, after unilaterally terminating company's contract, by allegedly stating that company had been derelict in providing services to Colorado Medicaid program, leading to stigmatization and adverse effect on company's ability to secure contracts with governmental bodies. Computer Sciences Corp. v. Ibarra, D.Colo.1988, 685 F.Supp. 748. Constitutional Law 278.7(1)

Real estate developer, who was conditionally designated as developer of publicly owned land, pleaded a section 1983 claim for deprivation of liberty interest based on allegations that false charges were made against him by a city official which impaired his interest in his good name, reputation, honor or integrity and resulted in his de-designation. Waltentas v. Lipper, S.D.N.Y.1986, 636 F.Supp. 331. Civil Rights 1395(3)

Allegation that physician suffered loss of income caused by decrease in number of patient referrals made to him following censure of physician by hospital board was no more than claim for consequential damages resulting from

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injury to physician's reputation and thus, was not actionable under 42 U.S.C.A. § 1983, absent allegation that decrease in referrals was caused by loss or alteration of legal status recognized and protected by state law. Chaudhry v. Prince George's County, Md., D.Md.1985, 626 F.Supp. 448. Civil Rights 1038

Plaintiff's claim of defamation properly stated a claim under this section, where complaint asserted that all defendants agreed to damage plaintiff's reputation and to defame his character and that as result plaintiff lost his business and suffered difficulty in finding suitable employment. Petrone v. City of Reading, E.D.Pa.1982, 541 F.Supp. 735. Civil Rights 1395(1)

1600. ---- False arrest and imprisonment, defamation, libel or slander, deprivation of constitutional or statutory rights generally

State's attorney's defamatory statements, which were alleged to have adversely influenced the prosecuting attorneys who were continuing § 1983 plaintiff's prosecution and the judicial tribunals hearing his case, implicated plaintiff's due process rights and elevated State's attorney's statements from defamation to a possible constitutional violation actionable under §§ 1983. Patterson v. Burge, N.D.Ill.2004, 328 F.Supp.2d 878. Constitutional Law 257.5; District And Prosecuting Attorneys 10

Even where libel is coupled with charge of false imprisonment against store personnel, there is no claim cognizable under provision of this section pertaining to deprivation of rights under color of state law. Stordahl v. Harrison, E.D.Va.1982, 542 F.Supp. 721. Civil Rights 1326(1)

Claim with respect to damage to plaintiff's reputation as a direct and proximate result of alleged unlawful act of defendant police officer in arresting plaintiff for disorderly conduct did not implicate any federally protected right and, hence, was not cognizable under this section. Zurek v. Woodbury, N.D.Ill.1978, 446 F.Supp. 1149. Civil Rights 1088(4)

1601. ---- Stigmatization, defamation, libel or slander, deprivation of constitutional or statutory rights generally

New York City community school board member who was removed by chancellor after other board members publicly charged her with harassment and terrorism stated claim for deprivation of "stigma-plus" liberty interest without procedural due process; combination of other board members' highly stigmatizing statements, which they sought to publicize in local news sources and which explicitly requested her removal, and chancellor's removal decision, the "plus," was sufficient. Velez v. Levy, C.A.2 (N.Y.) 2005, 401 F.3d 75. Constitutional Law 278.5(1); Schools 53(5)

Alleged damage to plaintiffs' business reputation, and deprivation of the good will in their business as result of allegedly defamatory statements about the physical condition of their business made by city and its mayor, was not state-imposed burden necessary to support "stigma plus" civil rights claim; such harms were not in addition to the alleged defamation, but rather were direct deleterious effects of that defamation. Sadallah v. City of Utica, C.A.2 (N.Y.) 2004, 383 F.3d 34. Civil Rights 1038

Pro se civil rights plaintiff, who alleged that state employee defamed her in denying her license to operate day care facility by making false remarks to facility's owner insinuating that plaintiff and owner were intimately involved, failed to state claim for deprivation of liberty interest in her reputation; if statement were true, it was incapable of supporting § 1983 defamation claim, and if false, owner would have known it was false and, thus, it could not have stigmatized plaintiff. Whitney v. State of N.M., C.A.10 (N.M.) 1997, 113 F.3d 1170. Civil Rights 1038

Terminated university basketball coach stated facts in complaint sufficient to establish that university officials imposed stigma on him, for purposes of his claim that officials deprived him of liberty interest without due process by making negative public statements regarding his termination; coach alleged that official made statement to the

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effect that coach personally attacked his players to the point that they became physically ill and were in trouble psychologically, and that he was unable to find employment as college basketball coach as a result. Campanelli v. Bockrath, C.A.9 (Cal.) 1996, 100 F.3d 1476, on remand 1997 WL 325422. Civil Rights 1395(8)

Corporation failed to state § 1983 action under stigma-plus test by claiming that stigma caused by allegedly defamatory remarks in report by district attorney to county board, which concluded there was connection between corporation and Mafia, plus injury to goodwill deprived them of liberty interest; at most corporation alleged injury to business reputation, and thus corporation had no distinct alteration or extinction of previously recognized right to add to alleged stigmatization. WMX Technologies, Inc. v. Miller, C.A.9 (Cal.) 1996, 80 F.3d 1315, rehearing en banc granted 99 F.3d 289, on rehearing 104 F.3d 1133, on subsequent appeal 197 F.3d 367. Civil Rights 1038

Towing company whose towing assignments by New York State Police were terminated failed to establish deprivation of interest protected by due process on "stigma plus" theory where there was no showing of any dissemination of defendant police officers' stigmatizing statements sufficient to affect towing company's standing in the community or to foreclose future job opportunities. White Plains Towing Corp. v. Patterson, C.A.2 (N.Y.) 1993, 991 F.2d 1049, certiorari denied 114 S.Ct. 185, 510 U.S. 865, 126 L.Ed.2d 144. Constitutional Law 276(2)

A psychologist made out a prima facie case that a liberty interest had been violated by the actions of the director of a publicly funded counselling service; the director acted under state law in suggesting to county and state agencies that the psychologist was not professionally qualified to handle cases and not only defamed psychologist but created a stigma that foreclosed his freedom to take advantage of other employment opportunities. Corbitt v. Andersen, C.A.10 (Wyo.) 1985, 778 F.2d 1471. Civil Rights 1421

Stigmatization or reputational damage alone, no matter how egregious, is not sufficient to support cause of action under this section providing for civil action for deprivation of rights and in order to justify relief under liberty clause of U.S.C.A.Const. Amend. 14 via this section, claimant's alleged reputational damage must be entangled with some other tangible interests such as employment. McGhee v. Draper, C.A.10 (Okla.) 1981, 639 F.2d 639. Civil Rights 1038

Village police chief stated §§ 1983 "stigma-plus" claim based on county District Attorney's "negative and false public comments" which allegedly impugned chief's honesty, reliability and job performance, thereby causing loss of his job and hindering his ability to obtain other employment in the law enforcement field; DA's comments implicated chief's interest in pursuing his occupation, a form of liberty protected by due process. Hoffman v. Kelz, W.D.Wis.2006, 443 F.Supp.2d 1007. Municipal Corporations 182

Allegations by apartment complex owner that public statements by county officials linking complex with high incidence of crime caused damage to owner's business reputation, and a loss of business goodwill, and that statements were false, did not state a §§ 1983 stigma-plus due process claim against officials, absent assertions that owner suffered an additional deprivation of a legal right or status as result of the public statements. University Gardens Apartments Joint Venture v. Johnson, D.Md.2006, 419 F.Supp.2d 733. Civil Rights 1395(3)

Denial of retired state court judge's application for appointment as judicial hearing officer did not stigmatize judge, as required for §§ 1983 claim that denial was violation of his constitutionally protected due process liberty interest. Levine v. McCabe, E.D.N.Y.2005, 357 F.Supp.2d 608. Constitutional Law 278.4(2); Reference 39

Town manager could not recover from town, under § 1983, for deprivation of liberty interest based on defamation of town manager during public disciplinary hearings, absent showing that town manager was stigmatized in connection with denial of right or status previously recognized under state law. Koelsch v. Town of Amesbury, D.Mass.1994, 851 F.Supp. 497. Civil Rights 1126

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To constitute a deprivation of liberty within U.S.C.A.Const. Amend. 14, the stigmatizing information must be false and made public by the offending governmental entity during the course of the employment termination and must call into question plaintiff's good name, reputation, honor, or integrity. McCarthy v. Cortland County Community Action Program, Inc., N.D.N.Y.1980, 487 F.Supp. 333. Constitutional Law 278.4(3)

A plaintiff must allege loss of a property or a liberty interest arguably plausible under state law or Bill of Rights in order to state a federal claim for stigmatization of reputation; unless he alleges infringement of such interest in conjunction with injury to his reputation he will not state a claim for stigmatization under this section but, at most, a state law claim for defamation, libel or slander. Poirier v. Hodges, M.D.Fla.1978, 445 F.Supp. 838. Civil Rights 1394

To assert claim for fundamental due process under this section, one must meet the "stigma-plus" test, but, to do so, it is not necessary that plaintiff ultimately prevail on his claim to property interest or liberty interest; rather, plaintiff need only allege denial of property or liberty interest that is arguable or putatively plausible under state law or bill of rights, in order to allege as well a federal claim for stigmatization of reputation, good name or integrity. Tanner v. McCall, M.D.Fla.1977, 441 F.Supp. 503. Civil Rights 1394

Former employee who brought action against state parole division failed to establish that his discharge from probationary position without hearing deprived him of protected liberty interest, as required to maintain § 1983 claim for due process violation; employee was not stigmatized by his loss of employment, since reason for dismissal was not published to any third parties at time of action. Pagan v. New York State Div. of Parole, S.D.N.Y.2003, 2003 WL 22723013, Unreported. Constitutional Law 278.4(5); Pardon And Parole 56

1602. ---- Prosecutors' comments, defamation, libel or slander, deprivation of constitutional or statutory rights generally

Arrestee failed to state § 1983 claim against prosecutor for his alleged defamatory statements concerning arrestee at press conference announcing arrestee's indictment, notwithstanding contention that press conference aroused community against arrestee, increasing chance that court would order him imprisoned pending trial and reducing chance of acquittal; interest in reputation is not itself liberty or property interest for purposes of due process clause, press conference itself did not cause arrestee's detention, indictment was untainted by press conference, and arrestee did not identify any constitutional problem in detention hearing or trial. Buckley v. Fitzsimmons, C.A.7 (Ill.) 1994, 20 F.3d 789, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 740, 513 U.S. 1085, 130 L.Ed.2d 642, on remand 1996 WL 10899. Civil Rights 1088(5)

Claim that defendant prosecuting attorney made continual, baseless accusations of criminal activity without filing any charges and made derogatory statements to the news media was not actionable under this section, in light of fact that the only injury involved in those allegations did not relate to a denial of a constitutional right, but merely to possible harm to plaintiffs' reputations. Kaylor v. Fields, C.A.8 (Ark.) 1981, 661 F.2d 1177. Civil Rights 1395(5)

Alleged defamation through county prosecutor's letter to house committee with copies to press did not deprive plaintiff of any life or liberty guaranteed by due process clause of U.S.C.A.Const. Amend. 14 and gave rise to no cause of action under this section. Walker v. Cahalan, C.A.6 (Mich.) 1976, 542 F.2d 681, certiorari denied 97 S.Ct. 1647, 430 U.S. 966, 52 L.Ed.2d 357. Civil Rights 1038; Constitutional Law 255(2)

Alleged defamatory television comments by state prosecuting attorney constituted public comment falling within the civil immunity of a public official and, therefore, did not give rise to the requisite denial of due process to sustain a civil rights action against the state attorney. Wolf v. Carey, N.D.Ill.1977, 438 F.Supp. 545, affirmed 582 F.2d 1282. Civil Rights 1376(9)

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42 U.S.C.A. § 1983

1603. ---- Freedom of press, defamation, libel or slander, deprivation of constitutional or statutory rights generally

Nursing home operator's civil rights claim for damages against newspaper reporter premised on the publication of misleading reports was barred by U.S.C.A.Const. Amend. 1 where the claim was not that the nursing home operator had been libeled but rather that he was deprived of constitutional rights because of the publication of information about him. Bergman v. Stein, S.D.N.Y.1975, 404 F.Supp. 287. Constitutional Law 90.1(8)

1604. ---- Attorneys as plaintiffs, defamation, libel or slander, deprivation of constitutional or statutory rights generally

Attorney's claim that grand jury intentionally disseminated their report to injure his reputation without providing due process did not state claim under § 1983. DeCamp v. Douglas County Franklin Grand Jury, C.A.8 (Neb.) 1992, 978 F.2d 1047, certiorari denied 113 S.Ct. 3036, 509 U.S. 923, 125 L.Ed.2d 723. Civil Rights 1088(5)

White attorney's allegation, that newspaper and others placed "defamatory cloud" over his "employment opportunities" due to alleged falsities in newspaper articles about his representation of black persons, was insufficient to state deprivation of liberty or property interest, which would be necessary for attorney to state claim for denial of due process under federal civil rights statute; attorney's status as attorney and his existing legal rights had to be significantly altered before claim would arise. Phelps v. Wichita Eagle-Beacon, C.A.10 (Kan.) 1989, 886 F.2d 1262. Civil Rights 1395(1)

1605. ---- Defendants in defamation actions, defamation, libel or slander, deprivation of constitutional or statutory rights generally

Bringing of defamation suit by local board of education president did not provide defamation defendant with basis for civil rights suit under § 1983, although defamation defendant claimed that bringing the defamation suit infringed his First and Fourteenth Amendment rights by forcing him to endure burden and expense of defending himself in court for speaking. Jungherr v. San Francisco U.S.D. Bd. of Educ., C.A.9 (Cal.) 1991, 923 F.2d 743, certiorari denied 112 S.Ct. 51, 502 U.S. 808, 116 L.Ed.2d 28. Civil Rights 1037

No state action was involved in bringing of libel action against black real estate developer, nor could state action be predicated on failure of state court to consider certain claims of black real estate developer in libel action; therefore, black real estate developer could not maintain 42 U.S.C.A. § 1983 action against person allegedly defamed. Fleming v. Moore, C.A.4 (Va.) 1985, 780 F.2d 438, certiorari denied 106 S.Ct. 1644, 475 U.S. 1123, 90 L.Ed.2d 189. Civil Rights 1326(9)

1606. ---- Miscellaneous claims, defamation, libel or slander, deprivation of constitutional or statutory rights generally

School district employee failed to show that school district made false statements that allegedly denied him his constitutionally-protected liberty interest in his reputation, honor, and integrity; although there was circumstantial evidence that third party heard something negative about employee, there was no evidence that school district made any of those statements or that those statements were false. Speziale v. Bethlehem Area School Dist., E.D.Pa.2003, 266 F.Supp.2d 366. Constitutional Law 278.5(2.1); Schools 63(1)

Property owners who alleged only injury to their reputations as result of allegedly defamatory statements made by town employees following dispute regarding zoning and issuance of certificates of occupancy did not allege injury to protected liberty interest, and thus could not recover in § 1983 action based on defamation. Frooks v. Town of Cortlandt, S.D.N.Y.1998, 997 F.Supp. 438, affirmed 182 F.3d 899. Civil Rights 1038

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42 U.S.C.A. § 1983

Allegation in § 1983 civil rights action that liquor licensing board commissioners who voted to suspend restaurant's liquor license based on assault charge against owner had engaged in smear campaign to ruin owner's business was without merit, where only evidence in support of this claim was liquor board's issuance to local police of a notice of suspension which was the standard notice issued whenever a liquor license suspension was imposed; even if issuance of notice "caused" police to spread word that closing of restaurant was imminent, such dissemination of the suspension decision did not give rise to constitutional violation. D'Agostino v. New York State Liquor Authority, W.D.N.Y.1996, 913 F.Supp. 757, affirmed 104 F.3d 351. Civil Rights 1046

Private school which also sold packages to parents interested in educating their children at home had no § 1983 claim against school officials for deprivation of liberty and property interests in its reputation, in connection with truancy prosecutions of home schoolers. Clonlara, Inc. v. Runkel, E.D.Mich.1989, 722 F.Supp. 1442. Civil Rights 1038

State employees' allegedly defamatory statements did not violate company's due process rights, given that alleged defamation alone did not establish constitutional deprivation, and only injury alleged beyond harm to company's reputation was loss of sales of company's alcohol-infused gelatin product, which was indirect injury not actionable under Fourteenth Amendment. BPNC, Inc. v. Taft, C.A.6 (Ohio) 2005, 147 Fed.Appx. 525, 2005 WL 1993426, Unreported. States 112.2(1)

1607. Privacy, deprivation of constitutional or statutory rights generally-- Generally

Under some circumstances there can be such a gross abuse of privacy as to amount to abridgement of fundamental constitutional guarantees. Baker v. Howard, C.A.9 (Or.) 1969, 419 F.2d 376. Constitutional Law 82(7)

Under Ohio law, decedent's surviving siblings sufficiently alleged that they had constitutionally protected privacy right to be free from photographer's unwarranted intrusion by taking pictures of decedent's body without family's permission, for purposes of § 1983 claim against county coroner and photographer alleging that siblings were denied privacy without due process; siblings had legitimate claim of entitlement to decedent's body and the right not to be embarrassed by exposure to public view of the decedent's remains for commercial purposes. Melton v. Board of County Com'rs of Hamilton County, Ohio, S.D.Ohio 2003, 267 F.Supp.2d 859. Constitutional Law 82(7); Constitutional Law 274(5); Dead Bodies 9

Right to be free from unwanted publicity is protected, if at all, by the common law; and because it is not a federal right, an action under this section will not lie for its invasion. Reilly v. Leonard, D.C.Conn.1978, 459 F.Supp. 291. Civil Rights 1040

1608. ---- Bodily privacy, deprivation of constitutional or statutory rights generally

Parolee had fundamental right to bodily privacy for purposes of qualified immunity defense in § 1983 civil rights suit against opposite-sex parole officer who entered stall while parolee was collecting urine sample. Sepulveda v. Ramirez, C.A.9 (Cal.) 1992, 967 F.2d 1413, certiorari denied 114 S.Ct. 342, 510 U.S. 931, 126 L.Ed.2d 307, on remand. Civil Rights 1376(7)

Municipality was not liable, in §§ 1983 action, for violating Fourth Amendment privacy rights of female arrestee, allegedly subjected to strip search, through policy of authorizing strip searching when officer had reasonable suspicion that arrestee was threat to facility security. Beasley v. City of Sugar Land, S.D.Tex.2006, 410 F.Supp.2d 524. Civil Rights 1351(4)

Counts alleging invasion of privacy arising out of school employee's observation of high school student in boys' restroom through two-way mirror failed to state cause of action under this section, where privacy allegedly invaded

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did not involve those zones of privacy which emanate from specific constitutional guarantees, nor did it deal with those substantive aspects of the U.S.C.A.Const. Amend. 14 which are fundamental or implicit in concept of ordered liberty and privacy which plaintiff claimed to have been invaded and interest which plaintiff attempted to vindicate derived their legal foundations from traditional state tort law. Stern v. New Haven Community Schools, E.D.Mich.1981, 529 F.Supp. 31. Civil Rights 1395(2)

1609. ---- Confidential relationships, privacy, deprivation of constitutional or statutory rights generally

Statute limiting disclosure of records of substance abuse programs does not create individual entitlements that can be enforced via § 1983, since the statute is a criminal prohibition and there is nothing in the text of the statute to indicate that Congress had in mind the creation of individual rights. Doe v. Broderick, C.A.4 (Va.) 2000, 225 F.3d 440. Civil Rights 1040

Catholic priest failed to state claim for deprivation of his constitutional right of privacy by violation of agreement to keep identity and whereabouts of men depicted on video engaging in sex with him; release of names and addresses of men alone did not involve intimate details of priest's life to implicate any privacy interests. Cinel v. Connick, C.A.5 (La.) 1994, 15 F.3d 1338, certiorari denied 115 S.Ct. 189, 513 U.S. 868, 130 L.Ed.2d 122. Constitutional Law 82(10)

Violations of confidentiality right of privacy may be actionable under § 1983. Scheetz v. The Morning Call, Inc., C.A.3 (Pa.) 1991, 946 F.2d 202, rehearing denied, certiorari denied 112 S.Ct. 1171, 502 U.S. 1095, 117 L.Ed.2d 417. Civil Rights 1040

Plaintiff infected with human immunodeficiency virus (HIV) had constitutional right to privacy which encompassed nondisclosure of her HIV status. Doe v. Town of Plymouth, D.Mass.1993, 825 F.Supp. 1102. Constitutional Law 82(7)

Mental health professionals did not violate patient's substantive due process right to privacy, as needed for patient to prevail on § 1983 civil rights claim, by disclosing patient's threats to kill co-workers to law enforcement personnel and one of individuals threatened, even if disclosure violated Pennsylvania Mental Health Procedures Act, since state's interest in protecting citizens from violent assault was sufficiently strong to outweigh patient's interest in maintaining confidentiality of psychiatric records. Ms. B. v. Montgomery County Emergency Service, Inc., E.D.Pa.1992, 799 F.Supp. 534, affirmed 989 F.2d 488, certiorari denied 114 S.Ct. 174, 510 U.S. 860, 126 L.Ed.2d 133. Constitutional Law 274(5); Mental Health 21

Police officer violated family members' Fourteenth Amendment privacy rights by publicly disclosing that husband/father was infected with Acquired Immune Deficiency Syndrome (AIDS) virus; medical evidence available at time of disclosure conclusively established that AIDS was not transmitted by casual contact, and there had not even been casual contact with those to whom disclosure was made. Doe v. Borough of Barrington, D.N.J.1990, 729 F.Supp. 376. Constitutional Law 274(5); Municipal Corporations 189(1)

Asserted right to privacy in psychiatrist patient relationship was not supported by Constitution or any federal law and afforded no basis for civil rights attack on C.G.S.A. § 19-48A compelling practitioners of healing arts to report names of, and other information about, drug-dependent persons to Commissioner of Health. Felber v. Foote, D.C.Conn.1970, 321 F.Supp. 85. Chemical Dependents 2; Constitutional Law 82(7)

1610. ---- Media disclosures, privacy, deprivation of constitutional or statutory rights generally

Crime victim's privacy interest in preventing dissemination of confidential and intimate details of rape perpetrated against her outweighed state's interest in releasing the details, absent any valid law enforcement-related justification

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for disseminating the details of the rape at the time of sheriff's press conference, and, thus, victim and her husband raised cognizable privacy claim under § 1983, based on allegations that sheriff violated their right to privacy by publicly revealing details of the rape, in retaliation for plaintiffs' publicly criticizing sheriff's investigation of the case. Bloch v. Ribar, C.A.6 (Ohio) 1998, 156 F.3d 673. Civil Rights 1088(1)

Attorney's allegation, that newspaper and others violated Kansas Supreme Court Rule when sealed information had been leaked to newspaper, did not state violation of right protected by federal civil rights statute. Phelps v. Wichita Eagle-Beacon, C.A.10 (Kan.) 1989, 886 F.2d 1262. Civil Rights 1395(1)

Plaintiff's invasion of privacy claim did not rise to constitutional dimensions, where it was based on front page newspaper article which identified plaintiff by name as welfare recipient and as former dancer at local nightclub and which included statements from doctor about plaintiff's disabled status, the amount of public assistance received by him, time when he received assistance and number of details surrounding circumstances under which assistance was paid. Morris v. Danna, C.A.8 (Minn.) 1977, 547 F.2d 436. Constitutional Law 82(7)

Since substantial information regarding federal prisoner's mental competency was a matter of public record by virtue of court order for psychiatric examination to determine competency to stand trial and judge's reading portions of psychiatric report in open court and newspaper article concerning the report contained little if anything not generally disclosed in open court, publication of portions of the report which were not read in open court did not support a claim for invasion of any constitutional right of privacy. McNally v. Pulitzer Pub. Co., C.A.8 (Mo.) 1976, 532 F.2d 69, certiorari denied 97 S.Ct. 150, 429 U.S. 855, 50 L.Ed.2d 131. Constitutional Law 82(13)

1611. ---- State privacy rights, deprivation of constitutional or statutory rights generally

Although issues of state law can arise in federal substantive due process analysis, § 1983 violation cannot be based solely on alleged violation of state privacy rights. Pesce v. J. Sterling Morton High School, Dist. 201, Cook County, IL, C.A.7 (Ill.) 1987, 830 F.2d 789. Civil Rights 1040

1612. ---- Miscellaneous claims, privacy, deprivation of constitutional or statutory rights generally

Allegations by city employee that director of city agency employer unlawfully disclosed employee's name, address, work schedule, and social security number during an employment hearing before the agency did not state §§ 1983 claim for violation of employee's privacy rights; information allegedly disclosed was not highly personal, it was related to public employment, and it was presented during employee's own hearing. Pennyfeather v. Tessler, C.A.2 (N.Y.) 2005, 431 F.3d 54. Civil Rights 1126

Allegations by crop duster that sheriff drove his vehicle directly into path of airplane to create a violation of Louisiana pesticide laws, which the Louisiana Department of Agriculture used to prosecute crop duster, were insufficient to show that crop duster had legitimate expectation of privacy in area of alleged search, and thus, crop duster failed to state § 1983 cause of action against sheriff for a violation of Fourth Amendment; crop duster did not own the field that sheriff inspected for pesticide use. Johnson v. Louisiana Dept. of Agriculture, C.A.5 (La.) 1994, 18 F.3d 318, rehearing denied. Civil Rights 1395(6)

Catholic priest failed to state claim for violation of his constitutional right of privacy against district attorney, assistant district attorney, and investigator from release to church and another private litigant of sexually oriented material found in his room, where church had viewed materials before giving them to district attorney's office, and other private litigant had participated in making videotape. Cinel v. Connick, C.A.5 (La.) 1994, 15 F.3d 1338, certiorari denied 115 S.Ct. 189, 513 U.S. 868, 130 L.Ed.2d 122. Constitutional Law 82(10)

Wife of police union official could not recover under § 1983 for invasion of privacy based on radio talk show program in which mayor's administrative assistant asked union official whether union's recent criticism of mayor

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was because official's wife had not qualified for position as police officer; disclosures, although exhibiting poor judgment and lack of sensitivity, neither involved fundamental rights nor addressed highly personal medical or financial information. Alexander v. Peffer, C.A.8 (Neb.) 1993, 993 F.2d 1348. Civil Rights 1040

Where independent consumer reporting firm obtained information about which plaintiff complained merely by searching its own files containing a summary of its own private reports on plaintiff, any intrusion giving rise to cause of action for invasion of plaintiff's privacy had to stem from fact that the firm collected and retained information concerning plaintiff's past insurance history. Tureen v. Equifax, Inc., C.A.8 (Mo.) 1978, 571 F.2d 411. Torts 341

City employees did not have objectively reasonable expectation of privacy in their offices, maintenance shop, lift station, weld shop, and various other open areas of their workplace that would support claim that surveillance of those areas violated their civil rights under the Fourth Amendment. Williams v. City of Tulsa, OK, N.D.Okla.2005, 393 F.Supp.2d 1124. Searches And Seizures 26

Federal statutes mandating confidentiality of drug abuse and mental health records in federally regulated or funded programs did not require school district to maintain confidentiality of its staff members' knowledge of students' pregnancies, i.e. did not preclude district's adoption of policy generally requiring parental notification of such pregnancies, especially given applicability of Family Educational Rights and Privacy Act (FERPA). Port Washington Teachers' Ass'n v. Board of Educ. of Port Washington Union Free School Dist., E.D.N.Y.2005, 361 F.Supp.2d 69. Schools 157

Student and his parents failed to show that communications between school social worker, guidance counselor, and assistant superintendent regarding student's history of sexual abuse while testing to see if student was emotionally disturbed within meaning of IDEA, which would have qualified student for special education services, violated student's right to privacy, as required to support §§ 1983 action against school officials and district; school officials had substantial interest in setting forth all relevant details about events which were likely to have impacted student's emotional well-being during evaluation of student's emotional state and all communications occurred during course of evaluation. N.C. ex rel. M.C. v. Bedford Central School Dist., S.D.N.Y.2004, 348 F.Supp.2d 32. Constitutional Law 82(12); Schools 148(3)

Allowing noninvestigating officers in sheriff's department to view surveillance videotape of attorney and client's sexual activities was not an unconstitutional invasion of attorney's privacy in violation of his substantive due process rights; video contained not just documentation of attorney's private sexual conduct, but of his alleged criminal activity in trading sexual favors for a reduction in legal fees, and the videotape was destined to become public inasmuch as it was evidence to be used, and was in fact used, in the criminal prosecution of attorney. Cawood v. Haggard, E.D.Tenn.2004, 327 F.Supp.2d 863, affirmed 125 Fed.Appx. 700, 2005 WL 773946. Constitutional Law 274(5); Sheriffs And Constables 100

County's dissemination to individual county officials of psychologist's report containing conclusion that police officer had impaired judgment was not actionable as invasion of privacy in officer's § 1983 due process suit against county, since report did not concern reproduction, contraception, abortion, or marriage. Mansoor v. County of Albemarle, W.D.Va.2000, 124 F.Supp.2d 367. Constitutional Law 278.4(1); Counties 67

Postal customer did not have objectively reasonable expectation of privacy in address card filed with postal service in connection with her postal box, since information was voluntarily provided and exposed to postal employees in ordinary course of business, or in her address itself, and thus federal agents did not engage in unreasonable search for Fourth Amendment purposes, which might have subjected them to *Bivens* liability, when they examined her postal registration card. Wesley v. Don Stein Buick, Inc., D.Kan.1997, 985 F.Supp. 1288, vacated in part 996 F.Supp. 1299. Postal Service 47

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42 U.S.C.A. § 1983

Bus passenger who had brought action against transit authority in connection with which authority had placed passenger under surveillance to determine if passenger's injuries were as severe as she claimed could not recover in federal civil rights action based on alleged violation of passenger's constitutional right to privacy where all surveillance occurred in public places in which passenger had no reasonable expectation of privacy and passenger offered no evidence to support assertion that surveillance amounted to unconstitutional invasion of her mind. Frazier v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1995, 907 F.Supp. 116, affirmed 91 F.3d 123. Civil Rights 1040

Plaintiffs in § 1983 action failed to meet burden of proving that action taken by Nevada conference of police and sheriffs, which issued press release signed by defendants and in which plaintiff was called a "biggot," was under pretense of state law. Tate v. Lau, D.Nev.1994, 865 F.Supp. 681. Civil Rights 1326(2)

Abandoned automobile salvager failed to state cognizable § 1983 right to relief based on disclosure that his business operations were implicated in police and grand jury investigations, regardless of whether investigation was properly initiated; alleged disclosure fell within ambit of public information in which salvager did not have constitutional privacy interest. Garner v. Township of Wrightstown, E.D.Pa.1993, 819 F.Supp. 435, affirmed 16 F.3d 403. Civil Rights 1088(1)

City dispatcher had no reasonable expectation of privacy with respect to personal phone call made during work hours which she erroneously believed was unrecorded, given nature of her employment and work environment and given that telephone calls were routinely reviewed. Hart v. Clearfield City, Davis County, D.Utah 1993, 815 F.Supp. 1544. Constitutional Law 82(11); Telecommunications 1440

For purposes of his federal civil rights claim, property owner's constitutionally protected right of privacy was not violated by act of flying over property in helicopter, particularly as property was in rural setting rather than in urban subdivision. Darvoe v. Town of Trenton, N.D.N.Y.1992, 785 F.Supp. 305, affirmed 979 F.2d 845. Civil Rights 1071; Constitutional Law 82(6.1)

Requirement that husband produce joint income tax returns in connection with proceeding to enforce judgment for child support did not violate privacy rights of either husband or his wife, and their action under this section was thus properly dismissed. O'Sullivan v. Saperston, S.D.N.Y.1984, 587 F.Supp. 1041. Civil Rights 1040; Civil Rights 1057

Neither juvenile offender nor his younger brother had constitutionally protected right to confidentiality in offender's records, and thus could not claim that city's release of records to scientists conducting psychiatric study of offenders' brothers violated right to privacy. Johnson ex rel. Johnson v. Columbia University, S.D.N.Y.2003, 2003 WL 22743675, Unreported. Constitutional Law 82(7); Infants 133

1613. Travel rights, deprivation of constitutional or statutory rights generally

Acting Chief of Immigration and Naturalization Office for Commonwealth of Northern Mariana Islands (CNMI) violated suspect's liberty interest in international travel by taking away suspect's passport without giving suspect either predeprivation or postdeprivation hearing. DeNieva v. Reyes, C.A.9 (N. Mariana Islands)1992, 966 F.2d 480. Aliens 51.5; Constitutional Law 274.3

Alleged violation of petitioner's right to travel unimpeded as a result of the use of a drug courier profile in his state criminal prosecution could not form a basis for habeas corpus relief; such claim was cognizable only upon an action for damages and injunctive relief based on this section. Wolkind v. Selph, E.D.Va.1979, 473 F.Supp. 675, on reconsideration 495 F.Supp. 507, affirmed 649 F.2d 865. Habeas Corpus 461

XII. DEPRIVATION OF EDUCATION RIGHTS

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1641. Deprivation of education rights generally

Public high school students have substantive and procedural rights while at school. Wood v. Strickland, U.S.Ark.1975, 95 S.Ct. 992, 420 U.S. 308, 43 L.Ed.2d 214, rehearing denied 95 S.Ct. 1589, 421 U.S. 921, 43 L.Ed.2d 790, on remand 519 F.2d 744. Schools 169

Claims under the Individuals with Disabilities Education Act (IDEA) may be actionable under § 1983. Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., C.A.3 (N.J.) 1999, 172 F.3d 238. Civil Rights 1069

Federal court should be loathe to intrude into internal school affairs. Megill v. Board of Regents of State of Fla., C.A.5 (Fla.) 1976, 541 F.2d 1073. Colleges And Universities 10

School district's alleged "retaliation" against parents of disabled student could not support claim under §§1983, where parents failed to identify a constitutional or statutory provision that was violated by the alleged retaliation. Alex G. ex el. Stephen G. v. Board of Trustees of Davis Joint Unified School Dist., E.D.Cal.2004, 332 F.Supp.2d 1315. Civil Rights 1069

IDEA violations can be the predicate for a § 1983 claim based on those statutory violations. R.S. v. District of Columbia, D.D.C.2003, 292 F.Supp.2d 23. Civil Rights 1069

Claim against state university under Title IX does not preempt plaintiff's enforcement of independent constitutional rights under § 1983 where both claims arise from same underlying conduct. Jennings v. University of North Carolina at Chapel Hill, M.D.N.C.2002, 240 F.Supp.2d 492. Civil Rights 1309

To prevail in action against school district under § 1983 on negligent hiring theory, where underlying claim is based on district employee's violation of student's constitutional right, student must show that district was deliberately indifferent to risk that violation of particular constitutional right at issue would follow decision to hire employee, or in other words, that employee was highly likely to inflict particular injuries suffered by student. Doe v. Granbury I.S.D., N.D.Tex.1998, 19 F.Supp.2d 667. Civil Rights 1352(2)

1642. Right to education, deprivation of education rights

While there is legal entitlement to public education provided by state, free from impairment of protected liberties, there is no requirement under paramount law to receive public education on special terms and conditions designed by student. Ouimette v. Babbie, D.C.Vt.1975, 405 F.Supp. 525. Schools 148(1)

1642A. No Child Left Behind Act, deprivation of education rights

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Provisions of the No Child Left Behind Act (NCLBA), requiring local educational agencies to notify parents of students enrolled in schools that were identified for "school improvement" "corrective action" or "restructuring" of such identification and students' rights to transfer to different schools, and to offer supplemental educational services (SES) to certain students, did not create individual rights that were enforceable under § 1983. Association of Community Organizations for Reform Now v. New York City Dept. of Educ., S.D.N.Y.2003, 269 F.Supp.2d 338 . Civil Rights 127.1

1643. Property interest, deprivation of education rights

Private vocational school, as indirect beneficiary of the Higher Education Act and the Act's student loan programs, did not have protected liberty or property interest on which to base its procedural due process claim for alleged violation of the Act, and thus did not have basis for § 1983 claim. Dumas v. Kipp, C.A.9 (Cal.) 1996, 90 F.3d 386. Colleges And Universities 9.25(2); Constitutional Law 278.5(1)

Physician who had been accepted into university hospital's graduate residency program in dermatology failed to state § 1983 claim against university hospital, university, and university and hospital officials for infringement of property interest in pursuit of continuance of her graduate medical education when hospital discontinued its dermatology residency program before physician could enter program; physician only had abstract type of unilateral expectation which was insufficient to constitute a property interest protected by Fourteenth Amendment. Unger v. National Residents Matching Program, C.A.3 (Pa.) 1991, 928 F.2d 1392, rehearing denied. Colleges And Universities 9.35(1); Constitutional Law 277(1)

1644. Administrative procedure, deprivation of education rights

Action under this section is not a plenary review of a challenged school administrative procedure. Whitsel v. Southeast Local School Dist., C.A.6 (Ohio) 1973, 484 F.2d 1222, 71 O.O.2d 381.

Likelihood of prevailing on merits requirement, for preliminary injunction requiring reinstatement of high school student suspended for disruptive conduct, was not satisfied by claim that student's procedural due process rights were violated when suspension did not follow school regulations, as required by state statute; noncompliance with procedures was insufficient grounds for due process violation, and in any event same suspension would have resulted if regulations had been observed. J.S. ex rel. Duck v. Isle of Wight County School Bd., E.D.Va.2005, 362 F.Supp.2d 675. Civil Rights 1457(3)

1645. Administrators, deprivation of education rights

Disabled student could not recover against school officials under § 1983 for failure to provide a free appropriate public education as required by the Individuals with Disabilities Education Act (IDEA), absent evidence that school board's policy was to ignore the responsibilities imposed by IDEA, as opposed to failing to fulfill its responsibilities. Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., C.A.3 (N.J.) 1999, 172 F.3d 238. Civil Rights 1069

This section is not a vehicle for federal court correction of errors which have been committed by school administrators in exercise of their discretion and which do not rise to level of violation of specific constitutional guarantees. Prebble v. Brodrick, C.A.10 (Wyo.) 1976, 535 F.2d 605. Civil Rights 1060

To prevail on § 1983 claim that corporate manager of public charter school created a culture in which expressions of Christian belief were tolerated and even encouraged, and through failure to restrain or correct the resulting excesses, tacitly approved them, parents of school's students had to show that the need for corrective action was so obvious that manager's and school's conscious decision not to act was tantamount to a policy of deliberate indifference to plaintiffs' constitutional rights, and that this policy or custom of deliberate indifference was the

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moving force behind the injury alleged. Daugherty v. Vanguard Charter School Academy, W.D.Mich.2000, 116 F.Supp.2d 897. Civil Rights 1337; Civil Rights 1352(2)

1646. Admissions, deprivation of education rights--Generally

Issue of constitutionality of requirement, for admission to university study program, that applicant possess JD or equivalent degree from law school accredited by American Bar Association did not turn on plaintiff's personal credentials but, rather, upon whether any state of facts reasonably could be conceived to justify challenged admissions standard, and, course of study being a graduate course, and admission requirement was reasonable and justifiable and thus not violative of equal protection. Pappanastos v. Board of Trustees of University of Alabama., C.A.5 (Ala.) 1980, 615 F.2d 219. Colleges And Universities 9.15; Constitutional Law 242.2(5.1)

1647. ---- Racial discrimination, admissions, deprivation of education rights

Even though university improperly considered race of its applicants for Ph.D. program in counseling psychology, unsuccessful white applicant suffered no cognizable injury warranting relief under § 1983, where students ultimately admitted to program had credentials that admissions committee considered superior to plaintiff's, so that plaintiff would have been rejected even under race-neutral policy. Texas v. Lesage, U.S.Tex.1999, 120 S.Ct. 467, 528 U.S. 18, 164 A.L.R. Fed. 785, 145 L.Ed.2d 347. Civil Rights 1061

Where law school admissions committee gave individual consideration to application submitted by black applicant, considered applicant's entire educational experience but rejected application of applicant whose academic credentials placed him in bottom one percent of all applicants to law school, black applicant could not recover in civil rights suit alleging that he was denied admission to law school because of his race. Henderson v. Florida Bd. of Regents of Division of Universities of Dept. of Ed., C.A.5 (Fla.) 1978, 569 F.2d 1309. Civil Rights 1061

1648. Alcoholic beverages, deprivation of education rights

School regulation, properly construed, prohibited use and possession of beverages containing any alcohol, rather than only beverages containing in excess of a certain alcoholic content, and accordingly, in view of students' admission that they intended to "spike" the punch at school function and that they mixed malt liquor into the punch that was served, there was no absence of evidence before the school board to prove the charge against the students. Wood v. Strickland, U.S.Ark.1975, 95 S.Ct. 992, 420 U.S. 308, 43 L.Ed.2d 214, rehearing denied 95 S.Ct. 1589, 421 U.S. 921, 43 L.Ed.2d 790, on remand 519 F.2d 744. Schools 177

1649. Armbands, buttons and insignia, deprivation of education rights

In absence of demonstration of any facts which might reasonably have led school authorities to forecast substantial disruption of, or material interference with, school activities or any showing that disturbances or disorders on school premises in fact occurred when students wore on their sleeves black armbands to exhibit their disapproval of Vietnam hostilities, regulation, adopted by school principals, prohibiting wearing armbands in schools and providing for suspension of any student refusing to remove such was an unconstitutional denial of students' right of expression of opinion. Tinker v. Des Moines Independent Community School Dist., U.S.Iowa 1969, 89 S.Ct. 733, 393 U.S. 503, 21 L.Ed.2d 731, 49 O.O.2d 222. Constitutional Law 90.1(1.4)

1650. Acts of other students, deprivation of education rights

Montana high school's lax building access policy, even if negligent, was not proximate cause of male students' scheme to videotape female students' locker room, and thus did not amount to type of deliberate indifference to constitutional rights of videotaped female students that would support imposition of §§ 1983 liability; scheme was not reasonably foreseeable consequence of policy. Harry A. v. Duncan, D.Mont.2005, 351 F.Supp.2d 1060. Civil

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42 U.S.C.A. § 1983

Rights 1352(2)

School district defendants had no constitutional duty to protect school children from acts of other students. Garza v. Galena Park Independent School Dist., S.D.Tex.1994, 914 F.Supp. 1437. Schools 89.11(1)

1651. Acts of self, deprivation of education rights

School board did not, for § 1983 purposes, assume affirmative due process duty to prevent junior high school student from committing suicide at home after he attempted to do so at school, even though, when third party informed school official of student's suicide attempt at school, official said he would "take care" of situation, and even though third party testified that, absent official's assurance, third party would have called student's mother directly; school did not "affirmatively prevent" mother from saving student's life, as official did not prevent third party from calling mother, but rather, third party herself chose not to do so. Wyke v. Polk County School Bd., C.A.11 (Fla.) 1997, 129 F.3d 560, certified question withdrawn 137 F.3d 1292. Constitutional Law 278.5(5.1); Schools 89.2

1652. Acts of nonstudents, deprivation of education rights

Even assuming constitutional soundness of state-created danger theory for imposing § 1983 liability, no claim was stated in connection with death of high school student hit in head by stray bullet shot by nonstudent during melee; it was questionable whether high school environment was "dangerous," it could not be inferred that school officials were actually aware of high risk that nonstudent invader would enter campus and fire pistol randomly during school hours, and even if deployment of security measures such as identification badges and metal detectors was haphazard or negligent, deliberate indifference could not be inferred. Johnson v. Dallas Independent School Dist., C.A.5 (Tex.) 1994, 38 F.3d 198, rehearing denied, certiorari denied 115 S.Ct. 1361, 514 U.S. 1017, 131 L.Ed.2d 218. Civil Rights 1065

Allegation that teacher's assistant failed to prevent or report fifth-grade teacher's alleged sexual abuse of female student was not sufficient to support §§ 1983 claim based on violation of student's substantive due process right to bodily integrity; assistant had no authority to take action against teacher. Doe v. D'Agostino, D.Mass.2005, 367 F.Supp.2d 157. Constitutional Law 278.5(5.1); Schools 147

Comments that school lunchroom monitor allegedly made in presence of another monitor regarding Asian-American elementary student, which included referring to student's "crazy lies" about his reports of racial harassment by other pupils, calling him a "freakin' Chinese liar," and describing student's family as "crazy," were not sufficiently extreme or egregious so as to shock the conscience, and thus, monitor was not liable under § 1983 for allegedly violating student's right to due process; portions of comments were amenable to race-neutral interpretations and were asserted in private conversation rather than directed toward student, and comments were made during single incident. Yap v. Oceanside Union Free School Dist., E.D.N.Y.2004, 303 F.Supp.2d 284. Constitutional Law 278.5(5.1); Schools 63(3)

1652A. ---- Acts of teachers and staff, acts of nonstudents, deprivation of education rights

School district could be liable on student's §§ 1983 claim, alleging that school district was deliberately indifferent to his physical and emotional integrity by repeatedly failing to take remedial action to prevent teacher's sexual molestation of young male students, only if student established by a preponderance of the evidence each of the following: (1) the existence of a clear and persistent pattern of sexual abuse or a substantial risk of sexual abuse by a school employee; (2) notice of such pattern, or substantial risk, of sexual abuse on the part of the school district; (3) the school district was deliberately indifferent to known facts which demonstrated an unreasonable risk to the safety of student; and (4) that the school district's deliberate indifference was a moving force or was a direct causal link in the constitutional deprivation. Williams ex rel. Hart v. Paint Valley Local School Dist., C.A.6 (Ohio) 2005,

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42 U.S.C.A. § 1983

400 F.3d 360. Civil Rights 1352(2); Civil Rights 1418

1653. Assaults by other students, deprivation of education rights--Generally

Student could not maintain equal protection claim against school district based on district's alleged failure to take steps to eradicate hostile environment created by fellow student who was allegedly sexually harassing and assaulting plaintiff student, absent any allegation that district engaged in official policy of deliberate indifference to sexual harassment, or that principal or teachers involved possessed final policymaking authority; acts of sexual harassment by a student directed solely at plaintiff did not demonstrate a custom or policy of district to be deliberately indifferent to sexual harassment as a general matter. Murrell v. School Dist. No. 1, Denver, Colo., C.A.10 (Colo.) 1999, 186 F.3d 1238. Civil Rights 1351(2)

Homosexual student could not maintain § 1983 claim that school officials violated his right to due process by acting with deliberate indifference in maintaining policy or practice of failing to punish students who harassed and harmed student, based on his sexual orientation, thereby encouraging harmful environment; even if state actor could be liable for intentionally adopting policy that encouraged one private actor to harm another, officials had no duty to act to protect student and thus could not be held liable for such failure. Nabozny v. Podlesny, C.A.7 (Wis.) 1996, 92 F.3d 446. Civil Rights 1068

School district did not owe duty of care to assaulted high school student under Fourteenth Amendment based on state-created danger theory; evidence of generally dangerous school environment did not make it foreseeable that student would receive punch intended for someone else, school's allegedly inadequate security was at most result of negligence, and school's conduct did not create foreseeable risk that student would suffer harm that actually occurred. Mohammed ex rel. Mohammed v. School Dist. of Philadelphia, E.D.Pa.2005, 355 F.Supp.2d 779. Constitutional Law 278.5(5.1); Schools 89.11(1)

School did not create danger by placing junior high special education student in detention with nonspecial education students for purposes of § 1983 action brought against school by estate of special education student who, following detention, was chased off school grounds by nonspecial education students and, in attempt to flee his pursuers, either slipped or was forced into stream where he drowned; there was no evidence that special education student would be attacked and pursued after detention period ended by nonspecial education students, only notice that school had of any danger to special education student was incident which occurred the day before which led to him being detained after school, and unwarranted assault against special education student was perpetrated by private individuals off school property and after school was over for the day. Hunter v. Carbondale Area School Dist., M.D.Pa.1993, 829 F.Supp. 714, affirmed 5 F.3d 1489, certiorari denied 114 S.Ct. 903, 510 U.S. 1081, 127 L.Ed.2d 94. Civil Rights 1062; Civil Rights 1069

Public school district did not have "special relationship" with high school student needed to impose liability in § 1983 civil rights suit for preventing other students from harassing and assaulting student. Elliott v. New Miami Bd. of Educ., S.D.Ohio 1992, 799 F.Supp. 818. Civil Rights 1064; Civil Rights 1065

Elementary student's allegations of 17 incidents of physical and verbal abuse by other students and of school officials' failure to prevent continuing attacks and abuse stated duty to student and § 1983 claim; repeated negligence could be considered as rising to level of deliberate indifference to affirmative duty. Pagano by Pagano v. Massapequa Public Schools, E.D.N.Y.1989, 714 F.Supp. 641. Civil Rights 1395(2)

1654. ---- Sexual assaults by other students, deprivation of education rights

Section 1983 cannot be used as vehicle to assert claim against individual school officials based on alleged violation of Title IX, since Title IX limits liability to funding recipients and does not itself extend to school officials. Williams v. Board of Regents of University System of Georgia, C.A.11 (Ga.) 2006, 441 F.3d 1287, rehearing and

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rehearing en banc denied 2006 WL 1173185. Civil Rights 1337

School district and its employees had no constitutional duty to protect mentally retarded student from sexual assault by another mentally retarded student, despite district's awareness that latter student had history of violent and sexually assaultive behavior. Dorothy J. v. Little Rock School Dist., C.A.8 (Ark.) 1993, 7 F.3d 729. Schools 89.11(1)

Students who were allegedly molested by other students failed to state § 1983 cause of action against school officials for deliberately establishing policy, custom or practice; case did not involve violation by state actors. D.R. by L.R. v. Middle Bucks Area Vocational Technical School, C.A.3 (Pa.) 1992, 972 F.2d 1364, certiorari denied 113 S.Ct. 1045, 506 U.S. 1079, 122 L.Ed.2d 354. Civil Rights 1351(2)

1655. Athletic activities, deprivation of education rights--Generally

School district was not subject to liability under §§ 1983 for failure to train high school cheerleading advisor, even though advisor failed to follow district guidelines in investigating allegation that cheerleaders had consumed alcohol before school event, where advisor attended two-day orientation seminar when she began her employment, at which time she received training on student code of conduct and district's discipline code, received written materials about state guidelines, and attended meeting for coaches to receive training on discipline code and student code of conduct. Jennings v. Wentzville R-IV School Dist., C.A.8 (Mo.) 2005, 397 F.3d 1118. Civil Rights 1352(2)

Former scholarship athlete enjoyed no right under Constitution nor under state law to maintain his position either as first or second string defensive back or as first string punter, and demotion from such positions was not "grievous loss" for purposes of this section, and thus demotion of athlete could not be basis for a claim under this section. Rutledge v. Arizona Bd. of Regents, C.A.9 (Ariz.) 1981, 660 F.2d 1345, certiorari granted 102 S.Ct. 3508, 458 U.S. 1120, 73 L.Ed.2d 1382, affirmed 103 S.Ct. 1483, 460 U.S. 719, 75 L.Ed.2d 413. Civil Rights 1063

Participation in interscholastic athletics is not a constitutionally protected civil right. Albach v. Odle, C.A.10 (N.M.) 1976, 531 F.2d 983. Civil Rights 1063

Basketball players who lost the opportunity to play in college athletic association-sponsored tournaments and in televised games through operation of athletic association's eligibility rule were not deprived of a "property" or "liberty" interest which would be protected by the due process clause of U.S.C.A.Const. Amend. 14. Parish v. National Collegiate Athletic Ass'n, C.A.5 (La.) 1975, 506 F.2d 1028. Constitutional Law 254.1

Former football player for state university did not have protected liberty interest in refusing to practice football while academically ineligible or in being free from governmental coercion to practice football upon which suit under § 1983 could be based, and in addition failed to allege that he refused to practice football or that he was coerced into playing football on date of his injury forming basis for suit against university. Canada v. Thomas, W.D.Mo.1996, 915 F.Supp. 145. Colleges And Universities 9.45(3); Constitutional Law 278.5(5.1)

1656. ---- Sex discrimination, athletic activities, deprivation of education rights

Arizona Interscholastic Association rule restricting interscholastic volleyball competition to single-sex teams did not violate civil rights of male student at high school with no boys' volleyball team; rule would prevent females from being displaced in interscholastic competition and was substantially related to goal of redressing past discrimination and promoting equality of athletic opportunity between sexes. Clark By and Through Clark v.

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Arizona Interscholastic Ass'n, C.A.9 (Ariz.) 1989, 886 F.2d 1191. Civil Rights 1067(2)

Female high school student failed to prove that decision to cut her from varsity baseball team was tainted or motivated by gender bias; student received fair tryout and coaches' decision to cut her was made in good faith and for reasons unrelated to gender. Croteau v. Fair, E.D.Va.1988, 686 F.Supp. 552. Civil Rights 1067(2)

Claim by female high school basketball player that an assertedly arbitrary and unreasonable distinction in boys' and girls' basketball rules denied her the pleasure of playing the full-court game and consequent physical development did not suffice to allege a deprivation of rights, privileges or immunities secured by the Constitution or laws of the United States and did not state a claim under the Civil Rights Act. Jones v. Oklahoma Secondary School Activities Ass'n (OSSAA), W.D.Okla.1977, 453 F.Supp. 150. Civil Rights 1395(2)

Secondary school athletic association rule prohibiting mixed participation and competition in contact or collision sports including baseball discriminated against female high school student by denying her opportunity to participate on baseball team at high school which did not have baseball program for female students. Carnes v. Tennessee Secondary School Athletic Ass'n, E.D.Tenn.1976, 415 F.Supp. 569. Civil Rights 1067(2)

1657. ---- Married students, athletic activities, deprivation of education rights

Complaint stated claim for relief under this subchapter on theory that plaintiff, a married high school student, would be deprived of opportunity to obtain a college scholarship if he were not allowed to play football in his senior year as result of school board rule preventing married students from participating in extracurricular activities. Moran v. School Dist. #7, Yellowstone County, D.C.Mont.1972, 350 F.Supp. 1180. Civil Rights 1395(2)

1658. ---- Deaths, athletic activities, deprivation of education rights

Surviving mother's § 1983 claim against members of Mississippi Board of Trustees of State Institutions of Higher Learning, in their individual capacities, for death of football player who became ill at practice, based on failure to provide sufficient funds to university and its clinic that allegedly resulted in hiring of incompetent personnel by Board members who were acting under color of state law and pursuant to state policies did not state cause of action, as due process clause of Fourteenth Amendment is not implicated by negligent act of official which causes unintended loss of life, liberty, or property. Sorey v. Kellett, S.D.Miss.1987, 673 F.Supp. 817, reversed on other grounds 849 F.2d 960, rehearing denied. Civil Rights 1395(2)

1659. ---- Injuries, athletic activities, deprivation of education rights

Eighth Amendment's prohibition against cruel and unusual punishment did not apply to § 1983 action in which high school wrestling coach allegedly instructed student with knee injury to resume bout, resulting in pain to student. Fenstermaker v. Nesfedder, E.D.Pa.1992, 802 F.Supp. 1258, affirmed in part, vacated in part 9 F.3d 1540 . Sentencing And Punishment 1589

1660. ---- Scholarships, athletic activities, deprivation of education rights

Athlete stated cause of action in complaint against state university officials for procedural due process violation arising from nonrenewal of his track scholarship, by alleging that scholarship was renewable on annual basis, and that when he appealed cancellation of scholarship, he engaged in "his right to procedural due process." Richard v. Perkins, D.Kan.2005, 373 F.Supp.2d 1211. Civil Rights 1395(2)

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42 U.S.C.A. § 1983

For purposes of stating claim under civil rights statute, black student who lost athletic scholarship when he was declared initially scholastically ineligible by college athletic association did not have constitutionally protected economic property interest in professional basketball career or in athletic scholarship. Hall v. National Collegiate Athletic Ass'n, N.D.Ill.1997, 985 F.Supp. 782. Civil Rights 1063

Black football players did not have property interest in contractual rights to play football for university, but only had property right in scholarship funds, and accordingly, university and its officials were not liable in action under civil rights statute, where football players were not deprived of funds they were entitled to under scholarship agreements, on theory university and officials deprived football players of property right without due process. Hysaw v. Washburn University of Topeka, D.Kan.1987, 690 F.Supp. 940. Civil Rights 1063; Constitutional Law 277(1)

1661. Attire, deprivation of education rights

Allegations that adoption and implementation of a school uniform policy infringed upon and violated the free exercise of great-grandmother's religion and her substantive due process right as a parent to direct great-grandson's education and religious upbringing stated viable claims against school board under § 1983. Hicks ex rel. Hicks v. Halifax County Bd. of Educ., E.D.N.C.1999, 93 F.Supp.2d 649. Civil Rights 1395(2)

High school student denied right to participate in graduation ceremony because of violation of promulgated dress code could not maintain action under this section against school superintendent on theory of respondent superior without any allegation of affirmative participation in the decision to exclude student by the superintendent. Fowler v. Williamson, W.D.N.C.1978, 448 F.Supp. 497. Civil Rights 1395(2)

1662. Board of Education, deprivation of education rights--Generally

Actions of city, county, and board of public education in deliberately choosing to build school building directly beneath high voltage conductor line, deliberately delaying removal of line, and willfully disregarding very high risk thereby created to contractor's employees, even if gross negligence, were insufficient to constitute constitutional violation, and thus, contractor's employee who was injured by contact with conductor line while constructing school building could not recover against governmental units under § 1983; governmental units' actions clearly did not constitute arbitrary conduct intentionally designed to punish someone but merely nonintentional torts. Lewellen v. Metropolitan Government of Nashville and Davidson County, Tenn., C.A.6 (Tenn.) 1994, 34 F.3d 345, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 903, 513 U.S. 1112, 130 L.Ed.2d 787. Civil Rights 1034

New York City Board of Education was not liable in civil rights action for damages based on kickback scheme committed by inspectors in division of school buildings, though scheme may have been widespread within parts of division, where scheme was not so widespread as to imply constructive acquiescence of Board, and Board demanded that notification of any possible corruption in division be made to inspector general's office for investigation, which ultimately led to indictment of inspectors involved in scheme. Terminate Control Corp. v. Horowitz, C.A.2 (N.Y.) 1994, 28 F.3d 1335. Civil Rights 1352(2); Civil Rights 1352(6)

Court's interference with local school board's operation of its school is justified only upon showing that board in operation of its school is depriving pupils of rights guaranteed by federal Constitution. Raney v. Board of Ed. of Gould School Dist., C.A.8 (Ark.) 1967, 381 F.2d 252, certiorari granted 88 S.Ct. 783, 389 U.S. 1034, 19 L.Ed.2d 822, reversed and remanded on other grounds 88 S.Ct. 1697, 391 U.S. 443, 20 L.Ed.2d 727. Schools 13(7)

1663. ---- Members, board of education, deprivation of education rights

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42 U.S.C.A. § 1983

Causation requirement was unsatisfied in § 1983 suit brought by unsuccessful female candidate for county board of education vacancy against district attorney and foreman of grand jury that was charged with providing recommendations for filling vacancy, alleging that defendants' expressed interest in recommending male candidates constituted sex discrimination in violation of equal protection; various acts intervened to destroy any causal link, including votes of independent grand jurors and final approval by independent state judge, and no coercion or extraordinary influence was shown. Dixon v. Burke County, Ga., C.A.11 (Ga.) 2002, 303 F.3d 1271. Civil Rights 1067(5); Civil Rights 1088(1)

To be entitled to a special exemption from the categorical remedial language of this section in a case in which his action has violated a student's constitutional rights, a school board member, who has voluntarily undertaken the task of supervising the operation of the school and the activities of the students, must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges. Sullivan v. Meade Independent School Dist. No. 101, C.A.8 (S.D.) 1976, 530 F.2d 799.

Eighth grade student who was sexually involved with her basketball coach failed to prove deprivation of constitutionally protected right, as required to recover under § 1983 against school board members; no member was aware of affair before middle school principal (nonparty) became aware, confronted coach, and fired him and, despite student's sweeping generalizations regarding members' knowledge of coach's incidents with other students, evidence showed only that one member was told of rumored relationship, but was told by superintendent that matter had been handled, that second member knew that coach had made some comment about taking member's daughter dancing after she graduated, but that member did not think it to be threat or anything serious, and there was no evidence of any relationship between coach and third student or that any defendant was aware of that alleged relationship. R.L.R. v. Prague Public School Dist. I-103, W.D.Okla.1993, 838 F.Supp. 1526. Civil Rights 1066

1664. Child abuse, deprivation of education rights

Teacher's conduct in calling 12-year-old student a prostitute in front of class and for period of several weeks, allegedly resulting in psychological harm to student, was not so severe as to be actionable under § 1983 as substantive due process violation. Abeyta By and Through Martinez v. Chama Valley Independent School Dist., No. 19, C.A.10 (N.M.) 1996, 77 F.3d 1253. Constitutional Law 278.5(5.1); Schools 147

Title IX, prohibiting gender discrimination in educational programs by institutions receiving federal funding, provided sufficient relief to complainants to preclude §§ 1983 suit against school officials who allegedly failed to prevent or adequately respond to fifth-grade teacher's alleged harassment of female students. Doe v. D'Agostino, D.Mass.2005, 367 F.Supp.2d 157. Civil Rights 1309

In § 1983 action, mandatory state law child abuse reporting requirements furnish plausible basis for jury to find deliberate indifference on part of defendant who fails to report suspected child abuse. Zappala v. Albicelli, N.D.N.Y.1997, 980 F.Supp. 635, affirmed 173 F.3d 848. Civil Rights 1057

Parents' admitted refusal to allow son to attend high school on days he did not first complete his home chores and parents' practice of handcuffing son were reasonably considered to be probable cause to believe that son was being subjected to form of neglect or abuse arguably prohibited by state law, so that school officials were obligated by statute to report any observed information about suspected neglect of son and division of family services was required to undertake thorough investigation, which would reasonably include interview with son, and failure to inform parents of interview did not violate their constitutional rights to privacy, to due process, to control education of their son, or to exist as a family. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Constitutional Law 82(10); Constitutional Law 274(5); Infants 13.5(1); Infants 17

Failure of administrators of special school district to report alleged incidents of child abuse against handicapped

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children by former bus driver was a failure by administrators to fulfill a duty owed to general public, not to specific individuals, and hence did not support a private cause of action in favor of individuals. Doe A v. Special School Dist. of St. Louis County, E.D.Mo.1986, 637 F.Supp. 1138. Schools 89.13(1)

1665. Child care, deprivation of education rights

Fact that effects of challenged "policy" regarding child care in community college district did not fall exclusively upon women but affected as well men with child-rearing responsibilities did not bar suit by four young women who were burdened with problems of child rearing and who alleged that lack of campus child care facilities deprived them of equal educational opportunities. De La Cruz v. Tormey, C.A.9 (Cal.) 1978, 582 F.2d 45, certiorari denied 99 S.Ct. 2416, 441 U.S. 965, 60 L.Ed.2d 1072. Constitutional Law 42.2(2)

1666. Children with disabilities, deprivation of education rights

Disabled infants could bring, under § 1983, class action suit against state officials, alleging that state was not complying with early intervention requirements of Individuals with Disabilities Education Act (IDEA); IDEA's early intervention provisions created enforceable rights, and IDEA did not preclude remedy of suits under § 1983. Marie O. v. Edgar, C.A.7 (Ill.) 1997, 131 F.3d 610. Civil Rights 1069

Parents of disabled student failed to state claim against school district under Individuals with Disabilities Education Act (IDEA), and thus could not maintain action against school district under § 1983 based upon alleged IDEA violations; parents' complaint requested only monetary damages, facts of case precluded possibility of compensatory services or reimbursement for such services, parents refused district's offer to provide remainder of tutoring required under student's educational program, and parents' counsel conceded at oral argument that relief in form of damages was not available and that she was bringing claim on principle. Hoekstra By and Through Hoekstra v. Independent School Dist. No. 283, C.A.8 (Minn.) 1996, 103 F.3d 624, certiorari denied 117 S.Ct. 1852, 520 U.S. 1244, 137 L.Ed.2d 1054. Civil Rights 1069; Schools 155.5(5)

IDEA confers right upon disabled children, enforceable under §§ 1983, to free appropriate public education. Schmelzer ex rel. Schmelzer v. New York, E.D.N.Y.2003, 363 F.Supp.2d 453. Civil Rights 1069; Schools 148(2.1)

Section 1983 is available as remedy when state refuses to grant benefits provided by federal law, including right to enforce "stay-put" provision of IDEA. J.D. v. Manatee County School Bd., M.D.Fla.2004, 340 F.Supp.2d 1316. Schools 155.5(2.1)

Complaint failed to allege existence of special circumstances that school district's conduct in violation of the IDEA was persistently egregious and prevented disabled student from securing equitable relief, or that district's custom or practices gave rise to IDEA violations alleged, as required to state § 1983 claim based on district's failure to provide child with free and appropriate public education (FAPE) pursuant to the IDEA; even though complaint alleged that district inappropriately denied a FAPE by failing to conduct reevaluations of child and by providing an inadequate review process, complaint did not include sufficient factual basis for the allegation of a municipal policy or custom. R.S. v. District of Columbia, D.D.C.2003, 292 F.Supp.2d 23. Civil Rights 1395(2)

There were no violations of § 1983 with respect to education provided educationally disabled student where there was no underlying violation of IDEA or federal disability statutes. McGraw v. Board of Educ. of Montgomery County, D.Md.1997, 952 F.Supp. 248.

Texas school district did not violate handicapped student's civil rights through its alleged failure to provide adequate education for her, absent allegation or evidence that instructors failed to adequately administer program based on bias or prejudice because student was handicapped. McDowell by McDowell v. Fort Bend Independent

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School Dist., S.D.Tex.1990, 737 F.Supp. 386. Schools 148(2.1)

Insofar as complaint alleged that state of New York provided educational services to nonhandicapped students beyond those required by Education to the Handicapped Act [20 U.S.C.A. § 1401 et seq.], but discriminately denied those services to handicapped children, complaint stated claim under 42 U.S.C.A. § 1983 for alleged violations of equal protection clause. Council For the Hearing Impaired Long Island, Inc. v. Ambach, E.D.N.Y.1985, 610 F.Supp. 1051. Civil Rights 1395(2)

Learning disabled children and their father were not entitled to damages for school committee's failure to provide residential placement during 1979-80 school year under this section for alleged violation of equal protection clause of U.S.C.A. Const. Amend. 14, in that school committee's alleged policy of providing residential placement for visually and emotionally handicapped children, but not for learning disabled students like plaintiffs, was not so arbitrary and irrational as to violate the equal protection clause. Colin K. v. Schmidt, D.C.R.I.1982, 536 F.Supp. 1375, affirmed 715 F.2d 1. Schools 155.5(2.1)

1667. Class assignments, deprivation of education rights

There was no violation of 42 U.S.C.A. §§ 1981 and 1983 in removing black first grader from the "highest" math class, which utilized individual style of teaching, and placing her in the second-highest math class, which utilized group teaching method, notwithstanding that the second highest math class was predominantly black where the student ranked tenth of ten among first graders in the "highest" math class and ranked fifth out of ten among first graders in the second highest math class, time spent in math class was approximately 45 minutes per day and child allegedly had short attention span and did not effectively utilize her time in the "highest" math class. Bond v. Keck, E.D.Mo.1985, 616 F.Supp. 565. Schools 13(17)

1668. Closing of schools, deprivation of education rights

School district's letting bids and selling school property after complaint had been brought in state court to enjoin closing, consolidation and annexation of school did not rise to level of constitutional deprivation under U.S.C.A.Const. Amends. 1, 4, 5 or 14, or under this section, or §§ 1981 or 1985 of this title. Laurales v. Desha County School Dist. No. 4 of Snowlake, C.A.8 (Ark.) 1980, 632 F.2d 72. Civil Rights 1041; Civil Rights 1070

Since plaintiffs, who sought to prevent school board from closing a predominantly black school, failed to assert a primary interest which was cognizable or protected under the laws of Ohio, the complaint's first claim, alleging a denial of property without due process, was insufficient to satisfy the second element required under this section, i.e., that the conduct in question operated to deprive a person of rights secured by the constitution or laws of the United States. Bronson v. Board of Educ. of City School Dist. of Cincinnati, S.D.Ohio 1982, 550 F.Supp. 941. Civil Rights 1395(2)

Despite a claim that school closings placed burden of busing to achieve racial integration more heavily on black students than on white students, decisions to close certain elementary schools in school system were based on legitimate reasons and were not shown to have a racially discriminatory impact. Greene v. School Bd. of City of Alexandria, E.D.Va.1979, 494 F.Supp. 467, affirmed 634 F.2d 622. Schools 13(12)

1669. Compulsory attendance, deprivation of education rights

Parent of school-age child failed to state a claim under § 1983 or the Constitution in challenging constitutionality of Arkansas compulsory school attendance law. Stephan v. State of Ark., Cleburne County, E.D.Ark.1990, 747 F.Supp. 1327. Civil Rights 1395(2)

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42 U.S.C.A. § 1983

1670. Credits, deprivation of education rights

College which expunged credits from teacher's transcript would not be liable for deprivation of teacher's liberty interest in his employment and reputation without due process of law if school board discharged teacher as result of expungement. Merrow v. Goldberg, D.Vt.1986, 674 F.Supp. 1130. Civil Rights 1340

1671. Curriculum, deprivation of education rights

To require teaching of every theory of human origin would be unwarranted intrusion into authority of public school system to control academic curriculum. Wright v. Houston Independent School Dist., C.A.5 (Tex.) 1973, 486 F.2d 137, rehearing denied 487 F.2d 1401, rehearing denied 489 F.2d 1312, certiorari denied 94 S.Ct. 3173, 417 U.S. 969, 41 L.Ed.2d 1140. Schools 164

1672. Defamation, deprivation of education rights

High school teacher's allegations of injury to his reputation as result of allegedly defamatory statements made to and about him were insufficient to support claim for deprivation of liberty interest under § 1983. Peloza v. Capistrano Unified School Dist., C.A.9 (Cal.) 1994, 37 F.3d 517, certiorari denied 115 S.Ct. 2640, 515 U.S. 1173, 132 L.Ed.2d 878. Civil Rights 1038

Complaint by high school student alleging injury to his reputation and public embarrassment resulting from printing in high school yearbook of a photograph of student competing in foot race in which his sexual organ was accidentally exposed, and subsequent refusal of school board and school and county officials to cease distribution of photograph failed to state a claim under § 1983. Carroll by Carroll v. Parks, C.A.11 (Ga.) 1985, 755 F.2d 1455. Civil Rights 1395(2)

1673. Demonstrations, deprivation of education rights

State had significant interests in protecting the educational experience of the students in furtherance of state university's educational mission, ensuring students' safety, and fostering diversity, for purpose of street preacher's § § 1983 claim challenging university's policy restricting use of outdoor common areas by non-university entities as violative of free speech; educated electorate was essential to vitality of democracy, safety was fundamental human need, and diversity was necessary to meet educational needs. Bowman v. White, C.A.8 (Ark.) 2006, 444 F.3d 967. Constitutional Law 90.1(1.4)

College student who had participated in unruly and disorderly college demonstrations on two successive nights was subject to disciplinary action under college regulations that college spectators at such gatherings were considered as contributing to such gathering. Esteban v. Central Missouri State College, C.A.8 (Mo.) 1969, 415 F.2d 1077, certiorari denied 90 S.Ct. 2169, 398 U.S. 965, 26 L.Ed.2d 548.

Students who attended state-supported New York State College of Ceramics which Alfred University operated under contract with state and who refused to observe an order of dean of students to alter their participation in demonstration in University's football field during parents' day ROTC ceremony were not deprived of any rights, privileges or immunities secured by the Constitution and laws, and hence were not entitled to civil rights relief, where University's demonstration guidelines were reasonable and students' demonstration was violating one guideline and was threatening to violate another. Powe v. Miles, C.A.2 (N.Y.) 1968, 407 F.2d 73. Civil Rights 1062

1674. Discipline, deprivation of education rights--Generally

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42 U.S.C.A. § 1983

High school cheerleaders were afforded due process prior to their 10-day suspensions, where cheerleaders received notice they were being charged with violating school policy by consuming alcohol before school event, principal spoke to one cheerleader about charge and gave her opportunity to respond, other cheerleader terminated discussion without permitting principal to explain what evidence he possessed, and principal informed parents about suspensions and invited them to contact him to discuss matter, but parents failed to contact principal. Jennings v. Wentzville R-IV School Dist., C.A.8 (Mo.) 2005, 397 F.3d 1118. Constitutional Law 278.5(7); Schools 177

State interest in maintaining order in schools limits the rights of particular parents unilaterally to except their children from the regime to which other children are subject. Hall v. Tawney, C.A.4 (W.Va.) 1980, 621 F.2d 607. Schools 169

Every disciplinary event at institution of higher learning cannot give rise to a constitutional question and a right to have a federal court intervene. Yench v. Stockmar, C.A.10 (Colo.) 1973, 483 F.2d 820.

U.S.C.A.Const. Amend. 14 protects the rights of school children under U.S.C.A.Const. Amend. 1 against unreasonable rules and regulations imposed by school authorities. Burnside v. Byars, C.A.5 (Miss.) 1966, 363 F.2d 744. Constitutional Law 278.5(5.1)

State education officials were not liable under §§ 1983 for alleged constitutional violations committed by subordinates who disciplined disabled student where they were not personally involved in either disciplinary incident taken against disabled student and did not induce the actions of either subordinate. Doe ex rel. Doe v. State of Hawaii Dept. of Educ., D.Hawai'i 2004, 351 F.Supp.2d 998, reconsideration denied 351 F.Supp.2d 1021. Civil Rights 1356

School district could not be held liable for any violation of disciplined eighth-grade student's due process rights, absent showing that any such violation was result of district policy or custom. Demers ex rel. Demers v. Leominster School Dept., D.Mass.2003, 263 F.Supp.2d 195. Civil Rights 1351(2)

City was not liable under § 1983 for removal of high school student from science class on disciplinary complaint where there were no allegations or evidence that the complaint filed by teacher or student's removal from the class resulted from any official policy or any custom or practice of either the city or the school committee; there was no allegation that teacher had authority to act as a decision maker on behalf of either body, no evidence as to who made the decision to remove the student from the class, and no evidence of a similar incident, from which custom or practice could be inferred. Casey v. Newport School Committee, D.R.I.1998, 13 F.Supp.2d 242. Civil Rights 1351(2)

When adequate procedural safeguards have been provided as regards disciplinary charges against public school student, sole function of the district court in an action alleging constitutional violations is to determine whether there was substantial evidence supporting the charge and this section does not entitle student to relitigate evidentiary questions arising in the disciplinary proceedings or the proper construction of school regulations. Diggles v. Corsicana Independent School Dist., N.D.Tex.1981, 529 F.Supp. 169. Civil Rights 1397

Even assuming that disciplinary committee's legal advisor provided some unknown type of assistance to student's legal counsel regarding college disciplinary hearing, such did not amount to a deprivation of the student's due process rights. Turof v. Kibbee, E.D.N.Y.1981, 527 F.Supp. 880. Civil Rights 1062

This section was not intended to be vehicle for federal court correction of error in reasonable exercise of high school officials' discretion in disciplining student, unless it rises to level of specific constitutional guarantees. Fenton v. Stear, W.D.Pa.1976, 423 F.Supp. 767. Civil Rights 1062

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42 U.S.C.A. § 1983

1675. ---- Corporal punishment, discipline, deprivation of education rights

Even if corporal punishment of student is excessive and beyond common-law privilege accorded school teachers, it does not necessarily follow that student's substantive due process rights have been violated. Wise v. Pea Ridge School Dist., C.A.8 (Ark.) 1988, 855 F.2d 560. Constitutional Law 278.5(6)

Corporal punishment of school students is a deprivation of substantive due process when it is arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning. Woodard v. Los Fresnos Independent School Dist., C.A.5 (Tex.) 1984, 732 F.2d 1243. Constitutional Law 278.5(6)

Disciplinary corporal punishment does not per se violate public school child's substantive due process rights. Hall v. Tawney, C.A.4 (W.Va.) 1980, 621 F.2d 607. Constitutional Law 278.5(6)

Record in action under this section action alleging that infliction of corporal punishment deprived students of liberty without due process of law supported finding that plaintiffs had not shown that the corporal punishment in concept or as authorized by the school board or as applied throughout the school system was arbitrary, capricious, or wholly unrelated to legitimate state purpose of determining its educational policy. Ingraham v. Wright, C.A.5 (Fla.) 1976, 525 F.2d 909, certiorari granted 96 S.Ct. 2200, 425 U.S. 990, 48 L.Ed.2d 815, affirmed 97 S.Ct. 1401, 430 U.S. 651, 51 L.Ed.2d 711. Schools 176

Teacher training program in place at high school, or lack thereof, with regards to physically restraining students, did not amount to deliberate indifference to student's rights, as would subject school district and school to liability under § 1983 for alleged excessive force that teacher used on student. Knicrumah v. Albany City School Dist., N.D.N.Y.2003, 241 F.Supp.2d 199. Civil Rights 1352(2)

Parent and natural guardian, on behalf of four-year old, non-verbal, autistic child who also suffered from tuberous sclerosis, a genetic disorder that caused tumors to form in many different organs including brain, eyes, heart, kidneys, skin and lungs, stated excessive force claim in §§ 1983 action under Fourth Amendment, on allegations that preschooler on four occasions was made to walk from bus to classroom without shoes, preschooler was slapped by teacher or taken by his hands and forced to slap himself, and preschooler was "slammed" in a chair by teacher. Roe ex rel. Preschooler II v. Nevada, D.Nev.2004, 332 F.Supp.2d 1331. Arrest 68(2)

Although junior high school teacher-coach violated school regulations in that he did not secure presence of another school official while administering corporal punishment to a junior high school student there was no violation of U.S.C.A.Const. Amend. 14 actionable by way of civil rights suit and student had adequate Louisiana remedies to protect any rights he may have had for the alleged violation. Rhodus By and Through Rhodus v. Dumiller, M.D.La.1982, 552 F.Supp. 425. Civil Rights 1065; Civil Rights 1317

Failure of superintendent to promulgate regulations limiting effect of state statute, 16 V.S.A. § 1161, which authorized corporal punishment, could not be responsible for alleged actions of principal which, if proved, would make out violation of the statute, 16 V.S.A. § 1161, in that unreasonable punishment was used and in that there was failure to request teacher's permission. Roberts v. Way, D.C.Vt.1975, 398 F.Supp. 856. Schools 176

1676. ---- De minimus punishments, discipline, deprivation of education rights

Even if school officials mistakenly disciplined high school student, where student was not deprived of any in-school education but was punished by being ordered to report to particular room to do his assigned schoolwork and by not being permitted to participate in one-day sight-seeing trip taken by other members of senior class, and he graduated at conclusion of the 11-day restriction, the punishment imposed was de minimus and he was not entitled to relief in federal court under this section. Fenton v. Stear, W.D.Pa.1976, 423 F.Supp. 767. Civil Rights 1062

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42 U.S.C.A. § 1983

1677. ---- Suspension, discipline, deprivation of education rights

Male Pennsylvania high school student who was given four-day suspension for alleged nonconsensual sexual touching of female student was not subjected to differential treatment because of his gender, in violation of equal protection; suspended male student and his female accuser, though treated differently, were not similarly situated in the first place as she was not accused of any wrongdoing, other than his charge that she willingly took part in the sexual misconduct at issue. Shuman ex rel. Shertzer v. Penn Manor School Dist., C.A.3 (Pa.) 2005, 422 F.3d 141. Schools 177

High school cheerleaders were afforded due process prior to their 10-day suspensions, where cheerleaders received notice they were being charged with violating school policy by consuming alcohol before school event, principal spoke to one cheerleader about charge and gave her opportunity to respond, other cheerleader terminated discussion without permitting principal to explain what evidence he possessed, and principal informed parents about suspensions and invited them to contact him to discuss matter, but parents failed to contact principal. Jennings v. Wentzville R-IV School Dist., C.A.8 (Mo.) 2005, 397 F.3d 1118. Constitutional Law 278.5(7); Schools 177

Disciplinary action taken against student, consisting of student being placed on in-school suspension for three days as a result of seven unexcused tardies, did not violate student's substantive due process rights; student was placed in room providing 34 square feet per student, room had good lighting as well as several windows, special education committee determined that student, a special education student, would not be adversely affected by being placed in suspension room, and student did not fall behind in his studies as a result of placement. Wise v. Pea Ridge School Dist., C.A.8 (Ark.) 1988, 855 F.2d 560. Constitutional Law 278.5(6); Schools 177

Alleged failure of school administrators to adhere to state statutes and administrative rules governing student due process in connection with high school student's 31-day suspension were not random and unauthorized acts so as to preclude §§ 1983 liability; alleged deprivation was not unpredictable, a predeprivation process capable of addressing the problem was possible, and the alleged deprivation was unauthorized only in the sense that it was not an act sanctioned by state law, but was a deprivation of constitutional rights by an official's abuse of his position. Waln By and Through Waln v. Todd County School Dist., D.S.D.2005, 388 F.Supp.2d 994. Schools 177

Substantive due process was not violated in connection with high school senior's ten-day disciplinary suspension at end of school year; student did not have a fundamental right to attend school, commencement ceremony, or other graduation events, and suspension was rationally related to his offense involving inappropriate and disrespectful behavior toward school official. Posthumus v. Board of Educ. of Mona Shores Public Schools, W.D.Mich.2005, 380 F.Supp.2d 891. Schools 177

Likelihood of prevailing on merits requirement for preliminary injunction requiring reinstatement of male high school student suspended for disruptive conduct was not satisfied by claim that student's procedural due process rights were violated when he was not given copy of statement made by alleged female victim of sexual abuse, taking place in girl's washroom, which triggered suspension; student was given summary of statement, student knew that victim was alleging sexual activity and had ample opportunity to tell his side of story, which was not dependant on knowing exact claims being made by victim, and it was not apparent how possession of statement would have helped suspended student. J.S. ex rel. Duck v. Isle of Wight County School Bd., E.D.Va.2005, 362 F.Supp.2d 675. Civil Rights 1457(3)

Student's failure to appeal his suspension in excess of one term to college's board of trustees did not bar him from proceeding with civil rights action arising out of the suspension. Turof v. Kibbee, E.D.N.Y.1981, 527 F.Supp. 880 . Civil Rights 1309

High school authorities did not act unreasonably, arbitrarily or capriciously in suspending student on her refusal to

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attend and take part in required physical education classes. Ouimette v. Babbie, D.C.Vt.1975, 405 F.Supp. 525. Schools 177

1678. Dismissals, deprivation of education rights--Generally

Record in medical student's action challenging her dismissal on due process grounds left no doubt, notwithstanding references to lack of personal hygiene and timeliness, that her dismissal was for pure academic reasons. Board of Curators of University of Missouri v. Horowitz, U.S.Mo.1978, 98 S.Ct. 948, 435 U.S. 78, 55 L.Ed.2d 124. Colleges And Universities 9.35(4)

A state university's interest in protecting its academic integrity clearly outweighed any interest graduate student/teaching assistant had in publicly presenting in a scientific publication what the university determined to be fraudulent data, and thus dismissal from university for academic misconduct and resulting loss of employment as teaching assistant, stemming from the fraudulent presentation, did not violate student's First Amendment free speech rights. Pugel v. Board of Trustees of University of Illinois, C.A.7 (Ill.) 2004, 378 F.3d 659, rehearing en banc denied. Colleges And Universities 8.1(3); Colleges And Universities 9.35(3.1); Constitutional Law 90.1(1.4); Constitutional Law 90.1(7.3)

Dismissals of medical students from university due to minimal passing grades, standings near bottom of their class, and failure to pass required examination after two attempts were not arbitrary and capricious, and thus students could not recover injunction, declaratory judgment and damages against university under this section prohibiting the deprivation of civil rights. Stevens v. Hunt, C.A.6 (Tenn.) 1981, 646 F.2d 1168. Civil Rights 1452

For court to overturn student's dismissal on substantive grounds it must find that such dismissal was arbitrary and capricious. Greenhill v. Bailey, C.A.8 (Iowa) 1975, 519 F.2d 5. Colleges And Universities 9.35(4)

Courts refrain from interfering with authority vested in school officials to drop a student from rolls for failure to attain or maintain prescribed scholastic rating, whether judged by objective or subjective standards, in the absence of a clear showing that officials have acted arbitrarily or have abused the discretionary authority vested in them. Gaspar v. Bruton, C.A.10 (Okla.) 1975, 513 F.2d 843. Schools 177

Private company operating charter school, and its employee who was acting as principal, were "state actors," capable of being sued under § 1983 for firing of teacher in alleged violation of her First Amendment rights. Riester v. Riverside Community School, S.D.Ohio 2002, 257 F.Supp.2d 968. Civil Rights 1326(11)

Parents of student expelled from school failed to state federal civil rights claim against school where parents only claimed that school officials violated state law, parents did not assert any direct private right of action under relevant state statute, and parents did not raise claim under state Civil Rights Act to enforce state law which officials allegedly violated. Carey on Behalf of Carey v. Maine School Administrative Dist. No. 17, D.Me.1990, 754 F.Supp. 906. Civil Rights 1395(2)

Evidence, in medical student's action charging that her dismissal from medical school violated her constitutional and civil rights, established that student was expelled because of quality of her work and that the dismissal was not because of bad faith, arbitrary or capricious action by any instructor. Horowitz v. Curators of University of Missouri, W.D.Mo.1975, 447 F.Supp. 1102, reversed 538 F.2d 1317, rehearing denied 542 F.2d 1335, certiorari granted 97 S.Ct. 1642, 430 U.S. 964, 52 L.Ed.2d 355, stay denied 97 S.Ct. 302, 429 U.S. 912, 50 L.Ed.2d 279, reversed 98 S.Ct. 948, 435 U.S. 78, 55 L.Ed.2d 124. Civil Rights 1418; Colleges And Universities 10

Courts as general rule refrain from interfering with authority vested in school officials to drop student from rolls for failure to attain or maintain prescribed scholastic ratings, whether judged by objective and/or subjective standards, absent clear showing that officials have acted arbitrarily or have abused discretionary authority vested in them.

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Navato v. Sletten, E.D.Mo.1976, 415 F.Supp. 312, reversed on other grounds 560 F.2d 340. Schools 177

Inquiries, if any, regarding exercise apparatus being promoted by doctoral candidate for degree in physical health education did not in themselves evidence any bias or prejudice on part of individual members of graduate studies committee who propounded them, much less on part of entire committee, in voting to discontinue candidate from further study. Stevenson v. Board of Regents of University of Texas, W.D.Tex.1975, 393 F.Supp. 812. Colleges And Universities 9.35(4)

1679. ---- Racial discrimination, dismissals, deprivation of education rights

Fact that student in doctoral program at pharmacy college, who was a native of Nigeria, received better grades from nondepartment instructors than from those within department, that some other Black Africans also experienced difficulties in the college, that one instructor destroyed tests and gave preferential treatment to other students, and that testimony was conflicting, did not establish that student, who received academic dismissal from college, was a victim of racial discrimination; there was ample evidence of student's academic shortcomings, such as misprescribing drugs and giving incorrect dosages, from which jury could have determined that student's dismissal had a sound academic basis. Ikpeazu v. University of Nebraska, C.A.8 (Neb.) 1985, 775 F.2d 250. Civil Rights 1544

Student who was terminated from doctorate program at state university after failing to pass minimum number of qualifying tests required to remain in program failed to show that race was substantial or motivating factor in her termination program, and, thus, failed to state § 1983 race discrimination claim against university or university officials. Middlebrooks v. University of Maryland at College Park, D.Md.1997, 980 F.Supp. 824, affirmed 166 F.3d 1209. Civil Rights 1070

Student's mere accusations that school board's code of good student behavior had been selectively or inconsistently enforced and had been used to discriminate against black students could not defeat summary judgment of student's § 1983 claim, absent even scintilla of evidence of inconsistent or discriminatory enforcement of code. L.Q.A. By and Through Arrington v. Eberhart, M.D.Ala.1996, 920 F.Supp. 1208, affirmed 111 F.3d 897. Federal Civil Procedure 2491.5

Former university medical school student failed to raise inference of discrimination as to her dismissal from school, as required to establish prima facie case of race discrimination under §§ 1981, §§ 1983, Title VI of Civil Rights Act, Pennsylvania Human Relations Act, and Pennsylvania Fair Educational Opportunities Act; student provided no evidence of a link between her dismissal and alleged stereotyping involved in university's provision of academic support program in which all African-American students were invited to participate, and professor who referred student to program also provided student with advice on study method that proved helpful to student. Manning v. Temple University, C.A.3 (Pa.) 2005, 157 Fed.Appx. 509, 2005 WL 3288162, Unreported. Civil Rights 1745

1680. ---- Religious discrimination, dismissals, deprivation of education rights

Evidence of a doctoral student's poor research ability supported the finding that his termination from a graduate physics program was attributable to his lack of research ability, rather than a result of any religious discrimination on the part of the chairman of the student's Ph.D. committee. Al-Zubaidi v. Ijaz, C.A.4 (Va.) 1990, 917 F.2d 1347, certiorari denied 111 S.Ct. 1583, 499 U.S. 960, 113 L.Ed.2d 648. Civil Rights 1418

1681. ---- Procedural requirements, dismissals, deprivation of education rights

New Hampshire high school student expelled for allegedly making bomb threat was likely to prevail on due process deprivation claim, for purpose of obtaining preliminary injunctive relief; school board failed to adequately

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notify parents that permanent expulsion was being contemplated, and deprived them of opportunity to effectively challenge evidence. Johnson v. Collins, D.N.H.2002, 233 F.Supp.2d 241. Civil Rights 1457(3)

University's alleged conduct during disciplinary proceedings concerning charges against graduate student for academic dishonesty, which resulted in student's dismissal from state university and resulting loss of employment as teaching assistant, did not violate graduate student's due process rights, where five decisionmaking entities found evidence that student had fabricated data and then publicly had presented that data knowing it to be invalid, and throughout the 17-month disciplinary process, student received notice of the charges against her and of the decisionmakers' determinations and had an opportunity both to present evidence on her behalf and to appeal the discharge decision. Pugel v. Board of Trustees of University of Illinois, C.A.7 (Ill.) 2004, 378 F.3d 659, rehearing en banc denied. Colleges And Universities 8.1(4.1); Colleges And Universities 9.35(4); Constitutional Law 278.5(4); Constitutional Law 278.5(7)

High school students stated due process civil rights claim against county school district and school officials on allegations that they were suspended from school without being informed of charges against them, they were not given explanation of evidence against them, and they were not given opportunity to respond. Alexander v. Underhill, D.Nev.2006, 416 F.Supp.2d 999. Schools 177

In making determination which prevented student from completing education degree program university was not obliged to adopt all the formalities of a court of law; the test was whether the proceedings leading to the determination were fundamentally fair and reasonable. Lai v. Board of Trustees of East Carolina University, E.D.N.C.1971, 330 F.Supp. 904. Colleges And Universities 9.30(7)

1682. ---- Stigmatization, dismissals, deprivation of education rights

Record in medical student's action challenging her dismissal on due process grounds left no doubt, notwithstanding references to lack of personal hygiene and timeliness, that her dismissal was for pure academic reasons. Board of Curators of University of Missouri v. Horowitz, U.S.Mo.1978, 98 S.Ct. 948, 435 U.S. 78, 55 L.Ed.2d 124. Colleges And Universities 9.35(4)

1683. Disruptive students, deprivation of education rights

College discipline cannot be achieved by wholesale elimination of select students who, hypothetically, may provoke disruptions; undifferentiated and unrealized fears of such nature may not be used as basis for denying constitutional rights. Lansdale v. Tyler Jr. College, E.D.Tex.1970, 318 F.Supp. 529, affirmed 470 F.2d 659, certiorari denied 93 S.Ct. 2268, 411 U.S. 986, 36 L.Ed.2d 964. Colleges And Universities 9.30(6)

1684. Educational malpractice, deprivation of education rights

Educational malpractice was not cognizable theory in § 1983 action; educational malpractice is matter of state law that does not, by itself, deprive victims of their constitutional rights, even if characterized as breach of contract. Bishop v. Indiana Technical Vocational College, N.D.Ind.1990, 742 F.Supp. 524. Schools 127

1685. Elections, deprivation of education rights

High school student did not have constitutional right to run for copresident of the high school student council; thus refusal to permit him to run was not violation of this section. Palacios v. Foltz, C.A.10 (N.M.) 1971, 441 F.2d 1196 . Civil Rights 1063; Constitutional Law 82(8)

School swim team coach's interference with affiliations involving team member and his peers at school did not

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violate team member's First Amendment right to free association; relationships of members of the same swim team, whether during school or summer break, were of a purely social nature, and therefore were not protected under First Amendment. Dominic J. v. Wyoming Valley West High School, M.D.Pa.2005, 362 F.Supp.2d 560. Constitutional Law 91; Schools 164

Provision of public college student government constitution requiring candidates for elective position to be registered for a minimum of twelve credits and to maintain a grade average of 2.5 on a 4.0 system was not unreasonable under U.S.C.A.Const. Amend. 14 as it was a fair and reasonable attempt to achieve legitimate purposes of insuring qualified candidates with the requisite interest in campus activities and of limiting office to those capable of discharging their duties without risk of academic failure; that the line drawn was an imprecise one could not undermine the constitutional validity of such provision. Sellman v. Baruch College of City University of New York, S.D.N.Y.1979, 482 F.Supp. 475. Constitutional Law 242.2(5.1)

1686. Expulsion, deprivation of education rights

Claim was stated that high school student was expelled, pursuant to policy or custom of district regarding conduct of expulsion proceedings that violated student's due process rights, allowing for §§ 1983 suit against district. Pomeroy v. Ashburnham Westminster Regional School Dist., D.Mass.2006, 410 F.Supp.2d 7. Civil Rights 1395(2)

College of veterinary medicine and its professors could not be characterized as state actors for purposes of former student's § 1983 claim, which arose when student was expelled after twice failing her first year exam; notwithstanding the college's strong state ties, including statutory creation, and receiving some state funding, the state did not have direct operational authority over the administration of the college, employees of the college were not classified as members of the state civil service, and the vast majority of the day-to-day operations at the college were expressly committed to its private discretion, such as creating the academic curriculum, hiring faculty, maintaining discipline and formulating educational policies. Curto v. Smith, N.D.N.Y.2003, 248 F.Supp.2d 132, affirmed in part, appeal dismissed in part 87 Fed.Appx. 788, 2004 WL 287290, affirmed 93 Fed.Appx. 332, 2004 WL 539234, certiorari denied 125 S.Ct. 1689, 544 U.S. 935, 161 L.Ed.2d 504, miscellaneous rulings 125 S.Ct. 1653, 544 U.S. 919, 161 L.Ed.2d 475, rehearing denied 125 S.Ct. 2293, 544 U.S. 1057, 161 L.Ed.2d 1105. Civil Rights 1326(6)

Federal civil rights law does not make available to parents of child expelled from school federal private right of action for relief from violations of state law. Carey on Behalf of Carey v. Maine School Administrative Dist. No. 17, D.Me.1990, 754 F.Supp. 906. Civil Rights 1330(2)

1687. Extracurricular activities, deprivation of education rights

Employees of black students union, who alleged that BSU received inadequate funds to pay their salaries because of BSU's involvement in campus disorders, were entitled to no relief under this section where it was found that demands for money by various student groups exceeded available funds, that BSU received funds and, in effect, had received a disproportionately larger share of the available funds. Jackson v. Hayakawa, C.A.9 (Cal.) 1979, 605 F.2d 1121, certiorari denied 100 S.Ct. 1601, 445 U.S. 952, 63 L.Ed.2d 787. Civil Rights 1448

1688. Files, deprivation of education rights

Plaintiff failed to show that her reputation had been damaged by placing in her permanent file at state university letters to effect that she lacked ability to complete graduate program and therefore was denied admission to it, where it did not appear that plaintiff had been foreclosed from attending graduate schools in other parts of the country or that the letters had prevented her from doing so; thus no deprivation of her liberty interest occurred. Ramos v. Texas Tech University, N.D.Tex.1977, 441 F.Supp. 1050, affirmed 566 F.2d 573. Civil Rights 1418

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1689. Fraternities and sororities, deprivation of education rights

Action of Board of trustees of State University banning social organizations having a direct or indirect affiliation with any national organization outside such University did not deprive members and affiliates of national fraternities and sororities of any civil rights. Webb v. State University of New York, N.D.N.Y.1954, 125 F.Supp. 910, appeal dismissed 75 S.Ct. 113, 348 U.S. 867, 99 L.Ed. 683. Civil Rights 1063

1690. Free education, deprivation of education rights

In action for an alleged civil rights violation by imposition of an $8 annual high school "enrollment fee" which plaintiff as a pupil refused to pay, and for which she was excluded from school, where it was claimed that the acts of defendants were unlawful under the "gratuitous instruction" mandate of the state Constitution, the validity of which was not attacked, court might conclude that the right asserted by the plaintiff was not one secured by U.S.C.A.Const. Amend. 14 and afforded no basis for a suit under this section. Byrd v. Sexton, C.A.8 (Mo.) 1960, 277 F.2d 418, certiorari denied 81 S.Ct. 49, 364 U.S. 818, 5 L.Ed.2d 48. Civil Rights 1070; Constitutional Law 242.2(6)

Wisconsin high school student was not deprived of his right to receive education without due process when principal called him out of class on three or four occasions in order to permit police officers to question him. Burreson v. Barneveld School Dist, W.D.Wis.2006, 434 F.Supp.2d 588. Schools 169

1691. Grading, deprivation of education rights

Nursing student who received failing grade for her clinical performance could not recover for denial of her civil rights due to teachers' and college officials' bad faith grading and evaluation of her performance, where student was given three chances to pass clinical test, rather than two as allowed by school policy, student did not challenge faculty members' evaluations of her performance, and student did not challenge merits of her failure. Clements v. Nassau County, C.A.2 (N.Y.) 1987, 835 F.2d 1000. Civil Rights 1070

Courts will ordinarily defer to broad discretion vested in public school officials and will rarely review educational institution's evaluation of academic performance of its students; even so, judicial intervention in school affairs regularly occurs when state educational institution acts to deprive individual of significant interest in either liberty or property. Greenhill v. Bailey, C.A.8 (Iowa) 1975, 519 F.2d 5. Colleges And Universities 9.35(4)

Grades given to student in nursing school, and basis for such grades, were not subject of judicial scrutiny in student's later suit against school officials for violation of her civil rights. Hubbard v. John Tyler Community College, E.D.Va.1978, 455 F.Supp. 753. Civil Rights 1070

Grading and evaluation system of medical school was applied fairly and reasonably to student who did not satisfy clinical skills requirements of medical school to graduate. Horowitz v. Curators of University of Missouri, W.D.Mo.1975, 447 F.Supp. 1102, reversed 538 F.2d 1317, rehearing denied 542 F.2d 1335, certiorari granted 97 S.Ct. 1642, 430 U.S. 964, 52 L.Ed.2d 355, stay denied 97 S.Ct. 302, 429 U.S. 912, 50 L.Ed.2d 279, reversed 98 S.Ct. 948, 435 U.S. 78, 55 L.Ed.2d 124.

1692. Graduation requirements, deprivation of education rights

New York community college student who was denied transfer to four-year state university on basis of his failure to possess state-recognized high school diploma or general equivalency diploma (GED), the same reason community college had denied him associate's degree despite his having earned enough credits, had no claim for damages, representing difference between tuition he was paying at private college that accepted him and tuition he

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would have paid had he been accepted at state university, against members of community college board of trustees; even though state university's director of admissions allegedly told student he would have assumed that student was high school graduate if he possessed degree from community college, there was no reason for community college to help student misrepresent his educational background and no guarantee that student would have been admitted to state university had community college graduated him. Owens v. Parrinello, W.D.N.Y.2005, 365 F.Supp.2d 353. Colleges And Universities 9.20(1)

Action taken by university board of trustees in adopting new bulletin which contained change in graduation requirements was reasonable exercise of its educational responsibilities and could not form basis for § 1983 civil rights action by student against members of the board in their individual capacities; there was no personal activity on part of members specifically toward student, and adoption of the bulletin and neutral change of academic policy contained therein was not constitutional violation. Hammond v. Auburn University, M.D.Ala.1987, 669 F.Supp. 1555, affirmed 858 F.2d 744, rehearing denied 860 F.2d 1092, certiorari denied 109 S.Ct. 1134, 489 U.S. 1017, 103 L.Ed.2d 195. Civil Rights 1070

1693. Hair, deprivation of education rights

School board's endorsement of football coach's "clean shaven" policy for team members was not rendered unconstitutional on theory that some team members were concerned that shaving could cause them skin problems where no evidence was presented that students who were challenging regulation were likely to suffer from such problems and coach testified that he would not enforce policy if it would have injurious results. Davenport by Davenport v. Randolph County Bd. of Educ., C.A.11 (Ala.) 1984, 730 F.2d 1395. Schools 172

Claim that local school regulation, by requiring the cutting of student's Indian braided hair, violated rights of his parents, one of whom was an American Indian, to raise their child according to their own religious, cultural and moral values lacked constitutional substance and was not cognizable in civil rights suit. Hatch v. Goerke, C.A.10 (Okla.) 1974, 502 F.2d 1189. Civil Rights 1062

Junior high school hair regulation could not be condemned, as violative of students' civil rights, unless it in fact impinged on exercise of fundamental constitutional rights or liberties. New Rider v. Board of Ed. of Independent School Dist. No. 1, Pawnee County, Oklahoma, C.A.10 (Okla.) 1973, 480 F.2d 693, certiorari denied 94 S.Ct. 733, 414 U.S. 1097, 38 L.Ed.2d 556, rehearing denied 94 S.Ct. 1456, 415 U.S. 939, 39 L.Ed.2d 497. Civil Rights 1062

Regulation adopted by school board as to acceptable length of hair for male public high school students, absent showing of justifications therefor, would not be upheld on ground that disciplinary powers of school authorities would otherwise be diminished. Breen v. Kahl, C.A.7 (Wis.) 1969, 419 F.2d 1034, certiorari denied 90 S.Ct. 1836, 398 U.S. 937, 26 L.Ed.2d 268. Schools 172

School regulation as promulgated by principal, banning long hair, was not discriminatory under this section and § 1981 of this title, or violative thereof. Ferrell v. Dallas Independent School Dist., C.A.5 (Tex.) 1968, 392 F.2d 697, certiorari denied 89 S.Ct. 98, 393 U.S. 856, 21 L.Ed.2d 125. Civil Rights 1062

1694. Hazing, deprivation of education rights

University officials did not violate right of former member of voluntary student military training organization to bodily integrity, under due process clause, by implementing or condoning organization's alleged custom and policy of hazing by student cadet leaders, absent evidence that officials' conduct reflected conscious disregard for risk that students would suffer bodily injuries of constitutional dimensions at the hands of student cadet leaders. Alton v. Texas A&M University, C.A.5 (Tex.) 1999, 168 F.3d 196, rehearing denied. Colleges And Universities 9.45(2); Constitutional Law 278.5(5.1)

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42 U.S.C.A. § 1983

1695. Home education, deprivation of education rights

Stress allegedly placed upon parents' home schooling rights by superintendent's request for portfolio of records and materials, allegedly made without authority under Pennsylvania home education law, did not establish deprivation of rights, privileges, or immunities secured by Constitution or laws of United States, as required to state claim under § 1983; no determination had been made that appropriate education was not taking place, nor had parents been threatened with cessation of their rights under home education statute. Stobaugh v. Wallace, W.D.Pa.1990, 757 F.Supp. 653. Civil Rights 1070

Parents' claimed right to educate their children through program of home study free from requirement of compliance with state education laws involving teacher certification does not rise above personal or philosophical choice, and therefore is not within bounds of constitutional protection. Hanson v. Cushman, W.D.Mich.1980, 490 F.Supp. 109. Constitutional Law 274(1)

1696. Home life interference, deprivation of education rights

It is fundamentally unfair to keep student out of school indefinitely because of difficulties between student and her parents, unless those difficulties manifest themselves in real threat to school discipline. Cook v. Edwards, D.C.N.H.1972, 341 F.Supp. 307. Schools 177

1697. Housing requirements, deprivation of education rights

Yale College's policy of requiring freshmen and sophomores to reside in college residence halls unless they are married or 21 or older is not "state action" for purposes of § 1983; complaint did not allege that the State of Connecticut, either through a regulation or policy, exercised coercive power or significantly encouraged Yale to adopt its housing policy, but only that there was a 300-year history of partnership, and neither allegation that Yale received some financial support from the state nor fact that Yale serves the public and that this service may benefit the State of Connecticut was sufficient to establish that Yale's conduct was state action. Hack v. President and Fellows of Yale College, D.Conn.1998, 16 F.Supp.2d 183, affirmed 237 F.3d 81, certiorari denied 122 S.Ct. 201, 534 U.S. 888, 151 L.Ed.2d 142. Civil Rights 1326(6)

1698. Investigations, deprivation of education rights

Student in § 1983 action failed to establish damage to some tangible interest entangled with his reputation and failed to establish deprivation of due process liberty interest and good reputation when vice principal took him from class for 20 minutes and questioned him about accusations that student had made bomb threat. Edwards For and in Behalf of Edwards v. Rees, C.A.10 (Utah) 1989, 883 F.2d 882. Civil Rights 1071

High school officials' placement of undercover policewoman in two classes to investigate drug trafficking was not alleged to be any more than "subjective" chilling of rights under U.S.C.A. Const.Amend. 1 under circumstances in which surveillance did not disrupt classroom activities or education and in which, though it was alleged that investigation focused on classes involving students and teachers with "liberal" sociopolitical views, there was no indication that investigation had any tangible and concrete inhibitory effect on expression of particular views in classroom; mere allegations that students and teachers were harmed when news of the covert operation spread through community did not satisfy "causation" requirement. Gordon v. Warren Consol. Bd. of Educ., C.A.6 (Mich.) 1983, 706 F.2d 778. Civil Rights 1395(2)

Even if claim was not preempted by Title IX, school officials could not be held liable under §§ 1983 for fifth-grade teacher's alleged sexual harassment of female students absent showing of deliberate indifference; officials took adequate steps to investigate situation. Doe v. D'Agostino, D.Mass.2005, 367 F.Supp.2d 157. Civil Rights

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42 U.S.C.A. § 1983

1356

School district's policy for handling of student allegations of racial harassment, to investigate claim and, when investigation shows that harassment took place, to discipline culprits, did not violate civil rights of complaining student or her parents. Booker v. Board of Educ., Baldwinsville Central School District, N.D.N.Y.2002, 238 F.Supp.2d 469. Civil Rights 1060; Civil Rights 1351(2)

1699. Military instruction, deprivation of education rights

As a matter of law, school board did not violate high school student's clearly established constitutional rights, and thus members thereof were not liable to student in damages, where student's claim of right not to be compelled to take course of military instruction was not supported by authoritative decisions from the Supreme Court or from the Fifth Circuit Court of Appeals, or even from other circuits. Sapp v. Renfroe, C.A.5 (Ga.) 1975, 511 F.2d 172. Schools 62

1700. Narcotics and controlled substances, deprivation of education rights

Student failed to state § 1983 claim against school officials concerning his indefinite expulsion for possession of marijuana in class, absent any evidence showing deprivation of constitutional or federal right. L.Q.A. By and Through Arrington v. Eberhart, M.D.Ala.1996, 920 F.Supp. 1208, affirmed 111 F.3d 897. Civil Rights 1062

While wisdom of director of state technical institute in ordering student off campus after finding marijuana in his room might be questioned, director's action did not rise to level of constitutional deprivation. Morale v. Grigel, D.C.N.H.1976, 422 F.Supp. 988. Colleges And Universities 9.30(6)

1701. Negligence, deprivation of education rights

Individual high school teachers could not be held liable under §§ 1983 for their failure to terminate locker room videotaping scheme, absent evidence that they knew of or were willfully blind to scheme's existence; teachers' failure to discern physical evidence of scheme, or to follow up on student comments hinting at scheme's existence, were at most negligent. Harry A. v. Duncan, D.Mont.2005, 351 F.Supp.2d 1060. Civil Rights 1356

School district was not liable under § 1983 for releasing student into hands of his stepmother and accomplice, who murdered him, though case might have presented jury issue of gross negligence, where school district did not intentionally inflict injury, as required to establish liability for violation of substantive due process. Baker v. Clay County Bd. of Educ., E.D.Ky.1994, 871 F.Supp. 930, affirmed 78 F.3d 584. Civil Rights 1065

High school shop teacher's act of removing safety guard from bench saw, even if negligent, was not sufficiently egregious as to be constitutionally tortious so as to permit student to recover under civil rights statute. Voorhies v. Conroe Independent School Dist., S.D.Tex.1985, 610 F.Supp. 868. Civil Rights 1070

Where plaintiff minor was allegedly injured by act or omission of state actor while student was attending school and was participating in class for which he would receive credit toward graduation, and where there was no remedy available to minor under state law, minor could maintain action under this section providing for civil action for deprivation of rights against teacher and school district on basis of teacher's negligent act. Flores v. Edinburg Consol. Independent School Dist., S.D.Tex.1983, 554 F.Supp. 974. Civil Rights 1070

1702. Newspapers, deprivation of education rights

State university's dismissal of graduate student because of disapproved content of newspaper, cover of which showed a political cartoon depicting policeman raping Statue of Liberty and Goddess of Justice, which featured a

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headline story entitled "M..... f..... Acquitted" and discussed trial and acquittal of youth who was a member of an organization known as "Up Against the Wall, M..... f....," and which student distributed on campus, could not be justified as a nondiscriminatory application of reasonable rules governing conduct. Papish v. Board of Curators of University of Missouri, U.S.Mo.1973, 93 S.Ct. 1197, 410 U.S. 667, 35 L.Ed.2d 618, rehearing denied 93 S.Ct. 1921, 411 U.S. 960, 36 L.Ed.2d 419. Colleges And Universities 9.30(6)

High school student's allegation that he was denied admission into National Honor Society in retaliation for writing article on race relations for school newspaper failed to state actionable First Amendment claim, in view of noncontroversial nature of article and fact that school administration approved its publication. Dangler on Behalf of Dangler v. Yorktown Cent. Schools, S.D.N.Y.1991, 771 F.Supp. 625. Civil Rights 1395(2)

1703. Promotions, deprivation of education rights

Claim which, though denominated a denial of equal educational opportunity by reason of failure of school officials to promote second grade students to third grade level for failure to complete requisite level of Ginn Reading Series, sounded rather in tort as a breach of some duty owed by teachers or school boards to their pupils to give them an education, if there was any such cause of action, did not rise to level of a constitutional claim and, hence, was not cognizable in an action under this section. Sandlin v. Johnson, C.A.4 (Va.) 1981, 643 F.2d 1027. Civil Rights 1070

1704. Quality of education, deprivation of education rights

Parents of disabled child were not entitled to damages under Individuals with Disabilities Education Act (IDEA), Americans with Disabilities Act (ADA), § 1983, or Rehabilitation Act for physical illness and emotional distress allegedly caused by school district's allegedly incompetent and unprofessional failure to provide child with adequate education; district offered child a free appropriate public education, and damages were not available for IDEA violations. Fort Zumwalt School Dist. v. Clynes, C.A.8 (Mo.) 1997, 119 F.3d 607, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1840, 523 U.S. 1137, 140 L.Ed.2d 1090. Schools 155.5(5)

In matters involving educational deficiencies of students, the final determination vests in those public officials charged with the performance of that important determination. Gaspar v. Bruton, C.A.10 (Okla.) 1975, 513 F.2d 843. Schools 178

1705. Racist speech and writings, deprivation of education rights

Even if university professor's writings were racist, highly offensive to anyone opposing racism, and antagonized and angered those in opposition, that would not constitute deprivation of civil rights of others. Furumoto v. Lyman, N.D.Cal.1973, 362 F.Supp. 1267. Civil Rights 1064

1706. Restraints, deprivation of education rights

Finding that physical therapist who was contract employee of school district violated substantive due process rights of handicapped student with respect to whom therapist recommended utilization of blanket wrapping technique would require no less than finding that her recommendation represented substantial departure from accepted professional judgment, practice, or standards. Heidemann v. Rother, C.A.8 (Neb.) 1996, 84 F.3d 1021, rehearing and suggestion for rehearing en banc denied. Constitutional Law 278.5(5.1)

1707. Search and seizure, deprivation of education rights

Former high school student failed to demonstrate direct causal link between an official policy or custom of sheriff's

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department and alleged deprivation of student's Fourth Amendment rights through use of drug-sniffing dog at high school, thus defeating money damages claims against sheriff's department officials in their official capacities, where student presented no credible evidence to refute sheriff's department evidence that departmental policy only permitted use of drug-sniffing dogs on objects, not on persons, and officials produced uncontroverted evidence that officers were trained in the use of dogs, and that they were trained to use dogs to sniff property, not people. B.C. v. Plumas Unified School Dist., C.A.9 (Cal.) 1999, 192 F.3d 1260. Civil Rights 1351(4)

Student subjected to strip search failed to state claim establishing deliberate indifference by school district, so as to support imposition of liability on "failure to train" theory, despite one alleged previous strip search and subsequent endorsement by school board president of strip searches of students conducted with parental consent. Cornfield by Lewis v. Consolidated High School Dist. No. 230, C.A.7 (Ill.) 1993, 991 F.2d 1316. Civil Rights 1352(2)

Parent and natural guardian, on behalf of four-year old, non-verbal, autistic child who also suffered from tuberous sclerosis, a genetic disorder that caused tumors to form in many different organs including brain, eyes, heart, kidneys, skin and lungs, stated excessive force claim in § 1983 action under Fourth Amendment, on allegations that preschooler on four occasions was made to walk from bus to classroom without shoes, preschooler was slapped by teacher or taken by his hands and forced to slap himself, and preschooler was "slammed" in a chair by teacher. Roe ex rel. Preschooler II v. Nevada, D.Nev.2004, 332 F.Supp.2d 1331. Arrest 68(2)

Parent and natural guardian, on behalf of preschool-aged, non-verbal, autistic child, could bring excessive force claim in § 1983 action under both Fourth and Fourteenth Amendments, since Fourth Amendment unreasonable seizures analysis generally applied in school context, but student's claim might have been more appropriately analyzed under due process clause of Fourteenth Amendment because school official could have used excessive force against student without seizing or searching that student. Roe ex rel. Preschooler II v. Nevada, D.Nev.2004, 332 F.Supp.2d 1331. Arrest 68(2); Constitutional Law 278.5(5.1); Schools 89.2; Schools 169.5

Parent and natural guardian, on behalf of preschool-aged, non-verbal, autistic child, could bring excessive force claim in §§ 1983 action under both Fourth and Fourteenth Amendments, since Fourth Amendment unreasonable seizures analysis generally applied in school context, but student's claim might have been more appropriately analyzed under due process clause of Fourteenth Amendment because school official could have used excessive force against student without seizing or searching that student. Roe ex rel. Preschooler II v. Nevada, D.Nev.2004, 332 F.Supp.2d 1331. Arrest 68(2); Constitutional Law 278.5(5.1); Schools 89.2; Schools 169.5

Genuine issue of material fact, regarding whether teacher had requisite individualized suspicion of wrongdoing needed to support her visual inspection of interior of pants which third grade student was wearing for evidence of $10 missing from her desk, precluded entry of summary judgment in civil rights action brought by student to recover for alleged teacher's alleged violation of her Fourth Amendment rights. Watkins v. Millennium School, S.D.Ohio 2003, 290 F.Supp.2d 890. Federal Civil Procedure 2491.5

Drawing all reasonable inferences in favor of student, school security officer's alleged conduct of violently restraining student during a combative dialogue with student after student was ordered to leave the school premises supported student's § 1983 claim of violation of students' Fourth Amendment rights against school district and school officials. Nicol v. Auburn-Washburn USD 437, D.Kan.2002, 231 F.Supp.2d 1092. Civil Rights 1395(2)

This section provided no remedy to student of state technical institute for action of school authority in conducting illegal search of student's dormitory and improperly seizing marijuana found therein. Morale v. Grigel, D.C.N.H.1976, 422 F.Supp. 988. Civil Rights 1062

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42 U.S.C.A. § 1983

1708. Segregation, deprivation of education rights

Where Negro public school pupils asserted in suit under this section that board of education members had been and were depriving pupils of rights protected by U.S.C.A.Const. Amend. 14 by maintaining segregated school, it was immaterial whether board's conduct was legal or illegal as a matter of state law, and pupils' claims were entitled to be adjudicated in federal court. McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill., U.S.Ill.1963, 83 S.Ct. 1433, 373 U.S. 668, 10 L.Ed.2d 622. Federal Courts 225

New York officials had full knowledge of nature, cause, and extent of segregation in city schools and knew or should have known that school segregation was de jure such that failure of officials to take actions toward desegregation in city, though they took remedial action in other cities, created liability under § 1983 on claims for injunctive relief to remedy vestiges of school segregation in city; evidence included testimony from former department officials as well as documents that showed that department and department officials knew of segregation and failed to take action due to heavy pressure from state legislature. U.S. v. City of Yonkers, C.A.2 (N.Y.) 1996, 96 F.3d 600, on remand 1996 WL 696121, on remand 1997 WL 311943, certiorari denied 117 S.Ct. 2479, 521 U.S. 1104, 138 L.Ed.2d 988, on remand 984 F.Supp. 687, on remand 992 F.Supp. 672. Schools 13(19)

Challenged policies of Arkansas school districts had no current segregative effect in violation of 14th Amendment or applicable federal statutes, and interdistrict remedies for imbalance between black and white student populations were thus not available to parent of school-aged children who sought redress for intentional discrimination; challenged policies were no longer in effect, and ongoing exodus of whites from predominantly black school districts could be accounted for by demographic factors other than past effect of challenged policies. Edgerson on Behalf of Edgerson v. Clinton, C.A.8 (Ark.) 1996, 86 F.3d 833. Constitutional Law 220(4); Schools 13(15)

Relief is not necessarily precluded because racial segregation of schools is one step removed from the cause, such as land use control. Ybarra v. City of San Jose, C.A.9 (Cal.) 1974, 503 F.2d 1041. Schools 13(2)

Mere existence of apparent racially imbalanced school system does not trigger remedial powers of court such that court can order particular defendant to alter distribution of black and white students within that school system; rather, court must determine if that school system is unlawfully segregated by examining conduct of defendant before it to determine if that defendant acted with segregative intent in creating, maintaining, and/or perpetuating segregated school system which plaintiff seeks to have altered. Bronson v. Board of Educ. of City School Dist. of City of Cincinnati, S.D.Ohio 1983, 573 F.Supp. 767, mandamus denied 725 F.2d 682. Schools 13(5)

1709. Sex discrimination, deprivation of education rights

Student who was terminated from doctorate program at state university after failing to pass minimum number of qualifying tests required to remain in program failed to show that her gender was substantial or motivating factor in her termination from program, and, thus, failed to state § 1983 claim for gender discrimination in violation of Equal Protection clause against university officials. Middlebrooks v. University of Maryland at College Park, D.Md.1997, 980 F.Supp. 824, affirmed 166 F.3d 1209. Civil Rights 1067(5)

School district's failure to train employees and students about sexual harassment did not constitute discrimination on the basis of sex. Doe v. Londonderry School Dist., D.N.H.1997, 970 F.Supp. 64, modified on denial of rehearing 32 F.Supp.2d 1360. Civil Rights 1352(2)

Those acting under color of state law may not deprive one of the equal opportunity to receive an education because he is a male and may not discriminate against an applicant for public education because he is a male. Cortner v. Baron, W.D.Okla.1975, 404 F.Supp. 316. Civil Rights 1067(4)

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42 U.S.C.A. § 1983

1710. Sexual harassment, deprivation of education rights

Remedies provided under Title IX did not foreclose former female student's claim against state-university professor under §§ 1983, alleging violation of equal protection resulting from sexual harassment, pursuant to *Sea Clammers* doctrine; only possible effect of applying doctrine would have been to immunize professor from liability for alleged federal constitutional tort, which could not have been intended by Congress when it enacted Title IX. Delgado v. Stegall, C.A.7 (Ill.) 2004, 367 F.3d 668. Civil Rights 1309

Genuine issue of material fact as to whether state-university professor's use of nickname for female student based on her supposed physical resemblance to White House intern involved in widely-covered, scandalous affair with President of the United States, and comments to student based on same theme, were sufficiently pervasive to create hostile environment precluded summary judgment on student's claim under § 1983 alleging that professor violated her equal protection rights by engaging in sexual harassment. Hayut v. State University of New York, C.A.2 (N.Y.) 2003, 352 F.3d 733, 197 A.L.R. Fed. 659. Federal Civil Procedure 2491.5

Supervisory college officials reasonably responded to student's complaint concerning professor's offensive behavior and thus were not liable to student under § 1983 for alleged equal protection violations; following student's initial complaints of sexual harassment to college dean, and college officials, student was instructed to provide a written complaint, college officials met prior to receiving the written complaint, dean, associate dean and supervisory professor met with professor day after the written complaint was received, and professor resigned approximately one month from the date student submitted her written complaint. Hayut v. State University of New York, N.D.N.Y.2002, 217 F.Supp.2d 280, affirmed in part, vacated in part and remanded 352 F.3d 733, 197 A.L.R. Fed. 659. Civil Rights 1356

Title IX plaintiff could not also maintain § 1983 claim for alleged violation of her constitutional rights by institutional defendants, where such claim was based on same factual predicate as Title IX claim. Norris v. Norwalk Public Schools, D.Conn.2000, 124 F.Supp.2d 791. Civil Rights 1309

Availability of Title IX remedies for sexual harassment precluded suit by male high school student against school district under § 1983, alleging that female teacher subjected him to sexual harassment in violation of his substantive due process rights. Doe v. School Administrative Dist. No. 19, D.Me.1999, 66 F.Supp.2d 57. Civil Rights 1309

School district owed junior high school student no duty of constitutional magnitude, actionable under § 1983, to protect her from the sexual harassment, on theory of special relationship, absent evidence that district took student into custody and made her unable to care for herself. Doe v. Londonderry School Dist., D.N.H.1997, 970 F.Supp. 64, modified on denial of rehearing 32 F.Supp.2d 1360. Civil Rights 1067(3)

Compulsory school attendance did not create custodial relationship necessary to impose affirmative constitutional duty on school district to protect high school student from sexual harassment from her fellow students, so as to support civil rights action under § 1983, regardless of district's knowledge of the harassment. Burrow By and Through Burrow v. Postville Community School Dist., N.D.Iowa 1996, 929 F.Supp. 1193. Civil Rights 1067(3)

Student's complaint against community college, based on alleged sexual harassment by professor, failed to state causes of action under § 1983 for violations of Equal Protection Clause, Americans with Disabilities Act, Title IX and § 504 of Rehabilitation Act; deficiencies included absence of allegations that college purposely discriminated against student or was aware of and acquiesced in discrimination, or that student was excluded from or denied benefits of any college program. Slater v. Marshall, E.D.Pa.1995, 906 F.Supp. 256. Civil Rights 1395(2)

Student presented sufficient evidence of sexual harassment to avoid directed verdict on civil rights claim by

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presenting evidence that professor first told her that she would have to have sexual intercourse with him in order to graduate and that he later said that she could graduate if she would allow him to take nude photographs of her. Parks v. Wilson, D.S.C.1995, 872 F.Supp. 1467. Civil Rights 1427

Female high school students stated § 1983 claim for violation of due process against teacher and county school system superintendent, alleging that teacher sexually harassed and molested them on school premises and that superintendent was aware of and condoned the activities, despite contention that liberty interests protected by Constitution were limited to those involving undue restraint, where alleged abusive acts were clothed in public authority and stature, taking place on school grounds, during school hours, and within context of teacher-student relationship. Wilson v. Webb, W.D.Ky.1994, 869 F.Supp. 496. Civil Rights 1395(2)

University student's allegations that she had intimate relationship with one of her professors and that professor failed to attend appointments, gave her lower grades and demeaned her after relationship ended was insufficient to state claim against professor for sexual harassment or discrimination based on gender; professor's conduct did not stem from his discriminatory action against women, but rather was the way he ended relationship with student. Ruh v. Samerjan, E.D.Wis.1993, 816 F.Supp. 1326, affirmed 32 F.3d 570. Civil Rights 1067(3)

1711. Sexual abuse by school employees, deprivation of education rights

School district's actions in entering into a confidential settlement agreement with teacher rather than terminating him outright for molesting student, and in providing him with a neutral letter of recommendation, did not rise to the level of deliberate indifference so as to warrant imputing liability to school district under § 1983 for teacher's sexual molestation of student in another district after he left his employment with district; school district did not have any actual knowledge of the extent of teacher's misconduct and did not know that another district would subsequently hire teacher or that he would molest a student there. Shrum ex rel. Kelly v. Kluck, C.A.8 (Neb.) 2001, 249 F.3d 773. Civil Rights 1351(5)

School board superintendent did not deprive high school student of her right to equal protection by failing to remedy teacher's sexual abuse of student, thus entitling superintendent to qualified immunity in his individual capacity, since, even assuming that failing to terminate or suspend teacher after learning of allegations of sexual abuse could have rendered superintendent liable under certain circumstances, student in fact suffered no injury following superintendent's awareness of her allegations of abuse; after superintendent learned of student's allegations, student did not suffer any further sexual abuse, sexual harassment, or harm of any sort while attending county's public schools. Hartley v. Parnell, C.A.11 (Ala.) 1999, 193 F.3d 1263, rehearing denied. Civil Rights 1376(5); Constitutional Law 224(2); Schools 63(3)

School district's failure to adopt an official policy regarding steps to be taken in response to allegations of sexual abuse of student by school employee did not amount to deliberate indifference that would support § 1983 liability for alleged abuse of students by teacher, as there was no evidence that lack of policy was result of intentional choice by district, and custom of permitting principals to address particular allegations of abuse was reasonable. Doe on Behalf of Doe v. Dallas Independent School Dist., C.A.5 (Tex.) 1998, 153 F.3d 211. Civil Rights 1351(2)

Individual school officials and school district were not liable under § 1983 for student's damages allegedly arising out of homosexual relationship with teacher where once alerted to possibility of sexual relationship between student and teacher, school officials attempted to monitor student's phone calls, they interviewed student, they administered two polygraphs to student, and they confronted teacher, and once they had conclusive proof of relationship, they immediately began proceedings to terminate teacher and revoke her teaching certification. Kinman v. Omaha Public School Dist., C.A.8 (Neb.) 1996, 94 F.3d 463. Civil Rights 1346; Civil Rights 1356

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42 U.S.C.A. § 1983

While high school teacher's alleged sexual abuse of student had satisfied § 1983 suit requirement that constitutionally protected right to victim be violated, in connection with suit on behalf of victim against another teacher for violating state statute requiring that teacher report sexual abuse within 48 hours after receipt of information, victim would be required to independently establish that teacher's inaction was conduct "under color of state law." Doe v. Rains County Independent School Dist., C.A.5 (Tex.) 1995, 66 F.3d 1402, rehearing denied. Civil Rights 1326(6)

School district did not act with deliberate indifference in failing to remove from the classroom teacher accused of sexually molesting two students, and thus student molested after district instead decided to transfer teacher to another school could not recover against district under § 1983, where district's board of trustees immediately initiated investigation when presented with earlier abuse complaint, and conduct which formed basis for earlier investigation was much less egregious than that to which student was later subjected. Gonzalez v. Ysleta Independent School Dist., C.A.5 (Tex.) 1993, 996 F.2d 745, rehearing and rehearing en banc denied 20 F.3d 471. Civil Rights 1066

Former student could maintain civil rights action against school officials for establishing and maintaining, with alleged deliberate indifference to the consequences, a policy, practice or custom of failing to take action with respect to complaints of sexual misconduct by teacher which allegedly directly caused former student constitutional harm. Stoneking v. Bradford Area School Dist., C.A.3 (Pa.) 1989, 882 F.2d 720, rehearing denied, certiorari denied 110 S.Ct. 840, 493 U.S. 1044, 107 L.Ed.2d 835. Civil Rights 1351(2)

Fifth-grade female student's allegations that teacher exposed and touched student's lower abdomen during unwanted ringworm examination, pressed student's abdomen in attempt to force her to urinate, coerced and manipulated student to kiss, hug, and sit on teacher's lap, and insisted on rolling lint brush over student's chest, were sufficient to support §§ 1983 claim based on violation of student's substantive due process right to bodily integrity. Doe v. D'Agostino, D.Mass.2005, 367 F.Supp.2d 157. Constitutional Law 278.5(5.1); Schools 147

Sexual molestation of a student by a teacher is a constitutional injury redressable in an action under § 1983. Bell ex rel. Bell v. Board of Educ. of County of Fayette, S.D.W.Va.2003, 290 F.Supp.2d 701. Civil Rights 1066

Neither genital touching nor sexual intercourse are necessary to state a claim for sexual abuse against public school teacher under § 1983. Hinkley v. Baker, D.Me.2000, 122 F.Supp.2d 48. Civil Rights 1066

School principal showed deliberate indifference to student who was sexually abused by teacher, by waiting to pass report of teacher's prior sexual abuse on to her superiors, by failing to report a lap-sitting incident, and by choosing not to increase monitoring activities beyond her normal daily rounds of the school, after her superior instructed her to closely monitor teacher; therefore, supervisory liability against principal was proper under section 1983. Baynard v. Lawson, E.D.Va.2000, 112 F.Supp.2d 524, affirmed 268 F.3d 228, certiorari denied 122 S.Ct. 1357, 535 U.S. 954, 152 L.Ed.2d 353. Civil Rights 1066; Civil Rights 1356

Actions alleged to have been taken by school administrators with respect to sexual harassment and abuse perpetrated by two teachers on student were objectively reasonable and did not exhibit deliberate indifference to student's constitutional rights, and could not form basis for action under § 1983, absent any evidence that administrators were aware of pattern of inappropriate sexual behavior pointing plainly toward conclusion that teachers were sexually abusing student, where all allegations against teachers were immediately and personally investigated and reported to supervisory personnel and police. Doe v. Granbury I.S.D., N.D.Tex.1998, 19 F.Supp.2d 667. Civil Rights 1066; Civil Rights 1067(3)

School district's policy which did not require criminal background checks for substitute teachers did not result in violation of statutory right enjoyed by student sexually molested by substitute teacher, as required to impose

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liability on district under § 1983, even though state law required performance of criminal background checks on all prospective school employees, where even if teacher's record had been checked, it would have yielded no information that would have prevented his employment. Mirelez v. Bay City Independent School Dist., S.D.Tex.1998, 992 F.Supp. 916. Civil Rights 1351(2)

For purposes of deciding summary judgment motion on former student's § 1983 claim against public school officials, district court would assume, without deciding, that former student had constitutional right to be protected from sexual abuse by school teacher, and that his right was clearly established in law by dates in question. Armstrong v. Lamy, D.Mass.1996, 938 F.Supp. 1018. Federal Civil Procedure 2491.5

Even if student had raised issue of fact as to claim that school district maintained policy of transferring "troubled teachers" to schools predominantly populated with minority students, sexual assaults on student by such a teacher five to six months after the student withdrew from the school where the teacher taught were too remote a consequence of the transfer policies to hold the district liable under § 1983. Becerra v. Asher, S.D.Tex.1996, 921 F.Supp. 1538, affirmed 105 F.3d 1042, rehearing and suggestion for rehearing en banc denied 111 F.3d 894, supplemented on denial of rehearing, certiorari denied 118 S.Ct. 82, 522 U.S. 824, 139 L.Ed.2d 40. Civil Rights 1066

Parents failed to state claim under § 1983, against gym teacher who allegedly exposed himself to children, for deprivation of parents' liberty interest in creation and maintenance of parent-child relationship; parents did not allege that teacher intentionally or directly acted to deprive them of or diminish their familial relationship with children, and parents suffered no permanent, physical loss of association. Divergilio v. Skiba, E.D.Mich.1996, 919 F.Supp. 265. Civil Rights 1066

Allegations that school board, principal, and superintendent were individually liable for sexual abuse of elementary students by public school teacher, alleged due process violation needed to state § 1983 civil rights claim; defendants were alleged to have had knowledge of teacher's continuous sexual contact with plaintiffs and failed to remedy problem. Does v. Covington County School Bd., M.D.Ala.1995, 884 F.Supp. 462. Civil Rights 1395(2)

Parents of eighth grader who became sexually involved with her basketball coach had no cause of action under § 1983 against school officials based on parents' constitutional right to care, custody and companionship of their child, as they had not lost physical custody, nor had severe and permanent injury rendered relationship meaningless. R.L.R. v. Prague Public School Dist. I-103, W.D.Okla.1993, 838 F.Supp. 1526. Civil Rights 1066

The law recognizes liability under § 1983 for sexual molestation or excessive punishment exacted on school student by public school employee. B.M.H. by C.B. v. School Bd. of City of Chesapeake, Va., E.D.Va.1993, 833 F.Supp. 560. Civil Rights 1065; Civil Rights 1066

1712. Shootings, deprivation of education rights

Student's voluntary attendance at school-sponsored function did not give rise to special relationship with school which would render school board and school principal liable for shooting of student by third parties while student was waiting for his ride home. Mitchell v. Duval County School Bd., C.A.11 (Fla.) 1997, 107 F.3d 837. Schools 89.2

Even if state could be liable under § 1983 on theory that it created danger and even if decision of school district and high school principal to sponsor dance at high school despite their awareness of dangers posed thereby was negligent, conduct of state actors did not rise to level of deliberate indifference to rights of student killed by random gunfire in parking lot of school after the dance. Leffall v. Dallas Independent School Dist., C.A.5 (Tex.)

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42 U.S.C.A. § 1983

1994, 28 F.3d 521. Civil Rights 1065

Black student shot while participating in a high school football game failed to state a cause of action under § 1983 against city officials for a due process violation resulting from failure to provide adequate security at interracial school events, as complaint alleged no more than simple negligence on part of officials and did not allege that officials had knowledge of impending attack or that there had been racial violence at previous athletic events. Williams v. City of Boston, C.A.1 (Mass.) 1986, 784 F.2d 430. Civil Rights 1395(2)

Allegations of § 1983 complaint brought by parents and siblings of victims of shooting at state university medical center were sufficient to infer that actions of administrator of security of medical center may have constituted gross negligence and willful, reckless and wanton conduct, and were sufficient to trigger protections of due process clause, for purposes of the § 1983 action. Beck v. Calvillo, D.Kan.1987, 671 F.Supp. 1555. Civil Rights 1395(1)

1713. Special education, deprivation of education rights

Student, who was denied special education services for handicapped under C.R.S. '63, 123-22-1 et seq. by Colorado State Board of Education, was not denied federal constitutional rights under this section since right to education is not among those rights guaranteed by federal Constitution. Flemming v. Adams, C.A.10 (Colo.) 1967, 377 F.2d 975, certiorari denied 88 S.Ct. 219, 389 U.S. 898, 19 L.Ed.2d 216.

Violation of procedural safeguards of the IDEA by school board and school officials entitled disabled student to IDEA remedies, but did not rise to level of constitutional violation, so as to support student's § 1983 claims. Smith ex rel. Duck v. Isle of Wight County School Bd., E.D.Va.2003, 284 F.Supp.2d 370, affirmed in part, reversed in part and remanded 402 F.3d 468. Civil Rights 1069; Schools 155.5(5)

Paraplegic former student failed to state § 1983 cause of action against state officials for alleged deprivation of right to due process in connection with amendment of his individualized written rehabilitation program where paraplegic received prior notice and opportunity to be heard at time program was amended in accordance with challenged ceiling on tuition and maintenance expenses, even though he did not receive prior notice nor was given opportunity to be heard at time challenged policy was adopted. McGuire v. Switzer, S.D.N.Y.1990, 734 F.Supp. 99 . Civil Rights 1069; Constitutional Law 318(2)

Where parents of emotionally handicapped child provided no hint as to how their due process rights might have been abridged by New York State Department of Education's refusal to reimburse them for unilateral placement of their mentally handicapped child in private out of state institution, and parents did not show how they were treated unfairly, parents failed to state claim under this section. Smrcka by Smrcka v. Ambach, E.D.N.Y.1983, 555 F.Supp. 1227. Schools 155.5(2.1)

1714. Student loans, deprivation of education rights

Student debtors residing in four-county area in Western Pennsylvania and who had defaulted on student loans guaranteed by the Pennsylvania Higher Education Assistance Agency were denied due process by practice of the Agency of bringing action on such debts in a distant forum within the state. Phillips v. Pennsylvania Higher Ed. Assistance Agency, W.D.Pa.1980, 497 F.Supp. 712, reversed on other grounds 657 F.2d 554, certiorari denied 102 S.Ct. 1284, 455 U.S. 924, 71 L.Ed.2d 466. Constitutional Law 305(4.1)

1715. Testing, deprivation of education rights

That psychological test being given in elementary school might not be educationally valid one for a few individual children did not alone show constitutional deprivation. Murray v. West Baton Rouge Parish School Bd., C.A.5

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(La.) 1973, 472 F.2d 438. Civil Rights 1070

1716. Textbooks, deprivation of education rights--Generally

School textbook purchase procedure which provided for input from faculty members assigned to instruct given courses, evaluation by citizens textbook committee and final consideration and selection by entire school board after consultation with its in-house professional and administrative staff was fair, equitable and logical. Minarcini v. Strongsville City School Dist., N.D.Ohio 1974, 384 F.Supp. 698, affirmed in part, vacated in part 541 F.2d 577. Schools 167

1717. ---- Racial discrimination, textbooks, deprivation of education rights

Action of textbook approval committee in rejecting specified textbook and thereby precluding the purchase of such textbook with state funds evidenced a racially discriminatory purpose, and thus violated this section, since reasons given by some committee members for rejecting the textbooks indicated that race was a motivating factor, those members who did not indicate that race influenced them in their decision did not indicate any other reason for their rejection, and the legislative history and background of the state textbook statutes demonstrated racially discriminatory policies as a motivating factor. Loewen v. Turnipseed, N.D.Miss.1980, 488 F.Supp. 1138. Civil Rights 1041; Civil Rights 1070

1718. Transportation, deprivation of education rights

Black and impoverished elementary school children residing more than 1.5 miles from schools to which they were assigned under desegregation plan did not have a constitutional right to free bus transportation where such students were not carrying any greater burdens than before the desegregation plan became effective, where busing had never been utilized by the school board, in a district coterminous with city limits, and where unitary school plan was effected by use of zones and no student was assigned to a school outside contiguous zone in which he resided. Sutton v. City of Hattiesburg, S.D.Miss.1973, 367 F.Supp. 1154. Schools 159.5(2)

1719. Transfer policy, deprivation of education rights

Ultimate failure of school district's punitive and preventative measures in response to incidents of pupils' racial name-calling and physical abuse of Asian-American elementary student, and district's refusal to allow student to either transfer schools or skip a grade, did not result in § 1983 liability for alleged violations of the student's right to equal protection; there was no evidence that student's transfer or skipping grade would alleviate problems, district's refusal to break long-standing policies regarding transfers and class acceleration was reasonable, and measures taken by district were reasonable attempts to address reported problems. Yap v. Oceanside Union Free School Dist., E.D.N.Y.2004, 303 F.Supp.2d 284. Constitutional Law 220(3); Schools 154(1); Schools 163

Parents, whose children were subjected to the allegedly unconstitutional transfer policies, had standing to seek nominal damages and limited declaratory relief in civil rights suit challenging validity of school district's plan limiting a student's ability to transfer out of a neighborhood school. Comfort v. Lynn School Committee, D.Mass.2001, 150 F.Supp.2d 285, rescinded in part 283 F.Supp.2d 328, reversed 2004 WL 2348505, opinion withdrawn on grant of rehearing, on rehearing 418 F.3d 1, certiorari denied 126 S.Ct. 798, 163 L.Ed.2d 627. Schools 13(20)

1720. Tuition, deprivation of education rights

Where wife came to Pittsburgh in April, 1970 for her husband's attendance at medical school and in June, 1971 she

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enrolled at university and from April, 1970 to June 1972, she held a series of jobs in Pittsburgh, after registering to vote in Pennsylvania in August, 1970, she qualified for resident tuition rates in June, 1971, notwithstanding an unfortunate separation from her husband in July, 1972 resulting in her returning to New Jersey in July, 1972 and remaining there after reconciliation with her husband at later date. Samuel v. University of Pittsburgh, C.A.3 (Pa.) 1976, 538 F.2d 991. Colleges And Universities 9.20(2)

Right to pay residency tuition at state university is not concerned with one of fundamental rights so as to be tested against compelling state interest standard. Kelm v. Carlson, C.A.6 (Ohio) 1973, 473 F.2d 1267, 67 O.O.2d 275. Constitutional Law 82(12)

University board of regents did not deny student due process under U.S.C.A.Const. Amend. 14 by failing to classify him as resident student for tuition purposes where student introduced no evidence indicating that regulations, which permitted nonresident students to acquire residency status if, after becoming emancipated, they established bona fide residence in state for at least one year, were applied to him in vagarious, whimsical, uneven or capricious manner. Vanlaarhoven v. Newman, D.C.R.I.1983, 564 F.Supp. 145. Colleges And Universities 9.20(2); Constitutional Law 278.5(5.1)

XIII. DEPRIVATION OF EMPLOYMENT RIGHTS

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1741. Deprivation of employment rights generally

First Amendment, equal protection and due process clauses of Fourteenth Amendment, and other provisions of Federal Constitution afford protection to employees who serve government as well as to those who are served by them, and section 1983 provides cause of action for all citizens injured by abridgement of those protections. Collins v. City of Harker Heights, Tex., U.S.Tex.1992, 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1027; Constitutional Law 82(11); Constitutional Law 238.5; Constitutional Law 278.4(1)

District of Columbia employee, who complained of sexual harassment by supervisor, did not as a result suffer any adverse employment action that rose to level of actionable retaliation merely because of alleged isolated insult by supervisor, change in work shift which was in accordance with policy for all probationary employees, lateral transfer without diminution in pay or benefits, or insistence by DOC that employee verify reason for seeking time off. Jones v. District of Columbia Dept. of Corrections, C.A.D.C.2005, 429 F.3d 276, 368 U.S.App.D.C. 279. District Of Columbia 7

When a plaintiff attempts to use § 1983 as a parallel remedy to a Title VII claim, the prima facie elements to establish liability are the same under both statutes. Rivera v. Puerto Rico Aqueduct and Sewers Authority, C.A.1 (Puerto Rico) 2003, 331 F.3d 183, rehearing denied. Civil Rights 141

Not every negative employment decision or event is adverse employment action that can give rise to discrimination or retaliation cause of action under section 1983. Southard v. Texas Bd. of Criminal Justice, C.A.5 (Tex.) 1997, 114 F.3d 539. Civil Rights 1125; Civil Rights 1245

Genuine issues of material fact existed as to whether former assistant superintendent resigned from his employment with school district, whether his position was validly abolished following his purported resignation, and whether his fraudulent conduct justified education board's unilateral decision to rescind his executory contract to serve as superintendent, precluding summary judgment for assistant superintendent in his §§ 1983 claim alleging due process violations in connection with his termination and the rescission of executory contract. Nichiporuk v. Board of Educ. of Palmyra-Macedon Central School Dist., W.D.N.Y.2006, 415 F.Supp.2d 242. Federal Civil Procedure 2497.1

In order to succeed on § 1983 claim, employee of state commission had to prove that commission employees and officials were acting under color of state law and that they deprived her of a constitutional right. Verney v. Dodaro, M.D.Pa.1995, 872 F.Supp. 188, affirmed 79 F.3d 1140. Civil Rights 1326(11)

Property rights including legitimate expectancy of continuation of public employment, are within ambit of protection of this section. Alicea Rosado v. Garcia Santiago, D.C.Puerto Rico 1976, 414 F.Supp. 709. Civil Rights 1071

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1742. Public employees and civil servants, deprivation of employment rights

Evidence was sufficient for jury to conclude in civil rights lawsuit that mayor's termination of transitory employee in Puerto Rico municipality on basis that there was not sufficient funds for her social worker position was pretext for discrimination in violation of First Amendment political affiliation rights of employee, where replacement was hired only five months later from mayor's political party and municipality did not follow through on its obligation to summon employee to compete for her old job before it was again filled. Borges Colon v. Roman-Abreu, C.A.1 (Puerto Rico) 2006, 438 F.3d 1. Civil Rights 1430

City was not liable, under § 1983, for alleged violation of First Amendment rights of former director of city's social service department, through city's passage of ordinance that eliminated director's position, absent evidence that more than two of six members of nine-member city council who voted for ordinance acted with intent to punish director for protected speech or were subjected to widespread constituent pressure. Scott-Harris v. City of Fall River, C.A.1 (Mass.) 1997, 134 F.3d 427, certiorari granted 117 S.Ct. 2430, 520 U.S. 1263, 138 L.Ed.2d 192, reversed 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79, certiorari denied 118 S.Ct. 1184, 523 U.S. 1003, 140 L.Ed.2d 315. Civil Rights 1128

If public employees resign of their own free will, even as result of employer's actions, they voluntarily relinquish their property interests and employer does not deprive them of property without due process of law in violation of § 1983. Yearous v. Niobrara County Memorial Hosp. By and Through Bd. of Trustees, C.A.10 (Wyo.) 1997, 128 F.3d 1351, rehearing denied, certiorari denied 118 S.Ct. 1515, 523 U.S. 1074, 140 L.Ed.2d 669. Civil Rights 1125

"Public employee" standard for First Amendment claims against state-related defendants did not apply to First Amendment claims of owner of towing and wrecker service against city, city chief of police, and county sheriff, arising from revocation of permission for owner to use police radio frequency in business after owner complained to chief of police respecting bidding procedure for abandoned vehicles towing contract with city; relationship between owner and defendants did not rise to level of even quasi-employment relationship, and owner's speech was not work-related grievance. Blackburn v. City of Marshall, C.A.5 (Tex.) 1995, 42 F.3d 925. Automobiles 370; Constitutional Law 90.1(9)

Genuine issue of material fact as to whether failure to follow nine-step merit selection and recruitment process for acquiring permanent career status under Puerto Rico's Autonomous Municipalities Act of 1991 (AMA) when municipal employees had been initially appointed to permanent career positions, which was the reason proffered by mayor and other municipal officials for failing to reinstate employees to permanent career positions upon their separation from trust positions to which they had been appointed after their initial career appointments, was pretext for political discrimination precluded summary judgment for mayor and other municipal officials, in employees' §§ 1983 action alleging political discrimination in violation of First Amendment. Roman v. Delgado Altieri, D.Puerto Rico 2005, 390 F.Supp.2d 94, reconsideration denied 2005 WL 3358906.

Merely juxtaposing his party affiliation with that of defendants and alleging unfair treatment is insufficient for public employee to establish prima facie case of political discrimination. Figueroa Montes v. Foy, D.Puerto Rico 2003, 272 F.Supp.2d 168. Civil Rights 1421

Where important conditions of employment are involved, public employee will not be foreclosed from § 1983 relief for First Amendment violation merely because the impermissible retaliation did not result in termination of his or her employment. DeLeon v. Little, D.Conn.1997, 981 F.Supp. 728. Constitutional Law 82(11)

Former New Jersey-appointed motor vehicle agents who alleged that they were removed solely because of their political affiliation in violation of their constitutional rights were not "public employees" and were not entitled to injunctive relief and compensatory and punitive damages under the Civil Rights Act. Horn v. Kean, D.C.N.J.1984,

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593 F.Supp. 1298, affirmed 796 F.2d 668. Civil Rights 1116(1); Officers And Public Employees 1

1743. Due process generally, deprivation of employment rights

Public employee, physician working in correctional facility, had not been deprived of his due process rights by manner that employer handled his numerous disciplinary proceedings, for purpose of employee's claim of constructive discharge due to harassing behavior, where employee had right to file grievance after any of alleged harassing disciplinary charges, but never did so, and there was nothing to suggest that such hearing would have been futile or unavailing. Witte v. Wisconsin Dept. of Corrections, C.A.7 (Wis.) 2006, 434 F.3d 1031. Prisons 7

Retired county sheriff's deputies had protected property interest in group health insurance coverage at same premium rate as for active deputies, as required for deputies' §§1983 action against county alleging that their insurance premiums had been raised above those for active deputies without due process; state statute expressly provided that continued group coverage be provided to retirees at same premium rate. Germano v. Winnebago County, Ill., C.A.7 (Ill.) 2005, 403 F.3d 926, rehearing and rehearing en banc denied. Constitutional Law 277(2)

County's act of setting up separate employee benefit plan for retired sheriff's deputies which charged higher premiums than for active deputies, in contravention of state statute and without pre-deprivation hearing, was random and unauthorized, and thus did not constitute due process violation, precluding retired deputy's §§1983 action against county; act directly and concededly violated state law and thus was unpredictable by state. Germano v. Winnebago County, Ill., C.A.7 (Ill.) 2005, 403 F.3d 926, rehearing and rehearing en banc denied. Constitutional Law 278.4(4); Constitutional Law 278.4(5); Sheriffs And Constables 32

Allegations of employee of Puerto Rico government administration that she was a career employee with a property interest in her job, that her duties and privileges were unilaterally curtailed following election, that a hearing on her demotion was a "sham," and that decision on the outcome of hearing was delayed in order to benefit a member of another political party who replaced her were sufficient to state a §§ 1983 claim based on procedural due process violation. Medina Diaz v. Gonzalez Rivera, D.Puerto Rico 2005, 371 F.Supp.2d 77. Constitutional Law 278.4(5); Territories 23

Failure to show any disparate treatment precluded claim by terminated cheerleading coordinator for state university that she was terminated without being provided due process, after she allegedly interjected her Christian religion into cheerleading activities and then read statement to squad expressing hostility after she was placed on probation due to religious activities. Braswell v. Board of Regents of University System of Ga., N.D.Ga.2005, 369 F.Supp.2d 1371. Colleges And Universities 8.1(3); Constitutional Law 278.5(3)

Employee of municipality stated claim that she was deprived of her due process rights when she was twice suspended without pay without receiving proper hearing. Figueroa-Garay v. Municipality of Rio Grande, D.Puerto Rico 2005, 364 F.Supp.2d 117. Civil Rights 1395(8)

To properly assert a procedural due process claim under §§ 1983, plaintiff must show that: (1) he had a property interest, and (2) that defendants, acting under color of state law, deprived them of that property interest without providing him a constitutionally adequate procedure. Ramos Rodriguez v. Puerto Rico, D.Puerto Rico 2004, 325 F.Supp.2d 6. Civil Rights 1324; Constitutional Law 277(1); Constitutional Law 278(1)

Police officer failed to state claim that he was deprived of property interest without due process of law because of his alleged permanent transfer to uniformed patrol unit, where he did not allege that he suffered any pecuniary loss resulting from his alleged permanent transfer. Lara v. City of Chicago, N.D.Ill.1997, 968 F.Supp. 1278. Civil Rights 1395(8)

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Prison guard's allegations that his supervisors attempted to frame him for drug offense by persuading prisoners to lie about him, that his supervisors ordered prison guard to fabricate misconduct charges against prisoners and then assigned him to work with those prisoners, that supervisors took such actions because of prison guard's race and that supervisors' actions forced prison guard to take and remain on stress leave were sufficient to state § 1983 substantive due process claim against supervisors. Ware v. Curley, E.D.Mich.1996, 934 F.Supp. 259. Civil Rights 1395(8)

A public employee may not be deprived of his property or liberty interest in continued government employment absent some due process protection. Eley v. Morris, N.D.Ga.1975, 390 F.Supp. 913. Constitutional Law 278.4(3)

Director for county agency did not have right to have attorney present at pre-disciplinary hearing under due process principles, which required only notice and opportunity to respond prior to deprivation of job benefits. Speiser v. Engle, C.A.6 (Ohio) 2004, 107 Fed.Appx. 459, 2004 WL 1745785, Unreported. Constitutional Law 278.4(5); Counties 67

1744. Property interest, deprivation of employment rights--Generally

Former city employee had no federal constitutionally protected interest in future employment, and thus employee could not maintain § 1983 action against city for violation of due process based on allegedly false and defamatory statements made about him when city was asked for references by security agencies with whom he sought employment, absent showing that security agencies generally applied to city to seek their approval before hiring new security guards. Muniz v. City of Harlingen, C.A.5 (Tex.) 2001, 247 F.3d 607. Constitutional Law 275(1); Constitutional Law 278.4(1); Municipal Corporations 218(10)

Electrician did not have protectible property interest in anticipated new job with city's water department, as required to state § 1983 claim based on city's alleged violation of his due process rights in depriving him of interest, given absence of enforceable written or oral employment contract. Zemke v. City of Chicago, C.A.7 (Ill.) 1996, 100 F.3d 511. Constitutional Law 277(2)

For property interest to arise, as required for procedural due process claim, government employee must have legitimate claim of entitlement to continued employment, as opposed to mere subjective expectancy. Batra v. Board of Regents of University of Nebraska, C.A.8 (Neb.) 1996, 79 F.3d 717. Constitutional Law 277(2)

Owner of towing and wrecker service failed to allege property interest in remaining on city's and county's rotating on-call list for accident wrecker service as required for his due process claims against city, its chief of police, and county sheriff, arising from revocation of permission for owner to use police radio frequency in business and owner's removal from on-call list after owner complained to chief respecting bidding procedure for abandoned vehicles towing contract with city; owner essentially claimed right to receive certain class of business referrals from local government, and did not allege that any governmental action prevented or restricted him from doing business with private citizens. Blackburn v. City of Marshall, C.A.5 (Tex.) 1995, 42 F.3d 925. Civil Rights 1395(3); Civil Rights 1395(5)

Failure to provide due process to employee with property interest in state employment is actionable under § 1983. Buttitta v. City of Chicago, C.A.7 (Ill.) 1993, 9 F.3d 1198, rehearing denied. Civil Rights 1125

Public employee faced with termination is entitled to procedural due process if he or she can demonstrate that termination implicates a property interest protected by due process clause; such property right derives from the employee's legitimate claim of entitlement to continued employment, which arises from independent sources such as state laws, rules, or understandings that secure benefits to employees. Calhoun v. Gaines, C.A.10 (Okla.) 1992, 982 F.2d 1470. Constitutional Law 277(2); Constitutional Law 278.4(5)

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Given New Mexico Metropolitan Court's unrestricted authority to terminate court administrator for any reason, administrator had no constitutionally protected property interest in his job, regardless of any expectations by administrator that he would only be terminated by metropolitan court independently exercising its authority, rather than by order of state Supreme Court; procedures provided for his termination did not create property interest. Russillo v. Scarborough, C.A.10 (N.M.) 1991, 935 F.2d 1167. Constitutional Law 277(2)

Evidence in action by former directors of bank against Secretary of Treasury of Puerto Rico and successor directors was not sufficient to establish that directorship carried with it collateral benefits capable of economic valuation such that directorship would be property interest within meaning of U.S.C.A.Const. Amend. 14. Rodriguez de Quinonez v. Perez, C.A.1 (Puerto Rico) 1979, 596 F.2d 486, certiorari denied 100 S.Ct. 78, 444 U.S. 840, 62 L.Ed.2d 51. Constitutional Law 277(1)

Allegation that former Puerto Rico housing department employee was removed from her career position by her supervisors supported claim that she was deprived of a property interest under color of state law, in violation of her right to due process. Gutierrez v. Molina, D.Puerto Rico 2006, 447 F.Supp.2d 168. Territories 23

Alleged promises by Department of Environmental Protection (DEP) to promote employees, who were "acting" as supervisors, did not create property right under New York law, as required for employees' § 1983 claim for violation of their procedural due process rights; employees were not entitled to promotion, under civil service law, and city had broad discretion in matters of promotion. Bheemarao v. City of New York, S.D.N.Y.2001, 141 F.Supp.2d 446. Constitutional Law 277(2)

City board of education employee had no property interest in her interim position as high school's acting supervisor of special education and, therefore, could not assert § 1983 procedural due process claim based on her involuntary transfer from such position. Murray v. Board of Educ. of City of New York, S.D.N.Y.1997, 984 F.Supp. 169. Constitutional Law 277(2)

Employee of state Department of Corrections (DOC) who had been transferred from his original position as drill instructor did not have property interest in continued employment as drill instructor and, therefore, could not state § 1983 claim for deprivation of property interest without due process of law. Gamper v. State of Ala. Dept. of Corrections, M.D.Ala.1997, 968 F.Supp. 1483. Constitutional Law 277(2)

Municipal judge did not have vested right or property interest in his position, where city ordinance provided that term of municipal judge shall be by appointment of city council by majority vote of governing party. Salmon v. Miller, E.D.Tex.1996, 951 F.Supp. 103. Constitutional Law 102(1); Constitutional Law 277(2); Judges 7

Work responsibilities that are uncompensated do not create protectible property interest under § 1983. Wagner v. Texas A & M University, S.D.Tex.1996, 939 F.Supp. 1297. Constitutional Law 277(1)

State university employee on probationary status under terms of collective bargaining agreement had no interest protected by due process clause arising from his suspension during pending criminal investigation to establish claim under § 1983. Boykin v. Bloomsburg University of Pennsylvania, M.D.Pa.1995, 893 F.Supp. 378, affirmed 91 F.3d 122, certiorari denied 117 S.Ct. 739, 519 U.S. 1078, 136 L.Ed.2d 678. Colleges And Universities 8.1(1); Constitutional Law 277(2)

Employee could not base § 1983 action against state natural resources department upon due process clause, for department's alleged refusals to transfer employee due to disability; employee failed to identify state law, rule or regulation creating property interest in employee's right to be transferred or "classified according to his abilities." Bodiford v. State of Ala., M.D.Ala.1994, 854 F.Supp. 886. Civil Rights 1220

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Whether plaintiff has constitutionally protected property interest in his employment depends upon whether state or some other independent source provided him with an expectation of continued employment; expectation of continued employment may arise through implied agreements or administrative regulations. Jackson v. Johns, D.Colo.1989, 714 F.Supp. 1126. Constitutional Law 278.4(3)

Former employees of a county detention center, who were terminated for allegedly violating a rule against entering the facility's walk-in refrigerator, had no substantial liberty or property interest in their jobs sufficient to support a cause of action under this section, and they received notice and an opportunity to respond to the charges against them sufficient to satisfy due process requirements. Fritz v. Norblad, D.C.Or.1983, 566 F.Supp. 1459. Civil Rights 1128; Constitutional Law 278.4(5)

For purposes of this section, person may have protected property interest in public employment if there is contractual or statutory guaranty of continued employment, except for removal for cause. Johnson v. Cushing, D.C.Minn.1980, 483 F.Supp. 608. Civil Rights 1128

Mayor's termination of municipal employee was intentional, a pre-termination process was in place, and no emergency situation existed, and therefore employee was deprived of procedural due process when she was fired, even if she did not avail herself of post-termination remedies; employee received no pre-termination opportunity to respond to her termination. Brown v. Town of LaBarge, WY, C.A.10 (Wyo.) 2004, 97 Fed.Appx. 216, 2004 WL 370948, Unreported. Constitutional Law 278.4(5); Municipal Corporations 218(8)

1745. ---- State law generally, property interest, deprivation of employment rights

Whether government employee has sufficient property interest in employment to be protected by due process is a matter of state law. Calhoun v. Gaines, C.A.10 (Okla.) 1992, 982 F.2d 1470. Constitutional Law 277(2)

Existence of property interest in public employment must be decided by reference to state law. Driggins v. City of Oklahoma City, Okl., C.A.10 (Okla.) 1992, 954 F.2d 1511, certiorari denied 113 S.Ct. 129, 506 U.S. 843, 121 L.Ed.2d 84. Constitutional Law 277(2)

For purposes of showing property interest in continued employment necessary to assert § 1983 claim for violation of constitutional due process, property interests are not created by the Constitution, but are defined by state law. Couch v. Wilkinson, C.A.8 (Iowa) 1991, 939 F.2d 673. Constitutional Law 277(2)

Former municipal clerk did not have job protection, because she was not "reappointed" under New Jersey law, and, therefore, she did not have protectable property interest in her employment under due process clause of Fourteenth Amendment, even though she completed six month portion of her "6 month 3 year" term as acting municipal clerk and she started second three-year term as municipal clerk; to obtain job protection as reappointed clerk, she had to serve three years prior to being reappointed, and that did not occur. Rieger v. Township of Fairfield, D.N.J.2003, 294 F.Supp.2d 648, reversed and remanded 121 Fed.Appx. 944, 2005 WL 293641. Constitutional Law 277(2); Municipal Corporations 218(8)

Determination of whether plaintiff has constitutionally protected property interest in continued public employment is question of state law. Pipkin v. City of Moore, Okl., W.D.Okla.1990, 735 F.Supp. 1004, affirmed 930 F.2d 34. Federal Courts 421

1746. ---- Statutes, property interest, deprivation of employment rights

Pennsylvania Housing Finance Agency Law creating Pennsylvania Housing Finance Agency did not bestow upon agency right to enter into employment contract with its employees contrary to general rule that public employees in Pennsylvania had at-will status and were subject to summary removal by employing agency, and thus construction

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representative of agency had no property interest in his employment for purpose of § 1983 claim. Cooley v. Pennsylvania Housing Finance Agency, C.A.3 (Pa.) 1987, 830 F.2d 469. Constitutional Law 277(2)

Laid off state merit system employees who brought action under this section against State and certain officials thereof failed to prove existence of constitutionally protected liberty interest, since KRS 18.110(17), 18.210(14, 16) governing layoffs contains no requirement to show cause and permits layoffs due to reorganization, lack of funds or work, or abolishment of positions and, furthermore, though employees may have had expectation of continued employment, it was unilateral one and did not rise to level of constitutionally protected right. Riggs v. Com. of Ky., C.A.6 (Ky.) 1984, 734 F.2d 262, certiorari denied 105 S.Ct. 184, 469 U.S. 857, 83 L.Ed.2d 118. Constitutional Law 278.4(3)

Town accountant who was not reappointed at end of fixed, three-year term did not have property interest in continued employment under town charter or Massachusetts statutes sufficient to require town authorities to give her due process hearing. Metivier v. Town of Grafton, D.Mass.2001, 148 F.Supp.2d 98, affirmed 283 F.3d 391. Constitutional Law 277(2); Towns 28

Town building inspector had protected property interest in his job, and therefore allegation that he was suspended without pay because of his refusal to misuse his authority in a harassment campaign by town officers against certain property owners supported a due process claim under § 1983; applicable statute made his position a three-year appointment that prohibited removal without cause, and then only after a hearing by the appointing authority. Columbus v. Biggio, D.Mass.1999, 76 F.Supp.2d 43. Constitutional Law 277(2); Constitutional Law 278.4(3); Towns 28

1747. ---- Ordinances, property interest, deprivation of employment rights

City ordinance providing that employer contributions to employee's pension fund were to be equal in amount for all employees at same grade on pay range table gave city employees property interest in equal employer contributions, for purposes of § 1983 claim against city for refusing to pay employer contributions for overtime and bonus pay. Adamson v. City of Provo, Utah, D.Utah 1993, 819 F.Supp. 934. Constitutional Law 277(2)

1748. ---- Contracts generally, property interest, deprivation of employment rights

Any contract rights that state employee had in his job did not create property right that would support § 1983 claim against state for deprivation of property right, where contract was not made pursuant to statute or authorizing regulation. Koepping v. Tri-County Metropolitan Transp. Dist. of Oregon, C.A.9 (Or.) 1997, 120 F.3d 998. Civil Rights 1128

Whether employment contract permits dismissal solely for cause, for purpose of public employee's civil rights claim against employer, is matter of state law. Cummings v. South Portland Housing Authority, C.A.1 (Me.) 1993, 985 F.2d 1. Federal Courts 411

Where state officials violate terms of employment contract that does not create a "property" interest in job itself under U.S.C.A.Const. Amend. 14, proper remedy lies in suit for breach of contract, not an action under this section. Bleeker v. Dukakis, C.A.1 (Mass.) 1981, 665 F.2d 401. Civil Rights 1312

Former employees of Puerto Rico Department of Education, alleging political motivation for nonrenewal of their one-year contracts, failed to state claim for due process violation; employees lacked property interest in their positions beyond contractual term. Rivera-Torres v. Rey-Hernandez, D.Puerto Rico 2004, 352 F.Supp.2d 152. Constitutional Law 277(2); Constitutional Law 278.4(3); Territories 23

Prospective employee failed to show that he had "property interest" in position of director of mathematics, in civil

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rights action against Commonwealth of Puerto Rico alleging political discrimination, although he was considered for the position and interviewed, since employment contract documents were not signed and no appointment was made. Soto Gonzalez v. Rey Hernandez, D.Puerto Rico 2004, 310 F.Supp.2d 418. Constitutional Law 277(2)

Physician's statement that he "was told, understood, and believed, that he was employed pursuant to a contract, formed by oral offer and acceptance, that was partially written, particularly as to terms and conditions of employment discipline and corrective actions" was inadequate as an evidentiary showing to create genuine issue of material fact as to existence of property interest in his employment and clinical privileges at county hospital for purposes of his § 1983 action; nothing in statement ascribed to hospital's authorized decisionmakers any contractual commitment running to physician. Draghi v. County of Cook, N.D.Ill.1998, 991 F.Supp. 1055, affirmed 184 F.3d 689, rehearing denied. Federal Civil Procedure 2497.1

Oral representation by hiring officer that state employee would not be removed without cause did not create property interest in position, so as to sustain employee's claim that her discharge violated her due process rights, when officer lacked statutory authority to enter into such employment contract. King v. Lensink, D.Conn.1989, 720 F.Supp. 236. Constitutional Law 277(2); States 53

School superintendent had property interest in continuation in his position sufficient to support civil rights action against school board for dismissing him where dismissal occurred during contractual period before expiration of the contract. Okeson v. Tolley School Dist. No. 25, D.C.N.D.1983, 570 F.Supp. 408. Civil Rights 1133

Plaintiff did not have a property interest in his employment under law of Pennsylvania which was enforceable under U.S.C.A. Amend. 14 and, hence, did not have a cause of action under this section for an alleged conspiracy on part of defendants to remove him from his position as supervising manager of public works and utilities for borough where, though plaintiff referred frequently to express provisions of his employment contract, plaintiff admitted that parties did not execute a written contract and, though an oral contract of employment was enforceable in Pennsylvania, plaintiff did not allege any acts or declarations demonstrating parties' intent that their agreement operate prior to or without regard for a written contract. Skrocki v. Caltabiano, E.D.Pa.1981, 505 F.Supp. 916.

Former employee of a private company operating a corrections facility under a state contract was a probationary employee at the time of her discharge, and thus, had no property right in continued employment, as required to support her §§ 1983 claim that her termination violated her rights under the Fourteenth Amendment, even though she had worked at the prison, albeit for two different employers, for a period longer than the company's probationary period; the employee specifically agreed in an employment contract that she was a probationary employee, and subject to the company's internal policies and procedures. Bell v. Management & Training Corp., C.A.6 (Ohio) 2005, 122 Fed.Appx. 219, 2005 WL 280465, Unreported. Constitutional Law 277(1); Prisons 7

1749. ---- Collective bargaining agreements, property interest, deprivation of employment rights

Discharged employee's claim that California State Commissioner of Labor's enforcement policy violated her right under NLRA to complete collective bargaining process and agree to arbitration clause was properly brought under § 1983; Commissioner's policy refused enforcement of state statutes requiring employers to pay all wages due immediately upon employee's discharge, and imposing penalty for refusal to promptly pay, if terms and conditions of employee's employment were governed by collective bargaining agreement containing arbitration clause. Livadas v. Bradshaw, U.S.Cal.1994, 114 S.Ct. 2068, 512 U.S. 107, 129 L.Ed.2d 93, on remand 30 F.3d 1252. Civil Rights 1136

Seasonal laborer who had been employed by city for more than six months, but less than one year, did not have property interest in his position that was protected by due process clause, even though city charter established

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six-month probationary period for city employees, where collective bargaining agreement (CBA) entered by city with laborer's bargaining unit established 12-month probationary period, which overrode inconsistent charter provision pursuant to Minnesota Public Employment Labor Relations Act (PELRA). Somers v. City of Minneapolis, C.A.8 (Minn.) 2001, 245 F.3d 782. Constitutional Law 277(2); Municipal Corporations 217.2

Where collective bargaining agreement with public employer did not create legitimate entitlement to be protected from layoffs other than by establishing seniority rights in such cases and by granting postdismissal remedies for violating those rights, violation if any might give rise to contractual or Commonwealth remedy but not to action which was cognizable in federal district court in action under this section. Union Insular De Trabajadores Industriales Y Construcciones Electricas v. Autoridad De Las Fuentes Fluviales De Puerto Rico, D.C.Puerto Rico 1975, 431 F.Supp. 435. Civil Rights 1128

1750. ---- Employee handbooks, property interest, deprivation of employment rights

Where employee handbook of municipally owned hospital specifically stated that permanent employee could not be discharged without cause, hospital's director of volunteer services, as permanent employee, had property interest in continued employment which was protected by U.S.C.A. Const. Amend. 14, and thus, her termination by hospital without hearing to determine whether cause existed constituted violation under this section as matter of law, and case was properly remanded for determination of appropriate compensatory and punitive damages, costs, attorney fees, and possible reinstatement. Vinyard v. King, C.A.10 (Okla.) 1984, 728 F.2d 428. Civil Rights 1128; Federal Courts 945

Allegation that university's faculty handbook contained procedures governing renewal or nonrenewal of contracts of year-to-year instructors asserted sufficient property interest in continued employment on part of nontenured instructor to plead claim under § 1983 for due process violations arising out of officials' failure to provide impartial decisionmaker with respect to decision not to renew instructor's contract. Anderson-Free v. Steptoe, M.D.Ala.1997, 970 F.Supp. 945. Civil Rights 1395(8)

Even assuming that county's employee handbook, or any of its provisions, was applicable to plaintiff in his position as high-level administrator at county community college, language of handbook did not support plaintiff's claim that, for due process purposes, he had property interest in his employment as vice president for administration at college, since there was no express assurance in handbook that termination would be for cause only, or that policy of progressive discipline endorsed by county would be followed in every case. McCarthy v. Board of Trustees of Erie Community College, W.D.N.Y.1996, 914 F.Supp. 937. Constitutional Law 277(2)

1751. ---- Grievance procedures, property interest, deprivation of employment rights

In absence of any evidence suggesting any substantive restriction on power of Housing Authority of Choctaw Nation of Oklahoma to discharge employee, her employment was terminable at will, and thus she possessed no property right in continued employment, notwithstanding claim that Authority's grievance procedure constituted an independent source supporting her claim of entitlement to future employment, since grievance procedure, at best, merely supported a claim of entitlement to such procedural protections. Asbill v. Housing Authority of Choctaw Nation of Oklahoma, C.A.10 (Okla.) 1984, 726 F.2d 1499. Constitutional Law 278.4(3)

1752. ---- Personnel guidelines, manuals and policies, property interest, deprivation of employment rights

Provisions of Personnel Policy Handbook stating that Pennsylvania township would take no disciplinary action against employee without "just cause" did not override default rule that public employees in Pennsylvania served at will; thus, township office manager bringing §§ 1983 action after she was fired without notice or hearing did not have property interest in her job sufficient to implicate Due Process Clause. Elmore v. Cleary, C.A.3 (Pa.) 2005,

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42 U.S.C.A. § 1983

399 F.3d 279. Constitutional Law 277(2); Municipal Corporations 218(8)

Former county employee who did not properly present evidence of county's personnel guidelines did not show that he had a property interest in continued employment protected by procedural and substantive due process. Nolin v. Douglas County, C.A.11 (Ga.) 1990, 903 F.2d 1546. Constitutional Law 277(2)

County hospital authority's internal personnel manual did not give security officers legitimate claims of entitlement to continued employment under Georgia law, and thus, officers had no protectable property interests in their positions and could be discharged with or without cause, absent discriminatory purpose. Wofford v. Glynn Brunswick Memorial Hosp., C.A.11 (Ga.) 1989, 864 F.2d 117. Constitutional Law 277(2)

Physicians have constitutionally protected property right in medical staff privileges where medical staff's bylaws present a detailed procedure for corrective action against staff members. Medeiros v. Randolph County Hosp. Ass'n, Inc., M.D.Ala.1997, 968 F.Supp. 1469. Constitutional Law 277(1); Health 273

Former city attorney employed in "unclassified" status as temporary employee did not have constitutionally protected right to continue employment; provisions of city's personnel policy upon which attorney relied to establish expectancy of continued employment applied only to "classified" service. Pipkin v. City of Moore, Okl., W.D.Okla.1990, 735 F.Supp. 1004, affirmed 930 F.2d 34. Constitutional Law 277(2); Municipal Corporations 217.2

Employee of circuit court staff was not a county employee and thus did not have any property interest protected by due process on the basis of county's personnel manual. Baker v. DuPage County, N.D.Ill.1989, 703 F.Supp. 735. Constitutional Law 277(2)

1752A. ---- Miscellaneous employment, property interest, deprivation of employment rights

School bus driver's employment relationship with private contractor could form the basis of a property interest protected by procedural due process when a government actor interfered with that employment. Fernandez v. Taos Municipal Schools Bd. of Educ., D.N.M.2005, 403 F.Supp.2d 1040. Constitutional Law 277(1)

1753. Executive orders, deprivation of employment rights

Executive orders concerning government contractors' obligations not to discriminate in employment practices did not create right in any individual to seek injunctive relief or assert claim for damages. Jackson v. University of Pittsburgh, W.D.Pa.1975, 405 F.Supp. 607. Injunction 114(2); United States 127(1)

1754. Contracts, deprivation of employment rights--Generally

Claims by city employee union and its president that city and its officers had breached state statutory provisions and applicable labor contracts in abridging seniority, promotion and other rights could not form the basis of a civil rights action. Boston Environmental Sanitation Inspectors Ass'n v. City of Boston, C.A.1 (Mass.) 1986, 794 F.2d 12. Civil Rights 1258

If state had merely breached contract with former university employee, he would have no cause of action under this section since relief is predicated on a denial of a constitutional right. Braden v. Texas A & M University System, C.A.5 (Tex.) 1981, 636 F.2d 90. Civil Rights 1131

Even if hospital's employee manual created protected property interest in continued employment, nurse did not have due process claim against hospital following her discharge, where state law breach of employment contract action provided adequate postdeprivation remedy. Churchill v. Waters, C.D.Ill.1990, 731 F.Supp. 311. Civil

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42 U.S.C.A. § 1983

Rights 1320

1755. ---- Necessity of contracts, deprivation of employment rights

Employment contract was not essential to cause of action brought by unincorporated labor association and two of its members under this section against county commissioners and superintendent of county home for discharging individual plaintiffs from employment solely because of their membership and activities in labor union. Service Emp. Intern. Union, AFL-CIO v. Butler County, Pa., W.D.Pa.1969, 306 F.Supp. 1080. Civil Rights 1122

1756. Equal protection, deprivation of employment rights--Generally

Employer did not violate anti-discrimination statutes by requiring employee to disclose her social security number as condition of continued employment, even though her refusal was based on fear of identity theft; requirement applied equally to all employees and was necessary consequence of employer's obligations under federal law. Cassano v. Carb, C.A.2 (N.Y.) 2006, 436 F.3d 74. Civil Rights 1231

Fact that director of anesthesiology residency program at state university medical school terminated physician's residency because of physician's lack of candor with regard to his dismissal from another residency was insufficient to establish director's vindictiveness or malignant animosity necessary to state claim for relief under Equal Protection Clause, where director's decision was reached after consultation with his peers and was based upon legitimate academic concern for physician's prospective ability to be entrusted with care of patients. Fenje v. Feld, C.A.7 (Ill.) 2005, 398 F.3d 620, rehearing and rehearing en banc denied. Colleges And Universities 9.35(3.1); Constitutional Law 242.2(5.1)

To succeed on § 1983 claim against public employer for equal protection violation, plaintiff must show that employer made adverse employment decision with discriminatory intent and purpose. Timm v. Wright State University, C.A.6 (Ohio) 2004, 375 F.3d 418. Constitutional Law 238.5

Court abused its discretion in withdrawing its judicial notice of information from the National Personnel Records Center's (NPRC's) website regarding health records maintained by site, in § 1983 action by employee, who had worked at state-run, federally-funded program for high school dropouts, against employer for allegedly violating his constitutional rights by requiring him to sign release of various documents as condition of his contract renewal, including medical records; although employee testified regarding his records, information on website was not duplicative of testimony. Denius v. Dunlap, C.A.7 (Ill.) 2003, 330 F.3d 919. Evidence 14

Though there may be no constitutional right to public employment as such, there is a constitutional right to be free from unreasonably discriminatory practices with respect to such employment. Whitner v. Davis, C.A.9 (Wash.) 1969, 410 F.2d 24. Constitutional Law 238.5

Puerto Rico police officers failed to state §§ 1983 claim based on deprivation of equal protection from "Law 181" which forced them to retire at age 55; law was not irrational because it allowed police officers who had reached age 55 but had not completed their 30 years of service to remain on the force, and retiring superintendent's alleged order that retired police officers be recruited once again in order to counter rise in criminality did not render statute irrational as it allowed for retention of mandatorily retired police officers in the Police Reserves for up to two years. Correa-Ruiz v. Calderon-Serra, D.Puerto Rico 2005, 411 F.Supp.2d 41. Territories 23

State police detective was not subjected to treatment different from others similarly situated, or to hostile work environment, in violation of his equal protection rights, when he was transferred from one casino to another, where he never requested transfer from second casino, he was only person who objected to tenor of sergeant's comments regarding transfer, sergeant made no more comments regarding transfer after meeting about detective's harassment complaint, sick leave audit analyzed sick leave taken by every officer in casino unit, and other officers were

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transferred on regular basis. Mercer v. Brunt, D.Conn.2004, 299 F.Supp.2d 21, reconsideration denied 304 F.Supp.2d 334. Constitutional Law 238.5; States 53

Public employee whose employment was terminated upon allegations that he solicited bribery failed to allege that any other employee confronted with similar allegation was treated differently, as required to maintain § 1983 civil rights action against state on basis that termination violated his equal protection rights. Garcia v. State of N.M. Office of the Treasurer, D.N.M.1997, 959 F.Supp. 1426. Civil Rights 1395(8)

Genuine issue of material fact on municipality's motive in requiring employees with nonwork related injuries to pay for their medical certificates precluded summary judgment for municipality on employee's § 1983 claim against municipality for violating Equal Protection Clause through disparate treatment of handicapped employees injured off the job. Ali v. City of Clearwater, M.D.Fla.1996, 915 F.Supp. 1231, affirmed 138 F.3d 956. Federal Civil Procedure 2497.1

Employment discrimination action cannot be maintained under section 1981 or section 1983 unless allegedly wrongful conduct was intentional. Gray v. City of Kansas City, Kan., D.C.Kan.1985, 603 F.Supp. 872. Civil Rights 1137

Display in window of county park unit manager's office, which exhibited a life-size torso-length image of former employee placed next to a similar image of "Twilight Zone" host, although juvenile, mean-spirited, and insulting, was not prohibited by equal protection clause. Ritzel v. Milwaukee County, C.A.7 (Wis.) 2004, 103 Fed.Appx. 7, 2004 WL 1435216, Unreported. Constitutional Law 238.5; Counties 146

Police officers' alleged conduct of notifying resident of intent to tow abandoned vehicle, and not notifying other residents of intent to tow, failed to support an equal protection claim under § 1983 brought by resident against officers, where resident's car was not towed and resident suffered no harm, and, further, resident failed to adequately identify the particular conduct of the named officers that allegedly injured him. Aultman v. Padgett, E.D.Pa.2003, 2003 WL 22358445, Unreported. Automobiles 12; Constitutional Law 292

1757. ---- National origin discrimination, equal protection, deprivation of employment rights

Employee's claim of harassment based on national origin is actionable under § 1983. Boutros v. Canton Regional Transit Authority, C.A.6 (Ohio) 1993, 997 F.2d 198, rehearing denied. Civil Rights 1144

For purposes of state university hospital employee physician's §§ 1983 claim that employers' decision to revoke his clinical privileges was national origin discrimination, co-workers ignoring employee's wife at office parties and comments of co-workers that patients from rural Ohio could not understand employee because of his accent did not constitute direct evidence of discrimination, since co-workers were not decision-makers and were not involved in employers' decision-making process. Benjamin v. Schuller, S.D.Ohio 2005, 400 F.Supp.2d 1055. Civil Rights 1421

1758. ---- Racial discrimination, equal protection, deprivation of employment rights

This section provides a remedy for state action that purposefully discriminates on basis of race in violation of equal protection clause of U.S.C.A.Const. Amend. 14, and the protection afforded includes relief from discriminatory employment practices of public employers; thus, the right to equal protection with regard to public employment does not depend on existence of a property interest in that employment. Poolaw v. City of Anadarko, Okl., C.A.10 (Okla.) 1981, 660 F.2d 459. Civil Rights 1125

Discharged African-American employee of a regional educational service center failed to prove that he was discharged as a teacher aid/driver because of his race, thus defeating his § 1983 claim of an equal protection

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violation; while he was actually capable of performing the tasks assigned, thus satisfying a threshold level of qualification, he failed to prove there were white employees that were similarly situated in all respects, as required for a prima facie case, and in any event, he failed to show that proffered reasons for his termination, four speeding incidents and an investigating agency's conclusion that an incident with a student constituted physical neglect, were merely a pretext for discrimination. Jenkins v. Area Cooperative Educ. Services, D.Conn.2003, 248 F.Supp.2d 117, modified on reconsideration 2004 WL 413267. Constitutional Law 220(7); Schools 63(1)

Genuine issue of material fact as to whether African American state Department of Correction employee was treated differently than similarly situated Caucasian and Hispanic employees when his employment was terminated based on his arrests on criminal charges precluded summary judgment on employee's §§ 1983 claim against supervisors and Commissioner of Correction alleging violation of Equal Protection Clause. Everson v. Lantz, D.Conn.2006, 453 F.Supp.2d 578. Federal Civil Procedure 2497.1

City was not liable under §§ 1983 for alleged violation of white employee's right to equal protection through its alleged selective enforcement of disciplinary code against him because of his support for minority coworkers; even if employee had demonstrated city policy or custom of treating employee differently than other workers, employee's chosen comparator, his supervisor, was not similarly situated insofar as they did not have the same job responsibilities and supervisor's purported infractions were not the same as those of employee. Bond v. City of Middletown, D.Conn.2005, 389 F.Supp.2d 319. Municipal Corporations 218(10)

Evidence that city's African-American mayor had told police department officials that he wanted white police officer fired due to pressure he was getting from black community over officer's involvement in certain racial altercation and that mayor had stated to the officials that he had been elected by black, not white, voters established that officer's termination had been racially motivated in violation of equal protection, absent showing that officer would have been terminated even in absence of racial discrimination. Wagner v. City of Memphis, W.D.Tenn.1997, 971 F.Supp. 308. Constitutional Law 219.1; Municipal Corporations 185(1)

Affidavit of county probate judge's acquaintance wherein he attested that judge, who was responsible for decision to terminate clerk, used derogatory racial and sexist term to refer to clerk, a potential employee of judge, constituted direct evidence of race and gender discrimination, satisfying clerk's initial burden of establishing prima facie case of race and gender discrimination, for purpose of Title VII and § 1983 equal protection claims, where derogatory reference was used in context of expressing how judge would exert authority to terminate clerk. Johnson v. Waters, M.D.Ala.1997, 970 F.Supp. 991. Civil Rights 1421; Civil Rights 1545

Black prison guard's allegations that his supervisors failed to transfer him, unduly disciplined him and, through scheme to falsely discredit him and place his life in danger, forced him to leave his employment and go on stress leave, and that supervisors made such decisions because of prison guard's race were sufficient to state § 1983 claim for equal protection violation against supervisors. Ware v. Curley, E.D.Mich.1996, 934 F.Supp. 259. Civil Rights 1395(8)

1759. ---- Sex discrimination, equal protection, deprivation of employment rights

"Sex plus" or "gender plus" discrimination, involving policy or practice by which employer classifies employees on basis of sex plus another characteristic, is actionable in a § 1983 case, inasmuch as Equal Protection Clause forbids sex discrimination no matter how it is labeled; relevant issue is not how claim is characterized, but whether plaintiff provides evidence of purposefully sex-discriminatory acts. Back v. Hastings On Hudson Union Free School Dist., C.A.2 (N.Y.) 2004, 365 F.3d 107. Civil Rights 1166; Civil Rights 1171; Constitutional Law 224(3)

Discharged Virginia deputy sheriff stated equal protection claim against former sheriff in his individual capacity; she had not entirely failed to allege that similarly situated persons outside protected class were not discharged, and in any event she also stated equal protection claim based on existence of gender-based hostile work environment.

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42 U.S.C.A. § 1983

Briggs v. Waters, E.D.Va.2006, 455 F.Supp.2d 508. Civil Rights 1395(8)

Former state employee could maintain sex discrimination claims under both Title VII and § 1983; § 1983 claim alleged violation of former employee's Fourteenth Amendment rights which were independent of rights created by Title VII. Coller v. State of Mo., Dept. of Economic Development, W.D.Mo.1997, 965 F.Supp. 1270. Civil Rights 1502

To demonstrate intent to harass based upon employee's membership in a particular class of citizens in § 1983 cause of action for sexual harassment based on equal protection, employee must prove that discriminatory conduct was intentional, that is, was because of employee's status as male or female, rather than because of some other personal characteristic. Faragher v. City of Boca Raton, S.D.Fla.1994, 864 F.Supp. 1552, affirmed in part, reversed in part 76 F.3d 1155, rehearing granted, opinion vacated 83 F.3d 1346, affirmed in part, reversed in part 111 F.3d 1530, certiorari granted 118 S.Ct. 438, 522 U.S. 978, 139 L.Ed.2d 337, reversed 118 S.Ct. 2275, 524 U.S. 775, 157 A.L.R. Fed. 663, 141 L.Ed.2d 662, on remand 166 F.3d 1152. Constitutional Law 224(3); Civil Rights 1183

This section permits action to redress unconstitutional sex discrimination in employment context as well as in other areas. Lyon v. Temple University of Commonwealth System of Higher Educ., E.D.Pa.1982, 543 F.Supp. 1372. Civil Rights 1165

Count charging employment discrimination on account of sex was sufficient to state a cause of action under this section even though it did not allege that plaintiff had been deprived of any "rights, privileges or immunities secured by the Constitution and laws." Curran v. Portland Superintending School Committee, City of Portland, Me., D.C.Me.1977, 435 F.Supp. 1063. Civil Rights 1532

1760. Speech freedom, deprivation of employment rights

Speech by attorney for the Oklahoma Indigent Defense System (OIDS), objecting to the OIDS procedure for approval of expert witnesses, touched on matter of public concern, for purpose of attorney's §§ 1983 free speech claim against public employer, because it dealt with proper investigation of criminal cases and provision of effective assistance of counsel to indigent defendants; the speech inquired about the qualifications of the supervisors to approve experts, and the inability to get timely decisions. McFall v. Bednar, C.A.10 (Okla.) 2005, 2005 WL 896453, amended and superseded 407 F.3d 1081. States 53

Municipal employer's interest in maintaining relationship of trust between African-American community and police and fire departments outweighed expressive interests of police and fire department employees while off-duty in deliberately donning "blackface" and parading through streets in mocking stereotypes of African-Americans in community they served, for purpose of civil rights claim of police and fire department employees under First Amendment free speech clause; free speech clause did not require government employer to sit idly by while its employees insulted those they were hired to serve and protect. Locurto v. Giuliani, C.A.2 (N.Y.) 2006, 447 F.3d 159. Municipal Corporations 198(2)

A public employer may not retaliate against an employee who exercises his First Amendment speech rights; this prohibition extends to retaliatory transfers to a less desired position. Miller v. Jones, C.A.7 (Wis.) 2006, 444 F.3d 929. Constitutional Law 90.1(7.2)

Assistant examiner for city civil service board occupied policymaking position, such that her interest in speaking out on matter of public concern involving city's diversity policy in letter to editor was overridden by city's interest in efficiently running government, and board members' alleged retaliatory action in terminating her did not constitute a First Amendment violation; position included policymaking tasks, such as authoring report on practical

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implementation of diversity rules, in addition to other tasks, such as taking minutes at board meetings. Silberstein v. City of Dayton, C.A.6 (Ohio) 2006, 440 F.3d 306, rehearing and rehearing en banc denied. Municipal Corporations 218(3)

Genuine issues of material fact existed regarding whether fact that limited term employee (LTE) at state university spoke out to administration and newspaper about poor treatment of LTEs by university was substantial factor in university's decision to not hire employee for permanent position, precluding summary judgment in employee's §§ 1983 action against university alleging violation of First Amendment rights. Ashman v. Barrows, C.A.7 (Wis.) 2006, 438 F.3d 781. Federal Civil Procedure 2497.1

Genuine issues of material fact as to whether revocation of county employee's full-time leave from his job duties, taken while serving as labor union official, constituted adverse employment action, whether employee's speech, criticizing public official's handling of a union grievance, was matter of public concern, and whether employee's leave agreement expressly prohibited such speech, precluded summary judgment, in employee's §§ 1983 First Amendment retaliation claim based on the revocation of his leave. Hoyt v. Andreucci, C.A.2 (N.Y.) 2006, 433 F.3d 320. Federal Civil Procedure 2497.1

Interests of employee of state university division in making allegations to his supervisor and university officials of division's illegal financial dealings with state Department of Health, and division's violation of university procedure in hiring another employee, outweighed university's interest in regulating his speech, for purposes of determining whether employment action impermissibly infringed on public employee's First Amendment free speech rights; as manager of division possibly violating the law, employee had great interest in curtailing suspected wrongdoing, and university's interest in regulating his speech was minimal. Baca v. Sklar, C.A.10 (N.M.) 2005, 398 F.3d 1210, on remand 2005 WL 2295671. Colleges And Universities 8.1(3); Constitutional Law 90.1(7.3)

State mental health facility's actions of assigning nurse supervisor to nonpatient duties pending the outcome of an investigation into allegations that one of her nurses used excessive force against a patient did not qualify as a penalty for speech, as required for supervisor's First Amendment retaliation claim brought under §§ 1983 alleging retaliation for speaking out in defense of the nurse, given that the decision to assign the supervisor to nonpatient duties was predetermined by facility's policy applicable to all employees. Carreon v. Illinois Dept. of Human Services, C.A.7 (Ill.) 2005, 395 F.3d 786. Constitutional Law 90.1(7.2); Health 266

In assistant state attorney general's action alleging that her termination violated the First Amendment, assistant's letter to attorney general and supervisors, detailing her disagreement with settlement of case and disagreement with office's enforcement of consumer protection laws, was sufficiently insubordinate for presumption in favor of government to apply, under which public employees could be discharged based on speech related to political or policy views without running afoul of First Amendment; speaking out against office's policies made it difficult for public employer to trust assistant to implement those same policies. Latham v. Office of Atty. Gen. of State of Ohio, C.A.6 (Ohio) 2005, 395 F.3d 261, rehearing en banc denied, certiorari denied 126 S.Ct. 420, 163 L.Ed.2d 320. Attorney General 2; Constitutional Law 90.1(7.2)

When a business vendor operates under a contract with a public agency, the Court of Appeals analyzes its First Amendment retaliation claim under § 1983 using the same basic approach that it would use if the claim had been raised by an employee of the agency. Alpha Energy Savers, Inc. v. Hansen, C.A.9 (Or.) 2004, 381 F.3d 917, certiorari denied 125 S.Ct. 1838, 544 U.S. 975, 161 L.Ed.2d 725. Constitutional Law 82(6.1)

If public employee who asserts First Amendment retaliation claim can show that her speech was constitutionally protected, and that discipline was motivated by that speech, burden shifts to defendant to prove that employee would have been disciplined regardless of the protected speech; if defendant carries that burden, then employee bears burden of persuasion to show that defendant's proffered reasons were pretextual, and that retaliation was the real reason for the discipline. Smith v. Dunn, C.A.7 (Ill.) 2004, 368 F.3d 705. Civil Rights 1405;

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42 U.S.C.A. § 1983

Constitutional Law 90.1(7.2)

Errors and incidents of poor judgment demonstrated by agent of Puerto Rico Justice Department's Special Investigations Bureau (SIB) were legitimate, non-retaliatory reasons for his negative performance evaluations after agent had voiced concerns over mishandling of potentially important investigation and possibilities of police corruption and perjury, and thus, SIB officers were not liable under § 1983 to agent for First Amendment retaliation. Guilloty Perez v. Pierluisi, C.A.1 (Puerto Rico) 2003, 339 F.3d 43. Constitutional Law 90.1(7.2); Territories 23

Dramatic downward shift in skill level required to perform job responsibilities can rise to level of adverse employment action, even if time required to perform duties remains constant, for purposes of § 1983 action alleging retaliation in violation of employee's free speech rights. Dahm v. Flynn, C.A.7 (Wis.) 1994, 60 F.3d 253, amended on denial of rehearing. Civil Rights 1249(1)

Eleventh Circuit analyzes First Amendment retaliatory discharge claims under four-part test which examines: (1) whether public employee's speech involves matter of public concern; (2) whether public employee's interest in speaking outweighs government's legitimate interest in efficient public service; (3) whether speech played substantial part in government's challenged employment decision; and (4) whether government would have made same employment decision in absence of protected conduct. Beckwith v. City of Daytona Beach Shores, Fla., C.A.11 (Fla.) 1995, 58 F.3d 1554. Constitutional Law 90.1(7.2)

Public housing authority employee's speech, for which he was allegedly discharged, related to matter of public concern for First Amendment purposes; employee was allegedly fired for filing auditing reports critical of authority and its officials, purpose of reports was to ferret out and highlight any improprieties he found at authority, and disclosing corruption, fraud, and illegality in government agency is matter of significant public concern. Feldman v. Philadelphia Housing Authority, C.A.3 (Pa.) 1994, 43 F.3d 823. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

County corrections officer was engaged in speech on matters of public concern, for purposes of determining whether his First Amendment rights were violated by his termination, when he expressed concern to his supervisors that fellow officer behaved illegally while accompanying inmate being extradited, and that overtime hours were being improperly curtailed. Shepard v. Wapello County, Iowa, S.D.Iowa 2003, 250 F.Supp.2d 1112. Constitutional Law 90.1(7.2); Prisons 7

Police officer's participation in internal investigation of alleged criminal wrongdoing within police department constituted activity protected by the First Amendment right to free speech, for purposes of officer's §§ 1983 claim that his supervisors increased the discipline he received for a violation of department policy, and thereby effectively forced his retirement, in retaliation for his participation in the investigation. Reilly v. City of Atlantic City, D.N.J.2006, 427 F.Supp.2d 507. Municipal Corporations 185(1)

Alleged verbal attacks on county employee during meetings, consisting of four attacks over four months, did not constitute adverse employment action for purposes of employee's free speech retaliation claim under §§ 1983. Magilton v. Tocco, S.D.N.Y.2005, 379 F.Supp.2d 495. Counties 67

Accountant for city was engaging in protected speech on matter of public concern, as required for claim she suffered adverse employment action in retaliation for speech, in violation of First Amendment, when she complained to supervisors that federal grants were being misapplied and illegally distributed; speech regarding government waste was clearly of interest to community, no attempt was made to publicly disclose concerns, and they were expressed early in immediate supervisor's tenure and repeated thereafter. Hinton v. Conner, M.D.N.C.2005, 366 F.Supp.2d 297. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

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42 U.S.C.A. § 1983

If a public employee, alleging retaliation in response to exercise of protected First Amendment freedom of speech rights, satisfies the burden of showing that an improper motive played a substantial role in employer's action, then employer may either show that it would have taken exactly the same action absent improper motive, or that employee's speech was likely to disrupt government's activities and that likely disruption was sufficient to outweigh value of employee's First Amendment expression. Levich v. Liberty Central School Dist., S.D.N.Y.2004, 361 F.Supp.2d 151. Constitutional Law 90.1(7.2)

Public employees' free speech claims under §§ 1983 are subject to a broader standard for what constitutes an adverse employment action than are Rehabilitation Act claims. Osborne v. Elmer, M.D.La.2004, 328 F.Supp.2d 620, affirmed 140 Fed.Appx. 509, 2005 WL 1444228. Civil Rights 1219; Constitutional Law 90.1(7.2)

City employee's expression of allegedly inaccurate belief, that third worker was subjected to same supervisory sexual harassment experienced by herself and second worker, was speech protected by First Amendment, as employee did not show reckless disregard for truth in making statement. Thomas v. Ragland, W.D.Wis.2004, 324 F.Supp.2d 950. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

African-American employee of city police department failed to establish that his filing of a complaint with the Equal Employment Opportunity Commission (EEOC) was a substantial or motivating factor in employer's alleged retaliation, as required to support employee's § 1983 claim alleging employer retaliated against him for filing an EEOC complaint in violation of his First Amendment rights to free speech. Jones v. City of Wilmington, D.Del.2004, 299 F.Supp.2d 380. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Kansas corrections officer's statements did not relate to matters of public concern, for purposes of her § 1983 claim based on First Amendment retaliation; officer complained primarily of various forms of harassment directed at her during her own employment, and she made no allegations concerning harassment involving others. McCall v. Board of Com'rs of County of Shawnee, KS, D.Kan.2003, 291 F.Supp.2d 1216. Constitutional Law 90.1(7.2); Prisons 7

Material issues of fact, as to whether speech delivered by county auditing office clerk running for county commissioner, that assessed property values were too low, was substantial and motivating factor in discharge, precluded summary judgment that county did not discharge clerk in retaliation for his assertion of First Amendment rights. Brominski v. County of Luzerne, M.D.Pa.2003, 289 F.Supp.2d 591. Federal Civil Procedure 2497.1

City and its officials did not make substantial showing supporting claim that prediction that likelihood of employees' speech to cause disruption was reasonable as of date the decision to terminate employees was made, for purposes of determining whether city was liable for retaliatory discharge of police and fire department employees for participating in parade float depicting African-Americans in stereotypical manner in the exercise of free speech under the First Amendment; as of date termination decision was made, city did not have any information on community reaction or potential effects on minority recruitment to warrant prediction of disruption, city's ignorance of specific identities of employees who participated in float demonstrated that decision was made without consideration of employees' performance records, and city did not offer sufficient evidence that speech would cause workplace disruption. Locurto v. Giuliani, S.D.N.Y.2003, 269 F.Supp.2d 368, reversed and remanded 447 F.3d 159. Constitutional Law 90.1(7.2); Municipal Corporations 185(1); Municipal Corporations 198(2)

City could be held liable on First Amendment retaliation claim based on alleged retaliation against police sergeant who made charges of corruption and discrimination within police department where substantial evidence suggested that there was a longstanding custom on the part of responsible city officials of retaliation against employees for serious criticism of the police department. Wagner v. City of Holyoke, D.Mass.2003, 241 F.Supp.2d 78, affirmed 404 F.3d 504, certiorari denied 126 S.Ct. 552, 163 L.Ed.2d 461. Civil Rights 1351(5)

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42 U.S.C.A. § 1983

City, mayor and police chiefs were not entitled to qualified immunity from police sergeant's § 1983 claims of retaliation for engaging in protected speech in violation of the First Amendment and the Fourteenth Amendment; law was clearly established that public employer could not discipline employee for protected speech, and there was evidence that defendants did discipline or decline to promote sergeant. Bennett v. City of Holyoke, D.Mass.2002, 230 F.Supp.2d 207, affirmed 362 F.3d 1. Civil Rights 1376(10)

Allegation by former executive director of General Council on Education of Puerto Rico that he was removed from office in retaliation for his continued denunciations of council members' alleged illegal activities stated § 1983 claim against council members who voted to remove him. Pandolfi de Rinaldis v. Llavona, D.Puerto Rico 1999, 62 F.Supp.2d 426. Civil Rights 1395(8)

Terminated college professor did not state claim for violation of her First Amendment freedom of speech rights by claiming that she was terminated in retaliation for her complaints regarding manner in which she was evaluated for retention; speech in question did not relate to political or social concerns of community, even though she claimed she was addressing public concerns of sex discrimination and ethical violations. Stein v. Kent State University Bd. of Trustees, N.D.Ohio 1998, 994 F.Supp. 898, affirmed 181 F.3d 103. Colleges And Universities 8.1(3); Constitutional Law 90.1(7.3)

State employee who alleged that she was replaced as Director of Consumer Utility in Alabama Attorney General's Office after she voiced concerns that settlement between telephone company and Public Service Commission (PSC) regarding consumer refund was not in good faith stated § 1983 First Amendment claim so as to survive motion to dismiss. Douglas v. Evans, M.D.Ala.1995, 888 F.Supp. 1536. Civil Rights 1395(8)

Former director of dental services at state psychiatric facility was not deprived of his free speech rights in violation of § 1983; he did not allege that he was thwarted in attempt to speak out on a matter of public concern, but rather, appeared to have resigned in connection with intra-office dispute. Koch v. Mirza, W.D.N.Y.1994, 869 F.Supp. 1031. Constitutional Law 90.1(7.2); States 52

Depriving sheriff's department employee of use of county car upon transfer from multijurisdictional drug task force to investigations division was not "adverse employment action" sufficient to give rise to § 1983 action for burdening right of free speech; employee suffered no loss in pay, benefits, or classification as result of transfer. Smith v. Upson County, Ga., M.D.Ga.1994, 859 F.Supp. 1504, affirmed 56 F.3d 1392. Civil Rights 1135

Assistant professor at state university failed to show any causal link between speech allegedly protected by First Amendment and denial of tenure, thus defeating his claim that he was discharged in retaliation for exercising his First Amendment rights; his complaint against a dean was made more than a year before a report by an affirmative action office was inserted into his file, at which point the most recent complaints about a coworker's competence were four months old, and the two final decision-makers made their evaluations of the professor based purely on his scholarly work and he presented no evidence of pretext. Feterle v. Chowdhury, C.A.6 (Ohio) 2005, 148 Fed.Appx. 524, 2005 WL 2233609, Unreported. Constitutional Law 90.1(7.3)

Police department's interest in maintaining an effective police force, free from internal division, outweighed police officers' right to speak on matters of public concern, for purposes of officers' §§ 1983 claim alleging First Amendment retaliation, where officers used media coverage to create a divisive environment, and used disruptive tactics to obtain documents supporting their allegations of police department corruption. Graham v. City of Mentor, C.A.6 (Ohio) 2004, 118 Fed.Appx. 27, 2004 WL 2711031, Unreported, rehearing en banc denied, certiorari denied 126 S.Ct. 340, 163 L.Ed.2d 51. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

Former elementary school media specialist's speech against waste of school's technology budget and reduction of classroom time encompassed points of public concern regarding malfeasance of a public official and harm to the

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quality of public education, for purposes of establishing prima facie case, under 1983, for retaliation for exercising her First Amendment right of free speech. Lander v. Summit County School Dist., C.A.10 (Colo.) 2004, 109 Fed.Appx. 215, 2004 WL 1809525, Unreported. Constitutional Law 90.1(7.3); Schools 147.12

Speech in which university employee reported alleged death threats made against her by a co-worker did not touch upon a matter of public concern, thus defeating her §§ 1983 claims of alleged retaliation in violation of the First and Fourteenth Amendments; the employee's statements to a human resources department and university officials concerned only her desire to see the co-worker fired and an official disciplined as a result of their treatment of the employee. Serrato v. Bowling Green State University, C.A.6 (Ohio) 2004, 104 Fed.Appx. 509, 2004 WL 1543161, Unreported, rehearing denied, certiorari denied 125 S.Ct. 896, 543 U.S. 1053, 160 L.Ed.2d 775. Colleges And Universities 8.1(1); Constitutional Law 90.1(7.3)

Mayor's rude gesture and comment to city council employee was not adverse employment action which would have provided a basis for a § 1983 claim of retaliation for the exercise of First Amendment right to support a political opponent. Poppy v. City of Willoughby Hills, C.A.6 (Ohio) 2004, 96 Fed.Appx. 292, 2004 WL 771281, Unreported. Constitutional Law 91; Municipal Corporations 218(3)

State administrative finding that superintendent's conduct warranted termination was insufficient to satisfy board of education's burden in superintendent's First Amendment retaliation claim of proving that superintendent would have been fired regardless of whether the superintendent had spoken out publicly against mayor and board member; thus, remand was required for consideration of superintendent's evidence of retaliatory motive. Howard v. Board of Educ. of City of East Orange, C.A.3 (N.J.) 2003, 90 Fed.Appx. 571, 2003 WL 23173680, Unreported. Civil Rights 1421; Federal Courts 943.1

Lack of causal connection between anonymous electronic mail message in which city employee criticized coworker's job performance and any adverse employment action taken against employee precluded city's liability under § 1983 for First Amendment retaliation. Bracey v. Lawson, C.A.8 (Ark.) 2003, 73 Fed.Appx. 889, 2003 WL 21664286, Unreported. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

Continued harassment that city employee allegedly suffered after engaging in protected speech did not rise to level of "adverse employment action," and thus did not support claim of retaliation in violation of employee's First Amendment and state law rights, when employee asserted that she was not invited to attend department meeting on day that she was transferred to department, was required to provide documentation for her absences, and was subjected to more rigorous standards for providing medical documentation than others who were absent for continuous periods of time, but conceded that she and other managers often submitted supporting documentation, and failed to acknowledge significance of her sporadic attendance and inability to inform supervisors in advance of her medical appointments. Mullen v. City of New York, S.D.N.Y.2003, 2003 WL 21511952, Unreported. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

1761. Association freedom--Generally, deprivation of employment rights

Freedom of association guaranteed by the First Amendment did not confer upon employee of state mental health facility the unconditional right to bring counsel to an internal investigational interview with the police concerning allegation that employee used excessive force in subduing a patient, as required for employee's claim alleging that he was retaliated against in violation of his freedom of association rights under the First Amendment for insisting that his attorney be present during the interview. Carreon v. Illinois Dept. of Human Services, C.A.7 (Ill.) 2005, 395 F.3d 786. Constitutional Law 91; Health 266

State employee's relationship with her brother-in-law was not of the sort afforded special constitutional protection, despite assertion that they were also good friends, and thus she could not assert cause of action under civil rights statute on theory that state employer had violated her right to freedom of association by engaging in course of

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retaliatory harassment to deter her from associating with brother-in-law after he testified in favor of a black employee in a prior suit. Rode v. Dellarciprete, C.A.3 (Pa.) 1988, 845 F.2d 1195. Civil Rights 1250

In general, state may not condition hiring or discharge of employee in way which infringes his right of political association; exception to such protection of U.S.C.A.Const. Amend. 1 exists in case of state employees who formulate policy, such exception being designed to insure that representative government not be undercut by tactics obstructing implementation of policies of new administration, presumably sanctioned by electorate. Rosenthal v. Rizzo, C.A.3 (Pa.) 1977, 555 F.2d 390, certiorari denied 98 S.Ct. 268, 434 U.S. 892, 54 L.Ed.2d 178. Constitutional Law 91

Former deputy sheriff failed to allege association protected by First Amendment, and thus, his §§ 1983 claim based on violation of association right brought against board of county commissioners, county prosecutors, and former and present deputy sheriffs failed; although former deputy asserted that adverse actions were taken against him because defendants perceived that he was affiliated with sheriff, who was removed from his position, former deputy made no claim that defendants discriminated against him on basis of his actual loyalty to political party, political candidate, or advocacy of ideas. Good v. Board of County Com'rs of County of Shawnee, Kan., D.Kan.2004, 331 F.Supp.2d 1315, affirmed 141 Fed.Appx. 742, 2005 WL 1714326. Constitutional Law 91; Sheriffs And Constables 21

Public employees stated cause of action under § 1983 in complaint against public officials for termination based on political affiliation in violation of First Amendment; information before court was insufficient for it to conclude that any reasonable government official would have believed that employee held position for which political loyalty was required. Milazzo v. O'Connell, N.D.Ill.1996, 925 F.Supp. 1331, affirmed 108 F.3d 129, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(8)

City, county, and two supervisors did not violate city dispatcher's First Amendment rights as result of supervisor telling dispatcher that she could not contact co-worker while on duty; county had no ability and made no attempt to infringe on dispatcher's rights of association and free speech, and city's actions in demanding that employee not contact co-worker during working hours was justified in that it could create disruption in dispatch center. Hart v. Clearfield City, Davis County, D.Utah 1993, 815 F.Supp. 1544. Constitutional Law 90.1(7.2); Constitutional Law 91; Municipal Corporations 218(3)

1761A. ---- Political affiliation, association freedom, deprivation of employment rights

Evidence was sufficient to support determination of municipal liability, in city employee's §§ 1983 claim for political harassment, in violation of his First Amendment rights; office where employee worked was turned into campaign headquarters for municipal assembly candidate, city policymakers did nothing to stop the transformation of the office into a partisan campaign headquarters, employee supported another candidate, and he was deprived of his work duties during the time period of the campaign as a result of city policymakers' failure to stop the transformation of the office. Bisbal-Ramos v. City of Mayaguez, C.A.1 (Puerto Rico) 2006, 467 F.3d 16. Civil Rights 1352(5)

Genuine issue of material fact as to whether municipalities failed to hire former employee for not-for-profit corporation charged with administering federal workforce-training funds for municipalities for position with replacement workforce development system because of her political party membership precluded summary judgment in employee's §§ 1983 action alleging violation of her First Amendment right to free association. Krause v. Buffalo and Erie County Workforce Development Consortium, Inc., W.D.N.Y.2006, 425 F.Supp.2d 352. Federal Civil Procedure 2497.1

Allegations of employee of Puerto Rico government administration that she was demoted because of her political affiliation, that hearing on her demotion was a sham, that she was replaced by a member of another political party,

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and that her supervisor failed to take steps to prevent her demotion were sufficient to state §§ 1983 claim for political discrimination under the First Amendment. Medina Diaz v. Gonzalez Rivera, D.Puerto Rico 2005, 371 F.Supp.2d 77. Constitutional Law 91; Territories 23

Employee established prima facie case of political discrimination under the First Amendment against interim director of regional office of Puerto Rico agency by showing that motive for reduction of her work duties was her political affiliation, and interim director failed to rebut claim where he failed to show that alleged adverse employment action was justified. Velez-Herrero v. Guzman, D.Puerto Rico 2004, 330 F.Supp.2d 62. Constitutional Law 91; Territories 23

1762. Stigmatization, deprivation of employment rights

There was sufficient nexus between statements by county District Attorney (DA) statements to village police chief's prospective employers and chief's termination for chief to state viable §§ 1983 "stigma-plus" due process claim against DA. Hoffman v. Kelz, W.D.Wis.2006, 443 F.Supp.2d 1007. Civil Rights 1359

Former Director of Pennsylvania Bureau of Blindness & Visual Services sufficiently pled, under liberal pleading standard, a "stigma-plus" claim under §§ 1983 by alleging that following her termination, numerous members of blind community protested and that Department of Labor and Industry along with Office of Vocational Rehabilitation (OVR), issued statements in response to uproar, including one saying that her termination was justified by compelling, performance-based reasons involving behavior unacceptable from employee in a policymaking position. Boone v. Pennsylvania Office of Vocational Rehabilitation, M.D.Pa.2005, 373 F.Supp.2d 484. Civil Rights 1395(8)

To establish liberty interest with regard to her employment, § 1983 plaintiff must show she was stigmatized in connection with alteration of her legal status as employee, stigma arose from substantially false characterizations of employee or her conduct, and damaging characterizations were made public through channels other than litigation initiated by employee. McCue v. State of Kan., Dept. of Human Resources, D.Kan.1996, 938 F.Supp. 718. Civil Rights 1128

1763. Favoritism, deprivation of employment rights

Employment decisions based upon favoritism to family members was not employment discrimination in violation of § 1983. Backlund v. Hessen, D.Minn.1995, 904 F.Supp. 964, reversed 104 F.3d 1031, rehearing denied, on remand 176 F.R.D. 316. Civil Rights 1120

Former state employee stated civil rights claim against state officials for violation of his First Amendment rights; employee alleged that officials maintained and operated patronage system in which political and financial supporters of political party were favored with respect to temporary employment as state highway maintainers, state classified job of permanent highway maintainer as position that was not subject to political patronage, and there was no vital governmental interest in requiring temporary workers to be affiliated with party in power when state acknowledged that it did not have such interest with respect to employees hired for same position on permanent basis. Vickery v. Jones, S.D.Ill.1994, 856 F.Supp. 1313, affirmed 100 F.3d 1334, certiorari denied 117 S.Ct. 1553, 520 U.S. 1197, 137 L.Ed.2d 701. Civil Rights 1395(8)

1764. Hiring, deprivation of employment rights--Generally

Individual was not entitled to be hired by railroad as locomotive engineer-trainee; thus, he could not maintain claim under this section on theory that refusal of railroad to hire him for that position constituted deprivation of civil rights secured by the Constitution and laws. Kaelin v. Long Island R. Co., E.D.N.Y.1980, 504 F.Supp. 656. Civil Rights 1121

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42 U.S.C.A. § 1983

1765. ---- Racial discrimination, hiring, deprivation of employment rights

City ordinance, which proscribed issuance of taxicab driver permit to any person convicted of smuggling marijuana, was job-related in determining who was to be entrusted to operate taxicab and was not invalid as utilizing a racially discriminatory employment testing device. Lane v. Inman, C.A.5 (Ga.) 1975, 509 F.2d 184. Civil Rights 1072

Statement of school board's president that it was "board policy" to hire Black applicant if two applicants were equally qualified did not support inference of racial preference policy alleged by job applicant in his action under § 1983 based on alleged violation of Equal Protection Clause, where president clearly stated that only he himself held that view, and that he was unaware of other board members' views on subject. Reynolds v. Glynn County Bd. of Educ., S.D.Ga.1996, 968 F.Supp. 696, affirmed 119 F.3d 11. Civil Rights 1405

Evidence, including proof that State Division of Personnel consistently fell short in hiring blacks in numbers commensurate to their percentage of available work force, that hiring officer deliberately ignored fact that woman chosen for position of affirmative action officer had little, if any, visible knowledge or contact with very minority community she was supposed to be concerned with in job, and failure of hiring officer to investigate black applicant's job performance for four-year period prior to his making application for position, supported finding that decision not to consider seriously black applicant for position was based on intentional racial discrimination. Cooper v. Department of Administration, State of Nevada, D.C.Nev.1982, 558 F.Supp. 244. Civil Rights 1544

Complainant may establish prima facie case of employment discrimination by showing that he belongs to a racial minority, that he applied and was qualified for a job for which employer was seeking applicants, that despite his application he was rejected and that after his rejection the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. Alvarez-Ugarte v. City of New York, S.D.N.Y.1975, 391 F.Supp. 1223. Civil Rights 1545

If disparate civil service examination performance results from candidates' relative qualifications for job, rather than their race, examinations are constitutionally adequate, in spite of their racially disparate impact. Jones v. New York City Human Resources Administration, S.D.N.Y.1975, 391 F.Supp. 1064, vacated in part, affirmed 528 F.2d 696, certiorari denied 97 S.Ct. 80, 429 U.S. 825, 50 L.Ed.2d 88, rehearing denied 97 S.Ct. 1341, 430 U.S. 923, 51 L.Ed.2d 602. Civil Rights 1142

"Apprenticeship" and "experience" prejob requirements employed by city in its "prevailing wage" skilled craft positions had a disproportionate adverse impact on minorities where only 1 percent of persons employed in building trades as craftsmen in construction industry were black, with as few blacks completing formal apprenticeships in skilled trades, and, with respect to skilled craft positions requiring a formal apprenticeship, none of the 72 employees of the city were black, and only 2 percent of the employees of the board of school directors were black. Crockett v. Green, E.D.Wis.1975, 388 F.Supp. 912, affirmed 534 F.2d 715. Civil Rights 1140

1766. ---- Sex discrimination, hiring, deprivation of employment rights

Wisconsin Department of Agriculture, Trade and Consumer Protection male employee, who interviewed for a supervisory position in Green Bay and one in Altoona, was not discriminated against on the basis of sex when female employee was offered position in Altoona and male employee was offered job in Green Bay after male had changed his mind and decided that he no longer wanted the Green Bay job but wanted the Altoona job. Stoner v. Wisconsin Dept. of Agriculture, Trade and Consumer Protection, C.A.7 (Wis.) 1995, 50 F.3d 481. Civil Rights 1179

Terminated female volunteer firefighter/paramedic sufficiently alleged unexpressed policy or custom of sex discrimination by fire protection district board of trustees and volunteer fire department so as to state § 1983 claim

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against board and department; firefighter/paramedic alleged that board and department refused to hire her as paid employee because she was a woman and then terminated her position as volunteer even though she had more fire calls than most men, discriminated against her by hiring less qualified male applicant, and fired her brother in retaliation for protesting sex discrimination. Vickery v. Minooka Volunteer Fire Dept., N.D.Ill.1997, 990 F.Supp. 995. Civil Rights 1351(5)

Use by California agencies of written and oral tests to qualify applicants for position of parole agent did not result in sex-based discrimination and did not violate this section. Bannerman v. Department of Youth Authority, N.D.Cal.1977, 436 F.Supp. 1273, affirmed 615 F.2d 847.

1766A. ---- Political affiliation, hiring, deprivation of employment rights

Unhired state job applicant's waning commitment to a political party, the family connections of the hired applicant to an allegedly influential member of the party, unhired applicant's alleged superior qualifications, the opportunity given to hired applicant to learn about the position before the interview, statement by hired applicant before the interview that he thought he had the job because of his political connections, and the statement made by one state official who made the hiring decision that unhired applicant would not get the job, were insufficient to prove that state officials who made the hiring decision actually considered the applicants' relative political involvement, as would establish employment discrimination based upon political motivation, in violation of the First Amendment. Hall v. Babb, C.A.7 (Ill.) 2004, 389 F.3d 758. Constitutional Law 91; States 53

State job applicant failed to show that decision by officials of the state Department of Transportation (DOT) to hire another applicant rather than him was due to fact that other applicant was a more active member of a political party, for purpose of §§ 1983 action alleging violation of his First Amendment rights; there was no evidence that at least two of the three officials knew that the hired applicant's involvement in the party was more prominent than unhired applicant's involvement, or that the officials actually considered the applicants' relative political involvement in making the hiring decision. Hall v. Babb, C.A.7 (Ill.) 2004, 389 F.3d 758. Constitutional Law 91; States 53

1767. ---- Application requirement, hiring, deprivation of employment rights

In employment discrimination suit brought under § 1981 of this title and this section, requirement that plaintiff have applied for position is a substantive element of plaintiff's cause of action. Tagupa v. Board of Directors, C.A.9 (Hawai'i) 1980, 633 F.2d 1309. Civil Rights 1331(5)

Unsuccessful female applicant for a position as a city police officer stated a claim against the city for violation of Title VII and §§ 1983 in connection with a "sit-and-reach" test, which the applicant claimed was non-predictive of job performance and discriminatory; there was no showing that the test was mandated by the State for certification, and in any event, a State mandate was no bar to the imposition of liability. Conroy v. City of Philadelphia, E.D.Pa.2006, 421 F.Supp.2d 879. Civil Rights 1174

1768. ---- Conflict of interest, hiring, deprivation of employment rights

When city or town adopted specific conflict of interest regulations governing municipal employment, it was lawfully obliged to comply with procedures outlining those regulations and failing such adherence, municipality and participants were subject to suit in federal court under this section by person who had been injured by wrongful application of those regulations. Levine v. Town of West Hartford Police Dept., D.C.Conn.1982, 541 F.Supp. 741. Civil Rights 1351(5)

1769. ---- Examinations, hiring, deprivation of employment rights

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42 U.S.C.A. § 1983

In action under this section based on allegedly intentional or purposeful discrimination, evidence of discriminatory impact of test given to prospective employees is evidence of intent. Richardson v. Pennsylvania Dept. of Health, C.A.3 (Pa.) 1977, 561 F.2d 489. Civil Rights 1546

1770. ---- Legitimate reasons, hiring, deprivation of employment rights

Former state university employee failed to show that a similarly situated coworker was treated more favorably than she was when she was not informed that her former position would be offered as a part-time position following her retirement, as required for university and supervisor to be liable to employee under §§ 1983 for violation of Equal Protection Clause on theories of selective enforcement and class-of-one discrimination; none of the other retired university employees identified by former employee who were allowed to return to part-time employment worked in departments that reported directly to supervisor who supervised former employee's department. Thompson v. Connecticut State University, D.Conn.2006, 2006 WL 3702271. Constitutional Law 238.5

Former employee's failure to pay child support did not constitute "dishonorable conduct" proscribing municipal employment under Puerto Rico law, as required for municipality to establish a nondiscriminatory reason to justify decision to not rehire former employee following the expiration of his contract in employee's §§ 1983 claim alleging he was not rehired based on his political affiliation. Cruz-Baez v. Negron-Irizarry, D.Puerto Rico 2005, 360 F.Supp.2d 326. Civil Rights 1128

Reasons articulated by state Board of Education for employment decisions with respect to female college administrator constituted legitimate, nondiscriminatory reasons for decisions at issue, shifting burden to administrator, in her action against Board under Title VII, Title IX, and § 1983, to persuade court that such reasons were pretext for discrimination; Board stated that administrator lacked sufficient administrative experience compared to males who were appointed to positions sought by her, that some or all of such males had participated in their communities while plaintiff did not have much involvement in community, and that selection decisions were made before plaintiff expressed interest. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Civil Rights 1170; Civil Rights 1405; Civil Rights 1537

1771. ---- Veterans' preference, hiring, deprivation of employment rights

Even if veteran's constitutional rights had been violated by school officials failure to apply veteran's preference in considering veteran's teaching application, officials were entitled to qualified immunity since no reasonable public official could have known that denying a veteran a preference would violate that veteran's property right under due process clause; furthermore, even if a constitutional right under Pennsylvania Veterans' Preference Act were clearly established, veteran was not entitled to that right because he was deemed as not qualified for the position. Basile v. Elizabethtown Area School Dist., E.D.Pa.1999, 61 F.Supp.2d 392. Civil Rights 1376(10)

1772. ---- Past discrimination, hiring, deprivation of employment rights

District Court's findings, made in course of issuing pretrial and partial remedial orders in class actions against state Board of Education alleging various forms of discrimination in hiring and employment, which findings included determination that immediate past history of discrimination in violation of Title VII existed in state college and university system, were sufficient to create rebuttable presumption on behalf of individual female plaintiffs in their causes of action under § 1983, and to subject defendants to heightened burden of justifying their employment decisions by clear and convincing evidence. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Civil Rights 1405

1773. Demotion, deprivation of employment rights--Generally

Evidence was sufficient to support jury's verdict in favor of state agency employee in his Title VII claim against

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agency and equal protection claim against supervisors under §§ 1983, alleging that he was demoted due to his race; although there was no direct evidence that agency and supervisors were motivated by racial bias when they demoted employee after he was found to have harassed a co-worker, agency memo drafted and approved by supervisors indicated that employee's violation was a category B violation, two white employees received far less severe penalties for category B violations, and testimony that supervisors thought employee's violation was more serious than category B came from supervisors rather than from disinterested witnesses and was not supported by documentary evidence. Davis v. Wisconsin Dept. of Corrections, C.A.7 (Wis.) 2006, 445 F.3d 971. Civil Rights 1548

Jury finding that Puerto Rico corrections administration employees' demotions were improper and the result of discrimination, as required to sustain jury verdict for employees' claims alleging that their political affiliations were a substantial or motivating factor behind their demotions, in violation of their First Amendment and due process rights, was supported by evidence that employees were long-standing, competent employees of the Puerto Rico corrections administration, that both were demoted without being given any notice or opportunity to defend their promotions, and that important documents were missing from their personnel files. Rodriguez-Marin v. Rivera-Gonzalez, C.A.1 (Puerto Rico) 2006, 438 F.3d 72. Constitutional Law 278.4(3)

Regional Director for Puerto Rico agency failed to establish prima facie case of political discrimination in connection with his demotion, given admitted facts and his failure to present any evidence of improper motive or discriminatory animus, aside from his own subjective belief that his political affiliation was motivation underlying his demotion. Figueroa Montes v. Foy, D.Puerto Rico 2003, 272 F.Supp.2d 168. Civil Rights 1421

City employee failed to establish, in his action alleging that his demotion violated First Amendment and consent decree in prior civil rights action prohibiting city from taking adverse employment actions based on political factors, that his demotion was politically motivated, notwithstanding contention that he was demoted for refusal to hire three applicants from politically connected union; city was bound, under circumstances, by collective bargaining agreement to hire union applicants, and there was no evidence showing that members of union or union itself were in any way favored beyond rights in agreement. Shanahan v. City of Chicago, N.D.Ill.1995, 875 F.Supp. 535, affirmed 82 F.3d 776. Civil Rights 1421

1774. ---- Status alteration, demotion, deprivation of employment rights

In civil rights suit charging the Secretary of Health for Puerto Rico, and various other officials, with conspiring to alter plaintiff's employment status from permanent to probationary for political reasons, and also charging defendants with infringing plaintiff's constitutional rights by subsequently discharging her, nothing in the record indicated that plaintiff's due process rights were violated. Ramirez de Arellano v. Alvarez de Choudens, C.A.1 (Puerto Rico) 1978, 575 F.2d 315. Constitutional Law 278.4(1)

Demotion of state employee who had worked as chief legal counsel for state department of revenue to staff attorney position constituted a loss of property within the meaning of the Fourteenth Amendment; employee received a lower raise as an attorney than he would have as chief legal counsel, he lost his supervisory authority, had fewer responsibilities than he did as chief legal counsel, and demotion would likely have adverse effect on his upward mobility and future income. Evans v. Morgan, W.D.Wis.2004, 307 F.Supp.2d 1036. Constitutional Law 278.4(3); States 53

1775. Disciplinary actions, deprivation of employment rights

Corrections officers failed to establish equal protection claim against corrections officials based on their instituting disciplinary charges against them and removing one officer from a privileged work assignment after the officers refused to assist in an internal investigation since there was no showing that officials intentionally treated them differently from other similarly situated corrections officers because of a personal dislike or malicious intent to

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injure them or that officials singled them out for discipline without any rational basis at all; initiation of disciplinary charges against officers was not arbitrary, or without basis in departmental policy, and was done to punish them for refusing to assist in the investigation and to deter other officers from similarly refusing to assist in investigations. Bizzarro v. Miranda, C.A.2 (N.Y.) 2005, 394 F.3d 82. Constitutional Law 238.5; Prisons 7

Lieutenant's alleged action of questioning inmates about corrections officer was not adverse employment action upon which retaliation claim under sections 1981 and 1983 could be based, where officer was not disciplined by lieutenant during such period, and officer's job requirement did not change. Henderson v. New York, S.D.N.Y.2006, 423 F.Supp.2d 129. Prisons 7

Genuine issues of material fact existed regarding whether sex or age discrimination factored into police chief's decision to discipline female police officer, precluding summary judgment in favor of city and police chief on officer's equal protection claim. DiCicco v. Voccola, D.Conn.2004, 325 F.Supp.2d 85. Federal Civil Procedure 2497.1

Prima facie test for discriminatory application of disciplinary rules provided appropriate prima facie test for city firefighters' § 1983 claim for discriminatory application of sick leave policy. Felton v. City of Auburn, M.D.Ala.1997, 968 F.Supp. 1476. Civil Rights 1421

Employee failed to submit any direct or inferential evidence of discrimination by his employer as would support prima facie case of race and national origin discrimination under California Fair Employment and Housing Act (FEHA) or § 1981 arising out of incidents in which coemployee attacked employee and was placed on 90-day final warning prior to termination, but employee was found to have provoked attack by making sarcastic remark, in which co-workers played practical joke on employee and employee was reprimanded for using profanity in reaction to joke, and in which employee's manager reprimanded employee for harassing co-worker. Rodriguez v. International Business Machines, N.D.Cal.1997, 960 F.Supp. 227. Civil Rights 1421; Civil Rights 1744

Absence of evidence that discipline imposed on Caucasian fire captain for commanding subordinate firefighters not to administer medical attention to infant trauma victim at accident scene, contrary to department's standard operating procedures, was unwarranted or was motivated by racial discrimination precluded department's liability for alleged reverse race discrimination based on decision to discipline captain. Monteverde v. New Orleans Fire Dept., C.A.5 (La.) 2005, 124 Fed.Appx. 900, 2005 WL 673490, Unreported. Civil Rights 1234

1776. Drug testing, deprivation of employment rights

Metropolitan transit authority's drug testing of employee after bus she was driving collided with stationary object was reasonable under Fourth Amendment, notwithstanding absence of probable cause or some level of individualized suspicion; postaccident testing policy was reasonably related to compelling governmental interest in protecting public safety. Tanks v. Greater Cleveland Regional Transit Authority, C.A.6 (Ohio) 1991, 930 F.2d 475 . Searches And Seizures 78

Blood testing of police officer to determine level of psychotropic medication in his blood did not serve police department's legitimate safety need for fit officers, as required for such testing under Fourth Amendment, since level of that medication in person's blood did not correspond to drug's efficacy, drug's side effects were uncommon or minor, and department doctor ordered test simply to determine if officer was taking the drug, when officer had already supplied documentation that he took the drug, that his doctors were monitoring its use, and that he was fit for duty. Krocka v. Bransfield, N.D.Ill.1997, 969 F.Supp. 1073, affirmed 203 F.3d 507. Searches And Seizures 78

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42 U.S.C.A. § 1983

Mechanic's helper discharged by county board of education after failing random drug test could not maintain § 1983 claim against board and education officials for board's alleged failure to follow procedural safeguards under Department of Transportation (DOT) regulations when conducting drug test, as mechanic's helper had mere property right in his employment, and state provided mechanic's helper adequate procedural safeguards to protect that right in view of fact that review panel had reinstated mechanic's helper with full back pay and benefits. English v. Talladega County Bd. of Educ., N.D.Ala.1996, 938 F.Supp. 775. Civil Rights 1320

Information received by school district from student's mother was sufficient to give rise to reasonable suspicion that school bus driver had recently used marijuana and, therefore, school district had reasonable cause to order that bus driver submit to urinalysis drug testing; bus driver did not show any reason to doubt reliability of parent, who identified herself and her child, and who reported that school bus arrived late and that she smelled marijuana when bus doors opened. Armington v. School Dist. of Philadelphia, E.D.Pa.1991, 767 F.Supp. 661, affirmed 941 F.2d 1200. Searches And Seizures 78

City transit authority drug testing policy, that prohibited drug use, required drug testing, and disciplined or refused to hire those who tested positive, applied to all employees or applicants and did not violate equal protection. Burka v. New York City Transit Authority, S.D.N.Y.1988, 680 F.Supp. 590, 97 A.L.R. Fed. 1. Constitutional Law 238.5

City's actions relating to mass urine testing of employees violated civil rights statute, 42 U.S.C.A. § 1983, depriving fire fighters and police department employee of constitutional rights and privileges secured to them. Capua v. City of Plainfield, D.N.J.1986, 643 F.Supp. 1507. Civil Rights 1126

In light of public interest in safety, public mass transit system rules providing that operating employees could be compelled by supervisors to submit to physical examinations, including blood and urinalysis testing, without probable cause, did not violate employees' civil rights. Division 241, Amalgamated Transit Union (AFL-CIO) v. Suscy, N.D.Ill.1975, 405 F.Supp. 750, affirmed 538 F.2d 1264, certiorari denied 97 S.Ct. 653, 429 U.S. 1029, 50 L.Ed.2d 632. Civil Rights 1126

1777. Harassment, deprivation of employment rights--Generally

County sheriff violated deputy's First Amendment rights by engaging in campaign of retaliatory harassment after deputy announced that he would run against sheriff in upcoming election; policymaker exception to ban on patronage dismissals did not extend to harassment. Wallace v. Benware, C.A.7 (Wis.) 1995, 67 F.3d 655, rehearing and suggestion for rehearing en banc denied. Constitutional Law 82(11); Sheriffs And Constables 17

Public employer who harassed an employee in order to induce him to give up a substantive constitutional right, such as freedom of speech, would be violating U.S.C.A. Const. Amend. 14 and this section. Brown v. Brienen, C.A.7 (Ill.) 1983, 722 F.2d 360. Civil Rights 1250; Constitutional Law 278.4(1)

Allegation that after public employee returned to work from leave of absence while running for public office, mayor and three of his subordinates subjected her to campaign of petty harassments in retaliation for her running for public office stated cause of action under this section for violation of U.S.C.A.Const. Amend. 1 insofar as it could be inferred that entire campaign of petty harassments was motivated not just by fact of her running for office but by views she espoused as candidate. Bart v. Telford, C.A.7 (Ill.) 1982, 677 F.2d 622. Civil Rights 1395(8)

Supervisor did not conduct campaign of harassment against city employee, in retaliation for her assertion of First Amendment rights by filing of complaints against him with city and state human rights agencies, when he notified city officials that she was late in producing accident report and had engaged in improprieties in connection with

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utilization of city credit card. Thomas v. Ragland, W.D.Wis.2004, 324 F.Supp.2d 950. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

Not all harassment is actionable under § 1983 as an equal protection violation, and only harassment that transcends coarse, hostile, and boorish behavior can rise to the level of a constitutional tort. Lyon v. Jones, D.Conn.2003, 260 F.Supp.2d 507, affirmed 91 Fed.Appx. 196, 2004 WL 628879. Civil Rights 1147; Constitutional Law 238(1)

Former state employee's allegations that former governor expressed admiration for her curves, attempted to kiss her and pulled her towards him, placed his hand on her leg and slid it toward hem of her culottes, exposed his penis and requested her to kiss it, hugged her, described them as couple at state capitol and directed state trooper to inform her that his wife was out of town often and that governor would like to see her were sufficient to show intent to harass based on gender for purposes of stating § 1983 sexual harassment claim under Equal Protection Clause. Jones v. Clinton, E.D.Ark.1997, 974 F.Supp. 712, appeal dismissed 161 F.3d 528. Constitutional Law 224(3); Civil Rights 1190

1778. ---- Hostile work environment, harassment, deprivation of employment rights

New York village employees were not exposed to sexually hostile work environment, as alleged incidents did not meet threshold of severity or pervasiveness required therefor; village administrator's close monitoring of secretary assistant's work, his mild rudeness to her, and his failure to take advantage of all of her abilities were not motivated by gender discrimination, nor was administrator discriminating against her on account of her sex when he assigned responsibilities formerly handled by her to other female employees, and administrator's review of recreation supervisor's budget with fine-toothed comb and criticism of her for being five minutes late to department meetings even though male employees could skip meetings with impunity were insufficient. Demoret v. Zegarelli, C.A.2 (N.Y.) 2006, 451 F.3d 140. Civil Rights 1185

Genuine issue of material fact existed as to whether English-only policy was established with intent to create hostile work environment, precluding summary judgment on Hispanic employees' claims of hostile work environment under §§ 1981, §§ 1983, and Title VII. Maldonado v. City of Altus, C.A.10 (Okla.) 2006, 433 F.3d 1294. Federal Civil Procedure 2497.1

Hostile work environment claims do not turn on single acts but on aggregation of hostile acts extending over period of time, and consequently, statute of limitations will not exclude acts that are part of same unlawful employment practice, under § 1983, if at least one act falls within time period. Ruiz-Sulsona v. University of Puerto Rico, C.A.1 (Puerto Rico) 2003, 334 F.3d 157. Limitation Of Actions 58(1)

Section 1983 did not provide public employee with cause of action against her employer for alleged discriminatory transfer and hostile work environment created by coworkers and supervisors, where there was no evidence of any policy or custom that would warrant municipal liability. Rivera v. Puerto Rico Aqueduct and Sewers Authority, C.A.1 (Puerto Rico) 2003, 331 F.3d 183, rehearing denied. Civil Rights 1351(5)

Federal right to be free of same-sex harassment in form of a hostile environment was not established in period covered by city employee's complaint, and, thus, individual supervisory officials could not be held liable on hostile work environment theory under §§ 1983 or 1985, although city itself could not claim qualified immunity. Kelly v. City of Oakland, C.A.9 (Cal.) 1999, 198 F.3d 779, as amended. Civil Rights 1376(10)

Genuine issue of material fact, as to whether frequency and severity of incidents of county clerk's harassment of deputy clerk rose to level of hostility required by law, precluded summary judgment on deputy clerk's hostile work environment claim under §§ 1983. Manzolillo v. Cooke, S.D.N.Y.2006, 438 F.Supp.2d 311. Federal Civil Procedure 2497.1

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Caucasian attorney working for city police department was not exposed to hostile work environment based on race, in suit under §§ 1983 and in violation of Title VII, when he was forced by minority supervisors to relocate his office numerous times without justification, his work was subjected to "intense scrutiny," he was given increased case load and forced to work longer uncompensated hours, and his job title was downgraded; conduct was insufficiently hostile. Hoffman v. Baltimore Police Dept., D.Md.2005, 379 F.Supp.2d 778. Civil Rights 1234

A §§ 1983 claim is actionable where a public official creates a hostile work environment; however, a §§ 1983 claim may not be brought to vindicate rights conferred only by a statute that contains its own structure for private enforcement, such as Title VII. Dawson v. County of Westchester, S.D.N.Y.2004, 351 F.Supp.2d 176. Civil Rights 1147; Civil Rights 1312; Civil Rights 1502

Material issues of fact, as to supervisor's motivation for removing city employee's computer access, precluded summary judgment that action was taken as part of campaign of harassment against employee, in retaliation for her assertion of First Amendment rights, through filing of complaint against supervisor with city and state human rights agencies. Thomas v. Ragland, W.D.Wis.2004, 324 F.Supp.2d 950. Federal Civil Procedure 2497.1

To prevail on hostile work environment claim against school district under § 1983, teacher had to: (1) establish existence of hostile work environment and (2) show that it was policy or custom of District to maintain hostile work environment or that District had policy or custom of deliberate indifference to existence thereof. Sullivan v. Newburgh Enlarged School Dist., S.D.N.Y.2003, 281 F.Supp.2d 689. Civil Rights 1147; Civil Rights 1351(5)

African-American employees, suing state department of human services under § 1983, failed to establish claim of hostile work environment, when they asserted that supervisors overly scrutinized their work and denied them promotions; actions were insufficiently egregious. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Civil Rights 1147

A claim for harassment which creates a hostile work environment in violation of the equal protection clause is cognizable under § 1983. Lyon v. Jones, D.Conn.2003, 260 F.Supp.2d 507, affirmed 91 Fed.Appx. 196, 2004 WL 628879. Civil Rights 1147

Isolated anti-Semitic comment toward county corrections officer was insufficient to support a claim of hostile work environment based on religion under § 1983. Baron v. Hickey, D.Mass.2003, 242 F.Supp.2d 66. Civil Rights 1161

Former state employee's allegations that former governor made sexual advances toward her in hotel room, used his position to facilitate his sexual harassment of her and later accosted her in state capitol, and that her supervisors treated her in hostile and rude manner and transferred her to job that had no advancement possibilities after she rejected his advances, were sufficient to show pervasive, intimidating, abusive conduct to state § 1983 hostile work environment claim. Jones v. Clinton, E.D.Ark.1997, 974 F.Supp. 712, appeal dismissed 161 F.3d 528. Civil Rights 1185

In deciding whether work environment is hostile or abusive, courts must look at totality of circumstances, including frequency of discriminatory conduct, its severity, whether it is physically threatening or humiliating or a mere offensive utterance, and whether it unreasonably interferes with employee's work performance. Williams v. Morris, W.D.Va.1996, 956 F.Supp. 679. Civil Rights 1147

District of Columbia Department of Corrections did not have actual knowledge of alleged racially hostile work environment created by African American coemployees' use of racial epithet when referring to fellow African Americans including employee who brought Title VII action; employee's memorandum to Department director

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contained no details, he failed to allege that management-level employees participated at roll calls in which he allegedly objected to use of epithet, and he failed to utilize Department's internal grievance process. Ridley v. District of Columbia, D.D.C.1996, 945 F.Supp. 333. Civil Rights 1149

1779. ---- Sexual harassment, deprivation of employment rights

Fact that school principal could not be held liable under Title VII for sexually harassing teacher because he was not "employer" did not exempt him from § 1983 action for equal protection violation arising from same conduct. Molnar v. Booth, C.A.7 (Ind.) 2000, 229 F.3d 593. Civil Rights 1359

Female correctional employee's allegations that captain had stared at her before asking her to do typing job, that captain had told her that he "got what [he] wanted" and that he wanted her, that captain had unreasonably requested her to perform typing assignments and that captain had slammed office doors in her presence were insufficient to show sex-based harassment in support of claims under § 1983 and civil rights conspiracy statute. Southard v. Texas Bd. of Criminal Justice, C.A.5 (Tex.) 1997, 114 F.3d 539. Civil Rights 1185; Conspiracy 7.5(1)

Public employee failed to show that supervisory personnel acted with reckless indifference to sexual harassment of employee by coworker, as required to impose supervisory liability under § 1983; supervisors had warned coworker to stay away from employee even before filing of employee's first formal complaint with employer's Equal Employment Opportunity Office (EEOO), EEOO investigated each complaint employee filed against coworker and took prompt action on complaints, and coworker was reprimanded and ordered not to go near employee. Sanchez v. Alvarado, C.A.1 (Puerto Rico) 1996, 101 F.3d 223, rehearing denied. Civil Rights 1359

Dispatcher for city fire department was victim of sexual harassment amounting to sex discrimination, so as to have claim against supervisors under § 1983, where supervisors knew of sexually oppressive working conditions even before dispatcher was hired, where dispatcher repeatedly complained of sexual harassment through official channels, and where no corrective action was taken. Bohen v. City of East Chicago, Ind., C.A.7 (Ind.) 1986, 799 F.2d 1180, on remand 666 F.Supp. 154. Civil Rights 1189

Genuine issue of material fact, as to whether female county police officer unreasonably failed to take advantage of any preventive or corrective opportunities provided or to avoid harm otherwise, precluded summary judgment for county and police chief on officer's sexual harassment claims on basis of *Faragher* affirmative defense. Ensko v. Howard County, Md., D.Md.2006, 423 F.Supp.2d 502. Federal Civil Procedure 2497.1

Kansas corrections officer was not subjected to sexually hostile work environment; refusal of county board of commissioners to honor doctor's order that she not work more than eight hours a day, and her retroactive termination, were not sufficiently pervasive or severe to alter terms, conditions, or privileges of employment and acts complained of were not gender based. McCall v. Board of Com'rs of County of Shawnee, KS, D.Kan.2003, 291 F.Supp.2d 1216. Civil Rights 1185

Former state employee's allegations that her former supervisor had berated and criticized her, had removed her duties and responsibilities, had made offensive sexual comments, had imposed additional work, had threatened her physically and emotionally, had harassed other women, had used female employees to find babysitters and had retaliated against her for filing complaint were sufficient to state § 1983 claim against former supervisor for sex discrimination in violation of Fourteenth Amendment. Coller v. State of Mo., Dept. of Economic Development, W.D.Mo.1997, 965 F.Supp. 1270. Civil Rights 1395(8)

Sexual harassment in workplace is actionable under § 1983 as a violation of Fourteenth Amendment right to equal protection. Wise v. New York City Police Dept., S.D.N.Y.1996, 928 F.Supp. 355. Civil Rights 1182

Female District of Columbia employee stated a § 1983 action against District of Columbia based on alleged

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harassment by supervisor by alleging that harassment was perpetrated under supervisor's authority as District of Columbia law enforcement official and harassment deprived employee of her constitutional civil rights under the Fifth Amendment. Williams v. District of Columbia, D.D.C.1996, 916 F.Supp. 1. Civil Rights 1190

Allegation that investigator improperly investigated claims of sexual harassment because of sexual bias states a claim under § 1983. Houck v. City of Prairie Village, Kan., D.Kan.1996, 912 F.Supp. 1438, on reconsideration in part 924 F.Supp. 120. Civil Rights 1189

Cause of action under § 1983 for sexual harassment, as violative of equal protection clause of Fourteenth Amendment, is cognizable. Faragher v. City of Boca Raton, S.D.Fla.1994, 864 F.Supp. 1552, affirmed in part, reversed in part 76 F.3d 1155, rehearing granted, opinion vacated 83 F.3d 1346, affirmed in part, reversed in part 111 F.3d 1530, certiorari granted 118 S.Ct. 438, 522 U.S. 978, 139 L.Ed.2d 337, reversed 118 S.Ct. 2275, 524 U.S. 775, 157 A.L.R. Fed. 663, 141 L.Ed.2d 662, on remand 166 F.3d 1152. Civil Rights 1036

Complaint of former borough employee alleging that one defendant, in his position and capacity as president of the borough council, engaged in series of sexually discriminatory actions consisting of sexually explicit and vulgar comments and forcibly kissing her, and alleging that police chief to whom incidents were reported only laughed and told plaintiff to be "nice" to the council president or the chief would "bury" her, stated claim for relief under § 1983. Palace v. Deaver, E.D.Pa.1993, 838 F.Supp. 1016. Civil Rights 1395(8)

Behavior of a major in a county sheriff's office toward a female employee did not constitute actionable hostile work environment sexual harassment violating Title VII and the Equal Protection Clause of the Fourteenth Amendment, under §§ 1983; the employee pointed to only 16 specific instances of offensive conduct over a four-year period, most involved only offensive utterances, and there was no evidence that his behavior unreasonably interfered with the employee's job performance. Mitchell v. Pope, C.A.11 (Ga.) 2006, 189 Fed.Appx. 911, 2006 WL 1976011, Unreported. Constitutional Law 224(3)

Conduct of city employee's supervisor in allegedly demanding that employee develop an intimate relationship with him or he would fire or demote her, assaulting employee to convince her to stop associating with her boyfriend, converting women's locker room into an office, failing to provide employee with suitable equipment, thereby placing her in harm's way, and retaliating against her for filing an internal discrimination complaint supported employee's civil rights claims under §§ 1983, §§ 1985, and state law. Crivera v. City of New York, E.D.N.Y.2004, 2004 WL 339650, Unreported. Civil Rights 1169; Civil Rights 1249(1); Conspiracy 7.5(1); Municipal Corporations 218(3)

1780. ---- Intent or knowledge, harassment, deprivation of employment rights

Genuine issues of material fact, as to whether county clerk was acting in bad faith in contacting fired deputy clerk and offering to rehire her after firing her, or whether her reemployment was to be conditioned on waiver of claim for county's past action, precluded summary judgment for county on deputy clerk's wrongful termination claim. Manzolillo v. Cooke, S.D.N.Y.2006, 438 F.Supp.2d 311. Federal Civil Procedure 2491.5

Material issues of fact, as to whether city employee's filing of complaints against supervisor with city and state human rights agencies motivated supervisor to make false claims about her, precluded summary judgment that supervisor had launched campaign of harassment against employee. in retaliation for her assertion of First Amendment protected rights. Thomas v. Ragland, W.D.Wis.2004, 324 F.Supp.2d 950. Federal Civil Procedure 2497.1

Person may pursue sexual harassment claim under Fourteenth Amendment based solely upon acts of harassment directed towards her, but that claim must show intent to harass because of status as female and not because of characteristics of her gender which are personal to her. Jones v. Clinton, E.D.Ark.1998, 990 F.Supp. 657, appeal

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dismissed and remanded 138 F.3d 758, on remand 12 F.Supp.2d 931, on reconsideration in part, appeal dismissed 161 F.3d 528. Constitutional Law 224(2)

1781. ---- Job detriment, harassment, deprivation of employment rights

Former state employee's claim that, "reading between the lines," she "knew what the Governor meant" when he allegedly indicated that employee's ultimate superior was his "good friend," was insufficient to show tangible job detriment as essential element of quid pro quo sexual harassment claim arising out of encounter between Governor and employee in hotel room; Governor's alleged statements did not in any way communicate clear threat that conditioned concrete job benefits or detriments on compliance with sexual demands. Jones v. Clinton, E.D.Ark.1998, 990 F.Supp. 657, appeal dismissed and remanded 138 F.3d 758, on remand 12 F.Supp.2d 931, on reconsideration in part, appeal dismissed 161 F.3d 528. Civil Rights 1184

Former state employee suffered no tangible job detriment establishing hostile work environment sexual harassment after she allegedly rebuffed Governor's sexual advances; although employee claimed that she suffered adverse employment actions, including being transferred to a position that had no responsible duties for which she could be adequately evaluated to earn advancement and failing to receive raises and merit increases, she received every merit increase and cost-of-living allowance for which she was eligible during her job tenure, her job was upgraded, and she consistently received satisfactory job evaluations. Jones v. Clinton, E.D.Ark.1998, 990 F.Supp. 657, appeal dismissed and remanded 138 F.3d 758, on remand 12 F.Supp.2d 931, on reconsideration in part, appeal dismissed 161 F.3d 528. Civil Rights 1185

Behavior of a major in a county sheriff's office toward a female employee did not rise to the level of tangible employment actions, so as to support claims of sexual harassment violating Title VII and the Equal Protection Clause of the Fourteenth Amendment, under §§ 1983; the employee claimed that she changed her work schedule several times to avoid the major, that she had her desk moved to avoid his stares, that he forbade her from using a spare office for her polygraph equipment, and that he gave her two assignments normally not given to officers in her position. U.S.C.A. Const. Amend. 14; Mitchell v. Pope, C.A.11 (Ga.) 2006, 189 Fed.Appx. 911, 2006 WL 1976011, Unreported. Civil Rights 1190

1782. Medical leave, deprivation of employment rights

Availability of postdeprivation proceeding did not excuse city official's failure to follow established predeprivation procedures before placing employee on involuntary medical leave of absence; had employee received required written notice, she might have successfully contested her placement on medical leave according to established procedures or received suggested medical treatment and returned to work. Roach v. City of New York, S.D.N.Y.1992, 782 F.Supp. 261. Civil Rights 1128

1783. Pension, deprivation of employment rights

Summary proceeding to review administrative decisions that is available under New York law offered postdeprivation hearing at meaningful time and in meaningful manner sufficient to satisfy due process with respect to widow of former city employee claiming denial of constitutional rights, because of failure to pay survivor benefits under former employee's pension; if widow had timely sought review under New York law, New York court would have had authority to remand case for appropriate administrative proceeding by New York City employees' retirement system. Campo v. New York City Employees' Retirement System, C.A.2 (N.Y.) 1988, 843 F.2d 96, certiorari denied 109 S.Ct. 220, 488 U.S. 889, 102 L.Ed.2d 211. Constitutional Law 278.4(5)

Beneficiaries of county pension benefit plan had no § 1983 claim against county for contract clause violation. Andrews v. Anne Arundel County, Md., D.Md.1996, 931 F.Supp. 1255, affirmed 114 F.3d 1175, certiorari denied 118 S.Ct. 600, 522 U.S. 1015, 139 L.Ed.2d 489. Civil Rights 1041

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42 U.S.C.A. § 1983

Male police officers' alleged lewd and offensive statements about women did not constitute discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter conditions of female officer's employment and create abusive working environment that was actionable under §§ 1983, where statements were not directed at officer. Davison v. City of Lone Jack, Mo., C.A.8 (Mo.) 2005, 121 Fed.Appx. 671, 2005 WL 195589, Unreported. Civil Rights 1185

1784. Pretext, deprivation of employment rights

Recreation supervisor for New York village satisfied fourth element of prima facie case of disparate treatment, insofar as circumstances surrounding the alleged adverse employment actions she experienced gave rise to inference of gender discrimination; actions had to be seen in context of village administrator's micromanagement and offensive comments and mayor's failure to respond to her expressed concerns. Demoret v. Zegarelli, C.A.2 (N.Y.) 2006, 451 F.3d 140. Civil Rights 1537

Evidence was sufficient for jury to conclude in civil rights lawsuit that mayor's termination of transitory employee in Puerto Rico municipality on basis that she was not qualified for her social worker position was pretext for discrimination in violation of First Amendment political affiliation rights of employee, where employee had been continually rehired and had received excellent ratings and municipality did not follow through on its obligation to summon her to compete for her old job before it was again filled. Borges Colon v. Roman-Abreu, C.A.1 (Puerto Rico) 2006, 438 F.3d 1. Territories 23

Evidence of racially tinged statements by school system's decision-makers, the relative superiority of white male employee's qualifications over successful black female candidate, school system's disregard of its own employment regulations, and white employee's rebuttal of many of school system's proffered justifications raised a genuine issue of material fact as to whether school system's articulated reasons for rejecting white employee for interim coordinator position were pretextual, precluding summary judgment in favor of school system on white employee's race discrimination claim based on failure to promote him to interim coordinator position. Vessels v. Atlanta Independent School System, C.A.11 (Ga.) 2005, 408 F.3d 763, rehearing and rehearing en banc denied 159 Fed.Appx. 183, 2005 WL 2179495. Federal Civil Procedure 2497.1

Genuine issue of material fact, as to pretextual nature of county clerk's proffered reasons for dismissing deputy clerk, relating to her interest in purchasing van previously leased by county, precluded summary judgment for county on deputy clerk's §§ 1983 claim that she was wrongfully terminated from her position on basis of her gender and appearance. Manzolillo v. Cooke, S.D.N.Y.2006, 438 F.Supp.2d 311. Federal Civil Procedure 2491.5

Reasonable jury could not have found from evidence adduced at trial in case under Title VII and §§ 1983, viewed in light most favorable to employee, that gender discrimination played any part in decision of chancellor not to renew employee's contract in her position as assistant chancellor, which was made on stated basis that employee's management style was having adverse effect on staff morale, where number of people told chancellor that they found employee's management style intimidating and not supportive and that it was one of reasons they were leaving university or thinking of leaving, and deficiencies of other administrators were not comparable to hers. Walker v. Board of Regents of University of Wisconsin System, W.D.Wis.2004, 329 F.Supp.2d 1018, amended 2004 WL 1688342, affirmed 410 F.3d 387, rehearing and rehearing en banc denied. Civil Rights 1170

Connecticut's Office of the Attorney General's proffered reason for failing to hire Caucasian attorney as an assistant attorney general, that attorney had previous failures of the bar exam, poor work performance as a paralegal in the Office of the Attorney General, and lacked recommendations, were not pretext for race discrimination under Title VII, § 1983 or the Connecticut Fair Employment Practices Act (CFEPA), or age discrimination under § 1983 or CFEPA. Burbank v. Office of Atty. Gen. of Connecticut, D.Conn.2003, 240 F.Supp.2d 167, affirmed 75 Fed.Appx. 857, 2003 WL 22229428. Civil Rights 1137

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42 U.S.C.A. § 1983

Temporal proximity between African-American state employee's complaint to Equal Employment Opportunity Commission (EEOC), which asserted that agency practice had disparate impact on African-American employees, and agency's subsequent promulgation of regulations prohibiting him and other employees from accessing certain data for non-work-related purposes was insufficient, without more, to satisfy employee's burden to bring forward some evidence that his termination for violation of disciplinary rules was pretextual, in violation of §§ 1983. Simpson v. New York State Dept. of Civil Services, C.A.2 (N.Y.) 2006, 166 Fed.Appx. 499, 2006 WL 93011, Unreported. States 53

Fact that county employer created opening on morning of employee's transfer did not establish that transfer was a pretext for discrimination against employee who was a union activist claiming that she was discriminated against for exercising First Amendment rights, given that employer needed to move employee out of computer department where a security breach, with which employee appeared to have had some involvement, took place. Wells v. O'Malley, C.A.6 (Ohio) 2004, 106 Fed.Appx. 319, 2004 WL 1662035, Unreported. Constitutional Law 82(11); Counties 67

Failure of Puerto Rico Department of Education to give employee any duties because he refused to accept proposed transfer to equivalent position with duties was not pretext for political affiliation discrimination, absent evidence that similarly situated employees with different political affiliation were treated differently. Lopez Hernandez v. Fajardo Velez, C.A.1 (Puerto Rico) 2003, 55 Fed.Appx. 576, 2003 WL 105365, Unreported. Territories 23

1785. Privacy, deprivation of employment rights

Police department employee's constitutional right to privacy was not violated by questions on required background questionnaire as to sexual history, marital history, family's criminal record, and financial background. Walls v. City of Petersburg, C.A.4 (Va.) 1990, 895 F.2d 188.

No constitutional rights or rights of housing authority employees under this section and §§ 1981 and 1985 of this title were violated by mere taping of conversation by defendants, who were connected in various capacities with the housing authority and who were parties to the conversations, even if the recording was done surreptitiously. Holmes v. Finney, C.A.10 (Kan.) 1980, 631 F.2d 150. Civil Rights 1126

Government attorney did not violate privacy rights of government employee, in connection with her investigation of employee's sexual harassment claim against supervisors, so as to provide basis for § 1983 action; privacy violation would entail forced disclosure of information about private sexual matters, and none were alleged. Marrero Rivera v. Department of Justice of Com. of Puerto Rico, D.Puerto Rico 1993, 821 F.Supp. 65. Civil Rights 1506; Constitutional Law 82(11)

1786. Promotion, deprivation of employment rights--Generally

Jury's verdicts in favor of city police department employee on her Title VII claim against city for retaliatory failure to promote, and in favor of city on employee's §§ 1983 claim of failure to promote in retaliation for exercise of free speech right were reconcilable; jury instructions permitted Title VII verdict for employee based on retaliation either for her filing of charges with Equal Employment Opportunity Commission (EEOC) and state Human Rights Department or for her complaining about and opposing discrimination within police department, and permitted interpretation that filing of charges was not protected speech. Deloughery v. City of Chicago, C.A.7 (Ill.) 2005, 422 F.3d 611. Civil Rights 1554

At the prima facie stage, for a § 1983 plaintiff alleging workplace discrimination to show she was qualified, she only needed to demonstrate that she met the basic criteria established by the employer; she was not required to show at the prima facie stage that her qualifications were demonstrably better than others applying for the job.

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42 U.S.C.A. § 1983

Franz v. Five Rivers MetroParks, S.D.Ohio 2002, 254 F.Supp.2d 753. Civil Rights 1121

Federal enforcement of municipal promotions procedures is neither contemplated nor warranted under § 1983. District Counsel 33, American Federation of State County and Mun. Employees, AFL-CIO v. City of Philadelphia, E.D.Pa.1995, 944 F.Supp. 392, affirmed 101 F.3d 690. Civil Rights 1135

Generally, prospective promotion is not a property or liberty interest protected by Fourteenth Amendment; only if promotion to specific position is matter of right under governing substantive law will protected property interest exist. Hunter v. City of Warner Robins, Ga., M.D.Ga.1994, 842 F.Supp. 1460. Constitutional Law 254.1; Constitutional Law 277(1)

Job promotion was not a fundamental right under § 1983, as it constituted neither a liberty nor property interest. Brown v. County of Jackson, E.D.Mich.1992, 804 F.Supp. 939. Civil Rights 1135

City employee who was promised but never officially appointed to career service position, as required by city regulations, had no property interest in position, for purpose of bringing § 1983 claim; there was no evidence that any city employee with authority made enforceable promise to provide employee with title, which could only be conferred via formal steps that were never taken. Santella v. City of Chicago, N.D.Ill.1989, 721 F.Supp. 160, affirmed 936 F.2d 328. Civil Rights 1135

While it may be perfectly legitimate for a private superior not to promote an employee whom he personally dislikes, a government employer may not stand in the way of the developing career of a subordinate for personal reasons not related to job functioning. DeLuca v. Sullivan, D.C.Mass.1977, 450 F.Supp. 736. Officers And Public Employees 11.7

1787. ---- Racial discrimination, promotion, deprivation of employment rights

Unsuccessful firefighter applicants could not show that teamwork portion of exam, which was facially race-neutral and applied non-discriminatorily, nevertheless had racially discriminatory impact on them and was adopted by New Jersey, New Jersey Department of Personnel (NJDOP), and NJDOP officials with intent to discriminate, for purposes of equal protection claims under §§ 1983, since passing rate on teamwork component was remarkably similar for African-American, Hispanic, and white applicants and had no adverse impact on basis of race. Antonelli v. New Jersey, C.A.3 (N.J.) 2005, 419 F.3d 267. Municipal Corporations 197

Regardless of whether city had improperly used race as consideration in its promotions process for police officers, officers who would have been rejected for promotion even without allegedly discriminatory process lacked standing to bring § 1983 equal protection challenge against that process. Petit v. City of Chicago, C.A.7 (Ill.) 2003, 352 F.3d 1111, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 2426, 541 U.S. 1074, 158 L.Ed.2d 984. Civil Rights 1331(5)

Although consent decree, entered in settlement of prior racial discrimination suit against sheriff's department and mandating a policy that at least 50% of all annual promotions in department be awarded to black officers, did not preordain the race of the officer receiving any one promotion, it did demand a racial allocation of the promotions conferred annually, thus potentially creating the equal protection infraction identified in the Supreme Court's *Croson* decision. Thigpen v. Bibb County, Ga., Sheriff's Dept., C.A.11 (Ga.) 2000, 223 F.3d 1231. Constitutional Law 219.1; Federal Civil Procedure 2397.2

Municipal water works was not liable under § 1981 for allegedly discriminatory denial of promotion to African-American employee; § 1983 provides exclusive federal remedy to violation of § 1981 when claim is against state actor, and employee offered no facts or evidence of policy or custom on part of water works of racially disparate treatment in promotion process which would subject water works to municipal liability under §

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1983. Williams v. Little Rock Mun. Water Works, C.A.8 (Ark.) 1994, 21 F.3d 218, rehearing denied. Civil Rights 1135; Civil Rights 1312

County community service board proffered neutral, non-discriminatory reasons for its allegedly adverse actions in passing over African-American employee for promotion, as required to rebut employee's prima facie racial discrimination claim under § 1983; board expressed concerns about morale issues and staff dissatisfaction with employee, indicated its belief that other candidate for interim directorship of board was better choice, and suggested concern at surreptitious manner in which employee and other person attempted to confer status of interim director on herself. Collier v. Clayton County Community Service Bd., N.D.Ga.2002, 236 F.Supp.2d 1345, affirmed 82 Fed.Appx. 222, 2003 WL 22227530. Civil Rights 1135

Black employee could not use § 1983 to assert a claim of race discrimination in connection with failure to promote; if such a violation of Title VII could have been asserted through § 1983, the employee could avoid most, if not all, of Title VII's detailed requirements for bringing such a claim. Middlebrooks v. Coughlin, W.D.N.Y.1997, 970 F.Supp. 210. Civil Rights 1312; Civil Rights 1502

Evidence that black firefighters had consistently received satisfactory performance ratings, that the firefighters had been praised while temporarily working in position of captain and that fire chief had been involved in assessment center promotion process, which had been established pursuant to consent decree entered in prior employment discrimination lawsuit, did not show that city's proffered reason for not promoting the firefighters to position of captain, that they had received low ratings from assessment center program, was pretext for intentional race discrimination in violation of § 1983. Felton v. City of Auburn, M.D.Ala.1997, 968 F.Supp. 1476. Civil Rights 1135

Genuine issues of material fact existed as to whether individual supervisory employees of Delaware Department of Public Instruction deliberately denied African-American employee a promotion due to his race, precluding summary judgment on § 1983 claim against employees individually. Lewis v. State of Del. Dept. of Public Instruction, D.Del.1996, 948 F.Supp. 352. Federal Civil Procedure 2497.1

Employee of youth services division of county probate court, who alleged that she was discriminated against on basis of race in failing to be granted promotion to director of youth services division, did not have liberty or property interest in promotion that was protected under § 1983. Douglas v. County of Jackson, E.D.Mich.1992, 804 F.Supp. 944. Civil Rights 1135

Captain with city fire department failed to show that department's nondiscriminatory reason for promoting African-American candidate to position of district chief, that he was better qualified, was pretextual and that failure to promote captain, who was Caucasian, resulted from race discrimination, precluding department's liability for alleged race discrimination. Monteverde v. New Orleans Fire Dept., C.A.5 (La.) 2005, 124 Fed.Appx. 900, 2005 WL 673490, Unreported. Civil Rights 1234

1788. ---- Sex discrimination

Female employee of a park failed to rebut overwhelming evidence that other, more qualified individuals, were hired into the various sergeant openings, or to show how the defendant chief ranger himself played any significant and material role in the decision-making process leading to the filling of the various job openings she sought, thus defeating her claim of sex discrimination under § 1983 regarding the denial of a promotion to the position of sergeant. Franz v. Five Rivers MetroParks, S.D.Ohio 2002, 254 F.Supp.2d 753. Civil Rights 1421

African-American employee of city did not establish that he was subjected to racially hostile work environment, as required for claims under §§ 1981 and 1983 employee did not allege any conduct of overtly racial character by city

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or its officials, and alleged menial work that employee was required to do was shared by all employees in his department. Jessamy v. City of New Rochelle, New York, S.D.N.Y.2003, 292 F.Supp.2d 498. Civil Rights 1147

Female employee of a park failed to rebut overwhelming evidence that other, more qualified individuals, were hired into the various sergeant openings, or to show how the defendant chief ranger himself played any significant and material role in the decision-making process leading to the filling of the various job openings she sought, thus defeating her claim of sex discrimination under § 1983 regarding the denial of a promotion to the position of sergeant. Franz v. Five Rivers MetroParks, S.D.Ohio 2002, 254 F.Supp.2d 753. Civil Rights 1421

Employee's allegation that county and county city-county planning commission "did not promote" her from her position as "planning technician solely on the basis of her sex," standing alone, was not sufficient to allege that her failure to be promoted was the result of a pattern and practice of discrimination and thus, employee failed to establish § 1983 municipal liability claim. Hammer v. Hillsborough County Through Bd. of County Com'rs, M.D.Fla.1996, 927 F.Supp. 1540. Civil Rights 1395(8)

Mayor did not engage in employment sex discrimination against female city employee, in violation of Title VII and §§ 1983, when he awarded new unclassified position of assistant director of city's recreation department to male employee who conceived of position, submitted idea to mayor, and pressed matter until mayor agreed to create new position, which he was legally empowered to do unilaterally. Long v. Congemi, C.A.5 (La.) 2004, 115 Fed.Appx. 190, 2004 WL 2537087, Unreported. Civil Rights 1169

1789. ---- Affirmative action, promotion, deprivation of employment rights

Racial classification imposed by county's police cadet program, which excluded nonminorities in favor of blacks and Hispanics, was not narrowly tailored to achieve asserted compelling governmental interest of remedying past race discrimination and, therefore, did not pass equal protection strict scrutiny test; cadet program was not required by court order or terms of prior consent decree, other remedies were available to increase minority police exam performance, continuation of cadet program until achievement of racial balance goals would be of unreasonable duration, statistical evidence showing disparity between number of minority police officers and minority percentage of general population had little probative value, and program's impact on rights of third parties was attenuated. Hiller v. County of Suffolk, E.D.N.Y.1997, 977 F.Supp. 202. Civil Rights 1238; Constitutional Law 219.1

Compelling government interest justified city's affirmative action plan, promoting black and Hispanic firefighters out of rank to captain; city was under continuing obligation to comply with prior consent decree, city was required under existing collective bargaining agreement to follow promotion policies designed to increase number of blacks and Hispanics in higher positions, and city commissioner of personnel concluded that city's commitment to equal opportunity required adoption of reasonable affirmative action measures. McNamara v. City of Chicago, N.D.Ill.1997, 959 F.Supp. 870, affirmed 138 F.3d 1219, rehearing and suggestion for rehearing en banc denied, certiorari denied 119 S.Ct. 444, 525 U.S. 981, 142 L.Ed.2d 398. Civil Rights 1238

1790. ---- Seniority systems, promotion, deprivation of employment rights

Although use of seniority as tie breaker for promotion and assignment preferences in city police department was facially gender neutral, use of seniority as tie breaker could be challenged as violation of § 1983 if it resulted in perpetuating past offenses of sexual discrimination in hiring and promotion. Barcume v. City of Flint, E.D.Mich.1993, 819 F.Supp. 631. Civil Rights 1169

1791. ---- Litigation, promotion, deprivation of employment rights

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42 U.S.C.A. § 1983

Former employee of Rhode Island Department of Business Regulation failed to establish that actions of departmental officials, either in not promoting him or in allegedly removing all of his job duties, were in retaliation for or substantially motivated by his prior lawsuits and thus could not support his claims that his First Amendment speech and petition rights had been violated. Corrigan v. State of R.I., Dept. of Business Regulation, D.R.I.1993, 820 F.Supp. 647. Civil Rights 1421; Constitutional Law 90.1(7.2); Constitutional Law 91

1792. ---- Political contributions, promotion, deprivation of employment rights

Conduct by persons in official positions whereby denial of employment or promotion is conditioned on making of a financial contribution to a political party is an unacceptable invasion of constitutional rights, actionable under this section. Cullen v. New York State Civil Service Commission, E.D.N.Y.1977, 435 F.Supp. 546, appeal dismissed 566 F.2d 846. Civil Rights 1135; Civil Rights 1231

1793. ---- Public employees, promotion, deprivation of employment rights

State agency's failure to select African-American employee for promotion on ground that he did not have highest interview score was not pretext for race discrimination, in violation of Title VII and §§ 1983, even if employee was only candidate who met minimum requirements for position, where there was no evidence that agency did not believe that individual selected was better qualified. Woods v. Illinois Dept. of Corrections, C.A.7 (Ill.) 2006, 167 Fed.Appx. 553, 2006 WL 122405, Unreported. Civil Rights 1137

While 58-year-old Hispanic employee of county alleged that she was unfairly passed over for two positions in favor of younger white employee and younger Hispanic employee, she failed to rebut employer's substantial showing that both of the chosen candidates were better qualified than plaintiff for the respective positions, as required for age and race discrimination claims under § 1983 and New York Human Rights Law (NYHRL). Nesbitt v. Morganthau, S.D.N.Y.2002, 2002 WL 31385828, Unreported. Civil Rights 1135; Civil Rights 1207

1793A. Retaliation, promotion, deprivation of employment rights

Even if city water department employee met with supervisor and discussed his claims of corruption by other employees and his fears of retaliation for reporting wrongdoing by other employees, employee failed to show that the conversation had an effect on any subsequent decision by supervisor to deny him promotions, as required for supervisor to be liable to employee under §§ 1983 for retaliation against employee for protected speech, in violation of First Amendment; employee was denied only two promotions after his meeting with supervisor, and both of those promotion decisions, and the hiring processes that preceded them, occurred after supervisor had resigned from her position. Healy v. City of Chicago, C.A.7 (Ill.) 2006, 450 F.3d 732. Municipal Corporations 218(3)

1794. Safety of work environment, deprivation of employment rights

Neither fact that plaintiff's decedent was government employee nor characterization of city's deliberate indifference to his safety as something other than "abuse of governmental power" was sufficient reason for refusing to entertain plaintiff's section 1983 claim that city violated due process clause by failing to train or warn its employees. Collins v. City of Harker Heights, Tex., U.S.Tex.1992, 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1126

Correctional facility and officers' alleged inadequate remedial and preventative measures to stop the spread of Methicilin Resistant Staphylococcus aureus infections within the correctional facility did not rise to a level of deliberate indifference that could be characterized as conscience shocking, as required for employee's §§ 1983 claim alleging that his working environment lead to his infection in violation of his substantive due process rights;

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the Department of Corrections found the jail substantially in compliance with state standards, giving defendants reason to believe the measures were adequate, only two of 170 corrections officers tested positive for colonization of the infection, and the facility had in place policies and procedures to ensure sanitary conditions in the jail, including requirements that cells be regularly cleaned with an all-purpose detergent and that showers be disinfected with a bleach and water solution. Kaucher v. County of Bucks, C.A.3 (Pa.) 2006, 455 F.3d 418. Prisons 8

State officials' reckless failure to provide prison guard with safe working environment did not violate constitutional or federal right for which prison guard could recover damages under section 1983. Washington v. District of Columbia, C.A.D.C.1986, 802 F.2d 1478, 256 U.S.App.D.C. 84. Civil Rights 1039

Civil rights claimant who allegedly suffered from respiratory and cardiovascular ailments and who sought damages and injunctive relief against his employer, the state of Oklahoma, and various officers and employees thereof failed to prove that he was deprived of a federal right by defendants' failure to prohibit smoking in the area where he worked. Kensell v. State of Okl., C.A.10 (Okla.) 1983, 716 F.2d 1350. Civil Rights 1421

Public employee alleged actionable deprivation of substantive due process rights, as actions of public employer shocked conscience, where public employee alleged that public employer and its employees knew he would face risk of almost certain injury if he changed switch near high voltage power lines as he was instructed to do. Eddy v. Virgin Islands Water and Power Authority, D.Virgin Islands 1997, 955 F.Supp. 468, on reconsideration 961 F.Supp. 113. Civil Rights 1395(8)

Bus drivers and bus mechanics did not have legally cognizable constitutional right to minimal level of workplace safety in public employment necessary to support their due process claims in § 1983 suit against school district. Murray v. Connetquot Cent. School Dist. of Islip, C.A.2 (N.Y.) 2002, 54 Fed.Appx. 18, 2002 WL 31832735, Unreported, certiorari denied 124 S.Ct. 67, 540 U.S. 815, 157 L.Ed.2d 30. Constitutional Law 278.5(2.1); Schools 63(1); Schools 159.5(6)

1795. Salary, deprivation of employment rights

State employee made prima facie showing that supervisor discriminated against her based on gender in determining her raise amount, in violation of her equal protection rights, inasmuch employee was in protected class as a woman, she received evaluation of "accomplished" for pertinent year and was meeting employer's legitimate employment expectations, she suffered adverse employment action in form of raise at allegedly discriminatory rate, and was treated differently from similarly situated male employees who received higher raise despite receiving same employment evaluation. Hildebrandt v. Illinois Dept. of Natural Resources, C.A.7 (Ill.) 2003, 347 F.3d 1014. Constitutional Law 224(3); States 63

Since school board's implementation of new salary structure and reading requirement for new janitor position was not an adverse employment action, board's alleged failure to promote and pay employees at appropriate rate and its alleged use of inappropriate reading test to block employees' rightful positions did not constitute "adverse employment action," as required to support employees' claim, under § 1983, that they were retaliated against for their participation in state court lawsuit alleging sex discrimination. Banks v. East Baton Rouge Parish School Bd., C.A.5 (La.) 2003, 320 F.3d 570, certiorari denied 124 S.Ct. 82, 540 U.S. 817, 157 L.Ed.2d 34. Schools 63(1)

County clerk's claim to a pay raise did not indicate an entitlement sufficient to constitute a property interest under this section providing for civil action for deprivation of rights. Estes v. Tuscaloosa County, Ala., C.A.11 (Ala.) 1983, 696 F.2d 898. Civil Rights 1136

Genuine issue of material fact, as to whether male county employees' positions were in fact comparable to that of female county deputy clerk, or whether county had succeeded in establishing existence of seniority pay system or other rationale to explain difference in pay, precluded summary judgment for county on deputy clerk's wage

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discrimination/equal pay claim. Manzolillo v. Cooke, S.D.N.Y.2006, 438 F.Supp.2d 311. Federal Civil Procedure 2498

Fire protection district employee's allegations of constitutional violations based on defendants' unjustified failure to pay her at same rate as younger coworkers and age discrimination in failing to increase her salary to reflect her seniority stated claim for age discrimination under §§ 1983. Aucoin v. Kennedy, E.D.La.2004, 355 F.Supp.2d 830 . Civil Rights 1207

A § 1983 claim has two elements: (1) the defendant acted under color of state law; and (2) as a result of defendant's conduct, plaintiff suffered a denial of a federal statutory or constitutional right or privilege. Sharif v. Buck, W.D.N.Y.2004, 338 F.Supp.2d 435, affirmed 152 Fed.Appx. 43, 2005 WL 2650070. Civil Rights 1304

School administrators had protected property interest in salary increase approved by school board, for purposes of § 1983 action brought after board rescinded increase. Rockford Principals and Sup'rs Ass'n v. Board of Educ. of Rockford School Dist. No. 205, N.D.Ill.1989, 721 F.Supp. 948. Civil Rights 1136

African-American 51-year-old employee of county failed to establish that her salary increases were incommensurate with salary increases of younger, white employees in same position, as required for age and race discrimination claims under § 1983 and New York Human Rights Law (NYHRL); employee failed to adduce any admissible evidence as to what salary increases were for comparators. Nesbitt v. Morganthau, S.D.N.Y.2002, 2002 WL 31385828, Unreported. Civil Rights 1138; Civil Rights 1210

1796. Seniority systems, deprivation of employment rights

In action under this section, application of seniority system that gives present effect to a past act of discrimination but is itself neutral in operation and makes no impermissible distinctions, does not give rise to an independent civil rights claim. Fiesel v. Board of Ed. of City of New York, E.D.N.Y.1981, 524 F.Supp. 48. Civil Rights 1141

1797. Suspension, deprivation of employment rights--Generally

State employer did not violate the United States Constitution or federal law in the various suspensions and dismissals of claimant, refusals to reinstate him, or in any possible conspiracy instant thereto occurring after claimant was indicted for and convicted of murdering a fellow employee, and thus claimant was not entitled to redress under this section. Ybarra v. Bastian, C.A.9 (Nev.) 1981, 647 F.2d 891, certiorari denied 102 S.Ct. 309, 454 U.S. 857, 70 L.Ed.2d 153. Civil Rights 1128; Conspiracy 7.5(2)

It was inherent in employment relationship as a matter of common sense that probation officer did not have right to place on wall of his office a poster favorably depicting persons who were fugitives from justice, and his supervisor could reasonably conclude that poster was unprofessional, in poor taste, and inconsistent with proper performance of plaintiff's duties as a probation officer and was acting within discretion in directing plaintiff to remove objectionable poster within two days or face suspension. Phillips v. Adult Probation Dept. of City and County of San Francisco, C.A.9 (Cal.) 1974, 491 F.2d 951. Officers And Public Employees 69.12

In order to succeed on claim that he was denied property interest without due process of law by being denied opportunity to be heard prior to suspension and termination, public employee must show that adverse employment action deprived him of property interest, and employer failed to provide him with notice of charges against him and meaningful opportunity to respond to those charges, unless exigent circumstances compelled employee's immediate removal or suspension. Sterling v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1996, 926 F.Supp. 65. Constitutional Law 272(2); Constitutional Law 278.4(5)

Mere fact that township employee believed that his continued employment in light of charges of conflict of interest

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could harm his political candidacy for local office was clearly insufficient to show involuntary resignation so as to state § 1983 claim against township and members of board of township supervisors who had previously voted to suspend employee from his position pending Attorney General's investigation. Lahaza v. Azeff, E.D.Pa.1992, 790 F.Supp. 88. Civil Rights 1128

Wrongful suspension from county job in contravention of civil service rules and regulations is not a violation of a federal right or privilege within this section. German v. Killeen, E.D.Mich.1980, 495 F.Supp. 822. Civil Rights 1128

1798. ---- Suspension with pay, deprivation of employment rights

School principal's suspension with pay did not implicate constitutionally protected property interest. Pierce v. Engle, D.Kan.1989, 726 F.Supp. 1231. Constitutional Law 277(2); Schools 147.28

1799. ---- Suspension without pay, deprivation of employment rights

Unlawful suspension of city housing authority employee without pay constituted denial of due process actionable under this section governing civil action for deprivation of rights. Hilf v. New York Housing Authority, S.D.N.Y.1982, 550 F.Supp. 1000. Civil Rights 1128

Claim that even if 71 P.S.Pa. §§ 741.803, 741.905a, 741.951(a, b), did provide for review of disciplinary proceeding against probationary employee, a reasonable lay person, upon reading the statutory provision, could easily conclude that appeal of suspension based on performance of job-related duties could not be had and that no presuspension opportunity to contest the charges was afforded, stated a cause of action for denial of due process to probationary employee who was suspended without pay for alleged misconduct. Bagby v. Beal, M.D.Pa.1977, 439 F.Supp. 1257. Civil Rights 1395(8)

1800. Training and supervision, deprivation of employment rights

City's alleged failure to train or warn its sanitation department employees did not violate due process clause, and thus, § 1983 did not provide remedy for widow of municipal employee who was fatally injured in course of his employment as a result of that alleged failure; due process clause did not impose independent substantive duty upon municipality to provide certain levels of safety and security in workplace, and city's alleged failure to train its employees, or to warn them about known risks of harm, was not omission that could properly be characterized as arbitrary, or conscience-shocking, in constitutional sense. Collins v. City of Harker Heights, Tex., U.S.Tex.1992, 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1352(5); Constitutional Law 278.4(1)

Town's alleged failure to implement sexual harassment training did not render it liable under § 1983 for town councilwoman's alleged sexual harassment of male employee; there was no evidence that town knew of any harassment by councilwoman or otherwise. Perks v. Town of Huntington, E.D.N.Y.2003, 251 F.Supp.2d 1143. Civil Rights 1352(5)

Blind employee's allegations that he was required to train and hire reading aides without assistance from his employer, the Pennsylvania Department of Public Welfare (DPW), and that DPW refused to supply him with updated computer software, or training manuals and seminar materials in braille, were sufficient to state claims against DPW under Rehabilitation Act and § 1983. Nelson v. Com. of Pennsylvania Dept. of Public Welfare, E.D.Pa.2002, 244 F.Supp.2d 382. Civil Rights 1220; Civil Rights 1225(3)

1801. Transfer, deprivation of employment rights

City employee transferred to another position without a hearing failed to establish that a developer and city

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officials conspired together to deprive him of his pretransfer hearing, as required to state a claim against developer under § 1983; record indicated that mayor and city commissioners had various reasons to transfer plaintiff including citizen complaints about employee's behavior, and there was no evidence of agreement between developer and city officials. Moore v. City of Paducah, C.A.6 (Ky.) 1989, 890 F.2d 831, rehearing denied. Civil Rights 1326(11)

If executive director of hospital transferred director of nursing and vice-president for corporate affairs of municipal corporation which operated hospital fired director of nursing because she brought evidence of malfeasance and corruption to hospital corporation's inspector general, they established hospital corporation policy and, therefore, municipal hospital corporation could be held liable for violating civil rights of director of nursing. Rookard v. Health and Hospitals Corp., C.A.2 (N.Y.) 1983, 710 F.2d 41. Civil Rights 1340

Supervisor's reduction of city employee's duties, following her complaints filed with local and state agencies alleging improper sexual conduct, could not be sustained over claims of First Amendment and Title VII retaliation violations on grounds that reductions were caused by problems arising from relationship of trust and confidence between supervisor and employee; appropriate response for personal conflicts of sort presented in instant case was transfer, not duties reduction, and employee's interest in free speech outbalanced any government efficiency interest. Thomas v. Ragland, W.D.Wis.2004, 324 F.Supp.2d 950. Civil Rights 1249(1); Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

Police officer was not victim of "adverse employment action," precluding Title VII or other Civil Rights Act suit challenging her transfer from administrative sergeant to beat sergeant, which involved no reduction in pay or benefits, despite claim that she preferred types of work done by administrative sergeant and that beat sergeant was less prestigious position. O'Neal v. City of Chicago, N.D.Ill.2004, 317 F.Supp.2d 823, affirmed 392 F.3d 909. Civil Rights 1135

Municipality's sports director was not liable in § 1983 action for political discrimination against municipal employee, whose request for transfer was denied and request for resignation was deferred until after local elections took place, allegedly due to employee's membership in political party, absent evidence that director supervised, carried out, or participated in any of the alleged discriminatory acts. Rivera Torres v. Ortiz Velez, D.Puerto Rico 2002, 306 F.Supp.2d 76, appeal denied 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Civil Rights 1359

Reasons articulated by state Board of Education, in female college administrator's suit alleging gender discrimination in employment in violation of Title VII, Title IX and § 1983, for employment decisions at issue were pretext for discrimination; campus reorganizations cited as reason for administrator's removal from her position as dean of students on two campuses and reassignment as dean of student services on one campus did not lead to demotion of any other administrators, one successful candidate for position sought by administrator had been fired from position profferred as partial justification for his preferment over her, plaintiff administrator's academic credentials were equal or superior to those of successful candidates, and at least one individual responsible for appointments harbored some animus toward administrator. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Civil Rights 1171

Assuming that African-American counselor employed by community college established prima facie case of racial discrimination in, inter alia, transfer to different job assignment at different campus and administrators' attempts to contact her during leave of absence, college officials articulated legitimate, nondiscriminatory reasons for employment decisions, which were not adequately rebutted, by stating that she was contacted during leave of absence to determine when she would return to work, that she was transferred to place her in work environment where she would not have perception of harassment, and that there were numerous problems with her job performance. Mosley v. Houston Community College System, S.D.Tex.1996, 951 F.Supp. 1279. Civil Rights

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Interests of Puerto Rico Electric Power Authority in having an efficiently run internal security office free from political dissension and distrust outweighed First Amendment rights of former employee and justified transfer based on political affiliation; internal security of authority implicated partisan issues. Pietri Bonilla v. Alvarado, D.Puerto Rico 1991, 762 F.Supp. 451. Constitutional Law 91; Territories 23

Medical professor at state university who had been assigned to university's department of family medicine had no "property interest" protected by due process clause in not being reassigned or transferred to any other department in college of osteopathic medicine, and could not maintain civil rights action based on his brief, ten-day interdepartmental transfer, which did not result in loss of salary or status. Farkas v. Ross-Lee, W.D.Mich.1989, 727 F.Supp. 1098, affirmed 891 F.2d 290. Civil Rights 1135; Constitutional Law 277(2)

Employee failed to offer proof from which reasonable fact finder could conclude that employer's motive for transferring her was discriminatory, as required for employer's liability under Title VII, §§1981, §§1983, and New York State Human Rights Law; employee failed to contravene employer's proof that transfer was part of general reorganization plan, nurses were transferred to new areas to improve morale, employee's replacement in job from which she was transferred was senior to her, other African American nurse with rank equivalent to employee remained on day shift, and employee had recommended reorganization. Roberts v. County of Nassau, C.A.2 (N.Y.) 2005, 140 Fed.Appx. 277, 2005 WL 1588786, Unreported. Civil Rights 1137

County employee, a union activist, failed to establish a prima facie case of retaliation when she was transferred to a data entry position from a PC specialist position; although she established she engaged in protected First Amendment activity and her transfer may have been adverse action, employer presented non-retaliatory grounds for transfer through undisputed evidence that employer had conducted an investigation of computer-security breach and determined that employee was involved in it. Wells v. O'Malley, C.A.6 (Ohio) 2004, 106 Fed.Appx. 319, 2004 WL 1662035, Unreported. Constitutional Law 82(11); Counties 67

City employee's transfer from one department to another was lateral, both in form and substance, and thus was not "adverse employment action" supporting claim that transfer was retaliation for employee's protected speech, in violation of her rights under First Amendment and state law. Mullen v. City of New York, S.D.N.Y.2003, 2003 WL 21511952, Unreported. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

1802. Unions, deprivation of employment rights--Generally

Discrimination against public employees because they are members of a labor organization is actionable under this section. Thomas v. Younglove, C.A.9 (Cal.) 1976, 545 F.2d 1171. Civil Rights 1125

Process provided to a teacher aide/driver employed by a regional educational service center in connection with his discharge was constitutionally sufficient to protect his property interest in his continued employment; collective bargaining agreement and its grievance procedure provided substantial post-deprivation procedures and rights, and the center's board heard an appeal of the decision to terminate him, thus affording adequate pre-termination review. Jenkins v. Area Cooperative Educ. Services, D.Conn.2003, 248 F.Supp.2d 117, modified on reconsideration 2004 WL 413267. Constitutional Law 278.5(4); Schools 63(1)

City's requirement that nonunion employees pay voluntary agency fee to union in order to be eligible for enrollment in dental insurance plan under employer-provided flexible benefits plan constituted unlawful coercion to join union, in violation of nonunion employees' First Amendment free association and free speech rights, where bargaining units had expressly voted against agency shop, and agency fee covered all charges union incurred for representational, collective bargaining, and contract enforcement activities in general, not just costs involved in negotiating, securing, and administering optional insurance plans. Brannian v. City of San Diego, S.D.Cal.2005,

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364 F.Supp.2d 1187. Constitutional Law 90.1(7.2); Constitutional Law 91; Labor And Employment 1474

Actions taken by county during labor negotiations with union were not in retaliation for union's failure to endorse one of defendants in his election bid for county office and thus, union was not entitled to recover under § 1983 civil rights deprivation claim; union failed to demonstrate that any retaliatory motive existed much less that any such motive was substantial factor in county defendants' actions. Rockland County Sheriff's Deputies Ass'n, Inc. v. Grant, S.D.N.Y.1987, 670 F.Supp. 566. Civil Rights 1033(2)

Right of association under U.S.C.A.Const. Amends. 1 and 14, § 1 protects right of public employees to join union and action under this section is proper vehicle for vindication of such right. Castleberry v. Langford, N.D.Tex.1977, 428 F.Supp. 676. Civil Rights 1126; Constitutional Law 91; Constitutional Law 274.1(2.1)

1803. ---- Dues, unions, deprivation of employment rights

Although nonunion public employees cannot be required to submit their constitutional claims with respect to agency fees to an arbitrator, if notice issues are addressed in course of reasonably prompt decision by arbitrator on chargeability issues, and nonunion employees have option of presenting those claims anew before court in civil rights action, their constitutional rights have been protected. Weaver v. University of Cincinnati, C.A.6 (Ohio) 1992, 970 F.2d 1523, certiorari denied 113 S.Ct. 1274, 507 U.S. 917, 122 L.Ed.2d 668. Labor And Employment 1039(5); Labor And Employment 1599

If collective bargaining agreement is with public employer that deducts union's agency fee from its employees' wages and part of the fee is used to advance union's political or ideological goals, as distinct from defraying union's expenses of negotiating and administering collective bargaining agreement, both public employer and union can be held liable in civil rights suit under § 1983 for violating nonunion employees' right of free speech under First Amendment. Gilpin v. American Federation of State, County, and Mun. Employees, AFL-CIO, C.A.7 (Ill.) 1989, 875 F.2d 1310, certiorari denied 110 S.Ct. 278, 493 U.S. 917, 107 L.Ed.2d 258. Constitutional Law 90.1(7.2)

Nonunion public employees would likely prevail on their § 1983 claim against a university's union for providing them with inadequate information in a notice prior to making union payroll deductions; notice failed to indicate amount of the fee, there was no independent verification of the chargeable and nonchargeable union expenses, nonmembers were required to request an audit in writing to receive a copy, and the union's deduction-escrow-rebate procedure would likely be found unconstitutional because there was a delay of nearly a year before a member would receive the rebate after request. Swanson v. University of Hawaii Professional Assembly, D.Hawai'i 2003, 269 F.Supp.2d 1252. Labor And Employment 1039(4)

Requirement that nonmembers used certified mail to file their objections to county employees' union's calculation of fair-share fee in order to invoke arbitration was unconstitutionally burdensome. Laramie v. County of Santa Clara, N.D.Cal.1992, 784 F.Supp. 1492. Labor And Employment 1039(5)

If public employer deducts union's agency fee from its employees' wages, and part of fee is used to advance union's political or ideological goals, as distinct from defraying union's expenses of negotiating and administering collective bargaining agreement, both public employer and union can be held liable for violating nonmembers' rights of free speech under the First and Fourteenth Amendments. Leer v. Washington Educ. Ass'n, W.D.Wash.1997, 172 F.R.D. 439. Labor And Employment 1039(3); Labor And Employment 1039(6)

1804. Whistle blowing, deprivation of employment rights

Finding that public housing authority officials discharged employee in violation of First Amendment in retaliation

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for his filing of auditing reports critical of authority was supported by evidence that employee had been reprimanded for filing reports, employee was discharged on day that report revealing wrongdoing on part of officials was to be filed, after being discharged, he was escorted to his office by two police officer and prevented from either circulating report or retrieving his work, and officials told employee that he was being discharged as part of reorganization of audit department, but, except for few minor changes, department was substantially same after employee left, notwithstanding authority's attack on employee's job performance. Feldman v. Philadelphia Housing Authority, C.A.3 (Pa.) 1994, 43 F.3d 823. Municipal Corporations 218(3)

Putting prison corrections officer on probation and reducing her pay for disclosing confidential information over telephone was not attributable to officer's exercise of her free speech rights in engaging in whistleblowing activity, as required to maintain First Amendment retaliation claim under § 1983, where officer admitted making unauthorized call to union representative after inmate had sexually assaulted another female officer, phone call violated Department of Criminal Justice guidelines, it was officer's second disciplinary violation in year, and sanctions given were light in comparison to maximum actions allowable under guidelines. Pierce v. Texas Dept. of Criminal Justice, Institutional Div., C.A.5 (Tex.) 1994, 37 F.3d 1146, certiorari denied 115 S.Ct. 1957, 514 U.S. 1107, 131 L.Ed.2d 849. Civil Rights 1252

Plaintiff asserting First Amendment whistle-blower claims under § 1983 must show that expressions that are alleged to have provoked retaliatory action related to matters of public concern, that alleged retaliatory action deprived him of some valuable benefit and that, but for protected expression, employer would not have taken alleged retaliatory action. Huang v. Board of Governors of University of North Carolina, C.A.4 (N.C.) 1990, 902 F.2d 1134, rehearing denied. Civil Rights 1243

Police officer claiming he was subjected to First Amendment retaliation for whistleblowing activity sufficiently alleged that captains, deputy chief, and chief of police took "adverse employment action" against him by failing to promote him, placing him on administrative leave, and refusing to reinstate him despite fact three psychologists declared him fit for duty. Neveu v. City of Fresno, E.D.Cal.2005, 392 F.Supp.2d 1159. Municipal Corporations 185(1)

Unsuccessful applicant did not show that rejection of his job application by police psychologist was in retaliation for his prior allegations that officers in his neighborhood had organized crime connections, as required to support First Amendment retaliation claim; psychologist's scrutiny of applicant's motive for making such allegations, which were part of his file, in determining his psychological fitness did not show retaliatory animus, nor did proximity between psychologist's rejection of his application and her learning of allegations. Golub v. City of New York, S.D.N.Y.2004, 334 F.Supp.2d 399. Constitutional Law 90.1(7.2); Municipal Corporations 184(1)

Issue of whether motivating factor for discharge, following publication of newspaper articles detailing his corruption allegations, of former agent for Special Investigations Bureau (S.I.B.) of Puerto Rico Department of Justice (D.O.J.) was agent's exercise of free speech rights was for jury in § 1983 action, with respect to claims against director of S.I.B., who discharged employee, supervisor who wrote memos to director recommending employee's discharge after he went to press and including domestic abuse conviction as alternative basis for employee's termination, supervisor of intelligence at S.I.B.'s Corruption and Organized Crime Investigation Division (C.O.C.I.D.) who was also personally alerted of employee's allegations of corruption and safety concerns and did nothing, and individual in charge of evaluating and recommending to Secretary of Justice the course of action respecting employee's future at DOJ. Tejada-Batista v. Fuentes-Agostini, D.Puerto Rico 2003, 251 F.Supp.2d 1048. Civil Rights 1430

A tax attorney terminated by the state failed to state a claim that his Fourteen Amendment rights were violated when he was terminated for whistleblower activities; while he sufficiently alleged an injury to his liberty interest in his good name, resulting from charges made in connection with his termination, he did not make the further necessary allegation that he was deprived of an adequate name-clearing hearing, as required by due process.

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Prager v. LaFaver, D.Kan.1998, 5 F.Supp.2d 906, affirmed 180 F.3d 1185, certiorari denied 120 S.Ct. 405, 528 U.S. 967, 145 L.Ed.2d 315. Civil Rights 1395(8)

1805. Wrongful death, deprivation of employment rights

City sewer worker, who was instructed to enter manhole to clear a line and who died of asphyxia before he could be removed, did not die as result of any abuse of government power and, thus, widow of worker could not maintain § 1983 action against city. Collins v. City of Harker Heights, Tex., C.A.5 (Tex.) 1990, 916 F.2d 284, certiorari granted 111 S.Ct. 1579, 499 U.S. 958, 113 L.Ed.2d 644, affirmed 112 S.Ct. 1061, 503 U.S. 115, 117 L.Ed.2d 261. Civil Rights 1126

1806. Dismissal, deprivation of employment rights--Generally

Physician's dismissal from anesthesiology residency program at state university for failing to disclose his participation in and dismissal from another residency program did not violate physician's due process liberty interest in pursuit of his occupation, absent showing that program director made false, defamatory statements of fact about physician and reasons for his termination. Fenje v. Feld, C.A.7 (Ill.) 2005, 398 F.3d 620, rehearing and rehearing en banc denied. Colleges And Universities 9.35(3.1); Constitutional Law 278.5(6)

Without an allegation of violation of constitutional rights, federal court had no jurisdiction to hear case brought by county employees arising from their alleged illegal dismissal. Mulherin v. O'Brien, C.A.1 (Mass.) 1978, 588 F.2d 853. Civil Rights 1128

Alleged unfair termination of state juvenile justice department employee was not a substantive due process violation, for purposes of § 1983 claim; loss of employment did not amount to a deprivation of a fundamental right. Levinson v. Mucker, W.D.Ky.2003, 289 F.Supp.2d 848. Constitutional Law 278.4(3); Infants 17

Secretary of Puerto Rico Department of Justice (D.O.J.) was not liable under § 1983 or First Amendment to former agent for Special Investigations Bureau (S.I.B.) for his discharge after publication of newspaper articles on corruption allegations made by agent; Secretary, who took office the month before agent's termination, had in signing termination letter adopted recommendation that agent be discharged for domestic abuse conviction, and there was no evidence Secretary was motivated in any way by publication of articles or agent's denouncement of corruption. Tejada-Batista v. Fuentes-Agostini, D.Puerto Rico 2003, 251 F.Supp.2d 1048. Civil Rights 1359

The employment of a public employee may not, in general, be terminated for the employee's exercise of constitutionally protected rights. Sprague v. Fitzpatrick, E.D.Pa.1976, 412 F.Supp. 910, affirmed 546 F.2d 560, certiorari denied 97 S.Ct. 2649, 431 U.S. 937, 53 L.Ed.2d 255. Officers And Public Employees 66

Board members of community action association did not conspire with state officials to terminate association's executive director in retaliation for exercising her First Amendment rights regarding legality of state's method of distributing federal funds, and thus director's termination by board members was not under color of state law, as required for § 1983 claim, even if state officials threatened to withhold funding, where state official who had ultimate authority for disbursement of funds played no role in director's termination. Spencer v. Illinois Community Action Ass'n, C.A.7 (Ill.) 2002, 51 Fed.Appx. 973, 2002 WL 31408895, Unreported. Civil Rights 1326(11)

1807. ---- Constructive discharge, dismissal, deprivation of employment rights

Public employee, physician working in correctional facility, had not been constructively discharged by steady stream of complaints, disciplinary proceedings, and occasional sanction, for purpose of his hostile work

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environment claim under due process clause in civil rights lawsuit, since employer did not take those actions solely to harass him, but, instead, employer was responding to complaints from both inmates and staff, and employer did not violate its own policies when it looked into those matters. Witte v. Wisconsin Dept. of Corrections, C.A.7 (Wis.) 2006, 434 F.3d 1031. Prisons 7

State university employee was not constructively discharged, and thus did not establish prima facie case of racial discrimination in his Title VII, §§ 1981, and §§ 1983 wrongful termination claims against university; although supervisor requested employee's resignation twice, employee refused both times, and at mediation to resolve his dispute with supervisor, employee volunteered that he wanted to leave and find another job, and he rejected university's offer of continued employment, with caveat that he move his office, in favor of deal that compensated him for six months while he looked for another job. Baca v. Sklar, C.A.10 (N.M.) 2005, 398 F.3d 1210, on remand 2005 WL 2295671. Civil Rights 1123

Former civil service employee was not constructively discharged when employer, Puerto Rico Tourism Company, appointed new supervisor for employee and ordered employee to report directly to supervisor, barring employee's claim of political discrimination in violation of the First Amendment, where employee failed to proffer any evidence suggesting that new work conditions were inferior to norm or that requiring him to respond to supervisor was result of political animus. Mercado-Alicea v. P.R. Tourism Co., C.A.1 (Puerto Rico) 2005, 396 F.3d 46. Constitutional Law 82(11); Territories 23

Among factors court considers in determining voluntariness of public employee's resignation, for purposes of § 1983 constructive discharge claim, are whether employee was given some alternative to resignation, whether employee understood nature of choice she was given, whether employee was given reasonable time in which to choose, and whether she was permitted to select effective date of resignation. Yearous v. Niobrara County Memorial Hosp. By and Through Bd. of Trustees, C.A.10 (Wyo.) 1997, 128 F.3d 1351, rehearing denied, certiorari denied 118 S.Ct. 1515, 523 U.S. 1074, 140 L.Ed.2d 669. Civil Rights 1123

Supervisory municipal employee failed to establish that city deprived him of any due process property interest, for purposes of § 1983 claim, by assigning him to more manual labor and less managerial and administrative work, even assuming that such conduct violated New Jersey statutory and common law; employee did not allege that he was discharged actually or constructively, that his salary or benefits were affected, or that he was stripped of his job title or transferred to different agency. Ferraro v. City of Long Branch, C.A.3 (N.J.) 1994, 23 F.3d 803. Civil Rights 1395(8)

Dispatcher who claimed sexual harassment by police officer failed to establish constructive discharge such as would support § 1983 claim; dispatcher made no complaint to management until after she had quit, and there was no showing that such complaint would have been futile. Woodward v. City of Worland, C.A.10 (Wyo.) 1992, 977 F.2d 1392, rehearing denied, certiorari denied 113 S.Ct. 3038, 509 U.S. 923, 125 L.Ed.2d 724. Civil Rights 1123; Civil Rights 1189

Physician at District of Columbia health clinic failed to establish she was constructively discharged, for purposes of §§ 1983 claim, in connection with her resignation from position of Clinic Chief and "retreat" to position of Medical Officer; physician's development of illnesses of hypertension, allegedly attributable to unreasonable physic demands, stress and duress of her former position, did not amount to "constructive discharge," and alleged promises of impending improvements in staffing were more likely made to keep her in her position as Clinic Chief than to force her to quit. Turner v. District of Columbia, D.D.C.2005, 383 F.Supp.2d 157. Civil Rights 1123

Genuine issues of material fact existed as to whether District of Columbia mental hospital and its officials deliberately made psychologist's working conditions intolerable, and thus constructively discharged her, precluding summary judgment as to her claim that officials of District mental hospital denied her due process by retaliating against her for recommending 12-hour-per-month conditional release of patient who had attempted to assassinate

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President of United States. Lerner v. District of Columbia, D.D.C.2005, 362 F.Supp.2d 149, appeal dismissed 2005 WL 3789087. Federal Civil Procedure 2497.1

Jury in § 1983 action could reasonably have found that constructive discharge of corrections officer was caused by unofficial custom in sheriff's office of deliberate indifference to retaliatory peer-to-peer harassment against corrections officers who breach "code of silence" by exercising their First Amendment right to speak about infractions by fellow officers; there was evidence that officer repeatedly informed high ranking officers that he was continually harassed after he reported fellow officer for rules infraction, and no action was taken. Baron v. Hickey, D.Mass.2003, 292 F.Supp.2d 248, affirmed 402 F.3d 225. Civil Rights 1430

School district employee failed to show under intolerable circumstances test that he was constructively discharged, in lawsuit alleging that school district was state actor that deprived him of his constitutional rights by violating his Fourteenth Amendment due process property and liberty interests; although superintendent asked employee to prepare job description and failed to provide guidance as to what form description should take, and superintendent reassigned his job duties, those circumstances were not so unpleasant that reasonable person would have felt compelled to resign. Speziale v. Bethlehem Area School Dist., E.D.Pa.2003, 266 F.Supp.2d 366. Constitutional Law 278.5(3); Schools 63(1)

Former special investigator for Kansas Human Rights Commission (KHRC) was not constructively discharged through alleged discriminatory denial of "reward" in form of top performers' attendance at national convention, executive director's alleged suspension of normal office procedure and direct supervision of another investigator, or written reprimand for unauthorized telephone calls. Delatorre v. Minner, D.Kan.2002, 238 F.Supp.2d 1280. States 53

State prison guard who had been living with convicted felon could not have relied reasonably on any misrepresentation by her supervisor that guard might be treated differently under prison's anti-fraternization policy if guard married the inmate, for purpose of determining whether guard's resignation was involuntary so as to deprive her of property interest protected under due process clause; guard was already subject to termination for her cohabitation with inmate, and even if she was induced to marry inmate, she was not induced to violate prison regulation prohibiting such associations. Wolford v. Angelone, W.D.Va.1999, 38 F.Supp.2d 452. Constitutional Law 278.4(3); Prisons 7

Employee's resignation will be involuntary and coerced when totality of circumstances indicate that employee did not have opportunity to make free choice, and circumstances to be considered are whether employee was given some alternative to resignation, whether employee understood nature of choice he was given, whether employee was given reasonable time in which to choose, and whether he was permitted to select effective date of resignation. Singer v. Denver School Dist. No. 1, D.Colo.1997, 959 F.Supp. 1325. Labor And Employment 826

Evidence did not support finding that corrections officer's immediate supervisor for two days a week constructively discharged corrections officer by his sexual harassment, considering that supervisor's conduct was sporadic and, at most, distasteful, that corrections officer and supervisor ceased working together several months before corrections officer's resignation, and that corrections officer testified she was not subjected to any harassment or discrimination at her new position. Stafford v. State, W.D.Mo.1993, 835 F.Supp. 1136. Civil Rights 1421

To determine whether there is constructive discharge of public employee in § 1983 action, court must inquire into objective feelings of employee and intent of employers; employee may not be unreasonably sensitive to working environment; and employer is held to intend foreseeable consequences of conduct. Meyers v. City of Cincinnati, S.D.Ohio 1990, 728 F.Supp. 477, affirmed in part, reversed in part on other grounds 934 F.2d 726. Civil Rights 1123

Course of conduct designed to harass, humiliate and frustrate parole officer in performance of his duties in a

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deliberate and calculated attempt to remove him from his position was an actionable "deprivation" of property within meaning of this section. McAdoo v. Lane, N.D.Ill.1983, 564 F.Supp. 1215, affirmed 774 F.2d 1168. Civil Rights 1126; Civil Rights 1150

Resignation by a female employee of a county sheriff's department was not a constructive discharge, so as to constitute a tangible employment action supporting claims of sexual harassment violating Title VII and the Equal Protection Clause of the Fourteenth Amendment, under §§ 1983; the employee never formally complained in writing about the behavior of a major, never complained orally to the sheriff, and did not establish any causal link between her resignation and the alleged harassment, but rather, the record demonstrated that she resigned due to health problems, a dispute over her leave time, and a concern that she would lose insurance if terminated. Mitchell v. Pope, C.A.11 (Ga.) 2006, 189 Fed.Appx. 911, 2006 WL 1976011, Unreported. Constitutional Law 224(3)

Female police officer was not constructively discharged, for purposes of §§ 1983, as result of male officers' alleged lewd and offense statements about women, where there was no evidence that officers deliberately made offensive remarks with intent to force her to resign because of her gender, and officer did not give town opportunity to resolve situation. Davison v. City of Lone Jack, Mo., C.A.8 (Mo.) 2005, 121 Fed.Appx. 671, 2005 WL 195589, Unreported. Civil Rights 1123

Former teacher at facility for juvenile delinquents failed to show that he was constructively discharged, in § 1983 lawsuit against state alleging employment discrimination; teacher alleged that his supervisors deliberately created conditions that made his continued employment intolerable, but there was long period between incidents that were alleged to be intolerable, outbursts and disruption were to be expected in setting in which teacher worked, and teacher had assistance of other persons during outbursts to extent that help was available. Linden v. Sherman, C.A.2 (N.Y.) 2003, 79 Fed.Appx. 458, 2003 WL 22441998, Unreported. Civil Rights 1123

Female clerical employee of municipal housing authority failed to establish constructive discharge, in violation of Title VII and New York Human Relations Law, or under § 1983, when she alleged that sexual harassment by supervisor and memoranda critical of her work created such an intolerable environment she was forced into early retirement; harassment had ceased, and year had elapsed since issuance of memoranda, before retirement decision was made. Parisi v. Buffalo Mun. Housing Authority, W.D.N.Y.2003, 2003 WL 21382893, Unreported. Civil Rights 1123

1808. ---- Property interest, dismissal, deprivation of employment rights

Where city employee has no Fourteenth Amendment property interest in continued employment, adequacy or even existence of reasons for failing to rehire him present no federal constitutional question, but only if employer creates and disseminates false and defamatory impression about employee in connection with his termination is such hearing required. Codd v. Velger, U.S.N.Y.1977, 97 S.Ct. 882, 429 U.S. 624, 51 L.Ed.2d 92. Municipal Corporations 218(8)

City employee who was terminated from her classified position after lengthy deliberation by city's civil service board was not subject to random, unauthorized deprivation of property interest, and thus her right to due process concerning loss of property interest in her position could not be satisfied through post-deprivation proceedings. Silberstein v. City of Dayton, C.A.6 (Ohio) 2006, 440 F.3d 306, rehearing and rehearing en banc denied. Municipal Corporations 218(8)

Discharge for cause of state employee from his position as deputy director of the Utah Department of Corrections by the Department's director did not render employee ineligible for reappointment to a career service position, under Utah law, and thus the director could not be liable in employee's § 1983 claim asserting deprivation of due process in connection with his ineligibility for reappointment; certification of employee's eligibility for reappointment was within sole province of Utah's Department of Human Resource Management (DHRM). Morgan

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v. McCotter, C.A.10 (Utah) 2004, 365 F.3d 882. Constitutional Law 278.4(3); Prisons 7; States 53

To support former employee's allegation that he was deprived of his due process rights when he was terminated by his employer without a hearing, confrontation or review, employee was required to allege facts showing that he had been deprived, by force of state action, of a liberty or property interest protected by due process clause. Ogilbee v. Western Dist. Guidance Center, Inc., C.A.4 (W.Va.) 1981, 658 F.2d 257. Civil Rights 1395(8)

Human Resources employee with Puerto Rico Government Development Bank (GDB) had no valid property interest in position held, absent reasonable expectation under Puerto Rico Personnel Act of retaining employment based on illegal appointment. Velez Rivera v. Agosto Alicea, D.Puerto Rico 2004, 334 F.Supp.2d 72, affirmed 437 F.3d 145. Constitutional Law 277(2); Territories 23

Emergency room physicians, challenging their termination, were afforded due process appropriate to their property interest in continued employment, when they were notified year in advance that physicians not board certified in designated medical specialties would be terminated, had pre-termination opportunity of hearing, together with option of pursuing union grievance, and also post-termination opportunity to pursue Article 78 proceeding, none of which they pursued. Gonzalez v. City of New York, E.D.N.Y.2001, 135 F.Supp.2d 385. Constitutional Law 275(2.1); Constitutional Law 278.4(5)

County sheriff violated county employee's Fourteenth Amendment right to procedural due process when he terminated her employment without pre-termination notice or opportunity to be heard; although there was question of whether sheriff knew that employee had completed her probationary period, cursory check of employee's timesheets and relevant provisions of work rules would have shown that she had completed her probationary period and as permanent employee had property interest in her position as defined in county civil service rules. Smith v. Milwaukee County, E.D.Wis.1997, 954 F.Supp. 1314. Constitutional Law 278.4(5); Sheriffs And Constables 24

Absent allegation that, after being discharged from his position as vice president for administration at county community college, plaintiff requested and was denied opportunity to clear his name, plaintiff could not maintain claim that he was deprived of liberty without due process based on his allegations that his termination was grounded on false accusations of misconduct or incompetence. McCarthy v. Board of Trustees of Erie Community College, W.D.N.Y.1996, 914 F.Supp. 937. Constitutional Law 278.5(3)

Neither property nor liberty interest of city employee was infringed by his termination, for purposes of § 1983 claim premised on due process clause; employee failed to allege violation of liberty interest, and failed to show that he suffered deprivation of protected property interest, since he failed to establish that he was not employed at will. Brown v. City of Galveston, Tex., S.D.Tex.1994, 870 F.Supp. 155. Civil Rights 1128

Former director of quality assurance at county hospital stated claim for violation of substantive due process arising from her discharge. Anglemyer v. Hamilton County Hosp., D.Kan.1994, 848 F.Supp. 938. Civil Rights 1395(8); Constitutional Law 278.4(3)

Public employee alleged no facts indicating that she had property right in her position, as was required for her claim that she was denied procedural due process in connection with her discharge. Wright v. Glover, N.D.Ill.1991, 778 F.Supp. 418. Civil Rights 1395(8)

A public employee who has a property or liberty interest in public employment and is discharged without being afforded requisite due process may vindicate his rights in an action under civil rights statute. McCracken v. City of Chinook, Mont., D.Mont.1987, 652 F.Supp. 1300. Civil Rights 1128

Neither longevity of employment of chief veterinarian of Maryland Racing Commission nor alleged representations

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made to chief veterinarian when he was initially hired as to anticipated duration of his employment with Commission created a reasonable inference that there was a mutually expressed understanding that in year in which chief veterinarian was dismissed he would not be terminated without cause before the end of the year; thus, chief veterinarian had no property interest in continued employment that was protected by U.S.C.A. Const. Amend. 14. Paice v. Maryland Racing Com'n, D.C.Md.1982, 539 F.Supp. 458. Constitutional Law 277(2)

1809. ---- Racial discrimination, dismissal, deprivation of employment rights

Decision to terminate black city employee was based on fact that he was permanently disabled, that city needed capable vehicle mechanic in his position, and that city had no permanent light duty work that he could perform at that time, so that failure to give employee permanent light duty job when he became permanently disabled could not be basis for employment discrimination action, where only white employee who received permanent light duty was not similarly situated. Hervey v. City of Little Rock, C.A.8 (Ark.) 1986, 787 F.2d 1223. Civil Rights 1128

African-American city employee did not establish that he was discharged under circumstances giving rise to inference of race discrimination, as required for prima facie case of race discrimination against city and its officials under §§ 1981 and 1983 white female project manager was also discharged at the same time as employee, both employee and white manager received six months notice that their positions were being eliminated, and neither the employee's position, nor the manager's position, were subsequently filled. Jessamy v. City of New Rochelle, New York, S.D.N.Y.2003, 292 F.Supp.2d 498. Civil Rights 1128; Civil Rights 1405

Employee of state training school who was discharged for striking nine-year-old resident in the back with her first was not entitled to monetary or injunctive relief on grounds that her discharge was based solely on her race; fact that employee's past work record had been excellent, and employee's bare allegation that her story concerning incident was not believed because she was black did not support her claim of racial discrimination. Mickles v. Lynchburg Training School and Hospital, W.D.Va.1976, 422 F.Supp. 672. Civil Rights 1448

1810. ---- Sex discrimination, dismissal, deprivation of employment rights

Record as whole in fired male state employee's discrimination case negated any reasonable inference of sex discrimination; employee was hired less than six months before his termination by agency's female executive director based on female human resources controller's recommendation and the same two individuals later decided to fire him, employee was replaced with another male, and testimony made clear that executive director had problems with both male and female subordinates, and hired and fired both. Steinhauer v. DeGolier, C.A.7 (Wis.) 2004, 359 F.3d 481. Civil Rights 1537

In order to prevail on § 1983 sex discrimination claim based on alleged equal protection violations, probation officer, who was demoted and subsequently discharged, was required to prove purposeful and intentional acts of discrimination based on her membership in particular class, not just on individual basis. Forrester v. White, C.A.7 (Ill.) 1988, 846 F.2d 29. Civil Rights 1171

Female employee demonstrated that city's reasons for terminating her were pretextual for purposes of employee's §§ 1983 claim alleging that city violated her Fourteenth Amendment right to equal protection under the law by terminating her because of her gender; mere fact that city's mayor offered an additional twenty reasons "after the fact" of employee's firing supported inference of pretext, and employee's duffel bag purchase was not reason for her termination in that the purchase request had not yet been approved at the time of employee's termination, and thus, no city funds had been expended on this alleged improper purchase. Scott v. City of Minco, W.D.Okla.2005, 393 F.Supp.2d 1180. Municipal Corporations 218(3)

County did not discriminate against male budget director on basis of his gender, in violation of equal protection

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clause and Title VII, despite claim that he was only male in office with eight females, that office was referred to by supervisor as "the girls and Jim," and that he was fired and replaced by female; there were differences in duties held by director and assumed by replacement, and there was unrebutted nondiscriminatory reason for termination, inability of director to get along with fellow employees. Van Arkel v. Warren County, S.D.Iowa 2005, 365 F.Supp.2d 979. Civil Rights 1179; Constitutional Law 224(3); Counties 67

Reasonable jury could not have found from evidence adduced at trial in case under Title VII and §§ 1983, viewed in light most favorable to employee, that gender discrimination played any part in decision of chancellor not to renew employee's contract in her position as assistant chancellor, where employee refused to carry out directives of reducing her administrative staff meetings and assisting chancellor in building enrollment, and no other administrator had been asked to engage in recruiting and refused. Walker v. Board of Regents of University of Wisconsin System, W.D.Wis.2004, 329 F.Supp.2d 1018, amended 2004 WL 1688342, affirmed 410 F.3d 387, rehearing and rehearing en banc denied. Civil Rights 1170

Evidence that the motivating reason for deputy court clerk's firing was the fact that she gave birth, conduct which was constitutionally protected conduct, established a right to recover under 42 U.S.C.A. § 1983; there was no evidence at trial of legitimate reason for discharge or any argument that circuit clerk would not have discharged deputy circuit clerk absent protected activity. Paxton v. Bearden, N.D.Miss.1992, 783 F.Supp. 1011. Civil Rights 1421

1810A. ---- Religious discrimination, dismissal, deprivation of employment rights

Former school employee failed to establish that he was discriminated against or harassed on the basis of his religion prior to his discharge, in violation of §§ 1983, given that he presented no evidence that change to his work schedule affected his attendance at Friday religious services, nor did he challenge the accuracy of union's determination that the schedule change was made to accommodate other, non-discriminatory purposes. Sharif v. Buck, C.A.2 (N.Y.) 2005, 152 Fed.Appx. 43, 2005 WL 2650070, Unreported. Civil Rights 1161

1811. ---- Seniority systems, dismissal, deprivation of employment rights

City fire department, which had been operating under affirmative action decree requiring it to bring ratio of minority employment within department to level reasonably reflecting ratio of each minority group to total population of city, was enjoined from reducing number of minority firemen, pursuant to economically dictated layoffs, below percentage ratios of minorities before layoff, despite the fact that layoffs were to be based on neutral factor of seniority, where affirmative action consent degree unqualifiedly proposed to eliminate existing discrimination in fire department and seniority rule had disparate effect on minority firemen. Brown v. Neeb, N.D.Ohio 1980, 523 F.Supp. 1, affirmed 644 F.2d 551. Civil Rights 1560

1812. ---- Speech and writings, dismissal, deprivation of employment rights

Former employee of city housing authority who brought §§ 1983 suit alleging he was terminated in violation of First Amendment for speaking out on a matter of public concern failed to establish that superior who made termination decision had final policymaking authority for personnel matters, and thus her single action did not constitute official policy which could trigger §§ 1983 liability; aside from various officials of authority who could overrule employee's superior, authority had a three-phase grievance procedure which allowed employee to request and obtain a hearing before executive director or three-person committee. Gelin v. Housing Authority of New Orleans, C.A.5 (La.) 2006, 456 F.3d 525.

Pickering balancing test weighed against terminated state employee, an education department psychologist who had consulted on state disability benefits claims, in his First Amendment retaliation action, which claimed that termination was result of his disagreement with new methods for approving claims for speech and language

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pathologies; employee had been involved in heated argument ending in supervisor's ultimatum to employee, and had written to management accusing supervisor of fraud and legal and ethical violations, and speech in question was more concerned with conflicts over internal procedures than with public interest. Bailey v. Department of Elementary and Secondary Educ., C.A.8 (Mo.) 2006, 451 F.3d 514. Schools 47

Factual finding by district court was clearly erroneous, in civil rights lawsuit under First Amendment free speech clause, that municipal officials did not terminate employment of police and fire department employees for their racially offensive off-duty expression in response to any reasonable concern for disruption of operations of police and fire departments; evidence was overwhelming that content of racist expression did not bring about dismissal in absence of notoriety which reasonably was seen to affect public perception of quintessential public employees and government. Locurto v. Giuliani, C.A.2 (N.Y.) 2006, 447 F.3d 159. Civil Rights 1420

Former school administrator failed to establish that her protected speech, involving accusations of improper governmental actions before the school board, was a substantial or motivating factor for the initiation of disciplinary action against administrator, as required for administrator's §§ 1983 claim of First Amendment retaliation; more than a year passed between administrator's accusations and the initiation of disciplinary proceedings, special counsel was immediately appointed to investigate the accusations made before the board, administrator was placed on a paid leave basis, and school board directed a series of medical examinations, as justified by the developing diagnoses, and permitted administrator's doctors to observe these examinations, and, only after receiving the final medical report, indicating that administrator was suffering from mental disorders and instability, were disciplinary proceedings initiated. Burkybile v. Bd. of Educ. of Hastings-On-Hudson Union Free School Dist., C.A.2 (N.Y.) 2005, 411 F.3d 306, certiorari denied 126 S.Ct. 801, 163 L.Ed.2d 628. Schools 63(1)

State agency head acted reasonably in terminating employee who had reported sexual harassment of employee's coworkers by employee's supervisor, and thus could not be liable in employee's § 1983 First Amendment retaliation action; internal investigator's report stated that alleged victims all denied harassment and that employee was angry because supervisor had demoted him, there was no evidence of bias on part of agency head or investigator, and employee failed to present any evidence in support of his allegations when asked to do so by agency head, and thus agency head's interest in promoting efficiency clearly outweighed employee's interest in commenting on matter of public concern. Johnson v. Louisiana, C.A.5 (La.) 2004, 369 F.3d 826. Constitutional Law 90.1(7.2); States 53

Former public employee failed to establish causal connection between his discharge and his allegedly protected speech in criticizing procedures of committee on which he served, for purposes of his § 1983 claim that his discharge was in retaliation for exercising his First Amendment rights, where former public employee merely alleged his belief that he was discharged in retaliation for such speech, former public employee was not terminated until over year after he finished serving on such committee, and supervisor who recommended former public employee's discharge was not employed by the government agency at time former public employee served on committee. Hom v. Squire, C.A.10 (Utah) 1996, 81 F.3d 969. Constitutional Law 90.1(7.2); Officers And Public Employees 66

To prove § 1983 violation based on violation of public employee's First Amendment rights, once public employee's speech is determined to be protected under *Connick* two-part test, public employee must show that speech was a motivating factor in discharge decision. Barnard v. Jackson County, Mo., C.A.8 (Mo.) 1995, 43 F.3d 1218, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 53, 516 U.S. 808, 133 L.Ed.2d 17. Constitutional Law 90.1(7.2)

Complaint failed to state claim against police department for violation of rights of employee who was terminated after federal judge who employed her was interviewed by police officer investigating internal affairs complaint that employee had made where police department could not and did not make any decision or take any actions affecting

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employee's rights, benefits, relationship, or status with state, notwithstanding facts that employee did allege that she was defamed by officer and that her termination was retaliation for her exercise of First Amendment rights. Gini v. Las Vegas Metropolitan Police Dept., C.A.9 (Nev.) 1994, 40 F.3d 1041. Civil Rights 1395(8)

If public employee's writing of novel was the only cause of his being fired and there was no legitimate reason for his supervisors to discourage him from writing the novel, he stated a claim that his rights under the First Amendment had been violated. Eberhardt v. O'Malley, C.A.7 (Ill.) 1994, 17 F.3d 1023. Constitutional Law 90.1(7.2)

Determining whether public employee was fired because of her constitutionally protected speech requires three-step analysis: employee must show she was engaged in protected activity; if she makes this showing, she must show activity was substantial or motivating factor in her discharge; and, if both showings are made, defendants have opportunity to defeat her claim by demonstrating they would have taken same action absent protected conduct. Swineford v. Snyder County Pa., C.A.3 (Pa.) 1994, 15 F.3d 1258. Constitutional Law 90.1(7.2)

First Amendment rights of registered nurse at state correctional center infirmary were violated by her discharge after she reported violations of nursing practices; nurse's speech involved matter of public concern, disruption from nurse's "whistle-blowing" was minimal interest when weighed against exposure of unethical medical practices affecting hundreds of inmates, and warden's warning that nurse would lose her job if she filed complaint with State Board of Nursing was sufficient evidence that her speech motivated decision to fire her. Frazier v. King, C.A.5 (La.) 1989, 873 F.2d 820, rehearing denied 878 F.2d 1435, certiorari denied 110 S.Ct. 502, 493 U.S. 977, 107 L.Ed.2d 504. Constitutional Law 90.1(7.2)

There was insufficient evidence to support conclusion that county board's action in adopting budget cuts, causing county employee's being laid off, was motivated by county employee's letter writing activity, or that desire to "get rid" of employee was substantial factor or causative factor in board's decision, such as would render discharge improper under First Amendment. Pilarowski v. Macomb County Health Dept., C.A.6 (Mich.) 1988, 841 F.2d 1281, certiorari denied 109 S.Ct. 133, 488 U.S. 850, 102 L.Ed.2d 106. Civil Rights 1421; Counties 67

Speech by county employee at public meeting of county board alleging inefficiency, false reports, duplication and unnecessary work on and parts for vehicles under jurisdiction of Division of Motor Vehicles in which he worked was protected under U.S.C.A. Const. Amend. 1, and thus defendants were liable for suspending employee in retaliation for that speech, as information conveyed by employee was of significant public, and not merely personal or private, interest, and as county's chain-of-command policy could not be used to justify that retaliatory action under rubric of county's interest in promoting efficiency of public service. Czurlanis v. Albanese, C.A.3 (N.J.) 1983, 721 F.2d 98. Counties 67; Constitutional Law 90.1(7.2)

Jury which heard testimony of circumstances of employee's termination from federal emergency employment program, proximity of termination in relation to city personnel officer's awareness of critical article written by employee, fact that city personnel officer had entire article before him at time he terminated employee, and fact that city personnel officer had discussed article with a colleague shortly before summoning employee to his office could properly infer that city personnel officer had terminated city employee for writing an article critical of emergency employment program in city, thus violating employee's rights under U.S.C.A. Const. Amend. 1. Crawford v. Garnier, C.A.7 (Wis.) 1983, 719 F.2d 1317. Municipal Corporations 218(9)

Even if independent contractor's letter to special education committee, expressing support for continuing services for special education student at an integrated day care center, was constitutionally protected speech, the government's interest in terminating her contract outweighed the interest in the speech, for purposes of contractor's §§ 1983 retaliation claim, given that contractor was not following procedural requirements in writing the letter and had been reprimanded in the past for her failure to do so. McGuire v. Warren, S.D.N.Y.2005, 404 F.Supp.2d 530.

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42 U.S.C.A. § 1983

Counties 127

Claim was stated that athletic association, as employer of athletic director for state university, and assistant athletic director were responsible for wrongful termination of cheerleading coordinator, after she allegedly interjected Christianity into cheerleading activities and read statement to squad critical of her placement on probationary status as result of those activities. Braswell v. Board of Regents of University System of Ga., N.D.Ga.2005, 369 F.Supp.2d 1371. Civil Rights 1395(8)

Purely private speech by a public employee cannot be the basis for a §§ 1983 action alleging retaliation in violation of the First Amendment. Tasadfoy v. Ruggiero, S.D.N.Y.2005, 365 F.Supp.2d 542. Constitutional Law 90.1(7.2)

Genuine issue of material fact as to whether state university officials terminated employee because of his public statements accusing university of improper conduct in handling intellectual property dispute with third party precluded summary judgment on qualified immunity grounds in employee's §§ 1983 action alleging that he was terminated in retaliation for exercise of his First Amendment rights. Biby v. Board of Regents of University of Neb. at Lincoln, D.Neb.2004, 338 F.Supp.2d 1063, amended in part 340 F.Supp.2d 1031, affirmed 419 F.3d 845. Federal Civil Procedure 2497.1

Former deputies established prima facie case of First Amendment retaliatory discharge under §§ 1983 when they showed that they were not recommissioned as deputies under newly elected sheriff, that they had participated in campaign against newly elected sheriff by exercising their speech rights in support of opposing candidate, that four of deputies had participated in prior lawsuit against town police department, that speech in prior lawsuit and in sheriff election involved matters of public concern, and that their interest in speaking out on matters of public concern outweighed interests of newly elected sheriff and his deputy sheriff in promoting efficiency. Smith v. Parish of Washington, E.D.La.2004, 318 F.Supp.2d 366. Constitutional Law 90.1(7.2); Sheriffs And Constables 21

City and its officials did not demonstrate that governmental interest in avoiding potential disruption to community and police and fire departments outweighed First Amendment right of free speech of police and fire employees who participated in parade float that depicted African-Americans in stereotypical manner, for purposes of determining whether city was liable for retaliatory discharge of police and fire department employees under § 1983; employees' expression was on matter of public concern of racial integration in community, there was no evidence of actual or potential disruption to departments' internal operations as result of employees' speech, and only evidence offered as to external disruption to community relations and minority recruiting was based on anticipated reaction to speech by certain offended groups in city and did not justify employees' termination for their exercise of constitutionally protected conduct while off duty. Locurto v. Giuliani, S.D.N.Y.2003, 269 F.Supp.2d 368, reversed and remanded 447 F.3d 159. Constitutional Law 90.1(7.2); Municipal Corporations 185(1); Municipal Corporations 198(2)

School district employee's allegations that supervisor's retaliatory policy resulted in filing of unwarranted negative job evaluations and disciplinary charges, termination from his position as bus driver trainer and, ultimately, termination of his employment with district, were sufficient to satisfy "adverse employment action" element of employee's § 1983 retaliation claim. Branch v. Guilderland Cent. School Dist., N.D.N.Y.2003, 239 F.Supp.2d 242 . Schools 63(1)

A terminated state tax attorney stated a prima facie case of First Amendment deprivation when he alleged he was disciplined and then terminated in response to his disclosures of misinterpreted tax laws resulting in illegal refunds, and a tax administrative procedure susceptible to political influence, and his assertion that many taxpayer perceived they were unfairly treated; the statements covered matters of public concern, the state failed to show disruption of the tax department as a result of the statements, and the timing of disciplinary actions, following incidents of

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disclosure, provided circumstantial evidence that the adverse employment actions were caused by the disclosures. Prager v. LaFaver, D.Kan.1998, 5 F.Supp.2d 906, affirmed 180 F.3d 1185, certiorari denied 120 S.Ct. 405, 528 U.S. 967, 145 L.Ed.2d 315. Civil Rights 1395(8)

Discharged employees' allegations that their complaints about official malfeasance at county hospital authority constituted constitutionally protected speech and were substantial or motivating factor in adverse action taken against them by county hospital authority officials were sufficient to state § 1983 claim against the officials in their individual capacities, notwithstanding officials' asserted defense of qualified immunity, as allegations indicated it was possible for discharged employees to prove that officials' conduct violated clearly established constitutional right of which reasonable person would have known. Ketron v. Chattanooga-Hamilton County Hosp. Authority, E.D.Tenn.1996, 919 F.Supp. 280. Civil Rights 1398

Former county employee, alleging § 1983 retaliatory discharge in response to her complaints about Animal Control Unit, did not meet burden of showing that First Amendment activity was substantial or motivating factor in county's decision to discharge her; although supervisor who terminated employee was aware that employee was dissatisfied with management of Unit, this was not sufficient to prove that supervisor was aware that employee had lodged formal complaints with county officials resulting in public investigation into Unit and even if supervisor was aware of complaints, such complaints were fully investigated several months prior to her termination. Addison v. Gwinnett County, N.D.Ga.1995, 917 F.Supp. 802, affirmed 78 F.3d 600. Civil Rights 1251

Former school district employee stated a § 1983 action against school district, board of education members, her immediate supervisor, and supervisor's supervisor for termination in violation of First Amendment free speech rights by alleging that she was terminated for speaking about her supervisor's including by mistake in his salary, school district's Medicare contribution on supervisor's behalf so as to raise retirement benefits to which supervisor would be entitled, even though employee attempted to speak with school district superintendent only after her bonus was revoked and defendants claimed that this established she was acting out of private concern at the time; had employee been acting out of personal concern, she most likely would have refrained from raising issue a second time with her supervisor, and she acted against her own best interest by furthering pursuing matter. Rojicek v. Community Consol. School Dist. 15, N.D.Ill.1995, 888 F.Supp. 878, on reconsideration in part. Civil Rights 1395(8)

Person cannot be denied employment because of the legitimate exercise of rights under U.S.C.A.Const. Amend. 1, particularly a person's interest in freedom of speech; the denial of employment because of constitutionally protected speech in effect penalizes and inhibits free speech and thereby permits employer to achieve by indirection that which employer could not command directly. Gilbreath v. East Arkansas Planning and Development Dist., Inc., E.D.Ark.1979, 471 F.Supp. 912. Constitutional Law 90.1(7.1)

Public employee may not be discharged or demoted for exercising his right of free speech. Alicea Rosado v. Garcia Santiago, D.C.Puerto Rico 1976, 414 F.Supp. 709. Officers And Public Employees 66

Former city employee established prima facie case that she was terminated in retaliation for protected speech, in violation of her First Amendment rights and state law, when former employee was terminated after complaining about possible misuse of state grant funds and showed that her speech was likely motivating factor in city's termination decision, in that her supervisors discussed and prepared for her termination shortly after becoming aware of her request for whistleblower status and termination occurred only 80 days after her initial complaint to investigations department. Mullen v. City of New York, S.D.N.Y.2003, 2003 WL 21511952, Unreported. Constitutional Law 90.1(7.2); Municipal Corporations 218(3)

1813. ---- Policy disputes, dismissal, deprivation of employment rights

Demonstration that an official city policy opposing fluoridation of city's water existed, and that an official

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interpretation of that policy caused retaliation against and termination of public employee for openly favoring fluoridation, would suffice as basis for imposing liability upon city under civil rights statute, even though policy itself was not unconstitutional. Bartholomew v. Fischl, C.A.3 (Pa.) 1986, 782 F.2d 1148. Civil Rights 1244

Given that state magistrate's criticism of clerk of court's delegation of microfilming duties to her was protected and was not a proper basis for dismissal, decisions of clerk and superior court judge not to reappoint her were made in retaliation for that speech entitling her to relief under this section. Lewis v. Blackburn, C.A.4 (N.C.) 1984, 734 F.2d 1000, on rehearing 759 F.2d 1171, certiorari denied 106 S.Ct. 228, 474 U.S. 902, 88 L.Ed.2d 228. Clerks Of Courts 7

Former county building inspector identified specific speech or expressive conduct for which his employment was allegedly terminated sufficient to state § 1983 claim against county for violation of his First Amendment rights; rather than general dispute with supervisors over general building code enforcement, inspector alleged that his refusal to pass specific contractors' substandard work, despite his supervisor's direction to do so, prompted his termination. Roper v. County of Chesterfield, Va., E.D.Va.1992, 807 F.Supp. 1221. Civil Rights 1395(8)

1814. ---- Political contributions, dismissal, deprivation of employment rights

In civil rights action brought by public employees discharged by county clerk for alleged failure of employees to comply with custom of making political contributions, county could be held liable. Burkhart v. Randles, C.A.6 (Tenn.) 1985, 764 F.2d 1196. Civil Rights 1351(5)

Genuine issue of material fact as to whether discharge of probationary public employee was motivated by political discrimination, precluded summary judgment in favor of public employer, in employee's claim against employer, for political discrimination. Reyes Canada v. Rey Hernandez, D.Puerto Rico 2003, 286 F.Supp.2d 174, reconsideration denied in part 221 F.R.D. 294. Federal Civil Procedure 2497.1

1814A. ---- Political appointments, dismissal, deprivation of employment rights

Puerto Rico public employee did not present sufficient evidence that would lead a reasonable jury to conclude that actions taken against him were motivated by political discrimination in violation of the First Amendment; although employee's duties were taken away, he was transferred, his salary was reduced substantially and he had less desirable working environment after change in administration, his duties and salary had been systematically increased by prior administration in concerted attempt to protect him from reinstatement to lesser duties and salary of his last legal career position upon coming change in administration, and comments made generally around office as to employment future of employees of his party affiliation did not bear sufficient connection to employment actions taken. Cardona Martinez v. Rodriguez Quinones, D.Puerto Rico 2004, 306 F.Supp.2d 89, affirmed 444 F.3d 25. Civil Rights 1430

Genuine issues of material fact, as to motivation behind investigation into and termination of Puerto Rico public employee and legality of his appointment, precluded summary judgment for defendants on Fourteenth Amendment due process claim on basis that, because appointment was illegal, employee had no protected property interest therein. Orraca Figueroa v. Torres Torres, D.Puerto Rico 2003, 288 F.Supp.2d 176. Federal Civil Procedure 2497.1

1815. ---- Political affiliation, dismissal, deprivation of employment rights

Jury finding that Puerto Rico corrections administration employees' demotions were improper and the result of discrimination, as required to sustain jury verdict for employees' claims alleging that their political affiliations were a substantial or motivating factor behind their demotions, in violation of their First Amendment and due process rights, was supported by evidence that employees were long-standing, competent employees of the Puerto Rico

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corrections administration, that both were demoted without being given any notice or opportunity to defend their promotions, and that important documents were missing from their personnel files. Rodriguez-Marin v. Rivera-Gonzalez, C.A.1 (Puerto Rico) 2006, 438 F.3d 72. Constitutional Law 278.4(3)

Evidence was sufficient for jury to conclude in civil rights lawsuit that administrator helped mayor to design and implement privatization of Puerto Rico municipal sanitation department in discriminatory manner in violation of First Amendment political affiliation rights of career employees, where defendants themselves characterized privatization decision as one made by both men together and there was evidence that administrator harbored political animus himself. Borges Colon v. Roman-Abreu, C.A.1 (Puerto Rico) 2006, 438 F.3d 1. Civil Rights 1430

Sufficient circumstantial evidence existed for jury to find that mayor's decisions regarding chief clerk's termination as part of budget cuts were in retaliation for clerk's political support of mayoral rival in violation of First Amendment, including evidence that clerk received warnings about her political activities from supervisor, who also told her that mayor was furious about her activities, that mayor's attitude toward clerk changed after she supported rival candidate in opposing party's primary, that most permanent employees were returned to payroll, and that four part-time persons were hired to perform clerk's old duties. Gronowski v. Spencer, C.A.2 (N.Y.) 2005, 424 F.3d 285. Civil Rights 1421

Civil service employee did not show that his dismissal was related to his political affiliation, as required to establish §§ 1983 political discrimination claim, under the First Amendment; although employee was a known member of a different political party than party to which his supervisors belonged, his employer, Puerto Rico Tourism Company, claimed that employee was fired because he cashed a check made out to his political party while performing his official duties, in violation of employee rules regarding conflict of interest, and employee failed to proffer evidence of any specific discriminatory conduct which proved that his political patronage was substantial or motivating factor in his dismissal. Mercado-Alicea v. P.R. Tourism Co., C.A.1 (Puerto Rico) 2005, 396 F.3d 46. Constitutional Law 91; Territories 23

Former employee with the Puerto Rico Department of Labor and Human Resources (DLHR), who alleged in § 1983 action that her employment was improperly terminated on the basis of her political affiliation, would suffer irreparable injury, absent the issuance of a preliminary injunction ordering reinstatement of employment, given that back pay or other monetary damages against the Commonwealth of Puerto Rico were unavailable, and it was unclear whether claim against DLRH officials in their individual capacities would yield an award of compensatory damages equal to the employee's lost wages. Rosario-Urdaz v. Rivera-Hernandez, C.A.1 (Puerto Rico) 2003, 350 F.3d 219. Civil Rights 1457(6)

Lack of evidence that county sheriff's department officials sought filing of criminal charges against former employee in order to retaliate against her for politically supporting former sheriff, to gain political advantage against former sheriff or to retaliate against her for filing notice of tort claim justified dismissal of former employee's § 1983 vindictive prosecution claim. Wolford v. Lasater, C.A.10 (N.M.) 1996, 78 F.3d 484. Civil Rights 1088(5)

Assertion by clerks, investigators, dispatchers, jailers and process servers in sheriff's office that new sheriff replaced all employees who had opposed his election stated claim for violation of sheriff's department employees' civil rights. Terry v. Cook, C.A.11 (Ala.) 1989, 866 F.2d 373. Civil Rights 1395(8)

Even if it was contractually permissible for civil defense director to discharge employee, it did not destroy employee's right to claim unfair political discharge under federal law, or Puerto Rican statute. Mariani Giron v. Acevedo Ruiz, C.A.1 (Puerto Rico) 1987, 834 F.2d 238. Civil Rights 1128; Territories 23

Former employees of Pennsylvania Department of Transportation, who alleged that they were discharged because

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of their political affiliation, and who sought compensatory or punitive damages in addition to their requests for back pay, reinstatement and declaratory and injunctive relief, stated cognizable claims under this section and their complaint was sufficient to entitle them to a jury trial. Laskaris v. Thornburgh, C.A.3 (Pa.) 1984, 733 F.2d 260, certiorari denied 105 S.Ct. 260, 469 U.S. 886, 83 L.Ed.2d 196. Jury 14(1)

Employee and his wife failed to sustain a prima facie case of political discrimination against Puerto Rico's State Insurance Fund Corporation (SIFC), under §§ 1983, based on allegations that their constitutional rights were infringed when the hearings granted to them by SIFC were merely informal, non-adversarial, administrative proceedings held by agency, which, in turn, only afforded employee the opportunity to present evidence to contradict employer's purported reasons for dismissal. Silva Rivera v. State Ins. Fund Corp., D.Puerto Rico 2006, 443 F.Supp.2d 218. Civil Rights 1231

Former transitory public employees established prima facie case of political discrimination against officials of governmental agency, in civil rights lawsuit under First Amendment, by presenting statements evidencing charged political environment at agency and statements that supported inference that officials at agency were aware of employees' political affiliation, by successfully impeaching officials' proffered nondiscriminatory rationale for not renewing their contracts and, in turn, proffering evidence supporting conclusion that politically discriminatory animus was at play, and by presenting evidence which showed that they were all replaced by supporters of officials' political party. Martinez-Baez v. Rey-Hernandez, D.Puerto Rico 2005, 394 F.Supp.2d 428. Civil Rights 1421

Former transitory employee of the Office of Superintendence of the Capitol in Puerto Rico failed to establish causal connection between government's alleged discriminatory conduct and his political affiliation, as was required to maintain action for political discrimination under First Amendment; letters notifying employee of termination of his contract did not make any reference to employee's political affiliation, employee's final notice of appointment had expired, government determined there was no need for employee's services, and his position remained vacant after termination of his contract. Desiderio-Ortiz v. Frontera-Serra, D.Puerto Rico 2005, 394 F.Supp.2d 381. Territories 23

Assertion by municipal employee, that she was discriminated against for supporting opponent of mayor in election, was claim of First Amendment deprivation rather than claim of Equal Process violation under Fourteenth Amendment, as pleaded. Figueroa-Garay v. Municipality of Rio Grande, D.Puerto Rico 2005, 364 F.Supp.2d 117. Civil Rights 1395(8)

Former municipal employees failed to establish that municipality would not have refused to rehire them following the expiration of their contracts but for their political affiliation, as required for §§ 1983 political discrimination to satisfy burden of rebutting municipality's proffered nondiscriminatory reasons for the adverse employment action, namely, that both employees had received a written reprimands for physically assaulting a supervisor and disorderly conduct. Cruz-Baez v. Negron-Irizarry, D.Puerto Rico 2005, 360 F.Supp.2d 326. Civil Rights 1137

Terminated employee who sued former supervisors at Puerto Rican government agency failed to rebut supervisors' argument that they would have taken same corrective action regardless of her political affiliation, as required to maintain First Amendment political discrimination claim; notwithstanding purported illegality of employee's initial appointment, reasonable minds could have differed as to whether she would have qualified to receive career status under Puerto Rican law. Lopez-Sanchez v. Vergara-Agostini, D.Puerto Rico 2005, 359 F.Supp.2d 48. Constitutional Law 91; Territories 23

Elrod-Branti doctrine was applicable to director of territorial Department of Education's sexual harassment complaints office, in director's and others' §§ 1983 First Amendment action against Department and individual officials alleging discrimination based on political affiliation; director was responsible for executing public policy in area where there was room for political disagreement, history of director's political affiliation and of her

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appointment to directorship gave rise to inference that appointment was because of political affiliation, and representation of Department secretary was function inherent to directorship. Reyes Canada v. Rey Hernandez, D.Puerto Rico 2004, 340 F.Supp.2d 142. Constitutional Law 91; Territories 23

Town employee, an Assistant Building Inspector, who claimed he was fired, not rehired and denied compensation for accrued vacation, personal and sick time because he was active participant in Republican Party, in violation of his First Amendment speech and associational rights, failed to satisfy causal connection requirement for § 1983 claims; not all board members knew of employee's political affiliation and activities and there was no evidence, beyond conclusory allegations, that any such knowledge affected their employment decisions in any way or that reasons given for those decisions, such as need to reorganize employee's department, employee's acceptance of free truckloads of firewood from local developers and contractors for his personal use in violation of town Code of Ethics, and town's general policy of requiring departing employees to sign release before receiving accrued compensation, were merely pretextual. Zdziebloski v. Town of East Greenbush, N.Y., N.D.N.Y.2004, 336 F.Supp.2d 194. Constitutional Law 90.1(7.2); Constitutional Law 91; Towns 28

Terminated Human Resources employee at Puerto Rico Government Development Bank (GDB) did not establish prima facie case of political discrimination, where she did not present any specific evidence indicating existence of political discriminatory animus other than blanket assertion of being member of opposing political party and her interpretation regarding her dismissal, or evidence that she was treated differently than other similarly situated employees because of her political affiliation. Velez Rivera v. Agosto Alicea, D.Puerto Rico 2004, 334 F.Supp.2d 72, affirmed 437 F.3d 145. Constitutional Law 82(11); Territories 23

Employees and former employees of municipality failed to produce evidence of discriminatory animus, based on their political affiliation, for adverse employment actions, and thus, municipality, its current mayor, and former head of its human resources department were entitled to qualified immunity from employees' § 1983 claim alleging violation of their First Amendment free speech rights; employees did not provide any factual support to show that they were treated differently due to their political ideas. Aldarondo-Lugo v. Municipality of Toa Baja, D.Puerto Rico 2004, 329 F.Supp.2d 221. Civil Rights 1376(10)

Elrod-Branti doctrine, which protected government officials who made employment decisions based upon political affiliation, was not applicable to particular trust position, which related to investigations of rape or sodomy of minors by teachers and teachers who were charged with other criminal conduct, in civil rights lawsuit brought by employees and former employees of Puerto Rico government agency against agency and individual officials alleging discrimination based upon political affiliation; although position had confidential nature, position did not relate to partisan political interests or concerns. Reyes Canada v. Rey Hernandez, D.Puerto Rico 2004, 326 F.Supp.2d 255. Constitutional Law 91; Territories 23

Puerto Rico public employee's allegations regarding comments to effect that employees of her party affiliation would have to leave following change in administration were insufficient to maintain cause of action for political discrimination under the First Amendment; employee did not show connection between those comments and her return to her last legal career appointment, which represented attempt to correct previous illegal personnel transactions. Cardona Martinez v. Rodriguez Quinones, D.Puerto Rico 2004, 306 F.Supp.2d 89, affirmed 444 F.3d 25. Constitutional Law 91; Territories 23

Municipal employee established prima facie case that defendant mayor's act of declining to accept employee's resignation and deferring acceptance until after elections that included mayoral race in which employee and mayor were candidates was political discrimination in violation of First Amendment; mayoral campaign was heated, and mayor allegedly made public statement that he would not "accept the resignation of the candidate because he's being investigated on some sick leave days he took. He's a crook." Rivera Torres v. Ortiz Velez, D.Puerto Rico 2002, 306 F.Supp.2d 76, appeal denied 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543

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42 U.S.C.A. § 1983

U.S. 805, 160 L.Ed.2d 7. Constitutional Law 82(11); Territories 23

Former employee of the Puerto Rico Highway Authority (PRHA) who alleged that his termination constituted political discrimination failed to demonstrate that proffered nondiscriminatory reason for his termination is merely a pretext; Executive Director of the PRHA stated that employee was terminated because he had obtained privileged and confidential information from personnel files in violation of PRHA regulations, and employee did not attempt to deny the charges against him, arguing only that they were time-barred. Rivera v. Fagundo, D.Puerto Rico 2004, 301 F.Supp.2d 103, affirmed 414 F.3d 124. Constitutional Law 82(11); Territories 23

Former territorial employees established prima facie case of political discrimination under § 1983 against their former employer, where they testified that they were members of opposition political party, that their job performance was satisfactory, and that they were substituted with members of new administration's political party. Flores Camilo v. Alvarez Ramirez, D.Puerto Rico 2003, 283 F.Supp.2d 440. Civil Rights 1126

Evidence of highly charged political environment coupled with parties' competing political persuasions may be sufficient to show discriminatory animus, especially in instance where public employee was conspicuous target for political discrimination; nonetheless, merely juxtaposing protected characteristic, someone else's politics, with fact that public employee was treated unfairly is not enough to state constitutional claim and what is required is fact specific showing that causal connection exists that links adverse employment action to public employee's politics. Gonzalez Pina v. Rodriguez, D.Puerto Rico 2003, 278 F.Supp.2d 195, affirmed 407 F.3d 425. Civil Rights 1421

Official of Commonwealth of Puerto Rico was qualifiedly immune from political discrimination claim under § 1983 arising from his decision to reclassify position of Vice President of Human Resources and Labor Relations of Government Development Bank of Puerto Rico (GDB) from career position to trust position, and his decision to transfer holder of that position and to place person of his same political affiliation in it. Huertas Morales v. Agosto Alicea, D.Puerto Rico 2003, 278 F.Supp.2d 164. Civil Rights 1376(10)

Workforce Investment Act (WIA) did not impliedly foreclose § 1983 claim of political discrimination by employees against municipal consortium; predecessor statutes and corresponding caselaw did not support conclusion that WIA complainants were barred from bringing § 1983 claims without first exhausting administrative procedures. Delgado-Greo v. Trujillo, D.Puerto Rico 2003, 270 F.Supp.2d 189, appeal dismissed as improvidently granted 395 F.3d 7. Civil Rights 1126; Civil Rights 1320

Genuine issue of material fact, as to whether superintendent's political affiliation was a substantial or motivating factor in decision not to reappoint him, precluded summary judgment on § 1983 claim predicated on political discrimination; deposition statement of newly elected mayor of different party that it was "time for a change" could mean either a change in political affiliation or something else, and undocumented record did not support mayor's claim of superintendent's poor job performance. McKeever v. Township of Washington, D.N.J.2002, 236 F.Supp.2d 400. Federal Civil Procedure 2497.1

Allegations of city employee's complaint, including allegation that mayor's volunteer campaign director told employee that employee would lose his job as result of his failure to support mayor's election, were sufficient to support inference that director was acting jointly with public officials who themselves acted under color of law, as required to state claim against campaign director in § 1983 political patronage case. Roche v. Donahue, D.Mass.1997, 985 F.Supp. 14. Civil Rights 1396

Defendants bore substantial burden of showing that political affiliation was appropriate requirement for discharged public employee's position, and any doubt would be resolved in employee's favor for purposes of her § 1983 First Amendment claim. Catone v. Spielmann, N.D.N.Y.1997, 966 F.Supp. 1288, appeal dismissed 149 F.3d 156. Constitutional Law 91

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42 U.S.C.A. § 1983

Former county employee stated § 1983 cause of action against county by alleging that county conspired with county legislators and county executive to pass a resolution that denied employee his job due to his political affiliation. Turner v. County of Suffolk, E.D.N.Y.1997, 955 F.Supp. 175. Conspiracy 18

Fact that mayor refused to overrule supervisor's decision to dismiss two city employees or that he relied on opinion of corporation counsel that their firings were justified were insufficient to show requisite degree of supervisory encouragement, or deliberate indifference on mayor's part, necessary to support § 1983 claim against mayor for violating First Amendment free speech and free associate rights of employees allegedly fired for want of dedication to mayor's political interests. Flynn v. Menino, D.Mass.1996, 944 F.Supp. 81, affirmed in part, vacated in part 140 F.3d 42, certiorari denied 119 S.Ct. 403, 525 U.S. 961, 142 L.Ed.2d 327. Civil Rights 1359

Discharge of paramedic and coordinator of patient transportation for county agency for failing to support candidate for county sheriff would violate First Amendment; employee's political affiliation was of no significance to operation of sheriff's office or to operation of agency. Burns v. County of Cambria, Pa., W.D.Pa.1991, 764 F.Supp. 1031, motion to amend denied 788 F.Supp. 868, affirmed in part, appeal dismissed in part on other grounds 971 F.2d 1015, certiorari denied 113 S.Ct. 1049, 506 U.S. 1081, 122 L.Ed.2d 357. Constitutional Law 91; Counties 67

Allegation of mayor's personal involvement in discharge of city employee in retaliation for political association through his personal identification of those senior executive service employees of city who were not his political supporters stated valid cause of action under civil rights statute [42 U.S.C.A. § 1983] against mayor in his individual capacity as well as his official capacity. Salkin v. Washington, N.D.Ill.1986, 628 F.Supp. 138. Municipal Corporations 218(8)

Former public employee claiming that he was discharge solely because of his membership in Democratic party stated cause of action under this section; employee's political activities were protected by U.S.C.A.Const. Amend. 1 , and actions of county and county officials in discharging him were clearly under color of state law. Mitman v. Glascott, E.D.Pa.1983, 557 F.Supp. 429, affirmed 732 F.2d 146. Civil Rights 1395(8)

Cause of action by state or municipal employees who alleged they have been discharged solely because of their partisan political affiliation constitutes a cognizable claim directly under U.S.C.A.Const.Amends. 1, 14 as well as under this section. Moorhead v. Government of Virgin Islands, D.C.Virgin Islands 1982, 542 F.Supp. 213. Civil Rights 1128

Evidence that former employee of Commonwealth's Office of Civil Defense was a member of one political party, that the director of civil defense was a member of another political party, and that there was a prohibition against active partisan political activity by employees was insufficient to show that discharge of the employee, who had been given a temporary appointment as an executive officer in the office, was for political reasons. Colon Velez v. Santiago de Hernandez, D.C.Puerto Rico 1977, 440 F.Supp. 432. Territories 23

1816. ---- Patronage positions, dismissal, deprivation of employment rights

In determining whether, for purposes of political patronage discharge claim, political affiliation was appropriate job requirement for position of hearing examiner with Office of the Commissioner of Municipal Affairs (OCMA) in Puerto Rico, nature of certain advisory tasks assigned to hearing examiner by Commissioner's predecessor were not related to inherent duties of hearing examiner and could not be considered in determining whether position entailed policymaking, despite catch-all "other assigned duties" provision in hearing examiner's job description. Roldan-Plumey v. Cerezo-Suarez, C.A.1 (Puerto Rico) 1997, 115 F.3d 58. Constitutional Law 91; Territories 23

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42 U.S.C.A. § 1983

Inherent duties of a referee in the service of an Ohio Domestic Relations Court are political in character, and thus political patronage considerations may justifiably influence or control court's appointment to that post, and any First Amendment claim initiated under § 1983 by a former referee for alleged patronage discharge is nonviable as a matter of law. Mumford v. Basinski, C.A.6 (Ohio) 1997, 105 F.3d 264, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 298, 522 U.S. 914, 139 L.Ed.2d 229. Constitutional Law 91; Divorce 143(.5)

To make her case for political discrimination under §§ 1983, the plaintiff must allege that defendants deprived her of federally protected rights while acting under color of state law, and that she engaged in constitutionally protected conduct and that this conduct was a substantial or motivating factor in the adverse employment action. Gutierrez v. Molina, D.Puerto Rico 2006, 447 F.Supp.2d 168. Civil Rights 1231

Former prosecutor with Puerto Rico Department of Justice (PRDOJ) sufficiently pled case for political discrimination under §§ 1983 against PRDOJ officials; he alleged defendants were affiliated with opposing political party, that his party affiliation was known to them, and that he was dismissed because of that affiliation. Calderon-Garnier v. Sanchez-Ramos, D.Puerto Rico 2006, 439 F.Supp.2d 229. Civil Rights 1395(8)

County was not estopped to assert *Elrod-Branti* policymaker defense to terminated employees' First Amendment patronage dismissal claim by virtue of having litigated that issue in unemployment compensation proceeding and lost; policymaker exempt from unemployment benefits under New York law was not shown to be identical to that exempt from patronage protection, and county's incentive to litigate unemployment claims was insignificant relative to its incentive to litigate civil rights claims. Alberti v. County of Nassau, E.D.N.Y.2005, 393 F.Supp.2d 151. Unemployment Compensation 301

Record established that state employee who claimed he was demoted because of his membership in political party was not fired because of his beliefs or association but because of his position in prior administration involving patronage appointments and such activity was not constitutionally protected. Aufiero v. Clarke, D.C.Mass.1980, 489 F.Supp. 650, affirmed 639 F.2d 49, certiorari denied 101 S.Ct. 3052, 452 U.S. 917, 69 L.Ed.2d 421. States 53

1817. ---- Insubordination, dismissal, deprivation of employment rights

Terminated employee failed to rebut city housing authority's proffered legitimate, non-discriminatory reasons for terminating her, namely insubordination and tenant complaints, and she thus failed to establish age or gender discrimination, where she asserted she did not think she was terminated because of age, and she gave equivocal answers when asked whether she was terminated because of gender. Allen v. City of Pocahontas, Ark., C.A.8 (Ark.) 2003, 340 F.3d 551, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 1420, 540 U.S. 1182, 158 L.Ed.2d 85. Civil Rights 1169; Civil Rights 1207

Termination of legislative auditor for disseminating audit and investigation results to press to providing it to legislature did not violate his First Amendment rights; early disclosure prior had adverse impact on legislators' ability to efficiently carry out legislative tasks, auditor's refusal to adhere to guidelines for discussing audit results with press was viewed as act of insubordination and misconduct, and auditor's interests, if any, in disclosing conclusions of not-yet-released audit prior to informing legislature of results was substantially outweighed by legislature's right to demand that its employees follow its procedures and its need to possess information contained in audits before being contacted by press or constituents about them. Barnard v. Jackson County, Mo., C.A.8 (Mo.) 1995, 43 F.3d 1218, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 53, 516 U.S. 808, 133 L.Ed.2d 17. Constitutional Law 90.1(7.2); Officers And Public Employees 69.7

Where discharge of black employee was not motivated by racial considerations and was not in retaliation for employee's having filed charges with Equal Employment Opportunity Commission and where the discharge was

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because of the employee's insubordination in refusing to submit to legitimate authority, the discharge was not a civil rights violation. Quarles v. North Mississippi Retardation Center, N.D.Miss.1978, 455 F.Supp. 52, affirmed 580 F.2d 1051. Civil Rights 1122

1818. ---- Strikes, dismissal, deprivation of employment rights

State Road Commission employees who initiated work stoppage were engaged in illegal strike against state, and the governor and state Road Commissioner had right, if not indeed responsibility, to terminate employees' employment with the state, and this action not only comported with law of state, but violated no federal constitutional rights of employees so discharged. Kirker v. Moore, S.D.W.Va.1970, 308 F.Supp. 615, affirmed 436 F.2d 423, certiorari denied 92 S.Ct. 49, 404 U.S. 824, 30 L.Ed.2d 51. Labor And Employment 1457(1)

1819. ---- Theft, dismissal, deprivation of employment rights

School employee's liberty interests were not violated when she was terminated based on accusations of purloining several items from cafeteria where she was given more than one opportunity after her discharge to present her side of the story. Strother v. Columbia-Brazoria Independent School Dist., S.D.Tex.1993, 839 F.Supp. 459, affirmed 32 F.3d 565. Constitutional Law 278.4(3)

1820. ---- Legitimate and illegitimate reasons, dismissal, deprivation of employment rights

Former employee of the Puerto Rico Highway Authority (PRHA) who alleged that his termination constituted First Amendment political discrimination failed to demonstrate that proffered nondiscriminatory reason for his termination was merely a pretext; Executive Director of the PRHA stated that employee was terminated because he had obtained privileged and confidential information from personnel files in violation of PRHA regulations and employee did not attempt to deny the charges against him. Cepero-Rivera v. Fagundo, C.A.1 (Puerto Rico) 2005, 414 F.3d 124. Civil Rights 1421

Ample evidence supported jury's finding that city housing authority which was host agency under senior aide program, which sought to employ low income seniors in nonprofit businesses and municipal agencies and which was operated by nonprofit corporation, violated employee's civil rights in violation of § 1983; authority's director requested employee's transfer from authority because of her testimony against housing authority commissioner at public hearing, director stated that employee's testimony was problem with commissioners, and commissioner refused at authority board meeting to consider reinstating employee due to her testimony against fellow commissioner. Andrade v. Jamestown Housing Authority, C.A.1 (R.I.) 1996, 82 F.3d 1179. Civil Rights 1421

If public employee makes showing that speech protected by First Amendment played a substantial role in his discharge, then burden shifts to defendant, in § 1983 action based on alleged violation of First Amendment rights, to prove that it would have reached same decision even in absence of protected conduct. Barnard v. Jackson County, Mo., C.A.8 (Mo.) 1995, 43 F.3d 1218, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 53, 516 U.S. 808, 133 L.Ed.2d 17. Civil Rights 1405

Employee showed that county employer's allegations of his improper management techniques and collection of supporting affidavits from disgruntled employees to support charges were response to county's fear of adverse publicity that would accompany lawsuit if subordinate employee pursued sexual harassment claim against employee, and, thus, reasonable jurors could conclude that proffered reasons for discharge were pretextual and violated his substantive due process rights. Adams v. Sewell, C.A.11 (Fla.) 1991, 946 F.2d 757. Constitutional Law 278.4(3); Counties 67

In case of illegal discharges from employment, wrong done by employer consists not of discharging employee, but of discharging him for illegal reasons; it is irrelevant to consideration of remedy for that wrong that the wrong

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might have been avoided by a discharge for a legal reason. Beazer v. New York City Transit Authority, C.A.2 (N.Y.) 1977, 558 F.2d 97, certiorari granted 98 S.Ct. 3121, 438 U.S. 904, 57 L.Ed.2d 1146, reversed on other grounds 99 S.Ct. 1355, 440 U.S. 568, 59 L.Ed.2d 587. Labor And Employment 1451

An employee's deliberate promotion of and participation in a massive and prolonged disruption of the telephone communications system of a county departmental office is "hard core" conduct which any reasonable person must know would be cause of discipline or dismissal from employment whether described in a rule or not. Herzbrun v. Milwaukee County, C.A.7 (Wis.) 1974, 504 F.2d 1189. Counties 67

A plaintiff in a civil rights action must be prepared to show that he has been acted against for a constitutionally prohibited reason, or under a constitutionally repugnant standard, or for no reason whatsoever, and he does not prevail in federal court if he can show only that he was dismissed from a job because the reason was not "weighty" enough to support "industrial capital punishment." Wishart v. McDonald, C.A.1 (Mass.) 1974, 500 F.2d 1110. Civil Rights 1405

Investigation indicating that corrections officer had used excessive force was legitimate, nonretaliatory reason for his termination, and was not pretext for discrimination in violation of sections 1981 and 1983. Henderson v. New York, S.D.N.Y.2006, 423 F.Supp.2d 129. Prisons 7

County's assertion that over-40 county budget director was terminated because he could not get along with fellow employees, including his supervisor, was unrebutted nondiscriminatory and nonpretextual reason for termination, precluding claim under equal protection clause or Age Discrimination in Employment Act (ADEA). Van Arkel v. Warren County, S.D.Iowa 2005, 365 F.Supp.2d 979. Counties 67

Assuming that terminated Human Resources employee at Puerto Rico Government Development Bank (GDB) had established prima facie case of political discrimination, President and other GDB officials had objective and legitimate nondiscriminatory basis to dismiss her; officials explained that employee was terminated because her appointment was in violation of GDB personnel regulations and merit principle, insofar as she did not comply with requirements of formal job announcement. Velez Rivera v. Agosto Alicea, D.Puerto Rico 2004, 334 F.Supp.2d 72, affirmed 437 F.3d 145. Constitutional Law 82(11); Territories 23

In opposing former deputies' retaliatory discharge claims asserted under First Amendment, §§ 1983, and Title VII, sheriff and deputy sheriff provided sufficient evidence to support nondiscriminatory reasons for deputies' terminations, thereby shifting burden to former deputies to establish that reasons were pretext for discrimination, given assertions that former deputies were terminated for such legitimate business reasons as past work history, quality of work, relations with co-workers and members of the community, personal attacks made against sheriff, and concerns that former deputies would not accept authority of sheriff, who was newly elected. Smith v. Parish of Washington, E.D.La.2004, 318 F.Supp.2d 366. Civil Rights 1405; Civil Rights 1541; Sheriffs And Constables 21

Recommendation for job elimination from puisne officers, including assistant city comptroller acting in his or her administrative role, was not an "employment decision" in a § 1983 case involving a budgetary job elimination in city. Burtnick v. McLean, D.Md.1997, 953 F.Supp. 121. Civil Rights 1128

Employer's explanations that it discharged employee for his failure to come to work for two months, to present sufficient medical evidence of his inability to work, and to attend fitness for duty examination were nondiscriminatory reasons employee failed to show that employer's articulated reasons were pretextual so as to prevail on his race discrimination claims under §§ 1981 and 1983. Spratley v. Hampton City Fire Dept., E.D.Va.1996, 933 F.Supp. 535, affirmed 125 F.3d 848. Civil Rights 1122

Defendants established, in city court employee's § 1983 action, that employee would have been discharged for poor

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performance, even if she had not made donation which was allegedly protected by First Amendment, even though employee was informed of her discharge 11 days after donation and allegedly received only one mixed performance review before discharge; review mentioned performance problems, notes and memorandum documented poor performance prior to donation, supervisor stated that draft of evaluation which led to discharge was completed prior to donation and that she did not consult employee's immediate superior because superior had been on vacation most of three weeks employee worked in superior's division, discharge was based on evaluation of employee's performance for three months in another division, supervisor's memoranda recommending discharge detailed poor performance, employee's own evaluation of her performance was immaterial, and employee, as probationary employee, was not entitled to notice of defendants' opinion of her work. Meyers v. Simons, S.D.N.Y.1995, 896 F.Supp. 132. Civil Rights 1421

Former court administrator failed to establish that her complaint to judicial commission regarding judge was substantial or motivational factor in elimination of her position, so that she failed to establish First Amendment violation; judge who was subject of complaint and county commissioners did not learn of complaint until after position was eliminated, and second judge who knew of complaint before elimination of position did not initiate that decision. Keenan v. Allan, E.D.Wash.1995, 889 F.Supp. 1320, affirmed 91 F.3d 1275. Civil Rights 1421

Hispanic correctional specialist failed to establish that his protected speech was a motivating factor in the decision to terminate him, and, thus, failed to establish claim of retaliation based upon exercise of his First Amendment rights; termination occurred seven months after the allegedly protected speech, the specialist was fired after an incident in which he admittedly used unnecessary force on an inmate, and the specialist acknowledged that he should have been terminated for the incident. Gutierrez v. Board of County Com'rs, Shawnee County, Kan., D.Kan.1992, 791 F.Supp. 1529. Constitutional Law 90.1(7.2); Prisons 7

Correctional officials in civil rights action brought by terminated Hispanic correctional specialist established legitimate, nondiscriminatory reason for the termination on basis of violating jail policies concerning use of restraints and use of unnecessary force on inmates. Gutierrez v. Board of County Com'rs, Shawnee County, Kan., D.Kan.1992, 791 F.Supp. 1529. Civil Rights 1128

Sheriff established independently effective motive unrelated to any political motivation in discharging chief jailer whose loyalty was to former sheriff, not to office of chief jailer, precluding jailer from prevailing on political discharge claim; jailer had been involved in automobile accident involving alcohol, evidence given to jailer for custody and safekeeping had disappeared and been unavailable for trial and jailer had turned records of sheriff's department over to former sheriff. Wright v. Phipps, W.D.Va.1990, 765 F.Supp. 1544, affirmed 935 F.2d 268. Civil Rights 1137

City attorney was not deprived of due process when, after brief reinstatement pursuant to arbitrator's decision, he was again removed from city payroll pending appeal of arbitrator's decision; city attorney was removed because, in absence of signed release from him, city planned to appeal arbitrator's award pursuant to which city attorney had been reinstated, since that time parties had agreed that arbitration award would be without effect, and city attorney was removed for same reasons as were previously stated in connection with termination, reasons which were fully discussed at hearing of grievance which preceded his second termination. Jones v. City of Topeka, D.Kan.1991, 764 F.Supp. 1423. Constitutional Law 278.4(5); Municipal Corporations 159(4)

Chief clerk in county clerk's office was not discharged for purely political reasons in violation of her First Amendment rights; county clerk who discharged her had won office by defeating her husband who had been the incumbent, and First Amendment did not require new county clerk to retain as his principal assistant wife of his political rival. Lowe v. Padgett, E.D.Tenn.1989, 740 F.Supp. 481, affirmed 897 F.2d 529. Constitutional Law 82(11); Counties 67

Social worker terminated from employment at state mental health facility that housed criminally insane persons

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could not recover on ground of constitutionally protected right not to lose his job for "blowing the whistle" on activities at the facility to federal authorities, where defendant government officials were substantially motivated to terminate social worker by his internal activities. Price v. Brittain, M.D.La.1988, 684 F.Supp. 1345, affirmed 874 F.2d 252. Mental Health 20

Former employees of sheriff's department were not entitled to relief under 42 U.S.C.A. § 1983 for deprivation of their First Amendment rights where their employment would have been terminated irrespective of reasons for employee's absence on afternoon in question; employee attending political function had left jail without supervisor during critical time of day with consent of other employee and at a time when, partly on account of illness, jail was understaffed. Price v. Townsend, W.D.Ark.1986, 631 F.Supp. 106. Civil Rights 1128

Discharged city employee could not maintain a civil rights action alleging wrongful termination from employment by city for no other reason than that employee was a transsexual where moving affidavits of city defendants established that plaintiff was discharged for insubordination after written notice and warning of other, work-related charges, and plaintiff's proofs in opposition to such affidavits failed to meet any of such facts. DeTore v. Local No. 245 of Jersey City Public Emp. Union, D.C.N.J.1981, 511 F.Supp. 171. Civil Rights 1421

Even assuming that plaintiffs, who alleged that their termination from employment was motivated by their efforts to promote union organization among ports authority employees, had made out a prima facie showing of discrimination, the defendants had articulated a legitimate, nondiscriminatory reason for their actions which was unrebutted by plaintiffs, where there was no sound basis for questioning good faith of defendants in their conclusion that a serious policy violation in falsifying time records supporting termination had been committed by the plaintiffs, and thus no antiunion animus contributed to the decision to terminate the plaintiffs to support their claims under this section and the Railway Labor Act § 151 et seq. of Title 42. Hodges v. Tomberlin, S.D.Ga.1981, 510 F.Supp. 1287. Labor And Employment 1455(7)

City employee established prima facie case of wrongful discharge under this section by showing that he engaged in a protected activity and that this conduct was a substantial motivating factor in his discharge, and was entitled to relief where employer failed to show by a preponderance of the evidence that it would have reached the same decision in the absence of the protected activity. Goodwin v. City of Pittsburgh, W.D.Pa.1979, 480 F.Supp. 627, affirmed 624 F.2d 1090. Municipal Corporations 218(9)

Evidence, in mental hospital administrator's civil action for injunctive date declaratory relief and damages claiming his summary discharge from employment with Rhode Island Department of Mental Health violated his rights under U.S.C.A.Const. Amends. 1 and 14, indicated that administrator would not have been discharged in absence of protected activity and that he was entitled to be reinstated to his position. Pilkington v. Bevilacqua, D.C.R.I.1977, 439 F.Supp. 465, affirmed 590 F.2d 386.

Even if one of stated reasons for dismissal of school superintendent was arbitrary and capricious, another stated reason may have been adequate and thus support termination during contract term. Miller v. Dean, D.C.Neb.1976, 430 F.Supp. 26, affirmed 552 F.2d 266. Schools 147.9

Bankruptcy court properly decided issue of whether Chapter 13 debtor was discharged by employer because of his race at close of debtor's civil rights case, where employer established its legitimate nondiscriminatory reason for adverse employment decision during debtor's case in chief. Shaw v. Housing Authority of Town of Lake Providence, W.D.La.1993, 158 B.R. 400. Bankruptcy 2162

Former paraprofessional at school failed to establish a prima facie case of employment discrimination in violation of equal protection under §§ 1983, alleging he was terminated on the basis of his religion, given that the evidence demonstrated that the employee's performance was unsatisfactory, he had received numerous written and verbal disciplinary complaints and two poor annual evaluations, and there was no evidence that gave rise to an inference

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that the termination occurred on the basis of his religion. Sharif v. Buck, C.A.2 (N.Y.) 2005, 152 Fed.Appx. 43, 2005 WL 2650070, Unreported. Schools 147.12

1821. ---- Continuing violation, dismissal, deprivation of employment rights

Unconstitutional refusal by a state official to reinstate wrongfully fired employee is continuing constitutional violation. Brook v. Thornburgh, E.D.Pa.1980, 497 F.Supp. 560. Constitutional Law 82(11)

1822. ---- Drug testing, dismissal, deprivation of employment rights

Terminated New York City Transit Authority (NYCTA) employee failed to state cause of action in § 1983 complaint for deprivation of liberty or property interest in violation of his due process rights, in connection with mandatory drug test, where complaint, in alleging that he was notified of action that was taken against him, was given explanation, was afforded opportunity to present evidence on his behalf, and availed himself of that opportunity, demonstrated that he was afforded all process due him. Straker v. Metropolitan Transit Authority, E.D.N.Y.2004, 333 F.Supp.2d 91. Constitutional Law 278.4(5); Municipal Corporations 218(8)

In § 1983 search and seizure action by former employees of city transit authority challenging their dismissals following positive drug tests, evidence that drug testing company under contract with transit authority failed to report positive drug test, that testing company stored urine specimens in cardboard boxes near window, that one employee who was not plaintiff had placed tea water, rather than urine, in specimen cup when he was tested with positive results sixteen months after plaintiffs' tests, and that one plaintiff had not received confirmation test results when he requested them, did not establish that drug testing procedures employed by testing company were flawed and/or that test results should not have been relied upon by transit authority. Laverpool v. New York City Transit Authority, E.D.N.Y.1993, 835 F.Supp. 1440, affirmed 41 F.3d 1501. Civil Rights 1421

Former employees stated claim under § 1983 based upon alleged violation of their Fourth Amendment rights by reason of employer's drug testing policy allegedly requiring mandatory urinalysis of employees without any degree of reasonable suspicion and without regard to whether position was safety related. Laverpool v. New York City Transit Authority, E.D.N.Y.1991, 760 F.Supp. 1046. Civil Rights 1395(8)

1823. ---- Malicious prosecution, dismissal, deprivation of employment rights

Discharge of state agency employees did not "shock the conscience," so as to give discharged employees § 1983 civil rights claim for malicious prosecution, after employees successfully challenged discharge, where employees were never subjected to possibility of incarceration and could not point to any invidious reason for discharge. McMaster v. Cabinet for Human Resources, C.A.6 (Ky.) 1987, 824 F.2d 518. Civil Rights 1249(2)

1824. ---- Reputation injury, dismissal, deprivation of employment rights

City did not violate discharged employee's liberty interest in his reputation in violation of his due process rights, given absence of showing that city disseminated reasons for his termination to future potential employers or the community at large; neither fact that coworkers discussed employee's arrest for possession of marijuana and subsequent termination, nor inclusion of information regarding arrest in discharged employee's personnel file, was sufficient to support claim. Franklin v. City of Evanston, C.A.7 (Ill.) 2004, 384 F.3d 838, certiorari denied 125 S.Ct. 1696, 544 U.S. 956, 161 L.Ed.2d 539. Constitutional Law 278.4(3); Municipal Corporations 218(8)

Former university employee did not establish his § 1983 claim alleging that he was deprived of Fourteenth Amendment liberty interest in obtaining future employment by university officials in that they, by checking "no rehire" on his termination report, "blackballed" is future opportunities for employment; employee failed to present

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evidence that stigmatizing statements were made and published and that such statements caused loss of employment opportunities. Walker v. Elbert, C.A.10 (Okla.) 1996, 75 F.3d 592. Civil Rights 1421

Only if city officials themselves published defamatory material about discharged employee could employee recover for deprivation of his occupational liberty interest in civil rights action. McMath v. City of Gary, Ind., C.A.7 (Ind.) 1992, 976 F.2d 1026, rehearing denied. Civil Rights 1128

There was no violation of New Mexico Metropolitan Court administrator's liberty interest in his reputation when he was discharged in connection with theft of funds from accounting department without name-clearing hearing, as defendants did not disseminate any false and stigmatizing charges against him; any impression that he was fired for financial wrongdoing was created by newspaper's juxtaposition of his discharge with news about missing funds, not by discharging judge's statements and, moreover, article did not suggest that he actually stole money, but may only have implied that he was fired for mismanagement. Russillo v. Scarborough, C.A.10 (N.M.) 1991, 935 F.2d 1167. Constitutional Law 278.4(3)

Only where alleged stigmatization from employment termination results in inability to obtain other employment does alleged loss of reputation and esteem in community rise to constitutional level which may be remedied in § 1983 civil rights action. Allen v. Denver Public School Bd., C.A.10 (Colo.) 1991, 928 F.2d 978. Civil Rights 1122

Publication of charge which stigmatizes a public officer can give rise to a claim that the public officer's liberty interest has been impaired when the employee is dismissed on other grounds, even though the stigmatizing charges are not the basis for dismissal. Melton v. City of Oklahoma City, C.A.10 (Okla.) 1989, 879 F.2d 706, rehearing granted in part 888 F.2d 724, on rehearing 928 F.2d 920, certiorari denied 112 S.Ct. 296, 502 U.S. 906, 116 L.Ed.2d 241, certiorari denied 112 S.Ct. 297, 502 U.S. 906, 116 L.Ed.2d 241. Constitutional Law 278.4(3)

Mere publication of false stigmatizing reason for discharge, intentional, or otherwise, is not actionable under § 1983 unless injured party was denied opportunity to refute charge. Nelson v. City of McGehee, C.A.8 (Ark.) 1989, 876 F.2d 56. Civil Rights 1122

Injury to former city employee's reputation was not compensable under § 1983, even assuming that termination procedures employed by city were somehow deficient, to extent that charges circulated in connection with dismissal were true. Myrick v. City of Dallas, C.A.5 (Tex.) 1987, 810 F.2d 1382. Civil Rights 1038

Stigma to reputation in conjunction with failure to rehire a nontenured public employee states claim under this subchapter for deprivation of liberty interest without due process under U.S.C.A.Const. Amend. 14 § 1. Dennis v. S & S Consolidated Rural High School Dist., C.A.5 (Tex.) 1978, 577 F.2d 338. Civil Rights 1395(8)

When government employee is dismissed without hearing, having been publicly charged with dishonesty or other wrongdoing that will injure his or her liberty to obtain other work, the federal tort is not the defamation, but the denial of hearing and opportunity to refute the public charge; federal remedy thus must be related solely to employee's loss resulting from discharge without hearing. Cox v. Northern Virginia Transp. Commission, C.A.4 (Va.) 1976, 551 F.2d 555. Civil Rights 1448

Statement in memorandum in county employee's personnel file, that employee was charged with committing particular crime and which provided relevant disciplinary code section in event employee was subsequently convicted, was not "false statement," for purpose of employee's § 1983 claim that county violated his liberty interests under due process clause of Fourteenth Amendment by not giving him name clearing hearing; although charge was dismissed, employee was criminally charged. Cotton v. Martin County, Fla., S.D.Fla.2004, 306 F.Supp.2d 1182, affirmed 125 Fed.Appx. 977, 2004 WL 2805781. Constitutional Law 278.4(5); Counties 67

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42 U.S.C.A. § 1983

Probationary police officer who was discharged by superintendent of city police department did not establish § 1983 claim for deprivation of liberty interest in his postemployment reputation against superintendent, absent evidence that superintendent or anyone else within the police department disclosed to any of officer's prospective employers that officer had been terminated due to allegations of sexual harassment. Olivieri v. Rodriguez, N.D.Ill.1996, 944 F.Supp. 686, affirmed 122 F.3d 406, certiorari denied 118 S.Ct. 1040, 522 U.S. 1110, 140 L.Ed.2d 106. Civil Rights 1128

To prevail on § 1983 claim for stigmatizing statement in connection with discharge from governmental employment, plaintiff must prove false statement of stigmatizing nature attending governmental employee's discharge made public by governmental employer without meaningful opportunity for name clearing. Foster v. Jackson County, Fla., N.D.Fla.1995, 895 F.Supp. 301. Civil Rights 1128

Former director of dental services at state psychiatric facility failed to state § 1983 claim against State Department of Mental Hygiene employees based on alleged due process violation in his forced resignation without pre or posttermination hearing, even if damage to reputation alone was sufficient to find constitutional violation, where he failed to allege that those employees damaged his reputation in connection with his resignation. Koch v. Mirza, W.D.N.Y.1994, 869 F.Supp. 1031. Civil Rights 1395(8)

Newspaper articles referring to undercover investigation into former employee's department did not create impression of criminal activity in conjunction with his discharge to support his § 1983 action against municipality. Doe v. Village of Oak Park, N.D.Ill.1994, 863 F.Supp. 797. Civil Rights 1128

County controller's allegations that she was deprived of her constitutionally protected liberty interest in employment-related reputation and good name without due process when her supervisor informed her that she was being terminated for misuse of public funds and that door to supervisor's office was open at time accusations were made and that other employees could hear his charges were sufficient to state deprivation of liberty claim under federal civil rights statute. Warzon v. Drew, E.D.Wis.1994, 855 F.Supp. 1017, affirmed 60 F.3d 1234. Civil Rights 1395(8)

Terminated city employee could not recover from city in § 1983 action based on violation of liberty interest where allegedly stigmatizing statement that employee was terminated for theft of services was not disclosed publicly and statement was not false. Copple v. City of Concordia, Kan., D.Kan.1993, 814 F.Supp. 1529. Civil Rights 1128

Public employee who has been dismissed has cognizable liberty interest under federal civil rights statute when dismissal is based upon charges which stigmatize employee and employer creates and disseminates defamatory impression about employee in connection with termination; defamation must occur in course of terminating individual's employment. Freeman v. McKellar, E.D.Pa.1992, 795 F.Supp. 733. Civil Rights 1128

To state claim for deprivation of liberty interest in pursuit of occupation, defamation must come in context of unfavorable employment decision, must carry the kind of stigma which could substantially curtail individual's employment possibilities and must have communicated, or have the potential for being communicated, to possible employers. Golbeck v. City of Chicago, N.D.Ill.1992, 782 F.Supp. 381. Constitutional Law 278.4(3)

Damages for mental anguish and reputational harm directly caused by denial of due process may be awarded in discharged public employee's action against public employer, alleging wrongful discharge violated his constitutionally protected liberty interest. Willbanks v. Smith County, Tex., E.D.Tex.1987, 661 F.Supp. 212. Civil Rights 1472

Former public health official, who alleged that he was subject to barrage of defamatory remarks, including charges of immorality or dishonesty, that were aimed at him by city in successful effort to oust him from his employment

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and that such attack was directed against him because he advocated fluoridation of water, could maintain action under this section; he was not limited to state defamation remedy. Bartholomew v. Fischl, E.D.Pa.1981, 534 F.Supp. 161. Civil Rights 1395(8)

Where only reason given for dismissal of county probation officers was that they proved to be "unsatisfactory" employees, there was no actual defamation implicating probation officers' liberty interests entitling them to hearing prior to dismissal, and mere fact that officers were dismissed would not damage their reputations sufficiently to warrant hearing. Shore v. Howard, N.D.Tex.1976, 414 F.Supp. 379. Courts 55

Even if county hospital employee was defamed in process of her termination by hospital, alleged defamation had no connection with any federally protected right under this section, but solely affected right arising out of state law. Large v. Reynolds, W.D.Va.1976, 414 F.Supp. 45. Civil Rights 1038

Absence of admissible evidence that superintendent of county correctional facility made alleged defamatory statements about deputy superintendent in connection with deputy superintendent's forced early retirement precluded superintendent's §§ 1983 liability for allegedly depriving deputy superintendent of due process-protected liberty interest in his professional reputation. Pierce v. Netzel, C.A.2 (N.Y.) 2005, 148 Fed.Appx. 47, 2005 WL 2176010, Unreported. Civil Rights 1359

1825. ---- Threat of dismissal, deprivation of employment rights

Threatening public elementary school secretary with discharge for putting her child in private, all-white school violated her civil rights, even if the secretary were never actually fired. Fyfe v. Curlee, C.A.5 (Miss.) 1990, 902 F.2d 401, certiorari denied 111 S.Ct. 346, 498 U.S. 940, 112 L.Ed.2d 310. Civil Rights 1131

Depending on circumstances, even threat of dismissal for political motivations is enough to trigger a civil rights cause of action and entitlement to immediate and specific relief. Velazquez v. Chardon, D.C.Puerto Rico 1980, 500 F.Supp. 10. Civil Rights 1128

1826. ---- At-will positions, dismissal, deprivation of employment rights

Enactment of rule providing that judges' secretaries were not entitled to normal termination procedures of notice and hearing accorded regular county employees since they served at pleasure of judges could not terminate secretary's protectible job security interest by changing status of her employment without her knowledge and consent and, not having been accorded such notice or opportunity, secretary was entitled to damages. Gabe v. Clark County, C.A.9 (Nev.) 1983, 701 F.2d 102. Civil Rights 1128

City librarian held position at will and pleasure of city with no contractual or other arrangement limiting right of termination and hence was subject to summary discharge with or without cause, and without formal notice or hearing, so long as it was not in retribution for exercise of some constitutionally protected right. Hodgin v. Noland, C.A.4 (Va.) 1970, 435 F.2d 859, certiorari denied 92 S.Ct. 2846, 408 U.S. 942, 33 L.Ed.2d 766. Municipal Corporations 155; Municipal Corporations 159(4); Municipal Corporations 218(1); Municipal Corporations 218(8)

Where superintendent's employment contract with city utility commission was void, because it was entered into without express authority of city, superintendent was employee at-will, who had no property interest in his position, and thus superintendent could not establish claims under §1983, arising from his termination. Williams v. City of London, E.D.Ky.2003, 252 F.Supp.2d 388, affirmed 375 F.3d 424. Civil Rights 1128

Director of mathematics program was "position of trust," and, therefore, terminable without cause, for purpose of prospective employee's political discrimination claim against Commonwealth of Puerto Rico, since position was

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intertwined with policymaking; job description clearly established that mathematics program director position was sufficiently close to education department policymakers to warrant its trust status, and person who held that position collaborated and participated in development, interpretation, and implementation of public policy of educational system. Soto Gonzalez v. Rey Hernandez, D.Puerto Rico 2004, 310 F.Supp.2d 418. Civil Rights 1133

College basketball coach and assistant coach were at-will employees of university system, and as such had no constitutionally protectable property interest in their employment entitling them to procedural due process prior to their termination; coaches were classified employees, and as such could be dismissed, demoted or suspended by their immediate supervisors upon determination that their performance of duty or personal conduct was unsatisfactory. Wallace v. Board of Regents of the University System of Georgia, S.D.Ga.1997, 967 F.Supp. 1287. Colleges And Universities 8.1(3); Constitutional Law 277(2); Constitutional Law 278.5(4)

At-will employee typically will not be able to establish § 1983 claim alleging violation of procedural due process because there is no property interest to protect. Merritt v. Brantley, S.D.Ga.1996, 936 F.Supp. 988. Constitutional Law 277(2); Constitutional Law 278.4(5)

In civil rights action brought against library and its board of trustees by former library employees, whose discharges were motivated by fact that they were living together in state of "open adultery," evidence did not indicate existence of any promise, implied or otherwise, of continued employment of male plaintiff, who was employed by library as janitor, but, to contrary, established that he was strictly an at-will employee, and as such, could have had his employment terminated without a pretermination hearing. Hollenbaugh v. Carnegie Free Library, W.D.Pa.1977, 436 F.Supp. 1328, affirmed 578 F.2d 1374, certiorari denied 99 S.Ct. 734, 439 U.S. 1052, 58 L.Ed.2d 713. Civil Rights 1421

1827. ---- Reduction in force, dismissal, deprivation of employment rights

Public university professor's procedural due process rights were not violated when she was terminated because of a reduction-in-force (RIF), where professor was provided with 30-day notice of her termination and was afford administrative process through which she could challenge decision, coupled with a judicial appeal. Guerrero v. University of Dist. of Columbia, D.D.C.2003, 251 F.Supp.2d 13. Colleges And Universities 8.1(5); Constitutional Law 278.5(4)

1827A. ---- Retaliation, dismissal, deprivation of employment right

Material issues of fact concerning whether a policymaker ordered that criminal charges be filed against officer for theft and whether the borough had probable cause to file the charges precluded grant of summary judgment to borough on officer's §§ 1983 claim alleging that the borough filed criminal charges against him in retaliation for his pursuit of posttermination remedies in violation of his First Amendment rights. Koltonuk v. Borough of Laureldale, E.D.Pa.2006, 443 F.Supp.2d 685. Federal Civil Procedure 2491.5

Corrections officer's termination was not causally related to his deposition testimony in sexual harassment suit, and thus did not constitute retaliation, as required to support his section 1981 and section 1983 claims, where more than four years separated such incidents. Henderson v. New York, S.D.N.Y.2006, 423 F.Supp.2d 129. Prisons 7

Employee's alleged discharge because of his whistleblowing activities did not violate §§ 1983, where he would have been terminated for violating confidentiality rules prescribed by company policy and Arizona law regardless of his whistle-blowing activities. Gerberry v. Maricopa County, C.A.9 (Ariz.) 2006, 172 Fed.Appx. 781, 2006 WL 774929, Unreported. Civil Rights 1247

1828. ---- Policy-making positions, dismissal, deprivation of employment rights

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Responsibilities of hearing examiner with Office of the Commissioner of Municipal Affairs (OCMA) did not entail policymaking, although Commissioner designated position as "confidential" under Puerto Rico Public Service Personnel Act, and thus party affiliation was not appropriate job requirement, since narrow duties outlined in job description required technical and professional skills and did not provide discretion to formulate or implement policy; hearing examiner was charged only with investigating and holding hearings into possible irregularities in municipal functions, and reporting them to Commissioner, in whom authority rested to take action. Roldan-Plumey v. Cerezo-Suarez, C.A.1 (Puerto Rico) 1997, 115 F.3d 58. Constitutional Law 91; Territories 23

Personnel officer occupying policymaking position in city government could not assert that reduction of his duties and personal harassment by administration from other party violated his substantive due process rights; scope of substantive due process was governed by First Amendment, as complaint was basically one of restrictive free speech, and officer had failed to state claim for relief under § 1983 on First Amendment grounds. Kaluczky v. City of White Plains, C.A.2 (N.Y.) 1995, 57 F.3d 202. Constitutional Law 278.4(3); Municipal Corporations 170

Where first assistant district attorney, who was the direct administrative and policy-making subordinate of the district attorney, declared in public that his immediate superior had not told the truth with respect to certain matters, thus completely undermining the working relationship between them, district attorney could discharge assistant without incurring liability for damages, despite contention that discharge was for exercise of rights protected by U.S.C.A.Const. Amends. 1 and 14 in violation of this section, and though assistant's criticisms concerned matters of grave public import. Sprague v. Fitzpatrick, C.A.3 (Pa.) 1976, 546 F.2d 560, certiorari denied 97 S.Ct. 2649, 431 U.S. 937, 53 L.Ed.2d 255. Civil Rights 1249(2)

Town park manager who was terminated from employment did not establish § 1983 municipal liability claim since there was no evidence in the record to support the conclusion that park commissioners, although they had discretionary authority to hire and fire, were responsible for establishing town's overall employment policy and since manager did not even assert that park commissioners were the ultimate policy makers for town. Krennerich v. Inhabitants of Town of Bristol, D.Me.1996, 943 F.Supp. 1345. Civil Rights 1351(5)

1829. ---- Probationary positions, dismissal, deprivation of employment rights

Iowa Veterans Preference Act did not give armed forces veteran sufficient expectation of continued employment on which to base § 1983 claim of discharge without due process where special and later-enacted Iowa statute limited to first six months of employment provided that probationary employees could be discharged at discretion of appointing authority without right of appeal; special statute controlled over general statute providing discharged veteran with protected property interests. Couch v. Wilkinson, C.A.8 (Iowa) 1991, 939 F.2d 673. Civil Rights 1331(5); Constitutional Law 277(2)

Under California law, probationary civil service employee ordinarily has no property interest in continued public employment and may be dismissed without hearing or judicially cognizable good cause, but public employee who can establish existence of rules and understandings promulgated and fostered by state officials that justify legitimate claim to continued employment has a property interest in that continued employment within the purview of due process clause. McGraw v. City of Huntington Beach, C.A.9 (Cal.) 1989, 882 F.2d 384. Constitutional Law 277(2)

Probationary employee of city's public utilities commission had no interest in his employment which would entitle him to any hearing beyond that provided for in the controlling regulations of the Civil Service Commission and applicable city charter. Sherman v. Yakahi, C.A.9 (Cal.) 1977, 549 F.2d 1287. Municipal Corporations 218(8)

1830. ---- Temporary positions, dismissal, deprivation of employment rights

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42 U.S.C.A. § 1983

"Temporary" employees, who were hired to fill positions for only limited period of time and who were not given any guarantee that they would not be dismissed except for cause, did not have property interest in their position sufficient to entitle them to contend that procedures for termination of employment for failure to comply with county assessor's office grooming regulation were not adequate under due process clause. Jacobs v. Kunes, C.A.9 (Ariz.) 1976, 541 F.2d 222, certiorari denied 97 S.Ct. 1109, 429 U.S. 1094, 51 L.Ed.2d 541. Constitutional Law 277(2)

1831. ---- Bias or prejudice of decisionmaker, dismissal, deprivation of employment rights

Even if supervisor harbored retaliatory animus toward city water department employee as a result of employee's complaints of corruption and illegal activities by other employees, employee failed to show that supervisor was responsible for decisions to deny promotions to employee, as required for supervisor to be liable to employee under §§ 1983 for retaliation against employee for protected speech, in violation of First Amendment; each time employee applied for promotion, he was given low ranking by an interview panel, and higher-ranking applicants were given promotions, there was no indication that supervisor influenced questions asked by panels, and supervisor's recommendations to city personnel department regarding promotions mirrored panels' recommendations. Healy v. City of Chicago, C.A.7 (Ill.) 2006, 450 F.3d 732. Municipal Corporations 218(3)

For purposes of state university hospital employee physician's §§ 1983 claim that employers' decision to revoke his clinical privileges was national origin discrimination, supervisor's statement that she needed to be blunt with employee because he was not American and did not understand the American way did not constitute direct evidence of discrimination, since supervisor did not play a part in initiating employee's peer review and did not even begin working for employer until after peer review process began, and statement was made a few months before supervisor recommended employee's primary suspension. Benjamin v. Schuller, S.D.Ohio 2005, 400 F.Supp.2d 1055. Civil Rights 1421

Reasonable jury could not have found gender bias from evidence adduced at trial in case under Title VII and §§ 1983, viewed in light most favorable to employee, that gender discrimination was motivating factor in decision of chancellor not to renew employee's contract in her position as assistant chancellor, on evidence that person whom employee supervised received merit increases after complaining about reorganization plan while chancellor thought she was trying to sabotage reorganization even before it started by complaining about it; employee and subordinate were not similarly situated because subordinate was carrying out directives that chancellor gave him while employee refused to do so. Walker v. Board of Regents of University of Wisconsin System, W.D.Wis.2004, 329 F.Supp.2d 1018, amended 2004 WL 1688342, affirmed 410 F.3d 387, rehearing and rehearing en banc denied. Civil Rights 1172

Reasonable jury could not have found gender bias from evidence adduced at trial in case under Title VII and §§ 1983, viewed in light most favorable to employee, that gender discrimination was motivating factor in decision of chancellor not to renew employee's contract in her position as assistant chancellor, on evidence that chancellor stripped her of her authority to exert leadership in matter involving women's basketball coach; natural inference of anti-female bias could not be made because employers may have plethora of reasons for deciding what employee should handle particular issue. Walker v. Board of Regents of University of Wisconsin System, W.D.Wis.2004, 329 F.Supp.2d 1018, amended 2004 WL 1688342, affirmed 410 F.3d 387, rehearing and rehearing en banc denied. Civil Rights 1405; Civil Rights 1537

County employee failed to show supervisor's bias to support claim that supervisor was not unbiased decisionmaker in his final decision to dismiss claimant as would support § 1983 due process violation claim; supervisor's failure to follow personnel commission's decision was not dispositive since commission decision was merely advisory and evidence that employee proffered relating to decision supported defendant's position that he attempted to maintain objective viewpoint in making decision. Gray v. Laws, E.D.N.C.1994, 915 F.Supp. 747, on reconsideration in part 915 F.Supp. 762, affirmed in part, vacated in part 51 F.3d 426. Civil Rights 1421

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42 U.S.C.A. § 1983

Rule of necessity did not excuse due process violation in nature of unbiased tribunal hearing charges against now terminated executive director of city housing authority, in that state law allowed the authority to appoint an independent hearing examiner; considering overwhelming bias of authority members, the authority should have appointed an impartial hearing examiner, attempted to submit the matter to arbitration or otherwise avoided acting in a quasi-judicial capacity. Salisbury v. Housing Authority of City of Newport, E.D.Ky.1985, 615 F.Supp. 1433. Constitutional Law 278.4(5)

1832. ---- Incompetence of decisionmaker, dismissal, deprivation of employment rights

Alleged failure of State Commissioner of Department of Employee Relations to adequately familiarize herself with case of dismissed state employee and causing undue delay of hearing procedures did not rise to level of due process violation actionable under § 1983, where the dismissed employee failed to show that the Commissioner was "more than" negligent. Deretich v. Office of Administrative Hearings, State of Minn., C.A.8 (Minn.) 1986, 798 F.2d 1147. Civil Rights 1039

1833. ---- Procedural requirements, dismissal, deprivation of employment rights

City violated procedural due process rights of employee arrested for possession of marijuana when, pursuant to its express policy, city refused to continue employee's disciplinary hearing until after his criminal case was resolved and asked employee to respond at hearing to criminal charges against him without advising him that his responses could not be used against him in his pending criminal proceedings, thereby effectively forcing employee to choose between his job and his Fifth Amendment rights; it did not matter that Court of Appeals' *Atwell* decision compelling such warnings was decided after employee's disciplinary hearing. Franklin v. City of Evanston, C.A.7 (Ill.) 2004, 384 F.3d 838, certiorari denied 125 S.Ct. 1696, 544 U.S. 956, 161 L.Ed.2d 539. Constitutional Law 278.4(5); Municipal Corporations 218(8)

On former police officer's claims for violation of his procedural due process rights based on failure to provide him with unbiased procedures through which he could grieve his constructive discharge claim and adequate name-clearing hearing to protect his reputation, district court should have examined adequacy of all remedies available to him, including arbitration and any possible state court relief, in order to ascertain whether arbitration and any other remedy available were so inadequate as to violate clearly established law. Bussinger v. City of New Smyrna Beach, Fla., C.A.11 (Fla.) 1995, 50 F.3d 922. Civil Rights 1320

Discharged hospital employee received more process than she was due under personnel manual, where in addition to providing her with three-step grievance procedure outlined in manual's "Fair Treatment Policy" hospital provided her with further opportunities to resolve dispute with supervisor and remain a hospital employee. Carnes v. Parker, C.A.10 (Okla.) 1991, 922 F.2d 1506.

Director's failure to follow procedures required by Alabama law in discharging state employee by failing to give him required regular service ratings did not rise to level of a constitutional deprivation, and thus did not entitle employee to relief under this section authorizing civil actions for deprivation of rights. Thompson v. Bass, C.A.5 (Ala.) 1980, 616 F.2d 1259, certiorari denied 101 S.Ct. 399, 449 U.S. 983, 66 L.Ed.2d 245. Civil Rights 1448; Constitutional Law 278.4(5)

Former state Department of Correction employee failed to state a claim under §§ 1983 against supervisors and Commissioner of Correction for violation of his right to procedural due process by alleging that Department failed to follow its own internal rules in deciding to terminate his employment, since employee conceded that defendants provided him with notice of the charges against him, an explanation of the evidence, and an opportunity to present his side of the story. Everson v. Lantz, D.Conn.2006, 453 F.Supp.2d 578. Prisons 7

Although police officer had the opportunity for a full posttermination hearing before the Civil Service Commission,

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the hearing did not actually occur only because officer withdrew his request for the hearing, and thus, officer's due process right to a posttermination hearing was not violated for purposes of his §§ 1983 due process claim. Koltonuk v. Borough of Laureldale, E.D.Pa.2006, 443 F.Supp.2d 685. Municipal Corporations 185(4)

Alleged stigmatizing statements in memorandum in county employee's personnel file did not "attend" employee's discharge, for purpose of employee's § 1983 claim that county, as employer, violated his liberty interests under due process clause of Fourteenth Amendment by not giving him name clearing hearing, since county laid off employee with other county employees due to budgetary concerns, even though both events occurred within same year. Cotton v. Martin County, Fla., S.D.Fla.2004, 306 F.Supp.2d 1182, affirmed 125 Fed.Appx. 977, 2004 WL 2805781 . Constitutional Law 278.4(5); Counties 67

Kansas corrections officer's Fourteenth Amendment due process rights were not violated, as alleged in § 1983 claim, when she was terminated without hearing as of date county was notified her disability benefits took effect; termination did not deprive officer, who conceded she was totally disabled from performing her job, of property interest, and hearing could not have provided her any relief. McCall v. Board of Com'rs of County of Shawnee, KS, D.Kan.2003, 291 F.Supp.2d 1216. Constitutional Law 278.4(5); Prisons 7

Merits of termination of government employees are not judicially reviewable, with court's function in such actions limited to determination whether applicable procedures were substantially complied with in effecting termination. Thacker v. Whitehead, E.D.Tenn.1976, 407 F.Supp. 1111, affirmed 548 F.2d 634. Officers And Public Employees 72.53

In the absence of allegations tending to show that contract of employment with housing authority included specific procedures for discharge, that employee was holding his position under permanent appointment, or that there was some other source which could provide employee with a right to be heard before his discharge, failure to provide notice and an opportunity to be heard before discharge did not provide basis for claim of denial of civil rights. Holden v. Boston Housing Authority, D.C.Mass.1975, 400 F.Supp. 399. Civil Rights 1128

1834. ---- Hearing, dismissal, deprivation of employment rights

Physician's dismissal from anesthesiology residency program at state university for failing to disclose his participation in and dismissal from another residency program fell within ambit of "academic dismissal," rather than disciplinary dismissal, and thus physician did not have due process right to hearing before decision-making body, either before or after termination decision; physician was specifically asked to disclose anything in his background that might have bearing on his candidacy for program, program director informed physician of his concerns and provided opportunity to give his side of the story, and anesthesiology faculty members interpreted physician's dishonesty in application process as undermining his future credibility as source of information concerning care of seriously ill patients. Fenje v. Feld, C.A.7 (Ill.) 2005, 398 F.3d 620, rehearing and rehearing en banc denied. Colleges And Universities 9.35(4); Constitutional Law 278.5(7)

Career civil service employee with protected interest in employment was not deprived of pre-termination hearing, in violation of due process, where employee failed to attend the proffered hearing, despite fact that it was rescheduled on three separate occasions, and employee did not file any written objections to his discharge when employer, Puerto Rico Tourism Company, specifically granted the opportunity to do so. Mercado-Alicea v. P.R. Tourism Co., C.A.1 (Puerto Rico) 2005, 396 F.3d 46. Constitutional Law 278.4(5); Territories 23

Evidence was sufficient to support jury's finding that medical examiner was denied procedural due process by his discharge without public hearing, notwithstanding his lack of property interest in continued employment, where discharge was accompanied by public charges of dishonesty implicating the examiner's liberty interest; examiner introduced testimony about publicity of the dishonesty charges, that the charges were contested by him, and that the charges were indeed false. Brady v. Gebbie, C.A.9 (Or.) 1988, 859 F.2d 1543, certiorari denied 109 S.Ct. 1577,

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42 U.S.C.A. § 1983

489 U.S. 1100, 103 L.Ed.2d 943. Civil Rights 1421

Claim by classified civil service employee that he was denied the right to argue his case before decision makers at a posttermination hearing raised at least a colorable claim of denial of due process. Carter v. Western Reserve Psychiatric Habilitation Center, C.A.6 (Ohio) 1985, 767 F.2d 270. Constitutional Law 278.4(5)

County, which afforded discharged at-will employee of board of commissioners a posttermination hearing before a tribunal composed of board members, afforded employee a constitutionally adequate opportunity to clear her name only 14 days after her dismissal and therefore she was not entitled to damages under this section. Campbell v. Pierce County, Ga. By and Through Bd. of Com'rs of Pierce County, C.A.11 (Ga.) 1984, 741 F.2d 1342, rehearing denied 747 F.2d 710, certiorari denied 105 S.Ct. 1754, 470 U.S. 1052, 84 L.Ed.2d 818. Constitutional Law 278.4(5)

Discharged school official could establish his claim under this section of denial of procedural due process, i.e., lack of name clearing hearing, by showing district's publication of the allegedly defamatory charges, injury to employment and denial of a hearing, and publication could be shown by revelation of the charges and official interviews with the press and it was not necessary to also show a prior secret disclosure to the press, although such was immaterial to claim for punitive or exemplary damages against individual school officials. In re Selcraig, C.A.5 (Tex.) 1983, 705 F.2d 789. Civil Rights 1133

Complaint which alleged that probationary employee was terminated following review hearing by Civil Service Commission [now Merit Systems Protection Board] at which Commission did not follow its own rules was sufficient to state cause of action for violation of this section. Sherman v. Yakahi, C.A.9 (Cal.) 1977, 549 F.2d 1287. Civil Rights 1395(8)

Where members of road maintenance crew had been discharged for insubordination and they had been granted hearings on charges placed against them, there was no denial of procedural due process or any other federally secured right that would entitle crew members to bring action under this section. Chism v. Price, C.A.9 (Ariz.) 1972, 457 F.2d 1037. Civil Rights 1122; Civil Rights 1128

Failure to give discharged municipal employee a hearing required by state law was not ground for relief under this section, but hearing was required under federal law so that employee would have opportunity to protect interests other than state employment inextricably connected with his removal. Birnbaum v. Trussell, C.A.2 (N.Y.) 1966, 371 F.2d 672. Civil Rights 1128

Puerto Rico police officers who were forced to retire at age 55 failed to state §§ 1983 claim based on deprivation of their property rights without due process; even if they could establish a property interest in their employment that would expire in ten years given that retirement age established under previous law was 65, Commonwealth did not have to provide hearing to each retiree subject to mandatory retirement. Correa-Ruiz v. Calderon-Serra, D.Puerto Rico 2005, 411 F.Supp.2d 41. Territories 23

State department of revenue secretary's misinterpretation of state law in demoting state employee from chief legal counsel to staff attorney, which denied employee of a meaningful opportunity to be heard before being demoted, was not reasonably foreseeable, and therefore, it was unlikely that predeprivation procedures would have improved the correctness of secretary's decision to demote employee, for purposes of determining whether predeprivation procedures violated employee's due process rights. Evans v. Morgan, W.D.Wis.2004, 307 F.Supp.2d 1036. Constitutional Law 278.4(5); States 53

Community college's refusal to give discharged employee a post-termination hearing did not constitute a denial of due process; employee's termination, coupled with college's dissemination of the reasons for his dismissal, constituted an "adjudication" under Pennsylvania's Local Agency Law, so that he had available to him the

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procedural rights afforded by that statute, and even if he was not accorded the hearing required by the Local Agency Law, he had the right to avail himself of judicial review. Demko v. Luzerne County Community College, M.D.Pa.2000, 113 F.Supp.2d 722. Colleges And Universities 8.1(5); Constitutional Law 278.5(4)

County administrator was entitled to hearing to clear his name on his claim of reputational injury from stigmatizing statements made in connection with his discharge; although state law remedy was adequate to address administrator's property interest, it did not address alleged liberty interest to his reputation. Foster v. Jackson County, Fla., N.D.Fla.1995, 895 F.Supp. 301. Constitutional Law 278.4(5)

Quantity of information assimilated by news media regarding misconduct charges against employees of state agency did not suggest that agency made charges known to media, and thus that agency had obligation subsequent to discharge of employees to provide liberty interest name-clearing hearing, where information which another employee communicated to media was specific and, with one possible exception, contained all details subsequently revealed in media coverage. Dubose v. Oustalet, S.D.Miss.1990, 738 F.Supp. 188. Constitutional Law 278.4(3)

Plaintiff, who was discharged without a hearing from her position as director of nursing at county nursing home, had no "liberty" or "property" interest under state law in the expectation of continued employment, and there was thus no deprivation of due process, or of rights under this section, when plaintiff was terminated without a hearing. DeFrank v. Pawlosky, W.D.Pa.1979, 480 F.Supp. 115, affirmed 633 F.2d 209. Constitutional Law 254.1; Constitutional Law 277(2); Constitutional Law 278.4(5)

1835. ---- Pre-dismissal hearing, deprivation of employment rights

Nontenured city employee was not entitled to hearing prior to dismissal due to stigmatizing effect of certain material placed in his personnel file where employee did not challenge substantial truth of material in question, because hearing required where nontenured employee has been stigmatized in course of decision to terminate his employment is solely to provide that person an opportunity to clear his name and, if he does not challenge substantial truth of material in question, no hearing would afford promise of achieving that result for him. Codd v. Velger, U.S.N.Y.1977, 97 S.Ct. 882, 429 U.S. 624, 51 L.Ed.2d 92. Municipal Corporations 218(8)

Because employees in public defender's office were state and not county employees, failure of county to hold evidentiary hearing before discharging employees, which would have violated county disciplinary procedures, did not violate due process rights of employees. Warren v. Stone, C.A.7 (Ill.) 1992, 958 F.2d 1419. Constitutional Law 278.4(5); States 53

Borough accorded police officer adequate pretermination process, and thus, officer did not establish §§ 1983 due process claim; borough provided officer notice of the charges against him, an explanation of the borough's evidence, and an opportunity to explain his side of the story. Koltonuk v. Borough of Laureldale, E.D.Pa.2006, 443 F.Supp.2d 685. Municipal Corporations 185(6)

Park manager's allegations that co-workers were terminated involuntarily without being given notice or opportunity for a hearing did not serve as a basis for municipal policy or custom of terminating employees in violation of the Fourteenth Amendment because there was no evidence in the record that co-workers had just cause protection entitling them to any due process prior to termination and as such, park manager did not establish § 1983 municipal liability claim. Krennerich v. Inhabitants of Town of Bristol, D.Me.1996, 943 F.Supp. 1345. Civil Rights 1351(5)

Any contractual defense that state transportation authority might rely on through collective bargaining agreement was susceptible to factual arguments, and thus authority's contention that procedures used to dismiss employee, as set forth in union contract, met requirements of due process, and that employee's post-termination hearing satisfied

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due process, did not allow dismissal of employee's § 1983 claim, alleging that authority failed to grant him pre-termination hearing, in violation of his due process rights. Frederick v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1995, 892 F.Supp. 122. Federal Civil Procedure 1793.1

Due process rights of "permanent" director of social services of county could not be satisfied by posttermination hearing, where predeprivation process was possible and state delegated to local board of social services the power to effect the termination about which the director complained. Bockes v. Fields, W.D.Va.1992, 798 F.Supp. 1219, affirmed in part, reversed in part on other grounds 999 F.2d 788, certiorari denied 114 S.Ct. 922, 510 U.S. 1092, 127 L.Ed.2d 216. Constitutional Law 278.4(5); Counties 67

Probation officers were not entitled to hearing prior to dismissal by county probation office absent binding understanding with probation office or indication that office followed de facto policy of providing such hearings. Shore v. Howard, N.D.Tex.1976, 414 F.Supp. 379. Courts 55

Hearing prior to termination of employment is required as matter of procedural due process only if state, or persons acting under color of state law, act to deprive an individual of the security of interests that he has already acquired in specific benefits. Muir v. County Council of Sussex County, D.C.Del.1975, 393 F.Supp. 915. Constitutional Law 277(2)

1836. Reinstatement, deprivation of employment rights

State employee failed to state § 1983 claim against state Attorney General for declining to prosecute superintendent of state clinic to force superintendent to comply with order of State Personnel Board of Review (SPBR) to reinstate employee with back pay and benefits. Collyer v. Darling, C.A.6 (Ohio) 1996, 98 F.3d 211, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 2439, 520 U.S. 1267, 138 L.Ed.2d 199. Civil Rights 1088(5)

Fact that civil servant, who was terminated from his position following probationary period, had his name restored to the list for further employment and that Civil Service Commission could not have returned him to his original job regardless of its findings did not show that the employee did not suffer damage as result of alleged denial of civil rights in connection with the hearing before the Civil Service Commission where, even though his name had been restored to the list for further employment, there was attached thereto a proviso that he not be rehired by the employer which had just discharged him and where the Commission could have restored him to the list without such a proviso. Sherman v. Yakahi, C.A.9 (Cal.) 1977, 549 F.2d 1287. Civil Rights 1482

Southeastern Pennsylvania Transportation Authority (SEPTA) did not deny employee, who was reinstated with back pay following his discharge for alleged gross negligence, a post-termination hearing, as would constitute denial of due process, where judge terminated administrative hearing, holding that proceedings were moot upon employee's reinstatement with back pay. Krenzel v. Southeastern Pennsylvania Transp. Authority, C.A.3 (Pa.) 2004, 91 Fed.Appx. 199, 2004 WL 188091, Unreported. Constitutional Law 278.4(5); Officers And Public Employees 72.16(1)

1837. Firefighters, deprivation of employment rights--Generally

Fire chief was not entitled to qualified immunity against liability for allegedly retaliating against volunteer firefighter for raising questions as to safety of a controlled burn, as firefighter's right to comment on matters of public safety was clearly established. Cooper v. Town of Bar Nunn, D.Wyo.2003, 257 F.Supp.2d 1363, affirmed 101 Fed.Appx. 324, 2004 WL 1281491. Civil Rights 1376(10)

Evidence that several white firefighters had been allowed to return to light duty work, while black firefighters had been forced to remain on sick leave, was sufficient to establish prima facie case under § 1983 of discriminatory

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application of sick leave policy by city and fire department. Felton v. City of Auburn, M.D.Ala.1997, 968 F.Supp. 1476. Civil Rights 1421

1838. ---- Property interest, firefighters, deprivation of employment rights

Unsuccessful firefighter applicants, who alleged they were excluded from firefighter eligibility lists without due process, did not have a protected "property interest"; applicants did not pass exam and did not have any protected interest in being placed on eligibility lists. Antonelli v. New Jersey, C.A.3 (N.J.) 2005, 419 F.3d 267. Constitutional Law 277(2)

Firefighter did not have property interest in competitive examination for promotion, as required for his § 1983 claim for violation of his Fourteenth Amendment procedural due process rights; although New York law required a competitive examination, it did not create a cognizable property interest in a competitive examination, and firefighter did not have any legitimate claim of entitlement to the position to which he aspired. McMenemy v. City of Rochester, C.A.2 (N.Y.) 2001, 241 F.3d 279. Constitutional Law 277(2)

Volunteer fire company, which had contracted with county to provide fire protection and emergency medical services, was qualifiedly immune from any claims associated with its decisions to either dismiss or demote management employees without affording them due process hearings, since company's employment decisions were indisputably within its scope of discretionary authority, and, given parties' terminable-at-will employment relationship, company did not violate any "clearly established" property interest in rendering those decisions. Mitchell v. Lealman Volunteer Fire Co., M.D.Fla.1996, 985 F.Supp. 1436. Civil Rights 1376(10)

Plaintiffs, who were either terminated or demoted as management employees of volunteer fire company, failed to demonstrate any protected property interest in their employment, thus defeating their § 1983 due process claims, where plaintiffs did not have written employment contracts, fire chief testified that company's board of directors specifically considered disciplinary procedure for management personnel but did not officially adopt one, and company policy manual, delineating disciplinary terms and review procedures, applied only to rank-and-file employees. Mitchell v. Lealman Volunteer Fire Co., M.D.Fla.1996, 985 F.Supp. 1436. Constitutional Law 277(2); Municipal Corporations 198(3)

Employee of fire protection district did not have protected property interest in his continued employment where personnel procedure manual in effect at time of his discharge specifically stated that its provisions did not apply to positions of chief and assistant chief. Williams v. Castlewood Fire Protection Dist., D.Colo.1991, 755 F.Supp. 956 . Constitutional Law 277(2)

Terminated fire chief did not have claim of entitlement to continued employment, and thus could not maintain § 1983 civil rights claim against fire district, where his employment contract with previous board was not unitary one for doing of particular and specified act, but rather was of personal nature as it involved variety of duties, including hiring and firing of personnel, and thus, employment contract did not bind subsequent board members. Tryon v. Avra Valley Fire Dist., D.Ariz.1986, 659 F.Supp. 283. Civil Rights 1128

1839. ---- Sex discrimination, firefighters, deprivation of employment rights

Allegations by city fire department employee, who was born male and subsequently was diagnosed with gender identity disorder, that employee was discriminated against based upon employee's gender non-conforming behavior and appearance, sufficiently constituted claim of sex discrimination grounded in Equal Protection Clause pursuant to § 1983. Smith v. City of Salem, Ohio, C.A.6 (Ohio) 2004, 378 F.3d 566, rehearing en banc denied. Constitutional Law 224(2); Municipal Corporations 198(2)

Evidence supported awarding damages to female applicant for fire fighter position who was not hired, although

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defendant city commission claimed that there was no evidence that female applicant would have been hired if she had been certified as eligible for hire; evidence established that female applicant could be considered very qualified for fire fighter position, except for her poor credit record, which was found to be pretext for discrimination against the female applicant, fire chief recommended applicant for certification and stated that, in his opinion, nothing precluded female applicant from being fire fighter, and male applicants with poor credit records and additional problems were certified and hired by city. Scott v. City of Topeka Police and Fire Civil Service Com'n, D.Kan.1990, 739 F.Supp. 1434. Civil Rights 1470; Civil Rights 1765

Claim of intentional discrimination in violation of civil rights statute, 42 U.S.C.A. § 1983, by city and city officials with respect to selection of women as fire fighters could not be sustained based on fact that before 1975 job announcements for position of fire fighter were restricted to males, only five of 832 fire fighters were women, director of training academy, who had been removed due to bias against women, had been biased against them, and physical and mechanical reasoning tests were used to select fire fighters, where there was substantial evidence that city made efforts to encourage women to apply as fire fighters and to complete selection process, no evidence of discriminatory treatment was offered by two incumbent female fire fighters who testified, and there appeared to be no discrimination against women in administration of physical examination. Brunet v. City of Columbus, S.D.Ohio 1986, 642 F.Supp. 1214, appeal dismissed 826 F.2d 1062, certiorari denied 108 S.Ct. 1593, 485 U.S. 1034, 99 L.Ed.2d 908. Civil Rights 1421

1840. ---- Speech and writings, firefighters, deprivation of employment rights

Fire marshal's internal arson investigation report, which was used as grounds for demotion of fire marshal, addressed matters of public concern and thus, was constitutionally protected speech, particularly where Kansas law mandated that report be filed in office of state fire marshal and explicitly gave public access to such report, and thus, jury verdict awarding marshal $100,000 damages in action alleging demotion abridged marshal's right of free speech had to be upheld. Koch v. City of Hutchinson, C.A.10 (Kan.) 1987, 814 F.2d 1489, rehearing granted 847 F.2d 1435, on rehearing 847 F.2d 1436, certiorari denied 109 S.Ct. 262, 488 U.S. 909, 102 L.Ed.2d 250. Civil Rights 1473; Constitutional Law 90.1(7.2)

Dismissal of fireman for his participation in circulation of a petition protesting recent promotion in fire department, and for his presenting same to city manager, was an impermissible infringement upon fireman's exercise of his rights under U.S.C.A.Const. Amends. 1 and 14, and defendants failed to show sufficient justification for penalizing him because of his exercise of such rights. Jannetta v. Cole, C.A.4 (S.C.) 1974, 493 F.2d 1334. Municipal Corporations 198(2); Constitutional Law 90.1(7.2); Constitutional Law 278.4(3)

Actions of fire chief in allegedly terminating volunteer firefighter in retaliation for his protected First Amendment speech could form basis for municipal liability under § 1983, where fire chief had been delegated final policymaking authority for department through municipal ordinance. Cooper v. Town of Bar Nunn, D.Wyo.2003, 257 F.Supp.2d 1363, affirmed 101 Fed.Appx. 324, 2004 WL 1281491. Civil Rights 1351(5)

1841. ---- Political affiliation, firefighters, deprivation of employment rights

Firefighter's allegations that city officials conspired to bypass him for promotion to battalion chief in retaliation for his criticism of mayor during his own mayoral campaign alleged deprivation of a federally protected right, as required to support firefighter's civil conspiracy claim under § 1983. Fioriglio v. City of Atlantic City, D.N.J.1998, 996 F.Supp. 379, affirmed 185 F.3d 861, certiorari denied 120 S.Ct. 789, 528 U.S. 1075, 145 L.Ed.2d 666. Conspiracy 7.5(2)

Fire fighter bringing § 1983 action against fire department did not sufficiently allege causal connection between his political activities in opposition to principal elected official of fire department and his having been assigned to a position with hours which were unfavorable to him. Walsh v. Ward, C.D.Ill.1991, 757 F.Supp. 959, affirmed 991

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42 U.S.C.A. § 1983

F.2d 1344. Civil Rights 1395(8)

1842. ---- Constructive discharge, firefighters, deprivation of employment rights

Threatened demotion and resignation of assistant fire chief for allegedly telling an organization that it was helping unqualified persons to obtain jobs were "constructive discharge" of chief who was claiming violation of procedural due process and First Amendment in § 1983 actions; demotion would have required chief to take orders from persons who were previously of equal rank and would have made reasonable chief feel compelled to resign; chief was given two days to make decision to resign; adverse publicity had surrounded threatened demotion; and city could reasonably foresee that chief would feel compelled to resign. Meyers v. City of Cincinnati, S.D.Ohio 1990, 728 F.Supp. 477, affirmed in part, reversed in part on other grounds 934 F.2d 726. Civil Rights 1123

1843. ---- Promotion, firefighters, deprivation of employment rights

New Jersey, New Jersey Department of Personnel (NJDOP), and NJDOP officials did not administer facially race-neutral firefighters' exam in intentionally discriminatory manner, for purposes of equal protection claim asserted by unsuccessful applicants under §§ 1983, where all applicants took same exam, all exams were scored using same scoring key, all applicants were required to achieve same minimum cut-off score on each exam component, and all applicants who passed each component of exam were ranked according to final score with each component equally weighted. Antonelli v. New Jersey, C.A.3 (N.J.) 2005, 419 F.3d 267. Municipal Corporations 197

Black firefighters sufficiently demonstrated that they were qualified for promotion to captain, notwithstanding their low ratings in assessment center program, so as to establish prima facie case under § 1983 of discriminatory failure to promote; firefighters had consistently received satisfactory job performance ratings and had received praise while temporarily working in position of captain. Felton v. City of Auburn, M.D.Ala.1997, 968 F.Supp. 1476. Civil Rights 1135

1844. ---- Medical leave, firefighters, deprivation of employment rights

HIV-positive fire fighter who was assigned to light duty following his resignation and then subsequently discharged when he refused to perform light duty assignments failed to establish that he was denied equal protection or due process, inasmuch as fire fighter was treated differently only to extent of providing him with alternative to his initial voluntary resignation due to his HIV status, and fire fighter was discharged because of his refusal to perform assigned duties, not because of his medical condition. Severino v. North Fort Myers Fire Control Dist., C.A.11 (Fla.) 1991, 935 F.2d 1179. Constitutional Law 238.5; Constitutional Law 278.4(3); Municipal Corporations 198(2)

Fire fighter who sustained back injury could not recover in action under this section on ground that he was denied due process when he did not receive an immediate hearing on denial of initial application for indemnification of medical expenses. Packish v. McMurtrie, C.A.1 (Mass.) 1983, 697 F.2d 23. Civil Rights 1126

While injured fire fighter had vested property interest under New York law in receipt of disability payments equal to his regular salary, city's mistaken policy of withholding taxes from those payments did not deprive fire fighter of procedural due process; fire fighter had opportunity to contest amounts withheld by filing appropriate withholding and exemption certificates and could have refused to report payments made as income on his tax returns and demanded reimbursement from government for amounts withheld. DiGiovanni v. City of Rochester, W.D.N.Y.1988, 680 F.Supp. 80. Constitutional Law 278.4(5); Municipal Corporations 200(5)

Right to travel was not in any matter at issue in case respecting decision of defendant trustees of pension board to reinstate plaintiff on a late duty basis in absence of evidence that governing Indiana statute, IC 1976, 19-1-37-17,

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contained any restrictions on a disabled fireman's right to travel, but even if right to travel was at issue with respect to alleged conduct of defendants in calling plaintiff back to Indiana from Florida for reexamination, a cause of action under this section for violation of right to travel was not stated in absence of evidence that reexamination was unjustifiable for purpose of preventing one who was retired for medical reasons from taking advantage of such retirement if disability no longer existed. Danaher v. Michaw, N.D.Ind.1977, 435 F.Supp. 717. Civil Rights 1395(8)

1845. ---- Reputation injury, firefighters, deprivation of employment rights

Communication by employer-city fire department of reasons for discipline of employee, who was considered to have committed unprofessional conduct and grievous breach of her obligations to maintain confidentiality of investigations conducted by inspector general's office warranting dismissal, could violate employee's liberty interest, so as to permit her to maintain civil rights action under 42 U.S.C.A. § 1983. Morciglio v. New York City Fire Dept., E.D.N.Y.1986, 628 F.Supp. 134. Civil Rights 1040

1846. ---- Unions, firefighters, deprivation of employment rights

Fire department employees failed to establish that union retaliated for employee's employment discrimination charges and promotion lawsuit when union attorney failed to represent employee on her claim against fire fighter's benefit fund, that union attorney's conflict of interest was pretextual reason for denying representation, and that denial of representation was retaliation for exercise of First Amendment rights. Herhold v. City of Chicago, N.D.Ill.1989, 723 F.Supp. 20. Constitutional Law 90.1(7.2); Civil Rights 1249(1)

1847. ---- Wages, firefighters, deprivation of employment rights

Fire department's original denial of wages to fire fighter for day when he was absent from work while responding to witness subpoena in federal court was neither procedural nor substantive constitutional violation, and therefore did not give rise to colorable claim under federal civil rights statute, even though refusal to pay wages would deprive fire fighter of property right in violation of state law which entitled him to wages, where deprivation was rectified by state under effective administrative procedure by time that civil rights suit was filed. Genusa v. Mumphrey, C.A.5 (La.) 1991, 931 F.2d 11. Civil Rights 1320

1848. Police officers, deprivation of employment rights--Generally

Determination whether city policeman had property right in continued employment, protected by U.S.C.A.Const. Amend. 14, was determined by state law, in absence of allegation that policeman was suspended for constitutionally impermissible reasons or in violation of this section. DeBono v. Vizas, D.C.Colo.1977, 427 F.Supp. 905. Federal Courts 411

1849. ---- Property interest, police officers, deprivation of employment rights

Police officer lacked property interest in continuing public employment for purposes of procedural due process claim against town and town administrator under §§ 1983; officer was probationary employee who could be terminated without cause under terms of town charter, and the very nature of probationary employment meant that officer could not be permanent employee with property interest in continuing employment without further testing. Dodd v. Sheppard, D.R.I.2006, 436 F.Supp.2d 326. Towns 28

Police officer had no property right, protected by due process clause, to promotion by Commonwealth of Puerto Rico to position of first lieutenant; officer was ineligible for promotion while ongoing complaint or administrative investigation was pending against him. Ramos Rodriguez v. Puerto Rico, D. Puerto Rico 2004, 325 F.Supp.2d 6. Constitutional Law 277(2)

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42 U.S.C.A. § 1983

State police detective was not deprived of property interest, in violation of his due process rights, when he was transferred from one casino to another, where there existed no independent source under Connecticut law supporting his claim of entitlement to be left at first casino, and he lost no pay or benefits when he was transferred. Mercer v. Brunt, D.Conn.2004, 299 F.Supp.2d 21, reconsideration denied 304 F.Supp.2d 334. Constitutional Law 278.4(1); States 53

North Carolina public policy exception to employment-at-will doctrine did not give at-will police officer property interest in continued employment sufficient to support § 1983 claim against city. Beck v. City of Durham, M.D.N.C.2000, 129 F.Supp.2d 844. Constitutional Law 277(2)

Special law enforcement officer (SLEO) employed by city did not have property interest, pursuant to Special Law Enforcement Officers Act, in his reappointment after his suspension, once his final term had expired, as required to support his §§ 1983 claim, that city's alleged failure to give proper notice, either that administrative proceedings in connection with his misconduct could result in his suspension, or of suspension itself, violated his right to due process. Nance v. City of Newark, New Jersey, C.A.3 (N.J.) 2005, 124 Fed.Appx. 722, 2005 WL 348365, Unreported. Constitutional Law 278.4(5); Municipal Corporations 185(3)

Former members of village police department had no property right, under Ohio law, to continued employment in police department that village legally and completely abolished to provide its citizens with more professional law enforcement via county sheriff's department, for purposes of §§ 1983 claim based on alleged due process violations; village did not fire department members to replace them with agreeable officers, and there was no probative evidence suggesting abolishment was a subterfuge. Wanless v. Village of South Lebanon, C.A.6 (Ohio) 2005, 118 Fed.Appx. 967, 2005 WL 14984, Unreported. Constitutional Law 277(2); Municipal Corporations 185(1)

1850. ---- Disparate treatment, police officers, deprivation of employment rights

Constitutionality under equal protection clause of consent decree, entered in settlement of prior racial discrimination suit against sheriff's department and mandating a policy that at least 50% of all annual promotions in department be awarded to black officers, was evaluated according to the analytical framework set forth in the U.S. Supreme Court's *Croson* decision, the Eleventh Circuit's *Birmingham II* decision, and commensurate decisions, not by the *McDonnell Douglas* standard; department's employment promotion policy constituted an affirmative action plan. Thigpen v. Bibb County, Ga., Sheriff's Dept., C.A.11 (Ga.) 2000, 223 F.3d 1231. Constitutional Law 219.1; Federal Civil Procedure 2397.2

Probationary police officers' complaint charging due process and equal protection violations, but failing to identify any property or liberty interest or any prior or subsequent history of disparate treatment failed to state claim under § 1983. Perkins v. Silverstein, C.A.7 (Ill.) 1991, 939 F.2d 463. Civil Rights 1395(5)

Fact that white police officers were not qualified for promotion to sergeant because they did not have associates degree, which was condition precedent for taking sergeant exam, and that one officer was not qualified until he had five years' experience with police department did not preclude officers from establishing prima facie case of discriminatory promotion under §§ 1981, 1983, and Michigan's Elliott-Larsen Civil Rights Act, where officers' principal point was that these requirements were imposed with discriminatory animus. Kresnak v. City of Muskegon Heights, W.D.Mich.1997, 956 F.Supp. 1327. Civil Rights 1234

City officials' allegation that police officer was held to higher standard of professional conduct than subordinate because of difference in their ranks provided sufficient indication of rational basis for disciplining officer more harshly with respect to his review of report which contained racially intemperate remarks, and officer's claim for violation of his right to equal protection was denied. Boone v. Mingus, S.D.Ala.1988, 697 F.Supp. 1577, affirmed 880 F.2d 419. Constitutional Law 238.5; Municipal Corporations 185(1)

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42 U.S.C.A. § 1983

Former state trooper, who complained that he had been subject to more severe sanction by Virginia Department of State Police than was imposed upon other Department personnel who had also engaged in similar or identical conduct, could not recover under this section governing civil action for deprivation of rights on equal protection grounds where he admitted that conduct he engaged in from which his alleged injuries arose was in violation of state law and Department regulations. Suddarth v. Slane, W.D.Va.1982, 539 F.Supp. 612. Civil Rights 1126

Allegations in city police detectives' complaint supported federal civil rights claims that city failed to adequately protect minority undercover officers based on race and national origin when complaint and referenced documents asserted that overwhelming majority of undercover assignments were given to black and Hispanic officers, that city knew this fact when it failed to provide adequate protection for such officers, and that superiors who failed to follow proper safety procedures acted with discriminatory intent. Tamayo v. City of New York, S.D.N.Y.2004, 2004 WL 137198, Unreported, adhered to in part on reconsidertaion 2004 WL 725836. Civil Rights 1395(8)

1851. ---- Age discrimination, police officers, deprivation of employment rights

West Virginia statute establishing 18 to 35-year age limit for applicants for original appointment to police force of any city with population of 10,000 or more did not violate Equal Protection Clause of U.S.C.A.Const. Amend. 14, § 1, and thus unsuccessful applicant for employment as police officer whose application was denied on sole ground that he was 40 years of age could not prevail in civil rights action brought against Constitutional Law 238.5; Municipal Corporations 176(3.1)

1852. ---- Racial discrimination, police officers, deprivation of employment rights

White, male, police training cadets, who were discharged from academy for cheating on examinations, failed to establish that they were treated differently from minority and female recruits and that discharge was based on gender or race; discharged cadets were involved in more instances of exchanging answers during examination; and police department was entitled to differentiate between discipline given to discharged cadets and other recruits who were only peripherally involved in cheating. Friedel v. City of Madison, C.A.7 (Wis.) 1987, 832 F.2d 965. Civil Rights 1544; Civil Rights 1549

Practice of sheriff in preferring applicants for deputy jobs who had been policemen in various townships of county was not discriminatory, notwithstanding claim that practice resulted in excluding blacks as candidates in that all township police officers of county were white, where less than one percent of population of townships was black and, aside from a demonstrated rational relationship between preference and successful performance on job, there was no showing that preference resulted in perpetuation or carrying forward of past discriminatory practices. Shack v. Southworth, C.A.6 (Mich.) 1975, 521 F.2d 51. Civil Rights 1127

Where arbitrary requirement of service in next preceding rank was required for promotions to levels of police lieutenant and police captain, district court could reasonably conclude from evidence that requirements for promotion to lieutenant and captain tended to perpetuate past discriminatory practices at entry level. Afro Am. Patrolmen's League v. Duck, C.A.6 (Ohio) 1974, 503 F.2d 294, on remand. Civil Rights 1548

Former police officer could not recover on claim of racially hostile work environment with respect to claims of pressure to write tickets, harassment of officer, pressure to keep silent, and promotions and firing; police officer offered no evidence indicating he was pressured to write tickets because of his race, he offered no evidence he was harassed because he was black but, rather, stated that harassment was done to make an example to other officers who might disclose police irregularities, he offered no evidence that pressure was placed only to keep black officers silent, as opposed to any officer who had allegedly threaten to disclose information, and he gave a good deal of evidence indicating that much of alleged discrimination with respect to promotions and firings was based on taking actions to lie or cover up. Williams v. Morris, W.D.Va.1996, 956 F.Supp. 679. Civil Rights 1147

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42 U.S.C.A. § 1983

Black police officer who alleged that town mayors discriminated against him on basis of his race had to show a purpose or intent to discriminate in order to prevail on his § 1983 equal protection claim. Lightner v. Town of Ariton, Ala., M.D.Ala.1995, 902 F.Supp. 1489. Civil Rights 1137

City's desire to have more black sergeants or other high ranking black officers on police force, standing alone, was not sufficiently compelling reason to justify passing over of qualified white officers in order to make room for promotion of lesser qualified black officers to sergeant, where there was no evidence of any constitutional or statutory violations and, therefore, no governmental interest in preferring one group over another. Hayes v. City of Charlotte, N.C., W.D.N.C.1992, 802 F.Supp. 1361, affirmed in part, vacated in part on other grounds 10 F.3d 207. Civil Rights 1234; Civil Rights 1238

Hispanic employees of police department failed to raise inference of discriminatory intent required to establish prima facie case of employment discrimination under §§ 1981 and 1983 in connection with department's alleged custom or policy of requiring them to use their Spanish language skills, and of considering Spanish language skills in its employment decisions. Cota v. Tucson Police Dept., D.Ariz.1992, 783 F.Supp. 458. Civil Rights 1421

Hispanic police lieutenant did not establish prima facie case of discrimination as result of his failure to be appointed acting captain absent showing that he applied for and was qualified for job for which employer was seeking applicants, that he was rejected despite his qualifications, and that position remained open and other applicants were sought after his rejection; city had not sought application for position in question, lieutenant did not apply for position before appointment was made, and he was not qualified for assignment where he had not been working within the division in which the vacancy occurred. Garza v. City of Inglewood, C.D.Cal.1991, 761 F.Supp. 1475, affirmed 967 F.2d 586. Civil Rights 1548

City's refusal to hire black plaintiff as a city police officer was not shown to be racially motivated, where the state developed information through its routine background investigation that the applicant had been fired from one job for shoplifting, that she misrepresented that history in subsequent employment applications, that she abandoned another job without notice, that one of her former co-workers gave her a negative reference, and that, upon being given a successive polygraph examination concerning the shoplifting incident, the examiner opined that her denial was deceptive. Drayton v. City of St. Petersburg, M.D.Fla.1979, 477 F.Supp. 846. Civil Rights 1127

Existence of alleged deal between attorney and city manager that three of black patrolmen that attorney represented in prior case would be promoted, did not, under circumstances, support police officer's allegation that decision not to promote him to sergeant was based on consideration of his white race. Burns v. Sullivan, D.C.Mass.1979, 473 F.Supp. 626, affirmed 619 F.2d 99, certiorari denied 101 S.Ct. 256, 449 U.S. 893, 66 L.Ed.2d 121. Civil Rights 1135

Actions taken by Pennsylvania state police pursuant to consent decree in prior civil rights action with respect to employment of minorities did not constitute an appointing of cadets on the basis of a "fixed quota" but was merely the following of procedures which prevented additional discrimination against minority applicants during the temporary period while constitutional selection procedures were developed. Oburn v. Shapp, E.D.Pa.1975, 393 F.Supp. 561, affirmed 521 F.2d 142. Civil Rights 1127

African-American police officer failed to set forth any evidence from which inference could be drawn that county intentionally discriminated against Blacks in termination during probation, training, or Sheriff's Emergency Response Team (SERT) participation, in lawsuit claiming equal protection violation; even though officer alleged specific incidents of racial slurs and mace-shaving cream assault by fellow officers, incidents were not reported to someone in supervisory position, and special firearms training was given only to select few officers who were more senior than African-American officer. Patterson v. County of Oneida, N.D.N.Y.2002, 2002 WL 31677033, Unreported, affirmed in part, vacated in part 375 F.3d 206. Civil Rights 1405

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42 U.S.C.A. § 1983

1853. ---- Sex discrimination, police officers, deprivation of employment rights

Evidence, although conflicting, did not compel conclusion that internal departmental investigation of female state police officer's conduct would have been conducted even without consideration of her sex; although investigations concerning allegations that female officer slapped fellow trooper, about party she hosted at her parents' home, and about automobile accident raised questions of legitimate concern to state police, there was at least circumstantial evidence that similar incidents involving male troopers were not investigated internally. Pontarelli v. Stone, C.A.1 (R.I.) 1991, 930 F.2d 104. Civil Rights 1421

Police commissioner's remarks to discharged police officer that women had no business being police officers and that he did not want police officer there provided sufficient evidence of discriminatory intent to support employment discrimination claim under statute, which prohibits deprivation of federal constitutional right under color of state law. Webb v. City of Chester, Ill., C.A.7 (Ill.) 1987, 813 F.2d 824. Civil Rights 1421

Female police officer stated claim under § 1983, when she claimed that police department and police chief treated her differently than similarly situated males, interfered with her promotional opportunities, interfered with her opportunity to attend executive management program, gave her demeaning assignments and unfairly reprimanded her, that the acts were taken under color of state law in that they were rules and/or policies mandated and/or approved by the state, and that they were ongoing; the key unlawful employment practices were alleged to have occurred within the two-year period prior to claim, and acts occurring prior to that two-year period were covered by the continuing violation standard. Kielczynski v. Village of LaGrange, Ill., N.D.Ill.1998, 19 F.Supp.2d 877. Civil Rights 1126; Civil Rights 1383; Limitation Of Actions 58(1)

Police officer's failure to show that city had policy or custom of sexual harassment within police department was fatal to her § 1983 claim against city for violation of her equal protection rights under Fourteenth Amendment. Sharp v. City of Houston, S.D.Tex.1997, 960 F.Supp. 1164. Civil Rights 1351(5)

Supervisor's actions in subjecting female police officer to close scrutiny and keeping meticulous track of her whereabouts, which was not done with male officers, did not constitute "disparate treatment" in terms of employment for which city could be held liable, even if conduct could be considered harassment; female officer was not removed from her position and there was no adverse employment action taken against her due to complained of conduct. Barcume v. City of Flint, E.D.Mich.1993, 819 F.Supp. 631. Civil Rights 1172

1854. ---- Sex harassment, police officers, deprivation of employment rights

Police officer stated § 1983 cause of action against fellow police officers for sexual harassment and retaliation in violation of Fourteenth Amendment, based on alleged incidents that occurred when all three officers worked off-duty as security guards in apartment complex; officer might be able to recover on claim if she could prove that, in committing alleged sexual harassment, fellow officers had supervisory authority over her or in some other way exercised state authority over her. David v. City and County of Denver, C.A.10 (Colo.) 1996, 101 F.3d 1344, rehearing denied, certiorari denied 118 S.Ct. 157, 522 U.S. 858, 139 L.Ed.2d 102. Civil Rights 1395(8)

Female police officer presented sufficient evidence of hostile work environment to survive motion for summary judgment in § 1983 action alleging hostile work environment in violation of equal protection clause; female employee alleged not only a training room incident in which male police officers were reading a pornographic magazine and made comments about magazine calculated to get her attention, with other officer's allegedly laughing, hooting, and making kissing sounds and cat calls, but also that she was harassed, propositioned, physically touched, and spoken to in sexual manner by numerous police officers over course of five years before training incident, that she was subjected to training films containing pornography, that pornographic materials were routinely posted at station house, and that other women were subjected to similar circumstances. Wise v. New York City Police Dept., S.D.N.Y.1996, 928 F.Supp. 355. Federal Civil Procedure 2497.1

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42 U.S.C.A. § 1983

Female police lieutenant, bringing claim that city engaged in gender and pregnancy discrimination, in violation of her constitutional rights, Title VII and California Fair Employment and Housing Act (FEHA), when it did not promote her to captain while she was on eligibility list, failed to show that reason, freezing of positions, was pretextual, even though freeze was lifted as soon as eligibility list including lieutenant expired; lieutenant failed to show any causal connection between gender and pregnancy and fact she was not promoted. Glenn-Davis v. City of Oakland, N.D.Cal.2003, 2003 WL 21244061, Unreported, reversed 126 Fed.Appx. 375, 2005 WL 663436, on remand 2005 WL 2373726. Civil Rights 1171; Civil Rights 1176

1855. ---- Speech and writings, police officers, deprivation of employment rights

Under *Pickering* balancing of interests test, potential disruptiveness of guard's outburst regarding insufficient officer coverage during evening meal at maximum security prison outweighed whatever First Amendment value her speech might have had, for purposes of her retaliation claim under §§ 1983 guard had complained in loud, profane and unprofessional manner and in presence of staff and inmates, endangering both groups by exposing them to opportunistic acts of violence and undermining authority of supervising officer in presence of other officers and inmates. Cygan v. Wisconsin Dept. of Corrections, C.A.7 (Wis.) 2004, 388 F.3d 1092. Constitutional Law 90.1(7.2); Prisons 7

Assistant police chief's memorandum, stating that, based on temporary restraining order (TRO) issued by state court, officers should temporarily disregard earlier police department directives prohibiting officers who had made charges against other officers from discussing those charges, did not render moot officers' federal § 1983 action alleging that earlier directives violated their free speech rights, inasmuch as there was no reasonable basis to conclude challenged conduct would not reoccur; memorandum was nothing more than effort to comply with TRO and was by its terms temporary. Milwaukee Police Ass'n v. Jones, C.A.7 (Wis.) 1999, 192 F.3d 742. Federal Courts 13.10

Former deputy sheriff's proposed letter to editor of local newspaper wherein deputy disputed article dealing with recent solving of burglary case by police department, wherein only named investigator was given credit for cracking the case, was not constitutionally protected speech inasmuch as police department was small organization in which mutual confidence and cooperation were essential and letter related to matter of internal administration of that organization, not to any matter of public debate and, thus, deputy sheriff was not impermissibly dismissed from job for exercising his constitutional right to speak on issue of public concern. Cooper v. Johnson, C.A.4 (Va.) 1979, 590 F.2d 559. Constitutional Law 90.1(7.2)

Firefighter's speech at union meeting regarding city's favorable treatment of lieutenant was not of public concern, and thus city's decision to place firefighter on administrative leave after speech did not constitute retaliation for protected speech, in violation of First Amendment. Langlois v. City of Deerfield Beach, Florida, S.D.Fla.2005, 370 F.Supp.2d 1233. Constitutional Law 90.1(7.2); Municipal Corporations 198(2)

Former deputies who allegedly were discharged in retaliation by sheriff and deputy sheriff for their participation in prior lawsuit against town police department established prima facie claim of retaliation under Title VII by showing that they were engaged in protected activity of exercising their First Amendment rights and that they suffered adverse employment action when their employment was terminated. Smith v. Parish of Washington, E.D.La.2004, 318 F.Supp.2d 366. Civil Rights 1249(2); Sheriffs And Constables 21

Police officers' objections to orders instructing them to carry "ghost" employee on daily duty roster so that he would be paid, which would have been a clear misuse of public funds, qualified as speech on a matter of public concern for purposes of determining whether officers stated claim under § 1983 for violation of First Amendment rights; officers' objections did not appear to have been motivated by unfavorable personnel decision or personal grievance, nor did context of officers' objections indicate a personal vendetta. Sanders v. District of Columbia, D.D.C.1998, 16 F.Supp.2d 10. Constitutional Law 90.1(7.2); District Of Columbia 7

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42 U.S.C.A. § 1983

Allegations of misconduct in police department were matter of public concern, as required to support deputy police chief's claim that he was terminated in violation of his free speech rights for appearing at news conference called to expose misconduct. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Constitutional Law 90.1(7.2); Municipal Corporations 196

Police officer's failure to show causal connection between his allegedly protected expression and his termination was fatal to his claim of retaliatory discharge in violation of First Amendment. Singleton v. Cecil, E.D.Mo.1997, 955 F.Supp. 1164, affirmed 133 F.3d 631, rehearing granted and vacated, on rehearing 155 F.3d 983, rehearing en banc granted, on rehearing 176 F.3d 419, certiorari denied 120 S.Ct. 402, 528 U.S. 966, 145 L.Ed.2d 313. Civil Rights 1421

Police officer stated cause of action for violation of her First Amendment freedom of speech rights, when she complained that she was discriminated against on basis of her sex and informed police department's office of equal employment opportunity that three other women in her precinct had been similarly treated; allegation of pattern of sexual discrimination made her speech that of a citizen complaining about a matter of public concern, to which First Amendment applied, rather than speech regarding individual grievance, to which it was inapplicable. Domenech v. City of New York, S.D.N.Y.1996, 919 F.Supp. 702, on reargument 927 F.Supp. 106. Constitutional Law 90.1(7.2); Municipal Corporations 180(1)

Police dispatcher and police officer stated claims against city, department, and city employees for deprivation of right to free speech for firing dispatcher for speaking to media about police misconduct and for forcing officer to retire for complaining to supervisors about police misconduct; dispatcher and officer demonstrated that they engaged in protected speech, that their interest in engaging in speech outweighed any interest of defendants, and that speech was motivating factor in defendants' actions. McDonald v. City of Freeport, Tex., S.D.Tex.1993, 834 F.Supp. 921. Civil Rights 1395(8)

Police academy cadet stated cause of action against city and community college based on deprivation of his First Amendment rights to free speech and free association, by alleging that chief of police decided to withdraw sponsorship required for police academy attendance in retaliation for cadet's refusal to make untrue allegations against police officer and that community college officials agreed to cadet's removal from college based on their dislike of statements cadet made about past or present police, military, and intelligence positions. Perez v. City of Key West, Fla., M.D.Fla.1993, 823 F.Supp. 934. Constitutional Law 90.1(7.2); Constitutional Law 91

Testimony given by former school police officer in coworker's sex discrimination case, and officer's filing of civil rights lawsuit which resulted in his reinstatement, did not involve matters of public concern and, therefore, alleged retaliation against officer for his speech did not involve independent violation of First Amendment that could have been actionable in § 1983 action separate from Title VII; speech which involved whether officer or coworker owned marijuana cigarette found in officer's van was made solely to further interests of officer and coworker. Arvinger v. Mayor & City Council of Baltimore, D.Md.1993, 811 F.Supp. 1121. Civil Rights 1502

County sheriff was not liable under § 1983 for dismissal of deputy sheriffs who had attended public county board meeting of supervisors to complain about proposed decrease in mileage allowance; subject of deputies' mileage allowance was not matter of public concern. Leonard v. Fields, W.D.Va.1992, 791 F.Supp. 143. Constitutional Law 90.1(7.2)

Statements made by police officer relating only to internal departmental employment matters were not statements of public concern protected by Constitution from employer's hostile actions and could not be basis for § 1983 action. Broderick v. Roache, D.Mass.1990, 751 F.Supp. 290. Constitutional Law 90.1(7.2)

Enforcement officer for domestic relations section of county court of common pleas was not engaged in any protected activity when he expressed to other officers his concerns that his duties required him to violate laws.

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Centrella v. Barth, E.D.Pa.1986, 633 F.Supp. 1016. Constitutional Law 90.1(7.2)

Former police chief was not entitled to damages and declaratory and injunctive relief under this section in his action alleging that he lost his job due to a letter he had written lodging charge against a magistrate which was protected by U.S.C.A.Const. Amend. 1 where previously close working relationship between police chief and mayor had been seriously damaged by controversy which followed letter, in that fact that deterioration in relationship with mayor occurred was itself sufficient to support police chief's dismissal, and even without the letter, police chief would not have been renewed under the circumstances. Wood v. Town of Frederica, D.C.Del.1982, 529 F.Supp. 403, affirmed 688 F.2d 828. Municipal Corporations 182; Civil Rights 1470

Police officer's expression of his concern over police department's response to September 11, 2001 terrorist attack during his conversation with police chief was outweighed by public interest in maintaining obedience, order, and discipline in the police department, especially in time of crisis, and thus could not serve as basis for claim that he was retaliated against for exercising his First Amendment free speech rights; officer's concern took the form of challenging chief's orders, persistently, flagrantly, and in front of others. Bradshaw v. Township of Middleton, C.A.3 (N.J.) 2005, 145 Fed.Appx. 763, 2005 WL 2077137, Unreported. Municipal Corporations 185(1)

City's failure to reappoint special law enforcement officer (SLEO), following his suspension due to firing warning shot and failing to have his weapon fully loaded, in violation of departmental policies, was not in retaliation for his engaging in any protected speech activity related to advocacy of rights of minorities in police department; SLEO was not treated differently from similarly situated individuals who were not commissioned as SLEOs due to alleged misconduct, and city would have taken action even in absence of allegedly protected activity. Nance v. City of Newark, New Jersey, C.A.3 (N.J.) 2005, 124 Fed.Appx. 722, 2005 WL 348365, Unreported. Constitutional Law 90.1(7.2); Municipal Corporations 185(1)

1856. ---- Policy disputes, police officers, deprivation of employment rights

Deputy police chief established that police chief and mayor retaliated against him for his testimony in employment discrimination case brought against the mayor and chief; deputy chief gave testimony extremely critical of mayor and his policies, and shortly thereafter, the deputy chief, who had previously discussed possibility of soon retiring, was effectively replaced, which had never been done in past situations where officers were preparing for retirement; moreover, the mayor lashed out at the deputy chief in a radio talk-show for the deputy's "disloyalty." Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Constitutional Law 82(11); Municipal Corporations 182

1857. ---- Political contributions, police officers, deprivation of employment rights

Where section of Louisiana Constitution and statute prohibited certain classified employees from engaging in political activity and where a police officer in city's classified service had allegedly sponsored postelection banquet honoring city councilman and had signed two checks, as president of policemen's association, payable to councilman and other political candidate, provisions were not unconstitutional as applied by city civil service commission against the officer. Bruno v. Garsaud, C.A.5 (La.) 1979, 594 F.2d 1062. Elections 311

1858. ---- Political affiliation, police officers, deprivation of employment rights

A police corporal established that he was retaliated against for his exercise of free speech and association rights, where corporal was transferred to a less desirable position shortly after mayor had learned that the corporal had been seen at headquarters of mayor's opponent. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Constitutional Law 90.1(7.2); Constitutional Law 91; Municipal Corporations 180(2)

Although deputy sheriff who was not reappointed by newly elected sheriff had openly supported an opposing

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candidate, the nonreappointment decision did not violate this subchapter where there was no contradiction of sheriff's testimony that he twice asked the deputy to speak with him about remaining with the department and that when deputy never appeared he concluded that he was not interested in remaining with the department. Soileau v. Zerangue, W.D.La.1982, 553 F.Supp. 845. Civil Rights 1128

Evidence did not support jury's finding that police department had custom of retaliation against individuals for challenging incumbent in political party's primary, criticizing police department, speaking out on issues of public concern, or any combination thereof, so as to support imposition of municipal liability on city in § 1983 suit brought by former police officer claiming retaliation in violation of his First Amendment rights, despite testimony that police department engaged in surveillance of groups that engaged in public criticism of department, and evidence that city had previously been held liable for unlawful and retaliatory firing of employee. Davis v. City of New York, C.A.2 (N.Y.) 2003, 75 Fed.Appx. 827, 2003 WL 22173046, Unreported. Civil Rights 1421

1859. ---- Association, police officers, deprivation of employment rights

Lack of any property interest or contractual right in county undersheriff's public employment did not defeat his claim under U.S.C.A.Const. Amend. 1 alleging retaliation against him for exercise of his right under U.S.C.A.Const. Amend. 1 of association and assistance in his wife's preparation of sex discrimination charge against sheriff's department. Owens v. Rush, C.A.10 (Kan.) 1981, 654 F.2d 1370. Civil Rights 1244

State trooper who alleged that he was terminated for associating with convicted felon and felon's family whom he had known since childhood did not state § 1983 First Amendment associational claim; trooper did not describe any details regarding his association with felon's family that closely resembled a family relationship, such as relative smallness and seclusion from others in critical aspects of the relationship, for purposes of the First Amendment's right of intimate association. White v. Florida Highway Patrol, Div. of Florida Dept. of Highway Safety & Motor Vehicles, M.D.Fla.1996, 928 F.Supp. 1153. Civil Rights 1395(8)

1860. ---- Self-incrimination privilege, police officers, deprivation of employment rights

Police officer who was fired when he refused to testify at a criminal trial on basis of his right against self-incrimination but whose dismissal was reversed by the Court of Appeals established that he was retaliated against by the mayor for evoking his constitutional rights, where mayor personally assigned the officer to a series of dead end jobs following his reinstatement, and reasons mayor gave for the assignments were not credible. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Constitutional Law 82(11); Municipal Corporations 185(1)

1861. ---- Hiring, police officers, deprivation of employment rights

Daughter of town selectman, whose application for employment with summer police force was denied, failed to establish that town's articulated legitimate, nondiscriminatory reason for not hiring her, town's anti-nepotism policy, was pretext for gender discrimination in violation of equal protection, for purpose of § 1983 claim, where daughter's statistical analysis failed to provide evidence that policy disproportionately affected female applicants and even if daughter did not socialize with appointing authority, policy was directed at public perception of how employees were hired, rather than under whose direction and discretion they performed. Roche v. Town of Wareham, D.Mass.1998, 24 F.Supp.2d 146. Constitutional Law 224(3); Towns 28

Applicants for positions on police force failed to state claims under § 1983 for deprivation of interest in being considered for employment based on borough's substitution of police chief for civil service commissioner as grader of civil service examination, where even if police chief's evaluations were excluded from computation of applicants' scores, applicants still would not have been eligible for the positions they sought under applicable

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agency regulations. Schmidt v. Borough of Stroudsburg, M.D.Pa.1993, 841 F.Supp. 639, affirmed 17 F.3d 1431. Civil Rights 1088(1)

Where new methods of selection of police officers had been approved on the basis of their nondiscriminatory results by the court, where a new roster had been compiled, and where to permit persons on old list to be hired would make validating the new hiring system difficult, city would be directed to hire from the new roster rather than from the old roster. U.S. v. City of Chicago, N.D.Ill.1977, 437 F.Supp. 256, affirmed 567 F.2d 730, certiorari denied 98 S.Ct. 2832, 436 U.S. 932, 56 L.Ed.2d 777. Municipal Corporations 184(2)

Alleged facts which indicated nothing more than a brief interview by appointing officials with respect to plaintiff's application for position of patrolman were insufficient to support cause of action, under this section proscribing the deprivation of rights, based upon denial of position to plaintiff. Evans v. Town of Watertown, D.C.Mass.1976, 417 F.Supp. 908. Civil Rights 1127

1862. ---- Demotion, police officers, deprivation of employment rights

Former police chief received substantially similar salary and fringe benefits upon demotion to assistant chief, retained his employment, and thus failed to allege deprivation of due process liberty interest sufficient to overcome city officials' motion to dismiss civil rights claim on qualified immunity grounds, despite any stigma arising from any injury to former chief's reputation. Schultea v. Wood, C.A.5 (Tex.) 1994, 27 F.3d 1112, rehearing en banc granted, on rehearing 47 F.3d 1427. Civil Rights 1376(10)

City-county personnel board's issuance of single sentence statement, affirming district fire chief's demotion, with no findings of fact, did not preclude district court from determining whether demotion was in retaliation for chief's allegations of departmental misconduct, and thus violated chief's First Amendment rights. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Municipal Corporations 196

Police officer had no protectible property interest in rank of major, for purposes of his § 1983 claim which was based on his demotion without a hearing; rank of major was upper level policy-making position which, under state law, was subject to demotion without hearing, and, although local government resolution could confer property interest and officer had been promoted pursuant to local government resolution, under state law, local government had lacked authority to enact resolution promoting police officer. Allen v. City of Carmel, Ind., S.D.Ind.1993, 830 F.Supp. 482. Constitutional Law 277(2)

Police lieutenant failed to establish that he was stripped of certain responsibilities in retaliation by police chief and mayor for findings he made in investigation of alleged mismanagement of petty cash by police officers in the narcotics and intelligence bureau, even though his claim may have had some merit; evidence was not sufficient to draw reliable inferences regarding whether report could be characterized as addressing matter of public concern, whether lieutenant actually suffered a tangible adverse treatment, or whether, if the lieutenant's duties were limited, limitation of the duties occurred because of the report. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Civil Rights 1405

1863. ---- Medical leave, police officers, deprivation of employment rights

Fact that policeman who was generally required under police department rules to remain in his apartment while on sick leave was subject to disciplinary action, including possible fine or dismissal, for exercising his normal right to travel created a justiciable claim with respect to enforceability of such rules, within purview of this section. Gissi v. Codd, E.D.N.Y.1974, 391 F.Supp. 1333. Civil Rights 1126

1864. ---- Off-duty conduct, police officers, deprivation of employment rights

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42 U.S.C.A. § 1983

Although police officer had right to engage in speech and activities with respect to firearms safety education, police department's prohibiting officer from engaging in secondary employment in this area, namely teaching classes on firearms safety to people applying for concealed handgun permits, did not impinge upon these rights, and as such, officer did not state § 1983 free association claim; officer was still free to advocate this cause or to participate in weapons safety classes on volunteer basis. Edwards v. City of Goldsboro, E.D.N.C.1997, 981 F.Supp. 406, affirmed in part, vacated in part 178 F.3d 231. Constitutional Law 91; Municipal Corporations 185(1)

For state governmental bodies to justify controlling the private off-duty conduct of policeman, such body must show that the employee's usefulness as a police officer would be substantially and materially impaired by the conduct in question. Smith v. Price, M.D.Ga.1977, 446 F.Supp. 828, reversed on other grounds 616 F.2d 1371. Municipal Corporations 185(1)

1865. ---- Privacy, police officers, deprivation of employment rights

City police officers did not have constitutionally protected right of privacy to engage in sexual relations with prostitutes while on duty, in that officers' job performance was threatened by obvious conflicts of interest and possibility of blackmail, officers' activities were carried on openly and were widely known, and officers' activities threatened to undermine police department's internal morale and community reputation. Fugate v. Phoenix Civil Service Bd., C.A.9 (Ariz.) 1986, 791 F.2d 736. Constitutional Law 82(11)

Court's finding that, as matter of law, conduct of telephone company in installing and maintaining "call director" at police department which was used to intercept police officers' oral and telephone communications could not give rise to finding, for purposes of Federal and New Jersey Wiretap Acts and §§ 1983 and 1985, that telephone company violated police officers' privacy rights also mandated summary judgment in favor of telephone company in officers' state constitutional and common law invasion of privacy claims. PBA Local No. 38 v. Woodbridge Police Dept., D.N.J.1993, 832 F.Supp. 808. Federal Civil Procedure 2491.5

Former police officer did not have legitimate expectation of privacy preventing disclosure of circumstances surrounding resignation, as needed to establish violation of right to privacy in support of § 1983 civil rights claim against city in connection with article published in police newsletter, where officer's suspension and remand for on-duty conduct were matters of public information, disclosed matters were not of highly personal and sensitive nature, newsletter article was not widely circulated, and officer resigned prior to public disclosure. Worden v. Provo City, D.Utah 1992, 806 F.Supp. 1512. Civil Rights 1040

Police officer and his wife, as subjects of confidential police investigative reports, had right to privacy in contents of report that could serve as basis for civil rights claim after reports were published by newspaper. Scheetz v. Morning Call, Inc., E.D.Pa.1990, 747 F.Supp. 1515, affirmed 946 F.2d 202, rehearing denied, certiorari denied 112 S.Ct. 1171, 502 U.S. 1095, 117 L.Ed.2d 417. Civil Rights 1040

That defendant police officers entered plaintiff police officer's home without consent in attempt to serve subpoena on plaintiff officer to appear before grand jury investigating police misconduct did not rise to the level of gross negligence or deliberate indifference on part of municipality so as to render municipality liable to plaintiff officer and his family under 42 U.S.C.A. § 1983, even if entry was a violation of plaintiffs' Fourth Amendment rights. Reed v. Schneider, E.D.N.Y.1985, 612 F.Supp. 216. Civil Rights 1376(6)

1866. ---- Promotion, police officers, deprivation of employment rights

Police officers failed to establish First Amendment retaliation claim against police chief based on a failure to promote where they offered no facts supporting a retaliatory motive on the part of chief, only wide-ranging speculation; officers did not offer any evidence to contradict chief's testimony that he did not exercise independent

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judgment when presented with the promotion choices of the selection committees, but rather relied on the committees' recommendations. Deters v. Lafuente, C.A.2 (N.Y.) 2004, 368 F.3d 185. Civil Rights 1421

Female police officer did not have a protectable property or liberty interest in her promotional opportunities, and thus, she could not allege due process violation by means of § 1983 based on her claim that she had a protected property and liberty interest in her promotional opportunities generally and in her opportunity to compete for a sergeant's position in the police department. Kielczynski v. Village of LaGrange, Ill., N.D.Ill.1998, 19 F.Supp.2d 877. Constitutional Law 277(2); Constitutional Law 278.4(2); Municipal Corporations 184.1

Police officer failed to show city policy or practice that controlled who would receive promotions or criteria that mayor would apply in selecting candidate for promotion from list of eligibles, and, thus, actions of city and city officials in not placing police officer on eligibility list for promotion and mayor's failure to promote him did not violate officer's due process rights under Fourteenth Amendment or Connecticut Constitution, where city personnel rules established mayor as final appointing authority, with final approval of all promotions, and gave him unfettered discretion to decide promotions. Violissi v. City of Middletown, D.Conn.1998, 990 F.Supp. 93. Constitutional Law 278.4(2); Municipal Corporations 184.1

Insertion of associates degree requirement for eligibility to take sergeant's exam into collective bargaining agreement was not motivated by race, designed to narrow those eligible to take exam to two black officers, and thus, city's motion for judgment as matter of law in white officer's discrimination action under §§ 1981, 1983, and Michigan's Elliott-Larsen Civil Rights Act was granted, where requirement impacted both black and white officers, there was no evidence police chief acted out of personal or institutional racial bias in requesting requirement, and statements officer relied upon were isolated statements that should not have been considered as direct proof of discrimination. Kresnak v. City of Muskegon Heights, W.D.Mich.1997, 956 F.Supp. 1327. Civil Rights 1234

Police officer who was passed over for promotion to captain failed to establish that he was denied the promotion on basis of his giving a favorable performance evaluation to an employee who mayor was encouraging retaliation against and because officer had expressed opposition to a mayor's emergency promotion plan; the officer did not communicate with either mayor or police chief about upcoming emergency promotions, there was no evidence as to whether the officer's name was ever mentioned to mayor in connection with the emergency promotions and it was equally plausible that mayor was referring to another officer who had given the employee higher marks in a then-recent evaluation. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Constitutional Law 90.1(7.2); Municipal Corporations 184.1

Where, under "rule of three," superintendent of police had authority to pass over person at head of eligible list and had additional authority, after passing over name three times, to request personnel director to omit that name from any subsequent certification to superintendent from that list, promotion was matter of discretion with superintendent of police and could not be mandated for plaintiffs. Hardouin v. City of New Orleans, Civil Service Comm., E.D.La.1980, 487 F.Supp. 1148. Municipal Corporations 184.1

Allegations did not support civil rights claims that city intentionally discriminated against minority undercover officers in failing to promote such officers to detective, given absence of allegation that failure to promote was based on race or national origin, or that white undercover officers were promoted sooner or in accordance with city code. Tamayo v. City of New York, S.D.N.Y.2004, 2004 WL 137198, Unreported, adhered to in part on reconsidertaion 2004 WL 725836. Civil Rights 1395(8)

City sued for gender and pregnancy discrimination, by police lieutenant denied promotion to captain, alleging violation of her constitutional rights, Title VII and California Fair Employment and Housing Act (FEHA), provided legitimate non-discriminatory reason for action, decision to restructure police department and freeze hiring, causing eligibility list to expire. Glenn-Davis v. City of Oakland, N.D.Cal.2003, 2003 WL 21244061, Unreported, reversed 126 Fed.Appx. 375, 2005 WL 663436, on remand 2005 WL 2373726. Civil Rights

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1867. ---- Punishment duty, police officers, deprivation of employment rights

Fact that no state other than Massachusetts imposed punishment duty on policemen could not invalidate M.G.L.A. c. 31 § 43(g), on ground of denial of equal protection, since state was entitled to make its own choice if the standard of rational connection is met. Ahearn v. DiGrazia, D.C.Mass.1976, 412 F.Supp. 638, affirmed 97 S.Ct. 225, 429 U.S. 876, 50 L.Ed.2d 160. Constitutional Law 238.5; Municipal Corporations 176(3.1)

1868. ---- Salary, police officers, deprivation of employment rights

Massachusetts law provided means by which patrolman could seek review of town retirement board's action in instructing town treasurer to withhold contribution, which board concluded patrolman owed as result of receiving back pay under settlement agreement with town, from patrolman's salary and, therefore, patrolman could not be said to have been deprived of property without due process for purposes of civil rights claim. Moody v. Town of Weymouth, C.A.1 (Mass.) 1986, 805 F.2d 30. Constitutional Law 278.4(5)

Former city police officers did not state § 1983 equal protection claim against city when city denied officers compensation for accrued, unused vacation time, but paid one disabled police officer for such time pursuant to arbitration ruling; city did not take that first step necessary for a constitutional violation, that is to classify, and city treated all permanently partially disabled police officers alike to the extent that it had a choice and the only variation in treatment occurred when arbitrator ordered it. Kirby v. City of Philadelphia, E.D.Pa.1995, 905 F.Supp. 222. Constitutional Law 238.5; Municipal Corporations 186(1)

1869. ---- Suspension, police officers, deprivation of employment rights

City police officer's allegations that his suspension with pay resulted in him being stigmatized in connection with denial of rights and status recognized under state law, that his state-created rights and status were distinctly altered, that he was deprived of liberty interest by virtue of police chief's placement of defamatory material in his personnel file and that he had property interest in his position as police captain were insufficient to state § 1983 claim against city and city police chief for violation of substantive due process; none of alleged liberty or property interests rose to level of fundamental right. Arenal v. City of Punta Gorda, Fla., M.D.Fla.1996, 932 F.Supp. 1406. Civil Rights 1395(8)

Under Texas law, deputy sheriffs had no protected property interest in their employment and, thus, there was no deprivation of constitutional due process in connection with their suspensions. Senegal v. Jefferson County, E.D.Tex.1992, 785 F.Supp. 86, affirmed 1 F.3d 1238. Constitutional Law 277(2); Sheriffs And Constables 21

Patrolman's civil rights action against municipal employer and municipal chief of police, alleging that his suspension violated municipal police civil service rules and regulations and thereby resulted in deprivation and taking of his property interest in 30 days of paid employment without due process of law under color of state law, stated claim sufficient to withstand motion to dismiss, despite claim of municipality and chief of police that any deprivation of rights occurred because chief failed to apply prescribed procedure and that regulations provided adequate means of redress for chief's error, where patrolman might be able to prove custom or usage on part of municipality and chief that would remove chief's action from category of random and unauthorized acts. Young v. Municipality of Bethel Park, W.D.Pa.1986, 646 F.Supp. 539. Civil Rights 1395(8)

Even assuming truth of borough police officer's allegations that he was suspended from employment prior to his

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trial and conviction of indecent assault charges, that no public notice was given of his termination hearing and that minutes of the hearing were not recorded, where the officer did not request a hearing with respect to his suspension and where there was no allegation that statutorily specified procedures were not followed by the borough or that the officer was terminated for an impermissible reason, complaint failed to state a claim under this section for deprivation of constitutionally protected rights. Olson v. Borough of Homestead, W.D.Pa.1976, 417 F.Supp. 784, affirmed 568 F.2d 769. Civil Rights 1395(8)

1870. ---- Transfer, police officers, deprivation of employment rights

Alleged conduct of state highway patrol officer's superiors in pressuring officer to change traffic report, verbally abusing officer, investigating officer's conduct and then transferring officer to another post without notice did not implicate any federally protected liberty or property interest, for purposes of officer's § 1983 claim that such conduct deprived him of liberty or property interest without due process of law, as officer made no showing or allegation that he had right not to be transferred or that conduct complained of amounted to constructive demotion or discharge. Stiesberg v. State of Cal., C.A.9 (Cal.) 1996, 80 F.3d 353. Constitutional Law 277(2); Constitutional Law 278.4(1)

City corrections officers failed to demonstrate that their transfers in alleged retaliation for exercising their First Amendment rights in working on election campaign were pursuant to city custom or policy, so as to subject city, city's Department of Corrections (DOC) and DOC officials in their official capacities to § 1983 liability; officers did not demonstrate that there was anything more than single decision to transfer certain individuals in context of specific investigation, and some corrections officers who had worked on campaign had not been transferred. Soto v. Schembri, S.D.N.Y.1997, 960 F.Supp. 751. Civil Rights 1351(5)

Sheriff's office detective who claimed that her transfers were demotions stated a § 1983 cause of action against sheriff, undersheriff, and colonel in sheriff's department by alleging that their actions chilled the exercise of her First Amendment right to free speech, and that the defendants acted under color of state law. Morris v. Crow, M.D.Fla.1993, 825 F.Supp. 295. Civil Rights 1395(8)

Police officer who was commander of traffic division failed to establish that police chief's refusal to assign him command of detective division was retribution for the officer's First-Amendment activities and initiation of a lawsuit; decision was based on professional judgment that appointing captain with extensive experience in the detective division as its temporary commander would be less disruptive than transferring the officer and being compelled to find a new commander for the traffic division. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Constitutional Law 82(11); Municipal Corporations 184.1

1871. ---- Unions, police officers, deprivation of employment rights

City police chief's directive, stating that officers normally would not be entitled to union representation in connection with internal investigations, did not supplant earlier directives prohibiting officers who had made charges against other officers from discussing those charges with anyone, including union, and later directive thus did not render moot officers' § 1983 claim that earlier directives violated their free speech rights; later directive did not refer to earlier directives, and later directive addressed only one issue that was raised in earlier directives, i.e., union representation. Milwaukee Police Ass'n v. Jones, C.A.7 (Wis.) 1999, 192 F.3d 742. Federal Courts 13.10

Police department employee established that he was denied several opportunities to attend police training courses in retaliation for his extensive involvement in organization of law enforcement employees; employee's supervisor warned him that if he wished to succeed in police department, he should avoid the organization, supervisor peremptorily denied recommendations that the employee be allowed to attend training courses, and supervisor commented, at least on one occasion, that if officers attended organization meetings and directed criticism at police

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chief, they would not be permitted to attend any training courses. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Constitutional Law 91; Municipal Corporations 180(1)

1872. ---- Dismissal, police officers, deprivation of employment rights

In Fifth Circuit, deputy sheriff cannot be terminated for exercise of his First Amendment rights unless sheriff alleges a disruption of governmental functions. Brady v. Fort Bend County, C.A.5 (Tex.) 1995, 58 F.3d 173, rehearing en banc granted, dismissed. Sheriffs And Constables 21

Evidence did not show that mayor and town council eliminated police department using pretext of financial savings as means to avoid required showing of good cause to terminate employment of police officers who had due process property interests in their jobs. Farnsworth v. Town of Pinedale, Wyo., C.A.10 (Wyo.) 1992, 968 F.2d 1054. Civil Rights 1421

Dismissed police officer was not deprived of property interest without due process of law where his dismissal was due to civil service commission error and state provided means of correcting such administrative level errors, notwithstanding that officer waived his state law avenues of relief by his inaction. Cohen v. City of Philadelphia, C.A.3 (Pa.) 1984, 736 F.2d 81, certiorari denied 105 S.Ct. 434, 469 U.S. 1019, 83 L.Ed.2d 360. Civil Rights 1128

If deputy sheriff would have been fired once juvenile incident had been uncovered, absent the allegation that he lied by failing to disclose the incident on his employment application, then his dismissal could not be challenged under this section, even though he may have been deprived of a liberty interest without due process of law by the allegation that he lied. White v. Thomas, C.A.5 (Tex.) 1981, 660 F.2d 680, certiorari denied 102 S.Ct. 1731, 455 U.S. 1027, 72 L.Ed.2d 148. Civil Rights 1128

Terminated police chief stated cause of action in complaint for conspiracy under § 1983; facts alleged supported claim that municipality and individuals conspired to violate his First Amendment rights. Shoemaker v. City of Lock Haven, M.D.Pa.1995, 906 F.Supp. 230. Conspiracy 18

Deputy sheriff's liberty interest was not violated by his termination when he was formally bound over for trial on criminal charges, although he contended his discharge stigmatized him in eyes of law enforcement agencies making employment difficult to secure; sheriff made no false statements concerning deputy in connection with his termination, and deputy was effectively allowed a due process opportunity to clear his name publicly in his jury trial on criminal charges. Seeley v. Board of County Com'rs for La Plata County, Colo., D.Colo.1987, 654 F.Supp. 1309. Constitutional Law 278.4(3)

Conduct of city officers, as pursued in good faith, in dismissing police officer from his employment because of his practice of plural marriage did not violate clearly established statutory or constitutional rights of which a reasonable person would have known at the time of the dismissal; thus, city officers could not be held liable for termination. Potter v. Murray City, D.C.Utah 1984, 585 F.Supp. 1126, affirmed as modified on other grounds 760 F.2d 1065, certiorari denied 106 S.Ct. 145, 474 U.S. 849, 88 L.Ed.2d 120. Civil Rights 1376(10)

Police officer seeking preliminary injunction to enjoin hearing before police pension fund's medical board, was likely to succeed on merits of claim that city police department's application to medical board to involuntarily retire him due to psychological unfitness was in retaliation for exercising his right to petition and violated reinstatement orders by state court, which found substantial evidence of retaliation against him. Buric v. Kelly, S.D.N.Y.2003, 2003 WL 22990082, Unreported. Injunction 138.46

1873. ---- Reinstatement, police officers, deprivation of employment rights

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42 U.S.C.A. § 1983

Although state Retirement Board had returned police officer to active service upon concluding that his disability had ceased, officer was given opportunity to demonstrate his fitness for active duty, and thus he was not deprived of any property interest created by Illinois Pension Code when police department nonetheless refused to reinstate him, where department regulation required that all officers under similar circumstances submit to physical examination, and department's examining physicians found that officer suffered from disabling liver condition. Buttitta v. City of Chicago, C.A.7 (Ill.) 1993, 9 F.3d 1198, rehearing denied. Municipal Corporations 187(11)

A police corporal failed to establish his transfer and rejection of his request to be rehired by police department were taken in retaliation for the corporal's active participation in organization of law enforcement employees; transfer decision was engineered by records and communications commander, who did not indicate any hostility towards organization, and decision not to hire corporal was arrived at by vote of all members in police department. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Municipal Corporations 180(1)

Employment discrimination claimant failed to show that metropolitan police department's decision not to reinstate him to his job was a purposely discriminatory act and, thus, he could not recover under this section. Monroe v. St. Louis Metropolitan Police Dept., E.D.Mo.1981, 524 F.Supp. 1009. Civil Rights 1421

1874. ---- Pension, police officers, deprivation of employment rights

Merely erroneous application of state statute to particular case does not present question of federal constitutional dignity, and police officer was not constitutionally entitled to have from pension board a decision that, in abstract, was "correct" or "right." Hirrill v. Merriweather, C.A.8 (Ark.) 1980, 629 F.2d 490. Civil Rights 1136

1875. ---- Constructive discharge, police officers, deprivation of employment rights

No constructive discharge, needed to support § 1983 civil rights claims by female police officers alleging race and sex discrimination, occurred when officer subjectively felt that police department was not taking complaints seriously; there was no evidence presented that investigation of complaint was anything other than legitimate. Redpath v. City of Overland Park, D.Kan.1994, 857 F.Supp. 1448. Civil Rights 1123

Even if a probationary police officer, who chose to resign in the face of threats by police chief that he would be fired and the reason for his firing made public, was constructively discharged, he had no valid claim against the city and the police chief for deprivation of a liberty interest since he was not faced with continuing employment on unlawful terms but with resigning to avoid a lawful discharge. Hoffman v. McNamara, D.Conn.1986, 630 F.Supp. 1257. Civil Rights 1123; Civil Rights 1128

Acting or temporary chief of police did not enjoy a "property interest" under Illinois law in his position sufficient to raise a federal constitutional question under this section in connection with his alleged constructive discharge. Dakuras v. Wagrowski, N.D.Ill.1982, 559 F.Supp. 636. Civil Rights 1123

1876. ---- Malicious prosecution, police officers, deprivation of employment rights

County corrections officers who were disciplined for improper use of force against an inmate had no cause of action under § 1983 for malicious prosecution, nor for wrongful use of proceedings or abuse of process under Pennsylvania law, even though at least two defendants allegedly contacted the county district attorney's office and may have tried to institute a criminal investigation against the officers and internal disciplinary hearings were conducted, where no charges were ever filed against the officers and no process or proceedings, either civil or criminal, were ever initiated as a result. Keim v. County of Bucks, E.D.Pa.2003, 275 F.Supp.2d 628. Civil Rights 1126; Malicious Prosecution 5.1; Malicious Prosecution 10; Process 171

Police officer could not maintain § 1983 claim for abuse of process or malicious prosecution against municipal

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officials for initiating grand jury investigation of his involvement in allegedly unlawful abandoned car scheme, where officer had not identified any facts establishing any process, such as arrest or filing of criminal charges, that deprived him of a constitutionally protected liberty interest without due process of law. Puricelli v. Borough of Morrisville, E.D.Pa.1993, 820 F.Supp. 908, motion to vacate denied 1993 WL 303285, affirmed 26 F.3d 123, certiorari denied 115 S.Ct. 321, 513 U.S. 930, 130 L.Ed.2d 282. Civil Rights 1088(1)

1877. ---- Reputation injury, police officers, deprivation of employment rights

Municipal police chief's comment to local newspapers that police officers were discharged because their services did not meet expectations of police department was not a comment of such damaging effect as to impair the officers' standing in the community so as to implicate their liberty interests and give rise to cause of action under this section providing for civil action for deprivation of rights. Bunting v. City of Columbia, C.A.4 (S.C.) 1981, 639 F.2d 1090. Constitutional Law 278.4(3)

Municipal officials named as defendants in a civil rights action did not injure any constitutionally protected interests in a police officer's reputation when they disclosed information about his criminal record and made statements about his involvement in activities under investigation by the county grand jury; officer had not discussed whether he suffered any tangible injury, and reputation alone did not support a finding that there was a constitutionally cognizable claim for harm to reputation. Puricelli v. Borough of Morrisville, E.D.Pa.1993, 820 F.Supp. 908, motion to vacate denied 1993 WL 303285, affirmed 26 F.3d 123, certiorari denied 115 S.Ct. 321, 513 U.S. 930, 130 L.Ed.2d 282. Civil Rights 1088(1)

Alleged injury caused by deputy sheriff and employees of his office to deputy sheriff's honesty, reputation, public status, and employment status did not constitute a deprivation sufficient to state § 1983 claim in the absence of dismissal from the job. Rios v. Navarro, S.D.Fla.1991, 766 F.Supp. 1158. Civil Rights 1395(8)

Former police chief's allegations that city officials' publicized allegedly stigmatizing facts four months after police chief's discharge did not state claim under this section for deprivation of liberty interest without due process. Duggan v. Town of Ocean City, D.C.Md.1981, 516 F.Supp. 1081. Civil Rights 1395(8)

Assuming that police captain was stigmatized by his suspension, his ultimate retention of employment (the suspension being rescinded and his back pay awarded) negated his claim that he was deprived of a "liberty" interest in his reputation without due process. Sparks v. City of Atlanta, N.D.Ga.1980, 496 F.Supp. 770. Civil Rights 1088(1)

This section proscribing the deprivation of rights could not provide a remedy for actions in the nature of defamation brought by plaintiff who had been denied position of patrolman by reason of actions of defendants. Evans v. Town of Watertown, D.C.Mass.1976, 417 F.Supp. 908. Civil Rights 1038

1878. ---- Policy-making positions, police officers, deprivation of employment rights

Deputy sheriff who was placed on unpaid leave after announcing his intention to run against sheriff in upcoming election did not establish violation of his First Amendment rights; sheriff could restrict free speech rights of deputy sheriff, who was policy-making employee, by placing him on unpaid leave based on disruptive potential of deputy's candidacy. Wilbur v. Mahan, C.A.7 (Ill.) 1993, 3 F.3d 214. Constitutional Law 90.1(7.2); Sheriffs And Constables 21

1879. ---- Persons liable, police officers, deprivation of employment rights

There was a causal link between violation of provisional police officer's First Amendment right to petition the government for redress and the actions of the final policymaker at the New York State Division of Criminal Justice

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Service (DCJS) denying her request for an extension of time in which to complete basic course at police academy, as required to hold DCJS liable under § 1983; deputy commissioner of DCJS did not ensure that officer's filing of discrimination claim did not prevent her from completing basic course at police academy and from receiving a certificate of completion from the DCJS within the appropriate time frame. Lathrop v. Onondaga County, N.D.N.Y.2002, 220 F.Supp.2d 129. Civil Rights 1351(5)

Former deputy sheriff did not have § 1983 due process claim against sheriff or county for deprivation of deputy sheriff's employment with city police department, despite allegation that actions of sheriff and county caused deputy sheriff to lose city police job in indirect fashion; even if deputy sheriff had property interest in city police department employment, sheriff and county were not deputy sheriff's employers for that position and, thus, were not in position to terminate deputy sheriff, and deputy sheriff had adequate state remedy for defendants' actions. Heideman v. Wirsing, W.D.Wis.1992, 840 F.Supp. 1285, affirmed 7 F.3d 659. Civil Rights 1128; Civil Rights 1320

Where police officer brought civil rights action arising out of his termination and decision of city not to grant him a hearing, where complaint averred merely that city council was responsible for all policy matters and controlled "appropriation of funds, levies, taxes and contracts debts," but where neither pleadings nor affidavits suggested that any members of council personally participated in matter of police officer's termination, city council members could not be held liable under this section for failing to take action with respect to officer's termination and decision not to grant officer a hearing. Himmelbrand v. Harrison, W.D.Va.1980, 484 F.Supp. 803. Civil Rights 1395(8)

1880. ---- Procedural requirements, police officers, deprivation of employment rights

Police officer who declined city's offer of reinstatement was not entitled to name-clearing hearing in connection with allegedly defamatory statements made about him during administrative appeal from discharge, for purposes of § 1983 claim based on denial of request for name-clearing hearing; officer was given meaningful opportunity to be heard, and he prevailed. Gillum v. City of Kerrville, C.A.5 (Tex.) 1993, 3 F.3d 117, certiorari denied 114 S.Ct. 881, 510 U.S. 1072, 127 L.Ed.2d 76. Civil Rights 1128

State highway patrolman's supervisor and latter's superior were immune from money damages for failing to afford highway patrolman a pretransfer and presuppression hearing, in that at time of 1978 transfer/suspension it was not clearly established that the right to be transferred or suspended only for cause would be assimilated to other rights falling within the Fourteenth Amendment's meaning of property. Howe v. Baker, C.A.11 (Fla.) 1986, 796 F.2d 1355. Civil Rights 1376(10)

Placement of reprimand letter in acting police chief's file without affording acting police chief hearing and other procedural safeguards did not constitute violation of his civil rights under 42 U.S.C.A. § 1983, where acting police chief did not lose his job as sergeant and therefore was not excluded from his profession, village did not owe it to plaintiff to make him police chief, and plaintiff did not cite any authority for proposition that he was entitled to hearing. Linhart v. Glatfelter, C.A.7 (Ill.) 1985, 771 F.2d 1004. Civil Rights 1126

Actions of town administrator and town police department toward police officer in terminating his employment, including allegedly failing to perform thorough, independent investigation into officer's alleged misconduct, was not "conscience-shocking" conduct as required for officer to state a substantive due process claim in his action under §§ 1983. Dodd v. Sheppard, D.R.I.2006, 436 F.Supp.2d 326. Towns 28

Terminated police officer stated §§ 1983 claims against Utah municipality for violation of procedural due process based on her alleged failure to be given pretermination hearing before her protected property interest in continued employment was taken away, and to receive fair and impartial posttermination hearing before impartial appeal board. Sivulich-Boddy v. Clearfield City, D.Utah 2005, 365 F.Supp.2d 1174. Constitutional Law 278.4(5);

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42 U.S.C.A. § 1983

Municipal Corporations 185(4)

Terminated police officer's allegation that city officials failed to conduct reasonable investigation into sodomy charges against officer before terminating his employment failed to state claim under § 1983; allegation amounted to claim for relief based upon negligence of defendants, and liability under § 1983 will not be found to exist where government official is merely negligent in causing injury. Williams v. City of Albany, M.D.Ga.1990, 738 F.Supp. 499, affirmed in part, reversed in part on other grounds 936 F.2d 1256, rehearing denied. Civil Rights 1128; Civil Rights 1395(8)

Former police officer was denied procedural due process when city failed to afford him opportunity to be heard before or after he was terminated, although city officials contended that officer had opportunity to present his side of story during two internal affairs investigations conducted before termination; officer did not have opportunity at that time to respond to official departmental charges of conduct unbecoming an officer and insubordination, and civil service commission discussed matter in officer's absence after receiving officer's request for continuance. Barkley v. City of Jackson, Tenn., W.D.Tenn.1988, 705 F.Supp. 390. Constitutional Law 278.4(5); Municipal Corporations 185(4)

Due process rights of tenured police officer who was suspended for reviewing report of subordinate which contained statements offensive to minorities were satisfied; officer was served with notice of predisciplinary hearing, at which he was entitled to explain and refute charges against him, and, after grievance committee ruled in favor of officer when he appealed suspension, matter was heard before county personnel board at hearing at which officer was represented by counsel. Boone v. Mingus, S.D.Ala.1988, 697 F.Supp. 1577, affirmed 880 F.2d 419. Constitutional Law 278.4(5); Municipal Corporations 185(6); Municipal Corporations 185(8)

Allegations of discharged policeman, bringing civil rights action against officials of borough which discharged him following his criminal conviction, that the proceedings were tainted by failure of borough council to advertise hearing to general public or by failure to record hearing in minute book as an official council meeting were not of such magnitude as to state a claim in federal court. Olson v. Murphy, W.D.Pa.1977, 428 F.Supp. 1057, affirmed 568 F.2d 769. Civil Rights 1395(8)

1881. ---- Miscellaneous claims, police officers, deprivation of employment rights

Evidence that included police chief's involvement in highly visible controversy over whether he had tampered with arrest records in attempt to protect mayor's daughter presented sufficient proof of retaliatory motive to support jury's finding that police chief's discipline of officer was in retaliation for that officer's show of support for fellow officer who made arrest, rather than for that officer's own unpreparedness for trial in another case. Morro v. City of Birmingham, C.A.11 (Ala.) 1997, 117 F.3d 508, rehearing and suggestion for rehearing en banc denied 127 F.3d 42, certiorari denied 118 S.Ct. 1299, 523 U.S. 1020, 140 L.Ed.2d 465. Civil Rights 1421

City did not violate police officer's First Amendment rights by ordering him to stop his own investigation of police chief and to cooperate with that being conducted by police department; although police chief's alleged violations of the law were matter of public concern, police officer's focus on that issue only extended to its impact on his wish to continue his own investigation. Gillum v. City of Kerrville, C.A.5 (Tex.) 1993, 3 F.3d 117, certiorari denied 114 S.Ct. 881, 510 U.S. 1072, 127 L.Ed.2d 76. Constitutional Law 90.1(7.2); Municipal Corporations 180(1)

Remarks made by capitol policeman's supervisor regarding lack of physical and professional qualifications of members of capitol police force did not give rise to cause of action under this section, since the comments did not cause the policeman's dismissal, nor did they result in loss of recognized property interest. Bradford v. Bronner, C.A.5 (Ala.) 1982, 665 F.2d 680. Civil Rights 1038

Former town police officer, who brought §§ 1983 action alleging that loss of his public employment constituted a

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deprivation of a property interest in violation of his right to procedural due process, failed to overcome presumption that his resignation from employment was voluntary, even though officer was not permitted to select the effective date of his resignation; officer was given a choice during meeting with superiors of whether to resign or be terminated, officer had reasonable time in which to make decision and was under no coercive time pressure, officer acknowledged his choice in his letter attempting to revoke his resignation, and employer had good cause to reasonably believe grounds for officer's termination existed. Dodd v. Sheppard, D.R.I.2006, 436 F.Supp.2d 326. Towns 28

New York State Division of Criminal Justice Service (DCJS) was deliberately indifferent to female police officer's First Amendment right to petition government, as required to hold DCJS liable under § 1983 when deputy commissioner did not ensure that officer's filing of discrimination claim did not prevent her from completing basic course at police academy and from receiving a certificate of completion from the DCJS within the appropriate time frame; deputy commissioner's decision not to respond police chief's request for an extension of time on officer's behalf was patently unreasonable given the information he had regarding the police academy's retaliation against her. Lathrop v. Onondaga County, N.D.N.Y.2002, 220 F.Supp.2d 129. Constitutional Law 91; Municipal Corporations 184(2)

County sheriff's department's three-day unpaid suspension of African-American deputy sheriff and three-month transfer of her to another courthouse after she had complained of allegedly discriminatory assignment practices within department, was adverse employment action likely to chill exercise of constitutionally protected speech, as required for deputy's § 1983 claim; suspension cost deputy three days of lost wages, and transfer caused her inconvenience in getting to and from work. Carlisle v. Lopresti, N.D.Ill.1999, 47 F.Supp.2d 973. Civil Rights 1249(3)

Police officials' initiation of criminal investigation by district attorney into alleged credit card fraud by police officer was not "adverse employment action," as required to support officer's § 1983 action against officials alleging First Amendment retaliation for officer's allegations of evidence tampering and other improprieties against officials, where no action was taken against officer as result of investigation. Boylan v. Arruda, S.D.N.Y.1999, 42 F.Supp.2d 352. Constitutional Law 90.1(7.2); Municipal Corporations 180(1)

Former police officer's evidence of unfavorable work assignment did not rise to level of being sufficiently severe or pervasive to alter conditions of his employment and create abusive working environment; officer's beat was unpopular and stressful assignment, but assignment was there for someone to do, and city did not create abusive work environment. Williams v. Morris, W.D.Va.1996, 956 F.Supp. 679. Civil Rights 1147

Police officer could bring § 1983 claim based on Title VII and ADEA violations against current and former chiefs of police in their official capacities; policy at issue requiring that officers pass physical fitness test was one adopted and implemented by city and its police department. Morrow v. City of Jacksonville, Ark., E.D.Ark.1996, 941 F.Supp. 816. Civil Rights 1359

City and mayors were not entitled to dismissal of former police chief's § 1983 claim for failure to state a claim upon which relief may be granted on the ground that Title VII contained sole remedy, where city and mayors could not demonstrate that circumstances surrounding Title VII claim could not also constitute violations of the Constitution for which § 1983 provided an additional remedy. Lightner v. City of Ariton, Ala., M.D.Ala.1995, 884 F.Supp. 468. Civil Rights 1502

Fact that wife and daughter of president of county police officers' union were present at confrontation between president and officials of county sheriff's department did not amount to abridgement of wife's and daughter's liberty interests in personal security that would have been actionable under § 1983. Flood v. O'Grady, N.D.Ill.1990, 748 F.Supp. 595. Civil Rights 1088(1)

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42 U.S.C.A. § 1983

Police officer did not suffer injury of constitutional dimension resulting from administrative review of his use of his service weapon in shooting incident, where officer had not been deprived of any employment-related benefits and was not dismissed, demoted or suspended. Hairston v. District of Columbia, D.D.C.1986, 638 F.Supp. 198. Civil Rights 1126

1882. Miscellaneous adverse actions, deprivation of employment rights

Lieutenant's alleged action of adding to evaluation that corrections officer "would benefit from being able to perform the tasks w/ less complaints from inmates," was not adverse employment action upon which retaliation claim under sections 1981 and 1983 could be based, where lieutenant never downgraded evaluation, and officer's termination did not occur until years later. Henderson v. New York, S.D.N.Y.2006, 423 F.Supp.2d 129. Prisons 7

Allegedly "forced" change in job description of Medical Officer was not "adverse employment action" for purposes of §§ 1983 claim, in light of District of Columbia health clinic physician's acknowledged awareness of changed job description prior to assumption of position. Turner v. District of Columbia, D.D.C.2005, 383 F.Supp.2d 157. Civil Rights 1126

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1911. Deprivation of teachers' rights generally

Determinations about such matters as teaching ability, research scholarship and professional statute are subjective and, unless they can be shown to have been used as mechanism to obscure discrimination, must be left for evaluation by professionals. Gurmankin v. Costanzo, C.A.3 (Pa.) 1980, 626 F.2d 1115, certiorari denied 101 S.Ct. 1375, 450 U.S. 923, 67 L.Ed.2d 352. Civil Rights 1130

Courts are loathe to intrude on the internal affairs of local school authorities in such matters as teacher competency. Blunt v. Marion County School Bd., C.A.5 (Fla.) 1975, 515 F.2d 951. Schools 147.44

Taken collectively, school district's alleged delaying tactics during dispute with high school teacher did not rise to level of adverse action cognizable in teacher's § 1983 First Amendment retaliation action; district waited to receive finalized and official version of settlement agreement regarding teacher's request for sabbatical before formally approving sabbatical and paying sabbatical back pay, delayed 19 days in paying back pay after teacher prevailed in his arbitration against district regarding length of disciplinary suspension, and waited 10 months after that payment to update pay information in public employees' retirement plan, and district provided uncontroverted innocent explanations for all delays. Schneck v. Saucon Valley School Dist., E.D.Pa.2004, 340 F.Supp.2d 558. Constitutional Law 82(12); Schools 147.12

One acting under color of state law may not substantially impair the interest of a school teacher in his ability to pursue his teaching career by action having no basis in fact. Morris v. Board of Ed. of Laurel School Dist., D.C.Del.1975, 401 F.Supp. 188.

1912. Legislative powers, deprivation of teachers' rights

State boards of education created to review subordinate decisions in their own ranks, such as the grant or denial of a teaching certificate, are exercising a strictly legislative function with which a federal court cannot interfere. Baron v. O'Sullivan, C.A.3 (N.J.) 1958, 258 F.2d 336. Constitutional Law 74

1913. Property interest, deprivation of teachers' rights

Tenured Connecticut public school teacher, who was required to take sick leave when he refused to comply with school board's conditions for his return to work following administrative leave, was not deprived of meaningful

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property right protected by due process until his sick pay ran out, and at that time grievance procedure under collective bargaining agreement (CBA) was adequate postdeprivation remedy for his loss of sick pay. O'Connor v. Pierson, C.A.2 (Conn.) 2005, 426 F.3d 187. Schools 147.31

Absent unusual circumstances, teacher in position without tenure or formal contract does not have legitimate entitlement to continued employment, as required for procedural due process claim. Batra v. Board of Regents of University of Nebraska, C.A.8 (Neb.) 1996, 79 F.3d 717. Constitutional Law 277(2); Schools 147.6

Teacher failed to state § 1983 claim against school superintendent, director of visual arts department, employee of complaints division and Secretary of Department of Education regarding teacher's assignment to courses, her refusal to accept assignment, and her suspension; teacher did not have property interest in teaching particular course and any departures from procedures for disciplinary hearing did not deprive teacher of any protected property interest. Reyes-Pagan v. Benitez, D.Puerto Rico 1995, 910 F.Supp. 38. Civil Rights 1131; Civil Rights 1133

In suit by discharged teacher for deprivation of property without due process of law, whether requisite property interest, which may arise from de facto or from quasi tenure if circumstances are such to support implied reasonable expectation of continuing employment as well as from de jure tenure, arose in connection with teacher's employment is question of state law. Summers v. Civis, W.D.Okla.1976, 420 F.Supp. 993. Federal Courts 421

1914. Racial discrimination, deprivation of teachers' rights

A board of education is obligated to use objective nondiscriminatory standards in employment, assignment and dismissal of teachers; a board may also consider established and previously announced nondiscriminatory subjective factors in making of such decisions; subjective standards carry little weight in meeting the board's burden to prove clearly and convincingly that it is not discriminating where there has been a history of racial segregation. Moore v. Board of Ed. of Chidester School Dist. No. 59, Chidester, Ark., C.A.8 (Ark.) 1971, 448 F.2d 709. Schools 133; Schools 147.2(2)

Black female college instructor failed to establish § 1981 claim that her rights to contractual equality were violated, or § 1983 claim that her equal protection rights were violated by community college, when she asserted that she did not receive annual performance evaluation while white instructors were given evaluations, that unlike white instructors her probationary period was extended, that conflicts with students were investigated and evaluated while student claims against white instructors were not, and that she suffered discriminatory discharge, was demoted to part time status and denied bookstore management position; there was either lack of sufficient supporting details or nondiscriminatory reason for each action. Jenkins v. Trustees of Sandhills Community College, M.D.N.C.2003, 259 F.Supp.2d 432, affirmed 80 Fed.Appx. 819, 2003 WL 22715091, certiorari denied 124 S.Ct. 1459, 540 U.S. 1199, 158 L.Ed.2d 115. Civil Rights 1131; Colleges And Universities 8.1(1); Constitutional Law 220(7)

1915. Religious discrimination, deprivation of teachers' rights

To prove prima facie case of employment discrimination, tenured university professor who was Jewish was entitled to prove that similarly situated nonminority faculty members received more favorable treatment, rather than being required to prove that defendants replaced him with comparably qualified person; at heart of this inquiry is whether cited nonminority employees have comparable work records and engaged in misconduct of comparable seriousness. Wexley v. Michigan State University, W.D.Mich.1993, 821 F.Supp. 479, affirmed 25 F.3d 1052. Civil Rights 1421

1916. Sex discrimination, deprivation of teachers' rights

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Action wherein female teacher challenged constitutionality of regulation of school board regarding employment status of pregnant, female employees was properly brought under this section governing deprivation of civil rights; and subject-matter jurisdiction of court was properly invoked under this section as well as § 2201 of Title 28. Heath v. Westerville Bd. of Ed., S.D.Ohio 1972, 345 F.Supp. 501, 32 Ohio Misc. 6, 61 O.O.2d 25. Civil Rights 1511; Declaratory Judgment 274.1; Federal Courts 221

1917. Speech freedom, deprivation of teachers' rights

Nontenured lecturer's First Amendment rights to free speech and academic freedom were not implicated or violated when tenured faculty member at univesity required her to communicate more clearly to her students what was required to complete the coursework in a class she taught; lecturer was not required to communicate the ideas of evaluations of others as if they were her own, lecturer was not told what grades to assign students, lecturer was not told what requirements for class should be, but instead, lecturer was simply required to spell out in detail the requirements she had devised. Johnson-Kurek v. Abu-Absi, C.A.6 (Ohio) 2005, 423 F.3d 590, certiorari denied 126 S.Ct. 1342, 164 L.Ed.2d 56. Constitutional Law 90.1(7.3)

Elementary schoolteacher who claimed she was disciplined and reprimanded in retaliation for her protected speech, including her expressed concerns at meeting of Local School Committee about lack of textbooks and other materials at school, failed to establish that her speech was substantial or motivating factor for disciplinary actions taken by principal, even though she had never been disciplined prior to school year in which she both publicly criticized principal and was subjected to multiple acts of discipline; each suspension and reprimand followed well-documented cases of misconduct or insubordination, and adverse action generally came either before or long after allegedly protected speech. Smith v. Dunn, C.A.7 (Ill.) 2004, 368 F.3d 705. Constitutional Law 90.1(7.3); Schools 147.12

Genuine issue of material fact existed as to whether school district's letters to seventh grade history teacher, threatening "further disciplinary action," and threatening termination in part for lack of adherence to district curriculum, were intended to chill his exercise of First Amendment rights by preventing him from teaching non-Christian history, and established "pall of orthodoxy" over his classroom, precluding summary judgment as to whether teacher met adverse action requirement for §§ 1983 action alleging Free Speech and Establishment Clause violations. Cole v. Maine School Administrative Dist. No. 1, D.Me.2004, 350 F.Supp.2d 143. Federal Civil Procedure 2491.5

Teacher's allegations that he was member of the National Association for the Advancement of Colored People (NAACP), that he was outspoken member of community who criticized school district's policies and conduct, and that school system brought disciplinary proceeding seeking his termination in retaliation for this criticism were sufficient to state § 1983 claim against school district, board of education and various school officials for violation of teacher's free speech rights. Taylor v. Brentwood Union Free School Dist., E.D.N.Y.1995, 908 F.Supp. 1165. Civil Rights 1395(8)

Former assistant professor stated First Amendment claim under § 1983 against dean and faculty members of state university school of architecture in their individual capacities; professor alleged that he engaged in protected speech by advocating minority recruitment and minority-related scholarship and engaging in race-conscious community work, and that dean and faculty members denied him tenure on basis of that speech. Collin v. Rector and Bd. of Visitors of University of Virginia, W.D.Va.1995, 873 F.Supp. 1008. Civil Rights 1395(8)

Denial of tenured teacher's request to use students to distribute copies of a letter to parents and guardians with respect to reduction of time available for parent-teacher conferences was not, given nonpublic nature of communications facility and availability of alternative means of disposition, violative of teacher's rights under U.S.C.A.Const. Amend. 1. Reid v. Barrett, D.C.N.J.1979, 467 F.Supp. 124, affirmed 615 F.2d 1354. Constitutional Law 90.1(7.3)

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1918. Association freedom, deprivation of teachers' rights

This section provides remedy against state interference with constitutionally protected rights of teachers to free association. Orr v. Thorpe, C.A.5 (Fla.) 1970, 427 F.2d 1129. Civil Rights 1130

Husband and wife showed at most a possibility of success on their § 1983 claim that schools' antinepotism policy violated their First Amendment rights to freedom of association, and thus were not entitled to preliminary injunction to prevent schools from transferring wife after their marriage; schools presented evidence that transfer was in best interest of schools, and husband and wife thus did not show that transfer decision was unconstitutional. Montgomery v. Carr, S.D.Ohio 1993, 848 F.Supp. 770. Civil Rights 1457(6)

1919. Voting rights, deprivation of teachers' rights

Refusal of school board to grant permission to teacher's aide to serve as election clerk at school board election did not abridge her constitutional right to vote. Evans v. Page, C.A.8 (Ark.) 1975, 516 F.2d 18. Elections 1

1920. Hiring, deprivation of teachers' rights--Generally

School board's discretion in the hiring and termination of its employees may not be exercised in an arbitrary and capricious manner, nor may a board exercise its discretion in a discriminatory manner. Bradford v. School Dist. No. 20, Charleston, S. C., C.A.4 (S.C.) 1966, 364 F.2d 185. Schools 63(1)

1921. ---- Property interest, hiring, deprivation of teachers' rights

Successful applicant for principalship had protectible property interest in his employment, notwithstanding fact that he had not yet begun to serve as principal when his appointment was cancelled, by reason of his oral acceptance of school board's offer, where his unsigned employment contract provided for termination only in cases of good and just cause. Kirschling v. Lake Forest School Dist., D.Del.1988, 687 F.Supp. 927. Constitutional Law 277(2)

1922. ---- Racial discrimination, hiring, deprivation of teachers' rights

Absent proof of pattern of past discrimination, informal "word-of-mouth" method used by president of county community college to select new associate dean would not be violative of black faculty member's civil rights. Gresham v. Chambers, C.A.2 (N.Y.) 1974, 501 F.2d 687. Civil Rights 1132

Fact that black teacher was employed under "Title I" contract for federally funded program, rather than under normal contract, together with fact that superintendent failed to consider her for certain position of that district and failed to reimburse her for expenditures made in attending summer school did not establish discrimination actionable under this section. Thomas v. Board of Ed. of Plum Bayou-Tucker School Dist. No. 1, Wright, Ark., C.A.8 (Ark.) 1972, 457 F.2d 1268. Civil Rights 1544

Public school teachers have right to demand and to be shown that race is not the criterion by which employment is granted or denied. Walton v. Nashville, Ark. Special School Dist. No. 1, C.A.8 (Ark.) 1968, 401 F.2d 137. Schools 133.1(1)

Negro school teachers, as a class, were entitled to an order requiring school board, which decreased number of positions open to Negro teachers from 24 to 8, to set up definite objective standards for employment and retention of teachers and to apply them to all teachers alike in a manner compatible with requirements of due process and equal protection. Chambers v. Hendersonville City Bd. of Ed., C.A.4 (N.C.) 1966, 364 F.2d 189. Constitutional Law 219.1; Constitutional Law 278.5(8)

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1923. ---- Desegregation, hiring, deprivation of teachers' rights

Regardless of opposition and impediments, board of education was under continuing obligation to remedy faculty situation with respect to racial imbalance, and until it did so, system could not be regarded under existing law as unitary, and board was not entitled to exemption for certain schools from judicial desegregation requirements on ground that efforts to place Negro faculty in all-white facilities had met with opposition. Mays v. Board of Public Instruction of Sarasota County, Fla., C.A.5 (Fla.) 1970, 428 F.2d 809. Schools 147.2(2)

School board, after closing of all-Negro junior high school and dismissing Negro teachers therefrom, had engaged in an unconstitutional selection process in hiring replacements for the 14 vacancies in system which were required to be filled in the summer following the closing. Smith v. Board of Ed. of Morrilton School Dist. No. 32, C.A.8 (Ark.) 1966, 365 F.2d 770. Civil Rights 1421; Civil Rights 1544; Injunction 128(9)

1924. ---- Affirmative action, hiring, deprivation of teachers' rights

Affirmative action plan concerning hiring by community college of faculty members was permissible under this section. Cohen v. Community College of Philadelphia, E.D.Pa.1980, 484 F.Supp. 411.

1925. ---- Sex discrimination, hiring, deprivation of teachers' rights

In sex discrimination action in which minority female with doctorate degree sought to enjoin state university school of medicine from denying her employment as instructor on basic sciences faculty, evidence established that chairman of biochemistry department at the university entered into contract with the minority female during meeting for her to be hired as an instructor in the department of biochemistry in the school of medicine, and not as research assistant as the chairman contended. Hunter v. Ward, E.D.Ark.1979, 476 F.Supp. 913. Civil Rights 1549

1926. ---- Unwed mothers, hiring, deprivation of teachers' rights

School district's practice of refusing employment to unwed mothers was not justified on ground that it was necessary in order to create properly moral scholastic environment, because unwed parents are improper communal models after whom students might pattern their lives, or because presence of unwed parents in scholastic environment would materially contribute to school girl pregnancies. Andrews v. Drew Municipal Separate School Dist., C.A.5 (Miss.) 1975, 507 F.2d 611, certiorari granted 96 S.Ct. 33, 423 U.S. 820, 46 L.Ed.2d 37, certiorari dismissed 96 S.Ct. 1752, 425 U.S. 559, 48 L.Ed.2d 169. Schools 55

1927. ---- Disabilities discrimination, hiring, deprivation of teachers' rights

In action by blind person against school district, alleging that hiring practices of school district discriminated against visually handicapped teachers in violation of equal protection and due process, evidence established that school district's oral interview of blind person was not graded fairly because of interviewer's lack of information concerning capabilities of blind teachers and kinds of adjustments that blind teacher can make to overcome apparent problems. Gurmankin v. Costanzo, E.D.Pa.1976, 411 F.Supp. 982, amended, affirmed 556 F.2d 184, on remand. Civil Rights 1544

1928. ---- Speech and writings, hiring, deprivation of teachers' rights

Assuming, arguendo, black principal applicant prevailed on first three steps of test for determining if board of education retaliated against him on basis of protected speech, board of education established that it would hire same person for principal, rather than applicant, even in absence applicant's speech and, therefore, evidence was insufficient to support jury verdict on applicant's behalf with regard to § 1983 free speech claim; person hired had

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nine years of experience as principal, held AA School Administration certification, was named outstanding secondary school principal in state and elected president of state secondary principals' association, whereas applicant had no principal experience and was only candidate for certification. Harris v. Shelby County Bd. of Educ., C.A.11 (Ala.) 1996, 99 F.3d 1078. Civil Rights 1421

Fact that various university regents considered factors impermissible under U.S.C.A.Const. Amend. 1 in determining not to hire faculty applicant did not necessarily mean that applicant's civil rights had been violated and that he was entitled to appointment; rather to be entitled to appointment because of those impermissible considerations, applicant was required to establish that one or more of them was paramount reason for regents' refusal to hire. Franklin v. Atkins, D.C.Colo.1976, 409 F.Supp. 439, affirmed 562 F.2d 1188, certiorari denied 98 S.Ct. 1645, 435 U.S. 994, 56 L.Ed.2d 83. Civil Rights 1132; Civil Rights 1405; Colleges And Universities 8(2)

1929. ---- Legitimate reasons, hiring, deprivation of teachers' rights

Although some future case might demonstrate improper application of the standard, standard which was adopted by school board as one of the objective criteria for employment, promotion, and transfers of teachers of staff and which called for examination of the "Potential for Working Harmoniously with Parents, Peers, Pupils, School Administrators, Principals, Supervisors, and Trustees as Indicated by Previous Employers and Others" was not facially deficient, as the characteristic toward which it was directed was capable of objective assessment based on recorded reports concerning specific overt acts. Lee v. Chambers County Bd. of Ed., C.A.5 (Ala.) 1976, 533 F.2d 132. Schools 133; Schools 147.2(1)

1930. ---- Miscellaneous claims, hiring, deprivation of teachers' rights

Where two school district provisional employees failed civil service examination, passage of which was required to continue in their positions, and district terminated both, but then created new part-time position outside scope of civil service rules for one of the two, district thereby took adverse employment action against other, non-rehired employee, as required to support that employee's § 1983 action against district alleging retaliation for protected speech. Wheeler v. Natale, S.D.N.Y.2001, 137 F.Supp.2d 301. Constitutional Law 90.1(7.2); Schools 63(1)

Where superintendent of schools originally decided to offer full-time teaching position to one nontenured teacher, his reversion to his original decision to hire other teacher was not violation of any right enjoyed by second teacher, when he conferred with second teacher and determined that she was not receptive to idea of job sharing. Renfroe v. Kirkpatrick, N.D.Ala.1982, 549 F.Supp. 1368, affirmed 722 F.2d 714, certiorari denied 105 S.Ct. 98, 469 U.S. 823, 83 L.Ed.2d 44. Schools 147.4

1931. Assignment, deprivation of teachers' rights--Generally

Under law, school districts may not assign staff and faculty to certain schools on basis of race or ethnicity. Diaz v. San Jose Unified School Dist., N.D.Cal.1981, 518 F.Supp. 622, affirmed 705 F.2d 1129, on rehearing 733 F.2d 660, certiorari denied 105 S.Ct. 2140, 471 U.S. 1065, 85 L.Ed.2d 497. Schools 147.2(2)

1932. ---- Transfer, assignment, deprivation of teachers' rights

Even assuming that tenured professor's position in particular department was right subject to substantive review under due process clause, professor's transfer to second department did not violate his right to continued employment in department free from arbitrary state action as university officials responsible for transfer acted in exercise of their professional judgment and did not venture beyond pale of reasoned academic decision making.

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42 U.S.C.A. § 1983

Huang v. Board of Governors of University of North Carolina, C.A.4 (N.C.) 1990, 902 F.2d 1134, rehearing denied. Constitutional Law 278.5(4)

Statements made by assistant high school football coaches concerning corporal punishment imposed on students by head coach were protected by U.S.C.A. Const.Amend. 1 where assistant coaches spoke in a restrained and moderate manner to parents at school and at school board meetings in context of a public debate over actions of head coach; thus, involuntary transfers of assistant coaches violated their right to free speech, entitling them to restoration to their original positions. Bowman v. Pulaski County Special School Dist., C.A.8 (Ark.) 1983, 723 F.2d 640. Constitutional Law 90.1(7.3)

Where teacher had intentionally withheld from his application information concerning his homosexuality, teacher who had been transferred to administrative position could not maintain suit seeking return to his teaching position. Acanfora v. Board of Ed. of Montgomery County, C.A.4 (Md.) 1974, 491 F.2d 498, certiorari denied 95 S.Ct. 64, 419 U.S. 836, 42 L.Ed.2d 63. Schools 147.47

School board's failure to obtain tenured principal's approval before transferring him to newly created, untenured position of superintendent of instruction, deprived principal, without due process of law, of entitlement established by statute pertaining to tenure upon transfer or promotion; thus, deprivation could support federal claim under § 1983. Farley v. North Bergen Tp. Bd. of Educ., D.N.J.1989, 705 F.Supp. 223. Civil Rights 1134; Constitutional Law 278.5(3); Civil Rights 1135

1933. Attire, deprivation of teachers' rights

Not every dispute between school board and teacher relating to teacher's personal appearance or choice of apparel raises questions of constitutional proportions which must stand or fall depending upon a court's view of who was right. Tardif v. Quinn, C.A.1 (Mass.) 1976, 545 F.2d 761. Schools 133.1(1)

1934. Harassment, deprivation of teachers' rights

Supervisor's verbal harassment of teacher was not so outrageous as to shock the conscience as necessary to show substantive due process violation of teacher's rights for purposes of stating § 1983 claim; offensive conduct was not conscience-shocking merely as result of trespassing on some fastidious squeamishness or private sentimentalism. Santiago de Castro v. Morales Medina, C.A.1 (Puerto Rico) 1991, 943 F.2d 129. Constitutional Law 278.5(3); Schools 63(3)

Tenured teacher had no federal constitutional right, redressable in § 1983 action, to perform her job free from "unwarranted practices" of school director presented in teacher's complaint; allegations setting forth series of petty acts of harassment by director did not state civil rights claim. Santiago-De-Castro v. Morales-Medina, D.Puerto Rico 1990, 737 F.Supp. 729, affirmed 943 F.2d 129. Civil Rights 1150; Civil Rights 1395(8)

1935. Maternity leave, deprivation of teachers' rights--Generally

While advance notice provisions of school board maternity leave policies are rational and may well be necessary to serve the objective of continuity of instruction, absolute requirement of female teacher's termination of employment at the fourth or fifth month before expected birth of child is violative of due process as having no valid relationship to state's interest in preserving continuity of teaching. Cleveland Bd. of Educ. v. LaFleur, U.S.Ohio 1974, 94 S.Ct. 791, 414 U.S. 632, 39 L.Ed.2d 52, 67 O.O.2d 126. Constitutional Law 278.5(3)

School district rules providing for mandatory, involuntary unpaid pregnancy leave of absence and female public school teacher's assignment to maternity leave during semester which began approximately 17 days before teacher

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was able to resume her duties following birth of her child did not discriminate against teacher because of her sex in violation of U.S.C.A.Const. Amend. 14, § 1 and this section. Lewis v. Los Angeles City Unified School Dist., C.D.Cal.1977, 429 F.Supp. 935. Civil Rights 1176; Constitutional Law 224(3)

1936. ---- Unwed mothers, maternity leave, deprivation of teachers' rights

Teacher's constitutional right of privacy was violated when she was forced to take leave of absence for becoming pregnant while she was unmarried. Ponton v. Newport News School Bd., E.D.Va.1986, 632 F.Supp. 1056. Constitutional Law 82(12)

1937. Medical leave, deprivation of teachers' rights

Retired teacher's claim that she was deprived of property without due process when school board reduced number of accumulated sick leave days when she retired was a common-law claim for breach of employment contract and was actionable under state law rather than under § 1983. Ramsey v. Board of Educ. of Whitley County, Ky., C.A.6 (Ky.) 1988, 844 F.2d 1268. Civil Rights 1131

1938. Outside employment, deprivation of teachers' rights

Law school faculty members of state university did not have isolated constitutional right either to participate in Legal Services Program of Office of Economic Opportunity or to engage in part-time employment while teaching part-time at law school, but they did have constitutional right to be treated no differently by state agency than other faculty members of such law school. Trister v. University of Miss., C.A.5 (Miss.) 1969, 420 F.2d 499. Constitutional Law 242.2(4)

1939. Personnel files, deprivation of teachers' rights

Former public school teacher had not established violation of his protected liberty interest in good name, reputation, honor, or integrity sufficient to permit him to maintain § 1983 action against government defendants based on presence of allegedly false and defamatory charges in his personnel file, after stigmatizing allegations had been removed from personnel file without having been disclosed; the fact that potential employers could have gained access to the personnel file while it contained the stigmatizing allegations was not of sufficient consequence in itself to implicate liberty interest, and the teacher could show no likelihood of future disclosure of the stigmatizing allegations. Brandt v. Board of Co-op. Educational Services, C.A.2 (N.Y.) 1988, 845 F.2d 416. Civil Rights 1038

As to correspondence and memoranda in personnel file of former assistant professor of university concerning his criticism of public official, professor was entitled to relief under this section pertaining to deprivation of constitutional rights on basis that university's retention of the correspondence and memoranda would violate his rights under U.S.C.A.Const. Amend. 1, since file contained statements that professor's letters concerning official contained inaccuracies and distortion of the truth so that prospective employer reading statements would question professor's veracity and prospective employer whose request to see the files was refused by professor would likely view him in unfavorable light. Croushorn v. Board of Trustees of University of Tennessee, M.D.Tenn.1980, 518 F.Supp. 9. Constitutional Law 82(11)

1940. Privacy, deprivation of teachers' rights

Police officer's disclosure in television news broadcast of expunged prior sexual abuse conviction of teacher did not breach teacher's privacy rights; teacher was on notice that violations of laws proscribing sexual abuse did not fall within constitutionally protected privacy realm, and expunged arrest and conviction did not erase firsthand

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knowledge of officer as to teacher's arrest and conviction, and thus teacher did not have legitimate expectation of privacy in his expunged criminal records. Nilson v. Layton City, C.A.10 (Utah) 1995, 45 F.3d 369. Constitutional Law 82(10); Criminal Law 1226(3.1)

School committee's requirement, that principal see a psychiatrist or remain on leave, did not violate principal's right to privacy, where committee had sufficient reason to worry about principal's ability to supervise children, committee provided for second examination if first report was unfavorable, disclosure of psychiatrist's report was not made public, and principal was immediately reinstated upon issuance of favorable report; requirement was prudent in light of principal's physical altercations with administrators, altercation with child which resulted in criminal charges, principal's admission he was under stress and in need of tranquilizers, and numerous parental complaints about the principal. Daury v. Smith, C.A.1 (Mass.) 1988, 842 F.2d 9. Constitutional Law 82(12); Schools 133.14

Former principal failed to state cause of action in §§ 1983 complaint for deprivation of liberty interest protected by Due Process Clause, where she alleged that school officials disclosed confidential information, but she failed to identify any defamatory statements made by officials. Lassiter v. Topeka Unified School Dist. No. 501, D.Kan.2004, 347 F.Supp.2d 1033, reconsideration denied 2004 WL 3048842. Civil Rights 1395(8)

1941. Promotion or demotion, deprivation of teachers' rights--Generally

Where Tennessee teacher or principal was not entitled to specific job to which he was assigned under Teacher Tenure Act, T.C.A. § 49-1401 et seq., action of school board in transferring principal without notice of charges or hearing constituted routine transfer of personnel within school system in interest of administrative efficiency and did not amount to punitive demotion, action of board did not result in deprivation of property rights and did not violate principal's civil rights. Coe v. Bogart, C.A.6 (Tenn.) 1975, 519 F.2d 10. Schools 147.28

1942. ---- Property interest, promotion or demotion, deprivation of teachers' rights

University law professor who had voluntarily resigned his employment pursuant to settlement agreement was not denied any "property right" protected by Fourteenth Amendment, for purpose of § 1983 claim, when law school failed to grant him emeritus status; professor had no "property right" to force faculty to vote on issue absent some language to that effect in settlement agreement. Samad v. Jenkins, C.A.6 (Ohio) 1988, 845 F.2d 660. Colleges And Universities 8.1(1); Constitutional Law 277(2)

In absence of a statute, ordinance or institutional regulation, a faculty member has no property entitlement to a promotion and, therefore, lacks any constitutional basis for requiring some kind of hearing upon a nonpromotional decision on that ground. Clark v. Whiting, C.A.4 (N.C.) 1979, 607 F.2d 634. Colleges And Universities 8(1)

Faculty handbook setting forth criteria which should generally result in promotion of faculty members did not create a property interest in promotion on the part of faculty members who met the criteria. Colburn v. Trustees of Indiana University, S.D.Ind.1990, 739 F.Supp. 1268, affirmed 973 F.2d 581, rehearing denied. Constitutional Law 277(2)

1943. ---- Racial discrimination, promotion or demotion, deprivation of teachers' rights

Black school teacher failed to establish racial discrimination in failure of board of education to promote him to position of principal. Webster v. Redmond, C.A.7 (Ill.) 1979, 599 F.2d 793, certiorari denied 100 S.Ct. 712, 444 U.S. 1039, 62 L.Ed.2d 674.

District court, in civil action for deprivation of rights brought by black faculty members and administrators, alleging that defendant school district had engaged in racial discrimination with respect to teacher recruitment,

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promotion and salaries, properly declined to award relief relating to promotions with respect to certain individual plaintiffs where it did not appear that any of seven teacher plaintiffs sought or was qualified for any of positions filled in allegedly discriminatory manner and where administrator plaintiffs testified that they did not believe that they had been discriminated against and disclaimed any interest in recovering damages. Clark v. Mann, C.A.8 (Ark.) 1977, 562 F.2d 1104. Civil Rights 1564

Middle school principal failed to establish he was victim of race discrimination in school district's failure to promote him to principal of high school, though former superintendent employed as consultant advised member of interviewing committee, whom he saw on break in hallway, to return to interview room and choose another candidate, where former superintendent claimed he was joking and committee member said he was not influenced by comment. Senigaur v. Beaumont Independent School Dist., E.D.Tex.1991, 760 F.Supp. 1200.

1944. ---- Sex discrimination, promotion or demotion, deprivation of teachers' rights

Black school guidance counselor was not victim of race or sex discrimination where decisions made by school officials concerning different aspects of plaintiff's employment, consisting of various reassignments, were fairly arrived at on the basis of administrative judgment as to school needs and consistent with plaintiff's qualifications and training, and not influenced by impermissible reasons. Jones v. Birdsong, N.D.Miss.1980, 530 F.Supp. 221, affirmed 679 F.2d 24, rehearing denied 683 F.2d 417, certiorari denied 103 S.Ct. 1186, 459 U.S. 1202, 75 L.Ed.2d 433. Schools 147.2(2)

1945. ---- Strikes, promotion or demotion, deprivation of teachers' rights

Tenured elementary school principals could not maintain action under this section with regard to their demotion to classroom teachers in retaliation for their support of teachers' strike where such strike was illegal. Bates v. Dause, C.A.6 (Ky.) 1974, 502 F.2d 865. Schools 147.12

1946. Religious holidays, deprivation of teachers' rights

Free exercise of Roman Catholic school teacher's religious rights were not violated by school district's refusal to give teacher paid leave of absence to observe Feast of Immaculate Conception and Feast of the Ascension where teacher was permitted to observe the holidays under guise of a personal day. Di Pasquale v. Board of Educ. Williamsville Cent. School Dist., W.D.N.Y.1985, 626 F.Supp. 457. Constitutional Law 84.5(3); Schools 144(1)

School district's granting only two paid personal leave days per year did not equate to denial of worship rights of tenured Jewish teacher, notwithstanding that it is important to observe Yom Kippur and Rosh Hashanah by attending temple for two days on each holiday, where teacher was not required to risk his job in order to attend synagogue, although his attendance at services would cause him to lose pay, and where policy was even more stringent, i.e., only one paid day, at time teacher assumed employment, notwithstanding that scheduling of December vacation was designed specifically to concur with Christmas. Pinsker v. Joint Dist. No. 28J of Adams and Arapahoe Counties, D.C.Colo.1983, 554 F.Supp. 1049, affirmed 735 F.2d 388. Constitutional Law 84.5(3)

1947. Salary, deprivation of teachers' rights

University did not retaliate against teacher for protesting her base salary and filing discrimination complaint, when it reduced her base salary, gave her only a "good" performance rating, and failed to rehire her, so as to violate § 1983; teacher failed to show that her actions were substantial factor in alleged retaliatory actions, and protest regarding base salary was not constitutionally protected conduct, in that it related solely to resolution of personal problem. Johnson v. University of Wisconsin-Eau Claire, C.A.7 (Wis.) 1995, 70 F.3d 469. Civil Rights

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1249(1)

Mere fact that assistant coach lost no salary as the result of school district's actions taken in response to his letter to members of the school board did not require that his action against them be treated as one for defamation not maintainable under this section. Anderson v. Central Point School Dist. No. 6, C.A.9 (Or.) 1984, 746 F.2d 505. Civil Rights 1038

1948. Sanctions, deprivation of teachers' rights

Alleged harms suffered by tenured associate math professor at university, who claimed that after he had challenged several departmental decisions and publicly supported professor allegedly attacked by administration for refusing to lower academic standards, he was retaliated against in teaching assignments, pay increases, administrative matters, and departmental procedures, did not rise to level of First Amendment deprivation; professor was not fired or even threatened with termination. Dorsett v. Board of Trustees for State Colleges & Universities, C.A.5 (La.) 1991, 940 F.2d 121. Colleges And Universities 8(1); Colleges And Universities 8(3); Constitutional Law 90.1(7.3)

Imposition on tenured university professor of a sanction that was less severe than the one specified in faculty handbook (dismissal) was not constitutionally offensive and therefore was not actionable under this section. Garrett v. Mathews, C.A.5 (Ala.) 1980, 625 F.2d 658, rehearing denied 629 F.2d 1349. Civil Rights 1131; Colleges And Universities 8.1(1)

1949. Seniority, deprivation of teachers' rights

No denial of a constitutional right to plaintiff discharged community college teacher resulted from the community college's determination of seniority for staff reduction purposes based on day teacher's contractual duties first commenced rather than date on which initial contract was signed. Hibbs v. Board of Ed. of Iowa Central Community College, N.D.Iowa 1975, 392 F.Supp. 1202. Colleges And Universities 8.1(1)

1950. Suspension, deprivation of teachers' rights

Tenured Connecticut public school teacher received all the process he was due in connection with his placement on involuntary sick leave after he refused to submit to school board's conditions for his return to work following administrative leave pending investigation; by the time his sick leave was about to expire, teacher knew both that he was on sick leave and that his sick leave was running out and had voiced his objections to placement on sick leave through informal communications from his attorney to school board and later through lawsuit, and hearing before superintendent, to which teacher argued he was entitled, would have been futile. O'Connor v. Pierson, C.A.2 (Conn.) 2005, 426 F.3d 187. Schools 147.38

Minor siblings and their father did not put forth sufficient evidence that employees of the Department of Children and Family Services (DCFS) knew of or suspected that minors were at risk of sexual abuse in foster homes in which they were placed to support § 1983 action against employees; evidence that foster homes were overcrowded, that foster homes were not properly licensed, that foster parent had been accused of child abuse twice, and that both accusations were determined unfounded did not indicate a risk of sexual abuse. J.H. ex rel. Higgin v. Johnson, C.A.7 (Ill.) 2003, 346 F.3d 788, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 1891, 541 U.S. 975, 158 L.Ed.2d 470. Civil Rights 1057

Although nature of charge, i.e., touching junior high school student's girlfriend on the buttocks and poking her breast with fork as she stood in lunch line, were such that they could stigmatize a person and thus give rise to a liberty interest, tenured teacher/coach, who was suspended for one week with pay before neutral school board member determined that suspension should continue pending full school board hearing, failed to establish a

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protected liberty interest and, also, there was no substantial evidence that the school board ever published the charges. Hardiman v. Jefferson County Bd. of Educ., C.A.11 (Ala.) 1983, 709 F.2d 635. Constitutional Law 278.5(3)

Middle school teacher was afforded sufficient due process rights, in connection with his suspension with full pay and benefits pending investigation of claims that he acted inappropriately toward female students, even though presuspension process consisted of notification one day prior to suspension that some students accused him of "inappropriate language and touching" and that child protection team would be consulted; while teacher had significant interest in impact of suspension on his reputation, school acted to reduce possibility of erroneous determination by not taking action until complaints were received from three students deemed credible by school, by holding postsuspension hearing at which teacher was informed of specific charges and given opportunity to respond, and by scheduling second hearing prior to settlement of matter, and school had compelling interest in removing teacher from scene quickly, in view of nature of charges against him. Tweedall v. Fritz, S.D.Ind.1997, 987 F.Supp. 1126. Constitutional Law 278.5(4); Schools 147.34(1); Schools 147.38

Though, under Ohio law, tenured teacher had protected property interest in continued employment by board of education, alleged acts of school district superintendent and certain board members in attempting to have teacher's contract suspended did not constitute "deprivation" of that property interest so as to state cause of action under this section for violation of the due process clause of U.S.C.A. Const. Amend. 14. Thomas v. Farmer, S.D.Ohio 1983, 573 F.Supp. 128. Civil Rights 1395(8)

1951. Tenure, deprivation of teachers' rights--Generally

Civil rights action by teachers at public community college challenging abrogation of tenure occurring after State of Maryland took over college presented substantial federal question, inasmuch as teachers were not "public officials" whose office could be modified or abolished by state to serve public good. Gardiner v. Tschechtelin, D.Md.1991, 765 F.Supp. 279. Federal Courts 221

Grant of tenure to member of university faculty is privilege, an honor, which is not to be accorded to all assistant professors, but is to be awarded in course of search for fundamental merit, and such decision, by its very nature, cannot be made by court but must be made by faculty, administration and trustees of university. Johnson v. University of Pittsburgh, W.D.Pa.1977, 435 F.Supp. 1328. Colleges And Universities 8.1(2)

1952. ---- Property interest, tenure, deprivation of teachers' rights

In civil rights action brought against president of state university system and board of regents by terminated assistant professor who challenged defendants' refusal to grant him tenure, the right of plaintiff to substantive due process was no greater than his right to procedural due process; and since plaintiff had no property or liberty right entitling him to procedural due process, there was no basis upon which court of appeals could say that the denial of tenure was error. Stebbins v. Weaver, C.A.7 (Wis.) 1976, 537 F.2d 939, certiorari denied 97 S.Ct. 741, 429 U.S. 1041, 50 L.Ed.2d 753. Constitutional Law 278.5(2.1)

Faculty handbook stating that "tenure shall be granted" to those faculty whose professional characteristics indicate that they will continue to serve with distinction did not create a property interest in tenure where the criteria also indicated that tenure would generally not be conferred unless a faculty member achieved or gave strong promise of achieving promotion and there was no guaranty of promotion. Colburn v. Trustees of Indiana University, S.D.Ind.1990, 739 F.Supp. 1268, affirmed 973 F.2d 581, rehearing denied. Constitutional Law 277(2)

1953. ---- Expectancy of tenure, deprivation of teachers' rights

Associate professor at state-operated medical school had no entitlement to permanent tenure and no property right

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to be protected by the Fourteenth Amendment due process clause for purposes of 42 U.S.C.A. § 1983 civil rights action based on Association of American University Professors-recommended tenure policies prevalent at other institutions and her alleged understanding that she would be considered for permanent tenure in accordance with those prevalent tenure guidelines, where the school never agreed to any policy of permanent tenure and did not adopt informal policy of tenure along those lines. Sabet v. Eastern Virginia Medical Authority, C.A.4 (Va.) 1985, 775 F.2d 1266. Colleges And Universities 8.1(2); Constitutional Law 277(2)

University employee did not have a protected property interest in attaining tenure, for purposes of her Fourteenth Amendment claim, where her contract with the university specifically stated that she was being employed under a probationary appointment and that the opportunity to attain tenure was subject to satisfactorily performing her duties, approving the evaluations, obtaining the faculty recommendations, and meeting the qualifications and all other criteria imposed by the applicable laws, regulations and norms of the university. Modesto v. Lehman, D.Puerto Rico 2002, 245 F.Supp.2d 340. Colleges And Universities 8.1(2); Constitutional Law 277(2)

1954. ---- Alienage discrimination, tenure, deprivation of teachers' rights

Restriction on granting tenure to alien teachers on college faculty could not be justified as bearing some rational relationship to a legitimate state end or so-called national interest of state in providing its own citizens with work, nor could it be justified on ground that other public bodies discriminated against aliens nor on ground that allegiance of aliens to principles of United States remained questionable. Younus v. Shabat, N.D.Ill.1971, 336 F.Supp. 1137, affirmed. Colleges And Universities 8.1(2)

1955. ---- Racial discrimination, tenure, deprivation of teachers' rights

Sufficient evidence was presented from which reasonable jury could find that law school chancellor and professor engaged in employment discrimination in violation of §§ 1981 and 1983, by denying white professor tenure track position; departures of other tenured professors, together with offer of tenure to black professor with less experience than white professor and comments about need to maintain black majority on faculty provided evidence that tenured positions were available to black applicants but not to white professor. Arenson v. Southern University Law Center, C.A.5 (La.) 1990, 911 F.2d 1124, rehearing denied, certiorari denied 111 S.Ct. 1417, 499 U.S. 949, 113 L.Ed.2d 470. Civil Rights 1544

Former assistant professor stated § 1983 claim against dean and faculty members of state university school of architecture in their individual capacities for violation of professor's right to equal protection; professor alleged that dean and faculty members discriminated against him by altering tenure process and denying tenure on basis of race and race-related association, and that dean later discriminated against professor by giving his grievance on equal treatment. Collin v. Rector and Bd. of Visitors of University of Virginia, W.D.Va.1995, 873 F.Supp. 1008. Civil Rights 1395(8)

1956. ---- Sex discrimination, tenure, deprivation of teachers' rights

Evidence supported jury's conclusions that university department chair and tenure committee chair intentionally discriminated against female professor on basis of gender, caused negative tenure recommendation, and violated equal protection; professor was told of need to publish additional book independent of her dissertation, even though no male member of department needed to publish second book; professor met or exceeded number of publications of every tenured faculty member, except committee chair; committee chair treated professor unequally in selection of outside evaluators; chairs gave consistently negative interpretations to generally favorable evaluations of professor's scholarship; and department chair stated opposition to professor, affirmative action, and women in tenured positions. Gutzwiller v. Fenik, C.A.6 (Ohio) 1988, 860 F.2d 1317. Civil Rights 1421

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1957. ---- Speech and writings, tenure, deprivation of teachers' rights

To extent that professor's remarks may tend to diminish collegiality of the department, one may, without offending the Constitution, base decision not to recommend tenure on content of remarks, although they enjoy U.S.C.A.Const.Amend. 1 protection; Mayberry v. Dees, C.A.4 (N.C.) 1981, 663 F.2d 502, certiorari denied 103 S.Ct. 69, 459 U.S. 830, 74 L.Ed.2d 69. Constitutional Law 90.1(7.3)

Court of appeals does not sit as a reviewing body of the correctness or incorrectness of state Board of Regents' decision in granting or withholding tenure; although a nontenured teacher is entitled to due process consideration of claims under U.S.C.A.Const. Amend. 1 mere assertion of such a claim does not convert the federal procedure into a plenary administrative review. Megill v. Board of Regents of State of Fla., C.A.5 (Fla.) 1976, 541 F.2d 1073 . Colleges And Universities 8.1(6.1)

Assuming, arguendo, that the complaints made to her superiors by former nontenured assistant professor concerning her difficulties with one colleague and one student constituted the exercise of a protected right under U.S.C.A.Const. Amend. 1, nevertheless, the ultimate action taken by the university, to-wit, failing to offer plaintiff tenure and instead offering her a terminal employment contract for the 1970-71 academic year, was not shown to have been provoked by any complaints plaintiff may have registered. Frazier v. Curators of University of Missouri, C.A.8 (Mo.) 1974, 495 F.2d 1149. Colleges And Universities 8.1(3)

Teachers' contention that they were denied their rights under U.S.C.A.Const. Amend. 1 in not being granted fourth year teaching contracts tantamount to tenure because of activities disapproved of by administration could not be defeated by argument that officials only allowed the teachers' contracts to expire since right sought to be vindicated was not a contractual one but a constitutional one. Pred v. Board of Public Instruction of Dade County, Fla., C.A.5 (Fla.) 1969, 415 F.2d 851. Constitutional Law 90.1(7.3)

Public university instructor's § 1983 First Amendment claim was not defeated by fact that he did not have tenure; even though instructor could have been discharged for no reason whatever and had no constitutional right to a hearing prior to the decision not to rehire him, he could nevertheless establish claim to reinstatement if decision not to rehire him was made by reason of his exercise of constitutionally protected First Amendment freedoms. Scallet v. Rosenblum, W.D.Va.1996, 911 F.Supp. 999, affirmed 106 F.3d 391, certiorari denied 117 S.Ct. 2482, 521 U.S. 1105, 138 L.Ed.2d 990. Colleges And Universities 8.1(3); Constitutional Law 90.1(7.3)

Professor who alleged that he was denied tenure in retaliation for his having previously grieved adverse personnel actions did not establish a First Amendment violation, considering that professor's complaint did not relate to a matter of political, social or other concern to the community, but involved only individual grievances. Singh v. Lamar University, E.D.Tex.1986, 635 F.Supp. 737. Civil Rights 1395(8)

Denial of tenure to state university teacher because of the teacher's efforts to improve the situation of women at the university would be actionable under this section. Lieberman v. Gant, D.C.Conn.1979, 474 F.Supp. 848, affirmed 630 F.2d 60. Civil Rights 1134

1958. ---- Legitimate and illegitimate reasons, tenure, deprivation of teachers' rights

Even if the tenure denial was due, in part, to the department chairman's disagreement with statements of professor protected by the constitution, professor had no cause of action for deprivation of civil rights where he would have been denied tenure regardless of his protected activities. Hildebrand v. Board of Trustees of Michigan State University, C.A.6 (Mich.) 1981, 662 F.2d 439, certiorari denied 102 S.Ct. 1760, 456 U.S. 910, 72 L.Ed.2d 168. Civil Rights 1252

1959. ---- Implied tenure, deprivation of teachers' rights

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Where tenure regulation provided for a probationary period of at least five years and did not explicitly require that president of institution make his decision whether to recommend tenure before end of fifth year, plaintiff who at end of fourth year was told that a contract would be discontinued at conclusion of fifth year but who was promoted from instructor to assistant professor had not acquired an implied right to tenure, and was not entitled to relief after she was granted an additional one-year contract to comply with board of regents' construction of its regulations. Sheppard v. West Virginia Bd. of Regents, C.A.4 (W.Va.) 1975, 516 F.2d 826. Colleges And Universities 8.1(2)

1960. ---- Procedural requirements, tenure, deprivation of teachers' rights

Had state university gratuitously afforded tenure aspirants procedural safeguards not constitutionally mandated, deviations from those procedures would not support a claim under U.S.C.A.Const. Amend. 14 due process guarantee or this section, and fact that additional procedural safeguards were provided by employment contract did not distinguish case from those where procedures were provided gratuitously. Kilcoyne v. Morgan, C.A.4 (N.C.) 1981, 664 F.2d 940, certiorari denied 102 S.Ct. 1976, 456 U.S. 928, 72 L.Ed.2d 444. Colleges And Universities 8.1(4.1); Constitutional Law 278.5(4)

In suit under this section brought by nontenured public high school teacher charging that he was denied tenure because of his exercise of rights under U.S.C.A.Const. Amend. 1, the determination of whether any constitutional rights of the teacher, who complained that some of the reasons assigned by school authorities for denying tenure occurred during his first year of employment as a probationary teacher, were violated was not controlled by M.C.L.A. § 38.83 requiring minimum of 60 days notice of whether a probationary teacher's work has been satisfactory. Manchester v. Lewis, C.A.6 (Mich.) 1974, 507 F.2d 289. Federal Courts 411

University instructor was not entitled to have reconsideration of his application for tenure subject to the same criteria as had been applied in consideration of his first application, where arbitrator's decision directing reconsideration had also directed that application should be considered and reviewed strictly in conformity with presently existing rules and procedures. Ishigami v. University of Hawaii, D.C.Hawai'i 1979, 469 F.Supp. 443. Colleges And Universities 8.1(5)

Probationary, nontenured professor who was denied tenure at state university could not claim federal constitutional protections for defects in hearing process or failure of university to formally inform her of contract termination a year in advance as required by university procedures. Perham v. Ladd, N.D.Ill.1977, 436 F.Supp. 1101. Colleges And Universities 8.1(5)

1961. Unions, deprivation of teachers' rights

Tutor, who was the only Native American employed by school district in a historically nonunion position, failed to establish that her race was a motivating factor in school defendants' decision to not allow her into union. Crowe v. School Dist. of Webster, W.D.Wis.2003, 300 F.Supp.2d 787. Civil Rights 1137; Civil Rights 1255

Adverse effects of policy of university which prohibited use of university facilities, including use of campus mailing system, to groups which were deemed to be labor organizations or which had as their goal organization of university employees for purposes of collective bargaining were not so slight as to fail to rise to level of a deprivation of civil rights under color of state law. University of Missouri at Columbia-National Ed. Ass'n v. Dalton, W.D.Mo.1978, 456 F.Supp. 985. Civil Rights 1070; Civil Rights 1131

1962. Reduction in force, deprivation of teachers' rights--Generally

Contrary to claim of terminated certified or tenured members of city university instructional staff, who lost positions in a retrenchment program, city university faced with genuine financial emergency adopted and applied a

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uniform set of procedures for meeting that emergency, and the retrenchment was not arbitrary or capricious, and the actions taken were clearly within the discretionary area reserved to the governing officials by Constitution. Klein v. Board of Higher Ed. of City of New York, S.D.N.Y.1977, 434 F.Supp. 1113. Colleges And Universities 8.1(1)

1963. ---- Desegregation, reduction in force, deprivation of teachers' rights

Adoption of requirement that teachers pass national teachers examination is impermissible when shown to have been motivated by discriminatory purpose, but, absent such showing, use of such scores in evaluating teachers is generally permissible, and dismissal of teacher for refusing to take test did not violate principle that school boards when converting from dual system to unitary one must establish and abide by written, nonracial criteria for promotion, retention, etc., of faculty. Moore v. Tangipahoa Parish School Bd., C.A.5 (La.) 1979, 594 F.2d 489. Schools 127; Schools 147.2(2)

Obligation of school board not to engage in discriminatory demotion or dismissal of faculty and professional staff displaced by unification of previously segregated system does not accrue only after integration-related dismissals or demotions have occurred; if there is a reduction in the number of principals, teachers and other professional staff as result of unification, staff member to be dismissed or demoted must be selected on the basis of objective and reasonable nondiscriminatory standards from all the staff of the school district. Campbell v. Gadsden County Dist. School Bd., C.A.5 (Fla.) 1976, 534 F.2d 650, rehearing denied 539 F.2d 710. Civil Rights 1133; Civil Rights 1135

Transfer of school district employee from position of assistant attendance supervisor to that of classroom teacher, a position with the same salary but less responsibility, constituted a "demotion" for purposes of decision requiring that any reduction in professional staff resulting from transition from a dual to a unitary school system be accomplished on a nondiscriminatory basis and that no staff vacancy be filled through recruitment of a person of a different race, color, or national origin than the individual who has been demoted until such individual has had an opportunity to fill the vacancy if qualified. Lee v. Chambers County Bd. of Ed., C.A.5 (Ala.) 1976, 533 F.2d 132. Schools 147.2(2)

Where no cuts were made in the total professional staff of school system in order to accommodate desegregation effort, it was not necessary that school district, in seeking to dismiss teacher on ground of incompetency, compare her qualifications with those of all other teachers in the system. Blunt v. Marion County School Bd., C.A.5 (Fla.) 1975, 515 F.2d 951. Schools 147.2(2)

Where there was no reduction or anticipated reduction in number of teachers and staff employed by school district which had recently been subject of integration order, discharge of black, nontenured teacher was not constitutionally invalid even if school board had not applied valid objective criteria in making the decision not to retain the teacher. Griffin v. Lancaster, W.D.La.1975, 400 F.Supp. 421. Schools 147.2(2)

1964. Renewal of contract, deprivation of teachers' rights--Generally

Reemployment of untenured high school teacher, who was employed under a one-year contract, could be refused for any reason or for no reason at all. Ball v. Board of Trustees of Kerrville Independent School Dist., C.A.5 (Tex.) 1978, 584 F.2d 684, rehearing denied 588 F.2d 828, certiorari denied 99 S.Ct. 1535, 440 U.S. 972, 59 L.Ed.2d 788 . Schools 147.9

Even if a teacher or other public employee does not have a contractual right to continued employment, he may not be dismissed nor denied renewal of contract on basis that infringes his constitutionally protected interests. Hastings v. Bonner, C.A.5 (Fla.) 1978, 578 F.2d 136. Officers And Public Employees 66; Schools 147.12; Schools 147.4

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Decision not to retain nontenured professor employed by state university may not rest on basis wholly unsupported in fact or on basis wholly without reason. Cook County College Teachers Union, Local 1600, Am. Federation of Teachers, AFL-CIO v. Byrd, C.A.7 (Ill.) 1972, 456 F.2d 882, certiorari denied 93 S.Ct. 56, 409 U.S. 848, 34 L.Ed.2d 90, rehearing denied 94 S.Ct. 29, 414 U.S. 883, 38 L.Ed.2d 131. Colleges And Universities 8.1(3)

Reasons for nonrenewal of nontenured teacher's contract may not be arbitrary and capricious. Drown v. Portsmouth School Dist., C.A.1 (N.H.) 1971, 451 F.2d 1106. Schools 147.9

Nontenured public school teacher claiming that school district's failure to rehire her deprived her of rights guaranteed by the Constitution was not entitled to damages. Drown v. Portsmouth School Dist., C.A.1 (N.H.) 1970, 435 F.2d 1182, certiorari denied 91 S.Ct. 1659, 402 U.S. 972, 29 L.Ed.2d 137. Schools 147.54

1965. ---- Property interest, renewal of contract, deprivation of teachers' rights

Fact that state university faculty member did not have tenure was not dispositive of faculty member's due process claim for wrongful dismissal in connection with rescission of his sabbatical leave contract on theory that faculty member had no property right or interest entitling him to due process of law. Bruce v. Board of Regents for Northwest Missouri State University, W.D.Mo.1976, 414 F.Supp. 559. Constitutional Law 277(2)

Where written terms of plaintiff's one-year contract specifically provided that his right of employment ended on June 30, 1973, his last day of work, and bylaws of private college provided that all faculty members were subject to annual reappointment by board of trustees, plaintiff had no constitutionally protected property right in employment by such college. Sament v. Hahnemann Medical College and Hospital of Philadelphia, E.D.Pa.1976, 413 F.Supp. 434, affirmed 547 F.2d 1164. Colleges And Universities 8.1(1)

1966. ---- Expectation of renewal, renewal of contract, deprivation of teachers' rights

Community college instructor could have property interest protected by due process in continued employment as chairperson of home economics department, despite lack of California law creating such expectation of continuation in administrative positions; interest could arise from college official's statements indicating mutually explicit understandings. Roberts v. College of the Desert, C.A.9 (Cal.) 1988, 870 F.2d 1411. Constitutional Law 277(2)

Coach and athletic director, who had two-year employment promise, was deprived of his legitimate expectation of continued employment when school board voted not to renew his contract for a second year and such deprivation was a violation of due process actionable under this section. Vail v. Board of Educ. of Paris Union School Dist. No. 95, C.A.7 (Ill.) 1983, 706 F.2d 1435, certiorari granted 104 S.Ct. 66, 464 U.S. 813, 78 L.Ed.2d 81, affirmed 104 S.Ct. 2144, 466 U.S. 377, 80 L.Ed.2d 377. Civil Rights 1133

Former superintendent of schools, who was denied reemployment, failed to show, in his suit under this section, that he had a "legitimate claim of entitlement" or "reasonable expectancy of re-employment"; rather, he established, at best, a unilateral expectation of continued employment. Tatter v. Board of Ed. of Independent School Dist. No. 306, D.C.Minn.1980, 490 F.Supp. 494, affirmed 653 F.2d 315. Civil Rights 1421

Assistant professor's mere expectancy that she might be retained at university if she did certain things is not enough to invest her with property right in her employment. Johnson v. University of Pittsburgh, W.D.Pa.1977, 435 F.Supp. 1328. Colleges And Universities 8(2)

1967. ---- Racial discrimination, renewal of contract, deprivation of teachers' rights

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Members of school council sufficiently offered nondiscriminatory reasons for voting not to renew contract of white high school principal and subsequently deciding not to rehire him, as required to rebut principal's prima facie case of reverse discrimination; members claimed that principal had closed school without authority, allowed unsafe conditions to exist in laboratory, responded inadequately when white teacher made racial slur, and did not work well with school departments. Pilditch v. Board of Educ. of City of Chicago, C.A.7 (Ill.) 1993, 3 F.3d 1113, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 1065, 510 U.S. 1116, 127 L.Ed.2d 385. Civil Rights 1421

Professor failed to establish that financial accountability analysis was flawed as asserted to prove alleged financial reasons for non-renewal of her contract were pretext for race discrimination, where professor did not provide evidence to establish that accounting methods were not actually relied on by college. Lewis v. Chattahoochee Valley Community College, M.D.Ala.2001, 136 F.Supp.2d 1232.

African-American instructor's race was more likely than not primary reason for community college's decision not to renew her contract, where chair of her department made racially discriminatory remarks and harbored racial prejudices, instruction was only African-American instructor ever employed in her department, and decision not to renew her contract was made by all white supervisory officials; fact that she received her Ph.D. degree from nonaccredited university was not credible reason for nonrenewal, since Ph.D. was not requirement for position and issue of accreditation was never discussed in any of instructor's hiring interviews. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1133

1968. ---- Sex discrimination, renewal of contract, deprivation of teachers' rights

School board which did not renew teacher's contract was not liable to teacher under § 1983 for employment discrimination; school board produced evidence that they did not intentionally discriminate against teacher on basis of sex, and teacher merely questioned credibility of board members who testified, rather than producing evidence which showed that board did intentionally discriminate against her. Suber v. Bulloch County Bd. of Educ., S.D.Ga.1989, 722 F.Supp. 736. Civil Rights 1421

1969. ---- Speech and writings generally, renewal of contract, deprivation of teachers' rights

Public university instructor's advocacy of "diversity" through the materials he taught in class related to matters of public concern for purposes of his § 1983 First Amendment claim and fact that instructor's statements were made in the classroom and not in the public square did not strip them of their inherently public quality; context of instructor's classroom speech, that is as part of the curriculum at university's graduate business school, did not metamorphosize speech addressing social issues into parochial musings unrelated to the world beyond ivy towers of the business school. Scallet v. Rosenblum, W.D.Va.1996, 911 F.Supp. 999, affirmed 106 F.3d 391, certiorari denied 117 S.Ct. 2482, 521 U.S. 1105, 138 L.Ed.2d 990. Colleges And Universities 8.1(3); Constitutional Law 90.1(7.3)

Fact that a teacher did not have tenure does not suffice to defeat such teacher's claim under this section that teaching contract was not renewed because teacher exercised rights under U.S.C.A.Const. Amend. 1. Cherry v. Burnett, D.C.Md.1977, 444 F.Supp. 324. Civil Rights 1133

1970. ---- Policy disputes, renewal of contract, deprivation of teachers' rights

In action by nontenured teacher challenging university's nonrenewal of her contract, evidence did not establish that university did not renew her contract because she made speeches attacking alleged sexually discriminatory practices of university. Decker-Gregg v. Scarlett, M.D.Tenn.1975, 392 F.Supp. 1352, affirmed 524 F.2d 1405. Colleges And Universities 8.1(6.1)

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1971. ---- Political affiliation, renewal of contract, deprivation of teachers' rights

Teacher who worked under contract failed to show that nonrenewal of her contract with Department of Education was due to political discrimination; teacher who took over her classes was a regular employee who had priority over contract employees and following first semester after her nonrenewal, courses were cancelled and career employee was assigned to another district. Saquebo v. Roque, D.Puerto Rico 1989, 716 F.Supp. 709. Colleges And Universities 8.1(4.1)

Former vocational school teacher, who taught on basis of a yearly provisional contract but who was not hired for the ensuing year after another applicant was selected, failed to prove in action under this section, that the nonrenewal of teaching job was politically motivated. Amador Hernandez v. Chaar, D.C.Puerto Rico 1975, 392 F.Supp. 964. Civil Rights 1421

1972. ---- Association, renewal of contract, deprivation of teachers' rights

Nontenured university instructor's contention that university officials refused to renew her contract as attempt to "punish her association" with her husband was sufficiently detailed to state claim under § 1983 for violation of her constitutional right to intimate association, where instructor supported such contention by citing her consistently above-average performance evaluations, faculty grievance committee's recommendation that her contract be renewed, and fact that her husband, tenured professor and member of faculty union, engaged in vocal criticisms of both university and its School of Music. Anderson-Free v. Steptoe, M.D.Ala.1997, 970 F.Supp. 945. Civil Rights 1395(8)

Lack of contractual or tenure right did not defeat claim of nontenured public school teacher that nonrenewal was based solely on a reason that infringed her constitutionally protected interest, specifically, that nonrenewal based on animosity of school officials towards her husband for his activities on behalf of teachers' association violated plaintiff's rights to freedom of speech, privacy and association within the marital contract. Newborn v. Morrison, S.D.Ill.1977, 440 F.Supp. 623. Constitutional Law 82(12); Constitutional Law 90.1(7.3); Constitutional Law 91

1973. ---- Unions, renewal of contract, deprivation of teachers' rights

Determination of school board after having had teacher before it that it would not renew teacher's contract on grounds that he had persistently failed to observe announced administrative policies regarding discipline of students was a matter within discretion of school board, and plaintiff teacher did not make a sufficient factual showing to justify conclusion that school board even so much as inquired into matter of teacher's participation in organization of school room teachers associations. Mitchell v. Alma School Dist. No. 30, W.D.Ark.1971, 332 F.Supp. 473. Schools 147.4

1974. ---- Certification requirement, renewal of contract, deprivation of teachers' rights

Requirement of appropriate certification is a valid nondiscriminatory reason for nonretention of a teacher by a school district so long as the requirement is applied in a nondiscriminatory manner. Lyons v. Board of Ed. of Charleston Reorganized School Dist. No. 1 of Mississippi County, Missouri, C.A.8 (Mo.) 1975, 523 F.2d 340. Schools 147.9

Lack of a proper teaching certificate for upcoming school year constituted a valid and nondiscriminatory basis for action of school board in refusing to renew teaching contract. Jackson v. Wheatley School Dist. No. 28 of St. Francis County, Ark., C.A.8 (Ark.) 1970, 430 F.2d 1359. Schools 147.9

1975. ---- Recommendation withheld, renewal of contract, deprivation of teachers' rights

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42 U.S.C.A. § 1983

In view of county school superintendent's failure for good cause to give recommendation required by state law for reemployment of plaintiff as a teacher, board's refusal to renew plaintiff's contract was not due to plaintiff's civil rights activities, and she was not entitled to injunction requiring reinstatement. Henry v. Coahoma County Bd. of Ed., C.A.5 (Miss.) 1965, 353 F.2d 648, certiorari denied 86 S.Ct. 1586, 384 U.S. 962, 16 L.Ed.2d 674. Schools 147.47

1976. ---- Refusal of renewal, renewal of contract, deprivation of teachers' rights

State university's board of regents and chancellor's decision not to renew former assistant chancellor's contract with university was an adverse employment action, for purposes of assistant chancellor's employment discrimination action against board and chancellor, alleging claims under §§ 1981, 1983, and Title VII. Walker v. Board of Regents of University of Wisconsin System, W.D.Wis.2004, 300 F.Supp.2d 836. Civil Rights 1133

Where, during controversy concerning outside employment by teacher, teacher was offered a renewal contract through her attorney for following school year and declined it and her refusal was made known to school board through the respective attorneys, she could not recover for nonrenewal of her contract. Gosney v. Sonora Independent School Dist., D.C.Tex.1977, 430 F.Supp. 53, reversed on other grounds 603 F.2d 522. Schools 147.54

1977. ---- Retaliation, renewal of contract, deprivation of teachers' rights

Three-month delay between time school teacher filed Equal Employment Opportunity Commission (EEOC) complaint and date that school officials increased their supervision of her, coupled with fact that increased supervision immediately followed a parent's complaint about teacher's in-class behavior, were insufficient to show causal connection between EEOC complaint and increased supervision for purposes of retaliation claim under Title VII, § 1981 or § 1983. Salvadori v. Franklin School Dist., E.D.Wis.2001, 221 F.Supp.2d 957, affirmed 293 F.3d 989. Civil Rights 1252; Schools 147.12

1978. ---- Residence requirement, renewal of contract, deprivation of teachers' rights

Even though school counselor whose contract was not renewed because of his failure to comply with county school district's continuing residency requirement lived only 11 miles from the school where he worked, counselor was not denied equal protection of the law by school district's policy requiring counselors to live in proximity of their schools or by school board's decision not to renew his contract where reasons given for residency requirement were related to counselor's role and were not wholly insubstantial. Mogle v. Sevier County School Dist., C.A.10 (Utah) 1976, 540 F.2d 478, certiorari denied 97 S.Ct. 1157, 429 U.S. 1121, 51 L.Ed.2d 572. Constitutional Law 242.2(4)

1979. ---- Legitimate and illegitimate reasons, renewal of contract, deprivation of teachers' rights

State university professor's constitutionally protected speech criticizing university's expenditure of public funds and implementation of programs was not substantial and motivating factor in university's decision one year after speech not to renew professor's contract and thus, professor could not recover against university under § 1983 for violation of his First Amendment rights; university's stated reason for not renewing contract was marked and persistent decline in enrollment that occurred prior to professor's speech and there was evidence that university chancellor did not even know about professor's speech until termination appeal process had begun. Hamer v. Brown, C.A.8 (Ark.) 1987, 831 F.2d 1398. Civil Rights 1252

Where there was just cause to terminate teacher, regardless of free speech issue, school board could reach decision not to rehire on basis of her performance record, even if protected conduct, i.e., speech, made employer more certain of the correctness of its decision. Rocker v. Huntington, C.A.2 (N.Y.) 1977, 550 F.2d 804. Schools

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42 U.S.C.A. § 1983

147.12

Although only seven days intervened between meeting at which nontenured associate professor of foreign languages accused acting chairman of suppressing application of another for the chairmanship and meeting at which it was decided not to renew the associate professor's contract, the nonrenewal decision was not in violation of the professor's constitutional rights where it was not made in retaliation for exercise of any valid right of free speech but because of work practices which created administrative hardships and delays as well as inadequate classroom performance and failure to get along amicably in the department. Roseman v. Indiana University of Pennsylvania, at Indiana, C.A.3 (Pa.) 1975, 520 F.2d 1364, certiorari denied 96 S.Ct. 1128, 424 U.S. 921, 47 L.Ed.2d 329. Constitutional Law 90.1(7.3)

Notice from dean to nontenured faculty member which stated that faculty member's appointment for coming academic year would be terminal appointment because, although his research project had been supported for considerable length of time, nothing had yet been presented in the nature of an article or paper did not proffer a constitutionally impermissible basis for the nonreappointment. Watts v. Board of Curators, University of Missouri, C.A.8 (Mo.) 1974, 495 F.2d 384. Colleges And Universities 8.1(3)

Where state provided that teacher's contract would be renewed unless she was notified of nonrenewal and teacher was notified of nonrenewal and her rights to hearing, federal court would not overrule school board's determination not to renew teacher's contract based on board's finding that test showed teacher's pupils had below average scholastic accomplishments. Scheelhaase v. Woodbury Central Community School Dist., C.A.8 (Iowa) 1973, 488 F.2d 237, certiorari denied 94 S.Ct. 3173, 417 U.S. 969, 41 L.Ed.2d 1140. Schools 147.44

Refusal by board of education to reemploy teacher, who wrote letter on board's stationery to state legislator criticizing department of education for failing to allot funds for certain program, who signed letter as "Supervisor of Physical Education and/or Motor-Perceptual Skills.", and refusal to reemploy teacher's supervisor, who refused to sign evaluation showing that teacher was unsatisfactory in her performance, did not violate rights under U.S.C.A.Const. Amend. 1 of teacher or supervisor, who instituted civil rights action as result of refusal to reemploy, where teacher, who did not have authority on behalf of board to write such letter, failed to make it clear that she was not acting on behalf of board. Long v. Board of Ed. of City of St. Louis, C.A.8 (Mo.) 1972, 456 F.2d 1058. Schools 147.12

Denial of teaching contract to nontenured teacher, who had been employed as high school counselor, on basis of lack of self-direction and cooperation in relation to extracurricular duties did not deny equal protection, absent indication that retained teachers shared dismissed teacher's view that there was no obligation to perform any duty that was not written into teacher's contract. Simcox v. Board of Ed. of Lockport Tp. High School, Dist. No. 205, Will County, Ill., C.A.7 (Ill.) 1971, 443 F.2d 40. Constitutional Law 242.2(4)

State university's board of regents and chancellor's proffered reason for failing to renew former assistant chancellor's contract, namely, her alleged resistance to chancellor's reorganization efforts, was not a legitimate, nondiscriminatory reason, as would shift burden to assistant chancellor to show that articulated reason was pretext, in her action alleging race and sex discrimination in violation of §§ 1981, 1983, and Title VII, where there was no evidence that assistant chancellor resisted chancellor's reorganization efforts, or that chancellor found fault with her concerns regarding such efforts. Walker v. Board of Regents of University of Wisconsin System, W.D.Wis.2004, 300 F.Supp.2d 836. Civil Rights 1133; Civil Rights 1170

Evidence of profitability of criminal justice program did not demonstrate that articulated reason for non-renewal of professor's contract was pretextual as required to prove race discrimination, although college alleged that reason for non-renewal was financial and evidence showed that department produced more revenue than expenditures, where program was profitable during professors final year only because she was replaced with a part-time instructor. Lewis v. Chattahoochee Valley Community College, M.D.Ala.2001, 136 F.Supp.2d 1232. Civil Rights

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42 U.S.C.A. § 1983

1137

Community college satisfied its burden of proffering race-neutral reasons for its decision not to renew African-American instructor's contract, where it contended that its decision was based on instructor's academic credentials, nonadherence to her work schedule, and general incompatibility with college administrators. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1133

If decision to nonrenew teacher's contract is based even partially on constitutionally impermissible ground, decision cannot stand unless constitutionally impermissible ground is merely incidental. Sheets v. Stanley Community School Dist. No. 2, D.C.N.D.1975, 413 F.Supp. 350, affirmed 532 F.2d 111. Schools 147.12

Former high school football coach, who was a white male, failed to show that school board's and black female school principal's proffered nondiscriminatory reason for declining to renew his coaching contract, which was that school principal sincerely believed coach had made derogatory remarks to students, was a pretext for racial discrimination in violation of Title VII and §§ 1983; although coach offered evidence that he made no such statements, he offered no evidence that called into question sincerity of principal's belief that he had done so. Riley v. Birmingham Bd. of Educ., C.A.11 (Ala.) 2005, 154 Fed.Appx. 114, 2005 WL 2981869, Unreported. Civil Rights 1234

1980. ---- Reputation injury, renewal of contract, deprivation of teachers' rights

Any damage or stigma to instructor's good name with regard to disclosure of information concerning school board's decision not to rehire instructor was caused not by school board's action, but by instructor, who made school board's actions public by commencing litigation, and thus, relief under 42 U.S.C.A. § 1983 would be inappropriate, where no information concerning decision not to rehire instructor was contained within his personnel file, and information relevant to investigation was maintained in separate file not subject to disclosure except as mandated by law. Sherrod v. Palm Beach County School Bd., S.D.Fla.1985, 620 F.Supp. 1275, affirmed 792 F.2d 1125. Civil Rights 1038; Civil Rights 1040

1981. ---- Threat of non-renewal, renewal of contract, deprivation of teachers' rights

Where state gave plaintiff right to be employed as superintendent of school district for one year, he was employed by district for that year and, while there was a period when board of education intended not to renew the contract, the contract was renewed and no break in employment occurred, plaintiff could not recover under this section for deprivation of constitutionally protected property right. Elbert v. Board of Ed. of Lanark Community Unit School Dist. No. 305, Carroll County, Ill., C.A.7 (Ill.) 1980, 630 F.2d 509, certiorari denied 101 S.Ct. 1741, 450 U.S. 1031, 68 L.Ed.2d 226. Civil Rights 1133

1982. ---- Procedural requirements generally, renewal of contract, deprivation of teachers' rights

Even if contract grievance proceedings concerning nonrenewal of state college teacher's contract accorded neither with that process which would have been required had teacher had a constitutionally protected interest nor with provisions specified in federation agreement, departure from the contractual grievance procedure did not violate the Civil Rights Act. Lovelace v. Southeastern Massachusetts University, C.A.1 (Mass.) 1986, 793 F.2d 419. Civil Rights 1258

Untenured instructor at state college had no constitutional right to notice and hearing in respect to his nonretention; however, if the college's own rules dictated that certain procedures had to be used when an untenured instructor was not reappointed, it was bound to follow them. Mabey v. Reagan, C.A.9 (Cal.) 1976, 537 F.2d 1036. Colleges And Universities 8.1(5)

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Substantive due process rights generally do not apply to an untenured teacher, such as a teacher's aide, who has no right under state law to procedural process, or was not afforded a hearing, prior to dismissal or nonrenewal of his or her employment contract. Evans v. Page, C.A.8 (Ark.) 1975, 516 F.2d 18. Constitutional Law 277(2)

Nontenured professor, whose contract was not renewed, who was found to have had no expectancy of continued employment, who was not retained because vice-president for academic affairs found that his professional relations with individual students failed to meet minimum standards, with the university appearing to have followed procedures suggested by American Association of University Professors in a statement of procedural standards for faculty retention, had not been deprived of minimum standards of due process and was not entitled to reinstatement pending due process hearing. Blair v. Board of Regents of State University and Community College System of Tennessee, C.A.6 (Tenn.) 1974, 496 F.2d 322. Colleges And Universities 8.1(7); Constitutional Law 278.5(4)

1983. ---- Statement of reasons, renewal of contract, deprivation of teachers' rights

A prosecutor's actions connected with initiation of prosecution, even if those actions are patently improper are immunized from civil liability under §§ 1983; however, purely administrative or investigative actions that do not relate to the initiation of a prosecution do not qualify for absolute immunity. Schenk v. Chavis, C.A.8 (S.D.) 2006, 461 F.3d 1043. Civil Rights 1376(9)

Where Ohio nontenured industrial arts teacher had been employed for eight successive years under series of one year certificates, it was not shown that teacher had submitted evidence of his completion of two courses on which his 1969 certificate had been conditioned and there was nothing in the record that could be construed to establish an expectancy of continued employment and it was not disputed that teacher had been notified in writing that Board did not intend to renew his contract for 1970-1971 school year, failure of Board to give statement of reasons for nonrenewal or to accord an opportunity to be heard did not violate due process. Patrone v. Howland Local Schools Bd. of Ed., C.A.6 (Ohio) 1972, 472 F.2d 159, 67 O.O.2d 371. Constitutional Law 278.5(4)

Government employment as a teacher is neither life, liberty, nor property within due process clause, and a nontenured teacher's interest in knowing reasons for nonrenewal of contract and in confronting board on those reasons is not sufficient to outweigh interest of board in free and independent action with respect to employment of probationary teachers. Orr v. Trinter, C.A.6 (Ohio) 1971, 444 F.2d 128, 29 Ohio Misc. 149, 58 O.O.2d 467, certiorari denied 92 S.Ct. 2847, 408 U.S. 943, 33 L.Ed.2d 767, rehearing denied 93 S.Ct. 95, 409 U.S. 898, 34 L.Ed.2d 157.

To prevail on an Eighth Amendment failure to protect claim, a prisoner is required to show that (1) he is incarcerated under conditions posing a substantial risk of serious harm (the objective element); and (2) prison officials acted with deliberate indifference, i.e., that prison officials knew of and disregarded an excessive risk to inmate health or safety. Dickens v. Taylor, D.Del.2006, 2006 WL 3190344. Sentencing And Punishment 1537

Nontenured high school principal, as "initial contract teacher" under amended provisions of Wyoming Education Code, had no statutory right to statement of reasons nor to hearing prior to school board's decision not to rehire him for another year. Schmidt v. Fremont County School Dist. No. 25, State of Wyo., D.C.Wyo.1976, 406 F.Supp. 781, affirmed 558 F.2d 982. Schools 147.34(1)

1984. ---- Notice, renewal of contract, deprivation of teachers' rights

Teachers who were not retained for the next school year following merger of districts during the summer were nonrenewed and not terminated under Arkansas law and thus they did not suffer deprivation of constitutionally

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protectable property interest cognizable in civil rights action, though they had not received timely notice of nonrenewal and thus claimed they were automatically under contract for the next school year, and further claimed that, when their district was annexed by another, the annexing district was obliged to honor their contracts, where the claim sprang from school district's failure to comply with the statutory nonrenewal scheme. Hilton v. Pine Bluff Public Schools, C.A.8 (Ark.) 1986, 796 F.2d 230. Civil Rights 1133

Failure to give former women's varsity basketball coach at college 12 months' notice that she would not be rehired did not amount to denial of coach's constitutional rights where coach served under temporary restricted appointment and was not covered by tenure, probationary and notice provisions of college handbook and regulations. Jacobs v. College of William and Mary, E.D.Va.1980, 517 F.Supp. 791, affirmed 661 F.2d 922, certiorari denied 102 S.Ct. 572, 454 U.S. 1033, 70 L.Ed.2d 477. Colleges And Universities 8.1(5)

College's failure to give former women's basketball coach and instructor notice of decision not to renew her contract at least 12 months before expiration of her appointment, as required by college's regulations, stated claim for relief under this section for deprivation of her constitutional rights. Jacobs v. College of William and Mary, E.D.Va.1980, 495 F.Supp. 183, affirmed 661 F.2d 922, certiorari denied 102 S.Ct. 572, 454 U.S. 1033, 70 L.Ed.2d 477. Civil Rights 1395(8)

1985. ---- Hearing, renewal of contract, deprivation of teachers' rights

State university did not deprive nontenured associate professor of a liberty interest in connection with nonrenewal of his employment contract and denial of tenure without a pretermination hearing where even if challenged decision was based on allegedly false charges of unethical conduct in "secret file" reports, the university did not state publicly its grounds for termination. Davis v. Oregon State University, C.A.9 (Or.) 1978, 591 F.2d 493. Civil Rights 1133

School district officials' interpretation and application of Mississippi law in denying a hearing to teacher, whose contract was not renewed, did not raise any federal issue cognizable in action under this section. Roberts v. Arledge, C.A.5 (Miss.) 1975, 519 F.2d 1129. Federal Courts 221

Tenured college instructor whose employment contract was not renewed for the 1973-74 school year should have been permitted, in his civil rights suit, to establish his entitlement to a hearing, the purpose of which would be to assure that his position was in fact "discontinued" within the meaning of his teaching contract and, if he was instead the victim of a "reduction in force," that the college trustees made a decision pursuant to their previously announced criteria. Collins v. Wolfson, C.A.5 (Fla.) 1974, 498 F.2d 1100. Civil Rights 1424

Procedural due process issue presented by civil rights action of nontenured teacher who was not rehired by school district was whether the reasons given to plaintiff and circumstances surrounding the nonrenewal of his contract so besmirched his professional reputation and standing in community as to implicate his liberty interest and thus require a hearing at which he could attempt to clear his name. Springston v. King, W.D.Va.1975, 399 F.Supp. 985. Constitutional Law 278.5(4)

1986. ---- Pre-nonrenewal hearing, renewal of contract, deprivation of teachers' rights

Under circumstances not constituting a deprivation of liberty, there is no constitutional right to a hearing before discharge of nontenured teachers who have no property interest in continued employment. Kelly v. West Baton Rouge Parish School Bd., C.A.5 (La.) 1975, 517 F.2d 194. Schools 147.6

1987. Dismissal, deprivation of teachers' rights--Generally

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42 U.S.C.A. § 1983

Nontenured teacher may be fired for any reason or for no reason at all but not for exercise of protected rights. Hillis v. Stephen F. Austin State University, C.A.5 (Tex.) 1982, 665 F.2d 547, rehearing denied 669 F.2d 729, certiorari denied 102 S.Ct. 2906, 457 U.S. 1106, 73 L.Ed.2d 1315. Colleges And Universities 8.1(3)

Even false reason for discharge of public employee does not raise an issue actionable under this section. McCowan v. Tucker, E.D.Tenn.1982, 558 F.Supp. 31. Constitutional Law 82(11)

School boards, as well as other administrative agencies, should have wide discretion in deciding whether or not to continue employment of their personnel, but discretion means exercise of judgment, and not bias or capriciousness, and thus decision must be based upon facts and supported by reasoned analysis. Gwathmey v. Atkinson, E.D.Va.1976, 447 F.Supp. 1113. Schools 147.4; Schools 147.31

Where public college faculty member has legitimate claim of entitlement to continued employment in absence of just cause, procedural and substantive due process must be provided before employment may be terminated. Shaw v. Board of Trustees of Frederick Community College, D.C.Md.1975, 396 F.Supp. 872, affirmed 549 F.2d 929. Constitutional Law 278.5(4); Constitutional Law 277(2)

Court's role in action by discharged teacher is not to second guess school administrators but to determine whether teacher's constitutional rights were transgressed. Hibbs v. Board of Ed. of Iowa Central Community College, N.D.Iowa 1975, 392 F.Supp. 1202. Schools 147.44

1988. ---- Property interest, dismissal, deprivation of teachers' rights

Persons who had been dismissed from positions as director of municipal school of nursing and as staff teaching nurse at that school sufficiently pleaded, for purposes of motion to dismiss for failure to state a cause of action, a property interest in continued employment and a liberty interest in the safeguarding of their reputation, honor and integrity so as to warrant protection of due process in their termination from employment. State of Mo. ex rel. Gore v. Wochner, E.D.Mo.1979, 475 F.Supp. 274, affirmed 620 F.2d 183, certiorari denied 101 S.Ct. 218, 449 U.S. 875, 66 L.Ed.2d 96. Constitutional Law 277(2); Constitutional Law 278.4(2)

1989. ---- Substantive due process, dismissal, deprivation of teachers' rights

Former university basketball coach's claim that he was denied employment and other property interests by university and university officials without due process of law did not support substantive due process claim. Mackey v. Cleveland State University, N.D.Ohio 1993, 837 F.Supp. 1396. Colleges And Universities 8.1(1); Constitutional Law 278.5(2.1)

Public school teacher had no substantive due process right to employment at a public school, for purpose of teacher's §§ 1983 claim, arising from his termination. Jerrytone v. Musto, C.A.3 (Pa.) 2006, 167 Fed.Appx. 295, 2006 WL 162656, Unreported. Schools 147.2(1)

1990. ---- Racial discrimination, dismissal, deprivation of teachers' rights

Finding that some of teachers hired by defendant school district to replace plaintiff black faculty members were black does not foreclose finding of racial discrimination in plaintiffs' terminations at least where termination and selection of replacement are accomplished separately. Clark v. Mann, C.A.8 (Ark.) 1977, 562 F.2d 1104. Civil Rights 1555

In determining whether termination of employment of school teacher was racially motivated, each case must be decided upon basis of its own peculiar facts mindful of the historical background. Walton v. Nashville, Ark. Special School Dist. No. 1, C.A.8 (Ark.) 1968, 401 F.2d 137. Schools 147.2(2)

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42 U.S.C.A. § 1983

Negro schoolteacher's discharge was discriminatory where, after it became necessary to discharge a teacher because of decrease in school enrollment, her qualifications were compared only with those of other teachers in all Negro school involved, rather than with all other teachers in the county system. Hill v. Franklin County Bd. of Ed., C.A.6 (Tenn.) 1968, 390 F.2d 583. Civil Rights 1133

Native American tutor did not show that race played a part in the decision to fire her, and therefore was not entitled to recover on her civil rights claims; tutor presented little or no evidence to establish a connection between school superintendent's racial views and her termination, failed to show that others similarly situated to her, from outside the protected class, were treated more favorably, and did not show that defendants' reasons for her termination, tutor's failure to follow administrative procedures and poor communication with parents, staff and students, were pretextual. Crowe v. School Dist. of Webster, W.D.Wis.2003, 300 F.Supp.2d 787. Civil Rights 1133

Tenured state university professor's constitutional rights were not transgressed when he was discharged where evidence supported finding that he was removed due to his inadequate performance and not because of his race. King v. University of Minnesota, D.C.Minn.1984, 587 F.Supp. 902, affirmed 774 F.2d 224, certiorari denied 106 S.Ct. 1491, 475 U.S. 1095, 89 L.Ed.2d 893. Civil Rights 1134

1991. ---- Speech and writings generally, dismissal, deprivation of teachers' rights

Teachers' speech, as result of which they suffered adverse employment action, was on a matter of public concern, for purposes of First Amendment retaliation claim, where teachers, as elected representatives of the faculty at meeting of committee formed by superintendent to create an improvement plan for high school in response to faculty's concerns about principal, told superintendent that many of the faculty believed the principal was not following the improvement plan, that her replacement was necessary to alleviate the problems, and that the faculty would revolt if superintendent did not do something, and comments were made against a backdrop of widespread concern in the community. Harris v. Victoria Independent School Dist., C.A.5 (Tex.) 1999, 168 F.3d 216, rehearing and rehearing en banc denied 336 F.3d 343, certiorari denied 120 S.Ct. 533, 528 U.S. 1022, 145 L.Ed.2d 413. Constitutional Law 90.1(7.3); Schools 147.12

Speech of former employee of public colleges organization speech did not address "matters of public concern" so as to support her § 1983 action against community college district board of trustees and employee's superiors for retaliation for her exercise of free speech; employee's speech related predominantly to her personal interest in resolving friction between herself and superior, rather than her concern as citizen over sexist behavior of organization official. Hartman v. Board of Trustees of Community College Dist. No. 508, Cook County, Ill., C.A.7 (Ill.) 1993, 4 F.3d 465, rehearing denied. Constitutional Law 90.1(7.3)

Nontenured art professor's criticism of head of department did not per se lose its protection merely because it was private expression directed at his superior. Hillis v. Stephen F. Austin State University, C.A.5 (Tex.) 1982, 665 F.2d 547, rehearing denied 669 F.2d 729, certiorari denied 102 S.Ct. 2906, 457 U.S. 1106, 73 L.Ed.2d 1315. Constitutional Law 90.1(7.3)

In action for conspiracy to deprive plaintiff of his civil rights, evidence failed to establish that defendants had dismissed plaintiff as a law professor or otherwise penalized him because of his advocacy of Blacks or other minorities. Herrmann v. Moore, C.A.2 (N.Y.) 1978, 576 F.2d 453, certiorari denied 99 S.Ct. 613, 439 U.S. 1003, 58 L.Ed.2d 679. Conspiracy 19

State university professor's complaint that department chair was auctioning off desirable offices to highest bidder to create discretionary fund within chair's exclusive control was not speech about matter of public concern, for purposes of retaliation claim, as matter concerned only departmental faculty members, at least where their was no allegation that chair intended to use funds improperly. Stiner v. University of Delaware, D.Del.2003, 243 F.Supp.2d 106. Colleges And Universities 8.1(3); Constitutional Law 90.1(7.3)

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42 U.S.C.A. § 1983

Improper operation and implementation of new special education program at elementary school involved matter of public concern, such that teachers stated civil rights claims against elementary school principal by alleging that he retaliated against them in response to their criticisms, where they spoke out at open meetings, their complaints were not centered on personal disputes, and they alleged no reasons why their interests in expressing themselves might be outweighed by any injuries caused to school. Love v. City of Chicago Bd. of Educ., N.D.Ill.1998, 5 F.Supp.2d 611. Constitutional Law 90.1(7.2); Schools 147.12

Teacher's statements, including criticisms of school's policies regarding changing of student grades, student placement, locking lavatories, and ground maintenance, were not protected speech, for purposes of § 1983 action challenging alleged retaliatory dismissal; criticisms were made in teacher's capacity as employee. Storlazzi v. Bakey, D.Mass.1995, 894 F.Supp. 494, affirmed 68 F.3d 455. Constitutional Law 90.1(7.3)

Teacher's federal civil rights suit was an effort to seek redress of and compensation for alleged wrongs done to him individually by the school district and did not relate to a matter of public concern, and thus was not protected by the First Amendment. Sweeney v. Board of Educ. of Mundelein Consol. High School Dist. 120, Lake County, Ill., N.D.Ill.1990, 746 F.Supp. 758. Constitutional Law 82(12)

County community college dean of instruction had no constitutionally protected right to express himself in unbusinesslike and unreasonable manner, and where he was terminated for publicly expressing his anger, making physical threats towards other people with whom he had to work and publicly making derogatory comments about his supervisor and other administrative personnel, termination being caused by manner in which opinion was expressed rather than because of expression of opinion, there was no termination by reason of expression protected under U.S.C.A.Const.Amend. 1. Russ v. White, W.D.Ark.1981, 541 F.Supp. 888, affirmed 680 F.2d 47. Constitutional Law 90.1(7.3)

Where a discharged teacher brings a civil rights action in which he alleges that he was terminated because he exercised his rights under U.S.C.A.Const. Amend. 1, court's obligation is to determine from all the evidence the real reason for the teacher's termination. Williams v. Day, E.D.Ark.1976, 412 F.Supp. 336, affirmed 553 F.2d 1160 . Schools 147.12

1992. ---- Policy disputes, dismissal, deprivation of teachers' rights

Speech by tenured associate math professor at university, who challenged several departmental decisions and publicly supported another professor allegedly attacked by administration for refusing to lower academic standards, did not address matter of "public concern" protected by First Amendment; complaints were not directed to anyone outside university, and professor expressed belief that administration's procedures were detrimental to public interests in education only after filing of suit. Dorsett v. Board of Trustees for State Colleges & Universities, C.A.5 (La.) 1991, 940 F.2d 121. Constitutional Law 90.1(7.3)

1993. ---- Unions, dismissal, deprivation of teachers' rights

Had superintendent of schools and members of board of education terminated employment of husband for his negotiating activities on behalf of school teachers or employment of wife, secretary to school district, for exercise of her freedom of speech, terminations would have violated husband and wife's constitutional rights and would have been prohibited. Hayes v. Cape Henlopen School Dist., D.C.Del.1972, 341 F.Supp. 823. Constitutional Law 90.1(7.3); Schools 63(1)

New York City teacher who was allegedly terminated because of her union activities failed to establish *Monell* liability under § 1983 for violation of her First Amendment free association rights grounded on municipal custom in form of "lettering" of employees' files, i.e., placement of multiple negative reviews in files so that terminated

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employees faced significant obstacles in challenging basis for their termination; regardless of whether practice was commonplace, teacher made no showing it existed due to antiunion animus. McDonald v. Board of Educ. of City of New York, S.D.N.Y.2003, 2003 WL 21782685, Unreported. Civil Rights 1351(5)

1994. ---- Character or integrity, dismissal, deprivation of teachers' rights

School committee did not act arbitrarily or capriciously in dismissing small town elementary teacher who allegedly carried in public view on his property located in town where he taught, in a lewd and suggestive manner, a dress mannequin that he had dressed, undressed and caressed, notwithstanding claim that reasons for the dismissal were unrelated to the educational process or to the working relationship within the educational institution. Wishart v. McDonald, C.A.1 (Mass.) 1974, 500 F.2d 1110. Schools 147.20

Conclusions that school board draws from inquiries into character and integrity of its teachers must not be trival or unrelated to the educational process or to working relationships with an educational institution in order to warrant dismissal of teacher. Sullivan v. Meade County Independent School Dist. No. 101, D.C.S.D.1975, 387 F.Supp. 1237, affirmed and remanded on other grounds 530 F.2d 799. Schools 147.9

1995. ---- Curriculum, dismissal, deprivation of teachers' rights

Discharge of three eighth grade teachers for distributing poem, thrust of which was alluring invitation and beckoning to throw off disciplines imposed by moral environment of their homelife and enter a new world of love and freedom, including freedom to use drugs, to take their clothes off and get an early start in use of certain vulgarities, which was not shown to have been relevant to subject matter of courses being taught and which had not been submitted to or approved for distribution, did not violate teachers' civil rights; there was good cause for termination. Brubaker v. Board of Ed., School Dist. 149, Cook County, Illinois, C.A.7 (Ill.) 1974, 502 F.2d 973, clarified 527 F.2d 611, certiorari denied 95 S.Ct. 1953, 421 U.S. 965, 44 L.Ed.2d 451. Civil Rights 1249(2); Constitutional Law 90.1(7.3); Schools 147.12

1996. ---- Disruptions, dismissal, deprivation of teachers' rights

Professor who played a prominent role in unauthorized student protest activities during school hours on school property, who continued to lead raucous catcalls after the university president had asked the audience to be quiet, who attempted to stop governor's motorcade, and whose acts caused a substantial and material disruption of a duly constituted university function which created a danger of violence was not, by reason of his discharge, denied freedom of speech, nor of assembly, nor of equal protection. Adamian v. Lombardi, C.A.9 (Nev.) 1979, 608 F.2d 1224, certiorari denied 100 S.Ct. 2158, 446 U.S. 938, 64 L.Ed.2d 791. Colleges And Universities 8.1(3); Constitutional Law 90.1(7.3); Constitutional Law 91; Constitutional Law 242.2(4)

Fact that high school teacher made statements to group of assembled students that by themselves and in a different context might have constitutional protection did not insulate such teacher from sanctions for noncompliance with school board regulation requiring him to assist in quieting students disruptions. Whitsel v. Southeast Local School Dist., C.A.6 (Ohio) 1973, 484 F.2d 1222, 71 O.O.2d 381. Schools 147.12

1997. ---- Insubordination, dismissal, deprivation of teachers' rights

University had just cause to terminate music professor regardless of his tenured status, particularly in light of his persistent actions not only in flouting the authority of the music department director and assistant director but also in refusing to meet his scheduled classes. Smith v. Kent State University, C.A.6 (Ohio) 1983, 696 F.2d 476. Colleges And Universities 8.1(3)

1998. ---- License termination, dismissal, deprivation of teachers' rights

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42 U.S.C.A. § 1983

The valid termination of teacher's teaching license for reasons unrelated to teacher's suit alleging that board of education discriminated on basis of sex in its policy of granting child care leave precluded court from enjoining board from discharging teacher or from ordering board to grant him child care leave. Ackerman v. Board of Ed. of City of New York, S.D.N.Y.1974, 387 F.Supp. 76. Civil Rights 1452

1999. ---- Legitimate and illegitimate reasons, dismissal, deprivation of teachers' rights

Even assuming that pretermination hearing afforded to professor was a sham because administrators used sexual harassment complaint to get rid of highly paid professor to save money, and thus were not impartial, professor was not denied due process because he had sufficient posttermination protection by way of appeal of college's decision to state court, an impartial decision maker. McDaniels v. Flick, C.A.3 (Pa.) 1995, 59 F.3d 446, certiorari denied 116 S.Ct. 1017, 516 U.S. 1146, 134 L.Ed.2d 97. Colleges And Universities 8.1(6.1); Constitutional Law 278.5(4)

Jury could find that school district employee's discharge occurred with deliberate indifference to her First Amendment rights based on evidence that one school board member believed that the employee's public opposition to a bond issue was the reason that superintendent had recommended her removal, that the bond issue and the employee's termination were raised from the floor at school board meeting, and that at least one school board member had raised the possibility at an executive session that the recommendation that the person be discharged was tied to the bond issue and that the proffered reasons for the discharge were not valid. Ware v. Unified School Dist. No. 492, Butler County, State of Kan., C.A.10 (Kan.) 1990, 902 F.2d 815. Civil Rights 1421

Although black faculty members and administrators, in civil action for deprivation of rights alleging that Arkansas school district discriminated racially with respect to their terminations, did not need to prove that impermissible reason formed sole basis for their dismissals in order to establish their claims, showing falling short of that standard would leave defendants opportunity to escape liability by showing that plaintiffs would have been dismissed even if impermissible factors had not been considered. Clark v. Mann, C.A.8 (Ark.) 1977, 562 F.2d 1104. Civil Rights 1544

Even assuming that teacher's report to teachers association relative to school board's ability to pay salary increase may have been only partially a factor in his subsequent dismissal, if that report was a protected activity then his dismissal was still constitutionally impermissible. Gieringer v. Center School Dist. No. 58, C.A.8 (Mo.) 1973, 477 F.2d 1164, certiorari denied 94 S.Ct. 165, 414 U.S. 832, 38 L.Ed.2d 66. Schools 147.12

School committee established legitimate justification for actions that teacher alleged to be retaliatory, including transferring students from his classes and requiring him to justify his teaching methods, in teacher's § 1983 action alleging that retaliatory discharge resulted from his exercise of free speech rights; rational bases for taking actions included complaints from parents and teachers, adjustments in scheduling due to declining enrollment, teacher's own desire for 80 percent course load, and internal administrative procedures. Storlazzi v. Bakey, D.Mass.1995, 894 F.Supp. 494, affirmed 68 F.3d 455. Civil Rights 1249(2)

In the absence of violation of constitutional rights, decision of school board to dismiss school superintendent was neither unreasonable nor arbitrary where evidence, including disclosure that school superintendent's relationship with faculty and principals had been destroyed and that school superintendent's effectiveness as a superintendent was also destroyed, could support conclusion that situation was due to school superintendent and some of his policies. Miller v. Dean, D.C.Neb.1976, 430 F.Supp. 26, affirmed 552 F.2d 266. Schools 147.28

2000. ---- Constructive discharge, dismissal, deprivation of teachers' rights

District court could determine that refusal of tenured instructor at state university to work after he was shifted to

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nonteaching job was not "constructive resignation," but, rather, was "discharge" depriving instructor of tenured employment without due process; instructor made it clear that he did not want to resign and that he was at most willing to take leave without pay, state college required that instructor show up for nonteaching job as condition to continued employment, and, when instructor did not show up, chancellor told him that he had resigned. Patterson v. Portch, C.A.7 (Wis.) 1988, 853 F.2d 1399. Civil Rights 1123; Civil Rights 1133

College's academic dean and associate dean, who occupied positions whose authority extended to supervision and disciplining of faculty members, did not deliberately, or with gross negligence, fail to adequately supervise faculty members, and thus, were not liable under § 1983 for alleged constructive discharge of professor and departmental chairman arising from internal disputes, where the deans never took positions opposing the professor, and repeatedly tried to negotiate settlement between the professor and member of faculty with whom he had dispute; furthermore, the deans were not required to take sides among disputatious colleagues absent evidence that the internal dispute was based upon or motivated by unlawful reasons. Kline v. North Texas State University, C.A.5 (Tex.) 1986, 782 F.2d 1229. Civil Rights 1123; Civil Rights 1359

State university professor was constructively discharged, despite his retirement, for purpose of due process claim, if he was unjustly given sub-par teaching evaluations which were publicly disclosed to other members of the faculty, berated by department chair, removed as chair of the department of promotion and tenure, relegated to teaching freshman level courses, not given credit for being overloaded with courses, and listed as academically unqualified in department paperwork. Stiner v. University of Delaware, D.Del.2003, 243 F.Supp.2d 106. Colleges And Universities 8.1(1); Constitutional Law 278.5(3)

Teacher who did not show that his resignation was so involuntary that it amounted to constructive discharge or that he had no real choice but to resign did not establish § 1983 due process claim that he was deprived of his property interest in continued employment; there was no violation of due process since teacher chose to end his employment without hearing and not to avail himself of available due process procedures. Singer v. Denver School Dist. No. 1, D.Colo.1997, 959 F.Supp. 1325. Civil Rights 1123

2001. ---- Future employment opportunities, dismissal, deprivation of teachers' rights

High school football coach's discharge for allegedly improper racial remark did not give rise to claim under § 1983 for denial of substantive due process, even though coach alleged that defamatory nature of school Board's charges and findings would seriously impugn his character, undermine his associations, and damage his ability to seek employment elsewhere as head coach; breach of contract by public employer does not give rise to claim for denial of substantive due process. Holthaus v. Board of Educ., Cincinnati Public Schools, C.A.6 (Ohio) 1993, 986 F.2d 1044. Constitutional Law 278.5(3); Schools 147.2(1)

Public school guidance counselor's alleged loss of reputation and esteem in community because of her termination did not give rise to § 1983 civil rights action where counselor made no claim that her future employment was restricted or that she was harmed through public dissemination of information regarding her termination. Allen v. Denver Public School Bd., C.A.10 (Colo.) 1991, 928 F.2d 978. Civil Rights 1133

Public employee must show how employer infringed upon his liberty interest in his good name and reputation as it affected his protected property interest in continued employment, and to be actionable, statements must impugn good name, reputation, honor, or integrity of employee, be false, occur in course of terminating employee or must foreclose other employment opportunities, and be published. Singer v. Denver School Dist. No. 1, D.Colo.1997, 959 F.Supp. 1325. Constitutional Law 278.4(3)

Former probationary teacher's conclusory assertion in his complaint against school officials under § 1983 that officials' allegedly defamatory statements impaired his ability to pursue his career, in that since his termination he was unable to secure teaching position, was insufficient to demonstrate that his difficulty in securing employment

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resulted from stigma placed upon him by officials, as required to establish claim for stigmatization amounting to deprivation of liberty interest. Federico v. Board of Educ. of Public Schools of Tarrytowns, S.D.N.Y.1997, 955 F.Supp. 194. Civil Rights 1395(8)

In order to prevail on § 1983 claim based upon violation of due process with respect to allegedly defamatory statements of school officials, plaintiff teacher is required to prove: that officials published stigmatizing information which is at least arguably false; and that as result of stigma, he has been foreclosed from range of other employment opportunities. Federico v. Board of Educ. of Public Schools of Tarrytowns, S.D.N.Y.1997, 955 F.Supp. 194. Constitutional Law 278.5(2.1)

Allegedly defamatory statements about teacher's dismissal did not impose stigma or other disability upon teacher that foreclosed other employment opportunities and, therefore, there was no deprivation of liberty interest in violation of due process; although statements addressed teacher's professional skills and his morality, teacher did not show that he suffered permanent exclusion from or protracted interruption of employment. Vukadinovich v. Board of School Trustees of Michigan City Area Schools, N.D.Ind.1991, 776 F.Supp. 1325, affirmed 978 F.2d 403, rehearing denied, certiorari denied 114 S.Ct. 133, 510 U.S. 844, 126 L.Ed.2d 97. Constitutional Law 278.5(3)

2002. ---- Recommendation of dismissal, deprivation of teachers' rights

School principal's recommending to board of education the discharge of probationary teacher, made in the course of his official duties, did not violate teacher's constitutional rights so as to give rise to cause of action by teacher against principal. Lombard v. Board of Ed. of City of New York, E.D.N.Y.1976, 407 F.Supp. 1166. Civil Rights 1131

2003. ---- Probationary teachers, dismissal, deprivation of teachers' rights

Assistant professors lacked property interest in continued employment with public university due to board of regents bylaws provision stating that their appointments were probationary and carried no presumption of renewal, thus precluding procedural due process claims arising from nonrenewal and denial of tenure, despite professors' contention that bylaws provision, by also stating that specific term could not exceed three years, created reasonable expectation of special status when their specific term appointments were renewed beyond three years; appointment letters stated, consistent with bylaws, that specific term appointments could not exceed total of seven full academic years, putting professors on notice that probationary appointments could last up to seven years before tenure consideration. Batra v. Board of Regents of University of Nebraska, C.A.8 (Neb.) 1996, 79 F.3d 717. Colleges And Universities 8.1(1); Colleges And Universities 8.1(2); Constitutional Law 277(2)

Allegations of probationary instructor at community college that his department head deprived him of his right to free speech under color of state law by causing his termination, based on instructor's outspoken support of Persian Gulf War, were sufficient to state § 1983 claim against department head based upon First Amendment. Grady v. El Paso Community College, C.A.5 (Tex.) 1992, 979 F.2d 1111. Civil Rights 1395(8)

School district did not take adverse employment action by terminating provisional employee who had failed civil service exam, passing grade on which was required under state statute to continue beyond limit of provisional period; thus, employee was precluded from recovering against district on claim that she was terminated in retaliation for her exercise of free association rights. Wheeler v. Natale, S.D.N.Y.2001, 137 F.Supp.2d 301. Constitutional Law 91; Schools 63(1)

By alleging that school superintendent and members of school board acted under color of state law to punish probationary teacher for the exercise of right of free speech under U.S.C.A. Const. Amend. 1, probationary teacher stated a cognizable civil rights claim. Dennis v. County School Bd. of Rappahannock County, W.D.Va.1984, 582 F.Supp. 536. Civil Rights 1395(8)

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42 U.S.C.A. § 1983

2004. ---- Student teachers, dismissal, deprivation of teachers' rights

State high school and its principal owed no duty to private college student, who had been student teacher at high school, and therefore student was entitled to no relief under this section against principal who terminated student's status as student teacher with result that student was denied college degree and certification to teach. Rowe v. Chandler, D.C.Kan.1971, 332 F.Supp. 336. Civil Rights 1070; Civil Rights 1072

2005. ---- Tenured teachers, dismissal, deprivation of teachers' rights

Where public college faculty member has tenure procedural and substantive due process must be provided before employment may be terminated. Shaw v. Board of Trustees of Frederick Community College, D.C.Md.1975, 396 F.Supp. 872, affirmed 549 F.2d 929.

Complaint alleging that plaintiff served as chairman of mathematics department of a school for certain years, acquired tenure, and that defendant members of a school committee deprived her of such position without cause and without affording her notice and a hearing as required by the due process clause of U.S.C.A.Const. Amend. 14 stated a claim on which relief could be granted under this section. Needleman v. Bohlen, D.C.Mass.1974, 386 F.Supp. 741. Civil Rights 1395(8)

2006. ---- Nontenured teachers, dismissal, deprivation of teachers' rights

Nontenured professor has no enforceable right to hearing absent protected property interest or liberty interest. Hillis v. Stephen F. Austin State University, C.A.5 (Tex.) 1982, 665 F.2d 547, rehearing denied 669 F.2d 729, certiorari denied 102 S.Ct. 2906, 457 U.S. 1106, 73 L.Ed.2d 1315. Colleges And Universities 8.1(5)

A discharged president of a community college had adequate remedy under Michigan law for loss of his employment, and, thus, federal civil rights cause of action alleging violation of due process could not be maintained; president was not a tenured employee, but, rather, was employee pursuant to four-year contract. Heath v. Highland Park School Dist., E.D.Mich.1992, 800 F.Supp. 1470. Civil Rights 1312

A nontenured teacher at a public institution does not have the right to be insulated from review by superiors merely because he or she engages in constitutionally protected conduct. Cherry v. Burnett, D.C.Md.1977, 444 F.Supp. 324 . Colleges And Universities 8.1(3)

2007. ---- Procedural requirements generally, dismissal, deprivation of teachers' rights

Ultimate reversal of school board's decision to dismiss tenured teacher did not federalize her claim, for Constitution demanded due process, not error-free decision-making. Franceski v. Plaquemines Parish School Bd., C.A.5 (La.) 1985, 772 F.2d 197. Civil Rights 1455

Where tenured school teacher received adequate notice, specification of the charges against her, and hearing at which she was able to present her defense, procedural due process under U.S.C.A. Const.Amend. 14 did not require that teacher be given three evaluations in accordance with local school board's written evaluation procedures before being notified of her termination and, thus, did not permit her to enforce such procedures under this section; enforcement of the regulations was to be done through the state court system. Goodrich v. Newport News School Bd., C.A.4 (Va.) 1984, 743 F.2d 225. Constitutional Law 278.5(4); Schools 147.31

Mere fact that plaintiff's discharge from his position as superintendent of school district may not have been in accordance with conference procedures outlined in 1953 Comp. § 77-8-18 (repealed) and set forth in a regulation promulgated by State Board of Education did not necessarily mean that there was a federal constitutional violation for which relief was afforded under this section where plaintiff was given a hearing by local board and was entitled

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to a further de novo hearing before State Board of Education and an appeal to New Mexico Court of Appeals. Atencio v. Board of Educ. of Penasco Independent School Dist. No. 4, C.A.10 (N.M.) 1981, 658 F.2d 774. Civil Rights 1133

A mere departure from university regulations occurring when board of regents failed to review record of discharge hearing pertaining to tenured faculty member of university, standing alone, could not deprive faculty member of any right which could be asserted under this section, notwithstanding claim that board of regents' violation of its own regulations by itself violated due process. Bates v. Sponberg, C.A.6 (Mich.) 1976, 547 F.2d 325. Civil Rights 1133

School board accorded teacher due process by contacting her, on first becoming aware of her conduct, and asking about facts and suggesting compromise solution, and thereafter, on rejection of suggestion, giving notice of charges and of time and place of hearing, by attempting to avoid adverse publicity which might prejudice case and dealing directly with counsel retained by teacher, by allowing teacher to testify personally, by honoring her refusal to discuss details with her relationship with unmarried male, by permitting counsel to make closing statements and to submit briefs and by preparing written findings and thereafter making one last effort to persuade her to change her living arrangement, all before dismissing her. Sullivan v. Meade Independent School Dist. No. 101, C.A.8 (S.D.) 1976, 530 F.2d 799. Constitutional Law 278.5(4)

State college president did not violate college rules in not remanding issue with respect to termination of untenured teacher to faculty committee for further deliberation until committee reached definite decision where committee had reached decision that matter should be reviewed by president and rules did not limit committee's recommendation to favoring or opposing retention. Jablon v. Trustees of California State Colleges, C.A.9 (Cal.) 1973, 482 F.2d 997, certiorari denied 94 S.Ct. 926, 414 U.S. 1163, 39 L.Ed.2d 116. Colleges And Universities 8.1(5)

Where a discharged public employee is given notice of the charges, an adequate explanation of the evidence, and an adequate opportunity to present his side of the story, his due process rights are not violated. Stiner v. University of Delaware, D.Del.2003, 243 F.Supp.2d 106. Constitutional Law 278.4(5)

Teacher received adequate procedural protections throughout the termination process and, thus, did not establish §§ 1983 due process claim against school district, superintendent of the district, and the board members of school district; letters describing the evidence supporting the charges against teacher and explicitly providing teacher an opportunity to tell his side of the story satisfied the notice requirement, and there was no bias or lack of impartiality among the board members. Martin v. School Dist. No. 394, D.Idaho 2005, 393 F.Supp.2d 1028. Schools 147.36

Even if university professor had property right, protected by due process clause, in continued employment with university, termination of professor pursuant to reduction in force (RIF) did not deny professor due process, where professor was provided with 30-day notice of her termination and was afforded an administrative process through which she could raise any challenges to the decision before her termination became effective, coupled with a judicial appeal to the local trial court. Guerrero v. University of District of Columbia, D.D.C.2002, 238 F.Supp.2d 32, withdrawn from bound volume, amended and superseded 251 F.Supp.2d 13.

A nontenured teacher may be discharged for no reason or for any reason not impermissible in itself or as applied, and he has no constitutional right to statement of reasons or hearing on university's decision not to rehire him. Sament v. Hahnemann Medical College and Hospital of Philadelphia, E.D.Pa.1976, 413 F.Supp. 434, affirmed 547 F.2d 1164. Colleges And Universities 8.1(5)

2008. ---- Grievance procedures, dismissal, deprivation of teachers' rights

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42 U.S.C.A. § 1983

State university professor's allegation that grievance procedures were not fully followed stated due process claim, even though grievance procedures were in place at university and professor utilized procedures in grieving his academic evaluations, particularly where professor was never given criteria under which faculty were evaluated, and thus was not given adequate explanation of evidence against him. Stiner v. University of Delaware, D.Del.2003, 243 F.Supp.2d 106. Colleges And Universities 8.1(5); Constitutional Law 278.5(4)

2009. ---- Notice, dismissal, deprivation of teachers' rights

Even if rule of public and parochial school athletic association which prohibited member schools from engaging in football practice before a specific date each year provided notice that violation might subject the school to punitive sanctions, imposition of sanction which resulted in football coach's loss of coaching and teaching position denied due process where rules of the association provided no notice that the association could directly or indirectly punish the coach personally. Wright v. Arkansas Activities Ass'n (AAA), C.A.8 (Ark.) 1974, 501 F.2d 25. Constitutional Law 298.5

Letter that teacher received stating that his probation was "extended indefinitely" satisfied the notice element of federal due process; letter specifically stated the circumstances giving rise to the reprimand and what later became one of the bases for teacher's termination, namely teacher's time out of his classroom, letter alerted teacher to the possibilities of suspension and/or termination, and letter concluded with an invitation to contact superintendent to discuss the problems addressed therein. Martin v. School Dist. No. 394, D.Idaho 2005, 393 F.Supp.2d 1028. Schools 147.34(1)

2010. ---- Hearing, dismissal, deprivation of teachers' rights

Record, in civil action for deprivation of rights filed by black faculty members and administrators alleging defendant school district discriminated racially with respect to teacher terminations, recruitment, promotions, and salaries provided no basis for holding that one named plaintiff, who was dismissed with two or three weeks remaining on his contract and thus was arguably deprived of property interest protected by due process, was denied due process where there was no contention that such plaintiff should be treated differently from other plaintiffs with respect to due process claim and where record was silent as to whether such plaintiff was afforded due process hearing or opportunity therefore. Clark v. Mann, C.A.8 (Ark.) 1977, 562 F.2d 1104. Constitutional Law 278.5(2.1)

Tenured or certified faculty members, who were terminated because of retrenchment program as city university and who were advised of review committee decisions at least after review by chancellor or his designee, were not entitled to a second hearing before chancellor or his designee upon his review of committee decision. Klein v. Board of Higher Ed. of City of New York, S.D.N.Y.1977, 434 F.Supp. 1113. Colleges And Universities 8.1(5)

2011. ---- Pre-dismissal hearing, deprivation of teachers' rights

Complaint alleging that Secretary of Education of Commonwealth of Pennsylvania and board of trustees of state college failed to afford tenured professor a hearing prior to summary termination and that such was done in bad faith and in violation of professor's constitutional rights failed to state claim for relief absent allegation as to what actions the Secretary and board took to terminate the employment and when they were taken. MacMurray v. Board of Trustees of Bloomsburg State College, M.D.Pa.1977, 428 F.Supp. 1171. Civil Rights 1395(8)

2012. ---- Statement of reasons, dismissal, deprivation of teachers' rights

Where board of education did not abuse its discretion in refusing to postpone a second hearing, secretary of school

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district had, by failing to attend the hearing, waived her opportunity to require the board to list reasons for its determination not to rehire her; thus, secretary could not be heard to complain that she was denied procedural due process by failure to provide her with a list of reasons for her dismissal. Hayes v. Cape Henlopen School Dist., D.C.Del.1972, 341 F.Supp. 823. Constitutional Law 43(1); Schools 63(1)

2013. ---- Miscellaneous claims, dismissal, deprivation of teachers' rights

Fact that college president, who scheduled two teachers for dismissal for violations of policy manual if they did not submit letters of contrition by specified date, could have accepted letters he received some two days late on the same terms as if they had been submitted earlier and without inconvenience to the administration did not make his refusal to do so a violation of U.S.C.A.Const. Amend. 1 since he was under no obligation to accept letters of contrition at any date. Shaw v. Board of Trustees of Frederick Community College, C.A.4 (Md.) 1976, 549 F.2d 929. Colleges And Universities 8.1(3)

2014. Reinstatement, deprivation of teachers' rights

School board's demand that Connecticut public school teacher seeking reinstatement release his medical records to board and its representatives, in addition to independent psychiatrist they wanted him to be examined by, was arbitrary; board was not competent to independently evaluate those records, so requesting them could serve no legitimate purpose. O'Connor v. Pierson, C.A.2 (Conn.) 2005, 426 F.3d 187. Schools 147.47

Teacher, who voluntarily resigned during first year of three-year contract and was not rehired, was not denied any federally protected right by school district and had no cause of action against district based on § 1983. Hankins v. Dallas Independent School Dist., N.D.Tex.1988, 698 F.Supp. 1323. Civil Rights 1132

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2041. Police activities generally

If police engage in illegal activity in concert with a defendant beyond the scope of their duties the remedy lies, not in freeing the equally culpable defendant, but in prosecuting the police under the applicable provisions of state or federal law. (Per Mr. Justice Rehnquist with the Chief Justice and one Justice concurring and two Justices concurring in the judgment.) Hampton v. U. S., U.S.Mo.1976, 96 S.Ct. 1646, 425 U.S. 484, 48 L.Ed.2d 113. Criminal Law 36.6

District court erred in analyzing all of plaintiff's civil rights claims from standpoint of single question of whether strip search of plaintiff violated her constitutional rights, where plaintiff stated claims for wrongful arrest, wrongful search and seizure, deliberate indifference to her constitutional rights by virtue of city's failure to train and supervise police officer, false imprisonment, assault and battery, malicious prosecution, abuse of process, intentional infliction of emotional distress, defamation, and invasion of privacy. Cottrell v. Kaysville City, Utah, C.A.10 (Utah) 1993, 994 F.2d 730. Civil Rights 1088(4)

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Acts of police officers in ambit of their personal, private pursuits fall outside of this section. Stengel v. Belcher, C.A.6 (Ohio) 1975, 522 F.2d 438, certiorari granted 96 S.Ct. 1505, 425 U.S. 910, 47 L.Ed.2d 760, certiorari dismissed 97 S.Ct. 514, 429 U.S. 118, 50 L.Ed.2d 269. Civil Rights 1326(8)

For acts of chief of police to be actionable under this section, they must have been done under color of state or local law and amount to a deprivation of a federal constitutionally protected right. Dewell v. Lawson, C.A.10 (Okla.) 1974, 489 F.2d 877. Civil Rights 1326(8)

Acts of local police officers, under authority of a local ordinance are within the scope of the protection of this section. Sheridan v. Williams, C.A.9 (Or.) 1964, 333 F.2d 581. Civil Rights 1326(8)

This section was not enacted to discipline local law enforcement officials. Smith v. Dougherty, C.A.7 (Ill.) 1961, 286 F.2d 777, certiorari denied 82 S.Ct. 180, 368 U.S. 903, 7 L.Ed.2d 97. See, also, Roberts v. Pepersack, D.C.Md.1966, 256 F.Supp. 415, certiorari denied 88 S.Ct. 175, 389 U.S. 877, 19 L.Ed.2d 165; Basista v. Weir, D.C.Pa.1964, 225 F.Supp. 619, affirmed in part, reversed in part on other grounds 340 F.2d 74.

Officer accused of unconstitutionally using deadly force is entitled to qualified immunity if his or her conduct was objectively reasonable. Cunningham v. Hamilton, E.D.Va.2003, 259 F.Supp.2d 457, affirmed 84 Fed.Appx. 357, 2004 WL 48857, certiorari denied 125 S.Ct. 68, 543 U.S. 818, 160 L.Ed.2d 25. Civil Rights 1376(6)

Female high school athlete could not proceed with § 1983 suit against police officer, in his individual capacity, seeking damages for alleged gender discrimination in enforcement of ban on sports participation by smokers, in violation of Title IX, when monetary damages were unavailable under Title IX. Schultzen v. Woodbury Cent. Community School Dist., N.D.Iowa 2003, 250 F.Supp.2d 1047. Civil Rights 1309; Civil Rights 1356

In § 1983 action, conduct of police officers should be analyzed under Fourth Amendment, not under due process standard. Frane v. Kijowski, N.D.Ill.1998, 992 F.Supp. 985. Civil Rights 1088(1)

Injuries arbitrarily inflicted by police are constitutionally cognizable and remediable. Simms v. Reiner, N.D.Ill.1976, 419 F.Supp. 468. Civil Rights 1088(1)

Misconduct on part of public police officer, to extent that it infringes constitutionally protected rights, gives rise to civil rights action for deprivation of rights under color of state law. Glover v. City of New York, E.D.N.Y.1975, 401 F.Supp. 632. Civil Rights 1088(1)

2042. Accident reports, police activities

Allegations that police deliberately filed false accident report tending to defame victim's reputation, that report assessed victim with blame for accident, that intent of defamatory statements in report was to inflict emotional and physical distress, and that police gave license to medical personnel to look upon victim with contempt and to mistreat her could not provide basis for § 1983 civil rights action; alleged conduct did not violate rights entitled to constitutional protection under § 1983. Griggs v. Lexington Police Dept., D.Mass.1987, 672 F.Supp. 36, affirmed 867 F.2d 605. Civil Rights 1395(5)

2043. Arrest and detention, police activities--Generally

That undercover police officer who alerted other officers to suspicious appearance of parade protester issued citation to protester upon visiting him at jail, following his arrest by other officers, did not make undercover officer the arresting officer for purposes of § 1983 liability for alleged false arrest. Graves v. City of Coeur D'Alene, C.A.9 (Idaho) 2003, 339 F.3d 828. Civil Rights 1358

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42 U.S.C.A. § 1983

Off-duty police officer's conduct of displaying his shield, identifying himself as police officer to arrestee, physically restraining arrestee, transporting him at gunpoint and detaining him until police officers arrived constituted an arrest, for purposes of arrestee's § 1983 false arrest claim. Jocks v. Tavernier, C.A.2 (N.Y.) 2003, 316 F.3d 128. Arrest 68(3); Civil Rights 1088(4)

Tort of false arrest supports claim against state police under § 1983 because it violates Fourth Amendment. Cook v. Sheldon, C.A.2 (N.Y.) 1994, 41 F.3d 73. Civil Rights 1088(4)

Tort of false arrest supports claim against state police under § 1983 because it violates Fourth Amendment. Cook v. Sheldon, C.A.2 (N.Y.) 1994, 41 F.3d 73. Civil Rights 1088(4)

Individual's right to be free from unlawful arrest and imprisonment implicates liberty interest protected by Constitution and federal laws, violation of which may give rise to cause of action under 42 U.S.C.A. § 1983. Motes v. Myers, C.A.11 (Ga.) 1987, 810 F.2d 1055, rehearing denied 837 F.2d 1095. Civil Rights 1088(4)

An individual's right to be free from unlawful arrest is a right protected by Federal Constitution and a violation of such right may be ground for a suit under this section proscribing a deprivation of rights. Duriso v. K-Mart No. 4195, Division of S. S. Kresge Co., C.A.5 (Tex.) 1977, 559 F.2d 1274. Civil Rights 1088(4)

On proof that there was no legal basis for arrest of plaintiffs, the filing of charges against them and their imprisonment, this section authorized relief against each policeman and state official who, acting under color of state law, was responsible for those wrongs; also, any conspiracy to commit such wrongs was actionable. Hampton v. City of Chicago, Cook County, Ill., C.A.7 (Ill.) 1973, 484 F.2d 602, certiorari denied 94 S.Ct. 1413, 415 U.S. 917, 39 L.Ed.2d 471, certiorari denied 94 S.Ct. 1414, 415 U.S. 917, 39 L.Ed.2d 471. Civil Rights 1326(8); Conspiracy 7.5(2)

To recover damages from police officer under this section for wrongful arrest it must be shown that arresting officer was acting under color of state law and that he deprived plaintiff of a constitutional right. Giordano v. Lee, C.A.8 (Mo.) 1970, 434 F.2d 1227, certiorari denied 91 S.Ct. 2250, 403 U.S. 931, 29 L.Ed.2d 709. Civil Rights 1088(4)

Under Nebraska law, sheriff was not a policy maker for his county, and therefore complaint, in Native American arrestee's § 1983 action alleging that sheriff's involvement in order preventing a protest march, and his apprehension of arrestee for violating such order, while failing to zealously pursue crimes committed against Native American victims, violated arrestee's First, Fourth, Fifth, Ninth, and Fourteenth Amendment rights, failed to state a claim upon which relief could be granted; sheriff had no authority to set policy regarding apprehension of individuals violating criminal laws. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Civil Rights 1351(4)

Police officer sufficiently participated in arrest to be held liable in arrestee's § 1983 action for false arrest, even though he stayed with her car after the arrest while another officer took her to the police station where she was placed in a holding cell, where, after the officer's car allegedly rammed the arrestee's car from behind as arrestee was driving the car in reverse at a very slow speed, the officer allegedly stood outside her car door with his gun pointed at her and told her not to move, and later searched her car incident to her arrest. Mack v. Town of Wallkill, S.D.N.Y.2003, 253 F.Supp.2d 552. Civil Rights 1088(4)

Plaintiffs who brought § 1983 action based on claims of unlawful detention and malicious prosecution could maintain claims, if at all, based only on alleged violation of their Fourth Amendment rights, and could not maintain claims pursuant to substantive due process protections of Fourteenth Amendment. Swales v. Township of Ravenna, N.D.Ohio 1997, 989 F.Supp. 925. Civil Rights 1088(4); Civil Rights 1088(5)

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42 U.S.C.A. § 1983

To state cause of action for "wrongful arrest" in violation of federal rights, plaintiff must show that conduct complained of was committed by person acting under color of state law; that this conduct deprived plaintiff of rights, privileges, or immunities secured by Federal Constitution; and that defendant's acts were proximate cause of injuries and consequent damages sustained by plaintiff. Cornish v. Papis, C.D.Ill.1997, 962 F.Supp. 1103. Civil Rights 1088(4); Civil Rights 1326(8)

Civil rights claims based on arrest and continued seizure of arrestee were not actionable under substantive due process clause of Fourteenth Amendment, because Fourth Amendment governed pretrial deprivations of liberty. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1088(4)

Individual has federally protected right to be free from unlawful arrest and detention resulting in significant restraint of liberty, and violation of such right may be grounds for suit under § 1983; arrest or detention may be unlawful if it is accomplished without due process of law as required by Constitution. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1088(4)

To prove constitutional violation for false arrest and malicious prosecution under § 1983 civil rights statute, plaintiff must establish elements of state law torts of false arrest or malicious prosecution and must show that defendants were acting under color of state law. Reid v. City of New York, E.D.N.Y.1990, 736 F.Supp. 21. Civil Rights 1037; Civil Rights 1326(1)

Individual has federally protected right to be free from unlawful arrest and detention resulting in significant restraint of liberty, and violation of this right may be grounds for suit under federal civil rights statute. Duckett v. City of Cedar Park, Tex., C.A.5 (Tex.) 1992, 950 F.2d 272. See, also, LaBate v. Butts, E.D.Mich.1987, 673 F.Supp. 887, affirmed 865 F.2d 258.

An arrest must meet constitutional standards to relieve law officer from possible civil liability under this section. Bur v. Gilbert, E.D.Wis.1976, 415 F.Supp. 335. Civil Rights 1088(4)

Allegations of unlawful arrest and imprisonment, if established as true, would constitute proof of deprivation of constitutional rights. Dennis v. Hein, D.C.S.C.1976, 413 F.Supp. 1137. Civil Rights 1420

An individual's right to be free from unlawful arrest is clearly such a constitutionally protected right as, if violated, may be basis for suit under this section. Lamb v. Cartwright, E.D.Tex.1975, 393 F.Supp. 1081, affirmed 524 F.2d 238. Civil Rights 1088(4)

Action for false arrest and detention and use of unreasonable force in the course of an arrest may properly be brought under this section. Everett v. City of Chester, E.D.Pa.1975, 391 F.Supp. 26. Civil Rights 1088(4)

2044. ---- Seizure requirement, arrest and detention, police activities

Where arrest by justice of the peace at landfill was invalid, subsequent chase of one of arrestees was but a continuation of an unlawful detention, not a separate violation of arrestee's civil rights. Brewer v. Blackwell, C.A.5 (La.) 1982, 692 F.2d 387. Civil Rights 1088(4)

Police officers' arrest of arrestee was not a seizure for Fourth Amendment purposes, and thus arrestee could not assert a §§ 1983 claim for malicious prosecution predicated on a violation of his Fourth Amendment Rights, where the arrest occurred as a result of an arrest without a warrant and therefore was not pursuant to a legal process and after the legal process was initiated, arrestee had to go to court in at least two occasions but did not even have to endure trial. Cabrera-Negron v. Municipality of Bayamon, D.Puerto Rico 2006, 419 F.Supp.2d 49. Civil Rights 1088(5)

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42 U.S.C.A. § 1983

Police officer's accidental shooting of arrestee while officer was reholstering his weapon after handcuffing arrestee did not constitute Fourth Amendment "seizure" so as to be basis for excessive force claim under § 1983; officer did not intend bullet to bring arrestee within his control. Troublefield v. City of Harrisburg, Bureau of Police, M.D.Pa.1992, 789 F.Supp. 160, affirmed 980 F.2d 724. Civil Rights 1088(4)

Officer's shooting of victim, whom he suspected of involvement in a shoplifting incident, was wholly accidental and was not a "seizure" within meaning of Fourth Amendment so that victim could not recover on his § 1983 claim based on excessive use of force; officer observed victim near site of shoplifting incident, with a can of corned beef and a twinkie in his pocket, and shot victim when his firearm accidentally discharged while officer was attempting to put his car in park in order to exit the car and question the victim. Glasco v. Ballard, E.D.Va.1991, 768 F.Supp. 176. Arrest 68(4); Civil Rights 1088(4)

Hunters were not arrested under either federal or state definition of arrest, where deputy stopped hunters, asked for identification, and warned them that they were trespassing and that legal consequences would ensue but did not prevent them from walking away or from continuing to hunt or even from continuing to cross land in question. Skipper v. Phipps, N.D.Fla.1980, 483 F.Supp. 1213. Arrest 68(3)

2045. ---- Supervisory personnel, arrest and detention, police activities

Whether police officer's supervisor played affirmative part in unlawful arrest of parade protester and search of protester's backpack, or whether officer decided to make arrest independent of supervisor, was question for jury in protester's § 1983 action for false arrest when, in response to officer's radio communication that protester had refused to consent to search of backpack, supervisor told officer to arrest protester if he did not consent to search, but officer did not provide supervisor with any information as to why he wanted to conduct search. Graves v. City of Coeur D'Alene, C.A.9 (Idaho) 2003, 339 F.3d 828. Civil Rights 1429

Coordinator of State police drug interdiction unit was not a supervisor of State police officers who had allegedly stopped and detained African-American and Hispanic motorists based on their race, and thus was not subject to supervisory liability under § 1983, where coordinator was not part of State police chain of command, but rather, conducted training sessions that the officers attended. Chavez v. Illinois State Police, C.A.7 (Ill.) 2001, 251 F.3d 612. Civil Rights 1358

Police chief's alleged failure to train officers or monitor their training was not affirmatively linked to off-duty officer's altercation with plaintiff, as required for plaintiff's claim of supervisory liability under § 1983. Ousley v. Town of Lincoln through its Finance Director, D.R.I.2004, 313 F.Supp.2d 78. Civil Rights 1358

Arrestee failed to allege that sheriff had requisite personal involvement in deprivations of arrestee's constitutional rights, associated with incidents in which arrestee was allegedly falsely arrested by deputies, subjected to excessive force, and defamed, as required to impose liability on sheriff under § 1983; although arrestee alleged that sheriff failed to adequately train or supervise deputies, knew about and tolerated deputies' allegedly unlawful behavior, and failed to institute proper system of review and reprimand of his deputies, arrestee did not allege any facts to support his claims. Houghton v. Cardone, W.D.N.Y.2003, 295 F.Supp.2d 268. Civil Rights 1395(5); Civil Rights 1395(6)

A supervisory official may be liable under § 1983 for the behavior of his subordinates if: (1) the behavior of the subordinates results in a constitutional violation, and (2) the official's action was affirmatively linked to that behavior such that it could be characterized as supervisory encouragement, condonation, or acquiescence, or gross negligence amounting to deliberate indifference. Rodriguez Esteras v. Solivan Diaz, D.Puerto Rico 2003, 266 F.Supp.2d 270. Civil Rights 1355

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42 U.S.C.A. § 1983

Detainee claiming he was wrongfully arrested for failing to identify himself stated claim for violation of his Fourth Amendment rights under § 1983, against supervisor of arresting police officer, by alleging that supervisor had authorized officer to arrest for failure to provide identification and had implemented custom and policy of arresting persons on that ground. Risbridger v. Connelly, W.D.Mich.2000, 122 F.Supp.2d 857, reversed and remanded 275 F.3d 565, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(6)

2046. ---- Intent to violate rights, arrest and detention, police activities

To withstand a motion for summary judgment, a plaintiff in a § 1983 suit challenging alleged racial discrimination in traffic stops and arrests must present evidence from which a jury could reasonably infer that the law enforcement officials involved were motivated by a discriminatory purpose and their actions had a discriminatory effect. Marshall v. Columbia Lea Regional Hosp., C.A.10 (N.M.) 2003, 345 F.3d 1157. Federal Civil Procedure 2491.5

Police officer's specific intent in arresting plaintiff was not required by either § 1983 or Fourth Amendment; therefore, district court erred in instructing jury that, to prevail on § 1983 claim for false arrest, plaintiff was required to show that police officer specifically intended to deprive him of his constitutional rights. Caballero v. City of Concord, C.A.9 (Cal.) 1992, 956 F.2d 204. Arrest 58; Civil Rights 1088(4); Civil Rights 1437

City police officer did not intend to harm or worsen the legal plight of a fleeing suspect or anyone else, thus precluding imposition of §§ 1983 liability in connection with the death of a motorist struck by the suspect's vehicle; the fact that no narcotics were found in the suspect's car did not negate the possibility that the suspect was conducting a narcotics transaction, or more importantly, that the officer had reason to believe that he was so involved. Anagnos v. Hultgren, D.Mass.2006, 445 F.Supp.2d 184. Civil Rights 1088(1)

City police officers could not be held liable for punitive damages in § 1983 suit arising from arrest of plaintiffs for violating residential picketing ordinance, absent evidence indicating that officers' acts were motivated by evil motive and intent or that acts constituted oppression, fraud, malice or callous or reckless indifference to rights of others. Veneklase v. City of Fargo, D.N.D.1995, 904 F.Supp. 1038, reversed in part, appeal dismissed in part 78 F.3d 1264, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 178, 519 U.S. 867, 136 L.Ed.2d 118. Civil Rights 1465(1)

Section 1983 plaintiff alleged "intentional," rather than "negligent," acts by city police officers in effecting his arrest; complaint alleged that officer hit plaintiff on head, yanked plaintiff's arms up and down, lifted plaintiff three inches off ground, smashed him on hood of police car, and threatened him with physical violence. Mahon v. City of Bethlehem, E.D.Pa.1995, 902 F.Supp. 76. Civil Rights 1395(6)

Police officer is liable under federal civil rights statute if officer deliberately arrests someone without probable cause. Ruiz v. Herrera, S.D.N.Y.1990, 745 F.Supp. 940. Civil Rights 1088(4)

2047. ---- Unreasonable seizure, arrest and detention, police activities

Individual's allegations that he was forcibly removed from his parents' home by county employees when he was a minor due to relatives' knowingly false allegations of child neglect, and that he was removed without an investigation, a pre-deprivation hearing, or exigent circumstances, stated a procedural due process claim under § 1983. Brokaw v. Mercer County, C.A.7 (Ill.) 2000, 235 F.3d 1000. Constitutional Law 274(5); Infants 17

A § 1983 claim for false arrest, resting on the Fourth Amendment right of an individual to be free from unreasonable seizures, including arrest without probable cause, is substantially the same as a claim for false arrest

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under New York law. Weyant v. Okst, C.A.2 (N.Y.) 1996, 101 F.3d 845. Civil Rights 1088(4)

False arrest claim against highway patrolman was governed by Fourth Amendment prohibition against unreasonable seizures, rather than general substantive due process standard under Fourteenth Amendment, even though Fourth Amendment protections applied to state officials through due process clause of Fourteenth Amendment. Larson v. Neimi, C.A.9 (Cal.) 1993, 9 F.3d 1397. False Imprisonment 2

Police officers did not violate arrestee's due process or Fourth Amendment rights by towing and storing his motor vehicle, pursuant to California's impoundment statute; arrestee was lawfully arrested for violation of seat belt law, impounding an unattended vehicle advanced a number of legitimate government purposes, including public safety, and due process did not prevent an officer from making the administrative decision to impound vehicle without judicial review. Hupp v. City of Walnut Creek, N.D.Cal.2005, 389 F.Supp.2d 1229. Constitutional Law 262

Even if false arrest claims were subject to favorable termination requirement under *Heck*, arrestee's pretrial diversion was not a criminal conviction, and, thus, her suit under §§ 1983 against city and police detective, alleging that her Fourth Amendment right to be free from arrest without probable cause was violated, was not barred on ground that it could invalidate a conviction, where, pursuant to Kentucky law, charges against arrestee were dismissed when she successfully completed provisions of pretrial diversion agreement. Butts v. City of Bowling Green, W.D.Ky.2005, 374 F.Supp.2d 532, reconsideration denied 2005 WL 2099805. Civil Rights 1088(4)

Arrest made in violation of Fourth Amendment standards will give rise to action under § 1983. Baltz v. Shelley, N.D.Ill.1987, 661 F.Supp. 169. Civil Rights 1088(4)

Unlawful arrest of individual by police officers, who were acting under color of state law, deprived him of his U.S.C.A.Const. Amend. 4 rights. Morrison v. Fox, W.D.Pa.1979, 483 F.Supp. 390. Civil Rights 1088(4)

An action for unlawful arrest and detention may be brought under this section as it represents an unconstitutional deprivation under U.S.C.A.Const. Amends. 4 and 14. Zurek v. Woodbury, D.C.Ill.1978, 446 F.Supp. 1149. See, also, Brainerd v. Potratz, N.D.Ill.1976, 421 F.Supp. 836. Civil Rights 1088(4)

Warrantless arrest, that is made without probable cause, can give rise to § 1983 claim against erring officers, as such arrest is "unreasonable seizure" under Fourth Amendment. Smith v. Dowson, D.Minn.1994, 158 F.R.D. 138. Civil Rights 1088(4)

Arrestee was barred under *Heck v. Humphrey* from bringing illegal seizure and wrongful arrest claims against police officers, where success on claims would have necessarily implied invalidity of his convictions, and arrestee had not demonstrated that those convictions had been overturned. Johnson v. Arndt, C.A.9 (Ariz.) 2005, 124 Fed.Appx. 514, 2005 WL 348409, Unreported. Civil Rights 1088(4)

2048. ---- Advisement of grounds for arrest, arrest and detention, police activities

Arrestee did not have Sixth Amendment or Fourth Amendment right to be informed of reason for his arrest, for purposes of civil rights action by arrestee against police officers; Sixth Amendment protection did not come into play until government had committed itself to prosecution, and state was not committed to prosecuting arrestee during brief period he remained in custody; Fourth Amendment required only that police have probable cause to believe individual had broken the law before arresting him or her, and evidence was sufficient to support finding that police had probable cause to believe that arrestee had committed crime. Kladis v. Brezek, C.A.7 (Ill.) 1987, 823 F.2d 1014. Arrest 68(1)

2049. ---- Chase, arrest and detention, police activities

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Intent-to-harm standard, rather than the deliberate indifference standard, applies to all § 1983 substantive due process claims based upon the conduct of public officials engaged in a high-speed automobile chase aimed at apprehending a suspected offender; overruling *Feist v. Simonson*, 222 F.3d 455. Helseth v. Burch, C.A.8 (Minn.) 2001, 258 F.3d 867, certiorari denied 122 S.Ct. 924, 534 U.S. 1115, 151 L.Ed.2d 888. Automobiles 175(1); Constitutional Law 253(1)

Police officer's high-speed pursuit of suspect which resulted in suspect's vehicle colliding with injured motorist's automobile did not constitute "seizure" of motorist under Fourth Amendment actionable under § 1983 as termination of motorist's freedom of movement was caused by suspect's collision with motorist's automobile, and not means that police officer meant to apply, flashing lights and continuing pursuit. Jones v. Chieffo, E.D.Pa.1993, 833 F.Supp. 498, affirmed 22 F.3d 301. Arrest 68(4)

Because police officer's collision with automobile during high-speed chase was "unknowing act" and not willful detention, widow of driver failed to show that driver had been "seized" as necessary to bring civil rights action based on violation of driver's Fourth Amendment rights. Hicks v. Leake, W.D.Va.1992, 821 F.Supp. 419. Arrest 68(7)

2050. ---- Child care following arrest, arrest and detention, police activities

Temporary care of minor children by arresting officers was mere unavoidable consequence of lawful arrest of individual engaged in supervising children and, in and of itself, could give rise to no claim against officers as matter of law, where individual was not immune from arrest otherwise called for, and children were not subject to unreasonable or injurious treatment. Witherspoon v. U.S., C.A.5 (Miss.) 1988, 838 F.2d 803, certiorari denied 109 S.Ct. 150, 488 U.S. 858, 102 L.Ed.2d 122. False Imprisonment 5

Law enforcement officers' conduct in leaving arrestees' minor daughter alone in camper trailer at campground, causing her to be placed in great fear for her safety as result of her parents having been arrested, handcuffed, and taken into custody in the middle of the night, demonstrated exercise of extremely poor judgment, but did not rise to level of constitutional deprivation which could support section 1983 claim on minor's behalf for emotional distress. Moore v. Marketplace Restaurant, Inc., C.A.7 (Ill.) 1985, 754 F.2d 1336. Civil Rights 1088(4)

Actions of State park and planning commission police officers who kept two-year-old child, who had been riding without safety seat required by Maryland law in automobile driven by motorist who was arrested for drunken driving, in heated police automobile at scene of arrest for two hours until child safety seat was brought by child's mother, did not give rise to liability on part of commission in federal civil rights action; even assuming that actions were pursuant to custom, policy, or procedure, actions were reasonable as matter of law. Barnes v. Maryland Nat. Capital Park and Planning Com'n, D.Md.1996, 932 F.Supp. 691. Civil Rights 1088(4)

After driver had been arrested, abandonment of driver's child and grandchild in parked car was actionable under § 1983; arresting officer had been told by driver that children had no way of getting home alone and that they had only 20 cents in change between them, child became ill after driver's arrest and grandchild was left in wet diapers for approximately six hours in parking lot. Walton v. City of Southfield, E.D.Mich.1990, 748 F.Supp. 1214, affirmed in part, reversed in part on other grounds 995 F.2d 1331. Civil Rights 1088(4)

2051. ---- Conspiracy, arrest and detention, police activities

Detectives did not conspire to deprive suspect of his constitutional rights in violation of § 1983 by virtue of their actions throughout investigation; their actions did not provide factual basis for agreement to deprive suspect of his constitutional rights, and their conduct in finding probable cause and investigating shooting was not unconstitutional. Green v. City of Paterson, D.N.J.1997, 971 F.Supp. 891. Conspiracy 7.5(1)

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42 U.S.C.A. § 1983

Police officer was not liable on § 1983 civil rights complaint alleging that defendant officer and other officers had mutual understanding to deprive arrestee of his Fourth Amendment rights by arresting him, holding him in subway station, and holding and processing him at police station when he had allegedly violated no law; officer's assistance in detaining and processing arrestee amounted to nothing other than doing his job, as there was nothing in record to suggest that officer knew that arrest was sham. Humphrey v. Demitro, N.D.Ill.1996, 931 F.Supp. 571, reversed in part 148 F.3d 719, rehearing denied. Civil Rights 1088(4)

Arrestee's allegations that no probable cause existed for arrest and that police officers, police chief, deputy chief, and mayor engaged in coverup of omissions and misrepresentations in arrest warrant affidavit and refused to investigate arrestee's report of theft stated claim of conspiracy to deprive arrestee of constitutional rights by false arrest. Lo Sacco v. City of Middletown, D.Conn.1990, 745 F.Supp. 812. Conspiracy 18

Prisoner's civil rights claim against city and police officers for allegedly illegal arrest and illegal search was barred under *Heck v. Humphrey*, as prisoner's allegations that defendants conspired to use fruits of arrest and search to convict him and that prisoner suffered loss of income and property as result of his subsequent conviction questioned validity of prisoner's conviction. Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047, affirmed in part, reversed in part 151 F.3d 646. Civil Rights 1088(3); Civil Rights 1088(4)

City police officers' alleged participation in entrapment of inmate, leading to his indictment, following arrest on other charges, for attempted murder based on misrepresentations by confidential informant, did not rise to level of constitutional violation, as required to support conspiracy claim under §§ 1983. Almonte v. Florio, S.D.N.Y.2004, 2004 WL 60306, Unreported. Conspiracy 7.5(1)

2052. ---- Cruel and unusual punishment, arrest and detention, police activities

Holding jail inmate in holding cell for minimal period of time, less than 20 hours, while sheriff's department checked on whether detainer was still lodged by another court, following one court's order for inmate's release, did not rise to level of cruel and unusual punishment and did not violate due process, especially when no evidence of negligence of malice existed, although inmate claimed he was taken from regular assigned cell and put in drunk tank. Edwards v. Oberndorf, E.D.Va.2003, 309 F.Supp.2d 780, affirmed 63 Fed.Appx. 756, 2003 WL 21224212. Constitutional Law 272(2); Prisons 4(4); Sentencing And Punishment 1527

Plaintiff had no claim for cruel and unusual punishment against deputy who arrested her and charged her with crimes. Williams v. DiVittoria, E.D.La.1991, 777 F.Supp. 1332. Sentencing And Punishment 1442

Even if arrestee's request for medical attention was a constitutionally protected statement, for purposes of maintaining §§ 1983 action for retaliation, delays in processing and receiving food and water alleged by arrestee were de minimis inconveniences not unique to her circumstances or singularly directed at her, but of the kind normally experienced by other persons under arrest. Maxwell v. City of New York, C.A.2 (N.Y.) 2004, 108 Fed.Appx. 10, 2004 WL 1800645, Unreported. Civil Rights 1088(4)

2053. ---- Discrimination, arrest and detention, police activities

Section 1983 claims of racially discriminatory traffic stops and arrests should be held to a clear evidence standard. Marshall v. Columbia Lea Regional Hosp., C.A.10 (N.M.) 2003, 345 F.3d 1157. Civil Rights 1420

Police officers called to investigate possible use of stolen credit card did not deny credit card holder equal protection of law when they arrested him for disorderly conduct after he became angry about allegedly being profiled as wrongdoer because of his race, and refused to quiet down; there was no evidence that officers would have treated white person any differently, in similar circumstances. Scott v. Macy's East, Inc., D.Mass.2002, 2002 WL 31439745, Unreported. Arrest 63.4(15); Constitutional Law 223

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2054. ---- Display of warrant, arrest and detention, police activities

Arrestee's claim that sheriff failed to show warrant to him before or contemporaneously with his arrest failed to state claim under federal civil rights statute, since no constitutional provision obligated sheriff to display proof of authority to arrest. Bradley v. Extradition Corp. of America, W.D.La.1991, 758 F.Supp. 1153. Civil Rights 1088(4)

2055. ---- Equal protection, arrest and detention, police activities

County, sheriff, and undersheriff were not liable under §§ 1983 to shareholder in land-owning corporation for class-of-one equal protection violation consisting of failure to adequately investigate and prosecute persons who trespassed on land held by corporation, absent showing that defendants enforced trespassing laws in any different fashion with respect to other, similarly situated county residents. Grubbs v. Bailes, C.A.10 (Okla.) 2006, 445 F.3d 1275. Sheriffs And Constables 100

Arrestee failed to prove that city, city police chief, police officers and others violated his equal protection rights, in connection with the arrest, absent any showing that they burdened a fundamental right, which he was exercising, targeted a suspect class, of which he was a part, or treated him any differently than others similarly situated without any rational basis. Radvansky v. City of Olmsted Falls, C.A.6 (Ohio) 2005, 395 F.3d 291. Arrest 63.1; Constitutional Law 250.1(3)

Police captain's alleged issuance of an all points bulletin for plaintiff's arrest, and placement of plaintiff's name and the fact that he was "driving black" into police computer system, with the result that the police surrounded plaintiff's house and frightened his children did not give rise to an equal protection claim based on selective enforcement; captain had a legitimate basis for issuing the all points bulletin, given the information provided by the nursing home and the conservator that plaintiff had kidnapped his mother from her nursing home, even if the accusations ultimately were found unwarranted. Collins v. West Hartford Police Dept., D.Conn.2005, 380 F.Supp.2d 83. Municipal Corporations 747(3)

Complaint failed to state claim that Native Americans were denied equal protection by Nebraska officials' adoption of policy of minimal criminal law enforcement when victims of crimes were Native Americans, absent allegation of existence of similarly situated people for whom the laws were vigorously enforced. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Civil Rights 1395(5)

Allegations by woman who had participated with police internal affairs office in sting operation aimed at police officer who had sexually assaulted woman that internal affairs office had policy of requiring additional proof to arrest police officers, as opposed to private citizens, failed to state claim under equal protection clause in woman's federal civil rights action; no facts were alleged to support subjective view of favored treatment of officers accused of crimes, and department had set up sting operation to secure arrest of officer who assaulted woman. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1395(5)

Landowners failed to state claim for violation of their right to equal protection of the laws; owners alleged that sheriffs, due to personal animus against them, refused to enforce restraining orders owners had obtained against their neighbors, but they failed to specifically allege that sheriffs treated them differently from similarly situated landowners. Marino v. Mayger, C.A.10 (Colo.) 2004, 118 Fed.Appx. 393, 2004 WL 2801795, Unreported. Constitutional Law 211(1); Sheriffs And Constables 99

2056. ---- Falsification of reports, arrest and detention, police activities

Evidence presented question for jury as to whether arresting police officer falsified arrestee's statement following

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arrest, for purposes of arrestee's § 1983 malicious prosecution claim; arrestee claimed that the statement written by the officer was false, that it had been edited to favor the police, and that arrestee refused to sign the statement for that reason, and officer testified that the statement was an accurate account of what arrestee told him. Jocks v. Tavernier, C.A.2 (N.Y.) 2003, 316 F.3d 128. Civil Rights 1429

Police officers' allegedly wrongful arrests for having defied officers' supposed authority, and then falsifying police report in order to support those charges, could form basis of subsequent civil rights suit by arrestees, even if that conduct could have been deemed mere "simple negligence." Borunda v. Richmond, C.A.9 (Cal.) 1988, 885 F.2d 1384, rehearing denied. Civil Rights 1088(4)

If detective manipulated the identification process before the victim selected a photograph of her assailant, manipulated it after the identification, and ignored and concealed evidence inconsistent with the eyewitness's supposed unequivocal identification of arrestee as her assailant, he would have violated arrestee's constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government. Ramirez v. County of Los Angeles, C.D.Cal.2005, 397 F.Supp.2d 1208. Municipal Corporations 747(3)

Genuine issues of material fact existed as to whether police chief participated in warrantless deprivation of arrestee's liberty before arraignment by telling arresting officer to inflate amount of damage to police vehicle allegedly caused by arrestee so that she could be arrested and prosecuted for felony criminal mischief, precluding summary judgment for police chief on qualified immunity grounds in arrestee's § 1983 action for false arrest. Mack v. Town of Wallkill, S.D.N.Y.2003, 253 F.Supp.2d 552. Federal Civil Procedure 2491.5

Intentionally false report, directly causing parolee's loss of liberty, can state a cause of action for deprivation of a parolee's constitutional rights; parolee has liberty interest in not having his conditional release unfairly revoked to extent that his initial confinement, prior to a probable cause hearing, is a direct result of the parole officer's actions. Taylor v. Sullivan, S.D.N.Y.1997, 980 F.Supp. 697, affirmed 166 F.3d 1201. Pardon And Parole 56

Deputies had qualified immunity from § 1983 plaintiff's claim that they filed false police reports. White v. Tamlyn, E.D.Mich.1997, 961 F.Supp. 1047. Civil Rights 1376(6)

Defamation/perjury claim concerning detective's alleged presentation of false statements and documents to court and to grand jury did not involve violation of any of arrestee's federally protected rights and, thus, was not actionable under § 1983. Franklin v. City of Kansas City, D.Kan.1997, 959 F.Supp. 1380. Civil Rights 1038; Civil Rights 1088(5)

Falsified police reports are only actionable under § 1983 if those reports result in deprivation of life, liberty or property. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1088(1)

Arrestee's claim against state game and fish officer for malicious prosecution, on ground that the officer knowingly made false statements in his incident report and at arrestee's criminal trial in an attempt to obtain a conviction for evading, eluding and/or obstructing an officer and for driving off of an established road, was not cognizable under § § 1983 even though arrestee was acquitted on all but the driving off of an established road offense, where the driving off-road offense and the evading and eluding offense arose out of the same events, and the charges were based on the same finding of probable cause and the same testimony at trial. Wheeler v. Scarafiotti, C.A.10 (N.M.) 2004, 85 Fed.Appx. 696, 2004 WL 37976, Unreported. Civil Rights 1088(5)

Genuine issue of material fact existed as to whether police officers planted evidence on citizen and falsely pursued prosecution, precluding summary judgment on citizen's malicious prosecution and malicious abuse of process claims under § 1983 related to his arrest. Henry v. City of New York, S.D.N.Y.2003, 2003 WL 22077469, Unreported. Federal Civil Procedure 2491.5

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2057. ---- First amendment violations, arrest and detention, police activities

In § 1983 action alleging First Amendment violations by police officer, "but for" standard of proof applied; plaintiff was not required to prove that defendant's sole motive was to chill plaintiff's protected expression, but only had to show that officer's intent or desire to curb expression was determining or motivating factor in making the arrest. Tatro v. Kervin, C.A.1 (Mass.) 1994, 41 F.3d 9. Civil Rights 1088(4)

Police requirement that protestor at presidential appearance not cross intersection was valid time, place and manner restriction on speech that did not violate First Amendment; restriction was content neutral, protection of president was significant government interest, and there were ample opportunities to communicate messages, including other three corners of intersection. Burnett v. Bottoms, D.Ariz.2005, 368 F.Supp.2d 1033. Constitutional Law 90.1(4); Municipal Corporations 703(2)

Owners, employees, and customers of Latino-owned business who brought §§ 1983 action against city and police officers, stemming from execution of search warrant at premises, failed to establish that raid was product of bigotry toward Latinos and Catholic religion, as required to maintain First Amendment religious discrimination claims; there was no evidence that officers targeted business because of association with Catholicism, or that officers were aware that plaintiffs were in fact Catholic. Panaderia La Diana, Inc. v. Salt Lake City Corp., D.Utah 2004, 342 F.Supp.2d 1013. Constitutional Law 84.5(1); Searches And Seizures 101

Native American arrestee's § 1983 action alleging that sheriff pursued criminal prosecution of Native Americans for their religious practices, but not others, failed to state a claim upon which relief could be granted, despite claim that the "white majority" in the county had not been prosecuted for their religious beliefs; arrestee failed to allege that the "white majority" was similarly situated to the Native Americans and that they had engaged in conduct similar to that described in the complaint. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Civil Rights 1395(6)

Assuming that arrestee engaged in protected speech when she insisted that she receive medical treatment for injuries allegedly suffered in altercation that precipitated her arrest, arresting officer did not unconstitutionally retaliate against arrestee in violation of her First Amendment rights in taking approximately three hours to process her arrest through central booking after she was returned from hospital; time span did not fall outside normal time period necessary for processing arrestees. Maxwell v. City of New York, S.D.N.Y.2003, 272 F.Supp.2d 285, reconsideration denied, affirmed in part, vacated in part and remanded 380 F.3d 106, supplemented 108 Fed.Appx. 10, 2004 WL 1800645. Arrest 70(1); Constitutional Law 90.1(1)

2058. ---- Forced entries, arrest and detention, police activities

Conduct of deputy sheriffs in attempting to force open locked bathroom door in order to serve arrest warrant did not rise to level of gross negligence and could not support civil rights claim based on alleged substantive due process violation, although arrestee shot herself as result of deputies' actions, where deputies did not know that arrestee was mentally disturbed or that she had a gun in the bathroom. Wilson v. Northcutt, C.A.11 (Ga.) 1993, 987 F.2d 719, rehearing denied. Civil Rights 1088(4)

Although family members did not have vicarious § 1983 claim based on arrestee's allegedly illegal arrest and detention, family members had their own § 1983 claims arising from allegedly illegal entry where arrest was accomplished by nonconsensual, warrantless entry into family home. Buenrostro v. Collazo, D.Puerto Rico 1991, 777 F.Supp. 128, affirmed 973 F.2d 39. Civil Rights 1331(4)

Arrestee's allegations that police arrested him in his home and searched his residence without a warrant stated claim against police under § 1983. Hunt v. Jaglowski, N.D.Ill.1987, 665 F.Supp. 681. Civil Rights 1395(6)

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42 U.S.C.A. § 1983

2059. ---- Informant's arrest, arrest and detention, police activities

Where police officers had no idea that plaintiff's decedent might be an informer until after their arrest of him, they incurred no liability by deferring ascertainment of his informer claim until the arrest process had been completed. O'Neal v. Esty, C.A.2 (N.Y.) 1980, 637 F.2d 846, certiorari denied 101 S.Ct. 2050, 451 U.S. 972, 68 L.Ed.2d 351. False Imprisonment 10

2060. ---- Length of detention, arrest and detention, police activities

Although county was entitled to combine probable cause determination following warrantless arrests with arraignment it was not immune from systemic challenges for failure to afford prompt probable cause determinations, where county's current policy was to offer combined proceedings within two days, exclusive of Saturdays, Sundays, or holidays, and thus delays could exceed 48-hour period permissible under the Fourth Amendment. County of Riverside v. McLaughlin, U.S.Cal.1991, 111 S.Ct. 1661, 500 U.S. 44, 114 L.Ed.2d 49, on remand 943 F.2d 36. Arrest 70(2); Criminal Law 228

Genuine issues of material fact existed as to whether witnesses to police shooting volunteered information to police or refused to provide when requested to do so, and as to amount of time reasonable necessary to secure scene and insure safety of officers and witnesses present, precluding summary judgment for county in section 1983 action arising out of detention of witnesses to shooting. Walker v. City of Orem, C.A.10 (Utah) 2006, 451 F.3d 1139. Federal Civil Procedure 2491.5

Four-day incarceration period between arrest and presentation to magistrate violated arrestee's right to prompt presentation, for purposes of her § 1983 action; county made no showing of justification for delay other than as course of measure to force her to cooperate with booking procedures, and refusal to cooperate with booking procedures did not excuse extended detention. Hallstrom v. City of Garden City, C.A.9 (Idaho) 1993, 991 F.2d 1473, certiorari denied 114 S.Ct. 549, 510 U.S. 991, 126 L.Ed.2d 450. Arrest 70(2)

Arrestee had constitutionally protected liberty interest in being free from incarceration without prompt pretrial court appearance, by virtue of state statute requiring that defendant be tried within 60 days or released and statute providing defendant with right to prompt pretrial court appearance. Oviatt By and Through Waugh v. Pearce, C.A.9 (Or.) 1992, 954 F.2d 1470. Constitutional Law 263

Arrestee may state constitutional claim if, after police officers make arrest pursuant to warrant, police officers fail to release arrestee after they receive information upon which to conclude beyond reasonable doubt that such warrant has been withdrawn. Duckett v. City of Cedar Park, Tex., C.A.5 (Tex.) 1992, 950 F.2d 272. Civil Rights 1088(4)

Deputy sheriff's detention for approximately 30 minutes of passenger in vehicle that deputy had stopped for speeding, the majority of which time was spent awaiting assistance, was not unreasonable for investigatory stop so as to deprive deputy of defense of qualified immunity; the vehicle was similar to one that deputy had noticed earlier in evening in the vicinity of marijuana fields, driver did not respond initially to his siren and blue light, and after stopping the vehicle, passenger and her companions did not respond to deputy's loud instruction to exit vehicle. Courson v. McMillian, C.A.11 (Fla.) 1991, 939 F.2d 1479. Civil Rights 1376(6)

Arrestee's allegation that he was detained for an excessive period following his arrest because there was shortage of fingerprint technicians on duty to perform job of fingerprint clearance was insufficient to state civil rights claim based on procedural due process violation, in view of adequate state tort law remedies. Hood v. City of Chicago, C.A.7 (Ill.) 1991, 927 F.2d 312. Civil Rights 1319

Conduct of police officers and municipalities in detaining arrestee after receiving information which implicated

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another person did not rise above level of negligence, precluding arrestee from recovering in civil rights action after he was released; although arrestee's fingerprints did not match those found on cigarette packages at scene of robbery and third party was implicated in robbery, arrestee's detention was based on his identification in photographic lineup in which third party was not identified. Simmons v. McElveen, C.A.5 (La.) 1988, 846 F.2d 337. Civil Rights 1088(4)

Where prisoner was detained by sheriff in jail for almost nine months after dismissal of indictments against him through failure of sheriff to properly process dismissal, action for deprivation of civil rights was improperly submitted to jury on basis of negligence since sheriff was chargeable with constructive notice of termination of proceedings against plaintiff or alternatively absence of such notice was not legal justification for plaintiff's continued imprisonment. Whirl v. Kern, C.A.5 (Tex.) 1968, 407 F.2d 781, certiorari denied 90 S.Ct. 210, 396 U.S. 901, 24 L.Ed.2d 177. False Imprisonment 13

Genuine questions of material fact, regarding whether detention of owners, employees, and customers of Latino-owned business, pursuant to search warrant, was unduly prolonged precluded summary judgment on §§ 1983 claims brought by detainees against city and police officers. Panaderia La Diana, Inc. v. Salt Lake City Corp., D.Utah 2004, 342 F.Supp.2d 1013. Federal Civil Procedure 2491.5

Failure to provide arrestees with citation release or a post and trial release option did not constitute a deprivation of due process or equal protection on basis of lengthy post-arrest detention, and therefore mayor and police chief were entitled to qualified immunity in arrestees' §§ 1983 action; the unavailability of citation release was due to unintended technological failures, and there was no evidence that the plaintiffs were treated differently than other groups of arrestees as to the availability of a post and trial release option. Barham v. Ramsey, D.D.C.2004, 338 F.Supp.2d 48, affirmed in part 434 F.3d 565, 369 U.S.App.D.C. 146. Arrest 70(1); Civil Rights 1376(4); Civil Rights 1376(6); Constitutional Law 250.2(1); Constitutional Law 262

Duration of traffic stop of vehicle with six passengers which took about 30 minutes was not unreasonable, as required to support passengers' § 1983 claim against officers for unreasonable detention; none of the passengers were wearing seat belts in violation of state law, officer decided to check identifications, and two passengers were eventually removed from vehicle and arrested. Lewis v. City of Topeka, Kansas, D.Kan.2004, 305 F.Supp.2d 1209 . Civil Rights 1088(4)

Prison administrative assistant's failure to investigate detainee's claim that detainee was being erroneously held and was victim of case of mistaken identity did not constitute deliberate indifference amounting to violation of detainee's civil rights where administrative assistant had no authority to release detainee from custody, detainee was being held pursuant to warrant from another state, administrative assistant had relatively little access to information which would have exonerated detainee, and, had administrative assistant successfully investigated detainee's claims, there was no way to guarantee that requisite application to court would have resulted in earlier release from custody. Roa v. City of Bethlehem, Pa., E.D.Pa.1991, 782 F.Supp. 1008. Civil Rights 1088(4)

Arrestee stated claim for violation of his federal civil rights against arresting officers who detained him for more than 31 days based solely on fact that his name, birthdate and eye color corresponded with person wanted in New York, without taking time to compare his fingerprints and photographs, which would have indicated their mistake; defendants did not show that failing to take simple steps of verifying photo or fingerprints at some point prior to 31 days after arrest was not clearly established as violation of due process at time that it occurred, so as to entitle them to qualified immunity. Buenrostro v. Collazo, D.Puerto Rico 1991, 777 F.Supp. 128, affirmed 973 F.2d 39. Civil Rights 1395(6); Civil Rights 1398

Woman's detention at sheriff's department for approximately five hours following her arrest was not unreasonable per se, where she refused to provide certain information requested in booking procedure; arresting officer's alleged evil motive in extending woman's detention was not relevant. Thomas v. Frederick, W.D.La.1991, 766 F.Supp. 540

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42 U.S.C.A. § 1983

. Civil Rights 1088(4)

2061. ---- Manner of transportation, arrest and detention, police activities

Police officers did not violate constitutional rights of prisoner by transporting him, while handcuffed, in squadrol rather than padded police car. Magayanes v. Terrance, C.A.7 (Ill.) 1983, 739 F.2d 1131. Civil Rights 1095

Handcuffing youth, who prior to his arrest for motorcycle traffic offenses had been arrested on approximately five occasions and was known to arresting officer, and then transporting him in cage of patrol car did not make out a case of constitutional proportions required by this section. Gandy v. Panama City, Fla., C.A.5 (Fla.) 1974, 505 F.2d 630. Civil Rights 1088(4)

Police officers did not create dangerous condition that led to shooting victim's death, in violation of substantive due process, when they decided to transport critically wounded victim to nearby hospital in police wagon rather than waiting for ambulance crew; death was not foreseeable result of officers' actions, absent any evidence that ambulance crew might have done better job of saving life of unresponsive victim than staff at hospital, which officers reached within few minutes, and officers did not increase opportunity for harm to victim or act with willful disregard or deliberate indifference for his safety. Hansberry v. City of Philadelphia, E.D.Pa.2002, 232 F.Supp.2d 404. Constitutional Law 253(1); Municipal Corporations 747(3)

One and one-half day detention between postarrest administrative steps on misdemeanor charge of attempted theft and arrestee's appearance in front of judge was reasonable, for purposes of arrestee's § 1983 action for alleged violation of civil rights, even though person arrested on misdemeanor charges normally would have been released on bond without having been brought before judge, where there was outstanding arrest warrant for arrestee's failure to appear in court on previous charge for aggravated criminal sexual assault. Cemond v. Smith, N.D.Ill.1990, 753 F.Supp. 713. Civil Rights 1088(4)

Police department's fingerprint clearance process, under which defendant is not taken for probable cause hearing until check of his fingerprints has been made, aids in making positive identification and obtaining the prior record of the defendant, is justifiable and the delay does not violate a defendant's Fourth Amendment rights. Brown v. City of Chicago, N.D.Ill.1989, 713 F.Supp. 250. Arrest 70(2)

Violations of Fourth Amendment requirement of judicial determination of probable cause as prerequisite to extended restraint of liberty following arrest are redressable under § 1983. Katona v. City of Cheyenne, D.Wyo.1988, 686 F.Supp. 287. Civil Rights 1088(4)

There is no state of mind requirement in excess of simple negligence to establish violation of an arrestee's right to receive a reasonably prompt determination of probable cause, and thus negligence will support an action under civil rights statute based on such a violation. Austin v. City of East Grand Rapids, W.D.Mich.1988, 685 F.Supp. 1396. Civil Rights 1088(4)

Allegation that law enforcement officials infringed arrestee's Fourth and Fourteenth Amendment rights by holding him more than 24 hours without a hearing while they sought to build a case against him stated claim against officials under § 1983. Hunt v. Jaglowski, N.D.Ill.1987, 665 F.Supp. 681. Civil Rights 1395(6)

Arrestee did not have constitutional right to be released on bail before various booking procedures attending the arrest could be completed and, even if he were detained somewhat longer than he should have been before he was allowed to post bail, he had a tort remedy under Illinois law and, therefore, he was not deprived of due process of law and had no claim under this section. Rodgers v. Lincoln Towing Service, Inc., N.D.Ill.1984, 596 F.Supp. 13, affirmed 771 F.2d 194. Bail 42

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If plaintiff police officer could show that law enforcement officers, without lawful authority, intentionally detained him at interrogation room for any significant period of time, he could show a denial of his right to liberty cognizable under this section. Chrisco v. Shafran, D.C.Del.1981, 507 F.Supp. 1312. Civil Rights 1088(4)

2062. ---- Mass arrests, arrest and detention, police activities

Pursuant to principle that mass arrests without investigation go far beyond permissible limits of police conduct, police could not make mass arrests of "hippies" in park where primary motive for various arrests and interrogations was desire to rid park of "hippies", or at least those "hippies" thought to be especially undesirable, nor could police lawfully arrest on basis of suspicion, or even probable cause to believe, that arrestee occupied status of being homosexual or narcotic addict. Hughes v. Rizzo, E.D.Pa.1968, 282 F.Supp. 881.

2063. ---- Pretext, arrest and detention, police activities

Police officer's detention of arrestee for 30 minutes at hospital where arrestee was taken following arrest for driving under the influence of alcohol, after blood tests revealed no trace of alcohol in arrestee's system, did not violate arrestee's Fourth Amendment rights, and so officer was entitled to qualified immunity as to arrestee's § 1983 claim alleging unlawful detention, where arrestee was detained so another officer could drive to hospital and serve complaint for resisting arrest and ticket for failing to maintain single lane of traffic; there was no evidence suggesting that arrestee was held on pretext, and, even if resisting arrest charge was "trumped up," traffic ticket was legitimate. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1376(6)

Motorist arrested for speeding stated § 1983 claim against village and police officer for violation of Fourth Amendment by alleging that he was seized pursuant to illicit law designed purposefully to create pretext for seizing citizens and trying to collect fines from them based on false appearance of wrongdoing created by illicit speed limit signs. Rose v. Village of Peninsula, N.D.Ohio 1993, 839 F.Supp. 517. Civil Rights 1395(6)

2064. ---- Reputation injury, arrest and detention, police activities

Because plaintiff could not establish unconstitutional deprivation of his liberty on basis of his arrest for theft, he could not maintain action under 42 U.S.C.A. § 1983 with regard to his separate claim for injury to his reputation resulting from arrest. Mark v. Furay, C.A.7 (Ill.) 1985, 769 F.2d 1266, on remand. Civil Rights 1088(4)

Where members of political and social group alleged that defamatory statements by police captain were made in connection with their unconstitutional arrest and prosecution, injury to members' reputations constituted "deprivation of liberty interest," and was therefore actionable under statute governing deprivation of civil rights. Stevens v. Rifkin, N.D.Cal.1984, 608 F.Supp. 710. Civil Rights 1038

2065. ---- Resistance, arrest and detention, police activities

Accused who asserted that his arrest was unlawful, that he had right to resist such arrest and that result of doing so was that he was badly beaten by police had claim to federal right under this section. MacDonald v. Musick, C.A.9 (Cal.) 1970, 425 F.2d 373, certiorari denied 91 S.Ct. 54, 400 U.S. 852, 27 L.Ed.2d 90. Civil Rights 1088(4)

Not only may an individual not be deprived of a federally protected right by an unlawful arrest and detention, but he has an undoubted right to resist an unlawful arrest, and courts will uphold the right of resistance in proper cases. Basista v. Weir, C.A.3 (Pa.) 1965, 340 F.2d 74.

Plea of nolo contendere, to charges that he disturbed the piece, precluded civil rights claimant from establishing, in §§ 1983 action, that police officers engaged in unlawful detention or false arrest. Reynolds v. Smythe, E.D.Pa.2006, 418 F.Supp.2d 724. Civil Rights 1088(4)

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Officer who was directed by other officers to make arrest and second officer who did not become involved until arrestee resisted, and who had not witnessed arrestee's prior conduct, were not acting in retaliation for arrestee's protected speech and thus could not be liable under §§ 1983 for violation of First Amendment rights. Birdine v. City of Coatesville, E.D.Pa.2004, 347 F.Supp.2d 182, vacated in part, reconsideration denied. Civil Rights 1358

2066. ---- Search related detentions, arrest and detention, police activities

Driver could not maintain § 1983 claim alleging that sheriff violated his Fourth Amendment rights by detaining him in order to photograph driver and his vehicle, since sheriff's actions did not detain driver; city police officers already were detaining driver, after valid traffic stop, for purpose of searching his vehicle when sheriff arrived on scene, and there was no evidence that officers had completed their search and were prepared to release driver before sheriff finished taking his photographs. Valance v. Wisel, C.A.7 (Ind.) 1997, 110 F.3d 1269. Civil Rights 1088(4)

There was no Fourth Amendment violation by police officers in detaining individuals not mentioned in search warrant for apartment, and thus, individuals who were detained had no § 1983 cause of action against police officers based on their detention, where individuals were present at premises while search was being conducted. Liggins v. Morris, D.Minn.1990, 749 F.Supp. 967. Arrest 63.5(3.1); Civil Rights 1088(4)

Federal civil rights plaintiff stated cause of action under Fourth Amendment, where she alleged that she and five other individuals were confined by police to a small two-person room for approximately two hours, even though confinement occurred during search undertaken pursuant to valid search warrant; detention may have been inordinately prolonged or may have gone beyond measures necessary to protect officers and prevent plaintiff from fleeing. Jacobs v. Paynter, N.D.Ill.1989, 727 F.Supp. 1212. Civil Rights 1395(6)

2067. ---- Territorial jurisdiction of police, arrest and detention, police activities

Florida's arrests of defendant, a citizen subject to conservation regulations, outside Florida territorial limits did not transmute otherwise proper efforts of state officials in enforcing regulations, limiting taking of crawfish, into violation of constitutional rights in violation of this section. Felton v. Hodges, C.A.5 (Fla.) 1967, 374 F.2d 337, certiorari denied 88 S.Ct. 467, 389 U.S. 971, 19 L.Ed.2d 461. Civil Rights 1088(4)

2068. ---- Training, arrest and detention, police activities

Civil rights claims against city, county, and other defendants in their official capacities for inadequate training were properly dismissed, where district attorney and police officer acted as reasonable officers in determining that there was probable cause to obtain warrant for plaintiff's arrest. Kohl v. Casson, C.A.8 (Neb.) 1993, 5 F.3d 1141. Civil Rights 1088(4)

Sheriff's failure to train his officers adequately regarding reliable techniques for identifying arrestees, along with his failure to account for incarcerated suspects, subjected sheriff to liability for violating civil rights of detainee, who was misidentified as probationer and was unnecessarily detained for six days for alleged probation violation, where there was evidence that sheriff knew of prior instances of mistaken identity, but failed to establish appropriate policies and continued to allow his deputies to detain persons even when discrepancies existed. Rivas v. Freeman, C.A.11 (Fla.) 1991, 940 F.2d 1491. Civil Rights 1358

County's incarceration of arrestee, who had been arrested pursuant to facially valid bench warrant, did not amount to constitutional violation, even though arrestee had already been allowed to plead guilty before city magistrate on underlying charges; there was no indication that any county official acted with deliberate indifference or callous

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disregard to arrestee's rights, nor was there any claim that county failed to train its officers or prosecutors. Erdman v. Cochise County, Ariz., C.A.9 (Ariz.) 1991, 926 F.2d 877. Civil Rights 1088(4); Civil Rights 1352(4)

Town that did not possess information about risks of cocaine-induced excited delirium and potential serious health consequences of prone restraint of arrestees was not deliberately indifferent, with respect to resisting arrestee who death was attributed to drug-induced delirium and positional asphyxia, in failing to train its officers regarding such information. Watkins v. New Castle County, D.Del.2005, 374 F.Supp.2d 379. Civil Rights 1352(4)

Allegations by parents of mentally ill suspect, who died of positional asphyxia, that suspect was apprehended by police officers, handcuffed, hog-tied, and transported to the hospital via patrol car while in a face-down position, that officers noticed suspect's irregular breathing, but did not adjust his position or inform the hospital, that city acted with deliberate indifference in failing to provide adequate training for officers handling encounters with mentally ill persons, and that failure resulted in suspect's death stated §§ 1983 claim for violation of suspect's substantive due process rights, for violation of the Rehabilitation Act, and for discrimination against the mentally ill, in violation of the ADA. Arnold v. City of York, M.D.Pa.2004, 340 F.Supp.2d 550. Civil Rights 1395(6)

Town and police department's alleged failure to train officer who was involved in altercation with plaintiff while officer was off-duty did not amount to deliberate indifference, as required for municipal liability under § 1983; fact that officer received little training in non-violent restraint in addition to his police academy training did not by itself indicate that the town made a deliberate, conscious choice not to provide its officer with the appropriate training. Ousley v. Town of Lincoln through its Finance Director, D.R.I.2004, 313 F.Supp.2d 78. Civil Rights 1352(4)

Citizen failed to show that municipal agency was deliberately indifferent to citizen's constitutional rights, in context of *Monell* liability for civil rights claim alleging improper training in making arrest of deranged persons, on evidence that citizen boarded commuter train dressed in army fatigues, wearing mask over his nose, and he carried wooden staff and military sword, citizen repeatedly refused police officers' directions to put staff down and leave the train, officers then sprayed citizen with pepper spray without effect, citizen swung sword at officers, and then officers shot citizen without killing him. Stevens v. Metropolitan Transp. Authority Police Dept., S.D.N.Y.2003, 293 F.Supp.2d 415. Civil Rights 1352(4)

City's training of its police officers did not demonstrate deliberate indifference that could support municipal liability claim by public intoxication arrestee who claimed that officers were not trained to distinguish drunkenness from panic disorder or certain physical infirmities; officers had attended training program, were certified law officers, and no showing was made of how arrestee's arrest was product of city policies. Newell v. City of Salina, D.Kan.2003, 276 F.Supp.2d 1148. Civil Rights 1352(4)

Town and its police chief did not fail to train police officers on extradition matters, and thus, could not be held liable in extradition detainee's § 1983 action for alleged failure to train officers, where town's officers received training in how to perform and interpret National Criminal Information Center (NCIC) results. Cuba-Diaz v. Town of Windham, D.Conn.2003, 274 F.Supp.2d 221. Civil Rights 1352(4); Civil Rights 1358

Municipality was not liable, in § 1983 action by motorist who was detained for investigation by police officers, for failure to properly train and supervise officers; officers did not violate motorist's constitutional rights, and no evidence was presented that officers were not properly trained or that municipality was deliberately indifferent to need for such training. Flowers v. Fiore, D.R.I.2003, 239 F.Supp.2d 173, affirmed 359 F.3d 24. Civil Rights 1352(4)

City's failure to train its police officers regarding possible benefits of providing immediate psychiatric care to pretrial detainees or about risks facing arrested police officers with histories of mental illnesses did not constitute deliberate indifference to medical needs of arrested police officer who had history of mental illness and suicide

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attempts, and therefore city's failure to train its officers was not actionable under § 1983. Houck v. City of Prairie Village, D.Kan.1997, 978 F.Supp. 1397, affirmed 166 F.3d 347. Civil Rights 1352(5)

Arrestee who suffered head injury when he fell after being pushed by officer, who sought to keep arrestee from lunging police dog, failed to establish that city's failure to adequately train officers demonstrated deliberate indifference on part of city to constitutional rights, as required to support recovery in § 1983 action against city; arrestee made only speculative assertions concerning how improved training program might have prevented injury. Palacios v. City of Oakland, N.D.Cal.1997, 970 F.Supp. 732, affirmed 152 F.3d 928. Civil Rights 1352(4)

Allegations by woman who had been sexually assaulted by police officer were insufficient to state claim against city for failure to train officer; woman made only conclusory allegations that police chief failed to instruct, supervise, or control officer and should have known of officer's illegal acts and misuse of official power, and alleged no facts which suggested specific deficiencies in supervision or training of officer which caused officer to rape woman or continue to sexually harass her. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1395(5)

City's alleged failure to train, supervise, and discipline police officers who arrested abortion protestor did not proximately cause allegedly unlawful arrest or alleged deprivation of right to freedom of speech and peaceable assembly, and, thus, city was not liable in § 1983 action for allegedly unlawful arrest or violation of First Amendment; temporary restraining order (TRO) against yelling, shouting, or screaming that substantially interferes with services at abortion clinic modified officers' understanding of First Amendment principles and essentially superseded any training, and since order was issued only a few days before arrest, there was no time to train officers about constitutional intricacies potentially involved. Habiger v. City of Fargo, D.N.D.1995, 905 F.Supp. 709, affirmed 80 F.3d 289, certiorari denied 117 S.Ct. 518, 519 U.S. 1011, 136 L.Ed.2d 407. Civil Rights 1352(4)

Arrestee presented no evidence that city had policy or custom allowing or encouraging allegedly unconstitutional arrests or that city inadequately trained or supervised police officers and, thus, city could not be held liable for alleged constitutional violation. Carnell v. Grimm, D.Hawai'i 1994, 872 F.Supp. 746, reconsideration denied, affirmed in part, appeal dismissed in part 74 F.3d 977. Civil Rights 1351(4); Civil Rights 1352(4)

City and county's police department did not exhibit deliberate indifference to adequately training its police officers as to requirements of warrantless stop or arrest, precluding city and county from being held liable on inadequate training theory after two of its officers made warrantless arrests without probable cause; police officer trainees were required to take 18 hours of classroom instruction on laws of arrest and were given examinations requiring 70% passing grade. Tokuhama v. City and County of Honolulu, D.Hawai'i 1989, 751 F.Supp. 1385. Civil Rights 1352(4)

Arrestee failed to put forward any evidence demonstrating that inadequacy of police training amounted to deliberate indifference to arrestee's rights so as to render city liable in civil rights action. Turton v. City of Atlanta, N.D.Ga.1990, 738 F.Supp. 1419. Civil Rights 1352(4)

Allegedly negligent and grossly negligent conduct of city police officers and city personnel in negligently refusing to provide medical assistance, failing to adequately screen, train, supervise and discipline subordinate law enforcement officers, in breaching duty of care to public by failing to protect them from risk of bodily harm and in failing to properly investigate altercation at nightclub so as to result in arresting of patrons without probable cause, using excessive force, and falsely imprisoning patrons did not trigger protections of due process clause under § 1983. Martinez v. Cordova, D.N.M.1987, 676 F.Supp. 1068. Civil Rights 1088(4)

2069. ---- Basis for arrest, arrest and detention, police activities

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City's plan to enforce ticket-scalping ordinance, consisting of arrests and detentions of those selling tickets close to sports arena, was not cause of allegedly improper arrest, precluding arrestee's § 1983 false arrest claim against city; plan required plainclothes officers to observe violators and maintain eye contact with them until arrest was made by uniformed officer, and thus if arrestee was mistakenly arrested it was due to plainclothes officer's failure to follow plan, not plan itself. Arlotta v. Bradley Center, C.A.7 (Wis.) 2003, 349 F.3d 517. Civil Rights 1351(4)

Involuntary confinement of detainee at detoxification facility overnight did not constitute confinement for status of being alcoholic in violation of due process, for purposes of § 1983 claim, but rather constituted confinement for conduct of being drunk in public place. Halvorsen v. Baird, C.A.9 (Or.) 1998, 146 F.3d 680. Chemical Dependents 10; Constitutional Law 255(5)

Rule prohibiting wearing of mask in county courthouse was reasonable rule, and citizen's arrest for violating rule by wearing paper air-filtration mask did not violate any of his constitutional rights; wearing of mask inside courthouse implied intimidation and implicated security problems and otherwise lawful arrest was not forbidden merely because objective of arrest could have been achieved by alternative means. Ryan v. County of DuPage, C.A.7 (Ill.) 1995, 45 F.3d 1090. Courts 80(1)

City did not violate civil rights of indigent defendant by attempting to jail her for failure to pay traffic fines; defendant repeatedly failed to appear and assert her indigency, thereby depriving court of opportunity to inquire into her reasons for not paying or to offer alternatives. Garcia v. City of Abilene, C.A.5 (Tex.) 1989, 890 F.2d 773 . Civil Rights 1088(5)

A warrantless and malicious arrest based on no probable cause violates liberty and, hence, this section. Reeves v. City of Jackson, Miss., C.A.5 (Miss.) 1979, 608 F.2d 644. Civil Rights 1088(4)

In evaluating police conduct relating to an arrest for purpose of determining whether the conduct violated the arrestee's civil rights, the court's guideline is good faith and probable cause. Landrum v. Moats, C.A.8 (Neb.) 1978, 576 F.2d 1320, certiorari denied 99 S.Ct. 282, 439 U.S. 912, 58 L.Ed.2d 258. Civil Rights 1088(4)

Arrestee's guilty plea to assault charge barred false arrest claim in civil rights action. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Civil Rights 1088(4)

Where decedent had been adjudicated guilty of misdemeanor of neglecting his children and sentenced to jail and a fine, where commitment orders had been issued to sheriff but stayed at various time for various reasons, and where sheriff had been ordered to place decedent in jail because of failure to comply with court orders, attempt to arrest decedent was not an attempt at a false arrest in violation of decedent's civil rights. Singer v. Wadman, D.C.Utah 1982, 595 F.Supp. 188, affirmed 745 F.2d 606, certiorari denied 105 S.Ct. 1396, 470 U.S. 1028, 84 L.Ed.2d 785. Civil Rights 1088(4)

Defendant deputy was liable under this section where he arrested the plaintiff when he did not have and knew he did not have probable cause to believe Florida's disorderly conduct statute, F.S.A. § 877.03, was being violated and where defendant was not immune in that his actions were deliberate, made with full knowledge that plaintiff was not breaking the law, and were not done in good faith. Carr v. Bell, N.D.Fla.1980, 492 F.Supp. 832. Civil Rights 1088(4)

Former inmate was not entitled to recover under this section on ground that he had been wrongfully and arbitrarily arrested and detained after his parole, in view of affidavit stating that arrest was occasioned by incident in which fellow tenant of plaintiff's complained that plaintiff was creating noisy disturbance and had ripped lock and doorknob off of his apartment door and that such conduct was prompted by use of alcohol. Gahagan v. Pennsylvania Bd. of Probation and Parole, E.D.Pa.1978, 444 F.Supp. 1326. Civil Rights 1088(4)

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Arrest does not give rise to cause of action for deprivation of civil rights under this section if it is made with valid warrant or with probable cause. Pritz v. Hackett, W.D.Wis.1977, 440 F.Supp. 592. Civil Rights 1088(4)

Plaintiffs who were subject to warrantless arrest not founded on probable cause and under circumstances where arresting officers could not reasonably believe that there was probable cause were denied due process, rendering officers liable therefor. Butler v. Goldblatt Bros., Inc., N.D.Ill.1977, 432 F.Supp. 1122. Civil Rights 1088(4); Constitutional Law 262

2070. ---- State law, arrest and detention, police activities

Existence of state tort cause of action for malicious prosecution does not preclude § 1983 Fourth Amendment action for wrongful arrest and detention arising from same arrest. McCullah v. Gadert, C.A.7 (Ill.) 2003, 344 F.3d 655. Civil Rights 1319

City and its police officers did not customarily discriminate against domestic violence victims as a class by arresting purported domestic violence victim pursuant to Colorado's mandatory arrest law in domestic violence situations, as would establish an equal protection violation to support purported victim and her son's action under § 1983, where officers were justified in believing purported victim had assaulted alleged abuser since officers at scene noticed alleged abuser's bloody mouth and shirt, as well as abrasions on purported victim's right hand. Eckert v. Town of Silverthorne, C.A.10 (Colo.) 2001, 258 F.3d 1147, withdrawn from bound volume, republished at 25 Fed.Appx. 679, 2001 WL 1152781.

Arrestee could not recover under § 1983 for arrest which violated Kentucky law, prohibiting warrantless misdemeanor arrests unless misdemeanor is committed in officer's presence, but which was supported by probable cause; such an arrest did not implicate any federal constitutional right. Pyles v. Raisor, C.A.6 (Ky.) 1995, 60 F.3d 1211. Civil Rights 1088(4)

Arrest by state actor that is not authorized by state law is actionable under § 1983 as seizure contrary to Fourth Amendment, and, thus, warrantless arrest of Nebraska parole violator is actionable unless it complies with Nebraska statute permitting warrantless arrest of parole violator, only if officer has reasonable cause to believe that parolee will attempt to leave jurisdiction or will place lives or property in danger. Cole v. Nebraska State Bd. of Parole, C.A.8 (Neb.) 1993, 997 F.2d 442, rehearing denied. Civil Rights 1088(4)

Federal civil rights action will not lie for warrantless misdemeanor arrest in violation of state law. Fields v. City of South Houston, Tex., C.A.5 (Tex.) 1991, 922 F.2d 1183, rehearing denied. Civil Rights 1088(4)

Warrantless arrest of homeless man who was material witness to murder and who expressed reluctance to testify at trial, and his subsequent detention after he was unable to post bond did not give rise to § 1983 action against arresting detective; homeless man's reluctance to testify and his inability to post low bond, together with his homelessness and alcoholism, offered ample grounds, within meaning of Tennessee reluctant witness statute, to arrest and detain him. White by Swafford v. Gerbitz, C.A.6 (Tenn.) 1989, 892 F.2d 457. Civil Rights 1088(4)

Because arrestee alleged equal protection violation, officers' mere compliance with procedural requisites of state law would not shield them from liability for violation of civil rights. Tanner v. Heise, C.A.9 (Idaho) 1989, 879 F.2d 572. Civil Rights 1088(4)

Where criminal offense was committed in presence of arresting officer, thereby justifying arrest without a warrant under Georgia law, arresting officer could not be held liable for false arrest or for civil rights violation. Hunter v. Clardy, C.A.5 (Ga.) 1977, 558 F.2d 290. Civil Rights 1088(4); False Imprisonment 7(3)

Failure of city police officers to comply with Code 1972, § 43-21-13 requiring police to obtain prior authorization

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from county youth court before incarcerating a juvenile was a violation of a state-created right which did not reach constitutional proportions and, therefore, was insufficient to constitute a rights violation cognizable under this section. Hamilton v. Chaffin, C.A.5 (Miss.) 1975, 506 F.2d 904. Civil Rights 1088(4)

Even if police officer violated state arrest law, he would not be liable under this section unless he also violated federal constitutional law governing warrantless arrests. Street v. Surdyka, C.A.4 (Md.) 1974, 492 F.2d 368. Civil Rights 1088(4)

Fact that an arrest is made under authority of S.H.A. ch. 38, § 31-1 providing for fine or imprisonment on conviction of resisting or obstructing a peace officer does not preclude the possibility of abuse of authority in effecting an arrest. Williams v. Liberty, C.A.7 (Ill.) 1972, 461 F.2d 325. Civil Rights 1088(4)

A finding of liability for false arrest under New York law also gives rise to liability under §§ 1983. Breitbard v. Mitchell, E.D.N.Y.2005, 390 F.Supp.2d 237. Civil Rights 1088(4)

For purpose of a qualified immunity analysis in a § 1983 action, identification of policymaking officials is a question of state law. Mack v. Town of Wallkill, S.D.N.Y.2003, 253 F.Supp.2d 552. Federal Courts 411

Police officer's noncompliance with state-mandated arrest procedure does not in and of itself give rise to claim cognizable under § 1983. O'Brien v. Borough of Woodbury Heights, D.N.J.1988, 679 F.Supp. 429. Civil Rights 1088(4)

Even if police officer violates state arrest statute, he would not be liable under this section unless he also violated federal constitutional law governing warrantless arrest. Diamond v. Marland, S.D.Ga.1975, 395 F.Supp. 432. Civil Rights 1088(4)

2071. ---- Department policy or practice, arrest and detention, police activities

Sheriff's department policy of ignoring an arrestee's claims of mistaken identity after arrestee had appeared in court and judge had ordered him held in custody did not violate arrestee's right to due process, as required for department to be liable under §§ 1983 to arrestee who was held by department for 13 days after his arraignment on warrant that had been issued for someone else, since judge did not abdicate responsibility to determine arrestee's identity or delegate that responsibility to department, and there was no doubt that arrestee was the person that judge ordered held at arraignment. Hernandez v. Sheahan, C.A.7 (Ill.) 2006, 455 F.3d 772. Constitutional Law 262

Police officers' alleged violation of police department policy that required warning to be given prior to arrest for making unreasonable noise did not give rise to deprivation of rights secured by Constitution, as required to state claim for false arrest under § 1983. Mangieri v. Clifton, C.A.5 (Tex.) 1994, 29 F.3d 1012. Civil Rights 1088(4)

City did not employ an unconstitutional policy that resulted in inadequate investigation of citizens' complaints, and therefore was not liable in §§ 1983 action brought by plaintiffs who allegedly complained repeatedly about police harassment; policy of sending verbal abuse and lack of service complaints to district captains for investigation was consistent with best practices employed by comparable police departments and consistent with the chain-of-command structure. Glass v. City of Philadelphia, E.D.Pa.2006, 455 F.Supp.2d 302. Civil Rights 1352(4)

Absent showing of existence of widespread municipal policy or practice of maintaining allegedly inhumane conditions in central booking, arrestee could not prevail on claim that city violated her due process rights by confining her under allegedly unconstitutional conditions. Maxwell v. City of New York, S.D.N.Y.2003, 272 F.Supp.2d 285, reconsideration denied, affirmed in part, vacated in part and remanded 380 F.3d 106, supplemented

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42 U.S.C.A. § 1983

108 Fed.Appx. 10, 2004 WL 1800645. Civil Rights 1351(4)

Provision in police field manual allowing arrest with supervisor's approval for three or more hazardous moving traffic violations did not conflict with Fourth Amendment by providing for physical arrest of misdemeanants under exigent circumstances where probable cause exists, and because policy reflected in manual was facially constitutional, city could not be held liable on Fourth Amendment claim under § 1983 for arrest of traffic violator. Young v. City of Atlanta, N.D.Ga.1986, 631 F.Supp. 1498. Civil Rights 1088(4)

2072. ---- Computer-generated information, arrest and detention, police activities

Person who is mistakenly arrested on basis of information law enforcement officer obtains from computer system cannot maintain cause of action for false arrest under § 1983 when officer acted reasonably and consistent with information obtained from computer system. Howard v. Regional Transit Authority, N.D.Ohio 1987, 667 F.Supp. 540. Civil Rights 1088(4)

Absent actual knowledge that an arrest warrant was no longer valid or in effect, Michigan state troopers acted reasonably and in good faith in arresting plaintiff based upon information received through a computer system and therefore the troopers were immune from civil liability under this section and common law. Taggart v. Macomb County, E.D.Mich.1982, 587 F.Supp. 1080. Civil Rights 1376(6)

2073. ---- Good faith, arrest and detention, police activities

Police officer was not liable under this section on account of arrest of plaintiff on bad check charges where he had ample probable cause to file complaint and acted in good faith. Strutt v. Upham, C.A.9 (Cal.) 1971, 440 F.2d 1236 . Municipal Corporations 189(1)

Police officer did not violate individual's civil rights in arresting him, even if probable cause had been lacking, due to good faith where officer did not arrest him until after learning vehicle individual was driving had been reported stolen, thus making belief that arrest was lawful and entirely reasonable. Lindsey v. Loughlin, E.D.N.Y.1985, 616 F.Supp. 449. Civil Rights 1088(4)

2074. ---- Hot pursuit, arrest and detention, police activities

Genuine issue of material fact existed as to whether reasonable suspicions existed that criminal activity was afoot so as to establish probable cause for officers' warrantless entry into a private dwelling in "hot pursuit" of a suspect, precluding summary judgment in favor of officers on owner's unlawful entry claim. Webster v. City of New York, S.D.N.Y.2004, 333 F.Supp.2d 184. Federal Civil Procedure 2491.5

Police officer's warrantless arrest of plaintiff in plaintiff's residence in connection with alleged sexual assault did not violate plaintiff's clearly established constitutional rights so as to permit plaintiff's recovery on civil rights claim against the arresting officer, because two of alleged participants in the attack had already taken flight when arresting officer returned with victim to the scene of the crime, neither officer nor victim knew if the premises in which the crime was committed was the residence of any of the suspects, and officer was engaged in "hot pursuit" at the time of plaintiff's arrest. Jones v. Waters, E.D.Pa.1983, 570 F.Supp. 1292. Civil Rights 1088(4)

2075. ---- Probable cause generally, arrest and detention, police activities

An alleged arrest without probable cause was insufficient to establish a deprivation of liberty without due process, in violation of the Fourteenth Amendment. Radvansky v. City of Olmsted Falls, C.A.6 (Ohio) 2005, 395 F.3d 291. Arrest 63.4(1); Constitutional Law 262

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42 U.S.C.A. § 1983

For § 1983 claims, the existence of probable cause is a question for the jury if reasonable persons might reach different conclusions on the facts. Graves v. City of Coeur D'Alene, C.A.9 (Idaho) 2003, 339 F.3d 828. Civil Rights 1429

Arrest made with probable cause constitutes absolute bar to § 1983 claim for false arrest. Ortega v. Christian, C.A.11 (Fla.) 1996, 85 F.3d 1521. Civil Rights 1088(4)

In civil rights cases arising out of police arrest, arrest challenged as unsupported by probable cause is deemed "objectively reasonable" unless there clearly was no reasonable cause at time arrest was made. Topp v. Wolkowski, C.A.1 (N.H.) 1993, 994 F.2d 45. Civil Rights 1376(6)

In § 1983 actions for false arrest, probable cause need not exist on charge for which plaintiff is arrested, so long as probable cause exists for arrest on closely related charge. Biddle v. Martin, C.A.7 (Ill.) 1993, 992 F.2d 673. Civil Rights 1088(4)

Arrest without probable cause is constitutional violation actionable under this section prohibiting violations of civil rights under color of law. Patzig v. O'Neil, C.A.3 (Pa.) 1978, 577 F.2d 841.

Once probable cause to arrest is established, law enforcement officer cannot be held liable for false arrest or civil rights violation, and any collateral bad motive on part of arresting officer is immaterial. Hunter v. Clardy, C.A.5 (Ga.) 1977, 558 F.2d 290. Civil Rights 1088(4); False Imprisonment 13

An arrest without probable cause is violative of rights secured by the Constitution and can be the basis of recovery in a suit pursuant to this section. Sartin v. Commissioner of Public Safety of State of Minn., C.A.8 (Minn.) 1976, 535 F.2d 430. Civil Rights 1088(4)

There is no cause of action for "false arrest" under this section unless arresting officer lacked probable cause. Street v. Surdyka, C.A.4 (Md.) 1974, 492 F.2d 368. Civil Rights 1088(4)

The existence of probable cause to arrest constitutes justification and is a complete defense to an action for false arrest, whether that action is brought under state law or under §§ 1983. Breitbard v. Mitchell, E.D.N.Y.2005, 390 F.Supp.2d 237. False Imprisonment 13

There can be no §§ 1983 claim for false arrest, in violation of Fourth Amendment, where the arresting officer had probable cause to arrest the claimant. Vines v. Callahan, D.Conn.2005, 352 F.Supp.2d 211. Civil Rights 1088(4)

Allegations that an arrest made pursuant to a warrant was not supported by probable cause are analogous to the common-law tort of malicious prosecution, and as a result, §§ 1983 actions seeking damages for unconstitutional arrest or confinement imposed pursuant to legal process must allege and prove a termination of the criminal proceedings favorable to the accused. Elkins v. Broome, M.D.N.C.2004, 328 F.Supp.2d 596, affirmed 122 Fed.Appx. 40, 2005 WL 361761. Civil Rights 1088(4)

Existence of probable cause to arrest is complete defense to false arrest claim, whether under New York law or under § 1983. Vasquez v. McPherson, S.D.N.Y.2003, 285 F.Supp.2d 334. Civil Rights 1088(4); False Imprisonment 13

Section 1983 claim of false arrest based on the Fourth Amendment right to be free from unreasonable seizures may not be maintained if there was probable cause for the arrest. Colon v. Ludemann, D.Conn.2003, 283 F.Supp.2d 747 . Civil Rights 1088(4)

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Genuine issues of material fact existed as to whether officer who made arrest for breach of the peace had probable cause to believe that arrestee was the person wanted in another state and to continue to hold him on a fugitive from justice charge, precluding summary judgment for town and police officers in arrestee's § 1983 action for false arrest. Cuba-Diaz v. Town of Windham, D.Conn.2003, 274 F.Supp.2d 221. Federal Civil Procedure 2491.5

Civil rights activists who brought § 1983 action against police officers, stemming from their arrests while attempting to film traffic stops, pleaded facts suggesting that they were not interfering with traffic stop when officer allegedly threatened to arrest them, rushed at them and attacked them, as required to allege that officers lacked probable cause to arrest them under Kansas statute prohibiting obstruction of legal process or official duty, and thus officers were not entitled to qualified immunity as to activists' Fourth Amendment claim; activists alleged that they were merely protesting and recording traffic stop from public property prior to their arrests. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1376(6); Civil Rights 1395(6)

Presence of probable cause to make arrest is complete defense to action for false arrest whether that action is brought under state law or under § 1983. Taylor v. City of New York, E.D.N.Y.2003, 269 F.Supp.2d 68, clarified 2003 WL 21781941. Civil Rights 1088(4); False Imprisonment 13

As long as officer has established probable cause for charge, absent element of malice or mendacity, he will not be found liable for false arrest for lack of probable cause simply because subsequent investigation reveals exculpatory information which officer could have found had his investigation been more complete. Ahlers v. Schebil, E.D.Mich.1998, 994 F.Supp. 856, affirmed 188 F.3d 365. Civil Rights 1088(4)

Even malicious motives will not support § 1983 plaintiff's claim of false arrest if probable cause exists. Sarantakis v. Village of Winthrop Harbor, N.D.Ill.1997, 969 F.Supp. 1095. Civil Rights 1088(4)

Proper inquiry in § 1983 claim based on false arrest is not whether person arrested actually committed offense, but whether arresting officer had probable cause to believe that he had. Lemons v. Lewis, D.Kan.1997, 969 F.Supp. 657. Civil Rights 1088(4)

Arrestee pleaded constitutional violation in his § 1983 action by alleging that officers entered his residence, searched premises, seized his property, and arrested him, all without probable cause, and that officers used excessive force. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 877. Civil Rights 1395(6)

Officer is not permitted to retaliate against suspect for invoking his Fifth Amendment rights by refusing to conduct proper investigation before making arrest. Spiegel v. Cortese, N.D.Ill.1997, 966 F.Supp. 684. Arrest 63.1

Section 1983 claims for false arrest and false imprisonment require that plaintiff demonstrate lack of probable cause to make initial arrest. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. Civil Rights 1037; Civil Rights 1088(4)

Arrestee who was acquitted of rape charges was not denied due process, for purposes of his civil rights claims against prosecutors and arresting officers, where officers obtained arrest warrant and judge found there was probable cause to submit case to grand jury. Jackson v. Jackson County, Miss., S.D.Miss.1995, 956 F.Supp. 1294, affirmed 95 F.3d 47. Arrest 65; Constitutional Law 257.5; Constitutional Law 262

Police officer's judgment as to probable cause to justify arrest, unlike a criminal complaint, may be based on hearsay evidence, upon suspicious circumstances, and upon probabilities. Velaire v. City of Schenectady, N.Y., N.D.N.Y.1994, 862 F.Supp. 774. Arrest 63.4(7.1)

If police officer arrests someone with probable cause, but by mistake, there is no constitutional violation and

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officer is not liable under federal civil rights statute. Ruiz v. Herrera, S.D.N.Y.1990, 745 F.Supp. 940. Arrest 63.4(1); Civil Rights 1088(4)

Claim for false arrest or false imprisonment as an unconstitutional deprivation of civil rights under § 1983 may be established only if there was no probable cause to support plaintiff's arrest and detention. Simpson v. Saroff, S.D.N.Y.1990, 741 F.Supp. 1073. Civil Rights 1088(4)

Police officer can be liable in civil rights action based on alleged wrongful arrest only if there clearly was no probable cause at time arrest was made. Marx v. Gumbinner, S.D.Fla.1989, 716 F.Supp. 1434, affirmed 905 F.2d 1503. Civil Rights 1088(4)

Arrestee will not prevail in § 1983 action for claims arising out of arrest supported by probable cause. Terrones v. Allen, D.Colo.1988, 680 F.Supp. 1483. Civil Rights 1088(4)

Question of whether individual has been unlawfully detained and arrested centers on whether probable cause to arrest exists, and if presence of probable cause is merely questionable at time of warrantless arrest, police officers should not be found liable under § 1983; rather, liability should only result when there clearly was no probable cause at time of arrest. LaBate v. Butts, E.D.Mich.1987, 673 F.Supp. 887, affirmed 865 F.2d 258. Civil Rights 1088(4)

If arrest challenged in § 1983 case is effected for which police officer had reasonable cause to arrest on any related statutory provision, acquittal of offense charged does not vitiate probable cause for arrest. Hall v. St. Helena Parish Sheriff's Dept., M.D.La.1987, 668 F.Supp. 535, affirmed 862 F.2d 872. Civil Rights 1088(4)

By virtue of its incorporation into the Fourteenth Amendment, the Fourth Amendment requires the states to provide a fair and reliable determination of probable cause as a precondition to any significant pretrial restraint of liberty; therefore, an arrest will be actionable under § 1983 if it is made without probable cause. Keller v. U.S., S.D.Cal.1987, 667 F.Supp. 1351, affirmed 930 F.2d 920. Civil Rights 1088(4)

Complaint alleging that plaintiff was arrested without probable cause and for reasons of personal animosity based on his interracial marriage stated Section 1983 cause of action. Williams v. Tansey, E.D.Pa.1985, 610 F.Supp. 1083. Civil Rights 1088(4)

If probable cause to arrest is established, a plaintiff may not recover for a violation of civil rights arising out of the arrest even if the police had time to get an arrest warrant. Greene v. Brown, E.D.N.Y.1982, 535 F.Supp. 1096. Civil Rights 1088(4)

Arrest without probable cause to believe that accused has violated criminal statute confers right of action for deprivation of federal constitutional privileges under this section. Diamond v. Marland, S.D.Ga.1975, 395 F.Supp. 432. Civil Rights 1088(4)

Arrestees' § 1983 claim that sheriff's deputies did not have probable cause to arrest them was not barred by *Heck v. Humphrey* on ground that it attacked validity of underlying state court's pretrial probable cause determinations, where arrestees were not convicted. Miller v. Riser, C.A.5 (La.) 2003, 84 Fed.Appx. 417, 2003 WL 23021576, Unreported. Civil Rights 1088(4)

City was not liable for alleged false arrest by law enforcement officers, barring arrestee's § 1983 action against city, where officers had probable cause to support arrest. Pitiger v. City of New York, S.D.N.Y.2003, 2003 WL 22251207, Unreported. Civil Rights 1348

Unrebutted presumption of probable cause, arising from grand jury indictment of arrestee for sexual crimes,

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precluded §§ 1983 suit against officers claiming false arrest. Sepulveda v. City of New York, S.D.N.Y.2003, 2003 WL 21673626, Unreported. Civil Rights 1404

City police officer had probable cause to arrest sexual assault suspect, and thus could not be held personally liable under § 1983 for false arrest, even though suspect had protested his innocence; officer was entitled to rely on victim's complaint identifying suspect, investigation by college security officers, and his own observations. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Civil Rights 1088(4)

Existence of probable cause for arrest on state misdemeanor charge of filing false instrument, which precluded arrestee's § 1983 false arrest/malicious prosecution action against police officers, was not negated by fact that initial complaint had been filed by police officer acting as private citizen, or by fact that portion of investigation had been conducted by officer § 1983 defendant who was related by marriage to complainant; subjective motivations were irrelevant to probable cause analysis, and had to be asserted in context of equal protection claim, not false arrest claim. Middelem v. County of Suffolk, E.D.N.Y.2003, 2003 WL 145247, Unreported. Civil Rights 1088(4); Civil Rights 1088(5)

2076. ---- Probable cause in particular cases, arrest and detention, police activities

Remand to Court of Appeals was required for determination as to whether arrest of driver for impersonating an officer or obstruction of justice, in connection with driver's use of wig-wag lights on his car and providing evasive answers to police officers during traffic stop, was supported by probable cause, for purpose of driver's §§ 1983 action against officers; Court of Appeals decided that officers lacked probable cause to arrest driver for stated offense of state Privacy Act violation based upon his tape recording of traffic stop, but did not decide whether probable cause existed to support arrest on the impersonating and obstruction offenses, because such offenses were not closely related to the Privacy Act offense, and Supreme Court subsequently determined that probable cause inquiry did not depend on whether offense invoked by officer at time of arrest was closely related to facts that provided probable cause to arrest for another offense. Devenpeck v. Alford, U.S.2004, 125 S.Ct. 588, 543 U.S. 146, 160 L.Ed.2d 537, on remand 418 F.3d 1004, on remand 446 F.3d 935. Federal Courts 462

Warrantless seizure of countertop gaming machines from businesses was justified under plain view doctrine, and thus, did not violate the Fourth Amendment, for purpose of businesses' §§ 1983 claim, where police had probable cause to believe, based on prosecutor's opinion, that the machines were contraband under state law. Skokos v. Rhoades, C.A.8 (Ark.) 2006, 440 F.3d 957. Gaming 60

Police officers had probable cause to make arrest based on information provided by eyewitnesses, that arrestee had threatened them with a knife, precluding arrestee's §§ 1983 action against officers; officers received report from dispatcher that a black man in a maroon car had pulled a gun, upon arriving at scene they found arrestee's maroon car stopped in median of busy street, officers asked arrestee if he had gun, a frisk turned up a knife, and eyewitnesses stated that during a road-rage incident arrestee had brandished knife and threatened to kill them. Askew v. City of Chicago, C.A.7 (Ill.) 2006, 440 F.3d 894. Arrest 63.4(12)

City police detective who allegedly told owner of residence that he could change the locks to prevent tenant's entry, approximately three weeks before tenant was arrested for burglary for breaking into residence, did not violate tenant's Fourth Amendment rights, for purpose of tenant's §§ 1983 wrongful arrest claim, absent showing that detective was actually involved in placing tenant under arrest. U.S.C.A. Const.Amend. 4; Radvansky v. City of Olmsted Falls, C.A.6 (Ohio) 2005, 395 F.3d 291. Civil Rights 1358

Convictions in state court were conclusive proof of existence of probable cause for police officer to make arrests, and thus arrestees were unable to establish the elements necessary to maintain §§ 1983 action against officer alleging they were arrested without probable cause, even though on appeal to state circuit court the convictions were dismissed for lack of speedy trial, where convictions were not overturned upon finding of innocence

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following trial on merits. Brown v. Willey, C.A.8 (Ark.) 2004, 391 F.3d 968. Civil Rights 1088(4)

County sheriff's deputies had probable cause to arrest bail bondsmen for assault in connection with their conduct in revoking bond issued to offender, barring bondsmen's § 1983 unlawful arrest claim; although bondsmen told deputies they entered offender's home to revoke bond and handcuffed offender because she attacked them, offender told deputies that she had been assaulted, and her face and neck were red and swollen, as was consistent with claims of assault. Anderson v. Cass County, Mo., C.A.8 (Mo.) 2004, 367 F.3d 741. Arrest 63.4(7.1); Arrest 63.4(13)

Jury's conclusion that police officer's supervisor did not act affirmatively and set parade protester's arrest into motion was supported by evidence that officer did not provide supervisor with information as to why he wanted to search protester's backpack, which made it plausible that officer did not interpret supervisor's statement that he should arrest protester if protester did not consent to search as assessment of legality of arrest, and therefore protester was not entitled to new trial on § 1983 claim that supervisor violated his Fourth Amendment rights. Graves v. City of Coeur D'Alene, C.A.9 (Idaho) 2003, 339 F.3d 828. Federal Civil Procedure 2338.1

Evidence presented question for jury as to whether off-duty police officer lacked probable cause to arrest assault suspect, in suspect's § 1983 false arrest and malicious prosecution claims against officer; suspect testified that he struck officer with telephone receiver after officer pulled gun and threatened suspect with it, so that officer would know that suspect was acting in self-defense, under New York law, but officer testified that suspect struck him first and then the officer identified himself as a police officer and drew his weapon. Jocks v. Tavernier, C.A.2 (N.Y.) 2003, 316 F.3d 128. Civil Rights 1429

Arrestee's complaint alleging, inter alia, that city and police officials arrested him as fugitive without probable cause, in that no reasonable police officer could have believed he was same person as fugitive in light of his obvious mental incapacity and fact that his fingerprints and other identifying characteristics did not match those of fugitive, and that officials recklessly and with deliberate indifference failed to compare fingerprints and other characteristics, stated cause of action under § 1983 for deprivation of suspect's Fourth Amendment right to be free of arrest without probable cause. Lee v. City of Los Angeles, C.A.9 (Cal.) 2001, 250 F.3d 668. Civil Rights 1395(6)

City jailers did not violate constitutional rights of tribal members by detaining them, in accordance with cross-deputization agreements with tribe, based upon representations of tribal officers that offenses had been committed; absent any objectively apparent lack of basis for detention, jailers had no constitutional duty to question tribal officers as to their probable cause for arrest, verify validity of grounds for detention under tribal law, or conduct independent constitutional and historical analysis to determine whether tribe's assertion of jurisdiction over detainees was legitimate. Dry v. U.S., C.A.10 (Okla.) 2000, 235 F.3d 1249. Prisons 9

Police officer was entitled to rely to meaningful degree on statements by three-and-a-half-year-old sexual abuse victim in determining that probable cause existed to arrest plaintiff pre-school employee for that abuse; child's mother indicated to officer that mother and school staff were only people with access to child during two-week period covering both potential incidents of abuse, further information provided by mother suggested that plaintiff was guilty party, and, despite inconsistencies in child's statements, those statements--considered along with other supporting evidence--were sufficiently reliable and trustworthy at their core to form basis for probable cause. Rankin v. Evans, C.A.11 (Fla.) 1998, 133 F.3d 1425, certiorari denied 119 S.Ct. 67, 525 U.S. 823, 142 L.Ed.2d 52 . Arrest 63.4(7.1)

Police officer had probable cause to believe that detainee was attempting to commit suicide, or at least might injure himself if not taken to hospital, so that mental health seizure did not violate detainee's Fourth Amendment rights, though detainee appeared coherent and denied that he was attempting to commit suicide, where officer was responding to radio dispatch that detainee told mental health worker that he ingested some pills and was drinking

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alcohol in effort to commit suicide, detainee in fact was drinking alcohol and appeared intoxicated and depressed, and count of pills revealed that at least 20 were missing. Monday v. Oullette, C.A.6 (Mich.) 1997, 118 F.3d 1099. Mental Health 40

Officers had probable cause to arrest motorist at roadblock, and such seizure did not violate his civil rights, where officer received report that possibly intoxicated driver was slumped over steering wheel of vehicle parked on shoulder of interstate, motorist's appearance indicated that he had been drinking, motorist declined to answer officer's questions and drove away without explanation, motorist failed to stop when officer engaged his emergency equipment, bumped motorist's vehicle, and shot out his tires, and motorist swerved to prevent officer from passing him. Latta v. Keryte, C.A.10 (N.M.) 1997, 118 F.3d 693. Automobiles 349(6); Civil Rights 1088(4)

Police officers had probable cause to arrest murder suspect, and were not liable to suspect on unlawful arrest theory under federal civil rights statute, based on information in their possession at time of arrest, including evidence that victim knew her killer and that killer was filled with rage against her, evidence of suspect's jealousy and former romantic relationship with victim, and evidence that suspect had lied to officers regarding presence near crime scene at roughly the time murder was committed. Booker v. Ward, C.A.7 (Ill.) 1996, 94 F.3d 1052, certiorari denied 117 S.Ct. 952, 519 U.S. 1113, 136 L.Ed.2d 840. Arrest 63.4(13); Arrest 63.4(15); Civil Rights 1088(4)

Arrestee who was detained after being arrested by police officer without probable cause stated § 1983 claim against arresting officer for false imprisonment, as facts and circumstances under arresting officer's consideration demonstrated that he lacked probable cause to arrest arrestee, and arrestee was detained for five months following his false arrest without being provided opportunity to conduct lineup or otherwise prove his innocence. Ortega v. Christian, C.A.11 (Fla.) 1996, 85 F.3d 1521. Civil Rights 1088(4)

Police officers' reliance on child's story of her near-abduction, in determining that they had probable cause to arrest claimant for attempted kidnapping, was not objectively unreasonable, for purposes of claimant's § 1983 action against officers for wrongful arrest, where child gave police officers specific description of automobile, its license plate number and detailed account of incident, where claimant's automobile matched child's description of automobile used in attempted abduction, and where claimant's automobile was found in immediate vicinity where child was allegedly accosted. Brodnicki v. City of Omaha, C.A.8 (Neb.) 1996, 75 F.3d 1261, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 179, 519 U.S. 867, 136 L.Ed.2d 119. Civil Rights 1088(4)

Police officer had probable cause to arrest restaurant customer for violating Massachusetts criminal trespass statute, such that officer was not liable under § 1983 for arresting customer in violation of Fourth Amendment; officer effected arrest based on eye witness report from manager that customer had created "unwarranted disturbance" and refused to leave the premises and on representation by employee that there had been "problem" with customer in the past and reasonable person so informed could fairly conclude that the implied license extended to customer had been revoked and that her continued presence constituted criminal trespass. Alexis v. McDonald's Restaurants of Massachusetts, Inc., C.A.1 (Mass.) 1995, 67 F.3d 341, on remand 1996 WL 463675. Arrest 63.4(7.1); Civil Rights 1088(4)

Fact that police officer responding to individual's first aid call told backup officers that individual had punched her was sufficient for backup officers to have believed that probable cause existed for individual's arrest and thus, backup officers were not liable under § 1983 with respect to individual's false arrest and false imprisonment claims. Groman v. Township of Manalapan, C.A.3 (N.J.) 1995, 47 F.3d 628. Civil Rights 1088(4)

Police had probable cause for arrest based on information provided by arrestee's acquaintances, absent showing that such statements were not reasonably trustworthy information sufficient to lead prudent police officer to conclude that arrestee had committed the crime at issue; accordingly, arrestee could not recover from officers

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under § 1983. Romero v. Fay, C.A.10 (N.M.) 1995, 45 F.3d 1472. Civil Rights 1088(4)

In civil rights action involving allegations that police lacked probable cause for arrest and used excessive force during arrest, trial court erred in instructing jury that plaintiffs had to prove that defendant police officers "clearly" lacked probable cause to arrest and "clearly" used excessive force in arrest; extra language may have erroneously misled jury into believing plaintiff faced heightened burden of proof with respect to those elements of his claim and extra language was not otherwise required by law or fact. Tatro v. Kervin, C.A.1 (Mass.) 1994, 41 F.3d 9. Civil Rights 1437

Police had probable cause to arrest motorist, thus precluding motorist's recovery in civil rights action; police followed motorist for several seconds in patrol car with calibrated speedometer, police knew that motorist had been driving with suspended license, and motorist's flight and forceful resistance to arrest provided sufficient probable cause for arrest. Vukadinovich v. Zentz, C.A.7 (Ind.) 1993, 995 F.2d 750. Civil Rights 1088(4)

Reasonable police officers would have believed that probable cause existed to arrest suspect for attempted rape of 12-year-old girl and, thus, officers were entitled to qualified immunity from liability in suspect's civil rights action; reasonable police officer could have believed, based on detailed story and physical description by girl, together with corroboration by her friends and witness, that they had probable cause to arrest, even though story by girl was later found to be false. McDonnell v. Cournia, C.A.7 (Wis.) 1993, 990 F.2d 963. Civil Rights 1376(6)

Police officer had arguable probable cause to arrest pregnant motorist who drove around traffic barricade in his presence, a misdemeanor under Georgia law, and, thus, officer was entitled to qualified immunity against motorist's unlawful arrest claim. Moore v. Gwinnett County, C.A.11 (Ga.) 1992, 967 F.2d 1495, certiorari denied 113 S.Ct. 1049, 506 U.S. 1081, 122 L.Ed.2d 357. Civil Rights 1376(6)

Officer had probable cause to arrest automobile passenger after finding handgun loaded with metal-piercing bullets in automobile trunk and additional bullets on another passenger in vehicle, and thus officer was entitled to qualified immunity from passenger's false arrest/imprisonment claim; no registration of gun was produced and absent explanation to contrary, bullets could have been property of any occupant of vehicle or might have been jointly possessed; officer was not required to believe statements of individual who had already been caught with metal piercing bullets in his pocket that gun and additional bullets belonged to him. Fernandez v. Perez, C.A.7 (Ill.) 1991, 937 F.2d 368. Arrest 63.4(16); Civil Rights 1376(6)

Police officer did not arrest suspect for ethnic intimidation without probable cause and, thus, did not violate suspect's civil rights, where officer received information from 12-year-old alleged victim that suspect had been shouting racial slurs and other expletives at her, and that she was afraid he would hit her, officer heard through his brother-in-law that suspect had history of making racial insults and engaging in racial confrontations, and officer knew that bus stop which was site of alleged offense was scene of racial confrontations in past. Grimm v. Churchill, C.A.7 (Ill.) 1991, 932 F.2d 674. Civil Rights 1088(4)

Statement made by arrestee's four-year-old daughter after she was raped, that "Daddy did this to me," together with arrestee's incriminating statement and failure of polygraph examination, gave police officers probable cause to make arrest, precluding officers from being held liable in civil rights action after blood test proved that arrestee was not the rapist. Marx v. Gumbinner, C.A.11 (Fla.) 1990, 905 F.2d 1503. Civil Rights 1088(4)

Arrestee's admission to officer that she had told someone to paste sign on automobile's windshield gave officer probable cause to make warrantless arrest for misdemeanor of tampering with automobile and, thus, arrestee could not show that she had been deprived of right secured by Constitution, as required to state civil rights claim, even if misdemeanor did not occur in arresting officer's presence. Barry v. Fowler, C.A.9 (Cal.) 1990, 902 F.2d 770. Automobiles 349(2.1); Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Abortion protester could not maintain civil rights action against officers arising from her arrest where evidence established that officers had reasonable belief that she had violated defiant trespass and criminal conspiracy laws in venturing onto portion of clinic's property. Dowling v. City of Philadelphia, C.A.3 (Pa.) 1988, 855 F.2d 136, rehearing denied. Civil Rights 1420

Police had probable cause to arrest suspect for arson and, therefore, suspect was barred from maintaining action for deprivation of civil rights, where police had reasonable cause to believe at time of arrest that fire was of incendiary origin, that suspect had ownership interest in burning building that was to be sold in foreclosure sale later that day, that suspect had purchased gasoline for use other than in automobile, and that suspect had time to start fire after purchase of gasoline. Williams v. Kobel, C.A.7 (Ill.) 1986, 789 F.2d 463. Civil Rights 1088(4)

Where items legally seized from doctor's unoccupied residence included controlled substances which doctor was no longer registered to possess in state, health officers had probable cause to arrest doctor for possessing controlled substances without proper registration, notwithstanding doctor's contention that they had "ulterior motive" for arrest, and thus, arresting officers could not be held liable for false arrest under this section or Gen.Laws 1956, § 12-7-5. Mann v. Cannon, C.A.1 (R.I.) 1984, 731 F.2d 54. Civil Rights 1088(4); False Imprisonment 13

Fact that store customer had been taken into police custody and charged with petty theft, despite fact that no stolen merchandise was found on his person thus precluding probable cause for belief that customer was a shoplifter, was protected right which could afford basis for federal civil rights action for deprivation of rights. Duriso v. K-Mart No. 4195, Division of S. S. Kresge Co., C.A.5 (Tex.) 1977, 559 F.2d 1274. Civil Rights 1088(4)

Sheriff's deputy had probable cause to arrest father for rape of daughter based on daughter's report, and thus arrest was privileged and could not form basis for § 1983 false arrest claim, notwithstanding daughter's history of drug abuse and discovery of "to do" list written by daughter which listed framing father for abuse as one of her tasks, where daughter reported alleged rape within 24 hours of incident and physical examination was consistent with rape occurring within time frame reported by daughter. Donovan v. Briggs, W.D.N.Y.2003, 250 F.Supp.2d 242. Arrest 63.4(8); Civil Rights 1088(4)

Arresting officer had probable cause to believe that civilian employee of police department had fraudulently received overtime wages from the department, for purposes of employee's § 1983 action, in light of evidence that employee had been teaching aerobics while signed-in for overtime work in department's crime lab, that employee was required to be present at crime lab while earning overtime, that there were no supervisors on duty during overtime shifts, and that employee's supervisors were unaware that employee had a second job as an aerobics instructor. Dintino v. Echols, E.D.Pa.2003, 243 F.Supp.2d 255, affirmed 91 Fed.Appx. 783, 2004 WL 474134. Arrest 63.4(13); Civil Rights 1088(4)

Police officers lacked probable cause to arrest plaintiffs on basis of traffic violation of having improper tags, and thus were liable in plaintiffs' §§ 1983 action; it had been confirmed that the vehicle belonged to plaintiff, and nothing identified plaintiffs as being the men reported to have fled from another officer two nights earlier. Glass v. City of Philadelphia, E.D.Pa.2006, 455 F.Supp.2d 302. Automobiles 349(4)

Genuine issue of material fact as to whether county law enforcement officers were engaged in an official function when they attempted to enter arrestee's back yard, so as to have probable cause for arrest for New York offense of second-degree obstructing governmental administration when arrestee attempted to prevent that entry, precluded summary judgment on arrestee's §§ 1983 false arrest claim against officers. Houghton v. Culver, W.D.N.Y.2006, 452 F.Supp.2d 212. Federal Civil Procedure 2491.5

Jury could reasonably conclude that police officer was liable under §§ 1983 for violating sexual assault victim's mother's right to be free from arrest without legal justification in violation of her constitutional rights, since jury found officer liable for falsely arresting mother who was allegedly taken into custody while visiting victim in

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hospital, even though jury also found that officer was not liable for assault and battery against mother. David v. District of Columbia, D.D.C.2006, 436 F.Supp.2d 83. Civil Rights 1429

Municipal police officers had probable cause to believe that arrestee had committed the crime of damaging a complainant's car, and thus his arrest did not give rise to a claim under §§ 1983 for false arrest, where the officers made the arrest after receiving a complaint about an altercation between arrestee and the complainant, in which, per the complainant's, account, arrestee had hit the complainant's car with a nightstick and there was nothing to suggest that at the time the municipal police talked with the complainant prior to the arrest they had any reason to believe that the complainant was lying. Cabrera-Negron v. Municipality of Bayamon, D.Puerto Rico 2006, 419 F.Supp.2d 49. Civil Rights 1088(4)

Police detective had probable cause to arrest suspect for rape and robbery, and thus detective was not liable under § § 1983 or New York law for false arrest, even though victim did not identify suspect at lineup, there was no physical evidence tying suspect to crime, and suspect was ultimately acquitted, where victim provided detailed description of crime, eyewitness's account corroborated victim's account, and statements obtained from informants corroborated victim's description of events almost exactly and specifically named suspect as rapist. Golden v. City of New York, E.D.N.Y.2006, 418 F.Supp.2d 226. False Imprisonment 13

Genuine issues of material fact as to whether off-duty county police officer caused neighbor's arrest and prosecution for simple assault with malice and without probable cause, precluded summary judgment for off-duty officer on arrested neighbor's §§ 1983 claim against her for malicious prosecution. Payne v. DeKalb County, N.D.Ga.2004, 414 F.Supp.2d 1158. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether police officer had probable cause to place terminated employee into custody, pursuant to Connecticut statute, for purpose of psychiatric examination, after employer's security manager reported that employee had stated that he had nothing to live for if he lost his job and that employee had threatened co-workers in past, precluding summary judgment in §§ 1983 action as to whether officer subjected employee to unreasonable seizure. Saliby v. Kendzierski, D.Conn.2006, 407 F.Supp.2d 393. Federal Civil Procedure 2491.5

Probable cause existed to issue arrest warrant for sexual assault, and thus arresting officer enjoyed qualified immunity in arrestee's §§ 1983 unreasonable seizure action, even though officer when applying for warrant had omitted from application telephone call logs and other records furnished by arrestee's friend, purportedly indicating alleged victim's history of erratic behavior and demands for hush money from friend and arrestee; even viewed in light most favorable to arrestee, omitted information was not sufficiently exculpatory to outweigh alleged victim's positive identification, accuracy of which was not in question since alleged victim knew arrestee. Russo v. Voorhees Tp., D.N.J.2005, 403 F.Supp.2d 352. Criminal Law 213

Probable cause for assault arrest existed, precluding arrestee's subsequent §§ 1983 malicious prosecution action against arresting and investigating officers; officers had received call to assist ambulance with combative diabetic male, individual in question was yelling when officers approached, and, according to both officers and eyewitnesses, individual lunged at one officer. Imbergamo v. Castaldi, M.D.Pa.2005, 392 F.Supp.2d 686. Civil Rights 1088(5)

Police officers had probable cause to arrest arrestee for repeatedly calling and harassing her former employer and employer's wife, and therefore, confinement of arrestee was privileged, precluding arrestee's false arrest claim under New York law; former employer complained of the harassment to police and alleged that arrestee had recently been fired, and officers had no reason to doubt former employer. Breitbard v. Mitchell, E.D.N.Y.2005, 390 F.Supp.2d 237. False Imprisonment 13

Police officer had probable cause to arrest driver for violation of California's safety belt statute, upon observing

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driver wearing his seat belt under his left arm and not across his upper torso, barring driver's §§ 1983 unlawful arrest claim, where driver requested to be taken before a magistrate instead of signing the promise to appear portion of citation issued by officer. Hupp v. City of Walnut Creek, N.D.Cal.2005, 389 F.Supp.2d 1229. Automobiles 349(15)

Police detective who arrested rape suspect at hospital, based upon alleged victim's in-person identification of suspect and her description of alleged rape, had probable cause to make arrest, and thus could not be held liable under §§ 1983 for false arrest and false imprisonment after charges were dismissed for lack of evidence; apart from victim's identification and description, detective relied on collective information from other police personnel concerning pertinent events. Smith v. City of New York, S.D.N.Y.2005, 388 F.Supp.2d 179. Civil Rights 1088(4)

Under New York law, uniformed police officers, who came on the scene in response to a 911 call placed by mall security guard and who were told by off-duty police officer moonlighting as security guard that a crime had been committed, had probable cause to arrest shopper for his part in an altercation with security guard; thus, city was not liable on §§ 1983 false arrest claim. Wahhab v. City of New York, S.D.N.Y.2005, 386 F.Supp.2d 277. Civil Rights 1088(4)

Absent circumstances that raised doubts as to former wife's veracity, her sworn accusation that former husband violated temporary order of protection provided officers with probable cause to arrest former husband, and therefore officers could not be held liable for false arrest and/or false imprisonment, or malicious prosecution under Section 1983 or New York law. Coyle v. Coyle, E.D.N.Y.2005, 354 F.Supp.2d 207, affirmed 153 Fed.Appx. 10, 2005 WL 2812255. Civil Rights 1088(4); Civil Rights 1088(5); False Imprisonment 13; Malicious Prosecution 18(5)

Probable cause existed to arrest suspect for commission of three robberies during course of one evening, precluding claims of false arrest, or malicious prosecution under Connecticut law; arrest was made pursuant to warrant, creating presumption of probable cause, there was witness and forensic evidence linking suspect to those robberies, and conclusory statements that police had coerced inculpating evidence from witnesses was insufficient rebuttal. Vines v. Callahan, D.Conn.2005, 352 F.Supp.2d 211. False Imprisonment 13; Malicious Prosecution 18(5)

Genuine issues of material fact existed as to whether as to whether police officers procured or initiated arrestee's prosecution on the basis of false information, whether probable cause was lacking for the prosecution initiated against arrestee, and as to existence of actual malice, precluding summary judgment in favor of officers on malicious prosecution claims brought under federal and New York law. Webster v. City of New York, S.D.N.Y.2004, 333 F.Supp.2d 184. Federal Civil Procedure 2515

Arrestee's prayer for judgment continued (PJC) did not indicate that he was innocent of charge against him, i.e., delaying a police officer in the performance of his duties, as would support arrestee's Fourth Amendment unlawful arrest claim alleging that officer obtained a warrant for his arrest without probable cause; PJC was issued after judge found arrestee guilty, at conclusion of trial in which both parties presented arguments and testimonial evidence. Elkins v. Broome, M.D.N.C.2004, 328 F.Supp.2d 596, affirmed 122 Fed.Appx. 40, 2005 WL 361761. Civil Rights 1088(4)

Police officer had probable cause under Indiana law to arrest motorist for driving while intoxicated, and for resisting arrest, precluding §§ 1983 claim that arrest violated motorist's Fourth and Fourteenth Amendment rights; motorist was making unsuccessful effort to parallel park in narrow space, and drove across curb quickly in order to flee when he saw police car. Tilson v. City of Elkhart, Ind., N.D.Ind.2003, 317 F.Supp.2d 861, adhered to on reconsideration 2003 WL 23509313, affirmed 96 Fed.Appx. 413, 2004 WL 901545. Arrest 63.4(15); Automobiles 349(6)

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There was probable cause to arrest motorist for driving with a suspended license, thus defeating his false arrest claim, where city department of motor vehicles' computer records reflected that the motorist's license had been suspended for failure to pay his fine, and there was no evidence that the information on the computer was false or inapplicable. Evans v. City of New York, S.D.N.Y.2004, 308 F.Supp.2d 316, affirmed 123 Fed.Appx. 433, 2005 WL 348377. Automobiles 349(4); False Imprisonment 13

Police had probable cause to make arrest, thus precluding arrestee's § 1983 causes of action for wrongful arrest and false imprisonment; officers had received a 911 call stating that domestic battery was occurring at the home of arrestee's girlfriend, and girlfriend admitted that arrestee hit her and that swelling and redness were visible on her face when the officers entered the home. Saunders v. City of Chicago, N.D.Ill.2004, 299 F.Supp.2d 869. Civil Rights 1088(4)

Police officer had probable cause to arrest credit card holder for making false report, under Connecticut law, precluding false arrest claim under § 1983, when holder reported that merchant submitted $6,000 charge to credit card issuer on $6.90 purchase and charge was denied and not verified by issuer, even though holder claimed his grant of permission to police officer to contact issuer negated statutory requirement that holder know information he was transmitting was false. Perrelli v. Burke, D.Conn.2003, 297 F.Supp.2d 441. Civil Rights 1088(4)

Officer had probable cause to arrest motorist believed to be the operator of vehicle that fled scene of three-car accident; although neither eyewitness was able to positively identify motorist in photo line-up, prior to preparing the probable cause affidavit, officer thoroughly investigated the accident by interviewing and taking written and signed statements from eyewitnesses who informed him that the woman driving the vehicle that started the chain reaction strongly resembled motorist's physical description, one eyewitness provided description of and registration number of the car that fled the scene, and the arrest warrant was issued by a neutral magistrate judge. Weinstock v. Wilk, D.Conn.2003, 296 F.Supp.2d 241, adhered to on reconsideration 2004 WL 367618. Automobiles 349(2.1)

Police had probable cause to arrest house occupant for disorderly conduct, under New Jersey law, precluding false arrest claim under § 1983, when they approached him as he chopped wood, to question him regarding neighbors allegation of bizarre behavior, and he responded by shedding shirt, assuming aggressive position and shouted that police were to get off his property. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Arrest 63.4(15)

Police had probable cause to arrest house resident for simple assault, precluding false arrest claim under § 1983, when he scuffled with police officers attempting to arrest him for disorderly conduct. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Arrest 63.4(15)

Arrestee failed to demonstrate that the insertion of omissions or the excision of assertions made with reckless disregard for the truth in affidavits supporting an arrest warrant materially affected the existence of probable cause, thus defeating the arrestee's § 1983 claim of unlawful arrest and seizure; "corrected" affidavits would have indicated that officers were contacted with information that a confidential informant could purchase cocaine from the arrestee, that the informant had previously provided confirmed information about drug dealers, and that he entered a building with money and exited with cocaine, which he said was given to him by the arrestee. Wychunas v. O'Toole, M.D.Pa.2003, 252 F.Supp.2d 135. Civil Rights 1088(4)

Arrestee's complaint contained sufficient factual allegations to undermine police defendants' assertion of unambiguous probable cause, and complaint thus stated claims for false arrest and malicious prosecution under New York law and § 1983; complaint alleged that on each of four arrest occasions arrests were grounded entirely upon accusations of fellow tenants in his apartment building, made under circumstances calling into question credibility of accusers. Bullard v. City of New York, S.D.N.Y.2003, 240 F.Supp.2d 292. Civil Rights 1395(6); False Imprisonment 20(1); Malicious Prosecution 49

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Fact that claimant was arrested and transported to county jail on charges of battery and resisting police officer did not establish deprivation of liberty, as required to support malicious prosecution claim under § 1983, even if probable cause was lacking for such charges; claimant was also arrested for resisting arrest, so that arrest and transportation would have occurred regardless of additional two charges. DuFour-Dowell v. Cogger, N.D.Ill.1997, 969 F.Supp. 1107, motion to amend denied 980 F.Supp. 955. Civil Rights 1088(5)

Arrest of individual by officers who had responded to call of domestic dispute was supported by probable cause, and thus did not give rise to § 1983 claim based on wrongful arrest; officer's observations of both individual's assault of officer, and his violent behavior earlier in evening, created probable cause for arrest. Gaschler v. Scott County, Kan., D.Kan.1997, 963 F.Supp. 971, affirmed 141 F.3d 1184. Arrest 63.4(15)

Evidence raised genuine issue of material fact as to whether police officers had probable cause to arrest based on violation of order of protection requiring arrestee to turn loft over to his form wife at particular time, precluding summary judgment in arrestee's civil rights action based on alleged wrongful arrest; although arrestee was present at loft beyond time permitted by order of protection, evidence conflicted as to whether arrestee was willing to leave loft, and arrestee was present only a short time after time established by order of protection expired. Brawer v. Carter, S.D.N.Y.1996, 937 F.Supp. 1071. Federal Civil Procedure 2491.5

Police officers had probable cause to arrest § 1983 plaintiff for committing assault with firearm against officer; evidence showed that police officer was in plaintiff's used car lot engaging in surveillance, that plaintiff, holding pistol, approached officer, and that plaintiff failed to drop pistol even after officer ordered him to do so, plaintiff read officer's badge, and uniformed officers arrived. Kelly v. Bencheck, E.D.N.C.1996, 921 F.Supp. 1465, affirmed 107 F.3d 866. Arrest 63.3

Evidence in § 1983 action for application of unreasonable force and malicious prosecution supported conclusions that police officer acted with malice and lacked probable cause to file police report stating that arrestee assaulted police officer and resisted arrest; arrestee denied touching officer, officer testified that arrestee turned around, punched him, and ripped his jacket, and the competing scenarios required jury to make credibility assessments. Lee v. Edwards, D.Conn.1995, 906 F.Supp. 94, vacated 101 F.3d 805. Civil Rights 1420

Police officers had knowledge or reasonably trustworthy information sufficient to warrant person of reasonable caution in belief that offense had been committed by arrestee, and, thus, officers had probable cause to make arrest and to take arrestee to barracks at which alcosensor test and drug test could be administered, and officers could not be held liable to arrestee under federal civil rights statute, where arrestee had been driving with high beams, and officers' assertions concerning arrestee's inability to perform some field sobriety tests were necessarily undisputed. Haussman v. Fergus, S.D.N.Y.1995, 894 F.Supp. 142. Civil Rights 1088(4)

Police had probable cause to arrest suspect for murder, and suspect thus did not have § 1983 claim for false arrest; police had witnesses' identification of suspect available to them at time of arrest, and fact that police were informed by suspect's father two hours after arrest that father would bring witnesses to exonerate suspect did not eliminate probable cause that existed at time of arrest. Dukes v. City of New York, S.D.N.Y.1995, 879 F.Supp. 335. Arrest 63.4(12)

Police had probable cause for warrantless arrest for attempted abduction based on facts and circumstances within officers' knowledge at time of arrest despite inconsistencies in complainant's description and allegedly suggestive nature of "showup;" nine-year-old complainant's description was generally consistent with evidence found by police including license plate number, color and location of arrestee's car, property seized in car included sunglasses like those described by complainant, complainant positively identified arrestee during "showup" while in his front yard, and arrestee did not have corroborating alibi at time of his arrest. Brodnicki v. City of Omaha, Neb., D.Neb.1995, 874 F.Supp. 1006, affirmed 75 F.3d 1261, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 179, 519 U.S. 867, 136 L.Ed.2d 119. Arrest 63.4(12)

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42 U.S.C.A. § 1983

Allegedly negligent acts of deputy sheriff in pursuing suspect in high-speed chase which resulted in accident in which pedestrian was killed did not shock judicial conscience, and did not give rise to action under federal civil rights statute on part of pedestrian's personal representative; deputy had sound basis for probable cause that suspect had committed felony and was charged with enforcing law, and it was not reasonable to assume that deputy could have known that suspect would cause fatal accident. Carroll v. Greenville County Sheriff's Dept., D.S.C.1994, 871 F.Supp. 844. Civil Rights 1088(1)

Arrestee could not recover under § 1983 from police officer for warrantless arrest which was based on probable cause consisting of facts that officer's police radar indicated that arrestee's vehicle was traveling at 50 miles per hour in 35-mile per hour zone, that, when stopped, arrestee refused to produce driver's license, and that arrestee eventually stated that he did not have a driver's license and then drove away. Schilling v. Swick, W.D.Mich.1994, 868 F.Supp. 904. Civil Rights 1088(4)

Police officer acted in objectively reasonable manner in stopping motorist for traffic violation and subsequently arresting her for drunk driving, and officer was entitled to qualified immunity, notwithstanding motorist's contention that officer's action in telling her that she had passed field sobriety tests and then placing her under arrest demonstrated malicious intent to cause deprivation of constitutional right to be free from unreasonable arrest and seizure; officer had probable cause both for stop and for arrest, and possibility that motorist's behavior was result of medication she was taking did not alter fact that motorist's conduct was also consistent with intoxication. Wynn v. Morgan, E.D.Tenn.1994, 861 F.Supp. 622. Civil Rights 1376(6)

Allegations that police officer arrested plaintiff for soliciting prostitution without ascertaining purpose of plaintiff's stop of car stated claim under § 1983 that police officer deprived plaintiff of rights by arresting plaintiff without probable cause, even though magic words "objectively reasonable" were not used. Borges v. City of West Palm Beach, S.D.Fla.1993, 858 F.Supp. 174. Civil Rights 1395(6)

Police officer had probable cause to arrest plaintiffs, members of church who disrupted service, on charge of aggravated disorderly conduct based upon information supplied to him by church members as to events which took place on morning of his investigation, even if police officer did not make any further investigation beyond talking with church members nor ask plaintiffs for their side of story before making arrest. Hahn v. County of Otsego, N.D.N.Y.1993, 820 F.Supp. 54, affirmed 52 F.3d 310. Arrest 63.4(6)

City police officers employed by community college district board of trustees as college security officers had probable cause to arrest college student for committing battery on officer under Illinois law so as to provide absolute defense to student's § 1983 claims against officers for malicious prosecution, false arrest, and false imprisonment in alleged deprivation of student's First, Fourth, and Fourteenth Amendments rights, despite dispute as to whether officer identified himself as police officer and placed student under arrest at beginning of incident; student struck officer in chest with at least soft blow. Myatt v. City of Chicago, N.D.Ill.1992, 816 F.Supp. 1259. Civil Rights 1088(4)

Kansas police officer had probable cause to arrest complainant's former business partners for making terroristic threats and was thus qualifiedly immune from liability in his individual capacity for false arrest, even though complaints subsequently proved false; complainant had detailed telephone calls in which former partners threatened to "kill" and "gut" him and explained motive for their making such threats, and arresting officer also reasonably relied upon statement of another officer corroborating complainant's statements. Harris v. Evans, D.Kan.1992, 795 F.Supp. 1060. Arrest 63.4(8); Arrest 63.4(11); Civil Rights 1376(6)

Although police officers did not consider facts indicating that arrestee lacked mens rea, it was objectively reasonable for them to believe that they had probable cause to arrest him for sodomy based on the fact that he was in the same room in which his roommate assaulted and raped the complaining witness and the fact that he admitted to participating in nonconsensual deviate sexual acts with complaining witness, and they were entitled to qualified

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immunity. Cox v. County of Suffolk, E.D.N.Y.1991, 780 F.Supp. 103. Civil Rights 1376(6)

Arrestee had no civil rights claim against arresting officers for unlawful arrest, illegal seizure of his person or illegal detention because officers had probable cause to arrest him for assaulting police officer and resisting arrest; not only did arrestee resist authority of police officers who had valid warrant for his arrest in their possession, but he also struck officer in the nose as he was attempting to escape from his custody. Valenti v. Sheeler, E.D.Pa.1991, 765 F.Supp. 227. Civil Rights 1088(4)

Police had probable cause to arrest a pedestrian following an altercation with the driver, after they were summoned to altercation site by driver; driver identified pedestrian as assailant, pedestrian was in the immediate vicinity, officers observed dent in car door and saw driver's swollen lip, which corroborated complaint that pedestrian had punched driver and kicked car. Kruppenbacher v. Mazzeo, N.D.N.Y.1990, 744 F.Supp. 402. Arrest 63.4(12); Arrest 63.4(13)

State trooper had no reasonable basis for believing that motorist had committed crime of assault with intent to kill with which trooper charged him, and, thus, trooper was liable in civil rights action for depriving motorist of Fourth Amendment right to be free from unlawful arrest; trooper testified on several occasions he did not believe motorist intended to do any harm, much less kill him, and facts did not reasonably support intent to kill. Moody v. Ferguson, D.S.C.1989, 732 F.Supp. 627. Civil Rights 1088(4)

City officials had probable cause to arrest city employee who allegedly used city computer facilities for his personal business without authorization precluding officials from being held liable in employee's civil rights action arising after New York trial court dismissed theft of services charges on grounds that computers of sort used by employee were not "business" equipment subject to criminal use under New York law. Weg v. Macchiarola, S.D.N.Y.1990, 729 F.Supp. 328. Civil Rights 1088(4)

Fact that arrestee was driving without valid license when stopped by officer supplied probable cause for his arrest and precluded recovery in civil rights action for unlawful arrest. Parker v. Strong, W.D.Okla.1989, 717 F.Supp. 767. Automobiles 349(4); Civil Rights 1088(4)

Grocery store owner's civil rights were not violated when police officers searched his person and arrested him following discovery of ledger book containing lottery numbers during search of his business for evidence of numbers operation conducted pursuant to search warrant where officers had had probable cause to search and arrest owner, notwithstanding fact that search of owner's person was not authorized in search warrant. Washington v. District of Columbia, D.D.C.1988, 685 F.Supp. 264. Civil Rights 1088(4)

Plaintiff's allegations, that although a state investigator may have had probable cause to arrest a person with his name, there was no probable cause to arrest him, were insufficient to state a cause of action under § 1983; although the investigator may have been negligent in identifying the suspect named in the valid arrest warrant, such negligence was not a violation of the Fourth Amendment. Keller v. U.S., S.D.Cal.1987, 667 F.Supp. 1351, affirmed 930 F.2d 920. Civil Rights 1395(6)

County sheriff and deputies had probable cause to arrest individual for criminal trespass where individual refused to leave residence one week after date she was ordered to do so by state court in connection with divorce proceeding and forcible entry and detainer under Illinois law was unavailable because trial court in divorce proceeding retains jurisdiction to enforce its decree; thus, individual could not recover under 42 U.S.C.A. § 1983 from county sheriff and deputies in action arising out of arrest. Thornton v. Wahl, N.D.Ill.1985, 618 F.Supp. 1043, affirmed 787 F.2d 1151, certiorari denied 107 S.Ct. 181, 479 U.S. 851, 93 L.Ed.2d 116. Civil Rights 1088(4)

Where lessee of automobile failed to return automobile within 30 days of proper demand for its return by lessor, and lessor arranged for preparation of a theft report, which was subsequently assigned to officer, facts known to

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officer warranted a prudent person in believing that lessee violated S.H.A.Ill. ch. 38 ¶ 16-1.1, and thus there existed probable cause for lessee's arrest, and no action under this section lay against arresting officer or lessor. Anderson v. Continental Illinois Nat. Bank and Trust Co. of Chicago, N.D.Ill.1984, 577 F.Supp. 872. Civil Rights 1088(4)

Arrest of plaintiff by police officer without a warrant did not violate plaintiff's constitutional rights under color of state law and violation of this section where at time he arrested plaintiff, officer knew that a controlled substance had been found in a residence owned by plaintiff, there were indications that plaintiff either lived in the residence or spent enough time there to have knowledge of the fact that marijuana was present, plaintiff admitted his ownership of the property, and state law forbade possession of marijuana and intentional maintenance of a dwelling frequented by users of controlled substances or used for manufacturing, keeping or delivering such substances, since officer had reasonable grounds for his belief that a crime had been committed and that plaintiff was guilty of the crime, and thus probable cause existed for plaintiff's arrest. Johnson v. Petersen, W.D.Wis.1983, 563 F.Supp. 672. Civil Rights 1088(4)

Sufficient evidence supported jury's conclusion that police officers lacked probable cause to arrest plaintiff, in plaintiff's §§ 1983 action against officers alleging wrongful arrest without probable cause; informant was taken into custody after trying to commit suicide and witnesses described him as drunk, sobbing, rambling, and scared, it was in this state when informant allegedly gave statement inculpating plaintiff and according to informant the following day he had to be coached and intimidated into again inculpating plaintiff. Scribner v. Dillard, C.A.5 (Miss.) 2005, 141 Fed.Appx. 240, 2005 WL 1199567, Unreported. Civil Rights 1420

Existence of probable cause to arrest, established by arresting officer's hearing suspect tell store clerk that suspect had had too much to drink, observing suspect swerve over road lines while driving, smelling alcohol on suspect's breath, and administering field sobriety test which suspect failed, precluded arrestee's §§1983 action against officer alleging malicious prosecution and unreasonable search incident to arrest. Joseph v. West Manheim Police Dept., C.A.3 (Pa.) 2005, 131 Fed.Appx. 833, 2005 WL 1164207, Unreported, certiorari denied 126 S.Ct. 1624, 164 L.Ed.2d 354, rehearing denied 126 S.Ct. 2376. Automobiles 349(6)

There was probable cause to arrest videographer for disorderly conduct, under New York law, as he attempted to pass through door of courthouse on way to film court proceeding, precluding §§ 1983 claim of false arrest in violation of Fourth Amendment, and false arrest under New York law; videographer was involved in struggle with guards, causing inconvenience or annoyance to public trying to enter or leave courthouse, and his conduct was either knowing or reckless. Posr v. Killackey, S.D.N.Y.2003, 2003 WL 22962191, Unreported. Civil Rights 1088(4); False Imprisonment 13

Citizen failed to state claim in civil rights action that police officer falsely arrested him, where citizen affirmatively alleged in his complaint that he was arrested on allegations of person who claimed to be victim of assault, and citizen did not allege any facts suggesting that putative victim should have appeared unreliable to reasonable police officer; although citizen asserted that putative victim's statement to police was false at time of incident, once putative victim complained to police about assault, officer had probable cause to arrest citizen, and he was not required to investigate further. Daniels v. City of New York, S.D.N.Y.2003, 2003 WL 22510379, Unreported. Civil Rights 1395(6)

State police investigator had probable cause to arrest suspects thought to have attempted to break into a vehicle for purpose of theft, and thus, qualified immunity precluded imposition of liability on the investigator in the suspects' § 1983 suit for false imprisonment; facts available to the investigator immediately before the arrest included eyewitness statements, the vehicle's damaged condition, and the unavailability of the vehicle's owner to provide further information. Benjamin v. Nuzzo, S.D.N.Y.2003, 2003 WL 22176001, Unreported. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police officers had probable cause to arrest citizen, thus citizen's claim of false arrest under § 1983 against officers failed; police were called to scene because of a possible struggle at address, once police arrived at scene they were directed to back apartment by an upstairs home-dweller, providing further evidence of criminal activity, and officers saw an individual with his hands bound and a pillowcase on his head. Henry v. City of New York, S.D.N.Y.2003, 2003 WL 22077469, Unreported. Civil Rights 1088(4)

Officer had probable cause to believe, under New York law, that tenants had committed petit theft and that one tenant's mother had committed criminal possession of stolen property in the fifth degree, precluding officer's liability for false arrest, false imprisonment, and malicious prosecution under § 1983, when officer received landlady's report that refrigerator was missing from house after tenants vacated premises, landlady denied giving tenants permission to remove refrigerator from house, officer learned from tenant's brother that tenants had given refrigerator to mother, and mother initially denied knowledge of refrigerator's whereabouts, but subsequently admitted that she had had it in her possession. Ingersoll ex rel. Estate of Ingersoll v. LaPlante, C.A.2 (N.Y.) 2003, 76 Fed.Appx. 350, 2003 WL 21949752, Unreported. Civil Rights 1088(4); Civil Rights 1088(5)

Police had probable cause to arrest lawyer for aggravated harassment in the second degree under New York law, so as to provide defense to lawyer's § 1983 claims of false arrest and malicious prosecution, where complainant told the police about numerous threatening phone calls and other communications made by the lawyer to the complainant, police detective followed up on the initial complaint by contacting complainant again and reconfirming his initial accusations, and there was no information that should have alerted the police to any possible malfeasance on the part of complainant sufficient to create a demonstrable ring of untruth to strip the circumstances of probable cause to arrest and require further investigation into complainant's veracity. Nazaire v. City of New York, E.D.N.Y.2003, 2003 WL 21738607, Unreported. Arrest 63.4(8); Civil Rights 1088(5)

Arrestee, who was arrested after faxing pictures that allegedly had been altered by superimposing faces of famous couple on bodies of nude models, failed to establish requisite lack of probable cause to arrest and prosecute arrestee for harassment, and thus, arrestee's civil rights claim that was based on his allegedly false arrest had to fail, where probable cause was established by the many complaints lodged against arrestee for allegedly faxing nude photographs, as well as by arrestee's previous history of harassment of famous couple. Jones v. Trump, C.A.2 (N.Y.) 2003, 71 Fed.Appx. 873, 2003 WL 21511770, Unreported. Civil Rights 1088(4)

Reasonable officer investigating accident in 2001 would not have believed, in context of qualified immunity analysis in § 1983 lawsuit under Fourth Amendment, that it was lawful to arrest citizen under Pennsylvania law for driving under influence (DUI) on observation that citizen was walking toward scene of accident with limp but otherwise unimpeded, he had no odor of alcohol about him, it was too dark to see that person's eyes, and that person merely confirmed that he was involved in accident. Ankele v. Hambrick, E.D.Pa.2003, 2003 WL 21223821, Unreported, affirmed 136 Fed.Appx. 551, 2005 WL 1532436. Civil Rights 1376(6)

Police officers had probable cause to arrest individual who was blocking subway entry gate and had not paid his fare, on basis that he had outstanding arrest warrant and was in possession of marijuana, and thus arrestee could not maintain false arrest claim under § 1983 and state law; police issued summons for subway infraction, consequently ran warrant search, discovered outstanding arrest warrant, which they arrested individual on, and then during search incident to arrest, police discovered marijuana. Nance v. New York City Police Dept. ex rel. McKay Chung, E.D.N.Y.2003, 2003 WL 1955164, Unreported. Arrest 63.4(16); Arrest 65; False Imprisonment 13

Campus security officers had probable cause to detain college student accused of sexually assaulting classmate, and thus could not be held liable for false arrest under § 1983; officers' reliance on victim complaint was justified, even though student claimed to be innocent. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Probable cause existed to arrest and charge school bus driver with driving while intoxicated (DWI) and endangering the welfare of a child (EWC) and to recharge driver with reckless driving, for purposes of driver's § 1983 false arrest and false imprisonment claims against town; driver failed four field sobriety tests and exhibited coordination problems and police officer and civilian witness observed driver driving erratically, while a child was passenger on the bus. Otero v. Town of Southampton, C.A.2 (N.Y.) 2003, 59 Fed.Appx. 409, 2003 WL 1025795, Unreported. Arrest 63.4(15); Automobiles 349(6); Civil Rights 1088(4)

City police officer had probable cause to arrest sexual assault suspect, and thus could not be held personally liable under § 1983 for false arrest, even though suspect had protested his innocence; officer was entitled to rely on victim's complaint identifying suspect, investigation by college security officers, and his own observations. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 715749, Unreported, opinion corrected and superseded 2003 WL 1809471. Civil Rights 1088(4)

Probable cause existed for prosecution of indicted sexual assault defendant, despite his protestations of innocence, and thus arresting officer could not be held personally liable under § 1983 for malicious prosecution, absent showing that indictment had been obtained in bad faith. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 715749, Unreported, opinion corrected and superseded 2003 WL 1809471. Civil Rights 1088(5)

Campus security officers had probable cause to detain college student accused of sexually assaulting classmate, and thus could not be held liable for false arrest under § 1983; officers' reliance on victim complaint was justified, even though student claimed to be innocent. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 715749, Unreported, opinion corrected and superseded 2003 WL 1809471. Civil Rights 1088(4)

Probable cause existed for arrest of realtor on state misdemeanor charge of filing of false instrument, precluding realtor's § 1983 action against county police officers for false arrest and malicious prosecution; affidavits filed by realtor in connection with building permits were undisputedly false in material respect, circumstances indicated that realtor had procured affidavits on behalf of owner to facilitate issuance of permits without having to obtain zoning variance, and circumstances also indicated that realtor solicited affidavits knowing of their false statements. Middelem v. County of Suffolk, E.D.N.Y.2003, 2003 WL 145247, Unreported. Civil Rights 1088(4); Civil Rights 1088(5)

Police officer had probable cause to arrest apparent participant in residential apartment building altercation for assault, precluding claims of false arrest and imprisonment under federal and New York law; victim, who appeared credible, informed officer that participant had beaten him up, neighbors corroborated claim, and participant's appearance, bloodied and with broken glasses, belied his denial of involvement. Rowe v. City of Rochester, W.D.N.Y.2002, 2002 WL 31974537, Unreported. Civil Rights 1088(4); False Imprisonment 13

Police officers had probable cause to arrest participant in altercation between neighbors, precluding false arrest claim under § 1983, based upon statement of neighbor that participant had cracked windshield of her vehicle, and inspection of vehicle that revealed crack. Hughes v. Shestakov, E.D.Pa.2002, 2002 WL 1742666, Unreported, affirmed 76 Fed.Appx. 450, 2003 WL 22234866. Civil Rights 1088(4)

2077. ---- Warrant, arrest and detention, police activities

Complaint filed by plaintiff who was arrested pursuant to valid warrant and detained in jail for three days despite his protests of mistaken identity failed to allege cause of action against county sheriff under civil rights statute affording liability for deprivation of rights under color of law, since plaintiff's detention was pursuant to a warrant conforming to constitutional requirements and thus did not amount to a deprivation of liberty without due process of law. Baker v. McCollan, U.S.Tex.1979, 99 S.Ct. 2689, 443 U.S. 137, 61 L.Ed.2d 433, on remand 601 F.2d 903

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42 U.S.C.A. § 1983

. Civil Rights 1395(6)

Arresting officers did not violate arrestee's rights by taking him into custody on an outstanding warrant and handing him over at the lockup for detention, in §§ 1983 action related to arrestee's suicide. Bradich ex rel. Estate of Bradich v. City of Chicago, C.A.7 (Ill.) 2005, 413 F.3d 688. Civil Rights 1088(4)

As sheriff committed no Fourth Amendment violation when he presented arrest warrant affidavit to judge, county was not liable in arrestee's § 1983 action based on arrest. Taylor v. Meacham, C.A.10 (Utah) 1996, 82 F.3d 1556, certiorari denied 117 S.Ct. 186, 519 U.S. 871, 136 L.Ed.2d 125. Civil Rights 1348

Fact that jail visitor told deputies who had learned of outstanding arrest warrants against her on bad check charges that she had reported checks in question as stolen and forged did not establish that officers violated clearly established right in executing warrants, which were facially valid and supported by probable cause; officers did not have duty to investigate visitor's claim of innocence. Pickens v. Hollowell, C.A.11 (Ga.) 1995, 59 F.3d 1203. Civil Rights 1376(6)

Arrestee failed to establish that police officers violated arrestee's civil rights by manufacturing evidence to obtain arrest warrant, absent presentation of any evidence beyond mere conclusionary allegation that arrestee's thumbprint was obtained during questioning in police station rather than from crime scene. Booker v. Koonce, C.A.5 (Tex.) 1993, 2 F.3d 114. Civil Rights 1420

In order to prevail in his civil rights action against undercover narcotics agent on his unreasonable seizure claim predicated on challenge to affidavits of probable cause used to secure warrants for his arrest, arrestee was required to show that agent, who was maker of affidavit, either stated deliberate falsehood or acted with reckless disregard for truth; proof of negligence or innocent mistake was insufficient. Lippay v. Christos, C.A.3 (Pa.) 1993, 996 F.2d 1490. Civil Rights 1088(4)

Deputy sheriffs did not violate due process when they made arrest pursuant to bench warrant that had been recalled, and could not be held liable to arrestee in civil rights action; although arrestee allegedly alerted deputies that charges against her had been dropped, warrant was facially valid, and mistake in making arrest was inadvertent. Mitchell v. Aluisi, C.A.4 (Md.) 1989, 872 F.2d 577. Civil Rights 1088(4); Constitutional Law 262

Assuming that officer who procures issuance of otherwise valid warrant may be subject to section 1983 liability for some omission or some improper state of mind in procurement process, deputy sheriff who arrested plaintiff for battery did not make false arrest, and thus was not subject to section 1983 liability, since, contrary to plaintiff's assertions, inter alia, deputy was not required to reject out of hand neighbor's complaint which led to arrest as frivolous or not credible, his failure to have in his possession second offense report filed by another deputy was at most negligence not of type or sufficiency to form basis of section 1983 claim, and it was not improper for deputy on previous occasion to warn that anyone who broke the law would be arrested. LeSavage v. White, C.A.11 (Fla.) 1985, 755 F.2d 814. Civil Rights 1088(4)

There was probable cause to support application for and execution of arrest warrant, and warrant was valid, and therefore issuance of warrant for a wrong person did not constitute a violation of arrestee's constitutional rights cognizable under § 1983, where identity of first name, confirmation of first name by police informant, and close connection with vehicle registered in that name met warrant's description. Thompson v. Prince William County, C.A.4 (Va.) 1985, 753 F.2d 363. Civil Rights 1088(4)

Before an arrest is made pursuant to an invalid warrant, rule in Baker that there can be no unconstitutional deprivation of liberty when an individual is arrested pursuant to a valid arrest form cannot be applied to preclude an arrestee's claim in a civil rights action of an unconstitutional deprivation of liberty. Powe v. City of Chicago,

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42 U.S.C.A. § 1983

C.A.7 (Ill.) 1981, 664 F.2d 639. Civil Rights 1088(4)

Police officer, who, based on photographic identifications together with other information that placed defendant in area of crimes about time they occurred, had ample probable cause to swear out warrant for plaintiff's arrest, could not be held liable in subsequent action for unlawful arrest nor could officer be held liable for any subsequent incarceration of plaintiff over which officer no longer had any control. Mundy v. State of Ga., C.A.5 (Ga.) 1978, 586 F.2d 507. Civil Rights 1088(4)

Arrestee stated civil rights claim for violation of Fourth Amendment right to be free from false imprisonment by alleging that officers who arrested him for failure to pay alimony had no authority under arrest warrant to immediately incarcerate him, but should have caused his appearance before judge. Garcia Rodriguez v. Andreu Garcia, D.Puerto Rico 2005, 403 F.Supp.2d 174. Civil Rights 1395(6)

Owners, employees, and customers of Latino-owned business who brought action against city and police officers, stemming from execution of search warrant at premises, failed to establish that raid was racially motivated, as required to maintain racial discrimination claims under Equal Protection Clause and federal civil rights statutes; allegation that nearby white-owned businesses were treated more favorably by police provided no evidence that particular action was based on racial animus, and plaintiffs failed to identify officers that allegedly used racist language in conducting raid. Panaderia La Diana, Inc. v. Salt Lake City Corp., D.Utah 2004, 342 F.Supp.2d 1013. Constitutional Law 215.2; Searches And Seizures 101

Where police officer's probable cause determination has been ratified by prosecutor's presentation of case to neutral magistrate, who ultimately issues arrest warrant, officer can be held liable for false arrest only if he stated deliberate falsehood or acted with reckless disregard for truth. Ahlers v. Schebil, E.D.Mich.1998, 994 F.Supp. 856, affirmed 188 F.3d 365. Civil Rights 1088(4)

Allegations by arrestee that police officer had used arrest warrant request form which was pre-signed by prosecutor to secure warrant for his arrest, and that prosecutor did not review request form prior to its presentation, as officer had represented, were sufficient to state claim for violation of arrestee's Fourth Amendment rights in § 1983 action. Gibson v. Sain, W.D.Mich.1997, 979 F.Supp. 557, reversed 159 F.3d 230. Civil Rights 1395(6)

Evidence of police chief's ignorance of case law requiring affidavit for arrest warrant to be consistent with underlying police reports, police department's lack of policy requiring accuracy in reports, and its lack of procedure to reconcile inconsistent reports at most established negligence, not deliberate indifference, of city, and, thus, city could not be held liable under § 1983. Mutter v. Town of Salem, D.N.H.1996, 945 F.Supp. 402. Civil Rights 1351(4)

Arrestee failed to show that warrant authorizing his arrest for his involvement in suspected drug transaction was not based on probable cause, as required to support civil rights claim against arresting officer; although warrant was based in part on statement of witness given through interpreter and police did not actually see defendant give drugs to witness, there was no evidence that interpreter was incompetent or that witness' statement was otherwise unreliable, and witness possessed drugs following apparent drug transaction with defendant. Artis v. Liotard, S.D.N.Y.1996, 934 F.Supp. 101. Civil Rights 1088(4)

Genuine issue of material fact existed as to whether recalled arrest warrant would have been removed from sheriff's computer listing in time to prevent erroneous arrest if sheriff had implemented reasonable warrant validation procedure, precluding summary judgment in arrestee's civil rights action. Ruehman v. Village of Palos Park, N.D.Ill.1996, 916 F.Supp. 782. Federal Civil Procedure 2491.5

In order to support § 1983 claim that false information was used to get arrest warrant, plaintiff must show that defendant made false statements knowingly and intentionally or with reckless disregard for truth. Moran v.

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Marker, E.D.Mich.1995, 889 F.Supp. 284. Civil Rights 1088(4)

Police officer was justified in arresting arrestee pursuant to arrest warrant, despite fact arrestee's name was listed as alias on warrant and warrant's description of suspect's age did not match arrestee's appearance and, thus, police officer was not liable in arrestee's § 1983 and false imprisonment action; arrestee was same race and lived at same address as suspect named on warrant, and fact that arrestee's name was listed as alias on warrant did not make arrest illegal. Fairley v. Zelenik, N.D.Ill.1995, 888 F.Supp. 89. Arrest 65

Arrest warrant issued by judge based on affidavit of suspect's wife was facially valid, precluding § 1983 action against arresting officer based on claim that he procured warrant without probable cause; although wife alleged that she was intoxicated at time warrant was procured, she had told arresting officer she had been beaten by her husband, and issuing judge had opportunity to assess wife's relative state of intoxication and bruises and swelling on her face. James v. City of Chester, D.S.C.1994, 852 F.Supp. 1288. Civil Rights 1088(4); Criminal Law 212

Sheriff's policy in not maintaining accurate records of traffic warrants was deliberately indifferent to constitutional rights of persons being subjected to arrests and detention on recalled warrants; steps taken by sheriff to improve system were so meaningless in face of known inadequacies that they showed deliberate indifference to those inadequacies and to inevitable harm imposed on those subjected to arrests on recalled warrants. Hvorcik v. Sheahan, N.D.Ill.1994, 847 F.Supp. 1414. Civil Rights 1088(4)

Police department which erroneously arrested and held detainee, based upon information received from police department in another jurisdiction that there was active warrant for detainee's arrest in that jurisdiction, had not violated detainee's civil rights; even though police officer had reason to know of some incongruities in information concerning detainee and person sought in arrest warrant, officer did not act intentionally, recklessly, or in grossly negligent manner in either disregarding discrepancies or determining that they were of minimal importance. Roa v. City of Bethlehem, Pa., E.D.Pa.1991, 782 F.Supp. 1008. Civil Rights 1088(4)

Arrestee who was charged with issuing bad checks did not have claim for false arrest or malicious prosecution under § 1983 against arresting officer, although officer was allegedly motivated by desire to discredit arrestee in upcoming election; checks provided to officer by complaining witness were grounds for issuance of arrest warrant, regardless of officer's underlying motives. Thomas v. Frederick, W.D.La.1991, 766 F.Supp. 540. Civil Rights 1088(4)

Person mistakenly arrested pursuant to outstanding felony arrest warrant for suspect with same name did not suffer deprivation of constitutional proportion by his detention and prosecution resulting from city's failure to implement more effective suspect identification procedure, irrespective of how common his name was; city had no duty to verify every claim of innocence made by suspect, and Constitution did not guarantee that only guilty would be detained or charged in criminal complaint. White v. City of Muskegon, Mich., W.D.Mich.1990, 749 F.Supp. 829. Civil Rights 1088(4)

Plaintiff had no cause of action under civil rights statute against deputy sheriffs who arrested him based on a valid arrest warrant. Bennett v. Batchik, E.D.Mich.1990, 743 F.Supp. 1245, affirmed 936 F.2d 572. Civil Rights 1088(4)

Material misrepresentation in probable cause affidavit is actionable under § 1983; police officer who knowingly or recklessly submits affidavit containing false statements concerning arrestee violates arrestee's clearly established Fourth Amendment rights and, accordingly, qualified immunity does not protect that officer. Pennington v. Hobson, S.D.Ind.1989, 719 F.Supp. 760. Civil Rights 1088(4); Civil Rights 1376(6)

Alleged arrest and assault of plaintiff pursuant to valid arrest warrant provided no basis for claims of false arrest

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and false imprisonment under federal statute governing civil action for deprivation of rights, where arresting federal agent, who allegedly executed warrant against wrong person, was not required by Constitution to independently investigate every claim of innocence, whether claim was based on mistaken identity or defense such as lack of requisite intent, agent was not required by Constitution to perform error-free investigation of such claims, and arrest made pursuant to valid warrant was not deprivation of Fourth Amendment rights. Lopez v. Modisitt, W.D.Mich.1980, 488 F.Supp. 1169. Civil Rights 1088(4)

Evidence in arrested person's action against sheriff and another officer for violation of an arrested person's constitutional right showed that defendant sheriff and other officer had valid arrest warrants for plaintiff and another when they searched plaintiff's premises and when they subsequently arrested plaintiff and that in execution of the warrants they did not violate any of plaintiff's constitutional rights. McCloud v. Tester, E.D.Tenn.1975, 391 F.Supp. 1271. Civil Rights 1420

Police officers had probable cause to arrest citizen, thus citizen's claim of false arrest under § 1983 against officers failed; police were called to scene because of a possible struggle at address, once police arrived at scene they were directed to back apartment by an upstairs home-dweller, providing further evidence of criminal activity, and officers saw an individual with his hands bound and a pillowcase on his head. Henry v. City of New York, S.D.N.Y.2003, 2003 WL 22077469, Unreported. Civil Rights 1088(4)

2077A. ---- Warrant application, arrest and detention, police activities

Police officer's omission from arrest warrant application in sexual assault investigation of telephone call logs and other records furnished by arrestee's friend, purportedly indicating alleged victim's history of erratic behavior and demands for hush money from arrestee and friend, potentially constituted reckless disregard for truth on officer's part, as required to support arrestee's §§ 1983 unreasonable seizure action against officer; judge hearing application would wish to know about omitted information. Russo v. Voorhees Tp., D.N.J.2005, 403 F.Supp.2d 352. Civil Rights 1088(4)

2078. ---- Innocence, arrest and detention, police activities

Plaintiff's innocence of charge contained in arrest warrant, while relevant to a tort claim of false imprisonment in most jurisdictions, is largely irrelevant to his claim of deprivation of liberty without due process of law, since Constitution does not guarantee that only the guilty will be arrested. Baker v. McCollan, U.S.Tex.1979, 99 S.Ct. 2689, 443 U.S. 137, 61 L.Ed.2d 433, on remand 601 F.2d 903. Constitutional Law 262

A police officer who arrests someone with probable cause or a valid warrant is not liable for false arrest simply because the innocence of the suspect is later established. Atkins v. Lanning, C.A.10 (Okla.) 1977, 556 F.2d 485. False Imprisonment 7(3); False Imprisonment 13

Where probable cause for arrest exists, civil rights are not violated by arrest even though innocence may subsequently be established, and, if investigation succeeds in producing evidence of crime, probable cause for arrest is not nullified by fact that otherwise successful investigation was maliciously inspired. Beauregard v. Wingard, C.A.9 (Cal.) 1966, 362 F.2d 901.

Having been convicted in state court of failing to wear his seatbelt properly, arrestee could not validly assert a §§ 1983 claim in federal court, alleging that it was unconstitutional for police officer to arrest him for not wearing his seatbelt properly. Hupp v. City of Walnut Creek, N.D.Cal.2005, 389 F.Supp.2d 1229. Civil Rights 1088(4)

City police officials were grossly negligent and violated guarantees of due process in incarcerating innocent and nondangerous minor children in locked detention cell after arrest of their mother for impeding traffic, and thus, city was liable to children, who suffered negative psychological effects, for denial of their constitutional rights under

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this section. Martini v. Russell, C.D.Cal.1984, 582 F.Supp. 136. Civil Rights 1348

Police officers do not incur liability under civil rights laws merely because a court subsequently acquits arrestee of particular charge cited by officers. Heslip v. Lobbs, E.D.Ark.1982, 554 F.Supp. 694. Civil Rights 1088(4)

2079. ---- Conviction, arrest and detention, police activities

In civil rights suit to recover damages resulting from plaintiff's arrest on charges of disorderly conduct, the district court correctly ruled that, as a matter of law, the arrest of plaintiff by a city policeman was made upon probable cause, since a municipal court, while it acquitted plaintiff on the disorderly conduct charge, convicted him of resisting arrest, since the municipal court jury therefore must have concluded that the arrest was legal, and since plaintiff failed to show that the verdict was obtained by fraud or perjury and therefore failed to overcome the presumption stemming from the resisting arrest conviction, that the arrest was made upon probable cause. Bergstralh v. Lowe, C.A.9 (Or.) 1974, 504 F.2d 1276, certiorari denied 95 S.Ct. 1131, 420 U.S. 930, 43 L.Ed.2d 402. Civil Rights 1429

Arrestee's claims related to his arrest, prosecution, and conviction were not cognizable under §§ 1983, absent showing that conviction had been invalidated or otherwise judicially called into question. Velez v. Hayes, S.D.N.Y.2004, 346 F.Supp.2d 557. Civil Rights 1088(4); Civil Rights 1088(5)

To extent that Native American plaintiff's § 1983 claims for monetary, declaratory, and injunctive or equitable relief, based on his arrest following a prayer march, would render his criminal conviction or sentence, for Nebraska offense of violating the lawful order of law enforcement officers, invalid, claims were barred; plaintiff did not show that his criminal conviction or sentence was reversed on appeal, expunged by executive order, or otherwise declared invalid. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Civil Rights 1088(4)

Claimant could not establish § 1983 claim against police officer for false arrest on robbery charge, despite fact that he was not convicted on such charge and despite minor inconsistencies in accounts of three eye-witnesses who identified claimant as perpetrator of robbery; officer's involvement was limited to sending case file to prosecutor's office to review for possible prosecution, eye-witness identification supported finding of probable cause to arrest, and claimant was arrested pursuant to warrant issued by associate circuit judge and was indicted by grand jury. Lemons v. Lewis, D.Kan.1997, 969 F.Supp. 657. Civil Rights 1088(4)

Section 1983 claimant's criminal conviction was conclusive evidence of good faith and reasonableness of officer's belief in lawfulness of arrest as defense to claims for false arrest, false imprisonment, and malicious prosecution; presumption continued to exist even though indictment was eventually dismissed, but was rebuttable by showing that conviction itself was result of fraud, perjury, or other acts effecting integrity of the prosecution. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. Civil Rights 1088(4); Civil Rights 1088(5)

Section 1983 claim for damages resulting from alleged illegal arrest on state charges was cognizable, in that determination that arrest was illegal would not imply that resulting conviction on federal charges of bank robbery and firearms violation was invalid and complaint alleged compensable injuries independent of conviction and imprisonment on federal charges, where plaintiff alleged that he was embarrassed by being arrested in front of his family, was kept in jail for over two weeks, including his birthday, posted bond, and suffered mental anguish and emotional distress. Braxton v. Scott, N.D.Ohio 1995, 905 F.Supp. 455. Civil Rights 1088(4)

Whether arrestee actually committed charged offense and outcome of prosecution are irrelevant to false arrest claim under § 1983. Kis v. County of Schuylkill, E.D.Pa.1994, 866 F.Supp. 1462. Civil Rights 1088(4)

Civil rights action based on false arrest or false imprisonment is barred by plaintiff's conviction for offense for which he is arrested. Giannini v. City of New York, S.D.N.Y.1988, 700 F.Supp. 202. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Defendant police officers, who were acting under color of state law at all relevant times, did not violate any constitutional or civil rights of plaintiffs where, rather than conspiring to deprive plaintiffs of their civil rights, or being motivated by racial prejudice, defendants legally arrested plaintiffs for striking police officers and for obstructing and interfering with that arrest, blows struck by defendants were necessary to effect arrest and confinement, excessive force was not used by any defendant in effectuating arrests, charges brought against plaintiffs were not false and unfounded, and defendants did not testify falsely against plaintiffs. Redding v. Medica, W.D.Pa.1976, 411 F.Supp. 272. Civil Rights 1088(4)

2080. ---- Pardon, arrest and detention, police activities

By virtue of full pardon he received from Missouri governor, former inmate's conviction was invalidated and "expunged by executive order" within meaning of *Heck* rule barring § 1983 as remedy when judgment for plaintiff would necessarily imply invalidity of his state conviction or sentence; thus, former inmate could pursue § 1983 relief from county and law enforcement officials for wrongful arrest and incarceration. Wilson v. Lawrence County, Mo., C.A.8 (Mo.) 1998, 154 F.3d 757, certiorari denied 119 S.Ct. 799, 525 U.S. 1069, 142 L.Ed.2d 661. Civil Rights 1088(4)

Pardon will be deemed to "invalidate" or "expunge" a conviction, for purposes of maintaining § 1983 claim seeking monetary relief for a wrongful conviction, if effect of pardon is to support finality of judgments and to eliminate risk of conflicting resolutions arising out of same transaction. Wilson v. Lawrence County, Mo., W.D.Mo.1997, 978 F.Supp. 915, reversed 154 F.3d 757, certiorari denied 119 S.Ct. 799, 525 U.S. 1069, 142 L.Ed.2d 661. Civil Rights 1088(5)

2081. ---- Guilty plea, arrest and detention, police activities

Pro se litigant whose guilty plea under Colorado law prevented him from bringing claim for what the facts clearly alleged was malicious prosecution stated valid § 1983 claim for unlawful arrest and illegal search and seizure in violation of Fourth Amendment in connection with authorities' efforts to close his topless donut shop. Cortese v. Black, D.Colo.1993, 838 F.Supp. 485. Civil Rights 1395(6)

Where plaintiff entered a plea of guilty to disorderly conduct, her false arrest claim under this section was barred. Keyes v. City of Albany, N.D.N.Y.1984, 594 F.Supp. 1147. Civil Rights 1088(4)

Plaintiffs could not maintain action under this section against police officers in the nature of common law tort actions of false arrest and false imprisonment, in the face of judgments of conviction which the state obtained on charges growing out of the arrests, particularly where those convictions resulted from voluntary pleas of guilty after the present plaintiffs acknowledged substantial elements of the probable cause which they now challenge and present plaintiffs never attempted to attack those convictions, despite contention that guilty pleas were tendered to avoid higher penalties that were anticipated if they went to trial and encountered the allegedly perjurious testimony of the present defendants. Pouncey v. Ryan, D.C.Conn.1975, 396 F.Supp. 126. Civil Rights 1369

2082. ---- Pending charge, arrest and detention, police activities

Stay was required for § 1983 claim of unlawful arrest where state court criminal proceedings were pending, as judgment in arrestee's favor would border on determination that he was not guilty of state charge, but if arrestee was convicted of offense for which he was arrested, he might be collaterally estopped from asserting that he was arrested without probable cause. Manning v. Tefft, D.R.I.1994, 839 F.Supp. 126, 142 A.L.R. Fed. 795. Action 69(5)

An arrest may support a cause of action for damages under this section notwithstanding pendency of a criminal charge or trial. Zurek v. Woodbury, N.D.Ill.1978, 446 F.Supp. 1149. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

2083. ---- Complainant's liability, arrest and detention, police activities

Mere arrest of plaintiff by police officer who was asked to arrest plaintiff for trespassing by owner of the property on which the arrest occurred did not bring plaintiff's action against the property owner within ambits of this section. Curtis v. Rosso & Mastracco, Inc., E.D.Va.1976, 413 F.Supp. 804. Civil Rights 1088(4)

2084. ---- Release from liability, arrest and detention, police activities

District court, in § 1983 action alleging unlawful arrest, excessive force and malicious prosecution, failed to conduct required analysis regarding enforceability of release-dismissal agreement, pursuant to which civil rights claims were released in exchange for dismissal of criminal charges, instead effectively treating release as presumptively valid. Coughlen v. Coots, C.A.6 (Ky.) 1993, 5 F.3d 970. Release 20

2085. ---- Miscellaneous claims, arrest and detention, police activities

Suspect's actions in throwing telephone receiver at off-duty police officer after telling officer to get off the phone so he could use it because there was an emergency created by a stalled truck on the highway did not constitute emergency measures, under New York law, barring suspect's defense to assault on that ground, as would show lack of probable cause to arrest suspect, for purposes of suspect's § 1983 false arrest claim. Jocks v. Tavernier, C.A.2 (N.Y.) 2003, 316 F.3d 128. Arrest 63.4(2); Assault And Battery 9; Civil Rights 1088(4)

City and its police officers did not customarily discriminate against domestic violence victims as a class by allegedly failing to arrest alleged domestic violence offender based on purported domestic violence victim's complaints of threats, property damage, and violation of restraining order, as would establish an equal protection violation to support purported victim and her son's action under § 1983, although Colorado's mandatory arrest law in domestic violence situations required arrest of anyone who committed domestic violence, where officers' decision that probable cause did not exist to arrest alleged offender was within their discretion. Eckert v. Town of Silverthorne, C.A.10 (Colo.) 2001, 258 F.3d 1147, withdrawn from bound volume, republished at 25 Fed.Appx. 679, 2001 WL 1152781.

In determining for qualified immunity purposes whether prosecutor's alleged manufacture of false evidence violated a constitutional right, defining the right as the right not to be deprived of liberty as a result of any governmental misconduct occurring in the investigative phase of a criminal matter would be too broad, but the right need not be identified at such a level of particularity as to focus only on fabrication of evidence by a prosecutor acting in an investigating capacity; rather, the right at issue is appropriately identified as the right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity. Zahrey v. Coffey, C.A.2 (N.Y.) 2000, 221 F.3d 342. Civil Rights 1376(9); Constitutional Law 257.5; District And Prosecuting Attorneys 10

Police officer had probable cause to believe motorist had committed crime, as required for investigatory stop, and thus motorist failed to show violation of constitutional right against unreasonable seizures, and thus could not state maintain § 1983 civil rights cause of action against officer, where officer observed motorist turn left without yielding to oncoming driver. Lanigan v. Village of East Hazel Crest, Ill., C.A.7 (Ill.) 1997, 110 F.3d 467. Automobiles 349(3)

Arrest of driver for failure to furnish satisfactory evidence of identity did not violate driver's civil rights, for purposes of her § 1983 action against arresting officer, where arrestee's actions demonstrated that she was likely to continue driving without license. Hallstrom v. City of Garden City, C.A.9 (Idaho) 1993, 991 F.2d 1473, certiorari denied 114 S.Ct. 549, 510 U.S. 991, 126 L.Ed.2d 450. Civil Rights 1088(4)

Officer's statement that children would never see their mother's live-in companion again and officers' refusal to

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allow children to "hug and kiss" him goodbye at time of his arrest did not constitute violation of any right to "familial associated privacy" or "court access" protected by substantive due process; there was no evidence that any act of the police with respect to alleged threats to the mother was directly aimed at relationship between parent and child. Pittsley v. Warish, C.A.1 (Mass.) 1991, 927 F.2d 3, rehearing denied, certiorari denied 112 S.Ct. 226, 502 U.S. 879, 116 L.Ed.2d 183. Constitutional Law 274(5)

Evidence established that defendant police officers had no realistic opportunity to prevent another officer's attack on arrestee in police station booking room that was over in a matter of seconds and, therefore, defendant officers did not violate Fourth Amendment. Gaudreault v. Municipality of Salem, Mass., C.A.1 (Mass.) 1990, 923 F.2d 203, certiorari denied 111 S.Ct. 2266, 500 U.S. 956, 114 L.Ed.2d 718. Civil Rights 1420

Fact that motorist prevailed in his tort action against police officer for false arrest, false imprisonment and malicious prosecution did not establish that motorist's arrest violated substantive due process, for purposes of determining whether motorist had federal civil rights cause of action. Braley v. City of Pontiac, C.A.6 (Mich.) 1990, 906 F.2d 220. Constitutional Law 262

Police officers and employees of county district attorney's office did not violate arrestee's civil rights by arresting him based on grand jury indictment resulting from charging disposition that erroneously named him as perpetrator of hotel theft; arrestee suffered no constitutional injury from defendants' postarrest actions, and their prearrest actions constituted no more than negligence. Herrera v. Millsap, C.A.5 (Tex.) 1989, 862 F.2d 1157. Civil Rights 1088(4)

Plaintiffs did not have claim against city, police department, or individual officers for deprivation of civil rights arising from encounter with police, who were engaged in arresting plaintiffs' son for driving while intoxicated. Barnier v. Szentmiklosi, C.A.6 (Mich.) 1987, 810 F.2d 594. Civil Rights 1088(4)

Police officers were not liable under §§ 1983 for alleged false imprisonment of arrestee after filing of criminal complaint, where officers did not subject prosecutor to unreasonable pressure to charge, withhold information, or provide false information, but instead alerted prosecutor to subsequent evidence that there was no basis for charge of vehicle theft. Ingram v. City of Los Angeles, C.D.Cal.2006, 418 F.Supp.2d 1182. Civil Rights 1088(4)

Constitutional rights of detainee, enforceable under §§ 1983, were not violated when he was arrested pursuant to warrant valid on its face, and brought before judge, who held him over after being informed of earlier proceeding terminated by decision that detainee had been arrested, and held for 25 days, when police made same mistake about identity of arrest warrant subject allegedly made in present case. Echols v. Unified Government of Wyandotte County, Kansas City, Kan., D.Kan.2005, 399 F.Supp.2d 1201. Civil Rights 1088(4)

State statute governing fingerprinting after an arrest mandated fingerprinting and photographing of criminal contemnor after she was found guilty of criminal contempt, and thus, she suffered no violation of her constitutional rights when she was fingerprinted and photographed after being found in criminal contempt by city court. Qader v. New York, S.D.N.Y.2005, 396 F.Supp.2d 466. Contempt 64

Failure of District of Columbia's Metropolitan Police Department (MPD) to discipline officer for her conduct in allegedly assaulting and arresting her brother-in-law did not amount to deliberate indifference sufficient to maintain §§ 1983 suit against District, where MPD conducted investigation after receiving brother-in-law's complaint during which officer's police powers were revoked, MPD interviewed all participants in incident, and officer was subsequently counseled about being involved in domestic disputes. McRae v. Olive, D.D.C.2005, 368 F.Supp.2d 91. Civil Rights 1352(4)

Prisoner had no federal constitutional right to have disciplinary proceedings instituted against arresting officer or defense attorney for alleged misconduct in connection with his case, and thus claim for injunctive relief directing

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disciplinary proceedings was not cognizable in civil rights action. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Civil Rights 1088(4); Civil Rights 1088(5); Constitutional Law 82(6.1); Municipal Corporations 185(7)

Sheriff deputies' detention, pursuant to state statute, of African-American hospital patient for psychiatric evaluation after she allegedly became unruly in emergency room while awaiting treatment for suspected heart attack, was not result of county policy of providing insufficient training to its deputies on subject of diversity, and thus county could not be liable under § 1983 for deputies' alleged violations of patient's Fourth Amendment rights to be free from unreasonable seizures and uses of force. Harvey v. Alameda County Medical Center, N.D.Cal.2003, 280 F.Supp.2d 960, affirmed 123 Fed.Appx. 823, 2005 WL 662645. Civil Rights 1352(6)

Alleged delay in the providing arrestee with food, water, and sanitary needs, as well as alleged refusal to voucher arrestee's money, involved de minimis inconveniences typically experienced by arrestees and were not legally sufficient to constitute unconstitutionally retaliatory actions taken in response to arrestee's purported exercise of First Amendment free speech rights. Maxwell v. City of New York, S.D.N.Y.2003, 272 F.Supp.2d 285, reconsideration denied, affirmed in part, vacated in part and remanded 380 F.3d 106, supplemented 108 Fed.Appx. 10, 2004 WL 1800645. Arrest 70(1); Constitutional Law 90.1(1)

City was liable under § 1983 for violations of plaintiff's constitutional rights arising from her false arrest and closure of bar and seizure of its liquor inventory; police department's custom or policy of closing licensed premises without notice or hearing and without checking with the authorized state agency to determine whether a target premises was operating without a valid license was unconstitutional, as it directly authorized the police to disregard the due process rights of corporate and individual licensees in violation of Fourteenth Amendment, and the policy was affirmatively linked to the alleged constitutional violations because plaintiff's arrest was the vehicle through which the bar's closure was accomplished. Sulkowska v. City of New York, S.D.N.Y.2001, 129 F.Supp.2d 274. Civil Rights 1352(4); Constitutional Law 287.2(3); Intoxicating Liquors 257

Arrestee's allegation that police officer fabricated a confession did not identify any federal statutory or constitutional right the deprivation of which could give rise to civil rights claim, where officer had probable cause to arrest even without the alleged confession, the alleged confession did not result in deprivation of liberty or property interest because criminal charges were dismissed before trial, and to the extent that the officer's conduct caused other forms of injury, such as extra defense costs, injury to reputation, prosecution with malice, and emotional distress, such injuries were not of constitutional dimension and could not form the basis of a civil rights claim. Hennick v. Bowling, W.D.Wash.2000, 115 F.Supp.2d 1204. Civil Rights 1088(1); Civil Rights 1088(4)

Claimant's allegation that he was imprisoned by county officials pursuant to a warrant issued for another individual stated claim for violation of the Fourth Amendment and due process clause supporting claimant's § 1983 action against such officials. Ramirez v. U.S., D.N.J.1998, 998 F.Supp. 425. Civil Rights 1088(4)

No substantive due process violation arose from arrest or prosecution of § 1983 plaintiff, who was arrested for assault with firearm on police officer, as officers' conduct did not "shock the conscience"; evidence showed that officer dressed in street clothes was conducting surveillance from defendant's business premises, that plaintiff, while armed with pistol, confronted officer concerning his presence, and that plaintiff refused to drop his pistol even after officer asked him to do so, plaintiff read officer's badge, and uniformed officers arrived. Kelly v. Bencheck, E.D.N.C.1996, 921 F.Supp. 1465, affirmed 107 F.3d 866. Constitutional Law 257.5; Constitutional Law 262

Police officers had probable cause to arrest suspect for purposes of § 1983 false arrest claim where evidence showed that suspect was formally arrested by officers after failing polygraph examination and admitting that he had lied where officers had additional knowledge that suspect had been untruthful about his whereabouts at time of

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murder and evidence supported that victim's murderer knew her and her work schedule and suspect was one of few people known to fall within that category. Booker v. Ward, N.D.Ill.1995, 905 F.Supp. 483, affirmed 94 F.3d 1052, certiorari denied 117 S.Ct. 952, 519 U.S. 1113, 136 L.Ed.2d 840. Civil Rights 1088(4)

Single incident of police misconduct in connection with arrest and detention of former pretrial detainee was insufficient to establish that municipal policy, custom, or usage caused civil rights violations of which pretrial detainee complained. Nelson v. Strawn, D.S.C.1995, 897 F.Supp. 252, affirmed in part, vacated in part 78 F.3d 579. Civil Rights 1351(4)

Evidence was insufficient as a matter of law to establish that city's training of jail personnel and policies regarding monitoring of arrestees amounted to deliberate indifference to substantial risk that arrestee would commit suicide such that city could be held liable under § 1983; although plaintiff's expert opined that operation of police department was grossly deficient, that department provided no training in recognition of mental illness, and that monitoring of arrestee was inadequate even in light of prior custodial suicide, conduct of officers in question was objectively reasonable, and city's failure to take preventive measures following earlier suicide at most amounted to negligence. Bowen v. City of Manchester, D.N.H.1991, 894 F.Supp. 561, affirmed 966 F.2d 13. Civil Rights 1420; Evidence 571(3)

Because county police officer did not unlawfully arrest resident of condominium for harassment of manager of condominium complex, county could not be liable to resident for unlawful arrest under § 1983. Fraser v. County of Maui, D.Hawai'i 1994, 855 F.Supp. 1167. Civil Rights 1348

Sheriff's policy in not maintaining accurate records of traffic warrants was proximate cause of unlawful arrests of class of plaintiffs, who were subjected to arrests and detention on recalled warrants, and thus municipality was liable for § 1983 violations as to class; failure to wash dead warrants from system was substantial factor in causing type of unlawful arrest and detention complained of. Hvorcik v. Sheahan, N.D.Ill.1994, 847 F.Supp. 1414. Civil Rights 1088(4)

Arresting officer had probable cause to make arrest for trespassing, and false arrest civil rights claim by arrestee was untenable; officer relied on trespassing complaint, positive identification of arrestee as trespasser referred to therein, and disruptive behavior exhibited by arrestee. Miloslavsky v. AES Engineering Soc., Inc., S.D.N.Y.1992, 808 F.Supp. 351, affirmed 993 F.2d 1534, certiorari denied 114 S.Ct. 68, 510 U.S. 817, 126 L.Ed.2d 37. Arrest 63.4(12); Arrest 63.4(15); Civil Rights 1088(4)

State prisoner's allegation based on officers' threats, derogatory remarks, and conduct in effecting arrest were not actionable under § 1983. Bey v. Bridgeton Police Dept., E.D.Mo.1991, 775 F.Supp. 1255. Civil Rights 1088(4)

Claims of malicious prosecution of motorist by police officers who were covering up fact that police officer involved in collision was intoxicated and claims of false arrest were not actionable under federal civil rights statute. Fisher v. City of Cincinnati, S.D.Ohio 1990, 753 F.Supp. 681. Civil Rights 1088(4); Civil Rights 1088(5)

Township police officers' attempted arrest of suspect at his home for violation of township ordinances did not involve even remote violation of suspect's constitutional rights which could give rise to § 1983 civil rights claim against police officers or township; suspect alleged that police officers came to his home to arrest him, refused to inform his family why they were attempting to arrest him, but failed to arrest him because he was not home. Tillio v. Montgomery County, E.D.Pa.1988, 695 F.Supp. 190. Civil Rights 1088(4)

Arrestee's allegations, that property was taken from his apartment after police officers who arrested him failed to secure apartment before taking him to police station, were insufficient to state actionable § 1983 claim for relief;

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failure to secure apartment before leaving amounted to nothing more than negligence, which does not implicate due process clause, and, even if officers intentionally left apartment open to allow third parties to remove property, arrestee had state postdeprivation remedy available, thus barring any constitutionally cognizable claim for relief. Slaughter v. Anderson, N.D.Ill.1987, 673 F.Supp. 929. Civil Rights 1395(6)

Even if arrestee was never brought before judge or magistrate, never charged with crime, never allowed to make bail, post bond, or be released on his own recognizance, and never allowed to call an attorney, there was no constitutional violation which could support action for damages under this section, inasmuch as arrestee was not interrogated in violation of *Miranda*, was given reasonable opportunity to consult with his attorney when he left sheriff's office to return home, and was released from custody within two hours of his arrest. Wilson v. Walden, W.D.Mo.1984, 586 F.Supp. 1235. Civil Rights 1088(4)

Where police officer did not know of student's religious beliefs or sexual orientation, and officer appeared to have acted in good faith in telling student that if student continued to cause trouble at student union, student would be removed from building and if necessary taken to jail, police officer did not violate any of student's constitutional rights, despite allegations of student, that police officer had threatened student as punitive measure because of student's religious beliefs, racial ancestry and sexual orientation. Sanders v. Ajir, W.D.Wis.1983, 555 F.Supp. 240. Civil Rights 1088(1)

City police officers' participation in alleged entrapment of inmate, leading to his indictment, following arrest on other charges, for attempted murder based on misrepresentations by confidential informant, did not rise to level of constitutional violation, as required to support inmate's §§ 1983 claim against officers. Almonte v. Florio, S.D.N.Y.2004, 2004 WL 60306, Unreported. Civil Rights 1088(5)

Arrestees had no constitutionally protected liberty interest in the issuance of desk appearance tickets, or in an individual assessment prior to denial of a ticket, thus defeating their § 1983 claim that police chief's refusal to issue desk appearance tickets violated their substantive due process rights; New York state law did not create a protected right in the issuance of a desk appearance ticket, but rather, its issuance was purely discretionary. Bryant v. City of New York, S.D.N.Y.2003, 2003 WL 22861926, Unreported, affirmed 404 F.3d 128. Arrest 70(1); Constitutional Law 265

Absence of evidence that officer acted with unlawful purpose, harmful intent, or collateral objective precluded officer's liability to arrestees, under § 1983, for abuse of process. Ingersoll ex rel. Estate of Ingersoll v. LaPlante, C.A.2 (N.Y.) 2003, 76 Fed.Appx. 350, 2003 WL 21949752, Unreported. Civil Rights 1088(5)

Municipality was not liable under § 1983 for damages arising out of alleged false arrest; arrestee failed to cite any unconstitutional activity or official policy under which arrest was accomplished. Sepulveda v. City of New York, S.D.N.Y.2003, 2003 WL 21673626, Unreported. Civil Rights 1351(4)

2086. Assault and battery, police activities--Generally

Citizen, alleging that, without provocation and without placing him under arrest, defendant police officers detained him, threw him to the ground, punched, kicked and handcuffed him stated a § 1983 claim for deprivation of substantive due process, notwithstanding existence of a basis for liability under state tort law. Rutherford v. City of Berkeley, C.A.9 (Cal.) 1986, 780 F.2d 1444. Civil Rights 1395(6)

Police officer's holding can of mace at his side as he entered divorced husband's apartment to retrieve child allegedly held in violation of child custody decree did not amount to assault in violation of this section. Wise v. Bravo, C.A.10 (Colo.) 1981, 666 F.2d 1328. Civil Rights 1088(3)

City policeman's using his nightstick to strike plaintiff tourist, who was photographing group of officers

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apprehending a boy during a Mardi Gras parade, with officer also striking the camera and smashing it into plaintiff's face and lacerating his forehead, was a violation of constitutional dimension for which redress could be had under this section as plaintiff was not involved in the arrest incident and did not interfere with the police and assault was unprovoked and unjustified and transcended bounds of ordinary tort law. Shillingford v. Holmes, C.A.5 (La.) 1981, 634 F.2d 263, on remand 512 F.Supp. 656. Civil Rights 1088(2)

On motion for summary judgment in civil rights action under § 1983, arrestees' allegation that arresting officer sexually assaulted them during search incident to arrest failed to create a genuine issue of material fact as to arrestees' claim that they were subjected to unreasonable search under the Fourth Amendment, since objective reasonableness of search was determined without regard to officer's underlying intent or motivation. Wyatt v. Slagle, S.D.Iowa 2002, 240 F.Supp.2d 931. Arrest 68(2); Civil Rights 1088(4)

Police chief's slapping 13-year-old boy whom chief arrested for operating motorcycle without license was unreasonable as matter of law, thus subjecting chief to § 1983 liability; offense for which boy was arrested was not particularly heinous transgression, and chief did not contend child attempted to avoid arrest or posed immediate threat, but admitted that he had no idea why he struck boy. Courville v. Town of Barre, Mass., D.Mass.1993, 818 F.Supp. 23. Civil Rights 1088(4)

Allegations by travelers that police officer pushed them during dispute at airport regarding inspection for possible tax violations of large, unmarked boxes travelers were attempting to bring into Puerto Rico failed to state claim for violation of § 1983. Salas Garcia v. Cesar Perez, D.Puerto Rico 1991, 777 F.Supp. 137. Civil Rights 1395(5)

Assault and battery against pretrial detainee do not become constitutional deprivations under Fourteenth Amendment for purposes of § 1983 analysis merely by reason that defendants are police officers; constitutional protections do not extend to cover every common-law tort action for battery and much less so for assault. Brooks v. Pembroke City Jail, E.D.N.C.1989, 722 F.Supp. 1294. Civil Rights 1088(4)

Illinois Wrongful Death Act [S.H.A. ch. 70, ¶ 1, et seq.] did not bar federal civil rights action under 42 U.S.C.A. § 1983 for alleged police shooting of victim seven times without provocation while he was in bed, if act was either intentional or reckless, since both intentional and reckless deprivation of life violate substantive constitutional guarantee. Doty v. Carey, N.D.Ill.1986, 626 F.Supp. 359. Civil Rights 1319

Even if police officer had threatened to withhold medical assistance from wounded plaintiff or to kill him if he failed to go to hospital chosen by police or to lie quietly on sidewalk after his arrest, inasmuch as such threats did not result in any physical contact or any physical injury to plaintiff, they could not amount to actionable assaults under this section. Simms v. Reiner, N.D.Ill.1976, 419 F.Supp. 468. Civil Rights 1088(4)

An alleged assault by law enforcement officers is a claim cognizable under this section. Rogers v. Fuller, M.D.N.C.1976, 410 F.Supp. 187. Civil Rights 1088(2)

Auxiliary police officer was not acting under color of law when he attacked a minor who was loitering outside restaurant owned by officer's parents, by brandishing handgun, firing four shots into the air, throwing minor to ground, and striking him several times with his handgun, so as to subject city or police commissioner to liability for damages under § 1983; officer was off-duty and out of uniform, did not flash his badge or announce he was auxiliary officer or acting in that capacity, used gun to inflict beating that was not issued by police department, and did not act through limited power to arrest given that he had no power to arrest beyond that of a private citizen. Miqui v. City of New York, E.D.N.Y.2003, 2003 WL 22937690, Unreported. Civil Rights 1326(8)

2087. ---- Verbal abuse, assault and battery, police activities

Allegations that, after arrestee was placed alone in back seat of police car, and arrestee refused to answer questions

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put to him by officers seated in front seat, one of officers uttered racial slur and threatened to "knock [arrestee's] remaining teeth out of his mouth" if he remained silent failed to allege conduct rising to level of "brutal" and "wanton act of cruelty" so as to state cognizable constitutional claim under § 1983; officer never threatened to kill arrestee, and arrestee did not allege that he was physically assaulted by officer or that officer raised his fists or made any type of physical gesture toward him. Hopson v. Fredericksen, C.A.8 (Mo.) 1992, 961 F.2d 1374. Civil Rights 1088(4)

Verbal threat is actionable under § 1983 only if it amounts to assault, results in physical harm, or is part of a pattern of unnecessary and wanton abuse. Guzinski v. Hasselbach, E.D.Mich.1996, 920 F.Supp. 762. Civil Rights 1036; Civil Rights 1035

Taunts, insults and racial slurs allegedly hurled at white arrestee by black police officers, while reprehensible if true, did not comprise infringement of constitutional guaranties and give rise to liability of police officers under federal civil rights statute. Haussman v. Fergus, S.D.N.Y.1995, 894 F.Supp. 142. Civil Rights 1088(4)

Verbal harassment and abusive language by police officer, although unprofessional and inexcusable, were simply not sufficient to state constitutional claim under § 1983. Slagel v. Shell Oil Refinery, C.D.Ill.1993, 811 F.Supp. 378, affirmed 23 F.3d 410, rehearing denied, certiorari denied 115 S.Ct. 611, 513 U.S. 1031, 130 L.Ed.2d 520, rehearing denied 115 S.Ct. 958, 513 U.S. 1137, 130 L.Ed.2d 900. Civil Rights 1088(1)

In tense and hostile atmosphere following shooting of policeman, it is not unreasonable to expect occasionally vehement verbal outbursts; thus where colloquy between police and arrestee does not rise to level of physical harm, there is no violation of constitutional right actionable under this section. Simms v. Reiner, N.D.Ill.1976, 419 F.Supp. 468. Civil Rights 1088(4)

Verbal abuse by correction officers was insufficient to support inmate's §§ 1983 action. Harvey v. Stalder, C.A.5 (La.) 2005, 130 Fed.Appx. 654, 2005 WL 564391, Unreported, certiorari denied 126 S.Ct. 77, 163 L.Ed.2d 98. Civil Rights 1098

Detainee's § 1983 claims against city detectives for allegedly verbally and sexually assaulting him while transporting him accrued at time of incident, rather than when criminal charges against him were dismissed, where detainee's allegations of assault were unrelated to criminal charges underlying warrant that prompted his arrest. Warren v. Altieri, C.A.2 (N.Y.) 2003, 59 Fed.Appx. 426, 2003 WL 1191173, Unreported. Limitation Of Actions 58(1)

2088. ---- Municipal liability, assault and battery, police activities

Town's failure to perform background check on police applicant was not cause of deprivation of citizen's constitutional rights when he was subjected to police brutality by town police officer, where officer had five years of unblemished service as police officer, and there were no facts supporting inference that town's motives were contrary to constitutional standards. Stokes v. Bullins, C.A.5 (Miss.) 1988, 844 F.2d 269. Civil Rights 1348

Municipality was not liable for failing to train police officers in use of attack dogs, resulting in trauma arising when dog bit detainee; there were insufficient incidents of canine problems to establish need for training. Tilson v. City of Elkhart, Ind., N.D.Ind.2003, 317 F.Supp.2d 861, adhered to on reconsideration 2003 WL 23509313, affirmed 96 Fed.Appx. 413, 2004 WL 901545. Civil Rights 1352(4)

Personal representative of teacher, who alleged sheriff's final policymaker status, his conduct underlying alleged constitutional violations, injury inflicted, and requisite intent, sufficiently set out essential elements for municipal liability in lawsuit under § 1983 that alleged violation of teacher's substantive due process rights. Sanders v. Board of County Com'rs of County of Jefferson, Colorado, D.Colo.2001, 192 F.Supp.2d 1094. Civil Rights 1395(5)

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City's alleged policy of never questioning persons subjected to chemical spray by police officers, and of failing to speak with officers about use of spray, was not "deliberate indifference" to the rights of persons with whom police would come into contact, as required for arrestee's § 1983 claim against city; city provided officers with training and supervision with respect to application of chemical spray, and arrestee could have filed citizen's complaint with police department, which would have automatically started an investigation of his complaints. Horrington v. City of Detroit, E.D.Mich.1999, 49 F.Supp.2d 1022. Civil Rights 1351(4)

Even if there were evidence of "deliberate indifference" on part of town in connection with fatal shooting of allegedly mentally ill individual during course of attempt by deputy and town officer to execute involuntary commitment order, town was not liable under § 1983, absent causal connection between actions of officer and alleged negligent death of individual; there was no evidence that officer used any type of force against individual, who was shot by deputy, and there was no proof that town endorsed, encouraged or facilitated deputy's actions or that the two entities routinely acted in concert to deprive citizens of their constitutionally guaranteed rights. Dowdell v. Chapman, M.D.Ala.1996, 930 F.Supp. 533. Civil Rights 1348

Allegation that § 1983 civil rights plaintiff was assaulted by police officer without provocation failed to state claim against municipality in absence of alleged improper municipal policy, practice or procedure, or that police officer possessed final authority to establish municipal policy with respect to action ordered. DeJesus v. O'Connor, S.D.N.Y.1995, 897 F.Supp. 131. Civil Rights 1351(4)

Whether police officer was negligent in discharging his gun or committed intentional assault upon individual shot during armed robbery investigation was an entirely separate matter for which conduct the city could not be held liable under this section which provides cause of action to any person who under color of state law is deprived of a right, privilege or immunity secured by the constitution or federal law. Whitley v. City of New York, S.D.N.Y.1981, 518 F.Supp. 1318. Civil Rights 1348

There was no evidence that city police department had policy or custom of violating citizens' constitutional rights through use of excessive force, so as to support municipal liability under § 1983 for damages suffered by minor for beating by off-duty auxiliary police officer with officer's own handgun after he discovered minor loitering outside restaurant of officer's parents, even though officer had previously been disciplined twice for unauthorized excursions in auxiliary police cars; police department's alleged failure to discipline officer more severely in no way implicated any constitutional deprivation, and police department did not demonstrate deliberate indifference to officer's prior misconduct but instead suspended him for it. Miqui v. City of New York, E.D.N.Y.2003, 2003 WL 22937690, Unreported. Civil Rights 1352(4)

2089. ---- Supervisory personnel, assault and battery, police activities

Complaint in class action by citizens and civic groups which alleged violation by police of constitutional rights and that various members of city police department had engaged in systematic pattern of abusive conduct which was condoned or encouraged or permitted by mayor and police chief of city was sufficient to state claim against mayor and police commissioner for declaratory and injunctive relief and for monetary damages under this section. Build of Buffalo, Inc. v. Sedita, C.A.2 (N.Y.) 1971, 441 F.2d 284. Civil Rights 1395(5); Declaratory Judgment 319; Injunction 118(3)

Personal representative of teacher, who alleged that supervisory law enforcement officers not only had knowledge of and acquiesced in their colleagues and subordinates alleged constitutional violations, but personally participated in such conduct, sufficiently set out essential elements for supervisory liability in lawsuit under § 1983 alleging violation of teacher's substantive due process rights. Sanders v. Board of County Com'rs of County of Jefferson, Colorado, D.Colo.2001, 192 F.Supp.2d 1094. Civil Rights 1395(5)

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Supervisor of emergency telephone dispatcher was not liable under § 1983 for injuries suffered by victim when he was shot by police officers who observed victim pointing gun at his wife in couple's kitchen, based on dispatcher's alleged failure to tell officers that victim had a dart gun rather than a real gun; supervisor was not supervising dispatchers who were working on day of incident, and there was no indication that different training of dispatchers would have averted incident. Frane v. Kijowski, N.D.Ill.1998, 992 F.Supp. 985. Civil Rights 1358

Allegations by woman who had been sexually assaulted by police officer and who participated in sting operation aimed at officer which was set up by internal affairs department that internal affairs officers had allowed officer to remove her clothing and make sexual contact before attempting to arrest officer were insufficient to state claim against internal affairs officers in federal civil rights action based on failure to supervise; alleged failure to intervene amounted to isolated instance of negligence or error of judgment not rising to level of deliberate indifference. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1088(1)

Arrestee's allegation that police chief failed to prevent alleged harassments and assaults of arrestee while he was free on bail was insufficient to state civil rights claim for supervisory liability, absent allegation of any assaults or harassment after arrestee's release on bail which rose to level of constitutional deprivations. Bieros v. Nicola, E.D.Pa.1994, 860 F.Supp. 226. Civil Rights 1395(6)

2090. Automobile accidents, police activities--Generally

No "constitutional deprivation" arose from automobile collision between plaintiff motorists and defendant deputy sheriff, even if deputy's driving at high rate of speed in nonemergency or nonpursuit situation revealed gross negligence rather than negligence; thus, plaintiffs could not maintain § 1983 action against deputy, as their cause of action was state tort claim. Rooney v. Watson, C.A.11 (Fla.) 1996, 101 F.3d 1378, certiorari denied 118 S.Ct. 412, 522 U.S. 966, 139 L.Ed.2d 315. Civil Rights 1088(1)

Mere negligence involving only lack of due care by state official is not sufficient to give rise to liability pursuant to § 1983, including police actions in injuring motorists through negligent operation of their vehicles. Johnson v. Colgate, M.D.Fla.1988, 687 F.Supp. 573. Civil Rights 1088(1)

Negligent operation of automobile by deputy sheriff did not give rise to claim under this section for wrongful death of motorist killed in collision with deputy sheriff. Ellsworth v. Mockler, N.D.Ind.1983, 554 F.Supp. 1072.

2091. ---- Chase, automobile accidents, police activities

Even if city's policies, training, and supervision of officers with respect to high-speed pursuits were unconstitutional, city could not be held liable under § 1983 for deaths of motorists killed in collision with fleeing suspect in the absence of constitutional violation by officers conducting pursuit. Trigalet v. City of Tulsa, Oklahoma, C.A.10 (Okla.) 2001, 239 F.3d 1150, certiorari denied 122 S.Ct. 40, 534 U.S. 814, 151 L.Ed.2d 13. Civil Rights 1351(4); Civil Rights 1352(4)

Police conduct in pursuit during which suspect's vehicle struck and injured pedestrian did not shock the conscience so as to give rise to substantive due process claim by pedestrian, where chase lasted no more than two minutes, covered only about half a mile, and vehicles' speed never exceeded 50 miles per hour; although chase occurred in densely populated area at time when people would likely be ambling about and officers did not seriously consider alternatives to hot pursuit, those points added up to no more than possible negligence. Evans v. Avery, C.A.1 (Mass.) 1996, 100 F.3d 1033, certiorari denied 117 S.Ct. 1693, 520 U.S. 1210, 137 L.Ed.2d 820, rehearing denied 117 S.Ct. 2533, 521 U.S. 1129, 138 L.Ed.2d 1032. Automobiles 175(1); Constitutional Law 253(1)

Municipality can be liable under § 1983 and the Fourteenth Amendment for failure to train its police officers with respect to high-speed automobile chases, even if no individual officer participating in chase violated Constitution.

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Fagan v. City of Vineland, C.A.3 (N.J.) 1994, 22 F.3d 1283. Civil Rights 1352(4)

Police officer's high-speed pursuit of suspect and his standing on brakes in attempt to stop when suspect lost control of his vehicle resulting in police officer's vehicle striking that of plaintiff's vehicle did not shock the judicial conscience and did not rise to the level of violation of substantive due process cognizable under § 1983. Temkin v. Frederick County Com'rs, C.A.4 (Md.) 1991, 945 F.2d 716, certiorari denied 112 S.Ct. 1172, 502 U.S. 1095, 117 L.Ed.2d 417. Automobiles 175(4); Constitutional Law 253(1)

Widow of bystander who was killed during high-speed chase of furloughed prisoner could not maintain § 1983 action against police for high-speed pursuit leading to accident; governmental conduct did not rise to requisite level of gross negligence and outrageous conduct, given officers' choice to protect public safety by attempting to apprehend obviously dangerous driver. Jones v. Sherrill, C.A.6 (Tenn.) 1987, 827 F.2d 1102. Civil Rights 1088(1)

Police officer's conduct during chase of drug suspects, in which pursued vehicle struck victim, did not "shock the conscience," or reach level of "callous or reckless indifference" to rights of third parties, in violation of victim's substantive due process rights. Evans v. Avery, D.Mass.1995, 897 F.Supp. 21, affirmed 100 F.3d 1033, certiorari denied 117 S.Ct. 1693, 520 U.S. 1210, 137 L.Ed.2d 820, rehearing denied 117 S.Ct. 2533, 521 U.S. 1129, 138 L.Ed.2d 1032. Automobiles 175(1); Constitutional Law 253(1)

Police officer was not reckless or grossly negligent in engaging in high-speed pursuit of traffic offender and, thus, there was no basis for § 1983 substantive due process claim by occupants of automobile struck by offender; it was not unreasonable for officer to turn on his siren and lights or chase after offender for 90 seconds. Dismukes v. Hackathorn, N.D.Miss.1992, 802 F.Supp. 1442. Civil Rights 1088(4)

No § 1983 cause of action existed for gross negligence of police officer in pursuing suspected thief who was in stolen car and in colliding with car of accident victim. Britt v. Little Rock Police Dept., E.D.Ark.1989, 721 F.Supp. 189. Civil Rights 1088(1)

Allegations that police officer's conduct in maintaining high-speed pursuit of fleeing misdemeanant beyond city limits for no emergency was conduct that shocked the conscience did not allege negligence that rose to level of conduct that was actionable under § 1983. Roach v. City of Fredericktown, Mo., E.D.Mo.1988, 693 F.Supp. 795, affirmed 882 F.2d 294. Civil Rights 1395(6)

Town constable who allegedly blocked road with his vehicle during high speed chase of motorcyclist, and who moved vehicle in front of motorcycle when motorcyclist changed lanes did not necessarily act in reasonable or negligent manner so as to preclude section 1983 action for injuries resulting from collision with vehicle, as constable could be found to have acted unreasonably or with slight degree of care for motorcyclist's well being. Stanulonis v. Marzec, D.Conn.1986, 649 F.Supp. 1536. Civil Rights 1088(1)

2092. Concealment or suppression of evidence, police activities

Alleged concealment of evidence by police officers in prior criminal prosecution did not violate arrestee's due process rights, for purposes of subsequent §§ 1983 claim brought after his convictions were reversed, where allegedly suppressed evidence, including time at which police officers actually ran records check during initial traffic stop, was not material to extortion, racketeering, and weapons charges and was either readily available to arrestee before his criminal trial or was type of evidence that arrestee could have testified to at trial. Ienco v. Angarone, C.A.7 (Ill.) 2005, 429 F.3d 680. Criminal Law 700(3)

Police officers who allegedly instructed identifying witness in homicide investigation to pick specific suspect out of

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lineup and then warned witness that he risked jail time if he informed prosecutors of officers' manipulation were not entitled to absolute immunity, in § 1983 due process action brought against officers by former suspect/pardoned prisoner, on theory that officers were being accused of suborning perjury and were within rule granting witnesses absolute immunity from civil liability on account of their testimony; officers' liability was under Due Process Clause owing to their concealment of exculpatory evidence. Newsome v. McCabe, C.A.7 (Ill.) 2003, 319 F.3d 301, certiorari denied 123 S.Ct. 2621, 539 U.S. 943, 156 L.Ed.2d 630. Civil Rights 1375

Evidence that narcotics officer allegedly withheld from prosecutors was not patently exculpatory and, thus, did not support § 1983 claim for damages stemming from two-week detention of individual; officer admitted that target of investigation was individual's neighbor and that he visited individual in jail to encourage her to provide information against neighbor, but individual had spent much time in neighbor's trailer that was littered with drugs, drug paraphernalia, and cash. Hart v. O'Brien, C.A.5 (Tex.) 1997, 127 F.3d 424, rehearing and suggestion for rehearing en banc denied 154 F.3d 419, certiorari denied 119 S.Ct. 868, 525 U.S. 1103, 142 L.Ed.2d 770. Civil Rights 1088(4)

Police officers who failed to set forth in their police reports alleged facts that officer, inter alia, "jumped onto [arrestee's] back with a large amount of force" did not deny arrestee effective and meaningful access to courts, so as to violate his constitutional rights, particularly as arrestee was personally involved in incident and thus had first-hand knowledge of all facts and circumstances surrounding his arrest; facts known to arrestee were sufficient to enable him to promptly file § 1983 lawsuit. Thompson v. Boggs, C.A.7 (Ill.) 1994, 33 F.3d 847, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1692, 514 U.S. 1063, 131 L.Ed.2d 556. Civil Rights 1088(4)

Defendant did not show that any policy of refusing to disclose police internal investigation files harmed him in prosecution for resisting arrest and aggravated battery where he was convicted only of resisting arrest and statements which would have been revealed related only to incidents after his arrest. Stachniak v. Hayes, C.A.7 (Ill.) 1993, 989 F.2d 914. Civil Rights 1351(4)

Police officers satisfied their constitutional obligation to turn over exculpatory information by providing information to prosecutor; their failure to contact defendant directly to alert him to existence of such evidence could not form basis for holding municipality liable under § 1983. Walker v. City of New York, C.A.2 (N.Y.) 1992, 974 F.2d 293, certiorari denied 113 S.Ct. 1387, 507 U.S. 961, 122 L.Ed.2d 762, certiorari denied 113 S.Ct. 1412, 507 U.S. 972, 122 L.Ed.2d 784. Civil Rights 1088(5); Criminal Law 700(5)

Whether a criminal defendant is incarcerated is not decisive in determining whether he has suffered an abridgment of constitutional rights in action under § 1983; being subjected to a prosecution because an officer withheld exculpatory evidence from prosecutor while urging that prosecution should go forward can work a deprivation of due process. Goodwin v. Metts, C.A.4 (S.C.) 1989, 885 F.2d 157, rehearing denied, certiorari denied 110 S.Ct. 1812, 494 U.S. 1081, 108 L.Ed.2d 942. Civil Rights 1088(5); Constitutional Law 268(5)

Because plaintiffs were not prevented from pursuing, and in fact obtained, relief in action seeking damages for allegedly unlawful search committed by police officers, plaintiffs suffered no deprivation of federal right, actionable under this section, based on officers' attempts to conceal police reports prepared in connection with challenged search. Dooley v. Reiss, C.A.9 (Cal.) 1984, 736 F.2d 1392, certiorari denied 105 S.Ct. 518, 469 U.S. 1038, 83 L.Ed.2d 407. Civil Rights 1088(3)

Claim that police deprived homeowners of their constitutional right to meaningful access to civil courts by losing all evidence of a theft from their home was viable under § 1983. Harrell v. City of Jacksonville, C.D.Ill.1997, 976 F.Supp. 777, reversed 169 F.3d 428. Civil Rights 1056; Civil Rights 1088(1)

Even assuming that police officers were negligent in mislaying field card which recorded name of person near

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scene of crime who was never tied to crime or shown to be witness, such negligence could not support cause of action against officers for violation of constitutional rights. Cooks v. County of Los Angeles, C.D.Cal.1989, 710 F.Supp. 732. Civil Rights 1088(5)

Civil rights plaintiff who failed to show that alleged misconduct, consisting of law enforcement officials' "leaking" of "false" information and their alleged "concealment" of a page of the plaintiff's police logbook, had any prejudicial effect on the plaintiff's defense to murder charges or showing that the trials were fundamentally and ultimately unfair, failed to establish that he was deprived of his civil rights. Schertz v. Waupaca County, E.D.Wis.1988, 683 F.Supp. 1551, affirmed 875 F.2d 578. Civil Rights 1088(1)

2093. Defamation, police activities

Plaintiff whose name and photograph appeared on flyer which was captioned "Active Shoplifters" and which was distributed by police chiefs to merchants did not have any legal guarantee of present enjoyment of reputation which was altered as the result of police chiefs' actions and thus suffered no deprivation of any "liberty" or "property" interests within due process guarantee. Paul v. Davis, U.S.Ky.1976, 96 S.Ct. 1155, 424 U.S. 693, 47 L.Ed.2d 405, rehearing denied 96 S.Ct. 2194, 425 U.S. 985, 48 L.Ed.2d 811. Constitutional Law 255(2); Constitutional Law 277(1)

Sheriff's statement, upon arrest of lessor for leasing commercial premises used for prostitution, indicating that law enforcement officials were attacking those with money backing prostitutes, as misleading as statement might have been, did not extinguish or significantly alter any right guaranteed to lessor by the United States Constitution or by Florida law and, accordingly, lessor alleged no state action sufficient to invoke due process guarantees and stated no § 1983 claim against sheriff; evidence established only that lessor suffered temporary, partial loss of income as result of sheriff's statement, given determination on appeal that deputies did not act unreasonably in arresting lessor. Von Stein v. Brescher, C.A.11 (Fla.) 1990, 904 F.2d 572. Civil Rights 1395(6)

Arrestee who was found innocent of attempted kidnapping failed to allege sufficient evidence to show elements of defamation claim against police officers after notice of arrest was published in local newspaper where newspaper gleaned information from police daily log which was public record and arrestee made no allegation that police disseminated any information other than information accessible to public as matter of right. Tomczak v. Town of Barnstable, D.Mass.1995, 901 F.Supp. 397. Libel And Slander 49

A defendant who pleaded guilty to drug offenses pursuant to plea bargain could not recover for allegedly slanderous statements made by police officers to his employer under civil rights statute or *Bivens* based on state tort law. Ludolph v. Wright, N.D.W.Va.1992, 791 F.Supp. 607. Libel And Slander 6(1)

In suit brought against federal and state officials allegedly responsible for disseminating to law enforcement agencies a telex message that erroneously accused plaintiffs of devising a plan to kill police officers, no cause of action was stated for an alleged violation of plaintiffs' constitutional right of privacy; more broadly, the Supreme Court's Paul decision established that the interest which plaintiffs claimed had been invaded--their interest in preserving their good reputations--was not protected by the federal Constitution, though it might be safeguarded by the tort law of one or more states. Gonzalez v. Leonard, D.C.Conn.1980, 497 F.Supp. 1058. Torts 351

That police officers may have provoked Negro to commit offense of disorderly conduct which resulted in his arrest, i.e., that they in effect entrapped him into commission of offense, afforded no basis for claim under this section. Johnson v. Hackett, E.D.Pa.1968, 284 F.Supp. 933. Civil Rights 1088(1)

2094. Emergency dispatchers, police activities

Even if constitutional violation occurred, intergovernmental agency that operated emergency dispatch system was

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not liable under § 1983 for injuries suffered by victim when he was shot by police officers who observed victim pointing gun at his wife in couple's kitchen, based on dispatcher's alleged failure to tell officers that victim had a dart gun rather than a real gun; there was no allegation of a policy or custom that was actionable under § 1983, there was only one allegation of a constitutional violation, and there was no demonstration of a causal nexus between agency's alleged policies and injuries to victim. Frane v. Kijowski, N.D.Ill.1998, 992 F.Supp. 985. Civil Rights 1351(4)

Emergency telephone dispatcher was not liable under § 1983 for injuries suffered by victim when he was shot by police officers who observed victim pointing gun at his wife in couple's kitchen, based on dispatcher's alleged failure to tell officers that victim had a dart gun rather than a real gun; dispatcher was not at residence, dispatcher's knowledge of scene came from account given by victim's daughter, dispatcher did not know that victim was wielding what appeared to be a real pistol, and dispatcher did not act with deliberate disregard for victim's rights. Frane v. Kijowski, N.D.Ill.1998, 992 F.Supp. 985. Civil Rights 1088(1)

2095. Emotional distress, police activities

Child who brought federal civil rights action against police officer and his superiors did not have liberty interest under due process clause of Fourteenth Amendment to be free of emotional trauma suffered as result of observing allegedly excessive police force which was directed entirely at his father during father's arrest. Archuleta v. McShan, C.A.10 (N.M.) 1990, 897 F.2d 495. Constitutional Law 274(2)

Shooting victim's sister and niece did not have standing to maintain civil rights action, even though they were in same room when victim, who had armed himself with machete, was shot and killed by police where sister and niece were not caught in cross-fire and their lives were not endangered by police action. Borrero-Rentero v. Rivera, D.Puerto Rico 1991, 761 F.Supp. 5. Civil Rights 1332(4)

Claims bought by bystanders against police, which alleged that they suffered emotional and psychological stress as result of witnessing alleged disturbance between family members and police was not cognizable under § 1983, though bystanders were in close proximity to altercation, where there was little risk to bystanders' personal security, in that altercation did not involve use of weapons and allegations of police misconduct with respect to bystanders did not shock conscience. Plambeck v. Stone, N.D.Ill.1986, 662 F.Supp. 298. Civil Rights 1088(1)

2096. Excessive force, police activities--Generally

Validity of excessive force claims brought under § 1983 is not governed by single generic standard; rather, court must identify specific constitutional right allegedly infringed, and then judge the claim by reference to specific constitutional standard which governs that right. Graham v. Connor, U.S.N.C.1989, 109 S.Ct. 1865, 490 U.S. 386, 104 L.Ed.2d 443. Civil Rights 1088(2)

Error in failing to give deadly-force instruction as to police officers who used deadly force against suspect while attempting to arrest him following a credit-union robbery was not harmless, in §§ 1983 excessive-force action, in which sole issue at trial was whether officers' use of force was justified. Rahn v. Hawkins, C.A.8 (Mo.) 2006, 464 F.3d 813. Federal Courts 911

Violations of state law and police procedure generally do not give rise to a §§ 1983 claim for excessive force. Marquez v. City of Albuquerque, C.A.10 (N.M.) 2005, 399 F.3d 1216. Civil Rights 1088(2)

The Court of Appeals analyzes an excessive force § 1983 claim under the Fourth Amendment's objective reasonableness standard. McCoy v. City of Monticello, C.A.8 (Ark.) 2003, 342 F.3d 842. Arrest 68(2); Civil Rights 1088(2)

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42 U.S.C.A. § 1983

The validity of an excessive force claim brought under § 1983 must be judged by reference to the specific constitutional right allegedly infringed by the challenged application of force, rather than to some generalized excessive force standard. McCoy v. Harrison, C.A.7 (Ill.) 2003, 341 F.3d 600. Civil Rights 1035

In making excessive force inquiry under § 1983, reasonableness of officers' actions depends both on whether officers were in danger at precise moment that they used force and on whether officers' own reckless or deliberate conduct during seizure unreasonably created need to use such force. Allen v. Muskogee, Okl., C.A.10 (Okla.) 1997, 119 F.3d 837, certiorari denied 118 S.Ct. 1165, 522 U.S. 1148, 140 L.Ed.2d 176. Civil Rights 1088(2)

Reasonableness of police officer's use of deadly force, for purposes of § 1983 civil rights claim, depends upon whether officer was in danger at precise moment that force was used and whether officer's own reckless or deliberate conduct unreasonably created need to use such force. Sevier v. City of Lawrence, Kan., C.A.10 (Kan.) 1995, 60 F.3d 695. Civil Rights 1088(2)

Use of excessive or unreasonable force by police officers in exercise of their authority gives rise to cause of action under the federal civil rights statute, § 1983. Russo v. City of Cincinnati, C.A.6 (Ohio) 1992, 953 F.2d 1036. Civil Rights 1088(2)

For arrestee to state federal cause of action under § 1983 for use of excessive force by law enforcement officers making arrest, conduct of officers must sufficiently cross constitutional line to state civil rights claim; assault or bodily harm caused by police officer is not actionable under § 1983 unless conduct is egregious and reckless. Dale v. Janklow, C.A.8 (S.D.) 1987, 828 F.2d 481, certiorari denied 108 S.Ct. 1486, 485 U.S. 1014, 99 L.Ed.2d 714. Civil Rights 1088(4)

In some circumstances, use of excessive force or violence by law enforcement personnel violates victim's rights under U.S.C.A.Const. Amends. 5, 8, 14. Landrigan v. City of Warwick, C.A.1 (R.I.) 1980, 628 F.2d 736. Civil Rights 1088(2)

Local law enforcement officers who act under color of state law and who use excessive force in the enforcement of state laws are subject to civil rights liability when their acts deprive person of rights guaranteed by the constitution and laws of the United States. Bellows v. Dainack, C.A.2 (N.Y.) 1977, 555 F.2d 1105. Civil Rights 1358

The use of excessive force by police officers in effecting an arrest is ground for liability under this section. Clark v. Ziedonis, C.A.7 (Wis.) 1975, 513 F.2d 79.

To determine whether force was excessive, a court facing a §§ 1983 claim must consider any safety threat perceived by the officers, the need for the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted and the efforts made by the officers to mitigate the severity of the force. Jenkins v. Wilson, W.D.Wis.2006, 432 F.Supp.2d 808. Civil Rights 1088(2)

Arrestee's uncertainty as to which of two officers placed knee on his neck, coupled with lack of other evidence as to identity of officer who did so, precluded finding that either officer used excessive force in connection with arrest that was accomplished by multiple officers. Birdine v. City of Coatesville, E.D.Pa.2004, 347 F.Supp.2d 182, vacated in part, reconsideration denied. Arrest 68(2)

Not every push or shove by a police officer, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment and is actionable under § 1983. Eberle v. City of Newton, D.Kan.2003, 289 F.Supp.2d 1269, motion to amend denied 296 F.Supp.2d 1276. Arrest 68(2); Civil Rights 1088(2)

For purposes of a § 1983 action alleging excessive force, a plaintiff must show that the alleged use of force is objectively sufficiently serious or harmful enough to be actionable; not every push or shove, even if it may later

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seem unnecessary in the peace of the judge's chambers, violates a prisoner's constitutional rights. Perkins v. Brown, E.D.N.Y.2003, 285 F.Supp.2d 279. Civil Rights 1035; Civil Rights 1093

A police officer is personally involved in the use of excessive force, as required for award of damages under § 1983, if he either: (1) directly participates in an assault; or (2) was present during the assault, yet failed to intercede on behalf of the victim even though he had a reasonable opportunity to do so. Jeffreys v. Rossi, S.D.N.Y.2003, 275 F.Supp.2d 463, affirmed 426 F.3d 549. Civil Rights 1358

Civil rights claims of excessive force by a police officer arising outside the context of a seizure, and thus outside the Fourth Amendment, are analyzed under substantive due process principles. Herrera v. Davila, D.Puerto Rico 2003, 272 F.Supp.2d 154. Constitutional Law 253(1)

Deadly force complaint under civil rights statute is analyzed according to Fourth Amendment standards, such that "reasonableness" of particular use of force must be judged from perspective of reasonable officer on scene, rather than with 20/20 vision of hindsight; calculus of reasonableness must include allowances for fact that police officers are often forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly evolving, about amount of force that is necessary in particular situation. Wicker v. City of Galveston, S.D.Tex.1996, 944 F.Supp. 553. Civil Rights 1088(2)

Excessive force claims brought under federal civil rights statute are not governed by single generic standard but, rather, specific constitutional right allegedly infringed by challenged use of force must be identified. Wallace by Wallace v. Batavia School Dist. 101, N.D.Ill.1994, 870 F.Supp. 222, affirmed 68 F.3d 1010. Civil Rights 1035

Although charges against plaintiff were later dropped, city was not liable under § 1983 claim that plaintiff's constitutional rights were violated upon her arrest and confinement, absent evidence of excessive use of force or that officers otherwise acted unreasonably. Velaire v. City of Schenectady, N.Y., N.D.N.Y.1994, 862 F.Supp. 774. Civil Rights 1088(4)

Claims of excessive use of force during arrest of free citizens are governed by reasonableness standard of Fourth Amendment, rather than by due process standards of Fourteenth Amendment. Gibson v. City of Clarksville, Tenn., M.D.Tenn.1993, 860 F.Supp. 450. Arrest 68(2)

Use of excessive force during an arrest, investigatory stop, or other seizure of a free citizen violates that person's Fourth Amendment rights and is actionable under Federal Civil Rights statute. Cox v. County of Suffolk, E.D.N.Y.1991, 780 F.Supp. 103. Arrest 68(2); Civil Rights 1088(4)

Allegations of brutality by law enforcement personnel apprehending suspect or effectuating arrest are cognizable in suit brought under § 1983. In re Scott County Master Docket, D.Minn.1987, 672 F.Supp. 1152, affirmed 868 F.2d 1017. Civil Rights 1088(4)

Plaintiff, who alleged that borough police officer directly and intentionally violated her right to be free from violence and injury by state's own agents, was not alleging a due process claim, but a deliberate and intentional invasion of a substantive constitutional right, and thus plaintiff had right of action against officer for violation of her civil rights, under 42 U.S.C.A. § 1983, without showing that postdeprivation due process was not available. Gant v. Aliquippa Borough, W.D.Pa.1985, 612 F.Supp. 1139. Civil Rights 1088(1)

If a police officer can perform his duties without use of force at all, then even use of minimal force is actionable. Donaldson v. Hovanec, E.D.Pa.1979, 473 F.Supp. 602. Municipal Corporations 189(1)

Claims against county sheriff and deputy sheriff for excessive force in arresting plaintiffs could be brought under

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this section. Manis v. U. S., E.D.Tenn.1979, 467 F.Supp. 828. Civil Rights 1326(8)

Federal civil rights action will lie against police officers for use of unnecessary or unreasonable force in effecting an arrest. Wyland v. James, N.D.Tex.1977, 426 F.Supp. 304. Civil Rights 1088(4)

Deprivation of life by a state or local enforcement official clearly constitutes a claim cognizable under this section governing deprivation of civil rights under color of state law if the deprivation of life results from an illegal use of force by the officer. Phillips v. Ward, E.D.Pa.1975, 415 F.Supp. 976. Civil Rights 1088(2)

This section governing deprivation of civil rights under color of state law neither permits police brutality nor allows police conduct which shocks the conscience. Brudney v. Ematrudo, D.C.Conn.1976, 414 F.Supp. 1187. Civil Rights 1088(2)

Use of excessive or unreasonable force by a police officer in the exercise of his authority is actionable under this section. Durkin v. Bristol Tp., E.D.Pa.1980, 88 F.R.D. 613. Civil Rights 1088(2)

2097. ---- Unreasonable seizure, excessive force, police activities

Police officer did not apply "excessive force" in his lawful seizure of motorist, by grabbing motorist's left arm and attempting to pull him out of his vehicle, and then, after motorist exited vehicle, by pulling motorist's wrist behind him and up to his neck, for purpose of civil rights action against county and deputy sheriff under Fourth Amendment, where motorist refused to produce his driver's license when officer requested it, motorist was combative and irrationally angry, and fact that vehicle was in motion as motorist argued with officer could have led reasonable officer to believe that motorist was attempting to evade arrest or that motorist was posing danger to pedestrians and stopped traffic in area. Lawrence v. Kenosha County, C.A.7 (Wis.) 2004, 391 F.3d 837. Arrest 68(2)

Claims of postarrest excessive force against arrestee who has been detained without a warrant and not yet brought before a judicial officer are governed by "objective reasonableness" standard of Fourth Amendment, under which question is whether defendants' actions were objectively reasonable in light of the facts and circumstances confronting them, without regard to hindsight or underlying intent or motivation. Frohmader v. Wayne, C.A.10 (Colo.) 1992, 958 F.2d 1024. Civil Rights 1088(4)

Not every instance of force proscribed by state law rises to level of constitutional violation so as to support § 1983 action; constitutional violation is shown only by proving use of force that was objectively unreasonable under Fourth Amendment. Finnegan v. Fountain, C.A.2 (N.Y.) 1990, 915 F.2d 817. Civil Rights 1088(2)

Force used during arrest may be so excessive as to support cause of action under § 1983 and Fourth and Fourteenth Amendments. Brown v. Borough of Chambersburg, C.A.3 (Pa.) 1990, 903 F.2d 274. Civil Rights 1088(4)

Town's police officer's alleged actions in effecting arrest on misdemeanor warrant were objectively unreasonable, in terms of force and humiliation, as required to support arrestee's §§ 1983 Fourth Amendment action against officer; despite minor nature of crime, fact that arrestee posed no immediate threat to safety and did not resist or flee, officer allegedly threw arrestee on bed while arrestee was naked from waist down, handcuffed him so tightly that his wrists bled and refused to remove cuffs, and hurried him out of house without permitting him to cover himself. Armstead v. Township of Upper Dublin, E.D.Pa.2004, 347 F.Supp.2d 188. Arrest 68(2)

Fourth Amendment rights, rather than due process rights, were implicated in arrestee's § 1983 claim that sheriff's officers violated her constitutional rights by making unlawful arrest and using excessive force; all claims that officers used excessive force in course of "seizure" are properly analyzed under Fourth Amendment's "reasonableness standard," rather than under substantive due process standard. Myers v. Becker County,

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42 U.S.C.A. § 1983

D.Minn.1993, 833 F.Supp. 1424. Constitutional Law 262

2098. ---- Cruel and unusual punishment, excessive force, police activities

Eighth Amendment had no application with respect to shooting of plaintiffs' decedent by police officer where decedent had not been arrested and had not been convicted. Baker v. Putnal, S.D.Tex.1994, 865 F.Supp. 389, affirmed in part, reversed in part 75 F.3d 190. Sentencing And Punishment 1444

Where light blows are administered by a police officer, they may be considered a mere tort under state law and not subject to suit under this section; however, conduct and manner of administering blows may constitute "cruel and unusual punishment." Com. of Pa. v. Porter, W.D.Pa.1979, 480 F.Supp. 686, affirmed in part, reversed in part on other grounds 659 F.2d 306, certiorari denied 102 S.Ct. 3509, 458 U.S. 1121, 73 L.Ed.2d 1383. Civil Rights 1088(2); Sentencing And Punishment 1440

2099. ---- Due process, excessive force, police activities

Police were liable under § 1983, on substantive due process theory, for beating and shooting death of decedent by means of excessive police force. Gilmere v. City of Atlanta, Ga., C.A.11 (Ga.) 1985, 774 F.2d 1495, certiorari denied 106 S.Ct. 1970, 476 U.S. 1115, 90 L.Ed.2d 654, certiorari denied 106 S.Ct. 1993, 476 U.S. 1124, 90 L.Ed.2d 673. Civil Rights 1088(4)

Resident established, for purposes of motion for summary judgment on qualified immunity grounds, that village's animal control officer violated resident's substantive due process rights through use of excessive force during purported attack that was unjustified by any government interest, given allegations that officer went to resident's home to inquire about reported skunk problem, officer yelled at resident, with whom he had history of personal animosity, after resident declined his help and began to walk away from officer's vehicle, officer hit resident's arm with metal baton after resident noticed and attempted to take tape recorder in officer's lap, and officer then pursued resident on his property, striking him with baton and kicking him in the groin, until resident retreated to his house. Tate v. Fish, D.N.M.2004, 347 F.Supp.2d 1049. Civil Rights 1376(6); Constitutional Law 253(1); Municipal Corporations 747(1)

Police officer who arrived on scene of car stopped by other officers because it matched description of car in reported carjacking was not liable, under § 1983, to car's passenger for failing to intervene sooner than he did to stop officer who pulled passenger from the car from kicking, kneeing, and stripping the passenger after the passenger was handcuffed, in alleged violation of his Fourth Amendment right against use of excessive force, where the arriving officer arrived after the passenger was pulled from the car, and absent any evidence that the arriving officer had a realistic opportunity to intervene earlier. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Civil Rights 1088(4)

Claim of excessive use of force in making an arrest is actionable under § 1983 as a violation of Fourteenth Amendment right to substantive due process. United Steelworkers of America v. Milstead, D.Ariz.1988, 705 F.Supp. 1426. Civil Rights 1088(4)

Abuse of a suspect in police custody is a clear violation of due process guarantees of U.S.C.A.Const. Amend. 14, and thus such conduct is actionable under this section. Classon v. Krautkramer, E.D.Wis.1977, 451 F.Supp. 12. Civil Rights 1088(4); Constitutional Law 262

In effecting an arrest, force found to be reasonable or not excessive under the circumstances is deemed to be in conformity with, and not in contravention of, due process of law, and hence does not create liability of the police officer under this section. Samuel v. Busnuck, D.C.Md.1976, 423 F.Supp. 99. Civil Rights 1088(4); Constitutional Law 262

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42 U.S.C.A. § 1983

2100. ---- Racial discrimination, excessive force, police activities

Driver's failure to prove or allege that similarly situated nonminorities would have been treated differently during course of traffic stop was fatal to federal civil rights claim against state patrol officer where his claim of racial slurs, by itself, could not state violation of equal protection. Oliver v. Cuttler, E.D.N.Y.1997, 968 F.Supp. 83. Civil Rights 1088(4)

Plaintiffs could not proceed against city because of shooting by city police officers to vindicate their rights declared in this section, where action was not based on city's alleged prejudice against plaintiffs because of race. Folk v. Wilson, D.C.Del.1970, 313 F.Supp. 727. Civil Rights 1088(2)

2101. ---- Departmental regulations, excessive force, police activities

Intradepartmental regulations of police department did not create constitutionally protected interest on part of fleeing felony suspect with respect to use of deadly force against him and did not preclude police officer from asserting qualified immunity in view of existing state and federal law permitting use of deadly force under the circumstances. Washington v. Starke, C.A.6 (Mich.) 1988, 855 F.2d 346. Civil Rights 1376(6)

Deputies' alleged uses of excessive force, in violation of the Fourth Amendment, which allegedly occurred while they were detaining hospital patient, pursuant to state statute, for psychiatric evaluation, were not undertaken pursuant to policy or custom of county, and thus county could not be liable under § 1983 for deputies' conduct. Harvey v. Alameda County Medical Center, N.D.Cal.2003, 280 F.Supp.2d 960, affirmed 123 Fed.Appx. 823, 2005 WL 662645. Civil Rights 1351(6)

Interdepartmental policies or regulations of city police department and county sheriff's department did not have force and effect of state law or administrative regulation, and thus, could not and did not create a protected liberty interest in individual not to be shot as a fleeing felon, for purposes of negating defense of qualified immunity available to public officials in civil rights action against public officials based on shooting death during law enforcement pursuit. Washington v. Starke, W.D.Mich.1986, 626 F.Supp. 1149, appeal dismissed 791 F.2d 936, affirmed 855 F.2d 346. Civil Rights 1376(6)

Preseizure conduct was not relevant in determining whether officer's use of force against mentally ill individual violated Fourth Amendment, and thus district court did not abuse its discretion in §§ 1983 excessive force action in excluding police department's general order on handling mentally ill persons. Rollins v. Smith, C.A.8 (Ark.) 2004, 106 Fed.Appx. 513, 2004 WL 1636933, Unreported, certiorari denied 125 S.Ct. 1710, 544 U.S. 954, 161 L.Ed.2d 534, rehearing denied, rehearing denied 125 S.Ct. 2538, 162 L.Ed.2d 288. Arrest 68(2)

2102. ---- Factors governing, excessive force, police activities

Property owner failed to show that she actually yielded to a show of authority, as required to establish a "seizure" for purposes of her excessive force claim under § 1983, alleging that state animal welfare investigator violated her Fourth Amendment rights when he struck her while investigating dog kennels on her property, where investigator did not try to restrain her after he knocked her down, he did not order her to remain where she was, and he asserted no authority as to her person. McCoy v. Harrison, C.A.7 (Ill.) 2003, 341 F.3d 600. Arrest 68(4)

Excessive force inquiry under § 1983 not only includes officers' actions at moment threat was presented, but also may include their actions in moments leading up to suspect's threat of force if those actions are "immediately connected" to such threat of force. Allen v. Muskogee, Okl., C.A.10 (Okla.) 1997, 119 F.3d 837, certiorari denied 118 S.Ct. 1165, 522 U.S. 1148, 140 L.Ed.2d 176. Civil Rights 1088(2)

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Whether officer's specific use of force in connection with arrest is excessive for civil rights purposes turns on factors such as severity of crime, whether suspect poses immediate threat, and whether suspect is resisting or fleeing. Post v. City of Fort Lauderdale, C.A.11 (Fla.) 1993, 7 F.3d 1552, modified 14 F.3d 583. Civil Rights 1088(4)

In evaluating excessive police force claim in context of § 1983 civil rights action, factors such as need for using force, relationship between need for using force and amount of force used, reason for using force, that is, whether officer applied force in good faith or with malicious intent, and extent of injuries suffered, are considered. Samples on Behalf of Samples v. City of Atlanta, C.A.11 (Ga.) 1988, 846 F.2d 1328. Civil Rights 1088(2)

In determining if police officer's conduct rises to level of constitutional deprivation, factors such as need for force, relationship between need and amount applied, extent of injury inflicted, motivation of police officer in applying force, and circumstances surrounding use of force must be considered. Lewis v. Downs, C.A.6 (Tenn.) 1985, 774 F.2d 711. See, also, Roberts v. Marino, C.A.5 (La.) 1981, 656 F.2d 1112; Jordan v. Five Unnamed Police Officers and Agents, E.D.La.1981, 528 F.Supp. 507. Civil Rights 1412

In determining whether an individual's constitutional rights have been violated through use of excessive force by a law enforcement official in completing an arrest, court must look at such factors as the need for application of force, relationship between the need and the amount of force that was used, extent of the injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm; use of any force by officers simply because a suspect is argumentative, contentious, or vituperative is not to be condoned and force can only be used to overcome physical resistance or threatened force. Bauer v. Norris, C.A.8 (S.D.) 1983, 713 F.2d 408. Civil Rights 1088(4)

Police officer who used no force against mentally ill individual during confrontation between individual and police officers seeking to take him into custody could not have used unreasonable force against individual and thus could not be liable in his individual capacity for violation of mentally ill individual's Fourth Amendment rights. Herrera v. Las Vegas Metropolitan Police Dept., D.Nev.2004, 298 F.Supp.2d 1043. Arrest 68(2); Civil Rights 1358

For purposes of § 1983 Fourth Amendment excessive force claim, calculus of reasonableness of force must embody allowance for fact that police officers are forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. Huong v. City of Port Arthur, E.D.Tex.1997, 961 F.Supp. 1003. Civil Rights 1088(4)

In determining whether force used to effect arrest was objectively reasonable, court must look at particular circumstances involved and not at officer's underlying intent; surrounding circumstances to which court must look include severity of crime, whether suspect posed immediate threat to safety of officers or others, and whether he was actively resisting arrest or attempting to evade arrest by flight. Crooms v. P.O. Mercado, No. 41, N.D.Ill.1997, 955 F.Supp. 985. Arrest 68(2)

In order to prevail on excessive force claim, plaintiff in § 1983 action must show: (1) significant injury, (2) which resulted directly and only from use of force that was clearly excessive to need, the excessiveness of which was (3) objectively unreasonable, which is standard measured with reference to law as it existed at time of conduct in question. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1088(4)

Factors to consider in determining whether force used by police officers in making arrest was excessive include severity of crime at issue, whether suspect poses immediate threat to officers or others, and whether suspect actively resisted arrest or attempted to evade arrest by flight. Brawley v. Sapp, D.Del.1993, 811 F.Supp. 172, affirmed 6 F.3d 778. Civil Rights 1088(4)

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In determining whether excessive force has been used in violation of plaintiff's civil rights, court must inquire into need for application of force; relationship between need and amount of force used; extent of injury inflicted; and whether force was applied in good faith effort to effect arrest or maliciously and sadistically for the very purpose of causing harm. Lindsey v. City of St. Paul, D.Minn.1990, 732 F.Supp. 1000. Civil Rights 1088(4)

2103. ---- Balancing test, excessive force, police activities

In determining whether state officers have crossed constitutional line that would make physical abuse actionable under section 1983 [42 U.S.C.A. § 1983] because of seizure of person, proportions of injury must be gauged by balancing nature and quality of intrusion on individual's Fourth Amendment [U.S.C.A. Const.Amend. 4] interest against importance of governmental interest alleged to justify the intrusion. Jamieson By and Through Jamieson v. Shaw, C.A.5 (Miss.) 1985, 772 F.2d 1205, rehearing denied 776 F.2d 1048. Civil Rights 1088(4)

2104. ---- Objective standard, excessive force, police activities

Objective reasonableness is test to determine whether particular use of force to effect arrest is excessive. Kopf v. Wing, C.A.4 (Md.) 1991, 942 F.2d 265, certiorari denied 112 S.Ct. 1179, 502 U.S. 1098, 117 L.Ed.2d 423. Civil Rights 1088(4)

Under Fourth Amendment analysis of excessive force claim, which applies at least to the period prior to the time when the person arrested is arraigned or formally charged, and remains in the custody of the arresting officer, question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation; among the factors the jury should consider in determining the objective reasonableness of the officer's conduct are the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, whether the suspect is actively resisting arrest or attempting to evade arrest by flight, the need for the use of force, the relationship between the need for force and the amount of force used, and the extent of any injury. Turner v. White, E.D.N.Y.2005, 443 F.Supp.2d 288. Arrest 68(2)

Reasonableness inquiry in excessive force civil rights case is objective one: whether officers' actions are objectively reasonable in light of facts and circumstances confronting them, without regard to their underlying intent or motivation. Brown v. City of Bloomington, D.Minn.2003, 280 F.Supp.2d 889, appeal after remand from federal court 706 N.W.2d 519, review denied. Civil Rights 1088(2)

Police officers' use of force in arresting motorist following traffic stop and ensuing struggle was objectively unreasonable, as would support motorist's excessive force claim under § 1983 against officers, where a reasonable officer would have recognized that kicks and knee strikes administered to motorist after he was subdued were unnecessary. Coleman v. Rieck, D.Neb.2003, 253 F.Supp.2d 1101, affirmed 154 Fed.Appx. 546, 2005 WL 3068056. Automobiles 349(17)

Analysis of a § 1983 claim of excessive force in violation of constitutional prohibition against unreasonable seizures requires a review of the objective reasonableness of the defendants' actions in light of the totality of circumstances surrounding the incident. Raymond v. Bunch, N.D.N.Y.2001, 136 F.Supp.2d 71. Civil Rights 1088(2)

Determining whether force used is "reasonable" under Fourth Amendment for purposes of civil rights claim for excessive force requires objective inquiry as to whether defendant's actions were objectively reasonable given totality of circumstances, regardless of defendant's underlying intent or motive. Oliver v. Cuttler, E.D.N.Y.1997, 968 F.Supp. 83. Civil Rights 1088(4)

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"Objective reasonableness" test determines whether excessive force was used in making of arrest or seizure, under which court must examine (1) severity of crime at issue; (2) whether suspect posed immediate threat to safety of officers and others; and (3) whether he actively resisted arrest. Caridi v. Forte, S.D.N.Y.1997, 967 F.Supp. 97. Arrest 68(2)

Whether use of force was reasonable, for purposes of § 1983 Fourth Amendment excessive force claim, is judged from perspective of reasonable officer on scene; test of reasonableness requires attention to facts and circumstances of case, including whether crime was severe, whether subject posed immediate threat to safety of officers, and whether he was actively resisting arrest or attempting to evade arrest by flight. Huong v. City of Port Arthur, E.D.Tex.1997, 961 F.Supp. 1003. Civil Rights 1088(4)

Excessive force claims are analyzed under Fourth Amendment objective reasonableness standard, and police officer's use of force to arrest individual is unconstitutional if, judging from totality of circumstances at time of arrest, officer used greater force than was reasonably necessary to make the arrest. Crooms v. P.O. Mercado, No. 41, N.D.Ill.1997, 955 F.Supp. 985. Arrest 68(2)

Under Fourth Amendment, police officer's use of force must be objectively reasonable in light of facts and circumstances surrounding arrestee's actions; thus, even unreasonable force applied without malice violates Fourth Amendment and may be challenged under § 1983. Smith v. Delamaid, D.Kan.1994, 842 F.Supp. 453. Arrest 68(2); Civil Rights 1088(4)

Inquiry whether police officer's use of force in making arrest is reasonable is an objective one, i.e., whether officer's actions are objectively reasonable in light of facts and circumstances confronting him without regard to his underlying intent or motivation. House v. New Castle County, D.Del.1993, 824 F.Supp. 477. Arrest 68(2)

2105. ---- Injury, excessive force, police activities

Whether minor arrested by police officer suffered long-term or permanent physical injury from officer's improper application of handcuffs was question for jury in minor's §§ 1983 action alleging use of excessive force in violation of Fourth Amendment, given testimony of treating orthopedic surgeon that minor suffered 1.3 percent permanent impairment of his upper right extremity, vocational rehabilitation expert's testimony that minor suffered 13 percent vocational disability, and economist's testimony that minor's life-time economic loss was $180,063. Hanig v. Lee, C.A.8 (S.D.) 2005, 415 F.3d 822, rehearing and rehearing en banc denied. Civil Rights 1429

Although arrestee was not required to show that he suffered significant injury before he could prevail in civil rights action for alleged use of excessive force, arrestee was required to prove that he suffered some injury, even if insignificant. Knight v. Caldwell, C.A.5 (Tex.) 1992, 970 F.2d 1430, certiorari denied 113 S.Ct. 1298, 507 U.S. 926, 122 L.Ed.2d 688. Civil Rights 1088(4)

Serious injury was not an essential element of § 1983 action predicated on allegations that pretrial detainee was beaten and injured by officers during custodial interrogations. Gray v. Spillman, C.A.4 (N.C.) 1991, 925 F.2d 90. Civil Rights 1088(4)

In regard to due process claims arising from excessive force in pretrial detention, it is not necessary that detainee suffer severe injury. Titran v. Ackman, C.A.7 (Ill.) 1990, 893 F.2d 145. Constitutional Law 262

Objectively severe physical injury was necessary element of civil rights claim under § 1983 alleging arresting officer used undue force. Johnson v. Moral, C.A.5 (La.) 1988, 843 F.2d 846, rehearing granted, on rehearing 876 F.2d 477. Civil Rights 1088(4)

Police officer's having slapped arrestee several times with open hand amounted to more of an affront than an

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injury, given testimony that arrestee was not injured by the slaps and that they caused no bleeding, required no medical attention, and were too weak to knock him down, and even assuming truth of arrestee's account and however reprehensible such conduct by a policeman may be, it did not rise to such level that redress could be had for it under section 1983. Mark v. Caldwell, C.A.5 (Tex.) 1985, 754 F.2d 1260, certiorari denied 106 S.Ct. 310, 474 U.S. 945, 88 L.Ed.2d 287. Civil Rights 1088(4)

Extent of injuries received does not necessarily determine whether unconstitutional punishment was inflicted to one in custody of police. Howell v. Cataldi, C.A.3 (Pa.) 1972, 464 F.2d 272. Civil Rights 1088(5)

Genuine issues of material fact existed as to existence or extent of arrestee's mother's injuries, and whether the force employed against mother in two instances was necessary and reasonable, precluding summary judgment in favor of officers on mother's excessive force claim. Webster v. City of New York, S.D.N.Y.2004, 333 F.Supp.2d 184. Federal Civil Procedure 2491.5

Section 1983 complaint which failed to allege any physical injury as result of arrest did not state a claim against police officers for use of excessive force. Shultz v. Smith, D.Md.2003, 264 F.Supp.2d 278. Civil Rights 1088(4)

Allegations that minor child was handcuffed, thrown to the floor, and threatened by police officers when they took child into custody after arresting his mother and that child suffered psychological injuries as a result failed to state civil rights claim for excessive use of force. Thompson v. City of Galveston, S.D.Tex.1997, 979 F.Supp. 504, affirmed 158 F.3d 583. Civil Rights 1088(2)

To successfully state excessive force claim under Fourth Amendment, plaintiff must establish that he or she suffered significant injury or that defendant's actions were sufficiently reprehensible. Pride v. Kansas Highway Patrol, D.Kan.1992, 793 F.Supp. 279, affirmed 997 F.2d 712. Arrest 68(2)

Complaint alleging that plaintiff suffered a punched stomach, swollen and bleeding wrists from tight handcuffs, and faintly detectable scar on wrist alleged sufficient injury to state a § 1983 civil rights claim based on claim of excessive force in connection with arrest. Simpson v. Saroff, S.D.N.Y.1990, 741 F.Supp. 1073. Civil Rights 1395(6)

Plaintiff seeking to impose civil rights liability on police officers because of the use of excessive force must show that the injury inflicted rose to the level of a constitutional tort, i.e., that it was so egregious as to exceed the boundaries of wrongful injuries redressable under tort law and that it deprived the victim of a liberty interest without due process of law. Skevofilax v. Quigley, D.C.N.J.1984, 586 F.Supp. 532. Civil Rights 1088(2)

Evidence in §§ 1983 action that deputies stopped detainee's truck, struck him in the mouth, pulled him out of the truck, and slammed his head to the ground, that one deputy got on top of detainee, put a gun to his head, and made a statement that he ought to kill him, together with psychotherapist's testimony that this experience caused detainee to suffer from flashbacks, anxiety, stress, and the loss of sleep, was sufficient for a reasonable fact finder to conclude that deputies harmed detainee by the use of excessive force. Bias v. Lundy, C.A.5 (La.) 2006, 188 Fed.Appx. 248, 2006 WL 1877275, Unreported. Civil Rights 1088(4)

2106. ---- Malice requirement, excessive force, police activities

In order for arrestee to state § 1983 action pursuant to the Fourteenth Amendment based upon alleged excessive force used by police officer in detention of arrestee after lawful arrest, action by officer must be not only grossly disproportionate under circumstances, but must have been inspired by malice, so as to amount to abuse of official power that shocks conscience. Stevens v. Corbell, C.A.5 (Tex.) 1987, 832 F.2d 884, rehearing denied 838 F.2d 1214, certiorari denied 108 S.Ct. 2018, 486 U.S. 1033, 100 L.Ed.2d 604. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Civil rights plaintiff was not required to show malice to prevail on claim of excessive force in connection with arrest. Palmer v. Williamson, W.D.Tex.1989, 717 F.Supp. 1218. Civil Rights 1088(4)

2107. ---- Willfulness requirement, excessive force, police activities

Civil rights statute [42 U.S.C.A. § 1983] provides a remedy for excessive use of physical force by state agents whether or not unauthorized conduct of state agents was "willful." Kidd v. O'Neil, C.A.4 (Va.) 1985, 774 F.2d 1252. Civil Rights 1035

Persons who were intentionally sprayed with pepper spray by police officers were "seized" within meaning of Fourth Amendment, for purpose of lawsuit under §§ 1983 alleging excessive force, since officers dispersed pepper spray in attempt to gain physical control over those individuals. Logan v. City of Pullman, E.D.Wash.2005, 392 F.Supp.2d 1246. Arrest 68(4)

2108. ---- Beatings, excessive force, police activities

Police officer had reasonable notice of failure to intervene claim brought by juvenile in §§ 1983 action stemming from fellow officer's beating of juvenile; allegations in complaint indicated that officer was present during, and contributed to, the juvenile's beating, and pretrial motions indicated that police officer "aided and assisted" in the brutal attacks on the juvenile instead of preventing them. Torres-Rivera v. O'Neill-Cancel, C.A.1 (Puerto Rico) 2005, 406 F.3d 43. Civil Rights 1397

Arrestee who was part of crowd socializing on railroad property did not sustain sufficiently severe injury to support § 1983 action for excessive use of force, by virtue of being slapped in the face with the back of the hand, having his arms jerked behind his back and being thrown to the ground, and being placed in a headlock and choked by police officer; only medical treatment was soft foam rubber collar which he wore for a week, and there was no long term injury. Pfannstiel v. City of Marion, C.A.5 (Tex.) 1990, 918 F.2d 1178. Civil Rights 1088(4)

Arrestee's being pushed against wall twice on way to holding area did not give rise to constitutional claim of excessive force under Fourth Amendment, particularly in light of arrestee's testimony that he sustained no injury as result of being pushed. Foster v. Metropolitan Airports Com'n, C.A.8 (Minn.) 1990, 914 F.2d 1076. Civil Rights 1088(4)

Alderman stated claim that police officers used excessive force in arresting him, for refusing to leave meeting when ordered to do so by other aldermen, by allegedly slamming his head against brick wall and concrete floor, when alderman was not resisting arrest in any way, precluding any need to engage in physical violence. King v. Jefferies, M.D.N.C.2005, 402 F.Supp.2d 624. Arrest 68(2)

Evidence, in arrestee's federal civil rights action against police officers for injuries sustained after resisting alcohol confiscation at public fireworks display, supported findings that officers used excessive force in applying handcuffs, beating him with baton and deliberately driving police van so as to throw him about. Hogan v. Franco, N.D.N.Y.1995, 896 F.Supp. 1313. Civil Rights 1420

Arrestee's allegations that he was beaten by arresting officer after his arrest because he would not sign *Miranda* warnings and requested to make a telephone call was sufficient to state civil rights claim against officer, regardless of whether Fourth or Fourteenth Amendment applied; beating arrestee for refusing to sign *Miranda* warnings or in retaliation for requesting phone call was not objectively reasonably and "shocked the conscience." Bieros v. Nicola, E.D.Pa.1994, 860 F.Supp. 226. Civil Rights 1088(4)

Deputy sheriff used excessive force when he threw black woman against car after woman protested arrest of her husband for passing bad check, where woman suffered severe back injury as result, had not threatened deputy, was

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unarmed, and made no aggressive move which would have justified deputy's actions. Thomas v. Frederick, W.D.La.1991, 766 F.Supp. 540. Civil Rights 1088(4)

Police officer who struck arrestee in face after being struck light blow by arrestee during struggle was liable under § 1983 for using excessive force; officer's blow rendered arrestee unconscious, causing him to strike his head on pavement and sustain serious brain damage. Braud v. Painter, M.D.La.1990, 730 F.Supp. 1. Civil Rights 1088(4)

Civil rights claim which alleged that officers kicked arrestee in the head and between the legs and hit him with a night stick was sufficient to state a claim for use of unreasonable force in violation of civil rights. East v. City of Chicago, N.D.Ill.1989, 719 F.Supp. 683. Civil Rights 1093

State trooper's seizure of arrestee was unreasonable and actionable under § 1983 to extent that trooper used excessive force to make arrest; before arrestee was handcuffed, trooper vented his anger after high-speed chase, struck arrestee on head, arms and ribs, and kicked arrestee in groin while he was lying on his stomach. Pastre v. Weber, S.D.N.Y.1989, 717 F.Supp. 992, affirmed 907 F.2d 144. Civil Rights 1088(4)

Plaintiff's rights under this section and U.S.C.A.Const. Amend. 14 were not violated where although during course of arrest he was struck on head with a pistol and by fist and received broken nose and wounds requiring 21 stitches, the plaintiff struggled violently against arresting officers and attempted to seize officer's pistol and four men were required to subdue plaintiff who had been a high school wrestler and football player; amount of force used was not unreasonable. Melton v. Shivers, M.D.Ala.1980, 496 F.Supp. 781. Civil Rights 1088(4)

Where deputy with probable cause told husband plaintiff that he was under arrest and he pulled away and made some move with his hands which deputy interpreted as threatening, deputy's action in striking husband plaintiff with his fist, knocking him to the ground, was reasonable under the circumstances and was not an excessive use of force. Lamb v. Cartwright, E.D.Tex.1975, 393 F.Supp. 1081, affirmed 524 F.2d 238. Arrest 68(2)

2109. ---- Dogs, excessive force, police activities

Issue of whether officer's actions of ordering his police service dog to apprehend arrestee were objectively reasonable was for jury in §§ 1983 action brought by arrestee alleging that the use of the police dog constituted excessive force in violation of her Fourth Amendment rights; evidence demonstrated that officer had reason to believe that arrestee was an armed burglary suspect, a high-speed chase immediately preceded the arrest, at the conclusion of the high speed chase arrestee attempted to evade arrest by running from officer and trying to climb a fence, and, at the time of the arrest, the officer was the only officer at the scene and was required to secure two felony suspects. Marquez v. City of Albuquerque, C.A.10 (N.M.) 2005, 399 F.3d 1216. Civil Rights 1429

Even if use of police dog to apprehend suspected felon involved use of deadly force, use of such force to seize burglary suspect in automobile dealership was not unreasonable, precluding suspect's estate from recovering in civil rights action after police dog grabbed suspect by neck, resulting in suspect's death; suspect was hiding in darkened building in middle of night and had been warned that dog would be used if he did not surrender. Robinette v. Barnes, C.A.6 (Tenn.) 1988, 854 F.2d 909, 102 A.L.R. Fed. 605. Civil Rights 1088(4)

Police officer did not use excessive force, precluding detainee's §§ 1983 action claiming violation of his Fourth and Fourteenth Amendment rights, when he dispatched canine to catch and subdue motorist who fled on foot after being ordered out of validly stopped automobile. Tilson v. City of Elkhart, Ind., N.D.Ind.2003, 317 F.Supp.2d 861, adhered to on reconsideration 2003 WL 23509313, affirmed 96 Fed.Appx. 413, 2004 WL 901545. Arrest 68(2)

2110. ---- Chase, excessive force, police activities

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42 U.S.C.A. § 1983

Where high-speed chase had terminated without injury to automobile driver, and chase by members of various law enforcement agencies was authorized under IC 18-1-11-4 which provides that officers may pursue person who has committed a misdemeanor in their presence and may assist another officer in doing so, regardless of whether warrant has been issued, no liability could attach to law enforcement agencies or individual members thereof for participation in chase under this section. Richardson v. City of Indianapolis, C.A.7 (Ind.) 1981, 658 F.2d 494, certiorari denied 102 S.Ct. 1442, 455 U.S. 945, 71 L.Ed.2d 657. Civil Rights 1326(8)

Police officers' actions in shooting and killing suspect following motor vehicle chase could not support municipal liability claim under §§ 1983 against city, where officers did not use excessive force in violation of the Fourth Amendment. Ingle v. Yelton, W.D.N.C.2004, 345 F.Supp.2d 578, affirmed in part, reversed in part and remanded 439 F.3d 191. Civil Rights 1351(4)

Assuming that police officer involved in arrest of 14-year-old driver who had forced vehicle off the road and then fled hit driver or that an officer placed foot on driver's neck as he was being handcuffed, such force was not so unreasonable as to be violative of driver's constitutional or civil rights; in addition to fleeing after forcing vehicle off the road, when driver arrived at his home, he apparently attempted to flee on foot. Matasic v. City of Campbell, Ohio, N.D.Ohio 1997, 954 F.Supp. 156. Civil Rights 1088(4)

Conduct of police officer in pursuing motorist at high speed was not of the egregious or reckless type which would amount to constitutional violation of excessive force so as to support civil rights claim by persons in automobile with which motorist collided. Keller v. Truska, E.D.Mo.1988, 694 F.Supp. 1384, affirmed 882 F.2d 294. Civil Rights 1088(2)

Administratrix of motorcyclist's estate failed to state civil rights cause of action against police officers, who engaged in high-speed chase with motorcyclist causing motorcyclist to lose control and to sustain injuries ultimately leading to his death; officers' chase to stop motorcyclist fleeing in violation of Ohio law did not shock conscience of court, and administratrix had a remedy in state court. York v. Lamantia, N.D.Ohio 1987, 674 F.Supp. 17. Civil Rights 1395(5)

Deputy sheriff's alleged negligence, in connection with high-speed pursuit, in relaying purportedly erroneous information to dispatcher, encouraging police officer giving chase to continue pursuit, trying to intercept fleeing vehicle, and calling for roadblock by police officers, did not amount to constitutional deprivation, such as could render deputy liable in civil rights action in connection with accident during pursuit and occupant's subsequent death. Allen v. Cook, W.D.Okla.1987, 668 F.Supp. 1460. Civil Rights 1088(1)

Finding, in §§ 1983 action, that arrest involved the use of constitutionally permissible force was supported by sufficient evidence, including deputy's testimony that as he drove behind arrestee to make a traffic stop, arrestee slowed his car to a standstill, jumped out, and ran toward the front of the car, that, as arrestee did this, deputy drove around arrestee's car and stopped his vehicle ahead and to one side, hoping to prompt arrestee to run in the other direction, where deputy expected backup assistance to be arriving, and that, instead, arrestee tried to run through the space between the two vehicles and, as his idling car rolled forward, his leg was pinned. Herrera v. Board of Bernalillo County Com'rs, C.A.10 (N.M.) 2004, 106 Fed.Appx. 670, 2004 WL 1730381, Unreported. Civil Rights 1420

2111. ---- Drawing and pointing of guns, excessive force, police activities

Police officer's actions in pointing his shotgun at arrestee's head and ordering him to roll over were not unreasonable under the circumstances and therefore did not give rise to excessive force claim; regardless of how arrestee's struggle with fellow officers started or whether there had been wrongdoing by fellow officers, officer was entitled to rely on his fellow officers' determination that the arrest in process was lawful. Davis v. Rodriguez, C.A.2 (Conn.) 2004, 364 F.3d 424. Arrest 68(2)

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Deputy sheriff's requiring automobile passenger to lie on ground while he directed shotgun toward her and her companions in course of investigatory stop did not constitute excessive force for purpose of defense of qualified immunity; deputy was alone late at night at vacant construction site when he stopped vehicle, occupants appeared to be uncooperative and not all occupants exited vehicle until deputy's third command, deputy suspected that occupants might have been connected with marijuana fields that he had under surveillance, and one of passenger's companions was abusive. Courson v. McMillian, C.A.11 (Fla.) 1991, 939 F.2d 1479. Civil Rights 1376(6)

Police officer did not use excessive force in seizing auto theft suspect in violation of suspect's Fourth Amendment rights, when officer did not reholster his weapon which he had reasonably drawn when suspect began to flee; had officer taken time to put gun away suspect would have escaped. Pleasant v. Zamieski, C.A.6 (Mich.) 1990, 895 F.2d 272, rehearing denied, certiorari denied 111 S.Ct. 144, 498 U.S. 851, 112 L.Ed.2d 110. Arrest 68(2)

Evidence in civil rights deprivation case supported conclusion that officer in charge of three-man police squad doing "preventive rounds" on drug detail acted with reckless or callous indifference to constitutional rights when he had the squad, all of whom were in plain clothes and had alighted from an unmarked police car, approach a parked automobile with guns drawn without identifying themselves as policemen. Gutierrez-Rodriguez v. Cartagena, C.A.1 (Puerto Rico) 1989, 882 F.2d 553. Civil Rights 1420

Federal civil rights claim for use of excessive force in violation of Fourth Amendment was stated by driver's claim that state parole officer in arresting him for reckless driving pointed gun to his head and kicked him in his legs, causing him to fall, despite lack of any provocation or wrongdoing. Oliver v. Cuttler, E.D.N.Y.1997, 968 F.Supp. 83. Civil Rights 1395(6)

Police officers' actions in making arrest were objectively reasonable under circumstances and did not constitute use of excessive force, and therefore officers could not be held liable for violation of federal civil rights statute, even though officer drew and pointed weapon at automobile passenger and allegedly threatened to blow her head off, where officers reasonably believed that automobile was stolen, and another occupant had exited automobile and surrendered himself. Lodato v. Township of Evesham, D.N.J.1992, 782 F.Supp. 957. Civil Rights 1088(4)

2112. ---- Drownings, excessive force, police activities

Police officers did not, as matter of law, use excessive force against arrestee who drowned in dredge pond after resisting arrest and attempting to flee; there was no evidence that officer carried arrestee against his will into water over his head or that officer had any way of knowing that arrestee could not swim, and officer's attempts to subdue arrestee left no significant abrasions, bruises or other injuries on arrestee's body. Franklin v. City of Boise, D.Idaho 1992, 806 F.Supp. 879. Civil Rights 1088(4)

2113. ---- Forced entries, excessive force, police activities

Evidence raised triable issue of fact as to whether police officers used excessive force in effecting arrest, precluding summary judgment in arrestee's civil rights action; evidence indicated that arrestee was arrested for littering, attempted to evade arrest by fleeing to her home, and that officers broke down door to arrestee's home, tackled and choked her, and dragged her from her home by handcuffs and her hair. Berry v. City of Phillipsburg, Kan., D.Kan.1992, 796 F.Supp. 1400. Federal Civil Procedure 2491.5

Since sheriff acted pursuant to legal authority in allegedly breaking window and lock on storm door of petitioner's house in serving arrest warrant issued by parole officer and did not act in a flagrant manner, neither sheriff's department nor the parole officer were liable in damages under this section. Alger v. Page County Sheriff's Dept., W.D.Va.1976, 408 F.Supp. 978. Civil Rights 1376(6)

2114. ---- Mace, excessive force, police activities

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Police did not use excessive force in arresting house occupant for disorderly conduct, on lawn while he was chopping wood, precluding civil rights violation claim under § 1983, when he ordered them off property, and removed shirt as if to fight, and police sprayed him twice with pepper spray and wrestled him to ground, to apply handcuffs. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Arrest 68(2)

Conduct of police officers, who, upon responding to call that apparently drunken couple was engaged in loud and boisterous confrontation on public street outside bar, took plaintiff, on her insistence, to jail with her yelling and screaming all the way, who after leaving plaintiff momentarily in car and returning to find her kicking and pounding on window directed two slight squirts of mace in her direction to calm her down and who were forced to physically carry her to cell and to use reasonable force in effort to push her in, was reasonable, based upon probable cause, and did not violate any of her civil or constitutional rights. Hanks v. Weddle, E.D.Wash.1977, 434 F.Supp. 1150. Arrest 68(2); Civil Rights 1088(4)

2115. ---- Restraints, excessive force, police activities

Allegations that city's handcuff policy required that all detainees wear handcuffs, regardless of the circumstances, supported § 1983 claim of arrestee who allegedly suffered pain and injury from being restrained with handcuffs that were too small for his wrists, pursuant to city policy, despite being arrested for non-violent misdemeanor offense. Kostrzewa v. City of Troy, C.A.6 (Mich.) 2001, 247 F.3d 633. Civil Rights 1395(6)

"Hog-tie" restraint of arrestee who had been running around naked and jumping up and down and yelling, in which arrestee's tied ankles were bound to his handcuffed wrists behind his back, constituted use of excessive force, in violation of Fourth Amendment, where diminished capacity of arrestee was obvious to arresting officers, as arrestee was yelling continuously about swarming insects and was swatting at invisible objects, and after his eyelid was opened, arrestee's pupil was constricted but did not constrict further in response to sunlight, which led officers to surmise that he was on some type of drug. Cruz v. City of Laramie, Wyo., C.A.10 (Wyo.) 2001, 239 F.3d 1183. Arrest 68(2)

For purposes of § 1983 excessive force claim, state trooper's conduct in placing her hand around arrestee's neck and applying force to restrain him was reasonable, where arrestee had been arrested for disorderly conduct based on altercation at state fair, trooper had been told that arrestee had been drinking and that he was suspected of slapping barmaid, trooper observed that arrestee was intoxicated and combative, and trooper perceived that arrestee was acting in threatening manner; relevant question for court was not whether arrestee acted in threatening manner but whether trooper reasonably believed so. Pride v. Does, C.A.10 (Kan.) 1993, 997 F.2d 712. Civil Rights 1088(4)

Police officer who merely put his hands around pregnant motorist to restrain her as she attempted to flee from him for second time to avoid arrest on misdemeanor traffic infraction was entitled to qualified immunity on motorist's claim of excessive force. Moore v. Gwinnett County, C.A.11 (Ga.) 1992, 967 F.2d 1495, certiorari denied 113 S.Ct. 1049, 506 U.S. 1081, 122 L.Ed.2d 357. Civil Rights 1376(6)

Assuming the Fourteenth Amendment standard applied to an arrestee's excessive force claim under § 1983, standard was not violated by police officer's pulling arms of arrestee through bars of her cell and holding her in place while police matron performed pat down search; search was not intended as excessive force to punish but rather was intended to meet legitimate government interest of insuring that prisoner was not in possession of contraband or any means by which to hurt herself. Culver v. Town of Torrington, Wyo., C.A.10 (Wyo.) 1991, 930 F.2d 1456. Prisons 4(7)

Use of handcuffs to temporarily detain arrestee suspected of rape during execution of search warrant of home and transportation in automobile was reasonable and justified under Fourth Amendment, for purpose of arrestee's §§ 1983 claim, since police officer had legitimate concern that allegedly violent criminal would have tried to escape

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before collection of potentially incriminating evidence or could have posed danger to officer executing warrant, and officer did not use handcuffs at any time where concerns justifying their use were not present and officer did not use any force to detain occupant once search was completed. Barrows v. Coleman, D.Conn.2005, 352 F.Supp.2d 276. Arrest 68(2)

Arresting officer's conduct in allegedly roughly pushing arrestee into squad car, which caused arrestee's forehead to scrape against partition between front and back seats, was too minimal a use of force to be constitutionally excessive. Maxwell v. City of New York, S.D.N.Y.2003, 272 F.Supp.2d 285, reconsideration denied, affirmed in part, vacated in part and remanded 380 F.3d 106, supplemented 108 Fed.Appx. 10, 2004 WL 1800645. Arrest 68(2)

Handcuffing arrestee to bar on wall at police station during his detainment and striking him in thighs with baton in attempt to subdue him after he became violent did not constitute use of excessive force, and conduct of detaining officers was in any event protected from arrestee's § 1983 suit by good faith immunity, where arrestee posed enormous threat to officers' safety, in that he repeatedly attacked arresting officer, appeared to be on drugs, ingested more drugs upon arriving at station, struck arresting officer in face with metal handcuffs, and hurled racial invective at arresting officer throughout whole incident. Caridi v. Forte, S.D.N.Y.1997, 967 F.Supp. 97. Arrest 68(2); Civil Rights 1376(6)

City's policy to require nearly all arrestees to be handcuffed with their hands behind their backs, unless there is physical limitation, was reasonable, and thus officers' handcuffing of arrestee's hands behind his back after he had been shot did not constitute Fourth Amendment deprivation for purposes of § 1983 action brought by administrator of arrestee's estate. Frazier v. City of Philadelphia, E.D.Pa.1996, 927 F.Supp. 881. Civil Rights 1088(4)

Force used by sheriff's officers to make arrest was reasonable, so that officers were entitled to qualified immunity in arrestee's § 1983 action; it was reasonable for officers to believe that arrestee was attempting to escape when she began moving away from them as she did not indicate her intent when she did so, arrestee had access to potential weapons, only force applied to arrestee before she began struggling was grabbing of her wrists, force then escalated in response to arrestee's attempts to break free, force used was minimal, and there was no further use of force once arrestee succumbed to officers' authority, even though arrestee's alleged offense was neither violent nor serious. Myers v. Becker County, D.Minn.1993, 833 F.Supp. 1424. Civil Rights 1376(6)

Use of handcuffs to restrain arrestee did not amount to use of excessive force after arrestee had fled from lawful custody and resisted arrest and, therefore, police officer could not be held liable in civil rights action for alleged use of excessive force. Jones v. Village of Villa Park, N.D.Ill.1993, 815 F.Supp. 249. Civil Rights 1088(4)

Sheriff did not use excessive or unreasonable force in grabbing arrestee by neck with one hand, placing him up against vehicle, and handcuffing him, after arrestee, following verbal altercation with sheriff, stopped vehicle in middle of driving lane, jumped out of it, ignored another officer's request to move vehicle to side of road, ran towards sheriff's vehicle yelling obscenity; there was no evidence that sheriff continued to squeeze arrestee's neck or to use any other gratuitous force after arrestee was secured with handcuffs; therefore, arrestee could not recover from sheriff in suit under § 1983. Swanson v. Fields, D.Kan.1993, 814 F.Supp. 1007, affirmed 13 F.3d 407. Arrest 68(2); Civil Rights 1088(4)

Officers did not violate any of rape suspect's clearly established rights with regard to excessive force at time of his lawful arrest, and thus, officers were entitled to qualified immunity for their alleged use of excessive force in arresting suspect and transporting him to police station; suspect suffered bruise and swollen left wrist and pain in back of neck as result of being handcuffed and from hitting his head on door frame or roof of police car. Boyd v. Angarone, N.D.Ill.1990, 729 F.Supp. 1194. Civil Rights 1376(6)

Detainee whose hands were handcuffed behind his back and who was allegedly injured after being placed in police

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van on metal benches was entitled to maintain § 1983 action against city and police officers; allegations raised reasonable inferences as to whether city and police officers acted with reckless disregard for detainee's constitutional rights. Montgomery v. City of Chicago, N.D.Ill.1987, 670 F.Supp. 230. Civil Rights 1395(6)

Force used by police officer in arresting plaintiff, who had been stopped for speeding, for resisting law enforcement, battery on a law enforcement officer, failure to obey a law enforcement officer and disorderly conduct, was not excessive, did not violate plaintiff's right to due process, and was not actionable under this section, notwithstanding that plaintiff sustained a slight injury to his left wrist upon being handcuffed, in view of evidence that plaintiff physically resisted officer's efforts to take him into custody, that a custom and practice existed whereby everyone taken to jail was handcuffed, and plaintiff put pressure on the handcuffs when he sat in police vehicle. Bovey v. City of Lafayette, Ind., N.D.Ind.1984, 586 F.Supp. 1460, affirmed 774 F.2d 1166. Arrest 68(2); Constitutional Law 262

2116. ---- Roadblocks, excessive force, police activities

Roadblock established by sheriff's deputies, which motorist swerved to avoid resulting in disabling car crash, did not constitute unreasonable use of deadly force for purposes of motorist's § 1983 claim, as roadblock became deadly force only because motorist chose to continue high-speed chase, rather than pull his car to side of road or slow down. Reed v. Allegan County, W.D.Mich.1988, 688 F.Supp. 1239. Civil Rights 1088(4)

Where motorcyclist made no allegation that state conservation officers used excessive force as part of effort to detain motorcyclist, only that one officer intentionally blocked motorcyclist's path so as to cause collision which gave rise to personal injuries or that officers acted in concert, motorcyclist could not, by mere allegations of malice, transform routine auto accident involving state officials into constitutional claim under 42 U.S.C.A. § 1983. LeCuyer v. Weidenbach, N.D.Ill.1985, 613 F.Supp. 509. Civil Rights 1395(6)

2117. ---- Shootings, excessive force, police activities

Police officer's use of deadly force was reasonable, and thus, widow of suspect who was fatally shot could not prevail in §§ 1983 excessive force claim; officer received dispatch for domestic disturbance at same residence to which he had been dispatched eight days earlier on a similar call, officer was aware that suspect had history of violence and an extensive arrest history, when officer confronted suspect outside residence, suspect told officer that he would have to kill him, when officer told suspect to stop advancing toward him, suspect disregarded warning and kept advancing, and suspect lunged toward officer when officer stumbled, at which point officer fired one shot. DeLuna v. City of Rockford, Ill., C.A.7 (Ill.) 2006, 447 F.3d 1008. Arrest 68(2)

Identity of individual who robbed bank was irrelevant in assessing whether police officer was justified in shooting suspect to death, in action by suspect's father under § 1983 and Illinois Wrongful Death Act, given that suspect had threatened officer and his partner with gun subsequent to time officers knew that armed robbery of bank had been completed. Muhammed v. City of Chicago, C.A.7 (Ill.) 2002, 316 F.3d 680. Civil Rights 1088(4); Municipal Corporations 747(3)

Police officers' use of deadly force was reasonable where intoxicated arrestee who was handcuffed and sitting in front seat of police car pulled out gun, had his finger on trigger and pointed it at officers who were only a few feet away, officers ordered arrestee to drop weapon and arrestee refused to do so even though officers fired multiple shots. Elliott v. Leavitt, C.A.4 (Md.) 1996, 99 F.3d 640, rehearing en banc denied 105 F.3d 174, certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015. Arrest 68(2)

Police officer could have reasonably believed that armed robbery suspects posed imminent, deadly threat to officer or others and, thus, officer's use of deadly force by shooting at suspects was objectively reasonable, which precluded suspect's § 1983 claim regardless of officer's subjective state of mind; another suspect was pointing gun

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at police officer, and suspects were exiting van following high speed chase during which van had struck pedestrian. Stroik v. Ponseti, C.A.5 (La.) 1994, 35 F.3d 155, rehearing denied, certiorari denied 115 S.Ct. 1692, 514 U.S. 1064, 131 L.Ed.2d 556. Civil Rights 1088(4)

Issue in § 1983 action against city in connection with police officer's fatal shooting of victim was not whether there may have been failure to discipline officers in certain instances but, rather, for plaintiff to prevail, there had to be sufficient evidence for jury to conclude that city's failure in that regard amounted to deliberate indifference to rights of its citizens, which failure proximately caused victim's death. Berry v. City of Detroit, C.A.6 (Mich.) 1994, 25 F.3d 1342, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 902, 513 U.S. 1111, 130 L.Ed.2d 786. Civil Rights 1088(2)

Finding that police officer's use of deadly force against suspect was unconstitutional was supported by witness' testimony that officer had his gun out while suspect was facing away from him, that suspect's hands were in air, and that suspect did not charge officer, second witness' testimony that she saw nothing in suspect's hands, that suspect was not charging officer, and that suspect made no slicing or stabbing motions toward officer, testimony of officer's partner that she saw nothing in suspect's right hand, that suspect was walking forward at slow pace and was approximately four to five feet from gun when shot, and that she was surprised when she heard first shot as she had not expected officer to shoot suspect, and medical testimony concerning powder burn marks on suspect's arm and chest which indicated that suspect was not approaching officer with arm extended in threatening manner when shot. Zuchel v. City and County of Denver, Colo., C.A.10 (Colo.) 1993, 997 F.2d 730, rehearing denied. Civil Rights 1420

Police officer who entered dark hallway of private residence at 2:45 a.m. and who failed to give any indication of his identity was more than merely negligent and could be held liable in civil rights action for use of excessive force against shooting victim. Yates v. City of Cleveland, C.A.6 (Ohio) 1991, 941 F.2d 444, rehearing denied. Civil Rights 1088(2)

Police officer was justified in using deadly force to defend himself and others around him, where, after pursuing suspects in bank robbery in high-speed chase, passenger in vehicle repeatedly reached down below police officer's sight line in defiance of police officer's orders to raise his hands and officer could reasonably have believed that passenger had retrieved gun and was about to shoot, even though vehicle was totally surrounded by nine police officers and passenger was actually unarmed. Reese v. Anderson, C.A.5 (Tex.) 1991, 926 F.2d 494. Civil Rights 1088(4)

District court's finding that police officers were negligent under Florida law in shooting security guard was supported by the evidence, even though guard was carrying pistol and even though officers' allegedly yelled "police, freeze"; guard testified he did not hear officers yell and that he did not raise his right hand as he turned or act in threatening manner toward officers. Ansley v. Heinrich, C.A.11 (Fla.) 1991, 925 F.2d 1339. Municipal Corporations 742(5)

Question whether police officers serving peace warrant made adequate preparations was improperly submitted to jury in lawsuit brought by estate of victim killed by officer during service of warrant; actions of police would be at worst ordinary negligence, which does not form basis for claim of deprivation of constitutional rights. Brandenburg v. Cureton, C.A.6 (Tenn.) 1989, 882 F.2d 211. Civil Rights 1437

Police officer's action in shooting a second time at hospital patient who had gone on rampage through hospital and stabbed seven people, immediately after first volley of gunfire while patient was still on his feet and holding his knife was not excessive and did not violate patient's civil rights; second shot was part of initial reaction to patient's attempt to stab officer. O'Neal v. DeKalb County, Ga., C.A.11 (Ga.) 1988, 850 F.2d 653. Civil Rights 1088(2)

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42 U.S.C.A. § 1983

Deceased burglar's estate could not maintain § 1983 action against city, based on accidental shooting of burglar during struggle with police during handcuffing, despite city's policy of requiring officer to hold gun on arrestee during handcuffing process, where police officer did not violate burglar's Fourth Amendment rights. Dodd v. City of Norwich, C.A.2 (Conn.) 1987, 827 F.2d 1, certiorari denied 108 S.Ct. 701, 484 U.S. 1007, 98 L.Ed.2d 653. Civil Rights 1088(4)

Police were liable under § 1983, under the Fourth Amendment, for the beating and shooting death of decedent by means of excessive police force; harms visited on decedent while in officers' custody were only minimally, if at all, necessary to enable them to carry out their official duties, police had little cause to believe decedent to be dangerous, and decedent had done little to provoke the officers to beat or shoot him. Gilmere v. City of Atlanta, Ga., C.A.11 (Ga.) 1985, 774 F.2d 1495, certiorari denied 106 S.Ct. 1970, 476 U.S. 1115, 90 L.Ed.2d 654, certiorari denied 106 S.Ct. 1993, 476 U.S. 1124, 90 L.Ed.2d 673. Civil Rights 1088(4)

Motorist who was injured during his arrest by deputy sheriff when deputy's gun accidently discharged after deputy slipped on a patch of ice was not entitled to recover from deputy, county sheriff, or county board for violation of his Fourth Amendment rights where deputy's conduct was not result of established state procedure, and deputy drew his gun because he had reason to believe that motorist was emotionally disturbed. Leber v. Smith, C.A.6 (Ohio) 1985, 773 F.2d 101, certiorari denied 106 S.Ct. 1466, 475 U.S. 1084, 89 L.Ed.2d 722. Civil Rights 1088(4)

A negligent action resulting in personal injury does not become a constitutional violation merely because tortfeasor is state or local police officer, and thus, even assuming simple negligence on part of police officer in shooting escaping jail inmate in the back while attempting to handcuff him, inmate could not recover in his civil rights action for such shooting since there was no deprivation of right, privilege or immunity secured by the Constitution or laws of the United States. Mills v. Smith, C.A.8 (Ark.) 1981, 656 F.2d 337. Civil Rights 1088(4)

Where police officers who pursued and fatally shot burglary suspect did not believe that the crime for which they were seeking to arrest the suspect involved the use or threatened use of deadly force or that a substantial risk existed that the suspect would cause death or serious bodily harm if his apprehension were delayed, the police officers exercised unreasonable force as a matter of law, under R.R.S.1943, § 28-839, in firing at the suspect as he fled. Landrum v. Moats, C.A.8 (Neb.) 1978, 576 F.2d 1320, certiorari denied 99 S.Ct. 282, 439 U.S. 912, 58 L.Ed.2d 258. Municipal Corporations 188

Minor injuries consisting of bruises and cuts received by defendant off-duty policeman on his face which did not require hospitalization did not support his claim of self-defense or justify his use of excessive force in killing two young men and permanently maiming a third. Stengel v. Belcher, C.A.6 (Ohio) 1975, 522 F.2d 438, certiorari granted 96 S.Ct. 1505, 425 U.S. 910, 47 L.Ed.2d 760, certiorari dismissed 97 S.Ct. 514, 429 U.S. 118, 50 L.Ed.2d 269. Municipal Corporations 189(1)

Genuine issues of material fact as to whether off-duty police officer shot bar patron during altercation, whether officer was acting under color of law, and whether officer was acting within scope of his employment precluded summary judgment in favor of city in patron's action to recover for injuries received during altercation. Coles v. City of Chicago, N.D.Ill.2005, 361 F.Supp.2d 740. Federal Civil Procedure 2491.5

Contention that female officer at scene would also have discharged her firearm had suspect presented real threat to male officer, who shot suspect after suspect allegedly charged him with knife, did not create factual issue precluding summary judgment for male officer on § 1983 claim for use of excessive force when plaintiffs did not contest officers' assertion that they were on opposite sides of doorway when suspect exited house, such that suspect's back would have been to female officer and suspect presented greater level of threat to male officer, and when female officer testified both that department policy prevented her from firing her weapon due to presence of dwelling behind male officer, and that it was not necessary for her to fire when she heard male officer fire his own

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weapon in self-defense. Santana v. City of Hartford, D.Conn.2003, 283 F.Supp.2d 720. Federal Civil Procedure 2491.5

Officer was entitled to qualified immunity in civil rights suit for his alleged negligence in employing deadly force, in firing second shotgun slug at citizen who was holding knife to her own throat, in mistaken belief that it was also beanbag, non-lethal round like his first shot; negligence could not establish civil rights claim. Brown v. City of Bloomington, D.Minn.2003, 280 F.Supp.2d 889, appeal after remand from federal court 706 N.W.2d 519, review denied. Civil Rights 1376(6)

Officers who fired shots into car in which arrestee was a passenger were not liable to arrestee under § 1983 for excessive force; although officers fired total of ten shots into car, arrestee was not hit or hurt by any of the shots. McAllister v. New York City Police Dept., S.D.N.Y.1999, 49 F.Supp.2d 688. Civil Rights 1088(4)

Survivors of victim of fatal shooting allegedly perpetrated by police officer stated § 1983 claim against superintendent of police by alleging that he failed to implement existing disciplinary system intended to detect unconstitutional behavior, and that, had superintendent implemented that policy, shooting would have been avoided because officer's previous conduct would have warranted his dismissal from force and/or his reassignment to position in which he would not come into contact with citizens. Rivera v. Medina, D.Puerto Rico 1997, 963 F.Supp. 78. Civil Rights 1395(5)

Officer's use of deadly force was objectively reasonable, and thus, shooting victim's relatives did not have any claim under § 1983 for violation of victim's Fourth Amendment rights; victim had knife in his hand for more than two hours and continuously threatened to harm himself and others during this period, victim had knife in one hand and pot of hot grease in other hand, and officer shot victim when victim made movement as though he was going to throw grease at officer. Huong v. City of Port Arthur, E.D.Tex.1997, 961 F.Supp. 1003. Civil Rights 1088(4)

Township was not liable under § 1983 in connection with police officer's accidental fatal shooting of suspect during execution of arrest and search warrants; while plaintiffs claimed that police department had custom of permitting use of excessive force without fear of a reprisal and improperly trained officers regarding maintaining safe distance, it was acknowledged that shooting was accidental and, as to second argument, there was no evidence of officers previously accidentally discharging their guns while subduing suspects. Clark v. Buchko, D.N.J.1996, 936 F.Supp. 212. Civil Rights 1351(4)

Town's policies, or lack thereof, did not constitute "deliberate indifference," so as to support imposition of § 1983 liability on failure to train theory in action arising from deputies fatal shooting of allegedly mentally ill individual during attempt by deputy and town officer to execute involuntary commitment order; there was no evidence that town had actual or constructive notice that any particular omission was substantially certain to result in violation of individuals constitutional rights, and while town had no written policy for handling "mental pickups," officer acted within guidelines of barricade policy, which was sufficient for situation presented. Dowdell v. Chapman, M.D.Ala.1996, 930 F.Supp. 533. Civil Rights 1352(4)

Police department and city could not be held liable for failure to train police, in civil rights action by suspect who was shot by officer while fleeing, since officer was found to have acted reasonably and did not use excessive force. Ridgeway v. City of Woolwich Tp. Police Dept., D.N.J.1996, 924 F.Supp. 653. Civil Rights 1352(4)

Law enforcement agents' shooting of individual during raid of individual's and suspect's home which was conducted in effort to arrest suspect was not excessive force, as it was reasonable under existing circumstances, thus, shooting did not violate Fourth Amendment or § 1983; agents could reasonably have feared for their safety where agents were aware that firearms and at least two potentially violent individuals could be present in home, officers found individual shooting gun from second-floor window, and several officers were stationed outside of home. Maravilla v. U.S., N.D.Ind.1994, 867 F.Supp. 1363, affirmed 60 F.3d 1230. Arrest 68(2)

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42 U.S.C.A. § 1983

Traffic violator stated § 1983 claim against police officer by alleging that officer shot violator, without cause or provocation, after chase, and that violator was thereby subjected to excessive force during course of his arrest, in violation of his Fourth and Fourteenth Amendment rights. Moser v. Bascelli, E.D.Pa.1994, 865 F.Supp. 249. Civil Rights 1395(6)

Genuine issues of material fact regarding excessiveness of force used by police officers who shot and killed man who was brandishing knife precluded summary judgment for police officers in § 1983 action. Sevier v. City of Lawrence, D.Kan.1994, 853 F.Supp. 1360, appeal dismissed 60 F.3d 695. Federal Civil Procedure 2491.5

Complaint alleging that deceased was ambushed and fired upon by officers without warning stated claim under civil rights statute, § 1983. Roxbury v. Paul, W.D.Mich.1992, 838 F.Supp. 1204, affirmed 7 F.3d 234. Civil Rights 1395(5)

Reasonable law enforcement officer in defendant's officer's position could have believed that deadly force was necessary, and thus officer was entitled to qualified immunity from claim of excessive force in violation of unarmed decedent's Fourth Amendment rights, where officer, responding to emergency call, observed suspect who was "well-built" and larger than officer and whose arm was covered with blood and who continually shouted death threats to officer, and where suspect chased officer for several minutes, officer did not believe he could personally subdue the suspect given suspect's larger size and highly agitated and abnormal state, suspect failed to respond to order to stop, and officer believed that suspect was reaching behind himself for a weapon. Wyche v. City of Franklinton, E.D.N.C.1993, 837 F.Supp. 137. Civil Rights 1376(6)

Force used by police officers to subdue man who came at them with knife after police officers entered his apartment following report of neighbors that man was breaking windows and throwing things from windows was, as matter of law, not excessive; thus, police officers were not liable to estate of man in their individual capacities in civil rights action due to qualified immunity defense. Thornton v. City of Albany, N.D.N.Y.1993, 831 F.Supp. 970. Arrest 68(2); Civil Rights 1376(6)

Deputy sheriff's split-second decision to use deadly force to protect himself from suspect was objectively reasonable, for purposes of civil rights actions, even though suspect was handcuffed; suspect was armed with fireplace poker (a two to three foot steel rod with hook on one end) and had already assaulted one officer with that weapon, evaded arrest, fled from police, and claimed that he would not be taken alive, and officers were unable to calm suspect or to get him to surrender after speaking to him for almost 30 minutes. Plakas v. Drinski, N.D.Ind.1993, 811 F.Supp. 1356, affirmed 19 F.3d 1143, certiorari denied 115 S.Ct. 81, 513 U.S. 820, 130 L.Ed.2d 34. Civil Rights 1088(4)

Police officer did not use excessive force in connection with his shooting of § 1983 plaintiff; plaintiff had previously shot at officer with rifle, thereby intending to inflict serious bodily harm or deadly force upon him, and plaintiff, at minimum, was seeking to escape at time of shooting and was fired upon only after warning had been given. Daniels v. Terrell, E.D.Mo.1992, 783 F.Supp. 1211. Civil Rights 1088(4)

Because state police and corrections officers were authorized under Illinois law to choose time and place of arrest of murder solicitation suspect, their use of deadly force in response to suspect's firing of guns did not violate suspect's civil rights, even if use of deadly force could have been avoided by attempting arrest at another time or place. Carter v. Buscher, C.D.Ill.1991, 763 F.Supp. 392, affirmed 973 F.2d 1328, rehearing denied. Arrest 68(2)

Shooting by police could give rise not only to Fourth Amendment claim of excessive force, but also Fourteenth Amendment claim on ground that officers allegedly created dangerous situation victim found himself in shortly before he was shot. Ward v. City of San Jose, N.D.Cal.1990, 737 F.Supp. 1502, affirmed in part, reversed in part on other grounds 967 F.2d 280, amended on denial of rehearing. Constitutional Law 255(2)

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42 U.S.C.A. § 1983

City police officer did not violate substantive due process when he fatally shot arcade patron after patron threatened officer with knife for purposes of civil rights action arising from the shooting; officer did not display his weapon until patron refused to obey officer's command to remove his hand from chest area of his jacket, and officer did not fire at patron until patron lunged at him with raised knife. Estate of Jackson v. City of Rochester, W.D.N.Y.1989, 705 F.Supp. 779. Civil Rights 1088(2); Constitutional Law 262

Force which defendants, consisting of a police officer and a student observer, used against plaintiff in attempting an arrest was not excessive where it was confined to instances of firing shots from a handgun at or near plaintiff and was done in reasonable belief that defendants were in imminent danger of serious bodily injury. Dolan v. Golla, M.D.Pa.1979, 481 F.Supp. 475, affirmed 633 F.2d 209. Arrest 68(2)

Where city police officer who was searching crime scene for additional suspects commanded person concealed in closet to come out with his hands up and where suspect, who was hiding under blankets and clothing, did not respond verbally but instead quickly reached his hand upward and outward toward the officer, circumstances were such as to warrant officer in believing that use of deadly force was necessary to prevent death or great bodily harm to himself and, therefore, officer's action in shooting at suspect's hand did not constitute unreasonable or excessive use of force in violation of the suspect's civil rights. Willis v. Tillrock, N.D.Ill.1976, 421 F.Supp. 368. Civil Rights 1088(4)

Where deputy sheriff shot citizen who was escaping from arrest for misdemeanor, such shooting was without justification and subjected citizen to deprivation of right secured by constitution, and deputy was thus liable to plaintiff for injuries. Fults v. Pearsall, E.D.Tenn.1975, 408 F.Supp. 1164. Civil Rights 1088(4)

2118. ---- Thrown objects, excessive force, police activities

Jury in civil rights action could find that police officer did not violate fleeing minor suspect's constitutional rights by throwing heavy metal flashlight which struck suspect in back of head, notwithstanding officer's admission that his act constituted battery and use of "excessive force," where officer also testified that act was spontaneous reaction, that he did not intend to harm suspect, and that throwing flashlight was mistake; use of force was not necessarily inspired by unwise, excessive zeal amounting to abuse of official power that shocked conscience or by malice rather than mere carelessness. Trujillo v. Goodman, C.A.10 (Colo.) 1987, 825 F.2d 1453. Civil Rights 1088(4)

2119. ---- Failure to enforce law or regulations, excessive force, police activities

Complaint filed against city, police officer, mayor and police commissioner, based on police officer's use of force against plaintiff, alleging that mayor and police commissioner repeatedly and knowingly failed to enforce state laws and police department regulations pertaining to police officers' use of force, thereby creating within police department an atmosphere of lawlessness in which police officers employed excessive and illegal force and violence, was sufficient to state cause of action against mayor and police commissioner under this section, plaintiff's additional allegation that police officer's acts implemented policies endorsed by mayor and police commissioner having constituted sufficient causal link between alleged negligence and plaintiff's injury. Norton v. McKeon, E.D.Pa.1977, 444 F.Supp. 384, affirmed 601 F.2d 575. Civil Rights 1395(5)

2120. ---- Training, excessive force, police activities

To establish failure to train claim under §§ 1983, plaintiff must show prior instances of unconstitutional conduct demonstrating that municipality has ignored history of abuse and was clearly on notice that training in particular area was deficient and likely to cause injury. St. John v. Hickey, C.A.6 (Ohio) 2005, 411 F.3d 762, on remand 2006 WL 293790. Civil Rights 1352(1)

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For excessive force by a police officer to occur in circumstances constituting a usual and recurring situation with which officers must deal, as required for a § 1983 claim against a city for failure to train officers, the situation need not be frequent or constant; it must merely be of the type that officers can reasonably expect to confront. Brown v. Gray, C.A.10 (Colo.) 2000, 227 F.3d 1278. Civil Rights 1352(4)

To establish a city's liability under § 1983 for inadequate training of police officers in use of force, plaintiff must show: officers exceeded constitutional limitations on use of force; use of force arose under circumstances that constitute usual and recurring situation with which police officers must deal; inadequate training demonstrates deliberate indifference on part of city toward persons with whom police officers come into contact; and there is direct causal link between the constitutional deprivation and inadequate training. Allen v. Muskogee, Okl., C.A.10 (Okla.) 1997, 119 F.3d 837, certiorari denied 118 S.Ct. 1165, 522 U.S. 1148, 140 L.Ed.2d 176. Civil Rights 1352(4)

County's failure to adequately train its deputies as to constitutional limits of use of force was deliberate indifference to safety of county inhabitants as matter of law for purposes of imposing municipal liability under § 1983; sheriff department's "field training program" for deputies, although apparently adequate on paper, was never followed in practice. Davis v. Mason County, C.A.9 (Wash.) 1991, 927 F.2d 1473, certiorari denied 112 S.Ct. 275, 502 U.S. 899, 116 L.Ed.2d 227. Civil Rights 1352(4)

City's failure to train police officer who was involved in fatal scuffle with plaintiffs' decedent did not rise to the level of deliberate indifference so as to fasten liability on the city on a failure to train theory, where officer had years of experience before joining the city's police force and received extensive training over the course of his career; whether that training was the best and most comprehensive available had no bearing on the failure to train claim. Lewis v. City of Irvine, Ky., C.A.6 (Ky.) 1990, 899 F.2d 451. Civil Rights 1352(4)

Although there was evidence from which jury could reasonably conclude that patrolman was grossly negligent in causing severe permanent injuries to plaintiff and that city police chief was grossly negligent in sending patrolman on patrol without additional training, city could not be held liable for plaintiff's injuries under this section where there was no evidence that city police force in general was inadequately skilled or experienced, that there had been other actual or claimed incidents of police misconduct or negligence, that city had any general policy or custom of sending unskilled or inexperienced officers on patrol or that members of city's governing body were themselves grossly negligent in failing to prevent patrolman's going on patrol without additional training. Languirand v. Hayden, C.A.5 (Miss.) 1983, 717 F.2d 220, rehearing denied 721 F.2d 819, certiorari denied 104 S.Ct. 2656, 467 U.S. 1215, 81 L.Ed.2d 363. Civil Rights 1420

Police sergeant was not subject to liability in arrestees' § 1983 due process action for allegedly failing to ensure that patrolmen received proper and special training regarding excessive force, absent allegation that sergeant's acts or omissions caused alleged constitutional violations or that police training was in fact inefficient. Santiago Irizarry v. Maldonado Aponte, D.Puerto Rico 2003, 296 F.Supp.2d 146. Civil Rights 1358

Genuine issues of material fact existed as to extent of training for felony stops that city provided to its police officers, and as to police department's policy for reporting constitutional violations by other officers, precluding summary judgment on *Monell* claim of police detainee bringing § 1983 action against police officers, police chief, and city for alleged use of excessive force in violation of detainee's Fourth Amendment rights. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Federal Civil Procedure 2491.5

Police chief could not be found liable on failure to train theory for officer's conduct in firing shotgun rounds at citizen where officer was entitled to qualified immunity for his actions. Brown v. City of Bloomington, D.Minn.2003, 280 F.Supp.2d 889, appeal after remand from federal court 706 N.W.2d 519, review denied. Civil Rights 1358

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42 U.S.C.A. § 1983

To establish a claim under § 1983 for inadequate training of police officers in the use of force, a plaintiff must show (1) the officers exceeded constitutional limitations on the use of force; (2) the use of force arose under circumstances that constitute a usual and recurring situation with which police officers must deal; (3) the inadequate training demonstrates a deliberate indifference on the part of the city toward persons with whom the police officers come into contact, and (4) there is a direct causal link between the constitutional deprivation and the inadequate training. Newell v. City of Salina, D.Kan.2003, 276 F.Supp.2d 1148. Civil Rights 1352(4)

Failure to show that sheriff's office had policies or customs that led to inadequate training and supervision barred suit against sheriff in his official capacity, seeking to impose liability for alleged false arrest and use of unnecessary force. Seegars v. Adcox, S.D.Ga.2002, 258 F.Supp.2d 1370, affirmed 88 Fed.Appx. 381, 2003 WL 22769277. Civil Rights 1352(4)

Administrator of police shooting victim's estate failed to prove municipal liability under § 1983 on a failure to train theory; the municipalities submitted affidavits and other evidence showing that the individual officers from the municipalities received training in the use of force, and the administrator introduced nothing into the record to show that she could prove that the training was inadequate. Easley v. Kirmsee, E.D.Wis.2002, 235 F.Supp.2d 945, affirmed 382 F.3d 693. Civil Rights 1352(4)

The inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of the persons with whom the police come into contact. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1352(4)

Parents and their child, whose leg was broken during scuffle when the twelve-year-old, 87-pound boy attempted to flee arrest and a 270-pound county deputy sheriff allegedly intentionally fell on the boy, failed to prove that county failed properly to train and discipline its officers and that such alleged policy of failing to train and discipline its officers was the proximate cause of alleged deprivation of child's constitutional right to be free from excessive force, where county produced documentation from the Texas Commission on Law Enforcement Standards and Education (TCLEOSE) showing that the ten deputies employed by county met and exceeded training requirements set forth by TCLEOSE. Gonzales v. Westbrook, W.D.Tex.2000, 118 F.Supp.2d 728. Civil Rights 1352(4)

Any lack of city policy or training in use of choke hold, when viewed in light of use of force training as a whole, did not rise to level of deliberate indifference as required to hold city liable for excessive force allegedly used by police officer in subduing suspect. Jackson v. City of Albany, Ga., M.D.Ga.1998, 49 F.Supp.2d 1374. Civil Rights 1352(4)

City's training of its police officers in crowd control techniques did not amount to deliberate indifference to rights of striking workers, thereby precluding city from being held liable for inadequate training in civil rights action brought by worker who was struck on hand with police baton while participating in strike, where city attempted to give its officers supplemental training in face of impending strike by bringing in outside consultants and implementing detailed plan to handle strike, city's standing policy permitted officers to use only minimum amount of force necessary, and there was no specific evidence of deprivation of constitutional rights of striking workers prior to incident. Secot v. City of Sterling Heights, E.D.Mich.1997, 985 F.Supp. 715. Civil Rights 1352(4)

Fact that police officer wrote letter expressing desire or even need to gain more knowledge about alternative uses of force and fact that response was that police department would not pay for him to attend such course did not establish inadequate training or supervision so as to give rise to municipal liability under § 1983. Huong v. City of Port Arthur, E.D.Tex.1997, 961 F.Supp. 1003. Civil Rights 1352(4)

Material issues of fact as to whether city was deliberately indifferent to inadequate training of police officers precluded summary judgment in civil rights action brought after plaintiff was shot by officer; factual issue of excessive force existed, practice of dealing with drunken, rude, and potentially violent suspects was "usual and

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recurring," and expert opined that all four officers completely mishandled situation. Diaz v. Salazar, D.N.M.1996, 924 F.Supp. 1088. Federal Civil Procedure 2491.5

Whether lack of policies on whether police officers are to carry back-up weapons when suspects are in custodial arrest, and whether city provided officers with inadequate training on use of force were fact questions precluding summary judgment in § 1983 civil rights suit arising from fatal shooting of arrested suspect during escape attempt. Garrison v. City of Texarkana, Tex., E.D.Tex.1995, 910 F.Supp. 1196. Federal Civil Procedure 2491.5

Police department was not liable under § 1983 for failing to adequately train their police officers, absent evidence demonstrating that police department made conscious or deliberate choice not to train its officers; conclusory allegation that regulations concerning use of force were so ambiguous as to represent conscious choice not to train police officers did not amount to factual support for improper training claim. House v. New Castle County, D.Del.1993, 824 F.Supp. 477. Civil Rights 1352(4)

Family members and trustees of heirs of Asians shot by police could not recover from city in § 1983 action based on any failure of city to train officers in racial sensitivity; family members and trustees failed to develop any factual record concerning prevalence and effectiveness of racial sensitivity training and there was no evidence of causation between lack of training and shooting. Yang v. Murphy, D.Minn.1992, 796 F.Supp. 1245. Civil Rights 1352(4)

Failure of county to investigate alleged use of excessive force by sheriff's deputies in connection with arrest of plaintiff was insufficient to support plaintiff's § 1983 claim against county and sheriff for failure to adequately train and supervise deputies, where only notice to county of alleged misconduct were remarks of criminal defense lawyer to assistant prosecutor during plea negotiations, plaintiff made no formal or informal complaint of police brutality, and failure of county to investigate was not willful, reckless, or grossly negligent. Tompkins v. Frost, E.D.Mich.1987, 655 F.Supp. 468. Civil Rights 1088(4)

Question of whether city's failure to discipline adequately police officers involved in prior beating of suspect created atmosphere whereby police department tolerated misconduct and even police brutality was for jury in arrestee's § 1983 action seeking to hold city liable for officer's use of excessive force. Disorbo v. Hoy, C.A.2 (N.Y.) 2003, 74 Fed.Appx. 101, 2003 WL 22037275, Unreported. Civil Rights 1429

Sheriff's department policies and training did not evidence deliberate indifference too the rights of citizens who came into contact with deputies, as required to support property owner's § 1983 failure to train claim arising from deputy's alleged use of excessive force in arresting her; department provided training on use of force issues at least two or three times over two year period, each lasting about 30 minutes, use of force was typically discussed at supervisor meeting, a formal written use of force policy existed, and each officer's use of force would be reviewed under policy. Collin v. Stephenson, S.D.Ohio 2002, 2002 WL 31409874, Unreported. Civil Rights 1352(4)

2121. ---- Supervisory personnel, excessive force, police activities

Neither Constitution nor any federal statute imposes duty upon municipality or its chief of police to supervise its police officers, and thus § 1983 liability cannot be invoked on that basis alone. Hale v. Vance, S.D.Ohio 2003, 267 F.Supp.2d 725. Civil Rights 1352(4); Civil Rights 1358

In § 1983 action for excessive force, sheriff and county were not liable under supervisory liability theory, absent liability on the part of one of the deputies. Harrell v. Purcell, M.D.N.C.2002, 236 F.Supp.2d 526. Civil Rights 1348; Civil Rights 1358

The standards applicable to a determination of municipal liability under § 1983, requiring a showing of a policy impairing the federal constitutional rights of a claimant, did not apply to a police brutality action brought against an

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officer who was the supervisor of the police involved in the incident but took no direct part in it. Martinez v. Wolferseder, D.Mass.1998, 997 F.Supp. 192. Civil Rights 1358

To establish prima facie claim of supervisory liability for police brutality based on allegation that supervising officer failed to adequately screen/supervise applicants and officers, plaintiff must demonstrate that current screening/supervision mechanisms utilized by police department are deficient, that supervising officer knew or should have known that deficiencies existed, and that supervising officer failed to reasonably address those deficiencies. Sanchez v. Figueroa, D.Puerto Rico 1998, 996 F.Supp. 143. Civil Rights 1358

To establish prima facie claim of supervisory liability for police brutality based on allegation that supervising officer failed to adequately train officers in use of weapons and deadly force, plaintiff must demonstrate that officers were not adequately trained, supervising officer knew or should have known of that deficiency, and that supervising officer failed to take obvious steps to remedy problem. Sanchez v. Figueroa, D.Puerto Rico 1998, 996 F.Supp. 143. Civil Rights 1358

Genuine issue of material fact existed as to whether a reasonable supervisor could have believed he was not being deliberately indifferent to existence of an excessive risk of an intentional dog bite, precluding summary judgment for police department officials, on basis of qualified immunity, with respect to supervisory liability claim under §§ 1983 brought by suspect who was injured by a police dog as he fled on foot from allegedly stolen motor vehicle. Rosenberg v. Vangelo, C.A.3 (Pa.) 2004, 93 Fed.Appx. 373, 2004 WL 491864, Unreported. Federal Civil Procedure 2491.5

Supervisor of arresting officers could not be held liable to arrestee for officers alleged use of excessive force absent evidence of his personal involvement in misconduct; conclusory allegations of deliberate indifference to prior misconduct were insufficient. Harris v. City of New York, S.D.N.Y.2003, 2003 WL 554745, Unreported. Civil Rights 1358; Civil Rights 1420

2122. ---- Good faith, excessive force, police activities

Liability under this section will not arise from use of deadly force in an arrest if officers involved reasonably believed in good faith that such force was necessary to protect themselves or others from death or great bodily harm. Maiorana v. MacDonald, C.A.1 (Mass.) 1979, 596 F.2d 1072. Civil Rights 1088(4)

Even if police officer used unreasonable force against suspect when he discharged his firearm six times after suspect charged him with knife, officer made reasonable mistake as to amount of force allowed by the law in his situation, and thus was entitled to qualified immunity on § 1983 claim for use of excessive force. Santana v. City of Hartford, D.Conn.2003, 283 F.Supp.2d 720. Civil Rights 1376(6)

2123. ---- Legality of arrest, excessive force, police activities

Action under § 1983 in which prisoner alleged that police officers had used excessive force in arresting him did not require overturning his conviction on drug charges, which was based in part on evidence seized in a search that accompanied arrest, and thus was not barred by *Heck v. Humphrey*; police might have used excessive force in effecting a perfectly lawful arrest. Robinson v. Doe, C.A.7 (Ill.) 2001, 272 F.3d 921, rehearing and rehearing en banc denied, certiorari denied 122 S.Ct. 1976, 535 U.S. 1084, 152 L.Ed.2d 1033. Civil Rights 1088(4)

"Illegal act defense" is inapplicable in § 1983 excessive force suits; to hold otherwise would effectively license law enforcement agents to use objectively unreasonable force to make arrests whenever person being arrested committed crime precipitating arrest. Heflin v. Town of Warrenton, E.D.Va.1996, 944 F.Supp. 472. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

For purposes of § 1983 claim arising from alleged use of excessive force during arrest, issue presented was one of reasonableness of force used, and not validity of arrest; thus, fact that jury found lack of probable cause to support arrest on related claim did not automatically entitle arrestee to verdict in its favor on claim of use of excessive force. Watchorn By and Through Christenson v. Town of Davie, S.D.Fla.1992, 795 F.Supp. 1112. Civil Rights 1088(4); Civil Rights 1424

Even a legal arrest may be accompanied by excessive force which can form the basis for a subsequent action for damages under this section. Delaney v. Dias, D.C.Mass.1976, 415 F.Supp. 1351.

The use of excessive force in the context of an arrest, albeit an arrest that is itself lawful, is actionable under this section. Bur v. Gilbert, E.D.Wis.1976, 415 F.Supp. 335. Civil Rights 1088(4)

2124. ---- Conviction, excessive force, police activities

Validity of arrestee's Pennsylvania conviction for resisting arrest, establishing that arresting officer was justified in using "substantial force," would not be thrown into doubt by judgment in arrestee's favor on his § 1983 claim of excessive force, so as to bar claim; "substantial force" could be objectively reasonable or excessive and unreasonable, and finding that officer used excessive "substantial force" would not imply that arrest was unlawful. Nelson v. Jashurek, C.A.3 (Pa.) 1997, 109 F.3d 142. Civil Rights 1088(4)

Prisoner who had entered plea of guilty under *Alford* to charge of assault with a deadly weapon was not barred under *Heck* from bringing federal civil rights action alleging that police officers had used force far greater than that required for his arrest and out of proportion to threat which he posed to officers, even though his conviction had not been reversed, expunged, invalidated, or called into question by issuance of writ of habeas corpus by federal court, as successful civil rights action would not necessarily imply invalidity of prisoner's conviction. Smithart v. Towery, C.A.9 (Nev.) 1996, 79 F.3d 951. Civil Rights 1088(4)

Fact that claimant was convicted on charge of resisting arrest did not preclude § 1983 claim against officers for excessive force used during such arrest; jury in criminal prosecution could have found that resistance to arrest was not physical in nature, or that resistance preceded or succeeded excessive force, and therefore, finding of excessive force in § 1983 action would not necessarily be inconsistent with conviction for resisting arrest. DuFour-Dowell v. Cogger, N.D.Ill.1997, 969 F.Supp. 1107, motion to amend denied 980 F.Supp. 955. Civil Rights 1088(4)

2125. ---- Self-defense, excessive force, police activities

If a police officer attacked by a prisoner uses more force than reasonably necessary in defending himself, officer can be subject to liability for the use of excessive force. Williams v. Liberty, C.A.7 (Ill.) 1972, 461 F.2d 325. Civil Rights 1093

Genuine issue of material fact as to whether security guards at public hospital acted in self-defense when they were involved in altercation with motorist who illegally parked while picking up his wife at hospital precluded summary judgment in motorist's civil rights action. Monge v. Cortes, D.Puerto Rico 2006, 413 F.Supp.2d 42. Federal Civil Procedure 2491.5

Force used by police officers to effect arrest was not excessive under Fourth Amendment, in context of claim under § 1983, where police officers had reasonable belief that citizen posed imminent risk to lives of police officers and other persons; citizen boarded commuter train dressed in army fatigues, wearing mask over his nose, and he carried wooden staff and military sword, citizen repeatedly refused police officers' directions to put staff down and leave the train, officers then sprayed citizen with pepper spray with no effect, citizen swung sword at officers, and then officers shot citizen without killing him. Stevens v. Metropolitan Transp. Authority Police Dept., S.D.N.Y.2003,

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42 U.S.C.A. § 1983

293 F.Supp.2d 415. Arrest 68(2)

Lethal force used against a police shooting victim was reasonable and did not violate the victim's Fourth Amendment rights, and thus, the officers involved were entitled to qualified immunity in a § 1983 suit brought by the administrator of the victim's estate; the officers were dispatched to search for the victim, who had left his home in a rage, inebriated, spattered with blood from self-inflicted cuts, and armed with a knife, and when the officers closed in on him, he refused to relinquish the knife and began to charge an officer who, fearing for his life, shot and killed the victim. Easley v. Kirmsee, E.D.Wis.2002, 235 F.Supp.2d 945, affirmed 382 F.3d 693. Arrest 68(2); Civil Rights 1376(6)

Arrestee who was mentally disturbed and caused damage to hospital failed to state excessive force claim under civil rights statute against police officers who subdued him; arrestee threatened officers with physical harm and actually injured them, arrestee was physically strong man and suffered from bipolar chemical imbalance which caused him to become grossly agitated, arrestee struck officers before they struck him, it took eight officers to subdue arrestee, and officers were called to hospital by hospital's own frightened staff to prevent arrestee from doing further damage and to restore order. Nicholson v. Kent County Sheriff's Dept., W.D.Mich.1993, 839 F.Supp. 508. Civil Rights 1088(4)

2126. ---- Retroactive application of court decisions, excessive force, police activities

In determining in civil rights action whether university police used excessive force when they arrested professor, excessive force standard in use when case came to trial, rather than excessive force standard in use when incident occurred, applied; new standard applied retroactively. Martin v. Thomas, C.A.5 (Tex.) 1992, 973 F.2d 449. Courts 100(1)

2127. ---- Miscellaneous claims, excessive force, police activities

Evidence failed to establish that sheriff's isolated decision to hire deputy without performing adequate screening reflected deliberate indifference by sheriff to high risk that deputy would use excessive force, and thus, county could not be held liable for sheriff's decision in § 1983 action brought by automobile passenger who was injured when deputy used excessive force in removing her from vehicle after it was stopped; while deputy's record may have made him poor candidate for position, it did not create obvious risk of use of excessive force, as primary charges in deputy's record arose from single incident while he was college student. Board of County Com'rs of Bryan County, Okl. v. Brown, U.S.Tex.1997, 117 S.Ct. 1382, 520 U.S. 397, 137 L.Ed.2d 626, rehearing denied 117 S.Ct. 2472, 520 U.S. 1283, 138 L.Ed.2d 227, on remand 117 F.3d 239. Civil Rights 1420

In arrestees' §§ 1983 action against arresting police officers, evidence was sufficient to support jury's conclusion that officers used excessive force; arrestee and his fiancee testified that officers attacked arrestees without any provocation and savagely beat them, and evidence included photographs depicting the physical injuries inflicted by officers and medical records describing those injuries. Casillas-Diaz v. Palau, C.A.1 (Puerto Rico) 2006, 463 F.3d 77. Civil Rights 1420

A reasonable jury could have found that, even without an additional show of authority by police officer, arrestee was seized within meaning of Fourth Amendment when officer punched him in the face, knocking him to the ground, and thus, officer was not entitled to judgment as a matter of law on arrestee's §§ 1983 claim against him alleging seizure by use of excessive force; officer's use of force caused arrestee to reel backwards and fall to the ground, and force of blow caused arrestee to black out momentarily. Acevedo v. Canterbury, C.A.7 (Ill.) 2006, 457 F.3d 721. Civil Rights 1429

Genuine issues of material fact existed as to whether police officers' actions in shooting suspect violated suspects

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Fourth Amendment right to be free from excessive force, precluding summary judgment for officers in §§ 1983 claim brought by suspect's personal representative of his estate. Walker v. City of Orem, C.A.10 (Utah) 2006, 451 F.3d 1139. Federal Civil Procedure 2491.5

Medical testimony from four doctors that cause of death of detainee who died while police officers were attempting to subdue and arrest him was chest and neck trauma consistent with crushing of his chest, and one doctor's testimony that detainee's injuries almost certainly happened during struggle with officers, raised genuine issue of material fact as to whether officer who knelt on detainee's back while he was lying on ground used unreasonable amount of force, precluding summary judgment in §§1983 action against officer by detainee's estate alleging use of excessive force in violation of Fourth Amendment. Abdullahi v. City of Madison, C.A.7 (Wis.) 2005, 423 F.3d 763 . Federal Civil Procedure 2491.5

Police officer's conduct in tackling arrestee and forcing him to the floor was not unreasonable, and thus did not violate the Fourth Amendment, although arrestee sustained head trauma when he hit the floor, and the head injury led to arrestee's death, where arrestee was disoriented and exhibiting signs of lacking mental control, and he was barreling toward glass doors that officer knew were locked at time of the tackle. McVay ex rel. Estate of McVay v. Sisters of Mercy Health System, C.A.8 (Ark.) 2005, 399 F.3d 904. Arrest 68(2)

Single blow from walkie-talkie of hospital security guard to head of former employee was reasonable use of force to detain employee, and, consequently, guard did not deprive employee of her Fourth Amendment civil right to be free from use of excessive force, where employee admitted that she acted in unreasonable manner, she threatened bodily harm to persons at hospital, she provoked breach of the peace, she battered guard, and she created dismay. Johnson v. LaRabida Children's Hosp., C.A.7 (Ill.) 2004, 372 F.3d 894. Arrest 68(2)

Allegations that police officers, who were seeking to execute an already-executed arrest warrant, threatened to break down the door and gates of plaintiff's house, used foul language, exacerbated plaintiff's prior injuries by pushing his arms up behind his back while handcuffing him, and did so in front of plaintiff's children, failed to state a claim, in §§ 1983 action, for excessive force; allegations demonstrated no more than the degree of physical coercion typically attendant to an arrest. Pena-Borrero v. Estremeda, C.A.1 (Puerto Rico) 2004, 365 F.3d 7. Arrest 68(2)

Officer's split-second judgment to administer a single kick to subdue arrestee was objectively reasonable as a matter of law, and thus did not support recovery under either § 1983 or California law of battery, where another police officer had been shot and wounded and was engaged in a gun battle, arresting officer noticed an individual who matched the description given of a suspect and he had no way of knowing whether the individual was armed, and that individual began to comply with officer's commands to get down on the ground, but then suddenly jumped to his feet as officer approached him. Saman v. Robbins, C.A.9 (Cal.) 1999, 173 F.3d 1150. Arrest 68(2); Civil Rights 1088(4)

Police officer's use of single burst of pepper spray to subdue detainee believed to pose suicide risk did not per se involve use of excessive force, in light of detainee's size and inebriation, his adamant refusal to go to hospital, and officer's reasonable belief that detainee had taken overdose. Monday v. Oullette, C.A.6 (Mich.) 1997, 118 F.3d 1099. Civil Rights 1088(4)

Motorist stated § 1983 cause of action for unreasonable seizure against police officer who, during traffic stop, administered one violent poke and push, and said to motorist, "[w]e know what to do with you." Lanigan v. Village of East Hazel Crest, Ill., C.A.7 (Ill.) 1997, 110 F.3d 467. Civil Rights 1395(6)

Police officers did not use "excessive force" in securing arrestee's fingerprints; arrestee made fist with his thumb tucked inside in order to prevent fingerprinting, officer then seized arrestee, pressed his thumb against arrestee's mandibular nerve junction below his jaw, and repeatedly pushed his thumb forward toward arrestee's nose in effort

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to compel him to open his hand, and officer repeated that maneuver two or three times next day before arrestee finally relented. Joos v. Ratliff, C.A.8 (Ark.) 1996, 97 F.3d 1125. Civil Rights 1088(4)

Evidence supported jury's finding that police officer used excessive force after arrestee failed to remove her wedding ring when she was ordered to remove all of her personal property, even if alleged use of force was not life threatening and did not leave extensive marks; officer admitted pulling ring from arrestee's finger and arrestee claimed that she did nothing to provoke officer's abusive behavior and was subjected to intense physical pain from his actions. Holmes v. City of Massillon, Ohio, C.A.6 (Ohio) 1996, 78 F.3d 1041, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 312, 519 U.S. 935, 136 L.Ed.2d 228. Civil Rights 1420

Force used against arrestee was not excessive, for purposes of arrestee's claim under § 1983, even though during initial investigatory stop police officer drew his gun, reached for arrestee's keys, and grabbed arrestee and tried to pull arrestee out of truck; officer's actions were eminently reasonable in light of information from radio dispatcher that owner of truck was suspected to be armed and dangerous and in light of arrestee's suspicious movements while inside the truck. Foote v. Dunagan, C.A.4 (Va.) 1994, 33 F.3d 445. Civil Rights 1088(4)

Evidence did not support wife's claim under § 1983 that officer used excessive force in arresting husband; wife's counsel earlier stipulated to dismiss assault and battery claims against officer because discovery disclosed that officer never touched husband, and second officer's statement that "it took five of us to subdue [husband]" was insufficient to show excessive force. Hancock v. Dodson, C.A.6 (Mich.) 1992, 958 F.2d 1367. Civil Rights 1420

Police officers who were found to have used excessive force against each other in altercation at scene of arrest, during which both were in plain clothes and neither knew other was police officer, were not precluded from recovering on their respective constitutional claims raised under § 1983. Graham v. Davis, C.A.D.C.1989, 880 F.2d 1414, 279 U.S.App.D.C. 341. Civil Rights 1088(4)

Although there was sufficient evidence to support finding that state official maliciously caused use of excessive force in arresting farmer, that state officials implemented an operation to enforce a civil statute that utilized too many bodies and too many guns and that those officials maliciously planned needlessly dramatic and coercive operation knowing it would surprise, frighten, upset and anger farmer, state officials' conduct did not amount to a constitutional violation redressable under Section 1983 where farmer was not struck, pushed, mistreated or threatened during the incident and did not suffer even any minor physical injuries as result of the incident. Gumz v. Morrissette, C.A.7 (Wis.) 1985, 772 F.2d 1395, certiorari denied 106 S.Ct. 1644, 475 U.S. 1123, 90 L.Ed.2d 189 . Civil Rights 1088(4)

Genuine issues of fact, as to whether deputy sheriffs acted reasonably in hitting pretrial detainee about the head in attempting to handcuff him and transport him to segregation, precluded summary judgment on excessive force claim. Jenkins v. Wilson, W.D.Wis.2006, 432 F.Supp.2d 808. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether officers' alleged use of taser gun and other force during arrest was excessive and unreasonable in light of the facts and circumstances confronting the officers precluded summary judgment for officers on arrestee's §§ 1983 claim for excessive force. Batiste v. City of Beaumont, E.D.Tex.2006, 426 F.Supp.2d 395. Federal Civil Procedure 2491.5

Arrestee stated excessive use of force claim against police officer where he alleged that officer arrested him without a warrant or probable cause and intentionally pushed him to a brick wall, causing a six-inch cut on his back. Glisson v. Sangamon County Sheriff's Dept., C.D.Ill.2006, 408 F.Supp.2d 609. Civil Rights 1395(6)

Police officers' use of pepper spray against patrons of restaurant and nightclub without warning to break up fight was excessive, for purpose of officers' assertion of qualified immunity to patrons' Fourth Amendment excessive

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force claim in lawsuit under §§ 1983, since officers' use of force was substantial, in that pepper spray caused pain, irritation, swelling, and difficulty in breathing, and no strong governmental interests were at stake, in that character of offense was minor, risk to officers' safety or their ability to control group was not high, and patrons were not forcibly resisting arrest or interfering with officer's attempt to make arrest. Logan v. City of Pullman, E.D.Wash.2005, 392 F.Supp.2d 1246. Arrest 68(2)

Genuine issue of material fact as to whether police officers used reasonable force to arrest, by allegedly spraying arrestee with pepper spray, and hitting him with a baton, precluded summary judgment in favor of officers, in arrestee's §§ 1983 excessive force claim against officers. Reed v. City of Lavonia, M.D.Ga.2005, 390 F.Supp.2d 1347. Federal Civil Procedure 2491.5

Police officer's use of force against arrestee was justified, and thus officer was entitled to qualified immunity from liability in arrestee's §§ 1983 excessive force case, even though arrestee complied with officer's order to lie on his stomach and place his hands behind his head, and officer allegedly had four unarmed officers stand on arrestee's extremities, pulled hard on handcuff, causing it to cut through arrestee's flesh to bone, pulled arrestee's head up while another officer sprayed him with mace, and kicked arrestee in ribs, where arrestee had just wrestled baton away from one officer and grabbed groin of another. McLaurin v. New Rochelle Police Officers, S.D.N.Y.2005, 373 F.Supp.2d 385, subsequent determination 379 F.Supp.2d 475. Civil Rights 1376(6)

Force used by officers, who deployed pepper spray and executed control holds, tripped, hit and handcuffed a hallucinating and obviously deranged suspect and placed him in a prone position pending the arrival of paramedics, was reasonable; suspect was highly erratic, had armed himself with two weapons, had previously wounded his wife with a knife, had disregarded the officers' attempts to pacify him and refused to surrender, and demonstrated an intent to harm when he rushed at the officers with the screwdriver. Wheeler v. City of Philadelphia, E.D.Pa.2005, 367 F.Supp.2d 737. Arrest 68(2)

Use of plastic "flexi-cuffs" to detain arrestees being temporarily held in a gymnasium, by cuffing one wrist to the opposite ankle, did not constitute a use of excessive force, even though the arrests were unlawful, and therefore mayor and police chief were entitled to qualified immunity in arrestees' §§ 1983 action alleging use of excessive force during their detention; officers' actions were objectively reasonable given that they faced a crowd of several hundred arrestees. Barham v. Ramsey, D.D.C.2004, 338 F.Supp.2d 48, affirmed in part 434 F.3d 565, 369 U.S.App.D.C. 146. Arrest 68(2); Civil Rights 1376(4); Civil Rights 1376(6)

"No use of force" standard, rather than the "reasonable force" standard, applied in nightclub owner's civil rights action in determining whether Puerto Rico treasury agent used unreasonable force in conducting warrantless administrative inspection of nightclub. Alvarez Sepulveda v. Colon Matos, D.Puerto Rico 2004, 306 F.Supp.2d 100. Searches And Seizures 79

Genuine issue of material fact existed as to whether two police officers, who handcuffed driver of car that they stopped because it matched description of car in reported carjacking, could see third officer on the other side of the stopped car as he allegedly kneed passenger in the groin several times and stripped passenger of his pants and underwear in public, after he had already ordered passenger to the ground, handcuffed him, and allegedly kicked him several times, precluding summary judgment on the two officers' qualified immunity defense against the passenger's § 1983 claim for failing to intervene to stop the third officer's kneeing and stripping of the passenger in alleged violation of his Fourth Amendment right against use of excessive force. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Federal Civil Procedure 2491.5

Officer's act of inquiring into whether arrestee had a permit for the gun discovered in his automobile before reading him his *Miranda* rights could not support arrestee's excessive force claim, in § 1983 action against officer, where officer used absolutely no force against arrestee. Mosley v. Yaletsko, E.D.Pa.2003, 275 F.Supp.2d 608. Arrest 68(2); Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Police officers did not use excessive force in seizure and arrest, although arrestee may have suffered some bruises and a black eye, where arrestee admitted to physically resisting arrest, arrestee did not suffer any serious physical injuries, and arrestee did not need medical attention. Raymond v. Bunch, N.D.N.Y.2001, 136 F.Supp.2d 71. Arrest 68(2)

Genuine issues of material fact, precluding summary judgment for police officers on arrestee's § 1983 excessive force claim, existed as to whether defendant officers were ones who committed alleged acts, and whether those acts were reasonable under circumstances. Jonelis v. Russo, D.Conn.1994, 863 F.Supp. 84. Federal Civil Procedure 2491.5

Arrestee's allegations that arresting officer hit him with a soccer ball while arrestee was in holding cell to coerce arrestee to answer questions and sign his *Miranda* warnings was sufficient to allege claim for use of excessive force in violation of Fourth or Fourteenth Amendments. Bieros v. Nicola, E.D.Pa.1994, 860 F.Supp. 226. Civil Rights 1395(6)

Federal protection officer acted reasonably in arresting the motorist who had committed misdemeanor by illegally parking in federal building parking lot, and in allegedly poking him in the stomach with his finger to force him inside building and to office of U.S. attorney; degree of force used was objectively reasonable in view of motorist's belligerent attitude and refusal to provide any identification. Perreault v. Thornton, D.R.I.1991, 781 F.Supp. 873. United States 50.10(3)

No more force was used than was reasonably necessary to effectuate arrest of § 1983 plaintiff who had already shown his willingness to ram police car with his tractor trailer; scuffle had ensued as defendant and other officers subdued plaintiff, handcuffed him and placed him in police car to transport him to jail. Williams v. Adams, E.D.Mo.1991, 780 F.Supp. 635, affirmed 989 F.2d 506, certiorari denied 114 S.Ct. 1103, 510 U.S. 1132, 127 L.Ed.2d 415. Civil Rights 1088(4)

Arresting officer exercised reasonable force against police sergeant who resisted arrest, unnecessarily honked car horn, refused to show license and registration, and almost struck an officer with her vehicle in trying to flee, and, thus, arresting officer did not violate Fourth Amendment or commit assault and battery under District of Columbia law. Stevens v. Stover, D.D.C.1990, 727 F.Supp. 668. Arrest 68(2); Assault And Battery 10

Evidence adequately established violation of federal law in arrestee's right to be free from unlawful arrest by person acting under color of state law where arrestee's evidence showed police officers used excessive force in subduing arrestee in transporting him to police station, and filed untimely and unfounded charges against him. Odato v. Vargo, W.D.Pa.1988, 677 F.Supp. 384. Civil Rights 1420

For purposes of civil rights action under 42 U.S.C.A. § 1983, deputy sheriff used excessive force by breaking arrestee's finger, where immediate task of photographing arrestee did not require breaking his finger, three or four police officers present could have handcuffed or otherwise subdued arrestee without intentionally hurting him, if he was disruptive, and arrestee's conduct in pointing at deputy sheriff and stating that he did not want deputy sheriff near him did not require discipline by breaking arrestee's finger as conduct occurred in presence of other police officers only. Bowman v. Casler, N.D.N.Y.1985, 622 F.Supp. 836. Civil Rights 1088(4)

Assuming there was intentional deprivation of plaintiff's physical liberty when state trooper told him not to move after trooper stopped plaintiff's car at shopping mall, trooper was not liable to plaintiff under 42 U.S.C.A. § 1983, in that there was no use or threat of force, no official arrest was made, plaintiff was not taken into custody, and state court action provided plaintiff with adequate due process protections. Ferry v. Bergbigler, W.D.Pa.1985, 615 F.Supp. 90. Civil Rights 1088(4)

Where defendant law enforcement officers, in attempting to execute facially valid arrest warrants, were confronted

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with hostile and uncooperative subjects, at various times, all three plaintiffs attempted to hinder and obstruct officers in execution of their duty, and one plaintiff's injury was directly related to his struggle with officer, all three defendants responded with only that force which was reasonable and necessary in light of resistance which they faced, and thus officers could not be held liable to plaintiffs in civil rights action. Smith v. Garrett, N.D.W.Va.1984, 586 F.Supp. 517. Civil Rights 1088(4)

An action under this section arising from plaintiff's arrest and confinement by defendant police officer was not established in that, though plaintiff alleged that defendant officer, individually and as an agent of the police department and the city, violated plaintiff's civil rights by arresting her without cause and with excessive force and by causing her to be imprisoned without justification, evidence showed that defendant's action was commensurate with plaintiff's increased resistance and, therefore, reasonable in light of existing need and that, without minimizing the physical discomfort felt by the plaintiff at the time of her arrest, the injuries sustained by her during the course of the arrest required neither medication nor subsequent medical treatment. Bailey v. City of New Orleans, E.D.La.1982, 533 F.Supp. 193. Civil Rights 1420

Whether police used excessive force in connection with a fatal shooting was a question for the jury in a §§ 1983 suit, despite claim that the victim was handcuffed and in police custody before he was shot; there was sufficient evidence to support a verdict consistent with a defense theory that the victim was physically capable of crawling underneath a house and that, after doing so, he was shot while running through a yard. Palma v. Edwards, C.A.7 (Ill.) 2004, 103 Fed.Appx. 3, 2004 WL 1435213, Unreported. Civil Rights 1429

Officers of sheriff's department were entitled to use deadly force in attempting to arrest arrestee and thus arrestee's § 1983 claim against officers for use of excessive force during arrest failed; arrestee fled officers, during pursuit arrestee struck a utility pole, lost control of his car and slid into a ditch, climbed out of ditch and fled on foot, arrestee then stole a truck, he saw officer try to grab onto truck so arrestee drove faster, arrestee saw officer fall off back of truck, and arrestee accelerated into another officer. Barboa v. Baird, C.A.10 (N.M.) 2003, 81 Fed.Appx. 301, 2003 WL 22719562, Unreported, certiorari denied 124 S.Ct. 2916, 542 U.S. 941, 159 L.Ed.2d 820. Arrest 68(2)

State trooper did not use excessive force in arresting citizen for driving under influence (DUI), although trooper unnecessarily slammed citizen over hood of patrol car and proceeded to handcuff him; citizen was backing away from trooper when trooper asked citizen if he was other driver involved in accident, and alleged injuries suffered by citizen were limited to soft tissue injuries, and were not substantiated with any medical documentation. Ankele v. Hambrick, E.D.Pa.2003, 2003 WL 21223821, Unreported, affirmed 136 Fed.Appx. 551, 2005 WL 1532436. Automobiles 349(14.1)

Police officer's conduct of striking another officer on chest with his open hand during confrontation did not constitute excessive force, so as to be cognizable constitutional tort under § 1983; conduct interfered with no civil rights of plaintiff and caused no physical harm, injury, or consequence. Rosenfeld v. Egy, D.Mass.2003, 2003 WL 222119, Unreported, affirmed 346 F.3d 11. Civil Rights 1088(2); Civil Rights 1126

2128. Execution of judicial orders, police activities

There may be a "deprivation" within meaning of this section not only when there has been an actual taking of property by a police officer, but also when the officer assists in effectuating a repossession over objection of the debtor or so intimidates a debtor as to cause him to refrain from exercising his legal right to resist repossession. Harris v. City of Roseburg, C.A.9 (Or.) 1981, 664 F.2d 1121. Civil Rights 1088(3)

Law enforcement officials who took person into custody and transported him to mental hospital in good faith reliance on state civil commitment law without reason to believe that person had been committed without notice and hearing were not liable to that person under this section. Sebastian v. U. S., C.A.8 (Ark.) 1976, 531 F.2d 900,

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certiorari denied 97 S.Ct. 153, 429 U.S. 856, 50 L.Ed.2d 133. Civil Rights 1376(6)

County sheriff in levying distraints, serving summonses and conducting sheriff's sale incident to enforcement of judgments for rent was carrying out mandatory routine functions of his office and was not liable to tenants for such acts. Steinpreis v. Shook, C.A.4 (Md.) 1967, 377 F.2d 282, certiorari denied 88 S.Ct. 811, 389 U.S. 1057, 19 L.Ed.2d 858. Sheriffs And Constables 111

Plaintiff did not establish § 1983 Fourth Amendment excessive force claim against county deputy sheriff who executed writ of possession for the premises and evicted plaintiff therefrom: notice was posted on the premises advising plaintiff that writ of possession had been issued and that she had no lawful right to be on the premises; plaintiff had opportunity to remove herself and her possessions from the premises before she was evicted; at no time was plaintiff placed under arrest or in handcuffs; and plaintiff did not show that she suffered any physical injury during eviction. Busch v. Torres, C.D.Cal.1995, 905 F.Supp. 766. Civil Rights 1088(2)

2129. Familial association, police activities

Police officer did not unduly interfere with wife's right of familial association with her husband by telling wife, falsely, that husband had confessed to child abuse; wife consensually talked to officer, and officer's conduct did not involve physical coercion and did not shock the conscience. Griffin v. Strong, C.A.10 (Utah) 1993, 983 F.2d 1544. Constitutional Law 82(10)

Siblings of black victim of fatal shooting by city police officer did not have constitutionally protected liberty interest in continued association with their deceased brother so as to entitle them to recover under this section. Bell v. City of Milwaukee, C.A.7 (Wis.) 1984, 746 F.2d 1205. Civil Rights 1332(4)

Police officer who fatally shot driver after driver fled on foot from scene of investigative stop of his vehicle was not liable under §§ 1983 to driver's son for violation of son's right to due process, absent showing that officer's actions were directed at parent-child relationship between driver and son. Remillard v. City of Egg Harbor City, D.N.J.2006, 424 F.Supp.2d 766. Municipal Corporations 747(3)

Police officers' actions in removing daughter from school grounds and releasing her to custodial father did not deprive mother of any constitutional right, as required to support § 1983 action against police officers and municipality. Rubin v. Smith, D.N.H.1996, 919 F.Supp. 534. Civil Rights 1088(1)

Police officer's alleged negligence in obtaining background information about juvenile informant and in using juvenile as informant without his mother's consent, did not amount to violation of mother's constitutional right to care, custody, and management of her child and his affairs; there was no indication that police officers intended to interfere with mother's rights or to usurp mother's role. Williamson v. City of Virginia Beach, Va., E.D.Va.1992, 786 F.Supp. 1238, affirmed 991 F.2d 793. Constitutional Law 82(10)

Parents' alleged constitutionally protectible liberty interest in the continued companionship and association with their children within the rubric of substantive due process was not implicated by parents' allegation that their then 17-year-old son suffered from emotional and psychological harm by virtue of a brief four-hour detention by the police. Willard v. City of Myrtle Beach, SC, D.S.C.1989, 728 F.Supp. 397. Civil Rights 1395(6)

Brothers of decedent who was killed by police officer did not have constitutionally protected liberty interest in their association, if any, with decedent, so that brothers did not have cognizable civil rights claim. de la Cruz LaChapel v. Chevere Ortiz, D.Puerto Rico 1986, 637 F.Supp. 43. Civil Rights 1332(4)

Civil rights claim of father whose son was fatally shot by police officer based on his alleged "parental right" to have his son freely associate, which could be construed to allege that father had been deprived of the constitutional

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right to associate with his son, stated a cause of action under the civil rights statute, 42 U.S.C.A. § 1983, where complaint alleged conduct involving reckless or callous indifference to federally protected rights of parent of decedent son, rather than to decedent son's constitutional rights. Trejo v. Wattles, D.Colo.1985, 636 F.Supp. 992. Civil Rights 1395(5)

Complaint alleging that plaintiff was threatened by police defendants and was told that she would lose custody of her son if she did not sign a statement implicating her husband in firebombing did state claim under this section providing for civil action for deprivation of rights. Wilkinson v. Ellis, E.D.Pa.1980, 484 F.Supp. 1072. Civil Rights 1395(5)

2130. Fingerprints, police activities

Where heart of plaintiff's complaint was that he was deprived of his liberty because state authorities failed to promulgate, put into effect and monitor enforcement of appropriate rules applicable to return of photographs and fingerprints when a criminal proceeding is terminated in favor of accused, when illegally retained photograph was used to arrest him in a subsequent prosecution, adequacy of postdeprivation remedies did not control question whether complaint stated a cause of action under section 1983 for violation of procedural due process. Anderson v. City of New York, S.D.N.Y.1985, 611 F.Supp. 481. Civil Rights 1319

2131. Harassment, police activities--Generally

Allegations by nightclub and individuals that government officials conducted campaign of harassment and intimidation, including unreasonable searches and seizures and deprivation of right to assemble and right to profits from nightclub were conclusory and thus insufficient to state § 1983 claim for relief. L.S.T., Inc. v. Crow, C.A.11 (Fla.) 1995, 49 F.3d 679. Civil Rights 1395(6)

Where plaintiffs in civil rights action failed to allege that they were singled out for discriminatory enforcement of town law and municipal ordinance or that police permitted others to engage in same activity with impunity while plaintiffs were harassed and arrested, complaint failed to state cause of action under this section. Reilly v. Doyle, C.A.2 (N.Y.) 1973, 483 F.2d 123. Civil Rights 1395(5)

City employed a custom of investigatory detentions that violated plaintiffs' Fourth Amendment rights, and thus was liable in §§ 1983 action; on one occasion officers brought plaintiffs involuntarily to police station in the back of a police car, handcuffed, and held them in a cell for two to three hours without having probable cause to arrest, and on second occasion officers brought one plaintiff involuntarily to police station, without probable cause to arrest, and placed him in a cell to investigate whether he was driving a stolen car. Glass v. City of Philadelphia, E.D.Pa.2006, 455 F.Supp.2d 302. Civil Rights 1351(4)

Allegations that police officers had on several occasions arrested private security guard, attempted to arrest guard, and subjected guard to unreasonable searches without probable cause for purposes of harassing him failed to state equal protection violation for purposes of federal civil rights action; no allegation was made that intentional discrimination occurred due to impermissible classification such as race. Crawford By and Through Crawford v. City of Kansas City, Kan., D.Kan.1997, 952 F.Supp. 1467. Civil Rights 1395(6)

Mother of minor who was allegedly questioned in his home by police officer who entered without mother's permission or knowledge stated claim under § 1983 against police chief by alleging that chief violated plaintiff's equal protection rights in that chief, as policymaker, evinced deliberate indifference or gross negligence in failing to investigate fully and thoroughly allegations of police misconduct; those allegations manifested policy of harassment towards juveniles and teenagers that was selectively applied in order to punish plaintiffs for exercising their First Amendment rights by filing civilian complaint against police officer. Johns v. Town of East Hampton, E.D.N.Y.1996, 942 F.Supp. 99. Civil Rights 1395(5)

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42 U.S.C.A. § 1983

Deputy's conduct toward parents and son of target of investigation did not violate their constitutional rights and thus did not support action under § 1983; though deputy was allegedly rude and unprofessional in manner that harassed and humiliated parents and son, deputy did not physically touch or threaten parents and son, was invited into parents' home, and was never asked to leave. Jackson v. Liberty County, E.D.Tex.1994, 860 F.Supp. 360. Civil Rights 1088(1)

Alleged police harassment of bank customers, without more, could not form basis for § 1983 cause of action, absent invocation of protected life, liberty or property interests; police conduct of telling customer's children that customers would be prosecuted if they did not pay debt, and letting it be known at customers' places of employment that they owed $18,000 to bank, was rude and obnoxious, but not violative of any constitutional right. Arnold v. Truemper, N.D.Ill.1993, 833 F.Supp. 678. Civil Rights 1088(1)

Record in federal civil rights suit by tavern owner against members of county sheriff's department and South Carolina Highway Patrol showed, as matter of law, that defendants' alleged actions in harassing plaintiff and plaintiff's business did not result in violation of his civil rights in manner actionable under this section. Plampin v. U. S. Fidelity and Guaranty Co., D.C.S.C.1978, 463 F.Supp. 972. Civil Rights 1420

2132. ---- Chilling effect, harassment, police activities

Genuine issue of material fact, precluding entry of summary judgment for police officer in civil rights action, existed as to whether police officer's warnings to gas station proprietor about speaking to press actually had chilling effect on proprietor's protected activity, even though proprietor participated in approximately 30 media interviews without rejecting any interview requests subsequent to meeting with police officer, where proprietor claimed that because of officer's threats he no longer made comments to media concerning conduct of police. Bennett v. Village of Oak Park, N.D.Ill.1990, 748 F.Supp. 1329. Federal Civil Procedure 2491.5

2133. Hostage situation, police activities

Mother, who brought § 1983 claim against city after her house was destroyed and her children were killed during hostage situation created by mother's former boyfriend, failed to establish that city violated her rights to substantive due process, as required to support claim; city did not have constitutional duty to preserve mother's property under these conditions, or to train its officers to deal with "barricaded hostage" situations. Smith v. City of Plantation, S.D.Fla.1998, 19 F.Supp.2d 1323, affirmed 198 F.3d 262. Constitutional Law 253(1); Constitutional Law 320; Municipal Corporations 628; Municipal Corporations 747(3)

2134. Identification procedures, police activities--Generally

Detective's actions in mistakenly identifying plaintiff as drug dealer using police department identification equipment and procedures five months after he made undercover purchase of crack cocaine did not violate plaintiff's due process rights; plaintiff had no constitutional right to be protected from detective's merely negligent conclusion that she was suspect who had sold him crack cocaine. Campbell v. City of San Antonio, C.A.5 (Tex.) 1995, 43 F.3d 973. Constitutional Law 266(3.1); Municipal Corporations 747(3)

Arrestee who alleged that his rights were violated when police used his photograph in identification array after they had been ordered, pursuant to New York law, to release photograph to him upon termination of prior criminal proceeding in his favor did not state § 1983 claim for deprivation of property without due process of law; even if he had property right in photograph, he did not allege that state court remedy was inadequate or unavailable. Grandal v. City of New York, S.D.N.Y.1997, 966 F.Supp. 197. Civil Rights 1319

Suspect included in photographic lineup had no cause of action under § 1983 even if lineup was unduly suggestive, absent actual criminal trial of suspect and use of evidence of lineup to support allegation of violation of right to fair

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trial, and absent constitutional right to be free from unduly suggestive lineups; rule against unduly suggestive lineups was mere procedural safeguard to protect constitutional right to fair trial. Sejnoha v. City of Bisbee, D.Ariz.1993, 815 F.Supp. 1300. Civil Rights 1088(1)

Criminal defendant's right to be free from suggestive lineup is intended to protect right to fair trial and thus was not separately actionable as constitutional violation under federal civil rights statute. Mack v. Butler, N.D.Ill.1990, 742 F.Supp. 1007. Civil Rights 1088(5)

Police officers did not violate civil rights of attempted rape suspect, whose prosecution was nolle prosse after identification testimony was suppressed, on ground officers influenced or coerced victim into making identification of him, absent evidence officers knew defendant was not attempted rapist when they arrested him and had him submit to visual lineup, that visual lineup was misleading or unnecessarily suggestive, that visual lineup, if misleading, caused victim to make positive voice identification, that officers engaged in coercive or suggestive conduct encouraging victim to identify defendant, or that voice identification and visual lineup made it possible for victim to connect pieces at preliminary hearing at which she identified defendant. Brooks v. Fitzsimmons, N.D.Ill.1987, 658 F.Supp. 840. Civil Rights 1088(5)

Arrestee's claim that his constitutional rights were violated when victim's testimony identifying him as perpetrator was admitted at preliminary hearing failed to state a cognizable § 1983 claim against police officers who conducted lineup at which arrestee was selected by victim, as police were not responsible for admission of victim's testimony at preliminary hearing, and thus their actions were not directly linked with any violation of arrestee's civil rights. Hensley v. Carey, N.D.Ill.1986, 633 F.Supp. 1251, affirmed 818 F.2d 646, certiorari denied 108 S.Ct. 456, 484 U.S. 965, 98 L.Ed.2d 395. Civil Rights 1088(4)

2135. ---- Arrest and detention, identification procedures, police activities

City police department's procedure for verifying that arrestee held in custody on warrant was actually person named in warrant did not violate Fourth Amendment or due process clause by requiring only double checking and not triple checking of identity of arrestee, so as to subject city to liability under §§ 1983 to arrestee who was held in custody by police for two days after his arrest and prior to his arraignment on warrant that had been issued for someone else, since warrant itself was valid, and arrestee was only held by police for two days. Hernandez v. Sheahan, C.A.7 (Ill.) 2006, 455 F.3d 772. Constitutional Law 262

Expert report that probable cause to arrest suspect was based on three identifications that violated police department procedure did not preclude finding of probable cause, so as to give rise to § 1983 claim. Green v. City of Paterson, D.N.J.1997, 971 F.Supp. 891. Civil Rights 1088(4)

Mistakenly arresting plaintiff for theft of carpet from hotel did not violate plaintiff's constitutional rights, as needed to state civil rights claim under § 1983, given that police had no reason to question eyewitness identifications of defendant as perpetrator when arrest was made. Davis v. Tamburo, E.D.Ark.1993, 849 F.Supp. 1294. Civil Rights 1088(4)

If persons are taken from the streets, detained and placed in lineups against their will and without any charges being brought against them, they have been subject to illegal arrest, and suit pursuant to this section is proper. Butcher v. Rizzo, E.D.Pa.1970, 317 F.Supp. 899. Civil Rights 1088(4)

2136. Inaction, police activities--Generally

There was insufficient evidence that discrimination against women was motivating factor behind police department's alleged policy or custom of providing less protection to women victims of domestic abuse, as required to establish mother's § 1983 claim that police inaction, following her report of physical abuse, permitted father to

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kill her children and thus violated equal protection; there was no evidence that officer's motivation in telling father about mother's visit to police station was based on gender discrimination, and police superintendent's expression of disagreement with domestic abuse law and failure to meet with Women's Affairs Commission, while some evidence of discriminatory intent, was not enough to meet strict standards for showing discriminatory intent in equal protection claims. Soto v. Flores, C.A.1 (Puerto Rico) 1997, 103 F.3d 1056, certiorari denied 118 S.Ct. 71, 522 U.S. 819, 139 L.Ed.2d 32. Civil Rights 1420

A law enforcement officer can be liable under this section when by his inaction he fails to perform a statutorily imposed duty to enforce the laws equally and fairly, and thereby denies equal protection to persons legitimately exercising rights guaranteed them under state or federal law, and state officials are not entitled to rely on community hostility as an excuse not to protect, by inaction or affirmative conduct, the exercise of fundamental rights. Smith v. Ross, C.A.6 (Ohio) 1973, 482 F.2d 33. Civil Rights 1088(1); Civil Rights 1369

Police officer cannot be held liable in damages under §§ 1983 for failure to intercede to protect constitutional rights of citizens from infringement by other law enforcement officers unless such failure permitted fellow officers to violate suspect's clearly established statutory or constitutional rights of which reasonable person would have known. McLaurin v. New Rochelle Police Officers, S.D.N.Y.2005, 373 F.Supp.2d 385, subsequent determination 379 F.Supp.2d 475. Civil Rights 1376(6)

Failure of Nebraska State Patrol Superintendent to protect Native American marchers from private violence by intoxicated individuals did not violate marcher's due process rights. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Constitutional Law 253(1); States 78

A police officer who fails to intercede on behalf of a citizen whose constitutional rights are being violated in the officer's presence by other officers is liable for the preventable harm caused by the actions of the other officers where that officer observes or has reason to know (1) that excessive force is being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Civil Rights 1088(1); Civil Rights 1088(2); Civil Rights 1088(4)

Law enforcement officer has duty to intercede on behalf of citizen whose constitutional rights are being violated in officer's presence, and officer who does not intercede on behalf of citizen in such situation can be liable to that citizen under § 1983. Jonelis v. Russo, D.Conn.1994, 863 F.Supp. 84. Civil Rights 1088(1)

Section 1983 plaintiff did not have constitutional right to see his purported tormentor punished for threatening to assault him so as to state § 1983 claim against police officer who failed to investigate charge. Slagel v. Shell Oil Refinery, C.D.Ill.1993, 811 F.Supp. 378, affirmed 23 F.3d 410, rehearing denied, certiorari denied 115 S.Ct. 611, 513 U.S. 1031, 130 L.Ed.2d 520, rehearing denied 115 S.Ct. 958, 513 U.S. 1137, 130 L.Ed.2d 900. Civil Rights 1088(1)

Spectators who were attacked at downtown fireworks display had no civil rights claim against city based on theory that its alleged policy and official actions regarding management of fireworks event were grossly negligent or in reckless disregard of constitutional right to freedom from bodily harm, absent some affirmative obligation of care and protection on part of city; policy or custom could not create any right, but only went to proving that state action, if city had affirmative obligation of care and protection, was grossly negligent or deliberately indifferent. Was v. Young, E.D.Mich.1992, 796 F.Supp. 1041. Civil Rights 1039; Civil Rights 1351(6)

State does not have affirmative obligation under federal civil rights statute to protect individual against private violence. Smith v. Dodrill, N.D.W.Va.1989, 718 F.Supp. 1293. Civil Rights 1039

Complaint alleging that city deprived wife of undercover narcotics officer by negligently failing to provide her with

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24-hour police protection with the result that she was beaten unconscious by unknown assailant shortly after her eight-hour police guard had left failed to state claim for relief since unknown assailant was not within control of city and, while city might be liable under state law for failing to take positive action, its conduct did not deprive wife of her liberty in any constitutional sense. Ellsworth v. City of Racine, E.D.Wis.1984, 592 F.Supp. 1262, affirmed 774 F.2d 182, certiorari denied 106 S.Ct. 1265, 475 U.S. 1047, 89 L.Ed.2d 574. Civil Rights 1395(1)

Even if members of police department failed or refused to take action with regard to plaintiff's allegations of wrongdoing in connection with unsolved murder and alleged cover-up of identity of murderer, such failure or refusal, if actionable at all, did not rise to level of deprivation of plaintiff's constitutional or other federal rights. Sellner v. Panagoulis, D.C.Md.1982, 565 F.Supp. 238, affirmed 796 F.2d 474, certiorari denied 107 S.Ct. 962, 479 U.S. 1069, 93 L.Ed.2d 1009, rehearing denied 107 S.Ct. 1595, 480 U.S. 941, 94 L.Ed.2d 784. Civil Rights 1088(1)

Police officers against whom civil rights plaintiff alleged dereliction of duty in failure to investigate and prosecute alleged offenses against him had not acted in violation of the civil rights plaintiff's constitutional rights. Clark v. Brandom, W.D.Mo.1976, 415 F.Supp. 883. Civil Rights 1088(1)

Sheriffs' alleged conduct, involving inaction in prolonged dispute between property owners and their neighbors over administration of irrigation ditch running along subdivision border, if accurately portrayed, was inconsistent with what was expected from public officials, but was not so egregious or fraught with unreasonable risk as to shock the conscience, as required for property owners to state claim for violation of substantive due process; to extent that sheriffs permitted potentially volatile situation to persist, their cumulative inaction did not rise above level of negligence. Marino v. Mayger, C.A.10 (Colo.) 2004, 118 Fed.Appx. 393, 2004 WL 2801795, Unreported. Constitutional Law 253(1); Sheriffs And Constables 99

Police officers' alleged conduct of failing to "do anything" with respect to third-party, who allegedly went to resident's home and threatened to harm resident and his family and who allegedly stole resident's car and dog, failed to support a claim under § 1983 for violation of due process. Aultman v. Padgett, E.D.Pa.2003, 2003 WL 22358445, Unreported. Constitutional Law 253(1); Municipal Corporations 747(3)

2137. ---- Conspiracy, inaction, police activities

Acquiescence can amount to § 1983 conspiracy agreement when one police officer watches open breach of law by other officers and does not seek its prevention. Hafner v. Brown, C.A.4 (Md.) 1992, 983 F.2d 570. Conspiracy 7.5(1)

Complaints by administrators of estates of pedestrians killed by police officer who was driving while intoxicated sufficiently alleged joint action between police benevolent association (PBA) and city, as required to state § 1983 conspiracy claim against PBA to violate plaintiffs' due process rights to be free of state-created danger and to deny them access to courts; plaintiffs alleged specific agreements between city and PBA to prevent police officers from facing legal sanction for their illegal activities, and plaintiffs further alleged specific agreement between several individual officer defendants and individual PBA representatives to prevent officer from facing legal consequences of his drunk driving activities on day of accident, and joint activity in furtherance of that agreement. Small v. City of New York, E.D.N.Y.2003, 274 F.Supp.2d 271, opinion clarified on denial of reconsideration 304 F.Supp.2d 401 . Conspiracy 18

An officer who fails to intercede is liable under § 1983 for the preventable harm caused by the actions of other officers where that officer observes or has reason to know: (1) that excessive force is being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official. Mack v. Town of Wallkill, S.D.N.Y.2003, 253 F.Supp.2d 552. Civil Rights 1088(2); Civil Rights

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42 U.S.C.A. § 1983

1088(4)

Evidence was insufficient to support arrestee's claim that police officers conspired to deprive him of his constitutional rights in violation of § 1983; officers arrived on scene of arrestee's beating and arrest separately, no officer was ever alone with any other officer, later arriving officers were entitled to rely on statement by first officer on scene that arrestee had assaulted him and to participate in arrest, and neither later arriving officer had any involvement with filing or signing of complaint against arrestee. Fantasia v. Kinsella, N.D.Ill.1997, 956 F.Supp. 1409. Conspiracy 19

Mother failed to show that police chief and deputy sheriff engaged in civil rights conspiracy to withhold mother's constitutional right to protective service and assistance of law enforcement in "retrieving" mother's minor daughter from paternal grandparents; mother contacted police and sheriff's department separately, sheriff did not speak with or discuss situation with chief, grandparents testified that they had no conversation with any representative of sheriff's department regarding matter in question, and right to protective service was not firmly established constitutional right. Van Loo v. Braun, E.D.Wis.1996, 940 F.Supp. 1390. Conspiracy 19

Evidence did not establish that key decision-makers, including chief of police and mayor, considered, mentioned, or were aware of store owners' nationality when they decided to move police forces two to three blocks beyond store owners' businesses in response to mob violence, and thus store owners could not prevail on their § 1983 claim that city, police chief, and mayor violated their equal protection rights by making conscious decision to withhold protective services of police based upon their nationality. Park v. City of Atlanta, N.D.Ga.1996, 938 F.Supp. 836, reversed 120 F.3d 1157. Civil Rights 1420

Complaint, filed by participants in anti-Ku Klux Klan rally who were attacked by members of the Ku Klux Klan and American Nazi Party, alleging that city police had advance knowledge of time and location of rally and had advance knowledge that the Klan was planning to attack the rally and that, in furtherance of conspiracy between the police and the Klan, the police failed to arrive at the rally site until well after the attack took place, allowing the violence to go unchecked and many of the perpetrators to flee, stated cause of action under this section. Waller v. Butkovich, M.D.N.C.1984, 584 F.Supp. 909. Conspiracy 18

2138. ---- Creation of danger, inaction, police activities

Allegations by family members of pedestrians, who were killed when an intoxicated off-duty police officer drove his car through several red lights and struck them, that other officers merely stood by and watched him drink to excess, and that the officers did nothing to prevent him from driving in that condition, failed to state §§ 1983 claim against those other officers for violation of substantive due process rights, under the state-created danger theory. Pena v. DePrisco, C.A.2 (N.Y.) 2005, 432 F.3d 98. Municipal Corporations 747(3)

State did not deprive murder witness of her substantive due process right to life or liberty, for purpose of estate's §§ 1983 lawsuit under substantive due process clause on state created danger theory, by identifying her as witness and taking her witness statement in course of investigating murder, since both were necessary law enforcement tools. Rivera v. Rhode Island, C.A.1 (R.I.) 2005, 402 F.3d 27. Constitutional Law 255(2); States 112.2(2)

City police officers did not affirmatively place, in a more dangerous position, injured motorist who had fled into desert following his involvement in two-car collision, and were not liable under § 1983 for violating motorist's due process rights by allegedly failing to conduct adequate search operation, where motorist had already fled into desert before officers arrived on scene; mere fact that officers had ordered curtailment of any civilian "rescue" efforts did not impose on them any greater duty to protect motorist from harm, where these civilian "rescue" efforts consisted of little more than a few passing drivers who had stopped on side of road to help search immediate surroundings, and there was no reason to believe that their rescue efforts would have been successful had police not intervened. Estate of Amos ex rel. Amos v. City of Page, Arizona, C.A.9 (Ariz.) 2001, 257 F.3d 1086.

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42 U.S.C.A. § 1983

Constitutional Law 253(1); Municipal Corporations 747(3)

Borough police officers did not act with degree of culpability that shocked the conscience when they released citizen after stopping his vehicle and conducting field sobriety tests, as required for liability for citizen's death in subsequent car accident under §§ 1983 for substantive due process violation of state-created danger; after administering field sobriety tests, which citizen passed, officers believed that they did not have probable cause to detain him further, officers' actions were not tainted by an improper or malicious motive to harm or kill citizen, and officers confiscated ammunition from gun that was in citizen's possession. Hoffman v. Borough of Avalon, W.D.Pa.2006, 446 F.Supp.2d 395. Municipal Corporations 747(3)

Genuine issues of material fact as to whether police officer authorized perpetrator to attack victims, and whether force used by perpetrator was excessive precluded summary judgment in victims' §§ 1983 action alleging that police officer violated their due process rights by failing to timely intervene while they were being attacked. Garcia v. Brown, S.D.N.Y.2006, 442 F.Supp.2d 132. Federal Civil Procedure 2491.5

Police officers, by allegedly failing to intervene in ongoing violence during neighborhood celebration, did not affirmatively place in a more dangerous position crowd members who were injured by other crowd members, and therefore, city was not liable under §§ 1983 for violating injured crowd members' due process rights by failing to intervene; officers did not place injured crowd members in harm's way, there was no evidence that officers had any contact with injured individuals or their assailants, nor did officers compel crowd members to interact in any way. Johnson v. City of Seattle, W.D.Wash.2005, 385 F.Supp.2d 1091. Municipal Corporations 740(1)

For purpose of determining the applicability of the state-created or enhanced danger doctrine, in § 1983 action, by student who was wounded during attack on high school by two armed students, against law enforcement officers for substantive due process violation based on alleged improper responses to attack and lack of rescue efforts, student met requirement of alleging that officers' actions put student at risk of harm; officers instructed people in library to stay put, thus enhancing danger student would be shot, and officers ordered SWAT teams and rescue units not to enter building for several hours after attackers had committed suicide, thus enhancing danger that student's injuries, which resulted from his being shot, would be aggravated. Ireland v. Jefferson County Sheriff's Dept., D.Colo.2002, 193 F.Supp.2d 1201. Constitutional Law 253(1); Municipal Corporations 747(3)

For purpose of determining the applicability of the state-created or enhanced danger doctrine, in § 1983 action, by student who was wounded during attack on high school by two armed students, against law enforcement officers for substantive due process violation based on alleged improper responses to attack and lack of rescue efforts, student met requirement of being a member of a limited and specifically definable group; student alleged he was one of students shot and seriously injured in the library. Ireland v. Jefferson County Sheriff's Dept., D.Colo.2002, 193 F.Supp.2d 1201. Constitutional Law 253(1); Municipal Corporations 747(3)

Discouragement of firefighters by law enforcement officers was not type of affirmative conduct such as would subject officers to liability, under state-created danger exception to *DeShaney* rule, for violation of individual's due process rights by failing to protect him from dying in house fire which individual himself had set; officers, who were displaying drawn weapons, delayed firefighting efforts by refusing to allow firefighters to rescue individual until scene was considered secure, resulting in altercations with firefighters. Lansdown v. Chadwick, W.D.Ark.2000, 152 F.Supp.2d 1128, affirmed 258 F.3d 754, rehearing and rehearing en banc denied. Constitutional Law 253(1); Municipal Corporations 747(3)

State had not affirmatively placed school principal in danger so as to give rise to duty under due process clause to protect principal by responding to principal's call for help in providing security to school at time of protest, where demonstrators would have come to school whether police had come to help principal or not. Evan v. Morales, N.D.Ill.1991, 775 F.Supp. 271. Constitutional Law 274(2); Municipal Corporations 747(3)

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42 U.S.C.A. § 1983

Property owner failed to state substantive due process claim against sheriffs for creating the danger that caused the harm when one of two neighbors with whom he had been involved in long-standing dispute and against whom he had obtained restraining order assaulted him with shovel; sheriff's issuance of concealed weapon permit to the other of the two neighbors against whom owner had obtained restraining order, allegedly knowing that situation was volatile and that someone could get hurt, was not affirmative conduct that created or increased danger that the neighbor who had not been issued the permit would assault owner. Marino v. Mayger, C.A.10 (Colo.) 2004, 118 Fed.Appx. 393, 2004 WL 2801795, Unreported. Constitutional Law 253(1); Sheriffs And Constables 99

2139. ---- Detention of child, inaction, police activities

Chief of police and deputy sheriff did not violate mother's due process rights or her constitutional right to associate with her child by allegedly withholding police assistance in "retrieving" mother's minor daughter from her paternal grandparents, thus precluding mother's recovery under § 1983; First, Fifth and Fourteenth Amendments imposed no duty upon police chief and deputy sheriff to provide mother with assistance in retrieving her daughter, and no special relationship existed between them and mother that would create such duty. Van Loo v. Braun, E.D.Wis.1996, 940 F.Supp. 1390. Constitutional Law 82(10); Constitutional Law 274(5); Child Custody 967

2140. ---- Discrimination, inaction, police activities

Although there is no general constitutional right to police protection, state may not discriminate in providing such protection. Watson v. City of Kansas City, Kan., C.A.10 (Kan.) 1988, 857 F.2d 690. Constitutional Law 83(1); Constitutional Law 211(4)

Police officers did not unlawfully arrest or use excessive force against Lebanese citizen, as legal resident of United States, for purpose of citizen's civil rights claim that was made on theory of bystander liability, where officers did not have opportunity to prevent events that already had occurred before their arrival; officers arrived while citizen was sitting on ground after events which gave rise to alleged unlawful arrest and use of force had passed. Mazloum v. District of Columbia, D.D.C.2006, 442 F.Supp.2d 1. Civil Rights 1088(4)

Evidence that police officers who responded to 911 domestic violence call laughed and made silly faces when the male complainant told them when they arrived that he and his male cohabitant were ending a relationship did not establish either that the officers treated him differently because he was a homosexual, or that similarly situated heterosexuals were treated more favorably than he was, as required to establish a § 1983 claim against the officers for violation of his equal protection rights; other than laughter, the officers made no verbal comments about sexual orientation, their treatment of the complainant was removing him from the premises, and no evidence presented showed that the officers treated him differently in that respect because he was a homosexual. Lunini v. Grayeb, C.D.Ill.2004, 305 F.Supp.2d 893, reversed in part 395 F.3d 761, amended on denial of rehearing. Constitutional Law 224(2); Municipal Corporations 747(3)

Native American arrestee's claim for monetary damages or declaratory relief for Nebraska officials' alleged policy of minimal criminal law enforcement, including lax enforcement of liquor control laws, when victims of crimes were Native Americans, was barred by Eleventh Amendment. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Federal Courts 269; Federal Courts 272

There was no evidence of disparate treatment between Hispanic plaintiffs and non-Hispanics in similar situations, as required to support Hispanic plaintiffs' equal protection claim that they had been subjected to numerous traffic stops and unreasonable searches and arrests on account of their race. Avalos v. City of Glenwood, S.D.Iowa 2003, 269 F.Supp.2d 1091, reversed 382 F.3d 792, rehearing and rehearing en banc denied. Civil Rights 1420

Black homeowner who brought § 1983 action against city alleging selective enforcement of laws for city's failure

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to prevent father of owner of neighboring property from interfering with her use of abandoned street over neighboring property, failed to show that police verbal harassment and abusive language, and failure to arrest or prosecute father of property owner, were motivated by intent to discriminate against her on basis of her race, or to show existence of city policy or custom of selective enforcement of laws based on race, as required to establish municipal liability. Crenshaw v. City of Defuniak Springs, N.D.Fla.1995, 891 F.Supp. 1548. Civil Rights 1039; Civil Rights 1351(3)

City could not be held liable under civil rights statute for injuries sustained by public housing resident who was shot in face and neck by two assailants in hallway of project, although resident alleged that failure to protect her was based on discriminatory motive of her status as Hispanic woman and victim of domestic violence; resident adduced no proof of discrimination against Hispanics, intentional or otherwise, and charge of discrimination against women was premised solely on basis that women are more often victims of domestic violence and while that was true, resident presented no proof of other claims made by battered women that were met with indifference by police. Merced v. City of New York, S.D.N.Y.1994, 856 F.Supp. 826. Civil Rights 1088(1)

Viable equal protection claim was made out against police officials and city based on allegations that officials failed to detain or file criminal complaints against those who attacked persons from India and intentionally discriminated against Indians, and that city engaged in custom or practice of discrimination against Indians. Mody v. City of Hoboken, D.N.J.1991, 758 F.Supp. 1027. Civil Rights 1395(5)

Discriminatory police department policy providing favored treatment to police officers accused of domestic violence could support municipal liability under § 1983 for assault on child by off-duty police officer. Sherrell By and Through Wooden v. City of Longview, E.D.Tex.1987, 683 F.Supp. 1108. Civil Rights 1351(5)

Rape victim's allegation that police officers' failure to arrest rapist and to continue investigation was result of her being a woman, was sufficient to state claim under 42 U.S.C.A. § 1983; U.S.C.A. Const.Amend. 14. Lowers v. City of Streator, N.D.Ill.1985, 627 F.Supp. 244. Civil Rights 1395(5)

If police officers knew that member of religious group had been abducted by his parents and held for deprogramming, but failed to take any action because of their opinion of that particular church, their action would violate member's civil rights. Cooper v. Molko, N.D.Cal.1981, 512 F.Supp. 563. Civil Rights 1088(1)

2141. ---- Failure to adopt policies, inaction, police activities

Civil rights claimant raped by police officer failed to show city policy or custom of failing to act on or investigate prior complaints of sexual abuse by police officers, as required to establish § 1983 claim against city for such failure, given evidence that city officials, when informed of prior incidents of misconduct, had immediately requested officers' resignations, as it did with officer who raped claimant, and that police chief had acted upon rumors regarding unidentified officer's improper conduct in stopping female drivers, notwithstanding evidence that police chief failed to take remedial action regarding two specific complaints against offending officer. Andrews v. Fowler, C.A.8 (S.D.) 1996, 98 F.3d 1069. Civil Rights 1352(4)

Sheriff could not be held liable under this section for failure to adopt policies to prevent constitutional violations on part of his deputies. Wanger v. Bonner, C.A.5 (Ga.) 1980, 621 F.2d 675. Civil Rights 1358

2142. ---- Special relationship, inaction, police activities

Mere fact that police officer observed beating of one man by another without intervening did not establish "special relationship" between officer and victim such that victim obtained constitutional right to state intervention and officer could be held liable in civil rights action under § 1983 for failure to intervene. Tucker v. Callahan, C.A.6 (Tenn.) 1989, 867 F.2d 909, rehearing denied. Civil Rights 1088(1)

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No "special relationship" existed between woman, who had been assaulted by police officer and who was participating in internal affairs department sting operation aimed at officer, and internal affairs officers who participated in sting, and woman could not recover on basis of violation of duty to protect her based on special relationship in federal civil rights action brought in which woman alleged that target of sting was allowed to have sexual contact with her before internal affairs officers made arrest; woman was not in custody, but had voluntarily agreed to participate in sting. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1088(1)

Even if police officer has special relationship with victim, imposing duty on officer to affirmatively act to protect victim, existence of special relationship in itself is not sufficient to establish liability under § 1983; victim must also show that police acted with deliberate indifference, since there is no liability for merely negligent nonfeasance. Rogers v. City of Port Huron, E.D.Mich.1993, 833 F.Supp. 1212. Civil Rights 1088(1)

2143. ---- Domestic violence, inaction, police activities

Police officers' failure to enforce temporary detention order against victim's brother was not proximate cause of injury suffered by victim when he was stabbed by brother over two weeks later, as required to support victim's federal civil rights claim against officers; although brother committed kind of violence mentioned in petition for detention order, family members did not attempt to obtain another detention order in intervening two weeks, and detention order only authorized detention of brother for at most 24 hours. Rodriguez-Cirilo v. Garcia, C.A.1 (Puerto Rico) 1997, 115 F.3d 50. Civil Rights 1088(4)

Abused wife and her father did not establish that husband's violent acts, in sexually assaulting wife and murdering her mother, would have been avoided had husband been arrested for earlier incidents of harassment, as required to impose § 1983 liability on police department, where arrest for earlier harassment might as easily have spawned retaliatory violence from husband, there was no realistic chance for police to provide protection when violence occurred, and there had been no reports of violent acts committed by husband to make rape and murder foreseeable to police. Ricketts v. City of Columbia, Mo., C.A.8 (Mo.) 1994, 36 F.3d 775, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1838, 514 U.S. 1103, 131 L.Ed.2d 757. Civil Rights 1088(4)

Domestic violence victim was not in deputy sheriff's "protective custody" at time that she was shot and killed by her husband, and therefore county, sheriff, and deputy sheriff could not be held liable on that basis in civil rights action alleging due process violation, where victim had been neither coerced nor persuaded by State to accept its protection when returning to trailer house to retrieve victim's belongings. Losinski v. County of Trempealeau, C.A.7 (Wis.) 1991, 946 F.2d 544, rehearing denied. Civil Rights 1088(1)

Actions of police officers was not such as to create for woman due process right to receive assistance in gaining access to civil courts by advice, as required by New Jersey's Domestic Violence Act, of right to receive restraining order against former live-in boyfriend who had attacked her, where officer, though failing to advise woman as required by the Act, did not act to create or exacerbate the danger or in any way constrain woman's general liberty or freedom on her own accord to seek protection in the courts, and officers had not had custody of the boyfriend prior to his initial assault. Brown v. Grabowski, C.A.3 (N.J.) 1990, 922 F.2d 1097, rehearing denied, certiorari denied 111 S.Ct. 2827, 501 U.S. 1218, 115 L.Ed.2d 997. Constitutional Law 305(2)

Employees of police department and employees of district attorney's office did not falsify or suppress evidence, and therefore did not deprive child's father of his due process rights as a parent under Maine law, when they failed to find probable cause to arrest child's biological mother for kidnapping, even if tapes submitted by father might have indicated that mother repeatedly lied to law enforcement officers and filed false reports. Burrell v. Anderson, D.Me.2005, 353 F.Supp.2d 55. Constitutional Law 274(5); District And Prosecuting Attorneys 10; Municipal Corporations 747(3)

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Genuine issues of material fact existed as to whether city councilman attempted to use his authority as a city councilman to avoid arrest when his male cohabitant called 911 to report an alleged domestic violence incident, and as to whether police officers who responded to the call and the city police chief failed to arrest the councilman because of his position, precluding summary judgment on the cohabitant's § 1983 claim against the councilman, the police officers, and the police chief for violation of his equal protection rights as a class of one. Lunini v. Grayeb, C.D.Ill.2004, 305 F.Supp.2d 893, reversed in part 395 F.3d 761, amended on denial of rehearing. Federal Civil Procedure 2491.5

On § 1983 claim alleging gender-based discrimination, municipality's official policy of treating domestic disputes less seriously than other disputes did not cause estranged husband to murder friend of wife or to sexually assault wife; cause of murder and assault were independent criminal acts of husband, municipality, through police department, was not present at time of acts nor was it notified as to immediate danger prior to acts, and despite general evidence that policy may have emboldened husband, murder and assault were not shown to be natural and probable results of emboldenment. Ricketts v. City of Columbia, Mo., W.D.Mo.1993, 856 F.Supp. 1337, affirmed 36 F.3d 775, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1838, 514 U.S. 1103, 131 L.Ed.2d 757. Civil Rights 1351(4)

Material issue of fact as to whether police department had policy of treating domestic assaults differently than other assaults precluded summary judgment for city, police department and officers on equal protection claim based on membership in the class of victims of domestic violence, rather than on gender, brought under § 1983 by representative for estate of wife who was killed by husband following reported incidents of domestic violence. Cellini v. City of Sterling Heights, E.D.Mich.1994, 856 F.Supp. 1215. Federal Civil Procedure 2491.5

A protective order issued to prevent relative or household member from abusing other family members creates property right that incurs duty on part of government irrespective of whether the right is created by judicial function at statutory behest of the state legislature, and government has duty to protect beneficiary of such order, and failure to perform the duty may constitute denial of right to procedural due process. Siddle v. City of Cambridge, Ohio, S.D.Ohio 1991, 761 F.Supp. 503. Constitutional Law 277(1); Constitutional Law 278(1.3)

Victim was not deprived of liberty without due process of law by sheriff's negligence in leaving only deputy to protect victim from her ex-boyfriend while she was retrieving her property from his residence as Fourteenth Amendment did not create duty upon state to provide police protection, and victim's death therefore did not result from any breach of state's duty to provide protection; thus, there was no liability on part of sheriff under civil rights statute. Thompson v. Lancaster, M.D.Ga.1987, 652 F.Supp. 703. Civil Rights 1088(1); Constitutional Law 255(2)

Special relationship existed between murder victim and city police department and officers that vested in victim the right to adequate police protection, and thus, administrator of victim's estate stated cause of action against department and officers pursuant to 42 U.S.C.A. § 1983 for deprivation of her Fourteenth Amendment right to due process, in light of allegations that city had actual notice of boyfriend's violent conduct directed toward victim by virtue of protection order entered by county court, that victim had contacted city numerous times to obtain assistance pursuant to such order, and that victim had personally informed individual officers shortly before her death of her boyfriend's continuous harassment and threats of murder and suicide. Dudosh v. City of Allentown, E.D.Pa.1985, 629 F.Supp. 849. Civil Rights 1088(1)

Ex-wife's allegations that a borough failed to properly train its police in "domestic relations disputes" and in applying the law "equally and fairly without bias," and that it had a policy of allowing its police to "sid[e] with one party in [a domestic relations] dispute and deny[ ] protection to the other," failed to allege a deprivation of her Equal Protection rights under the Fourteenth Amendment, so as to state a claim under § 1983; the ex-wife merely alleged evidence of a contentious domestic relations and custody dispute between two private individuals, and did

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not allege any facts in support of a claim that the borough intentionally treated her differently from a "similarly situated" person in the incidents at issue. Garrison v. Yeadon, E.D.Pa.2003, 2003 WL 21282115, Unreported. Civil Rights 1395(5)

2144. ---- Drunk driving, inaction, police activities

Motorists' allegations that police officers arrested sober driver and left behind obviously drunk passenger who subsequently drove vehicle and was involved in collision with motorists was sufficient to state civil rights claim against officers based on due process violation. Reed v. Gardner, C.A.7 (Ill.) 1993, 986 F.2d 1122, rehearing denied, certiorari denied 114 S.Ct. 389, 510 U.S. 947, 126 L.Ed.2d 337. Civil Rights 1395(6)

Police officer who lawfully arrested the designated driver of drinking group on outstanding warrant did not have duty to provide for safety of other members, who were left alone in car outside police station, given complete lack of evidence that officer knew that other members were intoxicated; no § 1983 action would lie based on officer's failure to provide for other members, who drove away from police station and were involved in fatal accident. Gregory v. City of Rogers, Ark., C.A.8 (Ark.) 1992, 974 F.2d 1006, certiorari denied 113 S.Ct. 1265, 507 U.S. 913, 122 L.Ed.2d 661. Civil Rights 1088(4)

Police officer's use of city police department's driving under the influence (DUI) check sheet, which provided that implied consent breathalyzer or blood test had to be offered to persons under 21 who were suspected of operating motor vehicle after illegally consuming alcohol/DUI, did not support § 1983 cause of action for age discrimination by driver not offered breathalyzer or blood test upon arrest for DUI. Edwards v. Oberndorf, E.D.Va.2003, 309 F.Supp.2d 780, affirmed 63 Fed.Appx. 756, 2003 WL 21224212. Civil Rights 1088(4)

Deputy sheriff's failure to arrest or otherwise restrain driver, who officer rescued from ditch and who was later involved in fatal accident after which it was determined that he had been intoxicated, did not deprive accident victims of their alleged constitutional right to protection by state from harm caused by intoxicated or otherwise impaired driver absent allegation of special relationship between victims and state from which duty to protect could have arisen. Patel by Patel v. McIntyre, D.S.C.1987, 667 F.Supp. 1131, affirmed 848 F.2d 185. Sheriffs And Constables 102

Police officer's alleged failure to enforce driving while intoxicated laws against the driver of a vehicle subsequently involved in an accident with a motorist did not violate any substantive due process right of the motorist, thus precluding imposition of §§ 1983 liability on township on the theory that it had an unconstitutional policy and/or custom of allowing its police officers unbridled discretion in the enforcement of the law; while the officer's decision not to investigate the state of intoxication of the driver, a go-go dancer who kissed him in gratitude for having previously not ticketed her for speeding, may have seemed unsavory, the officer had no specific duty to conduct such an investigation under the circumstances. Hall v. Feigan, C.A.3 (N.J.) 2004, 104 Fed.Appx. 247, 2004 WL 1588176, Unreported. Constitutional Law 253(1)

2145. ---- Other officers committing violation, inaction, police activities

Allegations by family members of pedestrians, who were killed when an intoxicated off-duty police officer drove his car through several red lights and struck them, that other officers implicitly communicated to him that he was free to drink to excess and drive in that condition, that officers were encouraged to excessively drink alcohol while on and off duty, and that many supervisors routinely drank with intoxicated officer and other officers in bars and in the precinct parking lot, were sufficient to assert that other officers created a serious danger through state action and with deliberate indifference to it, as would state §§ 1983 claim against those other officers for violation of substantive due process rights, under state-created danger theory. Pena v. DePrisco, C.A.2 (N.Y.) 2005, 432 F.3d 98. Municipal Corporations 747(3)

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Genuine issue of material fact as to whether it would have been clear to a reasonable officer that police officer's actions in kneeling on back of detainee that he and other officers were attempting to subdue and arrest constituted unreasonable force under the circumstances, thus triggering a duty to intervene on the part of the other officers, precluded summary judgment on qualified immunity grounds in §§1983 action by detainee's estate against officers alleging that detainee died as a result of use of excessive force in violation of Fourth Amendment. Abdullahi v. City of Madison, C.A.7 (Wis.) 2005, 423 F.3d 763. Federal Civil Procedure 2491.5

Police officer has affirmative duty to intercede on behalf of citizen whose constitutional rights are being violated in his presence by other officers, and failure to intercede to prevent unlawful arrest can be grounds for § 1983 liability. Ricciuti v. N.Y.C. Transit Authority, C.A.2 (N.Y.) 1997, 124 F.3d 123, on remand 70 F.Supp.2d 300, reargument denied. Civil Rights 1088(4)

Police officer could not be held liable for failure to prevent fellow officer from using excessive force, when fellow officer allegedly struck arrestee in head with butt of shotgun, in absence of any evidence that he actually observed or should have known of fellow officer's actions. Turner v. Scott, C.A.6 (Ky.) 1997, 119 F.3d 425. Civil Rights 1088(4)

County investigator who allowed military police officer to ride in his vehicle during joint drug patrol did not have duty to intervene and prevent officer's alleged use of excessive force while arresting passenger of truck stopped by investigator, and could not be held liable for passenger's shooting death; while military officer was dealing with passenger, investigator was on opposite side of truck arresting driver, and investigator observed no use of excessive force before passenger was shot. Riley v. Newton, C.A.11 (Ga.) 1996, 94 F.3d 632, certiorari denied 117 S.Ct. 955, 519 U.S. 1114, 136 L.Ed.2d 842. Civil Rights 1358

Evidence established that nonarresting officer did not have realistic opportunity to prevent arresting officer from any use of excessive force, precluding imposition of liability on arrestee's § 1983 claim against nonarresting officer for failing to prevent use of excessive force by arresting officer; undisputed testimony established that nonarresting officer did not have opportunity to participate in physical apprehension of arrestee or to assist or prevent arresting officer from acting as he did, as such acts were accomplished before nonarresting officer even had opportunity to get out of his squad car. Thompson v. Boggs, C.A.7 (Ill.) 1994, 33 F.3d 847, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1692, 514 U.S. 1063, 131 L.Ed.2d 556. Civil Rights 1420

Sheriff's department deputy was not liable under § 1983 for police officer's shooting of unarmed arrestee at sobriety checkpoint after deputy had warned officer that a man had acquired a gun, despite contention that deputy violated duty under Virginia law to protect arrestee from violence. McLenagan v. Karnes, C.A.4 (Va.) 1994, 27 F.3d 1002, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1088(4)

One who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge; such responsibility obtains when the nonfeasor is a supervisory officer to whose direction misfeasor officers are committed; likewise, the same responsibility must exist as to nonsupervisory officers who are present at the scene. Byrd v. Brishke, C.A.7 (Ill.) 1972, 466 F.2d 6. Civil Rights 1088(2)

Police official and his wife stated § 1983 claim against police supervisors who were in charge of precinct during time when official and wife were allegedly harassed and threatened by officers working out of that precinct, by alleging that official informed supervisors of officers' behavior and that supervisors disregarded risk of harm to official and wife by failing to take any action to sanction officers or to abate risk. Neris v. Vivoni, D.Puerto Rico 2003, 249 F.Supp.2d 146. Civil Rights 1395(5); Civil Rights 1395(8)

Police officer who was directing traffic at the roadside when arrestee was initially put in hog-tie restraint, which

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ultimately caused his death, could be found liable under § 1983 for violating arrestee's Fourth Amendment rights; officer was aware the arrestee had been in extended struggle with officers, and did not intervene to alleviate risks posed by hog-tie restraint. Garrett v. Unified Government of Athens-Clarke County, M.D.Ga.2003, 246 F.Supp.2d 1262, reversed in part 378 F.3d 1274. Arrest 68(2)

Corrections officer was liable under the Eighth Amendment in prisoner's §§ 1983 action, arising from use of excessive force by other officers, based upon officer's failure to intervene; even though officer did not directly participate in using force against prisoner, and the altercation in which other officers grabbed prisoner, pushed him to floor and handcuffed him lasted only one minute, officer had opportunity to intervene, and officer had actual knowledge of risk to prisoner's safety. Jackson v. Austin, D.Kan.2003, 241 F.Supp.2d 1313. Prisons 10; Sentencing And Punishment 1548

Arrestee's allegations that police officers had opportunities to intercede on his behalf to prevent the excessive use of force and the unreasonable seizure but, due to their intentional conduct or deliberate indifference, declined or refuse to do so stated a cause of action under §§ 1983 for bystander liability. Chavez v. McIntyre, W.D.Va.2006, 424 F.Supp.2d 858. Civil Rights 1395(6)

Police officer who participated in investigative stop of vehicle was not liable under §§ 1983 for alleged use of excessive force by second officer who pursued driver of vehicle when he fled on foot, and then fatally shot driver, since officer did nothing more than instruct second officer to pursue fleeing driver, and there was no evidence that officer was present during shooting or that he otherwise acquiesced to shooting. Remillard v. City of Egg Harbor City, D.N.J.2006, 424 F.Supp.2d 766. Civil Rights 1358

Failure to make showing that police officer witnessed any alleged attempt by fellow officers to get civil rights claimant, bringing false arrest charge under §§ 1983, charged with extortion by arranging for payment of money to him in return for convincing girl friend to drop rape charges against friend of officer, precluded claim that officer failed to intervene, in violation of his duty to do so. Dawkins v. Williams, N.D.N.Y.2006, 413 F.Supp.2d 161. Civil Rights 1088(4)

There was no evidence that two officers were in such position outside gymnasium so as to affect conduct of third officer who allegedly used excessive force on town meeting participant, nor evidence that they had realistic opportunity to intervene, as required to support §§ 1983 claim that two officers failed to prevent use of excessive force. Nolan v. Krajcik, D.Mass.2005, 384 F.Supp.2d 447. Civil Rights 1088(2)

Two police officers who handcuffed driver of car that they stopped because it matched description of car in reported carjacking, which report was later discovered to be a hoax, were not liable under § 1983 for failing to intervene as a third officer, who, on the other side of the stopped car, ordered passenger to the ground, handcuffed him, and allegedly kicked him in the head and face several times, in alleged violation of passenger's Fourth Amendment right against use of excessive force, absent any evidence that the two officers were aware of or able to see the third officer's alleged beating of the passenger, or that, even if they knew of the kicking, they had a realistic opportunity to intervene. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Civil Rights 1088(4)

Where first officer did not violate citizen's constitutional rights in firing one non-lethal, beanbag shotgun round and one regular, lethal slug at citizen, second officer could not be found liable under § 1983 for failing to intervene. Brown v. City of Bloomington, D.Minn.2003, 280 F.Supp.2d 889, appeal after remand from federal court 706 N.W.2d 519, review denied. Civil Rights 1088(4)

Police officer present at scene of civil rights violation who does not take reasonable steps to protect victim from fellow officer's excessive use of force may be liable under § 1983 for his nonfeasance. Mendez Marrero v. Toledo, D.Puerto Rico 1997, 968 F.Supp. 27. Civil Rights 1088(1)

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Police officer may not be liable under § 1983 for his failure to intercede in fellow officer's excessive use of force if he did not have realistic opportunity to prevent use of force. Mendez Marrero v. Toledo, D.Puerto Rico 1997, 968 F.Supp. 27. Civil Rights 1088(2)

Police officer's failure to prevent another officer from beating arrestee during course of arrest did not constitute failure to prevent excessive use of force, where officer alleged to have failed to prevent beating would have had opportunity to intervene only if he had not been calling for backup units, call for backup was prudent move and objectively reasonable course of action under circumstances, and officer intervened at first realistic opportunity to do so. Fantasia v. Kinsella, N.D.Ill.1997, 956 F.Supp. 1409. Civil Rights 1088(4)

Allegations by woman who had been sexually assaulted by police officer were insufficient to state claim in federal civil rights action based on alleged deliberate indifference to officer's actions; woman made only conclusory allegations that police department was aware of officer's past history and failed to arrest him, and prompt response of internal affairs department in setting up sting operation after woman made report of rape indicated that city was in fact responsive to citizens' complaints. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1395(5)

Genuine issue of material fact, precluding summary judgment for police officer who was not identified by name in plaintiff arrestee's § 1983 action, existed as to whether that officer failed to intervene when fellow officers allegedly used unnecessary force to detain plaintiff, who allegedly was not fleeing or resisting arrest. Zempel v. Cygan, E.D.Wis.1996, 916 F.Supp. 889. Federal Civil Procedure 2491.5

Personal participation in, or physical presence at, fellow officer's attack on pretrial detainee is not element of a claim under § 1983 for failure to intervene to protect a pretrial detainee from an attack by a fellow officer. Medley v. Turner, N.D.Ill.1994, 869 F.Supp. 567, amended 1995 WL 23522. Civil Rights 1088(4)

Personal participation in, or physical presence at, fellow officer's attack on pretrial detainee is not element of a claim under § 1983 for failure to intervene to protect a pretrial detainee from an attack by a fellow officer. Medley v. Turner, N.D.Ill.1994, 869 F.Supp. 567, amended 1995 WL 23522. Civil Rights 1088(4)

Evidence was sufficient to support finding that police officer was aware that arrestee was being kicked by other officers in jail elevator, and thus violated arrestee's civil rights by failing to attempt to prevent arrestee's injuries; arrestee's testimony that he was kicked in elevator was credible, and it was not reasonable that officer could have failed to observe infliction of serious injuries in confined space. Diebitz v. Arreola, E.D.Wis.1993, 834 F.Supp. 298. Civil Rights 1420

2146. ---- Hostages, inaction, police activities

City and police officers did not violate women's due process rights by failing to protect her from criminal actions of private actor absent special relationship between city and woman; woman was never in custody of city, at most city and police officers failed to rescue woman, they did not create danger in which she found herself when she was abducted by car wash employee and died in trunk of car from starvation, dehydration and methanol poisoning. Gazette v. City of Pontiac, C.A.6 (Mich.) 1994, 41 F.3d 1061. Constitutional Law 254(4); Municipal Corporations 747(3)

Once police officers knew that hostage had been shot in leg, they were obligated to act; if they had not and hostage had bled to death, or condition had deteriorated because of their inaction, officers conceivably could be held liable under civil rights statute. Taylor v. Watters, E.D.Mich.1986, 636 F.Supp. 181. Civil Rights 1088(1)

2147. ---- Witnesses, inaction, police activities

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42 U.S.C.A. § 1983

Section 1983 claim could not be maintained against city based on police department's failure to protect witness and her son, who were murdered by brother of person against whom she was to testify; there was no evidence that police chief or any other identified city policymaker was aware of decision not to afford protection to victims and the basis for it until after the homicides, nor any evidence that city or any of its policymakers ever received any complaints about failures to protect witnesses or about related constitutional violations that could have been remedied by instituting a better witness protection policy. Clarke v. Sweeney, D.Conn.2004, 312 F.Supp.2d 277. Civil Rights 1352(4)

Witness who had agreed to testify in criminal prosecution in exchange for grant of immunity and who was killed by his accomplices had no liberty interest in freedom from bodily harm to be afforded by adequate police protection which could form basis for civil rights action by his survivors. Bernstein v. Lower Moreland Tp., E.D.Pa.1985, 603 F.Supp. 907. Civil Rights 1039

2148. Involuntary confession, police activities--Generally

Physical violence is not a necessary adjunct to a civil action based on the extraction of an involuntary confession. Duncan v. Nelson, C.A.7 (Ill.) 1972, 466 F.2d 939, certiorari denied 93 S.Ct. 116, 409 U.S. 894, 34 L.Ed.2d 152, certiorari denied 93 S.Ct. 175, 409 U.S. 894, 34 L.Ed.2d 152. Civil Rights 1088(4)

Even if police officers obtained coerced confessions from juvenile suspects, they could not be held civilly liable under § 1983 for violation of their Fifth Amendment privilege against self-incrimination, where compelled statements were not used against suspects in a criminal trial, but only in grand jury proceeding which led to their indictment and in subsequent hearing to determine whether they should be tried in adult court. Crowe v. County of San Diego, S.D.Cal.2004, 303 F.Supp.2d 1050. Civil Rights 1088(5)

Police officer did not use unreasonable force to coerce an involuntary statement by failing to allow arrestee to eat for the eight hours of the 24- hour period prior to the taking of his statement during which arrestee was in officer's custody; arrestee did not assert he ever complained to officer about missing meals or being hungry, and he was not in officer's custody during time normally associated with eating, with the exception of lunchtime on the day of the arrest. Gonzalez v. Tilmer, N.D.Ill.1991, 775 F.Supp. 256. Civil Rights 1088(4)

2149. ---- Advising accused of rights, involuntary confession, police activities

Failure to read *Miranda* warnings did not, standing alone, give rise to constitutional violation of § 1983 plaintiff's rights, as *Miranda* warnings were prophylactic only, not constitutional rights in themselves. Weaver v. Brenner, C.A.2 (N.Y.) 1994, 40 F.3d 527. Civil Rights 1088(4)

Any failure to give Miranda warning would not subject police officers to liability under this section. Bennett v. Passic, C.A.10 (Utah) 1976, 545 F.2d 1260. Civil Rights 1088(4)

Miranda warnings are not a constitutional right, and officer's failure to issue *Miranda* warnings cannot form basis for civil rights claim under § 1983. Lemons v. Lewis, D.Kan.1997, 963 F.Supp. 1038. Civil Rights 1088(4)

Violation of suspect's *Miranda* rights does not support civil rights action under § 1983. James By and Through James v. Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1407. Civil Rights 1088(4)

Assertion that officers violated arrestee's constitutional rights by failing to read her *Miranda* rights to her did not support claim for constitutional violations, where no statement made by arrestee was offered in evidence at trial or otherwise used against her. Ippolito v. Meisel, S.D.N.Y.1997, 958 F.Supp. 155. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Violation of *Miranda* rights did not give rise to § 1983 claim. Bey v. Bridgeton Police Dept., E.D.Mo.1991, 775 F.Supp. 1255.

Fact that officers did not give occupants of vehicle *Miranda* warnings prior to searching vehicle pursuant to valid arrest based upon probable cause did not give rise to § 1983 cause of action. White v. O'Leary, N.D.Ill.1990, 742 F.Supp. 990. Civil Rights 1088(4)

Assuming that individual who was arrested for fishing without a license was not read his Miranda rights, individual's claim of violation of due process clause of U.S.C.A. Const.Amend. 14 was not cognizable under this section. Estes-El v. State of N.Y., S.D.N.Y.1982, 552 F.Supp. 885. Civil Rights 1088(4)

Claim under this section may not be based upon alleged failure of police to give Miranda warnings. O'Hagan v. Soto, S.D.N.Y.1981, 523 F.Supp. 625.

Failure to give Miranda warnings to plaintiff, who was subject to custodial interrogation, did not, standing alone, give rise to damages action for violation of rights under U.S.C.A.Const. Amend. 5. Chrisco v. Shafran, D.C.Del.1981, 507 F.Supp. 1312. Civil Rights 1088(4)

Failure to give the Miranda warnings does not give rise to an action cognizable under this section. Dunkin v. Lamb, D.C.Nev.1980, 500 F.Supp. 184. Civil Rights 1088(4)

If state prisoner was not prejudiced at his trial by any violation of Miranda v. Arizona which may have occurred, he could not base a constitutional tort claim on the alleged violation. Davis v. Hudson, D.C.S.C.1977, 436 F.Supp. 1210. Civil Rights 1088(4)

2150. Investigation, police activities

Qualified immunity precluded police lieutenant's liability under § 1983 based on his alleged participation in conspiracy to cover up purported unconstitutional conduct of subordinate officers during suicide intervention that ended in subject's death; there was no clearly established constitutional law requiring lieutenant to make sure that officers involved wrote individual reports of incident, and lieutenant's authorized preparation of joint report on incident, which he reasonably believed did not involve criminal investigation, did not support conclusion that lieutenant joined cover-up, if one existed, or failed to act in objectively reasonable manner. Ford v. Moore, C.A.2 (N.Y.) 2001, 237 F.3d 156. Conspiracy 7.5(1)

Police officer could not be held liable, under § 1983, for allegedly failing to conduct adequate investigation at scene of suicide intervention attempt, which ended in subject's death, notwithstanding contention that investigation could have provided support for later-constructed theory that one of officers involved in intervention shot subject. Ford v. Moore, C.A.2 (N.Y.) 2001, 237 F.3d 156. Civil Rights 1088(1)

Absent evidence that officers were motivated by improper purpose, police officers did not violate constitutional rights of city civil service commission member who had had prior disagreements with police department who was target of police investigation when they did no more than was expected of competent police officers by investigating suspected criminal activity and by turning the case over to assistant district attorney for decision regarding filing of criminal charges once they collected sufficient information. Rakovich v. Wade, C.A.7 (Wis.) 1988, 850 F.2d 1180, rehearing denied, certiorari denied 109 S.Ct. 497, 488 U.S. 968, 102 L.Ed.2d 534. Civil Rights 1032; Civil Rights 1088(1)

Alleged confrontation wherein defendant in his capacity as deputy director of multicounty narcotics bureau allegedly told plaintiffs that he was going to see that their tavern was closed was not a basis for establishing a deprivation of civil rights under color of state law when plaintiffs were investigated for violating state's dangerous

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drug laws where investigation began five months prior to confrontation and, hence, was not a product thereof. Coffy v. Multi-County Narcotics Bureau, C.A.6 (Ohio) 1979, 600 F.2d 570. Civil Rights 1088(1)

Arrestee had no due process right to pre-trial DNA testing, and thus officers could not be held liable under § 1983 for their alleged failure to promptly obtain such testing, even though delay prolonged arrestee's detention for some twenty-two months. Jimenez v. New Jersey, D.N.J.2003, 245 F.Supp.2d 584. Constitutional Law 262; Prisons 4(7)

County deputy sheriff's alleged negligence in his initial investigation and in providing information from informant after arrestee who had been misidentified by informant as a drug dealer had already been arrested did not amount to necessary, deliberate, or intentional action required to support arrestee's claim for violation of his right to due process, in civil rights action under §§ 1983. Caldwell v. Green, W.D.Va.2006, 451 F.Supp.2d 811. Constitutional Law 262

Parents of children who were killed after being struck by vehicle while they were attempting to cross street failed to establish that police officer's alleged failure to investigate was based on their race or some other suspect classification, and that others had been treated differently and more favorably, as required to establish claim of inadequate investigation, in violation of Fifth Amendment's right to equal protection under the laws, so as to give rise to liability under § 1983. White v. City of Toledo, N.D.Ohio 2002, 217 F.Supp.2d 838. Constitutional Law 215.2; Constitutional Law 250.1(1); Municipal Corporations 747(3)

To maintain a § 1983 claim against police officer for his or her investigation of case, plaintiff must show that officer's conduct violated clearly established federal constitutional or statutory right of which reasonable official, in defendant officer's position, would have known. Ahlers v. Schebil, E.D.Mich.1997, 966 F.Supp. 518. Civil Rights 1376(6)

Federal obstruction of justice statute could not support § 1983 claim against police officials based on their allegedly improper investigation of plaintiff's arrest; there was no allegation that defendants attempted to obstruct or did obstruct any judicial proceeding, as their investigation occurred after criminal charges against plaintiff were stricken and before plaintiff filed his original § 1983 complaint. David v. Village of Oak Lawn, N.D.Ill.1996, 954 F.Supp. 1241. Civil Rights 1088(1)

Group of young, black males detailed overt acts of communication among state defendants in compiling list of black males on college campus as part of violent crime investigation which could reasonably lead to inference of formation or furtherance of conspiracy to support § 1983 conspiracy to violate Federal Education and Privacy Rights Act (FEPRA) charge. Brown v. City of Oneonta, N.D.N.Y.1996, 911 F.Supp. 580, on reconsideration in part 916 F.Supp. 176, reversed in part, appeal dismissed in part 106 F.3d 1125. Conspiracy 18

If individual was not selectively prosecuted in retaliation for exercise of First Amendment speech rights, there was nothing improper in preprosecution activities including commencement of surveillance of individual, opening a "notorious persons file" on him, and establishing standing order to arrest him on handgun charges. Bennett v. Village of Oak Park, N.D.Ill.1991, 769 F.Supp. 1035. Constitutional Law 90.1(1)

Allegedly negligent conduct by police officers in investigation of the crime for which plaintiff was prosecuted was not actionable under this section as such actions were not enough to make out any constitutional claim. Von Williams v. City of Bridge City, Tex., E.D.Tex.1984, 588 F.Supp. 1187, affirmed 760 F.2d 267. Civil Rights 1088(1)

Initiating an enforcement campaign against the largest and most visible violator of a criminal statute does not constitute an unjustified abuse of prosecutorial discretion. Black Jack Distributors, Inc. v. Beame, S.D.N.Y.1977, 433 F.Supp. 1297. District And Prosecuting Attorneys 8

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42 U.S.C.A. § 1983

City police officers did not violate arrestee's constitutional rights by failing to investigate child abuse complaint he claimed he filed against mother of his child, before she reported to police that he was harassing her through telephone calls at her home and place of employment, as required for arrestee to be entitled to damages under § 1983; officers' alleged failure to respond to arrestee's child abuse complaint did not constitute a federal statutory or constitutional claim, and there was no evidence that officers' alleged failure to investigate violated his rights. Sheehan v. New York City Police Dept. 78th Precinct Officers, E.D.N.Y.2003, 2003 WL 22859947, Unreported. Civil Rights 1088(4)

2150A. Interrogations, police acitivities

Evidence that police detective may have misled suspect, during allegedly coercive interrogation, by telling him that his statements would remain confidential, that charges were not serious, and that charges would lead to little or no consequences, did not shock the conscience, as basis for substantive due process claim under §§ 1983, relating to elicitation of false confession to unlawful sexual contact with a minor. McConkie v. Nichols, D.Me.2005, 392 F.Supp.2d 1, affirmed 446 F.3d 258. Municipal Corporations 747(3)

2151. Medical care, police activities

Plaintiffs stated Fourteenth Amendment violation to which police officers were not entitled to qualified immunity by claiming that officers placed individual, who later died, in danger in deliberate indifference to his medical needs; officers allegedly took affirmative actions that significantly increased risk facing individual after finding him to be in serious medical need, by cancelling 911 call to paramedics, removing individual from public view and taking him into empty house, locking door, and leaving him there alone, thereby making it impossible for anyone to provide emergency medical care. Penilla v. City of Huntington Park, C.A.9 (Cal.) 1997, 115 F.3d 707, certiorari denied 118 S.Ct. 2059, 524 U.S. 904, 141 L.Ed.2d 137. Civil Rights 1376(6)

Police officers who offered arrestee medical assistance which arrestee consistently and obstinately rejected were not deliberately indifferent to arrestee's medical needs so as to be liable under § 1983 for failure to provide necessary medical treatment. Groman v. Township of Manalapan, C.A.3 (N.J.) 1995, 47 F.3d 628. Civil Rights 1088(4)

Arrestee could maintain § 1983 action against arresting officer for deliberate indifference to known medical need in violation of Fourteenth Amendment based on officer's disregard of her repeated requests to move handcuffs to alleviate pain in light of case law establishing constitutional protection against deliberate indifference to prisoner's serious medical needs. Howard v. Dickerson, C.A.10 (N.M.) 1994, 34 F.3d 978. Civil Rights 1088(4)

State trooper did not exhibit deliberate indifference to arrestee's medical needs, which rose to level of violation of arrestee's constitutional rights under § 1983 when trooper refused to immediately call an ambulance following arrestee's exposure to pepper spray; less than hour and a half elapsed between arrestee's exposure to pepper spray and arrival of ambulance, during delay, arrestee refused trooper's offers to provide him with towel and water to flush out his eyes, and there was no medical evidence that delay in treatment caused arrestee to suffer harm which he would not have suffered had ambulance been immediately called to scene. Mantz v. Chain, D.N.J.2002, 239 F.Supp.2d 486. Civil Rights 1088(4)

Arrestee stated a claim against municipality under §§ 1983 for false arrest and denial of medical aid by alleging that county had in a place a custom or policy requiring the police to detain DWI suspects regardless of their requests and apparent need for medical attention, or, failed to train its officers to recognize when a DWI suspect was suffering from a serious medical condition, the symptoms of which might parallel some symptoms of intoxication, or, to appropriately respond to situations in which motorists suspected of vehicle and traffic infractions require immediate medical attention. Aguilera v. County of Nassau, E.D.N.Y.2006, 453 F.Supp.2d 601 . Civil Rights 1395(6)

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The refusal to provide or the excessive delay in providing a post-arrest detainee with needed medical attention may give rise to a constitutional violation actionable under § 1983 on due process grounds. Herrera v. Davila, D.Puerto Rico 2003, 272 F.Supp.2d 154. Constitutional Law 262

Allegations that officers violated shooting victim's rights to equal protection and carried out municipal policy in failing to summon medical care for shooting victim for nearly an hour and a half after being summoned to scene of shooting, although conclusory in nature, were sufficient to state claim against municipality for violation of Section 1983, where no facts were pled that were inconsistent with those allegations. Torres v. City of Chicago, N.D.Ill.2000, 123 F.Supp.2d 1130. Civil Rights 1395(5)

Arrestee failed to state § 1983 claim against arresting police officers for denial of medical care, absent allegation of sufficiently serious wounds that reasonable officer would determine that wounds required immediate treatment, and absent allegation that officers actually denied care; defendant was taken to hospital when he requested medial attention, and defendant's allegations of swollen face, black eyes, and bruised ribs and back at most pleaded simple negligence rather than deliberate indifference necessary to state claim. Ford v. Davis, N.D.Ill.1995, 878 F.Supp. 1124. Civil Rights 1395(6)

Even assuming as true the doubtful proposition that plaintiff stated cause of action under Arkansas law for deputy sheriff's alleged refusal to assist plaintiff in getting home or to a hospital after plaintiff injured his leg in a fall, there was clearly no federal cause of action stated thereby under this section. Hart v. Cash, W.D.Ark.1984, 585 F.Supp. 344. Civil Rights 1395(5)

Failure of police officers to give shooting victim first aid treatment at scene could not form basis of civil rights action against police chief and city where, when faced with victim's apparently fatal wounds to his neck and chest, officers responded in best way they could by transporting victim to hospital themselves instead of waiting for ambulance and risking further delay. Jordan v. Five Unnamed Police Officers and Agents, E.D.La.1981, 528 F.Supp. 507. Civil Rights 1088(1)

Police officer who ran over a victim lying in the road did not violate the victim's due process rights by failing to afford medical aid for the victim; officer was not attempting to exercise any affirmative authority over the victim through incarceration, institutionalization, or other similar restraint of personal liberty when the injury occurred. Hayes v. Garcia, C.A.10 (N.M.) 2005, 123 Fed.Appx. 858, 2005 WL 165445, Unreported, certiorari denied 126 S.Ct. 71, 163 L.Ed.2d 95. Constitutional Law 253(1); Municipal Corporations 747(3)

Arrestee did not have any serious medical needs that police officers were deliberately indifferent to when they refused to provide him medical care at police station, as required for his § 1983 claim; arrestee did not seek medical care until more than a month after his arrest, and then he only sought care for a pre-existing condition. Nance v. New York City Police Dept. ex rel. McKay Chung, E.D.N.Y.2003, 2003 WL 1955164, Unreported. Civil Rights 1088(4)

2152. Privacy, police activities

Plaintiff did not have § 1983 claim against police officer for allegedly violating his constitutional right to privacy, where he did not demonstrate how intrusion he experienced when officer called and sent written notes asking for money in exchange for losing evidence in drug case against his son implicated privacy rights. Roach v. City of Evansville, C.A.7 (Ind.) 1997, 111 F.3d 544. Civil Rights 1088(1)

Statements made by university police officer, who was investigating report of alleged sexual assault, to friends of victim of alleged assault after conducting interviews with friends that incident did not seem like rape, that victim "had the hots" for alleged assailant, and that he would interview victim and arrest her if he thought she was lying did not violate victim's right to privacy, and officer was entitled to qualified immunity in federal civil rights action

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by victim; officer was commenting upon information initially spoken of by friends, and had considerable latitude in exploring veracity of complaint. Cantu v. Rocha, C.A.5 (Tex.) 1996, 77 F.3d 795. Civil Rights 1376(6); Constitutional Law 82(7)

Informant's claim, that police officers who had promised her confidentiality violated her right to privacy by viewing videotape of her engaging in sexual activity and allowing others to view tape, alleged violation of clearly established constitutional right, and, thus, officers were not entitled to qualified immunity. James v. City of Douglas, Ga., C.A.11 (Ga.) 1991, 941 F.2d 1539. Civil Rights 1376(6)

If defendant while acting as city police officer caused plaintiff, who had come to station to complain of assault, to be photographed in indecent positions, over her objections, and such defendant and another defendant as police officers circulated the photographs among police personnel, defendants were liable under this section for invading privacy without due process. York v. Story, C.A.9 (Cal.) 1963, 324 F.2d 450, certiorari denied 84 S.Ct. 794, 376 U.S. 939, 11 L.Ed.2d 659. Torts 351

Section 1983 plaintiff claiming deprivation of Fourth Amendment right to be free from unreasonable search or seizure may only recover damages directly related to invasion of privacy resulting from deprivation, such as compensation for physical injury, property damage, or injury to reputation. Driscoll v. Townsend, W.D.N.Y.1999, 60 F.Supp.2d 78. Civil Rights 1462

2153. Racial discrimination, police activities

Allegations by black woman who had participated with police internal affairs office in sting operation aimed at police officer who had sexually assaulted woman were insufficient to state claim of violation of her equal protection rights in woman's federal civil rights action where no allegations of wrongdoing were made with respect to treatment of black females by city police department and pleadings referred to race and gender only in connection with officer alleged to have committed assaults. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1395(5)

2154. Rape, police activities

Police officer who was raped by fellow officer failed to show that city's hiring practices that led it to employ fellow officer constituted gross negligence amounting to conscious indifference to welfare of public, precluding officer from recovering from city and city officials in civil rights action; although city did not verify officer's employment record to age 16 and did not conduct polygraph examination, city followed recommended guidelines in checking officer's background and required officer to be certified as physically and psychologically fit by licensed physician. Wassum v. City of Bellaire, Tex., C.A.5 (Tex.) 1988, 861 F.2d 453. Civil Rights 1349; Civil Rights 1352(4)

2155. Records, police activities

Police department detective's release of arrest records of union organizers to the management of supermarket chain undergoing a unionization campaign did not constitute a deprivation of rights of the organizers actionable under this section, since, even assuming that the release of the records by the detective supplied the prerequisite action under color of state law, the record was devoid of any evidence to support a conclusion that the organizers were in fact deprived of their constitutional right to travel, on ground that the union would be reluctant to assign any of them to organizing campaigns in other states, or of their right not to be deprived of liberty and property without due process of law, on ground that the release of the records damaged their reputations. Tosh v. Buddies Supermarkets, Inc., C.A.5 (Tex.) 1973, 482 F.2d 329. Civil Rights 1088(1)

Police officer did not violate citizen's Fourth Amendment right to be free from unreasonable searches and seizures

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by initiating unauthorized search of citizen's criminal record and department of motor vehicle (DMV) record, since citizen did not have any legitimate expectation of privacy in those records; criminal record was matter of public record and DMV records were akin to criminal records maintained by courts and law enforcement agencies. Phillips v. Bailey, W.D.Va.2004, 337 F.Supp.2d 804. Searches And Seizures 76

Evidence did not show that city had a policy of deliberately failing to train itself with respect to confidentiality of police booking records, so as to permit city to be held liable when booking information concerning the fact that prisoner was suspected of having AIDS (Acquired Immune Deficiency Syndrome) was improperly disclosed. Doe v. City of Cleveland, N.D.Ohio 1991, 788 F.Supp. 979. Civil Rights 1352(4)

Police sergeant's allegedly negligent failure to determine that one charge on computer printout given to reporter had been expunged did not violate due process or equal protection. Morton v. City of Little Rock, E.D.Ark.1989, 728 F.Supp. 543, affirmed 934 F.2d 180. Constitutional Law 225.1; Constitutional Law 274(2); Criminal Law 1226(3.1)

2156. Search and seizure, police activities--Generally

"Seizure" alone is not enough for section 1983 liability; seizure must also be unreasonable. Brower v. County of Inyo, U.S.Cal.1989, 109 S.Ct. 1378, 489 U.S. 593, 103 L.Ed.2d 628, on remand 884 F.2d 1316. Civil Rights 1088(3)

Because an illegal search or arrest may be followed by a valid conviction, a successful § 1983 action for Fourth Amendment search and seizure violations does not necessarily imply the invalidity of a conviction, and, as a result, *Heck* does not generally bar such claims. Hughes v. Lott, C.A.11 (Ala.) 2003, 350 F.3d 1157. Civil Rights 1088(3); Civil Rights 1088(4)

To establish a violation of the Fourth Amendment in a § 1983 action, the claimant must demonstrate a seizure occurred and the seizure was unreasonable. McCoy v. City of Monticello, C.A.8 (Ark.) 2003, 342 F.3d 842. Arrest 68(4)

Deputy sheriff could not reasonably have thought, even under deputy's caretaking or public safety function under Illinois law, that motel manager's desire to have uncooperative motel guest move his truck allowed the deputy to kick open the door to the guest's room when the guest did not respond to the deputy's knocking on the door and the manager used her key to open the door but found the door's security chain engaged, where the guest was not doing anything to disturb the public order, and thus, the deputy was not entitled to qualified immunity against the guest's § 1983 claims for unlawful search, excessive use of force, and false imprisonment. Finsel v. Cruppenink, C.A.7 (Ill.) 2003, 326 F.3d 903. Civil Rights 1376(6)

Inevitable discovery exception to exclusionary rule is no bar to § 1983 suit arising from allegedly illegal search when there has been no prior state trial. Chatman v. Slagle, C.A.6 (Ohio) 1997, 107 F.3d 380. Civil Rights 1088(3)

Assuming that actions of police officers who responded to 911 domestic violence call, in ordering the complainant to leave the premises under threat of arrest and to surrender his house key and garage opener amounted to a "seizure," the seizure was not unreasonable, as required for the complainant to establish a § 1983 claim against the officers for violation of his Fourth Amendment rights, even though he told the police that he owned the house and even if the police had probable cause to arrest his male cohabitant for domestic violence, where the complainant, who had a bloody lip and appeared to be in a confrontation with the cohabitant, was in the process of packing boxes to move out; the police needed to separate the parties and it was logical to ask complainant to leave. Lunini v. Grayeb, C.D.Ill.2004, 305 F.Supp.2d 893, reversed in part 395 F.3d 761, amended on denial of rehearing. Arrest 63.1

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42 U.S.C.A. § 1983

Plaintiff who did not claim that defendants searched her or seized her property could not state § 1983 claim for violation of her right to be free from unreasonable searches and seizures. Santos v. County of Los Angeles Department of Children and Family Services, C.D.Cal.2004, 299 F.Supp.2d 1070. Civil Rights 1088(3)

No Fourth Amendment "search" or "seizure" occurred where police officer wearing "street" clothes entered plaintiff's used car lot to engage in surveillance of undercover officer, and thus, plaintiff could not recover on trespass claim under § 1983; police did not exercise control over, otherwise dispossess plaintiff of, or prevent plaintiff from entering, his property, and plaintiff did not sufficiently restrict public's access to lot so as to possess reasonable expectation of privacy therein, as lot was lit and plaintiff acknowledged that members of public came into lot "at all times of the day" to look at vehicles. Kelly v. Bencheck, E.D.N.C.1996, 921 F.Supp. 1465, affirmed 107 F.3d 866. Searches And Seizures 16

Sheriff's department's request for warrant to search home of arrestee, based on allegedly false affidavit, and request to be present during search, allegedly for purpose of planting illegal items, did not support arrestee's § 1983 claim based on those incidents, absent evidence that sheriff actually conducted search or allegation that search ultimately conducted by Federal Bureau of Investigation violated Fourth Amendment. Gerakaris v. Champagne, D.Mass.1996, 913 F.Supp. 646. Civil Rights 1088(3)

A cause of action will be recognized under this section where a person's right to be free from illegal searches and seizures of himself and his property has been violated. Skrocki v. Caltabiano, E.D.Pa.1981, 511 F.Supp. 651. Civil Rights 1088(3); Civil Rights 1088(4)

Claim for damages resulting from unconstitutional search and seizure falls squarely within cause of action provided by this section governing civil action for deprivation of rights. Keller v. Hilgendorf, E.D.Wis.1978, 79 F.R.D. 687. Civil Rights 1088(3)

Town police officers did not violate homeowner's legitimate expectation of privacy in curtilage and therefore did not violate Fourth Amendment, where officers, without warrant, proceeded from front to back of house; officers had received report that minor might be consuming alcohol in house, officers could tell people were in house but nobody responded to knocking at front door, and walking to back door was legitimate method to carry out objective of locating minor and checking on underage drinking. Galindo v. Town of Silver City, C.A.10 (N.M.) 2005, 127 Fed.Appx. 459, 2005 WL 762120, Unreported. Searches And Seizures 27

2157. ---- Seizure requirement, search and seizure, police activities

Motorist claiming civil rights violation was "seized" only when officers stopped him at roadblock, and not during initial encounter on roadside or during pursuit on interstate, where motorist's vehicle was on side of road when officer approached to ascertain his well-being, officer did not display weapon or make physical contact, motorist drove away while officer attempted to comply with request for identification, and pursuit was unsuccessful until motorist was stopped at roadblock. Latta v. Keryte, C.A.10 (N.M.) 1997, 118 F.3d 693. Arrest 68(4)

Allegation that police officers stopped plaintiff's friend's vehicle to threaten retribution for plaintiff's complaint did not amount to deprivation of liberty or search or seizure, which would implicate constitutional concerns to support civil rights action. Daniels v. Southfort, C.A.7 (Ill.) 1993, 6 F.3d 482. Civil Rights 1088(4)

Officer's decision to swear out warrantless arrest probable cause affidavits to Magistrate Court was not enough to meet Fourth Amendment "seizure" requirement for purposes of arrestee's §§ 1983 Fourth Amendment malicious prosecution claim; arrestee was arrested without warrant and was held for several hours at airport precinct before being transported to jail, and officer executed warrantless arrest probable cause affidavits, setting forth facts of arrest and claiming arrestee violated state law, and probable cause affidavits were signed only by officer and not by

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a Magistrate Judge or prosecutor. Love v. Oliver, N.D.Ga.2006, 450 F.Supp.2d 1336. Civil Rights 1088(5)

Individuals charged with misdemeanors were subjected to sufficient deprivation of liberty to constitute "seizure" necessary to support their § 1983 malicious prosecution claims against police officer, even though they were never placed in custody and no restrictions were placed on their right to travel, where they were required to submit to processing and to attend court hearings as result of charges. Roskos v. Sugarloaf Tp., M.D.Pa.2003, 295 F.Supp.2d 480. Civil Rights 1088(5)

Two members of county emergency response team (ERT) participating in hostage-rescue exercise at public high school were not liable, under § 1983, for illegal seizure of and excessive force used on teachers in adjoining performing arts center, who were not informed of exercise, where the two ERT members had no direct contact with the teachers during entire exercise. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1358

2158. ---- Negligence, search and seizure, police activities

In § 1983 action alleging that police officers conducted illegal search of home and office, whether officers were merely negligent in relying upon repossession order to conduct searches was irrelevant to determination of whether constitutional violation occurred. Specht v. Jensen, C.A.10 (Colo.) 1987, 832 F.2d 1516, rehearing granted in part 837 F.2d 940, on rehearing in part 853 F.2d 805, certiorari denied 109 S.Ct. 792, 488 U.S. 1008, 102 L.Ed.2d 783. Civil Rights 1088(3)

Negligence of police, if any, in searching suspected felon who resisted arrest, handcuffing him, and securing him in police car did not offend principles of decency and justice embodied in due process clause; thus, claim based on the alleged negligence failed to state constitutional deprivation remediable by section 1983. Hewitt v. City of Truth or Consequences, C.A.10 (N.M.) 1985, 758 F.2d 1375, certiorari denied 106 S.Ct. 131, 474 U.S. 844, 88 L.Ed.2d 108. Civil Rights 1088(4)

Although violation of Fourth Amendment is still deprivation of rights even if done negligently, question of officer's "objective good faith" will come into play in determining whether remedy is available for deprivation, or, in other words, whether officer may assert defense of qualified immunity. Edwards v. Cabrera, N.D.Ill.1994, 861 F.Supp. 664, reversed 58 F.3d 290. Civil Rights 1376(6)

Police officers' allowing third parties to enter home during exigent circumstances of investigation into shooting death was at most mere negligence, which was insufficient to establish culpability under §§ 1983. Smith v. Busby, C.A.8 (Ark.) 2006, 172 Fed.Appx. 123, 2006 WL 328368, Unreported. Civil Rights 1088(3)

2159. ---- Arrest related search, search and seizure, police activities

County was not liable under § 1983 for its alleged negligence in hiring, training, and supervising police officers who effected warrantless search and arrest at residence, where officers did not commit any constitutional violations. Couden v. Duffey, D.Del.2004, 305 F.Supp.2d 379, affirmed in part, reversed in part and remanded 446 F.3d 483. Civil Rights 1352(4)

Under civil rights laws, arrestees who are arrested for driving without license and who fail to post bond may not be strip-searched merely because officials are unable to verify arrestees' criminal history. Kelly v. Foti, E.D.La.1994, 870 F.Supp. 126, affirmed in part and remanded 77 F.3d 819, rehearing and suggestion for rehearing en banc denied 85 F.3d 627. Civil Rights 1088(4)

Federal employee's claim that he was searched by federal agents incident to pretextual arrest was constitutional claim cognizable under § 1983; although agents' actions could also have been tortious under common law, that did

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not preclude action under § 1983. Terrell v. Petrie, E.D.Va.1991, 763 F.Supp. 1342, affirmed 952 F.2d 397. Civil Rights 1088(4)

Because arrest was lawful, search of arrestee's person incident to that arrest was also lawful and precluded arrestee from recovering damages in civil rights action. Parker v. Strong, W.D.Okla.1989, 717 F.Supp. 767. Civil Rights 1088(4)

State prisoner's claim that he was physically abused while being searched after arrest stated cause of action under this section. Stacey v. Ford, N.D.Ga.1982, 554 F.Supp. 8. Civil Rights 1395(7)

2160. ---- Body cavity search, search and seizure, police activities

Suspected drug trafficker did not have clearly established constitutional right to be free from manual body cavity search conducted by licensed physician, in private and hygienic setting in medically approved manner, pursuant to warrant issued on probable cause; thus, for purposes of suspect's § 1983 action against police officer to whom warrant was issued, search was not unreasonable by its very nature within meaning of Fourth Amendment. Rodriques v. Furtado, C.A.1 (Mass.) 1991, 950 F.2d 805. Civil Rights 1088(4)

No reasonable officer could have believed that supervising police officers did not violate arrestees' civil rights under Fourth Amendment in executing no-knock search warrant, either by their actions or by their failure to intercede, by allegedly conducting, authorizing, or witnessing various invasive body cavity searches of two women in front of male officers and visual body cavity searches of three men, or by kicking, punching, choking, stepping on, and threatening them with guns without any provocation during conduct of search, precluding application of qualified immunity to officers in lawsuit under §§ 1983. Bolden v. Village of Monticello, S.D.N.Y.2004, 344 F.Supp.2d 407. Civil Rights 1376(6)

2161. ---- Body intrusion, search and seizure, police activities

Police officer was not liable under § 1983 for any deprivation of arrestee's rights arising from catheterization of arrestee at hospital to which officer took him for blood test, even though officer allegedly waived warrant for blood test in arrestee's face, grabbed arrestee's arm, and told medical technician to "just do it"; physician ordered catheterization due to arrestee's alleged combativeness and inability to provide urine sample, technician testified that he never catheterized anyone in police custody without authorization from doctor or nurse, and officer exerted no influence over physician's decision. Rudy v. Village of Sparta, W.D.Mich.1996, 990 F.Supp. 924, affirmed 129 F.3d 1265. Civil Rights 1088(4)

2162. ---- Pat-down searches, search and seizure, police activities

Arresting officer's pat-down searches outside opposite sex arrestees' clothing were not so egregious or outrageous to shock the contemporary conscience, as would support arrestees' due process claim in civil rights action under § 1983 against officer. Wyatt v. Slagle, S.D.Iowa 2002, 240 F.Supp.2d 931. Arrest 63.5(8); Constitutional Law 262

2163. ---- Chase, search and seizure, police activities

No Fourth Amendment "seizure" occurred, precluding § 1983 civil rights damages claim, when fleeing motorist crashed and suffered fatal injuries after going around curve at extremely high rate of speed while being chased by sheriff's deputy; absence of contact with deputy's cruiser and failure of motorist to voluntarily stop vehicle established, as matter of law, that government did not terminate motorist's freedom of movement required for seizure. Estate of Story Through McNair v. McDuffie County, Ga., S.D.Ga.1996, 929 F.Supp. 1523, affirmed 110 F.3d 798. Arrest 68(4)

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42 U.S.C.A. § 1983

Police officer's high-speed pursuit of motorcyclist who committed traffic violation was not "seizure" of motorcyclist in violation of Fourth Amendment, though motorcyclist was injured in crash which occurred while negotiating curve during pursuit, where officer did not take direct action likely to halt motorcycle in violent or sudden manner likely to cause injury, but merely followed motorcycle with siren and lights activated; thus, motorcyclist could not maintain § 1983 action against officer based on alleged seizure. Carroll v. Borough of State College, M.D.Pa.1994, 854 F.Supp. 1184, affirmed 47 F.3d 1160. Automobiles 349(10)

2164. ---- Consent search, search and seizure, police activities

Genuine issues of material fact existed as to whether arrested driver consented to blood test, precluding summary judgment for police officers who allegedly ordered test, in driver's § 1983 action alleging that administration of warrantless blood test violated Fourth Amendment. Marshall v. Columbia Lea Regional Hosp., C.A.10 (N.M.) 2003, 345 F.3d 1157. Federal Civil Procedure 2491.5

Police officers who were given permission by defendant's grandmother, in whose house defendant lived, to search unlocked room in which defendant slept acted properly in making the warrantless search on the basis of the grandmother's consent to the search so that parolee could not recover from police officers in civil rights action based on alleged illegality of the search. Wolfel v. Sanborn, C.A.6 (Ohio) 1977, 555 F.2d 583. Civil Rights 1088(3); Searches And Seizures 178

Genuine issue of material fact as to whether homeowners consented to search of home by surety bail bond agent and bail enforcement agent precluded summary judgment on homeowners' claims against bond agent and enforcement agent alleging unreasonable search under §§ 1983, and negligence under Connecticut law. Tirreno v. Mott, D.Conn.2006, 453 F.Supp.2d 562. Federal Civil Procedure 2491.5

Encounter between police officer and plaintiff at public bus station was consensual and thus was not Fourth Amendment seizure, as required for prima facie showing of unlawful detention under § 1983, where officer approached plaintiff at station and asked if she could talk with him, plaintiff consented to do so, officer was by herself at first, her service weapon was holstered, and she did not yell at or frisk plaintiff, no police officer touched plaintiff, and officer's later request for plaintiff to accompany her to bus on which plaintiff's brother was sitting was not coercive. Edwards v. Cabrera, N.D.Ill.1994, 861 F.Supp. 664, reversed 58 F.3d 290. Arrest 68(4); Civil Rights 1088(4)

Actions of defendant police officers in gaining entry into plaintiff officer's home under false pretenses, namely, by representing that they belonged to police department's "medical unit," although they were actually there to serve plaintiff officer with a subpoena to appear before grand jury investigating police misconduct, exceeded limits of technical trespass, and instead constituted an unreasonable search for purposes of Fourth Amendment, cognizable in suit under 42 U.S.C.A. § 1983 by plaintiff police officer and his family, if consent to enter was involuntarily obtained. Reed v. Schneider, E.D.N.Y.1985, 612 F.Supp. 216. Civil Rights 1088(3)

2165. ---- Plain view, search and seizure, police activities

Where defendants had a warrant to search plaintiff's home, where stolen articles therein were in plain view, and where plaintiff's wife consented to their seizure, search and seizure were not unreasonable, and defendants were not liable for damages. Robbins v. Bryant, W.D.Va.1972, 349 F.Supp. 94, affirmed 474 F.2d 1342. Searches And Seizures 85; Searches And Seizures 149; Searches And Seizures 171

2166. ---- Probable cause, search and seizure, police activities

Search warrant requiring suspect to provide saliva sample for DNA test, as part of serial murder investigation, was not supported by probable cause, for purpose of suspect's §§ 1983 Fourth Amendment claim against law

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enforcement officers; although officers received two anonymous tips that suspect should be checked, suspect had two out of several traits that matched the FBI profile of the killer, and he had prior burglary conviction, there was no corroboration of the anonymous tips, the burglary conviction was 20 years old, and there was no specific evidence connecting suspect to any murder. Kohler v. Englade, C.A.5 (La.) 2006, 470 F.3d 1104. Searches And Seizures 114

Strip-search of mother and her minor daughter in the course of execution of a search warrant for drugs at their home exceeded scope of the warrant, and, in the absence of probable cause, violated their Fourth Amendment rights, where face of the warrant did not grant authority to search either of them, and where, although accompanying affidavit requested permission to search all occupants of the residence, the warrant made no reference to the affidavit, other than references that described the date of the violation and the supporting probable cause. Doe v. Groody, C.A.3 (Pa.) 2004, 361 F.3d 232, certiorari denied 125 S.Ct. 111, 543 U.S. 873, 160 L.Ed.2d 121. Controlled Substances 126; Controlled Substances 151

City police commissioner whose officers had, on 300 occasions over 19 days, searched third persons' homes, without search warrants and on uninvestigated and anonymous tips, for suspects, in accordance with routine practice and plan conceived by high ranking officials, would be enjoined from conducting such searches on uncorroborated anonymous tips and thus without probable cause, although searches for particular suspects had ceased and commissioner had ordered that there be no further searches without probable cause; injunction against any such search without search warrant was not deemed necessary. Lankford v. Gelston, C.A.4 (Md.) 1966, 364 F.2d 197. Civil Rights 1454

In view of the responsibility of the police to find evidence of a crime, and in view of evidence that search of student for drugs was undertaken not merely to maintain discipline in the classroom but also to find evidence of crime, standard of probable cause applicable to student's civil rights action against school officials was that necessary to justify the search under U.S.C.A.Const. Amend. 4, civil rights violation could be found if police proximately caused student to be searched without probable cause to believe she was breaking the law by possessing an illegal substance on her person. Picha v. Wielgos, N.D.Ill.1976, 410 F.Supp. 1214. Civil Rights 1088(3)

Exigent circumstances existed, and thus, warrant was not required under Fourth Amendment before town police officers entered home through back door and searched for minor; officers had received report that minor might be consuming alcohol in home, nobody responded to knocking at front door, at back of home officers observed minors who could not be aroused by repeated knocking on patio door and yelling through open door, and officers feared for safety and welfare of minors, due to possible alcohol poisoning. Galindo v. Town of Silver City, C.A.10 (N.M.) 2005, 127 Fed.Appx. 459, 2005 WL 762120, Unreported. Searches And Seizures 42.1

Crime of complicity was not sufficiently related to crime of unlawful restraint, as required for sheriff defendants' probable cause defense to property owner's §§ 1983 unreasonable seizure claim; defendants argued that property owner was responsible for her husband's concerted efforts to restrain telephone worker through overt threats of force. Collin v. Stephenson, S.D.Ohio 2002, 2002 WL 31409874, Unreported. Arrest 68(2)

2167. ---- Warrantless search, search and seizure, police activities

Genuine issue of material fact existed as to whether probation officers reasonably believed that citizen was still on probation when officers executed warrantless search on citizen's residence, precluding summary judgment on citizen's civil rights claim under Fourth and Fourteenth Amendments. Trask v. Franco, C.A.10 (N.M.) 2006, 446 F.3d 1036. Federal Civil Procedure 2491.5

State actors administering a blood test without warrant or consent may be subject to suit under § 1983. Marshall v. Columbia Lea Regional Hosp., C.A.10 (N.M.) 2003, 345 F.3d 1157. Civil Rights 1088(3)

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42 U.S.C.A. § 1983

Though federal civil rights plaintiffs' contended state bureau of investigation agent subjected them to a warrantless search of their home without probable cause, where their brief offered no explanation or argument as to why warrant was illegal or not supported by probable cause, Court of Appeals took that omission as a concession that the officers entered the premises in reliance on a valid warrant. Jenkins v. Wood, C.A.10 (Kan.) 1996, 81 F.3d 988 . Federal Courts 714

Judgment as matter of law was not warranted and jury was justified including that officers' entry into plaintiff's home was unreasonable in light of evidence that officers entered without consent, without warrant, and with no documents establishing custody of child for whom they were searching and that, when plaintiff insisted that officers leave, they refused to do so, despite officers' contention that concern for welfare of child justified entry. Caruso v. Forslund, C.A.2 (Conn.) 1995, 47 F.3d 27. Civil Rights 1429

Police did not violate Fourth Amendment rights of house occupant by making warrantless entry to attached garage, for purpose of facilitating evaluation of occupant's mental health by experts who accompanied them; father who owned house answered front door, led them to garage and admitted them. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Searches And Seizures 174

Exigent circumstances exception to search warrant requirement precluded need by police to obtain warrant before pursuing occupant into house from garage, which they had validly entered, precluding civil rights suit under § 1983; occupant assumed aggressive attitude when he first caught sight of officers, as he went from house into garage, and had seized wood splitter before going back into house, creating imminent danger situation. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Searches And Seizures 43

Exigent circumstances justified police officer's warrantless search of room adjoining one into which officer had been invited by detainee, and thus, detainee could not establish § 1983 claim that his Fourth Amendment rights were violated by search; detainee and suspect hiding in adjoining room were involved in violent assault believed to be a felony, officer had probable cause to believe that detainee was lying to him about whereabouts of suspect, officer had strong indication that suspect was on premises, suspect would probably escape unless apprehended immediately, and officer was peacefully and lawfully present in detainee's house. Mann by Parent v. Meachem, N.D.N.Y.1996, 929 F.Supp. 622. Searches And Seizures 186

No warrant was required to conduct inventory search, in accordance with standard police procedures, of impounded automobile; accordingly, warrantless search did not give rise to any claim for relief under § 1983. Schilling v. Swick, W.D.Mich.1994, 868 F.Supp. 904. Civil Rights 1088(3); Searches And Seizures 66

Warrantless entry into business premises by private entity responsible for preventing cruelty to animals (a "state actor") and city fire fighters violated business owner's Fourth Amendment and civil rights where six hours transpired between fire fighters' initial rescue efforts and later joint effort by fire fighters and animal protection officers, and no attempt was made to obtain warrant or to even contact building owner. Suss v. American Soc. for Prevention of Cruelty to Animals, S.D.N.Y.1993, 823 F.Supp. 181. Civil Rights 1032; Searches And Seizures 31.1; Searches And Seizures 42.1; Searches And Seizures 79

Guardian of children, who brought §§ 1983 action against social worker and others related to warrantless entry into her home and removal of children, failed to establish that social worker encouraged or incited police officer's alleged assault, battery, and false arrest of guardian during search of home, as required to support civil conspiracy claim against social worker; social worker reasonably relied on police officer's assessment that deplorable conditions in home justified warrantless entry and after entry social worker remained on first floor while officers searched house for children. Jordan v. Murphy, C.A.6 (Ohio) 2005, 145 Fed.Appx. 513, 2005 WL 1869506, Unreported, rehearing en banc denied. Conspiracy 7.5(1)

Exigent circumstances supported law enforcement officers' warrantless entry into suspect's house, for purposes of

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suspect's §§ 1983 action; suspect had assaulted several people at his cousin's home with machete and threatened to chop up his cousin's small dog, he fled from the scene when his cousin called police, patrol car spotted suspect's car and gave chase to his residence, where he got out of his car, refused to drop machete at pursuing officer's command, and escaped into his house, officers, who could not reach suspect by telephone, were not aware of whether anyone else was in house, and they eventually entered it by force, based upon county prosecutor's opinion that warrant was unnecessary. Cuffy v. Van Horn, C.A.6 (Ohio) 2004, 112 Fed.Appx. 438, 2004 WL 2297855, Unreported. Arrest 68(9)

2168. ---- Warrant issuance, search and seizure, police activities

Information about the FBI profile of the serial killer, which police detective knew but failed to include in his affidavit to support a warrant requiring suspect to provide saliva sample for DNA test, was irrelevant to the question of whether the detective's affidavit provided the issuing judge with a substantial basis for determining the existence of probable cause, for purpose of suspect's §§ 1983 Fourth Amendment claim against detective and others. Kohler v. Englade, C.A.5 (La.) 2006, 470 F.3d 1104. Searches And Seizures 114

Claims of negligence are insufficient to prove constitutional violation for purposes of impeaching otherwise valid warrant in § 1983 action on ground that it was issued on specified information that was false and critical to finding of probable cause. Beard v. City of Northglenn, Colo., C.A.10 (Colo.) 1994, 24 F.3d 110. Criminal Law 219

Police officers were not required to know for a certainty that each item of jewelry was stolen before they could seize it pursuant to warrant sworn by them, but were only required to possess probable cause for associating jewelry with criminal activity and, as long as they did, could not be held liable to owner of store in civil rights action for damages based on deliberate misrepresentation of facts in warrant affidavit. Perlman v. City of Chicago, C.A.7 (Ill.) 1986, 801 F.2d 262, certiorari denied 107 S.Ct. 1349, 480 U.S. 906, 94 L.Ed.2d 520. Civil Rights 1088(3)

Law enforcement officers are not liable, under 42 U.S.C.A. § 1983, for their actions in executing search warrant that was obtained by making negligent statements or omissions of fact to issuing magistrate. Donta v. Hooper, C.A.6 (Ohio) 1985, 774 F.2d 716, certiorari denied 107 S.Ct. 3261, 483 U.S. 1019, 97 L.Ed.2d 760. See, also, Hill v. McIntyre, C.A.6, (Mich.) 1989, 884 F.2d 271, rehearing denied. Civil Rights 1088(3)

Negligence of police officers who acted in good faith in obtaining search warrant would not support action under this section for damages for illegal search and seizure. Madison v. Manter, C.A.1 (Mass.) 1971, 441 F.2d 537. Civil Rights 1376(6)

Fourth Amendment rights of homeowner, bringing §§ 1983 action against police, were not violated as result of search of home looking for drug activity, despite claim that affidavit in support of search warrant contained false statements regarding response to premises burglar alarm, where evidence of drug involvement was found; even if false statements were redacted from affidavit, there was probable cause to search, based on later trash analysis which turned up drug paraphernalia, and a later emergency call, during which homeowner's girl friend and 15 year-old daughter were found in comatose condition, apparently under influence of drugs. Gibbons v. Lambert, D.Utah 2005, 358 F.Supp.2d 1048. Controlled Substances 146; Controlled Substances 147

Discrepancies between original search warrant affidavit and "corrected" affidavit under *Franks*, in rape victim's description of attacker and arrestee's appearance, were not so great so as to render arrestee obviously innocent of suspicion, and dispute over time of arrestee's departure from area that was subsequently designated as crime scene was not resolved by "corrected" affidavit, and, consequently, presumption that probable cause existed to execute search warrant for arrestee's home was not overcome by "corrected" affidavit, for purpose of arrestee's §§ 1983 claim under Fourth Amendment. Barrows v. Coleman, D.Conn.2005, 352 F.Supp.2d 276. Civil Rights 1404;

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Section 1983 plaintiff who challenges validity of search warrant by asserting that law enforcement agent submitted false affidavit to issuing judicial officer must show that: (1) officer knowingly and deliberately, or with reckless disregard for truth, made false statements or omissions that created falsehood in applying for warrant, and (2) such statements or omissions were necessary to find probable cause. Douris v. Schweiker, E.D.Pa.2002, 229 F.Supp.2d 391, reconsideration denied, affirmed 100 Fed.Appx. 126, 2004 WL 1396209. Searches And Seizures 112

Evidence that assistant state's attorney saw search warrant applications allegedly permitting unconstitutional prior restraint of allegedly obscene materials could not, without more, justify holding her liable under § 1983 based on unconstitutionality of warrant applications. Hicks v. Cassilly, D.Md.1997, 971 F.Supp. 956, reversed 153 F.3d 720, certiorari denied 119 S.Ct. 1037, 525 U.S. 1143, 143 L.Ed.2d 45. Civil Rights 1088(3)

Civil rights plaintiff could not maintain action against police officer for execution of search warrant, on basis of material misrepresentation or omission in affidavit that supported search warrant, where there was no evidence of any deliberate falsehood or reckless disregard for truth by officer, or any omission of information in officer's possession. Aleotti v. Baars, D.D.C.1995, 896 F.Supp. 1, affirmed 107 F.3d 922, 323 U.S.App.D.C. 289. Civil Rights 1088(3)

Law officer who obtains invalid search warrant by making material false statements in warrant affidavit, either knowingly or in reckless disregard for truth, is liable under § 1983; however, if sufficient untainted evidence was presented in affidavit to establish probable cause, warrant is valid. Hartzler v. Licking County Humane Soc., S.D.Ohio 1990, 740 F.Supp. 470. Civil Rights 1088(3); Searches And Seizures 112

Property owners failed to state claim that deputy in sheriff's department violated their Fourth Amendment right to be free from unreasonable searches, absent allegation that he knowingly or recklessly gave false information in obtaining the otherwise valid warrant; owner's allegations that deputy made false statements regarding thoroughness of search of crime scene did not impugn his integrity as affiant, and his alleged omission of certain information was not critical to probable cause finding. Marino v. Mayger, C.A.10 (Colo.) 2004, 118 Fed.Appx. 393, 2004 WL 2801795, Unreported. Searches And Seizures 112

Property owners' mere showing that statements in search warrant affidavit as to who spoke directly with confidential informant and that informant saw truck of person police were looking for at owners' property were false was insufficient to preclude summary judgment for county and deputies in §§ 1983 action; other than conclusory allegations contained in complaint, property owners offered no evidence that errors in affidavit resulted from a deliberate attempt to mislead magistrate judge. Mason v. Lowndes County Sheriff's Dept., C.A.5 (Miss.) 2004, 106 Fed.Appx. 203, 2004 WL 1540766, Unreported. Civil Rights 1088(3); Federal Civil Procedure 2491.5

2169. ---- Warrant execution, search and seizure, police activities

Alleged ease with which contraband could be concealed on those present in residence while search warrant for drugs was executed did not, alone, provide probable cause for strip-search of mother and her minor daughter who were present and for whom the search warrant did not authorize a search. Doe v. Groody, C.A.3 (Pa.) 2004, 361 F.3d 232, certiorari denied 125 S.Ct. 111, 543 U.S. 873, 160 L.Ed.2d 121. Controlled Substances 126

Even if search warrant that police officer possessed when he entered motel room were invalid, officer was entitled to rely on authority provided by arrest warrants he also possessed, thus defeating arrestees' § 1983 claim based on alleged invalidity of search warrant, even though officer did not deny that he entered room to execute search warrant. Simms v. Village of Albion, N.Y., C.A.2 (N.Y.) 1997, 115 F.3d 1098. Civil Rights 1376(6)

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Plaintiff did not have claim against police officer under § 1983 for violation of his constitutional right to be free from unreasonable searches and seizures, where search of his residence was pursuant to warrant directed against activities of his son, nothing belonging to plaintiff was seized during search. Roach v. City of Evansville, C.A.7 (Ind.) 1997, 111 F.3d 544. Civil Rights 1088(3)

Illegality of search based on a warrant containing description that fit two adjacent houses was not so clearly established that officer executing warrant could not reasonably have believed his search was lawful and, thus, officer was entitled to qualified immunity from liability in § 1983 action brought by plaintiffs whose home was mistakenly searched; at time officer obtained warrant, it was not clear that he knew description of property in the warrant fit two houses. Richardson v. Oldham, C.A.5 (Tex.) 1994, 12 F.3d 1373. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from civil liability for violations of plaintiff's Fourth Amendment rights during search and seizure conducted on plaintiff's business and residence, as the extended search, after two television sets which were all that was named in warrant were discovered, and seizure of objects at random were not justified under either exception to general rule that only items described in search warrant may be seized, and officers should have been aware that search conducted was in violation of the Fourth Amendment. Creamer v. Porter, C.A.5 (La.) 1985, 754 F.2d 1311. Civil Rights 1376(6)

Police officers and correction officers are not shielded by search warrant from liability under this section if the warrant was executed in an unreasonable manner. Galluccio v. Holmes, C.A.2 (N.Y.) 1983, 724 F.2d 301. Civil Rights 1088(3)

Law enforcement officers having good faith and reasonable belief in validity of search warrant may nonetheless incur liability under this section if warrant is executed in unreasonable manner. Duncan v. Barnes, C.A.5 (Tex.) 1979, 592 F.2d 1336. Civil Rights 1088(3)

Police officer who acts in good faith and in reasonable manner in executing search warrant issued by judicial officer is not liable in damages under this section upon showing that the judicial officer erred. Com. of Pa. ex rel. Feiling v. Sincavage, C.A.3 (Pa.) 1971, 439 F.2d 1133. Civil Rights 1376(6)

Genuine issues of material fact existed as to whether, when police officers responded to 911 domestic violence call at home of city councilman, there was an agreement between the councilman, the police officers, and police chief, whom the councilman telephoned when the police arrived at his house, to deprive the councilman's male cohabitant, who made the 911 call, of his right to equal protection, precluding summary judgment on his § 1983 equal protection "class of one" claim. Lunini v. Grayeb, C.D.Ill.2004, 305 F.Supp.2d 893, reversed in part 395 F.3d 761, amended on denial of rehearing. Federal Civil Procedure 2491.5

Police officers defending § 1983 action had made an objectively reasonable mistake in executing valid search and seizure warrant, by entering apartment which was across hall from apartment covered by warrant; recipient of drug delivery had initially entered complainant's apartment rather than apartment covered by warrant, officers entered building from rear through open door and believed they were in a common entry hall, and there is recognized need to allow some latitude for honest mistakes made by officers in dangerous and difficult process of making arrests and executing search warrants. Samuels v. Smith, D.Conn.1993, 839 F.Supp. 959. Civil Rights 1088(3)

Despite fact that police officers may have reasonably relied on patently valid search warrant conduct of police officers in executing search warrant is always subject to review as to reasonableness, and officers may be held liable under statute governing deprivation of civil rights for executing warrant in unreasonable manner. Brown v. District of Columbia, D.D.C.1986, 638 F.Supp. 1479. Civil Rights 1088(3)

Actions of police in executing search warrant with guns drawn and forcing occupants of home to ground and placing them in handcuffs was reasonable and not excessive, where officers entered home with an unknown

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number of occupants and with expectation of encountering a dangerous suspect who was known to be involved with drug activity, when officers entered home one property owner attempted to retrieve a firearm, property owners were detained at gunpoint for only a short period of time, and officers immediately retreated from home upon learning that suspect was not there. Mason v. Lowndes County Sheriff's Dept., C.A.5 (Miss.) 2004, 106 Fed.Appx. 203, 2004 WL 1540766, Unreported. Arrest 63.5(9); Controlled Substances 151

2170. ---- Admissible evidence, search and seizure, police activities

State prisoner could not maintain civil rights action for damages based upon alleged constitutional infirmities of his arrest, search of his apartment and seizure of property which was introduced at trial which resulted in his conviction. Alexander v. Emerson, C.A.5 (Tex.) 1973, 489 F.2d 285. Civil Rights 1088(3); Civil Rights 1088(4)

Section 1983 claim of prisoner which challenges legality of search that occurred prior to conviction is not barred merely because fruits of that search are introduced in criminal trial that leads to conviction, as ruling that search was illegal would not invalidate subsequent conviction if evidence would have been admissible at trial under independent source or inevitable discovery doctrines or if admission of evidence was harmless error; proper consideration is whether challenged conduct had effect on plaintiff's custody. Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047, affirmed in part, reversed in part 151 F.3d 646. Civil Rights 1088(3)

Plaintiff could not recover in civil rights action for money and ring allegedly seized pursuant to an invalid warrant which had already been judicially declared sufficient. Smith v. Sinclair, W.D.Okla.1976, 424 F.Supp. 1108. Judgment 648

2171. ---- Suppressed evidence, search and seizure, police activities

When evidence derived from illegal search would have to be suppressed in state-court criminal case if judgment in § 1983 claim were to be applied to criminal case and suppression would necessarily invalidate criminal conviction, stated principle of *Heck* would apply, and § 1983 claim would have to be dismissed; there would be no cause of action under § 1983. Ballenger v. Owens, C.A.4 (S.C.) 2003, 352 F.3d 842. Civil Rights 1088(3)

A defendant in a criminal prosecution who succeeds in having evidence suppressed because it was unlawfully obtained may later bring action for damages for violation of his right under U.S.C.A.Const. Amend. 4 to be free of unlawful searches and seizures. Williams v. Codd, S.D.N.Y.1978, 459 F.Supp. 804. Searches And Seizures 85

2172. ---- Vehicle seizures, search and seizure, police activities

Police officer did not violate car owners' due process rights by failing to promptly notify prosecutor's office directly about seizure of car under Missouri Criminal Activity Forfeiture Act (CAFA) and county's "zero tolerance" drug policy; initial traffic stop and subsequent search of car was valid, officer followed departmental protocol by reporting seizure to prospector by indirect means, and, although protocol deviated from technical directives of CAFA, this did not support imposition of § 1983 liability. Putman v. Unknown Smith, C.A.8 (Mo.) 1996, 98 F.3d 1093, rehearing and suggestion for rehearing en banc denied. Constitutional Law 303; Controlled Substances 177

Deputy sheriff who acted within his discretionary authority when he stopped vehicle in which plaintiff was a passenger did not violate clearly established constitutional law in May, 1985, for purpose of defense of qualified immunity, in impounding vehicle, arresting plaintiff's companions, and leaving plaintiff alone beside highway at night without transportation home. Courson v. McMillian, C.A.11 (Fla.) 1991, 939 F.2d 1479. Civil Rights

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1376(6)

Genuine issues of material fact existed as to whether police officer's stop of a motor vehicle and search of a passenger was impermissibly motivated by racial bias, precluding summary judgment for officer in passenger's §§ 1983 action alleging an Equal Protection violation; other officers testified that defendant exhibited racial bias towards African-Americans while performing his duties and regularly engaged in racial profiling. Johnson v. Anhorn, E.D.Pa.2006, 416 F.Supp.2d 338. Federal Civil Procedure 2491.5

Municipality was not liable to arrestee under Fourth Amendment when police towed vehicle to impound lot, where vandalism allegedly occurred; damage, consisting of nail through tire and theft of electronic equipment, was insufficient to support claim of constitutional violation, there was no policy or practice of municipality supporting actions in question, and municipality could not be held liable under Massachusetts common law tort of conversion. Sheppard v. Aloisi, D.Mass.2005, 384 F.Supp.2d 478. Searches And Seizures 66

Truck owner could not maintain an action under this section against two policemen who had impounded his truck for alleged negligence in failing to complete release forms or in allowing damage to the truck and removal of personal property therefrom, including alleged negligent failure in preventing unknown third person from intentionally committing such acts. Ragusa v. Streator Police Dept., N.D.Ill.1981, 530 F.Supp. 814. Civil Rights 1376(6)

If state policemen, acting under color of state law, seized motorists' automobiles in such a way as to deprive the motorists of any opportunity to challenge the lawfulness of the seizure, the police officers acted in a way which deprived the motorists of due process. Watters v. Parrish, W.D.Va.1975, 402 F.Supp. 696. Constitutional Law 319.1

2173. ---- Property damage during search, search and seizure, police activities

Police officer did not deprive house resident of property, without due process of law, supporting §§ 1983 action by resident, when he allegedly scratched door of bathroom in process of extricating resident who had barricaded himself in room; any damage to property was far too insignificant to rise to constitutional dimensions. Policky v. City of Seward, Neb., D.Neb.2006, 433 F.Supp.2d 1013. Municipal Corporations 747(3)

Claimed violations of plaintiffs' rights under U.S.C.A.Const. Amend. 14 arising when county law enforcement officer allegedly acting under county policy of discrimination against Negroes undertook search and arrest of occupants of residence located across street from plaintiffs' home and during course of search fired revolver and bullet passed through front door of plaintiffs' home were immaterial to real controversy of city's liability for injuries and property damage allegedly negligently inflicted by officer; thus, claimed constitutional violations could not serve as basis for giving federal question jurisdiction. McCarther v. Grady County, Okl., W.D.Okla.1977, 437 F.Supp. 828. Federal Courts 244

If state prisoner could show the requisite amount of damages proximately caused by a warrantless, late night entry into his home under conditions that revealed arbitrary or unreasonable force or damage to property on the part of the law officers, prisoner might have a valid federal claim; in such event, prisoner should submit allegations of police misconduct under oath or affirmation under pain and penalty of perjury and should take care to state specific facts rather than conclusory allegations. Davis v. Hudson, D.C.S.C.1977, 436 F.Supp. 1210. Civil Rights 1088(3); Civil Rights 1395(6)

2174. ---- Disposal of seized property, search and seizure, police activities

Failure of officer, who impounded truck when prior owner reported it stolen, to inform city officials of claim of plaintiff who bought truck at abandoned vehicles auction, or to tell buyer that the "hold" had been released was not

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proximate cause of buyer's due process injury, where officer was not responsible for determining merits of buyer's claim to the property. Williams v. Soligo, C.A.8 (Mo.) 1997, 104 F.3d 1060, rehearing denied. Civil Rights 1088(1)

City was liable under § 1983 for loss sustained through city's disposal of property which had been seized in criminal investigation without providing adequate due process notice to owners of property prior to disposal pursuant to city ordinance and police department custom; practices which reduced rather than increased possibility of notice were so common and well settled so as to constitute municipal policy and further, city could have provided predeprivation procedure. Matthias v. Bingley, C.A.5 (Tex.) 1990, 906 F.2d 1047, modified on other grounds on denial of rehearing 915 F.2d 946. Civil Rights 1351(4)

Arrestee from whom property was seized stated valid § 1983 due process claim through allegations that his seized property was disposed of without notifying him of procedures for reclaiming property, although actual procedures followed with regard to disposition of seized items were constitutionally valid, where such procedures were not in municipal code and pertinent municipal ordinance misled affected persons as to what procedures were and how they were to be invoked. Butler v. Castro, C.A.2 (N.Y.) 1990, 896 F.2d 698. Civil Rights 1395(6)

2175. ---- Return of seized property, search and seizure, police activities

Police department's refusal, without court order, to return to resident ammunition and firearms that were seized from resident's home pursuant to search warrant, after it was determined that items were not contraband or required as evidence in court proceeding, was not random or unauthorized act, and thus could be subject of § 1983 action for alleged due process violation, regardless of whether resident had adequate state postdeprivation remedy. Lathon v. City of St. Louis, C.A.8 (Mo.) 2001, 242 F.3d 841. Civil Rights 1319

Neither county nor sheriff, in his official capacity, could be held liable under § 1983 to licensee for allegedly wrongful retention of his driver's license, given licensee's failure to allege or present any evidence that county officials acted pursuant to county policy or custom when they refused to return license; nothing suggested that retention of license was more than one-time isolated event for which county was not responsible. Fox v. Van Oosterum, C.A.6 (Mich.) 1999, 176 F.3d 342. Civil Rights 1351(4)

Police officer's release of automobile seized from arrestee to automobile's title holder was actionable under § 1983, as violation of due process clause, based on city's established procedure for releasing items held by property clerk, which did not provide for notice to arrestee or for resolution of ownership disputes prior to release of vehicle to lienholder. Alexandre v. Cortes, C.A.2 (N.Y.) 1998, 140 F.3d 406. Civil Rights 1088(1)

State statutes afforded adequate postdeprivation process for recovery of property seized pursuant to lawful search, and therefore, claimants could not prevail on § 1983 claim alleging that city failed to provide reasonable procedure for recovery of such property in violation of due process clause. Perkins v. City of West Covina, C.A.9 (Cal.) 1997, 113 F.3d 1004, certiorari granted 118 S.Ct. 1690, 523 U.S. 1105, 140 L.Ed.2d 812, reversed 119 S.Ct. 678, 525 U.S. 234, 142 L.Ed.2d 636, on remand 167 F.3d 1286. Civil Rights 1319

State trooper who executed warrant for seizure of cattle which were subject of cruelty to animals complaint, and then turned cattle over to humane society, was not liable to owners in § 1983 civil rights action based on subsequent sale of cattle by humane society without notice to owners; state police lacked adequate facilities to care for cattle, prosecutor had informed court the humane society would do so, and statute permitted court to award neglected animals to a humane society. Campbell v. Chappelow, C.A.7 (Ind.) 1996, 95 F.3d 576. Civil Rights 1071

Civil rights complaint which sought injunctive relief against harassment through further prosecution and return of

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unspecified property allegedly taken from plaintiff but which failed to identify property or indicate who had it was properly dismissed in light of fact that unlawful detention of one's chattels is not sort of wrong to which this section is applicable. Carter v. Chief of Police, C.A.3 (N.J.) 1971, 437 F.2d 413. Federal Civil Procedure 1741

No cause of action lay against city predicated upon alleged deprivation of rights and privileges secured by federal Constitution on complaint putting particular emphasis on alleged unlawful seizure and retention of plaintiff's out-of-state driver's license. Puett v. City of Detroit, Dept. of Police, C.A.6 (Mich.) 1963, 323 F.2d 591, certiorari denied 84 S.Ct. 978, 376 U.S. 957, 11 L.Ed.2d 975. Civil Rights 1072; Civil Rights 1395(1); Conspiracy 13

This section is not proper vehicle for request for return of noncontraband items seized when no constitutional rights have been violated, and, further, defendants who were involved only in seizure, not retention, of the property in question are not proper targets of order for return. Lucien v. Roegner, N.D.Ill.1983, 574 F.Supp. 118. Civil Rights 1088(3); Forfeitures 10

District attorney's failure to provide on a request a release, following completion of criminal proceedings, so that plaintiff could secure return of $1,000 seized at the time of his arrest did not give rise to cause of action against the district attorney where he thereafter provided a release and where failure to provide release immediately did not itself cause plaintiff to be unable to recover his $1,000 or otherwise injure him or deprive him of his civil rights. Cooper v. Police Property Clerk of the City of New York, E.D.N.Y.1976, 416 F.Supp. 49. District And Prosecuting Attorneys 10

State criminal investigator, who allegedly told owner of seized vehicles, held by state subject to pending forfeiture action, that their release was conditioned on his agreement to testify falsely, did not deprive owner of any due process right he had in return of vehicles absent evidence that investigator actively interfered with dismissal of forfeiture action or had any affirmative duty to recommend dismissal of action; there was no evidence investigator actually caused complained-of deprivation. Wrench Transp. Services, Inc. v. Bradley, C.A.3 (N.J.) 2005, 136 Fed.Appx. 521, 2005 WL 1503887, Unreported. Forfeitures 5

State-law remedies for various torts, including replevin and trespass to chattels, were adequate to address injury suffered by motorist due to police officers' alleged failure to return knife and all of money confiscated from motorist during search, and therefore alleged random and unauthorized seizure of such property did not support due process claim under §§ 1983. Alexander v. Hodell, C.A.2 (N.Y.) 2005, 124 Fed.Appx. 665, 2005 WL 78787, Unreported. Constitutional Law 319.5(1); Searches And Seizures 84

Sheriff and deputy sheriff did not deprive business owner of due process by allegedly seizing, then refusing to release, equipment from business in connection with investigation of charge of receiving stolen vehicles, given evidence that deputy did not issue police order forbidding owner from selling allegedly stolen equipment, but rather requested that business cooperate with police by refraining from selling equipment until police verified its ownership, equipment remained at all times in possession and control of business, and owner waited more than a year after being asked to cooperate to raise issue of equipment's status with police or prosecutor. Speiser v. Engle, C.A.6 (Ohio) 2004, 107 Fed.Appx. 459, 2004 WL 1745785, Unreported. Constitutional Law 319.5(1); Criminal Law 1224(1)

2176. ---- Racial motive, search and seizure, police activities

Jury in § 1983 action could find that drug enforcement task force, inspecting convenience stores for presence of drugs, did not violate search and seizure and equal protection rights of Arabic store owners by selecting their stores for drug searches due to owner's ethnicity; task force officers testified that ethnicity was never discussed when determining which stores to inspect. Saleh v. City of Buffalo, W.D.N.Y.2002, 2002 WL 31655002, Unreported, affirmed 80 Fed.Appx. 119, 2003 WL 22490186. Civil Rights 1429

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2177. ---- Training, search and seizure, police activities

Residents of house which was searched by police officers pursuant to search warrant which mistakenly identified that house as suspected "dope house" could not recover under § 1983 against city, despite allegation that police officers were not trained in proper methods for obtaining search warrants by any formal classroom training. Hill v. McIntyre, C.A.6 (Mich.) 1989, 884 F.2d 271, rehearing denied. Civil Rights 1088(3)

County had no § 1983 liability for failure to train in connection with fatal shooting of homeowner by officers executing search warrant, where officers underwent substantial training program in use of deadly force and additional training as members of special response team and nothing suggested that death was attributable to any inadequacies in county's program. Wingrove v. Forshey, S.D.Ohio 2002, 230 F.Supp.2d 808. Civil Rights 1352(4)

Plaintiffs' whose house was allegedly unlawfully searched, resulting in seizure of items not named in search warrant and destruction of other items, stated claim for relief under section 1983 against state's attorney and county's state's attorney's office by alleging that state's attorney failed to train his employees to respect constitutional guarantee against unreasonable searches and seizures, since plaintiffs' allegations identified policy or custom and indicated how it caused complained-of behavior and plaintiffs' resulting harm. McCrimmon v. Kane County, N.D.Ill.1985, 606 F.Supp. 216. Civil Rights 1395(6)

2178. Sex discrimination, police activities

In order to show that police violated equal protection rights of women victims of domestic abuse by allegedly treating victims of domestic violence differently from victims of nondomestic violence, plaintiff would be required to show intent, purpose or effect of discrimination against women. Hynson By and Through Hynson v. City of Chester Legal Dept., C.A.3 (Pa.) 1988, 864 F.2d 1026, on remand 731 F.Supp. 1236. Constitutional Law 224(2)

2179. State created danger, police activities

Special relationship did not arise between murder witness and state, for purpose of estate's §§ 1983 lawsuit under substantive due process clause on duty to protect theory, by assuring witness that she would be protected after she was subjected to numerous threats upon her life. Rivera v. Rhode Island, C.A.1 (R.I.) 2005, 402 F.3d 27. Constitutional Law 253(1); States 112.2(2)

Deputy sheriff's conduct of instructing bystander to assist him in subduing suspect during struggle for possession of deputy's gun and fleeing to bushes after suspect gained possession of gun, leaving bystander to be fatally shot by suspect, did not shock the conscience as required to give rise to § 1983 claim based on violation of bystander's substantive due process rights; deputy was confronted with emergency situation and had no time for deliberation, and deputy did not act with intent to harm bystander. Radecki v. Barela, C.A.10 (N.M.) 1998, 146 F.3d 1227, certiorari denied 119 S.Ct. 869, 525 U.S. 1103, 142 L.Ed.2d 771. Civil Rights 1088(1)

Borough police officers did not use their authority in a way that created a danger to citizen or that rendered him more vulnerable to danger than he would have been had officers not acted at all when they released citizen after stopping his vehicle and conducting field sobriety tests, as required for liability for citizen's death in subsequent car accident under §§ 1983 for substantive due process violation of state-created danger; officers did nothing to make citizen more vulnerable to danger, and they improved safety of his situation by confiscating ammunition from gun that was in his possession. Hoffman v. Borough of Avalon, W.D.Pa.2006, 446 F.Supp.2d 395. Municipal Corporations 747(3)

For purpose of determining the applicability of the state-created or enhanced danger doctrine, in § 1983 action, by

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student who was wounded during attack on high school by two armed students, against law enforcement officers for substantive due process violation based on alleged improper responses to attack and lack of rescue efforts, student met requirement of alleging that risk to him was obvious or known to officers, even though officers did not know that he specifically had been shot in the library and was in need of medical treatment; student alleged that officers knew emergency medical treatment was needed for persons in library. Ireland v. Jefferson County Sheriff's Dept., D.Colo.2002, 193 F.Supp.2d 1201. Constitutional Law 253(1); Municipal Corporations 747(3)

City police officers did not create danger by refusing to forcibly enter apartment based on neighbors' reports of screaming and dog barking from apartment, and thus city was not liable to family of woman murdered in apartment after police left under § 1983 under state-created danger theory; family members' loss of right to associate with victim was not foreseeable result of failing to enter, apartment was peaceful when officers arrived, officers had no contact with family members, and officers did not create opportunity for harm to occur to victim. White v. City of Philadelphia, E.D.Pa.2000, 118 F.Supp.2d 564. Civil Rights 1088(1)

Police officers did not create danger that individual would be shot by other officer when, in responding to report of possible burglary, officers returned gun to individual who was resident after initially taking gun due to his anxious behavior, despite their knowledge of his anxiety and discovery that he suffered from psychological problems, and thus, officers were not liable in individual's civil rights action premised on violation of his right to substantive due process; it was not foreseeable that other officers would return in response to barricaded person situation, officers did not act in willful disregard of individual's safety, there was no relationship between individual and state, and officers did not create opportunity for other officer to shoot individual. DiJoseph v. City of Philadelphia, E.D.Pa.1997, 953 F.Supp. 602, new trial denied 968 F.Supp. 244. Civil Rights 1088(1)

Allegations that police officer forced intoxicated individual to ride bicycle which had no lights at night were sufficient to allege special relationship between victim and state, as required for due process claim, to support § 1983 action against motion to dismiss; complaint alleged police officer placed intoxicated individual in position of danger and then did nothing to protect him from being struck and killed. Estate of Tittiger by Tittiger v. Doering, E.D.Mich.1988, 678 F.Supp. 177. Civil Rights 1395(5)

2180. Sting operation, police activities

Allegations by woman who had participated with police internal affairs office in sting operation aimed at police officer who had sexually assaulted her that policy of internal affairs office of utilizing private individuals to further investigations of criminals and police officers violated her due process rights of individuals used were insufficient to state claim in federal civil rights action; police had not refused to act or to arrest officer, and woman voluntarily participated in sting operation. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Constitutional Law 255(2); Municipal Corporations 747(3)

2181. Surveillance, police activities

Consent decree entered in 1981 civil rights litigation, which imposed detailed and onerous restrictions on city's powers of investigation of subversive activities, would be modified to permit police to protect public safety by allowing police to keep tabs on incipient terrorist groups; core of the decree, which the city did not seek to modify, forbade investigations intended to interfere with or deter the exercise of the freedom of expression that the First Amendment protects, and required the city to commission independent periodic audits of the city's compliance with the decree. Alliance to End Repression v. City of Chicago, C.A.7 (Ill.) 2001, 237 F.3d 799. Federal Civil Procedure 2397.4

Action of city police department intelligence unit in photographing and data gathering at public meetings held by citizen's groups whose general political or social views conflicted with that of city government officials or the police department members and the sharing of information with other law enforcement groups did not give rise to a

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constitutional violation with respect to plaintiff whose public meetings were the subject of police surveillance. Philadelphia Yearly Meeting of Religious Soc. of Friends v. Tate, C.A.3 (Pa.) 1975, 519 F.2d 1335. Municipal Corporations 189(1)

Alleged improper vagrancy observation practices by the District of Columbia police furnished no basis for federal jurisdiction by virtue of this section. Gomez v. Wilson, C.A.D.C.1973, 477 F.2d 411, 155 U.S.App.D.C. 242.

Allegation that retail store, its personnel and police officers violated plaintiff's rights by permitting deficiencies in closed toilet stalls that facilitated observation of plaintiff by employees and by police officers in violation of his Fourth, Fifth, and Fourteenth Amendment rights was sufficient to establish that defendants' conduct deprived plaintiff of constitutional or federal rights for purposes of § 1983 claim. Gilbert v. Sears, Roebuck and Co., M.D.Fla.1993, 826 F.Supp. 433. Civil Rights 1395(1)

2182. Theft, police activities

Claim that law enforcement officers who participated in search of plaintiffs' residence took rare coins in plaintiffs' possession did not state cognizable federal civil rights claim. Rogers v. Fuller, M.D.N.C.1976, 410 F.Supp. 187. Civil Rights 1395(6)

2183. Third parties injured by police actions, police activities

City could not be liable in § 1983 civil rights action arising from injuries to pedestrian struck by suspect's vehicle during police pursuit, absent a constitutional violation by the officers. Evans v. Avery, C.A.1 (Mass.) 1996, 100 F.3d 1033, certiorari denied 117 S.Ct. 1693, 520 U.S. 1210, 137 L.Ed.2d 820, rehearing denied 117 S.Ct. 2533, 521 U.S. 1129, 138 L.Ed.2d 1032. Civil Rights 1088(1)

2184. Traffic control, police activities--Generally

Alleged breach of sheriff's duty to provide adequate traffic control to corporation, which conducted concert on rented county fairgrounds, did not present a substantial cognizable constitutional claim for alleged violations of rights of peaceful assembly, equal protection and due process upon which relief could be granted. W. J. A. Productions, Inc. v. Barnett, N.D.Ohio 1977, 449 F.Supp. 690. Civil Rights 1088(1)

2185. ---- Citations, traffic control, police activities

Act of police officer in issuing to motorist a citation charging motorist with violation of an inapplicable speed limit statute did not render him liable to motorist under this section. Gabbard v. Rose, C.A.6 (Ky.) 1966, 359 F.2d 182. Civil Rights 1088(1)

Police officer did not violate equal protection clause when he ticketed vehicle of black motorist bringing §§ 1983 action, for being in handicapped parking spot, while allegedly ignoring illegally parked vehicle driven by white motorist; as motorist did not approach officer until ticket writing process had begun, officer could not have known race of motorist before deciding to issue ticket. Kelly v. Rice, S.D.N.Y.2005, 375 F.Supp.2d 203. Automobiles 349(1); Constitutional Law 223

Claimants failed to state §§ 1983 claim that village officials violated federally protected rights of motorists by engaging in practice of illegally ticketing and fining them; allegedly violative conduct was not adequately explained, and allegations of negligence were made that could not be pursued in §§ 1983 action. Wood v. Incorporated Village of Patchogue of New York, E.D.N.Y.2004, 311 F.Supp.2d 344. Civil Rights 1088(1); Civil Rights 1395(5)

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42 U.S.C.A. § 1983

2186. ---- Roadblocks, traffic control, police activities

Action by motorcyclist injured when he hit car stopped at alleged roadblock established by city police officer at best alleged negligence on part of city police officers not cognizable as Fourteenth Amendment deprivation of liberty in civil rights action brought under § 1983. Chesney v. Hill, C.A.6 (Tenn.) 1987, 813 F.2d 754. Civil Rights 1088(1)

2187. Training and supervision, police activities--Generally

Inadequacy of police training may serve as basis for § 1983 municipal liability only where failure to train amounts to deliberate indifference to rights of persons with whom police come into contact; only where municipality's failure to train its employees in relevant respect evidences "deliberate indifference" to rights of its inhabitants can such shortcoming be properly thought of as city "policy or custom" that is actionable under § 1983. City of Canton, Ohio v. Harris, U.S.Ohio 1989, 109 S.Ct. 1197, 489 U.S. 378, 103 L.Ed.2d 412. Civil Rights 1352(4)

Inadequacy of police training may serve as basis for municipal liability under § 1983 only where failure to train amounts to deliberate indifference to rights of persons with whom police come into contact. Dunn v. City of Elgin, Illinois, C.A.7 (Ill.) 2003, 347 F.3d 641, rehearing denied. Civil Rights 1352(4)

Constitutional claim could not be maintained against city under § 1983 for inadequately training and supervising police officers where plaintiff did not demonstrate that she suffered a constitutional deprivation by police officers. Dahl v. Holley, C.A.11 (Ala.) 2002, 312 F.3d 1228. Civil Rights 1352(4)

To prevail on "failure to train" municipal liability claim under § 1983, plaintiff must show that city's employee violated his constitutional rights, that city had policy or custom of failing to train its employees, and that failure to train caused constitutional violation. Roach v. City of Evansville, C.A.7 (Ind.) 1997, 111 F.3d 544. Civil Rights 1352(1)

"Deliberate indifference" test is employed to determine when inadequate training can justifiably be said to represent city policy for purposes of imposing municipal liability under § 1983. Garner v. Memphis Police Dept., C.A.6 (Tenn.) 1993, 8 F.3d 358, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 1219, 510 U.S. 1177, 127 L.Ed.2d 565. Civil Rights 1352(1)

For § 1983 plaintiff to prevail against municipality, plaintiff must show that inadequate training of city employees represented city policy and that need for better training was so obvious and inadequacy so likely to result in violation of constitutional rights, that municipality can be said to have been deliberately indifferent to the need. Barber v. City of Salem, Ohio, C.A.6 (Ohio) 1992, 953 F.2d 232. Civil Rights 1352(1)

Where constitutional violation was not alleged to be part of pattern of past conduct, supervisory official or municipality may be held liable in civil rights case only where there is essentially complete failure to train police force, or training that is so reckless or grossly negligent that future police misconduct is almost inevitable or would properly be characterized as substantially certain to result. Hays v. Jefferson County, Ky., C.A.6 (Ky.) 1982, 668 F.2d 869, rehearing denied 673 F.2d 152, certiorari denied 103 S.Ct. 75, 459 U.S. 833, 74 L.Ed.2d 73. Civil Rights 1358

Due Process Clause did not impose on city or police officials duty to train African-American police officer regarding his off-duty responses and risks posed to African-American officers in such circumstances; thus, no constitutional violation occurred when officer was mistakenly shot and killed by fellow officers allegedly as result of his inadequate training in those areas, and officer's survivor had no § 1983 cause of action based on lack of training. Young v. City of Providence, D.R.I.2004, 301 F.Supp.2d 163, affirmed in part, reversed in part and remanded 404 F.3d 4, on remand 396 F.Supp.2d 125. Constitutional Law 278.4(1); Municipal Corporations

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42 U.S.C.A. § 1983

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A city's failure to train is a violation of § 1983 only when the city's failure to train its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants can such a shortcoming be properly thought of as a city policy or custom that is actionable under § 1983. Eberle v. City of Newton, D.Kan.2003, 289 F.Supp.2d 1269, motion to amend denied 296 F.Supp.2d 1276. Civil Rights 1352(1)

A municipality is liable under § 1983 for policies made by its lawmakers or by those with policymaking authority, and for customs or unofficial policies derived from circumstantial proof, which includes liability for a deliberate government policy of failing to train or supervise its officers, when this failure to train amounts to a deliberate indifference to the rights of the persons with whom the police come into contact. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Civil Rights 1352(1)

In the absence of an explicit policy or an entrenched custom, the inadequacy of police training may serve as a basis of § 1983 liability where the failure to train amounts to a deliberate indifference to the rights of persons with whom the police come into contact. Newell v. City of Salina, D.Kan.2003, 276 F.Supp.2d 1148. Civil Rights 1352(4)

Municipality was not liable under § 1983 for failure to train and supervise police officer, who shot driver of vehicle as he emerged following high speed chase, when officer's action was not supported by any municipal policy, and officer had received training in use of deadly force. Parker v. Town of Swansea, D.Mass.2003, 270 F.Supp.2d 92. Civil Rights 1352(4)

When there is evidence that police officers undertaking arrests were trained to act recklessly in manner that created high risk of death, and that officers acted consistently with their training, need for different training may be deemed so obvious and inadequacy of training so likely to result in violation of constitutional rights that municipal policymakers may be found deliberately indifferent to victim's need, resulting in liability in § 1983 action. Parker v. Town of Swansea, D.Mass.2003, 270 F.Supp.2d 92. Civil Rights 1352(4)

Complaint was sufficient to state a claim against superintendent under § 1983 based on failure to properly evaluate, select, train, instruct and supervise police officer, who sexually molested female student; superintendent's alleged negligence could have resulted in deliberate indifference if superintendent knew or had reason to know that officer was prone to such improper behavior. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1395(5)

Section 1983 plaintiff seeking to establish municipal liability on basis of failure to train and supervise must show recurring situations presenting obvious potential for constitutional violation at issue, and violation must be plainly obvious or highly predictable consequence of failure to train or supervise. Jacobs v. City of Port Neches, E.D.Tex.1998, 7 F.Supp.2d 829, affirmed 193 F.3d 516. Civil Rights 1352(1)

Municipal liability based on failure to train and supervise could not be established by allegations that individual officers engaged in corrupt activity, without evidence that such activity was highly predictable consequence of failure to train. Jacobs v. City of Port Neches, E.D.Tex.1998, 7 F.Supp.2d 829, affirmed 193 F.3d 516. Civil Rights 1352(1)

Training inadequacies of law enforcement personnel may serve as basis for § 1983 liability only where failure to train amounts to deliberate indifference to rights of persons with whom law enforcement comes into contact. Hightower v. Harris, N.D.Ill.1997, 963 F.Supp. 716, reversed 161 F.3d 485. Civil Rights 1352(4)

Municipality's failure to train its police may form basis for municipal liability under § 1983, but only where failure exhibits deliberate indifference to constitutional rights of persons with whom police encounter. Lester v. City of

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Chicago, N.D.Ill.1997, 950 F.Supp. 870. Civil Rights 1352(4)

Lack of adequate training of police officers may support claim for municipal liability under § 1983 only where failure to train amounts to deliberate indifference to rights of persons with whom police come into contact. Johnson v. City of Detroit, E.D.Mich.1996, 944 F.Supp. 586. Civil Rights 1352(4)

Inadequacy of police training may serve as basis for municipal liability under § 1983 if failure to train amounts to deliberate indifference to rights of persons with whom police come into contact; to meet deliberate indifference standard, failure to train must reflect deliberate or conscious choice made by city policymakers. Frazier v. City of Philadelphia, E.D.Pa.1996, 927 F.Supp. 881. Civil Rights 1352(4)

Municipality may be held liable under § 1983 for failure to train police officers, but only if failure to train amounts to deliberate indifference to rights of persons with whom police come into contact. Roberts v. City of Forest Acres, D.S.C.1995, 902 F.Supp. 662. Civil Rights 1352(4)

To hold city liable for allegedly unconstitutional acts of police officers, it is necessary to show that officials with authority for making policy promulgated, adopted, or ratified policy or custom of constitutional violations, or that officials knowingly acquiesced in longstanding practice or custom, and that constitutional injury was direct result of inadequate training or supervision. Carnell v. Grimm, D.Hawai'i 1994, 872 F.Supp. 746, reconsideration denied, affirmed in part, appeal dismissed in part 74 F.3d 977. Civil Rights 1351(4); Civil Rights 1352(4)

To establish § 1983 claim for failure to train, plaintiff must show that supervisor failed to supervise or train subordinate officer, failure to supervise or train was closely related to violation of plaintiff's rights, and failure to supervise or train amounted to deliberate indifference; single incident, standing alone, is insufficient as to matter of law to establish failure to train. Craig v. St. Martin Parish Sheriff, W.D.La.1994, 861 F.Supp. 1290. Civil Rights 1355

Inadequacy of police training may serve as basis for § 1983 liability only when failure to train amounts to deliberate indifference to persons with whom police come in contact. Hudson v. Maxey, E.D.Mich.1994, 856 F.Supp. 1223. Civil Rights 1352(4)

Generic claims of inadequate training are not enough to establish municipal liability under § 1983 civil rights statute; plaintiff must identify specific training that municipality did not give, explain how lack of that training actually caused ultimate injury, and show that alleged failure to train was part of official municipal policy of deliberate indifference. Herman v. Clearfield County, Pa., W.D.Pa.1993, 836 F.Supp. 1178, affirmed 30 F.3d 1486 . Civil Rights 1352(1)

To support a claim of municipal liability based upon a failure to train, a plaintiff must show inadequate training, that the inadequate training represented a policy which reflected a deliberate indifference to plaintiff's constitutional rights, and the policy caused the alleged violation of constitutional rights. Cooper v. Merrill, D.Del.1990, 736 F.Supp. 552. Civil Rights 1352(1)

Municipal policy condoning or encouraging police misconduct for civil rights liability purposes may be inferred from police department's failure to train, supervise, or discipline its officers, but fact finder may not draw such inference unless need for training, supervision, or discipline is so obvious and inadequacy so likely to result in violation of constitutional rights that policymakers of city can reasonably be said to have deliberately indifferent to need. Reid v. City of New York, E.D.N.Y.1990, 736 F.Supp. 21. Civil Rights 1404

Allegations of improper hiring, training and supervision were not a recognized basis for imposing liability under this section on director of Michigan Department of State Police and head of the Michigan state police post based

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on alleged failure to properly supervise the allegedly offending police officers. Stefaniak v. State of Mich., W.D.Mich.1983, 564 F.Supp. 1194. Civil Rights 1358

2188. ---- Perjury, training and supervision, police activities

Municipality could be liable under § 1983 for failing to train its officers not to commit perjury, though obligation not to commit perjury should have been obvious to any reasonable police officer, to extent that officers had history of committing perjury of which municipal policymakers were aware. Walker v. City of New York, C.A.2 (N.Y.) 1992, 974 F.2d 293, certiorari denied 113 S.Ct. 1387, 507 U.S. 961, 122 L.Ed.2d 762, certiorari denied 113 S.Ct. 1412, 507 U.S. 972, 122 L.Ed.2d 784. Civil Rights 1352(4)

2189. ---- Suicide prevention, training and supervision, police activities

City's failure to provide training and education for police officers in suicide detection and prevention was not "deliberate indifference" in violation of § 1983; city's training and policies regarding suicide prevention were in accord with requirements of state law at time of detainee's suicide, and there was no basis for finding that his suicide was closely related to city's failure to train officers in suicide prevention. Manarite By and Through Manarite v. City of Springfield, C.A.1 (Mass.) 1992, 957 F.2d 953, certiorari denied 113 S.Ct. 113, 506 U.S. 837, 121 L.Ed.2d 70. Civil Rights 1352(4)

County was immune from liability on federal civil rights claim arising out of detainee's suicide, absent sufficient evidence that policy of failure to train officers in suicide prevention actually and proximately caused that harm. Buffington v. Baltimore County, Md., C.A.4 (Md.) 1990, 913 F.2d 113, rehearing denied, certiorari denied 111 S.Ct. 1106, 499 U.S. 906, 113 L.Ed.2d 216. Civil Rights 1351(4)

County jail's suicide prevention policy appeared reasonable and comprised an effort to prevent suicides, and thus, county was not deliberately indifferent to training its employees on inmate suicide prevention in violation of the Eighth Amendment, even if the policy had not been updated in recent years and the jail was not accredited by the American Correctional Association (ACA), where, inter alia, the policy set forth a detailed list of factors to identify potentially suicidal inmates, set forth a procedure for identification and screening of inmates, and required on-going training in the implementation of suicide prevention and intervention for all staff. Harvey v. County of Ward, D.N.D.2005, 352 F.Supp.2d 1003. Prisons 17(2); Sentencing And Punishment 1546

2190. ---- Miscellaneous claims, training and supervision, police activities

County did not have widespread practice of inadequately training its police officers in assessing probable cause for searches and arrests, as would support holding county liable, under § 1983, for officers' alleged unconstitutional conduct towards arrestee during search of apartment and arrest; county had training program in place that was specifically designed to instruct police officers in assessing probable cause for searches and arrests. Holmes v. Kucynda, C.A.11 (Ga.) 2003, 321 F.3d 1069. Civil Rights 1352(4)

Suspect did not show that training or supervision provided by county to police officer and prosecutor was inadequate, for purpose of suspect's civil rights claim under *Monell*, where officer stated that he knew when he joined investigation that he was required to secure and deliver to prosecutor all evidence relating to crime, including exculpatory evidence, and prosecutor stated that he knew of his obligation to disclose exculpatory evidence to defense before investigation of suspect and that it was policy of county prosecuting attorney's office to disclose all *Brady* materials. Reasonover v. St. Louis County, Mo., C.A.8 (Mo.) 2006, 447 F.3d 569. Civil Rights 1352(4)

Sheriff was not deliberately indifferent to the rights of citizens who came into contact with deputies, as required for suspect's §§ 1983 claim against sheriff in his official capacity alleging a failure to train and supervise his deputies,

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stemming from suspect's arrest; evidence demonstrated that the officers received police training from the state peace officers training academy, and one officer trained for two months under the supervision of two sergeants. Fisher v. Harden, C.A.6 (Ohio) 2005, 398 F.3d 837, rehearing en banc denied, certiorari denied 126 S.Ct. 828, 163 L.Ed.2d 706, on remand 2006 WL 1697538. Civil Rights 1352(4)

City was not liable under § 1983 for actions of police officers who, while on "standby service," removed minor daughter from mother's custody pursuant to unenforceable custody order issued by court in another state, in violation of mother's and daughter's constitutional rights; officers had been instructed in field training that standby service required officers to keep the peace but not take any other actions, and had received training on city's standard operation procedure (SOP) which informed officers that civil orders generally were not to be served or enforced by officers. Dunn v. City of Elgin, Illinois, C.A.7 (Ill.) 2003, 347 F.3d 641, rehearing denied. Civil Rights 1352(6)

Issues of fact existed as to whether police chief was negligent in hiring, training, and supervision of police officer, and whether city had an official policy or custom of, or was deliberately indifferent to, civil rights violations by its officers, precluding summary judgment for city in § 1983 action brought by driver allegedly targeted for traffic stop and arrest on basis of his race. Marshall v. Columbia Lea Regional Hosp., C.A.10 (N.M.) 2003, 345 F.3d 1157. Federal Civil Procedure 2491.5

Sheriff's failure to instruct police on handling of dangerous people who appeared to be irrational did not amount to deliberate indifference, as would support § 1983 claim, where sheriff instructed police not to use deadly force absent threat of death or great bodily harm; failure to instruct that special measures should be taken for apparently irrational people could amount to no more than mere negligence, absent showing that there had been rash of such killings that could have been avoided by special measures. Pena v. Leombruni, C.A.7 (Ill.) 1999, 200 F.3d 1031, certiorari denied 120 S.Ct. 2207, 530 U.S. 1208, 147 L.Ed.2d 240. Civil Rights 1358

District court's failure to consider whether city's program for training police officers was adequate, whether city was deliberately indifferent to any deficiency in training, and whether deficiency caused police officers' indifference to pedestrian's intoxication and need for assistance warranted remand of legal guardian's § 1983 action to hold city liable based on its alleged acquiescence in policy, custom or practice of not granting officers "activity credits" for taking intoxicated persons into custody and failing to adequately train officers in proper care of intoxicated persons. Kneipp v. Tedder, C.A.3 (Pa.) 1996, 95 F.3d 1199, 159 A.L.R. Fed. 619. Federal Courts 939

Arrestee could not show that injuries he suffered, when he was bitten in presence of regular police officers by police dog whose handler had fallen during pursuit, were result of deliberate indifference on part of city in failing to adequately train police officers; city's program was not obviously inadequate, where it trained officers to deal with routine arrests involving police dogs and handlers, and loss of canine handler during chase was very unlikely scenario. Holiday v. City of Kalamazoo, W.D.Mich.2003, 255 F.Supp.2d 732. Civil Rights 1352(4)

Lack of similar past occurrences involving police dogs precluded showing of deliberate indifference to support civil rights claim that city's training programs were inadequate because they did not teach regular officers how to proceed with apprehension in presence of police dog whose handler had become incapacitated; dog bites occurred in only 0.002% of service calls and there was no evidence of occurrence of incidents similar to one in which arrestee was bitten, after dog's fell during pursuit and regular officers had to complete arrest. Holiday v. City of Kalamazoo, W.D.Mich.2003, 255 F.Supp.2d 732. Civil Rights 1352(4)

Victim of alleged assault by officer of state department of public safety stated claim of supervisory failure, under § 1983, against officer's supervisors, in their individual capacities, by stating that officer had history of misconduct in Marines, and in prior and present police positions, known to supervisors, and they failed to provide training and supervision required under circumstances. McGrath v. Scott, D.Ariz.2003, 250 F.Supp.2d 1218. Civil Rights

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Mere fact that city allegedly had knowledge of alleged constitutional violations and assaults occurring against municipal police officer and "failed to do anything" was insufficient to show failure to train police department officials, precluding officer's § 1983 claim against city; officer made no showing specifying what training city had failed to provide or demonstrating that city's actions were deliberate and conscious. Brown v. District of Columbia, D.D.C.2003, 251 F.Supp.2d 152. Civil Rights 1352(4); Civil Rights 1352(5)

Negligent conduct alleged by arrestee did not give rise to a constitutional claim cognizable under § 1983; she alleged that the warrant clerk for a county sheriff's office negligently entered incorrect data into the National Crime Information Center (NCIC) database, that the clerk's supervisor negligently failed to verify the information, that unnamed employees of the sheriff's office, when contacted by police officers, failed to compare the bench warrant with the NCIC database, and that the county sheriff's office negligently failed to train and supervise its employees about correct methods to enter and verify information in the NCIC database. Johnson v. Scotts Bluff County Sheriff's Dept., D.Neb.2003, 245 F.Supp.2d 1056. Civil Rights 1088(4)

Parents' claim that failure of police commission and police chief to enact proper policies and procedures for dealing with mentally ill persons or to train police officers to peacefully deal with mentally ill persons resulted in police officers shooting their mentally ill son during his involuntary committal was properly characterized as Fourteenth Amendment substantive due process claim, rather than Fourth Amendment excessive force claim, and thus could serve as basis for § 1983 liability if failure to train amounted to deliberate indifference to rights of persons with whom police came into contact. Schorr v. Borough of Lemoyne, M.D.Pa.2003, 243 F.Supp.2d 232. Civil Rights 1352(4); Civil Rights 1358

Overwhelming weight of evidence showing that police officer who threw flash-bang device into apartment while executing search warrant had received training in use of such devices rendered discrepancy caused by omission of that training from one of city's training reports for officer immaterial as a matter of law, and thus, discrepancy did not create genuine issue of material fact so as to preclude summary judgment in favor of city on occupants' §§ 1983 claim of municipal liability for inadequacy of police training; officer stated in affidavit that he took the course, he produced certificate of completion signed by training manager indicating he completed course, and another city training report stated that officer completed course. Taylor v. City of Middletown, D.Conn.2006, 436 F.Supp.2d 377.

County sheriff and district attorney were not liable, in §§ 1983 action, for conduct of police and prosecutors conducting search of homeowner's premises and charging him with controlled substance possession and dealing in harmful material to minor, on grounds that they failed to properly train subordinates; conduct of subordinates was not so bad as to reflect essentially complete failure to train, or training that was so reckless or grossly negligent that future misconduct was almost inevitable. Gibbons v. Lambert, D.Utah 2005, 358 F.Supp.2d 1048. Civil Rights 1358

Supervisory liability under section 1983 could not be imposed against police chief based on "personal involvement" in police department's failure to protect witness and her son, who were murdered by brother of person against whom she was to testify, or failure to take corrective action after learning of a subordinate's unlawful conduct; since there was no evidence that chief was aware of the events preceding victims' homicides, he could not be held liable for failing to take corrective action after learning of a subordinate's unlawful conduct or for failing to act on information regarding the unlawful conduct of subordinates, and because he did not have knowledge of subordinates' alleged unlawful acts, chief could not be held liable for gross negligence in supervising subordinates. Clarke v. Sweeney, D.Conn.2004, 312 F.Supp.2d 277. Civil Rights 1358

Town police chief was not liable under § 1983 for federal negligent supervision claim brought by pitbull dog owner after police officer shot and killed pitbull that escaped from residence and ran toward officer and police

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canine as they were attempting to track a fleeing suspect; dog owner suffered no constitutional injury because officer acted reasonably, and there was no evidence to support dog owner's conclusory allegations that police chief violated federal law by failing to instruct, supervise, control, or discipline the police officer on a continuing basis. Warboys v. Proulx, D.Conn.2004, 303 F.Supp.2d 111. Civil Rights 1352(3); Civil Rights 1352(4)

Expert report stating in conclusory fashion that death of off-duty, plainclothes police officer had resulted from inadequate training of uniformed officers, who mistakenly shot off-duty officer during parking-lot confrontation with armed suspect, failed to satisfy causation requirement of off-duty officer's survivor's § 1983 inadequate training claim against city and police officials; areas of inadequacy in training procedures were not specified, nor a causal connection made between that training and uniformed officers' actions. Young v. City of Providence, D.R.I.2004, 301 F.Supp.2d 163, affirmed in part, reversed in part and remanded 404 F.3d 4, on remand 396 F.Supp.2d 125. Civil Rights 1420

Expert report stating in conclusory fashion that death of off-duty, plainclothes police officer had resulted from inadequate training of uniformed officers, who mistakenly shot off-duty officer during parking-lot confrontation with armed suspect, failed to satisfy causation requirement of off-duty officer's survivor's § 1983 inadequate training claim against city and police officials; areas of inadequacy in training procedures were not specified, nor a causal connection made between that training and uniformed officers' actions. Young v. City of Providence, D.R.I.2004, 301 F.Supp.2d 163, affirmed in part, reversed in part and remanded 404 F.3d 4, on remand 396 F.Supp.2d 125. Civil Rights 1420

Former executive assistant chief of police who was responsible for day-to-day operations of department was not liable under § 1983 for failing to investigate alleged constitutional violations committed by police department officers against fellow officer who was misidentified as perpetrator of carjacking and armed robbery, prior to his departure from department, in absence of evidence that he acted with deliberate indifference or failed to take corrective action; there was no evidence that assistant chief had individual duty to oversee pending investigation of incident of alleged officer misconduct, to discover results of such an investigation, or to discipline officers upon resolution of an investigation, and assistant chief was aware of the allegations and believed that there was ongoing criminal investigation at time of his departure. Byrd v. District of Columbia, D.D.C.2003, 297 F.Supp.2d 136, affirmed 2004 WL 885228. Civil Rights 1358; Civil Rights 1359

Neither town nor town police chief were liable under § 1983 for damages claimed in homeowners' civil rights action alleging that town and police chief failed to properly train and supervise police officers who allegedly violated homeowners' rights under Fourth Amendment and state constitution by mistakenly entering residence to arrest suspect who had previously lived there; homeowners did not suffer constitutional injury at hands of town police officers as required to support claim that town and chief failed to train, supervise, or discipline officers for engaging in allegedly unconstitutional conduct, and chief and town were not personally involved in federal investigation that led to determination of suspect's address, had not participated in process of obtaining arrest warrant, and had not attempted to execute warrant. Tyson v. Willauer, D.Conn.2003, 290 F.Supp.2d 278. Civil Rights 1352(4); Civil Rights 1358

District court considering summary judgment motion of defendants in police detainee's § 1983 action against police officers, police chief, and city for alleged use of excessive force in violation of detainee's Fourth Amendment rights could properly consider letters to city's counsel requesting, pursuant to Freedom of Information Act (FOIA), copies of all settlement agreements entered into on behalf of the city police department and its officers and all pending cases against city's police, to show that the city and the police department knew that citizens were accusing its officers of using excessive force in the course of their duties, and that the city acted with deliberate indifference, as required to support detainee's *Monell* claim, and for the scope of the FOIA requests. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Federal Civil Procedure 2545

Supervisory officer who authorized initial posting of "No Trespassing" signs during execution of replevin order

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against debtor's premises was not liable under § 1983 for any Fourth Amendment violations arising when another officer left creditor in possession of premises after inventory was completed. Audio Odyssey, Ltd. v. Brenton First Nat. Bank, S.D.Iowa 2003, 284 F.Supp.2d 1159. Civil Rights 1358

Allegedly unreasonable seizure, under the Fourth Amendment, of hospital patient that occurred when sheriff deputies assisted hospital employees in using restraints to strap patient on gurney after deputy detained her for psychiatric evaluation, pursuant to state law, because she was allegedly unruly in emergency room while awaiting treatment for suspected heart attack, was not undertaken pursuant to county policy or custom, as required to hold county liable for deputies' actions under § 1983. Harvey v. Alameda County Medical Center, N.D.Cal.2003, 280 F.Supp.2d 960, affirmed 123 Fed.Appx. 823, 2005 WL 662645. Civil Rights 1351(6)

City that employed police officers who improperly seized and transported arrestee to premises of search warrant failed to establish that there was insufficient evidentiary basis to support verdict against city and officers in arrestee's § 1983 action, or that jury was misinstructed as to relevance of state oversight and certification, and thus city's motions for judgment as matter of law and for new trial would be properly denied; city trained its officers to seize individuals thought to be associated with premises for which they had search warrant, and officers' actions were taken pursuant to such faulty training. Pappas v. New Haven Police Dept., D.Conn.2003, 278 F.Supp.2d 296. Civil Rights 1420; Civil Rights 1437; Federal Civil Procedure 2336; Federal Civil Procedure 2339

Municipal defendants and other subdivisions of the state were not liable under Due Process Clause for murder and rape committed by parolee after police officers failed to arrest parolee for violation of parole condition after he entered police station to surrender on a bench warrant, since they were not the moving force behind any constitutional violation; there was no municipal policy, practice, or custom that caused the deprivation of any constitutional right, even though county and borough practice of "checking" and "confirming" warrants could be seen as fostering parolee's release, county board of prison inspectors acquiesced in the transfer of responsibility for retrieving warrants to poorly-trained entry-level workers, and the lax training of the entry-level workers tasked with handling the warrants led directly to the booking specialist missing parolee's warrant. Leidy v. Borough of Glenolden, E.D.Pa.2003, 277 F.Supp.2d 547, affirmed 117 Fed.Appx. 176, 2004 WL 2677158. Civil Rights 1351(4); Civil Rights 1352(4)

School personnel who exhibit deliberate indifference by failing to take appropriate action when they have knowledge that abuse of student is occurring can be held liable under § 1983 for failure to protect. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1065

Mere fact that city allegedly had knowledge of alleged constitutional violations and assaults occurring against municipal police officer and "failed to do anything" was insufficient to show failure to train police department officials, precluding officer's § 1983 claim against city; officer made no showing specifying what training city had failed to provide or demonstrating that city's actions were deliberate and conscious. Brown v. District of Columbia, D.D.C.2003, 251 F.Supp.2d 152. Civil Rights 1352(4); Civil Rights 1352(5)

City's failure to provide more training to police officers in prisoner-rights law or regulation of jail correspondence was inadequate to support civil rights liability of city under failure-to-train theory after police officer allowed mailing of prisoner's letter identifying informant in murder investigation, where release could not be shown to have resulted in informant's death, and informant's death, absent special relationship or state-created danger, did not give rise to violation of constitutional rights. Gatlin ex rel. Gatlin v. Green, D.Minn.2002, 227 F.Supp.2d 1064, affirmed 362 F.3d 1089, appeal after remand from federal court 2006 WL 1320467. Civil Rights 1352(4)

Brain-damaged motorist who alleged that township police officer used excessive force during his arrest failed to show pattern of excessive force violations or inadequate training sufficient to establish municipal liability in §§ 1983 action; although township had no written policy concerning arrests of disabled suspects, all officers received

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training on how to cope with individuals with physical and mental impairments, and explicit township policy prohibited excessive force. Pahle v. Colebrookdale Tp., E.D.Pa.2002, 227 F.Supp.2d 361. Civil Rights 1351(4); Civil Rights 1352(4)

City was liable under § 1983 for violations of plaintiff's constitutional rights arising from her false arrest and closure of bar and seizure of its liquor inventory based on its failure to properly train its officers regarding laws relating to display of liquor licenses and proper procedures associated with closing a premises and seizure of inventory; given that photocopying of liquor licenses was a frequent practice of New York bar owners, the failure of police to properly train officers with regard to laws related to the forgery of liquor licenses was evidence of city's deliberate indifference to the rights of licensees and bar employees, such as plaintiff, who initially presented a photocopy of a liquor license and subsequently produced valid original license. Sulkowska v. City of New York, S.D.N.Y.2001, 129 F.Supp.2d 274. Civil Rights 1352(4)

Mother's allegation that her home was destroyed and her children were killed as result of city's failure to train police officers to properly deal with barricaded hostage situations was insufficient to support § 1983 claim, absent evidence regarding frequency of "barricaded hostage" situations, extent of existing training program, or causal connection between deficiency in training program and incident. Smith v. City of Plantation, S.D.Fla.1998, 19 F.Supp.2d 1323, affirmed 198 F.3d 262. Civil Rights 1420

Evidence was insufficient as a matter of law to establish that alleged inadequacies in city's training of its police officers rose to level of deliberate indifference to rights of residents so as to support claim of municipal liability under § 1983 based on conduct of officer in engaging in high-speed chase and ultimately shooting suspect; while city relied on state's basic training and in-service classes and perhaps should have taken independent steps to maintain its officers' familiarity with more specific department procedures, state training provided officer with "basics" regarding high-speed pursuits and use of force, and state training was modeled on minimum legal standards under state law. Anderson v. City of Glenwood, Ga., S.D.Ga.1995, 893 F.Supp. 1086. Civil Rights 1420

Civil rights plaintiff injured in connection with the arrest of a third party failed to prove a municipal policy of inadequate training, deliberate indifference, and causation, as required to prevail on her failure-to-train claim against township under § 1983; it was insufficient for her to point out alternatives which could have been pursued by the police department. Padilla v. Township of Cherry Hill, C.A.3 (N.J.) 2004, 110 Fed.Appx. 272, 2004 WL 2241024, Unreported. Civil Rights 1352(4)

No constitutional violation occurred in police officers' use of allegedly deadly force when a truck was being driven at them at a high rate of speed, and therefore city was not liable, in §§ 1983 action, for allegedly failing to train its officers and lacking a custom or policy to insure that its officers avoided the use of unnecessary deadly force. Herman v. City of Shannon, Mississippi, C.A.5 (Miss.) 2004, 104 Fed.Appx. 398, 2004 WL 1576559, Unreported. Civil Rights 1352(4)

Even if arrestee had established that city police officers had violated his constitutional rights, he failed to make out claim of municipal liability under § 1983 against city, where he did not offer any evidence suggesting a specific failure in police officers' training. Williams v. City of New York, S.D.N.Y.2003, 2003 WL 22434151, Unreported, affirmed 120 Fed.Appx. 388, 2005 WL 154275. Civil Rights 1352(4)

Members of city council were not subject to supervisory liability under § 1983 for officers' alleged use of excessive force in connection with arrest of motorist, absent evidence that council members themselves caused motorist's injuries, or that they directly supervised any of arresting officers or ratified or condoned any of their alleged wrongful conduct. Fitzpatrick v. Gates, C.D.Cal.2003, 2003 WL 22385397, Unreported. Civil Rights 1358

Ex-wife's allegations that a borough failed to properly train its police in "domestic relations disputes" and in

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applying the law "equally and fairly without bias," and that it had a policy of allowing its police to "sid[e] with one party in [a domestic relations] dispute and deny[ ] protection to the other," failed to allege a deprivation of her substantive due process rights under the Fourteenth Amendment, so as to state a claim under § 1983; she did not alleged a "special relationship" with the borough such that the borough owed her an affirmative duty to protect her from her ex-husband, nor did she allege that the borough engaged in affirmative acts that exposed her to danger, so as to support a "state created danger theory" of liability. Garrison v. Yeadon, E.D.Pa.2003, 2003 WL 21282115, Unreported. Civil Rights 1395(5)

2191. Miscellaneous claims, police activities

Constitutional rights of intoxicated individual, who was removed from fairground and released in parking lot of police station, after which he was struck and killed by automobile, were not violated by police officer or park rangers, and thus survivors could not recover under § 1983 from members of board of police commissioners. Sellers By and Through Sellers v. Baer, C.A.8 (Mo.) 1994, 28 F.3d 895, rehearing and rehearing en banc denied, certiorari denied 115 S.Ct. 739, 513 U.S. 1084, 130 L.Ed.2d 641. Civil Rights 1088(1)

Police officers who affixed coroner's seals to premises, precluding anyone's entry, as result of malfunctioning gas stove, could not be liable under federal civil rights statute for deprivation of owners' due process, in that deprivation occurred as result of failure to remove seals when emergency passed, in which police officers were not implicated. Tavarez v. O'Malley, C.A.7 (Ill.) 1987, 826 F.2d 671. Civil Rights 1088(3)

If police officer, knowing that burning car was occupied and wanting occupants to be burned to death, directed traffic away from scene in order to prevent any passing driver from saving them, he would be liable under this section for having, under color of city ordinance making him a public officer, deprived plaintiffs' decedents of their lives without due process of law. Jackson v. City of Joliet, C.A.7 (Ill.) 1983, 715 F.2d 1200, certiorari denied 104 S.Ct. 1325, 465 U.S. 1049, 79 L.Ed.2d 720. Civil Rights 1088(1)

Jury verdict finding that police officer violated motorist's rights under §§ 1983 but not Massachusetts Civil Rights Act (MCRA) was not inconsistent; if §§ 1983 liability was based on state-created danger, jury could have found officer's order to motorist to move or push her car along roadway did not constitute a threat, intimidation, or coercion under MCRA but was, nevertheless, recklessly indifferent to her safety under §§ 1983. Lockhart-Bembery v. Town of Wayland Police Dept., D.Mass.2006, 447 F.Supp.2d 11. Civil Rights 1746

Patrons of restaurant and nightclub, who suffered secondary exposure from police officers' use of pepper spray on other persons who were fighting on another floor of building, were not "seized" within meaning of Fourth Amendment, and thus persons who suffered from secondary exposure could pursue excessive force claims only under substantive due process clause of Fourteenth Amendment, since officers did not intend to effect those individuals who were not sprayed directly. Logan v. City of Pullman, E.D.Wash.2005, 392 F.Supp.2d 1246. Municipal Corporations 747(3)

Complaint alleging that two officers of the Port Authority of New York and New Jersey violated airline passenger's Fourth Amendment right to be free from unreasonable seizure by removing her from a plane, after she made cell phone calls reporting that she was being held hostage, and taking her to a psychiatric hospital, stated no cognizable claim against the Port Authority, where complaint merely lumped that claim in with claims against the officers. Turturro v. Continental Airlines, S.D.N.Y.2004, 334 F.Supp.2d 383. Civil Rights 1395(1)

State police officers did not violate plaintiff's equal protection or due process rights or inflict emotional distress on plaintiff when officers allegedly ordered landowner's removal of chain across dirt road on landowner's premises to allow access to nearby property owners, threatened landowner's arrest for keeping chain on premises, and had landowner's vehicle towed off premises to facilitate neighbor's trespass, where plaintiff did not join landowner as fee owner of parcel until after such incidents occurred and officers' conduct was not alleged to have been directed

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at plaintiff. Longmoor v. Nilsen, D.Conn.2003, 285 F.Supp.2d 132. Constitutional Law 211(1); Constitutional Law 253(1); Damages 57.25(2); States 79

Prisoner's allegations that he had spent additional five years in prison for murder he did not commit as result of police officers' failure to comply in good faith with court order requiring them to run fingerprints found at murder scene through automated fingerprint identification system stated § 1983 claim for violation of due process. Newsome v. James, N.D.Ill.1997, 968 F.Supp. 1318. Civil Rights 1395(5)

There was no evidence that city's process of hiring correction officers, including psychological evaluations and consideration given to the results of those evaluations, was inadequate, much less so faulty as to demonstrate city's deliberate indifference to rights of persons such as plaintiff, who was shot by off-duty correction officer, for purposes of imposing liability on city under civil rights statute, § 1983. Longin by Longin v. Kelly, S.D.N.Y.1995, 875 F.Supp. 196. Civil Rights 1348

Police sergeant who authorized officer to accompany mother to residence of father "to keep the peace" when mother informed police that she intended to retake custody of child did not deprive father of constitutionally protected right, even if officer who accompanied mother illegally deprived father of his liberty interest in custody and control of minor illegitimate child without due process of law. Anderson v. Roberts, C.D.Cal.1986, 659 F.Supp. 19. Civil Rights 1358

Deprivation by defendants, certain law enforcement officers and other individuals engaged jointly with such law-enforcement officials in driving plaintiffs, a black couple, from their home by a heavily damaging and dangerous barrage of gunfire from several different types of lethal weapons on the heels of having been terrorized by the scare-tactic of a forewarning that they were being "watched" by Ku Klux Klan, of plaintiffs' right to security was proscribed by this section. Green v. Williams, E.D.Tenn.1981, 541 F.Supp. 863, affirmed in part, modified in part on other grounds 705 F.2d 846. Civil Rights 1088(2)

Complaint that minor plaintiff was forced by policemen to engage in homosexual solicitation on public street as part of crackdown being conducted by police on homosexual prostitution, liberally construed, alleged violation of constitutional rights as required for civil action for deprivation of rights under this section. Martin v. Covington, Ky., E.D.Ky.1982, 541 F.Supp. 803. Civil Rights 1395(5)

XVI. PRISONS AND PRISONERS GENERALLY

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2221. Prisons and prisoners generally

Though rights of prisoner may be diminished by the needs and exigencies of the institutional environment, he is not wholly without the protections of the Constitution and the due process clause. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Constitutional Law 272(2)

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42 U.S.C.A. § 1983

Civil rights action is proper remedy for state prisoner who is making constitutional challenge to conditions of his prison life but not to fact or length of his custody. Preiser v. Rodriguez, U.S.N.Y.1973, 93 S.Ct. 1827, 411 U.S. 475, 36 L.Ed.2d 439. Civil Rights 1090

The *Heck v. Humphrey* rule provides that where success in a prisoner's § 1983 damages action would implicitly question the validity of conviction or duration of sentence, the litigant must first achieve favorable termination of his available state or federal habeas opportunities to challenge the underlying conviction or sentence. Muhammad v. Close, C.A.6 2004, 379 F.3d 413. Civil Rights 1088(5); Civil Rights 1311; Civil Rights 1319

District court erred in finding prisoner's § 1983 claims for Fourth Amendment search and seizure violations barred under *Heck* where circumstances surrounding prisoner's convictions for burglary and receipt of stolen property were unknown from the record; under such circumstances, it was impossible for the district court to determine that a successful § 1983 action for unreasonable search and seizure necessarily implied the invalidity of those convictions. Hughes v. Lott, C.A.11 (Ala.) 2003, 350 F.3d 1157. Civil Rights 1088(3)

Inmates are entitled to environment that does not threaten their mental and physical well-being. Madyun v. Thompson, C.A.7 (Ill.) 1981, 657 F.2d 868. Prisons 13(2)

Prison administrators must be sensitive and alert to protections afforded prisoners by developing judicial scrutiny of prison conditions and practices. Knell v. Bensinger, C.A.7 (Ill.) 1975, 522 F.2d 720. Prisons 9

Limitations on fundamental rights of prisoners must be supported by legitimate and reasonable needs and exigencies of the institutional environment. Sostre v. Preiser, C.A.2 (N.Y.) 1975, 519 F.2d 763. Prisons 13(2)

Allegations that prison guards deprived prisoner of sleep, by keeping him up with their singing, talking, and other noise, and that prisoner's segregation cell had roaches, leaky toilet, peeling paint, and writing on wall, did not rise to level of Eighth Amendment claim; claims did not lie outside scope of ordinary discomfort accompanying prison life, and prisoner neglected to report plumbing problems or to use roach traps, which would have resulted in the prison providing additional pest control if any roaches were caught. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593. Sentencing And Punishment 1539; Sentencing And Punishment 1553

To prevail in claim under civil rights statute, prison inmate must demonstrate that inmate possessed liberty or property interest protected by United States Constitution or federal statutes and that, without due process, inmate was deprived of that interest. Husbands v. McClellan, W.D.N.Y.1997, 957 F.Supp. 403, motion to amend denied 990 F.Supp. 214. Civil Rights 1090

In order to prevail in action based on § 1983 and Fourteenth Amendment, prison inmate must demonstrate deprivation of liberty interest protected by Due Process Clause itself or violation of state-created liberty interest. Cespedes v. Coughlin, S.D.N.Y.1997, 956 F.Supp. 454, on reconsideration 969 F.Supp. 254. Civil Rights 1028; Constitutional Law 272(2)

Eighth Amendment does not mandate comfortable prison conditions, and only those deprivations denying minimal civilized measure of life's necessities are sufficiently grave to state a cognizable § 1983 claim based on the Eighth Amendment. Kropp v. McCaughtry, E.D.Wis.1996, 915 F.Supp. 85. Sentencing And Punishment 1532

Responsible state officials cannot be allowed to operate prison facilities that are barbaric and inhumane albeit that prisoners are not to be coddled and that prisons are not to be operated as hotels or country clubs. Pugh v. Locke, M.D.Ala.1976, 406 F.Supp. 318, affirmed and remanded on other grounds 559 F.2d 283, rehearing denied 564 F.2d 97, rehearing denied 564 F.2d 98, certiorari granted in part, reversed in part 98 S.Ct. 3057, 438 U.S. 781, 57 L.Ed.2d 1114, certiorari denied 98 S.Ct. 3144, 438 U.S. 915, 57 L.Ed.2d 1160. Prisons 17(1)

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42 U.S.C.A. § 1983

Prisons are public institutions, the conduct and conditions of which are matters of legitimate public concern. Burnham v. Oswald, W.D.N.Y.1972, 342 F.Supp. 880. Prisons 1

2222. Prison Litigation Reform Act, prisons and prisoners generally

Prison inmate's § 1983 in forma pauperis complaint alleging that prison officials forced him to work outside in inclement conditions on two occasions five months apart did not fall within the exception under the Prison Litigation Reform Act's (PLRA) three-strikes provision for a prisoner under imminent danger of serious physical injury, absent specific fact allegations, other than conclusory assertions that the prison officials were trying to kill him by forcing him to work in extreme conditions despite his blood pressure condition, of serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury. Martin v. Shelton, C.A.8 (Ark.) 2003, 319 F.3d 1048, rehearing denied. Federal Civil Procedure 2734

"Three strikes" provision of Prison Litigation Reform Act (PLRA) precluded inmate from proceeding in forma pauperis in § 1983 action alleging that city attorney had, in inmate's three prior § 1983 suits against police officers for wrongful arrest and excessive force, conspired to conceal officers' misconduct, withheld information supporting inmate's claims, and knowingly misled court, where two of inmate's prior suits arising from incident had been dismissed on res judicata grounds, appeals from those dismissals were summarily dismissed, and inmate was not in imminent physical danger. Higgins v. Carpenter, C.A.8 (Ark.) 2001, 258 F.3d 797, certiorari denied 122 S.Ct. 1803, 535 U.S. 1040, 152 L.Ed.2d 659. Federal Civil Procedure 2734

Civil rights complaint brought by pro se prisoner in forma pauperis against state officials seeking relief from order of back-time for parole violation was legally frivolous, and thus subject to dismissal under Prison Litigation Reform Act (PLRA), where prisoner failed to plead that parole revocation deprived him of any right created by federal constitution or federal statute. Thomas v. Pennsylvania, M.D.Pa.2005, 375 F.Supp.2d 406. Civil Rights 1395(7)

Genuine issue of material fact as to whether inmate sufficiently exhausted his administrative remedies prior to instituting suit, as required by the Prison Litigation Reform Act (PLRA), precluded grant of summary judgment in inmate's § 1983 action against correctional officers for allegedly assaulting him in violation of his Eighth Amendment rights. Evans v. Jonathan, W.D.N.Y.2003, 253 F.Supp.2d 505. Federal Civil Procedure 2491.5

Prison Litigation Reform Act (PLRA) did not deprive court of subject matter jurisdiction over inmate's § 1983 claims against prison officials for deliberate indifference to his medical needs and excessive use of force, even if some claims within complaint had not been exhausted. Johnson v. True, W.D.Va.2000, 125 F.Supp.2d 186, appeal dismissed 32 Fed.Appx. 692, 2002 WL 596403. Civil Rights 1311

State prisoner, who had had three or more prior prisoner actions dismissed for failure to state claim, was statutorily barred from bringing in forma pauperis § 1983 action alleging that he was "rousted after a riot" at jail where he was no longer detained; current complaint did not seek relief from imminent danger of serious physical injury, within meaning of exception to multiple filing bar. Young v. Sisneroz, N.D.Cal.2003, 2003 WL 22159059, Unreported. Federal Civil Procedure 2734

2223. Loss of rights upon imprisonment, prisons and prisoners generally

Although prisoners' rights must necessarily accommodate needs and objectives of prison regime to which they are committed, prisoners still enjoy generally protection of constitution, and thus if constitutionally protected interest can be made out, and some harm thereto is shown which is sufficiently grievous and which cannot be justified by exigencies of incarceration, then proper case for relief exists. Shimabuku v. Britton, C.A.10 (Kan.) 1974, 503 F.2d 38. Civil Rights 1090; Convicts 1

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One does not loss all his constitutional rights when he enters prison. LeVier v. Woodson, C.A.10 (Kan.) 1971, 443 F.2d 360. See, also, Brown v. Brown, C.A.9 (Cal.) 1966, 368 F.2d 992; Stiltner v. Rhay, C.A.9 (Wash.) 1963, 322 F.2d 314, certiorari denied 84 S.Ct. 678, 376 U.S. 920, 11 L.Ed.2d 615, rehearing denied 84 S.Ct. 972, 376 U.S. 959, 11 L.Ed.2d 978; Cook v. City of New York, S.D.N.Y. 1984, 578 F.Supp. 179; Bethea v. Daggett, D.C.Ga.1970, 329 F.Supp. 796, affirmed 444 F.2d 112; Seale v. Manson, D.C.Conn.1971, 326 F.Supp. 1375; U.S. ex rel. Diamond v. Social Service Dept., D.C.Pa.1967, 263 F.Supp. 971. Convicts 1

Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a restriction justified by the considerations underlying the penal system. Childs v. Duckworth, N.D.Ind.1981, 509 F.Supp. 1254, affirmed 705 F.2d 915. Prisons 4(1)

Prisoners do not forfeit all constitutional protections by reason of their conviction and confinement; however, their retained rights are necessarily limited by the fact of confinement as well as by legitimate goals and policies of the penal institution. Brown v. Hilton, D.C.N.J.1980, 492 F.Supp. 771. Convicts 1

Prisoner does not retain constitutional rights which are inconsistent with his status as a prisoner or with legitimate penological objectives of corrections system; imprisonment unavoidably results in forfeiture of certain rights and privileges commonly exercised in a free society. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Convicts 1

2224. Reluctance of courts to interfere, prisons and prisoners generally

Policy of judicial restraint on part of federal courts in refraining from interference with state penal authorities in their administration of a state's penal system is not a justifiable basis for failure to take cognizance of valid federal constitutional claims relating to rights secured to inmates by Federal Constitution and laws of United States. Battle v. Anderson, C.A.10 (Okla.) 1977, 564 F.2d 388. Prisons 4(3)

However reluctant federal courts may be to interfere with the administration of state prisons by state officials, they may not avoid determination of whether rights protected by Constitution have been violated. Fox v. Sullivan, C.A.5 (Ala.) 1976, 539 F.2d 1065. Prisons 4(3)

While federal courts are usually reluctant to interfere in matters of state prison administration, they are not unwilling in all situations to review the actions of state prison administrators to determine the existence of possible violations of constitutional rights. Parker v. McKeithen, C.A.5 (La.) 1974, 488 F.2d 553, certiorari denied 95 S.Ct. 67, 419 U.S. 838, 42 L.Ed.2d 65. Prisons 4(3)

Generally, regulation of prison is administrative matter for prison officials and officials' action in regard thereto is not subject to judicial review except under most unusual circumstances. LeVier v. Woodson, C.A.10 (Kan.) 1971, 443 F.2d 360. See, also, Baldwin v. Smith, C.A.2 (Vt.) 1971, 446 F.2d 1043; Landman v. Royster, D.C.Va.1971, 333 F.Supp. 621, supplemented 354 F.Supp. 1302. Prisons 4(2.1)

A federal court should be reluctant to interfere with operation of state prison and intervention is warranted only upon clear showing of violation of federally guaranteed constitutional right. Holt v. Sarver, C.A.8 (Ark.) 1971, 442 F.2d 304, on remand 363 F.Supp. 194. See, also, Martinez v. Mancusi, C.A.2 (N.Y.) 1971, 443 F.2d 921, certiorari denied 91 S.Ct. 1202, 401 U.S. 983, 28 L.Ed.2d 335; Burns v. Swenson, C.A.8 (Mo.) 1970, 430 F.2d 771, certiorari denied 92 S.Ct. 743, 404 U.S. 1062, 30 L.Ed.2d 751, rehearing denied 92 S.Ct. 1178, 405 U.S. 969, 31 L.Ed.2d 245. Prisons 12

2225. Discretion of prison officials, prisons and prisoners generally

Constitutionally protected liberty interests may be created in favor of prisoners even when the prerequisite which

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limits the discretion of prison officials is a predictive judgment based on certain guidelines rather than a specific factual finding; therefore, the fact that prison officials are required to make a predictive determination does not preclude the existence of a protected liberty interest even though the predictive determination inherently involves a large measure of discretion. Bills v. Henderson, C.A.6 (Tenn.) 1980, 631 F.2d 1287. Constitutional Law 272(2)

Discretion that a jailor may lawfully exercise in imprisoning an individual is more limited in scope than the discretion that a policeman may exercise in effectuating an arrest and much more limited than the discretion accorded a prison administrator in managing prison. Douthit v. Jones, C.A.5 (Tex.) 1980, 619 F.2d 527, rehearing denied 641 F.2d 345. Civil Rights 1376(7)

Federal courts employ policy of minimum intrusion into affairs of state prison administration, and state prison officials enjoy wide discretion in operation of state penal institutions; such deference will be tendered, however, only as to necessary or essential concomitants of incarceration, and policy of judicial restraint will not encompass any failure to take cognizance of valid constitutional claims. Williams v. Edwards, C.A.5 (La.) 1977, 547 F.2d 1206. Prisons 4(3)

Prison officials have broad discretion in area of conditions of confinement. Hill v. Estelle, C.A.5 (Tex.) 1976, 537 F.2d 214. Prisons 17(1)

2226. Duty of prison officials, prisons and prisoners generally

The Department of Corrections was under no duty to verify or otherwise review correctness of judicially issued commitment order, nor were guards under any duty to act when prisoner under their custody asserted his innocence, no matter how forcefully, and thus failure to take such actions could not form basis for federal civil rights action. Buenrostro v. Collazo, D.Puerto Rico 1991, 777 F.Supp. 128, affirmed 973 F.2d 39. Civil Rights 1098

The task of determining the rights and deprivations of state prisoners falls principally upon the prison authorities, whose judgment in the exercise of this responsibility, federal courts will not ordinarily question. Poe v. Werner, M.D.Pa.1974, 386 F.Supp. 1014. Prisons 4(2.1)

State correctional officer and deputy superintendent who were not present for alleged assault by other officers on prisoner could not be liable under § 1983, for failure to investigate assault, without showing of their personal involvement; there was no evidence that either officer or deputy superintendent created policy or custom under which assault occurred, that they were grossly negligent in the management of subordinates who caused assault, or that they failed to remedy violation when they had authority to do so, and lack of investigation itself did not result in deprivation of constitutional right. Harris v. Skinner, W.D.N.Y.2003, 2003 WL 22384794, Unreported. Civil Rights 1358

2227. Discipline and security in prison generally, prisons and prisoners generally

Prison inmate's alleged detailed conditions of placement in disciplinary segregation at state prison, including inability to participate in prison programs, educational programs, work programs, loss of contact visits, and reduction in personal items, were not so atypical and significant as to constitute a deprivation of a liberty interest, and thereby failed to trigger procedural due process protections. Lekas v. Briley, C.A.7 (Ill.) 2005, 405 F.3d 602. Constitutional Law 272(2); Prisons 13(5)

Rule giving prison officials discretion to act for any reason, but placing restraints on their options if their motive is disciplinary, creates neither a liberty nor a property interest; overruling *Abdul-Wadood v. Duckworth*, 860 F.2d 280 . Wallace v. Robinson, C.A.7 (Ill.) 1991, 940 F.2d 243, certiorari denied 112 S.Ct. 1563, 503 U.S. 961, 118

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42 U.S.C.A. § 1983

L.Ed.2d 210. Constitutional Law 272(2); Constitutional Law 277(1)

Unless an infringement upon constitutional or fundamental rights is involved, courts are reluctant to interfere with a prison's internal discipline methods. Glick v. Sargent, C.A.8 (Ark.) 1983, 696 F.2d 413. Prisons 13(10)

Maintenance of discipline in a prison is an executive function with which judicial branch ordinarily will not interfere. Wetzel v. Edwards, C.A.4 (N.C.) 1980, 635 F.2d 283. Prisons 13(10)

Prison discipline is generally a matter for prison authorities and not for the courts, but where constitutional infirmities exist, the prison deference rule will yield to the remedial power of the federal court. Thompson v. Capps, C.A.5 (Ala.) 1980, 626 F.2d 389, rehearing denied 632 F.2d 894. Prisons 13(3)

State has compelling interest in maintaining security and order in its prisons and, to extent that it furthers this interest in reasonable and nonarbitrary ways, property claims by inmates must give way. Sullivan v. Ford, C.A.5 (Fla.) 1980, 609 F.2d 197, certiorari denied 100 S.Ct. 2950, 446 U.S. 969, 64 L.Ed.2d 829. Prisons 13(2)

Prison administrators are required to deal in a constitutional manner with convicts who are violent and unruly as well as with those whose conduct is exemplary or at least peaceful, and while prison officials must have some latitude in imposing conditions reasonably necessary to control prisoners' behavior, the contributory fault of an inmate does not necessarily deprive him of his right to relief from deprivations of constitutional dimension. Wycoff v. Brewer, C.A.8 (Iowa) 1978, 572 F.2d 1260. Prisons 13(2)

Because the sentence imposed for the violations following disciplinary hearing did not include recommended loss of good time, the favorable termination rule set forth in *Heck,* which precluded a §§ 1983 action based on alleged procedural defects during an inmate's disciplinary hearing where the sanction imposed could affect credits toward release based on good-time served, unless the inmate succeeded in obtaining a favorable result, did not apply to prisoner's due process claim arising from disciplinary hearing. Shell v. Brzezniak, W.D.N.Y.2005, 365 F.Supp.2d 362. Civil Rights 1092

Genuine issues of material fact as to whether prison disciplinary action against Muslim inmate who refused to assist in preparation of pork while working in prison kitchen constituted substantial burden on inmate's religious exercise and did not further institutional interests in security or prompt food preparation, and as to whether action was reasonable in light of potential burden on prison officials and alternatives available to further penological goals, precluded summary judgment on inmate's §§1983 claim against corrections employees and officials alleging violation of right to free exercise of religion. Williams v. Bitner, M.D.Pa.2005, 359 F.Supp.2d 370. Federal Civil Procedure 2491.5

County could not be liable to detainee under § 1983 with respect to imposing discipline for possession of shank, where it was within discretion of disciplinary hearing official to find officer who found shank more credible than detainee, and there was no pattern of prison officials planting evidence in cells in order to bring false charges. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1348

Prisoner who violated prison rule and was placed in keeplock as result of disciplinary charges had no standing to bring civil rights claim alleging deprivation of his constitutional right to due process; prisoner had no liberty interest in not being confined in keeplock pending investigation into alleged disciplinary violation. Uzzell v. Scully, S.D.N.Y.1995, 893 F.Supp. 259. Constitutional Law 272(2)

Prison inmate had no claim against correctional officials for constitutional deprivation merely because they charged him with disciplinary violation. Meadows v. Miller, W.D.Tenn.1994, 855 F.Supp. 219. Civil Rights 1092

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42 U.S.C.A. § 1983

Maintaining institutional security and preserving internal order and discipline are legitimate goals which justify restrictions on prison inmates' constitutional rights, and, to achieve such goals, prison administrators must be accorded broad leeway to implement and execute policies which they believe are necessary. Griffin v. Smith, W.D.N.Y.1980, 493 F.Supp. 129. Prisons 13(2); Prisons 13(3)

Maintaining institutional security and preserving internal order and discipline are legitimate and essential goals of prison administration which may require limitation of prisoners' retained rights. Brown v. Hilton, D.C.N.J.1980, 492 F.Supp. 771. Prisons 4(1)

2228. Reasons for not remedying deprivation, prisons and prisoners generally--Generally

Genuine issue of material fact as to whether state prison officials' refusal to secure Sukkah booth in prison yard due to security concerns was merely pretext for interfering with Jewish inmate's right to freely exercise his religion precluded summary judgment in inmate's § 1983 action alleging violation of his First Amendment free exercise rights. Wares v. VanBebber, D.Kan.2004, 319 F.Supp.2d 1237. Federal Civil Procedure 2491.5

Prison officials could not be permitted to continue to inflict unconstitutional hardships on great majority of inmates because officials were incapable of remedying conditions they relied upon to justify their actions, and prisoners could not be made to suffer unconstitutional deprivations because of lack of management capability found in corrections department. Jefferson v. Southworth, D.C.R.I.1978, 447 F.Supp. 179, affirmed 616 F.2d 598, certiorari denied 101 S.Ct. 115, 449 U.S. 839, 66 L.Ed.2d 45. Prisons 12

2229. ---- Inadequate resources, reasons for not remedying deprivation, prisons and prisoners generally

Perpetuation of unconstitutional conditions of confinement cannot be excused by inadequate funding or by an allegedly contrary duty at state law. Smith v. Sullivan, C.A.5 (Tex.) 1980, 611 F.2d 1039. Prisons 4(1)

Inadequate resources can never be an adequate justification for state's depriving any person of his constitutional rights. Rhem v. Malcolm, C.A.2 (N.Y.) 1974, 507 F.2d 333, on remand 389 F.Supp. 964. Constitutional Law 82(1)

Individual or class may not be deprived of constitutional rights simply because of economic considerations, and lack of funds is not acceptable excuse for unconstitutional conditions of incarceration. Owens-El v. Robinson, W.D.Pa.1978, 442 F.Supp. 1368. Prisons 4(1)

State may not justify denial of pretrial detainee's rights for budgetary reasons. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Prisons 4(4)

Inadequate funding by legislature was no answer to existence of unconstitutional conditions in state penal institutions especially where legislature had had ample opportunity to make provision for state to meet constitutional responsibilities in area. Pugh v. Locke, M.D.Ala.1976, 406 F.Supp. 318, affirmed and remanded 559 F.2d 283, rehearing denied 564 F.2d 97, rehearing denied 564 F.2d 98, certiorari granted in part, reversed in part 98 S.Ct. 3057, 438 U.S. 781, 57 L.Ed.2d 1114, certiorari denied 98 S.Ct. 3144, 438 U.S. 915, 57 L.Ed.2d 1160 . Prisons 4(1)

2230. Juvenile offenders, prisons and prisoners generally

District of Columbia owed duty of care to delinquent youth in its custody not to act with deliberate indifference to his care and protection, a violation of which might support substantive due process claim against the District under §§ 1983; District had assumed position of the youth's legal custodian and primary caregiver, and had placed him in independent living program which constrained his liberty by limiting, among other things, where he lived and what

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he could do. Smith v. District of Columbia, C.A.D.C.2005, 413 F.3d 86, 367 U.S.App.D.C. 86. Infants 280

Juveniles transferred to county jail and detained pending trial as adults may not be subjected to devastating psychological and reprehensible physical conditions. Swansey v. Elrod, E.D.Ill.1975, 386 F.Supp. 1138. Infants 68.3

State inmate's § 1983 claim against jail officials for improperly placing him in adult facilities, rather than in youth facilities, and for failing to provide adequate education services accrued when inmate became aware of existence of his illiteracy and violent, anti-social, hardened-criminal behavior. Edwards v. Jasper County Youth Court, C.A.5 (Miss.) 2004, 94 Fed.Appx. 224, 2004 WL 764084, Unreported. Limitation Of Actions 95(15)

2231. Constitutional rights affected, prisons and prisoners generally

Courts are limited in their exercise of power in area of prison administration to deprivations which represent constitutional abuses and they cannot prohibit a given condition or treatment in prison management unless it reaches the level of an unconstitutional deprivation. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Prisons 4(2.1); Prisons 12

Alleged constitutional deprivation relating to conditions of a prisoner's confinement presented a matter cognizable under this section. Cooper v. Lockhart, C.A.8 (Ark.) 1973, 489 F.2d 308. Federal Courts 227

Prisoner had no federal constitutional right to have arresting officer or defense attorney prosecuted for alleged crimes, and thus claim seeking injunction directing such relief was not cognizable in civil rights action. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Civil Rights 1088(4); Civil Rights 1088(5); Constitutional Law 82(6.1)

Allegation that prison officials limited number of grievances allowed prisoner presented no constitutional claim to support § 1983 suit, as prisoner had no right to any grievance procedure, and right of access to courts was not compromised by any limitation on grievances. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593. Prisons 13(6)

General policies, rules, and regulations of prison did not violate constitutional rights but, rather, were designed merely to regulate the daily lives of the inmates and to preserve institutional security and challenge to the rules did not state a viable claim under this section. Allen v. Coughlin, N.D.N.Y.1981, 527 F.Supp. 1096. Civil Rights 1098

Civil rights action is a proper remedy for a state prisoner to make a constitutional challenge to the conditions of his prison life. Wilson v. Nevada Dept. of Prisons, D.C.Nev.1981, 511 F.Supp. 750. Civil Rights 1090

State inmate did not have a liberty interest in his work assignment, family visits, or housing assignment that would implicate due process concerns, for purposes of §§ 1983 claim alleging that he did not receive due process at disciplinary hearing. Nash v. Wilkinson, C.A.5 (La.) 2005, 124 Fed.Appx. 254, 2005 WL 419484, Unreported. Constitutional Law 272(2); Prisons 13(7.1)

Protections afforded by the Due Process Clause do not extend to every change in the conditions of confinement which adversely affects prisoners. Bridges v. Lee, C.A.5 (Miss.) 2005, 124 Fed.Appx. 225, 2005 WL 14991, Unreported. Constitutional Law 272(2)

2232. Cruel and unusual punishment, prisons and prisoners generally

State prisoner convicted of capital murder was not entitled to preliminary injunction or stay of execution, in §§

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1983 action challenging the lethal injection protocol as violative of the prohibition against cruel and unusual punishment; prisoner unreasonably delayed, in that he waited years to pursue any state remedy, despite knowing that he faced death by lethal injection and being aware of other legal challenges to the protocol, the Eighth Amendment did not require the use of medically optimal execution methods, and there was no showing that prisoner faced risk of harm that rose to the level of cruel and unusual punishment. Hamilton v. Jones, C.A.10 (Okla.) 2007, 472 F.3d 814. Civil Rights 1457(5)

Female prison guard's alleged solicitation of a male prisoner's manual masturbation, even under the threat of reprisal, did not present more than de minimis injury, and therefore did not give rise to a claim under the Eighth Amendment. Boxer X v. Harris, C.A.11 (Ga.) 2006, 437 F.3d 1107. Sentencing And Punishment 1554

Conditions at county jail did not pose a "substantial risk of serious harm," as required to show violation of Eighth Amendment rights of inmate who was beaten and injured by three other inmates in his cell over alleged money dispute, even if inmates were allowed to keep money in their cells, play cards and gamble, jail had history of inmate-on-inmate attacks, and jail's layout presented some difficulty in continuous observation of inmates, where inmates were segregated based on particularized factors, including kind of crime committed and potential personal conflicts, jail was not understaffed at time of attack, serious inmate-on-inmate violence was not the norm, fights that did occur were linked to no recurring specific cause, and jailers had history of punishing inmate violence. Purcell ex rel. Estate of Morgan v. Toombs County, GA, C.A.11 (Ga.) 2005, 400 F.3d 1313. Sentencing And Punishment 1537

Alleged lead contamination in water at correctional facility was not cruel and unusual punishment, for purposes of state prison inmate's § 1983 action against prison officials, where presence of lead in water was due to corrosion of water pipes, but only when water was still overnight, and inmate was told to let water run before drinking it in the morning. Carroll v. DeTella, C.A.7 (Ill.) 2001, 255 F.3d 470. Prisons 17(1); Sentencing And Punishment 1536

Evidence in § 1983 action brought by prison inmates who had been held out-of-doors while prison officials searched buildings after quelling disturbances, for four days in the summer and 17 hours in the winter, was sufficient, if believed, to show that the defendant prison officials had actual knowledge of the inmates' exposure to the elements and need for sanitation, edible food, and adequate drinking water, and that they intentionally disregarded these conditions, in violation of the Eighth Amendment. Johnson v. Lewis, C.A.9 (Ariz.) 2000, 217 F.3d 726, certiorari denied 121 S.Ct. 2215, 532 U.S. 1065, 150 L.Ed.2d 209. Civil Rights 1420

Inmate's testimony that correctional officer struck him in head and face 20 to 25 times while four other officers were restraining his limbs, after inmate complied with order to lie face down on floor without resisting efforts to restrain him, and evidence of serious injuries sustained by inmate, supported district court's conclusion that correctional officer used force maliciously and sadistically for purpose of causing inmate harm, thereby inflicting cruel and unusual punishment in violation of Eighth Amendment. Estate of Davis by Ostenfeld v. Delo, C.A.8 (Mo.) 1997, 115 F.3d 1388. Sentencing And Punishment 1548; Prisons 13(4)

Absent any definition of "physical injury" in Prison Litigation Reform Act (PLRA), which requires prisoner to make prior showing of physical injury before bringing any federal civil action, court will be guided by established Eighth Amendment standards in determining whether prisoner has sustained necessary physical injury to support claim for mental or emotional suffering, and, thus, injury must be more than de minimis, but need not be significant. Siglar v. Hightower, C.A.5 (Tex.) 1997, 112 F.3d 191. Civil Rights 1090

Prison librarian's supervisor was not deliberately indifferent toward and did not tacitly approve librarian's act of striking inmate, and, thus, supervisor was not liable to inmate in § 1983 action alleging cruel and unusual punishment, even though librarian had been admitted to psychiatric hospital for bipolar disorder due to chemical imbalance; following the hospitalization, supervisor contacted librarian's physician and was assured of fitness to

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return to work, librarian had no prior history of aggressive behavior problems at work, and supervisor intervened to stop librarian's conduct. White v. Holmes, C.A.8 (Mo.) 1994, 21 F.3d 277, rehearing denied. Civil Rights 1358

For purposes of determining tort liability under § 1983 for violation of Eighth Amendment's prohibition against infliction of cruel and unusual punishments, "punishment" has both objective and subjective component; objective component is nature of acts or practices alleged to constitute cruel and unusual punishment, and subjective component is intent with which acts or practices constituting alleged punishment are inflicted. Jackson v. Duckworth, C.A.7 (Ind.) 1992, 955 F.2d 21. Civil Rights 1090

Genuine issue of material fact existed as to whether corrections officers acted with deliberate indifference to prisoners' health or safety in transport of prisoners by using restraints during prolonged transport that were secured more tightly than usual, causing greater pain than was necessary to ensure that they were securely restrained, precluding summary judgment on prisoners' civil rights claim alleging cruel and unusual punishment under Eighth Amendment. Anderson-Bey v. District of Columbia, D.D.C.2006, 2006 WL 3579341. Federal Civil Procedure 2491.5

Pretrial detainee proceeding in forma pauperis failed to state a nonfrivolous claim upon which relief could be granted against parish sheriff under §§ 1983 by alleging that manner and timing of his evacuation from flooded prison system medical unit following a hurricane constituted cruel and unusual punishment, since detainee did not allege that sheriff personally acted with deliberate indifference to detainee's safety. Tate v. Gusman, E.D.La.2006, 459 F.Supp.2d 519. Federal Civil Procedure 2734

To state an Eighth Amendment "conditions of confinement" claim under §§ 1983, a prisoner must satisfy two prongs, in that, first, the deprivation alleged must be, objectively, sufficiently serious, in that a prison official's act or omission must result in the denial of the minimal civilized measure of life's necessities, and the second requirement, which follows from the principle that only the unnecessary and wanton infliction of pain implicates the Eighth Amendment, is that a prison official must have a sufficiently culpable state of mind, and that state of mind is one of deliberate indifference to inmate health or safety. Walker v. Johnson, E.D.Va.2006, 448 F.Supp.2d 719. Sentencing And Punishment 1532

In light of substantial questions in §§ 1983 action regarding whether, pursuant to California's actual practice in carrying out lethal-injection protocol, there was undue risk that death row inmate would still be conscious following administration of five grams of thiopental sodium, so that inmate might suffer cruel and unusual punishment from pain following injections of pancuronium bromide and potassium chloride, district court would use equitable powers to fashion the following remedy, and if prison officials declined to implement the remedy, district court would grant preliminary injunction staying the execution and hold hearing on merits of inmate's claims within 90 days: district court would ask prison officials either to either certify they would use only sodium thiopental or another barbiturate or combination of barbiturates in inmate's execution or to agree to independent verification by qualified person that inmate is unconscious before either pancuronium bromide or potassium chloride is injected. Morales v. Hickman, N.D.Cal.2006, 415 F.Supp.2d 1037, affirmed 438 F.3d 926, certiorari denied 126 S.Ct. 1314, 163 L.Ed.2d 1148. Sentencing And Punishment 1796

Court in §§ 1983 action would not issue temporary restraining order, barring administration of three drug lethal injection protocol to prison inmate, on grounds that inmate would suffer pain constituting cruel and unusual punishment under Eighth Amendment; intravenous sodium pentothal, administered in massive dose, would ensure profound unconsciousness, before lethal drugs pancuronium bromide (Pavulon) and potassium chloride were administered, while there were problems with inmate's veins caused by years of drug abuse medical experts confirmed they were adequate, and placement of medically trained observers in room next to execution chamber was acceptable compromise between need to have them available and need for them to remain anonymous. Evans v. Saar, D.Md.2006, 412 F.Supp.2d 519.

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Absent allegations regarding conditions of his confinement, arrestee who alleged that he was subjected to cruel and unusual punishment in violation of Eighth Amendment when he was incarcerated upon his arrest failed to state civil rights claim. Garcia Rodriguez v. Andreu Garcia, D.Puerto Rico 2005, 403 F.Supp.2d 174. Civil Rights 1395(6)

For purposes of screening provision of Prison Litigation Reform Act (PLRA), prisoner stated §§ 1983 claim for violation of his Eighth Amendment right to be free from cruel and unusual punishment based on deliberate indifference of corrections officer alleged to have repeatedly harassed and threatened prisoner for not being a good "snitch." David v. Hill, S.D.Tex.2005, 401 F.Supp.2d 749. Civil Rights 1395(7)

County jail officers' use of force against inmate was within scope of jail's policy for maintaining and restoring order, and thus, officers were not liable under §§ 1983 to inmate for cruel and unusual punishment; inmate had refused to return to cell as ordered, he had verbally abused officers, an officer fired two Taser gun shots rather than one continuous-trigger shot, officer decided not to fire third shot, inmate suffered only minor injury, and inmate had a history of self harm. Manier v. Cook, E.D.Wash.2005, 394 F.Supp.2d 1282. Sentencing And Punishment 1548

Correctional officer was not liable to inmate under §§ 1983 for violating Eighth Amendment prohibition against cruel and unusual punishment by failing to intervene to protect inmate from attack by another officer, where officer had no reasonable opportunity to prevent the other officer's initial blow to inmate, and thereafter attempted to intervene. Orwat v. Maloney, D.Mass.2005, 360 F.Supp.2d 146. Prisons 17(4); Sentencing And Punishment 1537

Death row inmate was not likely to suffer irreparable harm as result of state's mechanism for carrying out sentence of death by lethal injection, and thus inmate was not entitled to preliminary injunction in §§ 1983 action to delay his execution, despite inmate's contention that there was possibility that sedative used would not function properly, where state administered skeletal muscle relaxant after sedative, followed by lethal injection, chance that inmate would be conscious of any pain associated with second two drugs and of his death was less than 6/1000 of one percent, inmate selected lethal injection over constitutionally acceptable alternative of electrocution, and inmate waited over five years before raising claim. Reid v. Johnson, E.D.Va.2004, 333 F.Supp.2d 543. Civil Rights 1457(5)

Prison officials did not treat inmate in cruel and unusual manner, in violation of his Eighth Amendment rights, when they placed him on his back in five points restraint on mattress, with arms and legs secured and belt over chest, after he shoved plate of food back at guard serving it to him, causing contents to spill on to guard, and began yelling. Sadler v. Young, W.D.Va.2004, 325 F.Supp.2d 689, reversed 118 Fed.Appx. 762, 2005 WL 19486. Prisons 13(4); Sentencing And Punishment 1549

State prison inmate's § 1983 complaint, alleging that members of the lockup unit staff deprived him of food and recreation, that they gave him rotten food, reduced his ration every day, and gave him trays with food missing, and that these actions caused him to lose twenty-five pounds and caused him stomach pain and headaches, was sufficient, when inmate was given the benefit of the inferences to which he was entitled at the pleadings stage, to state a claim against the members of the lockup unit staff for violating the Eighth Amendment by depriving him of food and exercise. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Civil Rights 1395(7)

Prison inmate's claims that prison officials violated Eighth Amendment prohibition against cruel and unusual punishment, through verbal abuse, denial of medical attention after he was struck in leg with basketball, and officer's act of slamming him against wall and rubbing against him, were insufficient to support constitutional or civil rights violation; inmate's medical records showed that he was examined half an hour after basketball incident occurred and was determined to have full range of motion with no swelling or bruising, inmate's verbal abuse claims were not cognizable under § 1983 and were insufficient to show viable constitutional violation, and officer's

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alleged use of force against inmate was de minimis and insufficient to violate Constitution. Govan v. Campbell, N.D.N.Y.2003, 289 F.Supp.2d 289. Sentencing And Punishment 1546; Sentencing And Punishment 1548; Sentencing And Punishment 1554

In challenging conditions of his confinement, prisoner is in effect claiming that they constituted cruel and unusual punishment under the Eight Amendment. Baker v. Lehman, E.D.Pa.1996, 932 F.Supp. 666. Sentencing And Punishment 1532

Inmate failed to state cause of action in complaint for violation of Eighth Amendment guarantee against cruel and unusual punishment, when he alleged that he was placed in section of prison where he was denied education programs, rehabilitative programs, state pay, and access to games or television, was given limited access to showers, and was required to share one sink, one water fountain, two urinals, and four toilets with 49 other inmates; inmate was not deprived of minimal civilized measure of life's necessities. Brown v. McBride, N.D.Ind.1996, 929 F.Supp. 1132. Sentencing And Punishment 1532; Prisons 17(1)

Material issue of fact as to whether deceased inmate's constitutional rights to be free from cruel and unusual punishment and to due process were violated by city, city corporation, and city employees precluded summary judgment in administratrix's federal civil rights action arising from inmate's death. D'Angelo v. City of New York, S.D.N.Y.1996, 929 F.Supp. 129. Federal Civil Procedure 2491.5

When claim is asserted that particular conditions or treatment in prison constitute cruel and unusual punishment, § 1983 is means by which prisoners may gain redress for conditions which result in unquestioned and serious deprivations of basic human needs or for conditions which deprive prisoners of minimal civilized measure of life's necessities. Hudgins v. DeBruyn, S.D.Ind.1996, 922 F.Supp. 144. Civil Rights 1090

Prisoner alleging in civil rights action that prison official inflicted cruel and unusual punishment must prove both subjective and objective component. Walker v. Godinez, N.D.Ill.1995, 912 F.Supp. 307. Sentencing And Punishment 1532

Dirty showers which did not pose serious risk to inmate's health were not cruel and unusual punishment in violation of Eighth Amendment and could not be basis for § 1983 civil rights claim against various state prison officials. Ishaaq v. Compton, W.D.Tenn.1995, 900 F.Supp. 935. Sentencing And Punishment 1539

Analysis of Eight Amendment civil rights claim involves both subjective aspect, whether prison officials acted with sufficiently culpable state of mind, and objective factor, whether alleged wrongdoing was harmful enough to establish constitutional violation. Moyers v. Buescher, E.D.Mo.1992, 806 F.Supp. 218. Sentencing And Punishment 1532

Actions which contravene prohibition against cruel and unusual punishment guaranteed by U.S.C.A.Const. Amend. 8 may be enjoined under this section. Ahrens v. Thomas, W.D.Mo.1977, 434 F.Supp. 873, affirmed in part, modified in part on other grounds 570 F.2d 286. Civil Rights 1454

State department of corrections officials did not violate inmate's Eighth Amendment rights by distributing free tobacco and then allegedly failing to provide smoking cessation programs when prisons became smoke-free, where inmates were informed they could purchase nicotine patches or gum and were offered smoking cessation classes. Woodberry v. Simmons, C.A.10 (Kan.) 2004, 118 Fed.Appx. 362, 2004 WL 2651299, Unreported, certiorari denied 125 S.Ct. 1599, 544 U.S. 909, 161 L.Ed.2d 285. Prisons 17(1); Sentencing And Punishment 1536

State correctional officers' failure to seatbelt prisoner in van during transport to jail did not pose substantial risk of serious harm, as would support prisoner's Eighth Amendment claim based on officers' failure to insure his safety, in his action under §§ 1983 seeking to recover damages following van rollover in which he was ejected and sustained

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injuries resulting in quadriplegia; even though severity of harm should motor vehicle accident occur could be exacerbated by failure to seatbelt, risk of accident was dependent on host of factors unrelated to use of seatbelts. Dexter v. Ford Motor Co., C.A.10 (Utah) 2004, 92 Fed.Appx. 637, 2004 WL 254753, Unreported. Prisons 17(1); Sentencing And Punishment 1536

Prison official did not act maliciously, as required for excessive use of force claim under Eighth Amendment, when he allegedly pressed state prisoner's face into wall, to attempt to secure compliance of prisoner, who was arguing with him about manner in which he was conducting pat frisk; amount of force used was not significantly disproportional to need to conduct search, rather it was consistent with good faith attempt to maintain prison discipline and order. Kalwasinski v. Artuz, S.D.N.Y.2003, 2003 WL 22973420, Unreported. Prisons 13(4); Sentencing And Punishment 1548

Even if inmate did not exhaust his available administrative remedies, in his § 1983 claim that corrections official's alleged forgery of request for extension of time for inmate's disciplinary hearing resulted in inmate's continued confinement in special housing unit (SHU), no Eighth Amendment violation occurred; deprivation of being housed in SHU was not so serious as to constitute cruel and unusual punishment. Khalild v. Reda, S.D.N.Y.2003, 2003 WL 42145, Unreported. Prisons 13(5); Sentencing And Punishment 1553

Allegations by estate of prison inmate who was shot and killed by guard during riot at state prison that review board conducted an inadequate investigation failed to raise inference that former prison officials promoted a custom or pattern of inadequate investigations, or encouraged review boards to exonerate staff members who violated use of force policy as a matter of course, and thus, officials were not liable under § 1983 for alleged violation of inmate's Eighth Amendment rights. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107950, Unreported. Prisons 13(4); Sentencing And Punishment 1548

2233. Shocks the conscience test, prisons and prisoners generally

Standard of liability in civil rights action based on alleged cruel and unusual punishment with respect to operation of county jail was whether plaintiff proved exceptional circumstances and conduct on part of defendant so grossly incompetent, inadequate or excessive as to shock the conscience or to be intolerable to basic fairness. Clappier v. Flynn, C.A.10 (Wyo.) 1979, 605 F.2d 519. Civil Rights 1462

2234. Deliberate indifference standard, prisons and prisoners generally

Whether the District of Columbia's deliberate indifference to care and protection of delinquent youth in its custody, in not promulgating any standards for selecting or monitoring third parties providing independent living programs for such youths, with result that youth was placed in program run by unlicensed providers and required to live in allegedly unsafe facility with no locks on outer doors and allegedly inadequate security, was moving force behind youth's murder by unidentified third party while present in that facility was question for jury, so as to prevent grant of the District's motion for judgment as matter of law in civil rights action brought by youth's grandmother for alleged violation of his substantive due process rights. Smith v. District of Columbia, C.A.D.C.2005, 413 F.3d 86, 367 U.S.App.D.C. 86. Civil Rights 1431

Louisiana prison's maintenance of policy requiring judicial approval of elective medical procedures did not evidence deliberate indifference to rights of female prisoner seeking non-therapeutic abortion, as required to impose liability under §§ 1983; prison officials attempted to assist prisoner's compliance with policy. Victoria W. v. Larpenter, C.A.5 (La.) 2004, 369 F.3d 475. Civil Rights 1352(4)

Prison official's acting or failing to act with deliberate indifference to substantial risk of serious harm to prisoner is equivalent of recklessly disregarding that risk, for Eighth Amendment purposes. Street v. Corrections Corporation of America, C.A.6 (Tenn.) 1996, 102 F.3d 810. Sentencing And Punishment 1533

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42 U.S.C.A. § 1983

Test for "deliberate indifference" by prison officials to rights of prisoner, as will allow recovery by prisoner in federal civil rights action, is twofold; first, prisoner must demonstrate that he is incarcerated under conditions posing substantial risk of serious harm, and second, prisoner must demonstrate that defendant prison officials possessed sufficient culpable intent. Hayes v. New York City Dept. of Corrections, C.A.2 (N.Y.) 1996, 84 F.3d 614. Civil Rights 1090; Sentencing And Punishment 1533

To prove actionable violation of Eighth Amendment for harm suffered in prison, inmate must demonstrate that deprivation suffered was objectively, sufficiently serious, and must establish that prison officials had sufficiently culpable state of mind in allowing deprivation to take place; "sufficiently culpable state of mind" means being deliberately indifferent to inmate's health or safety. Wallis v. Baldwin, C.A.9 (Or.) 1995, 70 F.3d 1074. Sentencing And Punishment 1532

Deliberate indifference which will result in finding of violation of inmate's Eighth Amendment rights does not require a finding of express intent to harm, but must involve more than ordinary lack of due care for the prisoner's interests or safety; it is lower than the intentional and malicious infliction of injury and less than the degree of recklessness required for conviction of second-degree murder; official or municipality acts with deliberate indifference if its conduct or adopted policy disregards a known or obvious risk that is very likely to result in the violation of prisoner's constitutional rights. Berry v. City of Muskogee, Okl., C.A.10 (Okla.) 1990, 900 F.2d 1489. Sentencing And Punishment 1533

Former pretrial detainee had to demonstrate in civil rights suit that challenged restrictions were used intentionally by jail officials to punish detainees; intent could either be expressed or could be inferred from restrictions that were not reasonably related to legitimate governmental objective. Kincaid v. Rusk, C.A.7 (Ind.) 1982, 670 F.2d 737. Civil Rights 1092

Within context of prisoner's civil rights action against prison officials to recover for officials' alleged deliberate deprivation of prisoner's constitutional rights, term "deliberate deprivation" denotes two species of culpability: actual intent and recklessness; "actual intent" encompasses both the special intent to deprive prisoner of constitutional rights as well as general intent to perform conduct whose natural consequence is deprivation of prisoner's constitutional rights, and "recklessness" comprehends objective standard of whether officials' conduct is with such disregard of prisoner's clearly established constitutional rights that the action cannot be reasonable characterized as being in good faith. Little v. Walker, C.A.7 (Ill.) 1977, 552 F.2d 193, certiorari denied 98 S.Ct. 1507, 435 U.S. 932, 55 L.Ed.2d 530. Civil Rights 1090

Genuine issues of material fact as to whether city police officers had subjective knowledge of a pretrial detainee's highly intoxicated state and whether they acted with deliberate indifference when they left him with his hands handcuffed behind his back precluded summary judgment for the officers, even on qualified immunity grounds, in the detainee's §§ 1983 suit claiming a Due Process violation in connection with injuries sustained in a fall. Carroll v. City of Quincy, D.Mass.2006, 441 F.Supp.2d 215. Federal Civil Procedure 2491.5

In cases where a prisoner is challenging prison conditions in violation of the Eighth Amendment, the subjective-requirement analysis should focus on whether the prison official acted with deliberate indifference to inmate health or safety, not whether defendants were motivated by a malicious and sadistic intent to harm prisoner. Jones v. Garcia, S.D.Cal.2006, 430 F.Supp.2d 1095. Sentencing And Punishment 1533

Material issues of fact, as to whether jail commander ratified or encouraged practice of "pencil-whipping," involving making false entries on records showing observations of cell occupants that were not actually made, precluded summary judgment that commander was not liable in §§ 1983 action alleging deliberate indifference resulting in substantive due process violation of rights of detainee who hanged himself in cell. Estate of Abdollahi v. County of Sacramento, E.D.Cal.2005, 405 F.Supp.2d 1194. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

Prison official, who never had any direct or indirect contact with inmate and had no involvement regarding his housing assignments and classification and who had no knowledge that inmate ever complained to any correctional officer that he feared for his safety or requested orally or in writing to be placed into protective custody, could not be held liable to inmate under §§ 1983 for deliberate indifference to inmate's safety in violation of the Eighth Amendment; there was no evidence that official was subjectively aware that inmate faced a substantial risk of serious harm and no evidence of a longstanding and well-documented risk of inmate attacks, nor evidence that official was exposed to information concerning the risk. Thompson v. Spears, S.D.Fla.2004, 336 F.Supp.2d 1224, affirmed 129 Fed.Appx. 497, 2005 WL 901871. Civil Rights 1358

In order to establish a claim for deliberate indifference in a civil rights lawsuit under the Fourteenth Amendment, a plaintiff must show that he was detained under conditions posing a substantial risk of serious harm, and a prison or jail official knew of, and disregarded, an excessive risk to his health or safety; if the jail official knew of the risk to the plaintiff's safety and responded reasonably, the plaintiff's claim fails, even if the harm was not ultimately averted. Layman v. Alexander, W.D.N.C.2003, 294 F.Supp.2d 784. Constitutional Law 262

To show "deliberate indifference" by prison official, it is enough that official acted or failed to act despite his knowledge of substantial risk of serious harm; deliberate indifference standard reflects § 1983 standard, requiring both deprivation and intent, nuanced to fit Eighth Amendment's requirements. Velazquez-Martinez v. Colon, D.Puerto Rico 1997, 961 F.Supp. 362. Civil Rights 1090

To state claim under § 1983 for violation of rights afforded by Fourteenth Amendment, inmate must allege facts sufficient to support his claim that prison officials were deliberately indifferent to those rights. Herrera v. Scully, S.D.N.Y.1993, 815 F.Supp. 713. Civil Rights 1395(7)

Deliberate indifference to deprivation of state prison inmate's rights is actionable under this section where it can be shown that prison's authorities manifested an actual intent to so deprive him of his rights, or recklessness in ignoring threats. Burr v. Duckworth, N.D.Ind.1982, 547 F.Supp. 192, affirmed 746 F.2d 1482. Civil Rights 1090

Since state prison officials took steps to correct conditions in which inmate was allegedly not given enough time to eat his meals and was forced to eat spoiled food, they did not act with deliberate indifference to inmate's health or safety, as required for inmate to prevail on his §§ 1983 claim alleging Eighth Amendment violation. Strope v. McKune, C.A.10 (Kan.) 2005, 131 Fed.Appx. 123, 2005 WL 768781, Unreported, certiorari denied 125 S.Ct. 2916, 162 L.Ed.2d 304. Sentencing And Punishment 1540

Requiring state inmate to lie in prone position during emergency situations did not rise to level of Eighth Amendment violation supporting inmate's deliberate indifference claim under §§ 1983. Perry v. Kramer, C.A.9 2005, 121 Fed.Appx. 191, 2005 WL 81176, Unreported. Prisons 13(4); Sentencing And Punishment 1550

2235. Concealment of misconduct, prisons and prisoners generally

Fact that municipal jail guards sought to conceal incident during which they forced female inmate to perform striptease in front of other inmates and male and female guards did not insulate municipality from § 1983 liability based on its deliberate indifference to constitutional rights of inmate; fact that municipality's investigative committee charged 14 guards with aiding and abetting sexual misconduct and charged several more guards and supervisors with negligence indicated that misconduct was not confined to small group of rogue employees acting surreptitiously, and, whatever participants did to cover up forced striptease, series of similar incidents that preceded it was open and notorious. Daskalea v. District of Columbia, C.A.D.C.2000, 227 F.3d 433, 343 U.S.App.D.C. 261. Civil Rights 1352(4)

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42 U.S.C.A. § 1983

2236. Negligence, prisons and prisoners generally

Municipalities may not be held liable under § 1983 for mere negligence in oversight, although prison officials may not ignore obvious dangers to inmates. Scott v. Moore, C.A.5 (Tex.) 1996, 85 F.3d 230, rehearing granted, opinion vacated, on rehearing 114 F.3d 51. Civil Rights 1090

While mere inadvertence or negligence on the part of prison officials cannot support a prisoner's civil rights action raising U.S.C.A.Const. Amend. 8 issues, deliberate indifference regardless of how evidenced, either by actual intent or recklessness, will provide a sufficient foundation. Little v. Walker, C.A.7 (Ill.) 1977, 552 F.2d 193, certiorari denied 98 S.Ct. 1507, 435 U.S. 932, 55 L.Ed.2d 530. Civil Rights 1090

Claim by prison inmate that prison officials were negligent as to their statutory responsibilities under Florida law did not state cause of action under § 1983. Raske v. Dugger, M.D.Fla.1993, 819 F.Supp. 1046. Civil Rights 1098

Courts must be responsive to complaints by prison inmates of conditions of incarceration which overstep bounds of federal constitutional limitations and where negligence of prison warden leads to violation of constitutional rights of prisoners, it must be assumed that under the proper circumstances this section provides a remedy. LeBlanc v. Foti, E.D.La.1980, 487 F.Supp. 272. Civil Rights 1090

2237. Retaliation generally, prisons and prisoners generally

Prisoner stated First Amendment retaliation claim based on allegation that he was punished for filing a grievance concerning the conditions of his imprisonment. U.S.C.A. Const.Amend. 1; 28 U.S.C.A. §§ 1915A; Boxer X v. Harris, C.A.11 (Ga.) 2006, 437 F.3d 1107. Civil Rights 1395(7)

District court abused its discretion, for purpose of consideration of prisoner's civil rights complaint under statute that governed proceedings in forma pauperis, in concluding that there was no arguable basis that state prison officials retaliated against prisoner on allegations that prisoner complained about his placement in administrative segregation and threatened to file suit, prison official told him that if he did not stop complaining he would be transferred to long-term administrative segregation at another facility, prisoner did not stop protesting, and he was subsequently transferred. Fogle v. Pierson, C.A.10 (Colo.) 2006, 435 F.3d 1252. Federal Civil Procedure 2734

Temporal proximity alone may be significant enough to constitute indirect evidence of a causal connection so as to create an inference of retaliatory motive in an inmate's § 1983 action against a corrections officer. Muhammad v. Close, C.A.6 2004, 379 F.3d 413. Civil Rights 1404; Civil Rights 1420

In order to prevail on retaliation claims brought under § 1983, prisoner had the burden of showing, first, that he engaged in constitutionally protected conduct and, second, that the conduct was a substantial or motivating factor for the adverse actions taken by prison officials; if prisoner made these showings, prison officials could evade liability if they demonstrated that they would have disciplined or transferred prisoner even in the absence of the protected conduct. Bennett v. Goord, C.A.2 (N.Y.) 2003, 343 F.3d 133. Civil Rights 1404

A prisoner alleging retaliation in violation of his civil rights must show (1) constitutionally protected conduct, (2) an adverse action by prison officials sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the exercise of his constitutional rights and the adverse action taken against him. Mitchell v. Horn, C.A.3 2003, 318 F.3d 523, on remand 2005 WL 1060658. Civil Rights 1090

When inmate asserts § 1983 claim alleging that prison officials retaliated against him due to his exercise of

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constitutionally protected rights, inmate bears initial burden of proving that his constitutionally protected conduct was a substantial or motivating factor in the decision to discipline him; once inmate makes this demonstration, prison officials may still prevail by proving that they would have made the same decision absent the protected conduct for reasons reasonably related to a legitimate penological interest. Rauser v. Horn, C.A.3 (Pa.) 2001, 241 F.3d 330. Civil Rights 1404

Prisoner was precluded from bringing claim against guard, based upon alleged retaliation for his filing grievance against guard; punishment had been based on actual violation of prison rules against gambling, and there was support for legitimacy of complaint based upon testimony of other members of football pool which prisoner had allegedly organized and of confidential informants. Earnest v. Courtney, C.A.8 (Ark.) 1995, 64 F.3d 365. Civil Rights 1092

Genuine issue of material fact existed as to whether corrections officers attempted to chill prisoners' participation in pending civil lawsuit against officers by subsequently applying restraints to prisoners during transport in manner calculated to cause discomfort and pain for numerous hours that trips lasted, and denying food, water, timely dispensation of medicine, and toilets, precluding summary judgment on prisoners' First Amendment civil rights claims of denial of access to courts and denial of redress of grievances. Anderson-Bey v. District of Columbia, D.D.C.2006, 2006 WL 3579341. Federal Civil Procedure 2491.5

Denial of food during bus ride that lasted some 10 to 15 hours was insufficiently serious to state stand-alone cruel and unusual punishment civil rights claim under Eighth Amendment, especially where prisoners did not identify any serious harm suffered as result. Anderson-Bey v. District of Columbia, D.D.C.2006, 2006 WL 3579341. Sentencing And Punishment 1540

Corrections officer's alleged nasty remark to state prisoner concerning his litigious proclivities did not rise to the level of retaliation, for purposes of prisoner's retaliation claim under the First Amendment, in civil rights action under §§ 1983 alleging that he was denied needed pain medication in retaliation for two lawsuits he had previously brought against DOCS staff members, where there was no evidence that officer ever had any medication in his possession, or that he had the ability to procure prisoner's medication for him. Davidson v. Bartholome, S.D.N.Y.2006, 460 F.Supp.2d 436. Prisons 17(2)

Inmate's filing of grievance was not substantial or motivating factor in his suspension from prison shop, so as to support his retaliation claim against prison employees; inmate's initial removal from the shop occurred prior to his filing of the grievance, and evidence indicated that the refusal to authorize inmate's return to the shop was based on finding that he was a security risk, rather than on his pursuit of the grievance. Bussey v. Phillips, S.D.N.Y.2006, 419 F.Supp.2d 569. Prisons 13(6)

Detainee failed to sufficiently state a retaliation claim against jail where he failed to identity the act or acts claimed to have constituted retaliation, identify what he reported, and identify to whom he reported. Glisson v. Sangamon County Sheriff's Dept., C.D.Ill.2006, 408 F.Supp.2d 609. Civil Rights 1395(6)

For purposes of screening provision of Prison Litigation Reform Act (PLRA), inmate stated claim of retaliation under §§ 1983 against corrections officer who, on the very day inmate said he did not want to work as prison informant or "snitch," verbally threatened him, forced him to strip and be subjected to body cavity search, pushed him over, and denied him his medication who repeatedly came to his cell while he was in solitary confinement and threatened him with physical abuse for failing to provide names of prison employees involved in drug trafficking, and who rifled through his mail, took possession of his property, and filed two grievances against him in twelve-day period. David v. Hill, S.D.Tex.2005, 401 F.Supp.2d 749. Civil Rights 1395(7)

Corrections officer's alleged retaliatory planting of evidence and retaliatory filing of misbehavior report against prisoner, after prisoner filed grievance alleging sexual assault by officer, was in violation of prisoner's civil rights

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under First and Fourteenth Amendments, since prisoner had constitutional right of access to courts and to petition government for redress of grievance and prisoner provided circumstantial evidence of officer's retaliatory motives. Rodriguez v. McClenning, S.D.N.Y.2005, 399 F.Supp.2d 228. Prisons 4(5)

Prison officials established a proper basis, in inmate's disciplinary infractions, for inmate's removal from inmate liaison committee, and thus officials were not liable to inmate under §§1983 for removing him from committee in retaliation for his protected First Amendment conduct of making complaints to prison and church officials while incarcerated. Gonzalez v. Narcato, E.D.N.Y.2005, 363 F.Supp.2d 486. Constitutional Law 90.1(1.3); Prisons 13(7.1)

Genuine issues of material fact regarding motivations of prison librarian in denying prisoner timely access to binder in order to bind petition for writ of certiorari precluded summary judgment on prisoner's retaliation claim under §§ 1983. Phillips v. Hust, D.Or.2004, 338 F.Supp.2d 1148. Federal Civil Procedure 2491.5

Inmate's allegation, that he was retaliated against numerous times after he filed a grievance against a guard who showed him a racially insensitive drawing, failed to state a claim upon which relief could be granted; it was unclear that the incidents related to the conduct underlying the grievance, and the inmate's allegations lacked specificity and did not appear to rise to the level of a constitutional violation. Graves v. North Dakota State Penitentiary, D.N.D.2004, 325 F.Supp.2d 1009, affirmed 2006 WL 1343223. Civil Rights 1395(7)

Prisoner alleging First Amendment retaliation claim has the burden of showing by a preponderance of the evidence that (1) he was engaging in activity protected by the First Amendment and (2) his activity was one of the reasons for defendants' decision to take action against him; if prisoner can meet that standard, burden of persuasion shifts to the defendants to prove by a preponderance of the evidence that they would have taken the same action anyway. Johnson v. Kingston, W.D.Wis.2003, 292 F.Supp.2d 1146. Civil Rights 1404; Civil Rights 1420

Prisoner stated legally viable § 1983 claim against corrections officials for retaliating against him for his involvement in other lawsuits against prison employees; complaint chronicled a series of events, including prisoner's transfer and each defendant's involvement in that transfer, and alleged that prisoner had suffered from ongoing retaliation for his participation in other civil suits, and although prisoner did not state specifically that the transfer was retaliatory, such claim could be inferred from the broad language of the complaint. Johnson v. Kingston, W.D.Wis.2003, 292 F.Supp.2d 1146. Civil Rights 1395(7)

To state § 1983 claim for retaliatory treatment, prisoner's complaint against prison officials need only allege a chronology of events from which retaliation may be inferred. Baltoski v. Pretorius, N.D.Ind.2003, 291 F.Supp.2d 807. Civil Rights 1395(7)

In order to state a prima facie claim under § 1983 for retaliatory conduct in a prison context, a plaintiff must advance non-conclusory allegations establishing that (1) conduct at issue was protected, (2) defendants took adverse action against plaintiff, and (3) there was a causal connection between the protected activity and the adverse action--in other words, that the protected conduct was a substantial or motivating factor in the prison officials' decision to take action against plaintiff. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1090

In context of a prison inmate's § 1983 claim for retaliatory conduct, if alleged conduct was taken for both proper and improper reasons, then state action may be upheld if the action would have been taken based on the proper reasons alone. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1090

In inmate's § 1983 complaint alleging that corrections officials retaliated against him for filing grievances, any violation of inmate's rights under New York statute prohibiting disciplining of inmates for raising grievances did not necessarily state a claim for a constitutional violation, as required in § 1983 claim. Gill v. Hoadley,

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42 U.S.C.A. § 1983

N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1092

Inmate's § 1983 complaint, alleging that corrections officials retaliated against him for filing grievances, did not warrant federal court exercise of pendent jurisdiction over state claims based on violation of inmate's rights under New York statute prohibiting disciplining of inmates for raising grievances. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Federal Courts 15

In general, a prisoner may establish retaliation by demonstrating that the prison official's actions were the result of his having filed a grievance concerning the conditions of his imprisonment; the prisoner must, however, come forward with more than "general attacks" upon a defendant's motivations and must produce affirmative evidence of retaliation from which a jury could find that plaintiff had carried his burden of proving the requisite motive. Pate v. Peel, N.D.Fla.2003, 256 F.Supp.2d 1326. Civil Rights 1092

Only those retaliatory acts that are likely to chill a person of ordinary firmness from continuing to engage in activity protected by the First Amendment are actionable under § 1983; on the other hand, deprivations that are not sufficiently serious to constitute a due process violation may be sufficient to constitute a First Amendment violation, as different considerations come into play. Rivera v. Goord, S.D.N.Y.2003, 253 F.Supp.2d 735. Constitutional Law 82(3)

Where an inmate has violated an actual prison rule, no retaliation claim can be stated under § 1983 for a resulting disciplinary action. Williams v. Manternach, N.D.Iowa 2002, 192 F.Supp.2d 980. Civil Rights 1092

Inmate, in his § 1983 action, sufficiently pleaded facts to support his claims that prison officials retaliated against him, and conspired to retaliate against him, by imposing disciplinary sanctions for his "jailhouse lawyering" activities, such that dismissal of complaint was not warranted; pleadings did not allege whether inmate had actually committed prison rule violations, as would defeat retaliation claim. Williams v. Manternach, N.D.Iowa 2002, 192 F.Supp.2d 980. Civil Rights 1395(7); Conspiracy 18

Acts taken against prisoner in retaliation for exercise of constitutional right can state claim under § 1983, even when retaliatory acts do not themselves violate constitutional right. Thomas v. Hill, N.D.Ind.1997, 963 F.Supp. 753. Civil Rights 1090

Inmate's claim that corrections officer issued inmate false disciplinary ticket to prevent inmate from seeking redress for earlier assault by corrections officers, in violation of the First Amendment, failed to state claim for retaliation under civil rights statute where inmate failed to allege or show how false disciplinary ticket prevented him from pursuing First Amendment rights to seek redress from government. Husbands v. McClellan, W.D.N.Y.1997, 957 F.Supp. 403, motion to amend denied 990 F.Supp. 214. Civil Rights 1395(7)

State prisoner's failure to allege any facts supporting his retaliation assertions, other than fact that certain events followed certain other events, defeated his § 1983 claim asserting that prison officials took unconstitutional actions based on desire to retaliate against him for his activism in procuring vocational rehabilitation classes and building access for handicapped inmates and for his activities as jailhouse lawyer. Garrett v. Angelone, W.D.Va.1996, 940 F.Supp. 933, affirmed 107 F.3d 865. Civil Rights 1395(7)

Prison officials were not entitled to qualified immunity from prisoner's claim of filing of disciplinary charge in retaliation for his complaints about prison conditions. Geder v. Godinez, N.D.Ill.1995, 875 F.Supp. 1334. Civil Rights 1376(7)

Inmate alleging that prison officials retaliated against him was required, in response to interrogatory, to identify lawsuits alleged in his § 1983 complaint to have been reason for officials' alleged retaliation, where complaint and exhibits were devoid of such information. Davidson v. Goord, W.D.N.Y.2003, 215 F.R.D. 73, appeal denied 259

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42 U.S.C.A. § 1983

F.Supp.2d 238. Federal Civil Procedure 1502

Prisoner could not establish causal link between his prior lawsuit against prison official and the official's decision to transfer him to restricted housing unit (RHU), as required to show unlawful retaliation under §§ 1983, where prisoner's suit against official was decided several years earlier. Sims v. Vaughn, C.A.3 (Pa.) 2006, 189 Fed.Appx. 139, 2006 WL 2038748, Unreported. Civil Rights 1095

Complaint supported state inmate's §§ 1983 retaliation claim against investigator for state corrections department, given inmate's allegations that investigator issued rule violation report (RVR) against inmate in retaliation for inmate's conduct in sending letters critical of prison and prison officials to family members of prisoner who committed suicide, that inmate would have been allowed to return to general prison population had RVR not been issued, and that RVR did not issue for more than one month after inmate admitted violation, and issued only after local newspaper published article quoting anonymous inmate. Cressionnie v. Hample, C.A.5 (Miss.) 2006, 184 Fed.Appx. 366, 2006 WL 1582714, Unreported. Civil Rights 1092

Inmate's conjecture that since he alone was punished for violating prison regulations, prison officials and correctional officers must have been retaliating for filing grievance against a prison guard was insufficient to sustain his burden at summary judgment in §§ 1983 action. Irby v. Siedschlag, C.A.7 (Wis.) 2005, 160 Fed.Appx. 499, 2005 WL 3479210, Unreported. Federal Civil Procedure 2491.5

State inmate's assertion that corrections officer retaliated against him and conspired with others to retaliate against him because inmate ended affair with her did not state actionable claim of retaliation or conspiracy under §§ 1983. Johnson v. Jones, C.A.8 (Ark.) 2005, 132 Fed.Appx. 97, 2005 WL 1220371, Unreported. Civil Rights 1098; Conspiracy 7.5(1)

Prisoner who sued state prison officials and employees failed to establish that actions purportedly taken in retaliation for his conduct would have been sufficient to deter person of ordinary firmness from exercising his constitutional rights, as required to maintain First Amendment retaliation claim; although prisoner's daily caloric intake was allegedly reduced, he did not suffer any detrimental effects, and search of prisoner's cabinet constituted minimal intrusion in light of security checks. Branch v. Russian, M.D.Pa.2005, 2005 WL 1137879, Unreported. Prisons 4(7)

State inmate failed to assert §§ 1983 claim for retaliation against prison officials when he did not allege that officials retaliated against him for filing prison grievance, filing his district court action, or performing any other protected act, and did not allege that his constitutional rights were chilled by officials, in that inmate was able to timely pursue his prison grievance through the highest level and timely file his action in district court. Perry v. Kramer, C.A.9 2005, 121 Fed.Appx. 191, 2005 WL 81176, Unreported. Civil Rights 1092; Civil Rights 1395(7)

Prisoner stated valid claim of retaliation under § 1983 based on allegations that prison doctor revoked his necessary medical rehabilitative treatment because he filed a grievance against prison security personnel; allegations showed a causal connection between the constitutionally protected activity of filing a grievance and the adverse action. Williams v. Fisher, S.D.N.Y.2003, 2003 WL 22170610, Unreported. Civil Rights 1395(7)

Absent evidence that state prison inmate's protected conduct of filing prison grievance was a "but for" cause of his placement in temporary lockup, inmate could not prove retaliation in violation of civil rights laws; inmate's mere speculation that prison employee retaliated against him for filing a complaint against another employee was insufficient to undermine prison employee's explanation for placing him in lockup, and evidence showed that employee would have placed inmate in lockup regardless of whether the other employee knew of the complaint against him. Charles v. Reichel, C.A.7 (Wis.) 2003, 67 Fed.Appx. 950, 2003 WL 21377500, Unreported. Civil Rights 1092

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42 U.S.C.A. § 1983

State prisoner's § 1983 complaint stated claim for retaliatory transfer; complaint alleged chronology of events from which causal connection between protected speech and adverse action could plausibly be inferred. Soto v. Iacavino, S.D.N.Y.2003, 2003 WL 21281762, Unreported. Civil Rights 1395(7)

Prison inmate sufficiently stated claim of retaliation, in violation of his First Amendment right to redress of grievances, against prison officials by alleging that prison officials shook down his cell "in retaliation of my complaining" about being denied a shower and "my filing law suits and grievances." Walker v. Page, C.A.7 (Ill.) 2003, 66 Fed.Appx. 52, 2003 WL 21018002, Unreported. Civil Rights 1395(7)

Prison inmate who alleged that he had been transferred and his property confiscated in retaliation for his actions in filing lawsuits failed to show that the transfer would not have occurred but for his actions in filing lawsuits, as required to recover in § 1983 action based on alleged retaliation. Eaton v. Dooley, C.A.8 (S.D.) 2000, 230 F.3d 1362, Unreported. Civil Rights 1095

2238. Totality of circumstances considered, prisons and prisoners generally

Where constitutional deprivations are established, either in specific instances or by the totality of conditions within a penal institution, the federal courts may, and must, if the issue is appropriately presented, intervene. Smith v. Sullivan, C.A.5 (Tex.) 1980, 611 F.2d 1039. Prisons 4(2.1)

2239. Isolated cases, prisons and prisoners generally

To establish "episodic act or omission" jail condition claim, detainee must establish only that due process violation complained of was done with subjective deliberate indifference to that detainee's constitutional rights. Scott v. Moore, C.A.5 (Tex.) 1997, 114 F.3d 51. Prisons 4(4)

Former prosecutor for Puerto Rico Department of Justice (PRDOJ) stated claim for First Amendment retaliation under §§ 1983 by alleging he was fired in retaliation for protesting 24-hour work shifts. Calderon-Garnier v. Sanchez-Ramos, D.Puerto Rico 2006, 439 F.Supp.2d 229. Civil Rights 1395(8)

Pretrial detainee did not state claim for violation of equal protection rights by alleging isolated incident of bigotry at correctional institution without reference to other groups in institution; pretrial detainee did not allege that other Jews either were or being denied certain rights that were offered to others at institution. Messina v. Mazzeo, E.D.N.Y.1994, 854 F.Supp. 116. Civil Rights 1395(6)

2240. Arbitrary or unreasonable deprivations, prisons and prisoners generally

Louisiana prison's policy of requiring judicial approval of elective medical procedures was reasonably related to legitimate penological interests, and thus did not violate Fourteenth Amendment rights of female prisoner seeking non-therapeutic abortion; policy helped maintain inmate security, avoid prison liability, and conserve prison resources. Victoria W. v. Larpenter, C.A.5 (La.) 2004, 369 F.3d 475. Constitutional Law 272(2); Prisons 17(2)

Judicial interference with prison administration should be avoided whenever possible and prison regulations sustained unless they are unreasonable and arbitrary. Sullivan v. Ford, C.A.5 (Fla.) 1980, 609 F.2d 197, certiorari denied 100 S.Ct. 2950, 446 U.S. 969, 64 L.Ed.2d 829. Prisons 4(2.1)

Where prisoner regulations are neither unreasonable nor arbitrary, federal courts will not interfere with administration of state prisons. Hill v. Estelle, C.A.5 (Tex.) 1976, 537 F.2d 214. Prisons 4(3)

State prisoner's proper action to contest the calculation of a release date in federal court is a habeas corpus petition

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rather than a § 1983 action. Mitchell v. Department of Corrections, M.D.Pa.2003, 272 F.Supp.2d 464. Civil Rights 1311

2241. Conspiracy, prisons and prisoners generally

Correctional officer was not liable to inmate under §§ 1983 for conspiring with another officer to violate Eighth Amendment prohibition against cruel and unusual punishment by physically attacking inmate, absent evidence that officer knew of and participated in the other officer's plan to enter inmate's cell to confront and assault him. Orwat v. Maloney, D.Mass.2005, 360 F.Supp.2d 146. Conspiracy 7.5(2)

Inmate's allegations regarding acts of retaliation prison employees took against him after he filed state court action, including two cell fires, his transfer to another prison, and "bogus" misbehavior reports, were sufficient to state claim for conspiracy under §§1983. Hernandez v. Goord, S.D.N.Y.2004, 312 F.Supp.2d 537. Conspiracy 18

Prisoner did not state claim for civil rights conspiracy against public defender based on mere assumption that public defender must have conspired with prosecutor to obtain his conviction. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Conspiracy 18

Prosecuting attorneys and prison officials did not conspire to violate constitutional rights of inmate, by providing false information regarding details of crime and denying his requests for work release; no constitutional rights were violated, and in any event conclusory allegations regarding conspiracy did not prove required meeting of minds. Romer v. Morgenthau, S.D.N.Y.2000, 119 F.Supp.2d 346. Conspiracy 7.5(2)

2242. Supervisory personnel, prisons and prisoners generally

Mere linkage in the prison chain of command is insufficient to implicate a state commissioner of corrections or a prison superintendent in a § 1983 claim. Richardson v. Goord, C.A.2 (N.Y.) 2003, 347 F.3d 431. Civil Rights 1358

Inmate could not recover against superintendent of correctional facility and director of State Department of Corrections under § 1983 for corrections officers' alleged use of excessive force, absent evidence that officials were deliberately indifferent or personally involved in incident, or had tacitly authorized alleged misconduct. Burgess v. Moore, C.A.8 (Mo.) 1994, 39 F.3d 216, rehearing and suggestion for rehearing en banc denied. Civil Rights 1358

The personal involvement of a supervisory prison official, as element for § 1983 liability to an inmate, may be shown by evidence that: (1) the defendant participated directly in the alleged constitutional violation; (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong; (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom; (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts; or (5) the defendant exhibited deliberate indifference to the rights of inmates by failing to act on information indicating that unconstitutional acts were occurring. Durran v. Selsky, W.D.N.Y.2003, 251 F.Supp.2d 1208. Civil Rights 1358

Prison superintendent could not held liable under § 1983 for Eighth Amendment violation arising out of guard's alleged assault of inmate, absent indication that superintendent was personally involved in incident, or had knowledge of, or reason to have knowledge of, any danger to inmate prior to incident, or that it was custom or practice at prison to deprive inmates of their rights. Torres v. Mazzuca, S.D.N.Y.2003, 246 F.Supp.2d 334. Civil Rights 1358

Affirmative link between supervisor's action or inaction and alleged constitutional violation must constitute

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supervisory encouragement, condonation or acquiescence, or gross negligence amounting to deliberate indifference to support claim for supervisory liability under §§ 1983. Collins v. Graham, D.Me.2005, 377 F.Supp.2d 241. Civil Rights 1355

Correctional facility supervisory officials were not liable to inmate under §§ 1983 in their individual capacities for failing to prevent or intervene in corrections officers' alleged retaliatory issuance of a misbehavior report; although inmate had complained to officials about various matters, most of his complaints did not involve officers in question, his complaints about those officers did not allege retaliatory activity, officials took proper steps to investigate and properly handle inmate's complaints, and he was afforded right to appeal misbehavior report, which led to a reversal. Withrow v. Donnelly, W.D.N.Y.2005, 356 F.Supp.2d 273. Civil Rights 1358

Change in state prisoner's security status after she refused to make admissions required for participation in sex offender treatment program did not result in atypical and significant hardships, and thus were not so severe as to amount to compelled self-incrimination, even though change resulted in restrictions on her phone use, prevented her from keeping refrigerator and cooking supplies in her cell, prevented her from receiving clearance to work outside confines of prison, and prevented her eligibility for transfer to prison located closer to her friends and family. Wolfe v. Pennsylvania Dep't of Corrections, E.D.Pa.2004, 334 F.Supp.2d 762. Criminal Law 393(1); Prisons 13(5)

In lawsuit under § 1983 alleging that supervisor violated prisoner's Eighth Amendment rights, estate and survivors of deceased prisoner failed to show that supervisor was deliberately indifferent to substantial risk that prisoner would attempt to commit suicide, even though supervisor was subjectively aware of prisoner's suicidal state; supervisor was not aware that corrections officer had ordered prisoner to be given regular blanket and placed in hard lockdown cell rather than rubber room and supervisor was not aware that officer was not conducting required periodic checks. Estate of Sisk v. Manzanares, D.Kan.2002, 262 F.Supp.2d 1162. Civil Rights 1358; Prisons 17(2); Sentencing And Punishment 1547

County corrections supervisor was subject to supervisory liability under § 1983 based on acts of his subordinates, which resulted in inmate's death, when supervisor instructed subordinates to control inmate by force if necessary, supervisor saw two officers enter inmate's cell and heard banging and thuds coming from cell while officers were beating inmate, and also felt vibrations from beating and heard inmate moaning and crying, supervisor testified that he believed subordinates were using excessive force against and inflicting physical injury upon inmate, supervisor testified that he did not act to stop beating, and supervisor acceded to one subordinate's suggestion that no injury report be filed and failed to check immediately on inmate's medical condition; such course of conduct was, at minimum, gross negligence in violation of supervisor's duty to protect inmates from foreseeable risks of harm. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Civil Rights 1358

Pro se inmate's claims against prison officials that his removal from sex offender treatment program and accompanying reduction in privileges and prejudice to his chances for parole violated his due process rights, and that officials' failure to provide adequate law library and adequate legal assistance violated his constitutional right of access to the courts, failed to state a claim under § 1983. Pagel v. Utah State Prison, C.A.10 (Utah) 2003, 76 Fed.Appx. 259, 2003 WL 22222210, Unreported, certiorari denied 124 S.Ct. 1425, 540 U.S. 1186, 158 L.Ed.2d 92, rehearing denied 124 S.Ct. 2199, 541 U.S. 1057, 158 L.Ed.2d 759. Civil Rights 1395(7)

Inmate did not state cognizable Eighth Amendment claim against Kansas Department of Correction employees and health care providers alleging his civil rights were violated under § 1983 by the demonstrated deliberate indifference to his serious medical condition; inmate was not barred from seeking medical treatment, and abundant evidence demonstrated he obtained medical treatment for his needs. Baker v. Simmons, C.A.10 (Kan.) 2003, 65 Fed.Appx. 231, 2003 WL 21008830, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Prisoner could not maintain civil rights suit against Commissioner of State Department of Correctional Services

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absent any allegation that Commissioner was personally involved in constitutional violations arising from taking blood sample from prisoner. Zaire v. Barringer, N.D.N.Y.2003, 2003 WL 57918, Unreported, subsequently affirmed 108 Fed.Appx. 689, 2004 WL 2029986. Civil Rights 1358

2243. Discriminatory treatment, prisons and prisoners generally--Generally

Inmate sufficiently pleaded equal protection violations, based on his treatment as a "lifer," to state a claim, and therefore dismissal of his complaint in his § 1983 action against prison officials was inappropriate; facts pleaded by inmate, asserting disparate treatment of "lifers" as to jobs and level advancements, as well as that he had been reclassified so as to be barred from prompt reinstatement to such jobs or level status by the quotas imposed on "lifers," sufficiently pleaded that "lifers" were treated differently from other inmates, and that discriminatory intent could be inferred from the imposition of such quotas. Williams v. Manternach, N.D.Iowa 2002, 192 F.Supp.2d 980 . Civil Rights 1395(7)

Inmate failed to state § 1983 claim for violation of equal protection against officials, of county and of State Department of Corrections, and county by alleging merely that inmates at Department intake center were afforded different privileges than inmates at other Department institutions; inmate did not allege that he was personally singled out for disparate treatment. Canell v. Bradshaw, D.Or.1993, 840 F.Supp. 1382, affirmed 97 F.3d 1458. Civil Rights 1395(7)

Courts will not interfere with uniformly applied prison regulations which are designed to achieve discipline and which are indispensable to the orderly operation of state penal institutions. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Prisons 4(2.1)

State prisoner's allegations that other prisoners received more favorable treatment than he received did not present constitutional issue. Fowler v. Graham, D.C.S.C.1979, 478 F.Supp. 90. Prisons 13(1)

2244. ---- Racial discrimination, discriminatory treatment, prisons and prisoners generally

Even though black prisoner may have received rather harsh punishment for apparently trivial offenses, where punishment he received was not unusual and was administered in nondiscriminatory manner and black prisoner posed disciplinary problem to institution, black prisoner who brought civil rights action against warden was not entitled to relief from punishment. Johnson v. Wolff, C.A.8 (Neb.) 1974, 501 F.2d 407. Civil Rights 1092

Inmate failed to state § 1983 and § 1985(3) claims against sentencing judge, inmate's appellate and post-conviction counsel, and clerk of court, by alleging that inmate was treated more harshly than white defendants because he was black, and that inmate thus suffered restraint of liberty, false imprisonment, loss of employment, and pursuit of happiness; inmate was actually attacking legality of his conviction and confinement, and they had not been invalidated, but rather, had been affirmed repeatedly. Horton v. Marovich, N.D.Ill.1996, 925 F.Supp. 532. Civil Rights 1088(5); Conspiracy 18

Future wrongs were not beyond the scope of prison conditions case in which grievance machinery was established because of past wrongs involving incidents of racial harassment, intimidation or insult. Taylor v. Perini, N.D.Ohio 1977, 431 F.Supp. 566. Prisons 13(6)

It is impermissible for prison authorities to discriminate against inmates on account of their race. Murphy v. Wheaton, N.D.Ill.1974, 381 F.Supp. 1252. Prisons 12

There were no racially discriminatory practices in county jail justifying injunctive relief in favor of plaintiff inmates charging discrimination. Stroman v. Griffin, S.D.Ga.1971, 331 F.Supp. 226. Civil Rights 1454; Injunction 94

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42 U.S.C.A. § 1983

2245. ---- Sex discrimination, discriminatory treatment, prisons and prisoners generally

Iowa female prison inmates failed to state claim by alleging that their equal protection rights were violated on ground that prison services and programs provided to them differed substantially from those provided to Iowa male inmates; female inmates were not similarly situated to male inmates in Iowa due to female prison's small population and segregation of female inmates from male inmates, and plaintiffs did not establish that reason for difference in programming was due to gender-based discrimination or that differences were not rationally related to legitimate governmental interests. Pargo v. Elliott, S.D.Iowa 1994, 894 F.Supp. 1239, vacated 49 F.3d 1355, on remand 894 F.Supp. 1243. Constitutional Law 224(5); Prisons 17(.5)

Incarceration of female District of Columbia Code offenders at federal facility approximately 260 miles from District of Columbia, due to lack of District of Columbia facility for female offenders, was not alone sufficient to raise fundamental constitutional issue; although female offenders were placed at substantial disadvantage as compared to male offenders with respect to proximity of homes and families and access to certain programs, confinement at federal facility was within constitutional limits, and female offenders could not be found to have had justifiable expectation that they would be incarcerated at facility within District of Columbia or its metropolitan area. Pitts v. Meese, D.D.C.1987, 684 F.Supp. 303, affirmed 866 F.2d 1450, 275 U.S.App.D.C. 332. Civil Rights 1098

2245A. Fugitive disentitlement doctrine, prisons and prisoners generally

Evidence was insufficient to demonstrate that plaintiff's fugitive status had a connection to his § 1983 action against prison officials for treatment he received while he was an inmate, as required for dismissal of action based on Fugitive Disentitlement Doctrine; plaintiff alleged in his civil action that he was subjected to unreasonably high levels of environmental tobacco smoke and subjected to physical and verbal abuse by prison guards, while fugitive status was allegedly due to plaintiff's failure to report and to inform his probation officer of a new address. Atkinson v. Taylor, D.Del.2003, 277 F.Supp.2d 382. Action 13

2246. Manner of execution, prisons and prisoners generally

State inmate's challenge to method of execution, alleging that death by electrocution was cruel and unusual punishment, would be construed as petition for habeas corpus, even though inmate brought challenge as "conditions of confinement" action under § 1983, and challenge was thus subject to procedural requirements for bringing second or successive habeas claim. In re Sapp, C.A.6 (Ky.) 1997, 118 F.3d 460, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 2536, 521 U.S. 1130, 138 L.Ed.2d 1035. Habeas Corpus 666; Habeas Corpus 891

Denial of bathroom breaks during bus trip from one prison to another prison that lasted some 10 to 15 hours, without more, did not constitute cruel and unusual punishment under Eighth Amendment. Anderson-Bey v. District of Columbia, D.D.C.2006, 2006 WL 3579341. Sentencing And Punishment 1539

In a §§ 1983 action alleging that a certain method of execution constitutes cruel and unusual punishment, the District Court will not usurp the legislature to determine whether there is a more humane execution procedure if the current procedure does not violate the Constitution. Walker v. Johnson, E.D.Va.2006, 448 F.Supp.2d 719. Sentencing And Punishment 1796

Action under § 1983 was appropriate for death row inmates to challenge constitutionality of execution by lethal gas. Booker v. Murphy, S.D.Miss.1997, 953 F.Supp. 756. Civil Rights 1098

2247. Notice of rules and regulations, prisons and prisoners generally

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42 U.S.C.A. § 1983

Prison's failure to provide inmate with prison rules, regulations and penalties for violations thereof violates prisoner's civil rights. Duckett v. Ward, S.D.N.Y.1978, 458 F.Supp. 624. Civil Rights 1098

Prison inmates have right to notice of rules which govern prisoner conduct, rights and privileges. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Prisons 4(1)

The concept of due process requires at the least that persons confined in institutions be informed of the rules and of the procedures by which they may be disciplined for a breach thereof; placing a copy of the regulations in the library to which access is limited does not meet the constitutional standard. Martinez Rodriguez v. Jimenez, D.C.Puerto Rico 1976, 409 F.Supp. 582, stay denied 537 F.2d 1, affirmed 551 F.2d 877. Constitutional Law 272(2)

Absent showing of prejudice to inmate, prison's alleged failure to post rules and regulations and prescribed punishments for violations was not deprivation of constitutional rights even if such failure violated corrections department guidelines. Russell v. Oliver, W.D.Va.1975, 392 F.Supp. 470, affirmed in part, vacated in part on other grounds 552 F.2d 115. Prisons 13(1)

State prisoner's § 1983 claim against prison employee who had allegedly signed memorandum authorizing prisoner's suspension from prison upholstery shop accrued for limitations purposes when he was first notified of the suspension. Allah v. Juchnewioz, S.D.N.Y.2003, 2003 WL 1535623, Unreported. Limitation Of Actions 95(14)

2248. Compliance with state law, prisons and prisoners generally

Mere failure of a jailer to comply with a state regulation is not a constitutional violation. Roberts v. City of Troy, C.A.6 (Mich.) 1985, 773 F.2d 720. Civil Rights 1090

Claim that state officials have failed to follow procedural provisions of state law does not aver cause of action for violation of prisoner's civil rights. Shields v. Hopper, C.A.5 (Ga.) 1975, 519 F.2d 1131. Civil Rights 1395(7)

2249. Least restrictive regulation, prisons and prisoners generally

Prison officials need not choose least restrictive regulation consistent with prison discipline. St. Claire v. Cuyler, C.A.3 (Pa.) 1980, 634 F.2d 109, rehearing denied 643 F.2d 103. Prisons 13(2)

2250. Privacy generally, prisons and prisoners generally

Prisoner stated a §§ 1983 claim for violation of his privacy rights where he alleged that he was forced to strip and masturbate for female guard's entertainment. Boxer X v. Harris, C.A.11 (Ga.) 2006, 437 F.3d 1107. Civil Rights 1098

Inmate's constitutional "right to privacy" was not violated when state correctional officer exhibited nude photographs of inmate's wife to two other inmates and made derogatory comments to desk sergeant regarding wife's anatomy; rather, officer's actions presented controversy squarely within ambit of state tort law protections. Davis v. Bucher, C.A.9 (Wash.) 1988, 853 F.2d 718. Constitutional Law 82(13)

Because reporter could not have been prevented from reporting statements, made by defendant while he was in jail, which the reporter easily overheard while at the jail, use of a device to record them did not create a claim for invasion of privacy when one would not otherwise exist. Holman v. Central Arkansas Broadcasting Co., Inc., C.A.8 (Ark.) 1979, 610 F.2d 542. Torts 341

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42 U.S.C.A. § 1983

The Due Process Clause did not afford a remedy under § 1983 for alleged invasion of privacy of county jail inmate who was placed in administrative segregation in cell which did not have a privacy partition next to the toilet and in which the toilet was allegedly situated such that three female inmates in another cell could, at separate intervals, have a direct view of the inmate while he was performing bodily functions, absent evidence that jail officials were aware that the inmate was viewable by female inmates during his use of the toilet, and where, when the matter was brought to their attention upon the inmate's later return to the jail, the privacy problem in the segregation cell was investigated and mitigated. Simpson v. Penobscot County Sheriff's Dept., D.Me.2003, 285 F.Supp.2d 75. Constitutional Law 272(2); Prisons 4(6)

Prison superintendent did not violate Spanish-speaking inmate's right to privacy by failing to provide medically qualified interpreters of Spanish rather than inmate interpreters or non-medically qualified, non-inmate interpreters when consulting with prison medical staff about his leg and back pain; inmate was afforded the luxury of determining whether he wanted a particular inmate or even a non-inmate to serve as his interpreter and failed to present any evidence or even any allegation that knowledge of his condition was disseminated to inappropriate persons. Cortes v. Johnson, W.D.N.Y.2000, 114 F.Supp.2d 182. Constitutional Law 82(13); Prisons 17(2)

Unwanted but nonegregious publicity may be an actionable invasion of privacy under state law but does not support a claim under this section. Mimms v. Philadelphia Newspapers, Inc., E.D.Pa.1972, 352 F.Supp. 862. Civil Rights 1040

Use of female officers to supervise male prison living areas did not violate male prisoner's First or Fourth Amendment rights, since policy was reasonably related to legitimate penological interest; prisoner had minimal right to privacy, state had legitimate interest in maintaining flexibility in security personnel staffing and in pursuing equal employment opportunity practices, and prisoner did not suggest in § 1983 action any ready and effective alternatives to state's policy. Sinclair v. Stalder, C.A.5 (La.) 2003, 78 Fed.Appx. 987, 2003 WL 22436063, Unreported. Constitutional Law 82(13); Prisons 4(6); Prisons 4(14)

2251. Detainers, prisons and prisoners generally

Prisoner's action to enjoin New Jersey prison officials from utilizing detainer of New York to cause him harmful collateral consequences during his confinement in New Jersey presented a colorable civil rights claim, but claim that he was denied "minimum custody status" was not sufficiently specific. Mokone v. Fenton, C.A.3 (N.J.) 1983, 710 F.2d 998. Civil Rights 1395(7)

Though prison officials delayed approximately 61 days in forwarding prisoner's request for final disposition of detainer to prosecuting officials of the state which requested the detainer, this did not demonstrate a violation of a right secured by the United States Constitution and laws, for which redress is provided by this section, in case in which detainer was disposed of by trial in the other state within 180 days as required by Interstate Agreement on Detainers, set out in the Appendix to Title 18. Rhodes v. Schoen, C.A.8 (Minn.) 1978, 574 F.2d 968, certiorari denied 99 S.Ct. 195, 439 U.S. 868, 58 L.Ed.2d 178. Civil Rights 1094

Since the Interstate Agreement on Detainers and Uniform Criminal Extradition Act are constitutional and comport with requirements of due process, prisoner's action under this section against superintendent of correctional institution and records clerk for their roles in transferring the prisoner to Maryland to face criminal charges there must be predicated on a failure to comply with the provisions of the Extradition Act. Wallace v. Hewitt, M.D.Pa.1976, 428 F.Supp. 39. Civil Rights 1095

Where prisoner to be extradited from North Carolina was in custody of New York authorities and outside jurisdiction of North Carolina when prisoner's counsel served unsigned and unverified copy of purported show cause order on warden of North Carolina prison, and where requirements of Interstate Agreement on Detainers had

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been met and North Carolina governor had approved New York's temporary custody permit and warden of North Carolina prison had acted pursuant to valid executive order when he transferred prisoner to New York authorities, prisoner had no cause of action under this section against warden in North Carolina or against district attorney in New York. Mabery v. Garrison, E.D.N.C.1975, 405 F.Supp. 134. Civil Rights 1095

Where federal prisoner incarcerated in Atlanta federal penitentiary under sentence of federal court in New York sought leave to file a civil action to dismiss detainer-warrant issued by the Parole Division of the State of New York Department of Correctional Services on ground that the existence of the detainer affected conditions of his prison confinement in preventing him from being transferred to a facility closer to his home, denied him the opportunity of participating in a prerelease program available to other prisoners, and denied him access to other rehabilitative programs, the alleged constitutional deprivation related to conditions of his confinement cognizable under this section. Pavia v. Hogan, N.D.Ga.1974, 386 F.Supp. 1379. Civil Rights 1098

2252. Classification, prisons and prisoners generally

Inmate who was incarcerated in another state pursuant to Interstate Corrections Compact (ICC) had no liberty interest entitling him to application of sending state's classification and recreation rules in receiving state, as application of receiving state's procedures did not impose an atypical or significant hardship, and thus application of those procedures could not form basis for §§ 1983 due process claim. Garcia v. Lemaster, C.A.10 (N.M.) 2006, 439 F.3d 1215. Prisons 13(5)

Deliberate indifference of prison officials, required for § 1983 civil rights claim by inmates alleging that randomly assigning cellmates substantially increased risk of violence was cruel and unusual punishment, was supported by evidence that level of violence and number of inmates requesting protective custody had increased, prison officials were aware that construction of cells made monitoring impossible, prison rules were disincentive to reporting assaults, and prison officials knew increase in misconduct reports was substantial. Jensen v. Clarke, C.A.8 (Neb.) 1996, 94 F.3d 1191. Civil Rights 1420

Operational classification regulations which state prison officials put in place, with prior court approval, pursuant to obligations imposed by consent decree settling class action suit brought by inmates to rectify prison conditions in South Carolina did not create "liberty interest" in inmates' custody and security classifications, for purposes of prison inmate's § 1983 action against prison officials; regulations failed to impose substantive limitations on official discretion in making classification decisions, but instead, though they provided procedural safeguards and substantive criteria for making baseline classification decisions, such decisions were only recommendations that were subject to discretionary review and rejection by higher level prison officials. Slezak v. Evatt, C.A.4 (S.C.) 1994, 21 F.3d 590, certiorari denied 115 S.Ct. 235, 513 U.S. 889, 130 L.Ed.2d 158. Constitutional Law 272(2); Prisons 13(5)

Failure to adequately classify inmates, with result, inter alia, that pretrial detainees were not segregated from convicted felons, violated Eighth Amendment prohibition against cruel and unusual punishment. Pembroke v. Wood County, Tex., C.A.5 (Tex.) 1993, 981 F.2d 225, certiorari denied 113 S.Ct. 2965, 508 U.S. 973, 125 L.Ed.2d 665. Sentencing And Punishment 1534

Prison's alleged failure to properly classify inmate pursuant to state law was not a constitutional violation redressable by § 1983 action. Glick v. Walker, C.A.8 (Ark.) 1987, 834 F.2d 709. Civil Rights 1092

In state prisoner's complaint of institutional reclassification and transfer, without notice or hearing, in violation of due process, district court should have allowed prisoner to present evidence that Florida state regulations created liberty interest for sort of transfer and reclassification which occurred. Bullard v. Wainwright, C.A.5 (Fla.) 1980, 614 F.2d 1020. Prisons 13.5(3)

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42 U.S.C.A. § 1983

Placement of inmates who have sought protective custody classification and number of inmates who may be safely assigned to a cell is a matter resting within the sound discretion of prison administration. Crowe v. Leeke, C.A.4 (S.C.) 1976, 540 F.2d 740. Prisons 12

Although federal courts are extremely reluctant to limit freedom of prison officials to classify prisoners as they, in their broad discretion, determine appropriate, where prison officials have failed to control or separate prisoners, whether homosexual or not, who endanger physical safety of other prisoners, officials may be required to take steps to protect prison population from these dangerous prisoners. McCray v. Sullivan, C.A.5 (Ala.) 1975, 509 F.2d 1332, on remand 399 F.Supp. 271, certiorari denied 96 S.Ct. 114, 423 U.S. 859, 46 L.Ed.2d 86. Prisons 12; Prisons 17(4)

Not every error in classification of state prisoners by prison classification board gives rise to an infringement of a constitutionally protected right. Palmigiano v. Mullen, C.A.1 (R.I.) 1974, 491 F.2d 978. Prisons 13(5)

If assignment to appropriate cell block based on reason for detention is ministerial act of warden, absent some breach of or threat to discipline, negligence in performing that ministerial duty resulting in infringement of constitutional right might be actionable. U. S. ex rel. Jones v. Rundle, C.A.3 (Pa.) 1971, 453 F.2d 147. Civil Rights 1092

Prisoner's classification while confined in out-of-state correctional facility to a restrictive or harsh classification was not adverse, for purposes of prisoner's First Amendment retaliation claim under §§ 1983, where the classification was not significantly more severe than his classification while confined at in-state correctional facility. Price v. Wall, D.R.I.2006, 2006 WL 3254530. Prisons 13(5)

Inmate did not have a protected liberty interest in either maintaining a current classification or obtaining a new classification, as required to prevail on §§ 1983 claim challenging state prison's classification system on due process grounds; inmate's alleged drug infraction resulted in reducing the good-time credits he might earn in the future, but did not result in his losing any already-earned credits. Gaskins v. Johnson, E.D.Va.2006, 443 F.Supp.2d 800. Prisons 15(3)

State inmate had no cause of action under § 1983 in connection with upgrading of or failure to reduce his security classification, despite contention that classification decisions were motivated by inmate's political and religious beliefs and legal activities; under state law, inmate had no liberty interest in his security classification, and thus no action pertaining to classification could be maintained under § 1983. Siddiqi v. Lane, N.D.Ill.1991, 763 F.Supp. 284, affirmed 972 F.2d 352. Civil Rights 1092

Inmate was not unlawfully deprived of any constitutionally protected interest because information concerning his alleged escape remained in his individual prison personnel file, even though he was never tried or convicted for escape, where only "harm" suffered by inmate was denial of his request to be housed in "honor dormitory" and inmates in Indiana correctional facilities have no state-created or recognized constitutionally protected right to be assigned to any particular security classification. Martin v. Duckworth, N.D.Ind.1984, 581 F.Supp. 1282. Civil Rights 1092

Illinois prison regulation which sets forth procedures for assigning and reassigning inmates to work, training and study programs indicates that assignment committee has complete discretion over security classification decision, and therefore regulation does not create justifiable expectation that inmate will receive or retain any particular classification so as to give rise to a constitutionally protected entitlement; thus, correctional officer's unilateral decision to use allegedly false information provided by deputy director of Illinois Department of Law Enforcement as basis for changing inmate's security classification was not subject to challenge under this section. Larson v. Mulcrone, N.D.Ill.1982, 575 F.Supp. 1, affirmed 723 F.2d 914. Civil Rights 1092; Constitutional Law 272(2)

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42 U.S.C.A. § 1983

Except to the extent that some independently protected right is implicated, inmates have no constitutional claim to any particular security classification, housing or job assignments; rather, classification system is matter ordinarily left to expertise and discretion of prison administrators. Grubbs v. Bradley, M.D.Tenn.1982, 552 F.Supp. 1052. Prisons 13(5); Prisons 17(1)

Inmate classification policy at a county correctional facility, at which an inmate was allegedly harassed and sexually assaulted by other prisoners, including a trustee, did not evince deliberate indifference to an unreasonable risk of serious injury to the inmate, so as to support an Eighth Amendment claim under §§ 1983; an expert's criticisms of the facility's policies and practices with respect to classification evinced only negligence, if any misfeasance at all. Counterman v. Warren County Correctional Facility, C.A.3 (N.J.) 2006, 2006 WL 929366, Unreported. Sentencing And Punishment 1537

State prisoner's challenge, which was to amendment of his indictment or conviction and his classification as violent offender, constituted challenge to his custodial classification, in which he had no protectable property or liberty interest, as required to state claim under §§ 1983. Epps v. Epps, C.A.5 (Miss.) 2004, 108 Fed.Appx. 150, 2004 WL 1842639, Unreported. Civil Rights 1092

State inmate did not have constitutionally protected liberty interest in his prison classification, and mental anguish he allegedly suffered as a result of error in his classification as medium-security inmate did not impose atypical and significant hardship in relation to ordinary incidents of prison life or threaten to lengthen inmate's term of confinement, and therefore erroneous classification did not violate inmate's due process rights. Bey v. Simmons, C.A.10 (Kan.) 2003, 69 Fed.Appx. 931, 2003 WL 21480693, Unreported. Constitutional Law 272(2); Prisons 13(5)

State inmate could maintain § 1983 suit challenging his demotion in status as result of disciplinary charges, where demotion did not affect fact or duration of his sentence. Russell v. Washington, C.A.7 (Ill.) 2002, 52 Fed.Appx. 862, 2002 WL 31805206, Unreported. Civil Rights 1092

2253. Speech freedom, prisons and prisoners generally

Prisoner stated a legally cognizable claim for violations of his First Amendment right to freedom of expression by alleging that prison regulation that banned all literature from outside organizations unless those organizations had been approved did not authorize corrections officers' confiscation of prisoner's political literature, and accordingly, that such confiscations were improperly made for reasons of personal prejudice as opposed to legitimate penological interests. Shakur v. Selsky, C.A.2 (N.Y.) 2004, 391 F.3d 106. Constitutional Law 90.1(1.3); Prisons 4(8)

Allegations in inmate's pro se civil rights complaint, that prison official on two occasions opened his legal mail outside of his presence, were insufficient to state a claim for violation of his free speech rights, where inmate alleged neither facts that would establish ongoing practice by prison officials of interfering with his mail nor facts that set forth any harm he claimed to have suffered from such tampering. Davis v. Goord, C.A.2 (N.Y.) 2003, 320 F.3d 346. Civil Rights 1395(7)

Causal nexus existed between protected speech of prisoners in bringing civil lawsuit against corrections officers and subsequent alleged retaliation by officers during transport of prisoners, as required for First Amendment civil rights claims of denial of access to courts and denial of redress of grievances, where allegedly harsh conditions on bus rides were imposed by officers, prisoners were participating in class action lawsuit against officers, and litigation was protected speech activity. Anderson-Bey v. District of Columbia, D.D.C.2006, 2006 WL 3579341. Prisons 4(10.1)

Genuine issue of material fact as to whether prison authorities could have reasonably interpreted state prisoner's

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draft of §§ 1983 lawsuit against correctional officer as threat to security and safety of prison precluded summary judgment for prison authorities as to prisoner's claim that prison authorities' decision to place prisoner in administrative segregation constituted retaliation for prisoner having exercised his First Amendment free speech rights by drafting the lawsuit against officer. Bacon v. Taylor, D.Del.2006, 414 F.Supp.2d 475. Federal Civil Procedure 2491.5

A prisoner alleging a First Amendment retaliation claim under § 1983 must show that the protected conduct was a substantial or motivating factor behind the alleged retaliatory conduct. Rivera v. Goord, S.D.N.Y.2003, 253 F.Supp.2d 735. Constitutional Law 82(13)

Reasonable officer could have objectively believed that disciplining inmate for stating in grievance that female correctional officer was rumored to have engaged in sexual activities with male officers did not offend Constitution, and thus prison officials were entitled to qualified immunity from liability in inmate's § 1983 suit alleging violation of his First Amendment right to petition for redress of grievances, where there was no binding precedent on point addressing discipline for false or insolent statements in grievances, and analogous cases applied different approaches and reach different results. Hale v. Scott, C.D.Ill.2003, 252 F.Supp.2d 728, affirmed 371 F.3d 917. Civil Rights 1376(7)

State policy prohibiting prisoners from possessing "any gang literature" was reasonably related to legitimate penological interests in gang suppression. Koutnik v. Brown, C.A.7 (Wis.) 2006, 189 Fed.Appx. 546, 2006 WL 2053025, Unreported. Prisons 4(8)

2254. Religious practice, prisons and prisoners generally--Generally

Inmate who alleged that another inmate had excluded him from religious group and that Department of Corrections officials had contracted with that other inmate to help them determine whether particular inmates should be classified as members of that religious group stated a claim for violation of civil rights. Swift v. Lewis, C.A.9 (Ariz.) 1990, 901 F.2d 730. Civil Rights 1395(7)

Giving "wide-ranging deference" to decisions of prison officials, test on review of regulations curtailing prisoners' rights under U.S.C.A.Const. Amend. 1 is whether there is reasonable relation to security requirements in officials' exercise of informed discretion. St. Claire v. Cuyler, C.A.3 (Pa.) 1980, 634 F.2d 109, rehearing denied 643 F.2d 103. Prisons 13(2)

So long as prison authorities provide inmate with a reasonable opportunity for the exercise of his religious tenets in a form that is substantially warranted by the requirements of prison safety and order, there is no violation of the inmate's constitutional rights. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Prisons 4(14)

It is impermissible for prison authorities to discriminate against inmates on account of their race or religious faith. Tilden v. Pate, C.A.7 (Ill.) 1968, 390 F.2d 614. Prisons 4(14)

Relief may be granted under this section to state prisoners subjected to deprivations and hardships solely because of their religion. Weaver v. Pate, C.A.7 (Ill.) 1968, 390 F.2d 145. Civil Rights 1098

Where it is asserted that state prison authorities have so greatly impaired prisoner's federally protected freedom of religion as to give rise to cause of action under this section complete deference would not be given to administrative discretion but weight would be given to judgment of administrators in determining practices which were necessary and appropriate in conduct of prison. Cooper v. Pate, C.A.7 (Ill.) 1967, 382 F.2d 518. Civil Rights 1098

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Corrections officers and officials were not liable under §§ 1983 for violating inmate's First Amendment right to free exercise of religion by prohibiting him from attaching religious materials to door and windows of his cell, absent showing that prohibition interfered with inmate's ability to observe a central practice of his religion. Mark v. Gustafson, W.D.Wis.2006, 2006 WL 845851. Prisons 4(14)

County sheriff's department, sheriff, undersheriff, and county attorney did not interfere with constitutional rights of pretrial detainee with respect to his Asatru religion, where no one ever saw detainee practice his religion in county jail, and detainee's fiancee would have refused to bring religious materials to jail had detainee asked her to do so. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280. Prisons 4(14)

State prisoner failed to state equal protection cause of action in complaint of being prevented from practicing his religion, in that facts he alleged did not indicate that his religion was treated any differently, that similarly situated inmates of other religions were treated differently, or that he would have been treated differently if he had been attempting to practice different religion; prisoner merely stated generally that his rights under the Fourteenth Amendment were violated. Shidler v. Moore, N.D.Ind.2006, 409 F.Supp.2d 1060. Civil Rights 1395(7)

Genuine issue of material fact as to whether Jewish inmate's oral request for Sukkah booth was legitimate method of requesting religious accommodation at state prison facility precluded summary judgment in inmate's § 1983 action alleging violation of his First Amendment free exercise rights on ground that inmate had not made proper request for accommodation. Wares v. VanBebber, D.Kan.2004, 319 F.Supp.2d 1237. Federal Civil Procedure 2491.5

Fact issues existed as to whether prayers at "group closures" that concluded meetings of voluntary drug treatment program, conducted by private contractor at city corrections facility, constituted city endorsement or coercion of religious activity, precluding summary judgment in inmate's § 1983 Establishment Clause action against city and contractor; although participation via verbalizing prayer was not required, inmates were required to stand together as group while prayer was recited or face loss of good time credits. Clanton v. Glover, M.D.Fla.2003, 280 F.Supp.2d 1360. Federal Civil Procedure 2491.5

State prison's restrictions on Taoist prisoner's practice of Tai Chi were reasonably related to legitimate penological objective of limiting inmate practice of martial arts. Adams v. Stanley, D.N.H.2003, 237 F.Supp.2d 136. Prisons 4(14)

State has burden of justifying policies or practices which prevent prison inmates from engaging in religious or spiritual practices which do not present a threat to security, discipline and good order of institution. Battle v. Anderson, E.D.Okla.1978, 457 F.Supp. 719, remanded on other grounds 594 F.2d 786. Prisons 4(14)

Where prison regulation of certain religious practice is challenged, there is no necessity that religious practice at issue be absolutely mandated by doctrinal requirements of religious observance in order to bring challenge within ambit of constitutional protection, and proof that practice at issue is deeply rooted in religious belief is sufficient, for it is not for courts to decide which practices or observances are strict requirements of a particular faith. Monroe v. Bombard, S.D.N.Y.1976, 422 F.Supp. 211. Constitutional Law 84.5(14)

Allegation that deputy county sheriff used abusive language regarding prisoner's religious background was insufficient to establish §§ 1983 claim, absent evidence that alleged epithet rose to the level of a constitutional violation. Karboau v. Purnington, C.A.9 (Or.) 2005, 137 Fed.Appx. 18, 2005 WL 1473935, Unreported. Civil Rights 1098

Genuine issue of material fact existed as to whether Islamic Affairs Coordinator for New York State Department of Correctional Services (DOCS) engaged in policy of hiring only Sunni Muslims, engaged in an active campaign of hostility towards Shi'ite Muslims, and was involved in removal of Shi'ite Muslim prisoner from DOCS' "call-out

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list," thereby prohibiting him from celebrating special services and religious holidays, precluding summary judgment in favor of prisoner on his Establishment Clause claims, or in favor of Coordinator on claims arising before his retirement. Cancel v. Mazzuca, S.D.N.Y.2003, 2003 WL 1702011, Unreported. Federal Civil Procedure 2491.5

2255. ---- Black Muslims, religious practice, prisons and prisoners generally

Practice of Black Muslim religious beliefs was subject to reasonable regulations necessary for protection and welfare of the prison community. Long v. Parker, C.A.3 (Pa.) 1968, 390 F.2d 816.

Plaintiff, a "Black Muslim" confined in state correctional institution would not be entitled to relief in federal courts because of alleged deprivation of free exercise of religious beliefs unless state correctional authorities and courts failed in their efforts to work out within a reasonable time a sound compromise, based on careful factual study, between the freedom of worship and prison discipline. Muhammad v. McGinnis, C.A.2 (N.Y.) 1966, 362 F.2d 587 . Courts 495; Prisons 4(14)

Muslim inmate's claim that fund of state prison's chaplain was used only to fund Christian activities failed to establish equal protection violation to support inmate's § 1983 action; inmate never requested disbursements from such fund, funds used solely for Christian activities were raised by Christian inmate group, and all inmate groups had opportunity to establish sub-accounts for their own use. McGlothlin v. Murray, W.D.Va.1997, 993 F.Supp. 389, affirmed 151 F.3d 1029, certiorari denied 119 S.Ct. 1261, 526 U.S. 1022, 143 L.Ed.2d 357, on remand 54 F.Supp.2d 629. Constitutional Law 250.3(2); Prisons 4(14)

Refusal of defendant New York State Commissioner of Corrections to recognize Muslimism as a religion and his failure to promulgate regulations enabling Black Muslims incarcerated in state prison to enjoy at least some religious rights during period from Oct. 24, 1964, date the United States Supreme Court denied certiorari in *Sostre* v. *McGinnis,* thus finally resolving question of whether Muslimism was a religion, until May 6, 1966, when commissioner filed revised rules and regulations with federal district court, constituted an unconstitutional deprivation of rights under U.S.C.A.Const. Amend. 1 of plaintiff Black Muslim inmates to practice their religion. Bryant v. McGinnis, W.D.N.Y.1978, 463 F.Supp. 373. Constitutional Law 84.5(14)

State prison warden could proscribe Black Muslim congregations and activities within institution on ground that the racial antipathy implicit in their teachings might create racial tension and inflammatory hostility among the population of over 1400 inmates, one-fourth of which was Negro. Lee v. Crouse, D.C.Kan.1967, 284 F.Supp. 541, affirmed 396 F.2d 952. Prisons 4(14)

2256. ---- Books, magazines or other periodicals, religious practice, prisons and prisoners generally

Situation in which a state prisoner, solely because of his religious beliefs, was denied permission to purchase certain religious publications and denied other privileges enjoyed by other prisoners was one covered by this section. Cooper v. Pate, U.S.Ill.1964, 84 S.Ct. 1733, 378 U.S. 546, 12 L.Ed.2d 1030, on remand 382 F.2d 518.

A prisoner who is denied access to certain religious publications or legal materials may bring suit under this section for violation of his constitutionally protected interests. Drollinger v. Milligan, C.A.7 (Ind.) 1977, 552 F.2d 1220. Civil Rights 1094; Civil Rights 1098

Experience of prisons which have permitted Muslim literature should have substantial probative value on question of state interests in forbidding prisoners access to such literature and should be considered together with opinions of prison officials in determining effect of access to such publications. Brown v. Peyton, C.A.4 (Va.) 1971, 437 F.2d 1228. Prisons 4(14)

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42 U.S.C.A. § 1983

Where prison officials reasonably determined that distribution of book and newspaper asserting Negro superiority and supremacy would be inflammatory and subversive of discipline, officials could ban publications from penitentiary. Abernathy v. Cunningham, C.A.4 (Va.) 1968, 393 F.2d 775. Prisons 4(8)

Correctional facility's policy prohibiting unapproved vendors from sending free softbound, Christian literature, compact discs and tapes to prisoners who had requested those materials violated prisoners' free exercise and free speech rights under First Amendment; asserted penological goals of preventing receipt of contraband, reducing fire hazards, increasing efficiency of random cell inspections or enhancing prison security did not justify the policy, and the distinction between approved vendors and unapproved vendors was arbitrary and not reasonably related to legitimate penological interests. Jesus Christ Prison Ministry v. California Department of Corrections, E.D.Cal.2006, 456 F.Supp.2d 1188. Prisons 4(14)

State prisoner's civil rights claim based on alleged removal of "various appeals materials" and Bible from his cell for period of 19 days while he was confined to suicide watch did not state cognizable claim, particularly where materials were seized pursuant to established policies concerning suicide watch and prisoner had not shown harm caused by alleged seizure. Morrison v. Martin, E.D.N.C.1990, 755 F.Supp. 683, affirmed 917 F.2d 1302. Civil Rights 1098

Absent allegation or showing that inmate was deprived of religious material, no violation of rights protected under this section occurred when Bible delivered to inmate by her attorney was inspected by prison chaplain pursuant to prison policy. Batton v. State Government of North Carolina, Executive Branch, E.D.N.C.1980, 501 F.Supp. 1173 . Civil Rights 1098

For prison officials properly to exclude religious literature from prisoners, presence of literature must create a clear and present danger of breach of security of prison or discipline or some other substantial interference with orderly functioning of the institution. Wilson v. Prasse, W.D.Pa.1971, 325 F.Supp. 9, affirmed 463 F.2d 109. Prisons 4(14)

Prison inmate was entitled to receive, at his expense on regular basis, newspaper entitled "Muhammad Speaks" unless it could be clearly demonstrated that a specific issue would substantially disrupt prison discipline. Northern v. Nelson, N.D.Cal.1970, 315 F.Supp. 687, affirmed 448 F.2d 1266. Prisons 4(14)

2257. ---- Clergymen or ministers, religious practice, prisons and prisoners generally

That Orthodox Jewish inmate would have access to Orthodox rabbi if he were moved to different prison was insufficient to justify finding that prison infringed upon inmate's right to free exercise by not providing Orthodox rabbi, where inmate was maximum security prisoner and prison was only maximum security prison in Nevada prison system. Ward v. Walsh, C.A.9 (Nev.) 1993, 1 F.3d 873, certiorari denied 114 S.Ct. 1297, 510 U.S. 1192, 127 L.Ed.2d 649. Constitutional Law 84.5(14); Prisons 4(14)

Prison was not required to pay for full-time imam to serve Muslim inmates. Al-Alamin v. Gramley, C.A.7 (Ill.) 1991, 926 F.2d 680. Prisons 4(14)

Requirement that state interpose no unreasonable barriers to free exercise of inmate's religion cannot be equated with suggestion that state has affirmative duty to provide, furnish or supply every inmate with clergyman of his choice. Gittlemacker v. Prasse, C.A.3 (Pa.) 1970, 428 F.2d 1. Prisons 4(14)

Permitting Black Muslim prisoners to visit with ministers of their faith, subject to prison rules, did not pose such danger to prison security as to warrant prison administrators' refusal to permit visiting. Cooper v. Pate, C.A.7 (Ill.) 1967, 382 F.2d 518. Prisons 4(14)

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42 U.S.C.A. § 1983

Muslim inmate's claim that outside Muslim volunteers were refused permission to counsel Muslim inmates failed to establish equal protection violation to support inmate's § 1983 action; denials complained of were result of prospective volunteer's criminal record, which standard was applied equally to all who sought entry into prison facility. McGlothlin v. Murray, W.D.Va.1997, 993 F.Supp. 389, affirmed 151 F.3d 1029, certiorari denied 119 S.Ct. 1261, 526 U.S. 1022, 143 L.Ed.2d 357, on remand 54 F.Supp.2d 629. Constitutional Law 250.3(2); Prisons 4(14)

Oklahoma prison officials were directed to afford native American inmates desiring to have traditional tribal religion, spiritual or cultural services the same opportunity for exercise of their religion as other inmates; such inmates were entitled to access to spiritual leaders on group and individual basis, access to religious paraphernalia such as gourds, beads, feathers and drums and access to religious literature. Battle v. Anderson, E.D.Okla.1978, 457 F.Supp. 719, remanded 594 F.2d 786. Prisons 4(14)

While prison officials should impose no barriers which are unreasonable, under circumstances of the particular case, to free exercise of inmate's religion, they are not under duty to supply each inmate with clergyman of his choice. Wilson v. Prasse, W.D.Pa.1971, 325 F.Supp. 9, affirmed 463 F.2d 109. Prisons 4(14)

Prison authorities would be required to pay Muslim minister, if available and otherwise authorized to perform religious services pursuant to and in accordance with department of corrections and institutional rules, at hourly rate comparable to that paid to chaplains of Catholic, Jewish and Protestant faiths. Northern v. Nelson, N.D.Cal.1970, 315 F.Supp. 687, affirmed 448 F.2d 1266. Prisons 4(14)

2258. ---- Confiscation of religious objects, religious practice, prisons and prisoners generally

Confiscation of inmate's rosary with attached hard plastic crucifix did not violate his constitutional right to exercise freely his religion, even though inmate had sincere religious belief in crucifix, where confiscation was reasonably related to legitimate penological interests of preventing inmates from using hard plastic crucifixes to unlock their handcuffs. Mark v. Nix, C.A.8 (Iowa) 1993, 983 F.2d 138, rehearing denied. Constitutional Law 84.5(14); Prisons 4(14)

State prisoner seeking to possess Taoist religious articles was not discriminated against, in violation of either his free exercise or equal protection rights; number of religious article permitted to Taoists was similar to most other religious groups in prison, and there was no evidence that prisoner had been denied any article which he had shown to be essential to religious Taoism. Adams v. Stanley, D.N.H.2003, 237 F.Supp.2d 136. Constitutional Law 84.5(14); Constitutional Law 250.3(2); Prisons 4(14)

2259. ---- Diet, religious practice, prisons and prisoners generally

Budgetary concerns and need for nondiscriminatory and consistent prison staffing appeared to be legitimate penological interests precluding relief from summary judgment in favor of prison officials in inmate's §§ 1983 action alleging that officials violated his religious freedom by requiring him to work in prison kitchen where he could not avoid ingestion of non-kosher odors and handling of non-kosher food, although inmate had presented sufficient evidence of sincerity of his beliefs. Searles v. Dechant, C.A.10 (Kan.) 2004, 393 F.3d 1126. Constitutional Law 84.5(14); Prisons 4(14)

That other prisoners might perceive inmate as being favored if he were provided special kosher diet and other prisoners were not similarly accommodated, while not irrelevant, was not in itself dispositive as to whether prison's denial of kosher diet violated Orthodox Jewish prisoner's constitutional right of free exercise. Ward v. Walsh, C.A.9 (Nev.) 1993, 1 F.3d 873, certiorari denied 114 S.Ct. 1297, 510 U.S. 1192, 127 L.Ed.2d 649. Prisons 4(14)

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42 U.S.C.A. § 1983

Where it appeared that prisoner could obtain balanced ration by voluntarily avoiding pork or food cooked in grease or lard, prison was not required to provide special diet to prisoner obliged by religious belief to abstain from such foods. Abernathy v. Cunningham, C.A.4 (Va.) 1968, 393 F.2d 775. Prisons 12

Genuine issues of material fact existed as to whether denial of prisoner's request for a vegetarian diet, which allegedly was required by his Muslim religion, was reasonably related to legitimate penological concerns, precluding summary judgment on prisoner's §§ 1983 claim for prison officials' alleged violation of his rights under the free exercise clause of the First Amendment. Shaheed-Muhammad v. Dipaolo, D.Mass.2005, 393 F.Supp.2d 80 . Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether issuance of misconduct against Muslim inmate who refused to assist in preparation of pork while working in prison kitchen, and his placement on cell restriction for 30 days, constituted a substantial burden on his exercise of his sincere religious beliefs, and as to whether ordering him to assist in pork preparations and issuing him a misconduct for refusing to comply were least restrictive means of furthering compelling government interests, precluded summary judgment on inmate's §§1983 claim against corrections employees and officials alleging violation of RLUIPA. Williams v. Bitner, M.D.Pa.2005, 359 F.Supp.2d 370. Federal Civil Procedure 2491.5

State officials' plan to require copayment for kosher meals provided to Orthodox Jewish civilly committed inmate of state institution was not reasonably related to legitimate penological interests of maintaining fixed budget for food at institutional facilities and preventing adverse effects on other inmates, and thus copayment plan unduly infringed inmate's rights under Free Exercise Clause; officials provided no figures or calculations to demonstrate financial impact of providing free kosher meals, warranting inference that cost was de minimis, nor did they present any evidence to support their assertion that copayments would reduce tension between kosher and non-kosher meal recipients. Thompson v. Vilsack, S.D.Iowa 2004, 328 F.Supp.2d 974. Constitutional Law 84.5(17); Mental Health 73; Mental Health 78.1

No rational connection existed between state officials' plan to require copayment for kosher meals provided to Orthodox Jewish civilly committed inmate of state institution and asserted penological interest of teaching financial responsibility to inmates, and thus plan's infringement of inmate's Free Exercise Clause rights could not be justified on that basis, in inmate's §§1983 action challenging copayments. Thompson v. Vilsack, S.D.Iowa 2004, 328 F.Supp.2d 974. Constitutional Law 84.5(17); Mental Health 73; Mental Health 78.1

State prisoner was not denied religious diet consistent with his Taoist beliefs, in violation of either his free exercise or equal protection rights; prison was providing vegetarian-no egg diet and, although prisoner was not provided with holiday meals like other religious groups, he had not identified and substantiated any Taoist special meal days. Adams v. Stanley, D.N.H.2003, 237 F.Supp.2d 136. Constitutional Law 84.5(14); Constitutional Law 250.3(2); Prisons 4(14)

For purposes of entitlement to injunctive relief, prisoner failed to demonstrate likelihood of success on merits of claim that "nutriloaf" he was served in prison was not kosher and thus violated First Amendment religious rights, where prisoner merely made naked assertion that the loaves were not kosher, and where prison officials submitted evidence that the loaves were prepared under supervision of two rabbis who certified them as kosher. Davidson v. Scully, S.D.N.Y.1996, 914 F.Supp. 1011. Injunction 138.60

Pretrial detainee was not denied free exercise of religion by corrections officer's alleged refusal to mark him as Jewish on intake sheet and provide him with identification card that granted prisoners access to kosher food where detainee did not allege that he requested kosher food and that request was denied; First Amendment did not, in context of prison confinement, protect detainee's status or identity, without more, as member of particular sect. Messina v. Mazzeo, E.D.N.Y.1994, 854 F.Supp. 116. Constitutional Law 84.5(14); Prisons 4(14)

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Courts cannot be concerned with prison menu or the lack of medical care to which prisoners believe they are entitled or the lack of exercise or the lack of access to special religious service; such matters involve internal prison administration. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Prisons 4(14); Prisons 17(1)

Since kosher food was made available to Jewish inmates, those meals should also be made available to Muslims on days when pork was the meat portion of the menu for the rest of the prison population; it was discriminatory to offer Muslims only an extra helping of vegetables in place of the pork. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(14)

Prisoner is not entitled to special diet if adequate nourishment can be obtained by him from other foods which are not objectionable to him on religious grounds. Wilson v. Prasse, W.D.Pa.1971, 325 F.Supp. 9, affirmed 463 F.2d 109. Prisons 17(3)

Denying Muslim prisoner's request in §§ 1983 action to order scientific testing to determine if certain Kosher food items contained meat was not an abuse of discretion, where prisoner failed to offer any evidence that these items did contain meat. Jackson v. Hill, C.A.9 (Or.) 2005, 128 Fed.Appx. 595, 2005 WL 823876, Unreported. Federal Civil Procedure 1581

2260. ---- Grooming requirements, religious practice, prisons and prisoners generally

State prisoner was not precluded from pursuing as-applied challenge for injunctive and declaratory relief to prison grooming regulation by fact that prison officials had qualified immunity from civil liability because any free exercise right to grow beard and sidelocks in conformance with Hasidic Orthodox faith was not clearly established at time officials enforced regulation; resolution of damage claim through application of qualified immunity did not resolve whether officials could continue to enforce regulation in future. Flagner v. Wilkinson, C.A.6 (Ohio) 2001, 241 F.3d 475, rehearing and rehearing en banc denied, certiorari denied 122 S.Ct. 678, 534 U.S. 1071, 151 L.Ed.2d 590. Declaratory Judgment 84

Prison policy of refusing to permit inmates to wear any beard, even quarter-inch beard, except for medical reasons did not violate free exercise rights of Muslim inmate who desired to wear quarter-inch beard for religious reasons; policy served legitimate penological interests, such as preventing prisoners from quickly altering their appearance, and did not deprive inmate of all means of expressing his religious beliefs. Green v. Polunsky, C.A.5 (Tex.) 2000, 229 F.3d 486. Constitutional Law 84.5(14); Prisons 4(14)

Prisoner's claim that prison regulation prohibiting facial hair unconstitutionally restricted his right to free exercise of religion was civil case in which prisoner did not have right to bring ineffective assistance of counsel claim. Friedman v. State of Ariz., C.A.9 (Ariz.) 1990, 912 F.2d 328, certiorari denied 111 S.Ct. 996, 498 U.S. 1100, 112 L.Ed.2d 1079. Federal Civil Procedure 1951

Denial of shaving exemption did not violate equal protection rights of Taoist prisoner, though Muslim inmates were given such exemption, absent showing that facial hair was required or central to religious Taoism. Adams v. Stanley, D.N.H.2003, 237 F.Supp.2d 136. Constitutional Law 250.3(2); Prisons 4(14)

2261. ---- Providing religious objects, religious practice, prisons and prisoners generally

Texas Department of Corrections was not required to furnish Jewish inmate with certain religious materials, such as six books and a prayer shawl, a tallit, sermon tapes and a kippah, free of charge, for his use; refusal to provide demanded religious articles was within latitude in administration of prison affairs which prison officials must be

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accorded. Frank v. Terrell, C.A.5 (Tex.) 1988, 858 F.2d 1090. Prisons 4(14)

Muslim inmate's claim under § 1983 that state prison officials refused to recognize Islamic prayer beads and other holy symbols was actually claim regarding property lost during inmate's transfer between prison facilities, and therefore, such claim should have been brought under Virginia Tort Claims Act rather than § 1983. McGlothlin v. Murray, W.D.Va.1997, 993 F.Supp. 389, affirmed 151 F.3d 1029, certiorari denied 119 S.Ct. 1261, 526 U.S. 1022, 143 L.Ed.2d 357, on remand 54 F.Supp.2d 629. Civil Rights 1319

Material issues of fact as to sincerity of prisoner's religious beliefs precluded summary judgment for either party in prisoner's § 1983 action against prison officials for violating his freedom of religion by preventing his use of candles, incense, tarot cards, and access to Wiccan chaplain and bible, and by refusing to permit group worship and use of chapel by adherents of Wiccan faith. Rouser v. White, E.D.Cal.1996, 944 F.Supp. 1447. Federal Civil Procedure 2491.5

2262. ---- Retaliatory transfers, religious practice, prisons and prisoners generally

Complaint alleging that prison inmate was transferred from medium security institution to maximum security prison solely to punish him for his religious views stated claim for relief under 42 U.S.C.A. § 1983. Murphy v. Missouri Dept. of Correction, C.A.8 (Mo.) 1985, 769 F.2d 502. Civil Rights 1395(7)

2263. ---- Services, religious practice, prisons and prisoners generally

Prison officials did not violate Muslim inmate's equal protection rights by allegedly failing to give him and other Muslim inmates 10-15 minute notice prior to services, or by requiring them to sign attendance sheets at such services; such conduct did not deny inmate reasonable opportunity to pursue his faith comparable to opportunity afforded other prisoners who were given customary alert and who were not required to sign attendance sheet. Freeman v. Arpaio, C.A.9 (Ariz.) 1997, 125 F.3d 732. Constitutional Law 250.3(2); Prisons 4(14)

Cancellation of Muslim religious services on no more than six occasions over a five-year period in favor of recreational activities which required use of the same facility was action in furtherance of important governmental interest and did not violate Muslim inmates' First Amendment rights. Hadi v. Horn, C.A.7 (Ill.) 1987, 830 F.2d 779 . Constitutional Law 84.5(14)

In civil rights action brought by inmate in Nebraska prison under sentence of death alleging that prison regulation prohibiting inmates subject to death penalty from attending corporate worship services impermissibly infringed on his right under U.S.C.A. Const. Amend. 1 to free exercise of religion, evidence was sufficient to sustain finding that the regulation was based upon a justifiable concern for institutional security, especially since inmate had been allowed visits by religious leader, and had been provided with special meals during Muslim holy month, religious literature, and national Muslim broadcasts. Otey v. Best, C.A.8 (Neb.) 1982, 680 F.2d 1231. Constitutional Law 84.5(14); Prisons 4(14)

Decision of corrections officials not to provide Catholic group religious service to departmental segregation unit for safety reasons was neither arbitrary nor without reason. McDonald v. Hall, C.A.1 (Mass.) 1978, 579 F.2d 120. Prisons 4(14)

Requirement that state interpose no unreasonable barriers to free exercise of inmate's religion cannot be equated with suggestion that state has affirmative duty to provide, furnish or supply every inmate with religious services of his choice. Gittlemacker v. Prasse, C.A.3 (Pa.) 1970, 428 F.2d 1. Prisons 4(14)

State prisoner stated cause of action in complaint against prison officials under §§ 1983 seeking monetary damages for First Amendment violations, by alleging that all inmates in his housing units were denied communal worship.

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42 U.S.C.A. § 1983

Shidler v. Moore, N.D.Ind.2006, 409 F.Supp.2d 1060. Prisons 4(14)

Prison officials' decision to prevent inmate from attending ceremony in prison chapel conducted by Catholic cardinal was reasonable, and thus did not violate inmate's First Amendment rights to petition government for redress of grievances and to free speech; inmate had made hostile requests that prison chaplain contact cardinal to request cardinal's support in challenging his conviction, inmate told chaplain he intended to attend ceremony despite prohibition and confront cardinal there, and Catholic church official reported that inmate had written belligerent letters to cardinal and might act inappropriately at ceremony. Gonzalez v. Narcato, E.D.N.Y.2005, 363 F.Supp.2d 486. Constitutional Law 90.1(1.3); Constitutional Law 91; Prisons 4(14)

Muslim inmate's claim that he was not allowed to use prison chapel for Friday night muslim inmate group's religious services, but was required to obtain a pass for religious services in another building failed to establish violation of his right to free exercise of religion under First Amendment and Religious Freedom Restoration Act (RFRA), for purposes of inmate's § 1983 action; inmate was never denied pass to attend religious services and could show no impingement on his ability to attend religious services other than minor inconvenience, and there was no security available for chapel on Friday nights. McGlothlin v. Murray, W.D.Va.1997, 993 F.Supp. 389, affirmed 151 F.3d 1029, certiorari denied 119 S.Ct. 1261, 526 U.S. 1022, 143 L.Ed.2d 357, on remand 54 F.Supp.2d 629. Civil Rights 1098; Constitutional Law 84.5(14); Prisons 4(14)

Although it would be preferable that there be a chapel or other arrangements for inmates of the same faith to congregate, in view of fact that no prisoner could be involuntarily held at federal correctional facility for longer than 60 days, opportunities for religious observances were met by provisions of religious service for Catholics, Protestants, Jews, Muslims, and Christian Scientists, even though Jewish inmates, scattered among various modular living units, were often unable to assemble a minyan. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(14)

State prisoner's claim that he was denied the right to attend Jewish services could not serve as basis for granting relief in action under this section, where Jewish services were available on request and prisoner never made such request. Lingo v. Boone, N.D.Cal.1975, 402 F.Supp. 768. Civil Rights 1098

While prison officials should impose no barriers which are unreasonable, under circumstances of the particular case, to free exercise of inmate's religion, they are not under duty to supply each inmate with religious services of his choice. Wilson v. Prasse, W.D.Pa.1971, 325 F.Supp. 9, affirmed 463 F.2d 109. Prisons 4(14)

Where neither warden's memorandum nor regulations applicable to separate unit for death sentence prisoners made mention of prisoner's right to participate in religious services and plaintiff testified that he had not been permitted to go to Mass or Communion as any other Catholic prisoner since he had been in confinement and warden testified that religious services as such were not made available to condemned prisoners, court would order that plaintiff be permitted to attend mid-week services or regular Catholic Sunday services under appropriate supervision. Glenn v. Wilkinson, W.D.Mo.1970, 309 F.Supp. 411. Prisons 4(14)

2264. ---- Holidays, religious practice, prisons and prisoners generally

Prisoner stated a §§ 1983 claim for violations of his First Amendment right to the free exercise of religion by alleging that corrections officers refused to allow him to attend Muslim holiday feast of Eid-ul-Fitr. Shakur v. Selsky, C.A.2 (N.Y.) 2004, 391 F.3d 106. Constitutional Law 84.5(14); Prisons 4(14)

Allegations by state prisoner that prison chaplain interfered with free exercise of his religion by intentionally interfering with his ability to observe a particular religious holiday, and that chaplain's interference was motivated by his personal animus towards followers of prisoner's religion, stated claim for violation of free exercise clause of

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the First Amendment, for purposes of prisoner's § 1983 action. Wares v. VanBebber, D.Kan.2002, 231 F.Supp.2d 1120. Civil Rights 1395(7)

2265. Integration of prisoners, prisons and prisoners generally

Housing of white inmates who objected to living with blacks in cell house in which there were no black prisoners was not justified on ground that it was needed to maintain order and that trouble would result if black inmates were housed with such white inmates. McClelland v. Sigler, C.A.8 (Neb.) 1972, 456 F.2d 1266. Prisons 12

Constitution does not require assignment of prisoners to integrated cells where such assigning cannot be safely made. Holt v. Hutto, E.D.Ark.1973, 363 F.Supp. 194, reversed on other grounds 505 F.2d 194, on remand 410 F.Supp. 251. Prisons 12

Racial segregation, for limited purpose of avoiding imminent prison violence, is at discretion of prison authorities. Rentfrow v. Carter, N.D.Ga.1968, 296 F.Supp. 301. Prisons 13(5)

Prisoner at federal reformatory seeking to enjoin integration of all-white dormitory, not required for security, health or other penal reasons, established discrimination in housing of white prisoners who were not given choice of living in all-white dormitories while Negro prisoners were given choice of living in all-Negro dormitories. Dixon v. Duncan, E.D.Va.1963, 218 F.Supp. 157. Civil Rights 1420; Injunction 128(9)

Proposed complaint alleging that state officials charged with administration of state prisons violated inmate's right to equal protection and due process of law under U.S.C.A.Const. Amend. 14 by discriminating against him by reason of his race by requiring him to join an exclusively Negro line formation when proceeding to his assigned cell block for daily lineup, lodging him in an exclusively Negro cell within said cell block, requiring him to join an exclusively Negro line formation for tally purposes, requiring him to join an exclusively Negro line when proceeding into prison dining hall and to eat in a walled-off and exclusively Negro compartment in dining hall, did not show a sufficiently grave and substantial interference with any right of inmate reaching such constitutional magnitude as to justify intervention of federal district court. Nichols v. McGee, N.D.Cal.1959, 169 F.Supp. 721, appeal dismissed 80 S.Ct. 90, 361 U.S. 6, 4 L.Ed.2d 52. Constitutional Law 223; Constitutional Law 272(2)

2266. Telephones, prisons and prisoners generally--Generally

Temporary loss of prison privileges, such as use of telephone, did not implicate liberty interest cognizable under Fourteenth Amendment. Warren v. Irvin, W.D.N.Y.1997, 985 F.Supp. 350. Constitutional Law 272(2); Prisons 13(4)

Evidence from which jury could conclude that plaintiff was held in jail until he had quieted down and not for reason that he was unfit to care for his own safety or was danger to safety of others and from which jury could also conclude that defendants' denial of his right to make telephone call, as provided in rule of police department, was arbitrary permitted recovery under this section. Syarto v. Baker, E.D.Wis.1980, 500 F.Supp. 888. Civil Rights 1420

Occasional abuse consisting of coin cheating or fraudulent reference to credit cards allegedly attributable to telephones presently at county jail could not justify an "across the board" denial or limitation of telephone access; adequate number of telephones should be sufficiently proximate to modules that each inmate desiring to use them could make at least one call per day. Rutherford v. Pitchess, C.D.Cal.1978, 457 F.Supp. 104. Prisons 4(6)

Requirement that inmates sign up to make long distance telephone calls, whether they were to be collect or prepaid, was reasonable and valid. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118,

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certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(6)

2267. ---- Collect calls, telephones, prisons and prisoners generally

Equal Protection Clause was not violated by 45% commission paid to county by county corrections facility's telecommunications providers on surcharged collect telephone calls from inmates, pursuant to contract between county and providers, even assuming that commission amounted to tax imposed on friends and relatives of inmates, and even assuming that recipients of inmates' calls were similarly situated to recipients of collect calls from general public; contract was aimed at generating revenue to defray costs of providing inmates with telephone service, not at treating recipients of inmates' calls differently from others, and thus had rational basis. Gilmore v. County of Douglas, State of Neb., C.A.8 (Neb.) 2005, 406 F.3d 935. Constitutional Law 242; Telecommunications 947

To state § 1983 claim based on violation of Equal Protection clause, recipients of inmate collect calls, who alleged that public operators of jail facilities and telephone companies treated the recipients differently than recipients of non-inmate collect calls with regard to rates for such calls, had to establish that state discriminated against similarly situated parties without rationally related legitimate penological interest. Daleure v. Commonwealth of Kentucky, W.D.Ky.2000, 119 F.Supp.2d 683, appeal dismissed 269 F.3d 540. Constitutional Law 242

Prison and telephone services contractor were not liable to inmate, under § 1983, for policy requiring provider to identify calls as collect calls from correctional institution, absent showing that any constitutional right had been impinged by practice; fact of inmate's incarceration was matter of public record, and thus practice implicated no constitutional privacy interest. Griffin-El v. MCI Telecommunications Corp., E.D.Mo.1993, 835 F.Supp. 1114, affirmed 43 F.3d 1476. Civil Rights 1098; Constitutional Law 82(13)

2268. ---- Solitary confinement or segregation of prisoners, telephones, prisons and prisoners generally

A prisoner in maximum security has no right to unlimited telephone use. Fowler v. Graham, D.C.S.C.1979, 478 F.Supp. 90. Prisons 13(2)

2269. Visitation, prisons and prisoners generally--Generally

Convicted prisoner has no absolute constitutional right to visitation; privilege of visitation is subject to discretion of prison authorities, provided visitation policies of prison meet legitimate penological objectives. Evans v. Johnson, C.A.11 (Ala.) 1987, 808 F.2d 1427. Prisons 4(6)

Visitation privileges are a matter subject to discretion of prison officials. McCray v. Sullivan, C.A.5 (Ala.) 1975, 509 F.2d 1332, on remand 399 F.Supp. 271, certiorari denied 96 S.Ct. 114, 423 U.S. 859, 46 L.Ed.2d 86. Prisons 4(6)

Prisoner failed to state cause of action under § 1983 against assistant warden for allegedly denying his protected liberty interest in visitation; although prisoner outlined violation of liberty interest, he failed to sufficiently connect alleged violation to assistant warden, in that he did not allege that widespread abuses had occurred and that assistant warden had failed to respond repeatedly, and he merely alleged that he sent one letter to assistant warden, who replied two weeks later. Gavin v. McGinnis, N.D.Ill.1994, 866 F.Supp. 1107. Civil Rights 1395(7)

Although prison officials must be accorded latitude in setting visitation ground rules, they nonetheless must assure that reasonable and effective means of communication remain open. Massey v. Wilson, D.C.Colo.1980, 484 F.Supp. 1332. Prisons 4(6)

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With respect to entry of people into prisons for face-to-face communication with inmates, institutional considerations, such as security and related administrative problems, as well as accepted and legitimate policy objectives of corrections system itself, require that some limitation be placed on such visitations, and so long as reasonable and effective means of communication remain open and no discrimination in terms of content is involved, in drawing such lines, prison officials must be accorded great latitude. Ali v. Gibson, D.C.Virgin Islands 1979, 483 F.Supp. 1102, reversed on other grounds 631 F.2d 1126, certiorari denied 101 S.Ct. 951, 449 U.S. 1129, 67 L.Ed.2d 117. Prisons 4(6)

Promulgation of visiting regulations is matter properly left to competence and discretion of prison officials. Louis v. Ward, S.D.N.Y.1978, 444 F.Supp. 1107. Prisons 4(6)

Visitation policies employed by Alabama penal institutions did not serve valid penal objectives where restrictions on visitation from family and friends were so unreasonable as to frustrate ability of inmates to engage in rehabilitation. Pugh v. Locke, M.D.Ala.1976, 406 F.Supp. 318, affirmed and remanded on other grounds 559 F.2d 283, rehearing denied 564 F.2d 97, rehearing denied 564 F.2d 98, certiorari granted in part, reversed in part 98 S.Ct. 3057, 438 U.S. 781, 57 L.Ed.2d 1114, certiorari denied 98 S.Ct. 3144, 438 U.S. 915, 57 L.Ed.2d 1160. Prisons 4(6)

2270. ---- State-created right, visitation, prisons and prisoners generally

Ill.S.H.A. ch. 38, § 1003-8-7, providing that disciplinary restrictions on visitations, work, education or program assignments, and use of prison library shall be related as closely as practicable to abuse of such privileges or facilities, conferred on inmate state-created liberty interest in preserving his visiting privileges against imposition of excessive restraints; therefore, inmate, who alleged such interest was deprived without due process when visitor was barred from visiting inmate without hearing and defendants failed to hear his grievance seeking review of order, stated cause of action under this section. Jackson v. Illinois Dept. of Corrections, N.D.Ill.1983, 567 F.Supp. 1021. Civil Rights 1395(7)

2271. ---- Discriminatory denial, visitation, prisons and prisoners generally

Challenge by prisoners to proposed visitation regulation at women's prison which permitted officials to permanently deny all visitation privileges to prisoner upon commission by prisoner of two major misconducts involving substance abuse was not ripe for court to adjudicate and was not considered in federal civil rights action; regulation was discretionary, and prisoners could not demonstrate that any person of their class would be permanently deprived of all visitation upon commission of two major misconducts. Bazzetta v. McGinnis, E.D.Mich.1995, 902 F.Supp. 765, affirmed 124 F.3d 774, supplemented 133 F.3d 382, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 2371, 524 U.S. 953, 141 L.Ed.2d 739. Federal Courts 13.15

The manner in which visitation privileges are granted rests within discretion of prison administrators, and it is only when visitation is denied in an unreasonable or discriminatory manner that an actionable fact exists. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Prisons 4(6)

Since individual whom prisoner was allegedly denied privilege of seeing on one occasion as punishment for being intoxicated was presently on prisoner's visiting list, issue as to whether prisoner's constitutional rights had been abridged by discriminatory application of visiting regulations was no longer of severe enough quality to necessitate federal intervention. Underwood v. Loving, W.D.Va.1975, 391 F.Supp. 1214. Prisons 4(6)

2272. ---- Death penalty inmates, visitation, prisons and prisoners generally

Rational basis existed for prison regulation which limited condemned prisoners to visits with only two persons who

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were not members of their family, while allowing other prisoners to have more nonfamily member visitors, in that condemned men were the most incorrigible of the inmates and constituted the highest escape risk, thus necessitating limits on their opportunities to obtain contraband or make arrangements for escape. Wilson v. Nevada Dept. of Prisons, D.C.Nev.1981, 511 F.Supp. 750. Prisons 4(6)

2273. ---- Bailbondsmen, visitation, prisons and prisoners generally

County officials reasonably excluded bailbondsman from county prison, where he was unlicensed and he had a lengthy criminal record, including recent conviction for criminal activity growing out of bonding business, and a recent state report documented criminal activity in that business. Carey v. Beans, E.D.Pa.1980, 500 F.Supp. 580, affirmed 659 F.2d 1065. Prisons 4(6)

2274. ---- Family members, visitation, prisons and prisoners generally

Prisoner's various complaints as to his not being permitted to receive visits by his wife and daughter were matters within scope of prison discipline and security and did not state a claim under U.S.C.A.Const. Amends. 6 and 14, or this section. Walker v. Pate, C.A.7 (Ill.) 1966, 356 F.2d 502, certiorari denied 86 S.Ct. 1598, 384 U.S. 966, 16 L.Ed.2d 678. Civil Rights 1094; Constitutional Law 272(2); Criminal Law 641.12(1); Prisons 4(6); Civil Rights 1098

County detention center did not violate civil rights of prisoner by denying him visitation rights with his six-year-old son during approximately seven-month period of incarceration; while policy of blanket exclusion of visitation rights with young children would ordinarily be subject to careful scrutiny, center was revising its policy during period of prisoner's incarceration and informally allowed him visitation for last two months, even though liberalized policy had not been formally adopted. Smith v. McDonald, D.Kan.1994, 869 F.Supp. 918. Civil Rights 1098

Pro se inmate's allegations that prison officials refused to admit his family to prison for visitation purposes and revoked their visitation privileges for a six-month period, thus preventing him from receiving visitors, were sufficient to state claim under § 1983 for violation of civil rights. Gavin v. McGinnis, N.D.Ill.1992, 788 F.Supp. 1012, order vacated in part on reconsideration 866 F.Supp. 1107. Civil Rights 1395(7)

Absent extraordinary circumstances, internal concerns such as visiting regulations should be resolved by jail officials, but every effort should be made to allow visitations by children, and length of visits should be extended to allow inmates benefits of visiting with friends and family. Lovern v. Cox, W.D.Va.1974, 374 F.Supp. 32. Prisons 4(6)

2275. ---- News media, visitation, prisons and prisoners generally

Prison regulations under which inmates had opportunity to participate in individual interviews with member of press and, additionally, to communicate by mail were adequate, and regulations were not constitutionally deficient in banning group press conferences. Main Road v. Aytch, C.A.3 (Pa.) 1977, 565 F.2d 54. Prisons 4(6)

Decisions of prison authorities regarding access and security are to be accorded high degree of deference and rational policy decisions which restrict entry by news media, incarcerated spouses and paralegals will not be disturbed, unless there is substantial evidence to indicate that officials have exaggerated their response to perceived problem. Carey v. Beans, E.D.Pa.1980, 500 F.Supp. 580, affirmed 659 F.2d 1065. Prisons 4(6); Prisons 4(8); Prisons 4(11)

Restriction whereby persons, who were incarcerated in state institution in lieu of bail, were not permitted to talk to reporters without express approval of Commissioner of Corrections was reasonable, in light of belief that limitation

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of interviews was required to prevent prisoners from gaining such notoriety that they would become "wheels" within institution. Seale v. Manson, D.C.Conn.1971, 326 F.Supp. 1375. Prisons 4(6)

2276. ---- Psychologists, visitation, prisons and prisoners generally

Denial of contact visits between prisoner and his psychologist by county jail officials neither shocked general conscience nor violated established standards of fundamental fairness, and thus denial of contact visitation did not constitute denial of prisoner's rights under U.S.C.A.Const. Amend. 14, in view of total absence of any allegations which could support claim that denying prisoner contact visits with his psychologist was sufficiently harmful to evidence deliberate indifference to serious medical needs. Mingo v. Patterson, D.C.Colo.1978, 455 F.Supp. 1358. Constitutional Law 272(2)

2277. ---- Contact visits, visitation, prisons and prisoners generally

Visiting policy at county jail limiting number of visitors and length of visits and prohibiting "contact" visits was justified by small size of jail and limited number of people to be accommodated, and did not violate constitutional rights of pretrial detainee, even though, on one occasion, detainee's mother was denied opportunity to visit with him because she arrived on day when no visits were scheduled. Martin v. Tyson, C.A.7 (Ind.) 1988, 845 F.2d 1451, certiorari denied 109 S.Ct. 162, 488 U.S. 863, 102 L.Ed.2d 133. Prisons 4(6)

Denial of contact visits at county jail was a permissible restriction of inmates' right to privacy, where prohibition of contact visits was reasonable response to legitimate concerns of prison security and where restriction prohibiting physical contact was specifically tailored to meet perceived security problem. Inmates of Allegheny County Jail v. Pierce, C.A.3 (Pa.) 1979, 612 F.2d 754, on remand 487 F.Supp. 638. Prisons 4(6)

Restrictions on contact visits in county jail were reasonably related to the legitimate penological purpose of security and thus did not provide basis for relief in civil rights action concerning conditions at the jail. Johnson v. Galli, D.C.Nev.1984, 596 F.Supp. 135. Civil Rights 1098; Prisons 4(6)

Jail inmates had no constitutional right to contact visits. Owens-El v. Robinson, W.D.Pa.1978, 457 F.Supp. 984, affirmed in part, vacated in part on other grounds 612 F.2d 754, on remand 487 F.Supp. 638. Prisons 4(6)

2278. ---- Conjugal visits, visitation, prisons and prisoners generally

Question of whether there may be conjugal visits in federal jails or prisons is for Congress and the executive to decide. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Constitutional Law 70.3(9.1); Constitutional Law 72

2279. ---- Smoking, visitation, prisons and prisoners generally

Officials at Virginia prison did not violate inmate's civil rights in connection with alleged smoke-filled condition of visiting room; officials had taken adequate measures to alleviate inconvenience of occasional incidents when room had several smokers, and inmate had not alleged any serious medical problems resulting from room's condition. Harris v. Murray, E.D.Va.1990, 761 F.Supp. 409. Civil Rights 1091

2280. ---- Time restrictions, visitation, prisons and prisoners generally

Whether individual visitors to county jail should stay only 20 minutes as presently allowed or could be allowed more time did not raise constitutional issue that required district court to second guess sheriff, who along with his

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staff fully recognized value of visitation and were to be commended for attention and effort that they had devoted to accommodating large number of visitors. Rutherford v. Pitchess, C.D.Cal.1978, 457 F.Supp. 104. Prisons 4(6)

Prison officials did not violate inmate's constitutional rights in rejecting grievances which were not filed under his legal name; rather, they were only enforcing prison regulations. Green v. Litscher, C.A.7 (Wis.) 2004, 103 Fed.Appx. 24, 2004 WL 1445831, Unreported, certiorari denied 125 S.Ct. 927, 543 U.S. 1074, 160 L.Ed.2d 813. Prisons 13(7.1)

2281. ---- Weekdays or weekends, visitation, prisons and prisoners generally

Where prison superintendent informed inmate's visitor of regulation against weekday visitors and was not informed by visitor of visitor's inability to visit on weekends, superintendent's failure to make special arrangements to enable visitor to visit inmate on weekdays pursuant to prison practices did not deprive inmate of constitutional rights. Russell v. Oliver, W.D.Va.1975, 392 F.Supp. 470, affirmed in part, vacated in part on other grounds 552 F.2d 115. Prisons 4(6)

2282. ---- Monitoring conversations, visitation, prisons and prisoners generally

Monitoring county jail inmate's conversations with visitors violated no right of privacy possessed by inmate. Christman v. Skinner, C.A.2 (N.Y.) 1972, 468 F.2d 723. Prisons 4(6)

2283. ---- List of visitors, visitation, prisons and prisoners generally

Missouri Department of Corrections Rule, which stated that those persons whose names appear on inmate's visiting list "shall" be allowed to visit, created liberty interest protected by Fourteenth Amendment, and thus inmate could bring federal civil rights action after he was denied visitation with his son, who was on approved visiting list. Taylor v. Armontrout, C.A.8 (Mo.) 1989, 894 F.2d 961, rehearing denied. Civil Rights 1098; Constitutional Law 272(2)

2284. ---- Abuse of visitation right, prisons and prisoners generally

Prisoners and members of their families and designated friends did not have right of visitation protected by U.S.C.A.Const. Amend. 1 which was unduly limited by suspension by reason of prisoners' being found in possession of contraband immediately after visits. White v. Keller, C.A.4 (Md.) 1978, 588 F.2d 913. Constitutional Law 91; Prisons 4(6)

Where state prisoner had abused rights of visitation when he accepted narcotic drug from wife during visit, subsequent limitations imposed on prisoner's visitation rights were made with good cause and gave no basis to suit by prisoner under this section. Patterson v. Walters, W.D.Pa.1973, 363 F.Supp. 486. Civil Rights 1092; Prisons 4(6)

2285. Conversations with other prisoners, prisons and prisoners generally

Record disclosed no error in district court's finding that prison inmate who claimed denial of right to have other inmates to converse with was loud and boisterous in his relations with others in the protective custody cell block. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Prisons 4(6)

2286. Defamation, libel or slander, prisons and prisoners generally

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Complaint of prison inmates against the state legislator, state prison official, and newspaper writer and editor alleging that the disparaging comments on value of inmate testimony made by prison official and legislator as contained in newspaper article were false, malicious and defamatory failed to state a federal claim, since inmates were free to express views with regard to reliability of inmate testimony regardless of whether the views were supported or not and the inmates were free to express their views by letter or in person when legislative committee toured penitentiary. Smith v. Klecker, C.A.8 (N.D.) 1977, 554 F.2d 848. Civil Rights 1395(7)

State prisoner could not maintain civil rights action against prison employee on allegations that employee defamed his reputation by calling him obscene name; prisoner had not been deprived of any right, privilege or immunity secured him by Federal Constitution or laws of the United States. Ellingburg v. Lucas, C.A.8 (Ark.) 1975, 518 F.2d 1196. Civil Rights 1395(7)

Defamatory statement made by member of state parole board relative to defendant's propensity for committing rape, which statement was made at parole hearing and included in memorandum placed in prisoner's file, could not be basis for action by prisoner under this section authorizing action for deprivation of rights. Sorenson v. Zapien, D.C.Colo.1978, 455 F.Supp. 1207. Civil Rights 1097

2287. Infliction of emotional distress, prisons and prisoners generally

Intentional infliction of emotional distress, by prosecuting attorneys and prison officials, could not form basis of claim that prison inmate's federal due process rights were violated, which could be brought under § 1983; claim should have been brought under state law. Romer v. Morgenthau, S.D.N.Y.2000, 119 F.Supp.2d 346. Civil Rights 1098

2288. Grievance procedures, prisons and prisoners generally

Inmate's pursuit of grievances against Department of Correctional Services was activity clearly protected by Federal Constitution. Hendricks v. Coughlin, C.A.2 (N.Y.) 1997, 114 F.3d 390. Prisons 13(6)

Issue of whether inmate availed himself of the inmate grievance procedure prior to bringing § 1983 action in district court for treatment he received in county jail could not be resolved at motion to dismiss phase because of factual dispute as to whether inmate filed a grievance, and if so, whether correctional facility responded to it. Sweet v. Wende Correctional Facility, W.D.N.Y.2003, 253 F.Supp.2d 492. Federal Civil Procedure 1831

Prison grievances are constitutionally protected conduct for purposes of inmate retaliation claim under § 1983. Justice v. Coughlin, N.D.N.Y.1996, 941 F.Supp. 1312. Civil Rights 1092

Inmates do not have a constitutionally protected right to a grievance procedure. Brown v. G.P. Dodson, W.D.Va.1994, 863 F.Supp. 284. Prisons 13(6)

Any failure of prison officials to provide inmate with informal resolution request form was not cognizable in § 1983 proceeding because inmate grievance procedure was not constitutionally required. Davis v. Sancegraw, E.D.Mo.1993, 850 F.Supp. 809. Civil Rights 1092

Alleged failure of state prison officials to respond to inmate's grievances within time periods provided by grievance procedure set up within state prison system did not give rise to a deprivation of federal constitutional rights actionable under civil rights statute. Spencer v. Moore, E.D.Mo.1986, 638 F.Supp. 315. Civil Rights 1092

Inmate's complaint that prison officials' failure to comply with grievance procedure mandated by Illinois Department of Corrections regulation violated his rights under Ill.S.H.A. Const. Art. 1 § 1 et seq. and statutes did not give rise to claim cognizable in federal civil rights action. Azeez v. DeRobertis, N.D.Ill.1982, 568 F.Supp. 8.

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Administrative insensitivity to state prison inmates' complaints does not constitute a constitutional violation. Fisher v. Woodson, E.D.Va.1973, 373 F.Supp. 970. Civil Rights 1092

Inmate failed to prove that he was retaliated against for filing a grievance requesting the use of a larger room to conduct meetings of a religious organization, thus defeating the inmate's First Amendment claim; correction officer's requiring the inmate to clean pesticide residue was not an adverse action, and in any event was not shown to be causally related to the grievance, and the superintendent was not shown to have disregarded the request, would have moved the meetings to another location if necessary, and was not involved in a transfer of the inmate. Croswell v. McCoy, N.D.N.Y.2003, 2003 WL 962534, Unreported. Constitutional Law 91; Prisons 4(14)

2289. Unions, prisons and prisoners generally

With presumably effective path available for transmission of grievances from prison inmates to correctional officials, fact that prisoners' union grievance procedures might be more "desirable" would not convert prohibitory regulations directed at the union into unconstitutional acts. Jones v. North Carolina Prisoners' Labor Union, Inc., U.S.N.C.1977, 97 S.Ct. 2532, 433 U.S. 119, 53 L.Ed.2d 629. Prisons 4(5)

2290. Political activity, prisons and prisoners generally

While some questioning relating to "political" activity may have relevance to prison security classification, punitive prison action on the basis of pure political belief is constitutionally prohibited. Nimmo v. Simpson, E.D.Va.1974, 370 F.Supp. 103. Prisons 4(5)

2291. Protests, prisons and prisoners generally

Inmates of penal institution have no judicially enforceable right to advocate open defiance of authority within the prison walls. Long v. Harris, D.C.Kan.1971, 332 F.Supp. 262, affirmed 473 F.2d 1387. Prisons 4(5)

2292. Petitions or writings, prisons and prisoners generally

Presence of defendants' reasoned belief that it was necessary to prohibit circulation of protest petitions by prisoners in light of legitimate prison security concerns, and existence of alternative means for prisoners to communicate grievances justified suppression of prisoners' group petition because of special problems of prison administration, despite evident restriction of prisoners' right to freedom of expression. Nickens v. White, C.A.8 (Mo.) 1980, 622 F.2d 967, certiorari denied 101 S.Ct. 581, 449 U.S. 1018, 66 L.Ed.2d 478. Prisons 4(5)

Punishment of state prisoner for putting his thoughts on paper, with no prior warning and no hint that he intended to spirit writings outside his cell, was improper even if the writings were inflammatory and racist, and any threat to prison security that prisoner's possession of his writings might have posed could have been met by confiscation rather than punishment. Sostre v. McGinnis, C.A.2 (N.Y.) 1971, 442 F.2d 178, certiorari denied 92 S.Ct. 719, 404 U.S. 1049, 30 L.Ed.2d 740, certiorari denied 92 S.Ct. 1190, 405 U.S. 978, 31 L.Ed.2d 254. Prisons 13(4)

An attorney may not invoke constitutional protection for prison inmate to circulate petitions or other printed material within the prison simply by sending them to an inmate in an envelope bearing the attorney's office letterhead. Paka v. Manson, D.C.Conn.1974, 387 F.Supp. 111. Prisons 4(5)

2293. Books, magazines or other periodicals, prisons and prisoners generally--Generally

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Questions of fact existed as to whether there was valid and rational connection between state prison's ban on inmates' receipt of gift publications or subscriptions, dollar limit on publication purchases, and complete ban on some inmates' receipt of publications, and asserted legitimate governmental interests of security and behavior management, precluding summary judgment in inmates' and publisher's §§1983 due process and First Amendment action against corrections officials; there was expert testimony that limitation of access served no legitimate purpose, no behavior-management justification was demonstrated for complete ban for some inmates, no link was drawn between dollar limit and increased payment of restitution or other obligations, and weak link was drawn between gift subscriptions and "strong arming" security risk. Jacklovich v. Simmons, C.A.10 (Kan.) 2004, 392 F.3d 420, on remand 401 F.Supp.2d 1181. Federal Civil Procedure 2491.5

State prison authorities must affirmatively justify the withholding of a given publication from complaining prisoner, and only in the limited circumstances when legitimate governmental interests are involved, that is, where receipt of publication would constitute a threat to prison security or order or inmate's own rehabilitation, may the withholding of same be justified. Morgan v. LaVallee, C.A.2 (N.Y.) 1975, 526 F.2d 221. Prisons 4(8)

State inmate's claim that state correctional officials failed to follow institutional grievance procedures did not demonstrate denial of constitutionally or federally protected right, and thus was not cognizable in § 1983 action. Hunnicutt v. Armstrong, D.Conn.2004, 305 F.Supp.2d 175, affirmed in part, vacated in part and remanded 152 Fed.Appx. 34, 2005 WL 2573525. Civil Rights 1092

Determination of which prisoner-penned articles will be circulated throughout the prison population via an inmate periodical is clearly a matter of prison administration within the discretion of state authorities. Jones v. Rouse, M.D.Fla.1972, 341 F.Supp. 1292. Prisons 4(6)

Inmate's possession of reading materials may be preceded by careful examination to detect contraband, and considerations of space, sanitation and orderliness may require certain limitations which would otherwise be constitutionally offensive if an ordinary citizen were involved. Seale v. Manson, D.C.Conn.1971, 326 F.Supp. 1375. Prisons 4(8)

2294. ---- Black magazines, books, magazines or other periodicals, prisons and prisoners generally

Refusal, based solely on race, to allow black prisoners to subscribe to nonsubversive black magazines violates U.S.C.A.Const. Amend. 14. Martin v. Wainwright, C.A.5 (Fla.) 1976, 525 F.2d 983. Constitutional Law 223

Complaint by Negro prisoner alleging that although one-half of prison population was Negro only two Negro magazines were allowed in prison while 123 magazines catering to taste of white inmates were allowed, and that when prisoner requested leave to subscribe to a certain Negro national magazine request was denied because magazine was not on official list of approved magazines issued by prison officials stated claim within jurisdiction of the court and stated claim upon which relief could be granted. Owens v. Brierley, C.A.3 (Pa.) 1971, 452 F.2d 640. Civil Rights 1395(7); Federal Courts 244

2295. ---- Newspapers, books, magazines or other periodicals, prisons and prisoners generally

Prison inmate newspaper prepared for distribution both within and without correction facility may be subjected to prepublication review and in appropriate circumstances objectionable articles may be edited. Chiarello v. Bohlinger, S.D.N.Y.1975, 391 F.Supp. 1153, affirmed 573 F.2d 1288. Prisons 4(8)

State prison officials may unilaterally enact regulations pertaining to publication of newspaper by prison inmates, but such regulations must be no broader than necessary to protect legitimate governmental interests of security, order and rehabilitation. The Luparar v. Stoneman, D.C.Vt.1974, 382 F.Supp. 495. Prisons 4(8)

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2296. ---- Paperbacks, books, magazines or other periodicals, prisons and prisoners generally

Since county jail officials did not show that a ban on paperback books was in any way justified to promote jail security or other legitimate governmental ends, court would direct said officials to lift the ban on receipt of paperback books by inmates. Parnell v. Waldrep, W.D.N.C.1981, 511 F.Supp. 764. Prisons 4(8)

2297. ---- Loaning to other inmates, books, magazines or other periodicals, prisons and prisoners generally

State penitentiary rule prohibiting the unauthorized loaning of books to other inmates is reasonable, and there was no showing that action by prison officials in confiscating a prisoner's books which were found by prison authorities in cell of another inmate was arbitrary so as to warrant further inquiry by federal court. U. S. ex rel. Duronio v. Russell, M.D.Pa.1966, 256 F.Supp. 479. Prisons 4(8)

2298. ---- Notice of rejection of publication, books, magazines or other periodicals, prisons and prisoners generally

Rather than merely advising inmate, when publication has been rejected, of number of guideline that publication violates, better practice would be for rejection notice to contain brief statement of reasons, in meaningful language, why inmate may not receive publication, specifying offending portion if less than entire publication was objectionable; such a requirement would promote thought by decision maker, focus attention on relevant points, and further protect against arbitrary and capricious censorship decisions grounded upon impermissible or erroneous considerations. Jackson v. Ward, W.D.N.Y.1978, 458 F.Supp. 546. Prisons 4(8)

Jail authorities may exercise discretion in denying an inmate the right to receive publications having a deleterious effect upon institutional control and discipline, but written notification should be given to the inmate of rejection of such a publication stating the reasons therefor. Sykes v. Kreiger, N.D.Ohio 1975, 451 F.Supp. 421. Prisons 4(8)

Procedure for screening literature for receipt by state prison inmates whereby committee made up of prison officials from number of fields decided censorship disputes, such evaluation was guided by presumption that literature should be freely available and by list of seven specific criteria of nonacceptability, and decisions were required to be reached within certain time limits was deficient, in that prisoners were not given notice of reason for delays in receipt of literature and notice that they could present argument to committee. Sostre v. Otis, S.D.N.Y.1971, 330 F.Supp. 941. Prisons 4(8)

2299. ---- Objection to rejection of publication, books, magazines or other periodicals, prisons and prisoners generally

A prisoner in a state correctional institution has the right to the aid of the publisher in submitting written objections to rejection of publications mailed to him in institution inasmuch as the prisoner has not seen the offending issue and, thus, cannot be expected to marshal arguments in favor of its admission without the assistance of someone familiar with the material. Cofone v. Manson, D.C.Conn.1976, 409 F.Supp. 1033. Prisons 4(6)

2300. Copying machines, prisons and prisoners generally

No basis exists in the Constitution or federal law for challenging transactions between prison and its inmates simply because transactions return profit to prison administration, and thus fact that prisoners paid price for photocopying that resulted in profit to prison administration did not violate federal rights of prisoner, who did not alleged that profit making had any impact on his constitutional rights aside from asserted right to make photocopies at price that did not include a profit margin. Rhodes v. Robinson, C.A.3 (Pa.) 1979, 612 F.2d 766. Prisons 4(5)

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2301. Libraries, prisons and prisoners generally

There was no violation of constitutional rights in denying state prisoner's request that inter-library loan procedure be used to obtain certain titles, specifically, satanism, where prison officials had not interfered with plaintiff's purchase of such books and he wanted to use the inter-library loan procedure to obtain extra copies, there was no evidence that inmates had or could obtain materials through the inter-library loan procedure for use in religious groups, as plaintiff wanted to do, and books were obtained for personal study and library did not stock titles on a certain subject matter and only one inmate expressed interest in such material. Childs v. Duckworth, N.D.Ind.1981, 509 F.Supp. 1254, affirmed 705 F.2d 915. Constitutional Law 90.1(1.3); Constitutional Law 272(2)

2302. Recreation, prisons and prisoners generally--Generally

Women prisoners in District of Columbia were denied equal protection, and District and correction officials were liable under civil rights statute for not providing equal opportunities in areas of recreation, work details and work training, in that inequality resulted from implementation of policy decision of Department of Corrections; there was no justifiable reason why women could not perform more skilled, less traditional chores within their own facility as similarly situated men did in their facilities, and inequality could not be justified by pointing to differences in the physical structures of the facilities or the proportion of men and women in the facilities. Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia, D.D.C.1995, 899 F.Supp. 659, remanded 93 F.3d 910, 320 U.S.App.D.C. 247, rehearing denied, certiorari denied 117 S.Ct. 1552, 520 U.S. 1196, 137 L.Ed.2d 701, on remand 968 F.Supp. 744. Civil Rights 1098; Constitutional Law 224(5); Convicts 7(1); Prisons 17(5)

Jail inmates were provided with adequate recreation and exercise areas and opportunities where there was day room which inmates were free to use for meals and limited recreation, including television, radios, and limited forms of exercise. Hopkins v. Campbell, D.Kan.1994, 870 F.Supp. 316. Prisons 17(5)

Under all the circumstances, including jail officials' apparent good faith desire to provide for adequate recreation for county jail inmates, one hour per day recreation would be considered a goal, rather than a constitutionally mandated minimum, with court retaining jurisdiction in order to assess progress toward such goal; in the meantime, all prisoners, including those considered "high power" and those in administrative segregation, had to be allowed not less than two and one-half hours of roof recreation per week. Rutherford v. Pitchess, C.D.Cal.1978, 457 F.Supp. 104. Prisons 17(5)

Prison superintendent's failure to spend funds in inmate canteen fund to purchase arts, crafts and hobby equipment as authorized by division of corrections, because he learned that another grant was forthcoming for same purpose, did not violate prisoners' civil rights. Matthews v. Reynolds, W.D.Va.1975, 405 F.Supp. 50. Prisons 4(5)

In view of evidence that weightlifting, boxing, outdoor ball games in organized leagues, hobby crafts, library facilities, indoor games, classrooms, individual and group study, and musical groups were provided for inmates, restrictions upon ability of inmates to obtain physical exercise or engage in recreational activities did not approach severity of cruel and unusual punishment. Collins v. Haga, W.D.Va.1974, 373 F.Supp. 923. Sentencing And Punishment 1541

2303. ---- Exercise, recreation, prisons and prisoners generally

Prison officials were entitled to qualified immunity from inmate's claim that officials violated Eighth Amendment by offering him only three hours of exercise per week in enclosed outdoor area where inmate stated in his complaint that he refused to make use of exercise opportunities and that any ill effects arising from lack of exercise

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stemmed from his own, rather than officials', actions or inactions. Hosna v. Groose, C.A.8 (Mo.) 1996, 80 F.3d 298, certiorari denied 117 S.Ct. 164, 519 U.S. 860, 136 L.Ed.2d 107. Civil Rights 1376(7)

While a restriction of two exercise periods of one hour each during a week might not ordinarily transgress the constitutional standard as fixed by U.S.C.A.Const. Amend. 8 if confined to a relatively short period of maximum confinement, an indefinite limitation on exercise may be harmful to a prisoner's health, and, if so, would amount to "cruel and unusual" punishment. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Sentencing And Punishment 1541

Denial of outdoor exercise to state prisoner, following racial tension and violence culminating in another inmate's murder, was not result of warden's deliberate indifference, and thus did not violate defendant's Eighth Amendment rights, in that restrictions were instituted for primary purpose of preventing further race-based attacks, injuries, and homicides. Hayes v. Garcia, S.D.Cal.2006, 461 F.Supp.2d 1198. Prisons 17(5); Sentencing And Punishment 1541

Suspension of outdoor exercise at state prison for 150 days was not motivated by prison officials' deliberate indifference or malicious and sadistic intent to harm or punish inmate, and thus did not constitute cruel and unusual punishment in violation of Eighth Amendment, where entire unit was locked down as result of riot between African-American and Caucasian inmates, and restrictions on outdoor exercise were instituted for primary purpose of preventing further race-based attacks, injuries, and homicides. Hurd v. Garcia, S.D.Cal.2006, 454 F.Supp.2d 1032. Sentencing And Punishment 1541

Lack of outdoor exercise for pretrial detainee at small county jail did not violate due process, where cells were large, detainee did a wide variety of inside exercises during stay at jail, and no physical deterioration occurred due to failure to obtain outdoor exercise. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280 . Prisons 17(5)

Although there was a genuine issue as to whether prisoner was unconstitutionally deprived of a basic need for outdoor exercise for approximately thirty-five weeks, prisoner's Eighth Amendment rights were not violated since period without exercise, which began as a result of racial tension and violence and culminated in an inmate's murder, was not the result of prison defendants' deliberate indifference or motivated by malicious and sadistic intent to harm or punish him, but rather, was motivated by a desire to ensure the safety and security of the staff and inmates. Jones v. Garcia, S.D.Cal.2006, 430 F.Supp.2d 1095. Sentencing And Punishment 1541

There was no showing that warden and deputy warden of correctional institution were deliberately indifferent to condition of inmate claiming he was sexually assaulted during pat down search by sergeant at facility, as required for Eighth Amendment claim; there was evidence that officials did investigate claim, including checking whether city police had any information, and there were no further sexual assault incidents, suggesting that remedial action had been taken. Reimann v. Frank, W.D.Wis.2005, 397 F.Supp.2d 1059. Sentencing And Punishment 1548

For purposes of entitlement to preliminary injunction, prisoner demonstrated likelihood of showing that he was unconstitutionally denied opportunity to exercise outdoors, where he made undisputed allegation that inmates, such as he, housed in special housing unit were issued only summer weight pants, short sleeve shirts, a sweatshirt and noninsulated, nonwaterproof footwear despite cold winter weather, and alleged additionally that inmates of that unit shared "community" lightweight jackets; for prison to refuse to provide adequate clothing for outdoor exercise during cold weather was tantamount to refusing to provide outdoor exercise, and such refusal would constitute "cruel and unusual punishment." Davidson v. Scully, S.D.N.Y.1996, 914 F.Supp. 1011. Injunction 138.60

Allegations of county jail inmates that inmates were provided inadequate opportunity for exercise stated claim under this section, in light of inmate's assertion that during approximately seven months he was confined in jail he was only permitted to exercise outside his cell on two occasions. Mawby v. Ambroyer, E.D.Mich.1983, 568

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F.Supp. 245.

Inmate's allegation that he was denied one hour's exercise did not amount to a constitutional violation for purposes of a complaint under this section. Nelson v. Herdzik, W.D.N.Y.1983, 559 F.Supp. 27. Civil Rights 1098

Gaston County, North Carolina and its Board of Commissioners were liable under this section for past and continuing injury to county prisoners as regard unconstitutional conditions with regard to lack of exercise facilities and they were subject to any lawful equitable remedies that the court might order to prevent further injury, especially as such defendants knew shortly after suit was filed in 1979 that unconstitutional conditions existed at jail and failed to correct such conditions although they were not served until August, 1981. Parnell v. Waldrep, W.D.N.C.1982, 538 F.Supp. 1203. Civil Rights 1352(4)

Expense of providing exercise facilities for inmates at county jail did not absolve jail officials from meeting the constitutional requirement to provide exercise opportunities. Parnell v. Waldrep, W.D.N.C.1981, 511 F.Supp. 764 . Prisons 17(5)

In view of fact that no prisoner could involuntarily be kept at federal correctional center for more than 60 days, physical exercise available through one hour each day in the rooftop area and weight machines, exercise bicycles, and other such items available in the multipurpose areas of the modular living units provided adequate physical exercise opportunities for the inmates. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 17(5)

Regulation which allotted all inmates under sentence of death the same amount of exercise time although less than that afforded to noncapital prisoners was reasonable with respect to prisoner under death sentence in view of necessity for maximum security in case of inmates under sentence of death. U. S. ex rel. Raymond v. Rundle, E.D.Pa.1967, 276 F.Supp. 637. Prisons 13(4)

In prisoner's pro se § 1983 complaint, allegation that he was injured in softball game as result of dangerous condition posed by recreational area due to its small size, was sufficient to satisfy objective element required to state Eighth Amendment claim. Slacks v. Grenier, S.D.N.Y.2003, 2003 WL 22232942, Unreported. Civil Rights 1395(7)

2304. ---- Movies, recreation, prisons and prisoners generally

Allegation by state prisoner who brought action that was treated as if brought under this section that he should not have been subjected to misconduct report by prison guard for attending movie in prison did not indicate extraordinary circumstances with respect to exercise of prison discipline that would warrant adding such guard as party defendant. U. S. ex rel. Pope v. Williams, E.D.Pa.1971, 326 F.Supp. 279. Civil Rights 1395(7)

2305. ---- Television, recreation, prisons and prisoners generally

Inmates confined to wheelchairs were similarly situated with other prisoners who had in-cell cable television service, for purposes of § 1983 actions by wheelchair-bound inmates challenging refusal of prison to provide in-cell cable service to unit in which inmates were housed. More v. Farrier, C.A.8 (Iowa) 1993, 984 F.2d 269, rehearing denied, certiorari denied 114 S.Ct. 74, 510 U.S. 819, 126 L.Ed.2d 43. Civil Rights 1098

State prisoners' contentions regarding such matters as absence of television or radio and mingling of military and civilian prisoners were matters entirely within purview of jail officials and, though involving matters which were naturally of vital concern to inmates, did not pertain to paramount federal constitutional rights and thus were not cognizable under this section. Lovern v. Cox, W.D.Va.1974, 374 F.Supp. 32. Civil Rights 1395(7)

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2306. Educational or vocational training, prisons and prisoners generally-- Generally

Failure to provide inmates with educational programs or to allow them to participate in charitable organization did not rise to level of a constitutional deprivation. Burnette v. Phelps, M.D.La.1985, 621 F.Supp. 1157. Prisons 4(5)

Prisoner failed to establish that the conditions of prison dining hall and the manner in which vocational training was offered violated his civil rights. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Civil Rights 1420

Control of prison educational programs is a matter of prison administration which will not give rise to a federal claim in most instances. Hayes v. Cuyler, E.D.Pa.1979, 475 F.Supp. 1347. Prisons 12

Educational program available at federal correctional facility, which would not involuntarily hold any prisoner longer than 60 days, which included high school equivalency diploma program, English as a second language, adult basic education, college courses, and classes in art, dance, creative writing, human sexuality and family dynamics, life skills, world politics, sculpture, and drama was adequate. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(5)

There is no federal constitutional right to vocational training for inmates in correctional system and state had no obligation to provide inmate with vocational materials. Russell v. Oliver, W.D.Va.1975, 392 F.Supp. 470, affirmed in part, vacated in part on other grounds 552 F.2d 115. Prisons 4(5)

Denial of attendance at prison school is a restriction on activity incidental to lawful incarceration and necessarily within discretion of prison administration; it does not raise constitutional question or constitute proper subject for relief under this section. U. S. ex rel. Cleggett v. Pate, N.D.Ill.1964, 229 F.Supp. 818. Civil Rights 1098; Prisons 4(5)

2307. ---- Legal education, educational or vocational training, prisons and prisoners generally

Michigan was required to institute legal education program at women's prison, despite existence of prison legal services program, since assistance offered by legal services program did not extend to civil rights suits and criminal appellate matters that could be handled by public defender. Glover v. Johnson, E.D.Mich.1979, 478 F.Supp. 1075. Prisons 4(13)

2308. ---- Licenses and permits, educational or vocational training, prisons and prisoners generally

Complaint wherein Pennsylvania state prison inmate alleged that he had accumulated over 1,250 barbering credit hours at the prison, working as a student barber and an institutional barber, that he had attended a prison barber school but that neither the months that he spent in the school nor his credit hours of barbering were ever recorded by the defendant prison official and that, as a direct result of the prison official's conduct, the Pennsylvania State Board of Barber Examiners had denied him eligibility to take the state licensing examination did not charge any defendants with conduct depriving the inmate of a right, privilege or immunity secured by the Constitution and laws of the United States and, therefore, the complaint did not state a claim for relief against the prison official under this section. Hayes v. Cuyler, E.D.Pa.1979, 475 F.Supp. 1347. Civil Rights 1395(7)

2309. Rehabilitation programs, prisons and prisoners generally--Generally

State prison policy requiring inmates participating in sex offender treatment program to fully disclose past sexual behavior, including uncharged, potentially prosecutable conduct, did not violate inmate's Fifth Amendment right

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against self-incrimination, even though inmate's failure to participate in program resulted in negative parole recommendations, where participation in program was voluntary, and policy did not automatically deprive inmate of consideration for parole. Wolfe v. Pennsylvania Dep't of Corrections, E.D.Pa.2004, 334 F.Supp.2d 762. Criminal Law 393(1); Prisons 4(5)

Prisoner's § 1983 claim against prison officials for failing to provide him with sex offender treatment and to allow him to participate in rehabilitation program was frivolous as prisoner does not have protected liberty interest in receiving treatment while in prison. Richmond v. Cagle, E.D.Wis.1996, 920 F.Supp. 955. Civil Rights 1098

While courts have declined to elevate a positive rehabilitative program to level of a constitutional right, it is clear that a penal system cannot be operated in such a manner that it impedes an inmate's ability to attempt rehabilitation, or simply to avoid physical, mental or social deterioration. Pugh v. Locke, M.D.Ala.1976, 406 F.Supp. 318, affirmed and remanded on other grounds 559 F.2d 283, rehearing denied 564 F.2d 97, rehearing denied 564 F.2d 98, certiorari granted in part, reversed in part 98 S.Ct. 3057, 438 U.S. 781, 57 L.Ed.2d 1114, certiorari denied 98 S.Ct. 3144, 438 U.S. 915, 57 L.Ed.2d 1160. Prisons 4(1)

Prisoner's claim concerning inability to participate in rehabilitative programs due to conditions of his confinement did not state deprivation of constitutional dimensions. Penn El v. Riddle, E.D.Va.1975, 399 F.Supp. 1059. Civil Rights 1098

Persons convicted of felonies do not acquire by virtue of their conviction a constitutional right to services and benefits unavailable as of right to persons never convicted of criminal offenses; so long as treatment, rehabilitation and reformation services and facilities may not be demanded of the state as of right by her free citizens, such services may not be demanded by convicted felons. James v. Wallace, M.D.Ala.1974, 382 F.Supp. 1177. Prisons 17(2)

2310. ---- Detainers, rehabilitation programs, prisons and prisoners generally

Wisconsin's per se exclusion of prisoners with detainers from minimum security status and from participating in certain rehabilitation programs requiring minimum security status does not bear a rational relationship to legitimate governmental purpose. Reddin v. Israel, E.D.Wis.1978, 455 F.Supp. 1215. Prisons 12

2311. Employment during confinement, prisons and prisoners generally-- Generally

Illinois prison regulation which allowed transfer of prisoner's work assignment for any reason except punishment had put restrictions on only one ground of action, and the remaining field of discretion was so large that no prisoner had a legitimate claim of entitlement to a particular job placement no matter what the facts might be. Wallace v. Robinson, C.A.7 (Ill.) 1991, 940 F.2d 243, certiorari denied 112 S.Ct. 1563, 503 U.S. 961, 118 L.Ed.2d 210. Convicts 7(1)

Allegation that prisoner's work assignment amounted to classification error under state law did not state cause of action for violation of prisoner's civil rights. Shields v. Hopper, C.A.5 (Ga.) 1975, 519 F.2d 1131. Civil Rights 1395(7)

Alleged imposition of unreasonable punitive work assignments and solitary confinement with deliberate and knowing effect of activating prisoner's tubercular condition gave rise to cause of action in light of the cruel and unusual punishment prohibition of U.S.C.A.Const. Amend. 8. Woolsey v. Beto, C.A.5 (Tex.) 1971, 450 F.2d 321. Civil Rights 1092

In order to induce county jail inmates to work at menial chores that had to be performed regularly if jail was to operate, sheriff was entitled to "hold out the carrot" of certain privileges that from a practical standpoint could not,

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or constitutionally need not, be accorded general jail population, such as allowing those inmates that agreed to work to enter and leave their cells at will, have virtually unrestricted access to day room and many other areas of jail, and to attend weekly movies. Rutherford v. Pitchess, C.D.Cal.1978, 457 F.Supp. 104. Prisons 12

Although jobs were not available for many inmates at federal correctional facility, which would not involuntarily hold any prisoner longer than 60 days, prisoners were not entitled to have constructive employment made available to all inmates wishing it or to have those inmates paid at the federal minimum wage. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 12

Administration of programs such as work assignments involve discretion which prison officials must exercise for management of their institution. McNeil v. Latney, E.D.Va.1974, 382 F.Supp. 161. Prisons 12

2312. ---- Mandatory work, employment during confinement, prisons and prisoners generally

Requiring state prisoner to work while in prison even though conviction was being appealed did not violate this section. Stiltner v. Rhay, C.A.9 (Wash.) 1963, 322 F.2d 314, certiorari denied 84 S.Ct. 678, 376 U.S. 920, 11 L.Ed.2d 615, rehearing denied 84 S.Ct. 972, 376 U.S. 959, 11 L.Ed.2d 978. Civil Rights 1098

2313. ---- Choice of employment, employment during confinement, prisons and prisoners generally

Prisoner's expectations of prison employment did not amount to a property or liberty interest entitled to due process protection, since prison regulations described work reductions as "discretional." Torres Garcia v. Puerto Rico, D. Puerto Rico 2005, 402 F.Supp.2d 373. Convicts 7(1)

Illinois administrative regulation governing removal of prison inmates from work assignments did not vest inmate with protected liberty and property interest in his prison job so as to give rise to § 1983 action for reassignment of inmate to less desirable job, where regulation left decision to remove inmate from job assignment to unfettered discretion of prison officials. Jackson v. O'Leary, N.D.Ill.1988, 689 F.Supp. 846, reconsideration denied. Civil Rights 1098

State penitentiary inmate was not entitled to a job assignment of his choice in the prison. Hill v. Anderson, E.D.Okla.1974, 381 F.Supp. 906. Convicts 7(1)

Right to have job of his choice was not within constitutional protected liberty of convicted felon, and he was entitled to relief if, but only if, his work assignment at prison was decided arbitrarily or capriciously. Beatham v. Manson, D.C.Conn.1973, 369 F.Supp. 783. Constitutional Law 88; Convicts 7(2)

State prisoner did not have a constitutional right to a particular prison job or classification and, thus, his allegations that he was found guilty of violating prison's drug policy, after which his class status was reduced, he lost his prison job, and he was placed in punitive isolation for 30 days and that his disciplinary conviction was later reversed could not form the basis for §§ 1983 relief. Sanders v. Norris, C.A.8 (Ark.) 2005, 153 Fed.Appx. 403, 2005 WL 2861952, Unreported, certiorari denied 126 S.Ct. 1780. Prisons 13(5)

2314. ---- Personal benefit of prison official, employment during confinement, prisons and prisoners generally

Prisoner provided sufficient circumstantial evidence to withstand summary judgment on his claim that corrections officer retaliated against him by planting evidence in his cell and filing misbehavior report against him, after prisoner filed grievance alleging sexual assault by officer, in violation of prisoner's civil rights under First and Fourteenth Amendments; alleged retaliation occurred only two days after officer responded in writing to prisoner's grievance, prisoner generally had good disciplinary record, and weapons charges against prisoner were dismissed

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for lack of sufficient evidence. Rodriguez v. McClenning, S.D.N.Y.2005, 399 F.Supp.2d 228. Federal Civil Procedure 2491.5

Where prison superintendent was authorized to use his own automobiles in his work because there were not enough state-owned vehicles for use, requiring inmates to work on superintendent's vehicles did not constitute using inmate labor for superintendent's own benefit or violate inmates' civil rights. Matthews v. Reynolds, W.D.Va.1975, 405 F.Supp. 50. Convicts 7(1)

2315. ---- Dismissal, employment during confinement, prisons and prisoners generally

Prisoner's removal from his job assignment as an inmate nurse in a psychiatric ward is not cognizable under this section. Gardner v. Johnson, E.D.Mich.1977, 429 F.Supp. 432. Civil Rights 1098

State prisoner's § 1983 claim against prison employee who had allegedly signed memorandum authorizing prisoner's suspension from prison upholstery shop could not relate back to filing of his retaliation claim against other prison employees, where prisoner knew identity of that employee at time of his original filing. Allah v. Juchnewioz, S.D.N.Y.2003, 2003 WL 1535623, Unreported. Limitation Of Actions 124

2316. ---- Racial discrimination, employment during confinement, prisons and prisoners generally

Prisoner, who alleged that several times he asked deputy to permit him to work as orderly in jail kitchen and was told that he would be appointed as soon as there was an opening for a "white boy," and who also alleged that deputy said that he did not like whites to work in kitchen and would only permit blacks to work there, had constitutional right to be free from racial discrimination, and thus had right to have his application for position of kitchen orderly not be denied solely because of his race. Bentley v. Beck, C.A.5 (Ga.) 1980, 625 F.2d 70. Convicts 7(1)

2317. ---- Retaliatory assignments, employment during confinement, prisons and prisoners generally

That inmate did not have constitutional right to prison employment did not prevent him from stating civil rights claim against prison officials for allegedly terminating his prison employment in retaliation for his refusal to sign fiscal agreement that purported to deprive him of constitutionally protected property interest in earnings on his prison account. Vignolo v. Miller, C.A.9 (Nev.) 1997, 120 F.3d 1075. Civil Rights 1098

Prison inmate stated claim by allegation that he was retaliated against in job assignments for exercising his First Amendment rights. Williams v. Meese, C.A.10 (Kan.) 1991, 926 F.2d 994, on remand. United States 50.10(3)

Loss of inmate's library job after he filed class action lawsuit against governor and parole board members did not support inmate's retaliation claim against prison officials, absent showing that inmate's discharge adversely impacted his right of access to courts or that class action was cause of his discharge; following inmate's discharge, his class action was voluntarily dismissed and inmate was able to file civil rights complaint and two habeas petitions, and inmate had had disagreements with official in charge of law library even before filing class action suit. Talbert v. Hinkle, E.D.Va.1997, 961 F.Supp. 904. Civil Rights 1094

2318. ---- Heavy labor, employment during confinement, prisons and prisoners generally

Where prisoner at bar was essentially complaining only that a prison doctor should not have found him fit to do heavy manual labor, there was clearly not presented an instance calling for judicial interference. Granville v. Hunt, C.A.5 (Fla.) 1969, 411 F.2d 9.

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2319. ---- Dangerous conditions, employment during confinement, prisons and prisoners generally

Correctional officials acted with deliberate indifference, as required for inmate to establish actionable violation of Eighth Amendment, by forcing inmate to tear off loose pipe covering and insulation at prison with insufficient protection from exposure to asbestos, even if officials did not actually know about asbestos in area; asbestos assessment report had detailed locations of and dangers posed by exposed asbestos, fire marshal had ordered prison to remove "material" hanging from pipes prior to work detail being assigned to clean area, supervisor testified that he was aware of presence of asbestos, and inmate had attempted to notify defendants that he was being exposed to asbestos. Wallis v. Baldwin, C.A.9 (Or.) 1995, 70 F.3d 1074. Convicts 7(1); Sentencing And Punishment 1535

County inmates who were involved in cleanup of sewage at correctional facility hospital were not subjected to "cruel and unusual punishment" when correctional officers failed to warn that sewage could be contaminated with AIDS (Acquired Immune Deficiency Syndrome) virus and other infectious diseases; nothing indicated correctional officers' knowledge that sewage was contaminated with infectious diseases and presented dangerous health risk to inmates. Burton v. Armontrout, C.A.8 (Mo.) 1992, 975 F.2d 543, rehearing denied, certiorari denied 113 S.Ct. 2960, 508 U.S. 972, 125 L.Ed.2d 661. Sentencing And Punishment 1535; Sentencing And Punishment 1536

Inmates disciplined for refusing to assist prison maintenance supervisor in cleaning out wet-well portion of prison's raw sewage lift-pump station without protective clothing and equipment established prima facie Eighth Amendment violation on part of prison officials, sufficient to withstand motion to dismiss at close of their evidence, irrespective of whether officials had actual or constructive knowledge of presence of toxic or explosive gases in wet-well, in view of evidence presented regarding danger of heat stroke, risk of contracting disease from contact with raw sewage, and general undesirability of being in close proximity to human waste; forcing inmates to work in shower of human excrement without protective clothing and equipment would be inconsistent with any standard of decency. Fruit v. Norris, C.A.8 (Ark.) 1990, 905 F.2d 1147. Civil Rights 1429; Sentencing And Punishment 1536; Sentencing And Punishment 1535

Correctional officer's alleged misconduct in requiring prison inmate to use unsafe ladder to perform job at the prison did not rise to the level of constitutional violation on which inmate could base civil rights claim but at most constituted negligence for which there were adequate remedies under state law. Wright v. Collins, C.A.4 (Md.) 1985, 766 F.2d 841. Civil Rights 1098

Inmate's death in cave-in of sewer ditch resulting from alleged negligent action of prison officials in failing to formulate safety measures and to implement safer conditions for digging the ditch did not raise constitutional claim, as required for claim to be cognizable under this section. Major v. Benton, C.A.10 (Okla.) 1981, 647 F.2d 110. Civil Rights 1098

Supervisor of state prison unit overseeing prison jobs was not shown to have known of and disregarded risk to inmate, who had chronic obstructive pulmonary disease, from dust and smoke accompanying his work as welder, precluding recovery in inmate's §§ 1983 Eighth Amendment action against supervisor alleging unsafe working conditions; inmate did not complain directly to supervisor about his working conditions or file grievance relating to those conditions, and declined to wear dust mask he was given, and prison's accreditation required compliance with safe-working-area standards. Flanyak v. Hopta, M.D.Pa.2006, 410 F.Supp.2d 394. Sentencing And Punishment 1536

Inmate failed to state actionable § 1983 claim on theory that he was subjected to dangerous conditions in prison paint factory, where inmate's only specific allegation concerned quality of wiring in paint factory and that defendants had conspired to defraud accreditation officials, but such conduct would not give rise to violation of the inmate's constitutional rights. Haney v. Stephan, D.Kan.1993, 817 F.Supp. 87. Civil Rights 1098

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Contemnor's assigned tasks of washing clothes, mopping floors, and delivering meals while incarcerated for civil contempt were not comparable to dangerous working conditions subject to constitutional scrutiny. Wronke v. Champaign County Sheriff's Office, C.A.7 (Ill.) 2005, 132 Fed.Appx. 58, 2005 WL 1220487, Unreported. Sentencing And Punishment 1535

Conditions of confinement did not violate state inmates' Eighth Amendment rights, notwithstanding inmates' challenge to environmental conditions at print shop at which they worked and minor health problems they experienced, including headaches, nausea, and skin irritations, given that prison's work programs were voluntary and that inmates were fully aware of potential health risks stemming from their working conditions, yet chose to continue working under those conditions, even during litigation of their claims. Wooten v. Goord, C.A.2 (N.Y.) 2005, 123 Fed.Appx. 441, 2005 WL 387971, Unreported. Prisons 17(1); Sentencing And Punishment 1536

2320. ---- Cold weather, employment during confinement, prisons and prisoners generally

Prisoner's allegation in civil rights action that he was forced to work outside during dangerously cold conditions was not, standing alone, enough to state claim for cruel and unusual punishment; prisoner did not dispute information provided in investigatory report that appropriate clothing was issued and available to prisoners during winter work. Pendergrass v. Hannigan, D.Kan.1992, 788 F.Supp. 488. Sentencing And Punishment 1554

2321. ---- Personal injury, employment during confinement, prisons and prisoners generally

A personal injury action against certain state prison officials for injuries sustained by state prisoner who had been forced to work on a press was not cognizable under this section on theory that acts complained of subjected prisoner to deprivation of rights guaranteed to him by the Constitution and laws of the United States. Kent v. Prasse, C.A.3 (Pa.) 1967, 385 F.2d 406. Civil Rights 1098

2322. ---- Wages, employment during confinement, prisons and prisoners generally

Missouri prison regulations did not create due process property interest in prison wages for Missouri prisoner incarcerated in Arkansas under Interstate Corrections Compact given that in-state incarceration was triggering event for right to receive prison wages in Missouri and, thus, withholding prison wages for work performed in Arkansas could not be basis for § 1983 civil rights claim; Missouri wages were based on value of labor to institution, payment would not further positive behavior incentive objective, and Compact provided that inmates would be paid on same basis as inmates of receiving state. Jennings v. Lombardi, C.A.8 (Mo.) 1995, 70 F.3d 994. Constitutional Law 277(1); Convicts 7(1); States 6

District court did not abuse its discretion in dismissing as frivolous inmate's claim that new prison wage scale deprived him of protected property interest without due process, where there was no constitutional right to prison wages and inmate pointed to no Missouri statute granting him property interest to previous higher wage scale. Robinson v. Cavanaugh, C.A.8 (Mo.) 1994, 20 F.3d 892. Federal Civil Procedure 2734

Prisoner had no constitutionally protected interest in wages he earned while in prison pursuant to I.C.A. § 218.42 since, according to Iowa law, payment of prison wages is a matter subject to discretion of director of institution and amount paid, if any, is subject to condition that it may be reduced to repay court costs; thus, prison officials' conduct in reducing wages to pay court costs was not actionable under § 1983. Hrbek v. Farrier, C.A.8 (Iowa) 1986, 787 F.2d 414. Civil Rights 1098

Allegation that prison official intentionally cut in half federal stipends given state prisoners for certain work assignments stated claim for relief based on intentional taking of prisoners' property. Yusuf Asad Madyun v. Thompson, C.A.7 (Ill.) 1981, 657 F.2d 868. Prisons 10

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42 U.S.C.A. § 1983

Forfeiture of normal prisoner's pay and all privileges of general prison population for 90 days following escape did not amount to deprivation of the constitutional right for which damages were justifiable under this section. Gregory v. Wyse, C.A.10 (Colo.) 1975, 512 F.2d 378. Civil Rights 1092

Cancellation of future credits in Nebraska state prisoner's spending account derived from payments received for prison labor was not a deprivation of federal constitutional rights. Sigler v. Lowrie, C.A.8 (Neb.) 1968, 404 F.2d 659, certiorari denied 89 S.Ct. 2010, 395 U.S. 940, 23 L.Ed.2d 456. Convicts 3

Prevailing wage provision for transportation in interstate commerce of goods produced by prisoners, under the Ashurst-Sumners Act, had primary purpose of benefitting society in general by eliminating unfair competition, rather than being enacted for "especial benefit" of prison inmates, and thus, inmates may not enforce provision under § 1983. McMaster v. State of Minn., D.Minn.1993, 819 F.Supp. 1429, affirmed 30 F.3d 976, certiorari denied 115 S.Ct. 1116, 513 U.S. 1157, 130 L.Ed.2d 1080. Civil Rights 1090; Convicts 13

Inmate's refusal to participate in the inmate financial responsibility program warranted reduction of prison earnings to maintenance pay of $5 per month; program required inmates to cooperate with prison staff to develop plan to meet financial obligations, including court ordered assessments, costs, and restitution. Muhammad v. Moore, D.Kan.1991, 760 F.Supp. 869. Prisons 17(1)

Inasmuch as prison inmates did not have claim for minimum wage for work performed at privately owned plasma center in prison against owner of center under either state or federal law, they did not have colorable claim against private owner under § 1983 for alleged deprivation of liberty interest without due process of law. Young v. Cutter Biological, a Div. of Script Miles Laboratories, D.Ariz.1988, 694 F.Supp. 651, affirmed 931 F.2d 1320. Civil Rights 1098

Prisoners stated cause of action for violations of due process rights arising out of prison officials' deducting room and board charges from wages of those participating in available work programs earning gross monthly wages in excess of $75 at least as to money deducted prior to approval of new Nevada statute [N.R.S. 209.461] which allowed such deductions. Turner v. Nevada Bd. of State Prison Com'rs, D.Nev.1985, 624 F.Supp. 318. Civil Rights 1395(7)

Former inmate could not maintain claim under this section for damages for reduction of his prison pay. Gahagan v. Pennsylvania Bd. of Probation and Parole, E.D.Pa.1978, 444 F.Supp. 1326.

Classification whereby those work activities which, in opinion of correctional officials in charge of pay incentive program, produced some measurable production or savings from which monies for program were earned or saved were included in pay incentive program, while those activities not thought to do so, such as those at prison hospital, were excluded, was based upon valid state objective. Newell v. Davis, E.D.Va.1976, 437 F.Supp. 1059, affirmed 563 F.2d 123, certiorari denied 98 S.Ct. 1455, 435 U.S. 907, 55 L.Ed.2d 498. Convicts 7(1)

Mental anguish which state prisoner allegedly suffered as a result of initial difference in compensation that he received upon transfer from state penitentiary to a field unit was not of such magnitude as to rise to level of a constitutional deprivation as would empower federal court to act pursuant this section. McNeil v. Blankenship, W.D.Va.1973, 377 F.Supp. 191. Civil Rights 1095

Right, if any, of state prisoner to be paid by the state for his services as prison barber was not a "right secured by the Constitution or laws of the United States" within the meaning of this section and the prisoner could not recover in action under this section for the services. Borror v. White, W.D.Va.1974, 377 F.Supp. 181. Civil Rights 1098

System whereby seniority pay scale rights earned by inmates at Enfield correctional institution were not

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"dovetailed" with seniority of transferees from Somers correctional institution was rational and permissible and involved no deprivation of due process or equal protection. Beatham v. Manson, D.C.Conn.1973, 369 F.Supp. 783 . Constitutional Law 272(2)

Prison inmate who was illegally confined in administrative segregation was entitled to compensation, if any, to which he might have been entitled as a prisoner in general population during period of illegal confinement. Claybrone v. Thompson, M.D.Ala.1973, 368 F.Supp. 324. Prisons 10

Amount of compensation, if any, to be paid to state prisoners is within discretion of prison administration. White v. Sullivan, S.D.Ala.1973, 368 F.Supp. 292. Prisons 17(1)

Where transfer of state prisoner from one correctional institution to another was accomplished under proper and lawful court order, fact that prisoner lost prison wages as result of transfer did not result in deprivation of his civil rights. Patterson v. Walters, W.D.Pa.1973, 363 F.Supp. 486. Civil Rights 1095

Failure to pay state prison inmates, who were compelled to work in research clinic operated in prison by private drug manufacturers, for their labor at its reasonable value was not a denial of any fundamental constitutional rights following prisoners into their cell. Sims v. Parke Davis & Co., E.D.Mich.1971, 334 F.Supp. 774, affirmed 453 F.2d 1259, certiorari denied 92 S.Ct. 1196, 405 U.S. 978, 31 L.Ed.2d 254. Convicts 7(1)

Prison inmate, who brought civil rights action against prison food contractor and prison officials based on contractor's use of inmate labor to prepare and serve food, failed to show that his constitutional rights had been violated or that he was otherwise entitled to minimum wage for his work with the food contractor, and thus, summary judgment was properly entered in favor of contractor and prison officials. Laventure v. Aramark Correctional Services, Inc., C.A.10 (Kan.) 2003, 76 Fed.Appx. 870, 2003 WL 21978624, Unreported. Civil Rights 1098

2323. ---- Honor farms, employment during confinement, prisons and prisoners generally

Inmate's allegations that prison officials denied his request to be allowed to work on honor farm on ground that he was not within three years of parole eligibility while permitting other inmates who had more than three years to serve before parole eligibility to work on honor farm and that inmate thereby possibly lost university scholarship did not state cause of action under this section. Madison v. Sielaff, N.D.Ill.1975, 393 F.Supp. 788. Civil Rights 1395(7)

2324. ---- Health personnel, employment during confinement, prisons and prisoners generally

Only persons meeting job descriptions for positions related to provision of medical care to inmates at Minnesota State prison shall be so employed at prison. Hines v. Anderson, D.C.Minn.1977, 439 F.Supp. 12. Prisons 7

State prison inmate's complaint alleging that prison officials exposed him to environmental tobacco smoke when he was transferred to a smoking cell block failed to state a §§ 1983 claim for violation of the Eighth Amendment absent any allegation that the defendant prison officials had personal involvement in his transfer. Jones v. Maher, C.A.3 (Pa.) 2005, 131 Fed.Appx. 813, 2005 WL 1155914, Unreported. Civil Rights 1358

2325. ---- Miscellaneous employments, employment during confinement, prisons and prisoners generally

Mother of inmate who died following his collapse from heat exhaustion while working could not show that prison official knowingly compelled inmate to perform physical labor that was beyond his strength, dangerous to his health, or unduly painful before inmate collapsed, so as to establish deliberate indifference to inmate's medical

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needs, for purposes of § 1983 action alleging violation of inmate's Eighth Amendment rights; there was no evidence showing that inmate displayed any signs prior to his collapse to alert official to medical need. Mays v. Rhodes, C.A.8 (Ark.) 2001, 255 F.3d 644. Prisons 17(1); Sentencing And Punishment 1535

Any violation of M.C.L.A. § 800.305, by virtue of furnishing of prison labor to drug companies for use in their research clinics at prison pursuant to contract between manufacturers and state prison officials did not create a cause of action for money damages in favor of inmates working in clinic. Sims v. Parke Davis & Co., E.D.Mich.1971, 334 F.Supp. 774, affirmed 453 F.2d 1259, certiorari denied 92 S.Ct. 1196, 405 U.S. 978, 31 L.Ed.2d 254. Convicts 10(1)

Allegation by state prisoner, who brought action that was treated as if brought under this section, that prison guard, after excusing prisoner from work for completing job assignment, "call[ed] me back to work and ordered me to polish the Brass Facing of a door--work in an area not previously assigned to me." did not indicate extraordinary circumstances with respect to exercise of prison discipline, and thus action would be dismissed. U. S. ex rel. Pope v. Williams, E.D.Pa.1971, 326 F.Supp. 279. Civil Rights 1395(7)

2326. Trustees, prisons and prisoners generally

Both Vernon's Ann.Tex.Civ.St. art. 6184k-1 outlawing placement of any inmate in supervisory or administrative capacity over other inmates and administration of disciplinary action by any inmate to other inmates and U.S.C.A.Const. Amends. 8, 14 were violated by building tender system as operated at Texas Department of Corrections. Ruiz v. Estelle, S.D.Tex.1980, 503 F.Supp. 1265, stay denied in part, granted in part 650 F.2d 555, stay denied in part, granted in part 666 F.2d 854, affirmed in part, reversed in part on other grounds 679 F.2d 1115, opinion amended in part, vacated in part 688 F.2d 266, certiorari denied 103 S.Ct. 1438, 460 U.S. 1042, 75 L.Ed.2d 795. Prisons 12

Retraction of position of trusteeship, which was privilege and reward for good conduct and was not required to be bestowed on any inmate, did not warrant interference by federal district court whether retraction was arbitrary or for just cause. Rosson v. Weatherholtz, W.D.Va.1975, 405 F.Supp. 48. Prisons 13(10)

Wardens of a county correctional facility, at which an inmate was allegedly harassed and sexually assaulted by other prisoners, including a trustee, did not know that leaving a trustee block unsupervised exposed prisoners to an excessive risk of harm, thus defeating the inmate's Eighth Amendment claims against the wardens under §§ 1983 for supervisory deliberate indifference; practice of leaving trustee blocks unattended did not appear to have given rise to a pattern of violence among inmates, and there were procedures for screening inmates for suitability as trustees. Counterman v. Warren County Correctional Facility, C.A.3 (N.J.) 2006, 2006 WL 929366, Unreported. Sentencing And Punishment 1537

2327. Financial transactions, prisons and prisoners generally--Generally

Claim that prison authorities conspired to prevent prisoner from converting government bond into cash did not set forth grievance of such quality as would support claim for relief under this section. Aragon v. Wathen, C.A.9 (Cal.) 1965, 352 F.2d 77. Conspiracy 1.1; Conspiracy 7.5(1)

Telephone services contractor's payment of commission to Department of Corrections' "general revenue fund," rather than "inmate canteen fund" as contractually required, did not give rise to § 1983 liability to inmate; contractual obligation did not create constitutionally protected property interest, prosecutable by inmate, in contractor's placing of money in canteen fund, in that inmate had no legitimate expectation that local prison fund would ever receive any money from contract. Griffin-El v. MCI Telecommunications Corp., E.D.Mo.1993, 835 F.Supp. 1114, affirmed 43 F.3d 1476. Civil Rights 1098

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Inmate's allegation that money due him was held up by prison's administrator in effort to deter inmate from proceeding with his various legal actions failed to state civil rights claim based on denial of his right to access to courts, in view of prison superintendent's allegation that delay was result of inadvertent action of state official. Gittens v. Sullivan, S.D.N.Y.1987, 670 F.Supp. 119, affirmed 848 F.2d 389. Civil Rights 1395(7)

2328. ---- Business operations, financial transactions, prisons and prisoners generally

State's rules, regulations and encouragement of "hobby crafts" did not create constitutionally protected interest in prisoners' operation of business within penal institution. Garland v. Polley, C.A.8 (Iowa) 1979, 594 F.2d 1220. Prisons 4(5)

When person is lawfully incarcerated in a penal institution, he loses the right, except as granted specially by court before entering incarceration, to enter into, engage in, or conduct ordinary business ventures, and he does not have the right to set up his own business ventures or to require that special rules and regulations be tailored to accommodate such ventures. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Convicts 1

2329. ---- Buying or selling between inmates, financial transactions, prisons and prisoners generally

Prison policy limiting the source of acquisition and the market for sale by or to an inmate did not constitute clear abuse on the part of prison officials; indeed, the Sherman Antitrust Act, §§ 1 to 7 of Title 15, notwithstanding, it is appropriate for prison officials to impose such controls over the buying and selling of property by inmates and especially over buying and selling between inmates. Velarde v. Ricketts, D.C.Colo.1979, 480 F.Supp. 261. Prisons 4(5)

Prison rules forbidding economic transactions between prisoners and requiring that books be purchased from vendors outside of prison were reasonable, and prison employees were justified in confiscating legal papers and books allegedly acquired by prisoner by gift or purchase from other inmates. McKinney v. DeBord, E.D.Cal.1970, 324 F.Supp. 928, affirmed in part, reversed in part on other grounds 507 F.2d 501. Prisons 4(13); Prisons 12

2330. ---- Spending accounts, financial transactions, prisons and prisoners generally

Conduct by California Department of Corrections (DOC) director in affording city and county inmates a $300 exemption of funds held in their trust accounts from collection to satisfy restitution orders, pursuant to California statute, but not affording same exemption to state prisoners, was rationally related to legitimate government interest in collecting restitution fines, and thus, did not violate Equal Protection Clause; the difference in the length of incarceration terms and nature of convictions suggested that jail inmates would be able to satisfy restitution fines more quickly because they would be released into the workforce sooner than state prisoners. Abney v. Alameida, S.D.Cal.2004, 334 F.Supp.2d 1221. Constitutional Law 250.3(2); Convicts 3

There is rational, legitimate reason supporting state prison's restrictions on inmates' individual trust fund account disbursements sufficient to preclude inmate from any disbursement to nonfamily members, even to charitable religious contributions; safety and contraband considerations, as well as fears of donation pressures from other inmates were sufficient, particularly since other means were available to inmates to make such donations. Blankenship v. Gunter, D.Neb.1988, 707 F.Supp. 1137, affirmed 898 F.2d 625. Prisons 4(5)

Ability of an inmate in the Maryland House of Correction to control funds in his spending account, subject only to official approval for commissary purchases in excess of $25, precluded a finding that the inmate's money placed in such account has in fact been unconstitutionally confiscated. Gray v. Lee, D.C.Md.1980, 486 F.Supp. 41, affirmed 661 F.2d 921. Convicts 3

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Prison officials' practice of endorsing inmates' checks and money orders and depositing them in the facility's bank account was arbitrary and capricious and constituted a taking of property without due process of law. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Constitutional Law 278(1.3)

State prisoners' allegation that they were denied right to maintain a savings account and were required to accept their pay in canteen tickets which had to be spent within the correctional unit involved a matter entirely within purview of prison authorities and did not merit consideration in federal court. Collins v. Haga, W.D.Va.1974, 373 F.Supp. 923. Civil Rights 1395(7)

Defendants' contention that prison rule preventing prisoners from transferring money from their restricted prison accounts to their open prison accounts was reasonable as a means of preventing prisoners from spending their money unwisely did not sufficiently show why prisoners could be subjected to such a regulation that could not be constitutionally imposed upon the general public. Berry v. Schmidt, W.D.Wis.1972, 341 F.Supp. 1025. Civil Rights 1098

2331. ---- Welfare funds, financial transactions, prisons and prisoners generally

Work-release participant stated § 1983 claim for retaliation against state officials who revoked his participation after he applied for public assistance benefits; participant had statutory and constitutional right to apply for benefits and to petition government, and participant explicitly alleged that officials revoked his work release in retaliation for that protected conduct. Friedl v. City of New York, C.A.2 (N.Y.) 2000, 210 F.3d 79. Civil Rights 1096; Civil Rights 1395(7)

Prison officials' denial of inmates' request to make available portion of inmate owned welfare fund for mailing leaflet to voters in state could not be sustained, against claim of U.S.C.A.Const. Amend. 1 right, on ground that fund had never been used previously for such purposes, on ground that distribution of leaflet would not be a proper use of inmates' funds, or on ground that such use of funds would not be beneficial for the inmates as a whole as required by rules, in light of fact that there was a large surplus in the fund and that no rules had been made limiting percentage of fund to be used for U.S.C.A.Const. Amend. 1 purposes prior to attempted distribution of leaflet criticizing governor's policies and administration of prison. O'Connell v. Southworth, D.C.R.I.1976, 422 F.Supp. 182. Constitutional Law 90.1(1.3)

2332. Shopping, prisons and prisoners generally

Prison officials' withholding of food from inmate when he wore sock on his head when meals were delivered to his cell was a reasonable condition to the receipt of food, in light of security issues presented by possibility that sock could be used as a weapon if something was inside it, and thus, prison officials' withholding of food from inmate when he refused to remove sock from his head did not constitute the use of food deprivation as punishment, for purposes of Eighth Amendment prohibition against cruel and unusual punishment. Freeman v. Berge, C.A.7 (Wis.) 2006, 441 F.3d 543. Sentencing And Punishment 1540

Fact that prisoners were permitted to order items from only three large catalogue sales chains and not from other sales establishments did not deprive prisoners of their civil rights. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Civil Rights 1098

Prohibition forbidding inmates in administrative segregation for visiting commissary and requirement that they secure goods by order only, while general population could "shop" at commissary, was justified by security risk which would be incurred by allowing segregated prisoners to mingle with general population if they visited commissary. Giampetruzzi v. Malcolm, S.D.N.Y.1975, 406 F.Supp. 836. Prisons 4(5)

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42 U.S.C.A. § 1983

2333. Diet, prisons and prisoners generally--Generally

Prisoner stated claim under § 1983 when he alleged that imposition of seven-day bread diet violated his Eighth Amendment right against cruel and unusual punishment. Phelps v. Kapnolas, C.A.2 (N.Y.) 1997, 123 F.3d 91. Civil Rights 1395(7)

State prisoner's complaints with respect to prison menu, censorship of his mail, lack of medical care, infrequency of shower facilities, lack of exercise, and lack of access to legal materials, library and religious services involved only matters of internal prison administration with which federal court would not interfere. Krist v. Smith, C.A.5 (Ga.) 1971, 439 F.2d 146. Prisons 4(5)

Alleged deficiency of food served at state prison did not rise to level of a constitutional violation requiring intervention of a federal court in suit under this section. Freeman v. Trudell, E.D.Mich.1980, 497 F.Supp. 481. Civil Rights 1098

It was beyond office and duty of federal district court to investigate the various general allegations of bad food, racism, institutional theft and other conditions of confinement in federal institution. Coats v. U. S., W.D.Okla.1975, 405 F.Supp. 1107. Federal Courts 6

Inmate failed to allege that his health was in immediate danger based on the allegedly nutritionally deficient diet provided to him while he was incarcerated or that prison officials knew that the diet was inadequate, as required to state a § 1983 claim for violation of his Eighth Amendment rights against the commissioner and director of nutritional services of the New York State Department of Correctional Services, despite speculative assertion that the diet he advocated would reduce the risk of "chronic maladies." O'Keefe v. Goord, C.A.2 (N.Y.) 2003, 77 Fed.Appx. 42, 2003 WL 22273060, Unreported. Civil Rights 1395(7)

2334. ---- Caloric requirements, diet, prisons and prisoners generally

Assertion of inmate bringing pro se § 1983 action, that he was continuously deprived of food, stated cognizable claim for Eighth Amendment violation. Cooper v. Sheriff, Lubbock County, Tex., C.A.5 (Tex.) 1991, 929 F.2d 1078. Sentencing And Punishment 1540

Court will not countenance depriving inmate in isolation of diet of same caloric content as received by other isolation inmates by knowingly serving him food that he will reject, at least when the rejection is based upon arguably religious grounds; in such case every effort should be made to ensure that reasonable substitutes are available to meet minimum daily caloric requirements. Jones v. Superintendent, W.D.Va.1974, 370 F.Supp. 488. Prisons 17(3)

2335. ---- Contamination, diet, prisons and prisoners generally

Contamination of inmate's food states cause of action under civil rights statute governing deprivation of civil rights. Malik v. Tanner, S.D.N.Y.1988, 697 F.Supp. 1294. Civil Rights 1098

Occasional incident of foreign object discovered in prison food does not raise question of constitutional proportions. Lovern v. Cox, D.C.Va.1974, 374 F.Supp. 32. See, also, Boston v. Stanton, W.D.Mo.1978, 450 F.Supp. 1049.

2336. ---- Special diets, prisons and prisoners generally

Prisoner's complaint alleging that prison officials refused to control prison's insect population or provide him with adequate vegetarian diet stated federal civil rights claim under Eighth Amendment. Harris v. Ostrout, C.A.11

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(Fla.) 1995, 65 F.3d 912. Civil Rights 1395(7)

Prison officials' refusal to put inmate, who lost his dentures, on soft food diet because inmate was to be transferred to institution equipped to provide diet did not rise to level of deliberate indifference as would entitle inmate to bring § 1983 action against prison for refusal to provide soft food diet. Hunt v. Dental Dept., C.A.9 (Ariz.) 1989, 865 F.2d 198. Civil Rights 1091

Even if prison officials were not giving prisoner with heart disease exact diet recommended by cardiologists, their conduct was not such reckless failure to inform themselves of prisoner's medical needs as to give rise to a cause of action under this section where they were making a sincere and reasonable effort to handle prisoner's problem and were making effort to assist him to choose proper foods, along with medication. Startz v. Cullen, C.A.2 (Conn.) 1972, 468 F.2d 560. Civil Rights 1091

State prisoner's complaint against warden under this section claiming deprivation of ulcer diet and seeking $1,500 damages for physical pain and mental anguish and an order requiring warden to cease and desist from refusing to give him ulcer diet pleaded no claim for relief. Snow v. Gladden, C.A.9 (Or.) 1964, 338 F.2d 999. Civil Rights 1395(7)

Allegation that detainee was deprived of medical care stated claim for violation of civil rights under § 1983, even if period of detention was brief, in view of evidence that prison officials were aware of detainee's need for prescription medication and special diet. Gerakaris v. Champagne, D.Mass.1996, 913 F.Supp. 646. Civil Rights 1088(4)

For period after physician determined that inmate no longer required low sodium diet for treatment of his high blood pressure, inmate's complaint that he had been denied adequate medical treatment did not state a constitutional claim under § 1983; however, before that time, there was a genuine issue of material fact as to whether inmate was actually provided the recommended diet, precluding summary judgment. Riddick v. Bass, E.D.Va.1984, 586 F.Supp. 881. Civil Rights 1091; Federal Civil Procedure 2491.5

Since any pain suffered by state prisoner because of failure of state criminal officials to forward ulcer diet and medication to officials of county jail in which prisoner was incarcerated for eight days awaiting postconviction case was result of possible negligence by Department of Corrections personnel, there was no violation of prisoner's civil rights; also, any pain caused by mere negligence is not that deliberate indifference to a serious medical need compensable under this section. Russell v. Enser, D.C.S.C.1979, 496 F.Supp. 320, affirmed 624 F.2d 1095. Civil Rights 1091

Whether an inmate has a legitimate, medically prescribed diet is a question wholly within the province of the prison administration. Jefferson v. Douglas, W.D.Okla.1979, 493 F.Supp. 13. Prisons 4(5)

Failure to provide diabetic prisoner with a special diet did not warrant granting of relief to prisoner who brought civil rights action, where general diet furnished prisoner whose diabetic condition was controlled with medication was adequate. Lingo v. Boone, N.D.Cal.1975, 402 F.Supp. 768. Civil Rights 1098

Genuine issue of material fact existed as to whether state corrections officials, while providing to Jewish inmate combination kosher/therapeutic diet, had on religious designation grounds refused to honor Muslim inmate's request for same diet, which allegedly would have satisfied both Muslim religious requirements and inmate's low-cholesterol and low-fat dietary requirements, precluding summary judgment in inmate's § 1983 action against officials alleging violation of Free Exercise and Equal Protection clauses; officials proffered no legitimate penological interest for denial. Brown v. Johnson, W.D.N.Y.2003, 2003 WL 360118, Unreported. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

State prisoner failed to establish that prison officials acted with retaliatory motive in taking him off special diet, allegedly for having filed grievance against official; although prisoner repeatedly speculated about defendants' motives and conversation, he presented no actual evidence of their motives or of what transpired during their conversation about his request to be moved from his regular cell to special diet unit, there was no evidence that doctor who removed prisoner from special diet even knew about grievance, and defendants presented evidence establishing legitimate penological purposes for their actions, namely, that special diet was no longer medically necessary and that there was thus no basis to grant prisoner's request to be moved. Gray v. Terhune, N.D.Cal.2002, 2002 WL 31819232, Unreported. Civil Rights 1420

2337. ---- Number of meals, diet, prisons and prisoners generally

Denial of food during bus ride that lasted some 10 to 15 hours was insufficiently serious to state stand-alone cruel and unusual punishment civil rights claim under Eighth Amendment, especially where prisoners did not identify any serious harm suffered as result. Anderson-Bey v. District of Columbia, D.D.C.2006, 2006 WL 3579341. Sentencing And Punishment 1540

Claim that plaintiff did not receive any breakfast on morning following his incarceration in city jail did not raise any constitutional issue in Act suit brought against superintendent of the jail. Herring v. Superintendent, Danville City Jail, W.D.Va.1974, 387 F.Supp. 410. Civil Rights 1098

2338. ---- Water, diet, prisons and prisoners generally

Alleged radium contamination in water at correctional facility was not cruel and unusual punishment, for purposes of state prison inmate's § 1983 action against prison officials, where remedial action on part of prison officials was not necessary, because the Illinois Environmental Protection Agency (EPA) did not believe potential radium hazard required remedial measures since radium level was less than half the maximum in a proposed revision of existing standards. Carroll v. DeTella, C.A.7 (Ill.) 2001, 255 F.3d 470. Prisons 17(1); Sentencing And Punishment 1536

In light of prisoner's threat to plug up commode in cell into which he was being moved and flood county jail, superintendent of jail exercised compelling state interest in directing that water supply to cell be interrupted for brief period even though prisoner was deprived of drinking water for period of six hours. Frazier v. Wilson, E.D.Tenn.1977, 450 F.Supp. 11. Prisons 17(1)

Former inmate failed to prove that prison officials placed unhealthy chemicals in the drinking water supply, thus defeating his claim of cruel and unusual punishment, despite the inmate's claim that prison staff did not drink the prison's water, but brought their own drinking water to the facility; prison officials proffered evidence that chemicals in boiler water were properly kept separate from the potable water, and that the potable water supply was consistently tested for safety and satisfied a health department's sanitary standards. Labounty v. Coughlin, S.D.N.Y.2003, 2003 WL 21692766, Unreported. Prisons 17(3); Sentencing And Punishment 1540

2339. Dining privileges, prisons and prisoners generally

Prison's feeding rule requiring that, when meals were delivered to an inmate's cell, the inmate had to be wearing trousers or gym shorts was a reasonable condition to the receipt of food, in light of security issues and respect for female security officers' privacy, and thus, prison officials' withholding of food from inmate when he refused to put on trousers or shorts did not constitute the use of food deprivation as punishment, for purposes of Eighth Amendment prohibition against cruel and unusual punishment. Freeman v. Berge, C.A.7 (Wis.) 2006, 441 F.3d 543. Sentencing And Punishment 1540

Discomfort of eating in a prison cell is not, of itself, an unconstitutional hardship. Detainees of Brooklyn House of

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42 U.S.C.A. § 1983

Detention for Men v. Malcolm, C.A.2 (N.Y.) 1975, 520 F.2d 392, on remand 421 F.Supp. 832. Prisons 4(5)

Prisoner cannot sue under § 1983 to recover amounts that he claims have been improperly deducted from commissary account. Meadows v. Gibson, W.D.Tenn.1994, 855 F.Supp. 223. Civil Rights 1098

Privilege of prison inmate to eat with his fellow inmates on a particular evening did not rise to the level of a protected liberty interest, and thus he did not have a valid due process claim when he was deprived of that privilege because of alleged infraction, without being removed from the general prison population, and could not maintain civil rights action against prison guards who allegedly inflicted such deprivation. Sierra v. Lehigh County Pennsylvania, E.D.Pa.1985, 617 F.Supp. 427. Civil Rights 1092; Constitutional Law 272(2)

Denial of access to canteen during state prisoner's eight-day stay at county jail awaiting postconviction case and alleged unavailability of bed linen did not rise to constitutional deprivations; also, although conditions were most probably unpleasant, it did not represent cruel and unusual punishment, notwithstanding lack of a shower or claim of lack of running water. Russell v. Enser, D.C.S.C.1979, 496 F.Supp. 320, affirmed 624 F.2d 1095. Civil Rights 1098; Sentencing And Punishment 1538; Sentencing And Punishment 1539; Sentencing And Punishment 1554

Cancellation of prison inmate's canteen privileges by prison officials concerned about the diet which he was receiving for his diabetes did not constitute a deprivation of any secured right, privilege or immunity. Jefferson v. Douglas, W.D.Okla.1979, 493 F.Supp. 13. Civil Rights 1098

County jail inmates should be allowed not less than 15 minutes at meal table. Rutherford v. Pitchess, C.D.Cal.1978, 457 F.Supp. 104. Prisons 17(3)

This section rendering liable persons who, under color of law, subject another to deprivation of rights, privileges or immunities secured by Constitution and laws of the United States does not create cause of action inuring to benefit of state prisoners who would challenge institution's disregard for mess hall seating preferences. Birch v. Vincent, S.D.N.Y.1974, 368 F.Supp. 532. Civil Rights 1098

2340. Clothing, prisons and prisoners generally--Generally

Prisoner complaints relating to conditions concerning clothing issues, or repairs of facilities and the like are matters of internal concern and should be presented to administrators of institution to correct them on each occasion when and where they occur. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Prisons 17(1)

2341. ---- Strip cells, clothing, prisons and prisoners generally

Eighth Amendment is violated in strip cell cases only if, after viewing totality of the circumstances, including extent of plaintiff's injuries, fact finder concludes that defendant's conduct was so inhumane, base, or barbaric as to shock one's sensibilities; not every use of strip cell for control purposes will violate that standard. Johnson v. Boreani, C.A.8 (Ark.) 1991, 946 F.2d 67. Sentencing And Punishment 1553

The 14-day incarceration of state prisoner in a strip cell which had a light and some ventilation and which was equipped with a toilet which could be flushed from within the cell by prisoner who was furnished clothing, bedding, soap, towels and toilet paper did not constitute cruel and unusual punishment of state prisoner who was found to be in possession of drug paraphernalia. Clements v. Turner, D.C.Utah 1973, 364 F.Supp. 270. Sentencing And Punishment 1553

After prison psychiatrist was informed that prisoner had attempted to harm himself and to block view into his cell,

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psychiatrist's recommendation that correctional officers remove any items from prisoner's cell with which he could harm himself did not amount to Eighth Amendment violation against cruel and unusual punishment, despite prisoner's claims that, as a result, his cell was stripped and he was left naked in his cell for five days, where recommendation was made not to humiliate or harm prisoner, but to ensure his safety and further legitimate penal concerns. Jetter v. Beard, C.A.3 (Pa.) 2006, 183 Fed.Appx. 178, 2006 WL 1489201, Unreported. Sentencing And Punishment 1553

2342. Grooming requirements, prisons and prisoners generally

Prison officials violated inmate's civil rights by ordering them to cut their hair; although officials had legitimate penological interest in curbing gang activity, district court's determination that proffered explanation that hairstyle at issue was gang-related was pretextual was not clearly erroneous, where officials never told inmates why their hairstyle was considered extreme and officials did not receive memo depicting gang-related hairstyles until after they ordered inmates to get haircuts. Quinn v. Nix, C.A.8 (Iowa) 1993, 983 F.2d 115. Civil Rights 1098

State prison haircut and shaving regulations, which allegedly promoted cleanliness and personal identification, and prison regulations pertaining to making telephone calls and decorating cells did not constitute abuse of discretion enjoyed by prison authorities so as to warrant interference by federal court with administration of state prison. Hill v. Estelle, C.A.5 (Tex.) 1976, 537 F.2d 214. Prisons 4(7)

Jailer who directed jail employee to cut plaintiff's hair even though jailer knew that plaintiff was about to be released deprived plaintiff of his constitutional rights in violation of this section. Carter v. Noble, C.A.5 (Miss.) 1976, 526 F.2d 677. Civil Rights 1098

Hair length regulations of Iowa State Penitentiary were not unconstitutional as an unwarranted infringement of a right of prisoners to govern their own personal appearance. Rinehart v. Brewer, C.A.8 (Iowa) 1974, 491 F.2d 705. Prisons 4(7)

Federal court would not entertain prisoner's civil rights action against warden and other state officials in order to second guess the state authorities on the length of prisoners' hair. Daugherty v. Reagan, C.A.9 (Cal.) 1971, 446 F.2d 75. Civil Rights 1098

Prison regulation requiring petitioner to shave and cut his hair, however annoying it may have been to petitioner personally, did not deprive him of any federal civil or constitutional right. Blake v. Pryse, C.A.8 (Minn.) 1971, 444 F.2d 218. Prisons 4(7)

Prison regulation requiring prisoners to be clean shaven did not deprive inmate, who alleged that he was demigod, that his mustache was gift from his creator, and that he was an established religion, of religious liberties guaranteed by the Constitution. Brown v. Wainwright, C.A.5 (Fla.) 1970, 419 F.2d 1376. Constitutional Law 84.5(14)

Prison officials did not violate equal protection rights of pre-operative transsexual inmate suffering from gender identity disorder by refusing to permit inmate to grow long hair, even if other inmates were allowed to grow long hair for religious reasons, in light of potential for institutional disruption and violence if inmate were allowed to express feminine gender identity. Wolfe v. Horn, E.D.Pa.2001, 130 F.Supp.2d 648. Prisons 4(7)

Prisoner's claim, under this section, that he was told to get haircut or he would be sent to isolation was nuisance, to be dealt with as such. Sloan v. Southampton Correctional Center, E.D.Va.1979, 476 F.Supp. 196. Civil Rights 1098; Federal Civil Procedure 1788.10

Utilization of haircut rule as means of discipline fell clearly within ambit of administrative discretion held by prison officials, with which court would be loathe to interfere in absence of extreme circumstances. Hill v. Estelle,

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S.D.Tex.1976, 423 F.Supp. 690. Prisons 13(4)

Fact that, if state correctional facility did away with its "non-beard" rule, alternative of taking postbeard identification photographs of inmates might be administratively inconvenient or financially burdensome, was insufficient to excuse state from according basic constitutional rights to inmates required by their religion to grow beards. Monroe v. Bombard, S.D.N.Y.1976, 422 F.Supp. 211. Constitutional Law 84.5(14)

Action by prisoners contesting practice of barring visits from family and friends to inmates refusing to shave presented issues as to impact of the practice and the constitutional dimensions of prison visitation, requiring hearing on the merits. Agron v. Montanye, W.D.N.Y.1975, 392 F.Supp. 454. Prisons 4(7)

Hair grooming regulation which was promulgated by sheriff with respect to correctional officers at county jail and which forbade hair touching the ears or collar and mustaches extending over the top of the upper lip and beyond the corners of the mouth could not be sustained as reasonably related to legitimate state interest in jail discipline, jail safety, and rehabilitative effect of exemplary conduct. O'Doherty v. Seniuk, E.D.N.Y.1975, 390 F.Supp. 456. Prisons 6

Prison regulations prohibiting beards and hair styles that appeared unsanitary and impaired identification of inmates were directed to achievement of valid objectives and any resulting restriction on inmates' personal preferences was justified. Collins v. Haga, W.D.Va.1974, 373 F.Supp. 923. Prisons 4(7)

North Carolina prison regulation that inmates must keep their hair neatly cut and properly groomed and which required inmates to be clean shaven was justified for identification, hygienic and security reasons and, as it was applied with uniformity throughout the North Carolina system and was not instituted to block black inmates from wearing "Afro" haircuts, black inmates were not deprived of right to practice their religion, were not subjected to cruel and unusual punishment nor deprived of property without due process of law because they were not permitted to wear "Afro" haircuts or to wear mustaches and goatees. Williams v. Batton, E.D.N.C.1972, 342 F.Supp. 1110. Constitutional Law 84.5(14); Constitutional Law 272(2); Sentencing And Punishment 1534; Prisons 4(14); Sentencing And Punishment 1551

2343. Hygienic conditions, prisons and prisoners generally--Generally

Pro se prisoner's allegations that District of Columbia knew or should have known about constitutional violations taking place in private prison that had contract with the District, including prison officials' alleged use of common needles to draw blood from prisoners, were sufficient to allege that violations were caused by District custom or policy, as required to state § 1983 claim under deliberate indifference theory. Warren v. District of Columbia, C.A.D.C.2004, 353 F.3d 36, 359 U.S.App.D.C. 179. Civil Rights 1352(4)

Prisoner's claims regarding unsanitary conditions in his cell, which included allegations that mice were constantly entering his cell, and that for several consecutive days area directly in front of his cell was filled with human feces, urine, and sewage water, were sufficient to allege inhumane conditions in violation of his Eighth Amendment right to be free from cruel and unusual punishment, and thus to state § 1983 claim against prison officials allegedly responsible for conditions. Gaston v. Coughlin, C.A.2 (N.Y.) 2001, 249 F.3d 156. Prisons 17(1); Sentencing And Punishment 1539

Former inmate failed to demonstrate that former prison officials had actual knowledge of alleged substantial risk of harm presented by conditions in former inmate's prison unit, as was necessary to establish violation of constitutional prohibition against cruel and unusual punishment, where former inmate did not complain or file grievance about any condition in his unit and also failed to offer any circumstantial evidence from which former prison officials' actual knowledge could be inferred. Tokar v. Armontrout, C.A.8 (Mo.) 1996, 97 F.3d 1078. Sentencing And Punishment 1546; Prisons 17(1)

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42 U.S.C.A. § 1983

Inmate was not subjected to "unconstitutional conditions of confinement," for purposes of his claim under § 1983, by prison employee who swept water and garbage into inmate's prison cell, absent showing that volume or depth of water and garbage posed substantial risk of serious harm and that employee actually knew of the risk. Baker v. Delo, C.A.8 (Mo.) 1994, 38 F.3d 1024. Civil Rights 1098

Alleged inadequate temperature-control and ventilation, presence of insects, and a lack of cleaning at county jail did not violate due process rights of pretrial detainee, where jail cells were heated and cooled by air conditioning on same ventilation system as rest of courthouse, detainees had ability to open cell windows and had fans to use in summer, detainees were allowed additional blankets in winter, jail and courthouse were treated for insects on a monthly basis, and cleaning materials were provided to detainees to use in cells. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280. Prisons 17(1)

Inmate who sued prison officials failed to establish that he was exposed to unreasonably high levels of contaminated water while incarcerated, as required to maintain deliberate indifference claim under Eighth Amendment; although water from cell sink was allegedly discolored, and inmate fainted shortly after he drank water, sample taken to laboratory for independent testing met or exceeded requisite standards. Brown v. Williams, D.Del.2005, 399 F.Supp.2d 558. Sentencing And Punishment 1536

Neither state prison's director of special housing and inmate discipline nor acting hearing officer at inmate discipline proceedings were deliberately indifferent to conditions which posed substantial risk of serious harm to inmate, as required to establish Eighth Amendment violation for which they were liable under § 1983, where, although inmate was subject to inmates who threw feces, set fires, and flooded cells with overflowing toilets, both officials spent great deal of time addressing those acts, cleaning and disinfecting cells, moving inmates behind plexiglass shields, and punishing the violators, and where inmate was not particularly victimized by such acts, which were primarily directed at prison officials or prison population in general. Porter v. Selsky, W.D.N.Y.2003, 287 F.Supp.2d 180, affirmed 421 F.3d 141. Prisons 17(1); Sentencing And Punishment 1536

County jailer and her supervisor violated inmate's Eighth Amendment rights, for purposes of inmate's § 1983 claim, by acting with deliberate indifference to complaints about filth in cell and nonfunctioning toilet and sink, lack of toilet paper, and shower head which produced only thin stream of cold water; jailer left inmate in cell for six days while written maintenance request was processed, and jailer's supervisor told inmate he could not receive cleaning supplies until cleaning day. Sanford v. Brookshire, W.D.Tex.1994, 879 F.Supp. 691. Sentencing And Punishment 1539; Prisons 17(1)

Refusal to allow prisoner to shower for three days reached level of cognizable claim under federal civil rights statute, even though, under ordinary circumstances, denial of shower for three days would not be actionable, where prisoner alleged that jail personnel allowed other inmates to shower, that prisoner had been sexually assaulted, and that jail personnel knew of assault. Huffman v. Fiola, N.D.Cal.1994, 850 F.Supp. 833, vacated 110 F.3d 68. Civil Rights 1098

Pretrial detainee's allegations that he was confined to solitary cell under sheriff's control and that cell was coated with human feces and urine and had no source of drinking water stated cause of action under § 1983 against sheriff with respect to conditions of detention. Majette v. Butterworth, S.D.Fla.1988, 699 F.Supp. 882. Civil Rights 1395(7)

Prison medical staff members were not deliberately indifferent to medical needs of prisoner who suffered from bowel and urinary incontinence in refusing prisoner's request for daily showers, even though prior to prisoner's arrival at prison, one physician had recommended daily showers, and thus, staff did not violate prisoner's Eighth Amendment rights; staff considered prisoner's conditions and made special provisions for him, including permission to shower more frequently than ordinary inmates. De La Paz v. Peters, N.D.Ill.1997, 959 F.Supp. 909. Sentencing And Punishment 1546; Prisons 17(2)

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42 U.S.C.A. § 1983

Federal prisoner clearly alleged prison conditions were substandard and subhuman, and he further described facilities as safety hazard and so unsanitary as to breed disease, and such conditions, if true, were sufficient to constitute a claim under U.S.C.A.Const. Amend. 8. Botway v. Carlson, E.D.Va.1979, 474 F.Supp. 836. Sentencing And Punishment 1536; Sentencing And Punishment 1539

Fact that beds in unit in which prisoner slept were kept close together, that, after every man had taken a shower, there was hardly enough water to flush the toilets, and that cups and utensils were sometimes dirty did not constitute denial of constitutional rights. Turner v. Plageman, W.D.Va.1976, 418 F.Supp. 132. Prisons 17(1)

Alleged failure of prison officials to supply soap, toothpaste, and some writing materials, alleged failure of prison officials to provide jobs within the prison at wages comparable to what would be earned in medical research programs, alleged failure of prison officials to adequately supervise medical experiment conducted by drug firm, and alleged failure of prison officials to provide proper medical treatment and to provide a warm and dry cell did not, individually or in combination, constitute infliction of cruel and unusual punishment such as would give rise to civil rights claim. Roach v. Kligman, E.D.Pa.1976, 412 F.Supp. 521. Civil Rights 1098

General claim of state prisoner that warden of house of detention failed to properly enforce health regulations was insufficient to support a claim of deprivation of constitutional rights under this section. Bussue v. Lankler, S.D.N.Y.1972, 337 F.Supp. 146. Civil Rights 1091

Warden and corrections officers who allegedly either denied inmate's requests for personal hygiene items or had reviewed and rejected his challenge to those denials could be held liable in § 1983 action for withholding of personal hygiene items in violation of inmate's right to be free from cruel and unusual punishment. James v. O'Sullivan, C.A.7 (Ill.) 2003, 62 Fed.Appx. 636, 2003 WL 1466486, Unreported. Prisons 17(1); Sentencing And Punishment 1539

State inmate's complaints regarding conditions of his confinement in state correctional facilities, including that cells were small, cold, dirty, smelly, and overcrowded, that noise level was too high, and that he was incorrectly classified, did not rise to level of constitutional violations, as required to state § 1983 claims against prison officials. DeFoe v. Correction Officers Tucker, D.Del.2002, 2002 WL 31422864, Unreported. Civil Rights 1092; Civil Rights 1098

2344. ---- Second hand smoke, hygienic conditions, prisons and prisoners generally

An unreasonably high level of environmental tobacco smoke, required for a prisoner to prove that second-hand smoke constitutes deliberate indifference to serious medical needs, is one that poses an unreasonable risk of serious damage to his current or future health. George v. Smith, W.D.Wis.2006, 2006 WL 3775929. Sentencing And Punishment 1536

Former inmate's allegations, that while he was in jail he was subjected to an intolerable level of environmental tobacco smoke (ETS), that such exposure caused health problems at time he was confined and posed a risk to his future health, and that individual defendants were deliberately indifferent to his condition, were sufficient, if true, to establish an Eighth Amendment violation, for purposes of determination whether individual defendants were entitled to qualified immunity in inmate's §§ 1983 action. Williams v. District of Columbia, D.D.C.2006, 439 F.Supp.2d 34. Sentencing And Punishment 1536

Inmate's allegations that he was subject to an intolerable level of second-hand tobacco smoke while confined at jail, and that jail officials were deliberately indifferent to his condition because they did not resolve the numerous grievances he filed on the issue, were sufficient to support an Eighth Amendment claim based on exposure to environmental tobacco smoke (ETS). Abdullah v. Washington, D.D.C.2006, 437 F.Supp.2d 137. Sentencing And Punishment 1536

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42 U.S.C.A. § 1983

State prisoner's allegations that correctional officer, on one occasion, smoked a cigarette on the tier by another inmate's cell and blew smoke into that inmate's cell, and that on several occasions the correctional officer smoked in the isolated control pod, did not sufficiently allege that objectively, the plaintiff prisoner was exposed to unreasonably high levels of environmental tobacco smoke (ETS), as element for stating a claim under §§ 1983 for violation of Eighth Amendment prohibition of cruel and unusual punishment, relating to involuntary exposure to ETS. Bacon v. Taylor, D.Del.2006, 414 F.Supp.2d 475. Sentencing And Punishment 1536

Prison officials' subjecting inmate, with deliberate indifference, to levels of environmental tobacco smoke (ETS) that pose unreasonable risk of serious damage to inmate's future health is cognizable under Eighth Amendment; showing of aggravation of existing medical condition is not required. Bartlett v. Pearson, E.D.Va.2005, 406 F.Supp.2d 626. Sentencing And Punishment 1536

Corrections officials were not deliberately indifferent to state prison inmate's request for non-smoking housing, precluding recovery in inmate's §§ 1983 Eighth Amendment action against officials alleging that exposure to smokers endangered his future health; prison had policy aimed at limiting, when practicable, inmates' environmental tobacco smoke (ETS) exposure, officials twice offered inmate option to reside in special or segregated housing, and inmate was moved to non-smoking area after being housed with smokers for total of 17 weeks, which was not unreasonable given level of crowding at prison and fact that safety concerns took precedence over smoking preferences. Bartlett v. Pearson, E.D.Va.2005, 406 F.Supp.2d 626. Prisons 17(1)

Under objective standard governing determination of whether prisoner was exposed to inhumane conditions of confinement, prison warden did not violate Eighth Amendment rights of state prisoner under § 1983 by placing him in cell with inmate who allegedly smoked 20 cigarettes a day, resulting in prisoner's exposure to environmental tobacco smoke (ETS); there was no scientific or statistical evidence as to the seriousness of potential harm and likelihood of alleged injury to prisoner's health, and there was no evidence that inmate actually smoked in cell shared with prisoner or that prisoner was otherwise exposed to unreasonably high level of ETS. Washington v. Davis, N.D.Cal.2003, 2003 WL 1873272, Unreported, affirmed 76 Fed.Appx. 147, 2003 WL 22170675. Prisons 17(1); Sentencing And Punishment 1536

Prisoner stated Section 1983 claim that his exposure to environmental tobacco smoke (ETS) in prison constituted an Eighth Amendment violation, where he claimed that he was exposed to ETS for approximately six weeks and that prison officials exhibited deliberate indifference toward the risk that this exposure constituted a threat to his future health. Sanders v. Kingston, C.A.7 (Wis.) 2002, 53 Fed.Appx. 781, 2002 WL 31856352, Unreported. Prisons 17(1); Sentencing And Punishment 1536

2345. ---- AIDS transmission, hygienic conditions, prisons and prisoners generally

Inmate could not recover on his § 1983 civil rights claim against prison officials based on allegations that he was exposed to risk of contracting AIDS (acquired immune deficiency syndrome) from use of his drinking cup and cigarette roller by allegedly HIV-positive (human immunodeficiency virus-positive) inmate, who was assigned to his cell, since possibility of transference of AIDS through these means was too remote. Marcussen v. Brandstat, N.D.Iowa 1993, 836 F.Supp. 624. Civil Rights 1098

Prison authorities did not violate inmate's constitutional rights simply by placing him in same cell as inmate who had tested positive for Acquired Immune Deficiency Syndrome (AIDS), where first inmate did not contend that there were any instances of sexual contact or intravenous drug use among inmates or any other activities that could pose serious risk of transmission of AIDS. Welch v. Sheriff, Lubbock County, Tex., N.D.Tex.1990, 734 F.Supp. 765. Prisons 17(2)

2345A. ---- Hepatitis C, hygienic conditions, prisons and prisoners generally

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Placement of pretrial detainee in jail cell with inmate known to be infected with Hepatitis C did not pose substantial risk of harm, as element of Eighth Amendment cruel and unusual punishment claim in §§ 1983 action against county sheriff and county jail administrator; Hepatitis C was not spread through airborne transmission or casual contact and instead was spread only through exchange of bodily fluids, and there was no evidence that infected cellmate had history of violent or risky behavior that would increase the likelihood of transmission of Hepatitis C to other inmates. McMahan v. Wilder, C.A.10 (Okla.) 2005, 131 Fed.Appx. 125, 2005 WL 827145, Unreported. Sentencing And Punishment 1536

2346. ---- Toilet facilities, hygienic conditions, prisons and prisoners generally

Allegations of petition in nature of civil rights action that inmates on "death row" at state penitentiary were denied sunshine and exercise, that many toilet facilities located in cells constantly bubbled over, that inmates came in contact with excessive amounts of bacteria, that drinking water was full of rust, and that inmates were fed from filthy food cart and were forced to eat off trays stained with grease went beyond matters exclusively of prison discipline and administration and required consideration by federal district court. Sinclair v. Henderson, C.A.5 (La.) 1970, 435 F.2d 125, on remand 331 F.Supp. 1123. Civil Rights 1395(7)

Denial of bathroom breaks during bus trip from one prison to another prison that lasted some 10 to 15 hours, without more, did not constitute cruel and unusual punishment under Eighth Amendment. Anderson-Bey v. District of Columbia, D.D.C.2006, 2006 WL 3579341. Sentencing And Punishment 1539

Purported withholding of toilet paper from pretrial detainee while incarcerated did not deny him minimal measure of necessities required for civilized living, as required to establish Fourteenth Amendment violation; only evidence supporting allegation consisted of complaint that detainee was regularly made to wait over one hour for toilet paper, and there was no evidence regarding frequency of such events. Beltran v. O'Mara, D.N.H.2005, 405 F.Supp.2d 140, reconsideration denied 2006 WL 240558. Prisons 17(1)

State prison inmate did not exhaust administrative remedies, as required by Prison Litigation Reform Act (PLRA), before bringing §§ 1983 claim that prison did not furnish mandated quantities of toilet paper, when he did not appeal administrative dismissal of complaint. Cole v. Litscher, W.D.Wis.2004, 343 F.Supp.2d 733, reconsideration denied 2005 WL 318819. Civil Rights 1319

Prisoners' right to adequate and hygienic means to dispose of their bodily wastes was clearly established in 1991, and thus facility's superintendent and administrator were not entitled to qualified immunity from liability under §§ 1983 for failing to ensure that chemical toilets in facility were properly cleaned and maintained, despite state trial court's ruling in 1991 that conditions attending chemical toilets at facility did not constitute cruel and unusual punishment under Eighth Amendment, and their attorney's opinion that the conditions at facility were constitutional, where state court required prison officials to inspect toilets at least twice per month and issued specific directions regarding their inspection, cleaning and replacement, but officials allegedly did nothing to alleviate obvious sanitation problems associated with cleaning and maintenance of chemical toilets. Masonoff v. DuBois, D.Mass.2004, 336 F.Supp.2d 54. Civil Rights 1376(7)

State's commissioner of correction was not individually liable under §§ 1983 for violations of inmate's Eighth Amendment rights as result of inadequate cleaning and maintenance of chemical toilets, even though conditions were obviously harmful, where commissioner did not have day-to-day contact with operations and conditions at facility, and did not have actual knowledge of conditions. Masonoff v. DuBois, D.Mass.2004, 336 F.Supp.2d 54. Sentencing And Punishment 1539

Although inmate's claim of unsanitary conditions of toilet area, existence of roaches and bed bugs, and lack of weekly bedding supplies stated unpleasant conditions, conditions themselves did not rise to level of constitutional

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violation and did not state actionable § 1983 claim particularly absent any allegation that inmate suffered injuries result as of conditions. Robinson v. Illinois State Correctional Center (Stateville) Warden, N.D.Ill.1995, 890 F.Supp. 715. Civil Rights 1098

Allegations of prison officials' deliberate denial of toilet paper and soap for extended period of time was more significant than de minimis intrusion and constituted denial of minimal civilized measures of life's necessities so as to state claim under § 1983 for violation of Eighth Amendment. Williams v. ICC Committee, N.D.Cal.1992, 812 F.Supp. 1029. Sentencing And Punishment 1539; Prisons 17(1)

While normalization of prison environment is a desirable policy, that policy cannot be furthered rationally be subjecting male prisoners who are using showers or toilet facilities to scrutiny of female officers; such practice aggravates rather than mitigates disparity between prison environment and society at large. Hudson v. Goodlander, D.C.Md.1980, 494 F.Supp. 890. Prisons 12

It was arbitrary and capricious for federal prison officials to keep bathroom in visiting area locked and to require inmates or their visitors to obtain the key from a guard simply because of an unexplained history of one improbable escape in which the bathroom was involved. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(6)

Practice of providing only towels, soap and toilet paper to inmate at state correctional unit and requiring other toiletry items to be purchased or obtained from outside sources did not rise to magnitude of a constitutional deprivation in absence of evidence that it was seriously harmful to inmate's health. Scellato v. Department of Corrections, W.D.Va.1977, 438 F.Supp. 1206. Prisons 17(1)

Prisoner's allegation concerning his cellmate who allegedly washed his feet in toilet and then proceeded to drink from the same toilet did not amount to deprivation of a constitutional magnitude. Feazell v. Augusta County Jail, W.D.Va.1975, 401 F.Supp. 405. Civil Rights 1395(7)

Even if commode in prisoner's jail cell became stopped up and if water was turned off to prevent same from happening again, it was not cruel and inhuman punishment or punishment subject to judicial review where conditions complained of lasted no longer than some 27 hours and prisoner was allowed to keep his clothing and had a raised slab upon which to sit and sleep, even if he was deprived of mattress and property taken from cell because it had been thrown on floor and had become soaked. Green v. Kent, W.D.Va.1974, 369 F.Supp. 1124. Sentencing And Punishment 1538; Prisons 17(1); Sentencing And Punishment 1539

2347. ---- Vermin and rodents, hygienic conditions, prisons and prisoners generally

State prison inmate's allegation that a prison officer deprived him of adequate ventilation and water by turning off those systems during a cell extraction in his unit of the facility was insufficient to allege a deprivation that rose to the level of an Eighth Amendment violation, even if the inmate were able to establish the officer's intent. Minifield v. Butikofer, N.D.Cal.2004, 298 F.Supp.2d 900. Prisons 17(1); Sentencing And Punishment 1538

County jail officials would be required to spray the cells of all inmates at least once a month for the purpose of eradicating vermin and rodents. Tate v. Kassulke, W.D.Ky.1975, 409 F.Supp. 651. Prisons 17(1)

Presence of vermin or other unsanitary and unhealthy conditions in prison may be grounds for judicial intervention, but no injunctive relief was mandated, in view of evidence disclosing that reasonable efforts were regularly made by the correctional officials to maintain adequate sanitation, and in view of fact that there was no indication that any inmate had become ill by reason of the conditions. Collins v. Haga, W.D.Va.1974, 373 F.Supp. 923. Prisons 17(1)

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42 U.S.C.A. § 1983

2347A. Cell assignment

Prison officials' failure to house prisoner with cellmates of his choosing, after one staff member recommended such arrangement to accommodate his bipolar disorder and severe social anxiety disorder if doing so did not "break any custody or classification rules or criteria," did not constitute deliberate indifference to his serious medical needs in violation of Eighth Amendment, where officials had ample reasons for their action including safety concerns, and officials had no reason to know that housing choices would have serious negative impact on prisoner's mental health. Moots v. Lombardi, C.A.8 (Mo.) 2006, 453 F.3d 1020. Sentencing And Punishment 1546

Blind state prisoner had no constitutional right to be housed in cell with his son, who was co-defendant in underlying criminal case, despite prisoner's contention that he was dependent upon his son as his "sighted person." Quick v. Mann, C.A.10 (Okla.) 2006, 170 Fed.Appx. 588, 2006 WL 637169, Unreported. Prisons 17(1)

Prison inmate's confinement in "gang unit" at prison did not deprive him of a protected liberty interest arising under due process clause or under state-created liberty interest, despite his argument that confinement in "gang unit," without giving him the opportunity to employ counsel or to show that he was not a gang member, classified him as a gang member and placed him in harm's way. McDaniel v. State of New Jersey Dept. of Corrections, C.A.3 (N.J.) 2005, 160 Fed.Appx. 254, 2005 WL 3542567, Unreported. Prisons 13(5)

2348. Overcrowding, prisons and prisoners generally

If overcrowding of inmates did not violate inmates' federally secured rights, inmates did not have § 1983 action against corrections officials and mayor, notwithstanding contention that inmates could be awarded damages based on their subjective frustration; prisoners attributed all their woes to overcrowding. Brogsdale v. Barry, C.A.D.C.1991, 926 F.2d 1184, 288 U.S.App.D.C. 311. Civil Rights 1098

County failed to satisfy its constitutional responsibility in maintaining county jail by its delay in rectifying jail overcrowding, and it was liable for compensatory damages, despite voters' overwhelming rejection of proposal to levy tax to build new jail; ways in which commissioners actually obtain money to finance necessary jail improvements, when put under threat of litigation, provided compelling evidence of fact that commissioners could have taken steps to improve jail at much earlier date. Moore v. Morgan, C.A.11 (Ala.) 1991, 922 F.2d 1553. Civil Rights 1098

Prisoner did not demonstrate any nexus between alleged overcrowding conditions and fight between him and another inmate which guards did not break up, and thus did not show that prison officials had violated the Eighth Amendment by failing to provide him with safe conditions of confinement. Williams v. Willits, C.A.8 (Iowa) 1988, 853 F.2d 586. Sentencing And Punishment 1537; Sentencing And Punishment 1538

Requiring pretrial detainees to sleep on a mattress on the floor of their cells for a period of three to seven months did not violate the detainees' Fourteenth Amendment due process rights; providing sleeping accommodations on the floor was in response to overcrowding at the prison and was not intended to punish. Hubbard v. Taylor, D.Del.2006, 452 F.Supp.2d 533. Prisons 4(4)

Inmates of state correctional facility stated claim for Eight Amendment violation; inmates complained of five or six persons in cell designed for one, sleeping on floor for months, vermin in food supply, toilet paper in very short supply, and severely limited exercise opportunities, and these conditions had continued over long period of time, giving rise to inference that prison officials were aware of conditions and were indifferent to them. Ingalls v. Florio, D.N.J.1997, 968 F.Supp. 193. Civil Rights 1395(7)

Prisoners have no constitutional right to single cell. Brooks v. Kleiman, E.D.Pa.1989, 743 F.Supp. 350. Prisons 17(1)

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42 U.S.C.A. § 1983

Present overcrowding at the House of Detention for Men on Rikers Island was unconstitutional under the Wolfish standard, since the stipulation by which city agreed that the population at HDM was constitutionally impermissible was entered into a month after the Wolfish decision, since the facility on question was significantly different from that in question in Wolfish, since the Wolfish court clearly indicated that overcrowding may constitute impermissible "punishment," and since the overcrowding at HDM was not "reasonably related to a legitimate nonpunitive governmental objective." Benjamin v. Malcolm, S.D.N.Y.1980, 495 F.Supp. 1357. Prisons 17(1)

Cost is not required to be treated as a major factor in determining whether prison overcrowding rises to level of a violation; rather, matter of cost is to be carefully considered in fashioning an affirmative remedy. Jordan v. Wolke, W.D.Wis.1978, 460 F.Supp. 1080, reversed on other grounds 615 F.2d 749. Prisons 4(5)

Prison which was designed to have 1,100 inmates and which, in March of 1978, confined 1,708 prisoners was unconstitutionally overcrowded. Johnson v. Levine, D.C.Md.1978, 450 F.Supp. 648, judgment affirmed in part and remanded on other grounds 588 F.2d 1378. Prisons 17(1)

Where report of special master demonstrated that full compliance with prior court order concerning prison conditions was complicated by large number of inmates presently residing at the prison, and since it was demonstrated that any increase in population of the institution would interfere with effectuation of the court order, present maximum capacity of the prison would be ordered to be observed and no inmates would be allowed to be admitted to the prison in excess of the current number. Taylor v. Perini, N.D.Ohio 1976, 413 F.Supp. 189. Prisons 4(1)

Motion of Mississippi State Penitentiary inmates to accelerate the timing of scheduled prison housing relief and to enjoin prison officials from accepting any additional prisoners until every inmate was provided with at least 50 square feet of barracks living space would be denied, as the prison overcrowding was only 10%, as the prison, while perhaps somewhat understaffed, had a well trained and disciplined correctional staff, as violence among inmates had been dramatically reduced, and as the chief problem with inmate housing was not overcrowding but the dilapidated conditions of many housing units. Gates v. Collier, N.D.Miss.1975, 407 F.Supp. 1117. Prisons 17(1)

Overcrowded condition at state prison, though undesirable, did not "shock the conscience," could not be considered barbarous and did not constitute infliction of cruel and unusual punishment. White v. Sullivan, S.D.Ala.1973, 368 F.Supp. 292. Sentencing And Punishment 1538; Prisons 17(1)

In class action brought under this section to redress alleged infringement of constitutional rights of federal prisoners detained in city jail pursuant to contract with city, evidence established that overcrowding and unsanitary living conditions did not in themselves violate a federally protected right. Johnson v. Lark, E.D.Mo.1973, 365 F.Supp. 289. Civil Rights 1420

Jail officials were required to terminate use of space for activity not appropriate to jail operations and to make usable currently unused space to relieve overcrowding. Jones v. Wittenberg, N.D.Ohio 1971, 330 F.Supp. 707, 29 Ohio Misc. 35, 58 O.O.2d 47, affirmed 456 F.2d 854, 62 O.O.2d 232. Prisons 17(1)

2349. Double celling, prisons and prisoners generally

Prisoner's contention that doubling him in a single cell without giving him a bunk for his mattress, a privacy curtain for bathroom use, and a television stand violated the Eighth Amendment fell far short of the "extreme deprivation" required to satisfy the objective component of an Eighth Amendment conditions-of-confinement claim. Sanders v. Kingston, C.A.7 (Wis.) 2002, 53 Fed.Appx. 781, 2002 WL 31856352, Unreported. Prisons 17(1); Sentencing And Punishment 1538

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42 U.S.C.A. § 1983

2350. Size of cells, prisons and prisoners generally

While cells of jail were indeed small, in view of frequent and substantial periods of time that inmates were allowed to be out of their cells, limited number of square feet of sleeping space per inmate did not present constitutional issue that required immediate action, but any modification in system of allocating prisoners among county penal facilities should take into appropriate account increasingly enlightened standards with respect to living space that should be accorded each inmate. Rutherford v. Pitchess, C.D.Cal.1978, 457 F.Supp. 104. Prisons 17(1)

2351. Temperature in facilities, prisons and prisoners generally

Prisoner's allegation that due to unrepaired windows in his cellblock he had been exposed to freezing and sub-zero temperatures during winter months was sufficient to state claim under § 1983 for cruel and unusual punishment in violation of his Eighth Amendment rights. Gaston v. Coughlin, C.A.2 (N.Y.) 2001, 249 F.3d 156. Prisons 17(1); Sentencing And Punishment 1538

Plaintiff who alleged that, as unconvicted person, he was knowingly, intentionally and maliciously denied adequate detention facilities by defendants, who intentionally subjected him to cold, rainy, roach-infested facility and furnished him with inoperative, scum-encrusted washing and toilet facilities, sufficiently alleged cause of action under this section and U.S.C.A. Const.Amends. 8 and 14, and district court erroneously dismissed complaint without allowing plaintiff opportunity to prove that his claims were meritorious. Bienvenu v. Beauregard Parish Police Jury, C.A.5 (La.) 1983, 705 F.2d 1457. Civil Rights 1395(6)

Jail was adequately heated where temperature in cell blocks was monitored and records showed that temperatures were appropriate. Hopkins v. Campbell, D.Kan.1994, 870 F.Supp. 316. Prisons 17(1)

Evidence that cell in which prisoner was placed was cold and leaky and that it was shared by two prisoners did not demonstrate that prisoner was denied civil rights by being subjected to cruel and unusual punishment. Roach v. Kligman, E.D.Pa.1976, 412 F.Supp. 521. Civil Rights 1420

Inmate failed to prove that prison officials actually knew that the temperature in his cell was so cold as to subject him to substantial harm, and thus failed to prove an Eighth Amendment violation in his §§ 1983 suit arising from two instances in which officials removed his personal property from his cell and left him either nude or with underwear and without any blankets or sheets. Baptist v. Hinsley, C.A.7 (Ill.) 2004, 107 Fed.Appx. 7, 2004 WL 1799361, Unreported. Prisons 17(1); Sentencing And Punishment 1538

2352. Ventilation, prisons and prisoners generally

State prisoner's claims concerning lack of ventilation, use of air conditioning and size of area through which visitors had to speak, without any showing that prisoner, who was subjected to such conditions during eight-day stay in county jail awaiting postconviction case, had been damaged by such design or operational deficiencies did not rise to level of constitutional claims. Russell v. Enser, D.C.S.C.1979, 496 F.Supp. 320, affirmed 624 F.2d 1095 . Civil Rights 1098

State inmate's allegation that his asthmatic condition was aggravated as result of inadequate ventilation in his prison cell stated sufficiently serious physical injury to support his §§ 1983 claim for unconstitutional conditions of confinement. Robichaux v. Cain, C.A.5 (La.) 2004, 99 Fed.Appx. 561, 2004 WL 1240519, Unreported. Prisons 17(1)

2353. Asbestos exposure, prisons and prisoners generally

Inmate did not waive § 1983 claim for emotional distress damages allegedly caused by exposure to asbestos

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without proof of physical injury by stating "assuming" case law precluded claim for mere exposure to asbestos, his claim was distinguishable because he suffered present injury. Fontroy v. Owens, C.A.3 (Pa.) 1998, 150 F.3d 239. Civil Rights 1463

Prison Litigation Reform Act's (PLRA) exhaustion requirement applied to state prison inmate's pro se §§1983 claim against state corrections officials alleging that officials had permitted inmates to be exposed to toxic agent, namely "asbestos bacteria," inside prison. Escobar v. Crosby, S.D.Fla.2005, 363 F.Supp.2d 1361. Civil Rights 1319

2354. Sleeping facilities, prisons and prisoners generally

Claim that officer inflicted cruel and unusual punishment on defendant by requiring him to spend two evenings in holding cell that lacked civilized bed linen, pillow, or comfortable place to rest did not implicate validity of his conviction and could be maintained even without the conviction being invalidated. Channer v. Mitchell, C.A.2 (Conn.) 1994, 43 F.3d 786. Civil Rights 1088(4)

Correctional officer did not know of substantial risk of serious harm to state prisoner posed by his assignment to a top bunk in light of certain medical conditions, as would support prisoner's claim under the Eighth Amendment against officer, for deliberate indifference to his safety, where officer simply had prisoner's representations as to his medical condition, she had no duty to confirm prisoner's representations because she had no authority over bed assignments, and there was no prior medically-authorized bottom bunk assignment. Pennington v. Taylor, E.D.Va.2004, 343 F.Supp.2d 508, affirmed 98 Fed.Appx. 957, 2004 WL 1238583. Prisons 17(2); Sentencing And Punishment 1546

Inmate's claim that he was temporarily forced to sleep on jail floor due to overcrowding did not give rise to violation of his constitutional rights and was not cognizable under § 1983. Castillo v. Bowles, N.D.Tex.1988, 687 F.Supp. 277. Civil Rights 1098

Failure to provide adequate beds or other sleeping facilities, adequate clothing, facilities and equipment for personal hygiene, and reasonably adequate facilities for exercise was violative of rights of unconvicted detainees confined in the San Juan District jail, commonly known as "La Princesa." Martinez Rodriguez v. Jimenez, D.C.Puerto Rico 1976, 409 F.Supp. 582, stay denied 537 F.2d 1, affirmed 551 F.2d 877. Constitutional Law 250.2(1); Constitutional Law 262

2355. Sleep time, prisons and prisoners generally

Ordering inmate to bed at 10 p.m. and subsequently forcing him to comply with that order did not amount to cruel and unusual punishment. Brown v. Bigger, C.A.10 (Kan.) 1980, 622 F.2d 1025. Sentencing And Punishment 1554

2356. Basements, prisons and prisoners generally

Use of basement as detention facility of state correctional institution on temporary, i.e., 48-hour maximum, basis was neither unconscionable nor violative of constitutional prohibition against cruel and unusual punishment, nor was violation of any other federal constitutional right shown. Mayberry v. Maroney, W.D.Pa.1976, 418 F.Supp. 669, reversed on other grounds 558 F.2d 1159. Sentencing And Punishment 1553; Prisons 12

2357. Fire hazards, prisons and prisoners generally

Allegation that state correctional officials knew inmate faced severe and substantial risk from fire because of inoperative fire safety and prevention equipment and, despite their ability to do so, failed to ensure that system was

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operational stated constitutional claim pursuant to § 1983 for deprivation of the right to be free of cruel and unusual punishment. White v. Cooper, N.D.Ill.1999, 55 F.Supp.2d 848. Civil Rights 1395(7)

Although prison officials did not have official policy requiring them to create a fire trap, level of fire safety was consequence of decision by prison officials not to correct conditions of which they acknowledge were hazardous, and thus officials could be held liable for civil rights violation. Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia, D.D.C.1994, 877 F.Supp. 634, vacated in part, modified in part 899 F.Supp. 659, remanded 93 F.3d 910, 320 U.S.App.D.C. 247, rehearing denied, certiorari denied 117 S.Ct. 1552, 520 U.S. 1196, 137 L.Ed.2d 701, on remand 968 F.Supp. 744. Civil Rights 1358

While jail inmates complained about the adequacy of fire protection at the jail, the conditions did not amount to a deprivation of constitutional dimension; the county jail administrator stated by affidavit that the jail was equipped with fire hoses and extinguishers, that the fire department was one block away, that there were officers, closed-circuit television and an intercom for use in monitoring the jail, that procedures in the jail manual are followed, and that the jail has been approved by the state as having adequate safety precautions. Inmates, Washington County Jail v. England, E.D.Tenn.1980, 516 F.Supp. 132, affirmed 659 F.2d 1081. Sentencing And Punishment 1536; Prisons 1

Federal courts may grant relief against "cruel and inhumane" local jail conditions, including severe environment and fire hazards. Ferguson v. Fleck, W.D.Mo.1979, 480 F.Supp. 219. Prisons 4(3)

The duty to protect inmate includes the duty to provide reasonable safety precautions concerning fire, such as by providing extinguishers and fire escapes. Hamilton v. Covington, W.D.Ark.1978, 445 F.Supp. 195. Prisons 17(1)

2358. Personal injury, prisons and prisoners generally

Pretrial detainee proceeding in forma pauperis failed to state a nonfrivolous claim upon which relief could be granted against parish sheriff under §§ 1983 by alleging that conditions of his confinement in flooded prison system medical unit following a hurricane violated his Fourteenth Amendment rights, since he did not allege that he suffered any physical injury as a result of any of the conditions or lack of medical attention. Tate v. Gusman, E.D.La.2006, 459 F.Supp.2d 519. Federal Civil Procedure 2734

Inmate's complaint that he sustained injuries when he tripped on open floor drain, hit jail wall and broke his nose failed to state § 1983 claim; complaint alleged nothing more than mere negligence on part of prison officials and did not allege either deliberate or conscious indifference. Rocheleau v. Cumberland County Sheriff's Dept., D.Me.1990, 733 F.Supp. 140. Civil Rights 1395(7)

Alleged injury to back sustained by plaintiff when he slipped on greasy stairs in prison did not result from a condition of imprisonment and, hence, was not cognizable as cruel and unusual punishment and did not state a constitutional claim against defendant state prison officials under this section. Tunstall v. Rowe, N.D.Ill.1979, 478 F.Supp. 87. Civil Rights 1395(7); Sentencing And Punishment 1536

Conduct of officer in charge of cells at state institution on night petitioner allegedly sustained injuries when cell door closed on his chest was not negligence in absence of evidence that it was anything beyond the ordinary, but even if it was negligence, it was only a tort cognizable under state law and did not amount to a denial of a federally protected right which was cognizable under this section governing deprivation of civil rights. Gibson v. Charlottesville-Albemarle Joint Sec. Complex, W.D.Va.1975, 401 F.Supp. 544. Civil Rights 1098

There was no basis for reconsideration of a prior order dismissing inmate's negligence claim, arising out of an incident in which hot coffee spilled on him; judge issuing the prior order found that a negligent act of an official

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causing injury to life, liberty or property did not violate the United States Constitution, and that the inmate's complaint was not cognizable under §§ 1983 as it lacked any allegations which would give rise to the inference that intentional or reckless conduct of a state official caused the inmate's injuries. Pressley v. Green, S.D.N.Y.2004, 2004 WL 97701, Unreported. Federal Civil Procedure 928

2359. Assault by other prisoners, prisons and prisoners generally--Generally

To survive summary judgment on Eighth Amendment claim asserted under § 1983 which alleges that prison officials failed to adequately protect inmate from harm, inmate is required to produce sufficient evidence of substantial risk of serious harm, defendants' deliberate indifference to that risk, and causation. Hamilton v. Leavy, C.A.3 (Del.) 1997, 117 F.3d 742. Federal Civil Procedure 2491.5

Findings that correctional officers did not witness attack on inmate by other inmates, which gave rise to § 1983 civil rights suit alleging cruel and unusual punishment, was supported by testimony that prison riot broke out shortly before attack on inmate, officers had to stop fight involving approximately 50 inmates, and officers' testimony that they did not observe attack on inmate. Thornton v. Brown, C.A.7 (Ill.) 1995, 47 F.3d 194. Civil Rights 1420

Alleged urging of other inmates to attack prisoner was not a basis for stating a cause of action against prison guards under civil rights statute in absence of a showing that guards failed to protect prisoner or that prisoner told guards he was under a pervasive risk of harm. Mosby v. Mabry, C.A.8 (Ark.) 1982, 697 F.2d 213. See, also, Young v. Calhoun, S.D.N.Y.1987, 656 F.Supp. 970.

Prison authorities have responsibility for taking all reasonable steps to protect inmate from assaults. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Prisons 9

Absent allegation that he had sustained any injury at the hands of other inmates or prison guards, prisoner failed to state §§ 1983 claim that prison officials failed to afford him adequate protection from attack by other inmates in violation of Eighth Amendment; vague allegations of risk of harm were insufficient. Torres Garcia v. Puerto Rico, D.Puerto Rico 2005, 402 F.Supp.2d 373. Civil Rights 1395(7)

For Illinois prisoner to state a § 1983 claim against administrative officials at two institutions where he allegedly had been incarcerated without adequate protection from attacks by fellow inmates the prisoner was required to name as defendants those personally involved in the alleged failure to provide adequate security and was required to link those defendants to alleged attack and explain how those defendants failed to take adequate steps to protect prisoner from attack by other inmates. Sittig v. Illinois Dept. of Corrections, N.D.Ill.1985, 617 F.Supp. 1043. Civil Rights 1395(7)

2360. ---- Deliberate indifference, assault by other prisoners, prisons and prisoners generally

Prison employees were not deliberately indifferent to prisoner's welfare, in violation of Eighth Amendment, when they failed to protect him from his cellmate by honoring his request to be transferred to another cell, as they did not effectively condone attack; officials acted reasonably in responding immediately to prisoner's complaints about cellmate by taking cellmate to psychiatrist when he began acting strangely and by interviewing both men, even though they offered prisoner only a choice of moving to segregation and prisoner was attacked by his cellmate one week after cellmate's psychiatric evaluation. Borello v. Allison, C.A.7 (Ill.) 2006, 446 F.3d 742. Sentencing And Punishment 1537

White detainee at state facility for sexually violent persons stated knowledge-of-risk component of deliberate indifference prong of §§1983 due process failure-to-protect claim against facility officials, arising from series of attacks upon detainee by African-American resident in facility's dayroom, by alleging that officials knew of

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resident's propensity toward attacking Caucasians but permitted resident unsupervised access to dayroom, where detainee and other white residents were lounging; detainee did not have to show that he had informed officials of threat, or that officials were aware of specific threat to detainee rather than general threat to white residents. Brown v. Budz, C.A.7 (Ill.) 2005, 398 F.3d 904. Constitutional Law 255(5); Health 700

Inmate failed to establish claim for deliberate indifference based on prison officials' failure to protect inmate from attack by cellmate; although prison officials knew that cellmate was a "problem inmate" with a well-documented history of prison disobedience and had been prone to violence and specific notice from inmate that cellmate acted crazy, roaming his cell like a "caged animal," officials' generalized awareness of risk did not satisfy the subjective awareness requirement. Carter v. Galloway, C.A.11 (Ga.) 2003, 352 F.3d 1346. Prisons 17(4); Sentencing And Punishment 1537

Prisoner's claim for damages based on prison officials' alleged violation of Eighth Amendment by being deliberately indifferent to rape of prisoner was not cognizable under § 1983, where in prior prison disciplinary hearing regarding same incident, prisoner was found to have violated prison rules by engaging in consensual sex. Lewis v. Richards, C.A.7 (Ind.) 1997, 107 F.3d 549. Civil Rights 1093

Failure of two unarmed prison officials to intervene immediately during attack by armed inmate upon another inmate was not deliberate indifference needed for inmate to overcome qualified immunity defense to § 1983 civil rights suit alleging Eighth Amendment violation; officials were not previously aware of weapon and heroic measures were not constitutionally required. Winfield v. Bass, C.A.4 (Va.) 1997, 106 F.3d 525. Civil Rights 1376(7)

Deputy's testimony that if he spread rumor in jail that inmate was a snitch, inmate would probably be beaten by other inmates established "obdurate and wanton disregard" for inmate's safety, as required to find deputy liable under Eighth Amendment for injuries sustained by inmate in assault by other inmates. Northington v. Marin, C.A.10 (Colo.) 1996, 102 F.3d 1564. Sentencing And Punishment 1537

Warden was not deliberately indifferent to substantial risk of harm to inmate based on fact that second inmate with history of prison violence was incarcerated in same unit of detention facility as first inmate, and was thus not liable for Eighth Amendment claim arising from assault of first inmate, given that facility was not overcrowded and that staffing levels were maintained consistent with correctional requirements. Street v. Corrections Corporation of America, C.A.6 (Tenn.) 1996, 102 F.3d 810. Sentencing And Punishment 1537

Finding that defendant prison guard showed at least "deliberate indifference" to safety of plaintiff former inmate, as required for finding violation of plaintiff's civil rights, by unlocking sleeping plaintiff's cell door and allowing other inmates into cell to attack plaintiff, was supported by sufficient evidence; evidence that defendant was seen talking to group of prison gang members immediately prior to attack and was observed unlocking plaintiff's cell and promptly leaving scene would have supported finding that defendant actively aided assault on plaintiff. Pavlick v. Mifflin, C.A.7 (Ill.) 1996, 90 F.3d 205. Civil Rights 1420

In civil rights action, evidence sustained jury determination that prison officials were deliberately indifferent to safety and welfare of prisoner who was severely burned when cellmate, who had been acting strangely, set their cell on fire after prisoner's pleas to be moved were ignored and after cellmate was placed on "deadlock status" which made it more difficult to remove prisoner from cell in emergency. Haley v. Gross, C.A.7 (Ill.) 1996, 86 F.3d 630. Sentencing And Punishment 1537; Prisons 17(4)

Complaints alleging that prisoners were exposed to adverse prison settings and constantly in fear of their lives by physical assaults from other inmates who could discover their sex offense crimes did not state cause of action for failure to protect under Eighth Amendment, given lack of supporting factual averments showing deprivation was objectively sufficiently serious and absence of allegation of prison officials' deliberate indifference to inmates'

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safety. Riddle v. Mondragon, C.A.10 (N.M.) 1996, 83 F.3d 1197. Sentencing And Punishment 1537

There was no "deliberate indifference" on part of prison officials who failed to physically intervene in fight between plaintiff inmate and another inmate who had weapon and, thus, plaintiff could not recover under § 1983; guards were successful in attempting to break up fight verbally, guards observed that plaintiff and other inmate were evenly matched and that other inmate's weapon was ineffective, and guards called for additional staff and medical personnel and thus were preparing to intervene once sufficient staff was available in accordance with prison policy. MacKay v. Farnsworth, C.A.10 (Utah) 1995, 48 F.3d 491. Civil Rights 1093

Eighth Amendment violation by correctional officers in failing to protect inmate from harm by other inmates is actionable under civil rights statute, § 1983, if inmate shows that officers were deliberately indifferent to his constitutional rights, either because they actually intended to deprive him of some right, or because they acted with reckless disregard of his right to be free of violent attacks by fellow inmates and, under both circumstances, prison official acts with deliberate indifference to inmate's safety when official is present at time of assault and fails to intervene or otherwise act to end the assault. Williams v. Mueller, C.A.8 (Mo.) 1994, 13 F.3d 1214. Civil Rights 1093

To prevail in § 1983 suit, inmate seeking damages from prison officials for subjecting him to cruel and unusual punishment by failing to protect him from assault by another inmate must show something more than mere inadvertence or negligence; he must show defendants were deliberately indifferent to his constitutional rights, either because they actually intended to deprive him of some right, or because they acted with reckless disregard of his right to be free from violent attacks by fellow inmates; to establish reckless disregard by prison officials, inmate must show that he was faced with pervasive risk of harm and that prison officials failed to respond reasonably to that risk. Falls v. Nesbitt, C.A.8 (Ark.) 1992, 966 F.2d 375. Civil Rights 1093

Corrections officer's failure to be at area of prison in which inmate was fatally assaulted with weapon, and officer's alleged failure to conduct required searches of cells and inmates, did not rise to level of "deliberate indifference," and thus, did not violate Eighth Amendment. Gibson v. Foltz, C.A.6 (Mich.) 1992, 963 F.2d 851, rehearing denied. Sentencing And Punishment 1537

Inmate's claim that prison officials failed, as result of their deliberate indifference, to protect him from violent actions of other inmates may state viable § 1983 cause of action. Hendricks v. Coughlin, C.A.2 (N.Y.) 1991, 942 F.2d 109. Civil Rights 1093

Prison guards violated inmate's Eighth Amendment rights and could be held liable in civil rights action when they failed to prevent inmate's stabbing by another inmate, where guards had opportunity to prevent stabbing, but failed to do so, and instead looked on while inmate was attacked. Walker v. Norris, C.A.6 (Tenn.) 1990, 917 F.2d 1449, rehearing denied. Civil Rights 1093; Sentencing And Punishment 1537

Correctional officers and sheriff could not be held liable under § 1983 for failing to protect inmate who went to speak to officer about "racial problem" in his cell, but then returned to cell voluntarily; inmate did not say that he had been threatened, that fight was imminent, or that he feared attack, and there was no evidence that racial tensions in jail frequently resulted in violence. Brown v. Hughes, C.A.11 (Fla.) 1990, 894 F.2d 1533, certiorari denied 110 S.Ct. 2624, 496 U.S. 928, 110 L.Ed.2d 645. Civil Rights 1093

Record supported finding that, as matter of practice, District of Columbia was "deliberately indifferent" to inmates' security and that this practice caused inmate to suffer injury from assault at hands of fellow inmate; there was substantial evidence of violent tendencies of inmate who assaulted plaintiff/inmate, including evidence that inmate had been planning to kill another inmate unrelated to instant litigation, that failure to contain inmate in forensic unit was result of overcrowding and that assistant director of jail believed that jail was "at or near the danger point" shortly prior to assault, as a result of overcrowding. Morgan v. District of Columbia, C.A.D.C.1987, 824 F.2d

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42 U.S.C.A. § 1983

1049, 263 U.S.App.D.C. 69. Civil Rights 1420

Prison inmate's allegations that guards deliberately stood aside while inmate was assaulted by other prisoners, and that one guard struck inmate once were sufficient to allege intentional conduct by guards in violation of substantive due process or to state valid civil rights claim based on the Eighth Amendment prohibition against cruel and unusual punishment. Benny v. Pipes, C.A.9 (Ariz.) 1986, 799 F.2d 489, amended on other grounds 807 F.2d 1514, certiorari denied 108 S.Ct. 198, 484 U.S. 870, 98 L.Ed.2d 149. Civil Rights 1395(7)

Conduct prison classification committee chairman, prison warden, and prison unit administrator, who allowed prisoner to be jailed in same unit as inmate with known animosity to prisoner did not rise to level of callous indifference to prisoner's rights, so as to render them liable to prisoner under 42 U.S.C.A. § 1983 governing deprivation of civil rights for injuries sustained by prisoner in stabbing by inmate. Johnston v. Lucas, C.A.5 (Miss.) 1986, 786 F.2d 1254. Civil Rights 1093

Prisoner, who alleged that following a fight with another inmate that correction officers left open door of cell of his antagonist who then left his cell and assaulted prisoner causing injuries requiring medical attention, would be entitled to relief if he could show purposeful acts on part of correction officers or deliberate indifference to his safety amounting to a violation of due process. Holmes v. Goldin, C.A.2 (N.Y.) 1980, 615 F.2d 83, on remand 566 F.Supp. 863. Civil Rights 1404

State prison officials failed to protect inmates from violence at hands of other inmates, and in so doing, officials demonstrated deliberate indifference to serious and excessive risks to health and safety of inmates at prison, in violation of the Eighth Amendment, by failing to adequately supervise and train subordinates in how to investigate and abate dangerous conditions, failing to develop and follow effective internal review process for reporting policy violations, and failing to discipline malfeasant employees. Skinner v. Uphoff, D.Wyo.2002, 234 F.Supp.2d 1208. Prisons 17(4); Sentencing And Punishment 1537

To prevail on an Eighth Amendment failure to protect claim, a prisoner is required to show that (1) he is incarcerated under conditions posing a substantial risk of serious harm (the objective element); and (2) prison officials acted with deliberate indifference, i.e., that prison officials knew of and disregarded an excessive risk to inmate health or safety. Dickens v. Taylor, D.Del.2006, 2006 WL 3190344. Sentencing And Punishment 1537

State prison officials were not deliberately indifferent to substantial risk that inmate would be seriously harmed if transferred to another general population yard at facility, and thus inmate's transfer did not violate Eighth Amendment, even though inmate was assaulted by another inmate after his transfer, where officials were not aware that inmate had any enemies at yard to which he was transferred, inmate did not ask to be placed in protective custody out of fear of retaliatory assault, and inmate did not decline special access opportunities out of fear of assault. Hurd v. Garcia, S.D.Cal.2006, 454 F.Supp.2d 1032. Sentencing And Punishment 1537

County jail and jail personnel did not act with deliberate indifference to threat to pre-trial detainee's safety after he was injured in fight with another inmate in holding cell, as required for liability under §§ 1983 for failure to protect detainee from other inmates in violation of detainee's right to due process; after fight, jail personnel drove detainee to hospital, where he received three stitches in his head, splint for his wrist, and x-rays, which were negative for fractures, upon return from hospital, detainee was placed in jail's medical dormitory, where he remained until his transfer out of jail, and while in medical dormitory, detainee received medical attention and was never beaten by anyone. Cirilla v. Kankakee County Jail, C.D.Ill.2006, 438 F.Supp.2d 937. Prisons 17(4)

Evidence indicating a deficiency in juvenile correction center's record management capabilities did not suggest a willful disregard for the safety of the wards and did not rise to the level of longstanding, pervasive, well-documented evidence that center's former superintendent and former assistant superintendent must have

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known about threat to ward who was beaten by two fellow wards, as was required to hold them liable under §§ 1983 for violating ward's Eighth Amendment rights. Blankenship v. Commonwealth, E.D.Va.2006, 432 F.Supp.2d 607. Sentencing And Punishment 1605

Warden and nurse practitioner, at correctional facility, did not violate Eighth Amendment rights of inmate by denying him access to indoor recreational facilities, needed for rehabilitation of leg, pursuant to regulation barring from indoor recreation all inmates on "low bunk restriction," due to medical conditions. Reimann v. Frank, W.D.Wis.2005, 397 F.Supp.2d 1059. Sentencing And Punishment 1541

Relatives of inmate, who died while incarcerated in a Puerto Rico state prison, stated §§ 1983 claim based on deliberate indifference to inmate's security and medical needs; inmate was forcibly intoxicated with morphine by fellow prisoners which eventually caused his death by overdose, prison officials' failure to classify prisoners to avoid harm and inadequate supervision allowed inmate practices which resulted in danger to lives and body integrity of prisoners, officials had sufficient information from which an inference of substantial risk of serious harm to prisoners could be drawn, and there was shortage of medical staff and equipment. Rivera-Quinones v. Rivera-Gonzalez, D.Puerto Rico 2005, 397 F.Supp.2d 334. Sentencing And Punishment 1546

Inmate who sued county sheriff's department, stemming from attack by other inmates while incarcerated, failed to establish that department officials knew of and disregarded risk of attack when they moved inmate to other jail unit, as required to maintain deliberate indifference claim under Eighth Amendment; at time of move, inmate did not inform anyone of safety concerns or segregation issues due to purported gang affiliation. Collins v. County of Kern, E.D.Cal.2005, 390 F.Supp.2d 964. Sentencing And Punishment 1537

Prison official's accidental opening of two cells, allowing inmates to be released and allegedly attack another inmate, could not be characterized as wanton infliction of unnecessary pain in violation of the Eighth Amendment, as required to support injured inmate's § 1983 action against prison official. Glenn v. Berndt, N.D.Cal.2003, 289 F.Supp.2d 1120. Prisons 17(4); Sentencing And Punishment 1537

To be liable under § 1983 for failing to protect an inmate from violence at the hands of other inmates, a prison official must know of and disregard an excessive risk to inmate safety. Mooring v. San Francisco Sheriff's Dept., N.D.Cal.2003, 289 F.Supp.2d 1110. Civil Rights 1093

Fact that inmate chose to approach cell of fellow inmate who was member of gang that "had a hit out for" inmate precluded inmate's recovery in § 1983 "deliberate indifference" action against prison superintendent and corrections officials arising out of assault by gang member; inmate had been in common area waiting for escort and could have remained there, and thus proximate cause of assault was inmate's own actions, regardless of fact that corrections officials were aware of "hit." Benner v. McAdory, N.D.Ill.2001, 165 F.Supp.2d 773, affirmed 34 Fed.Appx. 483, 2002 WL 552358. Prisons 17(4); Sentencing And Punishment 1537

Arrestee who alleged that he was physically assaulted because jailer encouraged inmates to beat him up established § 1983 Fourteenth Amendment claim; substantial risk of harm existed at jail, jailer took no steps to abate risk of harm, and there was evidence of causation between jailer's deliberate indifference and arrestee's injury. Martinez v. Mathis, S.D.Ga.1997, 970 F.Supp. 1047, reversed in part, vacated in part 159 F.3d 1360. Constitutional Law 262

To prevail on failure-to-protect inmates civil rights claim, inmates must first satisfy objective requirement by showing that they are incarcerated under conditions posing substantial risk of serious harm, and must then satisfy subjective element by showing that officials know of and disregard excessive risk to inmates' health or safety. Ingalls v. Florio, D.N.J.1997, 968 F.Supp. 193. Civil Rights 1093

Employment relationship between officer and city police department was not, by itself, enough to establish

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municipal policy or custom as cause of inmate's injuries in alleged assault by fellow inmate. Torres v. Knapich, S.D.N.Y.1997, 966 F.Supp. 194. Civil Rights 1351(4)

Prison official who began his service as corrections administrator seven days before inmate's murder could not be shown to have been deliberate indifference to harm posed to inmate by prison conditions. Velazquez-Martinez v. Colon, D.Puerto Rico 1997, 961 F.Supp. 362. Civil Rights 1093

Test for prison official's liability in connection with prisoner's attack on another inmate is whether official was deliberately indifferent to substantial risk of serious harm to inmate. Rider v. Louw, E.D.Mich.1997, 957 F.Supp. 983. Prisons 17(4)

Prison guard did not act with deliberate indifference toward serious risk of harm faced by inmate involved in fight with another inmate such as would give rise to liability under § 1983, even assuming that guard watched fight briefly and did not intervene; inmate claimed that his attacker was armed with shampoo brush with which he was beating him unconscious, and inmate did not establish that fight was readily preventable, that it would have been reasonable for guard to have tried to stop the fight, or that guard acting alone could have ended the fight any sooner than it in fact ended. Lacy v. Berge, E.D.Wis.1996, 921 F.Supp. 600, affirmed 132 F.3d 36. Civil Rights 1093

State inmate's unsupported, conclusory statement in his complaint that unnamed prison officials knew that fellow inmate had threatened inmate and yet permitted fellow inmate to move about freely failed to establish that prison officials and employees acted with deliberate indifference toward inmate with respect to their handling of scuffle between the two inmates. Abdul-Matiyn v. New York State Dept. of Correctional Services, N.D.N.Y.1994, 871 F.Supp. 1542, affirmed 66 F.3d 309. Civil Rights 1395(7)

Prisoner stated cognizable claim against police officers under federal civil rights statute for acting with deliberate indifference to threat of serious harm or injury to prisoner, where prisoner alleged that officers watched, laughed and refused to assist or prevent alleged sexual assault of prisoner in booking cell. Huffman v. Fiola, N.D.Cal.1994, 850 F.Supp. 833, vacated 110 F.3d 68. Civil Rights 1395(7)

Assistant prison librarian did not violate Eighth Amendment rights of inmate stabbed by another inmate when he went on erroneously sent "call-out" to law library, absent evidence from which it could be inferred that librarian was deliberately indifferent to risk of harm; librarian was unaware of death threats against inmate and there was no evidence from which deliberate indifference on librarian's part might be inferred. Ribble v. Lucky, E.D.Mich.1993, 817 F.Supp. 653. Sentencing And Punishment 1537; Prisons 17(4)

Corrections officer who controlled access to prisoner's cell did not act with reckless disregard of known risk of serious harm to prisoner from attack by unknown assailant, as would establish officer's deliberate indifference in failing to protect prisoner from the attack, for purpose of prisoner's Eighth Amendment claim; although prisoner was targeted by gang members in retaliation for prisoner exposing plot by gang to kill corrections officer in another prisoner, there was no showing that officer knew that prisoner was enemy of the gang. Fender v. Bull, C.A.8 (Neb.) 2006, 166 Fed.Appx. 869, 2006 WL 947949, Unreported. Sentencing And Punishment 1537

Even if a correctional officer knew that prisoners were pushing another inmate around and harassing him, evidence did not show that the officer knew of, but disregarded, an objectively intolerable risk of harm, as required for the officer to have the requisite knowledge for deliberate indifference supporting inmate's Eighth Amendment claim against the officer under §§ 1983. Counterman v. Warren County Correctional Facility, C.A.3 (N.J.) 2006, 2006 WL 929366, Unreported. Sentencing And Punishment 1537

Inmate stated a claim of deliberate indifference violating his Eighth Amendment rights in connection with an attack by a fellow prisoner by alleging that a corrections officer failed to intervene while watching the attack; the officer's

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alleged failure to intervene, standing by in the face of an inmate disturbance that he observed, particularly one which the inmate alleged resulted in his loss of oxygen and necessitated cardio pulmonary resuscitation (CPR) treatment, could have constituted deliberate indifference to a substantial risk of serious harm. Murphy v. Turpin, C.A.11 (Ga.) 2005, 159 Fed.Appx. 945, 2005 WL 3455813, Unreported. Sentencing And Punishment 1537

Prison officials were not deliberately indifferent to prisoner's safety in transferring him, at conclusion of his time in lockdown, to same cell block as inmate whom prisoner had assaulted years earlier, and thus they had no liability when inmate assaulted prisoner, where prisoner had not conveyed to prison officials any fears about his safety around inmate for approximately two years. Alford v. Ward, C.A.5 (La.) 2003, 79 Fed.Appx. 689, 2003 WL 22478181, Unreported. Prisons 17(4); Sentencing And Punishment 1537

Alleged failure by prison officers to act after receiving inmate's letters about having "enemies" in various locations could not be characterized as gross negligence or deliberate indifference, and thus, would not support imposition of liability under § 1983. Velez v. Kulhmann, S.D.N.Y.2003, 2003 WL 22004899, Unreported. Civil Rights 1358

Inmate's allegations of "neglect" by prison warden and security director in failing to prevent attack by another inmate did not rule out the possibility that warden and security director acted with deliberate indifference and, thus, complaint stated a claim upon which relief could be granted, under § 1983, such that inmate did not need to allege the facts listed in his motion to vacate judgment of dismissal. Whitaker v. Morgan, C.A.7 (Wis.) 2003, 65 Fed.Appx. 556, 2003 WL 1796027, Unreported. Civil Rights 1395(7)

Estate of prison inmate who was shot and killed by guard during riot at state prison failed to show that former prison officials acted with deliberate indifference in that they knew of and disregarded obvious danger that there would be violent retaliation among inmates when groups who had been placed on lockdown were released into exercise yard together, and thus, officials were not liable under § 1983 for alleged violation of inmate's Eighth Amendment rights. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107950, Unreported. Prisons 17(4); Sentencing And Punishment 1537

Risk that one of four inmates who was led to showers by prison guard would stab other inmates with concealed knife after their handcuffs were taken off was not known by or obvious to guard, so that guard was not deliberately indifferent to risk presented to inmate who was stabbed, in violation of his constitutional rights; stabbed inmate had consistently reported only a general fear for his safety, did not identify perpetrator as an enemy, and was surprised by attack. Grady v. Terry, C.A.8 (Ark.) 2000, 242 F.3d 374, Unreported. Prisons 17(4); Sentencing And Punishment 1537

Genuine issue of material fact as to whether prison guard was deliberately indifferent for failing to seek help from other parts of prison during assault of white inmate by African-American inmates precluded summary judgment in favor of guard on qualified immunity grounds in white inmate's § 1983 suit against guard. Cohrs v. Norris, C.A.8 (Ark.) 2000, 210 F.3d 378, Unreported. Federal Civil Procedure 2491.5

2361. ---- Knowledge, assault by other prisoners, prisons and prisoners generally

Grievance form in which prisoner complained of being forced to be in cells with inmates from general population, of being "jumped on" by inmate, and of mental stress was insufficient to establish that assistant director of corrections department had subjective knowledge that prisoner faced excessive risk of rape by other inmates, and therefore assistant director could not be held liable under § 1983 and Eighth Amendment. Spruce v. Sargent, C.A.8 (Ark.) 1998, 149 F.3d 783. Sentencing And Punishment 1537; Prisons 17(4)

County jail and jail personnel were not aware of and deliberately indifferent to a specific, impending, and substantial threat to pre-trial detainee's safety, as required for liability under §§ 1983 for failure to protect detainee

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from other inmates in violation of detainee's right to due process; even if detainee was involved in several altercations with other inmates, he never filed grievances or complaints about those incidents, detainee claimed only some bruising and a bloody nose as result of altercations, and although detainee requested medical attention for a sore finger after the altercations, he did not complain at that time about injuries from fights. Cirilla v. Kankakee County Jail, C.D.Ill.2006, 438 F.Supp.2d 937. Prisons 4(4)

Fact that juvenile correction center had been decertified by the Virginia Board of Juvenile Justice, standing alone, did not necessarily confer on center's former superintendent and former assistant superintendent the knowledge as to the ongoing and substantial risk of harm to residents, as was required to hold them liable in §§ 1983 action for failing to protect ward who was beaten by two fellow wards, in violation of his Eighth Amendment rights; over time center's audit reports specifically indicated an overall improvement in the area of staffing and safety of the wards. Blankenship v. Commonwealth, E.D.Va.2006, 432 F.Supp.2d 607. Sentencing And Punishment 1605

Deputy sheriff did not violate pretrial detainee's due process right to protection from violence at the hands of other inmates when he placed the inmate, a gang member, in a cell with a member of a rival gang, absent any evidence that the deputy knew the inmate's particular gang affiliation or that the deputy could have learned the inmate's gang affiliation from information on the inmate's housing record. Mooring v. San Francisco Sheriff's Dept., N.D.Cal.2003, 289 F.Supp.2d 1110. Constitutional Law 262; Prisons 17(4)

A prison official need not believe to a moral certainty that one inmate intends to attack another at a given place at a time certain before he is obligated, under the Eighth Amendment, to take steps to prevent such an assault, but he must have more than a mere suspicion that an attack will occur. Mooring v. San Francisco Sheriff's Dept., N.D.Cal.2003, 289 F.Supp.2d 1110. Sentencing And Punishment 1537

Cursory statement by prisoner that he had informed prison guard of a security hazard caused by other inmate did not show prison officials had foreknowledge of attack on prisoner, despite prisoner's contention that officials should have known that once prisoner was labelled as an informant he would be subject to attack by other inmates. Gangloff v. Poccia, M.D.Fla.1995, 888 F.Supp. 1549. Prisons 17(4)

To state § 1983 cause of action, prisoner who claims cruel and unusual punishment based on failure to protect from violence must allege deliberate indifference on part of prison officials to need for reasonable protection from violence and must allege that prison officials had foreknowledge of attack or of prior threats on prisoner or that officials tacitly or expressly approved of or participated in beatings or attacks on prisoner. Gangloff v. Poccia, M.D.Fla.1995, 888 F.Supp. 1549. Civil Rights 1395(7)

A new inmate who was sexually assaulted by another inmate during intake procedure at facility did not have civil rights claim against corrections officers who entrusted him to other inmate absent any evidence that either corrections officer was aware that other inmate presented specific risk of violent homosexual attack to new prisoners as required for their conduct to amount to gross negligence or reckless indifference for purposes of a § 1983 action. Heine v. Receiving Area Personnel, D.Del.1989, 711 F.Supp. 178. Civil Rights 1093

Bragging by prisoners to a correctional officer about beatings and harassment perpetrated against an inmate conveyed harassment and unpleasantness, but not an objectively intolerable risk of harm, as required for the officer to have the requisite knowledge for deliberate indifference supporting inmate's Eighth Amendment claim against the officer under §§ 1983. Counterman v. Warren County Correctional Facility, C.A.3 (N.J.) 2006, 2006 WL 929366, Unreported. Sentencing And Punishment 1537

Prison officials did not have subjective knowledge of a risk of serious harm to an inmate from placing him in a cell with another prisoner, thus defeating the inmate's §§ 1983 claim that the officials were deliberately indifferent in violation of his Eighth Amendment rights, even though the inmate allegedly stated, upon seeing the other prisoner, that he and the prisoner had had problems, and that he was in fear for his life; the inmate did not identify a specific

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prior incident from which officials could infer that a substantial risk existed. McBride v. Rivers, C.A.11 (Ga.) 2006, 170 Fed.Appx. 648, 2006 WL 622591, Unreported. Sentencing And Punishment 1537

Inmate's failure-to-protect charge did not state a claim for an Eighth Amendment violation in a §§ 1983 suit arising in connection with an attack by a fellow prisoner; while the inmate alleged he requested protection from certain prisoners and that the defendant officials knew about his request for protection from his original cellmate, he did not allege that they had notice that he was in danger from the prisoner who attacked him. Murphy v. Turpin, C.A.11 (Ga.) 2005, 159 Fed.Appx. 945, 2005 WL 3455813, Unreported. Sentencing And Punishment 1537

Plaintiff inmate's isolated comments to prison guards that he and cellmate were not getting along and his asking to be moved were insufficient to show that guards knew that he faced a substantial risk such that they could be considered deliberately indifferent to that risk in violation of Eighth Amendment, given lack of evidence establishing that inmate articulated specific threats of serious harm or that he made multiple complaints about cellmate to any one guard and complete lack of documentation to substantiate his allegation. Jones v. Beard, C.A.3 (Pa.) 2005, 145 Fed.Appx. 743, 2005 WL 1995438, Unreported. Sentencing And Punishment 1537

Absent allegation that corrections officer was actually aware of conflict between prisoner and his attacker or that officer deliberately opened doors to separate, locked protective custody cells so that prisoner could be attacked, inmate failed to state action for failure to protect under § 1983 against officer or against sheriff, under theory that sheriff was vicariously liable for officer's conduct. Lesley v. Whetsel, C.A.10 (Okla.) 2004, 110 Fed.Appx. 851, 2004 WL 2189609, Unreported. Civil Rights 1358

Prisoner who was injured by fellow inmate failed to offer any evidence that prison guard and his supervisor knew or should have known that prisoner faced any threat or risk of potential harm, as would support prisoner's civil rights action under § 1983 against guard and supervisor, alleging violations of his constitutional rights and state law negligence claims. Brown v. Picarelli, S.D.N.Y.2003, 2003 WL 21297287, Unreported. Civil Rights 1358; Prisons 17(4)

Allegations by estate of prison inmate who was shot and killed by guard during riot at state prison that warden's managerial shortcomings led to improper enforcement of prison's lethal force policy was insufficient to establish that former prison officials deliberately violated inmate's constitutional rights, as would support estate's Eighth Amendment claim under § 1983 against officials, where estate failed to show that officials knew that warden's performance would create excessive risk of constitutional violations. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107950, Unreported. Prisons 13(4); Sentencing And Punishment 1548

2362. ---- Response, assault by other prisoners, prisons and prisoners generally

There was insufficient evidence that prison warden was deliberately indifferent to known risk of harm to inmate to support imposition of liability on Eighth Amendment claim in § 1983 suit arising from murder of inmate; warden was on sick leave during entire time inmate was at prison, he continually attempted to improve prison conditions from time he took over, and there was no indication that he did not respond reasonably to risks at prison. Woods v. Lecureux, C.A.6 (Mich.) 1997, 110 F.3d 1215. Sentencing And Punishment 1537; Prisons 17(4)

Even if prisoner established compensable injuries under Eighth Amendment, prison officials responded reasonably to risk of harm, and thus, could not be held liable in § 1983 action, where after prisoner snitched on prison gang, prison officials placed prisoner in protective custody for his own safety, and after prisoner set fire to his cell to alert guards to ongoing escape attempt, officials again placed and kept prisoner in protective custody and expedited his transfer to another facility. Doe v. Welborn, C.A.7 (Ill.) 1997, 110 F.3d 520, as amended, rehearing and suggestion for rehearing en banc denied. Sentencing And Punishment 1553; Prisons 17(1)

Warden took reasonable steps to respond to threats which prisoner faced from other inmate by transferring inmate

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to complex at other end of prison, and was not "deliberately indifferent" to prisoner's rights, within meaning of Eighth Amendment, merely because he failed to anticipate that guard would leave his post and permit inmate to gain access to prisoner's cell; no civil rights liability could be imposed on warden under § 1983. Bailey v. Wood, C.A.8 (Minn.) 1990, 909 F.2d 1197. Civil Rights 1093; Sentencing And Punishment 1537

Prison officials who actually know of a substantial risk to inmate health or safety may be found free from liability under §§ 1983 if they responded reasonably to the risk, even if harm ultimately was not averted. Blankenship v. Commonwealth, E.D.Va.2006, 432 F.Supp.2d 607. Civil Rights 1358

Inmate who sued county sheriff's department, stemming from attack by other inmates while incarcerated, failed to establish that department officials disregarded risk to inmate's health and safety by failing to stop attack, as required to maintain deliberate indifference claim under Eighth Amendment; officials took prompt action to stop fight, secure area, and ensure prompt medical treatment for inmate, while sheriff was not present at facility at time of attack. Collins v. County of Kern, E.D.Cal.2005, 390 F.Supp.2d 964. Sentencing And Punishment 1537

2363. ---- Negligence, assault by other prisoners, prisons and prisoners generally

State prison inmate could not base federal civil rights action on prison officials' negligent failure to protect him from another inmate. Davidson v. Cannon, U.S.N.J.1986, 106 S.Ct. 668, 474 U.S. 344, 88 L.Ed.2d 677, concurring opinion 106 S.Ct. 677, 474 U.S. 327, 88 L.Ed.2d 662. Civil Rights 1093

Merely negligent failure to protect a prison inmate from attack does not justify liability under section 1983. Carter v. Galloway, C.A.11 (Ga.) 2003, 352 F.3d 1346. Civil Rights 1093

Even gross negligence is not enough for inmate to recover under § 1983 from prison official for failure to prevent injury inflicted by other prisoners; to sustain constitutional claim, inmate must demonstrate something approaching total unconcern for his welfare in face of serious risks or a conscious, culpable refusal to prevent harm. King v. Fairman, C.A.7 (Ill.) 1993, 997 F.2d 259. Civil Rights 1093

Alleged negligence of prison officials in failing to protect inmate from violence by prison guards could not form basis of § 1983 suit. Oliver v. Collins, C.A.5 (Tex.) 1990, 914 F.2d 56. Civil Rights 1093

Correction officers' negligent failure to take steps to protect an inmate, who had written a note indicating that another inmate had threatened him, did not give rise to a claim under the Civil Rights Act when the threat was carried out, even though inmate had a liberty interest in being secure from attacks by fellow inmates, where one officer followed established procedure in directing prisoner to the proper officer but simply failed to follow up, and other officer, who was operating under a double shift burden, merely forgot to investigate the note, which was ambiguous as to nature of the threat and conveyed no sense of urgency. Davidson v. O'Lone, C.A.3 (N.J.) 1984, 752 F.2d 817, certiorari granted 105 S.Ct. 2673, 471 U.S. 1134, 86 L.Ed.2d 692, affirmed 106 S.Ct. 668, 474 U.S. 344, 88 L.Ed.2d 677, concurring opinion 106 S.Ct. 677, 474 U.S. 327, 88 L.Ed.2d 662. Civil Rights 1093

Superintendent of Mississippi state penitentiary was not guilty of misconduct greater than ordinary negligence and could not be held liable for injuries sustained by inmate when he was stabbed be fellow inmate where any failure on part of superintendent to adequately search inmates for weapons and to supervise inmates was not due to malicious intent, but to state law and to lack of funds provided by state. Bogard v. Cook, C.A.5 (Miss.) 1978, 586 F.2d 399, rehearing denied 591 F.2d 102, certiorari denied 100 S.Ct. 173, 444 U.S. 883, 62 L.Ed.2d 113. Civil Rights 1093

Alleged negligence of state prison warden in permitting "insane" prisoner to roam within prison and allowing prisoner to have access to dangerous instrument, resulting in injury to plaintiff prisoner, was not denial of equal protection cognizable under this section. Puckett v. Cox, C.A.6 (Tenn.) 1972, 456 F.2d 233. Civil Rights

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42 U.S.C.A. § 1983

1037

Failure of prison officials, who were responding to another official's personal alarm in connection with inmate fight, to key open the locked door of cell block where fight was occurring, during the few minutes they waited until the door opened, could not be construed as more than negligence or gross negligence, and thus was not actionable under § 1983 as violation of Eighth Amendment. Glenn v. Berndt, N.D.Cal.2003, 289 F.Supp.2d 1120. Prisons 17(4); Sentencing And Punishment 1537

Allegations by former inmate at county jail, who claimed to have been assaulted by jail employees, that supervisor of employees was responsible for welfare and security of all inmates rose only to level of negligence, and failed to state federal civil rights claim. Marshall v. Fairman, N.D.Ill.1997, 951 F.Supp. 128. Civil Rights 1093

Correction officers' alleged negligence in following prison procedures in the opening and closing of cell doors did not rise to the level of deliberate indifference required to merit constitutional relief and thus, prisoner failed to state claim under § 1983 that officers violated his Eighth and Fourteenth Amendment rights in failing to protect him from attack by fellow inmates. Caldwell v. District of Columbia, D.D.C.1995, 901 F.Supp. 7, appeal dismissed 1996 WL 587652, rehearing denied. Sentencing And Punishment 1537; Prisons 17(4)

Fact that protective procedures established at county jail failed when plaintiff was stabbed by fellow inmate was inadequate to support liability of county or its department of corrections. Stark v. County of Westchester, S.D.N.Y.1994, 862 F.Supp. 67. Civil Rights 1093

State prison warden was not liable under this section to inmate who was assaulted in isolated incident while working in prison kitchen; that warden may have been lax in not providing more and better-trained guards and that food preparation area may have had design defects enabling assaultive inmates to hide out undiscovered did not rise to level of constitutional deprivation of rights under U.S.C.A. Const. Amend. 8. Webster v. Foltz, W.D.Mich.1983, 582 F.Supp. 28. Civil Rights 1358

Employees of private prison did not act with deliberate indifference to state prisoner's safety, in violation of Eighth Amendment, for allegedly failing to protect him from assault by fellow inmate, even though prisoner alerted employees to threat, where employees was offered opportunity to transfer to segregation, but he declined. Faulkner v. Litscher, C.A.7 (Wis.) 2005, 130 Fed.Appx. 812, 2005 WL 1122663, Unreported. Prisons 17(4); Sentencing And Punishment 1537

Failure of prison guard to discover knife which was concealed by one of four inmates he had led from their cells to shower was at most negligent, and did not reflect deliberate indifference to safety of other inmates on part of prison guard, as would support § 1983 claim brought after inmate stabbed one of fellow inmates after his handcuffs were taken off, where officer had followed accepted procedure and had checked the inmates' underwear and towels, and inmates were dressed only in their undershorts. Grady v. Terry, C.A.8 (Ark.) 2000, 242 F.3d 374, Unreported. Civil Rights 1093

2364. ---- Number of assaults, assault by other prisoners, prisons and prisoners generally

A pervasive risk of harm to inmates from other inmates may not ordinarily be shown by pointing to single incident or isolated incident, but it may be established by much less than proof of a reign of violence and terror in the particular institution; conditions need not deteriorate to the point of anarchy before constitutional right to protection arises. Withers v. Levine, C.A.4 (Md.) 1980, 615 F.2d 158, certiorari denied 101 S.Ct. 136, 449 U.S. 849, 66 L.Ed.2d 59. Convicts 2

Evidence that guard was assaulted by several wards did not suggest that ward was incarcerated under conditions posing a substantial risk of serious harm, such that juvenile correction center's former superintendent and former

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assistant superintendent could be held liable in §§ 1983 action for failing to protect ward who was beaten by two fellow wards, in violation of his Eighth Amendment rights. Blankenship v. Commonwealth, E.D.Va.2006, 432 F.Supp.2d 607. Sentencing And Punishment 1605

Inmate who was attacked in jail failed to show that sheriff had subjective knowledge of generalized, substantial risk of serious harm from inmate violence at jail, and thus failed to show Eighth Amendment violation; although inmate claimed he was forced to sleep on floor, he did not allege that overcrowding resulted in violent attacks or that other attacks had taken place at jail while he was there or at other times. Abrams v. Hunter, M.D.Fla.1995, 910 F.Supp. 620, affirmed 100 F.3d 971. Sentencing And Punishment 1537; Prisons 17(4)

An inmate does, of course, have a right to reasonable protection from constant threat of violence; however, an isolated attack by another inmate does not establish the absence of this protection. O'Neal v. Evans, S.D.Ga.1980, 496 F.Supp. 867. Convicts 2

Where Federal prisoners' claim that they were inadequately protected from violence and sexual assault during confinement in a city jail was based on general conditions rather than on isolated attacks, claim was actionable under civil rights law. Fore v. Godwin, E.D.Va.1976, 407 F.Supp. 1145. Civil Rights 1093

An isolated act or omission by a prison official which allows an attack on another prisoner to occur is not constitutionally actionable. Van Horn v. Lukhard, E.D.Va.1975, 392 F.Supp. 384. Prisons 10

2365. ---- Emergency beeper use, assault by other prisoners, prisons and prisoners generally

Prison staff member acted with deliberate indifference in not using emergency beeper during assaults of inmate by four other prisoners, notwithstanding staff member's testimony that he did not see assaults; staff member's testimony was implausible given physical dimensions of area in which assault occurred, fact that assaults occurred in open in three locations over 20-minute period and drew attention of other inmates in area, staff member's interest in outcome of trial, and his demeanor during testimony. Holloway v. Wittry, S.D.Iowa 1994, 842 F.Supp. 1193. Civil Rights 1420

2366. ---- Women guards, assault by other prisoners, prisons and prisoners generally

State prisoners were not entitled to relief from prison policy of using female personnel in positions of vulnerability, despite contention that such policy increased risk of violence in prison and posed a source of potential injury to the inmates, since, although presence of women might cause violence or they might be too physically weak to suppress it, inmates themselves would initiate it. Madyun v. Thompson, C.A.7 (Ill.) 1981, 657 F.2d 868. Prisons 7

2367. ---- Work area, assault by other prisoners, prisons and prisoners generally

Factual finding in inmate's § 1983 civil rights suit alleging cruel and unusual punishment, that correctional officer named as defendant did not unlock door to area inmate was cleaning before being attacked by other inmates, was not clear error in light of evidence that officer was not in cell house at time of attack, officer followed routine of leaving key with door officer, and in light of testimony that door may have been opened by other prison officers throughout day. Thornton v. Brown, C.A.7 (Ill.) 1995, 47 F.3d 194. Civil Rights 1420

Inmate failed to show pervasive risk of harm, so that he failed to establish reckless disregard of his right to be free from assaultive behavior by other inmates, in his § 1983 action against prison officials arising from attack in prison industries section of state penitentiary; security director testified that fewer assaults occurred in prison industries than in other areas of penitentiary. Holloway v. Wittry, S.D.Iowa 1994, 842 F.Supp. 1193. Civil Rights 1420

2368. ---- Requests for help, assault by other prisoners, prisons and prisoners generally

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42 U.S.C.A. § 1983

Inmate's failure to give advance notice of attack was not dispositive on federal civil rights claim for assault in jail, and sheriff could not escape liability by showing that he did not know inmate was likely to be assaulted or that assault would be committed by specific prisoners who eventually committed the assault; however, inmate had to show that sheriff was causally connected to injury, as sheriff could not be held liable under theory of respondeat superior. Abrams v. Hunter, M.D.Fla.1995, 910 F.Supp. 620, affirmed 100 F.3d 971. Civil Rights 1093; Civil Rights 1358

When inmate's repeated request for help places appropriate prison officials on notice of life-endangering situation, constitutional duty of care arises, binding such officials to take reasonable measures to insure inmate's safety. West v. Rowe, N.D.Ill.1978, 448 F.Supp. 58. Prisons 17(4)

Evidence would not support an inference that a correctional officer heard an inmate's cries and the general commotion that accompanied an assault on the inmate by other prisoners, so as to render him aware of an excessive risk to the inmate's safety, thus defeating the inmate's Eighth Amendment claim against the officer under §§ 1983. Counterman v. Warren County Correctional Facility, C.A.3 (N.J.) 2006, 2006 WL 929366, Unreported. Sentencing And Punishment 1537

2369. ---- Fear of assault, assault by other prisoners, prisons and prisoners generally

Prisoner, who alleged that he experienced terror, psychological harm and deterioration while in protective custody for two months waiting for transfer to another facility resulting from living in constant fear of fellow prisoners, failed to establish compensable injuries under Eighth Amendment, for purposes of § 1983 action against prison officials, where prisoner showed no physical harm and claim of psychological injury did not reflect deprivation of minimal civilized measures of life's necessities. Doe v. Welborn, C.A.7 (Ill.) 1997, 110 F.3d 520, as amended, rehearing and suggestion for rehearing en banc denied. Sentencing And Punishment 1553; Prisons 17(1)

2370. ---- Exposing of information by prison officials, assault by other prisoners, prisons and prisoners generally

Correctional officers' references to prisoner as an "informant" and a "rat" in conversations with other inmates were not adverse actions that could constitute an unconstitutional retaliation in response to the prisoner's exercise of his First Amendment rights in filing a grievance against another prison guard, absent some showing that comments actually opened up prisoner to assault from his fellow inmates. Dawes v. Walker, C.A.2 (N.Y.) 2001, 239 F.3d 489 . Constitutional Law 82(13); Prisons 4(5)

Pro se prisoner's claims under this section alleging that prison officials had labeled him a snitch and were exposing him to inmate retaliation, perhaps because of his conduct in bringing prior lawsuits against prison, were sufficient, on their face, to carry cause of action through service-of-process stage. Harmon v. Berry, C.A.11 (Ala.) 1984, 728 F.2d 1407. Civil Rights 1395(7)

2371. ---- Sexual assaults, assault by other prisoners, prisons and prisoners generally

Prison guard in charge of monitoring shower area to protect inmates from each other was not liable under Eighth Amendment to inmate who was raped in the shower when the guard left his post without authorization; evidence indicated that the guard left to take an inmate to the hospital. McGill v. Duckworth, C.A.7 (Ind.) 1991, 944 F.2d 344, certiorari denied 112 S.Ct. 1265, 503 U.S. 907, 117 L.Ed.2d 493. Sentencing And Punishment 1537

Where prison inmate, even though he was known by prison staff to be a homosexual and had a reputation among some of prison staff as a bully, had had no disciplinary violations in over two years and was engaged in a long-term consensual relationship with another inmate, prison warden's failure to intervene and direct former inmate's immediate placement in maximum security following his involvement in incidents of assault and alleged harassment for homosexual favors did not evidence deliberate indifference to personal safety of other inmates in

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medium security which would entitle inmate raped by former inmate to recover from warden under civil rights statute. Wheeler v. Sullivan, D.C.Del.1984, 599 F.Supp. 630. Civil Rights 1420

Where newly transferred prisoner was placed with cellmate without prior review of prison records and known characteristics to assess prisoners' suitability as cellmates, and where absence of proper procedure for making initial cell assignment allowed harm to come to prisoner, in form of sexual assault by cellmate, such violated prisoner's right, secured by U.S.C.A.Const. Amends. 8 and 14, to be reasonably protected from harm at the hands of his fellow inmate. Withers v. Levine, D.C.Md.1978, 449 F.Supp. 473, affirmed 615 F.2d 158, certiorari denied 101 S.Ct. 136, 449 U.S. 849, 66 L.Ed.2d 59. Constitutional Law 272(2); Sentencing And Punishment 1537

2372. ---- Trusties, assault by other prisoners, prisons and prisoners generally

Act of trusty in hitting fellow inmate, who began throwing water on trusty as trusty was mopping up water in the latter's cell, did not raise any constitutional issue in suit filed against superintendent of city jail. Herring v. Superintendent, Danville City Jail, W.D.Va.1974, 387 F.Supp. 410. Civil Rights 1093

2373. ---- Miscellaneous assaults, assault by other prisoners, prisons and prisoners generally

Detainee at state facility for sexually violent persons who brought §§ 1983 equal protection action against facility employees, arising from detainee's beating at hands of fellow resident, could state claims for failure to supervise against employees who purportedly had no duty to supervise, for failure to investigate against employees who purportedly had no duty to investigate, and for failure to punish against employees who purportedly had no responsibility for punishment. Brown v. Budz, C.A.7 (Ill.) 2005, 398 F.3d 904. Civil Rights 1395(6)

Prison supervisor on duty when inmate was assaulted by another inmate was not deliberately indifferent to inmate's risk of harm, and thus was entitled to qualified immunity as matter of law in inmate's § 1983 action alleging failure to protect in violation of Eighth Amendment; although supervisor did not prevent assault, supervisor approved cell isolation of assaulting inmate in an attempt to prevent assault, and supervisor could not reasonably have foreseen that other officials would permit assaulting inmate to leave his cell after isolation had been imposed. Doe v. Bowles, C.A.6 (Ohio) 2001, 254 F.3d 617. Civil Rights 1376(7)

Prison officials' decision to remove inmate from protective custody and to assign him to space that was less protected, though still not in the general population, was not sufficient to establish that prison officials knowingly disregarded serious risk of harm to inmate, who had argued against being moved from protective custody because he feared for his safety after he had turned in gang members; thus, inmate failed to bring forward evidence to survive summary judgment on his civil rights claim against prison officials. Jelinek v. Greer, C.A.7 (Ill.) 1996, 90 F.3d 242. Civil Rights 1093; Sentencing And Punishment 1537; Prisons 17(4)

Juvenile correction center's former superintendent and former assistant superintendent could not be held liable in §§ 1983 action for failing to protect ward who was beaten by two fellow wards, in violation of his Eighth Amendment rights, based on constructive knowledge of threat against ward. Blankenship v. Commonwealth, E.D.Va.2006, 432 F.Supp.2d 607. Sentencing And Punishment 1605

Inmate who did not assert that he was ever subjected to physical violence could not state cause of action for lack of supervision of inmates. Hopkins v. Campbell, D.Kan.1994, 870 F.Supp. 316. Prisons 17(4)

Inmate's claim that prison officials negligently failed to provide adequate security failed to state claim for relief under § 1983. Policano v. Koehler, S.D.N.Y.1989, 715 F.Supp. 598. Civil Rights 1395(7)

Given tense, emergency situation and taking into account safety of all inmates, decision of sergeant in charge to

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order inmates to leave gym without first ascertaining that no inmate had weapon and that no further assaults would occur once inmates were in more open, less supervised area was not patently unreasonable, as required for black inmate who was assaulted by Hispanic inmates to state section 1983 claim. McGriff v. Coughlin, S.D.N.Y.1986, 640 F.Supp. 877. Civil Rights 1093

Correctional officer could not be held liable to inmate allegedly injured when assaulted by another inmate in dayroom of correctional center on ground that offending inmate, who was psychiatric patient, was taken into presence of offenders who were not psychiatric patients, notwithstanding that medical decision that offending inmate could be sent to segregation was apparently overruled by nonmedical staff member, where evidence did not show that correctional officer could refuse to take person to segregation if psychiatric unit team had approved such course of action and prison conduct adjustment board had imposed such sentence upon determination of guilt. Massey v. Smith, N.D.Ind.1983, 555 F.Supp. 743. Civil Rights 1093

County jail officials were not liable under §§ 1983 for deliberate indifference to substantial risk of serious harm to inmate who was attacked twice by other inmates, where inmate failed to allege that he was injured in second attack, and, with respect to first attack, it was inmate, not officials, who made informed decision to risk his own safety by choosing to go to the recreation yard when inmates "on the behavior modification tier" were present. Dickey v. Merrick, C.A.10 (Utah) 2006, 190 Fed.Appx. 692, 2006 WL 2212195, Unreported. Civil Rights 1093

2374. Assault by prison officials, prisons and prisoners generally-- Generally

To determine whether prison official used excessive force in violation of Eighth Amendment, court must consider whether force was applied in good faith effort to maintain or restore discipline or maliciously and sadistically to cause harm. Hill v. Shelander, C.A.7 (Ill.) 1993, 992 F.2d 714. Sentencing And Punishment 1548

State corrections officer had duty to intervene on behalf of inmate being assaulted by county corrections officer regardless of whether state department had lawful custody of inmate. Buckner v. Hollins, C.A.8 (Mo.) 1993, 983 F.2d 119, rehearing denied. Prisons 10; Prisons 17(4)

On remand of inmates's civil rights suit alleging use of excessive force by corrections officer, district court was to look to extent of injury suffered, need for application of force, relationship between that need and amount of force used, threat reasonably perceived by responsible officials, and any efforts made to temper severity of forceful response. Shabazz v. Lynaugh, C.A.5 (Tex.) 1992, 974 F.2d 597. Federal Courts 951.1

In order for inmate to prevail in civil rights complaint of excessive use of force under this section, he must prove significant injury, which resulted directly and only from use of force that was clearly excessive to need, excessiveness of which was clearly and objectively unreasonable, and action constituted unnecessary and wanton infliction of pain. Luciano v. Galindo, C.A.5 (Tex.) 1991, 944 F.2d 261. Civil Rights 1093

Beating of inmate violated inmate's constitutional rights and was actionable under federal civil rights law where conduct of prison officials involved acts which were not permissible no matter what procedural protections accompanied them. Franklin v. Aycock, C.A.6 (Tenn.) 1986, 795 F.2d 1253. Civil Rights 1093

Claim of assault on prisoner by his custodian is cognizable under this section. Collins v. Hladky, C.A.10 (Wyo.) 1979, 603 F.2d 824.

Genuine issue of material fact as to whether injuries suffered by jail inmate while he was being transported to mental health unit following apparent suicide attempt were result of purposeful acts by defendant corrections officers, or were accidental in nature, precluded summary judgment for officers on their defense of qualified immunity in inmate's §§ 1983 action alleging cruel and unusual punishment in violation of the Eighth Amendment. Atkins v. County of Orange, S.D.N.Y.2005, 372 F.Supp.2d 377. Federal Civil Procedure 2491.5

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If prison supervisors with knowledge of risk of harm failed to take reasonable steps to prevent such harm, they may be liable under this section. Perry v. Walker, E.D.Va.1984, 586 F.Supp. 1264. Civil Rights 1090

Unjustified infliction of bodily harm on prisoner by correctional officer gives rise to liability under this section. Peterson v. Davis, D.C.Md.1982, 551 F.Supp. 137, affirmed 729 F.2d 1453. Civil Rights 1093

While prison officials may sometimes have to resort to occasional use of degree of intentional force in the operation of correctional facility, in determining whether constitutional line has been crossed, court must look to such factors as need for application of force, relationship between need and amount of force that was used, extent of injury inflicted, and whether force was applied in goodfaith effort to maintain or restore discipline or maliciously and sadistically for very purpose of causing harm. McCargo v. Mister, D.C.Md.1978, 462 F.Supp. 813 . See, also, Johnson v. Glick, C.A.2 (N.Y.) 1973, 481 F.2d 1028, certiorari denied 94 S.Ct. 462, 414 U.S. 1033, 38 L.Ed.2d 324; Jones v. Huff, N.D.N.Y.1992, 789 F.Supp. 526; Wilson v. White, S.D.N.Y.1987, 656 F.Supp. 877. Prisons 13(2)

State prisoner's § 1983 action against prison officials, alleging violation of equal protection, was frivolous, so that dismissal was warranted under Prison Litigation Reform Act (PLRA); prisoner merely made conclusory allegations that he suffered physical harm at hands of prison officials, that he was singled out for no other reason than "being an inmate of the black race," and that guards on numerous occasions "denied [prisoner] the same rights enjoyed by white inmates"; prisoner failed to point to any similarly situated white inmates who were given preferential treatment. Gadlin v. Watkins, C.A.10 (Colo.) 2004, 93 Fed.Appx. 204, 2004 WL 474010, Unreported. Civil Rights 1395(7)

Threats, verbal abuse and racial slurs allegedly directed at inmate could not form basis for § 1983 claim against guards absent accompanying physical threats. Amaker v. Foley, W.D.N.Y.2003, 2003 WL 21383010, Unreported, affirmed 117 Fed.Appx. 806, 2005 WL 78798. Civil Rights 1098

2375. ---- Shocking conduct, assault by prison officials, prisons and prisoners generally

Inmate who was allegedly beaten by corrections officers, in order to establish claim under civil rights statute [42 U.S.C.A. § 1983] based on Eighth Amendment, was required to show more than that he suffered some kind of intentional tort at hands of defendants who were acting under color of state law; he was required to prove acts which, in effect, amounted to shocking or brutal conduct. Hurd v. Nolan, E.D.Mo.1985, 610 F.Supp. 591. Civil Rights 1093

In order to succeed on his civil rights claim arising from alleged "abusive" or "reckless" force applied to plaintiff on removing him from his cell and taking him to segregation unit, plaintiff had to demonstrate that defendant correction officer's acts were so abusive as to "shock the conscience"; there had to be circumstances indicating an evil intent, or recklessness, or at least deliberate indifference to the consequences of his conduct for those under his control or dependent upon him; however, plaintiff's allegation of unspecified bruises on his arms and legs did not "shock the conscience" in the context of this case. Santiago v. Yarde, S.D.N.Y.1980, 487 F.Supp. 52. Civil Rights 1395(7); Civil Rights 1404

If prison guards dragged prisoner from his cell, beat him severely and held him against hot radiator, inflicting burns on various parts of his body, their ues of force was of such shocking nature as to constitute civil rights violation. Joseph v. Brierton, N.D.Ill.1976, 431 F.Supp. 50. Civil Rights 1093

Since not every intentional use of force by a correctional officer violates a prisoner's constitutional rights, allegations in state penitentiary inmate's complaint, to be actionable under this section, had to indicate that inmate had been administered physical and mental abuse or corporal punishment of such base, inhumane, and barbaric proportions that it shocked and offended court's sensibilities and offended U.S.C.A.Const. Amend. 8 as well.

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42 U.S.C.A. § 1983

Grillo v. Sielaff, N.D.Ill.1976, 414 F.Supp. 272. Civil Rights 1395(7)

2376. ---- Wanton infliction of pain, assault by prison officials, prisons and prisoners generally

Inmate's civil rights action against prison staff officers for excessive use of force failed to support reasonable inference of wantonness in infliction of pain required to establish a constitutional violation; there was undisputed evidence that inmate created disturbance, necessitating use of force, and although other inmates' affidavits attested to guards grabbing inmate by throat and pushing him against bars, there was no other evidence supporting inmate's claim that officer struck him with night stick, and inmate's medical records contained no report of head injuries or treatment for pain following incident. Bennett v. Parker, C.A.11 (Ga.) 1990, 898 F.2d 1530, rehearing denied 916 F.2d 719, certiorari denied 111 S.Ct. 1003, 498 U.S. 1103, 112 L.Ed.2d 1085. Civil Rights 1404

Inmate's allegation that corrections officer exposed his testicles to inmate did not meet the "unnecessary and wanton infliction of pain" standard necessary to support §§ 1983 claim based on Eighth Amendment violation. Collins v. Graham, D.Me.2005, 377 F.Supp.2d 241. Sentencing And Punishment 1548

Genuine issues of material fact as to whether correctional officer struck inmate not to restore or maintain discipline, but maliciously and sadistically to cause harm to him, and whether officer used more force than was necessary, precluded summary judgment on inmate's §§ 1983 claim that officer violated his Eighth Amendment right against cruel and unusual punishment by hitting him in the face and breaking his jaw. Orwat v. Maloney, D.Mass.2005, 360 F.Supp.2d 146. Federal Civil Procedure 2491.5

County corrections officers were liable under § 1983 and Eighth Amendment for unnecessary and wanton infliction of pain upon inmate when, after two officers brutally beat inmate and left him moaning in cell, and third witnessed beating, officers decided not to file report and advised supervisor that no report was needed, thereby preventing inmate from receiving immediate medical attention with deliberate indifference to his medical needs, even though officers, having beaten inmate or observed him being beaten in manner sufficient to kill him, should have been aware of seriousness of inmate's medical needs. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Sentencing And Punishment 1546

Issues of material fact as to whether defendant officers perpetrated series of unprovoked beatings and other violent assaults on plaintiff when she was taken into custody on summary conviction for criminal contempt, and as to extent of her injuries, precluded summary judgment in § 1983 civil rights action; plaintiff sufficiently rebutted officers' assertion of qualified immunity with affidavit attesting to series of beatings and other abuses constituting unnecessary and wanton infliction of pain. Sharp v. Kelsey, W.D.Mich.1996, 918 F.Supp. 1115. Federal Civil Procedure 2491.5

To prevail on civil rights claim grounded in the Eighth Amendment, prison inmate had to show that correctional officers used such excessive force to subdue him that force could fairly be characterized as unnecessary and wanton infliction of pain. Boyd v. Selmer, N.D.N.Y.1994, 842 F.Supp. 52. Sentencing And Punishment 1548

To sustain constitutional claim of violation of civil rights based on prison guard's pushing inmate into wall, allegations must set forth violation of cruel and unusual punishment prohibition by use of excessive force to impose unnecessary and wanton infliction of pain; shoving inmate into wall and worsening head injury does not show wantonness with respect to unjustified infliction of pain. Reyes v. Koehler, S.D.N.Y.1993, 815 F.Supp. 109. Civil Rights 1093

Correctional officers can be found answerable at law in civil rights suits only for "obduracy and wantonness," not merely because lesser measures might have sufficed in controlling prisoners or where ordinary errors of judgment occurred. Morrison v. Martin, E.D.N.C.1990, 755 F.Supp. 683, affirmed 917 F.2d 1302. Civil Rights 1090

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42 U.S.C.A. § 1983

Prison officials did not use excessive force in violation of inmate's Eighth Amendment rights, even though, after securing and handcuffing him following a fight with another prisoner, they allegedly repeatedly punched him in the back of his head, on his back, and on his left side, and kneed him four to six times on the left side of his face; although the officials arguably could have used less force after restraining the inmate, there was no evidence showing that their measures were taken maliciously and sadistically for the very purpose of causing harm. McBride v. Rivers, C.A.11 (Ga.) 2006, 170 Fed.Appx. 648, 2006 WL 622591, Unreported. Sentencing And Punishment 1548

2377. ---- Deliberate indifference, assault by prison officials, prisons and prisoners generally

Evidence that prison superintendent authorized investigation into correctional officer's failure to report use of force and that he received written complaints about correctional officer's use of excessive force and was advised that correctional officer should be discharged because of persistent complaints, but took no responsive action, supported conclusion that supervisor was deliberately indifferent to substantial risk of serious harm to inmate, in violation of Eighth Amendment. Estate of Davis by Ostenfeld v. Delo, C.A.8 (Mo.) 1997, 115 F.3d 1388. Sentencing And Punishment 1548; Prisons 17(4)

Pretrial detainee met burden of establishing that due process violation was committed with deliberate indifference to her constitutional rights, where she complained of repeated sexual assaults by jailer during jailer's eight-hour shift. Scott v. Moore, C.A.5 (Tex.) 1997, 114 F.3d 51. Constitutional Law 262; Prisons 17(4)

Genuine issues of material fact existed, precluding summary judgment, on whether corrections officer's alleged choking of inmate to virtual unconsciousness after inmate disrupted hearing was excessive use of force with malicious and sadistic desire to inflict harm in violation of inmate's civil rights, and whether prison official was deliberately indifferent by failing to intervene after other officers allegedly held inmate down and began choking him. Burgess v. Moore, C.A.8 (Mo.) 1994, 39 F.3d 216, rehearing and suggestion for rehearing en banc denied. Federal Civil Procedure 2491.5

Jail supervisor was deliberately indifferent to safety of county jail inmate who was fatally assaulted by other inmates if he knew that not having an officer on the ground in jail yard posed a risk of violence among the inmates and nonetheless allowed an officer to cover both the yard and another post, which required officer to leave yard unattended for a significant period of time. Wilson v. Maricopa County, D.Ariz.2006, 463 F.Supp.2d 987. Sentencing And Punishment 1537

County corrections officer was liable under § 1983 for deliberate indifference to substantial risk of serious harm to inmate, in violation of Eighth Amendment, where officer admitted knowing that two other officers planned to use excessive force in subduing inmate, accompanied those officers to inmate's cell, watched officers viciously beat inmate for approximately one minute without interceding, and admitted that his presence was intended to ensure that inmate did not fight back and to keep other inmates from interfering. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Sentencing And Punishment 1548

County did not act with deliberate indifference with regard to consequences of its policy of allowing cross-gender guarding in correctional facility and, thus, county could not be held liable under § 1983 based on county employee's alleged sexual assault of prisoner; there was no history of assaults on prisoners by employee or other detention officers and county moved quickly to investigate employee's actions upon hearing allegations. Cain v. Rock, D.Md.1999, 67 F.Supp.2d 544. Civil Rights 1093; Civil Rights 1351(4)

Female plaintiff did not establish deliberate indifference by prison officials and thus could not recover on Eighth Amendment claim as result of alleged rape by prison guard where prison officials had policy forbidding sexual contact between correctional officers and inmates, alleged rapist had received total of 64 hours of training, and inmate offered no expert opinion to rebut expert report that training was adequate. Carrigan v. State of Del.,

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42 U.S.C.A. § 1983

D.Del.1997, 957 F.Supp. 1376. Civil Rights 1358

Sheriff could be held liable for violation of plaintiff's Eighth Amendment rights by officers based on deliberate indifference, in civil rights action by plaintiff who allegedly suffered severe beatings by officers while being taken into custody after summary conviction for criminal contempt; plaintiff sufficiently alleged that officers violated her constitutional rights and that sheriff was aware of complaints regarding officer's excessive tendencies. Sharp v. Kelsey, W.D.Mich.1996, 918 F.Supp. 1115. Civil Rights 1358

Correctional officer's action of striking inmate in the groin area did not involve the "deliberate indifference" required to establish cruel and unusual punishment under the Eighth Amendment; the officer had no intent to inflict harm, and his conduct did not show wantonness. Neal v. Miller, W.D.Mich.1991, 778 F.Supp. 378. Sentencing And Punishment 1548

Allegations that three correctional officers hit prisoner in his rib and groin area before transporting him to high security for further detention, if proven true, could demonstrate "reckless or callous" indifference to prisoner's constitutional right to be free from cruel and unusual punishment; thus, allegation stated civil rights action under § 1983. Fenner v. Moran, D.R.I.1991, 772 F.Supp. 59. Civil Rights 1395(7)

Single-fist blow to inmate's head to quell disturbance created by inmate, who had shoved and scratched correctional officer, was warranted and not excessive; thus, inmate could not recover under 42 U.S.C.A. § 1983 on claim that his Eighth Amendment [U.S.C.A. Const.Amend. 8] right to be free from cruel and unusual punishment was violated. Peebles v. Frey, E.D.Mo.1985, 617 F.Supp. 1072, affirmed 802 F.2d 462. Civil Rights 1093

Neither prison superintendent nor deputy superintendent were deliberately indifferent to danger of assault by corrections officer against prisoner, and thus could not be liable in prisoner's § 1983 supervisory liability action, arising out of alleged actions of officer, in forcibly removing prisoner from cell, handcuffing him to tightly, punching and threatening him; superintendent and deputy lacked direct personal knowledge about the incident or about alleged prior incidents of violence involving officer. Reyes v. McGinnis, W.D.N.Y.2003, 2003 WL 23101781, Unreported. Civil Rights 1358

Estate of prison inmate who was shot and killed by guard during riot at state prison failed to show that former prison officials acted with deliberate indifference and exposed inmate to a substantial risk of serious damage to his future health, and thus, officials were not liable under § 1983 for alleged violation of inmate's Eighth Amendment rights resulting from alleged deprivation of adequate emergency medical care, where officials did not promulgate or authorize policies and practices related to medical care. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107950, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Genuine issue of material fact as to whether prison officials, who had knowledge of multiple sexual incidents between male guards and female inmates and complaints of inappropriate pat-downs, but made no changes in policies or practice in response, had acted with deliberate indifference to inmate safety, precluded grant of summary judgment on basis of qualified immunity in inmate's § 1983 action against officials. Trammell v. Davis, C.A.8 (Ark.) 2000, 208 F.3d 218, Unreported. Federal Civil Procedure 2491.5

2377A. ---- Intent, assault by prison officials, prisons and prisoners generally

Jury in §§ 1983 action could find that prison guard had requisite state of mind required for claim of excessive force, when he was found by jury to have hit inmate in face, knelt on him, and otherwise inflicted pain in course of securing inmate in four point restraint. Ziemba v. Armstrong, D.Conn.2006, 433 F.Supp.2d 248. Civil Rights 1429

Heightened requirement of sadistic and malicious intent applied to inmate's claim that prison officials used

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excessive force in violation of his constitutional right to be free from cruel and unusual punishment by exposing him to tear and pepper gas while he was in his cell. Lee v. Griner, C.A.11 (Ga.) 2006, 188 Fed.Appx. 877, 2006 WL 1843523, Unreported. Sentencing And Punishment 1548

2378. ---- Knowledge, assault by prison officials, prisons and prisoners generally

Prisoner failed to establish that prison guards were jointly and severally liable under §§ 1983 for their failure to intervene in other guards' alleged use of excessive force during transfer of prisoner from strip-search area to segregation cell, absent evidence regarding identity of guards who were involved in transfer; without identify of officers, there was no way to examine whether specific guards acted with a knowing willingness that a constitutional violation would occur. Harper v. Albert, C.A.7 (Ill.) 2005, 400 F.3d 1052. Civil Rights 1358

City's failure to adopt policy of additional jail staffing did not constitute deliberate indifference, for purposes of § 1983 due process claim of pretrial detainee based on sexual assault by jailer; there was no showing that city had actual knowledge that its staffing policy created substantial risk of harm to female detainees, as condition of employment jailer underwent background investigation, medical examination, and polygraph test, none of which revealed any issues of concern, jailer had been commissioned police officer, without incident, for four years prior to his employment with the jail, and had been trained by experienced jailers in official policies of jail management. Scott v. Moore, C.A.5 (Tex.) 1997, 114 F.3d 51. Civil Rights 1088(4)

Inmate alleging failure to protect, in violation of Eighth Amendment, need not show that prison official acted or failed to act believing that harm actually would befall inmate; it is enough that official acted or failed to act despite his knowledge of substantial risk of serious harm. Ingalls v. Florio, D.N.J.1997, 968 F.Supp. 193. Sentencing And Punishment 1537

Supervisory official was not liable in his supervisory capacity for the acts of the other prison employees, who allegedly failed to take reasonable measures to guarantee an inmate's safety and used excessive force in restraining the inmate; evidence did not show a history of widespread violence, and the inmate's general statement that he feared being placed in a cell with another prisoner was insufficient to show that the official had a subjective knowledge of a risk of serious harm. McBride v. Rivers, C.A.11 (Ga.) 2006, 170 Fed.Appx. 648, 2006 WL 622591, Unreported. Prisons 10

Allegations by estate of prison inmate who was shot and killed by correctional officer during altercation between inmates at state prison that review board conducted an inadequate investigation did not, absent specific evidence, raise inference that prison official responsible for articulating, copying, and distributing use of force policy promoted a custom or pattern of inadequate investigations, or encouraged review boards to exonerate staff members who violated use of force policy as a matter of course, as would support estate's claim under § 1983 against official. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107989, Unreported. Civil Rights 1404

2379. ---- Discriminatory action, assault by prison officials, prisons and prisoners generally

Inmate did not state a claim under the Fifth Amendment cognizable under § 1983 by alleging that correctional officer, who caused a relatively minor injury to inmate's leg, poked him in the back and spoke in a belligerent tone, had previously made discriminatory statements against Native Americans, as connection between the physical injury and the claimed racial prejudice was not sufficiently close. Black Spotted Horse v. Else, C.A.8 (Minn.) 1985, 767 F.2d 516. Civil Rights 1395(7)

2380. ---- Seriousness of injury, assault by prison officials, prisons and prisoners generally

Extent of prisoner's injuries provided no basis for dismissal of Eighth Amendment claim against prison employees;

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blows directed at prisoner caused bruises, swelling, loosened teeth and cracked dental plate and were not de minimis for Eighth Amendment purposes. Hudson v. McMillian, U.S.La.1992, 112 S.Ct. 995, 503 U.S. 1, 117 L.Ed.2d 156, on remand 962 F.2d 522. Civil Rights 1093; Sentencing And Punishment 1548

Inmate's alleged injury at hands of prison guards, a sore, bruised ear lasting for three days, was de minimus, and thus he did not raise valid Eighth Amendment claim for excessive use of force nor did he have requisite "physical injury" under Prison Litigation Reform Act (PLRA) to support claim for emotional or mental suffering. Siglar v. Hightower, C.A.5 (Tex.) 1997, 112 F.3d 191. Civil Rights 1463; Sentencing And Punishment 1548; Prisons 13(4)

While not every use of excessive force rises to constitutional violation cognizable under this section, "significant injury" element of excessive force claims does not authorize prison guards and correctional officers to impose excessive force upon prisoner so long as resulting injuries are kept below "permanent" threshold. Luciano v. Galindo, C.A.5 (Tex.) 1991, 944 F.2d 261. Civil Rights 1093

Inmate need not show court scars of torture in order to make out complaint under federal statute creating cause of action for deprivation of civil rights under color of state law, but rather, prisoner retains right at least to be free from terror of instant and unexpected death at whim of his allegedly bigoted custodians. Burton v. Livingston, C.A.8 (Ark.) 1986, 791 F.2d 97. Civil Rights 1093

Severe physical abuse of prisoners by their keepers without cause or provocation is actionable under this section. Tolbert v. Bragan, C.A.5 (Ala.) 1971, 451 F.2d 1020. Civil Rights 1093

Evidence that inmate suffered more than de minimis injury, as required for corrections officers to be held liable for excessive force under §§ 1983, was insufficient for submission to jury, inasmuch as facts introduced at trial as to some other correctional officers could not be applied to defendant officers, and there was no evidence at trial indicating any physical injury resulting from officers' alleged actions of shoving inmate against wall and throwing him in chair. Willis v. Youngblood, D.Md.2005, 384 F.Supp.2d 883. Civil Rights 1093

Severe pain in inmate's shoulder which lasted three to five days, though apparently not serious, was not de minimis injury as matter of law, for purpose of inmate's §§ 1983 claim against corrections officers alleging excessive force in violation of the Eighth Amendment. Atkins v. County of Orange, S.D.N.Y.2005, 372 F.Supp.2d 377. Prisons 13(4); Sentencing And Punishment 1548

Even assuming truth of a plaintiff's accusation under this section that he was handcuffed, single blow described was not "excessive use of force" prohibited by Eighth Amendment. Olson v. Coleman, D.Kan.1992, 804 F.Supp. 148. Sentencing And Punishment 1548

Inmate's claim he was beaten by guards and suffered torn ligaments as result would support a § 1983 action. Peterson v. Scully, S.D.N.Y.1989, 707 F.Supp. 759. Civil Rights 1093

Inmate stated civil rights claim against corrections officers, one of whom had allegedly cut inmate's housecoat and hand; inmate had due process right to be free from unprovoked attack, and corrections officers were acting under color of state law. Wilson v. White, S.D.N.Y.1987, 656 F.Supp. 877. Civil Rights 1395(7)

This section provides a remedy for serious physical abuse of prisoners in violation of U.S.C.A. Const. Amend. 8 or due process clause of U.S.C.A. Const. Amend. 14, § 1, but this section does not seek to redress every injury actionable under common-law tort of battery. Ricketts v. Derello, E.D.Pa.1983, 574 F.Supp. 645. Civil Rights 1090

Evidence in civil rights action was insufficient to support inmate's excessive force claim against corrections officer;

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officer struck inmate once in a reflex action with a heavy trap-door key after inmate had refused several orders to withdraw his arm from the trap door in his cell, had grabbed officer by his shirt through the trap door, and was attempting to pull officer down and would not let him go, no further force was used by officer, and inmate did not suffer serious resulting injuries. Proctor v. Engstrom, C.A.8 (Ark.) 2004, 95 Fed.Appx. 192, 2004 WL 814897, Unreported. Civil Rights 1420

2381. ---- Duty to intercede, assault by prison officials, prisons and prisoners generally

Prison guards who participated in prisoner's cell transfer and transport procedure were not jointly and severally liable under §§ 1983 for their failure to intervene in other guards' alleged use of excessive force, absent any evidence prisoner had been subjected to excessive force by any of the guards. Harper v. Albert, C.A.7 (Ill.) 2005, 400 F.3d 1052. Civil Rights 1358

Evidence supported determination that other members of "movement team," sent to restrain inmate and remove him from cell, saw correctional officer assault inmate, as basis for holding other team members liable for failure to protect inmate from use of excessive force, considering proximity of team members to correctional officer, nature of officer's actions, substantial risk of serious harm to inmate, inmate's actual injuries, and fact that none of the movement team members reported any injury in their use of force reports. Estate of Davis by Ostenfeld v. Delo, C.A.8 (Mo.) 1997, 115 F.3d 1388. Civil Rights 1420

Correctional officer could not be liable to state prison inmate, under § 1983, for the alleged assault of inmate by other correctional officers, where the officer did not observe the alleged assault and he therefore could not have interceded on inmate's behalf. Durran v. Selsky, W.D.N.Y.2003, 251 F.Supp.2d 1208. Civil Rights 1093

Corrections officer and supervisory official could be held liable under § 1983 based on failure to intervene if they were both present when excessive force allegedly was used against inmate, and knew of or should have known of unconstitutional conduct in time to intervene. McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Civil Rights 1093; Civil Rights 1358

Corrections officer bears affirmative duty to intercede on behalf of inmate when officer witnesses other officers maliciously beating inmate in violation of inmate's Eighth Amendment rights; duty arises if officer has reasonable opportunity to intercede. Jones v. Huff, N.D.N.Y.1992, 789 F.Supp. 526. Sentencing And Punishment 1548; Prisons 9

Estate of prison inmate who was shot and killed by guard during altercation between inmates at state prison failed to set forth facts sufficient to establish that prison officials could have intervened before guard's alleged use of excessive force, but failed and refused to do so, as would support estate's Eighth Amendment claim under § 1983 against officials, where estate failed to show that officials knew guard, who was in observation tower, was about to use lethal force, or that officials could have prevented use of force. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107989, Unreported. Prisons 13(4); Sentencing And Punishment 1548

2382. ---- Common-law torts, assault by prison officials, prisons and prisoners generally

Constitutional protection afforded prisoners against assaults by correction officers is not coextensive with that afforded by the common law tort action for battery. Santiago v. Yarde, S.D.N.Y.1980, 487 F.Supp. 52. Assault And Battery 7

Claim that state penitentiary inmate has been victim of common law battery, although suitable for cause of action in state courts, does not state claim under U.S.C.A.Const. Amend. 8 or this section. Donahue v. Maynard, D.C.Kan.1977, 437 F.Supp. 47. Civil Rights 1090; Sentencing And Punishment 1537

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42 U.S.C.A. § 1983

2383. ---- Self-defense, assault by prison officials, prisons and prisoners generally

Prison inmate was struck by guard in self-defense and with only such force as necessary to stop inmate's attack and inmate was properly transported to hospital where she received adequate medical treatment during her overnight stay there and from prison nurse prior to the trip and on her return to prison; thus, no violation of inmate's civil rights resulted from altercation in inmate's cell. Smith v. Thomas, E.D.Ark.1979, 475 F.Supp. 1135. Civil Rights 1091; Civil Rights 1093

2384. ---- Simple assault, assault by prison officials, prisons and prisoners generally

Alleged simple assault committed upon prisoner by guard in state correctional institution was not actionable under this section governing deprivation of civil rights, notwithstanding claim of mental anguish, humiliation, embarrassment and fear, where alleged assault did not result in a physical touching and did not produce a physical injury, and, in tense and hostile atmosphere of prison, confrontations of such sort occurred on numerous occasions. Bolden v. Mandel, D.C.Md.1974, 385 F.Supp. 761. Civil Rights 1098

2385. ---- Mace, assault by prison officials, prisons and prisoners generally

Even if Wisconsin prison regulations governing use of mace create a liberty interest in not being maced, evidence that inmate was maced in violation of regulations was not sufficient, by itself, to establish violation of procedural due process. Colon v. Schneider, C.A.7 (Wis.) 1990, 899 F.2d 660. Constitutional Law 272(2)

Correctional supervisor was not liable under 42 U.S.C.A. § 1983 to inmate the supervisor maced when inmate refused to enter jail cell, as supervisor used mace in good faith, exercising discretion given him under jail policy, notwithstanding that use of mace may have been unnecessary to effect the needed restraint, since greater injury to inmate and guards involved might have occurred if physical force had been used instead. Norris v. District of Columbia, D.C.D.C.1985, 614 F.Supp. 294, affirmed 787 F.2d 675, 252 U.S.App.D.C. 119. Civil Rights 1093

Correctional official's use of mace on prisoner when officer thought he was confronted with a weapon in prisoner's hand when prisoner refused to leave his cell during a shakedown did not give rise to a clear constitutional claim absent any indication of injury to prisoner or a risk that prisoner might be subjected to an unconstitutional application of physical force. Taylor v. Strickland, D.C.S.C.1976, 411 F.Supp. 1390. Prisons 13(4)

State prison security officer, sought to be held liable for $1,000,000 for allegedly placing prison inmate in locked cell and proceeding to "mace" him, did not abuse his discretion when he "maced" inmate, after inmate, who started hollering around midnight that he wanted to see a doctor, refused to obey order to quiet down. Crafton v. Rose, E.D.Tenn.1972, 369 F.Supp. 131. Prisons 13(5)

2386. ---- Stun guns, assault by prison officials, prisons and prisoners generally

Police officers' use of stun gun on disruptive prison inmate was not a per se violation of Eighth Amendment, even though officers were not trained to use stun gun and there was no policy regarding use of stun guns. Caldwell v. Moore, C.A.6 (Ky.) 1992, 968 F.2d 595. Sentencing And Punishment 1548

2387. ---- Training and supervision, assault by prison officials, prisons and prisoners generally

By alleging that corrections officers planned his beating in prison dining hall and encouraged him to act out so they could beat him, that deputy warden witnessed that attack and took no action to stop it or to punish officers involved, and that sergeant stood by as correction officers harmed him while he was handcuffed, inmate stated claim against prison officials under §§ 1983 for supervisory liability for use of excessive force in violation of Eighth Amendment. Davis v. Carroll, D.Del.2005, 390 F.Supp.2d 415. Sentencing And Punishment 1548

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42 U.S.C.A. § 1983

Municipal civil rights liability for failure to train results when (1) there is a constitutional violation by a municipal employee and (2) the evidence demonstrates a close causal link between the failure to train and the injury. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Civil Rights 1352(1)

A municipality will be held liable for failure to train its employees only if its failure to properly train evidences a deliberate indifference to the rights of its inhabitants. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198 . Civil Rights 1352(1)

District of Columbia has duty, not only to train its officers in matters relating to sexual contact between prison guards and inmates, but also to actively devise and implement system of supervision of its first level corrections officers in accordance with law. Newby v. District of Columbia, D.D.C.1999, 59 F.Supp.2d 35. Prisons 17(1)

Prison supervisor was not grossly negligent in managing prison officials who conducted pat down search of prisoner, for purpose of liability on excessive force claim under § 1983; following prisoner's complaints, supervisor twice replaced officials conducting pat down search, and he filed use of force report and took prisoner to hospital for immediate evaluation after prisoner claimed he had been assaulted. Kalwasinski v. Artuz, S.D.N.Y.2003, 2003 WL 22973420, Unreported. Civil Rights 1358

Estate of prison inmate who was shot and killed by correctional officer during altercation between inmates at state prison failed to show that alleged failure of prison official responsible for articulating, copying, and distributing use of force policy to oversee proper training, supervision, and discipline of guards resulted in inappropriate use of deadly force against inmate, as would support estate's claim under § 1983 against official. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107989, Unreported. Civil Rights 1358

Estate of prison inmate who was shot and killed by guard during riot at state prison failed to show that alleged failure of former prison officials to oversee proper training, supervision, and discipline of guards resulted in inappropriate use of deadly force against inmate, as would support estate's Eighth Amendment claim under § 1983 against officials. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107950, Unreported. Prisons 13(4); Sentencing And Punishment 1548

2388. ---- Miscellaneous assaults, assault by prison officials, prisons and prisoners generally

Alleged practice of excessive force by correctional officers was not part of policy of District of Columbia for purposes of liability for constitutional tort arising from beating of prisoner by correctional officers, and thus District could not be held liable for prisoner's broken neck during incident with guards, even if low-level supervisors covered up other alleged incidents of excessive force through falsified disciplinary reports; such practice reduced likelihood that policymakers would learn of practice and suggested belief by subordinates that their behavior violated established policy. Triplett v. District of Columbia, C.A.D.C.1997, 108 F.3d 1450, 323 U.S.App.D.C. 421. Civil Rights 1351(4)

Inmate failed to state facts, in § 1983 action, that met either objective or subjective component of test used to determine whether corrections officers' excessive physical force constituted cruel and unusual punishment, as allegations that inmate was bumped, grabbed, elbowed, and pushed were not sufficiently serious or harmful to reach constitutional dimensions, where inmate did not maintain that he experienced any pain or injury as result of physical contact or allege facts showing that officers used force maliciously and sadistically to cause harm rather than in good faith effort to maintain or restore discipline. Boddie v. Schnieder, C.A.2 (N.Y.) 1997, 105 F.3d 857. Civil Rights 1395(7)

Inmate in civil rights action against prison guard made out prima facie case of use of excessive force in violation of right to be free from cruel and unusual punishment, in light of evidence that guard hit inmate in mouth with clenched fist while inmate was held immobilized by at least nine other people, that punch in the face was not

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necessary to carry out court order for drawing of blood sample, that guard then said, "Shut up," that four teeth were removed the next day, and that, after incident, inmate "hurt all over." Thomas v. Stalter, C.A.7 (Ill.) 1994, 20 F.3d 298. Civil Rights 1420

Prison guards' use of force to remove inmate from regular cell to isolation cell was justified, and thus did not constitute Eighth Amendment violation; inmate had been asked three times to uncover his head while sleeping and had finally unequivocally refused, and his size, slippery skin, and "passive resistance" made him awkward to move. Stenzel v. Ellis, C.A.8 (S.D.) 1990, 916 F.2d 423. Sentencing And Punishment 1548

Prisoner's complaint alleging that he was severely beaten, kicked, choked, and thrown against wall by several guards when he shuffled his feet during prison "shakedown," and was beaten again while handcuffed after he was taken to holding unit, stated section 1983 claim. Gaut v. Sunn, C.A.9 (Hawai'i) 1987, 810 F.2d 923. Civil Rights 1395(7)

Inmate stated a §§ 1983 claim for an Eighth Amendment violation against a corrections officer who allegedly grabbed the inmate's buttocks and fondled his penis during a search; inmate adequately that the officer searched him in a harassing manner intended to humiliate and inflict psychological pain. Turner v. Huibregtse, W.D.Wis.2006, 421 F.Supp.2d 1149. Sentencing And Punishment 1545

Pretrial detainee stated a claim for excessive force against a county deputy sheriff; his assertions that the deputy, without provocation, shoved him, causing severe injury to his knee, and that he was deliberately denied medical attention for his injury satisfied the fair notice pleading standard. Harris v. Adams, S.D.Ohio 2005, 410 F.Supp.2d 707. Civil Rights 1395(6)

By alleging that correction officers harmed him on two different occasions while he was handcuffed, and deliberately hit him in order to provoke a response, inmate stated a claim against prison personnel under §§ 1983 for use of excessive force in violation of his Eighth Amendment right to be free from cruel and unusual punishment. Davis v. Carroll, D.Del.2005, 390 F.Supp.2d 415. Sentencing And Punishment 1548

An attempted touching, with no accompanying allegation of pain or injury, cannot support an inmate's claim of constitutional injury. Collins v. Graham, D.Me.2005, 377 F.Supp.2d 241. Civil Rights 1093

Corrections officers' alleged conduct of beating inmate as they were transporting him to mental health unit, following apparent suicide attempt by inmate, violated contemporary standards of decency, thus satisfying objective component of inmate's resulting §§ 1983 claim alleging excessive force in violation of the Eighth Amendment. Atkins v. County of Orange, S.D.N.Y.2005, 372 F.Supp.2d 377. Prisons 13(4); Sentencing And Punishment 1548

Allegation that prison guards assaulted prisoner by "poking" him in the back when he did not hear them did not state claim of excessive force, as it did not involve more than de minimus injury. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593. Prisons 13(4); Sentencing And Punishment 1548

Genuine issues of material fact, precluding summary judgment for prison officials in § 1983 action by inmate who alleged violation of his Eighth Amendment right to be free from excessive use of force, existed as to whether correctional officers used minimal amount of force to place handcuffs on inmate to transfer him to court, rather than (as inmate alleged) wrestling him to floor, handcuffing him, hitting him with their sticks, and dragging him onto waiting bus. Newland v. Achute, S.D.N.Y.1996, 932 F.Supp. 529. Federal Civil Procedure 2491.5

Evidence showed that force used by employees of New York State Department of Corrections (DOCS) towards inmate was applied to protect safety of other inmates as well as staff of correctional facility, and was not performed maliciously and sadistically to cause harm, and, thus, inmate's Eighth Amendment claim against employees in civil

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rights action had to fail; inmate stated that motive for employees to beat him arose only from his intention to file cross-action lawsuit against prison officials in relation to living conditions imposed on "keeplock" inmates, but inmate contended that he never informed any employees of his plan to file lawsuit, employees had not had any prior substantive contact with inmate, and injuries suffered by employees and others indicated infliction of brutality by inmate on scale far greater than suffered by inmate. Duamutef v. Fial, W.D.N.Y.1996, 922 F.Supp. 807. Civil Rights 1420

Evidence in inmate's civil rights action against correction officers for use of excessive force supported finding that, in one incident, two officers had maliciously and sadistically harmed inmate, in light of evidence that inmate suffered jagged laceration on top of his head as well as abrasion above eye, requiring stitches, that inmate was much smaller than either of the officers, that officers had undergone training in proper use of force and defensive tactics, and testimony of physician that it was "highly unlikely" that laceration on top of head was self-inflicted. Hynes v. LaBoy, S.D.N.Y.1995, 887 F.Supp. 618. Civil Rights 1420

Police officer who transported arrestee to county jail after arrest could not be held liable for excessive force under § 1983 based on arrestee's testimony that the officer "kind of manhandled me around" and "roughly transported" him in "the manner in which [officer] took me out of the car and stuff like that," as testimony amounted to conclusory allegations. Dimmitt v. Ockenfels, D.Me.2004, 220 F.R.D. 116, affirmed 407 F.3d 21. Civil Rights 1420

State prisoner's pro se §§ 1983 action against prison guards, alleging that guards beat him for making insolent remarks, in violation of the Eighth Amendment, was barred by rule of *Heck v. Humphrey*, precluding civil claims which, if established, would necessarily imply the invalidity of an underlying conviction; prisoner was found guilty of assault and resisting the guards for same incident at a prison disciplinary hearing, and the §§ 1983 claim alleged that guards were not justified in using physical force against him, and did not admit that prisoner physically resisted guards, so that if prisoner prevailed in §§ 1983 claim, his disciplinary conviction would necessarily be called into doubt. Wooten v. Law, C.A.7 (Ill.) 2004, 118 Fed.Appx. 66, 2004 WL 2676624, Unreported. Civil Rights 1092

Prison guards did not act maliciously, as required for Eighth Amendment claim of excessive force, when they allegedly threw state prisoner, who refused direct order to move up in line and attacked guard, into another room head first; prisoner's injuries, including bump to head and scratches, bruises and abrasions, were very minor, there existed need for application of force, given that when guard attempted to move him out of line, prisoner attacked him in room with about forty other prisoners, amount of force actually used was commensurate with need for force, threat was reasonably perceived by guard whose arm had been trapped and who had been pinned to floor by prisoner, and force was only used to extent necessary to remove threat to prison guards and prison discipline. Kalwasinski v. Artuz, S.D.N.Y.2003, 2003 WL 22973420, Unreported. Prisons 13(4); Sentencing And Punishment 1548

No reasonable jury could find that prisoner was subjected to unnecessary or excessive force in violation of civil rights law when prisoner reached through trap in door of his cell with his right arm in violation of prison rules and prison officials then beat his hand with plastic medication box, resulting in lacerations, bruises, cuts, and swelling; injuries were minor and the force used was in proportion to the threat posed by prisoner. White v. Matti, C.A.7 (Wis.) 2002, 58 Fed.Appx. 636, 2002 WL 31887792, Unreported. Prisons 13(4); Sentencing And Punishment 1548

2389. Harassment by prison officials, prisons and prisoners generally-- Generally

Inmate sufficiently alleged continuous acts of harassment and beatings since time he filed administrative complaint with Department of Justice to state cause of action for retaliatory treatment against prison officials. Black v. Lane, C.A.7 (Ill.) 1994, 22 F.3d 1395, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(7)

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That, after prisoner filed petition for writ of habeas corpus, his ward officer filed three incident reports on him did not establish unconstitutional harassment where ward officer had independent factual basis for each charge. Willis v. Ciccone, C.A.8 (Mo.) 1974, 506 F.2d 1011. Prisons 13(2)

For purposes of screening provision of Prison Litigation Reform Act (PLRA), prisoner did not state §§ 1983 claim against wardens based on their alleged failure to protect him from harassment by corrections officer, absent showing wardens were aware of prisoner's complaints against that officer or suggestion they were personally involved in the harassment or that it was unreasonable for them to delegate his complaints to officers on pod; significantly, prisoner testified that one of those wardens eventually had subject officer removed from prisoner's floor. David v. Hill, S.D.Tex.2005, 401 F.Supp.2d 749. Civil Rights 1395(7)

Prisoner's complaint alleging that prison guards pulled him out of school and harassed him about grievances he had filed did not state § 1983 claim absent further supporting facts. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593 . Civil Rights 1395(7)

Officials at Virginia prison did not violate inmate's civil rights through alleged harassment of inmate by officer who was attempting to clear visitation room; officer was merely trying to organize inmates exiting that room and to make sure they did so in timely and orderly fashion, and inmate did not assert that he was harmed in any way physically or emotionally by alleged harassment. Harris v. Murray, E.D.Va.1990, 761 F.Supp. 409. Civil Rights 1098

Allegations of verbal abuse or harassment received by plaintiff at state prison were insufficient grounds for relief under this section governing deprivation of civil rights under color of state law. Freeman v. Trudell, E.D.Mich.1980, 497 F.Supp. 481. Civil Rights 1395(7)

Prisoner's generalized assertion of harassment by county jail officials did not give rise to a claim upon which relief could be granted under this section. Feazell v. Augusta County Jail, W.D.Va.1975, 401 F.Supp. 405. Civil Rights 1395(7)

Alleged harassment of state prison inmates by unit guards and lack of communication between inmates and unit officials would not reach constitutional magnitude unless inmates could show that prison officials acted cruelly or arbitrarily towards inmates. Lunsford v. Reynolds, W.D.Va.1974, 376 F.Supp. 526. Civil Rights 1098

2390. ---- Verbal abuse, harassment by prison officials, prisons and prisoners generally

Verbal abuse by prison guard does not give rise to claim under § 1983. Siglar v. Hightower, C.A.5 (Tex.) 1997, 112 F.3d 191. Civil Rights 1090

Inmate could not maintain claim that correctional program supervisor at state corrections release center violated prisoner's rights by using vulgar language in § 1983 action; verbal harassment or abuse is not sufficient to state constitutional deprivation under § 1983. Oltarzewski v. Ruggiero, C.A.9 (Ariz.) 1987, 830 F.2d 136. Civil Rights 1098

Complaint that prison guard, without provocation and for apparent purposes of retaliating against prisoner's exercise of his rights in petitioning federal court for redress, terrorized him with threats of death while using racially offensive language stated claim under statute governing deprivation of civil rights for violation of prisoner's rights under First Amendment and due process and equal protection clauses of Fourteenth Amendment. Burton v. Livingston, C.A.8 (Ark.) 1986, 791 F.2d 97. Civil Rights 1395(7)

Except in circumstances giving rise to unnecessary and wanton infliction of pain, verbal and sexual harassment does not give rise to §§ 1983 liability in the prison context. Collins v. Graham, D.Me.2005, 377 F.Supp.2d 241.

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Civil Rights 1098

State prison inmate's allegations that prison officer unzipped his clothing and told the inmate to grab the officer's penis and walked away laughing when the inmate refused, and did the same thing two days later but brushed against the inmate's arm before walking away, and that another officer held a candy bar toward his genital area, flipping it up and down, and then responded "I don't kiss and tell" when the inmate asked if the conduct was directed at him, amounted only to allegations of verbal sexual harassment, and thus, were insufficient to state a § 1983 claim for violation of the inmate's Eighth Amendment rights. Minifield v. Butikofer, N.D.Cal.2004, 298 F.Supp.2d 900. Prisons 13(4); Sentencing And Punishment 1554

Corrections officer's alleged verbal harassment of state inmate was not actionable under § 1983. McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Civil Rights 1098

Prisoner's claim of racial slurs or epithets reflecting racial prejudice did not form basis of claim under § 1983. Brown v. Croce, S.D.N.Y.1997, 967 F.Supp. 101. Civil Rights 1098

State prison inmate's allegations that he was provoked and harassed by correction officers who used profanity towards him did not state § 1983 claim that prisoner was subjected to cruel and unusual punishment; allegation of verbal harassment or profanity, without any injury or damage, did not state claim under § 1983. Harris v. Keane, S.D.N.Y.1997, 962 F.Supp. 397. Civil Rights 1098

Verbal harassment alone cannot support claim under § 1983. Bullock v. Barham, N.D.Ill.1997, 957 F.Supp. 154. Civil Rights 1036

Prisoner who had not actually experienced any retaliation as a result of filing a lawsuit against corrections officer could not recover on civil rights claim, even if his claim that he was threatened about retaliation should he do so was true; prisoner's allegations constituted nothing more than claim of verbal harassment which is not cognizable under federal civil rights statute. Shiflet v. Cornell, M.D.Fla.1996, 933 F.Supp. 1549. Civil Rights 1098

Verbal harassment by state correction officials and preparation of an allegedly false misbehavior report charging inmate with marijuana use, both alleged to have occurred after inmate's election as representative on inmate grievance resolution committee, did not amount by themselves to a constitutional violation for purposes of a § 1983 civil rights action against those officials, viewed apart from a claim that officials' conduct was retaliatory. Alnutt v. Cleary, W.D.N.Y.1996, 913 F.Supp. 160. Civil Rights 1092

Correctional officer's alleged verbal assault of inmate did not violate Eighth Amendment. Davis v. Michigan Dept. of Corrections, E.D.Mich.1990, 746 F.Supp. 662. Sentencing And Punishment 1554

Even if inmate's allegations that deputy sheriff physically and verbally abused him were true, inmate's claim was not cognizable under § 1983 because assault as alleged did not constitute invasion of inmate's constitutional rights; inmate did not allege he suffered any injury as a result of alleged assault. Castillo v. Bowles, N.D.Tex.1988, 687 F.Supp. 277. Civil Rights 1093

Corrections officers' alleged verbal harassment of state prisoner and destruction of photographs of prisoner's girl friend were de minimis violations and could not form basis of civil rights suit against officers. Hikel v. King, E.D.N.Y.1987, 659 F.Supp. 337. Civil Rights 1098

Allegations of verbal harassment and profanity without more simply do not show invasion of any federally protected right. Coyle v. Hughs, W.D.Okla.1977, 436 F.Supp. 591. Civil Rights 1395(1)

Mere words, however violent, on part of prison personnel do not amount to such an assault as would be actionable

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by prisoners under this section. Jones v. Superintendent, D.C.Va.1974, 370 F.Supp. 488. See, also, Morrison v. Martin, E.D.N.C.1990, 755 F.Supp. 683, affirmed 917 F.2d 1302; Stacey v. Ford, D.C.Ga.1982, 554 F.Supp. 8; Batton v. State Government of North Carolina, Executive Branch, D.C.N.C.1980, 501 F.Supp. 1173; Boston v. Stanton, D.C.Mo.1978, 450 F.Supp. 1049; Coyle v. Hughs, W.D.Okla.1977, 436 F.Supp. 591.

Allegations that prison guards verbally abused state inmate by cursing at him did not support §§ 1983 claim. Perry v. Kramer, C.A.9 2005, 121 Fed.Appx. 191, 2005 WL 81176, Unreported. Civil Rights 1098

2391. Threats by prison officials, prisons and prisoners generally

In § 1983 action in which prisoner alleged that prison officials conspired to murder him for their own personal purposes, to cover-up illicit activities by one of them, prisoner was required to show that prison officials were deliberately indifferent to prisoner's safety. Arnold v. Groose, C.A.8 (Mo.) 1997, 109 F.3d 1292. Conspiracy 7

Pro se inmate's allegations that arresting officer and other threatened to kill him and continued to do so failed by themselves to state constitutional claim cognizable under § 1983. Swoboda v. Dubach, C.A.10 (Kan.) 1993, 992 F.2d 286, on remand 1995 WL 530601. Civil Rights 1098

Claims by inmates that prison officials issued death threats against them and harassed them stated actionable claim under § 1983 based on alleged violation of First and Fourteenth Amendments. Knecht v. Collins, S.D.Ohio 1995, 903 F.Supp. 1193, affirmed in part, vacated in part and reversed in part 187 F.3d 636. Civil Rights 1098

Inmate failed to establish § 1983 due process claim against prison officials based on alleged threats and harassment by officials; mere verbal threats alone are insufficient to support claim under § 1983, and inmate made no showing of uninvited physical contact. Jermosen v. Coughlin, N.D.N.Y.1995, 878 F.Supp. 444. Civil Rights 1098

Alleged threats by prison officials to place prison inmate in "cell 17," without more, did not set forth a cause of action pursuant to civil rights statute, 42 U.S.C.A. § 1983. Featherman v. DiGiacinto, E.D.Pa.1985, 617 F.Supp. 431. Civil Rights 1395(7)

Alleged threatening language and gestures of a state penal official do not, even if true, constitute constitutional violation within the cognizance of this section. Fisher v. Woodson, E.D.Va.1973, 373 F.Supp. 970. Civil Rights 1090

2392. Harassment of guards by prisoners, prisons and prisoners generally

A prisoner has no right to verbally abuse guards, nor to engage in other forms of protest which impose a clear and present danger of disorder and violence; prompt suppression of such a violent outburst within limits imposed on the amount of force employed does not constitute an actionable tort of constitutional dimensions. Hawkins v. Elliott, D.C.S.C.1974, 385 F.Supp. 354. Civil Rights 1092; Prisons 13(4)

Prisoners have right even while confined to express their beliefs concerning conditions of their confinement, but no right to curse and verbally abuse guards, or throw food, trash and human waste at them, nor engage in other forms of protest which pose clear and present danger of violence and disorder. Collins v. Schoonfield, D.C.Md.1973, 363 F.Supp. 1152. Prisons 4(5)

Verbalization of inmate complaints within an institution should not be cause for punishment, at least of pretrial detainees, unless such verbalization poses threat which endangers the security of the jail. Collins v. Schoonfield, D.C.Md.1972, 344 F.Supp. 257, supplemented 363 F.Supp. 1152. Prisons 4(5)

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42 U.S.C.A. § 1983

2393. Riots or disturbances, prisons and prisoners generally--Generally

To state Eighth Amendment excessive force claim under § 1983, prisoner or pretrial detainee must show that force was not applied in good faith effort to maintain or restore discipline but, rather, was administered maliciously and sadistically to cause harm; further, prisoner or pretrial detainee must show some injury, but it need not be "significant." Rankin v. Klevenhagen, C.A.5 (Tex.) 1993, 5 F.3d 103. Sentencing And Punishment 1548; Prisons 13(4)

The fact that an inmate's loss of privileges was qualitatively equivalent to that experienced by prisoners segregated for disciplinary reasons did not entitle him to full range of procedural safeguards if restrictions were imposed upon prison unit as a whole as a measured response to an emergency. Abdul-Wadood v. Duckworth, C.A.7 (Ind.) 1988, 860 F.2d 280, rehearing denied. Prisons 13(7.1)

In investigation into criminal conduct before, during and after uprising in state prison, each inmate was entitled to protection of his constitutional rights, subject to such restrictions as were reasonably and necessarily required in light of his incarceration pursuant to his prior conviction on other charges. Inmates of Attica Correctional Facility v. Rockefeller, C.A.2 (N.Y.) 1971, 453 F.2d 12. Convicts 5

Events alleged with respect to prison riot were not cognizable in civil rights action under this section. McKinney v. People of State of Cal., C.A.9 (Cal.) 1970, 427 F.2d 160. Civil Rights 1395(7)

County jail inmates who alleged that state officials were guilty of intentional or grossly negligent acts resulting in violations of their rights under U.S.C.A. Const.Amends. 4, 14, in connection with events that occurred at jail when state's correctional emergency response team regained control of the jail following takeover by inmates, and who challenged state policies and procedures with regard to selection, training and supervision of the correctional emergency response team officers, were not required to prove an absence of adequate postdeprivation state remedies in order to establish a claim under this section and U.S.C.A. Const.Amend. 14. Allman v. Coughlin, S.D.N.Y.1984, 577 F.Supp. 1440. Civil Rights 1404

Allegation that prison official failed to establish procedures for regulating use of mace and tear gas was insufficient alone to constitute a claim cognizable under this section. LeBlanc v. Foti, E.D.La.1980, 487 F.Supp. 272. Civil Rights 1395(7)

Inmate, who was injured when he fell from fence while attempting to escape danger resulting from prison riot, failed to show that injuries he sustained were inflicted by prison personnel as cruel and unusual punishment in violation of U.S.C.A.Const. Amend. 8 or that there was deliberate indifference to risk of injuries being inflicted upon prisoner by fellow inmates or action to prevent injuries from occurring as soon as risk became apparent; thus prisoner was not entitled to recover from prison authorities on theory that he had been deprived by them of federal constitutional rights. Scittarelli v. Manson, D.C.Conn.1978, 447 F.Supp. 279. Convicts 2; Sentencing And Punishment 1537

2394. ---- Mace, riots or disturbances, prisons and prisoners generally

If prison officer used Mace on prisoner who was creating disturbance in his cell only in a single burst for a second or two, as testified to by him, then he was not liable for damages in civil rights action on theory of infliction of cruel and unusual punishment; but if, as testified to by the prisoner, he was gassed continuously by three or four guards for several minutes, jury should have found for the prisoner. Bailey v. Turner, C.A.4 (N.C.) 1984, 736 F.2d 963. Sentencing And Punishment 1548

Prisoner failed to establish that he suffered deprivation of any constitutional right arising out of use of mace by

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prison employees to quell a disturbance created by inmates. LeBlanc v. Foti, E.D.La.1980, 487 F.Supp. 272. Prisons 13(4)

Prison authorities' use of two shells of "mace" when large number of inmates refused to leave recreation room of penitentiary after being ordered to do so was proper for control of inmates, for protection of state property, for protection of prison officials and also for protection of inmates involved, and such use violated no constitutional right of inmate who was subjected to the "mace." Washington v. Anderson, E.D.Okla.1974, 387 F.Supp. 412. Prisons 13(4)

Where state prisoners confined in a maximum security seclusion cell as agitators during period of prison disturbance continued noisy and boisterous conduct, and where "talk and counsel" had failed, use first of fire hose with limited water pressure and then of controlled bursts of chemical mace to quell the disturbance did not constitute cruel and unusual punishment entitling prisoner to damages under this section. Beishir v. Swenson, W.D.Mo.1971, 331 F.Supp. 1227. Civil Rights 1092; Sentencing And Punishment 1553

2395. ---- Tear gas, riots or disturbances, prisons and prisoners generally

Use of tear gas to quell late-night disturbance at dormitory within state prison did not constitute excessive use of force so as to give rise to liability under this section, in view of fact that there had been the potential for a serious disturbance relating to incident wherein an inmate, supported by 20 to 25 other inmates, had flagrantly defied warden's orders, that the tear gas was used as last resort only after show of force by officers proved unsuccessful and after nonparticipants were given ample opportunity to leave dormitory and that the extent of injuries inflicted by the gas was minimal. Peterson v. Davis, D.C.Md.1982, 551 F.Supp. 137, affirmed 729 F.2d 1453. Civil Rights 1093

Use of tear gas on prisoner who had become intoxicated and refused to obey lawful order to return to his cell was proper where possible physical injury might have been suffered by prisoner and prison personnel if prison personnel had attempted to bring prisoner under control by laying hands on him rather than by use of tear gas. Christian v. Anderson, E.D.Okla.1974, 381 F.Supp. 168. Prisons 13(4)

Jail guards' conduct in spraying inmates with tear gas to quell disturbance in jail did not violate any constitutional rights of former inmate, who sought relief under this section. Davis v. U. S., E.D.Mo.1970, 316 F.Supp. 80, affirmed 439 F.2d 1118. Civil Rights 1093

2396. Escapes, prisons and prisoners generally

Factors relevant to inquiry whether prison official inflicted unnecessary and wanton pain and suffering on escaping prisoner include need for application of force, relationship between need and amount of force that was used, extent of injury inflicted, extent of threat to safety of staff and inmates, as reasonably perceived by responsible officials on basis of facts known to them, and any efforts made to temper severity of forcible response. Kinney v. Indiana Youth Center, C.A.7 (Ind.) 1991, 950 F.2d 462, rehearing denied, certiorari denied 112 S.Ct. 2313, 504 U.S. 959, 119 L.Ed.2d 232. Prisons 13(4)

Local jail detention officers injured by jail inmates attempting to escape did not have a federal civil rights claim against government officials in charge of the jail for injuries which would not have occurred but for those officials' alleged callous indifference to or grossly negligent failure to prevent, adequately guard against, or protect those injured from attempted escape and accompanying inmate violence; claim fell squarely within traditional state tort law and did not give rise to a constitutional claim. de Jesus Benavides v. Santos, C.A.5 (Tex.) 1989, 883 F.2d 385. Civil Rights 1098

Corrections officer's ultimately fatal shooting of escaping prisoner did not constitute unconstitutional use of

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excessive force, where prisoner had ignored multiple warnings to stop, officer had no reason to know that escape could be prevented by means other than use of deadly force, and officer was not in position to shoot only to disable prisoner. Newby v. Serviss, W.D.Mich.1984, 590 F.Supp. 591. Prisons 13(4)

In determining whether state authorities breached their duty to prevent conduct of other inmates from causing injury to prisoner, so as to support claim of prisoner against prison authorities for damages based on deprivation of federal constitutional rights, test was whether there was "deliberate indifference" to risk that serious injuries might be inflicted upon prisoner. Scittarelli v. Manson, D.C.Conn.1978, 447 F.Supp. 279. Convicts 2

2397. Chaining of inmates, prisons and prisoners generally

Chaining of pretrial detainee to bed in hospital ward of jail for four days, except when he was released to shower and when he left facility for court appearance, was reasonably related to jail security and, as administered, was not excessively restrictive, and thus where pretrial detainee was not chained because of his race, chaining did not constitute punishment or violate due process or equal protection. Guerrero v. Cain, D.C.Or.1983, 574 F.Supp. 1012. Constitutional Law 250.2(1); Constitutional Law 262; Prisons 4(4)

2398. Interrogation of inmates, prisons and prisoners generally--Generally

Prison guard's questioning of prisoner regarding allegation that prisoner had stolen another inmate's radio, did not constitute conduct in violation of defendant's constitutional rights sufficient to sustain § 1983 action, even though prisoner had complained that inmate had obtained confidential information from prisoner's file and used it to contact prisoner's mother and attempt to force her to pay debt prisoner allegedly owed to inmate. Harding v. Jones, E.D.Mo.1991, 768 F.Supp. 275. Civil Rights 1098

2399. ---- Sexual matters, interrogation of inmates, prisons and prisoners generally

Former prisoner was not entitled to recover under this section from prison authorities on basis of humiliation suffered in prison interview regarding plaintiff's personal sexual matters, where questions appeared to be oriented toward determining what, if any, danger or difficulty plaintiff would likely experience upon release on parole because of his sexual proclivities. Gahagan v. Pennsylvania Bd. of Probation and Parole, E.D.Pa.1978, 444 F.Supp. 1326. Civil Rights 1098

2400. Searches, prisons and prisoners generally--Generally

Inmate's allegation that prison officials' request that he submit to urinalysis was unreasonable search under Fourth Amendment was sufficient to state § 1983 civil rights claim, absent indication in record whether request was based on random selection or was otherwise permissible under Fourth Amendment as applied to prisoners. Lucero v. Gunter, C.A.10 (Colo.) 1994, 17 F.3d 1347. Civil Rights 1395(7)

Prison policy requiring prisoners in administrative segregation unit to submit to visual strip and body cavity searches when leaving their cells was constitutional, and given unit's security demands, prisoner's cell was reasonable place for conducting such searches. Rickman v. Avaniti, C.A.9 (Ariz.) 1988, 854 F.2d 327. Prisons 4(7)

Former county jail inmate's allegations in his § 1983 complaint that he was placed in administrative segregation in cell which did not have a privacy partition next to the toilet and in which the toilet was allegedly situated such that three female inmates another cell could, at separate intervals, have a direct view of the inmate while he was performing bodily functions did not amount to a claim for an impermissible search and seizure, as the inmate was complaining of the searching eyes of co-inmates rather than guards. Simpson v. Penobscot County Sheriff's Dept., D.Me.2003, 285 F.Supp.2d 75. Civil Rights 1092

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42 U.S.C.A. § 1983

Prisoner failed to establish that search conducted by government, that prisoner alleged was unconstitutional, caused him any actual compensable injury over and above that of being convicted and imprisoned, and so prisoner could not raise claim in civil rights action. Woodward v. Sedgwick County Jail, D.Kan.1996, 927 F.Supp. 1473, affirmed 106 F.3d 414. Civil Rights 1088(3)

Prisoner bringing § 1983 claim against state prison official did not allege violation of constitutionally protectible liberty interest under prison regulations violated by alleged improper cell search and false behavior report as required for procedural rule noncompliance to sustain § 1983 claim; alleged violations did not meet standard that denial create atypical and significant hardship in relation to ordinary incidents of prison life. Ramirez v. Holmes, S.D.N.Y.1996, 921 F.Supp. 204. Constitutional Law 272(2); Prisons 4(7); Prisons 13(2)

Prison inmate's assertion that correctional officials stepped on his belongings and left his cell in disarray in violation of agency directive requiring correctional officers to conduct cell search in orderly manner and to use care to avoid damage or destruction to property failed to state claim for relief under civil rights law; failure to follow state directive strictly was not protected by federal law. Smith v. O'Connor, S.D.N.Y.1995, 901 F.Supp. 644 . Civil Rights 1098

Cause was not required for correction officer to enter and search prisoner's cell. Payne v. Axelrod, N.D.N.Y.1995, 871 F.Supp. 1551. Prisons 4(7)

Cell search, in violation of prison directive, did not violate prisoner's civil rights, where directive did not contain substantive rights, but merely established procedural framework for prison personnel. Gilmore v. Jeffes, M.D.Pa.1987, 675 F.Supp. 219. Civil Rights 1098

Entering of plaintiff's jail cell by prison guards with intention to forcibly remove from defendant's possession an object which he had secreted in towel was not unreasonable per se, for purpose of civil rights liability for injury sustained in the incident, as guards and jail administrator believed that plaintiff had a metal object, plaintiff, who had been placed in segregation following shakedown, was shouting threats at guards and making loud banging noises with the object and was riling up other prisoners, notwithstanding that plaintiff had not swung towel at two guards when they stood outside cell talking to him or that there was no prisoner in any cell immediately adjacent to plaintiff's. Bush v. Ware, E.D.Wis.1984, 589 F.Supp. 1454. Civil Rights 1093

Where search of inmate's cell was prompted by information received from another corrections officer to effect that prisoner might have been engaged in a "flim flam" operation concerning a "corporation" set up by inmates, search of cell for "corporation" documents, which were found and confiscated and, subsequently, after several weeks, returned to facility and given back to state prisoner did not give rise to civil rights cause of action. Crawford v. O'Hara, N.D.N.Y.1982, 529 F.Supp. 484, affirmed 742 F.2d 1431. Civil Rights 1098

Search of cell occupied by inmate who was a known accomplice of two other inmates in whose cells contraband had been found was reasonable and was an appropriate security measure, especially as cell was left in proper order after the search. Brown v. Hilton, D.C.N.J.1980, 492 F.Supp. 771. Prisons 13(4)

Inmate's claims of Fourth Amendment search and seizure violations did not necessarily imply the invalidity of his conviction, and thus, he stated a claim under §§ 1983 for nominal damages. Wallace v. Smith, C.A.11 (Ga.) 2005, 145 Fed.Appx. 300, 2005 WL 1842350, Unreported. Civil Rights 1098

Performance of blood test upon arrestee did not implicate arrestee's Fourth Amendment right to be free from unreasonable search and seizure, for purposes of arrestee's action under § 1983, where physician performing test was private party acting with legitimate independent motivation, namely, his professional medical judgment that possibility of hypoglycemia as reason for arrestee's angry and combative behavior needed to be eliminated. Kartorie v. Dunham, C.A.3 (Pa.) 2004, 108 Fed.Appx. 694, 2004 WL 1661671, Unreported. Civil Rights

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42 U.S.C.A. § 1983

1326(8); Searches And Seizures 78

2401. ---- Body cavity searches, prisons and prisoners generally

Male prisoner did not state civil rights claim under Eighth Amendment against female guards based on allegations that they pointed and joked "among themselves" while observing him showering or while conducting body cavity search of him, where he did not allege that guards intended to humiliate him or that searches occurred without any penological justification; although court does not approve, exchange of verbal insults between inmates and guards is a constant, daily ritual observed in the nation's prisons. Somers v. Thurman, C.A.9 (Cal.) 1997, 109 F.3d 614, certiorari denied 118 S.Ct. 143, 522 U.S. 852, 139 L.Ed.2d 90. Sentencing And Punishment 1554; Prisons 17(1); Sentencing And Punishment 1545

Visual body cavity search of prisoner conducted in general presence of other inmates, guards and nonsearching officers as part of institution-wide shakedown of prison was constitutionally reasonable in context of prisoner's rights under Fourth Amendment for purposes of prisoner's § 1983 action, despite fact that privacy of prisoner was compromised; emergency situation created by increasing number of murders justified immediate search of inmates, because crisis required immediate action and because of the large number of inmates, Secretary of Louisiana Department of Corrections was justified in conducting strip search in the most time-efficient place and manner available and this meant search conducted on collective as opposed to individual basis, and although Secretary's pilot and news media personnel could have observed search from walkway that opened into room where searches were conducted, record did not reflect that they demonstrated any interest in viewing searches. Elliott v. Lynn, C.A.5 (La.) 1994, 38 F.3d 188, certiorari denied 115 S.Ct. 1976, 514 U.S. 1117, 131 L.Ed.2d 865. Civil Rights 1098

Language of prison regulation under which strip search "may only" be conducted in clean and private place did not establish prisoner's liberty interest in having visual body cavity searches conducted in complete privacy which could form basis of § 1983 claim for violation of Fourteenth Amendment; even if searches violated provisions of prison regulation, as they were not conducted in private place, violation would not give rise to constitutionally protected liberty interest. Zunker v. Bertrand, E.D.Wis.1992, 798 F.Supp. 1365. Constitutional Law 272(2); Prisons 4(7)

State prisoner bringing civil rights action against prison met initial requirement of establishing deprivation of a right of constitutional magnitude by showing that prison officials subjected each prisoner transferred to intensive management unit, without first establishing probable cause that he was concealing contraband, to a digital rectal probe conducted while prisoner was chained and in presence of escort squad of fellow prisoners who taunted him. Wetmore v. Gardner, E.D.Wash.1990, 735 F.Supp. 974, reversed 987 F.2d 589. Civil Rights 1092

Inmate suing pursuant to this section alleging that he had been subject to unreasonable body cavity search was not entitled to relief against correctional officers who conducted routine strip search preceding body cavity search. Coleman v. Hutto, E.D.Va.1980, 500 F.Supp. 586. Civil Rights 1448

2402. ---- Strip searches, prisons and prisoners generally

Prisoner's failure to rebut presumption of reasonableness of prison security regulation requiring strip searches of "close management" prisoners before they leave their cells precluded his federal civil rights action against correctional officer alleging that officer violated First and Eighth Amendments by using strip searches to sexually harass him and block his access to courts. Harris v. Ostrout, C.A.11 (Fla.) 1995, 65 F.3d 912. Civil Rights 1094; Civil Rights 1098

Convicted prisoner raised valid privacy claim under Fourth Amendment in challenging conditions of outdoor strip search before several female correctional officers. Cornwell v. Dahlberg, C.A.6 (Ohio) 1992, 963 F.2d 912.

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42 U.S.C.A. § 1983

Prisons 4(6)

In light of female prison inmate's willingness to remove her underclothing for search if male guards would withdraw, forceful removal of her underclothing in presence of male guards after prison physician had determined that prisoner was possibly suicidal and instructed prison guards to remove undergarments since noose might be fashioned from them was improper invasion of prisoner's privacy. Lee v. Downs, C.A.4 (Va.) 1981, 641 F.2d 1117 . Prisons 4(6)

Genuine issue of material fact existed as to whether strip search of detainee by corrections officers was justified, precluding summary judgment, in civil rights lawsuit brought by detainee who alleged that strip searches violated her right, guaranteed by Fourth Amendment, to be free from unreasonable searches and seizures. Gilanian v. City of Boston, D.Mass.2006, 431 F.Supp.2d 172. Federal Civil Procedure 2491.5

County jail inspection report provided information about circumstances surrounding search practices at jail, as well as the knowledge of the county policymakers before the commencement of the class period, and, thus, was relevant in class action suit brought against county, its sheriff, and unidentified jail correctional personnel under §§ 1983, claiming that Fourth Amendment rights of detainees alleged to have committed non-violent, non-weapons, and non-drug felonies, and detainees alleged to have committed misdemeanors, were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. Tardiff v. Knox County, D.Me.2006, 425 F.Supp.2d 159. Civil Rights 1412

Alleged conduct of state correctional officer in performing strip-frisk of inmate for drugs under sergeant's supervision, during which officer allegedly shined flashlight into inmate's anus and ran his middle finger between inmate's buttocks in a wiping fashion, causing inmate to urinate on himself, and also allegedly rubbed his genital area against inmate's buttocks, was not objectively sufficiently serious to rise to level of Eighth Amendment violation, given that incident was isolated one and did not cause inmate physical injury. Morrison v. Cortright, W.D.N.Y.2005, 397 F.Supp.2d 424. Sentencing And Punishment 1545

Material issues of fact, as to whether or when named class action plaintiffs alleged to have committed misdemeanors were strip searched, precluded claims that their Fourth Amendment rights were violated when searches were conducted without showing of reasonable suspicion that plaintiffs were harboring contraband on or within their bodies. Tardiff v. Knox County, D.Me.2005, 397 F.Supp.2d 115. Federal Civil Procedure 2491.5

Department of Corrections directive requiring all inmates being admitted to solitary housing unit (SHU) to undergo a strip frisk to assure that they had no contraband was reasonable, and thus corrections officers who acted pursuant to that directive in requiring inmate to submit to strip frisk, including running his fingers through his mouth, before he was admitted to SHU did not violate his Fourth Amendment right against unreasonable searches. Gonzalez v. Narcato, E.D.N.Y.2005, 363 F.Supp.2d 486. Prisons 4(7)

Genuine issue of material fact as to whether strip search of prison inmates, which occurred after altercation involving employees and other inmates, constituted unreasonable search in violation of Fourth Amendment precluded summary judgment in federal civil rights action. Show v. Patterson, S.D.N.Y.1997, 955 F.Supp. 182. Federal Civil Procedure 2491.5

Alleged strip or visual body cavity searches of state prisoner were not per se constitutionally objectionable if conducted in reasonable manner. Burton v. Kuchel, N.D.Ill.1994, 865 F.Supp. 456. Prisons 4(7)

Strip search of male inmate in presence of female officer did not violate inmate's right to privacy or support § 1983 civil rights claim given that strip search was conducted as part of emergency intervention to prevent suspected disturbance; strip search in female officer's presence is permitted under Kansas Department of Corrections procedures and by emergency circumstances. Jones v. Harrison, D.Kan.1994, 864 F.Supp. 166. Civil Rights

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42 U.S.C.A. § 1983

1098; Constitutional Law 82(13); Prisons 4(7)

Civil rights action could be brought against prison guards for alleged intentional constitutional violations with respect to both an alleged deprivation of medical care and manner in which a strip search was conducted, regardless of availability of postdeprivation remedy in state courts. Forrest v. Case, E.D.Pa.1985, 604 F.Supp. 349. Civil Rights 1319

Woman's civil rights action against individual county defendants based on allegedly unconstitutional strip search of woman conducted in county jail was not subject to dismissal on grounds that strip searches do not violate any constitutional right cognizable under this section which creates federal cause of action against person whose misconduct under color of state law violates constitutional rights of another; rather, whether woman's constitutional rights were violated by strip search depended upon whether strip search was unreasonable. Roscom v. City of Chicago, N.D.Ill.1982, 550 F.Supp. 153. Federal Civil Procedure 1788.10

Inmate failed to prove that prison officer conducted a physical strip search of the inmate's body without penological justification, thus defeating the inmate's §§ 1983 claim that the search was cruel and excessive; by admittedly refusing to take down his braids, the inmate failed to comply with a visual search and increased suspicions that he had hidden contraband in his braids, and moreover, he had the opportunity during several hours in the strip cell to transfer contraband from his braids to other body parts and acted out against officers with sexually inappropriate language and gestures. Cherry v. Frank, C.A.7 (Wis.) 2005, 125 Fed.Appx. 63, 2005 WL 589975, Unreported. Prisons 4(7)

2403. ---- Retaliatory searches, prisons and prisoners generally

Prisoner's failure to establish that retaliatory animus motivated correctional officer's compliance with prison security regulation requiring strip searches of "close management" prisoners before they leave their cells precluded his federal civil rights action against officer alleging that officer violated First and Eighth Amendments by using strip searches to sexually harass him and block his access to courts. Harris v. Ostrout, C.A.11 (Fla.) 1995, 65 F.3d 912. Civil Rights 1094

Complaint alleging that search of inmate's cell in retaliation for failure to pay extortion demand violated his rights under U.S.C.A. Const.Amends. 4 and 14 to be free from unreasonable searches and seizures failed to state claim for which relief could be granted in that Supreme Court has precluded challenges under U.S.C.A. Const.Amend. 4 to prison cell searches taken for any reason, whether or not reasonable. Hanrahan v. Lane, C.A.7 (Ill.) 1984, 747 F.2d 1137. Civil Rights 1395(7)

Prisoner, who filed grievance against corrections officer, did not have any constitutional right to be asserted under § § 1983 to be free from cell searches of any kind, including retaliatory cell searches; although First and Fourteenth Amendments prohibited prison officials from retaliating against inmates who filed grievances, prisoners did not have any reasonable expectation of privacy in their prison cells. Rodriguez v. McClenning, S.D.N.Y.2005, 399 F.Supp.2d 228. Prisons 4(7)

Reasonable inference that certain prison guards participated in harassing shakedowns of state prisoner, under pattern totally at odds with normal incidence of shakedowns of cells of other inmates, after prisoner's institution of grievance against another guard, raised inference of retaliation sufficient to preclude summary judgment in those guards' favor. Burton v. Kuchel, N.D.Ill.1994, 865 F.Supp. 456. Federal Civil Procedure 2491.5

2404. Shower monitoring, prisons and prisoners generally

Inmate's limited right to privacy may be violated where prison officials regularly watch inmates of opposite sex shower. Klein v. Pyle, D.Colo.1991, 767 F.Supp. 215. Prisons 4(6)

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Neither inadvertent encounter nor regularly scheduled visit by female employee at announced time would rise to level of constitutional deprivation of right to privacy of inmate, who alleged that female correctional officers viewed him using the toilet, undressing and showering. Hudson v. Goodlander, D.C.Md.1980, 494 F.Supp. 890. Constitutional Law 82(13)

Fact that a male guard and a female inmate could look directly at each other while inmate was showering or changing was an invasion of privacy and was easily correctable by such means as appropriate positioning of mottled or smoky glass which would permit a guard to observe that there was, in fact, a person in shower and assure himself of her appropriate and timely departure after use of shower without being able to recognize specific inmate or showering inmate being able to recognize other than general forms. Forts v. Ward, S.D.N.Y.1978, 471 F.Supp. 1095, vacated in part 621 F.2d 1210. Prisons 4(6)

2405. Confiscation of property, prisons and prisoners generally--Generally

Complaints of state prisoners stated claims upon which relief could be granted on theories of deprivations of personal property caused by delays in prison administrative system and similar deprivations caused by negligent recordkeeping. Madyun v. Thompson, C.A.7 (Ill.) 1981, 657 F.2d 868. Prisons 10

Civil rights action will lie for claimed deprivation of personal property without due process. Ferranti v. Moran, C.A.1 (R.I.) 1980, 618 F.2d 888. Civil Rights 1071

Claims of intentional deprivation of a prisoner's property under color of state law are actionable under this section. Jensen v. Klecker, C.A.8 (N.D.) 1979, 599 F.2d 243. Civil Rights 1090

Prisoner's allegation that prison officials have confiscated his property without due process is generally a cognizable claim under civil rights statute. Lewis v. State of N. Y., C.A.2 (N.Y.) 1976, 547 F.2d 4. Civil Rights 1395(7)

Prisoners have right to sue prison officials for confiscation of their personal property. Diamond v. Thompson, C.A.5 (Ala.) 1975, 523 F.2d 1201. Convicts 6

Civil rights action lies for wrongful confiscation or loss, by prison officials, of an inmate's property. Carter v. Estelle, C.A.5 (Tex.) 1975, 519 F.2d 1136. Civil Rights 1090

Allegation by state prisoner that the director of the California Department of Corrections (DOC) took deductions from checks and money orders to be deposited into prisoner's trust account in order to satisfy court-ordered restitution did not state a § 1983 claim for violation of his procedural due process rights, absent allegations that prisoner was not provided with opportunity to challenge the restitution order or the deduction of the funds, or that deduction was not authorized by state law. Abney v. Alameida, S.D.Cal.2004, 334 F.Supp.2d 1221. Constitutional Law 272(2); Convicts 3

Decision by prison officials to confiscate prisoner's scrapbook and clippings, in accordance with prison regulation prohibiting such items, was reasonable penological decision that justified impingement on prisoner's rights in light of security concerns that metal parts of scrapbooks could be used as weapons and that razors and other contraband could be hidden in clippings or scrapbooks and in light of time-consuming or extreme nature of other alternatives to uncovering these items, such as x-raying cells. Ballance v. Young, W.D.Va.2000, 130 F.Supp.2d 762, affirmed 11 Fed.Appx. 174, 2001 WL 427938. Prisons 4(7)

State corrections official's description of photographs confiscated from inmate's cell as including "children of many races and ages" did not raise inference of racially discriminatory intent behind confiscation, as required to support inmate's § 1983 equal protection action against official challenging confiscation. Ballance v. Virginia,

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W.D.Va.2000, 130 F.Supp.2d 754, affirmed 11 Fed.Appx. 174, 2001 WL 427938. Civil Rights 1404

Claims that inmate has been deprived of property are not actionable in civil rights suit under § 1983. Ishaaq v. Compton, W.D.Tenn.1995, 900 F.Supp. 935. Civil Rights 1090

Fact that state prisoner temporarily confined in county jail was not allowed access to certain personal possessions which he brought with him when he checked in at jail did not give rise to claim within provision of this section governing civil action for deprivation of rights. Falzerano v. Collier, D.C.N.J.1982, 535 F.Supp. 800. Civil Rights 1095

Confiscation of prisoner's property due to violation of prison policies on space limitations and security was reasonably related to legitimate penological interests, and did not violate his constitutional rights. Eaton v. Dooley, C.A.8 (S.D.) 2000, 230 F.3d 1362, Unreported. Prisons 4(7)

2406. ---- Availability of state remedy, confiscation of property, prisons and prisoners generally

Deprivation of property that death row inmate was entitled to as grade B inmate did not state claim under § 1983, where California law provided adequate postdeprivation remedy for any property deprivations. Barnett v. Centoni, C.A.9 (Cal.) 1994, 31 F.3d 813, on remand 1996 WL 263643. Civil Rights 1319

Negligent or intentional deprivation of prisoner's property fails to state claim under § 1983 if state has adequate postdeprivation remedy. Barnett v. Centoni, C.A.9 (Cal.) 1994, 31 F.3d 813, on remand 1996 WL 263643. Civil Rights 1319

Prisoner's due process rights were not violated by confiscation of his property without regard to prison policy requiring notice and opportunity to be heard, where tort of conversion provided adequate postdeprivation remedies under Texas law. Murphy v. Collins, C.A.5 (Tex.) 1994, 26 F.3d 541, rehearing denied 32 F.3d 568. Constitutional Law 272(2); Prisons 4(7)

State of Illinois provided inmate with adequate postdeprivation remedy after inmate's property was taken during shake down search of his cell, so that inmate's due process rights were not violated when prison officers confiscated and destroyed property without issuing "shakedown slip" listing property taken, where state statute permitted inmate to file tort claim in Illinois Court of Claims, despite problems of proof faced by inmate. Stewart v. McGinnis, C.A.7 (Ill.) 1993, 5 F.3d 1031, certiorari denied 114 S.Ct. 1075, 510 U.S. 1121, 127 L.Ed.2d 393. Constitutional Law 272(2); Prisons 4(7)

Former inmate at county jail who alleged that county employees had improperly confiscated his property had adequate remedy through Illinois Court of Claims, and thus could not state federal civil rights claim based on alleged taking of his property without due process of law. Marshall v. Fairman, N.D.Ill.1997, 951 F.Supp. 128. Constitutional Law 272(1); Convicts 3

Florida law provided adequate state remedy for prison officials' alleged random and unauthorized placing of hold on inmates prison account in order to collect costs judgments, so that inmate could not state claim under § 1983 against officials for taking of his property without due process of law. Spradley v. Martin, M.D.Fla.1995, 897 F.Supp. 560, affirmed 104 F.3d 370. Civil Rights 1319; Constitutional Law 272(2)

Inmate's claim that his money was confiscated upon his remand to custody was not cognizable in action under federal civil rights statute; the taking of an individual's property does not implicate the Fourteenth Amendment if there is an adequate postdeprivation remedy, and inmate had remedy through civil lawsuit against state. Turman v. Romer, D.Colo.1990, 729 F.Supp. 1276. Civil Rights 1319; Constitutional Law 278(1.3)

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42 U.S.C.A. § 1983

Death row inmate was not entitled to relief under 42 U.S.C.A. § 1983 for confiscation of certain items of his personal property, in that state law permitted recovery for any such property loss under common-law tort theories, and inmate did not possess right to be free from unreasonable searches and seizures in relation to his prison cell. Jeffries v. Reed, E.D.Wash.1986, 631 F.Supp. 1212. Civil Rights 1098

Since inmate's claim of deprivation of personal property was cognizable under Montana Tort Claims Act, MCA 2-9-101 et seq., inmate's allegation that prison officials wrongfully confiscated his television set did not rise to constitutional dimension and was not within scope of civil rights action. Robbins v. South, D.C.Mont.1984, 595 F.Supp. 785. Civil Rights 1098

Illinois sheriff's office detective's allegedly unauthorized seizure of inmate's computer from inmate's residence in Indiana did not violate due process, where inmate had adequate post-deprivation remedy. Holly v. Anton, C.A.7 (Ill.) 2004, 97 Fed.Appx. 39, 2004 WL 179220, Unreported, certiorari denied 125 S.Ct. 116, 543 U.S. 880, 160 L.Ed.2d 134. Constitutional Law 272(2); Searches And Seizures 35

2407. ---- Lawful possession of property, confiscation of property, prisons and prisoners generally

When statutory authority permits forfeiture of property improperly possessed by inmate, no constitutional violation occurs as a result of such forfeiture. Hanvey v. Blankenship, C.A.4 (Va.) 1980, 631 F.2d 296. Prisons 4(7)

Materials solicited from record companies by state reformatory inmate on representation that they were for benefit and use of reformatory's radio station and vocational electronics shop were donated for institutional use and were not inmate's property; thus he could not recover from reformatory employees and another inmate under this section on theory of wrongful deprivation of that property by defendants under color of state law or on theory that he had been denied due process by appropriation of property by reformatory officials. Holder v. Claar, D.C.Colo.1978, 459 F.Supp. 850. Civil Rights 1326(8); Constitutional Law 272(2)

Notarization of document, prepared by inmates and recording an inmate-to-inmate exchange in which prisoner received television set, did not constitute "written approval" within meaning of prison regulation that forbid giving anything of value to another inmate without prior written approval, and thus, correctional supervisor's confiscation of the television did not violate prisoner's right to due process. Wade v. Epps, C.A.5 (Miss.) 2006, 172 Fed.Appx. 74, 2006 WL 752084, Unreported. Prisons 4(5)

2408. ---- Negligence, confiscation of property, prisons and prisoners generally

Although negligent conduct of custodial officers resulting in loss of prisoner's property does not state a claim under this section, gross culpable negligence or intentional act may state a cause of action. Parker v. Rockefeller, N.D.W.Va.1981, 521 F.Supp. 1013. Civil Rights 1395(7)

2409. ---- Notice of availability of property for return, confiscation of property, prisons and prisoners generally

Failure of state prison officers to follow prison rules by notifying prisoner of availability of his personal property for removal from storage room in sufficient time for prisoner to arrange for its removal did not provide basis for section 1983 action, since state law provided prisoner with a postdeprivation remedy for intentional acts of state officials. Smith v. Rose, C.A.6 (Tenn.) 1985, 760 F.2d 102. Civil Rights 1098

2410. ---- Catalogues, confiscation of property, prisons and prisoners generally

State inmate's property interest involved in office supply catalogue as pleaded was so de minimis that confiscation by training center in the one instance pleaded did not constitute such a taking of property that due process rights were implicated. Nickens v. White, C.A.8 (Mo.) 1976, 536 F.2d 802. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

2411. ---- Clothing, confiscation of property, prisons and prisoners generally

Alleged taking of New Jersey prisoner's personalty, consisting mainly of clothing and the like, without accounting therefor by county officials was not deprivation of right protected by this section. Urbano v. Calissi, C.A.3 (N.J.) 1967, 384 F.2d 909, certiorari denied 88 S.Ct. 1824, 391 U.S. 925, 20 L.Ed.2d 664. Civil Rights 1071

Jail regulation that no county prison inmate was to have his personal clothing in his jail cell except when preparing to make court appearance was matter for management by prison officials not to be tampered with by a federal court. Rosson v. Weatherholtz, W.D.Va.1975, 405 F.Supp. 48. Prisons 12

Interference with property rights of a prisoner alleging that his raincoat was not returned to him when he left detention center and that he received only two of six dollars which he was promised for participating in medical program was not of the type intended to come within purview of this section. U. S. ex rel. Pope v. Hendricks, E.D.Pa.1971, 326 F.Supp. 699. Civil Rights 1098

2412. ---- Medicine, confiscation of property, prisons and prisoners generally

Sister of arrestee who committed suicide failed to support claim that police officers took arrestee's asthma medicine from him in an attempt to cause him distress or harm and at most established that confiscation of medicine was negligence; therefore, confiscation was not actionable under civil rights statute. Williams v. City of Lancaster, Pa., E.D.Pa.1986, 639 F.Supp. 377. Civil Rights 1420

2413. ---- Money, confiscation of property, prisons and prisoners generally

Even if prison inmate was not informed about the rules concerning possession of currency, confiscation of his currency as contraband did not violate his civil rights since he had over three months to reacquaint himself with the rules and regulations at prison after he was transferred from another prison. Harris v. Forsyth, C.A.11 (Fla.) 1984, 735 F.2d 1235. Civil Rights 1092

West's F.S.A. § 402.18(3), which provides for confiscation of any contraband found in possession of inmate, and prison rule, which provides that money found in possession of inmate in excess of $15 is contraband and is to be confiscated, are reasonable and nonarbitrary, since large sums in possession of inmate may invite attack by other inmates, since inmates with such funds are in better position to escape, procure drugs, or bribe guards, and since large caches of currency in prisons pose significant potential for mischief, and thus confiscation of $2,197.40 found in inmate's possession did not violate due process. Sullivan v. Ford, C.A.5 (Fla.) 1980, 609 F.2d 197, certiorari denied 100 S.Ct. 2950, 446 U.S. 969, 64 L.Ed.2d 829. Constitutional Law 272(2); Prisons 4(7); Prisons 13(4)

Claim of state prisoner that prison official should have but did not return his money and only personal property to him asserted protected right which could be determined under this section. Fox v. Sullivan, C.A.5 (Ala.) 1976, 539 F.2d 1065. Civil Rights 1395(7)

Action for damages for taking of money in plaintiff's possession when he was apprehended 40 minutes after he escaped from state prison or to recover the money would not lie under this section. Cisneros v. Cavell, C.A.3 (Pa.) 1971, 437 F.2d 1202. Civil Rights 1088(4)

Allegation by state prisoner that the director of the California Department of Corrections took deductions from checks and money orders to be deposited into prisoner's trust account in order to satisfy court-ordered restitution did not state a claim against director for violation of the Takings Clause of the Fifth Amendment, where the restitution was duly authorized by California law. Abney v. Alameida, S.D.Cal.2004, 334 F.Supp.2d 1221. Eminent Domain 2.39

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Wisconsin prison regulations providing for summary disposition of money possessed by inmates as contraband were reasonable and lawful and inmate had no protected property interest in money found in his possession; therefore, inmate's § 1983 claim that prison officials intentionally deprived him of property without due process under Fifth and Fourteenth Amendments was frivolous precluding him from proceeding in forma pauperis. Anderson v. Fiedler, E.D.Wis.1992, 798 F.Supp. 544. Federal Civil Procedure 2734; Prisons 4(7)

2414. ---- Pens, confiscation of property, prisons and prisoners generally

Confiscation of three ball-point pens sent to prisoner in mail was proper as promoting objective of preserving prison security in that contraband could be easily packaged in pens and pens could be ordered through the canteen. Lingo v. Boone, N.D.Cal.1975, 402 F.Supp. 768. Prisons 13(2)

2415. ---- Religious matter, confiscation of property, prisons and prisoners generally

Clearly established law was not violated by actions of prison chaplains in seizing prisoner's Shiite Muslim religious materials when he submitted them for copying, for purposes of chaplains' qualified immunity defense to prisoner's § 1983 action alleging violation of his religious freedom, since prison administrative directive specified in its statement of policy that "no one shall disparage the religious beliefs of any inmate, or other person," and the chaplains acted to prevent dissemination of the materials based on its highly inflammatory and divisive character. Al-Ra'id v. Ingle, C.A.5 (Tex.) 1995, 69 F.3d 28. Civil Rights 1376(7)

Prisoner's allegations that prison officials wrongfully confiscated memorandum from religious organization and did not follow minimum procedural safeguards in doing so and that prison officials handled and delayed delivery of mail from religious organization in a manner that discriminated on basis of race and religion were legally sufficient to state claim under § 1983. Valiant-Bey v. Morris, C.A.8 (Mo.) 1987, 829 F.2d 1441. Civil Rights 1395(7)

Inmate lacked standing to assert claim against correctional officers for alleged discrimination based on religious belief when inmate's kufi was not taken during incident in which unidentified correctional officers confiscated kufis from Muslim prisoners, and inmate did not allege any other injury due to incident. Booth v. King, E.D.Pa.2004, 346 F.Supp.2d 751. Civil Rights 1333(4)

Seizure of religious materials from prisoner's cell as part of random search of prison did not violate prisoner's rights under Free Exercise Clause as long as search was reasonably related to prison's legitimate penological interests in security, no matter how harmful seizure may have been to prisoner's religious practices. Robinson v. Ridge, E.D.Pa.1997, 996 F.Supp. 447, affirmed 175 F.3d 1011. Constitutional Law 84.5(14); Prisons 4(14)

2415A. ---- Miscellaneous, confiscation of property, prisons and prisoners generally

Prisoner failed to show that prison officials treated him differently than other similarly-situated inmates by taking away his calculator and allowing other similarly-situated inmates to have calculators with more memory capabilities, as required to support § 1983 claim against prison officials based on violation of his right to equal protection; officials repeatedly denied that other inmates possessed calculators with memory capabilities, and prisoner's assertion that one inmate was allowed to have color calculator in cell provided insufficient evidentiary support for claim of differential treatment. Damron v. North Dakota Com'r. of Corrections, D.N.D.2004, 299 F.Supp.2d 970, affirmed 127 Fed.Appx. 909, 2005 WL 1076645. Civil Rights 1420

2416. Loss or destruction of property, prisons and prisoners generally-- Generally

Negligent loss of prison inmates' property was with due process of law and thus did not constitute deprivation of

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property within purview of federal statute governing civil action for deprivation of rights, where prison employees involved in such losses had no discretion but to use ordinary care and, thus, actions could have been brought in state courts for value of property lost and where inmates had administrative remedy by way of grievance. Ausley v. Mitchell, C.A.4 (Va.) 1984, 748 F.2d 224, certiorari denied 106 S.Ct. 879, 474 U.S. 1100, 88 L.Ed.2d 916. Civil Rights 1098

Claims of prison inmates for lost property, where claims sounded in negligence but did not meet willful, reckless and intentional standards, showed no constitutional or civil rights violations. Lock v. Jenkins, D.C.Ind.1978, 464 F.Supp. 541, affirmed in part, reversed in part on other grounds 641 F.2d 488. Convicts 3

2417. ---- Availability of state remedy, loss or destruction of property, prisons and prisoners generally

Virginia's tort remedies satisfied procedural due process with respect to inmate charging that his belongings held in safekeeping by prison authorities while he was in segregation were missing when he returned to general prison population, notwithstanding possibility that prison authorities' invocation of sovereign immunity would preclude inmate from securing relief; therefore, because adequate state remedies existed to adjudicate inmate's claim, he failed to state violation of the due process clause of U.S.C.A. Const. Amend. 14 cognizable under this section. Groves v. Cox, E.D.Va.1983, 559 F.Supp. 772. Civil Rights 1319; Constitutional Law 305(1)

Disappearance from prison authorities' custody of personal property belonging to inmate constituted deprivation of "property" under color of state law, but there was no violation of civil rights where McKinney's Court of Claims Act § 1 et seq. provided remedy which could fully compensate inmate for loss of his property. Tigner v. State of N.Y., Com'r of Dept. of Corrections, W.D.N.Y.1983, 559 F.Supp. 25, affirmed 742 F.2d 1432. Civil Rights 1319

Pennsylvania Department of Corrections (DOC) did not violate state prisoner's procedural due process rights with respect to post-deprivation remedy through prison grievance alleging prisoner's legal and non-legal property was lost or destroyed when he was transferred from one prison to another, where DOC independently investigated the grievance and responded to prisoner, though DOC's Central Office did not render a final decision in prisoner's appeal of denial of his grievance. Jordan v. Horn, C.A.3 (Pa.) 2006, 165 Fed.Appx. 979, 2006 WL 304525, Unreported. Prisons 13(6)

2418. Disbursement of personal property, prisons and prisoners generally

Where defendant, upon imposition of life sentence following conviction for murder, made oral agreement offering his personal property to his cellmate, and where cellmate's girl friend was to act as cellmate's agent, storing property until cellmate was released from prison, and was given written permission from defendant to pick up property, deputy sheriff in custody of property acted within reasonable bounds of discretion by disbursing property to man who came to county jail to retrieve it where man had letter defendant sent to cellmate's girl friend and it was reasonable to suppose that man was acting as girl friend's agent. Kircheis v. Long, S.D.Ala.1976, 425 F.Supp. 505, affirmed 564 F.2d 414. Convicts 3

2419. Good-time allowance, prisons and prisoners generally

State prisoner's claim challenging only the procedures employed in disciplinary hearing depriving him of good-time credits is not always cognizable under § 1983, because nature of challenge to procedures could necessarily imply the invalidity of judgment; claim seeking damages for using wrong procedure, not for reaching wrong result, could still fail to be cognizable under § 1983 if it implies invalidity of conviction or sentence, unless prisoner shows that conviction or sentence has previously been invalidated. Edwards v. Balisok, U.S.Wash.1997, 117 S.Ct. 1584, 520 U.S. 641, 137 L.Ed.2d 906. Civil Rights 1092

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Though the Constitution does not guarantee good-time credit for satisfactory behavior while in prison and though the due process clause does not require a hearing in every conceivable case of government impairment of private interest, where state created right to good-time and recognized that its deprivation was a sanction authorized for major misconduct, prisoner's interest therein was sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the due process clause to insure that the state-created right was not arbitrarily abrogated. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Constitutional Law 272(2)

Disciplinary committee's erroneous interpretation of disciplinary rule resulting in Iowa inmate's loss of good time credits was not due process violation; since there was state procedure available to remedy committee's mistake, that error alone did not amount to denial of due process and any injury suffered by inmate was remedied when his good-time credits were restored by state court. Ragan v. Lynch, C.A.8 (Iowa) 1997, 113 F.3d 875. Prisons 15(5)

Prisoners have no cause of action under § 1983 for challenges to alleged unconstitutional change in good time credits, and, thus, federal courts will lack jurisdiction over such claims. Best v. Kelly, C.A.D.C.1994, 39 F.3d 328, 309 U.S.App.D.C. 51. Civil Rights 1092

Right to good-time credit which rests on legislative grace is conditional and does not vest until prisoner is dismissed from prison. Glouser v. Parratt, C.A.8 (Neb.) 1979, 605 F.2d 419. Prisons 15(1)

Punishment, which included 15 days in punitive isolation, the loss of three months' statutory good time which prisoner had earned and a status demotion affecting prisoner's ability to earn future good time, imposed upon prisoner who violated prison regulation by writing unauthorized letter constituted a "grievous loss" necessitating adequate procedural protection. Knell v. Bensinger, C.A.7 (Ill.) 1973, 489 F.2d 1014, on remand 380 F.Supp. 494. Prisons 13(6)

Poor institutional record during earlier period of incarceration supported denial, to state prisoner, of opportunity to earn remission time by service in less restrictive work detail. Marnin v. Pinto, C.A.3 (N.J.) 1972, 463 F.2d 583. Prisons 15(3)

Where prison inmate's offense was to refuse to sign "safety sheet" which he sincerely believed was waiver of his right to sue for any injury from negligence, and inmate did not refuse to work, and warden testified that inmate's segregation had been inappropriate punishment, court properly ordered restoration of his good behavior time. Wright v. McMann, C.A.2 (N.Y.) 1972, 460 F.2d 126, certiorari denied 93 S.Ct. 115, 409 U.S. 885, 34 L.Ed.2d 141. Prisons 15(5)

State prison official could not be held liable under § 1983 for failure to train or supervise adequately classification officer responsible for case of inmate whose gain time, and thus release date, was improperly calculated, given absence of evidence that official supervised classification officer, was responsible for training her, or could be considered policymaker as to calculation of inmates' gain time, in that official had no background in sentence calculation and classification officer worked in different department. McCurry v. Moore, N.D.Fla.2002, 242 F.Supp.2d 1167. Civil Rights 1358

State inmate established entitlement to preliminary injunction which barred prison officials from requiring, as part of sexual offender counseling program, that participants divulge history of sexual conduct, including illegal acts for which no criminal charges had been filed, in §§ 1983 action in which inmate alleged that he was threatened with loss of, and in fact did lose, good time credits as a direct and automatic result of his refusal to give up his Fifth Amendment privilege against self-incrimination and participate in program, but inmate was not entitled to preliminary injunction restoring his lost good time credits. Donhauser v. Goord, N.D.N.Y.2004, 314 F.Supp.2d 139, amended 317 F.Supp.2d 160. Civil Rights 1457(5)

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42 U.S.C.A. § 1983

State inmate was required to prove that loss of good time was reversed on direct appeal, expunged by executive order, declared invalid by state tribunal, or called into question by federal court's issuance of writ of habeas corpus before could bring § 1983 claim based on alleged failure to receive sentence credit. Luedtke v. Gudmanson, E.D.Wis.1997, 971 F.Supp. 1263. Civil Rights 1092

Fact that inmate's punishment for disciplinary violation initially included loss of one year of good-time credit was not sufficient to establish liberty interest, for purposes of inmate's civil rights claim premised upon alleged procedural due process violations in disciplinary hearing, where guilty finding was eventually administratively reversed, with inmate's record expunged and good-time credit restored, and there was no indication that temporary loss of good-time credit actually resulted in longer incarceration. Husbands v. McClellan, W.D.N.Y.1997, 957 F.Supp. 403, motion to amend denied 990 F.Supp. 214. Constitutional Law 272(2); Prisons 15(5)

Inmate's suit under federal civil rights statute challenging drug testing procedure at correctional facility, which defendant failed, causing loss of 30 days good-time credits and denial of parole, amounted to challenge to validity of his institutional infraction which had to be pursued in habeas, and therefore suit was required to be dismissed unless inmate could show that his conviction for institutional infraction for illegal drug use had been invalidated, where if inmate was successful in his suit, state would be required to vacate his institutional infraction and restore his good-time credits, thus affecting inmate's ultimate release date. Amin v. Pruett, E.D.Va.1996, 930 F.Supp. 1121 . Civil Rights 1094; Civil Rights 1097

Inmate had no due process liberty interest in his good conduct allowance (GCA) status which had been downgraded during annual review of assignment; although inmate's numerical score placed him in one of four GCA levels, prison officials had wide discretion under Virginia regulations to reject numerical score and override assignment. Holmes v. Cooper, W.D.Va.1995, 872 F.Supp. 298. Constitutional Law 272(2); Prisons 15(1)

Prison inmate, who claimed that prison officials kept dual records of his gain time during and after pendency of habeas corpus proceeding, failed to establish conspiracy to deprive him of gain time in violation of his civil rights; evidence indicated that dual records were maintained because Florida Department of Corrections' database was incapable of recording inmate's awards. Raske v. Dugger, M.D.Fla.1993, 819 F.Supp. 1046. Conspiracy 19

Even if inmate has liberty interest in previously earned good-conduct allowance credits, Constitution does not prohibit state from depriving inmate of that interest as long as procedural due process is present prior to deprivation; there must be advance written notice of charges, written findings, and right to call witnesses. Ewell v. Murray, W.D.Va.1993, 813 F.Supp. 1180. Constitutional Law 272(2)

Jail administrator's alleged breach of promise to effect that inmate would be granted day-for-day good time for all time he spent during employment as member of jail paint crew was not actionable under federal civil rights statute. Holton v. Fields, S.D.W.Va.1986, 638 F.Supp. 1319. Civil Rights 1092

Recalculation of prisoner's good-time credits could not be sought through this section prohibiting the deprivation of civil rights by state action. Partee v. Lane, N.D.Ill.1981, 528 F.Supp. 1254. Prisons 15(7)

Due process claim by which state inmate sought restoration of good-time credits on the grounds of past procedure was not cognizable under §§ 1983. Hornsby v. Jones, C.A.10 (Okla.) 2006, 188 Fed.Appx. 684, 2006 WL 1728022, Unreported. Civil Rights 1092

Pro se state prisoner's claim that his hearing before the prison classification committee, which determined his classification and custody status, and resulted in loss of ability to earn minimum time credits, violated his due process rights was cognizable under §§ 1983. Kemp v. McFarland, C.A.3 (N.J.) 2005, 149 Fed.Appx. 91, 2005 WL 2271044, Unreported. Civil Rights 1092

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42 U.S.C.A. § 1983

State inmate's status reclassification, which merely diminished his opportunity to earn good-time credits, did not implicate a liberty interest protected by due process, so as to warrant relief under §§ 1983. Hudson v. Ward, C.A.10 2005, 124 Fed.Appx. 599, 2005 WL 348399, Unreported, certiorari denied 126 S.Ct. 446, 163 L.Ed.2d 339 . Constitutional Law 272(2); Prisons 15(3)

Inmate failed to establish that his loss of "good-time credits" and other privileges stemming from prison disciplinary hearing had been invalidated, and therefore his § 1983 claims alleging that procedural due process violations occurred during disciplinary proceeding, which, if successful, would necessarily imply invalidity of judgment imposed, were barred. McNair v. Jones, S.D.N.Y.2003, 2003 WL 22097730, Unreported. Civil Rights 1092

Inmate who filed § 1983 action against state, stemming from loss of sentencing credits due to role in prison fight, failed to establish that his sentence had been invalidated, and thus action would be properly dismissed; inmate's allegation that he was innocent party who was "set up" by prison authorities was contrary to conclusion at disciplinary hearing that he was guilty of rule violation. Hernandez v. Davis, N.D.Cal.2003, 2003 WL 21148373, Unreported, affirmed 83 Fed.Appx. 892, 2003 WL 22928606. Civil Rights 1092

State prisoner who had received disciplinary sanction of a class status reduction, confinement to punitive isolation, and loss of good-time credits, and who alleged that his disciplinary hearing officer was biased and failed to list evidence to support her decision, could only obtain restoration of his good-time credits in a habeas corpus proceeding, and not in an action under § 1983. Stone v. Norris, C.A.8 (Ark.) 2000, 230 F.3d 1364, Unreported. Civil Rights 1311; Habeas Corpus 515

2420. Parole, prisons and prisoners generally--Generally

Parole board's regulations are relevant to determination of whether parole scheme gives rise to constitutionally protected liberty interest. Board of Pardons v. Allen, U.S.Mont.1987, 107 S.Ct. 2415, 482 U.S. 369, 96 L.Ed.2d 303. Constitutional Law 272.5

The full range of procedures mandated for parole and probation revocation hearings need not in all respects be followed in disciplinary cases in state prisons. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Prisons 13(6)

Even assuming that inmate had constitutional claim to correct information in his parole file, State did not act arbitrarily or rely on false information when it denied parole based on factual determinations about inmate's past drug and alcohol abuse, in view of exhibits attached to inmate's complaint indicating that inmate provided "a self-reported history of alcohol abuse," and that he told prison staff that his sexual abuse charges often stemmed from alcohol use. Adams v. Agniel, C.A.8 (Mo.) 2005, 405 F.3d 643. Pardon And Parole 58

Texas state prisoner's lack of liberty interest in obtaining parole under Texas law precluded his federal civil rights suit challenging constitutionality of parole review procedures. Orellana v. Kyle, C.A.5 (Tex.) 1995, 65 F.3d 29, certiorari denied 116 S.Ct. 736, 516 U.S. 1059, 133 L.Ed.2d 686. Civil Rights 1097

Inmate failed to state § 1983 cause of action against State Board of Pardons and Parole challenging Board's policy of extending his sentence after revoking his mandatory supervision, where he remained in custody and was not alleging that sentence imposed as result of revocation proceedings was invalidated by state or federal court. McGrew v. Texas Bd. of Pardons & Paroles, C.A.5 (Tex.) 1995, 47 F.3d 158. Civil Rights 1097

Section 1983 is appropriate legal vehicle to attack unconstitutional parole procedures or conditions of confinement. Cook v. Texas Dept. of Criminal Justice Transitional Planning Dept., C.A.5 (Tex.) 1994, 37 F.3d 166. Civil Rights 1090; Civil Rights 1097

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42 U.S.C.A. § 1983

Utah parole statute did not create "liberty interest" entitling inmate to due process protection under United States Constitution and, thus, could not be used as basis for § 1983 relief; Utah statute granted parole board complete discretion in making parole decisions once offender was eligible. Malek v. Haun, C.A.10 (Utah) 1994, 26 F.3d 1013. Civil Rights 1097; Constitutional Law 272.5

Due process claims were proper subject of action under this section seeking injunctive relief as to constitutionally required parole procedure. Walker v. Prisoner Review Bd., C.A.7 (Ill.) 1982, 694 F.2d 499, on remand 594 F.Supp. 556. Civil Rights 1454

Parolee's claim that his constitutional rights were violated when he was incarcerated after pleading guilty to parole violation was not cognizable under §§ 1983, where success in action would have necessarily implied invalidity of underlying parole violation. Ithna'Asheri v. New York State Div. of Parole, W.D.N.Y.2005, 364 F.Supp.2d 323. Civil Rights 1097

Suit under §§ 1983 was appropriate vehicle for claim that prison inmate was denied due process when he was expelled from sex offender treatment program required to be completed in order to be eligible for parole under indeterminate sentence; the alternative, a habeas corpus proceeding, was inapplicable as there was no challenge to conviction or sentence. Beebe v. Heil, D.Colo.2004, 333 F.Supp.2d 1011. Civil Rights 1097; Civil Rights 1311

Where prisoner is challenging not his conviction, sentence, or duration of confinement, but rather procedures and means used to make a parole eligibility determination, the action may be cognizable under § 1983. Buhrman v. Wilkinson, S.D.Ohio 2003, 257 F.Supp.2d 1110, supplemented 2004 WL 2044055, report and recommendation adopted 2004 WL 2044056. Civil Rights 1097

Fact that prisoner sought injunctive relief as remedy for § 1983 claim that Ohio Parole Authority violated his due process rights was not ground for district court to refuse to exercise jurisdiction over claim, on ground that proper remedy was to file action "at law" in state court; relief sought was order compelling Parole Authority to conduct new hearing in compliance with due process, and action would have been no less one for injunctive relief in state court. Buhrman v. Wilkinson, S.D.Ohio 2003, 257 F.Supp.2d 1110, supplemented 2004 WL 2044055, report and recommendation adopted 2004 WL 2044056. Federal Courts 54

Inmates' claim in § 1983 action, that amendment to Delaware parole statute violated due process by allegedly extending time between parole reconsideration hearings, was frivolous within meaning of in forma pauperis statute, requiring dismissal; neither Due Process Clause nor parole statute gave inmates a protected liberty interest. Ross v. Snyder, D.Del.2002, 239 F.Supp.2d 397. Constitutional Law 272.5; Federal Civil Procedure 2734

Inmate whose parole was denied failed to state § 1983 claim against former member of Illinois Prisoner Review Board (IPRB) in his individual capacity, absent allegations that member himself deprived or participated in depriving inmate of his constitutional right to due process by arbitrarily denying him parole. Horton v. Marovich, N.D.Ill.1996, 925 F.Supp. 540. Civil Rights 1358

Prisoner did not have liberty interest in receiving parole, sufficient to support § 1983 action against parole board for alleged wrongful denial of parole; unlike statutes in some states, which mandate grant of parole if specified criteria are satisfied and have accordingly been found to create liberty interest, New York is nebulous in shaping discretion of parole board, creating no reasonable parole expectation. Quartararo v. Catterson, E.D.N.Y.1996, 917 F.Supp. 919. Constitutional Law 272.5; Pardon And Parole 46

Denial of discretionary parole eligibility date to prisoner after state had previously mistakenly assigned eligibility date did not violate prisoner's constitutional rights where state Supreme Court had determined that prisoner was not eligible for discretionary eligibility date and prisoner was not harmed by mistaken assignment of date. Vaughan v.

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Murray, E.D.Va.1994, 872 F.Supp. 268, vacated 70 F.3d 114. Pardon And Parole 60

Although this section was not proper remedy for plaintiff seeking immediate or speedier release from state imprisonment, he did state claim for which relief might be granted pursuant to this section to extent that he was challenging parole procedures or lack thereof. Godbolt v. Commissioner of Dept. of Correctional Services, S.D.N.Y.1981, 524 F.Supp. 21. Civil Rights 1395(7)

Where Georgia parole statute, Ga.Code § 77-514, created no expectation of release, state prisoner failed to state cause of action under this section based upon violations of his substantive or procedural due process rights. Houser v. Morris, N.D.Ga.1981, 518 F.Supp. 873.

To the extent that prisoners were to seek damages, a declaratory judgment, and an injunction enjoining the prospective denial of paroles for impermissible reasons, they could properly bring an action under this section prohibiting deprivation of civil rights under color of state law. Texas Supporters of Workers World Party Presidential Candidates v. Strake, S.D.Tex.1981, 511 F.Supp. 149. Civil Rights 1097

Because state prisoner had not successfully challenged the parole detainer through appropriate remedies, his § 1983 suit, alleging that he was illegally imprisoned for 18 days on an alleged parole violation, was barred by *Heck v. Humphrey*, which held that the principle that civil tort actions are not appropriate vehicles to challenge validity of criminal judgments applies to § 1983 actions that necessarily require plaintiff to prove unlawfulness of his conviction or confinement; prisoner's primary argument, which was that he was arbitrarily detained because there was no probable cause to detain him after charge was dismissed for insufficient evidence, was clearly an attempt to challenge the substantive result in the parole hearing, and a judgment in prisoner's favor would necessarily imply invalidity of the parole detainer. Munofo v. Alexander, C.A.6 (Mich.) 2002, 47 Fed.Appx. 329, 2002 WL 31108821, Unreported. Civil Rights 1097

Prisoner could challenge various state parole procedures in §§ 1983 action; prisoner was not required to instead seek relief exclusively under federal habeas corpus statutes. Maimon v. Rea, C.A.9 (Or.) 2005, 127 Fed.Appx. 295, 2005 WL 752237, Unreported. Civil Rights 1097; Civil Rights 1311

State prisoner's § 1983 action against parole officers, alleging unconstitutional revocation of his parole, and seeking money damages, was barred, where action necessarily implied invalidity of parole revocation, but there was no showing that revocation had been invalidated. Washington v. Killian, C.A.10 (Colo.) 2004, 97 Fed.Appx. 878, 2004 WL 1098945, Unreported. Civil Rights 1097

Denial of access to sex offender treatment program, which allegedly resulted in prisoner being denied parole, did not violate prisoner's due process or equal protection rights, since prisoner had no constitutional right to parole. Saunders v. Williams, C.A.6 (Ohio) 2003, 89 Fed.Appx. 923, 2003 WL 23095572, Unreported. Constitutional Law 250.3(2); Constitutional Law 272.5; Pardon And Parole 46; Prisons 17(2)

Utah's parole statute created no liberty interest entitling prisoners to federal constitutional protection, and thus, the inmate failed to state a § 1983 claim regarding his assertions that procedures of the Utah Board of Pardons and Parole violated his Due Process rights. Suarez v. Utah Bd. of Pardons & Parole, C.A.10 (Utah) 2003, 76 Fed.Appx. 230, 2003 WL 22046122, Unreported. Constitutional Law 272.5; Pardon And Parole 46

A state prisoner cannot bring a § 1983 action challenging a parole revocation unless that revocation decision is reversed or the underlying conviction is set aside. Lee v. Donnaruma, C.A.2 (N.Y.) 2003, 63 Fed.Appx. 39, 2003 WL 21105326, Unreported. Civil Rights 1097

Parolee failed to have parole revocation decision set aside, and thus he could not bring civil rights action seeking damages under § 1983 against California's parole board, alleging his parole was unlawfully revoked. Prater v.

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California Parole Bd., Region II, N.D.Cal.2002, 2002 WL 31855306, Unreported. Civil Rights 1097

2421. ---- Discriminatory treatment, parole, prisons and prisoners generally

Section 1983 complaint of pro se prisoner who was convicted of forcible rape and sentenced to 20 years imprisonment, alleging discrimination by Missouri prison officials in preventing him from being considered for parole by preventing him from completing second phase of Missouri sexual offenders program, was neither frivolous nor malicious and stated a cause of action. Green v. Black, C.A.8 (Mo.) 1985, 755 F.2d 687. Civil Rights 1395(7)

Former parolee, who brought civil rights action against field parole officer, failed to state claim for any due process violation in connection with parole revocation procedures, where parolee did not impugn the procedures used, but charged only that parole officer formed biased opinions about him which caused officer to make false allegations concerning parolee in report to parole board. Brown v. Nester, S.D.Miss.1990, 753 F.Supp. 630. Civil Rights 1395(7)

In civil rights action by state prison inmates against members of state parole board, district court would not consider contention that various factors in the administration of the prison system made it more difficult for members of minority races to fulfill the conditions necessary to receive a discretionary parole, where, under state law, defendants, as board of parole, had absolutely no control over those conditions. Inmates of Nebraska Penal and Correctional Complex v. Greenholtz, D.C.Neb.1976, 436 F.Supp. 432, affirmed 567 F.2d 1368, certiorari denied 99 S.Ct. 132, 439 U.S. 841, 58 L.Ed.2d 140, affirmed 567 F.2d 1381. Civil Rights 1397

2422. ---- Retaliatory denial, parole, prisons and prisoners generally

Prison inmate failed to present any evidence that members of Oklahoma Pardon and Parole Board acted in retaliatory manner against him in failing to recommend parole, after he had previously brought lawsuits against prison officials; evidence of retaliation was inmate's claim that Board members failed to address him by his "Nubian, Islamic Hebrew" name and that Board granted parole to other similarly situated inmates appearing at same hearing. Shabazz v. Askins, C.A.10 (Okla.) 1994, 14 F.3d 533. Civil Rights 1420

Allegations of state prisoner's complaint seeking damages from members of Louisiana State Board of Pardons on ground that Board denied prisoner parole at least in substantial part because prisoner had previously filed lawsuits against prison officials, thus violating prisoner's constitutional right to be free from retaliation for seeking access to courts and his right to equal protection because others, who had been convicted of more heinous offenses, had been granted parole, was sufficient to state claim. Serio v. Members of Louisiana State Bd. of Pardons, C.A.5 (La.) 1987, 821 F.2d 1112. Civil Rights 1395(7)

State parole agent and police officers were not liable under §§ 1983 on parolee's retaliation claim, which was based on search of parolee's residence after parolee had filed suit against police officers; search was undertaken with a reasonable suspicion that parolee was engaged in criminal conduct, parole agent was not aware that parolee had filed a claim against the officers, and there was no showing that those conducting the search did not intend to advance legitimate penological goals. Wilson v. City of Fountain Valley, C.D.Cal.2004, 372 F.Supp.2d 1178. Civil Rights 1097

A decision to deny parole made in retaliation against or so as to hinder exercise of federally protected rights is actionable. Partee v. Lane, N.D.Ill.1981, 528 F.Supp. 1254. Civil Rights 1097

2422A. ---- Retaliatory revocation, parole, prisons and prisoners generally

Prisoner's § 1983 claim, alleging that parole officers and others conspired to plant weapons in his motel room in

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retaliation for a lawsuit he filed, resulting in the revocation of his parole, was required to be dismissed, absent showing that decision revoking parole was reversed, expunged, set aside, or called into question. Jernigan v. Davis, N.D.Cal.2003, 2003 WL 21556952, Unreported. Civil Rights 1097

2423. ---- Conditions, parole, prisons and prisoners generally

Prison officials were not responsible for terms of prisoner's parole, and thus could not be liable for alleged violation of prisoner's Fifth Amendment due process rights by parole condition requiring him to complete sex offenders' program. Munson v. Norris, C.A.8 (Ark.) 2006, 435 F.3d 877, rehearing and rehearing en banc denied. Civil Rights 1358

State retained minimal duty to parolee after his release, to extent that it continued to impose limitations on parolee; thus, state was potentially liable in parolee's §§1983 action against parole officers alleging that he had been effectively compelled to live in unsafe housing by being paroled to such housing and then denied opportunity to relocate and denied assistance in obtaining employment. Jacobs v. Ramirez, C.A.2 (N.Y.) 2005, 400 F.3d 105, on remand 2006 WL 1424191. Civil Rights 1097

State prison inmate could bring § 1983 action against parole board seeking injunctive relief to compel board to abide by constitutionally acceptable procedures prospectively; inmate alleged that board's application of certain conditions to his parole eligibility constituted due process and ex post facto violation. Reed v. McKune, C.A.10 (Kan.) 2002, 298 F.3d 946. Civil Rights 1097

Parolee did not establish that parole officer violated § 1983 by reporting to Board of Probation and Parole that parolee had consumed alcoholic beverages in bar contrary to condition of his parole, on grounds that her action constituted malicious prosecution; parolee had not prevailed in subsequent parole revocation hearing, officer had probable cause to initiate parole revocation, and she had not acted maliciously although she took action in part upon testimony of bar employees who disliked parolee. Purdie v. Tierney, E.D.Pa.1991, 769 F.Supp. 864. Civil Rights 1097

Parolee, whose parole was revoked after he refused to remove a skullcap worn by Islamic men when ordered to do so by employee of hospital where he was undergoing drug treatment program as a condition for release on parole and who had been informed that he would be under jurisdiction and authority of hospital employees and that any disobedience would result in revocation of his parole, adequately alleged state action in his claim under this section against hospital defendants; however, complaint, which did not allege that president of hospital had any participation in or knowledge of the events upon which he based his claims but merely stated that president was directly responsible for day-to-day operation of hospital, did not state a claim against president upon which relief could be granted. Jones v. Eagleville Hosp. and Rehabilitation Center, E.D.Pa.1984, 588 F.Supp. 53. Civil Rights 1395(7); Civil Rights 1396

Parolee did not have protected liberty interest in being free from special conditions of parole that were left to discretion of parole board under New York law, and thus fact that allegedly erroneous inclusion of rap sheets in parolee's file may have led to special conditions of curfew and drug testing did not state civil rights claim for deprivation of due process. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Constitutional Law 272.5; Pardon And Parole 64.1

2424. ---- Time of release, parole, prisons and prisoners generally

City was not liable under §§ 1983 for detaining parole inmate beyond maximum expiration date of his sentence without commencement and conclusion of his final parole revocation hearing, where city produced inmate for his final hearing on two occasions, city had no role in scheduling or conduct of parole revocation hearings, and inmate was detained pursuant to facially valid warrant issued by state division of parole. Dupree v. City of New York,

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S.D.N.Y.2006, 418 F.Supp.2d 555. Civil Rights 1348

Where delay between parole board decision to release prisoner and mailing of the release order was at most two days where delay between arrival of the order in city in which prisoner was held and its hand delivery by parole agent to the prison was exactly two days, where the board promptly set the release machinery in motion after determining to release prisoner, and where weekend intervened to delay receipt of mailed notice by the agent, six-day delay, during which prisoner was allegedly injured in prison riot, between date that parole board determined to release prisoner and date that he was actually released did not deny prisoner any constitutional rights. Burgess v. Roth, E.D.Pa.1975, 387 F.Supp. 1155. Civil Rights 1097

Parolee had no constitutionally protected liberty interest in receiving early discharge from parole; New York statute authorizing early release left decision to discretion of state parole board. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Pardon And Parole 93

2425. ---- False information, parole, prisons and prisoners generally

Petition for writ of habeas corpus, rather than §§ 1983 action, was appropriate procedure for claiming that denial of inmate's parole was improperly based on letter recommending denial, inserted in file without his knowledge, and report containing false information; habeas covered challenges to duration of confinement, while §§ 1983 covered conditions of confinement. Bodie v. Morgenthau, S.D.N.Y.2004, 342 F.Supp.2d 193. Civil Rights 1097; Civil Rights 1311; Habeas Corpus 516.1

Where admittedly false material is intentionally used to inhibit parole or awards of good conduct credit, federal jurisdiction might be asserted to prevent arbitrary and capricious action. James v. Robinson, E.D.Va.1994, 863 F.Supp. 275, affirmed 45 F.3d 426. Civil Rights 1092; Civil Rights 1097

Parolee did not state civil rights claim for violation of due process against parole officer based on his alleged knowing inclusion of false information in her parole file, absent any showing that inclusion violated protected liberty interest. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Constitutional Law 272.5; Pardon And Parole 56

2426. ---- Employment of parolee, prisons and prisoners generally

Alleged violation of Virginia's picketing and right to work statute did not provide sufficient grounds for § 1983 claim brought by parolee who alleged that state parole officials impeded his potential employment as paralegal; statute's purpose was to protect the right to work from infringement by the use of force, statute was quasi-criminal in nature and did not provide basis for civil damages, other than injunctive relief, and violation of statute did not rise to constitutional level. Kaufhold v. Bright, W.D.Va.1993, 835 F.Supp. 294. Civil Rights 1097

2427. ---- Plea agreements, parole, prisons and prisoners generally

Proof that, prior to entering into an agreement pursuant to which prisoners entered guilty pleas and gave up their right to a jury trial, direct promises were made them by parole board that, in exchange for prisoners' pleas and for return of stolen property, they would be released on parole after serving 18 months of their sentences, and proof that following this alleged agreement the parole board refused to grant prisoners' release on parole at promised time would establish a violation of prisoners' due process rights, and would authorize relief under this section against parole board. Palermo v. Rockefeller, S.D.N.Y.1971, 323 F.Supp. 478. Civil Rights 1420; Constitutional Law 272.5

Absent showing that Kansas state prisoner's continued confinement in Kansas had been overturned by state tribunal or executive order or called into question by issuance of writ of habeas corpus, prisoner could not state colorable

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claim for damages under civil rights law based on alleged violation of his constitutional rights, which allegedly occurred when Kansas allowed Oklahoma authorities to submit detainer for his arrest and return to Oklahoma, which was allegedly in violation of his plea agreement in which Kansas agreed not to oppose concurrent service of his Kansas and Oklahoma sentences. Brownfield v. Stovall, C.A.10 (Kan.) 2003, 85 Fed.Appx. 123, 2003 WL 23033727, Unreported. Civil Rights 1095

2428. ---- Multiple offender status, parole, prisons and prisoners generally

Action under this section was proper avenue to seek redress of claim of state prisoner, who was tried, convicted and sentenced as first offender, that he was being denied due process of law or was being subjected to ex post facto punishment by being classified as fourth offender for parole eligibility purposes. Schwindlig v. Smith, E.D.Ark.1984, 596 F.Supp. 224. Civil Rights 1097

2429. ---- Access to file, parole, prisons and prisoners generally

Claimed refusal to allow a Texas state prisoner access to his papers on file with parole board did not assume proportions of a deprivation of constitutional rights on claim of denial of due process. Craft v. Texas Bd. of Pardons and Paroles, C.A.5 (Tex.) 1977, 550 F.2d 1054, certiorari denied 98 S.Ct. 408, 434 U.S. 926, 54 L.Ed.2d 285. Constitutional Law 272(2)

Denial of access by prisoner to papers on file with State Board of Pardons and Paroles did not assume proportions of a deprivation of rights under the Constitution or laws of the United States for purposes of this section. Cook v. Whiteside, C.A.5 (Tex.) 1974, 505 F.2d 32. Civil Rights 1097

Prisoner claiming deprivation of his civil rights through wrongful removal from work release program and denial of parole did not state civil rights claim under § 1983 against assistant district attorney; allegation that attorney had denied him access to his parole file, and told him that no system existed to notify prospective parolees when information was added to or removed from their files, in violation of New York law, did not implicate any federal rights. Quartararo v. Catterson, E.D.N.Y.1996, 917 F.Supp. 919. Civil Rights 1096; Civil Rights 1097

Disclosure of state parolee's medical records to United States Probation Department was presumptively invalid, such that parolee had claim for violation of her Fourteenth Amendment privacy rights, where federal agency was not among entities to which disclosure was authorized by New York law. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Constitutional Law 272.5; Pardon And Parole 55.1

2430. ---- Hearing, parole, prisons and prisoners generally

Parolee's civil rights claim, based on contention that his parole revocation violated due process because he was not offered and furnished with attorney for his parole hearing, was not cognizable in federal court, where there had been no state judgment invalidating parole revocation. White v. Gittens, C.A.1 (Mass.) 1997, 121 F.3d 803. Civil Rights 1097

Inmate was not entitled to § 1983 relief, as inmate's due process rights were not violated, even though state statute provided that hearing panel "shall" consist of one member of parole board and two hearing officers; but one member of the hearing panel walked out of the parole hearing; where inmate did not identify any non-statutory particularized standards or criteria that guided the state's decisionmakers, and state statute required that the board comply with certain procedures but explicitly declined to impose substantive predicates on the board's discretionary parole decisions, and thus created no liberty interest in those decisions. Marshall v. Mitchell, C.A.8 (Mo.) 1995, 57 F.3d 671, rehearing and suggestion for rehearing en banc denied. Constitutional Law 272.5; Pardon And Parole 42.1

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42 U.S.C.A. § 1983

Prisoner's challenge to parole board consideration of voided prior convictions is cognizable under § 1983 when prisoner does not challenge result of hearing or request new hearing at specified time. Cook v. Texas Dept. of Criminal Justice Transitional Planning Dept., C.A.5 (Tex.) 1994, 37 F.3d 166. Civil Rights 1097

Although State Parole Board miscalculated prisoner's target release date and, thus, parole guidelines were not followed to extent that first prerelease hearing was held after correct target release date, Parole Board could not be found to have acted in a flagrant, unwarranted or unauthorized manner, especially where prisoner made no complaint about the miscalculation of the target release date or asserted that the Board lacked authority to require him to submit to a psychiatric examination before further parole hearings were held or showed that the Board failed to comply with its own guideline. Kelsey v. State of Minn., C.A.8 (Minn.) 1977, 565 F.2d 503. Pardon And Parole 59

Where Connecticut parole release hearing procedure permitted prisoner's counsel to have prehearing conference with chairman of panel which would decide prisoner's case and to place in file any statement or other documentary information and where purpose of holding hearing was to enable members of board personally to speak with and observe prisoner to determine his attitude towards his crime and his readiness for parole, state's interest in excluding persons other than prisoner from hearings outweighed need for and usefulness to inmate of having counsel present at hearing, and due process did not require Connecticut to allow counsel at hearing, despite inmate's concededly great interest in decision being made. Holup v. Gates, C.A.2 (Conn.) 1976, 544 F.2d 82, certiorari denied 97 S.Ct. 1571, 430 U.S. 941, 51 L.Ed.2d 787. Constitutional Law 272.5; Pardon And Parole 59

In view of Code of Ala., Tit. 12, § 12, providing for parole revocation hearing on return to state custody, state's filing of detainer against federal prisoner based on his alleged violation of state parole did not give rise to suit for violation of civil rights even though no parole revocation hearing had been granted prior to filing detainer. Brackett v. Lambert, C.A.5 (Ala.) 1973, 483 F.2d 57. Civil Rights 1097

This section may not be invoked to extend the right to call witnesses to parole eligibility proceedings, at least in absence of allegation that invidious discrimination, such as on basis of race or religion, is being practiced. Peinado v. Adult Authority of Dept. of Corrections, C.A.9 (Cal.) 1969, 405 F.2d 1185, certiorari denied 89 S.Ct. 2116, 395 U.S. 968, 23 L.Ed.2d 755. Civil Rights 1097

State prisoner's claim for monetary damages arising from alleged violation of his right to procedural due process by failing to afford him parole revocation hearing could be brought in civil rights action under § 1983. Henry v. Sanchez, C.D.Cal.1996, 923 F.Supp. 1266. Civil Rights 1097

There was no constitutional liberty interest breached solely by administrative decision not to hold parole hearings which were no longer statutorily required, and not necessary to or inevitably followed by decision to release, as was necessary for inmates to state claim under § 1983. Middleton v. McGinnis, E.D.Mich.1994, 860 F.Supp. 391. Constitutional Law 272.5; Pardon And Parole 59

Application of new statute enacted after defendant was convicted of attempted sexual assault which added that offense to those requiring persons seeking parole to appear before "psyche panel" did not violate ex post facto clause; there was no basis for believing that any actions taken by the "psyche panel" that defendant claimed produced mental and emotional damage constituted punishment given to him for his conviction of attempted sexual abuse. Land v. Lawrence, D.Nev.1993, 815 F.Supp. 1351. Constitutional Law 203; Pardon And Parole 42.1

New York's parole provisions did not create entitlement to parole and, therefore, any alleged unfairness in parole hearing did not and could not afford predicate for relief in civil rights action. Washington v. White, S.D.N.Y.1992, 805 F.Supp. 191. Civil Rights 1097; Pardon And Parole 48.1

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42 U.S.C.A. § 1983

For purposes of former parolee's civil rights claim, Pennsylvania Board of Probation and Parole did not lose jurisdiction over parolee when original maximum expiration date of his sentence passed without extension or readjustment, and delay in holding final parole violation hearing did not violate parolee's due process rights; parolee was notified two weeks before maximum expiration date at preliminary detention hearing that he was being charged as parole violator, and delay in holding final hearing resulted from his request for continuance pending disposition of criminal charges. Harris v. Vaughn, E.D.Pa.1991, 767 F.Supp. 667, affirmed 950 F.2d 722. Constitutional Law 272.5; Pardon And Parole 78; Pardon And Parole 84

Absent any allegation that state prisoner was being held past his mandatory release date, prisoner failed to allege any liberty interest stemming from the state department of correction officials' alleged denial of timely parole hearings, which allegedly was part of officials' attempt to over-crowd state prisons and necessitate transfers to private facilities in order to increase value of their retirement portfolios, which allegedly included stock in private prison corporations. Madyun v. Litscher, C.A.7 (Wis.) 2002, 57 Fed.Appx. 259, 2002 WL 31898230, Unreported, certiorari denied 123 S.Ct. 2225, 538 U.S. 1062, 155 L.Ed.2d 1114. Constitutional Law 272.5; Pardon And Parole 59

2431. ---- Assistance of counsel, parole, prisons and prisoners generally

Federal court was without authority to interfere with state custody of prison inmate by permitting the inmate to represent a parolee in the parolee's civil rights action against prison physician. Rizzo v. Zubrik, S.D.N.Y.1975, 391 F.Supp. 1058. Prisons 13(3)

Chairman of state board of parole was under no duty under either state or federal law to permit state prisoner to be represented by counsel at parole revocation hearing. Paige v. Pennsylvania Bd. of Parole, E.D.Pa.1970, 311 F.Supp. 940. Pardon And Parole 89

2432. ---- Evidence considered, parole, prisons and prisoners generally

Action seeking to enjoin state officials from using prison disciplinary records in determining classification and eligibility for parole where such records were obtained in proceedings that were constitutionally infirm could be maintained as civil rights action. Leonard v. Mississippi State Probation and Parole Bd., C.A.5 (Miss.) 1975, 509 F.2d 820, rehearing denied 515 F.2d 510, certiorari denied 96 S.Ct. 428, 423 U.S. 998, 46 L.Ed.2d 373. Civil Rights 1454

2433. ---- Statement of reasons, parole, prisons and prisoners generally

There was no constitutional basis for inmate's contention that, in preparing his parole application, he had a right to a psychiatric report under New Mexico parole system, nor was his dissatisfaction with parole board's reasons for denying his application actionable. Candelaria v. Griffin, C.A.10 (N.M.) 1981, 641 F.2d 868. Civil Rights 1097

Where, under New Jersey law, State Parole Board was not required to state its reasons for denial of parole, state prisoner was not deprived of any constitutional rights. Mosley v. Ashby, C.A.3 (N.J.) 1972, 459 F.2d 477. Pardon And Parole 61

Virginia Probation and Parole Board's reasons for denial of parole that petitioner's long record of law violations made it desirable that he prove himself for a longer period of time and that he had failed to profit from probation were sufficient to overcome his contention that Board acted arbitrarily and capriciously in denying parole. Williams v. Virginia Probation and Parole Bd., W.D.Va.1975, 401 F.Supp. 1371, affirmed 569 F.2d 784, certiorari denied 98 S.Ct. 1659, 435 U.S. 1003, 56 L.Ed.2d 92. Pardon And Parole 49

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42 U.S.C.A. § 1983

2434. Work release, prisons and prisoners generally--Generally

Work-release participant stated § 1983 claim for violation of procedural due process by alleging that state officials found him guilty of misconduct, and revoked his participation in work release program, without any evidence to support charges. Friedl v. City of New York, C.A.2 (N.Y.) 2000, 210 F.3d 79. Constitutional Law 272(2); Convicts 7(2)

Even if Louisiana statute providing work release program for prisoners created presumption that prisoner serving in last six months of sentence would be allowed to participate in work release, "presumption" is not by definition mandatory, and does not give rise to liberty interest. Welch v. Thompson, C.A.5 (La.) 1994, 20 F.3d 636. Constitutional Law 272(2)

Delaware prisoner, whose first and second applications for work release were rejected at least in substantial part by prison officials because of fear of legislative reprisals against prison system as a whole, had cause of action against two prison officials who denied applications for alleged deprivation of procedural due process. Winsett v. McGinnes, C.A.3 (Del.) 1980, 617 F.2d 996, certiorari denied 101 S.Ct. 891, 449 U.S. 1093, 66 L.Ed.2d 822. Civil Rights 1096

Prison inmate did not have liberty interest in being placed in work release program, needed to support claim that prison officials violated his due process rights by denying his request to participate in program. Romer v. Morgenthau, S.D.N.Y.2000, 119 F.Supp.2d 346. Constitutional Law 272(2); Convicts 7(2)

Neither statutes nor regulations established an expectancy of entitlement to participate in work release program without accompanying payment of "maintenance," and thus former prisoner could not maintain action under this section to recover maintenance costs which had been deducted from his earnings while he was in enrolled in work release program. Ervin v. Blackwell, W.D.Mo.1983, 585 F.Supp. 680, affirmed 733 F.2d 1282. Civil Rights 1096

State prisoner's complaint that he was denied equal protection when his request to participate in work-release program was denied where requests of prisoners with equal or greater sentences were granted stated claim for relief. Jones v. Lane, N.D.Ill.1983, 568 F.Supp. 1113. Civil Rights 1395(7)

Refusal to permit state prisoner, convicted of second-degree rape, to participate in "work release" and "furlough" programs, based on finding that prisoner was a poor risk in view of the vicious nature of his offense, his extensive prior criminal record, his use of drugs in the past, and his pattern of poor community adjustment, was not arbitrary and did not deny equal protection on theory that other inmates convicted of violent crimes were permitted to participate in the programs. Sanno v. Preiser, S.D.N.Y.1975, 397 F.Supp. 560. Constitutional Law 250.3(2); Convicts 7(2); Prisons 13(4)

2435. ---- Detainers, work release, prisons and prisoners generally

There is no denial of equal protection in per se exclusion of prisoners with detainers from participation in Wisconsin's Mutual Agreement Program, under which a prisoner "contracts" to meet a specified level of behavior and accomplishment in exchange for securing an early release into the community in which he has been working or studying while participating in the program, with rationale for exclusion being assumption that prisoners with detainers will be caused to leave the state to answer charges in another jurisdiction and thus will not be able to be released directly into the community. Reddin v. Israel, E.D.Wis.1978, 455 F.Supp. 1215. Constitutional Law 250.3(2)

2436. ---- Escapees, work release, prisons and prisoners generally

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42 U.S.C.A. § 1983

Decision of state prison's institutional classification committee denying inmate eligibility for work release program and furlough program because of guidelines which prohibit granting of work release to any inmate who has been convicted of escape during the past three years and which state that an inmate who escapes shall not be eligible to apply for a furlough for a period of two years from the date of the escape were clearly within the discretion of internal prison management, were without signs of any invidious discrimination and did not amount to a deprivation of constitutional rights cognizable in a civil rights suit. Hale v. Davis, W.D.Va.1974, 387 F.Supp. 408. Civil Rights 1096

2437. ---- Wages, work release, prisons and prisoners generally

Under V.A.M.S. § 217.435, inmate could not assert a legitimate claim of entitlement to the full amount of his salary while on work release program, and thus withholding a portion of his salary for maintenance costs was not actionable under this section, where regulations specifically conditioned participation in the program on payment of maintenance costs, and since carrying out such condition was not arbitrary action of government demanding due process protection. Ervin v. Blackwell, C.A.8 (Mo.) 1984, 733 F.2d 1282. Civil Rights 1096

2438. Funerals, prisons and prisoners generally

Allegation by state prisoner that he was not permitted to attend his mother's funeral because prison secretary inadvertently left authorization sitting on her desk was a charge of negligence in handling prisoner's request and was not actionable in suit under civil rights statute complaining about infliction of cruel and unusual punishment, even though complaint characterized prison officials' motivation as "deliberate indifference." Thomas v. Farley, C.A.7 (Ind.) 1994, 31 F.3d 557. Civil Rights 1098

Municipal directive stating that inmate shall be permitted to attend funeral of certain relatives, but may attend funeral of other people only at discretion of commissioner of city department of corrections, did not confer enforceable liberty interest recognizable under federal civil rights statute on prisoner to attend his uncle's funeral, where "uncles" were not included on list of relatives in directive, and directive placed no substantive limitations on commissioner's discretion to allow attendance at funerals of other people. Cruz v. Sielaff, S.D.N.Y.1991, 767 F.Supp. 547. Civil Rights 1098

Denying inmate permission to attend grandmother's funeral did not involve denial of liberty interest protected by Constitution and did not entitle inmate to relief under § 1983. Colon v. Sullivan, S.D.N.Y.1988, 681 F.Supp. 222. Civil Rights 1098

House of detention inmate failed to state a cause of action under this subchapter against deputy warden who allegedly refused to allow him to attend his children's wake. Samuels v. Department of Correction, N. Y. C., E.D.N.Y.1982, 548 F.Supp. 253. Civil Rights 1395(7)

State prison's alleged refusal to house inmate near his ill brother, or to allow him temporary community leave to attend brother's funeral, did not violate any due process protected liberty interest; inmate had no constitutional right to incarceration in particular institution. Verwolf v. Hamlet, N.D.Cal.2003, 2003 WL 22159055, Unreported. Constitutional Law 272(2); Convicts 6; Prisons 13(5)

2439. Furloughs, prisons and prisoners generally

State corrections officials did not violate inmate's due process rights under the Fourteenth Amendment when they revoked inmate's extended furlough without following procedures outlined in department of corrections manual, given that the procedures that were followed satisfied the procedural protection mandated by the federal Constitution, namely, inmate was given written notice of the claims, admitted to the violation, received a revocation hearing before a neutral hearing officer, and received written statements explaining the evidence relied

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on and the reasons for the revocation. Holcomb v. Lykens, C.A.2 (Vt.) 2003, 337 F.3d 217. Constitutional Law 272(2); Prisons 13(8)

Former prisoner stated claim for relief against county prison board and its members and employees on theory of arbitrary refusal to allow prisoner to participate in either work release or home furlough programs. Gahagan v. Pennsylvania Bd. of Probation and Parole, E.D.Pa.1978, 444 F.Supp. 1326. Civil Rights 1395(7)

State prisoner's allegations that decisions to deny him participation in "work release" and "furlough" programs were erroneous or ill-founded did not establish the infringement of a constitutionally protected right. Sanno v. Preiser, S.D.N.Y.1975, 397 F.Supp. 560. Civil Rights 1395(7)

In order to establish a constitutional deprivation in denial of furlough, cognizable pursuant to this section, prisoner must show that furlough committee determination was arbitrary or capricious so as to be devoid of due process or that the determination was designed as a form of punishment. Brooks v. Dunn, W.D.Va.1974, 376 F.Supp. 976. Civil Rights 1404

2440. Release, prisons and prisoners generally

State prison officials had no constitutional authority to hold inmate in prison for five extra days beyond his original maximum expiration date based upon alleged parole violation, where state failed to grant inmate final hearing or to offer any evidence that it would be impracticable to hold final hearing between date of parolee's detention and his original maximum expiration date. Calhoun v. New York State Div. of Parole Officers, C.A.2 (N.Y.) 1993, 999 F.2d 647. Pardon And Parole 80; Pardon And Parole 86

Prisoner, convicted of burglary and released on two-year term of mandatory supervised release was not unlawfully detained by prison authorities after expiration of his burglary sentence when returned to prison for violation of mandatory supervised release, where prisoner conceded that Illinois prison officials had accurately computed his sentence insofar as it was proper under Illinois law not to credit him with time he spent in confinement in California, after he had absconded from mandatory supervised release program, and where running of his mandatory supervised release was tolled when he absconded to California. Wallace v. Greer, C.A.7 (Ill.) 1987, 821 F.2d 1274. Pardon And Parole 72.1

Former state inmate could establish that he was entitled to monetary damages for false imprisonment under § 1983 if he proved that he was incarcerated beyond his correct release date due to constitutional violations by prison officials. McCurry v. Moore, N.D.Fla.2002, 242 F.Supp.2d 1167. Civil Rights 1096; Civil Rights 1460

County did not deliberately disregard known and substantial risk that inmate would be harmed if detention records technicians acted pursuant to county's alleged policy prohibiting technicians from counting days that inmate served for same charge under two different court case numbers, as required to support inmate's claim under § 1983 that county violated his Eighth Amendment rights when technician erroneously certified number of days county had detained inmate pretrial on burglary charge, which resulted in inmate's "over-detention" and late release from prison; only one other incident of same type had occurred in ten-year period preceding inmate's conviction, and no county employee actually was aware that inmate had been detained for same burglary under two different court case numbers until long after county delivered him to state department of corrections. Biberdorf v. Oregon, D.Or.2002, 243 F.Supp.2d 1145. Sentencing And Punishment 1531

Detention of a prisoner beyond the termination of his sentence can state an Eighth Amendment violation if that detention occurs without penological justification; in order to establish § 1983 liability in such a case, a plaintiff must demonstrate that a prison official had knowledge of the prisoner's problem and thus of the risk that unwarranted punishment was being, or would be, inflicted, that the official either failed to act or took only ineffectual action under the circumstances, indicating that his response to the problem was a product of deliberate

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indifference to the prisoner's plight, and that a causal connection exists between the official's response to the problem and the unjustified detention. Douglas v. Murphy, E.D.Pa.1998, 6 F.Supp.2d 430, affirmed 248 F.3d 1129 . Civil Rights 1092; Sentencing And Punishment 1531

Inmate did not have liberty interest in participating in pre-release program prior to being released on parole, making his civil rights claim based on alleged due process violation frivolous under Prison Litigation Reform Act provision governing in forma pauperis complaints. McFadden v. Lehman, M.D.Pa.1997, 968 F.Supp. 1001. Constitutional Law 272.5; Federal Civil Procedure 2734

Inmates do not have constitutional right to be released before their prison term expires. Vaughan v. Murray, E.D.Va.1994, 872 F.Supp. 268, vacated 70 F.3d 114. Pardon And Parole 46

Prisoner's claim which sought speedier release could not be asserted as civil rights claim, and claim for damages could not be asserted in federal court until underlying habeas claims were presented to state court. Russell v. Gilless, W.D.Tenn.1994, 870 F.Supp. 204. Civil Rights 1311; Habeas Corpus 207

Allegations of former state prisoner, who served part of his sentence in Illinois Department of Corrections (IDOC) facility and part in non-IDOC facility, that as a result of IDOC director's policy, requiring inmates to serve at least 60 days in IDOC facility, prisoner's release date was later than it would have been if prisoner had served his entire sentence in IDOC facility sufficiently alleged that director intentionally violated prisoner's equal protection rights so as to state claim under § 1983 for equal protection violation. Rooding v. Peters, N.D.Ill.1994, 864 F.Supp. 732. Civil Rights 1395(7)

Pennsylvania statute and regulations permitting release of state prisoners prior to expiration of their minimum sentences impose broad discretion upon prison officials and only in event of arbitrary abuse of such discretion of such severity as to amount to lack of due process or equal protection could there arise valid claim of civil rights deprivation for failure to grant release on temporary home furlough prior to expiration of minimum sentence. U. S. ex rel. Williams v. Cuyler, E.D.Pa.1977, 447 F.Supp. 540. Civil Rights 1096

An inaccurate computation of petitioner's conditional or mandatory release date from prison would have amounted to violation of statutory right and not constitutional right and petitioner's objection to the computation was not cognizable under this section prohibiting the depriving of any person's constitutional rights under color of law. Rice v. Schmidt, E.D.Wis.1967, 277 F.Supp. 811. Civil Rights 1096

Former inmate failed to establish his alleged incarceration past his properly calculated release date was the result of deliberate indifference by Department of Correction (DOC) officials, as was required to maintain §§ 1983 claim arising out of his confinement; once inmate alerted officials to his sentence merger concerns, they acted properly to investigate claim, but reasonably concluded in light of existing Montana precedent that he was not entitled to sentence merger. Barnacascel v. Montana, Dept. of Corrections, C.A.9 (Mont.) 2004, 103 Fed.Appx. 195, 2004 WL 1447710, Unreported. Civil Rights 1096

2441. Expungement of prison file, prisons and prisoners generally

Due process requirements in prison disciplinary proceedings are not to be applied retroactively so as to require that prison records containing determinations of misconduct, not in accord with required procedures, be expunged. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Courts 100(1)

State prison inmate was not deprived of his limited constitutional right to have erroneous information expunged from his prison file and district court was, therefore, without jurisdiction to consider claim where record failed to establish that prisoner had first made a request of prison officials that erroneous information be expunged from his

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file and that request had been denied. Paine v. Baker, C.A.4 (N.C.) 1979, 595 F.2d 197, certiorari denied 100 S.Ct. 263, 444 U.S. 925, 62 L.Ed.2d 181. Civil Rights 1098

Inmate failed to state claim under § 1983 for expungement of allegedly false report from prison files, absent allegation that he made his objections known to prison officials, and absent allegation that prison officials refused to modify supposedly erroneous report despite inmate's objections; inmate failed to assert that prison officials had acted to deprive him of his constitutional right to have file free of false information. McCrery v. Mark, E.D.Pa.1993, 823 F.Supp. 288. Civil Rights 1311

State prisoner's request in § 1983 proceeding that court order removal from his central file of all prejudicial and improper information was mere claim for unintended loss or injury resulting from negligent acts of state officials in failing to hold timely parole revocation hearing and was not cognizable under § 1983; moreover, expungement of state records was not right of federal constitutional dimension. Camardo v. Walker, D.R.I.1992, 794 F.Supp. 65. Civil Rights 1454; Criminal Law 1226(2)

Prisoner had no constitutional right to challenge veracity of his prison file unless he alleged that information was in his file, that the information was false and that it had been relied on by a parole board to a constitutionally significant degree. Williams v. Stacy, E.D.Va.1979, 468 F.Supp. 1206. Civil Rights 1395(7)

2442. Miscellaneous deprivations, prisons and prisoners generally

Inmate who had been convicted of attempted murder in the first degree was not entitled to equitable or injunctive relief in his §§ 1983 action challenging the collection of a sample of his DNA as a violent offender under Missouri's DNA profiling system, even though inmate's conviction did not qualify as a violent offense under statute, where new statute authorized the taking of a DNA sample from all felons, and inmate was a felon. Clevenger v. Gartner, C.A.8 (Mo.) 2004, 392 F.3d 977. Civil Rights 1454

Generally, courts are not concerned with prisoner's initial classification level based on his criminal history before his incarceration, and inmate has no protectable liberty interest in his custodial classification. Wilkerson v. Stalder, C.A.5 (La.) 2003, 329 F.3d 431, certiorari denied 124 S.Ct. 432, 540 U.S. 966, 157 L.Ed.2d 310. Constitutional Law 272(2); Prisons 13(5)

State prison's policy prohibiting inmates from covering lights in their cells did not violate inmates' equal protection rights, even though policy did not apply in other facilities in state, absent allegation that prison officials implemented policy with intent to discriminate against inmates, that other inmates at facility were treated differently, or that inmates at other facilities were similarly situated. Walker v. Woodford, S.D.Cal.2006, 454 F.Supp.2d 1007. Prisons 17(1)

Restrictions placed on civilly confined sex offender after he was transferred from his preferred treatment program, such as not being allowed to use as many electronic devices, being charged higher canteen prices, and being made to wear prison clothing, did not violate his due process right, as civil detainee, to be free of punishment. Laxton v. Watters, W.D.Wis.2004, 348 F.Supp.2d 1024. Constitutional Law 255(5); Mental Health 465(1)

Prison's practice of passing out general purpose mail to prisoners very late in evening, due to time constraints and problems posed by passing out mail during movement of inmates during day, did not involve deprivation of constitutional right that would support § 1983 action, even if posing slight inconvenience to prisoner's sleep schedule. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593. Prisons 4(9)

Physicians and hospitals involved in treatment of state prison inmate's alleged kidney stones and other ailments were entitled to qualified immunity in inmate's § 1983 action for alleged violation of his Eighth Amendment rights; physicians and hospitals had objectively reasonable belief that their actions in treating inmate were appropriate and

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lawful, and none knowingly engaged in conduct that violated inmate's rights. Brown v. Selwin, S.D.N.Y.1999, 250 F.Supp.2d 299, affirmed 29 Fed.Appx. 762, 2002 WL 355901. Civil Rights 1376(7)

Prison inmate who brought suit for emotional distress which allegedly resulted after his name was wrongfully printed in newspaper as having died in prison fire failed to allege conduct or knowledge on part of warden which would allow recovery on basis of supervisory liability in § 1983 action based on alleged deprivations of inmate's federally protected rights. Orum v. Haines, N.D.W.Va.1999, 68 F.Supp.2d 726. Civil Rights 1395(7)

Overwhelming weight of evidence supported jury's verdict, in inmate's § 1983 action, that inmate's due process rights were not violated when prison doctor injected him with sedative after he became disruptive without prior hearing and without inmate's consent; inmate flew into a rage when doctor denied him extra blanket for his cell, inmate then ran about his cell striking his head and other parts of his body against walls and other objects in cell, and after inmate did not respond to doctor's request to calm down, doctor, aware of inmate's prior history of medical instability, decided to sedate him. Wilson v. Chang, D.R.I.1997, 955 F.Supp. 18. Constitutional Law 272(2); Prisons 17(2); Prisons 17(2)

Fact issue as to whether court which sentenced defendant who had been unable to pay fine to 15 days' incarceration had adequately considered alternative remedies before imposing sentence, precluding summary judgment in federal civil rights action in which defendant claimed that sentence violated her constitutional rights due to her inability to pay fine, was presented by evidence that defendant had sought and received six extensions of time in which to pay fine, and by lack of express finding by sentencing court that it had considered alternatives to incarceration. Fahle v. Braslow, E.D.N.Y.1996, 913 F.Supp. 145, affirmed 111 F.3d 123. Federal Civil Procedure 2491.5

Inmate's limited First Amendment right to freedom of speech did not include right to proposition female prison employee, and so disciplinary action based on such speech did not support inmate's § 1983 civil rights action on basis of violation of his right to free speech. Kirsch v. Franklin, E.D.Wis.1995, 897 F.Supp. 1173. Constitutional Law 90.1(1.3); Prisons 4(6); Prisons 13(6)

Incarceration of defendant in county jail for period necessary to lay out fine which he was unable to pay based on dollar credit for days served violated due process, where jail officials immediately converted fine into jail sentence when fine was not paid without taking defendant before judge, having factual determination made concerning reasons for failure to pay fine, or considering alternatives to incarceration. Doe v. Angelina County, Texas, E.D.Tex.1990, 733 F.Supp. 245. Constitutional Law 272(1)

Right to refuse to perform an unconstitutional act is a right "secured by the Constitution" within the meaning of this section; accordingly, in the instant case, prison guard had the right to refrain from performing an act, ordered by the warden, which would have deprived prisoner of his constitutional rights. Harley v. Schuylkill County, E.D.Pa.1979, 476 F.Supp. 191. Prisons 9

State prisoner's claim concerning loss of commissary privileges did not implicate concerns that were protected by the due process clause. Bridges v. Lee, C.A.5 (Miss.) 2005, 124 Fed.Appx. 225, 2005 WL 14991, Unreported. Constitutional Law 272(2); Prisons 13(4)

State prisoner did not have protected liberty interest in participating in a drug treatment program, barring prisoner's due process claim based upon denial of his request to enter such program, where state statute authorizing drug treatment for prisoners did not require in explicit mandatory language that a particular outcome was required if certain requirements were met. In re Lopez, N.D.Cal.2003, 2003 WL 22384779, Unreported. Constitutional Law 272(2); Prisons 17(2)

XVII. PRETRIAL DETAINEES

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2471. Pretrial detainees generally

In cases challenging general conditions of confinement for pretrial detainees, there is automatic assumption that practice in question was intentional, such that proper standard in § 1983 action is whether practice in question was reasonably related to legitimate governmental purpose; when this test is properly applied, it is functional equivalent of subjective deliberate indifference standard applied to episodic acts of prison officials. Scott v. Moore, C.A.5 (Tex.) 1996, 85 F.3d 230, rehearing granted, opinion vacated, on rehearing 114 F.3d 51. Civil Rights 1088(4)

County could not be held liable in pretrial detainee's § 1983 action for alleged constitutional shortcomings in operation of its governmental institutions, county jail, and county defender's office attributable to omissions and commissions of county employees, absent any showing of existence of policy or custom of county by virtue of which such employees violated federally guaranteed rights. Grabowski v. Jackson County Public Defenders Office, C.A.5 (Miss.) 1996, 79 F.3d 478. Civil Rights 1351(4)

Court of Appeals would apply same deliberate indifference standard to unconstitutional conditions of confinement claims of inmate, who had been convicted and was awaiting sentencing, and pretrial detainee. Whitnack v. Douglas County, C.A.8 (Neb.) 1994, 16 F.3d 954. Civil Rights 1090

Unless there is express intent to punish, imposition or restriction on pretrial detainees is not violation of federal statute governing civil action for deprivation of rights if alternative purpose to which imposition may rationally be connected is assignable for it, unless it appears excessive in relation to alternative purpose assigned. Simons v. Clemons, C.A.5 (La.) 1985, 752 F.2d 1053. Civil Rights 1088(4)

In action under this section brought by pretrial detainees who claimed that they had been subjected to cruel and unusual treatment by county sheriff and his deputies, pretrial detainees were not required to prove that defendants' conduct amounted to cruel and unusual punishment, since they were not prisoners convicted of crimes. Putman v. Gerloff, C.A.8 (Mo.) 1981, 639 F.2d 415. Civil Rights 1404

Convict is not wholly stripped of his constitutional rights when he is imprisoned, but rather is subject to punishment by state, part of such punishment being deprivation of his liberty, but detainee before conviction may not be "punished" at all and is entitled to such liberty as does not undermine the legitimate state interests related to his detention. Norris v. Frame, C.A.3 (Pa.) 1978, 585 F.2d 1183. Convicts 1; Prisons 4(4)

Pretrial detainees generally retain more rights than convicted prisoners, so that federal court's duty to protect constitutional rights conceivably may justify more intrusive relief by federal courts in the local prison system with respect to pretrial detainees than sentenced inmates. Campbell v. McGruder, C.A.D.C.1978, 580 F.2d 521, 188 U.S.App.D.C. 258, on remand 554 F.Supp. 562. Prisons 4(2.1)

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Presumptively innocent status of pretrial detainees requires even closer scrutiny of limitations on their fundamental rights and liberties that is warranted when same restrictions are placed on convicted inmates and pretrial detainees must be held under least restrictive means necessary to assure their presence at trial. Taylor v. Sterrett, C.A.5 (Tex.) 1976, 532 F.2d 462. Prisons 4(4)

The law recognizes a difference in treatment of those confined prior to trial and those confined pursuant to a conviction; in providing for detention of pretrial detainees, correctional institutions must be more than mere depositories for human baggage; any deprivation or restriction of the detainees' rights beyond those which are necessary for confinement alone must be justified by a compelling necessity. Detainees of Brooklyn House of Detention for Men v. Malcolm, C.A.2 (N.Y.) 1975, 520 F.2d 392, on remand 421 F.Supp. 832.

Inmate would be treated as a pre-trial detainee, for purposes of his § 1983 action alleging excessive force; inmate was in courthouse for an appearance on a pending criminal matter unrelated to his incarceration. Perkins v. Brown, E.D.N.Y.2003, 285 F.Supp.2d 279. Civil Rights 1088(4); Civil Rights 1093

Pretrial detention period of two and one-half days did not violate detainee's civil rights. Hodge v. Ruperto, S.D.N.Y.1990, 739 F.Supp. 873. Civil Rights 1088(4)

Plaintiff could not maintain claim in § 1983 action that his incarceration in county jail following his arrest violated Eighth Amendment; constitutional right to be free from cruel and unusual punishment protects only those individuals actually convicted of crimes, and plaintiff's confinement occurred before any formal adjudication of his guilt. Garcia v. Jefferson County, Colo., D.Colo.1988, 687 F.Supp. 1498. Civil Rights 1088(4); Sentencing And Punishment 1433; Sentencing And Punishment 1528

Both convicted prisoners and pretrial detainees must be accorded those constitutional rights not fundamentally inconsistent with imprisonment itself or incompatible with objectives of incarceration; these rights include reasonable right of access to courts, freedom from invidious racial discrimination, reasonable opportunity to exercise right of religious freedom, and due process. Wagner v. Thomas, N.D.Tex.1985, 608 F.Supp. 1095. Prisons 4(1); Prisons 4(4)

If sheriff established and maintained policy of nonsegregation of felons from pretrial detainees and if such policy violated constitutional right of plaintiff detainee and if as proximate result thereof plaintiff was injured, it was at least arguable that claim was stated under this section against sheriff. Reynolds v. Sheriff, City of Richmond, E.D.Va.1983, 574 F.Supp. 90. Civil Rights 1395(7)

County's classification of Bureau of Citizenship and Immigration Services (BCIS) detainees as medium security was reasonably related to the legitimate government purposes of maintaining security and managing an institution, for purposes of detainee's §§1983 claim. Kyei v. Beebe, C.A.9 (Or.) 2005, 121 Fed.Appx. 689, 2005 WL 66024, Unreported. Civil Rights 1088(4)

2472. Privileges generally, pretrial detainees

Before pretrial detainees may be subjected to loss of privileges for more than one day, isolation, reduced diet, or loss of all privileges, there must be: (1) hearing before impartial officer not involved in the transaction or in investigation of the charges, (2) reasonable advance oral or written notice of hearing, (3) general written description of the charges reasonable in advance of the hearing, (4) right to present witnesses at hearing, (5) right to confront and question accusers, and (6) short, written statement of conclusions composed by hearing officer and given to inmate. Inmates of Milwaukee County Jail v. Petersen, E.D.Wis.1973, 353 F.Supp. 1157. Prisons 13(6)

2472A. ---- Mental illness

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42 U.S.C.A. § 1983

Detainee stated an equal protection claim against county jail and officer where he alleged that jail maintained a policy and practice that discriminated against him because of his mental illness, and that officer discriminated against him in terms of the type of confinement on the basis of his mental illness. Glisson v. Sangamon County Sheriff's Dept., C.D.Ill.2006, 408 F.Supp.2d 609. Civil Rights 1395(6)

2473. Access to courts, pretrial detainees--Generally

Usual route for raising inmate's claims of denial of access to courts is through civil rights action under § 1983; however, court has jurisdiction to determine claims during pretrial detainee's criminal trial, to extent they relate to right to adequately represent himself, consult with his standby counsel, and conditions of preconviction detention, although rulings are limited to things which must be done or provided. U.S. v. Janis, S.D.Cal.1992, 820 F.Supp. 512, affirmed 46 F.3d 1147, certiorari denied 116 S.Ct. 168, 516 U.S. 860, 133 L.Ed.2d 110. Civil Rights 1088(4); Criminal Law 641.7(1)

Access to courts is basic right of every person, including pretrial detainees, and is right which prison regulations must not unreasonably invade without some persuasive governmental justification. Lock v. Jenkins, D.C.Ind.1978, 464 F.Supp. 541, affirmed in part, reversed in part on other grounds 641 F.2d 488. Prisons 4(10.1)

2474. ---- Assistance of counsel, access to courts, pretrial detainees

Magistrate did not abuse discretion by refusing to appoint counsel to assist pretrial detainee in pursuance of § 1983 claim against parish prison officials arising out of alleged denial of reasonable medical care; there is no automatic right to appointment of counsel in § 1983 case, and magistrate had found that case was not complex, that pretrial detainee had done credible job of presenting motions and filing papers, that pretrial detainee had been adequately able to investigate case, and that evidence primarily would consist of medical records and other documentary evidence. Cupit v. Jones, C.A.5 (La.) 1987, 835 F.2d 82. Civil Rights 1445

Detainee sufficiently stated denial of access to courts claims against county jail and correctional officers; detainee alleged that the jail maintained a policy and practice of arbitrarily denying inmates confidential consultations with their attorneys and that officers directly participated in the arbitrary and capricious denial of his access to counsel. Glisson v. Sangamon County Sheriff's Dept., C.D.Ill.2006, 408 F.Supp.2d 609. Civil Rights 1395(6)

Pretrial detainee's allegations that his trial was required to be postponed and that, soon after his release from detention, detainee was cleared of the charges, and that detainee was able to make bail soon after he contacted his associate, satisfied pleading standards for his § 1983 claim that policy of jail administrators and sheriff, restricting access of pretrial detainees who are being disciplined to mail and telephone, violated detainee's right to access courts. Simpson v. Gallant, D.Me.2002, 231 F.Supp.2d 341. Civil Rights 1395(6)

Unconvicted detainees in administrative segregation unit of detention facility were entitled to confer with their attorney or attorneys in such numbers as might be shown necessary to assure right to prepare their defenses to charges for which they were detained. Giampetruzzi v. Malcolm, S.D.N.Y.1975, 406 F.Supp. 836. Prisons 4(12)

Requiring City of New York to provide pretrial detainees right of access to counsel outside Rikers Island facilities as well as free daily access to telephone and overnight housing in New York County for detainees who were to consult their attorneys or appear in court the following day was beyond the power of federal district court in suit under this section, for no other reason than the subject matter had never formed part of the litigation. Rhem v. Malcolm, S.D.N.Y.1975, 389 F.Supp. 964, amended on other grounds 396 F.Supp. 1195, affirmed 527 F.2d 1041. Civil Rights 1448

Federal district court did not clearly err in rejecting detainee's civil rights claim based on his alleged lack of access

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to the courts, where his attorney gave undisputed testimony that he was never denied access to detainee. Baxter v. Everett, C.A.8 (Ark.) 2004, 103 Fed.Appx. 49, 2004 WL 1354584, Unreported. Civil Rights 1088(4)

2475. ---- Assistance by other inmates, access to courts, pretrial detainees

With respect to matter of discipline of pretrial detainee absent any showing that he was illiterate or that issues of case were complex, aid from fellow inmate or help from staff or from sufficiently competent inmate designated by staff was not required for compliance with constitutional requirements. Lock v. Jenkins, D.C.Ind.1978, 464 F.Supp. 541, affirmed in part, reversed in part on other grounds 641 F.2d 488. Prisons 13(6)

Pretrial detainees were entitled to reasonable freedom to confer with codefendants. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(6)

2476. ---- Library or legal publications, access to courts, pretrial detainees

County jail's policy of limiting inmates' access to law books did not violate pretrial detainee's right of access to courts, where detainee was able to file legally sufficient civil rights complaint, despite detainee's contention that he could have obtained temporary restraining order if he had been provided with adequate legal assistance. Mann v. Smith, C.A.5 (Tex.) 1986, 796 F.2d 79. Prisons 4(13)

Pretrial detainee at county jail was not deprived of access to the courts and competent counsel, even if detainee was not permitted direct, physical access to law library, detainee was not separately assigned a paralegal to assist him, and detainee was unable to call counsel on a few instances, where detainee was given frequent and heavy access to law library materials, county had limited resources for providing physical access to law library, detainee was an able and experienced prison litigator, detainee decided not to file civil actions while at jail, detainee spoke with counsel on many occasions, and detainee was satisfied with counsel's representation. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280. Prisons 4(13)

Pretrial detainee's allegation that he pled guilty to charges against him to escape conditions he experienced while in protective pretrial custody did not allege requisite prejudice to enable him to maintain claim against prison officials under § 1983 for denial of access to prison law library and legal materials, absent any indication of how access to law library and legal materials would have changed detainee's plea. Heisler v. Kralik, S.D.N.Y.1997, 981 F.Supp. 830, affirmed 164 F.3d 618. Prisons 4(13)

Where pretrial detainees representing themselves had regular use of adequate law library jail, another law library was available to sentenced prisoners, an allegedly inferior third law library could be used by pretrial prisoners with appointed or retained counsel, and pretrial prisoners who were represented by counsel were accorded use of larger library if they could show legitimate reason why more exhaustive research by them was necessary, sufficient "access to the courts" was provided inmates at jail, including legal assistance provided by supervised law students. Rutherford v. Pitchess, C.D.Cal.1978, 457 F.Supp. 104. Prisons 4(13)

Rule which provided that pretrial detainees did not have to request law books by name but merely provide librarian with nature of subject, and which prohibited large law books in dormitory but made such books available for study in dayroom and multipurpose room would be extended to pretrial detainees in county's interim jail; however, county would not be required to purchase extensive law library for county jails for benefit of pretrial detainees. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Prisons 4(13)

Pretrial prisoners should be entitled to make occasional visits to jail library and check out one or more books from shelves or request that particular volumes not then available be placed on order. Dillard v. Pitchess, C.D.Cal.1975,

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42 U.S.C.A. § 1983

399 F.Supp. 1225. Prisons 4(8)

Pretrial detainee was not entitled to order requiring jail officials to make law library at county jail available to him to take depositions in proceeding on his claim that state actor deprived him of protected right under United States Constitution or other laws, where jail officials made other jail space available to detainee for taking depositions. Cunningham v. Washington County, D.Or.1994, 158 F.R.D. 155. Federal Civil Procedure 1383

2477. Access to mails, pretrial detainees

County jail's review of pretrial detainee's mail, which review involved the return of one package sent to detainee by friend and two interceptions of outgoing mail, did not interfere with detainee's First Amendment rights, where package was incorrectly addressed, the two mail interceptions arose from not unreasonable concerns about public safety and resulted in mail being forwarded to detainee's attorney and then proceeding on its way, and detainee conducted an extensive correspondence while at jail. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280. Prisons 4(9)

Pretrial detainee's § 1983 claim against jail administrators and sheriff, alleging violations of right to access telephone and mails, was properly characterized as claim that jail disciplinary sanctions imposed upon him violated his constitutional right to pursue bail and prepare defense while a pretrial detainee, rather than as due process claim that detainee had not violated rules so as to justify imposition of disciplinary sanction; therefore, claim did not seek to undermine validity of underlying disciplinary determination, so that principles of *Heck* were inapposite. Simpson v. Gallant, D.Me.2002, 231 F.Supp.2d 341. Civil Rights 1088(4)

County jail, which had adopted no policy or procedure concerning marking of legal mail, violated pretrial detainee's civil rights by opening letters from American Civil Liberties Union, legal services program, and United States Senate committee outside of detainee's presence; letters were from attorneys or senator, and bore designations sufficient, absent specific requirements articulated by jail, to alert jail personnel to their privileged nature. Faulkner v. McLocklin, N.D.Ind.1989, 727 F.Supp. 486. Civil Rights 1088(4); Prisons 4(4); Prisons 4(12)

Pretrial prisoner should be entitled to receive, from visitors or through mail, any newspapers, books or magazines that may lawfully be delivered by postal service. Dillard v. Pitchess, C.D.Cal.1975, 399 F.Supp. 1225. Prisons 4(8)

2478. Conditions of confinement, pretrial detainees

Issue of whether conditions of arrestee's pretrial confinement during five-day period between his arrest and his probable cause hearing were objectively unreasonable was for the jury, in arrestee's §§ 1983 Fourth Amendment claim challenging the conditions of his confinement; arrestee presented evidence that he was shackled to the wall of the interrogation room for four days, that he was deprived of food, drink, and sleep, and that he was forced to yell for long period of time before being let out to use the bathroom, and defendant officers denied such treatment. Lopez v. City of Chicago, C.A.7 (Ill.) 2006, 464 F.3d 711. Civil Rights 1429

Prison's cell assignment policy of allowing inmates to choose their own cell assignments did not demonstrate deliberate indifference on the part of prison officials to a substantial risk of serious harm to pre-trial detainee, who suffered serious injuries when he was attacked by a another inmate, for purposes of detainee's § 1983 claim under the Due Process Clause; detainee shared his cell with inmate for two weeks without incident prior to the attack, and did not inform the guards he had fought with inmate, or that he feared harm. Washington v. LaPorte County Sheriff's Dept., C.A.7 (Ind.) 2002, 306 F.3d 515. Prisons 17(4); Sentencing And Punishment 1537

Under reasonable relationship test which applies to conditions of confinement of pretrial detainees, due process

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violation exists only if court finds that condition of confinement is not reasonably related to legitimate, nonpunitive governmental objective. Scott v. Moore, C.A.5 (Tex.) 1997, 114 F.3d 51. Constitutional Law 262

Detainee's complaint sufficiently pled both that he was denied minimal civilized measure of life's necessity, and that county jail correctional officer had a culpable state of mind, as required for Eighth Amendment cruel and unusual punishment claim; complaint alleged that detainee was purposefully subjected to dehumanizing conditions when he was denied access to facilities both to go to the restroom and to clean himself up during five hour period in which he sat in his feces, and that officer displayed hostility towards him during his denial, using insulting and offensive language and expressions. Mitchell v. Newryder, D.Me.2003, 245 F.Supp.2d 200. Sentencing And Punishment 1539; Sentencing And Punishment 1554

Claim for malicious prosecution based on a few months of pretrial restraints between arraignment and acquittal was not actionable under § 1983 since prohibiting defendant from traveling outside Pennsylvania and New Jersey and requiring him to check in on weekly basis was not seizure within meaning of Fourth Amendment. Gallo v. City of Philadelphia, E.D.Pa.1997, 975 F.Supp. 723, reversed 161 F.3d 217, as amended. Civil Rights 1088(5)

Conditions of pretrial detainee's confinement did not violate his federal civil rights, placing detainee in restricted housing unit rather than general prison population was warranted by concerns detainee presented regarding potential for witness intimidation and tampering, it was reasonable nonpunitive response to legitimate security concerns, and there was no evidence that officials exaggerated their response to their treatment of detainee. Young v. Larkin, M.D.Pa.1994, 871 F.Supp. 772, affirmed 47 F.3d 1163. Civil Rights 1088(4)

Pretrial detainee failed to prove that county sheriff was deliberately indifferent to alleged unsanitary and inhumane conditions at a county detention center, so as to establish an Eighth Amendment violation; the detainee did not allege that the sheriff was aware that detention officers refused to supply him with disinfectants or other sufficient supplies to clean feces from his cell floor and toilet. Galloway v. Whetsel, C.A.10 (Okla.) 2005, 124 Fed.Appx. 617, 2005 WL 459598, Unreported. Prisons 17(1); Sentencing And Punishment 1539

Federal district court properly rejected detainee's civil rights claim alleging poor conditions of confinement, where there was testimony that detainee was detained in 8-foot by 10-foot cell, but had 24-hour access to larger day room; detainee was allowed outside for doctor visits, haircuts, and court appearances; jail did not allow visitors inside the cell blocks because there were not enough officers; detainee's attorney had not seen roaches or mice or perceived unsanitary smells at jail; jail administrators sprayed regularly for bugs, and had broken toilets repaired within two to three days; and detainee was never denied access to cleaning supplies. Baxter v. Everett, C.A.8 (Ark.) 2004, 103 Fed.Appx. 49, 2004 WL 1354584, Unreported. Civil Rights 1088(4)

Pre-trial detainee failed to allege that the assistant district attorney participated directly in establishing or maintaining the conditions in which he was incarcerated as required to state a claim under § 1983 against the attorney. Reid v. Schuman, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 376, 2003 WL 22965003, Unreported. Civil Rights 1358

2479. Restraints, pretrial detainees

Allegations that city's handcuff policy required that all detainees wear handcuffs, regardless of the circumstances, supported § 1983 claim of arrestee who allegedly suffered pain and injury from being restrained with handcuffs that were too small for his wrists, pursuant to city policy, despite being arrested for non-violent misdemeanor offense. Kostrzewa v. City of Troy, C.A.6 (Mich.) 2001, 247 F.3d 633. Civil Rights 1395(6)

With respect to his first detainment, plaintiff, a detainee awaiting a probation revocation hearing, sufficiently stated a claim under the Eighth Amendment against county defendants and correctional officer; plaintiff alleged that county jail maintained policies and customs tolerating cruel and unusual punishment of convicted prisoners and

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pretrial detainees, that the correctional officer and jail, by and through its elected officers and appointed employees, strapped him to a wheelchair for several hours, forcing him to urinate on himself and sit in his urine for several hours, while he was in a manic state, that the jail and correctional officer knew of his mental condition because it was documented at its facility, and that the officer's and jail's acts were intentional with malice and reckless disregard for his federally protected rights. Glisson v. Sangamon County Sheriff's Dept., C.D.Ill.2006, 408 F.Supp.2d 609.

2480. Medical care, pretrial detainees--Generally

Police officers had time to consider fully the potential consequences of their conduct during six minutes that detainee was denied medical care after being taken into police custody, given that officers had time to do such things as greet each other, prepare for their superiors' arrival, pick up dropped items and straighten their uniforms, and comment on apparent severity of detainee's injuries, and therefore traditional deliberate indifference standard of culpability applied to due process claim for denial of adequate medical care, rather than heightened standard requiring malice and intent to harm to establish §§ 1983 liability. Estate of Owensby v. City of Cincinnati, C.A.6 (Ohio) 2005, 414 F.3d 596, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 2023. Municipal Corporations 747(3)

Officer could not be held liable under § 1983 for being indifferent to pretrial detainee's medical needs as result of taking detainee's photograph and fingerprints while detainee was unconscious, in hospital, following accident that occurred while detainee was evading arrest, given detainee's failure to present evidence contradicting officer's statements that he did not interfere with detainee's medical treatment while obtaining fingerprints and photograph. Johnson v. Meltzer, C.A.9 (Cal.) 1998, 134 F.3d 1393, certiorari denied 119 S.Ct. 102, 525 U.S. 840, 142 L.Ed.2d 82. Sentencing And Punishment 1546

"Deliberate indifference" to patient's medical needs, as must be shown to prevail on § 1983 civil rights claim alleging inadequate medical treatment, may be inferred based upon a medical professional's erroneous treatment decision only when decision is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such judgment. Estate of Cole by Pardue v. Fromm, C.A.7 (Ind.) 1996, 94 F.3d 254, certiorari denied 117 S.Ct. 945, 519 U.S. 1109, 136 L.Ed.2d 834. Civil Rights 1088(4)

Episodic act or omission of state jail official does not violate pretrial detainee's constitutional right to be secure in his basic human needs, such as medical care and safety, unless detainee demonstrates that official acted or failed to act with subjective deliberate indifference to detainee's needs. Hare v. City of Corinth, Miss., C.A.5 (Miss.) 1996, 74 F.3d 633, on remand 949 F.Supp. 456. Prisons 17(2); Prisons 17(4)

Pretrial detainee's pro se allegations that guard failed to supervise subordinate guards and allowed them to provide inadequate medical care failed to state § 1983 claim for violation of her due process rights, absent any allegation of deliberate indifference. Zarnes v. Rhodes, C.A.7 (Ill.) 1995, 64 F.3d 285. Civil Rights 1395(6)

Deliberate indifference standard would be applied to pretrial detainee's claim under due process clause of inadequate medical care. Davis v. Hall, C.A.8 (Mo.) 1993, 992 F.2d 151, rehearing denied. Constitutional Law 262

Alleged inadequate medical care of pretrial detainee who was suffering from alcoholism, cirrhosis, and possible delirium tremens was actionable under federal civil rights statute. Colle v. Brazos County, Tex., C.A.5 (Tex.) 1993, 981 F.2d 237. Civil Rights 1088(4)

County jail provided pretrial detainee with adequate medical care consistent with due process, where detainee suffered from no serious medical condition during his stay at jail and detainee was successfully treated with

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over-the-counter medication in the single instance in which he suffered from minor flu symptoms. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280. Prisons 17(2)

Jury finding that sheriff was deliberately indifferent in his individual capacity to pre-trial detainee's constitutional rights was supported by evidence that detainee was placed in pod with post-trial detainees, that he had medical condition which required that he be placed on medical floor, that he was denied adequate exercise and recreation, that sheriff knew that placing pre- and post-trial detainees together was unconstitutional and dangerous, that sheriff knew that medical services at jail were inadequate, and that sheriff failed to train officers in regard to separation of pre- and post-trial detainees. Pulliam v. Shelby County, Tenn., W.D.Tenn.1995, 902 F.Supp. 797. Civil Rights 1420

To prove § 1983 civil rights violation of state's duty to protect detainee's liberty interest, standard of deliberate indifference to serious medical needs applies to pretrial detainees, as well as prison inmates. Merideth v. Grogan, N.D.Ga.1992, 812 F.Supp. 1223, affirmed 985 F.2d 579. Civil Rights 1088(4)

In § 1983 claim by pretrial detainee that jailer failed to promptly and reasonably procure competent medical aid for detainee, relevant standard under Eighth Amendment is "deliberate indifference" to medical needs. Davis v. Village of Calumet Park, N.D.Ill.1990, 737 F.Supp. 1039, reversed on other grounds 936 F.2d 971, rehearing denied 946 F.2d 538. Civil Rights 1376(7)

Medical policy of Pennsylvania State correctional institution, under which unsentenced inmates would receive emergency medical care only, was a reasonable policy attributable to the uncertainty as to how long pretrial detainees would remain incarcerated; therefore, it was appropriate that district court refrain from interfering with the policy. Holly v. Rapone, E.D.Pa.1979, 476 F.Supp. 226. Prisons 17(2)

Federal district court ruling on detainee's civil rights claim did not clearly err in finding that detainee failed to establish that unsanitary jail conditions caused his lung infection, where physician testified that he treated detainee for a similar lung condition before he was detained, and that he could not attribute cause of the infection while in jail to insalubrious conditions at the jail. Baxter v. Everett, C.A.8 (Ark.) 2004, 103 Fed.Appx. 49, 2004 WL 1354584, Unreported. Civil Rights 1088(4)

2481. ---- Serious medical need, medical care, pretrial detainees

Pre-trial detainee did not have objectively serious medical need on intake, that required immediate medical attention, from perspective of jailer, as layperson, for purpose of qualified immunity analysis of deliberate indifference civil rights claim of detainee's estate under Fourteenth Amendment, even if jailer had been aware that detainee had taken methamphetamine before arrest, since detainee followed directions, answered questions posed, and remained quiet and seated on bench inside jail. Grayson v. Ross, C.A.8 (Ark.) 2006, 454 F.3d 802. Constitutional Law 262

Jailer was not liable in § 1983 action brought by pretrial detainee who claimed that jailer was deliberately indifferent to serious medical needs of pretrial detainee where pretrial detainee was not seriously injured. Gray v. Spillman, C.A.4 (N.C.) 1991, 925 F.2d 90. Civil Rights 1088(4)

Pretrial detainee's multiple bruises to forehead, orbits of eyes, nasal area, ribs, flank, and shoulder, abrasion on upper back, corneal abrasion, deviated septum, and transient nerve damage allegedly as result of beating by police officer were not "serious medical needs," and, thus, ten-hour delay in providing treatment did not violate due process clause; detainee was treated by arm sling, eye patch, and disinfectant, and physician saw no need for immediate treatment of nerve damage and deviated septum almost two months after incident. Gaudreault v. Municipality of Salem, Mass., C.A.1 (Mass.) 1990, 923 F.2d 203, certiorari denied 111 S.Ct. 2266, 500 U.S. 956, 114 L.Ed.2d 718. Constitutional Law 262; Prisons 17(2)

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A "serious medical need," for purposes of deliberate indifference claim brought by prisoner or pretrial detainee under Eighth or Fourteenth Amendment, is one that has been diagnosed by a physician as requiring treatment or one that is so obvious even a lay person would easily recognize the necessity for a doctor's attention. Patrick v. Lewis, D.Minn.2005, 397 F.Supp.2d 1134. Sentencing And Punishment 1546

Pretrial detainee did not have to comply with Maine Health Security Act by filing notice of claim and submitting his claim to a prelitigation medical screening panel prior to filing §§ 1983 complaint against jail's medical services provider alleging cruel and unusual punishment in violation of the Eighth Amendment because of deprivation of care and treatment for his serious medical condition, where detainee did not seek damages for any state cause of action. Faulkingham v. Penobscot County Jail, D.Me.2004, 350 F.Supp.2d 285. Health 806

Pretrial detainee's allegations of serious medical need were sufficient to support his § 1983 claim against county corrections officers when detainee alleged that prior gunshot injury to his leg was so severe that he required reconstructive surgery and was unable to walk without assistance of cane or crutches and that officers denied him use of cane or crutches and forced him to walk without assistance, resulting in unnecessary pain and suffering. Castellano v. Chicago P.D., N.D.Ill.2001, 129 F.Supp.2d 1184. Civil Rights 1395(6)

Detention officers were not deliberately indifferent to pretrial detainee's serious medical needs by failing to take measures to prevent detainee's suicide, despite deposition testimony that detention officers failed to respond to yelling and banging on cell doors; even assuming that officers heard commotion, there was no evidence that detainee or second incarcerated individual ever indicated that detainee was in serious distress or was contemplating suicide, and expert's general observations about teen suicide did not establish actual or constructive knowledge by detention officers of detainee's specific risk of suicide. Clinton v. County of York, D.S.C.1995, 893 F.Supp. 581. Civil Rights 1420

Expert testimony that physicians deviated significantly from appropriate standard of care for serious asthma patients constituted at most medical malpractice claim which could not form basis of actionable § 1983 claim absent facts supporting charge of deliberate indifference to pretrial detainee's serious medical needs; evidence showed that physicians attended to detainee promptly after he complained of medical problems, and that during the course of their examinations they exercised medical judgment and prescribed treatment they deemed necessary. Bowman v. Campbell, N.D.N.Y.1994, 850 F.Supp. 144. Civil Rights 1088(4)

2482. ---- Refusal of treatment, medical care, pretrial detainees

Fact issues precluded summary judgment in favor of official on pretrial detainee's claim that denial of medical treatment was deliberate indifference and violated due process where evidence viewed in light most favorable to detainee was that following arrest, detainee was pale, dizzy, perspiring profusely, trembling uncontrollably, hardly able to talk, and repeatedly lost consciousness, that officials were informed that detainee was diabetic and was in insulin shock and needed to go to hospital immediately, and that official instead took detainee to police barracks and denied medical treatment throughout period of detention. Weyant v. Okst, C.A.2 (N.Y.) 1996, 101 F.3d 845. Federal Civil Procedure 2491.5

Paramedics could not be held liable for violating civil rights of pretrial detainee who died several hours after his arrest for DWI following traffic accident, where there was no evidence that they exhibited deliberate indifference to his serious medical needs; prior to refusing further treatment, detainee allowed paramedics to conduct preliminary examination which revealed that his vital signs were normal and that his skin color and skin moisture were normal and that his pupils were responsive and equal; paramedics were not required to take detainee to hospital to check for internal injuries simply because he was intoxicated. Salazar v. City of Chicago, C.A.7 (Ill.) 1991, 940 F.2d 233. Civil Rights 1088(4)

Pretrial detainee failed to state § 1983 claim against county jail officials for violation of his Eighth Amendment

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rights, arising from failure to provide him with dentures; detainee was federal prisoner, United States Marshals Service (USMS) refused to provide dentures, USMS had authority to approve and pay for his treatment, all detainee's requests for treatment were addressed to USMS, and detainee was transferred out of county jail prior to date established by dentist as appropriate for fitting dentures. Petrazzoulo v. U.S. Marshals Service, W.D.N.Y.1998, 999 F.Supp. 401. Civil Rights 1088(4)

Sheriff, deputies, and police officers did not violate pretrial detainee's constitutional rights by intentionally denying or interfering with his access to medication or medical treatment for congestive heart failure during and following his arrest, as would support recovery in § 1983 action. Blakely v. Bates, C.A.8 (Ark.) 2000, 230 F.3d 1362, Unreported. Civil Rights 1088(4)

2483. ---- Detoxification, medical care, pretrial detainees

Failure to hold all intoxicated pretrial detainees in detoxification center or to subject them to around-the-clock personal surveillance does not constitute deliberate indifference to serious need of such detainees. Colburn v. Upper Darby Tp., C.A.3 (Pa.) 1991, 946 F.2d 1017. Civil Rights 1088(4)

2484. ---- Drugs or medicine, medical care, pretrial detainees

For supervisor to be liable under civil rights statute for jail guards' alleged deliberate indifference to pretrial detainee's serious medical needs, detainee had to demonstrate that guards' alleged constitutionally deficient medical care occurred at supervisor's direction or with his knowledge and consent. Zentmyer v. Kendall County, Ill., C.A.7 (Ill.) 2000, 220 F.3d 805. Civil Rights 1358

Given pretrial detainee's allegations that he was "tricked" into taking amitriptyline by nurse, who informed him that it was a pain medication, and that he would not have taken the drug had he known that it had "antipsychotic" effects, trial court was required to determine whether amitriptyline was an antipsychotic drug, if so, whether procedural safeguards were necessary and were taken before its administration to pretrial detainee, for purposes of detainee's § 1983 claim alleging that he was given amitriptyline in violation of his constitutionally protected liberty interest. Frost v. Agnos, C.A.9 (Ariz.) 1998, 152 F.3d 1124. Constitutional Law 262; Prisons 17(2)

Any negligence by county officials in misplacing pretrial detainee's antidepressant medicine and delaying a month in getting prescription refilled would not support § 1983 claim; while detainee suggested that sudden withdrawal of medication caused his agitated behavior and resulted in another felony conviction for inciting riot, physician testified that he would not expect patient with detainee's history and symptoms to experience any undue agitation when medication was suddenly stopped. Ervin v. Busby, C.A.8 (Ark.) 1993, 992 F.2d 147, certiorari denied 114 S.Ct. 220, 510 U.S. 879, 126 L.Ed.2d 176. Civil Rights 1088(4)

Jury could reasonably conclude that deliberate indifference to medical needs of pre-trial detainee was direct result of policies and customs at jail implemented by sheriff, where plaintiff was never given medication even though he informed officials that he had seizure disorder, plaintiff lay on floor for considerable time after being beaten before receiving medical treatment, and, following return to jail, plaintiff was denied medication prescribed to him at hospital. Pulliam v. Shelby County, Tenn., W.D.Tenn.1995, 902 F.Supp. 797. Civil Rights 1088(4)

2485. ---- Drug treatment, medical care, pretrial detainees

Where detainee had already been receiving methadone as qualifying participant in approved program, and Pennsylvania had established procedures for termination of methadone recipient but they were not followed by county prison, which terminated course of treatment without demonstrating legitimate interest in so doing, and where also decision to conclude the treatment had been made by penal authorities and not by authorized methadone

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facility, detainee could properly assert deprivation of liberty interest, and actions of prison authorities were to be judged in light of legitimate state interests which would justify such deprivation but were not established by the evidence. Norris v. Frame, C.A.3 (Pa.) 1978, 585 F.2d 1183. Prisons 4(4)

Under all circumstances, including fact that Pennsylvania pretrial detainee received some medical treatment for his heroin withdrawal symptoms and for injuries suffered in a fall on ice-covered steps, the fact that the prisoner was treated on two occasions by a paramedic and that his requests for methadone and for x-rays were denied did not establish a deprivation of constitutionally guaranteed liberties without due process of law. Holly v. Rapone, E.D.Pa.1979, 476 F.Supp. 226. Constitutional Law 262

Policy of county jail whereby pretrial detainees who had been receiving methadone as treatment for drug addiction prior to their incarceration were denied methadone during pretrial confinement denied due process. Cudnik v. Kreiger, N.D.Ohio 1974, 392 F.Supp. 305. Constitutional Law 262

2486. ---- Experimental medication, medical care, pretrial detainees

Patient-arrestee's pro se § 1983 claim against doctors who treated him with experimental drug while he was unconscious, following accident in which patient was injured while trying to evade arrest, was properly construed to state claim for violation of patient's constitutionally protected liberty interest in bodily integrity; patient claimed that doctors acted for research purposes unrelated to treating him, that his due process rights had been violated, and that doctors used him as "human rat" to test experimental drug. Johnson v. Meltzer, C.A.9 (Cal.) 1998, 134 F.3d 1393, certiorari denied 119 S.Ct. 102, 525 U.S. 840, 142 L.Ed.2d 82. Civil Rights 1395(6)

2487. ---- Periodic examinations, medical care, pretrial detainees

That pretrial detainees were not routinely given complete physical examination does not establish constitutional violation. Lock v. Jenkins, D.C.Ind.1978, 464 F.Supp. 541, affirmed in part, reversed in part on other grounds 641 F.2d 488. Prisons 17(2)

2488. ---- Screening forms, medical care, pretrial detainees

Failure on part of county jailer to fill out medical screening form when mentally ill detainee was admitted to jail pending involuntary commitment proceeding was not sufficient basis for concluding that jailer was "deliberately indifferent" to detainee's medical needs, or for allowing recovery under civil rights provision, where jailer placed detainee in separate cell for her protection, conducted visual inspections every half hour, and attempted to medicate detainee according to prescription. Boston v. Lafayette County, Miss., N.D.Miss.1990, 744 F.Supp. 746, affirmed 933 F.2d 1003. Civil Rights 1088(4)

2489. ---- Suicide, medical care, pretrial detainees

Nighttime jailer was not deliberately indifferent to risk of suicide by pretrial detainee that had expressly threatened suicide if confined in county jail, and did not violate detainee's substantive due process rights simply by waiting, for one hour and 46 minutes after conducting his last cell check, to again inspect detainee's cell and discover him hanging from top bunk, where jailer was aware that detainee's belt, shoelaces and contents of his pockets had been confiscated and that cell had been stripped of implements that might assist suicide, where jailer regularly observed detainee through closed circuit monitor that reached majority of cell, and where detainee was able to commit suicide only by tearing elastic band from his underwear and tying it around his neck; jailer's actions did not violate detainee's due process rights and did not subject him to liability under § 1983. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Constitutional Law 262; Prisons 17(2)

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Senior deputy sheriff who knew of arrestee's suicide risk and that she was in possession of loose bedding, even though prior detainee had hanged himself in same cell under similar circumstances, could have been found to have acted with deliberate indifference to arrestee's known suicidal tendencies, and thus was not entitled to qualified immunity from liability, after arrestee killed herself, for violation of arrestee's due process rights. Jacobs v. West Feliciana Sheriff's Dept., C.A.5 (La.) 2000, 228 F.3d 388. Civil Rights 1376(7)

Pretrial detainee who committed suicide while being treated at psychiatric ward had substantive right under due process clause to be free from bodily restraint, but that right was not absolute; it ended at the point at which his freedom from restraint posed substantial risk that he would seriously injure or kill himself, and at that point detainee had a right to appropriate treatment, including bodily restraint. Estate of Cole by Pardue v. Fromm, C.A.7 (Ind.) 1996, 94 F.3d 254, certiorari denied 117 S.Ct. 945, 519 U.S. 1109, 136 L.Ed.2d 834. Constitutional Law 262; Prisons 17(2)

Evidence would not support finding that county had policy of inadequately training jail staff regarding care of pretrial detainees known to be suicidal, so as to support imposition of § 1983 liability; there was no evidence as to level of training staff possessed, additional training they lacked, why constitutional violation would obviously result from absence of additional training, or that any incompetence of staff was result of inadequate training. Rhyne v. Henderson County, C.A.5 (Tex.) 1992, 973 F.2d 386, rehearing denied. Civil Rights 1420

Sheriff and deputy exhibited deliberate indifference to pretrial detainee's serious medical needs in violation of Eighth Amendment in failing to cut detainee down when they found him hanging in his cell and instead waiting for medical personnel to arrive and photographs to be taken, even though body was warm and detainee's feet were touching floor. Heflin v. Stewart County, Tenn., C.A.6 (Tenn.) 1992, 958 F.2d 709, rehearing denied, on reconsideration 968 F.2d 1, certiorari denied 113 S.Ct. 598, 506 U.S. 998, 121 L.Ed.2d 535. Sentencing And Punishment 1546

When liability for pretrial detainee's serious harm or death, including suicide, is at issue in § 1983 case, plaintiff must demonstrate "deliberate indifference" by showing: unusually serious risk of harm (self-inflicted harm, in suicide case), defendant's actual knowledge of (or, at least, willful blindness to) that elevated risk, and defendant's failure to take obvious steps to address that known, serious risk; risk, knowledge, and failure to do obvious, taken together, must show that defendant is "deliberately indifferent" to harm that follows. Manarite By and Through Manarite v. City of Springfield, C.A.1 (Mass.) 1992, 957 F.2d 953, certiorari denied 113 S.Ct. 113, 506 U.S. 837, 121 L.Ed.2d 70. Civil Rights 1088(4)

Proper inquiry concerning liability of city and its employees in their official and individual capacities under § 1983 for pretrial detainee's suicide is whether detainee showed likelihood that he would attempt to take his own life in such a manner that failure to take accurate precautions amounted to deliberate indifference to detainee's serious medical needs. Barber v. City of Salem, Ohio, C.A.6 (Ohio) 1992, 953 F.2d 232. Civil Rights 1088(4)

The "reckless or deliberate indifference" standard for judging the defendant's conduct in a pretrial detainee suicide case implies that there must be strong likelihood, rather than mere possibility, that self-inflicted harm will occur, and even where strong likelihood of suicide exists, it must be shown that custodian officials knew or should have known of that strong likelihood; there can be no reckless or deliberate indifference to that risk unless there is something more culpable on part of officials than negligent failure to recognize high degree of risk. Colburn v. Upper Darby Tp., C.A.3 (Pa.) 1991, 946 F.2d 1017. Civil Rights 1088(4)

Civil rights of detainee who committed suicide were not violated by city's failure to train police officers in psychological screening procedures and to utilize sample medical psychological screening questionnaire found in detainee treatment manual; detainee did not have absolute right to psychological screening. Burns v. City of Galveston, Tex., C.A.5 (Tex.) 1990, 905 F.2d 100. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Police officers' failure to afford medical screening or attention to detainee, who committed suicide while detained at city jail on charges of public intoxication and hazardous driving, could not be construed as "deliberate indifference" to detainee's medical needs or intent to punish in violation of due process clause of Fourteenth Amendment, and thus officers had qualified immunity in federal civil rights action brought by detainee's daughter, where at no time during his one hour and 20-minute incarceration did detainee express any concern about his well being or behave in way that would have indicated to officers that he posed risk of suicide or that they should take any additional action. Belcher v. Oliver, C.A.4 (W.Va.) 1990, 898 F.2d 32. Civil Rights 1376(6); Constitutional Law 262

Allegation that township officials should have known pretrial detainee was suicide risk, in that police were familiar with detainee and her suicidal tendencies, was sufficient to state § 1983 claim for denial of due process against custodial officer whose search failed to disclose gun which detainee subsequently used to kill herself. Colburn v. Upper Darby Tp., C.A.3 (Pa.) 1988, 838 F.2d 663, certiorari denied 109 S.Ct. 1338, 489 U.S. 1065, 103 L.Ed.2d 808, on remand. Civil Rights 1395(6)

Allegations by pre-trial detainee's estate that, prior to detainee's hanging himself in his cell, detainee's family members and friends called and went to detention center in person to inform non-profit corporation, which was under contract to provide mental health services to prisoners at detention center, that detainee was suicidal and that corporation, after receiving knowledge of detainee's suicidal tendency, failed to provide adequate mental health care to detainee were sufficient to satisfy the deliberate indifference test in estate's §§ 1983 prisoner suicide case; knowledge that detainee was actually threatening to commit suicide was certainly enough to show knowledge of substantial risk of suicide, rather than just mere possibility. Smith v. Brevard County, M.D.Fla.2006, 461 F.Supp.2d 1243.

County was not liable for due process violation under §§ 1983 for deliberate indifference to serious medical needs in connection with death of pretrial detainee who hanged himself, absent evidence whether officer's delay in turning detainee's light on after detainee had turned it off, during which time inmate hanged himself, was standard practice or aberration. Taylor v. Wausau Underwriters Ins. Co., E.D.Wis.2006, 423 F.Supp.2d 882. Prisons 17(2)

There was no constitutional deprivation with respect to circumstances that led up to pretrial detainee's suicide, and so question of sheriff's qualified immunity did not need to be reached; county jail had procedures in place to screen detainees for risks of self-harm, those procedures were used, detainee exhibited no signs of suicidal intentions during three weeks of his detention, and no specific staff training deficiencies were shown to have caused the suicide. Keehner v. Dunn, D.Kan.2005, 409 F.Supp.2d 1266. Prisons 17(1)

City was not liable under §§ 1983 for deliberate indifference to serious medical needs of intoxicated pre-trial detainee who committed suicide in holding cell, based on its policies for monitoring pre-trial detainees for possible suicide attempts, given that city had such policies in place, notwithstanding that individual officers may not have followed such policies or that city did not strictly enforce them. Cruise v. Marino, M.D.Pa.2005, 404 F.Supp.2d 656. Civil Rights 1351(4)

Material issues of fact, as to whether jail detainee was exhibiting strong signs of suicidal tendencies, whether officials in contact with detainee were or should have been aware of tendencies, and whether officials took steps to address risk, precluded summary judgment that officials were not liable in their individual capacities for violating due process rights of detainee by showing deliberate indifference to his situation. Gaston v. Ploeger, D.Kan.2005, 399 F.Supp.2d 1211. Federal Civil Procedure 2491.5

County jail officials were not deliberately indifferent in failing to recognize and respond to the risk that a pretrial detainee was suicidal, so as to violate the detainee's due process rights, even assuming there was a 72-minute gap between the last time the detainee was checked and when he was found; officials did not know, based on a

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physician's discharge reports describing the detainee's depression only as "mild" or "situational," that the detainee presented a substantial risk of suicide, and there was nothing in the reports to suggest that anti-anxiety medication would have helped prevent the detainee's depression and attempted suicide. Drake ex rel. Cotton v. Koss, D.Minn.2005, 393 F.Supp.2d 756, affirmed 439 F.3d 441, rehearing granted and vacated, on rehearing 445 F.3d 1038, rehearing and rehearing en banc denied. Sentencing And Punishment 1528

Jailers were not deliberately indifferent to substantial risk of harm to pretrial detainee, and thus were not subject to liability under § 1983 for detainee's death, even if detainee had told another detainee that she wanted to see doctor, and detainee's death was not suicide, where there was no evidence that jailers knew that she was suffering from any psychological difficulty that would cause her to take her own life or that she would be harmed by someone else, detainee did not request medical aid from jail nurse who saw her initially, detainee subsequently drank coffee, conversed with others, requested cigarette, and ate part of her lunch, and there was no evidence that jailers murdered her themselves. Stiltner v. Crouse, W.D.Va.2004, 327 F.Supp.2d 667. Civil Rights 1088(4)

Psychiatrist and nurses on psychiatric unit where pretrial detainee asphyxiated himself with plastic bag from garbage can were not deliberately indifferent to risk that detainee would commit suicide with bag, and could thus not be found liable under § 1983; though nursing defendants knew of existence of plastic bags and psychiatrist arguably knew of existence, jury could not reasonably conclude that any defendants actually recognized risk, given that no patient previously tried to commit suicide with plastic bag, that no staff member ever recognized risk posed by bags, that no visitor, inspector, or any one else recognized risk before detainee committed suicide, and that no defendant was advised of risk by anyone else. Estate of Cole by Pardue v. Fromm, S.D.Ind.1995, 941 F.Supp. 776, affirmed 94 F.3d 254, certiorari denied 117 S.Ct. 945, 519 U.S. 1109, 136 L.Ed.2d 834. Civil Rights 1088(4)

Personal representatives of estate of pretrial detainee who committed suicide in jail failed to demonstrate that officer acted with deliberate indifference to detainee's suicidal tendencies, as would preclude officer from enjoying qualified immunity from suit; although officer was told that detainee has exhibited severe mood swings on his way to jail, detainee did not make any threats, cause any disturbances, stagger, slur his speech, or do anything bizarre which would have lead officer to believe he was suicidal. Estate of Frank v. City of Beaver Dam, E.D.Wis.1996, 921 F.Supp. 590. Civil Rights 1376(7)

Municipality was not liable for suicide of arrestee based on its alleged failure to train police officers regarding suicide awareness, absent evidence that municipality had large suicide problem which it was ignoring or that statutes or regulations required officers either to perform cardiopulmonary resuscitation (CPR) upon arrestee after he was discovered hanging in cell or to take suicide awareness classes. Pyka v. Village of Orland Park, N.D.Ill.1995, 906 F.Supp. 1196. Civil Rights 1352(4)

Actions of pretrial detainee, who was intoxicated and was asking why he could not go home, did not indicate possibility that he was going to harm himself for purposes of showing strong likelihood, rather than mere possibility, that self-inflicted harm would occur, and, thus, detainee's "particular vulnerability" to suicide was not shown. Litz v. City of Allentown, E.D.Pa.1995, 896 F.Supp. 1401. Civil Rights 1088(4)

Estate of pretrial detainee failed to state claim against city, under § 1983, for detainee's suicide after city officials failed to take his belt from him while he was in the holding cell; complaint was silent as to whether responsible policymakers had contemporaneous knowledge of events leading up to detainee's suicide, as to whether detainee gave any prior indication at all that he needed special care, and as to whether policymakers had knowledge or reason to know of prior suicides in city's jails or of alternatives for preventing them. Plasko v. City of Pottsville, E.D.Pa.1994, 852 F.Supp. 1258. Civil Rights 1395(6)

County's alleged failure to train jail personnel to recognize and respond to suicidal tendencies of pretrial detainees did not support § 1983 civil rights claim by detainee's estate where jail did not have history of numerous suicides and suicide attempts, county employed suicide prevention program for screening detainees, and jail correction

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officials did receive training regarding detention of suicidal detainees and appropriate responses. Herman v. Clearfield County, Pa., W.D.Pa.1993, 836 F.Supp. 1178, affirmed 30 F.3d 1486. Civil Rights 1352(4)

Assuming that detainee had known suicidal tendencies, county was not liable under § 1983 for detainee's suicide on theory of inadequate training, where sheriff's office did have a policy with regard to custodial confinement of detainees who had exhibited possible inclination to self-injury. Hood v. Itawamba County, Miss., N.D.Miss.1993, 819 F.Supp. 556. Civil Rights 1352(4)

Evidence failed to establish that jail detainee gave indication of strong likelihood that he would take his own life, and, thus, city could not be held liable under § 1983 for the detainee's suicide, notwithstanding fact that detainee was intoxicated and uncooperative; mere fact that detainee was intoxicated and uncooperative did not require that special precautions be taken in connection with the detention. Perkowski v. City of Detroit, E.D.Mich.1992, 794 F.Supp. 223. Civil Rights 1420

It was clearly established at time of detainee's March 30, 1988 arrest that the "deliberate indifference" standard applied to the handling of suicidal pretrial detainees, and that failure to take special precautions toward such detainees could violate that standard for purpose of civil rights action against prison officials after detainee committed suicide. Bragado v. City of Zion/Police Dept., N.D.Ill.1992, 788 F.Supp. 366. Civil Rights 1376(7)

Allegation that classification specialist, who interviewed pretrial detainee and perceived no signs that pretrial detainee would injure himself, contravened county policy when he failed to contact doctor or nurse after learning of detainee's dependency on alcohol would only have supported negligence claim and did not amount to deliberate indifference that would have required remedy under § 1983. Trask v. County of Strafford, D.N.H.1991, 772 F.Supp. 42. Civil Rights 1088(4)

Jailers did not deprive prisoner of clearly established right by failing to prevent his suicide while detained in allegedly inadequate detoxification room, and, thus, jailers' supervisors could not be held liable by prisoner's widow for improper training. Zwalesky v. Manistee County, W.D.Mich.1990, 749 F.Supp. 815. Civil Rights 1358

Alleged conduct of county sheriff and officers on duty at county jail on night of pretrial detainee's suicide attempt in allowing detainee to keep laces of boots, which detainee used in attempt to hang himself, was at most negligent and did not rise to level of constitutional violation, even though jail policy required removal of laces and detainee was arrested for driving while intoxicated; guard at jail asked detainee to remove boot laces, laces were difficult to remove and guard said they would have to be cut, detainee objected on grounds of cost, and another guard said that they should admit detainee with boot laces because he had been there before and would not "try anything." Hamlin v. Kennebec County Sheriff's Dept., D.Me.1990, 728 F.Supp. 804. Civil Rights 1088(4)

Finding that city was deliberately indifferent to serious medical needs of intoxicated detainee, and thus liable under § 1983 when detainee committed suicide, was sufficiently supported by evidence that detainee was at high risk to commit suicide, that his suicide was foreseeable and preventable, that attending officer had no training in suicide prevention, and that police department had been informed of alternative arrangements it could have made which would have reduced risk of detainee's suicide. Simmons v. City of Philadelphia, E.D.Pa.1990, 728 F.Supp. 352, affirmed 947 F.2d 1042, rehearing denied, certiorari denied 112 S.Ct. 1671, 503 U.S. 985, 118 L.Ed.2d 391. Civil Rights 1420

Jail officials' providing pretrial detainee with safety razor did not provide basis for a civil rights claim on the theory of deliberate indifference to possibility of suicide, where superficial injuries to detainee's wrists inflicted with the safety razor were not the cause of his death, which resulted instead from asphyxia by hanging. Boyd v. Harper, E.D.Va.1988, 702 F.Supp. 578. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Allegation that police officers failed to provide proper medical attention to pretrial detainee while he was booked and after he hanged himself in cell failed to state a § 1983 claim for violation of detainee's due process rights, since officers' alleged failure to provide medical aid did not rise to level of "deliberate indifference" or "gross negligence," but, at worst, constituted mere negligence. Danese v. Asman, E.D.Mich.1987, 670 F.Supp. 709. Civil Rights 1395(7)

Availability of adequate postdeprivation state remedy did not preclude finding that claim for relief was stated by count in civil rights complaint seeking to hold police officers liable under § 1983 for death of pretrial detainee who, after being beaten by the officers and placed in cell without being treated for his injuries and without being adequately supervised despite officers' knowledge of his suicidal tendencies, hanged himself since facts alleged in the count related to substantive due process right and arguably could shock conscience of the court. Madden v. City of Meriden, D.C.Conn.1985, 602 F.Supp. 1160. Civil Rights 1395(7)

Plaintiff, a pretrial detainee who was involuntarily committed to mental health facility after he cut his wrist in an unsuccessful suicide attempt, had no justifiable expectation of remaining in an involuntary commitment status at the mental health facility, and he was therefore not deprived of due process of law by reason of the fact that, on two occasions, he was transferred back to the county farm prison without first being provided a hearing. Santori v. Fong, E.D.Pa.1980, 484 F.Supp. 1029. Constitutional Law 262

Allegations that employees of county prison knew, or reasonably should have known, that they were to keep pretrial detainee under observation as a potential suicide risk, but failed to do so, and that employees failed to remove from detainee items which he could use in committing suicide were sufficient to state §§ 1983 claims against employees; complaint contained numerous facts which, when viewed in their totality and supplemented by information obtained in discovery, might support an inference of liability on the part of some or all of the prison employees. Kulp v. Veruette, C.A.3 (Pa.) 2006, 167 Fed.Appx. 911, 2006 WL 314461, Unreported. Civil Rights 1395(7)

2490. ---- Deliberate indifference, medical care, pretrial detainees

Evidence permitted finding that police officers knew of and disregarded substantial risk of harm to detainee's health and safety and thus denied detainee adequate medical care in violation of his due process rights under deliberate indifference standard, given that each officer viewed detainee in significant physical distress, but made no attempt to summon or provide medical care until several minutes later, when sergeant checked on detainee and discovered that he was not breathing. Estate of Owensby v. City of Cincinnati, C.A.6 (Ohio) 2005, 414 F.3d 596, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 2023. Municipal Corporations 747(3)

Jail staff did not display a deliberate indifference to a substantial risk of suicide by putting intoxicated arrestee in a regular cell and allowing him to keep his civilian clothes, rather than placing arrestee on suicide watch or sending him to hospital until he sobered up, in §§ 1983 action related to arrestee's suicide; arrestee had been arrested numerous times and never attempted to injure himself and arrestee did not have mental-health history implying any disposition toward suicide. Bradich ex rel. Estate of Bradich v. City of Chicago, C.A.7 (Ill.) 2005, 413 F.3d 688. Civil Rights 1088(4)

Decision of a driver for a transportation service to transport a pretrial detainee to a police station, as directed by police officers, rather than taking him to a hospital as allegedly requested by the detainee, did not amount to deliberate indifference to the detainee's objectively serious medical needs, so as to violate due process; primary authority over the detainee rested with police officers, the detainee's condition had not deteriorated since the officers had last determined that he should be taken to the police station, and the driver lacked medical training or any realistic control over the detainee. Jackson v. Illinois Medi-Car, Inc., C.A.7 (Ill.) 2002, 300 F.3d 760. Carriers 281; Constitutional Law 262

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42 U.S.C.A. § 1983

Estate of pre-trial detainee, who hung himself in his cell at detention center, stated cause of action under §§ 1983 against county sheriff, in his official capacity, for violating detainee's Fourteenth Amendment rights; detainee's Fourteenth Amendment rights were violated because, while he was pre-trial detainee at detention center, employees working there ignored his substantial risk of suicide, despite their subjective knowledge of the risk, and violation of detainee's constitutional rights was result of sheriff's failure to provide adequate staffing and safe housing for suicidal inmates, and in light of sheriff's knowledge that inmate suicide was a problem, his failure to address any policies that were causing those suicides constituted deliberate indifference to constitutional rights of inmates. Smith v. Brevard County, M.D.Fla.2006, 461 F.Supp.2d 1243. Prisons 17(2)

County jail and jail personnel did not act with deliberate indifference to pre-trial detainee's serious medical needs, and thus, jail and jail personnel were not liable under §§ 1983 to detainee for violation of his right to due process; even if detainee was involved in several altercations with other inmates, he never filed grievances or complaints about those incidents, detainee claimed only some bruising and a bloody nose as result of altercations, jail nurse gave detainee pain medication and cleaned his nose after he sustained bloody nose, and although detainee requested medical attention for a sore finger after the altercations, he did not complain at that time about injuries from fights. Cirilla v. Kankakee County Jail, C.D.Ill.2006, 438 F.Supp.2d 937. Prisons 17(2)

Police officers were not deliberately indifferent to serious medical needs of pretrial detainee in violation of Fourteenth Amendment in failing to seek further medical attention for him at scene of motorcycle accident or during booking for driving while intoxicated (DWI), notwithstanding that detainee later died sometime that night in his cell of complications of blunt force chest injuries, where arrestee refused further medical treatment after being evaluated by paramedics at scene, who found no major injuries requiring attention at hospital. Patrick v. Lewis, D.Minn.2005, 397 F.Supp.2d 1134. Municipal Corporations 747(3)

Pretrial detainee, who simply alleged that jail officials did not act in accordance with municipal procedures, failed to show that the defendant municipalities' training practices were so deliberately indifferent to the rights of detainees as to warrant §§ 1983 liability under *Monell* for failure to provide adequate medical care to detainee. Hollenbaugh v. Maurer, N.D.Ohio 2005, 397 F.Supp.2d 894. Civil Rights 1352(4)

2491. Educational or vocational training, pretrial detainees

Unconvicted detainees housed in administrative segregation unit at detention center were entitled to participate in facility's educational programs at appropriate times and places, although security considerations justified refusal to allow participation in such programs at same time and place as other inmates. Giampetruzzi v. Malcolm, S.D.N.Y.1975, 406 F.Supp. 836. Prisons 4(5)

Denial of pretrial detainees, while confined in state prison, of access to work and training programs provided to other prisoners could not, on record before court be found to be unconstitutional. Tyrrell v. Taylor, E.D.Pa.1975, 394 F.Supp. 9, modified on other grounds 535 F.2d 823. Prisons 12

Prisoners' claim of right to academic programs which had been available to them while in pretrial detention does not rise to level of fundamental constitutional right deserving of federal judicial interference with internal administration of state prisons. Jordon v. Keve, D.C.Del.1974, 387 F.Supp. 765. Prisons 4(5)

2492. Hygienic conditions, pretrial detainees

Allegation by pretrial detainee that he was subjected to overflowed toilet in his isolation cell and had to endure stench of his own feces and urine for four days amounted to de minimis imposition on detainee's rights and was insufficient to state civil rights claim based on conditions of confinement; detainee did not allege that he was exposed to disease or suffered any other consequences of exposure, and detainee did not dispute assertion by jail officials that he was offered opportunity to clean up mess himself but declined to do so. Smith v. Copeland, C.A.8

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(Mo.) 1996, 87 F.3d 265. Civil Rights 1088(4)

Filthy conditions of cell did not constitute unconstitutionally cruel and unusual punishment respecting inmate who had been convicted and was awaiting sentencing, and did not violate due process respecting pretrial detainee, given brevity of their confinement under such conditions; the intolerable conditions lasted not more than 24 hours before adequate cleaning supplies were made available which could make conditions tolerable. Whitnack v. Douglas County, C.A.8 (Neb.) 1994, 16 F.3d 954. Constitutional Law 262; Sentencing And Punishment 1539

With respect to his second detainment, pretrial detainee sufficiently stated a claim against county defendants and correctional officer under Due Process Clause of the Fourteenth Amendment; detainee alleged that county jail maintained policies and customs tolerating cruel and unusual punishment of convicted prisoners and pretrial detainees, that the correctional officer and jail, by and through its elected officers and appointed employees, strapped him to a wheelchair for several hours, forcing him to urinate on himself and sit in his urine for several hours, while he was in a manic state, that the correctional officer and jail knew of his mental condition because it was documented at its facility, and that the officer's and jail's acts were intentional with malice and reckless disregard for his federally protected rights. Glisson v. Sangamon County Sheriff's Dept., C.D.Ill.2006, 408 F.Supp.2d 609.

Pretrial detainee's allegations that detention facility failed to provide clean sheets, clothing, and towel, had limited number of toilets, showers, and sinks, and lacked sufficient toilet paper, soap, and cleaning materials stated claim for violation of due process, as such conditions were probably not reasonably related to legitimate government objective. Wilson v. Cook County Bd. of Commissioners, N.D.Ill.1995, 878 F.Supp. 1163. Civil Rights 1395(6)

2493. Overcrowding, pretrial detainees

Pretrial detainee could not maintain civil rights claim against county sheriff, executive director of county department of corrections, and superintendent of county jail regarding overcrowding that caused alleged inadequacy of supplies or sleeping arrangements at county jail, where detainee did not maintain that those defendants ordered overcrowding conditions as measure of punishment, but, rather, that they were aware of overcrowding at facility and failed to correct it; those defendants did not design jail, did not have ability to build larger facility, and could not control the number of people assigned to their custody. Landfair v. Sheahan, N.D.Ill.1995, 911 F.Supp. 323. Civil Rights 1088(4)

2494. Privacy, pretrial detainees

Arrestees detained in a city jail without any clothing or covering for between six and 18 hours, with at least limited exposure to viewing by members of the opposite sex, stated claims for violation of their right of privacy under the Fourth Amendment; even if they were deprived of clothing as a suicide prevention measure, the removal of their underclothing was not adequately justified. Wilson v. City of Kalamazoo, W.D.Mich.2000, 127 F.Supp.2d 855. Civil Rights 1395(6)

2495. Recreation, pretrial detainees

Inmate's allegations that he was deprived of out-of-cell exercise for six months during prison lockdown, and that he suffered from depression, and physical symptoms as a result, demonstrated injuries from an objectively serious deprivation for purposes of inmate's § 1983 action alleging violation of Eighth Amendment protection against cruel and unusual punishment, where inmate was shackled when he was allowed out of his cell for weekly showers and infrequent family and medical visits, and denial of exercise privileges was not brought on by inmate's misconduct or propensity to escape. Delaney v. DeTella, C.A.7 (Ill.) 2001, 256 F.3d 679. Prisons 17(5); Sentencing And

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42 U.S.C.A. § 1983

Punishment 1541

Pretrial detainee failed to establish § 1983 due process claim based on contention that he was denied opportunity to participate in outdoor recreation, given evidence that detainee was denied recreation on only one occasion because prison official misunderstood a note in his file to be a security override; one-time, accidental denial of recreation could not support constitutional claim. Frost v. Agnos, C.A.9 (Ariz.) 1998, 152 F.3d 1124. Constitutional Law 262; Prisons 17(5)

Level of exercise which must be provided to a pretrial detainee or an inmate consistent with due process or the protection against cruel and unusual punishment varies based upon the circumstances of each case. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280. Sentencing And Punishment 1541

In view of lack of facilities for exercise and recreation for pretrial detainees confined in county jails, county officials would be ordered to submit plans for establishment of recreational facilities and programs for pretrial detainees housed in such county jails. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Prisons 17(5)

Unconvicted detainees housed in administrative segregation unit of New York City House of Detention for Men were entitled to use of day room during period in which they were entitled to be outside their cells, subject to reasonable limitation of number of people who could use room at one time. Giampetruzzi v. Malcolm, S.D.N.Y.1975, 406 F.Supp. 836. Prisons 4(5)

County detention center officials were not deliberately indifferent to alleged denial of detainee's opportunity to exercise, for purpose of detainee's § 1983 conditions of confinement claim against county and detention center officials, where there was no showing that detainee notified officials that he was being denied the opportunity to exercise. Ullrich v. Canyon County Detention Center, C.A.9 (Idaho) 2003, 84 Fed.Appx. 752, 2003 WL 23095985, Unreported. Civil Rights 1088(4)

2496. Rehabilitation programs, pretrial detainees

Pretrial detainee is presumed innocent until proven guilty and is not to be punished or subjected to rehabilitation before he is tried or convicted of crime and thus, only constitutional purpose of incarceration for pretrial detainee is detention itself. Padgett v. Stein, M.D.Pa.1975, 406 F.Supp. 287. Criminal Law 308; Prisons 13(2)

2497. Riots or disturbances, pretrial detainees

In § 1983 action arising out of prison riots and fire allegedly caused by overcrowding of prison, pretrial detainees were required to rely upon Fourteenth Amendment's guarantee of due process, whereas inmates were required to rely upon Eighth Amendment's ban on cruel and unusual punishment. Brogsdale v. Barry, C.A.D.C.1991, 926 F.2d 1184, 288 U.S.App.D.C. 311. Constitutional Law 262; Sentencing And Punishment 1532; Sentencing And Punishment 1538

Force used in quelling jailbreak by pretrial detainees was not excessive; detainees had already rendered one jailor unconscious and when deterred in their attempt to escape, began hand-to-hand combat with officers. Smith v. Holzapfel, E.D.Tex.1990, 739 F.Supp. 1089. Prisons 13(4)

2498. Segregation, pretrial detainees

Segregation of pre-trial detainee for protection of detainee and other inmates after verbal confrontation was not punishment for purposes of § 1983 claim for violation of due process, absent any evidence that guard acted to punish detainee for crimes for which she was awaiting trial or for her role in confrontation, and absent evidence that segregation was arbitrary response to situation. Zarnes v. Rhodes, C.A.7 (Ill.) 1995, 64 F.3d 285. Civil Rights

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42 U.S.C.A. § 1983

1088(4)

Pretrial detainees who are lawfully held lack due process liberty interest in being housed separately from sentenced inmates and, thus, fact that detainee was confined with sentenced inmate could not be basis of § 1983 civil rights claim. Chapman v. Guessford, D.Del.1996, 924 F.Supp. 30. Constitutional Law 262; Prisons 4(4)

2499. Telephones, pretrial detainees

County jail rule which allowed pretrial detainees to make three outgoing telephone calls in any five-day period and which allowed such calls only from 9:00 to 11:00 A.M., 2:00 to 4:00 P.M., and 6:00 to 9:00 P.M. and which limited such calls to five minutes each, except those to or from detainee's attorney of record did not unduly restrict communication between detainees and the outside world, and would not be altered by district court. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Prisons 4(6)

Complete denial to pretrial detainees at city jail of use of the telephone may not take place unless required for security reasons. Collins v. Schoonfield, D.C.Md.1972, 344 F.Supp. 257, supplemented 363 F.Supp. 1152. Prisons 4(6)

With respect to prisoners awaiting trial, jail officials were required to make provisions for prisoners to make local telephone calls during stated hours and were not to monitor such calls, but officials were not required to make such provisions for prisoners under sentence. Jones v. Wittenberg, N.D.Ohio 1971, 330 F.Supp. 707, 29 Ohio Misc. 35, 58 O.O.2d 47, affirmed 456 F.2d 854, 62 O.O.2d 232. Prisons 4(6)

2500. Temperature in facilities, pretrial detainees

Pretrial detainee failed to establish § 1983 due process claim based on his complaints about temperature in his cell, conditions in medical center, and conditions in temporary holding cell, absent showing that such circumstances ultimately deprived him of the minimal civilized measures of life's necessities. Frost v. Agnos, C.A.9 (Ariz.) 1998, 152 F.3d 1124. Constitutional Law 262; Prisons 17(1)

Pretrial detainee's alleged exposure to low temperature in detention cell, while naked and with no alternative means of protecting himself from cold, even after he had complained to guards for hours, and guards' only responded with jeers and laughter, supported claim against guards for inadequate shelter, in violation of Fourteenth Amendment; it was not until detainee threatened guards with criminal prosecution that they called nurses, and by the time nurses arrived, his body temperature was three degrees below normal. Anton v. Sheriff of DuPage County, Ill., N.D.Ill.1999, 47 F.Supp.2d 993. Constitutional Law 262; Prisons 17(1)

2501. Training, pretrial detainees

In order to find county liable under § 1983 for failing to adequately train its detention facility officers in the use of force, detainee alleging excessive use of force would have to establish that (1) the officers exceeded constitutional limitations on the use of force, (2) the use of force arose under circumstances that constitute a usual and recurring situation with which officers must deal, (3) the inadequate training demonstrates a deliberate indifference on the part of the county toward persons with whom the officers come into contact, and (4) there is a direct causal link between the constitutional deprivation and the inadequate training. Lewis v. Board of County Com'rs of Sedgwick County, KS, C.A.10 (Kan.) 2003, 56 Fed.Appx. 873, 2003 WL 116129, Unreported, on remand 2003 WL 1785793 . Civil Rights 1352(4)

2502. Ventilation, pretrial detainees

Prison officials' decision not to make significant capital expenditure for air circulation equipment during extreme

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heat wave was not an irrational, arbitrary or purposeless response to jail's ventilation problems which resulted in death of pretrial detainee, particularly in light of fact that new jail was nearing completion, the heat wave was an extraordinary event that might well have made meaningless even more sweeping improvements, and officials coped by providing additional ice, water and salt and by permitting inmates to remove outer clothing. Willis v. Barksdale, W.D.Tenn.1985, 625 F.Supp. 411. Prisons 17(.5)

Where ventilation and circulation of air in interim county jail was poor, plumbing was antiquated, jail had no fire escapes or sprinkling system, there was no program for dealing with drug or alcohol abuse except hospitalization for detainees experiencing drug withdrawal, women detainees were provided approximately 20-square feet of living space when cells were full, detainees ate meals in public hallway which was also the primary area for attorney-client consultation, and walls and ceilings in kitchen and actual detention area were covered with 40 to 50 years of grease and dirt which was essentially unremovable, such jail was unfit for use as correctional facility in which to detain women who were unconvicted of any crime, and county officials would be ordered to submit plan for providing female pretrial detainees with constitutional living environment. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Chemical Dependents 12; Prisons 17(1)

2503. Visitation, pretrial detainees

County jail's policy prohibiting friends from visiting pretrial detainee did not violate due process, where detainee had free access to visits by family clergy and counsel to the extent that they wished to visit him, detainee had free use of a telephone in his cell to speak with his friends, and detainee sent and received over 200 letters while at jail. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280. Prisons 4(6)

Constitutionally protected liberty interest, enforceable under § 1983, was created by Illinois regulations governing visitation in county jails; under many of the regulations, once statutory condition precedent was met, right to visitation flowed automatically. Flournoy v. Fairman, N.D.Ill.1995, 897 F.Supp. 350. Constitutional Law 262

County jail rule which limited frequency of visits for pretrial detainees, denied physical contact visiting, and restricted persons who were allowed to visit pretrial detainees was not unconstitutionally restrictive. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Prisons 4(6)

2504. Assault by other prisoners, pretrial detainees

Fact that corrections officer observed stabbing of pretrial detainee by another inmate did not render officer deliberately indifferent as to second attack on detainee perpetrated minutes later by several inmates, precluding recovery in detainee's §§1983 due process action alleging officer's failure to protect; officer, after entering room where stabbing had occurred and attempting to restore order, found and confiscated knife near spot where he had observed stabbing, permitting inference that first assailant was now unarmed, detainee was unable to identify inmates who mounted second attack as participants in first, and there was no evidence of more than one weapon in initial attack. Fisher v. Lovejoy, C.A.7 (Ill.) 2005, 414 F.3d 659. Prisons 17(4)

Pretrial detainee in county jail who was assaulted by fellow detainee could not maintain failure to supervise claim against county sheriff under § 1983, based upon purported deliberate indifference to detainee's health and safety by jail officials who worked under sheriff's supervision, where detainee could not establish officials' deliberate indifference. Burrell v. Hampshire County, C.A.1 (Mass.) 2002, 307 F.3d 1. Civil Rights 1358

Jailers did not act with deliberate indifference to pretrial detainee's safety when they housed detainee with inmate who raped him, and therefore jailers were not liable under § 1983; although jailers were on notice that inmate was easily provoked, detainee and inmate had previously been housed together without incident, and jailers neither knew, nor had reason to know, that inmate was violent sexual aggressor. Perkins v. Grimes, C.A.8 (Ark.) 1998, 161 F.3d 1127, rehearing and suggestion for rehearing en banc denied. Civil Rights 1093

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Pretrial detainee's pro se allegations that guard was deliberately indifferent and showed deliberate or reckless disregard for her rights, by placing her in cell with mentally ill inmate who presented imminent potential for assault and posed substantial risk of danger, were sufficient to state § 1983 claim. Zarnes v. Rhodes, C.A.7 (Ill.) 1995, 64 F.3d 285. Civil Rights 1395(6)

Pretrial detainee, who alleged that racial and sexual violence was commonplace at county jail and that sheriff failed to exercise proper supervisory authority or direction to remedy the problem of violence that he either knew or should have known, stated a cause of action under this section for violation of his due process rights. Matzker v. Herr, C.A.7 (Ill.) 1984, 748 F.2d 1142. Civil Rights 1395(7)

Federal prisoner assaulted by other prisoners during pretrial detention in county jail was not entitled to recover from sheriff and head jailer under this section in absence of showing that sheriff and jailer had failed to exercise reasonable care in their personal capacities in providing for plaintiff's safekeeping. Brown v. U. S., C.A.8 (Ark.) 1973, 486 F.2d 284, on remand 374 F.Supp. 723.

Inmate may bring § 1983 action for damages in absence of any physical attack if inmate has suffered extreme and officially sanctioned psychological harm from living in fear of attack by other inmates. Heisler v. Kralik, S.D.N.Y.1997, 981 F.Supp. 830, affirmed 164 F.3d 618. Prisons 17(4)

Arrestee's allegations that director of county jail, in allowing him to be attacked and raped in county jail, failed in his duty to make certain that arrestee remained healthy, safe and free from criminal assaults while incarcerated after his judicial release were insufficient to state § 1983 claim against director in his individual capacity for violation of arrestee's federal civil rights in connection with the attack; arrestee did not allege that director was privy to any information that would allow reasonable finder of fact to conclude that he ignored excessive risk of harm to arrestee. McMurry v. Sheahan, N.D.Ill.1996, 927 F.Supp. 1082. Civil Rights 1395(7)

Pretrial detainee injured in fight with other inmates failed to establish § 1983 claim of deliberate indifference by correctional officers in connection with allegedly inadequate search for weapons, in light of wide-ranging discretion afforded prison officials in adoption and execution of policies relating to security, fact that two of "weapons" found consisted essentially of noncontraband items, i.e., a pencil and a pen, and absent prior threats against detainee by inmates involved in fight. Breland v. Abate, S.D.N.Y.1996, 917 F.Supp. 220. Civil Rights 1088(4); Prisons 17(4)

While pretrial detainee's claim that his life was placed in danger by virtue of correction officer's statements to other inmates that detainee was to blame for revocation of various privileges and shaking-down residents of county jail wing in which inmate was detained, allegedly in retaliation for filing grievance, might rise to the level of due process violation, detainee could not bring civil rights claim based on that allegation absent allegation that he actually suffered injury or that attack was imminent. Landfair v. Sheahan, N.D.Ill.1995, 878 F.Supp. 1106. Civil Rights 1088(4)

Actions of county authorities in connection with assault of pretrial detainee by inmate in county jail could form basis of valid § 1983 claim, notwithstanding their contention that their conduct, at worst, amounted to mere negligence; jury could find that failure of authorities to act, in light of their knowledge of conditions at county jail and their knowledge of assailant's dangerousness, was sufficiently deliberate to implicate the due process clause and support a § 1983 claim. Ryan v. Burlington County, N.J., D.N.J.1989, 708 F.Supp. 623, affirmed 889 F.2d 1286. Civil Rights 1088(4)

Pretrial detainee's allegations that jail assistant superintendent failed to provide adequate security from attack by other detainees by moving detainee who instigated attack on plaintiff onto plaintiff's tier, which was for nonaggressive inmates, and that four detainees who beat him had history of violence, including attack on another detainee on tier shortly before assault on plaintiff stated claim against assistant superintendent for failure to

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adequately supervise prisoners and for deliberately exposing pretrial detainee to known risk of violence. Gibson v. Babcox, N.D.Ill.1984, 601 F.Supp. 1156. Civil Rights 1395(7)

2505. Assault by prison officials, pretrial detainees

Pretrial detainee who alleged that she was sexually assaulted by jailer sufficiently alleged constitutional violation, for purpose of § 1983 action against city and police chief which asserted claim of inadequate staffing; city had deprived detainee of her liberty and thus had constitutional obligation, under due process clause, to provide detainee with minimal levels of safety and security. Scott v. Moore, C.A.5 (Tex.) 1996, 85 F.3d 230, rehearing granted, opinion vacated, on rehearing 114 F.3d 51. Civil Rights 1395(7)

Sheriff's deputies' shooting and killing of unarmed pretrial detainee who was escaping from custody during transport from one holding cell to another did not violate due process, where sheriff's department policy, allowing deadly force only when immediately necessary to prevent escape, was designed in good faith effort to maintain or restore discipline and not maliciously and sadistically for purpose of causing harm, deputies fired at detainee only as last resort to prevent escape, and detainee would have escaped had deputies not fired upon him. Brothers v. Klevenhagen, C.A.5 (Tex.) 1994, 28 F.3d 452, certiorari denied 115 S.Ct. 639, 513 U.S. 1045, 130 L.Ed.2d 545. Constitutional Law 262; Prisons 13(4)

A pretrial detainee who alleged that he suffered a cut wrist and bruises, but no loss of consciousness or permanent injury, could not state a federal civil rights claim for excessive or brutal use of force by jail officials; detainee created need for officers to apply reasonable force to subdue him when detainee resisted being put into cell of another inmate, even if detainee's actions were necessary to avoid being injured by other inmate. White v. Roper, C.A.9 (Cal.) 1990, 901 F.2d 1501. Civil Rights 1088(4)

In an excessive force action by an inmate, a prisoner must prove that the security measure taken inflicted unnecessary and wanton pain and suffering, which requires that an inmate prove that prison officials acted with a culpable state of mind, that is, force was not applied in a good faith effort to maintain or restore discipline, but rather, was applied maliciously and sadistically for the very purpose of causing harm; additionally, inmate must prove that prison officials' actions, taken contextually, do not comport with contemporary standards of decency. Concepcion v. Morton, D.N.J.2000, 125 F.Supp.2d 111, reversed 306 F.3d 1347. Prisons 13(4)

Pretrial detainee could not base claim under 42 U.S.C.A. § 1983 for police assault on constitutional prohibition against cruel and unusual punishment since that prohibition applied only to persons convicted of criminal offenses. Spell v. McDaniel, E.D.N.C.1984, 591 F.Supp. 1090. Civil Rights 1093

2506. Confiscation of property, pretrial detainees

Civil rights complaint seeking damages for loss of pair of shoes by pretrial detainee was subject to dismissal as frivolous; conduct alleged was not sufficiently egregious to amount to independent constitutional tort, and to extent that it was construed as alleging violation of procedural due process, state had provided adequate postdeprivation remedy. Vincent v. Lynch, N.D.Ga.1985, 626 F.Supp. 801. Federal Civil Procedure 1741

2507. Harassment by prison officials, pretrial detainees

County jail corrections officer's comments to pretrial detainee, "How are you doing little boy," and "How's the little guy doing," although inappropriate, did not violate detainee's constitutional rights, despite contention that comments constituted sexual harassment, where comment made no suggestion of any threat of violence and contention respecting comments having sexual connotations was not persuasive. Ellis v. Meade, D.Me.1995, 887 F.Supp. 324. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Alleged use of vile and abusive language against pretrial detainee did not form basis for civil rights action. Zeno v. Cropper, S.D.N.Y.1986, 650 F.Supp. 138. Civil Rights 1098

2508. Release, pretrial detainees

Detainee who was released immediately following his appearance before judge did not have § 1983 claim as detainee did not suffer a postarraignment deprivation of liberty. Johnson v. City of New York, S.D.N.Y.1996, 940 F.Supp. 631. Civil Rights 1088(4)

2509. Miscellaneous rights, pretrial detainees

Neither purchase of patrol wagons which lacked safety restraints, nor manner of transporting arrestees in those wagons, was policy that obviously presented a substantial risk of serious harm, as would rise to level of deliberate indifference to rights of pretrial detainee on part of municipal board of police commissioners, in violation of due process clause, and allow recovery in § 1983 action brought by detainee for injuries allegedly sustained after he was placed in wagon with his hands behind his back in handcuffs, and was thrown forward into bulkhead of wagon's passenger compartment. Spencer v. Knapheide Truck Equipment Co., C.A.8 (Ark.) 1999, 183 F.3d 902, rehearing and rehearing en banc denied, certiorari denied 120 S.Ct. 1165, 528 U.S. 1157, 145 L.Ed.2d 1076. Constitutional Law 262; Municipal Corporations 747(3)

Evidence that jailer failed to check on group cell during hour between last check and beating of pretrial detainee by other inmates was not sufficient to show deliberate indifference and causation necessary to hold jailer individually liable under § 1983 for pretrial detainee's injuries. Hale v. Tallapoosa County, C.A.11 (Ala.) 1995, 50 F.3d 1579. Civil Rights 1420

Material issues of fact, as to whether jail detainee was charged under Maine witness tampering statute that involved threatening witnesses or tampering statute involving non-threatening behavior, precluded summary judgment that county violated Fourth Amendment rights by conducting strip search of detainee accused of non-violent, non-weapons, non-drug felony without showing of reasonable suspicion that detainee was harboring contraband on or within her body. Tardiff v. Knox County, D.Me.2005, 397 F.Supp.2d 115. Federal Civil Procedure 2491.5

Pretrial detainee did not have a protected liberty interest in avoiding transfer to another detention facility, or in having unrestricted telephone privileges, for purpose of §§ 1983 due process claim against county prosecutor, where prosecutor had legitimate need to limit those privileges based upon a witness's complaints. Phillips v. Kiser, C.A.8 (Mo.) 2006, 172 Fed.Appx. 128, 2006 WL 721818, Unreported. Prisons 13.3

Former pretrial detainee, suing under § 1983 to recover for personal injuries, was entitled to discover log book entries for particular date; evidence was relevant to establish claims that detainee was in fact working in kitchen at time of accident and that equipment that allegedly injured him had been issued to him. Reyes v. N.Y.C. Correctional Dept., S.D.N.Y.2003, 2003 WL 282201, Unreported. Federal Civil Procedure 1593

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2531. Prisoners' access to courts generally

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Prisoners have constitutional right of access to the courts. Bounds v. Smith, U.S.N.C.1977, 97 S.Ct. 1491, 430 U.S. 817, 52 L.Ed.2d 72.

Prisoners have fundamental right of access to courts and right to petition for redress of grievances. Ward v. Dyke, C.A.6 (Mich.) 1995, 58 F.3d 271, certiorari denied 116 S.Ct. 524, 516 U.S. 991, 133 L.Ed.2d 431. Prisons 4(10.1)

Prisoner had constitutional right to petition the courts. McDonald v. Hall, C.A.1 (Mass.) 1979, 610 F.2d 16.

State prison officials owed prisoner a constitutional duty not to abridge his right of access to the state courts. Bonner v. Coughlin, C.A.7 (Ill.) 1975, 517 F.2d 1311, on rehearing 545 F.2d 565, certiorari denied 98 S.Ct. 1507, 435 U.S. 932, 55 L.Ed.2d 529. Convicts 6

While generally federal court does not interfere with internal management of prisons or with classifications of prisoners, a notable exception to rule arises when prison regulations or actions impinge upon prisoner's right to communicate with the courts. Hooks v. Kelley, C.A.5 (Fla.) 1972, 463 F.2d 1210. Prisons 4(12)

Responsibility for ensuring that prison inmate had required access to courts was shared by Pennsylvania, jurisdiction in which inmate was originally placed, and Massachusetts, jurisdiction to which inmate was transferred. Hannon v. Allen, D.Mass.2003, 241 F.Supp.2d 71. Prisons 4(10.1)

Congress's purpose in enacting the Prison Litigation Reform Act (PLRA) was primarily to curtail claims brought by prisoners under § 1983 and the Federal Torts Claims Act (FTCA), many of which are routinely dismissed as legally frivolous. Bieregu v. Ashcroft, D.N.J.2003, 259 F.Supp.2d 342. Convicts 6

Federal civil rights statute provides remedy for violation of right of access to courts if officials' actions are causally connected to plaintiff's failure to succeed in lawsuit as, in such a circumstance, plaintiff has been deprived of property without due process by being deprived of right to be awarded damages in meritorious lawsuit as a result of unconstitutional conduct. Gonsalves v. City of New Bedford, D.Mass.1996, 939 F.Supp. 921. Civil Rights 1056

Prisoner's allegation of intentional violation of right of access to courts states cause of action under § 1983. Oropallo v. Ackerman, D.N.H.1994, 856 F.Supp. 35. Civil Rights 1056; Civil Rights 1094

To show actual injury and have standing to raise claimed violation of right to court access, inmate must show that his efforts to pursue nonfrivolous legal claim were hindered by prison officials. Saunders v. Horn, E.D.Pa.1996, 959 F.Supp. 689, report and recommendation adopted 960 F.Supp. 893. Constitutional Law 42.2(1)

2532. Fundamental nature of right, prisoners' access to courts

It is fundamental that access of prisoners to courts for purpose of presenting their complaint may not be denied or obstructed. Leeds v. Watson, C.A.9 (Idaho) 1980, 630 F.2d 674. Prisons 4(10.1)

A state prison inmate's right of unfettered access to the courts is as fundamental a right as any other he may hold and this constitutional imperative prevails over a number of legitimate state concerns involving a state's administration and management of its correctional institutions. Rizzo v. Zubrik, S.D.N.Y.1975, 391 F.Supp. 1058. Prisons 4(10.1)

State prisoner's grievance, which was silent about funeral furlough but simply asserted that prison officials were rude to his family and waited one day before conveying news of his father's death, did not exhaust administrative

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remedies with regard to his civil rights claim, for purpose of requirement under Prison Litigation Reform Act (PLRA) of exhaustion of administrative remedies, that he had been denied equal protection by denial of furlough to attend funeral of father just because he was black when such privileges had routinely been provided to whites. Flournoy v. Schomig, C.A.7 (Ill.) 2005, 152 Fed.Appx. 535, 2005 WL 2739078, Unreported. Civil Rights 1319

State prisoner did not state civil rights claim that prison officials denied him access to courts, where prisoner did not identify any interference with any grievance that prevented him from bringing nonfrivolous claim; although prisoner had constitutional right of access to courts that, by necessity, included right to pursue administrative remedies that had to be exhausted before prisoner could seek relief in court, prisoner had to plead that unjustified acts prevented him from pursuing nonfrivolous claim. Flournoy v. Schomig, C.A.7 (Ill.) 2005, 152 Fed.Appx. 535, 2005 WL 2739078, Unreported. Prisons 4(10.1)

2533. Actions in which access guaranteed, prisoners' access to courts-- Generally

Constitution guarantees state inmates the right of access to the courts in both habeas corpus and civil rights actions. Rudolph v. Locke, C.A.5 (Ala.) 1979, 594 F.2d 1076. Civil Rights 1094; Habeas Corpus 513

Prisoners' constitutional right to access to courts extends to federal civil rights cases as well as habeas corpus proceedings. Carter v. Mandel, C.A.4 (Md.) 1978, 573 F.2d 172. Civil Rights 1445; Habeas Corpus 690

Prisoners do not have an absolute right to file any civil action they desire. Clark v. Hendrix, N.D.Ga.1975, 397 F.Supp. 966. Convicts 6

2534. ---- Habeas corpus, actions in which access guaranteed, prisoners' access to courts

Death row inmate's § 1983 claim, based on allegation that he had "been told" that he could not file habeas complaint unless he complied with Missouri Prison Litigation Reform Act (PLRA) and submitted copies of his prison account statement and paid full cost, was speculative and could not support stay of execution; inmate did not state he had attempted to file action with Missouri Supreme Court, and it was unknown whether Missouri courts would require from death row inmate facing execution to file writ of habeas corpus. McDonald v. Carnahan, C.A.8 (Mo.) 1997, 125 F.3d 652. Sentencing And Punishment 1798

Maine corrections authorities, who transferred prisoners to federal prison at Leavenworth, Kansas after determining that prisoners were security risks, remained responsible for research and legal assistance accoutrements to which prisoners were entitled for purposes of seeking postconviction relief in courts of state of Maine. Rich v. Zitnay, C.A.1 (Me.) 1981, 644 F.2d 41. Prisons 4(13)

Any denial of right to a habeas corpus hearing brought to extradition gives rise to cause of action under this section which protects all rights, privileges, or immunities secured by Constitution and laws of the United States. Crumley v. Snead, C.A.5 (Ala.) 1980, 620 F.2d 481. Civil Rights 1088(1)

State prisoner's allegations, that his beating by prison officials violated writ of Habeas Corpus Ad Testificandum to produce prisoner in state court for trial, failed to state claim that officials denied his right to access courts, since case had settled and accordingly, prisoner suffered no prejudice to his legal claim by officials' alleged actions. Kalwasinski v. Artuz, S.D.N.Y.2003, 2003 WL 22973420, Unreported. Prisons 4(10.1)

2535. Reasonable access, prisoners' access to courts

Reasonable regulations are necessary to balance the legitimate interests of inmate litigants with budgetary considerations and to prevent abuse. Harrell v. Keohane, C.A.10 (Okla.) 1980, 621 F.2d 1059. Prisons 4(1)

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Constitution requires only that prisoners have reasonable access to the courts. Knell v. Bensinger, C.A.7 (Ill.) 1973, 489 F.2d 1014, on remand 380 F.Supp. 494. Constitutional Law 321

Right of reasonable access to the courts extends to inmates using this section authorizing civil action for deprivation of rights to remedy denials of constitutional rights occurring during incarceration. Nolan v. Scafati, C.A.1 (Mass.) 1970, 430 F.2d 548. Constitutional Law 321

2536. Meaningful access, prisoners' access to courts

Prisoner litigants must be given meaningful access to courts. Boston v. Stanton, W.D.Mo.1978, 450 F.Supp. 1049.

2537. Detriment or prejudice, prisoners' access to courts

State prison inmate stated §§ 1983 claim for denial of access to the courts by alleging in his complaint that prison officials' denial of adequate materials had caused him, as pro se litigant, to lose court cases, and by submitting information about those cases in response to officials' motion to dismiss; no further particularity, e.g. showing of how withholding of materials had affected outcome of specific suits, was required at pleading stage. Pratt v. Tarr, C.A.7 (Wis.) 2006, 464 F.3d 730. Civil Rights 1395(7)

Former state prison inmate's §§ 1983 complaint failed to state claim for damages for denial of access to a law library, and was subject to dismissal under the statute governing in forma pauperis actions, where the complaint did not specifically explain how he was injured by any limitations on his access to the law library. Michau v. Charleston County, S.C., C.A.4 (S.C.) 2006, 434 F.3d 725, petition for certiorari filed 2006 WL 1079075. Federal Civil Procedure 2734

Inmate was required to show that he was actually injured by prison officials' alleged interference with his access to courts to pursue civil rights claim against them for such interference, regardless of whether "ancillary" or "central" aspect of right to court access was involved. Oliver v. Fauver, C.A.3 (N.J.) 1997, 118 F.3d 175. Prisons 4(10.1)

Prisoner who offered no facts indicating that alleged shortcomings of attorney provided by prison or lack of law library prejudiced her in a legal case did not establish cognizable injury and accordingly lacked standing to bring federal civil rights action alleging that her constitutional right to access to courts had been violated. Sabers v. Delano, C.A.8 (S.D.) 1996, 100 F.3d 82. Civil Rights 1333(4)

Prisoner's claim, in § 1983 action against prison officials for failure to provide meaningful access to courts, that while he was in segregation his access to library services was inadequate failed where prisoner neither alleged nor showed prejudice to any specific litigation. Gentry v. Duckworth, C.A.7 (Ind.) 1995, 65 F.3d 555, rehearing denied. Civil Rights 1094

Inmate was not entitled to recover on § 1983 claim against prison official alleging denial of meaningful access to courts; inmate failed to present sufficient evidence that he was prejudiced. Cooper v. Delo, C.A.8 (Mo.) 1993, 997 F.2d 376, rehearing denied. Civil Rights 1420

State inmate did not suffer actual injury due to prison officials' alleged delay in handling his prison grievance appeal, and thus officials did not thereby violate inmate's right to access courts, where delay did not cause inmate to miss any deadlines or to suffer any prejudice in federal court, and inmate's underlying claim was found to be without merit as matter of law. Brooks v. Alameida, S.D.Cal.2006, 446 F.Supp.2d 1179. Prisons 4(10.1)

State prisoner's allegation that correctional officer opened and read the draft of his lawsuit against her and then refused to return it to him did not sufficiently allege actual injury, as element for stating a claim under §§ 1983 for

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violation of First Amendment constitutional right of access to the courts; prisoner alleged only that as result of not receiving his original draft back he had forgotten exact dates he saw the officer smoking in the prison and thereby allegedly exposing him to unreasonably high levels of environmental tobacco smoke (ETS), but prisoner did not allege that his inability to remember specific dates had unduly prejudiced his case against officer. Bacon v. Taylor, D.Del.2006, 414 F.Supp.2d 475. Constitutional Law 91

Inmate who sued state prison officials, stemming from alleged incident at sallyport and related civil rights violations, failed to establish that warden violated his First Amendment rights to petition for redress by improperly removing inmate's letters of complaint from his master file, as required to maintain claim under §§ 1983; since such file was kept for administrative convenience of prison officials, inmate had no constitutionally protected interest in its contents. Ziemba v. Thomas, D.Conn.2005, 390 F.Supp.2d 136. Prisons 13(7.1)

Prisoner failed to state §§ 1983 claim for denial of access to courts against prison guards for allegedly attempting to withhold grievance appeal or engaging in harassment in attempt to discourage prisoner from filing civil rights action, absent any evidence of actual injury flowing from guards' actions. Ornelas v. Giurbino, S.D.Cal.2005, 358 F.Supp.2d 955. Civil Rights 1094

State inmate did not suffer actual injury as result of prison official's alleged failure to properly process inmate's legal mail containing his initial petition for writ of certiorari to United States Supreme Court appealing denial of his habeas corpus petition, and thus official did not violate inmate's constitutional right of access to courts, even though inmate's original mailing contained necessary appendix of lower court record, and lower courts failed to respond to inmate's subsequent requests for copies of record, where Supreme Court granted inmate extension of time for filing new petition, but rejected filing for failure to include lower court record. Johnson v. Hornung, S.D.Cal.2005, 358 F.Supp.2d 910. Prisons 4(12)

Prisoner did not suffer "actual injury" from changes in his prison schedule, which allegedly held him in his cell past his allotted law library time, and thus did not have claim for denial of meaningful access to courts in absence of any evidence that changes prevented him from pursuing his pending litigation. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593. Prisons 4(13)

Prisoner failed to allege that corrections counselor's refusal to provide him with copy of document from his inmate grievance file actually interfered with or prejudiced prisoner's Article 78 action in state court, and thus allegation failed to state § 1983 claim for denial of right of reasonable access to courts; Article 78 proceeding challenged denial of prisoner's grievance pertaining to counselor's refusal of prisoner's program assignment request, but prisoner had no federally protected or state law right to particular prison job assignment. Amaker v. Hakes, W.D.N.Y.1996, 919 F.Supp. 127. Civil Rights 1094

Inmate did not establish detriment element of his claim that county jail authorities deprived him of his constitutional right of access to court when they did not permit him to take his legal papers upon his transfer to state prison, with respect to his murder trial in Illinois; although he made claim that legal documents he lost were essential to his being able to argue certain issues, Illinois Supreme Court had denied him leave to file his own brief; thus, he was himself precluded from raising such issues, and in any event, was otherwise provided with adequate access to courts by having appointed counsel on appeal. Banks v. Sheahan, N.D.Ill.1995, 914 F.Supp. 231. Prisons 4(13)

Prison inmate, who alleged that he failed to meet required deadlines on four instances as result of prison officials' denial of access to library, refusal to notarize legal document, refusal to permit him to serve subpoenas for other inmates, and failing to mail documents by express mail, failed to prove any injury as a result of alleged denials, and thus failed to show retaliation or harassment for filing petition for writ of habeas corpus, in violation of § 1983; inmate failed to allege that he suffered dismissal or denial of relief due to his failure to meet court deadlines. Raske v. Dugger, M.D.Fla.1993, 819 F.Supp. 1046. Civil Rights 1094

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Inmate failed to establish that his correspondence with family court which purportedly was lost by prison officials would have had any impact on outcome of visitation rights proceeding so as to entitle inmate to recover under § 1983 for denial of access to courts; inmate was never denied visitation, his daughter periodically visited him at prison, and inmate had opportunity to communicate with daughter's counsel and to obtain copies of those documents once he realized they were lost. Herrera v. Scully, S.D.N.Y.1993, 815 F.Supp. 713. Civil Rights 1094

State prisoner did not suffer "actual injury" in pursuing a nonfrivolous claim, so as to be deprived of access to courts by his confinement in administrative segregation, where dismissal of his earlier claim was due to his failure to cooperate in finalizing pretrial order, not due to any inability to access law library or scribe materials. Moredock v. O'Bannon, C.A.7 (Ind.) 2001, 17 Fed.Appx. 447, 2001 WL 939083, Unreported. Prisons 4(10.1)

Allegations in state prison inmate's §§ 1983 complaint against prison librarians were minimally sufficient to allege "actual injury" as required to state a claim for denial of meaningful access to the courts, and thus, the District Court should have, at the least, allowed inmate an opportunity to amend prior to dismissing his complaint pursuant to the in forma pauperis statute, where he alleged that the defendants' actions resulted in the denial of his appeal in state post-conviction relief proceedings, docket attached to his complaint clearly indicated that his brief was untimely filed, and he specified several dates on which he requested, but was arbitrarily denied, access to the prison law library. Jones v. Domalakes, C.A.3 (Pa.) 2006, 161 Fed.Appx. 216, 2006 WL 41339, Unreported. Federal Civil Procedure 2734

Plaintiff, who alleged that law firm partner, section chief of career organization, and others conspired to deny his right of access to courts regarding an underlying defamation claim, did not have viable §§ 1983 claim, where the underlying defamation claim was based purely on speculation, such that plaintiff could not suffer an injury by being shut out of court on that claim. Foster v. Pennsylvania Human Relations Com'n., C.A.3 (Pa.) 2005, 157 Fed.Appx. 488, 2005 WL 2891368, Unreported. Conspiracy 7.5(2)

Prison inmate failed to show that he suffered actual harm as a result of alleged violation of his right of access to courts by officials at facility in which he was being held, as required to prevail in subsequent § 1983 action based on violation. Brooks v. Terry, C.A.8 (Ark.) 2000, 208 F.3d 217, Unreported. Civil Rights 1094

2538. State court proceedings, prisoners' access to courts

Prisoner's right of access to court did not create right to bring independent lawsuit to complain of noncompliance with state court orders in litigation concerning prisoner's right to use and possess certain word processor; prisoner's remedy was to seek finding of contempt in state court. Spruytte v. Govorchin, W.D.Mich.1997, 961 F.Supp. 1094. Prisons 4(10.1)

2539. Juveniles, prisoners' access to courts

Juveniles committed to state institution for delinquent boys, no less than adult offenders, were entitled to reasonable access to the courts. Morgan v. Sproat, S.D.Miss.1977, 432 F.Supp. 1130. Constitutional Law 328

2540. Transferring prisoners, prisoners' access to courts

In determining whether inmates of county jail have adequate access to courts, district court need not consider those inmates whose confinement is of a very temporary nature or for purposes of transfer to other institutions where the brevity of confinement does not permit sufficient time for prisoners to petition the courts. Cruz v. Hauck, C.A.5 (Tex.) 1975, 515 F.2d 322, certiorari denied 96 S.Ct. 1118, 424 U.S. 917, 47 L.Ed.2d 322. Prisons 4(10.1)

2541. Obscene or abusive petitions, prisoners' access to courts

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Prison authorities' practice of screening petitions to court for purpose of preventing inmates from sending petitions containing obscene, abusive or otherwise objectionable allegations or statements was improper, since courts could protect themselves from any improper matter. Talley v. Stephens, E.D.Ark.1965, 247 F.Supp. 683. Prisons 4(12)

2542. Multiple actions or motions filed, prisoners' access to courts

District court's findings on examination of its records, that, at time state prisoner alleged he was deprived of reasonable access to courts, state court received one brief and two written motions from him, that United States Supreme Court received petition for writ of habeas corpus and petition for writ of certiorari and that within three years he had filed three suits in court of appeals coupled with numerous papers and motions pertaining thereto, demonstrated that he had not been denied access to courts that would entitle him to damages under this section. Conway v. Oliver, C.A.9 (Cal.) 1970, 429 F.2d 1307. Civil Rights 1424

Fact of prisoner's filing of complaint against prison officials does not automatically disprove prisoner's claim of denial of access to courts in violation of his civil rights. Acevedo v. Forcinito, D.N.J.1993, 820 F.Supp. 886. Civil Rights 1094

Inmate who failed to show any interference with his access to courts save for unsubstantiated allegation that he did not receive court briefing schedule did not establish the prison superintendent's actions and mail policies denied him access to courts; examples of inmate's ample access to courts included his filing of petition, appeal, motion for reconsideration and petition for allowance of appeal. Boyd v. Petsock, W.D.Pa.1992, 795 F.Supp. 743. Prisons 4(12)

2543. Personal appearance in court, prisoners' access to courts

Generally speaking, prisoners who bring civil actions, including prisoners who bring actions under this section, have no right to be personally present at any stage of the judicial proceedings. Holt v. Pitts, C.A.6 (Tenn.) 1980, 619 F.2d 558. Federal Civil Procedure 1951

When plaintiff in civil rights suit is confined in state prison at time of hearing, he has no right to appear personally, but he is entitled to have process issued and served, to notice of any motion thereafter made by defendant or court to dismiss complaint and grounds therefor, to opportunity to submit written memorandum in opposition to such motion, to statement of grounds for dismissal, and to opportunity to amend complaint to overcome deficiency unless it clearly appears from complaint that deficiency cannot be overcome by amendment. Potter v. McCall, C.A.9 (Or.) 1970, 433 F.2d 1087. Convicts 6

Despite allegation by plaintiff that county jail prisoners being held on both felony and misdemeanor traffic charges were subject to systematic failure to arrange for appearance in traffic court, with effect that warrants would be issued for prisoner's rearrest and reconfinement on the traffic charges after release on the felony charges, jail officials were not derelict in their duty as to plaintiff and did not otherwise violate his civil rights, where his first hearing on the traffic charges in question was scheduled for date more than three weeks after his release from jail. Harris v. Elrod, N.D.Ill.1985, 601 F.Supp. 617. Civil Rights 1088(4)

While prisoners do retain their right to access to the courts, this does not necessarily mean that a prisoner has some inherent constitutional right to appear personally at a hearing or at a trial with respect to a civil suit which he has filed. Clark v. Hendrix, N.D.Ga.1975, 397 F.Supp. 966. Convicts 6

State prisoner failed to state a cognizable claim under § 1983 against corrections officers for denial of his right of access to the courts, although prisoner alleged that officers caused him to miss court-imposed deadline, where he did not allege that lawsuit he was attempting to pursue involved fact or conditions of his confinement or included

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nonfrivolous claims, or any hindrance to his lawsuit beyond "mere delay." Callegari v. Chesterman, N.D.Cal.2002, 2002 WL 31478178, Unreported. Civil Rights 1094

2544. Civilian clothing, prisoners' access to courts

Constitutional rights to counsel and access to the courts do not contemplate right to have "particular" clothing available to wear at trial. Mingo v. Patterson, D.C.Colo.1978, 455 F.Supp. 1358. Criminal Law 641.1; Prisons 4(10.1)

2545. Food and water provision, prisoners' access to courts

State prisoners' complaints regarding failure to provide lunch for inmates who are taken to court in morning and not tried until afternoon and lack of drinking water did not involve paramount rights and failed to establish that right of access to state courts had been impaired. Lovern v. Cox, W.D.Va.1974, 374 F.Supp. 32. Prisons 4(10.1)

2546. Assistance of counsel, prisoners' access to courts--Generally

An inmate's opportunity to confer with counsel is a particularly important constitutional right which courts will not permit to be unnecessarily abridged. Dreher v. Sielaff, C.A.7 (Ill.) 1980, 636 F.2d 1141. Prisons 4(12)

Prison authorities have authority to impose regulations on time, place and manner in which punitive isolation inmates communicate with attorneys and courts, but such regulations must be based on compelling needs of prison administration and discipline and purpose of regulation must not be interference with inmate's communication with courts and attorneys. McCray v. Sullivan, C.A.5 (Ala.) 1975, 509 F.2d 1332, on remand 399 F.Supp. 271, certiorari denied 96 S.Ct. 114, 423 U.S. 859, 46 L.Ed.2d 86. Prisons 13(5)

If refusal of prison officials, on second day of trial, to admit accused's counsel to prison for needed consultation with accused, although judge had ordered prison officials to permit counsel to visit defendant at any time for any length of time, was either wrongfully motivated or without adequate justification, it would constitute infringement of accused's constitutional right to counsel and would be actionable under this section. Via v. Cliff, C.A.3 (Pa.) 1972, 470 F.2d 271. Civil Rights 1094; Criminal Law 641.12(2)

One who is put behind prison walls does not automatically surrender all rights, and a right of access to the courts is one of the rights which a prisoner clearly retains; and that right carries with it the right to seek and obtain the assistance of competent counsel so that the assertion of legal claims may be fully effective. McDonough v. Director of Patuxent, C.A.4 (Md.) 1970, 429 F.2d 1189. Convicts 6

Allegations that prison staff members violated state inmate's due process rights by confining him to administrative segregation without giving him, within reasonable amount of time, either written notification of reasons for his confinement or opportunity to be heard in regard to confinement appeared on the face of complaint to have some chance of success, and therefore inmate, who was proceeding in forma pauperis, satisfied threshold showing of merit in seeking appointment of pro bono counsel. Harris v. McGinnis, S.D.N.Y.2003, 2003 WL 21108370, Unreported. Civil Rights 1445

2547. ---- Conflict of interest, assistance of counsel, prisoners' access to courts

In class action suit challenging prison's treatment of inmates who had tested positive for Human Immunodeficiency Virus (HIV), appointed counsel's own admission to HIV-positive class members, that he refrained from taking aggressive action on their desegregation claims in part because he feared the general prison population would object to it, supported finding that appointed counsel had conflict of interest in his dual representation of

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HIV-positive prisoners and of the general prison population in another prison conditions suit. Gates v. Cook, C.A.5 (Miss.) 2000, 234 F.3d 221, rehearing and rehearing en banc denied 253 F.3d 707. Civil Rights 1445

2548. ---- Alternate means of access, assistance of counsel, prisoners' access to courts

Prisoner is not denied constitutional right by denial of motion requesting appointment of counsel for civil rights action if effective access to courts is assured through some available means. Mingo v. Patterson, D.C.Colo.1978, 455 F.Supp. 1358. Civil Rights 1445

2549. ---- Informal legal advisor, assistance of counsel, prisoners' access to courts

Appointment of an attorney to act as informal legal advisor for prisoner satisfied test of providing adequate assistance to prisoner from persons trained in law. Boston v. Stanton, W.D.Mo.1978, 450 F.Supp. 1049. Prisons 4(11)

2550. ---- Civil Liberties Union, assistance of counsel, prisoners' access to courts

In absence of some countervailing interest, a state cannot prevent an inmate from seeking legal assistance from bona fide attorneys working in an organization such as Civil Liberties Union. Nolan v. Scafati, C.A.1 (Mass.) 1970, 430 F.2d 548. Prisons 4(11)

2551. ---- Paralegals, assistance of counsel, prisoners' access to courts

Paralegal who was denied contact visits with inmates failed to show adverse impact from visitation restriction, and thus failed to state retaliation claim under § 1983; withdrawal of special accommodation of paralegal, even if done in response to filing of lawsuit by organization employing paralegal, was not sufficiently adverse so as to constitute retaliation since paralegal was free to visit with inmates in noncontact meeting rooms which were all that prison provided to any nonprofessional visitor. American Civil Liberties Union of Maryland, Inc. v. Wicomico County, Md., C.A.4 (Md.) 1993, 999 F.2d 780. Civil Rights 1094

Paralegal was not entitled to access to state prison inmates where under prison rules only paralegals employed by an attorney could visit prisoners during other than normal visiting hours, plaintiff paralegal had previously represented that he was an attorney and had passively misrepresented his status in gaining entrance to prison shortly prior to inmate disturbance, notwithstanding that it was inconvenient for counsel, who sought to have paralegal interview certain inmates in connection with habeas corpus proceedings to make the 200-mile trip to the prison. Reed v. Evans, S.D.Ga.1978, 455 F.Supp. 1139, affirmed 592 F.2d 1189. Prisons 4(11)

2552. ---- Privileged communications, assistance of counsel, prisoners' access to courts

Where recorded comments of defendant were a boisterous complaint which he was making while in jail and did not involve any confidential legal advice and could not have been made with the expectation of privacy, the recording of those complaints did not violate the plaintiff's civil rights, despite his contention that the recording invaded his privacy and interfered with his right to consult with counsel. Holman v. Central Arkansas Broadcasting Co., Inc., C.A.8 (Ark.) 1979, 610 F.2d 542. Civil Rights 1094; Torts 341

Given that prisoner's right to counsel under U.S.C.A. Const. Amend. 6 was directly impinged on, in that important and privileged information in a lawyer's file was vulnerable to disclosure under prison's entry and exit inspection policy, or at least that fear of meaningful disclosure was reasonable, it was not open to reviewing court to deny relief on ground that harm had not yet occurred; enough had been shown to require prison authority to demonstrate that legitimate purposes could not be equally well served by means less threatening to individual constitutional rights. Henry v. Perrin, C.A.1 (N.H.) 1979, 609 F.2d 1010, certiorari denied 100 S.Ct. 1652, 445 U.S. 963, 64

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Contact by prisoner with an attorney, and the opportunity to communicate privately, is a vital ingredient to the effective assistance of counsel and access to the courts. Bach v. People of State of Ill., C.A.7 (Ill.) 1974, 504 F.2d 1100, certiorari denied 94 S.Ct. 3202, 418 U.S. 910, 41 L.Ed.2d 1156. Prisons 4(12)

County's failure to set aside physical facility to allow pretrial detainees to consult privately with attorneys and witnesses impeded detainees' ability to prepare for trial, jeopardized confidentiality of their attorney-client communications, and invaded their right to privacy, and county would be ordered to submit plan by which private facilities for attorney-client visits in jail could be obtained. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Prisons 4(12)

2553. ---- Processing of inmates, assistance of counsel, prisoners' access to courts

Due process could hardly be accorded county jail inmate who was so worn out by procedures involved in transporting him to court for trial that he lacks alertness to help his attorney in presence of trier of fact, and thus officials would be required to modify substantially present county jail procedures for processing inmate to courts in order to avoid subjecting inmates on trial to such daily trauma. Rutherford v. Pitchess, C.D.Cal.1978, 457 F.Supp. 104. Constitutional Law 272(2)

2554. ---- Book restrictions in visiting room, assistance of counsel, prisoners' access to courts

Prisoner's constitutional right to visit with his legal counsel was not violated by prison policy of not allowing prisoners to bring books into the visiting room, as the security problem posed by books as a vehicle for smuggling contraband into the institution is obvious. Howard v. Cronk, S.D.N.Y.1981, 526 F.Supp. 1227. Constitutional Law 272(2)

2555. ---- Grooming requirements, assistance of counsel, prisoners' access to courts

Prison official did not violate inmate's constitutional rights by refusing to permit inmate to leave death row without being clean shaven, as required by valid regulation, to see attorney. Solomon v. Zant, C.A.11 (Ga.) 1989, 888 F.2d 1579. Prisons 4(11); Prisons 13(4)

2556. ---- Mail restrictions, assistance of counsel, prisoners' access to courts

Denial of state prisoner's pro se §§ 1983 First Amendment access to courts claim, challenging prison policy restricting receipt of his legal mail, was warranted, absent showing that prisoner's failure to receive his legal mail actually frustrated, impeded, or hindered his efforts to pursue a legal claim. Wardell v. Duncan, C.A.10 (Colo.) 2006, 470 F.3d 954. Prisons 4(12)

Prisoner failed to establish §§ 1983 claim for unconstitutional denial of access to the courts; although prisoner demonstrated up to a week long delay in the posting of certain legal mail, there was no evidence that prison defendants acted so as to interfere with the posting of his mail, and prisoner did not show actual injury or specific harm which he had suffered as a result of the allegedly alleged delay or mishandling of his mail. Pearson v. Simms, D.Md.2003, 345 F.Supp.2d 515, affirmed 88 Fed.Appx. 639, 2004 WL 362386. Civil Rights 1094

Interference with prisoner's legal material and access to attorney and courts rise to level of constructional violation which may warrant injunctive relief. Oldham v. Chandler-Halford, N.D.Iowa 1995, 877 F.Supp. 1340. Civil Rights 1454

Charge in civil rights action that prison authorities prevented transmittal of memorandum of law from prisoner to

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his counsel stated claim upon which relief could be granted. Wells v. McGinnis, S.D.N.Y.1972, 344 F.Supp. 594. Civil Rights 1395(7)

Where prisoner had right under S.H.A.Ill. ch. 38, § 122-1, to secure postconviction relief, the filing of transcript was not necessary to set appeal procedure in motion within requisite time limit and his attorney could have taken proper action to inform state Supreme Court of difficulty in locating transcript, prisoner was not injured by failure of prison officials to mail transcript of his case to his attorney and therefore could not recover from prison authorities under this section. Jenkins v. Meyers, N.D.Ill.1972, 338 F.Supp. 383, affirmed 481 F.2d 1406. Civil Rights 1094

2557. ---- Self representation, assistance of counsel, prisoners' access to courts

Because neither Supreme Court of Puerto Rico, nor United States District Court Judge, was constitutionally compelled to accept inmate's invocation or request to self-representation, denial of that invocation or request did not infringe inmate's alleged right to self-representation; thus, he could not recover on his § 1983 claim based on that denial. Concepcion v. Cintron, D.Puerto Rico 1995, 905 F.Supp. 57. Civil Rights 1088(5); Criminal Law 641.4(1)

2558. ---- Telephone restrictions, assistance of counsel, prisoners' access to courts

Pretrial detainee's § 1983 complaint alleging that he was denied adequate access to telephone for purposes of defending charges against him and that he was denied means to make bail contained sufficient factual allegations to support, under simple notice pleading standard, his claims that jail administrators and sheriff interfered with his right to counsel and bail. Simpson v. Gallant, D.Me.2002, 231 F.Supp.2d 341. Civil Rights 1395(6)

State police officers could not be held liable, under § 1983, for alleged violation of arrestee's Sixth Amendment right to counsel arising from arrestee's inability to call his attorney from jail at which he was being held; right to counsel had not attached at the time arrestee was unable to call attorney and officers had no control over jail telephone policies. Fridley v. Horrigs, S.D.Ohio 2000, 162 F.Supp.2d 772, affirmed 291 F.3d 867, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 1262, 537 U.S. 1191, 154 L.Ed.2d 1024. Civil Rights 1358

Denying inmate's request to make telephone call to his attorney, on ground that inmate lacked sufficient money in inmate trust fund account, did not deny inmate access to the courts in violation of First Amendment and could not be basis for § 1983 civil rights claim by inmate against various state prison officials; convenience of access is not constitutionally protected and inmate failed to demonstrate actual interference. Ishaaq v. Compton, W.D.Tenn.1995, 900 F.Supp. 935. Constitutional Law 272(2); Prisons 4(12)

Allegation that inmate was denied "legal telephone calls" could state claim for relief under due process clause as denial of meaningful access to courts if inmate could demonstrate that telephone was his only avenue for meaningful access to his lawyer because he was unable to contact his lawyer by mail or was denied visits from his lawyer. Williams v. ICC Committee, N.D.Cal.1992, 812 F.Supp. 1029. Constitutional Law 305(2); Prisons 4(12)

Restrictions placed on prisoner's contact with his attorney by telephone did not violate prisoner's civil rights; prisoner did not allege that he was denied absolute access to his counsel by restrictions, but rather that he was delayed in communicating with counsel, and prisoner stated that he was always able to get in contact with his attorney although occasionally he had to wait one day. Bellamy v. McMickens, S.D.N.Y.1988, 692 F.Supp. 205. Civil Rights 1094

While allowing county jail inmates to use a telephone, on which to call their attorneys, was a system which might

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suffice for most inmates who are awaiting trial and who are constitutionally entitled to appointed counsel at trial, it would not insure that convicted inmates or pretrial detainees seeking to file federal and state petitions for habeas corpus or postconviction relief, in civil rights suits, have meaningful access to the courts. Parnell v. Waldrep, W.D.N.C.1981, 511 F.Supp. 764. Prisons 4(10.1)

Presence of custodial officers when pretrial detainees placed or received telephone calls in county jail posed threats to detainees' rights under U.S.C.A.Const. Amend. 1 and Amend. 6 and to their attorney-client privileges, and district court would order that whenever a detainee in county jail places a call to her attorney of record from telephone located in matron's office, matron and other jail personnel would be required to leave room so that conversation could be conducted in privacy. Moore v. Janing, D.C.Neb.1976, 427 F.Supp. 567. Prisons 4(12)

2559. ---- Time restrictions, assistance of counsel, prisoners' access to courts

Right of juvenile detained in juvenile center to counsel was not unduly curtailed by 9:00 a.m. to 5:00 p.m. weekday visiting hour restriction with its permissible exceptions by special arrangement for weekend and after-hour meetings. Negron v. Wallace, C.A.2 (N.Y.) 1971, 436 F.2d 1139, certiorari denied 91 S.Ct. 2184, 402 U.S. 998, 29 L.Ed.2d 164.

Attorney visiting policy at federal prison which limited access by attorneys from 8 a.m. to 8 p.m., seven days a week, with attorneys being issued special identification and which included five attorney conference rooms as well as a larger common space furnished with conference tables was adequate. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(12)

2560. ---- Transfer of prisoners, assistance of counsel, prisoners' access to courts

Where state penitentiary inmate complained of transfers between county jails but failed to allege that either of the jails involved closed their doors to his attorney, transfers, although causing some inconvenience, did not amount to denial of inmate's right to counsel under U.S.C.A.Const. Amend. 6. Mingo v. Patterson, D.C.Colo.1978, 455 F.Supp. 1358. Prisons 4(11)

2561. ---- Civil rights actions, assistance of counsel, prisoners' access to courts

Inmate did not demonstrate exceptional circumstances to justify appointment of a law student to act as his counsel in his action against corrections officials and health care providers, alleging various constitutional and statutory violations; inmate seemed fully capable of conducting fact investigation, appropriately filing court documents, and understanding and asserting legal claims. Niemic v. Maloney, D.Mass.2006, 448 F.Supp.2d 270. Civil Rights 1445

In prison inmate's § 1983 action alleging assault by corrections officials, any ineffective assistance of counsel was not a constitutional violation; Sixth Amendment did not apply in a civil case. Piedra v. True, C.A.10 (Kan.) 2002, 52 Fed.Appx. 439, 2002 WL 31656680, Unreported. Trial 21

2562. ---- Class actions, assistance of counsel, prisoners' access to courts

Substitution of counsel was warranted in class action suit challenging prison conditions for inmates who had tested positive for Human Immunodeficiency Virus (HIV), where class sentiments indicated clear preference for a known substitute, at least 80% of the class supported substitution, appointed counsel was not adequately performing his duties, his relationship with class members had deteriorated, and, as solo practitioner with limited resources, appointed counsel suffered constraints upon his ability adequately to prosecute the case. Gates v. Cook, C.A.5 (

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Miss.) 2000, 234 F.3d 221, rehearing and rehearing en banc denied 253 F.3d 707. Civil Rights 1445

If lack of counsel is sole impediment to prisoner being permitted to maintain civil rights action against prison officials as class action, consideration should be given to appointment of counsel. Cruz v. Estelle, C.A.5 (Tex.) 1974, 497 F.2d 496. Civil Rights 1445

2563. ---- Habeas corpus actions, assistance of counsel, prisoners' access to courts

In determining need for legal assistance prison authorities must take into account the need for assistance in civil rights actions as well as habeas corpus suits. McDonnell v. Wolff, C.A.8 (Neb.) 1973, 483 F.2d 1059, certiorari granted 94 S.Ct. 913, 414 U.S. 1156, 39 L.Ed.2d 108, affirmed in part, reversed in part on other grounds 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Prisons 4(11)

2564. ---- Proof of attorney's authority, assistance of counsel, prisoners' access to courts

Since state has legitimate interest in protecting juveniles under detention from visits by attorneys (or persons purporting to be attorneys) whom juveniles have expressed no desire to see and who have not established authority to speak for them, a requirement as to proof of the attorney's authority is reasonable in all but the most exceptional cases. Negron v. Wallace, C.A.2 (N.Y.) 1971, 436 F.2d 1139, certiorari denied 91 S.Ct. 2184, 402 U.S. 998, 29 L.Ed.2d 164. Attorney And Client 69

2565. ---- Appointment of counsel, assistance of counsel, prisoners' access to courts

Prisoner was not entitled to appointed counsel in his civil rights case challenging prison's confiscation of $50 money order sent to prisoner by his mother in violation of prison regulations; prisoner's complaint and pleadings in the district court adequately presented the factual and legal basis of his claim and demonstrated that he understood the basics of his due-process property interest claim, and, prisoner was granted the liberal treatment accorded pro se litigants. Steffey v. Orman, C.A.10 (Okla.) 2006, 461 F.3d 1218. Civil Rights 1445

Inmate who brought §§ 1983 action against jail employees and jail's doctor was not entitled to appointed counsel; discovery had just begun at time inmate requested counsel so there was no conflicting testimony, there was no indication that inmate was unable to investigate or present case, inmate correctly identified applicable legal standard governing his claims and successfully amended his complaint to include essential information, claims involved information readily available to inmate, inmate was able to avoid procedural default, complaint was sufficient to survive first motion for summary judgment, and inmate was able to file more than thirty documents with court. Phillips v. Jasper County Jail, C.A.8 (Mo.) 2006, 437 F.3d 791. Civil Rights 1445

Appointment of counsel for indigent state prisoner on appeal was warranted, in prisoner's civil rights lawsuit under Eighth Amendment alleging that employees of Wisconsin Department of Corrections were deliberately indifferent to his serious medical needs, since oral argument would have materially advanced issues presented. Greeno v. Daley, C.A.7 (Wis.) 2005, 414 F.3d 645. Civil Rights 1445

Indigent inmate asserting federal civil rights claim against Department of Correctional Services (DOCS) officers was entitled to appointed counsel; at least some aspects of his claim were likely to be of substance, given some officers' admission of involvement in one allegedly retaliatory prison transfer and possibility that appointed counsel could cure flaws in complaint and shortfalls in evidentiary proof with regard to other officers, inmate lacked ability to manage case effectively on his own, and complexity of legal issues was considerable. Hendricks v. Coughlin, C.A.2 (N.Y.) 1997, 114 F.3d 390. Civil Rights 1445

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42 U.S.C.A. § 1983

Inmate had no constitutional right to appointed counsel in civil rights case. Abdur-Rahman v. Michigan Dept. of Corrections, C.A.6 1995, 65 F.3d 489. Civil Rights 1445

Decision whether to appoint counsel for indigent inmate in civil rights action is based on whether merits of indigent's claim are colorable, ability of indigent to investigate crucial facts, whether nature of evidence indicates that representation by counsel will more likely expose the truth, capability of indigent to present the case, and complexity of legal issues presented by complaint. Tucker v. Randall, C.A.7 (Ill.) 1991, 948 F.2d 388, on remand 840 F.Supp. 1237. Civil Rights 1445

Appointment of counsel is not to be endorsed in every civil rights case filed by state prisoner, but same was appropriate where there was question of credibility of witnesses and where case presented serious allegations of fact which were not facially frivolous. Manning v. Lockhart, C.A.8 (Ark.) 1980, 623 F.2d 536. Civil Rights 1445

It is not necessary to provide legal assistance for every conceivable civil claim prisoners wish to process; both courts and legal assistance agencies themselves have right to determine which claims merit legal assistance. Kelsey v. State of Minn., C.A.8 (Minn.) 1980, 622 F.2d 956. Prisons 4(11)

United States district court did not abuse discretion by failing to appoint counsel for prisoner in civil action against police officers alleging deprivation of civil rights under color of law. McBride v. Soos, C.A.7 (Ind.) 1979, 594 F.2d 610, on remand 512 F.Supp. 1207. Civil Rights 1445

Where counsel was appointed for defendant less than two weeks after date on which defendant claimed he was denied constitutionally guaranteed access to courts with respect to attempt to secure preindictment examining trial, there was no damage with respect to the alleged denial of access cognizable on record. Grundstrom v. Darnell, C.A.5 (Tex.) 1976, 531 F.2d 272. Civil Rights 1462

Prisoner bringing § 1983 civil rights suit seeking return of jewelry used as exhibits during state criminal trial was not entitled to appointment of counsel given that issues unpresented were not de novo or complex and in absence of exceptional circumstances. Couch v. Cobb County Superior Court, N.D.Ga.1995, 874 F.Supp. 1378. Civil Rights 1445

Appointment of counsel was warranted for indigent prisoner who brought § 1983 action against prison officials alleging that he suffered injury at hands of fellow inmate, that prior to attack officials knew of threats against him, that he made known to officials that he was in fear of and in danger from inmate, and that officials witnessed attack and deliberately failed to intervene; there was some merit in fact and law to essential elements of prisoner's claim, whether it was premised upon due process clause or Eighth Amendment, and although prisoner was able to read and write reasonably well, his lack of legal education, the conflict of his work hours with prison library hours, and his need for in depth factual discovery seriously hampered his ability to represent himself effectively. Tabron v. Grace, M.D.Pa.1994, 871 F.Supp. 227. Civil Rights 1445

In determining whether to appoint counsel in § 1983 cases, court must initially consider whether claim is colorable; if so, court will look at nature and complexity of factual issues, complexity of legal issues, and capability of plaintiff to represent his claim without assistance of counsel. U.S. v. $27,000.00, More or Less in U.S. Currency, S.D.W.Va.1994, 865 F.Supp. 339. Civil Rights 1442

Prisoner was entitled to appointment of counsel to represent him in civil rights action against prison; each of his claims, failure to provide proper medical care, malicious punishment in retaliation for bringing lawsuits against prison officials, wrongful refusal of transfer and confinement in "keeplock" in violation of his rights to due process, would constitute constitutional deprivations if proved, and even though prisoner had conducted an appreciable amount of discovery on his own, issues were sufficiently complex to warrant legal assistance. Jermosen v.

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42 U.S.C.A. § 1983

Coughlin, W.D.N.Y.1990, 745 F.Supp. 128. Civil Rights 1445

Counsel should have been appointed for civil rights plaintiff who was in prison, where case had survived summary judgment and was set for trial before jury, plaintiff had limited education and lack of litigation experience, and prisoner's incarceration limited his ability to investigate the facts and depose potential witnesses, and case was likely to turn on credibility determinations. Woodham v. Sayre Borough Police Dept., C.A.3 (Pa.) 2006, 191 Fed.Appx. 111, 2006 WL 1371575, Unreported. Civil Rights 1445

District court's dismissal of state prisoner's §§ 1983 complaint for failure to state a claim, and dismissal of appeal from that order as frivolous, both counted as strikes under the three strikes provision of statute governing proceedings in forma pauperis. Howard v. Wilson, C.A.5 (Miss.) 2006, 176 Fed.Appx. 468, 2006 WL 997319, Unreported. Federal Courts 663

Although denial of pro se prisoner's motion for appointment of counsel should not have been denied as "untimely" in his civil rights case alleging excessive force, because prisoner with allegedly limited English skills made the motion as soon as he had seen and addressed prison guards' motion for summary judgment, prisoner was not prejudiced by denial of appointment of counsel, where no attorney could have overcome negative impact of surveillance videotape on prisoner's claim that he was the victim of excessive force when guards forcibly removed him from his cell; videotape fully supported guards' contention that they used only the force necessary to control the situation. Mediaceja v. Horner, C.A.7 (Wis.) 2003, 82 Fed.Appx. 488, 2003 WL 22853045, Unreported, certiorari denied 124 S.Ct. 2076, 541 U.S. 1013, 158 L.Ed.2d 626. Federal Courts 893

Just determination of state inmate's § 1983 action against prison staff members did not require appointment of pro bono counsel, even though inmate allegedly had been unable to retain private counsel and cross-examination likely would play significant role in trial of action, given that inmate had demonstrated ability to investigate and present relevant facts and had compiled incident reports, administrative records, and other documents related to his due process claim, that care with which inmate had detailed facts and circumstances surrounding underlying incident demonstrated his ability to frame questions to elicit responses pertinent to prosecution of action, and that factual circumstances surrounding claim did not appear to be complicated and inmate appeared generally capable of understanding and presenting legal issues raised by his claims. Harris v. McGinnis, S.D.N.Y.2003, 2003 WL 21108370, Unreported. Civil Rights 1445

District court did not abuse its discretion in denying pro se pretrial detainee's request for appointment of counsel in § 1983 action against county jail officials alleging deliberate indifference to his serious medical needs in violation of Eighth Amendment. Sandifer v. Green, C.A.10 (Kan.) 2003, 57 Fed.Appx. 857, 2003 WL 297562, Unreported, on remand 2004 WL 784934. Civil Rights 1445

Circumstances did not warrant appointment of counsel in prison inmate's in forma pauperis § 1983 action against prison personnel; inmate's complaint was detailed in nature, details contained in the complaint suggested that investigating the claims made in the instant action would not be a complicated exercise for the inmate, and while cross-examination might play a significant role at trial, inmate's care in explaining the facts and circumstances indicated to the Court that he would be able to frame questions to elicit responses pertinent to the prosecution of the action, and the legal issues, including alleged violations of the Fifth, Sixth, Eighth, and Fourteenth Amendments, were not complex. Edwards v. Goord, S.D.N.Y.2003, 2003 WL 223456, Unreported. Civil Rights 1445

Allegations by pro se prisoner that he had sustained back, neck, and wrist injuries and extreme mental suffering due to physical and mental abuse by prison officials satisfied threshold showing of merit, on prisoner's application for appointment of counsel in §1983 excessive force action. Kee v. Hasty, S.D.N.Y.2003, 2003 WL 115235, Unreported. Civil Rights 1445

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42 U.S.C.A. § 1983

Appointment of pro bono counsel to assist pro se prisoner who asserted § z1983 excessive force claims against prison officials would not be warranted; prisoner demonstrated ability to investigate and present relevant facts, factual circumstances surrounding the claim did not appear complex, prisoner appeared capable of understanding and presenting relevant legal issues, and prisoner had not demonstrated effort, apart from writing to three attorneys, to seek representation. Kee v. Hasty, S.D.N.Y.2003, 2003 WL 115235, Unreported. Civil Rights 1445

2566. Assistance by other inmates, prisoners' access to courts--Generally

Prison inmate did not possess a First Amendment right to provide legal assistance to fellow inmates. Shaw v. Murphy, U.S.2001, 121 S.Ct. 1475, 532 U.S. 223, 149 L.Ed.2d 420, on remand 253 F.3d 1151. Constitutional Law 82(13); Constitutional Law 91; Prisons 4(11)

At the present stage of development of prison disciplinary procedures, inmates do not have a constitutional right to either retained or appointed counsel, but where an illiterate inmate is involved or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate or, if that is forbidden, to have adequate substitute aid in the form of help from the staff or from sufficiently competent inmate designated by the staff. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Prisons 13(9)

Issuance of preliminary injunction enjoining prison officials from enforcing prison policy banning prisoners' communications with other prisoners who served as jailhouse lawyers was warranted, in § 1983 action brought by prisoners' who had pending post-conviction claims, challenging policy as unconstitutionally restricting prisoners' right of access to courts; policy banned all prisoner-to-prisoner legal communications, prisoners presented evidence of irreparable injury, in establishing that they had no satisfactory alternative way of obtaining legal assistance for their pending claims, and officials presented no evidence that ban served legitimate penological purpose, demonstrating likelihood of prisoners' success on the merits. Bear v. Kautzky, C.A.8 (Iowa) 2002, 305 F.3d 802. Civil Rights 1457(5)

A mere formal right of access to the courts is not enough; a prisoner's access to the courts must be effective, adequate and meaningful and, in some circumstances, such right may entail the right to seek the assistance of other prisoners in preparing legal papers. Rudolph v. Locke, C.A.5 (Ala.) 1979, 594 F.2d 1076. Prisons 4(10.1)

Prisoners have right not only directly to petition court without unreasonable interference but also means necessary effectively to present any claims, including right to assistance of a jailhouse lawyer or access to necessary legal materials. Knell v. Bensinger, C.A.7 (Ill.) 1975, 522 F.2d 720. Prisons 4(10.1)

Absent reasonable alternatives, and subject only to reasonable restrictions, inmates must be allowed to assist other prisoners in the preparation of legal petitions. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233. Prisons 4(11)

2567. ---- Alternate means of assistance, assistance by other inmates, prisoners' access to courts

In assessing adequacy of legal assistance available to prisoners under regulation appointing one inmate as a legal advisor, applying standard that inmates cannot be barred from furnishing assistance to each other if the state does not provide some reasonable alternative, capacity of the inmate advisor is to be assessed in light of demand for assistance in civil rights actions as well as in the preparation of habeas writs. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Prisons 4(11)

In absence of any allegation that sources of legal information available within federal prison were inadequate,

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action of prison officials in refusing to permit prisoner to visit with a certain person who allegedly had provided the prisoner with books and legal fees in the past did not violate the prisoner's minimal right of access to a threshold level of legal information or aid. Lynott v. Henderson, C.A.5 (Ga.) 1980, 610 F.2d 340. Prisons 4(11)

Where prison provides inmates with adequate assistance from persons trained in the law, the right to inmate legal assistance, which is premised upon absence of reasonable alternatives for legal aid, is not applicable and in such a situation, prison can restrict inmates from giving legal assistance to other prisoners, and prison is not required to provide an adequate law library. Wetmore v. Fields, W.D.Wis.1978, 458 F.Supp. 1131. Prisons 4(11); Prisons 4(13)

Inmates who are unable to perform their own legal research have constitutional right to legal assistance from other inmates, in absence of adequate assistance from lawyers, even where prison makes available an adequate law library. Wade v. Kane, E.D.Pa.1978, 448 F.Supp. 678, affirmed 591 F.2d 1338. Prisons 4(11)

2568. ---- Permission of prison official, assistance by other inmates, prisoners' access to courts

Prison regulation providing that inmate may not share or assist in the preparation of legal papers for others without permission of the Superintendent is reasonable. Wells v. McGinnis, S.D.N.Y.1972, 344 F.Supp. 594. Prisons 4(11)

2569. ---- Illiterates or other non-English speaking inmates, assistance by other inmates, prisoners' access to courts

In the case of illiterate or otherwise disadvantaged prison inmates, for whom the complexity of issues may foreclose the needed capacity to collect and present the evidence necessary for an adequate comprehension of the case involving transfer to maximum security, prison officials should allow the assistance of a fellow inmate, or some designated staff member, to be part of the proceedings. Kirby v. Blackledge, C.A.4 (N.C.) 1976, 530 F.2d 583. Prisons 13(9)

Prison regulation prohibiting prisoners from assisting other inmates in preparation of legal papers was invalid, even though assistance to illiterates was permissible under regulation. Wainwright v. Coonts, C.A.5 (Fla.) 1969, 409 F.2d 1337. Prisons 4(11)

2570. ---- Number of inmate legal advisors, assistance by other inmates, prisoners' access to courts

Formal program of inmate legal assistance which included only two inmate legal advisors for total prison population of 1,321 was inadequate to serve needs of all the inmates. Taylor v. Perini, N.D.Ohio 1976, 413 F.Supp. 189. Prisons 4(11)

2571. ---- Quality of assistance, assistance by other inmates, prisoners' access to courts

In view of fact that prisoner, who was charged with participating in prison riot, and for whom an inmate advisor was appointed, was not given an opportunity for at least some form of quality control and that neither he nor his assigned advisor were allowed to vary selection made for prisoner by prison officials, and in light of fact that there was no assurance that prison procedures were calculated to produce for prisoner, assumed incapable of presenting his own defense, an advisor any more capable of advancing his cause than himself, there was a substantial risk that elements of due process had been denied. Mills v. Oliver, E.D.Va.1973, 367 F.Supp. 77. Constitutional Law 272(2)

2572. ---- Retaliation against jailhouse lawyer, assistance by other inmates, prisoners' access to courts

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42 U.S.C.A. § 1983

On inmate's § 1983 claim of retaliation for providing legal assistance to fellow inmates, to survive summary judgment against him inmate had to allege violation of constitutional right and demonstrate a retaliatory motive. Tighe v. Wall, C.A.5 (La.) 1996, 100 F.3d 41. Civil Rights 1092

Alleged harassment by prison guards when prisoner exercised his right to be a jail house lawyer was sufficient to form a basis for a cause of action under civil rights statute in absence of a showing that prisoner did not have a right to practice jail house law because inmate legal assistance was prohibited and reasonable alternatives existed. Young v. Calhoun, S.D.N.Y.1987, 656 F.Supp. 970. Civil Rights 1094

2573. ---- Habeas corpus petitions, assistance by other inmates, prisoners' access to courts

Prisoner has no right to file habeas corpus petition on behalf of another inmate, absent extraordinary circumstances. McKinney v. DeBord, E.D.Cal.1970, 324 F.Supp. 928, affirmed in part, reversed in part on other grounds 507 F.2d 501. Convicts 6

Enforcement of prison rule prohibiting one inmate from assisting another in writing of habeas corpus petitions did not deny access to courts or other constitutional rights of inmate who was shown to be capable of expressing himself with sufficient clarity to present complaints effectively to court. Owens v. Russell, M.D.Pa.1967, 277 F.Supp. 390, certiorari denied 89 S.Ct. 491, 393 U.S. 1003, 21 L.Ed.2d 467. Prisons 4(11)

2574. Costs and fees, prisoners' access to courts

To prevent "effectively foreclosed access," indigent prisoners must be allowed to file appeals and habeas corpus petitions without payment of docket fees, and counsel must be appointed to give indigent inmates "a meaningful appeal" from their convictions. Bounds v. Smith, U.S.N.C.1977, 97 S.Ct. 1491, 430 U.S. 817, 52 L.Ed.2d 72. Criminal Law 1077.1(1); Criminal Law 1077.3; Habeas Corpus 883.1

Although inmates who failed to assert that mixed idle-pay allowance for postage and personal necessities had prejudiced them in any pending or contemplated legal proceeding failed to state constitutional claim, allegations of inmate who specifically listed prices of basic hygiene supplies, on which he had to spend idle pay, and stated that, for lack of funds, he was forced to miss court deadlines and dismiss cases raised material factual issues, precluding summary judgment in § 1983 action claiming that prison's idle-pay policy violated right of access to courts. Myers v. Hundley, C.A.8 (Iowa) 1996, 101 F.3d 542. Federal Civil Procedure 2491.5

Inmates in state hospital, placed under jurisdiction of Psychiatric Security Review Board after having been found guilty except for insanity of certain crimes, sufficiently alleged that state's policy limiting indigent patients to three stamps per week interfered with their access to courts, such as was necessary to state action against hospital superintendent for deprivation of constitutional right of meaningful access to courts; inmates alleged that they often found it necessary to communicate with courts more than three times per week and that pleadings often needed more than 20 cents postage. King v. Atiyeh, C.A.9 (Or.) 1987, 814 F.2d 565. Civil Rights 1395(1)

Refusal to pay for attendance of witnesses of indigent civil rights complainant did not deny or infringe complainant's fundamental right, if any, to bring civil rights action under this subchapter where complainant was able to bring action in federal court and present issues to court, and therefore fact that state was unwilling or unable to assist him by subsidizing payment of his witness fees did not totally bar his efforts to bring case. Johnson v. Hubbard, C.A.6 (Ohio) 1983, 698 F.2d 286, certiorari denied 104 S.Ct. 282, 464 U.S. 917, 78 L.Ed.2d 260. Civil Rights 1056

Prison policy whereby a prisoner must have less than $5 in his prison account to qualify for free postage did not deny prisoner his constitutional right to access to courts. Twyman v. Crisp, C.A.10 (Okla.) 1978, 584 F.2d 352. Prisons 4(10.1)

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42 U.S.C.A. § 1983

Alleged negligence on part of jailor in preventing inmate's access to courts by failing to transmit plaintiff's petition and filing fee to court to which they were addressed gave rise to a claim under this section governing deprivation of civil rights. Welch v. Evans, E.D.Va.1975, 402 F.Supp. 468. Civil Rights 1094

2575. Notary publics, prisoners' access to courts

Given the statutory alternative of unsworn declarations, the unavailability of notary services in parish prison did not preclude inmate from filing Freedom of Information Act and Privacy Act requests; therefore, the unavailability of notary services could not form basis for § 1983 civil rights action. Duncan v. Foti, C.A.5 (La.) 1987, 828 F.2d 297. Civil Rights 1094; Records 31; Records 62

Prison officials do not have right to refuse to notarize or mail legal papers of inmates when they believe form used is improper, and distinction may not be made between clinic and nonclinic legal papers for these purposes. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233. Prisons 4(12)

Jail authorities would be required to supply indigent inmates filing in forma pauperis petitions in either state or federal courts the services of a notary public without requiring the payment of any fee. Tate v. Kassulke, W.D.Ky.1975, 409 F.Supp. 651. Prisons 4(10.1)

Procedures whereby notary public service at prison was provided at least twice per week with emergency service available were not unreasonable, did not violate prisoner's right to due process and did not give rise to claim under this section or statute giving district courts original jurisdiction of actions arising under Constitution of the United States. Washington v. Vincent, S.D.N.Y.1973, 361 F.Supp. 942. Civil Rights 1094; Constitutional Law 272(2); Federal Courts 174; Prisons 4(13)

2576. Subpoenas, prisoners' access to courts

Assistant Attorney General's advice to prison official not to honor subpoena which was not tendered with witness fees did not violate civil rights of party who tendered subpoena. Tedder v. Odel, C.A.9 (Or.) 1989, 890 F.2d 210. Civil Rights 1098

2577. Library or legal publications, prisoners' access to courts--Generally

The right of access to the court does not afford prisoners unlimited access to prison law libraries, and limitations may be placed on library access so long as the regulations are reasonably related to legitimate penological interests. Jones v. Greninger, C.A.5 (Tex.) 1999, 188 F.3d 322, rehearing and suggestion for rehearing en banc denied 203 F.3d 826, on remand 2000 WL 869506. Prisons 4(13)

Although providing access to a law library is an acceptable means of effectuating right of access to the courts for inmates, there is no independent right of access to a law library or legal assistance; therefore, inmate claiming denial of right of access must satisfy standing requirement of "actual injury" by showing that denial of legal resources hindered his efforts to pursue a nonfrivolous claim. Penrod v. Zavaras, C.A.10 (Colo.) 1996, 94 F.3d 1399. Prisons 4(13)

Inmate seeking materials necessary for access to courts must describe materials sought sufficiently so that prison can obtain them for inmate without being required to perform legal research for inmate; inmate must do more than make mere conclusory allegation of need for unspecified or unlimited materials, although it may not always be possible to identify needed material precisely in advance. Petrick v. Maynard, C.A.10 (Okla.) 1993, 11 F.3d 991. Prisons 4(13)

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A prisoner must be granted access to a law library as part of his right to petition the courts. Ganey v. Edwards, C.A.4 (N.C.) 1985, 759 F.2d 337. Prisons 4(13)

Action challenging denial to prisoner of access to courts because of inadequate law library may be brought pursuant to this section. Bradenburg v. Beaman, C.A.10 (Wyo.) 1980, 632 F.2d 120, certiorari denied 101 S.Ct. 1522, 450 U.S. 984, 67 L.Ed.2d 820. Civil Rights 1094

Restricted access to prison law library is not per se denial of access to courts; prison library is but one factor in totality of all factors bearing on inmate's access to court. Twyman v. Crisp, C.A.10 (Okla.) 1978, 584 F.2d 352. Prisons 4(13)

The functions served by county jails in a state penal system should be taken into account in determining whether all inmates have access to legal materials. Cruz v. Hauck, C.A.5 (Tex.) 1975, 515 F.2d 322, certiorari denied 96 S.Ct. 1118, 424 U.S. 917, 47 L.Ed.2d 322. Prisons 4(13)

State prison officials reasonably interpreted rule proscribing possession of legal materials belonging to another inmate as including both copies and originals of such materials. Giba v. Cook, D.Or.2002, 232 F.Supp.2d 1171. Prisons 13(4)

Prison rules with regard to lateness which resulted in denial of inmate's access to prison law library due to his tardy arrival did not entitle inmate to § 1983 relief for violation of his right of access to courts, where prison rules were impartial administrative regulations and were not geared in any way toward limiting inmate's right of access to court, and inmate failed to show that his access to court was actually frustrated as result of enforcement of these rules. Muhammad v. Hilbert, E.D.Pa.1995, 906 F.Supp. 267. Civil Rights 1094; Prisons 4(13)

Denial of access to inmate's legal materials may state civil rights claim. Rhodes v. Knight, D.Kan.1994, 861 F.Supp. 980, affirmed 45 F.3d 440. Civil Rights 1094

Inmate failed to state § 1983 claim against State Department of Corrections officials by contending that Department violated its own regulations requiring that all inmates be given access to law library and adequate legal supplies, as violations of state law or regulations were not cognizable under § 1983. Canell v. Bradshaw, D.Or.1993, 840 F.Supp. 1382, affirmed 97 F.3d 1458. Civil Rights 1094

Inmate did not state claim for violation of his right to court access, absent allegations that his problems with obtaining access to law books or his legal mail caused him to suffer actual injury to his right to court access. Saunders v. Horn, E.D.Pa.1996, 959 F.Supp. 689, report and recommendation adopted 960 F.Supp. 893. Constitutional Law 328; Prisons 4(12); Prisons 4(13)

Inmates do not have a right per se to law books but, rather, a right to a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts. Inmates, Washington County Jail v. England, E.D.Tenn.1980, 516 F.Supp. 132, affirmed 659 F.2d 1081. Prisons 4(13)

To receive constitutionally mandated access to the courts, convicted county jail inmates, who serve up to 180 days in the jail, yet have no access to a law library or legal services, must be given either adequate legal assistance or adequate access to a law library. Parnell v. Waldrep, W.D.N.C.1981, 511 F.Supp. 764. Prisons 4(11); Prisons 4(13)

Prisoner did not have standing to bring § 1983 action against prison officials claiming that he was deprived of his right of access to the courts because prison's law library was deficient, as his alleged injury was merely speculative. Thomas v. Campbell, C.A.6 (Tenn.) 2001, 12 Fed.Appx. 295, 2001 WL 700839, Unreported. Civil Rights 1333(4)

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Prisoner's claim that his constitutional right to access to the courts was impaired by denial of access to a law library was not supported by actual injury, where prisoner failed to allege any facts in complaint of how supposed lack of legal research materials might have affected him. Florez v. Johnson, C.A.10 (N.M.) 2003, 63 Fed.Appx. 432, 2003 WL 1605857, Unreported. Civil Rights 1395(7)

Prisoner's allegations that prison authorities censored his mail failed to state § 1983 claim for violation of his First Amendment free speech right, where claim did not state when censorship began, who engaged in the censorship, the extent of the censorship, or the purpose of the censorship. Florez v. Johnson, C.A.10 (N.M.) 2003, 63 Fed.Appx. 432, 2003 WL 1605857, Unreported. Civil Rights 1395(7)

Pursuant to consent decree settling § 1983 suit, county jail would be required to maintain adequate law library, accessible to inmates, containing particular, named general/reference materials, federal materials and state materials. Griffith v. Fontenot, E.D.Tex.1994, 1994 WL 738984, Unreported. Prisons 4(13)

Allegedly improper failure of deputy general counsel of state department of corrections to respond to criminal defendant's request pursuant to New York Freedom of Information Law (FOIL) for information pertinent to preparation of his defense did not amount to denial of liberty or property without due process, and thus defendant's claim was not cognizable under § 1983, in light of defendant's adequate post-deprivation remedy of Article 78 proceeding under New York state law. Davis v. Guarino, C.A.2 (N.Y.) 2002, 52 Fed.Appx. 568, 2002 WL 31819622, Unreported. Constitutional Law 320.5; Records 62

2578. ---- Detriment or prejudice, library or legal publications, prisoners' access to courts

Civil rights claim, based on prison locker policy that allegedly imposed disciplinary violations if inmates had legal files in their possession that would not fit into tubs they were given to keep their personal possessions, was frivolous and could not support death row inmate's request for stay of execution, absent allegation that inmate suffered actual injury to pending or contemplated legal claims because of policy. McDonald v. Carnahan, C.A.8 (Mo.) 1997, 125 F.3d 652. Sentencing And Punishment 1798

Inmate who was denied parole could not show that he had suffered any cognizable harm from his alleged lack of access to law library or legal assistance, and thus inmate failed to state claim under § 1983; parole board based its decision on facts specific to inmate, not on legal precedent, and thus inmate's inability to research and present legal precedent did not interfere with his access to courts. Reffitt v. Nixon, E.D.Va.1996, 917 F.Supp. 409, affirmed 121 F.3d 699. Civil Rights 1094; Prisons 4(13); Civil Rights 1097

To show deprivation of access to courts, inmate must prove that prison officials failed to assist in preparation and filing of meaningful legal papers by providing prisons with adequate law libraries or adequate assistance from persons trained in law and must show some quantum of detriment caused by challenged conduct of state officials resulting in interruption or delay of pending or contemplated litigation. Gray v. Faulkner, N.D.Ind.1992, 811 F.Supp. 1343. Prisons 4(10.1)

At very least, in order to support civil rights claim for deprivation of access to legal materials, complaining prisoner must allege some quantum of detriment caused by challenged conduct of authorities resulting in interruption or delay of litigation. Morrison v. Martin, E.D.N.C.1990, 755 F.Supp. 683, affirmed 917 F.2d 1302. Civil Rights 1094

State prisoner failed to show that he was denied meaningful access to legal materials through prison law library, based upon library's delay in providing him with a case that he requested that allegedly could have resulted in habeas relief from his conviction, for purpose of §§ 1983 claim, where library provided him with requested case months before the deadline to file his habeas petition expired, but prisoner failed to file petition until after deadline. Easterwood v. Kirby, C.A.10 (Okla.) 2004, 86 Fed.Appx. 396, 2004 WL 103560, Unreported. Civil Rights

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Inmate's right of access to courts was not infringed to support his allegations under § 1983 against prison officials for administering an inadequate law library at county jail; undisputed facts demonstrated that inmate had ample and meaningful access to courts, inmate was provided with court-appointed attorney to challenge drug charges, attorney assisted in inmate's guilty plea, inmate was able to file pro se civil action against arresting officers, which he later withdrew, and inmate did not allege that statute of limitations prevented him from refiling civil action. Abodeen v. Bufardi, C.A.2 (N.Y.) 2003, 75 Fed.Appx. 822, 2003 WL 22148774, Unreported. Civil Rights 1094

2579. ---- Alternate means of access generally, library or legal publications, prisoners' access to courts

Although state prison law library's inventory, updating, and irregular hours of access were concededly inadequate, inmates were not deprived of their constitutional right of access to the courts where alternative means of such access were available. Kelsey v. State of Minn., C.A.8 (Minn.) 1980, 622 F.2d 956. Prisons 4(13)

No particular mode of access to courts by prisoner is required, but regulations or practices which can be construed as impeding such access are invalid, and lack of a law library or of access to such a library might, absent alternatives, unreasonably restrict inmate access to courts. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233. Prisons 4(10.1)

Providing inmates in control status cellblocks with paralegals and opportunity to use kite system to obtain books, even if not as good as direct access to law library, was sufficient to provide constitutional court access to prisoners deemed security risks at maximum security prison. Knecht v. Collins, S.D.Ohio 1995, 903 F.Supp. 1193, affirmed in part, vacated in part and reversed in part 187 F.3d 636. Constitutional Law 328; Prisons 4(11); Prisons 4(13)

Limited resources and hours of inmate law library did not violate inmate's right of access to the courts; inmates were afforded access to holdings of county law library, assistance from legal services provider was made available, limited hours were caused by extensive renovation project, and inmate failed to show how he was prejudiced. Bookless v. Bruce, D.Kan.1993, 814 F.Supp. 52. Prisons 4(13)

In providing meaningful access to courts, it is not required that correctional officials established a law library; alternative means to achieve that goal may be used. Fluhr v. Roberts, W.D.Ky.1978, 460 F.Supp. 536. Prisons 4(13)

Since pretrial detainee in county jail was represented by counsel, he had adequate access to courts; thus, he was not deprived of access by refusal of chief jailer and sheriff to give him access to legal materials. Wilson v. Wittke, E.D.Wis.1978, 459 F.Supp. 1345. Prisons 4(10.1)

Law libraries are a constitutionally acceptable method of assuring inmate access to the courts; however, where reliance on law libraries does not ameliorate lack of meaningful access to the courts, the judiciary has an obligation to take additional steps. Battle v. Anderson, E.D.Okla.1978, 457 F.Supp. 719, remanded on other grounds 594 F.2d 786. Prisons 4(13)

2580. ---- Attorney assistance programs, library or legal publications, prisoners' access to courts

State was under no constitutional duty to offer inmates of its penal institutions both adequate legal research facilities and independent attorneys' office, however helpful the dual service might be. Smith v. Bounds, C.A.4 (N.C.) 1975, 538 F.2d 541, certiorari granted 96 S.Ct. 1505, 425 U.S. 910, 47 L.Ed.2d 760, affirmed 97 S.Ct. 1491, 430 U.S. 817, 52 L.Ed.2d 72. Prisons 4(11); Prisons 4(13)

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State attorney assistance program which assisted state prisoners who were denied access to adequate legal research facility was an acceptable alternative to legal research facility, despite fact that program could have benefitted from participation of additional lawyers and despite delay which occurred between time prisoner requested assistance of attorney and time attorney could consult such prisoner. Peterson v. Davis, E.D.Va.1976, 421 F.Supp. 1220, affirmed 562 F.2d 48. Prisons 4(13)

Prison inmate who challenged actions of state prison authorities in instituting and implementing a new inmate legal-assistance program, under which prison law library was closed in favor of providing contract attorneys to assist inmates with their legal needs, failed to show that his own lawsuits had been dismissed because of legal services provided, as required to recover in § 1983 action in which he alleged that he had been denied access to the courts. Eaton v. Dooley, C.A.8 (S.D.) 2000, 230 F.3d 1362, Unreported. Civil Rights 1094

2581. ---- "Bookmobile" system, library or legal publications, prisoners' access to courts

"Bookmobile" system allowing prisoner to check out specifically requested books on a periodic basis is impermissible method of providing prisoners with court access. Marange v. Fontenot, E.D.Tex.1995, 879 F.Supp. 679. Prisons 4(13)

2582. ---- Clinics, library or legal publications, prisoners' access to courts

Prison officials may proscribe use of prison law clinic title in suits not allowed under clinic rules. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233.

Adequate prison law library was insufficient to preserve fundamental right of access to the courts as to those prisoners in administrative or disciplinary custody, who could not go to the library, despite program of providing a small number of cases or books on request, and as to those prisoners who were functionally illiterate, and thus closing of legal assistance clinic which had office on each cell block as well as main office and library would deprive those prisoners of the fundamental right of access to the courts. U.S. ex rel. Para-Professional Law Clinic v. Kane, E.D.Pa.1987, 656 F.Supp. 1099, affirmed 835 F.2d 285, certiorari denied 108 S.Ct. 1302, 485 U.S. 993, 99 L.Ed.2d 511. Prisons 4(13)

Closing of in-prison law clinic operated by inmates deprived inmates of their constitutional right to access to courts by denying inmates access to adequate law library, since prison's alternative program for representation of inmates by law students contemplated an institution-wide law library which lacked recent Federal Reporters, state criminal code and other materials. Wade v. Kane, E.D.Pa.1978, 448 F.Supp. 678, affirmed 591 F.2d 1338. Prisons 4(13)

2583. ---- Outside libraries, library or legal publications, prisoners' access to courts

Constitutional right of access to courts of inmate incarcerated in county jail for seven months was not violated by county's refusal to grant inmate access to county law library in regard to his challenges to conditions of confinement; inmate had access to counsel to pursue his civil rights claims at all times during his incarceration, and had access to telephone and free postage for communications with courts or attorneys. Love v. Summit County, C.A.10 (Utah) 1985, 776 F.2d 908, certiorari denied 107 S.Ct. 66, 479 U.S. 814, 93 L.Ed.2d 25. Prisons 4(13)

2584. ---- Illiterates or non-English speaking inmates, library or legal publications, prisoners' access to courts

Prison law library books, even if "adequate" in number, cannot provide access to the courts for those persons who do not speak English or who are illiterate. Cruz v. Hauck, C.A.5 (Tex.) 1980, 627 F.2d 710. Prisons 4(13)

For prisoners who cannot read or understand English, constitutional right of access to courts cannot be determined

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solely by number of volumes in, or size of, law library; merely making law library available to non-English speaking prisoner does not satisfy duty of prison officials to provide meaningful access. Acevedo v. Forcinito, D.N.J.1993, 820 F.Supp. 886. Prisons 4(13)

2585. ---- Indigents, library or legal publications, prisoners' access to courts

In absence of some alternative provision to insure that prisoners have assistance necessary to file petitions and complaints, such as access to legal advice, prison officials must provide indigent inmates with access to reasonably adequate law law library for preparation of legal actions. Padgett v. Stein, M.D.Pa.1975, 406 F.Supp. 287. Prisons 4(13)

2586. ---- Consulting with inmate in library, library or legal publications, prisoners' access to courts

County jail inmate could not maintain claim against two clerks at jail's law library alleging that library policies unduly restricted his access to law library and that clerks prevented him from consulting with fellow inmates while in library; appropriate recourse for inmate was to seek relief under terms of 1982 consent decree in which administrators at jail were required to provide inmates with sufficient access to law library. Martin v. Davies, N.D.Ill.1988, 694 F.Supp. 528, affirmed 917 F.2d 336, rehearing denied, certiorari denied 111 S.Ct. 2805, 501 U.S. 1208, 115 L.Ed.2d 978. Civil Rights 1094

2587. ---- Discarding of outdated materials, library or legal publications, prisoners' access to courts

In applying decision that a prisoner's right to access to courts includes right to adequate law libraries or adequate assistance from persons trained in the law, focus should not be on volumes that are discarded but on adequacy of volumes that remain in the library or, in absence of an adequate law library, on sufficiency of alternative legal assistance, and thus discarding of out-of-date advance sheets and supplementary pamphlets from prison law library did not interfere with prisoner's access to the courts. Rhodes v. Robinson, C.A.3 (Pa.) 1979, 612 F.2d 766. Prisons 4(13)

2588. ---- Number of publications prisoner allowed, library or legal publications, prisoners' access to courts

Prisoner was not denied his constitutional right of access to courts by prison's failure to provide him with every legal book he requested during lockdown, since prisoner was not prejudiced in any litigation as result of the alleged denial of access to law library; prisoner was only delayed in filing § 1983 lawsuit, which he filed after lockdown ended without missing any deadlines. Eason v. Thaler, C.A.5 (Tex.) 1996, 73 F.3d 1322. Constitutional Law 328; Prisons 4(13)

County jail rule prohibiting storage of hard cover law books in inmates' cells and restricting storage of nonhard cover materials so as not to limit the "floor or wall space dimensional of the jail cell block" was reasonable in light of duty of jail authorities to maintain security and to protect against dangers of fire. Cruz v. Hauck, C.A.5 (Tex.) 1975, 515 F.2d 322, certiorari denied 96 S.Ct. 1118, 424 U.S. 917, 47 L.Ed.2d 322. Prisons 12

State prison inmates were not denied effective access to courts by virtue of practices under which persons detained in prison's special housing unit were not allowed access to prison law library, were provided only two law books per day, and were not permitted legal assistance from inmates or inmate law clerks while in segregation. Frazier v. Ward, N.D.N.Y.1977, 426 F.Supp. 1354. Prisons 4(13)

State prison library consisting of only a few volumes of state code did not constitute a sufficient legal library and prison authorities would be directed to maintain legal library facilities consisting of certain specified items. White v. Sullivan, S.D.Ala.1973, 368 F.Supp. 292. Prisons 4(13)

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2589. ---- Number of visits allowed, library or legal publications, prisoners' access to courts

Single denial of inmate's entry to prison law library because of inmate's tardiness did not constitute infringement of inmate's right of access to courts, where inmate used library 11 other times during month in question and 12 times the following month. Muhammad v. Hilbert, E.D.Pa.1995, 906 F.Supp. 267. Constitutional Law 328; Prisons 4(13)

Inmate failed to state § 1983 claim arising from denial of access to courts where he was permitted to visit jail law library on numerous occasions, and was able to contact attorney by telephone. Johnson v. KSIR Principal Adm'r and Staff, D.Kan.1992, 804 F.Supp. 173. Civil Rights 1395(7)

2590. ---- Number of volumes in library, library or legal publications, prisoners' access to courts

Small law libraries in cellhouses three and seven of the Canon Correctional Facility were totally inadequate for effective researching and framing of issues, and the general population library, while more extensive than the collections in cellhouses three and seven, was still inadequate in that it contained only half the volumes recommended by the American Association of Law Libraries Committee on law library services to prisoners. Ramos v. Lamm, D.C.Colo.1979, 485 F.Supp. 122, affirmed in part, set aside in part on other grounds 639 F.2d 559, certiorari denied 101 S.Ct. 1759, 450 U.S. 1041, 68 L.Ed.2d 239, on remand 520 F.Supp. 1059. Prisons 4(13)

State prisoner's §§ 1983 action, which alleged inadequate access to legal materials because prison provided only a starter law library to inmates in segregation, was properly dismissed a frivolous even though it stated a recognized claim, since prisoners in segregation legitimately lose access to amenities provided to prisoners in the general population and prisoner failed to explain how he lost any suit because of the starter library's deficiencies. Lilly v. Jess, C.A.7 (Wis.) 2006, 189 Fed.Appx. 542, 2006 WL 2041381, Unreported. Civil Rights 1395(7)

2591. ---- Publications required, library or legal publications, prisoners' access to courts

A library for the use of prison inmates which lacks the Federal Reporter, 2d Series, is an inadequate law library. Wade v. Kane, E.D.Pa.1978, 448 F.Supp. 678, affirmed 591 F.2d 1338. Prisons 4(13)

2592. ---- Recording of requested information, library or legal publications, prisoners' access to courts

Absent allegation of chilling effect, no violation of prisoner's rights occurred in prison policy requiring recording of all information requested from library by prisoner, who was plaintiff in action challenging conditions at state correctional center, and requiring signature of prison official. Batton v. State Government of North Carolina, Executive Branch, E.D.N.C.1980, 501 F.Supp. 1173. Prisons 4(13)

2593. ---- Request slips, library or legal publications, prisoners' access to courts

Inmates had adequate access to legal materials where materials, including statute books, were present in the jail and available on request and inmates' requests for special materials were met. Hopkins v. Campbell, D.Kan.1994, 870 F.Supp. 316. Prisons 4(13)

Prisoners whose only access to federal correctional facility's law library was through use of request slips which were picked up daily, with the books being returned to the inmates in a day or two, with inmates being limited to three books at a time, and with inmates being provided with an incomplete list of the materials available, did not have inadequate access to legal materials. U.S. ex rel. Wolfish v. Levi, D.C.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed on other grounds 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(13)

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State prisoner's claim that he was denied adequate access to prison law library did not warrant granting of relief to prisoner who brought civil rights action, where prisoner submitted no evidentiary material suggesting that he had followed prison procedures in submitting library book request. Lingo v. Boone, N.D.Cal.1975, 402 F.Supp. 768. Civil Rights 1404

2594. ---- Research staff, library or legal publications, prisoners' access to courts

Untrained legal research staff is insufficient to safeguard inmate's right of access to courts. Valentine v. Beyer, C.A.3 (N.J.) 1988, 850 F.2d 951. Prisons 4(11)

Constitutional right of access to courts of prisoners of county jail, which had no law library and whose personnel made no effort to inform inmates of availability of legal research material or how to go about obtaining a court order permitting its use, was violated. Leeds v. Watson, C.A.9 (Idaho) 1980, 630 F.2d 674. Prisons 4(10.1)

2595. ---- Size of facility, library or legal publications, prisoners' access to courts

Fact that size of prison law library permitted only five inmates to use the facilities at the same time did not establish inadequacy of law library. Harrell v. Keohane, C.A.10 (Okla.) 1980, 621 F.2d 1059. Prisons 4(13)

2596. ---- State or federal materials, library or legal publications, prisoners' access to courts

State prisoner's complaint under this section alleging that state prison officials deprived him of his constitutional right of access to the courts by transferring him to federal penitentiary which had no state legal materials in its law library and by failing to fulfill his written request for certain state lawbooks, thereby preventing him from researching state law and examining legal materials which were relevant to various cases which he was presently litigating in state courts, was legally cognizable. Blake v. Berman, D.C.Mass.1984, 598 F.Supp. 1081. Civil Rights 1395(7); Conspiracy 18

2597. ---- Time open, library or legal publications, prisoners' access to courts

Prisoner of District of Columbia pleaded predicate constitutional violation of denial of access to courts, for purpose of his allegations against municipality under §§ 1983 on theory of agency, for acts committed by Virginia prison officials in Virginia while under prisoner custody arrangement, on allegations that lack of library time resulted in his inability to prepare legal brief and subsequent dismissal of his case on appeal. Ibrahim v. District of Columbia, D.D.C.2004, 357 F.Supp.2d 187. Civil Rights 1395(7)

Restrictions placed on prisoner's use of law library for period of time because prison officials did not have manpower to personally escort prisoner as required did not violate prisoner's civil rights; during period of restrictions he received help of competent jailhouse lawyers who assisted him in filing two legally sufficient claims, and prisoner was eventually permitted to use library for ten hours a week. Bellamy v. McMickens, S.D.N.Y.1988, 692 F.Supp. 205. Civil Rights 1094

Where prison law library was open 28 hours per week and at least 20 of those hours coincided with other major programs at the institution, and where there were only two inmates who had established themselves as jailhouse lawyers familiar with basic legal principles and possessed of research and writing skills, it would be unconstitutional for prison to enforce a policy flatly denying the two jailhouse lawyers additional access to the law library for purpose of providing assistance to ignorant, unskilled, untutored or illiterate inmates. Wetmore v. Fields, W.D.Wis.1978, 458 F.Supp. 1131. Prisons 4(13)

2598. ---- Transfer of prisoners, library or legal publications, prisoners' access to courts

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Inmate's claim that his transfer from state correctional facility in Pennsylvania to federal facility in Indiana violated his right of access to the courts because federal facility lacked Pennsylvania legal material was sufficient to state a cause of action under § 1983. Story v. Morgan, W.D.Pa.1992, 786 F.Supp. 523. Prisons 13.5(2)

Decision of prison officials to transfer inmate back to state prison from a treatment center after he complained of inadequacy of law library available to him at treatment center and suggested retransfer as a possible solution did not violate inmate's right of access to the courts, even though his transfer back to the state prison eventually became permanent. Fort v. Reed, E.D.Wash.1985, 623 F.Supp. 1106. Prisons 4(10.1)

2599. ---- Women's law library, library or legal publications, prisoners' access to courts

Women's prison law library meeting requirements of Bounds v. Smith was constitutionally adequate, even though prisoners at state's prisons for males had larger libraries because they chose to expend a greater portion of funds generated by prison commissary. Glover v. Johnson, E.D.Mich.1979, 478 F.Supp. 1075. Prisons 4(13)

2600. Copying machines, prisoners' access to courts

To make out a claim under this section based on denial of copying privileges, prison inmate had to show that denial prevented him from exercising his constitutional right of access to the courts, since constitutional concept of liberty does not include the right to xerox; reasonableness of prison's photocopy policy would become relevant only after prisoner showed that policy was impeding that access, for if it was unreasonable but not impeding he would not have made out prima facie case of violation of his constitutional rights. Jones v. Franzen, C.A.7 (Ill.) 1983, 697 F.2d 801. Civil Rights 1404; Civil Rights 1420

Constitutional concept of an inmate's right of access to courts does not require that prison officials provide inmates free or unlimited access to photocopying machinery. Johnson v. Parke, C.A.10 (Okla.) 1981, 642 F.2d 377. Prisons 4(13)

Prisoner's right of access to court does not include the right of free unlimited access to photocopying machine, particularly where prison policy gave inmates the option to use carbon paper and typewriters available in law library, or to forward papers to family and friends to be copied, or to have the institution reproduce the documents at a cost of ten cents per copy. Harrell v. Keohane, C.A.10 (Okla.) 1980, 621 F.2d 1059. Prisons 4(10.1)

Prisoner sufficiently alleged an access to the courts claim against prison defendants under §§ 1983 based on prison policy which frustrated his photocopying efforts; prisoner pleaded that defendants' application of policy improperly hindered his efforts to pursue a legal claim and that defendants' actions caused him an actual injury because he was forced to withdraw his order to show cause (OTSC) and his Article 78 petition was dismissed for failure to effect service. Collins v. Goord, S.D.N.Y.2006, 438 F.Supp.2d 399. Civil Rights 1395(7)

Inmate stated § 1983 claim for denial of constitutional right of access to courts by virtue of refusal of officials, of county and of State Department of Corrections, and county to let inmate make any photocopies, including discovery exhibits that had to be provided to court in duplicate and could not be replicated longhand, despite defendants' contention that there was no clearly established law requiring them to provide photocopies; right of access to courts required prison officials to provide inmates with supplies and services indispensable for filing court documents. Canell v. Bradshaw, D.Or.1993, 840 F.Supp. 1382, affirmed 97 F.3d 1458. Civil Rights 1094; Constitutional Law 328

2601. Typewriters, prisoners' access to courts--Generally

Prisoner's access to court does not include federally protected right to use typewriter or have one's pleadings typed since pro se prisoners' causes are not prejudiced by filing handwritten briefs. Twyman v. Crisp, C.A.10 (Okla.)

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1978, 584 F.2d 352. Prisons 4(10.1)

Prohibiting prisoner from typing petitions to court around midnight due to noise did not deprive prisoner of access to courts. Matthews v. Reynolds, W.D.Va.1975, 405 F.Supp. 50. Prisons 4(10.1)

That state hospital officials did not allow prisoners in ward occupied by petitioner, confined as criminal sexual psychopath, to possess typewriters did not unduly restrict access to judicial process. Leeper v. Birzgalis, W.D.Mich.1969, 314 F.Supp. 808. Mental Health 465(3)

2602. ---- Pretrial detainees, typewriters, prisoners' access to courts

Pretrial detainee had no constitutional right to typewriter as incident to right of access of courts. Lock v. Jenkins, D.C.Ind.1978, 464 F.Supp. 541, affirmed in part, reversed in part on other grounds 641 F.2d 488. Prisons 4(10.1)

2603. Writing materials, prisoners' access to courts

State convict was not entitled to have prison officials enjoined from refusing to furnish sufficient writing paper to enable prisoners to write writs and other legal documents in view of showing by prison officials that ten sheets of paper per day were available to convict. Conklin v. Wainwright, C.A.5 (Fla.) 1970, 424 F.2d 516, certiorari denied 91 S.Ct. 376, 400 U.S. 965, 27 L.Ed.2d 385. Prisons 4(13)

Inmate failed to show that prison's ink tube policy, under which inmates confined to punitive segregation unit were permitted to use only plastic inner ink insert from ballpoint pen for all legal and personal writing, violated inmate's constitutional right of meaningful access to courts; although inmate claimed that he could not grip tube well and that writing with tube resulted in pains, aches, and cramps in his writing hand due to previous hand injuries, he failed to provide any specific evidence of injuries that he claimed impaired his writing ability, and he provided no evidence of court dates missed, inability to make timely filings, denial of legal assistance or of loss of case that could have been won. Kirsch v. Smith, E.D.Wis.1995, 894 F.Supp. 1222, affirmed 92 F.3d 1187. Prisons 13(5)

Prison's failure to make available writing materials and implements to indigent prisoners violated the equal protection clause of U.S.C.A.Const. Amend. 14 as well as right of access to courts. Wade v. Kane, E.D.Pa.1978, 448 F.Supp. 678, affirmed 591 F.2d 1338. Constitutional Law 250.3(2); Constitutional Law 328

2604. Envelopes, prisoners' access to courts

Inmate's claim that policy of requiring indigent inmates to use for their legal correspondence only envelopes purchased from the prison canteen was unconstitutional both facially, because it impeded access to the courts, and as applied, because it was enforced against him in retaliation, was actionable under § 1983. Smith v. Erickson, C.A.8 (Minn.) 1989, 884 F.2d 1108. Civil Rights 1094

2605. Storage, prisoners' access to courts

Record failed to sustain prisoner's claim that his civil rights were violated by prison officials who, in accordance with regulations, required storage of legal papers in writ room and refused to permit prisoner to retain with him documents he had received. Brown v. Dugger, C.A.5 (Fla.) 1972, 456 F.2d 1260. Civil Rights 1420

Limiting property in inmate's personal areas and in segregation, including amount of legal materials which inmate could retain, did not violate inmate's right of access to the courts could not be basis for injunctive relief in § 1983 civil rights suit; prison had legitimate interest in fire safety and accessibility to inmate. Garrett v. Gilmore,

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W.D.Va.1996, 926 F.Supp. 554, affirmed 103 F.3d 117. Civil Rights 1454; Constitutional Law 328; Prisons 4(13)

2606. Telephone use, prisoners' access to courts

Although prisoners have constitutional right to meaningful access to courts, prisoners do not have right to any particular means of access, including unlimited telephone use. Aswegan v. Henry, C.A.8 (Iowa) 1992, 981 F.2d 313. Prisons 4(12)

2607. Confiscation, loss or destruction of legal materials, prisoners' access to courts

Inmate's allegation that his outgoing legal mail was opened and material removed, thus preventing "writ of mandamus" from arriving in district court, stated cognizable claim for violation of his rights of free speech and access to courts; there was no suggestion that legitimate penological interest justified alleged removal of legal material. Brewer v. Wilkinson, C.A.5 (Tex.) 1993, 3 F.3d 816, certiorari denied 114 S.Ct. 1081, 510 U.S. 1123, 127 L.Ed.2d 397. Constitutional Law 90.1(1.3); Constitutional Law 328; Prisons 4(12)

Inmate's allegation that prison officials destroyed his legal material in retaliation for suits and grievances he had filed and that he was denied access to prison law library, if true, would form the basis of a cognizable claim for violation of his right of access to the courts. Green v. Johnson, C.A.10 (Okla.) 1992, 977 F.2d 1383. Prisons 4(10.1); Prisons 4(13)

State prisoner had viable civil rights claim based on allegations that legal papers and documents were accepted and thereafter intentionally lost by institutional staff, and that, without documents, including sales receipts for merchandise he was alleged to have stolen, he was severely limited in pursuing postconviction relief. Gregory v. Nunn, C.A.7 (Ind.) 1990, 895 F.2d 413. Civil Rights 1094

Prisoner's allegations, that he made three requests to pick up legal materials which were needed for pending case and which were held by prison authorities and that legal materials were never given, stated § 1983 cause of action for intentional deprivation of right of access to courts protected by due process clause, privileges and immunities clause, and First Amendment. Simmons v. Dickhaut, C.A.1 (Mass.) 1986, 804 F.2d 182. Civil Rights 1395(7)

Taking of prisoner's legal papers states claim for violation of deprivation provision of this section or for conspiracy to deprive civil rights of others if taking results in interference with or infringement of prisoner's constitutional right of access to courts. Tyler v. "Ron" Deputy Sheriff or Jailor/Custodian of Prisoners, Division 15, St. Louis County Circuit Court, C.A.8 (Mo.) 1978, 574 F.2d 427. Civil Rights 1395(7); Conspiracy 18

Seizure of inmate's office supply catalogue did not deprive inmate of state training center of adequate opportunity for access to courts such as would warrant relief under this section. Nickens v. White, C.A.8 (Mo.) 1976, 536 F.2d 802. Civil Rights 1094

Inmate who sued state prison officials, stemming from alleged incident at sallyport and related civil rights violations, failed to establish that prison supervisor's purported failure to return his stolen legal materials hindered his access to courts, as required to maintain claim under §§ 1983; there was no reliable evidence that any actual injury stemmed from alleged violation. Ziemba v. Thomas, D.Conn.2005, 390 F.Supp.2d 136. Civil Rights 1094

Prison regulation limiting number of boxes of personal effects inmates could keep in their cells was reasonably related to legitimate penological objectives, precluding recovery in inmate's §§ 1983 action alleging that his right of access to courts was infringed when above-limit box was confiscated from him despite his informing corrections

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officials that it contained legal materials for his appeal and that he was facing deadline; regulation promoted fire safety and limited access to contraband as well as amount of clutter, inmate had continual access to prison's law library and could have obtained approval for extra box, and permitting extra box on basis of claimed legal deadline could have effect of causing other inmates to seek to keep extra boxes. Howard v. Snyder, D.Del.2005, 389 F.Supp.2d 589. Prisons 4(7)

Inmate failed to demonstrate that he was prejudiced in pursuit of his legal action or that his access to court was otherwise impaired by prison correspondence clerks' alleged improper handling or confiscation of tape of inmate's disciplinary hearing, as required to establish inmate's Fourteenth Amendment right to access to court claim. Jermosen v. Coughlin, S.D.N.Y.1995, 877 F.Supp. 864. Civil Rights 1420

Inmate's claim that confiscation of his law books and legal materials was intentional unauthorized deprivation of property without due process of law was not actionable under the Fourteenth Amendment as Wisconsin law provided him with numerous postdeprivation remedies; claim thus could not serve as basis for in forma pauperis § 1983 action. Chavers v. Abrahamson, E.D.Wis.1992, 803 F.Supp. 1512. Civil Rights 1311; Constitutional Law 272(2)

Jail inmate had no cause of action under civil rights statute based on his allegation of a single incident of destruction of his legal materials. Gill v. Neaves, W.D.Tex.1987, 657 F.Supp. 1394. Civil Rights 1094

If prison officials confiscated inmate's legal material and refused to return it even after being advised to do so by state Attorney General, officials would have violated inmate's civil rights. Slie v. Bordenkircher, N.D.W.Va.1981, 526 F.Supp. 1264. Civil Rights 1094

If prison official did destroy inmates's legal materials in retaliation for his exercise of his First Amendment rights and if that destruction did impede his access to the courts, that conduct was conscience-shocking and constituted egregious abuse of governmental power in violation of substantive due process. Riley v. Coutu, E.D.Mich.1997, 172 F.R.D. 228. Constitutional Law 272(2); Prisons 4(10.1)

Inmate did not sufficiently demonstrate actual injury to establish his claim against corrections officers for alleged deprivation of access to the courts, in violation of his First Amendment rights; although inmate claimed officers confiscated his legal materials for his Post Conviction Relief Act (PCRA) hearing, the second PCRA Court held that none of inmate's claims were cognizable under the PCRA, and he did not argue that he desired to present different or additional claims at his first PCRA hearing. Gordon v. Morton, C.A.3 (Pa.) 2005, 131 Fed.Appx. 797, 2005 WL 1099761, Unreported. Constitutional Law 91; Prisons 4(13)

State prisoner failed to show that prison officials' confiscation of legal materials that allegedly violated regulation limiting amount of material prisoner could keep in his cell interfered with his ability to file any claim in any court, as required to support claim under § 1983 for denial of access to courts. Pruitt v. Sparkman, C.A.5 (Miss.) 2004, 98 Fed.Appx. 281, 2004 WL 729207, Unreported, certiorari denied 125 S.Ct. 659, 543 U.S. 1023, 160 L.Ed.2d 500, rehearing denied. Civil Rights 1094

2608. Transcripts, prisoners' access to courts

Failure to provide inmate with transcripts of his trial did not result in actual injury and, thus, was not actionable under § 1983 as deprivation of access to courts or due process. Williams v. Dark, E.D.Pa.1993, 844 F.Supp. 210, affirmed 19 F.3d 645. Civil Rights 1088(5)

2609. Recognition of organizations, prisoners' access to courts

Prison regulation requiring associations to seek and receive official recognition before sponsoring group meetings

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or undertaking joint activities was reasonable attempt by prison administrators to protect security of institution, and thus refusal by prison officials to permit group, which had not complied with such procedures and which had not been formally recognized, to engage in joint activities did not violate the group members' right of access to courts, even though group was formed for purpose of bringing lawsuits to challenge conditions at the prison. Preast v. Cox, C.A.4 (Va.) 1980, 628 F.2d 292. Prisons 4(10.1)

2610. Retaliation by prison officials, prisoners' access to courts

Prisoner suing prison officials under § 1983 for retaliation must allege that he was retaliated against for exercising his constitutional rights and that retaliatory action did not advance legitimate penological goals, such as preserving institutional order and discipline. Barnett v. Centoni, C.A.9 (Cal.) 1994, 31 F.3d 813, on remand 1996 WL 263643 . Civil Rights 1090; Civil Rights 1395(7)

Alleged manifestations of prison officials' retaliation against inmates for their litigation activities did not themselves have to amount to violation of inmates' constitutional rights in order to permit inmates to maintain § 1983 action for prison officials' alleged intent to impede access to courts. Madewell v. Roberts, C.A.8 (Ark.) 1990, 909 F.2d 1203. Civil Rights 1094

Inmate's claim that officials retaliated against him for prevailing in class action to change prisoners' conditions of confinement stated viable civil rights claim, even if inmate could not assert "right" of other inmates to legal representation. Smith v. Maschner, C.A.10 (Kan.) 1990, 899 F.2d 940, on remand 915 F.Supp. 263. Civil Rights 1090

Prosecution of jail inmate for practicing law without license did not violate other inmates' constitutional right of access to courts; regular system of legal assistance was available to inmates and inmates were aware of system. Kunzelman v. Thompson, C.A.7 (Wis.) 1986, 799 F.2d 1172. Prisons 4(10.1)

Prisoner access to courts is not to be curtailed, or restricted by threats, intimidation, coercion or punishment. Campbell v. Beto, C.A.5 (Tex.) 1972, 460 F.2d 765. See, also, Evans v. Moseley, C.A.10 (Kan.) 1972, 455 F.2d 1084, certiorari denied 93 S.Ct. 160, 409 U.S. 889, 34 L.Ed.2d 146; Burns v. Swenson, C.A.8 (Mo.) 1970, 430 F.2d 771, certiorari denied 92 S.Ct. 743, 404 U.S. 1062, 30 L.Ed.2d 751, rehearing denied 92 S.Ct. 1178, 405 U.S. 969, 31 L.Ed.2d 245. Convicts 6

Prisoners no less than other persons have constitutional right of access to courts, and prison authorities may neither place burdens on such right, nor punish its exercise. Corby v. Conboy, C.A.2 (N.Y.) 1972, 457 F.2d 251. Prisons 4(10.1)

Assertions that prisoner was deprived of his commissary privileges by his jailers in retaliation for writing to United States judge required hearing on merits of complaint brought under this section. Andrade v. Hauck, C.A.5 (Tex.) 1971, 452 F.2d 1071. Civil Rights 1395(7)

Prison guards did not unconstitutionally retaliate against prisoner for filing prior civil rights suits by allegedly filing false disciplinary charges against him, absent any evidence that alleged actions adversely impacted on his access to courts and chilled his rights. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593. Civil Rights 1092

Prison official's statement to inmate that his efforts to file grievance after he was denied entry to law library because of his tardiness might be in vain was not harassment that infringed inmate's constitutional right of access to courts. Muhammad v. Hilbert, E.D.Pa.1995, 906 F.Supp. 267. Constitutional Law 328; Prisons 4(10.1)

Prison official's retaliation against inmate for exercising right of access to courts establishes basis for claim in § 1983 action; in order to prove retaliation claim, prisoner must demonstrate that his litigation activities constituted

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actual motivating factor, or "but for" cause of conduct, and failure to establish that retaliation adversely impacted prisoner's exercise of his constitutional rights is fatal to prisoner's case. Dillon v. Murray, W.D.Va.1994, 853 F.Supp. 199. Civil Rights 1094

Inmate's allegations of retaliation for prior lawsuits would state claim for deprivation of access to courts. Smith v. Smith, E.D.Pa.1984, 578 F.Supp. 1373. Civil Rights 1395(7)

Threat by prison authorities to punish or actual punishment of inmate for taking legal action infringes upon inmate's constitutional rights. De Jesus v. Ward, S.D.N.Y.1977, 441 F.Supp. 215. Prisons 13(4)

State inmate's allegation that warden placed his name on transfer list after he filed grievance complaining about prison official's allegedly false disciplinary report and after he filed state court action to enjoin plan to transfer him was sufficient to state claim under § 1983 for violation of his First Amendment right to petition for redress of grievances and to access to courts. Russell v. Washington, C.A.7 (Ill.) 2002, 52 Fed.Appx. 862, 2002 WL 31805206, Unreported. Civil Rights 1395(7)

2611. Conspiracy, prisoners' access to courts

In absence of any valid conspiracy claim among federal or state officials, there was no basis for claim under § 1983 that prisoner's discharged private attorney conspired with judges of Court of Appeals, of which his wife was Chief Justice, to deny prisoner his constitutional right of access to courts. Green v. Seymour, C.A.10 (Okla.) 1995, 59 F.3d 1073. Conspiracy 7.5(3)

2612. Cover-ups, prisoners' access to courts

Correctional officers' alleged cover-up of incident did not impede inmate's access to district court on his §§ 1983 claim that officer violated his Eighth Amendment right against cruel and unusual punishment by striking him and breaking his jaw, and thus officers were not liable to inmate under §§ 1983 for depriving him of access to court in violation of First Amendment; any cover-up did not succeed in depriving inmate of evidence relevant to his Eighth Amendment claim, since inmate was first-hand participant in incident. Orwat v. Maloney, D.Mass.2005, 360 F.Supp.2d 146. Constitutional Law 91; Prisons 4(10.1)

Where jury has found that defendant intentionally engaged in cover-up in hope of keeping civil suit from being filed and continues cover-up once case has been commenced, plaintiff may recover under federal civil rights statute for having been denied adequate access to courts if, because of cover-up, plaintiff was not awarded damages on meritorious claim that constitutional rights were violated. Gonsalves v. City of New Bedford, D.Mass.1996, 939 F.Supp. 921. Civil Rights 1056

2613. Threats, prisoners' access to courts

Allegation that prison guards communicated threats of physical harm to inmates who met with plaintiffs' counsel in instant class civil rights suit did not state a claim under § 1983, as mere threats do not deprive the inmates of any constitutional right unless an inmate can allege a specific instance in which he was actually denied access to the courts. White v. Fauver, D.N.J.1998, 19 F.Supp.2d 305. Civil Rights 1395(7)

Threat of physical harm to prisoner if he or she persists in his or her pursuit of judicial relief is as impermissible as more direct means of restricting right of access to courts; it is not necessary that prisoner succumb entirely or even partially to threat and it is enough that threat was intended to impose limitation upon prisoner's right of access to court and was reasonably calculated to have that effect. Brown v. Coughlin, W.D.N.Y.1997, 965 F.Supp. 401. Prisons 4(10.1)

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42 U.S.C.A. § 1983

2614. Miscellaneous deprivations, prisoners' access to courts

State prisoner's allegations that it took an average of eighteen days to receive requested legal materials from New Mexico after being transferred to Virginia prison, that he was expected to know exactly what he needed without any knowledge of what materials might be available to him, and that he was prevented from filing a state habeas petition due to these problems, supported his §§ 1983 action against New Mexico corrections officials in their personal capacities alleging denial of his constitutional right of access to the courts under the Fourteenth Amendment. Trujillo v. Williams, C.A.10 (N.M.) 2006, 465 F.3d 1210. Prisons 4(13)

Inmate's allegations that he was denied an attorney and a court appearance while held in jail for 73 days on an alleged parole violation were sufficient to state civil rights claim under § 1983; success on such claim would not have demonstrated the invalidity of any outstanding criminal judgment against the inmate and would not have been inconsistent with a proper parole revocation. French v. Adams County Detention Center, C.A.10 (Colo.) 2004, 379 F.3d 1158. Civil Rights 1097

Allegations in inmate's pro se civil rights complaint, that prison official on two occasions opened his legal mail outside of his presence, were insufficient to state a claim for denial of access to courts, where inmate did not allege that such interference with his mail either constituted an ongoing practice of unjustified censorship or caused him to miss court deadlines or in any way prejudiced his legal actions. Davis v. Goord, C.A.2 (N.Y.) 2003, 320 F.3d 346. Civil Rights 1395(7)

Inmate who presented evidence that jail officials interfered with his ability to correspond with courts and that he was handcuffed to bed for six days during hospitalization stated colorable claims for violation of civil rights. O'Donnell v. Thomas, C.A.8 (Neb.) 1987, 814 F.2d 524, opinion after remand 826 F.2d 788. Civil Rights 1395(7)

Civil rights of state prisoner who petitioned for federal habeas corpus relief and filed poverty affidavit were not violated on theory that he had been denied access to courts by being advised by clerk to resubmit his documents or that he had been libeled by clerk's understandable misinterpretation of inmate account balance sheet. Bradenburg v. Beaman, C.A.10 (Wyo.) 1980, 632 F.2d 120, certiorari denied 101 S.Ct. 1522, 450 U.S. 984, 67 L.Ed.2d 820. Civil Rights 1094

Attachments to inmate's state-court petition, including correspondence from court clerk's office acknowledging receipt of inmate's papers, suggested that proceeding was forwarded to judge for consideration, precluding state officials' liability on § 1983 claim alleging that delayed mailing of petition interfered with pursuit of inmate's appeal, in violation of his right of access to the courts. McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Civil Rights 1420

Claim that prison guard violently pulled clear plastic from prisoner's cell door did not rise to level of constitutional violation that could support § 1983 claim. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593. Prisons 17(1)

Allegations that prison guards fabricated disciplinary or misconduct charges against numerous inmates, in order to create the appearance of a justification for certain incidents of the physical mistreatment inflicted upon the inmates, failed to state a claim under § 1983, as the filing of false disciplinary charges does not itself deprive an inmate of a constitutional right, but to the extent that the inmates were induced into falsely pleading guilty or intimidated during the disciplinary hearings, this conduct deprived them of their due process rights and, therefore, was a cognizable claim under § 1983. White v. Fauver, D.N.J.1998, 19 F.Supp.2d 305. Civil Rights 1092; Constitutional Law 272(2); Prisons 13(7.1)

Prisoner failed to establish that alleged delay of 14 days by prison employee in serving prisoner with court papers relating to pending action in which prisoner was involved prejudiced prisoner's ability to seek redress from judicial

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system, as required to state constitutional claim based on violation of his right of access to the courts. Warburton v. Underwood, W.D.N.Y.1998, 2 F.Supp.2d 306. Constitutional Law 328; Prisons 4(10.1)

Inmate did not have standing to raise *Bounds* claim concerning denial of constitutional right of access to courts arising from lack of adequate prison law library or adequate legal assistance, despite claim that inadequate legal facilities precluded inmate from discovering a waiver argument in his previous civil rights case, which was dismissed, where inmate did not identify waiver problem when he had access to adequate legal facilities at correctional center. Kain v. Bradley, M.D.Tenn.1997, 959 F.Supp. 463. Civil Rights 1331(4)

It did not inexorably follow from prisoners' claimed difficulties in preparing his cases due to inadequate furnishings and supplies that he was thereby denied access to the courts, so as to make such inadequacies a constitutional violation; in order to carry burden of demonstrating a likelihood of success on the merits for purposes of entitlement to injunctive relief, prisoner would have to show an actual denial of access to courts resulting from those conditions. Davidson v. Scully, S.D.N.Y.1996, 914 F.Supp. 1011. Injunction 138.60; Prisons 4(13)

Requiring that inmate, in civil rights action concerning conditions of confinement, before being allowed to proceed in forma pauperis, file amended complaint specifically alleging who violated his constitutional rights, approximate dates, times and places, and specifically identifying the rights allegedly violated, and that he make no allegations unless he could produce some evidence to support such allegations, did not constitute unreasonable restriction on inmate's access to the courts, particularly in light of fact that inmate had filed numerous other complaints which had been dismissed as frivolous. Rudd v. Jones, S.D.Miss.1995, 879 F.Supp. 621. Federal Civil Procedure 2734; Prisons 4(10.1)

Inmate's allegation that prison grievance coordinator failed to return one of his grievances until after time for appeal had expired did not establish actual injury, and thus, inmate could not maintain § 1983 claim for denial of First Amendment right to access the courts; there was no indication the grievance had any potential merit or that the grievance stated a civil rights claim, and the alleged conduct occurred after inmate had filed his court-access action, in which no supplemental pleading alleging the coordinator's conduct was filed. Rodgers v. Hawley, C.A.6 (Mich.) 2001, 14 Fed.Appx. 403, 2001 WL 798618, Unreported, certiorari denied 123 S.Ct. 125, 537 U.S. 828, 154 L.Ed.2d 42. Constitutional Law 91; Prisons 4(10.1)

Alleged failure of prothonotary to use reasonable care in the processing of inmate's miscaptioned and misdirected notice of appeal was at most negligent deprivation of access to courts, and thus was not actionable constitutional claim under civil rights statute. Turner v. Donnelly, C.A.3 (Pa.) 2005, 156 Fed.Appx. 481, 2005 WL 3229537, Unreported, certiorari denied 126 S.Ct. 2332. Civil Rights 1056

Criminal defendant's §§ 1983 complaint, alleging actions of district court clerk and deputy clerk in handling motion violated his right of access to the courts, due process, and equal protection, was legally frivolous under statute governing proceedings in forma pauperis, where district court in criminal case ruled on defendant's motions. Bullock v. Doe, C.A.3 (Pa.) 2005, 153 Fed.Appx. 869, 2005 WL 2994433, Unreported. Federal Civil Procedure 2734

Court clerk's alleged conduct of failing to file documents sent to him by inmate, failing to respond to inmate's repeated inquiries and requests for court documents related to his criminal case, and destroying inmate's court documents did not deny inmate access to the courts, as required for inmate's §§ 1983 claim; inmate had exhausted his direct appeal rights six months prior to clerk's alleged actions and therefore could not demonstrate any injury related to clerk's alleged actions. Whitehead v. Schmid, C.A.3 (Pa.) 2005, 148 Fed.Appx. 120, 2005 WL 2203153, Unreported. Civil Rights 1094

Failure of prisoner in Pennsylvania prison to timely file petition for post-conviction relief was not as a result of his 30-day confinement in restrictive housing unit, as required to state a claim for denial of access to courts; prisoner

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had one year within which to file petition, petition did not have to contain argument or citation to authority, amendments of petitions were generally liberally allowed, and petition would be deemed filed on date delivered to prison authorities or placed in mailbox. Garland v. Horton, C.A.3 (Pa.) 2005, 129 Fed.Appx. 733, 2005 WL 1050786, Unreported. Prisons 4(10.1)

Inmate did not establish a violation of his constitutional right to court access when correctional center superintendent refused to mail inmate's sealed bankruptcy petition to United States Bankruptcy Court, since superintendent did not refuse outright to mail petition, but only refused to send the petition sealed. Moore v. Rowley, C.A.8 (Mo.) 2005, 126 Fed.Appx. 759, 2005 WL 677800, Unreported. Prisons 4(12)

State inmate's appeal of district court's dismissal of his §§ 1983 action was not taken in good faith, and thus inmate could not proceed in forma pauperis (IFP) on appeal, despite inmate's contention that he was denied his right of access to courts because destruction of his legal materials prevented him from meeting deadline to file petition for writ of certiorari with United States Supreme Court, absent showing of actual injury. Phillips v. Walker, C.A.5 (Miss.) 2005, 122 Fed.Appx. 120, 2005 WL 323725, Unreported. Federal Courts 663

2615. Withholding evidence, prisoners' access to courts

Allegation that state denied prisoner meaningful access to courts by withholding post-conviction access to potentially favorable evidence, i.e., DNA testing of biological evidence used eight years before in his felony murder trial, stated claim for violation of prisoner's due process rights. Wade v. Brady, D.Mass.2006, 460 F.Supp.2d 226. Criminal Law 1590

XIX. PRISONERS' ACCESS TO MAILS

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2641. Prisoners' access to mails generally

Claim by state prisoner under § 1983 that prison officials violated his First Amendment rights by interfering with the receipt of his mail did not implicate statute precluding prisoner suit for mental or emotional injury suffered while in custody without a prior showing of physical injury; a prisoner is entitled to judicial relief for a violation of his First Amendment rights aside from any physical, mental, or emotional injury he may have sustained. Rowe v. Shake, C.A.7 (Ind.) 1999, 196 F.3d 778, rehearing en banc denied. Civil Rights 1098

Except with respect to correspondence with designated public officials, the courts, and the prisoner's attorney, for certain purposes, regulation of incoming and outgoing prison mail is essentially an administrative matter in which the courts will not intervene. Wilkerson v. Warden of U. S. Reformatory, El Reno, Okl., C.A.10 (Okla.) 1972, 465 F.2d 956. Prisons 4(9)

Regulation of flow of mail from penal institution is essentially administrative matter for prison officials, and their action in regard thereto is not subject to judicial review except under most unusual circumstances. Evans v. Moseley, C.A.10 (Kan.) 1972, 455 F.2d 1084, certiorari denied 93 S.Ct. 160, 409 U.S. 889, 34 L.Ed.2d 146. Prisons 4(9)

Stopping of an inmate's mail may constitute an action for violation of rights under U.S.C.A.Const. Amend. 1. Lamb v. Hutto, E.D.Va.1979, 467 F.Supp. 562. Constitutional Law 82(13)

Prison officials have no unfettered discretion to withhold privileges of incoming mail, use of writing materials, visitation rights, and right to shower; unfettered withholding of those privileges may give rise to constitutional claim depending upon whether the deprivation is reasonable. Mathis v. DiGiacinto, E.D.Pa.1977, 430 F.Supp. 457. Prisons 4(5)

Control of mail to and from prison inmates is necessary to the proper administration of state penal institutions and, within limitations, is proper. Knell v. Bensinger, N.D.Ill.1974, 380 F.Supp. 494, affirmed 522 F.2d 720. Prisons 4(9)

Although prisoners retain constitutionally protected right to reasonable correspondence with the outside world, a single instance of damaged or withheld mail does not constitute First Amendment violation. Alexander v. Gennarini, C.A.3 (Pa.) 2005, 144 Fed.Appx. 924, 2005 WL 1805621, Unreported. Prisons 4(9)

2642. Legitimate penological interest, prisoners' access to mails

In order for corrections officials to be entitled to judgment as matter of law in suit by inmate alleging constitutional violations concerning confiscation of his mail and files, defendants were required to demonstrate that challenged prison regulations were reasonably related to legitimate penological interests. Akbar v. Borgen, E.D.Wis.1992, 803 F.Supp. 1479. Federal Civil Procedure 2121.1

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2643. Compelling state interest standard, prisoners' access to mails

Heightened scrutiny is required of prison officials' tampering with prisoners' legal mail due to the added constitutional concern of maintaining prisoners' access to the courts; restrictions on prisoners' legal mail are justified only if they further one or more of the substantial governmental interests of security, order, and rehabilitation, and must be no greater than is necessary for the protection of the particular governmental interest involved. Evans v. Vare, D.Nev.2005, 402 F.Supp.2d 1188. Prisons 4(12)

Freedom to use the mails is a "fundamental" interest and in order to uphold a prison regulation which allegedly infringes upon such fundamental interest, the state must show that "compelling state interest" justifies a differential in treatment of inmates as compared with those not convicted of a crime. Preston v. Thieszen, W.D.Wis.1972, 341 F.Supp. 785. Prisons 4(9)

2644. Security interests, prisoners' access to mails

State has a compelling interest in assuring the security of its prisons; whenever that need conflicts with the right of prisoners, the latter must yield. Crowe v. Leeke, C.A.4 (S.C.) 1977, 550 F.2d 184. Prisons 4(1)

Maintaining security was substantial government interest that could have justified interference with legal mail, for purpose of heightened scrutiny analysis of civil rights claim of state prisoner and his attorney-friend who alleged violation of their First Amendment rights. Evans v. Vare, D.Nev.2005, 402 F.Supp.2d 1188. Prisons 4(12)

2645. Less restrictive regulations sufficient, prisoners' access to mails

Complete ban on all correspondence between state prisoner and his attorney-friend, that appeared to law librarian to address cases other than prisoner's case and applied even to cases where names of parties had been blacked out, was more restrictive of plaintiffs' constitutional rights than was necessary to maintain prison security, for purpose of request for preliminary injunction. Evans v. Vare, D.Nev.2005, 402 F.Supp.2d 1188. Civil Rights 1457(5)

Inmate mail restrictions must further an important governmental interest unrelated to suppression of speech and the restrictions should be no greater than are necessary or essential to the protection of the particular governmental interest involved. Battle v. Anderson, E.D.Okla.1978, 457 F.Supp. 719, remanded on other grounds 594 F.2d 786. Prisons 4(9)

In assessing validity of a prison regulation that restricts prisoner correspondence, careful consideration should be given to possibility that a less restrictive regulation might suffice to promote the particular governmental interest that underlies the regulation. U. S. ex rel. Ratchford v. Jeffes, E.D.Pa.1978, 451 F.Supp. 675. Prisons 4(9)

2646. Discretion of prison officials, prisoners' access to mails

Prison administrators' regulation of inmate mail was valid if mail restrictions were justifiable and implementation of restrictions necessitated a minimum degree of discretion. Frazier v. Donelon, E.D.La.1974, 381 F.Supp. 911, affirmed 520 F.2d 941, certiorari denied 96 S.Ct. 1134, 424 U.S. 923, 47 L.Ed.2d 332. Prisons 4(9)

2647. Deliberate indifference, prisoners' access to mails

Even if prison officials had tampered with inmate's privileged mail, officials were no more than negligent and did not act with deliberate or callous indifference to inmate's constitutional rights, as required to support inmate's § 1983 claim alleging violation of due process. Jermosen v. Coughlin, S.D.N.Y.1995, 877 F.Supp. 864. Civil Rights 1094

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2648. Arbitrariness of restrictions, prisoners' access to mails

Claim of state prisoner relating to alleged imposition of arbitrary standards on his attempts to communicate would not support a claim for deprivation of constitutional rights under this section where there was no allegation that the alleged interference with prisoner's mail denied him access to the courts. Bussue v. Lankler, S.D.N.Y.1972, 337 F.Supp. 146. Civil Rights 1098

2649. Discriminatory restrictions, prisoners' access to mails

Restrictions upon prison inmate correspondence may not be imposed in discrimination against prisoner's race. Martin v. Wainwright, C.A.5 (Fla.) 1976, 525 F.2d 983. Prisons 4(9)

State prisoners failed to establish that restrictions on their correspondence affected some absolute right which law secures to an individual even while imprisoned, such as right of access to courts, or right to be free from discrimination against religious beliefs or race, and failed to establish claim for relief. Lovern v. Cox, W.D.Va.1974, 374 F.Supp. 32. Civil Rights 1420

2650. Reasonableness of restrictions, prisoners' access to mails

Except in extreme cases, courts may not interfere with reasonable regulations by prison authorities to control incoming and outgoing correspondence. Johnson v. Lark, E.D.Mo.1973, 365 F.Supp. 289. Prisons 4(9)

Right of prisoner to correspond generally with people in outside world is subject to reasonable regulation and restriction. Holt v. Hutto, E.D.Ark.1973, 363 F.Supp. 194, reversed on other grounds 505 F.2d 194, on remand 410 F.Supp. 251. Prisons 4(9)

2651. Post deprivation procedures, prisoners' access to mails

Adequacy of postdeprivation procedures for redressing erroneous, random, and unauthorized determination that mail sent to inmate was contraband precluded inmate from bringing civil rights claim on procedural due process grounds against prison officials; moreover, in light of availability of such procedures, no predeprivation hearing or grace period was required. Diaz v. Coughlin, S.D.N.Y.1995, 909 F.Supp. 146. Constitutional Law 272(2); Prisons 4(7)

2652. Opening, inspection or censorship of mail generally, prisoners' access to mails

Prison mail clerk did not violate inmate's constitutional rights to receive mail or to access courts when, while not in inmate's presence, she inadvertently opened inmate's incoming legal mail, particularly where opening was followed by corrective action consisting of stapling envelope shut without reading its contents, attaching confidential mail receipt form to envelope, and delivering it to inmate. Gardner v. Howard, C.A.8 (Neb.) 1997, 109 F.3d 427. Constitutional Law 82(13); Constitutional Law 328; Prisons 4(9)

Prison officials have a legitimate interest in opening incoming mail for the purpose of checking for weapons, drugs, or other items which might endanger the safety and security of the prison. Bach v. People of State of Ill., C.A.7 (Ill.) 1974, 504 F.2d 1100, certiorari denied 94 S.Ct. 3202, 418 U.S. 910, 41 L.Ed.2d 1156. Prisons 4(9)

Examination of prisoners' correspondence, not addressed to attorneys or to courts, is a reasonable exercise of the discretion of prison management with which the federal courts will not interfere. Woods v. Yeager, C.A.3 (N.J.) 1972, 463 F.2d 223. See, also, Cook v. Brockway, D.C.Tex.1977, 424 F.Supp. 1046, affirmed 559 F.2d 1214. Prisons 4(9)

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Supervisor at state prison's mail processing center did not personally participate in any alleged misconduct when she informed inmate that she had no documentation of any improper opening of his legal mail, and thus could not be held liable under § 1983. Giba v. Cook, D.Or.2002, 232 F.Supp.2d 1171. Civil Rights 1358

Although prison officials improperly opened privileged mail outside of inmate's presence, in violation of Department of Correctional Services Directive 4422, such deviation from the Department's rules was an insufficient basis for a federal claim of deprivation of civil rights. DiRose v. McClennan, W.D.N.Y.1998, 26 F.Supp.2d 550. Civil Rights 1094

Inmate's allegations that prison officials opened his incoming legal mail, monitored phone calls to his attorney, and filed false charges against him were redressable under § 1983. Bullock v. Barham, N.D.Ill.1997, 957 F.Supp. 154. Civil Rights 1094

Inmate failed to demonstrate that any prison official, with possible exception of one correspondence clerk, came in contact with inmate's mail which was allegedly tampered with, nor did inmate demonstrate that any of the supervisory officials had any knowledge of or personal involvement in any of the alleged incidents, as required to support § 1983 claim. Jermosen v. Coughlin, S.D.N.Y.1995, 877 F.Supp. 864. Civil Rights 1098; Civil Rights 1358

Inmate who asserted only that he would provide affidavits from family members that his mail had been interfered with did not raise genuine issue of material fact precluding summary judgment on civil rights claim for prison officials, whose affidavits established that privileged mail was opened only inadvertently and returned to sender only while prisoner was incarcerated in another state. Gee v. Ruettgers, D.Wyo.1994, 872 F.Supp. 915. Federal Civil Procedure 2491.5

Inmate of Oklahoma state reformatory was not deprived of any right guaranteed by United States Constitution notwithstanding that certain letters which were sealed, stamped, and given to jail official for mailing may have been opened, presumably read, resealed and mailed where there was no contention that the mail was censored, that any contents were removed and not replaced or that mailing or delivery was delayed and the mail was not "legal" mail addressed to attorneys or the court. Wray v. Kirkland, W.D.Okla.1981, 527 F.Supp. 52. Civil Rights 1098

Inspection of prisoners' mail under appropriate circumstances is constitutional. Stinson v. Sheriff's Dept. of Sullivan County, S.D.N.Y.1980, 499 F.Supp. 259. Prisons 4(6)

Prison regulations pertaining to screening, including reading, of incoming and outgoing nonlegal mail are constitutional and censorship of such mail is permissible to extent that censorship furthers penal interest of maintenance of institutional security, preservation of internal order and discipline, or rehabilitation of prisoner, and these penal interests outweigh rights under U.S.C.A.Const. Amend. 1. Padgett v. Stein, M.D.Pa.1975, 406 F.Supp. 287. Prisons 4(6)

State prisoner's allegations that prison officials violated his constitutional rights by tampering with his outgoing mail or sending forged documents to him were insufficient to state a claim under §§ 1983; exhibits clearly demonstrated that prisoner's mail was, in fact, sent out of the prison by prison officials and, in many instances, he received responses from the courts, and there was no evidence that any ongoing litigation being pursued by prisoner in state or federal court was affected by prison officials' alleged actions. Smith v. Bruce, C.A.10 (Kan.) 2004, 103 Fed.Appx. 342, 2004 WL 1448019, Unreported, certiorari denied 125 S.Ct. 418, 543 U.S. 965, 160 L.Ed.2d 334. Civil Rights 1094

Corrections officer did not proximately cause alleged violation of prisoner's constitutional right to send mail, although corrections officer intercepted prisoner's mail; officer forwarded prisoner's mail to supervisor, who made

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it available to prison disciplinary committee, who decided to destroy it as contraband after finding prisoner guilty of violating prison mail rules. Al-Hizbullahi v. Kun, N.D.Cal.2003, 2003 WL 22889412, Unreported, affirmed 122 Fed.Appx. 349, 2005 WL 319403. Prisons 10

2653. Persons prisoners entitled to correspond with, prisoners' access to mails--Generally

In compiling list of persons with whom prison inmate may engage in general correspondence prison officials may properly send questionnaire to prospective correspondent and make certain limited inquiries of local law enforcement officers as to proposed correspondent's criminal record in connection with drugs. Holt v. Hutto, E.D.Ark.1973, 363 F.Supp. 194, reversed on other grounds 505 F.2d 194, on remand 410 F.Supp. 251. Prisons 4(9)

Any limitations on communications by inmate with courts, counsel, family, potential witnesses, public officials and the press should be kept at bare and necessary minimum. Collins v. Schoonfield, D.C.Md.1972, 344 F.Supp. 257, supplemented 363 F.Supp. 1152. Prisons 4(6)

2654. ---- Counsel, persons prisoners entitled to correspond with, prisoners' access to mails

Preventing prisoner from mailing letter which concerned prisoner's trouble with past due payments on a freezer and might as easily have been written to store's credit department as to attorney was not a denial of constitutional right of access to the courts. Collins v. Cundy, C.A.10 (Wyo.) 1979, 603 F.2d 825. Constitutional Law 328

In order to assure that prison inmate does not abuse his right to confidential correspondence with attorneys, prison may require that inmate wishing to correspond with identifiable attorney present name and business address of attorney to prison officials 48 hours before correspondence is to be placed in mails. Taylor v. Sterrett, C.A.5 (Tex.) 1976, 532 F.2d 462. Prisons 4(12)

Unreasonable interference with prisoner's outgoing legal correspondence, particularly when it limits his access to courts, creates cause of action cognizable under this section. Martin v. Wainwright, C.A.5 (Fla.) 1976, 526 F.2d 938. Civil Rights 1094

Where prisoner did not allege that sheriff and deputy censored his letters while he was in custody or that they were responsible for failure of letters to be delivered, and attorney to whom letters were addressed was not associated with prisoner's defense, prisoner's civil rights were not violated by failure of letters to reach attorney. Page v. Sharpe, C.A.1 (Me.) 1973, 487 F.2d 567. Civil Rights 1094

Jail officials are not permitted to refuse to mail a communication between an inmate and an attorney. Christman v. Skinner, C.A.2 (N.Y.) 1972, 468 F.2d 723. Prisons 4(12)

As to mail of inmates to and from counsel, prison officials who would interfere with U.S.C.A.Const. Amend. 1 rights bear a heavy burden of showing abuse in terms of transmittal of contraband or the laying of plans for some unlawful scheme. Wilkinson v. Skinner, C.A.2 (N.Y.) 1972, 462 F.2d 670. Prisons 4(12)

On state prisoners' complaints, prison officials would not be prohibited from censoring or interfering in any way with any correspondence between inmate and his attorney, and could open and read correspondence between inmate and his attorney but would be prohibited from otherwise impeding or interfering with same, absent clear abuse of access, defined in terms of transmittal of contraband or laying of plans for some unlawful scheme. Wright v. McMann, C.A.2 (N.Y.) 1972, 460 F.2d 126, certiorari denied 93 S.Ct. 115, 409 U.S. 885, 34 L.Ed.2d 141. Civil Rights 1448; Prisons 4(12)

Inmate in state prison should not be given carte blanche mailing privilege, and decree that prison officials should

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permit inmate to correspond with civil liberties organization would be modified by engrafting limitation that correspondence be subjected to reasonable regulation consistent with legitimate policies of internal prison administration and security, so long as such regulation did not become subterfuge to deny inmate's access to the organization, and through it, to the courts. Burns v. Swenson, C.A.8 (Mo.) 1970, 430 F.2d 771, certiorari denied 92 S.Ct. 743, 404 U.S. 1062, 30 L.Ed.2d 751, rehearing denied 92 S.Ct. 1178, 405 U.S. 969, 31 L.Ed.2d 245. Prisons 4(12)

That prison inmates do not have all constitutional rights of citizens in society--and may hold some constitutional rights in diluted form--does not permit prison officials to frustrate vindication of those rights which are enjoyed by inmates, or to be sole judge--by refusal to mail letters to counsel--to determine which letters assert constitutional rights. Nolan v. Scafati, C.A.1 (Mass.) 1970, 430 F.2d 548. Prisons 4(12)

Undelayed uncensored, unlimited use of the mails is necessary to secure a prisoner's right of access to the courts and his concomitant right to seek and obtain assistance of competent counsel; further, the right to counsel carries with it the right to use the mails to obtain and communicate with counsel. McDonough v. Director of Patuxent, C.A.4 (Md.) 1970, 429 F.2d 1189. Prisons 4(12)

Correspondence to state prisoner from attorney-friend, that was genuinely related to prisoner's own criminal and civil rights claims, could be identified as "legal mail," and was subject to heightened level of scrutiny, for purpose of plaintiffs' request for preliminary injunction; even if correspondence consisted of legal orders pertaining to persons other than prisoner, those orders were not necessarily irrelevant to prisoner's claims and prison officials were not empowered to decide their relevance, since thorough analysis of legal orders and opinions on relevant issues was cornerstone of effective litigation. Evans v. Vare, D.Nev.2005, 402 F.Supp.2d 1188. Civil Rights 1457(5)

Without explicit proof of damages, an occasional violation of attorney-client mail regulations in a prison does not state a claim cognizable under this section. Cofone v. Manson, D.C.Conn.1976, 409 F.Supp. 1033. Civil Rights 1094

Although prisoner might have a colorable claim under this section with respect to action of prison officials in opening her legal correspondence, where there was no contention that the correspondence, which prison officials claimed was opened by mistake, was censored or that any substantial delay resulted in prisoner receiving letter claim was not one of constitutional magnitude such as to require intervention by federal court. Ray v. Parrish, E.D.Va.1975, 399 F.Supp. 775. Civil Rights 1094

2655. ---- Courts or judges, persons prisoners entitled to correspond with, prisoners' access to mails

A regulation prohibiting prison law clinic members from writing judges, in name of clinic, requesting furlough for fellow inmates, can be upheld as reasonable only if court determines that inmates who seek assistance in writing of such letters have available to them adequate alternative sources of assistance, and regardless of whether mail regulation prohibiting inmates from writing judges, in name of law clinic, requesting furlough for fellow inmates, is reasonable, prison officials may not refuse to mail such letters. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233. Prisons 4(12)

Right of access to courts embraces filing of necessary legal documents to secure a judicial determination, but does not comprehend a right to correspond with judges. Coleman v. Crisp, W.D.Okla.1977, 444 F.Supp. 31. Prisons 4(10.1); Prisons 4(12)

Any conduct by prison employees contrary to prison regulations prohibiting reading, censoring or reproduction of any outgoing inmate mail and allowing inmates to seal outgoing mail to the courts, public officials and lawyers

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would not give rise to cause of action under this section, notwithstanding that such conduct was wrongful. U. S. ex rel. Dean v. Johnson, E.D.Pa.1974, 381 F.Supp. 495. Civil Rights 1094

The warden's alleged interference with prisoner's mailing rights does not fall within purview of this section; reasonable control of the mails is a legitimate result of penal security, but correspondence between an inmate and courts or public officials relating to alleged abuses may not be infringed. Ornitz v. Robuck, E.D.Ky.1973, 366 F.Supp. 183. Civil Rights 1094

Prison inmate has a practically unrestricted right to correspond privately with courts and with his attorney. Holt v. Hutto, E.D.Ark.1973, 363 F.Supp. 194, reversed on other grounds 505 F.2d 194, on remand 410 F.Supp. 251. Prisons 4(12)

Even if superintendent violated Missouri Department of Corrections mail procedures when he refused to mail inmate's sealed bankruptcy petition to United States Bankruptcy Court, the violation of prison policy alone did not give rise to §§1983 liability, absent a violation of a constitutional right. Moore v. Rowley, C.A.8 (Mo.) 2005, 126 Fed.Appx. 759, 2005 WL 677800, Unreported. Civil Rights 1094; Civil Rights 1351(4)

2656. ---- Family or friends, persons prisoners entitled to correspond with, prisoners' access to mails

Unlike correspondence with courts or counsel, prisoner's right to mail letters to his family or friends is not absolute, and in certain instances refusal to mail inmate's letter may be clearly justified, such as where communication of its contents to persons beyond prison walls would pose threat to prison discipline or security, or would hinder efforts to rehabilitate inmate. Corby v. Conboy, C.A.2 (N.Y.) 1972, 457 F.2d 251. Prisons 4(9)

Prisoner had constitutional right, protected by U.S.C.A.Const. Amend. 1, to communicate with friends, relatives and attorneys by means of visits and correspondence. Ali v. Gibson, D.C.Virgin Islands 1979, 483 F.Supp. 1102, reversed on other grounds 631 F.2d 1126, certiorari denied 101 S.Ct. 951, 449 U.S. 1129, 67 L.Ed.2d 117. Constitutional Law 90.1(1.3)

Inmates, even while confined to isolation, shall not be denied a reasonable and proper correspondence with members of immediate family. Sykes v. Kreiger, N.D.Ohio 1975, 451 F.Supp. 421. Prisons 4(9)

Claim that prison authorities refused to mail prisoner's letters to his father and sister concerning "illegal prison treatment and punishment" failed to state claim under this section in absence of allegation of any special facts. Wells v. McGinnis, S.D.N.Y.1972, 344 F.Supp. 594. Civil Rights 1395(7)

2657. ---- Jurors, persons prisoners entitled to correspond with, prisoners' access to mails

State prison officials' refusal to permit prisoner to mail letters to former jurors at his trial held some 13 years previously did not amount to misuse or abuse of power derived from state and did not violate this section where prisoner showed no reason whatsoever for contacting jurors. In re Leamer, W.D.Pa.1971, 322 F.Supp. 578. Prisons 4(12)

2658. ---- Other prisoners, persons prisoners entitled to correspond with, prisoners' access to mails

Since Alabama prison regulations governing passage of material to and from inmates in segregation units limited right of segregation inmate to send literature about politics and religion to other prisoners and to receive such matter from them, the state was required to show how applying such regulation to prisoners like plaintiff furthered its legitimate penological objective; bare assertion that regulation was an appropriate means of maintaining security in segregation units was not enough since the state was required to adduce specific evidence to support such

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assertion and explain why the regulation was preferable to other possible measures which restricted rights under U.S.C.A.Const. Amend. 1 less severely. Rudolph v. Locke, C.A.5 (Ala.) 1979, 594 F.2d 1076. Prisons 4(5)

Prison's requirement that inmate seek addition of his alleged Georgia prisoner correspondent to his approved list of correspondents was reasonable, and no constitutional issue was raised by the procedure for purposes of inmate's civil rights suit. Fowler v. Graham, D.C.S.C.1979, 478 F.Supp. 90. Prisons 4(9)

Requirement of permission before prison inmates might correspond with other prisoners furthered state's substantial interest in maintaining order in and preventing escape from prisons and was practice no broader than necessary to protection of substantial governmental interests. Williams v. Ward, S.D.N.Y.1975, 404 F.Supp. 170. Prisons 4(9)

Seizure of letter mailed from inmate at one Virginia penal institution to inmate in other institution did not violate due process; in any event, letter was properly withheld from delivery because of its objectionable content, i.e., description of a serious fraud which the writer had perpetrated on prison superintendent and its offer to procure illegal drugs for recipient. Lawrence v. Davis, W.D.Va.1975, 401 F.Supp. 1203. Constitutional Law 272(2); Prisons 4(9)

2659. ---- Press, persons prisoners entitled to correspond with, prisoners' access to mails

The right of an inmate to send letters to the press survives incarceration. Burnham v. Oswald, W.D.N.Y.1972, 342 F.Supp. 880.

2660. ---- Prison officials, persons prisoners entitled to correspond with, prisoners' access to mails

Censorship of mail, whether addressed to head of state department of corrections or to others, is not deprivation of any constitutional guaranty available to state prisoner in solitary confinement. Belk v. Mitchell, W.D.N.C.1968, 294 F.Supp. 800. Prisons 4(9)

2661. ---- Public officials, persons prisoners entitled to correspond with, prisoners' access to mails

A prisoner has absolute right to address his grievances to public officials by letters written from the prison, so long as it can be shown that the letters have not been circulated to other inmates in the prison, with the view in mind of inciting a riot or lesser forms of violence or resentment against the prison officials. Preston v. Cowan, W.D.Ky.1973, 369 F.Supp. 14, affirmed in part, vacated in part on other grounds and remanded 506 F.2d 288. Prisons 4(12)

2662. Detriment or prejudice, prisoners' access to mails

Prisoner suffered an actual injury, and thus had standing to bring §§ 1983 action alleging deprivation of access to the courts, when prison mail room supervisor held his mail, including legal mail, rather than forwarding it while prisoner was temporarily being housed in another facility, causing him to lose a lawsuit; prisoner had an arguable and nonfrivolous claim which he was unable to pursue. Simkins v. Bruce, C.A.10 (Kan.) 2005, 406 F.3d 1239. Civil Rights 1333(4)

Pretrial detainee who asserted that his legal mail was opened and read outside of his presence and without his consent failed to state cognizable constitutional claim for denial of his right to access to the courts; detainee failed to allege that his position as litigant was prejudiced by mail tampering. Walker v. Navarro County Jail, C.A.5 (Tex.) 1993, 4 F.3d 410, rehearing denied. Civil Rights 1395(7)

Prisoner's allegations that prison officials negligently destroyed or mishandled his legal mail did not support an

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actionable claim under §§ 1983. Strong v. Woodford, C.D.Cal.2006, 428 F.Supp.2d 1082. Civil Rights 1094

To the extent that prisoner's complaint could be construed as alleging that the retaliatory action, delay of his outgoing legal mail, was taken in response to his filing cases in court or in an effort to thwart his ability to access the courts, he failed to establish §§ 1983 retaliation claim since he failed to show actual injury or specific harm which he has suffered as a result of the allegedly alleged delay or mishandling of his mail. Pearson v. Simms, D.Md.2003, 345 F.Supp.2d 515, affirmed 88 Fed.Appx. 639, 2004 WL 362386. Civil Rights 1094

Correctional facility inmate's claim that officials twice interfered with his mail and were responsible for the destruction of paperwork he left behind did not state cognizable claim under § 1983 for interference with his mail; interruption of mail was not a facility problem, inmate failed to show that pending or anticipated legal action was prejudiced by officials' alleged interference with mail, and inmate admitted leaving his documents behind in cell and failed to name specific person whom he believed destroyed his property. Govan v. Campbell, N.D.N.Y.2003, 289 F.Supp.2d 289. Civil Rights 1094; Civil Rights 1098

County sheriff's occasional opening of mail of prisoner while he was incarcerated at county jail, without any showing of harm, was reasonable exercise of discretion of prison management and did not render sheriff liable in civil rights action brought by prisoner. Cook v. Brockway, N.D.Tex.1977, 424 F.Supp. 1046, affirmed 559 F.2d 1214. Civil Rights 1090

2663. Consent of prisoner to open mail, prisoners' access to mails

There was no violation of prisoner's constitutional rights when prisoner submitted unsealed envelope for mailing and, upon prison officials' suspicion being aroused by envelope's weight and bulk, prisoner agreed voluntarily to remove contents for inspection and six smaller envelopes were discovered within the first, and were opened and inspected in the presence of the prisoner. Golden v. Coombe, S.D.N.Y.1981, 508 F.Supp. 156. Prisons 4(9)

2664. Presence of prisoner during opening of mail, prisoners' access to mails--Generally

Bureau of Prisons mail regulation allowed opening of general mail outside presence of inmate and opening of special mail only in presence of inmate if sender is adequately identified on envelope and phrase "Special Mail - Open only in the presence of the inmate" appeared on front of envelope was reasonably related to legitimate government interest of prison security and a more discretionary system of handling mail would increase volume of legal mail and costs. Henthorn v. Swinson, C.A.5 (Tex.) 1992, 955 F.2d 351, certiorari denied 112 S.Ct. 2974, 504 U.S. 988, 119 L.Ed.2d 593. Prisons 9

2665. ---- Legal mail, presence of prisoner during opening of mail, prisoners' access to mails

Requirement that mail from attorneys to prisoners be opened in the presence of the inmates, without being read by prison officials, does not infringe prisoners' First, Sixth, and Fourteenth Amendment rights. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Constitutional Law 82(13); Constitutional Law 272(2); Criminal Law 641.3(4)

Inmates claiming that their incoming legal mail was opened and inspected for contraband outside their presence, in violation of prison rules, stated no cognizable claim for violation of their constitutional right of access to courts and free speech; inmates did not assert that their ability to prepare or transmit necessary legal document had been affected or that mail had been censored, and they conceded that opening and inspection was for legitimate penological objective of prison security. Brewer v. Wilkinson, C.A.5 (Tex.) 1993, 3 F.3d 816, certiorari denied 114 S.Ct. 1081, 510 U.S. 1123, 127 L.Ed.2d 397. Constitutional Law 90.1(1.3); Constitutional Law 328; Prisons 4(12)

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Privileged prisoner mail, mailed to or from inmate's attorney and identified as such, could not be opened for inspections for contraband except in presence of prisoner. Jensen v. Klecker, C.A.8 (N.D.) 1981, 648 F.2d 1179. Prisons 4(11)

Opening of inmate's legal mail outside his presence was inadvertent act which did not rise to constitutional dimension, for purposes of inmate's claim under federal civil rights statute; it was uncertain whether items in question were identified as requiring special handling, there was no showing of pattern of improper opening of inmate's legal mail, and institution immediately responded to inmate's complaint. Bledsoe v. Biery, D.Kan.1993, 814 F.Supp. 58, affirmed 992 F.2d 1222. Civil Rights 1094; Prisons 4(6)

Prison practice of opening legal mail outside presence of inmate where envelope contained markings which made it readily identifiable as legal mail, but which were not in precise form specified by institutional rules, violated inmates' constitutionally protected rights of access to court and to assistance of counsel. Burt v. Carlson, C.D.Cal.1990, 752 F.Supp. 346. Prisons 4(9); Prisons 4(12)

Conduct of prison mailroom clerk in opening inmate's privileged legal mail out of inmate's presence and depositing check from the Tennessee Claims Commission directly into inmate's prison account amounted to no more than mere negligence and was not actionable under § 1983; inmate failed to allege any facts which would suggest that clerk was motivated by personal prejudice, that clerk intended to interfere with inmate's access to the courts, or otherwise acted in capricious manner. Jackson v. Norris, M.D.Tenn.1990, 748 F.Supp. 570, affirmed 928 F.2d 1132. Civil Rights 1094

Mail from the court was not legal mail requiring inmate's presence prior to opening, and thus inmate's allegations that his rights were violated when an envelope from the court stamped "legal mail, must be opened in the presence of inmate" was opened by jail officials outside his presence, were insufficient to support § 1983 claim against jail officials. Dung v. Alameda County Sheriff Dept., N.D.Cal.2003, 2003 WL 21982659, Unreported. Civil Rights 1094; Prisons 4(12)

2666. Reading of mail, prisoners' access to mails

Prison officials have discretion to open and inspect letters from governmental agencies to inmates in presence of inmates when they feel that external screening is insufficient to detect contraband, but they may not read contents of such letters. Taylor v. Sterrett, C.A.5 (Tex.) 1976, 532 F.2d 462. Prisons 4(9)

Even assuming prison official violated certain provisions of New York State Department of Correctional Services directive in reading and confiscating prisoner's personal mail, prisoner's due process claim premised solely upon such violation was not sufficient basis for § 1983 claim. Webster v. Mann, W.D.N.Y.1996, 917 F.Supp. 185. Civil Rights 1098

2667. Inclusion of statements in prisoner's mail, prisoners' access to mails

Placement of notice containing brief, factually accurate description of inmate's record and circumstances, which included sexual offenses involving children, with inmate's outgoing correspondence did not violate his First Amendment rights; copies were inserted in inmate's nonprivileged correspondence for unspecified period of time after prison officials discovered he had written to female students pictured in elementary and junior high school directories found in his cell. Turner v. Ralls, D.Kan.1991, 770 F.Supp. 605. Constitutional Law 90.1(1.3); Prisons 4(9)

2668. Number of pieces of mail opened, prisoners' access to mails

Isolated incident in which prison officials accidently opened one piece of inmate's constitutionally protected legal

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mail did not give rise to constitutional violation, absent evidence of improper motive or resulting interference with inmate's right to counsel or access to court. Smith v. Maschner, C.A.10 (Kan.) 1990, 899 F.2d 940, on remand 915 F.Supp. 263. Constitutional Law 272(2)

Prison guard's opening of single letter of inmate to federal district court did not constitute civil rights violation. Wiggins v. Anderson, E.D.Okla.1974, 386 F.Supp. 369. Civil Rights 1094

2669. Sending of mail to wrong party, prisoners' access to mails

Prison officials' negligent error in mailing prisoner's trial transcript to person other than prisoner's attorney was not cognizable under this section. Jenkins v. Meyers, N.D.Ill.1972, 338 F.Supp. 383, affirmed 481 F.2d 1406. Civil Rights 1094

2670. Subject matter of censored mail, prisoners' access to mails--Generally

Although Maryland Correctional Institute inmate had no right to demand that his letter concerning the suicide of a fellow inmate be printed in the prison news letter or that prison authorities make arrangements for the publication of the letter in local outside newspapers, inmate had right to send his letter to the outside world unimpeded. Cavey v. Levine, D.C.Md.1977, 435 F.Supp. 475, affirmed 580 F.2d 1047. Prisons 4(9)

Benefits made available by Veterans Administration were not within "other federal rights" for which federal court may exercise its equity powers to interfere with administration of state prison and order prison to permit a prisoner to mail a letter to obtain a constitutional or other federal right. Goodchild v. Schmidt, E.D.Wis.1968, 279 F.Supp. 149. Courts 495; Prisons 4(3)

State inmate sufficiently stated § 1983 retaliation claim against prison officials based on his allegation that prison officials improperly censored his outgoing mail to remove unflattering statements, even though he had no constitutional right to complaint, where it could reasonably be inferred from chronology of events that inmate was directly disciplined for writing letter and was subjected to retaliation through disciplinary proceedings. Crockett v. Wackenhut Correctional Corp., C.A.5 (La.) 2003, 79 Fed.Appx. 732, 2003 WL 22513691, Unreported. Civil Rights 1395(7)

2671. ---- Conditions of prison, subject matter of censored mail, prisoners' access to mails

Prison authorities have power to censor prisoner mail; thus, prison officials could not be found liable under this section for allegedly interfering with Tennessee inmate's constitutional right of free expression by allegedly confiscating letters mailed to his parents complaining of conditions at prison. Crafton v. Rose, E.D.Tenn.1972, 369 F.Supp. 131. Civil Rights 1098; Prisons 4(9)

2672. ---- Inflammatory material, subject matter of censored mail, prisoners' access to mails

If prison officials refused to mail inmate-written article to prisoners' writing contest merely because they concluded that it was inflammatory, such refusal constituted denial of inmate's civil rights. Chiarello v. Bohlinger, S.D.N.Y.1975, 391 F.Supp. 1153, affirmed 573 F.2d 1288. Civil Rights 1098

2673. ---- Sexually oriented material, subject matter of censored mail, prisoners' access to mails

Decision of prison censorship board to bar prisoners' receipt of mail containing sexually explicit material, including, "The Complete Adult Mail Order Catalogue," and a "Buddhist sex manual," on ground that it would have detrimental effect on rehabilitation was within discretion of censorship board and required no further review by district court, and district court was warranted in dismissing prisoners' civil rights complaint without requiring

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further response by board or conducting further hearings. Carpenter v. State of S. D., C.A.8 (S.D.) 1976, 536 F.2d 759, certiorari denied 97 S.Ct. 2636, 431 U.S. 931, 53 L.Ed.2d 246. Prisons 4(8)

2674. ---- Threatening letters, subject matter of censored mail, prisoners' access to mails

Counselor supervising prison law clinic may refuse to mail threatening letters or any letters discussing escape plans or future criminal activity which an inmate might seek to mail via the clinic. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233. Prisons 4(12)

Rules and regulations of county jail, pertaining to censorship of incoming and outgoing mail of jail inmates that provide for censorship of all mail except that from or to attorneys, courts and proper agencies and which call for the omission of communications that relate to threats, witness intimidation or means of escape, were reasonable. Nelson v. Bishop, E.D.Tenn.1974, 390 F.Supp. 1191. Prisons 4(9)

2675. Notice to prisoner of censorship, prisoners' access to mails

Withholding of former prisoner's mail by detention center officials after they determined it was obscene, and failure to notify former prisoner of the mail, even during time that he was later again incarcerated at the detention center, did not rise to level of deprivation of procedural due process. Harris v. Bolin, C.A.8 (Ark.) 1991, 950 F.2d 547. Constitutional Law 272(2); Prisons 4(9)

Once prison authorities decide to censor major portions of a letter to or from an inmate or to reject in toto the letter, minimal procedural safeguards should attach and authorities should notify sender of decision with accompanying explanation for action and sender should have available some avenue of review if he believes that his or her product is outside the pale of the restrictions. Frazier v. Donelon, E.D.La.1974, 381 F.Supp. 911, affirmed 520 F.2d 941, certiorari denied 96 S.Ct. 1134, 424 U.S. 923, 47 L.Ed.2d 332. Prisons 4(9)

2676. Hospitalized inmates, prisoners' access to mails

Decision to screen, for contraband, nonlegal mail addressed to involuntarily confined mental health patients was within realm of administrative judgments to which court was required to defer, where correspondence was not read, though screening took place at central location before being brought into wards. Eckerhart v. Hensley, W.D.Mo.1979, 475 F.Supp. 908. Mental Health 51.1

Censorship of prisoner's mail by state hospital officials was within scope of proper disciplinary and security measures. Leeper v. Birzgalis, W.D.Mich.1969, 314 F.Supp. 808. Health 582

2677. Books, magazines or other periodicals, prisoners' access to mails

A prison's withholding books sent to prisoner by his mother on basis of a Virginia Department of Corrections guideline requiring that books and other publications be mailed to prisoners directly from publisher or from legitimate book store could not have prejudiced claim of denial of access to courts made by prisoner, who had brought suit seeking to dispute a prison doctor's medical judgment that prisoner was not a victim of low blood sugar. Zaczek v. Hutto, C.A.4 (Va.) 1981, 642 F.2d 74. Prisons 4(10.1)

State prison inmate failed to prove that prison officials' enforcement of state regulation barring inmates' receipt of free or gift publications deprived him of due process or violated his free speech rights, so that inmate could not establish conspiracy to violate those constitutional rights. Zimmerman v. Simmons, D.Kan.2003, 260 F.Supp.2d 1077, reversed 392 F.3d 420, on remand 401 F.Supp.2d 1181. Conspiracy 7.5(2)

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42 U.S.C.A. § 1983

Prison officials did not violate inmate's First Amendment rights, for purposes of *Bivens* and § 1983 claims, by refusing to deliver single copy of magazine to inmate on basis of security concerns; warden determined that issue of magazine contained inflammatory article about activities of federal prison system and named officials at prison, that article also contained inflammatory information about incarcerated illegal aliens at prison, and that delivery of issue could have led to disorder or violence toward named officials and illegal aliens. Olson v. Loy, S.D.Ga.1996, 951 F.Supp. 225. Constitutional Law 90.1(1.3); Prisons 4(8)

Disapproval of news letter sent state prisoner because its content was inflammatory was improper but such impropriety did not require granting of relief to prisoner who brought action under this section, where complained of conduct involved a single, isolated instance of mail censorship without broader plan or course of conduct to censor prisoner's mail indiscriminately, where withholding of news letter was only honest error on part of prison official and where news letter was subsequently approved and distributed in prison. Lingo v. Boone, N.D.Cal.1975, 402 F.Supp. 768. Civil Rights 1098; Prisons 4(8)

State prison could not ban in general newspaper received by inmate because some of the issues of newspaper violated valid censorship rules of prison but had to examine each issue and disapprove or approve newspaper on issue to issue basis, where issue by issue determination would not place undue burden on prison officials in that newspaper was not voluminous and was published weekly, where many issues would be approved for receipt by inmate under the prison rules and where other prisons allowed its inmates to receive such newspaper and screened newspaper upon issue by issue basis. McCleary v. Kelly, M.D.Pa.1974, 376 F.Supp. 1186. Prisons 4(8)

County jailer's decision to refuse to permit inmates to receive newspapers and magazines was reasonable where newspaper had continually been used to stop up plumbing and on two occasions had been used to burn mattresses. Lovern v. Cox, W.D.Va.1974, 374 F.Supp. 32. Prisons 4(8)

Where prison officials made no showing of compelling state interest to justify infringement of prisoner's fundamental interest in freedom to use the mails, prisoner's civil rights complaint that defendants had refused to permit prisoner to receive law books from any source other than books' publisher stated claim upon which relief could be granted, notwithstanding defendants' allegation which lacked required supporting material, that it would be a simple matter to submit an entire escape plan in binding of a used book. Van Erman v. Schmidt, W.D.Wis.1972, 343 F.Supp. 377, supplemented 374 F.Supp. 1070. Civil Rights 1395(7)

2678. Catalogues, prisoners' access to mails

In state prison inmates' and publisher's §§1983 First Amendment and due process challenge to state regulation barring inmates' receipt of gift publications, and to prison's internal policies preventing some inmates from obtaining any publications and putting dollar limit on remaining inmates' publication purchases, questions of fact existed as to factors of alternative means of exercising constitutional right, effect of accommodation, and absence of ready alternatives to regulation, precluding summary judgment; dollar limit was likely to foreclose access, and more evidence was required concerning link between gift ban and "strong-arming" security concern. Jacklovich v. Simmons, C.A.10 (Kan.) 2004, 392 F.3d 420, on remand 401 F.Supp.2d 1181. Federal Civil Procedure 2491.5

Inmate's complaint that prison did not deliver catalogues and did not return receipts for certified mail did not raise issue of constitutional magnitude necessary to state cause of action for deprivation of civil rights. Smith v. Maschner, C.A.10 (Kan.) 1990, 899 F.2d 940, on remand 915 F.Supp. 263. Civil Rights 1395(7)

2679. Leaflets, prisoners' access to mails

Prisoner's complaint that in denying a request that money from inmate welfare fund be used to distribute a leaflet prepared by prisoners to voters of state, defendant state officials had impermissibly abridged prisoners' First and Fourteenth Amendment right of free expression stated a claim under civil rights statute. O'Connell v. Southworth,

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D.C.R.I.1976, 422 F.Supp. 182. Civil Rights 1395(7)

2680. Money, prisoners' access to mails--Generally

Federal prisoner had no constitutional right to send money through mails to former inmate nor to draw interest on his commissary account. Bijeol v. Benson, S.D.Ind.1975, 404 F.Supp. 595. Prisons 4(4)

2681. ---- Accounts, money, prisoners' access to mails

State prison inmate's right to use of mails did not require that he be furnished statements on his "intra-institutional" money account more frequently than monthly. X (Smith) v. Robinson, E.D.Pa.1978, 456 F.Supp. 449. Constitutional Law 82(6.1)

Inmate alleging that prison officials interfered with his right to access courts and counsel was required to identify all correspondence or other mail he claimed was not mailed in violation of his rights as alleged in his § 1983 complaint, absent showing that interrogatory request was burdensome or overbroad. Davidson v. Goord, W.D.N.Y.2003, 215 F.R.D. 73, appeal denied 259 F.Supp.2d 238. Federal Civil Procedure 1502

2682. Packages, prisoners' access to mails

Prison could impose restrictions on receipt of packages from outside the institution and therefore inmate's complaint that food package sent by his brother was not given to him but was returned did not give rise to civil rights violation. Jensen v. Klecker, C.A.8 (N.D.) 1981, 648 F.2d 1179. Prisons 4(5)

There was no denial of constitutional rights of county jail inmates with respect to inspection of mail, where the only inspection made was that of packages to determine whether contraband was contained therein. Tate v. Kassulke, W.D.Ky.1975, 409 F.Supp. 651. Prisons 4(9)

2683. Photographs, prisoners' access to mails

Prison officials and their subordinates were acting consistent with policies and procedures set forth in various Department of Corrections directives relating to incoming mail and possession of photographs by inmates when they opened inmate's mail and confiscated photographs; thus, prison officials did not deliberately violate inmate's constitutional rights by confiscating, misplacing or destroying photographs so as to state claim under § 1983. Herrera v. Scully, S.D.N.Y.1993, 815 F.Supp. 713. Prisons 4(6); Prisons 4(7)

No apparent rationale existed for policy of prison, which did permit prisoners to receive certain well-known magazines for men, of excluding all nude photographs of wives and girl friends of inmates even though those photographs were considerably less revealing in many instances than the photographs contained in the magazines. Taylor v. Perini, N.D.Ohio 1976, 413 F.Supp. 189. Prisons 4(8)

2684. Transcripts, prisoners' access to mails

Even though at time transcript of interview with inmate concerning racial organization was removed from prisoner's mail prison had policy of prohibiting inmates from receiving any literature concerning that organization, where there was no indication whether policy was enforced, transcript was not automatically confiscated as soon as someone noticed that it contained reference to organization, and mail room supervisor laid it aside, intended to read it later in order to determine whether it fell within prohibition of materials that promoted violence or disorder, and transcript disappeared either as result of inadvertent loss or theft by another precluding further examination, unconstitutional policy was not proximate cause of loss of transcript, and therefore, prisoner was not entitled to damages. Sims v. Wyrick, C.A.8 (Mo.) 1984, 743 F.2d 607. Civil Rights 1098

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42 U.S.C.A. § 1983

2685. Identification of attorney, prisoners' access to mails

State may require that communications of attorney to prisoner be specially marked as originating from attorney, with his name and address given, if they are to receive special treatment, and may require that a lawyer desiring to correspond with a prisoner first identify himself and his client to the prison officials to assure the letters marked "privileged" are actually from members of the bar. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Prisons 4(12)

2686. Signatures or names on mail, prisoners' access to mails

Party names other than state prisoner, or persons directly involved in prisoner's litigation, except in the case of published opinions or reference thereto, could be redacted in legal mail to state prisoner from attorney-friend, to properly balance security interests of prison with potential for chilling prisoner's right of access to courts and representation by counsel, for purpose of plaintiffs' request for preliminary injunction against prison policy of complete ban on all correspondence between state prisoner and his attorney-friend. Evans v. Vare, D.Nev.2005, 402 F.Supp.2d 1188. Civil Rights 1457(5)

Memorandum from Department of Rehabilitation and Correction to prison officials directing that residents working in the legal services office of the prison sign their correspondence in such a manner as to designate them as "inmate legal advisors" so as to make clear to courts and prosecuting attorneys that the inmates were not attorneys-at-law did not provide basis for imposing sanction, upon finding of a "mail violation," on inmate who had used the designation "legal advisor" on certain correspondence even though he was not entitled to such title and was not assigned to the law library. Taylor v. Perini, N.D.Ohio 1976, 413 F.Supp. 189. Prisons 4(9)

State penitentiary inmate complaining of alleged refusal of warden to allow inmate to use the title "Reverend" on his outgoing mail would be directed to seek relief with the Inmate Grievance Commission. Hyde v. Fitzberger, D.C.Md.1973, 365 F.Supp. 1021. Prisons 4(14)

2687. Stationery, prisoners' access to mails

No constitutional right is infringed where material used for communication by prison inmates is that supplied by the institution rather than that chosen by the prisoner; however, if limitation as to type of stationery would result in a curtailment of the prisoner's right to communicate with the courts, public officials, attorneys, as well as friends and family it could not be justified by considerations underlying the penal system. U. S. ex rel. Dean v. Johnson, E.D.Pa.1974, 381 F.Supp. 495. Civil Rights 1094

2688. Postage, prisoners' access to mails

There is no constitutional violation in checking prison resident law clinic mail in order to assure that clinic is not used for improper purposes, and counselor supervising prison law clinic may check outgoing mail to insure that it in fact is court related and seeks legal relief and may examine outgoing petitions for purposes of determining whether they are entitled to free postage, for keeping abreast of legal proceedings in which inmates are involved or even for making constructive suggestions. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233.

Postage regulation of Illinois Department of Corrections which, among other things, allowed free and unlimited postage for confidential correspondence with federal and state courts, Department of Corrections and Attorney General as well as the right to send three one-ounce confidential letters a week to any proper correspondent and to send unlimited correspondence to attorneys at prisoner's own expense constituted reasonable regulation as an attempt to balance rights of prisoners with prison budgetary considerations. Bach v. Coughlin, C.A.7 (Ill.) 1974, 508 F.2d 303. Prisons 4(9)

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42 U.S.C.A. § 1983

Claim of state prisoner requesting that three-judge court be convened to enjoin prison mail censors from removing postage stamps from his outgoing mail did not rise to level of federal claim and if considered as theft of property problem no basis was presented for civil rights action. Brown v. Wainwright, C.A.5 (Fla.) 1969, 419 F.2d 1308. Federal Courts 994

County jail inmates were not denied access to the courts by being required to pay postage for envelopes bearing bulky complaints. Tate v. Kassulke, W.D.Ky.1975, 409 F.Supp. 651. Prisons 4(9)

2689. Forwarding of mail, prisoners' access to mails

Prison officials have responsibility to promptly forward mail to inmates, even where mail is addressed to inmate in care of prison law clinic and inmate no longer works at clinic. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233. Prisons 4(9)

State prisoner had right under U.S.C.A.Const. Amends. 1 and 14 to have prison officials forward correspondence which was addressed to Governor, state's Attorney General and state's Pardon Attorney and in which prisoner complained about conditions at prison and sought investigation thereof. LeVier v. Woodson, C.A.10 (Kan.) 1971, 443 F.2d 360. Constitutional Law 91; Constitutional Law 274.1(2.1)

2690. Loss of mail, prisoners' access to mails

Prisoner failed to prove loss of any legal material, absent any proof beyond bald assertion of loss, as necessary to be entitled to injunctive relief, even though attorney and courts did not receive material allegedly mailed to them, absent proof that material were actually mailed. Oldham v. Chandler-Halford, N.D.Iowa 1995, 877 F.Supp. 1340. Civil Rights 1454

Prisoner's allegation that supervisor of prison mail room lost or refused to deliver certain items of inmates' legal mail stated a colorable claim for relief under this section. Woods v. Aldworth, N.D.Ill.1983, 561 F.Supp. 891. Civil Rights 1395(7)

Corrections officer did not proximately cause alleged violation of prisoner's constitutional right to receive mail, although note directed to corrections officer from mail room staff person advised that prisoner would not be allowed to use any name other than "Tyson" with respect to his mail; note did not reflect any conduct by officer that caused mail room to adopt subject policy, and there was no allegation that officer was aware that policy would or did affect prisoner's ability to receive mail, much less any allegation that officer could have done anything to change mail room's practice with respect to prisoner's name. Al-Hizbullahi v. Kun, N.D.Cal.2003, 2003 WL 22889412, Unreported, affirmed 122 Fed.Appx. 349, 2005 WL 319403. Prisons 10

2691. Log of incoming mail, prisoners' access to mails

Constitution did not require that prison officials keep log of incoming legal mail to inmates. Russell v. Oliver, W.D.Va.1975, 392 F.Supp. 470, affirmed in part, vacated in part on other grounds 552 F.2d 115. See, also, Russell v. Loving, D.C.Va.1975, 392 F.Supp. 475. Prisons 4(12)

2692. Number of letters allowed in possession, prisoners' access to mails

State penitentiary rule limiting each inmate to possession of fifteen personal letters had valid purpose of preventing fire hazards and was not exceptional circumstance requiring federal intervention, whether letters were personal or legal. U. S. ex rel. Lee v. People of State of Ill., C.A.7 (Ill.) 1965, 343 F.2d 120. Prisons 4(7)

2693. Time of retention of inmate mail, prisoners' access to mails

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Restrictions on length of time mail could be retained by inmates was arbitrary and an impermissible restraint on right of correspondence where such regulations were based on purported desire to prevent accumulations of flammable materials but inmates were allowed two manila envelopes of legal papers. Battle v. Anderson, E.D.Okla.1978, 457 F.Supp. 719, remanded on other grounds 594 F.2d 786. Prisons 4(9)

2694. Foreign language mail, prisoners' access to mails

Allegedly defamatory comments of town mayor and town attorney at public hearing regarding resident against whose property a tax foreclosure sale was conducted did not chill resident's First Amendment rights so as to support §§ 1983 claim, since resident did in fact address the hearing; resident had constitutional right only to speak, not to be believed or to exclude others from expressing contrary views. Balaber-Strauss v. Town/Village of Harrison, S.D.N.Y.2005, 405 F.Supp.2d 427. Municipal Corporations 980(3)

Denial to federal prisoner of privileges accorded to other English speaking prisoners to receive mail, on accident of language, refusing to permit him to receive mail from only relative, a sister who was in Hungary and could not read or write English, where convict's caseworker could act as interpreter for prison authorities, constituted unconstitutional discrimination for which relief was available under this section. U. S. ex rel. Gabor v. Myers, E.D.Pa.1965, 237 F.Supp. 852. Civil Rights 1098

2695. Certified mail, prisoners' access to mails

Inmate's complaint that prison did not deliver catalogues and did not return receipts for certified mail did not raise issue of constitutional magnitude necessary to state cause of action for deprivation of civil rights. Smith v. Maschner, C.A.10 (Kan.) 1990, 899 F.2d 940, on remand 915 F.Supp. 263. Civil Rights 1395(7)

Prison officials did not act in intentional and deliberate manner to deprive inmate of his constitutional rights by preventing his legal mail from arriving at court in timely manner due to their refusal to process certified mail due to insufficient funds in inmate's account; prison officials' behavior was consistent with Department of Correction's policies and procedures regarding processing of inmate mail and prison official offered to write to court on inmate's behalf explaining any untimeliness in arrival of inmate's reply affirmation. Herrera v. Scully, S.D.N.Y.1993, 815 F.Supp. 713. Prisons 4(12)

In view of inmates' widespread distrust of internal mail system at prison, which was at least partially justified by evidence of inefficiency of the system, requirement that certified mail be provided to prisoners, at least on credit, was a reasonable one. Taylor v. Perini, N.D.Ohio 1976, 413 F.Supp. 189. Prisons 4(9)

2696. Failure to respond to prisoner's letters, prisoners' access to mails

Allegations charging prison officials with failure to respond to inmate's letters are not per se cognizable under this section. West v. Rowe, N.D.Ill.1978, 448 F.Supp. 58. Civil Rights 1395(7)

2697. Time of mailing or distribution, prisoners' access to mails

Prison mail room supervisor's conduct of holding the mail, including mail clearly marked as containing legal documents, of a prisoner who had been temporarily transferred out of state, rather than forwarding it to him, constituted intentional conduct violating the prisoner's right of access to the courts; although prison regulation required that such mail be forwarded, the supervisor stated that she had been trained to hold such mail. Simkins v. Bruce, C.A.10 (Kan.) 2005, 406 F.3d 1239. Prisons 4(12)

Warden and classification officer named as defendants in prisoner's civil rights suit did not, through their actions with regard to delivery of inmate mail, cause prisoner to lose right to appeal in state coram nobis proceeding;

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classification officer's testimony established that notice of denial of coram nobis petition did not pass through warden's hands, there was no evidence that warden instituted any regulation or engaged in any practice that would delay prisoners' receipt of mail, and any delay by classification officer in delivery of mail was not prejudicial in light of unrebutted evidence that officer did not receive notice in question until after time for filing appeal had passed. Gramegna v. Johnson, C.A.11 (Ala.) 1988, 846 F.2d 675. Civil Rights 1420

Delay in the handling and distribution of an inmate's mail to and from courts which is attributable to forgetfulness or sloth on part of fellow inmates does not state cause of action against state officials. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233. Civil Rights 1395(7)

Where prison's delay in handling inmate's outgoing legal mail was merely inadvertent, and not intentional, and represented only isolated incident, delay did not rise to level of violation of the free exercise clause of U.S.C.A. Const. Amend. 1 or the due process clause of U.S.C.A. Const.Amend. 14 which would entitle inmate to relief in action under this section against corrections officials. Guffey v. Trago, N.D.Ind.1983, 572 F.Supp. 782.

That mail was not delivered or sent out on weekends at city jail related to an area of administrative detail in which federal district court had no authority to act. Green v. Ballou, W.D.Va.1975, 391 F.Supp. 806, affirmed 551 F.2d 306. Prisons 4(9)

State prison inmate's delivery of response papers to prison officials four days before date specified in order to show cause why his §§ 1983 action should not be dismissed for failure to prosecute was timely under prison mailbox rule, even if papers were not received by clerk of court until after that date and were not seen by district court until after order of dismissal had been issued. Woldeguiorguis v. Conner, C.A.2 (N.Y.) 2004, 101 Fed.Appx. 844, 2004 WL 1292611, Unreported. Federal Civil Procedure 1758.1

XX. MEDICAL CARE OF PRISONERS

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2721. Medical care of prisoners generally

Two-part analysis is to be used in claims under this section alleging Eighth Amendment violations as to medical care; first, whether there was a serious medical need, and second, if so, did the official's response to that need amount to deliberate indifference. Williams v. Burton, C.A.11 (Ala.) 1991, 943 F.2d 1572, rehearing denied 953 F.2d 652, certiorari denied 112 S.Ct. 3002, 505 U.S. 1208, 120 L.Ed.2d 877.

For purpose of civil rights action brought by a prisoner against prison authorities for denial of medical treatment, federal courts are generally reluctant to second-guess medical judgments and constitutionalize claims which sound in state tort law, but medical attention rendered for a prisoner may be so woefully inadequate as to amount to no treatment at all so as to give rise to federal civil rights action against prison officials. Westlake v. Lucas, C.A.6 (Mich.) 1976, 537 F.2d 857. Civil Rights 1091

Court in civil rights actions by prisoners must exercise highest degree of care to make certain that prisoner is not deprived of his federally secured constitutional right to medical care. Gamble v. Estelle, C.A.5 (Tex.) 1975, 516 F.2d 937, rehearing denied 521 F.2d 815, certiorari granted 96 S.Ct. 1101, 424 U.S. 907, 47 L.Ed.2d 311, reversed on other grounds 97 S.Ct. 285, 429 U.S. 97, 50 L.Ed.2d 251, rehearing denied 97 S.Ct. 798, 429 U.S. 1066, 50 L.Ed.2d 785, on remand 554 F.2d 653. Civil Rights 1091

Federal courts cannot close their judicial eyes to prison conditions which present a grave and immediate threat to health of physical well being. Campbell v. Beto, C.A.5 (Tex.) 1972, 460 F.2d 765. Prisons 17(1)

Material issues of fact, as to whether state prison inmate was subjected to sufficiently serious conditions when he was placed in most extreme isolation portion of maximum security prison, and whether officials making placement decision were indifferent to problems caused by placement, precluded summary judgment that Eighth Amendment rights of inmate were not violated. Scarver v. Litscher, W.D.Wis.2005, 371 F.Supp.2d 986, affirmed 434 F.3d 972 . Federal Civil Procedure 2491.5

Once state has deprived person of his or her liberty and, concomitantly, ability to seek out medical treatment, state may not ignore any serious medical needs that that individual may evidence and could have corrected but for the detention; where such wilful ignorance or reckless disregard of medical needs takes place, it is tantamount to punishment in contravention of the due process clause. Kocienski v. City of Bayonne, D.N.J.1991, 757 F.Supp. 457. Constitutional Law 262

Prisoner who in action brought under this section alleges violation of right under U.S.C.A. Const.Amend. 8 to be free from cruel and unusual punishment must not only show deprivation of federally guaranteed right and that deprivation occurred at hands of those acting under color of state law but also that named defendants were deliberately indifferent to his serious medical needs such as to constitute unnecessary and wanton infliction of pain. Williams v. Duckworth, N.D.Ind.1983, 598 F.Supp. 9, affirmed 749 F.2d 34. Civil Rights 1404

In order for claim that prisoner has not received adequate medical or dental treatment to state violation of prohibition of U.S.C.A.Const. Amend. 8 against cruel and unusual punishment, and thus a claim under this section, facts must indicate such acts or omissions as are sufficiently harmful to evidence deliberate indifference to serious needs, including intentional interference with professionally prescribed care or treatment, and negligent diagnosis, incorrect treatment or other circumstances that do not amount to more than professional malpractice will not suffice. Lewandowski v. Fauver, D.C.N.J.1981, 531 F.Supp. 53. Civil Rights 1091; Sentencing And

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Where prisoner has received some medical attention and dispute is over adequacy of treatment, federal courts are generally reluctant to second-guess medical judgments; however, in some cases, medical attention rendered may be so woefully inadequate as to amount to no treatment at all, thereby rising to level of claim under this section. Sturts v. City of Philadelphia, E.D.Pa.1982, 529 F.Supp. 434. Civil Rights 1091

Plaintiff was entitled to maintain under this section relating to civil action for deprivation of rights an action against defendant police officials for their alleged failure to provide him with medical attention while he was incarcerated. Green v. Cauthen, D.C.S.C.1974, 379 F.Supp. 361. Civil Rights 1091

Denial of medical care is a denial of federal right actionable under this section if there is acute physical condition, the urgent need for medical care, the failure or refusal to provide it, and tangible residual injury. Schmidt v. Wingo, W.D.Ky.1973, 368 F.Supp. 727, affirmed 499 F.2d 70. See, also, Preston v. Cowan, D.C.Ky.1973, 369 F.Supp. 14, affirmed in part, vacated in part on other grounds, remanded 506 F.2d 288. Civil Rights 1039

2722. Discretion of officials, medical care of prisoners

Prison medical officers have wide discretion in treating prisoners. Tolbert v. Eyman, C.A.9 (Ariz.) 1970, 434 F.2d 625. See, also, Stiltner v. Rhay, C.A.9(Wash.) 1967, 371 F.2d 420, certiorari denied 87 S.Ct. 1318, 386 U.S. 997, 18 L.Ed.2d 346, certiorari denied 87 S.Ct. 1384, 386 U.S. 1025, 18 L.Ed.2d 466, certiorari denied 87 S.Ct. 2038, 387 U.S. 922, 18 L.Ed.2d 977, rehearing denied 88 S.Ct. 21, 389 U.S. 893, 19 L.Ed.2d 212, certiorari denied 87 S.Ct. 2086, 387 U.S. 948, 18 L.Ed.2d 1338; Mayfield v. Craven, D.C.Cal.1969, 299 F.Supp. 1111, affirmed 433 F.2d 873.

In order for prisoner to recover in civil rights action brought against prison officials for denial of medical care, there must have been a knowing failure or refusal to provide urgently needed medical care, the consummate effect of which caused residual injury which could have been prevented with timely attention and court must consider the wide discretion allowed prison officials in their treatment of prisoners under authorized medical procedures and the absolute bar to basing any civil rights action on negligence. Scharfenberger v. Holmes, W.D.Ky.1974, 384 F.Supp. 1269, reversed on other grounds 542 F.2d 328. Civil Rights 1091

Even when there is statutory authorization for a federal court to oversee aspects of the administration of a federal medical facility the question before the court is not whether the hospital has made the best decision but whether it has made a permissible and reasonable decision in view of the relevant information and within a very broad range of discretion; the range of discretion is greatest where the judgment is medical, not administrative. Negron v. Preiser, S.D.N.Y.1974, 382 F.Supp. 535. Mental Health 436.1

In the case of medical treatment, state prison officials are given a wide discretion under this section and causes of action are recognized only in cases of abuse of this broad discretion. Robinson v. Jordan, N.D.Tex.1973, 355 F.Supp. 1228, vacated on other grounds 494 F.2d 793. Civil Rights 1091

2722A. Doctors orders ignored, medical care of prisoners

State prison inmate stated claim that nurse practitioner violated his Eighth Amendment rights by countermanding earlier order of physician, which provided that only soft restraints could be used, due to neurological damage inflicted by prior use of metal handcuffs; there was possibility that nurse sought to deliberately inflict pain, rather than implement differing medical assessment of inmate's condition. Reimann v. Frank, W.D.Wis.2005, 397 F.Supp.2d 1059. Sentencing And Punishment 1549

State prison's food service provider could not be held responsible for damages to inmate pursuant to § 1983 for the

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acts of its employees under a theory of respondeat superior or vicarious liability which allegedly resulted from the employees' failure to comply with orders of inmate's doctor that he be placed on restricted diet and consume meals at prescribed intervals. Woulard v. Food Service, D.Del.2003, 294 F.Supp.2d 596. Civil Rights 1339

Prisoner adequately pled a claim of deliberate indifference to a serious medical condition against members of prison's security personnel where he alleged that they deliberately denied and/or delayed the express instructions and orders of various outside orthopedic specialists and prison doctors. Williams v. Fisher, S.D.N.Y.2003, 2003 WL 22170610, Unreported. Civil Rights 1395(7)

2723. Persons liable, medical care of prisoners

Persons engaged in routine performance of routine medical responsibilities cannot be considered deliberately indifferent to the medical needs of a prisoner, in a lawsuit under § 1983 under the Eighth Amendment. Richardson v. Goord, C.A.2 (N.Y.) 2003, 347 F.3d 431. Sentencing And Punishment 1546

Supervising physician in prison could not be liable under § 1983 for alleged deliberate indifference by treating prison physicians to serious medical needs of prisoner with severe hand injury, based upon delays in medical treatment and surgery, where supervising physician never examined or diagnosed prisoner's hand, supervising physician was not directly responsible for scheduling treatments or procedures, or following up on continuing treatment, and there was no evidence that supervising physician was aware of or instituted any unconstitutional policy, practice or act, or that he was grossly negligent in supervising his subordinates. Hernandez v. Keane, C.A.2 (N.Y.) 2003, 341 F.3d 137, certiorari denied 125 S.Ct. 971, 543 U.S. 1093, 160 L.Ed.2d 905. Civil Rights 1358

Mere fact that corrections department sergeant was supervising special housing unit at time when prisoner intentionally cut himself was not enough to demonstrate her personal involvement, as required to prove that sergeant was liable under §§ 1983 for Eighth Amendment violation in form of deliberate indifference to serious medical needs. Bell v. Arnone, W.D.N.Y.2006, 455 F.Supp.2d 232. Civil Rights 1358

Inmate did not have objectively serious medical need when seen by prison nurses in medical clinic following alleged abuse by guards during extraction of inmate from his cell, and thus, nurses were not liable under §§ 1983 for violating inmate's Eighth Amendment rights through deliberate indifference to a serious medical need, where nurse's physical examination of inmate revealed that inmate suffered minor injuries consistent with those seen by medical personnel in prisons following cell extractions. Valdes v. Crosby, M.D.Fla.2005, 390 F.Supp.2d 1084, affirmed 2006 WL 1474726. Sentencing And Punishment 1546

Police officer who transported arrestee to county jail after arrest could not be held liable under § 1983 for deliberate indifference to the medical condition of arrestee, based on arrestee's conclusory assertion that "the Plaintiff had suffered a head injury so severe that he could not, under any circumstances, make a determination for himself as to whether or not he needed medical treatment." Dimmitt v. Ockenfels, D.Me.2004, 220 F.R.D. 116, affirmed 407 F.3d 21. Civil Rights 1420

Receipt by non-medical supervisory prison official of letters written by state prisoner with hepatitis C requesting follow up medical care was insufficient to impute personal involvement to official, for purpose of prisoner's §§ 1983 action for failure to provide adequate medical treatment. McKenna v. Wright, S.D.N.Y.2004, 2004 WL 102752, Unreported, appeal dismissed 386 F.3d 432. Civil Rights 1358

Since prisoner could not bring claim for deliberate indifference to medical needs against any individual defendant as a result of his failure to grieve, he could not maintain *Monell* claim against city based on deliberate indifference to medical needs. Rizzuto v. City of New York, S.D.N.Y.2003, 2003 WL 1212758, Unreported. Civil Rights

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2724. Persons required to give medical care, medical care of prisoners-- Generally

Member of prison grievance committee, which denied request for a referral for an outside dermatologist consultation for prisoner suffering from keloid formation on his face at site of a knife wound, was not deliberately indifferent to prisoner's medical needs, barring prisoner's § 1983 claim against superintendent for deliberate indifference in violation of the Eighth Amendment; although committee member signed the written decision of the committee, there was no evidence presented that the member had the ability to withhold his signature or otherwise overrule committee's decision, or that member had medical training or was otherwise aware that decision to deny referral was unresponsive to prisoner's medical needs. Brock v. Wright, C.A.2 (N.Y.) 2003, 315 F.3d 158. Sentencing And Punishment 1546

Allegations by prisoner against prison doctor and physician's assistant that prisoner had serious back condition, that he was subjected to the possible risks of a permanent disability or fatal injury due to lack of proper care by doctor and physician's assistant, that they acted maliciously and sadistically toward prisoner with intent to inflict pain, that doctor and physician's assistant refused to examine prisoner on numerous occasions, and that doctor twisted his leg during an examination, even though prison told him it was causing him pain, stated §§ 1983 claim against doctor and physician's assistant for Eighth Amendment deliberate indifference to serious medical needs. Spruill v. Gillis, C.A.3 (Pa.) 2004, 372 F.3d 218. Prisons 17(2); Sentencing And Punishment 1546

Evidence failed to support deliberate indifference claim against prison guards arising out of failure to address medical needs of inmate, where there was no evidence that the guards were in position to act meaningfully in regard to medical needs of inmate. Smith v. Barry, C.A.4 (Md.) 1993, 985 F.2d 180, certiorari denied 114 S.Ct. 207, 510 U.S. 874, 126 L.Ed.2d 164. Civil Rights 1420

Detainee, who was subdued by another city's officers, was in "custody" of police officers who came to assistance of other city's officers so as to give rise to obligation under Fourteenth Amendment to provide detainee with medical care where detainee was placed in their vehicle, to which they enjoyed sole access and control. Estate of Owensby v. City of Cincinnati, S.D.Ohio 2004, 385 F.Supp.2d 626, affirmed and remanded 414 F.3d 596, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 2023. Municipal Corporations 747(3)

Cruel and Unusual Punishments Clause was violated by inadequate medical care and inadequate medical records at county jail, warranting injunctive relief against county and sheriff in inmates' § 1983 class action; many physician progress notes and other medical records were missing, there was no written definition of medical emergency requiring immediate care, delays in responding to inmate requests for medical care were numerous, sheriff had provided no training in suicide prevention and had no written policy on same, and potentially suicidal inmates were often isolated physically and provided little or no counseling. Ginest v. Board of County Com'rs. of Carbon County, D.Wyo.2004, 333 F.Supp.2d 1190. Civil Rights 1454; Sentencing And Punishment 1546; Sentencing And Punishment 1547

Allegations that city administrative employees were aware of, but failed to remedy, ongoing violations of city prisoner's constitutional right to receive adequate medical care for debilitating condition, when read charitably and in the most favorable light, supported prisoner's §§ 1983 claims against employees, which were based on employees' failure to respond to prisoner's complaints of inadequate medical care for injuries he allegedly sustained in bus accident. Carrasquillo v. City of New York, S.D.N.Y.2004, 324 F.Supp.2d 428. Civil Rights 1395(7)

State prisoner's allegation against prison superintendent, that superintendent failed to address or rectify the denial of prisoner's medical treatment for hepatitis C when he denied prisoner's appeal of the denial of his grievance related to inadequate medical treatment, was sufficient to establish superintendent's personal involvement, for purpose of prisoner's §§ 1983 claim related to failure to provide medical treatment for prisoner's hepatitis C virus.

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McKenna v. Wright, S.D.N.Y.2004, 2004 WL 102752, Unreported, appeal dismissed 386 F.3d 432. Civil Rights 1358

2725. ---- Private organizations, persons required to give medical care, medical care of prisoners

Although prison warden and state correctional officials could not relieve themselves of duty to provide adequate medical treatment to those in custody by contracting provision of inmate health care to private organization, there was no evidence of any Board of Corrections policy of deliberate indifference to inmate's medical needs; thus, effective directed verdict on civil rights claims in favor of those defendants was proper. Toombs v. Bell, C.A.8 (Ark.) 1990, 915 F.2d 345. Civil Rights 1091

Private entity that contracted with county to provide jail inmates with medical services was functionally equivalent to municipality for purposes of inmate's § 1983 suit alleging inadequate medical care; thus, claim required showing that entity was responsible for unconstitutional municipal custom or policy that was moving force behind inadequate care. Wall v. Dion, D.Me.2003, 257 F.Supp.2d 316. Civil Rights 1326(5); Civil Rights 1351(4)

Even if state action were involved in private ambulance attendants' care of detainee transferred from sheriff's deputies, care that was afforded to detainee did not sink to level of deliberate indifference to serious medical need, and thus, detainee could not recover from attendants under § 1983; although detainee alleged that attendants failed to detect bullet wound or to stabilize her spine in event there was such wound, detainee was not refused treatment, nor was access to treatment denied or delayed. Williams v. Richmond County, Ga., S.D.Ga.1992, 804 F.Supp. 1561. Civil Rights 1088(4)

Prison inmate who brought suit claiming that prison officials had been deliberately indifferent to his serious medical needs when they refused to provide him with continuous positive air pressure (CPAP) machine, which was required in order for him to sleep safely due to obstructive sleep apnea (OSA) from which he suffered, failed to allege that medical corporation which provided care to inmates had implemented a particular policy or custom which violated his Eighth Amendment rights, or failed to train or supervise, as required to state § 1983 claim against corporation. Meloy v. Schuetzle, C.A.8 (N.D.) 2000, 230 F.3d 1363, Unreported. Civil Rights 1339

2726. ---- Supervisory personnel, persons required to give medical care, medical care of prisoners

By alleging that corrections officials were aware of his beating by corrections officers, his repeated requests for medical attention, and his subsequent brain surgery, yet took inadequate or insufficient measures to attend to his medical needs, inmate stated claim against prison officials under §§ 1983 for supervisory liability for deliberate indifference to his medical needs in violation of Eighth Amendment. Davis v. Carroll, D.Del.2005, 390 F.Supp.2d 415. Sentencing And Punishment 1546

State prison supervisory officials who allegedly ignored prisoner's complaints about medical staff and other correctional officers were not personally involved in alleged deprivations of prisoner's Eighth Amendment rights, and therefore, were not liable under § 1983; there was no evidence that supervisors received prisoner's complaints, or that they were deliberately indifferent to the alleged violations or grossly negligent in supervising medical staff and officers. Rivera v. Goord, S.D.N.Y.2000, 119 F.Supp.2d 327. Civil Rights 1358

Prisoner, who stated valid claim against corrections officials for deliberate indifference to a serious medical need, sufficiently asserted a § 1983 claim for supervisory liability; prisoner alleged that Administrator of Correctional Services of Puerto Rico formulated policies and failed to execute other policies which resulted in the inadequate provision of medical attention to him and that Administrator was aware of deficiencies in the prison system which increased the risk of inmates to receiving substandard medical treatment, and prisoner averred that Secretary of

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Puerto Rico's Department of Health knew or should have known that physician, the employee under her supervision who attended prisoner at the infirmary, was improperly trained. Muniz Souffront v. Alvarado, D.Puerto Rico 2000, 115 F.Supp.2d 237. Civil Rights 1395(7)

Detainee did not establish sheriff's supervisory liability for alleged failure to provide detainee, who was pregnant while detained, with adequate medical treatment; detainee did not offer evidence to counter sheriff's statements that he had not personal involvement in alleged deprivation of detainee's medical treatment, that county jail's policy was to provide access to appropriate treatment for all inmates, and that he never received request from detainee regarding any medical condition and did not know of any inmate ever being denied medical treatment. Ludlam v. Coffee County, M.D.Ala.1998, 993 F.Supp. 1421. Civil Rights 1358

Inmate stated a §§ 1983 claim against superintendent and physician for deliberate indifference to his serious medical needs, despite their claims of a lack of personal involvement; assuming that the superintendent himself did not institute challenged practices and policies, he could nonetheless be found liable for failing to remedy the wrong after being informed of a violation, and the physician could similarly be found liable for failing to act after being informed that constitutional violations were being committed. Williams v. Koenigsmann, S.D.N.Y.2004, 2004 WL 315279, Unreported. Civil Rights 1358

State prisoner's allegation against deputy superintendent of prison, that he personally denied prisoner's requests for medical treatment related to his hepatitis C virus through the denial of grievance for lack of medical care, was sufficient to establish deputy superintendent's personal involvement in the alleged failure to provide prisoner with adequate medical treatment for his hepatitis C, as required for §§ 1983 claim against deputy superintendent. McKenna v. Wright, S.D.N.Y.2004, 2004 WL 102752, Unreported, appeal dismissed 386 F.3d 432. Civil Rights 1358

2727. Shocks the conscience test, medical care of prisoners

Although the Supreme Court's "deliberate indifference" standard should be applied in determining whether prisoner's illness or injury gives rise to a claim under this section, the barbarous/shocks the conscience test is a permissible one. Bass v. Sullivan, C.A.5 (Ala.) 1977, 550 F.2d 229, certiorari denied 98 S.Ct. 195, 434 U.S. 864, 54 L.Ed.2d 138. Civil Rights 1091

The standard of liability in a civil rights case alleging cruel and unusual punishment relating to a claimed omission of medical care to prisoner is whether the plaintiff proves exceptional circumstances and conduct so grossly incompetent, inadequate or excessive as to shock the conscience or to be intolerable to basic fairness. Dewell v. Lawson, C.A.10 (Okla.) 1974, 489 F.2d 877. Civil Rights 1091

Mere negligence, in absence of conduct which shocks conscience, in giving or failing to supply medical treatment to prisoners does not give rise to a cause of action under this section. Page v. Sharpe, C.A.1 (Me.) 1973, 487 F.2d 567.

Physician who treats state prisoner may be liable under this section pertaining to deprivation of rights under color of state law for his deliberate indifference to prisoner's serious medical needs, but the conduct alleged must be repugnant to conscience of mankind. Tomarkin v. Ward, S.D.N.Y.1982, 534 F.Supp. 1224. Civil Rights 1326(8)

2728. Unnecessary suffering standard, medical care of prisoners

Denial of medical care that results in unnecessary suffering in prison is inconsistent with contemporary standards of decency and gives rise to cause of action under § 1983. Phillips v. Michigan Dept. of Corrections, W.D.Mich.1990, 731 F.Supp. 792, affirmed 932 F.2d 969. Civil Rights 1091

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Denial of medical care that results in unnecessary suffering in prison gives rise to cause of action under § 1983 for violation of Eighth Amendment. Jones v. Ehlert, E.D.Wis.1989, 704 F.Supp. 885, affirmed 899 F.2d 17. Civil Rights 1091

Whether infliction of unnecessary suffering is caused by prison doctor's response or lack thereof to inmate needs, or by prison guard's denial of access to medical care, or interference with prescribed treatment, deliberate indifference to prisoner's serious illness or injury states cause of action under 42 U.S.C.A. § 1983; critical factor in any such instance, however, is that indifference be not merely inadvertent or negligent, but deliberate, for it is only such deliberate indifference that can offend evolving standards of decency in violation of Eighth Amendment [U.S.C.A. Const.Amend. 8]. Ferola v. Moran, D.C.R.I.1985, 622 F.Supp. 814. Civil Rights 1091

2729. Deliberate indifference, medical care of prisoners

Deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by U.S.C.A.Const. Amend. 8 whether the indifference is manifested by prison doctors in response to prison needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed; regardless of how evidenced deliberate indifference to prisoner's serious illness or injuries states cause of action under this section. Estelle v. Gamble, U.S.Tex.1976, 97 S.Ct. 285, 429 U.S. 97, 50 L.Ed.2d 251, rehearing denied 97 S.Ct. 798, 429 U.S. 1066, 50 L.Ed.2d 785, on remand 554 F.2d 653. Civil Rights 1091; Sentencing And Punishment 1546

Prison doctor was not aware that his conduct of postponing course of treatment for inmate's Hepatitis C for five months, because of possibility inmate would be paroled, would cause serious harm, and, thus, doctor did not act with deliberate indifference and was not liable for Eighth Amendment violation, where doctor expressed belief that inmate was in no immediate danger because Hepatitis C would lead to cirrhosis only over 20 to 30 years. Salahuddin v. Goord, C.A.2 (N.Y.) 2006, 467 F.3d 263. Sentencing And Punishment 1546

Inmate, whose leg was crushed while he was on work release when the garbage collection truck on which he worked as a "hopper" collided with another vehicle, failed to demonstrate that state-prison physician disregarded the substantial health risk about which he knew, as required to establish deliberate indifference to serious medical need, and so physician enjoyed qualified immunity from inmate's civil rights action; according to medical records, inmate was given extensive medical treatment for the injury throughout his imprisonment term, a trier of fact might have found, at most, negligence in the one-week lapse in antibiotic treatment, and even if, as inmate asserted, there was a fact question regarding the precise time at which physician appreciated the infection in inmate's leg, no disputed fact question, when resolved in inmate's favor, rose to the level of egregious intentional conduct required to satisfy the exacting deliberate indifference standard. Gobert v. Caldwell, C.A.5 (La.) 2006, 463 F.3d 339. Sentencing And Punishment 1546

Where the prisoner's §§ 1983 complaint alleging inadequate medical treatment that rises to the level of deliberate indifference to serious medical needs, as would constitute cruel and unusual punishment in violation of Eighth Amendment, involves treatment of prisoner's sophisticated medical condition, expert testimony is required to prove causation. Alberson v. Norris, C.A.8 (Ark.) 2006, 458 F.3d 762. Civil Rights 1420

Genuine issue of material fact as to whether county jail officials were deliberately indifferent by failing to ensure that inmate received timely methadone treatment precluded summary judgment in §§ 1983 action alleging that inmate's death in county jail was due to sudden withdrawal from his prescribed methadone medication. Davis v. Carter, C.A.7 (Ill.) 2006, 452 F.3d 686. Federal Civil Procedure 2491.5

To prevail on deliberate indifference to prisoner's medical needs claim under §§ 1983, inadvertent failure to provide adequate medical care is not enough, nor does a complaint that a physician has been negligent in diagnosing or treating a medical condition state a valid claim of medical mistreatment under the Eighth

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Amendment; rather, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. Self v. Crum, C.A.10 (Colo.) 2006, 439 F.3d 1227, petition for certiorari filed 2006 WL 1591905. Sentencing And Punishment 1546

State prisoner's allegations that prison officials knew of his serious medical condition, but failed to inform him of medical appointments or to arrange transportation, were sufficient to state claim for deliberate indifference to a serious medical need. Martinez v. Garden, C.A.10 (Utah) 2005, 430 F.3d 1302. Civil Rights 1395(7)

Failure of corrections complaint appeals examiner to take further action once he had reviewed prisoner's complaints, verified that prisoner was receiving treatment, and referred those complaints to medical providers, did not constitute deliberate indifference to prisoner's serious medical need, for purpose of prisoner's civil rights lawsuit under Eighth Amendment, since medical providers could have been expected to address prisoner's concerns. Greeno v. Daley, C.A.7 (Wis.) 2005, 414 F.3d 645. Sentencing And Punishment 1546

Pro se inmate's allegations that dentist who performed tooth extraction was not qualified as oral surgeon and that dentist failed to recognize that he punctured an artery during extraction did not rise to level of deliberate indifference as required to support inmate's §§ 1983 action against dentist alleging violation of Eighth Amendment based on complications related to tooth extraction, where complaint also stated that dentist indicated that procedure had been difficult and that dentist placed inmate in chair for observation and then took inmate to prison's emergency room and then hospital. Finnegan v. Maire, C.A.8 (Mo.) 2005, 405 F.3d 694, rehearing and rehearing en banc denied. Sentencing And Punishment 1546

Correctional administrators who had no knowledge of any continuing pattern by guards of failing to report inmates' medical needs could not be held liable on §§1983 claim by mother of inmate who suffered head injury in prison riot and later died of brain inflammation associated with acquired immune deficiency syndrome (AIDS), alleging that administrators' deliberate indifference to threat that guards were neglecting inmates' medical needs violated Eighth Amendment right against cruel and unusual punishment. Alsina-Ortiz v. Laboy, C.A.1 (Puerto Rico) 2005, 400 F.3d 77. Civil Rights 1358

Prison officials' alleged failure to provide prisoner with medical treatment for his hepatitis C virus would amount to deliberate indifference to prisoner's serious medical need, as would support claim for denial of adequate medical care in violation of the Eighth Amendment. McKenna v. Wright, C.A.2 (N.Y.) 2004, 386 F.3d 432. Prisons 17(2); Sentencing And Punishment 1546

Genuine issues of material fact as to whether county juvenile detention center was deliberately indifferent to juvenile detainee's mental health needs and safety, and whether such indifference was cause of injuries suffered by detainee in assaults by other residents, precluded summary judgment for center on claim for violation of substantive due process brought under §§ 1983. A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, C.A.3 (Pa.) 2004, 372 F.3d 572. Federal Civil Procedure 2491.5

Employee's lack of training and carelessness were relevant to establishing deliberate indifference of employer, a private contractor hired by county to provide medical and mental health services at jail, in inmate's § 1983 Eighth Amendment action against employer-contractor, even though employee herself was found not liable, since employee's coworker was found individually liable. Woodward v. Correctional Medical Services of Illinois, Inc., C.A.7 (Ill.) 2004, 368 F.3d 917. Civil Rights 1339

Persons engaged in routine performance of routine medical responsibilities cannot be considered deliberately indifferent to the medical needs of a prisoner, in a lawsuit under § 1983 under the Eighth Amendment. Richardson v. Goord, C.A.2 (N.Y.) 2003, 347 F.3d 431. Sentencing And Punishment 1546

Nurse was not deliberately indifferent to prisoner's serious medical needs related to hand injury by failing to obtain

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adequate physical therapy for prisoner after his hand surgery, precluding prisoner's § 1983 Eighth Amendment claim against nurse, where it was undisputed that nurse repeatedly tried to schedule visits with physical therapists from local hospitals and clinics, but those institutions would no longer send their therapists to the prison and rejected nurse's requests. Hernandez v. Keane, C.A.2 (N.Y.) 2003, 341 F.3d 137, certiorari denied 125 S.Ct. 971, 543 U.S. 1093, 160 L.Ed.2d 905. Prisons 17(2); Sentencing And Punishment 1546

Administrator of estate of state prisoner, who committed suicide by hanging while incarcerated, failed to show that prison officials were deliberately indifferent to prisoner's risk of suicide, barring administrator's § 1983 claim against officials for violation of the Eighth Amendment; although medical form existed indicating that prisoner had once attempted suicide, that form was not included in prisoner's medical records, officials asserted that they never knew about that form, prisoner never told any official that he felt suicidal or depressed beyond his control during his incarceration, despite having been asked that question numerous times during intake interviews, psychological evaluations, crisis counseling, and physical exams, and officials who examined prisoner never determined that he exhibited suicidal or delusional tendencies. Matos ex rel. Matos v. O'Sullivan, C.A.7 (Ill.) 2003, 335 F.3d 553. Prisons 17(2); Sentencing And Punishment 1547

Absent evidence that nurse herself subjectively was aware of a serious risk of harm to prisoner, prisoner's allegations that nurse displayed deliberate indifference towards his serious medical need, by ordering her staff not to provide dental care to him, failed to state claim for violation of his Eighth Amendment rights. Farrow v. West, C.A.11 (Ala.) 2003, 320 F.3d 1235. Prisons 17(2); Sentencing And Punishment 1546

Deliberate indifference to prisoner's serious illness or injury constitutes unnecessary and wanton infliction of pain proscribed by Eighth Amendment and, therefore, states cause of action under § 1983, but "deliberate indifference" does not include negligence in diagnosing medical condition. Sanderfer v. Nichols, C.A.6 (Mich.) 1995, 62 F.3d 151, rehearing and suggestion for rehearing en banc denied. Civil Rights 1091; Sentencing And Punishment 1546

Deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain and states civil rights cause of action under § 1983. Walker v. Butler, C.A.5 (La.) 1992, 967 F.2d 176. Civil Rights 1091

"Deliberate indifference" standard rather than "wanton infliction of pain" standard applied to civil rights claims based on alleged deficiencies in planning for medical needs of prisoners following prison authorities' retaking of prison. Al-Jundi v. Mancusi, C.A.2 (N.Y.) 1991, 926 F.2d 235, certiorari denied 112 S.Ct. 182, 502 U.S. 861, 116 L.Ed.2d 143. Civil Rights 1091

Deliberate indifference to a prisoner's serious medical needs constitutes an Eighth Amendment violation and states a cause of action under § 1983. Jackson v. Cain, C.A.5 (La.) 1989, 864 F.2d 1235. Civil Rights 1091; Sentencing And Punishment 1546

State prison officials were not deliberately indifferent to injuries inmate sustained in altercation with correctional officers, and thus did not violate inmate's Eighth Amendment rights, where inmate was taken to treatment center immediately after incident for medical evaluation and treatment, nurse evaluated inmate directly after incident and stated that his injuries were minor and his prognosis was good, and inmate received check ups for his complaints of headaches until his symptoms subsided. Wilkins v. Ramirez, S.D.Cal.2006, 455 F.Supp.2d 1080. Sentencing And Punishment 1546

Corrections department sergeant was not deliberately indifferent to serious medical needs of prisoner in violation of Eighth Amendment, where medical records indicated that he received medical treatment after intentionally cutting himself, medical records also revealed that on one occasion he refused to accept treatment, and sergeant was not personally involved in events in question. Bell v. Arnone, W.D.N.Y.2006, 455 F.Supp.2d 232.

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42 U.S.C.A. § 1983

Sentencing And Punishment 1546

Genuine issue of material fact as to whether jail physician acted with deliberate indifference to medical needs of county jail pretrial detainee precluded summary judgment for physician, in §§ 1983 action brought by detainee's survivors, alleging a due process violation relating to detainee's death on the day she was scheduled to be released from jail, with the death allegedly caused by Staphylococcus aureus sepsis due to Staphylococcus aureus pneumonia. Rasmussen v. Skagit County, W.D.Wash.2006, 448 F.Supp.2d 1203. Federal Civil Procedure 2491.5

Health care providers who provided medical services at correctional facility did not act with deliberate indifference to medical needs of inmate who had liver problems and suffered from migraine headaches; inmate was provided multiple medicines for his headaches and was seen on several occasions by a neurologist, a gastroenterologist and a pain management specialist, all of whom performed tests and ongoing evaluations, the only time the inmate's request for certain medication for Hepatitis C was refused was after he failed a drug test, and that decision was in accord with community standards. Niemic v. Maloney, D.Mass.2006, 448 F.Supp.2d 270. Sentencing And Punishment 1546

Pre-trial detainee received appropriate medical care after his fight with another inmate while incarcerated in county jail, and thus, jail and jail personnel were not liable under §§ 1983 to detainee for deliberate indifference to his serious medical needs in violation of his right to due process; after fight, jail personnel drove detainee to hospital, where he received three stitches in his head, splint for his wrist, and x-rays, which were negative for fractures, upon return from hospital, detainee was placed in jail's medical dormitory, where he saw nurses on regular basis and was given medication, and detainee subsequently saw medical or nursing personnel on six occasions without complaining of any serious medical condition or medical crisis. Cirilla v. Kankakee County Jail, C.D.Ill.2006, 438 F.Supp.2d 937. Prisons 17(2)

Changes made in inmate's diagnosis course of treatment by employees of the New York State Office of Mental Health did not amount to deliberate indifference to inmate's serious medical needs, in violation of the Eighth Amendment; there was no evidence that the changes were incorrect or medically inappropriate, or that the employees had the requisite culpable state of mind to act with deliberate indifference. Goodson v. Evans, W.D.N.Y.2006, 438 F.Supp.2d 199. Sentencing And Punishment 1546

Failure by state prison officials and contract medical staff to treat inmate's hepatitis C or to perform liver biopsy did not establish deliberate indifference to inmate's serious medical condition, in violation of Eighth Amendment, despite expert testimony that liver biopsy was needed to determine amount of damage that had been done to his liver and whether treatment of his condition was necessary, where inmate's condition was monitored through laboratory tests, he was regularly seen by doctor, and inmate's liver enzyme levels were not sufficiently high under guidelines developed by Federal Bureau of Prisons and National Institutes of Health (NIH) to justify biopsy or treatment. Jordan v. Delaware, D.Del.2006, 433 F.Supp.2d 433. Sentencing And Punishment 1546

Course of treatment provided for prisoner's serious medical needs, even if inadequate, was not so inadequate as to shock the conscience, and thereby constitute deliberate indifference in violation of Eighth Amendment; although defendants denied medication for prisoner's Hepatitis C, denial of the medication was due to the reason that prisoner's treatment would have been adversely affected by prisoner's prior drug use. MacLeod v. Kern, D.Mass.2006, 424 F.Supp.2d 260. Sentencing And Punishment 1546

Prison nurse's failure to administer prisoner's hypertension medication on one day did not cause prisoner to suffer a serious medical condition, and thus nurse and correction officer who escorted nurse were not deliberately indifferent to prisoner's serious medical needs in violation of Eighth Amendment, where prisoner was taking relatively low dose of medication for mild hypertension, prisoner took his medication on every other day that month, prisoner's blood pressure was normal when checked three weeks later, and there was no indication that the

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missed dose of medication interfered with prisoner's activities or caused him medical complications. Torres v. Trombly, D.Conn.2006, 421 F.Supp.2d 527. Sentencing And Punishment 1546

Representative of prisoner's estate stated cause of action in §§ 1983 complaint against prison doctors for deliberate indifference to prisoner's serious medical condition, by alleging that doctors were the persons ultimately responsible for prisoner's treatment, that they had legal authority and duty to supervise their nursing and physician's assistant staff, that, despite their duty, doctors entirely failed to supervise staff's treatment of prisoner, and thus were deliberately indifferent to his care, and that such deliberate indifference to prisoner's serious medical condition for approximately two months caused prisoner's death. Billops v. Sandoval, S.D.Tex.2005, 401 F.Supp.2d 766. Civil Rights 1395(7)

Inmate failed to establish that prison officials disregarded excessive risk to inmate's health, as required to maintain deliberate indifference claim under Eighth Amendment; rather than deliberately ignoring inmate's complaints regarding pain in head and leg, official immediately acted by forwarding relevant information to health care services administrator for appropriate action. Brown v. Williams, D.Del.2005, 399 F.Supp.2d 558. Sentencing And Punishment 1546

Jailer who made jail cell checks periodically throughout night was not deliberately indifferent in violation of Fourteenth Amendment to serious needs of pretrial detainee who had been arrested for driving while intoxicated (DWI) after motorcycle accident, notwithstanding that pretrial detainee died in his cell sometime in early morning hours from complications of blunt force chest injuries, absent any indication she heard detainee's alleged call for help during her overnight shift or knew that arrestee, who had refused further medical treatment after paramedic evaluation at scene of accident, had serious injuries. Patrick v. Lewis, D.Minn.2005, 397 F.Supp.2d 1134. Prisons 17(2)

By alleging that deputy warden wanted to just stitch him up when he was hit in the head by correction officers, that it was only at insistence of a nurse that an ambulance was called, that after receiving treatment for head injuries, he was moved from infirmary despite needing more medical treatment, that no one came to check on him for several days after he underwent brain surgery, and that correction officers ignored his repeated requests for medical attention, inmate stated a claim against prison personnel under §§ 1983 for deliberate indifference to his serious medical needs in violation of Eighth Amendment. Davis v. Carroll, D.Del.2005, 390 F.Supp.2d 415. Sentencing And Punishment 1546

Even if no medical care could have prevented pretrial detainee's death, police officers nevertheless unconstitutionally deprived detainee of his Fourteenth Amendment right to medical care where they were subjectively aware of the risk to pretrial detainee's well-being that his medical condition posed but did nothing to summon any medical care. Estate of Owensby v. City of Cincinnati, S.D.Ohio 2004, 385 F.Supp.2d 626, affirmed and remanded 414 F.3d 596, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 2023. Municipal Corporations 747(3)

State inmate's allegations that he was on anticholinergic medication and particularly vulnerable to overheating and heat stroke, and that prison officials knew about this vulnerability, but acted with deliberate indifference towards it by keeping him in room with no windows, ventilation, or access to running water when temperature inside facility was 120° Fahrenheit, were sufficient to state claim under Eighth Amendment for deliberate indifference to his serious medical needs, where inmate suffered severely debilitating heat stroke. Moody v. Kearney, D.Del.2005, 380 F.Supp.2d 393. Sentencing And Punishment 1538

State inmate's complaint against state prison system's health care provider, stating that "official" took "excessive risk" to inmate's health by transporting him to another prison for medical procedure, and that when nurse could not start intravenous treatment she called warden, who instructed her to make transfer, failed to state cause of action under §§ 1983 for deliberate indifference to medical needs, where there was no allegation that provider had actual

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knowledge of or acquiesced to actions taken, and complaint did not mention provider's policies, much less allege they were inadequate. McCray v. First State Medical System, D.Del.2005, 379 F.Supp.2d 635. Civil Rights 1395(7)

State prison officials did not display deliberate indifference to serious medical needs of mentally ill and suicidal inmate, in violation of Eighth Amendment, when he was examined, and prescribed various antipsychotic medications, and only alleged deficiency was failure to provide therapeutic art supplies when requested. Scarver v. Litscher, W.D.Wis.2005, 371 F.Supp.2d 986, affirmed 434 F.3d 972. Prisons 17(2); Sentencing And Punishment 1546

The one and one-half day delay between prisoner's first complaints of flu-like symptoms, including aches, chills, and fever, and his subsequent treatment and diagnosis of pneumonia by physician did not constitute deliberate indifference by prison officials to prisoner's health and safety, for purpose of prisoner's §§ 1983 Eight Amendment claim; the delay did not deny prisoner the minimal civilized measures of life's necessities and it caused no substantial harm. Wynn v. Mundo, M.D.N.C.2005, 367 F.Supp.2d 832, affirmed 142 Fed.Appx. 193, 2005 WL 2108129. Prisons 17(2); Sentencing And Punishment 1546

Prisoner's allegations, which described nothing more than a disagreement as to the manner of treatment that he received, failed to state a deliberate indifference claim against prison doctor; additionally, prisoner's failure to allege that doctor acted with anything more than negligence resulted in the failure to state a constitutional claim. Shell v. Brzezniak, W.D.N.Y.2005, 365 F.Supp.2d 362. Civil Rights 1395(7)

Warden and prison medical staff did not act with deliberate indifference to inmate's serious medical needs, in violation of inmate's Eighth Amendment rights, when medical personnel at correctional facility attempted to introduce fluids intravenously to regulate inmate's blood sugar levels and then, when nurse was unable to perform procedure successfully, transferred inmate to different correctional facility to ensure that procedure was performed correctly, notwithstanding inmate's contention that he should have been taken to local hospital, rather than different correctional facility. McCray v. Williams, D.Del.2005, 357 F.Supp.2d 774. Sentencing And Punishment 1546

County jail officials' knowledge that inmate was intoxicated did not create genuine issue of material fact sufficient to preclude summary judgment in favor of officials in §§ 1983 suit alleging that inmate's suicide was result of their deliberate indifference, even though policies and procedures of county jail and state required constant monitoring of intoxicated individuals, where plaintiff admitted officials had no subjective knowledge that inmate was suicidal or at risk for any reason. Stewart ex rel. Estate of Stewart v. Waldo County, D.Me.2004, 350 F.Supp.2d 215. Civil Rights 1352(4)

Correctional officer was not "indifferent" to prisoner's claim that his safety would be jeopardized by being placed in a top bunk, in light of certain medical conditions, as would support prisoner's claim under the Eighth Amendment against officer, for deliberate indifference to his safety, where she informed prisoner of steps he needed to take to change his bunk assignment, there was little immediate indication that prisoner was at risk, and officer properly assumed there was no special permission given by medical personnel for a bottom bunk and that lack of permission indicated prisoner was not being placed at risk. Pennington v. Taylor, E.D.Va.2004, 343 F.Supp.2d 508, affirmed 98 Fed.Appx. 957, 2004 WL 1238583. Prisons 17(2); Sentencing And Punishment 1546

Genuine issues of material fact as to whether prison supervisor adequately trained guards with respect to use of four-point restraints, failed to respond to reports and complaints of use of force against inmate, and adopted policy regarding use of restraints that demonstrated indifference to inmate's mental illness precluded summary judgment in inmate's §§ 1983 action alleging excessive force and deliberate indifference to his health. Ziemba v. Armstrong, D.Conn.2004, 343 F.Supp.2d 173, affirmed in part, reversed in part and remanded 430 F.3d 623. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

Private health service physicians who treated prison inmate did not act with deliberate indifference to inmate's medical needs, as would violate Eighth Amendment, where physicians were responsive and timely when addressing inmate's medical concerns, and prison officials kept inmate apprised of status of his medical treatments and informed him that courses of treatment would be made by attending physicians. Jones v. Consuegra's Estate, M.D.Fla.2004, 338 F.Supp.2d 1282. Prisons 17(2); Sentencing And Punishment 1546

Pro se complaint, liberally construed, supported §§ 1983 claim that prison medical employee was deliberately indifferent to city prisoner's serious medical needs when prisoner alleged that he sustained injuries in bus accident which caused him "extreme pain and suffering" and that his body was deteriorating and he could "hardly support himself," and when complaint suggested that severity of prisoner's condition should have been apparent to medical employee, who nevertheless refused to provide adequate treatment. Carrasquillo v. City of New York, S.D.N.Y.2004, 324 F.Supp.2d 428. Civil Rights 1395(7)

Pro se inmate's allegation that hospital was deliberately indifferent to his serious medical needs in treating him failed to state a claim under § 1983 for violation of the Eighth Amendment, where all inmate alleged was that following emergency surgery for removal of part of intestines and colon, inmate developed pneumonia that required intensive medical care, including being placed on respirator and monitored in hospital's intensive care unit, even if hospital were person acting under color of law for § 1983 purposes. Hudson v. Clark, W.D.N.Y.2004, 319 F.Supp.2d 347. Prisons 17(2); Sentencing And Punishment 1546

State prisoner's allegation of a long series of events concerning his treatment by defendant doctors did not alone necessarily establish a continuing violation, in determining whether § 1983 action for allegedly deliberate indifference by doctors to prisoner's serious medical needs in violation of Eighth Amendment was time-barred as to some of the complained-of conduct. Griswold v. Morgan, W.D.N.Y.2004, 317 F.Supp.2d 226. Limitation Of Actions 58(1)

State prison guard had no personal involvement in deciding to place prisoner in cell with habitual smoker for cellmate, and thus, guard could not be liable in prisoner's action under § 1983 alleging that guard acted with deliberate indifference to his risk of medical harm by refusing to assign him to nonsmoking cell; guard passed on prisoner's complaint to his superiors, but had no power to move prisoner. Johnson v. Pearson, E.D.Va.2004, 316 F.Supp.2d 307. Civil Rights 1358

State prison's records manager had no personal involvement in deciding to place prisoner in cell with smoker, and thus, records manager could not be liable in prisoner's action under § 1983 alleging that record manager acted with deliberate indifference to his risk of medical harm by refusing to assign him to nonsmoking cell; records manager was merely manager of department that oversaw cell transfers, but had no power to move prisoner. Johnson v. Pearson, E.D.Va.2004, 316 F.Supp.2d 307. Civil Rights 1358

State prison officials acted with deliberate indifference to prisoner's exposure to levels of environmental tobacco smoke that allegedly posed unreasonable risk of serious damage to his future health, as would support prisoner's civil rights action under § 1983, alleging that officials violated his Eighth Amendment rights by refusing to transfer him to nonsmoking cell, where officials never considered consequences of future health problems, but were only concerned with administrative convenience. Johnson v. Pearson, E.D.Va.2004, 316 F.Supp.2d 307. Prisons 17(1); Sentencing And Punishment 1536

State prisoner's allegations that prison employees acted with deliberate indifference to his serious medical needs by denying him adequate medical treatment for ongoing pain, swollen testicle, and digestive tract problems, were sufficient to state claim for violation of Eighth Amendment. Moore v. Bachmeier, D.N.D.2004, 315 F.Supp.2d 1029. Prisons 17(2); Sentencing And Punishment 1546

Prison officials' refusal to inform inmate of his bilateral inguinal hernia did not constitute deliberate indifference to

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serious medical condition, in violation of Eighth Amendment, even if there was possibility that inmate could have contracted gangrene, where inmate did not suffer any serious injury from hernia. Lawrence v. Virginia Dept. of Corrections, E.D.Va.2004, 308 F.Supp.2d 709. Prisons 17(2); Sentencing And Punishment 1546

Prison doctor's failure to treat inmate's bacterial meningitis and severe dehydration did not amount to deliberate indifference to inmate's serious medical conditions, thus did not violate Eighth Amendment, where doctor tested inmate for meningitis and concluded that he did not have that condition, and there was no evidence that doctor had subjective knowledge of serious risk of severe dehydration that he diagnosed in inmate. Brown v. Mitchell, E.D.Va.2004, 308 F.Supp.2d 682. Prisons 17(2); Sentencing And Punishment 1546

Detainee who brought action against sheriff's department supervisors, stemming from alleged failure to receive adequate medical care, failed to establish that supervisors were deliberately indifferent to his medical needs, as required to maintain substantive due process claims under Fourteenth Amendment; county jail had policy of having nurse on-call and transporting prisoners to local hospitals, detainee did not establish that deficiencies in staffing or training caused him to be denied necessary medical care, detainee failed to show that need for more or different training was so obvious that it was likely to result in violation of constitutional rights, and there was no evidence of widespread abuse or problems with medical care administered by jail. Bunyon v. Burke County, S.D.Ga.2004, 306 F.Supp.2d 1240, affirmed 116 Fed.Appx. 249, 2004 WL 1936471. Constitutional Law 262; Prisons 17(2)

Incarcerated prisoner's allegations that orthopedic surgeon's refusal to schedule shoulder surgery in timely manner constituted deliberate indifference to serious medical condition stated a claim; prisoner alleged that surgeon knew extended delay in repairing tendons would lessen prisoner's chance for recovery and might lead to permanent disability. Benjamin v. Schwartz, S.D.N.Y.2004, 299 F.Supp.2d 196. Prisons 17(2); Sentencing And Punishment 1546

Genuine issue of material fact as to whether lieutenant at state prison, who allegedly stated that he would do nothing with regard to inmate's special dietary needs and did not care if inmate lived or died, demonstrated deliberate indifference to inmate's serious medical needs in violation of the Eighth Amendment precluded summary judgment in inmate's § 1983 claim seeking damages for each day that prison officials allegedly did not comply with orders of inmate's physician. Woulard v. Food Service, D.Del.2003, 294 F.Supp.2d 596. Federal Civil Procedure 2491.5

Parent of deceased inmate who brought § 1983 action against correctional administrators, stemming from fatal prison riot, failed to establish that administrators acted with deliberate indifference toward constitutional rights of inmate, as required to maintain Eighth Amendment claim; administrators' knowledge of instance in other facility in which inmate allegedly failed to receive proper medical attention did not automatically establish their knowledge of conditions at issue, and parent failed to allege that administrators had any participation in supervising inmate's medical care following riot. Alsina Ortiz v. Laboy, D.Puerto Rico 2003, 286 F.Supp.2d 133, affirmed in part, vacated in part and remanded 400 F.3d 77. Prisons 17(2); Sentencing And Punishment 1546

Prisoner's allegations, that he suffered a great deal as result of tooth extraction which did not go well and led to cutting of his jawbone, damage to other teeth, nerve damage, and a loss of feeling on the right side of his face, were insufficient to support finding of deliberate indifference to his medical needs, as required for claim of Eighth Amendment violation in § 1983 action against various prison officials; at most, allegations implied negligence, incompetence, or malpractice. Majors v. Ridley-Turner, N.D.Ind.2003, 277 F.Supp.2d 916. Prisons 17(2); Sentencing And Punishment 1533; Sentencing And Punishment 1546

Jail inmate failed to establish municipal policy condoning deliberate indifference to his medical care, required for municipal liability in § 1983 action claiming injuries arising from handling of his glaucoma condition, when he cited only to one paragraph article in local newspaper reporting some government findings regarding jail.

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42 U.S.C.A. § 1983

Richardson v. Nassau County, E.D.N.Y.2003, 277 F.Supp.2d 196. Civil Rights 1420

In lawsuit under § 1983 alleging that supervisor violated prisoner's Eighth Amendment rights, estate and survivors of deceased prisoner failed to show that supervisor was deliberately indifferent, or even aware of, substantial risk that prisoner would attempt to commit suicide, even though supervisor did not visit the modules very often; mere fact that supervisor was not integrally involved in day to day activities of his subordinates did not mean that he was deliberately indifferent to need to provide adequate medical care to suicidal inmates. Estate of Sisk v. Manzanares, D.Kan.2002, 262 F.Supp.2d 1162. Prisons 17(2); Sentencing And Punishment 1547

County sheriff could not be held liable under § 1983 for jail guard's alleged deliberate indifference to inmate's serious medical needs, which resulted in inmate's death, absent evidence that sheriff was aware of inmate's needs or that sheriff was deliberately indifferent to widespread practice of offending conduct by guards. Estate of Hampton v. Androscoggin County, D.Me.2003, 245 F.Supp.2d 150. Civil Rights 1358

Report by corporation that conducts surveys every three years to determine whether prison inmates are getting minimum level of care did not establish custom of deliberate indifference by private corporation providing medical services for inmates, for purposes of inmate's § 1983 action alleging Eighth Amendment violations based upon prison physician's alleged failure to provide surgery for inmate's avascular necrosis of femoral head, where report contained no references to delay in obtaining surgery for inmates. Palermo v. Correctional Medical Services, Inc., S.D.Fla.2001, 148 F.Supp.2d 1340. Civil Rights 1339

Allegations of deliberate indifference to prisoner's serious medical needs states cause of action under federal civil rights statute. Carrigan v. State of Del., D.Del.1997, 957 F.Supp. 1376. Civil Rights 1091

In order for prisoner to state actionable § 1983 claim of indifference to serious medical needs, legal conclusion of deliberate indifference must rest on facts clearly showing "wanton" actions, which means actions which are reckless and without regard to rights of others, on part of prison officials. Gangloff v. Poccia, M.D.Fla.1995, 888 F.Supp. 1549. Civil Rights 1091

Prisoners have constitutional right to appropriate medical attention, and deliberate or reckless disregard of such right constitutes violation of § 1983. Doe v. Morgenthau, S.D.N.Y.1994, 871 F.Supp. 605, on reconsideration in part. Civil Rights 1091; Sentencing And Punishment 1546

Failure to act can amount to deliberate indifference, for purposes of prisoner's § 1983 claim of inadequate medical care. Sappington v. Ulrich, E.D.Tex.1994, 868 F.Supp. 194. Civil Rights 1091

A claim that alleges deliberate indifference to a prisoner's serious injury constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment and states a cause of action under statute prohibiting the deprivation of civil rights by state action; "deliberate indifference" can take form of denial of necessary medical treatment itself, denial of access to necessary medical treatment, or intentional and unreasonable delay in access to such treatment, and that a medical need is "serious" can be established either by showing that a physician has diagnosed it as mandating treatment or by demonstrating that the condition was so obvious that even a lay person would recognize necessity of a doctor's attention. Partee v. Lane, N.D.Ill.1981, 528 F.Supp. 1254. Civil Rights 1395(7)

Employees at a jail did not act with deliberate indifference to pretrial detainee's serious medical needs, thus defeating his §§ 1983 claim of a Fourteenth Amendment due process violation by the sheriff based on an inadequate supervision and training theory; it was undisputed that the employees followed a private physician's instructions regarding the detainee's insulin medication and the need to check his blood glucose level a minimum of two times each day. Randall v. Board of County Com'rs., C.A.10 (Okla.) 2006, 184 Fed.Appx. 723, 2006 WL 1620066, Unreported. Prisons 17(2)

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42 U.S.C.A. § 1983

Prisoner's allegations in §§ 1983 action, which included failure to diagnose blood clots resulting from his vascular condition, denial of his preferred pain medication, delays in providing prescribed medications and treatments, and refusal to send him to an outside specialist, could not establish a constitutional violation; neither disagreements with the treatment provided by prison medical staff nor inadvertent or negligent failure to provide medical care rose to the level of deliberate indifference necessary to violate the Eighth Amendment. Hood v. Kansas Prisoner Health Services, Inc., C.A.10 (Kan.) 2006, 2006 WL 1230688, Unreported. Sentencing And Punishment 1546

Correctional officer's failure to add inmate to prison sick call list and telling other officers that inmate was faking his injury did not amount to deliberate indifference to inmate's medical needs, and thus, inmate failed to state claim against correctional officer for relief under §§ 1983 on claim of deliberate indifference to serious medical needs in violation of Eighth Amendment. Williams v. Pennsylvania, Dept. of Corrections, C.A.3 (Pa.) 2005, 146 Fed.Appx. 554, 2005 WL 1950801, Unreported. Sentencing And Punishment 1546

Failure of jail physician and nurse to diagnose contemnor's torn rotator cuff after accident did not demonstrate degree of indifference to contemnor's health or safety necessary to implicate Due Process Clause, where officials properly treated cut sustained in accident, and contemnor failed to inform physician of his continuing shoulder pain during subsequent examination. Wronke v. Champaign County Sheriff's Office, C.A.7 (Ill.) 2005, 132 Fed.Appx. 58, 2005 WL 1220487, Unreported. Constitutional Law 273; Prisons 17(2)

Inmate failed to state §§ 1983 claim for deliberate indifference to his serious medical needs based on allegations that conditions at state correctional center were unsanitary and fostered transmission of viruses and bacteria when inmate did not allege that he or any other inmate at center actually transmitted any such virus. Taggart v. MacDonald, C.A.9 (Mont.) 2005, 131 Fed.Appx. 544, 2005 WL 1127089, Unreported. Sentencing And Punishment 1536

State inmate's allegations did not support §§ 1983 claim against prison doctor under Eighth Amendment for deliberate indifference to his serious medical needs, given that inmate received care for his medical conditions, including evaluations by various medical personnel, prescriptions for several different medications, and electrocardiograph examination (EKG); allegations that prison doctor should have referred inmate to specialist or local hospital were insufficient, in and of themselves, to support Eighth Amendment claim. Jetter v. Beard, C.A.3 (Pa.) 2005, 130 Fed.Appx. 523, 2005 WL 1051180, Unreported, certiorari denied 126 S.Ct. 566, 163 L.Ed.2d 475. Sentencing And Punishment 1546

State prisoner did not establish §§ 1983 claim of deliberate indifference to his medical needs, in violation of Eighth Amendment, with respect to medical care during 17-day period following his complaints about his back and breathing; medical personnel made rounds every day during 17-day period and observed nothing abnormal until, on 17th day, prisoner was taken to medical unit, at medical unit the prisoner's vital signs, breathing, and pulmonary health appeared normal but doctor diagnosed muscle spasm and prescribed two medications, and second doctor found nothing wrong with prisoner. Sanders v. Spillers, C.A.5 (Miss.) 2005, 129 Fed.Appx. 117, 2005 WL 977835, Unreported. Prisons 17(2); Sentencing And Punishment 1546

At most, inmate alleged that detention center official and doctor were negligent in providing him with medical care when inmate complained of delay and ineffective treatment for abscessed tooth, swollen testicle, possible hernia, urinary problems, and problematic hemorrhoids and his submissions established that he had received ongoing treatment for those concerns, including oral surgery and outside testing, and therefore allegations did not support §§ 1983 claim for deliberate indifference to inmate's medical needs in violation of his Eighth Amendment rights. Herl v. Gamble, C.A.10 (Kan.) 2005, 124 Fed.Appx. 630, 2005 WL 648234, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Inmate failed to prove, in support of a §§ 1983 claim, that physicians were deliberately indifferent to his hemorrhoid condition, despite his claim that they caused him to "suffer lingering pain" and discomfort; his

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physicians responded to his complaints, pursued several different courses of treatment for his hemorrhoids, promptly and repeatedly referred him to outside specialists, authorized four surgeries, and provided significant aftercare. Jones v. Sood, C.A.7 (Ill.) 2005, 123 Fed.Appx. 729, 2005 WL 406381, Unreported. Civil Rights 1091

Inmate who complained of back, leg, and head pains that he believed were the result of a car accident failed to state a claim against prison officials and medical staff, who he claimed were deliberatively indifferent to his serious medical needs, in violation the Eighth Amendment, despite the prison's apparent mistake regarding the scheduling of his doctor's appointment; he visited with a nurse practitioner at the time he first requested treatment and received pain medication, the doctor he ultimately saw reviewed his medical records and directed no change in treatment, and in any event, he failed to allege that he suffered substantial harm. Colbert v. Prison Health Services, C.A.10 (Kan.) 2005, 122 Fed.Appx. 424, 2005 WL 319397, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Prison employees' alleged conduct of negligently treating prisoner's medical conditions failed to support prisoner's Eighth Amendment claim for inadequate medical treatment, absent allegations supporting an inference of deliberate disregard for prisoner's pain. Burgess v. Dufrain, C.A.2 (N.Y.) 2005, 121 Fed.Appx. 421, 2005 WL 272236, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Genuine issues of material fact as to the extent and obviousness of arrestee's knee injury, and whether she was compelled to walk after her injury, precluded summary judgment against the arrestee on her §§ 1983 claim of deliberate indifference to serious medical needs. Elliott v. County of Monroe, C.A.2 (N.Y.) 2004, 115 Fed.Appx. 497, 2004 WL 2617007, Unreported. Federal Civil Procedure 2491.5

Prisoner's allegations regarding treatment of his shoulder injury and regarding his dissatisfaction with specific course of treatment provided pled no more than mere negligence; thus, absent sufficient allegation of facts to support an inference of deliberate disregard for his pain, prisoner did not state an Eighth Amendment violation of his right to adequate medical care while in prison. Jacobs v. Stornelli, C.A.2 (N.Y.) 2004, 115 Fed.Appx. 480, 2004 WL 2428748, Unreported. Civil Rights 1395(7)

Inmate failed to state a § 1983 claim for deliberate indifference to his serious medical needs against a nurse practitioner who was the inmate's primary medical care provider at a correctional facility, given the numerous efforts the nurse made in an attempt to alleviate the inmate's pain; by the inmate's own admission, the nurse tried to accommodate his medical needs by prescribing various pain medications, arranging for a CAT scan, and scheduling visits with an outside pain clinic. Williams v. Koenigsmann, S.D.N.Y.2004, 2004 WL 315279, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Prison nurses' treatment of prisoner's hernia condition was not deliberately indifferent to prisoner's serious medical needs; first nurse arranged for supervisor to discuss prisoner's surgery concerns with him, second nurse informed prisoner that she would investigate delay in surgery and prisoner underwent surgery two weeks later, after prisoner complained of post-operative problems second nurse arranged for him to see different doctor, and third nurse explained that prison medical staff reserved right to pursue different course of treatment then those recommended by outside doctors. Guiddy v. Terhune, C.A.3 (N.J.) 2004, 90 Fed.Appx. 592, 2004 WL 229228, Unreported. Prisons 17(2); Sentencing And Punishment 1546

There was no evidence that treatment former inmate received while incarcerated from provider of medical services was medically unacceptable under circumstances or that treatment was provided with conscious disregard of an excessive risk to inmate's health, as required to support inmate's § 1983 claim against provider and its employees alleging deliberate indifference to his serious medical needs. Wade v. CMS Medical Services, Inc., C.A.9 (Idaho) 2004, 86 Fed.Appx. 291, 2004 WL 68719, Unreported. Civil Rights 1091

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42 U.S.C.A. § 1983

State inmate stated a § 1983 claim for deliberate indifference to his serious medical condition, despite claim that he failed to exhaust his administrative remedies; the inmate alleged that he attempted to appeal a superintendent's decision to a central office review committee (CORC), and he was not required to allege that CORC responded to his grievance. Brown v. Koenigsmann, S.D.N.Y.2003, 2003 WL 22232884, Unreported. Civil Rights 1395(7)

Prisoner adequately pled a claim of deliberate indifference to a serious medical condition against corrections officer who allegedly disregarded prisoner's medical elevator pass as well as the instructions of prisoner's physical therapist. Williams v. Fisher, S.D.N.Y.2003, 2003 WL 22170610, Unreported. Civil Rights 1395(7)

State corrections agency's chief medical officer who implemented guidelines for diagnosis and treatment of Hepatitis C never personally treated prisoner, and thus, he could not be liable for money damages under § 1983 for deliberate indifference to prisoner's medical needs. Graham v. Wright, S.D.N.Y.2003, 2003 WL 22126764, Unreported. Civil Rights 1358

Prison inmate's Eighth Amendment claim of deliberate indifference to his medical condition, brought under § 1983, was time barred; one year statute of limitations, expanded to three years by application of imprisonment disability to suit, had expired when inmate sued three years and 11 weeks after cause of action accrued, and inmate was unable to establish eleven consecutive weeks of insanity as additional disability bridging gap. Funtanilla v. Rubles, N.D.Cal.2003, 2003 WL 21309491, Unreported. Limitation Of Actions 78

Inmate failed to prove that county medical center and physicians were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment, despite his disagreement with their diagnoses and treatment recommendations as to his neurological issues. Pabon v. Goord, S.D.N.Y.2003, 2003 WL 1787268, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Genuine issues of material fact as to whether parole officer and medical program assistant were aware of, but disregarded, parolee's medical needs, and whether they had opportunity and ability to take steps to obtain his transfer or release from drug treatment facility precluded summary judgment in § 1983 suit alleging that parolee's death one day after his release from facility was result of deliberate indifference to his serious medical needs. Rodriguez v. Downstate Correctional Facility, S.D.N.Y.2003, 2003 WL 1698204, Unreported, affirmed 94 Fed.Appx. 864, 2004 WL 859856. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether medical director of drug treatment facility knew that treatment rendered to parolee was inadequate and ineffective, and whether he had ability to take steps to obtain parolee's transfer or release from facility precluded summary judgment in § 1983 suit alleging that parolee's death one day after his release from facility was result of deliberate indifference to his serious medical needs. Rodriguez v. Downstate Correctional Facility, S.D.N.Y.2003, 2003 WL 1698204, Unreported, affirmed 94 Fed.Appx. 864, 2004 WL 859856. Federal Civil Procedure 2491.5

Adjustment review committee member and corrections officers who knew only that inmate was wrongfully placed in segregation, not that he was being denied personal hygiene items, were not deliberately indifferent to inmate's health and safety and, thus, could not be held liable under § 1983 action for withholding of personal hygiene items in violation of inmate's right to be free from cruel and unusual punishment. James v. O'Sullivan, C.A.7 (Ill.) 2003, 62 Fed.Appx. 636, 2003 WL 1466486, Unreported. Prisons 17(1); Sentencing And Punishment 1539

Estate of prison inmate who was shot and killed by correctional officer during altercation between inmates at state prison failed to show that prison official responsible for articulating, copying, and distributing use of force policy acted with deliberate indifference and exposed inmate to a substantial risk of serious damage to his future health, and thus, official was not liable under § 1983 for alleged violation of inmate's constitutional rights resulting from alleged deprivation of adequate emergency medical care, where official did not promulgate or authorize policies and practices related to medical care. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107989, Unreported.

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42 U.S.C.A. § 1983

Civil Rights 1358

Allegations by prison inmate that he did not receive his blood pressure medication, and that his blood pressure rose as a result, when unit security nurse failed to run a scheduled pill call, that nurse thereafter periodically refused to give him medication and attempted to give him the wrong medication in retaliation for his rejection of her sexual advances, and that supervisory personnel failed to rectify situation despite inmate's repeated grievances, were sufficient to state claim under § 1983 based on deliberate indifference to inmate's serious medical needs. Haltiwanger v. Mobley, C.A.8 (Ark.) 2000, 230 F.3d 1363, Unreported. Civil Rights 1395(7)

Allegations by prison inmate that prison medical director and clinical director had refused to provide him with continuous positive air pressure (CPAP) machine, which was required in order for him to sleep safely due to obstructive sleep apnea (OSA) from which he suffered, were sufficient to state claim under § 1983 based on deliberate indifference to inmate's serious medical needs. Meloy v. Schuetzle, C.A.8 (N.D.) 2000, 230 F.3d 1363, Unreported. Civil Rights 1395(7)

Prison inmate could not recover in § 1983 action against prison officials based on deliberate indifference to his medical needs, absent showing that prison medical personnel had disregarded serious medical needs, or that non-medical personnel had delayed or denied him access to medical care. Olson v. Hansen, C.A.8 (Neb.) 2000, 221 F.3d 1343, Unreported. Civil Rights 1091

2730. Pattern or policy of indifference, medical care of prisoners

Prisoner stated claim for relief by alleging that District of Columbia had continuing duty to ensure that his Eighth Amendment rights were not violated while serving District of Columbia sentence in Virginia, that his rights were violated by inadequate care received in Virginia prison, and that violation of those rights occurred because of District's inadequate policies and customs which routinely sent prisoners to Virginia without ascertaining that they were receiving constitutionally inadequate medical care. Baker v. District of Columbia, C.A.D.C.2003, 326 F.3d 1302, 356 U.S.App.D.C. 47. Civil Rights 1395(7)

Clinical health specialist did not act with "deliberate indifference" in failing to review pretrial detainee's medical records and discover history of high blood pressure, in course of treating detainee, and thus was entitled to qualified immunity in § 1983 action arising from detainee's death; specialist showed no pattern of indifference and was not aware of facts from which she could and did draw inference that her conduct posed substantial risk of serious harm to detainee. Sanderfer v. Nichols, C.A.6 (Mich.) 1995, 62 F.3d 151, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(7)

Jail staff had no reason to suspect that detainee, who was intoxicated or under the influence of drugs, posed a risk of suicide, as required to support claim that county and sheriff were deliberately indifferent to detainee's serious medical needs. Estate of Hocker by Hocker v. Walsh, C.A.10 (Okla.) 1994, 22 F.3d 995. Civil Rights 1088(4)

Finding that prison official was deliberately indifferent to inmate's medical needs was supported by evidence that inmate's complaint about not getting medicine went unanswered and by evidence of a pervasive pattern of indifference to inmates' medical needs generally. Hill v. Marshall, C.A.6 (Ohio) 1992, 962 F.2d 1209, rehearing denied, certiorari denied 113 S.Ct. 2992, 509 U.S. 903, 125 L.Ed.2d 687. Civil Rights 1420

Deliberate indifference to serious medical needs of inmate may be shown by proving policy of deficiencies in staffing or procedures such that inmate is effectively denied access to adequate medical care. Anderson v. City of Atlanta, C.A.11 (Ga.) 1985, 778 F.2d 678. Civil Rights 1420

For purposes of determining whether inmate's civil rights have been violated by failure to provide proper medical

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treatment, one episode of gross misconduct is not necessarily excused by an overall pattern reflecting general attentiveness; issue is whether questioned conduct is cruel and unusual because it involves deliberate indifference, or something more than medical judgment call, accident, or inadvertent failure. Murrell v. Bennett, C.A.5 (Ala.) 1980, 615 F.2d 306. Civil Rights 1091

Genuine issues of material fact as to patterns and policies of prison health-care administrator precluded summary judgment in inmate's §§ 1983 action alleging deliberate indifference to serious medical need for optometrist; the inmate claimed that administrator was deliberately indifferent to inmate's eye condition because its policies caused employees to (1) improperly screen eye condition, (2) fail to schedule inmate for an eye appointment for four months, or (3) refuse to schedule appointment sooner than a date six weeks out if he appeared to need immediate care. Wood v. Idaho Dept. of Corrections, D.Idaho 2005, 391 F.Supp.2d 852. Federal Civil Procedure 2491.5

City defendants' failure to train the individual police officers on the proper meaning and application of policies regarding medical care of pretrial detainees and arrestees rose to the level of "deliberate indifference" and such failure was closely related to the ultimate injury detainee suffered from the resulting denial of medical care; "use of force" policy specifically instructed officers that they need not provide constitutionally-required medical assistance to arrestees or detainees until a particular scene was "stabilized," but offered no clarification of the term "stabilized." Estate of Owensby v. City of Cincinnati, S.D.Ohio 2004, 385 F.Supp.2d 626, affirmed and remanded 414 F.3d 596, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 2023. Civil Rights 1358

County and county sheriff's department were not liable under § 1983 for inmate's death, even if death was attributable to jail guard's refusal to summon emergency medical personnel upon inmate's request, and there was evidence of one other incident in which guards denied another inmate his medication, absent evidence that either incident involved so many jail staff as to reflect widespread practice. Estate of Hampton v. Androscoggin County, D.Me.2003, 245 F.Supp.2d 150. Civil Rights 1351(4)

Reports of court appointed monitor regarding pervasive failure of private medical services company to provide medical care to inmates of county jail, and company's own internal memoranda characterizing attitude of nurses at jail as one of deliberate indifference, were sufficient to establish custom of violating inmates' constitutional right to medical treatment, and, thus, to establish county's potential liability in § 1983 action arising out of failure to provide treatment for inmate with history of cardiac illness. Nelson v. Prison Health Services, Inc., M.D.Fla.1997, 991 F.Supp. 1452. Civil Rights 1351(4)

Deputy warden could not be held liable in inmate's § 1983 action to recover for lack of medical attention following attack from other inmates, where inmate made no factual allegations concerning deputy warden and did not allege that an official policy or custom had led to negligent handling of incident. Lovanyak v. Cogdell, E.D.N.Y.1996, 955 F.Supp. 172. Civil Rights 1358

County prison inmate could not prevail on her § 1983 claim against county alleging lack of medical care in violation of Eighth Amendment; there was no evidence of any policy, de facto or otherwise, which operated to deny inmate medical care in violation of Eighth Amendment. Little v. Lycoming County, M.D.Pa.1996, 912 F.Supp. 809, affirmed 101 F.3d 691. Civil Rights 1351(4)

Inmate's medical treatment for months before being denied treatment on single day did not evince deliberate indifference required to support inmate's claim under Eighth Amendment. Brown v. Thompson, S.D.Ga.1994, 868 F.Supp. 326. Sentencing And Punishment 1546

Inmate's statement that prison officials had practice of denying medical care after inmate beatings to hide their wrongdoing was insufficient to create defeat officials' summary judgment motion in inmate's § 1983 action, where assertion was raised only in inmate's unverified complaint amendment. Lott v. Ferrell, C.A.8 (Mo.) 2004, 109 Fed.Appx. 827, 2004 WL 2165350, Unreported. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

2731. Negligence or malpractice generally, medical care of prisoners

Inadvertent failure to provide adequate medical care to prisoner cannot be said to constitute a wanton infliction of unnecessary pain on prisoner or to be repugnant to conscience of mankind for purpose of providing cause of action under this section. Estelle v. Gamble, U.S.Tex.1976, 97 S.Ct. 285, 429 U.S. 97, 50 L.Ed.2d 251, rehearing denied 97 S.Ct. 798, 429 U.S. 1066, 50 L.Ed.2d 785, on remand 554 F.2d 653. Civil Rights 1091

Pretrial detainee failed to establish that officials at county detention center disregarded any known risks to the detainee's health or safety while incarcerated, and thus officials were entitled to qualified immunity in detainee's §§ 1983 action alleging deliberate indifference to his safety while incarcerated; detainee's allegations regarding inadequate records, overcrowding, poor supervision, and understaffing showed at most that officials were negligent, which did not rise to level of deliberate indifference. Crow v. Montgomery, C.A.8 (Ark.) 2005, 403 F.3d 598, rehearing and rehearing en banc denied. Civil Rights 1376(7)

While mere medical malpractice is not tantamount to deliberate indifference for purposes of civil rights claim against prison officials, certain instances of medical malpractice may rise to level of deliberate indifference; namely, when malpractice involves culpable recklessness, i.e., act or failure to act by prison doctor that evinces conscious disregard of substantial risk of serious harm. Hathaway v. Coughlin, C.A.2 (N.Y.) 1996, 99 F.3d 550. Civil Rights 1091

In order to succeed in civil rights action based on alleged inadequate medical treatment, prisoner must show more than negligence, prisoner must show deliberate indifference to serious medical need. Durmer v. O'Carroll, C.A.3 (N.J.) 1993, 991 F.2d 64. Civil Rights 1091

Negligent medical care does not constitute valid § 1983 claim. Mendoza v. Lynaugh, C.A.5 (Tex.) 1993, 989 F.2d 191. Civil Rights 1032

Deliberate indifference to prisoner's serious medical needs sufficient to support action under federal civil rights statute may be established by showing that prison doctors or prison guards intentionally denied or delayed access to medical care requested by prisoner, but inadvertent or negligent conduct in diagnosing or treating medical condition will not state constitutional violation merely because victim is prisoner. Barfield v. Brierton, C.A.11 (Fla.) 1989, 883 F.2d 923. Civil Rights 1091

Not every claim by a prisoner that he has not received medical treatment is sufficient to state cause of action under this section providing cause of action for deprivation of rights; inadvertent failure to provide adequate medical care cannot be said to constitute wanton infliction of unnecessary pain or to be repugnant to the conscience of mankind. Wood v. Worachek, C.A.7 (Wis.) 1980, 618 F.2d 1225. Civil Rights 1091

Negligence in the treatment of a prisoner's illness or injury may give rise to a state cause of action but it is not a violation of the Constitution's proscription of cruel and unusual punishment; however, deliberate neglect of a prisoner's important need for medical treatment is such a violation. Withers v. Levine, C.A.4 (Md.) 1980, 615 F.2d 158, certiorari denied 101 S.Ct. 136, 449 U.S. 849, 66 L.Ed.2d 59. Sentencing And Punishment 1546; Prisons 17(2)

An error of judgment or inadvertent failure to provide adequate medical care to a prisoner, while perhaps sufficient to support an action for malpractice, will not constitute a constitutional deprivation redressable under this section; it is only when there is deliberate indifference to serious medical needs of a prisoner that the conduct of the physician rises to the level of the constitutional deprivation. Boyce v. Alizaduh, C.A.4 (Md.) 1979, 595 F.2d 948. Civil Rights 1091

Simple malpractice in medical care given prison inmate does not give rise to action under this section. Shields v.

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Kunkel, C.A.9 (Cal.) 1971, 442 F.2d 409. See, also, Tolbert v. Eyman, C.A. 9 (Ariz.) 1970, 434 F.2d 625. Civil Rights 1091

Although prisoner, who alleged that his shoulder caused him extreme pain during the period which physicians failed to treat his injury, effectively raised a disputed issue of fact as to whether he labored under a serious medical condition, prisoner failed to raise an issue of fact with respect to whether physicians knew of and consciously disregarded an excessive risk to his health, and therefore failed to establish Eighth Amendment claim for deliberate indifference to a serious medical need; prisoner's claims of incompetent medical care only gave rise to a claim of negligence, which was not actionable under §§ 1983. Benjamin v. Galeno, S.D.N.Y.2005, 415 F.Supp.2d 254. Prisons 17(2)

Mere negligence will not support a §§ 1983 claim arising from alleged deliberate indifference to inmate's medical needs, since the Eighth Amendment is not a vehicle for bringing medical malpractice claims, nor a substitute for state tort law; thus, not every lapse in prison medical care will rise to the level of a constitutional violation, but rather, the conduct complained of must shock the conscience or constitute a barbarous act. Pimentel v. Deboo, D.Conn.2006, 411 F.Supp.2d 118. Sentencing And Punishment 1546

Dismissal of §§ 1983 action brought by prisoner against physicians and supervisory personnel at county medical center, stemming from removal of kidney and part of bladder, was not based on mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence; prisoner's allegations that personnel participated in or oversaw operation without definitive diagnosis of cancer raised claim of medical malpractice only, which was not cognizable under Eighth Amendment. Martino v. Miller, W.D.N.Y.2004, 341 F.Supp.2d 256. Sentencing And Punishment 1546

Inmate failed to allege that treatment of his injury by medical director of county correctional facility constituted conscious disregard of his medical condition, as required to state §§ 1983 claim of inadequate medical care; any question regarding propriety of additional diagnostic techniques or treatment at most constituted medical malpractice, which did not translate to constitutional violation. Davis v. Reilly, E.D.N.Y.2004, 324 F.Supp.2d 361 . Civil Rights 1091

Defendant's actions in filling cavities in prisoner's teeth, in allegedly extracting wrong tooth, and in fracturing tooth during extraction leaving a portion of root still in jaw was not evidence of deliberate indifference toward prisoner's dental needs, and thus dentist did not violate prisoner's Eighth Amendment right to be free from cruel and unusual punishment. Gindraw v. Dendler, E.D.Pa.1997, 967 F.Supp. 833. Sentencing And Punishment 1546; Prisons 17(2)

Prisoner asserting unconstitutional denial of medical care must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs; mere negligence in providing medical treatment does not give rise to Eighth Amendment claim. Davidson v. Harris, W.D.N.Y.1997, 960 F.Supp. 644. Sentencing And Punishment 1546

Inmate failed to state § 1983 civil rights claim against county jail physician for inadequate medical treatment of inmate's penile and testicular problems for time period after physician's examination of inmate; inmate's claims for that period rose, at best, to level of negligence, complaining that he did not receive any test results or follow-up appointment with physician and that physician did not perform appropriate diagnostic tests to detect his ailment. Jolly v. Klein, S.D.Tex.1996, 923 F.Supp. 931. Civil Rights 1395(7)

For inmate to recover on his § 1983 civil rights claim against county jail physician, arising from alleged denial of prompt and adequate medical treatment of inmate's penile and testicular problems, inmate had to prove that alleged constitutional or statutory deprivation was intentional or due to deliberate indifference, not the result of mere negligence. Jolly v. Klein, S.D.Tex.1996, 923 F.Supp. 931. Civil Rights 1091

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42 U.S.C.A. § 1983

In order to prevail in a civil rights claim of denial of proper medical care to prisoner, prisoner must establish that physician was deliberately indifferent to his serious medical condition, and proof of medical malpractice is not enough to show constitutional violation. Mathieu v. Chun, E.D.Mich.1993, 828 F.Supp. 495. Civil Rights 1091

Failure of police officers to provide adequate medical care to prisoner rises to level of unconstitutional conduct when there is deliberate indifference to serious medical needs; negligent or inadvertent failure to provide medical care is not enough. Dayton v. Sapp, D.Del.1987, 668 F.Supp. 385. Prisons 17(2)

To prevail on a § 1983 claim for inadequate or improper medical care, a prisoner must allege and prove acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs; claim based on medical malpractice or mere negligence may not be brought under § 1983. Donlan v. Smith, D.Md.1986, 662 F.Supp. 352, affirmed 820 F.2d 1219. See, also, Peterson v. Davis, D.C.Md.1982, 551 F.Supp. 137, affirmed 729 F.2d 1453; Sturts v. City of Philadelphia, E.D.Pa.1982, 529 F.Supp. 434. Civil Rights 1395(7)

While judgment of doctor which results in delay or deprivation of medical treatment may give rise to action in tort for malpractice or negligence, it does not amount to a federal constitutional violation; medical malpractice does not become a constitutional violation merely because the victim is a prisoner. Lee v. McManus, D.C.Kan.1984, 589 F.Supp. 633. Civil Rights 1091

Mere failure to treat all medical problems to a prisoner's satisfaction is insufficient to support a claim under this section even if that failure amounts to medical malpractice. Peterson v. Davis, D.C.Md.1982, 551 F.Supp. 137, affirmed 729 F.2d 1453. Civil Rights 1091

In order for claim that prisoner has not received adequate medical or dental treatment to state violation of prohibition of U.S.C.A.Const.Amend. 8 against cruel and unusual punishment, and thus a claim under this section, facts must indicate such acts or omissions as are sufficiently harmful to evidence deliberate indifference to serious needs, including intentional interference with professionally prescribed care or treatment, and negligent diagnosis, incorrect treatment or other circumstances that do not amount to more than professional malpractice will not suffice. Lewandowski v. Fauver, D.C.N.J.1981, 531 F.Supp. 53. Civil Rights 1091; Sentencing And Punishment 1546

Negligence and malpractice are not sufficient to make out claim for prisoner under this section. Campbell v. Sacred Heart Hospital, E.D.Pa.1980, 496 F.Supp. 692. Civil Rights 1090

Genuine issue of material fact as to whether failure of physician employed by state's Department of Corrections to timely diagnose and treat inmate's colon cancer was the result of deliberate indifference, or only negligence, precluded summary judgment on inmate's §§ 1983 claim against physician for alleged deliberate indifference to inmate's medical needs in violation of Eighth Amendment. Hart v. Blanchette, C.A.2 (Conn.) 2005, 149 Fed.Appx. 45, 2005 WL 2300225, Unreported. Federal Civil Procedure 2491.5

Inmate failed to prove that any of his health care providers were negligent in caring for him regarding a clival lesion at the base of his skull, thus precluding him from establishing deliberate indifference to his serious medical needs in violation of the Eighth Amendment; the lesion received extensive medical attention, and no doctor found that surgery or any other treatment was appropriate; he was prescribed various medications for headaches which he attributed to the lesion, and any delays in forwarding MRI and CT scans to outside consultants had no impact on his treatment or well being. Pabon v. Goord, S.D.N.Y.2003, 2003 WL 1787268, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Prisoner's allegations that he received prescription eye medication which irritated his eyes did not amount to more than a claim for negligence or gross negligence, and were therefore not cognizable under § 1983. Williamson v.

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Terhune, N.D.Cal.2003, 2003 WL 716246, Unreported. Civil Rights 1091

Actions of county sheriff in allegedly exacerbating injury sustained by arrestee, who had a foreign object lodged in his ear, by pouring peroxide into ear, at most constituted negligence, and did not give rise to a claim for deliberate indifference to arrestee's serious medical needs. Mason v. Parkman, C.A.8 (Ark.) 2000, 242 F.3d 376, Unreported. Prisons 17(2); Sentencing And Punishment 1546

2732. Intent or knowledge, medical care of prisoners

State-prison physician was aware of a substantial risk of serious harm to injured inmate from the nature of the wound itself, for purposes of inmate's claim of constitutionally inadequate medical care; inmate's leg was crushed while he was on work release when the garbage collection truck on which he worked as a "hopper" collided with another vehicle, at the relevant time inmate's injury consisted of an open wound, and knowledge of the health risk inherent in that type of wound established the requisite awareness on the part of the physician, as needed to satisfy the first prong of the deliberate indifference inquiry. Gobert v. Caldwell, C.A.5 (La.) 2006, 463 F.3d 339. Sentencing And Punishment 1546

Correctional officers were not subjectively aware that prisoner was suicide risk, and thus were not liable for Eighth Amendment violation in connection with his death, where they were informed that prisoner had requested to see crisis counselor, but were not informed that he had said he was suicidal, and inmates often requested meetings with crisis counselors for reasons both serious and mundane. Collins v. Seeman, C.A.7 (Ill.) 2006, 462 F.3d 757. Sentencing And Punishment 1547

Implicit in finding of deliberate indifference to serious medical needs required to establish § 1983 liability for denial of medical care is knowledge that medical need exists. Carr v. Tatangelo, C.A.11 (Ga.) 2003, 338 F.3d 1259, as amended. Civil Rights 1039

Prison warden and director of state Department of Corrections could not be held liable under § 1983 for deliberate indifference to inmate's need for medical attention for broken arm, absent demonstration that officials were sufficiently informed of situation to require their intervention; although inmate claimed she sent letters to officials or had other inmates write letters on her behalf, no letters were produced, inmate claimed her injury precluded her from filling out prison request form for medical treatment, inmate later denied communicating with director, and no other prisoner testified to having written letters on inmate's behalf. Vance v. Peters, C.A.7 (Ill.) 1996, 97 F.3d 987, rehearing denied, certiorari denied 117 S.Ct. 1822, 520 U.S. 1230, 137 L.Ed.2d 1030. Civil Rights 1358

To prevail on a § 1983 claim that medical care provided for inmate's slip and fall injury violated his rights under Eighth Amendment, inmate had to establish that prison officials intentionally inflicted needless suffering, and he could do that by showing that officials were deliberately indifferent to serious medical needs but that formula required proof that officials were both aware of facts from which the inference could be drawn that a substantial risk of serious harm existed and they also had to draw that inference. Ivey v. Harney, C.A.7 (Ill.) 1995, 47 F.3d 181. Sentencing And Punishment 1546

"Deliberate indifference" to prisoner's serious medical needs by prison officials and doctors, in violation of Eighth Amendment, may reside in "wanton" decisions to deny or delay care, where action is recklessness, not in tort law sense but in appreciably stricter criminal-law sense, requiring actual knowledge of impending harm, easily preventable. Watson v. Caton, C.A.1 (Me.) 1993, 984 F.2d 537. Sentencing And Punishment 1546

Determination that public official was deliberately indifferent to rights of civil rights plaintiff does not require proof of intent to harm or detailed inquiry into official's state of mind. Weeks v. Chaboudy, C.A.6 (Ohio) 1993, 984 F.2d 185, rehearing denied. Civil Rights 1031

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42 U.S.C.A. § 1983

Alleged delay by county deputies in getting medical attention for jail detainee was not "deliberate indifference" needed to support § 1983 civil rights claim given that jailors were not alleged to have known of injuries and deliberately ignored them. Sivard v. Pulaski County, C.A.7 (Ind.) 1992, 959 F.2d 662, on remand 809 F.Supp. 631 . Civil Rights 1088(4)

Condition for which there is no known or generally recognized method of treatment cannot serve as predicate for conclusion that failure to provide treatment constituted deliberate indifference to serious medical needs of prisoners under § 1983. Bailey v. Gardebring, C.A.8 (Minn.) 1991, 940 F.2d 1150, certiorari denied 112 S.Ct. 1516, 503 U.S. 952, 117 L.Ed.2d 652. Civil Rights 1091

Complaint alleging that prison doctor intended to inflict pain on prisoners without any medical justification, and alleging a large number of specific instances in which doctor allegedly insisted on continuing courses of treatment that doctor knew were painful, ineffective, or entailed substantial risk of serious harm to prisoners, including burning of prisoner who complained he could not feel anything in his hands, refusing to prescribe medication to reduce risk of peptic ulcer caused by other medication, and refusing hospitalization of prisoner following a heart attack, sufficed to state a violation of the Eighth Amendment and a concomitant right to relief under civil rights statute. White v. Napoleon, C.A.3 (N.J.) 1990, 897 F.2d 103. Civil Rights 1395(7); Sentencing And Punishment 1546

Evidence established deliberate indifference by physician's assistant charged with medical treatment of road prison inmates, for purposes of civil rights claim under § 1983; prisoner had serious medical needs once he injured his leg while jumping off truck bed, physician's assistant's knowledge of need for medical care was conclusively established, but physician's assistant never apprised his superior, a medical doctor, of the prisoner's situation, obtained an x-ray of the prisoner's leg, or had the prisoner examined by a doctor or taken to a hospital, despite repeated requests by the prisoner and his parents directed toward the physician's assistant and prison superintendent. Mandel v. Doe, C.A.11 (Fla.) 1989, 888 F.2d 783. Civil Rights 1420

To establish deliberate indifference to serious medical needs in violation of the Eighth Amendment, a prisoner must prove that the defendant official had a culpable state of mind and intended wantonly to inflict pain. Bell v. Arnone, W.D.N.Y.2006, 455 F.Supp.2d 232. Sentencing And Punishment 1546

Whether a prison official had the requisite knowledge of a substantial risk, so that the official acted with deliberate indifference, as element of §§ 1983 claim relating to prisoner's medical treatment, which claim alleges a violation of Eighth Amendment's prohibition of cruel and unusual punishment, is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious. Rasmussen v. Skagit County, W.D.Wash.2006, 448 F.Supp.2d 1203. Civil Rights 1429

Although prisoner, who alleged that his shoulder caused him extreme pain during the period which physicians failed to treat his injury, effectively raised a disputed issue of fact as to whether he labored under a serious medical condition, prisoner failed to raise an issue of fact with respect to whether physicians knew of and consciously disregarded an excessive risk to his health, and therefore failed to establish Eighth Amendment claim for deliberate indifference to a serious medical need; prisoner's claims of incompetent medical care only gave rise to a claim of negligence, which was not actionable under §§ 1983. Benjamin v. Galeno, S.D.N.Y.2005, 415 F.Supp.2d 254. Prisons 17(2)

Prison health services unit manager who was not shown to have ever been aware that prisoner had serious medical condition and was suffering pain could not be found to have been deliberately indifferent to prisoner's condition in violation of Eighth Amendment; prisoner's opinion that manager should have taken the initiative to review prisoner's medical charts over course of thirteen-month period could not establish deliberate indifference to a known medical need. Adsit v. Kaplan, W.D.Wis.2006, 410 F.Supp.2d 776. Sentencing And Punishment 1546

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42 U.S.C.A. § 1983

State prison's health care administrator could not be liable in inmate's §§ 1983 Eighth Amendment action alleging deliberate indifference to serious medical needs, i.e. inmate's chronic obstructive pulmonary disease; administrator was neither prison doctor nor on medical staff, inmate was diagnosed and treated by others without ever seeing administrator, and inmate never filed any grievances that would have alerted administrator to any alleged mistreatment. Flanyak v. Hopta, M.D.Pa.2006, 410 F.Supp.2d 394. Civil Rights 1358

Material issues of fact, as to whether jail officer responsible for observing detainees knew or should have known that detainee was in need of medical suicide prevention assistance, precluded summary judgment in §§ 1983 action for violation of detainee's substantive due process rights arising from indifference to his needs and his subsequent suicide. Estate of Abdollahi v. County of Sacramento, E.D.Cal.2005, 405 F.Supp.2d 1194. Federal Civil Procedure 2491.5

Prison official cannot be found liable under Eighth Amendment unless official knows of and disregards excessive risk to inmate health and safety; official must both be aware of facts from which the inference could be drawn that substantive risk of serious harm exists and he must also draw that inference, i.e., court must determine whether prison official acted or failed to act despite his knowledge of substantial risk of serious harm, and allegations of inadvertent failure to provide adequate medical care or negligent diagnosis fail to establish requisite culpable state of mind. Roach v. SCI Graterford Medical Dept., E.D.Pa.2005, 398 F.Supp.2d 379, appeal dismissed 2006 WL 1153738. Sentencing And Punishment 1546

With the exception of one deputy who did not directly interact with pretrial detainee and was not even present for most of the relevant events, material issues of genuine fact existed as to whether jail officials, who dealt directly with detainee and had opportunity to closely observe him and who acted inconsistently with county's own policies regarding medical care for inmates, knew that detainee was seriously ill, precluding summary judgment in favor of jail officials on qualified immunity ground on detainee's Fourteenth Amendment individual capacity deliberate indifference claims. Hollenbaugh v. Maurer, N.D.Ohio 2005, 397 F.Supp.2d 894. Federal Civil Procedure 2491.5

Material issue of fact as to state of mind of correctional facility's nurse when she denied medical treatment to inmate altogether and threatened inmate with "the hole" precluded grant of summary judgment to nurse on inmate's §§ 1983 Eighth Amendment claim of deliberate indifference. Marcotte v. Monroe Corrections Complex, W.D.Wash.2005, 394 F.Supp.2d 1289, reconsideration denied 2005 WL 2978651. Federal Civil Procedure 2491.5

Those police officers who were subjectively aware of the risk to detainee's well-being that his medical condition posed but did nothing to summon any medical care unconstitutionally deprived detainee of his Fourteenth Amendment right to medical care; however, genuine issue of material fact existed as to whether two other officers were subjectively aware of a substantial risk of serious harm to detainee, precluding summary judgment in favor of detainee's estate against those officers on deliberate indifference claim. Estate of Owensby v. City of Cincinnati, S.D.Ohio 2004, 385 F.Supp.2d 626, affirmed and remanded 414 F.3d 596, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 2023. Municipal Corporations 747(3)

Genuine issue of material fact existed as to whether guards at state prison knowingly disregarded risks to pregnant prisoner when they allegedly ignored her suffering from contractions and failed to have her transported to hospital, precluding summary judgment for guards in prisoner's action under § 1983, alleging Eighth Amendment deliberate indifference claim. Doe v. Gustavus, E.D.Wis.2003, 294 F.Supp.2d 1003. Federal Civil Procedure 2491.5

Evidence that inmate was in pain, and told medical personnel that his shoulder had been dislocated was insufficient to establish that medical personnel strongly suspected that his shoulder was dislocated, as required to support inmate's § 1983 claim that he was denied constitutional right to medical care; inmate's constant refusal to permit any of personnel to palpate his arm, preferred method for confirming or dispelling any doubts as to condition of

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alleged dislocated shoulder, was effective bar to any liability under theory that personnel strongly suspected condition, but failed to act. Higgins v. Correctional Medical Services of Illinois, Inc., N.D.Ill.1998, 8 F.Supp.2d 821, affirmed 178 F.3d 508, rehearing and suggestion for rehearing en banc denied. Sentencing And Punishment 1546; Prisons 17(2)

Prisoner's allegations that prison's chief medical officer knew of his subordinates' failure to treat prisoner's medical needs through at least two letters prisoner sent to officer in attempt to remedy problem, yet officer failed to act on that knowledge stated valid claim that officer be held liable for constitutional violation of his subordinates. Barry v. Ratelle, S.D.Cal.1997, 985 F.Supp. 1235. Civil Rights 1395(7)

Prison official cannot be held liable under Eighth or Fourteenth Amendment for denying inmate humane conditions of confinement unless official knows of and disregards excessive risk to inmate health or safety. Jolly v. Klein, S.D.Tex.1996, 923 F.Supp. 931. Constitutional Law 272(2); Sentencing And Punishment 1533

Showing in civil rights action of prison officials' deliberate indifference to prisoner's serious medical needs requires showing of official's actual awareness of substantial risk of serious harm. Walker v. Godinez, N.D.Ill.1995, 912 F.Supp. 307. Civil Rights 1091

Inmate failed to establish deliberate indifference in connection with medical treatment she received at correctional facility, for purposes of civil rights cause of action, where from day inmate complained that she was not feeling well, she received medical attention on at least daily basis until she was transferred to hospital, and defendants were not shown to have had actual knowledge of easily preventable, impending harm. Unterberg v. Correctional Medical Systems, Inc., E.D.Pa.1992, 799 F.Supp. 490. Civil Rights 1091

Failure of police officers to obtain medical care for plaintiff at the time she was pretrial detainee, based on plaintiff's complaint that "she was hurting," did not arise to level of constitutional violation giving rise to section 1983 claim, in view of the facts that plaintiff did not know she had a serious infection at the time of her arrest, there was no visible signs of her illness, she did not give police any details as to the nature or source of her pain and thus at the time of her arrest officers had no reason to believe that she was suffering from serious illness or injury that would raise conduct above level of negligence. Porter v. City of Detroit, E.D.Mich.1986, 639 F.Supp. 589. Civil Rights 1088(4)

Given defendant prison officials' undisputed ignorance of refusal to treat prisoner's burns on one night, prison officials could not have been deliberately indifferent and therefore prisoner could not recover against them on his civil rights claim that there was a deliberate deprivation of medical care. Robinson v. Cuyler, E.D.Pa.1981, 511 F.Supp. 161. Civil Rights 1091

Assuming physician's note during state inmate's hospitalization for ulcers that caused gastrointestinal bleeding, which note recommended that inmate stop taking a particular prescription medication for his asthma condition, could establish that inmate should never have received the medication due to risk of gastrointestinal bleeding, such evidence did not establish that prison physicians knew of an unacceptable risk and consciously disregarded it, as basis, in §§ 1983 action, for Eighth Amendment claim of cruel and unusual punishment relating to improper medical care. Holman v. Horn, C.A.7 (Wis.) 2006, 170 Fed.Appx. 1, 2006 WL 279057, Unreported. Sentencing And Punishment 1546

Prison inmate failed to satisfy personal involvement requirement for stating § 1983 claim against prison superintendent by alleging that he wrote letters to superintendent regarding assault by officials and failure to provide medical care but received no response; the hundreds of letters addressed to superintendent by inmates went directly to various subordinates, and superintendent could not recall reading letter or knowing inmate. Hucks v. Artuz, S.D.N.Y.2003, 2003 WL 22019744, Unreported. Civil Rights 1358

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42 U.S.C.A. § 1983

Prison inmate failed to satisfy personal involvement requirement for stating § 1983 claim against prison superintendent by alleging that he wrote letters to superintendent regarding assault by officials and failure to provide medical care but received no response; the hundreds of letters addressed to superintendent by inmates went directly to various subordinates, and superintendent could not recall reading letter or knowing inmate. Hucks v. Artuz, S.D.N.Y.2003, 2003 WL 22019744, Unreported. Civil Rights 1358

Inmate failed to prove that Commissioner of the New York State Department of Correctional Services and the superintendent at a correctional facility were personally involved in his medical care, thus defeating the inmate's claims against them for deliberate indifference to his serious medical needs in violation of the Eighth Amendment; the Commissioner was not even alleged to have had knowledge of alleged delays in treatment, and the superintendent forwarded the inmate's complaint of delay to the health administrator responsible for fielding such complaints. Pabon v. Goord, S.D.N.Y.2003, 2003 WL 1787268, Unreported. Civil Rights 1358

Arrestee failed to show that county sheriff knew of and ignored any serious medical need on part of arrestee, as required to recover under § 1983 based on a denial of necessary medical treatment. Mason v. Parkman, C.A.8 (Ark.) 2000, 242 F.3d 376, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Allegations that prison warden had knowledge of grievance filed by inmate, who alleged that prison medical personnel had refused to provide him with continuous positive air pressure (CPAP) machine which was required for him to sleep safely due to obstructive sleep apnea (OSA) from which he suffered, and attempted to expedite the grievance officer's decision, were insufficient to state claim against warden under § 1983 based on deliberate indifference to inmate's serious medical needs. Meloy v. Schuetzle, C.A.8 (N.D.) 2000, 230 F.3d 1363, Unreported. Civil Rights 1395(7)

2733. Differences of opinion, medical care of prisoners

Prisoner's claims of inadequate medical treatment which reflect a mere disagreement with prison authorities over proper medical treatment do not state claim of constitutional magnitude. Massey v. Hutto, C.A.8 (Ark.) 1976, 545 F.2d 45. Prisons 17(2)

Refusal of prison officials to permit medical treatment may in certain circumstances be actionable under this section; however, a difference of opinion between a prisoner-patient and prison medical authorities as to what treatment is proper and necessary does not give rise to a claim under this section. Mayfield v. Craven, C.A.9 (Cal.) 1970, 433 F.2d 873. Civil Rights 1091

Difference of opinion between physician and prisoner patient does not give rise to constitutional right or sustain claim under this section. Coppinger v. Townsend, C.A.10 (Colo.) 1968, 398 F.2d 392. Civil Rights 1091

Mere disagreement over the reasonableness of correctional facility's physician-assistant's diagnosis, treatment, and follow-up, without more, did not support inmate's §§ 1983 claim for deliberate indifference under Eighth Amendment. Marcotte v. Monroe Corrections Complex, W.D.Wash.2005, 394 F.Supp.2d 1289, reconsideration denied 2005 WL 2978651. Sentencing And Punishment 1546

Mere disagreement by a prisoner with treatment prescribed for him by a physician, without other factors, does not represent a constitutional claim. Russell v. Enser, D.C.S.C.1979, 496 F.Supp. 320, affirmed 624 F.2d 1095. Civil Rights 1091

Difference of opinion between prison medical personnel and prisoner regarding treatment could not serve as basis for cause of action under this section. Jackson v. Moore, D.C.Colo.1979, 471 F.Supp. 1068. Civil Rights 1091

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42 U.S.C.A. § 1983

State prisoner's disagreement with medical decisions regarding follow-up visits to specialist and physical therapy, without more, did not establish prison officials' deliberate indifference to his medical needs, as would constitute cruel and unusual punishment, relating to medical treatment after prisoner's Achilles tendon was torn by two-inch metal pipe protruding from floor in his cell. Brooks v. Beard, C.A.3 (Pa.) 2006, 167 Fed.Appx. 923, 2006 WL 332547, Unreported. Sentencing And Punishment 1546

To the extent state prisoner with a back fusion was dissatisfied with the type of medical care prescribed by prison physician, such a difference of opinion did not constitute deliberate indifference that violated prisoner's Eighth Amendment rights, for purposes of a §§ 1983 action, given that physician promptly treated prisoner's medical needs with over-the-counter and prescription medications, ordered x-rays, restricted prisoner from running, running in place, side straddle hops, windmills, sit-ups, and double-time marching, and, on two occasions, relieved prisoner of all activity for the day. Tucker v. Meyer, C.A.10 (Okla.) 2006, 165 Fed.Appx. 590, 2006 WL 226040, Unreported. Sentencing And Punishment 1546

2734. Cruel and unusual nature of punishment, medical care of prisoners

Treating physician did not violate prisoner's civil rights under Eighth Amendment by suggesting that surgery was one option in treatment of prisoner's broken hip or that prison could "do nothing" as acceptable course of treatment, since such conduct did not amount to act or omission sufficiently harmful to evidence deliberate indifference to serious medical needs. Fitzgerald v. Corrections Corp. of America, C.A.10 (Okla.) 2005, 403 F.3d 1134. Prisons 17(2); Sentencing And Punishment 1546

Mistreatment or nontreatment must be capable of characterization as cruel and unusual punishment in order to present a colorable claim under this section. Russell v. Sheffer, C.A.4 (Va.) 1975, 528 F.2d 318. Civil Rights 1090

Action against prison officials for inadequate medical care may be brought under this section when the prisoner's allegations rise to the level of cruel and unusual punishment in violation of U.S.C.A.Const. Amend. 8. Martinez v. Mancusi, C.A.2 (N.Y.) 1970, 443 F.2d 921, certiorari denied 91 S.Ct. 1202, 401 U.S. 983, 28 L.Ed.2d 335. Civil Rights 1091

It is only where inmate's complaint of improper or inadequate medical treatment depicts conduct so cruel or unusual as to approach violation of U.S.C.A.Const. Amend. 8 prohibition of such punishment that colorable constitutional claim is presented. Gittlemacker v. Prasse, C.A.3 (Pa.) 1970, 428 F.2d 1. Civil Rights 1091

When a claim against prison official is based on improper medical treatment, it must depict conduct that is so cruel and unusual as to present a colorable claim under U.S.C.A.Const. Amend. 8. Mitchell v. Hendricks, E.D.Pa.1977, 431 F.Supp. 1295. Civil Rights 1091

2735. Malicious treatment, medical care of prisoners

Not only absence of medical care gives rise to § 1983 cause of action on part of prisoner for inadequate medical care, but also malicious treatment of medical condition. Sappington v. Ulrich, E.D.Tex.1994, 868 F.Supp. 194. Civil Rights 1091

2736. Arrestees, medical care of prisoners

Officers did not intentionally, recklessly, or with deliberate indifference withhold medical care from drunk driving arrestee, for purpose of imposing § 1983 liability, though officers did not take arrestee back to hospital for another medical examination after arrestee stopped moving his arms and legs; officers could have interpreted his statement that his arms and legs would not move, his unresponsiveness to pain techniques and mace, and his general

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inactivity as result of heavy intoxication rather than as sign of injury requiring another medical examination. Brownell v. Figel, C.A.7 (Ind.) 1991, 950 F.2d 1285. Civil Rights 1088(4)

Assuming gross negligence to be applicable standard of care, town police officers were not grossly negligent for failing to provide pretrial arrestee, who later died in his cell, with medical treatment; officer had arrested decedent for drunk driving, but decedent had in fact ingested alcohol, glutethimide, and large quantities of codeine, and symptoms of this drug abuse was barely distinguishable from alcohol abuse. Carapellucci v. Town of Winchester, D.Mass.1989, 707 F.Supp. 611. Civil Rights 1088(4)

If widow could prove that her husband was in police custody at time vehicle in which he was passenger was detained for driver's having run a red light, and police officers knew that husband needed immediate medical attention and officers failed or refused to provide treatment causing husband's injury or death, widow could be able to recover damages under 42 U.S.C.A. § 1983 and, therefore, widow set forth claim against police officers sufficient to withstand motion for judgment on pleadings. Baldi v. City of Philadelphia, E.D.Pa.1985, 609 F.Supp. 162. Civil Rights 1395(5)

2737. Serious medical need, medical care of prisoners--Generally

There is no need to distinguish between a prisoner's underlying serious medical condition and the circumstances of his serious medical need when the prisoner alleges, in a § 1983 deliberate indifference to serious medical needs claim against prison officials, that prison officials failed to provide general treatment for his medical condition, but where the prisoner is receiving appropriate on-going treatment for his condition and brings a narrower denial of medical care claim based on a temporary delay or interruption in treatment, the serious medical need inquiry can properly take into account the severity of the temporary deprivation alleged by the prisoner. Smith v. Carpenter, C.A.2 (N.Y.) 2003, 316 F.3d 178. Sentencing And Punishment 1546

To succeed on his § 1983 claim alleging that doctors at correctional facility violated his Eighth Amendment rights by failing to provide him with adequate medical care, prisoner had to show that he had objectively serious medical need and that the doctors knew of and disregarded that need. Miller v. Schoenen, C.A.8 (Mo.) 1996, 75 F.3d 1305 . Sentencing And Punishment 1546

Arrestee failed to demonstrate that he had a serious medical condition that required immediate treatment or that arresting officers were deliberately indifferent to his medical needs, so as to support §§ 1983 claim; given the fact that arresting officers called emergency medical services, the evidence demonstrated that they attempted to provide medical treatment for arrestee. Cea v. Ulster County, N.D.N.Y.2004, 309 F.Supp.2d 321. Civil Rights 1088(4)

In claim by prisoner under § 1983 arising from inadequate or insufficient medical care, court must evaluate whether there was evidence of serious medical need and if so whether defendant's response to that need amounted to deliberate indifference. Sult v. Prison Health Services Polk County Jail, M.D.Fla.1992, 806 F.Supp. 251. Civil Rights 1091

In context of civil rights action, prisoner must show not only that prison officials were callously indifferent to his medical needs but that those needs were serious and that the failure to treat them resulted in considerable harm; serious medical need is one which has been diagnosed by a physician as mandating treatment or one which is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. Laaman v. Helgemoe, D.C.N.H.1977, 437 F.Supp. 269. Civil Rights 1091; Civil Rights 1404

Deprivation of medical treatment that seriously endangers prisoner's well-being would be actionable as violation of this section and U.S.C.A.Const. Amend. 8. Stokes v. Hurdle, D.C.Md.1975, 393 F.Supp. 757, affirmed 535 F.2d 1250. Sentencing And Punishment 1546

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42 U.S.C.A. § 1983

In order for a denial of medical treatment for a prisoner to be actionable in civil action for deprivation of rights, absent a showing of intent to cause harm, reliance may be had upon the presence of severe and obvious injuries. Mathis v. Pratt, N.D.Ill.1974, 375 F.Supp. 301. Civil Rights 1091

2738. ---- Arrestees, serious medical need, medical care of prisoners

A 14-hour delay between time of arrest and providing arrestee with medical care did not violate his Fourteenth Amendment due process rights; while arrestee sustained cut over one eye, bruises on shoulders and elbows, and a quarter-inch piece of glass was embedded in his palm, he presented no medical evidence that injuries were serious enough to require medical attention any earlier than he received it, and there was no evidence that delay in taking arrestee to hospital was done with specific intent to punish him. Martin v. Gentile, C.A.4 (Md.) 1988, 849 F.2d 863 . Constitutional Law 262; Prisons 17(2)

2739. ---- Broken bones, serious medical need, medical care of prisoners

State trooper did not violate civil rights of arrested election poll watchers in pretrial detention by failing to provide adequate medical care; one plaintiff stated that her back was hurting, but she sustained no broken bones and her deposition disclosed no type of injury that would be obvious to laymen, and she was treated and released from emergency room of hospital which would tend to show that injuries were not serious, other plaintiff's injuries were not types of injuries obvious to laymen as requiring immediate medical attention absent some other outward indicia and there was no evidence that trooper was "deliberately indifferent" to a medical need. Shoop v. Dauphin County, M.D.Pa.1991, 766 F.Supp. 1327, affirmed 945 F.2d 396, certiorari denied 112 S.Ct. 1178, 502 U.S. 1097, 117 L.Ed.2d 422. Civil Rights 1088(4)

2740. ---- Choking, serious medical need, medical care of prisoners

Inmate who had been placed in four-point restraints and gagged failed to establish serious medical need other than to be constantly monitored to prevent possible choking, or to demonstrate deliberate indifference by nurse who examined him, as required to establish Eighth Amendment violation as to medical care; nurse suggested that inmate be allowed to exercise and use toilet, and recommended that some of his clothing be removed because of heat in his cell. Williams v. Burton, C.A.11 (Ala.) 1991, 943 F.2d 1572, rehearing denied 953 F.2d 652, certiorari denied 112 S.Ct. 3002, 505 U.S. 1208, 120 L.Ed.2d 877. Sentencing And Punishment 1546

2741. ---- Colds, serious medical need, medical care of prisoners

Allegation by plaintiff that he was refused medical treatment for a cold at state correctional facility administered by defendants did not show deliberate indifference to a serious medical need and, hence, was not a basis for establishing a violation of plaintiff's constitutional rights. Gibson v. McEvers, C.A.7 (Ill.) 1980, 631 F.2d 95. Prisons 17(2)

Treating prisoner's cold and flu-like symptoms with aspirin, cough syrup and nasal spray did not demonstrate deliberate indifference required for § 1983 civil rights claim by prisoner, alleging that failure to provide appropriate medical care was cruel and unusual punishment in violation of Eighth Amendment. Williams v. Keane, S.D.N.Y.1996, 940 F.Supp. 566. Sentencing And Punishment 1546; Prisons 17(2)

2742. ---- Depression, serious medical need, medical care of prisoners

Prisoner's conclusory statement that he was depressed failed to indicate a serious medical need such that prison medical technician's denial of access to psychological care might have indicated deliberate indifference on his part required for liability under this section prohibiting the deprivation of civil rights by state action. Partee v. Lane,

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42 U.S.C.A. § 1983

N.D.Ill.1981, 528 F.Supp. 1254. Civil Rights 1395(7)

2742A. ---- Mental illness, serious medical need, medical care of prisoners

Prison employees did not violate the Eighth Amendment when they failed to provide prisoner with mental health treatment, so as to be liable under §§ 1983, since prisoner's health reports merely stated that psychiatric treatment could be helpful and employees denied any knowledge of those reports. Salley v. PA Dept. of Corrections, C.A.3 (Pa.) 2006, 181 Fed.Appx. 258, 2006 WL 1410825, Unreported. Sentencing And Punishment 1547

2743. ---- Diabetes, serious medical need, medical care of prisoners

Inmate who was diabetic sufficiently alleged that prison's failure to satisfy his dietary requirements threatened his serious medical needs to state claim under Eighth Amendment, where he alleged that dietician threatened his health and endangered his life by failing to provide him with required diet. Taylor v. Anderson, N.D.Ill.1994, 868 F.Supp. 1024. Sentencing And Punishment 1546

Officer who was told by arrestee that he was a diabetic who had been in insulin shock violated arrestee's civil rights by totally disregarding arrestee's well-being; officer expressed no solicitude or interest in what arrestee, who at that point was facedown on floor of police cruiser, had said, rather, he dismissed arrestee's attempt to inform him with a flippant and incorrect observation that diabetics do not come out of insulin shocks; moreover, officer never broached subject with other officers at jail so that one of them might act on it. Thompson v. City of Portland, D.C.Me.1985, 620 F.Supp. 482. Civil Rights 1088(4)

2744. ---- Lice, serious medical need, medical care of prisoners

Federal pretrial detainee's alleged lice infestation, in and of itself, was insufficient to establish existence of serious medical need as required to state civil rights due process claim against county jail-related parties for inadequate treatment. Kost v. Kozakiewicz, C.A.3 (Pa.) 1993, 1 F.3d 176. Civil Rights 1091

2745. ---- Transsexuality, serious medical need, medical care of prisoners

Evidence sustained finding that prison officials were not deliberately indifferent to medical needs of prisoner who claimed to be transsexual and, thus, prison officials were not liable in prisoner's § 1983 action which alleged that prison officials' failure to treat his gender-identity disorder constituted cruel and unusual punishment; prison medical staff made numerous attempts to evaluate prisoner's psychological problems, prisoner refused to cooperate with attempted psychological treatments, and prison officials properly relied on medical judgment in refusing to provide tranquilizers for prisoner. Long v. Nix, C.A.8 (Iowa) 1996, 86 F.3d 761, rehearing and suggestion for rehearing en banc denied. Civil Rights 1420

Prisoner stated claim under § 1983 and Eighth Amendment, that prison officials had been deliberately indifferent to prisoner's serious medical need, regardless of whether prisoner was entitled to estrogen treatment for gender dysphoria, by alleging a medical need for and general right to medical treatment for gender dysphoria and by alleging that he had not been offered any treatment at all. Brown v. Zavaras, C.A.10 (Colo.) 1995, 63 F.3d 967. Civil Rights 1395(7)

Inmate stated civil rights cause of action against prison officials and prison doctor under Eighth Amendment by alleging that inmate was a transsexual, a condition which presented a serious medical need, and that prison officials and doctor were deliberately indifferent to that need by failing to provide inmate with any kind of medical treatment. Meriwether v. Faulkner, C.A.7 (Ind.) 1987, 821 F.2d 408, certiorari denied 108 S.Ct. 311, 484 U.S. 935, 98 L.Ed.2d 269. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

2746. ---- Tuberculosis, serious medical need, medical care of prisoners

No disregard of inmate's "serious" or "essential" medical needs was shown, and thus no violation of this section occurred, where specific medication had been prescribed for inmate as preventative measure inasmuch as tests had shown him to be susceptible to tuberculosis, the inmate had not had tuberculosis nor did he have it at time in question, the inmate allegedly failed to receive such medication for period of ten days, and such omission was medically insignificant and did not endanger the inmate's health or health of anyone with whom he came in contact. Butler v. Best, E.D.Ark.1979, 478 F.Supp. 377. Civil Rights 1420

Prison's medical employees were not deliberately indifferent to serious medical needs of inmate who tested positive for tuberculosis, e-coli, and H. pylori, where inmate received drug therapy for tuberculosis and he was evaluated annually, and his x-rays and sputum tests showed that the tuberculosis was not active, and one medical employee testified that inmate experienced no harm from the e-coli and that she afforded him standard and successful treatment for H. pylori. McAlphin v. Alexander, C.A.8 (Ark.) 2005, 125 Fed.Appx. 85, 2005 WL 280724, Unreported. Prisons 17(2); Sentencing And Punishment 1546

2747. ---- Ulcers, serious medical need, medical care of prisoners

Prisoner's allegation that he was suffering from stomach ulcer was sufficient allegation of serious medical need to support § 1983 claim based on inadequate medical treatment from doctor's alleged refusal to provide special diet, in light of fact that stomach ulcer could cause intense and persistent pain and require emergency surgical intervention if left untreated. Coades v. Jeffes, E.D.Pa.1993, 822 F.Supp. 1189. Civil Rights 1091

2748. ---- Miscellaneous serious medical needs, medical care of prisoners

Genuine issues of material fact, as to whether county jail inmate suffered from serious heart condition, whether jail officials were notified of inmate's history of heart problems, whether officials failed to recognize that inmate was suffering from symptoms of heart attack that would be obvious to lay person, whether officials acted promptly to obtain necessary medical help, and whether officials were properly trained to deal with such medical emergency, precluded summary judgment in favor of jail officials and county, in inmate's §§ 1983 deliberate indifference claim. Plemmons v. Roberts, C.A.8 (Mo.) 2006, 439 F.3d 818. Federal Civil Procedure 2491.5

Genuine issue of material fact existed regarding whether inmate at county jail suffered a seizure while incarcerated, precluding summary judgment in inmate's §§ 1983 action against jail employees alleging deliberate indifference to his serious medical needs. Phillips v. Jasper County Jail, C.A.8 (Mo.) 2006, 437 F.3d 791. Federal Civil Procedure 2491.5

Severe heartburn and frequent vomiting from which state prisoner suffered was "serious medical condition" from objective viewpoint, for purpose of prisoner's civil rights claim under Eighth Amendment alleging deliberate indifference, since even lay person would have recognized need for doctor's care to treat that condition. Greeno v. Daley, C.A.7 (Wis.) 2005, 414 F.3d 645. Sentencing And Punishment 1546

State prisoner's HIV and hepatitis were "serious medical needs," for purposes of prisoner's Eighth Amendment claim. Brown v. Johnson, C.A.11 (Ga.) 2004, 387 F.3d 1344. Prisons 17(2); Sentencing And Punishment 1546

Allegations by state prisoner that he suffered from excruciating back pain, requiring significant and continuous medication, and that he fell or collapsed from the pain twice, exposing himself to further injury, without receiving proper treatment, met serious medical needs requirement to state claim for §§ 1983 Eighth Amendment deliberate indifference to serious medical needs. Spruill v. Gillis, C.A.3 (Pa.) 2004, 372 F.3d 218. Prisons 17(2); Sentencing And Punishment 1546

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42 U.S.C.A. § 1983

Treating prison physician and physician's assistant were not deliberately indifferent to prisoner's serious medical needs involving hand injury, for purpose of prisoner's Eighth Amendment § 1983 claim; although hand surgery and other treatment were delayed, prisoner did not receive a medical hold to prevent his transfer to another facility while surgery was being contemplated, and he was denied some post-surgery treatment, most of the delay before surgery was caused by factors beyond physician's and assistant's control, as prisoner was not incarcerated for almost two years and prisoner was incarcerated at another facility for several months, some delay was caused by prisoner's other medical conditions, surgery was risky procedure, determination of medical hold was nurses' responsibility, and prisoner refused some recommended post-surgical treatment and received physical therapy. Hernandez v. Keane, C.A.2 (N.Y.) 2003, 341 F.3d 137, certiorari denied 125 S.Ct. 971, 543 U.S. 1093, 160 L.Ed.2d 905. Prisons 17(2); Sentencing And Punishment 1546

Correctional department employees were not deliberately indifferent to inmate's serious medical needs, as required to establish § 1983 claim alleging Eighth Amendment violations arising from inmate's exposure to environmental tobacco smoke; employees took action to house inmate in smoke-free cell and took reasonable steps to ensure that inmate's cellmate observed no-smoking rule. Weaver v. Clarke, C.A.8 (Neb.) 1997, 120 F.3d 852, certiorari denied 118 S.Ct. 898, 522 U.S. 1098, 139 L.Ed.2d 884. Sentencing And Punishment 1536; Prisons 17(2)

Prison nurses who failed to refer prisoner to doctor despite his repeated complaints of shoulder and arm pain over 11-month period were not deliberately indifferent to prisoner's serious medical needs, and thus could not be held liable in prisoner's civil rights action based on Eighth Amendment; nurses took both authorized options they had for obtaining further medical treatment for a patient by referring prisoner to physician's assistant on numerous occasions and by suggesting medical director review prisoner's file, nurses listened to and painstakingly chronicled prisoner's numerous medical complaints, and prisoner was sent seven times to local hospital for further treatment. Camberos v. Branstad, C.A.8 (Iowa) 1995, 73 F.3d 174. Sentencing And Punishment 1546; Prisons 17(2)

Inmate who was shot by police officers with stun gun while officers attempted to quell his protests in isolation cell did not subsequently suffer deliberate indifference to his medical needs at hands of jailers, inasmuch as inmate's injuries were not serious enough to require immediate medical attention, and inmate produced no evidence that jailers acted with culpable state of mind. Caldwell v. Moore, C.A.6 (Ky.) 1992, 968 F.2d 595. Prisons 17(2)

Allegation that prison nurse refused to treat inmate's surgical wound for five days or to provide dressings or pain medication was sufficient to state Eighth Amendment cause of action for deliberate indifference to serious medical needs, even though the wound did not become infected and eventually healed. Boretti v. Wiscomb, C.A.6 (Mich.) 1991, 930 F.2d 1150, rehearing denied. Sentencing And Punishment 1546

Prisoner was not exposed to unreasonably high levels of environmental tobacco smoke, and he thus failed to establish deliberate indifference to his serious medical needs, where only smoking allowed in prison was outdoors, he was not required to stand or sit next to staff or inmates while they were smoking outdoors, medical records revealed that he was seen for complaints relating to asthma only four times in three years, and that he did not claim second-hand smoke as potential cause of first three flare-ups. George v. Smith, W.D.Wis.2006, 2006 WL 3775929 . Sentencing And Punishment 1536

State prison officials were not deliberately indifferent to pretrial detainee's serious medical needs, in violation of Due Process Clause, even though he was not hospitalized or sent to plastic surgeon after he sustained large cut over his right eye, where detainee's treatment included sutures, bandaging of wound, and administration of medication, as well as follow-up visit, detainee was given instructions to contact medical department for any perceived problems with wound, and detainee did not seek additional treatment. Poole v. Taylor, D.Del.2006, 2006 WL 3740811. Prisons 17(2)

Criminal contemnor's alleged dizziness and terrible headache did not satisfy the objective component of the standard for her Eighth Amendment §§ 1983 claim against city arising out of alleged inadequate medical care when

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she came into the custody of the city police department after being found guilty of criminal contempt, and thus her medical needs did not rise to the level of a constitutional claim. Qader v. New York, S.D.N.Y.2005, 396 F.Supp.2d 466. Sentencing And Punishment 1546

Pretrial detainee's heroin withdrawal presented "serious medical need" sufficient to support claim against county detention center's medical staff for deliberate indifference to his serious medical needs in violation of Fourteenth Amendment; acute pulmonary distress, disease and pneumonia were among well-known medical complications suffered by heroin users during heroin withdrawal, and detainee died as result of those acute symptoms. Gonzalez v. Cecil County, Maryland, D.Md.2002, 221 F.Supp.2d 611. Constitutional Law 262; Prisons 17(2)

Hepatitis C and arthritis were serious medical needs, for purposes of inmate's § 1983 action alleging deliberate indifference by prison medical care provider to his serious medical needs, as would violate Eighth Amendment; both diseases could be chronic, debilitating and deforming. Christy v. Robinson, D.N.J.2002, 216 F.Supp.2d 398. Sentencing And Punishment 1546

Prisoner's allegations in § 1983 complaint for deprivation of his right to medical attention, that over period of nearly two years in which his hemorrhoids were severe enough to lead prison physicians to perform three surgeries, he continually asked for treatment for his pain, discomfort, and bleeding, and that the physicians continued to administer the same treatment despite the fact his symptoms did not improve in the two years he suffered, provided an inference that the doctors knew of a serious risk, could support an inference that the doctors were deliberately indifferent to his suffering, and were sufficient to state a claim for violation of the Eighth Amendment. Jones v. Natesha, N.D.Ill.2001, 151 F.Supp.2d 938. Civil Rights 1395(7)

Alleged injuries suffered by state prisoner after prison guards used stun gun on him and beat him with their hands were not "serious medical needs," and therefore, prisoner's allegations in § 1983 complaint filed in forma pauperis that prison nurse failed to provide treatment for such injuries were insufficient to state claim for Eighth Amendment violation; prisoner alleged that he had three small cuts on his wrist which were bleeding, and that stun device left two sets of signature marks on his skin. Shelton v. Angelone, W.D.Va.2001, 148 F.Supp.2d 670, affirmed 49 Fed.Appx. 451, 2002 WL 31423846, certiorari denied 123 S.Ct. 1756, 538 U.S. 964, 155 L.Ed.2d 518 . Prisons 17(2); Sentencing And Punishment 1546

Prisoner's § 1983 complaint, claiming that county medical personnel delayed giving him pain medicine and oxygen for six to eight hours out of their fear of his alleged litigiousness, failed to state cause of action for deliberate indifference to serious medical needs; prisoner, who had sustained stab wounds to back, chest, and head, did not plead or demonstrate that his condition was sufficiently serious to amount to a condition of urgency. Davidson v. Harris, W.D.N.Y.1997, 960 F.Supp. 644. Civil Rights 1395(7)

Inmate raised genuine issue of material fact precluding summary judgment as to whether his need for removal of suture wire from his abdomen after hernia surgery was "serious medical need," as required to prevail on Eighth Amendment claim of deliberate indifference to serious medical need under § 1983; six doctors had recommended treatment for inmate's condition, defendant physician was the only doctor who determined that suture did not need to be removed, and inmate claimed that suture wire restricted his mobility and recreation, caused him recurring pain, and prevented him from earning good time credits and money by working in prison hospital and/or kitchen. Jones v. Granger, D.Md.1996, 935 F.Supp. 670. Federal Civil Procedure 2491.5

Inmate stated § 1983 civil rights claim against county jail physician for inadequate medical treatment of inmate's penile and testicular problems for time period up to physician's examination of inmate; inmate pled sufficient facts from which it could be inferred that physician displayed deliberate indifference to inmate's medical problems, that problems were serious, and that inmate was injured as result of physician's acts or omissions. Jolly v. Klein, S.D.Tex.1996, 923 F.Supp. 931. Civil Rights 1395(7)

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Prisoner's complaints regarding his allergies, podiatric condition, post-surgery hernia, knee condition, and urological, dermatological, and cardiological problems did not present urgent medical conditions the maltreatment of which amounted to cruel and unusual punishment; though certain care of those conditions might be appropriate, the conditions themselves, as alleged in prisoner's petition for injunctive relief, were not life-threatening and did not cause the type of extreme pain cognizable in a constitutional claim. Davidson v. Scully, S.D.N.Y.1996, 914 F.Supp. 1011. Sentencing And Punishment 1546

Small abrasion on pretrial detainee's chest was not "serious medical need" required for detainee to prevail on § 1983 civil rights claim alleging that police officer violated due process by failing to provide detainee with timely medical treatment despite repeated requests. Anderson-EL v. O'Keefe, N.D.Ill.1995, 897 F.Supp. 1093. Civil Rights 1088(4)

For purposes of rule that prison officials violate civil rights of inmates when they display deliberate indifference to serious medical needs, "serious medical needs" can include serious psychological problems, such as desire to commit suicide. Clinton v. County of York, D.S.C.1995, 893 F.Supp. 581. Civil Rights 1091

Inmate temporarily denied medical treatment for two infected toes was not subjected to cruel and unusual punishment; prisoner's toes presented no substantial potential for harm if not promptly treated, and no serious harm was suffered. Andrews v. Glenn, C.D.Ill.1991, 768 F.Supp. 668. Sentencing And Punishment 1546

Prisoner had serious medical condition, such that prison officials' deliberate indifference to that condition would be cruel and unusual punishment in violation of Eighth Amendment, where prisoner suffered from urinary and bowel incontinence. De La Paz v. Peters, N.D.Ill.1997, 959 F.Supp. 909. Sentencing And Punishment 1546; Prisons 17(2)

Fact that physician prescribed orthopedic shoes for inmate meant that he had "serious medical need" for Eighth Amendment purposes. Saunders v. Horn, E.D.Pa.1996, 959 F.Supp. 689, report and recommendation adopted 960 F.Supp. 893. Sentencing And Punishment 1546

Claim of state prisoner, who was in maximum security classification, and who brought civil rights action against warden and chief correctional officer for locking him up for five days in "hole" for throwing hot coffee on another inmate, that he was denied medical attention for "stomach problem" by medical doctor, viewed in context of his hunger strike, failed to state claim under rationale of applicable case, for prisoner fell far short of alleging facts that would indicate that any defendant, or medical technicians who saw him, deprived him of necessary medical attention for serious medical need. Maxton v. Johnson, D.C.S.C.1980, 488 F.Supp. 1030. Civil Rights 1395(7)

State prisoners' desire to establish and operate alcoholic rehabilitation program within prison was not a "serious medical need" for purposes of analysis under U.S.C.A.Const. Amend. 8 and this section. Pace v. Fauver, D.C.N.J.1979, 479 F.Supp. 456, affirmed 649 F.2d 860. Civil Rights 1091; Sentencing And Punishment 1546

Prisoner only had unrecoverable "de minimis injury," for purposes of his civil rights claim that was subject to Prison Litigation Reform Act (PLRA) which alleged that prisoner personnel were deliberately indifferent to his serious medical needs in violation of Eighth Amendment when they put him in small strip cage and kept him there for 12 hours, since swelling, pain, and cramps in prisoner's leg were not serious enough to mention to medical staff on day of his release from strip cage or two days later and incident did not result in medical findings at point at which prisoner claimed to have mentioned them to staff two weeks later. Jarriett v. Wilson, C.A.6 (Ohio) 2005, 162 Fed.Appx. 394, 2005 WL 3839415, Unreported. Civil Rights 1463

Prison officials did not act with deliberate indifference to inmate's hepatitis C condition by not allowing him to participated in hepatitis C protocol because he was due to be released from facility within one year; protocol took

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one year to complete, and it would have been more detrimental to inmate's health to discontinue or interrupt treatment prior to completion than to defer treatment until after release. Iseley v. Dragovich, C.A.3 (Pa.) 2004, 90 Fed.Appx. 577, 2004 WL 229449, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Arrestee's alleged back pain, asthma and chest pains did not rise to level of severe condition necessary to support Eighth Amendment claim under § 1983 that hospital where he was taken following arrest was deliberately indifferent to his medical needs. Flemming v. Velardi, S.D.N.Y.2003, 2003 WL 21756108, Unreported. Prisons 17(2); Sentencing And Punishment 1533; Sentencing And Punishment 1546

Undisputed evidence established that a clival lesion at the base of an inmate's skull was benign and harmless, thus precluding him from establishing deliberate indifference to his serious medical needs in violation of the Eighth Amendment regarding the lesion, despite his claim that the lesion was causing him "excruciating headaches"; nothing in the record suggested that the lesion was responsible for the symptoms of which the inmate complained, or was in any way threatening to his health. Pabon v. Goord, S.D.N.Y.2003, 2003 WL 1787268, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Inmate's allegations were insufficient to show that he suffered from a serious medical condition, thus defeating his claim that a correction officer was deliberately indifferent to his health and safety when the officer required him to clean pesticide residue from an exterminated beehive; the inmate simply had wheezing, which was not uncommon for persons with asthma, and a headache. Croswell v. McCoy, N.D.N.Y.2003, 2003 WL 962534, Unreported. Prisons 17(2); Sentencing And Punishment 1546

State prisoner's complaint failed to allege facts sufficient to satisfy either the subjective or objective elements required to establish a § 1983 claim against prison officials for deliberate indifference to a serious medical need, where the prisoner, who was initially placed in medical keeplock for 41 days for his refusal, on religious grounds, to submit to a tuberculosis (TB) screening test, and who subsequently agreed to submit to the test and tested positive, provided no specifics concerning his medical condition, failed to indicate that he was in pain or that any of the defendants ignored a condition which created a substantial risk of harm to him, and failed to allege sufficient facts to indicate how any of the named defendants were deliberately indifferent to his medical needs. Delisser v. Goord, N.D.N.Y.2003, 2003 WL 133271, Unreported. Civil Rights 1395(7)

2748A. ---- Pregnancy, serious medical need, medical care of prisoners

Facts alleged by county inmate, including that she had informed jail officials she was pregnant, bleeding, and passing blood clots, and that she was in extreme pain from cramping to point that it affected her ability to perform routine daily functions such as eating and showering, if proven, indicated that inmate had need for medical attention that would have been obvious to layperson, even if inmate was not visibly pregnant, and thus indicated that she had serious medical need for purposes of her Eighth Amendment claim for deliberate indifference to serious medical needs. Pool v. Sebastian County, Ark., C.A.8 (Ark.) 2005, 418 F.3d 934. Sentencing And Punishment 1546

Pregnant prisoner's condition was serious for purposes of her Eighth Amendment deliberate indifference claim in action under § 1983 against security and nursing staff at state prison. Doe v. Gustavus, E.D.Wis.2003, 294 F.Supp.2d 1003. Prisons 17(2); Sentencing And Punishment 1546

2749. Essential medical care, medical care of prisoners

Deprivation of essential medical care by state prison officials may be, in an exceptional circumstance, actionable in federal courts under this section. U.S. ex rel. Knight v. Ragen, C.A.7 (Ill.) 1964, 337 F.2d 425, certiorari denied 85 S.Ct. 1355, 380 U.S. 985, 14 L.Ed.2d 277. See, also, Dewell v. Lawson, C.A.10 (Okl.) 1974, 489 F.2d 877; Ross v. Bounds, D.C.N.C.1974, 373 F.Supp. 450; Hurley v. Field, C.D.Cal.1968, 282 F.Supp. 34.

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2750. Causation, medical care of prisoners

In civil rights action brought by administrator of prisoner's estate against prison physician, evidence that physician intentionally failed to respond immediately to initial request that he come to emergency room, that physician entered emergency room ten to 15 minutes after he had first been notified of emergency, that immediate response to cardiac arrest is crucial, and that 27- year-old person with no prior heart disease found unconscious but with feeble pulse, such as prisoner, would have had excellent chance of being resuscitated if advanced cardiac life support was provided within two minutes supported finding of causal connection between prisoner's death by cardiorespiratory arrest and physician's conduct. Bass by Lewis v. Wallenstein, C.A.7 (Ill.) 1985, 769 F.2d 1173. Civil Rights 1420

Detainee who brought action against county, stemming from his alleged failure to receive adequate medical care, did not establish that county jail's written policy or *de facto* practice created risk that medical attention would be delayed or denied, as required to maintain § 1983 claims; although conduct of individual county employees may have constituted violation of detainee's constitutional rights, there was no proof that county policy was proximate cause of his injuries. Bunyon v. Burke County, S.D.Ga.2004, 306 F.Supp.2d 1240, affirmed 116 Fed.Appx. 249, 2004 WL 1936471. Civil Rights 1351(4)

Contractor which provided drug counseling services to inmates established the adequacy of its training program regarding sexual harassment, and the absence of a causal connection between any inadequacy in the program and any injury to an inmate resulting from sexual harassment by a counselor, thus defeating the inmate's § 1983 claim; the contractor had a written policy at the relevant time against any sexual impropriety by an employee with a client, and the counselor received that written policy; moreover, the inmate' claim was the only claim of sexual harassment reported to the contractor in the many years it had provided in-jail services to county, and there was no evidence that the sexual harassment would have been avoided had the counselor been trained under a different program. Warns v. Vermazen, N.D.Cal.2003, 2003 WL 23025441, Unreported. Civil Rights 1098; Civil Rights 1339

2751. Damage or injury, medical care of prisoners

Prisoner did not make sufficient showing of substantial harm arising from alleged denial by prison officials of proper medical care to make a showing of exceptional circumstances required before federal court would inquire into adequacy of medical care available at prison. Patmore v. Carlson, E.D.Ill.1975, 392 F.Supp. 737. Prisons 17(2)

State prisoner, who did not claim that he was denied any medical care but rather that he received inadequate care without any indication that he had sustained physical injury as a result of alleged inadequate treatment, failed to state a claim for which relief could be granted in federal court. Argentine v. McGinnis, S.D.N.Y.1969, 311 F.Supp. 134. Prisons 17(2)

Prison inmate who claimed that practice of randomly double-celling inmates in administrative segregation had resulted in his being temporarily placed with an inmate whom he feared, and caused him to suffer mental anguish, constituted deliberate indifference to his rights, failed to allege that he had suffered any actual physical injury, as required to allow recovery under § 1983 for claimed mental or emotional injury. Kellensworth v. Norris, C.A.8 (Ark.) 2000, 221 F.3d 1342, Unreported. Civil Rights 1463

2752. Increase in risk of disease or injury, medical care of prisoners

Alleged slippery floors resulting from standing water problem in prison shower area did not rise to level of a condition posing a substantial risk of serious harm, for purposes of inmate's § 1983 action alleging that his Eighth

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42 U.S.C.A. § 1983

Amendment right against cruel and unusual punishment was violated by the alleged hazardous conditions, and therefore his complaint failed to state a claim, even though inmate was on crutches and had specifically warned officials he was at a heightened risk of falling. Reynolds v. Powell, C.A.10 (Utah) 2004, 370 F.3d 1028. Prisons 17(1); Sentencing And Punishment 1536

Inmate who claimed that he had been denied proper medical treatment because he had not been given prescription medicine was not required to show that the lack of medication resulted in more than a 50% risk of developing active tuberculosis; he was required only to show that his risk had increased due to deprivation. Hill v. Marshall, C.A.6 (Ohio) 1992, 962 F.2d 1209, rehearing denied, certiorari denied 113 S.Ct. 2992, 509 U.S. 903, 125 L.Ed.2d 687. Civil Rights 1091

Genuine issues of material fact existed as to whether jail inmate was exposed to levels of environmental tobacco smoke (ETS) sufficient to pose an unreasonable risk of serious damage to his health, whether the individual defendants knew or reasonably should have known of the ETS problem at the jail, and whether their conduct rose to the level of deliberate indifference, precluding summary judgment, on basis of qualified immunity, for individual defendants in inmate's §§ 1983 action. Williams v. District of Columbia, D.D.C.2006, 439 F.Supp.2d 34. Federal Civil Procedure 2491.5

2753. Preexisting injuries, medical care of prisoners

Measured by standard that deliberate indifference to serious medical needs of prisoners constitutes unnecessary infliction of pain proscribed by U.S.C.A.Const. Amend. 8, allegations of prisoner, who had known preexisting eye injury, that prison doctor cursorily examined him after his initial complaint of pain and loss of vision and never reexamined him despite later complaints, after which it was discovered that prisoner was suffering from serious eye disease, did not state constitutional claim, entitling prisoner to recover from prison authorities; even if doctor were negligent in examining and diagnosing prisoner, his failure to exercise sound professional judgment did not constitute deliberate indifference to serious medical needs. Wester v. Jones, C.A.4 (N.C.) 1977, 554 F.2d 1285. Prisons 17(2)

2754. Refusal of treatment, medical care of prisoners

Prison officials' action of requiring prisoner to undergo liver biopsy before considering him eligible for Hepatitis C treatment was not violation of prisoner's due process right to refuse medical treatment; prisoner was not forced to undergo biopsy, but consented to do so, apparently to avail himself of benefits of treatment. Pabon v. Wright, C.A.2 (N.Y.) 2006, 459 F.3d 241. Prisons 17(2)

Physician who tried to provide appropriate treatment for prisoner's condition, but who was thwarted by other staff, was not deliberately indifferent to prisoner's serious medical need, for purpose of prisoner's civil rights suit under Eighth Amendment. Greeno v. Daley, C.A.7 (Wis.) 2005, 414 F.3d 645. Sentencing And Punishment 1546

Prison personnel's refusal to give prisoner medical treatment during his time in strip cage despite his complaints of pain and swelling in his leg was not subjectively unreasonable in light of clearly established Eighth Amendment rights, for purpose of prison personnel's claim to qualified immunity in prisoner's civil rights lawsuit which alleged deliberate indifference to serious medical needs, since personnel took reasonable action to check on prisoner's records when he mentioned his leg injury and there was no reason to believe that he could not be placed in strip cage, and personnel offered to accommodate prisoner if he cooperated with them. Jarriett v. Wilson, C.A.6 (Ohio) 2005, 414 F.3d 634. Civil Rights 1376(7)

State can force prisoner to take psychotropic drugs and need not allow prisoner to stop taking drugs in order to prove that he can do without them, so long as state finds that medication is in prisoner's medical interest,

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physician's decision to force medication is subject to review by independent and impartial panel or tribunal which considers prisoner's best interests, and prisoner is able to argue capably before review tribunal that he does not need forced medication. Sullivan v. Flannigan, C.A.7 (Ill.) 1993, 8 F.3d 591, certiorari denied 114 S.Ct. 1376, 511 U.S. 1007, 128 L.Ed.2d 52. Prisons 17(2)

Due process clause of the Fourteenth Amendment substantively protects certain fundamental rights, including right to be free from unjustified intrusions into the body, which in turn includes right to refuse unwanted medical treatment and right to sufficient information to intelligently exercise those rights, and retaliation for exercise of those constitutionally protected rights is itself a violation of rights secured by the Constitution and is actionable under civil rights statute. White v. Napoleon, C.A.3 (N.J.) 1990, 897 F.2d 103. Civil Rights 1028; Constitutional Law 274(5)

Corrections sergeant's hostile or derogatory comment about state prisoner, which referred to prisoner's earlier lawsuit against another Department of Correctional Services (DOCS) employee, did not rise to the level of retaliation, for purposes of prisoner's retaliation claim under the First Amendment, in civil rights action under §§ 1983 alleging that he was denied needed pain medication in retaliation for two lawsuits he had previously brought against DOCS staff members, where prisoner received his medication on the very evening that sergeant allegedly uttered the offending words. Davidson v. Bartholome, S.D.N.Y.2006, 460 F.Supp.2d 436. Prisons 17(2)

Evidence did not sustain prisoner's § 1983 civil rights claim that he was refused medical treatment in prison for broken jaw where attendant doctors' declarations overwhelmingly showed that prisoner refused necessary treatments, was totally noncompliant, and otherwise impeded his recovery in numerous ways. Zatko v. Rowland, N.D.Cal.1993, 835 F.Supp. 1174. Civil Rights 1420

Prison personnel's refusal to give prisoner medical treatment during his time in strip cage despite his complaints of pain and swelling in his leg was not objectively unreasonable in light of clearly established Eighth Amendment rights, for purpose of prison personnel's claim to qualified immunity in prisoner's civil rights lawsuit which alleged deliberate indifference to serious medical needs, since medical records did not support prisoner's argument that he suffered sufficiently serious injury such that even lay person easily would have recognized necessity for doctor's attention. Jarriett v. Wilson, C.A.6 (Ohio) 2005, 162 Fed.Appx. 394, 2005 WL 3839415, Unreported. Civil Rights 1376(7)

Correctional facility inmate's right to refuse medical treatment was not violated when facility's nurse and physician's assistant told him that he would not be treated or given pain medication for kidney stone unless he consenting to catheterization to obtain urine sample; inmate actually consented to catheterization, and fact that he was faced with unattractive choices did not mean his right to refuse medical treatment was violated. Flemming v. Corrections Corp. of America, C.A.10 (Okla.) 2005, 143 Fed.Appx. 921, 2005 WL 1706972, Unreported. Civil Rights 1091

State inmate stated § 1983 claim against member of infirmary staff by alleging that she, along with others, failed continually to respond to inmate's persistent requests for competent care of his ongoing medical problems following his injuries from altercation with another prisoner, even though she was mentioned nowhere in the factual recitation or the "parties" portion of the complaint. Donahue v. Bennett, W.D.N.Y.2003, 2003 WL 21730698, Unreported. Civil Rights 1395(7)

Alleged failure of nurse administrator and another prison supervisor to act on prisoner's information about alleged indifference to his medical needs did not violate Eighth Amendment; supervisors were not personally involved in prisoner's medical treatment, no unconstitutional custom or practice was implicated, supervisory officials were not grossly negligent, and there was no underlying violation by medical personnel. Patterson v. Lilley, S.D.N.Y.2003, 2003 WL 21507345, Unreported. Prisons 17(2); Sentencing And Punishment 1546

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42 U.S.C.A. § 1983

2755. Request for treatment, medical care of prisoners

Inmate's allegations that he was not treated for three weeks although he daily requested treatment, that prison nurse dismissed his grievances in a disparaging manner, that prison doctor failed to treat him, and that his condition finally required gall bladder removal stated a claim of deliberate indifference to serious medical needs under federal civil rights statute. Toombs v. Bell, C.A.8 (Ark.) 1986, 798 F.2d 297. Civil Rights 1395(7)

Where jail inmate's brother visited inmate same day as shooting and testified that all inmate said was that he was hurt and did not mention that inmate asked for further medical attention, where inmate stated that he requested medical attention at about 8:00 p.m., and where paramedic came in and inmate was then sent to medical center at about 9:30, there was no "deliberate indifference" on part of officials to inmate's serious medical needs as required for him to recover on his claim of denial of medical treatment in civil rights action following his accidental shooting by police officer. Mills v. Smith, C.A.8 (Ark.) 1981, 656 F.2d 337. Civil Rights 1091

While failure of prison authorities to respond to every request of a prisoner for medical attention may not necessarily give rise to a cause of action under the civil rights provisions and while the courts are not to engage in the process of second-guessing in every case involving the adequacy of medical care that the state provides a prisoner, prison authorities may not be deliberately indifferent to the suffering of prisoners under their care, for fundamental fairness and the most basic conception of due process mandate that medical care be provided to one who is incarcerated and may be suffering from serious illness or injury. Westlake v. Lucas, C.A.6 (Mich.) 1976, 537 F.2d 857. Constitutional Law 272(2); Prisons 17(2)

Inmate's unsupported allegation of need for specific medical treatment is insufficient to support claim that lack of treatment violates civil rights. Oldham v. Chandler-Halford, N.D.Iowa 1995, 877 F.Supp. 1340. Civil Rights 1395(7)

2756. Specialized treatment, medical care of prisoners

Pro se state prisoner's claim that he had not received specialized medical tests, which he viewed as necessary based on his reading of medical literature during his years of imprisonment, did not amount to a denial of medical care in violation of his Eighth Amendment rights, where medical care had been provided whenever prisoner sought it for each of his many alleged ailments, and prisoner's claims amount to nothing more than a difference of opinion regarding medical diagnosis and treatment. U.S. v. Smith, C.A.6 (Ohio) 2004, 102 Fed.Appx. 911, 2004 WL 1367293, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Prison health service director did not show deliberate indifference to inmate's fractured metacarpal, in violation of Eighth Amendment, when he declined to refer inmate for surgery; refusal was exercise of medical judgment not constituting indifference, which was further refuted by prompt treatment consisting of splinting and provision of pain medication. Ruiz v. Homerighouse, W.D.N.Y.2003, 2003 WL 21382896, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Inmate failed to prove that the nurse administrator at correctional facility was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment, despite inmate's conclusory allegation that the administrator failed to send the inmate's medical records to specialist physicians; the inmate offered no competent evidence to support his allegation, and moreover, there was no evidence that any failings by the administrator were a result of deliberate indifference. Pabon v. Goord, S.D.N.Y.2003, 2003 WL 1787268, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Wheelchair-bound inmate was not entitled to injunctive relief requiring that he be sent to specialized hospitals in his § 1983 suit; he did not explain the harm he faced if treated at the correctional facility, where he had received extensive care for his rheumatoid arthritis, degenerative joint disease, and leukemia. Woods v. Goord,

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42 U.S.C.A. § 1983

S.D.N.Y.2002, 2002 WL 31296325, Unreported. Civil Rights 1454

2757. Court order, medical care of prisoners

Claim that jail physician denied state prisoner medical care in violation of a court order was sufficient to state a claim against physician. Maclin v. Paulson, C.A.7 (Ind.) 1980, 627 F.2d 83. Civil Rights 1395(7)

2758. Success of medical treatment, medical care of prisoners

Lack of success of medical treatment does not raise a constitutional claim under this section. Fearon v. Com. of Va., W.D.Va.1974, 383 F.Supp. 542. Civil Rights 1091

2759. Facilities, medical care of prisoners

A showing that prison medical facilities are so wholly inadequate for the prison population's needs that suffering is inevitable would make out a case under this section. Bishop v. Stoneman, C.A.2 (Vt.) 1974, 508 F.2d 1224. Civil Rights 1420

Averment that medical facilities at prison to which prisoner had been transferred were inferior, in providing prisoner care he required, to those at prison from which he had been transferred failed to state claim of constitutional deprivation. Gittlemacker v. Prasse, C.A.3 (Pa.) 1970, 428 F.2d 1. Civil Rights 1395(7)

Jail officials were required to provide rooms and equipment for physical examinations of inmates and entering prisoners, for treatment of medical emergencies, and minor injuries and illness; quarters for inmates too ill to remain safely as part of general population of prison but not sufficiently ill to require hospitalization, and adequate facilities for dental examinations and treatment. Jones v. Wittenberg, N.D.Ohio 1971, 330 F.Supp. 707, 29 Ohio Misc. 35, 58 O.O.2d 47, affirmed 456 F.2d 854, 62 O.O.2d 232. Prisons 17(2)

No serious deprivation occurred from leaky roof in state prison's medical unit, precluding HIV-infected prisoner's § §1983 Eighth Amendment action against corrections official alleging that his cough and skin lesions were result of exposure to asbestos and other contaminants from leak; medical records revealed no symptoms of pulmonary disease or any asbestos-related diseases, length of asbestos exposure was unlikely to result in future injury and could not have resulted in immediate injury at any rate, cough was consistent with inmate's medical history of gastroesophageal disease, and lesions were consistent with inmate's HIV treatment. Laureano v. Pataki, S.D.N.Y.2003, 2003 WL 841067, Unreported. Prisons 17(2); Sentencing And Punishment 1546

2759A. Equipment needs, medical care of prisoners

Prison medical personnel's alleged conduct of denying prisoner a wheelchair following an injury did not amount to deliberate indifference, as required for prisoner's Eighth Amendment deliberate indifference claim; medical staff denied his use of a wheelchair because they feared his leg muscles would atrophy, and, although an orthopedist initially recommended a wheelchair for prisoner, the orthopedist altered that assessment upon learning that prisoner would not need to walk far while he was housed in the medical department. Callahan v. Poppell, C.A.10 (Okla.) 2006, 471 F.3d 1155. Sentencing And Punishment 1546

Physician was not liable to prisoner under §§ 1983 for denial of medical care, based on a failure to give him a wheelchair, where reports did not suggest that physician's numerous checkups of prisoner were inadequate and prisoner did not produce any medical evidence to counter physician's conclusion that he could walk and was merely malingering. Salley v. PA Dept. of Corrections, C.A.3 (Pa.) 2006, 181 Fed.Appx. 258, 2006 WL 1410825, Unreported. Civil Rights 1339

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42 U.S.C.A. § 1983

2760. Classification, medical care of prisoners

Prison inmate's disagreement with his medical classification was insufficient to establish constitutional violation. Wilson v. Budney, C.A.5 (Tex.) 1992, 976 F.2d 957. Prisons 17(2)

2761. Choice of treatment, medical care of prisoners

Prisoner would be entitled to recover under Eighth Amendment claim concerning medical treatment provided by prison officials and employees if he could prove that clinic personnel deliberately gave him certain kind of treatment knowing that it was ineffective, either as means of toying with him or as way of choosing easier and less efficacious treatment. Kelley v. McGinnis, C.A.7 (Ill.) 1990, 899 F.2d 612. Sentencing And Punishment 1546

State inmate's claims that prison psychological staff failed to conduct adequate mental health examination and violated his privacy rights by insisting that he participate in group therapy sessions before he could be released from administrative segregation status constituted disagreement over treatment, and thus were not redressable under § 1983, even if state law provided privilege for privileged communications between psychologist and patient. Hunnicutt v. Armstrong, D.Conn.2004, 305 F.Supp.2d 175, affirmed in part, vacated in part and remanded 152 Fed.Appx. 34, 2005 WL 2573525. Civil Rights 1091; Civil Rights 1092

Exercise by doctor of his professional judgment in treating prisoner is never deliberate indifference, and will not give rise to civil rights claim that improper medical treatment violated prisoner's Eighth Amendment rights. Gindraw v. Dendler, E.D.Pa.1997, 967 F.Supp. 833. Sentencing And Punishment 1546

2762. Delay in treatment, medical care of prisoners

Prison doctor's alleged action of postponing course of treatment for inmate's Hepatitis C for five months because of the possibility of parole, without individualized assessment of inmate's actual chances of parole, if proven, was unreasonable, for purposes of inmate's Eighth Amendment claim. Salahuddin v. Goord, C.A.2 (N.Y.) 2006, 467 F.3d 263. Sentencing And Punishment 1546

County jail officer was not deliberately indifferent to inmate's methadone withdrawal symptoms, and thus was not subject to liability under §§ 1983 for Eighth Amendment violation following inmate's death, even though officer received call from inmate's wife informing her that inmate had not yet received methadone treatment and was in excruciating pain, and responded that county "don't work that fast," where officer appropriately transferred call to person responsible for inmate's medical care, and there was no evidence that officer's job duties included anything more than answering telephones. Davis v. Carter, C.A.7 (Ill.) 2006, 452 F.3d 686. Sentencing And Punishment 1546

Treating prison physician and physician's assistant were not deliberately indifferent to prisoner's serious medical needs involving hand injury, for purpose of prisoner's Eighth Amendment § 1983 claim; although hand surgery and other treatment were delayed, prisoner did not receive a medical hold to prevent his transfer to another facility while surgery was being contemplated, and he was denied some post-surgery treatment, most of the delay before surgery was caused by factors beyond physician's and assistant's control, as prisoner was not incarcerated for almost two years and prisoner was incarcerated at another facility for several months, some delay was caused by prisoner's other medical conditions, surgery was risky procedure, determination of medical hold was nurses' responsibility, and prisoner refused some recommended post-surgical treatment and received physical therapy. Hernandez v. Keane, C.A.2 (N.Y.) 2003, 341 F.3d 137, certiorari denied 125 S.Ct. 971, 543 U.S. 1093, 160 L.Ed.2d 905. Prisons 17(2); Sentencing And Punishment 1546

Determination that jail medical providers were not liable for injuries to inmate who suffered from Wilson's Disease, in inmate's civil rights action against providers in which inmate alleged that he failed to receive medical

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treatment as a result of providers' deliberate indifference, and that alleged failure caused his injuries, was supported by evidence that, at time of injuries, providers were seeking inmate's records to appropriately administer medication, which was very dangerous if inappropriately given, that proximate cause of injuries was assault by other inmate, and testimony that even if inmate had received medication, at time of assault he would have still exhibited symptoms which he claims caused assault. Peterson v. Willie, C.A.11 (Fla.) 1996, 81 F.3d 1033. Civil Rights 1420

Inmate's allegation that prison staff delayed for nearly two hours in providing him with medical attention after he was stabbed by another inmate was sufficient to state claim against prison officials for deliberate indifference to serious medical needs. Reed v. Dunham, C.A.10 (Okla.) 1990, 893 F.2d 285. Civil Rights 1395(7)

State prison officials were not deliberately indifferent to inmate's serious medical needs, in violation of Eighth Amendment, as result of contract medical provider's failure to provide inmate with dental treatment for over nine months, where state agreed that delay was unacceptable, and awarded contract to another provider, which provided treatment in timely manner. Samuel v. First Correctional Medical, D.Del.2006, 463 F.Supp.2d 488. Sentencing And Punishment 1546

Genuine issue of material fact, as to whether jailer delayed in summoning aid for pretrial detainee after discovering that detainee appeared not to be breathing, precluded summary judgment granting qualified immunity on claim that jailer was deliberately indifferent to detainee's serious medical needs in violation of Fourteenth Amendment. Patrick v. Lewis, D.Minn.2005, 397 F.Supp.2d 1134. Federal Civil Procedure 2491.5

Genuine issues of material fact concerning sixty-day delay before inmate could see ophthalmologist precluded summary judgment on inmate's §§ 1983 claim of deliberate indifference by health-care administrator to inmate's need for eye treatment; it was unclear whether inmate continued to suffer blurred vision, headaches, and photophobia during this time period or whether he used over-the-counter treatment to adequately relieve his symptoms, especially given the fact that his iritis was deemed resolved by the date of the appointment. Wood v. Idaho Dept. of Corrections, D.Idaho 2005, 391 F.Supp.2d 852. Federal Civil Procedure 2491.5

Any delay in prison nurse's response to call for immediate medical help for inmate did not create or exacerbate injuries inmate received from alleged beating by prison guards, as required for nurse to be liable to inmate's estate under §§ 1983 for violating inmate's Eighth Amendment rights through deliberate indifference to a serious medical need, since nurse arrived within minutes of receiving the call and guards were attending to inmate's medical needs by administering cardiopulmonary resuscitation (CPR). Valdes v. Crosby, M.D.Fla.2005, 390 F.Supp.2d 1084, affirmed 2006 WL 1474726. Sentencing And Punishment 1546

Correctional facility's medical director was not liable to prisoner for allegedly deliberate indifference to his medical welfare in violation of Eighth Amendment rights based on delay in surgery and performance of surgery on injured shoulder, where there was no allegation that director was personally involved in constitutional deprivation complained of and only allegation against director was that he could have intervened to encourage orthopedic surgeon to accelerate surgery. Benjamin v. Schwartz, S.D.N.Y.2004, 299 F.Supp.2d 196. Civil Rights 1358

Parent of deceased inmate who brought § 1983 action against correctional facility staff, stemming from fatal prison riot, failed to establish that staff acted with deliberate indifference toward constitutional rights of inmate, as required to maintain Eighth Amendment claim; all inmates injured in riot received treatment shortly thereafter, and brief delay before inmate was transferred to outside hospital did not evidence requisite recklessness or intention to surmise that staff deliberately deprived inmate of proper medical attention. Alsina Ortiz v. Laboy, D.Puerto Rico 2003, 286 F.Supp.2d 133, affirmed in part, vacated in part and remanded 400 F.3d 77. Prisons 17(2); Sentencing And Punishment 1546

Prisoner stated valid claim against corrections officials for deliberate indifference to a serious medical need;

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prisoner alleged that he writhed in excruciating pain for approximately three days, that officials were aware of his abdominal ailment but failed to follow up on his sonogram and condition, and waited before taking prisoner to the infirmary. Muniz Souffront v. Alvarado, D.Puerto Rico 2000, 115 F.Supp.2d 237. Civil Rights 1395(7)

Intermittent delays during three-day period in supplying inmate in administrative segregation with adult undergarments as treatment for incontinence of bowel and bladder were not sufficiently serious deprivations to establish Eighth Amendment violation; inmate did not show that delays resulted in unnecessary infliction of pain or worsening of his incontinence condition, but rather, at worst, he showed that delays caused him to suffer indignity and discomfort of wearing urine and/or feces-soiled clothing for several hours at a time. Miller v. Michigan Dept. of Corrections Health Care Providers, W.D.Mich.1997, 986 F.Supp. 1078, affirmed 173 F.3d 429. Sentencing And Punishment 1553; Prisons 17(2)

Fifty minutes between time of inmates' attack on prisoner to the time of medical attention did not amount to deliberate indifference and because correction officers' conduct, although possibly negligent, was not wanton, prisoner failed to state claim under § 1983 that delay in medical treatment on part of officers violated his Eighth Amendment rights; officers took steps to ensure that prisoner received proper medical attention and although prisoner alleged facts that could possibly amount to negligence, negligence was insufficient. Caldwell v. District of Columbia, D.D.C.1995, 901 F.Supp. 7, appeal dismissed 1996 WL 587652, rehearing denied. Sentencing And Punishment 1546; Prisons 17(2)

Police officer named as defendant in § 1983 civil rights suit by pretrial detainee did not act with "deliberate indifference" by temporarily delaying detainee's transport to hospital; three-hour delay was not excessive in light of abrasion injury on detainee's chest. Anderson-EL v. O'Keefe, N.D.Ill.1995, 897 F.Supp. 1093. Civil Rights 1088(4)

Jail clinic nurse who took prisoner's vital signs three hours after receiving sick-call slip was not deliberately indifferent to prisoner's medical needs, even if slip had been received the day before; prisoner saw clinical health specialist the next morning, and those actions were reasonably prompt. Aaron v. Finkbinder, E.D.Mich.1992, 793 F.Supp. 734, affirmed 4 F.3d 993. Prisons 17(2)

Slowness in providing medical and dental care while inmate suffered from minor medical conditions was not deliberate indifference to a serious medical need of inmate which would constitute a violation of inmate's due process rights. Tyler v. Rapone, E.D.Pa.1985, 603 F.Supp. 268. Constitutional Law 272(2); Prisons 17(.5)

If prisoner were to show that he suffered cruel and unusual punishment through failure of prison officials to permit him to see a physician for the first three days following knee injury, he would be entitled to recover damages in civil rights action for pain and suffering during the three-day delay which could have been alleviated by treatment or medication had it been rendered. Walnorch v. McMonagle, E.D.Pa.1976, 412 F.Supp. 270. Civil Rights 1462

Evidence in §§ 1983 action did not establish prison officials' deliberate indifference to state prisoner's medical needs, as would constitute cruel and unusual punishment, relating to medical treatment after prisoner's Achilles tendon was torn by two-inch metal pipe protruding from floor in his cell; even if medical treatment was delayed, prisoner caused part of the delay by refusing to sign a cash slip as required by prison policy, and such nonchalant behavior by prisoner belied his assertion that his injury constituted an excessive risk to his health. Brooks v. Beard, C.A.3 (Pa.) 2006, 167 Fed.Appx. 923, 2006 WL 332547, Unreported. Sentencing And Punishment 1546

State prisoner had to describe objective symptoms that he manifested after 10 day course of antibiotics that were sufficient to trigger need for additional treatment, in order to state civil rights claim under Eighth Amendment on

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basis that state prison officials delayed in providing follow-up care for prisoner's skin condition in deliberate indifference to prisoner's serious medical needs; although prisoner had been diagnosed with staphylococcus aureus skin infection, most skin conditions were not intuitively serious. Stepnay v. Goff, C.A.10 (Kan.) 2006, 164 Fed.Appx. 767, 2006 WL 182059, Unreported. Sentencing And Punishment 1546

Illinois inmate failed to show that jail officials acted with deliberate indifference toward inmate's serious medical need in violation of Fourteenth Amendment by delaying surgery for his hernia while he was in pre-trial detention, where inmate presented no evidence that jail administrators knew that the delays they were contemplating in scheduling surgery created a substantial risk of medical harm, and jail administrators were entitled to rely on judgment of medical professionals, who were not named as defendants in inmate's civil rights suit. Heard v. Sheahan, C.A.7 (Ill.) 2005, 148 Fed.Appx. 539, 2005 WL 2030660, Unreported, rehearing denied. Prisons 17(2)

Inmate failed to establish that twenty-month delay in scheduling elbow surgery after it was recommended was deliberate indifference to inmate's serious medical need, as required to support inmate's §§ 1983 action against medical provider; delay was due to staff misunderstanding and miscommunication concerning scheduling process, not provider's policy, surgery was elective and not medical emergency, and delay in surgery was not detrimental to inmate. Buckley v. Correctional Medical Services, Inc., C.A.8 (Mo.) 2005, 125 Fed.Appx. 98, 2005 WL 600651, Unreported. Civil Rights 1091

Inmate failed to prove that either of two prison doctors acted with deliberate indifference to his serious medical needs, in violation of his Eighth Amendment right to be free from cruel and unusual punishment, despite his claims that they delayed and denied him adequate medical care for an umbilical hernia, and delayed and denied treatment for liver disease in the form of a liver transplant; the inmate only established a difference of opinion regarding the feasibility of a liver transplant, and both doctors determined that the inmate was not a good candidate for hernia surgery due to the high risk of infection caused by his prior self-inflicted injury and his liver problems. Horton v. Ward, C.A.10 (Okla.) 2005, 123 Fed.Appx. 368, 2005 WL 419814, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Prisoner failed to establish that nurse and office assistant were deliberately indifferent to his medical needs related to an eye condition in violation of the Eighth Amendment, as required to support his § 1983 claim; nurse was not responsible for canceling or rescheduling prisoner's appointments or for responding to prisoners' medical concerns, office assistant inadvertently delayed prisoner's prescription medication, but matter was cleared up quickly, and prisoner was not harmed by delays in treatment. Canady v. Wilkinson, C.A.6 (Ohio) 2004, 90 Fed.Appx. 863, 2004 WL 232728, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Genuine issues of material fact as to whether inmate's delayed dental care met the "sufficiently serious" criteria for an Eighth Amendment claim, whether prison officials had notice of his needs, and whether they were deliberately indifferent to those needs precluded summary judgment against the inmate on his § 1983 claim. Stack v. McCotter, C.A.10 (Utah) 2003, 79 Fed.Appx. 383, 2003 WL 22422416, Unreported. Federal Civil Procedure 2491.5

Delay in state prisoner's receipt of medical treatment following assault did not constitute deprivation of constitutional rights, for purpose of § 1983 Eighth Amendment claim; prisoner admitted that his injuries of a split lip and scrape near his eye healed in a couple of days and that he was treated by a nurse within 11 minutes of the alleged assault. Harris v. Skinner, W.D.N.Y.2003, 2003 WL 22384794, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Deputy supervisor of administration and deputy supervisor of security for prison did not violate Eighth Amendment, through showing of deliberate indifference to inmate's metacarpal fracture, when appointment with outside orthopedist was delayed one week due to unavailability of security vehicle; fracture was insufficiently severe medical condition for Eighth Amendment purposes, earlier contact with orthopedist would not have avoided

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pain and disfigurement claimed by inmate, and prompt treatment with splint and pain medication precluded showing of necessary hostility on part of prison staff. Ruiz v. Homerighouse, W.D.N.Y.2003, 2003 WL 21382896, Unreported. Prisons 17(2); Sentencing And Punishment 1546

State prison's medical staff could not be held liable under § 1983 for alleged deliberate indifference to inmate's serious medical need for knee surgery when his surgery was delayed where it was not clear that the prison's medical staff was responsible for any delays, given medical clinic's cancellation of appointments, and given that, even if the prison held up surgery by failing, for example, to obtain MRI results, inmate did not introduce medical evidence to show any effect of the delay on his condition. Bieber v. Wisconsin Dept. of Corrections, C.A.7 (Wis.) 2003, 62 Fed.Appx. 714, 2003 WL 1870892, Unreported, certiorari denied 124 S.Ct. 113, 540 U.S. 843, 157 L.Ed.2d 78. Civil Rights 1091

Inmate claiming that he received inadequate medical care for injuries sustained when he fell out of his upper bunk at most alleged negligence, and thus, failed to state a claim under the Eighth Amendment in his section 1983 suit; a delay of three hours in treating his injuries did not rise to the level of deliberate indifference to his medical needs, and his allegation that he did not receive follow-up care after stitches were removed was belied by his statement that he later received medication for his ongoing pain and sleep-loss symptoms. Rossby v. Santa Clara County, N.D.Cal.2003, 2003 WL 297537, Unreported. Prisons 17(2); Sentencing And Punishment 1546

2763. Diagnosis, medical care of prisoners

Prison physician who provided medication for respiratory infection and to reduce fever and coughing to prisoner who complained of cough, chills, fever, rapid pulse, low blood pressure, and swelling and redness in calf, did not consciously disregard the substantial risk of serious harm arising from prisoner's symptoms, and thus was not deliberately indifferent to prisoner's serious medical needs, even if, at most, physician's actions amounted to misdiagnosis or failure to conduct further testing; prisoner's symptoms were consistent with respiratory infection, and treatment was appropriate. Self v. Crum, C.A.10 (Colo.) 2006, 439 F.3d 1227, petition for certiorari filed 2006 WL 1591905. Sentencing And Punishment 1546

Incorrect diagnosis by prison medical personnel does not suffice to state claim for deliberate indifference; rather, plaintiff must show that officials refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince wanton disregard for any serious medical needs. Domino v. Texas Dept. of Criminal Justice, C.A.5 (Tex.) 2001, 239 F.3d 752, rehearing denied. Sentencing And Punishment 1546

Forced submission of arrestee to x-rays and blood test at county jail did not constitute unlawful search in violation of Fourth Amendment, for purposes of civil rights action; county's interest in diagnosing severe medical problems to prevent transmission of serious disease among general jail population was sufficiently compelling to preclude finding that such searches were unreasonable within meaning of Fourth Amendment. Thompson v. City of Los Angeles, C.A.9 (Cal.) 1989, 885 F.2d 1439. Searches And Seizures 78

Alleged negligence in course of handling, diagnosis, or treatment of state prisoner's medical complaint was not actionable under this section. Nettles v. Rundle, C.A.3 (Pa.) 1971, 453 F.2d 889. Civil Rights 1091

Fact that plaintiff disagreed with prison doctors' diagnosis of his ills was not a sufficient basis for civil rights action. McKinney v. People of State of Cal., C.A.9 (Cal.) 1970, 427 F.2d 160. Civil Rights 1091

Claim by inmate that prison medical personnel misdiagnosed or mistreated his or her condition arises under state medical malpractice law, and is not cognizable under § 1983. Lewis v. Angelone, W.D.Va.1996, 926 F.Supp. 69. Civil Rights 1091

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Alleged misdiagnosis by county jail nurses of inmate's finger injury, and their failure to order an x-ray of his injured finger, which, the inmate contended, would have established that the finger was fractured, did not amount to deliberate indifference to serious medical needs, and thus inmate had no cognizable claim under § 1983 for cruel and unusual punishment. Rodriguez v. Joyce, D.Me.1988, 693 F.Supp. 1250. Civil Rights 1091

Neither evidence of prison physician's negligence in diagnosing or treating prisoner's medical condition, nor evidence of disagreement between physician and prisoner regarding medical care, were sufficient to establish §§ 1983 claim against prison officials for deliberate indifference to prisoner's medical needs. Green v. Khrisnaswamy, C.A.2 (N.Y.) 2005, 134 Fed.Appx. 465, 2005 WL 1389495, Unreported. Sentencing And Punishment 1546

2764. Medical records access, medical care of prisoners

Allegations by patient at state hospital that psychiatrist and psychologist refused him permission to see his mental health records failed to state claim under § 1983 for violation of federal constitutional or statutory right; patient had no constitutional right to see his own medical records, and Freedom of Information Act (FOIA) and Privacy Act applied only to federal, not state, agencies. Collins v. Khoury, N.D.Cal.2002, 2002 WL 1941150, Unreported. Mental Health 21; Records 51

2765. Diet, medical care of prisoners

Prison officials were not deliberately indifferent to serious medical needs of insulin-dependent diabetic in implementing policy requiring penal institutions to provide "Heart Healthy" diet to inmates and failing to authorize therapeutic outpatient diets, notwithstanding inmate's personal belief that diet was unhealthy for him and his hospitalizations and development of diabetic myelopathy while incarcerated; medical evidence indicated that diet could be appropriate for diabetics, and inmate failed to tie his health problems to diet. Baird v. Alameida, C.D.Cal.2005, 407 F.Supp.2d 1134. Sentencing And Punishment 1546

Inmate failed to prove that corrections officials and contractors were deliberately indifferent to his serious medical needs in failing to provide him with a medical order for a "high fiber bland diet" as a treatment for a diverticulosis condition; the inmate had regular consultation for his condition, he was provided a high fiber diet, that was nutritionally adequate, as a form of treatment, and his desire for a "bland seed free diet" constituted nothing more than a disagreement with the treatment provided to him. Kirkham v. Wilkinson, C.A.6 (Ohio) 2004, 101 Fed.Appx. 628, 2004 WL 1380083, Unreported. Prisons 17(3)

There was no evidence that correctional medical services nurse was deliberately indifferent to health and safety of inmate in violation of his rights under Eighth and Fourteenth Amendments by placing him on alternative meals for seven days, and thus, inmate was not entitled to damages under § 1983; inmate did not dispute that there was no medical reason why he could not be placed on alternative diet, and inmate presented no evidence of being starved or otherwise injured as a result of the diet. Fudge v. May, C.A.8 (Ark.) 2003, 84 Fed.Appx. 702, 2003 WL 22998106, Unreported. Constitutional Law 272(2); Prisons 17(2); Sentencing And Punishment 1546

Wheelchair-bound inmate was not entitled to injunctive relief requiring that he be granted a feed-in permit allowing him to have food brought to him in his cell in his § 1983 suit, despite his claim that a prior feed-in permit was revoked in retaliation for his having filed a lawsuit against the correctional facility and its officers and doctors; he was not singled out, but rather, the feed-in permits of a whole group of inmates was revoked on the ground that they could move about with the assistance of a wheelchair, and he was granted a feed-in permit for breakfast, when he was less mobile. Woods v. Goord, S.D.N.Y.2002, 2002 WL 31296325, Unreported. Civil Rights 1454

2766. Drugs or medicine, medical care of prisoners--Generally

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Any failure by prison officials to ensure that bipolar prisoner's medications were promptly transferred with him to solitary confinement did not constitute deliberate indifference to his serious medical needs in violation of Eighth Amendment, absent showing by prisoner that he suffered harm as result. Moots v. Lombardi, C.A.8 (Mo.) 2006, 453 F.3d 1020. Sentencing And Punishment 1546

Jail's doctor who prescribed anti-seizure medicine to inmate was not deliberately indifferent to the inmate's serious medical needs, even though medication prescribed was different from medication inmate had taken in past; doctor did not know that medication prescribed would present danger to inmate or that he was prescribing less medication than was required. Phillips v. Jasper County Jail, C.A.8 (Mo.) 2006, 437 F.3d 791. Sentencing And Punishment 1546

Genuine issue of material fact existed as to whether nurse's decision to withhold one particular medication from state prisoner and give him medication known to aggravate his esophageal condition, taken together with her threat that prisoner would be "locked up" if he continued to complain, could have supported conclusion that nurse was deliberately indifferent to prisoner's serious medical needs, precluding summary judgment in prisoner's civil rights lawsuit under Eighth Amendment. Greeno v. Daley, C.A.7 (Wis.) 2005, 414 F.3d 645. Federal Civil Procedure 2491.5

Prison officer's alleged refusal to provide inmate with prescribed psychotropic medication to be dispensed upon inmate's release and to make any effort to obtain medication for inmate supported § 1983 claim that officer exhibited deliberate indifference to inmate's serious medical needs, in violation of Eighth and Fourteenth Amendments, given inmate's inability to obtain such medication on his own immediately following his release. Wakefield v. Thompson, C.A.9 (Cal.) 1999, 177 F.3d 1160. Prisons 17(2)

Record supported award of $9,500 to prison inmate who brought § 1983 action against psychiatrist who ordered administration of antipsychotic medications to inmate without his consent, and without complying with applicable due process requirements, despite claim that inmate would have received same treatment even if he had been afforded due process; inmate was afforded virtually no procedural protections, and experienced severe side effects that continued for weeks after medications were discontinued. Doby v. Hickerson, C.A.8 (Ark.) 1997, 120 F.3d 111. Civil Rights 1464

Prisoner's allegation that prison psychiatrist prescribed prolixin in violation of prisoner's due process and Eighth Amendment rights, even though prisoner did not believe he needed drug did not state § 1983 claim against psychiatrist; inadequate prison health care rises to constitutional violation only if prison officials are deliberately indifferent to serious medical need, and mere disagreement with medical treatment does not constitute constitutional violation. Lair v. Oglesby, C.A.8 (Ark.) 1988, 859 F.2d 605. Civil Rights 1395(7)

Prisoner who allegedly was denied Rebetron Therapy to treat his Hepatitis C, despite his "relapse" while being treated with Interferon alone, because he tested positive for use of controlled substance, alleged unaddressed "serious medical need" for purposes of Eighth Amendment claim for deliberate indifference. Johnson v. Wright, S.D.N.Y.2002, 234 F.Supp.2d 352. Prisons 17(2); Sentencing And Punishment 1546

Eighth Amendment violation was not stated by prison medical staff member's allegedly requiring prisoner to wait certain lengths of time before getting appointments to review his complaints of penile pain, which could have been matters of medical judgment, even if bad ones, but an alleged refusal to prescribe pain medication during the waiting periods, and the alleged prescription of medication some time later that was intended to make prisoner ill, was actionable as being deliberately indifferent to prisoner's pain. Adsit v. Kaplan, W.D.Wis.2006, 410 F.Supp.2d 776. Sentencing And Punishment 1546

Correctional sergeant who, prior to dispensing inmate's pain medication, was called away to prison emergency did not act with deliberate indifference to inmate's serious medical need, since in fact another officer replaced sergeant

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and continued to dispense medications, but plaintiff inmate inexplicably did not remain in line to receive his; thus, any pain he suffered as result of missing medication was result of his own choice, not of any Eighth Amendment violation. Upthegrove v. Kuka, W.D.Wis.2006, 408 F.Supp.2d 708. Sentencing And Punishment 1546

State inmate exhausted administrative remedies with respect to prison doctor, as required under the as required under the Prison Litigation Reform Act (PLRA), prior to bringing claim pursuant to §§ 1983 alleging inadequate medical treatment in violation of the Eighth Amendment; although the doctor was not named in original prison grievance, inmate sent letter to grievance resolution committee while grievance was still pending, which plainly stated that the doctor violated inmate's Eighth Amendment rights by prescribing medications without examining physician. Evan v. Manos, W.D.N.Y.2004, 336 F.Supp.2d 255. Civil Rights 1319

County jail officials were not indifferent, as required to support inmate's § 1983 claim of deliberate indifference to his serious medical needs, when they allegedly failed to recognize, treat, or provide psychotropic medication for the inmate's psychological conditions, including anxiety and panic attacks, post-traumatic stress syndrome, and depression, where neither the county jail staff nor the inmate himself were aware of any mental health problems in need of treatment during the time that he was at the jail. Simpson v. Penobscot County Sheriff's Dept., D.Me.2003, 285 F.Supp.2d 75. Civil Rights 1091

Prison employees' insistence upon clinical observation prior to administration of drug to treat inmate's hemophilia was not "deliberate indifference" to inmate's health, as required to find Eighth Amendment violation; while some doctors believed that drug should generally be administered on demand, inmate would sometimes demand and get drug, and then refuse to take it, resulting in expensive waste, other doctors believed that there should be some objective manifestation of bleed before drug was administered, and some doctors believed that drug should be administered prophylactically on set schedule. Walker v. Peters, N.D.Ill.1997, 989 F.Supp. 971. Sentencing And Punishment 1546; Prisons 17(2)

Inmate protesting medical treatment, who failed to contest nature of diagnoses and prescriptions given, failed to state a cognizable claim under civil rights statute. Kopec v. Coughlin, S.D.N.Y.1991, 767 F.Supp. 467, affirmed 952 F.2d 394. Civil Rights 1395(7)

Inmate's pro se claim that medical personnel at correctional facility did not prescribe medicine he requested and did not place him on soft diet as he requested, and that he suffered three month delay for skin lotion were insufficient to support § 1983 action for cruel and unusual punishment arising out of denial of medical treatment, particularly where no injury was demonstrated and not only was inmate abusive to medical personnel, but refused to allow doctor to examine him or draw blood. Peterson v. Scully, S.D.N.Y.1989, 707 F.Supp. 759. Civil Rights 1091

Prison medical staff's refusal to continue to supply inmate with chronic spinal condition with drugs Valium and Talwin did not violate inmate's Eighth Amendment right to be free of cruel and unusual punishment, so that inmate was not entitled to injunction requiring that he be supplied with those drugs; staff determined that inmate should be treated with medicine other than those drugs based on belief that use of drugs could cause addiction abuse and that their presence could encourage barter system in prison. Wolfel v. Ferguson, S.D.Ohio 1987, 689 F.Supp. 756. Civil Rights 1455; Sentencing And Punishment 1546

Prison doctor's alleged failure to inform state inmate of side effects of prescribed medicine was nothing more than negligence, and thus did not support §§ 1983 claim under Eighth Amendment for deliberate indifference to inmate's serious medical needs. Jetter v. Beard, C.A.3 (Pa.) 2005, 130 Fed.Appx. 523, 2005 WL 1051180, Unreported, certiorari denied 126 S.Ct. 566, 163 L.Ed.2d 475. Sentencing And Punishment 1546

Inmate failed to establish that health care administrator of correctional facility was deliberately indifferent to his serious medical needs by failing to provide him with Motrin for back pain, as required to support § 1983 action

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against administrator, where inmate's Motrin prescription had expired, inmate's request for renewal was sent to doctor on more than one occasion, and inmate was provided Tylenol to help ease back pain until prescription for Motrin could be reviewed. Mack v. Wilkinson, C.A.6 (Ohio) 2004, 90 Fed.Appx. 866, 2004 WL 232730, Unreported. Civil Rights 1091

Physician was not deliberately indifferent to a serious medical condition of an inmate assaulted by other inmates while he was a pretrial detainee, despite his claim that the physician prescribed medicine for him that almost caused him to have a heart attack, and that she denied him an MRI and a CAT scan to investigate his headaches; there was no evidence that the physician prescribed the medication recklessly or even negligently, the inmate did not allege that his headaches impaired his activities of daily living, and there was no evidence that the physician knew or should have known that a CAT scan or MRI was necessary and recklessly or maliciously failed to order one. Renelique v. Doe, S.D.N.Y.2003, 2003 WL 23023771, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Issue of whether county prison's medical staff was deliberately indifferent to risks to inmate arising from their administration of another prisoner's prescription medications presented fact questions that could not be resolved on motion to dismiss inmate's § 1983 suit against staff members for violation of his Eighth Amendment rights. Bowers v. Milwaukee County Jail Medical Staff, C.A.7 (Wis.) 2002, 52 Fed.Appx. 295, 2002 WL 31688877, Unreported. Federal Civil Procedure 1831

2767. ---- Time of dispensing, drugs or medicine, medical care of prisoners

Evidence that prison staff denied seizure medication to inmate who reported to prison medical unit outside 30-minute period set aside for dispensing medication was insufficient to establish deliberate indifference to inmate's serious medical needs, in violation of inmate's civil rights, absent evidence that dosages that inmate was denied because of his late arrival caused alleged seizures that occurred at least three weeks later. Moyers v. Buescher, E.D.Mo.1992, 806 F.Supp. 218. Civil Rights 1420

Nurse's allegedly retaliatory act in refusing to administer to state prisoner a single dose of an over-the-counter pain reliever was de minimis, for purposes of prisoner's First Amendment retaliation claim, in civil rights action under §§ 1983 alleging that he was denied needed pain medication in retaliation for two lawsuits he had previously brought against Department of Correctional Services (DOCS) personnel, where prisoner had received his medication a few hours earlier, he received more medication a few hours after nurse allegedly refused to treat him, and a person of ordinary firmness would not be deterred from exercising his constitutional right to file grievances and lawsuits simply because he had to wait a few hours for access to his non-narcotic pain medication. Davidson v. Bartholome, S.D.N.Y.2006, 460 F.Supp.2d 436. Prisons 17(2)

2768. ---- Interruption of dispensing drugs or medicine, medical care of prisoners

Proper focus of prisoner's § 1983 deliberate indifference to serious medical needs claim against prison officials was on particular risks attributed to his missed HIV medication, rather than on his HIV-positive status alone, in evaluating whether he demonstrated a serious medical need as required to establish an Eighth Amendment violation when he was twice deprived of his HIV medication for several days, once due to delay in refilling his prescriptions and once due to confiscation of his medicine in a random search of his living quarters. Smith v. Carpenter, C.A.2 (N.Y.) 2003, 316 F.3d 178. Prisons 17(2); Sentencing And Punishment 1546

There was no evidence showing when alleged deprivations of prisoner's allergy medication occurred, or that any deprivation caused him serious health effects, as required to support his claim against prison officials for deliberate indifference to serious medical needs. George v. Smith, W.D.Wis.2006, 2006 WL 3775929. Sentencing And Punishment 1546

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Health care providers who provided medical services at state correctional facility did not violate inmate's due process rights when they denied him certain medication for Hepatitis C based on inmate's failed drug test without first offering him a hearing to confirm the results of that test; prison regulations stated medical decisions were not disciplinary in nature and were "the sole province" of prison physicians, inmate was made aware of the policy, and health care providers acted consistent with community standards in refusing to provide the medication. Niemic v. Maloney, D.Mass.2006, 448 F.Supp.2d 270. Prisons 17(2)

Prison nurse's failure to administer prisoner's hypertension medication on one day did not cause prisoner to suffer a serious medical condition, and thus nurse and correction officer who escorted nurse were not deliberately indifferent to prisoner's serious medical needs in violation of Eighth Amendment, where prisoner was taking relatively low dose of medication for mild hypertension, prisoner took his medication on every other day that month, prisoner's blood pressure was normal when checked three weeks later, and there was no indication that the missed dose of medication interfered with prisoner's activities or caused him medical complications. Torres v. Trombly, D.Conn.2006, 421 F.Supp.2d 527. Sentencing And Punishment 1546

Evidence was sufficient to prove that prisoner suffered physical harm as the result of not receiving his HIV medication for a period of three days while in custody, and therefore that prison health services exhibited deliberate indifference to prisoner's serious medical needs, depriving him of his constitutional rights and discriminating against him on the basis of his HIV status in violation of the Americans with Disabilities Act (ADA); although prisoner's expert witness was unable to say that "more probably than not" the symptoms suffered by prisoner while in jail were related to the interruption in medication, evidence showed that prisoner suffered from fever, chills, and flu-like symptoms that possibly were caused by the fact that prisoner was refused his HIV medication. McNally v. Prison Health Services, D.Me.1999, 52 F.Supp.2d 147. Civil Rights 1420

Prisoner's allegations that he did not receive his blood pressure or pain medication at least 26 times during his incarceration and that he suffered headaches and had to lie down when he did not receive his medications stated a missed-medication claim against correction officials under §§ 1983. King v. Busby, C.A.8 (Ark.) 2006, 162 Fed.Appx. 669, 2006 WL 122424, Unreported. Sentencing And Punishment 1546

Decision of county jail physician not to place prisoner on psychiatric medications, after he attempted to swallow a razor blade, was not deliberate indifference that would support a §§ 1983 claim; physician determined prisoner was not psychotic, but placed him on permanent segregation, transferred him to single cell observation, had prisoner monitored closely by jail's mental health nurses, mental health director, staff psychologists, and correctional officers, and, when necessary, placed him under more scrupulous levels of observation with additional restrictions on his access to personal property. Edmonds v. Horton, C.A.6 2004, 113 Fed.Appx. 62, 2004 WL 2203575, Unreported. Civil Rights 1091

Former inmate failed to establish that defendants acted with deliberate indifference, as required to support his § 1983 claim alleging the medical care he received while incarcerated violated the Eighth Amendment; although inmate occasionally did not receive prescribed medication for hypertension and degenerative joint disease, occasions were isolated and brief, inmate failed to establish that lapses posed an excessive risk to his health or that defendants knew of risk and disregarded it, and inmate failed to substantiate his claim that his medical records were

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falsified. Lindwurm v. Wexford Health Sources, Inc., C.A.10 (Wyo.) 2003, 84 Fed.Appx. 46, 2003 WL 22969348, Unreported. Prisons 17(2); Sentencing And Punishment 1546

2768A. Withdrawing treatment, medical care of prisoners

State prison medical administrator and doctor were deliberately indifferent to serious medical needs of prisoner with HIV and hepatitis, where they had completely withdrawn the prescribed treatment for his illnesses; prisoner was not receiving any treatment apart from clinic visits, despite his deteriorating condition. Brown v. Johnson, C.A.11 (Ga.) 2004, 387 F.3d 1344. Prisons 17(2); Sentencing And Punishment 1546

2769. Drug treatment, medical care of prisoners

Even if state and federal regulations relating to methadone detoxification program induced expectation, rising to constitutionally protected liberty interest, in participants that their methadone dependency would be terminated only by prescribed program of detoxification, such "right" was foregone by participants once they were incarcerated in penal institution unable to continue the program; fact of confinement, together with legitimate goals and policies of the penal institution, served to limit any such "right." Fredericks v. Huggins, C.A.4 (Va.) 1983, 711 F.2d 31. Constitutional Law 274(2)

Where inmates of county jail who had been receiving methadone treatment prior to incarceration from an approved clinic in the county were given methadone treatment through their sixth day of confinement, after which treatment was terminated, system of methadone treatment at jail would not constitute denial of due process, where there was medical testimony to the effect that system was adequate and where record did not establish any deliberate indifference to inmates' serious medical needs. Inmates of Allegheny County Jail v. Pierce, C.A.3 (Pa.) 1979, 612 F.2d 754, on remand 487 F.Supp. 638. Constitutional Law 272(2)

Eighth Amendment violation was not stated by prison medical staff member's allegedly requiring prisoner to wait certain lengths of time before getting appointments to review his complaints of penile pain, which could have been matters of medical judgment, even if bad ones, but an alleged refusal to prescribe pain medication during the waiting periods, and the alleged prescription of medication some time later that was intended to make prisoner ill, was actionable as being deliberately indifferent to prisoner's pain. Adsit v. Kaplan, W.D.Wis.2006, 410 F.Supp.2d 776. Sentencing And Punishment 1546

Pretrial detainee stated claim for deliberate indifference to his medical needs by alleging that intake physician at correctional institution denied him methadone which his condition on arrival warranted; if, based on detainee's condition, it was medical necessity that he receive methadone immediately, physician's action was something more than negligent. Messina v. Mazzeo, E.D.N.Y.1994, 854 F.Supp. 116. Civil Rights 1088(4)

Inmate who suffered from schizophrenia and who alleged that prison doctor administered an unapproved drug that caused potentially serious side effects and then later discontinued inmate's approved medications altogether stated claim under §§ 1983 for violation of his rights under Eighth Amendment. Adams v. Durai, C.A.7 (Ill.) 2005, 153 Fed.Appx. 972, 2005 WL 2867785, Unreported. Sentencing And Punishment 1546

2770. Experiments, medical care of prisoners

Evidence in prison inmate's action under this section alleging that inmate was forced to participate in mass tuberculosis experiment established that defendants were not deliberately indifferent to inmate's serious medical needs. Lee v. Armontrout, C.A.8 (Mo.) 1993, 991 F.2d 487, rehearing denied, certiorari denied 114 S.Ct. 209, 510 U.S. 875, 126 L.Ed.2d 166, rehearing denied 114 S.Ct. 462, 510 U.S. 973, 126 L.Ed.2d 394. Civil Rights 1420

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42 U.S.C.A. § 1983

Allegations that prisoner suffered ill effects after participating in medical experiment, that prison physician was not informed as to which inmates were involved in the experiment, that prisoner merely complained to the prison doctor that he had a sore throat and was hurting and did not tell the physician that he was taking medication as part of an experiment, and that, after returning from city hospital, prisoner sometimes missed sick call because he didn't feel like waiting in line but that, whenever he was in line, he was not denied treatment demonstrated that prisoner was not afforded such inadequate medical treatment as to give rise to civil rights claim under U.S.C.A.Const. Amend. 8. Roach v. Kligman, E.D.Pa.1976, 412 F.Supp. 521. Civil Rights 1395(7)

2771. Lock downs or lock ups, medical care of prisoners

Alleged conduct of corrections officer in intentionally provoking or inciting pretrial detainee into "rage attacks" by relentlessly taunting him, so that she could subsequently discipline him by imposing administrative lock down, was not subject to Eighth Amendment's "deliberate indifference" standard that applied to denial of appropriate medical care. O'Connor v. Huard, C.A.1 (Me.) 1997, 117 F.3d 12, certiorari denied 118 S.Ct. 691, 522 U.S. 1047, 139 L.Ed.2d 636. Sentencing And Punishment 1554

Use of lock down as alternative to appropriate mental health care for inmates with serious mental illnesses was deliberate indifference to serious mental health needs of inmates and violated their constitutional right to be free from cruel and unusual punishment. Casey v. Lewis, D.Ariz.1993, 834 F.Supp. 1477. Sentencing And Punishment 1547; Prisons 17(2)

No inmate at Minnesota State prison shall be deprived of medical care or attention because he is confined in 24-hour lockup and each inmate shall be provided with medical request forms that shall be transmitted to prison medical staff which shall make personal visit to inmate the same day. Hines v. Anderson, D.C.Minn.1977, 439 F.Supp. 12. Prisons 17(2)

2772. Medical history, medical care of prisoners

Physician at correction facility was not deliberately indifferent to medical needs of inmate during period prior to date of inmate's death, despite allegation that physician failed to prepare adequate medical history, and thus estate could not maintain civil rights action against physician on that basis; officials took health history of inmate. Kelly v. Wehrum, S.D.Ohio 1997, 956 F.Supp. 1369. Civil Rights 1091

2773. Number of cellmates, medical care of prisoners

Prison officials were not liable to prisoner, under this section prohibiting deprivation of civil rights by state action, for allegedly denying him due process by not giving him his own cell or a different cellmate since prison doctor had merely recommended, rather than ordered, that prisoner be celled alone or with a compatible cellmate, and the recommendation was expressly contingent upon approval of hospital administration. Partee v. Lane, N.D.Ill.1981, 528 F.Supp. 1254. Civil Rights 1091

2774. Organ donation and transplantation, medical care of prisoners

To prevail in § 1983 action alleging that doctors' refusal to provide kidney transplant violated inmate's Eight Amendment rights, inmate was required to show that course of treatment doctors chose was medically unacceptable under the circumstances and that they chose their course in conscious disregard of an excessive risk to inmate's health. Jackson v. McIntosh, C.A.9 (Cal.) 1996, 90 F.3d 330, certiorari denied 117 S.Ct. 584, 519 U.S. 1029, 136 L.Ed.2d 514. Sentencing And Punishment 1546; Prisons 17(2)

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42 U.S.C.A. § 1983

State prisoner under death sentence had no right cognizable under this section to be taken to hospital in another state so that he might donate a kidney. Campbell v. Wainwright, C.A.5 (Fla.) 1969, 416 F.2d 949, certiorari denied 90 S.Ct. 980, 397 U.S. 953, 25 L.Ed.2d 135. Prisons 13(1)

2775. Corrective devices, medical care of prisoners

Administrative delay in securing vendor to provide prisoner with shoe insert to remedy foot condition did not demonstrate deliberate indifference, required for § 1983 civil rights claim alleging that failing to properly provide required medical care was cruel and unusual punishment in violation of Eighth Amendment. Williams v. Keane, S.D.N.Y.1996, 940 F.Supp. 566. Sentencing And Punishment 1546; Prisons 17(2)

Prison officials' actions of ignoring fact that physician had prescribed orthopedic shoes for inmate, that shoes had been taken from him on day he arrived at facility, and that failure to provide proper footwear caused him to suffer constant pain constituted "deliberate indifference" to inmate's serious medical need and violated Eighth Amendment. Saunders v. Horn, E.D.Pa.1996, 959 F.Supp. 689, report and recommendation adopted 960 F.Supp. 893. Sentencing And Punishment 1546; Prisons 17(2)

State prison's medical staff could not be held liable under § 1983 for alleged deliberate indifference to inmate's serious medical need for his prescribed knee brace when they substituted an elastic sleeve for the brace because they believed that metal in the brace posed a security risk, even though they knew that his knee, if left unsupported, jeopardized his physical well-being, absent any evidence that they knew the brace was essential to treat his knee injury. Bieber v. Wisconsin Dept. of Corrections, C.A.7 (Wis.) 2003, 62 Fed.Appx. 714, 2003 WL 1870892, Unreported, certiorari denied 124 S.Ct. 113, 540 U.S. 843, 157 L.Ed.2d 78. Civil Rights 1091

Wheelchair-bound inmate was not entitled to retain his old orthopedic boots and elbow braces after receiving new ones, and thus, failed to state a § 1983 claim regarding a requirement that he give up his current equipment in order to receive new equipment, except insofar as there may have been a time when he was denied any elbow braces. Woods v. Goord, S.D.N.Y.2002, 2002 WL 31296325, Unreported. Civil Rights 1091

2776. Exercise, medical care of prisoners

Inmate's allegations that prison officials knew that there were serious adverse affects to inmates who were denied exercise, that he repeatedly complained to prison officials, that he filed a grievance and requested medical attention because he could not exercise outside his cell, and that prison officials did nothing satisfied subjective deliberate indifference requirement, for purposes of inmate's § 1983 action against prison officials alleging violation of Eighth Amendment protection against cruel and unusual punishment. Delaney v. DeTella, C.A.7 (Ill.) 2001, 256 F.3d 679. Prisons 17(5); Sentencing And Punishment 1541

Regional director in the Wisconsin Department of Corrections, Bureau of Health Services did not show deliberate indifference to condition of prison inmate, in violation of inmate's Eighth Amendment rights, when she denied inmate's request for access to weight training equipment; there was no showing director knew weight training was necessary to treat femoral neuropathy and several other leg ailments, precluding necessary determination that director was aware of facts supporting inference that inmate was being subjected to serious harm, and that director drew inference. Reimann v. Frank, W.D.Wis.2005, 397 F.Supp.2d 1059. Sentencing And Punishment 1541

Inmate's claim that he was deprived of out-of-cell exercise for six months during prison lockdown, and that he became depressed as a result, presented cognizable § 1983 claim of cruel and unusual punishment, where the only outings offered to inmate were weekly showers and a handful of family and medical visits, and inmate did not appear to present any particularized security risk that might justify loss of his exercise privileges. Delaney v. DeTella, N.D.Ill.2000, 123 F.Supp.2d 429, order affirmed and remanded 256 F.3d 679. Prisons 17(5); Sentencing And Punishment 1541

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42 U.S.C.A. § 1983

2777. Outside medical care, medical care of prisoners

State prison superintendent, who adopted the regional medical director's denial of a referral for an outside dermatologist consultation for prisoner suffering from keloid formation on his face at site of a knife wound, was not deliberately indifferent to prisoner's medical needs, barring prisoner's § 1983 claim against superintendent for deliberate indifference in violation of the Eighth Amendment, absent any evidence that superintendent had any medical training or that he understood that an outside consultation would be necessary or useful to treat prisoner's condition. Brock v. Wright, C.A.2 (N.Y.) 2003, 315 F.3d 158. Sentencing And Punishment 1546

Refusal of prison warden to allow prisoner to leave the facility for examination by his own doctor was within the warden's discretion where two doctors employed by university hospital had examined prisoner and found no need for surgery and had so advised the warden; mere difference of opinion as to diagnosis and treatment between the prisoner and medical report submitted to the warden could not serve as basis for cause of action, i.e., that refusal to permit prisoner to visit his own doctor constituted cruel and unusual punishment. McCracken v. Jones, C.A.10 (Okla.) 1977, 562 F.2d 22, certiorari denied 98 S.Ct. 1474, 435 U.S. 917, 55 L.Ed.2d 509. Sentencing And Punishment 1546; Prisons 17(2)

State prisoner was not entitled to order requiring prison authorities to furnish him with outside medical care and could not recover damages for injuries allegedly sustained by him through failure of prison officials to provide proper medical attention where, a few days after suit had been filed, prisoner had been discharged from hospital and hospital medical personnel found that he had not been suffering from any mental or physical illness. Byrd v. Wolff, C.A.8 (Neb.) 1974, 490 F.2d 1277. Civil Rights 1448; Civil Rights 1462

Refusal to allow prisoner to consult doctor of his own choice at his own expense would not violate prisoner's civil rights. Gahagan v. Pennsylvania Bd. of Probation and Parole, E.D.Pa.1978, 444 F.Supp. 1326.

2778. Periodic examinations, medical care of prisoners

Prison's lack of a program of routine medical examinations did not constitute deliberate indifference to a serious medical need, and did not violate prisoner's civil rights. Tunnell v. Robinson, W.D.Pa.1980, 486 F.Supp. 1265. Prisons 17(2)

Complaint by black inmates of state prison seeking injunctive relief requiring that all black inmates be routinely examined to determine if they had sickle-cell anemia or carried such trait did not state claim cognizable under this section. Ross v. Bounds, E.D.N.C.1974, 373 F.Supp. 450. Civil Rights 1395(7)

2779. Physical therapy, medical care of prisoners

Wheelchair-bound inmate was not entitled to injunctive relief requiring that he be provided with physical therapy in his § 1983 suit, despite his claim that he was being denied such therapy in retaliation for having filed a lawsuit against the correctional facility and its officers and doctors; the inmate made no specific claims of retaliation, and he was not likely to succeed on his underlying claim, particularly as a physician did provide some physical therapy treatment, i.e., the lifting of a can of beans, even if it was not what was ordered by a surgeon. Woods v. Goord, S.D.N.Y.2002, 2002 WL 31296325, Unreported. Civil Rights 1454

2780. Poisons, medical care of prisoners

Allegations that plaintiff prisoner became ill as a result of drinking wood alcohol obtained from an unknown source at state prison and that the defendant prison officials did not have the wood alcohol secured away from the prisoners did not rise to the level of a constitutional deprivation cognizable under this section where the plaintiff pointed to no specific constitutional guarantee safeguarding the interest allegedly invaded and made no claim that

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any of the officials were in any way responsible for his ingestion of wood alcohol. Clark v. People of State of Mich., E.D.Mich.1980, 498 F.Supp. 159. Civil Rights 1395(7)

2781. Prostheses, medical care of prisoners

Actions by prison's health services administrator who took steps to remedy inmate's situation, made arrangements to correct problems with inmate's crutches and informed inmate that he would arrange for prosthesis if it were deemed necessary at inmate's next medical evaluation, did not show deliberate indifference to inmate's serious medical needs as required for actionable civil rights claim. Kopec v. Coughlin, S.D.N.Y.1990, 767 F.Supp. 463, vacated on other grounds 922 F.2d 152, on remand 767 F.Supp. 467. Civil Rights 1091

2782. Removal from hospital or infirmary, medical care of prisoners

Alleged conduct of prison authorities in removing prisoner from hospital where prisoner had undergone surgery, before prisoner was ready to be moved and despite surgeons' orders and without obtaining a discharge, was more than "mere negligence" and gave rise to cause of action under this section for violation of proscription by U.S.C.A.Const. Amend. 8 of cruel and unusual punishment. Martinez v. Mancusi, C.A.2 (N.Y.) 1970, 443 F.2d 921, certiorari denied 91 S.Ct. 1202, 401 U.S. 983, 28 L.Ed.2d 335. Civil Rights 1091

Complaint of prisoner, who was suffering from chronic thrombophlebitis in his left leg, when he was transferred to correctional facility, who refused to take his medication because he was not initially housed in infirmary and who further alleged that he was discharged from infirmary for other than legitimate medical purposes, stated medical malpractice claim at most but did not state a valid claim under this section. Bourgeois v. Hongisto, S.D.N.Y.1980, 488 F.Supp. 304. Civil Rights 1395(7)

2783. Shots or inoculations, medical care of prisoners

Requests by special needs unit manager at state prison that schizophrenic inmate take his psychotropic medication did not violate inmate's due process rights, for purposes of inmate's § 1983 claim; although inmate was urged to take his medication and was punished for misbehavior that occurred when he was not taking his medication, he was never forcibly injected with antipsychotic medications, and he was permitted to refuse the medication. Whittington v. Vaughn, E.D.Pa.2003, 289 F.Supp.2d 621. Constitutional Law 272(2); Prisons 17(2)

Forced administration of diphtheria-tetanus inoculation to inmate by prison personnel did not violate his civil rights since there was no conscious or callous indifference to inmate's rights, but rather inoculation was administered solely to protect inmate and other inmates from spread of contagious disease. Zaire v. Dalsheim, S.D.N.Y.1988, 698 F.Supp. 57, affirmed 904 F.2d 33. Civil Rights 1098

2784. Sick-call procedures, medical care of prisoners

Evidence that sick call procedure at prison had serious deficiencies, that prison medical unit personnel were not qualified to treat cardiac arrest cases, that prisoner made several requests for medical treatment without any response other than being sent two pills, that, when prisoner was finally brought to emergency room, prison physician failed to respond immediately to request that he come to emergency room, and that prisoner died of cardiorespiratory arrest supported finding that there were such systematic and gross deficiencies in staffing, personnel, and sick call procedures that prisoner was effectively denied access to adequate medical care. Bass by Lewis v. Wallenstein, C.A.7 (Ill.) 1985, 769 F.2d 1173. Civil Rights 1420

2785. Size of staff, medical care of prisoners

Where size of prison medical staff in relation to number of inmates having serious health problems constitutes an

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effective denial of access to diagnosis and treatment by qualified health care professionals, "deliberate indifference" standard for determining whether medical treatment afforded prisoners is constitutionally adequate has been violated, for, in such circumstances, exercise of informed professional judgment as to serious medical problems of individual inmates is precluded by patently inadequate size of the staff. Inmates of Allegheny County Jail v. Pierce, C.A.3 (Pa.) 1979, 612 F.2d 754, on remand 487 F.Supp. 638. Prisons 17(2)

Inmates' Eighth Amendment rights were violated where, as result of inadequate staff members, existing staff could not adequately treat mental health problems of inmates. Casey v. Lewis, D.Ariz.1993, 834 F.Supp. 1477. Sentencing And Punishment 1547; Prisons 17(2)

2786. Suicide, medical care of prisoners--Generally

Corrections officer did not recklessly or intentionally disregard known risk of suicide, and thus was not liable under §§ 1983 for Eighth Amendment violation, where he immediately informed control room after prisoner requested crisis counselor and said he was feeling suicidal, officer then returned to prisoner's cell and received assurance that prisoner would be all right until counselor arrived, officer again returned to cell within 15 to 20 minutes, and another officer then assumed responsibility for monitoring prisoner. Collins v. Seeman, C.A.7 (Ill.) 2006, 462 F.3d 757. Sentencing And Punishment 1537

Fact that no previous suicides had occurred in county jail did not negate possibility of practice of deliberate indifference toward suicidal pretrial detainees on part of county contractor that provided medical and mental health services at jail, and thus did not preclude finding of contractor's liability in detainee's estate's §§1983 Eighth Amendment action against contractor. Woodward v. Correctional Medical Services of Illinois, Inc., C.A.7 (Ill.) 2004, 368 F.3d 917. Civil Rights 1339; Sentencing And Punishment 1547

County jail official's alleged failure to conduct regular cell checks did not constitute deliberate indifference to safety of inmate who committed suicide, for purpose of proving Eighth Amendment violation in § 1983 action, even though jail had policies and training materials that reflected its concern over possibility of inmate suicide; general risk of suicide among inmates was not substantial, where only one other inmate committed suicide in 15 years prior to inmate's death, and there were approximately two suicide attempts per year. Hott v. Hennepin County, Minnesota, C.A.8 (Minn.) 2001, 260 F.3d 901. Prisons 17(1); Sentencing And Punishment 1554

Prison case manager who waited longer than half an hour to check on prisoner following telephone call from prisoner's ex-wife indicating that prisoner had contacted her and planned to commit suicide was not "deliberately indifferent" to prisoner's risk of suicide in violation of the Eighth Amendment, and therefore, case manager was entitled to qualified immunity in § 1983 action following suicide; case manager's only indication of suicide risk was ex-wife's phone call. Gregoire v. Class, C.A.8 (S.D.) 2000, 236 F.3d 413. Civil Rights 1376(7); Sentencing And Punishment 1546

Jail supervisor was not liable under § 1983 in suicide of inmate, on theory of failure to properly train employees to identify, monitor, and refer for mental evaluations detainees exhibiting abnormal behavior, and for having no written detoxification plan, where jail had a detoxification plan and a policy addressing the classification and segregation of inmates when there is a suspected medical or mental problem, and there was no showing of a pattern or practice by supervisors at the jail in failing to segregate and bringing about serious harm to inmates or detainees. Williams v. Kelso, C.A.8 (Ark.) 2000, 201 F.3d 1060, rehearing and rehearing en banc denied. Civil Rights 1358

Jailer did not violate civil rights of prisoner who attempted to hang himself with belt that jailer had not detected in pat search, absent showing that jailer possessed level of knowledge required under deliberate indifference standard that would alert him to strong likelihood that prisoner would attempt suicide; prisoner's offhand comment during

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booking procedure "well I think I'll shoot myself" could not reasonably constitute serious suicide threat when no gun was available, and there was no evidence that jailer was familiar with "suicide profile" or that he was under any duty to be. Bell v. Stigers, C.A.8 (Iowa) 1991, 937 F.2d 1340. Civil Rights 1091

There was no evidence that prison officials were deliberately indifferent to serious mental health needs of inmate who committed suicide, even though they failed to provide inmate with psychiatric, as opposed to psychological, care, and even though officials did not place inmate in "suicide cell"; record showed that prison officials accommodated inmate both times he expressed need for mental health attention. Torraco v. Maloney, C.A.1 (Mass.) 1991, 923 F.2d 231. Prisons 17(2)

Deliberate indifference standard applicable to civil rights actions arising out of jail suicides requires a strong likelihood, rather than a mere possibility, that the self-infliction of harm will occur, and deliberate indifference will not be found to exist in the face of only negligence. Popham v. City of Talladega, C.A.11 (Ala.) 1990, 908 F.2d 1561. Civil Rights 1091

Finding that warden had been deliberately indifferent to inmate's serious medical needs was sufficiently supported by evidence presented in civil rights action, including evidence that warden knew or should have known of inmate's suicidal tendencies, but had nevertheless failed to deprive him of death dealing instrumentalities prior to placing him in solitary confinement immediately prior to death in cell. Lewis v. Parish of Terrebonne, C.A.5 (La.) 1990, 894 F.2d 142, rehearing denied 901 F.2d 1110. Civil Rights 1420

County, which had completed extensive improvement of its policies for prevention of inmate suicide, was not deliberately indifferent to needs of inmate who committed suicide, so as to support §§ 1983 liability, despite claim that policy did not adequately ensure that guards received notice of inmate's suicidal tendencies. Estate of Abdollahi v. County of Sacramento, E.D.Cal.2005, 405 F.Supp.2d 1194. Civil Rights 1351(4)

Evidence of conversations between county jail inmate's spouse and jail employee about the inmate's suicide risk, a correctional officers' note that the inmate's wife said she thought they should keep an eye on the inmate, and another correctional officer's report that the inmate may have been trying to save up some of his medications to take at a later time, was insufficient to establish that sheriff and jail administrator knew of the inmate's potential risk of suicide, as required to hold them liable under §§ 1983 for alleged deliberate indifference toward the inmate's substantial suicide risk, absent any evidence that the sheriff and administrator were aware of the alleged conversation or the documents. Harvey v. County of Ward, D.N.D.2005, 352 F.Supp.2d 1003. Prisons 17(2); Sentencing And Punishment 1547

Claims arising from a jail suicide are considered and treated as claims based on the failure of jail officials to provide medical care for those in their custody; under that standard, a plaintiff must prove that the defendant was deliberately indifferent to a substantial risk that the inmate might attempt to commit suicide. Estate of Sisk v. Manzanares, D.Kan.2002, 262 F.Supp.2d 1162. Prisons 17(2); Sentencing And Punishment 1547

For prison officials to be liable for prisoner's suicide, it is not necessary that prison officials knew specifically that prisoner was a suicidal inmate, but only that they were aware that a group of prisoners to which he belonged (suicidal inmates) faced a serious risk of harm caused by their deliberate indifference. Swan by Carello v. Daniels, D.Del.1995, 923 F.Supp. 626. Prisons 17(2)

In parent's § 1983 civil rights action alleging cruel and unusual punishment based on son's suicide while in custody of state department of corrections, complaint sufficiently alleged that probation officer and department employee did not take adequate measures in response to substantial risk of decedent's suicide, in support of claim of cruel and unusual punishment, where complaint asserted that probation officer did not communicate information on decedent's mental health to department and that department employee did not ensure that decedent received adequate counseling and observation. Viero v. Bufano, N.D.Ill.1995, 901 F.Supp. 1387. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

Generally, in jail suicide case under § 1983, to establish knowledge of strong risk of suicide, plaintiff would have to show that defendant officials were aware of previous threat or earlier attempt at suicide. Clinton v. County of York, D.S.C.1995, 893 F.Supp. 581. Civil Rights 1091

Jury finding that jail officials willfully and wantonly failed to prevent prisoner's suicide, giving rise to § 1983 civil rights liability, was supported by evidence that inadequate personal inspections of prisoner were done despite knowledge of prisoner's suicidal tendencies and that audio and video monitoring were insufficient. Bragado v. City of Zion/Police Dept., N.D.Ill.1993, 839 F.Supp. 551. Civil Rights 1420

Actions of line corrections officer at county jail, in allegedly delaying his inspection of inmate's cell as part of suicide watch for four minutes while he went to the bathroom, did not manifest any "deliberate indifference" to inmate's constitutional rights, such as might support § 1983 action against officer when inmate hanged himself in cell; officer had never been told anything by inmate indicating that he intended to commit suicide, and officer was surprised that inmate committed suicide. Russell v. Knox County, D.Me.1993, 826 F.Supp. 20. Civil Rights 1091

Wife of prisoner who hung himself in jail failed to adduce substantial evidence that would support finding that official conduct in failing to prevent suicide constituted deliberate indifference to prisoner's safety from self-harm; there was no evidence of any knowledge on part of officials of previous threat or attempted suicide by prisoner. Popham v. City of Talladega, N.D.Ala.1989, 742 F.Supp. 1504, affirmed 908 F.2d 1561. Civil Rights 1420

Communications operator on duty at county jail when prisoner attempted suicide, who had no knowledge regarding prisoner's arrest and suicide potential, did not display deliberate indifference to strong likelihood that prisoner would attempt suicide in violation of prisoner's civil rights under § 1983. Bell v. County of Washington County, Iowa, S.D.Iowa 1990, 741 F.Supp. 1354, reversed in part on other grounds 937 F.2d 1340. Civil Rights 1091

Allegations of administratrix of inmate's estate concerning inmate's suicide death while incarcerated in county jail were insufficient to state civil rights claimed against county and county officials; although administratrix claimed that officials failed to take sufficient steps to prevent inmate's suicide, inmate was placed in segregation, provided with psychiatric care and placed under suicide watch, making his death at most a result of negligence, not deliberate indifference to his needs. Snyder v. Baumecker, D.N.J.1989, 708 F.Supp. 1451. Civil Rights 1395(7)

Complaint which alleged that prisoner's civil rights were violated when inadequate supervision and treatment provided during his incarceration resulted in his suicide stated a cognizable claim under this section, despite contention that U.S.C.A. Const. Amend. 8 does not reach instances of deliberate self-injury. Guglielmoni v. Alexander, D.C.Conn.1984, 583 F.Supp. 821. Civil Rights 1395(7)

2787. ---- Availability of state remedy, suicide, medical care of prisoners

Brother of prisoner who committed suicide while in custody could not maintain a procedural due process action under § 1983 against chief deputy sheriff and jailer, as adequate relief existed under state law pursuant to the wrongful death statute, Miss.Code 1972, § 11-7-13. McGowan v. Riley, N.D.Miss.1985, 628 F.Supp. 1087. Civil Rights 1319

2788. ---- Arrestees, suicide, medical care of prisoners

Jail booking officer, who described detainee's mental state when he arrived at jail as "disoriented, confused and removed from reality," did not demonstrate deliberate indifference under Eighth Amendment standards in failing to immediately contact a mental health professional or assign special classification to such detainee, who had been involved in drunken assaultive behavior, and even if officer were deemed to be deliberately indifferent, there was

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no basis for § 1983 claim, as there was no causative connection between his failure to act and detainee's suicide four days later. Williams v. Kelso, C.A.8 (Ark.) 2000, 201 F.3d 1060, rehearing and rehearing en banc denied. Civil Rights 1088(4); Sentencing And Punishment 1547

County officers and jail personnel owed duty to pretrial detainee to not act with deliberate indifference to substantial risk of suicide by detainee, not duty to act in objectively reasonable manner with respect to risk of suicide, regardless of whether detainee has been taken before magistrate judge or other judicial officer to determine legality of arrest. Barrie v. Grand County, Utah, C.A.10 (Utah) 1997, 119 F.3d 862. Civil Rights 1088(4)

In § 1983 action against sheriff by guardian of arrestee who was rendered incompetent by suicide attempt in county jail, guardian failed to show that sheriff's unwritten policy for dealing with suicidal inmates was unconstitutional; policy made effort to identify and protect potentially suicidal inmates from self-harm, and guardian did not show that sheriff's department employees' failure to do more resulted from inadequate training amounting to deliberate indifference to needs of jail's inmates. Schmelz v. Monroe County, C.A.11 (Fla.) 1992, 954 F.2d 1540. Civil Rights 1358

Police officers sued under federal civil rights statute for death of arrestee were not liable when they failed to remove his belt before placing him in a cell where he subsequently hanged himself, as it could not be proved that they knew arrestee had suicidal tendencies, despite evidence that it was widely known throughout 35-person police department that arrestee had such tendencies. Williams v. Borough of West Chester, Pa., C.A.3 (Pa.) 1989, 891 F.2d 458, rehearing denied. Civil Rights 1091

Material issues of fact, as to whether county jail policies relating to suicide prevention, heroin detoxification, and cell checks, for which sheriff was responsible, played part in alleged violations of constitutional rights of detainees who committed suicide in their cells, precluded summary judgment that sheriff was not deliberately indifferent to situation of detainees, and thus liable in his official capacity, in §§ 1983 action alleging violation of detainees' substantive due process rights. Estate of Abdollahi v. County of Sacramento, E.D.Cal.2005, 405 F.Supp.2d 1194. Federal Civil Procedure 2491.5

Parents of teenager who committed suicide while in custody at juvenile detention center operated by county stated claim against county under § 1983 for violating juvenile's Fourteenth Amendment right to medical protection against his own suicidal intentions; parents alleged that facility supervisors' practice of pre-recording inspection records and then avoiding visual checks on juveniles was so pervasive as to constitute custom or policy, and that such practice was result of inadequate training. Smith v. Blue, S.D.Tex.1999, 67 F.Supp.2d 686. Civil Rights 1395(7)

In the absence of any allegation that arrestee had attempted suicide previously or that he was threatening suicide on the night he was arrested, police officers were not deliberately indifferent in their treatment of arrestee even though they left him in a situation in which he was able to gain control of a gun and shoot himself. McDay on Behalf of McDay v. City of Atlanta, N.D.Ga.1990, 740 F.Supp. 852, affirmed 927 F.2d 614. Civil Rights 1395(6)

2789. Work assignments, medical care of prisoners

Prison officials did not show deliberate indifference to inmate's health by requiring him to do field work despite complaints of asthma, and thus did not violate Eighth Amendment, where officials told inmate to continue working only after consulting with prison hospital staff, which informed officials that inmate was capable of work in question despite his condition. Lewis v. Lynn, C.A.5 (La.) 2001, 236 F.3d 766. Convicts 7(1); Sentencing And Punishment 1535

Failure to act upon request for reinstatement in prison job, absent some allegation that prison official was told, and it was true, that without reassignment to clinic prisoner would suffer medical impairment or pain, did not suggest

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deliberate indifference to serious medical needs, and thus denial of medical care did not result in pain and suffering sufficient to state cause of action under this section. Watts v. Morgan, N.D.Ill.1983, 572 F.Supp. 1385. Civil Rights 1395(7)

Since it appeared from entire record that prison medical authorities had made a sincere and reasonable effort to handle prisoner's medical problems, his constitutional rights had not been violated when he was made to work on a road crew despite his medical complaints. Bennett v. Reed, E.D.N.C.1981, 534 F.Supp. 83, affirmed 676 F.2d 690 . Prisons 17(2)

Refusal of prison officials, after taking prisoner's temperature and determining that it was normal, to permit prisoner to be absent from work due to alleged headaches and dizziness and their subsequent actions in ordering him to work and punishing him for refusing did not constitute denial of medical attention so grievous as to work denial of constitutional rights. Turner v. Plageman, W.D.Va.1976, 418 F.Supp. 132. Prisons 17(2)

Alleged negligence of prison physician in failing to notify prison officials that prisoner should not be required to work on "garden unit" was not actionable under this section. Heard v. Boren, E.D.Ark.1974, 368 F.Supp. 1321. Civil Rights 1091

2790. X-rays, medical care of prisoners

Prison inmate's allegations that physician refused to take X-rays and that treatment rendered "failed to meet the 14th Amendment standard of due process" were insufficient to establish physician's deliberate indifference to inmate's serious medical needs, as required for civil rights action. Gordon v. Higgs, D.Nev.1989, 716 F.Supp. 1351 . Civil Rights 1395(7)

2791. Abortion, medical care of prisoners

Louisiana prison's maintenance of policy requiring judicial approval of elective medical procedures did not cause injury to female prisoner seeking non-therapeutic abortion, as required to impose liability under §§ 1983; prisoner retained attorney, who chose not to base his early release on prisoner's desire for abortion. Victoria W. v. Larpenter, C.A.5 (La.) 2004, 369 F.3d 475. Civil Rights 1351(4)

Director of correctional health services was not deliberately indifferent to privacy right of inmate who was unable to obtain abortion when gestation was determined for second time, was increased, and was set at 24 weeks; director scheduled appointment within allowable time period based upon his medical opinion. Bryant v. Maffucci, S.D.N.Y.1990, 729 F.Supp. 319, affirmed 923 F.2d 979, certiorari denied 112 S.Ct. 152, 502 U.S. 849, 116 L.Ed.2d 117. Prisons 17(2)

2792. AIDS, medical care of prisoners

A genuine issue of material fact existed as to whether prison defendants were deliberately indifferent to prisoner's HIV/AIDS condition and Hodgkin's disease, precluding summary judgment in favor of prison defendants on Eighth Amendment claim; there were strong indications that, at least during part of the period pertinent to the action, defendants failed to properly monitor the progression of prisoner's HIV/AIDS, and often failed to timely provide him with necessary medications. Jackson v. Fauver, D.N.J.2004, 334 F.Supp.2d 697, amended on reconsideration in part 2005 WL 1677513. Federal Civil Procedure 2491.5

Family of inmate who died from AIDS had viable civil rights claim against prison medical personnel for alleged pattern of repeatedly refusing to provide medical treatment for prisoner's AIDS symptoms, which they allegedly misdiagnosed and refusal to treat inmate after he collapsed; however, alleged failure would not rise to level of

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violation of civil rights unless family proved deliberate indifference to serious medical needs. Maynard v. New Jersey, D.N.J.1989, 719 F.Supp. 292. Civil Rights 1091

Former pretrial detainee who had contracted the Acquired Immune Deficiency Syndrome (AIDS) virus failed to prove that jail doctor was deliberately indifferent to his serious medical needs, so as to violate Due Process, despite the detainee's claim that the doctor delayed in obtaining his required medication, failed to administer it according to the precise schedule required, and disregarded his complaints of pain and other serious symptoms of his condition; medical records reflected that he received medical treatment on a regular basis throughout the time he was at the jail, and as soon as blood test results showed that he needed a blood transfusion, the doctor transferred him to a hospital, where he received the transfusion and other medical treatment. Sandifer v. Green, C.A.10 (Kan.) 2005, 126 Fed.Appx. 908, 2005 WL 699309, Unreported. Constitutional Law 262; Prisons 17(2)

2793. Amputations, medical care of prisoners

Treatment of prisoner at prison hospital where prisoner's legs were amputated as a result of frostbite injuries suffered by prisoner during an escape did not constitute deliberate indifference. Bass v. Sullivan, C.A.5 (Ala.) 1977, 550 F.2d 229, certiorari denied 98 S.Ct. 195, 434 U.S. 864, 54 L.Ed.2d 138. Prisons 17(2)

2794. Asthma, medical care of prisoners

Prisoner's bare assertion that being placed in small shower stall during cell shakedowns aggravated his asthma was insufficient to support claim that being placed in stall was violation of his rights under Eighth Amendment. Aswegan v. Henry, C.A.8 (Iowa) 1995, 49 F.3d 461. Sentencing And Punishment 1546

Corrections officials were not deliberately indifferent to non-smoking state prison inmate's asthma by failing to accommodate inmate's request for non-smoking housing until inmate had spent total of 17 weeks housed with smokers, precluding recovery in inmate's §§ 1983 Eighth Amendment action against officials; there was no evidence of need for treatment beyond inhaler that inmate already had, and even assuming serious medical need, there was no evidence of denial of access to medical care, or of specific asthma attacks occurring while inmate was housed with smokers. Bartlett v. Pearson, E.D.Va.2005, 406 F.Supp.2d 626. Sentencing And Punishment 1546

2795. Burns, medical care of prisoners

Prisoner's allegation that he received severe burns on his hands and did not receive proper treatment and that this resulted from conspiracy to harm and intimidate him stated a civil rights claim. Bontkowski v. Jenkins, N.D.Ill.1987, 661 F.Supp. 576, affirmed 860 F.2d 1082. Civil Rights 1395(7)

2796. Cancer, medical care of prisoners

Proper standard of adequate medical treatment had not been accorded inmate whose past medical history and present condition indicated a possibility of cancer. Sawyer v. Sigler, D.C.Neb.1970, 320 F.Supp. 690, affirmed 445 F.2d 818.

That inmate became ill after consuming water, without any other evidence, could not alone establish that he had, or that the water caused, a serious illness, so as to support a §§ 1983 claim. Ford v. Mercer County Correctional Center, C.A.3 (N.J.) 2006, 171 Fed.Appx. 416, 2006 WL 714674, Unreported. Prisons 17(1)

2797. Concussions, medical care of prisoners

Confinee's unsupported allegations of conscious indifference to his medical needs were insufficient to establish

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civil rights claim arising from county's failure to treat him for mild concussion and broken jaw while he was in jail, in view of evidence that treatment was at most negligent. Jones v. Lewis, C.A.6 (Ky.) 1989, 874 F.2d 1125, rehearing denied. Civil Rights 1091

2798. Dental problems, medical care of prisoners

State prisoner failed to establish that prison warden, prison health service administrator, and prison dental assistance acted with deliberate indifference to his serious medical needs by not obtaining dental care for him for thirty or forty days, as required to support his §§ 1983 action alleging denial of dental care; unchallenged prison dental policy provided for outside resources for a dental emergency only when such emergency was identified by designated medical personnel, no such designated personnel declared that prisoner had a dental emergency, and thus prison officials were not aware of facts from which the inference could be drawn that a substantial risk of serious harm existed. Johnson v. Mullin, C.A.10 (Okla.) 2005, 422 F.3d 1184. Sentencing And Punishment 1546

Pro se inmate's allegations that unknown nurse assisted in his tooth extraction and that dentist failed to see that inmate received a partial plate he had prescribed were insufficient to support inmate's §§ 1983 action against dentist and nurse alleging Eighth Amendment violations based on complications related to a tooth extraction. Finnegan v. Maire, C.A.8 (Mo.) 2005, 405 F.3d 694, rehearing and rehearing en banc denied. Civil Rights 1395(7)

Even if Court of Appeals were to reach issue of whether bankruptcy court had abused its discretion in declining to appoint Chapter 11 trustee, an issue that party moving for appointment of trustee failed to raise on appeal in asserting only that bankruptcy court had employed wrong evidentiary standard, Court would not find any abuse of discretion, where allegations of self-interest by debtor's principal were as yet unproven, and where movant would have opportunity to test and ultimately resolve these allegations in other pending proceedings. In re G-I Holdings, Inc., C.A.3 (N.J.) 2004, 385 F.3d 313. Bankruptcy 3624; Bankruptcy 3771

Claim of state prisoner that he was victim of malpractice by defendant dentist in connection with extraction of teeth and treatment of gums and that such conduct constituted cruel and unusual treatment and a denial of equal protection was frivolous in that it amounted to no more than a tort claim for malpractice, not cognizable under this section. Isenberg v. Prasse, C.A.3 (Pa.) 1970, 433 F.2d 449. Civil Rights 1395(7)

Evidence was insufficient to prove that pro se state prisoner received inadequate medical care in prison, for purpose of §§ 1983 claim against corrections officials; prisoner had lengthy medical history, during which he was examined by several doctors and transported to outside facilities as necessary for tests and medical procedures, and although he was denied a particular prescription to treat his hepatitis C, the treatment was denied because of a doctor's medical judgment that the medication would have been ineffective in light of prisoner's prior narcotics use. MacLeod v. Kern, D.Mass.2005, 379 F.Supp.2d 103. Civil Rights 1420

Special circumstances existed to justify state inmate's failure to exhaust administrative remedies, pursuant to Prison Litigation Reform Act (PLRA), before bringing §§ 1983 action, to the extent that such remedies were available to inmate for his claim against prison dentist for deliberate indifference to inmate's serious medical needs, when inmate did not learn that his pain resulted from foreign object and reactive lesion in area of his mouth from which tooth had been extracted until after he was transferred to different correctional facility. Borges v. Piatkowski, W.D.N.Y.2004, 337 F.Supp.2d 424. Civil Rights 1319

State prison inmate's allegations, in § 1983 action, that dentist employed by New York State Department of Correctional Services (DOCS) was negligent in filling inmate's cavities and that inmate disagreed or was dissatisfied with treatment provided by dentist, including allegation that dentist should have given inmate the option of using plastic tooth-colored fillings instead of metal amalgam, did not establish objective and subjective

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components of deliberate indifference to serious medical need, as would be required to establish cruel and unusual punishment in violation of Eighth Amendment. Green v. Khrisnaswamy, W.D.N.Y.2004, 328 F.Supp.2d 417, affirmed 134 Fed.Appx. 465, 2005 WL 1389495. Prisons 17(2); Sentencing And Punishment 1546

County jail inmate's failure to allege blanket custom or policy of not medically treating inmates with hepatitis C did not preclude his § 1983 Eighth Amendment claim against private entities that contracted with county to provide inmates with medical services, in which he alleged that he had been denied adequate dental care by dentist's refusal to treat him due to his hepatitis C; even absent blanket policy, if inmate could demonstrate that contractor's employee was final policymaker with respect to treatment and decided not to treat pursuant to unconstitutional custom or policy, contractors could be liable. Wall v. Dion, D.Me.2003, 257 F.Supp.2d 316. Civil Rights 1351(4)

State prisoner's allegations in his complaint, that oral surgeon started extraction of tooth without first taking an x-ray, that he suffered severe, unbearable, and great pain as a result of prison dentists' alleged refusal to provide him with pain medication, and that he was later diagnosed with temporomandibular disorder but dentists refused to follow prescribed course of treatment, stated claim against prison dentists and staff for deliberate indifference to his serious medical needs. Rivera v. Goord, S.D.N.Y.2000, 119 F.Supp.2d 327. Prisons 17(2); Sentencing And Punishment 1546

Inmate's claim that he was threatened with disciplinary action, physical violence, extension of time in keeplock, and possible segregation if he continued to seek dental care, without any allegation of injury or damage, did not establish a violation of a constitutional right and could not state a § 1983 claim. Malsh v. Austin, S.D.N.Y.1995, 901 F.Supp. 757. Civil Rights 1091; Civil Rights 1092

Recommendation of prison physician that prisoner's four bad teeth be extracted which was made without first taking X-rays and refusal of prison to allow prisoner to visit periodontist for examination and treatment unless prisoner paid for visit himself did not constitute "deliberate indifference" to prisoner's rights as would allow recovery by prisoner in federal civil rights action based on violation of his rights under Eighth Amendment; action was one involving prisoner being dissatisfied with diagnosis of prison physician, and prisoner's claim at best rose to level of negligence. Hogan v. Russ, N.D.N.Y.1995, 890 F.Supp. 146. Civil Rights 1091; Sentencing And Punishment 1546

Inmate stated prima facie case under § 1983 for denial of medical care resulting in infliction of unnecessary pain and suffering without legitimate penological justification, in violation of Eighth Amendment; inmate alleged that intake center nurse refused to refer inmate to qualified doctor or dentist respecting inmate's missing dental filling which caused severe pain and that prison officials allowed nurse to determine whether inmate should be seen by doctor or dentist without ensuring that qualified health care personnel were present. Canell v. Bradshaw, D.Or.1993, 840 F.Supp. 1382, affirmed 97 F.3d 1458. Civil Rights 1395(7)

2799. Diabetes, medical care of prisoners

State physicians were not deliberately indifferent to state prison inmate's diabetes, precluding recovery in inmate's § § 1983 Eighth Amendment action against physicians, where physicians treated condition by prescribing insulin, adjusting prescribed level of insulin, and supplying instruments for self-monitoring of blood sugar levels; rather, inmate's complaint that insulin levels were not adjusted more frequently and that blood work was done too infrequently amounted to allegation of negligent care, which could not rise to level of deliberate indifference. Boomer v. DePerio, W.D.N.Y.2005, 405 F.Supp.2d 259. Sentencing And Punishment 1546

In light of expert's opinion and findings that prison defendants failed to properly monitor and control the level of sugar in prisoner's blood, and that such failure resulted in irreversible damage to prisoner's heart and kidneys, prisoner raised genuine issues of material fact as to whether prison defendants were deliberately indifferent to his

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serious need for medical care for diabetes, precluding summary judgment in favor of prison defendants on Eighth Amendment claim; however, prisoner failed to establish Eighth Amendment claim with regard to the treatment of his cardiac problems since he failed to show that defendants ignored or refused to treat his cardiac problems or that he was exposed to treatment under unsanitary conditions. Jackson v. Fauver, D.N.J.2004, 334 F.Supp.2d 697, amended on reconsideration in part 2005 WL 1677513. Federal Civil Procedure 2491.5; Prisons 17(2); Sentencing And Punishment 1546

If jail officials knew of inmate's diabetes, knew that by doing nothing it likely would worsen and, after time to reflect on situation, decided to do nothing more than wait until it actually worsened before acting, inference could be made that some sort of punitive intent motivated them, and thus that officials were not entitled to qualified immunity from liability under § 1983 for failing to provide useable insulin in timely manner. Flowers v. Bennett, N.D.Ala.2000, 135 F.Supp.2d 1150. Civil Rights 1376(7)

Inmate's claim that prison dietician failed to provide him with diabetic meals stated claim under § 1983, where he informed prison officials of his condition, complained about nutritionally inadequate meals provided, met with dietician, and still did not receive adequate diabetic meals. Taylor v. Anderson, N.D.Ill.1994, 868 F.Supp. 1024. Civil Rights 1091

Jail clinic nurse did not demonstrate deliberate indifference to insulin-dependent diabetic prisoner's medical needs, even if she misread or improperly administered random blood-sugar tests and did not take appropriate precautionary steps when she noted prisoner's nausea and headaches; nurse took action to alleviate prisoner's condition and prisoner should have brought claim for medical malpractice rather than civil rights violations. Aaron v. Finkbinder, E.D.Mich.1992, 793 F.Supp. 734, affirmed 4 F.3d 993. Civil Rights 1091; Prisons 17(2)

2800. Digestive problems, medical care of prisoners

Prison officials did not show deliberate indifference to inmate's serious medical needs relating to his stomach problems, though inmate maintained he received inadequate medical treatment, where inmate received doctor's care for his stomach problems nearly every month he spent at prison, inmate was provided medication and bland diet according to doctor's orders and was given vegetarian meals when his stomach problems did not sufficiently respond, and there was no evidence that inmate's digestive troubles and dietary needs were ignored, or his prescribed treatment thwarted, by prison officials; inmate received ongoing medical attention and treatment and, at most, his claims of inadequate treatment sounded in tort. Stroud v. Roth, E.D.Pa.1990, 741 F.Supp. 559. Sentencing And Punishment 1546

2801. Eyesight, medical care of prisoners

Lack of verifying medical evidence that delay in provision of sunglasses following inmate's eye surgery had any adverse affect on inmate's prognosis precluded inmate's § 1983 claim for deliberate indifference to his medical needs in violation of Eighth Amendment; inmate's physician gave deposition testimony that "whether or not he had the sunglasses certainly caused no further damage or less damage to his eye." Crowley v. Hedgepeth, C.A.8 (Iowa) 1997, 109 F.3d 500. Civil Rights 1420

Prisoner's eye condition was not serious medical need, and, thus, delay in eye examination was not deliberate indifference to serious medical needs, where prison optometrist did not find his eyes to be particularly light sensitive, and report indicating that prisoner may have had light sensitivity and watery eyes was 14 years old. George v. Smith, W.D.Wis.2006, 2006 WL 3775929. Sentencing And Punishment 1546

Optometrist was not deliberately indifferent to inmate's medical needs by not providing a full eye examination when seeing inmate for eye pain less than two years after last examination; the optometrist did not see anything in his examination of inmate that caused him to believe that a full eye examination was medically necessary at that

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time. Wood v. Idaho Dept. of Corrections, D.Idaho 2005, 391 F.Supp.2d 852. Sentencing And Punishment 1546

Prison officials' decision not to order tinted glasses requested by inmate, which he claimed he had to wear because of eye condition, even assuming that decision was wrong, did not constitute deliberate indifference to inmate's serious medical needs particularly given evidence that inmate received extensive care, including being seen by ophthalmologist as well as numerous other specialists. Abdul-Matiyn v. New York State Dept. of Correctional Services, N.D.N.Y.1994, 871 F.Supp. 1542, affirmed 66 F.3d 309. Sentencing And Punishment 1546; Prisons 17(2)

Allegation that inmate had been deliberately deprived of his eyeglasses although he was legally blind stated cognizable claim under this section for deliberate indifference to medical needs in violation of Eighth Amendment. Williams v. ICC Committee, N.D.Cal.1992, 812 F.Supp. 1029. Sentencing And Punishment 1546; Prisons 17(2)

For purposes of civil rights claim, inmate failed to establish deliberate indifference to his serious medical needs in connection with allegedly excessive waiting period to see doctor; delays of seven days on inmate's request for routine eye examination and approximately two weeks for treatment concerning hair loss problem were reasonable under the circumstances. Harris v. Murray, E.D.Va.1990, 761 F.Supp. 409. Civil Rights 1091

State prisoner's complaint against prison officials and optometrist on account of alleged injury to his vision due to failure to replace broken glasses alleged simply ordinary negligence which, although cognizable under state law, did not amount to denial of constitutional or federally protected right which could be redressed under this section. Di Febo v. Keve, D.C.Del.1975, 395 F.Supp. 1350. Civil Rights 1395(7)

In promptly answering inmate's request to see an eye doctor by referring request to prison health care administrator the following day, and promptly responding to inmate's request for medical treatment by responding the following day verifying that inmate was scheduled for surgery that same day, prison superintendent did not demonstrate conscious disregard of an excessive risk to inmate's health or safety, and thus, superintendent was not liable to inmate under §§ 1983 for violating Eighth Amendment by delaying surgical treatment for inmate's eye condition. Brown v. Thomas, C.A.3 (Pa.) 2006, 172 Fed.Appx. 446, 2006 WL 825777, Unreported. Sentencing And Punishment 1546

2802. Heart disease, medical care of prisoners

Pretrial detainee, who allegedly had heart attack approximately three months prior to detention, failed to establish, in § 1983 civil rights action against parish prison officials, that he had been denied reasonable medical care; evidence supported conclusion that prison officials had made every effort to accommodate detainee's special medication, exercise, and dietary requirements. Cupit v. Jones, C.A.5 (La.) 1987, 835 F.2d 82. Civil Rights 1420

Physician's failure to order follow-up diagnostic work to determine whether prison inmate was suffering from heart disease, while possibly amounting to departure from good medical practice, was not deliberate indifference amounting to cruel and unusual punishment or violation of due process, despite physician's knowledge of some of inmate's medical history, inmate's complaints of hyperventilation and chest pains, and indications contained in hospital reports and tests. Lynsky v. City of Boston, D.Mass.1990, 761 F.Supp. 858. Constitutional Law 272(2); Sentencing And Punishment 1546; Prisons 17(2)

State prisoner failed to establish a claim under this section against correctional officials for inadequate medical attention for his alleged heart condition, where, as shown by his medical records, several physicians were involved in examining and treating him, each of whom concluded that he suffered from no heart disorder. Phillips v. Keve,

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42 U.S.C.A. § 1983

D.C.Del.1976, 422 F.Supp. 1136. Civil Rights 1420

2803. Knee injuries, medical care of prisoners

Inmate, who asserted he was denied pain medication for knee injury, that nurse stated that infirmary personnel did not want to see inmate in infirmary for any medical reason unless it was emergency, and that doctor had cancelled appointment with specialist for knee, stated civil rights cause of action for improper medical care. Ellis v. Butler, C.A.8 (Ark.) 1989, 890 F.2d 1001. Civil Rights 1395(7)

Prison officials' alleged denial of proper rehabilitative therapy for inmate who suffered from knee problems did not amount to "deliberate indifference" to inmate's medical needs, as required to support inmate's Eighth Amendment claim for denial of medical treatment; prison officials delegated decision as to whether inmate's condition warranted transfer for medical reasons to medical staff, and there was absolutely nothing unconstitutional in delegation of such decision to medical staff. Boblett v. Angelone, W.D.Va.1997, 957 F.Supp. 808. Sentencing And Punishment 1546

2804. Paralysis, medical care of prisoners

Prison doctor's deliberate indifference to serious medical needs of paralyzed prisoner, as needed in § 1983 civil rights action, was established where doctor knew of prisoner's paraplegia, knew that prisoner was not permitted wheelchair in cellblock, and refused to admit prisoner to infirmary where wheelchair could be used; prisoner was not bathed or given hospital mattress for several days. Weeks v. Chaboudy, C.A.6 (Ohio) 1993, 984 F.2d 185, rehearing denied. Civil Rights 1091

2805. Psychological problems, medical care of prisoners

Alleged failure of former inmate's court-appointed psychologist to find inmate an outpatient sexual offender treatment program that would not require inmate to admit culpability for sexual assault of his daughter, even if psychologist had duty to find such program and failure to do so resulted in incarceration and assault by fellow inmate, did not constitute deprivation of federal right as required to support § 1983 action against psychologist in his individual capacity. Morstad v. Department of Corrections and Rehabilitation, C.A.8 (N.D.) 1998, 147 F.3d 741. Civil Rights 1091

Sex offender inmates did not state Eighth Amendment claim for denial of necessary medical treatment by prison officials when they alleged that they suffered from sex addiction mental disorder, that they were driven by deviant, sexually compulsive drives, and that condition eroded their self-esteem to point of apathy, reinforcing fear and feelings of differentness, and asserted that weekly group sessions they received were inadequate; seriousness of medical need was not shown, given lack of averments of physician's diagnosis of condition mandating treatment or of conditions lay person would easily recognize as necessitating doctor's attention, and failure to provide specialized treatment did not show requisite unnecessary and wanton infliction of pain by prison officials. Riddle v. Mondragon, C.A.10 (N.M.) 1996, 83 F.3d 1197. Sentencing And Punishment 1547

State security hospital did not violate civil rights of inmate during his civil commitment as psychopathic personality by failing to provide specific sexual offender treatment program; as dangerous psychopath civilly committed for purposes of safekeeping, defendant had no such constitutional right. Bailey v. Gardebring, C.A.8 (Minn.) 1991, 940 F.2d 1150, certiorari denied 112 S.Ct. 1516, 503 U.S. 952, 117 L.Ed.2d 652. Civil Rights 1054

At time prison psychiatrist prescribed a medication to which inmate claimed to be allergic, it was not clearly established that such conduct constituted deliberate indifference to inmate's serious medical needs and therefore prison psychiatrist was entitled to qualified immunity in inmate's suit alleging Eighth Amendment violation. Givens v. Jones, C.A.8 (Mo.) 1990, 900 F.2d 1229. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Forensic psychiatrist at state hospital was not liable under this section for death of county prisoner, who previously had allergic reaction to "some medicine," had been taking tranquilizer, was sent to hospital to obtain pretrial diagnosis of his mental condition and died shortly after being given injection of drug assertedly used for control of psychosis, in light of fact that prisoner did not have constitutional right to have psychiatrist receive recommendation from prisoner's father as to kind of drugs which should be used, that psychiatrist had not failed to give adequate attention to or withhold treatment from prisoner and that cause of death was not established. Daniels v. Gilbreath, C.A.10 (Okla.) 1982, 668 F.2d 477. Civil Rights 1091

Where prison inmate had removed and burned her paper dress and danced about the flames clapping her hands, reaction of prison officials which was treatment by isolation in clinic where she could be observed, and where she was free from further threats from fellow prisoners, and administration of sedatives was appropriate response to what had been observed and was not overreaction or serious inattention to her medical needs. Lee v. Downs, C.A.4 (Va.) 1981, 641 F.2d 1117. Prisons 17(2)

"Deliberate indifference" standard for determining whether medical treatment afforded prisoners is constitutionally adequate is applicable in evaluating constitutional adequacy of psychological or psychiatric care provided at a jail or prison; key factor in determining whether system for psychological or psychiatric care in a jail or prison is constitutionally adequate is whether inmates with serious mental or emotional illnesses or disturbances are provided reasonable access to medical personnel qualified to diagnose and treat such illnesses or disturbances. Inmates of Allegheny County Jail v. Pierce, C.A.3 (Pa.) 1979, 612 F.2d 754, on remand 487 F.Supp. 638. Prisons 17(2)

For a constitutional tort to arise and for a cause of action to be stated under this section with respect to psychological or psychiatric treatment afforded a prisoner, prisoner must allege deliberate indifference to his continued health and well-being. Bowring v. Godwin, C.A.4 (Va.) 1977, 551 F.2d 44. Civil Rights 1395(7)

State prison officials did not display deliberate indifference to serious medical needs of mentally ill and suicidal inmate, in violation of Eighth Amendment, when he was examined, and prescribed various antipsychotic medications, and only alleged deficiency was failure to provide therapeutic art supplies when requested. Scarver v. Litscher, W.D.Wis.2005, 371 F.Supp.2d 986, affirmed 434 F.3d 972. Prisons 17(2); Sentencing And Punishment 1546

State prisoner suffered from serious mental illness, as would support prisoner's § 1983 action against prison psychologist for deliberate indifference in violation of Eighth Amendment, where prisoner twice set fire to the toilet paper he had wrapped around his limbs, wrote a note indicating his lack of will to live and ate his own feces. Means v. Cullen, W.D.Wis.2003, 297 F.Supp.2d 1148. Prisons 17(2); Sentencing And Punishment 1547

Allegation that Missouri prison officials withheld treatment of sex offenders under Missouri sex offenders program (MOSOP) until prescribed time prior to release and failed to provide competent psychiatrically trained personnel despite declaring all sexual offenders in need of such care did not state claim under § 1983; there was no indication that prison officials had been deliberately indifferent to prisoners' serious medical needs or that they even had serious medical needs. Patterson v. Webster, E.D.Mo.1991, 760 F.Supp. 150. Civil Rights 1395(7)

2806. Seizures, medical care of prisoners

Physician at prison did not act with deliberate indifference to inmate's medical condition in violation of § 1983 by not taking other actions to insure that inmate took seizure medication; physician took active measures to monitor inmate's condition, counseled inmate about importance of taking his medication, altered inmate's regimen to make it easier for him to follow, and believed inmate was capable of following regimen. Whitley v. Lewis, E.D.Va.1994, 844 F.Supp. 276, affirmed 48 F.3d 1218. Civil Rights 1091

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42 U.S.C.A. § 1983

Allegation that prisoner received pills for headache, continued to complain of discomfort, was told that a doctor would see him before the end of the day, was never called to the hospital, passed out later that evening, regained consciousness in prison hospital and was informed that he had had a seizure and was ultimately transferred to civilian hospital and that he continued to have headaches and dizzy spells did not state a claim upon which relief could be granted under this section. Williams v. Manson, D.C.Conn.1974, 374 F.Supp. 1009. Civil Rights 1395(7)

2807. Surgery, medical care of prisoners

Inmate who brought § 1983 action against prison superintendent, chief medical officer of State Department of Corrections, and prison health care supervisor failed to establish Eighth Amendment claim for deliberate indifference to serious medical needs arising from delay in surgery scheduled by inmate's orthopedic physician; chief medical officer had final authority to decide whether surgery should be performed, there was no evidence that chief's decision to delay surgery so deviated from professional standards that it amounted to deliberate indifference, and uncontroverted evidence showed that chief did not rely on any alleged false statements of supervisor. Czajka v. Caspari, C.A.8 (Mo.) 1993, 995 F.2d 870. Civil Rights 1420

Persistent delay in priority one surgery for inmate inflicts the sort of pain and suffering which would not serve any penological purpose, and violates the Eighth Amendment. Johnson v. Lockhart, C.A.8 (Ark.) 1991, 941 F.2d 705. Sentencing And Punishment 1546

Allegations that inmate was still bleeding from surgery incisions when he was returned to state correctional facility, that he was kept in lockup and unhealthful living conditions and was denied a medically prescribed diet because prison physician refused to change inmate's medical status following surgery, that he was denied information about a heart condition, that he was refused an examination of his swollen leg following surgery, and that he had been given false information by physician was sufficient to state a claim for injunctive, declaratory and monetary relief against alleged unconstitutional medical treatment. Kelsey v. Ewing, C.A.8 (Minn.) 1981, 652 F.2d 4. Prisons 17(2)

Initial failure to properly diagnose prisoner's injury may be attributable to no more than error in judgment, which may or may not be actionable as negligence, but failure to promptly schedule surgery, once need for it was recognized and in face of prisoner's repeated complaint of severe pain, raised questions regarding prison hospital officials' concern for their patient. Duncan v. Duckworth, C.A.7 (Ind.) 1981, 644 F.2d 653. Prisons 17(2)

Prison physician's failure to surgically repair inmate's bilateral inguinal hernia did not amount to deliberate indifference to inmate's serious medical condition, in violation of Eighth Amendment, even though inmate had recurrent blood in his urine and semen, where physician ordered that another urinalysis be performed, ordered urine culture if urinalysis was positive for blood, and ordered follow-up medical appointment. Lawrence v. Virginia Dept. of Corrections, E.D.Va.2004, 308 F.Supp.2d 709. Prisons 17(2); Sentencing And Punishment 1546

Prison inmate's claims of medical malpractice against prison doctors were insufficient to state § 1983 claim where there was clearly split of opinion among the medical experts whether knee replacement surgery that inmate requested was necessary; medical care that inmate received did not constitute indifference to his medical problems where physicians recommended physical therapy before knee surgery, and inmate had refused to cooperate with the treatment program and failed to show that nonsurgical methods were not viable course of treatment. Calvert v. Hun, N.D.W.Va.1992, 798 F.Supp. 1226. Civil Rights 1091

Inmate, in failing to renew his grievance or otherwise seek to use an extensive inmate grievance resolution program in place at correctional facility, did not exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), thus barring his § 1983 suit alleging cruel and unusual punishment in connection with an

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eight-month delay of allegedly necessary surgery for an inguinal hernia; even if he initially thought that he had been promised prompt surgery after his informal grievance review, shortly thereafter he obviously knew that surgery had not been performed, or even scheduled, and he presented no explanation as to why he did not at least inquire as to why surgery that he allegedly thought he had been promised had not been forthcoming. Arroyo v. City of New York, S.D.N.Y.2003, 2003 WL 22211500, Unreported. Civil Rights 1311

2808. Trench mouth, medical care of prisoners

Alleged negligence of warden of county prison in which inmate contracted trench mouth while awaiting trial was not cognizable under this section. Bush v. Robinson, C.A.3 (Pa.) 1971, 442 F.2d 393. Civil Rights 1098

2809. Tuberculosis, medical care of prisoners

Section 1983 plaintiffs asserting medical mistreatment claim under Eighth Amendment failed to adequately allege requisite "deliberate indifference," in connection with assertions that inmate received medical examination which failed to reveal any abnormality in size of inmate's liver, that employees of county department of corrections administered tuberculosis medication to inmate at several times normal dosage, and that inmate's condition deteriorated until he eventually died; even if department employees affirmatively made inmate ill by administering medication to him improperly, plaintiff still alleged only single course of medical negligence received by one person, not pattern or systemic deficiencies required to show "deliberate indifference" under Eighth Amendment. Freeman v. Fairman, N.D.Ill.1996, 916 F.Supp. 786. Civil Rights 1395(7)

2810. Ulcers, medical care of prisoners

Prisoner who brought civil rights action claiming that his constitutional rights were violated when prison authorities denied him medical treatment for a bleeding ulcer after repeated requests and after he began to vomit blood stated a cause of action. Westlake v. Lucas, C.A.6 (Mich.) 1976, 537 F.2d 857. Civil Rights 1395(7)

2811. Miscellaneous medical problems, medical care of prisoners

Prisoner only had unrecoverable "de minimis injury," for purposes of his civil rights claim that was subject to Prison Litigation Reform Act (PLRA) which alleged that prisoner personnel were deliberately indifferent to his serious medical needs in violation of Eighth Amendment when they put him in small strip cage and kept him there for 12 hours, since swelling, pain, and cramps in prisoner's leg were not serious enough to mention to medical staff on day of his release from strip cage or two days later and incident did not result in medical findings at point at which prisoner claimed to have mentioned them to staff two weeks later. Jarriett v. Wilson, C.A.6 (Ohio) 2005, 414 F.3d 634. Civil Rights 1463

Jury was free to consider absence of concrete medical injury to prisoner as relevant factor in determining whether alleged deprivation of his HIV medication for several days on two occasions was sufficiently serious to satisfy the objective serious medical need standard for a deliberate indifference to serious medical needs claim under § 1983, absent any evidence that the alleged deprivation resulted in permanent or on-going harm to his health, or any evidence explaining why the absence of actual physical injury was not relevant in assessing severity of his medical need, and in view of credible medical testimony suggesting that the prisoner was not exposed to an unreasonable risk of future harm due to the periods of missed HIV medication. Smith v. Carpenter, C.A.2 (N.Y.) 2003, 316 F.3d 178. Civil Rights 1424; Sentencing And Punishment 1546

District court did not err in allowing the government to dismiss, on the morning of trial, a lesser count charging defendant with maintaining a premises for manufacturing drugs, notwithstanding defendant's claim that the government dismissed the lesser count to gain a strategic advantage, since alleged strategic decision did not rise to the level of bad faith. U.S. v. Rush, C.A.8 (Mo.) 2001, 240 F.3d 729. Criminal Law 303.25

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42 U.S.C.A. § 1983

Whether prison doctor was deliberately indifferent to inmate's serious medical needs was for jury in inmates § 1983 action which alleged that doctor violated inmate's Eighth Amendment rights; doctor failed to disclose to inmate that there were broken pins in his hip, failed to discuss option of surgery with inmate despite inmate's frequent complaints of pain after pins broke, and failed to refer inmate to specialist for reevaluation for surgery despite requests from inmate and student attorneys acting on his behalf. Hathaway v. Coughlin, C.A.2 (N.Y.) 1994, 37 F.3d 63, certiorari denied 115 S.Ct. 1108, 513 U.S. 1154, 130 L.Ed.2d 1074, on subsequent appeal 99 F.3d 550. Civil Rights 1429

Inmate's allegations in pro se complaint were sufficient to state Eighth Amendment claim for deliberate indifference to his serious medical needs in failing to operate on his diseased toe, failing to address his complaints of pain, and transferring him to non-medical facility, notwithstanding that complaint was disjointed and failed to contain specific allegations against some defendants. Carter v. Newland, D.Mass.2006, 2006 WL 1913947. Civil Rights 1395(7)

Belief of prisoner that his penile pain could be alleviated by circumcision did not, under Eighth Amendment, require Department of Corrections (DOC) or any officers to make arrangements to have the procedure performed free of charge. Adsit v. Kaplan, W.D.Wis.2006, 410 F.Supp.2d 776. Sentencing And Punishment 1546

State inmate's allegation that prison officials failed to adequately treat her gender identity disorder (GID) in accordance with policy that prohibited any hormone or surgical treatment for inmates suffering from GID, regardless of their medical condition, was sufficient, when inmate's pro se complaint was liberally construed, to state claim under § 1983 against Commissioner of New Hampshire Department of Corrections in his individual capacity. Barrett v. Coplan, D.N.H.2003, 292 F.Supp.2d 281. Civil Rights 1395(7)

Allegations that prison physicians were aware that prisoner had hernia condition which required surgery, and yet allowed they prisoner to remain in pain for two years without even giving him a truss once need for surgery was identified stated § 1983 that physicians were deliberately indifferent to his medical needs. Barry v. Ratelle, S.D.Cal.1997, 985 F.Supp. 1235. Civil Rights 1395(7)

High level prison officials were not entitled to dismissal of prisoner's Eighth Amendment claim for failure to accommodate medical condition, where inferences drawn from complaint were that prison officer discarded inmate's doctor-prescribed orthopedic shoes and canes, that he did not obtain medical treatment from prison doctor, that standard issue shoes he was required to wear caused him constant pain, and that inmate wrote to high level officials about his difficulties. Saunders v. Horn, E.D.Pa.1997, 960 F.Supp. 893. Civil Rights 1395(7)

Prisoner's tinnitus was not an urgent medical condition the maltreatment of which presented a constitutional claim, though condition might be painful, where prisoner did not demonstrate condition was degenerative or caused extreme pain; furthermore, circumstances that made condition more difficult to bear, such as noisy environment, insufficient ear plug supply, failure to provide prisoner with medicine of his choice, and failure to permit him to participate in sleep study, did not amount to cruel and unusual punishment even though changes in circumstances might ease his condition. Davidson v. Scully, S.D.N.Y.1996, 914 F.Supp. 1011. Sentencing And Punishment 1546

Female prison inmate's claim, that medical treatment she received while incarcerated resulted in damage to her reproductive organs and rendered her unable to have children, did not establish deliberate indifference to her medical needs. Pohlman v. Stokes, S.D.Ohio 1987, 687 F.Supp. 1179. Prisons 17(2)

County jailers did not act with deliberate indifference, in violation of due process, to pretrial detainee's medical needs after application of cast to detainee's ankle, though jailers did not call primary care physician or orthopedic specialist when detainee reported increased pain; laypersons would not know that medical attention was required if a person experienced increased pain following application of cast to swollen fractured ankle, and jailers followed

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specialist's specific instructions to give detainee regular doses of nonprescription pain medication and to keep his leg elevated. Johnson v. Myers, C.A.7 (Ill.) 2004, 109 Fed.Appx. 792, 2004 WL 1873207, Unreported. Constitutional Law 262; Prisons 17(2); Sentencing And Punishment 1546

Prisoner failed to show that doctor's alleged failure to recognize prisoner's need for treatment for deep vein thrombosis (DVT) amounted to deliberate indifference to a serious medical need in violation of his civil rights, where, when doctor last saw prisoner for his ankle injury, ankle was discolored but the swelling had decreased somewhat, and because prisoner's symptoms had not entirely resolved, doctor referred him to the medical director for approval of an orthopedic consult, and when prisoner's entire leg became severely swollen and blue three days later, it was a nurse, not the doctor, who observed but ignored the change in his condition. Hanic v. Schaeffer, C.A.8 (S.D.) 2003, 58 Fed.Appx. 665, 2003 WL 470574, Unreported. Civil Rights 1091

Prison medical authorities' were not deliberately indifferent to medical needs of prisoner, who brought § 1983 lawsuit under Eighth Amendment, even though prison was unable to provide elective surgery for prisoner's recurrent inguinal hernia; prisoner was examined on numerous occasions by medical doctors, he was prescribed a truss and medicine to alleviate his pain, he was restricted from lifting any significant weight, and repeated attempts were made to provide him with surgery at outside hospital. Iniguez v. Chief Medical Officer, San Quentin State Prison, N.D.Cal.2002, 2002 WL 31750217, Unreported. Prisons 17(2); Sentencing And Punishment 1546

XXI. TRANSFER OF PRISONERS

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2841. Transfer of prisoners generally

Prisoners generally do not have constitutionally-protected liberty interest in being held at, or remaining at, given facility. Pratt v. Rowland, C.A.9 (Cal.) 1995, 65 F.3d 802. Constitutional Law 272(2)

Transfer of prisoner to another institution did not violate his due process rights since the transfer did not impose an atypical and significant hardship in relation to the ordinary incidents of prison life. Torres Garcia v. Puerto Rico, D.Puerto Rico 2005, 402 F.Supp.2d 373. Prisons 13.5(1)

Fact that federal prisoner's claims regarding refusal of Bureau of Prisons (BOP) to exercise its discretion to transfer him to Community Correction Center (CCC) could have been brought under Administrative Procedure Act (APA) or §§ 1983 did not preclude the possibility of relief through habeas corpus. Pimentel v. Gonzales, E.D.N.Y.2005, 367 F.Supp.2d 365. Habeas Corpus 277

Prisoner had no constitutionally protected right to be confined in any particular correctional facility, and thus his request to direct correctional officials not to transfer him did not state cognizable claim in civil rights action. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Civil Rights 1095; Prisons 13.3

Prison inmates do not have constitutional right to choose a prison or to prevent prison officials from transferring them to particular prison. Knecht v. Collins, S.D.Ohio 1995, 903 F.Supp. 1193, affirmed in part, vacated in part and reversed in part 187 F.3d 636. Prisons 13.5(1)

Mere allegations of inconsistencies in transfer of prisoners within state prison system fell short of stating a constitutional claim of discrimination. Joyner v. McClellan, D.C.Md.1975, 396 F.Supp. 912. Prisons 13.5(1)

Prisoner has no federally protected rights as to the institution at which he is confined. Christian v. Anderson, E.D.Okla.1974, 381 F.Supp. 168. Prisons 13.3

Indigent federal prisoner was not entitled to appointment of counsel, in §§ 1983 action against prison officials alleging he was transferred to another prison in retaliation for exercising his rights, to review confidential prison reports submitted by prison officials to district court for in camera review in connection with prison officials' motion for summary judgment, so that counsel could use the confidential prison reports as a "fishing expedition" to find some evidence which might have allowed prisoner to resist summary judgment. Martinez v. True, C.A.10

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(Kan.) 2005, 128 Fed.Appx. 714, 2005 WL 896443, Unreported. Civil Rights 1445

2842. State-created right, transfer of prisoners

Surest source of a state-created liberty interest against prison transfer is an explicit grant of right in positive law not to be treated adversely absent certain conditions; such right may be created by statute or by prison rules and regulations. Garcia v. De Batista, C.A.1 (Puerto Rico) 1981, 642 F.2d 11. Constitutional Law 272(2)

Neither Colorado statutes nor Department of Corrections regulations created any liberty interest in prisoner's transfer; accordingly, prisoner failed to state civil rights cause of action based on transfer. Klein v. Pyle, D.Colo.1991, 767 F.Supp. 215. Constitutional Law 272(2)

Criminal conviction entitled state to confine prisoner in any of its facilities; so long as conditions of confinement do not violate constitutional norms, prisoner has no constitutionally derived liberty interest in particular assignment, but if any state statutory or regulatory enactment sufficiently restrict officials' ability to transfer inmates, liberty interest may nonetheless exist. Parker v. Lane, N.D.Ill.1988, 688 F.Supp. 353. Constitutional Law 272(2); Prisons 13.3

Prisoner had no right to be moved to another facility of South Carolina Department of Corrections in absence of state-created right to serve his sentence at facility that may be more to his liking than facility at which he was confined. Maxton v. Johnson, D.C.S.C.1980, 488 F.Supp. 1030. Prisons 13.5(1)

2843. Deliberate indifference, transfer of prisoners

Transfer of inmate to corrections facility which housed members of gang to which inmate had once belonged despite known threat to inmate's safety was not "cruel and unusual punishment," for purposes of inmate's § 1983 action, where transfer was necessary because inmate's admitted liaison with female staff member had compromised security at prison from which he was transferred; prison officials were not "deliberately indifferent" to inmate's safety. King v. Fairman, C.A.7 (Ill.) 1993, 997 F.2d 259. Sentencing And Punishment 1537

Prisoner stated §§ 1983 claim against District of Columbia, on allegations that municipality acted with deliberate indifference to safety and well-being of prisoner, through policy or custom of not reporting separation orders to ensure that its prisoners would be accepted for transfer at other correctional institutions without problems or delay, that municipality knew that prisoner faced specific danger from particular inmate, and that particular inmate incited other inmates against prisoner to injure him. Ashford v. District of Columbia, D.D.C.2004, 306 F.Supp.2d 8. Civil Rights 1395(7)

Allegations that prison officials intentionally disregarded inmate's request for transfer for protection from other prisoners did not rise to level of constitutional violation. Schaal v. Rowe, S.D.Ill.1978, 460 F.Supp. 155. Civil Rights 1395(7)

2844. Negligence, transfer of prisoners

Allegations that prison personnel broke inmate's television and lost some of inmate's items upon inmate's transfer failed to support a § 1983 claim for due process violations, given that the alleged violation amounted, at most, to mere negligence, which is not equivalent to a constitutional tort as required in a § 1983 claim. Roberts v. Champion, N.D.Okla.2003, 255 F.Supp.2d 1272, affirmed 91 Fed.Appx. 108, 2004 WL 249617. Constitutional Law 272(2); Convicts 3

Alleged negligence on part of warden of state prison in failing to transfer prisoner to another institution or to change restrictions placed on prisoner in protective confinement was not a sufficient basis for obtaining an award

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of damages in action under this section. Joyner v. McClellan, D.C.Md.1975, 396 F.Supp. 912. Civil Rights 1095

2845. Bad faith, transfer of prisoners

Transfer of inmate to another prison because of overcrowded conditions, as to which transfer there was no evidence of any motivation of malice or ill will, did not violate any constitutional rights of inmate. Mack v. Johnson, E.D.Pa.1977, 430 F.Supp. 1139, affirmed 582 F.2d 1275, affirmed 582 F.2d 1276. Prisons 13.5(1)

2846. Discrimination, transfer of prisoners

Indian-American/Mexican-American prisoner who suffered from bowel and urinary incontinence failed to establish that denial of his request for transfer to honor dorm at which he could have showered more frequently was motivated by racial discrimination, and thus denial did not violate his equal protection rights; mere fact that there were very few Mexican-American inmates in honor dorm was insufficient to establish racial discrimination. De La Paz v. Peters, N.D.Ill.1997, 959 F.Supp. 909. Constitutional Law 223; Prisons 13(6)

2847. Promises by prison officials, transfer of prisoners

Prisoner's claim that he had been promised a transfer to some other institution for undertaking to locate illegal weapons for correctional officials was frivolous and had no constitutional dimensions. Taylor v. Strickland, D.C.S.C.1976, 411 F.Supp. 1390. Prisons 13.5(1)

2848. Grounds for transfer, transfer of prisoners--Generally

It was proper for prison authorities to transfer inmate from one institution to another of the same security level in order to give prison staff a respite from the prisoner's continuous barrage of grievances where inmate's failure to adjust was detrimental to himself and posed potential threat to other inmates and staff. Ward v. Dyke, C.A.6 (Mich.) 1995, 58 F.3d 271, certiorari denied 116 S.Ct. 524, 516 U.S. 991, 133 L.Ed.2d 431. Prisons 13.5(1)

Prisoner's transfer to out-of-state correctional system was not adverse, for purposes of prisoner's First Amendment retaliation claim under §§ 1983, where transfer out of state was made at prisoner's request and with his consent. Price v. Wall, D.R.I.2006, 2006 WL 3254530. Prisons 13.5(2)

When a state prisoner is transferred for reasons entirely extrinsic to his conduct, it is not for federal courts to meddle with internal operation of prisons simply because prisoner is understandably unhappy in his new situation. Rosenberg v. Preiser, S.D.N.Y.1975, 388 F.Supp. 639. Prisons 13.5(3)

2849. ---- Disciplinary reasons, grounds for transfer, transfer of prisoners

Prison did not put forward "some evidence" in support of its disciplinary action against prisoner, alleged to have struck another prisoner, as required to defeat claim that punishment imposed was in retaliation for prisoner's having brought civil action against prison alleging overcrowding; confidential informant's statement that prisoner had been person who had assaulted fellow prisoner lacked sufficient indicia of reliability, as informant communicated only what someone else had said he saw, prison officials failed to properly investigate confidential informant's source of knowledge, victim claiming that he had been struck by prisoner never testified under oath and his statements were procured by leading questions with promised reward of transfer to more desirable facility. Goff v. Burton, C.A.8 (Iowa) 1996, 91 F.3d 1188. Prisons 13(7.1)

In any penal system embracing several institutions, transfer from one to another is often effective disciplinary

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procedure as well as administrative necessity, and is not necessarily improper. Gomes v. Travisono, C.A.1 (R.I.) 1974, 510 F.2d 537. Prisons 13.5(1)

Evidence that inmate was transferred to another correctional facility because of belief that inmate had been chief organizer of food strike precluded § 1983 civil rights claim by inmate alleging that transfer occurred solely because of inmate's race, in violation of inmate's right to equal protection. Gaston v. Coughlin, W.D.N.Y.1994, 861 F.Supp. 199, affirmed in part, vacated in part 249 F.3d 156. Civil Rights 1420

2850. ---- Retaliatory transfers, grounds for transfer, transfer of prisoners

Prisoner's transfer to another prison did not constitute disciplinary retaliation supporting §§ 1983 liability, where he disputed neither computation of his classification score nor conclusion that his score made him ineligible to remain at prison from which he was transferred. Moots v. Lombardi, C.A.8 (Mo.) 2006, 453 F.3d 1020. Civil Rights 1095

An issue of fact does not trigger the application of the retaliatory transfer standard, rather than the retaliatory discipline standard, on a claim by prison officials that they merely transferred the inmates, and did so to investigate whether they were soliciting signatures in violation of prison rules, rather than in retaliation for filing their civil rights lawsuit. Nei v. Dooley, C.A.8 (S.D.) 2004, 372 F.3d 1003. Prisons 13.5(1)

Trial court could find that prison officials' transfer of prisoner from correction facility to penitentiary, for allegedly striking fellow prisoner, was actually in retaliation for prisoner's having filed civil rights action against prison, alleging overcrowding; although prison officials had information tending to implicate prisoner in assault, they took no action until after civil complaint had been received, there was testimony from other prisoners that guard had told them that return of prisoner to penitentiary was retaliatory, and it was admitted that prisoner's detention in penitentiary for several weeks without further investigation was atypical. Goff v. Burton, C.A.8 (Iowa) 1996, 91 F.3d 1188. Prisons 13.5(3)

Inmate who brought § 1983 action alleging that prison officials had transferred him from one prison to another, and placed him in double cell, in retaliation for his exercise of his First Amendment rights in giving interview to television network, did not establish that transfer was effected for retaliatory reasons, and was not justified by neutral institutional objectives, as required to show likelihood of success on merits, and so he was not entitled to preliminary injunction; there was no evidence that officials who were involved in transfer decision were aware of interview, interview occurred after officials' meeting to transfer inmate, there was no evidence that officials at new prison who placed inmate in double cell were aware of interview, transfer was justified by neutral objective of allowing inmate to be closer to his wife and children, and placement in double cell was justified by legitimate reason that prison was operating at over 200% capacity. Pratt v. Rowland, C.A.9 (Cal.) 1995, 65 F.3d 802. Civil Rights 1457(5)

Though correspondence in dates between institution of suit and transfer of plaintiff prisoner between correctional institutions raised an inference of retaliation on part of defendant supervisory official, where case against inference was substantial in that a physician testified that person responsible for transfer was himself and that transfer was effected so as to enable plaintiff to receive treatment for drug addiction, defendant prison official could not be held liable in civil rights action on a claim of improper transfer. Layne v. Vinzant, C.A.1 (Mass.) 1981, 657 F.2d 468. Civil Rights 1095

Inasmuch as it had been alleged that the reason for transfer was prisoner's exercise of constitutional rights, prisoner's claim that he was transferred to another prison in retaliation for filing civil rights action stated cause of action. Garland v. Polley, C.A.8 (Iowa) 1979, 594 F.2d 1220. Civil Rights 1395(7)

While some transfers of prisoners conceivably might not serve as penalty for participation in protected conduct,

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test for whether transfer is sufficiently punitive would not be whether prison officials deemed it punitive, but rather it would be an inquiry into, among other things, relative conditions in institutions and harms of dislocation itself and how inmate perceived them. Buise v. Hudkins, C.A.7 (Ind.) 1978, 584 F.2d 223, certiorari denied 99 S.Ct. 1234, 440 U.S. 916, 59 L.Ed.2d 466. Prisons 13.5(1)

Prisoner's transfer to out-of-state correctional system was not in retaliation for his legal activities, as would violate prisoner's First Amendment right to petition the government, where prisoner requested and consented to transfer. Price v. Wall, D.R.I.2006, 2006 WL 3254530. Prisons 13.5(2)

Transfer of prisoner whose leg had been amputated to maximum security housing unit where his privileges were significantly curtailed, in order to place him near a handicapped accessible shower during renovation of his current housing unit, was not in retaliation for prisoner's exercise of constitutional rights, as would violate §§ 1983, though prisoner was transferred immediately after he complained to sheriff about showers; transfer was made in good faith, and prisoner was returned to his previous housing unit upon his request. Partelow v. Massachusetts, D.Mass.2006, 442 F.Supp.2d 41. Civil Rights 1095

Inmate stated a §§ 1983 claim for retaliation in violation of the First Amendment where he alleged that corrections officials intentionally transferred him to the facility where he was confined, which did not have rehabilitation programs, in an effort to frustrate his rehabilitation, in retaliation for his court action challenging their failure to provide him with court ordered rehabilitation programs; the question was not whether the defendants had a right to transfer the inmate, but whether such action was accomplished for an unlawful purpose. Price v. Wall, D.R.I.2006, 428 F.Supp.2d 52. Prisons 13.5(1)

Prison inmate stated claim that he was retaliated against for exercise of his constitutional rights, when he alleged that he was transferred to another corrections facility within hours after informing guard that he intended to file suit against facility due to failure of mailroom staff to deliver magazine to him. Reimann v. Frank, W.D.Wis.2005, 397 F.Supp.2d 1059. Prisons 13.5(1)

Existence of county custom or policy of engaging in retaliatory transfers of jail inmates, which could support civil rights claim against county, was not established absent evidence of similar activity against jail inmates other than civil rights plaintiff. Lipton v. County of Orange, NY, S.D.N.Y.2004, 315 F.Supp.2d 434. Civil Rights 1351(4)

Analytical framework applicable in determining prisoner's § 1983 claim alleging retaliatory transfer for exercise of First Amendment rights required prisoner to first demonstrate (1) that he engaged in protected First Amendment activity, (2) suffered an adverse action because of that activity, and (3) show a causal connection between the two; it prisoner came forward with such evidence, the burden would then shift to prison defendants to prove that they would have transferred prisoner anyway for legitimate reasons. Osterback v. Kemp, N.D.Fla.2003, 300 F.Supp.2d 1238, on reconsideration 300 F.Supp.2d 1263. Civil Rights 1404; Constitutional Law 82(13)

In view of prisoner's acknowledgment that his misconduct was sufficient to justify his housing re-assignment, retaliation for grievance filed against officer was not a substantial factor in sheriff's department's decision to transfer prisoner to a cell block. Miller v. Loughren, N.D.N.Y.2003, 258 F.Supp.2d 61. Prisons 13(4)

Inmate's allegation that prison officials conspired to transfer him to another facility in retaliation for filing class action lawsuit against governor and parole board did not support inmate's retaliation claim; evidence indicated that officials became aware of inmate's class action suit only after instituting disciplinary proceedings against him. Talbert v. Hinkle, E.D.Va.1997, 961 F.Supp. 904. Civil Rights 1420

Inmate's transfer to protective custody following allegations of rape by guard was not unconstitutional act of retaliation for her assertion of the claims. Carrigan v. State of Del., D.Del.1997, 957 F.Supp. 1376. Prisons

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13(5)

Inmate has viable § 1983 claim if prison authorities transfer him in retaliation for exercising constitutional rights. Maguire v. Coughlin, N.D.N.Y.1995, 901 F.Supp. 101. Civil Rights 1095

Inmate failed to establish that transfer was retaliation for his initiation of state negligence claims against prison officials, since transfer process was initiated prior to filing of any legal action by inmate. Banks v. Mannoia, N.D.N.Y.1995, 890 F.Supp. 95. Civil Rights 1095

State inmate established likelihood of success necessary for preliminary injunction on his claim that his transfer and placement in double cell were in retaliation for exercise of his First Amendment rights; transfer was ordered on Christmas Eve, two days after inmate decided to accept television interview, regular transfer procedures were not followed, Christmas Eve meeting covered inmate's case only and involved no staff preparation or recommendation, origin of transfer order was obscured, inmate was summarily placed in double cell upon transfer despite his assertion that his medical condition required that he be housed in single cell and was given work assignment that conflicted with all visitation hours, and, on two prior occasions, courts had found actual or probable retaliation against inmate by state corrections officials. Pratt v. Rowland, N.D.Cal.1994, 856 F.Supp. 565, reversed 65 F.3d 802. Civil Rights 1457(5)

2851. ---- Security reasons, grounds for transfer, transfer of prisoners

State inmate's challenge to a transfer from one security level to another or from one prison to another is cognizable under §§ 1983. Boutwell v. Keating, C.A.10 (Okla.) 2005, 399 F.3d 1203. Civil Rights 1095

Transfers between prison institutions are made for a variety of reasons and often involve no more than informed predictions as to what would best serve institutional security or safety and welfare of inmate, and were court of appeals to hold Due Process Clause, U.S.C.A.Const. Amends. 5 and 14, § 1, applicable to out-of-state transfer of Connecticut prisoners, such court would place clause astride day-to-day functioning of state prisons and involve judiciary in issues and discretionary decisions that were not business of federal judges. Cofone v. Manson, C.A.2 (Conn.) 1979, 594 F.2d 934. Prisons 13.5(2)

Even if inmate's sharing of senator's letter with other inmates led to his segregation and transfer, prison officials showed that they had legitimate penological reasons for segregation and transfer, barring inmate's retaliation claim; sharing of letter caused unrest within prison, creating potentially serious security risk. Talbert v. Hinkle, E.D.Va.1997, 961 F.Supp. 904. Civil Rights 1092

Allegations of personal involvement accompanied with other allegations that named prison officials acted with deliberate indifference to prisoner's safety, and failed to move prisoner to area of safety as ordered by judge at prisoner's preliminary hearing, were sufficient to state cause of action against named officials for violation of this section. Barr v. Hardiman, N.D.Ill.1982, 583 F.Supp. 1. Civil Rights 1395(7)

2852. Effect of transfer, transfer of prisoners--Generally

Losses such as a job, friendships, and the like resulting from transfers within state prison system are not constitutionally protected interests. Twyman v. Crisp, C.A.10 (Okla.) 1978, 584 F.2d 352. Prisons 13.5(1)

2853. ---- Access to courts, effect of transfer, transfer of prisoners

If a prisoner is transferred for exercising his own right of access to the courts, or for assisting others in exercising their right of access to the courts, he has a claim under § 1983. Higgason v. Farley, C.A.7 (Ind.) 1996, 83 F.3d 807 . Civil Rights 1094

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Corrections officials were not liable under §§ 1983 for conspiring to deprive inmate of his right of access to the courts by deciding to transfer him from one correctional facility to another, absent showing that officials made decision in an attempt to thwart inmate's ability to litigate his lawsuits. Mark v. Gustafson, W.D.Wis.2006, 2006 WL 845851. Conspiracy 7.5(1)

Even if civil rights action was appropriate means for seeking relief on claim that action pertaining to transfer of prisoners to Texas Department of Corrections pending appeal from convictions was unconstitutional because prisoner, on transfer from county jail, would be forced to perform labor tasks of regular inmates and would be deprived of time to work on appeal and of full access to legal materials, such cause of action did not raise any cognizable federal constitutional questions and thus did not state cause of action under this section. Leahy v. Estelle, N.D.Tex.1974, 371 F.Supp. 951, affirmed 503 F.2d 1401. Civil Rights 1395(7)

Administrative transfer of prisoner from one penal institution to another did not make out a deprivation of his civil rights even if communication with his counsel was hampered by the transfer. Wells v. McGinnis, S.D.N.Y.1972, 344 F.Supp. 594. Civil Rights 1095

2854. ---- Medical treatment, effect of transfer, transfer of prisoners

Even if prison physician had no objection to transfer of state prisoner to another institution in order to obtain vocational training, where prisoner's illness due to epilepsy and frequency of his seizures, notwithstanding medication, was undisputed, decision of committee of laymen, in determining to deny request for transfer, that closer supervision and more readily available medical facilities at state prison were more appropriate for prisoner was well within administrative discretion of committee and was neither arbitrary nor capricious. Mueller v. Turcott, C.A.7 (Wis.) 1974, 501 F.2d 1016. Prisons 13.5(1)

There was no violation of this section in transferring Missouri prisoner, notwithstanding that transfer would result in his being deprived of participation in sexual offender program as prisoner had no expectation under the due process clause of U.S.C.A.Const.Amend. 14 to remain in subject correction center. Burnside v. Frey, E.D.Mo.1983, 563 F.Supp. 1344. Civil Rights 1095

2855. Place of transfer, transfer of prisoners--Generally

There is no constitutional right not to be transferred from one level II institution to another when prison officials, in exercise of their discretion, determine that prisoner is an adjustment problem. Ward v. Dyke, C.A.6 (Mich.) 1995, 58 F.3d 271, certiorari denied 116 S.Ct. 524, 516 U.S. 991, 133 L.Ed.2d 431. Prisons 13.5(1)

Transfer between two correctional institutions of similar character was within administrative discretion of state correctional officials and constituted neither deprivation of civil rights nor cruel and unusual punishment. Figueroa v. Kapelman, S.D.N.Y.1981, 526 F.Supp. 681. Sentencing And Punishment 1534; Prisons 13.5(1)

A prisoner has no constitutional right to be held in a particular facility; the courts will not undertake to supervise or review an administrative decision to transfer a prisoner from one cellhouse to another. Seibert v. McCracken, E.D.Okla.1974, 387 F.Supp. 275. Prisons 13.5(3)

Transfer of prisoner between two correctional institutions of similar character and security classification is within the administrative discretion of state officials. Schumate v. People of State of N. Y., S.D.N.Y.1974, 373 F.Supp. 1166. Prisons 13.5(1)

State prisoner had no liberty interest in being placed in state prison facility, rather than a county jail, and thus, since prisoner was not deprived of constitutionally protected property or liberty interest when he was moved to county jail before being placed in another state facility, prison officials did not violate his due process rights. Hunter v.

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Ortiz, C.A.10 (Colo.) 2005, 125 Fed.Appx. 241, 2005 WL 459606, Unreported. Constitutional Law 272(2); Prisons 13.3

2856. ---- Maximum security prisons, place of transfer, transfer of prisoners

Decision of Illinois Department of Correction (IDOC) officials to hold prisoner at maximum security prison until Supreme Court issued its mandate following reversal of conviction, did not violate any of prisoner's constitutional rights, as decision was management decision within scope of officials' discretion. Crane v. Logli, C.A.7 (Ill.) 1993, 992 F.2d 136, certiorari denied 114 S.Ct. 245, 510 U.S. 889, 126 L.Ed.2d 198. Prisons 13.3

No due process clause liberty interest of Florida prisoner was infringed on transfer from minimum-medium security to maximum security without notice and hearing since West's F.S.A. § 945.09 does not condition reclassification and transfer on a specific finding of misconduct and the only thing a transfer is conditioned on is that it is subject to grievance procedure, which itself is not structured to be a condition precedent to action by prison administrators. Franklin v. Fortner, C.A.5 (Fla.) 1976, 541 F.2d 494. Constitutional Law 272(2)

Procedural protections of the due process clause did not apply to transfer of state prisoners to maximum security by Virginia State Penitentiary institutional classification committee in the wake of episodes of prison violence in which prisoners were allegedly involved. Cooper v. Riddle, C.A.4 (Va.) 1976, 540 F.2d 731. Prisons 13(7.1)

Prisoner stated due process claim against Puerto Rico Department of Corrections' officials based on his transfer from a minimum security unit to a maximum security unit in violation of prison rule creating a liberty interest in a timely post-transfer hearing; however, since officials fell under the umbrella of the Commonwealth of Puerto Rico, and prisoner failed to allege their personal involvement to such extent or sufficient to invoke liability, prisoner could seek only injunctive relief. Torres Garcia v. Puerto Rico, D. Puerto Rico 2005, 402 F.Supp.2d 373. Prisons 13.5(3)

Allegations that prison officials conspired to have inmate classified as a maximum security inmate, which resulted in his transfer to high-security facility, failed to support inmate's § 1983 conspiracy claim against prison officials for violations of due process, given that the record demonstrated that inmate's change of classification resulted from inmate's menacing statement to prison personnel, and that inmate had no constitutional right to be incarcerated in the facility of his choice. Roberts v. Champion, N.D.Okla.2003, 255 F.Supp.2d 1272, affirmed 91 Fed.Appx. 108, 2004 WL 249617. Conspiracy 7.5(2)

State inmate did not have federally protected liberty interest in being housed in particular facility, and thus inmate was not entitled to any due process protection before he was moved to high security facility and placed in administrative confinement, even if his placement violated state law. Moore v. Litscher, C.A.7 (Wis.) 2002, 52 Fed.Appx. 861, 2002 WL 31805012, Unreported, certiorari denied 123 S.Ct. 2649, 539 U.S. 963, 156 L.Ed.2d 665, rehearing denied 124 S.Ct. 43, 539 U.S. 985, 156 L.Ed.2d 701. Constitutional Law 272(2); Prisons 13(5)

2857. ---- Different wing of same institution, place of transfer, transfer of prisoners

Transfer of prisoners to a different wing of the same prison, wherein conditions of confinement were more stringent, was a serious deprivation requiring at least a minimal level of due process protection. Carlo v. Gunter, C.A.1 (Mass.) 1975, 520 F.2d 1293. Constitutional Law 272(2); Prisons 13.5(1)

No liberty interest of prisoner was infringed by his transfer to different unit within same prison facility, especially where prisoner did not even experience more burdensome conditions as a result of the transfer. Hudson v. Johnson, E.D.Mich.1985, 619 F.Supp. 1539. Prisons 13.5(1)

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Where inmates of "third wing" of prison, housing inmates who could not safely be kept in general prison population, were better off in some respects than inmates of other wings but were not as well off as inmates in general population and suffered deprivations that general population inmates did not suffer, Constitution required that status of third wing inmates be evaluated and reevaluated periodically in order to determine whether or not particular inmates could safely be returned to general population or should be transferred to other institutions. Finney v. Hutto, E.D.Ark.1976, 410 F.Supp. 251, affirmed 548 F.2d 740, certiorari granted 98 S.Ct. 295, 434 U.S. 901, 54 L.Ed.2d 187, affirmed 98 S.Ct. 2565, 437 U.S. 678, 57 L.Ed.2d 522, rehearing denied 99 S.Ct. 1035, 439 U.S. 1122, 59 L.Ed.2d 83. Prisons 12

2858. ---- Same county jails, place of transfer, transfer of prisoners

Constitution did not secure to prisoner the right to be confined in any particular jail, and decision to transfer prisoner from one county jail to another county jail was not subject to review in subsequent action under this section even though conditions surrounding confinement at second facility may have been quite different from those existing at former facility. Lyons v. Papantoniou, E.D.Tenn.1982, 558 F.Supp. 4, affirmed 705 F.2d 455. Civil Rights 1095; Prisons 13.5(1)

Process of transferring prisoner back and forth between county jails did not deny prisoner his right of freedom of association, speech and expression under U.S.C.A.Const. Amend. 1, despite allegation that people with whom prisoner wished to visit were discouraged and caused additional expense in traveling to either of the two detention facilities, where there was no allegation that prisoner was held incommunicado nor was there any allegation of conspiratorial scheme to deprive prisoner of human contact or communication. Mingo v. Patterson, D.C.Colo.1978, 455 F.Supp. 1358. Constitutional Law 90.1(1.3); Constitutional Law 91

2859. ---- State and local institutions, place of transfer, transfer of prisoners

Plaintiff, who successfully sought reversals of two separate convictions in state courts, had no right under the Constitution or laws of the United States to be held at any particular place, and the fact that he was held in the Texas Department of Corrections pending retrial, rather than in the Dallas county jail, did not in itself state any ground on which relief could be granted on his civil rights complaint. Lowery v. Estelle, C.A.5 (Tex.) 1976, 533 F.2d 265. Civil Rights 1395(7)

Allegations that inmate was confined in state correctional facility designed for housing convicted prisoners for at least ten months after his conviction was reversed, instead of being transferred back to city correctional facility where pretrial detainees were kept, stated § 1983 claim for violation of due process. Robbins v. Doe, S.D.N.Y.1998, 994 F.Supp. 214. Civil Rights 1395(7)

Even if state prisoner had liberty interest in being confined in county facility after his conviction was overturned and he was awaiting a second trial, prison superintendent could not be held liable, for period of time during which superintendent was unaware that conviction had been overturned, for violating prisoner's civil rights by failing to transfer him; superintendent at most acted with negligence and did not have requisite state of mind to violate prisoner's Fourteenth Amendment liberty interest. Getch v. Rosenbach, D.N.J.1988, 700 F.Supp. 1365. Civil Rights 1095

Delay in transferring prisoner from city jail to Virginia correctional system after his conviction did not violate this section where Va.Code 1950, § 19.2-310 stated that transfer of prisoners was within discretion of director of the Department of Corrections, taking into consideration space available in the units, transportation required, and categories within the priority system, in that Virginia did not provide inmates awaiting transfer from jail to state system with an interest that was protected by the Constitution. Miller v. Landon, W.D.Va.1982, 545 F.Supp. 81. Civil Rights 1095

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42 U.S.C.A. § 1983

2860. ---- Intrastate transfers, place of transfer, transfer of prisoners

Prisoner's right to due process may be infringed if he is arbitrarily subjected to a serious deprivation, and due process deprivation may result from interstate or intrastate transfer of prisoner, but magnitude of such deprivation in the case of intrastate transfer is generally insufficient to invoke federal due process protection. Beatham v. Manson, D.C.Conn.1973, 369 F.Supp. 783. Constitutional Law 272(2)

Transfer of state prisoner from one state prison to another does not violate any constitutional right of prisoner and does not entitle prisoner to relief under this section. U. S. ex rel. Thomas v. Bookbinder, E.D.Pa.1971, 330 F.Supp. 1125. Civil Rights 1095; Prisons 13.3

Transfer of state prisoners from one state institution to another is peculiarly within scope of the administration of the state penal system. U. S. ex rel. Verde v. Case, E.D.Pa.1971, 326 F.Supp. 701. Prisons 13.5(1)

2861. ---- Interstate transfers, place of transfer, transfer of prisoners

Transfer of prisoners from Alaska state prison to prisons in other states, though without the consent of the transferees, presented no issue related to federally protected constitutional rights of prisoners, cognizable by federal courts. Fajeriak v. McGinnis, C.A.9 (Alaska) 1974, 493 F.2d 468. Prisons 13.5(2)

Prisoner maintained no right or justifiable interest in remaining in Connecticut correctional facility, and therefore prisoner's challenge under federal civil rights statute to authenticity of state contract regarding transfer of prisoners to out-of-state prison failed to state cognizable constitutional claim, where no Connecticut statute, rule or regulation substantively limited discretion of Commissioner of Correction to transfer prisoners. Tyson v. Tilghman, D.Conn.1991, 764 F.Supp. 251. Civil Rights 1095

State prisoner had no due process right to be housed in particular facility, so he could not raise civil rights claim based on state's practice of transferring prisoners to out-of-state private prisons, especially where prisoner had not been transferred to an out-of-state or private prison. Madyun v. Litscher, C.A.7 (Wis.) 2002, 57 Fed.Appx. 259, 2002 WL 31898230, Unreported, certiorari denied 123 S.Ct. 2225, 538 U.S. 1062, 155 L.Ed.2d 1114. Constitutional Law 272(2); Prisons 13.3

2862. ---- Solitary confinement and segregation of prisoners, place of transfer, transfer of prisoners

State prisoner could not use § 1983 to contest his placement in disciplinary segregation; prison disciplinary board decision would not lead to § 1983 award of damages as it was still open to contest under federal habeas statute on theory that it reduced prisoner's good-time credit-earning class, prisoner had been barred from filing any § 1983 litigation based on his failure to pay sanctions imposed for his history of vexatious civil litigation, and prisoner had neither liberty nor property interest in remaining in prison's general population. Montgomery v. Anderson, C.A.7 (Ind.) 2001, 262 F.3d 641, rehearing denied. Civil Rights 1092

Inmate, by way of rules resulting from consent decree specifying procedure to be used by Rhode Island correctional institutions with regard to inmate disciplinary actions, had state created liberty interest under due process clause in remaining in general prison population and, thus, inmate's complaint that he was sentenced to punitive segregation for providing false information in connection with complaint he filed stated claim under § 1983. Nicholson v. Moran, C.A.1 (R.I.) 1992, 961 F.2d 996, on remand 835 F.Supp. 692. Civil Rights 1395(7); Constitutional Law 272(2)

Decision of sheriff to transfer prisoner in county jail to segregated confinement as a minor disciplinary matter was one that was better left to discretion of prison officials and was not a basis for obtaining relief under this section governing deprivation of civil rights in absence of evidence of harshness or arbitrariness. Knott v. Kerkhoff,

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W.D.Va.1976, 410 F.Supp. 1236. Civil Rights 1092

Where procedures resulting in order transferring a prisoner from minimal security of a prison farm to segregation failed to meet with due process, disciplinary decision of the board would be invalidated and prison record would be expunged of findings and conclusions by that of board. King v. Higgins, D.C.Mass.1974, 370 F.Supp. 1023, affirmed 495 F.2d 815. Constitutional Law 272(2); Prisons 13.5(3)

2863. Western Interstate Corrections Compact, transfer of prisoners

Transfer of state prisoner from Hawaii state prison to California's Folsom state prison under western interstate corrections compact, though against prisoner's will, presented no issue related to federally protected constitutional rights of prisoner cognizable by federal district court. Hillen v. Director of Dept. of Social Service and Housing, C.A.9 (Hawai'i) 1972, 455 F.2d 510, certiorari denied 93 S.Ct. 331, 409 U.S. 989, 34 L.Ed.2d 256. Prisons 13.5(2)

Nevada prisoner's § 1983 claims concerning provisions of Western Interstate Corrections Compact dealing with notice of length of his transfer to Arizona prison and provisions for his retaking by Nevada Department of Prisons were frivolous, since those matters related to arrangements between the two contracting states and did not confer any rights on prisoner. Cooper v. Sumner, D.Nev.1987, 672 F.Supp. 1361. Civil Rights 1095

Interstate compact between western states, regarding corrections questions, had not become federal law for purposes of supporting § 1983 action, by virtue of Congress having given consent to states to enter into agreements for cooperative efforts and assistance, and having recognized existence of compact in terms of later amending legislation. Griffin v. Riveland, E.D.Wash.1993, 148 F.R.D. 266. Civil Rights 1090

2864. Duration of transfer, transfer of prisoners

In civil rights action brought against county sheriff by prisoner who had formerly been incarcerated in county jail, prisoner failed to establish that he was deprived of any constitutional rights, when he was temporarily transferred to old county work farm which had been converted into detention facility, in view of fact that any loss of mail or visitation privileges allegedly suffered by prisoner while at such farm was not significant enough to raise issue of legal proportion given very temporary nature of prisoner's confinement at the farm. Cook v. Brockway, N.D.Tex.1977, 424 F.Supp. 1046, affirmed 559 F.2d 1214. Civil Rights 1095

2865. Responses to inquiries, transfer of prisoners

Inmate's constitutional rights would not have been violated by mere failure of assistant warden to respond to inmate's inquiries regarding inmate's transfer to another prison or by inmate being twice ordered by guard to return to area where assault occurred as condition precedent to the transfer. West v. Rowe, N.D.Ill.1978, 448 F.Supp. 58. Prisons 13.5(1)

2866. Approval of classification board, transfer of prisoners

State prisoner's claims that he was unjustly transferred from one state prison to another, that his transfer was accomplished without approval of central classification board, that his personal property was sent to his home and he had to purchase similar items from prison commissary and that he was defamed by correctional officer and threatened by correctional officer failed to state any claim cognizable in federal court. Ward v. Johnson, E.D.Va.1977, 437 F.Supp. 1053. Civil Rights 1395(7)

2867. Hearing, transfer of prisoners

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42 U.S.C.A. § 1983

Prison official's violation of prison rule requiring inmate be afforded posttransfer hearing within seven working days after her transfer violated inmate's due process rights. Maldonado Santiago v. Velazquez Garcia, C.A.1 (Puerto Rico) 1987, 821 F.2d 822. Constitutional Law 272(2)

A prisoner does not have a right to a hearing before being transferred and he can be transferred for no reason at all, but he may nevertheless establish a claim under this section if decision to transfer him was made by reason of his exercise of constitutionally protected freedoms under U.S.C.A.Const. Amend. 1. McDonald v. Hall, C.A.1 (Mass.) 1979, 610 F.2d 16. Civil Rights 1095; Prisons 13.5(3)

Transfers of prisoners, suspected of illicit drug traffic, to maximum security prison were disciplinary in nature and resulted in substantial deprivations thus requiring hearing under minimum standards in accord with those of Wolff. Stone v. Egeler, C.A.6 (Mich.) 1974, 506 F.2d 287. Prisons 13.5(3)

Inmate had no liberty interest in remaining at state prison under New Hampshire law, and thus, inmate had no due process right to hearing on transfer to out-of-state prison or to independent determination of confidential informant's reliability. Guglielmo v. Cunningham, D.N.H.1993, 811 F.Supp. 31. Constitutional Law 272(2); Prisons 13.5(2)

Prisoner, who was transferred from work release center to penitentiary pursuant to T.C.A. § 41-1810 which did not condition authority for such a transfer on occurrence of some misconduct or other event, had no constitutional right to a hearing and thus was not entitled to declaratory judgment and monetary damages under this section prohibiting the deprivation of constitutional rights. Delp v. Harris, E.D.Tenn.1980, 503 F.Supp. 101, affirmed 698 F.2d 1218. Prisons 13.5(3)

XXII. DISCIPLINARY PROCEEDINGS IN PRISON

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2891. Disciplinary proceedings in prison generally

Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such a prosecution does not apply; rather, there must be a mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Prisons 13(6)

When a prisoner's challenge to a disciplinary proceeding involves a sanction that affects only his conditions of confinement, and not his term of confinement, the prisoner may maintain an action under §§ 1983 without showing, as required by the favorable termination rule, that the sanction, or the procedures that led to it, had been previously invalidated. Peralta v. Vasquez, C.A.2 (N.Y.) 2006, 467 F.3d 98. Civil Rights 1092

A prisoner alleging retaliatory punishment in a § 1983 action against prison officials bears the burden of showing that the conduct at issue was constitutionally protected and that the protected conduct was a substantial or motivating factor in the prison officials' decision to discipline the prisoner; the burden then shifts to the officials to show that the prisoner would have received the same punishment even absent the retaliatory motivation. Gayle v. Gonyea, C.A.2 (N.Y.) 2002, 313 F.3d 677. Civil Rights 1404

The "favorable termination rule," under which a § 1983 plaintiff cannot seek damages for harm caused by actions the unlawfulness of which would necessarily render the fact or length of his confinement invalid, unless he can prove that the conviction, sentence, or prison disciplinary sanction that resulted from those actions has been reversed, invalidated, or called into question by a grant of federal habeas corpus relief, does not apply to prison disciplinary sanctions that affect only the conditions, and not the fact or duration, of a prisoner's confinement. Torres v. Fauver, C.A.3 (N.J.) 2002, 292 F.3d 141. Civil Rights 1092

Determination of whether prisoner's challenge to procedures used in disciplinary proceeding is properly brought under § 1983 must be made based upon whether nature of challenge to procedures is such as necessarily to imply invalidity of judgment; if challenge would necessarily imply invalidity of judgment or continuing confinement, then challenge must be brought as petition for writ of habeas corpus, not under § 1983. Butterfield v. Bail, C.A.9 (Wash.) 1997, 120 F.3d 1023. Civil Rights 1311; Habeas Corpus 513

In action by federal prison inmates complaining of procedures before institution's disciplinary committee, reviewing court would assume that disciplinary committee operates under established practices reasonably designed to promote discipline of the institution and that there was some uniformity in practices throughout the federal prison system. Rivera v. Toft, C.A.10 (Okla.) 1973, 477 F.2d 534.

State prison officials were not required to promulgate and adhere to rules and regulations regarding either trial-type procedures in prison disciplinary hearings or procedures to be used in determining whether inmate should be confined to psychiatric observation cell, but "minimally fair and rational" inquiry would require observation of such basic safeguards against arbitrariness as adequate notice, opportunity for prisoner to reply to charges lodged against him, and reasonable investigation into relevant facts at least in cases of substantial discipline. Wright v.

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McMann, C.A.2 (N.Y.) 1972, 460 F.2d 126, certiorari denied 93 S.Ct. 115, 409 U.S. 885, 34 L.Ed.2d 141. Prisons 13(7.1)

Procedure whereby penitentiary inmate, prior to imposition of confinement in segregation, is taken before disciplinary captain for hearing and determination of guilt or innocence, and if found guilty, to have captain designate punishment satisfies concept of procedural due process. Adams v. Pate, C.A.7 (Ill.) 1971, 445 F.2d 105. Constitutional Law 272(2)

Prison disciplinary hearings may constitute a denial of due process in the context of civil rights actions under §§ 1983 when they are instituted for the sole purpose of retaliating against an inmate for his exercise of a constitutional right. Nicholson v. Carroll, D.Del.2005, 390 F.Supp.2d 429. Constitutional Law 272(2)

When prisoner faces disciplinary charges, prison officials must provide prisoner (1) a written statement at least 24 hours before the disciplinary hearing which includes the charges, a description of the evidence against prisoner, and an explanation for the disciplinary action taken; (2) an opportunity to present documentary evidence and call witnesses, unless calling witnesses would interfere with institutional security; and (3) legal assistance when the charges are complex or prisoner is illiterate. Wolff v. Hood, D.Or.2002, 242 F.Supp.2d 811. Prisons 13(8); Prisons 13(9)

Prisoner's later success in administrative appeal following disciplinary hearing conviction does not bar § 1983 claim. Porter v. Novak, N.D.N.Y.1995, 898 F.Supp. 79. Civil Rights 1311

Prison's failure to follow its own rules in disciplinary proceedings violates inmate's civil rights. Duckett v. Ward, S.D.N.Y.1978, 458 F.Supp. 624. Civil Rights 1092

Although no consensus may have been reached as to what procedural safeguards must precede the imposition of prison discipline, there is no serious doubt that due process applies, and that suits alleging its denial are valid sources of judicial inquiry under this section. Crafton v. Luttrell, M.D.Tenn.1973, 378 F.Supp. 521. Constitutional Law 272(2)

Even though inmate had right under New York regulation to be present at prison disciplinary hearing, inmate's ejection during his disciplinary hearing did not constitute due process violation, as required to support § 1983 claim against state prison employees, arising from his ejection from hearing; even though due process requirement provided inmate limited right to call witnesses and present documentary evidence in his defense, it did not provide right to be physically present at testimony. Bogle v. Murphy, W.D.N.Y.2003, 2003 WL 22384792, Unreported. Constitutional Law 272(2); Prisons 13(7.1)

2892. Harm or prejudice, disciplinary proceedings in prison

State prison inmate's 90-day disciplinary confinement in special housing unit (SHU) did not impose an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life, and thus, inmate did not have a protected due process liberty interest, as to the procedures used at the prison disciplinary hearing at which the disciplinary confinement was ordered. Durran v. Selsky, W.D.N.Y.2003, 251 F.Supp.2d 1208. Constitutional Law 272(2); Prisons 13(5)

State inmate was not denied his constitutional rights with respect to his disciplinary hearing; although hearing officer may have mishandled tape, transcript showed that inmate was able to make statement and offer evidence in his defense, hearing officer repeated testimony that might have been lost, inmate agreed that hearing officer accurately summarized said testimony, inmate was given advance written notice of charges and opportunity to prepare for hearing, and he was also provided with substantial assistance. Abdul-Matiyn v. New York State Dept.

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of Correctional Services, N.D.N.Y.1994, 871 F.Supp. 1542, affirmed 66 F.3d 309. Prisons 13(8)

Deprivation of inmate's due process rights during pendency of prison disciplinary hearings could not be basis for § 1983 civil rights claim, even though determination of guilt was ultimately overturned, given that guilty verdict was based on some evidence and inmate was credited for time served on special housing unit. Gaston v. Coughlin, W.D.N.Y.1994, 861 F.Supp. 199, affirmed in part, vacated in part 249 F.3d 156. Civil Rights 1092

Despite alleged violations of prison regulations, prisoner could not recover in civil rights action for delay from discovery of offense to issuance of disciplinary "ticket," for failure to read Miranda warnings to prisoner, or for absence of 24-hour notice of hearing, where prisoner claimed no harm or prejudice from 72-hour delay, no statement was used against him, and 20-day continuance rendered absence of 24-hour notice harmless. Harris v. MacDonald, N.D.Ill.1982, 532 F.Supp. 36. Civil Rights 1092

2893. False disciplinary charges, disciplinary proceedings in prison

Prisoner's verified § 1983 complaint, stating that several prison officials were involved in charging him with false misbehavior report and punishing him with keeplock confinement in retaliation for his exercise of his constitutional right to file grievance, met requirement of summary judgment rule that affidavits be made on basis of personal knowledge, set forth facts that would be admissible in evidence, and demonstrate affiant's competency to testify to matters in affidavit. Gayle v. Gonyea, C.A.2 (N.Y.) 2002, 313 F.3d 677. Federal Civil Procedure 2538

State prisoner failed to state cognizable claim under § 1983 when he alleged that defendants violated his due process rights by considering false information in his prison file to find him ineligible for parole, notwithstanding that prisoner sought money damages rather than parole as remedy; claim necessarily implicated validity of his continuing confinement, and thus did not accrue unless and until conviction or sentence was reversed, expunged, invalidated or impugned by grant of writ of habeas corpus. Butterfield v. Bail, C.A.9 (Wash.) 1997, 120 F.3d 1023. Civil Rights 1097

There was no independent injury requirement for inmate to bring § 1983 action alleging that correctional officer violated prisoner's First Amendment right of petition by bringing false disciplinary charge against prisoner in retaliation for prisoner's use of prison grievance procedures; injury to constitutional right to seek redress of grievances inhered in retaliatory conduct itself. Dixon v. Brown, C.A.8 (Mo.) 1994, 38 F.3d 379, rehearing and suggestion for rehearing en banc denied. Civil Rights 1092

Inmate stated claim for violation of his procedural due process rights by alleging that prison officials repeatedly and systematically filed and approved false and unjustified disciplinary charges, which resulted in segregation and loss of good time. Black v. Lane, C.A.7 (Ill.) 1994, 22 F.3d 1395, rehearing and suggestion for rehearing en banc denied. Constitutional Law 272(2); Prisons 13(6)

Filing of disciplinary charge against inmate, although otherwise not actionable under § 1983, is actionable under § 1983 if done in retaliation for his having filed a grievance pursuant to established procedures; prison officials cannot properly bring a disciplinary action against an inmate for filing a grievance that is determined by those officials to be without merit any more than they can properly bring a disciplinary action against an inmate for filing a lawsuit that is judicially determined to be without merit. Sprouse v. Babcock, C.A.8 (Iowa) 1989, 870 F.2d 450. Civil Rights 1092

Allegation that state prison officials intentionally filed false disciplinary charges against inmate in retaliation for his cooperation with state administrative investigation of alleged incidents of inmate abuse stated claim under civil rights statute; although allegations did not directly implicate inmate's right of access to the courts or similar judicial forums, they implicated his constitutional right to petition government for redress of grievances. Franco v. Kelly, C.A.2 (N.Y.) 1988, 854 F.2d 584. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

Correctional officers were not liable to inmate under §§ 1983 for conspiring to bring false disciplinary charges against him and to fabricate evidence to deny him a meaningful ability to defend himself against the charges, where inmate was able to present his version of events at the disciplinary hearing. Orwat v. Maloney, D.Mass.2005, 360 F.Supp.2d 146. Conspiracy 7.5(2)

State prison officers were liable, under § 1983, for First Amendment retaliation against prisoner who had met with prison officials to discuss prison's violation of New York law limiting number of hours that inmates were required to work; although prisoner was allegedly disciplined for instigating a "work stoppage," there was no evidence that any work stoppage occurred, and prisoner was restricted from working in prison kitchen and transferred to another prison approximately one month after making his complaint. Gaston v. Coughlin, N.D.N.Y.1999, 81 F.Supp.2d 381, reconsideration denied 102 F.Supp.2d 81. Civil Rights 1092

Prisoner has no general constitutional right to be free from being falsely accused in misbehavior report, unless report is filed in response to undertaking constitutionally protected activity. Hameed v. Pundt, S.D.N.Y.1997, 964 F.Supp. 836. Constitutional Law 82(13)

If false disciplinary ticket is issued against inmate in retaliation for inmate's exercise of rights protected under First Amendment, claim under § 1983 may exist. Husbands v. McClellan, W.D.N.Y.1997, 957 F.Supp. 403, motion to amend denied 990 F.Supp. 214. Civil Rights 1092

Allegations by former jail inmate that correctional officer had made up charges which resulted in inmate being placed in disciplinary segregation were sufficient to state federal civil rights claim based on violation of inmate's liberty interest in avoiding term in segregation. Marshall v. Fairman, N.D.Ill.1997, 951 F.Supp. 128. Civil Rights 1404

Direct threats and harassment by corrections officials, cited by inmate in support of § 1983 civil rights action against those officials alleging retaliation against him for his activities as a representative on inmate grievance resolution committee, suggested a possible correlation between defendants' actions and inmate's activities as a representative, precluding summary judgment against inmate on his retaliation claim. Alnutt v. Cleary, W.D.N.Y.1996, 913 F.Supp. 160. Federal Civil Procedure 2491.5

Allegedly false charges against inmate did not give rise to per se constitutional violation actionable under § 1983, where inmate was provided a hearing and was given opportunity to rebut charges against him. Hodges v. Jones, N.D.N.Y.1995, 873 F.Supp. 737. Civil Rights 1092

Though filing of false charges against prisoner is normally not actionable under civil rights statute, prisoner stated claim by alleging that guard filed false weapon possession claim against him in retaliation for reporting incident in which fire was allegedly set by another correction officer. Payne v. Axelrod, N.D.N.Y.1995, 871 F.Supp. 1551. Civil Rights 1092

Cause of action may arise under § 1983 for administrative decisions made in retaliation for exercise of inmate's constitutional rights. Candelaria v. Coughlin, S.D.N.Y.1992, 787 F.Supp. 368, affirmed 979 F.2d 845. Civil Rights 1090

Inmate stated claim against corrections officer under § 1983 for falsely accusing inmate of misconduct, where defendant was not afforded due process at disciplinary hearing. Vines v. Howard, E.D.Pa.1987, 658 F.Supp. 34. Civil Rights 1395(7)

Allegedly false disciplinary ticket by which prison guard charged prisoner with a rule violation, ending in a hearing before adjustment committee which resulted in sanctions, was insufficient to form a basis for a civil rights claim when prisoner was otherwise shown to have received due process protections mandated in such matters. Galimore

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v. Lane, N.D.Ill.1986, 635 F.Supp. 1367. Civil Rights 1092

2894. Overturned judgment requirement, disciplinary proceedings in prison

The favorable termination rule, under which a § 1983 plaintiff cannot seek damages for harm caused by actions the unlawfulness of which would necessarily render the fact or length of his confinement invalid, unless he can prove that the conviction, sentence, or prison disciplinary sanction that resulted from those actions has been reversed, invalidated, or called into question by a grant of federal habeas corpus relief, did not bar § 1983 claim of former prisoner, who was no longer in custody, challenging the procedures by which he was sentenced to disciplinary detention and administrative segregation; the sanctions imposed implicated only the conditions, and not the fact or duration, of his confinement. Torres v. Fauver, C.A.3 (N.J.) 2002, 292 F.3d 141. Civil Rights 1092

Former inmate who challenged conditions of confinement to which he allegedly was subjected without procedural due process in prison disciplinary proceedings, but did not challenge disciplinary proceedings on basis that they affected overall length of his confinement, was not required to show that disciplinary rulings were invalidated through administrative or judicial review to seek relief under § 1983. Sims v. Artuz, C.A.2 (N.Y.) 2000, 230 F.3d 14, on remand 2003 WL 1746263. Civil Rights 1311

Inmate's claim that he was unlawfully seized was not barred by rule of *Heck v. Humphrey*, since proof that inmate's initial seizure and detention by officers was without probable cause would not necessarily imply the invalidity of his drug-possession conviction. Moore v. Sims, C.A.8 (Neb.) 2000, 200 F.3d 1170. Civil Rights 1088(4)

"Conviction" in prison disciplinary proceedings, for purposes of *Heck v. Humphrey* principle that prisoner cannot bring § 1983 action seeking damages based on "conviction" in prison disciplinary proceeding in certain circumstances, includes a ruling in a prison disciplinary proceeding that results in a change to the prisoner's sentence, including the loss of good-time credits. Clarke v. Stalder, C.A.5 (La.) 1998, 154 F.3d 186, certiorari denied 119 S.Ct. 1052, 525 U.S. 1151, 143 L.Ed.2d 58. Civil Rights 1092

Prison inmate could not maintain § 1983 claim alleging that one-year term of disciplinary segregation violated due process because chairman of conduct adjustment board (CAB) failed to provide adequate written record of evidence relied upon to support finding that inmate had threatened third party; even if such claim was independently cognizable, inmate's primary claim, that finding of guilt was not supported by reliable evidence, was barred by *Heck v. Humphrey*, because disciplinary judgment had not been overturned, and inmate failed to assert claim alleging absence of written record separately from primary claim. Stone-Bey v. Barnes, C.A.7 (Ind.) 1997, 120 F.3d 718. Civil Rights 1092

Prisoner's civil rights action under § 1983 against superintendent of state prison, alleging she was wrongfully placed in "keeplock" confinement as result of defective disciplinary hearing, was precluded on ground that "keeplock" sentence had not been overturned. Eason v. New York, S.D.N.Y.2003, 2003 WL 22232945, Unreported. Civil Rights 1092

2895. Amendment of procedure, disciplinary proceedings in prison

No cause of action under this section was averred by state penitentiary inmates' complaint which challenged the manner in which the penitentiary's "Adult Rules, Regulations and Disciplinary Procedures" were amended, alleging that the Louisiana Administrative Procedures Act, LSA-R.S. 49:951-49:968, had not been followed. Martin v. Blackburn, C.A.5 (La.) 1978, 581 F.2d 94. Civil Rights 1395(6)

2896. Notice, disciplinary proceedings in prison

State inmate's claims against corrections officer for constitutional violations and mental and emotional pain and

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suffering from deprivation of constitutional rights based on alleged failure to serve inmate with proper notice of disciplinary hearing were complete as soon as inmate discovered that he had been deprived of notice and did not depend upon anything that happened at hearing that notice was for; thus, deciding those claims did not require federal court to decide whether disciplinary process against inmate reached correct result and did not implicate habeas corpus claims which would have required inmate to first exhaust state remedies before bringing action. Clayton-El v. Fisher, C.A.7 (Ill.) 1996, 96 F.3d 236. Civil Rights 1319

Prison authorities' failure to provide inmate subject to discipline with written statement giving facts relied on and reasons for conclusions reached might subject them to liability in damages for bad faith where due process rights violated by prison authorities were clearly established at time of inmate's disciplinary hearing, authorities knew or should have known of that right by the time of inmate's hearing, and authorities must have known that their meager statement of facts relied on and reasons for conclusions reached did not satisfy due process norm; however, authorities' failure to inform inmate of substance of investigatory report containing exculpatory evidence would not necessarily subject authorities to damages for bad faith, since due process right to exculpatory evidence in prison disciplinary proceeding was not clearly established at time of inmate's hearing. Chavis v. Rowe, C.A.7 (Ill.) 1981, 643 F.2d 1281, certiorari denied 102 S.Ct. 415, 454 U.S. 907, 70 L.Ed.2d 225. Civil Rights 1092

District court's finding that the potential impact of bad-conduct report on plaintiff inmate, who alleged that defendant correctional official denied him due process by not giving him advance written notice of the charge brought against him in prison disciplinary proceeding, was not purely "speculative" was supported by the overwhelming weight of the evidence; moreover, even assuming arguendo that the finding was unjustified, defendants' "grievous loss" analysis completely missed the mark by focusing solely on the impact of the discipline that plaintiff actually received after the hearing rather than on the potential loss that he could have received. Ware v. Heyne, C.A.7 (Ind.) 1978, 575 F.2d 593. Prisons 13(8)

Any procedural defect in failing to deliver to inmate notice of misbehavior report was cured where inmate received notice at initial hearing, after which it was adjourned for one week. Payne v. Axelrod, N.D.N.Y.1995, 871 F.Supp. 1551. Prisons 13(8)

It would be preferable for inmate guide, which was prisoner manual that contained description of disciplinary procedures followed in South Carolina Department of Corrections, to be amended to expressly authorize preventive detention when it was necessary to utilize that tactic to control unruly inmate, as specific standards were preferable to necessity for prison officials to handle each case on ad hoc basis. Maxton v. Johnson, D.C.S.C.1980, 488 F.Supp. 1030. Prisons 13(5)

Prisoner's allegation that prison officials subjected him to corrective custody for rule infractions which he did not commit was not of such character as to shock general conscience or to be intolerable to fundamental fairness, in view of deference policy of federal courts to administrative officials in management of penal institutions and in view of fact that prisoner was given notice of charges against him and was given opportunity to be heard in front of conduct adjustment board. Mingo v. Patterson, D.C.Colo.1978, 455 F.Supp. 1358. Prisons 13(4)

Prison inmate could not bring § 1983 action against warden and disciplinary hearing officer, in which he alleged that warden and officer had failed to give him adequate notice of the disciplinary proceedings against him, in violation of his due process rights, where challenged disciplinary ruling had not been invalidated through a state or federal habeas corpus proceeding; even though inmate sought award of damages, rather than earlier release, a judgment in his favor would necessarily imply the invalidity of disciplinary result which had lengthened his sentence. Early v. Blankenship, C.A.8 (Ark.) 2000, 221 F.3d 1342, Unreported. Civil Rights 1092

2897. Necessity of hearing, disciplinary proceedings in prison

In the future, state penal authorities would be obliged to conduct a fair disciplinary hearing prior to meting out

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punishment for violation of prison rules of restriction of visiting time, loss of good time and denial of school attendance rights. Johnson v. Wolff, C.A.8 (Neb.) 1974, 501 F.2d 407. Prisons 13(8)

Inmate who brought § 1983 civil rights action against corrections officials based on disciplinary hearing at which he was found guilty of drug use was not entitled to relief to the extent that claim was based on allegedly false information on testing procedures in the misbehavior report charging him with drug use; defendant was afforded a proper due process hearing on the underlying drug charge. Alnutt v. Cleary, W.D.N.Y.1996, 913 F.Supp. 160. Civil Rights 1092

While it is to be hoped that prison follows administrative guidelines, evidently intended to maintain order and discipline, violation of guideline providing that prehearing detention is authorized only when accused inmate's behavior is considered to be dangerous to persons or property, if shown, would not state claim under this section, in that there was no liberty interest associated with administrative policy guidelines. Sellers v. Roper, E.D.Va.1982, 554 F.Supp. 202. Civil Rights 1092

Complaint which alleged that prisoner was subjected to punishment without being given due process hearing and that, on at least one occasion, disciplinary captain, who was alleged to have participated in beatings of prisoner, made the initial report against the prisoner, sat in judgment upon him, and then determined his punishment stated a cause of action for denial of due process in violation of civil rights. Butler v. Bensinger, N.D.Ill.1974, 377 F.Supp. 870. Civil Rights 1395(7)

Provided he accompany his complaint with accusation that he is being punished in retaliation for exercise of constitutional right, prisoner may compel an evidentiary hearing in federal court when any disciplinary action is taken against him. Sellars v. Beto, S.D.Tex.1972, 345 F.Supp. 499. Prisons 13(3)

2898. Time of hearing, disciplinary proceedings in prison

Inmate's civil rights were not violated by his detention prior to hearing to determine accuracy of charge that he disobeyed direct order to leave visiting room in timely manner. Harris v. Murray, E.D.Va.1990, 761 F.Supp. 409. Civil Rights 1092

Prison warden's interpretation of policy statement as allowing investigations by Federal Bureau of Investigation or existence of emergencies to excuse hearings before prison disciplinary committee within three days of placement of inmate in temporary disciplinary segregation was unreasonable and was inconsistent with plain meaning of regulations, and thus Bureau investigations and alleged emergency conditions did not excuse warden's failure to comply with requirement of timely hearings. Jordan v. Arnold, M.D.Pa.1979, 472 F.Supp. 265, appeal dismissed 631 F.2d 725. Prisons 13(8)

Although administrative regulations of Illinois Department of Corrections provided for a hearing within 72 hours after a disciplinary ticket had been written, constitutional requirements of procedural due process did not impose such a 72-hour rule, and state penitentiary inmates' averment that Director of Department of Corrections had violated such administrative regulations failed to state cause of action under this section. Carlisle v. Bensinger, N.D.Ill.1973, 355 F.Supp. 1359. Civil Rights 1395(7); Constitutional Law 272(2)

2899. Committees authorized to discipline, disciplinary proceedings in prison

Since purpose of West Virginia statute providing for a disciplinary committee composed of warden, prison physician and chaplain to hear appeals from prisoners removed from overtime job assignments because of misconduct and to recommend what portion of accrued commutation of time should be forfeited for misconduct was not to supplant other legitimately constituted fact finding bodies, state prisoner's civil rights were not infringed by fact that existing disciplinary committee at Huttonsville, rather than the new committee, passed on his guilt or

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innocence on charges of violating institutional rules. Tawney v. McCoy, N.D.W.Va.1978, 462 F.Supp. 752. Civil Rights 1092

That state inmate, who had been charged with disruptive behavior in correctional unit, was tried before adjustment committee of another unit to which he had been transferred was proper. Cradle v. Superintendent, Correctional Field Unit No. 7, W.D.Va.1974, 370 F.Supp. 79. Prisons 13.5(3)

2900. Composition of disciplinary committee, disciplinary proceedings in prison

Even if inmate at state correctional institution had a liberty interest in state Department of Correction's policy requiring disciplinary committee members to have been employed for at least six months in department dealing firsthand with inmates, Department's lack of intent to deprive inmate of any interest defeated inmate's § 1983 claim for damages sustained in serving 82 days in punitive isolation based on disciplinaries which were subsequently reversed as result of ineligibility of a disciplinary committee member under the "six-month" requirement. Glick v. Walker, C.A.8 (Ark.) 1987, 834 F.2d 709. Civil Rights 1092

Prison official who assigned a subordinate to preside over prison inmate's second Tier III hearing on charges of assaulting a fellow inmate, after assigned official had reviewed inmate's misbehavior report prior to first hearing, was not liable to inmate for having made that assignment; there was no evidence that superior official had made assignment intentionally or through gross negligence, and mere negligence would not constitute a constitutional injury. Russell v. Coughlin, S.D.N.Y.1991, 774 F.Supp. 189, on reargument 782 F.Supp. 876, reversed in part on other grounds 15 F.3d 219, modified on denial of rehearing, affirmed in part 35 F.3d 55. Civil Rights 1092

In prison disciplinary proceeding it is unfair for a superior to prosecute case before his immediate inferiors or to permit inferiors to sit in judgment over a charge brought by their superior, and when the warden has been intimately involved in the investigatory and accusatory stages of a prison disciplinary action, it may be necessary to purge the hearing panel of his inferiors, but where warden neither brought nor prosecuted disciplinary action, both his inferiors who served on disciplinary board testified that the warden's appearance and testimony before the panel did not affect their decision and the prison trustee, sitting as third member of the board, was independent of the warden, disciplinary hearing was free of command influence. Collins v. Vitek, D.C.N.H.1974, 375 F.Supp. 856.

2901. Bias of decisionmaker, disciplinary proceedings in prison

Standing alone, alleged fact that inmate told prison hearing examiner of inmate's pending civil action against examiner would not demonstrate that examiner's decision at disciplinary hearing was motivated by such suit. Carter v. Kane, E.D.Pa.1996, 938 F.Supp. 282. Civil Rights 1092

2902. Assistance of counsel, disciplinary proceedings in prison

Prisoner had no right to counsel at his disciplinary hearing. McDonald v. Hall, C.A.1 (Mass.) 1979, 610 F.2d 16. Prisons 13(9)

Hearing examiner's denial of counsel at state inmate's misconduct hearings did not violate inmate's due process rights, for purposes of his § 1983 claim; although inmate requested generally that he be provided with a lawyer or an "inmate and/or staff" in his misconduct hearings, he did not specify any particular individual from whom he sought assistance, and he never alleged that he was illiterate or baffled by the issues the misconducts involved. Whittington v. Vaughn, E.D.Pa.2003, 289 F.Supp.2d 621. Constitutional Law 272(2); Prisons 13(9)

Inmate was not entitled to assistance in prison disciplinary hearing, where issues were not unduly complex, inmate was not illiterate, and inmate was not housed in Special Housing Unit (SHU) or otherwise incapable of preparing for or participating in hearing. Payne v. Axelrod, N.D.N.Y.1995, 871 F.Supp. 1551. Prisons 13(9)

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42 U.S.C.A. § 1983

In order for inmate claiming that failure of chairman of prison adjustment committee to grant continuance of disciplinary proceedings to permit inmate to obtain an attorney was violation of prison guidelines and established cause of action under this section, he would have to show that if he had not relied on regulations permitting him to have his attorney present, he would have prevailed. Kelly v. Cooper, E.D.Va.1980, 502 F.Supp. 1371. Civil Rights 1404

At the present stage of development of prison disciplinary proceedings, inmates did not have a constitutional right to either retained or appointed counsel or counsel-substitute at disciplinary hearings, but where an illiterate inmate is involved or where the complexity of the issues makes it unlikely that the inmate will be able to collect and present evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate or, if that is forbidden, to have adequate substitute aid in the form of help from the staff or from sufficiently competent inmate designated by the staff. Sykes v. Kreiger, N.D.Ohio 1975, 451 F.Supp. 421. Prisons 13(9)

Inmate was not entitled to counsel in disciplinary hearing which resulted in confinement to quarters for 20 days. Russell v. Division of Corrections Com. of Virginia, W.D.Va.1975, 392 F.Supp. 476, affirmed 530 F.2d 969. Prisons 13(9)

2903. Assistance to inmates, disciplinary proceedings in prison

Inmate was not provided with assistance to which he was entitled in connection with disciplinary hearing, and thus hearing officer could be held liable for denying assistant to inmate, where sergeant, who was not designated by inmate on assistance sheet, was assigned and visited inmate in his cell, wrote on assistant sheet that inmate would prefer to see one of the assistants he had chosen, and did nothing more though inmate was unaware that assistants he had selected were unavailable, and where inmate specifically requested assistant from hearing officer at three of the hearing days and tried to do so at other hearings as well, and was never offered an assistant or even offered the aid of the same sergeant again. Lee v. Coughlin, S.D.N.Y.1995, 902 F.Supp. 424, reconsideration granted 914 F.Supp. 1004, on reconsideration 26 F.Supp.2d 615. Prisons 10; Prisons 13(9)

2904. Interpreters, disciplinary proceedings in prison

Revocation of prison inmate's good time credits following disciplinary hearings in which inmate, who was a Spanish-speaking native of Cuba, was not always provided with an interpreter, did not violate inmate's due process rights, even assuming that he had a protected liberty interest in credits, where inmate received assistance of an interpreter every time he requested it, and administrative law judge (ALJ) who presided over numerous hearings, both with and without interpreters, testified that he believed inmate's English skills were sufficient to understand and respond to proceedings. Gonzales-Perez v. Harper, C.A.8 (Iowa) 2001, 241 F.3d 633. Constitutional Law 272(2); Prisons 15(7)

Hearing impaired inmate could not recover on § 1983 claim for violation of equal protection rights concerning prison's failure to provide sign language interpreter, absent allegation that he was treated differently from similarly situated inmates; inmate's claim instead asserted that he was not similarly situated to hearing inmates for purposes of participation in disciplinary hearings, medical care, and educational programs. Randolph v. Rodgers, E.D.Mo.1997, 980 F.Supp. 1051, reversed in part, vacated in part 170 F.3d 850. Civil Rights 1098

2905. Participation by inmate, disciplinary proceedings in prison

The 1968 disciplinary procedure wherein disciplinary ticket was read to state prison inmate, who hit prisoner with shovel, inmate was asked for reasonable explanation for his conduct, ticket was reviewed by senior captain who recommended that inmate be demoted to "C" grade, merit staff made report which contained statements describing inmate's background, his past disciplinary record, shovel incident and recommended that he be demoted and wherein warden approved report did not deny due process, though inmate did not participate in consideration of

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matter by captain, merit staff or warden. Haines v. Kerner, C.A.7 (Ill.) 1974, 492 F.2d 937. Constitutional Law 272(2); Prisons 13(6)

2906. Inspection or production of documents, disciplinary proceedings in prison

Inmate who was disciplined for writing letter to another inmate was not denied due process by failure of disciplinary committee chairperson to give him an opportunity to see the letter he was accused of writing, absent assertion that presentation of letter would have resulted in different outcome at disciplinary hearing, and inmate failed to present any evidence that acting prison superintendent and assistant superintendent should have been aware of any alleged due process violations, absent indication that he made them aware of his due process claims. Griffin-Bey v. Bowersox, C.A.8 (Mo.) 1992, 978 F.2d 455. Constitutional Law 272(2); Prisons 13(7.1)

2907. Calling or production of witnesses, disciplinary proceedings in prison

Hearing officer in prison disciplinary proceeding did not violate any clearly established constitutional or statutory right of inmate in failing to call inmate's suggested witnesses, and officer was entitled to qualified immunity in inmate's subsequent civil rights action; officer provided inmate with explanation for his action, to which inmate did not respond, and colloquy at hearing indicated that officer reasonably regarded proffered testimony of two witnesses as duplicative or nonprobative. Russell v. Selsky, C.A.2 (N.Y.) 1994, 35 F.3d 55. Civil Rights 1376(7)

Constitutional violation occurred when penalty was imposed on prisoner without allowing him to call witnesses, in violation of state law and due process requirements, and, thus, any administrative appeal, whether successful or not, could not cut off prisoner's cause of action under § 1983. Walker v. Bates, C.A.2 (N.Y.) 1994, 23 F.3d 652, certiorari denied 115 S.Ct. 2608, 515 U.S. 1157, 132 L.Ed.2d 852. Civil Rights 1319

In hearing involving prisoner's refusing to work, an institutional offense, adjustment committee's decision to allow physician examining prisoner, who claimed that he had liver condition which prevented him from working, to testify regarding prisoner without benefit of test results was not an abuse of discretion. Zaczek v. Hutto, C.A.4 (Va.) 1981, 642 F.2d 74. Prisons 13(8)

Right of inmate to call witnesses in a prison disciplinary proceeding is "limited." Hayes v. Walker, C.A.7 (Ill.) 1977, 555 F.2d 625, certiorari denied 98 S.Ct. 491, 434 U.S. 959, 54 L.Ed.2d 320. Prisons 13(9)

In prison disciplinary proceedings, prison officials must have discretion to refuse to call witnesses if to do so might create risk of reprisal or undermine authority. Palmigiano v. Baxter, C.A.1 (R.I.) 1974, 510 F.2d 534, certiorari granted 95 S.Ct. 2414, 421 U.S. 1010, 44 L.Ed.2d 678, reversed on other grounds 96 S.Ct. 1551, 425 U.S. 308, 47 L.Ed.2d 810, on remand 536 F.2d 305. Prisons 13(9)

Inmate's disciplinary proceedings satisfied due process requirements, where inmate received a copy of the offense report prior to his misconduct hearing, inmate received statements of evidence relied upon in addition to the rationale for the punishment imposed, and inmate was allowed to submit testimony from witnesses in the form of written witness statements. Roberts v. Champion, N.D.Okla.2003, 255 F.Supp.2d 1272, affirmed 91 Fed.Appx. 108, 2004 WL 249617. Constitutional Law 272(2); Prisons 13(8); Prisons 13(9)

Prison officials were not required to take affirmative steps to interview all possible witnesses to incident involving inmate in order to assist inmate's defense, and thus officials were not subject to liability under § 1983 for failing to interview other inmates quickly enough after incident so that they could have been called at inmate's disciplinary hearing, where inmate did not claim that he was prevented from calling witnesses, nor that any specific witnesses would have testified for inmate but were not located in time. Delgado v. New York City Dept. of Correction, S.D.N.Y.1993, 842 F.Supp. 711. Civil Rights 1092; Prisons 13(9)

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42 U.S.C.A. § 1983

Prisoner stated § 1983 claim against members of prison disciplinary board and deputy assistant director of the Department of Corrections, where prisoner was denied request to call as witnesses at his disciplinary hearing correctional officers who searched his cell and allegedly found homemade knife, and no reason for "unavailability" of witnesses was proffered at time of hearing; however, complaint failed to state claim against any prison officials who could not have participated in decision to deny request to examine witness or did not have authority to vacate guilty decision of disciplinary board. Morgan v. Ellerthorpe, D.R.I.1992, 785 F.Supp. 295. Civil Rights 1395(7)

Prison official was not liable under § 1983 on inmate's claim that officer failed to call two corrections officers as witnesses requested by inmate at inmate's first Tier III hearing on charges of assaulting fellow inmate; official explained that inmate had stated on record that one officer's testimony would merely be cumulative and that other officer's testimony had no probative value. Russell v. Coughlin, S.D.N.Y.1991, 782 F.Supp. 876, reversed in part on other grounds 15 F.3d 219, modified on denial of rehearing, affirmed in part 35 F.3d 55. Civil Rights 1092

Failure to strictly comply with institutional rule that inmate had right to present voluntary testimony of witnesses at disciplinary hearing could not be translated into a constitutional deprivation as there is no constitutional right to have witnesses present at an institutional hearing. Pollard v. Baskerville, E.D.Va.1979, 481 F.Supp. 1157, affirmed 620 F.2d 294. Civil Rights 1092

2908. Confrontation or examination of witnesses, disciplinary proceedings in prison

Constitution at the present time does not impose requirement of confrontation and cross-examination in prison disciplinary proceedings. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Criminal Law 662.3; Prisons 13(7.1)

Allegation that defendant prison officials deprived plaintiff inmate of his right of confrontation during an administrative hearing at state correctional facility for alleged rule violations because it was practicable for plaintiff to confront and cross-examine his accusing witness was sufficient to state a cause of action under this section notwithstanding alleged inconvenience of defendant prison officials when accusing witness was off duty. Adargo v. Barr, D.C.Colo.1980, 482 F.Supp. 283. Civil Rights 1395(7)

State prisoner stated a claim, in §§ 1983 action, that prison officials violated his procedural due process rights in prison disciplinary proceedings; prisoner alleged he was evicted from and denied assistance during first disciplinary hearing, that he was denied opportunity to call "expert witness" in second disciplinary hearing, and that he was denied opportunity to call two witnesses, and to be present, at third disciplinary hearing. Chavis v. Zodlow, C.A.2 (N.Y.) 2005, 128 Fed.Appx. 800, 2005 WL 834646, Unreported. Constitutional Law 272(2); Prisons 13(7.1); Prisons 13(9)

2909. Informants, disciplinary proceedings in prison

Some determination of reliability of confidential informants must be made for due process to be afforded to inmates in disciplinary proceedings involving confidential informants. Freitas v. Auger, C.A.8 (Iowa) 1988, 837 F.2d 806. Constitutional Law 272(2)

Prison official who was sole witness at disciplinary proceeding against prisoner could not be held liable under § 1983 for hearing officer's alleged violation of prisoner's due process rights by failing to independently access credibility and reliability of confidential informant; although official provided testimony regarding reliability of informant who had implicated prisoner, hearing officer testified that she did not accept official's testimony without question and that she weighed official's testimony against prisoner's testimony. Cook v. Lehman, E.D.Pa.1994, 863 F.Supp. 207. Civil Rights 1420

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42 U.S.C.A. § 1983

2910. Reports of misbehavior, disciplinary proceedings in prison

Prisoner suffered punishment as result of corrections officer's alleged retaliatory motive in issuing misbehavior report against prisoner, after prisoner filed grievance against officer alleging sexual assault, for purpose of prisoner's civil rights claim under First and Fourteenth Amendments, where prisoner was placed in less desirable housing because of officer's filing of misbehavior report. Rodriguez v. McClenning, S.D.N.Y.2005, 399 F.Supp.2d 228. Prisons 4(5)

Inmate's claim that prison officials falsely caused him to be convicted of misconduct offense, in retaliation for his exercise of First Amendment rights, was defeated by inmate's agreement with prison guard's misconduct report regarding incident; inmate's statement of facts reported dialogue in which he mocked guard's name several times, as alleged in misconduct report. Walker v. Roth, E.D.Mich.1997, 967 F.Supp. 250. Constitutional Law 82(13); Prisons 4(5)

Prisoner's complaint, alleging that several false inmate misbehavior reports (IMR) were filed in retaliation for prisoner having filed grievances, failed to state civil rights retaliation claim, where prisoner filed three grievances involving three different prison officials, none of those officials filed another IMR after prisoner's grievances had been filed, and there was no evidence that prison officials even knew about prisoner's grievances. Harris v. Keane, S.D.N.Y.1997, 962 F.Supp. 397. Civil Rights 1092

Inmate failed to assert specific allegations against correction officers apart from claims that they caused inmate to be confined to prison by filing misbehavior report against him, which in itself would not support finding of due process violation actionable under § 1983. Greaves v. State of N.Y., S.D.N.Y.1997, 958 F.Supp. 142. Civil Rights 1395(7)

For purposes of inmate's § 1983 civil rights action against state correctional officers based on disciplinary hearing at which he was found guilty of drug use, there was no basis for liability against hearing officer concerning the sufficiency of the evidence; hearing officer was presented with ample evidence to support the guilty determination, including a misbehavior report, urine test results, and testimony by person who had performed the testing that proper procedures were followed, and the fact that that individual's testimony became suspect years later did not change result concerning the due process afforded inmate at time of hearing. Alnutt v. Cleary, W.D.N.Y.1996, 913 F.Supp. 160. Civil Rights 1092

Preparation of prison misbehavior report which is subsequently relied upon in an allegedly defective hearing does not constitute a violation of the constitutional rights of the inmate. Cepeda v. Coughlin, S.D.N.Y.1992, 785 F.Supp. 385. Civil Rights 1092

2911. Record of proceeding, disciplinary proceedings in prison

Written record of disciplinary proceedings wherein prisoner is stripped of liberty interest protected by due process clause cannot satisfy due process requirements unless it is certain that inmate has complete and full access to it and such access is assured only if record is in fact furnished to him. Bills v. Henderson, E.D.Tenn.1978, 446 F.Supp. 967, affirmed in part, reversed in part on other grounds 631 F.2d 1287. Constitutional Law 272(2)

Jail officials were required to keep written record on individual basis showing time and place of infraction of jail rules and disciplinary measure imposed. Jones v. Wittenberg, N.D.Ohio 1971, 330 F.Supp. 707, 29 Ohio Misc. 35, 58 O.O.2d 47, affirmed 456 F.2d 854, 62 O.O.2d 232. Prisons 13(6)

2912. Statement of reasons, disciplinary proceedings in prison

In order to insure adequate review of prison hearing committee's decision and to protect prisoner from undue

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collateral consequences of committee's decision, written statement as to evidence relied on and reasons for disciplinary action must be complete unless exigent circumstances require special exclusions. Rhodes v. Robinson, C.A.3 (Pa.) 1979, 612 F.2d 766. Prisons 13(7.1)

Institutional adjustment committee, in respect to prison disciplinary proceeding, failed to give an adequate statement as to evidence relied on or reasons for the action taken against plaintiff inmate; rather than pointing out the essential facts upon which inferences were based, the committee merely incorporated the violation report and the special investigator's report. Hayes v. Walker, C.A.7 (Ill.) 1977, 555 F.2d 625, certiorari denied 98 S.Ct. 491, 434 U.S. 959, 54 L.Ed.2d 320. Prisons 13(7.1)

2913. Appeal, disciplinary proceedings in prison

State prison official could not be liable, under § 1983, for allegedly violating inmate's due process rights by denying inmate's appeal of disciplinary sanction, where the inmate's due process claim against the prison official who initially imposed the 90-day disciplinary confinement was itself groundless. Durran v. Selsky, W.D.N.Y.2003, 251 F.Supp.2d 1208. Constitutional Law 272(2); Prisons 13(10)

Claim that it took superintendent approximately 13 days to respond to inmate's appeal from adjustment committee decision did not state a claim upon which relief could be granted under this section since although department of corrections guideline required a more speedy response, such provision did not so closely relate to or protect a constitutional right that violation of the guideline entitled inmate to proceed under this section. Pollard v. Baskerville, E.D.Va.1979, 481 F.Supp. 1157, affirmed 620 F.2d 294. Civil Rights 1395(7)

2914. Retaliation, disciplinary proceedings in prison

Prisoner's conduct violation for fighting did not constitute retaliatory discipline supporting §§ 1983 liability, even though prisoner asserted that prison official asked him to dismiss his complaint near time of violation, where prisoner was bruised around his eye, and fact that conduct violation was later expunged did not mean that there was not some evidence for its imposition. Moots v. Lombardi, C.A.8 (Mo.) 2006, 453 F.3d 1020. Civil Rights 1092

Genuine issues of material fact existed as to whether inmate would have suffered the same punishment as result of disciplinary action, regardless of corrections officer's alleged retaliatory motive, precluding summary judgment for officer in inmate's § 1983 action alleging that officer took retaliatory action, in violation of the First Amendment, against inmate for filing complaint against officer. Scott v. Coughlin, C.A.2 (N.Y.) 2003, 344 F.3d 282. Federal Civil Procedure 2491.5

Prison officials failed, in prisoner's § 1983 action alleging unlawful retaliation, to meet their burden of showing that they would have punished prisoner to same extent regardless of alleged retaliation, where officials argued that misbehavior report would have been filed in any case based on prisoner's threat of inmate unrest and admission to encouraging other inmates to file grievances, but prisoner denied making such inflammatory statements. Gayle v. Gonyea, C.A.2 (N.Y.) 2002, 313 F.3d 677. Civil Rights 1092

Prison officials failed, in prisoner's § 1983 action alleging unlawful retaliation, to meet their burden of showing that they would have punished prisoner to same extent regardless of alleged retaliation, where officials argued that misbehavior report would have been filed in any case based on prisoner's threat of inmate unrest and admission to encouraging other inmates to file grievances, but prisoner denied making such inflammatory statements. Gayle v. Gonyea, C.A.2 (N.Y.) 2002, 313 F.3d 677. Civil Rights 1092

Corrections officer's issuance of major misconduct ticket to inmate was not "shocking to the conscience," thus precluding inmate's recovery under § 1983, despite inmate's claim that ticket was issued in retaliation for grievance

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that inmate filed against officer, in which inmate alleged that officer violated inmate's First Amendment rights by destroying his legal materials and depriving him of his religious materials; inmate failed to show that his filing of grievance was substantial or motivating factor behind officer's issuance of misconduct ticket, in light of inmate's threats to kill officer. McLaurin v. Cole, C.A.6 (Mich.) 1997, 115 F.3d 408, vacated 202 F.3d 269. Civil Rights 1092

State prison officials did not retaliate against prisoner who intended to file lawsuit against prison officials regarding unauthorized opening of his legal mail; sanctions imposed were warranted after prisoner violated prison rules, and there was no evidence that officer who reassigned prisoner to different job knew of his intended lawsuit. Giba v. Cook, D.Or.2002, 232 F.Supp.2d 1171. Prisons 13(4)

Prisoner failed to state retaliation claim under §§ 1983 against captain who allegedly found him guilty on false disciplinary charges and whose motivation was because prisoner was a writ writer; secondary litigation activity did not comprise basis of retaliation claim. David v. Hill, S.D.Tex.2005, 401 F.Supp.2d 749. Civil Rights 1092

Prisoner provided sufficient circumstantial evidence to withstand summary judgment on his claim that corrections officer retaliated against him by planting evidence in his cell and filing misbehavior report against him, after prisoner filed grievance alleging sexual assault by officer, in violation of prisoner's civil rights under First and Fourteenth Amendments; alleged retaliation occurred only two days after officer responded in writing to prisoner's grievance, prisoner generally had good disciplinary record, and weapons charges against prisoner were dismissed for lack of sufficient evidence. Rodriguez v. McClenning, S.D.N.Y.2005, 399 F.Supp.2d 228. Federal Civil Procedure 2491.5

Falsifying misconduct reports in retaliation for a prisoner's resort to legal process is a violation of the First Amendment guarantee of access to the courts. Nicholson v. Carroll, D.Del.2005, 390 F.Supp.2d 429. Constitutional Law 91

Prisoner's actions of filing a grievance was not the cause of his removal from prison's driving while intoxicated program, as required for prisoner's §§ 1983 retaliation claim against program assistant, given that the assistant wrote poor evaluations for the prisoner before and after the filing of his grievance and there was no evidence that indicated the grievance was the cause of his removal from the program. Spies v. Kelleher, C.A.2 (N.Y.) 2005, 151 Fed.Appx. 72, 2005 WL 2650060, Unreported. Civil Rights 1092

Inmate stated a claim under §§ 1983 for retaliation by alleging that he was placed in segregation because he invoked his constitutional right to use the prison grievance procedures by filing grievances against correctional officers who called him names, regardless of whether inmate's placement in segregation independently violated the Constitution. Williams v. Snyder, C.A.7 (Ill.) 2005, 150 Fed.Appx. 549, 2005 WL 2346964, Unreported, certiorari denied 126 S.Ct. 1434, 164 L.Ed.2d 137. Civil Rights 1395(7)

Genuine issue of material fact as to whether female inmate, who received severe disciplinary sanction based on her sexual encounter with male prison guard, had been retaliated against for reporting guard, precluded summary judgment in inmate's § 1983 action against prison officials. Trammell v. Davis, C.A.8 (Ark.) 2000, 208 F.3d 218, Unreported. Federal Civil Procedure 2491.5

Prisoner's allegations of retaliatory conduct by prison officials were sufficient, under liberal pleading standard, to state a First Amendment retaliation claim under § 1983, despite prisoner's failure to present chronology of events; prisoner alleged that after he filed grievances against them, officers retaliated by withholding his legal documents and destroying exhibits and personal photographs, and that remaining defendants participated in the ongoing retaliation by falsely telling his sister that her name was not on the visitor's list, denying him his state pay, preventing him from having his yearly interview, and otherwise unnecessarily harassing him. Hunter v. Welborn, C.A.7 (Ill.) 2002, 52 Fed.Appx. 277, 2002 WL 31688934, Unreported. Civil Rights 1395(7)

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XXIII. SOLITARY CONFINEMENT OR SEGREGATION OF PRISONERS

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2941. Solitary confinement or segregation of prisoners generally

Amount of due process that is due to state inmate who has been placed in administrative segregation is defined by federal rather than state law. Smith v. Shettle, C.A.7 (Ind.) 1991, 946 F.2d 1250. Constitutional Law 272(2)

State prisoners' complaint stated claim for relief on theory that punishment of disciplinary segregation was disproportionate to offenses committed. Madyun v. Thompson, C.A.7 (Ill.) 1981, 657 F.2d 868. Prisons 10

The due process clause of U.S.C.A.Const. Amends. 5 and 14 does not of itself, make a state prisoner's freedom from transfer to administrative segregation a constitutionally protected liberty interest. Bills v. Henderson, C.A.6 (Tenn.) 1980, 631 F.2d 1287. Constitutional Law 272(2)

In examining deprivations complained of by a prisoner as a result of confinement in a maximum security call, court must balance the legitimate rights of the prisoner with the necessary concern and responsibility of prison authorities for security and order. Crowe v. Leeke, C.A.4 (S.C.) 1976, 540 F.2d 740. Prisons 17(1)

State prisoner might have cause of action under this section by reason of his being placed in solitary confinement when he was returned to county prison for court appearances. U. S. ex rel. Arzonica v. Scheipe, C.A.3 (Pa.) 1973, 474 F.2d 720. Civil Rights 1092

Especially in view of actions taken by state of New York to remedy perceived deficiencies in treatment of inmates in general as well as those confined to segregation or psychiatric observation cells, court on complaints of state prisoners would not prohibit prison officials from confining any inmate to segregation or psychiatric observation cells until rules and regulations regarding conditions of such cells have been promulgated. Wright v. McMann, C.A.2 (N.Y.) 1972, 460 F.2d 126, certiorari denied 93 S.Ct. 115, 409 U.S. 885, 34 L.Ed.2d 141. Civil Rights 1448

Prisoner's misconduct which resulted in his being placed in solitary confinement related to internal affairs of state penal institution and, where lack of inquiry by prison board did not deprive prisoner of a fundamental constitutional right, federal court would not interfere. Courtney v. Bishop, C.A.8 (Ark.) 1969, 409 F.2d 1185, certiorari denied 90 S.Ct. 235, 396 U.S. 915, 24 L.Ed.2d 192. Prisons 13(5)

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Inmate's disciplinary segregation did not constitute deprivation of protected liberty interest in violation of due process, since such segregation did not constitute atypical and significant hardship in relation to ordinary incidents of maximum security prison life; conditions of disciplinary segregation were essentially same as those in administrative segregation and protective custody. Mullins v. Smith, E.D.Mich.1998, 14 F.Supp.2d 1009. Constitutional Law 272(2); Prisons 13(5)

The state had granted prison inmates a protected liberty interest in remaining free from administrative segregation, as required in order for an inmate to maintain a civil rights action claiming that his due process rights were violated when he was placed in administrative segregation; there were regulations recognizing that administrative segregation was a real hardship, limiting the power to impose the hardship to cases in which the inmate's presence in the general prison population was a threat to safety and security, and setting forth a procedural mechanism to determine if the inmate met the substantive standards for imposition of the hardship. McClary v. Kelly, W.D.N.Y.1998, 4 F.Supp.2d 195. Constitutional Law 272(2)

Prisoner asserting § 1983 claim based on segregated confinement must prove existence of state-created liberty interest protected by Due Process Clause by establishing two elements: that confinement creates atypical and significant hardship under *Sandin* and that state has granted its inmates, by regulation or statute, protected liberty interest in remaining free from that confinement. Cespedes v. Coughlin, S.D.N.Y.1997, 956 F.Supp. 454, on reconsideration 969 F.Supp. 254. Constitutional Law 272(2)

Inmate had no constitutionally protected liberty interest in freedom from placement in disciplinary segregation, thus precluding relief on his § 1983 claim that he was gratuitously placed in segregated confinement for no reason at all. Leslie v. Doyle, N.D.Ill.1995, 896 F.Supp. 771, affirmed 125 F.3d 1132, rehearing denied. Constitutional Law 272(2)

Prison regulations did not give inmate legitimate claim of entitlement to remain in general prison population or free from segregation, and thus did not provide liberty interest protected by Due Process Clause; provisions vested wide discretion in prison officials as to placement of inmates within prison. Blizzard v. Watson, D.Del.1995, 892 F.Supp. 587. Constitutional Law 272(2)

Prisoner's mere retention in unlocked cell during five-day period could not be branded as segregation actionable as liberty claim. Harris v. MacDonald, N.D.Ill.1982, 555 F.Supp. 137. Prisons 13(5)

Illinois prisoners have protectible liberty interest in not being placed in disciplinary segregation absent a finding of major misconduct. Williams v. Franzen, N.D.Ill.1980, 499 F.Supp. 304. Prisons 13(5)

Placement of plaintiff in segregation at state prison did not of itself constitute a violation of U.S.C.A.Const. Amend. 8 and was not, therefore, a basis for establishing a claim under this section. Freeman v. Trudell, E.D.Mich.1980, 497 F.Supp. 481. Civil Rights 1092

Prisoner cannot be placed in punitive confinement area to punish him for disciplinary infraction unless procedures employed by prison officials comport with minimum due process standards set out in applicable case. Maxton v. Johnson, D.C.S.C.1980, 488 F.Supp. 1030. Constitutional Law 272(2); Prisons 13(5)

Claims that state prisoners were held in "segregation unit" in violation of prison rules and regulations were cognizable in action under this section. Carter v. McGinnis, D.C.N.Y.1970, 320 F.Supp. 1092. See, also McAlister v. Robinson, D.C.Conn.1978, 488 F.Supp. 545, affirmed 607 F.2d 1058.

Decision of United States Supreme Court outlining certain procedural requirements that prison administrators must afford a prisoner before they can deprive him of accumulated "good time" credits or confine him to "solitary" for serious misconduct was inapplicable in situation where imposition of a much lesser penalty than "solitary" or

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deprivation of "good time" credits was involved. Knott v. Kerkhoff, W.D.Va.1976, 410 F.Supp. 1236. Prisons 13(6); Prisons 15(7)

Solitary confinement is not per se cruel and unusual punishment, and temporary inconveniences and discomforts incident thereto cannot be regarded as basis for judicial relief. Newsome v. Sielaff, E.D.Pa.1974, 375 F.Supp. 1189
.

State prisoner's claims that his disciplinary segregation was imposed in violation of applicable prison rules and laws and that, during the adjudication of his segregation challenge, he was denied the opportunity to present witness testimony and evidence of retaliatory conduct were not cognizable under the federal habeas statute, but rather, had to be brought under §§ 1983, as the claims did not challenge his placement in custody, but only the condition of his confinement or the severity of his custody. Jacobs v. Bertrand, E.D.Wis.2005, 228 F.R.D. 627, reconsideration denied 2005 WL 1719285. Habeas Corpus 277

2942. Discriminatory treatment, solitary confinement or segregation of prisoners

State corrections officials' policies placing extra restrictions on telephone use and number of visitations for inmates in segregation status, and prohibiting those inmates' possession of publications other than books, were reasonably related to legitimate penological interests and thus valid, precluding recovery in inmate's §§1983 action against officials arising from his loss of privileges upon transfer to segregation; policies were designed to promote security and rehabilitation by allowing for awarding of increased privileges for segregated inmates who demonstrated good behavior, and there was no showing that officials could further those interests with less restrictive means. King v. Frank, W.D.Wis.2005, 371 F.Supp.2d 977. Prisons 13(5)

Complaint of prisoner showing that of approximately 300 inmates improperly out of their cells at time of prison riot approximately 16 percent were white of whom only one was confined to segregation while approximately 83 percent of prisoners improperly out of their cells were black and approximately 20 percent were confined to segregation coupled with fact that prison guards who identified black plaintiff as one of those responsible for riot and as having a weapon were blindfolded at the time was sufficient to raise factual questions as to whether the disparity in the treatment of blacks and whites allegedly involved in the same activity was rationally based. Murphy v. Wheaton, N.D.Ill.1974, 381 F.Supp. 1252. Civil Rights 1395(7)

2943. Death penalty inmates, solitary confinement or segregation of prisoners

Confinement of death sentence prisoners in facility within penitentiary separate from maximum security unit within which incorrigible and insane inmates were housed and separate from general prison population without permitting death sentence inmates to commingle with general prison population did not violate any of plaintiff death sentence prisoner's federally protected rights. Glenn v. Wilkinson, W.D.Mo.1970, 309 F.Supp. 411. Prisons 13(5)

LSA-R.S. 15:568 requiring that until time of execution convict should be kept in solitary confinement and no one allowed access to him without court order except prison officials, counsel, physicians, spiritual advisor and designated members of family is nondiscriminatory on its face. Labat v. McKeithen, E.D.La.1965, 243 F.Supp. 662, affirmed 361 F.2d 757. Prisons 13(5)

2944. Grounds, solitary confinement or segregation of prisoners--Generally

Administrative segregation is not per se unconstitutional; validity depends upon existence of valid and subsisting reason or reasons for segregation and relative humaneness of the conditions; prison warden may not constitutionally put inmate in administrative segregation, involving solitary confinement or other rigorous conditions of imprisonment, simply because he dislikes inmate or desires to punish him for past misconduct. Kelly v. Brewer, C.A.8 (Iowa) 1975, 525 F.2d 394. Prisons 12

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Where plaintiff was placed in isolation on four occasions totaling eight days as result of his conduct in damaging prison security cameras and his placement in isolation was of an administrative nature to preserve the security in jail, actions of sheriff in placing plaintiff in isolation did not involve punishment so as to subject sheriff to liability under this section for subjecting plaintiff to cruel and unusual punishment. Potter v. Clark, C.A.7 (Ill.) 1974, 497 F.2d 1206. Civil Rights 1092

Although solitary confinement does not of itself violate constitution, it must be imposed for proper disciplinary purposes. Stinson v. Sheriff's Dept. of Sullivan County, S.D.N.Y.1980, 499 F.Supp. 259. Prisons 13(5)

Where record established that purpose of placing state prisoner in special custody was not punishment but separation from rest of prison population because of a belief that such segregation was essential to security of entire institution, as well as prisoner's own protection, action taken by prison officials was within discretion normally accorded them in general administration of prison affairs, and prisoner's application for relief was subject to dismissal. Rivera v. Fogg, W.D.N.Y.1974, 371 F.Supp. 938. Prisons 13(5)

2945. ---- Drug use, grounds, solitary confinement or segregation of prisoners

Inmates who did not allege that prison official knew or should have suspected that drug test results which resulted in disciplinary proceedings against them were false did not state civil rights claim against him. Allen v. Purkett, C.A.8 (Mo.) 1993, 5 F.3d 1151, certiorari denied 115 S.Ct. 100, 513 U.S. 829, 130 L.Ed.2d 49. Civil Rights 1092

2946. ---- Gang affiliation, grounds, solitary confinement or segregation of prisoners

Placement of state prison inmate in administrative segregation because of his gang affiliation did not deprive inmate of constitutionally cognizable liberty interest. Pichardo v. Kinker, C.A.5 (Tex.) 1996, 73 F.3d 612. Constitutional Law 272(2); Prisons 13(5)

California Department of Corrections and Rehabilitation (CDCR) regulations providing for gang validation based on association, and on that basis housing inmate in secure unit, bore rational relation to goal of penological interest in institutional security, in determining whether regulations violated state prison inmate's First and Fourteenth Amendment associational rights as alleged in inmate's §§ 1983 action, even though inferences might be substituted for direct evidence that inmate would pose threat to security under those regulations. Stewart v. Alameida, N.D.Cal.2006, 418 F.Supp.2d 1154. Prisons 13(5)

State prison's placement of inmate in administrative segregation for gang affiliation was supported by "some evidence," and thus did not violate his federal due process rights, even if double counting of one piece of evidence meant that prison regulation, requiring three pieces of evidence, was not met. Verwolf v. Hamlet, N.D.Cal.2003, 2003 WL 22159055, Unreported. Constitutional Law 272(2); Prisons 13(7.1)

2947. ---- Hunger strikes, grounds, solitary confinement or segregation of prisoners

Action taken to place inmate who began hunger strike in administrative segregation was taken in compliance with policy of Kansas Department of Corrections, and, thus, inmate's constitutional rights were not violated. Ball v. Sledd, D.Kan.1993, 814 F.Supp. 48. Prisons 13(5)

2948. ---- Political beliefs, grounds, solitary confinement or segregation of prisoners

Absent some specific allegation of unjustifiably discriminatory administration of the correctional practices with relation to segregation or the use of them as punishment without procedural due process, no federal question was

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raised in state prisoner's action, under this section, complaining that he was being subjected to penalties for political beliefs. Morgan v. LaVallee, C.A.2 (N.Y.) 1975, 526 F.2d 221. Civil Rights 1395(7)

2949. ---- Refusal to work, grounds, solitary confinement or segregation of prisoners

Solitary confinement of state prisoner for his refusal to accept work in steward's department did not violate prisoner's civil rights. Rhinehart v. Rhay, W.D.Wash.1970, 314 F.Supp. 81. Civil Rights 1092

2950. ---- Religious beliefs, grounds, solitary confinement or segregation of prisoners

If sole reason for segregation of Black Muslim prisoner was his refusal to obey an order that violated his rights under U.S.C.A.Const. Amend. 1, i.e., handle pork, punitive segregation for violation of such order would be entirely impermissible. Chapman v. Kleindienst, C.A.7 (Ill.) 1974, 507 F.2d 1246. Constitutional Law 84.5(14)

Prisoner's incarceration in maximum security was not the result of religious discrimination in view of evidence that plaintiff had never indicated to any prison personnel his preference for the Black Muslim religion and that plaintiff had been guilty of behavior warranting disciplinary action. Mason v. Wainwright, C.A.5 (Fla.) 1969, 417 F.2d 769.

2951. ---- Threat of harm by other inmates, grounds, solitary confinement or segregation of prisoners

Prisoner who was securely locked by himself in maximum security cell was not confined under conditions posing substantial risk of serious harm, as required to establish Eighth Amendment claim based on prison officers' failure to prevent harm, notwithstanding fact that inmate located outside cell succeeded in inflicting injury upon him. Grimsley v. MacKay, C.A.10 (Utah) 1996, 93 F.3d 676. Sentencing And Punishment 1553

Placement of intersexual inmate, who was of alleged female gender but was anatomically situated as a male due to the presence of a penis, in segregated confinement for a period of 438 days, with concomitant severely limited privileges, solely because of the condition and status of ambiguous gender was not a violation of the Eighth Amendment prohibition against cruel and unusual punishment; safety of inmate and other inmates was secured by placing inmate in administrative segregation, and inmate was provided the basic necessities of food, shelter, clothing and medical treatment. DiMarco v. Wyoming Dept. of Corrections Div. of Prisons, Wyo. Women's Center, D.Wyo.2004, 300 F.Supp.2d 1183. Prisons 13(5); Sentencing And Punishment 1553

Inmate did not have right under United States Constitution or Pennsylvania law to any specific custody status and, thus, inmate could not state § 1983 civil rights claim for damages against correctional officers based on allegations that he was placed in administrative confinement against his wishes based on false information that threats had been made against inmate's life. Oden v. Caison, E.D.Pa.1995, 892 F.Supp. 111. Civil Rights 1092

Restrictions to which state prisoner was subjected while he was in protective segregation were not constitutionally impermissible in view of fact that prisoner was exposed to a real danger from attack from any of a number of persons in prison population. Joyner v. McClellan, D.C.Md.1975, 396 F.Supp. 912. Prisons 13(5)

It was within discretion of prison officials, utilizing good faith, experience and expertise, to place inmate in administrative segregation for his own safety, in view of threat upon his life, though inmate desired to be released to general prison population. Daughtery v. Carlson, E.D.Ill.1974, 372 F.Supp. 1320. Prisons 13(5)

2952. ---- Threat of harm to guards or other inmates, grounds, solitary confinement or segregation of prisoners

Full accommodation of state prison inmate's First and Fourteenth Amendment associational rights by precluding

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gang validation through associations and resultant housing of inmates in secure unit, as provided for by California Department of Corrections and Rehabilitation (CDCR) regulations, would seriously hinder objective of institutional security and compromise safety of inmates and correctional officers, in determining whether the regulations violated inmate's First and Fourteenth Amendment associational rights as alleged in §§ 1983 action. Stewart v. Alameida, N.D.Cal.2006, 418 F.Supp.2d 1154. Prisons 13(5)

In absence of some specific factual information indicating that a particular prisoner poses a threat of harm to other inmates, there is no duty to isolate him, and, in that connection, there is no difference between convicted inmates and pretrial detainees. Campbell v. Bergeron, M.D.La.1980, 486 F.Supp. 1246, affirmed 654 F.2d 719. Prisons 4(4); Prisons 13(1)

Concern which state prisoner expressed as to danger of contact with fellow prisoner housed in same general area was sufficient to raise concern by prison classification committee regarding prisoner's personal security and justified a separation from fellow prisoner under "padlock" status whereby prisoner was required to remain in cell at all times save for minimal periods of exercise and for sanitary purposes. Cousins v. Oliver, E.D.Va.1974, 369 F.Supp. 553. Prisons 13(5)

Under evidence that certain Black Muslim prisoners were engaged in a power struggle which endangered the safety and security of the penitentiary, action of prison officials in placing such inmates in segregated confinement did not constitute abuse or caprice. Long v. Harris, D.C.Kan.1971, 332 F.Supp. 262, affirmed 473 F.2d 1387. Prisons 13(5)

2953. ---- Violation of prison regulations, grounds, solitary confinement or segregation of prisoners

Inmate placed in disciplinary segregation for speaking with inmate from another residence area did not, by virtue of prison regulations, have any liberty interest protected by due process. Mujahid v. Meyer, C.A.9 (Hawai'i) 1995, 59 F.3d 931. Constitutional Law 272(2); Prisons 13(5)

In absence of any extreme circumstances, federal court refused to grant relief to state prisoner seeking to obtain his permanent release from administrative segregation on ground that his confinement was unlawful because he had violated no prison regulations. Young v. Wainwright, C.A.5 (Fla.) 1971, 449 F.2d 338. Prisons 13(5)

Prison authorities' placing prisoner in maximum security area was not, in view of prisoner's repeated violations of prison rules, arbitrary or capricious. Abernathy v. Cunningham, C.A.4 (Va.) 1968, 393 F.2d 775. Prisons 13(5)

Because inmate was found not guilty by inmate advisory council did not require conclusion that prison official did not have probable cause to file charges for violation of prison rules for purposes of § 1983 action, given information available at time he filed charges. Keeler v. Pea, D.S.C.1992, 782 F.Supp. 42. Civil Rights 1092

Even though state prisoner was incarcerated in isolation cell, where prisoner was not subjected to isolation status but kept in detention because of violation of institutional rules and had all his personal belongings, including writing materials, was fed three meals daily and was kept in warm cell and where prisoner's hearing on charges was postponed for four days because prisoner wished to employ private attorney to represent him at hearing, prisoner was not entitled to recover damages from prison officials because of such isolation. Cradle v. Superintendent, Correctional Field Unit No. 7, W.D.Va.1973, 374 F.Supp. 435. Civil Rights 1462

2954. Length of confinement or segregation, solitary confinement or segregation of prisoners

Former inmate alleged deprivations that were sufficiently atypical to implicate liberty interest in avoiding such punishment, as required to state due process claims against state prison officials, when he alleged that due process

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violations occurring in underlying disciplinary proceedings resulted in his being sentenced to special housing confinement for excessive lengths of time, placement in full restraints for nearly seven months, not being allowed to exercise without restraints, deprivation for two 14-day periods of normal meals, and being forced to remain naked in his cell for number of days. Sims v. Artuz, C.A.2 (N.Y.) 2000, 230 F.3d 14, on remand 2003 WL 1746263 . Constitutional Law 272(2); Prisons 10

Where there was no proof that seven days' disciplinary segregation for refusal to follow order of prison staff officer, a "major violation" under bureau of prisons policy, was cruel or unusual punishment, severity of such punishment for prisoner's refusal of order to shave his beard furnished no basis of liability in action seeking damages solely for alleged constitutional violation. Jihaad v. O'Brien, C.A.6 (Mich.) 1981, 645 F.2d 556. Prisons 10

Three-day separation of prisoner from prison population and its normal privileges while restricted to his own cell did not present a federal constitutional question. Jordan v. Jones, C.A.6 (Mich.) 1980, 625 F.2d 750. Civil Rights 1092

Fact that segregated confinement is prolonged and indefinite is not sufficient in itself to command constitutional protection, though it is a factor to be considered, especially if the confinement is punitive rather than administrative or protective. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Prisons 13(6)

It is permissible to keep a prisoner in segregation until he agrees to abide by rules of institution. Mukmuk v. Commissioner of Dept. of Correctional Services, C.A.2 (N.Y.) 1976, 529 F.2d 272, certiorari denied 96 S.Ct. 2238, 426 U.S. 911, 48 L.Ed.2d 838. Prisons 13(5)

In view of prisoner's criminal record and several recent incidents of his resisting orders from prison officials and his frequent transfers between state facilities, district court could properly determine, in prisoner's civil rights action seeking injunction and damages, that prisoner presented a "clear and imminent danger" warranting protective confinement and that protective custody of 35 days did not constitute an unduly long observation period. Bloeth v. Montanye, C.A.2 (N.Y.) 1975, 514 F.2d 1192. Prisons 13(5)

Fact that state prison inmate's disciplinary segregation lasted only 77 days did not, by itself, mandate finding that segregation did not impose atypical and significant hardship on inmate, and in turn did not preclude inmate's §§ 1983 due process claim against corrections department hearing officer alleging that confinement was result of officer's improper denial of inmate's right to present witnesses at disciplinary hearing; whether conditions of confinement were atypical was unknown. Withrow v. Donnelly, W.D.N.Y.2004, 333 F.Supp.2d 108. Constitutional Law 272(2); Prisons 13(5)

Inmate suing prison officials under § 1983 was not entitled to develop factual record regarding types of restrictive confinement employed in New York prisons generally and prison in which he was confined in particular, absent any allegation in his complaint of hardship other than that arising out of length of his confinement in prison's Special Housing Unit (SHU), as length of inmate's confinement in SHU was dispositive absent such allegation. Cespedes v. Coughlin, S.D.N.Y.1997, 956 F.Supp. 454, on reconsideration 969 F.Supp. 254. Civil Rights 1397

Inmate stated at least arguable claim that he had "artificial liberty interest" that was violated when he received unwarranted additional two days of segregation, and thus, inmate was allowed to proceed in forma pauperis in civil rights action; Wisconsin prison regulations could be construed as containing binding, exhaustive, and definite criteria that limited discretion of prison officials to place inmates in adjustment segregation for particular length of time. Rose v. Kettle Moraine Correctional Inst. Officials, E.D.Wis.1991, 778 F.Supp. 1009. Federal Civil Procedure 2734

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42 U.S.C.A. § 1983

Seven-day delay in release of prisoner from administrative segregation following discovery that he had been mistakenly identified as person who assaulted fellow prisoner would not rise to level of constitutional violation cognizable under federal statute governing civil action for deprivation of rights. Shango v. Jurich, N.D.Ill.1985, 608 F.Supp. 931. Civil Rights 1092

2955. Pretrial detainees, solitary confinement or segregation of prisoners

Pretrial detainee placed in segregated confinement for administrative reasons anchored in desire to foil his escape was not denied procedural due process by lack of hearing at which he could contest reasons for his confinement, as he was not subjected to "discipline" for violation of prison rule and, thus, could derive no liberty interest from regulatory provision requiring jailers to provide for disciplinary hearings in cases of alleged violations of prisoner conduct rules. Martucci v. Johnson, C.A.6 (Tenn.) 1991, 944 F.2d 291, rehearing denied. Constitutional Law 272(2); Prisons 13(5)

District court should not have dismissed former pretrial detainee's § 1983 claims regarding his placement in administrative segregation for nine months without reviewing state law to determine whether statute or regulation prescribed mandatory procedures governing administrative as opposed to punitive segregation so as to create liberty interest in remaining in general population, and without analyzing possible punitive aspects of such lengthy segregation. Covino v. Vermont Dept. of Corrections, C.A.2 (Vt.) 1991, 933 F.2d 128. Federal Civil Procedure 1788.10

Where correctional officers and social service employees were not responsible for pretrial detainee's confinement in maximum security cell nor did his confinement there result from officers' or employees' intent to punish him, detainee was not deprived of his civil rights under this section, or under § 1985 of this title, prohibiting conspiracy to interfere with civil rights. Villanueva v. George, C.A.8 (Mo.) 1980, 632 F.2d 707, on rehearing 659 F.2d 851. Civil Rights 1098; Conspiracy 7.5(2)

2956. Conditions of confinement generally, solitary confinement or segregation of prisoners

District court abused its discretion, for purpose of consideration of civil rights complaint under statute that governed proceedings in forma pauperis, in concluding that there was no arguable basis that three-year period of administrative segregation during which time state prisoner was confined to his cell for all but five hours each week and denied access to any outdoor recreation was not "atypical," in violation of his due process rights. Fogle v. Pierson, C.A.10 (Colo.) 2006, 435 F.3d 1252. Federal Civil Procedure 2734

Former inmate was not required to raise claim for being placed in administrative segregation allegedly without due process through petition for writ of habeas corpus, rather than through his § 1983 action; former inmate challenged only conditions of his confinement, and not its duration. Brown v. Plaut, C.A.D.C.1997, 131 F.3d 163, 327 U.S.App.D.C. 313, certiorari denied 118 S.Ct. 2346, 524 U.S. 939, 141 L.Ed.2d 716, on remand 66 F.Supp.2d 41. Civil Rights 1311

Remand of inmate's § 1983 action, alleging cruel and unusual punishment claim for conditions of confinement in prison's most restrictive segregation unit, was required for district court to enter more precise findings on contested issues about allegedly inhumane conditions as to temperature, sanitation, and ventilation; although district court resolved claim on lack of culpable state of mind by prison officials, if conditions were truly as dreadful as inmate claimed, then defendants would in all probability have had requisite state of mind to satisfy subjective component of Eighth Amendment claim. Isby v. Clark, C.A.7 (Ind.) 1996, 100 F.3d 502, on remand 1997 WL 471833. Federal Courts 922

Alleged denial of exercise opportunities or denial of the more liberal commissary and visitation privileges for the

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general prison population did not state claims for denial of civil rights of prisoners in segregation unit. Beck v. Lynaugh, C.A.5 (Tex.) 1988, 842 F.2d 759. Civil Rights 1092

Showing that deputies acted with malicious and sadistic intent in subjecting prisoner to solitary confinement in extremely cold cell and in forcing prisoner to sleep on floor where rats crawled over him was not prerequisite to maintaining § 1983 action against county jail officials for violating the Eighth Amendment; treatment of prisoner did not arise out of situation posing significant risk to rights of inmates and prison staff, and thus, prisoner was only required to show that infliction of pain was unnecessary and wanton. Foulds v. Corley, C.A.5 (Tex.) 1987, 833 F.2d 52. Civil Rights 1092

Temporary solitary confinement did not amount to cruel and unusual punishment and did not amount to denial of due process for which damages were recoverable under this section, notwithstanding hard bed, cramped quarters, continuous light, and other restrictions. Gregory v. Wyse, C.A.10 (Colo.) 1975, 512 F.2d 378. Civil Rights 1092; Sentencing And Punishment 1553

Genuine issue of material fact existed as to whether segregated confinement of pregnant prisoner was cruel and unusual punishment, precluding summary judgment for guard captain, who ordered that prisoner be placed in segregation, in prisoner's action under § 1983, alleging Eighth Amendment deliberate indifference claim. Doe v. Gustavus, E.D.Wis.2003, 294 F.Supp.2d 1003. Federal Civil Procedure 2491.5

Despite allegations of toilets close to beds, low-calorie food, poor ventilation, and denial of meaningful exercise, inmates did not show that they were denied food or exercise, that ventilation was so poor as to pose risk of serious harm, or that prison officials acted with deliberate indifference, as would support claim that confinement to Administrative Segregation and Detention Area (ASDA) constituted cruel and unusual punishment. Blizzard v. Watson, D.Del.1995, 892 F.Supp. 587. Sentencing And Punishment 1553

Conditions which might constitute infringements of civil rights of prisoners in special housing unit included excessive and unnecessary use of force by correctional officers, grossly inadequate provision for exercise, denial of access to psychological and mental health care specialists, unsanitary food utensils, including cigarette burns and hair on food trays, portions of food smaller than those provided to inmates in general population and destruction and/or loss of mail sent to superintendent. Griffin v. Smith, W.D.N.Y.1980, 493 F.Supp. 129. Civil Rights 1092; Civil Rights 1093

2957. Access to courts, solitary confinement or segregation of prisoners-- Generally

A prison official was forbidden from denying to prisoners in punitive isolation writ papers, etc., for their use in petitioning the courts or from in any way interfering with or restricting prisoners from petitioning the court or communicating with their attorneys. McCray v. Sullivan, S.D.Ala.1975, 399 F.Supp. 271, supplemented 413 F.Supp. 444. Prisons 4(13)

Where prison inmate presented no evidence that prison warden or director of board of corrections directly or indirectly denied him access to courts while he was confined in administrative segregation, inmate had not established cause of action under this section. Phillips v. Anderson, E.D.Okla.1974, 386 F.Supp. 371. Civil Rights 1420

Effective access to courts, by prisoners, is too crucial a right to be awarded or withheld as a disciplinary tool particularly when an inmate is confined in solitary and effectively cut off from all but his custodians. Johnson v. Anderson, D.C.Del.1974, 370 F.Supp. 1373, modified on other grounds 420 F.Supp. 845. Prisons 13(5)

2958. ---- Assistance by other inmates, access to courts, solitary confinement or segregation of prisoners

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42 U.S.C.A. § 1983

Forbidding inmate in administrative segregation or punitive housing from receiving assistance of another inmate in preparation of legal draft challenging conditions of confinement did not violate inmate's constitutional right to counsel for purposes of civil rights statute [42 U.S.C.A. § 1983], where inmate had limited access to law library, court officials, and inmate assistants known as "writ writers." Little v. Norris, C.A.8 (Ark.) 1986, 787 F.2d 1241. Civil Rights 1094

2959. ---- Library or legal publications, access to courts, solitary confinement or segregation of prisoners

District court abused its discretion, for purpose of consideration of prisoner's civil rights complaint under statute that governed proceedings in forma pauperis, in concluding that there was no arguable basis for state prisoner's claim of denial of access to prison law library on allegations that he was completely denied access to law library and its accompanying resources and that denial prevented him from filing non-frivolous claims. Fogle v. Pierson, C.A.10 (Colo.) 2006, 435 F.3d 1252. Federal Civil Procedure 2734

Prison's policy of banning prisoners who were confined in protective custody from library did not prejudice inmate; there was no showing that policy prevented inmate from obtaining case law. Jenkins v. Lane, C.A.7 (Ill.) 1992, 977 F.2d 266. Prisons 4(13)

Evidence in prisoner's action against prison administrators, on account of deprivation of legal materials, and advice during period of disciplinary isolation, supported finding of good-faith application of rule to all inmates with honest belief in its constitutionality. Knell v. Bensinger, C.A.7 (Ill.) 1975, 522 F.2d 720. Civil Rights 1423

Inmate failed to state § 1983 cause of action for denial of access to the courts arising out of his being placed in segregation and being denied opportunity to perform legal research; there was only a 20-day delay and inmate failed to show that he had been prejudiced. Kness v. Sondalle, E.D.Wis.1989, 725 F.Supp. 1006, affirmed 917 F.2d 1306. Civil Rights 1094

Inmates of administrative segregation unit in detention facility could be restricted from keeping more than five nonlegal books at one time in their cells; such restriction could not, however, apply to law books, legal periodicals or other legal materials. Giampetruzzi v. Malcolm, S.D.N.Y.1975, 406 F.Supp. 836. Prisons 4(8)

2960. Access to mails, solitary confinement or segregation of prisoners

Fact that while inmate was in punitive isolation, inmate was denied right to receive or send personal correspondence, but was entitled to receive legal and media mail, did not deny inmate's constitutional rights, where purpose of withholding personal mail was to make punitive isolation unpleasant, and thereby discourage improper behavior and promote security within prison, and such sanction was only imposed for 30 days. Little v. Norris, C.A.8 (Ark.) 1986, 787 F.2d 1241. Prisons 4(9)

2961. Religious practice, solitary confinement or segregation of prisoners-- Generally

District court abused its discretion, for purpose of consideration of prisoner's civil rights complaint under statute that governed proceedings in forma pauperis, in concluding that there was no arguable basis for prisoner's First Amendment religious practice claim on allegations that state prison officials placed unreasonable constraint on prisoner's sincerely held religious beliefs by denying him all opportunity for "Christian fellowship" while in administrative segregation. Fogle v. Pierson, C.A.10 (Colo.) 2006, 435 F.3d 1252. Federal Civil Procedure 2734

Prison inmate in protective custody who admitted that chaplains visited the cell block and that one visited him every time he requested a personal visit of the chaplain could not constitutionally demand more. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Prisons 4(14)

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42 U.S.C.A. § 1983

Conclusory allegation of inmate, who had been placed in administrative segregation, that prison officials had interfered with inmate's free exercise of religion was insufficient to render officials liable to inmate in inmate's § 1983 civil rights action, where inmate had not met his initial obligation of demonstrating that he had sincerely held religious belief, or that officials substantially interfered with such belief by placing him in administrative segregation. Speed v. Stotts, D.Kan.1996, 941 F.Supp. 1051. Civil Rights 1395(7)

State prison policy allowing prison-employed chaplains to have contact visits with "death watch" inmates on regular basis, while prohibiting nonemployee Catholic priest from having contact visits with death watch inmates, did not deprive Roman Catholic inmate who was on death watch of equal protection of the laws, although all prison chaplains were Protestants; prison allowed outside religious leaders to visit inmates on regular basis, all inmates had equal access to outside religious representatives, and all inmates had equal access to institutional chaplains. Card v. Dugger, M.D.Fla.1988, 709 F.Supp. 1098, affirmed 871 F.2d 1023. Constitutional Law 250.3(2); Prisons 4(14)

Prison policy of permitting inmates held in segregation to receive visits from clergymen of their faith but not to attend religious services was reasonable. U.S. ex rel. Wolfish v. Levi, S.D.N.Y.1977, 439 F.Supp. 114, affirmed 573 F.2d 118, certiorari granted 99 S.Ct. 76, 439 U.S. 816, 58 L.Ed.2d 107, reversed 99 S.Ct. 1861, 441 U.S. 520, 60 L.Ed.2d 447. Prisons 4(14)

2962. ---- Services, religious practice, solitary confinement or segregation of prisoners

Inasmuch as prison inmate's mere presence in the general prison population had practically precipitated a riot and inmate's life was thereby put in jeopardy, prison authority's refusal to allow inmate to attend regular chapel services along with the general prison population represented a reasonable judgment. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Prisons 4(14)

Prison officials' decision to place inmate in solitary housing unit for seven hours during ceremony in prison chapel conducted by Catholic cardinal due to security risk defendant posed to ceremony was reasonable, and thus did not violate inmate's due process rights, absent the imposition of some atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. Gonzalez v. Narcato, E.D.N.Y.2005, 363 F.Supp.2d 486. Constitutional Law 272(2); Prisons 13(5)

Restricting prisoner's attendance at general religious services did not violate prisoner's civil rights; prisoner was prevented from attending communal religious services because he was not permitted to mix with general inmate population, and prisoner was ministered to each week in private and attended bible study classes conducted on maximum security tier. Bellamy v. McMickens, S.D.N.Y.1988, 692 F.Supp. 205. Civil Rights 1092

2963. Visitation, solitary confinement or segregation of prisoners

Visitation restrictions on prisoner in restrictive housing unit for prisoners with misconduct violations did not amount to condition of confinement in violation of prisoner's constitutional rights; prisoner was restricted to visitation during weekdays and was not permitted to touch visitors due to plexiglass partition installed for security reasons. Brooks v. Kleiman, E.D.Pa.1989, 743 F.Supp. 350. Prisons 13(4)

Long-term prison inmate, who was objectively in danger of violent assault from other inmates and who was segregated in a maximum security housing unit at his own request for his own protection, was not entitled to extension of hours for visitation so as to equal the number of hours afforded inmates in general population for reason that there was a valid security justification for the limited hours of visitation. Wojtczak v. Cuyler, E.D.Pa.1979, 480 F.Supp. 1288. Prisons 4(6)

Prison rule requiring inmate held in administrative segregation unit of detention center to submit request slip before

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receiving clothing from visitors was valid as being based on the security considerations. Giampetruzzi v. Malcolm, S.D.N.Y.1975, 406 F.Supp. 836. Prisons 4(6)

2964. Books, magazines or other periodicals, solitary confinement or segregation of prisoners

Where state prison inmate was not denied periodic access to prison law library, the taking of dictionary and almanac from him when he was placed in segregation for disciplinary reasons violated no federal right and was not sufficient basis for civil rights action. Williams v. Wilkins, C.A.2 (N.Y.) 1963, 315 F.2d 396, certiorari denied 84 S.Ct. 112, 375 U.S. 852, 11 L.Ed.2d 79. Civil Rights 1094

2965. Recreation, solitary confinement or segregation of prisoners

District court abused its discretion, for purpose of consideration of civil rights complaint under statute that governed proceedings in forma pauperis, in concluding that there was no arguable basis that state prisoner suffered unconstitutionally cruel and unusual punishment by being denied all outdoor exercise for three years that he was in administrative segregation. Fogle v. Pierson, C.A.10 (Colo.) 2006, 435 F.3d 1252. Federal Civil Procedure 2734

Record required conclusion that an order requiring a change in exercise periods, in prison segregation unit, from two days a week to three or five, or some other number, would be an unwarranted intrusion upon Bureau of Prisons' discretion, since the denial of additional exercise periods is not a sufficiently grave deprivation of bodily needs to trigger special injunctive relief from court. Dorrough v. Hogan, C.A.5 (Ga.) 1977, 563 F.2d 1259, rehearing denied 567 F.2d 390, certiorari denied 99 S.Ct. 153, 439 U.S. 850, 58 L.Ed.2d 153. Prisons 17(5)

2966. Rehabilitation programs, solitary confinement or segregation of prisoners

Persons in administrative segregation unit at detention center were entitled to partake of volunteer social services and counseling as long as such programs took place outside administrative segregation unit. Giampetruzzi v. Malcolm, S.D.N.Y.1975, 406 F.Supp. 836. Prisons 4(5)

2967. Employment during confinement, solitary confinement or segregation of prisoners

Long-term prison inmate, who was segregated in a maximum security housing unit at his own request for his own protection, was entitled to be provided with remunerative employment when suitable employment was available and when that was consistent with security precautions and he was also entitled to be given idle pay when he was not working where general prison population was given opportunities to engage in remunerative employment or receive idle pay when work was not available. Wojtczak v. Cuyler, E.D.Pa.1979, 480 F.Supp. 1288. Convicts 7(1)

2968. Strip cells, solitary confinement or segregation of prisoners

Civil rights of prisoner, accused of murder, were not violated by his being kept in solitary confinement, naked, in "strip cell" for extended period where there was no indication that confinement conditions were imposed as punishment rather than for protection, and where purpose of confinement was to protect prisoner from fellow inmates and to prevent him from again attempting to commit suicide. McMahon v. Beard, C.A.5 (Fla.) 1978, 583 F.2d 172. Civil Rights 1095

2969. Diet, solitary confinement or segregation of prisoners

Deprivations of food and water imposed on inmate in special housing unit of state prison were not sufficiently serious to constitute cruel and unusual punishment under Eighth Amendment; inmate was deprived of one meal for

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violation of requirement of returning trays and cups before receiving next meal and deprived of water because he was using it to flood gallery. Warren v. Irvin, W.D.N.Y.1997, 985 F.Supp. 350. Sentencing And Punishment 1553; Prisons 17(3)

Fact that defendants, while acting under color of state law, may have violated state law or state Constitution in confining prisoners to isolation cell where they were deprived of food and water for 52 hours, was not basis for action under this section unless such violations resulted in deprivation of some right which prisoners had under federal Constitution and laws. Ruark v. Schooley, D.C.Colo.1962, 211 F.Supp. 921. Civil Rights 1092

2970. Grooming requirements, solitary confinement or segregation of prisoners

Prison regulation under which person, who was incarcerated in state institution in lieu of bail, was placed in administrative segregation for wearing beard and goatee was unreasonable where body vermin was not problem in institution and where it was not contended that need to make prompt and accurate identification of inmates was interfered with. Seale v. Manson, D.C.Conn.1971, 326 F.Supp. 1375. Prisons 4(7)

2971. Hygienic conditions, solitary confinement or segregation of prisoners

Civil rights complaint alleging that prison inmate was denied deodorant, soap, and shampoo while he was in special housing unit failed to show a constitutional deprivation. Thomas v. Smith, W.D.N.Y.1983, 559 F.Supp. 223 . Civil Rights 1092

2972. Lighting, solitary confinement or segregation of prisoners

State prison inmate who was in segregation status was not deprived of basic human need by presence of constantly illuminated nine-watt fluorescent light in his cell, precluding recovery in inmate's §§1983 Eighth Amendment action against corrections officials alleging that light had caused him sleeplessness and other problems; registered nurse and psychologist both concluded after examining inmate that he suffered no ill effects, and at any rate there was no showing of deliberate indifference on part of corrections officials or showing that alleged ill effects outweighed security concerns promoted by illumination. King v. Frank, W.D.Wis.2005, 371 F.Supp.2d 977. Sentencing And Punishment 1553

Keeping light on 24 hours a day during solitary confinement did not constitute cruel and unusual punishment and did not give rise to an action under this section. U. S. ex rel. Pope v. Hendricks, E.D.Pa.1971, 326 F.Supp. 699. Civil Rights 1092; Sentencing And Punishment 1553

2973. Medical care, solitary confinement or segregation of prisoners

Where two medical technicians visited protective custody cell block three times each day to receive any complaints from the inmates and to provide any medication that might be requested or would appear appropriate, prison did not fail to meet its constitutional obligation for providing adequate medical services. Sweet v. South Carolina Dept. of Corrections, C.A.4 (S.C.) 1975, 529 F.2d 854. Prisons 17(2)

State prison inmate did not suffer inadequate medical treatment, precluding recovery in his §§1983 Eighth Amendment action against corrections officials, when corrections officer responsible for distributing prescription drugs to inmates was, on single occasion, unable to dispense inmate's prescription for insomnia medication due to fact that prison had run out of drug; panic attack and similar symptoms claimed by inmate could not have resulted from single missed dose, there was no showing of deliberate indifference, and alleged symptoms could not place inmate in jeopardy or cause permanent harm. King v. Frank, W.D.Wis.2005, 371 F.Supp.2d 977. Prisons 17(2); Sentencing And Punishment 1546

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42 U.S.C.A. § 1983

Allegations of state prisoners, concerning alleged improper treatment while in isolation cells, relating to, among other things, denial of medical assistance for some 14 hours, without specifying any individual suffered therefrom, and deficiencies with respect to food service and cleanliness failed to reach the constitutional dimensions required for court intervention. Jones v. Superintendent, W.D.Va.1974, 370 F.Supp. 488. Prisons 17(2)

2974. Temperature in facilities, solitary confinement or segregation of prisoners

General poor physical conditions in segregation unit at state prison during prisoner's confinement in administrative segregation, including fact that atmospheric temperature often dipped into the 40 degree range and occasionally into the 30's and that length of detention was uncertain constituted a violation of cruel and unusual punishment clause of U.S.C.A.Const. Amend. 8. Parker v. Cook, S.D.Fla.1979, 464 F.Supp. 350, affirmed in part, vacated in part on other grounds 642 F.2d 865. Sentencing And Punishment 1553

2975. Assault by other prisoners, solitary confinement or segregation of prisoners

Allegations that officials of transferor prison and transportation officer were aware that inmate had been placed in protective custody at transferor prison and medical intake report indicating that inmate was in protective custody status were insufficient to support inmate's claim against prison officials under § 1983, alleging that he was subjected to cruel and unusual punishment in violation of Eighth Amendment when he was placed with general prison population, instead of continuing in protective custody, at transferee prison, and that as result, he was attacked and injured by unknown inmate; inmate showed only inadvertent or good-faith error by prison officials. Blankenship v. Meachum, C.A.10 (Okla.) 1988, 840 F.2d 741. Civil Rights 1395(7)

Prison guards' failure to prevent and protect prisoner from beatings by fellow inmates did not violate this section, especially where prisoner could have requested to be put in segregation for his own protection but did not. Schyska v. Shifflet, N.D.Ill.1973, 364 F.Supp. 116. Civil Rights 1093

2976. Riots or disturbances, solitary confinement or segregation of prisoners

Evidence presented on prison guards' motion for summary judgment on inmate's Eighth Amendment claim supported reliable inference of wantonness in infliction of pain when prison guards placed inmate in four-point restraints for eight hours, without permitting him to wash off mace that had been sprayed on him during prison disturbance, to use toilet, or to receive medical attention; inmate was allegedly screaming in pain as mace "burned" his face, once immobilized, he begged and pleaded for water to wash off mace, guards refused to wash off mace or permit him to wash himself, and no medical personnel checked on his condition and he was left helpless and in immense pain for eight hours. Williams v. Benjamin, C.A.4 (S.C.) 1996, 77 F.3d 756. Federal Civil Procedure 2491.5

Discretion of prison authorities to confine prisoners in cells because of riot emergency was not wholly immune from judicial review. La Batt v. Twomey, C.A.7 (Ill.) 1975, 513 F.2d 641.

After all lesser methods to regain control of state prison in which there had been three days of flooding, burning and destruction of property by inmates had failed, confinement of agitators in maximum security seclusion cell did not constitute cruel and unusual punishment for which prisoner so confined could recover damages under this section, though several prisoners were caused to share the same cell for a period of time, where such confinement was for short period during emergency while attempts were made to make other arrangements and where the nutritional and hygienic needs of the inmates were satisfied. Beishir v. Swenson, W.D.Mo.1971, 331 F.Supp. 1227. Civil Rights 1092; Sentencing And Punishment 1553

2977. Lockups, solitary confinement or segregation of prisoners

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42 U.S.C.A. § 1983

Complaint wherein three inmates of Louisiana State Penitentiary alleged that they had been deprived of due process of law in a prison disciplinary hearing which resulted in their being sentenced to a "lock down" stated a claim upon which relief could be granted. Mitchell v. Beaubouef, C.A.5 (La.) 1978, 581 F.2d 412, rehearing denied 586 F.2d 842, certiorari denied 99 S.Ct. 2416, 441 U.S. 966, 60 L.Ed.2d 1072. Prisons 13(10)

Holding inmate in keeplock confinement for eight days prior to superintendent's disciplinary hearing in violation of New York regulations requiring that hearing be held, absent exigent circumstances, within seven days of inmate's initial confinement, did not amount to constitutional violation redressable under § 1983. Howard v. Wilkerson, S.D.N.Y.1991, 768 F.Supp. 1002. Civil Rights 1092

Prison officials' failure to provide disciplinary hearing during six and eight-day periods that inmate was in "keeplock" and their failure to submit a misbehavior report, the mechanism which triggered procedural safeguards accorded inmates confined in keeplock, inexcusably denied inmate opportunity to be heard for an "indefinite period of time," particularly absent allegation of any circumstances justifying postponement. Scott v. Coughlin, W.D.N.Y.1990, 727 F.Supp. 806. Prisons 13(7.1); Prisons 13(8)

Inmate's claim that he was denied due process in his adjustment committee hearing and placement in keeplock did not constitute a claim cognizable under § 1983; New York prison regulation gave superintendent discretion to keep inmate in keeplock. Dell'Orfano v. Scully, S.D.N.Y.1988, 692 F.Supp. 226. Civil Rights 1092; Constitutional Law 272(2)

Prisoners have reasonable expectation rooted in past practices of state prison authorities that they will not be confined indiscriminately in their cells, absent some situation that poses danger to smooth functioning of prison, but essential to all other correctional goals is institutional consideration of internal security within correction facilities themselves, and it is in light of this legitimate penal objective that court must assess challenges to prison regulations based on asserted constitutional rights of prisoners, and thus prisoners must expect that their limited freedom will be curtailed at times of indisputable crisis, and for reasonable periods thereafter for precautionary measures. Clifton v. Robinson, E.D.Pa.1980, 500 F.Supp. 30. Prisons 13(5)

Even if state prisoner, who was in maximum security classification, accurately characterized prison officials' action in locking him up for five days in "hole" for throwing hot coffee on another inmate as overreaction to "harmless horseplay," such overreaction did not represent violation of prisoner's rights under Constitution, but, rather, lockup, at most, represented error by prison officials in exercise of discretion placed in them to maintain discipline and security that was required within walls of maximum security prison. Maxton v. Johnson, D.C.S.C.1980, 488 F.Supp. 1030. Prisons 13(5)

2978. Notice, solitary confinement or segregation of prisoners

Where guidelines in effect at Tennessee state prison provided that administrative segregation could be based on an inmate's entire past record, that disciplinary reports alleging general behavior requiring administrative segregation could be initiated only by the warden and not by prison employees generally and that administrative segregation was one option available to disciplinary board in response to finding that an inmate committed a specific rule infraction, inmates who were charged with threatening the security of the institution were entitled to notice regarding facts which triggered the charges; such notice should be sufficiently specific to enable inmates to marshal evidence in their behalf but need not disclose identity of informants or review all items in the inmate's prior record which might be properly considered. Bills v. Henderson, C.A.6 (Tenn.) 1980, 631 F.2d 1287. Prisons 13(8)

State prisoner's complaint alleging that prison regulations set out the only reasons for which prisoners may be placed in close management status, that plaintiff was transferred to close management without notice or hearing and that failure to provide notice or hearing violated plaintiff's due process rights was sufficient to state claim for

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relief. Mitchell v. Hicks, C.A.5 (Fla.) 1980, 614 F.2d 1016. Prisons 13.5(3)

Once prisoner asserting § 1983 claim based on segregated confinement proves existence of state-created liberty interest protected by Due Process Clause, court must determine whether prison officials adequately protected that interest by granting prisoner: 24 hours notice of charges against him; written statement of evidence relied on by fact-finder at hearing; reasons for disciplinary action taken by hearing officer; meaningful assistance from prison employee in presenting defense; and fair and impartial hearing officer. Cespedes v. Coughlin, S.D.N.Y.1997, 956 F.Supp. 454, on reconsideration 969 F.Supp. 254. Constitutional Law 272(2)

Segregated confinement procedures at state prison were constitutionally inadequate in that prison review committee failed to define standards and considerations by which need for inmate's continued segregated confinement was to be judged, inmate was not being provided with sufficient information as to why his segregated confinement was being continued, and committee failed to obtain sufficient information as to inmate's psychological condition to enable it to make informed decision on inmate's proper confinement status; prison officials would be enjoined from continuing unconstitutional procedures. U. S. ex rel. Hoss v. Cuyler, E.D.Pa.1978, 452 F.Supp. 256. Prisons 13(5)

2978A. Due process, solitary confinement or segregation of prisoners

State inmate did not have protected liberty interest in not being held in administrative segregation for three months, and thus inmate's placement in administrative segregation did not violate due process, where there was no evidence that conditions of confinement in administrative segregation imposed atypical and significant hardship. Wilkins v. Ramirez, S.D.Cal.2006, 455 F.Supp.2d 1080. Prisons 13(5)

Prison inmate who was retained in administrative segregation unit (ASU) after expiration of his disciplinary term in security housing unit (SHU) was not thereby deprived of any due process rights; after his initial placement in administrative segregation inmate received written notice of the reasons for his placement and a hearing at which he had opportunity to present his views, and thereafter he received periodic reviews of the placement. Lindgren v. Curry, C.D.Cal.2006, 451 F.Supp.2d 1073. Prisons 13(5)

2978B. Equal protection, solitary confinement or segregration of prisoners

Prisoner failed to state an equal protection claim based on allegation that majority of the inmates in special housing unit were black where he failed to allege intentional or purposeful discrimination. Dickens v. Taylor, D.Del.2006, 2006 WL 3190344. Civil Rights 1395(7)

State inmate failed to plead viable equal protection claim against prison officials and employees when he alleged that similarly situated inmates were not so arbitrarily administratively segregated from general population, were not required to complete two 30-day work evaluations to be eligible for good-time credits, and were not required to work for free or deprived of work, given that inmate, who did not claim fundamental right or differential treatment based on suspect classification, could not contend that his placement in administrative segregation was unreasonable in light of prison officials' considerable discretion in placement decisions, and did not allege that his work situation or conditions placed on his eligibility for good-time credits lacked rational basis. Hornsby v. Jones, C.A.10 (Okla.) 2006, 188 Fed.Appx. 684, 2006 WL 1728022, Unreported. Civil Rights 1395(7)

2979. Necessity of hearing, solitary confinement or segregation of prisoners

Even if hearing accorded petitioner after he was placed in solitary confinement minimized or eliminated any compensable harm resulting from initial denial of procedural safeguards, his constitutional claim that he was unjustifiably placed in segregation without prior hearing was nonetheless actionable. Hughes v. Rowe, U.S.Ill.1980, 101 S.Ct. 173, 449 U.S. 5, 66 L.Ed.2d 163. Civil Rights 1092

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42 U.S.C.A. § 1983

District court's findings that prison official violated prisoner's procedural due process rights by placing him in administrative segregation without a hearing, and that official acted maliciously, arbitrarily and with punitive intent, was supported by sufficient evidence; issue of credibility was crucial because prisoner and official presented sharply conflicting evidence. Stevens v. McHan, C.A.8 (Ark.) 1993, 3 F.3d 1204. Civil Rights 1420

Responsible state officials who had the power to grant inmate a hearing prior to administrative segregation did not merely fail to follow state rules in providing deficient hearing, but obviously knew that inmate was in peril of being deprived of his liberty interest and, thus, the deprivation of liberty, giving rise to § 1983 claim, was neither "random" nor "unauthorized," so as to excuse, on grounds of impossibility, the state's failure to accord inmate a predeprivation hearing conforming to due process requirements. Patterson v. Coughlin, C.A.2 (N.Y.) 1985, 761 F.2d 886, certiorari denied 106 S.Ct. 879, 474 U.S. 1100, 88 L.Ed.2d 916. Constitutional Law 272(2)

Where placing prisoner in isolation for three days after he circulated a memorandum among other inmates informing them of state court action which he had commenced, and his later placement in a cell with two other inmates who were allegedly instructed not to mingle with him, were not so much intended as punishment as to preserve order in the jail, and since any punishment that might be inferred was minimal, prisoner was not denied due process by failure of jail officials to accord him an administrative hearing before imposition of punishment. Christman v. Skinner, C.A.2 (N.Y.) 1972, 468 F.2d 723. Constitutional Law 272(2)

Confinement of intersexual inmate in administrative segregation for 438 days without a hearing solely due to a genetically created ambiguous gender violated inmate's due process rights; prison's decision to place inmate in administrative segregation for a legitimate security reason was a rationale choice for the first thirty days while they evaluated housing options and inmate's behavior patterns, but to continue the same placement with no attempts at elevating her living conditions was completely arbitrary and capricious and without a rationale basis. DiMarco v. Wyoming Dept. of Corrections Div. of Prisons, Wyo. Women's Center, D.Wyo.2004, 300 F.Supp.2d 1183. Constitutional Law 272(2); Prisons 13(5)

Failure to provide inmate with hearing pursuant to Kansas Administration Regulations within 72 hours of his placement in administrative segregation based upon finding that he was escape risk did not violate his constitutional rights, where inmate received hearing prior to his placement in administrative segregation. Jacobs v. Stotts, D.Kan.1993, 829 F.Supp. 1245. Prisons 13(8)

2980. Interviews, solitary confinement or segregation of prisoners

Prison official's interviews of inmates placed in administrative segregation did not satisfy inmates' right to an informal interview for purposes of inmates' § 1983 procedural due process claims; official conducted investigation for his supervisors who would determine whether further steps, bringing criminal charges or issuing conduct violation, were necessary and thus, official was not the designated decision maker. Jones v. Coonce, C.A.8 (Mo.) 1993, 7 F.3d 1359, rehearing denied. Constitutional Law 272(2); Prisons 13(7.1)

2981. Evidence considered, solitary confinement or segregation of prisoners

In determining whether prisoners could safely be returned to general population from administrative segregation, it was not permissible for warden to give artificial weight to fact that each prisoner had been convicted of violent attack upon prison guard, i.e., warden could not properly consider such convictions as controlling or preponderant guidelines, but he could properly consider underlying facts and their convictions as historical facts of their cases and as factors to be considered among others in determining whether, after lapse of months or even of years, it was safe to terminate segregated status. Kelly v. Brewer, C.A.8 (Iowa) 1975, 525 F.2d 394. Prisons 12; Prisons 13(5)

Virginia prisoner was not deprived of his constitutional rights, on ground that his commitment to solitary

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confinement was based on knowing receipt of false testimony by prison officer as to defendant's alleged threat to do officer bodily harm, where prisoner's allegations in such regard were broad and unsupported and seemed to be partially refuted by his own pleadings, in which he pled that he "lost his temper," "cussed" the officer and "slammed a chair" into a table, and due process commands of governing Supreme Court decision were complied with; it seemed apparent that had the officer merely asserted statements contained in the pleadings the adjustment committee would have had reason to find that petitioner threatened the officer with bodily harm. Underwood v. Loving, W.D.Va.1975, 391 F.Supp. 1214. Civil Rights 1395(7); Constitutional Law 272(2)

2982. Periodic review, solitary confinement or segregation of prisoners

Reason or reasons for administrative segregation of prisoner must not only be valid at outset but must continue to subsist during period of segregation, and where inmate is held in segregation for prolonged or indefinite period, due process requires that situation be reviewed periodically and meaningfully and by relevant standards. Kelly v. Brewer, C.A.8 (Iowa) 1975, 525 F.2d 394. Constitutional Law 272(2)

Members of administrative segregation review committee had sufficient "personal involvement" in constitutionally offensive decisions to keep prisoner in administrative segregation to impose liability under § 1983, despite fact that final determination was made by the prison superintendent; committee members were integral parts of the decision making process which the jury ultimately found to be unconstitutional since prison superintendents considered and relied on the recommendations of their committee. McClary v. Coughlin, W.D.N.Y.2000, 87 F.Supp.2d 205, affirmed 237 F.3d 185. Civil Rights 1358

Persons confined in administrative segregation are entitled to a periodic review of their confinement and prison administration must have valid reason for segregation. Hooker v. Arnold, M.D.Pa.1978, 454 F.Supp. 527. Prisons 13(5)

Decisions to place county jail inmates in indeterminate confinement in isolation must be reviewed at least every ten days by a panel of officials, none of whom made the original decision to place the inmate in indefinite confinement. Tate v. Kassulke, W.D.Ky.1975, 409 F.Supp. 651. Prisons 13(6)

Ideally, weekly evaluation of prisoners in segregation, for purpose of determining whether they were fit and ready to be returned to general prison population, would be conducted by impartial state official not under control of Commissioner of Corrections, rather than by Deputy Commissioner, but selecting appropriate procedure was judgment entrusted to state officials, not federal judges, and federal court could not, in civil action brought by state prisoner, mandate procedure deemed desirable. Tyree v. Fitzpatrick, D.C.Mass.1971, 325 F.Supp. 554, affirmed 445 F.2d 627. Civil Rights 1092; Courts 495; Prisons 13(5)

2983. Statement of reasons, solitary confinement or segregation of prisoners

Assertion, by state prison inmate that his right to remain free from disciplinary segregation absent specified, substantive predicates complying with due process, was actionable under federal civil rights statute, as act relevant to deprivation was conscious act of disciplinary board in placing inmate in disciplinary segregation, not failure by board to render written statement of reasons for such confinement alleged by Board to constitute, at most, merely negligent conduct. Franklin v. Aycock, C.A.6 (Tenn.) 1986, 795 F.2d 1253. Civil Rights 1092

State prison officials' decision to continue administrative confinement of prisoner had to be supported by specific evidence demonstrating applicability to some or all of certain approved criteria to prisoner's situation and by statement of reasons why applicable criteria required continued segregation of prisoner; absent finding that some or all of specified criteria required that prisoner's confinement be continued until next periodic review, prisoner was to be released from segregative confinement. U. S. ex rel. Hoss v. Cuyler, E.D.Pa.1978, 454 F.Supp. 51. Prisons 13(7.1)

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42 U.S.C.A. § 1983

2984. Request of prisoner, solitary confinement or segregation of prisoners

State prisoner suffered no constitutional injury by being confined in protective custody at his own request. Taylor v. Strickland, D.C.S.C.1976, 411 F.Supp. 1390. Prisons 13(5)

Plaintiff prisoners, who were confined in protective custody cells at state prison pursuant to their own requests because of their fear that their lives would be in danger should they be returned to general prison population, failed to make required showing of barbaric conditions or exceptional circumstances which would entitle them to relief under this section. Fowler v. Anderson, E.D.Okla.1974, 386 F.Supp. 307. Civil Rights 1420

2985. Miscellaneous confinements or segregations, solitary confinement or segregation of prisoners

Disciplinary procedures in Nebraska prison which could result in loss of good-time credit or imposition of solitary confinement and which involved (1) a preliminary conference with chief correction supervisor and charging party at which prisoner was informed of misconduct charge and engaged in preliminary discussion on its merits, (2) preparation of a conduct report and hearing held before adjustment committee, at which report was read to inmate, and (3) opportunity at hearing to ask questions of the charging party were not fully adequate to satisfy due process requirements. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Constitutional Law 272(2)

Gender-related disparate treatment in housing of homosexuals was rationally calibrated to address legitimate penological concerns, and was not in violation of equal protection, since institutions for females generally were much less violent than those for males and male inmates were more likely than female inmates to have homophobic attitudes. Veney v. Wyche, C.A.4 (Va.) 2002, 293 F.3d 726. Constitutional Law 224(5); Prisons 13(5)

Prison officials did not violate inmate's due process liberty interest by keeping inmate involuntarily in "voluntary" protective custody for six months; even though this placement cost him approximately half of his out-of-cell time, eliminated his access to employment, and restricted his access to prison facilities, such placement did not impose "atypical and significant hardship." Neal v. District of Columbia, C.A.D.C.1997, 131 F.3d 172, 327 U.S.App.D.C. 322, rehearing denied, certiorari denied 119 S.Ct. 46, 525 U.S. 812, 142 L.Ed.2d 35. Constitutional Law 272(2); Prisons 13(5)

Inmate's segregation for 19 days was not atypical, significant deprivation as would support § 1983 action against prison officials for violating inmate's constitutional rights, even if inmate was locked in closed-front cell 24 hours per day, was not allowed to participate in activities available to general population or nonsegregated inmates housed in same area, was handcuffed whenever he left his cell, and lacked much contact with other inmates or staff. Williams v. Ramos, C.A.7 (Ill.) 1995, 71 F.3d 1246. Civil Rights 1092

Inmate was not kept in segregation in violation of prison regulation, and even if he had been so confined, his claim was for deprivation of liberty interest, under U.S.C.A.Const.Amend. 14, § 1, an issue not presented. Ross v. Reed, C.A.4 (N.C.) 1983, 719 F.2d 689. Prisons 13(5)

Inmate's six-month confinement in segregated housing unit (SHU) following disciplinary hearing did not implicate liberty interest under Fourteenth Amendment so as to allow inmate to maintain civil rights action premised upon alleged procedural due process violations during disciplinary hearing; inmate was not subjected to punishment that imposed "atypical and significant hardship" in relation to ordinary incidents of prison life where, under New York prison regulations, inmates could be confined in SHU for extended periods for both punitive and nonpunitive reasons. Husbands v. McClellan, W.D.N.Y.1997, 957 F.Supp. 403, motion to amend denied 990 F.Supp. 214. Constitutional Law 272(2); Prisons 13(5)

Inmate's confinement in administrative segregation did not give rise to viable claim under § 1983, absent allegation

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of deprivation of liberty which was atypical or substantial, or which was otherwise protected by state law. Everson v. Nelson, D.Kan.1996, 941 F.Supp. 1048. Civil Rights 1092

State prison officials were entitled to qualified immunity from liability under §§ 1983 in connection with their decision to keep inmate in administrative segregation, where decision was based on variety of factors, including original circumstances that necessitated administrative segregation, events that occurred in interim, and committee's personal observations of inmate, inmate was given opportunity to present information to committee, and committee conducted regular reviews of his confinement, every seven days for first two months, and every month thereafter. Torres v. Irvin, C.A.2 (N.Y.) 2004, 99 Fed.Appx. 292, 2004 WL 1147089, Unreported. Civil Rights 1376(7)

XXIV. VOTING AND ELECTIONS

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3011. Voting and elections generally

In light of unchallenged findings that no one was denied right to vote in state election and that votes claimed to have been wrongfully obtained would not have changed election, suit seeking to annul state election, which simply did not involve serious voting violations or aggravating factors such as racial discrimination or fraudulent conduct, did not justify federal intervention. Saxon v. Fielding, C.A.5 (Ala.) 1980, 614 F.2d 78. Federal Courts 52

If the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause, U.S.C.A.Const. Amend. 14 § 1, may be indicated and relief available under this section proscribing a deprivation of rights. Griffin v. Burns, C.A.1 (R.I.) 1978, 570 F.2d 1065. Civil Rights 1032

Not every election irregularity will give rise to a constitutional claim and an action under this section. Hennings v. Grafton, C.A.7 (Ill.) 1975, 523 F.2d 861. Civil Rights 1032

Where no violation of voters' constitutional rights, privileges or immunities was shown in connection with election error, this section provided no remedy. Powell v. Power, C.A.2 (N.Y.) 1970, 436 F.2d 84. Civil Rights 1029

County election workers' alleged act of refusing to permit voter whose voting machine had malfunctioned to cast another ballot was not cognizable as infringement on constitutional guarantees against discrimination in voting on account of sex or age, precluding voter's §§ 1983 action against county and county employees, absent evidence that employees had acted with sex bias or because of voter's age. Hill v. Gunn, S.D.N.Y.2005, 367 F.Supp.2d 532. Elections 11; Elections 13

Claims in voters' § 1983 action challenging state statutory requirement, that no vote cast in forthcoming gubernatorial recall election be counted for any candidate unless the voter also voted on the recall question itself, as a violation of their free speech, due process, and equal protection rights, as well as a violation of their right not to vote which was assertedly implicit in the Ninth, Fourteenth, Fifteenth, Nineteenth, and Twenty-Sixth Amendments, would all be addressed under a single analytical framework. Partnoy v. Shelley, S.D.Cal.2003, 277

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F.Supp.2d 1064, as modified on reconsideration. Constitutional Law 47

Although no precise line can be drawn between state action which will prompt a federal court to grant relief in an election dispute and that which will not, federal court intervention is more likely when the attack is on an officially sponsored election procedure which, in its basic aspect, is flawed than when the court is asked to count and validate ballots and enter into the details of the administration of the election. Duncan v. Poythress, N.D.Ga.1981, 515 F.Supp. 327, affirmed 657 F.2d 691, rehearing denied 664 F.2d 291, certiorari granted 102 S.Ct. 1426, 455 U.S. 937, 71 L.Ed.2d 647, certiorari dismissed 103 S.Ct. 368, 459 U.S. 1012, 74 L.Ed.2d 504. Elections 15

Before federal court could responsibly order a new presidential election in New York, claimants seeking extraordinary relief had to come forward with clear and convincing evidence that state officials or persons acting under color of state law, by intentionally depriving qualified voters of right to vote, altered outcome of election. Donohue v. Board of Elections of State of N. Y., E.D.N.Y.1976, 435 F.Supp. 957. Civil Rights 1422

While all procedures used by state as an integral part of the election process must pass muster against charges of discrimination or abridgement of the right to vote, it is not every limitation or incidental burden on the exercise of voting rights but is subject to a strict standard of review. Fishman v. Schaffer, D.C.Conn.1976, 418 F.Supp. 613. Elections 15

3012. Absentee ballots, voting and elections

Qualified voters who voted by absentee or shut-in ballots, later determined to be allowable only in general elections, in Democratic party primary for vacant city council seat in the 10th ward of the City of Providence were deprived by state officials of a constitutional right actionable under this section, since the state officials had, in effect, presented plaintiff class with "illegal ballots" and then refused to count their votes, and since plaintiffs' right to vote was thus clearly infringed. Griffin v. Burns, D.C.R.I.1977, 431 F.Supp. 1361, affirmed 570 F.2d 1065. Civil Rights 1029; Civil Rights 1032

3013. Appearance of name on ballot, voting and elections--Generally

Political party's refusal to permit prospective candidate to run for local party office failed to present justiciable controversy that was cognizable under statute that prohibits deprivation of federal constitutional rights under color of state law. Thompson v. Woodall, C.A.11 (Ala.) 1987, 819 F.2d 1052. Civil Rights 1032

If Illinois electoral Board did not perform, in opinion of plaintiff, its function of examining nominating petitions and certifying persons as candidates for elective office on ballot in accordance with law creating it, plaintiff was relegated to Illinois courts and was not entitled to relief in federal courts under this section. Daly v. Stratton, C.A.7 (Ill.) 1964, 326 F.2d 340. Courts 489(1)

Candidate and other civil rights plaintiff stated actionable § 1983 claim arising from appeal by board of elections from district judge's ruling in suit seeking to have candidate's name placed on ballot; plaintiffs alleged that filing of appeal and motion for stay pending appeal, as well as their timing, was specifically calculated to undercut exercise of candidate's First Amendment right to conduct his campaign, and that appeal and motion were frivolous. Hirschfeld v. Spanakos, S.D.N.Y.1994, 871 F.Supp. 190. Civil Rights 1395(1)

Strict application of cover sheet requirements of McKinney's N.Y. Election Code § 6-134, subd. 2 to petitions filed with the Board of Elections by plaintiffs and others on primary election ballot was not violative of this section as depriving plaintiffs of their constitutional right to appear on ballot absent evidence that plaintiffs relied upon advice given by the Board of Elections or any other state official to make out the cover sheet in the way they did or evidence that the cover sheet requirements were not otherwise applied uniformly among all candidates. Moldonado v. Rodriguez, S.D.N.Y.1981, 523 F.Supp. 177. Civil Rights 1033(2)

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42 U.S.C.A. § 1983

In view of fact that Florida election code provided no means by which an independent presidential candidate might objectively demonstrate his support and where independent presidential candidate who brought action under this section to challenge Florida statutory scheme had considerable national support, it was an unconstitutional abridgement of the rights of the candidate and of plaintiffs who were voters and potential electors to deny independent candidate opportunity to be placed on Florida ballot in upcoming presidential election. McCarthy v. Askew, S.D.Fla.1976, 420 F.Supp. 775, affirmed 540 F.2d 1254. Elections 22

For purpose of demonstrating that a would-be candidate has a significant measurable quantum of community support, requirements of Connecticut election law, C.G.S.A. §§ 9-453a to 9-453s, that a potential candidate submit petition signed by electors equal to only one percent of the number who voted for the same office in the previous election, with required forms being available after the previous statewide elections, impose no constitutionally impermissible burdens on prospective candidates in those respects. Fishman v. Schaffer, D.C.Conn.1976, 418 F.Supp. 613. Elections 21

3014. ---- Position of name on ballot, appearance of name on ballot, voting and elections

Denial of nominee's right to position on a ballot by episodic election irregularity in county primary election does not deprive his supporters of federal constitutional right. Gamza v. Aguirre, C.A.5 (Tex.) 1980, 619 F.2d 449, rehearing denied 625 F.2d 1016. Elections 22

3015. ---- Deadlines, appearance of name on ballot, voting and elections

There were no actions on part of state officials which barred political party from having its candidate for governor placed on ballot for 1994 general election, as required to support suit under § 1983, even though party claimed that it was precluded from filing its nominee for primary election by specified date due to mistaken belief by Secretary of State that party did not meet statutory requirements for a "political party"; there were other valid grounds for refusal to accept tendered nomination, as party had not filed required anti-Communist oath. Independent Party of Arkansas v. Priest, E.D.Ark.1995, 907 F.Supp. 1276. Civil Rights 1032

Where information voluntarily furnished plaintiffs' representative by Louisiana Secretary of State and State Attorney General as to deadline for placing name of plaintiff and his electors on 1976 general election ballot for office of President of United States was the law as it stood prior to 1974 amendment of LSA-R.S. 18.624(c) requiring nominating papers to be filed before the first, rather than second primary, as under prior law, and plaintiffs' petition was timely filed under preamendment law, state election officials were estopped from enforcing the amended law against plaintiff, notwithstanding contention that plaintiffs were charged with knowledge of the amended law and could not rely on opinions of the State Attorney General or that it was physically impossible to place another name on the ballot due to construction of the voting machines. McCarthy v. Hardy, E.D.La.1976, 420 F.Supp. 410. Estoppel 62.2(2)

3016. Apportionment, voting and elections--Generally

A claim that a state statute effected an apportionment that deprived plaintiffs of equal protection of the laws in violation of U.S.C.A.Const. Amend. 14 did not assert a federal constitutional claim unsubstantial and frivolous, for purposes of determining jurisdiction of the subject matter. Baker v. Carr, U.S.Tenn.1962, 82 S.Ct. 691, 369 U.S. 186, 7 L.Ed.2d 663, on remand 206 F.Supp. 341. Federal Courts 180

Proposed city charter amendment relating to councilmanic districts was properly enjoined where it would produce unconstitutional variance between districts measured on basis of total population, although districts in question would have been sufficiently equal if measured by registered voters and even if existing charter required apportionment according to registered voters. Ellis v. Mayor and City Council of Baltimore, C.A.4 (Md.) 1965, 352 F.2d 123, on remand 267 F.Supp. 263. Injunction 85(1); Municipal Corporations 80

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City's redrawing of nine council districts based on census, resulting in an 8.8 percent deviation from the largest district population to the smallest, was a minor deviation, and thus, insufficient to create a prima facie case of invidious discrimination under the Fourteenth Amendment or a claim for denial of the right to vote under the Fifteenth Amendment. Baines v. Masiello, W.D.N.Y.2003, 288 F.Supp.2d 376. Constitutional Law 82(8); Constitutional Law 225.3(6); Municipal Corporations 80

Fact that some Tennessee voters for state senate had been moved from even-numbered district to odd-numbered district so that, under a staggered election plan, they would not vote for senator for another two years, did not render the plan unconstitutional. Mader v. Crowell, M.D.Tenn.1980, 498 F.Supp. 226. States 27(1)

3017. ---- Racial discrimination, apportionment, voting and elections

Plaintiffs who brought action under this section alleging that at-large method of electing city directors effectively diluted voting power of blacks and excluded them from meaningful participation in election of city directors and in political processes and government of city were not entitled to relief under any theory. Leadership Roundtable v. City of Little Rock, E.D.Ark.1980, 499 F.Supp. 579, affirmed 661 F.2d 701. Civil Rights 1448

3018. ---- One person one vote rule, apportionment, voting and elections

Where Massachusetts vocational district school committee representatives were not elected but were appointed by elected school committees of cities and towns, and appointees to district school committees did not have to be members of local school committee, system was appointive, not elective, and thus did not violate "one man, one vote" principle on theory that committee membership that was disproportionate to district population ratios. Burton v. Whittier Vocational Regional School Dist., D.C.Mass.1978, 449 F.Supp. 37, affirmed 587 F.2d 66. Constitutional Law 225.3(11)

3019. ---- At-large election, apportionment, voting and elections

Since Mobile, Alabama, is a unitary electoral district and city commission elections are conducted at large, there can be no claim that the "one person, one vote" principle has been violated, and therefore nobody's vote has been "diluted" in the sense in which that word is used in Reynolds v. Sims. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) City of Mobile, Ala. v. Bolden, U.S.Ala.1980, 100 S.Ct. 1490, 446 U.S. 55, 64 L.Ed.2d 47, dissenting opinion 100 S.Ct. 1519, 446 U.S. 55, 64 L.Ed.2d 47, on remand 626 F.2d 1324. Constitutional Law 225.3(1)

3020. ---- Weighted voting, apportionment, voting and elections

While weighted voting might not be desirable method for permanent reapportionment of parish school board, so long as plan was not shown to import its own discrimination it would be an acceptable palliative until permanent plan could be formulated. Dameron v. Tangipahoa Parish Police Jury, E.D.La.1970, 315 F.Supp. 137. Schools 48(1)

3021. Campaign tactics, voting and elections--Generally

Neither federal Constitution nor any civil rights law prohibits legitimate activity including canvassing, poster hanging and poll watching by partisan political personnel in election. Shakman v. Democratic Organization of Cook County, N.D.Ill.1969, 310 F.Supp. 1398, reversed on other grounds 435 F.2d 267, certiorari denied 91 S.Ct. 1383, 402 U.S. 909, 28 L.Ed.2d 650, on remand 356 F.Supp. 1241. Elections 319

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42 U.S.C.A. § 1983

3022. ---- Defamation, campaign tactics, voting and elections

No authority could be read into this section which would provide for a cause of action thereunder by one candidate in a primary election against another candidate who, in the heat of political battle, made nonfactual averments or defamatory remarks against that official's reputation in a newspaper advertisement, and standing alone, such advertisement presented no invasion of constitutional rights nor any basis for a damage action under this section. Sinchak v. Parente, W.D.Pa.1966, 262 F.Supp. 79. Civil Rights 1038

3023. ---- Investigations, campaign tactics, voting and elections

Former county commissioner did not have civil rights cause of action under § 1983 for electoral loss allegedly caused by state attorney's alleged use of political power to oppose commissioner in his election campaign or pursuing bad faith investigation of him after his vehicle was stolen and obtaining civil contempt adjudication against him for refusal to answer questions during investigation of admitted thieves. Gersten v. Rundle, S.D.Fla.1993, 833 F.Supp. 906, affirmed 56 F.3d 1389, certiorari denied 116 S.Ct. 924, 516 U.S. 1118, 133 L.Ed.2d 853. Civil Rights 1032

Allegations by candidate for local election that conspiracy among township board of supervisors and election opponent to initiate criminal investigation caused candidate to be deprived of opportunity to win primary election for township board of supervisors did not state claim under § 1983 for violation of due process rights; there was no federally protected right to win election to public office. Lahaza v. Azeff, E.D.Pa.1992, 790 F.Supp. 88. Constitutional Law 274.2(1)

3024. ---- Polls, campaign tactics, voting and elections

Defeated candidate for Kentucky circuit judgeship had no right of action under this section against incumbent judge who was reelected, chairman and cochairman of election campaign of incumbent judge, and president and officers of bar association, in connection with poll of association members concerning qualifications of candidates. Gorman v. Lukowsky, C.A.6 (Ky.) 1970, 431 F.2d 971. Civil Rights 1376(8)

3025. Contributions, voting and elections

Federal court, hearing challenge of Wisconsin Socialist Workers 1976 Campaign Committee and others to W.S.A. 11.001 et seq., relating to disclosure of names of contributors and recipients of funds, would not require evidence or specific acts of harassment of contributors before granting relief, since to do so would impose unnecessarily strict burden on plaintiffs. Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, E.D.Wis.1977, 433 F.Supp. 540. Declaratory Judgment 346

3026. Counting of ballots, voting and elections

General rule of non-intervention by federal courts in local election disputes precluded District Court's issuance of preliminary injunction, ordering the Puerto Rico Electoral Commission to identify and set aside, but not consider, certain ballots cast in Puerto Rico's gubernatorial election, the validity of which were challenged by losing gubernatorial candidate and his supporting voters, in §§ 1983 action against Election Commission and its officers; the Commission had ordered that the ballots were required to be counted, so that challenging candidate and voters could not show that a discrete group of voters had been disenfranchised. Rossello-Gonzalez v. Calderon-Serra, C.A.1 (Puerto Rico) 2004, 393 F.3d 16, withdrawn from bound volume, opinion corrected and superseded 398 F.3d 1. Injunction 138.51

Federal court intervention was inappropriate in a civil rights action brought by political party challenging a ruling of the Supreme Court of Puerto Rico allowing the counting of ballots which were mismarked by the electors, but

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which clearly showed elector's intent. Partido Nuevo Progresista v. Perez, C.A.1 (Puerto Rico) 1980, 639 F.2d 825, certiorari denied 101 S.Ct. 2318, 451 U.S. 985, 68 L.Ed.2d 842. Judgment 828.20(1)

3027. Damages, voting and elections

Even though municipal board of elections acted in bad faith by moving in Court of Appeals six days before election for stay of district court's order requiring board to place candidate's name on ballot, candidate failed to prove any damages in his subsequent § 1983 action against board; he did not show that board's action caused him to lose election or that his campaign would have spent less money but for board's actions, and attorney fees that Court of Appeals awarded to candidate as sanction after denying motion for stay eliminated that as item of damages necessary to make candidate whole. Hirschfeld v. Spanakos, C.A.2 (N.Y.) 1997, 104 F.3d 16. Civil Rights 1032

3028. Primaries, voting and elections--Generally

Recovery could be had for denial of right to vote at primary election for same reasons as apply to final election. Nixon v. Herndon, U.S.Tex.1927, 47 S.Ct. 446, 273 U.S. 536, 71 L.Ed. 759. Elections 57

Actions of state democratic party in certifying as democratic nominee for governor candidate receiving fewest total number of votes in runoff election did not implicate any federally protected right, where runoff was marked by widespread misrepresentations and illegal actions taken by other candidate and his staff at highest level, committee had attempted to determine lawful primary winner in circumstances where opponents had created situation making absolute accuracy impossible, and state process was available but not used to address any errors. Curry v. Baker, C.A.11 (Ala.) 1986, 802 F.2d 1302, stay denied 107 S.Ct. 5, 479 U.S. 1301, 93 L.Ed.2d 1, certiorari dismissed 107 S.Ct. 1262, 479 U.S. 1023, 93 L.Ed.2d 819. Elections 136.1

While the individual defendants, who were charged with conspiring together to take over or interfere with the American Labor Party locally by registering in primary election for mayor and voting in that election, may have taken a less than serious view of the fortunes and position of the Labor Party, their conduct did not amount to anything more than robust, though sometimes clownish, assertion of political rights; and although they obviously were in cahoots to accomplish whatever they did, their joint action was not a conspiracy to deprive anyone of constitutional rights within the meaning of this section. Hooks v. Eure, W.D.N.C.1976, 423 F.Supp. 55. Conspiracy 7.5(2)

3029. ---- Racial discrimination, primaries, voting and elections

Where local party authorities acting pursuant to regulation prescribed by party's state executive committee refused to permit Negro to vote in Democratic primary in Georgia to select candidates for state and federal offices solely on account of his race, they deprived Negro of a right secured to him by the constitution and laws of the United States in violation of U.S.C.A.Const. Amends. 14, 15 and 17, for which he was entitled to recover damages under this section. Chapman v. King, C.C.A.5 (Ga.) 1946, 154 F.2d 460, certiorari denied 66 S.Ct. 905, 327 U.S. 800, 90 L.Ed. 1025.

3030. ---- College students, primaries, voting and elections

Election schedule, which set primary election in town for January 2, did not discriminate unconstitutionally against students who attended colleges located in town, in that burden on students imposed by election schedule was not so severe as itself to constitute an unconstitutionally onerous burden, and in that the election calendar was not arbitrary and was not unconnected to any important state goal. Walgren v. Board of Selectmen of Town of Amherst, Mass., D.C.Mass.1974, 373 F.Supp. 624, affirmed 519 F.2d 1364. Constitutional Law 225.2(2)

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3031. Qualifications of voters, voting and elections--Generally

Voting Rights Act provision forbidding the practice of disqualifying potential voters for their failure to provide information irrelevant to determining their eligibility to vote could be enforced by a private right of action under § 1983; neither Voting Rights Act's provision for enforcement by the Attorney General nor Congress's failure to provide for a private right of action expressly in Voting Rights Act required the conclusion that Congress did not intend such a right to exist. Schwier v. Cox, C.A.11 (Ga.) 2003, 340 F.3d 1284, on remand 412 F.Supp.2d 1266. Civil Rights 1040; Elections 12(9.1)

Short of attack on convictions of plaintiffs on their pleas of guilty to receiving unemployment compensation benefits by reason of misrepresentations, plaintiffs had no right to challenge their disqualification from voting that resulted from the convictions under constitutional Alabama law. Waddy v. Davis, C.A.5 (Ala.) 1971, 445 F.2d 1. Elections 90

3032. ---- Racial discrimination, qualifications of voters, voting and elections

City election poll worker's preventing black voter from voting was racially motivated, as required to support voter's § 1983 equal protection action against worker, even though voter's name was not on list of registered voters, where poll worker, who had known voter for years, did not follow state's instructions to call county clerk's office to verify residency, which may have revealed that voter met the residency requirement, and did not allow voter to fill out challenged ballot or direct voter to county polling place. Taylor v. Howe, C.A.8 (Ark.) 2000, 225 F.3d 993. Constitutional Law 215.3; Municipal Corporations 747(1)

Provision of Texas Constitution and Texas Election Code barring convicted felons from voting or holding public office do not, on their face, deprive persons of any constitutional right on account of their race. Hayes v. Williams, S.D.Tex.1972, 341 F.Supp. 182.

3033. Referenda, voting and elections

Parents of school children failed to state a federal civil rights claim arising out of a referendum which rejected their attempt to "detach" their property from one school district and "attach" it to another; technical violation of notice requirements and limitations period for referendum were nothing more than garden variety election irregularities which could adequately be dealt with through state law procedures. Dieckhoff v. Severson, C.A.7 (Wis.) 1990, 915 F.2d 1145. Civil Rights 1317

Wrongs allegedly committed by village officials, who during period preceding public referendum on bond issue allegedly deliberately misrepresented facts concerning need for and cost of sewer system and failed to disclose material facts, including presumably their personal interests therein, were not intimately connected with ballot itself or right to vote on issue authorizing village to issue bonds to pay for 25 percent of cost of design and construction of sewer system, and thus did not provide basis for federal cause of action. Rudisill v. Flynn, C.A.7 (Ill.) 1980, 619 F.2d 692. Municipal Corporations 108.10

3033A. Recall elections, voting and elections

Claims in voters' § 1983 action challenging state statutory requirement, that no vote cast in forthcoming gubernatorial recall election be counted for any candidate unless the voter also voted on the recall question itself, as a violation of their free speech, due process, and equal protection rights, as well as a violation of their right not to vote which was assertedly implicit in the Ninth, Fourteenth, Fifteenth, Nineteenth, and Twenty-Sixth Amendments, would all be addressed under a single analytical framework. Partnoy v. Shelley, S.D.Cal.2003, 277 F.Supp.2d 1064, as modified on reconsideration. Constitutional Law 47

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42 U.S.C.A. § 1983

District court considering voters' challenge of state statutory requirement, that no vote cast in forthcoming gubernatorial recall election be counted for any candidate unless the voter also voted on the recall question itself, as a violation of their free speech, due process, and equal protection rights, was required first to determine the extent to which the statute burdened the voters' First and Fourteenth Amendment rights, and then to determine whether such a burden was either severe or only a reasonable nondiscriminatory restriction. Partnoy v. Shelley, S.D.Cal.2003, 277 F.Supp.2d 1064, as modified on reconsideration. Constitutional Law 90.1(1.2); Constitutional Law 225.2(6); Constitutional Law 274.2(3)

3033B. ---- Voters with direct interest, recall elections, voting and elections

State's asserted interest in ensuring that only those voters with a direct interest in gubernatorial recall successor election are allowed to vote and in making certain that those votes are not diluted was not a compelling state interest, as required to justify, against First Amendment free speech and Fourteenth Amendment due process and equal protection challenge, statutory requirement that no vote cast in recall election be counted for any candidate unless the voter also voted on the recall question itself; simply because a person was either opposed to the recall election process or agnostic to its merits, would not mean that that person was not directly interested in who would be their next Governor. Partnoy v. Shelley, S.D.Cal.2003, 277 F.Supp.2d 1064, as modified on reconsideration. Constitutional Law 90.1(1.2); Constitutional Law 225.2(6); Constitutional Law 274.2(3); States 52

3033C. ---- Compelling state interest, recall elections, voting and elections

State's asserted interest in protecting integrity and continuity of validly elected officials, and in protecting the people's interest in seeing their elected officials remain in office unless voters show substantial interest in whether the official is removed, was not a compelling state interest, as required to justify, against First Amendment free speech and Fourteenth Amendment due process and equal protection challenge, statutory requirement that no vote cast in recall election be counted for any candidate unless the voter also voted on the recall question itself; there was no requirement as to number of voters who must vote on the recall, and the requirement had effect of reducing the vote on the successor question, as it disallowed votes by otherwise properly registered voters. Partnoy v. Shelley, S.D.Cal.2003, 277 F.Supp.2d 1064, as modified on reconsideration. Constitutional Law 90.1(1.2); Constitutional Law 225.2(6); Constitutional Law 274.2(3); States 52

3034. Refusal to hold election, voting and elections

Refusal of county board of supervisors to hold election on bond issue did not rise to level of constitutional deprivation; even if board members improperly eliminated signatures on plaintiffs' protest petition or viewed required number of signatures too restrictively, proper avenue for such claims was through established state election procedures and not federal courts. Thrasher v. Board of Sup'rs of Alcorn County, Miss., N.D.Miss.1991, 765 F.Supp. 896. Counties 178

Drainage commissioners did not, by failing to call drainage commissioner elections, deprive landowners of their constitutionally protected right to election, where commissioners did not interfere with landowners' ability to petition state court for election as provided under Illinois law. Spinka v. Brill, N.D.Ill.1990, 750 F.Supp. 306. Elections 15

3035. Registration, voting and elections--Generally

C.R.S. 1-2-203(2)(j), distinguishing between political parties and political organizations by allowing voter registrants to indicate their affiliations only with political parties unconstitutionally burdened opportunity of political organizations to promote their minority interests. Baer v. Meyer, C.A.10 (Colo.) 1984, 728 F.2d 471.

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42 U.S.C.A. § 1983

Elections 19

Help America Vote Act (HAVA) conferred right to vote in federal election, enforceable under §§ 1983. Florida Democratic Party v. Hood, N.D.Fla.2004, 342 F.Supp.2d 1073. Elections 8.1

Plaintiffs challenging state's claimed failure to comply with National Voter Registration Act (NVRA) stated claim under federal civil rights statute, § 1983, and thus failure to provide notice of violation to chief election official of state, as required for bringing a private right of action under NVRA, was irrelevant; NVRA creates enforceable right under § 1983 and contains no express provision limiting plaintiffs' remedy for violations to the remedy created by the Act, but instead states that rights and remedies created by NVRA "are in addition to all other rights and remedies provided by law." Association of Community Organizations for Reform Now v. Miller, W.D.Mich.1995, 912 F.Supp. 976, affirmed 129 F.3d 833. Civil Rights 1029

Provisions of election laws of New Hampshire, requiring that one seeking to change his party registration do so before the first day on which candidates could file for the next primary election and providing for newspaper notice and posting notice of the dates on which supervisors of the checklist would meet to allow such change of registration, did not violate constitutional and civil rights of independent voters who voted in party primaries but failed to appear before supervisors of the checklist to register again as independents. Young v. Gardner, D.C.N.H.1980, 497 F.Supp. 396. Civil Rights 1032; Elections 19

3036. ---- Racial discrimination, registration, voting and elections

Consistent and extreme form of discrimination engaged in by former, though not by current, board of registrars in registering voters was significant factor to consider in determining likelihood of future civil rights violations. U. S. v. Atkins, C.A.5 (Ala.) 1963, 323 F.2d 733. Injunction 80

3037. ---- College students, registration, voting and elections

Action under color of state law which allegedly subjects college students to discriminatory voter registration requirements will support an action under this section. Auerbach v. Kinley, N.D.N.Y.1980, 499 F.Supp. 1329. Civil Rights 1033(2)

3038. Residency requirements, voting and elections

Ark.Stats. §§ 19-201 et seq. providing for at-large election of aldermen who must reside in their respective wards was not per se violative of equal protection clause of provision precluding abridgment of right to vote. Dove v. Bumpers, D.C.Ark.1973, 364 F.Supp. 407, remanded on other grounds 497 F.2d 895, affirmed 539 F.2d 1152.

3039. Stuffing of ballot box, voting and elections

Stuffing of a ballot box would amount to a violation of both this section and § 241 of Title 18. Munoz v. Amador, S.D.Tex.1964, 230 F.Supp. 591, appeal dismissed 340 F.2d 590.

3040. Voting devices, voting and elections

Voters and incumbent candidate for town supervisor had no cognizable due process claim in their §§ 1983 action against county board of elections, board commissioners, and opposing candidate based on voting machine malfunction that allegedly resulted in undercounting of votes for incumbent, absent allegation of intentional deprivation of the right to vote; malfunctioning voting machine that failed to register votes was an unfortunate but unintended irregularity, and as such, differed significantly from purposeful state conduct directed at disenfranchising a class or group of citizens. Shannon v. Jacobowitz, C.A.2 (N.Y.) 2005, 394 F.3d 90.

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42 U.S.C.A. § 1983

Constitutional Law 274.2(3); Elections 222

There was no evidence of intentional or willful conduct by state officials in connection with late delivery of voting machines for Republican primary election for state senator, as required to support § 1983 claim for deprivation of right to vote. Coto v. New York City Bd. of Elections, C.A.2 (N.Y.) 1996, 101 F.3d 803. Civil Rights 1422

Candidates for state and federal offices in county general election were not entitled to recover from county election officials in civil rights action based on inaccuracies in computerized voting system, absent allegation that officials manipulated system to undermine the election. Bodine v. Elkhart County Election Bd., C.A.7 (Ind.) 1986, 788 F.2d 1270. Civil Rights 1032

Malfunctioning of electronic voting devices in election for county offices, and permitting some voters to vote a second time where it was discovered that one of the devices had failed to record votes, did not establish a constitutional deprivation cognizable under this section. Hennings v. Grafton, C.A.7 (Ill.) 1975, 523 F.2d 861. Civil Rights 1032

County election workers' alleged act of refusing to permit voter whose voting machine had malfunctioned to cast another ballot amounted to negligence or incompetence, not willful conduct, precluding voter's §§ 1983 due process claim against county and county employees, absent showing of intent to cause deprivation of voter's right to vote, as opposed to mere intent to deny her another ballot. Hill v. Gunn, S.D.N.Y.2005, 367 F.Supp.2d 532. Constitutional Law 274.2(3); Elections 57

Plaintiffs did not establish civil rights claim for relief with respect to completed elections, where none of the irregularities claimed resulted from intentional, systematic conduct aimed at corrupting state's electoral process; original malfunctioning of voting machines was purely fortuitous and courts merely attempted to rectify situation. Lake v. State Bd. of Elections of North Carolina, M.D.N.C.1992, 798 F.Supp. 1199. Elections 12(4)

Voters and incumbent candidate demonstrated that their right to vote and have their votes counted for office of town supervisor was violated, in lawsuit under §§ 1983, on evidence that 295 voters entered voting machine but 139 votes were not recorded for town supervisor, only 1 vote was recorded for incumbent, and companion voting machine had non-participation rate of 1.49%. Shannon v. Jacobowitz, N.D.N.Y.2004, 2004 WL 180253, Unreported, reversed and remanded 394 F.3d 90. Elections 295(1)

Exception to mootness for conduct capable of repetition, yet evading review was applicable to civil rights case brought by voter against New Mexico Secretary of State, in which challenged the production and certification of the New Mexico general election ballot and sought to have write-in ballot instead, even though election had already taken place by the time that voter's appeal was considered, where the New Mexico statutes regarding ballot production and ballot certification continued to remain in effect, so it was likely that the same dispute would occur between voter and secretary of state. Pearlman v. Vigil-Giron, C.A.10 (N.M.) 2003, 71 Fed.Appx. 11, 2003 WL 21666673, Unreported, certiorari denied 124 S.Ct. 576, 540 U.S. 1021, 157 L.Ed.2d 438, rehearing denied 124 S.Ct. 1139, 540 U.S. 1145, 157 L.Ed.2d 963. Mandamus 187.8

3041. Miscellaneous claims, voting and elections

City election poll worker's requiring that black voter's chosen assistant, who was to help voter read ballot, first read section of ballot aloud to poll worker, was evidence of racial discrimination supporting voter's § 1983 equal protection action against worker, where state law and accepted practice dictated that disabled voter was entitled to assistance from any person of her choice. Taylor v. Howe, C.A.8 (Ark.) 2000, 225 F.3d 993. Constitutional Law 215.3; Municipal Corporations 747(1)

Scheme under which water district for particular development was managed by officials elected by entire town had

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rational basis and did not impermissibly dilute voting power of residents of the development. Collins v. Town of Goshen, C.A.2 (N.Y.) 1980, 635 F.2d 954. Waters And Water Courses 183.5

Help America Vote Act (HAVA) conferred right to vote in federal election, enforceable under §§ 1983. Florida Democratic Party v. Hood, N.D.Fla.2004, 342 F.Supp.2d 1073. Elections 8.1

XXV. IMMUNITY GENERALLY

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3071. Immunity generally

Congress did not intend this section to abrogate immunities well grounded in history and reason. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. Civil Rights 1373

Immunity analysis, i.e., immunity from liability in damages under Civil Rights Act, rests on functional categories and not on status of a defendant. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Civil Rights 1373

Two kinds of immunity from a § 1983 claim are qualified immunity and absolute immunity. O'Neal v. Mississippi Bd. of Nursing, C.A.5 (Miss.) 1997, 113 F.3d 62. Civil Rights 1373; Civil Rights 1376(1)

If parties seeking immunity from § 1983 claim were shielded from tort liability when Congress enacted § 1983, court infers from legislative silence that Congress did not intend to abrogate such immunities when it imposed liability for actions taken under color of state law; additionally, irrespective of the common-law support, court will not recognize immunity available at common law if § 1983's history or purpose counsel against applying it in § 1983 actions. In re Allen, C.A.4 (W.Va.) 1997, 106 F.3d 582, suggestion for rehearing denied 119 F.3d 1129, certiorari denied 118 S.Ct. 689, 522 U.S. 1047, 139 L.Ed.2d 635. Civil Rights 1373

Immunity is a judicially-developed limitation on protection established by Congress in this section. Henriksen v. Bentley, C.A.10 (Wyo.) 1981, 644 F.2d 852.

Since this section by its very terms admits no immunities, but rather imposes liability upon "every person" who,

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under color of state law, deprives another of his civil rights, courts are naturally loath to clothe any person with immunity which would frustrate design of this section of providing vindication of those wronged by misuse of state power. Marrero v. City of Hialeah, C.A.5 (Fla.) 1980, 625 F.2d 499, certiorari denied 101 S.Ct. 1353, 450 U.S. 913, 67 L.Ed.2d 337. Civil Rights 1373

Doctrine of immunity, absolute or qualified, extended to public officials in a civil rights suit is one of judicial making and involves the delicate balancing of the rights of citizens to obtain redress from wrong committed by public officials and the need to assure that public officials will perform their assigned duties unfettered by the prospect of being subjected to the costs of defense and consequences of the damage award against him for acts done in the course of their duties. Allred v. Svarczkopf, C.A.10 (Utah) 1978, 573 F.2d 1146. Civil Rights 1376(1)

Doctrine of official immunity should be applied sparingly since to hold all state officers immune from suit would largely frustrate the salutary purpose of this section providing for civil actions for deprivation of rights; it is necessary to balance competing considerations in determining whether particular officers are immune. C. M. Clark Ins. Agency, Inc. v. Maxwell, C.A.D.C.1973, 479 F.2d 1223, 156 U.S.App.D.C. 240. Civil Rights 1376(3)

Officials sued for violations of rights conferred by a statute or regulation, like officials sued for violation of constitutional rights, do not forfeit their immunity by violating some other statute or regulation; rather, these officials become liable for damages on § 1983 claims only to the extent that there is a clear violation of the statutory rights that give rise to the cause of action for damages. Estate of Phillips v. District of Columbia, D.D.C.2003, 257 F.Supp.2d 69, motion to vacate denied 355 F.Supp.2d 212. Civil Rights 1376(1); Civil Rights 1376(2)

Conduct by persons acting under color of state law which is wrongful under § 1983 cannot be immunized by state law. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Civil Rights 1373

Once prima facie case is established under § 1983, question becomes whether defendant is entitled to some kind of defense against or immunity from damages liability. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1366; Civil Rights 1373

In civil rights cases in particular, the doctrine of official immunity should be applied sparingly. Williams v. Codd, S.D.N.Y.1978, 459 F.Supp. 804. Civil Rights 1376(1)

Proper approach, in determining whether a state official is immune from liability under this section, is to consider the precise function at issue, and to determine whether an officer is likely to be unduly inhibited in the performance of that function by the threat of liability for tortious conduct. Joyce v. Gilligan, N.D.Ohio 1974, 383 F.Supp. 1028, affirmed 510 F.2d 973. Civil Rights 1376(3)

Public official's defense of immunity from suit is to be sparingly applied in civil rights cases. James v. Ogilvie, N.D.Ill.1970, 310 F.Supp. 661. See, also, Jobson v. Henne, C.A.2 (N.Y.) 1966, 355 F.2d 129; Stevenson v. Sanders, D.C.Ky.1970, 311 F.Supp. 683; Donovan v. Mobley, D.C.Cal.1968, 291 F.Supp. 930.

When immunity is properly invoked it constitutes a defense to civil rights action. DeFelice v. Philadelphia Bd. of Ed., E.D.Pa.1969, 306 F.Supp. 1345, affirmed 432 F.2d 1358. Civil Rights 1373

3071A. Judges and court officials, immunity generally

Receiver appointed pursuant to divorce proceeding to sell couple's property and divide proceeds enjoyed immunity against former husband's § 1983 civil rights claim attacking receiver's authority to act as receiver. Huszar v. Zeleny, E.D.N.Y.2003, 269 F.Supp.2d 98. Civil Rights 1376(8)

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Judges and court officials are immune from suit under § 1983 for acts performed in their official capacities; similarly, court-appointed receivers are also cloaked with judge's immunity. Huszar v. Zeleny, E.D.N.Y.2003, 269 F.Supp.2d 98. Civil Rights 1376(8)

3072. Common law, immunity generally

Immunity available at common law will not be recognized if history or purpose of § 1983 counsel against applying that in § 1983 actions. Wyatt v. Cole, U.S.Miss.1992, 112 S.Ct. 1827, 504 U.S. 158, 118 L.Ed.2d 504, on remand 994 F.2d 1113. Civil Rights 1373

Section 1983 immunities are predicated upon considered inquiry into immunity historically accorded the relevant official at common law and the interests behind it. Tower v. Glover, U.S.Or.1984, 104 S.Ct. 2820, 467 U.S. 914, 81 L.Ed.2d 758. Civil Rights 1376(1)

In determining whether immunity defense is available in § 1983 suit, critical initial question is whether official claiming immunity can point to common-law counterpart to privilege he asserts. Enlow v. Tishomingo County, Miss., C.A.5 (Miss.) 1992, 962 F.2d 501, rehearing denied 971 F.2d 750. Civil Rights 1376(1)

Immunity from suit under § 1983 depends on whether such immunity was recognized at common law when statute was enacted and whether public policy would support such immunity. Manis v. Corrections Corp. of America, M.D.Tenn.1994, 859 F.Supp. 302. Civil Rights 1373

In determining whether individual is entitled to immunity in § 1983 action, inquiry is whether official, sued in individual capacity, can point to common-law counterpart to privilege he asserts, and whether § 1983's history or purpose would exclude same immunity in § 1983 action. Vines v. Howard, E.D.Pa.1987, 676 F.Supp. 608. Civil Rights 1376(1)

Common law official immunity is a judicially developed limitation on the civil rights protection established by Congress in this section. Friedman v. Weiner, D.C.Colo.1981, 515 F.Supp. 563. Civil Rights 1376(1)

3073. Federal immunity compared, immunity generally

In absence of Congressional direction to the contrary, there is no basis for according to federal officials a higher degree of immunity from liability when sued for constitutional infringement than is accorded state officials when sued for the identical violation under this section; federal officials should enjoy no greater zone of protection when they violate federal constitutional rules than do state officers. Butz v. Economou, U.S.N.Y.1978, 98 S.Ct. 2894, 438 U.S. 478, 57 L.Ed.2d 895, on remand 466 F.Supp. 1351. Civil Rights 1376(1)

Assuming that United States Supreme Court decision in Bivens v. Six Unknown Named Agents authorizes damage action for particular constitutional infringement by federal officer, federally determined immunity applicable in such case should be no different from federally determined immunity available in similar litigation brought against state official under deprivation provisions of this section. Briggs v. Goodwin, C.A.D.C.1977, 569 F.2d 10, 186 U.S.App.D.C. 179, certiorari denied 98 S.Ct. 3089, 437 U.S. 904, 57 L.Ed.2d 1133. Civil Rights 1376(1)

3074. Public policy, immunity generally

Supreme Court does not have license to establish immunities from § 1983 actions in interests of what Court judges to be sound public policy; when there is no historical tradition of immunity on which court can draw, its inquiry is at an end. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. Civil Rights 1373

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For purposes of this section, immunities are extended to government officials only when overriding considerations of public policy demand that official be given a measure of protection from personal liability to ensure his ability to function effectively. Marrero v. City of Hialeah, C.A.5 (Fla.) 1980, 625 F.2d 499, certiorari denied 101 S.Ct. 1353, 450 U.S. 913, 67 L.Ed.2d 337. Civil Rights 1376(1)

Questions concerning an official's immunity under this section may not be resolved simply on the basis of judicial notions of sound public policy. Raitport v. Provident Nat. Bank, E.D.Pa.1978, 451 F.Supp. 522. Civil Rights 1376(1)

Public policy requires that public officials be accorded protection against personal liability in some circumstances despite the existence of a violation of constitutional rights. Carey v. White, D.C.Del.1974, 375 F.Supp. 1327, supplemented 407 F.Supp. 121. Officers And Public Employees 114

3075. First amendment rights, immunity generally

Four-part inquiry for determining whether public official is qualifiedly immune from public employee's First Amendment claim is to be applied regardless of whether employer's claimed reasons for employee's termination are related to speech. Vista Community Services v. Dean, C.A.11 (Ga.) 1997, 107 F.3d 840. Civil Rights 1376(10)

Noerr-Pennington doctrine, granting First Amendment protection for actions arising out of citizen's right to petition government for redress, can be utilized to provide immunity regarding claims for civil conspiracy under § 1983. Nickum v. Village of Saybrook, C.D.Ill.1997, 972 F.Supp. 1160. Conspiracy 7.5(1)

3076. Affirmative defense, immunity generally

Immunity is an affirmative defense and does not go to existence of a cause of action under this section prohibiting the deprivation of civil rights under color of state law. Davidson v. Scully, C.A.2 (N.Y.) 1982, 694 F.2d 50, on remand. Civil Rights 1376(1)

Question of whether a defendant is immune is not a jurisdictional issue in a civil rights suit; rather, immunity is an affirmative defense which may defeat relief once subject-matter jurisdiction has been established. Tayyari v. New Mexico State University, D.C.N.M.1980, 495 F.Supp. 1365. Civil Rights 1373

3077. Private defendants, immunity generally

Private party was not eligible for immunity from suit under § 1983 to challenge execution of default judgment and prejudgment attachment; private parties were not immune from suit at common law; and extension of immunity to private parties would not further policy goals to prevent injustice of subjecting to liability officer who is required to exercise discretion and to permit officer to execute office with decisiveness and judgment required by public good. Duncan v. Peck, C.A.6 (Ohio) 1988, 844 F.2d 1261, 95 A.L.R. Fed. 69. Civil Rights 1374

Any behavior by a private party that is protected from antitrust liability by the Noerr-Pennington doctrine is also outside the scope of section 1983 liability. Bayou Fleet, Inc. v. Alexander, E.D.La.1998, 26 F.Supp.2d 894. Civil Rights 1374

3078. Indians, immunity generally

Doctrine of tribal sovereign immunity barred former tribal police chief's action against tribal council and tribal administrator alleging deprivation of his First Amendment right to free speech in violation of § 1983 where actions of officials and administrator had no independent legal effect; rather, it was official action of tribe in terminating

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police chief that caused police chief's alleged injury. Miller v. Coyhis, E.D.Wis.1995, 877 F.Supp. 1262. Indians 27(1); Indians 32(6)

Indian tribe's sovereign immunity protected council members and chief from civil rights suit in individual and official capacities. Warn v. Eastern Band of Cherokee Indians, W.D.N.C.1994, 858 F.Supp. 524. Civil Rights 1373

Common-law immunity from suit enjoyed by Indian tribes extended to tribal policemen and shielded them in their official capacities from actions, either for injunctive or for monetary relief, brought pursuant to this section. Bruette v. Knope, E.D.Wis.1983, 554 F.Supp. 301. Indians 27(1)

3079. Internal Revenue Service agents, immunity generally

Since Internal Revenue Service (IRS) agent's alleged action in seeking to initiate probation revocation proceedings against probationer convicted of tax evasion, by reporting probationer's illegal activities, was functionally identifiable as protected actions of law enforcement agent, agent was immune from suit for civil damages. Schiff v. Dorsey, D.Conn.1994, 877 F.Supp. 73. Internal Revenue 4464

3080. Military officials, immunity generally

Air National Guard airman's federal civil rights claims against individual guardsmen, seeking to recover for injuries incurred in "hazing" incident at national guard base, were barred by *Feres* doctrine, since United States was itself protected by *Feres* doctrine as to the same injury. Day v. Massachusetts Air Nat. Guard, C.A.1 (Mass.) 1999, 167 F.3d 678, on remand 37 F.Supp.2d 546. United States 50.10(5)

Insofar as *Feres* doctrine of intramilitary immunity extends to state National Guard units, it shields state military officers from constitutional claims brought under § 1983 to same extent that it protects federal military personnel from defending against *Bivens* actions raising very same claims. Bowen v. Oistead, C.A.9 (Alaska) 1997, 125 F.3d 800, certiorari denied 118 S.Ct. 2343, 524 U.S. 938, 141 L.Ed.2d 714. Civil Rights 1376(3)

Wisconsin Air National Guard commander's claim against Guard for damages under § 1983 arising from his discharge was not justiciable; immunity afforded federal military officials applied to state militia officials, in light of integral role of state national guard in national armed forces. Knutson v. Wisconsin Air Nat. Guard, C.A.7 (Wis.) 1993, 995 F.2d 765, certiorari denied 114 S.Ct. 347, 510 U.S. 933, 126 L.Ed.2d 311. Civil Rights 1376(3); Civil Rights 1376(10)

Feres doctrine of intramilitary immunity bars claims against military doctors for medical malpractice, civil rights claims against federal individuals brought under *Bivens*, civil rights claims by national guard personnel against state officers, and Title VII-type discrimination in employment claims; *Feres* also bars suits under the Public Vessels Act, and claims for age and disability discrimination. Flowers v. First Hawaiian Bank, D.Hawai'i 2003, 289 F.Supp.2d 1213. United States 78(16)

Doctrine of intramilitary immunity precluded former service member's claims against his military superiors for alleged violations of his rights under § 1983 and the United States Constitution for allegedly conspiring to remove him from the Air Force National Guard where alleged constitutional harms occurred incident to military service, while plaintiff was an active duty service member, and defendants were plaintiff's military superiors. Chandler v. Roche, D.D.C.2002, 215 F.Supp.2d 166. Civil Rights 1376(3)

Secretary of Army was immune from Reserve Officers' Training Corps (ROTC) cadet's § 1983 and constitutional claims arising out of her sexual harassment by another cadet and hostile environment created after she reported harassment under doctrine that military enjoys immunity to *Bivens* claims that it coextensive with its *Feres*

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immunity. Morse v. West, D.Colo.1997, 975 F.Supp. 1379, affirmed 172 F.3d 63. United States 50.10(5)

3081. Parole officials, immunity generally

Civil rights action for damages by prisoner claiming improper denial of parole would be barred due to the parole board's immunity from liability for damages. Lindsey v. Wells, C.A.8 (Ark.) 1990, 901 F.2d 96. Civil Rights 1376(7)

Prisoners' federal civil rights lawsuit against prison authorities seeking compensatory damages for violation of alleged parole rights was properly dismissed as frivolous; parole officials were immune from damage suits under civil rights statute. Sultenfuss v. Snow, C.A.11 (Ga.) 1990, 894 F.2d 1277, on remand. Civil Rights 1376(7); Federal Civil Procedure 2734

3082. Presidential immunity, immunity generally

Sitting President of United States was entitled to limited or temporary Presidential immunity from immediate trial with respect to sexual harassment action brought against him for alleged conduct occurring when President was Arkansas governor and thus, President could not be tried until he left office, but discovery and deposition process could proceed as to all persons including the President; President should not have to devote his time and effort to defense of case at trial while in office, this was not case in which necessity existed to rush to trial nor case that would likely be tried with few demands on Presidential time, plaintiff was not in rush to get case to court, and allowing discovery process to proceed would eliminate problem that witnesses might die or become forgetful due to passage of time. Jones v. Clinton, E.D.Ark.1994, 869 F.Supp. 690, stay granted 879 F.Supp. 86, affirmed in part, reversed in part 72 F.3d 1354, rehearing and suggestion for rehearing en banc denied 81 F.3d 78, certiorari granted 116 S.Ct. 2545, 518 U.S. 1016, 135 L.Ed.2d 1066, motion granted 117 S.Ct. 291, 519 U.S. 925, 136 L.Ed.2d 210, affirmed 117 S.Ct. 1636, 520 U.S. 681, 137 L.Ed.2d 945, on remand 974 F.Supp. 712, on remand 990 F.Supp. 657. Federal Civil Procedure 1266; Federal Civil Procedure 1323.1; United States 26; United States 50.5(5)

3083. Counties, immunity generally

Counties and other local governments--while "persons" for the purposes of § 1983 liability in the sense that they can be sued--do not enjoy the defenses of absolute and qualified immunity that are available to human defendants sued in their individual capacities. Holloway v. Brush, C.A.6 (Ohio) 2000, 220 F.3d 767. Civil Rights 1376(4)

3084. Municipalities, immunity generally

In evaluating municipality's § 1983 liability, court looks only to whether municipality has conformed to requirements of the federal Constitution and statutes. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1343

Corporation counsel for city waived defense of qualified immunity, in § 1983 action brought by lessee after he was evicted from premises obtained by city in foreclosure without any advance notice or hearing, where corporation counsel failed to assert such defense in his answer, and initially raised defense six months later prior to lessee's deposition. Kassim v. City of Schenectady, N.D.N.Y.2003, 255 F.Supp.2d 32, affirmed in part, vacated in part and remanded 415 F.3d 246. Civil Rights 1398

There is no immunity defense, either qualified or absolute, available to a municipality sought to be held liable under § 1983. Juncewicz v. Patton, W.D.N.Y.2002, 2002 WL 31654957, Unreported, appeal dismissed 63 Fed.Appx. 44, 2003 WL 21105332. Civil Rights 1376(4)

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3085. Law enforcement, immunity generally

Sheriff and his personnel were "persons" subject to suit under § 1983, and no further immunity analysis was warranted, where court first concluded that they were not entitled to Eleventh Amendment immunity. Layman v. Alexander, W.D.N.C.2003, 294 F.Supp.2d 784. Civil Rights 1358; Civil Rights 1376(6)

XXVI. SOVEREIGN IMMUNITY

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3111. Sovereign immunity generally

Scope of Eleventh Amendment is consideration in deciphering congressional intent as to scope of this section. Will v. Michigan Dept. of State Police, U.S.Mich.1989, 109 S.Ct. 2304, 491 U.S. 58, 105 L.Ed.2d 45. Federal Courts 265

This section which creates a cause of action for deprivation of civil rights under color of law did not abrogate the Eleventh Amendment immunity of the states. Quern v. Jordan, U.S.Ill.1979, 99 S.Ct. 1139, 440 U.S. 332, 59 L.Ed.2d 358. Federal Courts 265

When adjudging a § 1983 action, a federal court's remedial power, consistent with the Eleventh Amendment, is necessarily limited to prospective injunctive relief and may not include a retroactive award which requires payment of funds from the state treasury. Marrero Gutierez v. Molina, D.Puerto Rico 2004, 330 F.Supp.2d 45. Federal Courts 265; Federal Courts 272

Sovereign immunity barred federal civil rights claims against Equal Employment Opportunity Commission (EEOC) by participant in Senior Environmental Employment (SEE) program. Jaffer v. National Caucus and Center on Black Aged, Inc., M.D.N.C.2003, 296 F.Supp.2d 639, motion for relief from judgment denied 2004 WL 3827544, appeal dismissed 108 Fed.Appx. 107, 2004 WL 1941240, certiorari denied 125 S.Ct. 1851, 544 U.S. 983, 161 L.Ed.2d 739, rehearing denied, rehearing denied 125 S.Ct. 2538, 162 L.Ed.2d 288. United States 125(28.1)

Congress has not abrogated state sovereign immunity under §§ 1983 or §§ 1981. Bennett v. City of Atlantic City, D.N.J.2003, 288 F.Supp.2d 675. Federal Courts 265

When an absolute immunity existed in 1871, and proves compatible with the purposes and policies of § 1983, it is incorporated into § 1983, and may bar liability of state public officials in their personal capacities. Mason v. Arizona, D.Ariz.2003, 260 F.Supp.2d 807. Civil Rights 1373; Civil Rights 1376(3)

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Inmate's § 1983 claims against state or its agencies were barred by the Eleventh Amendment. Johnson v. New York, S.D.N.Y.2003, 256 F.Supp.2d 186. Federal Courts 265; Federal Courts 269

Eleventh Amendment immunizes state officials acting in their official capacity from § 1983 damages claims by individuals. Douris v. Schweiker, E.D.Pa.2002, 229 F.Supp.2d 391, reconsideration denied, affirmed 100 Fed.Appx. 126, 2004 WL 1396209. Federal Courts 269

Eleventh Amendment immunity applies to suits brought against the state pursuant to Section 1983. Board of Educ. of Pawling Cent. School Dist. v. Schutz, N.D.N.Y.2001, 137 F.Supp.2d 83, affirmed 290 F.3d 476, certiorari denied 123 S.Ct. 1284, 537 U.S. 1227, 154 L.Ed.2d 1088. Federal Courts 265

No direct action under Federal Constitution itself, as contrasted with § 1983 suit, exists against state actors in manner comparable to that provided against federal governmental officials under *Bivens*. Universal Outdoor, Inc. v. Elk Grove Village, N.D.Ill.1997, 969 F.Supp. 1124. Civil Rights 1322

Section 1983 did not abrogate state's Eleventh Amendment immunity from suit in federal court. Ryan v. Illinois Dept. of Children & Family Services, C.D.Ill.1997, 963 F.Supp. 1490, reversed 185 F.3d 751. Federal Courts 265

State's Eleventh Amendment immunity is not overridden by § 1983 claims, and New York has not consented to such suits in federal court. Molina v. State of N.Y., E.D.N.Y.1995, 956 F.Supp. 257. Federal Courts 265; Federal Courts 267

Action under § 1983 is subject to application of Eleventh Amendment. Edward B. v. Brunelle, D.N.H.1986, 662 F.Supp. 1025, on reconsideration 660 F.Supp. 51. Federal Courts 265

Eleventh Amendment barred § 1983 claims against Commonwealth in federal court, even though plaintiff alluded to acts by individual Commonwealth employees, where the only defendant named in complaint was the Commonwealth. Howard v. Commonwealth of Virginia, C.A.6 (Ohio) 2001, 8 Fed.Appx. 318, 2001 WL 278535, Unreported. Federal Courts 265

3112. Continued violations

Claim that policies and procedures of the Secretary of West Virginia Department of Health and Human Services (DHSS) had resulted in the denial of due process with respect to plaintiffs' benefits under Medicaid Home and Community Based Age/Disabled Waiver Program (ADWP) was actionable under §§ 1983, and thus served as an allegation of an ongoing violation of federal law, within *Ex parte Young* exception to Eleventh Amendment immunity. Cyrus ex rel. McSweeney v. Walker, S.D.W.Va.2005, 409 F.Supp.2d 748. Federal Courts 269

Official capacity §§ 1983 claims against state judge by his personal staff, who were discharged for reporting judge's alcohol abuse, were barred by the Eleventh Amendment; although staff characterized their claims as seeking only prospective relief, so as to avoid Eleventh Amendment bar, relief sought, which included reinstatement, was not intended to halt present, continuing violation of federal law, rather claims simply targeted judge's past action of discharging staff. Jakomas v. McFalls, W.D.Pa.2002, 229 F.Supp.2d 412. Federal Courts 269; Federal Courts 272

3113. Persons within section distinguished, sovereign immunity

State university and director of university-operated laboratory, in his official capacity, were persons under and could be fully liable for their actions under § 1983, as they were not entitled to Eleventh Amendment sovereign immunity as arms of the state. Doe v. Lawrence Livermore Nat. Laboratory, C.A.9 (Cal.) 1995, 65 F.3d 771,

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certiorari granted 116 S.Ct. 2522, 518 U.S. 1004, 135 L.Ed.2d 1047, motion granted 117 S.Ct. 2, 518 U.S. 1036, 135 L.Ed.2d 1099, motion granted 117 S.Ct. 44, 519 U.S. 804, 136 L.Ed.2d 8, reversed 117 S.Ct. 900, 519 U.S. 425, 137 L.Ed.2d 55, on remand 131 F.3d 836. Federal Courts 269

To the extent a defendant is entitled to Eleventh Amendment immunity, defendant is not a "person" within the meaning of statute allowing suit against a "person" acting under color of state law for violation of civil rights. Grabow v. Southern State Correctional Facility, D.N.J.1989, 726 F.Supp. 537. Civil Rights 1344

A state or state agency is not a "person" that Congress made amenable to suit in § 1983. Davis v. Bruce, D.Kan.2003, 215 F.R.D. 612, reconsideration denied 2004 WL 957854, affirmed in part 129 Fed.Appx. 406, 2005 WL 768778. Civil Rights 1344

3114. Money damages, sovereign immunity

Former state employee could not maintain § 1983 claims for monetary relief against state, or against its officials in their official capacity, as such claims were barred by the Eleventh Amendment, and even if they were not, state government was not "person" within meaning of § 1983. Lupo v. Voinovich, S.D.Ohio 2002, 235 F.Supp.2d 782. Civil Rights 1349; Federal Courts 265; Federal Courts 269

On motion to dismiss, court would allow inmate's § 1983 damages claim against prison officials to stand, even though inmate did not specify in complaint that he was suing officials in their individual, rather than official, capacities, as required to avoid Eleventh Amendment immunity bar; inmate's responsive memorandum asserted that he was suing officials in their individual capacity as to damages, but in their official capacity as to injunctive relief, and he requested punitive damages. Bullock v. Barham, N.D.Ill.1997, 957 F.Supp. 154. Civil Rights 1395(7)

State defendants in § 1983 action brought by prisoner were entitled to Eleventh Amendment immunity in their official capacity from inmate's claims for money damages. Mott v. State of Ind., N.D.Ind.1991, 793 F.Supp. 178, affirmed 966 F.2d 1456. Federal Courts 269

An entity can be a "person" within the scope of this section and still be immune under U.S.C.A.Const. Amend. 11 from suits for monetary relief. Zentgraf v. Texas A & M University, S.D.Tex.1980, 492 F.Supp. 265. Civil Rights 1343; Federal Courts 269

This section cannot be used to impose liability in the nature of monetary damages upon a government entity. Bennett v. Gravelle, D.C.Md.1971, 323 F.Supp. 203, affirmed 451 F.2d 1011, certiorari dismissed 92 S.Ct. 2451, 407 U.S. 917, 32 L.Ed.2d 692.

3115. Injunctions, sovereign immunity

Although Eleventh Amendment would bar suit by Indian band which named state itself as defendant or sought to enjoin violations of state law, suit seeking to enjoin governor and state officials responsible for enforcing state fish and game laws from interfering with treaty rights to hunt, fish, and gather natural resources from ceded territories sought to vindicate important federal rights and therefore fell squarely within doctrine of *Ex parte Young*. Fond du Lac Band of Chippewa Indians v. Carlson, C.A.8 (Minn.) 1995, 68 F.3d 253. Federal Courts 272

State employee's §§ 1983 claim against state officials in their official capacities for an injunction banning the officials from transferring him again without legitimate cause and specifically prohibiting them from taking job actions against him due to the exercise of his constitutional rights did not come within *Ex parte Young* exception to Eleventh Amendment immunity; there was no allegation of threatened illegal conduct, but rather, employee sought an adjudication of the legality of past state conduct. Bailey v. Montgomery, E.D.Ky.2006, 433 F.Supp.2d 806. Federal Courts 272

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42 U.S.C.A. § 1983

Eleventh Amendment did not bar relief, under Civil Rights Act, in suit brought by teacher against state education department and high school vice principal, seeking injunction prohibiting future gender and national origin discrimination. Sherez v. State of Hawai'i Dept. of Educ., D.Hawai'i 2005, 396 F.Supp.2d 1138. Federal Courts 272

Eleventh Amendment did not bar request in § 1983 action against state chiropractic board members in their official capacities for reinstatement of chiropractor's license, as relief was prospective in nature. Mason v. Arizona, D.Ariz.2003, 260 F.Supp.2d 807. Federal Courts 269; Federal Courts 272

Suit by former patient of public psychiatric center, seeking equitable relief for § 1983 claim alleging that center subjected him to illegal strip search pursuant to center's general search policy, was within *Ex Parte Young* exception to Eleventh Amendment; prayer for injunctive relief was prospective in nature. Aiken v. Nixon, N.D.N.Y.2002, 236 F.Supp.2d 211, affirmed 80 Fed.Appx. 146, 2003 WL 22595837. Federal Courts 272

Section 1983 claim against state officials, in their official capacities, for prospective injunctive relief was not barred by the Eleventh Amendment, as such claim, challenging the constitutionality of state officials' actions, was not considered suit against the state. Lupo v. Voinovich, S.D.Ohio 2002, 235 F.Supp.2d 782. Federal Courts 269; Federal Courts 272

Eleventh Amendment rights of the state did not preclude former administrative law judge's (ALJ) claim for injunctive relief in § 1983 action against members of state Workers' Compensation Commission, based on her allegation that her termination violated her free speech rights. Harrison v. Coffman, E.D.Ark.1999, 35 F.Supp.2d 722. Federal Courts 269; Federal Courts 272

Due to Eleventh Amendment immunity, prospective injunctive relief was only remedy available to former state employee for her § 1983 sex discrimination claim against former co-worker in his official capacity, and therefore dismissal of such claim was required in light of fact that co-worker no longer worked for state agency; court could not grant injunctive relief governing official's conduct who no longer worked as public servant. Coller v. State of Mo., Dept. of Economic Development, W.D.Mo.1997, 965 F.Supp. 1270. Federal Courts 272

State officials sued in their official capacity for injunctive relief are "persons " subject to suit under § 1983, as such actions are not treated as actions against the state. Alley v. Angelone, E.D.Va.1997, 962 F.Supp. 827. Civil Rights 1354

Michigan Board of Dentistry was not immune under U.S.C.A.Const. Amend. 11 from dentist's demand for injunctive relief from order suspending his license brought under this section. Jones v. State of Mich., E.D.Mich.1981, 525 F.Supp. 636, affirmed 705 F.2d 454. Federal Courts 272

With respect to prayer for injunctive relief by school teachers whose contracts were not renewed, doctrine of sovereign immunity did not bar action against joint school district and board of education, which rested on allegation that they had acted in violation of Constitution of the United States. Gouge v. Joint School Dist. No. 1, W.D.Wis.1970, 310 F.Supp. 984. Injunction 78

Arrested student's official capacity §§ 1981 and 1983 claims against public college official and security employees did not come within *Ex Parte Young* exception to Eleventh Amendment bar; claims sought solely retrospective compensatory relief. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Federal Courts 269; Federal Courts 272

3116. Reinstatement, sovereign immunity

Eleventh Amendment sovereign immunity did not apply to former county auditor's claims for reinstatement and

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attorney fees, in her § 1983 action against two Texas district judges who allegedly nonrenewed her appointment in retaliation for reporting numerous matters of public concern that involved violations of laws and administrative regulations. Warnock v. Pecos County, Tex., C.A.5 (Tex.) 1996, 88 F.3d 341. Federal Courts 269

3117. Waiver of immunity, sovereign immunity

While this section provides federal forum to remedy many deprivations of civil liberties, it does not provide federal forum for litigants who seek remedy against state for alleged deprivations of civil liberties; Eleventh Amendment bars such suits unless state has waived its immunity or Congress has exercised its undoubted power under section 5 of Fourteenth Amendment to override that immunity. Will v. Michigan Dept. of State Police, U.S.Mich.1989, 109 S.Ct. 2304, 491 U.S. 58, 105 L.Ed.2d 45. Federal Courts 265

Where petitioners in actions which arose out of confrontation between students and national guard and which were brought under this section, and state laws alleged facts demonstrating intent to impose individual and personal liability upon named defendants, notwithstanding their state offices, for alleged deprivation of federal rights under color of state law, actions were not barred by U.S.C.A.Const. Amend. 11. Scheuer v. Rhodes, U.S.Ohio 1974, 94 S.Ct. 1683, 416 U.S. 232, 40 L.Ed.2d 90, 71 O.O.2d 474. Federal Courts 268.1

Commonwealth did not waive its Eleventh Amendment immunity in §§ 1983 action due to its failure to address with specificity plaintiff's grounds for waiver of immunity, where state filed motion to dismiss on Eleventh Amendment grounds. Ramos-Pinero v. Commonwealth Of Puerto Rico, C.A.1 (Puerto Rico) 2006, 453 F.3d 48. Federal Courts 266.1

State of Texas did not waive its Eleventh Amendment immunity from prisoner's civil rights claim by suing prisoner for child support in state court. Brandley v. Keeshan, C.A.5 (Tex.) 1995, 64 F.3d 196, certiorari denied 116 S.Ct. 947, 516 U.S. 1129, 133 L.Ed.2d 872. Federal Courts 266.1

U.S.C.A.Const. Amend. 11 barred children's suit against Department of Correctional Services and Parole Board for their release of mother's husband from custody in violation of the law absent state's consent. Leonhard v. U. S., C.A.2 (N.Y.) 1980, 633 F.2d 599, certiorari denied 101 S.Ct. 1975, 451 U.S. 908, 68 L.Ed.2d 295. Federal Courts 269

If action under this section to recover against utilities district was an attempted action against state agency, U.S.C.A.Const. Amend. 11 precluded such action, absent showing that state had waived its sovereign immunity and consented to be sued. Jorden v. Metropolitan Utilities Dist., C.A.8 (Neb.) 1974, 498 F.2d 514. Federal Courts 270

State of California was immune from suit without its consent and that immunity extended to suits against it under this section. Bennett v. People of State of Cal., C.A.9 (Cal.) 1969, 406 F.2d 36, certiorari denied 89 S.Ct. 1320, 394 U.S. 966, 22 L.Ed.2d 568. States 191.4(4)

Appeals referee for state employment security commission (ESC) voluntarily waived Eleventh Amendment immunity in terminated employee's § 1983 action against referee in his official capacity; state removed case, and referee opposed remand, urging court to dispose of employee's claims on non-immunity grounds. Howard v. Food Lion, Inc., M.D.N.C.2002, 232 F.Supp.2d 585. Federal Courts 266.1

Employee's filing, in Ohio Court of Claims, of employment discrimination claims against state of Ohio constituted complete waiver, under Ohio's sovereign immunity statute, of any state or federal claims against state employees in their individual capacities, including §§ 1981 and §§ 1983 claims, though employee later voluntarily dismissed that suit before bringing §§ 1981 and §§ 1983 claims in federal court. Higginbotham v. Ohio Dept. of Mental Health, S.D.Ohio 2005, 412 F.Supp.2d 806. States 184

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42 U.S.C.A. § 1983

State university did not waive its Eleventh Amendment immunity from its former police officer's claims, alleging it was vicariously liable for supervisor's battery, assault, intentional infliction of emotional distress (IIED), and negligent infliction of emotional distress (NIED), as well as negligent retention and supervision, by removing officer's suit to federal court, given that State had not explicitly waived its sovereign immunity for such claims, under State Tort Claims Act or any other statute, in state court. Alston v. North Carolina A & T State University, M.D.N.C.2004, 304 F.Supp.2d 774. Federal Courts 266.1

To extent that Native American plaintiff's § 1983 action asserted claims for money damages and declaratory relief, against Nebraska State defendants in their official capacities, for violations of plaintiff's free exercise and equal protection rights arising out of plaintiff's arrest following a prayer march and protest, claims were barred by Eleventh Amendment; State had not waived its immunity from liability. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Federal Courts 266.1; Federal Courts 269; Federal Courts 272

Alleged failure of Commissioner of New York State Department of Social Services (NYS DSS) to raise Eleventh Amendment immunity as defense in his amended answer did not impliedly waive Eleventh Amendment immunity in Medicaid recipients' § 1983 suit against Commissioner in his official capacity. Conrad v. Perales, W.D.N.Y.2000, 92 F.Supp.2d 175. Federal Courts 266.1

Individual may bring suit against state or state agency in federal court if state unequivocally waived its immunity or if congressional legislation operates as waiver of Eleventh Amendment's protection. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Federal Courts 265; Federal Courts 269

Although states waive their Eleventh Amendment immunities through adoption of Fourteenth Amendment with respect to claims brought under certain civil rights statutes, neither statutory language nor legislative history of § 1983 evinces sufficient, express congressional intention to override traditional immunities of states to allow private damages actions against states and their officials pursuant to that statute. Dugas v. Jefferson County, E.D.Tex.1995, 911 F.Supp. 251.

Indian tribe did not waive its sovereign immunity to suit under § 1983 by engaging in gaming activity regulated by the IGRA. Miller v. Coyhis, E.D.Wis.1995, 877 F.Supp. 1262. Indians 27(1)

Native Hawaiians' claims against state or its agencies or departments under Hawaiian Homes Commission Act or Hawaii Admission Act for failing to hold public lands in trust for native Hawaiians were barred by Eleventh Amendment; State of Hawaii had not waived its sovereign immunity. Han v. Department of Justice, D.Hawai'i 1993, 824 F.Supp. 1480, affirmed 45 F.3d 333. Federal Courts 265; Federal Courts 269

Correctional center which was part of West Virginia's state prison system was immune from civil rights suit under § 1983 in federal forum by reason of Eleventh Amendment; prisoner had alleged deliberate indifference to his serious medical needs and conspiracy to remove appendix without cause to receive reimbursement money from state, but state had not waived its Eleventh Amendment immunity. Meadows v. Huttonsville Correctional Center, N.D.W.Va.1992, 793 F.Supp. 684, affirmed 991 F.2d 790. Federal Courts 266.1; Federal Courts 269

National Guard member could not bring action against state National Guard for violation of civil rights by causing him to resign from police department to accept appointment with Army Corps of Engineers where state had not given its consent to suit and there had been no waiver of its immunity under U.S.C.A.Const. Amend. 11. Hilliard v. New Jersey Army Nat. Guard, D.C.N.J.1981, 527 F.Supp. 405. Federal Courts 269

Where state of Delaware did not waive sovereign immunity with respect to claims asserted by state prisoner who brought action against state and prison officials alleging violation of federally secured rights and alleging a state claim for assault and battery arising from injuries inflicted on prisoner by prison guards and seeking compensatory and punitive damages, state could not be sued on either common law assault claim or civil rights claim. Davidson

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v. Dixon, D.C.Del.1974, 386 F.Supp. 482, affirmed 529 F.2d 511. Federal Courts 265

Where back bonuses and pay for services as prison barber which state prisoner sought to recover from the state would be paid out of the treasury of Virginia, and the Commonwealth of Virginia was not shown to have consented to the suit, the state prisoner's action under this section to recover such pay was barred by U.S.C.A.Const. Amend. 11. Borror v. White, W.D.Va.1974, 377 F.Supp. 181. Federal Courts 268.1

3118. Source of payment, sovereign immunity

Eleventh Amendment shielded Arizona officials from damage claims under § 1983 for failing to pay minimum wages to inmates, since conduct complained of was not personal, and money damages for wages due would be paid out of state treasury regardless of whether officials were acting in accord with statutory duties; therefore, inmates could maintain action under § 1983 against individual officers for prospective relief only. Hale v. State of Ariz., C.A.9 (Ariz.) 1993, 993 F.2d 1387, certiorari denied 114 S.Ct. 386, 510 U.S. 946, 126 L.Ed.2d 335. Federal Courts 269

Eleventh Amendment limits relief available to § 1983 plaintiff, who may obtain damages only from personal estates of defendant state officials, not from state treasury. Wheaton v. Webb-Petett, C.A.9 (Or.) 1991, 931 F.2d 613. Federal Courts 269

Sheriff was not entitled to absolute immunity status in property owners' § 1983 action stemming from arrest for trespass on own property during attempt to recover possession where sheriff was county official and no contentions had been made that potential judgments against sheriff in his official capacity would be paid from state treasury rather than county funds. Hutton v. Strickland, C.A.11 (Fla.) 1990, 919 F.2d 1531. Civil Rights 1376(6)

Eleventh Amendment barred inmate's actions against prison officials in their official capacities, since any judgment against Idaho Department of Corrections or its employees acting in their official capacities would have to be paid out of state treasury. Leer v. Murphy, C.A.9 (Idaho) 1988, 844 F.2d 628. Federal Courts 269

Demands under § 1983 against state banking official for retroactive injunctive relief were barred by Eleventh Amendment as any remedy for damage already done would necessarily involve public expenditure. Rannels v. Hargrove, E.D.Pa.1990, 731 F.Supp. 1214. Federal Courts 272

Indiana Department of Corrections performed state governmental function and any judgment against Department would be paid out of state treasury and, thus, Department was entitled to sovereign immunity in action under § 1983. Grosz v. State of Ind., S.D.Ind.1990, 730 F.Supp. 1474. Civil Rights 1376(7)

Although action of terminal operator was fairly attributable to the state, for purposes of § 1983, terminal operator was not entitled to Eleventh Amendment immunity from liability in civil rights action brought by worker of company, which transported ship containers from terminal, after worker's involvement in fight on terminal premises; any judgment against operator would not be paid out of state treasury, and terminal operator had power to sue and be sued and was incorporated separately under Virginia Nonstock Corporation Act, not the Virginia Port Authority Enabling Act. Artist v. Virginia Intern. Terminals, Inc., E.D.Va.1988, 679 F.Supp. 587, affirmed 857 F.2d 977. Federal Courts 268.1

Civil rights action under 42 U.S.C.A. § 1983 against prison guards in their official capacities for death of prison inmate allegedly caused by deliberate indifference of guards in responding to inmate's safety and medical needs was barred under the Eleventh Amendment, which forbids bringing suits for monetary damages or other retroactive relief against a state in federal court, as any monetary relief against guards in their official capacities would necessarily be paid from public funds. Bailey v. State of Ill., N.D.Ill.1985, 622 F.Supp. 504. Federal Courts 269

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There is no remedial power in a federal court to require the payment of funds from a state treasury in an action under this section. Trotman v. Palisades Interstate Park Commission, C.A.2 (N.Y.) 1977, 557 F.2d 35. See, also, King v. Carey, D.C.N.Y.1975, 405 F.Supp. 41; Klein v. New Castle County, D.C.Del.1974, 370 F.Supp. 85.

3119. Federal reimbursement, sovereign immunity

State would not receive federal reimbursement for its potential obligation to refund Medicaid recipients' wrongfully collected client shares, or Net Available Monthly Income (NAMIs), under Medicaid statute providing for federal reimbursement to states for costs that were "necessary for the proper and efficient administration of the State plan" and, thus, state would not lose its Eleventh Amendment immunity because of availability of partial or total federal reimbursement. Conrad v. Perales, W.D.N.Y.2000, 92 F.Supp.2d 175. Federal Courts 265

3120. Official capacity, sovereign immunity--Generally

Only immunities available to defendant in official-capacity action under this section are those that governmental entity possesses. Hafer v. Melo, U.S.Pa.1991, 112 S.Ct. 358, 502 U.S. 21, 116 L.Ed.2d 301. Civil Rights 1376(1)

To sustain § 1983 claims against municipality and its officials in their official capacity, plaintiff has to establish that allegedly unconstitutional acts were official policy or custom of municipality, and allegations based upon respondeat superior are insufficient to support cause of action under § 1983. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1345; Civil Rights 1351(1)

Even when state officials act under color of state law pursuant to § 1983, Eleventh Amendment bars monetary claims against them in their official capacity. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Federal Courts 269

In addition to Eleventh Amendment immunity, § 1983 precludes official capacity claims for damages against state officials. Fernandez v. Wolff, N.D.Ill.1996, 919 F.Supp. 1120. Civil Rights 1354

The only immunities available to defendant in official capacity action under § 1983 are forms of sovereign immunity that governmental entity, qua entity, may possess, such as under the Eleventh Amendment. Craig v. St. Martin Parish Sheriff, W.D.La.1994, 861 F.Supp. 1290. Civil Rights 1376(1); Federal Courts 265

States and state officials acting in their official capacities are unamenable to suit under § 1983. MSA Realty Corp. v. State of Ill., N.D.Ill.1992, 794 F.Supp. 267, affirmed 990 F.2d 288. Civil Rights 1344; Civil Rights 1354

Eleventh Amendment did not bar § 1983 action, despite claim that defendants were acting in official capacity. Loukas v. Hofbauer, E.D.Mich.1991, 784 F.Supp. 377. Federal Courts 269

3121. ---- Individual capacity distinguished, official capacity, sovereign immunity

Personal-capacity suits under this section seek to impose individual liability upon government officer for actions taken under color of state law, and while plaintiff in personal-capacity suit need not establish connection to governmental 'policy or custom,' officials sued in their personal capacities, unlike those sued in their official capacities, may assert personal immunity defenses, such as objectively reasonable reliance on existing law. Hafer v. Melo, U.S.Pa.1991, 112 S.Ct. 358, 502 U.S. 21, 116 L.Ed.2d 301. Civil Rights 1354; Civil Rights 1376(2)

In an official capacity action, the personal immunity defenses available to a public official sued in his personal

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capacity in a suit under this section are unavailable and the only immunities that can be claimed are forms of sovereign immunity that the entity, qua entity, may possess, such as the Eleventh Amendment. Kentucky v. Graham, U.S.Ky.1985, 105 S.Ct. 3099, 473 U.S. 159, 87 L.Ed.2d 114, on remand 791 F.2d 932. Civil Rights 1376(1)

Eleventh Amendment did not bar applicant's § 1983 action against Nevada State Private Investigators Licensing Board members in their individual capacities, alleging that denial of application violated due process in that one Board member had pecuniary interest in outcome and was biased against applicant, and that, influenced by that member's bias, other Board members and Board investigators prejudged application and acted in arbitrary and improper manner. Stivers v. Pierce, C.A.9 (Nev.) 1995, 71 F.3d 732. Federal Courts 269

Eleventh Amendment did not bar oil and sludge transportation barge owners' § 1983 claims for damages against Commissioner and Executive Commissioner of New York State Department of Environmental Conservation in their individual capacities arising from their actions in imposing summary abatement orders prohibiting owners from operating barges in New York harbor; mere fact that state might reimburse Commissioner and Executive Commissioner did not make state real party in interest. Berman Enterprises, Inc. v. Jorling, C.A.2 (N.Y.) 1993, 3 F.3d 602, certiorari denied 114 S.Ct. 883, 510 U.S. 1073, 127 L.Ed.2d 78. Federal Courts 269

Eleventh Amendment did not bar § 1983 claim filed by graduate assistant against state university's dean of graduate school and head of department of education; her suit named dean and department head in their individual rather than official capacities for actions they committed that allegedly violated her constitutionally protected rights. Mandsager v. University of North Carolina at Greensboro, M.D.N.C.2003, 269 F.Supp.2d 662. Federal Courts 269

Fact that an official acts under color of law does not mean the he or she becomes the state; when sued in his or her individual capacity, he or she is a person for the purpose of § 1983 and enjoys no Eleventh Amendment immunity. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1354; Federal Courts 269

Because personal-capacity civil rights suits can be executed only against official's personal assets, personal-capacity suits do not extend any form of liability to the state, so Eleventh Amendment is not implicated even though named defendant is public official and acted under color of state law. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Federal Courts 269

Eleventh Amendment did not bar arrestee's §§ 1983 and 1985 claims for monetary damages against state trooper in his individual capacity, or arrestee's claims for declaratory and injunctive relief against trooper in his official capacity. Estes-El v. Town of Indian Lake, N.D.N.Y.1997, 954 F.Supp. 527. Federal Courts 269; Federal Courts 272

Court possesses original jurisdiction over § 1983 claims against state officials in their individual or personal capacities; official sued in his or her individual capacity is not cloaked in state's Eleventh Amendment protection from suit and can be "person" liable under § 1983 for deprivation of federal rights. Flores v. Long, D.N.M.1995, 926 F.Supp. 166, appeal dismissed 110 F.3d 730. Civil Rights 1354; Federal Courts 269

State officers sued in their individual capacities are "persons" within meaning of § 1983, and Eleventh Amendment will not bar suits against these officers in their individual capacities nor are such officers absolutely immune from personal liability solely by virtue of "official" nature of their acts. Vaughn v. Kerley, M.D.Fla.1995, 897 F.Supp. 1413. Civil Rights 1354; Federal Courts 269

State official acting in his official capacity may not be sued for damages under § 1983. Singer v. State of Me., D.Me.1994, 865 F.Supp. 19, reversed in part 49 F.3d 837. Civil Rights 1354

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42 U.S.C.A. § 1983

State prison officials were entitled to Eleventh Amendment immunity from prisoner's § 1983 claims against them in their official capacities, but officials were not entitled to immunity for claims in their individual capacities. Britt v. Department of Corrections, S.D.N.Y.2003, 2003 WL 1338684, Unreported. Federal Courts 269

3122. ---- State officials generally, official capacity, sovereign immunity

Eleventh Amendment barred § 1983 monetary claims against Department of Education of Puerto Rico and individual department officials in their official capacity. Hatfield Bermudez v. Rey Hernandez, D.Puerto Rico 2003, 245 F.Supp.2d 383. Federal Courts 269

Officials of state of Rhode Island could not be sued under § 1983 for damages, in their official capacities, by union of corrections officer claiming violation of members' federal constitutional rights arising out of amendment to statute changing manner of determining incentive pay for officers amassing education credits. Rhode Island Broth. of Correctional Officers v. Rhode Island, D.R.I.2003, 264 F.Supp.2d 87, affirmed 357 F.3d 42. Federal Courts 269

Eleventh Amendment barred § 1981, § 1983, and state law claims of African-American female secretary for state judge against state and its office of court administration (OCA), arising from judge's alleged sexual and racial harassment; state did not consent to suit in federal court, and no express override of state statutory authority had been enacted by Congress in association with §§ 1981 or 1983. Bland v. New York, E.D.N.Y.2003, 263 F.Supp.2d 526. Federal Courts 265; Federal Courts 269

Secretary of Pennsylvania Department of Public Welfare (DPW), acting in her official capacity, was immune under Eleventh Amendment from § 1983 suit brought by DPW employee only to the extent that employee sought damages for prior acts of discrimination, and not injunction for future discrimination. Nelson v. Com. of Pennsylvania Dept. of Public Welfare, E.D.Pa.2002, 244 F.Supp.2d 382. Federal Courts 269; Federal Courts 272

Employees of Delaware Division of Family Services (DFS) were entitled to immunity, under the Eleventh Amendment, from § 1983 official capacity claims for monetary damages, arising from determination by DFS that father had abused his sons. Rodriguez v. Stevenson, D.Del.2002, 243 F.Supp.2d 58. Federal Courts 269

Delaware deputy attorney general was state agent who enjoyed Eleventh Amendment immunity from § 1983 official capacity claims for monetary damages. Rodriguez v. Stevenson, D.Del.2002, 243 F.Supp.2d 58. Federal Courts 269

Request for punitive damages against state officials is sure tip-off that suit must be individual capacity, not official capacity, action, for purposes of determining applicability of Eleventh Amendment immunity. Bullock v. Barham, N.D.Ill.1997, 957 F.Supp. 154. Federal Courts 269

Eleventh Amendment barred former employee's § 1983 claims against state officials in their official capacities for allegedly discharging her in violation of her free speech and due process rights, to extent such claims sought monetary damages, but not to extent claims sought reinstatement. Fry v. McCall, S.D.N.Y.1996, 945 F.Supp. 655. Federal Courts 269; Federal Courts 272

Immunity for state officials from civil rights liability is rule, not exception. Brown v. Thompson, S.D.Ga.1994, 868 F.Supp. 326. Civil Rights 1376(3)

Official capacity suit against state official for monetary relief is no different from suit against state itself; in contrast, suit against state official in his or her individual capacity, which seeks to impose personal liability, is not suit against state subject to Eleventh Amendment immunity. Williams-El v. Dunning, E.D.Va.1993, 816 F.Supp.

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42 U.S.C.A. § 1983

418. Federal Courts 269

Because state immunity extends to state officers who act on behalf of the state, where the state is the real, substantial party in interest, the Eleventh Amendment generally bars federal court jurisdiction over § 1983 actions against state officials acting in their official capacities. Brewer v. Jones, S.D.N.Y.2003, 2003 WL 22126718, Unreported. Federal Courts 269

3123. ---- Governors, official capacity, sovereign immunity

State governor and director of division of corrections were immune from civil rights suit by state prisoner for damages for confinement under allegedly improper court sentence of imprisonment. U. S. ex rel. Bailey v. Askew, C.A.5 (Fla.) 1973, 486 F.2d 134. Civil Rights 1376(7)

The governor of state had immunity from damage suits for acts within sphere of executive activity. Martone v. McKeithen, C.A.5 (La.) 1969, 413 F.2d 1373. States 191.1

Former governor, former secretary of justice, and other officials of government of Puerto Rico were not immune, under Eleventh Amendment, from suit by judgment creditor under § 1983, alleging that their actions directed towards goal of evading payment of judgment against corporation which was allegedly commonwealth's alter ego violated substantive due process and equal protection; judgment creditor's complaint specifically stated that individual officials were being sued in their personal capacities. Future Development of Puerto Rico v. Estado Libre Asociado De Puerto Rico, D.Puerto Rico 2003, 276 F.Supp.2d 228. Federal Courts 269

Indian tribe could not sue governor in his official capacity under § 1983 to secure state's compliance with Indian Gaming Regulation Act through governor as state's agent; governor had available to him same Eleventh Amendment immunity as state. Poarch Band of Creek Indians v. State of Ala., S.D.Ala.1992, 784 F.Supp. 1549, affirmed 11 F.3d 1016, certiorari granted 115 S.Ct. 932, 513 U.S. 1125, 130 L.Ed.2d 878, affirmed 116 S.Ct. 1114, 517 U.S. 44, 134 L.Ed.2d 252, certiorari denied 116 S.Ct. 1415, 517 U.S. 1133, 134 L.Ed.2d 541, certiorari denied 116 S.Ct. 1416, 517 U.S. 1133, 134 L.Ed.2d 541. Federal Courts 269

Where governor of state, joined as defendant in prison inmate's civil rights action, was sued as representative of state, and where his actions were within sphere of his executive activity and authorized by law, governor was immune from suit. Morrow v. Igleburger, S.D.Ohio 1974, 67 F.R.D. 675. Federal Courts 269

3124. ---- County officials, official capacity, sovereign immunity

Section 1983 conspiracy claim brought by former county employee against county officials and legislators, alleging disclosure of her sexual harassment accusations and identity to news media, was barred by intracorporate conspiracy doctrine, since defendants were acting within scope of their official duties by conducting investigation into alleged misconduct of employee's supervisor. Nassau County Employee "L" v. County of Nassau, E.D.N.Y.2004, 345 F.Supp.2d 293. Conspiracy 2

There is no good faith immunity under § 1983 for county officials acting in an official capacity since a suit against a county official acting in an official capacity is one against the county he represents, and counties are not entitled to assert defense of qualified immunity. Shipley v. First Federal Sav. and Loan Ass'n of Delaware, D.C.Del.1985, 619 F.Supp. 421. Civil Rights 1376(4)

3125. ---- Police officers, official capacity, sovereign immunity

Sheriff's department was not acting as an arm of the state when administering local county jails, and therefore, was not entitled to Eleventh Amendment immunity on detainees' § 1983 claims for overdetention; county was

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financially liable for sheriff's department's actions in its capacity as administrator of local jails, sheriff's department did not act in a law enforcement capacity when administering county's jail release policy, and sheriff's department was a separately suable entity. Streit v. County of Los Angeles, C.A.9 (Cal.) 2001, 236 F.3d 552, certiorari denied 122 S.Ct. 59, 534 U.S. 823, 151 L.Ed.2d 27. Federal Courts 270

Sheriff's deputies, who were members of multi-jurisdictional narcotics task force acting under the direction of the sheriff, were acting as "arms of the state" when they stopped the vehicle containing suspected drug suppliers and detained its occupants; therefore, Georgia county sheriff and deputies were entitled to Eleventh Amendment immunity on §§ 1983 claims brought against them in their official capacities arising from the stop and detention. Beaulah v. Muscogee County Sheriff's Deputies, M.D.Ga.2006, 447 F.Supp.2d 1342. Federal Courts 269

Eleventh Amendment barred all monetary damages claims brought under §§ 1983 and §§ 1988 against Puerto Rico police officers in their official capacity as state agents, brought by neighborhood residents who were allegedly assaulted by police deployed to the area due to drug trafficking activity. Nieves Cruz v. Com. of Puerto Rico, D.Puerto Rico 2006, 425 F.Supp.2d 188. Federal Courts 269

Federal civil rights suit for depriving another of federal right under color of state law could be maintained against state official in his individual capacity in federal court, over Eleventh Amendment challenge, even though acts complained of arose in course of official duties. Oliver v. Cuttler, E.D.N.Y.1997, 968 F.Supp. 83. Federal Courts 269

Eleventh Amendment did not bar arrestee's § 1983 suit against state troopers where officers were sued in their individual capacities. White v. Tamlyn, E.D.Mich.1997, 961 F.Supp. 1047. Federal Courts 269

Any civil rights damage claims against police officers in their official capacities would not be barred by Eleventh Amendment, since Amendment does not protect local government bodies, but by requirement that municipal policy or custom be proven in order for municipality to be liable under federal civil rights statute for actions of its officers. Ippolito v. Meisel, S.D.N.Y.1997, 958 F.Supp. 155. Civil Rights 1351(4); Federal Courts 270

Under doctrine of sovereign immunity, county sheriff could not be held liable in his official capacity for money damages in § 1983 action arising out of county employee's termination of employment; sheriff was considered state official entitled to sovereign immunity; under Wisconsin law. Smith v. Milwaukee County, E.D.Wis.1997, 954 F.Supp. 1314. Civil Rights 1376(10)

Eleventh Amendment barred arrestee's suit seeking monetary damages under §§ 1983 and 1985 against state police and state trooper in his official capacity. Estes-El v. Town of Indian Lake, N.D.N.Y.1997, 954 F.Supp. 527. Federal Courts 269

County sheriff and sheriff's department were arms of state and could not be held liable for monetary damages under § 1983 under Eleventh Amendment immunity doctrine. Blankenship v. Warren County, Va., W.D.Va.1996, 931 F.Supp. 447. Federal Courts 269

Under Alabama law, county sheriff was entitled to sovereign immunity from claim brought by citizen alleging that sheriff negligently, recklessly and/or wantonly failed to supervise, instruct or train deputy in his duties as result of which deputy unlawfully seized citizen's automobile; sheriff possessed authority to train his deputies and exercise of this authority was discretionary function for purposes of sovereign immunity. Williams v. Goldsmith, M.D.Ala.1995, 905 F.Supp. 996. Sheriffs And Constables 100

Eleventh Amendment precluded § 1983 action against Alabama deputy in his official capacity, as he was "state officer," and state had neither consented to be sued nor waived its Eleventh Amendment immunity in instant case. Cofield v. Randolph County Com'n, M.D.Ala.1994, 844 F.Supp. 1499. Federal Courts 269

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42 U.S.C.A. § 1983

Eleventh Amendment prohibited award of damages against sheriffs and deputy sheriff in their official capacities under Alabama law and § 1983 action brought by individual who claimed that deputy sheriff used excessive force and conducted unlawful search of his vehicle. Sanders v. Miller, N.D.Ala.1992, 837 F.Supp. 1106. Federal Courts 269

3125A. ---- Sheriff, official capacity, sovereign immunity

Under Maryland law, county sheriff and sheriff's deputy were state officials, and thus official capacity claims raised against sheriff and deputy under § 1983 were barred by Eleventh Amendment, even though county retained authority to provide for appointment of county police and to fix their compensation, where county had no authority to control sheriff's functions and duties. Rossignol v. Voorhaar, D.Md.2004, 321 F.Supp.2d 642. Federal Courts 269

3126. ---- Prison officials, official capacity, sovereign immunity

Sheriff functioned as an arm of the state, not of the county, when promulgating policies and procedures governing conditions of confinement at the county jail, and thus, was entitled to Eleventh Amendment immunity from suit in his official capacity in that regard. Purcell ex rel. Estate of Morgan v. Toombs County, GA, C.A.11 (Ga.) 2005, 400 F.3d 1313. Federal Courts 269

State, state department of corrections, state prison, and prison officials in their official capacities were immune under Eleventh Amendment in prisoner's action under § 1983 alleging exposure to unreasonable levels of secondhand smoke in violation of Eighth Amendment. Davis v. New York, C.A.2 (N.Y.) 2002, 316 F.3d 93. Federal Courts 265; Federal Courts 269

To extent that civil rights claim was brought against prison superintendent in his official capacity, it was barred by sovereign immunity. Koehl v. Dalsheim, C.A.2 (N.Y.) 1996, 85 F.3d 86. Civil Rights 1376(7)

State prison officials had immunity under the Eleventh Amendment from prisoner's suit against them in their official capacities under §§ 1983 for money damages. Hayes v. Woodford, S.D.Cal.2006, 444 F.Supp.2d 1127. Federal Courts 269

To the extent that prisoner sued prison officials in their official, as opposed to individual, capacities, and to recover money damages or other retroactive relief, officials were immune from liability under §§ 1983 pursuant to the Eleventh Amendment. Strong v. Woodford, C.D.Cal.2006, 428 F.Supp.2d 1082. Federal Courts 269

Inmate's §§ 1983 action against prison personnel in their individual capacities was not barred by sovereign immunity under the Eleventh Amendment. Davis v. Carroll, D.Del.2005, 390 F.Supp.2d 415. Federal Courts 269

Eleventh Amendment barred civil rights damage claims against prison officials to extent they were sued in their official capacities. Ornelas v. Giurbino, S.D.Cal.2005, 358 F.Supp.2d 955. Federal Courts 269

Eleventh Amendment barred state prison inmate's pro se §§ 1983 action against corrections officials alleging that diet provided to inmate constituted infringement of inmate's free exercise rights and violation of equal protection; state had not waived its Eleventh Amendment immunity, officials were acting in their official capacities as secretary of state corrections department and warden, respectively, at all times relevant to suit, and complaint expressly named officials as defendants in their official capacities and made no mention of actions undertaken in officials' individual capacities. Johnson v. Simmons, D.Kan.2004, 338 F.Supp.2d 1241. Federal Courts 269

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42 U.S.C.A. § 1983

Sovereign immunity barred § 1983 claim against state prison officials, in their official capacities, seeking damages arising when one official told inmates that suing inmate was "snitch" and officials allegedly failed to adequately protect him against abuse afterwards. Burgess v. Morse, W.D.N.Y.2003, 259 F.Supp.2d 240. Civil Rights 1376(7)

Eleventh Amendment barred state prisoner's pro se § 1983 actionfor damages against prison chaplain in his official capacity, alleging that chaplain violated prisoner's First Amendment right to freely exercise his religion by intentionally interfering with prisoner's ability to observe a religious holiday. Wares v. VanBebber, D.Kan.2002, 231 F.Supp.2d 1120. Federal Courts 269

Defendant state Department of Corrections and correctional institution personnel were immune from prisoner civil rights suit to the extent money damages were sought, pursuant to doctrine of sovereign immunity, as state officials acting in their official capacities are not "persons" within the meaning of § 1983. Alley v. Angelone, E.D.Va.1997, 962 F.Supp. 827. Civil Rights 1358; Civil Rights 1376(7)

Presumption arose that inmate had sued prison officials in their official capacity where he failed to state otherwise in complaint in his § 1983 suit, though that presumption was not conclusive. Bullock v. Barham, N.D.Ill.1997, 957 F.Supp. 154. Civil Rights 1404

Exceptions to Eleventh Amendment immunity did not apply in § 1983 action seeking damages from sheriff and investigator in their official capacities, inasmuch as Congress had not abrogated Eleventh Amendment immunity in § 1983 cases, and state of Alabama had not waived its immunity. Toth v. City of Dothan, Ala., M.D.Ala.1996, 953 F.Supp. 1502. Federal Courts 265; Federal Courts 266.1

Eleventh Amendment barred prison employees and officials from being held liable in their official capacities for money damages in federal civil rights action brought by prison inmate alleging use of excessive force. Roberts v. Samardvich, N.D.Ind.1995, 909 F.Supp. 594. Federal Courts 269

Eleventh Amendment precluded state prisoner from bringing § 1983 action against employees of state prison, in their official capacity. Thomas v. Brown, N.D.Ind.1993, 824 F.Supp. 160. Federal Courts 269

Neither prison mail room supervisor nor assistant warden could be held liable under § 1983 for official acts undertaken in their capacities as state officials. Johnson v. Daniels, E.D.Mich.1991, 769 F.Supp. 230, affirmed 70 F.3d 1272. Civil Rights 1358

Prison warden sued in his individual capacity under § 1983 based on his involvement in inmate's medical treatment was not entitled to absolute immunity under Eleventh Amendment, even though he was acting in his official capacity when alleged constitutional tort was committed; inmate alleged that, pursuant to warden's instruction, he was refused admission to medical facility for scheduled appointment concerning foot problem on ground that he was not wearing state-issued shoes. Harrington v. Grayson, E.D.Mich.1991, 764 F.Supp. 464. Federal Courts 269

Where parole officer was alleged to have acted beyond bounds of his special authority, action based on parole officer's alleged handcuffing of plaintiff and beating him without provocation could be brought against officer individually and U.S.C.A. Const.Amend. 11 posed no obstacle to plaintiff's claim. Terry v. Burke, N.D.Ill.1984, 589 F.Supp. 853. Federal Courts 269

Prisoners' civil rights action against state prison officials challenging validity of prison rule prohibiting prisoners from joining in any petition or statement with another was not barred by U.S.C.A.Const. Amend. 11, since plaintiffs could recover damages from defendant state officials under some circumstances, and whether those officials were entitled to immunity from damages could not be determined on record before the court. Broome v.

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Percy, E.D.Wis.1979, 470 F.Supp. 633. Federal Courts 269

Despite fact that segregated confinement evaluation procedures violated due process requirements, prison officials were immune from damage liability under U.S.C.A.Const. Amend. 11 and also by virtue of common law immunity applicable to governmental officials in civil rights actions. U. S. ex rel. Hoss v. Cuyler, E.D.Pa.1978, 452 F.Supp. 256. Civil Rights 1376(7); Federal Courts 269

U.S.C.A.Const. Amend 11 did not preclude federal district court's accepting jurisdiction of suit brought under this section against Director of Department of Corrections of Commonwealth of Virginia to recover for alleged assault perpetrated on plaintiff by adult prisoner while plaintiff was incarcerated in juvenile section of Prince William County jail; in addition, when viewed on basis of allegations in the complaint the alleged nonfeasance of the Director did not fall within the parameters of the qualified immunity attaching to state officials in suits under this section. Payne v. Rollings, E.D.Va.1975, 402 F.Supp. 1225. Civil Rights 1376(7); Federal Courts 268.1

Inmate stated a §§ 1983 claim against superintendent and physician for deliberate indifference to his serious medical needs, despite their claims that they were being sued in their official capacities, and were thus protected by Eleventh Amendment immunity; the inmate explicitly stated that "[e]ach defendant is sued in his individual capacity," and the defendants may very well have been personally involved in the alleged constitutional violations. Williams v. Koenigsmann, S.D.N.Y.2004, 2004 WL 315279, Unreported. Civil Rights 1395(7)

State prison officials had Eleventh Amendment immunity, in their official capacities, from inmate's § 1983 suit. Derrick v. Ward, C.A.10 (Okla.) 2004, 91 Fed.Appx. 57, 2004 WL 38545, Unreported. Federal Courts 269

3127. ---- Miscellaneous officials, official capacity, sovereign immunity

Civil rights lawsuit, which sought equitable relief against governor and attorney general, on alleged basis that amendment to state constitution, which limited state-recognized institution of marriage to heterosexual couples, violated federal constitution, fell within exception to state's Eleventh Amendment immunity, and thus was justiciable; although question existed as to whether enjoining those two state officers would have fully redressed alleged injuries, officers had some connection with enforcement of amendment. Citizens for Equal Protection v. Bruning, C.A.8 (Neb.) 2006, 455 F.3d 859. Federal Courts 272

State university officials sued in their official capacities were entitled to Eleventh Amendment immunity in action brought by former professor who claimed he was discharged for exercising his First Amendment rights. Feldman v. Bahn, C.A.7 (Ill.) 1993, 12 F.3d 730, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 571, 513 U.S. 1014, 130 L.Ed.2d 489. Federal Courts 269

Sheriff's Eleventh Amendment immunity extended to deputy sheriffs in § 1983 action brought to recover damages from sheriff and deputies in their official capacities; deputies had traditional function under Alabama law as sheriff's alter ego and there was absence of clear evidence that counties would pay damage award rendered against deputy sheriffs. Carr v. City of Florence, Ala., C.A.11 (Ala.) 1990, 916 F.2d 1521, rehearing denied 925 F.2d 1477 . Federal Courts 269

Suit against state officials for alleged improper administration of Montana Workers' Compensation Act in deprivation of plaintiffs' Fourteenth Amendment rights was not barred by the Eleventh Amendment to the extent plaintiffs sought relief against state officials in their individual capacities. Blaylock v. Schwinden, C.A.9 (Mont.) 1988, 862 F.2d 1352. Federal Courts 269

Section 1983 claims seeking monetary damages from state psychiatric center and individual center officials in their official capacities, in which former patient alleged that he was subjected to illegal strip search and body cavity search upon his voluntary admission to center in violation of his Fourth Amendment rights, were barred by

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42 U.S.C.A. § 1983

Eleventh Amendment. Aiken v. Nixon, N.D.N.Y.2002, 236 F.Supp.2d 211, affirmed 80 Fed.Appx. 146, 2003 WL 22595837. Federal Courts 48

Building commissioner, town supervisor, building inspector, and prior building commissioner, in their official capacities, could invoke Eleventh Amendment immunity as affirmative defense to homeowners' § 1983 claims of malicious prosecution and abuse of process concerning town officials' roles as representatives of state in pursuing criminal action against homeowner for zoning and building violations. Willner v. Town of North Hempstead, E.D.N.Y.1997, 977 F.Supp. 182. Federal Courts 270

Suit for money damages against Drug Enforcement Administration (DEA) and its agents in their official capacities alleging that DEA and agents unlawfully deprived plaintiff of his truck in violation of his constitutional rights was really suit against United States and had to be dismissed, absent unequivocal waiver of sovereign immunity. Daniel v. U.S., N.D.Ga.1995, 891 F.Supp. 600. United States 125(28.1)

County board of commissioners, to extent that they were sued in their official capacities, were immune from county jailer's punitive damages claim under § 1983. Malone v. Chambers County Bd. of Com'rs, M.D.Ala.1994, 875 F.Supp. 773, reconsideration denied. Civil Rights 1474(2)

School and district officials in their official capacities were immune from claims for punitive damages under § 1983. Kessler v. Monsour, M.D.Pa.1994, 865 F.Supp. 234. Civil Rights 1465(2)

Action against state officials, in their individual capacities, for alleged sex discrimination against female teachers at state institutions of higher education was not barred by doctrine of sovereign immunity. Taliaferro v. State Council of Higher Ed., E.D.Va.1974, 372 F.Supp. 1378. States 191.10

3128. Discrimination claims, sovereign immunity

District Court lacked subject matter jurisdiction over attorney's claims under §§§§ 1981, 1982, 1983, 1985, 1986, and the Racketeer Influenced and Corrupt Organizations Act (RICO), based on alleged conspiracy between federal agencies and officers to place attorney under surveillance in order to harass and intimidate him in retaliation for his role as counsel in certain legal proceedings, where the United States had not waived its sovereign immunity for claims under §§§§ 1981, 1982, 1983, 1985, 1986, and RICO. Jones v. National Communication and Surveillance Networks, S.D.N.Y.2006, 409 F.Supp.2d 456. United States 125(9)

This section does not abrogate immunity of states under U.S.C.A. Const. Amend. 11, even where claim alleges race and sex discrimination. Daisernia v. State of N.Y., N.D.N.Y.1984, 582 F.Supp. 792. Federal Courts 265

3129. States and state agencies, sovereign immunity--Generally

Section 1983 does not abrogate state's Eleventh Amendment immunity from suit in federal court. In re Secretary of Dept. of Crime Control and Public Safety, C.A.4 (N.C.) 1993, 7 F.3d 1140, certiorari denied 114 S.Ct. 2106, 511 U.S. 1109, 128 L.Ed.2d 667. Federal Courts 265

Congress did not abrogate states' Eleventh Amendment immunity by enacting federal civil rights statute. Williams v. State of Mo., C.A.8 (Mo.) 1992, 973 F.2d 599. Federal Courts 265

By virtue of U.S.C.A.Const. Amend. 11, state was immune from suit brought under this section. Burton v. Waller, C.A.5 (Miss.) 1974, 502 F.2d 1261, certiorari denied 95 S.Ct. 1356, 420 U.S. 964, 43 L.Ed.2d 442, rehearing denied 95 S.Ct. 1668, 421 U.S. 939, 44 L.Ed.2d 95.

Eleventh Amendment did not bar §§ 1983 claim against municipality and its mayor, in his official capacity,

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claiming violation of employee's federally protected rights; Eleventh Amendment protected states and its employees. Figueroa-Garay v. Municipality of Rio Grande, D.Puerto Rico 2005, 364 F.Supp.2d 117. Federal Courts 270

Eleventh Amendment barred § 1983 suit against state, claiming violation of nursing home services providers' substantive and procedural rights to reasonable and adequate Medicaid reimbursement rates; as Boren Amendment, which extended those rights, had been repealed, there was no need for injunctive relief to bar ongoing violations, which could otherwise be brought consistent with Eleventh Amendment, and Eleventh Amendment precluded determination that Boren Amendment was violated in past. In re NYAHSA Litigation, N.D.N.Y.2004, 318 F.Supp.2d 30, affirmed 444 F.3d 147. Federal Courts 265; Federal Courts 272

Eleventh Amendment barred § 1983 suit against State of Rhode Island, brought by union representing corrections officers, claiming violation of members' federal constitutional rights arising out of amendment to statute changing manner of determining incentive pay for officers amassing education credits. Rhode Island Broth. of Correctional Officers v. Rhode Island, D.R.I.2003, 264 F.Supp.2d 87, affirmed 357 F.3d 42. Federal Courts 265

State agencies cannot be sued for damages under § 1983. Singer v. State of Me., D.Me.1994, 865 F.Supp. 19, reversed in part 49 F.3d 837. Civil Rights 1344

Congress did not intend to abrogate states' Eleventh Amendment immunity when it enacted § 1983. Black v. Goodman, D.Mont.1990, 736 F.Supp. 1042. Federal Courts 265

Statute which creates civil action for deprivation of rights under color of law does not override the state's protection under U.S.C.A. Const. Amend. 11. Almond Pharmacy, Inc. v. Mankowitz, N.D.Ill.1984, 587 F.Supp. 925. Federal Courts 265

Congress did not exercise its power to abrogate state's immunity under U.S.C.A. Const.Amend. 11 when it enacted this section. Coffin v. South Carolina Dept. of Social Services, D.C.S.C.1983, 562 F.Supp. 579. Federal Courts 265

State was immune from suit, brought under federal civil rights statute proscribing a deprivation of rights, under the protection of U.S.C.A.Const. Amend. 11. Bohn v. State of N. Y., S.D.N.Y.1979, 467 F.Supp. 27. Federal Courts 265

State of New York is immune from suit. Stenson v. State of N. Y., S.D.N.Y.1976, 422 F.Supp. 38.

Political subdivisions of a state or the state itself are not amenable to suit under this section. Com. of Pa. v. Powers, E.D.Pa.1970, 311 F.Supp. 1219.

Eleventh Amendment barred criminal defendant's §§ 1983 action against district attorney in his official capacity and against county district attorney's office alleging that district attorney had violated his constitutional rights by failing to notify courts of notarized recantation by victim in state sexual assault prosecution following sentencing. Romero v. Boulder County DA's Office, C.A.10 (Colo.) 2004, 87 Fed.Appx. 696, 2004 WL 100523, Unreported. Federal Courts 269

3130. ---- Counties and county officials, states and state agencies, sovereign immunity

Louisiana parish sheriff was not an arm of the state entitled to Eleventh Amendment immunity in § 1983 suit by plaintiff who had been evicted from her residence; state was not liable for any damage caused by sheriff within course of his official duties. Cozzo v. Tangipahoa Parish Council--President Government, C.A.5 (La.) 2002, 279 F.3d 273.

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42 U.S.C.A. § 1983

Sheriff was county official and not agent of state so that Eleventh Amendment did not bar mother's suit under Civil Rights Act for sheriff's alleged wrongful seizure of child from her home; sheriff seized child pursuant to papers given sheriff by ex-husband incorrectly implying that husband had right to child. Hufford v. Rodgers, C.A.11 (Fla.) 1990, 912 F.2d 1338, rehearing denied 921 F.2d 283, certiorari denied 111 S.Ct. 1312, 499 U.S. 921, 113 L.Ed.2d 246. Federal Courts 269

Deputy county attorney, as prosecutor, was not entitled to Eleventh Amendment immunity in her official capacity, to citizen's civil rights lawsuit alleging that attorney participated in conspiracy with detective to search his residence and seize evidence without warrant in violation of Fourth Amendment, since attorney was properly classified as county officer, rather than state officer; Utah statutory law designated county attorney as "county officer," attorney could prosecute only those offenses committed within county, expenses of county attorney in prosecuting criminal cases were charged against county, and most of her enumerated duties related solely to county. Allison v. Utah County Corp., D.Utah 2004, 335 F.Supp.2d 1310. Federal Courts 269

County community service board was not immune under Eleventh Amendment from racial discrimination claims brought by African-American employee under § 1983, since employee's rights under § 1981, to which governmental immunity did not apply, were being vindicated through § 1983 action. Collier v. Clayton County Community Service Bd., N.D.Ga.2002, 236 F.Supp.2d 1345, affirmed 82 Fed.Appx. 222, 2003 WL 22227530. Federal Courts 269

County, in adjudicating special use permit of less than 15 acres under state law, was not an "arm of the state," and thus was not protected by sovereign immunity from liability, for alleged civil rights violations by county planning commission of religious organization's *Monell* free exercise claim, although county was acting with delegated authority of state; county had enforcement powers and complete discretion to grant or deny permit, and nothing indicated state would pay or indemnify county for money judgments arising from unconstitutional exercise of discretion. Hale O Kaula Church v. Maui Planning Com'n, D.Hawai'i 2002, 229 F.Supp.2d 1056. Federal Courts 270

County probate judge was county official, rather than state official, and thus, judge, in his official capacity, was not entitled to Eleventh Amendment immunity from § 1983 action; Alabama Constitution limits probate courts' jurisdiction to county and probate judge is elected by vote of single county confined in duty to territorial limits of that county. Johnson v. Waters, M.D.Ala.1997, 970 F.Supp. 991. Federal Courts 269

Juvenile probation officer was "county official," rather than "state official," under Alabama law, and thus, officer was not entitled to Eleventh Amendment immunity in juvenile's § 1983 action alleging that he was harmed as result of illegal detention in county jail; it could be inferred that absence of state law codifying control over juvenile probation officers indicated delegation of such control to counties, and official considered herself employee not of state, but rather of county. A.M. By and Through Law v. Grant, M.D.Ala.1995, 889 F.Supp. 1495, affirmed 68 F.3d 486. Federal Courts 269

County clerk's liability in her official capacity in § 1983 suit was merely another way of naming liability of county, the responsible entity, and because plaintiffs would recover money damages from county, they could not recover additional money damages from clerk in her official capacity. Winters v. Mowery, S.D.Ind.1995, 884 F.Supp. 321. Damages 15

County official acted with final policy-making authority in imposing and continuing curfew, such that county could be held liable under § 1983 if action were unlawful, though Governor's executive order authorized curfew, where county had authority to declare state of emergency and impose curfew even if Governor had not declared state of emergency, and county official's decisions were not reviewable by Governor. Smith v. Avino, S.D.Fla.1994, 866 F.Supp. 1399, affirmed 91 F.3d 105. Civil Rights 1351(6)

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42 U.S.C.A. § 1983

Florida county sheriff and deputy sheriff were county, rather than state officials, and were not entitled to Eleventh Amendment immunity in civil rights action. Colvin v. Curtis, M.D.Fla.1993, 860 F.Supp. 1503, vacated 62 F.3d 1316. Federal Courts 269

County sheriff was not acting as state official in executing arrest warrant issued by state court and, accordingly, was not entitled to Eleventh Amendment immunity in § 1983 action brought by plaintiff who was repeatedly arrested under warrant issued for another person. Jackson v. Doria, N.D.Ill.1994, 851 F.Supp. 288. Federal Courts 269

County and county board of commissioners were not protected by state's sovereign immunity in section 1983 action, nor were county department and board of social services so protected, inasmuch as they merely functioned as extensions of county. Meares v. Brunswick County, N.C., E.D.N.C.1985, 615 F.Supp. 14. Civil Rights 1376(4)

3131. ---- Court systems, states and state agencies, sovereign immunity

Eleventh Amendment barred Civil Rights Act claims brought by teacher against state education department and vice principal of high school in her official capacity, to extent that retrospective or compensatory damages were sought. Sherez v. State of Hawai'i Dept. of Educ., D.Hawai'i 2005, 396 F.Supp.2d 1138. Federal Courts 269

Official capacity § 1983 claims against state judge by his personal staff, who were discharged for reporting judge's alcohol abuse, were barred by the Eleventh Amendment; although staff characterized their claims as seeking only prospective relief, so as to avoid Eleventh Amendment bar, relief sought, which included reinstatement, was not intended to halt present, continuing violation of federal law, rather claims simply targeted judge's past action of discharging staff. Jakomas v. McFalls, W.D.Pa.2002, 229 F.Supp.2d 412. Federal Courts 269; Federal Courts 272

Civil rights suit against Missouri circuit court was barred by Eleventh Amendment, as court is agency of the state. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Federal Courts 269

3132. ---- Colleges and universities, states and state agencies, sovereign immunity

Any §§ 1983 claim asserted by student against public university's athletic association, alleging student-on-student sexual harassment in violation of Title IX, was barred by Eleventh Amendment, even though Congress validly abrogated states' immunity from Title IX suits, absent Congressional abrogation of states' immunity from §§ 1983 suits or waiver by university or board. Williams v. Board of Regents of University System of Georgia, C.A.11 (Ga.) 2006, 441 F.3d 1287, rehearing and rehearing en banc denied 2006 WL 1173185. Federal Courts 269

University and university board of regents were immune, under Eleventh Amendment, from suit on faculty members' due process and First Amendment claims brought under § 1983 arising from closing of university dental hygiene department. Brine v. University of Iowa, C.A.8 (Iowa) 1996, 90 F.3d 271, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1082, 519 U.S. 1149, 137 L.Ed.2d 217. Federal Courts 269

University of Utah Medical Center was arm of the state, and therefore the Medical Center and its officials, in their official capacities, were entitled to Eleventh Amendment immunity in § 1983 action brought by nurse formerly employed by the Medical Center; although the Medical Center received most of its budget from patient billing, it was integral part of the university and manager of the Utah Risk Management Fund stated that bulk of any money judgment awarded in the action would be paid from the Fund. Watson v. University of Utah Medical Center, C.A.10 (Utah) 1996, 75 F.3d 569. Federal Courts 269

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42 U.S.C.A. § 1983

Although function of state university in regulating public education was important central government function, university was not entitled to Eleventh Amendment sovereign immunity for contract and § 1983 purposes in action arising out of employment with university-operated laboratory owned by the Department of Energy where Department of Energy, not the state, would be liable for any judgment rendered against university, California Constitution granted university power to sue and be sued, university had power to take property in its own name, and California Constitution established a corporation known as the Regents of University of California. Doe v. Lawrence Livermore Nat. Laboratory, C.A.9 (Cal.) 1995, 65 F.3d 771, certiorari granted 116 S.Ct. 2522, 518 U.S. 1004, 135 L.Ed.2d 1047, motion granted 117 S.Ct. 2, 518 U.S. 1036, 135 L.Ed.2d 1099, motion granted 117 S.Ct. 44, 519 U.S. 804, 136 L.Ed.2d 8, reversed 117 S.Ct. 900, 519 U.S. 425, 137 L.Ed.2d 55, on remand 131 F.3d 836. Federal Courts 269

College, as agent of state, enjoyed sovereign immunity under U.S.C.A.Const. Amend. 11, and was not liable to professor for award of back pay arising from his alleged wrongful termination. Skehan v. Board of Trustees of Bloomsburg State College, C.A.3 (Pa.) 1978, 590 F.2d 470, certiorari denied 100 S.Ct. 61, 444 U.S. 832, 62 L.Ed.2d 41, on remand 501 F.Supp. 1360. Federal Courts 270

Under Pennsylvania law, state colleges are agencies of Commonwealth and are subject to claim of sovereign immunity, and thus, in teacher's civil rights suit against state college, back pay could not be awarded, and award of attorney's fees as costs taxed against college could only be made if college were found to have been obdurant in such litigation. Skehan v. Board of Trustees of Bloomsburg State College, C.A.3 (Pa.) 1976, 538 F.2d 53, certiorari denied 97 S.Ct. 490, 429 U.S. 979, 50 L.Ed.2d 588, on remand 431 F.Supp. 1379. Civil Rights 1480; Civil Rights 1471; States 191.10

Section 1983 claims against University of Texas Medical Branch (UTMB) and its Chief Administrative Officer of Correctional Managed Care/Associate Vice President for Managed Care were barred by doctrine of sovereign immunity. Bates v. University of Tex. Medical Branch, S.D.Tex.2003, 425 F.Supp.2d 826. Federal Courts 269

Athletic association was agency of state, entitled to Eleventh Amendment immunity from money damages in §§ 1983 wrongful termination suit, brought by former coordinator of state university's cheerleading program; association was subject to oversight, direction and control of university, assets were devoted exclusively to university's athletic program, and board was predominantly composed of university officials and faculty. Braswell v. Board of Regents of University System of Ga., N.D.Ga.2005, 369 F.Supp.2d 1371. Federal Courts 269

Eleventh Amendment barred Virginia state college employee's § 1983 claims against college and Commonwealth of Virginia alleging racial discrimination and retaliatory discrimination in employment. Allen v. College of William & Mary, E.D.Va.2003, 245 F.Supp.2d 777. Federal Courts 265; Federal Courts 269

Nebraska community college was not arm of state entitled to Eleventh Amendment immunity from § 1983 plaintiff's claim for money damages; college was not statutorily designated as state agency, was not under ultimate state control, was not primarily funded by state treasury, and there was no evidence that state would necessarily be liable for payment of any judgment rendered against college. Griner v. Southeast Community College, D.Neb.2000, 95 F.Supp.2d 1054. Federal Courts 269

Female college administrators could not maintain action under § 1983 against Alabama Board of Education or against college presidents, absent waiver of state's federal constitutional immunity from suit on behalf of entities under its control. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Federal Courts 269

Texas A&M University is an alter ego of the State of Texas, accorded sovereign immunity, and thus university and its officials in their official capacities were entitled to Eleventh Amendment immunity from suit in federal court under §§ 1981 and 1983. Chacko v. Texas A&M University, S.D.Tex.1997, 960 F.Supp. 1180, affirmed 149 F.3d

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42 U.S.C.A. § 1983

1175. Federal Courts 269

Community college was state agency protected from liability under § 1983 for its discriminatory decision not to renew contract of African-American instructor. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1349

Employees of state veterinary college considered arm of state enjoyed qualified immunity for acts taken in their individual capacities, and could not be sued for damages for acts undertaken in their official capacities. Carboni v. Meldrum, W.D.Va.1996, 949 F.Supp. 427, affirmed 103 F.3d 116. Federal Courts 269

State university was considered to be an arm of the state government and thus, under the Eleventh Amendment, it was immune from civil rights suit brought by student in federal court, and university coach was also immune from suit in his official capacity as to student's civil rights causes of action. Davis v. Kent State University, N.D.Ohio 1996, 928 F.Supp. 729. Civil Rights 1376(4); Federal Courts 269

Eleventh Amendment was a bar not only as to employee's § 1983 claims against state university, but also as to employee's § 1983 claims against university officials in their official capacities; university, as arm and alter ego of the State of Tennessee, was entitled to the state's Eleventh Amendment immunity from suit. Hiefner v. University of Tennessee, E.D.Tenn.1995, 914 F.Supp. 1513. Federal Courts 269

Eleventh Amendment barred damages claims against state university officials in their official capacities under § 1983 and under state age discrimination law; however, Eleventh Amendment did not bar request for prospective injunctive relief. Van Pilsum v. Iowa State University of Science and Technology, S.D.Iowa 1994, 863 F.Supp. 935. Federal Courts 269; Federal Courts 272

Tenured teacher's § 1983 action for alleged First Amendment violation against community college president in his official capacity was not barred by Eleventh Amendment, where community college was not arm of state; community college was more analogous to local school board than to state prisons or state mental institutions which were arms of state, and community college board of trustees was elected by community, not appointed by governor as was university board which was arm of state. Gardetto v. Mason, D.Wyo.1994, 854 F.Supp. 1520. Federal Courts 269; Federal Courts 270

University and members of its board of regents did not waive sovereign immunity from section 1983 suit by removing case from state court. Idoux v. Lamar University System, E.D.Tex.1993, 817 F.Supp. 637. Federal Courts 266.1

State university faculty member could not sue university at all under federal civil rights statute for alleged due process and equal protection violations and could sue university officials acting in their official capacity only for declaratory and injunctive relief. Derechin v. State University of New York, W.D.N.Y.1989, 731 F.Supp. 1160. Civil Rights 1349; Civil Rights 1455; Declaratory Judgment 210

Eleventh Amendment immunity applied to state university and its board of regents, precluding suit under §§ 1983. Kay v. Likins, C.A.9 (Ariz.) 2005, 160 Fed.Appx. 605, 2005 WL 3525618, Unreported. Federal Courts 269

City University of New York and one of its senior colleges were effectively arms of state, and thus entitled to Eleventh Amendment immunity from § 1981 and § 1983 claims by student who was arrested and prosecuted for sexually assaulting classmate; any damage award would be paid out of state treasury, and state exercised significant supervisory functions. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 715749, Unreported, opinion corrected and superseded 2003 WL 1809471. Federal Courts 269

Title VII and § 1983 claims against state university were barred by the Eleventh Amendment. O'Diah v. New York

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42 U.S.C.A. § 1983

City, S.D.N.Y.2002, 2002 WL 31886622, Unreported. Federal Courts 269

3133. ---- Corrections departments, states and state agencies, sovereign immunity

United States Parole Commission enjoyed sovereign immunity in District of Columbia inmate's §§ 1983 challenge to Commission's procedural rules; neither statute extending §§ 1983 to persons acting under color of laws of District, nor District of Columbia Revitalization Act, indicated Congressional intent to subject Commission to §§ 1983 liability. Settles v. U.S. Parole Com'n, C.A.D.C.2005, 429 F.3d 1098, 368 U.S.App.D.C. 297. United States 125(28.1)

Eleventh Amendment precluded former inmate's suit against Texas Department of Corrections for damages. Pete v. Metcalfe, C.A.5 (Tex.) 1993, 8 F.3d 214. Federal Courts 269

State parole officials had Eleventh Amendment immunity, in their official capacities, from § 1983 suit by former parole revokee for alleged violation of his Eighth and Fourteenth Amendment rights. Young v. McKune, D.Kan.2003, 280 F.Supp.2d 1250, affirmed 85 Fed.Appx. 723, 2004 WL 95875. Federal Courts 269

Arrestee's § 1983 official capacity claims for money damages against state prison officials, arising from detention and cavity search that he was subjected to while attempting to visit his son, were barred by the Eleventh Amendment. Lynn v. O'Leary, D.Md.2003, 264 F.Supp.2d 306. Federal Courts 269

Alabama Board of Pardons and Paroles was immune, by virtue of U.S.C.A.Const. Amend. 11 and the doctrine of official immunity, from suit under this section brought by father of girl allegedly murdered by parolee. Pate v. Alabama Bd. of Pardons and Paroles, M.D.Ala.1976, 409 F.Supp. 478, affirmed 548 F.2d 354.

Eleventh Amendment barred inmate's suit against state correctional institution, under §§ 1983; institution was instrumentality of State of Delaware, and neither United States Congress nor Delaware legislature had waived immunity. Green v. Howard R. Young Correctional Institution, D.Del.2005, 229 F.R.D. 99. Federal Courts 269

3134. ---- Education departments, states and state agencies, sovereign immunity

New York State, New York Education Department, and New York Board of Regents, were not considered persons subject to suit under § 1983, and, thus, were entitled to Eleventh Amendment immunity. U.S. v. City of Yonkers, C.A.2 (N.Y.) 1996, 96 F.3d 600, on remand 1996 WL 696121, on remand 1997 WL 311943, certiorari denied 117 S.Ct. 2479, 521 U.S. 1104, 138 L.Ed.2d 988, on remand 984 F.Supp. 687, on remand 992 F.Supp. 672. Civil Rights 1346; Federal Courts 265; Federal Courts 269

Eleventh Amendment immunity barred § 1983 suit against State Review Officer of New York State Education Department in his official capacity. Board of Educ. of Pawling Cent. School Dist. v. Schutz, N.D.N.Y.2001, 137 F.Supp.2d 83, affirmed 290 F.3d 476, certiorari denied 123 S.Ct. 1284, 537 U.S. 1227, 154 L.Ed.2d 1088. Federal Courts 269

Minnesota Department of Children, Families and Learning (MDCFL), director of department, and Minnesota Board of Education were entitled to Eleventh Amendment immunity from disabled child's § 1983 action alleging he was entitled to due process hearing under IDEA and Minnesota Constitution. Thompson By and Through Buchanon v. Board of Special School Dist. No. 1, D.Minn.1996, 936 F.Supp. 644, affirmed 144 F.3d 574. Federal Courts 269

As state agency, state education department was immune from suit brought under § 1983. Grimes By and Through Grimes v. Sobol, S.D.N.Y.1993, 832 F.Supp. 704, affirmed 37 F.3d 857. Federal Courts 269

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State Department of Education had immunity from civil rights suit brought by school; Department was agency of state. ICR Graduate School v. Honig, S.D.Cal.1991, 758 F.Supp. 1350. Civil Rights 1376(5)

3135. ---- Environment departments, states and state agencies, sovereign immunity

Eleventh Amendment sovereign immunity barred state law claims of manufacturer in federal court against Commissioner of New York State Department of Environmental Conservation and Attorney General of State of New York that were related to Commissioner's creation and implementation of New York Architectural and Industrial Maintenance Coatings regulations, which were designed to reduce ozone emissions as required under Clean Air Act (CAA), since Commissioner acted as state official under state law and her creation and implementation of those regulations was well within scope of her authority. U.S.C.A. Const.Amend 11; 42 U.S.C.A. §§§§ 1983, 7401 et seq; N.Y. Envtl. Conserv. Sherwin-Williams Co. v. Crotty, N.D.N.Y.2004, 334 F.Supp.2d 187. Federal Courts 269

Owner of proposed residential subdivision was not precluded by Eleventh Amendment from seeking declaratory and injunctive relief against state officials in its § 1983 civil rights action against State Department of Environmental Conservation (DEC) officials, county, and county sewer district, arising from district's denial of Department sewer main line extension permit because of moratorium imposed by Department, under exception to general rule precluding actions against State, for actions involving acts of state officials that violate federal constitutional rights. HBP Associates v. Marsh, S.D.N.Y.1995, 893 F.Supp. 271. Federal Courts 269

Department of Environmental Management was an agency of state of Indiana, and as such, its Leaking Underground Storage Tank Division was immune from § 1983 suit brought by owners of former site of gasoline service station found to have required substantial cleanup. Rodenbeck v. State of Ind., Leaking Underground Storage Tank Div. of Dept. of Environmental Management, N.D.Ind.1990, 742 F.Supp. 1442. Federal Courts 269

State university officials in their personal capacities were qualifiedly immune from former employee's federal substantive due process claims, since the alleged rights at issue were not clearly established at the time of her termination from employment. Kay v. Likins, C.A.9 (Ariz.) 2005, 160 Fed.Appx. 605, 2005 WL 3525618, Unreported. Civil Rights 1376(10)

3136. ---- Public defender systems, states and state agencies, sovereign immunity

The state of Indiana and Indiana Public Defender System, as an arm of the state, were protected by immunity under U.S.C.A. Const.Amend. 11 from civil rights action brought by prison inmates who contended that the Public Defender System functioned unfairly by discriminating against them on their requests for public defender assistance in prosecuting postconviction appeals. Hendrix v. Indiana State Public Defender System, N.D.Ind.1984, 581 F.Supp. 31. Federal Courts 268.1; Federal Courts 269

3137. ---- School boards, states and state agencies, sovereign immunity

Where, under Ohio law, 'state' did not include 'political subdivisions' and 'political subdivisions' did include local school district, school board was more like county or city than it was like arm of state, and it therefore was not entitled to assert any Eleventh Amendment immunity from suit in federal court. Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, U.S.Ohio 1977, 97 S.Ct. 568, 429 U.S. 274, 50 L.Ed.2d 471. Federal Courts 270

School districts and governing school boards were not arms of the state in New Mexico and thus were not entitled to Eleventh Amendment immunity in district employee's § 1983 action against school district and board; overruling *Martinez v. Board of Educ.*, 748 F.2d 1393. Duke v. Grady Mun. Schools, C.A.10 (N.M.) 1997, 127 F.3d 972. Federal Courts 269

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42 U.S.C.A. § 1983

County school board was arm of state under Maryland law, and thus was entitled to sovereign immunity from suit for damages under § 1983, the Maryland Declaration of Rights, and civil rights conspiracy, breach of contract, promissory estoppel and wrongful discharge. Lewis v. Board of Educ. of Talbot County, D.Md.2003, 262 F.Supp.2d 608. Federal Courts 270

Eleventh Amendment did not bar elementary school student's § 1983 claim against Commissioner of New Jersey Department of Education, alleging that Commissioner aided in local education officials' violation of student's First Amendment rights by failing to either exercise supervisory powers or implement policy to allow for expression of religious beliefs in classroom, where student sought only prospective injunctive relief with respect to that claim. C.H. v. Oliva, D.N.J.1997, 990 F.Supp. 341, affirmed 166 F.3d 1204, rehearing granted, opinion withdrawn, on rehearing 195 F.3d 167, rehearing granted, opinion vacated 197 F.3d 63, on rehearing 226 F.3d 198, certiorari denied 121 S.Ct. 2519, 533 U.S. 915, 150 L.Ed.2d 692. Federal Courts 269; Federal Courts 272

Material issue of fact as to whether county board of education was entitled to Eleventh Amendment immunity from students' § 1983 claims against board for money damages precluded summary judgment for board. Orange v. County of Grundy, E.D.Tenn.1996, 950 F.Supp. 1365. Federal Civil Procedure 2491.5

In action brought by former high school teachers alleging that their discharges were not in compliance with applicable standards and constituted deprivation of property without due process of law, immunity provided by U.S.C.A.Const. Amend. 11 was not shield for all defendants but extended only to defendant school board as agency and instrumentality of the state, which immunity was not waived by 70 O.S.1971, § 5-105, as to suit in federal court. Summers v. Civis, W.D.Okla.1976, 420 F.Supp. 993. Federal Courts 268.1; Federal Courts 319

3138. ---- School districts, states and state agencies, sovereign immunity

Eleventh Amendment did not bar assertion of federal §§ 1983 and Title VII claims in Mississippi state-court action against school district, brought under Mississippi Tort Claims Act (MTCA) on behalf of developmentally disabled middle school student allegedly sexually assaulted by classmates, so long as school district was not arm of state; MTCA likely waived immunity for federal claims, MTCA notice requirement did not apply to §§ 1983 claims, and MTCA failed to insulate state and its subdivisions from liability for violations of constitutional rights. Black v. North Panola School Dist., C.A.5 (Miss.) 2006, 461 F.3d 584. Federal Courts 270

Utah school districts are not arms of the state for purposes of the Eleventh Amendment, and, therefore, they would not be entitled to immunity from liability in § 1983 suits in federal court; districts are considered political subdivisions under Utah law, local boards have significant authority over school district operations, and Utah school districts obtain funding at least in part through locally administered property taxes. Ambus v. Granite Bd. of Educ., C.A.10 (Utah) 1993, 995 F.2d 992. Federal Courts 270

Eleventh Amendment immunity barred parents' § 1983 action alleging IDEA violations against school district, district's board of trustees, state education department, state board of education, and state superintendent of public instruction; however, district officials sued in their individual capacities were not cloaked with sovereign immunity. Porter ex rel. Porter v. Board of Trustees of Manhattan Beach Unified School Dist., C.D.Cal.2000, 123 F.Supp.2d 1187, reversed 307 F.3d 1064, certiorari denied 123 S.Ct. 1303, 537 U.S. 1194, 154 L.Ed.2d 1029. Federal Courts 269; Federal Courts 270

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42 U.S.C.A. § 1983

Courts 269; Federal Courts 270

3139. ---- Tax departments, states and state agencies, sovereign immunity

North Carolina was entitled to Eleventh Amendment immunity from § 1983 suit challenging constitutionality of drug tax, absent any suggestion of waiver or consent. Lynn v. West, C.A.4 (N.C.) 1998, 134 F.3d 582, certiorari denied 119 S.Ct. 47, 525 U.S. 813, 142 L.Ed.2d 36. Federal Courts 265; Federal Courts 266.1; Federal Courts 267

State was entitled to Eleventh Amendment immunity from §§ 1983 action filed by its citizens, who were challenging their state court tax evasion convictions. Enyeart v. Minnesota, D.Minn.2006, 408 F.Supp.2d 797. Federal Courts 265

Eleventh Amendment barred award of damages in arrestee's §§1983 action against director and enforcement officers of North Carolina Department of Revenue Controlled Substance Tax Division in their official capacity arising out of assessment against arrestee of controlled substance tax, penalty, and interest following his arrest while in possession of crack cocaine and cash, but did not bar him from receiving injunction barring further enforcement of assessment. Williams v. Starling, M.D.N.C.2005, 353 F.Supp.2d 607. Federal Courts 269

Eleventh Amendment barred claims against State defendants, in Native American plaintiff's § 1983 action alleging conversion and unjust enrichment arising out of Nebraska's collection of sales taxes on sales of alcohol in an area of land allegedly unconstitutionally withdrawn from Indian reservation, and out of misappropriation and conversion of the value of that land; State had not waived its immunity from liability. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Federal Courts 266.1; Federal Courts 269

State tax officials would not be carrying out state tax laws, and thus would not be immune from § 1983 liability, if they unlawfully obtained search warrant and conducted searches and seizures improperly. Mom's Inc. v. Weber, E.D.Va.1996, 951 F.Supp. 92, appeal dismissed 164 F.3d 625. Civil Rights 1376(3)

3140. ---- Utilities, states and state agencies, sovereign immunity

New York Public Service Commission (PSC) and its employees acting in their official capacities were immune under Eleventh Amendment from business partner's § 1983 suit in federal court, alleging that Commission's failure to compel electric utility to extend electrical distribution lines to farm for free amounted to denial of equal protection and due process, absent Commission's consent to suit. Jemzura v. Public Service Com'n, N.D.N.Y.1997, 971 F.Supp. 702. Federal Courts 269

Public telephone company did not have privileges or immunities under Fourteenth Amendment which could be vindicated in § 1983 civil rights action, where company was subdivision of the state. Laborde-Garcia v. Puerto Rico Telephone Co., D.Puerto Rico 1990, 734 F.Supp. 46. Constitutional Law 206(1)

3141. ---- Miscellaneous agencies, states and state agencies, sovereign immunity

Section 1983 claim brought by terminated administrative law judge for state Department of Motor Vehicles (DMV) against DMV was barred by the Eleventh Amendment, since DMV was state agency. Feingold v. New York, C.A.2 (N.Y.) 2004, 366 F.3d 138. Federal Courts 269

State statutory immunities for child abuse investigations could not protect city from federal constitutional claims asserted in § 1983 action. Wallis v. Spencer, C.A.9 (Cal.) 2000, 202 F.3d 1126. Civil Rights 1376(4)

Airman could not maintain § 1983 and state-law tort and civil rights claims against Massachusetts National Guard

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for injuries incurred in "hazing" incident at national guard base, regardless of whether Massachusetts National Guard was viewed as a federal or state entity, since, if it were viewed as federal entity, claims would be barred by *Feres* doctrine, and, if not, damage claims against it in federal court would be barred by Eleventh Amendment. Day v. Massachusetts Air Nat. Guard, C.A.1 (Mass.) 1999, 167 F.3d 678, on remand 37 F.Supp.2d 546. Federal Courts 269; United States 78(16)

New York State Insurance Fund (SIF) was a "state agency" entitled to Eleventh Amendment immunity in civil rights action seeking damages for nonpayment of workers' compensation award, although SIF operated in manner of a private insurer, where SIF was created and controlled by the state; SIF's monies were not distinct from those of state but were controlled by, and could be commingled with other funds of, the state; its funds could be used to pay other state obligations; and if judgment against SIF could not be satisfied out of funds generated by SIF, it was payable out of other state funds. Lipofsky v. Steingut, C.A.2 (N.Y.) 1996, 86 F.3d 15, certiorari denied 117 S.Ct. 401, 519 U.S. 971, 136 L.Ed.2d 316. Federal Courts 265

Eleventh Amendment barred § 1983 action against state department of public welfare, notwithstanding plaintiffs' contention that exception existed where state agency participated in federally funded program or when it engaged in activity regulated by Congress; plaintiffs could point to no statutory waiver of sovereign immunity on part of department. Baxter by Baxter v. Vigo County School Corp., C.A.7 (Ind.) 1994, 26 F.3d 728. Federal Courts 266.1; Federal Courts 269

Florida Governor's Council on Indian Affairs, created by executive order for purpose of carrying out governmental function of advising the Governor with respect to Indian affairs, was a "state agency" and, as such, was immune from liability under this section to discharged Council employee. Tuveson v. Florida Governor's Council on Indian Affairs, Inc., C.A.11 (Fla.) 1984, 734 F.2d 730. Civil Rights 1376(3); Civil Rights 1376(10)

Even if Tax Injunction Act, section 1341 of Title 28, did not bar civil rights action alleging that enforcement of Washington liquor and cigarette tax laws on Indian trust land was illegal and that state agents and local police had made unconstitutional arrests and searches and seizures, U.S.C.A.Const.Amend. 11 required dismissal of action with respect to state and state agencies. Comenout v. State of Wash., C.A.9 (Wash.) 1983, 722 F.2d 574. Federal Courts 269

Eleventh Amendment barred attorney's claims under §§§§ 1981, 1982, 1983, 1985, 1986 against states and state officials, alleging that defendants conspired to place him under surveillance in order to harass and intimidate him in retaliation for his role as counsel in certain legal proceedings, where Congress did not waive states' immunity in the civil rights statutes at issue, and states did not consent to be sued in federal court under those civil rights statutes. Jones v. National Communication and Surveillance Networks, S.D.N.Y.2006, 409 F.Supp.2d 456. Federal Courts 266.1

New York State Department of Motor Vehicles (DMV) was an agency acting on behalf of the state and thus was entitled to sovereign immunity, under the Eleventh Amendment, in motorist's action under §§§§ 1981 and 1983 seeking declaratory and injunctive relief from DMV's failure to provide a Spanish speaking interpreter during an administrative proceeding to determine whether motorist's driver's license should be revoked for failure to take a breathalyzer test following his arrest for driving under the influence of alcohol or drugs. Sandoval v. Department of Motor Vehicles State of New York, E.D.N.Y.2004, 333 F.Supp.2d 40. Federal Courts 269; Federal Courts 272

Housing Department of the Commonwealth of Puerto Rico (HDCPR) was an arm of the Commonwealth, and therefore enjoyed sovereign immunity as to the monetary damages claims brought under § 1983 by public employees who claimed they were victims of political reprisals, but remained vulnerable to suit for injunctive relief claims. Marrero Gutierez v. Molina, D.Puerto Rico 2004, 330 F.Supp.2d 45. Federal Courts 269; Federal Courts 272

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Debtor was barred from maintaining civil rights action against state guaranty agency and its employee in his official capacity, in connection with collection of federal student loan debt and garnishment of his wages, pursuant to Eleventh Amendment sovereign immunity. Savage v. Scales, D.D.C.2004, 310 F.Supp.2d 122. Federal Courts 269

Veterinarian's § 1983 action against state racing commission, as state agency, was barred by commission's Eleventh Amendment immunity. VanHorn v. Nebraska State Racing Com'n, D.Neb.2004, 304 F.Supp.2d 1151. Federal Courts 269

Louisiana State Mineral Board was arm of state for Eleventh Amendment immunity purposes, barring unsuccessful bidder's § 1983 due process action against Board seeking to annul mineral lease, even though statutes that created Board referred to it as a corporation, Board could sue and be sued and hold and use property, and Board sometimes administered leases on behalf of other agencies and local districts; courts considered Board an arm of state, state appropriated general fund money directly to Office of Mineral Resources which constituted staff of Board, state would be source of refund of bonus paid for lease in question if it was voided, and Board was executive department with little if any of its control and management functions relating to local autonomy. Dunhill Resources I, L.L.C. v. Louisiana ex rel. Louisiana State Mineral Bd., M.D.La.2003, 298 F.Supp.2d 404. Federal Courts 269

Commonwealth of Pennsylvania and the Pennsylvania State Police (PSP) were entitled to sovereign immunity on female state trooper's claims under § 1983, civil rights conspiracy statute, and the Pennsylvania Human Relations Act (PHRA). Zelinski v. Pennsylvania State Police, M.D.Pa.2003, 282 F.Supp.2d 251, affirmed in part, vacated in part and remanded 108 Fed.Appx. 700, 2004 WL 1799234. Federal Courts 269

Pennsylvania Department of Public Welfare (DPW), as a state agency, was immune under Eleventh Amendment from § 1983 suit brought by DPW employee for discrimination based on his blindness. Nelson v. Com. of Pennsylvania Dept. of Public Welfare, E.D.Pa.2002, 244 F.Supp.2d 382. Federal Courts 269

Delaware Division of Family Services (DFS) was state agency, and thus was entitled to immunity, under the Eleventh Amendment, from § 1983 claims, arising from its determination that father had abused his sons, where state did not waive its immunity, and Congress did not abrogate states' immunity for claims under § 1983. Rodriguez v. Stevenson, D.Del.2002, 243 F.Supp.2d 58. Federal Courts 269

Though a state agency, Baltimore City Police Department was connected with city government to such an extent as to prevent assertion of Eleventh Amendment immunity, and therefore Department was a "person" subject to suit under § 1983. Chin v. City of Baltimore, D.Md.2003, 241 F.Supp.2d 546. Civil Rights 1348; Federal Courts 270

Section 1983 claims seeking monetary damages from state psychiatric center and individual center officials in their official capacities, in which former patient alleged that he was subjected to illegal strip search and body cavity search upon his voluntary admission to center in violation of his Fourth Amendment rights, were barred by Eleventh Amendment. Aiken v. Nixon, N.D.N.Y.2002, 236 F.Supp.2d 211, affirmed 80 Fed.Appx. 146, 2003 WL 22595837. Federal Courts 48

Eleventh Amendment, barring suits against a state or its agency where there is no express consent, barred § 1983 claims arising from allegedly improper actions of bar association disciplinary committee's chief counsel and law clerk that purportedly led to suspension of plaintiffs from practice; since committee was part of the judicial arm of state, real party in interest was the state. Thaler v. Casella, S.D.N.Y.1997, 960 F.Supp. 691. Federal Courts 271

Claim in federal court by school district against state agencies under civil rights statute, § 1983, seeking monetary compensation from the state agencies for damages that district allegedly incurred as result of those agencies' failure

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to draft an interagency agreement as required by the IDEA was precluded by the Eleventh Amendment. Board of Educ. of Community High School Dist. No. 218, Cook County, Ill. v. Illinois State Bd. of Educ., N.D.Ill.1996, 940 F.Supp. 1321, vacated in part 979 F.Supp. 1203. Federal Courts 269

Doctor's § 1983 action which sought damages against members of state Board of Medical Examiners in their official capacities was barred, because action was, in effect, suit against state in violation of Eleventh Amendment. Howard v. Miller, N.D.Ga.1994, 870 F.Supp. 340. Federal Courts 269

Georgia Department of Transportation, as an arm of the state, was entitled to same sovereign immunity as state itself, and thus was entitled to immunity on former employee's discrimination claims under §§ 1983, the ADA, and the Age Discrimination in Employment Act (ADEA). Stephens v. Georgia Dept. of Transp., C.A.11 (Ga.) 2005, 134 Fed.Appx. 320, 2005 WL 1274481, Unreported, certiorari denied 126 S.Ct. 1128, 163 L.Ed.2d 862, rehearing denied 126 S.Ct. 1609, 164 L.Ed.2d 329. Federal Courts 269

Accepting parties' concession that the Utah Labor Commission was an arm of the State of Utah, plaintiff's § 1983, ADA, and state civil rights claims against the Commission were barred by the Commission's Eleventh Amendment sovereign immunity. Buck v. Utah Labor Com'n., C.A.10 (Utah) 2003, 73 Fed.Appx. 345, 2003 WL 21916992, Unreported. Federal Courts 269

Claims under § 1983 against state and its instrumentalities or alter egos, arising from state court domestic proceedings, fell within Eleventh Amendment's bar of actions for damages against state in federal court. Collins v. Johnson County, KS, C.A.10 (Kan.) 2002, 56 Fed.Appx. 852, 2003 WL 42164, Unreported. Federal Courts 265; Federal Courts 269

New York State Department of Motor Vehicles (DMV) and Workers' Compensation Board were protected by sovereign immunity from § 1983 claims arising from DMV's alleged conspiracy to issue traffic tickets to plaintiff and alleged denial of plaintiff's right to equal access to Workers' Compensation Board forum; DMV and the Board were state entities, for purposes of sovereign immunity, and the Civil Rights Act and § 1983 did not abrogate sovereign immunity. O'Diah v. New York City, S.D.N.Y.2002, 2002 WL 1941179, Unreported, reconsideration denied 2002 WL 31246508, reconsideration denied 2003 WL 223418. Federal Courts 269

3142. Municipalities and municipal agencies, sovereign immunity

New York City Police Department and New York City Department of Corrections are both agencies of the City of New York, and cannot be sued independently in civil rights action under § 1983. Bailey v. New York City Police Dept., E.D.N.Y.1996, 910 F.Supp. 116. Civil Rights 1389

City corporation was not entitled to Eleventh Amendment immunity from § 1983 civil rights action. Snyder v. Murray City Corp., D.Utah 1995, 902 F.Supp. 1444, amended on denial of reconsideration 902 F.Supp. 1455, affirmed in part, reversed in part 124 F.3d 1349, opinion vacated in part on rehearing en banc 159 F.3d 1227, certiorari denied 119 S.Ct. 1334, 526 U.S. 1039, 143 L.Ed.2d 499. Federal Courts 270

Under the Eleventh Amendment, the City University of New York was immune from a suit for damages under 42 U.S.C.A. § 1983 for alleged reverse discrimination. Silver v. City University of New York, S.D.N.Y.1991, 767 F.Supp. 494, affirmed 947 F.2d 1021. Federal Courts 268.1

Public officials, including officials of city and county, acted under state law, not local laws, in destroying monkey that had bitten child, to enforce state Rabies Control Act, and thus Eleventh Amendment prohibited actions for monetary relief against county and city inasmuch as county and city were merely acting in place of state. Keeble v. Cisneros, S.D.Tex.1987, 664 F.Supp. 1076. Federal Courts 270

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42 U.S.C.A. § 1983

3143. Puerto Rico, sovereign immunity

Regardless of whether Puerto Rico's sovereign immunity was constitutional or common-law in nature, Congress did not abrogate that immunity when it granted federal district court sitting in Puerto Rico jurisdiction to enforce provisions of § 1983 on basis equal to that conferred on district courts in the states. Maysonet-Robles v. Cabrero, C.A.1 (Puerto Rico) 2003, 323 F.3d 43. Federal Courts 265

The Eleventh Amendment barred a § 1983 action against Puerto Rico officials in their official capacities for monetary damages that would have to be paid from the Puerto Rico treasury. Lugo Rodriguez v. Puerto Rico Institute of Culture, D.Puerto Rico 2002, 221 F.Supp.2d 229, affirmed 98 Fed.Appx. 15, 2004 WL 964272, certiorari denied 125 S.Ct. 416, 543 U.S. 958, 160 L.Ed.2d 321. Federal Courts 269

Under Eleventh Amendment, Commonwealth of Puerto Rico was immune from liability in action under § 1983 brought by father who was subjected to judicial proceedings arising out of his failure to pay child support. Font v. Dapena Yordan, D.Puerto Rico 1991, 763 F.Supp. 680, affirmed 946 F.2d 880. Federal Courts 265

Commonwealth of Puerto Rico enjoys sovereign immunity and cannot be sued in federal courts without its consent. Toa Baja Development Corp. v. Garcia Santiago, D.C.Puerto Rico 1970, 312 F.Supp. 899. Federal Courts 265

3144. Regional planning agencies and members, sovereign immunity

Tahoe Regional Planning Agency was not immune from liability under Eleventh Amendment, in light of states' intention in creating Authority, terms of Interstate Compact, and Authority's actual operation. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, U.S.Nev.1979, 99 S.Ct. 1171, 440 U.S. 391, 59 L.Ed.2d 401, on remand 474 F.Supp. 901.

3145. Tribal agencies, sovereign immunity

Agency created pursuant to the tribal-state agreements was a tribal agency, and therefore enjoyed sovereign immunity from civil rights suit based on removal of Indian child from her mother's custody and placement in a psychological care facility as a suicide risk and the filing and investigation of charges that mother abused and/or neglected her daughter. E.F.W. v. St. Stephen's Mission Indian High School, D.Wyo.1999, 51 F.Supp.2d 1217, affirmed 264 F.3d 1297. Indians 32(6)

XXVII. ABSOLUTE IMMUNITY

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3171. Absolute immunity generally

Level of immunity afforded in § 1983 action flows not from official's rank or title or location within government, but from nature of official's responsibilities. Scotto v. Almenas, C.A.2 (N.Y.) 1998, 143 F.3d 105. Civil Rights 1376(1)

In order to determine whether government official is absolutely immune from suit, proper focus is on official's role in the context of the case, not identity of the party claiming the immunity, an immunity attaches to particular official functions, not to particular officers. O'Neal v. Mississippi Bd. of Nursing, C.A.5 (Miss.) 1997, 113 F.3d 62 . Officers And Public Employees 114

Absolute immunity from liability under this section should be accorded only in exceptional cases. Walden v. Wishengrad, C.A.2 (N.Y.) 1984, 745 F.2d 149. Civil Rights 1373

Absolute immunity immunizes government officials from liability completely and is accorded to public officials only in limited circumstances. Borzych v. Frank, W.D.Wis.2004, 340 F.Supp.2d 955, reconsideration denied in part 2004 WL 2491597. Officers And Public Employees 114

Insurance Commissioner of Puerto Rico and his Office were not entitled to absolute judicial immunity from civil rights suit challenging revocation of insurance licenses on due process grounds, where revocations were issued unilaterally, without prior administrative hearing at which licensees had opportunity to be heard before neutral fact-finder. Guillemard Gionorio v. Contreras Gomez, D.Puerto Rico 2004, 301 F.Supp.2d 122, appeal dismissed 161 Fed.Appx. 24, 2005 WL 3382638. Civil Rights 1376(8)

Critical inquiry in assessing claim of absolute judicial immunity against liability under § 1983 focuses on nature of act being performed and not on status of individual performing it. Clynch v. Chapman, D.Conn.2003, 285 F.Supp.2d 213. Civil Rights 1376(8)

Absolute immunity should be given sparingly and only under circumstances where it is imperative to protect a public official's discretion in making crucial decisions. Marty's Adult World of New Britain, Inc. v. Guida, D.C.Conn.1978, 453 F.Supp. 810. Officers And Public Employees 114

Federal district court properly dismissed prisoner's civil rights claims on the ground of absolute immunity, where claims were brought against two New York assistant attorneys general who represented the defendants in prisoner's civil state court action. Jacobs v. Stornelli, C.A.2 (N.Y.) 2004, 115 Fed.Appx. 480, 2004 WL 2428748, Unreported. Civil Rights 1376(9)

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3172. Public policy, absolute immunity

Absolute immunity is proper, in § 1983 action, only in those rare circumstances where official is able to demonstrate that application of absolute immunity to circumstances presented is required by public policy. Scotto v. Almenas, C.A.2 (N.Y.) 1998, 143 F.3d 105. Civil Rights 1376(1)

As a matter of public policy, certain public officials are absolutely immune from liability for acts committed within the scope of their office, even if acts are corrupt or malicious. Jones v. Perrigan, C.A.6 (Tenn.) 1972, 459 F.2d 81. Officers And Public Employees 114

Administrative hearing officer and administrative prosecutor for New Mexico Board of Medical Examiners were entitled to absolute immunity from liability under §§ 1983 for their roles in revoking physician's state medical license, where state provided sufficient safeguards in regulatory framework, including appeal of Board's decision in state court, to control any potential unconstitutional conduct by officials. Guttman v. Khalsa, D.N.M.2003, 320 F.Supp.2d 1164, affirmed 401 F.3d 1170, vacated 126 S.Ct. 321, 163 L.Ed.2d 29, on remand 446 F.3d 1027. Civil Rights 1376(8); Civil Rights 1376(9)

Public policy dictates that certain types of public officials, such as legislators, prosecutors, and judges, be granted an absolute immunity to insure a certain unintimated independence of action. Morales v. Vega, D.C.Puerto Rico 1979, 483 F.Supp. 1057. Officers And Public Employees 114

3173. Qualified immunity distinguished, absolute immunity

Although qualified immunity is generally sufficient to protect officials who are required to exercise their discretion from § 1983 liability, some officials perform "special functions" which, because of their similarity to functions that would have been immune when Congress enacted § 1983, deserve absolute protection from damages liability. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(1)

In light of preexisting law, purported unlawfulness of retaining records of unsubstantiated child abuse charges should not have been apparent to state officials at time of charges in 1989, and thus those officials were entitled to qualified immunity in civil rights action. Hodge v. Jones, C.A.4 (Md.) 1994, 31 F.3d 157, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1376(3)

3174. Affirmative defense, absolute immunity

Judicial immunity was an affirmative defense in suit under this section involving individual who sat as municipal court "judge" in prosecution of plaintiff for violating city ordinance and failure to plead such defense rendered irrelevant the "judge's" contentions that in view of pleading that he was a judge of municipal court, plaintiff was estopped to assert that he was not acting as a judge, that if the "judge" was not acting as judge plaintiff failed to prove requisite state action, and that plaintiff had burden, which she allegedly failed to carry, of proving that the "judge" was not a "judge" and that charges of disqualification were not valid defenses to judicial immunity. Boyd v. Carroll, C.A.5 (Tex.) 1980, 624 F.2d 730. Civil Rights 1376(8)

Question whether a defendant is immune, either qualifiedly or absolutely, is not a jurisdictional issue in a federal civil rights suit but, rather, immunity is affirmative defense which may defeat claim once subject-matter jurisdiction has been established. Robinson v. Bergstrom, C.A.7 (Ill.) 1978, 579 F.2d 401. Civil Rights 1373

Judges may invoke doctrine of judicial immunity not merely in their defense at trial but rather as a plea to bar the trial itself. Gregory v. Thompson, C.A.9 (Ariz.) 1974, 500 F.2d 59. Judges 36

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Absolute immunity is affirmative defense that serves to protect government officials, when performing discretionary acts, from personal liability under § 1983. Spear v. Town of West Hartford, D.Conn.1991, 771 F.Supp. 521, affirmed 954 F.2d 63, certiorari denied 113 S.Ct. 66, 506 U.S. 819, 121 L.Ed.2d 33. Civil Rights 1376(1)

3175. Court order, absolute immunity

Police officers were not entitled to absolute immunity from suit under for removing minor daughter from mother's custody pursuant to custody order, in violation of mother's and daughter's constitutional rights, since custody order was facially invalid under Illinois law; order was issued by court in another state, and there was no indication on face of order that it had been filed with court in Illinois. Dunn v. City of Elgin, Illinois, C.A.7 (Ill.) 2003, 347 F.3d 641, rehearing denied. Civil Rights 1376(6)

Superior court orders directing that inmate be maintained at state prison in protective custody to allow inmate to prosecute civil lawsuits effectively did not prohibit moving inmate or providing inmate with effective protection, and thus prison officials were not entitled to absolute immunity from inmate's Eighth Amendment claim alleging deliberate indifference to inmate's safety in violation of his Eighth Amendment right to be free of cruel and unusual punishment; the orders did not direct the prison officials, expressly or otherwise, to confine inmate in conditions that they knew posed a substantial risk of serious harm. Hamilton v. Leavy, C.A.3 (Del.) 2003, 322 F.3d 776, on remand 2004 WL 609334. Civil Rights 1376(7)

3176. Summary judgment, absolute immunity--Generally

Genuine issue of material fact existed as to whether state highway patrol investigator who participated in presenting gambling charges to grand jury subsequent to decision of building owner to file § 1983 suit in federal court, when investigator in his deposition conceded that he failed to see owner or his daughter perform any gambling activities on night of raid, violated First Amendment, precluding summary judgment on issue of whether investigator was entitled to absolute immunity from liability in § 1983 action. Enlow v. Tishomingo County, Miss., C.A.5 (Miss.) 1992, 962 F.2d 501, rehearing denied 971 F.2d 750. Federal Civil Procedure 2491.5

State prison officials involved in formulating prison grooming policy, but who were not involved in enforcing policy, were absolutely immune to § 1983 civil rights claim by inmate whose hair was cut. Abordo v. State of Hawai'i, D.Hawai'i 1995, 902 F.Supp. 1220. Civil Rights 1376(7)

3177. ---- Judicial immunity, summary judgment, absolute immunity

In action alleging that state court judge and others were responsible for instigation, prosecution and continuation of proceedings against plaintiff and that those wrongful acts caused him to be deprived of federally protected rights, genuine issue of material fact existed with respect to whether judge had conspired with others to jail plaintiff for taking his children outside of the county in violation of temporary restraining order and whether judge thus enjoyed judicial immunity, precluding summary judgment. Beard v. Udall, C.A.9 (Ariz.) 1981, 648 F.2d 1264. Federal Civil Procedure 2515

Genuine issues of material fact existed in inmate's civil rights action arising from injuries inflicted by another inmate, precluding summary judgement, on whether prison officials had custom or policy of permitting dangerous inmates to mingle with general prison population, whether officials knew or should have known that inmate presented danger to other inmates, whether management of prison was official, legislative or quasi-judicial function for purposes of invoking immunity, and whether management of prison violated inmate's clearly established constitutional rights. Schwartz v. County of Montgomery, E.D.Pa.1993, 823 F.Supp. 296. Federal Civil Procedure 2491.5

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A municipal court judge not being liable in civil action for acts done by him in exercise of his judicial functions, no genuine fact issues were presented for trial in action against him for damages under this section because of his alleged willful and unlawful requirement of excessive bail from plaintiff on two misdemeanor complaints, so that defendant was entitled to summary judgment. Oppenheimer v. Stillwell, S.D.Cal.1955, 132 F.Supp. 761. Federal Civil Procedure 2491.5

3178. ---- Prosecutorial immunity, summary judgment, absolute immunity

In civil rights action, district court correctly granted summary judgment in favor of district attorney whose only participation in the events of which plaintiff complained was his presentation of evidence at contested state hearing, as district attorney was clothed with absolute quasi-judicial immunity because his challenged activities were an integral part of the judicial process. Morrison v. Jones, C.A.9 (Cal.) 1979, 607 F.2d 1269, certiorari denied 100 S.Ct. 1648, 445 U.S. 962, 64 L.Ed.2d 237. Civil Rights 1376(9)

Genuine issue of material fact, as to whether prosecutor performed investigative functions in questioning illegally arrested and detained criminal suspect, precluded summary judgment in prosecutor's favor, based upon his prosecutorial immunity, in civil rights suit by former defendant. Thomas v. Riddle, N.D.Ill.1987, 673 F.Supp. 262. Federal Civil Procedure 2491.5

Unresolved issues of material fact prevented entry of summary judgment in defendants' favor on question whether, as state-employed attorneys involved in investigation of insurance company, some of their actions exceeded their authority, were investigative rather than prosecutorial in nature, and extent of their official immunity from liability for damages in civil rights suit. Safeguard Mut. Ins. Co. v. Miller, E.D.Pa.1978, 456 F.Supp. 682. Federal Civil Procedure 2491.5

In action in which it was alleged, with regard to plaintiffs' arrests, that city prosecutor participated in and directed investigation of gathering at residence prior to arrests and prosecutions and that his activities were conducted under color of state law to deprive plaintiffs of their constitutional rights, motions for dismissal of action against prosecutor or for summary judgment for prosecutor on basis of prosecutorial immunity would be denied, in that determination of issue as to such immunity would require impermissible ruling on ultimate factual questions. Ames v. Vavreck, D.C.Minn.1973, 356 F.Supp. 931. Federal Civil Procedure 1741; Federal Civil Procedure 2491.5

Because arrestee, a civil rights plaintiff, challenged assistant attorney general's conduct with respect to prosecutorial actions taken within the judicial phase of the criminal process, arrestee's claims were properly dismissed as barred by absolute immunity. Taylor v. Windsor Locks Police Dept., C.A.2 (Conn.) 2003, 71 Fed.Appx. 877, 2003 WL 21697441, Unreported. Civil Rights 1376(9)

3179. Equitable relief, absolute immunity--Generally

Immunity from damages does not ordinarily bar equitable relief as well, and individual justices of Nevada Supreme Court could be ordered to permit plaintiff to sit for bar examination if she was able to prove her claim for constitutional relief. Louis v. Supreme Court of Nevada, D.C.Nev.1980, 490 F.Supp. 1174. Attorney And Client 7

3180. ---- Declaratory judgments, equitable relief, absolute immunity

Judge was not shielded by absolute immunity from declaratory or injunctive relief. Schepp v. Fremont County, Wyo., C.A.10 (Wyo.) 1990, 900 F.2d 1448. Judges 36

Magistrate for county of Richland, South Carolina, was immune from liability for money damages in state

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prisoners' action under this section; however, he was not immune from equitable and declaratory relief. Timmerman v. Brown, C.A.4 (S.C.) 1975, 528 F.2d 811. Civil Rights 1376(8); Civil Rights 1376(9)

Judicial officer was not immune from suit for declaratory relief for judicial actions allegedly in violation of this section. Guerin v. Riley, D.C.N.J.1983, 573 F.Supp. 110. Civil Rights 1376(8)

Judges defending against actions brought under this section enjoy absolute immunity from damages liability for acts performed in their judicial capacities, but judge enjoyed no immunity with respect to prayer for declaratory judgment. Africa v. Anderson, E.D.Pa.1980, 510 F.Supp. 28, affirmed 707 F.2d 1399. Civil Rights 1376(8)

3181. ---- Injunctions, equitable relief, absolute immunity

Judicial immunity is not a bar to prospective injunctive relief against judicial officer acting in her judicial capacity. Pulliam v. Allen, U.S.Va.1984, 104 S.Ct. 1970, 466 U.S. 522, 80 L.Ed.2d 565. Judges 36

Section 1983 action seeking prospective injunctive relief based on federal constitutional violations may be brought against state officials in their official capacities. Harris v. Angelina County, Tex., C.A.5 (Tex.) 1994, 31 F.3d 331, rehearing and suggestion for rehearing en banc denied. Federal Courts 272

Traditionally, judges have enjoyed broad immunity from suit for judicial acts; judicial immunity does not preclude suit for prospective relief such as injunction. Berger v. Cuyahoga County Bar Ass'n, C.A.6 (Ohio) 1993, 983 F.2d 718, rehearing denied, certiorari denied 113 S.Ct. 2416, 508 U.S. 940, 124 L.Ed.2d 639. Judges 36

Court clerks have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at judge's direction, and only qualified immunity from all other actions for damages, and clerks enjoy no immunity whatsoever from claims for equitable relief. Tarter v. Hury, C.A.5 (Tex.) 1981, 646 F.2d 1010. Clerks Of Courts 72

Judicial immunity does not extend to injunctive relief. McCrum v. Elkhart County Dept. of Public Welfare, N.D.Ind.1992, 806 F.Supp. 203. See, also, Harris v. Harvey, C.A.7 (Wis.) 1979, 605 F.2d 330, certiorari denied 100 S.Ct. 1331, 445 U.S. 938, 63 L.Ed.2d 772.

Although village justice of the peace may have acted maliciously in signing criminal arrest warrant against plaintiff in furtherance of alleged illegal scheme to evict low-income people from their homes and buildings so that village could redevelop area for business and commercial interests, justice was immune from suit for damages for actions, but not immune from suit for injunctive relief. Heimbach v. Village of Lyons (Wayne County, N. Y.), C.A.2 (N.Y.) 1979, 597 F.2d 344. Civil Rights 1376(8)

Quasi-judicial immunity enjoyed by clerk of state court was limited to actions for damages and did not extend to suit for injunctive relief which sought to require the clerk to expunge the judgment of conviction from the court records in his custody. Shipp v. Todd, C.A.9 (Mont.) 1978, 568 F.2d 133. Civil Rights 1376(8)

Local law enforcement personnel and prosecutors were not entitled to immunity in civil rights action brought challenging antiobscenity ordinance and statute and seeking injunctive relief; prosecutors and law enforcement personnel had primary responsibility for enforcing the ordinance. West Virginia Pride, Inc. v. Wood County, W.Va., S.D.W.Va.1993, 811 F.Supp. 1142. Civil Rights 1376(6); Civil Rights 1376(9)

Doctrine of judicial immunity does not shield judge from injunctive relief in civil rights suit under § 1983. Holeman v. Elliott, S.D.Tex.1990, 732 F.Supp. 726, affirmed 927 F.2d 601, certiorari denied 112 S.Ct. 59, 502 U.S. 812, 116 L.Ed.2d 35. Civil Rights 1376(8)

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3182. Municipalities or cities, absolute immunity--Generally

Protection of municipality from being held liable under s 1983 on respondeat superior theory does not encompass 'immunity from suit'; unlike various government officials, municipalities do not enjoy immunity from suit, either absolute or qualified, under s 1983, and they can be sued under that section, but merely cannot be held liable unless policy or custom caused constitutional injury. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, U.S.Tex.1993, 113 S.Ct. 1160, 507 U.S. 163, 122 L.Ed.2d 517, on remand 993 F.2d 1177. Civil Rights 1351(1); Civil Rights 1376(4)

Application and rationale underlying both the doctrine whereby a municipality was held immune from tort liability with respect to its 'governmental' functions but not for its 'proprietary' functions, and a doctrine whereby a municipality was immunized for its 'discretionary' or 'legislative' activities but not for those which were 'ministerial' in nature, demonstrate that neither of these common-law doctrines could have been intended to limit a municipality's liability under the Civil Rights Act. Owen v. City of Independence, Mo., U.S.Mo.1980, 100 S.Ct. 1398, 445 U.S. 622, 63 L.Ed.2d 673, rehearing denied 100 S.Ct. 2979, 446 U.S. 993, 64 L.Ed.2d 850, on remand 623 F.2d 550. Civil Rights 1376(4)

Municipal body sued under this section cannot be entitled to an absolute immunity. Monell v. Department of Social Services of City of New York, U.S.N.Y.1978, 98 S.Ct. 2018, 436 U.S. 658, 56 L.Ed.2d 611. Civil Rights 1376(4)

City was not absolutely immune from a suit by dismissed police officer for monetary relief under this section. Cale v. City of Covington, Va., C.A.4 (Va.) 1978, 586 F.2d 311. Civil Rights 1376(10)

City official was entitled to absolute immunity from suit under §§ 1983 for her actions in introducing and voting for farm animal ordinance, which allegedly violated property owners' constitutional rights. Moran v. City of New Rochelle, S.D.N.Y.2004, 346 F.Supp.2d 507. Civil Rights 1376(4)

City manager was entitled to absolute immunity from §§ 1983 liability for his decision to initiate administrative disciplinary proceedings against firefighters, allegedly in retaliation for their political affiliation, in violation of the First Amendment, where he had acted with colorable claim of authority. Contes v. Porr, S.D.N.Y.2004, 345 F.Supp.2d 372. Civil Rights 1376(10)

Town Board of Police Commissioners had absolute immunity from suit under §§ 1983, brought by police officers claiming that issuance of report stating that police department was "out of control" violated their right to liberty and substantive due process; report was valid exercise of police power rights delegated to commissioners by town, which received powers through delegation by state. Algarin v. Town of Wallkill, S.D.N.Y.2004, 313 F.Supp.2d 257, affirmed 421 F.3d 137. Civil Rights 1376(10)

Municipal entities do not enjoy absolute immunity under the Eleventh Amendment, and thus may be sued under § 1983. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Federal Courts 270

Municipalities such as a city may only be held liable under § 1983 when the city itself deprives an individual of a constitutional right, and thus, for an individual deprived of a constitutional right to have recourse against a municipality under § 1983, she must show that she was harmed by a municipal "policy" or "custom." Davis v. City of New York, S.D.N.Y.2002, 228 F.Supp.2d 327, affirmed 75 Fed.Appx. 827, 2003 WL 22173046. Civil Rights 1351(1)

City officials were not entitled to absolute immunity with respect to former employee's § 1983 First Amendment claim; firing of employee did not arise because of any action by city council, but, rather, arose from actions of city

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administrator as head of public works department, and it was doubtful that absolute immunity applied to individual administrator's decision to reorganize her department without approval from governing body. Butler v. City of Prairie Village, D.Kan.1997, 974 F.Supp. 1386, affirmed in part, reversed in part 172 F.3d 736. Civil Rights 1376(10)

Town was not entitled to immunity, either qualified or absolute, in arrestee's § 1983 action arising out of his arrest and arraignment for aggravated unlicensed operation of motor vehicle in third degree. Estes-El v. Town of Indian Lake, N.D.N.Y.1997, 954 F.Supp. 527. Civil Rights 1376(4)

City's hearing masters who made determinations related to alleged violations by property owner of city building code and imposition of fines and subsequent filing of lien against property were not protected, as matter of law, by doctrine of absolute immunity; hearing masters were agents of the city and thus, there was no Eleventh Amendment issue to afford immunity. Doty v. City of Tampa, M.D.Fla.1996, 947 F.Supp. 468. Federal Courts 270

Municipality was not immune from liability arising from allegedly politically motivated discharge of assistant city attorney. Finkelstein v. Barthelemy, E.D.La.1988, 678 F.Supp. 1255. Civil Rights 1376(10)

3183. ---- Policy or custom, municipalities or cities, absolute immunity

For purposes of imposition of municipal liability under § 1983, an act performed pursuant to a custom that has not been formally approved by an appropriate decisionmaker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law; to succeed on this theory, a plaintiff must prove the existence of a practice that is permanent. Davis v. City of New York, S.D.N.Y.2002, 228 F.Supp.2d 327, affirmed 75 Fed.Appx. 827, 2003 WL 22173046. Civil Rights 1351(1)

3184. Presidential immunity, absolute immunity

Sitting President of the United States was not entitled to absolute immunity with respect to sexual harassment action brought against him for alleged conduct occurring when President was governor of Arkansas. Jones v. Clinton, E.D.Ark.1994, 869 F.Supp. 690, stay granted 879 F.Supp. 86, affirmed in part, reversed in part 72 F.3d 1354, rehearing and suggestion for rehearing en banc denied 81 F.3d 78, certiorari granted 116 S.Ct. 2545, 518 U.S. 1016, 135 L.Ed.2d 1066, motion granted 117 S.Ct. 291, 519 U.S. 925, 136 L.Ed.2d 210, affirmed 117 S.Ct. 1636, 520 U.S. 681, 137 L.Ed.2d 945, on remand 974 F.Supp. 712, on remand 990 F.Supp. 657. United States 26; United States 50.5(5); United States 50.10(1)

3185. Prosecutors, absolute immunity

City's corporate counsel was not entitled to absolute immunity from §§ 1983 liability in firefighters' action alleging that their First Amendment rights were violated when disciplinary charges were initiated against them in retaliation for their political affiliation, where counsel's actions in conducting an investigation after receiving female fire dispatcher's letter complaining of harassment by firefighters, and then writing a memorandum to city manager recommending that charges should be brought against firefighters, were merely investigatory and advisory in nature, and counsel did not initiate disciplinary proceedings herself. Contes v. Porr, S.D.N.Y.2004, 345 F.Supp.2d 372. Civil Rights 1376(10)

State prosecuting attorneys are entitled to absolute immunity from §§ 1983 actions for conduct intimately associated with the judicial phase of the criminal process. Mink v. Salazar, D.Colo.2004, 344 F.Supp.2d 1231. Civil Rights 1376(9)

Insurance Commissioner and his office were not entitled to absolute immunity from civil rights liability for

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performing functions analogous to those of prosecutor in seeking to revoke insurance licenses, where their conduct went beyond filing charges to deciding merits and unilaterally imposing severe sanctions. Guillemard Gionorio v. Contreras Gomez, D.Puerto Rico 2004, 301 F.Supp.2d 122, appeal dismissed 161 Fed.Appx. 24, 2005 WL 3382638. Civil Rights 1376(3); Civil Rights 1376(9)

Prosecutors are absolutely immune in § 1983 actions for their decisions to prosecute, and withholding exculpatory evidence is quasi-judicial act protected by absolute immunity. Douris v. Schweiker, E.D.Pa.2002, 229 F.Supp.2d 391, reconsideration denied, affirmed 100 Fed.Appx. 126, 2004 WL 1396209. Civil Rights 1376(9)

District attorney was entitled to absolute immunity from liability in his individual capacity arising from his failure to notify courts of notarized recantation by victim in state sexual assault prosecution following sentencing. Romero v. Boulder County DA's Office, C.A.10 (Colo.) 2004, 87 Fed.Appx. 696, 2004 WL 100523, Unreported. District And Prosecuting Attorneys 10

Special prosecutor was not entitled to absolute immunity from liability under § 1983 for allegedly falsely attesting, in two motions and affidavits, to facts he had purportedly learned while investigating suspect in considering whether to charge him with numerous criminal law violations. Stinnett v. Fallon County, Montana, C.A.9 (Mont.) 2003, 72 Fed.Appx. 642, 2003 WL 21801546, Unreported. District And Prosecuting Attorneys 10

State prosecutor was not entitled to absolute immunity from § 1983 liability arising from his sworn statements made in an affidavit supporting application for an arrest warrant. Coburn v. Nordeen, C.A.10 (Kan.) 2003, 72 Fed.Appx. 744, 2003 WL 21662064, Unreported. Civil Rights 1375; Civil Rights 1376(9)

3185A. Parole board

Parole board official was entitled to absolute immunity from liability under § 1983 and District of Columbia common law for her alleged failure to timely schedule parolee's parole revocation hearing; duty to schedule and hold such a hearing in a timely manner was a purely administrative function. Pate v. U.S., D.D.C.2003, 277 F.Supp.2d 1. Civil Rights 1376(7); Pardon And Parole 56

3185B. County social workers

Employees of county youth services department had absolute immunity from §§ 1983 suit, challenging their seizure of minor child; under Pennsylvania law seizures were beginning of child dependency judicial procedure, protected by absolute immunity. Bowser v. Blair County Children and Youth Services, W.D.Pa.2004, 346 F.Supp.2d 788. Civil Rights 1376(4)

Child protective services caseworkers' recommendations to family court and investigation leading up to those recommendations related to initiation of judicial proceedings and thus fell within scope of absolute immunity, but their activities relating to carrying out removal of children from home were not judicial or prosecutorial functions and thus did not fall within scope of absolute immunity. O'Donnell v. Brown, W.D.Mich.2004, 335 F.Supp.2d 787 . Infants 17

County social workers were not entitled to absolute immunity from § 1983 liability for their alleged actions in removing minor nephews from aunt's custody, making false promises to aunt for temporary "respite care," and placing nephews in alternate housing situations, without returning them to aunt, even after she secured new housing; at most, such actions were subject to protection of qualified immunity. Santos v. County of Los Angeles Department of Children and Family Services, C.D.Cal.2004, 299 F.Supp.2d 1070. Civil Rights 1376(4)

3186. Federal marshals, absolute immunity

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Defendant federal deputy marshals were not entitled to absolute immunity from claims of false testimony in civil rights action alleging that marshals violated plaintiff's Fourth Amendment rights by conspiring to misrepresent and misrepresenting plaintiff's role in incident involving exchange of gunfire with marshals and that such conduct led to plaintiff's subsequent illegal arrest, as no immunity attached if false testimony played role in initiating prosecution, and complaint could fairly be read to allege that marshals did initiate prosecution. Harris v. Roderick, D.Idaho 1996, 933 F.Supp. 977, affirmed 126 F.3d 1189, certiorari denied 118 S.Ct. 1051, 522 U.S. 1115, 140 L.Ed.2d 114 . United States Marshals 32

XXVIII. JUDICIAL IMMUNITY GENERALLY

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3211. Judicial immunity generally

Judges are generally absolutely immune from civil suit for money damages, including § 1983 actions. Ireland v. Tunis, C.A.6 (Mich.) 1997, 113 F.3d 1435, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 560, 522 U.S. 996, 139 L.Ed.2d 401. Civil Rights 1376(8); Judges 36

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42 U.S.C.A. § 1983

Government officials whose duties require a full exemption from liability, and so are entitled to "absolute immunity," include judges performing judicial acts within their jurisdiction, prosecutors in the performance of their official functions, and certain "quasi-judicial" agency officials who, irrespective of their title, perform functions essentially similar to those of judges or prosecutors in a setting similar to that of a court. O'Neal v. Mississippi Bd. of Nursing, C.A.5 (Miss.) 1997, 113 F.3d 62. District And Prosecuting Attorneys 10; Judges 36; Officers And Public Employees 114

Judicial or quasi-judicial immunity available to federal officers is not limited to immunity from damages, but extends to actions for declaratory, injunctive and other equitable relief. Moore v. Brewster, C.A.9 (Cal.) 1996, 96 F.3d 1240, certiorari denied 117 S.Ct. 963, 519 U.S. 1118, 136 L.Ed.2d 848. Judges 36

Individual judges are immune from civil suit when acting within their judicial capacity, even in § 1983 civil rights actions. Harris v. Missouri Court of Appeals, Western Dist., C.A.8 (Mo.) 1986, 787 F.2d 427, certiorari denied 107 S.Ct. 179, 479 U.S. 851, 93 L.Ed.2d 114, rehearing denied 107 S.Ct. 681, 479 U.S. 1022, 93 L.Ed.2d 731. Civil Rights 1376(8)

Judges are immune from liability under this section for their acts within the judicial role. Keeton v. Guedry, C.A.5 (La.) 1976, 544 F.2d 199. Civil Rights 1376(8)

Judicial officers are immune from suit under this section. Andrews v. Murphy, C.A.6 (Mich.) 1965, 349 F.2d 114, certiorari denied 86 S.Ct. 589, 382 U.S. 999, 15 L.Ed.2d 486. Civil Rights 1376(8)

Absolute immunity is generally reserved for judges performing judicial acts within their jurisdiction, prosecutors performing acts intimately associated with the judicial phase of the criminal process, and quasi-judicial agency officials whose duties are comparable to those of judges or prosecutors when adequate procedural safeguards exist. Braswell v. Haywood Regional Medical Center, W.D.N.C.2005, 352 F.Supp.2d 639. District And Prosecuting Attorneys 10; Judges 36; Officers And Public Employees 114

Judges had absolute judicial immunity from claim of monetary damages under § 1983 and statutes prohibiting conspiracies to restrict civil rights and penalizing neglect of rights, by defendant convicted in state court of delivering controlled substance, who alleged violation of his federal rights as result of conspiracy of court officials, including judges, to deny him access to transcript of proceedings. Travis v. Miller, E.D.Pa.2002, 226 F.Supp.2d 663. Civil Rights 1376(8); Conspiracy 13

Judicial immunity is overcome only where actions were not taken in judicial capacity or where actions, though judicial in nature, were taken in complete absence of all jurisdiction. Ippolito v. Meisel, S.D.N.Y.1997, 958 F.Supp. 155. Judges 36

Judge was immune from civil liability to handicapped member of criminal defendant's family who was barred from using court personnel door to enter or leave courtroom; even if judge violated Americans with Disabilities Act, he acted well within his judicial power to control courtroom. Livingston v. Guice, W.D.N.C.1994, 855 F.Supp. 834, reversed 68 F.3d 460. Civil Rights 1376(8)

Judges, acting within the scope of their authority, are absolutely immune from liability. International Molders and Allied Workers, AFL-CIO v. Buchanan Lumber Birmingham, N.D.Ala.1978, 459 F.Supp. 950, affirmed 618 F.2d 782. Judges 36

Under this section, no claims are created which may be asserted against judges acting within the scope of their judicial functions. Martinez v. Com. of Puerto Rico, D.C.Puerto Rico 1977, 435 F.Supp. 1204. Civil Rights 1376(8)

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42 U.S.C.A. § 1983

A judge is absolutely immune from liability for damages for acts done in the performance of his judicial duties. Trivett v. Bank of Delaware, D.C.Del.1976, 421 F.Supp. 827. Judges 36

Judges acting within scope of their official duties are absolutely immune from liability for damages under this section. Scarrella v. Spannaus, D.C.Minn.1974, 376 F.Supp. 857. Civil Rights 1376(8)

3212. Common law, judicial immunity generally

Passage of this section did not result in abrogation of immunity of a judge from liability for damages. Wiggins v. Hess, C.A.8 (Mo.) 1976, 531 F.2d 920. Civil Rights 1376(8)

The common law immunity of a judge from liability for any injuries resulting from acts within his jurisdiction is fully applicable in suits under this section which alleged deprivations of constitutional rights. Apton v. Wilson, C.A.D.C.1974, 506 F.2d 83, 165 U.S.App.D.C. 22. Civil Rights 1376(8)

Common law of judicial immunity protects judge from monetary damages under this section. Blouin v. Dembitz, C.A.2 (N.Y.) 1973, 489 F.2d 488. Civil Rights 1376(8)

This section did not abolish or in anywise affect doctrine of judicial immunity. Davis v. McAteer, C.A.8 (Mo.) 1970, 431 F.2d 81. See, also, Dacey v. New York County Lawyers' Ass'n, C.A. 2 (N.Y.) 1969, 423 F.2d 188, certiorari denied 90 S.Ct. 1819, 398 U.S. 929, 26 L.Ed.2d 92; Louis v. Supreme Court of Nevada, D.C.Nev.1980, 490 F.Supp. 1174; Schwartz v. Weinstein, D.C.Mo.1971, 333 F.Supp. 1031, affirmed 459 F.2d 882; Kristein v. Rector and Visitors of University of Virginia, D.C.Va.1970, 309 F.Supp. 184. Civil Rights 1376(8)

Common law immunity of judicial officers applies in actions for damages under this section. Beard v. Stephens, C.A.5 (Ala.) 1967, 372 F.2d 685.

Legislative history of this section does not abrogate or impair traditional common law doctrine of judicial immunity. Byrne v. Kysar, C.A.7 (Ill.) 1965, 347 F.2d 734, certiorari denied 86 S.Ct. 902, 383 U.S. 913, 15 L.Ed.2d 668, rehearing denied 86 S.Ct. 1348, 384 U.S. 914, 16 L.Ed.2d 367, rehearing denied 86 S.Ct. 1891, 384 U.S. 994, 16 L.Ed.2d 1011. Civil Rights 1376(8)

Judges who perform judicial functions within their jurisdiction are granted absolute immunity concerning actions seeking monetary damages which arise out of these actions. Neville v. Dearie, N.D.N.Y.1990, 745 F.Supp. 99. Judges 36

Judicial officers are and must be immune from damage actions based on claimed violations of the federal civil rights laws arising out of their exercise of judicial power. Kane v. Graubard, Moskovitz, McGoldrick, Dannett & Horowitz, S.D.N.Y.1977, 442 F.Supp. 733. Civil Rights 1376(8)

The judicial immunity doctrine applies in action under this section. Weaver v. Haworth, D.C.Okl.1975, 410 F.Supp. 1032. See, also, Shore v. Howard, D.C.Tex.1976, 414 F.Supp. 379; Doe v. Lake County, Indiana, N.D.Ind.1975, 399 F.Supp. 553.

The common law immunity of judges was not abrogated by this section. Cameron v. Montgomery County Child Welfare Service, D.C.Pa.1979, 471 F.Supp. 761. See, also, Tate v. Arnold, C.A.8 (Ark.) 1955, 223 F.2d 782; Staelens v. Yake, D.C.Ill.1977, 432 F.Supp. 834; Jemzura v. Belden, N.D.N.Y.1968, 281 F.Supp. 200.

3213. Amendments, judicial immunity generally

Amendment to § 1983, limiting availability of injunctive relief against judges to circumstances in which

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declaratory relief was unavailable or inadequate, was not intended to alter availability of declaratory relief against judicial officers. Brandon E. ex rel. Listenbee v. Reynolds, C.A.3 (Pa.) 2000, 201 F.3d 194. Declaratory Judgment 111

3214. Public policy, judicial immunity generally

Doctrine of judicial immunity from civil rights actions for damages is not a clannish effort to protect one's own brood nor is it for the protection or benefit of a malicious or corrupt judge, but, rather, it is for the benefit of the public so that judges, state or federal, may feel at liberty to exercise their functions with independence and without fear of consequences. Torres Irizarry v. Toro Goyco, D.C.Puerto Rico 1976, 425 F.Supp. 366. Civil Rights 1376(8)

3215. Judges within section, judicial immunity generally--Generally

A judge, of whatever status in judicial hierarchy, is immune from suit for damages resulting from any act performed in judicial role. Brewer v. Blackwell, C.A.5 (La.) 1982, 692 F.2d 387. See, also, Briscoe v. LaHue, C.A.7 (Ill.) 1981, 663 F.2d 713, certiorari granted 102 S.Ct. 1708, 455 U.S. 1016, 72 L.Ed.2d 132, affirmed 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96, certiorari denied 103 S.Ct. 1426, 460 U.S. 1037, 75 L.Ed.2d 787; Coleman v. Court of Appeals, Div. No. Two of State of Okl., W.D.Okl.1980, 550 F.Supp. 681. Judges 36

Judges who presided over case in which civil rights claimant was defendant were entitled to absolute judicial immunity from claims of unconstitutional prosecution, conviction, and/or detention. Hunter v. City of Beaumont, E.D.Tex.1994, 867 F.Supp. 496. Civil Rights 1376(8)

Judges of courts of general jurisdiction are not liable in civil damages for their judicial acts, even when such acts are in excess of their jurisdiction and they are alleged to have been done maliciously or corruptly; the doctrine is fully applicable to actions maintained under this section and extends to judges of every status in the judicial hierarchy, from magistrates to justices of the peace, to family court commissioners. Ross v. Arnold, E.D.Wis.1983, 575 F.Supp. 1494. Civil Rights 1376(8)

3216. ---- Bankruptcy judges, judges within section, judicial immunity generally

Federal district judges and bankruptcy judge were immune from liability under § 1983 for any action within the sphere of their offices. Yocum v. Dixon, C.D.Ill.1990, 729 F.Supp. 616. Civil Rights 1376(8)

3217. ---- Chief judges, judges within section, judicial immunity generally

Chief judge of eleventh judicial circuit in and for Dade county and chief judge of crimes division of county court for Dade county enjoyed cloak of official immunity and were not actionable for damages under this section. Smyl, Inc. v. Gerstein, S.D.Fla.1973, 364 F.Supp. 1302. Civil Rights 1376(8)

3218. ---- County court judges, judges within section, judicial immunity generally

County judge who served as principal executive officer overseeing county roads pursuant to Arkansas law was entitled to qualified immunity for his conduct of ordering county sheriff to arrest motorist who drove truck over bridge without a weight limit posting causing bridge to collapse, in motorist's §§ 1983 unlawful arrest claim; although titled a judge, he lacked any judicial duties, he had no authority to order the arrest, and his conduct did not rise to the level of conscience-shocking or egregious behavior. Robinson v. White County, AR, C.A.8 (Ark.) 2006, 452 F.3d 706. Civil Rights 1376(8)

County judge was immune from suit which alleged that acts done and performed by him in his capacity as county

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judge denied plaintiff his civil rights. Godwin v. Williams, N.D.Tex.1968, 293 F.Supp. 770.

3219. ---- Federal district court judges, judges within section, judicial immunity generally

Federal district judge and magistrate judge were entitled to absolute judicial immunity with regard to former defendant's claims under § 1983 and *Bivens* that judges conspired to prosecute him; while complaint alleged that judges acted in absence of jurisdiction, as evidenced by court order vacating his conviction on grounds that defendant's conduct was not criminal at the time, such allegation did not establish clear absence of jurisdiction, which district court clearly had in view of charges against defendant under federal law. Santini v. Gierbolini, D.Puerto Rico 1996, 937 F.Supp. 130, affirmed 114 F.3d 1169. Civil Rights 1376(8); Judges 36

Federal district court judges and United States magistrate were entitled to absolute immunity from liability under § 1983 for acts carried out within scope of their judicial duties. Hanner v. U.S. Government, S.D.Miss.1986, 660 F.Supp. 77. Civil Rights 1376(8)

3220. ---- Immigration judges, judges within section, judicial immunity generally

Absolute immunity from monetary relief stemming from judicial actions of immigration judge bars suit at onset and frees judge of any obligation to justify his action. Lartey v. U.S. Dept. of Justice, W.D.La.1992, 790 F.Supp. 130. Judges 36

3221. ---- Justices of the peace, judges within section, judicial immunity generally

A justice of the peace exercises judicial functions and is immune from liability under this section. Stift v. Lynch, C.A.7 (Ill.) 1959, 267 F.2d 237. Justices Of The Peace 27

Though, as general proposition of law, judges and justices of peace are immune from damages under this section, such is not a universal proposition. Cross v. Byrum, S.D.Fla.1972, 348 F.Supp. 196. Civil Rights 1376(8)

Justices of the peace are judicial officers and are immune from liability for damages under this section if acting within the scope of their authority or in discharge of their duties. Danner v. Moore, W.D.Pa.1969, 306 F.Supp. 433 . Civil Rights 1376(8)

3222. ---- Magistrates, judges within section, judicial immunity generally

Neutral and detached magistrate is absolutely immune from suit under civil rights statute. McKenna v. Clayton County, State of Ga., N.D.Ga.1987, 657 F.Supp. 221. Civil Rights 1376(8)

County magistrate and prosecuting attorney were immune from liability for damages for acts performed by them in the exercise of their judicial or quasi-judicial discretion. Davis v. Hudson, D.C.S.C.1977, 436 F.Supp. 1210. Officers And Public Employees 114

County magistrate enjoyed judicial immunity from civil rights action seeking money damages for action taken in his official capacity. Dennis v. Hein, D.C.S.C.1976, 413 F.Supp. 1137. Civil Rights 1376(8)

3223. ---- Municipal court judges, judges within section, judicial immunity generally

That seating of special city judge was procedurally defective did not render his judicial actions invalid or deprive him of absolute judicial immunity in connection with discharge of his judicial duties. White by Swafford v. Gerbitz, C.A.6 (Tenn.) 1989, 892 F.2d 457. Judges 26; Judges 36

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42 U.S.C.A. § 1983

Where, at no time during prosecution of plaintiff in state court for violation of state statute prohibiting harassing phone calls did defendants act other than in their capacity as city judge and assistant district attorney, both defendants were entitled to protection of judicial immunity afforded judicial officers acting within scope of their jurisdiction, in suit under this section alleging a conspiracy to deprive plaintiff of his constitutionally protected rights. Guedry v. Ford, C.A.5 (La.) 1970, 431 F.2d 660. Civil Rights 1376(8)

Judges of municipal court were absolutely immune from liability for damages for acts done in the course of their judicial doctrines; this subchapter did not abrogate that common law doctrine. Tucker v. City of Montgomery Bd. of Com'rs, M.D.Ala.1976, 410 F.Supp. 494. Civil Rights 1376(8)

3224. ---- State court judges generally, judges within section, judicial immunity generally

State circuit court judge was entitled to absolute immunity in his individual capacity from damages in § 1983 suit based upon judge's order that spectator leave courtroom; incident occurred while judge was hearing a domestic relations case, judge excluded spectator from courtroom during a proceeding that was properly before judge, judge was acting in his official capacity, and judge had jurisdiction over hearing. Simmons v. Conger, C.A.11 (Ala.) 1996, 86 F.3d 1080. Civil Rights 1376(8)

State court judge who ordered plaintiff's arrest for contempt of court in underlying action was immune from liability in plaintiff's § 1983 action, where judge had subject-matter jurisdiction over underlying action and played judicial role in ordering plaintiff's arrest for contempt. Homola v. McNamara, C.A.7 (Ill.) 1995, 59 F.3d 647. Civil Rights 1376(8)

State trial judge had absolute immunity from inmate's pro se and in forma pauperis civil rights claim alleging that he was not guilty of murder and that judge should have prevented allegedly wrongful conviction, but not complaining of any nonjudicial actions taken by judge, and thus claim could be dismissed with prejudice as frivolous. Boyd v. Biggers, C.A.5 (Miss.) 1994, 31 F.3d 279. Federal Civil Procedure 2734; Judges 36

South Carolina judges were absolutely immune from damage liability with respect to cases before them; thus no claim against them under this section for deprivation of rights under color of state law could be maintained. Wilkins v. Rogers, C.A.4 (S.C.) 1978, 581 F.2d 399. Civil Rights 1376(8); Judges 36

Judge of state court is immune from liability for damages under this section. Wartman v. Branch 7, Civil Division, County Court, Milwaukee County, State of Wis., C.A.7 (Wis.) 1975, 510 F.2d 130. Civil Rights 1376(8)

Judicial immunity applied to bar unsuccessful state litigant's § 1983 claims for monetary damages that were asserted against state judges in their individual capacities. Tsabbar v. Booth, S.D.N.Y.2003, 293 F.Supp.2d 328, affirmed 115 Fed.Appx. 513, 2004 WL 2931117. Civil Rights 1376(8)

Judges of state court acting within apparent scope of their judicial duties are immune from civil rights actions for money damages. Blouin v. Dembitz, S.D.N.Y.1973, 367 F.Supp. 415, affirmed 489 F.2d 488. Civil Rights 1376(8)

Judges of a general court of justice of a state were clothed with judicial immunity from suit for damages. Fowler v. Alexander, M.D.N.C.1972, 340 F.Supp. 168, affirmed 478 F.2d 694. Judges 36

Only federal court authorized to inquire into correctness of decision of state court in civil litigation is the Supreme Court of the United States, and suit naming the state judge is not a way around the principle that federal courts do not entertain collateral attacks on state judgments; the state judge is entitled to judicial immunity. Sato v. Plunkett, N.D.Ill.1994, 154 F.R.D. 189. Federal Courts 1142; Judges 36; Judgment 828.5(1)

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42 U.S.C.A. § 1983

State trial court judge who presided over medical malpractice action enjoyed absolute immunity from liability in civil rights action brought by patient as all of actions patient alleged that judge took were performed within scope of his jurisdiction as trial judge presiding over the medical malpractice action. Finch v. Buechel, C.A.3 (Pa.) 2006, 188 Fed.Appx. 139, 2006 WL 2092440, Unreported. Civil Rights 1376(8)

State court trial judge who presided over civil action in which physician brought legal malpractice claim against physician's attorney enjoyed absolute immunity from liability in §§ 1983 action brought by physician relating to his rulings in action. Guttman v. Silverberg, C.A.10 (N.M.) 2005, 167 Fed.Appx. 1, 2005 WL 3462805, Unreported. Civil Rights 1376(8)

Judicial immunity barred county inmate's § 1983 claims against California state judges who allegedly started and continued process of having him committed under statute relating to treatment of criminal defendants thought not competent to stand trial; judges' actions clearly were taken in judicial capacity and were of general nature of actions which judges had jurisdiction to take. Jernigan v. Superior Court of State of California for County of Santa Clara, N.D.Cal.2003, 2003 WL 21640489, Unreported. Civil Rights 1376(8)

3225. ---- State superior court judges, judges within section, judicial immunity generally

The People of the State of California and the Superior Court of California are immune from suit under this section. Serrano v. People of State of Cal., C.A.9 (Cal.) 1966, 361 F.2d 474. Civil Rights 1376(1)

3226. ---- State supreme court judges, judges within section, judicial immunity generally

Justices of state Supreme Courts are immune to suit for damages for acts performed in course of their official duties and such immunity is not altered by this section. Larsen v. Gibson, C.A.9 (Cal.) 1959, 267 F.2d 386, certiorari denied 80 S.Ct. 106, 361 U.S. 848, 4 L.Ed.2d 87. Civil Rights 1376(8); Judges 36

Dismissal of state prisoner's § 1983 action against prison officials was warranted, absent allegations of officials' personal involvement in the alleged constitutional violation. Williams v. Kansas, C.A.10 (Kan.) 2003, 76 Fed.Appx. 278, 2003 WL 22255965, Unreported. Civil Rights 1358

3227. Quasi-judicial officials, judicial immunity generally

Physician conducting peer review at behest of Maryland Board of Physician Quality Assurance was entitled to absolute quasi-judicial immunity from reviewed physician's § 1983 claim alleging due process violations; reviewing physician was performing function analogous to prosecutor reviewing evidence to determine if charges should be brought, and absolute immunity was necessary to foster atmosphere in which reviewing physician could exercise professional judgment without fear of retaliation. Ostrzenski v. Seigel, C.A.4 (Md.) 1999, 177 F.3d 245. Civil Rights 1376(9)

State nursing board was functioning as adjudicatory body, and board director and its members were acting in their "quasi-judicial" capacity, in revoking nursing licenses; in revocation proceedings board and its members administer oaths, compel attendance of witnesses, allow presentation of witness testimony and cross-examination of witnesses, permit parties to be represented by counsel, and make findings of fact and assess punishments or accolades in accordance with those findings. O'Neal v. Mississippi Bd. of Nursing, C.A.5 (Miss.) 1997, 113 F.3d 62. States 78

Where defendants were judicial officers and quasi-judicial officers, they would be immune from claim for damages by plaintiffs under this section. Kinney v. Lenon, C.A.9 (Or.) 1971, 447 F.2d 596. Civil Rights 1376(8)

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42 U.S.C.A. § 1983

Title of office, quasi-judicial or even judicial, does not of itself immunize officer from responsibility for unlawful acts which cannot be said to constitute integral part of judicial process. Robichaud v. Ronan, C.A.9 (Ariz.) 1965, 351 F.2d 533. Officers And Public Employees 116

Absolute quasi-judicial immunity from suit applied to executive secretary for state racing commission and commission members, in their individual capacities, for actions taken in direct connection with adjudication of formal disciplinary complaint filed against veterinarian who held special license to treat racehorses, given that commission was state agency with established procedures for deciding disciplinary proceedings involving its licensees and those procedures closely resembled judicial procedures and provided adequate constitutional safeguards, notwithstanding veterinarian's contention that commission exceeded its authority and failed to adhere to its own procedures for judging his alleged rule violations. VanHorn v. Nebraska State Racing Com'n, D.Neb.2004, 304 F.Supp.2d 1151. States 78

Absolute quasi-judicial immunity barred § 1983 claims against members of state chiropractic board who revoked chiropractor's license; state law provided procedural safeguards resembling those available in judicial process, and board members were sufficiently independent and free of political influence. Mason v. Arizona, D.Ariz.2003, 260 F.Supp.2d 807. Civil Rights 1376(3); Civil Rights 1376(8)

Members of Mississippi Board of Nursing were entitled to absolute quasi-judicial immunity from liability in civil rights action, even though Board did not exist in 1871 and did not meet common-law or traditional test of immunity, where Board engaged in actions comparable to adjudicatory or judicial role; Board was imbued with powers comparable to those of judges and engaged in many adjudicatory functions, among them determination of fact questions, following procedural trappings logically associated with common-law finder of fact and subject to judicial review. Duncan v. Mississippi Bd. of Nursing, S.D.Miss.1997, 982 F.Supp. 425, affirmed 129 F.3d 611. Civil Rights 1376(8)

In determining scope of immunity, courts are to follow "functional" approach, based on analysis of factors characteristic of judicial process; official is entitled to absolute immunity if official's judgments are functionally comparable to those of judge, if nature of controversy in which official is forced to become participant is sufficiently intense that there is realistic prospect of continuing harassment or intimidation by disappointed litigants, and if system in which official operates contains safeguards adequate to reduce need for private damage actions as means of controlling unconstitutional conduct. Eisenberg v. Sternberg, W.D.Wis.1986, 641 F.Supp. 620 . Officers And Public Employees 114

Claim of judicial or quasi-judicial immunity depends not on title of officer, but on whether alleged conduct, which gives rise to the complaint, involved performance of judicial or quasi-judicial function and it is not limited to judicial officers of the court, such as judges, prosecutors and grand jurors. Hoke v. Board of Medical Examiners of State of N. C., W.D.N.C.1978, 445 F.Supp. 1313. Judges 36

Quasi-judicial immunity is more limited than the immunity afforded judges and extends only to those acts committed within the scope of the actor's jurisdiction and with the authorization of law. Turner v. American Bar Ass'n, N.D.Tex.1975, 407 F.Supp. 451, affirmed 539 F.2d 715, affirmed 542 F.2d 56. Officers And Public Employees 114

3228. Considerations governing generally, judicial immunity generally

In determining whether government officials should be afforded absolute immunity, factors characteristic of judicial process that are to be considered in determining absolute immunity, as opposed to qualified immunity, include need to assure that official can perform his functions without harassment or intimidation, presence of safeguards that reduce need for private damages actions as a means of controlling unconstitutional conduct, insulation from political influence, importance of precedent, adversary nature of process, and correctability of error

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on appeal; no one factor is controlling and list of considerations is not exclusive. O'Neal v. Mississippi Bd. of Nursing, C.A.5 (Miss.) 1997, 113 F.3d 62. Officers And Public Employees 114

Civil rights damages claim against judicial defendants was barred by doctrine of judicial immunity where there was no clear absence of jurisdiction shown, and acts complained of were judicial acts. Martin v. Aubuchon, C.A.8 (Mo.) 1980, 623 F.2d 1282. Civil Rights 1376(8)

Two considerations govern whether judge is entitled to absolute immunity: judge must have dealt with plaintiff in judicial capacity, and, if judge dealt in judicial capacity, judge is entitled to immunity unless judge acted in clear absence of all jurisdiction. Howard v. Miller, N.D.Ga.1994, 870 F.Supp. 340. Judges 36

To determine if state court judge is entitled to judicial immunity in civil rights action, district court must apply two-part test inquiring as to whether judge's actions were made while acting in his judicial capacity, and, if so, whether or not judge's actions fall clearly outside judge's jurisdiction as Florida circuit court judge; if both parts of test are met, judge is absolutely immune from liability under Civil Rights Acts. Clark v. Sierra, M.D.Fla.1993, 837 F.Supp. 1179. Civil Rights 1376(8)

3229. Clear absence of jurisdiction, judicial immunity generally--Generally

Act is done in "clear absence of all jurisdiction," for judicial immunity purposes, if matter upon which judge acts is clearly outside subject matter jurisdiction of court over which judge presides. Ireland v. Tunis, C.A.6 (Mich.) 1997, 113 F.3d 1435, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 560, 522 U.S. 996, 139 L.Ed.2d 401. Judges 36

Judge will be subject to liability despite doctrine of judicial immunity, where he has acted in clear absence of all jurisdiction. Moore v. Brewster, C.A.9 (Cal.) 1996, 96 F.3d 1240, certiorari denied 117 S.Ct. 963, 519 U.S. 1118, 136 L.Ed.2d 848. Judges 36

Judges are absolutely immune from civil liability in § 1983 suits for acts performed in their judicial capacity, provided that such acts are not done in clear absence of all jurisdiction. Roland v. Phillips, C.A.11 (Ga.) 1994, 19 F.3d 552. Civil Rights 1376(8)

The "absence of jurisdiction" exception to rule that a judge is absolutely immune from civil rights damage liability for acts within his judicial capacity, except when he acts in absence of all jurisdiction, refers to situations in which a judge acts purely in a private and nonjudicial capacity. Henzel v. Gerstein, C.A.5 (Fla.) 1979, 608 F.2d 654. Civil Rights 1376(8)

Rule of judicial immunity from damages, with its single bright-line exception, viz., a judge is not protected if he acts in "clear absence of all jurisdiction," is as broad as, but no broader than, necessary. Sparks v. Duval County Ranch Co., Inc., C.A.5 (Tex.) 1979, 604 F.2d 976, certiorari granted 100 S.Ct. 1336, 445 U.S. 942, 63 L.Ed.2d 775, certiorari denied 100 S.Ct. 1339, 445 U.S. 943, 63 L.Ed.2d 777, affirmed 101 S.Ct. 183, 449 U.S. 24, 66 L.Ed.2d 185, certiorari denied 101 S.Ct. 588, 449 U.S. 1021, 66 L.Ed.2d 483. Judges 36

Judges acting within their jurisdiction and authority are immune from suit under this subchapter. Hill v. McClellan, C.A.5 (Tex.) 1974, 490 F.2d 859. Civil Rights 1376(8)

Justices of village court had judicial immunity from damages sought in putative class action suit alleging they participated in scheme to illegally ticket and fine motorists after police authority was transferred from village to county; however wrongful, justice's acts were not in clear absence of any jurisdiction. Wood v. Incorporated Village of Patchogue of New York, E.D.N.Y.2004, 311 F.Supp.2d 344. Justices Of The Peace 24

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42 U.S.C.A. § 1983

Judicial immunity from damages under civil rights statute functions to immunize its beneficiaries for all discretionary judicial acts, except for acts done in clear absence of all jurisdiction. Sullivan v. Ford, E.D.Mich.1993, 828 F.Supp. 480. Civil Rights 1376(8)

Judges are entitled to absolute immunity in exercise of their judicial function unless they act in clear absence of jurisdiction. Boston v. Lafayette County, Miss., N.D.Miss.1990, 744 F.Supp. 746, affirmed 933 F.2d 1003. Judges 36

Judicial immunity is quite broad, but the immunity pertains only to those acts "judicial" in nature, and judge will not benefit from judicial immunity and will be exposed to liability for actions in the clear absence of all jurisdiction. Cintron Rodriguez v. Pagan Nieves, D.Puerto Rico 1990, 736 F.Supp. 411. Judges 36

Judges and magistrates are absolutely immune from liability for damages for acts performed within their judicial jurisdiction, in damage actions under civil rights statute [42 U.S.C.A. § 1983], statute proscribing conspiracy to interfere with civil rights [42 U.S.C.A. § 1985], and statute providing action for neglect to prevent conspiracy to interfere with civil rights proscribed by § 1985 [42 U.S.C.A. § 1986], and also for other civil rights litigation. Lundt v. Hodges, N.D.Iowa 1985, 627 F.Supp. 373. Civil Rights 1376(8)

Judge is absolutely immune from liability for damages under 42 U.S.C.A. § 1983 for actions arising out of performance of his judicial functions unless he acted in clear absence of all jurisdiction. Stafford v. Goff, D.C.Colo.1985, 609 F.Supp. 820. See, also, Whiteside v. State of Wash., E.D.Wash.1982, 534 F.Supp. 774. Civil Rights 1376(8)

The doctrine of judicial immunity protects judge from being held liable under this section for any actions taken while he is acting within his jurisdiction. Schorle v. City of Greenhills, S.D.Ohio 1981, 524 F.Supp. 821. Civil Rights 1376(8)

Only exception to absolute immunity of judges from liability under § 1983 is if judge acted in clear absence of all jurisdiction. In re Chapman, Bkrtcy.N.D.Ill.1993, 154 B.R. 258, affirmed 159 B.R. 812, affirmed 46 F.3d 1133, rehearing denied, certiorari denied 116 S.Ct. 153, 516 U.S. 853, 133 L.Ed.2d 97. Civil Rights 1376(8)

3230. ---- Personal jurisdiction, clear absence of jurisdiction, judicial immunity generally

State juvenile court judge who had subject matter jurisdiction over dependency petition was immune from liability in civil rights suit by mother seeking damages in connection with the judge's granting of petition with respect to mother's child, even though judge, in ruling on petition, had acted without personal jurisdiction over mother, who had not been served with summons accompanied by copy of petition as required by statute. Dykes v. Hosemann, C.A.11 (Fla.) 1985, 776 F.2d 942, on remand 783 F.2d 1000. Civil Rights 1376(8)

While trial judge, once claimant under this section was sentenced in criminal case no longer had personal jurisdiction over claimant and the case, he did possess subject-matter jurisdiction; therefore, even if true, judge's actions in ordering court reporter to alter trial transcript to indicate that juror designated as "foreman" acted as such rather than another juror, were not in clear absence of all jurisdiction so as to deprive him of use of defense of judicial immunity. Green v. Maraio, C.A.2 (N.Y.) 1983, 722 F.2d 1013. Civil Rights 1376(8)

Where plaintiff complained only of acts of judges in exercise of their respective judicial functions at a time when such judges had jurisdiction over parties involved and subject matter of litigation, judges would be immune from action under this section insofar as plaintiff's claim for monetary damages was concerned. Willett v. Wells, E.D.Tenn.1977, 469 F.Supp. 748, affirmed 595 F.2d 1227. Civil Rights 1376(8)

A judge is immune from an action under this section, where his acts were done in the exercise of his judicial

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function at a time when he had jurisdiction over both the parties and subject matter of the litigation. Christian v. Garrett, E.D.Tenn.1976, 432 F.Supp. 240. Civil Rights 1376(8)

It is only when a Tennessee judge has jurisdiction over both the parties and the subject matter that he is immune from a suit for money damages under this section. Smithson v. Ray, E.D.Tenn.1976, 427 F.Supp. 11. Civil Rights 1376(8)

3231. ---- Subject matter jurisdiction, clear absence of jurisdiction, judicial immunity generally

Justices of Minnesota Supreme Court were absolutely immune from claim for damages allegedly resulting from Supreme Court's denial of his petition challenging constitutionality of Minnesota Supreme Court rule requiring bar applicant to graduate from accredited law school; justices were acting judicially and within their subject matter jurisdiction in denying petition. LaNave v. Minnesota Supreme Court, C.A.8 (Minn.) 1990, 915 F.2d 386, certiorari denied 111 S.Ct. 2028, 500 U.S. 923, 114 L.Ed.2d 113.

A judge having subject-matter jurisdiction is absolutely immune, even though his judicial action is in excess of his vested jurisdiction or is otherwise erroneous. Ross v. Arnold, E.D.Wis.1983, 575 F.Supp. 1494. Judges 36

Proper inquiry in determining whether defendant judge is immune from suit is whether at time he took challenged action he had jurisdiction over subject matter before him. People ex rel. Snead v. Kirkland, E.D.Pa.1978, 462 F.Supp. 914. Judges 36

Judicial immunity is forfeited only for actions performed in the clear absence of all jurisdiction over the subject matter. Raitport v. Provident Nat. Bank, E.D.Pa.1978, 451 F.Supp. 522. Judges 36

3232. ---- Erroneous acts, clear absence of jurisdiction, judicial immunity generally

Because Indiana circuit court is court of general jurisdiction, neither procedural errors circuit court judge may have committed in considering sterilization petition, nor lack of specific statute authorizing his approval of petition, rendered him liable in damages for consequences of his actions. Stump v. Sparkman, U.S.Ind.1978, 98 S.Ct. 1099, 435 U.S. 349, 55 L.Ed.2d 331, rehearing denied 98 S.Ct. 2862, 436 U.S. 951, 56 L.Ed.2d 795, on remand 601 F.2d 261. Judges 36

Judge with jurisdiction to supervise grand jury was absolutely immune from § 1983 liability for preventing grand juror from discussing certain matters with fellow jurors and for ordering confiscation of grand juror's information packets. Fields v. Soloff, C.A.2 (N.Y.) 1990, 920 F.2d 1114. Civil Rights 1376(8)

Superior court judge and Chief Judge of state Court of Appeals were entitled to absolute immunity from civil rights suit based upon judges' alleged actions in impeding and delaying criminal defendant's appeal; any error by judges in their belief that they had authority to act as they did was at most a "grave procedural error," not act undertaking a clear absence of jurisdiction, and supervising preparation of record of trial is clearly within general responsibility of court. Dellenbach v. Letsinger, C.A.7 (Ind.) 1989, 889 F.2d 755, certiorari denied 110 S.Ct. 1821, 494 U.S. 1085, 108 L.Ed.2d 950. Civil Rights 1376(8)

Defect in procedure employed by judge in attempting to investigate report that plaintiff had misrepresented himself as the judge's law clerk without giving plaintiff written notice of the criminal contempt charge as required by 33 F.S.A.Rules of Criminal Procedure, rule 3.840, would not support conclusion that there was a clear absence of all jurisdiction so as to result in abrogation of judicial immunity from action under this section. Williams v. Sepe, C.A.5 (Fla.) 1973, 487 F.2d 913. Civil Rights 1376(8)

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42 U.S.C.A. § 1983

3233. ---- Excess of jurisdiction distinguished, clear absence of jurisdiction, judicial immunity generally

Judge's alleged actions in directing police officers to bring before judge attorney who was in courthouse were not taken in complete 'absence of all jurisdiction,' so as to deprive judge of judicial immunity from § 1983 suit, even though judge allegedly directed officers to carry out order with excessive force; if judge had authorized and ratified officer's use of excessive force, he had acted in excess of his authority, but such action, taken in aid of judge's jurisdiction over matter before him, could not be said to have been taken in absence of jurisdiction. Mireles v. Waco, U.S.Cal.1991, 112 S.Ct. 286, 502 U.S. 9, 116 L.Ed.2d 9, on remand 962 F.2d 865. Civil Rights 1376(8)

Even assuming that municipal court commissioner reactivated bench warrant for traffic violator only after agreeing to transfer case to another judge, commissioner merely acted in excess of his jurisdiction, rather than in clear absence of jurisdiction, and thus, commissioner was entitled to judicial immunity in traffic violator's § 1983 action. Franceschi v. Schwartz, C.A.9 (Cal.) 1995, 57 F.3d 828. Civil Rights 1376(8); Court Commissioners 3

Even if municipal judge in Arkansas lacked authority to enforce circuit court's judgment of conviction, municipal judge was entitled to absolute immunity in civil rights action by driver who was arrested after municipal judge issued warrant for failure to pay fines and court costs imposed upon circuit court conviction for speeding and driving with suspended license; municipal judge had authority to issue arrest warrant and thus acted, at most, in excess of jurisdiction, not in absence of jurisdiction. Duty v. City of Springdale, Ark., C.A.8 (Ark.) 1994, 42 F.3d 460, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(8)

Even if Chief Justice of California Supreme Court acted in excess of his jurisdiction by signing order, such signing was manifestly a judicial act, and thus Chief Justice was entitled to immunity from suit under federal civil rights statute. Rosenthal v. Justices of the Supreme Court of California, C.A.9 (Cal.) 1990, 910 F.2d 561, certiorari denied 111 S.Ct. 963, 498 U.S. 1087, 112 L.Ed.2d 1050. Civil Rights 1376(8)

There is no absolute immunity from claim for damages arising out of judicial actions if judge undertakes to act in area in which he has no subject-matter jurisdiction, but if he exceeds his authority, his action is subject to correction on appeal or other authorized review, but it does not expose him to claim for damages in private action, or put him to trouble and expense of defending such action. Chu v. Griffith, C.A.4 (Va.) 1985, 771 F.2d 79. Judges 36

A criminal court judge who convicts a defendant of a nonexistent crime acts in excess of jurisdiction and is absolutely immune from suit for damages. Brewer v. Blackwell, C.A.5 (La.) 1982, 692 F.2d 387. Judges 36

Pro tem municipal judge's action in convicting defendant of contempt, an offense generally within his court's jurisdiction, without requisite papers to confer jurisdiction over particular alleged commission of offense, constituted act in excess of jurisdiction, but not act in clear absence of all jurisdiction, and thus judge was immune from liability. O'Neil v. City of Lake Oswego, C.A.9 (Or.) 1981, 642 F.2d 367. Judges 36

Although Kentucky state court judge may have erroneously taken jurisdiction over 15-year-old's traffic offense, he was not so clearly without jurisdiction as to deprive him of immunity from suit by juvenile. Allsup v. Knox, E.D.Ky.1980, 508 F.Supp. 57. Judges 36

Acts of county court judge who considered other charges when criminal defendant was brought before him, who felt that defendant was not setting a good example for students which he taught in the public school, and who bargained with defendant to dismiss proceedings against him if he would pay his debts and leave county, constituted at worst no more than acts in excess of jurisdiction rather than acts done without jurisdiction, and thus doctrine of judicial immunity applied to bar such defendant's suit against judge under this section. McGlasker v. Calton, M.D.Ala.1975, 397 F.Supp. 525, affirmed 524 F.2d 1230. Civil Rights 1376(8)

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3234. ---- Knowledge, clear absence of jurisdiction, judicial immunity generally

Under New York law, town justice did not have judicial immunity in civil rights suit for issuing arrest warrants in neighboring town over which he knew he had no jurisdiction. Maestri v. Jutkofsky, C.A.2 (N.Y.) 1988, 860 F.2d 50, certiorari denied 109 S.Ct. 1132, 489 U.S. 1016, 103 L.Ed.2d 193. Civil Rights 1376(8)

State court judge's misinterpretation of jurisdictional statute, which allowed him to exercise jurisdiction over civil rights plaintiff, show cause defendant in divorce proceeding giving rise to § 1983 complaint, was not done "in the clear absence of jurisdiction"; judge retained his absolute immunity for his civil contempt ruling in show cause hearing. Schucker v. Rockwood, C.A.9 (Cal.) 1988, 846 F.2d 1202, rehearing denied, certiorari denied 109 S.Ct. 561, 488 U.S. 995, 102 L.Ed.2d 587. Civil Rights 1376(8)

When judge knows he lacks jurisdiction, or acts in face of clearly balanced statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. Schorle v. City of Greenhills, S.D.Ohio 1981, 524 F.Supp. 821. Judges 36

3235. ---- Malicious acts, clear absence of jurisdiction, judicial immunity generally

Judge will not be deprived of immunity because action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in clear absence of all jurisdiction. Stump v. Sparkman, U.S.Ind.1978, 98 S.Ct. 1099, 435 U.S. 349, 55 L.Ed.2d 331, rehearing denied 98 S.Ct. 2862, 436 U.S. 951, 56 L.Ed.2d 795, on remand 601 F.2d 261. See, also, Chalk v. Elliott, D.C.Tex.1978, 449 F.Supp. 65. Judges 36

A judge cannot be deprived of immunity because the action or inaction he took or did not take was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in clear absence of all jurisdiction, and this doctrine of immunity extends to suits under this section. Rheuark v. Shaw, C.A.5 (Tex.) 1980, 628 F.2d 297, certiorari denied 101 S.Ct. 1392, 450 U.S. 931, 67 L.Ed.2d 365. Civil Rights 1376(8); Judges 36

Judges of courts of superior or general jurisdiction are not liable in civil action for their judicial acts even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously. Coleman v. Court of Appeals, Div. No. Two of State of Okl., W.D.Okla.1980, 550 F.Supp. 681. Judges 36

Judges of courts of general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly, and this doctrine of judicial immunity is applicable to suits maintained under this section governing civil action for deprivation of rights, and immunity conferred by this rule is only forfeited when judge in question acts in clear absence of any jurisdiction. Gutierrez v. Vergari, S.D.N.Y.1980, 499 F.Supp. 1040. Civil Rights 1376(8)

Judge is immune from civil suit for actions arising from his judicial acts; such doctrine of judicial immunity is absolute and extends to acts which are in excess of judge's jurisdiction, even if done maliciously or corruptly, and only exception to the doctrine is for acts taken by judge where there is clearly no jurisdiction over subject matter involved. People ex rel. Snead v. Kirkland, E.D.Pa.1978, 462 F.Supp. 914. Judges 36

County judge was not without jurisdiction to reset bail and judge who allegedly ordered portion of bail refunded so that it might be used to reimburse court-appointed attorney, with result that bail was insufficient, and who was sued under this section on ground that he had acted with malice to deprive plaintiff of his constitutional right to bail, was protected by doctrine of judicial immunity. Jacobson v. Schaefer, E.D.Wis.1969, 307 F.Supp. 690, affirmed 441 F.2d 127. Bail 53; Civil Rights 1376(8)

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42 U.S.C.A. § 1983

3236. ---- Bankruptcy judges, clear absence of jurisdiction, judicial immunity generally

Bankruptcy judge was entitled to absolute judicial immunity from liability based on his issuance of warrant for debtor's arrest and related actions; all of the allegations against judge related to activities performed as part of his official duties in matters clearly within his jurisdiction. Winslow v. Romer, D.Colo.1991, 759 F.Supp. 670. Judges 36

3237. ---- County court judges, clear absence of jurisdiction, judicial immunity generally

Where county judge had jurisdiction to impose some conditions to bail and jurisdiction to control substitution of attorneys in his court, possibility that he abused his jurisdiction when he ordered portion of defendant's bail refunded so that it might be used to reimburse court-appointed attorney did not destroy the original jurisdiction and county judge was protected by doctrine of judicial immunity from liability in suit under this section for alleged deprivation of plaintiff's constitutional right to bail. Jacobson v. Schaefer, C.A.7 (Wis.) 1971, 441 F.2d 127. Civil Rights 1376(8)

Where county court had jurisdiction of complaint filed in court, county judge was immune with respect to liability under this section with respect to its determination of whether defendant motorist had been charged under the proper statute. Gabbard v. Rose, C.A.6 (Ky.) 1966, 359 F.2d 182. Civil Rights 1376(8)

Whether county court judge was immune from suit for acts associated with disposition of case or cases of plaintiff in county court depended upon whether judge was acting within his jurisdiction at the time of such acts. McGlasker v. Calton, M.D.Ala.1975, 397 F.Supp. 525, affirmed 524 F.2d 1230. Judges 36

3238. ---- Justices of the peace, clear absence of jurisdiction, judicial immunity generally

Judicial immunity extends to justices of the peace as well as those who sit on the Supreme Court, and shields judges unless they act either in the clear absence of all jurisdiction over the subject matter or in a nonjudicial capacity. Brewer v. Blackwell, C.A.5 (La.) 1982, 692 F.2d 387. Justices Of The Peace 24

Except where judges or justices of the peace act completely without jurisdiction, they are protected by doctrine of judicial immunity from liability under this section. Slotnick v. Garfinkle, C.A.1 (Mass.) 1980, 632 F.2d 163. Civil Rights 1376(8)

Even if justice of peace was in error in resolving questions of jurisdiction concerning assault prosecution, he was immune from liability under this section for allegedly signing a defective information, where jurisdiction depended on resolution of factual issues and involved debatable questions of law. Fanale v. Sheehy, C.A.2 (N.Y.) 1967, 385 F.2d 866. Civil Rights 1376(8)

Even if decision of district justice of peace that plaintiff was guilty of charged offenses lacked a valid testimonial and procedural basis, and even though plaintiff was put to unnecessary inconvenience, humiliation and expense by failure to observe requirements of due process, doctrine of judicial immunity insulated district justice from liability for damages, where plaintiff did not claim that district justice improperly took jurisdiction over his case. Schmidt v. Degen, E.D.Pa.1974, 376 F.Supp. 664. Civil Rights 1376(8)

3239. ---- Juvenile court judges, clear absence of jurisdiction, judicial immunity generally

Prison inmate's claim for damages against county juvenile judge for allegedly erroneous entry of decree permitting adoption of plaintiff's children would fail where plaintiff failed to make showing that court's decree was entered in clear absence of all jurisdiction; as juvenile judge, defendant had jurisdiction to enter decrees of adoption. Williams v. Williams, C.A.8 (Mo.) 1976, 532 F.2d 120. Adoption 10; Judges 36

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42 U.S.C.A. § 1983

County juvenile court judge was absolutely immune from suit under section 1983 for any alleged constitutional violations arising from his dispositional orders regarding juvenile's custody; judge had subject matter jurisdiction over juvenile's case and over disposition of delinquency, even though failure to make requisite findings in dispositional orders or fact that disposition might not have been necessary or in juvenile's best interest and, during hearings regarding juvenile's custody and upon issuance of dispositional orders, parties dealt with judge in his judicial capacity. Weseman v. Meeker County, D.Minn.1987, 659 F.Supp. 1571. Civil Rights 1376(8)

3240. ---- Magistrates, clear absence of jurisdiction, judicial immunity generally

State magistrate was entitled to absolute immunity from civil rights liability under § 1983 for directing police officer to effect warrantless arrest; magistrate's actions were judicial in that, although she may have exceeded her authority in manner in which she ordered arrest, she performed function only performed by judge and did not act in clear absence of all jurisdiction. King v. Myers, C.A.4 (Va.) 1992, 973 F.2d 354. Civil Rights 1376(8)

Where, under Iowa law, magistrate of judicial district had jurisdiction over nonindictable misdemeanors and could punish contempt, magistrate who was presiding over trial of misdemeanor charges had authority to adjudge witness in contempt of court for his refusal to testify; therefore, the Iowa magistrate was immune from liability to witness for judicial action holding the witness in contempt. McClain v. Brown, C.A.8 (Iowa) 1978, 587 F.2d 389. Judges 36

State magistrate judge did not act in clear absence of jurisdiction by setting bail for intravenous drug user, after user was arrested for criminally possessing hypodermic instrument, in § 1983 action under Fourth Amendment, even though arrest was later determined to be false on basis that user was enrolled in needle exchange program, where judge was informed that user was arrested outside of program area; judge was entitled to absolute immunity because he was acting in judicial capacity and there was not clear absence of jurisdiction. L.B. v. Town of Chester, S.D.N.Y.2002, 232 F.Supp.2d 227. Civil Rights 1376(8)

Magistrate, having some authority to deal with possible contempt of court, did not act in clear absence of all jurisdiction in ordering arrest of attorney who failed to appear on behalf of client in case before magistrate, even though magistrate may have acted in excess of his jurisdiction in ordering arrest; therefore, chief deputy marshal was entitled to quasi-judicial immunity in civil rights action for his carrying out magistrate's order to arrest attorney for failing to arrange for his law partner or an associate to appear in his stead at scheduled hearing. King v. Thornburg, S.D.Ga.1991, 762 F.Supp. 336. Civil Rights 1376(6)

Local magistrate who issued arrest warrant based upon citizen's complaint was entitled to absolute judicial immunity from arrestee's civil rights claims; magistrate was acting within his jurisdiction, under Georgia law, when he issued warrant. Penaranda v. Cato, S.D.Ga.1990, 740 F.Supp. 1578. Civil Rights 1376(8)

Magistrates are immune from liability for damages under this section unless their alleged actions are clearly outside the scope of their respective jurisdiction; the only exception to judicial and prosecutorial immunity are acts of a judge or prosecution attorney which are clearly outside their jurisdiction, as distinguished from acts which are merely in excess of their jurisdiction, the latter not being actionable. Clark v. Zimmerman, M.D.Pa.1975, 394 F.Supp. 1166. Civil Rights 1376(8); Civil Rights 1376(9)

3241. ---- Municipal court judges, clear absence of jurisdiction, judicial immunity generally

Municipal judge was entitled to absolute immunity from a claim for damages brought under § 1983 by pretrial detainee who alleged that judge issued arrest warrant in violation of state law, since the judge did not act in the clear absence of all jurisdiction. Ledbetter v. City of Topeka, Kan., C.A.10 (Kan.) 2003, 318 F.3d 1183. Civil Rights 1376(8)

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42 U.S.C.A. § 1983

Georgia municipal court judge was immune from § 1983 liability for ordering arrest, on robbery charge, of complainant in rape prosecution, for ordering or permitting her to be detained with defendant in the rape prosecution, for ordering detention of the complainant for transfer of custody to juvenile authorities after charges were dismissed on ground that complainant was a juvenile, and for refusing to allow complainant's counsel to take her to the juvenile authorities; the arrest and incarceration of complainant were normal judicial functions, the judge had subject-matter jurisdiction over the charges against the complainant, the events occurred in the courtroom, the controversy centered around case pending before the judge brought before him by independent parties, and the events arose directly and immediately out of testimony before the judge in that case. Harris v. Deveaux, C.A.11 (Ga.) 1986, 780 F.2d 911. Civil Rights 1376(8)

Where municipal judge had jurisdiction over the subject matter and acts complained of were judicial acts, he was immune from liability under doctrine of judicial immunity for any violation of civil rights resulting from his acceptance of a guilty plea to charge of driving under the influence of alcohol, even though he appointed attorney and directed entry of guilty plea against plaintiff at request of friend of plaintiff's brother without notice to or direct contact with the plaintiff. Birch v. Mazander, C.A.8 (Ark.) 1982, 678 F.2d 754. Judges 36

Where municipal court judge, who had power under Code 1962 § 43-134 to impose contempt sanctions, retained subject-matter jurisdiction over criminal action for five-day period following judgment, judge in detaining attorney against his will and directing certain comments at attorney after attorney made derogatory remarks to crowd outside courtroom concerning quality of justice obtainable in municipal court performed judicial act in relation to matters over which there was not clear absence of subject-matter jurisdiction and thus was clothed with judicial immunity for purposes of attorney's subsequent civil rights suit. Dean v. Shirer, C.A.4 (S.C.) 1976, 547 F.2d 227. Civil Rights 1376(8)

In absence of claim that municipal court judges acted in absence of all jurisdiction, the judges were immune from civil rights action. Azar v. Conley, C.A.6 (Ohio) 1972, 456 F.2d 1382. Civil Rights 1376(8)

Failure of judge of Municipal Court to respond to accused's statement of bias and prejudice did not deprive judge of jurisdiction over subject matter and doctrine of immunity from suit under this section for conduct in performance of his official duties applied even if accused's statement of bias and prejudice was legally sufficient and judge erred in striking it. Agnew v. Moody, C.A.9 (Cal.) 1964, 330 F.2d 868, certiorari denied 85 S.Ct. 137, 379 U.S. 867, 13 L.Ed.2d 70. Civil Rights 1376(8); Judges 51(4)

In action to recover damages against a municipal court judge who had issued felony complaint against plaintiff upon the complaint of a private citizen, thereby instituting prosecution in the name of the State of California, there was no showing that the act of the judge complained of was done in the clear absence of jurisdiction so that judge was therefore protected from suit by his judicial immunity. Johnson v. MacCoy, C.A.9 (Cal.) 1960, 278 F.2d 37. Judges 36

Where plaintiff infant had been arrested for and pleaded guilty to petty larceny, even though there was no written judgment of transfer by youth court at time of city court trial, inasmuch as youth court judge had validly consented to plaintiff's prosecution, defendant city court judge had at least limited jurisdiction and entry of any erroneous judgment would not destroy his judicial immunity. Roberts v. Williams, D.C.Miss.1969, 302 F.Supp. 972, judgment affirmed in part, remanded in part on other grounds 456 F.2d 819, certiorari denied 92 S.Ct. 83, 404 U.S. 866, 30 L.Ed.2d 110. Judges 36

3242. ---- Probate judges, clear absence of jurisdiction, judicial immunity generally

A probate judge who tries and convicts a defendant of a crime acts in clear absence of jurisdiction and enjoys no immunity from suit for damages. Brewer v. Blackwell, C.A.5 (La.) 1982, 692 F.2d 387. Judges 36

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No clear absence of jurisdiction was shown as to probate judge who entered order temporarily denying divorced mother custody of her minor son, and doctrine of judicial immunity was applicable with respect to mother's claim for damages for emotional distress. Harley v. Oliver, C.A.8 (Ark.) 1976, 539 F.2d 1143. Civil Rights 1376(8)

Probate judge who ordered sterilization of plaintiff acted wholly without jurisdiction in the matter and hence was not protected by doctrine of judicial immunity, where there was no set of conditions or circumstances under Ohio law which would permit probate judge to order plaintiff to submit to sterilization, and where proceeding which resulted in plaintiff's sterilization commenced on affidavit filed by county child welfare board alleging that plaintiff was a feeble minded person within meaning of statute, which statute had been repealed, so that the term "feeble minded" was no longer defined in Ohio law and did not appear in statute under which proceedings conducted by defendant probate judge were purportedly authorized. Wade v. Bethesda Hospital, S.D.Ohio 1971, 337 F.Supp. 671, 61 O.O.2d 147, motion denied 356 F.Supp. 380, 70 O.O.2d 218. Judges 36

3243. ---- State court judges, clear absence of jurisdiction, judicial immunity generally

State judges, in waiving juvenile court jurisdiction and sentencing civil rights plaintiff as adult, acted within their judicial capacities and did not clearly lack jurisdiction and, thus, judges had absolute immunity from § 1983 liability. Myers v. Vogal, C.A.8 (Iowa) 1992, 960 F.2d 750. Civil Rights 1376(8)

For purposes of judge's immunity from damages in federal civil rights liability, state court judge did not act in the clear absence of all jurisdictions in issuing an order clarifying an earlier order and disqualifying an attorney from acting pro se on grounds that the attorney had already filed a notice of interlocutory appeal where attorney had failed to first obtain certification for interlocutory appeal. Rolleston v. Eldridge, C.A.11 (Ga.) 1988, 848 F.2d 163. Civil Rights 1376(8)

State trial judge who, in presiding over divorce case, found husband in contempt for violating several orders as to visitation, custody and support payments, had subject-matter jurisdiction over divorce proceeding and his act of finding husband in contempt was a judicial act; therefore, judge was immune from liability under 42 U.S.C.A. § 1983 for his acts during divorce proceeding which allegedly violated husband's constitutional rights. Patten v. Glaser, C.A.8 (N.D.) 1985, 771 F.2d 1178. Civil Rights 1376(8)

State court judge was immune from civil rights suits for judicial acts not taken in the absence of all jurisdiction. O'Connor v. State of Nev., C.A.9 (Nev.) 1982, 686 F.2d 749, certiorari denied 103 S.Ct. 491, 459 U.S. 1071, 74 L.Ed.2d 633. Civil Rights 1376(8)

State court judge was immune to suit for damages under this section based on allegations that he had ordered husband in divorce action to pay the sum awarded the wife or face arrest and had subsequently ordered the arrest and imprisonment of husband for failure to comply, where the judge had jurisdiction to enter the orders under Wisconsin law. Hansen v. Ahlgrimm, C.A.7 (Wis.) 1975, 520 F.2d 768. Civil Rights 1376(8)

District of Columbia superior court judge did not lose protection of judicial immunity, for purposes of personal representative's civil rights action, when judge allegedly lost jurisdiction in case involving estate. Burt v. Barry, D.D.C.1997, 962 F.Supp. 185, appeal dismissed 1997 WL 573477. Civil Rights 1376(8)

State court judge was immune from liability to habeas petitioner for alleged due process violations in reimposing life sentence after defendant violated terms of his probation following illegal suspension of life sentence to 15 years in prison, where there was no dispute that judge acted within his jurisdiction in resentencing petitioner. DeWitt v. Ventetoulo, D.R.I.1992, 803 F.Supp. 580, affirmed 6 F.3d 32, certiorari denied 114 S.Ct. 1542, 511 U.S. 1032, 128 L.Ed.2d 193. Judges 36

State court judge was immune from damages claim in civil rights suit alleging that judge presided over ex parte

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hearings which resulted in restriction of plaintiff's child visitation rights and thereby infringed his due process rights; even if judge held ex parte hearings in course of family law proceedings, his actions would not have occurred in absence of all jurisdiction, so judge was entitled to judicial immunity. Holeman v. Elliott, S.D.Tex.1990, 732 F.Supp. 726, affirmed 927 F.2d 601, certiorari denied 112 S.Ct. 59, 502 U.S. 812, 116 L.Ed.2d 35. Civil Rights 1376(8)

State court judge had jurisdiction over probate matters before him, including decedent's estate, and had broad power to review attorney fees and to ensure that his jurisdictional mandate was carried out, and therefore, such judge was immune from civil rights suit brought by attorney who alleged that he was arrested and ordered to deposit $15,000 with county clerk of court as a result of his refusal to attend a hearing to determine the propriety of fees that attorney had charged the decedent. Cairo v. Skow, E.D.Wis.1981, 510 F.Supp. 201. Civil Rights 1376(8)

A judge of a state court from which a case has been removed to federal district court will not always necessarily have absolute immunity to civil liability in damages for any action he may purport to take in case after it has been removed to federal court, as it could be argued, for example, that after timely and procedurally proper removal of case over which federal district court has removal jurisdiction and denial of motion for remand, there is a "clear absence of all jurisdiction" in state court, since thereafter it would be clear that case must proceed in federal court. Antelman v. Lewis, D.C.Mass.1979, 480 F.Supp. 180. Judges 36

Where state court judges acted within their jurisdiction in increasing support award in favor of child of former marriage and in entering payroll deduction order, they were entitled to absolute immunity with respect to second wife's and infant's claim for damages on theory that New York family court proceedings in which support order was increased was unconstitutional. Wiesenfeld v. State of N. Y., S.D.N.Y.1979, 474 F.Supp. 1141. Judges 36

3244. ---- Surrogate court judges, clear absence of jurisdiction, judicial immunity generally

State surrogate was acting entirely within his jurisdiction when he revoked plaintiff's letters testamentary and subsequently held plaintiff in civil contempt and ordered him incarcerated for disobeying order to render an accounting of estate, and also acted entirely within his jurisdiction when he solicited input from attorney for law firm which was retained to obtain revocation of plaintiff's letters testamentary; thus, surrogate had judicial immunity in regard to claims that he had been involved in conspiracy to violate plaintiff's Fifth Amendment rights and conspiracy to force plaintiff to make restitution in related criminal matter. Bertucci v. Brown, E.D.N.Y.1987, 663 F.Supp. 447. Civil Rights 1376(8); Judges 36

3245. Judicial acts, judicial immunity generally--Generally

While judges enjoy absolute immunity from liability in damages for their judicial or adjudicatory acts, judges are not absolutely immune from liability and damages for administrative, legislative, or executive functions that judges may occasionally be assigned by law to perform; it is nature of function performed adjudication--rather than identity of actor who performed it-- judge--that determines whether absolute immunity attaches to act. Forrester v. White, U.S.Ill.1988, 108 S.Ct. 538, 484 U.S. 219, 98 L.Ed.2d 555, on remand 846 F.2d 29. Judges 36

Judicial immunity in § 1983 cases is extended to officials other than judges when their duties are functionally comparable to those of judges--that is, because they, too, exercise discretionary judgment as part of their function. Whisman Through Whisman v. Rinehart, C.A.8 (Mo.) 1997, 119 F.3d 1303. Civil Rights 1376(8)

To determine whether action is judicial, for immunity purposes, courts should look to particular act's relation to general function normally performed by judge, rather than rigidly scrutinize only the particular act in question. Ireland v. Tunis, C.A.6 (Mich.) 1997, 113 F.3d 1435, rehearing and suggestion for rehearing en banc denied,

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certiorari denied 118 S.Ct. 560, 522 U.S. 996, 139 L.Ed.2d 401. Judges 36

If a defendant government official's functions are of a judicial nature, Court of Appeals then must weigh costs and benefits of denying or affording absolute immunity to official. O'Neal v. Mississippi Bd. of Nursing, C.A.5 (Miss.) 1997, 113 F.3d 62. Officers And Public Employees 114

State trial judge was immune from civil rights liability where plaintiff made no allegations of fact which would support finding that he acted outside scope of his judicial duties. Martinez v. Chavez, C.A.10 (N.M.) 1978, 574 F.2d 1043. Civil Rights 1376(8); Civil Rights 1376(9)

Where action complained of had been taken by state district court judge when he was serving in his official capacity as state judge, doctrine of judicial immunity was applicable and protective against suit in nature of civil rights action. Serbus v. Hoffman, C.A.8 (Minn.) 1971, 450 F.2d 296. Civil Rights 1376(8)

Civil rights action against justice of the peace was properly dismissed since justice was immune from such suit for actions connected with discharge of his judicial duties. Pennebaker v. Chamber, C.A.3 (Pa.) 1971, 437 F.2d 66. Federal Civil Procedure 1741

Judges are absolutely immune from liability for damages for acts committed within their judicial discretion, and judge will not be deprived of this immunity even when action was taken in error, done maliciously, or was in excess of authority. Johnson v. State of N.J., D.N.J.1994, 869 F.Supp. 289, reconsideration denied 1995 WL 46367. Judges 36

Whether act is a judicial act, for which judge is absolutely immune from liability, depends upon whether it is a function normally performed by judge and whether parties dealt with judge in his judicial capacity. Rumfola v. Murovich, W.D.Pa.1992, 812 F.Supp. 569. Judges 36

"Nonjudicial" act, for which no judicial immunity is available, is one which is not normally performed by judicial officer, or which is performed outside judge's official capacity. Boston v. Lafayette County, Miss., N.D.Miss.1990, 744 F.Supp. 746, affirmed 933 F.2d 1003. Judges 36

Absolute judicial immunity shields judge from money damages in civil rights suit; that immunity applies if the judge has subject matter jurisdiction over the case and the acts allegedly causing the constitutional violation are judicial; act is judicial if it is one normally performed by judge and the parties deal with the judge in his or her judicial capacity. Edwards v. Hare, D.Utah 1988, 682 F.Supp. 1528. Civil Rights 1376(8)

In determining whether official is engaged in judicial conduct that is entitled to absolute rather than qualified immunity, inquiry must focus on nature of function involved rather than official's position. Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047, affirmed in part, reversed in part 151 F.3d 646. Judges 36

Judges and justices are absolutely immune from suits for damages under this section for acts performed in their judicial capacities. Michaelis v. Krivosha, D.C.Neb.1983, 566 F.Supp. 94, affirmed 717 F.2d 437. Civil Rights 1376(8)

Where acts complained of in civil rights action were carried out by judge in his judicial capacity in trial of civil action, judge was absolutely immune from liability. Cleveland v. Noland, N.D.Ga.1981, 510 F.Supp. 37. Judges 36

Where plaintiff made no claim that judge was without jurisdiction to preside over his case and judge's acts were judicial in nature in that they were functions normally performed by a judge, judge was entitled to absolute judicial immunity from liability in case under this section. Rucker v. Martin, W.D.Okla.1980, 505 F.Supp. 20. Civil

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42 U.S.C.A. § 1983

Rights 1376(8)

3246. ---- Executive acts distinguished, judicial acts, judicial immunity generally

Members of Hawaii Judicial Selection Commission were acting in an executive, not judicial, capacity when performing their duties of appointing state court judges and thus were not absolutely immune in action under this section. Richardson v. Koshiba, C.A.9 (Hawai'i) 1982, 693 F.2d 911. Civil Rights 1376(8)

3247. ---- Ministerial or administrative acts, judicial acts, judicial immunity generally

Alleged actions of municipal court judges, in voting to terminate court commissioner and thereby force him to retire, were administrative rather than judicial in nature, and thus judges were not entitled to absolute judicial immunity from commissioner's civil rights action, alleging that he was terminated in retaliation for exercising his First Amendment right to campaign for judicial office. Meek v. County of Riverside, C.D.Cal.1997, 982 F.Supp. 1410, affirmed in part, dismissed in part 183 F.3d 962, certiorari denied 120 S.Ct. 499, 528 U.S. 1005, 145 L.Ed.2d 386. Civil Rights 1376(10)

Judicial officer is not immune from civil action that complains of acts that are properly characterized as ministerial or administrative as opposed to judicial. Shore v. Howard, N.D.Tex.1976, 414 F.Supp. 379. Judges 36

Application of the doctrine of judicial immunity is restricted to the following areas: (1) immunity applies only when judges are faced with suits involving their judicial as opposed to their ministerial or administrative duties, and (2) immunity applies only when officials are sued for damages. Doe v. Lake County, Indiana, N.D.Ind.1975, 399 F.Supp. 553. Judges 36

3248. ---- Bad faith acts, judicial acts, judicial immunity generally

State court judge had judicial immunity for entering a temporary restraining order prohibiting father from removing children from the county, even if entry of temporary restraining order was done maliciously or in bad faith, in light of fact that father failed to support with specific facts the claim that an agreement existed between the judge and a county prosecutor that a temporary restraining order would be entered. Beard v. Udall, C.A.9 (Ariz.) 1981, 648 F.2d 1264. Judges 36

Family court litigant, bringing §§ 1983 action against family court judge and court officials, would not be allowed to amend complaint to add second family court judge alleged to have taken abusive actions in hearing; as judge would have absolute judicial immunity for actions, amendment would be futile. Hom v. Brennan, E.D.N.Y.2004, 304 F.Supp.2d 374. Federal Civil Procedure 392

3249. ---- Discretionary acts, judicial acts, judicial immunity generally

Judicial immunity of judge to damages suit under this section, though judge is accused of acting maliciously and corruptly, is limited to acts committed within judicial discretion of judge. Franklin v. Meredith, C.A.10 (Colo.) 1967, 386 F.2d 958. Civil Rights 1376(8)

Doctrine of judicial immunity protects judges from liability for damages in civil rights suits for acts committed within their judicial discretion. Padgett v. Stein, M.D.Pa.1975, 406 F.Supp. 287. See, also, Clark v. Zimmerman, D.C.Pa.1975, 394 F.Supp. 1166. Civil Rights 1376(8)

3250. ---- Erroneous acts, judicial acts, judicial immunity generally

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Judge was not entitled to qualified immunity from disgruntled litigant's claim that judge, by speaking to media and accusing litigant of "stalking" her, retaliated against litigant for engaging in protected conduct of criticizing judge and exposing alleged wrongdoing; charged conduct violated clearly established First Amendment rights of which reasonable person in judge's position would have been cognizant. Barrett v. Harrington, C.A.6 (Tenn.) 1997, 130 F.3d 246, certiorari denied 118 S.Ct. 1517, 523 U.S. 1075, 140 L.Ed.2d 670. Civil Rights 1376(8)

However erroneous municipal court judge may have been in thinking that he had the power to hold defendant in a traffic violation case to answer incriminating questions under threat of contempt, and hold him in contempt, he was nevertheless in performance of his judicial duties, and he was protected by judicial immunity and not liable for damages in civil rights action. Berg v. Cwiklinski, C.A.7 (Ill.) 1969, 416 F.2d 929. Civil Rights 1376(8)

A judge is entitled to absolute immunity from liability for damages under § 1983 for actions performed in her judicial capacity, even if the action she took was in error, was done maliciously, or was in excess of her authority. D'Amato v. Rattoballi, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 359, 2003 WL 22955858, Unreported. Civil Rights 1376(8)

3251. ---- Malicious acts, judicial acts, judicial immunity generally

In circumstances in which judge reasonably perceives threat to himself or herself arising out of judge's adjudicatory conduct, judge's response, be it a letter to prosecutor or call to marshall's office for security, is judicial act within scope of judicial immunity. Barrett v. Harrington, C.A.6 (Tenn.) 1997, 130 F.3d 246, certiorari denied 118 S.Ct. 1517, 523 U.S. 1075, 140 L.Ed.2d 670. Judges 36

State court judge was entitled to absolute immunity for its judicial acts, including acts which were malicious or in excess of his authority. Schepp v. Fremont County, Wyo., C.A.10 (Wyo.) 1990, 900 F.2d 1448. Judges 36

Signing an arrest warrant was a judicial act for which a justice of the peace is protected by absolute immunity even if justice knew affidavit to be false and acted maliciously in signing warrant. Brewer v. Blackwell, C.A.5 (La.) 1982, 692 F.2d 387. Justices Of The Peace 25

Town justice was entitled to absolute judicial immunity from any liability under § 1983 arising from his failure to provide deaf criminal defendant with sign language interpreter. DuQuin v. Kolbert, W.D.N.Y.2004, 320 F.Supp.2d 39. Civil Rights 1376(8)

Probate judge was immune from liability in suit brought by mother alleging that he and others maliciously conspired to remove minor child from her custody for purpose of treating child by means of surgery with attendant blood transfusions which conspiring parties knew violated mother's religious belief. Harley v. Oliver, W.D.Ark.1975, 404 F.Supp. 450, affirmed 539 F.2d 1143. Judges 36

Judicial immunity under this section applies even when judge is accused of acting maliciously and corruptly. Smith v. Smith, D.C.Or.1973, 396 F.Supp. 367, affirmed 519 F.2d 1376. Judges 36

Judges are immune from liability under this section for acts committed within their judicial capacity even if judge is accused of acting maliciously, and like immunity extends to other governmental officers whose duties are related to the judicial process. Cross v. Board of Sup'rs of San Mateo County, N.D.Cal.1968, 326 F.Supp. 634, affirmed 442 F.2d 362. Civil Rights 1376(8)

3252. ---- Presentence reports, judicial acts, judicial immunity generally

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42 U.S.C.A. § 1983

On prisoner's § 1983 claim that his constitutional rights were violated by the filing of inaccurate presentence report (PSR), director of county department of probation and probation officer were entitled to absolute immunity in connection with their participation in preparing and filing of PSR, as probation officer acts at specific request of court and typically serves as arm of sentencing judge. Hili v. Sciarotta, E.D.N.Y.1997, 955 F.Supp. 177, affirmed 140 F.3d 210. Civil Rights 1376(7)

3253. ---- Prosecutorial acts, judicial acts, judicial immunity generally

For judicial immunity purposes judge's prosecutorial acts in determining offense to be charged, preparing guilty plea and waiver of jury and causing plaintiff's alleged signature to be placed thereon, and in presenting charge and plea form to himself with expectation that they would be basis for unconstitutional conviction and sentence, were taken in clear absence of all jurisdiction since acting as prosecutor is not within Illinois circuit judge's jurisdiction over justiciable matters. Lopez v. Vanderwater, C.A.7 (Ill.) 1980, 620 F.2d 1229, certiorari dismissed 101 S.Ct. 601, 449 U.S. 1028, 66 L.Ed.2d 491. Civil Rights 1376(8)

3254. ---- Rights violations, judicial acts, judicial immunity generally

That judges allegedly violated litigant's legal rights did establish that judges, for purposes of judicial immunity, were not acting in judicial capacity. Aldabe v. Aldabe, C.A.9 (Cal.) 1980, 616 F.2d 1089. Civil Rights 1376(8)

State court judges were protected from civil rights suit for damages by absolute judicial immunity for their alleged actions in requiring prisoner to plead and stand trial when the mandatory probable cause hearing had not been held and when there was insufficient cause to support the charges against him and improperly ordering the information amended after trial; actions were taken in judge's judicial capacities and were within judges' jurisdiction. Nicholson v. Lenczewski, D.Conn.2005, 356 F.Supp.2d 157. Civil Rights 1376(8)

3255. ---- Place of performance of act, judicial acts, judicial immunity generally

Fact that many of Texas judge's acts in allegedly seizing control of oil company through abuse of judicial office pursuant to bribe and conspiracy to deprive oil company's owners of their property without due process of law were performed outside the courtroom did not render the acts nonjudicial in nature and did not affect the judge's immunity from liability for alleged resulting harms. Holloway v. Walker, C.A.5 (Tex.) 1985, 765 F.2d 517, rehearing denied 773 F.2d 1236, certiorari denied 106 S.Ct. 605, 474 U.S. 1037, 88 L.Ed.2d 583. Civil Rights 1376(8)

Wisconsin county judge was not entitled to judicial immunity under this section for acts allegedly perpetrated outside his courtroom and not a part of his judicial function, which acts involved allegedly repeated communications to the press and city officials over course of a year and which were critical of city police lieutenant and called for action to be taken against him, with many such communications being made while lieutenant was awaiting trial on criminal charges stemming from "John Doe" proceedings allegedly improperly instigated by the judge as part of a racial campaign to discredit the lieutenant; although damages could not be assessed against judge for the "John Doe" proceedings, he could be liable for his extrajudicial acts. Harris v. Harvey, C.A.7 (Wis.) 1979, 605 F.2d 330, certiorari denied 100 S.Ct. 1331, 445 U.S. 938, 63 L.Ed.2d 772. Civil Rights 1376(8)

3256. ---- Rulings or decisions generally, judicial acts, judicial immunity generally

State probate court judge's not taking probate court employee's recommendations on disposition of juvenile cases and barring employee's admittance to courtroom were judicial acts for which judge enjoyed judicial immunity from

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liability in action brought by employee alleging that judge made his decisions out of hostility arising from employee's engagement and subsequent marriage to judge's secretary. Cameron v. Seitz, C.A.6 (Mich.) 1994, 38 F.3d 264. Judges 36

Chief judge of United States District court was immune from liability for allegedly improper rulings in an action over which he had presided. Foster v. MacBride, C.A.9 (Cal.) 1975, 521 F.2d 1304. Judges 36

Even if district court judge, who made adverse rulings against terminated federal employee in employee's discrimination and retaliation action against employer, and judges on panel of Court of Appeals, who affirmed district judge's rulings, were not exempt from employee's § 1983 claims, judges were entitled to absolute immunity from such claims; judges were performing their judicial functions when they ruled against employee, and judges were acting within their jurisdiction. Rockefeller v. U.S. Court of Appeals Office, for Tenth Circuit Judges, D.D.C.2003, 248 F.Supp.2d 17. Civil Rights 1376(8); Civil Rights 1376(10)

Absolute judicial immunity protected judges from §§ 1983 liability to husband for permitting domestic abuse prosecution to advance and failing to act when informed of wife's alleged extortion of money from husband; the husband did not charge judges with acting outside their jurisdiction. Greene v. Wright, D.Conn.2005, 389 F.Supp.2d 416. Civil Rights 1376(8)

State court judge, who presided over criminal proceeding against defendant, was judicially immune from civil liability for alleged violations of prisoner's civil rights during course of the criminal proceedings where prisoner sought to hold the judge liable for denial of various motions and writs submitted by the prisoner during course of the criminal proceedings. Neely v. Eshelman, E.D.Pa.1981, 507 F.Supp. 78. Civil Rights 1376(8)

Judicial immunity afforded protection to federal judges who had previously participated in decisions adverse to plaintiff from liability to plaintiff for damages. Conrad v. Wangelin, E.D.Mo.1977, 441 F.Supp. 345, appeal dismissed, certiorari denied 99 S.Ct. 63, 439 U.S. 806, 58 L.Ed.2d 99. Judges 36

This section is not designed as an alternative vehicle to attack judicial rulings; and immunity of judges from civil liability arising out of exercise of their judicial functions applies in civil rights actions challenging their disposition of a particular case. Moity v. Louisiana State Bar Ass'n, E.D.La.1976, 414 F.Supp. 180, affirmed 537 F.2d 1141, rehearing denied 540 F.2d 1085. Civil Rights 1376(8)

Doctrine of judicial immunity barred civil rights action against state court judge based on decisions he made in pretrial and trial proceedings. Meyer v. Lavelle, E.D.Pa.1974, 64 F.R.D. 533. Civil Rights 1376(8)

3257. ---- Acquittals or convictions, judicial acts, judicial immunity generally

This section making liable "any person" who under color of law deprives another person of his civil rights did not abolish immunity of judges for acts within their judicial role, and therefore a local judge could not be held liable for damages under this section for an unconstitutional conviction. Pierson v. Ray, U.S.Miss.1967, 87 S.Ct. 1213, 386 U.S. 547, 18 L.Ed.2d 288.

County judge, who acquitted persons charged with trespassing for interfering with patients attempting to obtain abortions at medical center on ground that they believed their trespasses were necessary to save lives, and county judge, who acquitted such persons of such charges on ground that Code Va. 1950, § 18.2-72 permitting first trimester abortions was unconstitutional, were immune from liability under this section and § 1985 of this title in action brought by center and patient. Northern Virginia Women's Medical Center v. Balch, C.A.4 (Va.) 1980, 617 F.2d 1045. Civil Rights 1376(8)

Texas justice of peace was absolutely immune from civil rights action brought on claim that justice of peace had

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convicted civil rights plaintiff of a nonexistent crime after which plaintiff had been briefly incarcerated before obtaining release by means of a state writ of habeas corpus. Turner v. Raynes, C.A.5 (Tex.) 1980, 611 F.2d 92, rehearing denied 614 F.2d 1298, certiorari denied 101 S.Ct. 269, 449 U.S. 900, 66 L.Ed.2d 129. Civil Rights 1376(8)

3258. ---- Reversals, judicial acts, judicial immunity generally

State appellate judges who reversed judgment for plaintiff in personal injury action were immune from suit under this section. Cheramie v. Tucker, C.A.5 (La.) 1974, 493 F.2d 586, certiorari denied 95 S.Ct. 126, 419 U.S. 868, 42 L.Ed.2d 107. Civil Rights 1376(8)

3259. ---- Appointment or dismissal, judicial acts, judicial immunity generally

State court judge was acting in administrative capacity when he demoted and dismissed probation officer, and thus state court judge was not absolutely immune from damages suit under § 1983; threat of vexatious lawsuits by disgruntled ex-employees did not serve to distinguish judge from other public officials who hire and fire subordinates. Forrester v. White, U.S.Ill.1988, 108 S.Ct. 538, 484 U.S. 219, 98 L.Ed.2d 555, on remand 846 F.2d 29. Civil Rights 1376(10)

State court judge's act of firing a court reporter did not implicate judicial decision-making process so as to afford judge absolute judicial immunity from claim for damages asserted in civil rights action based on court reporter's claim that she was discharged because of her race and political affiliation. McMillan v. Svetanoff, C.A.7 (Ind.) 1986, 793 F.2d 149, certiorari denied 107 S.Ct. 574, 479 U.S. 985, 93 L.Ed.2d 577. Civil Rights 1376(10)

State court judge's failure to appoint a sufficient number of substitute court reporters to alleviate the backlog of statements of facts in his court was a "judicial act" for which he enjoyed absolute immunity; he was vested with jurisdictional authority to appoint and supervise court reporters, and the parties dealt with him as a judge when they requested that he order statements of facts prepared and when they made subsequent inquiries about the status of their appeals. Rheuark v. Shaw, C.A.5 (Tex.) 1980, 628 F.2d 297, certiorari denied 101 S.Ct. 1392, 450 U.S. 931, 67 L.Ed.2d 365. Judges 36

Probate judge was not entitled to absolute immunity in § 1983 and Age Discrimination in Employment Act action brought by discharged probate court juvenile register/volunteer coordinator. Bridges v. Senger, W.D.Mich.1990, 730 F.Supp. 1401. Civil Rights 1376(10); Civil Rights 1527

Probation officer was closely allied with exercise of court's discretion in handling of individual probation cases, had dealt with court in its capacity as judge and had aided it in performance of judicial acts; thus, in terminating probation officer's employment as family counselor in county probation department, judge acted in his official capacity as judge, and was shielded by doctrine of judicial immunity for any damages arising from termination. Blackwell v. Cook, N.D.Ind.1983, 570 F.Supp. 474. Civil Rights 1376(10)

County judge, in hiring or firing county employees, is not exercising a judicial function but, rather, is performing administrative and ministerial duties and thus cannot claim judicial immunity with respect to a civil rights action arising out of those activities. Clark v. Campbell, W.D.Ark.1981, 514 F.Supp. 1300. Civil Rights 1376(10)

3260. ---- Assistance of counsel, judicial acts, judicial immunity generally

Civil rights claim against judge based on alleged violation of right of self-representation was barred by absolute judicial immunity. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(8)

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42 U.S.C.A. § 1983

Judges were absolutely immune from § 1983 claim based on their denial of inmate's request for pro se appearance; denial of that request was routine judicial act that fell within confines of judges' adjudicative role, and jurisdiction. Concepcion v. Cintron, D.Puerto Rico 1995, 905 F.Supp. 57. Civil Rights 1376(8)

Federal and state judges against whom plaintiffs claimed damages for denial of alleged right to have unlicensed lay counsel assist them in court proceedings were immune from suit for acts in their judicial capacity. Turner v. American Bar Ass'n, N.D.Tex.1975, 407 F.Supp. 451, affirmed 539 F.2d 715, affirmed 542 F.2d 56. Judges 36

Private counsel retained to represent attorney in disciplinary proceeding was not state actor, and thus could not be held liable to attorney under § 1983. Brooks v. New York State Supreme Court, Appellate Div. First Dept., E.D.N.Y.2002, 2002 WL 31528632, Unreported, affirmed 76 Fed.Appx. 356, 2003 WL 21961174. Civil Rights 1326(10)

3261. ---- Attorney appearances before judge, judicial acts, judicial immunity generally

Judge's alleged actions in directing police officers to bring before judge attorney who was in courthouse were taken in judge's 'judicial capacity' and, thus, judge was judicially immune from section 1983 suit, even though judge allegedly directed officers to carry out order with excessive force. Mireles v. Waco, U.S.Cal.1991, 112 S.Ct. 286, 502 U.S. 9, 116 L.Ed.2d 9, on remand 962 F.2d 865. Civil Rights 1376(8)

3262. ---- Attorney discipline, judicial acts, judicial immunity generally

Supreme Court of Ohio and its justices were immune from suit for money damages brought by attorneys whom Supreme Court sought to discipline. Berger v. Cuyahoga County Bar Ass'n, C.A.6 (Ohio) 1993, 983 F.2d 718, rehearing denied, certiorari denied 113 S.Ct. 2416, 508 U.S. 940, 124 L.Ed.2d 639. Judges 36

State court and disciplinary committee were absolutely immune from § 1983 liability for their conduct in disciplinary proceeding, absent allegation that any non-judicial actions were taken, or that there was complete absence of all jurisdiction. Brooks v. New York State Supreme Court, Appellate Div. First Dept., E.D.N.Y.2002, 2002 WL 31528632, Unreported, affirmed 76 Fed.Appx. 356, 2003 WL 21961174. Civil Rights 1376(8)

3263. ---- Arrests generally, judicial acts, judicial immunity generally

Judge's actions in stopping motorist on highway, using police officer to summon motorist unofficially, and charging motorist with various crimes were not judicial acts for purposes of claiming absolute judicial immunity. Malina v. Gonzales, C.A.5 (La.) 1993, 994 F.2d 1121, rehearing denied 1 F.3d 304, on remand 1993 WL 534163. Judges 36

Absolute quasi-judicial immunity did not apply to shield executive secretary of state racing commission from suit for violations of veterinarian's free association rights that allegedly occurred when executive secretary had veterinarian who was subject of commission's disciplinary proceedings arrested and forcibly removed from public areas of racetracks. VanHorn v. Nebraska State Racing Com'n, D.Neb.2004, 304 F.Supp.2d 1151. Civil Rights 1376(3); Civil Rights 1376(8)

3264. ---- Arrest warrants, judicial acts, judicial immunity generally

Issuance of arrest warrant was "judicial act," for which state circuit judge was absolutely immune under § 1983, unless judge acted in complete absence of all jurisdiction in issuing warrant. Ireland v. Tunis, C.A.6 (Mich.) 1997, 113 F.3d 1435, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 560, 522 U.S. 996, 139 L.Ed.2d 401. Civil Rights 1376(8)

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Where state district judge learned that plaintiff had been using firearms two days after he had suspended plaintiff's sentence on a charge of aggravated assault for similar conduct and also learned that there was some question as to plaintiff's mental condition, judge was performing judicial function in issuing arrest warrant for plaintiff and conducting commitment hearing and was thus immune from liability in civil rights action to recover damages arising from arrest, incarceration and commitment. Watson v. Interstate Fire & Cas. Co., C.A.5 (La.) 1980, 611 F.2d 120. Civil Rights 1376(8)

Where Louisiana justice of the peace thought that buyer's conduct in stopping payment on check for purchase of vehicle could give rise to criminal theft charge, and his statements that stop payment disputes were exclusively civil matters were really expressions of doubt as to eventual prosecution by district attorney on charges involving stop payment orders, his issuance of arrest warrant upon seller's insistence was in his capacity as justice of the peace and consequently he was entitled to protection of judicial immunity in buyer's subsequent civil rights action. Keeton v. Guedry, C.A.5 (La.) 1976, 544 F.2d 199. Civil Rights 1376(8)

Where speeding tickets were issued to motorist in geographical area over which judge presided, he was within his jurisdiction to issue warrant for her arrest when she failed to appear to answer tickets and to arraign her, and he was thus entitled to immunity. Ippolito v. Meisel, S.D.N.Y.1997, 958 F.Supp. 155. Civil Rights 1376(8)

Judge acted outside scope of his judicial authority by permitting use of his rubber stamp signature on mental health warrant outside his presence, and was not protected by judicial immunity in subsequent civil rights action brought by person incarcerated on basis of the warrant. Daniels v. Stovall, S.D.Tex.1987, 660 F.Supp. 301. Civil Rights 1376(8)

Where defendant judges were acting in their judicial capacities and within the scope of their authority when issuing a warrant for the arrest of plaintiff and upon the trial of plaintiff for the criminal offense charged, the judges were immune from civil liability to the plaintiff under this section. Crawford v. Lydick, W.D.Mich.1959, 179 F.Supp. 211, 83 Ohio Law Abs. 410, 11 O.O.2d 274, affirmed 280 F.2d 426, certiorari denied 81 S.Ct. 93, 364 U.S. 849, 5 L.Ed.2d 72. Civil Rights 1376(8)

West Virginia justice of the peace who issued warrant for arrest of party on charge of issuing a check with insufficient funds in bank to pay same was acting judicially under authority of Code 61-3-39, and an action would not lie against him for violation of party's civil rights. Williamson v. Waugh, S.D.W.Va.1958, 160 F.Supp. 72. Justices Of The Peace 25

State court judge had absolute immunity from liability arising from his conduct in signing and approving alias arrest warrant and bond forfeiture order, in arrestee's §§ 1983 suit alleging that the judge conspired with state prosecutor to have him arrested on false charges; arrestee's claims against the judge arose out of actions that he took in his judicial capacity, and as a result, the judge was entitled to absolute immunity unless he acted in the absence of all jurisdiction, which the arrestee failed to establish. Lyghtle v. Breitenbach, C.A.10 (Kan.) 2005, 139 Fed.Appx. 17, 2005 WL 1178090, Unreported. Conspiracy 13

Doctrine of judicial immunity barred § 1983 action asserted against judge based on his actions in issuing an arrest warrant. Denoyer v. Dobberpuhl, C.A.8 (S.D.) 2000, 208 F.3d 217, Unreported. Civil Rights 1376(8)

3265. ---- Bail or bond, judicial acts, judicial immunity generally

Justice of the peace, who allegedly interfered with plaintiff's right to bail prior to trial, was clothed with immunity from suit for damages under this section. Grundstrom v. Darnell, C.A.5 (Tex.) 1976, 531 F.2d 272. Civil Rights 1376(8)

Officer in the Connecticut State Police was protected by absolute judicial immunity from a personal-capacity suit

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for monetary damages under § 1983 for actions related to his performing the bail setting function assigned to police officers under a statute, even though the officer set a cash only bond and sought advice from a state's attorney prior to setting bail; the governing statute did not preclude officers from setting cash only bonds, and although the statute did not contemplate or require an officer to contact a state's attorney prior to a bail commissioner's determination, nowhere did it preclude an officer from doing so. Sanchez v. Doyle, D.Conn.2003, 254 F.Supp.2d 266. Civil Rights 1376(8)

Police officers' roles in setting arrestee's bail were functionally comparable to that of judge, and thus officers were entitled to absolute immunity from liability under § 1983 in arrestee's action alleging violation of Eighth Amendment's excessive bail clause, even if officer did not consider individualized circumstances, where officers were required under state statute to attempt to conduct interview with arrestee to obtain information relevant to terms and conditions of his release from custody before setting bail, officers' determination was not reviewed after arrestee posted bail, and police department retained discretion to advise state's attorney of its objection to bail commissioner's redetermination. Clynch v. Chapman, D.Conn.2003, 285 F.Supp.2d 213. Civil Rights 1376(6); Civil Rights 1376(8)

State magistrate judge did not act in clear absence of jurisdiction by setting bail for intravenous drug user, after user was arrested for criminally possessing hypodermic instrument, in § 1983 action under Fourth Amendment, even though arrest was later determined to be false on basis that user was enrolled in needle exchange program, where judge was informed that user was arrested outside of program area; judge was entitled to absolute immunity because he was acting in judicial capacity and there was not clear absence of jurisdiction. L.B. v. Town of Chester, S.D.N.Y.2002, 232 F.Supp.2d 227. Civil Rights 1376(8)

Judge who set $40,000 bond on defendant charged with assaulting his wife was acting within her jurisdictional authority when she set bond and was therefore absolutely immune from liability for damages under § 1983. Miner v. Baker, E.D.Mo.1986, 638 F.Supp. 239. Civil Rights 1376(8)

As to actions of justice of the peace in issuing arrest warrants and fixing amount of bail, justice of the peace was immune from liability for alleged deprivation of constitutional rights under color of law. Krueger v. Miller, E.D.Tenn.1977, 489 F.Supp. 321, affirmed 617 F.2d 603. Civil Rights 1376(8)

Justice of the peace was immune from suit for his actions in setting bail and making probable cause determination at preliminary hearing. Fox v. Castle, M.D.Pa.1977, 441 F.Supp. 411. Justices Of The Peace 25

Where it was claimed that judge had ordered plaintiff's bail money to be given to some unauthorized person or organization but judge's action was not clearly illegal under Illinois law, S.H.A.Ill. Ch. 38, § 1-1 et seq., his action was within his judicial function and he enjoyed judicial immunity. Barksdale v. Ryan, N.D.Ill.1974, 398 F.Supp. 700, affirmed 511 F.2d 1405, certiorari denied 95 S.Ct. 2637, 422 U.S. 1011, 45 L.Ed.2d 676. Judges 36

If, as alleged, police magistrate who allegedly issued warrant charging employer with violation of municipal ordinance had directed that employee be arrested and, after his arrest, had used abusive language toward him, denied him opportunity to consult counsel and compelled him to post bond to obtain his release, doctrine of judicial immunity would not preclude findings of civil liability. Yates v. Village of Hoffman Estates, Ill., N.D.Ill.1962, 209 F.Supp. 757. Judges 36

3266. ---- Bar admissions and examinations, judicial acts, judicial immunity generally

Actions taken by State Supreme Court, and Committee on Character and Fitness and its members, in denying application for admission to state bar, were "judicial acts" to which absolute immunity attached. Sparks v. Character and Fitness Committee of Kentucky, C.A.6 (Ky.) 1988, 859 F.2d 428, certiorari denied 109 S.Ct. 1120, 489 U.S. 1011, 103 L.Ed.2d 183. Judges 36

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42 U.S.C.A. § 1983

Justices of State Supreme Court and members of State Board of Bar Examiners were entitled to immunity for actions they could not have known would be violation of bar examinees' constitutional rights. Garcia v. Colorado State Bd. of Law Examiners, C.A.10 (Colo.) 1985, 760 F.2d 239, certiorari denied 106 S.Ct. 163, 474 U.S. 856, 88 L.Ed.2d 135. Civil Rights 1376(8)

Members of committee on character and fitness for admission to the New York state bar in the First Department of the New York Supreme Court, Appellate Division were entitled to absolute judicial immunity from §§ 1983 claims brought against them by bar applicant arising out of hearing on application; Appellate Division's designation of authority required members of committee to act in a quasi-prosecutorial, and an adjudicatory, or quasi-judicial, capacity. Roe v. Johnson, S.D.N.Y.2004, 334 F.Supp.2d 415. Civil Rights 1376(8)

By reason of judicial immunity, plaintiff could not recover damages from justices of Nevada Supreme Court for refusal to approve admission to bar. Louis v. Supreme Court of Nevada, D.C.Nev.1980, 490 F.Supp. 1174. Judges 36

3267. ---- Chambers conferences, judicial acts, judicial immunity generally

Civil action for deprivation of rights that was instituted against state judge on alleged ground that judge had bailiff forcibly return plaintiff to judge's chambers and that judge addressed plaintiff in offensive and slanderous language could not be maintained where meeting and alleged slanderous utterances were addressed to subject of improperly influencing juries and judge's impression that plaintiff was involved, so that judge was acting within his authority to protect sanctity and dignity of courtroom proceedings. Mullins v. Oakley, C.A.4 (W.Va.) 1971, 437 F.2d 1217. Civil Rights 1376(8)

3268. ---- Child custody, judicial acts, judicial immunity generally

Juvenile officers and social workers who took temporary protective custody of minor were not entitled to judicial immunity in § 1983 action with respect to claims based upon their alleged failure to investigate, their detaining minor, and claimed inordinate delay in filing state court proceedings; such alleged actions were not functionally comparable to those of judges. Whisman Through Whisman v. Rinehart, C.A.8 (Mo.) 1997, 119 F.3d 1303. Civil Rights 1376(8)

Judges and other public officials enjoy judicial immunity to federal civil rights action claim for money damages in action arising out of custody dispute. DiRuggiero v. Rodgers, C.A.3 (N.J.) 1984, 743 F.2d 1009. Civil Rights 1376(1); Civil Rights 1376(8)

Judicial and court employees executing judicial orders were immune, under § 1985 of this title and this section, from liability for acts which were committed within their judicial discretion, relating to commitment of plaintiffs' daughter to a private orphanage. Henig v. Odorioso, C.A.3 (Pa.) 1967, 385 F.2d 491, certiorari denied 88 S.Ct. 1269, 390 U.S. 1016, 20 L.Ed.2d 166, rehearing denied 88 S.Ct. 1814, 391 U.S. 929, 20 L.Ed.2d 671. Civil Rights 1376(8)

Judges were absolutely immune from civil rights liability based on allegations that they signed orders of detention for children without giving parents notice, or opportunity for hearing, and that they filed orders terminating jurisdiction the cases without providing parents notice or opportunity for a hearing. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(8)

Assuming that state trial judge acted pursuant to state law when he required father but not mother to file affidavit during custody proceeding, father could not challenge constitutionality of such law by seeking injunctive relief against the state judge in civil rights action; civil rights statute does not provide relief against judges acting purely in their judicial capacity. Johnson v. State of N.J., D.N.J.1994, 869 F.Supp. 289, reconsideration denied 1995 WL

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42 U.S.C.A. § 1983

46367. Civil Rights 1376(8); Civil Rights 1456

Michigan judge was absolutely immune from damage liability under federal civil rights statute, in action alleging that judge refused to give full faith and credit to Kansas court's order that minor children's natural father have no contact with children; both Kansas and Michigan were in disagreement over which state should determine custody of minor children, thus both states had acted. Sipka v. Soet, D.Kan.1991, 761 F.Supp. 761, appeal dismissed 940 F.2d 1539. Civil Rights 1376(8)

3269. ---- Child protection, judicial acts, judicial immunity generally

Social workers and police officers whose actions in removing children from their parents are not integral to judicial process are entitled only to qualified immunity in § 1983 action, and not to absolute immunity. Malik v. Arapahoe County Dept. of Social Services, D.Colo.1997, 987 F.Supp. 868, affirmed in part, dismissed in part 191 F.3d 1306. Civil Rights 1376(1); Civil Rights 1376(6)

In presiding over proceeding to determine whether child was in need of protection or services, judge was acting in his official capacity and was protected by absolute judicial immunity from mother's § 1983 claim that judge and other defendants were depriving her of her right to enroll child in private school. Mason v. Waukesha County, E.D.Wis.1994, 855 F.Supp. 282, affirmed 48 F.3d 1222. Civil Rights 1376(8)

Plaintiff's civil rights claims against state Supreme Court judge, state family court judge, state district judge, county, Department of Social Services, Office of Child Protective Services, county attorney, and county Jewish Community Services would be dismissed; doctrine of absolute immunity shields judges from liability related to their judicial or adjudicatory acts, prosecutors from liability related to their prosecutorial functions, and witnesses from liability related to their testimony in court proceedings. Levine v. County of Westchester, S.D.N.Y.1993, 828 F.Supp. 238, affirmed 22 F.3d 1090. Civil Rights 1375; Civil Rights 1376(8); Civil Rights 1376(9)

County social workers had absolute immunity from suit by boyfriend of children's mother, challenging removal of children from household; when workers investigated situation and assisted in preparation of legal case leading to removal, they were acting in protected "quasi-prosecutorial" capacity. Wittman v. California Dept. of Social Services, N.D.Cal.2002, 2002 WL 31398711, Unreported, affirmed in part, reversed in part and remanded 108 Fed.Appx. 548, 2004 WL 1987357. Counties 93

3270. ---- Child support, judicial acts, judicial immunity generally

Judges who ruled against father in proceedings arising out of his failure to pay child support, who denied father's appeal of decision against recusal, or who denied further appeal were entitled to absolute immunity in father's § 1983 action. Font v. Dapena Yordan, D.Puerto Rico 1991, 763 F.Supp. 680, affirmed 946 F.2d 880. Civil Rights 1376(8)

State court judge and assistant corporation counsel for city were both immune from liability in action under this section charging that they violated plaintiffs' privacy rights by requiring them to produce joint income tax returns in connection with proceeding to enforce judgment for child support. O'Sullivan v. Saperston, S.D.N.Y.1984, 587 F.Supp. 1041. Civil Rights 1376(1); Civil Rights 1376(8)

3271. ---- Comments of judge, judicial acts, judicial immunity generally

Public officials are entitled to qualified immunity from liability under §§ 1983 if their actions violate clearly established statutory or constitutional rights then known to reasonable officer; under two-step analysis, court must first assess whether state actor's conduct violated a constitutional right when viewed in light most favorable to party

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asserting injury and, if so, must determine whether right violated was clearly established. Baird v. Board of Educ. for Warren Community Unit School Dist. No. 205, C.A.7 (Ill.) 2004, 389 F.3d 685, rehearing and suggestion for rehearing en banc denied, certiorari denied 126 S.Ct. 332, 163 L.Ed.2d 45. Civil Rights 1376(1); Civil Rights 1376(2)

Judge of Mississippi State Justice Court was immune from damages for issuing arrest warrant and requiring plaintiff to pay court costs for himself and others involved in the events leading up to his court appearance and for allegedly verbally abusing and humiliating plaintiff; however, plaintiff's claim that judge threatened to abuse him physically charged conduct that was not protected by judicial immunity but did not entitle plaintiff to any relief under this section since plaintiff, who did not allege that he was placed in fear of imminent harm or that judge took any actions indicating an immediate intent to carry out his alleged threats, failed to allege an injury which rose to minimum level required to invoke federal jurisdiction. Ammons v. Baldwin, C.A.5 (Miss.) 1983, 705 F.2d 1445, certiorari denied 104 S.Ct. 999, 465 U.S. 1006, 79 L.Ed.2d 232. Civil Rights 1376(8)

Judge's comment, when sentencing defendant, that he regretted that he was legally barred from imposing the death sentence, was within the scope of judicial immunity enjoyed by the judge and could not serve as basis for civil rights suit against judge. Careaga v. James, C.A.8 (Mo.) 1980, 616 F.2d 1062, certiorari denied 101 S.Ct. 140, 449 U.S. 851, 66 L.Ed.2d 62. Civil Rights 1376(8)

Judicial immunity did not bar attorney's claims for prospective relief against judge who presided over state court case brought by attorney, including claims seeking declaration that judge violated attorney's constitutional rights and that state court dismissal of attorney's actions was invalid, and injunction preventing judge from acting further in state case, or in the very least, from continuing to use "vicious" language and to challenge judge's refusal to allow him representation. Davidson v. Garry, E.D.N.Y.1996, 956 F.Supp. 265, affirmed 112 F.3d 503. Civil Rights 1376(8)

3272. ---- Contempt, judicial acts, judicial immunity generally

State judge was absolutely immune from any liability for holding clerk of court and deputy clerk in contempt for violating judge's administrative order against performing any duties connected with operation of courts and interfering with deputy clerks' performance of their duties, even if judge did not have contempt power as administrative judge, and even though judge was not in chambers and clerks were not involved in adversary proceeding; imposition of contempt was "judicial act"; and judge had colorable authority to hold clerks in contempt. Crooks v. Maynard, C.A.9 (Idaho) 1990, 913 F.2d 699. Judges 36

Issuance of show cause order and citing plaintiff for contempt following letter she sent judge intimating that he had dealt harshly with her sons in criminal proceedings before him because they could not afford to bribe him were "judicial acts" for purposes of judicial immunity, and therefore judge was immune from liability in plaintiff's suit under 42 U.S.C.A. § 1983. Adams v. McIlhany, C.A.5 (Tex.) 1985, 764 F.2d 294, rehearing denied 770 F.2d 164, certiorari denied 106 S.Ct. 883, 474 U.S. 1101, 88 L.Ed.2d 918. Civil Rights 1376(8)

Although county judge's asking plaintiff to raise his right hand to be sworn in and subsequently finding plaintiff in contempt occurred in judge's chambers, judge's ordering plaintiff apprehended, holding contempt proceeding and ordering plaintiff incarcerated were not "judicial acts" for purpose of immunity under this section since controversy that led to incarceration did not center around any matter pending before the judge but around domestic problems of plaintiff's former wife, who worked in courthouse and who plaintiff was attempting to locate and problems, including judge's apparently mistaken belief that divorce filed contained outstanding contempt violation, were brought to judge's attention in a social forum and plaintiff did not visit the judge in his official capacity. Harper v. Merckle, C.A.5 (Fla.) 1981, 638 F.2d 848, certiorari denied 102 S.Ct. 93, 454 U.S. 816, 70 L.Ed.2d 85. Judges 36

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42 U.S.C.A. § 1983

Judicial immunity protected judges and justices of the peace from liability under this section in action alleging that their participation in civil contempt proceeding resulted in plaintiff's unlawful commitment to a state hospital. Slotnick v. Garfinkle, C.A.1 (Mass.) 1980, 632 F.2d 163. Civil Rights 1376(8)

Even assuming that defense of former jeopardy was raised in Iowa misdemeanor prosecution and that the Iowa magistrate erred in refusing to dismiss the charges or to direct a verdict of acquittal, the magistrate was not acting outside his jurisdiction, for purposes of judicial immunity, when he thereafter held a witness in contempt for refusing to testify at the misdemeanor trial. McClain v. Brown, C.A.8 (Iowa) 1978, 587 F.2d 389. Judges 36

Doctrine of judicial immunity protects judge from civil suit for acts performed in course of his official duties, and civil rights suit prejudicated upon order entered in contempt proceeding in divorce case was properly dismissed as to judge who entered order. Glasspoole v. Albertson, C.A.8 (Minn.) 1974, 491 F.2d 1090. Civil Rights 1376(8)

County judge who convened court of inquiry to inquire into actions of hospital administrator, who refused to relinquish control of county hospital following termination of his position by county fiscal court, and punished administrator for contemptuous conduct committed in his presence was immune from civil action under this section and § 1985 of this title. Ray v. Huddleston, C.A.6 (Ky.) 1964, 327 F.2d 61. Civil Rights 1376(8)

Judge was entitled to judicial immunity from money damages in relation to issuing a contempt order and sentencing plaintiff pursuant to that order, regardless of alleged procedural irregularities, where the judge was a judge of a court of general jurisdiction and was empowered to punish for contempt. Cintron Rodriguez v. Pagan Nieves, D.Puerto Rico 1990, 736 F.Supp. 411. Judges 36

State magistrate judge possessed jurisdiction to issue a contempt order against court interpreter who refused to return to courtroom and perform interpretive services for a Spanish-speaking client, at a proceeding over which magistrate was presiding before counsel in open court, for purposes of defense of absolute immunity in interpreter's §§ 1983 action. Giron v. Chaparro, C.A.10 (N.M.) 2006, 167 Fed.Appx. 716, 2006 WL 165015, Unreported. Civil Rights 1376(8)

Judicial immunity barred former attorney from bringing civil rights action against state court justice for initiating criminal contempt proceedings against him, since judge initiated contempt proceedings after attorney failed to comply with discovery rules and orders regarding filing of frivolous motions, and New York Judiciary Law provided that State Supreme Court justice could institute criminal contempt proceedings against party who disobeyed its mandate. Abrahams v. DiBlasi, S.D.N.Y.2003, 2003 WL 1846305, Unreported. Civil Rights 1376(8)

3273. ---- Detention center supervision, judicial acts, judicial immunity generally

In civil rights action challenging the adequacy of juvenile detention center and the "treatment" which juveniles detained there purportedly receive, the chief judge and a juvenile judge of the Lake County Superior Court, both of whom were named defendants, did not have judicial immunity, since the suit was directed solely at their administrative and ministerial duties and only requested such equitable relief as necessary to safeguard plaintiffs' constitutional rights. Doe v. Lake County, Indiana, N.D.Ind.1975, 399 F.Supp. 553. Civil Rights 1376(8)

3274. ---- Dismissal of claims, judicial acts, judicial immunity generally

Federal judges, who were acting in their official capacities as federal government officials when they adversely ruled on terminated federal employee's discrimination and retaliation action against employer, were exempt from § 1983 claims, arising from their adverse rulings. Rockefeller v. U.S. Court of Appeals Office, for Tenth Circuit Judges, D.D.C.2003, 248 F.Supp.2d 17. Civil Rights 1363

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42 U.S.C.A. § 1983

Arrestee could not continue to pursue claims against state court judge, in amended pro se complaint alleging constitutional violations under §§ 1983, after his original pro se complaint seeking monetary damages was dismissed, where his allegations in amended complaint were based on same acts specified in original complaint, all claims in original complaint were clearly disposed of by federal court judge's earlier determination that they were barred by absolute judicial immunity, and federal court judge did not grant arrestee leave to amend his claims against state court judge. Velez v. Hayes, S.D.N.Y.2004, 346 F.Supp.2d 557. Federal Civil Procedure 1837.1

Illinois Court of Claims judges had judicial immunity from § 1983 claims arising from their dismissal of inmate's claim to recover money for property allegedly lost by State Department of Corrections, despite judges' lack of membership in judicial branch of state government; dismissal was act of judicial nature, and claimants in Court of Claims were accorded most of essential procedural protections accorded a plaintiff in court of law, and had right to appeal to court of law in exceptional circumstances. Williams v. Rath, N.D.Ill.1991, 756 F.Supp. 1103. Civil Rights 1376(8)

Absolute judicial immunity barred civil rights action against federal district judge who dismissed inmate's prior action; if inmate had felt seriously wronged by dismissal of his prior action, he should have taken and perfected appeal. Blake v. Costantino, E.D.N.Y.1989, 710 F.Supp. 450. Civil Rights 1376(8)

Defendants enjoyed absolute immunity in their judicial capacities for their actions in dismissing a complaint filed by plaintiff and in making certain statements in course of a settlement of case. Peragine v. Maimone, S.D.N.Y.1980, 504 F.Supp. 136, affirmed 742 F.2d 1436. Civil Rights 1376(8)

3275. ---- Evidence and witnesses, judicial acts, judicial immunity generally

State-court judge's alleged acts during hearing on motion for summary judgment, challenged under §§1983 as violative of plaintiff's due process rights, and consisting of "conspiring to prevent" subpoenaed witnesses from testifying and scheduling hearing at end of day's docket to insure an empty courtroom, were judicial actions for which judge was entitled to absolute immunity; scheduling of pretrial proceedings and decision whether to exclude witnesses' testimony were both within judge's discretion. Tatum v. Giarruso, E.D.La.2004, 347 F.Supp.2d 324. Civil Rights 1376(8)

Justice of the peace who presided over tax sale purchasers' forcible entry and detainer action was absolutely immune from liability to taxpayers under § 1983 for his decision to admit or exclude certain evidence and testimony, entry of judgment in favor of tax sale purchasers, and requiring taxpayers to post substantial appeal bond. Hirsch v. Copenhaver, D.Wyo.1993, 839 F.Supp. 1524, affirmed 46 F.3d 1151. Civil Rights 1376(8)

State judge was absolutely immune from civil rights action where the judge's actions complained of were evidentiary rulings and orders granting restitution or fines, and thus were within the scope of judicial authority, despite contention that judge's actions benefited parties who had initiated complaint, charging plaintiff with being an unlicensed contractor, rather than benefitting the state. Bennett v. Batchik, E.D.Mich.1990, 743 F.Supp. 1245, affirmed 936 F.2d 572. Civil Rights 1376(8)

3276. ---- Ex parte communications, judicial acts, judicial immunity generally

Because Indiana circuit court judge, in approving mother's ex parte petition to have her "somewhat retarded" 15-year-old daughter sterilized, acted in his capacity as circuit court judge, and performed type of act normally performed only by judges, lack of formality with which he proceeded did not render his action "nonjudicial" for purposes of depriving him of absolute immunity from damages liability. Stump v. Sparkman, U.S.Ind.1978, 98 S.Ct. 1099, 435 U.S. 349, 55 L.Ed.2d 331, rehearing denied 98 S.Ct. 2862, 436 U.S. 951, 56 L.Ed.2d 795, on remand 601 F.2d 261. Judges 36

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42 U.S.C.A. § 1983

3277. ---- Extradition, judicial acts, judicial immunity generally

Georgia judges who allegedly participated in extraditing Florida prisoner to Florida were immune from liability for damages for acts in the performance of judicial duty. Collins v. Moore, C.A.5 (Ga.) 1971, 441 F.2d 550. Judges 36

3278. ---- Forfeiture, judicial acts, judicial immunity generally

Municipal court judge was acting in judicial capacity, entitling him to absolute judicial immunity from suit alleging deprivation of federally protected rights, when judge ruled that claimant had violated ordinances and then imposed civil forfeitures. Haas v. Wisconsin, E.D.Wis.2003, 241 F.Supp.2d 922, affirmed 109 Fed.Appx. 107, 2004 WL 1799360, certiorari denied 125 S.Ct. 908, 543 U.S. 1053, 160 L.Ed.2d 776. Civil Rights 1376(8)

3279. ---- Garnishments, judicial acts, judicial immunity generally

State court judge who had played no meaningful role in initiation or execution of garnishment procedure, which was under attack, until defendant in state court action sought dissolution of the writ of garnishment in the state court and who asserted judicial immunity as a defense was entitled to prevail against state court defendant who brought civil rights action against the judge and others challenging constitutionality of state garnishment procedure. Douglas Research & Chemical, Inc. v. Solomon, E.D.Mich.1975, 388 F.Supp. 433. Civil Rights 1376(8)

Justice of the peace, being protected by judicial immunity rule, was not liable under this section for damages resulting from issuance of writ of garnishment before judgment, regardless of whether writ was issued without compliance with state law or whether alleged debtor was denied due process of law. Thompson v. Baker, W.D.Ark.1955, 133 F.Supp. 247. Civil Rights 1376(8)

3280. ---- Indictment or information, judicial acts, judicial immunity generally

Two state judges who refused to act on pending indictments were cloaked with judicial immunity and could not be subjected to a demand for damages for judicial action or inaction whether the right to damages was asserted to arise under this section or under any other theory of liability. Carter v. Duggan, C.A.5 (Tex.) 1972, 455 F.2d 1156. Civil Rights 1376(8); Judges 36

3281. ---- Injunctions, judicial acts, judicial immunity generally

State court judge was unqualifiedly immune from suit for damages occasioned by his judicial act of entering a temporary injunction, allegedly induced by a bribe given by a party to the suit as part of a conspiracy. Sparks v. Duval County Ranch Co., Inc., C.A.5 (Tex.) 1979, 604 F.2d 976, certiorari granted 100 S.Ct. 1336, 445 U.S. 942, 63 L.Ed.2d 775, certiorari denied 100 S.Ct. 1339, 445 U.S. 943, 63 L.Ed.2d 777, affirmed 101 S.Ct. 183, 449 U.S. 24, 66 L.Ed.2d 185, certiorari denied 101 S.Ct. 588, 449 U.S. 1021, 66 L.Ed.2d 483. Judges 36

Where federal judge acted within his judicial discretion in denying request for injunctive relief against tax sale of property for failure to pay real estate taxes, federal judge was immune from liability in civil rights action brought by taxpayer. McCann v. Silva, D.C.N.H.1978, 455 F.Supp. 540. Civil Rights 1376(8)

3282. ---- Guardianship, judicial acts, judicial immunity generally

Judge in Puerto Rico trial court enjoyed absolute judicial immunity from civil rights action based upon acts taken during guardianship proceedings, in failing to stop or reverse supposed fiduciary breaches by legal guardian, in sanctioning allegedly unethical arrangement between appointed guardian and guardian's appointed legal representative, and in reprimanding party challenging guardianship; challenged acts were judicial in nature.

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42 U.S.C.A. § 1983

Perkins-Leverock v. Ramirez-Ramirez, D.Puerto Rico 1991, 762 F.Supp. 19. Civil Rights 1376(8)

3283. ---- Judgments, judicial acts, judicial immunity generally

Defendant justice of peace who issued judgment removing tenant for failure to pay rent, sheriff who evicted tenant and their employees were immune from suit under this section by tenant as judicial officers. People of State of Miss. ex rel. Giles v. Thomas, C.A.5 (Miss.) 1972, 464 F.2d 156. Civil Rights 1376(8)

Illinois Supreme Court judges and Illinois circuit court judges who were merely performing their official duties were immune from civil rights action to enjoin enforcement of Supreme Court final judgment remanding action for damages to circuit court with instructions to dismiss. Adkins v. Underwood, N.D.Ill.1974, 370 F.Supp. 510, affirmed 520 F.2d 890, certiorari denied 96 S.Ct. 452, 423 U.S. 1017, 46 L.Ed.2d 389. Civil Rights 1376(8)

Alleged failure of associate justice of Superior Court of Massachusetts to enter defaults against a defendant and to render judgments for plaintiff involved official acts of judge in litigation pending in that court and he was not liable to answer to plaintiff for alleged violation of plaintiff's civil rights under U.S.C.A.Const. Amend. 14. Rudnicki v. Sullivan, D.C.Mass.1960, 189 F.Supp. 714. Civil Rights 1376(8); Judges 36

Absolute immunity protected state court trial judge from liability under § 1983 in suit brought by plaintiff in state suit asserting that judge failed to comply with technical requirements of Illinois procedural law in voiding judgment obtained by plaintiff. In re Chapman, Bkrtcy.N.D.Ill.1993, 154 B.R. 258, affirmed 159 B.R. 812, affirmed 46 F.3d 1133, rehearing denied, certiorari denied 116 S.Ct. 153, 516 U.S. 853, 133 L.Ed.2d 97. Civil Rights 1376(8)

3284. ---- Jury matters, judicial acts, judicial immunity generally

Doctrine of judicial immunity barred juror from recovering under civil rights statute for state court judge's in-court conduct in singling juror out in open court, after jury had returned its verdict in murder trial, as only juror to vote against death penalty. Emory v. Peeler, C.A.11 (Ga.) 1985, 756 F.2d 1547. Civil Rights 1376(8)

Missouri circuit court judge who presided over black inmate's criminal trial was immune from liability in inmate's subsequent civil rights suit in which it was alleged that judge, by permitting inmate to be absent during jury impanelment and refusing to dismiss his counsel and move the trial, was involved in a conspiracy with prosecutor and court-appointed defense counsel to impanel an all-white jury. White v. Bloom, C.A.8 (Mo.) 1980, 621 F.2d 276, certiorari denied 101 S.Ct. 533, 449 U.S. 995, 66 L.Ed.2d 292, certiorari denied 101 S.Ct. 882, 449 U.S. 1089, 66 L.Ed.2d 816. Civil Rights 1376(8)

Judges were immune from suits charging that they conspired to adopt illegal local rules relating to voir dire of jurors by court and providing for decisions on motions to be made without hearing and charging that rulings violated § 242 of Title 18 relating to civil rights. Hanson v. Goodwin, W.D.Wash.1977, 432 F.Supp. 853, appeal dismissed 566 F.2d 1181. Judges 36

3285. ---- Juvenile delinquents, judicial acts, judicial immunity generally

Juvenile officers and social workers who took temporary protective custody of minor were not entitled to absolute quasi-prosecutorial immunity in § 1983 action with respect to claims based upon their alleged failure to investigate, their detaining minor, and claimed inordinate delay in filing state court proceedings; alleged actions did not aid in presentation of case to juvenile court, but rather, they were intentionally designed to avoid or unreasonably delay judicial process. Whisman Through Whisman v. Rinehart, C.A.8 (Mo.) 1997, 119 F.3d 1303. Civil Rights 1376(1)

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Judge of family division of court of common pleas was immune from liability with respect to civil rights complaint which alleged that judge and director of youth study center actively engaged in efforts to conceal true facts surrounding alleged improper treatment of juvenile confined at the center, that judge had refused to investigate openly, impartially and thoroughly the charges, and that, in hearing held concerning those incidents, the judge neglected to summon certain witnesses. Thompson v. Montemuro, E.D.Pa.1974, 383 F.Supp. 1200. Civil Rights 1376(8)

Both Juvenile Court (and any particular judge thereof) and the Superintendent of State Correctional Institution were immune from the suit under this section, brought by petitioner who claimed that he had been illegally confined for 5 years past the age of 21 in the State Correctional Institution. Fox v. Juvenile Court, E.D.Pa.1970, 321 F.Supp. 67. Civil Rights 1376(8)

3286. ---- Mandamus, judicial acts, judicial immunity generally

State judge who presided over mandamus action brought by motorist challenging the revocation of her driver's license was entitled to judicial immunity with respect to motorist's subsequent civil rights action against judge. Schuman v. State of Cal., C.A.9 (Cal.) 1978, 584 F.2d 868. Civil Rights 1376(8)

3287. ---- Mental commitment and competency, judicial acts, judicial immunity generally

Judge was immune from suit for any civil rights deprivations arising out of his ordering person committed to mental hospital. Sebastian v. U. S., C.A.8 (Ark.) 1976, 531 F.2d 900, certiorari denied 97 S.Ct. 153, 429 U.S. 856, 50 L.Ed.2d 133. Civil Rights 1376(8)

Even if plaintiff had been committed under a repealed statute providing for summary commitments, such judicial miscue did not remove shield of Judicial immunity. Robinson v. McCorkle, C.A.3 (N.J.) 1972, 462 F.2d 111, certiorari denied 93 S.Ct. 529, 409 U.S. 1042, 34 L.Ed.2d 492. Judges 36

Judge who was hearing divorce action and initiated steps for husband's detention under West's Ann.Cal.Welfare & Inst.Code §§ 5047 et seq., for observation as to mental health and judge who granted authority for the detention and observation under court supervision were immune from any alleged liability to husband under this section in husband's suit, as was court bailiff who had acted at direction of judge in preparing and signing necessary petition. Haldane v. Chagnon, C.A.9 (Cal.) 1965, 345 F.2d 601. Civil Rights 1376(8)

The common law rule of immunity of a judicial officer for acts done in exercise of his judicial function, where he has jurisdiction over both parties and subject matter, has not been abrogated by this section, and judge and prosecuting attorney who acted in committing person to state mental institution were not subject to liability for alleged wrongful actions in this respect. Kenney v. Fox, C.A.6 (Mich.) 1956, 232 F.2d 288, certiorari denied 77 S.Ct. 84, 352 U.S. 855, 1 L.Ed.2d 66, certiorari denied 77 S.Ct. 84, 352 U.S. 856, 1 L.Ed.2d 66. Civil Rights 1376(8)

Since state judge was acting in course of his duties when he signed order for temporary detention of plaintiff for examination into her mental condition, the judge was entitled to absolute immunity with regards to plaintiff's claims against him. Martens v. Tremble, E.D.Wis.1979, 481 F.Supp. 831. Judges 36

Judge who conducted civil commitment hearings of allegedly mentally ill persons was cloaked with judicial immunity while acting pursuant to KRS 202.060 and 202.100 and procedures established by court of which he was a member and no claim for damages could be maintained against him for his activities in connection therewith. Kendall v. True, W.D.Ky.1975, 391 F.Supp. 413. Judges 36

3288. ---- Parole, judicial acts, judicial immunity generally

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Judge and prosecutor who allegedly filed with Texas Board of Pardons and Parole letter or instrument urging or recommending that Board deny prisoner parole were absolutely immune from liability in civil rights action alleging judge and prosecutor filed documents in retaliation for civil rights suits which prisoner had prosecuted and alleging that prosecutor further acted with intent of extending prisoner's period of incarceration on basis of unadjudicated offenses. Johnson v. Kegans, C.A.5 (Tex.) 1989, 870 F.2d 992, certiorari denied 109 S.Ct. 3250, 492 U.S. 921, 106 L.Ed.2d 596. Civil Rights 1376(8)

3289. ---- Plea bargains, judicial acts, judicial immunity generally

If California trial judge arguably had some common law or statutory basis for ordering plaintiff to submit to castration had he been convicted on child molestation charge, the trial judge, who allegedly accepted plea bargain whereby plaintiff was allowed to plead guilty to a lesser charge provided he consent to castration, would be immune from civil damages action under this section, likewise, district attorneys and physician, acting in capacity as medical examiner for county jail and advising at "plea bargaining" sessions, would also be immune from liability under this section for alleged misrepresentations about the side effects of the castration. Briley v. State of Cal., C.A.9 (Cal.) 1977, 564 F.2d 849. Civil Rights 1376(4); Civil Rights 1376(8); Civil Rights 1376(9)

Trial judge and district attorney were absolutely immune from damage liability under this section for allegedly breaching plea bargain with plaintiff. Miller v. Barilla, C.A.9 (Cal.) 1977, 549 F.2d 648. Civil Rights 1376(8); Civil Rights 1376(9)

District justice's actions regarding preliminary hearing and plea agreement were protected by absolute immunity, where actions were entirely appropriate and within ambit of justice's duties in course of presiding over criminal cases. Rumfola v. Murovich, W.D.Pa.1992, 812 F.Supp. 569. Justices Of The Peace 25

State court judge acting within his jurisdiction in criminal case was immune from civil rights action brought against him on basis that he and another had conspired to coerce and trick plaintiff into entering guilty plea. Griffin v. Nangle, E.D.Mo.1974, 413 F.Supp. 913. Civil Rights 1376(8)

3290. ---- Post-conviction relief, judicial acts, judicial immunity generally

State trial judge's alleged interference with giving criminal defendant notice of order vacating defendant's conviction entered pursuant to defendant's postconviction petition was protected by judicial immunity. Lowe v. Letsinger, C.A.7 (Ind.) 1985, 772 F.2d 308. Judges 36

President Judge of Court of Common Pleas and of Court of Oyer and Terminer and Court of Quarter Sessions in Pennsylvania could not be sued under this section by inmate of prison to recover damages because President Judge allegedly failed to hear and determine a habeas corpus proceeding of inmate. Cohen v. Norris, C.A.9 (Cal.) 1962, 300 F.2d 24.

State-court magistrate and judges, who had presided over criminal trial, considered postconviction relief motion, and presided over defendant's surrender to sheriff following affirmation of conviction on appeal, respectively, enjoyed judicial immunity in defendant's §§1983 action alleging that magistrate's and judges' comments in connection with those proceedings violated his constitutional rights; acts complained of were "judicial acts," and magistrate and judges did not act in clear absence of jurisdiction, regardless of alleged inappropriateness of their comments. Phillips v. Wood, M.D.N.C.2004, 341 F.Supp.2d 576. Civil Rights 1376(8)

Prison inmate bringing pro se § 1983 action against state court judge for alleged violation of his due process rights in connection with his postconviction relief proceedings was not entitled to appointment of counsel on ground that the issues presented in his case were too complex for him to litigate without the assistance of counsel, where the

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district court already attempted to procure an attorney to assist inmate, but discontinued those efforts after two attorneys reviewed his claims and concluded they had no merit, and where the district court agreed that inmate's claims had no merit. Quarles v. Lineberger, E.D.Pa.2003, 264 F.Supp.2d 208, affirmed 100 Fed.Appx. 127, 2004 WL 1396362, certiorari denied 125 S.Ct. 874, 543 U.S. 1060, 160 L.Ed.2d 787. Civil Rights 1445

Even if state judge improperly denied parolee's petition for writ of habeas corpus, doctrine of judicial immunity exempted him from liability for damages under federal civil rights law. Conner v. Alston, E.D.N.Y.1988, 701 F.Supp. 376. Civil Rights 1376(8)

Action of district judge in denying application of convicted defendant for post-conviction relief was within exercise of the judicial function and, as such, entitled him to absolute judicial immunity. Anderson v. Byars, W.D.Okla.1980, 505 F.Supp. 32. Judges 36

3291. ---- Prisoner transfers, judicial acts, judicial immunity generally

State trial judge had judicial immunity to suit under this section, on ground that judge conspired with superintendent of state mental hospital and psychiatrist to have individual, who had been adjudged insane in criminal prosecution in state court, transferred to state penitentiary. Franklin v. Meredith, C.A.10 (Colo.) 1967, 386 F.2d 958. Conspiracy 13

Alabama judge was immune from liability under this section for actions within scope of Code of Ala. Tit. 45, § 129, authorizing removal of sick prisoners to prison hospital. Beard v. Stephens, C.A.5 (Ala.) 1967, 372 F.2d 685. Civil Rights 1376(8)

Hearing officer in connection with classification of inmate to administrative segregation was entitled to absolute judicial immunity from § 1983 liability; it was not alleged that she was acting beyond scope of her authority. Loukas v. Hofbauer, E.D.Mich.1991, 784 F.Supp. 377. Civil Rights 1376(8)

Any action taken by judge to transfer to different jail the leader of a concerted effort by pretrial detainees to boycott court proceedings was "judicial act" for which he was immune from suit. Figueroa v. Kapelman, S.D.N.Y.1981, 526 F.Supp. 681. Civil Rights 1376(8)

3292. ---- Probable cause, judicial acts, judicial immunity generally

Justice of the peace was entitled to absolute immunity from liability in civil rights action in which it was alleged that the justice failed to inform arrestee during probable cause hearing which led to his release that he would still be given an examining trial before indictment if he was indicted. Dayse v. Schuldt, C.A.5 (Tex.) 1990, 894 F.2d 170. Civil Rights 1376(8)

State court judge was entitled to judicial immunity as to an arrestee's civil rights claim that the judge issued search warrants that lacked probable cause; the issuance of search warrants was an action taken in the judge's judicial capacity. Fernandez v. Alexander, D.Conn.2006, 419 F.Supp.2d 128. Civil Rights 1376(8)

Constitutional claims against Probate Court judge in his individual capacity arising from his appointment of a conservator for plaintiff's mother, removal of plaintiff's power of attorney, placement of a lis pendens on plaintiff's home, taking possession of mother's bank account, and selling mother's home were barred by absolute judicial immunity; judge's actions fell within the scope of his authority as a Probate Court Judge, over which he had jurisdiction under Connecticut statutes and judicial precedent. Collins v. West Hartford Police Dept., D.Conn.2005, 380 F.Supp.2d 83. Civil Rights 1376(8)

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3293. ---- Probation, judicial acts, judicial immunity generally

Action by hearing magistrate at preliminary probation revocation hearing was not quasi-judicial act entitling magistrate to quasi-judicial immunity in probationer's action contending that magistrate deprived him of right under U.S.C.A.Const. Amend. 14 to have preliminary hearing concerning charges conducted at or reasonably near place of alleged probation violation where, although decision was made in context of adversarial proceeding, it was made in absence of formal structure preserving magistrate's independence and hearing magistrate testified that he believed his decision denying probationer's motion for change of hearing site was mandated in accordance with direct legal authority. Harris v. Powers, W.D.Wis.1981, 520 F.Supp. 111. Civil Rights 1376(8)

3294. ---- Records or transcripts, judicial acts, judicial immunity generally

Judicial acts concerning preparation and ultimate transfer of papers and transcripts to appellate court qualify as "judicial acts" for which grant of absolute immunity is functionally appropriate. Dellenbach v. Letsinger, C.A.7 (Ind.) 1989, 889 F.2d 755, certiorari denied 110 S.Ct. 1821, 494 U.S. 1085, 108 L.Ed.2d 950. Judges 36

Alleged acts of state circuit court judge in connection with criminal action, in dictating false certificate misrepresenting occurrence of instruction and special verdict which was never held and causing alteration to trial transcript and docket sheet record to indicate false certificate was filed, were judicial acts and, thus, judge was cloaked with absolute judicial immunity from resulting civil rights action brought by defendant in criminal action, regardless of reprehensibility of conduct; actions were kind normally performed by judge and criminal defendant was dealing with judge in his judicial capacity. Eades v. Sterlinske, C.A.7 (Wis.) 1987, 810 F.2d 723, certiorari denied 108 S.Ct. 143, 484 U.S. 847, 98 L.Ed.2d 99. Civil Rights 1376(8)

State trial judge did not act outside scope of official duties in failing to direct court reporter to furnish prisoner with free transcript in order to prepare postconviction motion, and judge was therefore immune from liability in prisoner's § 1983 action. Boone v. Weizel, N.D.Ohio 1996, 917 F.Supp. 518, affirmed 108 F.3d 1376. Civil Rights 1376(8)

Alleged order of state court judge denying plaintiff access to trial records was a judicial act and shielded by absolute immunity from civil rights claims asserted by plaintiff. Ortiz v. Morgenthau, S.D.N.Y.1991, 772 F.Supp. 1430, affirmed 962 F.2d 4. Civil Rights 1376(8)

In spite of sweeping "every person" language of this section which creates federal cause of action against persons whose misconduct under color of state law violates constitutional rights of another, judges retain their traditional common-law immunity regardless of allegations of corruption or maliciousness; therefore, judge who allegedly accepted bribe and falsified court records to prevent plaintiff from presenting his case to court was entitled to judicial immunity. Kane v. Yung Won Han, E.D.N.Y.1982, 550 F.Supp. 120. Civil Rights 1376(8)

3295. ---- Receivership, judicial acts, judicial immunity generally

Contention of judgment creditors' attorney that she was acting as agent of and on behalf of court-appointed receiver for judgment debtor's assets, rather than as coconspirator, when attorney searched home of debtor's girlfriend did not entitle attorney to share in receiver's derivative judicial immunity from girlfriend's civil rights conspiracy claims; attorney's first duty was to her client, the judgment creditors, and to satisfaction of judgment against debtor, and, even assuming that attorney was receiver's agent, girlfriend's complaint alleged that attorney seized women's underwear, which would clearly have exceeded scope of receiver's authority to take possession of property of male judgment debtor. Davis v. Bayless, C.A.5 (Tex.) 1995, 70 F.3d 367. Civil Rights 1376(8)

Complaint that Texas judge, through abuse of judicial office, seized control of oil company by, inter alia, arranging to have receivership action against the oil company brought before his court contrary to usual procedure for

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assigning cases and by appointing incompetent receiver and dismissing many key employees of oil company, all pursuant to bribe and conspiracy to deprive oil company's owners of their property without due process of law, alleged that harm was inflicted by "judicial acts" to which absolute immunity would apply, and thus, was insufficient to avoid judicial immunity; declining to follow *Rankin v. Howard*, 633 F.2d 844. Holloway v. Walker, C.A.5 (Tex.) 1985, 765 F.2d 517, rehearing denied 773 F.2d 1236, certiorari denied 106 S.Ct. 605, 474 U.S. 1037, 88 L.Ed.2d 583. Civil Rights 1395(1)

3296. ---- Replevin, judicial acts, judicial immunity generally

A judge of Illinois county court could not be sued in action for damages for alleged violation of civil rights, because of his acts as a judge in replevin suit. Skinner v. Nehrt, C.A.7 (Ill.) 1957, 242 F.2d 573. Civil Rights 1376(8); Judges 36

3297. ---- Sentence and punishment, judicial acts, judicial immunity generally

Trial judge was absolutely immune from civil liability for sentence imposed following guilty plea entered after plea bargaining. Humble v. Foreman, C.A.5 (La.) 1977, 563 F.2d 780, rehearing denied 566 F.2d 106. Civil Rights 1376(8)

State trial judge, who sentenced plaintiff to prison, was immune from suit under this section. Ford v. Byrd, C.A.5 (Tex.) 1976, 544 F.2d 194.

Justices of state Supreme Court were immune from liability in civil rights action brought by prisoners who claimed that California Adult Authority had failed to grant parole or sentence determination in violation of principles and ideas of the state indeterminate sentence law. West's Ann.Cal.Pen.Code, § 1168, and that the legislators and justices had violated oaths of office by permitting the Authority it so act. Johnson v. Reagan, C.A.9 (Cal.) 1975, 524 F.2d 1123. Civil Rights 1376(3); Civil Rights 1376(8)

Allegations that unlawful sentencing of civil rights plaintiff involved mental cruelty did not take the conduct out of the realm of a state court judge's jurisdiction to impose sentences and did not remove the immunity which he enjoyed from suit under 42 U.S.C.A. § 1983. Freeman v. Fuller, S.D.Fla.1985, 623 F.Supp. 1224. Civil Rights 1376(8)

3298. ---- Subpoena enforcement, judicial acts, judicial immunity generally

Where federal judges were acting within the scope of their judicial duties in connection with enforcing Internal Revenue Service summonses directed to plaintiffs, they were immune from civil suit. Zimmerman v. Spears, W.D.Tex.1977, 428 F.Supp. 759, affirmed 565 F.2d 310. Judges 36

3299. ---- Supersedeas bonds, judicial acts, judicial immunity generally

Judge enjoyed absolute judicial immunity from action in which it was alleged that his conduct with regard to supersedeas bond constituted a due process violation, civil conspiracy, fraud, and intentional infliction of emotional distress, despite plaintiff's allegations of legal error and conspiracy between judge and litigant, as judge was acting within his jurisdiction, and challenged actions were judicial acts. Moore v. Brewster, C.A.9 (Cal.) 1996, 96 F.3d 1240, certiorari denied 117 S.Ct. 963, 519 U.S. 1118, 136 L.Ed.2d 848. Judges 36

3300. ---- Miscellaneous acts, judicial acts, judicial immunity generally

Judge who presided over state libel suit brought by county hospital against husband of patient, who sent out letters

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asking whether others had been sexually assaulted while patients at the hospital, was entitled to absolute judicial immunity in §§ 1983 claim brought by husband claiming that because the state supreme court ultimately held the hospital barred from bringing an action for libel, the judge acted without authority. Beedle v. Wilson, C.A.10 (Okla.) 2005, 422 F.3d 1059. Civil Rights 1376(8)

Probate judge was entitled to absolute judicial immunity from civil rights liability for swearing out criminal complaint against person who had falsified information about his legal gender on his marriage license application in probate court office; judge's initiation of proceedings constituted judicial act, as judge had obligation to report that crime had been committed in his court, and his efforts to stop person's repeated attempts to fraudulently obtain marriage licenses protected integrity of judicial system, judge's action arose directly from information provided to him in his judicial capacity, and action was not performed without any jurisdiction to do so. Brookings v. Clunk, C.A.6 (Ohio) 2004, 389 F.3d 614. Civil Rights 1376(8)

State court judge's alleged conduct in stalking and sexually assaulting prospective employee, subordinate, and litigant did not, irrespective of the circumstances, involve "judicial acts," such that judge would enjoy judicial immunity from resulting civil rights claims. Archie v. Lanier, C.A.6 (Tenn.) 1996, 95 F.3d 438. Civil Rights 1376(10)

Circuit court judge was acting in his judicial capacity and was entitled to immunity for his acts of setting dates for hearings and of collecting attorney fees that he had previously adjudged due. Mann v. Conlin, C.A.6 (Mich.) 1994, 22 F.3d 100, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 126. Judges 36

State court judge was not entitled to judicial immunity in connection with order declaring moratorium on issuance of writs of restitution from December 15 through January 2, as judge was acting in his administrative and not judicial capacity in issuing such order. Morrison v. Lipscomb, C.A.6 (Mich.) 1989, 877 F.2d 463. Judges 36

State court judges' refusal to grant defendant's request to appear in his own clothing, rather than jail clothing mandated by policy of county sheriff's department requiring that person in custody wear jail clothing when appearing in nonjury proceeding, unless trial judge ordered prisoners not to appear in jail clothing, was within each judges' official capacity, so that judges were absolutely immune from damage liability under § 1983. Houghton v. Osborne, C.A.9 (Mont.) 1987, 834 F.2d 745. Civil Rights 1376(8)

A judge's private, prior agreement to decide in favor of one party is not a "judicial act" for purpose of judicial immunity. Rankin v. Howard, C.A.9 (Ariz.) 1980, 633 F.2d 844, certiorari denied 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed.2d 326. Judges 36

Where each of defendant judges in civil rights action performed judicial functions in matters involving the various suits involving plaintiff husband and wife, judges were immune where such actions were in the regular performance of their official duties. Jones v. Jones, C.A.7 (Ill.) 1969, 410 F.2d 365, certiorari denied 90 S.Ct. 547, 396 U.S. 1013, 24 L.Ed.2d 505. Civil Rights 1376(8)

Action brought by attorney against state court judges, stemming from alleged reduction in attorney's pay as public defender, was properly dismissed as frivolous on immunity grounds, where there was no allegation that judges were acting outside their judicial capacities. Bliven v. Hunt, E.D.N.Y.2005, 418 F.Supp.2d 135. Judges 36

Two state judges were not absolutely immune from § 1983 suit alleging that they violated plaintiff's First Amendment rights by executing trespass notices prohibiting plaintiff from entering any state court grounds or courthouses in State of Vermont, after he refused to remove his van displaying posters conveying unflattering opinions of one of the judges from courthouse parking lot, since judges failed to demonstrate they were authorized to issue such notices under Vermont law. Huminski v. Rutland County, D.Vt.2001, 148 F.Supp.2d 373. Civil Rights 1376(8)

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Absolute judicial immunity protected town judge from liability in arrestee's §§ 1983 and 1985 action arising out of arrest and arraignment for aggravated unlicensed operation of vehicle in third degree; arrestee did not claim that judge acted in other than a judicial capacity, judge had jurisdiction over arrestee in that incident which formed basis of complaint occurred within town over which judge had jurisdiction, town court had jurisdiction over misdemeanor offense charged, and declaratory and injunctive relief sought by arrestee had no bearing on arrestee's claims against judge. Estes-El v. Town of Indian Lake, N.D.N.Y.1997, 954 F.Supp. 527. Civil Rights 1376(8); Judges 36

State trial judge enjoyed absolute immunity from § 1983 claim seeking relief concerning actions taken by judge in issuing certain orders in divorce proceedings affecting litigant and funds in court registry. Cok v. Forte, D.R.I.1995, 877 F.Supp. 797, affirmed 69 F.3d 531. Civil Rights 1376(8)

Judicial immunity applied to state trial judge in § 1983 civil rights damages suit based on failure to return jewelry used as evidence in criminal matter to prisoner given that judge acted in judicial capacity when authorizing return of jewelry from district attorney to clerk of court in then-pending criminal case and judge acted within jurisdiction in ordering release of exhibits from codefendant's trial for use in plaintiff's trial. Couch v. Cobb County Superior Court, N.D.Ga.1995, 874 F.Supp. 1378. Civil Rights 1376(8)

Judge was entitled to absolute judicial immunity in civil rights action based on allegations that he referred matter to his law clerk, in view of uncontroverted affidavit that the judge reviewed the matter with his law clerk and authorized law clerk to send a letter to the litigant. DeFerro v. Coco, E.D.Pa.1989, 719 F.Supp. 379. Civil Rights 1376(8)

State judges' decision to deny litigant's petition for allowance of appeal was action in their judicial capacity, for which they were entitled to absolute judicial immunity from damages under §§ 1983. Span v. Flaherty, C.A.3 (Pa.) 2005, 135 Fed.Appx. 525, 2005 WL 1367215, Unreported, certiorari denied 126 S.Ct. 1031, 163 L.Ed.2d 870. Civil Rights 1376(8)

State court judges were entitled to absolute immunity from state prisoner's civil rights lawsuit, in which he alleged that judges had a duty to hear his state habeas application because it was filed under a state law exception to the limitations period for applications asserting newly discovered evidence. Nathan v. Smith, C.A.5 (Miss.) 2003, 73 Fed.Appx. 58, 2003 WL 21976334, Unreported, certiorari denied 124 S.Ct. 828, 540 U.S. 1057, 157 L.Ed.2d 712. Civil Rights 1376(8)

Summary judgment was warranted in favor of judge, in § 1983 action, on basis of absolute judicial immunity. Stringer v. Herbert, C.A.5 (Miss.) 2003, 71 Fed.Appx. 341, 2003 WL 21805916, Unreported, certiorari denied 124 S.Ct. 1088, 540 U.S. 1124, 157 L.Ed.2d 923. Federal Civil Procedure 2491.5

3301. Injunctions, judicial immunity generally

Though judicial immunity is not bar to injunctive relief against judicial officer acting in judicial capacity, policies underlying judicial immunity indicate that immunity should be granted in case where dissatisfied litigant seeks injunction compelling judge to alter former decision. Johnson v. State of N.J., D.N.J.1994, 869 F.Supp. 289, reconsideration denied 1995 WL 46367. Judges 36

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Effective: October 19, 1996

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

§ 1983. Civil action for deprivation of rights

<Notes of Decisions for 42 USCA § 1983 are displayed in four separate documents. Notes of Decisions for subdivisions XXIX to XXXVIII are contained in this document. For text of section, historical notes, references, and Notes of Decisions for subdivisions I to IX, see first document for 42 USCA § 1983. For Notes of Decisions for subdivisions X to XXVIII, see the second ranked document for 42 USCA § 1983. For Notes of Decisions for subdivisions XXXIX to end, see 42 § 1983, post.>

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3331. Factors considered, immunity of miscellaneous judicial and quasi judicial officials

Whether nonjudicial officers merit quasi-judicial absolute immunity depends on consideration of characteristics of judicial process such as need to assure that individual can perform functions without harassment or intimidation, presence of safeguards that reduce need for private damages actions as means of controlling unconstitutional conduct, insulation from political influence, importance of precedent, adversary nature of process, and correctability of error on appeal. Young v. Selsky, C.A.2 (N.Y.) 1994, 41 F.3d 47, certiorari denied 115 S.Ct. 1837, 514 U.S. 1102, 131 L.Ed.2d 756. Judges 36

3332. Administrative hearing officers, immunity of miscellaneous judicial and quasi judicial officials

Administrative hearing officer and administrative prosecutor for New Mexico Board of Medical Examiners were entitled to absolute immunity from liability under §§ 1983 for their roles in revoking physician's state medical license, where state provided sufficient safeguards in regulatory framework, including appeal of Board's decision in state court, to control any potential unconstitutional conduct by officials. Guttman v. Khalsa, D.N.M.2003, 320 F.Supp.2d 1164, affirmed 401 F.3d 1170, vacated 126 S.Ct. 321, 163 L.Ed.2d 29, on remand 446 F.3d 1027. Civil

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42 U.S.C.A. § 1983

Rights 1376(8); Civil Rights 1376(9)

Administrative hearing officer, who presided over appeal of determination by Delaware Division of Family Services (DFS) that father had abused his son, and deputy attorney general, who was assigned to serve as counsel to DFS during appeal, were entitled to absolute immunity from father's § 1983 claims; defendants' functions in DFS administrative appeal process were analogous to functions of judges and prosecutors in criminal proceedings. Rodriguez v. Stevenson, D.Del.2002, 243 F.Supp.2d 58. Civil Rights 1376(8); Civil Rights 1376(9)

3333. Administrators, immunity of miscellaneous judicial and quasi judicial officials

Actions of chief administrator of Connecticut courts in supervising superior court judges in connection with state child welfare proceedings fell within his judicial jurisdiction, and thus administrator was entitled to absolute judicial immunity from liability in parents' §§ 1983 suit. Inkel v. Connecticut Dept. of Children and Families, D.Conn.2006, 421 F.Supp.2d 513. Civil Rights 1376(8)

Complaint filed by writers of insufficient funds checks failed to allege cause of action against administrator of county check clearing house under this section, since administrator was acting as a magistrate at all times and thus had judicial immunity. Gary v. Spires, D.C.S.C.1979, 473 F.Supp. 878. Civil Rights 1376(8)

State Supreme Court justices, state attorney general, solicitor general, secretary of state and administrator director of state board of professional responsibility were immune from suit by disbarred attorney under this section alleging that state Supreme Court's decision refusing to place attorney's name on ballot for position of justice of state Supreme Court violated his federal constitutional rights. Peterson v. Knutson, D.C.Minn.1973, 367 F.Supp. 515, affirmed 505 F.2d 736. Civil Rights 1376(3); Civil Rights 1376(8); Civil Rights 1376(9)

Even though defendant, a deputy court administrator, did not deny claim that he set new bail requirements for plaintiff in bench warrant proceeding, defendant, while acting in a judicial capacity in setting bail, was immune from suit under this section charging restraint of liberty and invidious discrimination. Jackson v. Hammock, E.D.Pa.1971, 330 F.Supp. 1124. Civil Rights 1376(8)

Administrator of state division of hearings and appeals was entitled to absolute immunity from liability under § 1983 arising from his refusal to overturn ALJ's decision to revoke parolee's parole; administrator made discretionary decision based upon record presented to him from parole revocation hearing, acting similarly to judge ruling on appeal based upon underlying record. Smith v. Schwarz, C.A.7 (Wis.) 2002, 46 Fed.Appx. 374, 2002 WL 31050123, Unreported. Civil Rights 1376(7)

3334. Aldermen, immunity of miscellaneous judicial and quasi judicial officials

City aldermen acted in judicial capacity in voting to impeach mayor and their function as board of impeachment was sufficiently comparable to "classic" adjudication so as to justify their absolute immunity from personal liability for § 1983 damages; although aldermen were elected officials, and to that extent were not insulated from political influence, impeachment proceedings were essentially judicial or adjudicatory in nature, municipal impeachment proceedings were subject to extensive procedural safeguards under Missouri law and as adjudicators in impeachment proceedings, aldermen had to be fair and impartial. Brown v. Griesenauer, C.A.8 (Mo.) 1992, 970 F.2d 431. Civil Rights 1376(4)

Neither California State Board of Pharmacy nor its executive director was entitled to absolute prosecutorial or judicial immunity in §§ 1983 action brought by licensed pharmacist and wholesaler of pharmaceuticals, which did not seek any monetary damages, but only declaratory and injunctive relief to enjoin a violation of federal law allegedly arising from attempt revoke or suspend pharmacist's pharmaceutical license and wholesaler's permit. Adibi v. California State Bd. of Pharmacy, N.D.Cal.2005, 393 F.Supp.2d 999. Civil Rights 1376(9)

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Neither city nor alderpersons were entitled to quasi-judicial immunity from liability in § 1983 action brought by tavern license applicant who claimed that denial of his application violated equal protection; fairly unbounded nature of inquiry in granting license distinguished it from anything that could properly be termed judicial. Herro v. City of Milwaukee, E.D.Wis.1993, 817 F.Supp. 768. Civil Rights 1376(8)

3335. Arbitrators, immunity of miscellaneous judicial and quasi judicial officials

Arbitrator by breaking deadlock at issue had no interest in outcome of employees' benefit plan and, his purpose being "functionally comparable" to that of judge, he was protected by arbitral immunity from liability for acts committed while serving in his official capacity to break deadlock between trustees. International Union, United Auto., Aerospace, and Agr. Implement Workers of America and its Locals 656 and 985 v. Greyhound Lines, Inc., C.A.6 (Mich.) 1983, 701 F.2d 1181. Arbitration 47

Arbitrators who found against property owner in assumpsit proceeding were entitled to absolute judicial immunity with respect to property owner's claim for damages arising out of events leading to sheriff's sale of property owner's land, which claim was brought under this section. Raitport v. Provident Nat. Bank, E.D.Pa.1978, 451 F.Supp. 522. Conspiracy 13

3336. Attorney disciplinary officials, immunity of miscellaneous judicial and quasi judicial officials--Generally

Individual who acted solely in the performance of his duties as executive secretary under the state rules for admission to the bar and discipline of attorneys was entitled to the same quasi-judicial immunity as prosecutors enjoy and persons who were represented by an attorney who is the subject of a disciplinary proceeding thus could not recover from the executive secretary for his alleged interference with their right to be represented by the attorney and their right to court access. Kissell v. Breskow, C.A.7 (Ind.) 1978, 579 F.2d 425. Civil Rights 1376(8)

The state Circuit Court, the judges thereof and members of the grievance committee of the State Bar of Michigan were acting within their statutory powers in disbarment proceedings and were immune from liability for damages for any alleged violation in proceedings under this section. Ginger v. Circuit Court for Wayne County, C.A.6 (Mich.) 1967, 372 F.2d 621, certiorari denied 87 S.Ct. 2061, 387 U.S. 935, 18 L.Ed.2d 998. Civil Rights 1376(8)

Chair of Massachusetts Board of Bar Overseers, and special hearing officer who conducted disciplinary investigation and proceedings against attorney, were entitled to absolute quasi-judicial immunity from liability, in attorney's §§ 1983 claim, alleging that administrative disciplinary proceedings violated attorney's civil rights; the chair and the hearing officer performed traditional adjudicatory function by determining whether to recommend attorney for disciplinary sanctions after making factual and legal determinations, the act of recommending disciplinary sanctions would likely stimulate a litigious reaction from the attorney, multiple levels of review of their decisions existed, and attorney made no allegations concerning their conduct outside their roles as adjudicators. Johnson v. Board of Bar Overseers of Mass., D.Mass.2004, 324 F.Supp.2d 276. Civil Rights 1376(8)

Judicial immunity precluded any claim for damages in civil rights action brought by attorney against Georgia judges, and the State Bar, arising from disciplinary action, as state bar disciplinary proceedings are judicial in nature; State Bar was agent of the Georgia Supreme Court and punishment imposed by State Bar was a judicial act; moreover, it was Georgia Supreme Court, and not the State Bar, that ordered suspension of attorney. Cohran v. State Bar of Georgia, N.D.Ga.1992, 790 F.Supp. 1568. Civil Rights 1376(8)

Members of Michigan Attorney Discipline Board were performing quasi-judicial functions when they prepared and distributed notices in disciplinary proceedings and, thus, members were entitled to absolute immunity from liability for alleged civil rights violations in action by attorney who claimed that he did not receive notice of his suspension.

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Eston v. Van Bolt, E.D.Mich.1990, 728 F.Supp. 1336. Civil Rights 1376(8)

Even if federal court had jurisdiction over attorney's § 1983 claim against members of attorney grievance commission, attorney could not maintain § 1983 action; members of staff were performing quasi-judicial function delegated by state Supreme Court and legislature and thus, were entitled to same immunity from suit available to Supreme Court. Lepley v. Dresser, W.D.Mich.1988, 681 F.Supp. 418. Civil Rights 1376(8)

Attorney General of the United States and his assistants, various United States attorneys and their assistants, state Attorneys General and their assistants, state district attorneys, and their assistants, supporting court personnel and law enforcement officials enjoyed quasi-judicial immunity with respect to actions which were alleged to have deprived plaintiff of right to have unlicensed lay counsel assist them in court proceedings. Turner v. American Bar Ass'n, N.D.Tex.1975, 407 F.Supp. 451, affirmed 539 F.2d 715, affirmed 542 F.2d 56. Attorney General 8; District And Prosecuting Attorneys 10; Officers And Public Employees 114

3337. ---- Bar associations and members, attorney disciplinary officials, immunity of miscellaneous judicial and quasi judicial officials

Members of Florida State Bar acting as agents of Supreme Court in connection with disciplinary proceeding were entitled to absolute immunity in § 1983 action. Carroll v. Gross, C.A.11 (Fla.) 1993, 984 F.2d 392, rehearing denied 996 F.2d 316, certiorari denied 114 S.Ct. 254, 510 U.S. 893, 126 L.Ed.2d 206. Civil Rights 1376(8)

County bar association, its committees and members were immune from suit for money damages brought by attorneys whom bar association sought to discipline; bar association and its committees acted as arms of Supreme Court of Ohio in performing function for which court and its justices were immune. Berger v. Cuyahoga County Bar Ass'n, C.A.6 (Ohio) 1993, 983 F.2d 718, rehearing denied, certiorari denied 113 S.Ct. 2416, 508 U.S. 940, 124 L.Ed.2d 639. Judges 36

As an arm of the Washington Supreme Court in connection with the disciplinary proceedings against attorney, the Washington Bar Association was an integral part of the judicial process and therefore entitled to the same immunity from suit under this section which is afforded to prosecuting attorneys in the state. Clark v. State of Wash., C.A.9 (Wash.) 1966, 366 F.2d 678. Civil Rights 1376(8)

3338. Attorneys general, immunity of miscellaneous judicial and quasi judicial officials

State attorney general (AG) was absolutely immune from liability on state correctional officer's §§ 1983 claim against him alleging that AG violated his rights under Equal Protection Clause by deciding not to represent him and provide for his defense in a §§ 1983 excessive-force action brought against him by an inmate; in deciding not to represent officer, AG was serving as an advocate of the state, his decision directly affected application of state legal resources, it was not in the public interest for AG to be constrained in making such decisions by potential liability in suits for damages, and officer could recover post-litigation reimbursement under Connecticut state statute if he was found in inmate's action to have acted within scope of his employment and not to have acted wantonly, maliciously, or recklessly. Mangiafico v. Blumenthal, C.A.2 (Conn.) 2006, 471 F.3d 391.

Indiana Attorney General, when reviewing contracts pursuant to IC 4-13-2-14, was acting in a quasi-judicial capacity and therefore entitled to absolute immunity from liability for damages; thus, the Indiana Attorney General enjoyed absolute immunity with respect to Section 1983 claim based on his refusal to approve a proposed contract between the state and a day-care nursery. Mother Goose Nursery Schools, Inc. v. Sendak, C.A.7 (Ind.) 1985, 770 F.2d 668, certiorari denied 106 S.Ct. 884, 474 U.S. 1102, 88 L.Ed.2d 919. Civil Rights 1376(9)

State attorney general was entitled to absolute immunity from a §§ 1983 claim that was based upon attorney general's decision not to defend state correctional officer in prisoner's pending civil lawsuit involving correctional

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officer's conduct. Mangiafico v. Blumenthal, D.Conn.2005, 358 F.Supp.2d 6. Civil Rights 1376(9)

3339. Private attorneys, immunity of miscellaneous judicial and quasi judicial officials

Private attorney who was informally sworn in as "special" assistant district attorney was not acting as public official under Tennessee law when he allegedly engaged in unconstitutional conduct against owners and employees of nightclubs offering nude dancing, and thus was not entitled to absolute prosecutorial or quasi-judicial immunity against § 1983 liability for his acts. Cooper v. Parrish, C.A.6 (Tenn.) 2000, 203 F.3d 937, rehearing and suggestion for rehearing en banc denied, certiorari denied 121 S.Ct. 185, 531 U.S. 877, 148 L.Ed.2d 128. Civil Rights 1375

3340. Bail officials, immunity of miscellaneous judicial and quasi judicial officials

Police officers had absolute judicial immunity when they set bail for suspect arrested for threatening, precluding § 1983 suit against officers for charging excessive bail. Walczyk v. Rio, D.Conn.2004, 339 F.Supp.2d 385. Civil Rights 1376(6)

There was evidence that town bail commissioner, in setting bail for offense charged against plaintiff, was following what apparently was judge's instructions in setting bail; therefore, even though plaintiff's offense, being a civil matter, was not a bailable offense, bail commissioner was entitled to immunity from plaintiff's suit under this section, because it would be manifestly unfair to subject bail commissioner to suit in matter over which she had no discretion, notwithstanding her quasi-judicial immunity. Thompson v. Sanborn, D.C.N.H.1983, 568 F.Supp. 385. Civil Rights 1376(8)

3341. Bailiffs, immunity of miscellaneous judicial and quasi judicial officials

Remand was required in civil rights action where record did not show whether all of bailiff's challenged conduct in communicating with jury and handling evidence was done under trial judge's authority and direction, so as to be subject to absolute quasi-judicial immunity. Robinson v. Freeze, C.A.8 (Ark.) 1994, 15 F.3d 107. Federal Courts 942

3342. Bankruptcy trustees, immunity of miscellaneous judicial and quasi judicial officials

Person acting as trustee in bankruptcy and official acting under authority of bankruptcy judge, was entitled to derived judicial immunity from liability to debtor because person was performing integral part of judicial process, absent evidence person acted outside limits of derived judicial immunity. Lonneker Farms, Inc. v. Klobucher, C.A.9 (Wash.) 1986, 804 F.2d 1096. Bankruptcy 3011

3343. Bar associations and members, immunity of miscellaneous judicial and quasi judicial officials

Commissioners of the State Bar of Alabama were not entitled to total, absolute immunity in civil rights case. Foley v. Alabama State Bar, C.A.5 (Ala.) 1981, 648 F.2d 355. Civil Rights 1376(1)

Members of committee on character and fitness for admission to the New York state bar in the First Department of the New York Supreme Court, Appellate Division were entitled to absolute judicial immunity from §§ 1983 claims brought against them by bar applicant arising out of hearing on application; Appellate Division's designation of authority required members of committee to act in a quasi-prosecutorial, and an adjudicatory, or quasi-judicial, capacity. Roe v. Johnson, S.D.N.Y.2004, 334 F.Supp.2d 415. Civil Rights 1376(8)

State bar officials were entitled to absolute quasi-judicial immunity in § 1983 action accusing them of accepting fraudulent documents, failing to record proceedings, failing to render timely decision, conducting fraudulent appeal

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hearing, and inhibiting plaintiffs from talking about proceedings. Samuel v. Michaud, D.Idaho 1996, 980 F.Supp. 1381, affirmed 129 F.3d 127. Civil Rights 1376(3)

In federal civil rights action challenging Alabama's bar examination and admission process, past and present presidents of Alabama State Bar, State Bar's executive director, State Bar's past and present admissions secretaries, and president of Alabama State Board of Bar Examiners, were entitled to absolute judicial immunity as to those claims for damages against them in their individual capacities. McFarland v. Folsom, M.D.Ala.1994, 854 F.Supp. 862. Civil Rights 1376(8)

President of Michigan Bar Association, as chief executive officer of an arm of the Michigan Supreme Court, was entitled to judicial and quasi-judicial immunity from damages in § 1983 suit. Moralez v. Thiede, E.D.Mich.1993, 828 F.Supp. 492. Civil Rights 1376(8)

Members of State Board of Bar Examiners were entitled to absolute immunity in applicant's suit for damages alleging that, notwithstanding that Board acted within statutorily prescribed time limit, total time taken by chairman and full Board in determining on applicant's appeal that he had passed the exam violated due process because of urgency of applicant's situation, as a decision's timing is functionally intertwined with decision-making process itself, which enjoys protection of absolute immunity. Rosenfeld v. Clark, D.C.Vt.1984, 586 F.Supp. 1332, affirmed 760 F.2d 253. Civil Rights 1376(3)

A state bar association is integral part of judicial process and is therefore immune from suit under this section. Louis v. Supreme Court of Nevada, D.C.Nev.1980, 490 F.Supp. 1174. Civil Rights 1376(8)

Federal court had jurisdiction to hear law school graduates' claim of racial discrimination on part of state bar examiners; examiners were not immune from suit on ground that they were officials of the judiciary. Newsome v. Dominique, E.D.Mo.1978, 455 F.Supp. 1373. Civil Rights 1376(8); Federal Courts 225

Since admission of individual to practice of law is regarded as judicial function, the doctrine of quasi-judicial immunity bars claim under this section against Louisiana State Bar Association. Moity v. Louisiana State Bar Ass'n, E.D.La.1976, 414 F.Supp. 180, affirmed 537 F.2d 1141, rehearing denied 540 F.2d 1085.

Bar association, having instituted summary proceeding to adjudge author of book pertaining to estate planning in contempt for the unauthorized practice of law, was immune from suit by author seeking damages on theory that contempt proceeding was illegal and unconstitutional restraint on freedom of speech and the press guaranteed by U.S.C.A.Const. Amend. 1 and by this section. Dacey v. New York County Lawyers' Ass'n, S.D.N.Y.1968, 290 F.Supp. 835, affirmed 423 F.2d 188, certiorari denied 90 S.Ct. 1819, 398 U.S. 929, 26 L.Ed.2d 92.

3344. Boards and board members, immunity of miscellaneous judicial and quasi judicial officials

Members of township's board of supervisors were entitled to quasi-judicial absolute immunity, in their individual capacities, in §§ 1983 suit alleging due process violations arising out of denial of permit application; there was need to assure that function performed by members could be performed without harassment or intimidation, there were many procedural safeguards against members' improper conduct, members were removable only for cause, board was required by statute to consider land-use standards in governing zoning ordinance, board's cases were adversarial as matter of law, and board's decisions were appealable as of right. Dotzel v. Ashbridge, C.A.3 (Pa.) 2006, 438 F.3d 320. Civil Rights 1376(8)

Members of Arkansas Veterinary Medical Examining Board were protected by absolute quasi-judicial immunity from § 1983 claim of veterinarian found to have practiced without license, even if veterinarian had liberty interest in practicing veterinary medicine; Board performed functions comparable to duties of courts in weighing evidence,

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making factual determinations, setting sanctions and issuing written decisions, Board's actions were likely to result in lawsuits for damages by disappointed parties, and sufficient safeguards existed in Arkansas regulatory framework to control unconstitutional conduct. Dunham v. Wadley, C.A.8 (Ark.) 1999, 195 F.3d 1007, rehearing and rehearing en banc denied, certiorari denied 121 S.Ct. 60, 531 U.S. 819, 148 L.Ed.2d 26. Civil Rights 1376(8)

State Personnel Board of Review (SPBR) members were absolutely immune from suit for money damages in their individual capacities based on alleged violation of due process rights of state employee, as they performed adjudicatory function within administrative agency. Collyer v. Darling, C.A.6 (Ohio) 1996, 98 F.3d 211, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 2439, 520 U.S. 1267, 138 L.Ed.2d 199. Civil Rights 1376(10)

Individual members of Alcoholic Beverage Control Board (ABCB) were entitled to absolute judicial immunity in § 1983 claim brought by liquor licensee alleging that suspension of his license by board violated his civil rights. Brossette v. City of Baton Rouge, M.D.La.1993, 837 F.Supp. 759, affirmed 29 F.3d 623, certiorari denied 115 S.Ct. 443, 513 U.S. 971, 130 L.Ed.2d 353. Civil Rights 1376(8)

Chairman of county construction board of appeals had absolute judicial immunity from § 1983 action brought by landowners claiming that chairman had caused board to not consider landowners' appeal from county construction officer's decision, so as to allow officer time to bring criminal action against landowners; board was quasi-judicial body, whose members had immunity for acts other than those in clear absence of all jurisdiction. Akins v. Deptford Tp., D.N.J.1993, 813 F.Supp. 1098, affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 510 U.S. 981, 126 L.Ed.2d 429, affirmed 17 F.3d 1428. Civil Rights 1376(8)

Executive director and board of managers of youth study center, who were not involved in adjudicatory process associated with juvenile delinquency proceeding but were responsible for determining conditions of confinement and care that would be provided to youth study center residents, were not sufficiently involved in judicial process of the family court to warrant absolute immunity for their conduct on theory of absolute "quasi-judicial" immunity in juveniles' civil rights action challenging conditions of confinement and treatment at youth study center. Santiago v. City of Philadelphia, E.D.Pa.1977, 435 F.Supp. 136. Civil Rights 1376(8)

Zoning officials in their individual capacities were not entitled to absolute immunity, in landowner's §§ 1983 lawsuit under Fourteenth Amendment alleging violation of its procedural and substantive due process rights, to extent that officials were not actually performing quasi-judicial functions. Lonzetta Trucking and Excavating Co. v. Schan, C.A.3 (Pa.) 2005, 144 Fed.Appx. 206, 2005 WL 730363, Unreported, on remand 2005 WL 3277996. Civil Rights 1376(8)

3345. Child welfare workers, immunity of miscellaneous judicial and quasi judicial officials

Supervisor's acts of supervising and managing social worker's case involving placement of child in foster home required exercise of reason and professional judgment, and thus were discretionary acts entitled to official immunity in §§ 1983 action brought against supervisor after child died from abuse after being placed in foster home. Porter v. Williams, C.A.8 (Mo.) 2006, 436 F.3d 917, rehearing and rehearing en banc denied. Civil Rights 1376(3)

Social worker was entitled to absolute immunity from civil rights liability for his testimony as witness in child custody dispute, which involved acting within scope of his role within judicial process. Dornheim v. Sholes, C.A.8 (N.D.) 2005, 430 F.3d 919, certiorari denied 126 S.Ct. 2031. Civil Rights 1375

State social workers were entitled to absolute immunity from §§ 1983 liability for initiating and maintaining termination of parental rights proceedings against mother in which infant child was removed from mother's home

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after discovering that child had seventeen broken bones. Abdouch v. Burger, C.A.8 (S.D.) 2005, 426 F.3d 982, rehearing and rehearing en banc denied. Civil Rights 1376(3)

Court-appointed child custody evaluator enjoyed judicial rather than prosecutorial immunity from federal civil rights liability in acting as "arm of the court" in fulfilling quasi-judicial role similar to that of guardian ad litem in interviewing parties, administering tests, and making recommendation at court's request; evaluator functioned more like witness than prosecutor, did not initiate proceedings, and was not forced to make "snap judgments," as is often the case with prosecutors. Hughes v. Long, C.A.3 (Pa.) 2001, 242 F.3d 121. Civil Rights 1376(8); Civil Rights 1376(9)

State caseworkers who placed two dependent children in home where they were sexually abused had absolute immunity under § 1983 from liability to children and their father, despite claim that caseworkers' involvement was not immune because it occurred during "post-adjudication reunification phase of the dependency" proceedings. Babcock v. Tyler, C.A.9 (Wash.) 1989, 884 F.2d 497, certiorari denied 110 S.Ct. 1118, 493 U.S. 1072, 107 L.Ed.2d 1025. Civil Rights 1376(3)

State family service workers were performing in quasi-judicial function in filing child abuse petition, and as such, were entitled to absolute immunity from liability in civil rights action brought by child's parents alleging that workers had failed to adequately investigate report that child had been sexually abused and that workers' acts resulted in defamation, invasion of privacy, abuse of process and malicious prosecution. Salyer v. Patrick, C.A.6 (Ky.) 1989, 874 F.2d 374. Civil Rights 1376(1)

Social workers' removal of foster child without giving prior agency hearing to preadoptive foster parents was not integral to judicial process and was not related to advocacy before judicial body, and, thus, social worker was not entitled to absolute immunity in § 1983 action; social workers' removal of child was based upon their perceived authority to do so under preadoption agreement with foster parent. Spielman v. Hildebrand, C.A.10 (Kan.) 1989, 873 F.2d 1377. Civil Rights 1376(1)

Child protective services worker was entitled to absolute quasi-judicial immunity from liability for damages stemming from worker's apprehension of newborn child at hospital pursuant to valid court order. Coverdell v. Department of Social and Health Services, State of Wash., C.A.9 (Wash.) 1987, 834 F.2d 758. Civil Rights 1376(1); Civil Rights 1376(3)

Juvenile officer was absolutely immune from liability for his role in initiating juvenile court proceedings, as his action was functionally comparable to that of prosecutor. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(4)

Child welfare worker was not entitled to absolute immunity from civil rights liability under § 1983, where his alleged tortious conduct took place during investigative, not prosecutorial, phase of child custody proceeding; he contacted city attorney for purpose of having her obtain custody order to remove children from plaintiff's custody. Miller v. City of Philadelphia, E.D.Pa.1997, 954 F.Supp. 1056, affirmed 174 F.3d 368. Civil Rights 1376(4)

Social service worker performing duties related to the filing of child custody and abuse proceedings has absolute prosecutorial immunity, caseworkers are protected by prosecutorial immunity in the context of child welfare proceedings, such as seeking and obtaining court order for the seizure and placement of a child, and caseworker who executes the court order is protected by absolute quasi-judicial immunity. Kruse v. State of Hawai'i, D.Hawai'i 1994, 857 F.Supp. 741, affirmed 68 F.3d 331. District And Prosecuting Attorneys 10; Judges 36

State child care workers did not have absolute immunity from liability in § 1983 action in connection with their emergency removal of child from parents for 96 hours under Connecticut statute authorizing removal without court

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order when there exists probable cause to believe child is in immediate physical danger from his surroundings; officials' function was not so intimately associated with adjudicative process as to be similarly immunized. Doe v. Connecticut Dept. of Children and Youth Services, D.Conn.1989, 712 F.Supp. 277, affirmed 911 F.2d 868. Civil Rights 1376(3)

Social caseworker was absolutely immune from liability for allegedly making insufficient investigation prior to his initiation of child dependency proceedings. Fanning v. Montgomery County Children and Youth Services, E.D.Pa.1988, 702 F.Supp. 1184. Civil Rights 1376(1)

Social worker was entitled to absolute immunity from parents' federal civil rights action arising from social worker's substantiating child abuse report without any evidence of misconduct by parents; determination that there was reasonable cause to believe child abuse had occurred was step in process of possibly initiating formal proceedings against parents and, as such, was intimately associated with judicial phase of legal process and, therefore, protected by absolute immunity. Donald M v. Matava, D.Mass.1987, 668 F.Supp. 703. Civil Rights 1376(2)

County social workers who removed children from their parents' homes and custody and placed children in foster care pursuant to child abuse statutes of Colorado were entitled only to good-faith immunity, not absolute immunity, in civil rights action brought against them by parents; declining to follow *Kurzawa v. Mueller*, 732 F.2d 1456 (6th Cir.); *Whelehan v. County of Monroe*, 558 F.Supp. 1093 (W.D.N.Y.). Czikalla v. Malloy, D.Colo.1986, 649 F.Supp. 1212. Civil Rights 1376(4)

3346. Clerks of court, immunity of miscellaneous judicial and quasi judicial officials--Generally

Inmate's § 1983 claims against court clerks for refusing inmate's request for records on direct appeal and for alleged delay in scheduling appeal related to judicial functions, and thus, clerks were entitled to absolute judicial immunity from claims. Rodriguez v. Weprin, C.A.2 (N.Y.) 1997, 116 F.3d 62. Civil Rights 1376(8)

Both state court judge and his clerk enjoyed absolute immunity from suit under this section. Slotnick v. Staviskey, C.A.1 (Mass.) 1977, 560 F.2d 31, certiorari denied 98 S.Ct. 1268, 434 U.S. 1077, 55 L.Ed.2d 783. Civil Rights 1376(8)

Clerks of court are entitled to immunity from suit the same as judges. Davis v. McAteer, C.A.8 (Mo.) 1970, 431 F.2d 81. See, also, Zimmerman v. Spears, D.C.Tex.1977, 428 F.Supp. 759, affirmed 565 F.2d 310. Clerks Of Courts 72

Judge's law clerk was entitled to absolute immunity under the quasi-judicial immunity doctrine for actions taken pursuant to judge's directive and instructions. DeFerro v. Coco, E.D.Pa.1989, 719 F.Supp. 379. Courts 55

Judicial immunity protects not only judges but other officers of the court from damages claims under this section for acts committed in their official capacity. Glucksman v. Birns, S.D.N.Y.1975, 398 F.Supp. 1343. Civil Rights 1376(8)

Clerk of county court was immune under judicial immunity doctrine from liability in civil rights action for acts performed in his official capacity. Pritt v. Johnson, M.D.Pa.1967, 264 F.Supp. 167. Civil Rights 1376(8)

3347. ---- Discretionary or ministerial duties, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

A clerk of a federal court may receive immunity in his own right for the performance of a discretionary act or he may be covered by the immunity of the judge because he is performing a ministerial function at the discretion of

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the judge. Williams v. Wood, C.A.5 (Fla.) 1980, 612 F.2d 982. Clerks Of Courts 72

Although judicial immunity might have extended to court clerk in exercise of her discretionary duties, where it was alleged that clerk did not take action in question in performance of her duties, but rather acted contrary to explicit statutory provisions, there was no basis for extending judicial immunity. McGhee v. Moyer, W.D.Va.1973, 60 F.R.D. 578. Clerks Of Courts 72

3348. ---- Arrest warrants, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Deputy clerk of court was entitled to absolute immunity for signing and issuing invalid arrest warrant regardless of whether judge instructed her to do so; those acts were integral parts of criminal justice process and, although clerks were not authorized to issue arrest warrants, they were permitted to sign such warrants. Boyer v. County of Washington, C.A.8 (Mo.) 1992, 971 F.2d 100, rehearing denied, certiorari denied 113 S.Ct. 2966, 508 U.S. 974, 125 L.Ed.2d 666, leave to file for rehearing denied 114 S.Ct. 1344, 510 U.S. 1216, 127 L.Ed.2d 691. Civil Rights 1376(8)

3349. ---- Bench warrants, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Clerk of municipal court who issued erroneous bench warrant on judge's order was absolutely immune from liability; issuance of warrant was a judicial function. Foster v. Walsh, C.A.6 (Ohio) 1988, 864 F.2d 416. Clerks Of Courts 72

3350. ---- Bail, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Even if deputy city court clerk's setting of homeless man's bail somehow proximately caused homeless man's alleged unconstitutional detention, clerk would be entitled to absolute immunity because setting bail was quasi-judicial activity. White by Swafford v. Gerbitz, C.A.6 (Tenn.) 1989, 892 F.2d 457. Clerks Of Courts 72

Plaintiffs' charge that clerk of municipal court of Wooster, Ohio improperly failed to fix bail for one of plaintiffs related to an act performed by clerk within scope of his official quasi-judicial duties, and hence clerk, who was named as a defendant in suit brought under this section, was entitled to immunity. Denman v. Leedy, C.A.6 (Ohio) 1973, 479 F.2d 1097, 66 O.O.2d 368. Civil Rights 1376(8)

Clerk of court who performed duties required by statute in connection with issuance of bail piece had judicial immunity and could not be sued under this section by accused whose bail had been revoked without notice. Smith v. Rosenbaum, C.A.3 (Pa.) 1972, 460 F.2d 1019. Civil Rights 1376(8)

3351. ---- Commitments, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Court clerk who filled out plaintiff's commitment papers, state hospital superintendent responsible for plaintiff during his commitment, and sheriff, who had plaintiff delivered to the hospital, acted under official directives of judge and thus were immune for liability for the alleged deprivation of plaintiff's civil rights. Slotnick v. Garfinkle, C.A.1 (Mass.) 1980, 632 F.2d 163. Civil Rights 1376(8)

Clerk of court who acted pursuant to his official position in issuing writ to take woman into custody pending involuntary commitment proceedings was entitled to quasi-judicial immunity from any civil rights liability to woman's estate when woman died in cell. Boston v. Lafayette County, Miss., N.D.Miss.1990, 744 F.Supp. 746, affirmed 933 F.2d 1003. Civil Rights 1376(8)

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3352. ---- Entry of default judgment, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Prothonotary was entitled to absolute immunity with regard to mortgagors' suit for damages for entering default judgment in mortgage foreclosure proceeding when service of writ on which judgment was entered was constitutionally defective, since under Delaware Superior Court Civil Rule 55(b)(1) prothonotary is given authority to enter default judgment in scire facias sur mortgage proceedings, and thus prothonotary was functioning in a judicial capacity when she entered default judgment against mortgagors. Shipley v. First Federal Sav. and Loan Ass'n of Delaware, D.C.Del.1985, 619 F.Supp. 421. Clerks Of Courts 72

3353. ---- Filing of papers, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Court clerks were entitled to absolute immunity against § 1983 action brought by two inmates, who alleged that clerks had deprived them of their constitutional right to access to courts by refusing to file inmates' civil suit in Indiana Superior Court; clerks' acts were done at judicial direction, and were nonmechanical functions integral to judicial process. Kincaid v. Vail, C.A.7 (Ind.) 1992, 969 F.2d 594, certiorari denied 113 S.Ct. 1002, 506 U.S. 1062, 122 L.Ed.2d 152. Civil Rights 1376(8)

Clerk of state court who was alleged to have impeded the filing of papers by plaintiff was entitled to no more protection in action under this section than any other state ministerial functionary who failed to discharge a mandatory duty. McCray v. State of Md., C.A.4 (Md.) 1972, 456 F.2d 1. Civil Rights 1376(8)

Assuming clerks of court deliberately violated litigant's constitutional rights to due process and access to the courts by failing respond to motions and inquiries about documents filed with town court, litigant's §§ 1983 claims were barred by absolute immunity; clerks were assisting judges in performing essential judicial functions when they allegedly refused to acknowledge the litigant's motions or to schedule his court proceedings. Argentieri v. Clerk of Court for Judge Kmiotek, W.D.N.Y.2006, 420 F.Supp.2d 162. Civil Rights 1376(8)

Clerk of county construction board of appeals had absolute judicial immunity in connection with civil rights suit alleging that she had intentionally failed to file landowners' appeal from county construction officer's decision, so as to give officer time to commence criminal proceedings against landowners; board of appeals was quasi-judicial body whose clerks were entitled to such immunity for activities integrally related to judicial process. Akins v. Deptford Tp., D.N.J.1993, 813 F.Supp. 1098, affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 510 U.S. 981, 126 L.Ed.2d 429, affirmed 17 F.3d 1428. Civil Rights 1376(8)

Assistant deputy court clerk was entitled to derivative absolute judicial immunity for conduct taken in response to judicial order in performing or refusing to perform ministerial acts of filing pleadings or responding to requests for information sought by inmate. Clay v. Yates, E.D.Va.1992, 809 F.Supp. 417, affirmed 36 F.3d 1091. Civil Rights 1376(8)

Clerk of court, who was compelled by state law to require plaintiff to pay a fee before accepting any motions in connection with pending criminal action, was absolutely immune from civil suit for damages under § 1983. Pokrandt v. Shields, E.D.Pa.1991, 773 F.Supp. 758. Civil Rights 1376(8)

Although absolute immunity may be available to protect discretionary actions of a court clerk, such as setting bail amounts, only qualified immunity should be accorded clerks performing ministerial duties, such as filing papers and preparing records. Marty's Adult World of New Britain, Inc. v. Guida, D.C.Conn.1978, 453 F.Supp. 810. Clerks Of Courts 72

Since the action complained of was ministerial, clerk of court was not immune from suit for damages under this section on ground that he was a judicial officer, with respect to alleged failure to transmit supplemental pleading to

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appellate court in a criminal case. Norwood v. Solomon, E.D.Mo.1977, 431 F.Supp. 380. Civil Rights 1376(8)

Even if alleged failure to file petition was patently violative of complainant's civil rights, Supreme Court prothonotary allegedly acting pursuant to court order and direction in allegedly failing so to file, could not be held civilly liable therefor. Ginsburg v. Stern, W.D.Pa.1954, 125 F.Supp. 596, affirmed 225 F.2d 245. Clerks Of Courts 72

State court clerk was entitled to judicial immunity from liability for her conduct in failing to file state prisoner's court documents, in prisoner's §§ 1983 in forma pauperis action, seeking damages for alleged deprivation of right of access to courts, and violation of due process and equal protection, where clerk acted pursuant to specific instruction of state court judge, and complaint did not give any indication that prisoner sought injunctive relief or an order requiring clerk to file his court documents. Guiden v. Morrow, C.A.10 (Kan.) 2004, 92 Fed.Appx. 663, 2004 WL 296983, Unreported. Civil Rights 1376(8)

3354. ---- Postconviction relief, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Clerk of state court was not entitled to immunity for his alleged concealment of order vacating defendant's conviction entered pursuant to defendant's postconviction petition. Lowe v. Letsinger, C.A.7 (Ind.) 1985, 772 F.2d 308. Clerks Of Courts 72

3355. ---- Referees, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

N.Y. McKinney's Judiciary Law § 251-a which provides that no person holding office of confidential clerk of law secretary to justice of supreme court shall be appointed referee in any action or proceeding instituted in supreme court is not jurisdictional, and therefore, confidential clerk of judge who served as referee in action challenging election nominating petition did not act without jurisdiction, but, at most, in excess of it; thus, since acting in excess of jurisdiction does not deprive one of judicial immunity, law clerk was immune from suit based upon her actions in connection with election petition suit. Weiss v. Feigenbaum, E.D.N.Y.1982, 558 F.Supp. 265. Judges 36

3356. ---- Summons, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Court clerks in issuing writs of summons which brought plaintiff tenants into court for distraint of rent cases, were performing their duties under rules of court having effect of law and were therefore immune from action by tenants for such acts. Steinpreis v. Shook, C.A.4 (Md.) 1967, 377 F.2d 282, certiorari denied 88 S.Ct. 811, 389 U.S. 1057, 19 L.Ed.2d 858. Clerks Of Courts 72

3357. ---- Transcripts, clerks of court, immunity of miscellaneous judicial and quasi judicial officials

Clerk of state circuit court did not have absolute immunity from equitable relief in inmate's suit against clerk for failure to provide inmate with transcript of his criminal trial for use on appeal. McCullough v. Horton, C.A.8 (Ark.) 1995, 69 F.3d 918. Clerks Of Courts 72

Where, in state proceeding, circuit judge, directing verdict for defendant at conclusion of evidence, court reporter, refusing to give plaintiff transcript of trial, and court clerk, refusing to give plaintiff transcript of record, were all acting in discharge of their official duties, they were protected by doctrine of judicial immunity. Dieu v. Norton, C.A.7 (Ill.) 1969, 411 F.2d 761. Clerks Of Courts 72; Courts 57(.5); Judges 36

Acts charged to individual defendants, a court reporter and a court clerk, alleging that they refused to furnish plaintiff with portion of state criminal trial transcript, were acts performed in their capacity as quasijudicial officers

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which clothed them with judicial immunity. Stewart v. Minnick, C.A.9 (Cal.) 1969, 409 F.2d 826. Clerks Of Courts 72; Courts 57(1)

3358. ---- Miscellaneous clerks of court acts, immunity of miscellaneous judicial and quasi judicial officials

State-court clerk who, on his own initiative, refused to file prison inmate's pro se marital dissolution pleadings, under mistaken belief that counsel was required to prosecute action, was not entitled to absolute quasi-judicial immunity in inmate's §§1983 action alleging denial of his constitutional right of access to the courts; clerk was not acting in functionally comparable way to a judge, since his duty under state law was purely ministerial one of maintaining official record, and secondly there was no evidence that clerk had acted at direction of any judicial officer. Snyder v. Nolen, C.A.7 (Ill.) 2004, 380 F.3d 279, rehearing en banc denied. Civil Rights 1376(8)

Clerk of federal district court was protected by absolute immunity for actions he performed in connection with allegedly improper handling of supersedeas bond, as those acts were within his quasi-judicial duties, even if he deceived litigant regarding status of bond and improperly conducted hearing to assess costs, in coordination with judge. Moore v. Brewster, C.A.9 (Cal.) 1996, 96 F.3d 1240, certiorari denied 117 S.Ct. 963, 519 U.S. 1118, 136 L.Ed.2d 848. Judges 36

Defendant was immune from § 1983 suit based upon his conduct as county circuit court clerk in executing garnishments against plaintiff. Ortman v. Thomas, E.D.Mich.1995, 894 F.Supp. 1104, affirmed 99 F.3d 807. Civil Rights 1376(8)

Law clerks who were performing their judicial functions of assisting judges and hearing examiners in New York Family Court had absolute immunity, pursuant to judicial immunity doctrine, from § 1983 suit. Fariello v. Campbell, E.D.N.Y.1994, 860 F.Supp. 54. Civil Rights 1376(8)

County prothonotary did not have absolute immunity from suit by state court litigant seeking to recover interest on funds paid into court; prothonotary's action had not been taken at direction of judgment or under court order, as required for absolute immunity. Rivkin v. County of Montgomery, E.D.Pa.1993, 838 F.Supp. 1009. Clerks Of Courts 72

Judges and court clerk who were named as defendants in civil rights suit, which was brought by citizen who had been prosecuted for littering and dumping, were entitled to judicial immunity and quasi-judicial immunity. Cochran v. Municipal Court of City of Barberton, Summit County, C.A.6 (Ohio) 2003, 91 Fed.Appx. 365, 2003 WL 23095546, Unreported. Civil Rights 1376(8)

3359. Commissions and commissioners, immunity of miscellaneous judicial and quasi judicial officials

Village mayor did not act in the absence of all jurisdiction by suspending bar owner's liquor license, temporarily closing bar, and imposing a fine, and thus, mayor was entitled to quasi-judicial immunity for those actions, in bar owner's §§ 1983 action alleging equal protection and due process violations; although Illinois Liquor Control Act required mayor, as local liquor control commissioner, to comply with certain procedures, such as reducing his decision to writing, and mayor failed to do so, the Act gave the mayor authority to suspend the license, close the bar, and impose the fine. Killinger v. Johnson, C.A.7 (Ill.) 2004, 389 F.3d 765. Civil Rights 1376(4)

Municipal fire and police civil service board and its board members were not entitled to absolute quasi-judicial immunity in their official capacities, in § 1983 action brought by firefighter alleging violations of his due process and equal protection rights, even if board members were absolutely immune as sued in their individual capacities. Turner v. Houma Mun. Fire and Police Civil Service Bd., C.A.5 (La.) 2000, 229 F.3d 478, rehearing denied. Civil Rights 1376(10)

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Members of Indiana Civil Rights Commission, which was quasi-judicial adjudicatory body, acted in functionally adjudicatory capacity when they determined that they lacked jurisdiction to review and consider discrimination complaint that attorney had filed against state court judge, and thus were entitled to absolute quasi-judicial immunity from attorney's § 1983 action alleging that Commission members violated due process by dismissing her complaint. Crenshaw v. Baynerd, C.A.7 (Ind.) 1999, 180 F.3d 866, certiorari denied 120 S.Ct. 374, 528 U.S. 952, 145 L.Ed.2d 292. Civil Rights 1376(8); Civil Rights 1376(10)

Combined function of Oregon Land Conservation and Development Commission (LCDC) of promulgating goals of agency and monitoring compliance was inconsistent with judicial role and supported finding that commissioners performed executive functions for purposes of determining whether they were entitled to absolute immunity from action by property owner. Zamsky v. Hansell, C.A.9 (Or.) 1991, 933 F.2d 677. Zoning And Planning 353.1

Oregon PUC assistant commissioner and deputy commissioner were not entitled to absolute immunity from federal civil rights claims of owner of intrastate trucking company, who maintained that commissioners, during administrative hearing on intrastate trucking applications, interfered in evidence-producing process, had repeated ex parte contacts with hearing officer for purpose of influencing outcome of hearing, and continued irregular and discriminatory actions after hearing was over in attempt to harass owner; although commissioners were acting within scope of their authority, they were not acting in quasi-judicial capacity. Schlegel v. Bebout, C.A.9 (Or.) 1988, 841 F.2d 937. Civil Rights 1376(3)

Actions of the Mississippi State Tax Commission in rescinding previous classification of motel and restaurant property as resort area and in deciding not to renew liquor license were performing actions essentially judicial in nature and were entitled to quasi-judicial immunity from suit. Chiz's Motel and Restaurant, Inc. v. Mississippi State Tax Com'n, C.A.5 (Miss.) 1985, 750 F.2d 1305. Intoxicating Liquors 61(1)

Commissioners appointed by the court to conduct a partition sale of the divorced plaintiffs' property were sufficiently related to the judicial process to entitle them to quasi-judicial absolute immunity from federal suit for damages arising from their conduct in handling sale and in distributing proceeds of sale where the alleged acts of wrongdoing, namely, the improper appointment, the defective advertisement, the illegal participation in the bidding, the unlawful cover-up, and the untruthful reporting to the court, were acts in furtherance of the commissioners' official duties in aid of the court. Ashbrook v. Hoffman, C.A.7 (Ind.) 1980, 617 F.2d 474. Judges 36

County planning commissioners and hearings officer who denied religious organization's request for special use permit were protected by quasi-judicial immunity from organization's § 1983 speech, assembly, religious freedom, due process, and equal protection claims and Religious Land Use and Institutionalized Persons Act (RLUIPA) individual capacity claims; defendants were adjudicating land use dispute and functioning as quasi-judicial body, proceedings were adversarial, parties had right of judicial review, and grant of immunity would prevent impairment of independent and impartial exercise of judgment. Hale O Kaula Church v. Maui Planning Com'n, D.Hawai'i 2002, 229 F.Supp.2d 1056.

Decision of officials of Connecticut Commission on Human Rights and Opportunities (CHRO) reversing and abandoning first finding of reasonable cause which had been in favor of employee alleging employment discrimination, and its subsequent dismissal of employee's charge for no reasonable cause were quasi-judicial functions, entitled to absolute immunity from employee's § 1983 suit; as part of coordinated state-federal administrative scheme for enforcing the anti-discrimination laws, officials had to be permitted to perform their duties without threat of individual liability for damages. White v. Martin, D.Conn.1998, 26 F.Supp.2d 385, affirmed 198 F.3d 235. Civil Rights 1376(8); Civil Rights 1376(10)

Actions of village official, who was both mayor and liquor commissioner, in suspending restaurant-lounge's liquor license for seven days and imposing $1,000 fine were judicial, and absolutely immune from due process claim

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asserted under § 1983; moreover, licensee's allegation that official operated pursuant to personal agenda and not in her judicial capacity did not affect her immunity. R & V Pine Tree, Inc. v. Village of Forest Park, N.D.Ill.1996, 947 F.Supp. 342. Civil Rights 1376(4)

Commissioners in Chancery were protected from liability under § 1983 based upon litigation over ownership of certain real estate by doctrine of judicial immunity. Davis v. Hudgins, E.D.Va.1995, 896 F.Supp. 561, affirmed 87 F.3d 1308, certiorari denied 117 S.Ct. 1440, 520 U.S. 1172, 137 L.Ed.2d 546. Civil Rights 1376(8)

Maine Public Utilities Commission chairman was entitled to absolute judicial immunity from civil rights liability for his alleged usurpation of powers of power company's board of directors in quest to punish former power company executive after he had been prosecuted criminally; regardless of propriety of his actions in that regard, they were sufficiently related to chairman's role as presiding commissioner in adjudicatory proceeding. Scott v. Central Maine Power Co., D.Me.1989, 709 F.Supp. 1176. Civil Rights 1376(8)

State Commissioner of Merit System was not entitled to absolute immunity from public employee's suit under this section on ground that Commissioner's action in denying employee's request for reclassification was quasi-judicial function where Commissioner had no authority to reverse decisions of hearing officer and Commissioner's only duties were to administer rules and regulations of State Personnel Board. Brown v. Ledbetter, N.D.Ga.1983, 569 F.Supp. 170. Civil Rights 1376(3); Civil Rights 1376(10)

Members of Peoria Housing Authority Board of Commissioners, who were named as defendants in action by former employee who alleged that her termination violated due process, were not entitled to absolute, quasi-judicial immunity. Young v. Peoria Housing Authority, C.D.Ill.1979, 479 F.Supp. 1093. Civil Rights 1376(10)

Commissioners conducting hearing of South Carolina Beverage Control Commission were absolutely immune from suit under this section alleging conspiracy to deny plaintiffs a sale and consumption license to sell alcoholic beverages as nonprofit corporation, where commissioners conducted hearing according to state law and denied license after fair and impartial hearing, in which both viewpoints were considered, so that the acts were judicial in nature and were not performed in abuse of discretion. Brown v. DeBruhl, D.C.S.C.1979, 468 F.Supp. 513. Conspiracy 13

Discretionary inaction on part of public service commissioners in failing to grant hearing to customer whose electric service was terminated for nonpayment of a bill was protected under the doctrine of quasi-judicial immunity. Condosta v. Vermont Elec. Co-op., Inc., D.C.Vt.1975, 400 F.Supp. 358. Civil Rights 1376(8)

3360. Conciliation court officials, immunity of miscellaneous judicial and quasi judicial officials

Employees of conciliation court who allegedly refused to allow father visitation rights and attempted to bias foster parents were entitled to quasi-judicial immunity; employees were performing judicial function at direction of court, controversy involved pending case to which they had been assigned, and events at issue arose directly and immediately out of confrontation between employees and parties in that case. Meyers v. Contra Costa County Dept. of Social Services, C.A.9 (Cal.) 1987, 812 F.2d 1154, certiorari denied 108 S.Ct. 98, 484 U.S. 829, 98 L.Ed.2d 59. Courts 55

3361. Conservators, immunity of miscellaneous judicial and quasi judicial officials

Trust officer employed by Department of Veterans' Affairs was immune from liability in civil rights action to recover damages arising out of trust officer's forcible entry into plaintiff's home and the removal of certain personal property, since trust officer was conservator of estate of plaintiff's husband who requested officer to retrieve certain items from the house, officer was informed that house was unoccupied, and officer was told by the State Attorney

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General that he could remove items requested by plaintiff's husband, and therefore, trust officer was acting pursuant to his court-appointed authority in the performance of his statutory duties. Mosher v. Saalfeld, C.A.9 (Or.) 1978, 589 F.2d 438, certiorari denied 99 S.Ct. 2883, 442 U.S. 941, 61 L.Ed.2d 311. Civil Rights 1376(1)

Where person appointed as conservator under Illinois law was not appointed as general conservator or as an estate conservator but was specifically appointed for sole purpose of consenting to surgery and blood transfusions, he had no discretion, and his liability for blood transfusion which violated ward's religious principles was no greater or less than that of judge who appointed, him, and he enjoyed judicial immunity from suit under this section. Holmes v. Silver Cross Hospital of Joliet, Ill., N.D.Ill.1972, 340 F.Supp. 125. Civil Rights 1376(8)

3362. Contempt proceeding officials, immunity of miscellaneous judicial and quasi judicial officials

State Supreme Court Justices, state district judges, prosecuting attorneys, clerks of court, sheriffs, law enforcement officers, prison officials and members of state integrated bar were immune from suit under this section for damages allegedly resulting from their performance of official tasks in connection with prosecution of plaintiff for contempt. Rhodes v. Meyer, C.A.8 (Neb.) 1964, 334 F.2d 709, certiorari denied 85 S.Ct. 263, 379 U.S. 915, 13 L.Ed.2d 186. Civil Rights 1376(1)

State court magistrate was performing judicial rather than administrative function when he initiated contempt proceeding against plaintiff, and issued arrest warrant, upon her failure to appear in court or to pay fine on citation for failure to wear seatbelt, for purpose of determining his immunity from § 1983 liability. Howell v. Hofbauer, N.D.Iowa 2000, 123 F.Supp.2d 1178. Civil Rights 1376(8)

3363. Court reporters, immunity of miscellaneous judicial and quasi judicial officials

Court reporter was not entitled to absolute immunity from damages liability under § 1983 for failing to produce criminal trial transcript. Hargrove v. Riley, E.D.Wash.2000, 100 F.Supp.2d 1271. Civil Rights 1376(8)

When court reporter transcribed plaintiff's criminal trial, she was performing one of her statutory duties, and so alleged alteration of transcript of trial was within her general subject matter jurisdiction as court reporter; therefore, she was entitled to absolute quasi-judicial immunity in federal civil rights action. Cook v. Smith, E.D.Pa.1993, 812 F.Supp. 561. Civil Rights 1376(8)

Individual stenographers were entitled to qualified immunity on inmates' claim that delay in filing appellate transcripts violated due process; at time appeals were filed, there was case law suggesting that denial of speedy appeal would not be denial of due process. Mathis v. Bess, S.D.N.Y.1991, 763 F.Supp. 58, reconsideration denied 767 F.Supp. 558. Civil Rights 1376(8)

Court reporters acting in their capacity as quasi-judicial officers are clothed with judicial immunity from liability for money damages in suit under Civil Rights Act and court reporter could not be held liable in damages for refusal to deliver a transcript of child custody hearing to mother where record had been ordered sealed by the court. Thurston v. Robison, D.C.Nev.1985, 603 F.Supp. 336. Civil Rights 1376(8)

Because of judicial immunity, defendant who was denied complete transcript of earlier trial on murder charge could not maintain action against judge and court reporter under this section conferring right of action for deprivation of constitutional right, privilege or immunity. Brown v. Charles, E.D.Wis.1970, 309 F.Supp. 817. Civil Rights 1376(8)

Court reporter was entitled to immunity against §§ 1983 claim by plaintiff arising from her alleged failure to provide plaintiff with copy of grand jury minutes in plaintiff's state court criminal proceeding; reporter's actions

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were carried out within scope of judge's instructions, and did not involve exercise of discretion. Rolle v. Berkowitz, S.D.N.Y.2004, 2004 WL 287678, Unreported. Civil Rights 1376(8)

3364. Deposition officers, immunity of miscellaneous judicial and quasi judicial officials

Court-appointed deposition officer was acting as quasi-judicial officer in taking depositions and was entitled to judicial immunity from subsequent complaint under this section for damage for allegedly acting contrary to his duties. Sarelas v. Sheehan, C.A.7 (Ill.) 1965, 353 F.2d 5. Civil Rights 1376(8)

3365. Directors, immunity of miscellaneous judicial and quasi judicial officials

Director of Division of Medical Assistance and Health Services of New Jersey Department of Human Services was exercising quasi-judicial function when he limited application of state appellate court decision to specific years encompassed therein and was thus entitled to judicial immunity from civil rights liability stemming from his exercise of that function, and reversal of departmental interpretation on appeal did not render his conduct objectively unreasonable or in violation of subject nursing home's rights and did not deprive him of judicial immunity. Stratford Nursing and Convalescent Center, Inc. v. Kilstein, D.N.J.1991, 802 F.Supp. 1158, affirmed 972 F.2d 1332. Civil Rights 1376(8)

Director of Virginia Department of Welfare was absolutely immune from liability in his individual capacity as result of actions taken in connection with prospective adoptive mother's attempt to adopt child, since director was acting pursuant to valid court directive in preparing and submitting his recommendation to state court. Wooldridge v. Com. of Va., E.D.Va.1978, 453 F.Supp. 1333. States 79

3366. Education and school officials, immunity of miscellaneous judicial and quasi judicial officials--Generally

State technological university's faculty grievance procedure fell short of requirements for quasi-judicial absolute immunity, and thus dean of graduate studies and university president were not entitled to such immunity from professor's claim that handling of his tenure denial grievance violated his right to procedural due process and equal protection; although grievance committee performed some traditional adjudicatory functions, it did not possess independence required for quasi-judicial immunity, grievance process did not provide safeguards for grievants as required for immunity, and grievance policy was not subject to requirements of Tennessee Administrative Procedures Act, and provided only for appeal to university chancellor, not to courts. Purisch v. Tennessee Technological University, C.A.6 (Tenn.) 1996, 76 F.3d 1414. Civil Rights 1376(10)

3367. ---- Attorneys, education and school officials, immunity of miscellaneous judicial and quasi judicial officials

Absent evidence that his acts were inextricably involved in the judicial process, school district attorney was not entitled to absolute immunity in civil rights suit of tenured teacher, who alleged that school district and school officials deprived him of due process rights by dismissing him without prior notice and pretermination hearing. Gilbert v. School Dist. No. 50, Adams County, D.C.Colo.1980, 485 F.Supp. 505. Civil Rights 1375

3368. Employment officials, immunity of miscellaneous judicial and quasi judicial officials

Members of county career service council (CSC) which rejected physician's claim of retaliatory discharge were entitled to quasi-judicial immunity from physician's § 1983 claim, as CSC's duties were functionally comparable to those of state judge. Atiya v. Salt Lake County, C.A.10 (Utah) 1993, 988 F.2d 1013. Civil Rights 1376(10)

Members of grievance committee set up under bargaining agreement named as defendants in civil rights action for alleged violation of rights to due process and to freedom of speech and association, were vested with quasi-judicial

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characteristics so as to be functionally comparable to judges and, hence were absolutely immune from liability when they affirmed plaintiff's dismissal on ground that he neglected his duty by refusing to use his personal automobile in accordance with bargaining agreement to carry out a field study for a project to be undertaken by employer. Morales v. Vega, D.C.Puerto Rico 1979, 483 F.Supp. 1057. Civil Rights 1376(8); Civil Rights 1376(10)

3369. Friends of the court, immunity of miscellaneous judicial and quasi judicial officials

Under Michigan statutes prescribing duties and responsibility of friends of the court, acts of friends of the court which formed basis of plaintiff's claims under this section were performed by such defendants within scope of their official quasi-judicial duties, and they were entitled to immunity. Johnson v. Granholm, C.A.6 (Mich.) 1981, 662 F.2d 449, certiorari denied 102 S.Ct. 2933, 457 U.S. 1120, 73 L.Ed.2d 1332. Civil Rights 1376(8)

3370. General court of justice officials, immunity of miscellaneous judicial and quasi judicial officials

An officer of general court of justice of a state assisting chief justice of a state and serving at his pleasure held a position entitling him to judicial immunity from suit by damages to the same extent as other judicial personnel of a state. Fowler v. Alexander, M.D.N.C.1972, 340 F.Supp. 168, affirmed 478 F.2d 694. Courts 55

3371. Governors, immunity of miscellaneous judicial and quasi judicial officials

Governor's failure to appoint replacements on Wyoming Personnel Review Board was made in an adjudicative capacity which absolutely immunized him from liability under this section. Johnston v. Herschler, C.A.10 (Wyo.) 1982, 669 F.2d 617. Civil Rights 1376(10)

Former governor had quasi-judicial immunity from parolee's civil rights suit under §§ 1983 alleging that he was deprived of certain constitutional and civil rights by governor's reversals of parole board's decision to grant parole, where governor's statutory duties upon review of parole board's decision were functionally comparable to those of judges. Miller v. Davis, C.D.Cal.2006, 420 F.Supp.2d 1108. Civil Rights 1376(8)

3372. Guardians ad litem, immunity of miscellaneous judicial and quasi judicial officials

Guardian ad litem for child was entitled to absolute judicial immunity from civil rights liability for performing her role in child custody and related proceedings. Dornheim v. Sholes, C.A.8 (N.D.) 2005, 430 F.3d 919, certiorari denied 126 S.Ct. 2031. Civil Rights 1376(8)

Guardian ad litem was entitled to quasi-judicial immunity on all civil rights claims arising from guardian's actions during child custody dispute, even if guardian lied to judge in open court. Fleming v. Asbill, C.A.4 (S.C.) 1994, 42 F.3d 886. Civil Rights 1376(8)

Guardian ad litem of child who was allegedly sexually abused was entitled to absolute immunity in connection with her role in helping to prepare and signing motion for order to stay referee's decision returning child to her home; guardian's actions were for child's protection, and no evidence indicated that those actions were unreasonable in light of information of which guardian was aware. McCuen v. Polk County, Iowa, C.A.8 (Iowa) 1990, 893 F.2d 172. Civil Rights 1373

Guardian ad litem should be absolutely immune from liability for civil rights violations when acting as integral part of judicial process. Gardner by Gardner v. Parson, C.A.3 (Del.) 1989, 874 F.2d 131. Civil Rights 1373

Law guardians in state court child custody proceeding were not "state actors," and thus were entitled to immunity for liability under § 1983 for their actions as judicial officers in proceeding, even though guardians were appointed

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by state court and paid by state funds, as guardians were bound to exercise independent judgment on behalf of their clients. Storck v. Suffolk County Dept. of Social Services, E.D.N.Y.1999, 62 F.Supp.2d 927. Civil Rights 1326(1)

Guardian ad litem is not automatically assumed to be acting as direct adversary of state, and, thus, creation of blanket rule insulating guardian ad litem from § 1983 liability is not justified; determination of whether guardian is entitled to immunity in § 1983 action has to be decided case by case, based on whether interests of clients conflict with interests of state. Kohl v. Murphy, N.D.Ill.1991, 767 F.Supp. 895. Civil Rights 1326(1); Civil Rights 1350

A volunteer appointed to serve as guardian ad litem was entitled to absolute quasi-judicial immunity for her actions in state dependency proceeding; all investigative work conducted by guardian ad litem was done pursuant to order of juvenile court judge while guardian ad litem was functioning as an extension of the court. Ward v. San Diego County Dept. of Social Services, S.D.Cal.1988, 691 F.Supp. 238. Infants 205

3372A. Hospital review boards

Members of local public hospital disciplinary and peer review boards were not entitled to absolute judicial immunity from §§1983 liability in action arising out of boards' suspension of surgeon's medical privileges at hospital; peer review process provided by hospital lacked important characteristics found in judicial bodies, including insulation from political influences, adequate procedural safeguards, and adversarial characteristics. Braswell v. Haywood Regional Medical Center, W.D.N.C.2005, 352 F.Supp.2d 639. Civil Rights 1376(8)

3373. Investigators, immunity of miscellaneous judicial and quasi judicial officials

State tax officials were not entitled to absolute immunity in §§ 1983 action brought by members of Indian tribe whose property had allegedly been subjected to tax liens in retaliation for their business association with a non-tribal gasoline distributor; officials were acting in an investigatory, rather than a judicial, capacity. Perez v. Ellington, C.A.10 (N.M.) 2005, 421 F.3d 1128. Civil Rights 1376(3)

Non-appointed staff-investigator for state board of dental examiners, who conducted warrantless search of dentist's office, but neither initiated disciplinary proceedings against dentist nor pursued prosecution of disciplinary complaint, was not entitled to absolute immunity in dentist's § 1983 and Racketeer Influenced and Corrupt Organizations Act (RICO) action; staff member's role as investigator was not at heart of board's adjudicative function. Beck v. Texas State Bd. of Dental Examiners, C.A.5 (Tex.) 2000, 204 F.3d 629, rehearing denied, certiorari denied 121 S.Ct. 171, 531 U.S. 871, 148 L.Ed.2d 117. Civil Rights 1376(8); States 79

Investigator who vouched for truth of contents of criminal complaint offered in support of warrant for mayor's arrest, on theory that mayor had made unauthorized payments to deputy sheriff contrary to terms of Michigan law requiring deputy sheriffs to be paid by counties for which they worked, was immune from liability for his actions under § 1983, even though district court judge ultimately determined that criminal complaint was constitutionally deficient in factual support; complaint was not so lacking in indicia of probable cause as to render official belief in its existence unreasonable. Ireland v. Tunis, C.A.6 (Mich.) 1997, 113 F.3d 1435, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 560, 522 U.S. 996, 139 L.Ed.2d 401. Civil Rights 1376(6)

Under Illinois law, investigator employed by state's attorney was entitled to absolute witness immunity from malicious prosecution liability arising from his grand jury testimony. Mutual Medical Plans, Inc. v. County of Peoria, C.D.Ill.2004, 309 F.Supp.2d 1067. Malicious Prosecution 40

Caseworker for Delaware Division of Family Services (DFS), who investigated allegations of child abuse by father

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and after consulting supervisor, placed father's name on central registry of abusers, and supervisor were not entitled to absolute immunity from father's § 1983 claims; defendants' investigative or administrative' actions were taken outside context of judicial proceeding. Rodriguez v. Stevenson, D.Del.2002, 243 F.Supp.2d 58. Civil Rights 1376(3)

Investigator performed "discretionary function" when, pursuant to court commission, he prepared and submitted report regarding criminal defendant's background, and investigator thus was immune from § 1983 action alleging violation of criminal defendant's rights, absent violation of clearly established law. Malloy v. Coleman, M.D.Fla.1997, 961 F.Supp. 1568. Civil Rights 1376(8)

3374. Jurors, immunity of miscellaneous judicial and quasi judicial officials

Members of state grand jury had absolute immunity against § 1983 claims against them by attorney, whose memorandum to newspaper reporter had led to grand jury's formation, arising from grand jurors' "co-authoring" of report issued following investigation of child abuse and other charges; grand jurors' comments in report involved exercise of discretionary, quasi judicial function. DeCamp v. Douglas County Franklin Grand Jury, C.A.8 (Neb.) 1992, 978 F.2d 1047, certiorari denied 113 S.Ct. 3036, 509 U.S. 923, 125 L.Ed.2d 723. Civil Rights 1375

Juror was immune from civil liability for damages arising out of criminal prosecution under this section. White v. Hegerhorst, C.A.9 (Cal.) 1969, 418 F.2d 894, certiorari denied 90 S.Ct. 1710, 398 U.S. 912, 26 L.Ed.2d 74. Jury 1

State court jurors were entitled to absolute immunity from subsequent action for damages under this subchapter; thus, plaintiff's complaint alleging that the jurors participated in a conspiracy to deprive him of his civil rights and his right of access to the courts based upon his race, his interracial marriage and fact that he was not a county resident failed to state a claim upon which relief could be granted. Sunn v. Dean, N.D.Ga.1984, 597 F.Supp. 79. Civil Rights 1375; Conspiracy 18

Juror in civil action is immune from later suit, based on his conduct as juror, for damages under this section. McIntosh v. Garofalo, W.D.Pa.1973, 367 F.Supp. 501.

The members of the jury which convicted defendant in a criminal case have immunity from liability for damages under this section. Roberts v. Barbosa, S.D.Cal.1964, 227 F.Supp. 20. Civil Rights 1375

3375. Jury officials, immunity of miscellaneous judicial and quasi judicial officials

Jury commissioners were not entitled to quasi-judicial immunity respecting § 1983 plaintiffs' claim that commissioners had attempted to remove minority groups from county jury pool; commissioners did not make judgments functionally comparable to those of judges and compiling jury pool did not involve exercise of discretionary judgment. Ryan v. DuPage County Jury Com'n, N.D.Ill.1993, 837 F.Supp. 898. Civil Rights 1376(8)

3376. Marshals, immunity of miscellaneous judicial and quasi judicial officials

Marshal who was acting pursuant to judge's orders enjoyed a quasi-judicial immunity from liability for damages in civil rights suits. Martinez v. Com. of Puerto Rico, D.C.Puerto Rico 1977, 435 F.Supp. 1204. Civil Rights 1376(8)

3377. Mayors, immunity of miscellaneous judicial and quasi judicial officials

Village mayor's actions, as local liquor control commissioner, in suspending bar owner's liquor license, temporarily

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closing bar, and imposing a fine, were judicial functions, as would support mayor's entitlement to judicial immunity for those actions, in bar owner's §§ 1983 action alleging equal protection and due process violations. Killinger v. Johnson, C.A.7 (Ill.) 2004, 389 F.3d 765. Civil Rights 1376(4); Civil Rights 1376(8)

City mayor's actions in investigating allegedly criminal incident involving university president and in swearing out complaint without probable cause and with malice did not constitute "judicial acts," cloaked in absolute immunity, in that those actions were not part of normal judicial function, but were plainly executive in nature, did not center around any pending case, but instead initiated the case, did not occur in judge's chambers, mayor being, ex officio under Texas law, city's municipal judge and magistrate, and did not involve mayor's official capacity as a judge. Thomas v. Sams, C.A.5 (Tex.) 1984, 734 F.2d 185, rehearing denied 741 F.2d 783, certiorari denied 105 S.Ct. 3476, 472 U.S. 1017, 87 L.Ed.2d 612. Judges 36

Where mayor, without jurisdiction to hear case due to plaintiff's refusal to waive right to jury trial, found plaintiff guilty and imposed penalty in excess of maximum allowed by ordinance, mayor lost his cloak of judicial immunity. Schorle v. City of Greenhills, S.D.Ohio 1981, 524 F.Supp. 821. Judges 36

3378. Medical boards, immunity of miscellaneous judicial and quasi judicial officials

Hearing officer for New Mexico Board of Medical Examiners was entitled to absolute immunity to physician's due process civil rights claim which alleged that officer should have recused himself from hearing to determine whether to revoke physician's medical license, since officer was acting in quasi-judicial function. Guttman v. Khalsa, C.A.10 (N.M.) 2006, 446 F.3d 1027. Civil Rights 1376(8)

Idaho's medical board, its disciplinary subsidiary, its members, professional staff and counsel functioned in a sufficiently judicial and prosecutorial capacity to entitle them to absolute immunity for their quasi-judicial and quasi-prosecutorial acts; thus, they were entitled to absolute immunity from § 1983 liability for acts which were directly related to their adjudicatory function and the ultimate resolution of physician assistant's disciplinary dispute. Olsen v. Idaho State Bd. of Medicine, C.A.9 (Idaho) 2004, 363 F.3d 916. Civil Rights 1376(3); Civil Rights 1376(8); Health 195

Members of state board of dental examiners, who allegedly targeted dentist for investigation and revoked his license in retaliation for his successfully challenging board's regulations against advertising, were performing quasi-judicial functions and were entitled to absolute immunity in dentist's § 1983 and Racketeer Influenced and Corrupt Organizations Act (RICO) lawsuit; adequate safeguards existed in disciplinary process to reduce need for private damages action as means of controlling unconstitutional conduct on part of board members, it was important for board members to be able to render disciplinary decisions free from threat of incurring personal liability, board members were insulated from political influence, since they were appointed to staggered, six-year terms with terms of one-third of members expiring every two years, disciplinary proceedings were adversarial in nature, and board's orders were appealable to state court. Beck v. Texas State Bd. of Dental Examiners, C.A.5 (Tex.) 2000, 204 F.3d 629, rehearing denied, certiorari denied 121 S.Ct. 171, 531 U.S. 871, 148 L.Ed.2d 117. Civil Rights 1376(8); States 79

While members of Nevada Board of Medical Examiners did not have all attributes of federal hearing officer, they were functionally comparable to judges and prosecutors, and, thus, board members were entitled to absolute immunity for their quasi-judicial acts; public interest of ensuring quality health care provided strong need to ensure that board members could perform disciplinary functions without threat of harassment or intimidation, Nevada statutory scheme presented adequate safeguards reducing need for private damages actions to control unconstitutional conduct, board members were sufficiently insulated from political influence, disciplinary process was adversary in nature, and Board errors were correctable on appeal. Mishler v. Clift, C.A.9 (Nev.) 1999, 191 F.3d 998. Health 195

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Because members of Colorado State Board of Medical Examiners performed functions comparable to those of a court of law when they ordered suspension of podiatrist's license to practice medicine, they were entitled to absolute immunity from damages for alleged deprivation of his civil rights. Horwitz v. State Bd. of Medical Examiners of State of Colo., C.A.10 (Colo.) 1987, 822 F.2d 1508, certiorari denied 108 S.Ct. 453, 484 U.S. 964, 98 L.Ed.2d 394. Civil Rights 1376(3)

Kansas Board of Healing Arts was immune from damages in civil rights action in connection with disciplinary proceeding against physician where facial review of applicable statutes indicated that investigations and decisions whether to commence disciplinary proceedings were within quasi-judicial jurisdiction of Board and there was no evidence that hearings conducted by Board went beyond their jurisdiction. Vakas v. Rodriquez, C.A.10 (Kan.) 1984, 728 F.2d 1293, certiorari denied 105 S.Ct. 384, 469 U.S. 981, 83 L.Ed.2d 319. Civil Rights 1376(8)

State Board of Nursing members and Board's counsel were not absolutely immune from liability in § 1983 action by nurse, who had been convicted of importation of obscene materials, claiming that his civil rights were violated when Board required him to take penile plethysmograph test as condition of his continued professional licensure as nurse; decision to require nurse to undergo test, made by Board members after full board had adjourned, was separate and apart from Board's quasi-judicial function, and Board members were acting in investigatory role, rather than prosecutorial, at time decision was made. Berthiaume v. Caron, D.Me.1997, 973 F.Supp. 29, reversed 142 F.3d 12. Civil Rights 1376(3)

Executive director and medical director of state Board of Medical Examiners were entitled to share absolute immunity of Board as de jure staff members, in doctor's § 1983 action alleging that summary suspension of doctor's license to prescribe controlled substances violated due process. Howard v. Miller, N.D.Ga.1994, 870 F.Supp. 340. Civil Rights 1376(3)

Members of State Board of Healing Arts are entitled to absolute immunity from damages in § 1983 suit inasmuch as Board serves quasi-judicial role by statute and its members perform judicial functions. Kutilek v. Gannon, D.Kan.1991, 766 F.Supp. 967. Civil Rights 1376(8)

Decision of state Board of Medical Examiners, agency of state of North Carolina, to prefer charges against physician involved performance of judicial or quasi-judicial function; thus individual Board members were not answerable in damages for their decision to bring the charges. Hoke v. Board of Medical Examiners of State of N. C., W.D.N.C.1978, 445 F.Supp. 1313. States 78

3379. Mental hospital officials, immunity of miscellaneous judicial and quasi judicial officials

Absolute quasi-judicial immunity afforded superintendent and psychologist at public mental health facility for complying with state court order that juvenile be confined at facility did not extend to any liability arising from placement of juvenile in maximum security ward; superintendent and psychologist were only qualifiedly immune for any liability arising from placement. Turney v. O'Toole, C.A.10 (Okla.) 1990, 898 F.2d 1470. Civil Rights 1376(8)

In light of immunity for acts under authorization of state court order, director of state mental hospital and county treasurer were shielded from civil rights liability for their action subsequent to court order requiring payment from patient's deposit fund and disability benefits of cost of patient's involuntary confinement in state mental hospital. Fayle v. Stapley, C.A.9 (Ariz.) 1979, 607 F.2d 858. Civil Rights 1376(3); Civil Rights 1376(4)

To extent that director of state mental institution was merely exercising order of state supreme court justice in confining person duly committed to mental institution by order of justice, he was immune from liability under this section. Miller v. Director, Middletown State Hospital, Middletown, N. Y., S.D.N.Y.1956, 146 F.Supp. 674, affirmed 243 F.2d 527. Civil Rights 1376(3)

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42 U.S.C.A. § 1983

3380. Parole boards and members, immunity of miscellaneous judicial and quasi judicial officials

Parole board members in South Dakota were entitled to absolute immunity, in prisoner's §§ 1983 claim alleging that the board's decision to reinstate her suspended sentence violated due process, where board members had authority under South Dakota law to make such decisions based on prisoner's signed parole agreement. Figg v. Russell, C.A.8 (S.D.) 2006, 433 F.3d 593. Civil Rights 1376(7)

Members of prisoner review board were absolutely immune from defendant's claims alleging that defendant was denied due process by board's alleged failure to provide adequate notice of supervised release revocation hearing, provide defendant with opportunity to present evidence and witnesses, adequately explain that hearing was final revocation hearing, or provide defendant adequate written notice of reasons for revocation, as board members' conduct was integral to decision-making process and was thus quasi-judicial in nature. Wilson v. Kelkhoff, C.A.7 (Ill.) 1996, 86 F.3d 1438. Civil Rights 1376(7)

Utah Board of Pardons and Parole officials were immune from damages liability to parolee based on their entitlement to absolute or qualified immunity, in parolee's § 1983 action alleging that he was denied opportunity to appeal parole board's decisions, that he was denied access to parole board's standards and criteria, and that parole board failed to credit his sentence. Malek v. Haun, C.A.10 (Utah) 1994, 26 F.3d 1013. Civil Rights 1376(7); Pardon And Parole 56

Absolute immunity barred former prisoner's civil rights claim against parole board members based on their decision not to grant him parole, despite his claim that decision was based on unlawful considerations. Patterson v. Von Riesen, C.A.8 (Neb.) 1993, 999 F.2d 1235. Civil Rights 1376(7)

State officials' duty to schedule and conduct timely parole violation hearing was quasi-judicial function for which they were entitled to absolute immunity, in suit by inmate who was injured between time hearing was scheduled but not held and time it was eventually held. Thompson v. Duke, C.A.7 (Ill.) 1989, 882 F.2d 1180, certiorari denied 110 S.Ct. 2167, 495 U.S. 929, 109 L.Ed.2d 496. Civil Rights 1376(7)

In connection with civil rights complaint brought by in forma pauperis parolee alleging that various federal probation officers and parole examiners conspired to cause his arrest, to make improper investigations and probable cause findings and conduct unfair parole revocation hearing in order to have him returned to prison, trial court improperly held that parole examiners were entitled to absolute immunity since complaint alleged that parole examiners performed executive and investigative functions in addition to their adjudicatory duties. Wilson v. Rackmill, C.A.3 (Pa.) 1989, 878 F.2d 772, on remand. Pardon And Parole 56

Member of Utah Board of Pardons was absolutely immune from damages liability for actions taken in performance of Board's official duties regarding grant or denying of parole. Knoll v. Webster, C.A.10 (Utah) 1988, 838 F.2d 450. Civil Rights 1376(7)

An official who, because of organization of government in particular state, performs parole board's quasi-judicial duties enjoys absolute immunity in suit for damages by parolee alleging that revocation procedures violated right to due process. Farrish v. Mississippi State Parole Bd., C.A.5 (Miss.) 1988, 836 F.2d 969. Civil Rights 1376(7)

Members of Louisiana State Board of Pardons had absolute immunity from § 1983 damages sought by prisoner on ground that he was denied parole, at least in substantial part, because he had previously filed lawsuits against prison officials. Serio v. Members of Louisiana State Bd. of Pardons, C.A.5 (La.) 1987, 821 F.2d 1112. Civil Rights 1376(7)

Parole board official was immune from Section 1983 action for damages resulting from allegedly wrongful imprisonment of state prisoner, as official's sole role in incarceration of prisoner was that he served as hearing

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examiner at detention proceeding, and such duty was plainly adjudicatory function. Harper v. Jeffries, C.A.3 (Pa.) 1986, 808 F.2d 281. Civil Rights 1376(7)

Members of Missouri Board of Probation and Parole were entitled to absolute immunity from liability for damages claimed by prisoner who alleged that Board violated his constitutional rights by denying him parole because he was a sexual offender. Gale v. Moore, C.A.8 (Mo.) 1985, 763 F.2d 341. Pardon And Parole 56

Texas state parole board members were absolutely immune from liability for damages in section 1983 action brought by state prisoner. Hilliard v. Board of Pardons and Paroles, C.A.5 (Tex.) 1985, 759 F.2d 1190. Civil Rights 1376(7)

Corrections department officers who were responsible for decision not to conduct second preliminary parole revocation hearing were entitled to absolute immunity from parolee's claim for damages relief pursuant to this section, because decision not to provide another hearing was adjudicatory in nature. Trotter v. Klincar, C.A.7 (Ill.) 1984, 748 F.2d 1177. Civil Rights 1376(7)

Chairman of state parole board was entitled to quasi-judicial immunity from suit for damages under § 1983; board members performed quasi-judicial function in considering inmates for parole. Parisie v. Morris, N.D.Ga.1995, 873 F.Supp. 1560. Civil Rights 1376(7)

State parole officer, her supervisor, and Missouri Board of Probation and Parole were entitled to absolute immunity from liability for damages in suit alleging unlawful detention of parolee pursuant to detainer that was subsequently quashed. Coats v. Nance, E.D.Mo.1990, 738 F.Supp. 1276. Pardon And Parole 56

Parole board officials, like judges, were entitled to absolute immunity from state inmate's § 1983 suit for damages, as they served quasi-adjudicative function in deciding whether to grant, deny or revoke parole. Faison v. Travis, N.D.N.Y.2002, 2002 WL 31640541, Unreported. Civil Rights 1376(7); Civil Rights 1376(8)

3381. Parole officers, immunity of miscellaneous judicial and quasi judicial officials

Parole board members in Missouri were entitled to absolute immunity in prisoner's §§ 1983 action alleging violation of his due process and equal protection rights by mandating participation in sex-offender treatment program as condition of parole, even if prisoner was improperly classified as sex-offender, where board members had authority under Missouri law to condition release on anything it deemed reasonable to assist offender in leading law-abiding life. Mayorga v. Missouri, C.A.8 (Mo.) 2006, 442 F.3d 1128. Civil Rights 1376(7)

Parole agent in South Dakota was entitled to absolute immunity, in prisoner's §§ 1983 claim alleging that the agent's failure to notify her that, pursuant to her parole agreement, the conditions applicable to her parole likewise applied to her suspended sentence violated due process; agent acted as representative of parole board, so that his actions were quasi-judicial. Figg v. Russell, C.A.8 (S.D.) 2006, 433 F.3d 593. Civil Rights 1376(7)

Individual members of state parole board were entitled to absolute quasi-judicial immunity from §§ 1983 suit for damages brought by parolee who had successfully defended parole violation charges. Holmes v. Crosby, C.A.11 (Ga.) 2005, 418 F.3d 1256. Civil Rights 1376(8)

State parole officer was not entitled to absolute immunity in § 1983 action arising from officer's alleged acts of falsely preparing parole violation report and recommending to supervisor that warrant be issued for parolee's arrest, as officer made no adjudicative decision, officer's actions were not integrally related to judicial process, and officer did not have authority to initiate charges. Scotto v. Almenas, C.A.2 (N.Y.) 1998, 143 F.3d 105. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Probation officers and parole officers are entitled to absolute quasi-judicial immunity from liability under § 1983 for actions taken in their adjudicatory capacities, but not for actions taken in officers' executive or administrative capacities. Williams v. Consovoy, D.N.J.2004, 333 F.Supp.2d 297. Civil Rights 1376(7)

State parole board was not entitled to absolute judicial immunity from liability in inmate's § 1983 action, where inmate alleged that board ordered parole without statutory authority to retard his good-time release date. Bollinger v. Oregon State Bd. of Parole & Post-Prison Supervision, C.A.9 (Or.) 2003, 86 Fed.Appx. 259, 2003 WL 23019018, Unreported, on remand 2005 WL 563742. Civil Rights 1376(7)

3382. Physicians, immunity of miscellaneous judicial and quasi judicial officials

Physician whose report that bite marks found in murder victim's body undoubtedly came from defendant had contributed to defendant's arrest and conviction of murder was not protected by absolute immunity from liability under § 1983, after defendant's murder conviction was set aside on appeal, for his pre-testimonial activities in examining victim's body, obtaining and examining defendant's dental impressions, and writing report. Keko v. Hingle, C.A.5 (La.) 2003, 318 F.3d 639, rehearing en banc denied 61 Fed.Appx. 123, 2003 WL 342359. Civil Rights 1375

Psychiatrist appointed by court to conduct competency examination performed functions essential to judicial process and had a function analogous to that of a witness, and thus enjoyed absolute immunity, despite claim that he had not been appointed in accordance with state law and that he was involved in a conspiracy which began before his appointment to examine one particular defendant. Moses v. Parwatikar, C.A.8 (Mo.) 1987, 813 F.2d 891, certiorari denied 108 S.Ct. 108, 484 U.S. 832, 98 L.Ed.2d 67. Civil Rights 1375

Medical examiner for superior court was acting in a quasi-judicial capacity when he allegedly falsely certified to superior court that he had examined plaintiff and, therefore, he was immune from liability under this section. Mills v. Small, C.A.9 (Cal.) 1971, 446 F.2d 249, certiorari denied 92 S.Ct. 535, 404 U.S. 991, 30 L.Ed.2d 543. Civil Rights 1376(8)

Court-appointed psychiatrists who prepared and submitted medical reports to state court were immune from liability under this section pertaining to civil action for deprivation of rights on ground that they had made false statements of fact and omitted material facts in their reports to state court in criminal case. Burkes v. Callion, C.A.9 (Cal.) 1970, 433 F.2d 318, certiorari denied 91 S.Ct. 2217, 403 U.S. 908, 29 L.Ed.2d 685. Civil Rights 1373

Where defendant doctor, at time he gave his opinion that plaintiff was mentally incompetent, had been appointed and was acting as an officer of Ohio probate court in giving opinion as to mental health of plaintiff, defendant doctor was protected by same immunity extended to judges and other judicial officers, and therefore plaintiff could not maintain an action under this section in a federal district court against defendant doctor for damages. Bartlett v. Weimer, C.A.7 (Ind.) 1959, 268 F.2d 860, certiorari denied 80 S.Ct. 380, 361 U.S. 938, 4 L.Ed.2d 358. Health 770

Court-appointed psychiatrist and psychologist who evaluated former husband, former wife, and daughter to assist judge in deciding custody issues were absolutely immune from liability in civil rights action. Williams v. Rappeport, D.Md.1988, 699 F.Supp. 501, affirmed 879 F.2d 863, certiorari denied 110 S.Ct. 243, 493 U.S. 894, 107 L.Ed.2d 193. Civil Rights 1373; Civil Rights 1375

Where duly licensed psychiatrist was summoned by county court to testify in judicial proceeding for purposes of determining whether plaintiff should be committed to hospital for observation, statements made and submitted by psychiatrist in that proceeding were absolutely privileged and immune, both from state court claims and from

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claims brought under this section. Williams v. Westbrook Psychiatric Hospital, E.D.Va.1976, 420 F.Supp. 322. Civil Rights 1375; Libel And Slander 38(4)

Coroner who allegedly acted contrary to terms of statute in signing certificate committing person to mental hospital stating that he had observed and examined subject when he had not done so was performing ministerial rather than judicial function was not entitled to judicial immunity and was liable for damages under this section. Delatte v. Genovese, E.D.La.1967, 273 F.Supp. 654. Civil Rights 1376(4)

Private physicians, who were appointed by probate court to examine plaintiff, who was placed in mental hospital by order of probate court, enjoyed same immunity from a claim under this section as physicians at the hospital and, in discharge of their duties, they also acted as an arm of the court and were entitled to enjoy the immunity afforded to the court. Bartlett v. Duty, N.D.Ohio 1959, 174 F.Supp. 94, 84 Ohio Law Abs. 555, 12 O.O.2d 237. Civil Rights 1373

3383. Police officers, immunity of miscellaneous judicial and quasi judicial officials--Generally

Police officer's absolute immunity from § 1983 liability for testimony given at trial extended to liability for allegedly perjured testimony given during preliminary hearing to determine whether probable cause existed to support warrantless arrest, and during hearing on motion to quash arrest and suppress evidence; policy consideration that witness might shade testimony in order to avoid liability applied with equal force to witness testimony in trial and adversarial pretrial settings, and plaintiff's argument that officer was akin to complaining witness and thus was not immune was inapplicable where plaintiff failed to state claim for malicious prosecution. Curtis v. Bembenek, C.A.7 (Ill.) 1995, 48 F.3d 281. Civil Rights 1376(6)

Police department employees were not acting as quasi-judicial or quasi-prosecutorial officers when disciplining police officer for refusing to submit to administrative search of his garage in violation of his constitutional rights, and thus employees were not entitled to absolute immunity for their acts. Los Angeles Police Protective League v. Gates, C.A.9 (Cal.) 1990, 907 F.2d 879, rehearing denied. Civil Rights 1376(10)

Police officer was entitled to qualified immunity for any violation of equal protection rights of divorcing husband, as member of class of persons involved in domestic disputes, in allegedly refusing to treat his complaint that his wife had stolen his personal property the same as a similar complaint by other complainants, as right was not clearly established in 1999 and it was objectively reasonable for officer to believe in lawfulness of not further investigating and arresting wife or searching her home of pieces of silverware set. Fedor v. Kudrak, D.Conn.2006, 421 F.Supp.2d 473. Civil Rights 1376(6)

Social workers are not entitled to absolute immunity, in § 1983 actions alleging violations of substantive due process rights, for their conduct in investigating the possibility that a removal petition should be filed. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1376(3); Civil Rights 1376(4)

Police detective who conducted investigation into suspected sexual abuse of child did not have absolute immunity from § 1983 action brought by child's mother, which alleged that detective contacted mother knowing that mother was represented by counsel and then conspired with social worker to circumvent counsel by misleading magistrate judge into issuing ex parte order for seizure of child, knowing that child was in no imminent danger; alleged actions were neither integral to judicial process nor ministerial. Malik v. Arapahoe County Dept. of Social Services, D.Colo.1997, 987 F.Supp. 868, affirmed in part, dismissed in part 191 F.3d 1306. Civil Rights 1376(6)

Police constable was not absolutely immune from § 1983 claim based on allegation that constable, acting as arm of the court in carrying out order of execution, altered order so as to thwart intention of district justice and pervert

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judicial process. Miniscalco v. Gordon, E.D.Pa.1996, 916 F.Supp. 478. Civil Rights 1376(6)

3384. ---- Sheriffs, police officers, immunity of miscellaneous judicial and quasi judicial officials

Sheriff's department was not entitled to quasi-judicial immunity in arrestee's §§ 1983 action alleging that sheriff's deputies violated his due process rights by refusing to entertain his claim that he was being held in custody due to mistaken identity following his arraignment on warrant that was issued for someone else; units of government were not entitled to immunity in §§ 1983 actions, and judge who arraigned arrestee did not forbid sheriff's department from conducting further inquiries into arrestee's identity. Hernandez v. Sheahan, C.A.7 (Ill.) 2006, 455 F.3d 772. Civil Rights 1376(6)

County sheriff and deputy sheriffs had absolute quasi-judicial immunity from § 1983 action arising from their actions in enforcing facially valid judicial order; deputy sheriffs charged company president with obstructing officer for her failure to comply with written restraining order and, subsequently, incarcerated her overnight pursuant to judge's verbal order. Roland v. Phillips, C.A.11 (Ga.) 1994, 19 F.3d 552. Civil Rights 1376(6)

Federal prisoner failed to show that sheriff actually participated in acts that allegedly deprived prisoner of his constitutional rights, formulated a policy of tolerating such violations, or was deliberately indifferent, and, thus, sheriff had qualified immunity from prisoner's civil rights action under §§ 1983. Felton v. Lincoln, D.Mass.2006, 429 F.Supp.2d 226. Civil Rights 1376(6)

Under New York law, city sheriff was required to execute marital residence transfer documents pursuant to facially valid judgment of divorce, and, thus, sheriff had absolute quasi-judicial immunity from husband's action under §§ 1983, alleging that wife effected sale of marital residence by submitting allegedly perjurious affidavits to sheriff, thereby inducing sheriff to participate in sale of residence. Tornheim v. Eason, S.D.N.Y.2005, 363 F.Supp.2d 674, affirmed 2006 WL 897865. Civil Rights 1376(6); Sheriffs And Constables 88

Sheriff was not entitled to quasi-judicial immunity for detaining arrestee for eight days without judicial probable cause determination, notwithstanding initial appearance at which bond was set, absent evidence as to substance and circumstances of judge's order. Lingenfelter v. Board of County Com'rs of Reno County, Kan., D.Kan.2005, 359 F.Supp.2d 1163. Civil Rights 1376(6); Civil Rights 1376(8)

Sheriff is immune from damage suits alleging violation of civil rights by sheriff's actions while acting as an arm of the court. State of La. ex rel. Purkey v. Ciolino, E.D.La.1975, 393 F.Supp. 102. Civil Rights 1376(6)

Sheriff is immune from suit alleging violation of plaintiff's civil rights by the actions of the sheriff while he is acting as the arm of the county court in carrying out judicial functions of the court in his capacity as sheriff. Salvati v. Dale, W.D.Pa.1973, 364 F.Supp. 691. Civil Rights 1376(6)

3385. ---- Applications for search warrants, police officers, immunity of miscellaneous judicial and quasi judicial officials

Judicial approval of a warrant affidavit cannot serve as an absolute bar to Section 1983 liability of officer who submitted it; where judicial finding of probable cause is based solely on information officer knew to be false or would have known was false had he not recklessly disregarded the truth, not only does the arrest violate Fourth Amendment, but officer will not be entitled to good-faith immunity. Olson v. Tyler, C.A.7 (Wis.) 1985, 771 F.2d 277. Civil Rights 1088(4); Civil Rights 1376(6)

3386. ---- Execution of court orders, police officers, immunity of miscellaneous judicial and quasi judicial

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officials

Sheriff had absolute immunity from § 1983 civil rights action brought by arrestee alleging illegal arrest, since sheriff's conduct in arresting and detaining arrestee was in compliance with facially valid court order compelling him to do so; sheriff's alleged knowledge that there was no legal cause for order did not erode sheriff's immunity. Mays v. Sudderth, C.A.5 (Tex.) 1996, 97 F.3d 107. Civil Rights 1376(6)

Law enforcement personnel are entitled to absolute quasi-judicial immunity from suit in § 1983 action if they were acting in furtherance of official duties and relying on facially valid court order. Roland v. Phillips, C.A.11 (Ga.) 1994, 19 F.3d 552. Civil Rights 1376(6)

Sheriff's deputies who arrested spectator after he was held in contempt for his conduct in courtroom and incarcerated him pursuant to judge's order were entitled to absolute immunity from liability for damages in suit alleging false arrest and imprisonment in violation of Fourth and Fourteenth Amendments. Valdez v. City and County of Denver, C.A.10 (Colo.) 1989, 878 F.2d 1285, rehearing denied. Civil Rights 1376(6)

Law enforcement officers were immune from suit under § 1983, alleging violation of claimant's federally protected rights in connection with his arrest and incarceration for failing to pay forfeitures imposed after entry of default judgments, when claimant alleged no conduct other than enforcement of state court judgments. Haas v. Wisconsin, E.D.Wis.2003, 241 F.Supp.2d 922, affirmed 109 Fed.Appx. 107, 2004 WL 1799360, certiorari denied 125 S.Ct. 908, 543 U.S. 1053, 160 L.Ed.2d 776. Civil Rights 1376(6)

Sheriff acting pursuant to writ of assistance specifically provided for in decree of foreclosure was entitled to quasi-judicial immunity with respect to civil rights arising out of alleged loss of and damage to personal property. Roach v. Madden, E.D.Ark.1989, 728 F.Supp. 537. Civil Rights 1376(6)

To the extent a law enforcement officer acts pursuant to direct order of court, he may be entitled to quasi-judicial immunity, by which he would be absolutely immune from conduct intimately related to judicial process. Coggins v. Carpenter, E.D.Pa.1979, 468 F.Supp. 270. Officers And Public Employees 114

Law enforcement personnel who act under a judge's order are entitled to quasi-judicial immunity. International Molders and Allied Workers, AFL-CIO v. Buchanan Lumber Birmingham, N.D.Ala.1978, 459 F.Supp. 950, affirmed 618 F.2d 782. Officers And Public Employees 114

Where sheriff, in evicting occupier from property, acted under court order, he was absolutely immune from damage claims under this section. Hevelone v. Thomas, D.C.Neb.1976, 423 F.Supp. 7, affirmed 546 F.2d 797. Civil Rights 1376(6)

3387. Pretrial service officers, immunity of miscellaneous judicial and quasi judicial officials

State court pretrial services officers were entitled to absolute quasi-judicial immunity for their actions of issuing temporary restraining order against plaintiff prior to hearing before judge, even though order was ultimately found to be defective; officers were designated by state judges to act as bond commissioners, officers acted within general subject matter of their jurisdiction, and officers were acting pursuant to judicial directives. Whitesel v. Sengenberger, C.A.10 (Colo.) 2000, 222 F.3d 861. Courts 55

3388. Prison officials, immunity of miscellaneous judicial and quasi judicial officials--Generally

Prison officials are entitled to immunity for acts that are functionally equivalent to those of judges. Borzych v. Frank, W.D.Wis.2004, 340 F.Supp.2d 955, reconsideration denied in part 2004 WL 2491597. Prisons 10

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42 U.S.C.A. § 1983

Correctional officials were not entitled to qualified immunity from damages under §§ 1983 for allegedly violating inmate's Fourteenth Amendment right to procedural due process in the calculation of his prison sentence, after he was allegedly confined for 65 days beyond mandatory release date due to miscalculation of sentence; even though prisoners' right to formal review procedures addressing requests for recalculation of sentences was not clearly established at time in Seventh Circuit, cases in Seventh Circuit and other circuits clearly recognized that prisoners had protected liberty interest in timely release and in being afforded some process when they alleged that sentences had been miscalculated. Russell v. Lazar, E.D.Wis.2004, 300 F.Supp.2d 716. Civil Rights 1376(7)

Private operator of county jail was not entitled to judicial immunity in civil rights action brought by arrestee who claimed he was incarcerated for 30 days following his warrantless arrest, where arrestee alleged that no judicial officer ever determined whether there was probable cause to detain him. Blumel v. Mylander, M.D.Fla.1996, 919 F.Supp. 423. Civil Rights 1376(8)

Prison officials were not qualifiedly immune from § 1983 liability for allegedly engaging in retaliatory conduct (transfers, segregated confinement, and cell search) in response to inmate's exercise of rights; that retaliatory segregated confinement was unconstitutional had been settled law in circuit since 1979. Lowrance v. Coughlin, S.D.N.Y.1994, 862 F.Supp. 1090. Civil Rights 1376(7)

Officer who undertook review of proceeding resulting in inmate's involuntary administrative confinement acted as quasi-judicial officer and, therefore, was absolutely immune from § 1983 liability. Sealey v. Coughlin, N.D.N.Y.1994, 857 F.Supp. 214, affirmed in part, reversed in part 116 F.3d 47, on remand 997 F.Supp. 316. Civil Rights 1376(7)

Members of prison appeals board located outside prison, who had no regular contact with employees of correctional facility, were entitled to absolute immunity for actions in upholding prison sanction imposed on prisoner for violating alleged unconstitutional right. Shaddy v. Gunter, D.Neb.1988, 690 F.Supp. 860. Prisons 10

Work release termination hearing chairperson who was responsible for terminating prisoner from work release program exercised adjudicatory function which was functionally comparable to that of judge, and thus, chairperson, and other members of committee responsible for decision, were immune from prisoner's subsequent suit for damages on basis that his work release was terminated in violation of regulations. Barada v. Pioneer Fellowship House, W.D.Wash.1983, 568 F.Supp. 102. Civil Rights 1376(7)

Prison officials did not enjoy absolute judicial immunity from prisoner's civil rights action, although officials contended that since they reviewed facts, weighed evidence and exercised discretion in reaching a disposition, they should be insulated from liability for damages so that they could perform their duties freely, independently and without fear of personal consequences, in light of fact that prison officials could not have been said to be insulated from outside influence, proceeding was not of adversarial nature, and inmates were severely limited in presentation of their cases. Hilliard v. Scully, S.D.N.Y.1982, 537 F.Supp. 1084. Civil Rights 1376(7)

Detention center official, who was required by state law to accept principal and keep him in detention, did not enjoy judicial immunity from liability for beating and robbery of principal after principal was arrested by agents of surety on bail bond and transported to the center. Hill v. Toll, E.D.Pa.1970, 320 F.Supp. 185. Civil Rights 1376(7)

3389. ---- Disciplinary hearing officials, prison officials, immunity of miscellaneous judicial and quasi judicial officials

Director of Office of Special Housing and Inmate Disciplinary Programs for New York State Department of Correctional Services was not entitled to absolute immunity from inmate's civil rights action, in light of lack of

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sufficient guarantee of director's independence and insulation from communication with hearing officers about specific cases. Young v. Selsky, C.A.2 (N.Y.) 1994, 41 F.3d 47, certiorari denied 115 S.Ct. 1837, 514 U.S. 1102, 131 L.Ed.2d 756. Civil Rights 1376(7)

Officials at state prison were absolutely immune from civil damages, in suit under this section, based on allegation that inmates' rights under U.S.C.A. Const.Amend. 14 were violated in disciplinary proceeding in state prison, in view of fact that the proceedings were adversary in nature, that the officials were insulated from improper supervision, that balanced and impartial tribunal was required, that record had to be kept in the proceedings, that an automatic review, followed by an appeal on record, was provided for and that there was danger of retaliatory response by disappointed inmates. Segarra v. McDade, C.A.4 (N.C.) 1983, 706 F.2d 1301. Civil Rights 1376(7)

Adjustment committee's chairman, who presided at Virginia correctional facility's inmate's disciplinary hearing involving an alleged major violation, enjoyed absolute immunity from damages liability in ruling that inmate would not be permitted to call three witnesses after chairman determined that their testimony would be irrelevant or cumulative, in view of fact that such ruling had typical characteristics of a "formal" adjudicatory decision, including the right to appeal. Ward v. Johnson, C.A.4 (Va.) 1982, 690 F.2d 1098. Prisons 10

Prison official who conducts an informal disciplinary hearing is not in one of those exceptional situations where it is demonstrated that absolute immunity is essential for conduct of public business; rather, such official is covered by general rule that, in suit for damages arising from unconstitutional action, federal executive officials exercising discretion are entitled only to qualified immunity. Jihaad v. O'Brien, C.A.6 (Mich.) 1981, 645 F.2d 556. Prisons 10

Prison official hearing appeal from inmate disciplinary proceeding was not entitled to absolute judicial immunity from inmate's § 1983 suit; officer served at pleasure of superiors within Department of Correctional Services. Moye v. Selsky, S.D.N.Y.1993, 826 F.Supp. 712. Civil Rights 1376(7)

Michigan Department of Corrections hearing officer was entitled to absolute judicial immunity from liability in inmate's § 1983 action challenging acts of officer in conducting administrative hearing which was a quasi-judicial act within hearing officer's jurisdiction. Banks v. Klapish, W.D.Mich.1989, 717 F.Supp. 520. Civil Rights 1376(7)

Hearing officer in the Michigan Department of Corrections is protected from liability for damages under the doctrine of absolute immunity. Shelly v. Johnson, W.D.Mich.1987, 684 F.Supp. 941, affirmed 849 F.2d 228. Civil Rights 1376(8)

State prison disciplinary hearing officer, whose actions were taken in course of official judicial and quasi-judicial duties, was entitled, as far as pecuniary liability was concerned in state inmate's action against officer under 42 U.S.C.A. § 1983, to judicial immunity accorded to inferior judicial and quasi-judicial officers. Chambers v. Koehler, W.D.Mich.1984, 635 F.Supp. 884. Civil Rights 1376(8)

Inspector for Michigan Department of Corrections, whose duties were akin to a judicial official, and who determined that inmate was to be held in administrative segregation pending a ruling on misconduct citation, was absolutely immune from suit under this section brought by present inmate seeking damages for the days spent in administrative segregation awaiting hearing on misconduct charge on which he was exonerated. Riley v. Smith, E.D.Mich.1983, 570 F.Supp. 522. Civil Rights 1376(7)

Prison officials were entitled to absolute immunity from damages in prisoner's suit challenging disciplinary action taken against prisoner, since defendant officials were acting in judicial capacities at the time the challenged disciplinary decisions were made. Breedlove v. Cripe, N.D.Tex.1981, 511 F.Supp. 467. Prisons 10

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42 U.S.C.A. § 1983

3390. ---- Grievance proceeding officials, prison officials, immunity of miscellaneous judicial and quasi judicial officials

Inmate complaint examiner who reviewed Wisconsin prisoner's complaint about nondelivery of prisoner's letter, and prison officials who affirmed examiner's recommendation that prisoner's complaint be dismissed, were absolutely immune from prisoner's §§ 1983 action alleging due process and free speech violations in connection with such actions. Koutnik v. Brown, W.D.Wis.2004, 351 F.Supp.2d 871. Civil Rights 1376(7)

Inmate grievance procedure established in Virginia is adversarial in nature, wardens and regional administrators are not subject to supervision of other employees engaged in investigative or prosecutorial duties, proceedings are preserved by record and structured so as to assure exercise of independent judgment by warden and regional administrator, inmate has right to appeal decision, and denial of absolute immunity would subject correctional officers to real threat of burdensome and expensive litigation and deter prison officials from participating in grievance procedures; thus, warden and regional administrator were entitled to absolute immunity to civil suit for damages brought by inmate who alleged he was denied due process in denial of his grievances. Burt v. Mitchell, E.D.Va.1984, 589 F.Supp. 186, affirmed 790 F.2d 83. Civil Rights 1376(7)

3391. ---- Physicians, prison officials, immunity of miscellaneous judicial and quasi judicial officials

Prison counselor and prison physician were immune from § 1983 liability with respect to claims of false diagnosis, false testimony and conspiracy, but were not immune from § 1983 liability with respect to filing of petition for involuntary commitment. McArdle v. Tronetti, C.A.3 (Pa.) 1992, 961 F.2d 1083. Civil Rights 1376(7)

3391A. ---- Nurses, prison officials, immunity of miscellaneous judicial and quasi judicial officials

Jail nurse was absolutely immune from liability in inmate's §§ 1983 action alleging that nurse took his blood without his consent, where she was acting pursuant to a facially valid warrant to withdraw blood. Boatner v. Hinds, C.A.3 (Pa.) 2005, 137 Fed.Appx. 499, 2005 WL 1526322, Unreported. Civil Rights 1376(7)

3392. ---- Wardens, prison officials, immunity of miscellaneous judicial and quasi judicial officials

Prison warden and correctional officer were entitled to absolute immunity, in prisoner's §§ 1983 claim challenging her incarceration as illegal, where prisoner's incarceration occurred pursuant to a facially valid court order. Figg v. Russell, C.A.8 (S.D.) 2006, 433 F.3d 593. Civil Rights 1376(7)

Warden is absolutely immune from damages flowing from fact of prisoner's incarceration, when that incarceration occurs pursuant to facially valid order of confinement. Patterson v. Von Riesen, C.A.8 (Neb.) 1993, 999 F.2d 1235 . Civil Rights 1376(7)

New Hampshire State Prison Warden was entitled to absolute immunity from inmate's § 1983 claim alleging that Warden violated his constitutional rights by refusing to transfer him to Massachusetts during pendency of his appeal from his conviction in New Hampshire state court, as inmate was claiming in essence that Warden should be held liable for following state court order. Stow v. Horan, D.N.H.1993, 829 F.Supp. 504, affirmed in part and remanded 36 F.3d 1089, certiorari denied 115 S.Ct. 1705, 514 U.S. 1069, 131 L.Ed.2d 566, rehearing denied 115 S.Ct. 2570, 515 U.S. 1137, 132 L.Ed.2d 822. Civil Rights 1376(7)

Prison warden is immune from liability for damages under this section for his actions pursuant to his quasi-judicial function in Maryland adjustment process reviewing decisions of adjustment team at penitentiary, providing warden is exercising adjudicatory discretion pursuant to and in accordance with expressly established and specific prison adjustment procedures, but immunity is limited to suits for damages. Fitchette v. Collins, D.C.Md.1975, 402 F.Supp. 147. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

The Department of Corrections, the Adult Authority, and warden of state prison enjoyed judicial immunity from pecuniary liability in action brought against them by parolee for exemplary damages under this section. Williams v. Craven, C.D.Cal.1967, 273 F.Supp. 649, certiorari denied 89 S.Ct. 242, 393 U.S. 916, 21 L.Ed.2d 201. Civil Rights 1376(7)

3393. ---- Miscellaneous officials, prison officials, immunity of miscellaneous judicial and quasi judicial officials

Where prison censorship board acted pursuant to district court order establishing censorship guidelines and state regulations adopted in accord with that court order in banning receipt by prisoners of mail containing sexually explicit material, board members could not be held liable in damages for violation of prisoners' civil rights. Carpenter v. State of S. D., C.A.8 (S.D.) 1976, 536 F.2d 759, certiorari denied 97 S.Ct. 2636, 431 U.S. 931, 53 L.Ed.2d 246. Civil Rights 1358

3394. Probate proceeding officials, immunity of miscellaneous judicial and quasi judicial officials

Probate court administrator who prepared assessment for juvenile to be placed in nonsecure detention home was acting as "arm of the court" in carrying out court order of referee to prepare assessment, and thus both administrator and referee were performing actions which were basic and integral parts of judicial function and absolute quasi-judicial immunity applied to administrator in connection with § 1983 action brought by operators of detention home after they were injured by juvenile who was incorrectly labelled nonviolent by administrator. Bush v. Rauch, C.A.6 (Mich.) 1994, 38 F.3d 842. Civil Rights 1376(8)

Since it appeared that judicial duties of register of wills in Pennsylvania were confined to matters relative to probate of wills, hiring and firing of employees was functionally not within purview of judicial duties and not within the ambit of those acts entitling him to judicial immunity. Retail Clerks Intern. Ass'n, Local 1357 v. Leonard, E.D.Pa.1978, 450 F.Supp. 663. Civil Rights 1376(10)

3395. Probation officers, immunity of miscellaneous judicial and quasi judicial officials--Generally

District of Columbia probation officers were absolutely immune from liability in civil rights action under § 1983 for alleged errors in investigation and preparation of presentence reports. Turner v. Barry, C.A.D.C.1988, 856 F.2d 1539, 272 U.S.App.D.C. 377. Civil Rights 1376(3); Civil Rights 1376(7)

Any actions taken by probation officer pursuant to his state statutory duty to provide a presentencing report were covered by judicial immunity doctrine. Demoran v. Witt, C.A.9 (Cal.) 1985, 781 F.2d 155. Courts 55

Federal probation officers were immune from suit for damages based on their alleged misconduct in investigation and preparation of presentence report. Spaulding v. Nielsen, C.A.5 (La.) 1979, 599 F.2d 728. Civil Rights 1376(7)

Probation officers and Pennsylvania Parole Board members are entitled to quasi-judicial immunity when engaged in adjudicatory duties. Thompson v. Burke, C.A.3 (Pa.) 1977, 556 F.2d 231, on remand 544 F.Supp. 173. Civil Rights 1376(7); Civil Rights 1376(8)

Probation officer in preparing and submitting probation report on defendant was performing a "quasi-judicial" function and was immune from liability under this section creating civil action for deprivation of rights on ground that he had made false statements of fact and omitted material facts in making report to state court. Burkes v. Callion, C.A.9 (Cal.) 1970, 433 F.2d 318, certiorari denied 91 S.Ct. 2217, 403 U.S. 908, 29 L.Ed.2d 685. Civil Rights 1376(8)

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Juvenile probation officer was not entitled to absolute judicial immunity from juvenile's § 1983 claim alleging that juvenile was harmed as result of his illegal detention in juvenile detention facility; case did not involve preparation and submission of presentence report, but rather, juvenile was detained as punishment for violation of school rules. A.M. By and Through Law v. Grant, M.D.Ala.1995, 889 F.Supp. 1495, affirmed 68 F.3d 486. Civil Rights 1376(7)

Probation officer who was acting pursuant to state statute and whose only motive in causing defendant's arrest was that of enforcing judge's sentence was absolutely immune from suit pursuant to civil rights statute, or was at least entitled to quasi-judicial immunity. Bennett v. Batchik, E.D.Mich.1990, 743 F.Supp. 1245, affirmed 936 F.2d 572. Civil Rights 1376(7)

Nature of function performed by state probation officers, impossibility of guaranteeing accuracy of information to be reported, and routine subjection of presentence report to advisory review made absolute immunity as appropriate for state probation officers as it was for federal probation officers, and thus, state probation officers were absolutely immune from liability in civil rights action for allegedly submitting presentence report that was false and inaccurate. Shelton v. McCarthy, W.D.N.Y.1988, 699 F.Supp. 412. Civil Rights 1376(7)

Actions taken by juvenile's probation officer relating to custody dispositions of juvenile, including his recommendation to court that juvenile remain in foster care and his subsequent recommendation that juvenile be placed at custodial state correctional facility for juvenile delinquents, were clearly adjudicatory in nature, thus making probation officer absolutely immune from civil rights suit. Weseman v. Meeker County, D.Minn.1987, 659 F.Supp. 1571. Civil Rights 1376(8)

Probation officer who allegedly filed detainer against probationer based on illegally seized evidence was entitled to absolute immunity in probationer's subsequent civil rights action; probationer did not allege that officer participated in improper gathering of evidence or that officer applied for detainer to third-party decision maker, but alleged only that officer relied on evidence gathered by police officers to reach discretionary and unilateral decision to order probationer's arrest. Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047, affirmed in part, reversed in part 151 F.3d 646. Civil Rights 1376(7)

Although probation officer's status alone was insufficient basis for finding absolute immunity from civil rights suit claiming that false and erroneous information in presentence report on plaintiff persuaded judge to impose unduly harsh sentence, where probation officer was performing, by delegation, a judicial function which was integral part of judicial process, defendant was entitled to share judge's absolute immunity. Crosby-Bey v. Jansson, D.C.D.C.1984, 586 F.Supp. 96. Civil Rights 1376(8)

Probation officer and adult probation investigator did not abandon their quasi-judicial role in participating in preparation of probation report and thus were immune from liability under this section. Friedman v. Younger, C.D.Cal.1968, 282 F.Supp. 710. Civil Rights 1376(8)

3396. ---- Federal immunity compared, probation officers, immunity of miscellaneous judicial and quasi judicial officials

The immunity from liability under this section that is extended to federal probation officers when preparing and submitting a presentence report in a criminal case is equally applicable to a state probation officer. Hughes v. Chesser, C.A.11 (Ala.) 1984, 731 F.2d 1489. Civil Rights 1376(7)

3397. Psychiatrists, immunity of miscellaneous judicial and quasi judicial officials

Psychiatrist was absolutely immune from liability for damages under § 1983 based on allegation that she conspired to present her own and another witness's perjured testimony at plaintiff's criminal trial, since her alleged

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conspiratorial behavior was inextricably tied to her testimony, where plaintiff was tried for 20-year-old murder based, in part, on his daughter's recovered memory, and plaintiff alleged that psychiatrist conspired with daughter by incorporating information obtained from daughter into her own testimony, and by providing daughter with description of the sort of details that would make her testimony more persuasive. Franklin v. Terr, C.A.9 (Cal.) 2000, 201 F.3d 1098. Civil Rights 1375

3398. Psychologists, immunity of miscellaneous judicial and quasi judicial officials

Private psychologist who contracted with state to perform evaluation and present his findings to adjudicative parole board, which then relied on his report and expertise in reaching its ultimate decision to deny inmate parole, acted as arm of court, and enjoyed absolute immunity from inmate's §§ 1983 action alleging wrongful denial of parole. Williams v. Consovoy, C.A.3 (N.J.) 2006, 453 F.3d 173. Civil Rights 1376(7)

Psychological assessment of parole candidate by private psychologist was adjudicative act, and thus psychologist was entitled to absolute immunity from liability under § 1983 as result of evaluation, where psychologist performed evaluation on order of state parole board to assist it in making its parole determination. Williams v. Consovoy, D.N.J.2004, 333 F.Supp.2d 297. Civil Rights 1373; Civil Rights 1376(7)

Court-appointed child psychologist, who, in child visitation and custody dispute, had opined that parents' nonconforming lifestyle and religion might be harmful to their child, was entitled to absolute immunity from liability in parents' § 1983 suit, since psychologist was not state actor, as she was self-employed, rather than employee of state, and she had not deprived parents of any federal rights. Williams v. Bierman, M.D.Fla.1999, 46 F.Supp.2d 1262. Civil Rights 1375

Therapist which had been selected by parents from list of court-approved psychologists, as part of agreement whereby juvenile court dismissed dependency and neglect petition against parents and parents agreed to undergo regular counseling, had absolute immunity from civil rights liability for acts committed within scope of her appointment. Doe v. Hennepin County, D.C.Minn.1985, 623 F.Supp. 982. Civil Rights 1376(8)

3399. Public defenders, immunity of miscellaneous judicial and quasi judicial officials

Immunity from liability under this section for state public defenders was not warranted on asserted ground that public defenders had responsibilities similar to those of judge or prosecutor and should enjoy similar immunities in order, ultimately, not to impair state's attempt to meet its constitutional obligation to furnish criminal defendants with effective counsel and in order to prevent inundation of federal courts with frivolous lawsuits in that it is for Congress to determine whether civil rights litigation has become too burdensome to state and federal institutions and, if so, what remedial action is appropriate. Tower v. Glover, U.S.Or.1984, 104 S.Ct. 2820, 467 U.S. 914, 81 L.Ed.2d 758. Civil Rights 1375

Public defender who represented child in proceeding to determine whether child was in need of protection or services was entitled to absolute immunity from § 1983 claim of mother based on deprivation of her right to enroll child in private school. Mason v. Waukesha County, E.D.Wis.1994, 855 F.Supp. 282, affirmed 48 F.3d 1222. Civil Rights 1375

3400. Receivers, immunity of miscellaneous judicial and quasi judicial officials

Court-appointed receiver of judgment debtor's assets was entitled to derivative judicial immunity from suit for damages on federal civil rights claims brought by judgment debtor's girlfriend, arising from search of girlfriend's home by judgment creditors' attorney; search of girlfriend's home, where judgment debtor temporarily resided, was supported by state court's general order appointing receiver, authorizing her to take possession of debtor's nonexempt assets and requiring debtor to cooperate with receiver's efforts, receiver was not personally present

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during search at home, and there was no allegation that receiver instructed attorney to seize girlfriend's property, that receiver converted any property for her personal use or that property had not been accounted for in receivership. Davis v. Bayless, C.A.5 (Tex.) 1995, 70 F.3d 367. Civil Rights 1376(8); Judges 36

Receiver appointed by state court to manage business assets of marital estate during dissolution proceeding was entitled to absolute derivative judicial immunity in postdivorce action alleging that he had mismanaged estate's assets; receiver was not absolutely immune, however, from allegations that he stole estate assets or slandered parties, in that such alleged acts were not judicial acts. New Alaska Development Corp. v. Guetschow, C.A.9 (Alaska) 1989, 869 F.2d 1298. Receivers 104; Receivers 170

State court receiver was entitled to judicial immunity in civil rights action, despite allegation that receiver injured plaintiff's business property by releasing defamatory reports to the media and by aiding and abetting in the conversion and/or embezzlement of plaintiff's corporate assets, in that reports concerned financial activities of plaintiff that had led to state court lawsuit in establishment of receivership and, assuming conversion and embezzlement allegations to be true, they did not indicate that receiver engaged in activities prima facie beyond scope of official function of a state court receiver. Property Management & Investments, Inc. v. Lewis, C.A.11 (Fla.) 1985, 752 F.2d 599. Civil Rights 1376(8)

Corporate receiver was immune from suit under this section where every action objected to in suit was known to and approved by state court judge supervising receiver and corporate plaintiff had an opportunity to and did object throughout state court proceedings to the fact that it was not being treated as a separate entity entitled to creditor status with respect to related corporation. T & W Inv. Co., Inc. v. Kurtz, C.A.10 (Okla.) 1978, 588 F.2d 801. Civil Rights 1373

Court appointed receiver who faithfully and carefully carried out orders of appointing judge was immune from liability under this section authorizing civil action for deprivation of rights or immunities secured by Constitution and laws and thus could not be held liable in civil action charging conspiracy between bank, construction company and receiver to put corporation into receivership so as to avoid payment of corporate debt. Kermit Const. Corp. v. Banco Credito Y Ahorro Ponceno, C.A.1 (Puerto Rico) 1976, 547 F.2d 1. Receivers 104

Receiver appointed by court to oversee and manage District of Columbia agency was acting in his judicial capacity when he terminated employee as part of reduction in force, and, thus, he was absolutely immune from civil liability in his individual capacity under § 1983 for acts taken within scope of his position as receiver. Murray v. Gilmore, D.D.C.2002, 231 F.Supp.2d 82, affirmed in part, reversed in part 406 F.3d 708, 365 U.S.App.D.C. 372. Civil Rights 1376(10)

Defendant who had been appointed receiver upon an ex parte application in connection with foreclosure of plaintiff's leasehold interest was not immune from liability under this section proscribing a deprivation of rights, or under New York law, on claim that receiver had not confined himself to matters committed to him by the order but had undertaken to act with respect to property wholly outside both the mortgage and the order appointing him. City Partners, Ltd. v. Jamaica Sav. Bank, E.D.N.Y.1978, 454 F.Supp. 1269. Civil Rights 1376(8)

Where court-appointed receiver carried out terms of court order which was issued by court of competent jurisdiction and valid on its face, receiver was immune from civil rights suit. Brewer v. Hill, N.D.Tex.1978, 453 F.Supp. 67. Civil Rights 1376(8)

3401. Referees, immunity of miscellaneous judicial and quasi judicial officials

Referee and administrative officer of county juvenile court was entitled to full reach of doctrine of judicial or quasi judicial immunity. Lucarell v. McNair, C.A.6 (Ohio) 1972, 453 F.2d 836. Courts 55

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Appeals referee for state employment security commission (ESC), who denied terminated employee's application for unemployment compensation, had absolute quasi-judicial immunity from employee's § 1983 claims against him; referee performed adjudicative functions, strong need existed to insulate appeals referees from harassment and intimidation, and such referees operated within a web of procedural safeguards that mitigated need for private damages actions to curb unconstitutional conduct. Howard v. Food Lion, Inc., M.D.N.C.2002, 232 F.Supp.2d 585. Civil Rights 1376(8)

Juvenile referee was entitled to dismissal of § 1983 action against him on grounds of judicial immunity, where acts alleged in complaint were within referee's jurisdiction and were performed in its judicial capacity. McCrum v. Elkhart County Dept. of Public Welfare, N.D.Ind.1992, 806 F.Supp. 203, reconsideration granted. Civil Rights 1376(8)

In view of adjudicative nature of functions performed by hearing appeals referee for the Arkansas Employment Security Division, as well as statutory safeguards against unconstitutional or otherwise improper conduct built into structure of the Division's adjudicatory system, referee was absolutely immune from liability under this section and section 1981 of this title for damages based on actions taken in connection with his duties. Jones v. Singer Career Systems, E.D.Ark.1984, 584 F.Supp. 1253. Civil Rights 1376(3)

Judges, commissioners, and referees acting in judicial capacity are immune from suits for damages arising out of acts committed within their judicial jurisdiction. Miller v. Reddin, D.C.Cal.1968, 293 F.Supp. 216, remanded on other grounds 422 F.2d 1264. Court Commissioners 3; Judges 36; Reference 77

3402. Special counsel, immunity of miscellaneous judicial and quasi judicial officials

Where consent decree permanently enjoining violation of securities laws provided for selection of special counsel to review dissemination of information to public by corporation and to take reasonable steps to secure corporation's compliance with securities laws, such special counsel was not entitled to absolute immunity comparable to that granted judicial officers. Canadian Javelin, Ltd. v. Lawler, Kent & Eisenberg, D.C.D.C.1979, 478 F.Supp. 448. Attorney And Client 26

Special counsel, who acted under supervision of state court with regard to investigation of alleged improper solicitation by certain members of city bar, was immune from damages under this section. Kremer v. Stewart, E.D.Pa.1974, 378 F.Supp. 1195. Civil Rights 1376(9)

3403. Special masters, immunity of miscellaneous judicial and quasi judicial officials

Judicial immunity may be extended to officials other than judges when their judgments are functionally comparable to those of judges, that is, because they, too, exercise discretionary judgment as part of their function. Gabbert v. Conn, C.A.9 (Cal.) 1997, 131 F.3d 793, certiorari granted in part 119 S.Ct. 39, 525 U.S. 809, 142 L.Ed.2d 30, reversed 119 S.Ct. 1292, 526 U.S. 286, 143 L.Ed.2d 399. Officers And Public Employees 114

Special master who ordered that party be detained approximately 48 hours in county jail pending involuntary commitment proceedings was entitled to absolute judicial immunity from any civil rights liability for allegedly depriving detainee of constitutional rights. Boston v. Lafayette County, Miss., N.D.Miss.1990, 744 F.Supp. 746, affirmed 933 F.2d 1003. Civil Rights 1376(8)

Special master was performing judicial duty pursuant to Mississippi statutory authority when he ordered temporary detainment of mentally ill person in county jail and, therefore, was not county policymaker for purposes of § 1983, even if hospital was most appropriate place of confinement, and even if master negligently misapplied or misinterpreted statute permitting master to order temporary detention in jail that is only reasonable location for detention; statute substantially limited master's discretion. Boston v. Lafayette County, Miss., N.D.Miss.1990, 743

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F.Supp. 462. Civil Rights 1351(6)

3404. Witnesses, immunity of miscellaneous judicial and quasi judicial officials--Generally

Section 1983 plaintiff may not circumvent witness's absolute immunity for testimony given in plaintiff's criminal trial by alleging that witness conspired with others to present false testimony. Franklin v. Terr, C.A.9 (Cal.) 2000, 201 F.3d 1098. Civil Rights 1375

Witnesses enjoy immunity for § 1983 liability only for their actions in testifying and are not immune for extra-judicial actions such as alleged conspiracy to present false testimony. Dory v. Ryan, C.A.2 (N.Y.) 1994, 25 F.3d 81. Civil Rights 1375

Witness in state judicial proceeding and state prosecutor were both absolutely immune from civil rights suit. O'Connor v. State of Nev., C.A.9 (Nev.) 1982, 686 F.2d 749, certiorari denied 103 S.Ct. 491, 459 U.S. 1071, 74 L.Ed.2d 633. Civil Rights 1375; Civil Rights 1376(9)

Witnesses who testified at former criminal defendants' trials were absolutely immune from liability under this section, and were therefore properly dismissed from civil rights actions. Briscoe v. LaHue, C.A.7 (Ill.) 1981, 663 F.2d 713, certiorari granted 102 S.Ct. 1708, 455 U.S. 1016, 72 L.Ed.2d 132, affirmed 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96, certiorari denied 103 S.Ct. 1426, 460 U.S. 1037, 75 L.Ed.2d 787.

Witnesses are absolutely immune under this section from liability actions arising from their testimony in judicial proceeding. Conley v. Office of Public Defender, Sixth Judicial Dist. of Arkansas, Pulaski and Perry Counties, C.A.8 (Ark.) 1981, 653 F.2d 1241. See, also, Buchanan v. Ford, N.D.N.Y. 1986, 638 F.Supp. 168; Macko v. Byron, N.D. Ohio 1983, 576 F.Supp. 875, affirmed 760 F.2d 95. Civil Rights 1375

Firearms examiner did not have absolute immunity from liability on civil rights claims that he withheld exculpatory information and notes both before and after murder trial and wrongfully destroyed exculpatory evidence after trial. Bembenek v. Donohoo, E.D.Wis.2005, 355 F.Supp.2d 942. Civil Rights 1375

As witness in criminal matter regarding African-American civil rights claimant's alleged rape of co-worker, co-worker was entitled to witness immunity, and could not be sued for damages under federal civil rights laws. Boykin v. Bloomsburg University of Pennsylvania, M.D.Pa.1995, 893 F.Supp. 409, affirmed 91 F.3d 122, certiorari denied 117 S.Ct. 739, 519 U.S. 1078, 136 L.Ed.2d 678. Civil Rights 1375

Witnesses who testified before Attorney Grievance Commission and Judicial Tenure Commission were entitled to absolute immunity from civil liability for statements given in course of proceedings. Lepley v. Dresser, W.D.Mich.1988, 681 F.Supp. 418. Torts 122

Witness in state judicial proceedings was entitled to absolute immunity from suit under this section or under *Bivens* type remedy. O'Connor v. State of Nev., D.C.Nev.1981, 507 F.Supp. 546, affirmed 686 F.2d 749, certiorari denied 103 S.Ct. 491, 459 U.S. 1071, 74 L.Ed.2d 633. Civil Rights 1375

3405. ---- Common law, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Civil Rights Act of 1871 did not abrogate the common-law absolute immunity of private witnesses from damages liability for their testimony in judicial proceedings. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Libel And Slander 38(4)

Policies that underlie common-law rule of absolute witness immunity apply with equal force in civil action for deprivation of rights or its counterpart, *Bivens*-type claim. Dale v. Bartels, S.D.N.Y.1982, 552 F.Supp. 1253,

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affirmed in part, reversed in part on other grounds 732 F.2d 278. Libel And Slander 38(4)

3406. ---- Private citizens, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Witnesses, including public officials and private citizens, are immune from civil damages based upon their testimony. Snell v. Tunnell, C.A.10 (Okla.) 1990, 920 F.2d 673, certiorari denied 111 S.Ct. 1622, 499 U.S. 976, 113 L.Ed.2d 719, on remand 792 F.Supp. 718. Action 14

3407. ---- Child welfare workers, witnesses, immunity of miscellaneous judicial and quasi judicial officials

District of Columbia social worker was entitled to absolute immunity, in child custodian's § 1983 damages action, as to her statement under oath submitted to court in support of child neglect proceeding; social worker's role was as witness in judicial proceeding, and thus statement was intimately associated with judicial process, regardless of fact that it was in form of written petition rather than oral in-court testimony. Gray v. Poole, C.A.D.C.2002, 275 F.3d 1113, 348 U.S.App.D.C. 369. Civil Rights 1375

Juvenile officer was protected by the absolute immunity afforded to witnesses for his role in providing information to state court upon which it acted. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(4)

County welfare workers are absolutely immune from liability in their individual capacities for testimony in child custody case and for other steps taken to present case for decision by court. McCrum v. Elkhart County Dept. of Public Welfare, N.D.Ind.1992, 806 F.Supp. 203, reconsideration granted. Infants 17

Staff person of an advocacy center for children was not entitled to absolute witness immunity in a civil rights action alleging that activities of staff person leading to plaintiff's arrest occurred neither on witness stand nor during trial but rather violated plaintiff's rights; activities occurred before any legal proceedings were initiated. Fittanto v. Klein, N.D.Ill.1992, 788 F.Supp. 1451. Civil Rights 1375

3408. ---- Fire marshals, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Fire marshal, who had arrested parolee on charges underlying parole revocation proceeding and who had testified at proceeding, was absolutely immune from liability for actions in capacity of witness at revocation proceeding, so that parolee could not maintain civil rights suit against marshal for alleged improper conduct during course of revocation proceedings. Johnson v. Kelsh, S.D.N.Y.1987, 664 F.Supp. 162. Civil Rights 1376(6)

3409. ---- Grand jury witnesses, immunity of miscellaneous judicial and quasi judicial officials

Attorney, who brought § 1983 action against county prosecutors alleging that his right to practice his profession was violated when warrant to search him was executed while his client was testifying before grand jury, had no standing to raise infringement of his client's alleged right to have attorney present outside grand jury room. Conn v. Gabbert, U.S.Cal.1999, 119 S.Ct. 1292, 526 U.S. 286, 143 L.Ed.2d 399. Civil Rights 1332(4)

For purposes of complaining witness exception to immunity generally extended, in § 1983 actions, to grand jury witnesses, "complaining witness" is a person who actively instigated or encouraged the plaintiff's prosecution. Kulas v. Flores, C.A.9 (Ariz.) 2001, 255 F.3d 780, certiorari denied 122 S.Ct. 1557, 535 U.S. 995, 152 L.Ed.2d 480. Civil Rights 1375

Deputy sheriff, as defendant in federal civil rights suit for malicious prosecution, would be denied absolute immunity for his grand jury testimony only if he was found to be a complaining witness and only if the testimony was relevant to the manner in which he initiated or perpetrated the prosecution of the plaintiff. Anthony v. Baker,

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C.A.10 (Colo.) 1992, 955 F.2d 1395, on remand 808 F.Supp. 1523. Civil Rights 1376(6)

Investigator for Office of the Attorney General of the State of Alabama was entitled to absolute immunity from liability from § 1983 claim with regard to his testimony before grand jury. Strength v. Hubert, C.A.11 (Ala.) 1988, 854 F.2d 421, rehearing denied 860 F.2d 1092. Civil Rights 1376(9)

County deputy sheriff had absolute witness immunity from damages liability under §§ 1983 based on his testimony before grand jury, where deputy sheriff did not act maliciously by testifying truthfully as to what he had been told about drug deal by an informant. Caldwell v. Green, W.D.Va.2006, 451 F.Supp.2d 811. Civil Rights 1375

3410. ---- Municipal officials, witnesses, immunity of miscellaneous judicial and quasi judicial officials

City officials were entitled to absolute immunity in § 1983 with regards to testimony they gave at Civil Service Commission hearing involving discipline of city firefighter, although this immunity did not protect them from liability from firefighter's claim that their testimony was part of conspiracy consisting of testimony and other nontestimonial acts. Cignetti v. Healy, D.Mass.1997, 967 F.Supp. 10. Civil Rights 1375

City officials were not entitled to absolute immunity on civil rights claim that they engaged in conspiracy to conceal evidence and gave false testimony in action in state court in effort to deprive plaintiffs of their constitutional right of access to courts. Foster v. City of Lake Jackson, Tex., S.D.Tex.1993, 813 F.Supp. 1262, reversed 28 F.3d 425, rehearing denied. Civil Rights 1376(4)

3411. ---- Parole officials, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Parole officer was entitled to absolute immunity, as witness in state habeas corpus proceeding, in parolee's § 1983 action alleging that officer submitted perjurious affidavit in opposition to parolee's petition for habeas relief, which resulted in delay of that relief; officer was not complaining witness as his affidavit did not serve to institute proceeding, functions of parole officer witness are same as those of any other witness, and, even though cross-examination was not available as to affidavit, parolee was afforded all other protection of judicial process. Sykes v. James, C.A.2 (N.Y.) 1993, 13 F.3d 515, certiorari denied 114 S.Ct. 2749, 512 U.S. 1240, 129 L.Ed.2d 867 . Civil Rights 1375; Civil Rights 1376(7)

3412. ---- Police officers, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Parole officer, acting within scope of his duties when he testified at parole revocation hearing, was entitled to absolute quasi-judicial immunity from §§ 1983 suit for damages brought by parolee who had successfully defended parole violation charges. Holmes v. Crosby, C.A.11 (Ga.) 2005, 418 F.3d 1256. Civil Rights 1376(8)

Deputy sheriff's testimony in criminal defendant's pretrial suppression hearing was absolutely immune from defendant's § 1983 claim, in which defendant claimed that deputy gave perjured testimony at hearing, since suppression hearing was adversarial in nature, and deputy's testimony at suppression hearing was subject to same procedural safeguards as trial testimony; deputy was under oath, appeared before judge on the record, was cross-examined by defendant, and was subject to penalty of criminal perjury. Moore v. McDonald, C.A.5 (Tex.) 1994, 30 F.3d 616. Civil Rights 1375

Police officer witness was not entitled to absolute immunity in defendant's § 1983 action alleging that witness conspired with prosecutor to convict defendant based on perjured testimony; witnesses enjoy absolute immunity only for their actions in testifying, not for extra-judicial conspiracies to give false testimony. Dory v. Ryan, C.A.2 (N.Y.) 1994, 25 F.3d 81. Civil Rights 1375; Civil Rights 1376(6)

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Police officer who testified before grand jury that indicted arrestee did not have absolute witness immunity in arrestee's subsequent civil rights action for false arrest; although immune testimony led to arrest, officer was not participating as witness in judicial proceeding when he executed arrest warrant. Juriss v. McGowan, C.A.7 (Ill.) 1992, 957 F.2d 345. Civil Rights 1376(6)

Law enforcement officers who testified at adversarial, pretrial proceedings were entitled to absolute immunity from § 1983 liability based on the testimony. Daloia v. Rose, C.A.2 (N.Y.) 1988, 849 F.2d 74, certiorari denied 109 S.Ct. 242, 488 U.S. 898, 102 L.Ed.2d 231. Civil Rights 1375; Civil Rights 1376(6)

Only officers acting outside of their legitimate role in the judicial process by withholding exculpatory information or acting in bad faith should not receive absolute witness immunity from liability on an arrestee's wrongful prosecution under §§ 1983, based on officer's testimony before grand jury; therefore, officers who are acting in good faith within the course of their duties are entitled to *Briscoe* immunity. Caldwell v. Green, W.D.Va.2006, 451 F.Supp.2d 811. Civil Rights 1375

Absolute immunity from liability under §§ 1983 attached to acting police chief's witness testimony at arbitration proceedings regarding matters underlying prior disciplinary proceedings against town police officer; both parties appeared by counsel and had full opportunity to adduce evidence, to cross-examine each other's witnesses and to make argument in support of their respective positions, and neither party raised any objections to fairness of arbitration proceedings. Rolon v. Henneman, S.D.N.Y.2005, 389 F.Supp.2d 517. Civil Rights 1375

Detective was not entitled to testimonial immunity from § 1983 suit for coercing informant to testify falsely; while informant was immune for giving false testimony at trial, detective was not vicariously immune for his alleged involvement in coercing informant to testify falsely. Spurlock v. Whitley, M.D.Tenn.1997, 971 F.Supp. 1166, affirmed 167 F.3d 995. Civil Rights 1376(6)

Absolute immunity sheltered deputies from § 1983 claim that deputies testified falsely in underlying criminal trial in which plaintiff was convicted. White v. Tamlyn, E.D.Mich.1997, 961 F.Supp. 1047. Civil Rights 1376(6)

Police detective was not entitled to absolute witness immunity from liability for arrestee's § 1983 claim for wrongful prosecution, which was based on detective's allegedly withholding from grand jury evidence showing lack of probable cause for sole purpose of having arrestee prosecuted; defendant was not simply withholding evidence from grand jury, but rather acting to further prosecution that he knew lacked probable cause. Lewis v. McDorman, W.D.Va.1992, 820 F.Supp. 1001, affirmed 28 F.3d 1210. Civil Rights 1376(6)

Police officer had absolute immunity from federal civil rights action based on claim that he testified falsely at the plaintiff's criminal trial. Dukes v. State of N.Y., S.D.N.Y.1990, 743 F.Supp. 1037. Civil Rights 1376(6)

Insofar as police detective might be considered "witness" for prosecution, he would be immune from suit under section 1983. Duncan v. State of W.Va., S.D.W.Va.1984, 597 F.Supp. 1195. Civil Rights 1375

3413. ---- Prison officials, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Genuine issue of material fact existed as to whether daughter was a complaining witness in murder prosecution against her father, precluding summary judgment on issue whether she was entitled to absolute witness immunity in the father's § 1983 suit against her in which he alleged that she conspired with county officials to conceal that she recovered the memory while under hypnosis, and that she conspired with county officials to exclude from the father's criminal trial evidence that everything she knew about the murder could have been learned from information in the public domain. Franklin v. Terr, N.D.Cal.2003, 294 F.Supp.2d 1145, affirmed 2006 WL 897705 . Federal Civil Procedure 2491.7

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Osteopath who conducted psychiatric evaluation of inmate and prison counselor who instituted commitment hearing were entitled to absolute immunity from liability for alleged civil rights violations under overlapping principles of witness immunity, quasi-judicial immunity, and prosecutorial immunity; osteopath and counselor did more than testify as routine witnesses and in fact participated in process of deciding issues. McArdle v. Tronetti, W.D.Pa.1991, 769 F.Supp. 188, affirmed 961 F.2d 1083. Civil Rights 1375; Civil Rights 1376(8); Civil Rights 1376(9)

3414. ---- Public defenders, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Inmate had no cause of action against Office of Public Defender under this section based on actions of public defender who witnessed lineup and testified for state that procedures followed were consistent with procedures followed in other lineups, since public defender had witness immunity and Office of Public Defender could not be liable for actions of its employees without showing of direct responsibility. Conley v. Office of Public Defender, Sixth Judicial Dist. of Arkansas, Pulaski and Perry Counties, C.A.8 (Ark.) 1981, 653 F.2d 1241. Civil Rights 1326(10)

3415. ---- False testimony, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Supreme Court would not carve out an exception to general rule of witness immunity from damages liability for perjured testimony in cases of alleged perjury by police officer witnesses. Briscoe v. LaHue, U.S.Ind.1983, 103 S.Ct. 1108, 460 U.S. 325, 75 L.Ed.2d 96. Civil Rights 1375

Witnesses, including police officers, are shielded by absolute immunity from liability for their allegedly perjurious testimony. Enlow v. Tishomingo County, Miss., C.A.5 (Miss.) 1992, 962 F.2d 501, rehearing denied 971 F.2d 750 . Municipal Corporations 747(3); Torts 122

Deputy sheriffs and jail nurse were absolutely immune from § 1983 liability for allegedly giving false or contradictory testimony to procure battery conviction of inmate. Miller v. Glanz, C.A.10 (Okla.) 1991, 948 F.2d 1562. Civil Rights 1376(6); Civil Rights 1376(7)

State social worker who provided affidavit used in defendant's bail revocation hearing was entitled to absolute witness immunity in civil rights action based on defendant's claim that affidavit contained false information; affidavit was submitted under possible penalty of perjury and defendant was entitled to present affidavits and witnesses of his own to refute statements made by social worker. Burns v. County of King, C.A.9 (Wash.) 1989, 883 F.2d 819. Civil Rights 1376(3)

Witness who testified at preliminary criminal hearing in state court was entitled to absolute immunity from liability in subsequent civil rights suit for damages based on alleged perjured testimony given at proceedings. Williams v. Hepting, C.A.3 (Pa.) 1988, 844 F.2d 138, 94 A.L.R. Fed. 879, certiorari denied 109 S.Ct. 135, 488 U.S. 851, 102 L.Ed.2d 107. Civil Rights 1375

Mayor was not liable under § 1983 for conspiring to give false and incomplete testimony in grand jury proceedings, absent allegation that mayor was personally involved in alleged conspiracy, where city officials who allegedly were involved in conspiracy were entitled to absolute witness immunity. Alioto v. City of Shively, Ky., C.A.6 (Ky.) 1987, 835 F.2d 1173. Conspiracy 7.5(1)

Police officer who allegedly gave perjurious testimony during adversarial pretrial proceedings in criminal matter was entitled to absolute witness immunity from liability for damages flowing from his testimony. Holt v. Castaneda, C.A.9 (Cal.) 1987, 832 F.2d 123, certiorari denied 108 S.Ct. 1275, 485 U.S. 979, 99 L.Ed.2d 486. Civil Rights 1375

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Witnesses in judicial proceedings were absolutely immune from civil liability under Section 1983 based on their testimony, even if they knowingly gave perjured testimony; thus, plaintiffs' claim based on perjured testimony did not sufficiently state cause of action under Section 1983. Macko v. Byron, C.A.6 (Ohio) 1985, 760 F.2d 95. Civil Rights 1375

In action brought by developers against a municipality and its officials for conspiracy in adopting policy of discriminatory treatment of mobile home parks and apartment building developers, developers could not recover on perjury charge, in that witnesses were absolutely immune from any damages action under this section and municipality could not be held liable for actions of municipal officials. Cloutier v. Town of Epping, C.A.1 (N.H.) 1983, 714 F.2d 1184. Civil Rights 1347; Civil Rights 1375

Police department forensic criminalist, who allegedly conspired with prosecutor to violate plaintiff's civil rights, was not protected from conspiracy liability by the absolute immunity enjoyed by testifying witnesses; complaint adequately pled several extra-judicial instances of criminalist's participation in the alleged conspiracy by collecting physical evidence at the crime scene, preparing reports on the inculpatory conclusions that could be drawn from the evidence, and lying on the stand to cover up his defalcations or those of the prosecutor in prosecution of plaintiff, who was released after DNA testing on the physical evidence used against him exonerated him of the crimes for which he was convicted. Charles v. City of Boston, D.Mass.2005, 365 F.Supp.2d 82. Conspiracy 13

Lab analyst did not have absolute immunity from liability on civil rights claim that she falsified micro-serology report by omitting exculpatory evidence and, as result, led medical examiner to present misleading testimony at criminal trial. Bembenek v. Donohoo, E.D.Wis.2005, 355 F.Supp.2d 942. Civil Rights 1375

Witness is absolutely immune from liability under § 1983 as to claims based on testimony given at judicial or administrative proceeding, even if testimony is knowingly and intentionally perjurious. Cignetti v. Healy, D.Mass.1997, 967 F.Supp. 10. Civil Rights 1375

Police officers enjoy absolute immunity from subsequent civil liability under § 1983 for their testimony at criminal trial, even when officers lie under oath at trial. Green v. Saenz, N.D.Ill.1992, 812 F.Supp. 798. Civil Rights 1376(6)

Doctrine of witness immunity did not require dismissal of driver's civil rights claim against police officer who initiated license revocation process and allegedly gave false testimony at administrative hearing and on subsequent appeals; claim was most akin to action against complaining witness in malicious prosecution case, and shield of witness immunity was thus inapplicable. Owens v. Keazer, D.Kan.1992, 795 F.Supp. 372. Witnesses 304(1)

3416. ---- Malicious prosecutions, witnesses, immunity of miscellaneous judicial and quasi judicial officials

Immunity available to police officer in face of defamation claim is not available in malicious prosecution action under § 1983, arising out of officer's role as "complaining witness." White v. Frank, C.A.2 (N.Y.) 1988, 855 F.2d 956. Civil Rights 1375; Civil Rights 1376(6)

Witness immunity doctrine did not apply to civil rights claim of former prisoner under Fourth Amendment, that physician acted as "de facto coroner," tampered with evidence, and supplied false medical records to prosecution which led to prisoner's false arrest and prosecution. Marsh v. San Diego County, S.D.Cal.2006, 432 F.Supp.2d 1035. Civil Rights 1375

Police officers who did not merely testify at trial, but initiated criminal prosecution against accused, did not enjoy absolute immunity from malicious prosecution claim for their conduct as complaining, and not just testifying, witnesses. Green v. Saenz, N.D.Ill.1992, 812 F.Supp. 798. Malicious Prosecution 42

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42 U.S.C.A. § 1983

3417. Miscellaneous judicial and quasi-judicial officials, immunity of miscellaneous judicial and quasi judicial officials

Members of state court screening committee were not entitled to quasi-judicial absolute immunity on attorney's action under §§§§ 1981 and 1983 seeking damages arising from committee's decision to remove attorney from panel of attorneys certified to serve as court-appointed counsel for indigent defendants in criminal cases; attorney had no right to formal hearing, attorney had no right to be apprised of details of accusation against him or of identity of his accuser, there was no separation of committee's investigative and decisionmaking functions, committee's decision was not subject to judicial review, and committee's functions were not integrally related to any specific judicial proceeding. Mitchell v. Fishbein, C.A.2 (N.Y.) 2004, 377 F.3d 157. Civil Rights 1376(8)

Louisiana officials were not entitled to absolute immunity against crop duster's claim that officials violated his civil rights by encouraging perjured testimony to facilitate adjudicating crop duster guilty of violating Louisiana's Pesticide Control laws and singling crop duster out for prosecution and revocation of his license using illegally obtained evidence; officials' duties were not so sensitive as to require total shield from liability, and officials failed to show that sufficient safeguards existed in the regulatory framework to inhibit unconstitutional conduct. Johnson v. Odom, C.A.5 (La.) 1990, 910 F.2d 1273, certiorari denied 111 S.Ct. 1387, 499 U.S. 936, 113 L.Ed.2d 443. Civil Rights 1376(3)

Action brought by attorney against state court officials, stemming from alleged reduction in attorney's pay as public defender, was properly dismissed as frivolous on immunity grounds, since officials were assisting judges of court in performing judicial functions. Bliven v. Hunt, E.D.N.Y.2005, 418 F.Supp.2d 135. States 78

Under functional approach, New York Metropolitan Transit Authority (MTA) Inspector General was not entitled to absolute immunity from liability to former employee under §§ 1983, as his statutory responsibilities did not resemble those of judge or prosecutor. Anemone v. Metropolitan Transp. Authority, S.D.N.Y.2006, 410 F.Supp.2d 255. Civil Rights 1376(10)

Director of treatment facility for patients confined pursuant to sexually violent persons law could not be held liable for alleged violation of substantive due process rights of patient on basis of quasi-judicial act of denying patient's grievance regarding his removal from particular treatment program. Laxton v. Watters, W.D.Wis.2004, 348 F.Supp.2d 1024. Civil Rights 1360

Members of township zoning hearing board had quasi-judicial immunity from § 1983 suit, in their individual capacities, claiming that they selectively enforced ordinance requiring that medical clinics must be located on minimum three-acre plots, when only act alleged was review of order closing facility. Associates In Obstetrics & Gynecology v. Upper Merion Tp., E.D.Pa.2003, 270 F.Supp.2d 633. Civil Rights 1376(8)

Administrative law judge (ALJ) who issued finding that assault charge against restaurant owner was sustained by the evidence, as a result of which state liquor authority suspended owner's liquor license for 45 days, was entitled to absolute judicial immunity from restaurant owner's § 1983 civil rights suit, where restaurant and its owner were represented by counsel at the hearing from which the finding issued, where those parties had procedural safeguards against erroneous, unlawful, or unconstitutional decisions, and where there was no indication that the ALJ, though a deputy commissioner of the liquor authority, had acted in other than an independent capacity in his role as factfinder. D'Agostino v. New York State Liquor Authority, W.D.N.Y.1996, 913 F.Supp. 757, affirmed 104 F.3d 351. Civil Rights 1376(8)

Director of disciplinary program for state department of correctional services was not entitled to absolute quasi-judicial immunity, in inmate's § 1983 suit. Gilbert v. Selsky, S.D.N.Y.1994, 867 F.Supp. 159, as amended. Civil Rights 1376(8)

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42 U.S.C.A. § 1983

Personnel hearing officer (PHO) who conducted hearing at which city's decision to terminate firefighter was upheld, was absolutely immune from firefighter's § 1983 action alleging procedural and substantive irregularities in hearing; even though PHO was private independent contractor to city, functions he performed were those that government employees would have to carry out had city not contracted for their performance, and denying immunity could very well constitute disincentive for others to become PHOs in future. Saavedra v. City of Albuquerque, D.N.M.1994, 859 F.Supp. 526, affirmed 73 F.3d 1525. Civil Rights 1376(8); Civil Rights 1376(10)

Officials of Oregon's Mortuary and Cemetery Board enjoyed quasi-judicial immunity from liability in §§ 1983 action alleging that plaintiff's funeral establishment license was improperly revoked on basis of race, as claims were based on actions undertaken in Board's judicial capacity. Brown v. Mortuary and Cemetery Bd., C.A.9 (Or.) 2005, 144 Fed.Appx. 581, 2005 WL 1140012, Unreported. Civil Rights 1376(8)

3418. Law clerks, immunity of miscellaneous judicial and quasi judicial officials

District court judge's law clerk was entitled to absolute judicial immunity from civil rights suit with respect to clerk's acts assisting judge in carrying out judge's judicial functions. Jackson v. Houck, C.A.4 (S.C.) 2006, 2006 WL 1344807, Unreported. Civil Rights 1376(8)

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3441. Prosecutorial immunity generally

Prosecutors are absolutely immune from suits for monetary damages under § 1983 for conduct that is intimately associated with the judicial phase of the criminal process. Smith v. Power, C.A.7 (Ill.) 2003, 346 F.3d 740. Civil Rights 1376(9)

Once court determines that official was functioning in core judicial or prosecutorial capacity, absolute immunity from § 1983 suit applies however erroneous act may have been, and however injurious in its consequences it may have proved to plaintiff. DiBlasio v. Novello, C.A.2 (N.Y.) 2003, 344 F.3d 292, certiorari denied 124 S.Ct. 2018, 541 U.S. 988, 158 L.Ed.2d 492. Civil Rights 1376(8); Civil Rights 1376(9)

Prosecutor enjoys absolute immunity from personal liability for damages under § 1983 for actions in initiating prosecution and presenting state's case and those intimately associated with judicial phase of criminal process. Esteves v. Brock, C.A.5 (Tex.) 1997, 106 F.3d 674, rehearing and suggestion for rehearing en banc denied 114 F.3d 1185, certiorari denied 118 S.Ct. 91, 522 U.S. 828, 139 L.Ed.2d 47. Civil Rights 1376(9)

State prosecutors are entitled to absolute immunity from civil rights liability for conduct intimately associated with judicial phase of criminal process. Hill v. City of New York, C.A.2 (N.Y.) 1995, 45 F.3d 653. Civil Rights 1376(9)

Prosecutor was shielded from personal liability by absolute immunity for acts within the scope of his prosecutorial duties. Schepp v. Fremont County, Wyo., C.A.10 (Wyo.) 1990, 900 F.2d 1448. District And Prosecuting Attorneys 10

Prosecutors are cloaked with immunity from civil rights liability while pursuing their prosecutorial activities. Humble v. Foreman, C.A.5 (La.) 1977, 563 F.2d 780, rehearing denied 566 F.2d 106. Civil Rights 1376(9)

Prosecuting attorney was immune from suit under this section. Ford v. Byrd, C.A.5 (Tex.) 1976, 544 F.2d 194.

A prosecutor asserting absolute immunity under § 1983 from individual liability for conduct in initiating and presenting a criminal prosecution is also immune from § 1983 claim for conduct in preparing for those functions, such as evaluating and organizing evidence for presentation at trial or to a grand jury or determining which offenses are to be charged. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1376(9)

Criminal prosecutors enjoy absolute immunity from claims arising out of their presentation of state's case. Hunter v. City of Beaumont, E.D.Tex.1994, 867 F.Supp. 496. Civil Rights 1376(9)

Prosecutor is absolutely immune from civil rights suits for activities allegedly committed while in course and scope of his employment and duties as prosecuting attorney. O'Connor v. State of Nev., D.C.Nev.1981, 507 F.Supp. 546, affirmed 686 F.2d 749, certiorari denied 103 S.Ct. 491, 459 U.S. 1071, 74 L.Ed.2d 633. Civil Rights 1376(9)

Prosecutor enjoys absolute immunity from suits based on alleged deprivation of civil rights when he acts within scope of his prosecutorial duties. Tyler v. Ryan, E.D.Mo.1976, 419 F.Supp. 905. District And Prosecuting Attorneys 10

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Prosecutor, who was named individually and in his capacity as prosecutor of county, enjoyed absolute immunity from liability for damages under this section resulting from his official prosecutorial responsibility. Clark v. Brandom, W.D.Mo.1976, 415 F.Supp. 883. Civil Rights 1376(9)

3442. Federal prosecutorial immunity compared

An assistant United States attorney is clothed with judicial immunity, unless there is some reason to distinguish between liability of state prosecutors under this section and liability of federal prosecutors under federal common law. Bethea v. Reid, C.A.3 (N.J.) 1971, 445 F.2d 1163, certiorari denied 92 S.Ct. 747, 404 U.S. 1061, 30 L.Ed.2d 749. Civil Rights 1376(9); District And Prosecuting Attorneys 10

Absolute immunity of United States Attorney and assistant United States attorney in connection with official prosecution and other official responsibility was not abrogated by this section. Zimmerman v. Spears, W.D.Tex.1977, 428 F.Supp. 759, affirmed 565 F.2d 310. Civil Rights 1376(9)

3443. Judicial immunity compared, prosecutorial immunity

Prosecutor was entitled to absolute immunity in defendant's § 1983 action alleging that prosecutor conspired to convict defendant based on perjured testimony; prosecutors enjoy immunity for all actions relating to advocacy. Dory v. Ryan, C.A.2 (N.Y.) 1994, 25 F.3d 81. Civil Rights 1376(9)

Prosecutors are entitled to absolute immunity from suits for civil damages under § 1983 when those suits are predicated upon prosecutor's performance of functions intimately associated with judicial phase of criminal process. Spielman v. Hildebrand, C.A.10 (Kan.) 1989, 873 F.2d 1377. District And Prosecuting Attorneys 10

In determining whether prosecutor enjoys absolute immunity from civil liability, federal courts must apply functional analysis to determine whether prosecutor's acts fall within bounds of "judicial," as opposed to "investigative or administrative" duties. Ross v. Meagan, C.A.3 (Pa.) 1981, 638 F.2d 646. District And Prosecuting Attorneys 10

A prosecutor whose activities are an integral part of judicial process is entitled to absolute immunity from suit under this section. Tigue v. Swaim, C.A.8 (Ark.) 1978, 585 F.2d 909. Civil Rights 1376(9)

Prosecutorial immunity from civil liability under this section is founded on the same considerations that underlie the common law immunities of judges and grand jurors acting within scope of their duties; its origin is often linked to judicial immunity. Briley v. State of Cal., C.A.9 (Cal.) 1977, 564 F.2d 849. Civil Rights 1376(9)

Key to immunity as a prosecutor is whether the acts alleged to have been wrongful were committed by the officer in the performance of an integral part of the judicial process, and as long as a district attorney is acting within that scope, or is authorized by law to do the act complained of, he is immune from civil liability for those acts. Sykes v. State of Cal. (Dept. of Motor Vehicles), C.A.9 (Cal.) 1974, 497 F.2d 197. District And Prosecuting Attorneys 10

Immunity of quasi-judicial officers such as prosecuting attorneys and parole board members derives not from their formal association with judicial process but from fact that they exercise a discretion similar to that exercised by judges, and where an official is not called upon to exercise judicial or quasi-judicial discretion courts refuse to extend protection of absolute judicial immunity regardless of any apparent relationship of his role to the judicial system. McCray v. State of Md., C.A.4 (Md.) 1972, 456 F.2d 1. Civil Rights 1376(8)

Prosecuting attorney is quasi-judicial officer and enjoys immunity from civil action for damages and from liability under this section similar to that which protects a judge. Sires v. Cole, C.A.9 (Wash.) 1963, 320 F.2d 877. See,

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also, Madison v. Purdy, C.A.5 (Fla.) 1969, 410 F.2d 99; Clark v. State of Wash., C.A.9 (Wash.) 1966, 366 F.2d 678; Bauers v. Heisel, C.A.3 (N.J.) 1966, 361 F.2d 581, certiorari denied 87 S.Ct. 1367, 386 U.S. 1021, 18 L.Ed.2d 457; Gabbard v. Rose, C.A.6 (Ky.) 1966, 359 F.2d 182; Robichaud v. Ronan, C.A.9 (Ariz.) 1965, 351 F.2d 533; Corsican Productions v. Pitchess, C.A.9 (Cal.) 1964, 338 F.2d 441; Kenney v. Fox, C.A.Mich.1956, 232 F.2d 288, certiorari denied 77 S.Ct. 84, 352 U.S. 855, 856, 1 L.Ed.2d 66; Jennings v. Nester, C.A.Ill.1955, 217 F.2d 153, certiorari denied 75 S.Ct. 888, 349 U.S. 958, 99 L.Ed. 1281; Boyd v. Huffman, D.C.Ohio 1972, 342 F.Supp. 787; Phipps v. Armour, D.C.Tenn.1971, 335 F.Supp. 768; Balistrieri v. Warren, D.C.Wis.1970, 314 F.Supp. 824; Ambrek v. Clark, D.C.Pa.1968, 287 F.Supp. 208; Friedman v. Younger, D.C.Cal.1968, 282 F.Supp. 710; Johnson v. Kreider, D.C.Pa.1967, 264 F.Supp. 188; Dixon v. State of Md. by Carter, D.C.Md.1966, 261 F.Supp. 746. Civil Rights 1376(9)

A prosecuting attorney is afforded the same judicial immunity from civil rights damage claims as is afforded judges; a prosecuting attorney is afforded such immunity because his primary responsibility is essentially judicial, the prosecution of the guilty and the protection of the innocent, and because his office is vested with a vast quantum of discretion which is necessary for vindication of the public interest, it being imperative that he enjoy the same freedom and independence of action as judges in performing his duties. Clark v. Zimmerman, M.D.Pa.1975, 394 F.Supp. 1166. Civil Rights 1376(9)

Doctrine of judicial immunity has been extended to prosecutors who are considered part of the judicial process. Lundblade v. Doyle, N.D.Ill.1974, 376 F.Supp. 57. District And Prosecuting Attorneys 10

3444. Persons or entities entitled to prosecutorial immunity--Generally

Because it detracts from § 1983's broad remedial purpose, absolute immunity applies only to limited class of officials and functions such as prosecutors, executive officers initiating administrative proceedings, government attorneys defending civil suits, and government attorneys initiating civil suits. Spear v. Town of West Hartford, C.A.2 (Conn.) 1992, 954 F.2d 63, certiorari denied 113 S.Ct. 66, 506 U.S. 819, 121 L.Ed.2d 33. Civil Rights 1376(1); Civil Rights 1376(9)

3445. ---- Bar associations and committees, persons or entities entitled to prosecutorial immunity

Even if Rhode Island Bar Association and its former Committee on Unauthorized Practice of Law were state actors, if they had clear authority to bring civil claim or to take steps that lead to criminal prosecution, and if it was that threat of prosecution that chilled constitutional rights of psychologist offering divorce mediation service, allegedly in violation of law prohibiting practice of law by nonattorneys, Association and Committee were absolutely immune from damage liability under statute governing deprivation of civil rights; moreover, if role of Committee and Association was that of investigator, they would still be entitled to qualified immunity for no reasonable person would have known that their conduct in asking psychologist to cease offering service violated his civil rights. Werle v. Rhode Island Bar Ass'n, C.A.1 (R.I.) 1985, 755 F.2d 195. Civil Rights 1373

3446. ---- City attorneys, persons or entities entitled to prosecutorial immunity

An assistant city attorney, while performing his duties as a prosecutor, is absolutely immune from liability under this section. Front Runner Messenger Service, Inc. v. Ghini, N.D.Ill.1979, 468 F.Supp. 305. Civil Rights 1376(9)

3447. ---- District attorneys, persons or entities entitled to prosecutorial immunity

Mere fact that successful candidate for office of district attorney had not yet assumed duties of his office, and thus did not have administration with which assistant district attorney, based on his open support of opposing candidate, could interfere did not affect qualified immunity to which district attorney was entitled for dismissing assistant

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district attorney based on his political affiliation; one who knows he is about to become district attorney must begin to assemble his staff before he actually assumes position. Aucoin v. Haney, C.A.5 (La.) 2002, 306 F.3d 268, on subsequent appeal 93 Fed.Appx. 638, 2004 WL 628886. Civil Rights 1376(10)

District Attorney and Assistant District Attorney had absolute immunity on §§ 1983 claims against them in their individual capacities by criminal defendant, arising out of their actions in prosecuting her criminal case, including their decision to prosecute her on charges that had previously been dismissed. Puckett v. Carter, M.D.N.C.2006, 454 F.Supp.2d 448. Civil Rights 1376(9)

State statute providing prosecutors with immunity for performance of quasi-judicial duties could not, as state law, immunize deputy district attorney from §§ 1983 claim. Mink v. Salazar, D.Colo.2004, 344 F.Supp.2d 1231. Civil Rights 1376(9)

County district attorney was entitled to Eleventh Amendment immunity from arrestee's § 1983 claims against him in his official capacity, arising from attorney's actions in initiating and conducting prosecution against arrestee; attorney was acting in quasi-judicial capacity when he was prosecuting criminal matter against arrestee, and thus he was representing the State of New York and not the county. Houghton v. Cardone, W.D.N.Y.2003, 295 F.Supp.2d 268. Federal Courts 269

District attorney was entitled to absolute prosecutorial immunity with respect to claims for damages against him in his individual capacity with respect to § 1983 action involving alleged discrimination against plaintiff in connection with investigations by police and decision making of prosecutors because plaintiff was the second to complain rather than the first; there was no indication that district attorney directly and personally tilted investigation to come out in favor or against any particular party or engaged in falsification of evidence or other behavior justifying invocation of investigative function exception to such immunity. Myers v. County of Orange, S.D.N.Y.1994, 870 F.Supp. 555. District And Prosecuting Attorneys 10

District attorney enjoyed absolute immunity from § 1983 monetary liability for prosecuting petitioner. Cross v. Meisel, E.D.Pa.1989, 720 F.Supp. 486. Civil Rights 1375

Assistant district attorney, in her official capacity, was entitled to immunity under doctrine of absolute prosecutorial immunity from pre-trial detainee's § 1983 lawsuit seeking damages for attorney's alleged failure to prevent detainee's detention in a smoking facility; attorney represented the state. Reid v. Schuman, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 376, 2003 WL 22965003, Unreported. Civil Rights 1376(9)

3448. ---- State attorneys, persons or entities entitled to prosecutorial immunity

State attorney general and assistant attorney general were not entitled to absolute immunity from § 1983 suit in which it was alleged that attorneys intervened in medical care of never-competent patient, who was in state custody and suffered from gastrointestinal distress, by directing the administration of invasive procedures to sustain patient's life, in violation of patient's constitutional rights; there was no historical or common-law support for extending absolute immunity in such cases, given that challenged intervention was not prosecutorial or intimately associated with judicial phase of criminal process. Blouin ex rel. Estate of Pouliot v. Spitzer, C.A.2 (N.Y.) 2004, 356 F.3d 348. Civil Rights 1376(9)

State attorneys were absolutely immune from § 1983 liability for investigation of charges against physician, which occurred after Colorado Board of Medical Examiners directed Attorney General's office to prepare formal disciplinary complaint based on physician's failure to treat indigent patient and alleged sexual misconduct incidents; there was no evidence that state attorneys' participation in any investigation of those incidents was unnecessary to their preparation of case against physician. Pfeiffer v. Hartford Fire Ins. Co., C.A.10 (Colo.) 1991, 929 F.2d 1484. Civil Rights 1376(9)

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County attorneys were entitled to absolute prosecutorial immunity in arrestee's civil rights action, where complaint did not allege that county attorneys dealt with arrestee in any capacity other than as county prosecutors. Dees v. Vendel, D.Kan.1994, 856 F.Supp. 1531, reconsideration denied. Civil Rights 1376(9)

3448A. ---- Attorneys general, persons or entities entitled to prosecutorial immunity

Allegations of minor cancer patient and his parents, who were arrested for refusing to subject patient to chemotherapy, that assistant attorney general provided factual information to district attorney's office that led to criminal charges against parents precluded granting absolute prosecutorial immunity on claims asserted against assistant attorney general in her individual capacity in civil rights action. P.J. ex rel. Jensen v. Utah, D.Utah 2006, 2006 WL 1702585, Unreported. Civil Rights 1376(9)

3449. ---- State prosecutors, persons or entities entitled to prosecutorial immunity

State prosecutors are entitled to absolute immunity against suits brought pursuant to § 1983 for activities "intimately associated with judicial" process, such as initiating and pursing criminal prosecutions. Gagan v. Norton, C.A.10 (Colo.) 1994, 35 F.3d 1473, certiorari denied 115 S.Ct. 1175, 513 U.S. 1183, 130 L.Ed.2d 1128. Civil Rights 1376(9)

Criminal prosecutors enjoy absolute immunity from claims for damages asserted under § 1983 for actions taken in presentation of state's case, including prosecutor's actions in initiating prosecution and in carrying case through judicial process. Boyd v. Biggers, C.A.5 (Miss.) 1994, 31 F.3d 279. District And Prosecuting Attorneys 10

State prosecutors were immune from civil rights liability where plaintiff made no allegations of fact which would support finding that they acted outside scope of their prosecutorial duties. Martinez v. Chavez, C.A.10 (N.M.) 1978, 574 F.2d 1043. Civil Rights 1376(8); Civil Rights 1376(9)

State prosecuting attorneys are entitled to absolute immunity from §§ 1983 actions for conduct intimately associated with the judicial phase of the criminal process. Mink v. Salazar, D.Colo.2004, 344 F.Supp.2d 1231. Civil Rights 1376(9)

Absolute immunity of criminal prosecutors to claims arising out of presentation of state's case extends from decision to initiate prosecution to all actions taken that move case through judicial process. Hunter v. City of Beaumont, E.D.Tex.1994, 867 F.Supp. 496. Civil Rights 1376(9)

A state prosecutor enjoys an absolute immunity from civil rights damage liability for those of his acts which relate to his role as advocate for the state and officer of the court. Goodrich v. Gonzalez, E.D.N.Y.1978, 451 F.Supp. 747 . Civil Rights 1376(9)

State prosecutors enjoy an immunity from damages in civil rights suits. Maney v. Ratcliff, E.D.Wis.1975, 399 F.Supp. 760. Civil Rights 1376(9)

3450. ---- Child welfare workers, persons or entities entitled to prosecutorial immunity

Social worker and therapist, as employees of Division of Child and Family Services (DCFS), were entitled to absolute immunity for their alleged misconduct in placing minor child in foster care, where child allegedly sexually abused younger child, barring child's guardian ad litem's § 1983 claims against them in their individual capacities, where all alleged misconduct by DCFS employees, including their failure to disclose child's history as perpetrator of sexual abuse, was in connection with child's court-ordered placement and ongoing child dependency proceedings, and alleged abuse occurred only after court issued official placement order. Miller v. Gammie, C.A.9 (Nev.) 2002, 292 F.3d 982, rehearing granted, opinion vacated 309 F.3d 1209, on rehearing 335 F.3d 889. Infants

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Child welfare department caseworkers were entitled to absolute immunity for their actions on behalf of state in preparing for, initiating, and prosecuting dependency proceedings, including formulation and presentation of recommendations to court in course of such proceedings, in grandmother's § 1983 action alleging that dependency decisions made with respect to granddaughter violated grandmother's substantive due process rights; caseworker's functions were prosecutorial in nature, public policy supported such immunity, and dependency proceedings incorporated safeguards that protected citizens from unconstitutional actions by child welfare workers. Ernst v. Child and Youth Services of Chester County, C.A.3 (Pa.) 1997, 108 F.3d 486, certiorari denied 118 S.Ct. 139, 522 U.S. 850, 139 L.Ed.2d 87. Civil Rights 1376(1); Civil Rights 1376(3)

Child welfare authorities were absolutely immune from liability in civil rights action for their initiation of ex parte proceedings in state court that led to award of temporary protective custody of child to the state after case worker received reports from treating physician indicating his suspicion that mother was engaging in life-threatening form of child abuse; case worker's role was functionally comparable to that of prosecutor. Thomason v. SCAN Volunteer Services, Inc., C.A.8 (Ark.) 1996, 85 F.3d 1365. Civil Rights 1376(3)

Absolute prosecutorial immunity did not apply to social worker's decision to "open a case" to investigate alleged child abuse, even though criminal prosecution could conceivably result from investigation; social worker did not initiate any court action in role of prosecutor. Achterhof v. Selvaggio, C.A.6 (Mich.) 1989, 886 F.2d 826, on remand 757 F.Supp. 837. Civil Rights 1376(3)

Child protective services worker enjoyed absolute immunity from liability for seeking and obtaining an ex parte court order directing that plaintiff's newborn daughter be seized from hospital and placed in temporary shelter care; worker's actions in seeking and obtaining court order were within scope of her statutory role as a quasi-prosecutor. Coverdell v. Department of Social and Health Services, State of Wash., C.A.9 (Wash.) 1987, 834 F.2d 758. Civil Rights 1376(1); Civil Rights 1376(3)

Social worker was not entitled to absolute quasi-prosecutorial immunity under §§ 1983 for the actions alleged in mother's complaint since social worker was not acting in a quasi-prosecutorial capacity when she decided to investigate hospital staff's allegations concerning mother's disability, when she sought and obtained information from Alaska regarding child protection proceedings there, when she interviewed mother at the hospital with two armed police officers, when she took custody of mother's newborn baby on behalf of the State, or when she filed an affidavit in state court asserting the truth of various matters in a sworn statement; while social worker was entitled to absolute immunity for continuing the baby's legal custody with State after judge authorized such custody, judge's order could not retroactively impute judicial immunity to social worker's prior actions. Brown v. Montana, D.Mont.2006, 442 F.Supp.2d 982. Civil Rights 1376(9)

Social workers were entitled to absolute prosecutorial immunity, in action under §§ 1983, for their actions in prosecuting child protection proceedings, where any alleged misrepresentations to dependency court and failure to disclose exculpatory evidence by social workers occurred during dependency proceedings. Parkes v. County of San Diego, S.D.Cal.2004, 345 F.Supp.2d 1071. Civil Rights 1376(9)

County child protective services workers were absolutely immune from suit by mother, daughter, and stepfather alleging substantive due process violations, insofar as claim was based on workers' decision to seek emergency removal of daughter, where Virginia law permitted emergency removal of child without prior judicial authorization, and workers were acting in prosecutorial, rather than investigative, capacity. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1376(4)

Decision of social worker to file charges or petition for removal of child from parents is protected by absolute prosecutorial immunity even in face of accusations of reckless prosecution without adequate investigation. Fogle

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v. Benton County SCAN, W.D.Ark.1987, 665 F.Supp. 729. Civil Rights 1376(1)

Employees of county department of social services were absolutely immune from liability under this section for alleged malicious prosecution of child protective proceedings since functions performed by employees under their child-protective duties were analogous to those of prosecutor. Whelehan v. Monroe County, W.D.N.Y.1983, 558 F.Supp. 1093. Civil Rights 1376(4)

3451. ---- Investigators, persons or entities entitled to prosecutorial immunity

Since investigating officer, who testified at grand jury proceeding, turned over to prosecutor all evidence, including any exculpatory evidence, he was absolutely immune from §§ 1983 liability on arrestee's malicious prosecution claim. Zamora v. City of Belen, D.N.M.2005, 383 F.Supp.2d 1315. Civil Rights 1375

Social workers are not entitled to absolute immunity, in § 1983 actions alleging violations of substantive due process rights, for their conduct in investigating the possibility that a removal petition should be filed. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1376(3); Civil Rights 1376(4)

Investigator who prepared felony complaint and arrest report for county jail inmate, who was accused of assaulting another inmate, was entitled to absolute immunity, even though investigator was not actually an employee of the District Attorney's office, but of the Sheriff's Department, and even though inmate's claim was for false arrest rather than malicious prosecution; decision to file criminal complaint and seek arrest warrant were quasi-judicial functions involved in initiation of a prosecution, and so were prosecutorial in nature, in that district attorney would be entitled to absolute immunity for performing same acts. Goncalves v. Reynolds, W.D.N.Y.2001, 198 F.Supp.2d 278. District And Prosecuting Attorneys 10

An arson investigator was entitled to immunity from a civil rights malicious prosecution claim relating to the manner in which he conducted an arson investigation, where the investigator had probable cause to submit all the information he accumulated to the prosecuting attorney, who in turn had prosecutorial discretion to determine that there was probable cause to prosecute the present plaintiff. Wolf v. Napier, N.D.Ind.1990, 742 F.Supp. 1014. Civil Rights 1376(6)

Criminal investigator employed by county district attorney's office who took child into custody in connection with juvenile court proceeding was entitled to absolute prosecutorial immunity in child's civil rights action based on claim that she was subsequently placed in custody of her father, who allegedly sexually abused her. M.K. through Hall v. Harter, E.D.Cal.1989, 716 F.Supp. 1333. Civil Rights 1376(9)

Investigator for district attorney enjoyed absolute immunity from liability for actions taken at direction of prosecutor for purpose of prosecuting misdemeanor case against accused, which consisted of interviewing complaining and alibi witnesses as well as conducting voice stress test of accused; actions were not merely investigatory, so as to entitle investigator to only qualified immunity, since they were taken after accused had been identified as suspect against whom case would be brought, nor could they be deemed independent activity, for which investigator would not enjoy absolute immunity, simply because prosecutor did not provide investigator with procedural manual instructing him how to perform his duties. Doe v. Smith, S.D.N.Y.1988, 704 F.Supp. 1177. District And Prosecuting Attorneys 10

In executing a valid arrest warrant, a state investigator had prosecutorial immunity from liability for violation of plaintiff's civil rights when plaintiff was mistakenly arrested because his name was the same as that of the suspect named in the warrant. Keller v. U.S., S.D.Cal.1987, 667 F.Supp. 1351, affirmed 930 F.2d 920. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Criminal law investigator in county district attorney's office was entitled to absolute immunity in connection with statements made in his affidavit before New York court, although he had not yet been admitted to state bar, since his statements were intimately related to presenting state's case in ongoing criminal prosecution. McGann v. Baranowicz, S.D.N.Y.1985, 617 F.Supp. 845. District And Prosecuting Attorneys 10

3452. ---- Medical officials, persons or entities entitled to prosecutorial immunity

Administrative prosecutor for New Mexico Board of Medical Examiners was entitled to absolute immunity to physician's due process civil rights claim, which alleged that prosecutor did not turn over exculpatory evidence, offered erroneous opinion to hearing officer, and improperly threatened adverse action if physician did not comply with deadline, since prosecutor was acting within scope of his prosecutorial duties. Guttman v. Khalsa, C.A.10 (N.M.) 2006, 446 F.3d 1027. Civil Rights 1376(9)

Commissioner of Department of Health, director of Division of Medical Quality Assurance, and chairman of Medical Examining Board were absolutely immune from physician's damages suit against them in their individual capacities, arising from suspension of physician's license to practice medicine pending hearing, as officials' actions were prosecutorial in nature. Moran v. Connecticut Dept. of Public Health and Addition Services, D.Conn.1997, 954 F.Supp. 484. Health 195; States 78

3453. ---- Police officers, persons or entities entitled to prosecutorial immunity

Police detective who allegedly assisted prosecutors with various investigative functions during prosecution had absolute immunity from indictee's § 1983 claim for detective's role in the prosecution. Davis v. Grusemeyer, C.A.3 (N.J.) 1993, 996 F.2d 617. Civil Rights 1376(6)

3454. ---- State commission officials, persons or entities entitled to prosecutorial immunity

For purposes of claim of absolute prosecutorial immunity under §§ 1983, counsel for Pennsylvania Department of Environmental Protection (DEP) functioned as a prosecutor by filing actions in court to enforce compliance with DEP orders, and in bringing subsequent civil petitions for contempt. Light v. Haws, C.A.3 (Pa.) 2007, 472 F.3d 74. Civil Rights 1376(9)

New York medical officials were not entitled to absolute immunity from radiologist's due process claims, arising from summary suspension of his medical license; summary suspension process lacked sufficient similarity to judicial process to warrant absolute immunity from suit for involved officials, and neither officials' role in summary suspension was sufficiently analogous to that of judge or prosecutor, respectively, to warrant absolute immunity from suit. DiBlasio v. Novello, C.A.2 (N.Y.) 2003, 344 F.3d 292, certiorari denied 124 S.Ct. 2018, 541 U.S. 988, 158 L.Ed.2d 492. Civil Rights 1376(3)

Deputy Commissioner of Banks of State of Massachusetts was absolutely immune from liability for alleged wrongful actions pertaining to his participation in decision to initiate removal proceedings against bank directors and for his prosecutorial role at show cause hearing. Roslindale Co-op. Bank v. Greenwald, D.C.Mass.1979, 481 F.Supp. 749, affirmed 627 F.2d 1087, affirmed 638 F.2d 258, certiorari denied 102 S.Ct. 128, 454 U.S. 831, 70 L.Ed.2d 108. Officers And Public Employees 114

Chief counsel to the Pennsylvania Insurance Commissioner, against whom insurance company and others brought civil rights action based on alleged conspiracy involving the chief counsel to deprive insurance company of due process and equal protection by issuing an illegal suspension order which denied the insurance company the right to do business within the state, and who represented the department in various proceedings was entitled to assert immunity applicable to a prosecuting attorney. C. M. Clark Ins. Agency, Inc. v. Reed, S.D.Tex.1975, 390 F.Supp. 1056. Conspiracy 13

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42 U.S.C.A. § 1983

3455. Considerations governing generally, prosecutorial immunity

District attorney's immunity from civil rights suit by criminal defendant is gauged by functional activities prosecutor engaged in, and not defendant's status; actions that are related to judicial process fulfill prosecutor's advocatory function and are considered absolutely immune. Brooks v. George County, Miss., C.A.5 (Miss.) 1996, 84 F.3d 157, certiorari denied 117 S.Ct. 359, 519 U.S. 948, 136 L.Ed.2d 251. Civil Rights 1376(9)

Three factors must be considered in determining whether prosecutor is absolutely immune from damages under § 1983: common law in 1871 when § 1983 was enacted, risk of vexatious litigation if immunity is unavailable, and role of judicial process in controlling prosecutor if damages are unavailable. Lucien v. Preiner, C.A.7 (Ill.) 1992, 967 F.2d 1166, certiorari denied 113 S.Ct. 267, 506 U.S. 893, 121 L.Ed.2d 196. Civil Rights 1376(9)

In determining whether absolute immunity should attach to prosecutorial activities, court must direct its inquiry to the nature of the official behavior which is challenged and not to the identity or position of the official responsible therefor. Cribb v. Pelham, D.C.S.C.1982, 552 F.Supp. 1217. Civil Rights 1376(9)

Assertions of quasi-judicial immunity by prosecutor sued for violations of constitutional rights cannot be rigidly accepted on their face, but rather an analysis of the activity being performed at the time the alleged misconduct occurred is required to determine the applicability of the doctrine. Briggs v. Goodwin, D.C.D.C.1974, 384 F.Supp. 1228, affirmed 569 F.2d 10, 186 U.S.App.D.C. 179, certiorari denied 98 S.Ct. 3089, 437 U.S. 904, 57 L.Ed.2d 1133. District And Prosecuting Attorneys 10

3456. Duties covered, prosecutorial immunity

State prosecutor's conduct in unilaterally increasing the bond amount of an arrestee was not prosecutorial in nature, for the purpose of determining whether prosecutor was entitled to absolute prosecutorial immunity, in arrestee's §§ 1983 action alleging unreasonable seizure and the setting of unreasonable bond in violation of the Fourth, Eighth and Fourteenth Amendments. Root v. Liston, C.A.2 (Conn.) 2006, 444 F.3d 127. Civil Rights 1376(9)

Prosecutors, and persons working under their direction, are entitled to absolute immunity when they function as advocates for the state in circumstances intimately associated with the judicial phase of the criminal process. Bernard v. County of Suffolk, C.A.2 (N.Y.) 2004, 356 F.3d 495. District And Prosecuting Attorneys 10

Application of absolute immunity from § 1983 actions is not limited to duties prosecutor performs in courtroom. Dory v. Ryan, C.A.2 (N.Y.) 1994, 25 F.3d 81. Civil Rights 1376(9)

Absolute immunity available to a prosecutor in defense to § 1983 claim in his or her individual capacity depends on the nature of the function performed by prosecutor asserting the defense, not on the identity of the actor who performed the function. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1376(9)

Absolute immunity from civil rights liability is not available when prosecutor undertakes conduct that is beyond scope of his or her litigation-related duties; if challenged conduct either is not traditional function or is not intimately associated with judicial phase of criminal system, prosecutor is not entitled to absolute immunity. Smith v. Gribetz, S.D.N.Y.1997, 958 F.Supp. 145. Civil Rights 1376(9)

3457. Jurisdictional duties, prosecutorial immunity--Generally

A state prosecuting attorney is immune from liability under this section unless his actions are clearly outside scope of his jurisdiction. Kauffman v. Moss, C.A.3 (Pa.) 1970, 420 F.2d 1270, certiorari denied 91 S.Ct. 93, 400 U.S. 846, 27 L.Ed.2d 84. See, also, U.S. ex rel. Birnbaum v. Dolan, C.A.3 (N.J.) 1971, 452 F.2d 1078; Moore v.

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Buck, C.A.3 (N.J.) 1971, 443 F.2d 25; Peek v. Mitchell, C.A.6 (Mich.) 1970, 419 F.2d 575; Lewis v. Brautigam, C.A.Fla.1955, 227 F.2d 124; Moyer v. McCann, D.C.Pa. 1976, 407 F.Supp. 518; Classic Distributors, Inc. v. Zimmerman, D.C.Pa.1974, 387 F.Supp. 829; Manfredonia v. Barry, D.C.N.Y.1971, 336 F.Supp. 765. Civil Rights 1376(9)

Arrestee's § 1983 claim against county attorney was barred by absolute prosecutorial immunity, which was accorded to actions that were intimately associated with judicial process; acts complained of, receiving correspondence from another county attorney, filing charges that were later dismissed by judge, and filing appeal, were actions quintessentially within scope of prosecutorial functions. Schroeder v. Kochanowski, D.Kan.2004, 311 F.Supp.2d 1241. Civil Rights 1376(9)

Prosecutor was not acting in absence of all jurisdiction when he filed misdemeanor complaint against defendant for adultery, based on defendant's own admission, and thus prosecutor was absolutely immune from § 1983 suit. Thomas v. County of Putnam, S.D.N.Y.2003, 257 F.Supp.2d 711. District And Prosecuting Attorneys 10

3458. ---- Admission of evidence, jurisdictional duties, prosecutorial immunity

District attorney was, as a matter of law, acting within his jurisdiction when he opposed defendant's motion for production of free transcript of earlier trial for murder, and was thus entitled to immunity in defendant's action under this section conferring right of action on person deprived of constitutional right, privilege or immunity. Brown v. Charles, E.D.Wis.1970, 309 F.Supp. 817. Civil Rights 1376(9)

3459. ---- Entrapment, jurisdictional duties, prosecutorial immunity

District attorney was immune from suit by prisoner for damages under this section for conduct akin to entrapment, in absence of allegations of actions outside the scope of his jurisdiction. Brazzell v. Adams, C.A.5 (Tex.) 1974, 493 F.2d 489. Civil Rights 1376(9)

3460. Administrative or investigative duties, prosecutorial immunity

When prosecutor functions as administrator rather than as officer of court, he is entitled to only qualified immunity from § 1983 liability. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(9)

Absolute prosecutorial immunity protected state prosecutors from § 1983 liability with respect to allegations that prosecutors engaged in improper ex parte communications with state chancellor regarding public nuisance actions to be filed against nightclubs featuring nude dancing, given absence of allegation that prosecutors, in taking such actions, were performing investigative functions normally performed by detective or police officer. Cooper v. Parrish, C.A.6 (Tenn.) 2000, 203 F.3d 937, rehearing and suggestion for rehearing en banc denied, certiorari denied 121 S.Ct. 185, 531 U.S. 877, 148 L.Ed.2d 128. Civil Rights 1376(9)

Absolute prosecutorial immunity will attach, not just to prosecutor's decision to file criminal complaint and seek arrest warrant, or presentation of charging documents to judicial officer and procurement of arrest warrant, but to administrative or investigative acts necessary for prosecutor to initiate or maintain criminal prosecution. Ireland v. Tunis, C.A.6 (Mich.) 1997, 113 F.3d 1435, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 560, 522 U.S. 996, 139 L.Ed.2d 401. District And Prosecuting Attorneys 10

Prosecutors are absolutely immune from liability under § 1983 for their conduct in initiating prosecution and in presenting state's case insofar as that conduct is intimately associated with judicial phase of criminal process; however, when prosecutors perform administrative or investigative, rather than advocatory, functions they do not

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receive absolute immunity. Roe v. City and County of San Francisco, C.A.9 (Cal.) 1997, 109 F.3d 578. District And Prosecuting Attorneys 10

Absolute immunity from § 1983 actions applies to prosecutor's conduct that is intimately associated with judicial phase of criminal process, but not to prosecutor's acts of investigation or administration. Dory v. Ryan, C.A.2 (N.Y.) 1994, 25 F.3d 81. Civil Rights 1376(9)

Assistant state attorney general was entitled to absolute immunity in suit under § 1983 alleging that investigation of psychologist for alleged false Medicaid claims violated psychologist's constitutional rights; investigation was initiated only after state agency had received complaints from Inspector General, investigation pertained to these complaints, and investigation was essential to ensuing decision on whether to prosecute. Zar v. South Dakota Bd. of Examiners of Psychologists, C.A.8 (S.D.) 1992, 976 F.2d 459. Civil Rights 1376(9)

Although assistant district attorney was absolutely immune from liability under deprivation of civil rights under color of state law statute for acts within scope of his duties in initiating and pursuing criminal prosecution, he was entitled only to qualified immunity, requiring showing that his acts were objectively reasonable, for any administrative or investigative activities. Day v. Morgenthau, C.A.2 (N.Y.) 1990, 909 F.2d 75, amended on rehearing, on remand 769 F.Supp. 472. Civil Rights 1376(9)

While a prosecutor, acting within the scope of his duties in initiating and pursuing a criminal prosecution, is absolutely immune from civil suit for damages under federal civil rights statute, if it is determined that the activities of the prosecutor are purely investigative and police related in nature and beyond the scope of his prosecutorial duties, the protection of absolute immunity from civil liability is lost. Pachaly v. City of Lynchburg, C.A.4 (Va.) 1990, 897 F.2d 723. Civil Rights 1376(9)

Supreme Court decision in Imbler v. Pachtman extends absolute prosecutorial immunity only so far as necessary to protect prosecutor's decision with respect to initiation and conduct of particular cases and does not immunize prosecutors for any and all measures they may undertake in course of wide-ranging law enforcement investigations or general fact-finding expeditions. Briggs v. Goodwin, C.A.D.C.1977, 569 F.2d 10, 186 U.S.App.D.C. 179, certiorari denied 98 S.Ct. 3089, 437 U.S. 904, 57 L.Ed.2d 1133. District And Prosecuting Attorneys 10

Prosecutors enjoy absolute immunity in connection with those functions in which they participate in the judicial process but the same protection is not available when a claim under civil rights legislation focuses on a prosecutor's actions in the course of directing police investigative activity. Apton v. Wilson, C.A.D.C.1974, 506 F.2d 83, 165 U.S.App.D.C. 22. Civil Rights 1376(9); District And Prosecuting Attorneys 10

Derivative form of immunity exists for prosecutors who will be cloaked with same immunity granted to judges when they are acting within scope of their proper prosecutorial capacity, rather than in investigatory capacity. Duba v. McIntyre, C.A.8 (Neb.) 1974, 501 F.2d 590, certiorari denied 96 S.Ct. 1480, 424 U.S. 975, 47 L.Ed.2d 745. District And Prosecuting Attorneys 10

Even if prosecutors enjoy an absolute immunity from suit in civil rights case when acting within their quasi-judicial capacity, such absolute immunity does not extend to acts essentially unrelated to judicial process, that is, acts done in prosecutor's investigatory role. Guerro v. Mulhearn, C.A.1 (Mass.) 1974, 498 F.2d 1249. Civil Rights 1376(9)

Prosecutorial immunity from § 1983 suits for damages does not apply when prosecutor's conduct falls outside of traditional advocacy functions, such as when prosecutor engages in "investigative" or "administrative" functions, e.g., prosecutor's involvement in wiretapping, giving legal advice to police during a police investigation, making false statements at press conference, and fabricating evidence prior to indictment or arrest, are not protected by prosecutorial immunity. Gibbs v. Deckers, D.Del.2002, 234 F.Supp.2d 458. Civil Rights 1376(9)

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42 U.S.C.A. § 1983

District attorneys were not entitled to absolute immunity from civil rights action brought by family of murdered township officer, alleging that defendants failed to protect officer despite threats from perpetrator, since attorneys' interactions with perpetrator in attempting to elicit confession were investigative rather than prosecutorial in nature. Walter v. Pike County, Pennsylvania, M.D.Pa.2006, 2006 WL 3437384. Civil Rights 1376(9)

County District Attorney (DA) was not entitled to absolute immunity from liability under §§ 1983 for his allegedly negative statements about village police chief, which were far removed from the judicial process; chief's allegation that DA's statements caused village board to decline renewal of chief's contract indicated he made statements in course of advising village board on personnel matter, and fact he referred to his prosecutorial function by stating he would not prosecute cases investigated by the chief was irrelevant. Hoffman v. Kelz, W.D.Wis.2006, 443 F.Supp.2d 1007. Civil Rights 1376(10)

Deputy county attorney was not entitled to absolute immunity in citizen's civil rights lawsuit alleging that attorney participated in conspiracy with detective to search his residence and seize evidence without warrant in violation of Fourth Amendment; attorney's alleged actions occurred in context of police investigation and were not intimately associated with judicial phase of criminal process. Allison v. Utah County Corp., D.Utah 2004, 335 F.Supp.2d 1310. Conspiracy 13

When a prosecutor supervises, conducts, or assists in the investigation of a crime, or gives advice as to the existence of probable cause to make a warrantless arrest, that is, when he performs functions normally associated with a police investigation, he loses his absolute protection from liability under § 1983. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1376(9)

Absolute immunity is not available when a prosecutor undertakes conduct that is beyond the scope of his or her litigation-related duties; when a prosecutor acts in an investigative or administrative capacity rather than in a prosecutorial one, absolute immunity is not available. Thomas v. County of Putnam, S.D.N.Y.2003, 257 F.Supp.2d 711. District And Prosecuting Attorneys 10

County prosecutors who allegedly planned sting operation, suborned perjury that led to arrest warrant and indictment, and made false statements to press were not entitled to absolute immunity from § 1983 liability; challenged activities were investigative or administrative activities for which only qualified immunity was available. Lehman v. Kornblau, E.D.N.Y.2001, 134 F.Supp.2d 281. Civil Rights 1376(9)

To determine whether prosecutor is immune from suit for damages under § 1983 based on prosecutor's role, that provides absolute immunity, or investigator's role, that provides qualified immunity, when prosecutor performs investigative functions normally performed by a detective or police officer, prosecutor is entitled to claim qualified, not absolute, immunity. Spurlock v. Whitley, M.D.Tenn.1997, 971 F.Supp. 1166, affirmed 167 F.3d 995 . Civil Rights 1376(9)

Prosecutor does not enjoy absolute immunity from civil rights liability for acts that are merely administrative, rather than prosecutorial, in nature. Eisenberg v. District Attorney of County of Kings, E.D.N.Y.1994, 847 F.Supp. 1029. Civil Rights 1376(9)

Prosecutors are absolutely immune from liability for conduct in initiating prosecution and presenting state's case insofar as that conduct is intimately associated with judicial phase of criminal process, but prosecutor enjoys only qualified immunity when he or she performs functions of administrative or investigatory nature. Chavers v. Stuhmer, E.D.Wis.1992, 786 F.Supp. 756. Civil Rights 1376(9)

Rule that a state prosecutor, while acting in his official duties associated with the judicial phase of the criminal process, is absolutely immune from damage suits under this section extends only to activities associated with the judicial process and, hence, does not extend to investigative or administrative functions. D'Iorio v. Delaware

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County, E.D.Pa.1978, 447 F.Supp. 229, reversed on other grounds 592 F.2d 681. Civil Rights 1376(9)

A prosecutor in a criminal case enjoys an absolute immunity from liability arising out of activities which constitute an integral part of the judicial process; however, a prosecutor is not completely immune from liability for an infringement of constitutional rights which occur in connection with investigatory, as opposed to quasi-judicial or advocacy activities. Carlsberg v. Gatzek, C.D.Cal.1977, 442 F.Supp. 813. Civil Rights 1376(9); District And Prosecuting Attorneys 10

Investigative activities fall outside a prosecutors's role as an officer of the court and, therefore, a prosecutor is subject to civil rights liability arising out of such investigative activities to the same extent as any other investigator acting under color of state law. Clark v. Lutcher, M.D.Pa.1977, 77 F.R.D. 415. Civil Rights 1376(9)

State assistant attorney general (AAG) was acting as a complaining witness when she filed a complaint with the Consumer Protection Division (CPD) of the Office of the Attorney General, alleging that plaintiff was practicing law without a license, and therefore AAG was not entitled to absolute immunity in plaintiff's §§ 1983 action; AAG's actions, of investigating plaintiff's involvement with associates seeking to bring suit against federal agents to determine whether he might be giving them legal advice, were purely investigative, rather than associated with initiating a prosecution. McCormick v. City of Lawrence, Kan., C.A.10 (Kan.) 2004, 99 Fed.Appx. 169, 2004 WL 882146, Unreported. Civil Rights 1375; Civil Rights 1376(9)

3461. Promulgation of policies and procedures, prosecutorial immunity

Prosecutorial immunity does not apply to prosecutor's or municipality's promulgation of policies and procedures which result in deprivation of constitutional rights. Johnson v. Reno Police Chief, D.Nev.1989, 718 F.Supp. 36. Civil Rights 1376(9)

3462. Building inspections, prosecutorial immunity

Actions of town attorney and town board members in sending building inspector to find violations on religious corporation's property, especially violations which allegedly had been known about and ignored for years, could transform prosecutorial actions into investigative or administrative ones, thereby emasculating availability of prosecutorial immunity. Moore v. Trippe, S.D.N.Y.1990, 743 F.Supp. 201. District And Prosecuting Attorneys 10; Towns 31

3463. Press statements, prosecutorial immunity

Prosecutor's allegedly false statements, made during public announcement of indictment of murder defendant, were entitled to only qualified, and not absolute immunity from § 1983 liability; comments had no functional tie to judicial process and, though announcement may have been integral part of prosecutor's job, he was in no different position than other executive officials who dealt with press and for whom qualified immunity was the norm. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(9)

State prosecutors were not entitled to absolute immunity from liability in civil rights action alleging wrongful publication of disciplinary proceedings involving physician; individual state attorneys' dissemination of information to press and others outside of State Board of Medical Examiners' proceedings did not constitute quasi-judicial function deserving of cloak of absolute immunity. Pfeiffer v. Hartford Fire Ins. Co., C.A.10 (Colo.) 1991, 929 F.2d 1484. Civil Rights 1376(9)

Prosecutor's alleged statements to press were part of administrative function, rather than role as advocate, and, therefore, could only be protected by qualified immunity, rather than absolute immunity, in § 1983 action. England

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v. Hendricks, C.A.10 (Utah) 1989, 880 F.2d 281, rehearing denied, certiorari denied 110 S.Ct. 1130, 493 U.S. 1078, 107 L.Ed.2d 1036. Civil Rights 1376(9)

State prosecuting attorneys were not entitled to absolute immunity from any damages which might arise from their issuance of an allegedly defamatory press release following their dismissal of child rape charges against civil rights plaintiff. Marx v. Gumbinner, C.A.11 (Fla.) 1988, 855 F.2d 783. Civil Rights 1376(9)

District attorney's dissemination to press of information from suspect's psychiatric report did not violate clearly established right of privacy as of day of press conference, and thus, district attorney was entitled to qualified immunity. Borucki v. Ryan, C.A.1 (Mass.) 1987, 827 F.2d 836. District And Prosecuting Attorneys 10

Only qualified good-faith immunity is available where a prosecutor distributes extraneous statements to the press designed to gain unfair advantage at trial; to the degree that a prosecutor is called upon as part of his official duties to deal with the press, such a duty would be administrative rather than "quasi-judicial," and hence not deserving of cloak of absolute immunity. Powers v. Coe, C.A.2 (Conn.) 1984, 728 F.2d 97. Civil Rights 1376(9)

Federal prosecutor's statements made at press conference announcing criminal indictment were not absolutely protected by quasi-judicial immunity. Stepanian v. Addis, C.A.11 (Fla.) 1983, 699 F.2d 1046. Libel And Slander 38(5)

Absolute prosecutorial immunity is not available when a prosecutor releases information or evidence to the media, authorizes or directs the use of wiretaps, or performs the functions normally performed by the police such as assisting in the execution of a search or seizure. Thomas v. County of Putnam, S.D.N.Y.2003, 257 F.Supp.2d 711. District And Prosecuting Attorneys 10

Level of immunity due a prosecutor, whether absolute or qualified, depends on functional nature of activities rather than prosecutor's status and accordingly court in civil rights action must determine whether prosecutor's activities in releasing information to press are more properly characterized as investigative or administrative rather than quasi-judicial. Strong v. Slaton, N.D.Ga.1981, 510 F.Supp. 161. Civil Rights 1376(9)

Even if plaintiff in civil rights action established that newspaper article which described plaintiff and his history in prerelease prison program deprived him of fair trial on charges arising out of offenses allegedly committed while he was in such program, prosecuting attorney who allegedly helped in preparing article was immune from liability in civil rights action. Tunnell v. Wiley, E.D.Pa.1974, 369 F.Supp. 1260, affirmed 514 F.2d 971. Civil Rights 1376(9)

3464. Police duties distinguished, prosecutorial immunity

Prosecutor is acting as advocate for the state, rather than as investigator or administrator, in recommending denial of bail and enjoys absolute immunity against any claims arising out of this function; prosecutor's function is intimately associated with judicial phase of criminal process, and deals with initiation and pursuit of criminal prosecution. Hart v. O'Brien, C.A.5 (Tex.) 1997, 127 F.3d 424, rehearing and suggestion for rehearing en banc denied 154 F.3d 419, certiorari denied 119 S.Ct. 868, 525 U.S. 1103, 142 L.Ed.2d 770. District And Prosecuting Attorneys 10

Prosecutor who acts in role of policeman is liable like policeman, under § 1983, if in so acting she deprives plaintiff of rights under the Constitution or federal laws. Hart v. O'Brien, C.A.5 (Tex.) 1997, 127 F.3d 424, rehearing and suggestion for rehearing en banc denied 154 F.3d 419, certiorari denied 119 S.Ct. 868, 525 U.S. 1103, 142 L.Ed.2d 770. Civil Rights 1088(1)

District attorney and assistant district attorney were not immune from suits under this section seeking damage

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because of their alleged participation in compelling plaintiff to act as police agent and informant since plaintiff, at least in part, challenged alleged prosecutorial conduct that was neither judicial nor even quasi-judicial, but, rather, was of a police/investigative nature; immunity to which the district attorney and the assistant claimed entitlement i.e., initiating prosecution and presenting the state's case, did not extend to their conduct while engaged in such police activity as recruiting or cultivating informants. Tomko v. Lees, W.D.Pa.1976, 416 F.Supp. 1137. Civil Rights 1376(9)

While the motive of a prosecutor is irrelevant in determining the scope of his immunity from damages in a civil rights suit, the immunity only extends to conduct which can be described as "quasi-judicial" as opposed to investigatory activities normally performed by laymen, such as police officers. Maney v. Ratcliff, E.D.Wis.1975, 399 F.Supp. 760. Civil Rights 1376(9)

3465. Advisor to county officials, prosecutorial immunity

District attorney and assistant were not entitled to absolute quasi-judicial immunity from § 1983 suit arising from legal advice to county commissioners that commissioners court could not pay state district court clerk's legal expenses incurred in contempt proceeding. Hughes v. Tarrant County Tex., C.A.5 (Tex.) 1991, 948 F.2d 918. Civil Rights 1376(9)

Assistant state's attorney functions in quasi-judicial role when advising county officials, and, in that role, state's attorney must have absolute immunity from civil rights damage suits to properly carry out her duties; where the functioning as prosecutor or advice giver, questions of legality considered by state's attorney mirror those which are everyday work of judges and lawyers, without protection of absolute immunity for advice which law requires her to give, state's attorney's impartiality would be significantly diminished by fear of vexatious litigation, and Illinois law subjects state's attorney's opinion to many checks. Henderson v. Lopez, C.A.7 (Ill.) 1986, 790 F.2d 44. Civil Rights 1376(9)

3466. Advisor to police officers, prosecutorial immunity

Absolute immunity from liability for damages under § 1983 did not apply to state prosecutor's giving of legal advice to police; there was no historical or common-law support for extending absolute immunity in such cases, and advising police in investigative phase of criminal case was not intimately associated with judicial phase of criminal process. Burns v. Reed, U.S.Ind.1991, 111 S.Ct. 1934, 500 U.S. 478, 114 L.Ed.2d 547, on remand 958 F.2d 374, rehearing denied. Civil Rights 1376(9)

Prosecutor was entitled to qualified immunity for his conduct in advising the police that the countertop gaming machines seized from businesses were illegal under state law, in business owners' §§ 1983 claim challenging the warrantless seizure of the machines; even though prosecutor's position was ultimately rejected by the state Supreme Court, when prosecutor first rendered his opinion, the specific issue had not yet been decided, and factually different cases arguably supported prosecutor's position. Skokos v. Rhoades, C.A.8 (Ark.) 2006, 440 F.3d 957. Civil Rights 1376(9)

Prosecutor's alleged conduct in directing deputy to prevent family and friends of defendant from entering hearing on postconviction motion did not amount to the giving of illegal advice to the police so as to come within exception to prosecutorial immunity. House v. Belford, C.A.7 (Ill.) 1992, 956 F.2d 711. Civil Rights 1376(9)

Prosecutor who directed police officer to arrest § 1983 claimant, after officer had decided to release claimant with a warning regarding a traffic violation, did not have absolute immunity from claimant's suit; in effectively advising officer that probable cause for arrest existed, prosecutor was not performing function that was intimately associated with judicial process, and prosecutor's interrogation of claimant was investigatory, rather than in preparation for trial. Johnson v. City of Meridian, S.D.Miss.1998, 23 F.Supp.2d 681. Civil Rights 1376(9)

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Prosecutors do not receive absolute immunity from § 1983 liability for legal advice given to police, and they are shielded only by qualified immunity for administrative or investigative functions which are not integral part of judicial process. Craig v. St. Martin Parish Sheriff, W.D.La.1994, 861 F.Supp. 1290. Civil Rights 1376(9)

3467. Advisor to prison officials, prosecutorial immunity

County attorney did not exercise any quasi-judicial authority and was not engaged in any prosecutorial activities when he gave legal advice concerning legality of strip searches to detention center officials and thus was not absolutely immune from damages under this section. Smith v. Montgomery County, Md., D.C.Md.1983, 573 F.Supp. 604, appeal dismissed 740 F.2d 963, on reconsideration 607 F.Supp. 1303. Civil Rights 1376(4)

3468. Advisor to probation officers, prosecutorial immunity

Assistant state's attorney was not merely rendering advice to probation officer when he based warrant for probationer's arrest on probation officer's affidavit, so that his actions were subject to absolute immunity from liability for any violation of civil rights. Schlosser v. Coleman, M.D.Fla.1993, 818 F.Supp. 1534. Civil Rights 1376(9)

3469. Employment duties, prosecutorial immunity

District attorney was not absolutely immune from damage suit under this section where act for which immunity was sought, alleged wrongful dismissal of plaintiff from employment as a county detective, was not an activity associated with judicial process, but rather represented action by district attorney in his administrative role. D'Iorio v. Delaware County, E.D.Pa.1978, 447 F.Supp. 229, reversed on other grounds 592 F.2d 681. Civil Rights 1376(10)

Status of district attorney as a quasi-judicial officer did not, in itself, immunize district attorney from suit under this section for his actions in terminating employment of his first assistant district attorney. Sprague v. Fitzpatrick, E.D.Pa.1976, 412 F.Supp. 910, affirmed 546 F.2d 560, certiorari denied 97 S.Ct. 2649, 431 U.S. 937, 53 L.Ed.2d 255. Civil Rights 1376(10)

3470. Civil proceedings, prosecutorial immunity

Government attorney was entitled to absolute immunity from federal civil rights liability for initiating civil child neglect proceeding and allegedly incorporating unverified, libelous, and slanderous materials in her complaint and in her statements to court. Gray v. Poole, C.A.D.C.2001, 243 F.3d 572, 345 U.S.App.D.C. 236, entered 2001 WL 311218, rehearing denied. Civil Rights 1376(9)

Acting corporation counsel for District of Columbia was entitled to absolute immunity from liability in federal civil rights action for any role she played in decision to initiate or continue civil child neglect proceeding. Gray v. Poole, C.A.D.C.2001, 243 F.3d 572, 345 U.S.App.D.C. 236, entered 2001 WL 311218, rehearing denied. Civil Rights 1376(9)

Prosecuting Attorney of judicial circuit, city, and county, was absolutely immune from civil rights action brought by property owner, arising from Prosecuting Attorney's actions in bringing a civil complaint against property owner and his corporation under Indiana's Racketeer Influenced and Corrupt Organizations Act, even though Prosecuting Attorney's actions were taken in context of civil, rather than criminal proceeding, where Prosecuting Attorney sought seizure order from state trial court, and filed for injunction and seizure of property subject to forfeiture; Prosecuting Attorney acted in an enforcement role analogous to a prosecutor, and acted pursuant to the authority vested in him under state law, functioning purely in his capacity as advocate for the state. Mendenhall v.

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Goldsmith, C.A.7 (Ind.) 1995, 59 F.3d 685, certiorari denied 116 S.Ct. 568, 516 U.S. 1011, 133 L.Ed.2d 492. Civil Rights 1376(9)

United States attorney and assistant United States attorney were entitled to immunity from liability for damages based on their actions in defending federal district judge and bankruptcy judge from debtor's claims that judges violated his civil rights in adjudicating his bankruptcy case, inasmuch as debtor's claims against attorneys were premised upon attorneys' performance of their duty to defend judges in debtor's civil action. Bryan v. Murphy, N.D.Ga.2003, 243 F.Supp.2d 1375, reconsideration denied 246 F.Supp.2d 1256. United States 50.10(2)

Government attorneys are not automatically entitled to absolute immunity under § 1983 for initiating civil proceedings without regard to nature of case or role attorney plays in that proceeding; rather, they are protected by absolute immunity only when performing "quasi-prosecutorial" functions in civil cases. Canell v. Oregon Dept. of Justice, D.Or.1993, 811 F.Supp. 546. Civil Rights 1376(9)

3471. Building code enforcement, prosecutorial immunity

Prosecutor was not entitled to absolute immunity with respect to her efforts to keep private school from opening where there was no enforcement proceeding in existence nor any showing that she was on the verge of initiating judicial action against the school in order to enforce building code. Sarf v. Town of Huntington, E.D.N.Y.1988, 702 F.Supp. 395. Civil Rights 1376(9)

3472. Commitment to mental hospital, prosecutorial immunity

Prosecuting attorney who prepared petition which resulted in commitment to mental hospital was immune from suit for any civil rights deprivations arising out of commitment. Sebastian v. U. S., C.A.8 (Ark.) 1976, 531 F.2d 900, certiorari denied 97 S.Ct. 153, 429 U.S. 856, 50 L.Ed.2d 133. Civil Rights 1376(9)

3473. Insurance proceedings, prosecutorial immunity

Deputy and assistant attorneys general employed by Commonwealth of Pennsylvania, in preparing and issuing suspension order against insurer, seeking injunction and order of impoundment, filing petition for liquidation, engaging in pretrial discovery, and conducting trial of Commonwealth's case against insurer, were engaged in activities which were intimately associated with judicial phase of insurance company's suspension process, and were entitled to absolute immunity from civil rights liability for such activities. Safeguard Mut. Ins. Co. v. Miller, E.D.Pa.1978, 456 F.Supp. 682. Civil Rights 1376(9)

3474. Licenses and permits, prosecutorial immunity

Elderly farmer's civil rights claim against state prosecutor, who cited him for hunting fur-bearing animals without harvester's license, was barred by prosecutor's absolute immunity in bringing state court action. Randles v. Gregart, C.A.6 (Mich.) 1992, 965 F.2d 90. Civil Rights 1376(9)

That state attorneys and chief attorney for Department of Professional Regulation were acting in their official capacity was alone insufficient to earn them absolute immunity to civil rights action brought by doctor following revocation of his license; rather, prior to dismissal of action on absolute immunity grounds, determination was required that attorneys were engaging solely in quasi-judicial functions and were not carrying out administrative or investigative functions. Kadivar v. Stone, C.A.11 (Fla.) 1986, 804 F.2d 635. Civil Rights 1376(9)

Deputy attorney general was absolutely immune from physician's suit alleging conspiracy in connection with administrative proceedings that resulted in conditional revocation of his license to practice medicine, including claim that deputy attorney general induced witnesses to testify falsely and allegation that he wrongfully failed to

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notify physician of revocation of waiver of medical course requirement. Demery v. Kupperman, C.A.9 (Cal.) 1984, 735 F.2d 1139, certiorari denied 105 S.Ct. 810, 469 U.S. 1127, 83 L.Ed.2d 803. Attorney General 8

3475. Tax proceedings, prosecutorial immunity

Civil rights action brought against federal judges and federal prosecutors for their participation in enforcement of Internal Revenue Service summons requiring bank to produce certain records in connection with prosecution for failure to file federal income tax returns was barred by doctrine of absolute immunity. Jarvis v. Roberts, W.D.Tex.1980, 489 F.Supp. 924. Civil Rights 1376(8); Civil Rights 1376(9)

3476. Zoning ordinance enforcement, prosecutorial immunity

City attorney's decision to seek injunction under city zoning ordinance was protected by absolute prosecutorial immunity, even though action was civil, rather than criminal, where injunction action was brought to enforce ordinance's criminal provision. Shoultes v. Laidlaw, C.A.6 (Mich.) 1989, 886 F.2d 114. Zoning And Planning 353.1

3477. Attorney disciplinary proceedings, prosecutorial immunity

Deputy disciplinary counsel for bar association was absolutely immune from suit brought under § 1983 by attorney who had been disciplined and who alleged that his access to courts had been denied by the discipline; bar association's counsel had acted as a prosecutor, his activities were likely to result in recriminatory lawsuits by disappointed parties, safeguards existed in regulatory framework to protect against unconstitutional conduct, and those disciplined could appeal decision of disciplinary board. Forman v. Ours, E.D.La.1992, 804 F.Supp. 864, affirmed 996 F.2d 306. Civil Rights 1376(9)

Grievance administrator for Michigan Attorney Grievance Commission was acting in prosecutorial capacity when he decided to initiate prosecution of attorney for practicing law while his license had been suspended and, thus, administrator was entitled to absolute immunity from liability for alleged civil rights violations during disciplinary proceedings. Eston v. Van Bolt, E.D.Mich.1990, 728 F.Supp. 1336. Civil Rights 1376(9)

3478. Contempt proceedings, prosecutorial immunity

City attorney was entitled to absolute prosecutorial immunity for participating in criminal contempt proceeding brought to enforce city zoning ordinance. Shoultes v. Laidlaw, C.A.6 (Mich.) 1989, 886 F.2d 114. Zoning And Planning 353.1

State's attorney enjoyed absolute immunity from liability for alleged false and malicious filing of petition for adjudication of civil contempt in connection with contract for deed purchasers' failure to comply with Illinois court's order of levy on personal property to satisfy judgment of confession on promissory note and, therefore, was not liable under statute, which gives cause of action for violation of federal statutory or constitutional rights under color of law. Henry v. Farmer City State Bank, C.A.7 (Ill.) 1986, 808 F.2d 1228. District And Prosecuting Attorneys 10

Prosecutor is absolutely immune from suit for instituting prosecution against accused for contempt of court judgment. Tanner v. Heise, D.Idaho 1987, 672 F.Supp. 1356, affirmed in part, reversed in part on other grounds 879 F.2d 572. Civil Rights 1376(9)

State's attorneys and prosecuting attorneys were immune from liability, under this section, for actions in capacity and under authority of their offices in connection with contempt proceeding. Rhodes v. Houston, D.C.Neb.1962, 202 F.Supp. 624, affirmed 309 F.2d 959, certiorari denied 83 S.Ct. 724, 372 U.S. 909, 9 L.Ed.2d 719, motion

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denied 258 F.Supp. 546, affirmed 418 F.2d 1309, certiorari denied 90 S.Ct. 1382, 397 U.S. 1049, 25 L.Ed.2d 662. Civil Rights 1376(9); District And Prosecuting Attorneys 10

3479. Internal investigation division hearings, prosecutorial immunity

In civil rights conspiracy action for monetary damages brought by members of Black Panther Party and mothers of two deceased party members against federal and state law enforcement officers arising out of gun battle during raid on party apartment, certain state prosecutor defendants were absolutely immune from liability for their actions at police department internal investigation division hearing. Law Students Civil Rights Research Council, Inc., v. Wadmond, S.D.N.Y.1969, 299 F.Supp. 117, probable jurisdiction noted 90 S.Ct. 560, 396 U.S. 999, 24 L.Ed.2d 492, affirmed 91 S.Ct. 720, 401 U.S. 154, 27 L.Ed.2d 749.

3480. Juvenile court proceedings, prosecutorial immunity--Generally

Assistant district attorney for county district attorney's office who was appointed by juvenile court to represent child at detention hearing was entitled to absolute prosecutorial immunity in child's civil rights action based on claim that assistant district attorney caused child to be placed in custody of father who allegedly sexually abused her. M.K. through Hall v. Harter, E.D.Cal.1989, 716 F.Supp. 1333. Civil Rights 1376(9)

3481. ---- Child neglect and abuse proceedings, juvenile court proceedings, prosecutorial immunity

State juvenile officer was not entitled to absolute prosecutorial immunity from prospective injunctive relief prohibiting him, based on allegations of mistreatment, from removing children from private boarding school without prior notice and hearing if and when he again sought removal of children in future. Heartland Academy Community Church v. Waddle, C.A.8 (Mo.) 2005, 427 F.3d 525. Civil Rights 1376(9)

Prosecutor's demand that mother swear to her innocence on a bible in a church as a condition of dropping charges that she had sexually abused her son was manifestly beyond prosecutor's authority, and thus prosecutor's conduct was not protected by absolute immunity. Doe v. Phillips, C.A.2 (N.Y.) 1996, 81 F.3d 1204, certiorari denied 117 S.Ct. 1244, 520 U.S. 1115, 137 L.Ed.2d 326. Civil Rights 1376(9)

District attorney was not entitled to absolute immunity for his extra prosecutorial acts, including his alleged failure to report charges of sexual abuse to state welfare department, failure to investigate allegations of abuse, and allowing victim's father to have physical contact with her in violation of court order. Chrissy F. by Medley v. Mississippi Dept. of Public Welfare, C.A.5 (Miss.) 1991, 925 F.2d 844. District And Prosecuting Attorneys 10

State prosecuting attorneys had absolute immunity for their interviewing of child rape victim about her assailant, which could be asserted in victim's violation of right to privacy civil rights suit. Marx v. Gumbinner, C.A.11 (Fla.) 1988, 855 F.2d 783. Civil Rights 1376(9)

Attorney employed by county social services department, who initiated and prosecuted child protective orders and represented the interests of the department and the county in family court, was entitled to absolute immunity from claims asserted under this section arising out of the performance of her duties. Walden v. Wishengrad, C.A.2 (N.Y.) 1984, 745 F.2d 149. Civil Rights 1376(9)

New Jersey prosecutors were entitled to absolute immunity from § 1983 action brought by operators of day care center who had been acquitted of charges of child sexual abuse; activities intimately associated with judicial process are absolutely immune from civil suit. Simmerman v. Corino, D.N.J.1992, 804 F.Supp. 644, affirmed 16

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F.3d 405. Civil Rights 1376(9)

Failure of § 1983 claimant to describe nature and scope of prosecutor's investigation of claimant's alleged sexual abuse of his child precluded court from being able to determine whether prosecutor was functioning in quasi-judicial or police-like capacity during investigation and thus court could not determine whether investigation was covered by absolute or by qualified immunity. Petry v. Lawler, S.D.Ind.1989, 718 F.Supp. 1396. Civil Rights 1395(5)

Attorney for county social services department was absolutely immune from liability under this section to former child protective caseworker with respect to whom attorney had obtained arrest warrant to compel caseworker's attendance at family court hearing, at least where attorney was at all times acting within scope of her duties. Walden v. Wishengrad, W.D.N.Y.1983, 573 F.Supp. 1115, affirmed 745 F.2d 149. Civil Rights 1376(9)

3482. Prison and prisoner proceedings, prosecutorial immunity

Prosecutor was absolutely immune from § 1983 liability for statements made to Illinois Prisoner Review Board in opposition to application for executive clemency; common law supported application of absolute immunity, risk of vexatious litigation would increase without absolute immunity, nothing prevented inmate from filing new application for clemency, and any abuse of authority by prosecutor could result in professional discipline or removal from office. Lucien v. Preiner, C.A.7 (Ill.) 1992, 967 F.2d 1166, certiorari denied 113 S.Ct. 267, 506 U.S. 893, 121 L.Ed.2d 196. Civil Rights 1376(9)

Oregon Assistant Attorneys General were not performing "quasi-prosecutorial" functions when they sued inmate to attach funds inmate received to set off those funds against inmate's debt at prison; thus, officials were not entitled to absolute immunity in inmate's § 1983 action against them arising from that earlier litigation. Canell v. Oregon Dept. of Justice, D.Or.1993, 811 F.Supp. 546. Civil Rights 1376(9)

3483. Initiation of prosecution, prosecutorial immunity

Prosecutor's administrative duties and those investigatory functions that do not relate to advocate's preparation for initiation of prosecution or for judicial proceedings are entitled only to qualified, and not absolute immunity. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. District And Prosecuting Attorneys 10

State prosecuting attorney who acted within scope of his duties in initiating and pursuing criminal prosecution and in presenting state's case was absolutely immune from civil suit for damages under this section for alleged deprivations of accused's constitutional rights. Imbler v. Pachtman, U.S.Cal.1976, 96 S.Ct. 984, 424 U.S. 409, 47 L.Ed.2d 128. Civil Rights 1376(9)

A prosecutor's actions connected with initiation of prosecution, even if those actions are patently improper are immunized from civil liability under §§ 1983; however, purely administrative or investigative actions that do not relate to the initiation of a prosecution do not qualify for absolute immunity. Schenk v. Chavis, C.A.8 (S.D.) 2006, 461 F.3d 1043. Civil Rights 1376(9)

Prosecutor was entitled to absolute prosecutorial immunity in civil rights action for deciding to initiate criminal prosecution of gun store owner for reckless endangerment, although prosecutor did not sign charging documents. Springmen v. Williams, C.A.4 (Md.) 1997, 122 F.3d 211. Civil Rights 1376(9)

Assistant district attorney was acting as advocate, and was absolutely immune from any liability under § 1983, for initiating aggravated sexual abuse prosecution against parent. Hill v. City of New York, C.A.2 (N.Y.) 1995, 45 F.3d 653. Civil Rights 1376(9)

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42 U.S.C.A. § 1983

Prosecuting attorneys are entitled to absolute immunity for their conduct in initiating prosecution and in presenting state's case as those activities are intimately associated with judicial phase of criminal process. Enlow v. Tishomingo County, Miss., C.A.5 (Miss.) 1992, 962 F.2d 501, rehearing denied 971 F.2d 750. See, also, Brummett v. Camble, C.A.5 (Tex.) 1991, 946 F.2d 1178, rehearing denied, certiorari denied 112 S.Ct. 2323, 504 U.S. 965, 119 L.Ed.2d 241. District And Prosecuting Attorneys 10

Decision as to whether to file criminal charges falls within category of acts which are integral part of judicial process and for which prosecutors are immune from federal civil rights liability. Oliver v. Collins, C.A.5 (Tex.) 1990, 904 F.2d 278. Civil Rights 1376(9)

Prosecutor in § 1983 action was absolutely immune from liability for initiating prosecution against owners of videotape rental store for aiding and abetting distribution of allegedly pornographic tapes to minors. England v. Hendricks, C.A.10 (Utah) 1989, 880 F.2d 281, rehearing denied, certiorari denied 110 S.Ct. 1130, 493 U.S. 1078, 107 L.Ed.2d 1036. Civil Rights 1376(9)

Absolute prosecutorial immunity protected states attorneys from §§ 1983 liability to husband for charging him with offenses arising out of domestic abuse incident, allowing prosecution to proceed despite his wife's purported recantation, and failing to press charges against wife for alleged extortion of money; the choice of charges and decision to charge at all were quintessentially prosecutorial functions. Greene v. Wright, D.Conn.2005, 389 F.Supp.2d 416. Civil Rights 1376(9)

Acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the state, are entitled to the protections of absolute immunity in a § 1983 action; included among those protected acts are the professional evaluation of the evidence assembled by the police and appropriate preparation for its presentation in an official proceeding. Miller v. City of Boston, D.Mass.2003, 297 F.Supp.2d 361. Civil Rights 1376(9)

Prosecutors are absolutely immune from liability in their individual capacity under § 1983 for their conduct in initiating a prosecution and in presenting the state's case, insofar as that conduct is intimately associated with the judicial phase of the criminal process. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1376(9)

District attorney's alleged failure to exercise proper discretion in evaluating whether former public utility executive's conduct warranted criminal prosecution and alleged failure to indict other utility executives for similar conduct implicated district attorney's traditional function of determining whether to initiate prosecution, and, if so, on what charges; thus, district attorney was entitled to absolute immunity for such decisions in executive's § 1983 action arising from criminal prosecution. Smith v. Gribetz, S.D.N.Y.1997, 958 F.Supp. 145. Civil Rights 1376(9)

Prosecutor had absolute immunity from § 1983 civil rights action arising from plaintiff's arrest, prosecution, and eventual acquittal of criminal sexual assault charge, even if plaintiff's constitutional rights were infringed due to those actions; prosecutor's acts of prosecuting plaintiff and interviewing alleged victim's mother were protected quasi-judicial functions. Pierzynowski v. Police Dept. City of Detroit, E.D.Mich.1996, 941 F.Supp. 633. Civil Rights 1376(9)

Doctrine of absolute prosecutorial immunity provides that prosecutors are absolutely immune from liability under § 1983 for their conduct in initiating prosecution and in presenting state's case, insofar as that conduct is intimately associated with judicial phase of criminal process. Quartararo v. Catterson, E.D.N.Y.1996, 917 F.Supp. 919. Civil Rights 1376(9)

Prosecutor's decision to commence and persist in prosecution, notwithstanding dearth of inculpatory evidence and

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existence of exculpatory evidence, was associated with judicial phase of criminal process and he enjoyed absolute immunity from civil rights liability. Eisenberg v. District Attorney of County of Kings, E.D.N.Y.1994, 847 F.Supp. 1029. Civil Rights 1376(9)

Prosecutor's alleged policy of waiving or abrogating his duty to exercise prosecutorial discretion and of prosecuting sex crime charges merely upon the decision or insistence of complainant regardless of the total lack of evidence was insufficient to overcome district attorney's entitlement to absolute immunity from civil rights liability. Eisenberg v. District Attorney of County of Kings, E.D.N.Y.1994, 847 F.Supp. 1029. Civil Rights 1376(9)

Prosecutors are absolutely immune from § 1983 when performing functions that are intimately associated with judicial phase of criminal process, including but not limited to initiating prosecution and presenting state's case; absolute prosecutorial immunity is based on concern that harassment from unfounded litigation would cause prosecutor to shade decisions instead of exercising independence of judgment required by public trust. Hall v. Ruggeri, N.D.N.Y.1994, 841 F.Supp. 484. Civil Rights 1376(9)

Assistant county district attorneys and county district attorney were absolutely immune from personal liability for their actions in initiating criminal prosecution against city police officers so as to preclude recovery of damages under § 1983. Feerick v. Sudolnik, S.D.N.Y.1993, 816 F.Supp. 879, affirmed 2 F.3d 403. Civil Rights 1376(9)

Insofar as deputy prosecuting attorneys were named in their individual capacities in § 1983 action, they were entitled to absolute immunity from acts taken to initiate or conduct prosecution. Study v. U.S., S.D.Ind.1991, 782 F.Supp. 1293. Civil Rights 1376(9)

Prosecutor was absolutely immune from action under civil rights statute where the only actions of prosecutor alleged to be improper were the prosecution of a criminal action against plaintiff. Bennett v. Batchik, E.D.Mich.1990, 743 F.Supp. 1245, affirmed 936 F.2d 572. Civil Rights 1376(9)

In the circumstances of an initiated prosecution, concern for protecting the flow of information from prosecutor concerning affairs of government and apprehension of criminals takes on added significance since prosecutor is direct and primary source of information regarding active prosecution of an individual; in this context, safeguard of absolute immunity for prosecutor is vital to both preservation of public awareness and proper performance of prosecutor's duties. Strong v. Slaton, N.D.Ga.1981, 510 F.Supp. 161. Civil Rights 1376(9)

State district attorney was entitled to absolute immunity from arrestee's civil rights suit, in which arrestee alleged that district attorney violated his Fourth and Fourteenth Amendment rights by initiating rape prosecution and continuing to pursue it in the face of a lack of evidence and by failing to abide by an earlier cooperation agreement. Bresko v. John, C.A.3 (Pa.) 2004, 87 Fed.Appx. 800, 2004 WL 180415, Unreported. Civil Rights 1376(9)

Assistant district attorney, in her individual capacity, was entitled to absolute immunity from pre-trial detainee's § 1983 lawsuit alleging attorney failed to prevent detainee's detention in a smoking facility; actions related to pre-trial confinement were part of the initiation and presentation of the state's case. Reid v. Schuman, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 376, 2003 WL 22965003, Unreported. Civil Rights 1376(9)

Prosecutors were absolutely immune from liability under § 1983 for decision to prosecute, even based on an allegedly inadequate police investigation, and for decision whether and when to dismiss the charges against plaintiff. Joseph v. Yocum, C.A.10 (Utah) 2002, 53 Fed.Appx. 1, 2002 WL 31656696, Unreported. Civil Rights 1376(9)

3484. Probable cause, prosecutorial immunity

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42 U.S.C.A. § 1983

Prosecutor was not entitled to absolute prosecutorial immunity with respect to her actions in executing certification for determination of probable cause in connection with filing of charges against accused, for purposes of § 1983 action brought after charges were dropped, in which accused alleged that certification contained false statements; act of filing certification was not one of traditional functions of advocate, as neither federal nor state law required that prosecutor make certification and it could have been made by any competent witness. Kalina v. Fletcher, U.S.Wash.1997, 118 S.Ct. 502, 522 U.S. 118, 139 L.Ed.2d 471. Civil Rights 1376(9)

Assistant district attorney was entitled only to qualified immunity from § 1983 liability for his investigation of charges of child abuse against plaintiff, for his decision to have child removed from plaintiff's custody, and for his advise to police that they had probable cause to arrest plaintiff; in taking these actions, assistant district attorney was not acting as advocate. Hill v. City of New York, C.A.2 (N.Y.) 1995, 45 F.3d 653. Civil Rights 1376(9)

Prosecutor is not functioning as advocate, and hence does not have absolute immunity, before he has probable cause to have anyone arrested. Buckley v. Fitzsimmons, C.A.7 (Ill.) 1994, 20 F.3d 789, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 740, 513 U.S. 1085, 130 L.Ed.2d 642, on remand 1996 WL 10899. District And Prosecuting Attorneys 10

Prosecutor was entitled to absolute immunity from arrestee's § 1983 action for monetary damages, which arose after rape charges against arrestee were dismissed based on finding of lack of probable cause; there was no allegation that prosecutor's conduct towards arrestee strayed from prosecutor's traditional advocacy functions. Gibbs v. Deckers, D.Del.2002, 234 F.Supp.2d 458. Civil Rights 1376(9)

3485. Decisions against prosecution, prosecutorial immunity

Prosecutor's decision not to prosecute is intimately associated with judicial phase of criminal process and thus prosecutor enjoys absolute immunity, under § 1983, for that decision. Roe v. City and County of San Francisco, C.A.9 (Cal.) 1997, 109 F.3d 578. District And Prosecuting Attorneys 10

Assistant district attorney for county was entitled to absolute immunity from civil rights liability for death of robbery victim, with respect to his decision not to prosecute person who allegedly tampered with victim by ordering him to change his testimony as to identity of robbery perpetrator; attorney's activities were clearly connected with prosecutorial function, for which absolute immunity was available. Ying Jing Gan v. City of New York, C.A.2 (N.Y.) 1993, 996 F.2d 522. Civil Rights 1376(9)

Absolute prosecutorial immunity barred civil rights claims seeking damages from county district attorney and deputy district attorney, arising from decision of district attorney not to prosecute arrests made by city police officer who was reinstated after suspension pending investigation of child sex abuse charges made against him; moreover, principles of prosecutorial independence, coupled with sensitivity to separation of powers concerns, counseled against any injunctive relief. Harrington v. Almy, C.A.1 (Me.) 1992, 977 F.2d 37, rehearing denied, on remand 148 F.R.D. 11. Civil Rights 1376(9)

Prosecutor enjoyed absolute immunity from liability in civil rights action in which plaintiff alleged that she was unconstitutionally deprived of right to sue her former father-in-law for malicious prosecution when prosecutor agreed to dismiss criminal case father-in-law brought against plaintiff in exchange for plaintiff's waiver of right to assert civil liability against former father-in-law; prosecutor's actions were wholly within scope of prosecutorial function. Hammond v. Bales, C.A.10 (Okla.) 1988, 843 F.2d 1320. Civil Rights 1376(9)

County prosecuting attorney had absolute immunity, as to dog owner's equal protection and due process claims under §§ 1983 relating to prosecuting attorney's decision not to prosecute county deputy sheriff's cousin for allegedly stealing her dog. Curry v. Weiford, N.D.W.Va.2005, 389 F.Supp.2d 704, appeal dismissed 133 Fed.Appx. 50, 2005 WL 1220816. Civil Rights 1376(9)

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Prosecutor's decision not to investigate a civil rights plaintiff's accusations against a police officer was sufficiently closely related to decision not to prosecute so as to qualify the decision for absolute immunity. Woolfolk v. Thomas, N.D.N.Y.1989, 725 F.Supp. 1281. District And Prosecuting Attorneys 10

Prosecuting attorney's only participation in "conspiracy" against plaintiff to remove political signs from his property was his decision to terminate prosecutions against two defendants for removing the signs; therefore, prosecuting attorney had absolute immunity from liability asserted against him under this section and section 1985 of this title. Coon v. Froehlich, S.D.Ohio 1983, 573 F.Supp. 918. Civil Rights 1376(9)

3486. Intent of prosecution, prosecutorial immunity--Generally

Regardless of prosecutors' alleged political motives for engaging in conduct, absolute prosecutorial immunity protected local prosecutors from civil rights liability for their alleged malicious or selective prosecution of town officials, as well as for any misconduct in presentation of evidence to grand juries that indicted officials. Bernard v. County of Suffolk, C.A.2 (N.Y.) 2004, 356 F.3d 495. Civil Rights 1376(9)

County district attorney was entitled to absolute prosecutorial immunity for charging political rival with criminal conspiracy and attempt to deal in infant children, even if charges were politically motivated. Kulwicki v. Dawson, C.A.3 (Pa.) 1992, 969 F.2d 1454. District And Prosecuting Attorneys 10

Doctrine of prosecutorial immunity bars § 1983 action brought after the fact to recover damages from prosecutors in their individual capacity for allegedly vindictive prosecution in violation of due process clause. Willhauck v. Halpin, C.A.1 (Mass.) 1991, 953 F.2d 689, rehearing denied. Civil Rights 1376(9)

Assistant county district attorneys and county district attorney were protected by absolute prosecutorial immunity from an action brought by plaintiff alleging that a policy existed in county district attorney's office to summarily arrest, incarcerate, and interrogate innocent citizens to obtain evidence implicating third parties charged with crimes leading to her alleged false arrest since prosecutors were performing actions related to initiation of a criminal prosecution. Hawk v. Brosha, E.D.Pa.1984, 590 F.Supp. 337. Civil Rights 1376(9)

Although perhaps motivated by improper purpose and carried out in bad faith, activities of county district attorney involving his instigation of criminal action against complainant which resulted in complainant's arrest and alleged damages were conducted entirely within scope of his duties as prosecutor and, hence, he was entitled to absolute immunity in complainant's civil rights action. Fabrizio v. Storey County, D.C.Nev.1982, 543 F.Supp. 573. Civil Rights 1376(9)

United States attorney and his assistants who prosecuted plaintiff for bank robbery offenses were absolutely immune from plaintiff's subsequent suit in which it was alleged that prosecutors conspired with other defendants to charge and convict plaintiff for offenses within he did not commit, since prosecutors were acting within scope of their duties in initiating and pursuing criminal prosecution against plaintiff. People ex rel. Snead v. Kirkland, E.D.Pa.1978, 462 F.Supp. 914. District And Prosecuting Attorneys 10

Prosecutors for the Commonwealth of Pennsylvania enjoyed absolute immunity from civil rights liability for their decision to bring criminal charges regardless of their motive or of whether they believed that the accused was in fact guilty of the crime charged; therefore, allegation that the prosecutors decided to prosecute and decided not to drop charges solely to maintain pressure on the accused to incriminate a third party could not form the basis for civil rights liability. Clark v. Lutcher, M.D.Pa.1977, 77 F.R.D. 415. Civil Rights 1376(9)

3487. ---- Malicious prosecutions, intent of prosecution, prosecutorial immunity

Prosecutor is absolutely immune from suit for malicious prosecution under this section; even though such

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immunity leaves genuinely wronged criminal defendant without civil redress against prosecutor whose malicious or dishonest action deprives him of liberty, since the alternative of qualifying prosecutor's immunity would disserve broader public interest, in that it would prevent vigorous and fearless performance of prosecutor's duty that is essential to proper functioning of criminal justice system and would often prejudice criminal defendants by skewing postconviction judicial decisions that should be made with sole purpose of insuring justice. Imbler v. Pachtman, U.S.Cal.1976, 96 S.Ct. 984, 424 U.S. 409, 47 L.Ed.2d 128. Civil Rights 1376(9)

Assistant state attorney was absolutely immune from arrestee's claim for malicious prosecution under § 1983, which alleged that attorney submitted willfully incomplete and inadequate assessment of case that provided basis for decision to prosecute him, inasmuch as attorney functioned as prosecutor when he reviewed police records, interviewed parties involved, and submitted evaluation of underlying complaints to superiors. Spiegel v. Rabinovitz, C.A.7 (Ill.) 1997, 121 F.3d 251, certiorari denied 118 S.Ct. 565, 522 U.S. 998, 139 L.Ed.2d 405. Civil Rights 1376(9)

Civil rights malicious prosecution claims against prosecuting attorney in his individual capacity as a member of creditor bank's board of directors and against another prosecutor in his individual capacity as a stockholder legal counsel for the bank were subject to prosecutorial immunity, despite debtor's argument that prosecutors acted in their respective capacities with bank to spur filing of charges which formed basis of civil rights suit. Brummett v. Camble, C.A.5 (Tex.) 1991, 946 F.2d 1178, rehearing denied, certiorari denied 112 S.Ct. 2323, 504 U.S. 965, 119 L.Ed.2d 241. Civil Rights 1376(9)

Allegation that assistant district attorney engaged in malicious prosecution of charge against paralegal was within "judicial phase of criminal process," and therefore, he was immune from liability for deprivation of civil rights under color of state law for his part in prosecuting charge. Day v. Morgenthau, C.A.2 (N.Y.) 1990, 909 F.2d 75, amended on rehearing, on remand 769 F.Supp. 472. Civil Rights 1376(9)

Although city attorney was authorized under local law to file only criminal charges based on violations of city ordinances, he was absolutely immune from liability under this section for damages based on filing of charges against plaintiffs under state felony statutes based on alleged assault of animal control officer as plaintiffs could have been prosecuted under city ordinances for their conduct and the statutes also arguably applied to the conduct, regardless of whether prosecutor acted intentionally or maliciously, and immunity extended to securing of arrest warrant and urging setting of high bail. Lerwill v. Joslin, C.A.10 (Utah) 1983, 712 F.2d 435. Civil Rights 1376(9)

District attorney and his assistants, who were defendants in civil rights action which alleged that defendants conspired to wrongfully condemn parcel of plaintiff's property and to falsely arrest, imprison and criminally prosecute him, acted solely within scope of their prosecutorial responsibilities and were therefore immune. Smart v. Jones, C.A.5 (Tex.) 1976, 530 F.2d 64, rehearing denied 532 F.2d 1375, rehearing denied 532 F.2d 1376, certiorari denied 97 S.Ct. 240, 429 U.S. 887, 50 L.Ed.2d 168, rehearing denied 97 S.Ct. 1166, 429 U.S. 1125, 51 L.Ed.2d 577. Conspiracy 13

Civil rights action against state prosecuting attorney on theory that he prosecuted complaint against plaintiff without probable cause and because he was motivated by malice was barred by prosecutorial immunity. Grow v. Fisher, C.A.7 (Ind.) 1975, 523 F.2d 875. Civil Rights 1376(9)

District attorneys named as defendants in civil rights action brought for alleged malicious prosecution and false arrest were protected by quasi-judicial immunity. Sykes v. State of Cal. (Dept. of Motor Vehicles), C.A.9 (Cal.) 1974, 497 F.2d 197. Civil Rights 1376(9)

Public prosecutor possesses same immunity in an action which seeks to hold him personally liable for official acts under this section as he does to similar action for malicious prosecution. Dacey v. New York County Lawyers'

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Ass'n, C.A.2 (N.Y.) 1969, 423 F.2d 188, certiorari denied 90 S.Ct. 1819, 398 U.S. 929, 26 L.Ed.2d 92. Civil Rights 1376(9)

City prosecutors were absolutely immune from plaintiff's §§ 1983 claim for malicious prosecution, arising from prosecution of plaintiff on a traffic citation, absent evidence that prosecutors provided legal advice to the police involved in plaintiff's traffic case. King v. Knoll, D.Kan.2005, 399 F.Supp.2d 1169. Civil Rights 1376(9)

Assistant district attorneys were entitled to absolute immunity from liability for alien's malicious prosecution claim brought against them in their individual capacities under § 1983 allegations that district attorney's office requested bail in sum of $50,000, that alien remained in jail because county and village officers continuously failed to investigate his identity, alibi, and numerous protestations of innocence, and that district attorney's chief of felony screening advised alien that grand jury had dismissed criminal charges, all arose out of traditional functions of prosecutor's office. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1376(9)

To the extent he was functioning as advocate, assistant United States attorney had absolute immunity from liability in § 1983 alleging malicious prosecution with respect to tax and bank fraud charges against plaintiff, even if attorney maliciously singled out plaintiff for prosecution. Groom v. Fickes, S.D.Tex.1997, 966 F.Supp. 1466, affirmed 129 F.3d 606. Civil Rights 1376(9)

Section 1983 claim against prosecutors for malicious prosecution was barred by absolute prosecutorial immunity, despite arrestee's allegation of a conspiracy to present false testimony against him at his criminal trial. Marion v. Groh, D.Conn.1997, 954 F.Supp. 39. Civil Rights 1376(9)

District attorney and former district attorney were entitled to absolute immunity from § 1983 claims of malicious prosecution, of presenting false testimony to and withholding exculpatory evidence from grand jury, and conspiracy, as charged acts were intimately associated with judicial phase of criminal process. Covington v. City of New York, S.D.N.Y.1996, 916 F.Supp. 282. Civil Rights 1376(9)

Even if claims that prosecutors maliciously singled individual out for prosecution were true, those claims were within ambit of prosecutorial absolute immunity. Hunter v. City of Beaumont, E.D.Tex.1994, 867 F.Supp. 496. Civil Rights 1376(9)

Prosecutor has absolute immunity from civil rights liability in connection with a decision whether to commence prosecution and the allegation that prosecutor engaged in malicious prosecution is within the judicial phase of the criminal process. Eisenberg v. District Attorney of County of Kings, E.D.N.Y.1994, 847 F.Supp. 1029. Civil Rights 1376(9)

State's attorney and city's assistant corporation counsel were immune from liability in civil rights and malicious prosecution action arising when plaintiff was arrested for disorderly conduct, where claims stemmed solely from performance of prosecutorial duties. Carr v. City of Chicago, N.D.Ill.1987, 669 F.Supp. 1421. Civil Rights 1376(9)

County prosecutor was absolutely immune from liability for his alleged act of filing murder charge, even if he did so with malice coupled with some evil and sinister motive, and even if he knew the charge to be baseless in law and fact; declining to follow *Beard v. Udall*, 648 F.2d 1264 (9th Cir.), *Brooks v. Fitch*, 534 F.Supp. 129 (D.N.J.); and *Elliott v. Perez*, 561 F.Supp. 1325 (E.D.La.). Ginter v. Stallcup, E.D.Ark.1986, 641 F.Supp. 939, appeal dismissed 802 F.2d 462, affirmed in part, reversed in part on other grounds 869 F.2d 384, rehearing denied. Civil Rights 1376(9); District And Prosecuting Attorneys 10

Assistant district attorney (ADA) was entitled to absolute immunity from former police officer's § 1983 false arrest and malicious prosecution claims, stemming from officer's arrest and prosecution for perjury; all of attorney's

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actions were within scope of his official duties. Tartaglione v. Pugliese, S.D.N.Y.2002, 2002 WL 31387255, Unreported, affirmed 89 Fed.Appx. 304, 2004 WL 474011. Civil Rights 1376(9); Civil Rights 1376(10)

3488. Motive, prosecutorial immunity

County prosecutor enjoyed absolute immunity in former criminal defendant's §§ 1983 and state-law malicious prosecution action seeking damages, which alleged that prosecutor had conspired with complainant to proceed against former defendant despite knowing she was innocent, and had done so with improper motive arising from friendship with complainant; prosecutor's improper state of mind did not constitute clear absence of all jurisdiction. Shmueli v. City of New York, C.A.2 (N.Y.) 2005, 424 F.3d 231. District And Prosecuting Attorneys 10

Prosecutorial immunity from § 1983 liability is broadly defined, covering virtually all acts, regardless of motivation, associated with prosecutor's function as advocate. Hill v. City of New York, C.A.2 (N.Y.) 1995, 45 F.3d 653. Civil Rights 1376(9)

Prosecutor's motives have no bearing on applicability of absolute immunity to civil rights action against prosecutor. Smith v. Gribetz, S.D.N.Y.1997, 958 F.Supp. 145. Civil Rights 1376(9)

Doctrine of absolute prosecutorial immunity creates formidable obstacle for plaintiff seeking to maintain civil rights action against district attorney in his individual capacity; prosecutorial immunity covers virtually all acts, regardless of motivation, associated with prosecutor's function as advocate and ensures vigorous and fearless performance of prosecutor's duty that is essential to proper functioning of criminal justice system. Smith v. Gribetz, S.D.N.Y.1997, 958 F.Supp. 145. Civil Rights 1376(9)

3489. Delays in prosecution, prosecutorial immunity

County prosecutor's decision not to charge prisoner until lineup could be held was prosecutorial rather than administrative decision, and prosecutor thus was absolutely immune from § 1983 claim by prisoner's widow alleging that delay in charging, after prisoner stated that he wanted to kill himself, led to prisoner's suicide and violated his Fourth and Fourteenth Amendment rights; prosecutor's review of evidence and determination that additional evidence was necessary to support charge were necessary part of his role as advocate. Anderson v. Simon, C.A.7 (Ill.) 2000, 217 F.3d 472, rehearing and rehearing en banc denied, certiorari denied 121 S.Ct. 765, 531 U.S. 1073, 148 L.Ed.2d 666. Civil Rights 1376(9)

Inmate's § 1983 claims against prosecutors allegedly responsible for delay in direct appeal related to their functions as trial or appellate advocates, and thus, absolute judicial immunity barred such claims to extent prosecutors were sued in their individual capacities. Rodriguez v. Weprin, C.A.2 (N.Y.) 1997, 116 F.3d 62. Civil Rights 1376(9)

District attorney and assistant district attorney were entitled to absolute immunity against damage claim brought under this section based upon any delay in prosecution of former district attorney for alleged murder of plaintiffs' daughter. Ryland v. Shapiro, W.D.La.1984, 586 F.Supp. 1495. Civil Rights 1376(9)

Prosecutor enjoyed Imbler immunity from civil rights liability based on alleged failure to properly investigate allegations against plaintiffs before deciding to prosecute and prosecutor's allegedly deliberately slowing time table for prosecution was also entitled to absolute immunity as part of presentation of the State's case. Stefaniak v. State of Mich., W.D.Mich.1983, 564 F.Supp. 1194. District And Prosecuting Attorneys 10

3489A. Medical treatment

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42 U.S.C.A. § 1983

Fire department lieutenant's alleged actions in removing patient from his home to a hospital for medical treatment against his will violated patient's clearly established Fourth Amendment right to be free from seizure and transport for medical treatment unless he presented a danger to himself or others, and thus, lieutenant was not entitled to qualified immunity on patient's §§ 1983 claim alleging unreasonable seizure. Green v. City of New York, C.A.2 (N.Y.) 2006, 465 F.3d 65. Civil Rights 1376(4)

3490. Convictions affirmed or reversed on appeal, prosecutorial immunity

District attorney's status as board member of organization whose members former criminal defendant was previously convicted of harassing, and his receipt of $300 campaign contribution from organization, did not constitute conflict of interest which would allow former criminal defendant to bring civil rights action against district attorney despite prosecutorial immunity; there was no evidence that district attorney directed and ordered prosecution and alleged improper acts that occurred during course of prosecution, and subsequent affirmance of former criminal defendant's conviction by Appellate Term of the Supreme Court, and denial of his petition for certiorari to United States Supreme Court, suggested that charges against him were not baseless. Katz v. Morgenthau, S.D.N.Y.1989, 709 F.Supp. 1219, affirmed in part, reversed in part on other grounds 892 F.2d 20, on remand. Civil Rights 1376(9)

Fact that conviction of arson with the intent to defraud an insurer was reversed on appeal in state court did not preclude application of doctrine of prosecutorial immunity to require dismissal of subsequent civil rights action based on allegation that state prosecuting attorney had violated accused's civil rights by unlawfully prosecuting him for arson. Wolf v. Carey, N.D.Ill.1977, 438 F.Supp. 545, affirmed 582 F.2d 1282. Civil Rights 1376(9)

Prosecutor at trial resulting in plaintiff's conviction of theft by deception, which conviction was reversed on appeal, was protected from liability for misconduct in performing his official functions. Croy v. Skinner, N.D.Ga.1976, 410 F.Supp. 117. Civil Rights 1376(9)

3491. Arrest warrants, prosecutorial immunity

Section 1983 creates damages remedy against prosecutor for making false statements of fact in affidavit supporting application for arrest warrant, as such conduct is not protected by doctrine of absolute prosecutorial immunity; abrogating *Joseph v. Patterson*, 795 F.2d 549. Kalina v. Fletcher, U.S.Wash.1997, 118 S.Ct. 502, 522 U.S. 118, 139 L.Ed.2d 471. Civil Rights 1088(4); Civil Rights 1376(9)

Prosecutor is absolutely immune for appearing before judicial officer to present evidence in support of application for arrest warrant, insofar as he acts as state's advocate in presenting evidence and arguing law. Kohl v. Casson, C.A.8 (Neb.) 1993, 5 F.3d 1141. District And Prosecuting Attorneys 10

District attorney enjoyed absolute immunity, in § 1983 action brought against district attorney in his individual capacity alleging that negligent transposition of descriptive information about suspect onto arrest warrant affidavit had led to false arrest; there was no showing that district attorney had personally investigated or participated in investigatory actions in preparation of warrant. White v. Oklahoma ex rel. Tulsa County Office of Dist. Attorney, N.D.Okla.2002, 250 F.Supp.2d 1319. Civil Rights 1376(9)

Officer, who arrested plaintiff pursuant to a facially valid bench warrant, was entitled to absolute immunity from §§ 1983 false arrest claim; since officer disclosed all evidence, exculpatory or otherwise, to prosecutor, could not be held liable for executing the arrest warrant allegedly obtained as a result of prosecutor's breach of his duties. Zamora v. City of Belen, D.N.M.2005, 383 F.Supp.2d 1315. Civil Rights 1376(6)

State prosecutor enjoys absolute immunity from §§ 1983 actions for preparing and filing an information and for moving for an arrest warrant, but only qualified immunity for acting as a complaining witness in averring a

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complaint for arrest and its supporting affidavit. Mink v. Salazar, D.Colo.2004, 344 F.Supp.2d 1231. Civil Rights 1375; Civil Rights 1376(9)

Prosecuting attorney's failure to assure that judge's order cancelling bench warrant was carried out did not amount to recklessness, willfulness, or deliberate indifference, as required for claim under § 1983; he followed procedure he had followed in about 100 other cases, and he had no knowledge of bench warrant failing to be cancelled in any other case. Sielaff v. Cooper, E.D.Mich.1997, 965 F.Supp. 21. Civil Rights 1088(4)

State prosecutor's actions in allegedly directing police officer to delete exculpatory material from an arrest warrant were squarely within scope of prosecutor's adversarial duties, and thus, prosecutor was entitled to absolute prosecutorial immunity with regard to plaintiff's § 1983 action against prosecutor, alleging malicious prosecution. Sheehan v. Colangelo, C.A.2 (Conn.) 2002, 53 Fed.Appx. 584, 2002 WL 31840792, Unreported. Civil Rights 1376(9)

3492. Bond or bail, prosecutorial immunity

Prosecutor was entitled to absolute immunity as to an arrestee's § 1983 claim alleging violation of his right to be free from excessive bail, even though the prosecutor's input into the judicial process of setting bail, upon inquiry by the officer statutorily authorized to set bail and at a stage in which the statutory scheme did not give the prosecutor a formal role, constituted providing legal advice to the bail setter; such advisory conduct was still a component of the initiation and presentation of a prosecution for which the prosecutor is entitled to absolute immunity. Sanchez v. Doyle, D.Conn.2003, 254 F.Supp.2d 266. Civil Rights 1376(9)

State prosecutor was entitled to absolute judicial immunity for his conduct of unilaterally increasing the bond amount of an arrestee, in arrestee's §§ 1983 action alleging unreasonable seizure and the setting of unreasonable bond in violation of the Fourth, Eighth and Fourteenth Amendments; setting bond was judicial in nature, it was done with colorable authority, pursuant to a Connecticut statute, which arguably permitted prosecutor to temporarily delay arrestee's release, and the a delay in release was the functional equivalent of a bond revocation, so that it was not unreasonable for prosecutor to conclude that he had the authority to modify the bond amount. Root v. Liston, C.A.2 (Conn.) 2006, 444 F.3d 127. Civil Rights 1376(9)

Although prosecutor acted without authority in unilaterally raising judicially-set bond on arrestee's failure to appear charge from $1,000 to $250,000 without consulting court, he had jurisdiction in general area of bond proceedings, was authorized by state statute to order defendants' release delayed after bond was set, and was engaged in activity closely associated with prosecutorial role when he raised arrestee's bond, and thus he was absolutely immune from § § 1983 action by arrestee claiming unreasonable seizure and setting of unreasonable bond in violation of Fourth, Eighth and Fourteenth Amendments. Root v. Liston, D.Conn.2005, 363 F.Supp.2d 190, affirmed on other grounds 444 F.3d 127. Civil Rights 1376(9)

Assistant attorney for the Commonwealth in appearing before court to argue that court should not reduce plaintiff's bond was absolutely immune from liability under this section, and also enjoyed qualified good-faith immunity. Harris v. Friedline, E.D.Va.1983, 585 F.Supp. 734, affirmed 745 F.2d 51, certiorari denied 105 S.Ct. 1368, 470 U.S. 1008, 84 L.Ed.2d 388. Civil Rights 1376(9)

Test whether allegedly injurious conduct falls within protected quasi-judicial role turns on whether harm is inflicted as part of or independently of prosecution, and actions of assistant state's attorneys in setting bond and arraignment date, in taking "not guilty" pleas, in dismissing case against one defendant at pretrial but refusing to drop case against another, in conducting discovery and obtaining continuance of trial date, in substituting charge of violation of one statute for different violation and in ultimately nolling case against remaining defendant just before trial were activities unquestionably essential to protected quasi-judicial aspects of prosecutorial function and were covered by immunity. Halpern v. City of New Haven, D.C.Conn.1980, 489 F.Supp. 841. Civil Rights 1376(9)

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42 U.S.C.A. § 1983

3493. Confessions, prosecutorial immunity

Illinois assistant state's attorney was entitled to directed verdict based on prosecutorial immunity in civil rights action brought by arrestee absent showing that attorney had engaged in investigative or administrative activities or in alleged coercion by police officer; attorney merely reviewed charges after arrestee had confessed and agreed to give statement. Hunt v. Jaglowski, C.A.7 (Ill.) 1991, 926 F.2d 689, rehearing denied. Civil Rights 1376(9)

Prosecutors were not entitled to absolute immunity in §§ 1983 suit based on allegations that they, in addition to conspiring to suppress the fact of and evidence obtained from the police defendants' abusive interrogation of plaintiff, actively participated with the police defendants in torturing plaintiff and fabricating his confession; allegations suggested that prosecutors were functioning as investigators rather than prosecutors and were therefore entitled only to the same qualified immunity as police officers performing similar tasks. Patterson v. Burge, N.D.Ill.2004, 328 F.Supp.2d 878. Civil Rights 1376(9)

3494. Confiscation of property, prosecutorial immunity--Generally

Prosecutor was not entitled to absolute prosecutorial immunity for his role in sale of drug defendant's forfeited property by county where prosecutor's action in allegedly improper sale clearly involved administrative duties. Giuffre v. Bissell, C.A.3 (N.J.) 1994, 31 F.3d 1241. District And Prosecuting Attorneys 10

Assistant county prosecutor was immune from civil rights suit in which plaintiff sought redress for allegedly unconstitutional confiscation and destruction of plaintiff's automobile, which was seized as evidence of crime and towed to police department to be impounded, in view of fact that assistant county prosecutor's actions with respect to automobile were in pursuance of his duties of investigating, initiating and pursuing criminal prosecution. Nylon v. City of Wellston, E.D.Mo.1981, 512 F.Supp. 560. Civil Rights 1376(9)

Even if state prisoner appearing pro se in civil rights action under § 1983 could pursue claims against city alleging that his mother and grandmother's home was razed based on city's fraudulent assertion in earlier civil forfeiture action that he committed drug-related murder on the property, prosecutors in civil forfeiture action were entitled to absolute immunity, since filing of complaint describing basis for forfeiture was integral part of judicial phase of litigation. Green v. City of Oakland, N.D.Cal.2002, 2002 WL 31855312, Unreported. Civil Rights 1376(9)

3495. ---- Return of property, confiscation of property, prosecutorial immunity

Actions complained about by plaintiff in his first claim for relief against county prosecutor, viz., that the prosecutor's failure to return property seized from plaintiff's business premises constituted a deprivation of private property in violation of U.S.C.A.Const. Amends. 5 and 14, fell within the function intimately associated with the judicial phase of the criminal process and, therefore, the prosecutor was absolutely immune from damages on that claim for relief. Maxfield v. Thomas, D.C.Idaho 1983, 557 F.Supp. 1123. Civil Rights 1376(9)

3496. Cruel and unusual punishment, prosecutorial immunity

County district attorney and State Attorney General had absolute prosecutorial immunity for any actions taken within scope of their duties allegedly denying plaintiff his constitutional right to speedy trial and his constitutional right to be free from cruel and unusual punishment. Prince v. Wallace, C.A.5 (Ala.) 1978, 568 F.2d 1176. Civil Rights 1376(9)

3497. Dependency proceedings, prosecutorial immunity

Civil rights claim for damages against district attorney was barred by official immunity where acts complained of,

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such as initiating dependency proceedings, occurred as part of initiation and prosecution of case against civil rights plaintiff. Martin v. Aubuchon, C.A.8 (Mo.) 1980, 623 F.2d 1282. Civil Rights 1376(9)

3498. Expungement of records, prosecutorial immunity

Prosecutors were not entitled to absolute immunity from action for deprivation of civil rights with regard to their opposing expungement of records of individuals against whom charges were dismissed, even after losing all appeals pertaining to dismissal, absent finding that individuals had prior record, and that hearing or legal proceeding was conducted with regard to motion for expungement during which prosecutors were acting as advocates representing state's interest in judicial processes; otherwise return of records was statutorily mandated, where underlying charge was not sexual offense. Joseph v. Patterson, C.A.6 (Mich.) 1986, 795 F.2d 549, certiorari denied 107 S.Ct. 1910, 481 U.S. 1023, 95 L.Ed.2d 516. Civil Rights 1376(9)

3499. Extradition, prosecutorial immunity

District attorney and deputy district attorney were entitled to absolute prosecutorial immunity in connection with decision not to extradite father for failing to pay child support; extradition was intimately associated with judicial phase of criminal process and was clearly litigation-associated duty. Larsen v. Early, D.Colo.1994, 842 F.Supp. 1310, affirmed 34 F.3d 1076. Civil Rights 1376(9)

Prosecuting attorney was immune from liability under this section for actions in course of extradition process. Cleary v. Andersen, D.C.Neb.1976, 423 F.Supp. 745. Civil Rights 1376(9)

Although the decision of whether to extradite is within the "quasi-judicial" function of a state prosecutor, conduct of Louisiana district attorney's office in leaving outstanding arrest warrant entry on the Federal Bureau of Investigation National Crime Information Center computer system after having decided not to extradite plaintiff was not within the prosecutorial function and was outside the scope of prosecutorial immunity in a civil rights suit. Maney v. Ratcliff, E.D.Wis.1975, 399 F.Supp. 760. Civil Rights 1376(9)

3500. Grand jury proceedings, prosecutorial immunity

Fact that prosecutors later called grand jury to consider allegedly false evidence their investigatory work had produced did not retroactively transform that work from administrative into prosecutorial, and thus did not provide prosecutors with absolute immunity from charge that evidence had been fabricated. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. District And Prosecuting Attorneys 10

Federal prosecutor was absolutely immune from liability for advocatory decisions including decision to prosecute individual for fraud, allegedly concealing exculpatory evidence from grand jury and allegedly manipulating evidence before grand jury to create false impression regarding individual's knowledge about alleged fraudulent scheme. Moore v. Valder, C.A.D.C.1995, 65 F.3d 189, 314 U.S.App.D.C. 209, rehearing and suggestion for rehearing in banc denied, certiorari denied 117 S.Ct. 75, 519 U.S. 820, 136 L.Ed.2d 35. District And Prosecuting Attorneys 10

Mere fact that assistant district attorney obtained alleged child abuse victim's videotaped testimony pursuant to New York statute providing for the use of such videotaped testimony in grand jury proceedings, and that videotape was shown to grand jury just six days after it was recorded, was not determinative as to whether assistant district attorney was performing "investigative" or "advocate's" function in obtaining this videotaped testimony; neither the use of statutory procedure nor accelerated pace of events was controlling on assistant district attorney's entitlement to either qualified or absolute immunity from civil rights liability for his actions. Hill v. City of New York, C.A.2 (N.Y.) 1995, 45 F.3d 653. Civil Rights 1376(9)

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There was no exception to absolute immunity afforded prosecutors in their quasi-judicial role, even if prosecutors caused defendant to be tried for felony without having first presented to grand jury evidence of particular criminal conduct sought to be shown. Celia v. O'Malley, C.A.1 (Mass.) 1990, 918 F.2d 1017. District And Prosecuting Attorneys 10

Activities of district attorney and assistant district attorney in allegedly instituting grand jury proceedings without investigation and without good faith that wrongdoing had occurred, influencing and directing grand jury to present false findings, and intentionally failing to call witnesses with knowledge of events who they believed would exculpate investigation targets, were encompassed by prosecutorial immunity doctrine as intimately associated with judicial phase of criminal process. Rose v. Bartle, C.A.3 (Pa.) 1989, 871 F.2d 331, on remand. Civil Rights 1376(9)

State prosecutor was absolutely immune from liability for damages under section 1983 for allegedly maliciously presenting evidence to a grand jury in a manner calculated to clear a suspect of wrongdoing. Morrison v. City of Baton Rouge, C.A.5 (La.) 1985, 761 F.2d 242. Civil Rights 1376(9)

Allegation that prosecutor was "in charge of the investigation" of felony charges was insufficient to establish that he was performing investigatory functions apart from grand jury inquiry, for purpose of determining whether civil rights action against prosecutor fell within narrow area left unresolved by the *Imbler* rule of absolute prosecutorial immunity when presenting a case to the grand jury. Maglione v. Briggs, C.A.2 (N.Y.) 1984, 748 F.2d 116. Civil Rights 1398

Assistant district attorneys' presentation of evidence to grand juries was insulated from liability under this section. Fine v. City of New York, C.A.2 (N.Y.) 1975, 529 F.2d 70, on remand 71 F.R.D. 374. Civil Rights 1376(9)

Prosecutor's request that grand jury consider suspect as target for indictment was intimately associated with judicial phase of criminal process, and thus was protected by absolute prosecutorial immunity from liability in suspect's civil rights action. Miller v. Spiers, D.N.M.2006, 434 F.Supp.2d 1064. District And Prosecuting Attorneys 10

District attorney was entitled to absolute immunity for his alleged wrongful interference with grand jury proceedings by preventing grand jurors from obtaining evidence that would exculpate former public utility executive and presenting prejudicial evidence of executive's noncriminal activities, for purpose of executive's subsequent § 1983 action, as attorney's alleged conduct was part of his quasi-judicial, prosecutorial function; even if grand jury proceeding was initially investigative and did not focus on any particular individual, attorney's alleged misconduct took place after executive had been identified as target of investigation. Smith v. Gribetz, S.D.N.Y.1997, 958 F.Supp. 145. Civil Rights 1376(9)

District attorneys were entitled to absolute immunity with regard to arrestee's claim that they presented false information to grand jury. Pinaud v. County of Suffolk, E.D.N.Y.1992, 798 F.Supp. 913, affirmed in part, remanded in part 52 F.3d 1139. District And Prosecuting Attorneys 10

Where New York Attorney General was conducting grand jury investigation respecting oil company's bidding practices in state and was thus "initiating a prosecution," in that the proceedings were clearly prelude to one or more indictments if sufficient evidence could be produced, and in fact grand jury subsequently handed up indictments against oil company, and, under state statute, Attorney General was obligated to mail to appropriate government officials notice of refusal of witness to testify, and Attorney General was acting under State statutes requiring insertion in government contracts of clause providing for disqualification from contract by reason of refusal to testify, Attorney General was absolutely immune from damage claims. Mobil Oil Corp. v. Lefkowitz, S.D.N.Y.1977, 454 F.Supp. 59. Attorney General 8

3501. Imprisonment, prosecutorial immunity

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42 U.S.C.A. § 1983

Actions of assistant district attorneys general in connection with incarceration of material witness were inextricably intertwined with their initiation and presentation of the state's prosecution and were entitled to absolute immunity from civil rights action brought by witness. White by Swafford v. Gerbitz, C.A.6 (Tenn.) 1988, 860 F.2d 661, certiorari denied 109 S.Ct. 1160, 489 U.S. 1028, 103 L.Ed.2d 219. Civil Rights 1376(9)

Prosecuting attorney as "quasi-judicial officer" was immune from suit under this section for allegedly denying plaintiff access to supplementary police reports and causing him to be imprisoned before trial, thus allegedly handicapping preparations for his defense to state criminal prosecution. Guerrero v. Barlow, C.A.5 (Tex.) 1974, 494 F.2d 1190, rehearing denied 502 F.2d 1167, certiorari denied 96 S.Ct. 1481, 424 U.S. 975, 47 L.Ed.2d 746. Civil Rights 1376(9)

Inmate could not recover in civil rights action from district attorneys for alleged injuries emanating from duration and conditions of his imprisonment. Pinaud v. County of Suffolk, E.D.N.Y.1992, 798 F.Supp. 913, affirmed in part, remanded in part 52 F.3d 1139. Civil Rights 1098

Claim in civil rights action for damages against district attorneys for their part in bringing about plaintiff's arrest and incarceration was precluded by their absolute immunity from suit for actions taken while engaged in judicial phase of criminal process. Holland v. Rubin, E.D.N.Y.1978, 460 F.Supp. 1051. Civil Rights 1376(9)

Defendant who, as prosecuting attorney, authorized confinement of plaintiff in county jail for 40 hours, because it had been represented to defendant that plaintiff was insane and manifesting homicidal and other dangerous tendencies, was immune from civil liability to plaintiff under this section. Kenney v. Killian, W.D.Mich.1955, 133 F.Supp. 571, affirmed 232 F.2d 288, certiorari denied 77 S.Ct. 84, 352 U.S. 855, 1 L.Ed.2d 66, certiorari denied 77 S.Ct. 84, 352 U.S. 856, 1 L.Ed.2d 66. Civil Rights 1376(9)

3502. Indictment or information, prosecutorial immunity

Prosecutor's activities in connection with preparation and filing of charging documents, including information and motion for arrest warrant, were protected by absolute prosecutorial immunity in § 1983 action brought by accused after charges were dropped. Kalina v. Fletcher, U.S.Wash.1997, 118 S.Ct. 502, 522 U.S. 118, 139 L.Ed.2d 471. Civil Rights 1376(9)

Prosecutor had absolute immunity from § 1983 suit based on decision not to divert indictee from trial into pretrial intervention (PTI). Davis v. Grusemeyer, C.A.3 (N.J.) 1993, 996 F.2d 617. Civil Rights 1376(9)

Prisoner's allegation that prosecutor disregarded a court order to file an information or release prisoner would not place prosecutor outside scope of his prosecutorial duties and therefore prosecutor was absolutely immune from prisoner's civil rights claim based upon his denial of his constitutional right to a prompt judicial determination of probable cause. Webster v. Gibson, C.A.8 (Ark.) 1990, 913 F.2d 510. Civil Rights 1376(9)

Parish and its assistant District Attorneys were entitled to absolute prosecutorial immunity from civil rights suit, even assuming truth of plaintiff's allegations that bill on information on which he was convicted was defective and that one of prior DWI convictions alleged in bill was not in fact conviction, thus warranting sua sponte dismissal of claim as based on meritless legal theory or as having no realistic chance of ultimate success. Pugh v. Parish of St. Tammany, C.A.5 (La.) 1989, 875 F.2d 436, rehearing denied. Civil Rights 1376(4); Civil Rights 1376(9)

Prosecutor who misread grand jury voting sheet and prepared indictment in erroneous belief that vote had been to indict was acting within course of his official duties and, therefore, was absolutely immune from § 1983 liability. Baez v. Hennessy, C.A.2 (N.Y.) 1988, 853 F.2d 73, certiorari denied 109 S.Ct. 805, 488 U.S. 1014, 102 L.Ed.2d 796. Civil Rights 1376(9)

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State prosecutor was absolutely immune from civil liability for damages under this section for his actions in seeking an indictment and in the presentation of witnesses and documentary evidence at plaintiff's state trial and at challenges to his conviction in habeas corpus proceedings. Bruce v. Wade, C.A.5 (Tex.) 1976, 537 F.2d 850. Civil Rights 1376(9)

Prosecutor, in assisting police in obtaining evidence before indictment, functions in investigative capacity not quasi-judicial capacity, so that prosecutor does not enjoy absolute immunity and may avoid liability for those actions under a § 1983 suit only if qualifiedly immune. Metro Charities, Inc. v. Moore, S.D.Miss.1990, 748 F.Supp. 1156. Civil Rights 1376(9)

Former state Attorneys General and other state officials were entitled to only qualified immunity under Civil Rights Act on claim by confidential informant that the defendants failed to honor an alleged agreement for relocation and new identity after the informant's undercover identity had been disclosed; defendants were acting in their investigative capacities, rather than prosecutorial capacity, in that there was no evidence that the defendants were investigating the informant with the intent to seek an indictment as to him, although they may have been using informant's information to indict others. G-69 v. Degnan, D.N.J.1990, 745 F.Supp. 254, clarified on denial of reconsideration 748 F.Supp. 274. Civil Rights 1376(3); Civil Rights 1376(9)

Prosecutor's activities in filing criminal complaint, instituting proceedings for arrest of person suspected of criminal activities, and drawing criminal information are automatically entitled to immunity from liability for damages, since decision to initiate, maintain or dismiss criminal charges is at core of prosecutorial function. Condos v. Conforte, D.C.Nev.1984, 596 F.Supp. 197. Civil Rights 1376(9)

State Attorney General and district attorney had prosecutorial immunity against action under this section based on claim that prejudicial preindictment publicity and information leaked by prosecutors biased grand jury into returning indictment against plaintiff. Sperl v. Deukmejian, C.D.Cal.1980, 482 F.Supp. 1026, affirmed 642 F.2d 1154. Civil Rights 1376(9)

Prosecutors were immune from suit based upon their actions in reviving criminal indictments against prison inmate six and one-half years after indictments had been returned and eight years after alleged offenses had occurred. Gockley v. VanHoove, E.D.Pa.1976, 409 F.Supp. 645. District And Prosecuting Attorneys 10

3503. Inquests, prosecutorial immunity

District attorney's participation in investigation by coroner's jury was action taken as county official and, if district attorney participated with others in covering up police misconduct in connection with fatal shooting of citizen, that activity would fall outside sphere of activity for which prosecutors are given absolute immunity from civil rights suit for damages. Bell v. City of Milwaukee, E.D.Wis.1981, 514 F.Supp. 1363. Civil Rights 1376(9)

3504. Jury selection, prosecutorial immunity

Prosecutor was entitled to absolute immunity from personal liability under § 1983 for using peremptory strikes in claimant's trial in racially discriminatory manner, in that use of strikes was part of prosecutor's presentation of state's case. Esteves v. Brock, C.A.5 (Tex.) 1997, 106 F.3d 674, rehearing and suggestion for rehearing en banc denied 114 F.3d 1185, certiorari denied 118 S.Ct. 91, 522 U.S. 828, 139 L.Ed.2d 47. Civil Rights 1376(9)

Prosecutor, who was named a defendant in a black inmate's civil rights action, was immune from liability for allegedly participating in conspiracy to impanel an all-white jury in inmate's absence and later stating that inmate had been present. White v. Bloom, C.A.8 (Mo.) 1980, 621 F.2d 276, certiorari denied 101 S.Ct. 533, 449 U.S. 995, 66 L.Ed.2d 292, certiorari denied 101 S.Ct. 882, 449 U.S. 1089, 66 L.Ed.2d 816. Conspiracy 13

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42 U.S.C.A. § 1983

3505. Notices for trial, prosecutorial immunity

In arrestee's § 1983 suit against prosecutor, prosecutor's alleged improper setting of arrestee's case for trial on short notice was shielded by absolute immunity, as action was taken in course and scope of prosecution. Geter v. Fortenberry, C.A.5 (Tex.) 1988, 849 F.2d 1550. Civil Rights 1376(9)

3506. Parole, prosecutorial immunity

District court could not determine that parole officer and officials were absolutely immune from suit for errors allegedly committed in revoking defendant's parole until it first conducted some factual inquiry into whether officials' duties were judicial or prosecutorial in nature. Stewart v. Lattanzi, C.A.2 (N.Y.) 1987, 832 F.2d 12. Civil Rights 1376(1)

Prosecuting attorney had absolute immunity from suit by inmate, claiming that her letter in opposition to grant of parole violated his equal protection and due process rights; letter was written while attorney was involved with adjudicative process, affording her immunity similar to that given to judges. Bodie v. Morgenthau, S.D.N.Y.2004, 342 F.Supp.2d 193. Civil Rights 1376(9)

Prosecuting and district attorneys, sued under § 1983 by prisoner, had absolute immunity from claims that they had wrongfully communicated with parole board urging that he not be granted parole; those communications were intimately associated with judicial or quasi-judicial phase of criminal process. Quartararo v. Catterson, E.D.N.Y.1996, 917 F.Supp. 919. Civil Rights 1376(9)

Prosecuting and district attorneys did not have absolute immunity from § 1983 suit brought by prisoner claiming they had wrongfully communicated with committee responsible for determining whether prisoner would be retained on work release program; committee did not have indicia of adjudicatory body and consequently attorneys' activities did not relate to judicial or quasi-judicial function. Quartararo v. Catterson, E.D.N.Y.1996, 917 F.Supp. 919. Civil Rights 1376(9)

3507. Pleas, prosecutorial immunity

Even if state attorneys tried to force physician to give up his medical practice, first in return for keeping Colorado Board of Medical Examiners' proceedings confidential and then by threatening to file sexual assault charges against him, those offers were akin to plea bargaining, activity that was absolutely immune from § 1983 liability due to its intimate association with judicial process. Pfeiffer v. Hartford Fire Ins. Co., C.A.10 (Colo.) 1991, 929 F.2d 1484. Civil Rights 1376(9)

District attorney was entitled to absolute prosecutorial immunity from police officer's civil rights claim arising out of his resignation in response to the threat of criminal perjury charges, as the "agreement" between district attorney and officer was sufficiently analogous to a plea bargain to warrant same deference to prosecutor's discretion. Arnold v. McClain, C.A.10 (Okla.) 1991, 926 F.2d 963. Civil Rights 1376(9); Civil Rights 1376(10)

Prosecutor who was involved in plea bargaining process was exercising prosecutorial activities as to which he enjoyed immunity from civil rights liability. Humble v. Foreman, C.A.5 (La.) 1977, 563 F.2d 780, rehearing denied 566 F.2d 106. Civil Rights 1376(9)

State prosecutor who prosecuted accused and obtained plea of guilty to charge of possession of narcotic paraphernalia was immune from liability for damages to the accused under this section. Conner v. Pickett, C.A.5 (Ala.) 1977, 552 F.2d 585. Civil Rights 1376(9)

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District attorney and chief assistant district attorney were immune from liability in damages for nonfulfillment of negotiated plea agreement. Palermo v. Warden, Green Haven State Prison, C.A.2 (N.Y.) 1976, 545 F.2d 286, certiorari dismissed 97 S.Ct. 2166, 431 U.S. 911, 53 L.Ed.2d 221. District And Prosecuting Attorneys 10

Prosecutor was entitled to absolute immunity from civil rights liability for allegedly wrongfully conditioning his plea negotiations with litigant's criminal counsel on discharge of defense investigator. Bembenek v. Donohoo, E.D.Wis.2005, 355 F.Supp.2d 942. Civil Rights 1376(9)

District attorneys were entitled to absolute immunity regarding arrestee's claim that they breached plea agreement. Pinaud v. County of Suffolk, E.D.N.Y.1992, 798 F.Supp. 913, affirmed in part, remanded in part 52 F.3d 1139. District And Prosecuting Attorneys 10

Prosecutor, who allegedly breached plea agreement, was immune from suit for damages for the alleged breach and therefore state prisoner's claim brought under this section for that breach would be dismissed, but state prisoner's claim that prosecutor's act of confining him in segregation violated his constitutional rights was cognizable under this section and was not barred by defense or prosecutorial immunity. Doe v. Russotti, S.D.N.Y.1980, 503 F.Supp. 942.

Prosecutor was entitled to immunity from suit for damages under this section based on alleged misrepresentations to criminal defendant during plea bargaining process. Taylor v. Kavanagh, S.D.N.Y.1980, 492 F.Supp. 386, affirmed 640 F.2d 450. Civil Rights 1376(9)

Prosecuting attorney was immune from suit under this section for alleged breach of plea bargain. Berryman v. Shuster, W.D.Okla.1975, 405 F.Supp. 1346. Civil Rights 1376(9)

3508. Post-conviction proceedings, prosecutorial immunity--Generally

A prosecutor's actions after conviction and while a direct appeal is pending are protected from § 1983 action by absolute immunity. Parkinson v. Cozzolino, C.A.2 (N.Y.) 2001, 238 F.3d 145. Civil Rights 1376(9)

Prosecutors were entitled to absolute immunity from damages arising from their alleged failure to object to erroneous lesser included offense charge in murder prosecution or to bring error to light in postconviction proceedings. Patterson v. Von Riesen, C.A.8 (Neb.) 1993, 999 F.2d 1235. Civil Rights 1376(9)

3509. ---- Habeas corpus, post-conviction proceedings, prosecutorial immunity

State prosecutor was not absolutely, but was only qualifiedly, immune from § 1983 liability for preventing execution of writ of habeas corpus ad testificandum to allow inmate to testify on his own behalf in workers' compensation proceeding; state had successfully completed inmate's prosecution months before and, thus, when prosecutor intervened to forestall execution of writ, she, at best, acted pursuant to administrative duty assigned to her office. Lemmons v. Law Firm of Morris and Morris, C.A.10 (Okla.) 1994, 39 F.3d 264. Civil Rights 1376(9)

Prosecutors acting in their official capacities were immune from civil rights liability for allegedly using "false and untrue methods" in opposing attempts to secure habeas corpus relief and, likewise, same protection extended to former assistant district attorney charged merely with failing to come to the aid of plaintiff, who was then represented by counsel. Holloway v. Carey, S.D.N.Y.1979, 482 F.Supp. 551. Civil Rights 1376(9)

Prosecutor, while acting in scope of his duties as an assistant attorney general in handling habeas corpus hearing, would be absolutely immune from suit under this section. Ray v. Time, Inc., W.D.Tenn.1976, 452 F.Supp. 618, affirmed 582 F.2d 1280. Civil Rights 1376(9)

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42 U.S.C.A. § 1983

3510. Private complaints, prosecutorial immunity

The decision to approve or disapprove a private criminal complaint fits squarely within broader function of "initiating a prosecution," and therefore it cannot subject a prosecutor to civil liability for damages under this section. Raitport v. Provident Nat. Bank, E.D.Pa.1978, 451 F.Supp. 522. Civil Rights 1376(9)

3511. Evidence, prosecutorial immunity--Generally

County prosecutors were not entitled to absolute immunity on citizen's §§ 1983 claim that they withheld exculpatory evidence, in the form of DNA samples, after citizen was convicted of kidnapping, rape, and murder, and sentenced to death, absent showing that their response to citizen's requests for DNA testing was part of their advocacy for the state in post-conviction proceedings in which they were personally involved, rather than part of their administrative duties. Yarris v. County of Delaware, C.A.3 (Pa.) 2006, 465 F.3d 129. Civil Rights 1376(9)

Liability for prosecutor's suppression of exculpatory evidence is shielded by the doctrine of absolute prosecutorial immunity. Cousin v. Small, C.A.5 (La.) 2003, 325 F.3d 627, certiorari denied 124 S.Ct. 181, 540 U.S. 826, 157 L.Ed.2d 48. District And Prosecuting Attorneys 10

Prosecutor is absolutely immune from civil rights liability for his out-of-court efforts to control witness' grand jury testimony subsequent to decision to indict; however, this immunity does not protect prosecutor's efforts to manufacture evidence, to the extent that these efforts occur during investigatory phase of criminal case. Hill v. City of New York, C.A.2 (N.Y.) 1995, 45 F.3d 653. Civil Rights 1376(9)

Prosecutor's allegedly malicious refusal to present exculpatory evidence to grand jury or to allow witnesses to testify who could have establish alibi for suspect were decisions within prosecutor's advocacy function, and thus were protected by absolute prosecutorial immunity from liability in suspect's civil rights action. Miller v. Spiers, D.N.M.2006, 434 F.Supp.2d 1064. District And Prosecuting Attorneys 10

Prosecutor was not entitled to absolute immunity on civil rights claims that he withheld exculpatory evidence and misrepresented nature of state's evidence absent evidence that alleged conduct occurred in course of his performing advocative function. Bembenek v. Donohoo, E.D.Wis.2005, 355 F.Supp.2d 942. Civil Rights 1376(9)

To extent that civil rights complaint could state a cause of action against prosecutor for the offer of tainted evidence at plaintiff's first trial, it was foreclosed by absolute immunity against civil rights actions enjoyed by state prosecutors engaged in the judicial phase of the criminal process. Jackson v. Dillon, E.D.N.Y.1981, 518 F.Supp. 618. Civil Rights 1376(9)

3511A. ---- Destruction of evidence, evidence, prosecutorial immunity

County prosecutors' alleged destruction of exculpatory evidence in citizen's prosecution for kidnapping, rape, and murder was not related to their prosecutorial function, and thus, they were not entitled to absolute immunity on citizen's §§ 1983 claim that they violated his Fourteenth Amendment rights by deliberately destroying exculpatory evidence. Yarris v. County of Delaware, C.A.3 (Pa.) 2006, 465 F.3d 129. Civil Rights 1376(9)

3511B. ---- Exculpatory evidence withheld, evidence, prosecutorial immunity

State prisoner's §§ 1983 claims against prosecuting attorney, alleging that prosecutor conspired with prisoner's public defender to deprive prisoner of his constitutional rights by fabricating evidence used at trial, withholding

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exculpatory evidence, suborning perjury, and attempting to intimidate him into accepting a guilty plea, were foreclosed by absolute prosecutorial immunity, regardless of their alleged illegality; claims encompassed activities involving the initiation and pursuit of prosecution. Peay v. Ajello, C.A.2 (Conn.) 2006, 470 F.3d 65. District And Prosecuting Attorneys 10

County prosecutors were entitled to absolute immunity on citizen's §§ 1983 claim that they withheld exculpatory evidence prior to citizen's trial on charges of kidnapping, rape, and murder. Yarris v. County of Delaware, C.A.3 (Pa.) 2006, 465 F.3d 129. Civil Rights 1376(9)

3512. ---- False testimony, evidence, prosecutorial immunity

County prosecutors were not entitled to absolute immunity on citizen's §§ 1983 claim that they concocted a false and fabricated confession in relation to citizen's prosecution for kidnapping, rape, and murder, and sentenced to death, absent showing that they were functioning as the state's advocates when they engaged in the conduct that gave rise to the evidence-fabrication allegations. Yarris v. County of Delaware, C.A.3 (Pa.) 2006, 465 F.3d 129. Civil Rights 1376(9)

District attorneys' alleged conduct in acquiring known false statements from witness for use in prosecution against criminal defense attorney amounted to fabricating evidence, and thus was unprotected by absolute immunity in defense attorney's § 1983 suit against district attorneys for denial of due process and malicious prosecution; conduct allegedly occurred before grand jury was empaneled and before defense attorney was arrested. Milstein v. Cooley, C.A.9 (Cal.) 2001, 257 F.3d 1004, on remand 2001 WL 1674087. Civil Rights 1376(9)

Criminal prosecutor's absolute immunity from § 1983 claims applies even if prosecutor is accused of knowingly using perjured testimony. Boyd v. Biggers, C.A.5 (Miss.) 1994, 31 F.3d 279. District And Prosecuting Attorneys 10

Prosecutor and witnesses were absolutely immune from liability for participation in alleged conspiracy to present false testimony against defendant, in violation of defendant's civil rights. Snelling v. Westhoff, C.A.8 (Mo.) 1992, 972 F.2d 199, rehearing denied, certiorari denied 113 S.Ct. 977, 506 U.S. 1053, 122 L.Ed.2d 132. Civil Rights 1375; Civil Rights 1376(9)

Deputy prosecutor, as defendant in civil rights action, was entitled to absolute immunity against charges that he used perjured testimony in bail revocation hearing. Burns v. County of King, C.A.9 (Wash.) 1989, 883 F.2d 819. Civil Rights 1376(9)

Federal prosecutor's activities in trying case, presenting allegedly false testimony, allegedly using guilty plea allocution for investigative purposes, and allegedly transmitting false information to parole authorities were intimately associated with judicial phase of criminal process and entitled prosecutor to absolute immunity in § 1983 action. Daloia v. Rose, C.A.2 (N.Y.) 1988, 849 F.2d 74, certiorari denied 109 S.Ct. 242, 488 U.S. 898, 102 L.Ed.2d 231. Civil Rights 1376(9)

Prosecutors had absolute immunity from action for deprivation of civil rights with respect to their decision to file criminal complaint and seek issuance of arrest warrant, in that such activities were quasi-judicial duties involved in initiating prosecution, even assuming truth of allegation that prosecutors knowingly obtained issuance of criminal complaints and arrest warrants based on false, coerced statements elicited by prosecutors and police. Joseph v. Patterson, C.A.6 (Mich.) 1986, 795 F.2d 549, certiorari denied 107 S.Ct. 1910, 481 U.S. 1023, 95 L.Ed.2d 516. Civil Rights 1376(9)

Prosecuting attorneys were entitled to prosecutorial immunity with respect to action brought under this section alleging prosecutorial misconduct including falsification of evidence and coercion of perjured testimony in

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connection with criminal prosecutions brought against plaintiff. Lee v. Willins, C.A.2 (N.Y.) 1980, 617 F.2d 320, certiorari denied 101 S.Ct. 165, 449 U.S. 861, 66 L.Ed.2d 78. Civil Rights 1376(9)

Prosecutor enjoyed immunity from civil rights action which was based on allegations that he had conspired to present perjured testimony against the defendant in a criminal trial. Blevins v. Ford, C.A.9 (Cal.) 1978, 572 F.2d 1336. Conspiracy 13

District attorney was acting within his jurisdiction in bringing criminal charge for claimed violation of state law and hence was immune from liability under this section, regardless of claim that subsequent conviction was result of perjured testimony. Kauffman v. Moss, C.A.3 (Pa.) 1970, 420 F.2d 1270, certiorari denied 91 S.Ct. 93, 400 U.S. 846, 27 L.Ed.2d 84. Civil Rights 1376(9)

Prosecutor's alleged fabrication of evidence needed to establish probable cause for suspect's arrest did not fall within prosecutor's traditional advocacy function, and thus was not protected by absolute prosecutorial immunity from liability in suspect's civil rights action. Miller v. Spiers, D.N.M.2006, 434 F.Supp.2d 1064. District And Prosecuting Attorneys 10

Even if assistant attorney general did present perjured testimony in habeas corpus action, as alleged by § 1983 plaintiff, she retained absolute prosecutorial immunity from the § 1983 claim. Summers v. Sjogren, D.Utah 1987, 667 F.Supp. 1432. Civil Rights 1376(9)

3513. Scene of crime evidence, prosecutorial immunity

Prosecutors' alleged misconduct, when endeavoring to determine whether bootprint at scene of crime had been left by suspect was investigatory, administrative function rather than prosecutorial function, for which prosecutors were entitled to only qualified immunity in suspect's subsequent § 1983 suit; prosecutors had no probable cause to arrest suspect or to initiate judicial proceedings against him at time of bootprint investigation. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(9)

3514. Searches and seizures, prosecutorial immunity--Generally

Prosecutors were not entitled to absolute immunity in § 1983 action alleging that search of attorney's person and effects, while attorney's client was testifying in grand jury proceeding, violated attorney's Fourth and Fourteenth Amendment rights, as prosecutors' acts, including serving of initial search warrant on attorney's client, directing police officer to obtain search warrant for attorney, informing attorney of need for second search, and viewing of attorney's documents during search, were investigative in nature. Gabbert v. Conn, C.A.9 (Cal.) 1997, 131 F.3d 793, certiorari granted in part 119 S.Ct. 39, 525 U.S. 809, 142 L.Ed.2d 30, reversed 119 S.Ct. 1292, 526 U.S. 286, 143 L.Ed.2d 399. Civil Rights 1376(9)

Prosecutor was entitled to absolute immunity from liability under federal civil rights statute in conducting search to obtain evidence to prosecute indictment. Pachaly v. City of Lynchburg, C.A.4 (Va.) 1990, 897 F.2d 723. Civil Rights 1376(9)

State prosecutor's participation in allegedly illegal search and seizure which occurred prior to initiation of any judicial proceedings against plaintiffs fell outside sphere of activity for which prosecutors are given absolute immunity in actions under this section. Marrero v. City of Hialeah, C.A.5 (Fla.) 1980, 625 F.2d 499, certiorari denied 101 S.Ct. 1353, 450 U.S. 913, 67 L.Ed.2d 337. Civil Rights 1376(9)

County attorneys were not absolutely immune from § 1983 liability arising out of police search of premises of private detective agency pursuant to partially invalid search warrant, in which attorneys had participated; absolute

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immunity extended only to their activities relating to advocacy, and their presence at search scene and advice as to whether particular items were covered by search warrant was a "police-related function." Naugle v. Witney, D.Utah 1990, 755 F.Supp. 1504. Civil Rights 1376(9)

3515. ---- Application for search warrants, searches and seizures, prosecutorial immunity

State prosecutor's appearance in court in support of application for search warrant and presentation of evidence at hearing were protected by absolute immunity in civil rights action brought by arrestee; there was support for finding of absolute immunity in the common law and absolute immunity was justified by policy concerns. Burns v. Reed, U.S.Ind.1991, 111 S.Ct. 1934, 500 U.S. 478, 114 L.Ed.2d 547, on remand 958 F.2d 374, rehearing denied. Civil Rights 1376(9)

Applying to court for wiretap warrant was not clearly a prosecutorial function entitling prosecutors to absolute immunity in civil rights action. Liffiton v. Keuker, C.A.2 (N.Y.) 1988, 850 F.2d 73. Civil Rights 1376(9)

State prosecutor's preparation of arrest and search warrants and participation in search and seizure are investigatory activities rather than advocacy, and therefore receive only qualified immunity from suit. McSurely v. McClellan, C.A.D.C.1982, 697 F.2d 309, 225 U.S.App.D.C. 67. District And Prosecuting Attorneys 10

Deputy county district attorney had not waived absolute immunity from §§ 1983 action, claiming deprivation of homeowner's constitutional rights by filing of charges of controlled substance possession and dealing in harmful material to minor, by engaging in investigative rather than judicial function, when she allegedly drove past home during investigation, instructed police officer to gather information from certain individuals, and physically typing affidavit in support of search warrant while officer dictated it. Gibbons v. Lambert, D.Utah 2005, 358 F.Supp.2d 1048. Civil Rights 1376(9)

Deputy district attorney was engaged in quasi-judicial conduct when she reviewed and approved affidavit that subsequently was submitted in support of search warrant, the execution of which resulted in seizure of personal computer used by university student to create, maintain, and publish internet-based journal, and therefore deputy district attorney was entitled to absolute prosecutorial immunity that precluded §§ 1983 claim for violations of First and Fourth Amendments allegedly resulting from search warrant execution. Mink v. Salazar, D.Colo.2004, 344 F.Supp.2d 1231. Civil Rights 1376(9)

District attorney and township solicitor were immune from civil suit for damages under this section where allegation against them brought by pro se plaintiff asserted that they "caused to issue a search warrant and a search of plaintiff's property," in that such conduct was no more than initiating a prosecution and presenting the state's case and such conduct was immune from suit. Groff v. Eckman, E.D.Pa.1981, 525 F.Supp. 375. Civil Rights 1376(9)

Actions of attorney with New Mexico Environment Department (NMED) in preparing and signing application for administrative search warrant were primarily investigative in nature and were not prosecutorial duties that would have entitled attorney to absolute immunity in property owner's § 1983 action; attorney did not participate in hearing on application, her conduct occurred before she could have possibly claimed to be acting as an advocate, and her later initiation of action did not retroactively transform investigative work into prosecution. Eden v. Voss, C.A.10 (N.M.) 2004, 105 Fed.Appx. 234, 2004 WL 1535829, Unreported. Civil Rights 1376(9)

3516. ---- Execution of search warrants, searches and seizures, prosecutorial immunity

State Attorney General had absolute prosecutorial immunity from charges by charitable bingo sponsor that procurement and execution of search warrants in connection with state's civil proceedings violated sponsor's civil

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rights, despite sponsor's contention that immunity should not apply where government was pursuing administrative enforcement action not specifically authorized by statute. Metro Charities, Inc. v. Moore, S.D.Miss.1990, 748 F.Supp. 1156. Civil Rights 1376(9)

3517. ---- Execution of arrest warrants, searches and seizures, prosecutorial immunity

Allegations that assistant district attorney "directed" court officer to arrest paralegal, while all three men were in same courtroom, suggested that assistant district attorney may have participated in "executing the arrest," an act typically considered police function, not prosecutorial function, and thus, assistant district attorney was not entitled to absolute immunity for deprivation of civil rights for such conduct. Day v. Morgenthau, C.A.2 (N.Y.) 1990, 909 F.2d 75, amended on rehearing, on remand 769 F.Supp. 472. Civil Rights 1376(9)

3518. Speedy trial, prosecutorial immunity

Claims under this section for damages for libel and denial of speedy trial, based on allegedly libelous statements against plaintiffs by the Nebraska Attorney General, a deputy attorney general and an assistant attorney general and their initiation of deceptive practices suit in state court, were barred by doctrine of prosecutorial immunity. Ledwith v. Douglas, C.A.8 (Neb.) 1978, 568 F.2d 117. Civil Rights 1376(9)

Prosecutors enjoyed absolute immunity with respect to claims of denial of civil rights through denial of right to speedy trial. Cribb v. Pelham, D.C.S.C.1982, 552 F.Supp. 1217. Civil Rights 1376(9)

3519. Suppression of evidence, prosecutorial immunity

Prosecutor's withholding of information, after indictment, that is subject to disclosure under *Brady* is advocatory decision entitled to absolute immunity. Moore v. Valder, C.A.D.C.1995, 65 F.3d 189, 314 U.S.App.D.C. 209, rehearing and suggestion for rehearing in banc denied, certiorari denied 117 S.Ct. 75, 519 U.S. 820, 136 L.Ed.2d 35. District And Prosecuting Attorneys 10

Assistant district attorney's failure to turn over alleged *Brady* material during prosecutorial phase of case was a discretionary advocacy function, for which assistant district attorney was accorded absolute immunity from liability under § 1983. Hill v. City of New York, C.A.2 (N.Y.) 1995, 45 F.3d 653. Civil Rights 1376(9)

Prosecutor's absolute immunity from civil suit under § 1983 for acts committed within scope of his duties in pursuing criminal prosecution is applicable even when prosecutor knowingly used perjured testimony and deliberately withheld exculpatory information. Dory v. Ryan, C.A.2 (N.Y.) 1993, 999 F.2d 679, modified on rehearing 25 F.3d 81. Civil Rights 1376(9)

State prosecutors, who discovered evidence exculpating persons who had been imprisoned on murder convictions at time prosecutors were not involved in pending postconviction proceedings, were not entitled to absolute immunity from persons' civil rights claims for failure to disclose the evidence; prosecutors were acting solely in investigative capacity and, accordingly, were only entitled to assert qualified immunity. Houston v. Partee, C.A.7 (Ill.) 1992, 978 F.2d 362, certiorari denied 113 S.Ct. 1647, 507 U.S. 1005, 123 L.Ed.2d 269. Civil Rights 1376(9)

District attorney was not liable under this section to prisoner who alleged that deputy district attorney destroyed or permitted the destruction of exculpatory evidence related to the prosecution of the prisoner because if prisoner alleged that district attorney was directly involved in the decision not to preserve the evidence, he enjoyed absolute prosecutorial immunity, and there was no evidence that district attorney either trained deputy district attorney inadequately or failed to supervise him properly or that it was the custom or policy of the district attorney to fail to preserve evidence in order to deprive criminal defendants of a fair trial. Ybarra v. Reno Thunderbird Mobile

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Home Village, C.A.9 (Nev.) 1984, 723 F.2d 675. Civil Rights 1376(9)

In allegedly failing to preserve exculpatory evidence, which was removed on morning of trial, the prosecutor was acting in administrative or investigative role, rather than in an advocate role and, hence, was not entitled to absolute immunity from liability under this section but only to a qualified immunity. Henderson v. Fisher, C.A.3 (Pa.) 1980, 631 F.2d 1115, on remand 506 F.Supp. 579. Civil Rights 1376(9)

Alleged unlawful acts of prosecutors, including filing information without investigation, filing charges without jurisdiction, filing a baseless detainer, offering perjured testimony, suppressing exculpatory evidence, refusing to investigate complaints about prison system and threatening defendant with further criminal prosecutions, were a necessary and integral part of prosecutors' role and fell within prosecutorial immunity from civil suit under this section proscribing a deprivation of rights. Henzel v. Gerstein, C.A.5 (Fla.) 1979, 608 F.2d 654. Civil Rights 1376(9)

Notwithstanding acts and omissions of state prosecutor in withholding certain information and in failing to prevent or correct deceptive and misleading testimony deprived state defendant of constitutional right to fair trial, prosecutor was absolutely immune from liability for civil damages under this section. Hilliard v. Williams, C.A.6 (Tenn.) 1976, 540 F.2d 220. Civil Rights 1376(9); Civil Rights 1376(8)

Allegations that federal prosecutor conspired with a cooperating witness to use perjured testimony and to conceal exculpatory evidence in order to convict certain persons related to actions in the prosecutor's role as an advocate, rather than as an administrator or investigator, and he was thus immune from civil rights action predicated on those claims. Brawer v. Horowitz, C.A.3 (N.J.) 1976, 535 F.2d 830. Conspiracy 13

Prosecutors are absolutely immune in § 1983 actions for their decisions to prosecute, and withholding exculpatory evidence is quasi-judicial act protected by absolute immunity. Douris v. Schweiker, E.D.Pa.2002, 229 F.Supp.2d 391, reconsideration denied, affirmed 100 Fed.Appx. 126, 2004 WL 1396209. Civil Rights 1376(9)

Prosecutors are absolutely immune from § 1983 claims that they offered false testimony or suppressed material at trial, or suppressed exculpatory evidence. Malloy v. Coleman, M.D.Fla.1997, 961 F.Supp. 1568. Civil Rights 1376(9)

Prosecuting attorneys were absolutely immune from plaintiff's § 1983 claims that they prosecuted the wrong person and/or ignored exculpatory hearsay statements in course of their prosecution; alleged acts and omissions by prosecutors related solely to core prosecutorial functions. Rumfola v. Murovich, W.D.Pa.1992, 812 F.Supp. 569. Civil Rights 1376(9)

Former county state's attorney and assistant state's attorneys were not absolutely immune from § 1983 liability for their alleged suppression of exonerating evidence first discovered postconviction but then willfully withheld from both defense counsel and postconviction courts. Houston v. Partee, N.D.Ill.1991, 758 F.Supp. 1228, affirmed and remanded on other grounds 978 F.2d 362, certiorari denied 113 S.Ct. 1647, 507 U.S. 1005, 123 L.Ed.2d 269. Civil Rights 1376(9)

3520. Transcripts, prosecutorial immunity

Prosecutorial functions do not extend to supervision of trial transcript, and thus prosecutors are not immune from liability for damages for allegedly altering trial transcript. Slavin v. Curry, C.A.5 (Tex.) 1978, 574 F.2d 1256, opinion modified on other grounds, rehearing denied 583 F.2d 779. District And Prosecuting Attorneys 10

3521. Victim impact statements, prosecutorial immunity

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42 U.S.C.A. § 1983

Prosecutors are entitled to absolute immunity from § 1983 civil rights personal liability for failure to notify victims under victim impact law. Pusey v. City of Youngstown, C.A.6 (Ohio) 1993, 11 F.3d 652, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 2742, 512 U.S. 1237, 129 L.Ed.2d 862. Civil Rights 1376(9)

3522. Witnesses, prosecutorial immunity

Prosecutor's contacts with government witness in preparing her to testify at trial, and his interviews of other government witnesses with extensive criminal backgrounds, were all actions associated with prosecuting alleged criminal acts of suspect, and thus prosecutor was absolutely immune from liability on suspect's Fourth and Fourteenth Amendment claims under §§ 1983, although prosecutor had not undertaken active investigation beyond polygraph test to corroborate witnesses' statements. Reasonover v. St. Louis County, Mo., C.A.8 (Mo.) 2006, 447 F.3d 569. Civil Rights 1376(9)

Prosecutor who allegedly instructed State's witness to implicate defendant falsely in murder trial was acting as an advocate rather than as an investigator, and therefore, prosecutor was entitled to absolute immunity from defendant's §§ 1983 and 1985 claims; prosecutor's interview with witness was intended to secure evidence that would be used in the presentation of the state's case at the pending trial of an already identified suspect, not to identify a suspect or establish probable cause. Cousin v. Small, C.A.5 (La.) 2003, 325 F.3d 627, certiorari denied 124 S.Ct. 181, 540 U.S. 826, 157 L.Ed.2d 48. Civil Rights 1376(9)

Prosecutor's alleged detention of witnesses in district attorney's office during criminal trial to prevent them from testifying in criminal proceedings, while unlawful and improper, was nonetheless shielded by absolute immunity in §§ 1983 and 1985 suit. Cousin v. Small, C.A.5 (La.) 2003, 325 F.3d 627, certiorari denied 124 S.Ct. 181, 540 U.S. 826, 157 L.Ed.2d 48. Civil Rights 1376(9)

Federal prosecutor was entitled to only qualified immunity, not absolute immunity, from liability for alleged misconduct of intimidating and coercing witnesses into changing their testimony and disclosing grand jury testimony to unauthorized third parties, as such conduct was investigatory, not advocatory. Moore v. Valder, C.A.D.C.1995, 65 F.3d 189, 314 U.S.App.D.C. 209, rehearing and suggestion for rehearing in banc denied, certiorari denied 117 S.Ct. 75, 519 U.S. 820, 136 L.Ed.2d 35. District And Prosecuting Attorneys 10

Prosecutors were entitled to qualified immunity in arrestee's § 1983 action alleging that prosecutors obtained expert testimony implicating him from witness who was allegedly well-known for her willingness to fabricate unreliable expert testimony as their alleged action did not violate any well-established constitutional right; prosecutors' discussions with witness did not injure arrestee, and only decision to file charges and proffer testimony, for which prosecutors were entitled to absolute immunity, injured arrestee. Buckley v. Fitzsimmons, C.A.7 (Ill.) 1994, 20 F.3d 789, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 740, 513 U.S. 1085, 130 L.Ed.2d 642, on remand 1996 WL 10899. Civil Rights 1376(9)

Assistant district attorney general who failed to act timely in securing release of material witness from incarceration after being ordered by the court to work out the details of the release was not absolutely or qualifiedly immune from civil rights action by the material witness. White by Swafford v. Gerbitz, C.A.6 (Tenn.) 1988, 860 F.2d 661, certiorari denied 109 S.Ct. 1160, 489 U.S. 1028, 103 L.Ed.2d 219. Civil Rights 1376(9)

Assistant United States attorneys who allegedly communicated with prosecutors in another district in an attempt generally to prevent Drug Enforcement Administration (DEA) special agent from testifying in any court case were not entitled to absolute prosecutorial immunity in agent's civil rights action; attorneys were not performing an advocacy function in connection with a specific criminal prosecution. Maye v. Reno, D.D.C.2002, 231 F.Supp.2d 332. United States 50.10(2)

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Assistant county attorney, acting as witness instead of as prosecutor, was protected by qualified immunity on claim that he violated arrestee's Fourth Amendment rights by making allegedly untrue statements in an affidavit to support search warrant for arrestee's brother's car; affidavit was based on information provided to attorney by officer, officer stated he had been shown marijuana patch on property before arrestee was arrested, a car had been reported as trespassing on land, officer saw car hidden in hedgerow, and canine tracking unit backtracked from where arrestee came out of woods to marijuana patch. Dopp v. Rask, C.A.10 (Kan.) 2004, 91 Fed.Appx. 79, 2004 WL 119877, Unreported. Civil Rights 1375

3523. Condemnation proceedings, prosecutorial immunity

City attorney was entitled to absolute immunity in civil rights suit, in which landowners alleged that by initiating proceedings to condemn their one-acre parcel, city attorney violated their Fourteenth Amendment procedural and substantive due process and equal protection rights and violated the Racketeer Influenced and Corrupt Organizations Act (RICO), where city attorney was merely performing duties that were integrally part of the judicial process when he engaged in the challenged conduct. Parette v. Virden, C.A.8 (Ark.) 2006, 173 Fed.Appx. 534, 2006 WL 858271, Unreported. Civil Rights 1376(9)

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3551. Legislative immunity generally

Absolute legislative immunity from suit under § 1983 attaches to all actions of local officials taken in sphere of legitimate legislative activity. Bogan v. Scott-Harris, U.S.Mass.1998, 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79. Civil Rights 1376(4)

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Purpose of legislative immunity is to insure that legislative function may be performed independently without fear of outside interference. Supreme Court of Virginia v. Consumers Union of U. S., Inc., U.S.Va.1980, 100 S.Ct. 1967, 446 U.S. 719, 64 L.Ed.2d 641, on remand 505 F.Supp. 822. States 28(2)

Individual state legislators were entitled to absolute legislative immunity from official capacity suits under §§ 1983 for prospective relief. Scott v. Taylor, C.A.11 (Ga.) 2005, 405 F.3d 1251. Civil Rights 1376(3)

Under §§ 1983, absolute immunity attaches to all actions taken in sphere of legitimate legislative activity. Baird v. Board of Educ. for Warren Community Unit School Dist. No. 205, C.A.7 (Ill.) 2004, 389 F.3d 685, rehearing and suggestion for rehearing en banc denied, certiorari denied 126 S.Ct. 332, 163 L.Ed.2d 45. Civil Rights 1376(1)

Montana state legislators were entitled to absolute immunity from liability in § 1983 action brought by consumers, alleging that enactment of legislation deregulating state energy markets violated their constitutional rights. Single Moms, Inc. v. Montana Power Co., C.A.9 (Mont.) 2003, 331 F.3d 743, certiorari denied 124 S.Ct. 1415, 540 U.S. 1180, 158 L.Ed.2d 82. Civil Rights 1376(3)

Acts that are administrative in nature do not give rise to absolute legislative immunity from liability in damages under § 1983. Romero-Barcelo v. Hernandez-Agosto, C.A.1 (Puerto Rico) 1996, 75 F.3d 23. Civil Rights 1376(1)

To determine whether actions are to be regarded as legislative for immunity purposes, (1) action must be "substantively" legislative, which requires that it involve policy-making or line-drawing decision, and (2) action must be "procedurally" legislative, which requires that it be undertaken through established legislative procedures. Acierno v. Cloutier, C.A.3 (Del.) 1994, 40 F.3d 597. Municipal Corporations 170

Acts undertaken by legislators that are administrative in nature do not give rise to absolute immunity from liability in damages under § 1983. Negron-Gaztambide v. Hernandez-Torres, C.A.1 (Puerto Rico) 1994, 35 F.3d 25, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1098, 513 U.S. 1149, 130 L.Ed.2d 1066. Civil Rights 1376(1)

Not all actions taken by official with legislative duties are protected by absolute immunity from § 1983 suit; only those duties that are functionally legislative are protected. Hughes v. Tarrant County Tex., C.A.5 (Tex.) 1991, 948 F.2d 918. Civil Rights 1376(1)

In order for legislative immunity to attach, defendant seeking immunity from civil rights claim must demonstrate both that challenged functions performed by defendant were legislative, rather than managerial, and that functions were carried out pursuant to prescribed statutory procedures governing legislative enactments. Ryan v. Burlington County, N.J., C.A.3 (N.J.) 1989, 889 F.2d 1286. Civil Rights 1376(1)

Absolute immunity is accorded to legislators while acting in the course of their official duties. Johnson v. Reagan, C.A.9 (Cal.) 1975, 524 F.2d 1123. Judges 36; Officers And Public Employees 114

With respect to legislators and judges, the immunity doctrine may not be circumvented by allegations of improper motives; rather, the availability of the immunity depends on the character of the conduct under attack. Hampton v. City of Chicago, Cook County, Ill., C.A.7 (Ill.) 1973, 484 F.2d 602, certiorari denied 94 S.Ct. 1413, 415 U.S. 917, 39 L.Ed.2d 471, certiorari denied 94 S.Ct. 1414, 415 U.S. 917, 39 L.Ed.2d 471. Civil Rights 1376(1); Civil Rights 1376(8)

Section 1983 legislative immunity did not protect mayor in political discrimination action brought by lessors of vendor kiosk located in public market on city-owned property, alleging that lessors' political affiliation was

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motivating factor in mayor's refusal to permit enlargement of their kiosk; regardless of mayor's contention that challenged actions flowed from local legislative plans to remodel public market, lessors were alleging selective application of those plans, i.e. that mayor's actions were administrative. Rodriguez Cruz v. Trujillo, D.Puerto Rico 2006, 443 F.Supp.2d 240. Civil Rights 1376(4)

"Legislative immunity" protects legislator from being sued under § 1983 in his or her individual capacity for legitimate legislative acts. Gordon v. Katz, S.D.N.Y.1995, 934 F.Supp. 79, reconsideration denied, affirmed 101 F.3d 1393. Civil Rights 1376(1)

Legislators acting within a traditional legislative capacity are immune from damages under civil rights statute. Bennett v. Batchik, E.D.Mich.1990, 743 F.Supp. 1245, affirmed 936 F.2d 572. Civil Rights 1376(1)

Properly delegated legislative acts enjoy absolute immunity. Johnson v. Reno Police Chief, D.Nev.1989, 718 F.Supp. 36. Officers And Public Employees 114

Individual defendants are entitled to absolute immunity from liability under federal civil rights statute for those actions which they take while functioning in their traditional legislative capacity. Epstein v. Township of Whitehall, E.D.Pa.1988, 693 F.Supp. 309. Civil Rights 1376(1)

3552. Common law, legislative immunity

State and regional legislators have absolute federal common law immunity from liability for damages occasioned by their legislative acts, an immunity which Congress left undisturbed with its passage of the civil rights provision now codified in this section. Gorman Towers, Inc. v. Bogoslavsky, C.A.8 (Ark.) 1980, 626 F.2d 607. Civil Rights 1376(1); Officers And Public Employees 114

Legislators are immune from liability for damages for official acts within legislative role and the immunity was not abolished by this section providing for civil action for deprivation of rights. C. M. Clark Ins. Agency, Inc. v. Maxwell, C.A.D.C.1973, 479 F.2d 1223, 156 U.S.App.D.C. 240. Civil Rights 1376(1)

Common law immunity from suit afforded legislative and judicial officers continues to have force in suits brought under this section. Jobson v. Henne, C.A.2 (N.Y.) 1966, 355 F.2d 129. Civil Rights 1376(1)

This section did not abrogate pre-existing absolute immunity of judicial and legislative officers from civil liability for acts performed in course of their official duties. Morgan v. Sylvester, S.D.N.Y.1954, 125 F.Supp. 380, affirmed 220 F.2d 758, certiorari denied 76 S.Ct. 112, 350 U.S. 867, 100 L.Ed. 768, rehearing denied 76 S.Ct. 201, 350 U.S. 919, 100 L.Ed. 805. Civil Rights 1376(1); Civil Rights 1376(8)

3553. Status as legislative official generally, legislative immunity

Local legislators are absolutely immune from suit under § 1983 for their legislative activities. Bogan v. Scott-Harris, U.S.Mass.1998, 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79. Civil Rights 1376(4)

Legislators, whether federal, state, or regional, are entitled to absolute immunity from federal damages liability insofar as they act in their legislative capacities. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, U.S.Nev.1979, 99 S.Ct. 1171, 440 U.S. 391, 59 L.Ed.2d 401, on remand 474 F.Supp. 901. Civil Rights 1376(1)

Absolute immunity for legislative acts attaches to federal legislature, state legislature, and regional public officials. Acevedo-Cordero v. Cordero-Santiago, C.A.1 (Puerto Rico) 1992, 958 F.2d 20. Municipal Corporations 170; States 28(2); United States 12

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42 U.S.C.A. § 1983

Local legislators are protected by absolute immunity when they act in their legislative capacities. Shoultes v. Laidlaw, C.A.6 (Mich.) 1989, 886 F.2d 114. Municipal Corporations 170

Legislators of any political subdivision of a state are absolutely immune from civil rights liability insofar as they are acting in a legislative capacity. Haskell v. Washington Tp., C.A.6 (Ohio) 1988, 864 F.2d 1266. Civil Rights 1376(4)

Although there is an immunity under this section in favor of local legislators for conduct in furtherance of their legislative duties, no immunity exists for actions outside the sphere of legitimate legislative activity; it is the official function that determines degree of immunity required, not the status of the acting officer. Espanola Way Corp. v. Meyerson, C.A.11 (Fla.) 1982, 690 F.2d 827, certiorari denied 103 S.Ct. 1431, 460 U.S. 1039, 75 L.Ed.2d 791. Civil Rights 1376(4)

If legislators of any political subdivision of state function in a legislative capacity, they are absolutely immune from being sued under provisions of this section. Bruce v. Riddle, C.A.4 (S.C.) 1980, 631 F.2d 272. Civil Rights 1376(4)

Local legislators named in their individual capacities are absolutely immune from civil rights liability under § 1983 if conduct giving rise to potential liability was in legislative capacity. Sims v. City of New London, D.Conn.1990, 738 F.Supp. 638. Civil Rights 1376(4)

Local officials performing legislative functions are absolutely immune from damages in §§ 1983 and 1985 suits. Jodeco, Inc. v. Hann, D.N.J.1987, 674 F.Supp. 488. Civil Rights 1376(1)

Reason for privilege of legislative immunity is to encourage public legislative representatives to discharge their duties with fullest measure of freedom of speech and action, and such privilege extends to federal, state and regional legislators. Rheuark v. Shaw, D.C.Tex.1979, 477 F.Supp. 897, affirmed in part, reversed in part 628 F.2d 297, certiorari denied 101 S.Ct. 1392, 450 U.S. 931, 67 L.Ed.2d 365. Counties 59; States 28(2); United States 12

3554. Nature of acts, legislative immunity

Whether act is "legislative," so as to confer absolute immunity from suit under § 1983 on local official performing act, turns on nature of act, rather than on motive or intent of official performing it. Bogan v. Scott-Harris, U.S.Mass.1998, 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79. Civil Rights 1376(4)

Mere fact that the county council retained authority to grant conditional use permits (CUP) did not necessarily imply that granting CUPs involved policy-making, for purpose of analysis whether denial of a CUP was a legislative act so as to entitle the council members to absolute legislative immunity under § 1983; the council's decision to grant or deny a CUP was not a derogation from the county's comprehensive zoning ordinance, but rather, was an individualized determination that the proposed use was similar, related, or compatible to permitted uses. Kaahumanu v. County of Maui, C.A.9 (Hawai'i) 2003, 315 F.3d 1215. Civil Rights 1376(4)

Determination of whether an activity is "legislative," for purposes of applying absolute legislative immunity from § 1983 action, must be made without regard to legislators' subjective intent; whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it. Canary v. Osborn, C.A.6 (Ohio) 2000, 211 F.3d 324, certiorari denied 121 S.Ct. 304, 531 U.S. 927, 148 L.Ed.2d 244. Civil Rights 1376(1)

Under second part of two-part analysis for determining whether public official's act is legislative, such that official is entitled to absolute immunity from § 1983 claim, court must consider particularity of impact of state of action; if action involves establishment of general policy, it is legislative, but if it singles out specifiable individuals and

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affects them differently from others, it is administrative. Acevedo-Garcia v. Vera-Monroig, C.A.1 (Puerto Rico) 2000, 204 F.3d 1. Civil Rights 1376(1)

County chief executive officer (CEO) was entitled to absolute legislative immunity from manager's free speech retaliation claim under §§ 1983, inasmuch as CEO's submission of budget, which abolished manager's position, was legislative in nature. Bryant v. Jones, N.D.Ga.2006, 464 F.Supp.2d 1273. Civil Rights 1376(10)

Enforcement by a fire district's auditor and moderator of a rule of order which prohibited nonresidents from speaking or otherwise participating in the district's annual meeting was a legislative act, and thus, the moderator was protected by absolute legislative immunity from §§ 1983 liability on First Amendment claims asserted by a firefighter against whom the rule was enforced; moderator was enforcing a general policy, and did not target specific individuals for their views. Carlow v. Mruk, D.R.I.2006, 425 F.Supp.2d 225. Civil Rights 1376(4)

Government officials are entitled to absolute legislative immunity only when they take actions that are an integral part of the deliberative and communicative process by which they participate in proceedings with respect to the consideration and passage of legislation; however, legislators' administrative acts, such as employment decisions, are not entitled to legislative immunity even though those decisions are made through votes. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla., S.D.Fla.2004, 333 F.Supp.2d 1305. Municipal Corporations 170

Actions that are integral steps in legislative process or bear all the hallmarks of traditional legislation are within bounds of legislative immunity from § 1983 claims; decisions encompassing discretion and policymaking, including services to constituents, are considered integral steps in legislative process. Thornton v. City of St. Helens, D.Or.2002, 231 F.Supp.2d 1019. Civil Rights 1376(1)

3555. Particular acts, legislative immunity

City manager and city planner were not entitled to legislative immunity in wrecking yard owners' §§ 1983 due process action alleging improper delays in processing of owners' application for city approval of state wrecking license renewal; planner's and manager's jobs were administrative, and they were sued for performing administrative act. Thornton v. City of St. Helens, C.A.9 (Or.) 2005, 425 F.3d 1158. Civil Rights 1376(4)

Limited number of people impacted by county council's denial of conditional use permit (CUP) to allow operator of commercial wedding business to conduct weddings on beach-front residential property weighed against a finding that the decision was a legislative act so as to entitle the council members to absolute legislative immunity under § 1983, even if granting one application for a CUP would make it politically difficult for the council to deny a similar application from someone else, as a grant would have no legal effect on subsequent council decisions. Kaahumanu v. County of Maui, C.A.9 (Hawai'i) 2003, 315 F.3d 1215. Civil Rights 1376(4)

Prohibition on videotaping of an annual meeting of a fire district except by members of the press, imposed by the district's auditor and moderator, was a legislative act, and thus, the moderator was protected by absolute legislative immunity from §§ 1983 liability on First Amendment claims asserted by firefighters against whom the prohibition was applied; moderator was enforcing a rule of order which applied to all members of the public, which was designed to ensure that he could conduct the meeting without distraction and that the voters could speak without feeling intimidated, and which had been endorsed by a majority of the voters. Carlow v. Mruk, D.R.I.2006, 425 F.Supp.2d 225. Civil Rights 1376(4)

Town officials' alleged actions of intentionally violating, and actively seeking to silence, free speech rights of town clerk and deputy town clerk, and retaliating against town clerk and deputy town clerk for exercising their First Amendment rights, if proven, were outside officials' legislative authority, and thus were not basis for absolute immunity from town clerk and deputy town clerk's §§ 1983 claims. Denton v. McKee, S.D.N.Y.2004, 332

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42 U.S.C.A. § 1983

F.Supp.2d 659. Civil Rights 1376(10)

County supervisors were not engaged in legislative activity when they decided whether to indemnify deputy sheriffs for punitive damage awards, and therefore were not entitled to absolute immunity on claim that their policy and custom of indemnifying deputy sheriffs for punitive damage awards operated to cause constitutional violations by deputy sheriffs. Hawkins v. Baca, C.D.Cal.2000, 114 F.Supp.2d 987. Civil Rights 1376(4)

Introduction of proposed budget and subsequent signing into law of ordinance adopting budget are legislative functions for which executive officials enjoy absolute immunity from § 1983 liability regardless of their motive or intent. Hiller v. County of Suffolk, E.D.N.Y.2000, 81 F.Supp.2d 420. Civil Rights 1376(4)

3556. Attorneys, legislative immunity

Where counsel acts only in role of legislative aid to a legislative committee, counsel enjoys the same immunity as do the committee members from liability under this section. Green v. DeCamp, C.A.8 (Neb.) 1980, 612 F.2d 368. Civil Rights 1376(3)

3557. Bar associations and members, legislative immunity

Although absolute judicial immunity did not apply to State Committee of Bar Examiners' promulgation of general rules relating to scoring of bar exams, members of Committee were immune from suits for damages based on such official legislative act of establishing rules governing bar admissions. Levanti v. Tippen, S.D.Cal.1984, 585 F.Supp. 499. Attorney And Client 7

3558. Borough officials, legislative immunity

Borough council's abolishment of local police force by vote rather than by enactment of an ordinance was not a proper exercise of the council's legislative powers so as to entitle its members to absolute legislative immunity from suit brought by former members of force under § 1983, notwithstanding claim that, because council possessed authority to abolish police force, failure to enact ordinance was at most a procedural error which did not divest members of legislative immunity; applicable Pennsylvania statute indicated that a borough's legislative powers were to be exercised by or be based on an ordinance, and the ordinance procedure, including notice and comment requirements, served legitimate purposes. Donivan v. Dallastown Borough, C.A.3 (Pa.) 1987, 835 F.2d 486, certiorari denied 108 S.Ct. 1596, 485 U.S. 1035, 99 L.Ed.2d 910. Civil Rights 1376(10)

Former borough councilman performed legislative act, in voting not to fund promotion of police officer to lieutenant position, and consequently had absolute immunity from § 1983 suit brought by officer; officer's action fell within the discretionary, budgetary functions traditionally assigned to legislators. Scully v. Borough of Hawthorne, D.N.J.1999, 58 F.Supp.2d 435. Civil Rights 1376(10)

3559. Counties, legislative immunity

County was not entitled to legislative immunity from liability in § 1983 action brought by former employees, alleging that they were improperly fired for having supported a particular political candidate; doctrine of legislative immunity, if applied to county, would cut away core principle of *Monell* that local governments should be held liable for losses they cause. Carver v. Foerster, C.A.3 (Pa.) 1996, 102 F.3d 96. Civil Rights 1376(10)

Absolute legislative immunity did not apply to county in civil rights action. Fry v. Board of County Com'rs of County of Baca, D.Colo.1991, 837 F.Supp. 330, affirmed 7 F.3d 936, rehearing denied. Civil Rights 1376(4)

3560. County officials, legislative immunity--Generally

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42 U.S.C.A. § 1983

In suit brought by nurses against county officials who allegedly acted in concert to harass nurses' association and to discriminate against its members, claim of absolute legislative immunity was inapplicable to the county employee relations director and the county personnel director, both of whom are nonlegislative employees of the county. Thomas v. Younglove, C.A.9 (Cal.) 1976, 545 F.2d 1171. Civil Rights 1376(10)

Members of county legislature were entitled to absolute immunity for actions taken in legislative capacity to reorganize department of social services, despite claim that the reorganization was undertaken to remove employees of one political party. Orange v. County of Suffolk, E.D.N.Y.1993, 830 F.Supp. 701. Civil Rights 1376(10)

High level county officials' alleged repeated actions designed to wrongfully terminate employment of employee working for county agencies were not performed solely in legislative capacity so as to make individual officials absolutely immune in civil rights action under 42 U.S.C.A. § 1983 by allegedly wrongfully discharged employee pursuant to legislative immunity, where termination of employee did not involve promulgation of general or prospective legislation despite policy implemented through decision resulting in termination, but rather, case involved employment decision involving one individual. Kuchka v. Kile, M.D.Pa.1985, 634 F.Supp. 502. Civil Rights 1376(10)

3561. ---- Board members, county officials, legislative immunity

African-American county commissioners board members' vote to appoint an African-American clerk to replace white female clerk was an administrative act not protected by legislative immunity in § 1983 action brought by the white female clerk alleging equal protection violation. Smith v. Lomax, C.A.11 (Ga.) 1995, 45 F.3d 402. Civil Rights 1376(10)

Decision by county board of supervisors to terminate public works superintendent was not a legislative action by board members acting in their legislative capacities and, thus, neither county board members nor board itself were absolutely immune from liability in former superintendent's § 1983 civil rights claim arising out of termination. Roberson v. Mullins, C.A.4 (Va.) 1994, 29 F.3d 132. Civil Rights 1376(10)

Members of county board of freeholders were not entitled to absolute legislative immunity from civil rights claim of pretrial detainee who was assaulted by inmate in county jail, notwithstanding members' contention that their decision to operate existing jail while building a new one and their decision not to pay for additional security officers were legislative acts, where decisions were not reached in legislative manner by means of resolution or ordinance. Ryan v. Burlington County, N.J., C.A.3 (N.J.) 1989, 889 F.2d 1286. Civil Rights 1376(7)

Individual members of county board of supervisors, who enacted ordinance relating to wireless telecommunications facilities, had absolute legislative immunity to §§ 1983 claim brought by federally licensed provider of commercial mobile radio service under Telecommunications Act (TCA), since there was no set of circumstances under which provider could have established that act of enacting ordinance was not legislative act. Sprint Telephony PCS, L.P. v. County of San Diego, S.D.Cal.2004, 311 F.Supp.2d 898, opinion clarified 2004 WL 859333. Civil Rights 1376(4)

Individual members of county board of supervisors were entitled to absolute immunity from liability with respect to their denial of applications for conditional use permits if their actions could be considered "legislative" function under state law. Pendleton Const. Corp. v. Rockbridge County, Va., W.D.Va.1987, 652 F.Supp. 312, affirmed 837 F.2d 178. Civil Rights 1376(4)

Individual members of county board accused of introducing, debating and adopting allegedly unconstitutional resolution providing for mandatory retirement at age 55 for all nonelective protective occupation employees of county were absolutely immune from action alleging that such resolution was an violation of equal protection

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clause of U.S.C.A. Const. Amend. 14. Heiar v. Crawford County, Wis., W.D.Wis.1983, 558 F.Supp. 1175. Civil Rights 1376(10)

County board of supervisors was immune from claim for punitive damages based on alleged constitutional deprivations in rezoning property adjacent to plaintiff's tract. Tolbert v. Nelson County, W.D.Va.1981, 527 F.Supp. 836. Civil Rights 1376(4)

Members of county board of supervisors were entitled to absolute immunity for their conduct, within the legislative function of making zoning decisions or deliberations, in down zoning area in questions and in disapproving plaintiff's plan of development, but board members were not exempt from conduct alleged which was beyond that necessary to perform duties in establishing zoning policies. Fralin & Waldron, Inc. v. Henrico County, Va., E.D.Va.1979, 474 F.Supp. 1315. Civil Rights 1376(4)

3562. ---- Commissioners, county officials, legislative immunity

County commissioners' vote to ban attendee from all future commission meetings after he protested award of bid to his employer's competitor, and commissioners' subsequent decision to prohibit attendee from participating in or speaking before commission meetings, were administrative rather than legislative acts, even assuming that board acted in relation to business of awarding bids, and commissioners thus were not legislatively immune from attendee's § 1983 action alleging violation of his free speech rights. Kamplain v. Curry County Bd. of Com'rs, C.A.10 (N.M.) 1998, 159 F.3d 1248. Civil Rights 1376(4)

County commissioners were entitled to absolute legislative immunity from any liability under § 1983 in action alleging that commissioners and landowners jointly conceived and executed plan to vacate road in retaliation for property owners' exercise of First Amendment rights and in violation of due process and equal protection; any individual motive which guided any commissioner was irrelevant where decision to vacate was made following open public meeting in which all parties were heard. Fry v. Board of County Com'rs of County of Baca, State of Colo., C.A.10 (Colo.) 1993, 7 F.3d 936, rehearing denied. Civil Rights 1376(4)

Doctrine of legislative immunity was complete defense for county officials against claims that elimination of former county employee's position and refusal to hire her for another position violated her rights of free speech and association, and also barred her state law claim for intentional infliction of emotional distress; she failed to show that her political affiliation was determining factor in county board of commissioners' legislative decisions to abolish position that she had held and position for which she applied. Hollyday v. Rainey, C.A.4 (N.C.) 1992, 964 F.2d 1441, certiorari denied 113 S.Ct. 636, 506 U.S. 1014, 121 L.Ed.2d 567. Civil Rights 1376(10); Counties 59

County commissioners were entitled to absolute legislative immunity from § 1983 suit challenging imposition of temporary moratorium on issuance of permits for mobile homes; by enacting resolution imposing temporary moratorium of general application on issuance of mobile home permits for specified area of county until revised zoning development plan could be reviewed, individual county commissioners were performing traditional legislative function; moreover, even if conspiracy or bad faith could be proved, unworthy purpose does not preclude absolute immunity for legislators acting in their legislative capacity. Brown v. Crawford County, Ga., C.A.11 (Ga.) 1992, 960 F.2d 1002. Civil Rights 1376(4)

Other county commissioners, who were accused of not acting to prevent first commissioner, to whom personnel decisions at hospital were delegated, from making allegedly discriminatory personnel decisions even after other commissioners received several complaints, were charged with improper "legislative activity," in civil rights suit against them, and thus were protected by legislative immunity; only lawful action other commissioners could have taken to stop alleged improper personnel decisions would have been to redistribute assignments, by introduction of resolution to that effect and unanimous vote by all of commissioners. Yeldell v. Cooper Green Hosp., Inc., C.A.11

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42 U.S.C.A. § 1983

(Ala.) 1992, 956 F.2d 1056. Civil Rights 1376(10)

County commissioners' refusal to compensate state district court clerk for attorney fees incurred in contempt proceeding was not legislative, and, thus, commissioners were not entitled to absolute legislative immunity from § 1983 suit; decision was based on specific facts of individual situation, rather than general facts regarding policy, and did not purport to establish general policy. Hughes v. Tarrant County Tex., C.A.5 (Tex.) 1991, 948 F.2d 918. Civil Rights 1376(4)

County commissioners enjoyed legislative immunity in § 1983 suit challenging constitutionality of ordinances requiring licensing of adult entertainment facilities. Redner v. Citrus County, Florida, C.A.11 (Fla.) 1990, 919 F.2d 646, rehearing denied 935 F.2d 1297, certiorari denied 112 S.Ct. 303, 502 U.S. 909, 116 L.Ed.2d 246. Civil Rights 1376(4)

County commissioners, who were entitled to absolute immunity for their legislative actions in establishing unconstitutional minority and women business enterprise (MWBE) programs establishing "participation goals" for minority and women business enterprises in awarding county architectural and engineering (A & E) contracts, were acting in an administrative, rather than legislative, capacity when they voted to apply performance goals to specific county A & E contracts, and therefore they were not entitled to absolute legislative immunity with respect to those actions. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla., S.D.Fla.2004, 333 F.Supp.2d 1305. Civil Rights 1376(4)

Decision by county board of commissioners to continue to maintain Ten Commandments as part of statue within courtroom until ordered by court to remove them constituted policy-making decision on behalf of citizens of county and was "legislative act" for which commissioners were entitled to legislative immunity, not just from liability but from defense of lawsuit brought by citizen under § 1983, despite fact that board never actually passed ordinance concerning Ten Commandments. Suhre v. Board of Com'rs, W.D.N.C.1995, 894 F.Supp. 927, reversed 131 F.3d 1083, on remand 55 F.Supp.2d 384. Civil Rights 1376(4)

Under doctrine of legislative immunity, county commissioners were immune from liability in their official capacities for damages arising out of employee's termination, as determination of claims against commissioners in their official capacities would necessarily involve testimony from commissioners as to their motivation in enacting resolution to declassify all employee positions in commissioners' office; it was not appropriate to inquire into commissioners' motivations in changing status of certain employees in terminated employee's § 1983 action. Racine v. Cecil County, Md., D.Md.1994, 843 F.Supp. 53. Civil Rights 1376(10)

County commissioners' vote to terminate employees of commissioners' office was executive in nature and, therefore, commissioners were not entitled to absolute immunity from employees' § 1983 action, but enjoyed only qualified immunity, because vote neither applied to general community, nor involved promulgation of legislative policy as defined and binding rule of conduct. Christian v. Cecil County, Md., D.Md.1993, 817 F.Supp. 1279. Civil Rights 1376(10)

County commissioners were entitled to absolute legislative immunity for performing their legislative functions in approving budgets for maintenance of county jail, where approved budgets appeared to adequately maintain jail in order to meet constitutional standards. Lane v. Hutcheson, E.D.Mo.1992, 794 F.Supp. 877. Counties 59

3563. ---- Council members, county officials, legislative immunity

For the purpose of analyzing whether county council's denial of conditional use permit (CUP) to allow operator of commercial wedding business to conduct weddings on beach-front residential property was a legislative act so as to entitle the council members to absolute legislative immunity under § 1983, the decision was "ad hoc" where it was

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made based on the circumstances of the particular case and did not effectuate policy or create a binding rule of conduct; although granting permit would require council's enactment of ordinance and decision involved exercise of considerable discretion, the ordinance would be specific rather than general, affecting only the parcel of land at issue, and the decision involved administering policies set out in county code. Kaahumanu v. County of Maui, C.A.9 (Hawai'i) 2003, 315 F.3d 1215. Civil Rights 1376(4)

County zoning officials in enacting ordinance which rezoned single parcel of land to less intensive use were acting in substantively legislative manner for purposes of determining whether they were entitled to legislative immunity. Acierno v. Cloutier, C.A.3 (Del.) 1994, 40 F.3d 597. Zoning And Planning 355

Individual county council members were entitled to absolute legislative immunity from liability to landowner for alleged deprivation of landowner's civil rights due to alleged diminution in value of landowner's real property as result of zoning ordinance which he claimed was unconstitutionally enacted by the council since the members were acting within scope of their legislative activity when they voted on the ordinance, even though that had previously met with partisans to one side of the zoning controversy. Bruce v. Riddle, C.A.4 (S.C.) 1980, 631 F.2d 272. Civil Rights 1376(4)

Plaintiffs, holding title to the property as trustees, could not overcome absolute immunity and impose personal liability on defendant members of Montgomery County council for rezoning actions which Maryland Court of Appeals found constitutionally valid despite claim that actions denied the plaintiffs the right to equal protection and deprived plaintiffs of their constitutional right not to have their property taken without just compensation. Ligon v. State of Md., D.C.Md.1977, 448 F.Supp. 935. Civil Rights 1376(4)

Members of county council in approving change of zone of property owned by plaintiff from commercial to residential were acting within scope of legitimate legislative activity and no personal liability could be imposed on them under this section for doing so. Shellburne, Inc. v. New Castle County, D.C.Del.1968, 293 F.Supp. 237. Civil Rights 1376(4)

3564. ---- County executives, county officials, legislative immunity

County chief executive officer's (CEO) executive assistant was not entitled to absolute legislative immunity from manager's retaliatory discharge and free speech claim under §§ 1983, even though CEO's submission of budget, which abolished manager's position, was legislative in nature, where executive assistant did not decide final budget to be submitted, did not introduce final version for approval, and did he take any other act that could be deemed legislative. Bryant v. Jones, N.D.Ga.2006, 464 F.Supp.2d 1273. Civil Rights 1376(10)

County legislators' decisions concerning the creation and subsequent abolition of county dispatch supervisor position were legislative functions, and therefore, legislators were entitled to absolute immunity from civil county employee's § 1983 claim; although there were comments regarding employee's connection with the positions, the overall question was whether to authorize such a position. Pfeiffer v. Lewis County, N.D.N.Y.2004, 308 F.Supp.2d 88. Civil Rights 1376(10); Civil Rights 1529; Labor And Employment 2458

Action of county executive in signing budget resolution which created some positions and eliminated others was legislative in nature and he was thus entitled to absolute legislative immunity with respect to civil rights suit brought by county employees who alleged that their discharge or transfer as a result of the budget resolution was due to political affiliation. Orange v. County of Suffolk, E.D.N.Y.1993, 830 F.Supp. 701. Civil Rights 1376(10)

3565. Courts and judges, legislative immunity

In promulgating Virginia Code of Professional Responsibility, Virginia Supreme Court acted in legislative capacity

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and, in that capacity, Court and its members were immune from suit. Supreme Court of Virginia v. Consumers Union of U. S., Inc., U.S.Va.1980, 100 S.Ct. 1967, 446 U.S. 719, 64 L.Ed.2d 641, on remand 505 F.Supp. 822. Civil Rights 1376(8)

Circuit court judge's orders in domestic relations cases did not rise to level of rule making in clear absence of jurisdiction, as would expose judge to liability for money damages. Mann v. Conlin, C.A.6 (Mich.) 1994, 22 F.3d 100, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 126. Judges 36

Illinois Supreme Court, Supreme Court's Attorney Registration and Disciplinary Commission (ARDC) and Northern District of Illinois Executive Committee were immune from money damages under § 1983 in connection with adoption by Illinois Supreme Court and federal district court of disciplinary rules forbidding lawyers from assisting laypersons in unauthorized practice of law and from entering into partnerships with nonlawyers; Supreme Court, ARDC and executive committee were state actors performing acts in their legislative capacity. Lawline v. American Bar Ass'n, C.A.7 (Ill.) 1992, 956 F.2d 1378, certiorari denied 114 S.Ct. 551, 510 U.S. 992, 126 L.Ed.2d 452. Civil Rights 1376(8)

Justices of Michigan Supreme Court were acting within their legislative capacity in promulgating mediation rule, and, thus, court and its justices were entitled to legislative immunity from civil rights action; immunity applied whether relief sought was money damages or injunctive relief. Alia v. Michigan Supreme Court, C.A.6 (Mich.) 1990, 906 F.2d 1100, rehearing denied. Civil Rights 1376(8)

Although challenged disciplinary rule of Virginia Supreme Court was unconstitutional except as applied to criminal jury trials, inasmuch as Virginia Supreme Court was acting in legislative capacity in promulgating disciplinary rule, it was absolutely immune, and no award of attorney's fees would be made against Court under this section. Hirschkop v. Snead, C.A.4 (Va.) 1981, 646 F.2d 149. Civil Rights 1480

In federal civil rights action challenging Alabama's bar examination and admission process, individual justices of Alabama Supreme Court, and members of Alabama State Bar and Board of Bar Examiners, were entitled to absolute legislative immunity as to all claims for damages against them for their respective roles in promulgating rules governing admission to Alabama State Bar. McFarland v. Folsom, M.D.Ala.1994, 854 F.Supp. 862. Civil Rights 1376(3); Civil Rights 1376(8)

3566. Education and school officials, legislative immunity

School board members were not absolutely immune from §§ 1983 liability for superintendent's termination on theory that determination of rules and procedures, participation in pretermination hearing and individual decisions to terminate superintendent were legislative acts; termination of employee was administrative act. Baird v. Board of Educ. for Warren Community Unit School Dist. No. 205, C.A.7 (Ill.) 2004, 389 F.3d 685, rehearing and suggestion for rehearing en banc denied, certiorari denied 126 S.Ct. 332, 163 L.Ed.2d 45. Civil Rights 1376(10)

School board members' actions in allegedly denying tenured Connecticut art teacher terminated as result of budgetary cutbacks the opportunity to be reappointed to position for which she was qualified were administrative in nature and thus did not qualify for legislative immunity; board did not engage in broad prospective policymaking characteristic of legislative action but instead "tabled" another art teacher's resignation, albeit by board vote, a decision only directed to his situation and not implicating any board policy. Harhay v. Town of Ellington Bd. of Educ., C.A.2 (Conn.) 2003, 323 F.3d 206, on remand 2006 WL 861058. Civil Rights 1376(10); Schools 62

The members of a university's board of regents who approved a prior consent decree containing pay increases for female faculty members were not entitled to legislative immunity from male faculty member's § 1983 action

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alleging discriminatory pay scale, even though board members were elected to their position by the state legislature, since board members were not acting as legislators, but rather administrators of university. Maitland v. University of Minnesota, C.A.8 (Minn.) 2001, 260 F.3d 959, rehearing and rehearing en banc denied, certiorari denied 122 S.Ct. 1300, 535 U.S. 929, 152 L.Ed.2d 212. Civil Rights 1376(10)

Acting school committee chairperson was not absolutely immune from suit brought by committee member alleging that chairperson's ordering his ejection from meeting violated his free speech rights and constituted intentional infliction of emotional distress; subject of dispute leading to ejection was propriety of using certain funds to hire certain teachers, an administrative matter to which absolute immunity did not attach. Vacca v. Barletta, C.A.1 (Mass.) 1991, 933 F.2d 31, certiorari denied 112 S.Ct. 194, 502 U.S. 866, 116 L.Ed.2d 154. Civil Rights 1376(5); Schools 62

Secretary of community college's board of trustees enjoyed no absolute immunity from liability for claims that she, acting on her own behalf and as agent for college, intentionally and/or recklessly discriminated against white male administrators by falsely accusing them of racism and sexism. Chonich v. Wayne County Community College, C.A.6 (Mich.) 1989, 874 F.2d 359. Libel And Slander 36

Although regents of state university were given power to enact laws for government of university, they were essentially administrators who oversaw operation of state educational institution; thus, doctrine of legislative immunity under this section did not shield regents' decision to establish refund system for university's newspaper motivated at least in part by offensive issue of newspaper. Stanley v. Magrath, C.A.8 (Minn.) 1983, 719 F.2d 279. Civil Rights 1376(5)

Superintendent of school district and elected members of board of education of that district were not absolutely immune from suit by probationary public school teachers who alleged they had been discriminatorily discharged for their union membership. McLaughlin v. Tilendis, C.A.7 (Ill.) 1968, 398 F.2d 287. Civil Rights 1376(10)

School board members effectively eliminated position of director of elementary education when they transferred its occupant to teaching position and reassigned her duties to existing administrative personnel, meaning their actions were legislative and they were entitled to legislative immunity in her political discrimination case under §§ 1983; while board meeting's minutes did not explicitly state that position was eliminated, no person had held that position since she was transferred, and employment advertisement placed by board on occasion of retirement of office member to whom her former responsibilities had been reassigned indicated that position had been eliminated. Chadwell v. Lee County School Bd., W.D.Va.2006, 457 F.Supp.2d 690. Civil Rights 1376(10)

School board members, in their individual capacities, were acting in capacity of school officials when they brought temporary restraining order (TRO) action against former president of parent teacher association (PTA) and candidate for trustee of school board and, therefore, were not entitled to absolute immunity from president's and candidate's § 1983 claim. Mazza v. Hendrick Hudson Cent. School Dist., S.D.N.Y.1996, 942 F.Supp. 187. Civil Rights 1376(5)

Federal retaliation and conspiracy claims against local school board members by school district employee based on formulation of reorganization plan and votes which effectively eliminated employee's position from budget did not state a cause of action, regardless of whether adoption of the plan was a "ruse" to transfer and effectively demote the employee; the allegedly improper actions were legislative acts for which school board members were cloaked with absolute legislative immunity. Callaway v. Hafeman, W.D.Wis.1986, 628 F.Supp. 1478, affirmed 832 F.2d 414. Conspiracy 18; Schools 62

3567. Executive officials, legislative immunity

Absolute legislative immunity may be appropriate if act is legislative in nature, regardless of whether actor's office

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is in executive, judicial, or legislative branch of government. Redwood Village Partnership v. Graham, D.N.D.1993, 819 F.Supp. 867, affirmed 26 F.3d 839, certiorari denied 115 S.Ct. 423, 513 U.S. 962, 130 L.Ed.2d 337. Municipal Corporations 170

Legislative immunity is not applicable to acts of executive officer in a generally executive function. Keker v. Procunier, E.D.Cal.1975, 398 F.Supp. 756. Officers And Public Employees 114

3568. Municipalities, legislative immunity

Town was not entitled to absolute legislative immunity from damage alleged to have been suffered by supernumerary police officer when town, by legislative action, eliminated his job in retaliation for his having supported chief of police on controversial issue; there was no immunity defense, either qualified or absolute, available to municipality sought to be held liable under § 1983. Goldberg v. Town of Rocky Hill, C.A.2 (Conn.) 1992, 973 F.2d 70. Civil Rights 1376(10)

City was not entitled to legislative immunity from damages arising from its zoning regulations if those zoning regulations resulted in "taking" of private property for public use without just compensation. Hernandez v. City of Lafayette, C.A.5 (La.) 1981, 643 F.2d 1188, rehearing denied 649 F.2d 336, certiorari denied 102 S.Ct. 1251, 455 U.S. 907, 71 L.Ed.2d 444. Eminent Domain 285

3569. Municipal or city officials, legislative immunity--Generally

Municipal legislators have absolute immunity from civil rights suit for actions taken in legislative capacity. Gorman Towers, Inc. v. Bogoslavsky, C.A.8 (Ark.) 1980, 626 F.2d 607. Municipal Corporations 170

Members of a municipal legislative body do not share complete immunity from liability under this section which is enjoyed by judges and state legislators. Nelson v. Knox, C.A.6 (Mich.) 1958, 256 F.2d 312. Civil Rights 1376(4)

Legislative immunity from § 1983 liability extends only to actions by legislators in their legislative capacities, not to any of their administrative or executive acts. Union Pacific R. Co. v. Village of South Barrington, N.D.Ill.1997, 958 F.Supp. 1285. Civil Rights 1376(1)

Municipal legislators are absolutely immune from damages in civil rights suits for actions taken within scope of their valid legislative authority. Ligon v. State of Md., D.C.Md.1977, 448 F.Supp. 935. Civil Rights 1376(4)

Doctrine of legislative immunity was not available to city legislators where suit sought only injunctive and declaratory relief, but legislators are cloaked with immunity only in damage actions brought pursuant to this section. Citizens Council on Human Relations v. Buffalo Yacht Club, W.D.N.Y.1977, 438 F.Supp. 316. Civil Rights 1376(4)

3570. ---- Aldermen, municipal or city officials, legislative immunity

Failure of town aldermen to establish they were acting in legislative as opposed to executive capacity when they ordered fellow alderman ejected from closed meeting, after he insisted on making tape recording of proceedings, precluded claim of absolute legislative immunity from §§ 1983 action by alderman, claiming deprivation of his free speech, seizure and due process rights. King v. Jefferies, M.D.N.C.2005, 402 F.Supp.2d 624. Civil Rights 1376(4)

City aldermen's alleged action of denying employee a raise commensurate with that of other city employees because she was a married woman was not legislative act, and members of board of aldermen thus were not

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legislatively immune from employee's § 1983 claim, inasmuch as alleged action singled out specifiable individuals. Fortner v. City of Archie, Missouri, W.D.Mo.1999, 70 F.Supp.2d 1028. Civil Rights 1376(10)

Members of Board of Aldermen and Board of Adjustment, who voted to deny application for zoning variance, could not be held liable in their individual capacities for violation of applicant's civil rights, in that it was clear that officials were acting within scope of their legislative duties when they voted. Dunmore v. City of Natchez, S.D.Miss.1988, 703 F.Supp. 31. Civil Rights 1376(4)

3571. ---- Board members, municipal or city officials, legislative immunity

Executive director and members of governing board of Tahoe Regional Planning Authority, who possessed both legislative and executive powers, had qualified immunity in connection with their executive function and absolute immunity to degree they acted in their legislative capacity and, to create liability under Bivens, property owners, who alleged that Authority's land use ordinance constituted inverse condemnation or "taking" of their property, would have to show something more than even-handed enforcement of ordinance. Jacobson v. Tahoe Regional Planning Agency, C.A.9 (Cal.) 1977, 566 F.2d 1353, certiorari granted 98 S.Ct. 2843, 436 U.S. 943, 56 L.Ed.2d 784, affirmed in part, reversed in part on other grounds 99 S.Ct. 1171, 440 U.S. 391, 59 L.Ed.2d 401, on remand 474 F.Supp. 901. States 6

If members of board of supervisors performed only legislative functions, and if, in all of activities which purportedly deprived plaintiffs of constitutional rights, defendant member was engaged only in sphere of legitimate legislative activity, then he enjoyed legislative immunity from liability for damages in civil rights suit. Gillibeau v. City of Richmond, C.A.9 (Cal.) 1969, 417 F.2d 426. Civil Rights 1376(4)

Town board members were not shielded by legislative immunity from liability under §§ 1983 for their failure to rehire employee whose position had been eliminated as result of reorganization, or for requiring employee to sign release before receiving accrued vacation, personal and sick time and withholding that pay without signed release; those actions were administrative personnel matters. Zdziebloski v. Town of East Greenbush, N.Y., N.D.N.Y.2004, 336 F.Supp.2d 194. Civil Rights 1376(10)

Village board members performed legislative act when they passed amending ordinance that enabled village to draw down letter of credit due to developer's failure to provide replacement letter and, thus, were entitled to absolute legislative immunity from developer's claim that its constitutional rights were violated by that conduct, even if board members enacted amending ordinance as pretext for drawing down developer's letter of credit. Union Pacific R. Co. v. Village of South Barrington, N.D.Ill.1997, 958 F.Supp. 1285. Civil Rights 1376(4)

3572. ---- Commissioners, municipal or city officials, legislative immunity

Decision by township board of commissioners to discharge director of roads and public property was, by statute and ordinance, a managerial rather than legislative activity, and thus commissioners were not entitled to legislative immunity. Abraham v. Pekarski, C.A.3 (Pa.) 1984, 728 F.2d 167, certiorari denied 104 S.Ct. 3513, 467 U.S. 1242, 82 L.Ed.2d 822. Civil Rights 1376(10)

Current and former city commissioners were entitled to absolute legislative immunity on claims seeking to hold them liable for enacting ordinances which imposed occupancy limits on residential rental property in areas which were zoned for single family residences, since city commissioners were engaged in legislative acts when they did so. Jones v. Wildgen, D.Kan.2004, 320 F.Supp.2d 1116, on reconsideration in part 349 F.Supp.2d 1358. Municipal Corporations 170

Action of city commissioners in voting to rescind redevelopment plan fell within scope of absolute legislative immunity, but commissioners' conduct surrounding the actual vote would not fall within purview of furthering their

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legislative duties if they failed to follow established commission procedures. Key West Harbour Development Corp. v. City of Key West, Fla., S.D.Fla.1990, 738 F.Supp. 1390. Municipal Corporations 170

City commissioners, who voted in favor of city's budget ordinance, were entitled to absolute legislative immunity from liability as to wrongful termination claims of city employees eliminated from city's budget pursuant to ordinance. Rateree v. Rockett, N.D.Ill.1986, 630 F.Supp. 763, affirmed 852 F.2d 946. Civil Rights 1376(10)

3573. ---- Council members, municipal or city officials, legislative immunity

Ordinance eliminating city department of which civil rights complainant was sole employee was legislative in substance, precluding any need to consider whether formally legislative character of putatively legislative action by local officials would be sufficient to confer absolute immunity from § 1983 suit on city officials; ordinance reflected discretionary, policymaking decision implicating budgetary priorities of city. Bogan v. Scott-Harris, U.S.Mass.1998, 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79. Civil Rights 1376(10)

Jury's findings that mayor's and city council member's stated reason for seeking enactment of ordinance which eliminated position of city's social services director was not their real reason and that director's constitutionally protected speech was substantial or motivating factor in mayor's and member's actions regarding ordinance supported conclusion that mayor's and member's actions were administrative, rather than legislative, for purpose of determining whether mayor and member were shielded by legislative immunity from director's resulting § 1983 action alleging violation of director's First Amendment rights. Scott-Harris v. City of Fall River, C.A.1 (Mass.) 1997, 134 F.3d 427, certiorari granted 117 S.Ct. 2430, 520 U.S. 1263, 138 L.Ed.2d 192, reversed 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79, certiorari denied 118 S.Ct. 1184, 523 U.S. 1003, 140 L.Ed.2d 315. Civil Rights 1376(10)

City council members who vote to pay punitive damage award pursuant to California Government Code section, authorizing public entity to pay that part of a judgment that is for punitive or exemplary damages, perform an administrative, not legislative, act and therefore, they are not entitled to absolute immunity; decision whether to pay punitive damages is made on case-by-case basis, decision does not involve the formulation of policy, and decision does not apply to the community at large, but rather is directed toward shielding individuals from specific damage awards. Trevino By and Through Cruz v. Gates, C.A.9 (Cal.) 1994, 23 F.3d 1480, certiorari denied 115 S.Ct. 327, 513 U.S. 932, 130 L.Ed.2d 286. Municipal Corporations 170

Mayor and city council members who voted for zoning ordinance that was later declared invalid were protected by legislative immunity in civil rights action brought by operator of adult bookstore who had been fined and subsequently found to be in civil and criminal contempt for violating ordinance. Shoultes v. Laidlaw, C.A.6 (Mich.) 1989, 886 F.2d 114. Civil Rights 1376(4)

Members of city council were entitled to absolute immunity for actions taken in furtherance of their duty as members, and such duties included decision to disband police department, so that members could not be held liable to former police chief, who claimed that he was discharged in retaliation for exercise of his First Amendment rights. Finch v. City of Vernon, C.A.11 (Fla.) 1989, 877 F.2d 1497. Civil Rights 1376(4); Civil Rights 1376(10)

District of Columbia council member was acting in administrative, not legislative capacity in terminating legislative researcher, and thus was not entitled to absolute immunity from § 1983 liability to researcher. Gross v. Winter, C.A.D.C.1989, 876 F.2d 165, 277 U.S.App.D.C. 406. Civil Rights 1376(10)

Where city council was simply monitoring and administering contract which gave promoter right to promote live entertainment in municipally-owned amphitheater by voting on various proposed concerts, council member was acting in his executive, rather than legislative, capacity and enjoyed only qualified immunity in action alleging that

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entertainers were denied access to public forum in violation of U.S.C.A. Const. Amend. 1 on basis of content of their expression and other arbitrary factors. Cinevision Corp. v. City of Burbank, C.A.9 (Cal.) 1984, 745 F.2d 560, certiorari denied 105 S.Ct. 2115, 471 U.S. 1054, 85 L.Ed.2d 480. Civil Rights 1376(4)

Members of municipal council acting in a legislative capacity are absolutely immune from damage suits under this section and those acting in a legislative capacity are immune from suit under section 1985 of this title. Aitchison v. Raffiani, C.A.3 (N.J.) 1983, 708 F.2d 96. Civil Rights 1376(4)

Since, in civil rights action brought by allegedly wrongfully dismissed county detective, district court's back pay award was imposed against district attorney and members of county council in their official capacities, immunities from individual damage liability under this section governing civil action for deprivation of rights were not relevant. D'Iorio v. Delaware County, C.A.3 (Pa.) 1978, 592 F.2d 681. Civil Rights 1413

Members of town selectboard were entitled to legislative immunity from federal damage claims asserted by nude dancing establishment under §§ 1983 in its suit challenging town public indecency ordinance on First Amendment grounds, where damages claims arose from town's enactment of ordinance, as enactment was a purely legislative function. White River Amusement Pub, Inc. v. Town of Hartford, Vt., D.Vt.2005, 412 F.Supp.2d 416. Civil Rights 1376(4)

City council members were entitled to absolute legislative immunity from claims based on their vote to approve an ordinance appropriating funds for the purchase of voting equipment which did not permit visually and manually impaired voters to vote without assistance; voting by such officials was manifestly a legislative act. American Ass'n of People With Disabilities v. Smith, M.D.Fla.2002, 227 F.Supp.2d 1276, reconsideration denied 278 F.Supp.2d 1337. Civil Rights 1376(4); Municipal Corporations 170

Mayor and city council members were absolutely immune from § 1983 liability for their legislative activity in adopting an ordinance eliminating position of director of public safety, and in signing the ordinance into law. Lumpkin v. City of Lafayette, M.D.Ala.1998, 24 F.Supp.2d 1259. Civil Rights 1376(10)

Claims of cogenerators seeking to construct cogeneration plant against city council member were not barred by legislative immunity under District of Columbia speech or debate statute in § 1983 action for due process violation, unconstitutional impairment of contracts, and tortious interference with contractual and economic relations, where, to extent complaint alleged member sought to interfere with regulatory building permit process by using his influence to cajole or intimidate executive branch members, such acts would not fall within legitimate scope of legislative activity, and complaint raised fact issue as to whether member acted outside legislative sphere. Dominion Cogen, D.C., Inc. v. District of Columbia, D.D.C.1995, 878 F.Supp. 258. Civil Rights 1376(4)

City council members were not acting in their legislative capacity when they denied property owners' renewed application for special use permit, such that they would be entitled to absolute immunity on property owners' claims brought under § 1983. Triomphe Investors v. City of Northwood, N.D.Ohio 1993, 835 F.Supp. 1036, affirmed 49 F.3d 198, certiorari denied 116 S.Ct. 70, 516 U.S. 816, 133 L.Ed.2d 31. Civil Rights 1376(4)

City council members were entitled to absolute legislative immunity in inmate's § 1983 action alleging that they violated his constitutional rights by failing to allocate sufficient money to city jail and by failing to enact legislation to address conditions at jail. Terry v. Bobb, E.D.Va.1993, 827 F.Supp. 366. Civil Rights 1376(4)

Members of city council were entitled to absolute immunity from liability in their individual capacity in § 1983 action challenging unconstitutional zoning ordinance; city council members were acting in their legislative capacity in reviewing recommendations of proposed ordinance. Burkhart Advertising, Inc. v. City of Auburn, Ind., N.D.Ind.1991, 786 F.Supp. 721. Civil Rights 1376(4)

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42 U.S.C.A. § 1983

City council members were entitled to legislative immunity in civil rights action brought by former city employee who claimed that council members' budget vote resulted in loss of his job and that budget vote was invalidated by procedural error; council members were protected in their legitimate efforts to conduct legislative business and court would not allow trivial errors to obviate that protection. Draughon v. City of Oldsmar, M.D.Fla.1991, 767 F.Supp. 1144. Civil Rights 1376(10)

Individual members of city council and of city light and water commission were entitled to legislative immunity in connection with nonexclusive cable franchisee's § 1983 claims concerning establishment of municipal cable system, absent any allegations that members were acting in any capacity other than their official ones or that council and commission implemented laws in violation of nonexclusive franchisee's constitutional rights. Paragould Cablevision, Inc. v. City of Paragould, Ark., E.D.Ark.1990, 739 F.Supp. 1314, affirmed 930 F.2d 1310, rehearing denied, certiorari denied 112 S.Ct. 430, 502 U.S. 963, 116 L.Ed.2d 450. Civil Rights 1376(4)

3574. ---- Directors, municipal or city officials, legislative immunity

City directors were absolutely immune with respect to their enactment of allegedly unconstitutional zoning amendment. Gorman Towers, Inc. v. Bogoslavsky, C.A.8 (Ark.) 1980, 626 F.2d 607. Civil Rights 1376(4)

3575. ---- Mayors, municipal or city officials, legislative immunity

City mayor performed legislative act, in formulating budget eliminating department of which civil rights complainant was sole employee, and in signing ordinance so providing, and was consequently entitled to absolute immunity from § 1983 suit by complainant, even though he was member of executive department of municipal government. Bogan v. Scott-Harris, U.S.Mass.1998, 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79. Civil Rights 1376(10)

Absolute immunity did not shield mayor from §§ 1983 liability because the conduct with which he was charged, specifically, constructive discharge through harassment, defamation, and accusations of illegality, was not legislative activity. Hill v. Borough of Kutztown, C.A.3 (Pa.) 2006, 455 F.3d 225. Civil Rights 1376(10)

Alleged acts of mayor and city human resources director, upon taking office, of selectively laying off and imposing restrictions upon employees belonging to opposing political party were administrative rather than legislative, and such officials thus were not protected by absolute immunity from employees' § 1983 claims, notwithstanding that municipal assembly formally enacted mayor's layoff plan and ordered elimination of specified positions, and that alleged actions may have been taken pursuant to Puerto Rico law; claims concerned implementation of layoff plan and challenged targeting of specific individuals. Acevedo-Garcia v. Vera-Monroig, C.A.1 (Puerto Rico) 2000, 204 F.3d 1. Civil Rights 1376(10)

Mayor was not entitled to absolute immunity from liability to citizen alleging First Amendment violation arising out of mayor's order that citizen be removed from city council meeting for speaking out of order, in that mayor was not acting in "legislative capacity" at relevant time; mayor's conduct occurred during portion of city council meeting which was devoted to open comments from general public. Hansen v. Bennett, C.A.7 (Ill.) 1991, 948 F.2d 397, certiorari denied 112 S.Ct. 1939, 504 U.S. 910, 118 L.Ed.2d 545. Civil Rights 1376(4)

Determination of absolute immunity of village mayor in exercise of judicial responsibilities as liquor control commissioner and of legislative responsibilities as president of village board of trustees, and of absolute immunity of all trustees in exercise of their legislative responsibilities, would not warrant dismissal in its entirety of former liquor licensees' complaint, alleging that local legislators, judicial officers and municipal employer interfered with and eventually destroyed licensees' business in violation of due process, where not only were there other defendants who did not and could not claim absolute immunity as judicial or legislative officers, but also complaint against village mayor extended to nonjudicial nonlegislative conduct as mayor. Reed v. Village of Shorewood,

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42 U.S.C.A. § 1983

C.A.7 (Ill.) 1983, 704 F.2d 943. Federal Civil Procedure 1729

Mayor's presentation to city council of recommended annual operating budget covering all city agencies, departments, and city expenditures was legislative in nature, and thus mayor was entitled to absolute immunity from liability under §§ 1983, despite city employees' claims that their positions were eliminated or reduced in retaliation for their support for mayor's opponent, where city charter required mayor to present budget, city council amended certain aspects of recommended budget, and approved budget resulted in layoff of thirteen full-time positions and reduction of four full-time positions to part-time. Lorusso v. Borer, D.Conn.2005, 359 F.Supp.2d 121 . Civil Rights 1376(10)

Mayor and city council members were absolutely immune from § 1983 liability for their legislative activity in adopting an ordinance eliminating position of director of public safety, and in signing the ordinance into law. Lumpkin v. City of Lafayette, M.D.Ala.1998, 24 F.Supp.2d 1259. Civil Rights 1376(10)

Police chief, mayor, and city council members were not entitled to absolute immunity from former parking ticket officer's § 1983 claims that he was discharged for refusing to discriminate in issuing parking tickets; municipal employment decisions were administrative rather than legislative in nature and, thus, did not enjoy immunity from suit. Reitz v. Persing, M.D.Pa.1993, 831 F.Supp. 410. Civil Rights 1376(10)

Mayor and county plan commission members were entitled to absolute immunity from liability in § 1983 action challenging constitutionality of zoning ordinance which imposed total ban on off-premise advertising billboards; mayor and commission members were exercising legislative function when they executed responsibilities to enact proposed ordinance into local law. Burkhart Advertising, Inc. v. City of Auburn, Ind., N.D.Ind.1991, 786 F.Supp. 721. Civil Rights 1376(4)

Action of mayor of township in casting his vote, along with members of township committee, in favor of adopting rezoning plan was legislative in character, and thus mayor was entitled to absolute immunity from civil suit for damages brought by property owner adversely affected by zoning change. Jodeco, Inc. v. Hann, D.N.J.1987, 674 F.Supp. 488. Zoning And Planning 353.1

Mayor's meeting with economically self-interested private developers and other persons and mayor's formal approval of ordinance limiting conversion of rental units to condominiums were within mayor's legislative function so that mayor enjoyed absolute legislative immunity with respect to action arising out of the adoption of the ordinance. Traweek v. City and County of San Francisco, N.D.Cal.1984, 659 F.Supp. 1012, affirmed in part, vacated in part on other grounds 920 F.2d 589. Municipal Corporations 747(1)

Mayor and city council members were absolutely immune from suit for damages under this section and section 1985 of this title to extent that they acted in their legislative capacities, and were further absolutely immune from suit for declaratory and injunctive relief under such sections for acts within sphere of legitimate legislative activity. Latino Political Action Committee, Inc. v. City of Boston, D.C.Mass.1984, 581 F.Supp. 478. Civil Rights 1376(4)

3576. ---- Miscellaneous officials, municipal or city officials, legislative immunity

Vice president of city council committed legislative act, when she voted for amendment abolishing city department of which complainant was sole employee, and consequently had absolute immunity from § 1983 suit brought by claimant. Bogan v. Scott-Harris, U.S.Mass.1998, 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79. Civil Rights 1376(10)

Former city employee stated § 1983 claim against supervisors, that she was terminated in retaliation for filing earlier discrimination lawsuit, despite argument that supervisors were engaged in immune legislative activity when

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they prepared legislation abolishing employee's position. Brennan v. Straub, S.D.N.Y.2003, 246 F.Supp.2d 360. Municipal Corporations 218(3)

City's street superintendents, who were in charge of maintaining drainage ditch constructed by city on African-American property owner's land, were not entitled to qualified immunity, in property owner's §§ 1983 equal protection claim, asserting that city officials failed to properly maintain ditch causing flooding on property, where superintendents allegedly knew that the ditch needing mowing and that flooding occurred, but they did nothing to maintain the ditch or otherwise prevent flooding. Wilson v. Northcutt, C.A.8 (Ark.) 2006, 441 F.3d 586, rehearing and rehearing en banc denied. Civil Rights 1376(4)

City manager and city financial services director were entitled to qualified immunity from claim that they enforced ordinance that invalidly capped number of permits to operate horse-drawn carriage permits at 46, and annually renewed 42 permits held by competitor of claimant while competitor used only 16; actions were within scope of their respective authorities, and there was no showing that officers had violated equal protection or commerce clause rights of claimant. Avalon Carriage Service Inc. v. City of St. Augustine, FL, M.D.Fla.2006, 417 F.Supp.2d 1279. Civil Rights 1376(4)

Zoning officials were acting in mere "administrative" or "ministerial" capacity, so as not to be absolutely immune from subsequent civil rights action, when they refused to grant property owner a curative amendment from denial of zoning variance. de Botton v. Marple Tp., E.D.Pa.1988, 689 F.Supp. 477. Civil Rights 1376(4)

Officers who conducted search and housing-code inspection of residence were entitled to qualified immunity from liability under §§ 1983, where officers acted under authority of warrant, and warrant was not transparently defective. Bielenberg v. Griffiths, C.A.7 (Ill.) 2005, 130 Fed.Appx. 817, 2005 WL 1122666, Unreported, rehearing denied. Civil Rights 1376(4)

3577. Parish officials, legislative immunity

Parish police jurors were entitled to legislative immunity against damages in their individual capacities in connection with their adoption of series of construction moratoria that frustrated construction of low to moderate-income housing project, regardless of whether jurors were motivated by discriminatory intent; although moratoria involved spot zoning rather than zoning ordinance, such zoning remained legislative in character in that moratoria involved legislative judgment and evaluation of legislative facts. Calhoun v. St. Bernard Parish, C.A.5 (La.) 1991, 937 F.2d 172, certiorari denied 112 S.Ct. 939, 502 U.S. 1060, 117 L.Ed.2d 110. Civil Rights 1376(4); Counties 59

3578. Puerto Rico officials, legislative immunity

Decision of Director of Legislative Service Office of Puerto Rico, President of the Puerto Rico House of Representatives, and President of the Puerto Rico Senate to discharge librarian in legislative library was not a legislative act entitled to absolute legislative immunity from damages under § 1983. Negron-Gaztambide v. Hernandez-Torres, C.A.1 (Puerto Rico) 1994, 35 F.3d 25, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1098, 513 U.S. 1149, 130 L.Ed.2d 1066. Civil Rights 1376(10)

Municipal assembly members were entitled to legislative immunity, although they were nonelected officials, if they were acting in manner comparable to that of state legislators; municipal legislators were closer to constituents than either state or federal counterparts and were thus most vulnerable to and least able to defend lawsuits caused by passage of legislation. Acevedo-Cordero v. Cordero-Santiago, C.A.1 (Puerto Rico) 1992, 958 F.2d 20. Municipal Corporations 170

Activities of Judiciary Committee of Commonwealth of Puerto Rico in conducting televised hearings concerning

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shooting incident involving supporters of radical proindependence group and in publishing documents were within sphere of legitimate legislative activity and, therefore, civil rights action seeking to enjoin Committee from compelling plaintiffs to appear and testify publicly at televised hearings and from publishing documents was barred by legislative immunity. Colon Berrios v. Hernandez Agosto, C.A.1 (Puerto Rico) 1983, 716 F.2d 85. Civil Rights 1376(3)

Speaker of the House and President of the Senate of Puerto Rico were entitled to absolute legislative immunity with respect to discharge of Superintendent of the Capitol Building, since Superintendent occupied position which constituted integral element of meaningful input necessary for performance of defendants' legislative duty and for general functioning of legislative process. Lasa v. Colberg, D.C.Puerto Rico 1985, 622 F.Supp. 557. Territories 19

Investigation by Puerto Rican Senate Nomination Committee of Puerto Rican Secretary of Justice was part of function of representative government; thus, legislature of Puerto Rico was protected from civil suit arising out of subpoena of Secretary and subpoena was proper. Acosta v. Agosto, D.C.Puerto Rico 1984, 590 F.Supp. 144. Territories 19

3578A. Virgin Island officials, legislative immunity

Speech or Debate Clause of Virgin Islands Organic Act guaranteed that Virgin Islands' Senators could claim absolute legislative immunity from suit pursuant to § 1983. Unidos v. Government of U.S. Virgin Islands, D.Virgin Islands 2004, 314 F.Supp.2d 501. Civil Rights 1376(3)

3579. Regional planning agencies and members, legislative immunity

To extent that individual members of controlling board of Tahoe Regional Planning Agency were acting in legislative capacity, they were entitled to absolute immunity from federal damages liability. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, U.S.Nev.1979, 99 S.Ct. 1171, 440 U.S. 391, 59 L.Ed.2d 401, on remand 474 F.Supp. 901. Civil Rights 1376(1)

3580. State officials, legislative immunity--Generally

State and regional legislators are entitled to absolute immunity from liability under § 1983 for their legislative activities. Bogan v. Scott-Harris, U.S.Mass.1998, 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79. Civil Rights 1376(3); Civil Rights 1376(4)

Personal defenses are generally unavailable in official capacity suits under §§ 1983 because such suits are treated as suits against the underlying entity; however, exception exists under *Ex Parte Young*, which held that official capacity suits for prospective relief to enjoin state officials from enforcing unconstitutional acts are not deemed to be suits against the state and thus are not barred by the Eleventh Amendment. Scott v. Taylor, C.A.11 (Ga.) 2005, 405 F.3d 1251. Civil Rights 1366; Federal Courts 269; Federal Courts 272

State legislators, to same extent as their federal counterparts, are immune from suit under this section for injunctive relief, as well as from damages, based on their activities within traditional sphere of legislative activity. Star Distributors, Ltd. v. Marino, C.A.2 (N.Y.) 1980, 613 F.2d 4. Civil Rights 1376(3)

Legislative immunity shields state officials only from liability for actions performed in sphere of legitimate legislative activity. Grass Roots Organizing Workshop (GROW) v. Campbell, D.S.C.1988, 704 F.Supp. 644. States 79

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42 U.S.C.A. § 1983

Federal common-law immunity from suit under 42 U.S.C.A. § 1983 accorded to state legislators acting in sphere of legitimate legislative activity does not encompass everything that legislator might do while in office; administrative functions are not protected and only legislator's conduct while acting in sphere of legitimate legislative activity is immunized. Hudson v. Burke, N.D.Ill.1985, 617 F.Supp. 1501, affirmed 913 F.2d 427. Civil Rights 1376(3)

State legislators enjoy absolute immunity from suits for damages by individuals alleging violations of this section when their conduct occurs in a field where legislators traditionally have the power to act; test is whether the activity took place in a session of the legislature by one of its members in relation to the business before it. Shultz v. Sundberg, D.C.Alaska 1984, 577 F.Supp. 1491, affirmed 759 F.2d 714. Civil Rights 1376(3)

3581. ---- Administrative agency employees, state officials, legislative immunity

Employees of North Dakota Department of Human Services were entitled to absolute immunity from § 1983 suit for damages for their promulgation of amended rules for basic care facilities. Redwood Village Partnership v. Graham, C.A.8 (S.D.) 1994, 26 F.3d 839, certiorari denied 115 S.Ct. 423, 513 U.S. 962, 130 L.Ed.2d 337. Civil Rights 1376(3)

Employees of North Dakota Department of Human Services, who promulgated rules establishing reimbursement rates for nursing homes, were entitled to absolute legislative immunity from nursing home's § 1983 claim asserting that new rules were merely attempt to circumvent unfavorable court decision; that new rules may only have affected nursing home in question did not change nature of employees' conduct from legislative to executive. Redwood Village Partnership v. Graham, D.N.D.1993, 819 F.Supp. 867, affirmed 26 F.3d 839, certiorari denied 115 S.Ct. 423, 513 U.S. 962, 130 L.Ed.2d 337. Civil Rights 1376(3)

3582. ---- Assembly members, state officials, legislative immunity

State representative was entitled to absolute legislative immunity for his conduct, in reporting state agency employee's meeting with governor's office to state agency employer, reporting employee's alleged nonresponsiveness to state legislators, and allegedly pushing through a bill without following state procedure, in employee's §§ 1983 action, arising from her discharge resulting from communication of her public policy views to governor; pushing through legislation was legislative duty, and representative's discussions with state agency about agency employee were also part of his responsibilities on legislative committee. Hinshaw v. Smith, C.A.8 (Ark.) 2006, 436 F.3d 997, rehearing and rehearing en banc denied. Civil Rights 1376(10)

Position of legislative budget analyst was closely enough connected to legislative process so that decisions regarding position warranted protection of state legislative immunity, and analyst could not maintain Equal Pay Act or § 1983 claims against state assembly men based on alleged wage and work load discrimination, where legislative budget analyst had substantial input into preparing documents upon which assembly men relied in drafting proposed legislation. Bostick v. Rappleyea, N.D.N.Y.1985, 629 F.Supp. 1328, affirmed 907 F.2d 144. Labor And Employment 2458

3583. ---- Commissioners, state officials, legislative immunity

Investigation of nursing home operator pursued by temporary commission was fully within the powers of the commission so that its chairman, a state legislator, was immune from civil rights action brought against him by the nursing home operator. Bergman v. Stein, S.D.N.Y.1975, 404 F.Supp. 287. Civil Rights 1376(3)

3584. ---- Committee members, state officials, legislative immunity

Where plaintiff circulated a petition to persuade the legislature of a state not to appropriate further funds for a

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particular legislative committee and in the petition plaintiff charged that the committee in question had used plaintiff as a tool in order to smear a local mayoral candidate and plaintiff indicated that evidence previously given by him to the legislative committee was false, the individual members of the committee and the committee were acting in the sphere of legitimate legislative activity in calling the plaintiff before it and examining him, and this section did not create a civil liability for such conduct. Tenney v. Brandhove, U.S.Cal.1951, 71 S.Ct. 783, 341 U.S. 367, 95 L.Ed. 1019, rehearing denied 72 S.Ct. 20, 342 U.S. 843, 96 L.Ed. 637. Civil Rights 1038; States 28(2); States 34

Where New York State Select Legislative Committee on Crime investigation was well within bonds of traditional sphere of legislative activity, the committee members were immune from suit, brought under this section, for injunctive relief against enforcement of subpoenas duces tecum, which were issued in course of the authorized, legitimate investigation into child pornography. Star Distributors, Ltd. v. Marino, C.A.2 (N.Y.) 1980, 613 F.2d 4. Civil Rights 1376(3)

3584A. ---- Party caucus, state officials, legislative immunity

State party caucus and representative exercised administrative function when they terminated employee allegedly for reporting improprieties in electoral affidavit process, and thus legislative immunity was inapplicable to civil rights action brought by employee, alleging First Amendment retaliatory discharge; decision did not reach beyond single employee, did not eliminate employee's position, did not rely on any broad consideration of policy, and was not directed to creating new policy. Fowler-Nash v. Democratic Caucus of Pa. House of Representatives, C.A.3 (Pa.) 2006, 469 F.3d 328. Civil Rights 1376(10)

3585. ---- Governors, state officials, legislative immunity

Because office of governor is political, discretion vested in chief executive by Constitution and laws of state respecting his official duties is not subject to control or review by courts. Mitchell v. King, C.A.10 (N.M.) 1976, 537 F.2d 385. Constitutional Law 72

Enactment of Puerto Rico statute reducing number of Commissioners of Industrial Commission to five from 25 was legislative rather than administrative act, and Governor thus was protected by absolute legislative immunity from Commissioners' political discrimination claims under §§ 1983 stemming from her signing of such legislation, where impetus for statute was general concern about functioning of Commission as whole, and statute did not favor any Commissioners over others. Torres-Rivera v. Calderon-Serra, D.Puerto Rico 2004, 328 F.Supp.2d 237, affirmed 412 F.3d 205. Civil Rights 1376(3)

The governor of a state, as well as state legislators, are immune from suit under this section for acts or omissions done within the sphere of legitimate executive or legislative activities. Parker v. McKeithen, E.D.La.1971, 330 F.Supp. 435, vacated on other grounds 488 F.2d 553, certiorari denied 95 S.Ct. 67, 419 U.S. 838, 42 L.Ed.2d 65. Civil Rights 1376(3)

3586. ---- Senators, state officials, legislative immunity

Both senators who were members of select committee of Nebraska legislature designed to review operations of criminal and drug divisions in the state patrol and committee counsel were immune from liability under this section for release to news reporting and publishing agencies of a report which was critical of homicide investigation undertaken by city police chief and which was prepared in connection with the committee's investigation of state patrol's review of the matter. Green v. DeCamp, C.A.8 (Neb.) 1980, 612 F.2d 368. Civil Rights 1376(3)

State senator was entitled to absolute legislative immunity from civil rights liability for his role in sponsorship of amendment to state's child support laws, notwithstanding contention that statements made by senator in support of

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amendment were intended to fraudulently mislead his fellow legislators and that immunity did not extend to legislative actions occurring off senate floor. Larsen v. Early, D.Colo.1994, 842 F.Supp. 1310, affirmed 34 F.3d 1076. Civil Rights 1376(3)

Even if state senator had taken actions to prevent commutation of state prisoner's sentence and had made libelous statements to the press about prisoner's case as an example to support "campaign" to restrict commutation powers of the Governor, the senator was acting within lawful scope of his duties as a member of the California Senate Select Committee on Penal Institutions and as a representative of its constituency and, accordingly, had absolute immunity from prisoner's civil rights suit arising from termination of his minimum security status. Lokey v. Richardson, N.D.Cal.1982, 534 F.Supp. 1015. Civil Rights 1376(3)

3587. ---- Miscellaneous officials, state officials, legislative immunity

Rule of state House of Representatives purporting to ban lobbyists from floor of House and exclude lobbyists from perimeter of House while House was in session was protected from civil rights challenge by legislative immunity; rule affected manner in which House conducted its legislative functions, and claim that rule, as applied, favored public lobbyists over private lobbyists was insufficient to overcome immunity. National Ass'n of Social Workers v. Harwood, C.A.1 (R.I.) 1995, 69 F.3d 622. Civil Rights 1376(3)

Two Illinois legislators enjoyed official immunity with respect to civil complaint charging them with violating the Sherman Anti-Trust Act, sections 1-7 of Title 15, S.H.A. ch. 38, § 60-3, this section, the Racketeer Influenced and Corrupt Organizations Act, section 1961 et seq. of Title 18, the commission of common-law torts of fraud, unfair competition, and interference in view of fact that causes of action focused on legislators' attempts to use their legislative positions to influence regulation of currency exchanges, a legitimate legislative activity. Thillens, Inc. v. Community Currency Exchange Ass'n of Illinois, Inc., C.A.7 (Ill.) 1984, 729 F.2d 1128, certiorari dismissed 105 S.Ct. 375, 469 U.S. 976, 83 L.Ed.2d 342. States 28(2)

Even if motivation of certain legislators in supporting bill which provided for annexation of certain territory to a city in violation of that city's agreement with two other cities was suspect, the conduct of the legislators was clearly within the traditional sphere of legislative activity and thus immune from liability for violation of alleged civil rights of one of the cities in question. City of Safety Harbor v. Birchfield, C.A.5 (Fla.) 1976, 529 F.2d 1251. Civil Rights 1376(3)

State legislators were immune from liability in civil rights action brought by prisoners who claimed that California Adult Authority had failed to grant parole or sentence determination in violation of principles and ideas of the state indeterminate sentence law, West's Ann.Cal.Pen.Code, § 1168, and that the legislators and justices had violated oaths of office by permitting the Authority to so act. Johnson v. Reagan, C.A.9 (Cal.) 1975, 524 F.2d 1123. Civil Rights 1376(3); Civil Rights 1376(8)

County clerk was "state official," immune under Eleventh Amendment from official capacity suit under §§ 1983, claiming that lis pendens procedure, of which clerk was part due to his role in collecting fees, violated homeowner's due process and equal protection rights. Diaz v. Pataki, S.D.N.Y.2005, 368 F.Supp.2d 265. Federal Courts 269

In federal civil rights action challenging Alabama's bar examination and admission process, Alabama's Secretary of State and members of Alabama's House of Representatives and Senate were entitled to absolute legislative immunity to extent that action sought monetary damages against those persons in their individual capacities due to their respective roles in legislative process and enactment of statutes pertaining to admission to bar. McFarland v. Folsom, M.D.Ala.1994, 854 F.Supp. 862. Civil Rights 1376(3)

State legislators were cloaked with legislative immunity with respect to alleged discrimination on the grounds of

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race against applicant for position as fiscal analyst with legislative committee. Birdsong v. Dirck, E.D.Mo.1984, 633 F.Supp. 54. Civil Rights 1376(10)

3588. Town officials, legislative immunity--Generally

City aldermen were entitled to absolute legislative immunity for introducing and voting for zoning ordinances that would prevent churches from purchasing particular parcels of property in aldermen's wards, in churches' resulting § 1983 action, because such activities were elements of core legislative process and could not be separated from that legislative function; fact that aldermen may have known of churches' requests for special use permits was immaterial. Biblia Abierta v. Banks, C.A.7 (Ill.) 1997, 129 F.3d 899. Civil Rights 1376(4)

Failure of town and its officials to authorize sewer service for landowners was not legislative action, and hence, was not protected by absolute immunity from liability in civil rights action; decision of town and its officials had to do with zoning enforcement rather than with rule making. Front Royal and Warren County Indus. Park Corp. v. Town of Front Royal, Va., C.A.4 (Va.) 1989, 865 F.2d 77, rehearing denied. Civil Rights 1376(4)

Issue whether town officials were qualifiedly immune from §§ 1983 claims of town clerk and deputy town clerk, that officials violated their First Amendment speech rights by enacting facilities policy, and retaliated against them for exercising their speech rights, could not be resolved at motion to dismiss phase because of factual disputes. Denton v. McKee, S.D.N.Y.2004, 332 F.Supp.2d 659. Federal Civil Procedure 1831

Town justice's act of proposing budget, which eliminated court assistant and court attendant positions and town supervisor's act of voting on that budget were functionally legislative, as required for protection by absolute legislative immunity, even though their duties as town justice and town supervisor were administrative. Gordon v. Katz, S.D.N.Y.1995, 934 F.Supp. 79, reconsideration denied, affirmed 101 F.3d 1393. Judges 36; Towns 31

Activities of town officials in proposing ordinance setting percentage limitations on number of mobile homes which could be located in town were absolutely immune from liability under this subchapter. Cloutier v. Town of Epping, D.C.N.H.1982, 547 F.Supp. 1232, affirmed 714 F.2d 1184. Civil Rights 1376(4)

3589. ---- Board members, town officials, legislative immunity

Members of town board were not entitled to absolute legislative immunity on plaintiff's § 1983 claim that he was fired in retaliation for constitutionally protected activities, even if subsequent elimination of plaintiff's position as Park Superintendent for town-owned country club was legislative act for which members were entitled to immunity, as earlier termination from position which then remained open at least briefly was administrative act that legislative immunity did not protect. Jessen v. Town of Eastchester, C.A.2 (N.Y.) 1997, 114 F.3d 7. Civil Rights 1376(10)

Members of town planning board were not protected by absolute immunity from developer's action alleging that board violated constitutional guarantees of due process and equal protection by imposing "outrageous conditions" on development of subdivision because of racial animus towards developer's purchasers. Cutting v. Muzzey, C.A.1 (N.H.) 1984, 724 F.2d 259. Civil Rights 1376(4)

Members of township board of supervisors were not individually liable to civil rights claimant, who alleged that he was denied use and occupation permit pursuant to established township procedure, in that board members participated in making allegedly unconstitutional zoning policy in legislative capacity, for which they had absolute immunity from liability under § 1983. Forest v. Banko, E.D.Pa.1984, 662 F.Supp. 275. See, also, Herbst v. Daukas, D.Conn.1988, 701 F.Supp. 964. Civil Rights 1376(4)

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42 U.S.C.A. § 1983

Members of town board were acting as local legislators in capacity comparable to that of members of state legislature in reducing salaries for town supervisor and his confidential secretary, and in declining to reappoint deputy town attorney, and thus were entitled to absolute immunity from liability under this section for those actions. Dusanenko v. Maloney, S.D.N.Y.1983, 560 F.Supp. 822, affirmed 726 F.2d 82. Civil Rights 1376(10)

3590. ---- Commission members, town officials, legislative immunity

Members of township board of commissioners were not acting in legislative capacity when they voted to disapprove proposed development plan and thus were not entitled to legislative immunity from civil rights claim. Epstein v. Township of Whitehall, E.D.Pa.1988, 693 F.Supp. 309. Civil Rights 1376(4)

Defendant township supervisors and planning commissioners were not subject to being dismissed from civil rights complaint on ground that they were legislators who enjoyed absolute immunity from suit where complaint did not challenge any of the defendants' actions which could be described as legislative in nature, but merely alleged that defendants arbitrarily and capriciously refused to grant plaintiff necessary building permits, and even if those actions were legislative in nature, it was not clear whether doctrine of absolute legislative immunity was applicable to local officials whose duties included legislative tasks. Riccobono v. Whitpain Tp., E.D.Pa.1980, 497 F.Supp. 1364. Federal Civil Procedure 388

3591. Village officials, legislative immunity

Acts of village trustees which resulted in termination of employment of assistant village attorney and two employees of village urban renewal agency, that is, creation of housing and community development agency, transfer of funds of programs of urban renewal agency to village and approval of appointments of individuals to positions that performed duties previously performed by discharged employees were clearly within scope of trustees' authority under village law, and were traditional legislative acts, reflecting policy objectives, and therefore trustees were entitled to absolute immunity from suit under this section by the discharged employees. Goldberg v. Village of Spring Valley, S.D.N.Y.1982, 538 F.Supp. 646. Civil Rights 1376(10)

3592. Zoning, legislative immunity

When ordinance is passed in effort to facilitate enforcement of existing zoning laws, and not to facilitate enactment or amendment of new zoning laws involving broad-based policy or line-drawing determinations, then the action is administrative in nature and not protected by absolute legislative immunity in § 1983 action. Summerchase Ltd. Partnership I v. City of Gonzales, M.D.La.1997, 970 F.Supp. 522. Civil Rights 1376(4)

3593. Zoning officials, legislative immunity

For the purpose of analyzing whether county council's denial of conditional use permit (CUP) to allow operator of commercial wedding business to conduct weddings on beach-front residential property was a legislative act so as to entitle the council members to absolute legislative immunity under § 1983, the decision did not bear all the hallmarks of traditional legislation, where it did not change the county's comprehensive zoning ordinance or the policies underlying it, or affect the county's budgetary priorities or the services the county provided to residents. Kaahumanu v. County of Maui, C.A.9 (Hawai'i) 2003, 315 F.3d 1215. Civil Rights 1376(4)

County commissioners' actions, in voting to reorganize land use departments and approving unified structure for county development department, were quintessentially legislative functions and, thus, commissioners were entitled to absolute immunity from § 1983 suit brought by county license investigator whose position was eliminated during reorganization. Macuba v. Deboer, C.A.11 (Fla.) 1999, 193 F.3d 1316, rehearing and suggestion for rehearing en banc denied 210 F.3d 395. Civil Rights 1376(10)

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Rezoning ordinances that prevented churches from buying certain property for use as church sites were legislation, not administrative or executive acts, for purpose of aldermen's claim of legislative immunity in churches' § 1983 action arising from aldermen's introduction and support of ordinances, because, even if ordinances presently applied to limited group of people, they created neutral, prospective rules that applied to all current and future owners of property. Biblia Abierta v. Banks, C.A.7 (Ill.) 1997, 129 F.3d 899. Civil Rights 1376(4)

Actions of city's board of aldermen members in revoking building permit previously issued to developer and in refusing to accept further permit applications from developer were not legislative actions entitled to absolute immunity in action brought by developer under § 1983 and Fair Housing Act (FHA); each of challenged actions involved enforcement of existing zoning laws and affected only the developer. Summerchase Ltd. Partnership I v. City of Gonzales, M.D.La.1997, 970 F.Supp. 522. Civil Rights 1376(4)

Zoning officials in their official capacities, township zoning board, and township were not entitled to absolute immunity, in landowner's §§ 1983 lawsuit under Fourteenth Amendment alleging violation of its procedural and substantive due process rights, since planning board as governmental agency had no immunity whatsoever. Lonzetta Trucking and Excavating Co. v. Schan, C.A.3 (Pa.) 2005, 144 Fed.Appx. 206, 2005 WL 730363, Unreported, on remand 2005 WL 3277996. Civil Rights 1376(4)

XXXII. QUALIFIED IMMUNITY GENERALLY

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3621. Qualified immunity generally

Qualified immunity strikes balance between compensating those who had been injured by official conduct and protecting government's ability to perform its traditional functions; in short, qualified immunity acts to safeguard government, and thereby to protect public at large, not to benefit its agents. Wyatt v. Cole, U.S.Miss.1992, 112

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S.Ct. 1827, 504 U.S. 158, 118 L.Ed.2d 504, on remand 994 F.2d 1113. Civil Rights 1376(1)

Qualified immunity doctrine recognized that officials can act without fear of harassing litigation only if they reasonably can anticipate when their conduct may give rise to liability for damages and only if unjustified lawsuits are quickly terminated. Davis v. Scherer, U.S.Fla.1984, 104 S.Ct. 3012, 468 U.S. 183, 82 L.Ed.2d 139, rehearing denied 105 S.Ct. 26, 468 U.S. 1226, 82 L.Ed.2d 919. Civil Rights 1376(2)

Although qualified immunity is a question of law determined by the court, when qualified immunity depends on disputed issues of fact, those issues must be determined by the jury. Monteiro v. City of Elizabeth, C.A.3 (N.J.) 2006, 436 F.3d 397, petition for certiorari filed 2006 WL 1557608. Officers And Public Employees 119

When deciding whether a public official is entitled to qualified immunity, Court of Appeals simply assumes the disputed facts in the light most favorable to the plaintiff, and then decides, under those facts, whether the defendants violated any of the plaintiff's clearly established constitutional rights. Board v. Farnham, C.A.7 (Ill.) 2005, 394 F.3d 469. Civil Rights 1376(2); Federal Courts 791

Where defendants continue to assert qualified immunity after undergoing trial on § 1983 claim, post-trial grant of immunity would still confer benefit by shielding them from any liability for monetary damages awarded by jury. Acevedo-Garcia v. Monroig, C.A.1 (Puerto Rico) 2003, 351 F.3d 547. Civil Rights 1376(1)

On review of district court's ruling on motion to dismiss § 1983 action on qualified immunity grounds, whether complaint alleges violation of clearly established right is question of law which Court of Appeals reviews *de novo*, accepting facts alleged as true and drawing all reasonable inferences therefrom in plaintiff's favor. Snider v. Jefferson State Community College, C.A.11 (Ala.) 2003, 344 F.3d 1325, rehearing and rehearing en banc denied 90 Fed.Appx. 391, 2003 WL 23190922. Federal Courts 776; Federal Courts 797

The court, in evaluating a claim of qualified immunity in a § 1983 action, must first determine whether the defendant's alleged conduct constituted a constitutional violation; if so, the defendant is entitled to qualified immunity only if the constitutional right that he allegedly violated was not clearly established. Doe ex rel. Doe v. Hawaii Dept. of Educ., C.A.9 (Hawai'i) 2003, 334 F.3d 906, on remand 351 F.Supp.2d 998. Civil Rights 1376(1); Civil Rights 1376(2)

The initial step in evaluating a qualified immunity defense is determining whether the complaint states a claim for violation of a constitutional right. Allison v. Snyder, C.A.7 (Ill.) 2003, 332 F.3d 1076, certiorari denied 124 S.Ct. 486, 540 U.S. 985, 157 L.Ed.2d 377. Civil Rights 1376(1)

Doctrine of qualified immunity offers public officials defense against liability under § 1983. Guzman-Rivera v. Rivera-Cruz, C.A.1 (Puerto Rico) 1996, 98 F.3d 664. Civil Rights 1376(1)

Qualified immunity protects government officials from insubstantial suits and harassing litigation while not foreclosing suits for damages which may be the only realistic avenue for vindication of constitutional rights. Runge v. Dove, C.A.8 (S.D.) 1988, 857 F.2d 469. Civil Rights 1376(1)

Whether qualified immunity applied to preclude arresting officer's §§ 1983 liability for false arrest could not be decided on motion to dismiss, given factual questions as to whether arrestee's ambiguous response when officer addressed him by using narcotics suspect's name, in attempt to determine whether arrestee was suspect, provided probable cause to arrest in light of information possessed by officers about suspect, and as to reasonableness of officers' actions in immediately attempting to take arrestee into custody. Williams v. City of Mount Vernon, S.D.N.Y.2006, 2006 WL 800963. Federal Civil Procedure 1831

State officials are not entitled to qualified immunity from §§ 1983 liability simply because no case with materially

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similar facts has held that their conduct was unconstitutional, in that the standard is one of fair warning, and when the contours of the violated right have been defined with sufficient specificity that a state official had fair warning that her conduct deprived a victim of his rights, she is not entitled to qualified immunity. Myers v. Baca, C.D.Cal.2004, 325 F.Supp.2d 1095. Civil Rights 1376(3)

Qualified immunity shields government officials from liability under § 1983 insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Tyson v. Willauer, D.Conn.2003, 289 F.Supp.2d 190. Civil Rights 1376(2)

Typical motion to dismiss standard, rather than heightened pleading standard of *Judge v. City of Lowell*, would be applied in considering motion to dismiss § 1983 action involving qualified immunity defense. Torres Ocasio v. Melendez, D.Puerto Rico 2003, 283 F.Supp.2d 505. Civil Rights 1398

Procedures regarding qualified immunity for alleged civil rights violations under § 1983 allow for judicial review, via certiorari, on the qualified immunity issue; thus, in order to avoid subjecting state officials to unnecessary and burdensome discovery or trial proceedings, district courts and courts of appeal must rule on the qualified immunity issue from the beginning, focusing on the characterization of the constitutional right in controversy and deciding, whether from the facts alleged in the complaint, a constitutional violation could be found. Hernandez Carrasquillo v. Rivera Rodriguez, D.Puerto Rico 2003, 281 F.Supp.2d 329. Federal Courts 452

Building inspector did not show prima facie evidence that his conduct in making numerous warrantless entries into lessees' offices was objectively reasonable, and, although inspector showed that it was objectively reasonable to submit purported code violations to superior agency, lessees presented sufficient evidence that inspector's actions were motivated by an intent to unfairly target or harass them; thus, building inspector was not entitled to summary judgment on his qualified immunity defense to equal protection claim of lessees, who showed that they were treated differently than other similarly situated businesses and proprietors, and that their equal protection rights were "clearly established" at the time of inspector's conduct. Mimics, Inc. v. Village of Angel Fire, D.N.M.2003, 277 F.Supp.2d 1131, affirmed in part, reversed in part and remanded 394 F.3d 836. Federal Civil Procedure 2491.5

Because qualified immunity under § 1983 is more than just affirmative defense to liability but instead immunity to lawsuits and their attendant burdens, early resolution of its availability is encouraged. Vinagro v. Reitsma, D.R.I.2003, 260 F.Supp.2d 425. Civil Rights 1376(1)

District court does not reach qualified immunity issue if claims against defendants are not actionable. James By and Through James v. Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1407. Officers And Public Employees 114

Doctrine of qualified immunity is judicial construction aimed at balancing competing policies of vindication of constitutional rights by those aggrieved and preservation of independent decisionmaking by public officials who are discharging their duty. Carrigan v. State of Del., D.Del.1997, 957 F.Supp. 1376. Civil Rights 1376(1)

Public officers are entitled to qualified immunity from claims for monetary damages if they can prove that their actions did not violate clearly established statutory or constitutional rights of which reasonable person would have been aware. Garrett v. Angelone, W.D.Va.1996, 940 F.Supp. 933, affirmed 107 F.3d 865. Civil Rights 1376(2)

"Qualified immunity" shields government officials performing discretionary functions from liability for suits brought against them in their individual capacities unless their conduct violates clearly established statutory or constitutional rights of which reasonable person would have known. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

Qualified immunity analysis in § 1983 claim requires courts to determine whether plaintiff has alleged violation of constitutional right, and whether that plaintiff has shown that applicable constitutional standards were clearly established at time of alleged misconduct. Flenner v. Sheahan, N.D.Ill.1996, 920 F.Supp. 905, reversed 107 F.3d 459. Civil Rights 1376(2)

Doctrine of qualified immunity shields public officials from damages unless their conduct was unreasonable in light of clearly established law. Lanigan v. Village of East Hazel Crest, N.D.Ill.1996, 913 F.Supp. 1202. Civil Rights 1376(2)

Generally, government officials performing discretionary functions are accorded qualified immunity and thereby shielded from civil damages liability insofar as they do not violate clearly established statutory or constitutional rights of which reasonable person would have known or as long as their actions could reasonably have been thought consistent with rights they are alleged to have violated. Field v. Kirton, D.Conn.1994, 856 F.Supp. 88. Civil Rights 1376(2)

Arresting officer's determination that he had probable cause to arrest sexual assault suspect was objectively reasonable, and thus he was entitled to qualified immunity from § 1983 liability arising out of allegedly false arrest; officer was entitled to rely on victim's complaint, absent showing that it was inherently incredible. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Civil Rights 1376(6)

3622. Purpose, qualified immunity generally

The primary goal of qualified immunity to a § 1983 action is to permit government officials to act in areas of legal uncertainty without undue fear of subsequent liability. Hanrahan v. Doling, C.A.2 (N.Y.) 2003, 331 F.3d 93. Civil Rights 1376(2)

Qualified immunity, for purposes of § 1983 action, is designed to shield from civil liability all but the plainly incompetent government officials or those who knowingly violate the law. Brady v. Fort Bend County, C.A.5 (Tex.) 1995, 58 F.3d 173, rehearing en banc granted, dismissed. Civil Rights 1376(2)

Underlying doctrine of qualified immunity for § 1983 purposes is desire to avoid overdeterrence of energetic law enforcement by subjecting governmental actors to high risk of liability. Rowland v. Perry, C.A.4 (N.C.) 1994, 41 F.3d 167. Civil Rights 1376(1)

Grant of qualified immunity to government officials ensures that the officials can perform their duties free from specter of endless and debilitating lawsuits. Torchinsky v. Siwinski, C.A.4 (N.C.) 1991, 942 F.2d 257. Civil Rights 1376(1)

Under qualified immunity doctrine, government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known; doctrine recognizes that government officials need to perform their duties without fear of litigation and to be able to reasonably anticipate if their actions will give rise to liability for damages. McCrea v. Zieba, N.D.Ohio 1996, 955 F.Supp. 801. Civil Rights 1376(2)

Qualified immunity protects government officials performing discretionary functions from civil liability if their conduct violates no clearly established statutory or constitutional rights, and seeks to protect government officials from cost of trial and burdens of broad reaching discovery. L.Q.A. By and Through Arrington v. Eberhart, M.D.Ala.1996, 920 F.Supp. 1208, affirmed 111 F.3d 897. Civil Rights 1376(2)

Doctrine of qualified immunity is designed to protect public official from liability in his or her individual capacity where official's conduct concerns performance of discretionary functions and does not violate clearly establish

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statutory or constitutional rights of which reasonable person would know. Gonzales v. Galveston Independent School Dist., S.D.Tex.1994, 865 F.Supp. 1241. Civil Rights 1376(2)

Qualified immunity acts as means to avoid deterring capable persons from accepting public office and encouraging action on pressing social issues. Han v. Department of Justice, D.Hawai'i 1993, 824 F.Supp. 1480, affirmed 45 F.3d 333. Officers And Public Employees 114

3623. Common law, qualified immunity generally

Qualified immunity covers civil liability for claims brought against police officers under both § 1983 and common law. Capone v. Marinelli, C.A.3 (Pa.) 1989, 868 F.2d 102. Civil Rights 1376(6); Municipal Corporations 747(3)

3624. Absolute immunity distinguished, qualified immunity generally

Presumption is that qualified rather than absolute immunity is sufficient to protect government officials in exercise of their duties. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and suggestion for rehearing en banc denied. Civil Rights 1407

When determining which type of immunity government official enjoys, qualified or absolute, Court of Appeals looks to nature of function that official was performing in particular case; if government official's function was quasi-judicial, official enjoys absolute immunity, while if function was administrative or investigatory, official enjoys only qualified immunity. Henderson v. Lopez, C.A.7 (Ill.) 1986, 790 F.2d 44. Officers And Public Employees 114

Qualified immunity from liability under § 1983 is entitlement not to stand trial, not defense from liability. Leisure v. City of Cincinnati, S.D.Ohio 2003, 267 F.Supp.2d 848. Civil Rights 1376(1)

Qualified immunity is not absolute. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Officers And Public Employees 114

"Absolute immunity" is complete shield for defendants sued under § 1983; "qualified immunity" affords defendants immunity from suit if their conduct was objectively reasonable. Redwood Village Partnership v. Graham, D.N.D.1993, 819 F.Supp. 867, affirmed 26 F.3d 839, certiorari denied 115 S.Ct. 423, 513 U.S. 962, 130 L.Ed.2d 337. Civil Rights 1376(1)

An allegation that a police officer destroyed exculpatory evidence by discarding result receipts from an alcohol breath testing machine is considered under a qualified, as opposed to absolute, immunity analysis, in a lawsuit under § 1983. Ankele v. Hambrick, E.D.Pa.2003, 2003 WL 21223821, Unreported, affirmed 136 Fed.Appx. 551, 2005 WL 1532436. Civil Rights 1376(6)

3624A. Clearly established right, qualified immunity generally

Rights of inmates to practice their religion, to communicate with the outside world, and to compile a legal defense were clearly established rights any reasonable person would be aware of, and sheriff was accordingly not entitled to qualified immunity at motion to dismiss stage on inmate's claims that sheriff conspired to violate those rights. Yoder v. Ryan, N.D.Ill.2004, 318 F.Supp.2d 601. Civil Rights 1376(6)

Civil rights activists who brought § 1983 action against police officers, stemming from their arrests while attempting to film traffic stops, adequately alleged in non-conclusory fashion that officers' purportedly improper conduct while making arrests violated their clearly-established rights to criticize and journalistically record traffic

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stops, and thus officers were not entitled to qualified immunity as to activists' First Amendment retaliation claim; criticism of officers was clear constitutional right, officers' alleged threats and physical attacks on activists would have chilled persons of ordinary firmness from engaging in protected activity, and officers allegedly took their actions immediately after activists made political speech criticizing officers from public sidewalk. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1376(6); Civil Rights 1395(6)

Prison officials were entitled to qualified immunity from an award of any damages at all, including nominal damages for any violations of Native American prisoner's rights under Free Exercise Clause of First Amendment, where none of the First Amendment claims made prisoner was founded upon clearly established law. Wilson v. Moore, N.D.Fla.2003, 270 F.Supp.2d 1328. Civil Rights 1376(7)

In undertaking qualified immunity analysis with respect to § 1983 claims against government officials, district court must first determine whether plaintiff has shown violation of constitutionally protected right, and if so, court must examine whether right was clearly established. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1376(1); Civil Rights 1376(2)

To show that right was clearly established, such that official is not entitled to qualified immunity from § 1983 claims, right allegedly violated cannot be asserted at high level of generality, but instead, must have been "clearly established" in more particularized, and hence more relevant, sense, i.e., contours of right must be sufficiently clear that reasonable official would understand that what he is doing violates that right. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1376(2)

3625. Time for raising defense, qualified immunity generally--Generally

Government official may not assert defense of qualified immunity at trial in § 1983 action if official did not first assert defense in pretrial dispositive motion, absent special circumstances, such as when detailed factual findings significantly affect qualified immunity inquiry. Falkner v. Houston, D.Neb.1997, 974 F.Supp. 757. Federal Civil Procedure 1942

Because qualified immunity is immunity from suit rather than mere defense to liability, any claims to immunity are to be resolved at earliest possible stage in litigation before any other action is taken by district court. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1376(1)

Qualified immunity issue should be resolved at earliest possible stage of litigation. Spiegel v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 891, affirmed 196 F.3d 717, as amended, rehearing denied, certiorari denied 120 S.Ct. 2688, 530 U.S. 1243, 147 L.Ed.2d 961. Civil Rights 1376(1)

Motion to dismiss based on qualified immunity may be raised at any time in employment discrimination action against government officials. Verney v. Dodaro, M.D.Pa.1995, 872 F.Supp. 188, affirmed 79 F.3d 1140. Federal Civil Procedure 1822.1

Court must decide defense of qualified immunity from civil rights violations at earliest opportunity as qualified immunity is immunity from suit rather that mere defense to liability. Orozco v. County of Yolo, E.D.Cal.1993, 814 F.Supp. 885. Civil Rights 1376(1)

3626. ---- Laches as bar to raising defense, time for raising defense, qualified immunity generally

City police officers were not barred by laches from asserting claim of qualified immunity in connection with warrantless search of social club, even though availability of privilege was known to them at least year prior to

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their motion, based on Court of Appeals finding of qualified immunity on part of Federal Bureau of Investigation agents who had accompanied them on search. Washington Square Post No. 1212 v. City of New York, S.D.N.Y.1992, 808 F.Supp. 264. Civil Rights 1376(6)

3627. Affirmative defense, qualified immunity generally--Generally

Qualified immunity is an affirmative defense to § 1983 action that may be waived. Bogle v. McClure, C.A.11 (Ga.) 2003, 332 F.3d 1347, rehearing and rehearing en banc denied 77 Fed.Appx. 510, 2003 WL 21804722, certiorari dismissed 124 S.Ct. 1168, 540 U.S. 1158, 157 L.Ed.2d 1059. Civil Rights 1398

Government officials performing discretionary functions are entitled to plead qualified immunity as affirmative defense to civil rights claim and are shielded from liability if their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known; moreover, even if permissible scope of activity is clearly defined, qualified immunity protects official if it was objectively reasonable for him to believe his acts were lawful. Wachtler v. County of Herkimer, C.A.2 (N.Y.) 1994, 35 F.3d 77. Civil Rights 1376(2)

Although qualified immunity is affirmative defense, no principle forbids court to notice that such defense exists, is bound to be raised, and is certain to succeed when raised. Buckley v. Fitzsimmons, C.A.7 (Ill.) 1994, 20 F.3d 789, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 740, 513 U.S. 1085, 130 L.Ed.2d 642, on remand 1996 WL 10899. Civil Rights 1376(1)

Affirmative defense of qualified immunity is available to all government officials, including police officers, in § 1983 action. England v. Hendricks, C.A.10 (Utah) 1989, 880 F.2d 281, rehearing denied, certiorari denied 110 S.Ct. 1130, 493 U.S. 1078, 107 L.Ed.2d 1036. Civil Rights 1376(6)

Qualified immunity constitutes an affirmative defense that the defendant official has the burden of pleading. Mason v. Arizona, D.Ariz.2003, 260 F.Supp.2d 807. Civil Rights 1398

Qualified immunity is affirmative defense against § 1983 claims, which provides immunity from suit, not merely from liability. James By and Through James v. Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1407. Civil Rights 1376(1)

Qualified immunity is affirmative defense to § 1983 liability. McCrea v. Zieba, N.D.Ohio 1996, 955 F.Supp. 801. Civil Rights 1376(1)

In civil rights cases, qualified immunity determines defendant's immunity from his or her ability to avoid trial altogether, rather than his or her immunity from damages. Kelly v. Foti, E.D.La.1994, 870 F.Supp. 126, affirmed in part and remanded 77 F.3d 819, rehearing and suggestion for rehearing en banc denied 85 F.3d 627. Civil Rights 1376(1)

Qualified immunity is immunity from suit, rather than mere defense to liability. Bapat v. Connecticut Dept. of Health Services, D.Conn.1992, 815 F.Supp. 525. Civil Rights 1376(1)

If § 1983 plaintiff seeks damages from government official in that official's individual capacity, official may raise affirmative defense of qualified immunity. Datz v. Hutson, N.D.Ga.1992, 806 F.Supp. 982, affirmed 14 F.3d 58. Civil Rights 1376(1)

Qualified immunity is an affirmative defense that must be pleaded by the defendant. Gavrilles v. O'Connor, D.C.Mass.1984, 579 F.Supp. 301. Civil Rights 1398

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To extent that county board members and village trustees were acting in administrative rather than legislative capacity, they enjoyed only qualified immunity, which was affirmative defense to be pleaded by particular defendant. LaSalle Nat. Bank v. Lake County, N.D.Ill.1984, 579 F.Supp. 8. Civil Rights 1376(4)

3627A. ---- Clearly established right, affirmative defense, qualified immunity generally

Prison officials were not entitled to qualified immunity in § 1983 action by allegedly transsexual inmate who was refused medical treatment in violation of the Eighth Amendment; although officials' conduct comported with prison policy of providing treatment to inmates who were diagnosed with gender identity disorder (GID) prior to incarceration, but not those who were diagnosed after incarceration, officials' conduct in denying inmate treatment was not objectively reasonable in light of clearly established law. Brooks v. Berg, N.D.N.Y.2003, 270 F.Supp.2d 302, vacated in part 289 F.Supp.2d 286. Civil Rights 1376(7)

To overcome defendants' claim to qualified immunity, § 1983 plaintiff must claim violation of a right pursuant to a statute or the Constitution which is clearly established so that objectively, reasonable officer would have known of it. Echtenkamp v. Loudon County Public Schools, E.D.Va.2003, 263 F.Supp.2d 1043. Civil Rights 1376(2)

The final steps in the qualified immunity analysis in a § 1983 action require the court to determine whether the right police officer allegedly violated was a clearly established constitutional right of which a reasonable person would have known, and, if so whether the officer's actions were objectively unreasonable in light of the right. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1376(6)

For a right to be clearly established, for qualified immunity purposes in a § 1983 action, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right; this is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent and officials can still be on notice that their conduct violates established law even in novel factual circumstances. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1376(2)

At the time of arrest giving rise to arrestee's § 1983 action, the law was clearly established, for purposes of qualified immunity, that a police officer should use no more force than necessary to effect an arrest. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1376(6)

3628. ---- Burden of proof, affirmative defense, qualified immunity generally

In civil rights action which plaintiff alleged lack of probable cause for arrest and use of excessive force during arrest, plaintiff was not required to prove absence of qualified immunity by arresting officer; officers did not raise qualified immunity defense and both parties agreed that no qualified immunity issue existed. Tatro v. Kervin, C.A.1 (Mass.) 1994, 41 F.3d 9. Civil Rights 1407

Qualified immunity is affirmative defense, and burden of proving defense lies with official asserting it. Houghton v. South, C.A.9 (Mont.) 1992, 965 F.2d 1532. Officers And Public Employees 119

Qualified good-faith immunity which protects a police officer under this section is an affirmative defense and must be pled by officer claiming it. Satchell v. Dilworth, C.A.2 (N.Y.) 1984, 745 F.2d 781. Civil Rights 1398

Defendant under this section retains burden of pleading qualified immunity defense, and proving either that the law

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was not clearly established at time of plaintiff's alleged injury, or, if the law was clearly established, that he neither knew nor should have known of the relevant legal standard due to extraordinary circumstances. Alexander v. Alexander, C.A.6 (Tenn.) 1983, 706 F.2d 751, on remand 573 F.Supp. 373. Civil Rights 1398; Civil Rights 1407

It is plaintiff's burden in § 1983 action, in opposing legitimate qualified immunity defense, to point to cases of Supreme Court and Court of Appeals demonstrating that her rights purportedly violated were clearly established, in light of facts and circumstances of her particular case. Hale v. Vance, S.D.Ohio 2003, 267 F.Supp.2d 725. Civil Rights 1376(2); Civil Rights 1407

After public official properly raises the defense of qualified immunity, the plaintiff initially bears the burden of showing the violation of a clearly established federal right; if plaintiff makes such showing, ultimate burden of persuasion switches back to the defendant official. Mason v. Arizona, D.Ariz.2003, 260 F.Supp.2d 807. Civil Rights 1407

To assert qualified immunity in § 1983 action, defendants must show that they were acting within scope of their discretionary authority when allegedly wrongful activities occurred, and once this has been shown, burden shifts and plaintiff must show lack of good faith on individual defendants' part; plaintiff can meet this burden by alleging that individual defendants' actions violated clearly established constitutional law or that individual defendants' objective intent was to harm plaintiff, regardless of state of law at time of conduct. Coletta v. City of North Bay Village, S.D.Fla.1997, 962 F.Supp. 1486. Civil Rights 1376(2); Civil Rights 1407

In § 1983 action, it was not burden of defendants claiming qualified immunity to demonstrate that the law was clearly established in their favor; rather, plaintiff had heavy burden of demonstrating substantial correspondence between conduct in question and prior law establishing that defendants' actions were clearly prohibited. James By and Through James v. Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1407. Civil Rights 1407

Section 1983 litigant must overcome onerous burden of defeating qualified immunity defense to recover monetary damages from pocket of government official. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Civil Rights 1376(1)

3629. ---- Dismissal motion, affirmative defense, qualified immunity generally

Allegations that police officer punched arrestee in the face, without first identifying himself as police officer and without preceding physical force on arrestee's part, and caused arrestee physical injury necessitating medical treatment supported arrestee's §§ 1983 claim for use of excessive force, and therefore officer was not entitled to dismissal for failure to state claim based on qualified immunity, notwithstanding officer's different version of incident. Williams v. City of Mount Vernon, S.D.N.Y.2006, 2006 WL 800963. Civil Rights 1395(6)

Officials of New Mexico Commission for the Blind Adult Orientation Center (AOC) were qualifiedly immune from former residents' §§ 1983 claims of deprivation of property without due process and denial of equal protection, inasmuch as former residents failed to provide any responsive argument or authority to officials' assertion of qualified immunity in motion to dismiss, and there was no reason why it would be improper to apply qualified immunity defense. Baumeister v. New Mexico Com'n for the Blind, D.N.M.2006, 425 F.Supp.2d 1250. Federal Civil Procedure 1752.1

Qualified immunity did not apply at motion-to-dismiss stage of §§ 1983 action brought against officials of Puerto Rico agency by 19 former employees, given that former employees asserted viable claims that their First Amendment and equal protection rights were violated as a result of former employees' termination, and, viewing those allegations in the most favorable light, court could not conclude that rights implicated were not clearly established. Acevedo-Orama v. Rodriguez-Rivera, D.Puerto Rico 2005, 389 F.Supp.2d 238. Federal Civil

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42 U.S.C.A. § 1983

Procedure 1752.1

Village's chief of police was not entitled to qualified immunity from black, former police dispatcher's civil rights action alleging race discrimination claim, on ground that former dispatcher's constitutional rights were not violated, or that her version of events was wrong; rather, former dispatcher's version of events were presumed true on chief's motion to dismiss on basis of qualified immunity. Dolson v. Village of Washingtonville, S.D.N.Y.2005, 382 F.Supp.2d 598. Civil Rights 1407

Although qualified immunity is affirmative defense, it is one that may, in some circumstances, be raised and decided on motion to dismiss before parties have commenced discovery. Connor v. Foster, N.D.Ill.1993, 833 F.Supp. 727. Federal Civil Procedure 1788.6

3630. Waiver of defense, qualified immunity generally

Like absolute immunity, qualified immunity from a civil rights action is effectively lost if a case is erroneously permitted to go to trial. Saucier v. Katz, U.S.2001, 121 S.Ct. 2151, 533 U.S. 194, 150 L.Ed.2d 272, on remand 262 F.3d 897. Civil Rights 1376(1)

Police officers waived claim of qualified immunity as grounds for judgment as matter of law at trial of action by mother of suspect killed by officers under § 1983, alleging excessive use of force, by not raising claim on motion for judgment as matter of law, even though they had raised claim in pretrial motion for summary judgment. Isom v. Town of Warren, Rhode Island, C.A.1 (R.I.) 2004, 360 F.3d 7. Federal Civil Procedure 2602

Psychiatrist, director of administrative services, and supervisor of psychiatric care unit at correctional center waived qualified immunity defense to inmate's claim that he was deprived of liberty without due process through forcible administration of psychotropic medications where they did not press defense in any pretrial motions, at pretrial conference, or at trial. Maul v. Constan, C.A.7 (Ind.) 1991, 928 F.2d 784. Federal Civil Procedure 751

Entitlement to qualified immunity in civil rights action is an immunity from suit, rather than a mere defense to liability and, like absolute immunity, is effectively lost if case is permitted to go to trial erroneously. Alvarado v. Picur, C.A.7 (Ill.) 1988, 859 F.2d 448, rehearing denied. Civil Rights 1373

Government official's entitlement to qualified immunity from § 1983 claim is immunity from suit rather than mere defense to liability, and like absolute immunity, it is effectively lost if case is erroneously permitted to go to trial. Rapkin v. Rocque, D.Conn.2002, 228 F.Supp.2d 142. Civil Rights 1376(1)

Qualified immunity privilege is immunity from § 1983 suit, rather than mere defense to liability; like absolute immunity, it is effectively lost if case is erroneously permitted to go to trial. Castaldo v. Stone, D.Colo.2001, 192 F.Supp.2d 1124, reconsideration denied 191 F.Supp.2d 1196. Civil Rights 1376(1)

Because qualified immunity is immunity from suit rather than mere defense to § 1983 liability, it is effectively lost if case is erroneously permitted to go to trial. Smith v. Tolley, E.D.Va.1997, 960 F.Supp. 977. Civil Rights 1376(1)

Prison nurse waived defense of qualified immunity in inmate's civil rights suit, where, after raising general immunity as defense in answer, she failed to raise qualified immunity defense in form of motion during years of pretrial litigation, she did not seek to establish qualified immunity defense during trial, and her proposed jury instructions did not include request to charge on issue of qualified immunity. Blissett v. Eisensmidt, N.D.N.Y.1996, 940 F.Supp. 449. Estoppel 52.10(3)

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42 U.S.C.A. § 1983

3631. Considerations governing generally, qualified immunity generally

County chancery clerk was entitled to qualified immunity with respect to deputy clerk's §§ 1983 claims for violations of her First and Fourteenth Amendment rights based upon alleged constructive discharge; deputy clerk offered no facts suggesting that her free speech rights were violated, or that chancery clerk sought to avoid providing her with pretermination procedures. Rutland v. Pepper, C.A.5 (Miss.) 2005, 404 F.3d 921. Civil Rights 1376(10)

When determining whether a defendant is entitled to qualified immunity in a § 1983 action, court ordinarily begins with a two-step test; first, court determines whether the conduct attributed to defendant violated federal law, and then determines whether that right was clearly established. Hanrahan v. Doling, C.A.2 (N.Y.) 2003, 331 F.3d 93. Civil Rights 1376(1); Civil Rights 1376(2)

Qualified immunity from a § 1983 action is analyzed from the perspective of the defendant at the time of the challenged conduct. Hanrahan v. Doling, C.A.2 (N.Y.) 2003, 331 F.3d 93. Civil Rights 1376(1)

Courts evaluating § 1983 claims based on allegedly unconstitutional conduct by state actors should conduct a two-prong inquiry to determine whether the state actors are entitled to qualified immunity: the first inquiry must be whether a constitutional right would have been violated on the facts alleged and, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established. McClendon v. City of Columbia, C.A.5 (Miss.) 2002, 305 F.3d 314, certiorari denied 123 S.Ct. 1355, 537 U.S. 1232, 155 L.Ed.2d 196. Civil Rights 1376(1); Civil Rights 1376(2)

In determining whether allegations by § 1983 plaintiff are sufficient to overcome defendant's defense of qualified immunity, court must determine whether plaintiff has alleged violation of clearly established constitutional right, if plaintiff fails, defendant is entitled to qualified immunity, but if plaintiff is successful, issue becomes objective legal reasonableness of defendant's conduct under circumstances. Baker v. Putnal, C.A.5 (Tex.) 1996, 75 F.3d 190 . Civil Rights 1376(2)

Supervisor sued in individual capacity in federal civil rights action is entitled to qualified immunity unless reasonable supervisor would have known that his or her actions were unlawful in light of clearly established law and information possessed. Dolihite v. Maughon By and Through Videon, C.A.11 (Ala.) 1996, 74 F.3d 1027, certiorari denied 117 S.Ct. 185, 519 U.S. 870, 136 L.Ed.2d 123. Civil Rights 1376(2)

To determine existence of qualified immunity, first step is to determine whether plaintiff has alleged violation of constitutional right; if plaintiff has, then next step is to decide if right was clearly established at time conduct occurred and whether defendant's conduct was objectively reasonable. Hale v. Townley, C.A.5 (La.) 1995, 45 F.3d 914, rehearing and suggestion for rehearing en banc denied 51 F.3d 1047. Civil Rights 1376(2)

District court is not required to determine, as part of qualified immunity analysis in § 1983 action, whether plaintiff has stated claim upon which relief can be granted, to decide, independent of and prior to addressing defendant's entitlement to qualified immunity, whether plaintiff has stated claim upon which relief can be granted, or to decide merits of constitutional claim. DiMeglio v. Haines, C.A.4 (Md.) 1995, 45 F.3d 790. Civil Rights 1376(1)

"Qualified immunity" or "good faith immunity" shields government officials performing discretionary functions from liability unless their conduct violates clearly established statutory or constitutional rights of which reasonable person would have known. Babb v. Dorman, C.A.5 (Tex.) 1994, 33 F.3d 472. Civil Rights 1376(2)

Court must make three-part inquiry to determine whether defendants in civil rights action are entitled to qualified immunity: first, it determines whether plaintiff is asserting violation of constitutional rights; second, it determines whether allegedly violated constitutional right was clearly established; and third, it determines if, given facts most

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favorable to plaintiff, there are no genuine issues of material fact as to whether reasonable official would have known that alleged acts violated that right. Foulks v. Cole County, Mo., C.A.8 (Mo.) 1993, 991 F.2d 454. Civil Rights 1376(2)

Two-part test for determining whether public official is entitled to qualified immunity from liability in civil rights action requires consideration of whether alleged conduct violated plaintiff's constitutional rights and then, if rights were violated, whether rights were clearly established at time of violation. Sherman v. Four County Counseling Center, C.A.7 (Ind.) 1993, 987 F.2d 397. Civil Rights 1376(2)

In order to determine whether official is entitled to qualified immunity in § 1983 action, court must identify right allegedly violated, determine whether right was clearly established, and determine whether reasonable official would have believed his or her conduct to be lawful. Hamilton v. Endell, C.A.9 (Alaska) 1992, 981 F.2d 1062. Civil Rights 1376(2)

For right to have been clearly established for purposes of qualified immunity in § 1983 action, something more than general constitutional rights such as due process must have been recognized; right must be established in more particularized sense meaning that contours of right must be sufficiently clear that reasonable official would understand that what he is doing violates right. Heflin v. Stewart County, Tenn., C.A.6 (Tenn.) 1992, 958 F.2d 709, rehearing denied, on reconsideration 968 F.2d 1, certiorari denied 113 S.Ct. 598, 506 U.S. 998, 121 L.Ed.2d 535. Civil Rights 1376(2)

Doctrine of qualified immunity shields officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Lundblad v. Celeste, C.A.6 (Ohio) 1991, 924 F.2d 627, certiorari denied 111 S.Ct. 2889, 501 U.S. 1250, 115 L.Ed.2d 1054. Civil Rights 1376(2)

Government officials are shielded from liability for civil damages in an action under this section insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. A.E. v. Mitchell, C.A.10 (Utah) 1983, 724 F.2d 864. Civil Rights 1376(2)

When determining if a public official is entitled to qualified immunity in a lawsuit under §§ 1983, a court considers whether: (1) plaintiff's allegations, if true, establish a constitutional violation; (2) that right was clearly established at the time of the alleged violation; and (3) a similarly situated reasonable official would have understood that the challenged action violated the constitutional right at issue. Sistemas Urbanos, Inc. v. Lugo Ramos, D.Puerto Rico 2006, 413 F.Supp.2d 96. Civil Rights 1376(2)

There are certain § 1983 cases where the inquiries into qualified immunity and the underlying merits are intertwined, in which the qualified immunity analysis unavoidably calls into question the existence of a constitutional violation, and in those cases the District Court considers both the assertion of qualified immunity and the issue of a constitutional violation. Forest v. Pawtucket Police Dept., D.R.I.2003, 290 F.Supp.2d 215, affirmed 377 F.3d 52, certiorari denied 125 S.Ct. 1315, 543 U.S. 1149, 161 L.Ed.2d 111. Civil Rights 1376(1)

Under qualified immunity analysis, court must first determine whether, based on applicable law, genuine issue of fact has been raised as to existence of constitutional violation, and then whether defendant officials should have known their actions were in violation of that constitutional right. Wysinger v. City of Benton Harbor, W.D.Mich.1997, 968 F.Supp. 349. Civil Rights 1376(2)

Determination of whether official is entitled to qualified immunity in civil rights action depends upon consideration of whether allegations state claim for violation of any rights secured by United States Constitution, whether rights and law at issue are clearly established, and whether reasonably competent official should have known when his conduct was unlawful in light of clearly established law. Carrigan v. State of Del., D.Del.1997, 957 F.Supp. 1376.

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42 U.S.C.A. § 1983

Civil Rights 1376(2)

"Qualified immunity" shields government officials from civil rights liability under § 1983 as long as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known, and for right to be clearly established, there does not have to be prior case directly on point, but on lawfulness of precipitating acts must be apparent in light of the existing law. Harris by Tucker v. County of Forsyth, M.D.N.C.1996, 921 F.Supp. 325. Civil Rights 1376(2)

Test for whether governmental defendant is entitled to qualified immunity from § 1983 liability in his or her individual capacity is whether defendant public official can first prove that he or she was acting within scope of his or her discretionary authority when allegedly wrongful acts occurred, and then burden shifts to plaintiff to show lack of good faith on defendant public official's part by proof demonstrating that law was clearly established at time and that official's actions violated clearly established constitutional law. L.Q.A. By and Through Arrington v. Eberhart, M.D.Ala.1996, 920 F.Supp. 1208, affirmed 111 F.3d 897. Civil Rights 1376(2); Civil Rights 1407

In determining whether government officials are entitled to qualified immunity, it must be determined whether (1) claimant asserted violation of constitutional right, (2) whether constitutional right was clearly established at time incident occurred, and (3) whether reasonable official would have known his actions violated that right. Long v. Nix, S.D.Iowa 1995, 877 F.Supp. 1358, affirmed 86 F.3d 761, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(2)

Under the doctrine of qualified immunity, state actors are immune from damages under § 1983 if they have performed discretionary functions falling within scope of their authority and have done so in objectively reasonable manner measured by the state of law at the time the conduct occurred. Rosario v. Brooks, D.Mass.1995, 877 F.Supp. 765. Civil Rights 1376(3)

Courts must engage in two-part analysis in determining whether government officials are entitled to qualified immunity: whether plaintiff had clearly established constitutional right; and whether that right was violated. Verney v. Dodaro, M.D.Pa.1995, 872 F.Supp. 188, affirmed 79 F.3d 1140. Civil Rights 1376(2)

In determining whether defense of qualified immunity is established, court must inquire as to whether there has been in fact violation of clearly established constitutional right by defendant; if court determines there has been such violation, court must then conduct second inquiry as to objective legal reasonableness of defendant's conduct. Vines v. City of Dallas, Tex., N.D.Tex.1994, 851 F.Supp. 254, affirmed 52 F.3d 1067. Civil Rights 1376(2)

Qualified immunity allows public official to escape liability in § 1983 civil rights claim if official's conduct did not violate clearly established statutory or constitutional rights of which reasonable person would have known. Gehl Group v. Koby, D.Colo.1993, 838 F.Supp. 1409, affirmed 63 F.3d 1528. Civil Rights 1376(2)

Individual liability under § 1983 turns on objective legal reasonableness of defendant's actions assessed in light of clearly established law at that time. Thompson v. City of Arlington, Tex., N.D.Tex.1993, 838 F.Supp. 1137. Civil Rights 1376(2)

3632. Knowledge, qualified immunity generally

City's chief inspector was entitled to qualified immunity, in African-American property owner's §§ 1983 equal protection claim, asserting that city officials failed to properly maintain ditch causing flooding on property, absent evidence that inspector was involved with any aspect of constructing or maintaining the ditch, or was aware of property owner's complaints about the flooding and ditch problems. Wilson v. Northcutt, C.A.8 (Ark.) 2006, 441 F.3d 586, rehearing and rehearing en banc denied. Civil Rights 1376(4)

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42 U.S.C.A. § 1983

Government officials are not entitled to qualified immunity if they had fair warning that their conduct violated §§ 1983 plaintiff's rights. Moran v. Clark, C.A.8 (Mo.) 2004, 359 F.3d 1058. Civil Rights 1376(2)

If official pleading qualified immunity defense claims extraordinary circumstances and can prove that he neither knew nor should have known of relevant legal standard, defense should be sustained. Walter v. Pike County, Pennsylvania, M.D.Pa.2006, 2006 WL 3437384. Civil Rights 1376(2)

For qualified immunity purposes, an arresting officer does not need to have personal knowledge of probable cause, but can be informed of the facts by his fellow officers; collective knowledge of law enforcement officials should be considered when making a determination of whether arguable probable cause to arrest existed. Delgado v. Miami-Dade County, S.D.Fla.2006, 456 F.Supp.2d 1234. Civil Rights 1376(6)

Executive director of school district's intermediate unit was entitled to qualified immunity from liability under §§ 1983 for alleged violations of student's rights under Individuals with Disabilities Education Act (IDEA), where director did not know student until action was filed, did not become aware of the due process hearings involving student until after they occurred, and did not take any particular action with respect to student. Colon ex rel. Disen-Colon v. Colonial Intermediate Unit 20, M.D.Pa.2006, 443 F.Supp.2d 659. Civil Rights 1376(5)

Alleged failure of New Mexico Commission for the Blind Adult Orientation Center (AOC) to provide residents with adequate medical care, despite knowing of dangerous medical circumstances, if proven, did not create special relationship so as to preclude qualified immunity defense to former AOC resident's claim of violation of her right to bodily integrity and personal security. Baumeister v. New Mexico Com'n for the Blind, D.N.M.2006, 425 F.Supp.2d 1250. Civil Rights 1376(3)

Genuine issues of material fact existed as to what arresting officer actually did or knew, precluding summary judgment for arresting officer on basis of qualified immunity in arrestee's § 1983 action against the officer for false arrest. Cuba-Diaz v. Town of Windham, D.Conn.2003, 274 F.Supp.2d 221. Federal Civil Procedure 2491.5

Sheriff was entitled to qualified immunity against arrestee's § 1983 malicious prosecution claim that was based on sheriff's alleged awareness of alleged wrongdoing in his department and failure to prevent the commission of those wrongs, which allegedly resulted in arrestee's alleged false arrest and imprisonment, where there was evidence that more than one investigation was carried out in response to arrestee's complaints, and there was no proof that the investigations were in any way inadequate. Riebsame v. Prince, M.D.Fla.2003, 267 F.Supp.2d 1225, affirmed 91 Fed.Appx. 656, 2004 WL 177567, certiorari denied 125 S.Ct. 166, 543 U.S. 888, 160 L.Ed.2d 149. Civil Rights 1376(6)

Officials of state department of human services were not entitled to qualified immunity, in suit brought by African-American employees challenging placement of white female in department through nonconventional hiring procedure and promotion of female without giving them opportunity to seek position when they were at least equally qualified; assuming officials committed charged acts, they knew or should have known that they were violating employees' constitutional and statutory rights. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Civil Rights 1376(10)

In § 1983 action brought by former employee against county community service board and individual board members, alleging retaliation for exercise of First Amendment rights, employee failed to establish that members were sufficiently alerted to fact that they might have been acting illegally, since employee could not maintain prima facie retaliation claim, and thus members were entitled to qualified immunity. Collier v. Clayton County Community Service Bd., N.D.Ga.2002, 236 F.Supp.2d 1345, affirmed 82 Fed.Appx. 222, 2003 WL 22227530. Civil Rights 1376(10)

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42 U.S.C.A. § 1983

Qualified immunity protects all but plainly incompetent or those who knowingly violate law. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1376(2)

Public officials are shielded from liability for damages in civil rights action as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known; stated differently, qualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law. Hare v. City of Corinth, Miss., N.D.Miss.1996, 949 F.Supp. 456, reversed 135 F.3d 320 . Civil Rights 1376(2)

Qualified immunity defense allows for mistaken judgments; it protects all but the plainly incompetent or those who knowingly violate law. McRae v. Tena, D.Ariz.1996, 914 F.Supp. 363, affirmed on other grounds 113 F.3d 1241. Civil Rights 1376(2)

Former police chief and mayor were entitled to qualified immunity regarding former police officer's §§ 1981 and 1983 race discrimination claim in which disabled black officer claimed white police officers with disabilities were accommodated while he was not and he was treated differently with respect to job rotation policy in comparison with white officers; there was no competent evidence that white police officers were accommodated while black officer was not or that, in comparison to white officers, black officer was treated differently with respect to job rotation policy, and neither former police chief or mayor was aware of any difference in treatment along racial lines even if such differences existed. Ways v. City of Lincoln, D.Neb.1995, 909 F.Supp. 1316. Civil Rights 1376(10)

Qualified immunity is not intended to protect plainly incompetent state officials or those who knowingly violate law. Pinder v. Commissioners of Cambridge in City of Cambridge, D.Md.1993, 821 F.Supp. 376, affirmed 33 F.3d 368, rehearing granted and vacated, on rehearing 54 F.3d 1169, certiorari denied 116 S.Ct. 530, 516 U.S. 994, 133 L.Ed.2d 436. Officers And Public Employees 114; Officers And Public Employees 116

3633. Motive or intent, qualified immunity generally

Material issue of genuine fact existed as to whether city council president acted with a motive to suppress council member's speech based upon his viewpoint when she had him removed from council meeting, precluding summary judgment in favor of president on qualified immunity grounds on member's First Amendment claim. Monteiro v. City of Elizabeth, C.A.3 (N.J.) 2006, 436 F.3d 397, petition for certiorari filed 2006 WL 1557608. Federal Civil Procedure 2491.5

Firetruck driver responding to emergency call at time he struck and killed on-coming motorist was entitled to qualified immunity, as matter of law, from §§ 1983 claim based on substantive due process violation, absent allegation that he intended to harm motorist; it could not be said that decision to drive quickly, even recklessly so, in response to emergency call shocked conscience. Perez v. Unified Government of Wyandotte County/Kansas City, Kan., C.A.10 (Kan.) 2005, 432 F.3d 1163, petition for certiorari filed 2006 WL 1130534. Civil Rights 1376(4)

Because issue in determining whether defendant is entitled to qualified immunity in § 1983 action is one of objective reasonableness in respect to whether challenged action violated constitutional provision sued on, defendant's subjective motivation and subjective belief as to lawfulness of defendant's conduct or what facts justified it are irrelevant. Pierce v. Smith, C.A.5 (Tex.) 1997, 117 F.3d 866. Civil Rights 1376(2)

State of mind of public official is irrelevant to question of qualified immunity in §§ 1983 action, except for those cases in which impermissible intent is essential element of constitutional violation alleged. Irizarry-Lopez v. Torres-Gonzalez, D.Puerto Rico 2005, 363 F.Supp.2d 7. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

Pro se inmate who was experienced with § 1983 litigation, articulate, and cognizant of basic procedural requirements was not entitled to appointment of counsel in suit alleging violations of his right of access to courts and counsel, where suit did not present difficult factual or legal issues. Davidson v. Goord, W.D.N.Y.2003, 259 F.Supp.2d 238. Civil Rights 1445

A government official sued for discrimination under § 1983 may prevail on qualified immunity grounds, even if the plaintiff establishes that official acted with a discriminatory motive, if official establishes that he also acted from a non-discriminatory motive and that non-discriminatory motive alone would have prompted same adverse action, even had the discriminatory motive not existed. Morris v. Wallace Community College-Selma, S.D.Ala.2001, 125 F.Supp.2d 1315, affirmed 34 Fed.Appx. 388, 2002 WL 518045. Civil Rights 1376(2)

3634. Custom or usage, qualified immunity generally

Policy or custom requirement imposed by Supreme Court's *Monell* decision, i.e., that government is liable under § 1983 only when injury is inflicted as result of execution of governmental policy or custom, cannot be equated with qualified immunity; to contrary, requirement of municipal policy or custom is essential element of § 1983 claim that plaintiff must prove in order to establish municipal liability. Buckner v. Toro, C.A.11 (Ga.) 1997, 116 F.3d 450, certiorari denied 118 S.Ct. 608, 522 U.S. 1018, 139 L.Ed.2d 495. Civil Rights 1351(1); Civil Rights 1376(1)

Genuine issue of material fact as to whether the city had a custom or policy of having its police officers conduct strip searches of all persons on premises when executing search warrant, precluded summary judgment in favor of city, in §§ 1983 action brought by minors who were subject to strip search by officers during execution of search warrant, alleging that city failed to properly train its officers. Quiles v. Kilson, D.Mass.2004, 337 F.Supp.2d 224. Federal Civil Procedure 2491.5

3635. Reliance, qualified immunity generally

City manager and police officers who, in reliance on advice given to them by city attorney, enforced city ordinance barring distribution of newspapers on public sidewalks were entitled to qualified immunity from liability in individual's § 1983 action alleging that enforcement of ordinance violated his First Amendment rights. Steele v. City of Bemidji, D.Minn.2003, 242 F.Supp.2d 624. Civil Rights 1376(4); Civil Rights 1376(6)

3636. Special relationship, qualified immunity generally

Even if police officers prevented bar fight participant's friends from driving him home after he was asked to leave bar, officers did not create dangerous situation or render participant more vulnerable to danger, so as to create "special relationship" implicating due process protections, given that officers gave participant several reasonable options, including a ride to a nearby service station, which he accepted; accordingly, qualified immunity prevented police officers from being held liable in participant's estate's civil rights action. Estate of Stevens v. City of Green Bay, C.A.7 (Wis.) 1997, 105 F.3d 1169. Civil Rights 1376(6)

Agency employee's alleged action of letting strangers into New Mexico Commission for the Blind Adult Orientation Center (AOC), who allegedly attempted to extort money from resident, if proven, did not create special relationship so as to preclude qualified immunity defense to resident's claim of violation of her right to bodily integrity and personal security, inasmuch as alleged action did not impose any limitation on resident's freedom. Baumeister v. New Mexico Com'n for the Blind, D.N.M.2006, 425 F.Supp.2d 1250. Civil Rights 1376(3)

Neither individual nor his minor daughter had Fourteenth Amendment right to be protected by the state from acts of Mississippi parolee, who murdered daughter in Wisconsin, and, thus, former Mississippi commissioner of corrections and interstate compact administrator were entitled to qualified immunity from civil rights suit in their

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personal capacities; no custodial relationship existed between plaintiff's daughter and Mississippi officials, there was no prior relationship of any kind between officials and daughter such that daughter would have been foreseeable victim of officials' failure to act, and there was no allegation that officials were aware that daughter, as distinguished from public at large, faced any special danger. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Civil Rights 1376(7)

3637. Legal question, qualified immunity generally

District court's denial of parole officer's claim of qualified immunity in § 1983 action brought by parolee alleging Fourth Amendment violations was appealable, given that the officer conceded parolee's facts as to what happened, and thus the determination of officer's entitlement to qualified immunity turned on a question of law. Knox v. Smith, C.A.7 (Ill.) 2003, 342 F.3d 651, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 1422, 540 U.S. 1183, 158 L.Ed.2d 86. Federal Courts 579

With respect to qualified immunity defense in § 1983 case, question of whether defendants acted objectively in reasonable manner and whether plaintiff's rights were clearly established at time of alleged deprivation is to be applied to particular defendant's conduct as question of law and is to be decided by court prior to trial. Whisman Through Whisman v. Rinehart, C.A.8 (Mo.) 1997, 119 F.3d 1303. Civil Rights 1376(1); Civil Rights 1432

Determination of qualified immunity in § 1983 action essentially is legal rather than factual question. Turiano v. Schnarrs, M.D.Pa.1995, 904 F.Supp. 400. Civil Rights 1432

Existence of qualified immunity from civil rights claim is question of law for the court, rather than question of fact for the jury. Defore v. Premore, N.D.N.Y.1994, 863 F.Supp. 91, affirmed 86 F.3d 48. Civil Rights 1432

Determining whether qualified immunity applies is question for court where factual issues are undisputed. Malignaggi v. County of Gloucester, D.N.J.1994, 855 F.Supp. 74. Civil Rights 1432

Qualified immunity test requires three inquiries, the first two of which present pure questions of law, while the third, though ultimately a legal question, may require some factual determinations as well: identification of specific right allegedly violated; determination whether right was so clearly established as to alert reasonable officer to its constitutional parameters; and determination whether reasonable officer could have believed his conduct was lawful. Dennis v. Thurman, C.D.Cal.1997, 959 F.Supp. 1253. Civil Rights 1376(2); Civil Rights 1432

3638. Facts of each case as controlling, qualified immunity generally

Police officers were not entitled to qualified immunity from liability on § 1983 claim alleging they used excessive force, in violation of Fourth Amendment, in attempting to take mentally individual, who was ultimately shot and killed, into custody, because fact issues existed as to whether officers acted reasonably under the circumstances. Herrera v. Las Vegas Metropolitan Police Dept., D.Nev.2004, 298 F.Supp.2d 1043. Civil Rights 1376(6)

Court should use plaintiff's allegations in complaint to determine appropriateness of defendants' qualified immunity defense in § 1983 action. Leisure v. City of Cincinnati, S.D.Ohio 2003, 267 F.Supp.2d 848. Civil Rights 1398

Plaintiff seeking to overcome bar of qualified immunity to § 1983 claims can show that right that was allegedly violated was clearly established in law by pointing to binding precedent that directly establishes conduct in question as violating plaintiff's rights or to generally applicable principle from either binding or persuasive authorities whose specific application to relevant controversy is so clearly foreshadowed by applicable direct authority as to leave no doubt in mind of reasonable officer that his conduct was unconstitutional. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1376(2)

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While issue of qualified immunity is question of law, it cannot be decided in abstract; court can only make such determination in reference to particular facts of case. Simkunas v. Tardi, N.D.Ill.1989, 720 F.Supp. 687, affirmed 930 F.2d 1287. Officers And Public Employees 119

Remand was required in property owner's § 1983 action against town officials, private architect, and others, arising from demolition of building on property, for purpose of determining whether architect acted under state law or was entitled to qualified immunity, where district court dismissed action against architect, but opinion was unclear as to reason for dismissal. Davis v. Ferdico, C.A.2 (N.Y.) 2003, 67 Fed.Appx. 43, 2003 WL 21309149, Unreported. Federal Courts 947

3639. Summary judgment, qualified immunity generally--Generally

For purposes of determining if a government official is entitled to qualified immunity from a civil rights action, if the law did not put the official on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate. Saucier v. Katz, U.S.2001, 121 S.Ct. 2151, 533 U.S. 194, 150 L.Ed.2d 272, on remand 262 F.3d 897. Federal Civil Procedure 2491.5

Court of Appeals reviews the district court's denial of summary judgment on the ground of qualified immunity in a § 1983 case, to the extent that the denial turns on an issue of law, de novo. Hanrahan v. Doling, C.A.2 (N.Y.) 2003, 331 F.3d 93. Federal Courts 776

Summary judgment on basis of qualified immunity is appropriate only if asserted rights were not clearly established, or if evidence is such that, even when it is viewed in light most favorable to plaintiffs and with all permissible inferences drawn in their favor, no rational jury could fail to conclude that it was objectively reasonable for defendants to believe that they were acting in fashion that did not violate clearly established right. Davidson v. Scully, C.A.2 (N.Y.) 1997, 114 F.3d 12. Civil Rights 1376(2)

Disputed facts are treated no differently in qualified immunity analysis than in any other context for summary judgment purposes; if plaintiff has alleged clearly established right, summary judgment on qualified immunity grounds is improper as long as there remains any material factual dispute regarding actual conduct of defendants. Buonocore v. Harris, C.A.4 (Va.) 1995, 65 F.3d 347. Federal Civil Procedure 2491.5

When motion for summary judgment is brought claiming qualified immunity to § 1983 action, plaintiff must state claim of violation of clearly established law and must present evidence sufficient to create genuine issue as to whether defendant in fact committed acts that violated law. Adams v. Metiva, C.A.6 (Mich.) 1994, 31 F.3d 375. Federal Civil Procedure 2491.5

Government officials performing discretionary functions are entitled to summary judgment on qualified immunity in civil rights cases if, taking facts in light most favorable to plaintiff, officials' conduct did not violate clearly established constitutional rights of which reasonable person would have known. Kane v. Hargis, C.A.4 (Va.) 1993, 987 F.2d 1005. Civil Rights 1376(2)

To avoid summary judgment in § 1983 civil rights action based on qualified immunity, plaintiff must show that, at time of public official's action or inaction, specific right at issue was so clearly established that any reasonable officer in defendant's position would have clearly understood that he was under duty to refrain from conduct alleged to have been unconstitutional. Morton v. City of Little Rock, C.A.8 (Ark.) 1991, 934 F.2d 180. Civil Rights 1376(2)

In determining whether presence of allegedly disputed material facts relating to qualified immunity claim prevents interlocutory appeal of summary judgment denial of qualified immunity defense, the Court of Appeals should consider in the light most favorable to plaintiff all undisputed facts discernible from pleadings and other materials

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submitted to supplement them by time motion for summary judgment is made. DeVargas v. Mason & Hanger-Silas Mason Co., Inc., C.A.10 (N.M.) 1988, 844 F.2d 714, 105 A.L.R. Fed. 829. Federal Courts 802

Qualified immunity determination in the special context of First Amendment retaliation claims cannot properly be resolved on the face of the pleadings on motion to dismiss, but rather, can be resolved only after the plaintiff has had an opportunity to adduce evidence in support of the allegations that the true motive for the conduct was retaliation. Bradshaw v. Township of Middletown, D.N.J.2003, 296 F.Supp.2d 526, affirmed 145 Fed.Appx. 763, 2005 WL 2077137. Civil Rights 1398; Federal Civil Procedure 1752.1

When the record shows an unresolved dispute of historical fact relevant to a qualified immunity analysis, in a § 1983 action, a motion for summary judgment based on qualified immunity should be properly denied. Unzueta v. Steele, D.Kan.2003, 291 F.Supp.2d 1230. Federal Civil Procedure 2491.5

Triable issue of fact as to whether retaliatory animus motivated village and state defendants' conduct toward plaintiff precluded summary judgment for his First Amendment retaliation claim based on qualified immunity. Stein v. Janos, S.D.N.Y.2003, 269 F.Supp.2d 256. Federal Civil Procedure 2497.1

City council members were entitled to absolute immunity from § 1983 claims arising out of application of ordinance that was enacted to establish local procedures for annual renewal of wrecker certificates; procedures adopted affected everyone who applied, or would be applying, for wrecker certificate, and thus adoption of procedures was within legislative sphere. Thornton v. City of St. Helens, D.Or.2002, 231 F.Supp.2d 1019. Civil Rights 1376(4)

Presentation of genuine issues of material fact on elements of § 1983 claim will not preclude summary judgment for defendants if defendants are immune from suit. Wysinger v. City of Benton Harbor, W.D.Mich.1997, 968 F.Supp. 349. Federal Civil Procedure 2491.5

District court should grant summary judgment on a claim of qualified immunity if asserted rights were not clearly established, or if the evidence is such that, even when viewed in light most favorable to plaintiffs and with all permissible inferences drawn in their favor, no rational jury could fail to conclude that it was objectively reasonable for defendants to believe that they were acting in a fashion that did not violate a clearly established right. Davidson v. Coughlin, S.D.N.Y.1997, 968 F.Supp. 121. Federal Civil Procedure 2491.5

Whether defendants are entitled to qualified immunity may be properly determined on pretrial motion for summary judgment. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Federal Civil Procedure 2491.5

Defendants claiming qualified immunity cannot prevail at summary judgment stage if plaintiff can present version of facts that is supported by evidence and under which defendants would not be entitled to qualified immunity. Estate of Frank v. City of Beaver Dam, E.D.Wis.1996, 921 F.Supp. 590. Federal Civil Procedure 2491.5

To defeat defendants' motion for summary judgment of § 1983 claim based on qualified immunity, plaintiff must show that defendants are not entitled to qualified immunity as matter of law or that genuine issues of material fact exist so that determination of whether defendants are entitled to qualified immunity are only properly determined after findings of fact have been made by jury, but even disputes over genuine issues of material fact will not preclude summary judgment premised on qualified immunity if legal norms allegedly violated were not clearly established at time of challenged actions. L.Q.A. By and Through Arrington v. Eberhart, M.D.Ala.1996, 920 F.Supp. 1208, affirmed 111 F.3d 897. Federal Civil Procedure 2491.5

Issue of qualified immunity is threshold question in any summary judgment motion in § 1983 action, because purpose of objective qualified immunity inquiry is to avoid unnecessary burdens on government officials by more frequent use of summary judgment tool. Pyka v. Village of Orland Park, N.D.Ill.1995, 906 F.Supp. 1196. Federal

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42 U.S.C.A. § 1983

Civil Procedure 2491.5

Under doctrine of qualified immunity, summary judgment must be granted against any damages claim against actions taken by government employees in their official government capacities insofar as conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Umbehr v. McClure, D.Kan.1993, 840 F.Supp. 837, reversed 44 F.3d 876, rehearing denied, certiorari denied 115 S.Ct. 2616, 515 U.S. 1161, 132 L.Ed.2d 859, certiorari granted 115 S.Ct. 2639, 515 U.S. 1172, 132 L.Ed.2d 878, motion granted 116 S.Ct. 416, 516 U.S. 962, 133 L.Ed.2d 334, affirmed and remanded 116 S.Ct. 2342, 518 U.S. 668, 135 L.Ed.2d 843, dissenting opinion 116 S.Ct. 2361, 518 U.S. 668, 135 L.Ed.2d 843. Federal Civil Procedure 2491.5

To succeed on motion for summary judgment in § 1983 action on basis of qualified immunity, defendants need not show that there is only one reasonable conclusion jury could reach; rather, standard to be applied is whether defendants acted reasonably under settled law in circumstances, not whether another reasonable, or more reasonable, interpretation of events can be constructed. Myers v. Becker County, D.Minn.1993, 833 F.Supp. 1424. Federal Civil Procedure 2491.5

When presented with motion for summary judgment based on qualified immunity, court must engage in three-part analysis: identification of specific right allegedly violated; determination of whether that right was so clearly established as to alert reasonable officer to its constitutional parameters; and ultimate determination of whether reasonable officer could have believed conduct at issue was lawful; officers will prevail if right asserted was not clearly established or officer could have reasonably believed his conduct was lawful. Marshall v. Gates, C.D.Cal.1993, 812 F.Supp. 1050, reversed 44 F.3d 722, as amended. Federal Civil Procedure 2491.5

In deciding whether to grant summary judgment based on qualified immunity, court must address state of law at time of incident and determine whether officer acted reasonably in light of clearly established law and information he possessed at that time. Africa v. City of Philadelphia, E.D.Pa.1992, 809 F.Supp. 375, opinion after remand 849 F.Supp. 331, affirmed in part, reversed in part, dismissed in part 49 F.3d 945, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 176, 516 U.S. 863, 133 L.Ed.2d 116, on remand 910 F.Supp. 212, on remand 938 F.Supp. 1264. Federal Civil Procedure 2491.5

In applying qualified immunity test, court must first identify specific right allegedly violated, then determine whether right was so clearly established as to alert reasonable officer to its constitutional parameters, before considering third inquiry, requiring determination of whether reasonable officer could have believed his conduct was lawful. Dennis v. Thurman, C.D.Cal.1997, 959 F.Supp. 1253. Civil Rights 1376(2)

3640. ---- Burden of proof, summary judgment, qualified immunity generally

In context of summary judgment motion, to prevail against qualified immunity defense in § 1983 action plaintiff must come forward with facts or allegations to show both that defendant's alleged conduct violated law and that law was clearly established when violation occurred. Pallottino v. City of Rio Rancho, C.A.10 (N.M.) 1994, 31 F.3d 1023. Civil Rights 1376(2)

Civil rights plaintiff, as nonmovant, could not rest on his pleadings to defeat defendant officials' summary judgment motion premised on qualified immunity defense, particularly when plaintiff was currently represented by counsel, even if he was proceeding pro se when he filed his amended complaint. Kerr v. Puckett, E.D.Wis.1997, 967 F.Supp. 354, affirmed 138 F.3d 321. Federal Civil Procedure 2491.5

To enjoy qualified immunity, government official must first demonstrate that he or she was acting within scope of his or her discretionary authority when allegedly wrongful acts occurred. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Officers And Public Employees 114

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To establish defense of qualified immunity on motion for summary judgment, prison official who performed allegedly unconstitutional strip search of prison visitor bore burden of showing upon undisputed facts either that it was not clear at time of search that interest asserted by plaintiff was protected by federal law or that it was objectively reasonable for official to believe his conduct did not violate visitor's clearly established rights. Varrone v. Bilotti, E.D.N.Y.1994, 867 F.Supp. 1145, reversed 123 F.3d 75. Civil Rights 1376(7)

When defendant moves for summary judgment in § 1983 action on basis of qualified immunity, it is plaintiff's burden to demonstrate defendant's infringement of a "clearly established" federal right; if plaintiff fails to do so, defendant prevails. Hansen v. Lamontagne, D.N.H.1992, 808 F.Supp. 89. Federal Civil Procedure 2544

To avoid summary judgment when § 1983 defendant raises defense of qualified immunity, plaintiff bears burden of coming forward with facts or allegations sufficient to show both that defendant's alleged conduct violated law and that law was clearly established when alleged violation occurred; if plaintiff meets such burden, defendant assumes normal burden of movant for summary judgment of establishing that no material facts remain in dispute that would defeat his or her claim of qualified immunity. King v. Marmon, D.Kan.1992, 793 F.Supp. 1030. Federal Civil Procedure 2544

3641. ---- Shifting of burden, summary judgment, qualified immunity generally

In applying the qualified immunity test on a motion for summary judgment in a § 1983 action, court reviews the facts in the light most favorable to the plaintiff and draw all permissible inferences in the plaintiff's favor. Hanrahan v. Doling, C.A.2 (N.Y.) 2003, 331 F.3d 93. Federal Civil Procedure 2543

Once defendant public official asserting qualified immunity establishes that he or she was acting within scope of his or her discretionary authority when allegedly wrongful acts occurred, burden shifts to plaintiff bringing § 1983 claim to show lack of good faith on defendant's part, which can be met by demonstrating that official's actions violated clearly established constitutional law. Wallace v. City of Montgomery, M.D.Ala.1996, 956 F.Supp. 965. Civil Rights 1407

Test for qualified immunity at summary judgment stage of proceeding requires plaintiff to demonstrate that law is clearly established; defendant official must then prove that his or her conduct either does not violate plaintiff's rights or that there were extraordinary circumstances and that he neither knew nor should have known of relevant legal standard. Kurtz v. Denniston, N.D.Iowa 1994, 872 F.Supp. 631. Civil Rights 1376(2)

On § 1983 retaliation claim against government employee, burden is on plaintiff to demonstrate that protected conduct was substantial or motivating factor in employee's decision; once such showing is made, burden shifts to defendant to prove by preponderance of evidence that it would have reached same decision absent protected conduct. Blue v. Koren, S.D.N.Y.1994, 865 F.Supp. 169, reversed 72 F.3d 1075. Civil Rights 1405

If civil rights plaintiffs meet their burden of both identifying the clearly established law that defendants allegedly violated and of demonstrating that defendants' alleged conduct violated that law, burden shifts to defendants moving for summary judgment on basis of qualified immunity to show that no material issues of fact remain as to whether their actions were objectively reasonable in light of the law and the information they possessed at the time; showing of objective reasonableness entitles defendants to summary judgment unless plaintiffs show that there are factual disputes relevant to claims of immunity. Harris v. Evans, D.Kan.1992, 795 F.Supp. 1060. Federal Civil Procedure 2544

3642. ---- Prima facie evidence, summary judgment, qualified immunity generally

City government made prima facie showing of objective reasonableness of laying off from position as assistant city manager Hispanic female over age of 40, and city produced enough evidence to require employee to show that

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summary judgment based on qualified immunity was inappropriate. Lewis v. City of Ft. Collins, C.A.10 (Colo.) 1990, 903 F.2d 752. Civil Rights 1551; Federal Civil Procedure 2497.1

3643. ---- Standard of proof, summary judgment, qualified immunity generally

For § 1983 plaintiff to defeat defendants' motion for summary judgment based on qualified immunity, plaintiff must show that defendants are not entitled to qualified immunity as matter of law or that genuine issues of material fact exist so that determination of whether defendants are entitled to qualified immunity is only properly made after findings of fact have been made by jury; however, even disputes over genuine issues of material fact will not preclude summary judgment premised on defendants' qualified immunity if legal norms allegedly violated were not clearly established at time of challenged actions. Dowdell v. Chapman, M.D.Ala.1996, 930 F.Supp. 533. Federal Civil Procedure 2491.5

Plaintiff's claims will withstand summary judgment against public official claiming qualified immunity only if plaintiff presents some evidence upon which reasonable fact finder could find that public official violated well-established federal rights and that it was not objectively reasonable for public official to believe that his conduct did not violate those rights. Abdul-Matiyn v. New York State Dept. of Correctional Services, N.D.N.Y.1994, 871 F.Supp. 1542, affirmed 66 F.3d 309. Civil Rights 1376(2)

When civil rights defendants move for summary judgment on basis of qualified immunity, plaintiffs bear heavier burden than is normally imposed to avoid summary judgment and must show that defendants violated clearly established law; to meet this burden, plaintiffs must demonstrate substantial correspondence between conduct in question and prior law allegedly establishing that the defendant's actions were clearly prohibited. Harris v. Evans, D.Kan.1992, 795 F.Supp. 1060. Federal Civil Procedure 2544

3644. ---- Extension of time to file motion, summary judgment, qualified immunity generally

Civil rights plaintiff's unexplained failure to request additional time to file opposition to summary judgment motion based on qualified immunity and his proffered explanations for late filing, counsel's engagement in another trial and plaintiff's incarceration, did not constitute "inadvertence" or "inexcusable neglect" and, due to consequent violation of numerous local rules, court would not consider untimely filed documents in ruling on motion; defense counsel had not even received opposing papers, which plaintiff served by mail, by hearing date. Marshall v. Gates, C.D.Cal.1993, 812 F.Supp. 1050, reversed 44 F.3d 722, as amended. Federal Civil Procedure 2547.1

3645. ---- Issues of material fact, summary judgment, qualified immunity generally

Genuine issue of material fact, as to whether changes in intangible employment conditions were significant or material such that state employee's reassignment in retaliation for protected speech was actionable adverse employment action, precluded summary judgment for state employee's supervisors on § 1983 claim on basis of qualified immunity; although employee's pay, benefits and job title did not change, she was not reprimanded, and difference in her duties following transfer was not material, there was also evidence of considerable downward shift in skill level required to perform her new job responsibilities, and of work load reduced to degree that supervisors had to find other "tasks" to keep employee busy. Meyers v. Nebraska Health and Human Services, C.A.8 (Neb.) 2003, 324 F.3d 655. Federal Civil Procedure 2497.1

Genuine issue of material fact existed as to whether police chief and mayor terminated police officer in retaliation for his statements regarding his investigation into illegal activities of police chief, precluding summary judgment on issue of whether police chief and mayor were entitled to qualified immunity from liability in police officer's civil rights action alleging violation of his First Amendment rights. Walter v. Morton, C.A.10 (Okla.) 1994, 33 F.3d 1240. Federal Civil Procedure 2497.1

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Employee of regional detention center was not entitled to summary judgment on qualified immunity grounds to extent that there remained fact issues with regard to arrestee's claims of deliberate indifference to serious medical needs and excessive force. Robertson v. Johnson County, Ky., E.D.Ky.1995, 896 F.Supp. 673. Federal Civil Procedure 2491.5

Although dismissal or summary judgment is often proper on ground of qualified immunity, rules of procedure which apply to either dismissal or summary judgment are not abrogated; thus, even where official moves for summary judgment on ground of qualified immunity, court may not grant motion if there exists genuine issue of material fact. Bee v. DeKalb County, N.D.Ga.1988, 679 F.Supp. 1107. Federal Civil Procedure 2465.1

3646. ---- Employment officials, summary judgment, qualified immunity generally

Genuine issues of material fact as to police department official's intent or motive in developing and bringing disciplinary charges against police officer precluded summary judgment as to official's qualified immunity defense in officer's § 1983 action alleging that charges were brought in retaliation for his exercise of his First Amendment rights; officer supported allegations that official failed to offer officer opportunity to accept lesser form of discipline, rejected recommendations of officer's commander, and became unusually involved in investigation of officer. Broderick v. Roache, C.A.1 (Mass.) 1993, 996 F.2d 1294. Federal Civil Procedure 2491.5

There were issues of fact precluding grant of qualified immunity to supervisor of terminated county employee on claim of violation of due process, in light of supervisor's withdrawal of offer for continuance of pretermination hearing and termination of employee without a hearing, in light of fact that supervisor who terminated plaintiff was not unbiased decision maker, and in light of question of whether appeal to county grievance board would have been full-blown hearing sufficient to overcome deficiencies in pretermination procedure. Langley v. Adams County, Colo., C.A.10 (Colo.) 1993, 987 F.2d 1473. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether university employee's employment contract was governed by manual allegedly authorizing university president to discharge employee without cause or hearing precluded summary judgment in favor of president on qualified immunity grounds in employee § 1983 action. Archer v. Sanchez, C.A.10 (N.M.) 1991, 933 F.2d 1526, rehearing denied. Federal Civil Procedure 2491.5

3647. ---- Hospital officials, summary judgment, qualified immunity generally

Qualified immunity defense was not available to county hospital in §§ 1983 claim for damages brought by husband of patient alleging the hospital violated husband's rights under the First Amendment by participating in a malicious and wrongful filing of a state-court lawsuit against him for libel. Beedle v. Wilson, C.A.10 (Okla.) 2005, 422 F.3d 1059. Civil Rights 1376(4)

Triable issues of fact, as to whether qualified immunity was available precluded summary judgment in favor of director of Montana Department of Institutions in mental patient's civil rights suit for alleged violation of his substantive due process liberty interest in reasonably nonrestrictive confinement conditions, arising from director's refusal to transfer inmate from hospital's maximum security unit; director did not meet his burden on summary judgment of showing that he was qualified professional entitled to *Youngberg* deference, or provide basis for his denial of request by hospital medical staff to transfer inmate to less restrictive confinement environment. Houghton v. South, C.A.9 (Mont.) 1992, 965 F.2d 1532. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether medical officials and staff members of security and medical facility reasonably could have believed that deprivations used in pretrial detainee's intensive behavior modification program represented legitimate psychological treatment precluded summary judgment for officials and members on ground of qualified immunity in detainee's civil rights action. Green v. Baron, C.A.8 (Iowa) 1991, 925 F.2d 262. Federal Civil Procedure 2491.5

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Issues of fact as to whether consulting psychiatrists involved in treatment of patient, who was involuntarily committed to state adolescent mental health facility, exercised professional judgment in his treatment precluded summary judgment on qualified immunity grounds in § 1983 action arising out of his suicide attempt in facility; psychiatrists had authority to intervene at any time to direct treatment, facility policy stated that actively suicidal patients were not appropriate for placement at facility, expert's affidavit stated that psychiatrists knew or should have known of patient's documented increasing self-mutilation, disruptive behavior, mood swings, psychotic episodes, and suicide threats and that failing to act appropriately, through medication, evaluation, or therapy, could constitute absence of professional judgment. Dolihite v. Videon, M.D.Ala.1994, 847 F.Supp. 918, affirmed in part, reversed in part 74 F.3d 1027, certiorari denied 117 S.Ct. 185, 519 U.S. 870, 136 L.Ed.2d 123. Federal Civil Procedure 2491.5

3648. ---- Municipal or city officials, summary judgment, qualified immunity generally

Fact question as to whether police commissioner's decisions not to promote deputy police inspector and to transfer inspector to subordinate position were motivated by desire to retaliate against inspector for criticizing police department, precluded summary judgment on issue of whether commissioner was entitled to qualified immunity from inspector's First Amendment retaliation claim. Mandell v. County of Suffolk, C.A.2 (N.Y.) 2003, 316 F.3d 368. Federal Civil Procedure 2497.1

Material issue of fact as to whether supervisors knew or had reason to know that former employee was source of complaints to Department of Pollution Control and Ecology regarding city Wastewater Utility Commission's operations and were motivated by that knowledge when terminating employee precluded summary judgment for supervisors on defense of qualified immunity to § 1983 action alleging that employee's First Amendment rights were violated when she was terminated. Engle v. Townsley, C.A.8 (Ark.) 1995, 49 F.3d 1321. Federal Civil Procedure 2497.1

Allegations that municipal officials acted with politically discriminatory motive when they demoted employee, lowered his salary, and harassed and persecuted him concerned potentially discriminatory treatment, and thus alleged sufficient facts to assert claim for political discrimination under the First Amendment, so as to withstand motion to dismiss § 1983 action on qualified immunity grounds. Valentin Rodriguez v. Municipality of Barceloneta, D.Puerto Rico 2002, 236 F.Supp.2d 189. Civil Rights 1395(8); Civil Rights 1398

Genuine issue of material fact, as to reasons why supervisor fired city mechanical inspector, precluded summary judgment for supervisor on inspector's §§ 1983 claim on basis of qualified immunity. Donnell v. City of Cedar Rapids, Iowa, N.D.Iowa 2006, 437 F.Supp.2d 904. Federal Civil Procedure 2497.1

3649. ---- Parole officers, summary judgment, qualified immunity generally

Whether male parole officer violated female parolee's constitutional right to bodily privacy was fact question precluding summary judgment on issue of whether officer was entitled to qualified immunity from liability for civil rights suit where officer allegedly walked into stall where parolee was partially unclothed while collecting urine sample for drug testing. Sepulveda v. Ramirez, C.A.9 (Cal.) 1992, 967 F.2d 1413, certiorari denied 114 S.Ct. 342, 510 U.S. 931, 126 L.Ed.2d 307, on remand. Federal Civil Procedure 2491.5

3650. ---- Police officers, summary judgment, qualified immunity generally

Fact question as to whether warrantless searches of arrestee's personal belongings in bedroom of apartment that arrestee was visiting and in her purse in living room, were justified incident to arrest, precluded summary judgment on issue of whether police officers' were entitled to qualified immunity from arrestee's claim that searches violated the Fourth Amendment. Holmes v. Kucynda, C.A.11 (Ga.) 2003, 321 F.3d 1069. Federal Civil Procedure

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2491.5

Fact question as to whether police officer filed recklessly false application for arrest warrant, precluded summary judgment on issue of whether officer was entitled to qualified immunity from claim that officer's actions violated the Fourth Amendment. Holmes v. Kucynda, C.A.11 (Ga.) 2003, 321 F.3d 1069. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether truck's flight presented an immediate threat of serious harm to officer or others at the time officer fired the shot that struck passenger, whether officer's use of deadly force was necessary to prevent escape, whether it was feasible for officer to warn truck's occupants of the potential use of deadly force, and as to whether it would have been clear to an objectively reasonable officer that officer's conduct was unlawful, precluding summary judgment in favor of officer on qualified immunity grounds on passenger's § 1983 claim predicated on Fourth Amendment violation; assuming a Fourth Amendment violation, a reasonable officer would have known that firing into the cabin of a pickup truck, traveling at approximately 80 miles per hour on an interstate highway in the morning, would transform the risk of an accident on the highway into a virtual certainty. Vaughan v. Cox, C.A.11 (Ga.) 2003, 343 F.3d 1323, rehearing and rehearing en banc denied 88 Fed.Appx. 394, 2003 WL 22994454. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether police officer lost sight of unarmed suspect long enough for suspect to have possibly secured firearm before officer shot and killed suspect precluded summary judgment for officer on basis of qualified immunity, premised on objective reasonableness, in § 1983 action by administrator of suspect's estate for use of excessive force during arrest. O'Bert ex rel. Estate of O'Bert v. Vargo, C.A.2 (Vt.) 2003, 331 F.3d 29. Federal Civil Procedure 2491.5

Fact issues precluded summary judgment on whether police officers' actions were protected by qualified immunity against § 1983 claims for false arrest and denial of medical treatment where legal principles governing officers' conduct were well established and where question of whether it was reasonable for officers to believe their actions met standards set by those principles depended on whether one believed officers' version of the facts that was sharply disputed. Weyant v. Okst, C.A.2 (N.Y.) 1996, 101 F.3d 845. Federal Civil Procedure 2491.5

Speculation and extrapolation based on witness' "understanding of human nature and human factors and working in gunshot cases" did not suffice to create genuine issue of material fact with regard to reasonableness of police officer's decision to use deadly force and thus did not preclude summary judgment for officer on grounds of qualified immunity from civil rights claim. Reynolds v. County of San Diego, C.A.9 (Cal.) 1996, 84 F.3d 1162. Federal Civil Procedure 2491.5

Interlocutory summary judgment which denied police officer's motion for qualified immunity due to existence of factual issues concerning officer's compliance with knock and announce rule was not appealable. Bonner v. Anderson, C.A.4 (Va.) 1996, 81 F.3d 472. Federal Courts 574

Material issues of fact concerning police officer's reasons for refusing to release arrestee following his arrest for writing on sidewalk precluded summary judgment to police officer on grounds of qualified immunity in arrestee's § 1983 action for wrongful arrest; police officer was required to release arrestee without bail if he promised to appear in court and if there was no reasonable likelihood that arrestee would continue to commit offense, and arrestee claimed he agreed to stop writing on sidewalk and that police officer would not release him because of his "attitude," while police officer claimed that arrestee refused to agree to stop writing on sidewalk. Mackinney v. Nielsen, C.A.9 (Cal.) 1995, 69 F.3d 1002. Federal Civil Procedure 2491.5

In civil rights suit arising when police officers with warrant to search upper duplex unit mistakenly entered lower unit during raid, there was issue of fact precluding summary judgment for officers on ground of qualified immunity as to whether any of the illegal searches and seizures, and use of physical force to compel residents to lie on the

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floor at gunpoint, took place after the police officers discovered or reasonably should have discovered that they were in fact in the wrong residence. Pray v. City of Sandusky, C.A.6 (Ohio) 1995, 49 F.3d 1154. Federal Civil Procedure 2491.5

Genuine issue of material fact existed, as to whether a police officer in city police officer's position could have believed that force he allegedly used against detainee, who had obtained woman's lost five-dollar bill, was objectively reasonable in light of the circumstances, precluding summary judgment for officer on qualified immunity grounds respecting detainee's § 1983 excessive force claim against officer, alleging degree of force against detainee that violated Fourth Amendment's protection against unreasonable seizures. Rowland v. Perry, C.A.4 (N.C.) 1994, 41 F.3d 167. Federal Civil Procedure 2491.5

In suit by residents of private home, seeking damages for alleged excessive measures employed by Secret Service agent and others during search, issues of material fact existed as to extent of physical force and intrusive measures employed during search, and whether such measures were justified by purposes of search, precluding summary judgment on issue of whether agent was qualifiedly immune. Ayeni v. Mottola, C.A.2 (N.Y.) 1994, 35 F.3d 680, certiorari denied 115 S.Ct. 1689, 514 U.S. 1062, 131 L.Ed.2d 554. Federal Civil Procedure 2491.5

There were genuine issues of material fact, precluding summary judgment for police officers in plaintiff's civil rights action, as to whether police officers used excessive force in effecting arrest; there was testimony from plaintiff and other witnesses that officer continued to spray plaintiff with mace even after he was placed in vehicle. Adams v. Metiva, C.A.6 (Mich.) 1994, 31 F.3d 375. Federal Civil Procedure 2491.5

Fact issue existed as to whether police officers ordered storming of house of plaintiff's decedent primarily for purpose of arresting decedent rather than to assist health department officials in conducting administrative inspection, precluding summary judgment with respect to issue of qualified immunity. Alexander v. City and County of San Francisco, C.A.9 (Cal.) 1994, 29 F.3d 1355, certiorari denied 115 S.Ct. 735, 513 U.S. 1083, 130 L.Ed.2d 638. Federal Civil Procedure 2491.5

Fact question precluded summary judgment for uniformed officers based on qualified immunity, on demonstrator's claim that he was arrested for exercising his freedom of speech. Johnston v. City of Houston, Tex., C.A.5 (Tex.) 1994, 14 F.3d 1056. Federal Civil Procedure 2491.5

Question of fact as to whether arrestee was attempting to flee deputy sheriff, such that reasonable officer could have believed that probable cause existed to arrest plaintiff for obstructing public servant, precluded summary judgment on grounds of qualified immunity from arrestee's § 1983 suit alleging unlawful arrest. Palmer v. Sanderson, C.A.9 (Wash.) 1993, 9 F.3d 1433. Federal Civil Procedure 2491.5

Director of public safety and chief of police were entitled to summary judgment in plaintiffs' civil rights suit arising from shooting of disturbed teenager in response to call for assistance where plaintiffs failed to establish disputed issue of fact regarding whether supervisors' actions or admissions with respect to county training and use of force policies would violate any clearly established constitutional right. McKinney by McKinney v. DeKalb County, Ga., C.A.11 (Ga.) 1993, 997 F.2d 1440. Civil Rights 1358

Genuine issue of material fact as to conduct engaged in by arresting officers precluded summary judgment for officers on ground of qualified immunity in arrestee's § 1983 action; arrestee alleged that he did not grab at nonarresting officers, and that, after he unlocked door for arresting officers, he was hit from behind and thrown face down on floor, after which one of arresting officers choked him until he passed out. Arnott v. Mataya, C.A.8 (S.D.) 1993, 995 F.2d 121. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether officers used excessive force in violation of clearly established principles in effectuating arrest, thus precluding summary judgment based on qualified immunity, was presented by

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testimony of arrestee that three officers rushed in, tackled him, and threw him face first into the bed of a pickup, that he was handcuffed and beaten with flashlights, that he was kneed in the groin and shoved into patrol car, and that he did not fight back. Butler v. City of Norman, C.A.10 (Okla.) 1993, 992 F.2d 1053. Federal Civil Procedure 2491.5

Genuine issues of material fact, precluding summary judgment for police officers on qualified immunity defense in § 1983 action by fleeing felon's widow who alleged that officers unconstitutionally used excessive force, existed as to, inter alia, whether objectively reasonable officers should have realized that felon was not armed, and as to whether officers had probable cause to believe that felon posed threat of serious bodily harm to them or to others. Washington v. Newsom, C.A.6 (Mich.) 1992, 977 F.2d 991, rehearing denied, certiorari denied 113 S.Ct. 1848, 507 U.S. 1031, 123 L.Ed.2d 472. Federal Civil Procedure 2491.5

In absence of genuine dispute as to reasonableness of police officers' perceptions when they responded to report of disturbance at apartment complex, issue of officers' entitlement to qualified immunity was ripe for summary judgment. Gooden v. Howard County, Md., C.A.4 (Md.) 1992, 954 F.2d 960. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether police officers' repeated shooting of potentially homicidal and suicidal paranoid schizophrenic violated clearly established precedents on use of deadly force, so as to preclude summary judgment for officers on ground of qualified immunity in suit under the federal civil rights statute, § 1983, alleging use of excessive force. Russo v. City of Cincinnati, C.A.6 (Ohio) 1992, 953 F.2d 1036. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether police officer, who relied on confidential informant to obtain search warrant for "the second house on the right" of a street, acted reasonably in not clarifying which houses were to be considered in determining which house was second house, precluding summary judgment in favor of officer on his qualified immunity claim in civil rights action of inhabitants of house that was erroneously searched. Navarro v. Barthel, C.A.9 (Or.) 1991, 952 F.2d 331, certiorari denied 112 S.Ct. 2324, 504 U.S. 966, 119 L.Ed.2d 243. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether police detective, who disregarded any semblance of victim's individual safety in rushing to produce sufficient evidence to arrest him and his brother for narcotics trafficking, was entitled to qualified immunity for police defendants' failure to protect victim from shooting by father who was duped by police into believing that his daughter was facing a prison sentence because of victim, precluding summary judgment in favor of detective in civil rights action; issues of fact existed as to whether detective's actions were objectively reasonable, and whether they were proximate cause of victim's injuries. Avalos v. City of Glenwood, S.D.Iowa 2003, 269 F.Supp.2d 1091, reversed 382 F.3d 792, rehearing and rehearing en banc denied. Federal Civil Procedure 2491.5

Material issues of fact, as to whether house occupant was lunging at police officer while brandishing wood splitter, precluded summary judgment that officer had qualified immunity from suit that he used excessive force in shooting and killing occupant. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Federal Civil Procedure 2491.5

Genuine questions of material fact as to whether plaintiff sold drugs to undercover police officer precluded summary judgment for officer based on qualified immunity defense to claims of false arrest and malicious prosecution under § 1983. Taylor v. City of New York, E.D.N.Y.2003, 269 F.Supp.2d 68, clarified 2003 WL 21781941. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether undercover officer identified plaintiff as drug seller to arresting officers precluded summary judgment for arresting officers based on qualified immunity defense against claims of false arrest and malicious prosecution under § 1983. Taylor v. City of New York, E.D.N.Y.2003, 269 F.Supp.2d 68, clarified 2003 WL 21781941. Federal Civil Procedure 2491.5

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Summary judgment on basis of qualified immunity is proper in § 1983 action against police officer, notwithstanding factual disputes, if those disputes do not call into question reasonableness of officer's perceptions. Cunningham v. Hamilton, E.D.Va.2003, 259 F.Supp.2d 457, affirmed 84 Fed.Appx. 357, 2004 WL 48857, certiorari denied 125 S.Ct. 68, 543 U.S. 818, 160 L.Ed.2d 25. Federal Civil Procedure 2491.5

Issue of whether police officer who was investigating fire at elementary school was entitled to qualified immunity in § 1983 action brought by student who was repeatedly questioned by officer, in which student alleged that he had been seized in violation of his Fourth Amendment rights, could not be resolved at motion for judgment on the pleadings phase, due to factual dispute as to whether officer's conduct was so plausibly unreasonable that officer should have been on notice as to illegality of his actions. Bills by Bills v. Homer Consol. School Dist. No. 33-C, N.D.Ill.1997, 967 F.Supp. 1063. Federal Civil Procedure 1054

Material issues of fact as to whether police officer beat arrestee because of arrestee's statement "Are you going to shoot me like the other guy? Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293.

Genuine issues of material fact regarding reasonableness of police officers' actions in conjunction with alleged intentional burning of house during search, including whether officers knew occupant was present in house at time of fire and whether officers were involved in setting of fire, precluded summary judgment in favor of officers on qualified immunity grounds in occupant's § 1983 action for use of excessive force in violation of Fourth Amendment. Johnson v. City of Detroit, E.D.Mich.1996, 944 F.Supp. 586. Federal Civil Procedure 2491.5

Fact question as to whether officer had probable cause to arrest was sufficient to defeat summary judgment for qualified immunity in § 1983 case; fact question remained whether probable cause existed given significant disparity between height and weight of subject of warrant and plaintiff, even though plaintiff and subject had same name and were same race, and further issue remained as to whether failure to seek fuller description of subject such as address, eye color or skin tone was reasonable. Johnson v. City of New York, S.D.N.Y.1996, 940 F.Supp. 631. Federal Civil Procedure 2491.5

Fact issue as to whether police officer, who had allegedly instructed mother that she would be arrested if she did not turn child over to father's custody pursuant to divorce order, was entitled to qualified immunity in mother's federal civil rights action alleging that officer had unreasonably seized mother, precluding summary judgment, was presented by dispute as to whether divorce order was valid or had been superseded by order giving mother permission to move. Bennett v. Town of Riverhead, E.D.N.Y.1996, 940 F.Supp. 481. Federal Civil Procedure 2491.5

Genuine issues of material fact, precluding summary judgment on qualified immunity grounds as to false arrest claim asserted under § 1983 action by arrestee against arresting officer and officer who signed criminal complaint, existed as to whether arrest occurred merely because arresting officer perceived that arrestee was trying to get him and other officers in trouble for having used excessive force in effecting arrest of another person. Humphrey v. Demitro, N.D.Ill.1996, 931 F.Supp. 571, reversed in part 148 F.3d 719, rehearing denied. Federal Civil Procedure 2491.5

Genuine issues of material fact, precluding summary judgment on qualified immunity grounds for police officers who allegedly arrested plaintiffs without probable cause, and who allegedly used excessive force during arrest, existed as to whether seizure was *Terry* stop rather than arrest, as to magnitude of force actually employed, and as to circumstances provoking same in respect of each plaintiff. Tobing v. City of New York, E.D.N.Y.1996, 929 F.Supp. 86. Federal Civil Procedure 2491.5

Material issues of fact precluded summary judgment on behalf of police officers, alleging qualified immunity in response to civil rights action brought by female occupants of apartment claiming that they had been illegally strip searched as part of search for presence of drugs; if as was indicated in police testimony in related civil matter

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officers had not discovered drugs during their first search of apartment, which preceded strip search, trier of fact could find that reasonable officer would not believe that probable cause for strip search existed, barring qualified immunity claim. Howard v. Schoberle, S.D.N.Y.1995, 907 F.Supp. 671. Federal Civil Procedure 2491.5

Fact issue as to whether police officer breached clearly established duty to take affirmative steps to protect motorist who had been stopped by officer on suspicion of drunk driving, precluding grant of summary judgment for officer based on qualified immunity in federal civil rights action brought by motorist, was presented by evidence that second officer with whom motorist was left by officer had confined motorist to his car and repeatedly sexually assaulted her during time in which motorist reasonably believed she was in custody of police, giving rise to duty. Valanzuela v. Snider, D.Colo.1995, 889 F.Supp. 1409. Federal Civil Procedure 2491.5

Genuine issue of material fact precluding summary judgment on officer's claim of qualified immunity arising out of search of home and frisk was presented by conflicting evidence as to whether he was in charge of the scene and whether he was grossly negligent in insuring that officers acted consistent with the situation in which exigent circumstances and probable cause were absent. Signorile By and Through Signorile v. City of New York, E.D.N.Y.1995, 887 F.Supp. 403. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether deputy sheriff reasonably feared for his own safety when he fired shot that killed motorist precluded summary judgment on qualified immunity grounds in § 1983 suit alleging use of deadly force without justification. Martin v. Dishong, C.A.4 (S.C.) 2003, 57 Fed.Appx. 153, 2003 WL 194776, Unreported. Federal Civil Procedure 2491.5

3651. ---- Prison officials, summary judgment, qualified immunity generally

Genuine issue of material fact existed as to whether state treatment facility employees' use of seclusion against civilly committed sex offenders for at least 20 consecutive days, and as much as 82 consecutive days in one case, could be justified on either security or treatment grounds, precluding summary judgment, on qualified immunity grounds, for employees in detainees' § 1983 action for alleged violation of their due process rights. West v. Schwebke, C.A.7 (Wis.) 2003, 333 F.3d 745. Federal Civil Procedure 2491.5

Genuine issues of material fact existed, precluding summary judgment on qualified immunity grounds, in prison visitor's civil rights action challenging search of her automobile, about exact scope of search of car or whether sign was posted and visible notifying visitor that her car would be searched; absent resolution of factual questions, it could not be said whether search was unreasonable and, if so, whether law had been clearly established at the time. Spear v. Sowders, C.A.6 (Ky.) 1995, 71 F.3d 626. Federal Civil Procedure 2491.5

In inmates' § 1983 action alleging various due process violations in connection with disciplinary proceedings instituted after prison riot, district court did not abuse its discretion in allowing discovery to proceed before the court ruled on defendants' motion for summary judgment based on qualified immunity; if inmates' allegations stated claim of violation of clearly established law and parties disagreed as to what actions law enforcement officers took, discovery may have been appropriate for limited purpose of addressing issue of qualified immunity. Lovelace v. Delo, C.A.8 (Mo.) 1995, 47 F.3d 286. Federal Civil Procedure 2553

General issue of material fact existed as to whether two prison officials were entitled to qualified immunity from liability in connection with inmate's § 1983 claim arising out of failure of prison officials to release him from special management facility and after multiple recommendations for release had been approved, although those two officials were not directly involved in the decision. Hall v. Lombardi, C.A.8 (Mo.) 1993, 996 F.2d 954, rehearing denied, certiorari denied 114 S.Ct. 698, 510 U.S. 1047, 126 L.Ed.2d 665. Federal Civil Procedure 2491.5

Fact question as to whether prison sergeant acted in good faith to restore order in cell block or acted maliciously in allegedly beating prisoner for refusing to exit his cell precluded summary judgment for official on grounds of

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qualified immunity. Hill v. Shelander, C.A.7 (Ill.) 1993, 992 F.2d 714. Federal Civil Procedure 2491.5

Material issues of fact existed as to whether jailer who ignored warning that detainee might try to kill himself was entitled to qualified immunity in civil rights suit brought by detainee's widow, precluding summary judgment for jailer on qualified immunity issue. Gordon v. Kidd, C.A.4 (N.C.) 1992, 971 F.2d 1087, as amended. Federal Civil Procedure 2491.5

Genuine issues of material fact, concerning whether digital rectal searches performed on inmates were reasonably related to legitimate penological goal and concerning whether governor and state prison officials reasonably could have believed that searches were conducted to further legitimate purpose, precluded summary judgment on qualified immunity defense in § 1983 action arising out of policy requiring digital rectal search whenever inmate is moved into secure housing unit within maximum security prison. Tribble v. Gardner, C.A.9 (Wash.) 1988, 860 F.2d 321, certiorari denied 109 S.Ct. 2087, 490 U.S. 1075, 104 L.Ed.2d 650. Federal Civil Procedure 2491.5

Genuine issue of material fact, precluding summary judgment for county detention officer on qualified immunity grounds in arrestee's civil rights action, existed as to whether officer touched arrestee's buttocks during strip-search, and, if so, the nature of that contact, and, thus, as to whether officer's conduct violated clearly established law. Gonzalez v. City of Laredo, S.D.Tex.1995, 879 F.Supp. 701. Federal Civil Procedure 2491.5

Material issue, precluding summary judgment for prison guard, existed as to whether guard's conduct violated clearly established law, and, thus, whether guard was entitled to qualified immunity in pretrial detainee's civil rights action, where detainee presented evidence indicating that guard arbitrarily shoved detainee, who was disabled, to floor of prison cell. Telfair v. Gilberg, S.D.Ga.1994, 868 F.Supp. 1396, affirmed 87 F.3d 1330. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether prison staff physician and health administrator of state Department of Criminal Justice were entitled to qualified immunity in denial of medical care claim precluded summary judgment in § 1983 action brought by prisoner. Sappington v. Ulrich, E.D.Tex.1994, 868 F.Supp. 194. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether state prison warden's operating procedure in reviewing and authorizing transfers of inmates was defective so as to create unconstitutional condition under Eighth Amendment, precluding summary judgment for warden on Eleventh Amendment qualified immunity basis in inmate's civil rights action. Taylor v. Foltz, E.D.Mich.1992, 803 F.Supp. 1261, affirmed 14 F.3d 602. Federal Civil Procedure 2491.5

Fact issue as to whether hearing officer acted reasonably in failing to call stabbing victim as witness in prison disciplinary proceeding precluded summary judgment in favor of officer on grounds of qualified immunity in inmate's civil rights action. Vasquez v. Coughlin, S.D.N.Y.1989, 726 F.Supp. 466. Federal Civil Procedure 2491.5

3652. ---- School officials, summary judgment, qualified immunity generally

Genuine issue of material fact, as to whether Alabama public high school teacher and principal who punished student who silently raised his fist during daily flag salute were motivated by desire to suppress student's supposedly unpatriotic viewpoint, precluded summary judgment on that Speech Clause claim against them on qualified immunity grounds. Holloman ex rel. Holloman v. Harland, C.A.11 (Ala.) 2004, 370 F.3d 1252, rehearing and rehearing en banc denied 116 Fed.Appx. 254, 2004 WL 1737002. Federal Civil Procedure 2491.5

In § 1983 action against teacher for alleged fabrication of child abuse charge against child's father, there was issue

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of fact as to causation, precluding summary judgment, despite contention that welfare officials and a state judge independently evaluated the allegations of sexual abuse, where the plaintiffs claimed that teacher not only created false evidence that was presented to the state court judge and to child welfare officials in the first instance, but also that she continued to create false evidence after the child was removed from the home and any emergency had passed, in violation of specific instructions to discontinue the use of controversial facilitated communications (FC) device with the child. Morris v. Dearborne, C.A.5 (Tex.) 1999, 181 F.3d 657, rehearing and rehearing en banc denied 196 F.3d 1259, on remand 69 F.Supp.2d 868. Federal Civil Procedure 2491.5

To withstand motion for summary judgment based on defense of qualified immunity, § 1983 plaintiff must first show from the facts alleged that the government official violated a clearly established statutory or constitutional right. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether school board members in their individual capacities acted in good faith in suspending student for use of alcohol prior to school function precluded summary judgment in favor of school board members on basis of qualified immunity. Kubany by Kubany v. School Bd. of Pinellas County, M.D.Fla.1993, 818 F.Supp. 1504. Federal Civil Procedure 2491.5

3653. Equitable relief, qualified immunity generally--Generally

In action brought by claimant challenging forfeiture of $9,000 in cash allegedly wrongfully taken from him by police officers, individual officers were not entitled to qualified immunity from liability; although shield of qualified immunity protects official defendants where monetary damages are sought, claimant's demand that money taken from him be returned was equitable in nature. Jones v. U.S. Drug Enforcement Admin., M.D.Tenn.1992, 801 F.Supp. 15. United States 50.10(3)

3654. ---- Injunctions, equitable relief, qualified immunity generally

Evidence was sufficient to support finding that employee, a teacher at state-run, federally-funded program, was entitled to injunctive relief, in § 1983 action against his employer for allegedly violating his constitutional rights by requiring him to sign release of various documents, including medical records, as condition of his contract renewal; employer testified that other employees' release forms remained in their personnel files, and that none of the other employees were informed that the release form had been revised to cover only criminal records. Denius v. Dunlap, C.A.7 (Ill.) 2003, 330 F.3d 919. Civil Rights 1422; Civil Rights 1455

Doctrine of qualified immunity did not shield correctional officials from inmates' § 1983 action insofar as inmates sought injunctive relief. Fortner v. Thomas, C.A.11 (Ga.) 1993, 983 F.2d 1024. Civil Rights 1376(7)

Defense of qualified immunity was not available to state officials in § 1983 action by dealer in automobile repair service contracts, in which dealer sought injunctive relief, but no money damages, in relation to due process challenge to state bulletin expressing view that automobile repair service contracts amounted to automobile insurance and to alleged threats made to revoke license of any broker who refused to stop selling those contracts. American Fire, Theft & Collision Managers, Inc. v. Gillespie, C.A.9 (Cal.) 1991, 932 F.2d 816. Civil Rights 1376(3)

Defense of qualified immunity was not available to secretary of state public corrections department, and warden of state prison, sued under §§ 1983 in their individual capacities by inmate seeking declaratory and injunctive relief from conviction under prison disciplinary rule prohibiting spreading of rumors, challenged on vagueness and overbreadth grounds. Cassels v. Stalder, M.D.La.2004, 342 F.Supp.2d 555. Civil Rights 1376(7)

Government official is not entitled to qualified immunity from actions seeking only injunctive and declaratory

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relief. McCrea v. Zieba, N.D.Ohio 1996, 955 F.Supp. 801. Officers And Public Employees 114

State legal ethics committee did not have qualified immunity against suspended attorney's § 1983 action for injunctive relief; qualified immunity applied only to damages. Sexton v. Arkansas Supreme Court Committee on Professional Conduct, W.D.Ark.1989, 725 F.Supp. 1051. Civil Rights 1376(3)

3655. Retrospective relief, qualified immunity generally

Prison officials who were sued in their individual capacities by inmate in civil rights action could assert good-faith qualified immunity from retrospective relief. McDuffie v. Estelle, C.A.5 (Tex.) 1991, 935 F.2d 682. Civil Rights 1376(7)

3656. Governmental entities, qualified immunity generally

Governmental bodies do not enjoy qualified immunity from damage actions under § 1983. Hedge v. County of Tippecanoe, C.A.7 (Ind.) 1989, 890 F.2d 4. Civil Rights 1376(1)

Correctional facility was "governmental entity," rather than individual "government actor," for qualified immunity purposes and, therefore, was not eligible for qualified immunity. Smith v. U.S., M.D.Fla.1995, 896 F.Supp. 1183. United States 50.10(3)

3657. Municipalities or cities, qualified immunity generally

Where an immunity was well-established at common law at the time the Civil Rights Act was enacted, and where its rationale was compatible with the purposes of the Act, the Act has been construed to incorporate that immunity; but there is no tradition of immunity for municipal corporations, and neither history nor policy support a construction of the Act that would justify a grant of qualified immunity to a city. Owen v. City of Independence, Mo., U.S.Mo.1980, 100 S.Ct. 1398, 445 U.S. 622, 63 L.Ed.2d 673, rehearing denied 100 S.Ct. 2979, 446 U.S. 993, 64 L.Ed.2d 850, on remand 623 F.2d 550. Civil Rights 1373; Civil Rights 1376(4)

Municipality may not invoke qualified immunity defense to claim that it has violated constitutional rights of person. Eagle v. Morgan, C.A.8 (Ark.) 1996, 88 F.3d 620. Civil Rights 1376(4)

City was responsible for alleged Fourth Amendment violation of its officials when they allowed explosive device to be used while attempting to arrest individuals who were barricaded in building and allowing resulting fire to burn, and was not entitled to qualified immunity from liability, even if officials themselves were entitled to immunity from personal liability. In re City of Philadelphia Litigation, C.A.3 (Pa.) 1995, 49 F.3d 945, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 176, 516 U.S. 863, 133 L.Ed.2d 116, on remand 910 F.Supp. 212, on remand 938 F.Supp. 1264. Civil Rights 1376(4)

City was not entitled to the qualified immunity asserted by city police officers in § 1983 suit arising from use of force to obtain blood sample for blood alcohol analysis. Hammer v. Gross, C.A.9 (Cal.) 1991, 932 F.2d 842, certiorari denied 112 S.Ct. 582, 502 U.S. 980, 116 L.Ed.2d 607, on remand 981 F.2d 1115. Civil Rights 1376(4)

Because purpose of good faith immunity is to protect officials from personal liability, such immunity is available only to individuals, not to municipalities. Rollins by Agosta v. Farmer, C.A.8 (Neb.) 1984, 731 F.2d 533. Municipal Corporations 723

City of Cedar Rapids, Iowa was qualifiedly immune from liability under §§ 1983 to mechanical inspector who was allegedly fired in retaliation for talking to public officials about cronyism in his department, absent evidence of city

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policy or custom of suppressing employees' free speech rights. Donnell v. City of Cedar Rapids, Iowa, N.D.Iowa 2006, 437 F.Supp.2d 904. Civil Rights 1376(10)

Municipalities enjoy neither Eleventh Amendment nor qualified immunity in suits brought pursuant to §§ 1983. Batiste v. City of Beaumont, E.D.Tex.2005, 421 F.Supp.2d 969. Federal Courts 270

There is no qualified immunity from suit for municipality, there is only freedom from liability. Daniels v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 901. Civil Rights 1376(4)

Arrestee could not recover from city, under § 1983, absent showing that his constitutional rights were violated. Schilling v. Swick, W.D.Mich.1994, 868 F.Supp. 904. Civil Rights 1348

While municipality and agencies may not be held liable, under § 1983, for acts of employees on theory of respondeat superior, they are not permitted to assert defense of qualified immunity available to individual employees. Tenenbaum v. Williams, E.D.N.Y.1994, 862 F.Supp. 962, adhered to on denial of reconsideration 907 F.Supp. 606, affirmed in part, vacated in part 193 F.3d 581, certiorari denied 120 S.Ct. 1832, 529 U.S. 1098, 146 L.Ed.2d 776. Civil Rights 1376(4)

Common-law immunity for discretionary functions of municipality does not apply in § 1983 suit; doctrine cannot serve as foundation for good faith immunity under § 1983 inasmuch as municipality has no discretion to violate the constitution. B.M.H. by C.B. v. School Bd. of City of Chesapeake, Va., E.D.Va.1993, 833 F.Supp. 560. Civil Rights 1376(4)

City community development agency and city were not entitled to qualified immunity in § 1983 action of design corporation, which had contracted with agency for design of shopping area, arising from city's last-minute rejection of design. La Societe Generale Immobiliere v. Minneapolis Community Development Agency, D.Minn.1993, 827 F.Supp. 1431, reversed 44 F.3d 629, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 58, 516 U.S. 810, 133 L.Ed.2d 22. Civil Rights 1376(4)

As long as governmental entity has notice of civil rights action, suit against officials in their official capacity is treated as suit against entity, and, thus, municipality is not entitled to assert good faith of its officers as defense under § 1983 suit. J & A Realty v. City of Asbury Park, D.N.J.1991, 763 F.Supp. 85. Civil Rights 1376(2)

Municipality is not entitled to assert defense of qualified immunity in action under this section. Taylor v. Collins, E.D.Mich.1983, 574 F.Supp. 1554. See, also, Pinder v. Commissioners of Cambridge in City of Cambridge, D.Md.1993, 821 F.Supp. 376, affirmed 33 F.3d 368, rehearing granted and opinion vacated, reversed 54 F.3d 1169, certiorari denied 116 S.Ct. 530, 133 L.Ed.2d 436; Greiner v. City of Champlin, D.Minn.1993, 816 F.Supp. 528, affirmed in part, remanded in part 27 F.3d 1346; Pennington v. Hobson, S.D.Ind.1989, 719 F.Supp. 760. Civil Rights 1376(4)

3658. Discretionary duties, qualified immunity generally--Generally

Government officials performing discretionary functions generally are granted a qualified immunity and are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Wilson v. Layne, U.S.Md.1999, 119 S.Ct. 1692, 526 U.S. 603, 143 L.Ed.2d 818. Civil Rights 1376(2)

Under doctrine of "qualified immunity" from liability under this section, government officials are not subject to damages liability for performance of their discretionary functions when their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Buckley v. Fitzsimmons, U.S.Ill.1993, 113 S.Ct. 2606, 509 U.S. 259, 125 L.Ed.2d 209, on remand 20 F.3d 789, rehearing and

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suggestion for rehearing en banc denied. Civil Rights 1376(2)

Government officials performing discretionary functions are entitled to qualified immunity from liability under § 1983, insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1376(2)

Where government official was acting within his discretionary authority, court's inquiry, in deciding whether official is protected by qualified immunity from liability under § 1983, focuses on two questions: (1) whether there was some underlying constitutional violation; and (2) whether the law the public official is alleged to have violated was clearly established at the time of incidents giving rise to § 1983 action. Cagle v. Sutherland, C.A.11 (Ala.) 2003, 334 F.3d 980, rehearing and rehearing en banc denied 82 Fed.Appx. 216, 2003 WL 22076253. Civil Rights 1376(1); Civil Rights 1376(2)

Public official who performs act clearly established to be beyond scope of his or her discretionary authority is not entitled to claim qualified immunity under § 1983. In re Allen, C.A.4 (W.Va.) 1997, 106 F.3d 582, suggestion for rehearing denied 119 F.3d 1129, certiorari denied 118 S.Ct. 689, 522 U.S. 1047, 139 L.Ed.2d 635. Civil Rights 1376(2)

Government officials who perform discretionary functions are entitled to qualified immunity from civil suits for damages arising out of performance of their official duties as long as their actions could reasonably have been thought consistent with rights they are alleged to have violated. Adams v. Metiva, C.A.6 (Mich.) 1994, 31 F.3d 375 . Officers And Public Employees 114

Qualified immunity shields government officials performing discretionary functions from civil damages liability if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Raju v. Rhodes, C.A.5 (Miss.) 1993, 7 F.3d 1210, certiorari denied 114 S.Ct. 1543, 511 U.S. 1032, 128 L.Ed.2d 194. Civil Rights 1376(2)

Availability of qualified immunity defense to official exercising discretionary authority in particular case requires careful consideration of established law at time, state actor's objective knowledge of that law, and complained-of conduct. Latimore v. Widseth, C.A.8 (Minn.) 1993, 7 F.3d 709, certiorari denied 114 S.Ct. 1124, 510 U.S. 1140, 127 L.Ed.2d 433. Civil Rights 1376(2)

Doctrine of qualified immunity provides that government officials performing discretionary functions are shielded from civil liability to extent that their conduct does not violate clearly established statutory constitutional rights of which reasonable person would have known. Rainey v. Conerly, C.A.4 (N.C.) 1992, 973 F.2d 321. Officers And Public Employees 114

Qualified immunity operates to shield government officials performing discretionary functions from civil damages liability as long as their actions could reasonably have been thought consistent with rights they are alleged to have violated. Enlow v. Tishomingo County, Miss., C.A.5 (Miss.) 1992, 962 F.2d 501, rehearing denied 971 F.2d 750. Officers And Public Employees 114

Public officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known; qualified immunity inquiry requires examination of two issues: whether at time of alleged conduct there was clearly established constitutional right that was violated; and whether reasonable person would have known that her conduct violated that constitutional right. Frazier v. Bailey, C.A.1 (Mass.) 1992, 957 F.2d 920 . Officers And Public Employees 114

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42 U.S.C.A. § 1983

In order to allow government officials to perform their discretionary duties without constant fear that each time they act they will be forced to defend themselves in civil suit, officials are protected from suit unless their actions violate clearly established law which reasonable officer would be aware of at time of their actions. Jackson v. Hoylman, C.A.6 (Ohio) 1991, 933 F.2d 401. Officers And Public Employees 114

In federal civil rights suit, government official is entitled to qualified immunity for discretionary acts undertaken within scope of his authority; in determining applicability of such immunity, court focuses on objective legal reasonableness of an official's conduct to ascertain whether conduct infracted clearly established constitutional rights. Collins v. Marina-Martinez, C.A.1 (Puerto Rico) 1990, 894 F.2d 474. Civil Rights 1376(1); Civil Rights 1376(2)

When exercising discretionary authority, a state official whose conduct deprives another of a right secured by federal constitutional or statutory law may avoid liability for damages under §§ 1983 under the doctrine of qualified immunity; that doctrine does not apply, however, where at the time and under the circumstances of the challenged conduct all reasonable officials would have realized that it was proscribed by the federal law on which the suit is founded. Russo v. City of Hartford, D.Conn.2004, 341 F.Supp.2d 85. Civil Rights 1376(3)

The doctrine of qualified immunity protects government officials who perform discretionary functions from suit and from liability for monetary damages under § 1983. Flores Camilo v. Alvarez Ramirez, D.Puerto Rico 2003, 283 F.Supp.2d 440. Civil Rights 1376(1)

Public elementary school principal and teacher who were allegedly performing their discretionary duties when they allegedly deprived a student of his Fourth Amendment and Fourteenth Amendment due process and equal protection rights by allegedly failing to protect him from racial harassment and assaults by other students were state actors, as required in student's § 1983 action against the principal and teacher. Crispim v. Athanson, D.Conn.2003, 275 F.Supp.2d 240. Civil Rights 1326(6)

Government officials performing discretionary functions are entitled to qualified immunity as long as their actions could reasonably have been thought to be consistent with the rights they are alleged to have violated. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1376(2)

Qualified immunity shields government officials from civil liability under § 1983 for damages based upon the performance of discretionary functions if the acts were objectively reasonable in light of then clearly established law. Herrera v. Medical Center Hosp., E.D.La.2002, 241 F.Supp.2d 601. Civil Rights 1376(2)

Patients at state mental health facility, following adjudication as not guilty by reason of insanity (NGRI), failed to show that officials violated patients' substantive due process rights, in their actions regarding alleged glaring and protracted deficiencies in facility conditions, on officials' assertion of qualified immunity on patients' § 1983 confinement conditions claims; officials were entitled to presumption they exercised their professional judgment, and officials' actions did not shock the conscience of the court. Neiberger v. Hawkins, D.Colo.2002, 239 F.Supp.2d 1140. Civil Rights 1376(3)

Test whether governmental defendant in § 1983 action is entitled to qualified immunity from liability requires determination whether government official was acting within scope of his or her discretionary authority when allegedly wrongful acts occurred, and then whether that official's actions violated clearly established constitutional law or federal statute. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1376(2)

Public officials, including law enforcement officers, are entitled to assert defense of qualified immunity in a § 1983 civil rights suit for discretionary acts occurring in the course of their official duties. Hare v. City of Corinth, Miss.,

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N.D.Miss.1996, 949 F.Supp. 456, reversed 135 F.3d 320. Civil Rights 1376(6)

Qualified immunity shields government officials performing discretionary functions from liability for civil damages when their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Rodriguez v. City of New York, S.D.N.Y.1996, 931 F.Supp. 209, affirmed 112 F.3d 505. Civil Rights 1376(2)

Government officials performing discretionary functions are entitled to qualified immunity from liability in a § 1983 action unless their conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known. Brinston v. Dunn, S.D.Miss.1996, 928 F.Supp. 669. Civil Rights 1376(2)

Government officials performing discretionary functions are shielded by qualified immunity from civil damages liability, as long as their actions could reasonably have been thought consistent with rights they are alleged to have violated. Green v. Clarendon County School Dist. Three, D.S.C.1996, 923 F.Supp. 829. Civil Rights 1376(2)

Doctrine of qualified immunity provides that government officials performing discretionary functions are generally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights which reasonable person would have known. Estate of Frank v. City of Beaver Dam, E.D.Wis.1996, 921 F.Supp. 590. Civil Rights 1376(2)

Under doctrine of qualified immunity, government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Stevens v. Umsted, C.D.Ill.1996, 921 F.Supp. 530, affirmed 131 F.3d 697. Civil Rights 1376(2)

State officials performing discretionary functions in the course of their duties are immune from suits alleging constitutional violations insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known; even when such rights are clearly established, qualified immunity will protect official if it was objectively reasonable for official to believe that his acts did not violate those rights. Atkins v. Latanzio, W.D.N.Y.1995, 918 F.Supp. 668. Civil Rights 1376(2)

Under doctrine of "qualified immunity," government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Griswold v. Alabama Dept. of Indus. Relations, M.D.Ala.1995, 903 F.Supp. 1492. Civil Rights 1376(2)

Government officials performing discretionary functions generally are shielded from liability for civil damages in § 1983 actions insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person should have known; qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. Douglas v. Evans, M.D.Ala.1995, 888 F.Supp. 1536. Civil Rights 1376(2)

Governmental officials who perform discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Gregory v. Hunt, W.D.Tenn.1991, 872 F.Supp. 476, clarified 1992 WL 695478, affirmed 24 F.3d 781. Civil Rights 1376(2)

Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Verney v. Dodaro, M.D.Pa.1995, 872 F.Supp. 188, affirmed 79 F.3d 1140. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

Qualified immunity of public officials from civil liability when they are exercising discretionary responsibilities, and their conduct does not violate clearly established constitutional rights of which reasonable person would have known, is the rule, not the exception. Telfair v. Gilberg, S.D.Ga.1994, 868 F.Supp. 1396, affirmed 87 F.3d 1330. Civil Rights 1376(2)

Doctrine of qualified immunity shields government officials from civil liability when they perform discretionary functions to the extent that their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Gavin v. McGinnis, N.D.Ill.1994, 866 F.Supp. 1107. Civil Rights 1376(2)

To be entitled to qualified immunity, government official must have been performing discretionary functions, and his conduct must not have violated clearly established statutory or constitutional rights of which reasonable person would have known. Baker v. Putnal, S.D.Tex.1994, 865 F.Supp. 389, affirmed in part, reversed in part 75 F.3d 190 . Civil Rights 1376(2)

Supervisor was not qualifiedly immune from § 1983 sexual harassment claim brought by lifeguard; supervisor did not act within scope of his discretionary authority when he sexually harassed lifeguard, and a reasonable person would have known during period from 1985 to 1990 that sexual harassment violated clearly established law. Faragher v. City of Boca Raton, S.D.Fla.1994, 864 F.Supp. 1552, affirmed in part, reversed in part 76 F.3d 1155, rehearing granted, opinion vacated 83 F.3d 1346, affirmed in part, reversed in part 111 F.3d 1530, certiorari granted 118 S.Ct. 438, 522 U.S. 978, 139 L.Ed.2d 337, reversed 118 S.Ct. 2275, 524 U.S. 775, 157 A.L.R. Fed. 663, 141 L.Ed.2d 662, on remand 166 F.3d 1152. Civil Rights 1376(10)

Actions of deputy sheriffs in resolving dispute over shipment of watermelons involved discretionary decision-making process entitling them to qualified immunity in civil rights action brought by owner of tractor and trailer that had been retained by farmer. Padgett v. Palmer, S.D.Miss.1994, 856 F.Supp. 1185, affirmed 58 F.3d 636. Civil Rights 1376(6)

Correctional officer is performing a "discretionary function" as that term is used in context of federal law of qualified immunity, applied in § 1983 cases, when officer exercises his authority to use reasonable force for a permissible purpose. Foster v. McGrail, D.Mass.1994, 844 F.Supp. 16. Civil Rights 1376(7)

3659. ---- Ministerial duties distinguished, discretionary duties, qualified immunity generally

Doctrine of qualified immunity shields government officials performing discretionary, as distinct from ministerial, functions from liability in individual capacity for damages arising from actions which do not violate clearly established statutory or constitutional rights of which reasonable person would have known. Kaminsky v. Rosenblum, C.A.2 (N.Y.) 1991, 929 F.2d 922. Civil Rights 1376(2); Officers And Public Employees 114

Sheriff acted within the scope of his discretionary authority, as required for qualified immunity against arrestee's § 1983 claims for failing to disclose exculpatory evidence and for inadequately training, supervising, and instructing his deputies, where the sheriff supervised the investigations into arrestee's multiple complaints placed by telephone and letter, and oversaw the training, supervision, and instruction of deputy who made arrest. Riebsame v. Prince, M.D.Fla.2003, 267 F.Supp.2d 1225, affirmed 91 Fed.Appx. 656, 2004 WL 177567, certiorari denied 125 S.Ct. 166, 543 U.S. 888, 160 L.Ed.2d 149. Civil Rights 1376(6)

3660. Capacity, qualified immunity generally

Immunity from suit under § 1983 extends to public servants only in their individual capacities. Board of County Com'rs, Wabaunsee County, Kan. v. Umbehr, U.S.Kan.1996, 116 S.Ct. 2342, 518 U.S. 668, 135 L.Ed.2d 843,

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dissenting opinion 116 S.Ct. 2361, 518 U.S. 668, 135 L.Ed.2d 843. Civil Rights 1376(1)

An official in a personal-capacity section 1983 action may, depending on his position, be able to assert personal immunity defenses to liability, such as objectively reasonable reliance on existing law. Kentucky v. Graham, U.S.Ky.1985, 105 S.Ct. 3099, 473 U.S. 159, 87 L.Ed.2d 114, on remand 791 F.2d 932. Civil Rights 1376(2)

Qualified immunity only shields defendants in their individual capacity from money damages. Flynn v. Sandahl, C.A.7 (Ill.) 1995, 58 F.3d 283. Civil Rights 1376(1)

Any qualified immunity enjoyed by school superintendent relative to his conduct in allegedly refusing to recommend teacher's reemployment due to her involvement in divorce, in violation of teacher's First Amendment right to privacy, did not compel dismissal of entire case, where in addition to money damages, teacher sought, inter alia, an injunction reinstating her to a position as a classroom teacher in the school system, since at most, resolution of qualified immunity issue would settle only superintendent's liability as an individual for money damages, and superintendent would not be entitled to such immunity in his official capacity as superintendent. Littlejohn v. Rose, C.A.6 (Ky.) 1985, 768 F.2d 765, certiorari denied 106 S.Ct. 1260, 475 U.S. 1045, 89 L.Ed.2d 570. Civil Rights 1376(10)

City and mayor who was sued in official capacity were not entitled to qualified immunity on § 1983 free speech, free assembly, due process, and equal protection claims asserted by abortion protesters, as qualified immunity doctrine could be raised only by a natural person sued in individual capacity. Trewhella v. City of Lake Geneva, Wis., E.D.Wis.2003, 249 F.Supp.2d 1057. Civil Rights 1376(4)

Deputy sheriff, in his individual capacity, was entitled to qualified immunity, in § 1983 action alleging that county violated farmer's federal and Iowa constitutional rights by seizing her horses, where farmer made no specific allegations against deputy and presented no evidence that he was involved in execution of the search warrant. McClendon v. Story County Sheriff's Dept., S.D.Iowa 2004, 312 F.Supp.2d 1146, affirmed in part, reversed in part 403 F.3d 510. Civil Rights 1376(6)

It is no defense to individual liability under § 1983 that officer appeared to be acting within her official capacity. Hale v. Vance, S.D.Ohio 2003, 267 F.Supp.2d 725. Civil Rights 1354

Assertion of qualified immunity by jail administrators and sheriff, on pretrial detainee's § 1983 claims that he was denied access to telephone and mail communications that hindered his ability to make bail and investigate his defense to underlying criminal charges, was mooted, where detainee amended complaint to indicate that claims were against defendants in official capacity only. Simpson v. Gallant, D.Me.2002, 231 F.Supp.2d 341. Federal Courts 13.10

Public officials in their individual capacities are entitled to assert qualified immunity defense to claims under § 1983, but qualified immunity is not available to officials sued in their official capacity. Feasel v. Willis, N.D.Tex.1995, 904 F.Supp. 582. Civil Rights 1376(1)

Neither District of Columbia nor District's police officers had qualified immunity defense under § 1983 insofar as they were sued in their official capacities. O'Callaghan v. District of Columbia, D.D.C.1990, 741 F.Supp. 273. Civil Rights 1376(3); Civil Rights 1376(6)

Public employees sued in their individual capacities under § 1983 are entitled to assert defense of qualified immunity. Murphy v. McClendon, N.D.Ga.1988, 712 F.Supp. 921. Civil Rights 1376(1)

Individual members of vocational center's board of control would not be dismissed from teacher's civil rights action under § 1983 alleging she was improperly dismissed from her job due to sex discrimination; language of

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complaint suggested teacher was suing board members in both their official and personal capacities, qualified immunity could not insulate board members in their personal capacities from teacher's claim of intentional discrimination, teacher might be entitled to punitive damages if she prevailed, and she could only recover such damages from individual board members. Dunlop v. Colgan, N.D.Ill.1988, 687 F.Supp. 406. Civil Rights 1359; Civil Rights 1376(10)

Various public animal control officers are entitled to qualified immunity for acts done in their official capacity which require exercise of judgment. Keeble v. Cisneros, S.D.Tex.1987, 664 F.Supp. 1076. Animals 105

City police officers who fired into speeding vehicle that had crashed were not entitled to qualified immunity from liability in §§ 1983 action brought by driver's estate and survivors alleging use of excessive force, where officers were outside their jurisdiction at the time and had presented nothing to support a finding that their interaction with driver, whom they claimed was trying to run them over with vehicle, was undertaken in the performance of their official duties. Jones v. City of Atlanta, C.A.11 (Ga.) 2006, 192 Fed.Appx. 894, 2006 WL 2273171, Unreported. Civil Rights 1376(6)

3661. Conspiracy, qualified immunity generally

Private citizen who allegedly conspired with town supervisor and other town officials to deprive developer of his federal constitutional rights, by improperly influencing town zoning board in connection with board's recision of developer's zoning variance and building permit, was not entitled to qualified immunity from liability in developer's civil rights action. Toussie v. Powell, C.A.2 2003, 323 F.3d 178. Civil Rights 1373

Defense of qualified immunity is applicable to conspiracy claims under § 1983. Owens v. Board of Regents of Texas Southern University, S.D.Tex.1996, 953 F.Supp. 781. Conspiracy 11

3662. Persons entitled to qualified immunity generally

Actions of city solicitor in advising police officer that police officer's manual did not prohibit imposition of a hearing board penalty until after appeal process was complete in disciplinary proceeding were insufficient to overcome solicitor's assertion of qualified immunity, in suspended police officer's § 1983 action against solicitor in her individual capacity for denial of procedural due process, absent showing that solicitor was responsible for determining that police officer should be terminated pending appeal of decision of second hearing board in disciplinary proceedings against police officer. Izquierdo v. Sills, D.Del.1999, 68 F.Supp.2d 392. Civil Rights 1376(10)

When state employee brings action under § 1983 to hold individual fellow state employee liable in damages for violation of § 1981 rights, fellow employee, because he or she is state actor, is entitled to rely on defense of qualified immunity. Ebrahimi v. City of Huntsville Bd. of Educ., N.D.Ala.1995, 905 F.Supp. 993, appeal dismissed 114 F.3d 162. Civil Rights 1376(10)

3663. Agents, qualified immunity generally

Female director of crisis center, who was private individual, and who acted under color of state law by conducting strip search of female detainees for contraband at request of police officer, had qualified immunity from § 1983 suit arising out of searches since she acted as agent of officer who also had qualified immunity. Warner v. Grand County, C.A.10 (Utah) 1995, 57 F.3d 962. Civil Rights 1373

3664. Attorneys General, qualified immunity generally

West Virginia's Attorney General performed act clearly established to be beyond his authority when he established

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"government agency corporation," and he thus was not qualifiedly immune from § 1983 action arising from such act. In re Allen, C.A.4 (W.Va.) 1997, 106 F.3d 582, suggestion for rehearing denied 119 F.3d 1129, certiorari denied 118 S.Ct. 689, 522 U.S. 1047, 139 L.Ed.2d 635. Civil Rights 1376(9)

3665. Banks and banking officials, qualified immunity generally

Bank and attorney who instituted state foreclosure proceedings on bank's behalf were entitled to qualified immunity in mortgagors' civil rights action based on claim that mortgagors were denied due process through use of state court rule providing for constructive service of process in mortgage foreclosure actions, where bank and attorney acted in good-faith belief that rule was constitutional when they pursued foreclosure. Shipley v. First Federal Sav. & Loan Ass'n of Delaware, D.Del.1988, 703 F.Supp. 1122, affirmed 877 F.2d 57, certiorari denied 110 S.Ct. 3218, 496 U.S. 938, 110 L.Ed.2d 666, rehearing denied 111 S.Ct. 238, 498 U.S. 891, 112 L.Ed.2d 197. Civil Rights 1374; Civil Rights 1375

3666. Bank regulators, qualified immunity generally

Director of Wyoming Department of Audit who was also acting state examiner and manager of banking division of Department were entitled to qualified immunity from § 1983 liability for bank president's termination in reaction to letter written to bank board of directors informing them of bank's legal violations, members' potential liability for monetary penalties, and possibility of bank president's removal if noncompliance continued as director and manager acted within scope of employment as state regulators, no evidence showed that they violated the law or knew or should have known that letter triggered bank president's due process rights or that they did not act in good faith. Lenz v. Dewey, C.A.10 (Wyo.) 1995, 64 F.3d 547. Civil Rights 1376(10)

3667. Bar admission committees, qualified immunity generally

In view of fact that assignment of examination numbers to applicants to the District of Columbia bar involved no exercise of judge-like discretion, members of Committee on Admissions appointed by the District of Columbia Court of Appeals, otherwise entitled to absolute immunity for actions involving exercise of discretion, would be entitled at most to qualified immunity, if their acts were performed in good faith, with respect to allegation in unsuccessful applicant's civil rights suit that examination numbers assigned to applicants were used to predetermine test scores. Powell v. Nigro, D.C.D.C.1985, 601 F.Supp. 144. Civil Rights 1376(8)

3668. Building inspectors, qualified immunity generally

Employees of private property inspection agency were not entitled to qualified immunity in § 1983 action of apartment building owners arising out of employees' search of building conducted pursuant to special inspection warrant and under contract to perform building inspections for village; employees did not establish anything special about job or its organizational structure to justify extension of governmental immunity, and employees carried out duties largely without government supervision or direction. Malinowski v. DeLuca, C.A.7 (Wis.) 1999, 177 F.3d 623. Civil Rights 1376(1)

Village building inspector was entitled to qualified immunity on homeowner's claim that inspector violated his due process rights by posting his home as uninhabitable after inspector discovered extraordinary number of animals in house, terrible smell in house, dead and sick animals in house, and raw sewage in basement. McGee v. Bauer, C.A.7 (Ill.) 1992, 956 F.2d 730. Civil Rights 1376(4)

Town building official was entitled to qualified immunity in his individual capacity from § 1983 liability on warehouse lessees' claim that building official deprived lessees of rights to due process under Federal Constitution by failing to notify them of scheduled demolition of warehouse; building official acted objectively reasonable given that no statutory or regulatory provision required him to notify tenants of scheduled demolition. Kendrick v. Town

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of Winchester/City of Winsted, D.Conn.1998, 11 F.Supp.2d 212. Civil Rights 1376(4)

3669. Child welfare workers, qualified immunity generally--Generally

Social workers and police officer who conducted investigation into mother's and father's conflicting allegations of child abuse were entitled to qualified immunity from civil rights liability for alleged interference with custodial mother's and child's substantive due process right to familial integrity for actions taken within confines of investigation. Dornheim v. Sholes, C.A.8 (N.D.) 2005, 430 F.3d 919, certiorari denied 126 S.Ct. 2031. Civil Rights 1376(6)

County bureau of child welfare caseworkers who, during investigation of child abuse relating to corporal punishment at private Christian elementary school, conducted warrantless search of school premises and seized student for interview were entitled to qualified immunity from school's and student's parents' action under § 1983, since caseworkers relied on Wisconsin statute granting them authority to conduct search and seizure, even though statute violated Fourth Amendment as applied; statute was not patently unconstitutional, since statute had never been challenged, there were no reported decisions addressing precise issue, and Wisconsin Attorney General had issued formal opinion on legality of statute. Doe v. Heck, C.A.7 (Wis.) 2003, 327 F.3d 492, amended on denial of rehearing. Civil Rights 1376(4)

District of Columbia social worker was entitled to qualified, not absolute immunity in child custodian's § 1983 damages action, as to her actions as investigator and advisor to District corporation counsel in recommending that neglect proceeding be brought; social worker's role was analogous to police officer's role prior to giving testimony in criminal prosecution. Gray v. Poole, C.A.D.C.2002, 275 F.3d 1113, 348 U.S.App.D.C. 369. Civil Rights 1375; Civil Rights 1376(3)

Juvenile officers, social workers, and their supervisors were not entitled to qualified immunity in § 1983 action against them based on grandparents' claim that defendants' delay in instituting juvenile court proceedings after taking grandchild into temporary protective custody violated grandparents' First Amendment rights of access to courts; Missouri law gave grandparents right to intervene in such proceedings but not to initiate them, defendants knew that grandparents desired to obtain custody and that mother had authorized it, and grandparents alleged that defendants nonetheless unreasonably delayed initiation of proceedings. Whisman Through Whisman v. Rinehart, C.A.8 (Mo.) 1997, 119 F.3d 1303. Civil Rights 1376(1)

Letter in which treating physician expressed his suspicion that mother was engaging in life-threatening form of child abuse, although based solely upon circumstantial evidence, was rationally drawn from child's medical history, specific acts by mother which physician described, and other physicians' alleged concern about mother's "affect" permitted child welfare authorities to form reasonable suspicion of abuse which would justify some degree of interference with parents' due process liberty rights, for purposes of determining whether authorities were entitled to qualified immunity in subsequent civil rights action. Thomason v. SCAN Volunteer Services, Inc., C.A.8 (Ark.) 1996, 85 F.3d 1365. Civil Rights 1376(3)

Social workers were entitled to qualified immunity from parents' suit arising out of investigation into child abuse allegations; grandmother, who lived with parents and children, provided detailed accounts of children being beaten for trifles with great severity and interviews with children provided substantial support for grandmother's concerns. DeCosta v. Chabot, C.A.1 (N.H.) 1995, 59 F.3d 279. Civil Rights 1376(1); Infants 17

Illinois child welfare workers were not entitled to qualified immunity from liability for placing child in the custody of a foster parent who allegedly was known or was suspected to be a child abuser, after the child had been removed from the custody of her natural parents; welfare workers would be liable for damages only if, without financial justification or other considerations of professional judgment, they placed child in hands they knew to be dangerous or otherwise unfit. K.H. Through Murphy v. Morgan, C.A.7 (Ill.) 1990, 914 F.2d 846, on remand 765

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F.Supp. 432. Civil Rights 1376(3)

Social workers were entitled to qualified immunity from civil rights liability for their removal in September, 1986 of suspected child abuse victim from his parents' physical custody and taking of that child into temporary protective custody. Baker v. Racansky, C.A.9 (Cal.) 1989, 887 F.2d 183. Civil Rights 1376(4)

Employees of county youth services department, and private family intervention crisis service acting as department's agent, were not entitled to qualified immunity from §§ 1983 suit alleging that they violated privacy rights of parent being investigated for child custody purposes, when they allegedly took third parties with them on home visitations; employees should have been aware presence of third parties was violation of parent's privacy rights. Bowser v. Blair County Children and Youth Services, W.D.Pa.2004, 346 F.Supp.2d 788. Civil Rights 1373; Civil Rights 1376(4)

Employees of county youth services department had qualified immunity from §§ 1983 suit, challenging their seizure of minor child; employees could believe their conduct was consistent with governing legal principles, when they acted upon state court judge's oral authorization to seize. Bowser v. Blair County Children and Youth Services, W.D.Pa.2004, 346 F.Supp.2d 788. Civil Rights 1376(4)

For purposes of defendants' motion for summary judgment in action under §§ 1983 incident to child protection proceedings, reasonable jury could conclude that social worker's removal of children from mother's custody violated Fourteenth Amendment, where social worker lacked judicial authorization for removal, removal was based on one child's report of molestation by father, there were no allegations of molestation or abuse by mother, and social worker stated that mother's failure to be protective placed sibling of child who reported molestation at risk of serious bodily harm but that mother did not present risk to child who reported molestation. Parkes v. County of San Diego, S.D.Cal.2004, 345 F.Supp.2d 1071. Federal Civil Procedure 2491.5

State, state social workers, private foster care contractor, and private social workers were entitled to qualified immunity as matter in civil rights conspiracy action brought by mother whose parental rights were terminated based, in part, on her handicap; handicap may be a legitimate reason for terminating one's parental rights. Bartell v. Lohiser, E.D.Mich.1998, 12 F.Supp.2d 640, affirmed 215 F.3d 550. Conspiracy 13

Division of Family Services (DFS) social worker assigned to child, who was beaten and sexually abused by juvenile while placed in county shelter unit, was entitled to qualified immunity with respect to claim against her in her individual capacity alleging that she violated constitutional rights of child, where there was no evidence that social worker was aware or should have been aware that child was at risk in shelter unit. Schaffrath on Behalf of R.J.J. v. Thomas, D.Utah 1998, 993 F.Supp. 842, affirmed 189 F.3d 478. Civil Rights 1376(3)

Alleged behavior of police detective and social worker of seeking and obtaining ex parte order for temporary custody of child in connection with sexual abuse investigation without requisite belief that child's life or health was seriously endangered would have been clearly unlawful deprivation of mother's substantive due process right to familial association and privacy, and therefore, would not be protected by qualified immunity in mother's § 1983 action. Malik v. Arapahoe County Dept. of Social Services, D.Colo.1997, 987 F.Supp. 868, affirmed in part, dismissed in part 191 F.3d 1306. Civil Rights 1376(1); Civil Rights 1376(6)

School and division of family services employees were protected by qualified immunity for any violation of parents' rights in conducting interview with son without informing parents, where parents' refusal to allow son to attend high school on days he did not first complete his home chores and parents' practice of handcuffing son were reasonably considered to be probable cause to believe that son was being subjected to form of neglect or abuse prohibited by state law. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(4); Civil Rights 1376(5)

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Caseworker and her supervisor were entitled to qualified immunity from father's § 1983 claim arising out of caseworker's direction that, in light of allegations of sexual abuse, he would have to leave his home or face removal of his daughter; given procedures on training they were given, it was objectively reasonable for caseworker and her supervisor to believe that their acts were necessary to avoid serious risk of imminent harm to child. Gottlieb v. County of Orange, S.D.N.Y.1994, 871 F.Supp. 625, affirmed 84 F.3d 511. Civil Rights 1376(2)

Caseworkers who received report of suspected child abuse acted reasonably in removing children from their parents' home and taking them to hospital for medical examination, entitling caseworkers to qualified immunity in parents' civil rights action; although no evidence of abuse was discovered at home, child abuse report indicated that two of the children had suffered skull fractures. Chayo v. Kaladjian, S.D.N.Y.1994, 844 F.Supp. 163. Civil Rights 1376(2)

Social workers and sheriff's deputy who removed children from parents' home, against parents' wishes and without prior court order, following their investigation of physician's sex abuse report, were entitled to qualified immunity in civil rights action brought by parents. Whitcomb v. Jefferson County Dept. of Social Services, D.Colo.1987, 685 F.Supp. 745. Civil Rights 1376(1); Civil Rights 1376(6)

County social workers had qualified immunity from suit by boyfriend of children's mother, challenging removal of children from household; as boyfriend had no right to associate with children, workers could not have violated any right. Wittman v. California Dept. of Social Services, N.D.Cal.2002, 2002 WL 31398711, Unreported, affirmed in part, reversed in part and remanded 108 Fed.Appx. 548, 2004 WL 1987357. Civil Rights 1376(4)

3670. ---- Applications for search warrant, child welfare workers, qualified immunity generally

Social workers and agency attorney who allegedly provided false and misleading information to judge, for purpose of securing warrant to enter private home being operated as emergency shelter and remove children were not entitled to qualified immunity in homeowners' subsequent § 1983 action. Snell v. Tunnell, C.A.10 (Okla.) 1990, 920 F.2d 673, certiorari denied 111 S.Ct. 1622, 499 U.S. 976, 113 L.Ed.2d 719, on remand 792 F.Supp. 718. Civil Rights 1376(3)

3671. Contractors, qualified immunity generally

Private contractor that was responsible for processing parking tickets for city was not entitled to assert qualified immunity in § 1983 action against it; although contractor claimed to be subject to city's close supervision, contractor was responsible for general oversight of project activities, while city was responsible for setting policy and monitoring contractor's performance, and thus contractor was subject to limited direct supervision that was inadequate to confer qualified immunity. Ace Beverage Co. v. Lockheed Information Management Services, C.A.9 (Cal.) 1998, 144 F.3d 1218. Civil Rights 1376(4)

Correctional officers employed by a private corporation under contract with state were entitled to qualified immunity from liability in inmate's § 1983 action, although public had interest in maintaining secure and efficient correctional facilities, and refusal to grant qualified immunity would result in increased litigation costs which may be passed on to state in form of increased contract price, where such officers are not principally motivated by a desire to further interests of public at large, state could force private actor to internalize monitoring costs otherwise borne by state, and denial of qualified immunity would not deter talented candidates from entering public service. McKnight v. Rees, C.A.6 (Tenn.) 1996, 88 F.3d 417, certiorari granted 117 S.Ct. 504, 519 U.S. 1002, 136 L.Ed.2d 395, affirmed 117 S.Ct. 2100, 521 U.S. 399, 138 L.Ed.2d 540. Civil Rights 1376(7)

When private party defendants act in accordance with duties imposed by contract with governmental body, perform governmental function, and are sued solely on basis of those acts performed pursuant to contract, private party defendants are entitled to qualified immunity from § 1983 and constitutional tort liability. DeVargas v. Mason &

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Hanger-Silas Mason Co., Inc., C.A.10 (N.M.) 1988, 844 F.2d 714, 105 A.L.R. Fed. 829. Civil Rights 1373; United States 50.5(2)

Defense of qualified immunity to prisoners' civil rights claims was available to personnel of state corrections facility that was operated by private contractor; the private prison guards and correctional officers were required to perform same functions and were faced with same type of situations requiring exercise of discretion as were state employees working in state prisons, and mere fact that their contractual ties to state were different did not provide logical basis for denying those workers benefit of qualified immunity. Citrano v. Allen Correctional Center, W.D.La.1995, 891 F.Supp. 312. Civil Rights 1376(7)

Employees of rape crisis center who acted under contract of the center with public school system in giving presentation to students as representatives of the school acted as public officials and thus were entitled to raise defense of qualified immunity in civil rights action against them arising from report of suspected child abuse. Wojcik v. Town of North Smithfield, D.R.I.1995, 874 F.Supp. 508, affirmed 76 F.3d 1. Civil Rights 1376(5)

3672. County officials, qualified immunity generally

County investigator was not entitled to qualified immunity in felon-in-possession arrestee's §§1983 Fourth Amendment action alleging that investigator had filed false arrest warrant affidavit averring that arrestee was felon, where at time of filing of affidavit investigator had learned from out-of-state authorities that arrestee had been previously arrested in other state, but had no information regarding conviction; investigator was charged with knowing difference between arrest and conviction. Kearse v. Moffett, C.A.8 (Ark.) 2002, 311 F.3d 891. Civil Rights 1376(6)

Letter from employee of county housing authority to her supervisor, which contained accusations that supervisor forced her to engage in discriminatory housing practices, clearly did not contain speech on a "matter of public concern," and therefore, supervisor was entitled to qualified immunity from employee's § 1983 claim alleging that she was terminated in retaliation for such letter in violation of the First Amendment; letter focused on employee's own aggravation and her disputes with supervisor rather than rights of potential tenants. Gonzalez v. Lee County Housing Authority, C.A.11 (Fla.) 1998, 161 F.3d 1290. Civil Rights 1376(10)

Chairman of county board of commissioners was not entitled to legislative immunity in § 1983 action for any actions he took to abolish public employees' positions allegedly because they had supported a particular political candidate, even assuming that salary board's decision to eliminate the positions was legislative; in giving unilateral order to have supporters of candidate fired, chairman was not engaging in policy-making of general application regarding expenditure of county funds but was making either executive decision on how anticipated cutback should be implemented or administrative decision that certain individuals should be fired. Carver v. Foerster, C.A.3 (Pa.) 1996, 102 F.3d 96. Civil Rights 1376(10)

Qualified immunity shielded county executive and county attorney in their individual capacities from former deputy sheriff's § 1983 claims alleging that he was deprived of liberty interest in reputation when executive represented on television that deputy was being forced to retire because of management problems at jail; deputy's claim was not founded on any clearly established principle of federal law, in that deputy's liberty interests were not implicated by harm to reputation alone, and executive's announcement indicated at most that deputy was incompetent, not that he was dishonest or immoral. Zepp v. Rehrmann, C.A.4 (Md.) 1996, 79 F.3d 381. Civil Rights 1376(10)

Sheriff was entitled to qualified immunity from § 1983 claim arising from valid arrest in courthouse based on arrestee's violation of rule prohibiting wearing of masks in courthouse, as sheriff had custody and care of courthouse and with that custody came authority to issue reasonable rules for maintaining safety and decorum of building, regardless of suggestion that rule was actually promulgated by chief judge of circuit court of county

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which occupied county courthouse. Ryan v. County of DuPage, C.A.7 (Ill.) 1995, 45 F.3d 1090. Civil Rights 1376(6)

Female manager was entitled to qualified immunity on male county employee's § 1983 claim that manager violated his equal protection rights by conducting a "sham" investigation of his complaints regarding county's domestic violence shelter; there was no evidence of a pattern or practice of violations concerning male employees' equal protection rights. Kulikowski v. Board of County Com'rs of County of Boulder, D.Colo.2002, 231 F.Supp.2d 1053 . Civil Rights 1376(10)

Newly-arrested felony detainee's right to be free from body cavity search without individualized reasonable suspicion was not clearly established in 2000, and thus sheriff was entitled to qualified immunity from liability under § 1983 arising from county's blanket policy of subjecting all newly-arrested felony detainees in correctional facility to visual body cavity searches, even though unconstitutionality of county's policy with regard to misdemeanor arrestees was clearly established in 1994, and officers implementing policy conducted searches without regard to detainees' status. Murcia v. County of Orange, S.D.N.Y.2002, 226 F.Supp.2d 489. Civil Rights 1376(7)

County commissioners were entitled to qualified immunity in § 1983 action by foster parents, individually and on behalf of their minor natural children who were injured by foster children, where there was no evidence that the commissioners were responsible for any injury of constitutional magnitude, and sole basis for the claims against them appeared to be parents' opinion that the commissioners did not pursue adequate measures after the alleged injuries were sustained to secure parents sufficient compensation from county department of human services or to discipline department officials. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997, 968 F.Supp. 1212 . Civil Rights 1376(4)

County circuit clerk was entitled to qualified immunity from liability in § 1983 action brought by former deputy clerk who alleged that circuit clerk unlawfully terminated his employment in violation of First Amendment in retaliation for his having qualified to run against her; circuit clerk could reasonably have concluded that former deputy clerk's candidacy would disrupt efficient functioning of office in such a manner that interests of public would have outweighed deputy clerk's First Amendment rights given that deputy clerk was only one of ten employees working in small office where compatibility of all employees was important, and other employees might have been placed in difficult position of choosing sides, trying to predict ultimate winner to secure favorable treatment after election. Brinston v. Dunn, S.D.Miss.1996, 928 F.Supp. 669. Civil Rights 1376(10)

County animal control officer, who entered dog owners' backyard with utility workers to assist in removal of meter from home and who shot dog after it allegedly charged him with teeth bared and hackles raised, was entitled to qualified immunity from dog owners' § 1983 civil rights claims. Helms v. Gamet, D.Colo.1993, 828 F.Supp. 819. Civil Rights 1376(4)

County officials were entitled to qualified immunity as to any duty to protect juvenile from his own suicidal behavior while he was detained in single-occupancy cell in juvenile detention facility in early 1983. Vega v. Parsley, W.D.Tex.1988, 700 F.Supp. 879. Civil Rights 1376(4)

County official was protected from personal liability by the doctrine of qualified immunity for enforcement of illegal ordinance where he was simply enforcing what he thought to be a valid county ordinance; official could reasonably have believed that he was not violating performer's First Amendment rights by acting in accord with county policy. Hobbs v. County of Westchester, S.D.N.Y.2003, 2003 WL 21919882, Unreported, affirmed 397 F.3d 133, certiorari denied 126 S.Ct. 340, 163 L.Ed.2d 51. Civil Rights 1376(4)

County board of supervisors had qualified immunity from civil rights suit, brought by boyfriend of children's mother, claiming that removal of children from household was wrongful; boyfriend was not denied any rights

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protected by Constitution. Wittman v. California Dept. of Social Services, N.D.Cal.2002, 2002 WL 31398711, Unreported, affirmed in part, reversed in part and remanded 108 Fed.Appx. 548, 2004 WL 1987357. Civil Rights 1376(4)

District court lacked authority to grant leave to amend complaint in which plaintiff asserted § 1983 claims against sheriff and other county officers, where Court of Appeals had determined in an earlier appeal that sheriff and officers were protected by qualified immunity. Hill v. Johnson, C.A.8 (Ark.) 2000, 208 F.3d 218, Unreported. Federal Civil Procedure 851

3673. Court reporters, qualified immunity generally

Court reporter acted within his legal authority in fulfilling transcript requests in order received and in preparing transcript as he did at request of defendant's attorney under Missouri rules; thus, qualified immunity protected court reporter from liability in civil rights suit brought against him based upon delay in preparation of criminal defendant's trial transcript. Holt v. Dunn, C.A.8 (Mo.) 1984, 741 F.2d 169.

Individual stenographers were entitled to qualified immunity on inmates' claim that delay in filing appellate transcripts violated Eighth Amendment. Mathis v. Bess, S.D.N.Y.1991, 767 F.Supp. 558. Civil Rights 1376(8)

Federal court reporter was entitled to qualified immunity from civil rights claim based upon his alleged conduct, while acting on behalf of judge, in causing transcript of courtroom proceeding to be altered. Neville v. Dearie, N.D.N.Y.1990, 745 F.Supp. 99. Civil Rights 1376(8)

Court reporter's delay in furnishing defendant in criminal trial with transcript of guilty plea proceedings was not alleged to be a knowing act in contravention of defendant's constitutional rights, and thus, reporter was entitled to qualified immunity with respect to defendant's subsequent civil rights claim for money damages; delay in furnishing transcript was apparently occasioned by misunderstanding concerning which of several court proceedings defendant sought to have transcribed and, once reporter received notice of request and learned which transcript was sought, she promptly prepared and delivered that transcript. Formanek v. Arment, E.D.Mo.1990, 737 F.Supp. 72. Civil Rights 1376(8)

3674. Education and school officials, qualified immunity generally-- Generally

Alabama public high school economics and government teacher was not engaged in discretionary function when she led class in moment of silent prayer and thus was not entitled to qualified immunity on Establishment Clause-based § 1983 claim; assuming she was attempting to pursue legitimate job-related function of fostering her students' character education by teaching compassion, she was not doing so through legitimate means that fell within her powers. Holloman ex rel. Holloman v. Harland, C.A.11 (Ala.) 2004, 370 F.3d 1252, rehearing and rehearing en banc denied 116 Fed.Appx. 254, 2004 WL 1737002. Civil Rights 1376(5)

High school principal was eligible for qualified immunity defense in § 1983 action arising from his alleged use of excessive force while disciplining thirteen-year-old student; disciplining students lay within principal's general discretionary authority. Kirkland ex rel. Jones v. Greene County Bd. of Educ., C.A.11 (Ala.) 2003, 347 F.3d 903, rehearing and rehearing en banc denied 88 Fed.Appx. 393, 2003 WL 22994441. Civil Rights 1376(5)

Middle school teachers' concerns regarding proper care and education of special education students were outweighed by principal's interest in efficiently administering school, and thus principal was entitled to qualified immunity in teachers' suit alleging he had infringed on their First Amendment rights, where teachers' conduct had polarized school faculty. Fales v. Garst, C.A.8 (Ark.) 2001, 235 F.3d 1122. Civil Rights 1376(5)

School district was not entitled to qualified immunity in student's § 1983 action alleging equal protection violation

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stemming from school officials' alleged failure to protect student from harassment and harm by other students due to student's sexual orientation. Nabozny v. Podlesny, C.A.7 (Wis.) 1996, 92 F.3d 446. Civil Rights 1376(5)

Qualified immunity did not apply to teacher's civil rights claims against school principal and school district in their official capacities only; fact that teacher sought recovery of attorney fees did not mean that he was seeking damages so as to render qualified immunity doctrine applicable. Williams v. Vidmar, N.D.Cal.2005, 367 F.Supp.2d 1265. Civil Rights 1376(10)

Qualified immunity from §§ 1983 liability, enjoyed by public officials exercising discretionary powers who do not violate clearly established statutory or constitutional rights of which a reasonable person would have known, extends to public school officials. Mohammed ex rel. Mohammed v. School Dist. of Philadelphia, E.D.Pa.2005, 355 F.Supp.2d 779. Civil Rights 1376(5)

As nonjudicial officers, state education officials held qualified immunity under Hawaii law and were immune from liability on state law tort claims, absent clear and convincing proof that their actions were motivated by malice. Doe ex rel. Doe v. State of Hawaii Dept. of Educ., D.Hawai'i 2004, 351 F.Supp.2d 998, reconsideration denied 351 F.Supp.2d 1021. Schools 47

College president was entitled to qualified immunity from § 1983 liability for her actions in violation of students' First Amendment rights, as reasonable official in president's position would not have understood that her actions were unlawful; while it was clearly established at time of decision that, in absence of reasonable limitations on scope of limited public forum, college newspapers had right to print election-related coverage without retribution, it was not yet clearly established that nullifying and rescheduling student government election that was subject of coverage was impermissible retribution for that expression, i.e., it was not established with sufficient specificity that canceling student government election, as opposed to impounding newspaper, denying funding, or directly disciplining students would constitute actionable form of reprisal against them. Husain v. Springer, E.D.N.Y.2004, 336 F.Supp.2d 207. Civil Rights 1376(5)

Principal, who recommended African-American teacher's termination, was entitled to qualified immunity from teacher's individual capacity claims under §§ 1981 and 1983; principal did not violate any of teacher's constitutional rights, in that, he was not decisionmaker who terminated her, and even if he had violated her constitutional rights, principal's recommendation to terminate teacher was objectively reasonable, in light of teacher's history of unprofessional behavior toward colleagues, students, and supervisors despite repeated warnings and reprimands. Bluitt v. Houston Independent School Dist., S.D.Tex.2002, 236 F.Supp.2d 703. Civil Rights 1376(10)

School board members and superintendent were not entitled to qualified immunity in their individual capacities against § 1983 civil rights suit alleging that personally identifiable information about student was released to newspaper in violation of Family Educational Rights and Privacy Act; whether disclosed information was personally identifiable was jury question. Doe v. Knox County Bd. of Educ., E.D.Ky.1996, 918 F.Supp. 181. Civil Rights 1376(5)

School officials were entitled to qualified immunity in civil rights action based on their interpretation of school rule prohibiting students from being on school property while "under the influence of alcohol" as prohibiting the presence of a student who has ingested only a single alcoholic beverage. Kubany v. School Bd. of Pinellas County, M.D.Fla.1993, 839 F.Supp. 1544. Civil Rights 1376(5)

3675. ---- Assaults on students, education and school officials, qualified immunity generally

Assuming high school student had substantive due process right not to be sexually abused by teacher, school board superintendent did not deprive her of that right, thus entitling superintendent to qualified immunity in his individual

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capacity on due process claim, where superintendent did not personally participate in teacher's sexual abuse of student, and there was no evidence of any prior inappropriate acts by teacher that should have put superintendent on notice that teacher might commit such abuse, nor evidence that superintendent had any preexisting policy in place which could have led teacher to believe that sexual abuse of students was permitted by superintendent. Hartley v. Parnell, C.A.11 (Ala.) 1999, 193 F.3d 1263, rehearing denied. Civil Rights 1376(5)

Genuine issue of material fact as to whether grade school principal was deliberately indifferent to risk of teacher sexually abusing his students precluded summary judgment on qualified immunity grounds in student's §§ 1983 action against principal. Arbaugh v. Board of Educ., County of Pendleton, N.D.W.Va.2004, 329 F.Supp.2d 762. Federal Civil Procedure 2491.5

In action by high school student alleging that school administrators maintained a policy, custom, or practice which played an affirmative role in bringing about the sexual abuse plaintiff suffered from coach, current principal was entitled to qualified immunity in light of evidence showing that he personally investigated report of abuse. Seneway v. Canon McMillan School Dist., W.D.Pa.1997, 969 F.Supp. 325, appeal quashed 118 F.3d 1577. Civil Rights 1376(5)

School district and individual school administrators were not entitled to qualified immunity in § 1983 action brought by former middle school student who alleged that during school year teacher subjected him to sexual, physical, and verbal abuse and harassment; student sufficiently alleged that defendants tolerated and tacitly condoned teacher's behavior. K.L. v. Southeast Delco School Dist., E.D.Pa.1993, 828 F.Supp. 1192. Civil Rights 1376(5)

College administrator, as supervisor of campus security officers, could only be held liable under § 1983 if: (1) she directly participated in officers' violation of student's rights; (2) created policy or custom under which unconstitutional practices occurred, or allowed such policy or custom to continue; or (3) was grossly negligent in managing officers. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Civil Rights 1356; Civil Rights 1358

3676. ---- Failure to report, education and school officials, qualified immunity generally

In order to impose liability on teacher under § 1983 for failing to report sexual abuse of student by another teacher, student was required to establish that teacher knew of facts pointing plainly to conclusion that another teacher was sexually abusing student, that teacher demonstrated deliberate indifference toward constitutional rights of student by failing to take action to stop abuse, and that such failure caused constitutional injury to student; barring such proof, teacher possessed qualified immunity to student's action. Doe v. Rains Independent School Dist., E.D.Tex.1994, 865 F.Supp. 375, reversed 66 F.3d 1402, rehearing denied. Civil Rights 1376(5)

3677. ---- Handicapped students, education and school officials, qualified immunity generally

Parents of female handicapped student who had been sexually abused by school van driver failed to show pattern of unconstitutional behavior as required to render school district liable to parents under § 1983 for governmental custom of failing to receive, investigate, and act upon complaints of sexual misconduct of its employees; parents could point only to one prior complaint regarding driver's behavior toward student. Larson by Larson v. Miller, C.A.8 (Neb.) 1996, 76 F.3d 1446. Civil Rights 1352(2)

School district officials were not entitled to qualified immunity from suit, brought against them in their individual capacities by high school students and their parents, alleging failure to address students' educational and disciplinary problems in violation of their rights under Individuals with Disabilities Education Act (IDEA), Rehabilitation Act, Americans with Disabilities Act (ADA), and Fourteenth Amendment; claimants cited several instances of conduct clearly impermissible under IDEA. McCachren v. Blacklick Valley School Dist.,

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W.D.Pa.2002, 217 F.Supp.2d 594.

Qualified immunity for school board members in their individual capacity did not absolve school board itself for alleged § 1983 violation, in § 1983 action brought by autistic student and his parents against school district and its members for violation of Family Educational Rights and Privacy Act (FERPA). Maynard v. Greater Hoyt School Dist. No. 61-4, D.S.D.1995, 876 F.Supp. 1104. Civil Rights 1376(5)

Employees and agents of school committee were not liable under federal civil rights statute for failure to provide student with written Individualized Educational Plan (IEP) or finding of no special needs or for issuance of diploma; special education that would have been offered to student had IEP been drawn up was rejected by her, and school staff had acted in good faith and was entitled to raise defense of qualified immunity. Puffer v. Raynolds, D.Mass.1988, 761 F.Supp. 838. Civil Rights 1376(5)

3678. ---- Medical care, education and school officials, qualified immunity generally

Under Mississippi law, head football coach, athletic trainer, and team physician at state university were entitled to qualified immunity in civil rights and state law suit by estate of football player who died after practice session; trainer and physician were performing discretionary functions in administering medical treatment to player, and coach was sued merely because of his general authority over program. Sorey v. Kellett, C.A.5 (Miss.) 1988, 849 F.2d 960, rehearing denied. Civil Rights 1376(5); Colleges And Universities 8(1)

3679. ---- Searches, education and school officials, qualified immunity generally

School officials did not violate Fourth Amendment's prohibition against unreasonable seizures and were entitled to qualified immunity, when, in acting in loco parentis, they transported one child to school of her sibling so that siblings could be interviewed together in connection with investigation of possible abuse report. Wojcik v. Town of North Smithfield, C.A.1 (R.I.) 1996, 76 F.3d 1. Civil Rights 1376(5); Schools 169.5

State university employees and officials, who coordinated search of campus office of department head as part of investigation into possible child pornography stored on computers located in the office that resulted in seizure of his personal laptop computer, were entitled to qualified immunity from department head's §§ 1983 action, since search and seizure did not violate the Fourth Amendment. Soderstrand v. Oklahoma, ex rel. Bd. of Regents of Oklahoma Agr. and Mechanical Colleges, W.D.Okla.2006, 463 F.Supp.2d 1308. Civil Rights 1376(10)

3680. ---- Freedom of speech, education and school officials, qualified immunity generally

Chancellor was not entitled to qualified immunity from liability under §§ 1983 on New York City community school board member's claim that she was removed from office in retaliation for her political views, in violation of First Amendment. Velez v. Levy, C.A.2 (N.Y.) 2005, 401 F.3d 75. Civil Rights 1376(10)

Although student's sketch depicting violent siege on high school, composed off-campus and inadvertently brought on campus by his brother, was protected by First Amendment, principal was entitled to qualified immunity from student's First Amendment claim stemming from his removal from school; given unsettled nature of pertinent First Amendment law, contours of student's First Amendment rights were not clearly established, and principal's determination that drawing was not entitled to First Amendment protection was objectively unreasonable. Porter v. Ascension Parish School Bd., C.A.5 (La.) 2004, 393 F.3d 608, certiorari denied 125 S.Ct. 2530, 544 U.S. 1062, 161 L.Ed.2d 1112. Civil Rights 1376(5)

Alabama public high school principal who "paddled" student for silently raising his fist during daily flag salute instead of reciting Pledge of Allegiance with rest of class, in lieu of three-day detention that would have delayed

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student's graduation, was engaged in legitimate discretionary function for purposes of determining his entitlement to qualified immunity against student's Speech Clause claims; disciplining students was such a function, and in state of Alabama spanking students was legitimate part of principal's arsenal for enforcing such discipline. Holloman ex rel. Holloman v. Harland, C.A.11 (Ala.) 2004, 370 F.3d 1252, rehearing and rehearing en banc denied 116 Fed.Appx. 254, 2004 WL 1737002. Civil Rights 1376(5)

University committee chairman's conduct of preparing and reading to university faculty a mental illness memo concerning assistant professor did not rise to the level of an adverse employment action, as required to establish a First Amendment violation, and thus official was entitled to qualified immunity in assistant professor's First Amendment retaliation claim brought pursuant to § 1983. Stavropoulos v. Firestone, C.A.11 (Ga.) 2004, 361 F.3d 610, rehearing and rehearing en banc denied 123 Fed.Appx. 388, 2004 WL 3108141, certiorari denied 125 S.Ct. 1850, 544 U.S. 976, 161 L.Ed.2d 727. Civil Rights 1376(10); Colleges And Universities 8.1(1); Constitutional Law 90.1(7.3)

State university chancellor was not entitled to qualified immunity in § 1983 action by professors alleging violation of their First Amendment rights, on basis of balancing test used to determine whether public employer's termination of employee violates employee's right to free speech, where chancellor failed to establish workplace disruption or, at least, to make connection between professors' speech and workplace atmosphere. Burnham v. Ianni, C.A.8 (Minn.) 1997, 119 F.3d 668. Civil Rights 1376(10)

3681. Employees, qualified immunity generally

Public employees subjected to § 1983 action in their individual capacities can establish qualified immunity if they can show (1) it was not clear at time of official acts that interests asserted by plaintiff was protected by federal statute or Constitution or (2) it was not clear at time of acts at issue that exception did not permit those acts or (3) even if contours of rights were clearly delineated, it was objectively reasonable for them to believe their acts did not violate those rights. Tenenbaum v. Williams, E.D.N.Y.1994, 862 F.Supp. 962, adhered to on denial of reconsideration 907 F.Supp. 606, affirmed in part, vacated in part 193 F.3d 581, certiorari denied 120 S.Ct. 1832, 529 U.S. 1098, 146 L.Ed.2d 776. Civil Rights 1376(2)

3682. Employers, qualified immunity generally--Generally

Director of federally-funded teaching program was not entitled to qualified immunity, in § 1983 action by program teacher for allegedly violating his constitutional rights by requiring him to sign release of various documents, including medical records, as condition of his contract renewal. Denius v. Dunlap, C.A.7 (Ill.) 2003, 330 F.3d 919. Civil Rights 1376(10)

Public official will normally enjoy qualified immunity from damage liability in public employee job dismissal case as long as job in question potentially concerned matters of partisan political interest and involved at least modicum of policy-making responsibility, access to confidential information, or official communication. Juarbe-Angueira v. Arias, C.A.1 (Puerto Rico) 1987, 831 F.2d 11, certiorari denied 108 S.Ct. 1222, 485 U.S. 960, 99 L.Ed.2d 423. Officers And Public Employees 116

Supervisor was not qualifiedly immune from city employee's § 1983 gender discrimination claim, inasmuch as supervisor, who had had sexual harassment training, surely knew that he could not harass and discriminate against employee because of her gender. Dunnom v. Bennett, S.D.Ohio 2003, 290 F.Supp.2d 860. Civil Rights 1376(10)

3683. ---- Equal protection, employers, qualified immunity generally

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Female manager was entitled to qualified immunity on male county employee's § 1983 claim that manager violated his equal protection rights by conducting a "sham" investigation of his complaints regarding county's domestic violence shelter; there was no evidence of a pattern or practice of violations concerning male employees' equal protection rights. Kulikowski v. Board of County Com'rs of County of Boulder, D.Colo.2002, 231 F.Supp.2d 1053 . Civil Rights 1376(10)

In § 1983 action brought by black state employee, employee's superiors were entitled to qualified immunity from employee's equal protection claims where employee could not show that his superiors actively participated in, directed, or authorized any harassment, and employee acknowledged that on several occasions his superiors attempted to assist him by alleviating allegedly discriminatory and hostile work environment. Coney v. Department of Human Resources of State of Ga., M.D.Ga.1992, 787 F.Supp. 1434. Civil Rights 1376(10)

3684. ---- Racial discrimination, employers, qualified immunity generally

Members of board of trustees for public library system and director of system were not entitled to qualified immunity from Caucasian librarians' § 1983 action, alleging race discrimination; defendants violated librarians' constitutional rights by transferring them on basis of race, it was clearly established that intentional discrimination in workplace violated federal law, and record did not indisputably establish that defendants were motivated, at least in part, by lawful reasons. Bogle v. McClure, C.A.11 (Ga.) 2003, 332 F.3d 1347, rehearing and rehearing en banc denied 77 Fed.Appx. 510, 2003 WL 21804722, certiorari dismissed 124 S.Ct. 1168, 540 U.S. 1158, 157 L.Ed.2d 1059. Civil Rights 1376(10)

Fact questions existed as to whether second-level supervisor of African-American employee of state agency, and agency's director, exhibited deliberate indifference to employee's equal protection rights by failing to act on employee's complaints of first-level supervisor's allegedly racially discriminatory conduct, precluding summary judgment on qualified immunity grounds in employee's §§ 1981 and 1983 action. Hill v. Taconic Developmental Disabilities Services Office, S.D.N.Y.2003, 283 F.Supp.2d 955, affirmed 82 Fed.Appx. 254, 2003 WL 22879684. Federal Civil Procedure 2497.1

Black executive director of housing authority was entitled to qualified immunity to claim of racial discrimination in his discharge of white deputy director; deputy director produced no evidence that executive director's articulated nondiscriminatory reasons for the discharge were pretextual or disguises of racial animus. Fauser v. Memphis Housing Authority, W.D.Tenn.1991, 780 F.Supp. 1168. Civil Rights 1529

3685. ---- First Amendment, employers, qualified immunity generally

University officials were not entitled to qualified immunity with respect to allegations that they denied tenure to professor in retaliation for his exercise of First Amendment rights. Dube v. State University of New York, C.A.2 (N.Y.) 1990, 900 F.2d 587, certiorari denied 111 S.Ct. 2814, 501 U.S. 1211, 115 L.Ed.2d 986. Civil Rights 1376(10)

Professor failed to show any activity by college officials regarding his denial of tenure that was in violation of employee's constitutional rights and, thus, officials were entitled to qualified immunity in their individual capacities from employee's § 1983 claim alleging violation of his First Amendment rights. Thornton v. Kaplan, D.Colo.1996, 937 F.Supp. 1441. Civil Rights 1376(10)

Speech of staffing clerk at county residential health care facility in conversation with her supervisor, who just returned from meeting at which facility director told supervisor that facility's overstaffing problem required immediate resolution, expressing, in course of defending her staffing decisions, clerk's concerns for quality of resident care at the facility, addressed a matter of public concern, and thus, director was not entitled to qualified immunity against clerk's § 1983 claim for alleged violation of her First Amendment rights by terminating her in

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retaliation for her speech. English v. County of Orange, C.A.2 (N.Y.) 2003, 72 Fed.Appx. 848, 2003 WL 21729006, Unreported. Civil Rights 1376(10)

Even assuming that police officer could establish First Amendment retaliation claim and deprivation of her liberty interest in her reputation, police department officials were entitled to qualified immunity since it was objectively reasonable for officials to believe that their decision to reassign officer to a different precinct in light of interpersonal differences with her supervisor did not violate clearly established constitutional law. Martinez v. City of New York, S.D.N.Y.2003, 2003 WL 2006619, Unreported, affirmed 82 Fed.Appx. 253, 2003 WL 22879401. Civil Rights 1376(10)

3686. ---- Affirmative action, employers, qualified immunity generally

Mayor was entitled to qualified immunity in civil rights action brought by white applicant for police chief position, for which black was hired, alleging racial discrimination; consent decree directed city to use best efforts to increase representation of blacks in job classification in which blacks had been underrepresented, decree could reasonably be construed to encompass police chief position, and, at time of hiring, it was clearly established that public employer could undertake voluntary affirmative action plan, but parameters of permissible plan were unclear. Stubblefield v. City of Jackson, Miss., S.D.Miss.1994, 871 F.Supp. 903. Civil Rights 1376(10)

Government officials were entitled to qualified immunity from claim that they manipulated scores and positions of police sergeants' eligibility test for "race-conscious purpose of increasing the number of blacks and Hispanics promoted and decreasing the number of whites," where officials had acted pursuant to affirmative action program. Petit v. City of Chicago, N.D.Ill.1991, 766 F.Supp. 607. Civil Rights 1376(10)

3687. ---- Hiring, employers, qualified immunity generally

State officials were entitled to qualified immunity in hiring temporary power plant maintenance worker allegedly based on political affiliation, though unsuccessful candidate for permanent position alleged that state officials chose to fill position on temporary basis to circumvent terms of court-approved settlement prohibiting consideration of political affiliation for nonexempt positions; court would not speculate about allegations of noncompliance with settlement in another case. Tarpley v. Jeffers, C.A.7 (Ill.) 1996, 96 F.3d 921. Civil Rights 1376(10)

3688. ---- Discharges or dismissals, employers, qualified immunity generally

Officials at community college who discharged faculty member, without a name-clearing hearing, were not entitled to qualified immunity from liability in faculty member's § 1983 procedural due process claim; discharge was allegedly made in connection with stigmatizing accusations that faculty member was being investigated for misappropriating school funds, and that he encouraged the performance group he founded to put on events with inappropriate sexual overtones, and faculty member had clearly established protected liberty interest in his good name, reputation, honor, and integrity. Putnam v. Keller, C.A.8 (Neb.) 2003, 332 F.3d 541, rehearing and rehearing en banc denied. Civil Rights 1376(10)

Nurse failed to demonstrate that she had constitutionally protected property interest in continued employment with university medical center, and therefore medical center employees were entitled to qualified immunity in nurse's § 1983 action with regard to nurse's claim that she was deprived of property interest in continued employment without due process, where nurse did not produce evidence that employment manual stated employees could not be fired except for cause, nurse did not provide any information as to what the medical center's grievance procedures involved, and nurse identified no state statute on which a property interest could be grounded. Watson v. University of Utah Medical Center, C.A.10 (Utah) 1996, 75 F.3d 569. Constitutional Law 277(2)

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Chief of police who made stigmatizing public remark regarding officers who resigned rather than face formal charges after sting operation, that former officers were "dirty cops," was entitled to qualified immunity on claim by former officers that they were deprived of liberty interest without due process, since officers had already resigned before chief made stigmatizing remark and it was not clearly established that officers' resignations were "discharges." Barnette v. Folmar, C.A.11 (Ala.) 1995, 64 F.3d 598. Civil Rights 1376(10)

County officials did not have qualified immunity against claims by deputy sheriffs alleging that dismissals were made solely for political activities since party affiliation did not further effective performance of deputies' tasks of serving process, transporting prisoners, and providing security for courtrooms. Burns v. County of Cambria, Pa., C.A.3 (Pa.) 1992, 971 F.2d 1015, certiorari denied 113 S.Ct. 1049, 506 U.S. 1081, 122 L.Ed.2d 357. Civil Rights 1376(10)

Members of board of trustees for public military college were entitled to qualified immunity against § 1983 civil rights claims by former savings and loan association executive vice president, based on allegation that defendants conspired to have vice president terminated in retaliation for public criticism of college, in absence of evidence that board members violated any constitutional right. Burrell v. Board of Trustees of Ga. Military College, C.A.11 (Ga.) 1992, 970 F.2d 785, rehearing denied 978 F.2d 718, certiorari denied 113 S.Ct. 1814, 507 U.S. 1018, 123 L.Ed.2d 445. Conspiracy 13

School officials were entitled to qualified immunity in § 1983 action by maintenance supervisor who was discharged after appearing before school board and accusing basketball coach of profanity in presence of students and physical abuse of students; evidence indicated that supervisor's accusation of physical abuse was unfounded, and unrefuted evidence showed that supervisor's speech caused severe disruption in operation of school system. Nieto v. San Perlita Independent School Dist., C.A.5 (Tex.) 1990, 894 F.2d 174. Civil Rights 1376(10)

Government officials will normally enjoy qualified immunity from damage liability in upper level, managerial-type job dismissal cases brought under § 1983 where the government jobs in question are not purely technical or scientific in nature. Figueroa-Rodriguez v. Lopez-Rivera, C.A.1 (Puerto Rico) 1989, 878 F.2d 1478. Civil Rights 1376(10)

County sheriff was not entitled to qualified immunity from liability for his conduct in discharging part-time sheriff's department employee and failing to place her on the jail officer eligibility list, in former employee's action alleging that sheriff made those decisions because employee was in an interracial marriage, in violation of § 1981, § 1983, and Title VII, absent showing that sheriff did not know that employee was in an interracial marriage at time he made decisions. Jones v. Adams County, Wisconsin, W.D.Wis.2003, 297 F.Supp.2d 1132. Civil Rights 1376(10)

Genuine issues of material fact regarding public officials' motivations for taking adverse employment actions against public employees, precluded summary judgment in favor of public officials on grounds of qualified immunity, in public employees' § 1983 claims, asserting political discrimination. Reyes Canada v. Rey Hernandez, D.Puerto Rico 2003, 286 F.Supp.2d 174, reconsideration denied in part 221 F.R.D. 294. Federal Civil Procedure 2497.1

University officials in their individual capacities were entitled to qualified immunity from § 1983 claim of tenured professor that his constitutional free speech rights were violated by nonrenewal of his wife's contract in retaliation for his engaging in speech critical of university and its policies, absent presentation by professor of any case law whatsoever extant at time of officials' action permitting individual to bring free speech claim based on retaliation directed towards that individual's spouse. Anderson-Free v. Steptoe, M.D.Ala.1997, 970 F.Supp. 945. Civil Rights 1376(10)

University vice president was entitled to qualified immunity with respect to allegations that plaintiff was terminated

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or was not hired by university on basis of her citizenship, in light of vice president's limited role and lack of involvement in decision, as well as deference to counsel; plaintiff alleged that she showed vice president her contract and other documents that explained situation and that vice president promised to call her but never did, and vice president stated that he deferred judgment regarding situation to officials involved in the hiring process, and to legal counsel. Chacko v. Texas A&M University, S.D.Tex.1997, 960 F.Supp. 1180, affirmed 149 F.3d 1175 . Civil Rights 1376(10)

State officials being sued in their individual capacities were not entitled to invoke qualified immunity as defense to former employees' claims against them for allegedly intentional and deliberately selecting their positions for elimination because of high concentration of women, persons over 40, and union activists; termination of public employee because of his or her union activities, gender, or age would violate individual's constitutional and federal statutory rights. DeLoreto v. Ment, D.Conn.1996, 944 F.Supp. 1023. Civil Rights 1376(10)

Police chief was entitled to qualified immunity from discharged officers' claims that they were entitled to postdeprivation hearings, where officers waived any postdeprivation hearing rights they might have had by choosing to appeal termination through grievance and arbitration procedure under collective bargaining agreement, and arbitration procedure comported with their due process rights. Liedtke v. Ploeckelman, E.D.Wis.1993, 827 F.Supp. 575. Municipal Corporations 182

3689. ---- Promotions or demotions, employers, qualified immunity generally

Police officers' allegations that they were transferred from prestigious positions to street jobs and passed over for promotions after speaking with coworkers and union representatives about deputy inspector's order forbidding officers from conducting follow-up investigations or assisting detective bureau without inspector's direct authorization stated claim outside qualified immunity defense. Gustafson v. Jones, C.A.7 (Wis.) 1997, 117 F.3d 1015. Constitutional Law 90.1(7.2); Municipal Corporations 184.1

State employee who worked as chief legal counsel for Wisconsin Department of Revenue prior to his demotion to attorney was entitled to some pre-deprivation process prior to being demoted, and thus, Department Secretary was not entitled to dismissal on basis of qualified immunity as to employee's §§ 1983 claim alleging a deprivation of procedural due process; public employees were generally entitled to some process before termination or demotion, employee alleged that he was demoted without pre-deprivation hearing, and record was not sufficiently developed to permit a determination of whether employee's right to pre-deprivation hearing was clearly established at time of its alleged violation. Evans v. Morgan, W.D.Wis.2003, 304 F.Supp.2d 1100. Civil Rights 1376(10)

Community college president could not establish that he failed to promote female athletic instructor to athletic director position due to concerns over her reliability, trustworthiness and loyalty, as would allow qualified immunity defense to instructor's § 1983 claim alleging that failure to promote her to such position violated equal protection clause; president's reasons for not promoting instructor fluctuated and were not corroborated by others. Morris v. Wallace Community College-Selma, S.D.Ala.2001, 125 F.Supp.2d 1315, affirmed 34 Fed.Appx. 388, 2002 WL 518045. Civil Rights 1376(10)

Qualified immunity of government officials alleged to have promoted individual to municipal position on basis of race did not bar plaintiff's claim of intentional racial discrimination in employment. Zervas v. District of Columbia, D.D.C.1993, 817 F.Supp. 148. Civil Rights 1376(10)

3690. ---- Harassment, employers, qualified immunity generally

Town councilwoman, who allegedly subjected male town employee whom she supervised to unwelcome sexual conduct and harassment following his cessation of their romantic relationship, was not entitled to qualified immunity from employee's § 1983 claim; employee had a clearly established constitutional right to be free of

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sexual discrimination, and a reasonable person in councilwoman's position would have known of such right. Perks v. Town of Huntington, E.D.N.Y.2003, 251 F.Supp.2d 1143. Civil Rights 1376(10)

Genuine issue of material fact, as to whether police chief condoned harassment of female county police officer, precluded summary judgment for chief on officer's §§ 1983 claim on basis of qualified immunity. Ensko v. Howard County, Md., D.Md.2006, 423 F.Supp.2d 502. Federal Civil Procedure 2497.1

County sheriff was entitled to qualified immunity from county corrections officer's § 1983 claims, which alleged that sheriff and his department had policy of condoning a "code of silence," resulting in harassment of officer after he reported coworker's misconduct, despite sheriff's hands-off management style; harassment occurred at beginning of sheriff's tenure, and officer produced no evidence that sheriff was on notice of code of silence. Baron v. Hickey, D.Mass.2003, 242 F.Supp.2d 66. Civil Rights 1376(10)

3691. ---- Suspension, employers, qualified immunity generally

Officers had qualified immunity from any violation of due process occurring when they suspended state trooper without pay pending further investigation without prior notice or hearing, based on cause to believe that trooper had engaged in serious domestic abuse that would support criminal charges. Myers v. Shaver, W.D.Va.2003, 245 F.Supp.2d 805. Civil Rights 1376(10)

Terminated secretary's §§ 1983 claims against school superintendent in his individual capacity, alleging violation of her right to procedural due process in context of her suspension without pay and subsequent termination from employment, were not barred by doctrine of qualified immunity. Branham v. May, E.D.Ky.2006, 428 F.Supp.2d 668. Civil Rights 1376(10)

3691A. Conservation officers, qualified immunity generally--Generally

Wildlife officers, who were conducting investigation of an illegal killing of a deer on farm property owned and occupied by farmer, did not possess probable cause to arrest farmer, and his right to be free from such an arrest was clearly established for qualified immunity purposes; officers were aware that they could not simply enter onto a private landowner's property and demand access, given that they were told the person they were investigating was not present, the reported criminal activity they were investigating had been completed and therefore required no immediate action, and they did not have a search warrant to search for any parts of the deer that reportedly had been shot out of season. Johnson v. Wolgemuth, S.D.Ohio 2003, 257 F.Supp.2d 1013. Arrest 63.4(14); Civil Rights 1376(6)

3691B. ---- Excessive force, conservation officers, qualified immunity generally

Wildlife officers, who were conducting investigation of an illegal killing of a deer on farm property owned and occupied by farmer, were not entitled to qualified immunity with respect to farmer's excessive force claim; it was clearly established at the time of farmer's arrest that a property owner who had committed no crime, as far as the arresting officers knew at the time, and was not under investigation for the commission of any crime, could not be grabbed in a bear hug, thrown against his car, wrestled to the ground, sprayed with mace and handcuffed, and then left untreated for a longer period of time than necessary, merely for insisting that law enforcement officers, who were not in hot pursuit of a suspect, not acting under any other exigent circumstances and not acting pursuant to a warrant, remove themselves from his property and not attempt to re-enter his property without his permission. Johnson v. Wolgemuth, S.D.Ohio 2003, 257 F.Supp.2d 1013. Civil Rights 1376(6)

3692. Environment officials, qualified immunity generally--Generally

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Executive deputy commissioner of New York State Department of Environmental Conservation (DEC) was entitled to qualified immunity with respect to § 1983 First Amendment claim brought by discharged special assistant to General Counsel of DEC; reasonable officials could disagree over special assistant's status as policymaker. Catone v. Spielmann, N.D.N.Y.1997, 966 F.Supp. 1288, appeal dismissed 149 F.3d 156. Civil Rights 1376(10)

Even if suit by owners of barges used for transportation of oil was against individual commissioner and officer of state Department of Environmental Conservation in their personal capacity, they were afforded qualified immunity for violations of constitutional rights resulting from exercise of official powers. Berman Enterprises, Inc. v. Jorling, E.D.N.Y.1992, 793 F.Supp. 408, affirmed 3 F.3d 602, certiorari denied 114 S.Ct. 883, 510 U.S. 1073, 127 L.Ed.2d 78. States 79

Evidence that New Mexico Environment Department (NMED) representatives were present when warrant was executed was insufficient to establish that subcontractor that had been awarded contract with NMED to help remediate hazardous waste environmental conditions was closely supervised by NMED when it executed warrant, such that subcontractor was entitled to assert qualified immunity in § 1983 action brought by property owner. Eden v. Voss, C.A.10 (N.M.) 2004, 105 Fed.Appx. 234, 2004 WL 1535829, Unreported. Civil Rights 1373

3693. ---- Warrantless searches, environment officials, qualified immunity generally

Town officials reasonably relied on town nuisance abatement law and subsequent town board resolution to justify their warrantless entry onto property to remove debris, and thus officials were entitled to qualified immunity from liability under § 1983 for their actions, even if officials were required to get judicial warrant before abating nuisance on property. Livant v. Clifton, E.D.N.Y.2004, 334 F.Supp.2d 321. Civil Rights 1376(4)

State environmental inspection officer had qualified immunity in suit by service station after inspector took nonconsensual warrantless administrative search of exposed area surrounding station's underground gasoline storage tanks, which complied with state statute; lawfulness of search and official's attempts to get court order as well as inspector's receipt of legal advice concerning lawfulness of his action demonstrated he did not act in obvious violation of station's rights. V-1 Oil Co. v. State of Wyo., Dept. of Environmental Quality, D.Wyo.1988, 696 F.Supp. 578, affirmed 902 F.2d 1482, certiorari denied 111 S.Ct. 295, 498 U.S. 920, 112 L.Ed.2d 249. Civil Rights 1376(3)

3694. Executive officials, qualified immunity generally

In general, executive officials are protected from constitutional claims only by qualified immunity; in certain instances, however, executive officials may be entitled to absolute immunity, but such instances are limited to those exceptional situations where it is demonstrated that absolute immunity is essential for conduct of public business. Chalkboard, Inc. v. Brandt, C.A.9 (Ariz.) 1989, 902 F.2d 1375, certiorari denied 111 S.Ct. 509, 498 U.S. 980, 112 L.Ed.2d 521. Officers And Public Employees 114

3695. Foster parents, qualified immunity generally

Where juvenile officer who took child into custody was protected from liability by qualified immunity, so too were foster parents in whose care he placed child. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(1)

3696. Governors, qualified immunity generally

Governor in § 1983 action enjoyed qualified immunity from suit arising out of police action to retake prison after inmate uprising and to rescue hostages. Al-Jundi v. Estate of Rockefeller, C.A.2 (N.Y.) 1989, 885 F.2d 1060.

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Civil Rights 1376(3)

Former governor of Alabama was qualifiedly immune from employee's § 1983 suit alleging First Amendment violations; record did not contain any inferable facts that could support finding that former governor engaged in any activity, positive or negative, in response to any public criticism employee may have made concerning his job or his employers. Gorman v. Roberts, M.D.Ala.1995, 909 F.Supp. 1493. Civil Rights 1376(10)

Massachusetts' Governor and Attorney General, as state officials, would be entitled in civil rights action to qualified immunity from personal liability for actions taken in "good faith." Feliciano v. DuBois, D.Mass.1994, 846 F.Supp. 1033. Civil Rights 1376(3); Civil Rights 1376(9)

Former governor of Illinois was entitled to qualified immunity in civil rights action based on Illinois Medical Disciplinary Board's revocation of physician's license to practice medicine. McCabe v. Caleel, N.D.Ill.1990, 739 F.Supp. 387, affirmed 931 F.2d 895, rehearing denied. Civil Rights 1376(3)

Immunity afforded to executive officials other than President of United States, including governors of several states, is not absolute, but qualified. Tasker v. Moore, S.D.W.Va.1990, 738 F.Supp. 1005. Civil Rights 1376(3)

3697. Investigators, qualified immunity generally

Child abuse investigation of foster care facility conducted by detective was objectively reasonable, and thus detective was entitled to qualified immunity in § 1983 action brought by operator of facility against detective, even though operator alleged that the investigation was motivated by race, where detective received several reports of abuse not only from facility residents, but from school officials, the reports of abuse were corroborated by the existence of apparent physical injury, protocol required an investigation upon reports of abuse, and health and human services official accompanied detective on most of his investigations and attested to the professionalism and thoroughness of the investigation. Omni Behavioral Health v. Miller, C.A.8 (Neb.) 2002, 285 F.3d 646, rehearing and rehearing en banc denied. Civil Rights 1376(6)

State Gaming Control Board (NGCB) agent was not entitled to qualified immunity for his arrest of casino patron under authority of two state statutes for the patron's refusal to identify himself to the agent, and for his search of the patron's shoes incident to that arrest, even though the agent lawfully detained the patron under *Terry v. Ohio* based on the agent's reasonable suspicion that the patron was cheating at a card game; a reasonable officer in the agent's position would have known that the patron had a clearly established Fourth Amendment right not to identify himself, in view of two Ninth Circuit cases which unambiguously held that compelling an individual to identify himself during a *Terry* stop violated the Fourth Amendment. Carey v. Nevada Gaming Control Bd., C.A.9 (Nev.) 2002, 279 F.3d 873. Civil Rights 1376(6)

Investigator who vouched for truth of contents of criminal complaint offered in support of warrant for mayor's arrest was entitled only to qualified, and not absolute, immunity for his actions in subsequent civil rights action. Ireland v. Tunis, C.A.6 (Mich.) 1997, 113 F.3d 1435, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 560, 522 U.S. 996, 139 L.Ed.2d 401. Civil Rights 1376(6)

Employees of county environmental health department, who had conducted investigation into septic tank pumping business prior to district attorney's bringing criminal charges against business's operators for violations of environmental laws and conspiracy to defraud, were entitled to qualified immunity in operators' subsequent §§ 1983 malicious prosecution action; no Fourth Amendment violation occurred from employees' actions since state court had made preliminary finding of probable cause, district attorney rather than employees had made decision to prosecute, and employees' involvement primarily had consisted of referral of information to district attorney. Ayala v. KC Environmental Health, E.D.Cal.2006, 426 F.Supp.2d 1070. Civil Rights 1376(4)

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State prosecutor's conduct in investigating evidence against potential criminal defendant prior to his arrest justifies only qualified, rather than absolute, immunity from §§ 1983 liability. Mink v. Salazar, D.Colo.2004, 344 F.Supp.2d 1231. Civil Rights 1376(9)

Humane investigator was entitled to qualified immunity under § 1983 for alleged due process violation resulting from his impounding of horses pursuant to Illinois Humane Care for Animals Act without providing owner with predeprivation process; Act provided only for post-deprivation process, and a reasonable government actor could not be required to come to a conclusion that predeprivation process was due despite the fact that the Illinois General Assembly had come to a different conclusion, whether correctly or incorrectly, by passing a statute that provided for only post-deprivation process. Siebert v. Severino, C.D.Ill.2000, 97 F.Supp.2d 882, reversed and remanded 256 F.3d 648. Civil Rights 1376(6)

Counsel for state bar was entitled to qualified immunity in inmate's § 1983 action alleging that state bar failed to conduct proper investigation into inmate's grievance filed against clerk of federal district court; inmate provided no factual support for his allegation of a conspiracy between state bar and clerk, and inmate possessed no federally protected constitutional right to compel state bar to investigate his grievance. Brinson v. McKeeman, W.D.Tex.1997, 992 F.Supp. 897. Civil Rights 1376(3)

Assistant United States attorney who was sued in § 1983 action for malicious prosecution after plaintiff was acquitted of bank fraud charges was entitled only to qualified immunity to the extent he functioned as an investigator rather than as an advocate. Groom v. Fickes, S.D.Tex.1997, 966 F.Supp. 1466, affirmed 129 F.3d 606 . Civil Rights 1376(9)

3698. Judges, qualified immunity generally

State trial judge who had denied individual custody of his children in custody dispute was entitled to qualified immunity for requesting pat down search of that individual; judge had been warned in advance to have security in courtroom because of that individual's supposed "volatility," had learned about angry comment made by individual after court's ruling, and observed him pacing back and forth outside "staff only" door. McPherson v. Kelsey, C.A.6 (Mich.) 1997, 125 F.3d 989, certiorari denied 118 S.Ct. 1370, 523 U.S. 1050, 140 L.Ed.2d 518. Civil Rights 1376(8)

County auditor stated claim against state judges outside qualified immunity defense by alleging that judges refused to reappoint her for reporting specific wrongs and abuses within county government. Warnock v. Pecos County, Tex., C.A.5 (Tex.) 1997, 116 F.3d 776. Civil Rights 1376(10)

Judge was not entitled to make claim of qualified immunity for stopping motorist on interstate after motorist honked his horn and motioned to judge to change lanes; judge was not peace officer authorized to make stop. Malina v. Gonzales, C.A.5 (La.) 1993, 994 F.2d 1121, rehearing denied 1 F.3d 304, on remand 1993 WL 534163. Judges 36

County probate judge, in his individual capacity, was not entitled to qualified immunity from county employee's race and gender discrimination claims as enforced under § 1983, where right to be free from discrimination in workplace because of race and gender has long been established and reasonable official would have understood that such discrimination was unlawful. Johnson v. Waters, M.D.Ala.1997, 970 F.Supp. 991. Civil Rights 1376(10)

Hearing officer's failure to call two witnesses during state inmate's prison disciplinary proceeding did not violate established constitutional rights of which hearing officer should have known, given general nature of inmate's objection to "this whole hearing," and therefore qualified immunity applied to shield hearing officer from § 1983 liability for alleged violation of inmate's constitutional rights. Johnson v. Coombe, S.D.N.Y.2003, 2003 WL

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1883352, Unreported. Civil Rights 1376(8)

3699. License officials, qualified immunity generally

City planner and city engineer were not entitled to qualified immunity from claim they violated property owner's right to procedural due process when they denied building permit, thereby effectively revoking conditional use permit, without notice and an opportunity to be heard; owner had a clearly established right to a pre-deprivation hearing, and defendants did not have a reasonable belief that their actions were constitutional based on alleged reliance on advice of counsel. Holman v. City of Warrenton, D.Or.2002, 242 F.Supp.2d 791. Civil Rights 1376(4)

Owners of nursing home, which had operating certificate revoked and was terminated from Medicare-Medicaid program, did not proffer particularized evidence of improper intent on part of state and federal officials that would defeat qualified immunity in action alleging § 1983 and *Bivens* claims, although increase in frequency and severity of home's deficiency findings began after owner began complaining to and about New York State Department of Health (DOH) and its practices; allegations of improper and unconstitutional practices were largely lacking or barred by collateral estoppel under New York law based on findings in administrative proceedings, and owner's complaints were to some extent result, rather than cause, of the deficiency findings. Beechwood Restorative Care Center v. Leeds, W.D.N.Y.2004, 317 F.Supp.2d 248, affirmed in part, vacated in part and remanded 436 F.3d 147. Civil Rights 1376(3); United States 50.10(1)

State liquor authority official who denied restaurant owner's application for permission to make alterations to restaurant, based on fact that charges were pending against owner, was shielded by qualified immunity with respect to owner's § 1983 civil rights action, where application was denied pursuant to a long-standing divisional order that liquor licensing board would disapprove an application where revocation proceedings were pending, where the notice sent by liquor authority to restaurant owner stated that assault charge against owner alleged such improper conduct as to warrant revocation, cancellation, or suspension of his license, and where there was no evidence that official was aware of prior plea agreement between owner and authority under which assault charge would be withdrawn. D'Agostino v. New York State Liquor Authority, W.D.N.Y.1996, 913 F.Supp. 757, affirmed 104 F.3d 351. Civil Rights 1376(3)

State daycare licensing personnel would be entitled to qualified immunity on § 1983 civil rights claims alleging that licensing officers violated established minimum licensing standards, refused to follow orders of administrative hearing officer, and violated state administrative code; officials were not shown to have violated operators' procedural due process rights. Bowman v. Alabama Dept. of Human Resources, M.D.Ala.1994, 857 F.Supp. 1524 . Civil Rights 1376(3)

3700. Medical examiners, qualified immunity generally

Parent accused of manslaughter had no due process claim based on medical examiner's failure to reveal exculpatory information concerning cause of victim's death to her, to grand jury, or to prosecutor, and medical examiner was entitled to qualified immunity from that claim. Kompare v. Stein, C.A.7 (Ill.) 1986, 801 F.2d 883. Civil Rights 1088(1)

3701. Mental health officials, qualified immunity generally

Alleged failure of Associate Commissioner for Mental Health of state Department of Mental Health and Mental Retardation to make sure that staff at state adolescent hospital were trained in suicide assessment and in recognizing suicidal tendencies did not violate clearly established constitutional rights of patients, and Commissioner was entitled to qualified immunity in federal civil rights action brought after patient at hospital

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attempted to hang himself. Dolihite v. Maughon By and Through Videon, C.A.11 (Ala.) 1996, 74 F.3d 1027, certiorari denied 117 S.Ct. 185, 519 U.S. 870, 136 L.Ed.2d 123. Civil Rights 1376(3)

Facts alleged by former patient, if proved, were sufficient to support finding that former superintendent of state psychiatric center was consciously indifferent to risk that psychiatric aide, who had two complaints of patient sexual abuse previously filed against him, posed to safety of female patients at center, and, thus, superintendent was not entitled to qualified immunity in civil rights action brought by patient, who alleged that she was sexually abused by aide; reasonable hospital official would not have summarily disregarded substantial evidence that pointed to aide's misconduct with regard to prior complaints, only order given to supervisors that prohibited them from assigning aide to work with female patients was one given orally by director of nursing at brief meeting, and superintendent failed to put that directive in writing. Neely v. Feinstein, C.A.9 (Or.) 1995, 50 F.3d 1502. Civil Rights 1376(3)

Employees of State Department of Mental Health and Developmental Disabilities had qualified immunity from civil rights suit by involuntary patient committed pursuant to court order after adjudication of incompetency to stand trial and insanity, notwithstanding later court order restoring patient to civil competency, since under Illinois law, findings of sanity and competency are separate issues and defendants had never received notice of hearing or copy of order which restored the patient's competency; committing order required defendant to not only be committed until his competency was restored but until he had fully recovered from insanity. Smart v. Simonson, C.A.7 (Ill.) 1989, 867 F.2d 429, rehearing denied. Civil Rights 1376(3)

3702. Mental hospital officials, qualified immunity generally

Alleged failure of director of state adolescent hospital to make sure that conditions at hospital were safe by, among other things, removing bars from dormitory closets did not violate clearly established constitutional rights of patients, and director was entitled to qualified immunity in federal civil rights action brought after patient attempted to hang himself from bar in closet; director could reasonably have relied on subordinates to ensure that precautionary measures were taken for patients at risk, and there was no evidence of earlier incidents of injury involving alleged inadequacy. Dolihite v. Maughon By and Through Videon, C.A.11 (Ala.) 1996, 74 F.3d 1027, certiorari denied 117 S.Ct. 185, 519 U.S. 870, 136 L.Ed.2d 123. Civil Rights 1376(3)

Officials of state medical center were qualifiedly immune from claim of detainee, who had been found not guilty of murder by reason of insanity, that officials violated his due process rights by placing him in segregation after he had been committed for psychological treatment, where reasonable person could have believed detainee was danger to himself and others, detainee had history of violence against women, hospital was then treating mentally ill women, and hospital lacked staff to supervise detainee. Huss v. Rogerson, S.D.Iowa 2003, 271 F.Supp.2d 1118. Civil Rights 1376(3)

Officials at state hospital were entitled to qualified immunity with respect to suit by civilly committed patient arising from forced administration of antipsychotic drugs, given that there was no showing that constitutional rights were violated and, in any event, law was not clearly established concerning scope of due process as applied to person judicially committed to institution under adjudication of incompetence, and it was reasonable for officials to believe that, upon determination of compelling reasons, they could force medication without guardian's consent and override guardian's expressed substituted judgment where consent was refused. Jurasek v. Payne, D.Utah 1997, 959 F.Supp. 1441, affirmed 158 F.3d 506. Civil Rights 1376(3)

Superintendent of state psychiatric hospital was entitled to qualified immunity in context of former patient's Eighth Amendment deliberate-indifference claim based on alleged assault by paramedical assistant; while patient sought to rely on letter from superintendent to governor to prove that superintendent failed to act despite knowledge that hospital condition violated patients' constitutional right to safe confinement, superintendent indicated that he was attempting to comply within budgetary constraints to changes and recommendations in area of patient restraint and

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time-out, and superintendent's awareness of assistant's employment record and incidents of past violence were insufficient to show that superintendent had knowledge of substantial risk of serious harm to patient. Lopes v. Rogers, D.Hawai'i 1995, 909 F.Supp. 737. Civil Rights 1376(3)

Attending psychiatrist during patient's stay at state mental health institute was entitled to qualified immunity from damages stemming from patient's escape absent any allegation rebutting defense expert testimony that psychiatrist's orders regarding safety precautions satisfied his duty of due care to prevent patient's escape. Lindsay v. Northern Virginia Mental Health Institute, E.D.Va.1990, 736 F.Supp. 1392. Civil Rights 1376(3)

3703. Municipal or city officials, qualified immunity generally--Generally

Genuine issue of material fact, as to whether failure by city officials to correct the problems with drainage ditch on African-American property owner's land, or maintain the ditch, so that the ditch did not cause flooding on the property, resulted from improper racial animus precluded summary judgment in favor of officials, in property owner's §§ 1983 equal protection claim. Wilson v. Northcutt, C.A.8 (Ark.) 2006, 441 F.3d 586, rehearing and rehearing en banc denied. Federal Civil Procedure 2491.5

Attorneys and law firm serving as city's outside counsel in connection with litigation with police pension fund and fund's elected trustees were eligible for protection of qualified immunity in subsequent action by fund's investment managers raising federal civil rights and Racketeer Influenced and Corrupt Organizations Act (RICO) claims, inasmuch as attorneys and firm were clearly acting as city's agents. Cullinan v. Abramson, C.A.6 (Ky.) 1997, 128 F.3d 301, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1560, 523 U.S. 1094, 140 L.Ed.2d 792. Civil Rights 1375; Municipal Corporations 751(1)

Fire chief and deputy chief were not entitled to qualified immunity on §§ 1983 claims for constitutional violations giving rise to firefighters' injuries and loss of life where claims were based on allegations that fire department, the fire chief and deputy chief were on notice of specific circumstances and problems that, if not addressed, were almost certain to result in injury or death. Estate of Phillips v. District of Columbia, D.D.C.2005, 355 F.Supp.2d 212. Civil Rights 1376(10)

City official acted reasonably in issuing code violations against property owners, as would support official's claim to qualified immunity from owners' action under §§ 1983, where official issued violations for grass maintenance and litter after personally observing that grass had grown too long and that there was no garbage enclosure, and owner offered no evidence to suggest that violations issued to them were unwarranted in light of conditions on their properties. Moran v. City of New Rochelle, S.D.N.Y.2004, 346 F.Supp.2d 507. Civil Rights 1376(4)

Town officials were not entitled to qualified immunity from terminated employee's due process claims, where it was clearly established that employee was entitled to adequate notice of pretermination hearing, that officials could not predetermine result of hearing, and that the town administrator lacked authority to terminate employee's employment. Levesque v. Town of Vernon, D.Conn.2004, 341 F.Supp.2d 126. Civil Rights 1376(10)

Current and former commissioners of a city's department of motor vehicles, and a police officer, were entitled to qualified immunity in a § 1983 suit brought by a motorist claiming that his due process rights were violated in connection with suspension of his driver's license for failure to pay a fine; no reasonable jury could conclude that the defendants were objectively unreasonable in believing that due process was satisfied by mailing to the motorist, following a full hearing adjudicating his guilt on a charge of speeding, a notice that his license would be suspended if he did not pay the resulting fine within 14 days. Evans v. City of New York, S.D.N.Y.2004, 308 F.Supp.2d 316, affirmed 123 Fed.Appx. 433, 2005 WL 348377. Civil Rights 1376(4); Civil Rights 1376(6)

Municipal officials were not entitled to qualified immunity in § 1983 action, where property owner alleged that

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individual officials acted with intent to harm him. Coletta v. City of North Bay Village, S.D.Fla.1997, 962 F.Supp. 1486. Civil Rights 1376(4)

Whether village officials were violating developer's due process rights or equal protection rights when they drew down letter of credit was not clearly established, even if their conduct was not authorized, and thus officials enjoyed qualified immunity from developer's civil rights claim. Union Pacific R. Co. v. Village of South Barrington, N.D.Ill.1997, 958 F.Supp. 1285. Civil Rights 1376(4)

Town officials were not entitled to qualified immunity in civil rights action brought by property management company and its nonminority sole shareholder in which it was alleged that town officials conspired to drive company and shareholder out of business due to fact they provided housing to low income minorities. Pisello v. Town of Brookhaven, E.D.N.Y.1996, 933 F.Supp. 202. Civil Rights 1376(4)

Employee of city's Department of Aging was entitled to qualified immunity with respect to § 1983 claim that she conducted incomplete and biased investigation of plaintiff's dispute with neighbor, and thereafter falsely arrested plaintiff in violation of his Fourth and Fourteenth Amendment rights; defendant employee, in her civilian capacity, had no special power or authority to arrest or charge anyone. Spiegel v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 891, affirmed 196 F.3d 717, as amended, rehearing denied, certiorari denied 120 S.Ct. 2688, 530 U.S. 1243, 147 L.Ed.2d 961. Civil Rights 1376(4)

Fire chief had qualified immunity from personal liability in suit brought by landowner claiming that fire chief had required fire sprinklers to be installed on all floors of building, rather than those in which people resided, and subsequently ordered a round-the-clock fire watch, for purpose of depressing building's property value in violation of owners substantive due process rights; fire chief's alleged motivations could not defeat a qualified immunity claim, which required a showing of improper actions, and it was clear that building did not meet fire code and that fire chief could legally order live fire watch. Wohl v. City of Hollywood, S.D.Fla.1995, 915 F.Supp. 339. Civil Rights 1376(4)

District of Columbia officials were not immune from suit in civil rights action under doctrine of qualified immunity. Best v. District of Columbia, D.D.C.1990, 743 F.Supp. 44. Civil Rights 1376(3)

3704. ---- Mayors, municipal or city officials, qualified immunity generally

City mayor was entitled to qualified immunity, in African-American property owner's §§ 1983 equal protection claim, asserting that city officials failed to properly maintain ditch causing flooding on property, absent evidence that mayor was aware of property owner's complaint of continued flooding after first complaint was addressed, or that he was aware of city's failure to maintain the ditch. Wilson v. Northcutt, C.A.8 (Ark.) 2006, 441 F.3d 586, rehearing and rehearing en banc denied. Civil Rights 1376(4)

Mayor was entitled to qualified immunity from liability in § 1983 action brought by arrestee who claimed to have been beaten by arresting officer; there was no evidence that mayor had actual or constructive knowledge of any training or supervisory deficiencies or that he was indifferent to those deficiencies. Febus-Rodriguez v. Betancourt-Lebron, C.A.1 (Puerto Rico) 1994, 14 F.3d 87. Civil Rights 1376(4)

Genuine issue of material fact as to whether mayor and other municipal officials act with knowledge of the law with respect to appointing permanent career employees under nine-step merit selection and recruitment process for acquiring permanent career status under Puerto Rico's Autonomous Municipalities Act of 1991 (AMA), but failed to follow that process when appointing new career employees from mayor's political party, precluded summary judgment to mayor and municipal officials as to their qualified immunity defense to First Amendment political discrimination claims brought in §§ 1983 action by employees affiliated with prior mayor's political party, who were not reinstated to permanent career positions after separation from their trust positions. Roman v. Delgado

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Altieri, D.Puerto Rico 2005, 390 F.Supp.2d 94, reconsideration denied 2005 WL 3358906.

Mayor was not entitled to qualified immunity for his decision to deny and defer municipal employee's request to resign, in employee's action alleging political discrimination in violation of the First Amendment, since there remained a material question of fact as to mayor's motion for the challenged employment action. Rivera Torres v. Ortiz Velez, D.Puerto Rico 2002, 306 F.Supp.2d 76, appeal denied 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Civil Rights 1376(10)

Claim against city mayor under § 1983 by plaintiffs seeking to compel access to intercom system installed in closed community pursuant to Controlled Access Law which alleged that mayor delegated powers improperly under such law was too vague and conclusory to withstand mayor's motion for qualified immunity; Controlled Access Law was silent as to whether mayor had any powers to delegate thereunder, claim failed to specify which powers mayor allegedly delegated improperly, and claim was essentially legal conclusion without any factual explanation or support. Figueroa v. Fernandez, D.Puerto Rico 1996, 921 F.Supp. 889. Civil Rights 1398

3705. ---- Freedom of speech, municipal or city officials, qualified immunity generally

City aldermen did not have immunity from art student's § 1983 action stemming from aldermen's removal of his painting from a private institution's exhibition and refusal to release painting until student agreed not to display it; painting showed male former city mayor wearing women's underwear. Nelson v. Streeter, C.A.7 (Ill.) 1994, 16 F.3d 145. Civil Rights 1376(4)

City attorney was not entitled to qualified immunity from liability in individual's § 1983 suit alleging that enforcement of city ordinance barring him from distributing newspapers on public sidewalks violated his First Amendment rights, even though district court had originally upheld ordinance's constitutionality, where city attorney was aware that effect of ordinance was to preclude individual from exercising his free speech rights. Steele v. City of Bemidji, D.Minn.2003, 242 F.Supp.2d 624. Civil Rights 1376(9)

3706. Parole officers, qualified immunity generally

Corrections department employee's decision to initiate proceeding to revoke defendant's supervised release by preparing allegedly baseless violation report and notice of charges was not entitled to absolute immunity from defendant's subsequent § 1983 action, as decision was not judicial or prosecutorial in nature. Wilson v. Kelkhoff, C.A.7 (Ill.) 1996, 86 F.3d 1438. Civil Rights 1376(7)

Members of Texas Board of Pardons and Paroles have absolute immunity when acting in specific cases under their rules, but only qualified immunity when enacting rules pursuant to their rule-making authority granted by state legislature. Walter v. Torres, C.A.5 (Tex.) 1990, 917 F.2d 1379. Pardon And Parole 56

Parole officer was immune from tort liability to victims of parolee's crimes because officer, who was entitled to qualified immunity, did not violate victims' constitutional rights when officer failed to immediately place parolee in custody upon learning that he had violated parole and had made threats against one of the victims. Nelson v. Balazic, C.A.8 (Mo.) 1986, 802 F.2d 1077. Pardon And Parole 56

State parole officers, who filed a report and recommendation to the state parole board concerning prisoner's eligibility for parole, were entitled to qualified, rather than absolute, immunity from suit for damages, as there were fewer safeguards to protect against unreasonable official action than in the case of probation officers acting as an arm of the court in the sentencing process. LaFrance v. Rampone, D.Vt.1988, 678 F.Supp. 72. Pardon And Parole 56

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3707. Police officers, qualified immunity generally--Generally

County sheriff was entitled to qualified immunity in arrestee's § 1983 action alleging constitutional violations in connection with his protest activities, absent allegation of any specific, unconstitutional policy, custom, or practice on part of sheriff, or allegation that sheriff acted in any capacity other than employer of deputies involved in arrest. Summers v. Leis, C.A.6 (Ohio) 2004, 368 F.3d 881, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(6)

In response to suit alleging illegal stop at vehicle checkpoint, police officials who were responsible for planning and ordering checkpoint would be entitled to qualified immunity either if checkpoint in question did not violate clearly established federal rights, or if it was objectively reasonable for officials to believe their conduct was lawful. Maxwell v. City of New York, C.A.2 (N.Y.) 1996, 102 F.3d 664, certiorari denied 118 S.Ct. 57, 522 U.S. 813, 139 L.Ed.2d 21. Civil Rights 1376(6)

Fact that rape kit procedure performed on victim came back negative did not deprive officer of qualified immunity with respect to civil rights action arising out of his arrest of person identified by the victim as the rapist in the absence of any indication that he knew of the negative rape kit report when he made the arrest. Lallemand v. University of Rhode Island, C.A.1 (R.I.) 1993, 9 F.3d 214. Civil Rights 1376(6)

Reasonable officer in state trooper's position could have believed that, in light of state's Megan's law, carrying out parole board's determination that community notification was warranted as to out-of-state sexual offender who transferred his parole to Pennsylvania did not offend equal protection principles, and therefore trooper was entitled to qualified immunity against liability on offender's § 1983 claim that notification subjected him to disparate treatment, as compared to in-state sexual offenders, in violation of his equal protection rights. Lines v. Wargo, W.D.Pa.2003, 271 F.Supp.2d 649. Civil Rights 1376(6)

If verbal removal order came from family court intake referee prior to officers' warrantless entry into children's home, then police officers' mistaken reliance on order was reasonable for qualified immunity purposes, but they were not entitled to qualified immunity for anything they did prior to receiving such order, which, they acknowledged, was necessary to authorize entry. O'Donnell v. Brown, W.D.Mich.2004, 335 F.Supp.2d 787. Civil Rights 1376(6)

Qualified immunity from liability under §§ 1983 was unavailable to sheriff's deputies who allegedly violated newspaper publisher's First Amendment rights by making mass purchase of newspaper critical of sheriff on night before election, where deputies, though acting under color of law, were not on duty, and were not acting within scope of their employment as law enforcement officers. Rossignol v. Voorhaar, D.Md.2004, 321 F.Supp.2d 642. Civil Rights 1376(6)

Law enforcement officers were not entitled to qualified immunity in their official capacities but could raise the defense in their individual capacities in Section 1983 action based on alleged use of excessive force. Murphy v. Bitsoih, D.N.M.2004, 320 F.Supp.2d 1174. Civil Rights 1376(6)

City councilman, police chief, and police officers who responded to domestic violence call at the councilman's home lacked qualified immunity against the councilman's male cohabitant's equal protection claim that they deprived him of police protection out of an illegitimate animus and improper motive toward him, and for reasons unrelated to any legitimate state objective; at the time of the incident, it was clearly established that action depriving a citizen of police protection at the purely personal request of a government official was unrelated to any legitimate state objective, and denied the citizen the right to equal protection of the law. Lunini v. Grayeb, C.D.Ill.2004, 305 F.Supp.2d 893, reversed in part 395 F.3d 761, amended on denial of rehearing. Civil Rights 1376(4); Civil Rights 1376(6)

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Police captain, whose only nonfeasance was a failure to tell detectives of father's history of violence, was entitled to qualified immunity for police defendants' failure to protect victim from shooting by father who was duped by police into believing that his daughter was facing a prison sentence because of victim; captain did not take any affirmative action that created a danger to victim nor did captain 's nonfeasance amount to anything more than simple negligence. Avalos v. City of Glenwood, S.D.Iowa 2003, 269 F.Supp.2d 1091, reversed 382 F.3d 792, rehearing and rehearing en banc denied. Civil Rights 1376(6)

To be entitled to qualified immunity from liability under § 1983 for false arrest, a private person enlisted by a law enforcement official to assist in making an arrest must show that: (1) he acted at the request of one whom he knew to be, and who in fact was, a law enforcement official; (2) the assistance requested by the law enforcement official and provided by the private citizen was not patently abusive; and (3) his actions did not materially deviate from those that the law enforcement official directed him to take. Mejia v. City of New York, E.D.N.Y.2000, 119 F.Supp.2d 232. Civil Rights 1373

Deputy United States marshal was deemed to be "peace officer" under Kentucky law simply by virtue of his office, and thus, could potentially assert defense of qualified immunity in § 1983 action brought by individual, who had been stopped by marshal on suspicion that individual had violated state law, in which individual claimed that marshal had violated his Fourth Amendment rights. McNally v. DeWitt, W.D.Ky.1997, 961 F.Supp. 1041. Civil Rights 1376(6)

Doctrine of qualified immunity extends to law enforcement officers' margin of error when they navigate uncharted areas at margins of constitutional criminal law. Smith v. Tolley, E.D.Va.1997, 960 F.Supp. 977. Civil Rights 1376(6)

Current and former chiefs of police, in their individual capacities, were entitled to qualified immunity from ADA action by police officer and, therefore, officer's § 1983 claim relating to alleged ADA violation was prohibited. Morrow v. City of Jacksonville, Ark., E.D.Ark.1996, 941 F.Supp. 816. Civil Rights 1376(10)

Qualified immunity for individual officers revolves around two part inquiry involving: nature of constitutional or statutory right at issue, and reasonableness of law enforcement official's conduct. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1376(6)

Law enforcement officials are entitled to qualified immunity from personal civil liability under federal civil rights statute in large measure because of the complex tasks performed by officials, and government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights that a reasonable person would have known. David v. Mosley, E.D.Va.1996, 915 F.Supp. 776, affirmed 103 F.3d 117, certiorari denied 117 S.Ct. 2457, 520 U.S. 1276, 138 L.Ed.2d 214. Civil Rights 1376(6)

Qualified immunity defense under § 1983 is premised on concern that if government officials faced significant threat of liability for performing discretionary tasks, then many persons would be discouraged from accepting responsibilities inherent in public service, or public servants would be unduly inhibited from performing duties; especially in context of police work, decisions must be made in atmosphere of great uncertainty, and holding police officers liable in hindsight for every injurious consequence of their actions would paralyze functions of law enforcement. Roberts v. City of Forest Acres, D.S.C.1995, 902 F.Supp. 662. Civil Rights 1376(1); Civil Rights 1376(6)

Police officers who set up surveillance of and arrested plaintiff who brought civil rights action were shielded from liability by qualified immunity, since officers' conduct was objectively lawful; plaintiff only offered unsubstantiated inferences that one officer was motivated by political gain, and offered no allegations of improper motive by other officer. Aleotti v. Baars, D.D.C.1995, 896 F.Supp. 1, affirmed 107 F.3d 922, 323 U.S.App.D.C.

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289. Civil Rights 1376(6)

Arrestee's conduct following arrest and prior to his placement in holding cell did not indicate that there was substantial risk that he would commit suicide, and police officers involved in arrestee's confinement were entitled to qualified immunity in subsequent § 1983 action, notwithstanding expert's testimony regarding gross deficiencies in operation of police department; conduct cited by plaintiff involved arrestee's cooperative nature, fact that female friend rejected request for help in raising bail, and arrestee's expression of shame over what he had done when he was arrested, and expert's nonconclusory opinions only supported theories based on negligence, not constitutional theories predicated on deliberate indifference to substantial risk of suicide. Bowen v. City of Manchester, D.N.H.1991, 894 F.Supp. 561, affirmed 966 F.2d 13. Civil Rights 1376(6); Evidence 571(3)

Police officer's knowledge of reasonably trustworthy evidence, including police records and witness interviews, would have been sufficient to warrant prudent person in believing that detainee had committed offense under Texas law of appropriating property with intent to deprive owner of property, and, thus, officer was entitled to qualified immunity in civil rights action with respect to detainee's seizure-related claims under Fourth Amendment. Reyes v. Granados, S.D.Tex.1995, 879 F.Supp. 711. Civil Rights 1376(6)

Police officer did not have qualified immunity from § 1983 claim in view of failure to rebut allegation that he wrongfully entered plaintiff's home and shot her. DeFrancis v. Bush, E.D.Tex.1994, 859 F.Supp. 1022. Civil Rights 1376(6)

Police officers were protected by qualified immunity from § 1983 action brought against them by administrator of estate of passenger killed in automobile accident after officers had passenger ride in vehicle driven by drunk driver following earlier automobile accident, alleging substantive due process violation, as no reasonable police officer would have known what duty was owed to passenger under facts alleged in instant action. Chipman v. City of Florence, E.D.Ky.1994, 858 F.Supp. 87, reconsideration denied 866 F.Supp. 332, affirmed in part, reversed in part 126 F.3d 856, rehearing denied, certiorari denied 118 S.Ct. 1796, 523 U.S. 1118, 140 L.Ed.2d 936, on subsequent appeal 2003 WL 22843929. Civil Rights 1376(6)

Qualified immunity is available to police officers for actions taken within scope of their responsibilities due to risk of deterring vigorous legitimate performance of duty if lawsuit are permitted without adequate support. Indomenico v. Brewster, S.D.N.Y.1994, 848 F.Supp. 1136. Civil Rights 1376(6)

3708. ---- Freedom of speech, police officers, qualified immunity generally

Police officers had qualified immunity from any liability, arising from their arrest of demonstrator at presidential appearance, who allegedly tried to violate their order not to occupy one corner of intersection needed to be left open for traffic control purposes; no reasonable officer could believe what he was doing was violating any of protestor's rights. Burnett v. Bottoms, D.Ariz.2005, 368 F.Supp.2d 1033. Civil Rights 1376(6)

Civil rights activists who brought § 1983 action against police officers, stemming from their arrests while attempting to film traffic stops, adequately alleged that officers' purportedly improper conduct while making arrests discriminated against them based on their viewpoints and content of their speech, and thus officers were not entitled to qualified immunity as to activists' First Amendment content discrimination claim; claim was not merely duplicative of another count in the complaint alleging a prior restraint claim. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632 . Civil Rights 1376(6); Civil Rights 1395(6)

Police officer who believed that protestors' demonstration was focused on residence of women's health advocate was entitled to qualified immunity from protestors' civil rights claim, which arose from enforcement of targeted residential picketing ban against them. Copper v. City of Fargo, D.N.D.1994, 905 F.Supp. 680, supplemented 905

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42 U.S.C.A. § 1983

F.Supp. 703. Civil Rights 1376(6)

3709. ---- Right to bear arms, police officers, qualified immunity generally

Police officer who took gun at time of arrest and police chief who held gun pending trial engaged in normal law enforcement actions and were entitled to qualified immunity from liability for deprivation of right to keep and bear arms. Rhea v. Umfleet, E.D.Mo.1988, 680 F.Supp. 322. Civil Rights 1376(6)

3710. ---- Arrests generally, police officers, qualified immunity generally

Officer who had responded to report of gunshots fired toward a home was entitled to qualified immunity from arrestee's §§ 1983 claim that officer used excessive force, in violation of Fourth Amendment, particularly in putting his foot on arrestee's face when arrestee was down on the ground; reasonable officer could have believed that force applied was reasonably necessary after multiple shots had been fired and arrestee was not docile as he lay face down on the pavement, and force applied, while undignified in its placement, was not severe in amount. Crosby v. Monroe County, C.A.11 (Ala.) 2004, 394 F.3d 1328. Civil Rights 1376(6)

Officer who had responded to report of gunshots fired toward a home was entitled to qualified immunity from arrestee's §§ 1983 claim that his arrest was unlawful; officer had arguable probable cause to make arrest for reckless endangerment after hearing shot from direction of arrestee's home, seeing arrestee carrying shotgun and hearing sound of him ejecting shell from the weapon. Crosby v. Monroe County, C.A.11 (Ala.) 2004, 394 F.3d 1328. Civil Rights 1376(6)

Alabama state trooper, who observed motorist speeding in large tractor truck in area of hazardous conditions on interstate highway, had probable cause to issue reckless driving citation, and to arrest motorist who refused to sign it, and thus trooper was entitled to qualified immunity from § 1983 liability, even though motorist was subsequently acquitted of reckless driving charge. Wood v. Kesler, C.A.11 (Ala.) 2003, 323 F.3d 872, certiorari denied 124 S.Ct. 298, 540 U.S. 879, 157 L.Ed.2d 143. Civil Rights 1376(6)

Deputy who had arrested one of the parties suing for alleged violation of his Fourth Amendment rights at police checkpoint, and another deputy who had delivered sheriff's message that proposed "rock" concert was not to proceed, before sheriff instituted checkpoints to check licenses of motorists traveling along road leading to concert, were both entitled to qualified immunity on resulting civil rights claims, where summary judgment evidence indicated that first deputy had conducted license checks of each motorist driving on road leading to property owner's farm without regard to motorist's destination, and had made arrests only when there was problem with license or when contraband was discovered in plain view or after consensual search, and where there was no evidence that deputies had abused their discretion to deny use of forum for First-Amendment-protected expression or were involved in arrestees' ability to make bond or in crowded condition of jail where they were held. Collins v. Ainsworth, C.A.5 (Miss.) 2004, 382 F.3d 529, on subsequent appeal 2005 WL 3502174, certiorari denied 126 S.Ct. 1661, 164 L.Ed.2d 397. Civil Rights 1376(6)

Remand for new trial was required in arrestee's § 1983 action, in which jury rendered legally inconsistent special verdicts, finding both that police officer was entitled to qualified immunity for his conduct in shooting arrestee, and officer used excessive force, where jury was not specifically instructed on qualified immunity issue, and both special verdict questions asked jury to decide if officer's conduct was objectively reasonable, so that there was a probability that jury was confused. Stephenson v. Doe, C.A.2 (N.Y.) 2003, 332 F.3d 68. Federal Courts 944

On remand for new trial in arrestee's § 1983 action, in which jury previously rendered legally inconsistent special verdicts, finding both that police officer was entitled to qualified immunity for his conduct in shooting arrestee, and that officer used excessive force, the district court should instruct the jury on the excessive force issue, but not on qualified immunity; later, if jury returned a verdict of excessive force against officer, the district court would be

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required to decide the issue of qualified immunity, based upon special interrogatories submitted to the jury, such as whether officer gave warnings to arrestee and whether arrestee was armed with weapon. Stephenson v. Doe, C.A.2 (N.Y.) 2003, 332 F.3d 68. Civil Rights 1429; Civil Rights 1437; Federal Courts 955

Police detective who made arrest on basis of warrant he knew was no longer supported by probable or arguable probable cause was not entitled to qualified immunity against arrestee's § 1983 action under related offense doctrine, when charged offense and alleged uncharged offense occurred outside detective's presence on different dates, and officer not only lacked first-hand knowledge of evidence allegedly connecting defendant to both offenses, but possessed evidence excluding possibility that defendant committed both offenses; offenses lacked requisite relationship. Vance v. Nunnery, C.A.5 (La.) 1998, 137 F.3d 270. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity in § 1983 action alleging that officer lacked probable cause to arrest manager of rehabilitative center for troubled boys for having failed to report child abuse; officer knew that incident had been reported to HRS central abuse hotline and that manager had additionally submitted written report, and there was no requirement that abuse also be reported to local law enforcement or to local HRS office. Madiwale v. Savaiko, C.A.11 (Fla.) 1997, 117 F.3d 1321. Civil Rights 1376(6)

Police officer who obtained arrest warrants for possession of marijuana could rely on validity of those warrants, thus entitling him to qualified immunity in arrestees' § 1983 action alleging, inter alia, false arrest, despite arrestees' claim that officer failed to inform issuing magistrate that officer stopped one arrestee prior to finding marijuana only because arrestee was black and from out of town, two impermissible reasons; none of those allegations formed basis of arrestees' complaints, arrestees offered no proof of them at trial, and arrestees did not allege that officer failed to reveal details of how he obtained marijuana or that he conducted illegal search. Simms v. Village of Albion, N.Y., C.A.2 (N.Y.) 1997, 115 F.3d 1098. Civil Rights 1376(6)

Police officers did not act with deliberate indifference to due process rights of arrestee who died of "positional asphyxiation" after he was taken into custody and detained in automobile with his feet on rear seat and his head in space between front and rear seats, in which position he was unable to adequately inhale oxygen, and were entitled to qualified immunity in action brought following arrestee's death; there was no indication officers knew of and consciously disregarded risk of suffocation, and evidence indicated that officers had not received training on how to recognize signs of suffocation in prisoners being transported. Cottrell v. Caldwell, C.A.11 (Ala.) 1996, 85 F.3d 1480. Civil Rights 1376(6)

Police chief was entitled to defense of qualified immunity in § 1983 action alleging unlawful arrest by police officer of father for alleged sexual abuse; chief was not personally or directly involved in alleged constitutional violation, he did not investigate claims of abuse, he was not present at arrest, and chief's act of signing and notarizing complaint after arrest was insufficient to establish connection between chief and alleged constitutional violation. Ripson v. Alles, C.A.8 (Iowa) 1994, 21 F.3d 805, rehearing denied. Civil Rights 1376(6)

Law enforcement officers who arrested judgment debtor pursuant to facially valid writ of execution were entitled to qualified immunity in judgment debtor's subsequent civil rights suit. Whiting v. Kirk, C.A.1 (R.I.) 1992, 960 F.2d 248, as amended. Civil Rights 1376(6)

Sheriff's deputy and assistant district attorney, who advised deputy regarding probable cause, were entitled to qualified immunity from § 1983 liability for arresting father for rape, on what later proved to be fabricated complaint of teenaged daughter, where there was arguable probable cause, based on daughter's report and medical report that was consistent with her account, notwithstanding questions as to her veracity arising from her history of drug abuse and a writing suggesting that she might have planned to frame father for abuse. Donovan v. Briggs, W.D.N.Y.2003, 250 F.Supp.2d 242. Civil Rights 1376(6); Civil Rights 1376(9)

In a §§ 1983 suit for damages based on an arrest allegedly without probable cause, courts must grant an arresting

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officer qualified immunity if either (1) it was objectively reasonable for the officer to believe that probable cause existed, or (2) officers of reasonable competence could disagree on whether the probable cause test was met. Prowisor v. Bon-Ton, Inc., S.D.N.Y.2006, 426 F.Supp.2d 165. Civil Rights 1376(6)

Genuine issues of material fact as to whether arresting officer was acting in her discretionary authority as a county police officer when causing the arrest of a neighbor for simple assault, or was instead acting as a private citizen seeking the arrest of a neighbor, precluded summary judgment for officer on her claim of qualified immunity in neighbor's §§ 1983 action against officer in her individual capacity. Payne v. DeKalb County, N.D.Ga.2004, 414 F.Supp.2d 1158. Federal Civil Procedure 2491.5

Sheriff's deputies were entitled to qualified immunity from liability under §§ 1983 for their arrest of suspect pursuant to bench warrant issued by family court judge in connection with child support proceedings, even if warrant was erroneous, where warrant was facially valid, and deputies had no reason to believe that warrant was not valid. Cogswell v. County of Suffolk Deputy Sheriff's Dept., E.D.N.Y.2005, 375 F.Supp.2d 182. Civil Rights 1376(6)

Police officers had probable cause to arrest civil process server for impersonating law enforcement officer under Hawai'i law, and thus were entitled to qualified immunity against server's §§ 1983 action; server identified himself to officers as deputy sheriff but could not produce verification, sheriff's office told officers that server had no law enforcement authority, and officers were told that server had threatened to arrest citizen. Orso v. Cobb, D.Hawai'i 2004, 348 F.Supp.2d 1165. Arrest 63.4(7.1); Arrest 63.4(13); Civil Rights 1376(6)

Town's police officer was not entitled to qualified immunity in §§ 1983 Fourth Amendment suit arising from officer's alleged actions in effecting arrest on misdemeanor warrant, consisting of throwing arrestee on bed while arrestee was half-naked, handcuffing him so tightly that his wrists bled and refusing to remove cuffs, and hurrying him out of house without permitting him to cover himself; arrestee's right to be free from unreasonable seizures involving excessively tight handcuffs, and forcible removal from his home naked from waist down, was clearly established on date of arrest. Armstead v. Township of Upper Dublin, E.D.Pa.2004, 347 F.Supp.2d 188. Civil Rights 1376(6)

Police officer was entitled to qualified immunity in arrestee's action under §§ 1983, alleging that officer arrested him for drug trafficking based on deficient arrest warrant; it was reasonable for officer to believe statement of arrestee's girlfriend that trafficking quantity of what appeared to be cocaine belonged to arrestee, who was reasonably believed to be a trafficking-level drug dealer. Joseph v. Kimple, S.D.Ga.2004, 343 F.Supp.2d 1196, affirmed 391 F.3d 1276. Civil Rights 1376(6)

To support claim to qualified immunity from §§ 1983 case alleging Fourth Amendment violation, police can claim "arguable" probable cause, i.e., that a reasonable officer in the same circumstance and possessing the same knowledge as the defendant could have believed that probable cause existed to search and/or arrest the plaintiff. Joseph v. Kimple, S.D.Ga.2004, 343 F.Supp.2d 1196, affirmed 391 F.3d 1276. Civil Rights 1376(6)

Qualified immunity applied to shield officer from § 1983 liability for imprisonment of motorist that followed seizure of motorist based on suspicion that he was driving while intoxicated, and for related claim alleging intentional infliction of emotional distress, given that officer merely took motorist into custody and transported him to medical facility after arriving at accident scene and discovering that motorist needed medical attention. Cuvo v. De Bias, E.D.Pa.2004, 339 F.Supp.2d 650, affirmed in part, reversed in part and remanded 169 Fed.Appx. 688, 2006 WL 332546. Civil Rights 1376(6); Municipal Corporations 747(3)

Police chief was not entitled to qualified immunity in §§ 1983 action arising out of the unlawful mass arrest of a group of people, including demonstrators, who were gathered in a park; even if he was unaware that no order to disperse had been given to the group, chief did not act in an objectively reasonable manner in approving the arrests

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inasmuch as he had an opportunity and duty to ascertain whether a dispersal order had been given by his subordinates and to investigate the justification for the mass arrests, but failed to do so. Barham v. Ramsey, D.D.C.2004, 338 F.Supp.2d 48, affirmed in part 434 F.3d 565, 369 U.S.App.D.C. 146. Civil Rights 1376(6)

Police officers were not entitled to summary judgment on constitutional claims on basis of qualified immunity where disputed issues of fact concerning the existence of exigent circumstances remained with respect to unlawful entry claim, where genuine issues of fact concerning the reasonableness of force employed by officers with respect to excessive force claim, and where factual issues remained underlying malicious prosecution and First Amendment retaliation claims. Webster v. City of New York, S.D.N.Y.2004, 333 F.Supp.2d 184. Federal Civil Procedure 2491.5

Civil rights activists who brought § 1983 action against police officers, stemming from their arrests while attempting to film traffic stops, adequately alleged that officers' purportedly improper conduct while making arrests constituted prior restraint upon their rights to criticize and journalistically record traffic stops, and thus officers were not entitled to qualified immunity as to activists' claims under First Amendment; activists allegations that they were engaged in constitutionally protected speech were not conclusory, and activists' arrests could have preemptively denied them right to engage in future endeavors. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1376(6); Civil Rights 1395(6)

Although Fish and Wildlife Service complied with notice requirements imposed by Endangered Species Act (ESA) and Administrative Procedure Act (APA) with respect to timing and method of giving notice of proposed designation of critical habitat for Alameda whipsnake, which had been listed as threatened pursuant to ESA, notice was deficient to the extent that final rule failed to comport with statutory definition of critical habitat, in that it deprived public of meaningful opportunity to comment and to offer informed criticism and comments. Home Builders Ass'n of Northern California v. U.S. Fish and Wildlife Service, E.D.Cal.2003, 268 F.Supp.2d 1197. Environmental Law 541

Police officers were entitled to qualified immunity in arrestee's unreasonable seizure claim under § 1983, even if warrantless arrest, for an assault not involving severe personal injury, was an arrest for a misdemeanor not committed in an officer's presence which violated Maryland law; arrest was supported by probable cause and thus did not violate Fourth Amendment, inasmuch as officer had spoken with assault victims, saw one of them being treated, and received confirmation from an independent witness. Shultz v. Smith, D.Md.2003, 264 F.Supp.2d 278. Civil Rights 214(6)

Police sergeant who was precinct desk officer was entitled to qualified immunity from arrestee's § 1983 claims where, when officers appeared before sergeant with arrestee, sergeant asked basis for arrest and officers said arrest was based on a warrant; even though arrestee protested repeatedly to sergeant that he had never been arrested before and that officers had wrong person, sergeant was under no obligation to conduct an investigation into arrestee's claim of innocence. Johnson v. City of New York, S.D.N.Y.1996, 940 F.Supp. 631. Civil Rights 1376(6)

Chief of police and individual police officers enjoy qualified immunity from father's § 1983 claims that they violated his constitutional rights by refusing to arrest mother of his children, refusing to arrest individuals allegedly hiding his children, refusing to recognize his right to visit his children, and not willingly releasing information to him. Tidik v. Ritsema, E.D.Mich.1996, 938 F.Supp. 416. Civil Rights 1376(6)

Transit authority police had probable cause to arrest bus passenger for assaulting bus driver, and therefore qualified immunity protected police from passenger's claim under federal civil rights statute, where bus driver told police that passenger spat in his face and attempted to flee bus, and passenger refused to provide any identification. Saidi v. Washington Metropolitan Area Transit Authority, D.D.C.1996, 928 F.Supp. 21. Civil Rights 1376(6)

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Deputy sheriff had requisite probable cause to make legal "in presence" arrest for theft, and, therefore, deputy sheriff was entitled to qualified immunity in arrestee's civil rights action, where deputy sheriff confirmed ownership of property in question with landowner, even though landowner was out of state, there were no other eyewitnesses, another deputy sheriff vouched for arrestee's credibility, and deputy sheriff failed to file any court papers commencing prosecution. Barber v. Guay, D.Me.1995, 910 F.Supp. 790. Arrest 63.4(6); Civil Rights 1376(6)

Police officer was entitled to qualified immunity under § 1983 for alleged wrongful arrest of National Guard member for speeding where officer raised compelling arguments that the treason, felony, or breach of peace exception to military members' constitutional and statutory immunity to arrest encompassed all crimes, and that immunity thus applied only to civil arrests. Roberts v. City of Forest Acres, D.S.C.1995, 902 F.Supp. 662. Civil Rights 1376(6)

Arresting police officer was entitled to qualified immunity from civil rights suit brought by arrestee who was acquitted of charges, even though officer did not provide magistrate judge who issued arrest warrant with exculpatory statements of eyewitness, where magistrate had sufficient reliably trustworthy information from the officer to find that probable cause existed to justify arrest. Rock v. Lowe, S.D.Ga.1995, 893 F.Supp. 1573. Civil Rights 1376(6)

Evidence showed that police officer, who was involved in romantic relationship with arrestee's wife, provided false information to court in seeking arrest warrant and provided false information in subsequent arraignment and bail hearing for arrestee, and, thus, officer was barred from raising defense of qualified immunity to arrestee's civil rights action. Phelan v. Thompson, D.N.H.1994, 889 F.Supp. 517. Civil Rights 1423

Police officer posing as "bum" as part of undercover operation to reduce crimes against persons before, during, and after parades did not have arguable probable cause under Alabama law to arrest for harassment plaintiff who, after "bum" had approached him three times for money, raised his fist and said "Get the hell out of here" and thus, officer was not entitled to qualified immunity with respect to plaintiff's § 1983 claim; plaintiff had cause for concern since there were few people around and "bum" kept one hand in his pocket as though he could have weapon and refused to leave plaintiff alone and plaintiff's statement was attempt to avoid, not provoke, a confrontation. Beech v. City of Mobile, S.D.Ala.1994, 874 F.Supp. 1305. Civil Rights 1376(6)

Plaintiffs failed to establish that police officers who investigated incident leading to their arrest without probable cause had requisite causation under § 1983, where their superior made decision to arrest. Wagner v. County of Cattaraugus, W.D.N.Y.1994, 866 F.Supp. 709. Civil Rights 1088(4)

Police chief was not entitled to qualified immunity for arresting plaintiff for driving under the influence, despite his having observed plaintiff's car run a stop sign and despite strong alcoholic smell emanating from the vehicle, where plaintiff told officer she was not "drunk" and officer did not administer any field sobriety test to plaintiff before arresting her. Hurst v. Finley, M.D.Ala.1994, 857 F.Supp. 1517, affirmed 63 F.3d 1112. Civil Rights 1376(6)

Qualified immunity was not available to sheriff who was alleged policymaker, undercover officer, and deputy sheriffs who participated in civil rights plaintiff's arrest and events leading up to arrest. Cortese v. Black, D.Colo.1993, 838 F.Supp. 485. Civil Rights 1376(6)

Probable cause existed to believe that plaintiff had committed disorderly conduct, under Illinois law, and therefore police officer was entitled to qualified immunity in false arrest claim, even though alleged conduct did not occur in public and was in form of writings; plaintiff posted numerous hate messages to an internet website bulletin board. Haddad v. Higgins, C.A.7 (Ill.) 2003, 66 Fed.Appx. 62, 2003 WL 21153391, Unreported, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 574, 540 U.S. 1021, 157 L.Ed.2d 437, rehearing denied 124 S.Ct. 1193, 540 U.S. 1170, 157 L.Ed.2d 1221. False Imprisonment 13

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3711. ---- Stops, police officers, qualified immunity generally

Deputy sheriff who was on duty was acting within purview of his discretionary authority when he stopped speeding vehicle in which plaintiff was a passenger and detained plaintiff and her companions, for purpose of determining availability of defense of qualified immunity for seizure of plaintiff. Courson v. McMillian, C.A.11 (Fla.) 1991, 939 F.2d 1479. Civil Rights 1376(6)

Officers who responded to a call for back-up during a traffic stop were entitled to qualified immunity on passengers' § 1983 claims of unreasonable detention in violation of their Fourth Amendment rights; responding officers did not personally participate in alleged unlawful stop and detention, officers merely responded to call for back-up, and officers were entitled to rely on statements made by stopping officer and officer who first observed suspicious vehicle. Lewis v. City of Topeka, Kansas, D.Kan.2004, 305 F.Supp.2d 1209. Civil Rights 1376(6)

3712. ---- Investigations, police officers, qualified immunity generally

Deputy sheriff who served as a school resource officer (SRO) at elementary school was acting within scope of his discretionary authority when he detained and handcuffed student who allegedly acted in disrespectful manner and threatened teacher during physical education class, thus supporting deputy's claim of qualified immunity in student's resulting §§ 1983 action alleging violation of her Fourth Amendment rights; deputy was charged with responsibility to investigate criminal activity that might be taking place at school and allegedly believed that student had committed a misdemeanor. Gray ex rel. Alexander v. Bostic, C.A.11 (Ala.) 2006, 458 F.3d 1295. Civil Rights 1376(6)

That state trooper possessed some race-neutral basis for initiating investigation into immigration status of Hispanic motorists was insufficient, standing alone, to entitle trooper to qualified immunity from liability on motorists' equal protection claims if motorists could demonstrate that trooper was partly motivated by discriminatory purpose. Farm Labor Organizing Committee v. Ohio State Highway Patrol, C.A.6 (Ohio) 2002, 308 F.3d 523. Civil Rights 1376(6)

Police had qualified immunity in § 1983 action alleging violation of constitutional rights arising from claim of false arrest, malicious prosecution and abuse of process made by apartment resident; police acted with required objective reasonableness when they arrested resident for assault, based on claim by son that resident had punched father in face, corroborated by presence of blood in father's apartment. Fernandez v. City of New York, S.D.N.Y.2003, 2003 WL 21756140, Unreported. Civil Rights 1376(6)

Even if campus security officers lacked probable cause to detain student accused of sexually assaulting classmate, their reliance on victim complaint was objectively reasonable, and thus they were entitled to qualified immunity from § 1983 liability. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Civil Rights 1376(5); Civil Rights 1376(6)

3713. ---- Excessive use of force, police officers, qualified immunity generally

Where an excessive force claim is predicated solely on allegations the arresting officer lacked the power to make an arrest, the excessive force claim is entirely derivative of, and is subsumed within, the unlawful arrest claim. Bashir v. Rockdale County, Ga., C.A.11 (Ga.) 2006, 445 F.3d 1323. Civil Rights 1088(4)

Force used to detain babysitter's husband for violent felony of molesting child was excessive if husband was subject to a lawful investigative detention, and, thus, law enforcement officers were not entitled to qualified immunity from §§ 1983 liability; after grabbing husband by the arm and pulling him from the doorway of his home, the officers handcuffed him and placed him in the back seat of a locked squad car in the middle of the night even though he had voluntarily opened door of home to police, did not attempt to flee, and was cooperating, and

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nothing indicated that he posed an immediate threat to any person's safety. Cortez v. McCauley, C.A.10 (N.M.) 2006, 438 F.3d 980. Arrest 68(2)

Genuine issue of material fact as to whether sheriff and his deputies acted reasonably when they attempted to place disabled arrestee in their cruiser after arrestee informed them that his legs would not bend precluded summary judgment on qualified immunity grounds in arrestee's §§ 1983 excessive force action. St. John v. Hickey, C.A.6 (Ohio) 2005, 411 F.3d 762, on remand 2006 WL 293790. Federal Civil Procedure 2491.5

Police officer did not recklessly and deliberately create the need to use force by cornering plaintiff, who was armed with a knife, in a bedroom, ordering her to come out, and attempting to open the door, and therefore officer was entitled to qualified immunity in §§ 1983 action alleging that officer used excessive force in shooting plaintiff; officer was aware that plaintiff was attempting to escape through a window. Jiron v. City of Lakewood, C.A.10 (Colo.) 2004, 392 F.3d 410. Civil Rights 1376(6)

Reasonable officer in police officer's situation could have believed that he had probable cause to search for suspected explosives in parade protester's backpack, and therefore officer was entitled to qualified immunity from § 1983 liability for unlawful arrest and search of backpack, when officer was confronted with incendiary situation in which violent hate group was about to march down city streets through crowd of impassioned and potentially violent protesters and supporters, officer knew that stolen explosives were at large and could be present at parade, and officer, after observing protester's heavy backpack, with cylindrical bulges at its base, was left with unpleasant choice between arresting protester and searching backpack or allowing protester to proceed into crowd despite officer's suspicion that he was carrying explosives. Graves v. City of Coeur D'Alene, C.A.9 (Idaho) 2003, 339 F.3d 828. Civil Rights 1376(6)

Substantive due process rights of suspect who was shot at but not hit were not violated, and police officers were entitled to qualified immunity from § 1983 liability for claimed use of excessive force against him; suspect incurred no physical injury as result of shooting incident, and force was used in self-defense and defense of fellow officer, not maliciously and sadistically to cause harm. Carr v. Tatangelo, C.A.11 (Ga.) 2003, 338 F.3d 1259, as amended. Civil Rights 1376(6); Constitutional Law 253(1); Municipal Corporations 747(3)

Genuine issues of material fact as to whether police officer used excessive force in arresting arrestee for obstructing officer in performance of his duties and disorderly conduct, under totality of circumstances, precluded summary judgment for officer on basis of qualified immunity in arrestee's action under § 1983 alleging violation of Fourth Amendment. Payne v. Pauley, C.A.7 (Ill.) 2003, 337 F.3d 767. Federal Civil Procedure 2491.5

Arrestee did not waive his objection to qualified immunity defense raised by officer on appeal, in § 1983 excessive force action, even though arrestee did not seek judgment as a matter of law on the qualified immunity issue or a new trial following special jury verdict in favor of officer on qualified immunity issue, where jury made arguably inconsistent determination in special verdict that officer used excessive force, so that enforcing the qualified immunity verdict could unjustly deprive arrestee of right to recover for violation of constitutional rights. Stephenson v. Doe, C.A.2 (N.Y.) 2003, 332 F.3d 68. Federal Courts 633

Special jury verdict finding that police officer was entitled to qualified immunity in arrestee's § 1983 excessive force claim for his conduct in shooting arrestee was legally inconsistent with the verdict in favor of arrestee in his excessive force claim, and was required to be set aside, where jury was not presented with any evidence, instructions or argument about possible ambiguities in the law with respect to the circumstances of the case or about officer's state of knowledge about excessive force law under the circumstances. Stephenson v. Doe, C.A.2 (N.Y.) 2003, 332 F.3d 68. Civil Rights 1424

Deputy sheriff was entitled to qualified immunity in § 1983 action brought by parents of individual shot and killed by deputy, which alleged use of excessive force in violation of Fourth Amendment, as deputy acted in self-defense

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when he shot individual after individual punched deputy, ran knife across deputy's stomach, and continued toward deputy even after being fired upon once. Romero v. Board of County Com'rs of County of Lake, State of Colo., C.A.10 (Colo.) 1995, 60 F.3d 702, rehearing denied, certiorari denied 116 S.Ct. 776, 516 U.S. 1073, 133 L.Ed.2d 728. Civil Rights 1376(6)

Police officers were entitled to qualified immunity with respect to arrestee's excessive force claim absent anything other than general assertion by arrestee that officers used excessive force in placing him on ground while effecting arrest; arrestee conceded that officers were entitled to place him on ground physically in course of completing arrest, and arrestee did not present sufficient evidence to show that officers' actions were objectively unreasonable in circumstances, but only pointed to fact that he cut his abdomen when he struck ground. Edwards v. Giles, C.A.8 (Neb.) 1995, 51 F.3d 155. Civil Rights 1376(6)

Defense of qualified immunity is available to law enforcement officer in claims alleging excessive use of force in violation of Fourth Amendment. Slattery v. Rizzo, C.A.4 (Va.) 1991, 939 F.2d 213. Civil Rights 1376(6)

Allegations that police officer punched arrestee in the face, without first identifying himself as police officer and without preceding physical force on arrestee's part, and caused arrestee physical injury necessitating medical treatment supported arrestee's §§ 1983 claim for use of excessive force, and therefore officer was not entitled to dismissal for failure to state claim based on qualified immunity, notwithstanding officer's different version of incident. Williams v. City of Mount Vernon, S.D.N.Y.2006, 428 F.Supp.2d 146. Civil Rights 1395(6)

Police officers were not entitled to qualified immunity on claim of excessive force for allegedly striking driver twice in the forehead with can of made, with sufficient force to cause contusion, when driver objected to his car being searched during stop that allegedly had been based on mere hunch that driver might have drugs, and then throwing driver to ground, pushing his face down, and twisting his arms behind his back, causing or aggravating shoulder injury, when driver allegedly fled in fear of additional harm in response to being struck; force was unreasonable under facts alleged, and reasonable officer could have believed otherwise. Cowles v. Peterson, E.D.Va.2004, 344 F.Supp.2d 472. Civil Rights 1376(6)

Jury could find that police officer had qualified immunity from motorist's claim that officer used excessive force in arresting him for driving while under influence (DWI), in light of testimony of officer and expert that officer followed standard police procedures in handling unruly suspect when he applied rear wrist lock. Kent v. Katz, D.Vt.2004, 327 F.Supp.2d 302, affirmed 398 F.3d 644, rehearing en banc denied, certiorari denied 126 S.Ct. 238, 163 L.Ed.2d 220. Civil Rights 1432

Police officers involved in victim's shooting death were not entitled to qualified immunity with respect to section 1983 claim based on their alleged intentional manipulation of the scene by planting of firearm next to victim's body; since issue was not completely settled, it was at least questionable that victim's survivors could maintain a section 1983 cause of action for depravation of federally protected rights under the premise of cover-up, and jury question existed as to whether police officers planted rifle. Gonzalez Perez v. Gomez Aguila, D.Puerto Rico 2004, 312 F.Supp.2d 161. Civil Rights 1376(6)

Police officers involved in victim's shooting death were not entitled to qualified immunity with respect to section 1983 excessive force claims where there was conflicting evidence as to whether victim was carrying a firearm, and thus committing a crime under Puerto Rico law, and therefore factual dispute existed regarding the reasonableness of the officers' actions. Gonzalez Perez v. Gomez Aguila, D.Puerto Rico 2004, 312 F.Supp.2d 161. Civil Rights 1376(6)

Three police officers were not entitled to qualified immunity from motorist's claim, under § 1983, that they used excessive force during warrantless arrest for driving under the influence; motorist offered no resistance to officers' efforts to place him under arrest, precluding finding that any reasonably well-trained officers confronted with

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similar circumstances could reasonably have believed that their actions were lawful under clearly established law. Blackstone v. Quirino, D.Me.2004, 309 F.Supp.2d 117. Civil Rights 1376(6)

Police officer who allegedly shot fleeing pedestrian in the back after the pedestrian, whom the officer detained at gunpoint from his patrol car, allegedly dropped his handgun in the passenger side of the front seat of the patrol car, could not reasonably have believed that he was entitled to use deadly force without warning against the fleeing pedestrian to apprehend him and prevent his escape, and thus, the officer was not entitled to qualified immunity on pedestrian's § 1983 claim for use of excessive force under the Fourth Amendment. Pablo Hernandez v. City of Miami, S.D.Fla.2004, 302 F.Supp.2d 1373, affirmed 124 Fed.Appx. 642, 2004 WL 3106626. Civil Rights 1376(6)

Police officers' actions of using deadly force to apprehend mentally ill driver, if proven, violated driver's constitutional rights, for purposes of qualified immunity analysis in § 1983 action brought by survivors of driver against the police officers, where the driver was allegedly traveling in a vehicle, not steered toward any officer, at a slow rate of speed and accelerated only slightly by less than 4 miles per hour. Waterman v. Batton, D.Md.2003, 294 F.Supp.2d 709, reversed 393 F.3d 471. Automobiles 349(14.1)

A qualified immunity defense is of less value when raised in defense of an excessive force claim. Eberle v. City of Newton, D.Kan.2003, 289 F.Supp.2d 1269, motion to amend denied 296 F.Supp.2d 1276. Civil Rights 1376(6)

Civil rights activist who brought § 1983 action against police officers, stemming from his arrest while attempting to film traffic stops, adequately alleged that officer maliciously and deliberately inflicted excruciating pain upon him as other officer failed to intervene, and thus officers were not entitled to qualified immunity as to activist's excessive force claim under Fourth Amendment; activist alleged that officer drove his knee into his back repeatedly while activist was face-down, handcuffed and helpless on ground, and wrenched down on inward-facing portion of handcuffs on activist's wrists in manner that was rude, aggressive and violent. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1376(6); Civil Rights 1395(6)

Arresting officer was entitled to qualified immunity from liability under § 1983 for her alleged use of excessive force in arresting and detaining suspect, even if fact issues remained as to whether there was probable cause for arrest and whether excessive force was used, where officer had reasonable suspicion sufficient to support *Terry* stop of suspect, and allegedly excessive force was employed by another officer when he kicked suspect's legs out from under her while she was still being held in "escort position" by first officer. Hale v. Vance, S.D.Ohio 2003, 267 F.Supp.2d 725. Civil Rights 1376(6)

Police officers were entitled to qualified immunity in arrestee's unreasonable seizure claim under § 1983, even if warrantless arrest, for an assault not involving severe personal injury, was an arrest for a misdemeanor not committed in an officer's presence which violated Maryland law; arrest was supported by probable cause and thus did not violate Fourth Amendment, inasmuch as officer had spoken with assault victims, saw one of them being treated, and received confirmation from an independent witness. Shultz v. Smith, D.Md.2003, 264 F.Supp.2d 278. Civil Rights 214(6)

Under the first prong of the qualified immunity analysis for § 1983 claim, court was required to decide whether, viewed in the light most favorable to arrestee, the facts alleged show that police officer violated arrestee's right to be free from the use of excessive force during arrest. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1376(6)

Genuine issue of material fact existed as to whether police officer applied handcuffs to citizen's wrists in excessively forceful fashion, precluding summary judgment on officer's claim to qualified immunity in § 1983

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lawsuit brought by citizen alleging violation of her Fourth Amendment right to be free from unreasonable seizure; citizen stated that officer pulled handcuffs "as tight as he could get them," so that they were "very, very, very tight," and citizen submitted photographic evidence of bruise on one of her wrists allegedly resulting from tightly applied handcuffs. Lyons v. City of Xenia, OH, S.D.Ohio 2003, 258 F.Supp.2d 761, affirmed in part, reversed in part 90 Fed.Appx. 835, 2004 WL 187555, vacated 125 S.Ct. 808, 543 U.S. 1033, 160 L.Ed.2d 596, on remand 417 F.3d 565. Federal Civil Procedure 2491.5

Issue of whether police officers, who allegedly intentionally burned house while conducting search, owed any duty to house's occupant under Michigan's "public duty" doctrine was irrelevant to determination of whether such officers were entitled to qualified immunity in occupant's § 1983 action against officers for use of excessive force in violation of Fourth Amendment. Johnson v. City of Detroit, E.D.Mich.1996, 944 F.Supp. 586. Civil Rights 1376(6)

Police officer was entitled to qualified immunity on § 1983 claim of excessive force based on handcuffing while in cell where arrestee was handcuffed in front, rather than in rear, where his movement was not restricted, and where he could shake the bars of his cell and move his hands; at a minimum, reasonably competent officers could disagree over whether placing arrestee in handcuffs throughout his detention violated his Fourth Amendment rights. Johnson v. City of New York, S.D.N.Y.1996, 940 F.Supp. 631. Civil Rights 1376(6)

All police officers present at scene of arrest, including officer who actually handcuffed arrestee, were entitled to qualified immunity in connection with arrestee's § 1983 claim premised on excessive force; officers were executing arrest warrant based on arrestee's alleged phone harassment of his former girlfriend, officers were aware that arrestee had threatened his girlfriend, and although arrestee told officers that he had previously fractured wrist, he exhibited no physical manifestation of fracture, was lifting weights in gym at time of arrest, and was six inches taller and almost 100 pounds heavier than officer who applied handcuffs. Trout v. Frega, N.D.Ill.1996, 926 F.Supp. 117. Civil Rights 1376(6)

For purposes of excessive force claim, uncontroverted evidence established that plaintiffs' injuries were de minimus, nonactionable, and direct result of their resistance to exiting vehicle pursuant to police officers' request and resistance to being placed under arrest, and officers were entitled to qualified immunity. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1376(6)

Under doctrine of qualified immunity or Illinois' Local Governmental and Governmental Employees Tort Immunity Act, police officer was not liable for shooting 12-year-old boy who ran from police and pointed gun at officer when officer ordered him to drop the weapon. Estate of Chlopek by Fahrforth v. Jarmusz, N.D.Ill.1995, 877 F.Supp. 1189. Civil Rights 1376(6); Municipal Corporations 747(3)

Police officers did not unreasonably create situation in which need for deadly force arose, such as would support denial of qualified immunity defense to civil rights claim of arrestee whom officers shot, even though arrestee never heard officers identify themselves or warn him that they were police in time to give him opportunity to put down rifle with which he had armed himself against what he believed was unlawful intrusion into his home; officers were wearing badges and patches to identify themselves as police, knocked on the front door for response before entry, and announced their office and intentions loudly and repeatedly. Sledd v. Lindsay, N.D.Ill.1994, 864 F.Supp. 819, reversed 102 F.3d 282. Civil Rights 1376(6)

Deputy sheriff was entitled to qualified immunity with respect to shooting of decedent who was armed with knife and in position to inflict grave bodily harm on deputy at time deputy fired his gun. Reynolds v. County of San Diego, S.D.Cal.1994, 858 F.Supp. 1064, affirmed in part, remanded in part 84 F.3d 1162. Civil Rights 1376(6)

Officer was entitled to qualified immunity in arrestee's § 1983 suit in connection with officer's striking with

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flashlight shins of arrestee, who was repeatedly kicking door of police vehicle in effort to free himself; officer was justified in using some force to restrain arrestee, who was under considerable stress, to prevent him from seriously injuring himself, and blows resulted only in "nickel" size bruises, which healed within ten days. Hodges v. Waters, S.D.Ga.1994, 843 F.Supp. 1470. Civil Rights 1376(6)

Jury's finding of excessive force in arrestee's §§1983 false arrest/excessive force action against arresting police officer did not preclude grant of qualified immunity to officer, on theory of legal inconsistency; officer could have acted unreasonably in using excessive force, yet reasonably believed his conduct to be lawful. Kent v. Katz, C.A.2 (Vt.) 2005, 125 Fed.Appx. 334, 2005 WL 387943, Unreported. Civil Rights 1376(6); Civil Rights 1424

Kansas Department of Revenue (KDOR) agents' use of weapons and handcuffs in executing search warrant for family members' residence did not constitute excessive force under Fourth Amendment, and thus agents were entitled to qualified immunity, in family members' §§ 1983 action against Kansas KDOR agents, city, city police chief, and city police officers, alleging that their Fourth Amendment rights had been violated due to KDOR agents and police acting without probable cause to search, detain, or arrest them, and by applying excessive force; at time search was undertaken, agents had legitimate concerns about their safety, given police chief's statements that family members had history of violence and that there were firearms in residence. Wright v. City of St. Francis, KS, C.A.10 (Kan.) 2004, 95 Fed.Appx. 915, 2004 WL 838181, Unreported. Arrest 68(2); Searches And Seizures 143.1

Safety officer was entitled to qualified immunity on motorist's claims of excessive force related to car chase that resulted in motorist's collision with a fire hydrant, where motorist only alleged that the chase caused him fear. Timmins v. Toto, C.A.2 (N.Y.) 2004, 91 Fed.Appx. 165, 2004 WL 233144, Unreported. Civil Rights 1376(6)

Officers were entitled to qualified immunity from claim that they used excessive force in arresting 79-year-old woman who suffered temporary shoulder pain and bruises on her forearm and thumb when officers carried her to squad car after she refused to walk. Grauerholz v. Adcock, C.A.10 (Kan.) 2002, 51 Fed.Appx. 298, 2002 WL 31579878, Unreported. Civil Rights 1376(6)

3714. ---- Related offenses, police officers, qualified immunity generally

When arresting officer has made warrantless arrest and charged arrestee with offense not supported by arguable probable cause, based on officer's "first-hand knowledge" of evidence gained as result of personal investigation, officer is entitled to qualified immunity under related offense doctrine so long as evidence providing arguable probable cause to make arrest for uncharged offense also suggested that charged offense had been committed. Vance v. Nunnery, C.A.5 (La.) 1998, 137 F.3d 270. Civil Rights 1376(6)

3715. ---- Evidence, police officers, qualified immunity generally

Under Connecticut law, probation officer who prepared prisoner's presentence report was entitled to absolute immunity from prisoner's §§ 1983 claims, even though prisoner alleged that officer deliberately presented false information in the report. Peay v. Ajello, C.A.2 (Conn.) 2006, 470 F.3d 65. Civil Rights 1376(7)

Police officials and officers knew or should have known, at the time of their alleged actions, that it was unlawful and outside their discretion to manufacture evidence and use questionable procedures in an attempt to use innocent officer as scapegoat for acts of police brutality against developmentally disabled citizen, possibly based on officer's race, and no reasonable official would have thought that such actions were permissible, and therefore officials and officers were not protected from §§ 1983 liability for alleged violation of police officer's substantive due process rights based on qualified immunity. Moran v. Clark, C.A.8 (Mo.) 2004, 359 F.3d 1058. Civil Rights 1376(6); Civil Rights 1376(10)

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42 U.S.C.A. § 1983

Police officers were entitled, in § 1983 action brought by prisoner who had been imprisoned for murder he did not commit, to absolute immunity for their testimony in pretrial proceedings and at trial; however, officers were not entitled to immunity for their alleged participation in scheme to fabricate testimony of eyewitnesses or other alleged misconduct. Newsome v. James, N.D.Ill.1997, 968 F.Supp. 1318. Civil Rights 1376(6)

Police officers were entitled to qualified immunity, rather than absolute immunity, from civil rights action for allegedly giving false testimony before grand jury that issued indictment, in light of lack of procedural safeguards at grand jury stage. White v. Frank, S.D.N.Y.1988, 680 F.Supp. 629, appeal dismissed 855 F.2d 956. Civil Rights 1375; Civil Rights 1376(6)

3716. ---- False arrests and imprisonment, police officers, qualified immunity generally

Police officers who were involved in private investigators' arrests for carrying concealed weapons knew that investigators were carrying firearms for protection in course of their occupations and so knew, or should have known, that investigators were not violating Ohio law or subject to arrest; therefore, officers were not entitled to qualified immunity from liability under § 1983 on investigators' false arrest claims. Estate of Dietrich v. Burrows, C.A.6 (Ohio) 1999, 167 F.3d 1007, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from a § 1983 false arrest claim for investigating and photographing suspect for allegedly using stolen credit cards in light of discrepancies in descriptions and lack of exigent circumstances; witness described suspect as woman in her 20s, about 57-inches tall and weighing approximately 150 pounds, but the woman confronted at her home was in her 40s, 5 feet 1 inch tall, weighed no more than 100 pounds and had just undergone dialysis. Taylor v. Farmer, C.A.4 (Va.) 1993, 13 F.3d 117. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity as matter of law as to false arrest claim under § 1983 by tow truck driver who allegedly violated South Carolina regulations governing solicitation of towing business; driver drove to scene of accident in wrecker in his capacity as volunteer fireman, officers admitted that they knew at time of arrest that driver had not solicited any wrecker business, and violation of regulations was not strict liability offense. Pritchett v. Alford, C.A.4 (S.C.) 1992, 973 F.2d 307. Civil Rights 1376(6)

Whether qualified immunity applied to preclude arresting officer's §§ 1983 liability for false arrest could not be decided on motion to dismiss, given factual questions as to whether arrestee's ambiguous response when officer addressed him by using narcotics suspect's name, in attempt to determine whether arrestee was suspect, provided probable cause to arrest in light of information possessed by officers about suspect, and as to reasonableness of officers' actions in immediately attempting to take arrestee into custody. Williams v. City of Mount Vernon, S.D.N.Y.2006, 428 F.Supp.2d 146. Federal Civil Procedure 1831

Genuine issues of material fact existed as to whether detective subverted the judicial process by providing falsified information to the prosecution, precluding summary judgment in favor of detective on qualified immunity grounds on acquittee's §§ 1983 malicious prosecution claim. Ramirez v. County of Los Angeles, C.D.Cal.2005, 397 F.Supp.2d 1208. Federal Civil Procedure 2491.5

Probable cause existed to arrest newspaper reporter for trespassing at meeting room on Indian land, and thus tribal police officer was protected by qualified immunity from reporter's §§ 1983 false arrest and related claims; although reporter was invited to meeting, prior to start of meeting ultimate authority at meeting requested non-Indians leave so a discussion of tribe legal issues could occur, non-Indian reporter refused to comply with request, tribal officer approached reporter and told reporter he would be arrested if he did not leave, and reporter continued to remain. Armstrong v. Mille Lacs County Sheriffs Dept., D.Minn.2002, 228 F.Supp.2d 972, affirmed 63 Fed.Appx. 970, 2003 WL 21212166. Arrest 63.4(17); Civil Rights 1376(6)

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Transit authority police had probable cause to arrest bus passenger for assaulting bus driver, and therefore police were protected by qualified immunity from any claim passenger had for false arrest and false imprisonment, where bus driver told police that passenger spat in his face and attempted to flee bus, and passenger refused to provide any identification. Saidi v. Washington Metropolitan Area Transit Authority, D.D.C.1996, 928 F.Supp. 21. Arrest 63.4(7.1); False Imprisonment 13; False Imprisonment 15(1)

Because arrestee sufficiently alleged that defendant police officers failed to conduct adequate investigation before causing plaintiff's arrest, pursuant to officers' qualified immunity defense, plaintiff's wrongful detention claim would not be dismissed, for failure to state claim. Spiegel v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 891, affirmed 196 F.3d 717, as amended, rehearing denied, certiorari denied 120 S.Ct. 2688, 530 U.S. 1243, 147 L.Ed.2d 961. Civil Rights 1395(6)

New York sheriff was qualifiedly immune from civil rights suit on malicious prosecution and false arrest causes of action by department employee who was arrested but not indicted on charge of criminal possession of stolen property in the fourth degree; at time employee was arrested, sheriff knew that employee had admitted to having had possession of gun which had been reported stolen by its owner, that employee said he did not have the gun, that gun had been left at scene of fire after employee's investigation, and that employee had admitted placing gun outside sheriff's department office. Greiner v. County of Greene, N.D.N.Y.1993, 811 F.Supp. 796. Civil Rights 1376(10)

City, county, and police department were not permitted to assert a defense of qualified immunity, and, therefore, were not entitled to a stay of discovery on false arrest or excessive force claims against them pending resolution of qualified immunity issue as to individual defendants. Rome v. Romero, D.Colo.2004, 225 F.R.D. 640. Civil Rights 1376(6); Federal Civil Procedure 1271

Genuine issue of material fact as to whether city police officers had probable cause to arrest and reasonable suspicion to detain arrestee, based on officer's alleged personal observations of him shouting obscenities in his presence and female's statement that arrestee had sexually assaulted her and another woman in past, precluded summary judgment as to officers' alleged entitlement to qualified immunity under §§ 1983 from arrestee's false imprisonment claim. Aczel v. Labonia, C.A.2 (Conn.) 2004, 92 Fed.Appx. 17, 2004 WL 287164, Unreported. Federal Civil Procedure 2491.5

Safety officer was entitled to qualified immunity on motorist's claims of false arrest and malicious prosecution arising out of a car chase that resulted in motorist's collision with a fire hydrant; motorist pled guilty to disorderly conduct in exchange for dismissal of other charges brought against him, motorist could not establish that officer did not have probable cause for arrest, and prosecution did not terminate in motorist's favor. Timmins v. Toto, C.A.2 (N.Y.) 2004, 91 Fed.Appx. 165, 2004 WL 233144, Unreported. Civil Rights 1376(6)

3717. ---- Application for arrest warrants, police officers, qualified immunity generally

Physician sued for allegedly conspiring to violate defendant's civil rights in connection with murder prosecution was not entitled to absolute immunity for expert report which was offered, not as evidence at trial, but at hearing to obtain warrant for defendant's arrest, in which physician concluded that bite marks found in victim's body undoubtedly came from defendant. Keko v. Hingle, C.A.5 (La.) 2003, 318 F.3d 639, rehearing en banc denied 61 Fed.Appx. 123, 2003 WL 342359. Civil Rights 1375; Conspiracy 13

Deliberate falsity or reckless disregard that court should consider in determining existence of qualified immunity in civil rights action in connection with issuance of arrest warrant is only that of affiant, not of any nongovernmental informant. Duca v. Martins, D.Mass.1996, 941 F.Supp. 1281. Civil Rights 1376(6)

There were no extraordinary circumstances entitling a county deputy to qualified immunity in connection with

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omissions from an arrest warrant affidavit, despite the deputy's claim that an attorney drafted the affidavit; attorney simply prepared the affidavit based on the deputy's own investigative report, and the deputy did not allege that the attorney advised her as to what information to include in the report or allege any facts from which the court could construe the attorney's actions as constituting legal advice. Melessa v. Randall, C.A.10 (Utah) 2005, 121 Fed.Appx. 803, 2005 WL 226240, Unreported. Civil Rights 1375

3718. ---- Warrantless arrests, police officers, qualified immunity generally

City police officer did not violate arrestees' Fourth Amendment right by arresting them upon probable cause for violation of city ordinance prohibiting being in a park after closing time, and thus officer had qualified immunity in arrestees' §§1983 claim for false arrest. Tanberg v. Sholtis, C.A.10 (N.M.) 2005, 401 F.3d 1151. Arrest 63.4(5); Civil Rights 1376(6)

Officers were not entitled to qualified immunity from arrestees civil rights claim based on malicious abuse of criminal process where officers lacked probable cause to arraign arrestee on charges of illegal possession of car without a Vehicle Identification Number (VIN) and arrestee alleged that arrest was based on arrestee's having advised other occupants of vehicle of their right to a lawyer. Cook v. Sheldon, C.A.2 (N.Y.) 1994, 41 F.3d 73. Civil Rights 1376(6)

Arresting officer was not entitled to qualified immunity from arrestee's claim that officer's warrantless arrest of her in her home for misdemeanor offenses violated Fourth Amendment; arrest was for careless driving and leaving scene of accident, and offenses were misdemeanors carrying maximum fine of $300 or imprisonment for at most 90 days or both, and thus did not merit extraordinary recourse of warrantless home arrest. Howard v. Dickerson, C.A.10 (N.M.) 1994, 34 F.3d 978. Civil Rights 1376(6)

Sheriff was performing "discretionary function," for qualified immunity purposes in § 1983 action, when arresting citizens without warrant. Herren v. Bowyer, C.A.11 (Ga.) 1988, 850 F.2d 1543. Civil Rights 1376(6)

Three police officers were entitled to qualified immunity from motorist's claim, under §§ 1983, that warrantless arrest for driving under the influence was not supported by probable cause; weaving of motorist's pickup truck, redness of his eyes, his failure to follow instructions, and his ever-so-slight side step during walk-and-turn field sobriety test precluded finding that there was clearly no probable cause, or that no reasonably competent officer would have found probable cause. Blackstone v. Quirino, D.Me.2004, 309 F.Supp.2d 117. Civil Rights 1376(6)

Police officer's actions were undertaken in performance of duties and were well within scope of discretionary authority, for purposes of qualified immunity from plaintiff's § 1983 claim that officer deprived plaintiff of liberty without due process, where officer was called to plaintiff's home to handle domestic dispute in manner consistent with officer's training and education, officer arrived in uniform and found plaintiff locked out of house and in process of leaving, officer requested that plaintiff leave premises, and officer arrested plaintiff for disorderly conduct when plaintiff became argumentative and began to curse. Rose v. Town of Jackson's Gap, M.D.Ala.1996, 952 F.Supp. 757. Civil Rights 1376(6)

Police officer had qualified immunity from § 1983 claim arising from valid warrantless arrest. Schilling v. Swick, W.D.Mich.1994, 868 F.Supp. 904. Civil Rights 1376(6)

Long professional and personal relationship between chief of state university police department and state narcotics officer, who also was an adjunct professor at university, justified chief's reliance upon truth and veracity of corroborating information that narcotics officer supplied, and thus, chief was entitled to qualified immunity from liability in arrestees' §§ 1983 action alleging unlawful arrest, unlawful detention, unlawful search and search, defamation, and infliction of emotional distress. New v. Fleming, C.A.5 (Miss.) 2006, 170 Fed.Appx. 298, 2006

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42 U.S.C.A. § 1983

WL 295418, Unreported. Civil Rights 1376(6)

3719. ---- Searches generally, police officers, qualified immunity generally

Deputies were not entitled to qualified immunity on §§ 1983 claim arising from warrantless entry and arrest of plaintiff; under the law existing at the time, a reasonable law enforcement officer faced with identical circumstances would have known he could not enter the home and arrest plaintiff without a warrant, exigent circumstances, or consent. Bashir v. Rockdale County, Ga., C.A.11 (Ga.) 2006, 445 F.3d 1323. Civil Rights 1376(6)

In executing search warrant, failure of police officers to leave either copy of warrant or receipt for property taken, in violation of criminal procedure rule and state law, did not render the search unreasonable under Fourth Amendment, and thus police officers and members of city's board of police commissioners were entitled to qualified immunity on plaintiffs' Fourth Amendment claim; at time of search, violation of procedure rule and state law did not constitute violation of clearly established constitutional right. DeArmon v. Burgess, C.A.8 (Mo.) 2004, 388 F.3d 609. Civil Rights 1376(6); Searches And Seizures 141

Deputies who conducted the police checkpoints ordered by sheriff, when property owners failed to accede to sheriff's demands that they not hold "rock" concert on their land, were entitled to qualified immunity on resulting civil rights claims, where summary judgment evidence indicated that they had conducted license checks of each motorist driving on road leading to property owner's farm without regard to motorist's destination, and had made arrests only when there was problem with license or when contraband was discovered in plain view or after consensual search, and where there was no evidence that deputies had any contact with civil rights plaintiffs or that they had abused their discretion to deny use of forum for First-Amendment-protected expression or were involved in arrestees' ability to make bond or in crowded condition of jail in which they were held. Collins v. Ainsworth, C.A.5 (Miss.) 2004, 382 F.3d 529, on subsequent appeal 2005 WL 3502174, certiorari denied 126 S.Ct. 1661, 164 L.Ed.2d 397. Civil Rights 1376(6)

Police officers were entitled to qualified immunity to T1983 claim of citizen, that officers' alleged forced entry into her Connecticut residence without a warrant was in violation of her Fourth Amendment rights, since entry into home was authorized by conservator of estate of her father, who owned home and recently had been living there as cohabitant. Ehrlich v. Town of Glastonbury, C.A.2 (Conn.) 2003, 348 F.3d 48. Civil Rights 1376(6)

Even if police officers violated the Fourth Amendment rights of a woman with Down Syndrome when they seized her and transported her to a hospital, the officers were entitled to qualified immunity in § 1983 action brought by the woman against the officers in their individual capacities; the officers were responding to a 911 call from within the woman's residence from a caller who claimed to be under attack, and the officers were responding to an order of a superior officer to seize the woman and remove her to the hospital. Anthony v. City of New York, C.A.2 (N.Y.) 2003, 339 F.3d 129. Civil Rights 1376(6)

Fact that search was illegal would not preclude finding that law enforcement officers who searched and then effected seizure of truck were entitled to qualified immunity in resulting § 1983 action brought by purported truck owners. Wren v. Towe, C.A.5 (Tex.) 1997, 130 F.3d 1154, certiorari denied 119 S.Ct. 51, 525 U.S. 815, 142 L.Ed.2d 40. Civil Rights 1376(6)

State trooper was not entitled to qualified immunity in § 1983 case with respect to claim that strip search of plaintiff after her arrest for driving while under influence of drugs violated Fourth Amendment; plaintiff was not placed in general inmate population, plaintiff had no opportunity to hide anything beneath her clothing after her vehicle was stopped, and thorough pat-down search at jail revealed no drugs. Foote v. Spiegel, C.A.10 (Utah) 1997, 118 F.3d 1416, on remand 995 F.Supp. 1347. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police officer was entitled to qualified immunity from § 1983 claim alleging that he violated Fourth Amendment rights of detainee who was unintentionally run over by police car after being seized by officer and forced to lie on ground; being run over by vehicle was not part of seizure, but rather was accidental effect of otherwise lawful government conduct. Evans v. Hightower, C.A.11 (Fla.) 1997, 117 F.3d 1318. Civil Rights 1376(6)

In determining whether defendants in § 1983 action are entitled to qualified immunity, Court of Appeals asks first whether constitutional right in question was clearly established at time of alleged violation, which is question of law for court, and, second, whether reasonable, similarly situated official would understand that challenged conduct violated that established right. Swain v. Spinney, C.A.1 (Mass.) 1997, 117 F.3d 1. Civil Rights 1376(2)

Qualified immunity applied to shield detective from §§ 1983 liability on claim that he caused arrestee to be subjected to unlawful strip search at detention facility, given arrestee's failure to show that it was clearly established, at the time of his arrest, that police officer in detective's position had constitutional duty to prevent jail officials from conducting strip search of arrestee charged with felony offense. George v. City of Wichita, Kan., D.Kan.2004, 348 F.Supp.2d 1232. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from liability for conducting strip searches of minors located outside apartment at time of execution of search warrant for apartment, in minors' §§ 1983 action, alleging violation of their Fourth Amendment rights; the warrant only permitted searches of all persons in the apartment, there was no evidence that minors outside the apartment were involved in illegal activities, and probable cause did not exist to search minors located outside apartment. Quiles v. Kilson, D.Mass.2004, 337 F.Supp.2d 224. Civil Rights 1376(6)

Deputy sheriffs, in their individual capacities, were entitled to qualified immunity, in § 1983 action alleging that county violated farmer's federal and Iowa constitutional rights by seizing her horses; deputies were given a facially valid search warrant to execute, which provided for, inter alia, rescue of horses, and it was objectively reasonable, in view of the unsanitary conditions and the opinions of a licensed veterinarian and two animal control officers, that all the horses were in danger, for deputies to believe all the horses should be seized. McClendon v. Story County Sheriff's Dept., S.D.Iowa 2004, 312 F.Supp.2d 1146, affirmed in part, reversed in part 403 F.3d 510. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from claim they violated the Fourth Amendment when they partially strip searched suspect after his arrest for involvement in murder; although suspect did not confess to actually stabbing victim, such confession was not necessary to justify requiring suspect to strip down to his underwear for a visual examination, where suspect told police that he was present in the house at the time of the murder, a knife fitting the description of murder weapon was found under his bed, and the murder was of the type that one could reasonably believe would leave the murderer with cuts, bruises, scratches, or other signs of a physical altercation. Crowe v. County of San Diego, S.D.Cal.2004, 303 F.Supp.2d 1050. Civil Rights 1376(6)

Conduct of citizen, of walking to kitchen in her home and yelling and pointing finger at police officer, did not constitute affirmative acts from which reasonable officer could have found probable cause to believe that citizen had obstructed official business under Ohio law, in order to arrest citizen, in context of officer's claim to qualified immunity in § 1983 lawsuit brought by citizen alleging violation of her Fourth Amendment rights, even though officer had right to investigate involvement of juvenile, who lived in citizen's home, in prior, unrelated juvenile assault. Lyons v. City of Xenia, OH, S.D.Ohio 2003, 258 F.Supp.2d 761, affirmed in part, reversed in part 90 Fed.Appx. 835, 2004 WL 187555, vacated 125 S.Ct. 808, 543 U.S. 1033, 160 L.Ed.2d 596, on remand 417 F.3d 565. Civil Rights 1376(6)

Deputy United States marshal was not acting as federal official when he stopped and attempted to frisk individual based on suspicion that individual had committed state crime, and thus, could not assert defense of qualified immunity based on discharge of federal duties in § 1983 action in which individual alleged that marshal had

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violated his Fourth Amendment rights; marshal's duties bore no relation, incidental or otherwise, to his official responsibilities as marshal as set out by statute. McNally v. DeWitt, W.D.Ky.1997, 961 F.Supp. 1041. Civil Rights 1376(6)

Police officers who lawfully stopped vehicle based on suspicion that it had been involved in armed robbery were entitled to qualified immunity with regard to Fourth Amendment claim asserted in subsequent § 1983 action based on protective search of vehicle's occupants; radio report indicated that robbery was armed robbery, and there was no evidence suggesting that search of occupants was unreasonable. Warren v. Coffee County Com'n, M.D.Ala.1995, 942 F.Supp. 1412. Civil Rights 1376(6)

Police officer who obtained search warrant, made decision to execute it, and brought television station personnel to house in his patrol car to film inside house during execution of search warrant without occupants' permission was not entitled to qualified immunity in § 1983 action for violating occupant's Fourth Amendment right to be free of unreasonable searches and seizures. Parker v. Clarke, E.D.Mo.1995, 905 F.Supp. 638, clarified 910 F.Supp. 460, affirmed in part, reversed in part 93 F.3d 445, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1081, 519 U.S. 1148, 137 L.Ed.2d 216. Civil Rights 1376(6)

Trooper who merely assisted in lawful search of motorist's vehicle after her arrest was entitled to qualified immunity from any § 1983 liability; trooper arrived at scene after traffic stop, after administration of field sobriety tests of motorist, and after her arrest. Foote v. Spiegel, D.Utah 1995, 903 F.Supp. 1463, affirmed in part, reversed in part, dismissed in part 118 F.3d 1416, on remand 995 F.Supp. 1347. Civil Rights 1376(6)

Police officers who searched wrong apartment, pursuant to a warrant, looking for drugs were entitled to qualified immunity; officers honestly believed that they were searching correct apartment and they did not use excessive force. Samuels v. Smith, D.Conn.1993, 839 F.Supp. 959. Civil Rights 1376(6)

3720. ---- Applications for search warrant, police officers, qualified immunity generally

Police officer was entitled only to qualified immunity, not absolute immunity, from liability for damages under section 1983 based on allegation that officer caused plaintiffs to be unconstitutionally arrested by presenting judge with a complaint and supporting affidavit which failed to establish probable cause, notwithstanding claim that officer's function in seeking arrest warrant is similar to that of complaining witness or prosecutor who asks grand jury to indict a suspect. Malley v. Briggs, U.S.R.I.1986, 106 S.Ct. 1092, 475 U.S. 335, 89 L.Ed.2d 271. Civil Rights 1376(6)

New Orleans police officer and Drug Enforcement Administration (DEA) agent were entitled to qualified immunity from §§ 1983 liability, for claims based on procurement of warrant, to occupants of home where warrant allegedly based on stale narcotics information was executed; neither of them signed warrant application or was responsible for its preparation or presentation to judge. Michalik v. Hermann, C.A.5 (La.) 2005, 422 F.3d 252. Civil Rights 1376(6)

Qualified immunity is available in relation to warrant application if affidavit accompanying application is sufficient, after correction for material misstatements or omissions, to support reasonable officer's belief that probable cause existed. Martinez v. City of Schenectady, C.A.2 (N.Y.) 1997, 115 F.3d 111. Civil Rights 1376(6)

Probable cause existed to search civil rights complainant's residence, affording police qualified immunity in § 1983 action, despite acknowledged misrepresentations and omissions in affidavit underlying search warrant conveying impression that officer and confidential informant had participated in controlled drug buy while in fact third person accompanied them and made actual purchase; affidavit provided probable cause to search after being edited to correct for misrepresentations and omissions, as it still alleged that police received tip from previously reliable

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informant that claimant was conducting drug transactions from his residence and tip was corroborated by controlled drug purchase. Sherwood v. Mulvihill, C.A.3 (N.J.) 1997, 113 F.3d 396. Civil Rights 1376(6); Controlled Substances 147

Absent false information in search warrant affidavit that deputy sheriff was "certified" in narcotics training and that he smelled "acetone" or "P2P" on plaintiff's property, neutral magistrate would not have issued warrant, since there was no probable cause to believe that crime had occurred, so that affiant was not entitled to qualified immunity in § 1983 action against her for making materially false statements in search warrant affidavit, where deputy's observations of white powder and operation of generator were not tied in any way to manufacture of methamphetamine, and his statement that he smelled cat urine and later recognized odors that were consistent with manufacturing methamphetamine were too vague to support probable cause. Hervey v. Estes, C.A.9 (Wash.) 1995, 65 F.3d 784, rehearing and suggestion for rehearing en banc denied, amended on denial of rehearing. Civil Rights 1376(6)

Police detective who obtained arrest warrant on strength of her sworn statement that arrestee had committed offense of cocaine possession was not protected by qualified immunity from arrestee's § 1983 malicious protection claim; when detective swore out affidavit, she knew that the substance arrestee had possessed was not cocaine, and her affidavit articulated neither a basis for her belief that arrestee violated the law nor any affirmative allegation that she had personal knowledge of the circumstances of alleged crime. Kelly v. Curtis, C.A.11 (Ga.) 1994, 21 F.3d 1544. Civil Rights 1376(6)

Deputy sheriff did not intentionally or recklessly mislead magistrate who issued search warrant for farm on probable cause of animal mistreatment, so as to lose his qualified immunity from civil rights action, by not including prior incident reports indicating that investigation of past complaints by another deputy had not resulted in charges; information in the three- and 17-month-old reports was stale and not entirely exculpatory, neighbors' complaints underlying warrant concerned that point in time, not ongoing enterprise of bad acts, and reports would not have negated finding of probable cause that was supported by five complainants' sworn statements and results of deputy's investigation. Spafford v. Romanowsky, S.D.N.Y.2004, 348 F.Supp.2d 40. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from claim they engaged in illegal search of murder suspect's residence because search warrant affidavit contained material misrepresentations and omissions concerning location of murder victim's body, possible involvement of third party in murder, and state of the windows and doors in victim's residence, as alleged misrepresentations and omissions did not cast doubt on existence of probable cause. Crowe v. County of San Diego, S.D.Cal.2004, 303 F.Supp.2d 1050. Civil Rights 1375; Civil Rights 1376(6)

Police detective's statements that he saw money placed in locker from which other police detective took money were sufficient to give police officers probable cause to seek warrant to search other detective's residence, such that police officers were protected by qualified immunity, where police detective's story was corroborated when he turned in portion of money and he implicated himself voluntarily at time he implicated other detective. Rodriguez v. City of New York, S.D.N.Y.1996, 931 F.Supp. 209, affirmed 112 F.3d 505. Civil Rights 1376(6); Searches And Seizures 114

Arresting police officer had qualified immunity from civil rights action brought by arrestee who was subsequently acquitted and who alleged that officer's statements made to obtain arrest warrant failed to apprise magistrate judge of eyewitness's exculpatory statements where officer and prosecutor decided that eyewitness's statements were not of great import because she could not remember to within 50 yards of where she was standing at time of robbery. Rock v. Lowe, S.D.Ga.1995, 893 F.Supp. 1573. Civil Rights 1376(6)

3721. ---- Confiscation of property, police officers, qualified immunity generally

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Question whether interrogator regarded police officer as target of possible perjury prosecution, rather than mere *Garrity* witness, when he questioned officer for second time in departmental investigation into misconduct involving use of police scanners precluded grant of qualified immunity on claim that interrogator violated police officer's Fifth Amendment rights when, during course of second interview, he accused officer of falsification and obstruction during first interview and threatened him with termination if he did not admit his role in misconduct, which led officer to materially contradict his earlier statements and led to his prosecution, on basis of statements in second interview, for falsification and obstruction. McKinley v. City of Mansfield, C.A.6 (Ohio) 2005, 404 F.3d 418, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 1026, 163 L.Ed.2d 854. Civil Rights 1376(6); Civil Rights 1376(10)

Plaintiffs failed to establish that execution of search warrant was unreasonable, and, thus, police officers and members of city's board of police commissioners were entitled to qualified immunity on plaintiffs' Fourth Amendment claim, even if items such as jewelry, photographs, and personal papers were seized; search warrant authorized seizure of drugs, weapons, money, drug records, and "other instruments" of drug transactions and objectively reasonable law enforcement officials could have believed that items seized were of such incriminating nature as to constitute contraband or evidence of criminal activity. DeArmon v. Burgess, C.A.8 (Mo.) 2004, 388 F.3d 609. Civil Rights 1376(4); Civil Rights 1376(6)

Fact that law enforcement officer has executed form certifying that reconditioned vehicle is legitimate does not create presumption that vehicle was legitimate, for purpose of other officers' claim of qualified immunity in action alleging that their search and seizure of vehicle was unreasonable. Wren v. Towe, C.A.5 (Tex.) 1997, 130 F.3d 1154, certiorari denied 119 S.Ct. 51, 525 U.S. 815, 142 L.Ed.2d 40. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity in arrestee's § 1983 action alleging that officer seized his car and had it towed without probable cause under Illinois statute authorizing seizure of vehicles believed to have been used in drug offense; arrestee's possession of a small amount of cocaine was discovered 20 to 25 minutes after he left his car and entered his residence, and there was no evidence linking his cocaine possession to car. Scott v. Glumac, C.A.7 (Ill.) 1993, 3 F.3d 163. Civil Rights 1376(6)

Deputy sheriff, in his individual capacity, was entitled to qualified immunity, in § 1983 action alleging that county violated farmer's federal and Iowa constitutional rights by seizing her horses; deputy's only involvement in execution of search warrant was in being asked to remove two dead horses and transport them to a veterinary lab. McClendon v. Story County Sheriff's Dept., S.D.Iowa 2004, 312 F.Supp.2d 1146, affirmed in part, reversed in part 403 F.3d 510. Civil Rights 1376(6)

Civil rights activists who brought § 1983 action against police officers, stemming from their arrests while attempting to film traffic stops, adequately alleged that they had sufficient ownership interest in recording equipment seized by officers for standing to bring claim based upon officers' purported lack of probable cause to seize equipment, and thus officers were not entitled to qualified immunity as to activists' claim under Fourth Amendment. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1376(6); Civil Rights 1395(6)

Highway patrol officer who seized and immobilized vehicle pursuant to Ohio statute requiring police to seize and immobilize vehicles of persons who have been arrested for second offense of operating a motor vehicle while under influence of alcohol (OMVI) was entitled to qualified immunity from liability for damages resulting from due process violation to which he subjected vehicle's owner, who successfully invoked statute's "innocent owner" provision; although officer was performing discretionary duty when he seized vehicle, he was acting in accordance with statute that had never been held unconstitutional. Putnam v. Davies, S.D.Ohio 1996, 169 F.R.D. 89. Civil Rights 1376(6)

3722. ---- Reliance, police officers, qualified immunity generally

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42 U.S.C.A. § 1983

Officer would not be deprived of qualified immunity on civil rights claim for his action in arresting plaintiffs because he relied on victim's statement without interviewing plaintiffs prior to seeking their arrest, even though victim had given differing statements as to the attack; officer did not ignore readily available exculpatory evidence of which he had been made aware. Torchinsky v. Siwinski, C.A.4 (N.C.) 1991, 942 F.2d 257. Civil Rights 1376(6)

Police officers who transported suspect to police station at direction of superior officer were entitled to qualified immunity in suspect's § 1983 action based on unlawful arrest, absent evidence that officers were aware of any lack of probable cause to arrest suspect. Rose v. Town of Concord, D.Mass.1997, 971 F.Supp. 47. Civil Rights 1376(6)

Police officers who arrested plaintiff and who were involved in his processing were entitled to qualified immunity with respect to his wrongful arrest claim under § 1983, alleging that police lacked probable cause to arrest him because they failed to conduct sufficient investigation into facts supporting his arrest; defendant officers were entitled to rely on information obtained from other law enforcement officials regarding arrest warrant. Spiegel v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 891, affirmed 196 F.3d 717, as amended, rehearing denied, certiorari denied 120 S.Ct. 2688, 530 U.S. 1243, 147 L.Ed.2d 961. Civil Rights 1376(6)

3723. ---- Training and supervision, police officers, qualified immunity generally

Police chiefs were immune from § 1983 suit claiming that their failure to provide proper supervision and training of officer who shot and killed plaintiffs' decedent led to deprivation of decedent's constitutional rights despite claim by purported criminal justice expert that chief's failure to assume command and control on day of shooting was proximate cause of officer's reaction where there was no proof that chief knew of gravity of situation developing at park where shooting took place or that he could have responded in time, there was no evidence of any deliberate indifference overcoming qualified immunity, and expert's statement was more aspersion than evidence. Baker v. Putnal, C.A.5 (Tex.) 1996, 75 F.3d 190. Civil Rights 1376(6)

Five complaints levied against arresting officer did not provide police superintendent with requisite notice of behavior likely to result in violation of constitutional rights of citizens and, thus, police superintendent was entitled to qualified immunity from liability in § 1983 action brought by arrestee who claimed he had been beaten by arresting officer; the five previous complaints against officer stemmed from incidents completely unrelated to present one, and arrestee also failed to show how superintendent's alleged failure to discipline officer was affirmatively linked to alleged assault. Febus-Rodriguez v. Betancourt-Lebron, C.A.1 (Puerto Rico) 1994, 14 F.3d 87. Civil Rights 1376(6)

Chief of police was entitled to qualified immunity on arrestee's §§ 1983 claim against him in his individual capacity based solely on his supervisory authority over arresting county police officers, absent any evidence indicating that chief participated in any way or was even aware of arrestee's arrest and prosecution. Payne v. DeKalb County, N.D.Ga.2004, 414 F.Supp.2d 1158. Civil Rights 1376(6)

Jury's finding that police officer violated off-duty officer's Fourth Amendment right to be free of unreasonable seizure was sufficient to establish that conduct of supervisory police officials violated constitutional right, for purposes of determining whether supervisory officials were entitled to qualified immunity from liability in §§ 1983 suit, despite officials' contention that relevant inquiry was whether training provided to officer was constitutionally inadequate or constitutionally deficient. Young v. City of Providence, D.R.I.2005, 396 F.Supp.2d 125. Civil Rights 1376(10)

Alleged supervisor of officers who surrounded and entered common areas of duplex in search for potentially armed suspect had no supervisory liability for acts of subordinate officers, where officers did not commit any constitutional violations in attempting to control residents of building. Reeves v. Churchich, D.Utah 2004, 331

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F.Supp.2d 1347. Civil Rights 1358

Supervisors were not entitled to qualified immunity with respect to section 1983 supervisory liability and failure to train claims based on their conduct or inaction in permitting police sergeant to supervise a high impact unit of officers involved in victim's shooting death despite sergeant's disciplinary record; jury questions were presented as to whether the officers involved in victim's death acted upon instructions by sergeant, and thus whether an "affirmative link" existed between the failure of supervisors to take measures regarding sergeant's complaint history and the depravation, if any, of victim's constitutional rights. Gonzalez Perez v. Gomez Aguila, D.Puerto Rico 2004, 312 F.Supp.2d 161. Civil Rights 1376(6); Civil Rights 1429

Absent evidence that police chief committed a constitutional violation on his own, or that he was responsible for police officer's use of force, chief was entitled to qualified immunity in arrestee's § 1983 action alleging excessive force by officer in connection with her arrest. Eberle v. City of Newton, D.Kan.2003, 289 F.Supp.2d 1269, motion to amend denied 296 F.Supp.2d 1276. Civil Rights 1376(6)

Provisions of Endangered Species Act (ESA) creating duty on part of federal agencies to ensure that actions do not jeopardize continued existence of endangered or threatened species or result in destruction or adverse modification of such species' habitat, and authorizing issuance of permits to engage in acts otherwise proscribed by ESA provision prohibiting takings of protected species and violations of regulations related to such species, impose their burdens based on either the listing of a species or the designation of species' critical habitat. Home Builders Ass'n of Northern California v. U.S. Fish and Wildlife Service, E.D.Cal.2003, 268 F.Supp.2d 1197. Environmental Law 531; Environmental Law 536

Police chief was entitled to qualified immunity on claim of failure to supervise arresting officer who beat arrestee where there was only bare assertion by expert witness that chief took inappropriate action with regard to supervision. Sweatt v. Bailey, M.D.Ala.1995, 876 F.Supp. 1571. Civil Rights 1376(6)

At the time residents' home was searched, it was not clearly established that police officers' treatment of the residents would violate their Fourth Amendment rights, and thus, the supervising officers were entitled to qualified immunity on in the residents' §§ 1983 suit; the officers allegedly stayed on the premises for seven and one quarter hours, during which time they kept the residents in handcuffs for several hours, in their underwear in plain sight of each other and of numerous law enforcement officers in spite of pleas to allow them to be covered. Kerusenko v. New Jersey, C.A.3 (N.J.) 2004, 115 Fed.Appx. 583, 2004 WL 2616483, Unreported, certiorari denied 126 S.Ct. 94, 163 L.Ed.2d 110. Civil Rights 1376(6)

City could not be held liable to arrestee under § 1983, based on officer's alleged false arrest and malicious prosecution, absent allegation that any failure of city to train or supervise officer amounted to municipal policy or custom. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 1809471, Unreported. Civil Rights 1352(4)

3724. Prison officials, qualified immunity generally--Generally

Privately employed prison physician was ineligible to advance the defense of qualified immunity in inmate's civil rights action; no "firmly rooted" tradition of immunity applicable to privately employed prison physicians existed under similar circumstances, and public policy reasons for qualified immunity, including fears of "unwarranted timidity" in performance of duties, possible deterrence of qualified candidates, and concern that lawsuits might distract employees from their duties, did not justify extension of qualified immunity. Hinson v. Edmond, C.A.11 (Ga.) 1999, 192 F.3d 1342, amended 205 F.3d 1264. Civil Rights 1376(7)

Failure of prison officials to immediately confiscate alcoholic beverages possessed by inmates was not deliberate indifference toward inmate who was later attacked by another inmate, as required to overcome qualified immunity

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defense in § 1983 civil rights suit based on alleged Eighth Amendment violation. Winfield v. Bass, C.A.4 (Va.) 1997, 106 F.3d 525. Civil Rights 1376(7)

Deputy sheriff was entitled to qualified immunity from inmate's § 1983 claim that deputy was deliberately indifferent to inmate's personal safety when deputy failed to communicate to oncoming guard that he had placed inmate in a holding cell because of a threat to his life; deputy was acting within scope of his discretionary authority, and he could reasonably believe that his failure to communicate situation to oncoming guard did not violate constitutional law. McCoy v. Webster, C.A.11 (Ga.) 1995, 47 F.3d 404. Civil Rights 1376(6)

Prison official inflicting sufficiently grave conditions of confinement acts with a sufficiently culpable state of mind and is not entitled to qualified immunity from liability on an Eighth Amendment claim if he does so with deliberate indifference. Rodgers v. Jabe, C.A.6 (Mich.) 1995, 43 F.3d 1082. Civil Rights 1376(7)

Former Louisiana prison officials were not entitled to qualified immunity in § 1983 civil rights claims by black prisoners alleging that general policies for segregating two-person cells violated equal protection in light of officials' knowing and intentional participation in general policy of racial segregation despite outstanding court order mandating full integration of prison facility. Sockwell v. Phelps, C.A.5 (La.) 1994, 20 F.3d 187. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity for violating prisoners' civil rights, where district court found that officials did not act out of legitimate penological concerns. Quinn v. Nix, C.A.8 (Iowa) 1993, 983 F.2d 115. Civil Rights 1376(7)

Mayor and two top corrections officials were protected by qualified immunity in performance of their discretionary functions related to prison administration in § 1983 action arising out of prison fire and riots. Brogsdale v. Barry, C.A.D.C.1991, 926 F.2d 1184, 288 U.S.App.D.C. 311. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from damages suit brought under §§ 1983 by inmate claiming he was convicted for spreading rumors unfavorable to prison staff, in violation of prison rule that was vague and overbroad, and as form of retaliation, when his mother responded to inmate's complaint regarding disposition of earlier complaint by advertising on Internet for legal counsel to assist inmate on further prosecution of earlier grievance; as disciplinary board had determined that allegations of earlier grievance were without merit, officials could have reasonably believed that inmate was spreading rumors. Cassels v. Stalder, M.D.La.2004, 342 F.Supp.2d 555. Civil Rights 1376(7)

Correctional officials were not entitled to qualified immunity from damages under §§ 1983 for alleged violation of inmate's Eighth Amendment rights resulting from miscalculation of his prison sentence and resulting confinement for 65 days beyond his mandatory release date; applicable Wisconsin law clearly required that officials release inmate on his mandatory release date, and Seventh Circuit had previously recognized a prisoner's right to be released at lawful conclusion of a prison sentence. Russell v. Lazar, E.D.Wis.2004, 300 F.Supp.2d 716. Civil Rights 1376(7)

State prison inmates' § 1983 complaint alleging that Governor and State Parole Board members conspired to deprive the inmates of their constitutional and civil rights when inmates' parole hearings included members who were appointed by the Governor without Senate confirmation, in alleged violation of state statute requiring appointment of Parole Board members by the Governor with the advice and consent of the Senate, did not make the necessary allegations of bad faith or malice to sustain the claim against the defense of qualified immunity, in light of the defendants' reliance upon opinion issued by state Attorney General's office stating that such temporary appointments of Parole Board members were valid under state law. Sonntag v. Papparozzi, D.N.J.2003, 256 F.Supp.2d 320, affirmed as modified 94 Fed.Appx. 970, 2004 WL 737021. Conspiracy 18

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42 U.S.C.A. § 1983

For prison official to be held liable under Eighth or Fourteenth Amendment for denying inmate humane conditions of confinement, official must both be aware of facts from which inference could be drawn that substantial risk of serious harm exists, and he must also draw the inference. Jolly v. Klein, S.D.Tex.1996, 923 F.Supp. 931. Constitutional Law 272(2); Sentencing And Punishment 1533

Inmate failed to show that officer knowingly presented false information in support of criminal complaint against inmate, as would warrant denial of qualified immunity from § 1983 claim stemming from that complaint; discrepancy between statement made at time of incident underlying complaint and statement made under oath some seven years later could have been caused by inadvertence, failure of recollection or some other innocent explanation. Atkins v. Latanzio, W.D.N.Y.1995, 918 F.Supp. 668. Civil Rights 1376(7)

By raising defense of qualified immunity in § 1983 action by prisoner, prison official invoked all standards that governed qualified immunity, including rule that plaintiff must produce direct evidence of government defendant's state of mind to clear heightened pleading standard; thus, direct evidence standard was not waived even if official failed to raise distinction between direct and circumstantial tests. Crawford-El v. Britton, D.D.C.1994, 863 F.Supp. 6. Civil Rights 1395(7)

3725. ---- Sexual harassment, prison officials, qualified immunity generally

Prison official's alleged sexual harassment of inmate and unauthorized appearance in her cell did not constitute the deliberate indifference required for an Eighth Amendment violation and therefore, prison official was entitled to qualified immunity with respect to inmate's § 1983 Eighth Amendment claim. Adkins v. Rodriguez, C.A.10 (Colo.) 1995, 59 F.3d 1034. Civil Rights 1376(7); Sentencing And Punishment 1554

3726. ---- State-employed correctional officers, prison officials, qualified immunity generally

State employed correctional officers enjoy protections of qualified immunity in carrying out their duties. McKnight v. Rees, C.A.6 (Tenn.) 1996, 88 F.3d 417, certiorari granted 117 S.Ct. 504, 519 U.S. 1002, 136 L.Ed.2d 395, affirmed 117 S.Ct. 2100, 521 U.S. 399, 138 L.Ed.2d 540. Civil Rights 1376(7)

3727. ---- Freedom of religion, prison officials, qualified immunity generally

Former officials of state prison system were immune from liability in state inmate's civil rights action alleging that he was denied furlough because his sponsors were Jewish; inmate presented no evidence that statements allegedly made about religious background of sponsors influenced furlough decision. Rogers v. Fair, C.A.1 (Mass.) 1990, 902 F.2d 140. Civil Rights 1376(7)

On motion to dismiss, prison officials were not entitled to qualified immunity on claims that they violated prisoner's Free Exercise rights by failing to provide him with religious diet, prohibiting his use of certain "incendiary" religious materials such as prayer oil, as development of fuller record was appropriate and prisoner was seeking injunctive and well as monetary damage, such that immunity would not have terminated suit in any event. Kilaab Al Ghashiyah v. Department of Corrections of State of Wisconsin, E.D.Wis.2003, 250 F.Supp.2d 1016, vacated. Federal Civil Procedure 1752.1

Former county sheriff was not entitled to qualified immunity from suit under §§ 1983, based upon his promulgation of detainee rules for county jail based upon the Ten Commandments, where sheriff knew or reasonably should have known that his actions were in violation of detainee's Establishment Clause rights; extant case law, of which sheriff was aware as result of prior lawsuit with respect to detainee rules, clearly provided notice that posting Ten Commandments, verbatim or in analogous form, in government facility, and requiring citizens detained there to read and obey them, would violate Establishment Clause. Byar v. Lee, W.D.Ark.2004, 336 F.Supp.2d 896. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Officers of the Pennsylvania Department of Corrections were not entitled to qualified immunity on inmate's suit under § 1983 related to inmate's termination from position as cook in prison kitchen for refusing to serve pork, an act that violated inmate's Islamic religious faith; prison had previously accommodated inmate's aversion to pork showing that officers could meet inmate's needs without prohibitive cost, and courts had previously required prisons to accommodate Muslim inmates by preparing alternative meals when pork was served, which was a greater burden that rearranging a kitchen schedule. Williams v. Bitner, M.D.Pa.2003, 285 F.Supp.2d 593. Civil Rights 1376(7)

Corrections officials were not entitled to qualified immunity in prison inmate's § 1983 complaint alleging infringement of his free exercise rights, in violation of First Amendment; inmate's right to freely exercise his religion by attending services, absent legitimate penological concerns, was clearly established. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1376(7)

Officials of the New York State Department of Correctional Services (DOCS) were entitled to rely on the undisputed advice of religious experts, Muslim clerics, in determining that a family day event meal was not religiously mandated for a Muslim inmate, and thus, the officials were entitled to qualified immunity from inmate's § 1983 claim alleging that their decision not to provide the inmate with the meal violated the Free Exercise Clause of the First Amendment; the clerics advised that the meal lost religious significance, as it was moved past the three-day closing of the month of Ramadan. Ford v. McGinnis, S.D.N.Y.2002, 230 F.Supp.2d 338, vacated and remanded 352 F.3d 582. Civil Rights 1376(7)

Islamic Affairs Coordinator for New York State Department of Correctional Services (DOCS) was not entitled to qualified immunity on Shi'ite Muslim prisoner's claims that Coordinator purposely only hired Sunni Muslims as chaplains, and engaged in a hostile campaign against Shi'ites. Cancel v. Mazzuca, S.D.N.Y.2003, 2003 WL 1702011, Unreported. Civil Rights 1376(7)

3728. ---- Pretrial detainees, prison officials, qualified immunity generally

Even if arresting officer erred in concluding that he had probable cause to detain arrestee for psychiatric evaluation, officer was entitled to qualified immunity from liability in subsequent civil rights action where he complied with facially valid Indiana statutes and where arrestee had made multiple threats against others. Sherman v. Four County Counseling Center, C.A.7 (Ind.) 1993, 987 F.2d 397. Civil Rights 1376(6)

County sheriff was entitled to qualified immunity in connection with § 1983 action brought by estate of arrestee who had died accidentally while swallowing soap in cell after displaying unusual behavior; sheriff had no knowledge of arrestee's behavior. Hardin v. Hayes, C.A.11 (Ala.) 1992, 957 F.2d 845. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity in § 1983 action to recover for death of prisoner from asphyxia after being searched and subdued, even though no evidence indicated that each officer's actions caused severe injuries; captain admitted placing prisoner in neck hold and exerted sufficient pressure to subdue him, another officer sat on prisoner, tape recording allegedly indicated prisoner's screams and repeated cries for mercy and contained statements from which trier-of-fact could infer malice, and officers discussed beforehand how to handle situation and functioned as unit once inside cell. Simpson v. Hines, C.A.5 (Tex.) 1990, 903 F.2d 400. Civil Rights 1376(6)

City chief of police was entitled to qualified immunity from liability in civil rights action brought by warrantless arrestee who claimed that he was detained at city jail for public intoxication after it became known that he was not drunk, but, rather, was suffering from insulin shock; no evidence indicated that police chief had any personal involvement with events respecting arrestee or that he had any knowledge of her connection with policy of detaining all those arrested for public intoxication for at least four hours. McConney v. City of Houston, C.A.5 (Tex.) 1989, 863 F.2d 1180. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Sheriff, undersheriff, and county attorney had qualified immunity from pretrial detainee's §§ 1983 action alleging various due process violations, where defendants provided detainee with medical attention when requested, gave him all legal materials he asked for, and provided a regularly-cleaned cell with working windows, detainee had virtually unlimited telephone access and was allowed visits, defendants screened mail to prevent transfer of contraband and to promote public safety, and detainee suffered no physical injury at jail, engaged in heavy correspondence, and ultimately concluded that counsel adequately represented him. Murray v. Edwards County Sheriff's Dept., D.Kan.2006, 453 F.Supp.2d 1280. Civil Rights 1376(6)

Jail administrator who was sued by arrestee, stemming from arrestee's lengthy detention prior to initial court appearance, failed to establish that his actions complied with requirements of Arkansas criminal procedural rule governing pretrial detentions, and thus was not entitled to qualified immunity from arrestee's § 1983 claim; arrestee's 38-day incarceration constituted "unnecessary delay" under applicable rule, and administrator made conscious decision to do nothing upon receipt of arrestee's grievance forms. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1376(7)

Police officer who shot pretrial detainee who objected to being handcuffed, but allegedly posed no other danger to safety of officer, was not entitled to qualified immunity from § 1983 claim that he had violated detainee's substantive due process rights. Jordan v. Cobb County, Georgia, N.D.Ga.2001, 227 F.Supp.2d 1322. Civil Rights 1376(6)

Actions taken by police officers prior to inmate's suicide, which included video and audio surveillance, removal of various articles of inmate's clothing and jewelry, denial of bed linens, placement of inmate in cell with another inmate, and multiple searches of inmate, did not constitute "deliberate indifference" to inmate's safety, even though inmate was not constantly observed after being placed in cell, and thus, officers were entitled to qualified immunity in § 1983 action arising out of inmate's suicide. Gay v. City of Daleville, M.D.Ala.1996, 953 F.Supp. 1315. Civil Rights 1376(6)

Members of prison inmate discipline board were not qualifiedly immune from liability for imposing punishment on pretrial detainees without granting detainees any right to be heard in violation of their due process rights, thus warranting award of $300 to each detainee; although board members testified that jail's door problems caused security concerns, security could have been readily accommodated by other measures during relatively brief time necessary for proper hearing satisfying constitutional due process concepts, and board members' lack of knowledge that their actions violated law did not preclude liability. Dean v. Thomas, S.D.Miss.1996, 933 F.Supp. 600. Civil Rights 1376(7); Civil Rights 1464

Allegations by pretrial detainee's estate after detainee hanged himself with shackles left chained to bars of cell failed to establish that police officer deliberately interfered with detainee's safety resulting in due process violation and, therefore, officer was entitled to qualified immunity from § 1983 action; although officer was in charge of maintaining handcuffs and shackles, officer had no knowledge of detainee's suicide threat and, therefore, could not have acted knowingly or recklessly with respect to detainee's right to be protected from self-inflicted harm. Estate of Olivas By and Through Miranda v. City and County of Denver, D.Colo.1996, 929 F.Supp. 1329. Civil Rights 1376(6)

Personal representative of estate of pretrial detainee who committed suicide in jail failed to demonstrate that officer acted with deliberate indifference to detainee's suicidal tendencies, as would preclude officer from enjoying qualified immunity; although she was told that detainee had exhibited mood swings while on his way to jail, officer's only contact with detainee was escorting him to his cell and observing that he was quiet and did not respond to question she asked him. Estate of Frank v. City of Beaver Dam, E.D.Wis.1996, 921 F.Supp. 590. Civil Rights 1376(7)

Police chief and mayor were entitled to qualified immunity in § 1983 action brought by estate of detainee who

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committed suicide while in police custody based on failure to train officers regarding suicide prevention; chief and mayor did not directly participate in alleged violations of detainee's rights. Marshall v. Borough of Ambridge, W.D.Pa.1992, 798 F.Supp. 1187. Civil Rights 1376(4); Civil Rights 1376(6)

Police officer was entitled to qualified immunity from civil rights claim based on the overnight detention of an arrestee before probable cause hearing, primarily so that police could arrange lineup; although arrestee remained in custody for more than two days, only the first 24 hours were attributable to the officer, since he relinquished custody of arrestee at lineup, and there was no evidence of improper motivation on the part of officer. Gonzalez v. Tilmer, N.D.Ill.1991, 775 F.Supp. 256. Civil Rights 1376(6)

3729. ---- Access to courts, prison officials, qualified immunity generally

Prison librarian was not entitled to qualified immunity from prisoner's §§ 1983 claim, alleging that librarian's refusal to timely allow him to comb bind his petition for writ of certiorari to the United States Supreme Court violated his clearly established right to access courts; librarian took an atypically long time to answer prisoner's request to bind, prisoner's petition missed the filing deadline and was denied as untimely, and a reasonable person in librarian's position should have known, under existing precedent, that refusal of prisoner's request could result in him missing a filing deadline. Phillips v. Hust, D.Or.2004, 338 F.Supp.2d 1148. Civil Rights 1376(7)

Even if provision by county jail of letter access to legal assistance organizations and weekly request access to law library violated detainees' right to access to courts, reasonable jail official would not have known that this level of access violated establish law on right of access to courts, and thus, officials who provided this level of access were entitled to qualified immunity on detainees' § 1983 claim. Casteel v. Pieschek, E.D.Wis.1996, 944 F.Supp. 748. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity with respect to inmate's claim that he was deprived of his right of meaningful access to courts as result of his officials denying him physical access to law library, where record indicated that prison officials assisted in maintaining law books and legal information and they investigated his grievances regarding his lack of legal information in manner that protected his right of access to courts. Gawloski v. Dallman, S.D.Ohio 1992, 803 F.Supp. 103. Civil Rights 1376(7)

3730. ---- Access to mail, prison officials, qualified immunity generally

Warden was entitled to qualified immunity in inmate's § 1983 action alleging that his incoming legal mail was improperly opened, where warden upheld inmate's grievance concerning first alleged incident of improper opening, and there was no evidence that warden was aware of second alleged incident. Gardner v. Howard, C.A.8 (Neb.) 1997, 109 F.3d 427. Civil Rights 1376(7)

County prison officials were not entitled to qualified immunity when they barred detainee from obtaining hardcover books which he had ordered directly from publisher; officer's interest in preventing smuggling of contraband in hardcovered books and use of such books as weapons could have been accommodated by removing hard covers before turning over books to detainee. Jackson v. Elrod, C.A.7 (Ill.) 1989, 881 F.2d 441. Prisons 10

State prison officials were entitled to qualified immunity in inmate's action against officials asserting that their enforcement of state regulation barring inmates' receipt of free or gift publications deprived him of due process, absent showing that regulation violated due process. Zimmerman v. Simmons, D.Kan.2003, 260 F.Supp.2d 1077, reversed 392 F.3d 420, on remand 401 F.Supp.2d 1181. Civil Rights 1376(7)

3731. ---- Assaults, prison officials, qualified immunity generally

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Prison warden's argument that he could not be liable for civil rights violations stemming from rape of inmate who was transferred to another facility because warden had no personal knowledge of inmate's particular vulnerabilities to sexual assault was unavailing; correct inquiry was whether warden had knowledge about substantial risk of serious harm to particular class of persons, not whether he knew who the particular victim turned out to be. Taylor v. Michigan Dept. of Corrections, C.A.6 (Mich.) 1995, 69 F.3d 76. Civil Rights 1093

Prison officials did not act with deliberate indifference to safety of inmate who was assaulted by his cellmate in allegedly failing to properly train and supervise activity of prison personnel, entitling officials to qualified immunity in civil rights action arising from assault, where prison had second lowest assault rate in state prison system. Knight v. Gill, C.A.6 (Ky.) 1993, 999 F.2d 1020. Civil Rights 1376(7); Prisons 12; Prisons 17(4)

Unarmed corrections officers were entitled to qualified immunity with respect to their failure to physically intervene to break up assault with a pipe by one inmate on another where they did order the assaulting inmate to stop the assault. Arnold v. Jones, C.A.8 (Iowa) 1989, 891 F.2d 1370, rehearing denied. Civil Rights 1376(7)

Corrections officers were not entitled to qualified immunity as to an inmate's §§ 1983 claim of an Eighth Amendment violation in connection with a search in which one officer allegedly held the inmate and laughed while a second officer grabbed the inmate's buttocks and fondled his penis; at the time of the search, it was clearly established that an otherwise legal search that was conducted in a harassing manner intended to humiliate and inflict psychological pain was unconstitutional. Turner v. Huibregtse, W.D.Wis.2006, 421 F.Supp.2d 1149. Civil Rights 1376(7)

Qualified immunity did not protect corrections officer, in lawsuit under §§ 1983, from prisoner's claim that officer sexually assaulted him in violation of his Eighth Amendment right to be free from cruel and unusual punishment, since sexual assault of prisoner was not within scope of corrections officer's official duties. Rodriguez v. McClenning, S.D.N.Y.2005, 399 F.Supp.2d 228. Civil Rights 1376(7)

Prisoner who brought §§ 1983 action against prison officials, alleging failure to prevent assault, properly stated deprivation of Eighth Amendment rights that were clearly established at time of purported violations, and thus officials were not entitled to qualified immunity; complaint averred that officials had actual knowledge of threat to prisoner prior to assault, but that they intentionally or with deliberate indifference did not protect prisoner, thus proximately causing injury. Gibson v. Brooks, D.Conn.2004, 335 F.Supp.2d 325. Civil Rights 1376(7)

Director and chief of security for juvenile detention center were entitled to qualified immunity from juvenile inmate's Eighth Amendment claims arising out of assault by fellow inmates; officials acted within their discretionary authority and Eighth Amendment did not clearly proscribe conditions of confinement allegedly endured by inmate. D.R. by Robinson v. Phyfer, M.D.Ala.1995, 906 F.Supp. 637. Civil Rights 1376(7)

State inmate failed to establish, as required under his qualified immunity burden, that affirmative link existed between correctional facility's warden and excessive force allegedly used against inmate when he was removed from his cell by special operations response team, and therefore warden was protected from § 1983 liability by qualified immunity; inmate did not show that warden acted with culpable mind, deliberate indifference, or knowledge of any substantial risk of bodily harm to inmate when she activated command center in responding to weapon threat and ordered lockdown, did not show that warden ordered response team to act or knew of or acquiesced in any unconstitutional conduct by team, and did not show that warden personally participated with, exercised control or direction over, or supervised response team. Serna v. Colorado Department of Corrections, C.A.10 (Colo.) 2004, 108 Fed.Appx. 570, 2004 WL 1842991, Unreported. Civil Rights 1376(7)

Prison officials were not deliberately indifferent for failing to prevent attack on white inmate by African-American inmates, and thus were entitled to qualified immunity from inmate's § 1983 claims based on their failure to prevent

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attack, even if other white inmates had also been assaulted during same night, absent evidence that officials were aware of attacks or that racially-motivated attacks had previously occurred in barracks. Cohrs v. Norris, C.A.8 (Ark.) 2000, 210 F.3d 378, Unreported. Civil Rights 1376(7)

3732. ---- Disciplinary proceedings, prison officials, qualified immunity generally

Members of federal prison's Institution Discipline Committee, who hear cases in which inmates are charged with rules infractions, are entitled to qualified, but not absolute, immunity from personal damages liability for actions violative of Federal Constitution. Cleavinger v. Saxner, U.S.Ind.1985, 106 S.Ct. 496, 474 U.S. 193, 88 L.Ed.2d 507. Civil Rights 1376(7); United States 50.5(5)

Court of Appeals would affirm district court's order denying Louisiana prison officials' motion to dismiss inmates' § 1983 claim on grounds of qualified immunity, where complaint did not allege whether inmates' confinement in extended lockdown resulted from their initial classification, which would not be protected under Fourteenth Amendment procedural due process, or from violations of prison disciplinary rules, which would trigger *Sandin* test; court could not determine whether inmates had asserted facts that would give rise to denial of liberty interest. Wilkerson v. Stalder, C.A.5 (La.) 2003, 329 F.3d 431, certiorari denied 124 S.Ct. 432, 540 U.S. 966, 157 L.Ed.2d 310. Constitutional Law 272(2); Federal Courts 927

State prison officials had qualified immunity from inmate's § 1983 claims arising from officials' discretionary determinations to house inmate in more restrictive "awaiting action" unit prior to disciplinary hearing, to permit inmate to use affidavits of inmates housed in other correctional institutions rather than live testimony at hearing, and to use evidence from unidentified informants at hearing, given that state correctional regulations generally permitted rather than forbade actions complained of. Abrazinski v. DuBois, D.Mass.1996, 940 F.Supp. 361. Civil Rights 1376(7)

Inmate's due process right to call witnesses at prison disciplinary hearing did not include right to gallery listing to identify potential witnesses, and, thus, qualified immunity doctrine applied to § 1983 civil rights claims against hearing officer based on denial of inmate's request for listing. Zamakshari v. Dvoskin, S.D.N.Y.1995, 899 F.Supp. 1097. Constitutional Law 272(2); Prisons 13(9)

Normally, prison officials serving as hearing officers are not absolutely immune but are protected by qualified immunity only, and fact that hearing officer was not an employee of the prison at which hearing took place but was employed by the Department of Correctional Services (DOCS) central office did not mean that he was sufficiently independent of prison authorities to merit absolute immunity. Payne v. Axelrod, N.D.N.Y.1995, 871 F.Supp. 1551 . Prisons 10

Prison discipline hearing officer was not entitled to qualified immunity in § 1983 civil rights claims arising from violation of inmate's due process rights when nothing more than conclusory reasons were given for refusing to allow inmate to call witnesses; no assessment was conducted as to reliability of confidential informant, and officer relied solely on third-party assessment as to informant's credibility. Gaston v. Coughlin, W.D.N.Y.1994, 861 F.Supp. 199, affirmed in part, vacated in part 249 F.3d 156. Civil Rights 1376(7)

Qualified immunity applied to shield prison officials from § 1983 liability on state inmate's claim that he was deprived of opportunity to present witnesses in his defense at prison disciplinary proceeding in violation of his federal constitutional rights, inasmuch as officials' alleged conduct in disregarding inmate's letters did not violate clearly established rights, and officials could not be charged with knowledge that such inaction would have violated clearly established right. Johnson v. Coombe, S.D.N.Y.2003, 2003 WL 1883352, Unreported. Civil Rights 1376(7)

3733. ---- Medical care, prison officials, qualified immunity generally

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42 U.S.C.A. § 1983

State-contracted physician who treated prison inmate did not act with deliberate indifference to inmate's medical needs, as would violate Eighth Amendment; physician was responsive and timely when addressing inmate's medical concerns. Jones v. Consuegra's Estate, M.D.Fla.2004, 338 F.Supp.2d 1282. Prisons 17(2); Sentencing And Punishment 1546

Failure of corrections officer, who first discovered inmate hanging in cell, to attempt to resuscitate inmate did not violate any clearly established constitutional right of inmate, for qualified immunity purposes in § 1983 claim brought by survivors of inmate alleging deliberate medical indifference in violation of the Eighth Amendment, given that officer believed that inmate was dead and reasonably expected that emergency help was on its way. DiPace v. Goord, S.D.N.Y.2004, 308 F.Supp.2d 274. Civil Rights 1376(7)

Sheriff in his individual capacity was entitled to qualified immunity to claim of deliberate indifference brought by guardian of head-injured arrestee, in § 1983 lawsuit under Fourteenth Amendment, where guardian only made conclusory allegation that sheriff failed to adequately supervise his subordinates, and guardian pointed only to single incident suggesting need for further training; there were no allegations of previous incidents during which jail officials failed to provide necessary medical care to detainees or which should have alerted jail officials of need to train jailers as to appropriate manner of responding to head-injured or unconscious inmates. Layman v. Alexander, W.D.N.C.2003, 294 F.Supp.2d 784. Civil Rights 1376(7)

Representative of inmate who died in custody of Alabama Department of Corrections failed to establish that warden at correctional facility had any particular knowledge that medical treatment afforded at facility to inmate was inadequate, and thus, warden had qualified immunity from representative's civil rights action, based on warden's alleged deliberate indifference to inmate's serious medical need in violation of inmate's Eighth Amendment rights. Pinkney v. Davis, M.D.Ala.1997, 952 F.Supp. 1561. Civil Rights 1376(7)

To prove deliberate indifference to a pretrial detainee's medical needs in violation of due process provisions of Fourteenth Amendment, pretrial detainee must show actual knowledge of specific risk of harm or risks so substantial that knowledge could be inferred; failure to take reasonable measures to prevent harm; and that failure to take such measures in light of knowledge or risk of harm justified liability for consequences of the failure. Houck v. City of Prairie Village, D.Kan.1996, 942 F.Supp. 493, reconsideration denied 950 F.Supp. 312, affirmed 166 F.3d 347. Constitutional Law 262

Prison medical staff was immune from liability for deliberate indifference to medical needs claim based on temporary failure to provide wheelchair to inmate. Brown v. Thompson, S.D.Ga.1994, 868 F.Supp. 326. Civil Rights 1376(7)

Individual defendants in § 1983 action, health administration of state Department of Criminal Justice and prison staff physician, were employed by state as individual officers with health care matters committed to their control and supervision, and could assert qualified immunity defense in action brought against them for inadequate medical care; thus inmate had to assert facts that show that no reasonable officer could have believed care received was permissible under laws as it existed at time of incident. Sappington v. Ulrich, E.D.Tex.1994, 868 F.Supp. 194. Civil Rights 1376(7)

Officers of sheriff's department did not act with "deliberate indifference" to pretrial detainee's medical needs, so as to defeat qualified immunity defense in § 1983 suit, even if they failed to treat him with ice and aspirin as instructed by doctor or delayed over two months in having injuries viewed again, as reasonable person would not have viewed detainee's injuries as being life threatening or serious; detainee was transported to hospital prior to booking, hospital doctor did not treat injuries as serious or life threatening, and inmate did not complain of injuries to booking officer upon arrival. Tucker v. Randall, N.D.Ill.1993, 840 F.Supp. 1237. Civil Rights 1376(6)

Prison officials were not entitled to qualified immunity from liability in state prisoner's §§ 1983 action for

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deliberate indifference to his serious medical needs, in connection with prisoner's alleged failure to receive medical treatment for his hepatitis C, where prisoner's allegations as pled demonstrated that prisoner's knew or reasonably should have known that they were violating plaintiff's clearly established Eighth Amendment rights. McKenna v. Wright, S.D.N.Y.2004, 2004 WL 102752, Unreported, appeal dismissed 386 F.3d 432. Civil Rights 1376(7)

Qualified immunity would not shield prison defendants from § 1983 liability for deliberate indifference to prisoner's serious medical condition. Williams v. Fisher, S.D.N.Y.2003, 2003 WL 22170610, Unreported. Civil Rights 1376(7)

State prison administrators could not be held liable under § 1983 absent allegation that they were personally involved in any allegedly retaliatory actions taken against prisoner. Soto v. Iacavino, S.D.N.Y.2003, 2003 WL 21281762, Unreported. Civil Rights 1358

3734. ---- Searches, prison officials, qualified immunity generally

Prison officials were not entitled to qualified immunity from civil rights liability for inmate's claim that his constitutional rights were violated when body cavity searches were allegedly conducted in full view of clerical workers, other inmates, and other bystanders, even if such viewings were inadvertent; there was evidence that screening was not always in place. Canell v. Beyers, D.Or.1993, 840 F.Supp. 1378. Civil Rights 1376(7)

3735. ---- Solitary confinement or segregation of prisoners, prison officials, qualified immunity generally

For purposes of determining whether state prison officials were entitled to qualified immunity in former prisoner's § 1983 action, which alleged violation of his procedural due process rights during a prison disciplinary proceeding at which he was sentenced to confinement in a special housing unit, proper focus of inquiry into whether prisoner had a clearly established right to due process protection was length of disciplinary sentence imposed at time of disciplinary proceeding, rather than time prisoner actually served in the special housing unit. Hanrahan v. Doling, C.A.2 (N.Y.) 2003, 331 F.3d 93. Civil Rights 1376(7)

Director of satellite mental unit, of Department of Corrections facility, was not liable under § 1983 to prisoner who had been left in isolated cell while suffering from a fracture of fibula, on grounds that director did not have proper supervisory procedure in place; there was requirement that corrections officers make rounds every 15 minutes, and that medical complaints be reported to medical staff immediately, and corrections officer alleged to have not reported prisoner's complaint had reported complaint of another patient at approximately the same time. Brown v. Sheridan, N.D.N.Y.1995, 894 F.Supp. 66. Civil Rights 1358

Correctional facility officer could be held personally liable for failing to afford inmate opportunity to make statement prior to being confined in 24-hour keeplock imposed for administrative reasons, even though defect arose from lack of provision for such right in jail's rules, where officer had not asserted official immunity. McCann v. Phillips, S.D.N.Y.1994, 864 F.Supp. 330. Civil Rights 1358

Prison officials were entitled to qualified immunity from money damages in § 1983 action brought by inmate alleging constitutional violations in his placement in investigatory segregation for 41 days, during which time personal property restrictions were imposed, and failure to provide inmate with full back pay or full credit for time served against any future penalties; general policy of restricting personal property was made after review of security concerns and conference with assistant Attorney General of state, and inmate received appropriate notices for due process requirements and informal, nonadversarial hearing during term spent in segregation. Losee v. Nix, S.D.Iowa 1994, 842 F.Supp. 1178. Civil Rights 1376(7)

3736. ---- Smoking in prison, prison officials, qualified immunity generally

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42 U.S.C.A. § 1983

Secretary of Department of Corrections and wardens were not entitled to qualified immunity against state prisoner's § 1983 claim that he was forced to live and work in environments filled with tobacco smoke and that prison smoking policies amounted to unreasonable risk and deliberate indifference to his health, in that it was not beyond doubt that prisoner could prove no set of facts showing that this situation was not within contemporary standards of decency. Rochon v. City of Angola, La., C.A.5 (La.) 1997, 122 F.3d 319, certiorari denied 118 S.Ct. 1518, 523 U.S. 1075, 140 L.Ed.2d 671. Civil Rights 1376(7)

Prison officials' alleged consistent unwillingness to enforce smoking ban in inmate's room and repeated unresponsiveness to inmate's requests was "deliberate indifference" to inmate's medical problems caused by exposure to tobacco smoke, needed to state § 1983 civil rights claim despite qualified immunity defense. Weaver v. Clarke, C.A.8 (Neb.) 1995, 45 F.3d 1253. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from prisoner's claim that they violated his Eighth Amendment rights by exposing him to environmental tobacco smoke that posed unreasonable risk of future harm; right of prisoner not to be subjected to such risk was clearly established, and there was evidence that prisoner was left in small enclosed cell for 19 hours a day with habitual cigar smoker. Johnson v. Pearson, E.D.Va.2004, 316 F.Supp.2d 307. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from prisoner's claim that they violated his Eighth Amendment rights by exposing him to environmental tobacco smoke that exacerbated his respiratory problems, and caused him mild headaches, difficulty breathing, eye irritation, runny nose, dizziness, and occasional stomach cramping; right of prisoner not to be subjected to such risk was clearly established, and there was evidence that prisoner was left in small enclosed cell for 19 hours a day with habitual cigar smoker. Johnson v. Pearson, E.D.Va.2004, 316 F.Supp.2d 307. Civil Rights 1376(7)

State prison officials were entitled to qualified immunity in inmate's civil rights action stemming from complaint concerning smoking in prison. Mott v. State of Ind., N.D.Ind.1991, 793 F.Supp. 178, affirmed 966 F.2d 1456. Civil Rights 1376(7)

3737. ---- Training and supervision, prison officials, qualified immunity generally

Village police chief's failure to train police officers as to need to refer pretrial detainee for psychiatric treatment and failure to refer a pretrial detainee for such timely and adequate medical care was not deliberate indifference to detainee's medical needs so as to render police chief liable in § 1983 action for violation of due process; police chief did not have medical or psychiatric training, he did not have direct contact with detainee, there was no reason to find that he had actual knowledge or substantial reason to know that failure to immediately hospitalize detainee would cause detainee harm, and risk of not hospitalizing persons exhibiting detainee's behavior was not obvious. Houck v. City of Prairie Village, D.Kan.1996, 942 F.Supp. 493, reconsideration denied 950 F.Supp. 312, affirmed 166 F.3d 347. Civil Rights 1358

Commissioner and Deputy Commissioner of Massachusetts Department of Corrections were entitled to qualified immunity from liability for failure to train and supervise prison officials in civil rights action brought by inmate for being denied due process at disciplinary hearing. McGuinness v. DuBois, D.Mass.1995, 891 F.Supp. 25, affirmed 86 F.3d 1146. Civil Rights 1376(7)

Former state prison officials were entitled to qualified immunity from civil rights action under § 1983, alleging that inmate's Eighth Amendment rights were violated on ground that officials exhibited deliberate indifference to inmate's constitutional rights by authorizing unconstitutional policies and practices related to use of lethal force, where Court of Appeals had previously affirmed that identical use of force policy was constitutionally sound. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107950, Unreported. Civil Rights 1376(7)

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3738. Private defendants, qualified immunity generally

Prison guards who are employees of a private prison management firm are not entitled to qualified immunity from suit by prisoners charging a violation of § 1983, considering that history does not reveal a firmly rooted tradition of immunity applicable to privately employed prison guards, and that immunity doctrine's purposes do not warrant immunity for private prison guards. Richardson v. McKnight, U.S.Tenn.1997, 117 S.Ct. 2100, 521 U.S. 399, 138 L.Ed.2d 540. Civil Rights 1373; Civil Rights 1376(7)

Qualified immunity was not available to private litigant and his attorney in § 1983 action against them for securing relief under Mississippi replevin statute, later determined to be unconstitutional. Wyatt v. Cole, U.S.Miss.1992, 112 S.Ct. 1827, 504 U.S. 158, 118 L.Ed.2d 504, on remand 994 F.2d 1113. Civil Rights 1374; Civil Rights 1375

For purposes of §§ 1983 claim, fact that private firm is non-profit entity is insufficient to shield it from market pressures, such that qualified immunity is necessary to protect against unwarranted timidity by firm and its employees. Rosewood Services, Inc. v. Sunflower Diversified Services, Inc., C.A.10 (Kan.) 2005, 413 F.3d 1163. Civil Rights 1373

Private individual who performs government function pursuant to state order or request is entitled to qualified immunity if state official would have been entitled to such immunity had he performed function himself. Eagon Through Eagon v. City of Elk City, Okl., C.A.10 (Okla.) 1996, 72 F.3d 1480. Civil Rights 1373

Qualified immunity is not available in § 1983 actions to private persons who act under color of law. Jordan v. Fox, Rothschild, O'Brien & Frankel, C.A.3 (Pa.) 1994, 20 F.3d 1250, on remand 1995 WL 141465. Civil Rights 1373

Private psychiatric facility that had been involved in emergency involuntary detention and treatment of arrestee pursuant to Indiana statutes was entitled to assert qualified immunity defense in civil rights action in which arrestee claimed that facility violated his right to due process where facility acted pursuant to court order, where there was no allegation of bad faith, and where there was no claim that administration of antipsychotic drugs had been medically inappropriate. Sherman v. Four County Counseling Center, C.A.7 (Ind.) 1993, 987 F.2d 397. Civil Rights 1373

Private defendants who allegedly conspired with public official to deprive another of that person's constitutional rights are not entitled to qualified immunity under § 1983 of civil rights laws. Burrell v. Board of Trustees of Ga. Military College, C.A.11 (Ga.) 1992, 970 F.2d 785, rehearing denied 978 F.2d 718, certiorari denied 113 S.Ct. 1814, 507 U.S. 1018, 123 L.Ed.2d 445. Conspiracy 13

Court of Appeals lacked jurisdiction over private defendants' interlocutory appeal in federal civil rights action in which they claimed defense of qualified immunity; public policy reasons for qualified immunity did not extend to private defendants who were alleged to have voluntarily engaged in illegal activities in the advancement of their own self-interest. Felix de Santana v. Velez, C.A.1 (Puerto Rico) 1992, 956 F.2d 16, certiorari denied 113 S.Ct. 59, 506 U.S. 817, 121 L.Ed.2d 28. Federal Courts 579

Defense of qualified immunity was not available to hospital paramedics who detained allegedly mentally ill person pursuant to Wyoming's Emergency Detention statute, as policies underlying qualified immunity did not apply with full force; hospital did not act pursuant to government contract, it was not better to have hospital personnel make mistaken decisions based on good-faith interpretation of law than not to make any decisions, and detainee may have been deprived of her constitutional rights even if paramedics did not act for sole purpose of depriving her thereof. Moore v. Wyoming Medical Center, D.Wyo.1993, 825 F.Supp. 1531. Civil Rights 1373

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Subcontractor that had been awarded contract with New Mexico Environment Department (NMED) to help remediate hazardous waste environmental conditions acted pursuant to a lawful and constitutional warrant when it searched property for hazardous waste materials and, therefore, was entitled to qualified immunity in property owner's §§ 1983 action. Eden v. Voss, C.A.10 (N.M.) 2004, 105 Fed.Appx. 234, 2004 WL 1535829, Unreported. Civil Rights 1373

3739. Probation officers, qualified immunity generally

Juvenile probation officer was acting outside scope of her authority in approving detention of juvenile without approval of juvenile judge, and thus, officer was not entitled to qualified immunity in § 1983 action by juvenile who alleged that such detention violated his federally protected rights under Fourth Amendment; to extent that county juvenile detention center guide permitted officer to make referrals to detention center, manual exceeded authority granted by juvenile probation officers by Alabama law. A.M. By and Through Law v. Grant, M.D.Ala.1995, 889 F.Supp. 1495, affirmed 68 F.3d 486. Civil Rights 1376(7)

Probation officers enjoyed only qualified immunity from civil rights liability predicated on their gathering of information in order to prepare presentence report. Bieros v. Nicola, E.D.Pa.1993, 839 F.Supp. 332. Civil Rights 1376(7)

3740. Prosecutors, qualified immunity generally

Mere fact that successful candidate for office of district attorney had not yet assumed duties of his office, and thus did not have administration with which assistant district attorney, based on his open support of opposing candidate, could interfere did not affect qualified immunity to which district attorney was entitled for dismissing assistant district attorney based on his political affiliation; one who knows he is about to become district attorney must begin to assemble his staff before he actually assumes position. Aucoin v. Haney, C.A.5 (La.) 2002, 306 F.3d 268, on subsequent appeal 93 Fed.Appx. 638, 2004 WL 628886. Civil Rights 1376(10)

Government officials were qualifiedly immune from liability in § 1983 action for bringing criminal prosecution for criminal harassment, supported by probable cause, allegedly in attempt to deter or silence plaintiff's right to free speech, where prosecution did not actually deter or silence plaintiff. Mozzochi v. Borden, C.A.2 (Conn.) 1992, 959 F.2d 1174. Civil Rights 1376(1)

Even if search warrant affidavit contained misrepresentation about date on which professor delivered material to special prosecutor who was investigating allegations of embezzlement from university, substance of affidavit nevertheless established probable cause to search and, thus, special prosecutor, detective, and auditor were entitled to qualified immunity from civil rights liability. Rozek v. Topolnicki, C.A.10 (Colo.) 1989, 865 F.2d 1154. Civil Rights 1376(1); Civil Rights 1376(9)

District attorneys' alleged participation with police in conducting search exceeded attorney's necessary role in marshaling facts of case and, therefore, did not justify absolute immunity under Georgia law from liability for claims brought under statute that prohibits deprivation of federal or statutory or constitutional rights under color of state law, but attorneys were entitled to qualified immunity for involvement in raid on jail cell. Mullinax v. McElhenney, C.A.11 (Ga.) 1987, 817 F.2d 711. Civil Rights 1376(9)

State prosecutor enjoys absolute immunity from §§ 1983 actions for preparing and filing an information and for moving for an arrest warrant, but only qualified immunity for acting as a complaining witness in averring a complaint for arrest and its supporting affidavit. Mink v. Salazar, D.Colo.2004, 344 F.Supp.2d 1231. Civil Rights 1375; Civil Rights 1376(9)

Qualified immunity shields prosecutors and other government officials from liability for money damages when

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performing discretionary functions if their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Groom v. Fickes, S.D.Tex.1997, 966 F.Supp. 1466, affirmed 129 F.3d 606. Civil Rights 1376(2); Civil Rights 1376(9)

Because Pennsylvania law allowed hypnotized testimony to be used in certain circumstances, Pennsylvania county district attorney did not act in clear violation of state law in securing hypnotically enhanced testimony from alleged assault victim and therefore, he was entitled to qualified immunity for purposes of § 1983 action. Boykin v. Bloomsburg University of Pennsylvania, M.D.Pa.1995, 893 F.Supp. 400, affirmed 91 F.3d 122, certiorari denied 117 S.Ct. 739, 519 U.S. 1078, 136 L.Ed.2d 678. Civil Rights 1376(9)

Prosecutor was entitled to qualified immunity from § 1983 liability for investigating and preparing state's case against landowner for chasing meter reader off property. Lutz v. Lavelle, M.D.Pa.1991, 809 F.Supp. 323. Civil Rights 1376(9)

When acting in investigative or administrative capacity, as in dissemination of information to press, prosecutor is protected only by qualified "good faith" immunity from liability under § 1983. Schiavone Const. Co. v. Merola, S.D.N.Y.1988, 678 F.Supp. 64, affirmed 848 F.2d 43, certiorari denied 109 S.Ct. 144, 488 U.S. 855, 102 L.Ed.2d 116. Civil Rights 1376(9)

If state officials used private citizen, who was bringing civil actions against physician, to obtain physician's medicaid records in illegal manner, doctrine of qualified immunity would not protect officials from section 1983 liability. Hooper v. Sachs, D.C.Md.1985, 618 F.Supp. 963, affirmed 823 F.2d 547, certiorari denied 108 S.Ct. 347, 484 U.S. 954, 98 L.Ed.2d 373. Civil Rights 1376(3)

Special prosecutor was entitled to absolute immunity from liability under § 1983 for alleged violation of police officer's Fourth Amendment right against unreasonable seizure in connection with court order, based on information filed by special prosecutor, prohibiting officer from leaving state, even if special prosecutor failed to state in motion and affidavit in support of information that suspect, as police officer effecting arrest, and legal right to arrest and use reasonable force. Stinnett v. Fallon County, Montana, C.A.9 (Mont.) 2003, 72 Fed.Appx. 642, 2003 WL 21801546, Unreported. District And Prosecuting Attorneys 10

3741. Utilities officials, qualified immunity generally

Public policy considerations did not warrant extending qualified immunity to community developmental disability organization (CDDO) sued by developmental disability service provider under §§ 1983, alleging conflicts of interest and retaliation in connection with distribution of state funds; although replacement procedures under Kansas law created significant barriers to entry into CDDO industry, extension of immunity was not necessary to avoid unwarranted timidity in CDDO's performance of its duties. Rosewood Services, Inc. v. Sunflower Diversified Services, Inc., C.A.10 (Kan.) 2005, 413 F.3d 1163. Civil Rights 1373

Town superintendent of highways was not entitled to qualified immunity in civil rights action brought by homeowners for violation of substantive due process in denial of street excavation permit for connection to public water system, as a means of extorting a deed of land from them for widening street; superintendent was not exercising discretionary function but simply refusing to perform ministerial act and could not have believed, as a matter of equal protection or town law, that he had discretion to deny permit as a means of extorting land from homeowners. Walz v. Town of Smithtown, C.A.2 (N.Y.) 1995, 46 F.3d 162, certiorari denied 115 S.Ct. 2557, 515 U.S. 1131, 132 L.Ed.2d 810. Civil Rights 1376(4)

Sewer district officials were entitled to qualified immunity for § 1983 claim against them in their individual capacities by employee alleging violation of right to privacy due to officials' covert surveillance at work place which resulted in employee's arrest on drug charges and discharge, where officials' conduct did not infringe on any

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established privacy rights. Henry v. Metropolitan Sewer Dist., C.A.6 (Ky.) 1990, 922 F.2d 332, rehearing overruled 41 F.Supp.2d 1123. Civil Rights 1376(10)

Town officers did not have qualified immunity in suit by landowners for failure to extend town sewer lines to annexed parcels, notwithstanding cost considerations, where prior state annexation court orders required sewer lines to be connected to the parcels within five years and that time period had passed; extension of sewer lines was not a discretionary act. Front Royal and Warren County Indus. Park Corp. v. Town of Front Royal, Va., W.D.Va.1989, 708 F.Supp. 1477. Civil Rights 1376(4)

3742. Zoning officials, qualified immunity generally

On claim that operator of adult entertainment business was maliciously prosecuted for exercise of constitutional rights, there was no substantial evidence that zoning administrator acted with malice and intentionally attempted to deprive operator of his rights, though he was acquitted on two counts of operating an adult entertainment establishment within one thousand feet of a residential zone, because of incorrect measurement of distance to nearest residence, and covictiuons for operating an adult entertainment establishment in an improper zone were overturned by federal habeas court for failure of administrator to notify the city attorney of her department's mistaken approval of location, leaving standing only convictions for building code violations; mistake did not preclude prosecution under state law, administrator was acting not on her own motion but on a citizen's complaint, and it was the prosecutor's independent decision to prosecute, despite then knowing of the mistake. Poppell v. City of San Diego, C.A.9 (Cal.) 1998, 149 F.3d 951. Malicious Prosecution 33

While establishing goals for statewide master zoning plan is clearly legislative act entitling officials to absolute immunity, suit against Oregon Land Conservation and Development Commission (LCDC) for singling out property and demanding that local legislature amend its plans so as to change property's value was executive action subject only to qualified immunity. Zamsky v. Hansell, C.A.9 (Or.) 1991, 933 F.2d 677. Zoning And Planning 353.1

Processing site plan application was not mere exercise of a ministerial duty, but, rather, involved exercise of discretion, and thus, affirmative defense of qualified immunity would not be stricken from town, town planning board, and board members' answer in action brought by developer of proposed subdivision, alleging that board's alleged refusal to receive and begin processing its application violated its constitutional rights. Ridgeview Partners, LLC v. Entwistle, S.D.N.Y.2005, 354 F.Supp.2d 395. Federal Civil Procedure 1108.1

Members of city's board of aldermen were not entitled to qualified immunity with regard to developer's due process and Fair Housing Act (FHA) claims which stemmed from board's decisions to revoke building permit previously issued to developer, to enact moratorium on issuance of building permits for multi-unit residential housing and to refuse to accept further permit applications, as such claims involved clearly established statutory and constitutional rights. Summerchase Ltd. Partnership I v. City of Gonzales, M.D.La.1997, 970 F.Supp. 522. Civil Rights 1376(4)

3742A. Practice and procedure, qualified immunity generally

Ruling on qualified immunity should be made early in proceedings in § 1983 case so that cost and expenses of trial are avoided where defense is dispositive. Leisure v. City of Cincinnati, S.D.Ohio 2003, 267 F.Supp.2d 848. Civil Rights 1376(1)

3743. Particular claims, qualified immunity generally

Allegations in civil rights complaint, that prior decisions of Los Angeles County Board of Supervisors to indemnify county sheriffs from punitive damage awards were made in bad faith and proximately caused a violation of

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plaintiff's constitutional rights, were sufficient to overcome Board's claims of qualified immunity and to state claim for relief under § 1983. Navarro v. Block, C.A.9 (Cal.) 2001, 250 F.3d 729, rehearing and rehearing en banc denied.

City officials who suspended massage therapist's practitioner and massage establishment licenses due to alleged misconduct involving patient were not entitled to qualified immunity as to therapist's equal protection claim; there was evidence that officials first specifically informed therapist that his license was void after he requested hearing, marked his license void, and ensured that therapist would not practice massage until he filed new application, but that therapist was treated differently than others similarly situated. Jones v. City of Modesto, E.D.Cal.2005, 408 F.Supp.2d 935. Civil Rights 1376(4)

Qualified immunity did not apply to preclude §§ 1983 liability of Puerto Rico Health Insurance Administration and its executives for alleged termination of services contract of independent contractor in retaliation for exercise of First Amendments rights by one of contractor's major shareholders. Behavioral Healthcare Partners, Inc. v. Gonzalez-Rivera, D.Puerto Rico 2005, 392 F.Supp.2d 191. Civil Rights 1376(3)

Genuine issue of material fact regarding state prison officials' motive in transferring inmate to Administrative Segregation after Behavior Modification Unit (BMU) program was discontinued precluded summary judgment for officials on issue of qualified immunity, in inmate's § 1983 action alleging that officials retaliated against inmate in violation of the First Amendment, due to inmate's filing of complaint. Lodato v. Ortiz, D.N.J.2004, 314 F.Supp.2d 379. Federal Civil Procedure 2491.5

Government officials who calculated food stamp participant's benefits were entitled to qualified immunity from § 1983 claim that officials improperly failed to consider participant to be homeless under statute defining homeless individual as person who had primary nighttime residence that was not designed for or used as regular sleeping accommodation; participant rented room in building which was designed for regular sleeping conditions. Sanders v. Jefferson County Dept. of Human Resources, N.D.Ala.1999, 117 F.Supp.2d 1199, affirmed in part, reversed in part 235 F.3d 1345. Civil Rights 1376(1)

XXXIII. CLEARLY ESTABLISHED RIGHT

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3771. Clearly established right generally

If a court determines, in ruling on a qualified immunity issue in a civil rights action against a government official, that a favorable view of plaintiff's alleged facts show that official's conduct violated a constitutional right, court's next step is to ask whether such right was clearly established; this inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition. Saucier v. Katz, U.S.2001, 121 S.Ct. 2151, 533

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U.S. 194, 150 L.Ed.2d 272, on remand 262 F.3d 897. Civil Rights 1376(2)

A court evaluating a claim of qualified immunity must first determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all, and if so, proceed to determine whether that right was clearly established at the time of the alleged violation. Wilson v. Layne, U.S.Md.1999, 119 S.Ct. 1692, 526 U.S. 603, 143 L.Ed.2d 818. Civil Rights 1376(1); Civil Rights 1376(2)

In order to overcome the defense of qualified immunity in a § 1983 action for civil damages from a government official performing discretionary functions, the plaintiff is required to show that the official violated clearly established statutory or constitutional rights of which a reasonable person would have known. Conn v. Gabbert, U.S.Cal.1999, 119 S.Ct. 1292, 526 U.S. 286, 143 L.Ed.2d 399. Civil Rights 1376(2)

Unlawfulness must be apparent in light of pre-existing law for official to be denied qualified immunity; however, that is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful. McKinley v. City of Mansfield, C.A.6 (Ohio) 2005, 404 F.3d 418, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 1026, 163 L.Ed.2d 854. Civil Rights 1376(2)

Plaintiff contesting a defendant's qualified immunity on the ground that defendant's conduct violated a clearly established constitutional or statutory right bears the burden of establishing that a given right is clearly established, and to do so the plaintiff must demonstrate either that a court has upheld the purported right in a case factually similar to the one under review, or that the alleged misconduct constituted an obvious violation of a constitutional right; however, liability is not predicated upon the existence of a prior case that is directly on point. Lunini v. Grayeb, C.A.7 (Ill.) 2005, 395 F.3d 761, amended on denial of rehearing. Civil Rights 1376(2); Civil Rights 1407

In determining whether a constitutional right has been clearly established for qualified immunity purposes, it is not necessary for the particular violation in question to have been previously held unlawful; instead, a clearly established constitutional right exists in the absence of precedent, where the contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right. Board v. Farnham, C.A.7 (Ill.) 2005, 394 F.3d 469. Civil Rights 1376(2)

Public officials are entitled to qualified immunity from liability under §§ 1983 if their actions violate clearly established statutory or constitutional rights then known to reasonable officer; under two-step analysis, court must first assess whether state actor's conduct violated a constitutional right when viewed in light most favorable to party asserting injury and, if so, must determine whether right violated was clearly established. Baird v. Board of Educ. for Warren Community Unit School Dist. No. 205, C.A.7 (Ill.) 2004, 389 F.3d 685, rehearing and suggestion for rehearing en banc denied, certiorari denied 126 S.Ct. 332, 163 L.Ed.2d 45. Civil Rights 1376(1); Civil Rights 1376(2)

Qualified immunity is not appropriate merely because no cases directly address the use of a new weapon or a novel method is used to inflict injury; rather, when an officer's conduct is so patently violative of the constitutional right that reasonable officials would know without guidance from the courts that the action was unconstitutional, closely analogous pre-existing case law is not required to show that the law is clearly established. Boyd v. Benton County, C.A.9 (Or.) 2004, 374 F.3d 773. Civil Rights 1376(6)

For purposes of a qualified immunity claim, the standard for determining which legal rules are clearly established is an objective one, and thus, an inquiry into the reasonableness of a government officer's conduct must focus on the discernible contours of the law at the time of the alleged act or omission. (Per Selya, Circuit Judge, by an equally divided court, with three judges concurring.) Savard v. Rhode Island, C.A.1 (R.I.) 2003, 338 F.3d 23, certiorari denied 124 S.Ct. 1074, 540 U.S. 1109, 157 L.Ed.2d 895. Civil Rights 1376(2)

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Egregiousness and outrageousness of certain conduct by government officials may suffice to obviously locate such conduct within area proscribed by general constitutional rule, for purpose of determining that law was clearly established and that officials were not entitled to qualified immunity in § 1983 action. Pierce v. Smith, C.A.5 (Tex.) 1997, 117 F.3d 866. Civil Rights 1376(2)

For qualified immunity to be surrendered, preexisting law must dictate, that is, truly compel and not just suggest or allow or raise question about, conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law in circumstances. Jenkins by Hall v. Talladega City Bd. of Educ., C.A.11 (Ala.) 1997, 115 F.3d 821, certiorari denied 118 S.Ct. 412, 522 U.S. 966, 139 L.Ed.2d 315. Civil Rights 1376(2)

Government officials are shielded by qualified immunity if federal law allegedly violated was not clearly established at time of alleged violation, or if, at summary judgment, there is no genuine dispute of material fact that would prevent a finding that officials' actions, with regard to applying or following such clearly established law, were objectively reasonable. Vargas-Badillo v. Diaz-Torres, C.A.1 (Puerto Rico) 1997, 114 F.3d 3. Civil Rights 1376(2)

Doctrine of qualified immunity provides that government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Vargas-Badillo v. Diaz-Torres, C.A.1 (Puerto Rico) 1997, 114 F.3d 3. Civil Rights 1376(2)

Under "qualified immunity," government officials are not subject to liability for the performance of their discretionary actions unless their conduct violates clearly established statutory or constitutional rights which a reasonable person would have known. O'Neal v. Mississippi Bd. of Nursing, C.A.5 (Miss.) 1997, 113 F.3d 62. Civil Rights 1376(2)

Public official accused of civil rights violations is shielded from claims for damages under § 1983 as long as his conduct did not violate rights that were "clearly established" under Constitution or under federal law; right is "clearly established" if contours of the right are sufficiently clear that reasonable official would understand that what he is doing violates that right. Diaz v. Martinez, C.A.1 (Puerto Rico) 1997, 112 F.3d 1. Civil Rights 1376(2)

Public official is not entitled to qualified immunity when contours of allegedly violated right were sufficiently clear that reasonable official would understand that what he was doing violated that right. P.B. v. Koch, C.A.9 (Idaho) 1996, 96 F.3d 1298. Civil Rights 1376(2)

For purposes of § 1983 action, for constitutional right to be clearly established, it is not necessary that the very action in question have previously been held unlawful. Jackson v. McIntosh, C.A.9 (Cal.) 1996, 90 F.3d 330, certiorari denied 117 S.Ct. 584, 519 U.S. 1029, 136 L.Ed.2d 514. Civil Rights 1376(2)

Qualified immunity insulates public officials from claims for damages where their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Defore v. Premore, C.A.2 (N.Y.) 1996, 86 F.3d 48. Civil Rights 1376(2)

Federal immunity law shields state officials from personal liability under federal law for civil damages under doctrine of qualified immunity as long as conduct could reasonably have been thought consistent with rights officials are alleged to have violated; for liability to be imposed, right official is alleged to have violated must have been clearly established at time conduct in issue occurred, and contours of right must be sufficiently clear that reasonable official would understand that conduct in issue constitutes violation. Cantu v. Rocha, C.A.5 (Tex.) 1996, 77 F.3d 795. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

Right is "clearly established," for purposes of qualified immunity defense to § 1983 action, if, at time right was allegedly violated, its contours were sufficiently clear that reasonable official would understand that what he was doing violated that right. Brown v. Hot, Sexy and Safer Productions, Inc., C.A.1 (Mass.) 1995, 68 F.3d 525, certiorari denied 116 S.Ct. 1044, 516 U.S. 1159, 134 L.Ed.2d 191. Civil Rights 1376(2)

When public official asserts qualified immunity from liability in § 1983 action, court must determine whether law governing official's conduct was clearly established and whether, under that law, official could have reasonably believed conduct was lawful; official's action need not have been previously declared to be unlawful, if in light of preexisting law, unlawfulness was apparent. Kruse v. State of Hawai'i, C.A.9 (Hawai'i) 1995, 68 F.3d 331. Civil Rights 1376(2)

In determining whether civil rights plaintiff's right that was allegedly violated was clearly established at time defendants acted, as required for defendants to have had qualified immunity, Court of Appeals examines whether right was defined with reasonable specificity, whether decisional law of Supreme Court and applicable circuit court supports its existence, and whether, under preexisting law, defendant official would have reasonably understood that his acts were unlawful. Rodriguez v. Phillips, C.A.2 (N.Y.) 1995, 66 F.3d 470. Civil Rights 1376(2)

Even officials who violate the Constitution are to be accorded qualified immunity and so escape liability for money damages if, in performance of discretionary duties, their conduct does not violate clearly established constitutional rights of which a reasonable person would have known. Buonocore v. Harris, C.A.4 (Va.) 1995, 65 F.3d 347. Civil Rights 1376(2)

"Qualified immunity" protects government official who performs discretionary functions from liability for civil damages if official can show that official's actions did not violate clearly established statutory or constitutional rights of which reasonable person would have known. Moore v. Valder, C.A.D.C.1995, 65 F.3d 189, 314 U.S.App.D.C. 209, rehearing and suggestion for rehearing in banc denied, certiorari denied 117 S.Ct. 75, 519 U.S. 820, 136 L.Ed.2d 35. Civil Rights 1376(2)

Government officials who perform discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Ward v. Dyke, C.A.6 (Mich.) 1995, 58 F.3d 271, certiorari denied 116 S.Ct. 524, 516 U.S. 991, 133 L.Ed.2d 431. Civil Rights 1376(2)

In action under § 1983, allegedly violated constitutional right must have been clearly established in a particularized sense at time of alleged violation; otherwise, public official is entitled to qualified immunity. Foy v. City of Berea, C.A.6 (Ohio) 1995, 58 F.3d 227. Civil Rights 1376(2)

For purposes of determining if official is protected from civil rights liability by qualified immunity, constitutional right is clearly established if, in light of preexisting law, the unlawfulness of alleged conduct is apparent, even if the very action in question had not then been held to be constitutional violation. Hale v. Townley, C.A.5 (La.) 1995, 45 F.3d 914, rehearing and suggestion for rehearing en banc denied 51 F.3d 1047. Civil Rights 1376(2)

Whether a right which government official is alleged to have violated was "clearly established" at time of violation, for purposes of determining whether government official is entitled to qualified immunity, turns on federal constitutional, statutory, and case law existing at time of challenged action, and law of highest court in state may also be considered. Rodgers v. Jabe, C.A.6 (Mich.) 1995, 43 F.3d 1082. Civil Rights 1376(2)

Right is "clearly established" for purposes of qualified immunity, if it is denied with reasonable clarity, if the Supreme Court or Circuit in which offense has occurred has affirmed right's existence, or if reasonable defendant would understand from existing law that his acts were unlawful. Cook v. Sheldon, C.A.2 (N.Y.) 1994, 41 F.3d 73. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

For purposes of rule that state officials enjoy qualified immunity from § 1983 liability if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known, a right is "clearly established" if its contours are sufficiently clear that a reasonable official would understand that what he is doing violates that right. Bator v. State of Hawaii, C.A.9 (Hawai'i) 1994, 39 F.3d 1021, on remand 910 F.Supp. 479. Civil Rights 1376(2)

Governmental officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Bakalis v. Golembeski, C.A.7 (Ill.) 1994, 35 F.3d 318, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(2)

First task in resolving claim of qualified immunity is to review specific parts of complaint to determine whether plaintiff charges conduct violating "clearly established federal rights;" and such a right is clearly established only when its contours are sufficiently clear that reasonable official would have realized that his conduct violated that right, not simply that conduct was otherwise improper. Foster v. City of Lake Jackson, C.A.5 (Tex.) 1994, 28 F.3d 425, rehearing denied. Civil Rights 1376(2)

Under doctrine of qualified immunity, public officer will only be held liable for his conduct if it can be shown that he trenched upon plaintiff's clearly established constitutional or statutory right and if reasonable person in defendant officer's position would have known his conduct violated that right. Beard v. City of Northglenn, Colo., C.A.10 (Colo.) 1994, 24 F.3d 110. Civil Rights 1376(2)

In order for right to be clearly established right for purposes of qualified immunity analysis, contours of right must be sufficiently clear that reasonable official would understand that what he is doing violates that right. Mahers v. Harper, C.A.8 (Iowa) 1993, 12 F.3d 783, rehearing denied. Civil Rights 1376(2)

To demonstrate that the law is clearly established, for purposes of determining whether conduct of officials is entitled to qualified immunity, there must be showing that reasonable official would understand that what he is doing violates plaintiff's rights; government official is not required to guess, at his peril, future development of constitutional doctrine nor is he liable for violation of extremely abstract rights. Hall v. Lombardi, C.A.8 (Mo.) 1993, 996 F.2d 954, rehearing denied, certiorari denied 114 S.Ct. 698, 510 U.S. 1047, 126 L.Ed.2d 665. Civil Rights 1376(2)

Law of qualified immunity requires that in order to hold public official civilly liable for discretionary actions taken during course of official's duties, official must have violated "clearly established" legal right. Wright v. Whiddon, C.A.11 (Ga.) 1992, 951 F.2d 297. Civil Rights 1376(2)

Public officers are entitled to qualified immunity from liability unless their actions violated clearly established law. E-Z Mart Stores, Inc. v. Kirksey, C.A.8 (Ark.) 1989, 885 F.2d 476. Officers And Public Employees 114

An official loses qualified immunity if the law he violated was clearly established at the time of the violation, and the applicability of the law to his particular action was evident. Vukelic v. Bartz, D.N.D.2003, 245 F.Supp.2d 1068 . Civil Rights 1376(2)

Superintendent, assistant superintendent and sergeant, in their individual capacities, were qualifiedly immune from §§ 1983 liability to terminated correctional officer, absent showing their conduct violated any constitutional right, let alone one that was clearly established. Ferguson v. Georgia Dept. of Corrections, M.D.Ga.2006, 428 F.Supp.2d 1339. Civil Rights 1376(10)

For purpose of qualified immunity defense, which shields public officials from damages if their conduct did not violate clearly established rights, phrase "clearly established" denotes that at the time the challenged conduct

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occurred the contours of the right were sufficiently plain that a reasonably prudent state actor would have realized not merely that his conduct might be wrong, but that it violated a particular constitutional right. Rivera Torres v. Ortiz Velez, D.Puerto Rico 2002, 306 F.Supp.2d 76, appeal denied 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Civil Rights 1376(2)

For constitutional right to be "clearly established," so as to overcome public official's qualified immunity defense to § 1983 claim, its contours must be sufficiently clear that reasonable official would understand that what he is doing violates that right; this is not to say that official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in light of pre-existing law unlawfulness must be apparent. Mladek v. Day, M.D.Ga.2003, 293 F.Supp.2d 1297. Civil Rights 1376(2)

The plaintiff opposing a motion for summary judgment on the basis of qualified immunity in an excessive force case under § 1983 bears the burden of establishing the existence of a clearly established constitutional right. Buchanan v. City of Milwaukee, E.D.Wis.2003, 290 F.Supp.2d 954. Federal Civil Procedure 2491.5

In deciding whether right was "clearly established" when analyzing whether government official is entitled to qualified immunity from § 1983 claim, district court considers the following: (1) was law defined with reasonable clarity, (2) had the Supreme Court or the Second Circuit affirmed the rule, and (3) would reasonable defendant have understood from existing law that conduct was unlawful. Thomas v. Zaharek, D.Conn.2003, 289 F.Supp.2d 167. Civil Rights 1376(2)

When assessing claim of qualified immunity, Court employs three part test; threshold question is whether Plaintiffs have established constitutional violation, second question asks whether law was clearly established at time of violation, and final question is whether reasonable official, situated similarly to defendants, would have understood that conduct at issue contravened clearly established law. Orraca Figueroa v. Torres Torres, D.Puerto Rico 2003, 288 F.Supp.2d 176. Civil Rights 1376(1); Civil Rights 1376(2)

Whether government official is entitled to qualified immunity from §§ 1981 and 1983 claims generally turns on objective reasonableness of action assessed in light of legal rules that were "clearly established" at time it was taken, i.e., defendant is entitled to qualified immunity unless he violated constitutional right that was clearly established at time of his conduct. Bluitt v. Houston Independent School Dist., S.D.Tex.2002, 236 F.Supp.2d 703. Civil Rights 1376(2)

Single case holding that dating is a type of association protected by the First Amendment did not create the clearly established law needed to defeat city officials' qualified immunity defense against a § 1983 action brought by a city police officer after he was fired for engaging in a sexual relationship with a minor. Blanco v. City of Clearwater, Fla., M.D.Fla.1998, 9 F.Supp.2d 1316. Civil Rights 1376(4)

In deciding whether a right was clearly established for purposes of qualified immunity, court should consider: whether right in question was defined with "reasonable specificity"; whether decisional law of the Supreme Court and applicable circuit court support existence of the right in question; and whether under preexisting law a reasonable official would understand that his or her acts were unlawful. Davidson v. Coughlin, S.D.N.Y.1997, 968 F.Supp. 121. Civil Rights 1376(2)

To avoid protection of qualified immunity on basis that right which government official allegedly violated is clearly established, contours of right must be sufficiently clear that reasonable official would understand that what he is doing violates that right; this is not to say that official action is protected by qualified immunity unless that action has previously been held unlawful, but it is to say that, in light of preexisting law, unlawfulness must be apparent. Smith v. Tolley, E.D.Va.1997, 960 F.Supp. 977. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

Under qualified immunity doctrine, government officials are not liable for bad guesses in gray areas; they are liable only for transgressing bright lines. Smith v. Tolley, E.D.Va.1997, 960 F.Supp. 977. Civil Rights 1376(2)

In determining whether right is clearly established for purposes of qualified immunity, court should consider whether right defined with reasonable specificity, whether decisional law of Supreme Court and applicable appellate court supports existence of right in question, and whether under preexisting law a reasonable defendant official would have understood that his acts were unlawful. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. Civil Rights 1376(2)

In determining whether specific right allegedly violated by government official was clearly established, for purposes of determining whether official is entitled to qualified immunity, proper focus is not upon right at its most general or abstract level, but at level of its application to specific conduct being challenged. Reeves Bros., Inc. v. U.S. E.P.A., W.D.Va.1995, 956 F.Supp. 665. Civil Rights 1376(2)

In order for law to be "clearly established," for purposes of claim of qualified immunity from § 1983 liability, preexisting law must dictate, i.e., truly compel, not just suggest or allow or raise question about, conclusion for every like-situated, reasonable government agent that what defendant did violated federal law in circumstances; i.e., if case law, in factual terms, has not staked out bright line, qualified immunity almost always protects defendant, and plaintiff cannot rely on general conclusory allegations or broad legal truisms. Dowdell v. Chapman, M.D.Ala.1996, 930 F.Supp. 533. Civil Rights 1376(2)

Generally, "qualified immunity" shields public officers and agencies from liability, even though their actions may have violated plaintiff's constitutional rights, if those unconstitutional acts did not violate clearly established constitutional rights of which reasonable person would have known. Ramirez v. City of Reno, D.Nev.1996, 925 F.Supp. 681. Civil Rights 1376(2)

To overcome qualified immunity, § 1983 plaintiff must first allege violation of clearly established constitutional or statutory right. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1376(2)

In determining whether government officials are entitled to qualified immunity, court examines whether the plaintiff has alleged a deprivation of constitutional magnitude, and, if so, whether that right was so clearly established that officials would have known their conduct violated Federal Constitution at the time of their acts. Howard v. Everett, C.A.8 (Ark.) 2000, 208 F.3d 218, Unreported. Civil Rights 1376(1); Civil Rights 1376(2)

3772. Notice, clearly established right

For purposes of qualified immunity analysis in Fourth Amendment cases, factually similar cases are not always necessary to establish that a government actor was on notice that certain conduct is unlawful; if the plaintiff in a § 1983 action can show that the official's conduct lies so obviously at the very core of what the Fourth Amendment prohibits that the unlawfulness of the conduct was readily apparent to the official, notwithstanding the lack of caselaw, then the official is not entitled to qualified immunity. Thomas ex rel. Thomas v. Roberts, C.A.11 (Ga.) 2003, 323 F.3d 950, rehearing and rehearing en banc denied 73 Fed.Appx. 389, 2003 WL 21788455. Civil Rights 1376(6)

Because officials can still be on notice that their conduct violates established law even in novel factual circumstances, overcoming a qualified immunity defense does not require a plaintiff to show that either the particular conduct complained of or some materially indistinguishable conduct has previously been found unlawful; still, the relevant legal rights and obligations must be particularized enough that a reasonable official can be expected to extrapolate from them and conclude that a certain course of conduct will violate the law. (Per Selya, Circuit Judge, by an equally divided court, with three judges concurring.) Savard v. Rhode Island, C.A.1 (R.I.)

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2003, 338 F.3d 23, certiorari denied 124 S.Ct. 1074, 540 U.S. 1109, 157 L.Ed.2d 895. Civil Rights 1376(2)

Genuine issue of material fact as to whether teacher should have known that she was violating third-grade female student's privacy rights, in requiring student to hold open her pants so that teacher could look inside for evidence of money missing from desk, precluded entry of summary judgment for teacher on her qualified immunity defense to student's § 1983 claims. Watkins v. Millennium School, S.D.Ohio 2003, 290 F.Supp.2d 890. Federal Civil Procedure 2491.5

Officials can still be on notice that their conduct violates established law, so as to defeat the officials' qualified immunity claims in a civil rights action, even in novel factual circumstances. Danielle v. Adriazola, S.D.Fla.2003, 284 F.Supp.2d 1368. Civil Rights 1376(2)

To overcome qualified immunity from § 1983 claims, right allegedly violated must be so clear that any reasonable public official in defendant's position would understand that his conduct violated the right, and if officers of reasonable competence could disagree on this issue, immunity should be recognized. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1376(2)

3773. Time of establishment, clearly established right

Plaintiff who seeks damages for violation of constitutional or statutory rights may overcome defendant official's qualified immunity only by showing that those rights were clearly established at time of conduct at issue. Davis v. Scherer, U.S.Fla.1984, 104 S.Ct. 3012, 468 U.S. 183, 82 L.Ed.2d 139, rehearing denied 105 S.Ct. 26, 468 U.S. 1226, 82 L.Ed.2d 919. Civil Rights 1376(2)

When addressing the issue of qualified immunity in a civil rights case, a court does not have to determine if the alleged constitutional violation was clearly established at the time of the incident in question, when the existence of a constitutional violation depends on the resolution of uncertain state law or upon dicta in a prior case. Ehrlich v. Town of Glastonbury, C.A.2 (Conn.) 2003, 348 F.3d 48. Civil Rights 1376(2)

To determine whether federal right was clearly established at time of defendants' alleged conduct, for purposes of qualified immunity defense to § 1983 action, Court of Appeals focuses not upon right at its most general or abstract level, but at level of its application to specific conduct being challenged. Zepp v. Rehrmann, C.A.4 (Md.) 1996, 79 F.3d 381. Civil Rights 1376(2)

If law was not clearly established at time public official violated citizen's civil rights, official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to know that law forbade conduct not previously identified as unlawful, so as to be held liable for civil damages. Eagon Through Eagon v. City of Elk City, Okl., C.A.10 (Okla.) 1996, 72 F.3d 1480. Civil Rights 1376(2)

Under § 1983, whether constitutional violation occurred is analyzed under constitutional standards in effect at time of litigation, rather than under those in effect at time alleged misconduct occurred; however, reasonableness of official's conduct, for purposes of qualified immunity inquiry, is analyzed in light of law in effect at time of alleged misconduct. Rankin v. Klevenhagen, C.A.5 (Tex.) 1993, 5 F.3d 103. Civil Rights 1031; Civil Rights 1376(2)

Court must determine whether allegedly violated constitutional right was clearly established at time action occurred for qualified immunity purposes. Smith v. Tolley, E.D.Va.1997, 960 F.Supp. 977. Civil Rights 1376(2)

Case which was decided after incident giving rise to inmate's claim of violation of Eighth and Fourteenth Amendment rights could not be used to negate prison officials' claim of qualified immunity. Carrigan v. State of Del., D.Del.1997, 957 F.Supp. 1376. Civil Rights 1376(7)

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Conclusion after the fact that conduct is unlawful is insufficient to deprive law enforcement officer of qualified immunity, since officers should not be expected to anticipate subsequent legal developments. Showers v. Spangler, M.D.Pa.1997, 957 F.Supp. 584, affirmed in part, reversed in part 182 F.3d 165. Civil Rights 1376(6)

Three factors determine whether particular right was clearly established at time defendants allegedly violated it: (1) whether right in question was defined with reasonable specificity; (2) whether decisional law of Supreme Court and applicable circuit court support existence of right in question; and (3) whether, under preexisting law, reasonable official would have understood that his or her acts were unlawful. Maguire v. Coughlin, N.D.N.Y.1995, 901 F.Supp. 101. Civil Rights 1376(2)

Because relevant inquiry in determining whether § 1983 defendant is entitled to qualified immunity focuses on defendant's knowledge at time he acted, right allegedly violated must have been clearly established when alleged infringement occurred. Strauch v. Demskie, S.D.N.Y.1995, 892 F.Supp. 503. Civil Rights 1376(2)

Key to inquiry as to whether defendant's actions were clearly prohibited under existing law for purposes of qualified immunity in § 1983 action is objective reasonableness of official's conduct in light of legal rules that were clearly established at time action was taken. Allen v. Board of Com'rs of County of Wyandotte, D.Kan.1991, 773 F.Supp. 1442. Civil Rights 1376(2)

3774. Identity of facts, clearly established right

In determining which legal rules are clearly established, for purposes of a qualified immunity claim, if the operative legal principles are clearly established only at a level of generality so high that officials cannot fairly anticipate the legal consequences of specific actions, then the requisite notice is lacking. (Per Selya, Circuit Judge, by an equally divided court, with three judges concurring.) Savard v. Rhode Island, C.A.1 (R.I.) 2003, 338 F.3d 23, certiorari denied 124 S.Ct. 1074, 540 U.S. 1109, 157 L.Ed.2d 895. Civil Rights 1376(2)

Absence of legal precedent addressing identical factual scenario does not necessarily yield conclusion that law is not clearly established, for purposes of claim of qualified immunity. Johnson v. Newburgh Enlarged School Dist., C.A.2 (N.Y.) 2001, 239 F.3d 246. Civil Rights 1376(2)

Qualified immunity can be found for public employee even absent prior case precisely upon all fours on facts and law involved in current case as long as law is clear in relation to specific facts confronting public official when he acted. McDonald by McDonald v. Haskins, C.A.7 (Ill.) 1992, 966 F.2d 292. Civil Rights 1376(2)

Contours of asserted right must have been sufficiently clear that reasonable officials in defendant's positions would understand that their actions would violate that right for defendants not to be entitled to qualified immunity; but precise action or omission in question need not previously have been held unlawful, and facts need not precisely mirror facts of precedent setting case. Yvonne L., By and Through Lewis v. New Mexico Dept. of Human Services, C.A.10 (N.M.) 1992, 959 F.2d 883. Civil Rights 1376(2)

Although prior cases involving exact fact pattern as case at bar are not required in order to find that constitutional right allegedly violated by government official was clearly established, and thus that official was not entitled to qualified immunity, case law in closely analogous area is essential in order for court to conclude that constitutional right was clearly established at time of alleged violation. Conner v. Reinhard, C.A.7 (Wis.) 1988, 847 F.2d 384, certiorari denied 109 S.Ct. 147, 488 U.S. 856, 102 L.Ed.2d 118. Officers And Public Employees 114

For the illegality of conduct to be clearly established, so as to defeat a state official's qualified immunity claim, the case is not required to be fundamentally similar to previous cases, nor must it present materially similar facts. Danielle v. Adriazola, S.D.Fla.2003, 284 F.Supp.2d 1368. Civil Rights 1376(3)

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42 U.S.C.A. § 1983

To meet burden of proving that right allegedly violated is clearly established for purposes of defeating qualified immunity, § 1983 plaintiff need not point to case finding same exact action to be unlawful or case that is on all fours with present set of facts and circumstances; clearly analogous case decided before officer's action or inaction in present case is sufficient to confirm that right is clearly established. Spiegel v. Cortese, N.D.Ill.1997, 966 F.Supp. 684. Civil Rights 1376(2)

To prevail despite qualified immunity defense, civil rights plaintiff demonstrating that right is "clearly established" need not show that the very act in question was previously held unlawful or that prior case is "on all fours" with facts and law in plaintiff's own case; instead, closely analogous cases, those decided before defendants acted or failed to act, are required to find that constitutional right is clearly established. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Civil Rights 1376(2)

3775. Knowledge, clearly established right

For purposes of qualified immunity, officials can still be on notice that their conduct violates established law even in novel factual circumstances, as notice does not require that facts of previous cases be materially or fundamentally similar to situation in question; rather, salient question is whether the state of the law at the time gives officials fair warning that their conduct is unconstitutional. Hope v. Pelzer, U.S.2002, 122 S.Ct. 2508, 536 U.S. 730, 153 L.Ed.2d 666, on remand 304 F.3d 1331. Civil Rights 1376(2)

A public official is not entitled to qualified immunity in a § 1983 action if his conduct violates clearly established constitutional rights of which a reasonable person would have known. Doe ex rel. Doe v. Hawaii Dept. of Educ., C.A.9 (Hawai'i) 2003, 334 F.3d 906, on remand 351 F.Supp.2d 998. Civil Rights 1376(2)

In ascertaining whether right was clearly established with respect to a given situation, for purposes of claim of qualified immunity, court must consider not what lawyer would learn or intuit from researching case law, but what reasonable person in government actor's position should know about appropriateness of his conduct under federal law. Johnson v. Newburgh Enlarged School Dist., C.A.2 (N.Y.) 2001, 239 F.3d 246. Civil Rights 1376(2)

Where plaintiff elected to sue in federal court under civil rights statute, he was required to prove more than merely wrongful acts or constitutional violation on part of defendants; in order to surmount defendants' qualified immunity shield, he was required to prove that they violated clearly established constitutional rights of which a reasonable person would have known. Powell v. Georgia Dept. of Human Resources, C.A.11 (Ga.) 1997, 114 F.3d 1074. Civil Rights 1376(2)

If law is not clearly established when official acts, he or she is entitled to qualified immunity because he or she could not reasonably be expected to anticipate subsequent legal developments, nor could he or she fairly be said to know that law forbade conduct not previously identified as lawful; on the other hand, if law was established clearly, official still may obtain qualified immunity if he or she claims extraordinary circumstances and can prove that he or she neither knew nor should have known of relevant legal standard. In re City of Philadelphia Litigation, C.A.3 (Pa.) 1995, 49 F.3d 945, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 176, 516 U.S. 863, 133 L.Ed.2d 116, on remand 910 F.Supp. 212, on remand 938 F.Supp. 1264. Civil Rights 1376(2)

Once court determines that plaintiff seeking to hold official personally liable under § 1983 has alleged violation of clearly established right, it proceeds to determine whether reasonable person in official's position would have known that his actions violated that right, qualified immunity defense ordinarily should fail as reasonably competent public official should know law governing his conduct; however, official may still be able to show extraordinary circumstances and prove that he neither knew nor should have known of relevant legal standard. DiMeglio v. Haines, C.A.4 (Md.) 1995, 45 F.3d 790. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

In order for public officer to be held accountable under § 1983, right she is charged with violating must be clearly established, and be one of which reasonable officer in her position would have known. Hale v. Vance, S.D.Ohio 2003, 267 F.Supp.2d 725. Civil Rights 1376(2)

3776. Legal question, clearly established right

In evaluating whether a right is clearly established for purposes of a qualified immunity inquiry under § 1983, the court looks to the clarity of the law establishing the right allegedly violated, as well as whether a reasonable person, acting under the circumstances then confronting a defendant, would have understood that his actions were unlawful. Hanrahan v. Doling, C.A.2 (N.Y.) 2003, 331 F.3d 93. Civil Rights 1376(2)

Determination that law allegedly violated by defendant was clearly established at time of challenged actions is abstract issue of law that is immediately appealable, as is determination that under either party's version of facts, defendant violated clearly established law. Foote v. Spiegel, C.A.10 (Utah) 1997, 118 F.3d 1416, on remand 995 F.Supp. 1347. Federal Courts 554.1

In context of § 1983 suit, whether conduct of police officers in effecting arrest violated clearly established law with regard to use of force was essentially legal question. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1432

3777. Constitutional deprivations, clearly established right

Right to be free of conscience-shocking executive action was firmly established at time of events giving rise to substantive due process claims by injured firefighters and estates of deceased firefighters against District of Columbia fire department officials in their personal capacities, and thus officials were not shielded by qualified immunity from claims asserted through § 1983; officials allegedly either committed or allowed to continue violations of the fire department's standard operating procedures, even after scathing reviews in a number of safety reports. Estate of Phillips v. District of Columbia, D.D.C.2003, 257 F.Supp.2d 69, motion to vacate denied 355 F.Supp.2d 212. Civil Rights 1376(10)

It was clearly established at the time county hospital filed libel claim against husband of patient that the hospital was a governmental entity that was not entitled to bring a claim for libel, and, thus, chief executive officer (CEO) and chief operating officer (COO) were not entitled to qualified immunity in §§ 1983 action brought by husband against them in their individual capacities for alleged injuries caused by the malicious libel suit. Beedle v. Wilson, C.A.10 (Okla.) 2005, 422 F.3d 1059. Civil Rights 1376(4)

Veterinarian did not have clearly established First Amendment right to attend horse races, and therefore executive secretary of state racing commission and commission members were entitled to qualified immunity from §§ 1983 liability based on their actions in excluding veterinarian from state racetracks. VanHorn v. Nebraska State Racing Com'n, D.Neb.2004, 304 F.Supp.2d 1151. Civil Rights 1376(3)

Municipal employee who allegedly drove fire truck through red light and collided with motorist, causing his death, was not entitled to qualified immunity from liability, upon motion to dismiss, in motorist's heir's § 1983 substantive due process claim; heir's allegations stated claim for violation of substantive due process rights, and motorist's constitutional rights were sufficiently clear for employee to have understood that his alleged conduct violated them. Becerra v. Unified Government of Wyandotte County/Kansas City, Kansas, D.Kan.2003, 272 F.Supp.2d 1223. Civil Rights 1376(4)

Allegations that county attorney refused to issue a release for return of arrestee's weapons after assault charges

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were dismissed did not establish a Second Amendment constitutional violation, and thus attorney was entitled to qualified immunity in §1983 claim brought by arrestee against attorney in his individual capacity, as the Second Amendment only protects weapon possession reasonably related to preservation of militia and the arrestee made no showing of a reasonable relationship between the weapons and the preservation of a militia. Blackburn v. Jansen, D.Neb.2003, 241 F.Supp.2d 1047. Civil Rights 1376(9); Weapons 1

If there is any legitimate question as to whether government official's conduct transgresses a constitutional right, official is entitled to qualified immunity from liability. Price v. Dixon, E.D.N.C.1997, 961 F.Supp. 894. Civil Rights 1376(2)

Government official is entitled to qualified immunity if there is legitimate question as to whether government official's conduct constitutes constitutional violation. Reeves Bros., Inc. v. U.S. E.P.A., W.D.Va.1995, 956 F.Supp. 665. Civil Rights 1376(2)

First step of analysis in determining whether state official is entitled to defense of qualified immunity in federal civil rights action is whether plaintiffs have asserted violation of constitutional right at all. Hilliard v. Walker's Party Store, Inc., E.D.Mich.1995, 903 F.Supp. 1162. Civil Rights 1376(1)

By allegedly destroying relevant documents during the pendency of an investigation by the Equal Employment Opportunity Commission (EEOC), former employer and several of its employees obstructed former employee's access to the courts in violation of her constitutional rights to substantive due process, so that former employee alleged sufficient constitutional rights violation to deny defendants qualified immunity regarding former employee's claims. Bremiller v. Cleveland Psychiatric Institute, N.D.Ohio 1995, 898 F.Supp. 572. Civil Rights 1376(10); Constitutional Law 305(2)

Alleged racial and derogatory remarks by public official are not considered constitutional violations and so do not rebut public official's assertion of qualified immunity defense. Crenshaw v. City of Defuniak Springs, N.D.Fla.1995, 891 F.Supp. 1548. Civil Rights 1376(1)

State officials were entitled to qualified immunity in former employee's § 1983 action alleging that his pretermination hearing violated state statute; hearing complied with state applicable regulations, state law claims are cognizable under § 1983 only if federal constitutional right is expansive enough to encompass state rights, and hearing met federal constitutional requirements. Ringer v. Fallis, D.Del.1994, 848 F.Supp. 519, affirmed 77 F.3d 463. Civil Rights 1376(10)

Even where constitutional right is found to have been violated, officials responsible therefor may still be entitled to qualified immunity in § 1983 action. Pesek v. City of Brunswick, N.D.Ohio 1992, 794 F.Supp. 768. Civil Rights 1376(3); Civil Rights 1376(4)

3778. Court decisions generally, clearly established right

Only Supreme Court cases, Eleventh Circuit caselaw, and Georgia Supreme Court caselaw can "clearly establish" law in Eleventh Circuit for purposes of qualified immunity analysis by Georgia district court. Thomas ex rel. Thomas v. Roberts, C.A.11 (Ga.) 2003, 323 F.3d 950, rehearing and rehearing en banc denied 73 Fed.Appx. 389, 2003 WL 21788455. Civil Rights 1376(2)

Consent decree resolving class action suit brought by state inmates to rectify prison conditions in South Carolina did not create protected "liberty interest" in prison inmates with respect to security and custody classifications, where decree was not self-executing in matter of inmates' security and custody classifications but imposed enforceable legal and contractual obligations on state to devise, submit, and implement systematic classification procedures having certain defined features and did not itself provide operational details of classification system

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dictating particular classification divisions necessary to create protected liberty interests. Slezak v. Evatt, C.A.4 (S.C.) 1994, 21 F.3d 590, certiorari denied 115 S.Ct. 235, 513 U.S. 889, 130 L.Ed.2d 158. Constitutional Law 272(2); Federal Civil Procedure 2397.1

For purposes of finding clearly established constitutional rights, although decisions of other courts can clearly establish law, those decisions must both point unmistakably to unconstitutionality of conduct and be so clearly foreshadowed by applicable direct authority as to leave no doubt in mind of reasonable officer that his conduct was unconstitutional. Mumford v. Zieba, C.A.6 (Ohio) 1993, 4 F.3d 429, on remand 915 F.Supp. 917. Civil Rights 1376(2)

A plaintiff attempting to defeat an assertion of qualified immunity to a substantive due process § 1983 claim need not show that the specific action at issue has previously been held unlawful, he need only show that the alleged unlawfulness was apparent in light of preexisting law; ordinarily, in order for the law to be "clearly established," there must be a Supreme Court or a applicable circuit court decision on point, or the clearly established weight of authority from other circuit courts must have found the law to be as the plaintiff maintains. Sanders v. Board of County Com'rs of County of Jefferson, Colorado, D.Colo.2001, 192 F.Supp.2d 1094. Civil Rights 1376(2)

Single case does not establish the law in a sufficiently concrete context so as to defeat a qualified immunity defense to a § 1983 action. Blanco v. City of Clearwater, Fla., M.D.Fla.1998, 9 F.Supp.2d 1316. Civil Rights 1376(2)

To defeat qualified immunity, plaintiff must point to controlling case, decided before events at issue, that establishes constitutional violation on materially similar facts. Ferguson v. City of Montgomery, M.D.Ala.1997, 969 F.Supp. 674, affirmed 141 F.3d 1189. Civil Rights 1376(2)

Federal district court must find binding precedent from United States Supreme Court, Circuit Court, or itself in order to find clearly established constitutional right for purposes of qualified immunity analysis in § 1983 action; however, this is not to say that official action is protected by qualified immunity unless specific action in question has previously been held unlawful by Supreme Court, Circuit Court, or district court. McCrea v. Zieba, N.D.Ohio 1996, 955 F.Supp. 801. Civil Rights 1376(2)

Binding precedent is not a sine qua non of a finding that a particular constitutional right was clearly established for purposes of qualified immunity; where there is no controlling precedent, court should examine all relevant case law to determine whether at time of alleged acts a sufficient consensus had been reached indicating that official's conduct was unlawful; relevant case law should indicate that recognition of right by controlling precedent was merely a question of time. Abbott v. Village of Winthrop Harbor, N.D.Ill.1996, 953 F.Supp. 931. Civil Rights 1376(2)

3779. Circuit court decisions, clearly established right

Prison officials were not entitled to qualified immunity with respect to inmate's claim alleging that officials violated his constitutional rights by repeatedly opening his properly marked incoming legal mail outside of his presence; although Court of Appeals had not previously ruled on this precise issue, contours of officials' legal obligations under the regulations and Constitution were sufficiently clear that reasonable official would understand that repeatedly opening inmate's properly marked incoming legal mail outside his presence violated the Constitution. Bieregu v. Reno, C.A.3 (N.J.) 1995, 59 F.3d 1445, rehearing denied. Civil Rights 1376(7)

It became clearly established on May 22, 1989, with a Tenth Circuit's opinion in *Starrett*, that sexual harassment can constitute violation of equal protection and give rise to action under federal civil rights statute, even in the absence of any discharge, so that defense of qualified immunity could not apply to those types of actions thereafter. Lankford v. City of Hobart, C.A.10 (Okla.) 1994, 27 F.3d 477. Civil Rights 1376(10)

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42 U.S.C.A. § 1983

Prison official was entitled to qualified immunity in § 1983 action brought by inmate claiming he was subjected to cruel and unusual punishment through exposure to tobacco smoke; there was a split of authority among circuits as to whether tobacco smoke exposure was cruel and unusual punishment, and under those circumstances official could not be deemed to know he was violating prisoner's rights by exposing him to smoke. Murphy v. Dowd, C.A.8 (Mo.) 1992, 975 F.2d 435, certiorari denied 113 S.Ct. 1310, 507 U.S. 930, 122 L.Ed.2d 698. Civil Rights 1376(7)

Parole officials were qualifiedly immune from parolee's request for damages for conditioning his parole on taking of antipsychotic drugs, as procedural due process rights were not clearly established in November of 1990. Felce v. Fiedler, C.A.7 (Wis.) 1992, 974 F.2d 1484. Civil Rights 1376(7)

Although university's antisolicitation policy as applied to newspapers with commercials violated students' First Amendment right to free speech, university officials were protected by qualified immunity as to students' claims for monetary damages and attorney fees in officials' individual capacities; shortly before university's policy became effective, similar university regulations had been upheld by district court in same circuit, and thus, officials did not violate clearly established law at time they enforced antisolicitation policy in immediate case . Hays County Guardian v. Supple, C.A.5 (Tex.) 1992, 969 F.2d 111, rehearing denied 974 F.2d 169, certiorari denied 113 S.Ct. 1067, 506 U.S. 1087, 122 L.Ed.2d 371. Civil Rights 1376(5)

Single recent case from Court of Appeals of another circuit is insufficient to make law "clearly established" in Sixth Circuit for purposes of determining whether official protected by qualified immunity may be held personally liable for alleged unlawful official action. Eugene D. By and Through Olivia D. v. Karman, C.A.6 (Ky.) 1989, 889 F.2d 701, rehearing denied, certiorari denied 110 S.Ct. 2631, 496 U.S. 931, 110 L.Ed.2d 651. Officers And Public Employees 114

Patient at state mental hospital did not have clearly established right during 1978 and 1979 to exercise of care by hospital personnel to prevent volitional self-injury, and, thus, administrators and supervisors of hospital enjoyed qualified immunity from § 1983 liability; single, idiosyncratic opinion from Court of Appeals for another circuit was hardly sufficient to put administrators and supervisors on notice of how Sixth Circuit or Supreme Court would decide issue. Davis v. Holly, C.A.6 (Ohio) 1987, 835 F.2d 1175. Civil Rights 1376(3)

Social worker and supervisors did not violate parents' clearly established rights when opening protective services case, placing parents' names on central register of child abuse cases, and attempting contacts with parents and, therefore, were entitled to qualified immunity from § 1983 liability; another circuit court's generalized remark regarding family's rights and similarly broad statements in department policy manuals failed to suggest contours of any rights that workers reasonably should have known they were violating. Achterhof v. Selvaggio, W.D.Mich.1991, 757 F.Supp. 837. Civil Rights 1376(3)

3780. Supreme Court decisions, clearly established right

Fact that uncertainty existed in courts as to application of functional approach developed in *Branti v. Finkel* for determining whether party affiliation was appropriate requirement for a given office did not compel finding that county sheriff was qualifiedly immune from § 1983 action challenging dismissal of employees occupying extremely low rung on the bureaucratic ladder. Flenner v. Sheahan, C.A.7 (Ill.) 1997, 107 F.3d 459. Civil Rights 1376(10)

To determine whether particular right was clearly established at time defendants acted for purposes of qualified immunity, court should consider: whether right in question was defined with reasonable specificity; whether decisional law of Supreme Court and applicable circuit court support existence of right in question; and whether under preexisting law reasonable defendant official would have understood that his or her acts were unlawful. Benitez v. Wolff, C.A.2 (N.Y.) 1993, 985 F.2d 662. Officers And Public Employees 116

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Ordinarily, to find clearly established constitutional right for purposes of qualified immunity analysis, district court within Sixth Circuit must find binding precedent from the Supreme Court, the Sixth Circuit, or from itself; although decisions of other courts can clearly establish the law, such decisions must both point unmistakenly to unconstitutionality of conduct and be so clearly foreshadowed by applicable direct authority as to leave no doubt in mind of reasonable officer that his conduct was unconstitutional. Cagle v. Gilley, C.A.6 (Tenn.) 1992, 957 F.2d 1347, as amended, rehearing dismissed. Officers And Public Employees 114

Where arrestees pled and pursued their claim of excessive force during arrest under Fourth Amendment, district court properly applied Fourth Amendment's "objective reasonableness" standard, rather than Fourteenth Amendment substantive due process analysis, to officers' alleged conduct, even though that conduct occurred prior to United States Supreme Court's *Graham* decision which directed lower courts to apply Fourth Amendment analysis to § 1983 claims of excessive force during arrest. Dixon v. Richer, C.A.10 (Colo.) 1991, 922 F.2d 1456, rehearing denied. Courts 100(1)

Deputy sheriff could not reasonably have known that he was prohibited from arresting Indian in Indian country in Oklahoma and, therefore, was entitled to qualified immunity from liability for extrajurisdictional arrest; broad language in United States Supreme Court opinions gave appearance of allowing state intervention when it was determined that intervention would not compromise tribal or federal interests. Ross v. Neff, C.A.10 (Okla.) 1990, 905 F.2d 1349, rehearing denied. Civil Rights 1376(6)

County prothonotary was not entitled to qualified immunity, in suit brought by state litigant seeking to recover interest on amounts paid into court; action of prothonotary was not reasonable under ascertainable constitutional standards, as was taken after United States Supreme Court case clearly holding that retention of interest was a constitutional taking. Rivkin v. County of Montgomery, E.D.Pa.1993, 838 F.Supp. 1009. Civil Rights 1376(4)

Hearing officer's failure to independently assess reliability of confidential informants' statements, in prison disciplinary hearing, did not violate clearly established constitutional right, and thus officer was entitled to qualified immunity from § 1983 liability; there had been no specific ruling on issue by circuit court or Supreme Court, and other circuits were divided over issue. Moye v. Selsky, S.D.N.Y.1993, 826 F.Supp. 712. Civil Rights 1376(7)

Wisconsin State Bar and its executive director violated no clearly established First Amendment rights with respect to mandatory bar dues, and therefore they were entitled to qualified immunity in civil rights action brought by attorneys, prior to United States Supreme Court's determination that principles developed for permissible use of compulsory union dues are equally applicable for use of mandatory bar dues; even basic question of applicability of First Amendment to lawyers in integrated bar was open to question before Supreme Court's decision. Crosetto v. Heffernan, N.D.Ill.1992, 810 F.Supp. 966, affirmed in part, vacated in part on other grounds 12 F.3d 1396, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 2138, 511 U.S. 1129, 128 L.Ed.2d 867. Attorney And Client 31; Civil Rights 1376(3); Constitutional Law 91

Supervisors of fire fighter claiming that he was placed on undesirable shift in retaliation for his political activities in opposition to elected head of fire department were entitled to qualified immunity for activities occurring prior to United States Supreme Court decision holding that forms of retaliation other than dismissal, taken in retaliation to an employees political rights, could be actionable under § 1983. Walsh v. Ward, C.D.Ill.1991, 757 F.Supp. 959, affirmed 991 F.2d 1344. Civil Rights 1376(10)

Chief of police had no way of knowing that terminated police officer's due process rights were implicated when officer was allegedly discharged without notice of charges upon which discharge was based and thus police chief had qualified immunity as to officer's property interest claim; at time of discharge, prior to Utah Supreme Court's decision and *Berube*, acknowledging possibility of implied employment contract which could otherwise modify

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at-will employment, police chief could not have known of officers' property interest in continued employment. Palmer v. City of Monticello, D.Utah 1990, 731 F.Supp. 1503, affirmed 31 F.3d 1499. Civil Rights 1376(10)

3781. Statutes or regulations, clearly established right--Generally

Officials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision, and officials become liable for damages only to extent that there is clear violation of statutory rights that give rise to the cause of action for damages, and if statute or regulation does give rise to cause of action for damages, clear violation of the statute or regulation forfeits immunity only with respect to damages caused by that violation. Davis v. Scherer, U.S.Fla.1984, 104 S.Ct. 3012, 468 U.S. 183, 82 L.Ed.2d 139, rehearing denied 105 S.Ct. 26, 468 U.S. 1226, 82 L.Ed.2d 919. Civil Rights 1376(2)

3782. ---- Federal statutes, statutes or regulations, clearly established right

Prior to 1986 amendment to Veteran's Reemployment Rights Act, degree to which employer could condition hiring on nonparticipation in the military reserves or National Guard was not clearly established, and therefore town officials enjoyed qualified immunity from suit in their personal capacities based on their actions pursuant to police department policy prior to the amendment. Boyle v. Burke, C.A.1 (N.H.) 1991, 925 F.2d 497. Armed Services 122(3)

Director of the Missouri Division of Child Support Enforcement was not entitled to qualified immunity from § 1983 claim arising from decision of Director not to use federally mandated formula in setting amount of child support arrearages owed by noncustodial parent as reimbursement for Aid to Families of Dependent Children (AFDC) paid to custodial parent; right to have child support arrearages calculated in accordance with federally mandated formula was a clearly established statutory right of which Director should have known, particularly in light of prior litigation. Jackson v. Rapps, W.D.Mo.1990, 746 F.Supp. 934, affirmed and remanded on other grounds 947 F.2d 332, rehearing denied, certiorari denied 112 S.Ct. 1561, 503 U.S. 960, 118 L.Ed.2d 208. Civil Rights 1376(3)

3783. ---- State and local laws giving rise to clearly established right, statutes or regulations

Police officer who swore out warrant for landlord's arrest for felony theft was not entitled to qualified immunity in landlord's subsequent action under § 1983 because officer knew that landlord claimed entitlement to snowblower in question as abandoned property under Minnesota landlord/tenant law and statute which officer accused landlord of violating required that property be taken "intentionally and without claim of right." Peterson v. City of Plymouth, Minn., C.A.8 (Minn.) 1991, 945 F.2d 1416, rehearing denied. Civil Rights 1376(6)

Even if constitutional right in personal security was created by Colorado emergency commitment statute, right was not clearly established in law at time of actions of Colorado police officers who impounded car in which plaintiff had been riding and left plaintiff in high crime area resulting in her subsequent robbery and rape, and thus, police officers were entitled to qualified immunity in plaintiff's § 1983 claim. Hilliard v. City and County of Denver, C.A.10 (Colo.) 1991, 930 F.2d 1516, certiorari denied 112 S.Ct. 656, 502 U.S. 1013, 116 L.Ed.2d 748. Civil Rights 1376(6)

Despite contention that former city personnel plan, which allegedly created property interest in city clerk position was inadvertently excluded from code revisions, code, which directed city council to elect city clerk at first regular meeting of the year, was clearly established, for purposes of qualified immunity in civil rights action, when council members voted not to reelect former clerk, where city council had approximately three years to amend code to include plan. Hudgins v. City of Ashburn, Ga., C.A.11 (Ga.) 1989, 890 F.2d 396. Civil Rights 1376(10)

Police chief and police officer in § 1983 action were entitled to qualified immunity from liability for actions

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leading to prosecution of owners of videotape rental store for aiding and abetting distribution of allegedly pornographic tapes to minors; no case law in Utah would have given county attorney or officers any guidance whether aiding and abetting statute could be used where police were unsure whether owners had rented tapes to minors. England v. Hendricks, C.A.10 (Utah) 1989, 880 F.2d 281, rehearing denied, certiorari denied 110 S.Ct. 1130, 493 U.S. 1078, 107 L.Ed.2d 1036. Civil Rights 1376(6)

Employee of Florida Fish and Wildlife Conservation Commission did not violate alleged state constitutional right of seaplane operator to work by issuing citation and threatening arrest for operation of seaplane in violation of Florida Manatee Sanctuary Act (FMSA), for purpose of employee's assertion of qualified immunity in civil rights lawsuit; operator's alleged right was asserted under provision that guaranteed rights of persons to work regardless of their "membership or non-membership in any labor union or labor organization," but operation of seaplane did not involve membership in labor organization. Tague v. Florida Fish and Wildlife Conservation Com'n, M.D.Fla.2005, 390 F.Supp.2d 1195, affirmed 154 Fed.Appx. 129, 2005 WL 2981921. Environmental Law 530

Developer's allegations that he had entitlement or right to obtain approval of his subdivision by county board of commissioners or county planning commission, as originally proposed and without restriction, did not allege violation of clearly established constitutional or statutory rights as required to survive qualified immunity doctrine in § 1983 action; developer had no entitlement or protectable property interest which might abrogate qualified immunity until such time as his application for subdivision was finally approved and was in compliance with state law, and board could act in manner consistent with governing statutes, and rules and regulations concerning approval of subdivisions. Marshall v. Board of County Com'rs for Johnson County, Wyo., D.Wyo.1996, 912 F.Supp. 1456. Civil Rights 1376(4)

3784. State officials generally, clearly established right

Director of the Missouri Department of Mental Health was entitled to qualified immunity for his conduct in refusing to provide patient advocacy group with a copy of the medical peer review committee report following a patient's death at a Missouri state mental hospital, for purpose of advocacy group's §§ 1983 action, alleging violation of the Protection and Advocacy for Mentally Ill Individuals Act (PAMII); director followed Missouri statute, which prohibited disclosure of the report, and although the PAMII preempted the Missouri statute, and disclosure was required, the group's right to receive the report was not clearly established at the time, in light of conflicting appellate court decisions on preemption issue. Missouri Protection & Advocacy Services v. Missouri Dept. of Mental Health, C.A.8 (Mo.) 2006, 447 F.3d 1021. Civil Rights 1376(3)

Right asserted by Commissioners of Puerto Rico's Industrial Commission, in their §§ 1983 political discrimination claim that they could continue to hold office after enactment of statute reducing number of Commissioners to five from 25, was not clearly established, given uncertainty as to Governor's power of removal, and Governor and other officials thus were qualifiedly immune from such claim. Torres-Rivera v. Calderon-Serra, D.Puerto Rico 2004, 328 F.Supp.2d 237, affirmed 412 F.3d 205. Civil Rights 1376(3)

State officials or employees who are sued in their individual capacity are immune from damages as long as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Kalasho v. Kapture, E.D.Mich.1994, 868 F.Supp. 882. Civil Rights 1376(2)

State officials cannot be held liable for damages under federal civil rights statute unless their conduct violates a clearly established constitutional right; this immunity is granted since government officials must act promptly and decisively when they perceive an emergency. Sinaloa Lake Owners Ass'n, Inc. v. Stephenson, C.D.Cal.1992, 805 F.Supp. 824, affirmed 70 F.3d 1095. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

State officials are immune from suits for damages alleging constitutional violation if it was not clearly established at time of official's acts that interest asserted by plaintiff was protected one or if it was objectively reasonable for officials to believe that their acts did not violate any clearly established statutory or constitutional rights. McMillan v. Healey, S.D.N.Y.1990, 739 F.Supp. 153. Civil Rights 1376(3)

3785. Executive officials, clearly established right

Mayor's alleged conduct of taking a number of actions designed to prevent and break up protests, and to bring about the arrests of First Amendment protestors without probable cause to believe that any illegal conduct was occurring or about to occur, violated clearly established law, for purpose of determining whether mayor was entitled to qualified immunity. Collins v. Jordan, C.A.9 (Cal.) 1996, 110 F.3d 1363. Civil Rights 1376(4)

Village and its mayor were entitled to qualified immunity from First Amendment free expression claim asserted by operator of restaurant-lounge; complaint stated that defendants engaged in harassment of establishment to suppress music played during "disc jockey nights," in order to reduce number of black patrons visiting restaurant-lounge, but operator did not allege deprivation of a clearly established constitutional right, as First Amendment right asserted by operator was too generalized and abstract. R & V Pine Tree, Inc. v. Village of Forest Park, N.D.Ill.1996, 947 F.Supp. 342. Civil Rights 1376(4)

In actions brought under § 1983, qualified immunity from liability for damages is available to state executive officers performing discretionary functions, insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Chiriboga v. Saldana, D.Puerto Rico 1987, 660 F.Supp. 618. Civil Rights 1376(3)

Mayor of borough was not entitled to qualified immunity in regard to allegations that his actions in regulating use of sound equipment during political campaign violated First and Fourteenth Amendment rights, and that mayor used his official authority to prevent effective campaigning for candidate he opposed, considering that law protecting citizens from an official's use of his position to "launch a private vendetta" or to penalize exercise of constitutional rights is clearly established. Lacey v. Borough of Darby, Pa., E.D.Pa.1985, 618 F.Supp. 331. Civil Rights 1376(4)

3786. Private defendants, clearly established right

In § 1983 action against private defendant for utilizing existing state attachment process later found to be constitutionally deficient, defendant could assert same type of qualified immunity afforded to public officials; in May of 1989, which was when defendant confessed judgment and obtained writ of execution, defendant reasonably could have believed that postconfessed judgment attachment procedure invoked, while criticized and in some legal jeopardy, was not clearly constitutionally deficient. Jordan v. Berman, E.D.Pa.1992, 792 F.Supp. 380, affirmed in part, vacated in part on other grounds 20 F.3d 1250, on remand. Civil Rights 1374

3787. State and local laws contrary to claimed right, clearly established right

Police officers had probable cause to take patient into custody for medical evaluation, entitling them to qualified immunity in subsequent civil rights action based on alleged unreasonable seizure; state law permitted officers to take persons who appear to be a danger to themselves or others into custody, and officers acted at request of patient's family and friends and on recommendation of physician after observing patient's irrational behavior, even though officers could not cite specifically the statute authorizing detention in emergency situation. Maag v. Wessler, C.A.9 (Mont.) 1991, 960 F.2d 773, amended on denial of rehearing. Civil Rights 1376(6); Mental Health 40

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Even if snow removal ordinance were invalid, officers could not have reasonably been expected to know that ordinance exceeded authority granted city by state, and thus were protected by qualified immunity from civil rights liability to property owner arrested for violating ordinance. Murray v. City of Sioux Falls, C.A.8 (S.D.) 1989, 867 F.2d 472. Civil Rights 1376(6)

Police sergeant's arrest of off-duty police officer for failing to identify himself as required by police department regulation did not violate clearly established law, and, thus, officer enjoyed qualified immunity; constitutionality of ordinance requiring officer to identify himself on demand was not settled at time of arrest; sergeant knew that off-duty officer belonged to police force. Richardson v. Bonds, C.A.7 (Ill.) 1988, 860 F.2d 1427, rehearing denied. Civil Rights 1376(6)

Even if city ordinance forbidding lodging and sleeping in motor vehicles in public areas was unconstitutionally vague and overbroad, police officer's conduct in arresting motorist for violation of that ordinance did not violate clearly established statutory or constitutional right which reasonable person would have known, so that officer was entitled to immunity in subsequent civil rights action brought by motorist. Hershey v. City of Clearwater, C.A.11 (Fla.) 1987, 834 F.2d 937. Civil Rights 1376(6)

Seaplane operator did not have clearly established right to operate seaplane in manner that violated Florida Manatee Sanctuary Act (FMSA), for purpose of agency employee's assertion of qualified immunity in civil rights lawsuit under Fourth Amendment, since seaplane was not exempt from definition of vessel as found in Florida's administrative rules and statutes; even if general counsel for agency determined that seaplanes were exempt from regulation under FMSA after employee issued citation to operator, Florida Administrative Code did not exclude seaplane from definition of vessel and plain language definition of vessel seemed to include seaplane. Tague v. Florida Fish and Wildlife Conservation Com'n, M.D.Fla.2005, 390 F.Supp.2d 1195, affirmed 154 Fed.Appx. 129, 2005 WL 2981921. Civil Rights 1376(3)

Individual city and police officials defendants were entitled to qualified immunity on police sergeant's First Amendment retaliation claim; in disciplining sergeant, who made charges of corruption and discrimination within police department, defendants were acting pursuant to departmental regulations, and could have objectively believed, albeit mistakenly, that their conduct did not violate the First Amendment. Wagner v. City of Holyoke, D.Mass.2003, 241 F.Supp.2d 78, affirmed 404 F.3d 504, certiorari denied 126 S.Ct. 552, 163 L.Ed.2d 461. Civil Rights 1376(10)

It was not clearly established at time of accident at railroad crossing as to whether order or timing of grade crossing improvements within city violated equal protection or substantive due process, and thus state official responsible for timing of improvements was entitled to qualified immunity in § 1983 action arising from accident. Powers v. CSX Transp., Inc., S.D.Ala.2000, 105 F.Supp.2d 1295. Civil Rights 1376(3)

Commerce clause's proscription of discrimination against interstate commerce was clearly established at time Commonwealth agriculture secretary detained sugar imports under regulation prohibiting importation of refined sugar not prepackaged in consumer-size units, precluding official's reliance on qualified immunity in importer's § 1983 action against official in his individual capacity. Starlight Sugar Inc. v. Soto, D.Puerto Rico 2000, 86 F.Supp.2d 23, reversed 253 F.3d 137, certiorari denied 122 S.Ct. 548, 534 U.S. 1021, 151 L.Ed.2d 424. Civil Rights 1376(3)

Park employee was shielded from liability for First Amendment violation by fact that he acted in good faith reliance on park policy; policy was adopted by park and was not patently unconstitutional, and thus employee was entitled to assume that policy was constitutional. Nemo v. City of Portland, D.Or.1995, 910 F.Supp. 491. Civil Rights 1376(2)

Qualified immunity extends to prison official who relies on facially valid regulation unless official knows or should

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know that regulation violates well established constitutional right consisting of particular act official punishes or prohibits. Kurtz v. Denniston, N.D.Iowa 1994, 872 F.Supp. 631. Civil Rights 1376(7)

3788. Enforcement of court orders, clearly established right

Police officers had qualified immunity in civil rights action alleging that service and execution of civil protection order (CPO) constituted breach of peace and wrongful arrest that deprived plaintiff of liberty and property without due process of law, where CPO was executed pursuant to presumably constitutional Ohio statute. Kelm v. Hyatt, C.A.6 (Ohio) 1995, 44 F.3d 415. Civil Rights 1376(6)

Even if police officers' presence during illegal execution of court order issued to private citizen violated citizen's Fourth Amendment rights, law was not so clear at time of incident so as to deprive officers of qualified immunity from civil rights liability; court order was valid on its face, officers were not acquainted with any other persons involved, and officers had no reason to doubt claim that person upon whom order was being served might become violent. Apostol v. Landau, C.A.7 (Ill.) 1992, 957 F.2d 339, rehearing denied. Civil Rights 1376(6)

County deputy sheriff who executed writ of possession and evicted plaintiff from her former premises was entitled to qualified immunity with respect to § 1983 Fourth Amendment excessive force claim brought by plaintiff; the law was clearly established allowing deputy sheriff to execute state court writ of possession by forcibly evicting a person not authorized to be on the premises, deputy sheriff did not use excessive force and his conduct complied with California law and was reasonable. Busch v. Torres, C.D.Cal.1995, 905 F.Supp. 766. Civil Rights 1376(6)

3789. Agriculture, clearly established right

State officials had qualified immunity for civil liability in stockyard owner's § 1983 civil rights claim arising from one-day checkpoint outside stockyards where all vehicles carrying live stock were stopped and inspected for brucellosis papers and vehicle safety, even though no immunity may have existed at common law, since government actions were objectively reasonable, statute under which checkpoints occurred had not been clearly established to be violative of stockyard owner's constitutional rights, and government actions fell within apparent authorization of enforcement of laws designed to rid state of brucellosis. Moore v. Webster, C.A.8 (Mo.) 1991, 932 F.2d 1229. Civil Rights 1376(3)

Even if social workers and police officers violated parents' procedural due process rights by removing their children without prior notice and a hearing, social workers and police officers were entitled to qualified immunity because the law concerning the constitutionality of removal of children on an emergency basis was not clearly established; rather, existing case law set forth the general and long-standing constitutional principle that if an emergency existed, then a warrant was not required before removing children, and weight of authority from other courts showed that the facts of the case fell squarely within the "emergency" end of the spectrum. Arredondo v. Locklear, D.N.M.2005, 371 F.Supp.2d 1281. Civil Rights 1376(3); Civil Rights 1376(6)

3790. Attorneys, clearly established right--Generally

State election board attorney did not violate clearly established law in advising town officials of proper method for determining whether Job Corps students were residents of the town and eligible to vote, and attorney thus enjoyed qualified immunity precluding him from being held liable under either the federal civil rights statute or the Voting Rights Act to town officials who were sued by persons whom they did not allow to vote. Justice v. Town of Blackwell, C.A.7 (Wis.) 1987, 820 F.2d 238.

3791. ---- Private attorneys compared, clearly established right

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Qualified immunity is not available in § 1983 actions to private persons who act under color of law. Jordan v. Fox, Rothschild, O'Brien & Frankel, C.A.3 (Pa.) 1994, 20 F.3d 1250, on remand 1995 WL 141465. Civil Rights 1373

3792. ---- Prosecutors, attorneys, clearly established right

Prosecuting Attorney of judicial circuit, city, and county, had at least qualified immunity from § 1983 civil rights action brought by property owner arising from Prosecuting Attorney's actions in instructing city police to seize and padlock property owner's building, even though such action was arguably administrative in nature, and Prosecuting Attorney waited to release property to owner two months after federal Supreme Court decision holding that pretrial seizure of expressive material under state's Civil Remedies for Racketeering Act/Racketeer Influenced and Corrupt Organizations Act scheme was unconstitutional prior restraint in violation of First Amendment, where at the time of the complained-of conduct, it had not been established that any aspect of state's Civil Remedies for Racketeering Act statute was unconstitutional, thus Prosecuting Attorney did not violate any clearly established constitutional right in advising police to seize and padlock building, and Federal Supreme Court opinion did not reach issues of pre-trial seizure of nonexpressive property, nor did it reach due process question. Mendenhall v. Goldsmith, C.A.7 (Ind.) 1995, 59 F.3d 685, certiorari denied 116 S.Ct. 568, 516 U.S. 1011, 133 L.Ed.2d 492. Civil Rights 1376(9)

Assistant district attorney for county had qualified immunity in connection with claim that he had failed to provide adequate protection for witness in robbery case who was subsequently killed, presumably by same gang that had perpetrated robbery; there was no decisional law imposing upon prosecutor special duty to protect witnesses from attack and consequently no right of witness that attorney should have known he was violating by withholding protection. Ying Jing Gan v. City of New York, C.A.2 (N.Y.) 1993, 996 F.2d 522. Civil Rights 1376(9)

Assistant United States attorney's preparation of list of persons, including plaintiff, to be investigated for possible criminal conduct did not violate plaintiff's constitutional rights, and thus attorney had qualified immunity from liability for that conduct in plaintiff's § 1983 action alleging malicious prosecution. Groom v. Fickes, S.D.Tex.1997, 966 F.Supp. 1466, affirmed 129 F.3d 606. Civil Rights 1376(9)

Prosecutors were entitled to qualified immunity, in § 1983 action by police officer against whom charges were later dropped, when holding press conference; allegation that news of officer's arrest, which was transmitted by prosecutors to the media, caused officer to be held up to ridicule and scorn, failed to state any constitutional violation. Joseph v. Yocum, C.A.10 (Utah) 2002, 53 Fed.Appx. 1, 2002 WL 31656696, Unreported. Civil Rights 1376(9)

3793. ---- State attorneys general, clearly established right

Kansas Attorney General was entitled to qualified immunity from § 1983 claim for alleged unconstitutional search of store on Indian reservation, during investigation of store proprietor for failing to collect and remit state sales taxes and cigarette and tobacco taxes, in that law was not clearly established at that time that proprietor, who was member of tribe different from one that occupied reservation, was exempt from such taxes, notwithstanding Kansas Department of Revenue's unwritten policy against taxing sales on reservations and its denial of proprietor's request for sales tax certificate pursuant to that policy. Kaul v. Stephan, D.Kan.1994, 868 F.Supp. 1253, affirmed 83 F.3d 1208. Civil Rights 1376(9)

Oregon Assistant Attorneys General were not entitled to qualified immunity with respect to inmate's claim that lawsuit Department of Corrections filed against inmate to attach funds inmate received in settlement of prior § 1983 litigation against Department was commenced in retaliation for inmate's prior § 1983 actions; alleged unlawfulness of state attorneys' actions was apparent in light of preexisting law. Canell v. Oregon Dept. of Justice, D.Or.1993, 811 F.Supp. 546. Civil Rights 1376(9)

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42 U.S.C.A. § 1983

3794. ---- Attachments, attorneys, clearly established right

Bank, its vice-president and their attorney were not qualifiedly immune under § 1983 from liability to lender for their prejudgment attachment of lender's collateral under South Dakota attachment statute, as law at time clearly established unconstitutionality of statute. Watertown Equipment Co. v. Norwest Bank Watertown, N.A., C.A.8 (S.D.) 1987, 830 F.2d 1487, appeal dismissed, certiorari denied 108 S.Ct. 1723, 486 U.S. 1001, 100 L.Ed.2d 188.

3795. Child welfare, clearly established right--Generally

Social workers violated parents' clearly established Fourteenth Amendment liberty interest in familial association and privacy when they removed 12-year-old child they suspected was a victim of Munchausen Syndrome by Proxy (MSBP) from parents' home, for purposes of qualified immunity; workers did use any pre-deprivation procedural safeguards, such as attempting to obtain an ex parte order, even though child's health and safety were not in immediate danger. Roska ex rel. Roska v. Peterson, C.A.10 (Utah) 2003, 328 F.3d 1230, on remand 311 F.Supp.2d 1307. Civil Rights 1376(3); Constitutional Law 274(5); Infants 17; Infants 192

Contours of due process right of access to courts were sufficiently clear in 1980 so that reasonable official would understand unconstitutionality of intentionally or recklessly withholding potentially exculpatory information from juvenile or court; thus, caseworker and caseworker's supervisor with Massachusetts Department of Youth Services did not enjoy qualified immunity. Germany v. Vance, C.A.1 (Mass.) 1989, 868 F.2d 9, rehearing denied. Civil Rights 1376(3)

From time that child was taken into protective custody until time that circuit court entered its order terminating custody and jurisdiction, juvenile officer had authority under Missouri law to supervise welfare of child, and parents had no clearly established federal constitutional right to avoid his decision not to allow them to take child on trip, so that he was entitled to qualified immunity from liability. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(4)

Child welfare worker was entitled to qualified immunity from liability in § 1983 action for his actions in instigating child abuse proceedings, where, at that time, there were no clearly established legal norms that child welfare worker must possess before initiating custody proceedings. Miller v. City of Philadelphia, E.D.Pa.1997, 954 F.Supp. 1056, affirmed 174 F.3d 368. Civil Rights 1376(4)

3796. ---- Family rights, child welfare, clearly established right

County bureau of child welfare caseworkers who, during investigation of child abuse relating to corporal punishment at private Christian elementary school, conducted custodial interrogation of student without notifying or obtaining consent of his parents, and threatened to remove student and his sister from parents' custody, in violation of student's and parents' rights to familial relations, were entitled to qualified immunity from parents' action under § 1983, since caseworkers relied on Wisconsin statute granting them authority to conduct interrogation, even though statute violated Fourth Amendment as applied, and parents' right to physically discipline their children, or to delegate that right to private school officials, was not clearly established so as to have placed caseworkers on notice that treating corporal punishment as per se child abuse violated parents' rights. Doe v. Heck, C.A.7 (Wis.) 2003, 327 F.3d 492, amended on denial of rehearing. Civil Rights 1376(4)

County and county's social services department could not be held liable under § 1983 for failure to train, based employees' failure to comply with New York law in denying mother's visitation with sons voluntarily placed in foster care, inasmuch as mother did not have clearly established due process right to visitation at time of denial. Young v. County of Fulton, C.A.2 (N.Y.) 1998, 160 F.3d 899. Civil Rights 1352(6)

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42 U.S.C.A. § 1983

State caseworker and others did not violate any clearly established rights of grandfather by referring to him as "untreated sex offender" in affidavit filed in support of child protection order, and thus they enjoyed qualified immunity from grandfather's civil rights claim, where child twice repeated charge that grandfather engaged in abusive sexual conduct, mother reported that grandfather endangered other child by his drunkenness, but mother continued to entrust children to grandfather. Brown v. Ives, C.A.1 (Me.) 1997, 129 F.3d 209, certiorari denied 118 S.Ct. 1307, 523 U.S. 1023, 140 L.Ed.2d 471. Civil Rights 1376(3)

Father who sued police officer and social worker under § 1983, claiming that they removed his children from his custody without prior notice or hearing, sufficiently alleged violation of clearly established right; in 1993, when deprivation occurred, it was clear that parent had constitutionally protected right to care and custody of his children and that he could not be summarily deprived of that custody without notice and hearing, except when children were in imminent danger. Ram v. Rubin, C.A.9 (Hawai'i) 1997, 118 F.3d 1306, certiorari denied 118 S.Ct. 686, 522 U.S. 1045, 139 L.Ed.2d 633. Civil Rights 1398

Sexual abuse investigators did not clearly violate father's constitutional familial rights by suggesting that mother seek temporary judicial relief from father in response to allegations that father had sexually abused child, and so investigators had qualified immunity from father's civil rights action; there was no evidence that investigators had improper motive. Manzano v. South Dakota Dept. of Social Services, C.A.8 (S.D.) 1995, 60 F.3d 505. Civil Rights 1376(2)

Case worker and her supervisor who investigated child sexual abuse allegation against father were entitled to qualified immunity from father's claim that they attempted to manipulate children to give false evidence, coerced mother, created false evidence, withheld and ignored exculpatory evidence, and made misrepresentations, thereby interfering with right to family integrity under the Fourteenth Amendment; preexisting law did not establish that case workers should have known that their conduct violated nebulous right of family integrity. Doe v. State of La., C.A.5 (La.) 1993, 2 F.3d 1412, rehearing denied 9 F.3d 105, certiorari denied 114 S.Ct. 1189, 510 U.S. 1164, 127 L.Ed.2d 539. Civil Rights 1376(3)

Conduct of Texas child protective service workers in temporarily removing children from parents' home was objectively reasonable and did not violate any clearly established constitutional right, so that workers' qualified immunity protected them from liability in civil rights suit arising from removal of children, despite allegation that workers violated clearly established right of "family integrity"; workers knew of report previous evening that father had chased children in yard with chain, observed children's bruises, and were told by children that other more serious bruises were concealed under their clothing. Hodorowski v. Ray, C.A.5 (Tex.) 1988, 844 F.2d 1210. Civil Rights 1376(3)

County officials and social workers were entitled to qualified immunity on parents' substantive due process claim to familial privacy based on county's conducting child abuse investigations centered on certain practices of parents' religion; familial privacy right, although clearly established, was not well-defined, and state had interest in protecting children. Words of Faith Fellowship, Inc. v. Rutherford County Dept. of Social Services, W.D.N.C.2004, 329 F.Supp.2d 675. Civil Rights 1376(4)

Assuming aunt had due process right to be free from interference with her custodial relationship with minor nephews placed in her care, reasonable county social worker would not have understood that removing nephews from their placement with aunt before aunt was afforded notice or hearing on removal would violate aunt's constitutionally protected rights, and therefore aunt's due process interest in pre-removal procedures was not clearly established at the time social workers removed nephews from her care, entitling social workers to qualified immunity from § 1983 liability to aunt. Santos v. County of Los Angeles Department of Children and Family Services, C.D.Cal.2004, 299 F.Supp.2d 1070. Civil Rights 1376(4)

Mother whose children were in foster care had no clearly established liberty interest in visitation, and thus county

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officials were entitled to qualified immunity from mother's claim that officials had denied her visitation with her children, in violation of § 1983. Young v. County of Fulton, N.D.N.Y.1998, 999 F.Supp. 282, affirmed 160 F.3d 899. Civil Rights 1376(4)

Limits of parents' alleged liberty interest in "living together as family" with their child were not clearly established, for purposes of qualified immunity defense to claim that Child Welfare Administration violated parents' right to due process by summarily removing child from their custody after child was diagnosed with Whiplash Shaken Infant Syndrome. Dietz v. Damas, E.D.N.Y.1996, 948 F.Supp. 198. Civil Rights 1376(3)

It was clearly established in 1989 that family had protected interest in familial privacy by time department of social services became aware that suspicions of child abuse had been ruled out and, therefore, social services officials were not entitled to qualified immunity from family's action under § 1983, even though officials argued that they made every effort in good faith to comply with state law. Hodge v. Carroll County Dept. of Social Services, D.Md.1992, 812 F.Supp. 593, reversed in part, vacated in part 31 F.3d 157, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1376(2)

State official who authorized removal of child from home after physician reported suspected child abuse was entitled to qualified immunity in civil rights action brought by child's family; temporarily removing child did not violate any clearly established right of family, and official acted reasonably, based on physician's report and statements of family members indicating that child had been struck by his father. Charron v. Picano, D.R.I.1993, 811 F.Supp. 768. Civil Rights 1376(3)

State law did not provide mother with clear and mandatory procedural protections after emergency removal proceedings sufficient to create clearly established liberty interest to state initiated hearing following her children's removal and placement, and thus social worker who handled removal and placement was entitled to qualified immunity from liability under § 1983 for alleged violation of mother's procedural due process rights, where state law was not clear as to whether signatures of both parents were necessary, and children were placed in custody of their father before expiration of period specified under state law for filing petition after voluntary removal. Shiraki v. Cannella, C.A.9 (Hawai'i) 2003, 83 Fed.Appx. 896, 2003 WL 22928726, Unreported. Civil Rights 1376(3)

3797. ---- Malicious prosecutions, child welfare, clearly established right

Case worker and her supervisor who investigated child sexual abuse allegation against father were entitled to qualified immunity from father's claim that they pursued investigation despite lack of evidence of sexual abuse, in violation of his Fourteenth Amendment right to be free from malicious prosecution; although cases indicated that civil malicious prosecution claim might give rise to constitutional claim where egregious conduct was present, case law gave no indication as to what constituted such egregious conduct. Doe v. State of La., C.A.5 (La.) 1993, 2 F.3d 1412, rehearing denied 9 F.3d 105, certiorari denied 114 S.Ct. 1189, 510 U.S. 1164, 127 L.Ed.2d 539. Civil Rights 1376(3)

Caseworker employed by city agency was qualifiedly immune from mother's §§ 1983 claim that her prosecution for neglect and removal of her children violated her due process rights, where agency's policy toward battered mothers was not found unconstitutional until 2002, and legality of prosecuting mothers for neglect based on domestic violence remained unsettled. Velez v. Reynolds, S.D.N.Y.2004, 325 F.Supp.2d 293. Civil Rights 1376(4)

3798. ---- Child abuse and neglect investigations, child welfare, clearly established right

State social workers' conduct of removing infant child from mother's home for approximately seven months after discovering that child had seventeen broken bones did not clearly violate mother's substantive due process right to care and custody of child, and thus social workers were entitled to qualified immunity from mother's civil rights action; mother conceded that it was initially proper for child to be removed from home, social workers' uncertainty

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about cause of injuries caused them to question mother's ability to care for and protect child, mother attempted to deceive social workers regarding father's living arrangements and appeared reluctant to believe that father may have abused child, and mother continued to live with father until shortly before hearing. Abdouch v. Burger, C.A.8 (S.D.) 2005, 426 F.3d 982, rehearing and rehearing en banc denied. Civil Rights 1376(3)

County bureau of child welfare caseworkers who, during investigation of child abuse relating to corporal punishment at private Christian elementary school, violated school's, student's, and student's parents' rights to procedural due process by failing to obtain warrant or court order before searching school premises and seizing student, interrogating student without first notifying his parents and obtaining their consent, and threatening to remove student and his sister from parents' custody, were entitled to qualified immunity from suit under § 1983, since caseworkers relied on Wisconsin statute granting them authority to conduct interrogation, even though statute violated Fourth Amendment as applied, and to extent caseworkers investigated parents solely due to their use of or support for corporal punishment, the law was not clearly established so as to place caseworkers on notice that their actions were clearly unconstitutional. Doe v. Heck, C.A.7 (Wis.) 2003, 327 F.3d 492, amended on denial of rehearing. Civil Rights 1376(4)

At time when state social worker allegedly instructed child's mother to stop making allegations of child abuse against child's father, there were no cases "clearly establishing" that a government official, by her statements discouraging citizens from seeking protection from government officials for harm inflicted by other private citizens, is held to have created danger of private abuse; therefore, social worker was entitled to qualified immunity defense in § 1983 action brought after father killed child. Currier v. Doran, C.A.10 (N.M.) 2001, 242 F.3d 905, certiorari denied 122 S.Ct. 543, 534 U.S. 1019, 151 L.Ed.2d 421. Civil Rights 1376(3)

Child welfare workers were qualifiedly immune from parents' and child's § 1983 claim that child's removal from school in 1990 for purpose of medical examination for signs of sexual abuse, without court order, violated their procedural due process rights, inasmuch as it was not clearly established until instant appeal in 1999 that emergency removal is unwarranted where there is reasonable time consistent with child's safety to obtain judicial order. Tenenbaum v. Williams, C.A.2 (N.Y.) 1999, 193 F.3d 581, certiorari denied 120 S.Ct. 1832, 529 U.S. 1098, 146 L.Ed.2d 776. Civil Rights 1376(4)

A period of four months after Court of Appeals decision in *Meador*, holding that due process extends right to be free from infliction of unnecessary harm to children in state-regulated foster homes, was an adequate period of time for social workers to adapt to the decision, for purposes of determining whether it was clear that children had right to due process protection and whether social workers are entitled to qualified immunity from liability in § 1983 action arising out of abuse of children in foster care. Lintz v. Skipski, C.A.6 (Mich.) 1994, 25 F.3d 304, certiorari denied 115 S.Ct. 485, 513 U.S. 988, 130 L.Ed.2d 397. Civil Rights 1376(2)

Complaint failed to state civil rights claim against social workers and sheriff's deputy, for their conduct in relation to child abuse investigation and dependency and neglect action, because it failed to show that conduct of social workers and deputy violated clearly established constitutional or statutory rights of which reasonable person would, or should, have known, as would be necessary to overcome qualified immunity defense; no case law cited in complaint supported assertions that charged conduct violated clearly established rights. Hidahl v. Gilpin County Dept. of Social Services, C.A.10 (Colo.) 1991, 938 F.2d 1150. Civil Rights 1398

Social workers who, on basis of perceived emergency, removed father's minor children from his home without notice or hearing and arranged for them to be transported to another state to stay with their mother, with whom father shared joint custody, were protected by qualified immunity in father's civil rights action because social workers did not violate any clearly established constitutional or statutory right; father's children were not placed with person who lacked legal custody rights and policy action taken by social workers had at least some support in Montana statute. Caldwell v. LeFaver, C.A.9 (Mont.) 1991, 928 F.2d 331. Civil Rights 1376(2)

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42 U.S.C.A. § 1983

Allegation that district attorney and welfare department employees failed to report or investigate allegations of child abuse was sufficient to charge violation of child's clearly established right of access to courts, thus depriving defendants of qualified immunity defense. Chrissy F. by Medley v. Mississippi Dept. of Public Welfare, C.A.5 (Miss.) 1991, 925 F.2d 844. Civil Rights 1376(3); Civil Rights 1376(9); Civil Rights 1395(1)

Child protective services workers were entitled to qualified immunity in action against them in their personal capacities by father who was target of child molestation investigation; father failed to show that workers breached clearly established statutory or constitutional rights of which reasonable person would have known. Stem v. Ahearn, C.A.5 (Tex.) 1990, 908 F.2d 1, certiorari denied 111 S.Ct. 788, 498 U.S. 1069, 112 L.Ed.2d 850, rehearing denied 111 S.Ct. 1341, 499 U.S. 932, 113 L.Ed.2d 272. Civil Rights 1376(2)

School personnel and social worker who removed student from classroom and subjected her to questioning and physical examination to determine if she was abused, and who subsequently questioned her sister about possible abuse even after father objected, were entitled to qualified immunity from civil rights claims asserted by the children and their parents; minor school children suspected of being victims of child abuse did not have at the relevant time a clearly established right to be free from questioning and visual examination of unexposed parts of their bodies of which state and local school employees reasonably should have known. Landstrom v. Illinois Dept. of Children and Family Services, C.A.7 (Ill.) 1990, 892 F.2d 670. Civil Rights 1376(2); Civil Rights 1376(5)

Individual defendants in their official capacity as employees of Illinois Department of Children and Family Services were protected from damage liability by doctrine of qualified immunity arising out of alleged deprivation of parents' constitutional rights by visual inspection of unclothed bodies of their children to determine whether children had been abused in view of the fact that at the time Department conducted physical examinations, the law was not clear whether such physical examinations were unconstitutional. Darryl H. v. Coler, C.A.7 (Ill.) 1986, 801 F.2d 893. Civil Rights 1376(3)

State and county employees were entitled to good-faith immunity from civil rights claims, brought on behalf of children who died after suffering brutal beatings at the hands of their guardians, alleging that the defendants violated the children's Fourteenth Amendment rights by failing to intervene and provide protection where, at time of alleged violation, constitutional right of affirmative protection was not clearly established. Jensen v. Conrad, C.A.4 (S.C.) 1984, 747 F.2d 185, certiorari denied 105 S.Ct. 1754, 470 U.S. 1052, 84 L.Ed.2d 818. Civil Rights 1376(3); Civil Rights 1376(4)

Social worker and police officer were entitled to qualified immunity for removing children from home without court order on basis of one child's tooth decay and bottle rot and both children's possible malnourishment, where law governing emergency removal of children on basis of medical neglect was not clearly established at time. Rogers v. County of San Joaquin Human Services Agency, E.D.Cal.2004, 363 F.Supp.2d 1227. Civil Rights 1376(4); Civil Rights 1376(6)

County officials and social workers were entitled to qualified immunity from claim that they conducted unconstitutional warrantless searches by holding abuse interviews with children at private school without parents' knowledge; right was not clearly established at time of conduct, and searches conducted by social workers were subject to less scrutiny than searches in criminal context. Words of Faith Fellowship, Inc. v. Rutherford County Dept. of Social Services, W.D.N.C.2004, 329 F.Supp.2d 675. Civil Rights 1376(4)

Officials and employees of city's child services agency did not violate clearly established law when they initiated child protective proceedings against mother based on alleged neglect in allowing her children to witness domestic violence, given questions as to whether, under state law, definition of "neglected child" included instances in which sole allegation of neglect was allowing child to witness domestic violence, and therefore officials and employees were shielded by qualified immunity from § 1983 liability for alleged malicious prosecution. Garcia v. Scoppetta,

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E.D.N.Y.2003, 289 F.Supp.2d 343. Civil Rights 1376(4)

It was clearly established in 2000, for purposes of qualified immunity analysis in a substantive due process action, that a social worker could not constitutionally sever parental contact with a child without a reasonable basis to suspect parental abuse. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1376(3); Civil Rights 1376(4)

Employees of State of Oregon Services to Children and Families (SOSCF) were entitled to qualified immunity from father's claim that employees deprived him of due process because he was not able to see his daughter during investigation of possible child abuse; employees' alleged actions did not amount to deprivation of clearly established right. Nielson v. Legacy Health Systems, D.Or.2001, 230 F.Supp.2d 1206. Civil Rights 1376(3)

Where there was reasonable cause to believe that child was subject of neglect or abuse, juvenile officer could take child into temporary protective custody to avoid perceived danger of personal harm by child remaining in his parents' residence, and doing so did not violate any clearly established civil rights of parents, so that officer was entitled to qualified immunity. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(2)

At time county employees temporarily removed developmentally disabled child from her parents' home based on alleged sexual abuse by father and filed child neglect petition against child's parents, it was not clearly established that child's allegations of sexual abuse as reported through experimental communication technique, together with other circumstances, would be insufficient to warrant immediate removal of child from her home or that bringing subsequent neglect petition based on such information would violate parents' constitutional rights, as would entitle county employees to qualified immunity in § 1983 action for alleged violation of parents' right to custody of child. Zappala v. Albicelli, N.D.N.Y.1997, 954 F.Supp. 538, affirmed 173 F.3d 848. Civil Rights 1376(4)

Parents' constitutional liberty interest in right to care and custody of their child was not "clearly established" when state officials removed child from their home based on unfounded allegations of sexual abuse, and, therefore, officials were entitled to qualified immunity from parents' civil rights claims; although it was well established that constitution offered some protection against state interference with parental rights, contours of right to family integrity were not defined with specificity. Defore v. Premore, N.D.N.Y.1994, 863 F.Supp. 91, affirmed 86 F.3d 48. Civil Rights 1376(3)

Inaction of State Department of Family Services employees respecting their failure to remove child from household of child's legal guardians, despite their alleged knowledge of physical and sexual abuse of child, did not violate any clearly established rights of child and, thus, employees were immune from liability under doctrine of qualified immunity for government employees in child's § 1983 action against employees in their individual capacities. Sapp v. Cunningham, D.Wyo.1994, 847 F.Supp. 893. Civil Rights 1376(3)

Employee of children's advocacy center who interviewed child who had allegedly been sexually abused and who insisted on plaintiff's arrest was entitled to qualified immunity in plaintiff's civil rights suit after criminal charges against plaintiff were dismissed; there was no clearly established law that would have put employee on notice that her actions were unlawful. Fittanto v. Klein, N.D.Ill.1992, 788 F.Supp. 1451. Civil Rights 1376(2)

State police investigator who informed state human resources official of inmate's alleged assault on daughter during prison family visit enjoyed qualified immunity from inmate's claim of constitutional deprivation arising from placement of his daughters into foster care, since investigator's action was clearly reasonable and did not violate any clearly established constitutional rights. Smith v. Coughlin, S.D.N.Y.1989, 727 F.Supp. 834. Civil Rights 1376(6)

3799. ---- Child support, child welfare, clearly established right

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42 U.S.C.A. § 1983

Former and current directors of Missouri Division of Child Support Enforcement were not entitled to qualified immunity from § 1983 claim arising from decision of directors not to use federally mandated formula in setting amount of child support arrearages owed by noncustodial parent as reimbursement for Aid to Families of Dependent Children (AFDC) paid to custodial parent; right to have child support arrearages calculated in accordance with federally mandated formula was clearly established statutory right of which director should have known. Jackson v. Rapps, C.A.8 (Mo.) 1991, 947 F.2d 332, rehearing denied, certiorari denied 112 S.Ct. 1561, 503 U.S. 960, 118 L.Ed.2d 208. Civil Rights 1376(3)

3800. ---- Foster care placements, child welfare, clearly established right

Director of the Arkansas Department of Human Services, Department caseworker, and certified foster parent were not entitled to qualified immunity from § 1983 claim arising out of death of asthmatic child placed in care of foster parent, as it was clearly established at time of incident that state has an obligation to provide adequate medical care, protection and supervision in case of children placed in foster care. Norfleet By and Through Norfleet v. Arkansas Dept. of Human Services, C.A.8 (Ark.) 1993, 989 F.2d 289. Civil Rights 1376(3)

Social workers employed by state human services agency were entitled to qualified immunity from liability in civil rights action in which it was alleged that minor came to harm while placed in state-licensed foster home as result of social workers' deliberate indifference to serious medical and developmental needs; when child was placed in foster home, it was not clearly established that due process imposed upon social workers a duty to assume responsibility for his care. Eugene D. By and Through Olivia D. v. Karman, C.A.6 (Ky.) 1989, 889 F.2d 701, rehearing denied, certiorari denied 110 S.Ct. 2631, 496 U.S. 931, 110 L.Ed.2d 651. Civil Rights 1376(3)

Official did not violate clearly established constitutional right in 1984 by placing a child in an environment despite information that individuals in that environment might present a threat to child's safety, so that public officials were entitled to qualified immunity with respect to civil rights action on behalf of child who had been placed in foster home despite warnings that members of the household had used drugs and sexually abused children in the past. Doe v. Bobbitt, C.A.7 (Ill.) 1989, 881 F.2d 510, rehearing denied, certiorari denied 110 S.Ct. 2560, 495 U.S. 956, 109 L.Ed.2d 742. Civil Rights 1376(2)

Constitutional standards for consideration of racial, ethnic, or cultural needs of child in foster placement were not clearly established in 1984, when officials of Missouri Division of Family Services made decision not to return two black foster children to white foster parents' home; thus, officials, who were entitled to qualified immunity, were not required to defend their decision in damage suits by white foster parents. J.H.H. v. O'Hara, C.A.8 (Mo.) 1989, 878 F.2d 240, rehearing denied, certiorari denied 110 S.Ct. 1117, 493 U.S. 1072, 107 L.Ed.2d 1024. Civil Rights 1376(3)

Rights of foster children or potential foster children under Adoptive Assistance and Child Welfare Act to development of case plan, to review of plan, to timely hearing, to development of information system, and to other matters were clearly established, and, thus, state officials were not entitled to qualified immunity from liability in § 1983 action. Del A. v. Edwards, C.A.5 (La.) 1988, 855 F.2d 1148, rehearing granted 862 F.2d 1107.

Foster child had "clearly established" right to be free from abuse by foster mother who allegedly whipped him, starved him, left him chronically dehydrated, gassed him with mace, tied him up, and forced him to live in animal filth, such that employees of Florida Department of Children and Families (DCAF) were on notice that it was constitutionally wrongful for them not to intervene and could be denied qualified immunity in § 1983 action. Omar ex rel. Cannon v. Lindsey, M.D.Fla.2003, 243 F.Supp.2d 1339, affirmed 334 F.3d 1246. Civil Rights 1376(3)

Requirement that state not ignore expressed religious preferences of parents and children interacting with the foster care system was clearly established when Jewish mother's child entered the foster care system, and thus child welfare caseworker was not entitled to qualified immunity in action brought by mother alleging her First

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Amendment free exercise rights were violated by caseworker's placement of child with Catholic foster parent. Bruker v. City of New York, S.D.N.Y.2004, 337 F.Supp.2d 539. Civil Rights 1376(3)

Foster child's due process right to protection and care while in the foster care system was clearly established at the time she was abused in emergency shelter, and thus Department of Children and Families (DCF) employees were not entitled to qualified immunity against foster child's § 1983 action arising out of the abuse. Danielle v. Adriazola, S.D.Fla.2003, 284 F.Supp.2d 1368. Civil Rights 1376(3)

Foster child's due process right to protection and care while in the foster care system was clearly established at the time she was abused in emergency shelter, and thus Department of Children and Families (DCF) employees were not entitled to qualified immunity against foster child's §§ 1983 action arising out of the abuse. Danielle v. Adriazola, S.D.Fla.2003, 284 F.Supp.2d 1368. Civil Rights 1376(3)

Even if foster parents were public officials and could therefore invoke qualified immunity defense, their behavior could indicate a deliberate indifference to risk of suffocation for an immobilized infant and duty they assumed to care for him, and thus minor's constitutional right to freedom from harm was clearly established for purposes of minor's parents' § 1983 claim against foster parents, where a reasonable foster parent would realize that creating a grave risk of death to a child in their care would violate that child's right to safety; foster parents placed minor immobilized by waist and leg cast face-down on a pillow for several hours, which resulted in his positional asphyxia. Hernandez v. Hines, N.D.Tex.2001, 159 F.Supp.2d 378. Civil Rights 1376(2)

Where division of family services employee entered parents' home, not to search for evidence of crime or juvenile neglect or abuse but, rather, to obtain child's possessions for transfer of his custody to foster parents, and where parents did not allege that entry violated their rights, any federal constitutional right in them to prevent employee from gathering child's clothes after she was in the residence was not clearly established, if it existed at all, and she was protected from liability by qualified immunity. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(4)

Although children in foster care had right to have protective action taken when accusations of sexual abuse in foster home were made, children did not have clearly established right to specific actions such as immediate removal from home and, therefore, county social worker was entitled to qualified immunity from children's claims that they had been deprived of their constitutional rights by being physically, emotionally, and sexually abused in foster home. Lintz v. Skipski, W.D.Mich.1993, 815 F.Supp. 1066. Civil Rights 1376(4)

Child's due process right to reasonable care and protection, especially in case of serious medical need, was clearly established in August of 1991 when child was taken into custody and placed in foster home after babysitter was arrested during trip by parent, and, thus, Director of Children and Family Services of Arkansas Department of Human Services (DHS), caseworker, and foster parent were not entitled to qualified immunity from § 1983 liability. Norfleet By and Through Norfleet v. State of Ark. Dept. of Human Services, E.D.Ark.1992, 796 F.Supp. 1194, affirmed 989 F.2d 289. Civil Rights 1376(3)

3801. ---- Medical treatment, child welfare, clearly established right

Failure of staff psychologist at state adolescent home who was on treatment team for patient to take action after patient unsuccessfully tried to hang himself did not violate patient's clearly established due process rights, and psychologist was entitled to qualified immunity in federal civil rights action brought after patient suffered severe injuries during second attempt to hang himself two days later after he was taken off close observation, where psychologist was not aware of initial hanging attempt or that patient was taken off close observation. Dolihite v. Maughon By and Through Videon, C.A.11 (Ala.) 1996, 74 F.3d 1027, certiorari denied 117 S.Ct. 185, 519 U.S. 870, 136 L.Ed.2d 123. Civil Rights 1376(3)

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Officials of county department of family and children services would be entitled to qualified immunity from liability in civil rights action, if law had been unclear when they obtained custody of minor patient after patient's father had refused to consent to insertion of catheter for administration of prescribed medication; although father's liberty interest in custody of patient was a right of which he could not be legally deprived without due process of law, officials could have acted without prior notice or opportunity for hearing if patient's life, safety or welfare had been threatened and if threat was of sufficient proportions and immediacy to warrant ex parte treatment. Bendiburg v. Dempsey, N.D.Ga.1989, 707 F.Supp. 1318, affirmed in part, reversed in part on other grounds 909 F.2d 463, certiorari denied 111 S.Ct. 2053, 500 U.S. 932, 114 L.Ed.2d 459. Civil Rights 1376(4)

3802. City officials, clearly established right

City officials were not entitled to qualified immunity for their enforcement of billboard ordinance; for over fifty years, it had been clearly established that licensing scheme is impermissible if it allows officials unfettered discretion to impose prior restraints on speech and it was clear that city could not impose greater restrictions on commercial speech than on noncommercial speech, and could not regulate noncommercial speech on the basis of content. Desert Outdoor Advertising, Inc. v. City of Moreno Valley, C.A.9 (Cal.) 1996, 103 F.3d 814, certiorari denied 118 S.Ct. 294, 522 U.S. 912, 139 L.Ed.2d 227. Civil Rights 1376(4)

City council members were entitled to qualified immunity from liability in § 1983 excess force action brought by daughter of robbery suspect who was killed by police claiming that council members deprived her of her civil rights by indemnifying officers against punitive damage liability since law was not sufficiently clear that reasonable council member would have understood that payment of punitive damages violated any constitutional right either before or after fatal shooting. Trevino v. Gates, C.A.9 (Cal.) 1996, 99 F.3d 911, certiorari denied 117 S.Ct. 1249, 520 U.S. 1117, 137 L.Ed.2d 330. Civil Rights 1376(4)

City administrators were not entitled to qualified immunity against independent contractor's claim that city's termination of its contracts was in retaliation for contractor's speech, through its flier and demonstration, expressing need for appropriate housing for persons with HIV/AIDS, and danger of homelessness faced by clients served by one of its programs due to city's failure to reimburse it for expenses and execute contract; issues contractor addressed squarely implicated matters of social and community concern, and were clearly protected by First Amendment. Housing Works, Inc. v. Turner, S.D.N.Y.2005, 362 F.Supp.2d 434. Civil Rights 1376(4)

Municipal employees who were involved in decision to inspect dangerous structure on private land and subsequently to demolish it were acting under clearly established law, and thus were entitled to qualified immunity as to landowner's civil rights claims stemming from demolition; employees were acting pursuant to Town Board resolution, adopted after full hearing. Davis v. Town of Hempstead, E.D.N.Y.2003, 296 F.Supp.2d 376, affirmed in part, vacated in part and remanded 167 Fed.Appx. 235, 2006 WL 172216, on remand 2006 WL 656995. Civil Rights 1376(4)

3803. Clinical privileges, clearly established right

Staff psychiatrist working for state psychiatric center did not have clearly established property right in his clinical privileges on date that center's director denied psychiatrist's appeal of revocation of his clinical privileges, and thus employees of center and of state office of mental health were entitled to qualified immunity. Greenwood v. State of N.Y., S.D.N.Y.1996, 939 F.Supp. 1060, affirmed in part, vacated in part 163 F.3d 119, on remand 2000 WL 1336281. Civil Rights 1376(3)

3804. Contractors, clearly established right

Volunteer fire company, a government contractor, would be qualifiedly immune from employees' due process

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liberty interest claims based on any public statements by company regarding employees' alleged ineptitude, since, at relevant time period, law was insufficiently established with respect to whether allegations of ineptitude against public employee necessitated name-clearing hearing. Mitchell v. Lealman Volunteer Fire Co., M.D.Fla.1996, 985 F.Supp. 1436. Civil Rights 1376(10)

Health care provider serving state correctional institutions asserted violation of clearly established and particularized interest protected by substantive due process which could not be defeated by qualified immunity in alleging that correctional officials conspired to debar provider from contracting with Commonwealth and to destroy its business reputation by falsely blaming provider for inmate's death. Hoffman v. Lehman, M.D.Pa.1996, 926 F.Supp. 510. Civil Rights 1376(7)

3805. Contracts and assignments, clearly established right

New York state police officers were entitled to qualified immunity against towing company's due process claims with respect to termination of its towing assignments, where exclusive assignment as towing operator for section of highway was nontraditional relationship and was terminable at will, so that it could not have been clear whether assignment provided company with status sufficient to give it liberty interest protected by due process in avoiding termination without name-clearing hearing, and where no court had ever answered question whether communication by one police officer to another of charge of dishonesty or ties to organized crime would constitute publication sufficient to violate subject's liberty interest. White Plains Towing Corp. v. Patterson, C.A.2 (N.Y.) 1993, 991 F.2d 1049, certiorari denied 114 S.Ct. 185, 510 U.S. 865, 126 L.Ed.2d 144. Civil Rights 1376(6)

No legal principles developed under equal protection clause clearly established that state officials could not award public contracts on basis of partisan politics or party affiliation; thus, Ohio officials were entitled to qualified immunity from civil damages on claim that they deprived plaintiff of equal protection by causing state to refuse, on partisan political grounds, to award plaintiff a bid to operate a golf course at a state park. Lundblad v. Celeste, C.A.6 (Ohio) 1991, 924 F.2d 627, certiorari denied 111 S.Ct. 2889, 501 U.S. 1250, 115 L.Ed.2d 1054. Civil Rights 1376(3)

Independent contractor's longstanding relationship with city to provide variety of services to homeless and to people with AIDS was "pre-existing commercial relationship," for purposes of clearly established federal law prohibiting termination of at-will government contracts in retaliation for contractor's exercise of its First Amendment rights, and thus city officials were not entitled to qualified immunity from liability in contractor's § 1983 retaliation suit, even if there was no contract between parties at time of alleged retaliation. Housing Works, Inc. v. Guiliani, C.A.2 (N.Y.) 2003, 56 Fed.Appx. 530, 2003 WL 56921, Unreported. Civil Rights 1376(4)

3806. Court officials, clearly established right

Court reporter was not entitled to qualified immunity from § 1983 liability for failing to timely prepare criminal trial transcript; defendant's due process right to timely appeal his conviction was so "clearly established" as to alert court reporter as to its constitutional parameters, and reporter was notified of her tardiness, yet did not seek extension of time, submit written explanation for delay or ask for assistance. Hargrove v. Riley, E.D.Wash.2000, 100 F.Supp.2d 1271. Civil Rights 1376(8)

Clerk of county court did not violate clearly established law by retaining interest accrued on spousal and child support payments which were paid to clerk and who then later paid recipients; therefore, she was entitled to qualified immunity from liability in § 1983 action brought by recipients who claimed that interest belonged to them. Winters v. Mowery, S.D.Ind.1993, 836 F.Supp. 1419, amended on other grounds 153 F.R.D. 132, on reconsideration in part 884 F.Supp. 321. Civil Rights 1376(8)

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3807. Developers, clearly established right

Alleged conduct of village officials in rejecting developers' business registration application and refusing to accept subdivision applications or approve final plats due to personal animosity did not violate any clearly established right to equal protection, and thus, officials enjoyed qualified immunity from developer's equal protection claim. Norton v. Village of Corrales, C.A.10 (N.M.) 1996, 103 F.3d 928. Civil Rights 1376(4)

3808. Education or schools, clearly established right--Generally

School board member who brought § 1983 action against other board members, stemming from her purportedly improper removal from board and investigation leading thereto, failed to allege that other members' actions violated clearly established legal rights of which they should have known, since conduct as alleged did not impermissibly infringe upon member's constitutional rights, and thus other members were entitled to qualified immunity from claims in their personal capacities. Velez v. Levy, S.D.N.Y.2003, 274 F.Supp.2d 444, affirmed in part, vacated in part and remanded 401 F.3d 75. Civil Rights 1376(10)

School official is entitled to qualified immunity from § 1983 action insofar as his conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known, or even where rights were clearly established, if it was objectively reasonable to believe his act did not violate those rights. Mazza v. Hendrick Hudson Cent. School Dist., S.D.N.Y.1996, 942 F.Supp. 187. Civil Rights 1376(5)

State school board officials were entitled to qualified immunity in their individual capacities for violations of federal civil rights provision insofar as their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Peelman v. Delaware Joint Vocational School Dist. Bd. of Educ., S.D.Ohio 1991, 763 F.Supp. 268, on subsequent appeal 992 F.2d 1217. Civil Rights 1376(5)

3809. ---- Equal protection, education or schools, clearly established right

Even assuming that noncustodial divorced parent had federal constitutional right to participate in his children's education, and that school deprived him of that right by excluding him from school grounds to monitor school's protection of his children from bullies and by improperly denying him access to his children's educational records, school principal enjoyed qualified immunity in parent's §§ 1983 substantive due process/equal protection action, since purported constitutional right was not established law. Crowley v. McKinney, C.A.7 (Ill.) 2005, 400 F.3d 965, certiorari denied 126 S.Ct. 750, 163 L.Ed.2d 573. Civil Rights 1376(5)

Defendant school officials were not entitled to qualified immunity in § 1983 action by male student alleging that officials violated equal protection due to their differing treatment of male and female victims of harassment by other students, as law clearly provided for equal protection in context of gender discrimination at relevant time, and officials did not proffer important governmental objective in support of their conduct. Nabozny v. Podlesny, C.A.7 (Wis.) 1996, 92 F.3d 446. Civil Rights 1376(5)

Defendant school officials were not entitled to qualified immunity in § 1983 action by male student who was harassed by other students and alleged that officials violated equal protection due to their differing treatment of student due to student' sexual orientation, as it was established, at relevant time, that Constitution prohibited intentional invidious discrimination between otherwise similarly situated persons based on one's membership in definable minority, absent at least rational basis for discrimination, homosexuals were definable minority, and officials failed to show rational basis for their conduct. Nabozny v. Podlesny, C.A.7 (Wis.) 1996, 92 F.3d 446. Civil Rights 1376(5)

School administrator and area superintendent were not entitled to qualified immunity at pleading stage to high school students' and parent's supervisory liability civil rights claims, that were based upon unreasonable seizure and

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excessive force by school officials, where plaintiffs properly alleged violations of clearly established Fourth Amendment rights, plaintiffs alleged that their rights were violated because defendants implemented discriminatory procedures, policies, and customs, and it was not precisely clear what role, if any, defendants played in alleged violations. Alexander v. Underhill, D.Nev.2006, 416 F.Supp.2d 999. Civil Rights 1376(5)

State university's president, athletic director, and assistant athletic director had qualified immunity from suit alleging that they violated equal protection rights of cheerleading coordinator when they placed her on probation after she allegedly interjected her Christian religion into cheerleading activities, and then terminated her after she read statement critical of probation to cheerleading squad; there were no other similarly situated individuals who received preferential treatment. Braswell v. Board of Regents of University System of Ga., N.D.Ga.2005, 369 F.Supp.2d 1371. Civil Rights 1376(10)

School superintendent did not have qualified immunity from suit claiming that he violated due process and equal protection rights of female elementary school students by not taking measures to protect them against teacher with history of sexual harassment; failure to take actions was well-established basis for liability on part of superintendent. Rasnick v. Dickenson County School Bd., W.D.Va.2004, 333 F.Supp.2d 560. Civil Rights 1376(5)

Even if high school principal's alleged conduct of turning student over to police officer to be taken into custody after student was allegedly unable to articulate her name violated the Fourth Amendment, student's rights in such context were not clearly established, and thus principal was entitled to qualified immunity from Fourth Amendment claim. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Civil Rights 1376(5)

At time of allegedly impermissible conduct, law clearly established that equal protection clause clearly prohibited sex-based intentional discrimination, for purpose of determining whether principal, in her individual capacity, was entitled to qualified immunity from student's § 1983 action. Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist., N.D.Cal.1997, 964 F.Supp. 1369. Civil Rights 1376(5)

Present and former Secretaries of Puerto Rico Department of Education and Licensing Director enjoyed qualified immunity from liability on prospective teacher's equal protection claim that certification examination should have been administered to her in English; court decisions involving minority language groups in equal protection were few and scattered throughout circuits and did not establish right that any official reasonably could have known existed. Smothers v. Benitez, D.Puerto Rico 1992, 806 F.Supp. 299. Civil Rights 1376(5)

3810. ---- Freedom of speech, education or schools, clearly established right

High school principal was not entitled to qualified immunity in student's §§ 1983 action alleging violation of his First Amendment rights for his punishment for displaying banner saying "Bong Hits 4 Jesus" during school-authorized activity taking place off of school campus; principal's actions violated student's First Amendment rights, and right was clearly established in light of fact that there was no concern about educational activities being disrupted and principal admitted to being aware of relevant law. Frederick v. Morse, C.A.9 (Alaska) 2006, 439 F.3d 1114. Civil Rights 1376(5)

Right of state university student editors under First Amendment to print school newspaper without prior review and approval by university officials was not clearly established, and thus university dean was entitled to qualified immunity from liability in students' §§ 1983 action alleging prior restraint violations of First Amendment; many aspects of law with respect to students' speech, not only role of age, were difficult to understand and apply, and Supreme Court had not ruled on whether *Hazelwood* legal framework applied in university settings. Hosty v. Carter, C.A.7 (Ill.) 2005, 412 F.3d 731, certiorari denied 126 S.Ct. 1330, 164 L.Ed.2d 47. Civil Rights 1376(5)

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Chancellor was not entitled to qualified immunity from liability for issuing preclearance directive in March of 2001 that banned all speech directed toward prospective student athletes without prior permission, in civil rights action brought by state university students and faculty members, who wished to contact prospective student athletes to make them aware that university and its athletic program utilized mascot that they believed was degrading to Native Americans, since fact that public employees retained certain rights to free speech on matters of public concern had been apparent since *Pickering* decision in 1968, *NTEU* in 1995, and *Jones* in 1999. Crue v. Aiken, C.A.7 (Ill.) 2004, 370 F.3d 668. Civil Rights 1376(5); Civil Rights 1376(10)

Staff of university actor training program were not entitled to qualified immunity from Mormon student's claim that program's script adherence requirement constituted compelled speech in violation of the First Amendment because it forced her to recite words in class exercises she considered offensive; claim alleged a violation of the First Amendment, and law clearly established that a pretextual speech restriction that was not justified by a legitimate pedagogical concern, and was based rather on religious discrimination, would violate student's First Amendment rights. Axson-Flynn v. Johnson, C.A.10 (Utah) 2004, 356 F.3d 1277. Civil Rights 1376(5)

Rights of state university student editors under the First Amendment to print school newspaper without prior review and approval by university officials were clearly established for purposes of determining whether university dean was qualifiedly immune § 1983 action brought by students against school officials; notwithstanding United States Supreme Court restrictive First Amendment standard announced in *Hazelwood*, holding that high school journalism students' First Amendment rights could be limited, there were distinct differences between First Amendment rights at stake for university students versus high school students and the dangers of chilling individual thought and expression were especially threatening in the university setting, where the creative power of student intellectual life is a vital measure of a school's influence and attainment. Hosty v. Carter, C.A.7 (Ill.) 2003, 325 F.3d 945, rehearing granted, opinion vacated. Civil Rights 1376(5)

It was clearly established prior to 1996 that handbills posted on bulletin boards at state university, which was a designated public forum, by former professor at university, through which professor sought to promote his appearance at upcoming conference to be held at university, were speech protected by First Amendment, and thus, second professor, who took down handbills, was not protected by qualified immunity in former professor's § 1983 action alleging a violation of his free speech rights. Giebel v. Sylvester, C.A.9 (Mont.) 2001, 244 F.3d 1182. Civil Rights 1376(5); Civil Rights 1376(10)

Even if history department display case at state university was nonpublic forum, such status did not compel finding that student's and professors' First Amendment right to display certain materials relating to department professors was not clearly established, for purpose of chancellor's claim to qualified immunity in § 1983 action brought by professors and students; suppression was unreasonable since forum was designated for type of expression engaged in by professors and students, and suppression amounted to viewpoint-based discrimination. Burnham v. Ianni, C.A.8 (Minn.) 1997, 119 F.3d 668. Civil Rights 1376(5); Civil Rights 1376(10)

Public school principal and teacher were entitled to qualified immunity in §§ 1983 action against them in their personal capacities brought by parent of public school student, as next friend of student, alleging violation of student's right to equal protection, based on actions of principal and teacher in prohibiting students from speaking Spanish in school, absent showing that right to speak a foreign language at a public school was clearly established. Rubio v. Turner Unified School Dist. No. 202, D.Kan.2006, 453 F.Supp.2d 1295. Civil Rights 1376(5)

State university's president, athletic director, and assistant athletic director had qualified immunity from suit alleging that they violated free speech rights of cheerleading coordinator by terminating her after she read statement to cheerleaders naming Jewish student who had complained of her interjection of Christian religion into cheerleading activities and expressing strong disagreement with decision to place her on probation; inability to terminate employee under circumstances of present case were not clearly established. Braswell v. Board of Regents of University System of Ga., N.D.Ga.2005, 369 F.Supp.2d 1371. Civil Rights 1376(10)

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California school officials were entitled to qualified immunity from claims that they violated high school student's religious and speech rights under the First Amendment when they suspended him for wearing T-shirt which with message expressing religious condemnation of homosexuality, as it was unclear whether student's right to free speech and religion was overcome by state statutes prohibiting sexual orientation harassment. Harper ex rel. Harper v. Poway Unified School Dist., S.D.Cal.2004, 345 F.Supp.2d 1096, affirmed and remanded 445 F.3d 1166. Civil Rights 1376(5)

It was clearly established at time state university faculty members allegedly retaliated against graduate student for exercising First Amendment rights, after student accused advisor of misappropriating his research, that state university officials cannot retaliate against or punish graduate student for content of his speech, regardless of whether that speech touches matters of public or private concern, and thus defendant faculty members could not establish defense of qualified immunity in § 1983 suit. Qvyjt v. Lin, N.D.Ill.1997, 953 F.Supp. 244. Civil Rights 1376(5)

School board members, in their individual capacities, were not entitled to qualified immunity from plaintiffs' § 1983 claim, alleging temporary restraining order (TRO) sought by members enjoining plaintiffs from distributing charges filed by school board against principal and from disseminating any information that could lead to identity of student named in charges violated their free speech rights; right to speak out on political and social issues was clearly established, fundamental constitutional rights and reasonable jury could find TRO adversely impacted First Amendment rights and that members' belief in lawfulness of their actions was unreasonable. Mazza v. Hendrick Hudson Cent. School Dist., S.D.N.Y.1996, 942 F.Supp. 187. Civil Rights 1376(5)

Contours of right of free speech of students and teachers were sufficiently clear that reasonable university official would understand that requiring removal of photographs of members of history department from display case because they were depicted as historical figures holding weapons violated the right. Burnham v. Ianni, D.Minn.1995, 899 F.Supp. 395, reversed 98 F.3d 1007, rehearing granted, opinion vacated, on rehearing 119 F.3d 668. Civil Rights 1376(5)

3811. ---- Religion, education or schools, clearly established right

Staff of university actor training program were not entitled to qualified immunity from Mormon student's claim that program's script adherence requirement violated the Free Exercise Clause of the First Amendment because it forced her to recite words in class exercises which offended her religious beliefs, insofar as claim was based on allegation that defendants maintained an ad hoc system of individualized case-by-case exemptions to curricular requirements that they failed to extend to her because of the religious basis for her request; it was clearly established at time of alleged violation that if a defendant has in place a system of individualized exemptions, it must extend that system to religious exemptions or face strict scrutiny review. Axson-Flynn v. Johnson, C.A.10 (Utah) 2004, 356 F.3d 1277. Civil Rights 1376(5)

Staff of university actor training program were not entitled to qualified immunity from Mormon student's claim that program's script adherence requirement that script adherence requirement violated the Free Exercise Clause of the First Amendment because it forced her to recite words in class exercises which offended her religious beliefs; law was clearly established at time of alleged violation that if a governmental requirement burdening a religious practice is not neutral or generally applicable, it is subject to strict scrutiny and will not pass constitutional muster unless it is narrowly tailored to advance a compelling government interest. Axson-Flynn v. Johnson, C.A.10 (Utah) 2004, 356 F.3d 1277. Civil Rights 1376(5)

State university's president, athletic director, and assistant athletic director had qualified immunity from claim they violated free exercise of religion rights of cheerleading coordinator when they placed her on probation for allegedly interjecting her Christian religion into cheerleading activities; coordinator's right to do so was not clearly established, given right of university to regulate activities of instructors. Braswell v. Board of Regents of

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University System of Ga., N.D.Ga.2005, 369 F.Supp.2d 1371. Civil Rights 1376(10)

School officials did not violate any clearly established constitutional or statutory right in precluding first-grade student from distributing religious tracts in classroom, and thus they were entitled to qualified immunity from claims under the First Amendment and the Religious Freedom Restoration Act (RFRA). Harless by Harless v. Darr, S.D.Ind.1996, 937 F.Supp. 1339. Civil Rights 1376(5)

First Amendment law concerning school curriculum or religious music in public schools was not clearly established during 1994-95 school year, and thus, public school officials and board members were entitled to qualified immunity in Jewish student's § 1983 action alleging that music teacher's requirement that school choir sing explicitly Christian religious music and perform at Christian religious sites violated her First Amendment rights. Bauchman By and Through Bauchman v. West High School, D.Utah 1995, 900 F.Supp. 254, affirmed 132 F.3d 542, certiorari denied 118 S.Ct. 2370, 524 U.S. 953, 141 L.Ed.2d 738. Civil Rights 1376(5)

3811A. ---- Social services, education or schools, clearly established right

County officials and employees were not entitled to qualified immunity on claim that they violated church members' Free Exercise right to practice their religion where reasonable official would have known that their alleged conduct of initiating sham investigations motivated by religious animus and enticing children to leave parents' faith violated clearly established right. Words of Faith Fellowship, Inc. v. Rutherford County Dept. of Social Services, W.D.N.C.2004, 329 F.Supp.2d 675. Civil Rights 1376(4)

3812. ---- Searches, education or schools, clearly established right

Federal case law at the time did not provide school defendants and police with "fair warning" that a strip search of an elementary school class for missing money would be unconstitutional under Fourth Amendment, and therefore they were entitled to qualified immunity from § 1983 liability. Thomas ex rel. Thomas v. Roberts, C.A.11 (Ga.) 2003, 323 F.3d 950, rehearing and rehearing en banc denied 73 Fed.Appx. 389, 2003 WL 21788455. Civil Rights 1376(5); Civil Rights 1376(6)

High school vice principal who ordered search of students suspected of smoking was entitled to qualified immunity in § 1983 action by student who, during that search, was found to be carrying knives, as it was not clearly established that student had claimed right to have search based on individualized suspicion, and search was reasonable. Smith v. McGlothlin, C.A.9 (Cal.) 1997, 119 F.3d 786. Civil Rights 1376(5)

Law regarding searches of students at school was not clearly established to extent that teacher and school counselor should have known at time that their conduct in strip searching two eight-year old elementary students twice in attempt to find $7 stolen from classmate was unreasonable under Fourth Amendment, and, thus, teacher and counselor were entitled to qualified immunity for their actions. Jenkins by Hall v. Talladega City Bd. of Educ., C.A.11 (Ala.) 1997, 115 F.3d 821, certiorari denied 118 S.Ct. 412, 522 U.S. 966, 139 L.Ed.2d 315. Civil Rights 1376(5)

Drawing all reasonable inferences in favor of student, school security officer's alleged actions of violently restraining student who was being noncompliant with orders to leave the school premises would have violated well-known constitutional principals, and thus school district and school officials were not entitled to qualified immunity on student's Fourth Amendment claim for unreasonable search and seizure brought pursuant to § 1983. Nicol v. Auburn-Washburn USD 437, D.Kan.2002, 231 F.Supp.2d 1092. Civil Rights 1376(5)

Principal was entitled to qualified immunity from damages for suspending student who refused to consent to search for stolen property, despite absence of required individualized suspicion, as such requirement was not so clear that a school official would have known he was violating clearly established law. DesRoches by DesRoches v. Caprio,

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E.D.Va.1997, 974 F.Supp. 542, reversed 156 F.3d 571. Civil Rights 1376(5)

Middle school principal and teachers were entitled to qualified immunity in civil rights action arising after students were subjected to improper general searches for marijuana and portable radios; requirement that defendants have individualized suspicion to make such searches was not "clearly established" at time searches were made. Burnham v. West, E.D.Va.1987, 681 F.Supp. 1160, supplemented 681 F.Supp. 1169. Civil Rights 1376(5)

Principal was entitled to qualified immunity for his role in acquiescing to police officers' brief private interview of one of his students while student was in school, where acquiescence did not violate student's clearly established Fourth Amendment rights of which a reasonable person would have known. Douglas v. Beaver County School Dist. Bd., C.A.10 (Utah) 2003, 82 Fed.Appx. 200, 2003 WL 22872699, Unreported. Civil Rights 1376(5)

3813. ---- Discipline generally, education or schools, clearly established right

Second-grade student's right to be free of excessive physical punishment was a clearly established right at the time school vice-principal taped his head to a tree for disciplinary purposes, and thus vice-principal was not entitled to qualified immunity in student's § 1983 action premised on claim of excessive force in violation of the Fourth Amendment. Doe ex rel. Doe v. Hawaii Dept. of Educ., C.A.9 (Hawai'i) 2003, 334 F.3d 906, on remand 351 F.Supp.2d 998. Civil Rights 1376(5)

School official was not entitled to qualified immunity on high school student's "class of one" selective enforcement claim, which was grounded on allegations that his punishment for his conversations with fellow students concerning handguns and his subsequent possession of a handgun off school property was disproportionate to the punishment imposed upon other two students who either supplied or obtained handguns; in light of clearly established case law, a reasonable school official would have understood that it would be wrong to irrationally treat student differently than the other students involved in the incident. Cohn v. New Paltz Central School Dist., N.D.N.Y.2005, 363 F.Supp.2d 421, appeal dismissed in part 2006 WL 522102. Civil Rights 1376(5)

Even if disciplining of eighth-grade student, who had made violent and threatening drawing, violated that student's constitutional rights, such violation was not clearly established at time that student was suspended, and thus school officials were entitled to qualified immunity from any § 1983 liability. Demers ex rel. Demers v. Leominster School Dept., D.Mass.2003, 263 F.Supp.2d 195. Civil Rights 1376(5)

School board members had qualified immunity from liability on student's § 1983 claims for expulsion for possession of marijuana in class, absent presentation of any case demonstrating clearly established right to particular expulsion procedures, right not to expelled on basis of school official's probable cause to believe student possessed marijuana, right to prevent school officials from gathering and sharing information concerning disciplinary accusations, right to not be accused of violating school rules by officials with probable cause to believe student violated rules, right not to be asked to display contents of pockets, right to have board of education compel presence of witnesses at expulsion hearing, or right to preclude board from considering written statements of witnesses. L.Q.A. By and Through Arrington v. Eberhart, M.D.Ala.1996, 920 F.Supp. 1208, affirmed 111 F.3d 897. Civil Rights 1376(5)

Teacher who allegedly violated high school student's due process rights when he momentarily grabbed her wrist and elbow to send her from classroom could not be held to constitutional standard which had not been addressed by Supreme Court or Seventh Circuit. Wallace by Wallace v. Batavia School Dist. 101, N.D.Ill.1994, 870 F.Supp. 222, affirmed 68 F.3d 1010. Constitutional Law 278.5(6)

Recess supervisor, school district, school board, school board president, superintendent, and principal were on notice that due process would be violated by punishment which was not disciplinary or which was so disproportionate to need as to amount to brutal and inhumane abuse of power and, therefore, were not entitled to

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qualified immunity from liability for death of handicapped student required to run 350 yards in less than two minutes as punishment for talking in line with another student. Waechter v. School Dist. No. 14-030 of Cassopolis, Mich., W.D.Mich.1991, 773 F.Supp. 1005. Civil Rights 1376(5)

3814. ---- Corporal punishment, education or schools, clearly established right

Law that some high level of force in corporal punishment context would violate student's substantive due process rights was clearly established before Court of Appeals' analogous decision and was clearly established when corporal punishment was inflicted on student for first time, and, thus, principal, teacher, administrative associate and others did not enjoy qualified immunity from liability. Garcia by Garcia v. Miera, C.A.10 (N.M.) 1987, 817 F.2d 650, certiorari denied 108 S.Ct. 1220, 485 U.S. 959, 99 L.Ed.2d 421. Civil Rights 1376(5)

3815. ---- Suspensions, education or schools, clearly established right

State university dean was not entitled to qualified immunity as defense to graduate student's claims for damages for violation of due process in disciplinary dismissal, as law at the time of dismissal in 1994 was clearly established that in the case of a suspension for disciplinary reasons, due process required notice of the charges and an opportunity for the student to be heard, which were not provided, and dismissal was for reasons totally unrelated to academic standing. Roach v. University of Utah, D.Utah 1997, 968 F.Supp. 1446. Civil Rights 1376(5)

It was not clearly established in February 1996 that Fifth Amendment right against self-incrimination applied to school expulsion hearing, and thus, police officer who had allegedly introduced student's un-*Mirandized* confession, which was obtained during officer's investigation of fire at elementary school, in student's expulsion hearing was entitled to qualified immunity with respect to student's Fifth Amendment claim in § 1983 action. Bills by Bills v. Homer Consol. School Dist. No. 33-C, N.D.Ill.1997, 967 F.Supp. 1063. Civil Rights 1376(6)

Middle school officials who suspended student without notice to parents were entitled to qualified immunity from § 1983 liability after student was injured in accident while suspended; student had no clear substantive due process right to supervision or protection after being suspended and after leaving school grounds, or to notice to his parents of suspension. Thrower v. Barney, N.D.Ala.1994, 849 F.Supp. 1445, affirmed 43 F.3d 680. Civil Rights 1376(5)

School officials who were involved in suspension of students for misconduct were not entitled to qualified immunity from liability for damages under § 1983; students alleged that they were suspended without being afforded proper hearing, and right to procedural safeguards in connection with suspension was clearly established. Cole By and Through Cole v. Newton Special Mun. Separate School Dist., S.D.Miss.1987, 676 F.Supp. 749, affirmed 853 F.2d 924. Civil Rights 1376(5)

3816. ---- Assaults on students, education or schools, clearly established right

Public university president, athletic director, and former coach of university basketball team were entitled to qualified immunity, in student's §§ 1983 action against them in their individual and official capacities, as to claim alleging violation of student's equal protection rights based on alleged sexual harassment of student by three student-athletes; even if defendants acted recklessly, in view of their alleged knowledge regarding one student-athlete's prior misconduct at other schools before recruiting him, student failed to present any cases showing that defendants violated her clearly established equal protection rights by recruiting and admitting that student-athlete. Williams v. Board of Regents of University System of Georgia, C.A.11 (Ga.) 2006, 441 F.3d 1287, rehearing and rehearing en banc denied 2006 WL 1173185. Civil Rights 1376(5)

Superintendent of state school for disabled students was entitled to qualified immunity, in student's § 1983 action

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alleging that student was sexually assaulted by other students, because student had no present right to protection from assaults of private individuals, much less clearly established constitutional right at time superintendent allegedly failed to take actions to prevent assaults. Stevens v. Umsted, C.A.7 (Ill.) 1997, 131 F.3d 697. Civil Rights 1376(5)

High school principal was not entitled to qualified immunity regarding students' § 1983 action alleging excessive use of force for his actions including slapping, punching, and choking students which students alleged bore no reasonable relation to need and which were taken for purpose of causing harm including significant pain, bruising, and emotional injury; students' right to be free from excessive force or unwanted intrusions was clearly established and principal could not have reasonably believed that his actions were lawful. P.B. v. Koch, C.A.9 (Idaho) 1996, 96 F.3d 1298. Civil Rights 1376(5)

Officials of Georgia school for the deaf were entitled to qualified immunity from the civil rights claim of residential student, who was sexually assaulted by a classmate, in that state's duty to protect student was not clearly established at time of sexual assault. Spivey v. Elliott, C.A.11 (Ga.) 1994, 29 F.3d 1522, on reconsideration 41 F.3d 1497. Civil Rights 1376(5)

Student's due process right to be free from sexual abuse by teacher was clearly established, for qualified immunity purposes, by at least 1992. Arbaugh v. Board of Educ., County of Pendleton, N.D.W.Va.2004, 329 F.Supp.2d 762 . Civil Rights 1376(5)

Students failed to establish that in 1992, when alleged incidents took place, it was clearly established in Eleventh Circuit that government officials violated students' substantive due process rights by not having sexual abuse prevention policy and by failing to train and/or supervise its personnel in sexual abuse prevention/intervention and, therefore, school officials, in their individual capacities, were entitled to qualified immunity from students' § 1983 action for substantive due process violation based on officials' alleged failure to comply with Title IX's regulatory requirements to implement such policy and practices. Does v. Covington County School Bd. of Educ., M.D.Ala.1996, 930 F.Supp. 554. Civil Rights 1376(5)

Even if high school football coach had constitutional duty to protect team member against assault by fellow students during hazing ritual on team bus, doctrine of qualified immunity shielded coach from liability under § 1983 ; no prior decision had ruled that school officials were constitutionally required to protect students from assault by fellow students during extracurricular activities. Reeves by Jones v. Besonen, E.D.Mich.1991, 754 F.Supp. 1135. Civil Rights 1376(5)

Estate of student that brought action against state university officials, stemming from student's murder in dormitory, failed to establish that officials' purported failure to provide adequate building security constituted violation of clearly established law, and thus officials were entitled to qualified immunity from §§ 1983 liability; law was not clear that student had special relationship giving rise to duty on part of state, pursuant to substantive due process, to protect against injury by third parties. Griffin v. Troy State University, C.A.11 (Ala.) 2005, 128 Fed.Appx. 739, 2005 WL 913278, Unreported. Civil Rights 1376(5)

3817. ---- Harassment, education or schools, clearly established right

Alabama community college officials were entitled to qualified immunity in § 1983 suit by male security officers who alleged that, between 1983 and 1998, they were sexually harassed by male supervisor; at time of alleged violations, it was not clearly established that same-sex sexual harassment violated Equal Protection Clause, and neither that clause nor case law before Eleventh Circuit's 2003 *Downing* decision provided fair and clear warning that male supervisor sexually harassing male employees would violate employees' constitutional rights. Snider v. Jefferson State Community College, C.A.11 (Ala.) 2003, 344 F.3d 1325, rehearing and rehearing en banc denied 90 Fed.Appx. 391, 2003 WL 23190922. Civil Rights 1376(10)

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It was not clearly established that school officials had duty to prevent student-on-student harassment, and thus middle school principal was entitled to qualified immunity from liability under §§ 1983 for failing to prevent harassment of student by fellow students. Risica ex rel. Risica v. Dumas, D.Conn.2006, 2006 WL 3345410. Civil Rights 1376(5)

School director was not entitled to qualified immunity from liability under §§ 1983 to school teacher for alleged sexual harassment by student; teacher had alleged constitutionally protected right to be free from sexual harassment, teacher also had, at a minimum, controverted school director's allegations that her right to be free from sexual harassment was clearly established at time of facts alleged in complaint, and teacher had presented sufficient evidence to create material issue of fact as to whether objectively reasonable government actor, performing discretionary functions, would have understood her conduct to violate teacher's rights under Title VII. Plaza-Torres v. Rey, D.Puerto Rico 2005, 376 F.Supp.2d 171. Civil Rights 1376(10)

University's dean of graduate school and head of education department were not entitled to qualified immunity from § 1983 claim filed by graduate assistant, alleging that dean and department head took actions in response to her claim of sexual harassment by professor that violated her constitutional right to be free from sexual harassment under the Fourteenth Amendment; dean and department head did not dispute that her right to be free from sexual harassment was a clearly established right, or that reasonable official would have understood that alleged misconduct violated that right. Mandsager v. University of North Carolina at Greensboro, M.D.N.C.2003, 269 F.Supp.2d 662. Civil Rights 1376(5); Civil Rights 1376(10)

Neither state university's soccer coach, who allegedly engaged in sexual harassment of players, nor supervisory employees who allegedly failed to act on complaints, were entitled to qualified immunity from § 1983 liability; players' rights of privacy and to be free of sexual harassment were clearly established at time of alleged misconduct. Jennings v. University of North Carolina at Chapel Hill, M.D.N.C.2002, 240 F.Supp.2d 492. Civil Rights 1376(5)

Individual school district defendants sued in their individual capacity were entitled to qualified immunity from civil rights liability for alleged sexual harassment of student by fellow student, absent violation of clearly-established rights of which reasonable person knew or should have known at time of incident in question. Garza v. Galena Park Independent School Dist., S.D.Tex.1994, 914 F.Supp. 1437. Civil Rights 1376(5)

3818. ---- Handicapped children, education or schools, clearly established right

Conduct of school district in using blanket wrapping technique with respect to handicapped student did not violate student's clearly established constitutional right to be free from unreasonable bodily restraint, and district was thus entitled to qualified immunity on student's due process claim as matter of law; student had verified severe mental retardation, epilepsy, visual impairments, hearing impairments, and learning disabilities, defendant physical therapist was licensed professional therapist and school district was following therapist's recommendation in using blanket wrapping technique, and even if blanket wrapping treatment constituted substantial departure from professional norms, reasonable official would not have known that to be true. Heidemann v. Rother, C.A.8 (Neb.) 1996, 84 F.3d 1021, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(5); Constitutional Law 82(12); Constitutional Law 278.5(5.1)

Requirement that school officials identify and evaluate children suspected of having qualifying disability under Individuals with Disability Education Act (IDEA) within reasonable time was clearly established in September of 1991, so that school officials were not entitled to qualified immunity with respect to the failure to do so. W.B. v. Matula, C.A.3 (N.J.) 1995, 67 F.3d 484. Schools 63(3)

Due process rights of retarded child, who was not committed to state school through formal judicial proceedings, were clearly established, and, thus, former superintendent and physicians of state school were not entitled to

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qualified official immunity in § 1983 action against them in their individual capacities. Savidge v. Fincannon, C.A.5 (Tex.) 1988, 836 F.2d 898, rehearing denied 843 F.2d 499. Civil Rights 1376(5)

School officials were not qualifiedly immune from §§ 1983 claims based on alleged violations of disabled student's rights under ADA's Title II, which prohibits discrimination in services, programs, or activities of public entity, and Rehabilitation Act section prohibiting discrimination under federal grants and programs, inasmuch as such rights were clearly established with respect to peer disability harassment given Supreme Court case involving peer sexual harassment, and reasonable teacher or administrator could not have believed that refusing to become more involved when student sought their help would not violate his rights. K.M. ex rel. D.G. v. Hyde Park Cent. School Dist., S.D.N.Y.2005, 381 F.Supp.2d 343. Civil Rights 1376(5)

IDEA prohibition of any arbitrary limit on early intervention services was clearly established law, for purposes of county officials' claim of qualified immunity against autistic children's parents' § 1983 action alleging de facto policy limiting provision of Applied Behavior Analysis (ABA) therapy during early intervention. BD v. DeBuono, S.D.N.Y.2000, 130 F.Supp.2d 401. Civil Rights 1376(4)

3819. ---- Miscellaneous rights, education or schools, clearly established right

Staff of university actor training program were entitled to qualified immunity from Mormon student's claim that program's script adherence requirement violated the Free Exercise Clause of the First Amendment because it forced her to recite words in class exercises which offended her religious beliefs, insofar as claim was based on "hybrid-rights" exception to rational basis review of neutral requirement which incidentally burdens a particular religious practice or belief, as law regarding "hybrid-rights" exception was not clearly established at time of alleged violation. Axson-Flynn v. Johnson, C.A.10 (Utah) 2004, 356 F.3d 1277. Civil Rights 1376(5)

School superintendent was entitled to qualified immunity in a § 1983 suit in connection with expulsion of a high school student under zero tolerance policy for presence of friend's knife in student's car, even if presence was without student's knowledge; as an abstract matter, the right of public school students not to be expelled arbitrarily or irrationally has been clearly established since at least 1975, but the contours of that right were not sufficiently clear to put a reasonable school superintendent on notice in 1996 that a school disciplinary policy's lack of a conscious-possession requirement could produce irrational expulsions and thus violate the legal rights of students expelled under the policy. Seal v. Morgan, C.A.6 (Tenn.) 2000, 229 F.3d 567, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(5)

School superintendent did not violate a clearly established constitutional right by allegedly not permitting student's sttendance at elementary school for seven days, and not consistently providing student with an in-home tutor for last three months of school year, and, thus, superintendent had qualified immunity from civil rights action under §§ 1983 brought by student's mother, alleging that superintendent violated her Fourteenth Amendment right as a parent to the orderly rearing and education of her child. Jenkins v. Board of Educ., S.D.Ohio 2006, 463 F.Supp.2d 747. Civil Rights 1376(5)

President and Vice President of Student Affairs for public university had qualified immunity from claim that they violated First Amendment rights of all-male fraternity by enforcing rule conditioning official recognition on admission of female students; associational rights of fraternities were not clearly defined prior to present case. Chi Iota Colony of Alpha Epsilon PI Fraternity v. City University of New York, E.D.N.Y.2006, 443 F.Supp.2d 374. Civil Rights 1376(5)

University officials were not entitled to qualified immunity from athlete's claim that they violated his procedural due process rights by dismissing him from track team in retaliation for his appeal of scholarship nonrenewal, inasmuch as it was well established that government officials could not retaliate against individuals who engaged in constitutionally protected conduct. Richard v. Perkins, D.Kan.2005, 373 F.Supp.2d 1211. Civil Rights

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1376(5)

Police officer had qualified immunity from suit, by female high school athlete, claiming that he engaged in gender discrimination in violation of student's privacy, due process, and equal protection rights by reporting to school principal that athlete was smoking off campus; it was not clearly established that report violated athlete's rights. Schultzen v. Woodbury Cent. Community School Dist., N.D.Iowa 2003, 250 F.Supp.2d 1047. Civil Rights 1376(6)

School officials were entitled to qualified immunity from suit for damages in their individual capacities for adoption and implementation of a school uniform policy which allegedly infringed upon and violated the free exercise of great-grandmother's religion and her substantive due process right as a parent to direct great-grandson's education and religious upbringing; while an individual's right to freely exercise her religion was a clearly established constitutional right, the law with respect to that right in the context of a facially neutral school uniform policy that purportedly infringes that right was not settled. Hicks ex rel. Hicks v. Halifax County Bd. of Educ., E.D.N.C.1999, 93 F.Supp.2d 649. Civil Rights 1376(5)

Student's right to freedom from school officials' deliberate indifference to, or affirmative acts that increase danger of, serious injury from unjustified invasions of bodily integrity perpetrated by third parties in school setting was clearly established at time high school wrestler was injured, for purpose of determining whether school officials, who had invited older, alumni wrestlers to practice with team, were entitled to qualified immunity from § 1983 liability. Sciotto v. Marple Newton School Dist., E.D.Pa.1999, 81 F.Supp.2d 559. Civil Rights 1376(5)

School principal was entitled to qualified immunity for any violation of parents' rights when he allowed child to leave school grounds with foster parents before school was dismissed for the day, without a court order, without notifying parents, and without parental permission, knowledge, or consent, where scenario presented to him involved foster parents being allowed by county juvenile officer to accept child into their home, apparently on a foster parent basis, with everyone's knowledge of facts which arguably established probable cause to believe that child was victim of neglect and abuse. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1376(5)

School officials, in their individual capacities, were entitled to qualified immunity from students' § 1983 action alleging substantive due process violation based on failure to supervise teachers by ignoring and failing to investigate complaints regarding teacher as students failed to establish that in 1992, when alleged incidents took place, it was clearly established in Eleventh Circuit that constitutional violation occurred when school principal received complaints on several occasions about teacher that teacher appeared to exhibit homosexual mannerisms, sometimes insisted students sit on his lap, that at one conference missing student was discovered coming out of teacher's office holding teacher's hand, that teacher sent student cards, candy and money, as well as note wherein teacher told student he sat in student's classroom desk, and thereafter principal reprimanded teacher when he saw teacher with student on his lap but took no other action. Does v. Covington County School Bd. of Educ., M.D.Ala.1996, 930 F.Supp. 554. Civil Rights 1376(5)

3820. Elections, clearly established right

Fundamental right to vote, right to secret ballot, and right to equal protection were clearly established, for qualified immunity purposes, when Board of Elections for the Commonwealth of the Northern Mariana Islands implemented new voter challenge procedures that provided for pre-election review of voter challenges raised by one political party and post-election review of challenges by opposing party and resulted in preclusion of certain voters from casting pivotal votes in island school board election via secret ballot process. Charfauros v. Board of Elections, C.A.9 (N.Mariana Islands)2001, 249 F.3d 941, amended on denial of rehearing. Civil Rights 1376(5)

It was not clearly established in September 1992 that constitutional right to seek election to public office included

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right to be free from abuse of process motivated by desire to interfere with right to seek office, and members of board of elections who had authorized filing of motion for stay from injunction which required board to include candidate on ballot for Congressional election were entitled to qualified immunity in federal civil rights action by candidate based on stay, even though stay motion was objectively baseless. Hirschfeld v. Spanakos, S.D.N.Y.1995, 909 F.Supp. 174. Civil Rights 1376(4)

3821. Employment, clearly established right--Generally

It was not clearly established at time when state lottery director made qualitative changes in employee's job duties, without discharge, transfer, demotion, or salary loss, that such action constituted adverse employment action, and director thus was qualifiedly immune from civil damages regarding rearrangement of employee's duties; although some cases hinted that gutting central job functions could constitute adverse action, those cases addressed quantitative rather than qualitative reductions in responsibilities. Dahm v. Flynn, C.A.7 (Wis.) 1994, 60 F.3d 253, amended on denial of rehearing. Civil Rights 1376(10)

Proposition argued by developer that city official was not entitled to qualified immunity for alleged malicious actions resulting in denial of public employment to developer causing developer to lose numerous other employment opportunities did not involve clearly established right at time of official's action, and thus, official's conduct was protected by qualified immunity with respect to developer's § 1983 action even if such conduct was unlawful. Walentas v. Lipper, C.A.2 (N.Y.) 1988, 862 F.2d 414, certiorari denied 109 S.Ct. 1747, 490 U.S. 1021, 104 L.Ed.2d 183. Civil Rights 1376(10)

Assistant director of county police department was not apprised of an extent of alleged discrimination which would have put him on notice that his failure to halt any unjustified transfers of police officers of non-Cuban heritage would rise to the level of a constitutional violation, such that he could be deprived of qualified immunity in § 1983 action based on alleged failure to adequately train subordinates; assistant director was responsible for 2,000 employees dispersed among eight districts, and any violation of department policy in connection with transfers was not a constitutional violation. Buzzi v. Gomez, S.D.Fla.1998, 24 F.Supp.2d 1352. Civil Rights 1376(10)

Superintendent was shielded by doctrine of qualified immunity from liability in individual capacity in revocation of teacher's coaching assignments for derogatory comment about former athletic director, as superintendent's conduct was not shown to have been retaliatory with respect to protected speech, and his actions were not unreasonable in light of clearly established constitutional principles. Hill v. Silsbee Independent School Dist., E.D.Tex.1996, 933 F.Supp. 616. Civil Rights 1376(10)

Public employer may not invoke qualified immunity when it investigates matters unrelated to employee's public duties, as reasonable employer would understand that investigation violates clearly established constitutional right. Hughes v. City of North Olmsted, N.D.Ohio 1995, 894 F.Supp. 1120, reversed 93 F.3d 238. Civil Rights 1376(10)

Plaintiff, an applicant for a government job, did not have a clearly established constitutional right in 1976 not to have search committee member referred to her personnel files and therefore government employee who referred search committee member to plaintiff's personnel files was immune from suit for damages arising out of denial of plaintiff's job application; furthermore, another government employee who complied with search committee member's request that she attempt to locate plaintiff's employment records and who conveyed a message to search committee member to continue accepting applications until he was certain he had selected the best qualified applicant was immune from suit regardless of whether her actions were performed because she knew of plaintiff's political beliefs. Lodico v. U.S., E.D.Mich.1982, 571 F.Supp. 21. United States 50.10(4)

3822. ---- First Amendment generally, employment, clearly established right

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Former police officers' right not to have governmental entities inflict an adverse employment decision against them, in retaliation for exercising their First Amendment rights, was clearly established when police chief allegedly retaliated against officers and no reasonable officer could have held a contrary belief and, thus, chief was not entitled to qualified immunity in officers' §§ 1983 action, alleging they were disciplined and terminated for speaking against misfeasance within police department, an ongoing cover-up, and an attempt to silence those who spoke out against it. Skehan v. Village of Mamaroneck, C.A.2 (N.Y.) 2006, 465 F.3d 96. Civil Rights 1376(10)

City officials' contention that state of the law was unclear with respect to whether public employee could be speaking on matters of public concern when speech was made in capacity as public employee did not entitle officials to qualified immunity from city engineer's First Amendment unlawful discharge claims; at time of engineer's termination, cases made clear that speech touched upon matter of public concern when it dealt with issues of interest to community, and employee's comments regarding dam project clearly addressed issues that public would be interested in, not issues of personal interest only to engineer. Kincade v. City of Blue Springs, Mo., C.A.8 (Mo.) 1995, 64 F.3d 389, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 1565, 517 U.S. 1166, 134 L.Ed.2d 665. Civil Rights 1376(10)

Mayor of Philadelphia was not entitled to qualified immunity from liability to former Deputy Police Commissioner on his §§ 1983 claim relating to his termination in alleged retaliation for filing equity complaint seeking to enjoin his removal pending results of District Attorney's investigation into whether he had obtained illegal gun permit and for appearing on radio program and discussing results of that investigation; former Deputy Commissioner had alleged violation of his First Amendment rights to petition government for redress of grievances and to engage in free speech, which were clearly established. Mitchell v. Street, E.D.Pa.2005, 415 F.Supp.2d 490. Civil Rights 1376(10)

Puerto Rico government agency, its executive director, and its human resources director were not entitled to qualified immunity from suit by employee, alleging that she was demoted due to political affiliation in violation of First Amendment; protection from political patronage in government employment had been recognized long before events giving rise to employee's claim, and executive and human resources directors were expected to know that employee could not be subjected to altered conditions of employment because of political inclination. Concepcion v. Zorrilla, D.Puerto Rico 2004, 309 F.Supp.2d 201. Civil Rights 1376(10)

Corrections facility employee's right to be free from retaliation was clearly established as First Amendment right and as statutory right under Title VII, for purposes of determining whether facility's officials in their individual capacities were qualifiedly immune from employee's § 1983 claim that retaliation by officials violated his equal protection rights. Eldridge v. Morrison, M.D.Ala.1996, 970 F.Supp. 928, affirmed 120 F.3d 275. Civil Rights 1376(10)

Former supervisors of former state employee, in their individual capacities, were entitled to qualified immunity with regard to former state employee's § 1983 claim that he was constructively discharged in violation of First Amendment; though constructively discharging public employee for protected speech would violate clearly established right, challenged conduct of former supervisors was within their discretionary authority, and former state employee failed to demonstrate that reasonable official in former supervisors' position would have known their actions were in violation of such right. Flood v. State of Ala. Dept. of Indus. Relations, M.D.Ala.1996, 948 F.Supp. 1535, affirmed 136 F.3d 1332. Civil Rights 1376(10)

Plaintiffs who were issued citation for interfering with peaceful conduct of business while attempting to gather signatures to petition in front of public building failed to establish that officers violated clearly established right so as to render inapplicable defense of qualified immunity. Tate v. Lau, D.Nev.1994, 865 F.Supp. 681. Civil Rights 1376(6)

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Police department and city officials were entitled to qualified immunity in § 1983 action brought by police officer denied permission to hold press conference to address certain issues, problems, and past incidents of behavior within police departments, as no reasonable public official could have known that denial of permission may have violated officer's clearly established rights under First Amendment to United States Constitution; when police department can show that speech in question actually disrupts officer's efficiency or internal operation of department or that speech has reasonable tendency to lead to such disruption, court should not substitute its judgment for that of department. Angle v. Dow, S.D.Ala.1993, 822 F.Supp. 1530. Civil Rights 1376(10)

Superintendent of schools and president of board of education were entitled to qualified immunity for their roles in actions taken against teacher in violation of her First Amendment rights; in light of preexisting law, unlawfulness of their actions was not "apparent" at that time. Rothschild v. Board of Educ. of City of Buffalo, W.D.N.Y.1991, 778 F.Supp. 642. Civil Rights 1376(10)

Fire department officials were not entitled to qualified immunity from liability with respect to paramedic's claim that he was transferred in retaliation for his exercise of First Amendment rights, notwithstanding fact that transfer did not take place until three and a half years after the protected activity, since there was established case law holding that transferring an employee against his or her will in retaliation for exercise of First Amendment rights violates Constitution even when no loss of pay or seniority is incurred. Nowak v. Szwedo, N.D.Ill.1989, 704 F.Supp. 153. Civil Rights 1376(10)

3823. ---- Freedom of speech, employment, clearly established right

At time that attorney for Oklahoma Indigent Defense System (OIDS) was discharged, after engaging in protected speech objecting to the OIDS procedure for approval of expert witnesses, law that public employer could not retaliate against an employee for exercising her protected right of free speech was "clearly established," barring qualified immunity defense, in attorney's §§ 1983 free speech claim; on point case law prohibiting such free speech retaliation existed for several years before attorney's discharge. McFall v. Bednar, C.A.10 (Okla.) 2005, 2005 WL 896453, amended and superseded 407 F.3d 1081. Civil Rights 1376(10)

Police chief was not entitled to qualified immunity in officer's §§ 1983 claim that he was transferred in retaliation for his speech on matter of public concern since it was well established that a public employer could not retaliate against an employee who exercised his First Amendment rights; in addition to the numerous cases prohibiting retaliatory transfer, the chief himself had been a defendant in another case alleging retaliatory transfer and should have been familiar with the law. Miller v. Jones, C.A.7 (Wis.) 2006, 444 F.3d 929. Civil Rights 1376(10)

Supervisor of special investigator for Pennsylvania Office of Inspector General (OIG) was entitled to qualified immunity from investigator's §§ 1983 claim that supervisor retaliated against him, in violation of First Amendment, for speaking out against pharmaceutical industry, since constitutional right allegedly violated was not clearly established; reasonable official in supervisor's position would not have been aware that making a few comments over the course of a few months, the gist of which was asking an employee to focus on his job, could violate First Amendment. McKee v. Hart, C.A.3 (Pa.) 2006, 436 F.3d 165. Civil Rights 1376(10)

Municipal administrator and street commissioner were entitled to qualified immunity to §§ 1981, §§ 1983, and equal protection claims of Spanish-speaking Hispanic employees, with regard to implementation of English-only policy, since right to speak foreign language in workplace had not been clearly established by Supreme Court or Court of Appeals at time that English-only policy had been adopted, and published authority from other circuit courts suggested that English-only rules as applied to bilingual speakers generally were not discriminatory. Maldonado v. City of Altus, C.A.10 (Okla.) 2006, 433 F.3d 1294. Civil Rights 1376(10)

School superintendent and high school principal were not entitled to qualified immunity from §§ 1983 liability to teacher whose contract was not renewed as result of public outcry engendered by assignment of protected materials

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that had been approved by school board; their conduct violated constitutional right that was clearly established. Evans-Marshall v. Board of Educ. of Tipp City Exempted Village School Dist., C.A.6 (Ohio) 2005, 428 F.3d 223. Civil Rights 1376(10)

School officials were not entitled to qualified immunity on school nurse's First Amendment retaliation claim based on allegation that officials gave her an unsatisfactory employment rating for raising matters of public concern; law was clearly established that nurse's speech advocating on behalf of two disabled students, and objecting to pesticide spraying by an unlicensed individual was constitutionally protected because it was a matter of public concern and because school defendants were unable to set forth a sufficient countervailing interest. McGreevy v. Stroup, C.A.3 (Pa.) 2005, 413 F.3d 359. Civil Rights 1376(10)

As a matter of law, a city inspector's constitutional rights in speaking publicly about illegal activities of the city building department were clearly established, for purposes of § 1983 civil rights claim brought by inspector against city and city officials alleging termination of employment in retaliation for exercising his First Amendment rights; a reasonable official would have known that terminating an employee with the motivation, even in part, of quieting the employee's public speech about illegal activities of the department violated the Constitution. Hoover v. Radabaugh, C.A.6 (Ohio) 2002, 307 F.3d 460. Civil Rights 1376(10)

Investigator's First Amendment right not to be terminated in retaliation for exercising his free speech rights, in connection with his internal investigation of fellow law enforcement officers' alleged buying of previously leased county vehicles at below market price, was clearly established in 1995, and, thus, acting county prosecutor was not qualifiedly immune from investigator's § 1983 claim. Baldassare v. State of N.J., C.A.3 (N.J.) 2001, 250 F.3d 188. Civil Rights 1376(10)

County commissioner was entitled to qualified immunity from county employee's § 1983 claim, which alleged that she was discharged in violation of the First Amendment for informing commissioner that county's failure to pay wages for overtime would violate the Fair Labor Standards Act (FLSA); precedent did not clearly establish that such statement involved a "matter of public concern." Chesser v. Sparks, C.A.11 (Ga.) 2001, 248 F.3d 1117. Civil Rights 1376(10)

By limiting the time and place for county employees to discuss an alleged incident of sexual misconduct involving a coworker, which these employees had heard about but had not witnessed, county commissioners did not violate "clearly established" First Amendment law and, thus, they were entitled to qualified immunity from liability under § 1983 on employees' First Amendment claims. Domina v. Van Pelt, C.A.8 (Neb.) 2000, 235 F.3d 1091. Civil Rights 1376(10)

County employee's First Amendment right to comment on traffic safety and snow removal at a particular intersection was clearly established in 1993, and director of county highways department thus was not qualifiedly immune from employee's § 1983 claim that his termination violated such right. Lee v. Nicholl, C.A.10 (Colo.) 1999, 197 F.3d 1291. Civil Rights 1376(10)

Even if school psychologist alleged First Amendment violation based on claim that school district superintendent influenced psychologist's employer, which was independent contractor that provided special education services to school district, in its refusal to renew psychologist's contract, superintendent was entitled to qualified immunity upon psychologist's resulting § 1983 claim, since constitutional standards regarding independent contractors were unclear at time psychologist's contract was not renewed. Khuans v. School Dist. 110, C.A.7 (Ill.) 1997, 123 F.3d 1010. Civil Rights 1376(10)

State corrections officials were not entitled to qualified immunity from § 1983 suit brought by employee who alleged she was fired for speaking out about department policies regarding sex offenders, since law was clearly established that public employees may not be discharged in retaliation for speaking on matters of public concern,

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absent showing that employer's interest in efficiency of its operations outweighed employee's interest in speech. Andersen v. McCotter, C.A.10 (Utah) 1996, 100 F.3d 723, on remand 3 F.Supp.2d 1223. Civil Rights 1376(10)

Journalist's right to be free from improper acts of retaliation for exercise of her First Amendment right to report to citizenry about political matters of public concern was "clearly established" at time village governmental officials allegedly violated that right, and thus officials were not entitled to qualified immunity for those improper acts of retaliation in journalist's § 1983 action; however, proper exercise by government officials of their own free speech rights could not serve as basis for imposition of liability upon those individuals. McBride v. Village of Michiana, C.A.6 (Mich.) 1996, 100 F.3d 457, on remand 1998 WL 276139. Civil Rights 1376(4); Civil Rights 1374

Right to be free of adverse employment action by public employer for exercise of First Amendment rights was clearly established at time county undersheriff discharged former probationary corrections officer, and therefore undersheriff was not entitled to qualified immunity in subsequent § 1983 action. Sagendorf-Teal v. County of Rensselaer, C.A.2 (N.Y.) 1996, 100 F.3d 270. Civil Rights 1376(10)

Law was clearly established that public official would violate public employee's free speech rights by taking adverse action against employee for employee's cooperation with law enforcement investigation, and so sheriff did not have qualified immunity from civil rights action brought by deputy whose commission as deputy sheriff was not renewed by sheriff as result of deputy's cooperation with Georgia Board of Investigation's (GBI) investigation into corruption at sheriff's office; deputy's statements about corruption were matters of public concern, and deputy's interest in making statements outweighed sheriff's interest in efficient operation of department. Cooper v. Smith, C.A.11 (Ga.) 1996, 89 F.3d 761, rehearing and suggestion for rehearing en banc denied 106 F.3d 420. Civil Rights 1376(10)

At time supervisor discharged public employee, public employee's First Amendment right to appear at supervisor's divorce proceeding pursuant to subpoena of supervisor's wife was clearly established, and therefore supervisor was not entitled to qualified immunity in public employee's subsequent § 1983 action which alleged she was discharged in retaliation for activity protected by First Amendment, though there existed split among Courts of Appeals at time of discharge regarding whether public employee's actions constituted constitutionally protected speech. Pro v. Donatucci, C.A.3 (Pa.) 1996, 81 F.3d 1283. Civil Rights 1376(10)

General administrator of Oklahoma Corporation Commission (OCC), a public employer, was entitled to qualified immunity with respect to § 1983 action brought by black public utility coordinator who was ordered by administrator to remove from her office picture depicting black girl being escorted to school by marshals and brick wall on which word "nigger" was written and picture depicting group of black children with white cat looking at group of white children with black dog in response to discrimination allegations made by coordinator's white subordinate; coordinator did not show that it was clearly established that forced removal of these pictures would violate employee's right of free speech and administrator's statement that he knew he was violating coordinator's civil rights was irrelevant to efficacy of administrator's qualified immunity defense. Furnace v. Oklahoma Corp. Com'n, C.A.10 (Okla.) 1995, 51 F.3d 932. Civil Rights 1376(10)

Specific and unrefuted evidence that state employee's speech criticizing agency programs affected morale and substantially disrupted work environment supported determination that his free speech rights were not "clearly established" and, thus, that supervisors were entitled to qualified immunity from liability for damages in civil rights action. Grantham v. Trickey, C.A.8 (Mo.) 1994, 21 F.3d 289. Civil Rights 1423

Punishment of public employee for writing a novel without any legitimate reason for the punishment is such an elementary violation of First Amendment that it may be found to be clearly established and, thus, defeat claim of qualified immunity, even in the absence of a reported case with similar facts. Eberhardt v. O'Malley, C.A.7 (Ill.)

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1994, 17 F.3d 1023. Civil Rights 1376(10)

Discharge of university professor after he accused a colleague of plagiarism did not violate professor's First Amendment rights, entitling university officials sued in their personal capacities to qualified immunity. Feldman v. Bahn, C.A.7 (Ill.) 1993, 12 F.3d 730, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 571, 513 U.S. 1014, 130 L.Ed.2d 489. Colleges And Universities 8.1(3); Constitutional Law 90.1(7.3)

Municipal employees were entitled to qualified immunity for dismissal of public employee for exercise of protected free speech where clarity of law on contours of public employee speech were by no means clearly established in early 1988 when dismissal occurred. Meyers v. City of Cincinnati, C.A.6 (Ohio) 1992, 979 F.2d 1154. Civil Rights 1376(10)

Municipal officials were not entitled to qualified immunity from employee's claim that he was discharged in retaliation for disclosure of criminal activities to Federal Bureau of Investigation (FBI); any reasonable public official would have been aware that in 1986 employee's statements were protected under the First Amendment. Gorman v. Robinson, C.A.7 (Ill.) 1992, 977 F.2d 350. Municipal Corporations 218(3)

Any retaliation for speech on manner of such prominent public concern as workplace sexual harassment will represent violation of clearly established right, so university health center officials alleged to have retaliated against officer with center's police force for officer's speech would not be entitled to qualified immunity from officer's claim under First Amendment. Wilson v. UT Health Center, C.A.5 (Tex.) 1992, 973 F.2d 1263, certiorari denied 113 S.Ct. 1644, 507 U.S. 1004, 123 L.Ed.2d 266. Civil Rights 1376(10)

City manager was not entitled to qualified immunity from employee's claim that she was fired in retaliation for her exercise of free speech, where law concerning whether public employee's expression was constitutionally protected conduct was clearly established. Martinez v. City of Opa-Locka, Fla., C.A.11 (Fla.) 1992, 971 F.2d 708. Civil Rights 1376(10)

City police department regulations that delayed employee's access to public forum to voice her complaints until after police department's internal affairs division could investigate complaints did not so clearly violate employee's constitutional right to free speech that officials would have been put on notice that enforcement of regulations would violate First Amendment and, thus, officials were entitled to qualified immunity from liability in civil rights action; police department had strong interest in maintaining loyalty, discipline, morale and favorable reputation with public. Busby v. City of Orlando, C.A.11 (Fla.) 1991, 931 F.2d 764. Civil Rights 1376(10)

Action of officer in charge of naval station commissary in terminating licensee grocery bagger after she circulated petition among other baggers calling for discharge of head bagger did not violate any clearly established statutory or constitutional rights of which reasonable person would have known and, accordingly, officer was entitled to qualified immunity from liability in civil rights action brought by licensee grocery bagger; bagger's speech was not a matter of public concern and accordingly, was not protected by the First Amendment. Havekost v. U.S. Dept. of Navy, C.A.9 (Wash.) 1991, 925 F.2d 316. Civil Rights 1376(10); Constitutional Law 90.1(7.2)

Supervisors of government social work unit were entitled to qualified immunity in connection with their transfer of an employee who had publicly criticized them and the department to undesirable work at same pay; at time action was taken it was not clear that the law forbade transfers on account of protected speech. Greenberg v. Kmetko, C.A.7 (Ill.) 1991, 922 F.2d 382, rehearing denied. Civil Rights 1376(10)

County employees were not entitled to qualified immunity in connection with deputy sheriff's claims that he was denied promotions and harassed because of his criticism of his department's promotion system and practices, as officer's criticism, which concerned efficient operation of department, involved matters of public concern and was

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clearly protected by First Amendment. Powell v. Basham, C.A.8 (Ark.) 1990, 921 F.2d 165. Civil Rights 1376(10)

County fire marshal's right not to be discharged in retaliation for protected speech allegedly opposing passage and enforcement of ordinances believed to conflict with state fire flow and private road standards was clearly established for purposes of determining whether county executive was entitled to qualified immunity from § 1983 liability. Burgess v. Pierce County, C.A.9 (Wash.) 1990, 918 F.2d 104. Civil Rights 1376(10)

City police commissioner was not entitled to qualified or absolute immunity for his alleged conduct in authorizing the commencement of and continuing a meritless lawsuit seeking to disqualify city police officer's attorneys in disciplinary action against officer, allegedly in retaliation for officer's comments on matters of public concern, for purpose of officer's §§ 1983 First Amendment retaliation claim; officer's right to comment on matters of public concern as a public employee was clearly established. Chittenden v. Connors, S.D.N.Y.2006, 460 F.Supp.2d 463. Civil Rights 1376(10)

Even if Office of Legislative Auditor (OLA) employee's speech was in fact constitutionally protected, defendants in §§ 1983 action relating to his subsequent demotion, allegedly in retaliation for that speech, were entitled to affirmative defense of qualified immunity as employee's asserted First Amendment rights were not clearly established. Levy v. Office of Legislative Auditor, M.D.La.2006, 459 F.Supp.2d 494. Civil Rights 1376(10)

Genuine issues of material fact existed as to whether supervisor at state mental health hospital filed work rule violation complaint against nurse as result of nurse's protected conduct, and as to whether supervisor should have known that filing such complaint would violate First Amendment, precluding summary judgment as to qualified immunity in nurse's retaliation action under §§ 1983. Barclay v. Michalsky, D.Conn.2006, 451 F.Supp.2d 386. Federal Civil Procedure 2497.1

New York Metropolitan Transit Authority (MTA) Inspector General was not entitled to dismissal of terminated employee's First Amendment retaliation claim on basis of qualified immunity; employee's right to be free from retaliation based on protected speech was defined with sufficient clarity to have been clearly established at time of Inspector General's alleged adverse employment actions, and there was no record yet in case to establish whether Inspector General acted reasonably. Anemone v. Metropolitan Transp. Authority, S.D.N.Y.2006, 410 F.Supp.2d 255. Civil Rights 1376(10)

County public library employee's right to wear pendant with cross while at work was not clearly established at time that employee was terminated for refusing to remove it, pursuant to library's dress code prohibiting any "ornament depicting religious ... decoration," and thus library officials who fired employee enjoyed qualified immunity in her § § 1983 action alleging violation of her free speech and free exercise rights; wearing of pendant implicated gray area between First Amendment's Free Speech/Free Exercise clauses and its Establishment Clause. Draper v. Logan County Public Library, W.D.Ky.2005, 403 F.Supp.2d 608. Civil Rights 1376(10)

State Secretary of Administration was not entitled to qualified immunity from §§ 1983 claim, by director of motor pool, that Secretary terminated director in retaliation for his complaints that reorganization of pool was not cost-effective; at time of termination it was clearly established that public employees were protected from retaliation when they spoke out regarding matter of public concern. Spiess v. Fricke, D.Kan.2005, 386 F.Supp.2d 1178. Civil Rights 1376(10)

County officials were not qualifiedly immune from employee's First Amendment claim if they retaliated against him for complaining about safety issues, inasmuch as public employee's right not to be retaliated against for speaking out on matters of public concern was well-settled. Magilton v. Tocco, S.D.N.Y.2005, 379 F.Supp.2d 495 . Civil Rights 1376(10)

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42 U.S.C.A. § 1983

New Mexico high school instructor's supervisor was entitled to qualified immunity from liability under §§ 1983 for any constitutional violation associated with instructor's support for spouse's underlying Equal Employment Opportunity Commission (EEOC) charge, as law was not clearly established in Tenth Circuit whether that charge had to be matter of public concern to warrant First Amendment retaliation protection. Trujillo v. Board of Educ. of Albuquerque Public Schools, D.N.M.2005, 377 F.Supp.2d 994. Civil Rights 1376(10)

Supervisor of state employee was not entitled to qualified immunity from employee's claim that supervisor terminated her in retaliation for exercising her First Amendment right to freedom of speech in disclosing to agency legal counsel alleged illegal acts of supervisor; unlawfulness of retaliating against or terminating a public employee who reports, even internally and privately, some evidence of ostensible corruption, impropriety, or other integrity lapses on the part of government officials, was apparent from well-established law at time of employee's termination. Gansert v. Colorado, D.Colo.2004, 348 F.Supp.2d 1215. Civil Rights 1376(10)

Supervisor of librarian for county library did not violate a clearly established First Amendment free speech or associational right of librarian, and supervisor therefore was entitled to qualified immunity from individual liability for alleged violation of First Amendment, as to supervisor's decision to prohibit librarian from attending, during working hours and without being accompanied by supervisor, meetings of private nonprofit corporation for which librarian served on board of directors and which raised funds for library, and for which it would be difficult to anticipate whether matters of public concern would be discussed at its meetings. Sheaffer v. County of Chatham, M.D.N.C.2004, 337 F.Supp.2d 709. Civil Rights 1376(10)

County sheriff did not have qualified immunity from suit claiming that assistant county jail administrator was wrongfully terminated in response to his exercise of First Amendment rights, after assistant accused his supervisor of improper supervision of transported prisoner and challenged overtime budget; sheriff could not have felt justified in terminating assistant based on evidence in support of transportation misconduct, and it was clearly established that officials could not interfere with employees exercising their First Amendment rights. Shepard v. Wapello County, Iowa, S.D.Iowa 2003, 303 F.Supp.2d 1004. Civil Rights 1376(10)

Agency's employees sufficiently alleged that inspector general's directives indicating that staff members could not communicate about agency policies to agency head, press, or any external agents except with his prior knowledge and approval operated as a prior restraint on speech, and that their right to be free from such a restriction was clearly established at time first directive was issued, as required to support claim that inspector general was not entitled to qualified immunity from liability for civil damages for violating their First Amendment rights; before directive was issued that there was heavy presumption against constitutional validity of any prior restraint on expression, and employees' proposed speech did not present likelihood of imminent lawless action so as to demonstrate that prior restraint was reasonable. Wernsing v. Thompson, C.D.Ill.2003, 286 F.Supp.2d 983, reversed and remanded 423 F.3d 732, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 1476, 164 L.Ed.2d 249. Civil Rights 1376(10)

It was clearly established in September 2002, for purposes of a fire chief's qualified immunity defense to a firefighter's free speech action, that a fire chief's disagreement with a firefighter's views on fire department safety issues and the firefighter's manner of expressing those views was insufficient to justify conditioning continued employment upon the cessation of the protected expression based on a perceived threat of disruption. Lilienthal v. City of Suffolk, E.D.Va.2003, 275 F.Supp.2d 684. Civil Rights 1376(10)

Employee's supervisor was not entitled to qualified immunity from employee's First Amendment claim under § 1983 alleging that adverse employment actions including termination were taken against her for complaining about employer's gender and age discrimination; employee's First Amendment rights to express such complaints were clearly established at time of events giving rise to claim. Hall v. Missouri Highway and Transp. Com'n, E.D.Mo.1998, 995 F.Supp. 1001, affirmed 235 F.3d 1065. Civil Rights 1376(10)

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It was not clearly established that governor's public statement about mob corruption by officials immediately prior to loss of employment by union employees on public project violated employees' liberty interest, and, thus, governor was entitled to qualified immunity for § 1983 action in his individual capacities arising out of alleged violation. Sacco v. Pataki, S.D.N.Y.1997, 982 F.Supp. 231, affirmed 278 F.3d 93. Civil Rights 1376(10)

School administrators who told public high school student not to display Confederate flag and who suspended him after he objected were entitled to qualified immunity in civil rights suit as it was not clearly established that their conduct violated First Amendment. Denno v. School Bd. of Volusia County, M.D.Fla.1997, 959 F.Supp. 1481, affirmed in part, reversed in part and remanded 182 F.3d 780, rehearing granted and vacated 193 F.3d 1178, reversed in part on rehearing 218 F.3d 1267, rehearing and suggestion for rehearing en banc denied 235 F.3d 1347, certiorari denied 121 S.Ct. 382, 531 U.S. 958, 148 L.Ed.2d 295. Civil Rights 1376(5)

Neither town nor mayor in his official capacity could be liable for punitive damages based on town employee's free speech claim. Myers v. Town of Landis, M.D.N.C.1996, 957 F.Supp. 762, affirmed in part, dismissed in part 107 F.3d 867. Civil Rights 1474(2)

City council members were entitled to qualified immunity from former public employee's claim that he was terminated as member of board of police commissioners after he exercised free speech rights in closed meeting of board; council members who voted in favor of motion premising employee's removal on issues of credibility reasonably could have concluded that employee could be removed without violating his First Amendment rights. Reinhart v. City of Maryland Heights, E.D.Mo.1996, 930 F.Supp. 410. Civil Rights 1376(10)

City officials were not entitled to qualified immunity from liability for civil damages arising from city employee's discharge following his statements on matter of clear public concern; employee's complaints to supervisors regarding inefficient management of significant public project and of extortion and threats related to it clearly constituted speech addressing matters of public concern, for which employee could not have been constitutionally terminated, existence of that right was well established at time employee was terminated, and any reasonable official would have understood at time that it was unconstitutional to dismiss employee for such reason. Rao v. New York City Health and Hospitals Corp., S.D.N.Y.1995, 905 F.Supp. 1236. Civil Rights 1376(10)

Public university officials were entitled to qualified immunity in § 1983 action brought by professor who alleged that officials violated her right to be free of retaliatory action for the exercise of First Amendment rights; although professor took steps to make the charges of discrimination public, charges that professor made public were apparently focused on her own experiences and it was not clearly established whether these actions were protected and even if the speech at issue was a matter of public concern, it was not clearly established that professor's interest outweighed the interest of public university in running effective academic atmosphere. Howze v. Virginia Polytechnic, W.D.Va.1995, 901 F.Supp. 1091. Civil Rights 1376(10)

Community college president was not entitled to qualified immunity for alleged violation of tenured teacher's First Amendment rights in suspending teacher, where corpus of law governing retaliatory action on basis of exercise of freedom of speech was clearly established at time of events in question. Gardetto v. Mason, D.Wyo.1994, 854 F.Supp. 1520. Civil Rights 1376(10)

Although First Amendment prohibited government officials from discharging certain employees solely because of their political affiliation in 1991, it was not clearly established at that time that position of legal assistant was not one for which political affiliation was proper requirement, and thus state superintendent of education was entitled to qualified immunity from employee's § 1983 claim based on constructive discharge in violation of First Amendment. Rouse v. Nielsen, D.S.C.1994, 851 F.Supp. 717, motion to amend denied. Civil Rights 1376(10)

Employees of school district and education service district were entitled to qualified immunity from school psychologist's §§ 1983 claim of retaliation for speech protected by the First Amendment, given that any mistake

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they made with regard to her free speech rights was within "hazy border" between lawful and unlawful conduct; psychologist's manner of communicating her concerns regarding potential Individuals with Disabilities Education Act (IDEA) violations was in some respects disruptive, and her co-workers complained to supervisors that she was hard to work with. Sweet v. Tigard-Tualatin School Dist. #23J, C.A.9 (Or.) 2005, 124 Fed.Appx. 482, 2005 WL 19531, Unreported. Civil Rights 1376(10)

Right of public employees to be free from retaliation for speaking on matters of public concern was well established, and thus state prison officials were not entitled to qualified immunity from liability under § 1983 arising from their retaliation against correctional officer for reporting use of excessive force by fellow officers against inmates. Bounds v. Taylor, C.A.3 (Del.) 2003, 77 Fed.Appx. 99, 2003 WL 22325312, Unreported. Civil Rights 1376(10)

Deputy sheriff's right to express views about racial prejudice or discrimination inside sheriff's department was clearly established at time he was allegedly terminated for doing so, and thus sheriff was not entitled to qualified immunity as matter of law from liability on First Amendment retaliation claim, at least where speech occurred at departmental meeting called to discuss prior racial incident, and prior incident involved potential candidate for election as sheriff, such that reasonable official would have recognized that firing could be deemed retaliatory. Brown v. Scotland County, M.D.N.C.2003, 2003 WL 21418099, Unreported. Civil Rights 1376(10)

3824. ---- Freedom of association, employment, clearly established right

Police chief was not entitled to qualified immunity from liability on police officer's claim that he was assigned to Sunday duty in retaliation for his membership in union and his invocation of his collective bargaining rights; not only did the First Amendment freedom of association protect public employee from retaliation for participation in union with which his employer had signed collective bargaining agreement (CBA), but the unconstitutionality of retaliating against public employee for participating in union was clearly established. Shrum v. City of Coweta, Okla., C.A.10 (Okla.) 2006, 449 F.3d 1132. Civil Rights 1376(10)

Elementary school teacher's fundamental right to raise his child was clearly established at time when school superintendent allegedly conditioned teacher's employment on whether teacher sent his son to public school and terminated him once his son was removed from public school, and, therefore, superintendent was not entitled to qualified immunity in §§ 1983 claim brought by teacher. Barrett v. Steubenville City Schools, C.A.6 (Ohio) 2004, 388 F.3d 967, rehearing en banc denied, certiorari denied 126 S.Ct. 334, 163 L.Ed.2d 47. Civil Rights 1376(10)

County commissioner was entitled to qualified immunity from county employee's claim that commissioner terminated her in violation of her First Amendment right to association because she was married to sheriff, who was political enemy of commissioner; employee also alleged that she was terminated in part for insubordination and lack of cooperation, and precedent did not clearly establish that such a termination violated the First Amendment. Chesser v. Sparks, C.A.11 (Ga.) 2001, 248 F.3d 1117. Civil Rights 1376(10)

At time of relevant actions underlying § 1983 complaint filed by state probate court judge's secretary against judge alleging that he took adverse employment actions against her based on her engagement to another probate court employee, constitutional protection of right of marital association did not clearly extend to dating relationship or to engagement; therefore, qualified immunity attached to judge's interference with secretary's relationship by his employment actions. Cameron v. Seitz, C.A.6 (Mich.) 1994, 38 F.3d 264. Civil Rights 1376(10)

State officials were entitled to qualified immunity from former state employee's claim that he was constructively discharged in violation of his First Amendment right of association; although employee alleged that he was constructively discharged or forced to resign on basis of association with friends and acquaintances in his hometown, there is no clearly established law that associations with friends and acquaintances are sufficiently

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intimate to be entitled to constitutional protection or freedom of association. Vieira v. Presley, C.A.8 (Mo.) 1993, 988 F.2d 850. Civil Rights 1376(10)

Sheriff was not entitled to qualified immunity from liability in his individual capacity for transferring deputies to less desirable positions in retaliation for announcing their candidacy for sheriff's office; law was clearly established at time of transfers that transfers, as distinguished from discharges, were actionable, even without reduction of pay, and that political activity, as distinguished from political belief, was protected under First Amendment when such activities had no effect on deputies' performance, on others' performance, on discipline, or on harmony among co-workers. Click v. Copeland, C.A.5 (Tex.) 1992, 970 F.2d 106. Civil Rights 1376(10)

In determining whether public officials who allegedly denied promotion to public employee because of his exercise of First Amendment rights were entitled to qualified immunity, court is entitled to determine whether the employee's action was entitled to First Amendment protection and, if so, whether his First Amendment right was clearly established so that reasonable officials could have believed that the failure to promote was unlawful. McEvoy v. Shoemaker, C.A.10 (Colo.) 1989, 882 F.2d 463, 109 A.L.R. Fed. 1, rehearing denied. Constitutional Law 82(11)

It was clearly established in September 2002, for purposes of a fire chief's qualified immunity defense to a firefighter's free association claim, that a firefighter had a right to associate with other persons in order to express his personal views on a matter of public concern without being threatened with termination motivated by the fire chief's opposition to the expression of those views. Lilienthal v. City of Suffolk, E.D.Va.2003, 275 F.Supp.2d 684. Civil Rights 1376(10)

Individual members of city housing authority's board of commissioners were entitled to qualified immunity from former executive director's claim under § 1983 that board's instructions that she was not to contact authority employees while she was on administrative leave and after she was discharged violated First Amendment; director cited no pre-existing law from which it would have been apparent that individual commissioners' actions were unlawful. Boggess v. Housing Authority of City of Charleston, S.D.W.Va.2003, 273 F.Supp.2d 729. Civil Rights 1376(10)

Teacher's constitutional right to intimate association with person with whom one shares home and intends to marry was not clearly established at time teacher's contract was not renewed by school officials, and, thus, individual school officials were entitled to qualified immunity in their individual capacities from teacher's § 1983 constitutional claims arising out of nonrenewal of her contract. LaSota v. Town of Topsfield, D.Mass.1997, 979 F.Supp. 45. Civil Rights 1376(5)

Community college president was not entitled to qualified immunity for alleged violation of tenured teacher's First Amendment rights to freedom of association, where corpus of law governing retaliatory action on basis of associational values was clearly established at time of events in question. Gardetto v. Mason, D.Wyo.1994, 854 F.Supp. 1520. Civil Rights 1376(10)

Chancery clerk was entitled to qualified immunity as to former deputy clerk's §§ 1983 claim that she was terminated in violation of her First Amendment freedom-of-association right in connection with statements made by her husband; there was no apparent decisional authority suggesting that the chancery clerk violated a "clearly established" right of the deputy to freely associate with her husband. Burge v. Pearl River County, Mississippi, C.A.5 (Miss.) 2004, 103 Fed.Appx. 823, 2004 WL 1576578, Unreported. Civil Rights 1376(10)

3825. ---- Political affiliation, employment, clearly established right

Clearly established law precludes government officials from discharging civil or "career" employees for politically-motivated reasons, precluding qualified immunity for officials alleged to have done so. Acevedo-Garcia

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v. Monroig, C.A.1 (Puerto Rico) 2003, 2003 WL 21982002, withdrawn and superseded on rehearing 351 F.3d 547 . Civil Rights 1376(10)

President of city assembly was not entitled to qualified immunity for his conduct in terminating employee or allowing employee to be deprived of his work duties, for purpose of city employee's §§ 1983 First Amendment political retaliation claim; employee supported different candidate for city assembly than everyone else in employee's office, the office was turned into campaign headquarters for candidate that employee opposed, employee was deprived of his work duties and later terminated because of his political support for the other candidate, and it was clearly established that public officials could not terminate or deprive employees of their job duties on the basis of political affiliation at the time that employee was subjected to that treatment. Bisbal-Ramos v. City of Mayaguez, C.A.1 (Puerto Rico) 2006, 467 F.3d 16.

Mayor was not entitled to qualified immunity on claims of career employees in Puerto Rico municipal sanitation department, that they had been terminated in violation of their First Amendment political affiliation rights, where jury readily could have found violation of employees' rights, right of career employees to not have their employment terminated due to their political affiliation had been clearly established, and jury easily could have found that mayor had been explicitly warned that he should not engage in scheme. Borges Colon v. Roman-Abreu, C.A.1 (Puerto Rico) 2006, 438 F.3d 1. Civil Rights 1376(10)

It was clearly established that the special investigators for county district attorney's office were not policymakers or confidential employees, within exception to prohibition against making employment action based on political affiliation, so that district attorney was not entitled to qualified immunity, in investigators' § 1983 action alleging that discharge because of their public support of district attorney's opponent in the election violated the First Amendment; investigators performed mostly ministerial duties, such as serving subpoenas, locating witnesses, and transporting witnesses to court, and prior case law rejected argument that investigators performing similar duties were policymakers or confidential employees. Carlson v. Gorecki, C.A.7 (Ill.) 2004, 374 F.3d 461, rehearing en banc denied, certiorari denied 125 S.Ct. 1723, 544 U.S. 960, 161 L.Ed.2d 601. Civil Rights 1376(10)

Reserve deputy's statements supporting sheriff's opponent in election, albeit made in private, involved matter of public concern, and thus it was clearly established that depriving reserve deputy of his commission for making statements could have violated his First Amendment rights, as required to deny qualified immunity to sheriff, undersheriff, deputy sheriff, and board of county commissioners in reserve deputy's § 1983 action. Bass v. Richards, C.A.10 (Colo.) 2002, 308 F.3d 1081. Civil Rights 1376(10)

Commissioner of Municipal Affairs for Puerto Rico and Director of Legal Division of Commissioner's Office were not entitled to qualified immunity from hearing examiner's § 1983 claim, alleging they violated her First Amendment rights by dismissing her due to her political beliefs; when defendants discharged hearing examiner, First Circuit law regarding discharge based on political discrimination was clearly established, and hearing examiner's inherent job duties did not reveal borderline case in which defendants could have reasonably determined that discharging her for political reasons was consonant with her constitutional rights. Roldan-Plumey v. Cerezo-Suarez, C.A.1 (Puerto Rico) 1997, 115 F.3d 58. Civil Rights 1376(10)

Law was clear as of 1993 that the permissibility of dismissing public employee for patronage reasons was determined by reference to inherent powers of employee's particular office, not to title of that office, for purposes of determining whether public official was qualifiedly immune from § 1983 claim alleging patronage dismissal in violation of First and Fourteenth Amendments. Flenner v. Sheahan, C.A.7 (Ill.) 1997, 107 F.3d 459. Civil Rights 1376(10)

Unconstitutionality of considering applicants' political affiliation in filling highway maintainer positions was not clearly established when state officials filled positions, and thus officials enjoyed qualified immunity from suit. Vickery v. Jones, C.A.7 (Ill.) 1996, 100 F.3d 1334, certiorari denied 117 S.Ct. 1553, 520 U.S. 1197, 137 L.Ed.2d

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42 U.S.C.A. § 1983

701. Civil Rights 1376(10)

State's attorney was immune from liability for damages in § 1983 suit brought by former employee who alleged that state's attorney discharged her from stenographer's position in which she was performing work of paralegal because of her political affiliation, in violation of First Amendment, since both law and its application to the facts were uncertain. Hernandez v. O'Malley, C.A.7 (Ill.) 1996, 98 F.3d 293. Civil Rights 1376(10)

Although lack of specific precedent holding that particular position is outside political patronage exception to First Amendment protection of public employees is necessary condition to arguing that First Amendment right to be free from patronage dismissal is unclear as to particular position, lack of such precedent is not a sufficient condition for concluding that law is unclear on subject such that qualified immunity must be granted to public employer. McCloud v. Testa, C.A.6 (Ohio) 1996, 97 F.3d 1536, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(10)

Former county property appraiser's office employees failed to establish that it was clearly established at time appraiser dismissed employees that their dismissal for political reasons violated their First Amendment rights and, therefore, appraiser, in his individual capacity, was entitled to qualified immunity from employees' action against him; Court of Appeals recently held in controlling case that it was not clearly established that dismissal of clerical employees of county tax collector's office for political reasons violated their First Amendment rights; moreover, district court, with full briefing and two years after appraiser's actions, concluded that those actions did not violate law, and argument that law was clearly established by two Supreme Court decisions was undermined by split of circuits concerning those decisions. Parrish v. Nikolits, C.A.11 (Fla.) 1996, 86 F.3d 1088, certiorari denied 117 S.Ct. 1818, 520 U.S. 1228, 137 L.Ed.2d 1027. Civil Rights 1376(10)

Even assuming that job duties of deputized employees of county tax collector's office were ministerial and that county tax collector discharged such employees for political reasons, it was not clearly established at time of the discharges whether termination of deputized employees' employment for political reasons violated any asserted First Amendment right not to be fired for political patronage reasons, and therefore county tax collector, in his individual capacity, was entitled to qualified immunity in deputized employees' subsequent § 1983 action for alleged violation of their First Amendment rights. Beauregard v. Olson, C.A.11 (Fla.) 1996, 84 F.3d 1402. Civil Rights 1376(10)

County sheriff was entitled to qualified immunity from deputy's claim under § 1983 that sheriff violated deputy's First Amendment rights by engaging in campaign of retaliatory harassment after deputy announced that he would run against sheriff in an upcoming election; law prohibiting retaliatory harassment was not clearly established in light of prior decisions permitting sheriffs to dismiss or demote politically disloyal deputies. Wallace v. Benware, C.A.7 (Wis.) 1995, 67 F.3d 655, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(10)

County district attorney was entitled to qualified immunity from claim that he violated the First Amendment by refusing to reappoint investigator employed by district attorney's office in retaliation for investigator's political support of former district attorney; right was not clearly established because neither the Fifth Circuit nor the Supreme Court had addressed issue of political patronage in hiring or firing investigators in district attorney's office, and neither had addressed issues sufficiently analogous that reasonable official would have understood from its resolution that it is a First Amendment violation to dismiss or not to hire an investigator on grounds that investigator supported campaign of official's opponent. Gunaca v. State of Tex., C.A.5 (Tex.) 1995, 65 F.3d 467. Civil Rights 1376(10)

Texas sheriff was not entitled to qualified immunity with respect to § 1983 action brought against him by deputy sheriffs who alleged that they were not rehired because they supported sheriff's opponent; sheriff's alleged actions violated clearly established law. Brady v. Fort Bend County, C.A.5 (Tex.) 1995, 58 F.3d 173, rehearing en banc granted, dismissed. Civil Rights 1376(10)

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42 U.S.C.A. § 1983

Sheriffs and other supervisory members of sheriff's department were entitled to qualified immunity from claims of subordinates that they were subject to adverse employment actions because of their political support of sheriff's opponent, in violation of their First Amendment rights; *Pickering* balancing did not lead to inevitable conclusion that warnings and attempts to sway subordinates' political views were unlawful. Rogers v. Miller, C.A.11 (Fla.) 1995, 57 F.3d 986. Civil Rights 1376(10)

At time of public employee's removal and demotion, May of 1990 and May of 1991, reasonable official would have understood that such actions on basis of employee's constitutionally protected statements criticizing political patronage employment practices and statements that she suspected employees were engaging in political patronage and other politically corrupt activities would violate her free speech rights and, thus, officials were not entitled to qualified immunity in her § 1983 action; sole countervailing state interest was disruption of working relationship between employee and two other employees. Williams v. Com. of Ky., C.A.6 (Ky.) 1994, 24 F.3d 1526, certiorari denied 115 S.Ct. 358, 513 U.S. 947, 130 L.Ed.2d 312. Civil Rights 1376(10)

Retired county official was not entitled to qualified immunity from suit by sheriffs' deputies and state paramedic allegedly terminated for failing to support successful sheriff candidate or work in political campaign since it was "clearly established" at time of dismissal that deputies and paramedic could not be dismissed for political activities. Burns v. County of Cambria, Pa., C.A.3 (Pa.) 1992, 971 F.2d 1015, certiorari denied 113 S.Ct. 1049, 506 U.S. 1081, 122 L.Ed.2d 357. Civil Rights 1376(10)

Mayor was entitled to qualified immunity on civil rights claims arising from alleged politically motivated personnel actions short of discharge, as it was not clearly established prior to 1986 that such personnel actions, even if politically motivated, violated the First Amendment. Valiente v. Rivera, C.A.1 (Puerto Rico) 1992, 966 F.2d 21. Civil Rights 1376(10)

It was not clearly established at time sheriff declined to rehire deputies what political affiliation was proper job requirement for deputy sheriff and, therefore, sheriff was entitled to qualified immunity from civil rights claims of former deputies that failure to rehire them, allegedly because they supported sheriff's opponent in election, violated First Amendment. Cagle v. Gilley, C.A.6 (Tenn.) 1992, 957 F.2d 1347, as amended, rehearing dismissed. Civil Rights 1376(10)

Sheriffs were entitled to qualified immunity from claims of former deputy sheriffs who alleged their discharges were impermissibly motivated by their political party affiliations, infringing on their First Amendment rights; at time of deputies' firings it was not clearly established that deputies were protected from patronage firings under prevailing doctrines. Upton v. Thompson, C.A.7 (Ill.) 1991, 930 F.2d 1209, rehearing denied 938 F.2d 84, certiorari denied 112 S.Ct. 1262, 503 U.S. 906, 117 L.Ed.2d 491, on remand. Civil Rights 1376(10)

Education officials in Puerto Rico were entitled to qualified immunity from liability in school teacher's § 1983 action alleging she was denied promotional opportunities out of political animus where law at that time was unclear as to whether First Amendment barred politically motivated demotion of career civil servant. Roque-Rodriguez v. Lema Moya, C.A.1 (Puerto Rico) 1991, 926 F.2d 103. Civil Rights 1376(10)

Any prohibition against allegedly political demotion of career government employee was not clearly established in 1985 at time of demotion, and thus, employer and other defendants were immune from § 1983 liability. Nunez-Soto v. Alvarado, C.A.1 (Puerto Rico) 1990, 918 F.2d 1029, rehearing denied. Civil Rights 1376(10)

District attorney was not entitled to qualified immunity in suit by former employee alleging that discharge was politically motivated; rights at issue were clearly established constitutional rights, and reasonable person would have known that refusing to retain or firing low-level staff employee for exercising those rights was unlawful. Laidley v. McClain, C.A.10 (Okla.) 1990, 914 F.2d 1386. Civil Rights 1376(10)

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42 U.S.C.A. § 1983

Aide to governor of Puerto Rico was not entitled to qualified immunity from civil rights claims of low-echelon employees, discharged in violation of First Amendment, inasmuch as it was sufficiently clearly established that employees in low-echelon positions could not be fired because of political affiliations. Rosario-Torres v. Hernandez-Colon, C.A.1 (Puerto Rico) 1989, 889 F.2d 314. Civil Rights 1376(10)

The question in a "qualified immunity" case is whether, at the time of dismissal of government employees for political reasons, it was clearly established that employees in the particular positions at issue, in light of responsibilities inherent in those positions, were protected from patronage dismissal; a defendant enjoys "qualified immunity" as long as the job in question potentially concerned matters of partisan political interest and involved at least a modicum of policymaking responsibility, access to confidential information, or official communication. Figueroa-Rodriguez v. Lopez-Rivera, C.A.1 (Puerto Rico) 1989, 878 F.2d 1478. Civil Rights 1376(10)

There was legitimate question at time that members of county electoral board and general registrar refused to rehire registrars because of political affiliation as to whether there existed a "small office" exception to the general prohibition against political affiliation as a consideration for public employment, so that the officials enjoyed qualified immunity in civil rights action brought by persons who were not rehired to the position of registrar because of their political affiliation. McConnell v. Adams, C.A.4 (Va.) 1987, 829 F.2d 1319, certiorari denied 108 S.Ct. 1731, 486 U.S. 1006, 100 L.Ed.2d 195. Civil Rights 1376(10)

Puerto Rico Department of Justice (PRDOJ) officials were not entitled to dismissal of former prosecutor's §§ 1983 claims on basis of qualified immunity; he alleged §§ 1983 violations of clearly established constitutional rights to freedoms of speech, affiliation, and procedural due process, and allegations indicated that reasonable officials in their shoes would know their actions violated his rights. Calderon-Garnier v. Sanchez-Ramos, D.Puerto Rico 2006, 439 F.Supp.2d 229. Civil Rights 1376(10)

Regional director of Puerto Rico Family Department was not entitled to qualified immunity for her alleged conduct in transferring Department employee to a different office with less responsibility, on the basis of the employee's political affiliation, in employee's §§ 1983 First Amendment claim; employee had clearly established right not to be reassigned based on political affiliation. Acevedo Luis v. Zayas, D.Puerto Rico 2006, 419 F.Supp.2d 115. Civil Rights 1376(10)

It was clearly established in 2002 that discharging public employee based upon political affiliation from position other than trust violated employee's First Amendment rights, and thus agency supervisors were not entitled to qualified immunity from liability in employee's §§ 1983 action against them. Lopez-Sanchez v. Vergara-Agostini, D.Puerto Rico 2006, 419 F.Supp.2d 78. Civil Rights 1376(10)

It was not clearly established that statutory reclassification of employees at state historic preservation office (SHPO) from trust positions to career was valid, and thus state officials who terminated employees after new political party won governorship were entitled to qualified immunity from liability under §§ 1983, even though reclassification was eventually upheld, where state secretary of justice and outside counsel advised officials that reclassifications were invalid. Sueiro Vazquez v. Torregrosa de la Rosa, D.Puerto Rico 2006, 414 F.Supp.2d 124. Civil Rights 1376(10)

Government officials were not entitled to qualified immunity to civil rights claims of former public employees who alleged political discrimination, since alleged violation of employees' right to be free from political discrimination was recognized under constitution and employees controverted officials' allegations that objectively reasonable government actor, performing discretionary functions, would not have understood that their conduct violated employees' constitutional rights. Martinez-Baez v. Rey-Hernandez, D.Puerto Rico 2005, 394 F.Supp.2d 428. Civil Rights 1376(10)

Former municipal employees in jobs funded through statutorily created employment opportunities development

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fund had a clearly established First Amendment right that protected them from municipality's failure to recall them or rehire them on account of their political affiliation, defeating municipality's qualified immunity claim in employees' §§ 1983 action alleging that they were not rehired following the expiration of their contracts due to political discrimination. Cruz-Baez v. Negron-Irizarry, D.Puerto Rico 2005, 360 F.Supp.2d 326. Civil Rights 1376(10)

If interim director of regional office of Puerto Rico agency was motivated by political animus at the time he took adverse employment actions, he knew or should have known that such actions were unconstitutional, and therefore he was not entitled to qualified immunity on employee's political discrimination claim under the First Amendment. Velez-Herrero v. Guzman, D.Puerto Rico 2004, 330 F.Supp.2d 62. Civil Rights 1376(10)

County sheriff was not entitled to qualified immunity from § 1983 suit brought by former employee, alleging that he was terminated in retaliation for campaigning for another candidate for sheriff, in violation of his First Amendment rights; when disputed actions were taken, it was clearly established by Supreme Court and Fourth Circuit precedent that employee could not be discharged for exercising right to free speech, and sheriff's comments during tape-recorded conversation showed that he was aware of such rights and that he clearly intended to violate written policy of his own department in order to squelch support by his staff of any other candidate. Carter v. Good, W.D.N.C.1996, 951 F.Supp. 1235, reversed 145 F.3d 1323, certiorari denied 119 S.Ct. 509, 525 U.S. 1000, 142 L.Ed.2d 423. Civil Rights 1376(10)

Correctional officers failed to demonstrate that they possessed clearly established right to avoid patronage dismissal and, thus, sheriff was entitled to qualified immunity from § 1983 claims regarding their patronage termination; law was unclear at time of dismissal as to whether correctional officers were subject to patronage dismissal. Flenner v. Sheahan, N.D.Ill.1996, 920 F.Supp. 905, reversed 107 F.3d 459. Civil Rights 1376(10)

County and clerk were entitled to qualified immunity in deputy clerk's § 1983 action alleging that her discharge violated her free speech rights; given deputy clerk's support of clerk's opponent in election, conduct of both proper and improper campaign activities, and disruptive attitude and behavior after election, reasonable public employer would not have believed that it was against clearly established law to discharge her. Taylor v. Bartow County, Ga., N.D.Ga.1994, 860 F.Supp. 1526. Civil Rights 1376(10)

State officials in their individual capacities were entitled to qualified immunity in former employee's civil rights action alleging that they maintained and operated patronage system in which political and financial supporters of political party were favored with respect to temporary employment as state highway maintainers; at time of alleged violation, it was not clearly established that analysis used to determine whether political affiliation may be considered in hiring, promotion, transfer, recall, and dismissal of public employees applied to temporary as well as permanent employees. Vickery v. Jones, S.D.Ill.1994, 856 F.Supp. 1313, affirmed 100 F.3d 1334, certiorari denied 117 S.Ct. 1553, 520 U.S. 1197, 137 L.Ed.2d 701. Civil Rights 1376(10)

Puerto Rico officials were entitled to qualified immunity from liability in civil rights action brought by teacher who alleged that she was not hired for other available positions when her contract was not renewed on the basis of political discrimination given that there was no clearly established law that would have given teacher federally protected right disallowing use of political factors in hiring process. Saquebo v. Roque, D.Puerto Rico 1989, 716 F.Supp. 709. Civil Rights 1376(10)

County and county officials were not entitled to qualified immunity from liability in former county public defender's § 1983 action, claiming that the termination of his employment allegedly because he ran for judge against a candidate whom one official supported, in violation of his First and Fourteenth Amendment rights; clearly established federal law precluded the termination of a public defender based upon his political affiliation. Yurchak v. County of Carbon, C.A.3 (Pa.) 2003, 84 Fed.Appx. 218, 2003 WL 23101853, Unreported. Civil Rights 1376(10)

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42 U.S.C.A. § 1983

3826. ---- Freedom of religion, employment, clearly established right

Police chief was not entitled to qualified immunity on officer's claim of interference with free exercise of his religion. as officer alleged a violation of his clearly established constitutional rights; while mere refusal of chief and police department to accommodate the officer's religious scheduling needs, without more, would not establish a constitutional violation, officer alleged he was moved to day shift precisely because of chief's knowledge of his religious commitment, meaning that transfer decision was not neutral but rather motivated by officer's religious commitments, and religious discrimination was means to entirely secular end of forcing him out by making him choose between his duties as police officer and his duties as minister. Shrum v. City of Coweta, Okla., C.A.10 (Okla.) 2006, 449 F.3d 1132. Civil Rights 1376(10)

State officials were entitled to qualified immunity from civil rights action of former state employee, who alleged she was discharged for using peyote in violation of her rights under free exercise clause; at time of discharge, legitimate question existed regarding whether employee's First Amendment rights were violated, in view of dispute as to whether she used peyote in bona fide religious ceremonies and whether she, as non-Indian, was member of Native American Church, and lack of legal precedent controlling case. Warner v. Graham, C.A.8 (N.D.) 1988, 845 F.2d 179. Civil Rights 1376(10)

County public library's dress code prohibiting any "ornament depicting religious ... decoration" was not impermissibly vague under Due Process Clause; term "religious" was not too vague to defy categorization, and any irregularity could be remedied through employee grievance process. Draper v. Logan County Public Library, W.D.Ky.2005, 403 F.Supp.2d 608. Counties 67

State natural resources department officials were not entitled to qualified immunity from employee's § 1983 action against officials in their individual capacities, alleging that officials violated Rehabilitation Act and First Amendment by allegedly refusing to transfer employee due to his disability and religion; Act and First Amendment were clearly established at time of alleged violations, facts were to be viewed most favorably to employee, and plaintiff presented documentary evidence that employment decisions were based on his disability. Bodiford v. State of Ala., M.D.Ala.1994, 854 F.Supp. 886. Civil Rights 1376(10)

3827. ---- Privacy right, employment, clearly established right

Chairperson of house administrative committee, which supervised house employment matters and investigated allegations of sexual harassment by former state representative, enjoyed qualified immunity from liability in 42 U.S.C.A. § 1983 action brought by former state representative; charges that chairperson, in violation of due process, damaged personal and political reputation of former state representative, diminished his personal and family privacy and deprived him of his position as state legislator could not show loss of a federal right which would have precluded chairperson from claiming qualified immunity. Flinn v. Gordon, C.A.11 (Fla.) 1985, 775 F.2d 1551, certiorari denied 106 S.Ct. 1972, 476 U.S. 1116, 90 L.Ed.2d 656. Civil Rights 1376(3); Civil Rights 1376(10)

Former county employee who brought §§ 1983 action against county legislator, alleging disclosure of her sexual harassment accusations and identity to news media, failed to allege violation of clearly established federal rights, as required to rebut legislator's qualified immunity defense; protections afforded by New York rape shield laws did not equate to constitutional privacy rights. Nassau County Employee "L" v. County of Nassau, E.D.N.Y.2004, 345 F.Supp.2d 293. Civil Rights 1376(10)

President of school board of trustees who did not know that trustee's telephone conversation was recorded illegally was entitled to qualified immunity in trustee's § 1983 action alleging that president violated his right to privacy under Fourth Amendment by allowing transcript of conversation to be read at board meeting and to be distributed to media, as there was no clearly established right that such actions would violate right to privacy. Peavy v. Dallas

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Independent School Dist., N.D.Tex.1999, 57 F.Supp.2d 382. Civil Rights 1376(5); Civil Rights 1376(10)

United States Postal Service employee was entitled to qualified immunity from job applicant's *Bivens* claim, alleging that employee violated applicant's constitutional right to privacy by disclosing to applicant's employer that applicant had applied for employment with Postal Service, since any right to privacy that applicant may have had to information disclosed by employee was not "clearly established" at time of employee's actions; while preexisting case law recognized general right of privacy in certain matters, it did not support broad right of privacy concerning disclosure of job applicant's identity. Sullivan v. U.S. Postal Service, W.D.N.Y.1996, 944 F.Supp. 191 . United States 50.10(7)

Investigation into nature of off-duty activities of police officer and his wife, their marital understanding or alleged "swinging" lifestyle was of no consequence to city and police department's legitimate interest, any investigation regarding those subjects violated clearly established constitutional rights of privacy and free association of police officer and his wife, and thus defendants city and police department officials were not entitled to qualified immunity. Hughes v. City of North Olmsted, N.D.Ohio 1995, 894 F.Supp. 1120, reversed 93 F.3d 238. Civil Rights 1376(10)

Police officer had no "clearly established" constitutional privacy right to nondisclosure of confidential information in his personnel file, so that member of town board of selectmen was entitled to qualified immunity in officer's § 1983 action which alleged that member's press release concerning reasons he considered officer unqualified for promotion revealed information obtained either by looking at personnel file or from discussion of confidential information at board's executive sessions. Hansen v. Lamontagne, D.N.H.1992, 808 F.Supp. 89. Civil Rights 1376(10)

Whether deputy sheriffs' extramarital intimate relationship was entitled to protection under the First Amendment right to intimate association was not clearly established, and thus, their supervisor was entitled to qualified immunity with regard to deputies' § 1983 claims that supervisor had retaliated against them based on their relationship. Bates v. Bigger, C.A.2 (N.Y.) 2002, 56 Fed.Appx. 527, 2002 WL 31875633, Unreported. Civil Rights 1376(10)

3828. ---- Equal protection, employment, clearly established right

County, corrections commissioner and corrections chief of operations were not entitled to qualified immunity on corrections officers' *Olech* "class of one" equal protection claim on basis that relevant standards were not clearly established at time of alleged unconstitutional conduct at issue. Cobb v. Pozzi, C.A.2 (N.Y.) 2004, 363 F.3d 89. Civil Rights 1376(10)

Law was clearly established when African-American members of board of county commissioners voted to replace white female clerk with African-American clerk they were not shielded from § 1983 liability by statutorily created personal staff exemption and, thus, county commissioner members were not entitled to qualified immunity from liability in white female clerk's civil rights action alleging equal protection violation. Smith v. Lomax, C.A.11 (Ga.) 1995, 45 F.3d 402. Civil Rights 1376(10)

Town officials were entitled to qualified immunity from damages arising from alleged violations of police officers' rights to equal protection and procedural due process resulting from police department's former policy prohibiting reserve participation and its current policy of reimbursing reservists for difference between their wages as police officers and their military pay while they were on active duty; town officials violated no clearly established rights to due process or equal protection. Boyle v. Burke, C.A.1 (N.H.) 1991, 925 F.2d 497. Civil Rights 1376(10)

City police chief and director of public safety were entitled to qualified immunity on former police officer's §§

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1983 claim that he was deprived of procedural due process when chief and director, without notice to officer, decided to consider departmental records outside of disciplinary hearing record in determining what disciplinary action officer would face for violation of police department procedure, since law on police officers' pre-suspension due process rights was not settled. Reilly v. City of Atlantic City, D.N.J.2006, 427 F.Supp.2d 507. Civil Rights 1376(10)

State police officials who denied employee's request under state statute to use accrued sick leave following birth of his child were not entitled to qualified immunity with regard to employee's § 1983 claim for violation of equal protection, which was based on officials' use of gender-based presumption that mothers were "primary care givers" entitled to greater amount of leave under the statute, though statute was recently amended, and no guidelines had yet been issued regarding amended statute; law against gender discrimination in employment was clearly established. Knussman v. State of Md., D.Md.1998, 16 F.Supp.2d 601. Civil Rights 1376(10)

Officials were not entitled to qualified immunity from claims that they violated Hispanic corrections officer's right to be free from discrimination under equal protection clause by failing to promote him to lieutenant. Perez v. Lane, C.D.Ill.1992, 794 F.Supp. 286. Civil Rights 1376(10)

Members of city council were entitled to qualified immunity from liability on civil rights claims based on failure of city to pay certain civil rights judgments against off-duty policemen as moral obligations where, even assuming that city's refusal to pay judgments constituted a violation of equal protection, city council members would not have been reasonably aware, based upon case law existing at the time, that their conduct infringed upon plaintiffs' rights. Stengel v. City of Columbus, Ohio, S.D.Ohio 1989, 737 F.Supp. 1460, affirmed 902 F.2d 35. Civil Rights 1376(4)

No clearly established right existed under the Equal Protection Clause to be free from retaliation, and thus, city manager and fire chief were entitled to qualified immunity on §§ 1983 claims by fire department employees that they were retaliated against in violation of their right to equal protection. Gardner v. City of Camilla, Ga., C.A.11 (Ga.) 2006, 186 Fed.Appx. 860, 2006 WL 1687650, Unreported. Civil Rights 1376(10)

No clearly established right existed under the equal protection clause to be free from retaliation, and thus, city fire department employee's supervisors were entitled to qualified immunity on his retaliation claim under §§ 1983. Jolivette v. Arrowood, C.A.11 (Ga.) 2006, 2006 WL 1308626, Unreported. Civil Rights 1376(10)

Prior supervisor was entitled to qualified immunity as to state employee's equal-protection claim of retaliation under §§ 1983, since no clearly established right existed under the equal protection clause to be free from retaliation. Clark v. Alabama, C.A.11 (Ala.) 2005, 141 Fed.Appx. 777, 2005 WL 1317037, Unreported. Civil Rights 1376(10)

City employees appeal board members, police chief, mayor, and city council members were entitled to qualified immunity from liability for damages under § 1983 which were sought by police officer who alleged that his termination for misconduct violated his due process rights; district court found, and record supported that, officials had not violated officer's clearly established right to due process because he received an abundance of due process before and after his termination. Sutherland v. Tooele City Corp., C.A.10 (Utah) 2004, 91 Fed.Appx. 632, 2004 WL 198306, Unreported. Civil Rights 1376(10)

3829. ---- Racial discrimination, employment, clearly established right

State university employee's supervisor's alleged acts of creating a hostile work environment violated employee's well-established right under Title VII not to be subjected to a hostile work environment based on her race, and thus, supervisor was not entitled to qualified immunity on employee's hostile work environment claim. Thompson v. Connecticut State University, D.Conn.2006, 2006 WL 3702271. Civil Rights 1529

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42 U.S.C.A. § 1983

Wichita, Kansas police chief was not entitled to qualified immunity from liability under §§ 1983 for alleged race discrimination against minority officers; chief allegedly had consistently ignored complaints about discriminatory working conditions, inadequately addressed minority complaints, and failed to implement steps to eliminate these unlawful working conditions and been aware of disparate impact upon minorities that department's policies and procedures had on minorities, yet failed to correct those policies, and chief's inaction in the face of actual knowledge of discriminatory conduct, if proven, would violate officers' constitutional rights to equal protection. Fulcher v. City of Wichita, D.Kan.2006, 445 F.Supp.2d 1271. Civil Rights 1376(10)

Corrections facility employee's right to be free from being subjected to harsher discipline and termination on account of his race was clearly established, for purposes of determining whether facility's officials in their individual capacities were qualifiedly immune from employee's § 1983 claim that such alleged actions violated his equal protection rights. Eldridge v. Morrison, M.D.Ala.1996, 970 F.Supp. 928, affirmed 120 F.3d 275. Civil Rights 1376(10)

Town mayors who allegedly discriminated against black police officer in the terms and conditions of his employment were not entitled to qualified immunity for purposes of officer's § 1983 action; reasonable official should have known that the alleged conduct violated clearly established federal law. Lightner v. Town of Ariton, Ala., M.D.Ala.1995, 902 F.Supp. 1489. Civil Rights 1376(10)

College officials and employees who were alleged to have taken actions including but not limited to racial discrimination in violation of the Fourteenth Amendment were not entitled to qualified immunity from civil rights claims; defendants did not contend law concerning racial discrimination in employment or the Fourteenth Amendment was unclear at the pertinent time or that extraordinary circumstances existed. Folse v. Delgado Community College, E.D.La.1991, 776 F.Supp. 1133. Civil Rights 1376(10)

3830. ---- Sex discrimination, employment, clearly established right

At the time that elementary school principal and district personnel director allegedly discriminated against school psychologist based on gender stereotypes about suitability for employment of mothers with young children, it was clearly established that psychologist had equal protection right to be free from sex discrimination, that adverse actions taken on basis of gender stereotypes could constitute sex discrimination, and that it was unconstitutional to treat men and women differently simply because of presumptions about respective roles they played in family life, and therefore principal and director were not shielded by qualified immunity from § 1983 liability to psychologist, even if they believed their alleged stereotypes to be true. Back v. Hastings On Hudson Union Free School Dist., C.A.2 (N.Y.) 2004, 365 F.3d 107. Civil Rights 1376(10)

Female county employee had clearly established right, in 1988, to be free of gender discrimination with respect to denial of promotion, alteration of job responsibilities, and other hostile treatment, so that county official was not entitled to qualified immunity in employee's civil rights action, provided that he took those adverse actions with discriminatory motive, notwithstanding official's contention that employee possessed only right not to be refused employment on basis of gender. Lindsey v. Shalmy, C.A.9 (Nev.) 1994, 29 F.3d 1382. Civil Rights 1376(10)

County attorney was not entitled to qualified immunity with regard to discharged assistant county attorney's § 1983 claim for sex discrimination in violation of Equal Protection Clause, as law was clear that at-will employee could not be fired for illegal, discriminatory reasons. Lococo v. Barger, E.D.Ky.1997, 958 F.Supp. 290, affirmed in part, reversed in part 234 F.3d 1268. Civil Rights 1376(10)

University officials were not entitled to defense of qualified immunity in suit by employee of university under § 1983 alleging sexual harassment and sex discrimination in violation of Fourteenth Amendment, where right of individual to be free from sexual harassment or sex discrimination in public employment was clearly established at time of events in question. Kelley v. Troy State University, M.D.Ala.1996, 923 F.Supp. 1494. Civil Rights

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42 U.S.C.A. § 1983

1376(10)

School officials were not entitled to qualified immunity with respect to § 1983 action by teacher who alleged that officials refused to renew her contract based upon her pregnancy by artificial insemination and her status as unwed mother; contours of her rights under Title VII to be free from sexual discrimination in workplace were clearly established at time officials did not renew her contract. Cameron v. Board of Educ. of Hillsboro, Ohio, City School Dist., S.D.Ohio 1991, 795 F.Supp. 228. Civil Rights 1376(10)

Corrections officers did not have clearly established right to serve in all staff positions involving opposite-sex inmates at time they filed suit complaining of corrections department's gender-based restrictions, and thus department officials were entitled to qualified immunity against officers' claims for damages. Csizmadia v. Fauver, D.N.J.1990, 746 F.Supp. 483. Civil Rights 1376(10)

School board members acted in violation of teacher's clearly established substantive due process rights by discharging her on basis of her out-of-wedlock pregnancy and decision to raise her child as a single parent, so that defense of qualified immunity was not available in teacher's civil rights action. Eckmann v. Board of Educ. of Hawthorn School Dist. No. 17, N.D.Ill.1986, 636 F.Supp. 1214. Civil Rights 1376(10)

3831. ---- Sexual harassment, employment, clearly established right

Officers and supervisors were entitled to qualified immunity from dispatchers' claims that sexual harassment violated their equal protection rights where alleged misconduct occurred prior to date that it became clearly established in Circuit that sexual harassment under color of state law violated equal protection; law was not clearly established in Circuit until case on point was decided in May of 1978. Woodward v. City of Worland, C.A.10 (Wyo.) 1992, 977 F.2d 1392, rehearing denied, certiorari denied 113 S.Ct. 3038, 509 U.S. 923, 125 L.Ed.2d 724. Civil Rights 1376(10)

Police captain and sergeant were not entitled to qualified immunity in sexual harassment action brought by female officers; general right which jury found defendants to have violated, right to be free from discrimination based upon sex in workplace, was well grounded in law and widely known to public by time of beginning of scenario for lawsuit. Andrews v. City of Philadelphia, C.A.3 (Pa.) 1990, 895 F.2d 1469. Civil Rights 1376(10)

Right of applicant for position of police officer to be free from any sexually related questions in preemployment interview was not "clearly established" at time that interview was conducted in 1986, so that police department employees were entitled to qualified immunity in applicant's § 1983 action. Hedge v. County of Tippecanoe, C.A.7 (Ind.) 1989, 890 F.2d 4. Civil Rights 1376(10)

Although qualified immunity shielded former sheriff as to deputy sheriff's allegations of hostile work environment sexual harassment under §§ 1983, it did not protect him as to her allegations of quid pro quo sexual harassment; former alleged violation was not of a clearly established right of which a reasonable person would have known, but latter was. Briggs v. Waters, E.D.Va.2006, 455 F.Supp.2d 508. Civil Rights 1376(10)

Male co-worker of female county employee was not entitled to qualified immunity with respect to sexual harassment claim; when co-worker allegedly began harassing employee, the law was clearly established that making repeated unwelcome sexual overtures to a co-worker, and making other derogatory remarks of a sexual nature, could be considered unlawful sexual harassment. McDaniel v. Fulton County School Dist., N.D.Ga.2002, 233 F.Supp.2d 1364. Civil Rights 1376(10)

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nature, could be considered unlawful sexual harassment. McDaniel v. Fulton County School Dist., N.D.Ga.2002, 233 F.Supp.2d 1364. Civil Rights 1376(10)

Female former city employee's right under equal protection clause to be free from retaliation for complaining about sexual harassment was not clearly established for qualified immunity purposes, and thus qualified immunity defeated former employee's § 1983 claim against supervisor for retaliation in violation of equal protection clause. Palisano v. City of Clearwater, M.D.Fla.2002, 219 F.Supp.2d 1249, affirmed 62 Fed.Appx. 320, 2003 WL 678350. Civil Rights 1376(10)

Unlawfulness of village employee's alleged use of his position of authority to sexually and racially harass female employee was clearly established at time that female employee complained of such harassment, and, thus, village officials were not entitled to qualified immunity from employee's equal protection § 1983 action against officials in their individual capacities. Carroll v. Village of Shelton, Neb., D.Neb.1996, 973 F.Supp. 900. Civil Rights 1376(10)

Former public employee's former supervisor was entitled to qualified immunity with regard to former employee's § 1983 claim for same-sex sexual harassment, as it was not clearly established at time of alleged harassment that same-sex sexual harassment was violation of Title VII. McCoy v. Macon Water Authority, M.D.Ga.1997, 966 F.Supp. 1209. Civil Rights 1376(10)

It was clearly established in 1994 that a state actor's sexual harassing and discriminatory conduct could provide basis for violation of equal protection rights under § 1983, and public employee's supervisors thus were not qualifiedly immune from equal protection claim alleging such conduct. Guy v. State of Ill., N.D.Ill.1997, 958 F.Supp. 1300. Civil Rights 1376(10)

Chief of police, deputy chief of police and township clerk were protected by qualified immunity from civilian dispatcher's § 1983 claim that they failed to adequately investigate her claim of sexual harassment, since courts had not yet "clearly established" proper response required under the Constitution. Foster v. Township of Hillside, D.N.J.1992, 780 F.Supp. 1026, affirmed 977 F.2d 567. Civil Rights 1376(10)

In state agency employee's §§ 1983 action against agency supervisor, alleging sexual harassment in violation of Equal Protection Clause, under employee's version of facts, supervisor's conduct was sufficiently severe and pervasive to create hostile work environment in violation of clearly established right to equal protection, and thus, supervisor was not entitled to summary judgment on ground of qualified immunity; supervisor asked employee on four separate occasions for specific details of conduct of another supervisor against whom employee had lodged sexual harassment complaint, employee considered the questioning hostile or abusive, and reasonable jurors could conclude that supervisor pursued questioning for his own sexual gratification. Fye v. Oklahoma Corp. Com'n, C.A.10 (Okla.) 2006, 175 Fed.Appx. 207, 2006 WL 895237, Unreported.

3832. ---- Searches generally, employment, clearly established right

State university officials did not violate any clearly established constitutional rights by conducting warrantless search of employee's computer for work-related materials, and thus officials were entitled to qualified immunity from liability under §§ 1983 for violating employee's Fourth Amendment right to privacy, where university conducted search primarily to provide documentation related to lawsuit and ensuing arbitration against third party, university's computer policy permitted search, and university suspected at time of search that employee had exceeded his authority with respect to technology transfer contracts and violated orders of his superiors forbidding pre-arbitration contact with third party. Biby v. Board of Regents, of University of Nebraska at Lincoln, C.A.8 (Neb.) 2005, 419 F.3d 845. Civil Rights 1376(10)

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Correctional officials were entitled to qualified immunity in connection with correctional officer's Fourth Amendment-based civil rights claim inasmuch as officials acted reasonably in detaining officer, searching him, and seizing fruits of that search during course of investigation into allegations that officer had engaged in illegal transactions with inmates. Brennan v. Hendrigan, C.A.1 (Mass.) 1989, 888 F.2d 189. Civil Rights 1376(10)

State university officials did not violate any clearly established constitutional rights by conducting warrantless search of employee's computer for work-related materials, and thus officials were entitled to qualified immunity from liability under §§ 1983 for violating employee's Fourth Amendment right to privacy, where university conducted search primarily to provide documentation related to lawsuit and ensuing arbitration against third party, university's computer policy permitted search, and university suspected at time of search that employee had exceeded his authority with respect to technology transfer contracts and violated orders of his superiors forbidding pre-arbitration contact with third party. Biby v. Board of Regents of University of Neb. at Lincoln, D.Neb.2004, 338 F.Supp.2d 1063, amended in part 340 F.Supp.2d 1031, affirmed 419 F.3d 845. Civil Rights 1376(10)

Assuming that jail officials performed nonconsensual strip search and visual bodily cavity search of jail guard suspected of smuggling cocaine into prison, and further assuming that officials lacked reasonable suspicion that guard was smuggling drugs, officials had qualified immunity; it was not clearly established at time of searches that reasonable suspicion was necessary. Profitt v. District of Columbia, D.D.C.1991, 790 F.Supp. 304. Civil Rights 1376(10)

State agency officials were entitled to qualified immunity from civil rights claims asserted by employees whose offices and desks were searched in connection with investigation into allegations of misconduct at facility at which employees served in supervisory capacities; in 1986, when searches were conducted, it was not clearly established that search of public employee's office and desk was unreasonable and violative of Fourth Amendment. Ross v. Hinton, S.D.Ohio 1990, 740 F.Supp. 451, affirmed 937 F.2d 609. Civil Rights 1376(10)

Prison administrators were entitled to qualified immunity from liability for conducting intrusive strip search on corrections officer after receiving uncorroborated anonymous tip that a corrections officer would be carrying narcotics into jail, despite lack of a reasonable suspicion, in view of fact that, at time of search, it was not clearly established that reasonable suspicion was required for intrusive searches of corrections officers or that search of officer in instant case was an intrusive search in violation of limited frisk search regulations. Adrow v. Johnson, N.D.Ill.1985, 623 F.Supp. 1085. Civil Rights 1376(7)

3833. ---- Discipline, employment, clearly established right

Community college officials were entitled to qualified immunity as to professor's claim for civil damages arising from officials' imposition of discipline for professor's alleged violation of sexual harassment policy, in violation of professor's First Amendment rights, as legal issues raised in case were not readily discernable, and appropriate conclusion to each was not so clear that officials should have known that their actions violated professor's rights. Cohen v. San Bernardino Valley College, C.A.9 (Cal.) 1996, 92 F.3d 968, certiorari denied 117 S.Ct. 1290, 520 U.S. 1140, 137 L.Ed.2d 364. Civil Rights 1376(10)

City police chief and director of public safety were not entitled to qualified immunity on former police officer's §§ 1983 claim that he was deprived of procedural due process because someone other than person vested with authority to make final disciplinary decisions made decision as to his discipline, since reasonable official in positions of chief and director would have known that they had to follow New Jersey state law procedures in making disciplinary decisions, including New Jersey law requirement that decision maker vested with authority make disciplinary decision. Reilly v. City of Atlantic City, D.N.J.2006, 427 F.Supp.2d 507. Civil Rights 1376(10)

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3834. ---- Drug testing, employment, clearly established right

Law was not "clearly established" at time of 1986 urinalysis of state prison guard that urine testing was search under Fourth Amendment, entitling prison officials who administered test to qualified immunity in guard's civil rights action. Molinelli v. Tucker, C.A.2 (N.Y.) 1990, 901 F.2d 13. Civil Rights 1376(10)

Law governing extent to which employees could be randomly tested for drugs was not clearly established, and consequently Secretary of Florida Department of Juvenile Justice (DJJ) had qualified immunity, in his individual capacity, from backpay claim by employee, alleging he was wrongfully subjected to random testing and fired when he refused to submit, in violation of his Fourth Amendment rights. Wenzel v. Bankhead, N.D.Fla.2004, 351 F.Supp.2d 1316. Civil Rights 1376(10)

City commissioner of sanitation, director of personnel and employee's supervisor had qualified immunity from an employee's allegation that a compulsory urinalysis violated a government employee's Fourth Amendment rights, as right was not clearly established at the time of the drug test incident at issue. Watson v. Sexton, S.D.N.Y.1991, 755 F.Supp. 583. Civil Rights 1376(10)

3835. ---- Discharges or dismissals, employment, clearly established right

City employee's right to procedural due process prior to termination from her classified position was clearly established at time of deprivation in 2002, such that board members were not entitled to qualified immunity for terminating employee without hearing, where no reasonable official could have misunderstood nature of position or fact that, as holder of classified position, employee was entitled to predeprivation hearing. Silberstein v. City of Dayton, C.A.6 (Ohio) 2006, 440 F.3d 306, rehearing and rehearing en banc denied. Civil Rights 1376(10)

Qualified immunity defense was not available to supervisors and directors in New Mexico State Personnel Office (SPO) in disabled employee's §§ 1983 action challenging constitutionality, on due process and equal protection grounds, of her termination without hearing, despite their argument they were merely enforcing state law; they were not mere minions obeying commands and had clear expertise in hiring and firing of state employees, including relevant state and federal law. Brown v. New Mexico State Personnel Office, C.A.10 (N.M.) 2005, 399 F.3d 1248. Civil Rights 1376(10)

Director of the Missouri Department of Agriculture and other officials were entitled to qualified immunity on terminated employee's § 1983 due process claim because there was confusion as to whether employee, who was director of the Division of Grain Inspection and Warehousing of the Department, had continued right of employment. Hopkins v. Saunders, C.A.8 (Mo.) 1996, 93 F.3d 522, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(10)

Since public employee's due process claim hinged on unsettled question of statutory construction, she did not have a clearly established right to receive due process before her termination, and state officials were entitled to qualified immunity on employee's § 1983 claim for damages arising from termination. Pace v. Moriarty, C.A.8 (Mo.) 1996, 83 F.3d 261. Civil Rights 1376(10)

Bureau of Taxation supervisors were entitled to qualified immunity from tax examiner's claim that supervisors violated her right against self-incrimination when she was fired after refusing to answer questions asked during investigation into her conduct as Bureau employee, since supervisors' actions did not amount to violation of clearly established Fifth Amendment right under applicable precedent at time of events; plaintiff did not explicitly claim privilege, was not told that she would be dismissed if she failed to answer questions, and was not asked to sign waiver of immunity, and neither statute nor Bureau rules mandated dismissal for refusal to answer questions. Singer v. State of Me., C.A.1 (Me.) 1995, 49 F.3d 837. Civil Rights 1376(10)

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It was not clearly established as matter of law in Alabama at time of firing of state university vice president that words of employment contract between university and vice president or words of university policy manual or both gave vice president protected property right in continued employment or that vice president was due hearing prior to his discharge, and thus, university officials were entitled to qualified immunity in former vice president's civil rights suit; employment contract was ruled ambiguous as a matter of law by Court of Appeals in prior decision, and implied contract from personnel manual theory on which vice president relied was not validated until decision of Alabama Supreme Court issued after vice president had been fired. Lassiter v. Alabama A & M University, Bd. of Trustees, C.A.11 (Ala.) 1994, 28 F.3d 1146. Civil Rights 1376(10)

Alabama law at time of firing of vice president of state university was not clearly established that import of evidentiary facts about formation of contract would be to oblige judge to conclude as matter of law that contract's words had legal effect that vice president advanced, i.e., that he had right to continued employment protected by due process requiring hearing prior to his firing; thus, reasonable university officers, even if fully informed of vice president's intent and understandings of pertinent contract and rest of his trial evidence surrounding making of contract, would not have known that vice president had protected property right that demanded due process protection. Lassiter v. Alabama A & M University, Bd. of Trustees, C.A.11 (Ala.) 1994, 28 F.3d 1146. Civil Rights 1376(10)

Police officer's due process right to pretermination hearing was not clearly established in November of 1987 when request for reinstatement following injury was denied, and, thus, police chiefs were entitled to qualified immunity; although United States Supreme Court in *Loudermill* required hearing before deprivation of constitutionally protected property interest, it was unclear in 1987 whether officer had unrestricted property right to continued employment. Prue v. City of Syracuse, C.A.2 (N.Y.) 1994, 26 F.3d 14. Civil Rights 1376(10)

Discharged city employee provided sufficient basis upon which to conclude that alleged violation of his occupational liberty interest, if true, violated clearly established right, and thus city officials were not entitled to qualified immunity in civil rights action; complaint alleged that officials discharged employee in connection with publicly communicated, false and stigmatizing statements that employee either participated in or condoned criminal activity, and that employee was not provided opportunity for "name clearing" hearing. McMath v. City of Gary, Ind., C.A.7 (Ind.) 1992, 976 F.2d 1026, rehearing denied. Civil Rights 1376(10)

Terminating teacher's employment in conformity with Puerto Rican statutory prohibition against aliens holding teaching positions did not violate clearly established federal constitutional right of teacher in September of 1986, and, thus, education officials were entitled to qualified immunity in teacher's § 1983 suit. Quintero de Quintero v. Aponte-Roque, C.A.1 (Puerto Rico) 1992, 974 F.2d 226. Civil Rights 1376(10)

Members of city council which had terminated employment of police officer were entitled to qualified immunity from damages on officer's property interest claims absent any clearly established law which would have prevented them from participating in tribunal, despite evidence that one tribunal member was biased against employee; law was not clearly established that arguable bias of one council member required other council members to refrain from participating. Hicks v. City of Watonga, Okl., C.A.10 (Okla.) 1991, 942 F.2d 737. Civil Rights 1376(10)

County officials were entitled to qualified immunity in connection with their discharge of employee who was hired due to mistake as to her qualifications; officials consulted with county counsel prior to discharging employee, and law was unsettled as to entitlement to job acquired pursuant to mistake of fact. Lucero v. Hart, C.A.9 (Cal.) 1990, 915 F.2d 1367. Civil Rights 1376(10)

University chancellor was not entitled to qualified immunity on § 1983 claim for terminating tenured professor in violation of his right to procedural due process since such action violated clearly established rights. Collins v. Marina-Martinez, C.A.1 (Puerto Rico) 1990, 894 F.2d 474. Civil Rights 1376(10)

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42 U.S.C.A. § 1983

Former Puerto Rico Secretary of Commerce was protected by qualified immunity from individual liability for compensatory and punitive damages arising out of 1985 discharge of regional directors; at that time, law forbidding dismissal of officials in "upper-level managerial-type government positions" was not clearly established. Batistini v. Aquino, C.A.1 (Puerto Rico) 1989, 890 F.2d 535. Territories 23

Supervisors of a state employee were entitled to qualified immunity from his substantive due process claim that his termination was arbitrary; at the time employee was fired there was no clearly established substantive due process right to continued public employment that would preclude arbitrary, capricious and pretextual termination in light of absence of binding precedent in Ninth Circuit and conflict between other circuits. Lum v. Jensen, C.A.9 (Cal.) 1989, 876 F.2d 1385, certiorari denied 110 S.Ct. 867, 493 U.S. 1057, 107 L.Ed.2d 951. Civil Rights 1376(10)

New York insurance officials were entitled to immunity with respect to § 1983 claims that officials deprived auto club president of liberty interest without due process by making defamatory statements that led to foreclosure of president's ability to engage in chosen occupation auto repair contract business; alleged defamation did not occur in course of dismissal from government job or termination by New York of any legal right or status enjoyed by president, and it would not have been clear to reasonable government official that alleged defamation was deprivation of protected liberty interest. Neu v. Corcoran, C.A.2 (N.Y.) 1989, 869 F.2d 662, certiorari denied 110 S.Ct. 66, 493 U.S. 816, 107 L.Ed.2d 33. Civil Rights 1376(3)

State medical examiner's supervisor did not have qualified immunity for her discharge of medical examiner, accompanied by public charges of dishonesty, without due process as law clearly established at time demonstrated examiner had right to a hearing; the law was clear that upon examiner's termination amid public charges of dishonesty, his liberty interests were implicated and he was entitled to hearing to attempt to clear his name. Brady v. Gebbie, C.A.9 (Or.) 1988, 859 F.2d 1543, certiorari denied 109 S.Ct. 1577, 489 U.S. 1100, 103 L.Ed.2d 943. Civil Rights 1376(10)

Guam's Governor and chief of staff violated clearly established rights by forcing resignation of classified employee, who was director of retired senior volunteer program, and, therefore, did not enjoy qualified immunity. Roberto v. Bordallo, C.A.9 (Guam) 1988, 839 F.2d 573. Civil Rights 1376(10)

Given that law was unsettled regarding termination of a police chief, without notice and a hearing, former police commissioner, who was sued in his personal capacity, enjoyed qualified immunity from chief's procedural due process claims, although former commissioner was subject to money damages for any Maryland state constitutional tort he may have committed; furthermore, current commissioner, who was sued in his official capacity, could remain in the case under §§ 1983 because the only claims brought against him were for injunctive relief. Franklin v. Clark, D.Md.2006, 454 F.Supp.2d 356. Civil Rights 1376(10)

For purposes of county employee's §§ 1983 claim alleging violation of procedural due process, county did not violate employee's liberty interest in his good name and reputation by placing in his personnel file termination letter which allegedly contained false and defamatory information, absent sufficient evidence of "publication"; information was not actually disseminated and intragovernmental dissemination generally fell short of Supreme Court's notion of "publication," and as to possibility of future disclosure outside county, employee had not alleged or produced evidence that publication was likely or imminent or sought injunctive relief in that regard. Bell v. Board of County Com'rs of Jefferson County, D.Kan.2004, 343 F.Supp.2d 1016. Constitutional Law 278.4(3); Counties 67

State university's chancellor was not entitled to qualified immunity from former assistant chancellor's race and sex discrimination claims under §§ 1981 and 1983 on ground that it was not clearly established that refusing to renew a contract was an adverse employment action, given that there were no cases in which a court held that universities could discriminate against at-will employees in context of renewing contracts. Walker v. Board of Regents of University of Wisconsin System, W.D.Wis.2004, 300 F.Supp.2d 836. Civil Rights 1376(10)

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42 U.S.C.A. § 1983

School superintendent and supervisor of school board employee were entitled to qualified immunity from individual liability under § 1983 for their actions in informing employee of board's suspicion that employee had violated policy against alcohol and/or drug abuse, and in declining to reappoint employee to further one-year contracts, as such actions were within scope of their authority and did not violate any clearly established law of which reasonable person would have known. Cox v. McCraley, M.D.Fla.1998, 993 F.Supp. 1452. Civil Rights 1376(10)

State officials and employees were entitled to qualified immunity regarding public employee's retaliatory harassment claim under Title VII and the First Amendment as employee did not show that employees or officials violated a clearly established law since employee was presently employed by public employer, had not lost any back pay, and had suffered no tangible injury. Gorman v. Roberts, M.D.Ala.1995, 909 F.Supp. 1479. Civil Rights 1376(10); Civil Rights 1529

3836. ---- Hirings, employment, clearly established right

County sheriff was entitled to qualified immunity for allegedly making defamatory statements about sheriff's department employees in retaliation for statements they made to outside law enforcement agencies concerning department's activities; even if there was cause of action under § 1983 for defamation in retaliation for exercising First Amendment rights, such action was not based on a clearly established legal principle of which sheriff should have been aware at the time. Blume v. Meneley, D.Kan.2003, 283 F.Supp.2d 1178. Civil Rights 1376(10)

At time deputy mayor for finance development for city allegedly defamed real estate developer, causing developer to lose public development project and other prospective opportunities to freely engage in chosen occupation, it was not clearly established that public defamation of one seeking state employment, but not yet having obtained it, which impairs changes for other employment, violates constitutional right to liberty of occupation, unless due process of law is followed; thus, deputy mayor was entitled to immunity in civil rights action brought against him by real estate developer. Walentas v. Lipper, S.D.N.Y.1987, 662 F.Supp. 902, affirmed 862 F.2d 414, certiorari denied 109 S.Ct. 1747, 490 U.S. 1021, 104 L.Ed.2d 183. Civil Rights 1376(10)

3836A. ---- Rehiring, employment, clearly established right

County District Attorney (DA) was not entitled to qualified immunity from liability in village police chief's §§ 1983 action; chief alleged that village failed to rehire him "in conjunction with publicly communicated, false statements" that he was dishonest and unreliable, properly setting out violation of his clearly established right to a name clearing hearing. Hoffman v. Kelz, W.D.Wis.2006, 443 F.Supp.2d 1007. Civil Rights 1376(10)

3837. ---- Medical benefits, employment, clearly established right

Individual members of county board of supervisors who were involved in decision not to give accrued sick leave or medical insurance benefits to discharged public defender were entitled to qualified immunity from suit under civil rights statute since it was not clear whether entitlement to that type of benefit is a constitutionally protected property right. Portman v. County of Santa Clara, C.A.9 (Cal.) 1993, 995 F.2d 898. Civil Rights 1376(10)

3838. ---- Promotions or demotions, employment, clearly established right

Supervisors of state employee were entitled to qualified immunity as to employee's claim that he was effectively demoted from his position without due process, due to his purported misconduct; employee had no legitimate expectation grounded in Illinois law that he would not be subjected to type of personnel action taken against him, and employee's reassignment did not violate clearly established constitutional right. Atterberry v. Sherman, C.A.7 (Ill.) 2006, 453 F.3d 823. Civil Rights 1376(10)

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No reasonable public official could have assumed he or she had authority to retaliate against employee for employee's disclosure of misconduct by another public official and, thus, former police chief's allegations of demotion in retaliation for disclosure of possible misconduct by city councilman were sufficient to overcome city officials' motion to dismiss civil rights claim on qualified immunity grounds. Schultea v. Wood, C.A.5 (Tex.) 1994, 27 F.3d 1112, rehearing en banc granted, on rehearing 47 F.3d 1427. Civil Rights 1376(10)

Director of Department of Public Safety and fire chief were immune from civil rights liability for the 1988 promotion of fire department captain to position of battalion chief, allegedly in retaliation for his criticism of his superiors; reasonable supervisors acting at that time would not have understood that the law "clearly established" that promotion to a suitable job could nonetheless violate the Constitution when it diminished employee's opportunity to make money elsewhere. Walsh v. Ward, C.A.7 (Ill.) 1993, 991 F.2d 1344. Civil Rights 1376(10)

"Clearly established" equal protection right to be free of race and sex discrimination in employment extended to community college president's alleged discrimination against female instructor, including failure to promote her to athletic director position and award her summer work contracts on same basis as male instructors, as required to overcome president's claim of qualified immunity to instructor's § 1983 claim. Morris v. Wallace Community College-Selma, S.D.Ala.2001, 125 F.Supp.2d 1315, affirmed 34 Fed.Appx. 388, 2002 WL 518045. Civil Rights 1376(10)

Corrections officials who were members of interview panel which denied promotion to African-American correctional sergeant knew or should have known, at time of their decision, that discrimination against African-American individual in promotion context violated clearly established equal protection rights, and therefore such officials were not entitled to qualified immunity with regard to sergeant's § 1983 claim for violation of his equal protection rights. Beckett v. Department of Corrections of the State of Del., D.Del.1997, 981 F.Supp. 319. Civil Rights 1376(10)

Law was clearly established at time of plaintiff's demotion from her position as assistant chief fire marshal that she was entitled to due process; thus, where plaintiff was denied due process by, inter alia, not receiving notice of any hearings or charges against her, city officials responsible for demotion were not free from liability based on qualified immunity in plaintiff's action under § 1983 and Title VII. Myers v. City of Fort Wayne, Ind., N.D.Ind.1990, 729 F.Supp. 625.

3839. ---- Referral lists, employment, clearly established right

Wrecking service had constitutionally protected "property right" under Fourteenth Amendment not to be removed from Highway Department's wrecking service rotation list summarily, without any prior notice, opportunity to be heard, or other process; thus, state officer who so removed service was not entitled to qualified immunity in service's § 1983 action alleging procedural due process violation. Pritchett v. Alford, C.A.4 (S.C.) 1992, 973 F.2d 307. Civil Rights 1376(3); Constitutional Law 277(1)

Police officers did not have qualified immunity from § 1983 suit alleging cooperation with school officials in cover-up of assault of high school student by teacher; it was well established that alleged cover-up activities of officers were violation of student's First Amendment right to petition government for redress of grievances. Estate of Morris ex rel. Morris v. Dapolito, S.D.N.Y.2004, 297 F.Supp.2d 680. Civil Rights 1376(6)

3840. ---- Reinstatements, employment, clearly established right

Qualified immunity did not shield state officials from public employee's § 1983 claims for reinstatement or other equitable remedies related to her procedural due process claims arising out of her termination. Pace v. Moriarty, C.A.8 (Mo.) 1996, 83 F.3d 261. Civil Rights 1376(10)

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Supervisors' delay in reinstating state employee after criminal charges of sexual assault against employee were dismissed did not constitute deprivation of clearly established right, especially considering that employee was ultimately provided back pay for delay period; thus, supervisors were entitled to qualified immunity from liability in § 1983 action. Komlosi v. New York State Office of Mental Retardation and Developmental Disabilities, C.A.2 (N.Y.) 1995, 64 F.3d 810, on remand 1998 WL 830524. Civil Rights 1376(10)

Hospital's executive director was not entitled to qualified immunity from liability for due process violations that occurred when hospital authority refused to reinstate paramedic after he was cleared of misconduct charges; it was clearly established in Georgia that public employee who could only be fired for cause had constitutionally protected property interest in continued employment absent misconduct, that paramedic was entitled to reinstatement, and that medical advisor's withdrawal of his sponsorship, which allegedly formed basis for refusal to reinstate, was based on same charges on which paramedic had been cleared. Baxter v. Fulton-DeKalb Hosp. Authority, N.D.Ga.1991, 764 F.Supp. 1510. Civil Rights 1376(10)

3841. ---- Resignations, employment, clearly established right

Law of procedural due process and fact that contract could vest right or interest that required due process protection were clearly established at time of police officer's forced resignation, for purposes of police commission members' claims of qualified immunity in officer's civil rights action. Moffitt v. Town of Brookfield, C.A.2 (Conn.) 1991, 950 F.2d 880. Civil Rights 1376(10)

Puerto Rico Environmental Quality Board official was entitled to qualified immunity from liability under §§ 1983 for any alleged violation of employee's constitututional rights resulting from postponement of decision to accept or reject employee's resignation pending an administrative investigation; official, who relied upon the recommendations and advice of various Puerto Rico governmental agencies and attorneys while pondering whether to accept or reject the resignation, was not objectively unreasonable in believing that the action taken at the time the decision was made violated a clearly established constitutional right. Ramirez-De Leon v. Mujica-Cotto, D.Puerto Rico 2004, 345 F.Supp.2d 174. Civil Rights 1376(10)

3842. ---- Retirement benefits, employment, clearly established right

It was not clearly established in January 1985 that denying pension fund admission to probationary fire fighter would violate fire fighter's due process rights, and, thus, individual defendants enjoyed qualified immunity from liability. Marvin v. King, S.D.Ind.1990, 734 F.Supp. 346. Civil Rights 1376(10)

3843. ---- Suspensions, employment, clearly established right

Actions of officials at New York Office of Mental Retardation and Developmental Disabilities (OMRDD) in suspending psychologist without pay did not constitute deprivation of clearly established right; thus, officials were entitled to qualified immunity in a § 1983 action. Komlosi v. New York State Office of Mental Retardation and Developmental Disabilities, C.A.2 (N.Y.) 1995, 64 F.3d 810, on remand 1998 WL 830524. Civil Rights 1376(10)

School board members were entitled to qualified immunity with respect to claim that lengthy postsuspension hearing process deprived teacher of due process, as case law established no bright line test for when delay would become a constitutional violation and school board members were responsible, at most, for two of the 19 months between the suspension and their reinstatement of the teacher pursuant to hearing officer's recommendation. Collins v. School Bd. of Dade County, Fla., C.A.11 (Fla.) 1993, 981 F.2d 1203. Civil Rights 1376(10)

Superior officers in Missouri State Highway Patrol were entitled to qualified immunity defense to trooper's procedural due process claim arising out of trooper's suspension, where it was reasonable for superiors to conclude

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that they had provided trooper with "fundamentals of due process"; trooper had been provided with notice of charges being investigated and informal opportunity to respond before formal charges were initiated, full evidentiary hearing before disciplinary review board, and private two-hour meeting with ultimate decision maker at which trooper responded to charges and argued his speech "retaliation" theory which he had been precluded from presenting at board hearing. Bartlett v. Fisher, C.A.8 (Mo.) 1992, 972 F.2d 911. States 79

Director of corrections facility and personnel director of county were entitled to qualified immunity on civil rights claim by corrections facility guard who was placed on suspension following arrest, where guard alleged entitlement to name-clearing hearing, but case which established right to name-clearing hearing was rendered during pendency of guard's litigation. Bailey v. Board of County Com'rs of Alachua County, Fla., C.A.11 (Fla.) 1992, 956 F.2d 1112, certiorari denied 113 S.Ct. 98, 506 U.S. 832, 121 L.Ed.2d 58. Civil Rights 1376(10)

District attorney's temporary suspension of deputy district attorney without providing deputy with opportunity to deny allegations leading to suspension violated clearly established law, and, thus, district attorney was not entitled to qualified immunity; deputy had protected property interest in job under California law. Finkelstein v. Bergna, C.A.9 (Cal.) 1991, 924 F.2d 1449, certiorari denied 112 S.Ct. 75, 502 U.S. 818, 116 L.Ed.2d 49. Civil Rights 1376(10)

Police superintendent's alleged campaign of harassment against and suspension of police officer in alleged retaliation for exercising First Amendment rights when cooperating with Federal Bureau of Investigation (FBI) and when testifying against fellow officer in court were clearly established, and, thus, superintendent was entitled to no qualified immunity on First Amendment claim. Dobosz v. Walsh, C.A.2 (Conn.) 1989, 892 F.2d 1135. Civil Rights 1376(10)

Employer who suspended public employee was entitled to qualified immunity in employee's § 1983 action as, at time of suspension in August, 1990, law was unclear as to whether due process requirements which clearly applied to discharge of public employees also required hearing, in all instances, prior to temporary suspension without pay; employer's telephone call to employee plus confirming letter which specifically detailed reasons for suspension as well as procedure which was to be followed were objectively reasonable in light of existing law. Cheathon v. Brinkley, M.D.La.1993, 822 F.Supp. 1241. Civil Rights 1376(10)

3844. Environment and conservation, clearly established right--Generally

Owners of home near lake, and of dam and land beneath lake, did not satisfy the burden of showing that, at time of alleged wrong, they had clearly established due process right to notice and opportunity to be heard before dam's breach by California DSOD (Division of Safety of Dams), and thus chief engineer of DSOD who made decision to breach dam was entitled to qualified immunity from owners' civil rights suit. Sinaloa Lake Owners Ass'n v. City of Simi Valley, C.A.9 (Cal.) 1995, 70 F.3d 1095. Civil Rights 1376(3)

Commissioner and Executive Deputy Commissioner of New York State Department of Environmental Conservation were entitled to qualified immunity on § 1983 claims for damages against them in their individual capacities for their actions in imposing summary abatement orders prohibiting owners from operating their oil and sludge barges in New York harbor; although parameters of Commissioners' powers were not well-defined, it was not clearly established that they lacked authority to act as they did under state law authorizing abatement orders. Berman Enterprises, Inc. v. Jorling, C.A.2 (N.Y.) 1993, 3 F.3d 602, certiorari denied 114 S.Ct. 883, 510 U.S. 1073, 127 L.Ed.2d 78. Civil Rights 1376(3)

Officials of Pennsylvania Department of Environmental Resources were entitled to qualified immunity from civil rights claim by officers of participant in joint venture which was owner and operator of landfill, for officials' conduct in causing ex parte order to be issued requiring that water quality bond be posted in connection with operation of landfill, and naming certain individual officers in that order; officials exercised discretion in obtaining

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the order and designating the individuals, and conduct did not violate clearly established constitutional or statutory rights of which they should have been aware. Winn v. Lynn, C.A.3 (Pa.) 1991, 941 F.2d 236, rehearing denied. Civil Rights 1376(3)

Landowner seeking to halt effluent runoff from methane production activities alleged facts sufficient to show that conduct of state Department of Environmental Quality (DEQ) officials sued in their individual capacities violated landowner's constitutional rights, and that such law was clearly established when violation occurred, as required to overcome officials' qualified immunity defense to landowner's Fifth Amendment takings claim; landowner alleged that state's failure to perform its statutory and regulatory obligations by allowing gas company to discharge coal bed methane process water effectuated physical taking of his private property, and that his continuing efforts to have state enforce its statutory and regulatory obligations was sufficient to put state officials on notice that their conduct may have been unlawful under preexisting law. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Civil Rights 1376(3)

Owners of homes near lake, and of dam and land beneath lake, did not satisfy their burden of showing that in 1983 they had clearly established due process right to notice and opportunity to be heard before dam's breach and to not have dam breached in arbitrary and capricious manner, and in any event officials of California DSOD (Division of Safety of Dams) were entitled to qualified immunity as reasonable dam safety engineering official, similarly situated, could have believed that breaching dam was lawful; decision to breach dam was based on collective evaluations, test data, and recommendations of subordinate engineers who had overseen and performed studies on dam specifically to determine dam's safety as well as appropriate response measures. Sinaloa Lake Owners Ass'n, Inc. v. Stephenson, C.D.Cal.1992, 805 F.Supp. 824, affirmed 70 F.3d 1095. Civil Rights 1376(3)

3845. ---- Arrests, environment and conservation, clearly established right

Conservation agent did not violate any clearly established constitutional right of taxidermist when agent reached across threshold to arrest taxidermist without warrant, and, thus, agent was entitled to qualified immunity from liability in § 1983 action; taxidermist at least partially relinquished expectation of privacy when he opened door to residence that was also used for business, and taxidermist knew immediately of agent's intention to arrest taxidermist and went to door in response to agent's knock. Dailey v. Lyles, W.D.Mo.1992, 785 F.Supp. 812, affirmed 993 F.2d 175, rehearing denied. Civil Rights 1376(6)

County social worker should have known that her alleged conduct in thwarting parents' attempts to have children returned to parents' home, after children were removed due to unsanitary conditions, and in effectively denying parents prompt hearing on children's placement had effect of violating parents' clearly established rights to procedural due process by involuntarily depriving parents of physical custody of children, and therefore qualified immunity did not apply to preclude social worker's liability under §§ 1983. Smith v. Williams-Ash, C.A.6 (Ohio) 2005, 2005 WL 3304101, Unreported. Civil Rights 1376(4)

3846. ---- Searches, environment and conservation, clearly established right

Even though right of gas station owner not to be subjected to warrantless search of its property under a statute such as the Wyoming Environmental Quality Act was clearly established at the time that the Department of Environmental Quality official conducted the search, official was entitled to qualified immunity where he had fully informed high ranking government attorneys of the facts and had been informed by them that the statute, which had not yet been tested in any court, permitted him to conduct a warrantless search. V-1 Oil Co. v. State of Wyo., Dept. of Environmental Quality, C.A.10 (Wyo.) 1990, 902 F.2d 1482, certiorari denied 111 S.Ct. 295, 498 U.S. 920, 112 L.Ed.2d 249. Civil Rights 1376(3)

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42 U.S.C.A. § 1983

3847. Horse racing, clearly established right

Ohio State Racing Commission officials were entitled to qualified immunity for monetary damages in suit by licensed thoroughbred trainer arising from request for drug testing of trainer given that constitutionality and propriety of administrative drug testing upon reasonable cause was unsettled when trainer submitted to Commission's drug screening procedure. Carrelli v. Ginsburg, C.A.6 (Ohio) 1992, 956 F.2d 598. States 79

3848. Hospitals, clearly established right--Generally

County medical center's security chief and general counsel did not violate clearly established law when they complied with family court order prohibiting plaintiff from visiting his son in medical center without son's consent and, therefore, were entitled to qualified immunity from § 1983 liability, despite plaintiff's claim that security chief and general counsel impaired obligation of separation agreement granting unrestricted access to son and right to approve medical treatment and that they violated right to practice religious belief in exercising supervision over medical treatment. Fariello v. Rodriguez, E.D.N.Y.1993, 148 F.R.D. 670, affirmed 22 F.3d 1090. Civil Rights 1376(4)

3849. ---- Mental hospitals or institutions, clearly established right

No clear line of federal law established that it was a substantial departure from accepted practice for physician to fail to inform a patient of risks of psychotropic medications; therefore, physicians at state hospital who treated involuntarily committed patient enjoyed qualified immunity from liability in patient's § 1983 action alleging that physicians' treatment decisions violated his due process rights. Kulak v. City of New York, C.A.2 (N.Y.) 1996, 88 F.3d 63. Civil Rights 1376(3)

Social worker at state adolescent home who was aware of patient's history of mental illness, including suicide threats and attempts and self-injurious behavior, but failed to notify psychiatrists or psychologists at hospital or continue protective measures already in place for patient was not entitled to qualified immunity in federal civil rights action brought after patient was severely injured when he tried to hang himself; it was clearly established in March 1992 that social worker's conduct, which rather than protecting patient actually put him at greater risk of suicide, violated patient's due process rights. Dolihite v. Maughon By and Through Videon, C.A.11 (Ala.) 1996, 74 F.3d 1027, certiorari denied 117 S.Ct. 185, 519 U.S. 870, 136 L.Ed.2d 123. Civil Rights 1376(3)

Existence of due process right in safe and humane environment on part of voluntarily admitted patient at state psychiatric hospital was not clearly established at time of patient's suicide death, in 1992, entitling state officials to defense of qualified immunity in subsequent civil rights action if patient was properly classified as voluntary patient. Kennedy v. Schafer, C.A.8 (Mo.) 1995, 71 F.3d 292, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 2548, 518 U.S. 1018, 135 L.Ed.2d 1068. Civil Rights 1376(3)

Mental patient's right to personal security in institution to which he or she is committed was clearly established in 1988, when first charge of sexual abuse was made against psychiatric aide, in determining whether former superintendent of state psychiatric center was entitled to qualified immunity in patient's civil rights action asserting failure to protect patient from sexual abuse by aide. Neely v. Feinstein, C.A.9 (Or.) 1995, 50 F.3d 1502. Civil Rights 1376(3)

Director of hospital and chief administrative officer of admissions unit at hospital were entitled to qualified immunity for purposes of § 1983 action brought by involuntarily civilly committed patient who was allegedly raped at hospital since it was not clearly established in the Eleventh Circuit, at time of the alleged rape, that it was unconstitutional for mental institution to fail to supervise patient for 15 minutes in smoking room when she was on close watch status for health problem, when institution had history of some sexual contact involving individuals other than patient but no history of rape for the past 12 years, and when patient had never before complained of

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unwanted sexual contact. Rodgers v. Horsley, C.A.11 (Ala.) 1994, 39 F.3d 308. Civil Rights 1376(3)

State hospital's rule, requiring seclusion of all involuntary patients for seven to ten days, did not provide doctors who followed it with qualified immunity from civil rights suit, particularly where rule violated clearly established law in state at time seclusion occurred. Walters v. Western State Hosp., C.A.10 (Okla.) 1988, 864 F.2d 695. Civil Rights 1376(3)

Former Massachusetts commissioner of mental health and chief administrator at treatment center were entitled to qualified immunity from civil damages in psychiatric patient's civil rights action based upon refusal of his repeated requests for individualized psychological therapy; those individuals were entitled to assert that defense by virtue of their positions as state officials charged with making policy involving discretionary judgment, and there was no clearly established constitutional or statutory right to psychological treatment at time in question. Knight v. Mills, C.A.1 (Mass.) 1987, 836 F.2d 659. Civil Rights 1376(3); Civil Rights 1376(7)

Psychiatrists were entitled to qualified immunity from civil rights action arising from involuntary commitment of plaintiff to psychiatric unit for 15 days on ground that he posed danger to himself and others; acts of defendants did not constitute clear, constitutional violation in light of fact that plaintiff, when examined by the two defendant physicians, was carrying knives "for his own protection," and was found to be "delusional, paranoid and potentially violent" as well as "dangerous." Richardson v. Nassau County Medical Center, E.D.N.Y.1994, 840 F.Supp. 219. Civil Rights 1376(2)

Any due process right of voluntary resident to safe conditions at facility for severely retarded individuals would not have been clearly established at time of resident's death, and, thus, state defendants were entitled to qualified immunity from § 1983 liability. Jordan v. State of Tenn., M.D.Tenn.1990, 738 F.Supp. 258. Civil Rights 1376(3)

There was no clearly established constitutional right to psychiatric treatment for civilly committed mentally ill persons in 1982 so that physicians and psychologists could not be held liable for any violation of patients civil rights for failing to provide him with mental treatment in 1982 as they enjoyed qualified immunity. Parillo v. Sura, D.Conn.1987, 652 F.Supp. 1517. Civil Rights 1376(2)

On December 19, 1980 when plaintiffs' son committed suicide while involuntarily committed to state mental hospital the right of inmates to safety was clearly established by decisional law, for purpose of defeating qualified official immunity defense in civil rights action, and such right was general one that officials at a state mental hospital should have been applying daily. Gann v. Schramm, D.C.Del.1985, 606 F.Supp. 1442. Civil Rights 1376(3)

When forensic patient in mental health facility became hostile, slammed window shut on hand of another patient, and made threatening remarks to the other patient, forensic patient presented danger to others and, hence, employees did not violate any clearly established right of patient to refuse forced submission to intravenous injections of psychotropic drug; hence, individual employees involved in administration of the drug were entitled to official immunity from liability therefor. Weiss v. Missouri Dept. of Mental Health, E.D.Mo.1984, 587 F.Supp. 1157. Asylums 7

3850. Housing, clearly established right--Generally

Executive director of metropolitan housing authority was not entitled to qualified immunity under this section with regard to allegations that prospective and current recipients of Section 8 [section 1437f of this title] public housing benefits were denied benefits without procedural due process, where at time of acts on which liability was based, it was established beyond question that at least some type of hearing was necessary before person could be deprived of public assistance that had been awarded because of need. Davis v. Mansfield Metropolitan Housing Authority,

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42 U.S.C.A. § 1983

C.A.6 (Ohio) 1984, 751 F.2d 180. Civil Rights 1376(3)

Town administrator was protected by doctrine of qualified immunity from house owner's claim that she was denied equal protection of laws based on allegation that she was treated differently from other persons who had purchased beach houses and wanted to move them; administrator's decision that house owner could move her house but only on same day that another house was to be moved was discretionary and did not violate any clearly established statutory or constitutional rights. Jacobs v. Town of Scituate, D.Mass.1996, 948 F.Supp. 7. Civil Rights 1376(4)

Government officials of Housing and Urban Development Department (HUD) had immunity from suit brought by public housing resident absent any showing that government officials violated clearly established constitutional rights of which reasonable person would have known or showing that residents were detained by government agency. Bourret v. Cisneros, D.Utah 1995, 896 F.Supp. 1104. Civil Rights 1376(1)

3851. ---- Evictions, housing, clearly established right

City police officers did not have qualified immunity from liability under § 1983 for evicting residents of women's shelter without predeprivation process, despite officers' contention that, based on shelter manager's representations, they did not believe residents were protected by landlord-tenant law; Kentucky laws forbidding self-help evictions without judicial process and providing for preeviction notice and forcible detainer actions were well-established, as were relevant United Supreme Court decisions. Thomas v. Cohen, C.A.6 (Ky.) 2002, 304 F.3d 563, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 2075, 538 U.S. 1032, 155 L.Ed.2d 1061. Civil Rights 1376(6)

Parish sheriff and deputy sheriff did not act reasonably in light of clearly established law at the time they evicted plaintiff from her residence pursuant to temporary restraining order (TRO) which had been obtained by her ex-husband, and therefore, sheriff and deputy were not entitled to qualified immunity on plaintiff's § 1983 claim; TRO stated that ex-husband no longer occupied the home, and the term "eviction" was unmistakably absent from the TRO. Cozzo v. Tangipahoa Parish Council--President Government, C.A.5 (La.) 2002, 279 F.3d 273. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from liability under § 1983 for alleged violation of Fourth Amendment when officers prevented former tenant from entering his former apartment which was in possession of landlord due to eviction of tenant, absent showing that alleged right not to have police prevent entry was clearly established at time of police action; officers' conduct was not contrary to precedent, nor so shocking as to render precedent unnecessary. Spiegel v. City of Chicago, C.A.7 (Ill.) 1997, 106 F.3d 209, certiorari denied 118 S.Ct. 65, 522 U.S. 816, 139 L.Ed.2d 27. Civil Rights 1376(6)

City building inspector was not qualifiedly immune from § 1983 liability for failure to afford tenants evicted pursuant to emergency evacuation posteviction notice of right to administrative hearing, as required by due process; inspector had advised landlord of right to hearing, yet took no action on behalf of tenants, who had at least clearly established right to process of sort inspector afforded to landlord. Flatford v. City of Monroe, C.A.6 (Mich.) 1994, 17 F.3d 162. Civil Rights 1376(4)

Commissioner and real property manager of city department of housing preservation and development were within their qualified immunity and, thus, were not liable in their individual capacities to trespassers, squatters, and illegal occupants who were evicted from city-owned building, in that no constitutional right of trespassers, squatters, or illegal occupants was violated by the eviction, and any alleged rights of trespassers, squatters, and illegal occupants were not clearly established at time of the event in question. De Villar v. City of New York, S.D.N.Y.1986, 628 F.Supp. 80. Civil Rights 1376(4)

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42 U.S.C.A. § 1983

3852. ---- Inspections, housing, clearly established right

Homeowner failed to show that law regarding third-party consent to warrantless administrative searches was well established at time of search of her home, and, thus, city building inspectors were entitled to qualified immunity from homeowner's § 1983 action arising out of their search of home with consent of building contractor to determine whether renovations complied with local building ordinances. Montville v. Lewis, C.A.7 (Ill.) 1996, 87 F.3d 900, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 961, 519 U.S. 1117, 136 L.Ed.2d 847. Civil Rights 1376(4)

3853. Housing codes, clearly established right

City officials were not entitled to qualified immunity against claims by low-income housing property owners that overenforcement of city housing code, to deflate value of property and facilitate redevelopment of property as shopping center, violated equal protection in light of clearly established precedent that city cannot make land-use decisions based simply on its own desire to acquire private owner's property for purposes unrelated to city's action. Armendariz v. Penman, C.A.9 (Cal.) 1996, 75 F.3d 1311. Civil Rights 1376(4)

Right of corporate owner of rental properties to refuse consent to a warrantless inspection of tenants' apartments, for the benefit of the tenants, was not clearly established, and thus fire chief was entitled to qualified immunity in claim brought by owner under § 1983 alleging that issuance of a citation for refusal to consent violated the Fourth Amendment; in light of the fact that the inspection was for the safety and benefit of the tenants, a reasonable code enforcement official could have believed that a landlord had no right to refuse entry for an inspection of tenants' apartments, and that such a landlord could be cited for obstructing access to tenant apartments for a duly authorized inspection, and, further, the fire chief had issued previous citations under similar circumstances that had been approved by state court judges. Grimm v. Sweeney, E.D.Pa.2003, 249 F.Supp.2d 571. Civil Rights 1376(4)

3854. Licenses and permits, clearly established right

Pennsylvania officials were qualifiedly immune from liability in §§ 1983 action in which Native American owner of black bears alleged that officials' refusal to grant waiver of fee for permit to keep wildlife in captivity violated his free exercise rights, where governing precedents were complex and developing, and Court of Appeals' decisions on general applicability principles could have reasonably been interpreted as sending conflicting signals. Blackhawk v. Pennsylvania, C.A.3 (Pa.) 2004, 381 F.3d 202. Civil Rights 1376(3)

Regardless of whether there was a clearly established right to an English-language real estate licensing test in Puerto Rico, members of the Puerto Rico Real Estate Examining Board were not entitled to qualified immunity for their equal protection violation when they, having chosen to give an English language examination, intentionally discriminated by making the English language test more difficult than the Spanish language test and by falsely grading the exam, giving failing grades which were not warranted, even though the Equal Protection Clause has seldom been invoked to protect "Americans" from national origin discrimination. DiMarco-Zappa v. Cabanillas, C.A.1 (Puerto Rico) 2001, 238 F.3d 25. Civil Rights 1376(3)

At time that police officials allegedly caused revocation of business' firearms license, law was not clearly established as to whether individual had constitutional right to gun dealer license when that person was committed to violence and was member of organization supporting violence, so as to defeat officials' claim of qualified immunity against First Amendment claims of owners of business whose license allegedly was revoked due to purported political beliefs and associations of owners. Rivera-Ramos v. Roman, C.A.1 (Puerto Rico) 1998, 156 F.3d 276, on remand 83 F.Supp.2d 233. Civil Rights 1376(6)

County officials did not enjoy qualified immunity from liability in civil rights action arising out of county's suspension of petroleum bulk permits where it was alleged that permits were suspended due to the exercise of First

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Amendment rights and at time of suspension an individual had clearly established right to be free of intentional retaliation by government officials based upon constitutionally protected expression. Soranno's Gasco, Inc. v. Morgan, C.A.9 (Cal.) 1989, 874 F.2d 1310. Civil Rights 1376(4)

State officials who suspended commercial campground operators' license were not entitled to qualified immunity in subsequent civil rights suit alleging that they had suspended license in retaliation for operators' refusal to submit to warrantless searches, in that law was clear that such retaliation was violation of operators' civil rights. Freeman v. Blair, C.A.8 (S.D.) 1988, 862 F.2d 1330, rehearing denied. Civil Rights 1376(3)

City officials who suspended massage therapist's massage establishment license due to alleged misconduct involving patient were not entitled to qualified immunity as to therapist's procedural due process claim stemming from failure to provide pre-deprivation hearing; reasonable official would have known that strong private interest was affected by summarily suspending license, and that there was risk of erroneous deprivation through procedures used. Jones v. City of Modesto, E.D.Cal.2005, 408 F.Supp.2d 935. Civil Rights 1376(4)

County planning director was entitled to qualified immunity on § 1983 speech, assembly, religious freedom, due process, and equal protection claims and Religious Land Use and Institutionalized Persons Act (RLUIPA) claims by religious organization which was denied special use permit for religious use of land classified as agricultural; contours of organization's rights under RLUIPA and free exercise clause were not sufficiently clear, and director was applying provisions of duly enacted and facially-constitutional laws. Hale O Kaula Church v. Maui Planning Com'n, D.Hawai'i 2002, 229 F.Supp.2d 1056.

Sheriff, who denied bail bond company due process by effectively suspending its license without predeprivation hearing, was not entitled to qualified immunity on company's § 1983 claim, as reasonable official would have known that sheriff's refusal to accept all bonds written by company without any notice or hearing violated company's clearly established rights. Holt Bonding Co., Inc. v. Nichols, W.D.Ark.1997, 988 F.Supp. 1232. Civil Rights 1376(6)

There was no violation of clearly established constitutional right in officer's filing of criminal complaint against restaurant operator for violation of statute prohibiting refusal to give to licensing investigator, inspector or agent such information as may be required for proper enforcement and, thus, officer was entitled to qualified immunity in operator's § 1983 suit; in 1987, it was not clearly established that operator's Fourth Amendment rights were implicated as result of summons to appear in court to defend himself against criminal charges, and in any event, evidence did not show that officer behaved in objectively unreasonable manner, regardless of whether he acted in good faith, as probable cause at least arguably supported application for complaint following operator's refusal to provide information upon direct questioning. Duca v. Martins, D.Mass.1996, 941 F.Supp. 1281. Civil Rights 1376(6)

City council member was entitled to qualified immunity from liquor license applicant's claim under § 1983 that council member retaliated against applicant, by urging council to deny license application, for applicant's exercise of his First Amendment right to criticize fees charged for abatement of weeds in council member's district; right not to be retaliated against by public official for exercise of First Amendment rights was not "clearly established," inasmuch as most First Amendment retaliation claims within the circuit involved public employees. Arrington v. Dickerson, M.D.Ala.1996, 915 F.Supp. 1516. Civil Rights 1376(4)

Members of county board of commissioners had qualified immunity from § 1983 action brought by applicant seeking damages for denial of permit to operate nude dancing establishment, which had been made pursuant to statute subsequently found unconstitutional on its face; county commissioners could not be expected to know that statute violated First Amendment, as law regarding constitutionality of nude dancing was "unstable" at time permit was denied. B Street Commons, Inc. v. Board of County Com'rs of El Paso County, D.Colo.1993, 835 F.Supp. 1266. Civil Rights 1376(4)

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42 U.S.C.A. § 1983

Members of Illinois Medical Disciplinary Board who voted to revoke physician's license to practice medicine were entitled to qualified immunity in physician's civil rights action based on claim that alleged illegal political composition of Board violated due process; it had never been clearly established that any violation of Illinois statute concerning political complexion of Board caused any hearings conducted by Board to be flawed in due process terms. McCabe v. Caleel, N.D.Ill.1990, 739 F.Supp. 387, affirmed 931 F.2d 895, rehearing denied. Civil Rights 1376(3)

3855. Lotteries, clearly established right

Under the law of Puerto Rico, regardless of whether former Executive Director of the Puerto Rico Human Resources and Occupational Development Council (HRODC) had a property interest in continued employment for the duration of her four-year term, such right was not clearly established at the time of her termination, and thus governor and other officials responsible for her termination were entitled to qualified immunity in claim brought by executive alleging violations of her Fourteenth Amendment right to due process occurred when she was terminated without a pre-termination hearing. Santana v. Calderon, C.A.1 (Puerto Rico) 2003, 342 F.3d 18. Civil Rights 1376(10)

If a seizure of construction workers occurred and village manager acted without probable cause or reasonable suspicion of the illegality, and with knowledge of his lack of authority to detain, jury could reasonably find that village manager acted in violation of clearly established constitutional rights of which he should have been aware, and thus was not entitled to qualified immunity for violation of construction workers' Fourth Amendment rights. Dejesus v. Village of Pelham Manor, S.D.N.Y.2003, 282 F.Supp.2d 162. Civil Rights 1376(4)

State officials were not liable in their individual capacities to members of handicapped persons association, even if officials breached settlement stipulation to require state lottery ticket sellers to provide access to disabled persons by certain date, absent showing that members' allegedly violated equal protection and substantive due process rights were clearly established. Florida Paraplegic Ass'n v. Martinez, S.D.Fla.1990, 734 F.Supp. 997. Civil Rights 1376(3)

3856. Medical status, clearly established right

At time state education department published training guide regarding setting up programs aimed at preventing spread of HIV (human immunodeficiency virus), constitutional right to privacy as to one's medical status, including one's HIV status, was clearly established, for purposes of determining whether state education department officials were entitled to qualified immunity in HIV positive individuals' § 1983 action alleging that publication of their full names in training guide as persons living with HIV violated their right to privacy. Doe v. Marsh, N.D.N.Y.1996, 918 F.Supp. 580, affirmed 105 F.3d 106. Civil Rights 1376(5)

3857. Medicaid payments, clearly established right

Director and former director of Division of Medical Services in the Arkansas Department of Human Services (ADHS) were not entitled to qualified immunity from §§ 1983 liability for violating clearly established rights of recipients and medical providers under Medicaid Act when they manipulated the prior authorization system in a way that denied children essential medical services solely because they wanted to cut costs. Pediatric Specialty Care, Inc. v. Arkansas Dept. of Human Services, C.A.8 (Ark.) 2006, 443 F.3d 1005. Civil Rights 1376(3)

Medicaid Commissioner was entitled to qualified immunity from any § 1983 liability for failure to provide hearing to physician following suspension of Medicaid payments during investigation; suspension of payments was not clearly established as suspension of provider agreement within meaning of Kentucky rule requiring evidentiary hearing following termination or suspension of provider agreement. Levin v. Childers, C.A.6 (Ky.) 1996, 101 F.3d 44. Civil Rights 1376(3)

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42 U.S.C.A. § 1983

3858. Police activities, clearly established right--Generally

Qualified immunity shields police officer from suit when he makes decision that, even if constitutionally deficient, reasonably misapprehends law governing circumstances he confronted; i.e., whether right in question is "clearly established" depends on whether it would be clear to reasonable officer that his conduct was unlawful in situation he confronted. Brosseau v. Haugen, U.S.2004, 125 S.Ct. 596, 543 U.S. 194, 160 L.Ed.2d 583, on remand 396 F.3d 1036. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from civil rights claim that they violated automobile passenger's due process rights by insisting that he and intoxicated driver leave in automobile, with result that passenger was killed in automobile accident; under the circumstances, there was no clearly established constitutional right to police protection from actions of driver, inasmuch as police did nothing to prevent passenger from protecting himself; rejecting *Tittiger*, 678 F.Supp. 177; *Russell*, 851 F.Supp. 859. Foy v. City of Berea, C.A.6 (Ohio) 1995, 58 F.3d 227. Civil Rights 1376(6)

Individual officers were entitled to qualified immunity for their actions in allegedly violating arrestee's Fifth Amendment right to counsel in taking statement that was never used in court of law; it could not be said that reasonable officer would have known that conduct alleged, intent to compel statement despite giving of *Miranda* rights, violated substantive rights under Fifth Amendment, even though officer might have recognized that conduct could have been basis for suppression of arrestee's statement; substantive Fifth Amendment norm alleged was not clearly established at time of challenged actions. Giuffre v. Bissell, C.A.3 (N.J.) 1994, 31 F.3d 1241. Civil Rights 1376(9)

Generally, police officers are entitled to qualified immunity if their conduct does not violate clearly established constitutional rights, or it was objectively reasonable for them to believe their acts did not violate those rights. Oliveira v. Mayer, C.A.2 (Conn.) 1994, 23 F.3d 642, certiorari denied 115 S.Ct. 721, 513 U.S. 1076, 130 L.Ed.2d 627, certiorari denied 115 S.Ct. 722, 513 U.S. 1076, 130 L.Ed.2d 627. Civil Rights 1376(6)

Law enforcement officials sued under § 1983 are entitled to qualified immunity if the right they allegedly have violated was not clearly established at time of violation, or if reasonable officer would have thought that defendants' actions were constitutional. Palmer v. Sanderson, C.A.9 (Wash.) 1993, 9 F.3d 1433. Civil Rights 1376(6)

In determining whether town fire captain and police lieutenant were entitled to qualified immunity in club owner's civil rights action, district court had to consider whether officers' conduct violated any of owner's clearly established rights and had to discuss any direct evidence presented by owner of proper intent or motive on part of officers. Wegener v. City of Covington, C.A.6 (Ky.) 1991, 933 F.2d 390. Civil Rights 1376(4); Civil Rights 1376(6)

Defendant police officers' due process duty not to affirmatively misuse government power so as to create danger to plaintiff or render her more vulnerable to harm was not clearly established in spring of 1991; thus, officers were entitled to qualified immunity in § 1983 action alleging that they improperly alerted plaintiff's former boyfriend of their decision to place parking lot of plaintiff's apartment complex under surveillance in response to plaintiff's repeated complaints that her car had been vandalized, which information enabled boyfriend to avoid arrest at that time, and to assault plaintiff two months later. Cook v. City of Groton, D.Conn.1997, 952 F.Supp. 101, affirmed 129 F.3d 113. Civil Rights 1376(6)

It was not clearly established in 1987 that allegedly defamatory statements made by detective to press accompanying arrest of restaurant operator and manager, asserting that manager and others were selling cocaine at restaurant, violated constitutional rights of manager and operator and, thus, detective was entitled to qualified immunity in § 1983 suit. Duca v. Martins, D.Mass.1996, 941 F.Supp. 1281. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police chief and deputy sheriff did not violate mother's constitutional rights or clearly established law by allegedly failing to assist mother in "retrieving" her minor child from paternal grandparents, and thus, police chief and deputy sheriff were entitled to qualified immunity in mother's § 1983 action; First, Fifth and Fourteenth Amendments imposed no duty on police chief or deputy sheriff to assist mother in retrieving her daughter, no special relationship existed that created that type of duty, and police chief and deputy sheriff did not interfere with mother's right to associate with her daughter by withholding police assistance. Van Loo v. Braun, E.D.Wis.1996, 940 F.Supp. 1390. Civil Rights 1376(6)

Local law enforcement officers who are sued for constitutional violations are entitled to immunity from suit if their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1376(6)

If constitutional or statutory right is clearly established, court assumes that police officer in question knew of this right and qualified immunity will only be denied in § 1983 action if reasonable official should have known that challenged conduct violated that established right. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1376(6)

Interrogating officers could not escape liability for alleged violation of criminal defendants' *Miranda* rights merely by claiming that they were enforcing policies or orders promulgated by superiors; claim of following orders applies only when reliance is objectively reasonable, and a reasonable person could not reconcile alleged practice of ignoring assertion of *Miranda* rights with commands of *Miranda*. California Attorneys for Criminal Justice v. Butts, C.D.Cal.1996, 922 F.Supp. 327, affirmed 195 F.3d 1039, amended on denial of rehearing, certiorari denied 120 S.Ct. 2717, 530 U.S. 1261, 147 L.Ed.2d 983. Civil Rights 1088(4)

Police officer who stopped motorist for making allegedly improper left-hand turn was qualifiedly immune from motorist's claim under § 1983 that officer was grumpy and discourteous; officer's conduct was not so outrageous as to constitute infliction of emotional harm under § 1983, nor any other tort of constitutional dimension. Lanigan v. Village of East Hazel Crest, N.D.Ill.1996, 913 F.Supp. 1202. Civil Rights 1376(6)

In determining police officer's right to qualified immunity for making arrest, law as it stood at time of arrest must be considered in determining whether reasonable officer could have believed his conduct to be lawful; officer could not be penalized for failing to predict legal developments that come later. Fordyce v. City of Seattle, W.D.Wash.1993, 840 F.Supp. 784, affirmed in part, vacated in part and reversed in part 55 F.3d 436, 147 A.L.R. Fed. 811, on remand 907 F.Supp. 1446. Civil Rights 1376(6)

Police officers are shielded from liability under § 1983 if the right they are alleged to have violated was not clearly established at the time of the incident; contours of the right alleged to have been violated must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Keller v. Frink, S.D.Ind.1990, 745 F.Supp. 1428. Civil Rights 1376(6)

Police officer who fails to follow accepted procedure is still immune from damages under § 1983 unless failure amounts to violation of clearly established law. Pennington v. Hobson, S.D.Ind.1989, 719 F.Supp. 760. Civil Rights 1376(6)

Police officers have qualified good-faith immunity to liability under § 1983, and such immunity shields police officers from liability unless conduct violates clearly established statutory or constitutional rights of which reasonable person would have known. LaBate v. Butts, E.D.Mich.1987, 673 F.Supp. 887, affirmed 865 F.2d 258. Civil Rights 1376(6)

Police chief was entitled to qualified immunity from police officer's § 1983 claims, arising from chief's refusal to renew officer's expired firearms license after officer was accused of abusing his wife; chief's denial of license did

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not violate any clearly established law, in that, it was reasonable in light of the accusations of abuse. Rosenfeld v. Egy, D.Mass.2003, 2003 WL 222119, Unreported, affirmed 346 F.3d 11. Civil Rights 1376(6); Civil Rights 1376(10)

City police officer was entitled to qualified immunity from detainee's claims under § 1983; officer did not violate detainee's constitutional rights, in that, he did not use any force on detainee and officer did not have duty to intervene and protect detainee when another officer was spraying her with mace. Wallace v. City of Columbus, S.D.Ohio 2002, 2002 WL 31844688, Unreported. Civil Rights 1376(6)

3859. ---- Access to courts, police activities, clearly established right

City police chief and detective of city police department were not entitled to qualified immunity from plaintiff's § 1983 claims alleging denial of access to courts due to inadequate investigation of individual's death, where right of access to courts was clearly established at time of conduct alleged and reasonable person in position of each of the defendants would have known that acts alleged in complaint could preclude plaintiff's exercise of that right. Stump v. Gates, D.Colo.1991, 777 F.Supp. 808, affirmed 986 F.2d 1429. Civil Rights 1376(6)

3860. ---- Equal protection, police activities, clearly established right

Even if allegations by male cohabitant of city councilman that officers denied him police protection from domestic violence by councilman because of councilman's official position presented a cognizable class of one equal protection violation, officers had qualified immunity because the law on the matter was not clearly established at the time of the incident, and an ordinary police officer could not have known that failure to arrest councilman would violate equal protection; there was no precedent in the Circuit upholding a class of one claim on similar facts, and the precise contours of class of one claims eluded even some judges. Lunini v. Grayeb, C.A.7 (Ill.) 2005, 395 F.3d 761, amended on denial of rehearing. Civil Rights 1376(6)

Police officers were entitled to qualified immunity with respect to claim in civil rights suit that they had violated woman's right to equal protection by reason of allegedly discriminatory implementation of police policy concerning domestic violence; at time of events in question in 1985, equal protection rights of domestic violence victims had not been sufficiently established to enable reasonable officials to anticipate that their conduct might give rise to liability for damages. Brown v. Grabowski, C.A.3 (N.J.) 1990, 922 F.2d 1097, rehearing denied, certiorari denied 111 S.Ct. 2827, 501 U.S. 1218, 115 L.Ed.2d 997. Civil Rights 1376(6)

Genuine issues of material fact existed as to whether police officer, on the basis of race, called an African-American complainant after he reported being abused and threatened at a gas station, and threatened him with arrest if he returned to the station, precluding summary judgment, on basis of qualified immunity, for officer in §§ 1983 action alleging an Equal Protection violation; even though there was no precisely analogous case law, officer should have been aware that he could not engage in adverse official conduct against a citizen based on bias or prejudice. Johnson v. Anhorn, E.D.Pa.2006, 416 F.Supp.2d 338. Federal Civil Procedure 2491.5

The right to be free from the corruption of the truth-seeking function of the trial process by purposely fabricating or suppressing evidence was a clearly established right of which a reasonable person would be aware, and, thus, state and court officials had no qualified immunity from §§ 1983 liability in suit alleging conspiracy to fabricate evidence and suppress evidence in connection with criminal case arising out of domestic abuse. Greene v. Wright, D.Conn.2005, 389 F.Supp.2d 416. Conspiracy 13

Domestic violence victim's right to equal protection when police respond to calls for assistance was not clearly established and thus, sheriff and deputies were entitled to qualified immunity to personal liability in § 1983 civil rights suit by mother of domestic abuse victim, based on allegations that custom of sheriff's department was to treat domestic assault cases less seriously than nondomestic assault cases. Hakken v. Washtenaw County,

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E.D.Mich.1995, 901 F.Supp. 1245. Civil Rights 1376(6)

Police officer's duty to protect domestic abuse victim was not clearly established and, thus, qualified immunity applied to § 1983 civil rights claims against officers in their individual capacities alleging that failure to remove former husband from victim's home violated victim's due process and equal protection rights. Smith v. City of Elyria, N.D.Ohio 1994, 857 F.Supp. 1203. Civil Rights 1376(6)

Police officers sued in their personal capacities were entitled to qualified immunity with respect to equal protection claim brought under § 1983 based on membership in the class of victims of domestic violence, rather than on gender, brought by representative for estate of wife who was killed by husband following reported incidents of domestic violence; conduct complained of did not meet the objective "clearly established law" test for avoiding qualified immunity. Cellini v. City of Sterling Heights, E.D.Mich.1994, 856 F.Supp. 1215. Civil Rights 1376(6)

3861. ---- Freedom of association, police activities, clearly established right

Police department investigation into marital sexual relations of police officer accused of sexual harassment did not violate his or his wife's clearly established constitutional rights to privacy and free association and, therefore, city and police officers who conducted investigation were entitled to qualified immunity from liability in § 1983 action brought by officer and his wife. Hughes v. City of North Olmsted, C.A.6 (Ohio) 1996, 93 F.3d 238. Civil Rights 1376(6); Civil Rights 1376(10)

Investigators for county sheriff's department who did not sufficiently allege violations of clearly established constitutional right did not show that sheriff was not entitled to qualified immunity with respect to their § 1983 action alleging violation of their First Amendment right to freedom of political association. Harris v. Hayter, W.D.Va.1997, 970 F.Supp. 500. Civil Rights 1376(10)

Sheriff and sheriff's deputies were entitled to qualified immunity from claims that they violated homeless persons' rights to peaceably assemble and to freedom of association under Florida and United States Constitutions when deputies forced them from homeless campsite on private property, as it was not clearly established that homeless persons retained rights to peaceably assemble and to freedom of association while living on private property without permission of owner. D'Aguanno v. Gallagher, M.D.Fla.1993, 827 F.Supp. 1558, affirmed in part, vacated in part 50 F.3d 877. Civil Rights 1376(6)

3862. ---- Freedom of speech, police activities, clearly established right

Protesters had clearly established First Amendment right not to have police officers interfere with their demonstration on private property, and thus, officers were not entitled to qualified immunity for their conduct in dispersing crowd and interfering with demonstration, in protesters' §§ 1983 First Amendment action, even if some of the protesters briefly ventured out into adjoining highway, absent showing of a clear and present danger of riot, imminent violence, interference with traffic, other immediate threat to public safety, that protesters had engaged in disorderly conduct, unlawful assembly, or other criminal activity, or that officers gave dispersal order and protesters ignored it. Jones v. Parmley, C.A.2 (N.Y.) 2006, 465 F.3d 46. Civil Rights 1376(6)

Viewing the evidence in light most favorable to arrestee, arrestee did not utter fighting words in heckling baseball player at ballpark, and thus, police officer violated arrestee's clearly established right to be free from arrest for exercise of his First Amendment right to free speech by arresting him for violating Cleveland disorderly conduct, so as to render officer ineligible for qualified immunity in arrestee's §§ 1983 claim against him for violation of First Amendment; player who was subject of arrestee's comments apparently did not hear arrestee's jeers, and there was no evidence that other fans in ballpark were offended by the jeers or incited to become violent. Swiecicki v. Delgado, C.A.6 (Ohio) 2006, 463 F.3d 489. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Right of voter referendum sponsors to exercise their free speech rights free from retaliatory harassment by police officers opposing referendum was clearly established, for purpose of determining officers' entitlement to qualified immunity from §§ 1983 liability; prohibition of retaliation against citizens for exercise of First Amendment rights was settled law. Bennett v. Hendrix, C.A.11 (Ga.) 2005, 423 F.3d 1247, petition for certiorari filed 2006 WL 295203. Civil Rights 1376(6)

County officials were entitled to qualified immunity on deputy's § 1983 claim for First Amendment retaliation since reasonable public official would have believed that decision to terminate deputy would not violate clearly established First Amendment rights; although deputy was terminated after he had testified against county constable in grand jury proceeding, he would have been terminated even if he had not testified against constable, since deputy's decision to draw his weapon on shoplifting suspect was improper conduct and cause for termination. Gonzales v. Dallas County, Tex., C.A.5 (Tex.) 2001, 249 F.3d 406. Civil Rights 1376(10)

Individual's First Amendment right to shout "f--k you" and make offensive gesture at group of abortion protestors was clearly established at time individual was arrested for disorderly conduct based on those acts, and reasonable officer should have known that such words and gesture amounted to protected speech; thus, police officer was not entitled to qualified immunity in individual's resulting § 1983 action alleging false arrest. Sandul v. Larion, C.A.6 (Mich.) 1997, 119 F.3d 1250, certiorari dismissed 118 S.Ct. 439, 522 U.S. 979, 139 L.Ed.2d 377. Civil Rights 1376(6)

At time police officer was investigated and disciplined, it was not clearly established that it was unconstitutional for police officials to investigate and suspend officer for making vulgar, insulting, and defiant criticisms of police department while giving testimony in deposition pursuant to subpoena; accordingly, police officials were entitled to qualified immunity from liability in § 1983 action brought by police officer alleging that his discipline for making such comments violated First Amendment. Hansen v. Soldenwagner, C.A.11 (Fla.) 1994, 19 F.3d 573. Civil Rights 1376(10)

Arrest of abortion protesters for carrying signs reading "the killing place" outside abortion clinic violated clearly established constitutional right of protesters to picket on public sidewalk in front of clinic, and, thus, arresting officers were not entitled to assert qualified immunity defense to civil right action brought against them by protesters for violating First Amendment rights; although signs were likely to offend those entering clinic, they were not inherently likely to cause immediate breach of peace. Cannon v. City and County of Denver, C.A.10 (Colo.) 1993, 998 F.2d 867. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity from liability for stopping and arresting car passenger who had made obscene gesture and yelled profanities at officer on deserted, rural highway late at night; officer should have known that traffic stop was illegal; and he had to have known that he was exercising authority in violation of well-established First Amendment rights, if he detained passenger as punishment for insults. Duran v. City of Douglas, Ariz., C.A.9 (Ariz.) 1990, 904 F.2d 1372. Civil Rights 1376(6)

Supervisors allegedly violated clearly established rights when they disciplined county police officer for his remarks critical of department's emergency services unit (ESU), precluding claim of qualified immunity from officer's First Amendment claims. Wallace v. Suffolk County Police Dept., E.D.N.Y.2005, 396 F.Supp.2d 251. Civil Rights 1376(10)

Police officers were entitled qualified immunity on protesters' §§ 1983 claim that officers' action in arresting them for verbally criticizing officers constituted a "prior restraint" in violation of the First Amendment since law was not clearly established such that a reasonable officer would know it prohibited such actions. McCormick v. City of Lawrence, D.Kan.2004, 325 F.Supp.2d 1191, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1376(6)

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Fact that signs posted in family's yard critical of public and private individuals were set ablaze did not qualify as act of harassment or retaliation with respect to city, county attorney, mayor, and city chief of police, for purposes of family's § 1983 claim of conspiracy to retaliate against family for exercising their First Amendment rights, where cause of fire had yet to be determined, family had no evidence, other than speculation, that any defendant was involved in fire, court did not know what signs were set afire, for purposes of determining whether speech was protected, and family failed to present any evidence as to why signs predating fire qualified as protected speech. Libbra v. City of Litchfield, Ill., C.D.Ill.1995, 893 F.Supp. 1370. Conspiracy 7.5(2)

City manager and city police officer violated clearly established law when they caused arrest of newspaper publisher for selling newspapers in newsrack without license, in determining whether they were entitled to qualified immunity in publisher's civil rights action based on alleged violation of his First Amendment free speech rights; ordinance under which publisher was arrested subjected newspaper vendors to fines of up to $500 for failing to undergo semi-weekly licensure procedure involving payment of $25 fee and completion of comprehensive license application. Jacobsen v. Lambers, D.Kan.1995, 888 F.Supp. 1088. Civil Rights 1376(4); Civil Rights 1376(6)

Deputy sheriff did not violate any clearly established constitutional rights of reporter when deputy took from reporter unedited transcripts of interviews with defendant in criminal case, and, thus, deputy was entitled to qualified immunity from liability on claims that he violated First Amendment, Fourth Amendment, and due process clause. Duluth News-Tribune v. Medure, D.Minn.1992, 808 F.Supp. 671. Civil Rights 1376(6)

Mayor and police chief did not have qualified immunity protecting from Fourth Amendment challenge their conduct in prohibiting city council member from tape recording session and in ejecting him from meeting when he refused to refrain from recording; reasonable officials in their position should have know at time that seizure of recorder and/or ejection of council member were unreasonable acts in violation of council member's clear First Amendment right to record council proceedings. Thompson v. City of Clio, M.D.Ala.1991, 765 F.Supp. 1066. Civil Rights 1376(4); Civil Rights 1376(6)

3863. ---- Investigations, police activities, clearly established right

Mother had no clearly established right under Fourth and Fourteenth Amendments to strike her son with belt on school grounds without law enforcement investigation of her conduct and filing of report with county prosecutor at time of alleged misconduct; thus, deputy sheriff who conducted investigation and filed report was entitled to qualified immunity in mother's § 1983 action, as were sheriff and county. Sweaney v. Ada County, Idaho, C.A.9 (Idaho) 1997, 119 F.3d 1385. Civil Rights 1376(4); Civil Rights 1376(6)

Even if allowing noninvestigating officers in sheriff's department to view surveillance videotape of attorney and client's sexual activities constituted an unconstitutional invasion of attorney's privacy in violation of his substantive due process rights, county officials were entitled to qualified immunity since law was not clearly established at the time that viewing a videotape obtained as evidence in a criminal investigation would violate attorney's constitutional rights. Cawood v. Haggard, E.D.Tenn.2004, 327 F.Supp.2d 863, affirmed 125 Fed.Appx. 700, 2005 WL 773946. Civil Rights 1376(6)

Defendant police officials were entitled to qualified immunity with respect to claim that their investigation of § 1983 plaintiff's arrest violated his Fourth Amendment and equal protection rights; even if plaintiff's arrest violated plaintiff's constitutional rights, relevant constitutional standards were not "clearly established" at time of investigation. David v. Village of Oak Lawn, N.D.Ill.1996, 954 F.Supp. 1241. Civil Rights 1376(6)

3864. ---- Taking without compensation, police activities, clearly established right

It was not clearly established in 1989 that state troopers' actions constituted taking under Fifth Amendment, so that

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troopers were entitled to qualified immunity, where tavern failed to cite any authority holding that establishment of state police sobriety roadblock which momentarily detained motorists on highway near tavern constituted taking of nondetained persons' property. Get Away Club, Inc. v. Coleman, C.A.8 (Ark.) 1992, 969 F.2d 664. Civil Rights 1376(6)

Borough commissioner and chief inspector of city department of buildings were not entitled to qualified immunity from claim by owner of inactive roller coaster that city's demolition thereof violated substantive due process; it was clearly established at time of demolition that exercise of power without any reasonable justification in service of legitimate governmental objective violated due process. Wantanabe Realty Corp. v. City of New York, S.D.N.Y.2003, 315 F.Supp.2d 375, reconsideration denied 2003 WL 21939028. Civil Rights 1376(4)

3865. ---- Training and supervision, police activities, clearly established right

Any law that would require training of deputy sheriffs on how to detain students was not clearly established, such that reasonable person in sheriff's shoes would have known that failure to provide such training constituted deliberate indifference, for purpose of qualified immunity analysis in student's §§ 1983 action seeking to hold sheriff liable for deputy sheriff's deprivation of student's Fourth Amendment rights by handcuffing student following student's alleged making of physical threat toward teacher. Gray ex rel. Alexander v. Bostic, C.A.11 (Ala.) 2006, 458 F.3d 1295. Civil Rights 1376(6)

It was not clearly established that police chief violated police officer's constitutional right to bodily integrity by requiring him to wear his riot helmet during training exercises, rather than a more protective face mask, resulting in an eye injury, and thus police chief was entitled to qualified immunity in officer's §§ 1983 claim that his substantive due process right of bodily integrity was violated. Moore v. Guthrie, C.A.10 (Colo.) 2006, 438 F.3d 1036. Civil Rights 1376(10)

It was objectively reasonable for police lieutenant to believe that his conduct in supervising, from police headquarters, officers at scene of suicide intervention did not violate constitutional rights of subject of intervention, and therefore lieutenant was entitled to qualified immunity from § 1983 claims that he should have taken various actions to avert subordinates' allegedly unconstitutional conduct during intervention, which ended in subject's death. Ford v. Moore, C.A.2 (N.Y.) 2001, 237 F.3d 156. Civil Rights 1376(6)

Police chief was entitled to qualified immunity on arrestee's § 1983 claims that chief failed to train subordinate officers regarding constitutional limitations of Florida's disorderly conduct statute and regarding proper response to arrestee's handcuff complaints, inasmuch as reasonable person in chief's position would not have known that such failure infringed on constitutional rights. Gold v. City of Miami, C.A.11 (Fla.) 1997, 121 F.3d 1442, rehearing en banc denied 138 F.3d 886, certiorari denied 119 S.Ct. 165, 525 U.S. 870, 142 L.Ed.2d 135. Civil Rights 1376(6)

Police chief did not violate clearly established statutory or constitutional rights of which reasonable person would have known when he failed to train, supervise, and discipline officer regarding use of excessive force after officer allegedly fired warning shots in violation of department policy and after police chief allegedly received other reports of excessive force, and therefore police chief was entitled to qualified immunity in connection with officer's killing of bystander at crime scene, absent any showing that warning shots violated anyone's constitutional rights or that any complaints were made before incident at issue. Otey v. Marshall, C.A.8 (Ark.) 1997, 121 F.3d 1150. Civil Rights 1376(6)

Conduct of police official, who was supervisor of disciplinary affairs bureau, in failing to identify and take any remedial action concerning "problem" police officer who killed a person could, if proven, create supervisory liability, and thus, superintendent was not entitled to qualified immunity in § 1983 action; it was clearly established at time of incident that reasonable police officer, charged with duties that police official bore, would have

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understood that he could be held constitutionally liable for failing to identify and take remedial action concerning officer with demonstrably dangerous predilections and checkered history of grave disciplinary problems. Diaz v. Martinez, C.A.1 (Puerto Rico) 1997, 112 F.3d 1. Civil Rights 1376(6)

Police chief should have known that his alleged failure to screen officer was deliberate indifference to Fourteenth Amendment rights of detainees, and thus chief was not entitled to qualified immunity from liability in detainee's § 1983 suit alleging that officer attempted to sexually assault him. Romero v. City of Clanton, M.D.Ala.2002, 220 F.Supp.2d 1313. Civil Rights 1376(6)

It was not clearly established at time of plaintiff's arrest that a police chief would be deliberately indifferent to serious medical needs of pretrial detainee if he failed to instruct or train his officers to hospitalize a pretrial detainee who was under arrest for battery, who was suffering from depression, who had made some suicidal statements, and who may have attempted suicide, but who did not appear delusional, hysterical or disoriented, and thus, police chief was entitled to qualified immunity from liability in a § 1983 action alleging deliberate indifference in violation of due process clause. Houck v. City of Prairie Village, D.Kan.1996, 942 F.Supp. 493, reconsideration denied 950 F.Supp. 312, affirmed 166 F.3d 347. Civil Rights 1376(6)

3866. ---- Travel rights, police activities, clearly established right

State officers were entitled to qualified immunity from Native American truck driver's claim that officials violated his right to hold specific private employment, under the Fourteenth Amendment, by issuing citations against him for nonpayment of license, permit, and use fees which were unenforceable by virtue of treaty with tribe which owned trucks; scope of travel rights under treaty was not clearly established at time the citations were issued. Cree v. Waterbury, E.D.Wash.1994, 873 F.Supp. 404, reversed 78 F.3d 1400, on remand 955 F.Supp. 1229. Civil Rights 1376(10)

Police officers did not violate detainee's clearly established rights when they allegedly forcibly put him in patrol car, drove him to city limits and left him by side of road just outside city limits, entitling officers to qualified immunity in detainee's civil rights action; right to local, intrastate travel was not clearly established constitutional right. Klock v. Cain, C.D.Cal.1993, 813 F.Supp. 1430. Civil Rights 1376(6)

3867. ---- Extraditions, police activities, clearly established right

Extra-circuit cases finding that fugitives have right to government officials' compliance with formal extradition procedures did not so clearly foreshadow applicable direct authority as to eliminate doubt that noncompliance was unconstitutional, and thus did not deprive police officer of qualified immunity from arrestee's § 1983 claim alleging that officer's transport of arrestee across state line without following formal extradition procedures violated arrestee's constitutional rights, where intra-circuit precedent held that fugitives lack such right, though case was nearly 40 years old and was cursory per curiam opinion that relied on reasoning of unpublished district court opinion; where decisions of other courts did not point unmistakably to unconstitutionality of officer's conduct; and where most contrary cases involved distinguishable facts. Barton v. Norrod, C.A.6 (Ky.) 1997, 106 F.3d 1289, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 341, 522 U.S. 934, 139 L.Ed.2d 265. Civil Rights 1376(6)

3868. ---- Malicious prosecutions, police activities, clearly established right

Special agent in Illinois Department of State Police Fraud and Forgery division was entitled to qualified immunity against § 1983 claims brought by insurance broker who had been convicted of theft based on agent's investigation; agent performed his official duties by conducting investigation and could not have known that Illinois Appellate Court would later hold that broker's breach of fiduciary duty could not form basis of criminal complaint. Davis v. Owens, C.A.7 (Ill.) 1992, 973 F.2d 574. Civil Rights 1376(6)

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Good-faith qualified immunity defense would not be available to police officer and police chief in civil rights action if they initiated criminal prosecution against plaintiff maliciously or without reasonably concluding that the criminal statutes under which they acted were applicable to plaintiff, since arrest lacking probable cause is violation of clearly established law and law protecting plaintiff from officers' use of official position to launch private vendetta was clearly established and not uncertain; thus it was unnecessary to consider whether defendants took action with malicious intention to cause deprivation of civil rights or other injury, and issue as to their reasonableness and good faith pertained only to their defense on the merits of the claim. Losch v. Borough of Parkesburg, Pa., C.A.3 (Pa.) 1984, 736 F.2d 903. Civil Rights 1376(6)

Police officers who allegedly made false statements in police report, which led to arrestee's prosecution in case that subsequently was dismissed for lack of probable cause, were not entitled to qualified immunity to arrestee's claim of malicious prosecution under Colorado law in lawsuit under §§ 1983, since law was clearly established that police officer who made false statements in police report could be held liable in §§ 1983 malicious prosecution action. Barton v. City and County of Denver, D.Colo.2006, 432 F.Supp.2d 1178. Civil Rights 1376(6)

The law was not settled as to whether an arrestee could bring a §§ 1983 action against law enforcement officers for malicious prosecution premised on a Fourth Amendment violation, and thus, law enforcement officers were entitled to qualified immunity on arrestee's §§ 1983 malicious prosecution claim. Bloomquist v. Albee, D.Me.2006, 421 F.Supp.2d 162. Civil Rights 1376(6)

Police officers accused of malicious prosecution in a § 1983 action are entitled to qualified immunity if other officers of reasonable competence could disagree on the existence of probable cause, and nothing occurred between the arrest and the prosecution to alter this belief. Wilder v. Village of Amityville, E.D.N.Y.2003, 288 F.Supp.2d 341, affirmed 111 Fed.Appx. 635, 2004 WL 2381295, certiorari denied 125 S.Ct. 1708, 544 U.S. 949, 161 L.Ed.2d 526. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from malicious prosecution action on basis of it not being clear that interest asserted by plaintiff was protected by federal statute or constitution or that it was not clear that exception did not permit the complained of act; alleged constitutional violation complained of involved right not to be arrested without probable cause, which was clearly established and was not subject to exception. Golino v. City of New Haven, D.Conn.1991, 761 F.Supp. 962, affirmed 950 F.2d 864, certiorari denied 112 S.Ct. 3032, 505 U.S. 1221, 120 L.Ed.2d 902. Civil Rights 1376(6)

Issue of whether malicious prosecution charge could be grounded upon constitutional violations was not clearly established, and thus Puerto Rican officials were entitled to qualified immunity from liability under § 1983 for alleged malicious investigation and prosecution of prison officer for misappropriation of automobile parts from penitentiary's repair shop. Rodriguez-Mateo v. Fuentes-Agostini, C.A.1 (Puerto Rico) 2003, 66 Fed.Appx. 212, 2003 WL 21243479, Unreported. Civil Rights 1376(3)

3869. ---- Third parties injured by police actions, police activities, clearly established right

It was not clearly established in June 1989 that conduct of police officer who struck and fatally injured motorist while driving through intersection against light and at high speed without using siren while responding to nonemergency call violated due process rights of motorist, and thus, officer was entitled to qualified immunity in federal civil rights action. Williams v. City and County of Denver, C.A.10 (Colo.) 1996, 99 F.3d 1009, rehearing granted, opinion vacated 140 F.3d 855, on rehearing 153 F.3d 730. Civil Rights 1376(6)

Assuming that sheriff violated constitutional rights of hostage held by gunman, by dismissing city police crew specially trained in hostage negotiations and attempting to secure her release by use of county personnel, actions were not sufficiently clearly established to be wrongful at time made to cause loss of immunity; only conduct which was clearly wrongful at time would have been deliberate indifference to plight of hostage, change of

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negotiating personnel did not reflect such indifference, and it could not be known that change of personnel would have any effect on whether gunman would kill hostage. Salas v. Carpenter, C.A.5 (Tex.) 1992, 980 F.2d 299. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from liability in § 1983 action brought by bicyclist who sustained injuries when struck by suspected felon during high speed automobile chase; it was not clearly established at time of accident that recklessness could give rise to liability under § 1983 or that police officer could be liable to third parties for injuries caused by suspect. Medina v. City and County of Denver, C.A.10 (Colo.) 1992, 960 F.2d 1493, rehearing denied. Civil Rights 1376(6)

Backup police officers' refusal to allow beauty salon customer to reenter salon to remove "the rollers and stuff" from her hair after customer was taken from salon during "drug raid" on the premises did not represent violation of constitutional right that was "clearly established" at time of incident; thus, officers were entitled to qualified immunity in customers' § 1983 action. James by James v. Sadler, C.A.5 (Miss.) 1990, 909 F.2d 834. Civil Rights 1376(6)

Police officer was immune under § 1983 for injury allegedly caused beating victim when co-workers moved victim from parking lot on officer's orders; the officer's conduct was at most grossly negligent, and at time of alleged injury it was not clearly established that gross negligence was sufficient basis for cause of action under § 1983 for violation of due process clause. Tucker v. Callahan, C.A.6 (Tenn.) 1989, 867 F.2d 909, rehearing denied. Civil Rights 1376(6)

State trooper, who allegedly left passenger of impounded vehicle stranded at night in high-crime area, was not entitled to qualified immunity in § 1983 action where law in 1984 at time of the incident provided that a police officer could be held liable for abandoning passengers of arrested drivers, thereby exposing them to unreasonable danger. Wood v. Ostrander, C.A.9 (Wash.) 1988, 851 F.2d 1212, on rehearing 879 F.2d 583, certiorari denied 111 S.Ct. 341, 498 U.S. 938, 112 L.Ed.2d 305. Civil Rights 1376(6)

It was clearly established in August 1992 that conduct of deputy sheriff in instructing bystander, who was civilian dressed in his bathrobe, to subdue suspect with whom deputy was struggling for control of gun by hitting him with flashlight, and after suspect gained possession of gun abandoning bystander by hiding in bushes and taking no steps to protect bystander, shocked the conscience and gave rise to violation of bystander's due process rights, and thus, deputy was not entitled to qualified immunity in federal civil rights action brought after bystander was fatally shot by suspect. Radecki v. Barela, D.N.M.1996, 945 F.Supp. 226, reversed 146 F.3d 1227, certiorari denied 119 S.Ct. 869, 525 U.S. 1103, 142 L.Ed.2d 771. Civil Rights 1376(6)

Police officer was entitled to qualified immunity from § 1983 claim brought by bystanders allegedly injured when officer fired gun in direction of fleeing suspect; officer acted with discretionary authority in returning fire from suspect when he was unaware of any other persons in the area and officer's conduct did not violate clearly established constitutional or statutory law. Porter v. Jameson, M.D.Ala.1995, 889 F.Supp. 1484. Civil Rights 1376(6)

Shooting victim's Fourteenth Amendment liberty interest in not being put in danger by police officers was sufficiently clear at time of incident complained of so as to deprive officers of qualified immunity in subsequent civil rights suit; officers created dangerous situation by traversing across and around private property, at night, in dangerous neighborhood, without notifying property owners such as victim. Ward v. City of San Jose, N.D.Cal.1990, 737 F.Supp. 1502, affirmed in part, reversed in part on other grounds 967 F.2d 280, amended on denial of rehearing. Civil Rights 1376(6)

3870. ---- Arrests generally, police activities, clearly established right

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42 U.S.C.A. § 1983

Federal and state law enforcement officials were entitled to qualified immunity with respect to *Bivens* and § 1983 claims asserted by homeowners whose Fourth Amendment rights were violated when officers brought media reporters into homeowners' home to observe and record attempted execution of arrest warrant on homeowners' son in April 1992; it was not unreasonable for police officer to have believed at that time that bringing media observers along during execution of arrest warrant (even in home) was lawful; abrogating *Ayeni v. Mottola*, 35 F.3d 680; and *Berger v. Hanlon*, 129 F.3d 505. Wilson v. Layne, U.S.Md.1999, 119 S.Ct. 1692, 526 U.S. 603, 143 L.Ed.2d 818. Civil Rights 1376(6); United States 50.10(3)

Motorist's right to be free from arrest for careless driving under Arkansas law after a bridge, without a weight limit posting, collapsed under motorist's truck, was clearly established, and thus, sheriff was not entitled to qualified immunity for his conduct in arresting motorist, in motorist's §§ 1983 unlawful arrest action. Robinson v. White County, AR, C.A.8 (Ark.) 2006, 452 F.3d 706. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity for allegedly carrying out mock arrest of airline employees as part of prank designed by her supervisors, as their actions in making mock arrest without legal justification, if true, were unreasonable under Fourth Amendment and violated clearly established legal rights of which reasonable person would have been aware. Fuerschbach v. Southwest Airlines Co., C.A.10 (N.M.) 2006, 439 F.3d 1197. Civil Rights 1376(6)

Police officers did not violate clearly established law by arresting arrestee for state law offense of obstructing governmental operations after arrestee blocked access to back door of her house and falsely stated that her son was not in the house when police officer attempted to enter to serve two valid arrest warrants for arrestee's son, who had just run into house, and thus, officers had qualified immunity on arrestee's §§1983 claim alleging arrest without probable cause. Ward v. Moore, C.A.8 (Ark.) 2005, 414 F.3d 968. Civil Rights 1376(6)

Animal control officer did not violate dog owner's clearly established rights, for purposes of her qualified immunity defense in resulting civil rights action, when she witnessed deputy sheriff's allegedly illegal arrest of dog owner while they were both responding to complaint about unleashed dogs. Wilson v. Strong, C.A.11 (Fla.) 1998, 156 F.3d 1131. Civil Rights 1376(6)

County investigator was entitled to qualified immunity on claim that he violated Posse Comitatus Act when he allowed military police officer to ride in his vehicle during joint drug investigation and officer shot passenger of truck they had stopped while making arrest; allowing military officer to ride along to investigate possible drug activity was not violation of clearly established law, and county investigator did not willfully use officer, who acted on his own initiative in making arrest. Riley v. Newton, C.A.11 (Ga.) 1996, 94 F.3d 632, certiorari denied 117 S.Ct. 955, 519 U.S. 1114, 136 L.Ed.2d 842. Civil Rights 1376(6)

Deputies did not violate any clearly established constitutional right in effecting arrest of jail visitor pursuant to facially valid warrants on bad check charges, even if deputies had at least some reason to believe that statute of limitations had expired at time they executed warrants; warrants were issued upon probable cause to believe that visitor had committed charged offenses, and officers did not have duty to investigate and decide potential viability of limitations defense even though visitor raised issue at time of her arrest. Pickens v. Hollowell, C.A.11 (Ga.) 1995, 59 F.3d 1203. Civil Rights 1376(6)

Qualified immunity shields arresting officers from personal liability for damages in a § 1983 suit insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known, or insofar as it was objectively reasonable for them to believe that their acts did not violate those rights. Brown v. D'Amico, C.A.2 (Conn.) 1994, 35 F.3d 97. Civil Rights 1376(6)

Actions of park rangers and police officer did not violate any constitutional principles that were clearly established under current law, and thus they were entitled to qualified immunity, in connection with removal of intoxicated

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individual from fairgrounds and release of individual in parking lot near police station, after which he was struck and killed by automobile; officers were trying to control behavior of crowd of more than 600,000 fairgoers, individual's conduct was not so threatening that it required he be jailed for protection of others, and officers may have placed him in safer position than that in which they found him. Sellers By and Through Sellers v. Baer, C.A.8 (Mo.) 1994, 28 F.3d 895, rehearing and rehearing en banc denied, certiorari denied 115 S.Ct. 739, 513 U.S. 1084, 130 L.Ed.2d 641. Civil Rights 1376(6); United States 50.10(1)

Police chief, supervisor of canine unit, and officers who trained canine were entitled to qualified immunity from liability in § 1983 action brought by arrestee who was bitten by dog during arrest where at time of dog's assault on arrestee, there was no clearly established law prohibiting use of dogs to make arrests. Chew v. Gates, C.A.9 (Cal.) 1994, 27 F.3d 1432, certiorari denied 115 S.Ct. 1097, 513 U.S. 1148, 130 L.Ed.2d 1065. Civil Rights 1376(6)

Officer in arresting officer's position could reasonably have believed that there was probable cause to make arrest based on observation of growing marijuana plants on arrestee's property, entitling arresting officer to qualified immunity in arrestee's civil rights action; although arresting officer did not believe that he had probable cause to arrest and had been informed that arrestee had not planted marijuana, he had reason to believe that arrestee knew about marijuana patches on his property, that someone had been harvesting the marijuana, and that arrestee wanted to conceal marijuana plants. Bridgewater v. Caples, C.A.8 (Neb.) 1994, 23 F.3d 1447. Civil Rights 1376(6)

Officers were entitled to qualified immunity for making arrest of plaintiff; officers heard plaintiff yelling obscenity from porch some 100 yards away, and had reasonable suspicion that plaintiff had committed offense of disorderly conduct and arguably had probable cause to make arrest when plaintiff fled. Kelly v. Bender, C.A.8 (Iowa) 1994, 23 F.3d 1328. Civil Rights 1376(6); False Imprisonment 13

State troopers violated no clearly established federal or state standards in arresting driver for making illegal lane change on interstate highway, and thus, troopers enjoyed qualified immunity from liability in arrestee's § 1983 actions, even though troopers made arrest based on radio report by trooper who saw traffic violation. Topp v. Wolkowski, C.A.1 (N.H.) 1993, 994 F.2d 45. Civil Rights 1376(6)

At time police officers took apartment tenant in for emergency psychiatric evaluation in 1987, law regarding seizures in mental health seizure context was not so clear that officers could be denied qualified immunity; although some cases existed regarding seizures in such context, those cases could not have given officers any clear indication that their conduct was unlawful because none of circumstances in those cases resembled situation confronting officers. Gooden v. Howard County, Md., C.A.4 (Md.) 1992, 954 F.2d 960. Civil Rights 1376(6)

Law enforcement officers who arrested members of Indian tribe for unlawful gathering of shellfish were entitled to qualified immunity in members' civil rights action, where it was not clearly established under various treaties or state and federal law that members of tribe had right to take shellfish in nonreservation areas at their usual and accustomed fishing places. Romero v. Kitsap County, C.A.9 (Wash.) 1991, 931 F.2d 624.

Arresting officers, called to property by person in possession, had obvious factual evidence that property owners trespassed in their attempt to recover possession and, bolstered by sheriff's instruction to arrest owners, were following clearly established statutory and constitutional law when they arrested owners and inventoried contents of their truck, and, thus, sheriff was entitled to qualified immunity from owners' § 1983 action since he merely verified the appropriate action under Florida law by instructing officers to arrest owners; officers had probable cause to arrest when they arrived on scene so that owners' belief concerning legality of their entry onto property was irrelevant to whether sheriff was entitled to immunity. Hutton v. Strickland, C.A.11 (Fla.) 1990, 919 F.2d 1531 . Civil Rights 1376(6)

Commonwealth police officer was not entitled to qualified immunity for arresting attorney for misdemeanor offense not occurring in officer's presence; officer could not turn attorney's failure to cooperate with investigation

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into justification for arrest, suspect's right not to be arrested because of refusal to answer officer's questions was clearly established, and reasonable law enforcement officer would have believed that arresting attorney violated that right. Rodriguez v. Comas, C.A.1 (Puerto Rico) 1989, 888 F.2d 899, rehearing denied. Civil Rights 1376(6)

In § 1983 action brought by police chief against state and local law enforcement officials alleging that he was arrested for first-degree murder of another police officer without probable cause, even assuming that police chief had raised factual issue with respect to probable cause issue, defendants were entitled to qualified immunity, as they were performing discretionary functions and did not violate clearly established statutory or constitutional rights of police chief in connection with investigation; once police officers had discovered sufficient facts to establish probable cause that police chief murdered subordinate officer, they had no constitutional obligation to conduct any further investigation in hopes of uncovering potentially exculpatory evidence. Schertz v. Waupaca County, C.A.7 (Wis.) 1989, 875 F.2d 578. Civil Rights 1376(6)

State trooper was entitled to qualified immunity from liability in civil rights action alleging that trooper's arrest of plaintiff violated Fourth Amendment; trooper arrested plaintiff in area of his driveway, there was substantial authority for proposition that area such as driveways that are reasonably accessible to visitors are not entitled to the same degree of Fourth Amendment protection as are interiors of defendants' houses, and there was strong likelihood that reasonable person in trooper's position would have believed that he had implied consent from plaintiff to be on his property at time of arrest. Krause v. Penny, C.A.2 (N.Y.) 1988, 837 F.2d 595. Civil Rights 1376(6)

Officers did not violate clearly established federal rule by arresting plaintiff on basis of teletype from Kentucky State Police requesting that plaintiff be picked up because he possessed stolen firearms, even though teletype did not recite existence of felony warrant, and thus, officers were entitled to qualified immunity in civil rights action brought by plaintiff. Donta v. Hooper, C.A.6 (Ohio) 1985, 774 F.2d 716, certiorari denied 107 S.Ct. 3261, 483 U.S. 1019, 97 L.Ed.2d 760. Civil Rights 1376(6)

At time police allegedly injured arrestee by handcuffing her behind-her-back in mid-2000, it was clearly established, for purposes of qualified immunity, that when a non-threatening, non-flight-risk, cooperating arrestee for a minor crime tells the police she suffers from an injury that would be exacerbated by handcuffing her arms behind her back, the arrestee has a right to be handcuffed with her arms in front of her even if the injury is not visible. Aceto v. Kachajian, D.Mass.2003, 240 F.Supp.2d 121. Civil Rights 1376(6)

Law enforcement officers who arrested plaintiff in his home pursuant to a capias were entitled to qualified immunity in arrestee's §§ 1983 action alleging unreasonable search and seizure in violation of the Fourth Amendment; at time of arrest it was not clearly established that such a home arrest violated the arrestee's Fourth Amendment rights, particularly given that the capias was signed by a court clerk and apparently issued by a Judge. Milner v. Duncklee, D.Conn.2006, 460 F.Supp.2d 360. Civil Rights 1376(6)

Police officer did not violate any clearly established constitutional right of which a reasonable person would have known in arresting reporter who was with a group of protesters, and was therefore entitled to qualified immunity; in effectuating the arrest, officer properly relied on information provided by his fellow officers that reporter was with a group of individuals which matched description of people who were throwing rocks. Delgado v. Miami-Dade County, S.D.Fla.2006, 456 F.Supp.2d 1234. Civil Rights 1376(6)

In light of the established state of the law at the time in question, defendant officers had notice that their alleged conduct in arresting plaintiff under loitering statute without probable cause and in using excessive force to effectuate that arrest was unconstitutional, and officers were not entitled to summary judgment on plaintiff's Fourth Amendment claims on qualified immunity grounds since there were triable issues of fact as to whether the officers had probable cause to arrest plaintiff and whether the force used to arrest plaintiff was unreasonable. Phillips v.

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City of Fairfield, E.D.Cal.2005, 406 F.Supp.2d 1101, reconsideration denied 2006 WL 335472. Federal Civil Procedure 2491.5

Fourth Amendment violation in execution of misdemeanor arrest warrant at arrestee's home in the middle of the night without exigent circumstances justifying nighttime execution of warrant was not so patently obvious as to eliminate requirement of Supreme Court or Court of Appeals precedent in order to clearly establish the constitutional violation for purposes of defeating claim of qualified immunity in arrestee's §§ 1983 action against arresting officer. Cipes v. Graham, D.Conn.2005, 386 F.Supp.2d 34. Civil Rights 1376(6)

Police officer called to scene of vehicular accident had qualified immunity from §§ 1983 claim of false arrest for reckless driving, brought by driver of pickup truck struck in rear by tractor trailer; driver did not have clearly established constitutional right to not be arrested under circumstances of case, which involved submission of written versions of accident by both drivers and officer's acceptance of tractor trailer driver's version, under which pickup truck driver was reckless. Christman v. Kick, D.Conn.2004, 342 F.Supp.2d 82. Civil Rights 1376(6)

In the absence of any dispersal order to the group of people, including protestors, gathered in a park, and an opportunity for them to disperse, police official's belief that some of the group had broken laws earlier did not provide probable cause for the mass arrest of the entire group, and thus arrests violated clearly established law and was not objectively reasonable, such that official was not entitled to qualified immunity in §§ 1983 action alleging that the arrests, allegedly for violating an order to disperse, violated the First and Fourth Amendments. Barham v. Ramsey, D.D.C.2004, 338 F.Supp.2d 48, affirmed in part 434 F.3d 565, 369 U.S.App.D.C. 146. Civil Rights 1376(6)

Qualified immunity applied to shield police officers from § 1983 liability based on their conduct in detaining restaurant patron because her two companions had been identified by restaurant's assistant manager as possible bank robbers and based on officers' use of felony take-down procedures, including weapons pat-down, in detaining companions, given absence of clearly established law precluding officers from assuming that persons suspected of being bank robbers would be armed and dangerous. Eisnnicher v. Bob Evans Farms Restaurant, S.D.Ohio 2004, 310 F.Supp.2d 936. Civil Rights 1376(6)

Constitutional right of fleeing suspect not to be subjected to deadly force in absence of threatening behavior was clearly established in April, 2001, and thus city police officer was not entitled to qualified immunity from liability under § 1983 for suspect's shooting death, despite officer's contentions that shooting was accidental or inadvertent, and that suspect fled at night through neighborhood with highest crime in city; it was not clear that officer had reasonable belief that suspect was armed or dangerous, officer allegedly pursued suspect with gun out and hand on trigger, in violation of department policy, suspect did not pose obvious danger to public or to officer, and department allegedly had unwritten policy and practice of heavy-handed abusive enforcement against African-Americans. Leisure v. City of Cincinnati, S.D.Ohio 2003, 267 F.Supp.2d 848. Civil Rights 1376(6)

Police officers, responding to night time call of firearm discharges in high crime area, were entitled to qualified immunity from § 1983 liability to suspect who they shot after he refused to drop handgun; reasonable officers could have found probable cause to believe that suspect presented serious threat of personal harm at time officers fired their weapons, and thus there was no Fourth Amendment violation. Cunningham v. Hamilton, E.D.Va.2003, 259 F.Supp.2d 457, affirmed 84 Fed.Appx. 357, 2004 WL 48857, certiorari denied 125 S.Ct. 68, 543 U.S. 818, 160 L.Ed.2d 25. Arrest 68(2); Civil Rights 1376(6)

Law regarding probable cause was clearly established at time that police officer arrested television cameraman, on officer's assertion of qualified immunity to cameraman's § 1983 and Florida law arrest without probable cause claims; although the facts of underlying action were unique and specific case law that would have put officer on notice of the legal constraints of her action was lacking, officer's conduct of arresting cameraman who had approached police officer in cleared street, was instructed to return to sidewalk, and was complying with

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instruction, was obviously illegal. Durruthy v. City of Miami, S.D.Fla.2002, 235 F.Supp.2d 1291, reversed 351 F.3d 1080, rehearing and rehearing en banc denied 97 Fed.Appx. 908, 2004 WL 385594, certiorari denied 125 S.Ct. 45, 543 U.S. 917, 160 L.Ed.2d 201. Civil Rights 1376(6)

Claimant's right to be free from arrest for charge of resisting arrest, where no arrest was attempted in the first instance, was clearly established, and therefore, officer who issued citation for resisting arrest after issuing citations for disorderly conduct and obstructing traffic was not entitled to qualified immunity from claimant's § 1983 action alleging violation of his Fourth Amendment rights. Hummel v. City of Carlisle, S.D.Ohio 2002, 229 F.Supp.2d 839 . Civil Rights 1376(6)

Police officers' arrest of plaintiff for refusing to stop using profanity directed against the officers, in a situation in which a suspected explosive device was present, did not violate clearly established statutory or constitutional rights of which a reasonable person would have known, and therefore officers were entitled to qualified immunity on § 1983 claim based on Fourth Amendment violation; plaintiff's statements would support a belief by a reasonable police officer that he had probable cause to arrest her for violation of Pennsylvania disorderly conduct statute. Russoli v. Salisbury Tp., E.D.Pa.2000, 126 F.Supp.2d 821. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity from arrestee's § 1983 claim that his constitutional rights were violated by officer's failure to comply with lawful extradition procedures; it was clearly established at time that arrestee was brought across state lines by officer that arrestee had constitutional right to have governmental officials comply with extradition procedures, that agents of demanding state could be held liable for depriving arrestee of extradition rights, and that waiver of extradition rights must be knowing and voluntary. Buchanan v. City of Kenosha, E.D.Wis.2000, 90 F.Supp.2d 1008. Civil Rights 1376(6)

Any exemption that armored car operators had from criminal liability for suspected unlawful use of weapons did not deprive state troopers of qualified immunity from civil rights liability for allegedly unlawful arrest and search; operators' right not to be searched or arrested was not so clearly established that any law enforcement officer would have know of it at time of arrest. McGarvey v. Biswell, C.D.Ill.1998, 993 F.Supp. 1198. Civil Rights 1376(6)

For purposes of qualified immunity, it was clearly established as of suspect's arrest in 1993 that police must base probable cause determinations on reasonably trustworthy information and, if necessary, conduct thorough investigation to find it. Spiegel v. Cortese, N.D.Ill.1997, 966 F.Supp. 684. Civil Rights 1376(6)

Right to be free from arrest without probable cause is clearly established for purposes of qualified immunity. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. Civil Rights 1376(6)

Arrestee's § 1983 claim against arresting officer in his official capacity alleging that arrest violated Fourth Amendment, which was essentially claim against city, was precluded as matter of law where officer did not violate arrestee's Fourth Amendment rights. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1088(4)

Civil rights plaintiff's right not to be arrested for violation of provision of disorderly conduct statute prohibiting use of "obscene gesture" when plaintiff gestured toward police officer with his hand, middle finger extended was not clearly established at time of incident and, thus, officer was entitled to qualified immunity in § 1983 suit; reasonable officials could have differed as to whether court opinion purporting to define "obscene" in manner consistent with Supreme Court authority interpreting First Amendment did so in valid manner. Brockway v. Shepherd, M.D.Pa.1996, 942 F.Supp. 1012. Civil Rights 1376(6)

Qualified immunity shields arresting officer from § 1983 civil rights suit if reasonable officer could have believed arrest to be lawful, in light of clearly established law and information arresting officers possessed. Kumar v. Chicago Housing Authority, N.D.Ill.1994, 862 F.Supp. 213. Civil Rights 1376(6)

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Officers were not entitled to qualified immunity from detainee's civil rights claim that his seizure and eight-hour detention violated Fourth Amendment insofar as officers maintained that detention was based on good faith suspicion; it was clearly established at relevant time that transportation of suspect to, and prolonged detention at, station was indistinguishable from arrest and required probable cause. Craig v. St. Martin Parish Sheriff, W.D.La.1994, 861 F.Supp. 1290. Civil Rights 1376(6)

Given validity of arrest warrant, there was probable cause and absence of malice entitling officers to qualified immunity as to arrestee's § 1983 claim. Parham v. Suppa, S.D.N.Y.1994, 844 F.Supp. 148. Civil Rights 1376(6)

In order for police officer to establish right to qualified immunity from civil rights action, officer had to show it was not clear at time of arrest that interest asserted by arrestee was protected, that it was not clear at time of arrest that exception did not permit arrest or that it was objectively reasonable for officer to believe that arrest did not violate arrestee's rights. Roberts by Roberts v. City of New York, S.D.N.Y.1990, 753 F.Supp. 480. Civil Rights 1376(6)

3871. ---- Applications for arrest warrants, police activities, clearly established right

State investigator was protected by qualified immunity from § 1983 suit for false arrest and malicious prosecution based on claim that his affidavit in support of arrest warrant omitted information alleged to undermine probable cause, notwithstanding that omitted information had previously been considered by Connecticut investigatory grand jury which made finding of probable cause; right to be free from arrest under such circumstances was not clearly established when officer applied for arrest warrant. Brown v. D'Amico, C.A.2 (Conn.) 1994, 35 F.3d 97. Civil Rights 1376(6)

If police officer submits affidavit in support of arrest warrant containing statements he knows to be false or would know to be false if he had not recklessly disregarded truth, officer failed to observe right that was clearly established, and he would not be entitled to qualified immunity in civil rights action brought by arrestee based on unreasonable seizure claim. Lippay v. Christos, C.A.3 (Pa.) 1993, 996 F.2d 1490. Civil Rights 1376(6)

Law was clearly established at time of arrest in November of 1984 that omission of material information from an arrest affidavit violated the Fourth Amendment, and officer making a material omission could not claim qualified immunity from liability for violation of civil rights. Salmon v. Schwarz, C.A.10 (N.M.) 1991, 948 F.2d 1131. Civil Rights 1376(6)

Law enforcement officers were entitled to qualified immunity as to arrestee's claim that he was deprived of due process when he was arrested in his home pursuant to a capias, even though the capias was not a valid arrest warrant since it was unsupported by a finding of probable cause; at time of arrest it was not clearly established that such a home arrest violated the arrestee's Fourth Amendment rights. Milner v. Duncklee, D.Conn.2006, 460 F.Supp.2d 360. Civil Rights 1376(6)

An officer who relies in good faith upon a warrant issued by a neutral and detached magistrate upon a finding of probable cause is presumptively shielded from personal liability for damages; an officer loses that qualified immunity, however, when he knows, or has reason to know, that he has materially misled a magistrate on the basis for a finding of probable cause. Spafford v. Romanowsky, S.D.N.Y.2004, 348 F.Supp.2d 40. Civil Rights 1376(6)

Affiant clearly violated arrestees' rights, and was not entitled to qualified immunity from civil rights liability, after she recklessly or intentionally submitted probable cause statement based on informant's tip, either knowing of omitted statements or with reckless disregard for truth about informant's reliability; affiant knew that informant was sole source of information in affidavit and of problems with informant's reliability, yet affidavit gave no indication

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of those problems. Haywood v. Nye, D.Utah 1998, 999 F.Supp. 1451. Civil Rights 1376(6)

Drug Enforcement Administration (DEA) task force agents were entitled to qualified immunity from liability on driver's *Bivens* claims for constitutional rights violation by federal officers, alleging that agents illegally seized cash from vehicle; when vehicle was stopped, agents knew that search warrant authorizing search of vehicle had been issued and, under the circumstances, reasonable officer would have believed that his reliance upon facially valid search warrant obtained by another officer was lawful. Pou v. U.S. Drug Enforcement Admin., S.D.N.Y.1996, 923 F.Supp. 573, affirmed 107 F.3d 3. United States 50.10(3)

3872. ---- Warrantless arrests, police activities, clearly established right

Warrantless arrest of suspected misdemeanant, where misdemeanor did not occur in officers' presence, did not violate clearly established federal law, and thus, arresting officers were entitled to qualified immunity from liability in arrestee's § 1983 action. Vargas-Badillo v. Diaz-Torres, C.A.1 (Puerto Rico) 1997, 114 F.3d 3. Civil Rights 1376(6)

Even if police detective's warrantless arrest and detention of homeless man pending his testimony in murder prosecution violated homeless man's civil rights, detective was entitled to qualified immunity in homeless man's § 1983 action because his conduct did not violate clearly established Tennessee law. White by Swafford v. Gerbitz, C.A.6 (Tenn.) 1989, 892 F.2d 457. Civil Rights 1376(6)

Police officers had qualified immunity from liability in § 1983 action brought by arrestee who claimed that the officers violated his Fourth Amendment rights when they arrested him in his home without a warrant, since the officers acted in accordance with state law and since, at time of the arrest in 1979, there was no "clearly established" law that warrantless entry into a suspect's home to make routine felony arrest violated the Fourth Amendment. Schlothauer v. Robinson, C.A.8 (Neb.) 1985, 757 F.2d 196. Civil Rights 1376(6)

Even if police officer lacked probable cause to make warrantless arrest of motorist for interference with official acts, officer's arrest of motorist did not violate motorist's clearly established constitutional rights, and thus officer was entitled to qualified immunity in motorist's §§ 1983 action; in light of the lack of detailed judicial guidance of terms used in statute setting forth the offense, a reasonable officer could have believed that motorist's conduct, in entering his truck in violation of officer's instructions and refusing to come out when told to do so, constituted interference with official acts. Davis v. City of Albia, S.D.Iowa 2006, 434 F.Supp.2d 692. Civil Rights 1376(6)

Officer was qualifiedly immune from §§ 1983 claim arising from warrantless arrest of suspect in his residence, inasmuch as it would not be clear to reasonable officer that warrantless arrest was unlawful, given that suspect verbally provoked and repeatedly shoved police officer, that other people at scene seemed to be afraid of suspect, that suspect had strong odor of alcohol, and that officers did not know that suspect lived at residence. Davis v. Township of Paulsboro, D.N.J.2006, 421 F.Supp.2d 835. Civil Rights 1376(6)

Police officer had qualified immunity from claim of malicious prosecution, under §§ 1983 action brought by employee who was alleged to have participated with two others in robbery of restaurant, assuming, contrary to precedent, that malicious prosecution was violation of Fourth Amendment rights, so as to satisfy §§ 1983 requirement of federal constitutional or statutory violation; right was not clearly established. Sheppard v. Aloisi, D.Mass.2005, 384 F.Supp.2d 478. Civil Rights 1376(6)

Arresting officer was entitled to qualified immunity from challenging constitutionality of arrest absent state arrest warrant; law was not clearly established at time of arrest that officer had to secure Idaho warrant before arresting suspect wanted on felony charges in Florida. Elder v. Holloway, D.Idaho 1995, 874 F.Supp. 278. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Officers were not entitled to qualified immunity in § 1983 suit for illegal arrest, where at time officers handcuffed suspect and took him into custody, it was clearly established that such conduct constituted arrest and not merely *Terry* type detention, and officers could not have reasonably believed that action did not constitute arrest requiring probable cause. Desales v. Woo, N.D.Cal.1994, 860 F.Supp. 1436. Civil Rights 1376(6)

Trooper who made warrantless arrest for driving while intoxicated did not violate clearly established constitutional right of driver and was entitled to qualified immunity, where trooper had probable cause to arrest after he observed driver's failure to dim her headlights, failure to notice and respond to flashing red and green lights, and her loud and slurred speech, and smelled alcohol on her breath. Holton v. Mohon, N.D.Tex.1987, 684 F.Supp. 1407. Civil Rights 1376(6)

3873. ---- Probable cause determinations, police activities, clearly established right

Viewing the evidence in light most favorable to arrestee, police officer violated arrestee's clearly established right to be free from arrest without probable cause by arresting him for violating Cleveland disorderly conduct ordinance prohibiting engaging in conduct likely to be offensive or cause inconvenience, annoyance, or alarm in a public place, and thus, officer was not entitled to qualified immunity on arrestee's §§ 1983 claim against him for making arrest without probable cause; arrestee did not use profane language in heckling baseball players at ballpark, his behavior was not inappropriately loud or offensive, almost everyone in the stands was shouting, ballpark encouraged fans to cheer and make noise, and no one complained about arrestee's behavior. Swiecicki v. Delgado, C.A.6 (Ohio) 2006, 463 F.3d 489.

It was clearly established at the time of suspect's arrest that a law enforcement officer could not affect a mental health seizure without probable cause, and thus, given that officers did not have probable cause, qualified immunity did not shield officers from civil liability in §§ 1983 action brought by suspect alleging that his seizure violated his Fourth Amendment rights. Fisher v. Harden, C.A.6 (Ohio) 2005, 398 F.3d 837, rehearing en banc denied, certiorari denied 126 S.Ct. 828, 163 L.Ed.2d 706, on remand 2006 WL 1697538. Civil Rights 1376(6)

It was objectively unreasonable for police officers to believe that there was probable cause to arrest husband for violating a domestic protection order whose contents they had not ascertained, and thus, they violated clearly established law by relying on wife's unsubstantiated claim that husband violated the order, and were not entitled to qualified immunity from husband's Fourth Amendment false arrest claim; officers confirmed with dispatcher that a protection order against husband had been issued and served, but made no attempt to ascertain its terms from authorized personnel or by reading readily available document, and therefore had no way to know whether it was violated. Beier v. City of Lewiston, C.A.9 (Idaho) 2004, 354 F.3d 1058. Civil Rights 1376(6)

Reasonable police officers would not have known that, under clearly established law, arrest of arrestee for violation of Illinois Deceptive Practices Act would have been unlawful for lack of probable cause, and officers were thus entitled to qualified immunity in arrestee's resulting § 1983 action for false arrest; officers had obtained information indicating that check given to travel agency by arrestee for payment of airline tickets had been returned unpaid, and officers were not required to accept defenses asserted by arrestee at time of his arrest. Marks v. Carmody, C.A.7 (Ill.) 2000, 234 F.3d 1006, certiorari denied 121 S.Ct. 2243, 533 U.S. 903, 150 L.Ed.2d 232. Civil Rights 1376(6)

Sexual assault victim's failure to identify arrestee as her attacker in detective's presence did not preclude finding that detective's arrest of arrestee comported with clearly established law, for purpose of detective's assertion of qualified immunity in arrestee's resulting § 1983 claim alleging lack of probable cause for arrest. Tangwall v. Stuckey, C.A.7 (Ill.) 1998, 135 F.3d 510. Civil Rights 1376(6)

Police detective's failure to present all of the facts to magistrate judge so that judge could make a neutral and independent determination of probable cause supporting issuance of arrest warrant violated clearly established law,

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and, thus, detective was not entitled to qualified immunity from arrestee's action under §§ 1983, alleging that her Fourth Amendment right to be free from arrest without probable cause was violated, where reasonably trained police officer would have known that a bare-bones, conclusory affidavit did not establish probable cause, and that additional information was required to establish probable cause. Butts v. City of Bowling Green, W.D.Ky.2005, 374 F.Supp.2d 532, reconsideration denied 2005 WL 2099805. Civil Rights 1375

Police officer's arrest of complainant for whose protection temporary restraining order (TRO) was issued did not violate any clearly established law, and thus officer was entitled to qualified immunity from liability in complainant's § 1983 false arrest suit, even if there was no clear term in TRO restraining complainant, where officer examined TRO, interpreted it to provide that either party could violate it, and believed that complainant had falsely reported violation of TRO. Byford v. Stephens, S.D.Fla.2003, 299 F.Supp.2d 1253. Civil Rights 1376(6)

In analyzing whether arresting officer is entitled to qualified immunity from § 1983 claim that arrest was without probable cause, issue is whether officer violated clearly established law in making arrests based on the objective factors that gave rise to his probable-cause determination and not whether arrestees' actions actually constituted crime. Hall v. Stewart, S.D.Fla.2004, 297 F.Supp.2d 1328. Civil Rights 1376(6)

Police officers accused of false arrest in a § 1983 action are protected by a qualified immunity if other officers of reasonable competence could disagree on the existence of probable cause. Wilder v. Village of Amityville, E.D.N.Y.2003, 288 F.Supp.2d 341, affirmed 111 Fed.Appx. 635, 2004 WL 2381295, certiorari denied 125 S.Ct. 1708, 544 U.S. 949, 161 L.Ed.2d 526. Civil Rights 1376(6)

Right of officer in county sheriff's department not to be charged and arraigned for crime without probable cause was clearly established constitutional right of which objectively reasonable officers should have known, for purposes of determining county defendant's qualified immunity in officer's § 1983 action. Ahlers v. Schebil, E.D.Mich.1997, 966 F.Supp. 518. Civil Rights 1376(4)

At time of her warrantless arrest and subsequent 20-hour detention in township jail, arrestee's constitutional right to have probable cause determination as soon as magistrate was available was clearly established, and therefore, if it was found that officers detained arrestee for purposes of further investigation or to "cool down" arrestee's situation with victim despite fact that magistrate was available, detaining officers would not be entitled to qualified immunity on arrestee's § 1983 claim that her detainment violated her Fourth Amendment rights. Williams v. Van Buren Tp., E.D.Mich.1996, 925 F.Supp. 1231. Civil Rights 1376(7)

Police officer who entered a home "to make sure everything was okay" while responding to a complaint and knowing of recent disturbances was entitled to qualified immunity on the home resident's claim that the warrantless entry violated her Fourth Amendment rights; the resident failed to show that the law placed the officer on notice that his conduct was unlawful. Burr v. Hasbrouck Heights Police Dept., C.A.3 (N.J.) 2005, 131 Fed.Appx. 799, 2005 WL 1153868, Unreported, certiorari denied 126 S.Ct. 651, 163 L.Ed.2d 526. Civil Rights 1376(6)

3874. ---- False arrests and imprisonments, police activities, clearly established right

Police officers were not entitled to qualified immunity, in §§ 1983 action alleging they committed false arrest and false imprisonment when they arrested plaintiff in the face of unambiguous evidence that their warrant was unenforceable; jury could find the officers' actions, of ignoring documentary evidence that the warrant had been previously executed, objectively unreasonable and a violation of plaintiff's clearly established Fourth Amendment rights. Pena-Borrero v. Estremeda, C.A.1 (Puerto Rico) 2004, 365 F.3d 7. Civil Rights 1376(6)

Arrest of civil rights plaintiff who was apparently intoxicated and hitting his head against building did not violate clearly established rights of which reasonable person would have known and therefore, police officers were entitled

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to qualified immunity on plaintiff's false arrest claim brought under § 1983. Jones v. Johnson, C.A.7 (Ill.) 1994, 26 F.3d 727, certiorari granted 115 S.Ct. 713, 513 U.S. 1071, 130 L.Ed.2d 621, affirmed 115 S.Ct. 2151, 515 U.S. 304, 132 L.Ed.2d 238. Civil Rights 1376(6)

Sheriff's deputy was not entitled to qualified immunity in arrestee's § 1983 action alleging that deputy violated her due process rights by detaining her on basis of misidentification as fugitive; arrestee had clearly established right against false imprisonment without due process at time of arrest, and reasonable officer would have attempted to obtain information from arrestee for purposes of filling out arrest report, rather than copying data from computer printout concerning fugitive, and would have been unlikely, in face of arrestee assertions of mistaken identity, to sign affidavit swearing to belief that arrestee was fugitive without taking any steps to verify that belief. Cannon v. Macon County, C.A.11 (Ala.) 1993, 1 F.3d 1558, modified on rehearing 15 F.3d 1022. Civil Rights 1376(6)

Police officer's possession of facially valid arrest warrant at time he made arrest did not give officer qualified immunity from liability and civil rights action for false arrest where officer knew that warrant was not supported by probable cause; at time officer executed warrant, reasonable officer would have known that Fourth Amendment forbade execution of facially valid arrest warrant that was not supported by probable cause. Juriss v. McGowan, C.A.7 (Ill.) 1992, 957 F.2d 345. Civil Rights 1376(6)

Bus driver had good faith and reasonable belief that passenger's spitting in face of driver and uttering racial epithet constituted commission of crime, and therefore driver was justified in detaining passenger, such that she could not maintain action for violation of federal civil rights statute, in light of determination that driver did not violate clearly established right of passenger. Saidi v. Washington Metropolitan Area Transit Authority, D.D.C.1996, 928 F.Supp. 21. Civil Rights 1376(4)

Alleged conduct of clerk of circuit court and county sheriff in failing to correct deficient computer systems listing outstanding arrest warrants, despite their knowledge that hundreds of people were being arrested on invalid warrants as result of deficient systems, violated arrestee's clearly established right to be free from unlawful arrest, and therefore, if alleged conduct was proven, clerk and sheriff would not be entitled to qualified immunity on arrestee's § 1983 claim against such officers in their individual capacities for violation of his constitutional rights in connection with his unlawful arrest pursuant to invalid warrant. McMurry v. Sheahan, N.D.Ill.1996, 927 F.Supp. 1082. Civil Rights 1376(6); Civil Rights 1376(8)

Arresting officers were entitled to qualified immunity from claim of false arrest under civil rights deprivation statute, with respect to arrest for disorderly conduct arising from arrestee's attempts to disrupt private luncheon featuring Vice-President and Governor of Arkansas; any reasonable officer could have believed arrest to be lawful, in light of clearly established law and information arresting officers possessed. McIntosh v. White, E.D.Ark.1987, 676 F.Supp. 912, affirmed 856 F.2d 1185. Civil Rights 1376(6)

District court's alleged failure to conduct full analysis in determination of whether city police officers were entitled to qualified immunity from liability for damages sought by arrestee under §§ 1983 did not amount to reversible error; although it might have been helpful for court to have been more explicit in determining that officers' conduct violated the arrestee's constitutional rights and that such rights were clearly established at the time of their alleged violation, the court's denial of officers' summary judgment motion grounded on immunity was based on conclusion in arrestee's favor as to both the existence of a right and the fact that it was clearly established at the time. Aczel v. Labonia, C.A.2 (Conn.) 2004, 92 Fed.Appx. 17, 2004 WL 287164, Unreported. Federal Courts 914

3875. ---- Protective custody, police activities, clearly established right

Law was not clearly established in 2001 that Fourth Amendment barred law enforcement officials from seizing apparently intoxicated individual in their role as community caretakers or from restraining detainee during medical procedure being conducted for non-investigatory purposes, and thus deputy sheriffs were entitled to qualified

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immunity from liability in detainee's §§ 1983 suit alleging that his seizure and detention violated Fourth Amendment, where individual was walking along rural road in winter, and was not wearing appropriate winter clothing. Tinius v. Carroll County Sheriff Dept., N.D.Iowa 2004, 321 F.Supp.2d 1064. Civil Rights 1376(6)

Issue as to whether placing person in protective custody for more than 12 hours constituted unreasonable seizure in violation of Fourth Amendment was one of first impression, and thus was not clearly established, as would preclude police officers from claiming qualified immunity in detainee's § 1983 suit against officers. Ringuette v. City of Fall River, D.Mass.1995, 906 F.Supp. 55. Civil Rights 1376(6)

3876. ---- Restraints, police activities, clearly established right

Police officers who hog-tied arrestee, causing his death, had fair and clear warning that such conduct was excessive force in violation of arrestee's clearly established Fourth Amendment rights, precluding qualified immunity from § 1983 claim by arrestee's representative, despite lack of fact-specific precedent involving hog-tie restraints; officers knew that arrestee had a head wound and had been sprayed with pepper spray, arrestee was compliant at the time of restraint, and existing case law did establish that use of force after suspect is compliant is unconstitutional. Garrett v. Unified Government of Athens-Clarke County, M.D.Ga.2003, 246 F.Supp.2d 1262, reversed in part 378 F.3d 1274. Civil Rights 1376(6)

Even if arresting officer violated arrestee's Fourth Amendment rights by applying handcuffs with excessive tightness and delaying loosening of the handcuffs for ten minutes after arrestee complained about pain caused by the handcuffs, a reasonable officer would not consider the officer's actions in the situation to be unlawful, and thus, arrestee's rights were not clearly established, and the officer was entitled to qualified immunity from arrestee's § 1983 claim for violation of his Fourth Amendment rights. Kopec v. Tate, E.D.Pa.2002, 230 F.Supp.2d 619, reversed and remanded 361 F.3d 772, certiorari denied 125 S.Ct. 453, 543 U.S. 956, 160 L.Ed.2d 317. Civil Rights 1376(6)

Law regarding handcuffing of police detainees and placing of detainees in squad cars was not settled, so that a reasonable officer in position of officers who handcuffed detainee and put him in back of squad car following traffic stop would have clearly known that such measures violated detainee's Fourth Amendment rights, and thus, officers were entitled to qualified immunity in detainee's §§ 1983 action alleging Fourth Amendment violations; neither Supreme Court nor Court of Appeals had addressed a case with closely parallel facts. Woodlen v. Jimenez, C.A.3 (Del.) 2006, 2006 WL 772894, Unreported. Civil Rights 1376(6)

3877. ---- Stops, police activities, clearly established right

Fourth Amendment right of elementary school student that was violated by deputy sheriff who, while serving as school resource officer (SRO), detained and handcuffed student after she allegedly acted in disrespectful manner and threatened teacher during physical education class was clearly established, and thus deputy was not entitled to qualified immunity in student's resulting §§ 1983 action; even if there was no factually similar pre-existing caselaw to put deputy on notice this his conduct was objectively unreasonable, handcuffing of compliant nine-year-old girl, who posed no safety concerns, for sole purpose of punishing her was obvious violation of her Fourth Amendment rights. Gray ex rel. Alexander v. Bostic, C.A.11 (Ala.) 2006, 458 F.3d 1295.

It was not clearly established in November 1997 that actions of officer of New York Department of Environmental Conservation in stopping vehicles, and making a brief detention and inquiry of vehicle occupants in order to perform deer tag and weapon safety checks during hunting season, were unreasonable and constituted an impermissible seizure in violation of Fourth Amendment, and thus, officer making stop was protected by qualified immunity in § 1983 action in which hunter who had been stopped alleged that his rights had been violated. Mollica v. Volker, C.A.2 (N.Y.) 2000, 229 F.3d 366. Civil Rights 1376(3); Civil Rights 1376(6)

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42 U.S.C.A. § 1983

State trooper was not required to use least intrusive means available to verify his suspicions that plaintiff motorist's temporary license registration was altered, and thus, trooper was entitled to qualified immunity in § 1983 action alleging that his continued detention of motorist violated clearly established law governing scope of detention for traffic violation because trooper first went to passenger side of vehicle and asked for driver's license and identification instead of immediately checking registration; trooper's actions were only minimally more intrusive than stop itself and were justified by his concern for his own safety. Foote v. Spiegel, C.A.10 (Utah) 1997, 118 F.3d 1416, on remand 995 F.Supp. 1347. Civil Rights 1376(6)

Actions of officers in ordering suspects who had been stopped from automobile at gunpoint were reasonable under clearly established law, and officers were entitled to qualified immunity in federal civil rights action brought by suspects, where officers had reasonable particularized suspicion to stop vehicle as suspects and automobile met general description given by witnesses of robbery and officers had information that suspects had fired on witness and were armed and dangerous. Alexander v. County of Los Angeles, C.A.9 (Cal.) 1995, 64 F.3d 1315. Arrest 63.5(7); Civil Rights 1376(6)

Police officers were not entitled to qualified immunity against civil rights claim in connection with detaining individual without reasonable suspicion; officers offered no reason why they would believe that citizens' Fourth Amendment rights were somehow diminished in airports and, in any event, law concerning airport stops of suspected drug couriers was well developed by the time the events leading to the present suit took place. Morgan v. Woessner, C.A.9 (Cal.) 1993, 997 F.2d 1244, certiorari dismissed 114 S.Ct. 671, 510 U.S. 1033, 126 L.Ed.2d 640. Civil Rights 1376(6)

State highway patrol officer was entitled to qualified immunity from liability in federal civil rights suit seeking damages based on his stopping a truck without a warrant where officer did not violate clearly established statutory or constitutional right by stopping truck to determine whether it was overweight based upon his observation of its squatty tires. Brierley v. Schoenfeld, C.A.10 (Utah) 1986, 781 F.2d 838. Civil Rights 1376(6)

Right of robbery suspects' companion not to be detained any longer than necessary for police officers to secure scene of investigatory detention of suspects was clearly established, and therefore qualified immunity did not apply to preclude officers' § 1983 liability to companion on claim that length of her detention was unreasonable under Fourth Amendment. Eisnnicher v. Bob Evans Farms Restaurant, S.D.Ohio 2004, 310 F.Supp.2d 936. Civil Rights 1376(6)

Police officer was entitled to qualified immunity from § 1983 liability for initial *Terry* stop of detainee suspected of carrying a gun; it was unclear at time of stop that anonymous tip that detainee was carrying a gun, without more, was insufficient to justify stop. Brown v. City of Milwaukee, E.D.Wis.2003, 288 F.Supp.2d 962. Civil Rights 1376(6)

Police officers' conduct in performing field sobriety test on side of road during lawful traffic stop did not violate clearly established constitutional rights of which a reasonable person would have known, and thus officers were entitled to qualified immunity from § 1983 claim brought by estate of detainee, who was struck by speeding vehicle and killed while performing field sobriety tests during traffic stop. Estate of George ex rel. George v. Michigan, E.D.Mich.2001, 136 F.Supp.2d 695, affirmed 63 Fed.Appx. 208, 2003 WL 1949584. Civil Rights 1376(6)

Officers' stop and search of arrestee did not violate clearly established constitutional law, and thus officers were entitled to qualified immunity with respect to arrestee's § 1983 Fourth Amendment claim; officers detained arrestee pursuant to anonymous tip that was relayed from police in another city, tip predicted future behavior, and arrestee matched tip's description of drug courier. Ferguson v. City of Montgomery, M.D.Ala.1997, 969 F.Supp. 674, affirmed 141 F.3d 1189. Civil Rights 1376(6)

Law on whether officer could continue to detain motorist in order to request driver's license, registration and run

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computer check after traffic stop was clearly established at time of traffic stop, for purposes of determining whether officers were entitled to qualified immunity from § 1983 liability. Foote v. Spiegel, D.Utah 1995, 903 F.Supp. 1463, affirmed in part, reversed in part, dismissed in part 118 F.3d 1416, on remand 995 F.Supp. 1347. Civil Rights 1376(6)

Police officer's conduct in preventing debtor's employee from following wrecker during repossession of wrecker did not violate any clearly established constitutional right of debtor, so that officer was entitled to qualified immunity in debtor's § 1983 action; officer was present at repossession on "civil standby" in order to keep peace, and officer merely stopped employee and requested his driver's license. Haverstick Enterprises, Inc. v. Financial Federal Credit, Inc., E.D.Mich.1992, 803 F.Supp. 1251, affirmed 32 F.3d 989. Civil Rights 1376(6)

Police officer's decision to stop truck based on tip by informant, who had provided information in the past, that truck was being used to transfer drugs and based on officer's investigation that truck owner was known to be trafficking in drugs did not violate clearly established precedent; therefore, officer was entitled to qualified immunity from liability in passenger's § 1983 action. Timberlake by Timberlake v. Benton, M.D.Tenn.1992, 786 F.Supp. 676. Civil Rights 1376(6)

City police officers, who allegedly stopped vehicle because occupants were not wearing seatbelts, were not entitled to qualified immunity from claims by passenger that seizure violated the Fourth Amendment; it was clearly established, under Pennsylvania law, that vehicle occupants' failure to wear seatbelts did not provide probable cause for traffic stop, police department knew law, and department had policy consistent with law. Stewart v. Trask, E.D.Pa.2003, 2003 WL 21500018, Unreported. Civil Rights 1376(6)

3878. ---- Roadblocks, police activities, clearly established right

Police officer who backed his squad car into path of fleeing motorcycle was entitled to qualified immunity from damages for violating motorcyclist's right to be free from unreasonable seizures; there was no clear authority at time of incident that intentional use of deadman roadblock was seizure. Donovan v. City of Milwaukee, C.A.7 (Wis.) 1994, 17 F.3d 944. Civil Rights 1376(6)

Right of motorist to be free from unreasonable seizure involving roadblock was clearly established in 1994 when motorist collided with vehicle at roadblock, for purposes of determining whether state troopers were qualifiedly immune from § 1983 action arising from roadblock; Supreme Court had established right of fleeing suspect to be free from unreasonable seizure in form of roadblock designed to kill him. Seekamp v. Michaud, D.Me.1996, 936 F.Supp. 23, affirmed 109 F.3d 802. Civil Rights 1376(6)

3879. ---- Excessive use of force, police activities, clearly established right

It was not clearly established in particularized sense that police officer violated Fourth Amendment's deadly-force standards by shooting disturbed suspect who was subject to felony no-bail warrant and who fled from officer in vehicle, and thus officer was entitled to qualified immunity in suspect's §§ 1983 excessive-force action against officer; persons in immediate area were at risk from flight, and suspect had demonstrated that he would do almost anything to avoid capture, since he started and accelerated vehicle even after officer had ordered him from it at gunpoint, had broken driver's-side window, and had struck suspect in head with weapon. Brosseau v. Haugen, U.S.2004, 125 S.Ct. 596, 543 U.S. 194, 160 L.Ed.2d 583, on remand 396 F.3d 1036. Civil Rights 1376(6)

Police officers were entitled to qualified immunity in §§ 1983 claim for their use of excessive force in employing a flashbang device to force shooting suspect from his home when they allegedly knew that the home contained accelerants, where the law was not clear that such conduct would violate suspect's rights. Bing ex rel. Bing v. City of Whitehall, Ohio, C.A.6 (Ohio) 2006, 456 F.3d 555. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

The right to be free from excessive force during an investigative detention was clearly established for qualified immunity purposes at the time that law enforcement officers made seizure. Cortez v. McCauley, C.A.10 (N.M.) 2006, 438 F.3d 980. Civil Rights 1376(6)

Police officers violated suspect's clearly established Fourth Amendment right to be free from excessive force where they shot an unarmed suspect from behind as he retreated from the scene of an apparent arson; thus, officers were not entitled to qualified immunity in suspect's civil rights action. Whitfield v. Melendez-Rivera, C.A.1 (Puerto Rico) 2005, 431 F.3d 1. Civil Rights 1376(6)

State police officers were qualifiedly immune from §§ 1983 claims that they used excessive force in deciding to activate Pennsylvania's Special Emergency Response Team (SERT) at suspect's house, inasmuch as *Sharrar* factors for deciding objective reasonableness of force were clearly established in 1999 when decision occurred, and officers did not apply such factors unreasonably, given their belief that suspect had targeted officer with laser-sighted weapon, and their limited knowledge of his medical conditions, including heart condition. Estate of Smith v. Marasco, C.A.3 (Pa.) 2005, 430 F.3d 140. Civil Rights 1376(6)

Even if arrestee had established a cognizable constitutional claim with respect to her allegation that police officer violated the Fourth and Fourteenth Amendments by using excessive force in tackling her while making her arrest, she failed to establish violation of a "clearly established" constitutional right, and so officer was entitled to qualified immunity as to that claim in arrestee's §§ 1983 action; the constitutional violation, if any, was by no means "obvious," given the officer-safety problem faced by the officer who, upon entering a house from which a fellow officer had just placed a distressed call for backup help, immediately saw that the resident and the other officer were in close proximity to each other and in the middle of some form of confrontation, and no precedent squarely governed the case, as court could not identify a single case predating the conduct at issue that prohibited tackling in a materially similar context. Lyons v. City of Xenia, C.A.6 2005, 417 F.3d 565. Civil Rights 1376(6)

Right of nonviolent arrestee to be free from unnecessary pain knowingly inflicted during arrest was clearly established as of November 9, 2000, for purposes of determining whether arresting officers were entitled to qualified immunity from liability under §§ 1983 on arrestee's claim that they violated his Fourth Amendment rights by attempting to place him in back seat of police cruiser after he specifically explained that his legs would not bend on account of his muscular dystrophy, where arrestee had not committed severe crime and posed no imminent risk of active physical resistance, violence, or flight, and no exigent circumstances required officers to immediately place arrestee in cruiser. St. John v. Hickey, C.A.6 (Ohio) 2005, 411 F.3d 762, on remand 2006 WL 293790. Civil Rights 1376(6)

Earned income tax credits (EITCs) to which Chapter 7 debtors were entitled on their federal income tax returns did not lose them exempt character under Alabama law, as "amounts paid or payable as public assistance to needy persons," simply because debtors chose to receive them as lump-sum refunds. In re James, C.A.11 (Ala.) 2005, 406 F.3d 1340. Exemptions 37

Right to be free from excessive force was clearly established at time officer seized motel occupant, and thus officer was not entitled to qualified immunity for pointing gun at guest motel's face, jerking him from room, spinning him around, handcuffing him, and twisting guest's back so as to aggravate prior injury without grounds for believing that guest was dangerous, posed risk of flight, or had committed crime. Turmon v. Jordan, C.A.4 (S.C.) 2005, 405 F.3d 202. Civil Rights 1376(6)

Reasonable officer would not have been on notice in October 1997 that use of flash-bang device inside dark apartment where five to eight people might have been sleeping was unconstitutional, and, consequently, officers were entitled to qualified immunity from liability in citizen's civil rights lawsuit against officers under Fourth Amendment alleging excessive use of force in search; although court held that officers violated citizen's Fourth

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Amendment rights in use of flash-bang, error was not so egregious without guidance from courts as to have been unreasonable application of law that existed at time of incident. Boyd v. Benton County, C.A.9 (Or.) 2004, 374 F.3d 773. Civil Rights 1376(6)

Right of arrestee to be free from use of excessive force in course of being handcuffed was clearly established, precluding qualified immunity for arresting officer in disorderly conduct arrestee's §§1983 Fourth Amendment action against officer alleging that officer placed excessively tight handcuffs on arrestee and needlessly failed to respond for 10 minutes to arrestee's pleas to loosen them, resulting in permanent nerve damage. Kopec v. Tate, C.A.3 (Pa.) 2004, 361 F.3d 772, certiorari denied 125 S.Ct. 453, 543 U.S. 956, 160 L.Ed.2d 317. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity for violation of arrestee's Fourth Amendment rights by using pepper spray on her while she was handcuffed and secured in the back of a patrol car; officer's conduct was so obviously at the very core of what the Fourth Amendment prohibited that the unlawfulness of the conduct was readily apparent to him, notwithstanding the lack of fact-specific case law. Vinyard v. Wilson, C.A.11 (Ga.) 2002, 311 F.3d 1340. Civil Rights 1376(6)

Officer was entitled to qualified immunity for releasing police dog, after giving appropriate warnings to suspect to stop, to apprehend suspect who had fled from minor traffic accident, as it was not clearly established in 1994 that using police dog trained in "bite and hold" method was excessive force, particularly under existing circumstances; officer knew that suspect was also suspect in prior robbery, and officer did not know whether suspect, who was fleeing through residential area, was armed. Jarrett v. Town of Yarmouth, C.A.1 (Mass.) 2002, 309 F.3d 54, rehearing granted, opinion withdrawn, rehearing en banc denied, opinion after grant of rehearing 331 F.3d 140, rehearing and suggestion for rehearing en banc denied, certiorari denied 124 S.Ct. 573, 540 U.S. 1017, 157 L.Ed.2d 431. Civil Rights 1376(6)

It was not clearly established in June 1996 that use of "hog-tie" restraint, in which subject's ankles are bound to his wrists behind his back, to subdue arrestee, who had been running around naked outside, and whose diminished capacity, which was apparently due to drug use, was obvious, constituted the use of excessive force in violation of arrestee's Fourth Amendment rights, and thus, arresting officers were protected by qualified immunity in § 1983 action by administrator of estate of arrestee, who had died while so restrained. Cruz v. City of Laramie, Wyo., C.A.10 (Wyo.) 2001, 239 F.3d 1183. Civil Rights 1376(6)

Police officer did not have clearly established duty to warn store proprietors that they were about to enter dangerous crime scene, thus entitling officer to qualified immunity on proprietors' excessive force claim based on any failure to warn, with respect to alleged maltreatment of proprietors by other officers when proprietors attempted to enter area around their stores; officer had not affirmatively assured proprietors that he would protect or assist them in their rush to store, so as to give rise to special relationship, nor did proprietors allege that they faced a special danger. Ensley v. Soper, C.A.11 (Ga.) 1998, 142 F.3d 1402. Civil Rights 1376(6)

Force that defendant police officer used in firing at fleeing car in which his partner's arm was momentarily caught was not "excessive" under clearly established law, as entire incident took only few short seconds, and officer's partner was in serious danger during that period; thus, officer was entitled to qualified immunity in § 1983 action by passenger whom officer's bullet struck. Pittman v. Nelms, C.A.4 (Md.) 1996, 87 F.3d 116. Civil Rights 1376(7)

Police officers, who, inter alia, rammed fist into testicles of man who filed and won lawsuit against law enforcement agencies, were entitled to qualified immunity where, in 1988, when conduct occurred, constitutional tort of retaliation against individual for having filed and won lawsuit was not so clearly established that reasonable official would understand that actions taken with this intent violated First Amendment. Hale v. Townley, C.A.5 (La.) 1995, 45 F.3d 914, rehearing and suggestion for rehearing en banc denied 51 F.3d 1047. Civil Rights

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42 U.S.C.A. § 1983

1376(6)

Reasonable police officer could have believed that limited force applied was proper and was not unconstitutionally excessive in light of clearly established law, and thus police officer was entitled to qualified immunity in connection with his use of physical force to remove boy from private residence after homeowner asked that boy be removed and it became clear that he would not leave of his own volition, and boy had been informed that police officer was chief of police; no closely analogous case would have notified officer that actions would violate Fourth Amendment, and limited force applied was not so plainly excessive that officers should have known, even in absence of closely analogous case, that he was violating boy's constitutional rights. Jones by Jones v. Webb, C.A.7 (Ill.) 1995, 45 F.3d 178. Civil Rights 1376(6)

Rights to be free from unreasonable seizures, and to be free from use of excessive force, are both clearly established under Fourth Amendment for purposes of claim of qualified immunity of government official from liability on civil rights claim. Buckner v. Kilgore, C.A.6 (Tenn.) 1994, 36 F.3d 536, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(2)

Police officers, who arrested homeowners and their guests after neighbor complained about loud party, were protected by qualified immunity from claim that officers violated Fourth Amendment through use of excessive force, where partygoers fled into house trying to escape arrest after police ordered them to disperse, partygoers struggled with police, all but one partygoer suffered no injury or minor injury, and other partygoer's more serious injury of severed tendon was caused by her own actions. Greiner v. City of Champlin, C.A.8 (Minn.) 1994, 27 F.3d 1346. Civil Rights 1376(6)

Deputy sheriff was not entitled to qualified immunity in arrestee's § 1983 suit alleging that deputy sheriff handcuffed arrestee so tightly as to cause pain and bruises and refused to loosen handcuffs after arrestee complained of pain, since Fourth Amendment right to be free from use of excessive force during arrest was clearly established at time of plaintiff's arrest, and, in absence of showing of justification, no reasonable officer could have believed that abusive application of handcuffs was constitutional. Palmer v. Sanderson, C.A.9 (Wash.) 1993, 9 F.3d 1433. Civil Rights 1376(6)

Fisherman's right not to be handcuffed at time of his arrest for violation of reporting regulation was not clearly established, and state officers were entitled to qualified immunity in context of fisherman's excessive force claim; at time of arrest, there was no case standing for proposition that person had right not to be handcuffed in course of particular arrest, even if he did not resist or attempt to flee, and there was some authority indicating that policy of always using handcuffs during transportation of persons in custody was reasonable. Soares v. State of Conn., C.A.2 (Conn.) 1993, 8 F.3d 917. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from claim that they used excessive force in recapturing arrestee when officers hit arrestee in back, knocking him to ground; arrestee failed to point out closely analogous case that established that he had constitutional right to be free from type of force that officers used on him, and arrestee failed to show that force used by officers was so plainly excessive that officers should have been on notice that they were violating Fourth Amendment. Rice v. Burks, C.A.7 (Ill.) 1993, 999 F.2d 1172. Civil Rights 1376(6)

Police officer was not entitled to dismissal of civil rights action alleging use of excessive force even though there was no precisely analogous prior case proscribing officer's conduct of holding gun to head of nine-year-old boy and threatening to pull trigger during course of search of boy's residence, there was no claim that officers at scene were in danger or that child was a suspect or was attempting to evade or assault officers at time of incident. McDonald by McDonald v. Haskins, C.A.7 (Ill.) 1992, 966 F.2d 292. Civil Rights 1376(6)

Police officer who used "Taser" on apartment occupant reported to be potentially homicidal and suicidal was entitled to qualified immunity from claims asserted under the federal civil rights statute, § 1983, for excessive

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force; when "Taser" was used, apartment occupant stood facing police officers from a few feet with a knife in each hand, apartment occupant had made threatening statements to officers, and officer's use of nonlethal force to subdue potentially homicidal person did not transgress clearly established law, and use of "Taser" allegedly violated official policy. Russo v. City of Cincinnati, C.A.6 (Ohio) 1992, 953 F.2d 1036. Civil Rights 1376(6)

In order to establish qualified immunity defense to charge of excessive force, police officer must show either that his conduct did not violate clearly established rights of which reasonable person would have known or that it was objectively reasonable under Fourth Amendment for officer to believe that his acts did not violate clearly established rights. Finnegan v. Fountain, C.A.2 (N.Y.) 1990, 915 F.2d 817. Civil Rights 1376(6)

Claimant failed to show that police officer violated clearly established right by failing to loosen tight handcuffs, and, thus, officer was entitled to qualified immunity; claimant presented no evidence of contusions, lacerations or damage to bones or nerves of wrists, did not prove amount of force was substantial, and did not establish malice on part of officer. Hannula v. City of Lakewood, C.A.10 (Colo.) 1990, 907 F.2d 129. Civil Rights 1376(6)

Defendants were entitled to qualified immunity for alleged excessive force used in bringing plaintiff to mental hospital and his attorney into jury room, because their conduct did not violate clearly established statutory or constitutional rights of which reasonable person would have known. Chathas v. Smith, C.A.7 (Ill.) 1989, 884 F.2d 980, certiorari denied 110 S.Ct. 1169, 493 U.S. 1095, 107 L.Ed.2d 1071. Civil Rights 1376(6)

Officers were protected by qualified immunity for their use of deadly force in order to effect a lawful arrest of fleeing narcotics suspects where, at time of incident, law in area was still unsettled. Hamm v. Powell, C.A.11 (Fla.) 1989, 874 F.2d 766, on rehearing in part on other grounds 893 F.2d 293, certiorari denied 110 S.Ct. 3218, 496 U.S. 938, 110 L.Ed.2d 665. Civil Rights 1376(6)

At time of police shooting of suspected burglar in 1982, the shooting did not violate clearly established state law, so that police officer was entitled to qualified immunity. Washington v. Starke, C.A.6 (Mich.) 1988, 855 F.2d 346. Civil Rights 1376(6)

Corrections officers were not entitled to qualified immunity from liability in prisoner's excessive force claim for violation of the Eighth Amendment, based upon officers' conduct of pushing prisoner to floor, and handcuffing him, when prisoner tried to show officer a written medical excuse in an effort to explain noncompliance with officer's order; such conduct violated the Eighth Amendment, and the law prohibiting such conduct was clearly established at the time of the occurrence. Jackson v. Austin, D.Kan.2003, 241 F.Supp.2d 1313. Civil Rights 1376(7)

Taking the facts in light most favorable to arrestee, state troopers used excessive force in effecting arrest, in violation of arrestee's well-established Fourth Amendment rights, and thus, troopers were not entitled to qualified immunity on arrestee's §§ 1983 excessive force claim against them; arrestee contended that trooper beat his head against the floor several times after he was already on the ground. Manning v. Washington, W.D.Wash.2006, 463 F.Supp.2d 1229. Civil Rights 1376(6)

Police officer's alleged acts of violently wrenching passive arrestee off of stairs where he was sitting and throwing him to the ground while thrusting a knee into his back, causing his face to smash into a cement pad, and second officer's alleged act of standing by and watching, violated defendant's clearly established Fourth Amendment right to be free from use of excessive force, as would have been understood by reasonable officers, and thus, officers were not entitled to qualified immunity on arrestee's §§ 1983 claim alleging use of excessive force. Smith v. Jackson, D.Me.2006, 463 F.Supp.2d 72. Civil Rights 1376(6)

Officers who grabbed female resident by front of tank top during execution of search warrant, jerked her through door opening, ripped her shirt and refused to allow her to change it for several hours, and pointed guns at her were

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not entitled to qualified immunity at summary judgment stage in resident's §§ 1983 claim alleging excessive force; resident was complying with search, and law was sufficiently clearly established to place reasonable law officer on notice that using this type of force was unlawful. Hansen v. Schubert, E.D.Cal.2006, 459 F.Supp.2d 973. Civil Rights 1376(6)

Officers who dragged resident out of bed by arm during execution of search warrant, pinned him up against entertainment center, pushed shotgun against his head, placed him in handcuffs, and searched his mouth were not entitled to qualified immunity at summary judgment stage in resident's §§ 1983 excessive force claim; although law that handcuffing person during search for evidence violated Fourth Amendment was not clearly established at time of search, law was sufficiently clear to place officer on notice that using this type of force against individual complying with search was unlawful. Hansen v. Schubert, E.D.Cal.2006, 459 F.Supp.2d 973. Civil Rights 1376(6)

Officers who executed search warrant at auto service and storage garage and, in course of executing warrant, stepped on back and knee of innocent bystander, who was at garage to pick up parts, were entitled to qualified immunity in bystander's §§ 1983 excessive force action; no clearly established rule prohibited officers from using their feet to force bystander to comply with an order to remain on the ground after bystander moved his head and leg while being detained. Paul v. City of Rochester, W.D.N.Y.2006, 452 F.Supp.2d 223. Civil Rights 1376(6)

Even if police officer's conduct in kicking and stomping suspect in the buttocks area and groin constituted use of excessive force in violation of Fourth Amendment, it was not a violation of established law, and thus, officer was entitled to qualified immunity in suspect's §§ 1983 action; no prior case law addressed situation in which officers conducting buy-bust operation saw drug seller run to rear of apartment building and speak to another man who became a suspect when he ran or walked briskly with seller into building, suspect appeared to be reaching for waistband of his shorts, as if he was armed, and when officers entered building and identified themselves as police, suspect did not put his hands up as ordered, but instead turned around and fell into doorway of his apartment, lying on his stomach. Johnson v. District of Columbia, D.D.C.2006, 445 F.Supp.2d 1.

Fourth Amendment right to be free from excessive force, which police officer allegedly violated by beating motorist after traffic stop, was clearly established as of December 6, 2002, and officer thus was not qualifiedly immune from §§ 1983 claim asserted by motorist's survivors. Reindl v. City of Leavenworth, Kansas, D.Kan.2006, 443 F.Supp.2d 1222. Civil Rights 1376(6)

It was clearly established law that police officer could not explicitly encourage private actor to commit assault, and thus officer was not entitled to qualified immunity from liability under §§ 1983 in victims' action alleging that officer spoke with perpetrator immediately before attack, then watched attack from his car until other officers arrived. Garcia v. Brown, S.D.N.Y.2006, 442 F.Supp.2d 132. Civil Rights 1376(6)

Although evidence could support finding that police officer used excessive force when he sprayed motorist with pepper spray while attempting to arrest him during a traffic stop, motorist's constitutional right not to be subjected to excessive force was not clearly established in the context of motorist's case, and thus officer was entitled to qualified immunity in motorist's §§ 1983 action; case law gave no notice that officer's conduct was constitutionally impermissible and provided some basis to believe it was permissible. Davis v. City of Albia, S.D.Iowa 2006, 434 F.Supp.2d 692. Civil Rights 1376(6)

Law was not "clearly established," as to whether alleged misdemeanor offender, who did not resist or attempt to flee, had right to not be handcuffed in course of arrest, and thus arresting police officers were entitled to qualified immunity to arrestee's excessive force claim under Fourth Amendment in lawsuit under §§ 1983; although there was authority from two other Circuits which supported arrestee's claim, neither Supreme Court nor relevant Circuit had so held, and other Circuit authority was to the contrary. Barton v. City and County of Denver, D.Colo.2006, 432 F.Supp.2d 1178. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police officers' use of force in arresting mentally handicapped minor child was not clearly unreasonable, and thus officers were entitled to qualified immunity as to §§ 1983 claim brought by child and parent, alleging violations of child's Fourth Amendment rights; child put up significant resistance to arrest, and although he suffered cuts and bruises, he did not suffer more serious injuries, and may have caused injuries as much as officers allegedly did. Barlow ex rel. Moncebaiz v. Owens, S.D.Tex.2005, 400 F.Supp.2d 980. Civil Rights 1376(6)

For purposes of determining supervisory officials' entitlement to qualified immunity from liability under §§ 1983, on-duty officer's fatal shooting of off-duty officer in January, 2000, was violation of off-duty officer's clearly established Fourth Amendment right to be free from unreasonable seizure by police use of deadly force. Young v. City of Providence, D.R.I.2005, 396 F.Supp.2d 125. Civil Rights 1376(10)

Commander of local law enforcement drug unit, in his individual and official capacities, was entitled to qualified immunity as to Fourth Amendment excessive force claims asserted by arrestee in §§ 1983 action; although arrestee had a Fourth Amendment right to be free from unlawful arrest and seizure, there was no evidence commander participated in any alleged illegal activity or promulgated any rule or custom that led to any alleged illegal conduct. Jones v. Pandey, M.D.Ga.2005, 390 F.Supp.2d 1371. Civil Rights 1376(6)

Contours of applicable law regarding handcuffing of suspect who advised officers of pre-existing arm condition were not sufficiently settled such that reasonable warning could be inferred, and thus arresting officers were entitled to qualified immunity from liability in arrestee's §§ 1983 excessive force action, even if officers knew that arrestee had reverse shoulder prosthesis in her shoulder, and arrestee suffered broken humerus when her hands were handcuffed behind her back. Schultz v. Hall, N.D.Fla.2005, 365 F.Supp.2d 1218. Civil Rights 1376(6)

Female police officer, who had probable cause to believe detainee was carrying drugs, had qualified immunity from claim that excessive force was used in search, during which officer's gloved hand allegedly made contact with detainee's vagina and rectum, and vigorous pulling on underpants caused garment to enter rectum and cause damage; there were no cases in which comparable levels of alleged harm were found to violate victim's Fourth Amendment rights, precluding realization on part of officer that her conduct violated Constitution. Dominguez v. Metropolitan Miami-Dade County, S.D.Fla.2004, 359 F.Supp.2d 1323, affirmed 167 Fed.Appx. 147, 2006 WL 334243. Civil Rights 1376(6)

At the time altercation allegedly occurred between resident and animal control officer, the law concerning substantive due process violations was clearly established such that reasonable person in officer's position would have known that physically injuring someone with metal baton merely because that person tried to take tape recorder away from officer would violate person's Fourteenth Amendment rights, and therefore law was clearly established for purposes of officer's summary judgment motion based on qualified immunity defense. Tate v. Fish, D.N.M.2004, 347 F.Supp.2d 1049. Civil Rights 1376(6)

It was clearly established in December 1999 that a reasonable officer could not believe it was lawful to "take down" or physically assault a person who did not pose a threat and/or was not actively resisting arrest and attempting to escape, that an officer has a duty to intervene to prevent the use of excessive force by other officers, and that use of force is unreasonable and therefore excessive if need to use such force resulted from officer's own reckless or deliberate conduct during seizure, and thus, police officers were not entitled to qualified immunity in § 1983 action by arrestee who alleged that excessive force had been used by officer who made arrest, and that other officers present had failed to intervene. Hays v. Ellis, D.Colo.2004, 331 F.Supp.2d 1303. Civil Rights 1376(6)

Law enforcement officer was entitled to qualified immunity from liability, in excessive force claim brought by arrestee who sustained sprained and bruised wrist during handcuffing, absent showing that officer's conduct during the handcuffing and arrest violated any clearly established constitutional right. Mladek v. Day, M.D.Ga.2004, 320 F.Supp.2d 1373, affirmed 125 Fed.Appx. 978, 2004 WL 2805985, rehearing and rehearing en banc denied 129

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42 U.S.C.A. § 1983

Fed.Appx. 600, 2005 WL 179012. Civil Rights 1376(6)

For purposes of evaluating law enforcement officers' qualified immunity defense to victim's estate's excessive force claim, facts alleged a violation of victim's clearly established Fourth Amendment rights; under the facts alleged by victim's estate, victim was not committing any relatively severe crime, did not pose an immediate threat to the safety of the officers, and was not resisting arrest by attempting to flee the scene when officers shot victim in excess of five times with high-powered weapons while victim was approximately fifteen feet away from the officers. Murphy v. Bitsoih, D.N.M.2004, 320 F.Supp.2d 1174. Civil Rights 1376(6)

The constitutional rights of mentally ill driver, who died after sustaining multiple gunshot wounds by police officers when police officers shot into his vehicle as his vehicle was allegedly traveling at a slow rate of speed and allegedly not posing a serious threat to the officers or others, were sufficiently clear that a reasonable officer would have had fair warning at the time of the shooting that the use of deadly force to apprehend the driver would violate individual's constitutional rights, and thus officers were not entitled to qualified immunity in § 1983 action brought by the survivors of the driver against the police officers. Waterman v. Batton, D.Md.2003, 294 F.Supp.2d 709, reversed 393 F.3d 471. Civil Rights 1376(6)

It was clearly established in 2000, for purposes of qualified immunity, that the excessive use of force during an arrest or other seizure constituted a Fourth Amendment violation, and that the use of deadly force was permissible only when the officer reasonably believed that the suspect posed an immediate threat to the officer or others. Buchanan v. City of Milwaukee, E.D.Wis.2003, 290 F.Supp.2d 954. Civil Rights 1376(6)

Officer's use of violence against arrestee during questioning at police station regarding possible drunk driving violated arrestee's clearly established right to be free from excessive force, and thus officer was not entitled to qualified immunity in arrestee's § 1983 action; in response to arrestee's attempt to exit interrogation room, officer grabbed arrestee by the arm, throwing her in the direction of a chair and causing her to fall, after which arrestee weakly kicked officer, causing officer to kick arrestee in return, even though arrestee was lying on the floor and presented no threat to him. Eberle v. City of Newton, D.Kan.2003, 289 F.Supp.2d 1269, motion to amend denied 296 F.Supp.2d 1276. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity from § 1983 liability for highly intrusive tactics used to effectuate *Terry* stop of detainee, which involved officer and others surrounding detainee, shining lights at her to prevent her from seeing, pointing weapons at her, cocking them, and bombarding her with profanity-laced threats to shoot, based only on anonymous tip that she had a gun; it was clearly established that use of deadly force to apprehend a suspect was unreasonable, absent probable cause that suspect was dangerous or had committed violent crime, and detainee suffered permanent physical injury. Brown v. City of Milwaukee, E.D.Wis.2003, 288 F.Supp.2d 962. Civil Rights 1376(6)

Police officers accused of the use of excessive force in a § 1983 action, who do not violate clearly established constitutional or statutory rights which they may reasonably be expected to be aware of, are protected by a qualified immunity that protects all but the plainly incompetent or those who knowingly violate the law. Wilder v. Village of Amityville, E.D.N.Y.2003, 288 F.Supp.2d 341, affirmed 111 Fed.Appx. 635, 2004 WL 2381295, certiorari denied 125 S.Ct. 1708, 544 U.S. 949, 161 L.Ed.2d 526. Civil Rights 1376(6)

Unconstitutionality of use of gratuitous force against a suspect after he had been subdued was well established at time police officers kicked and struck motorist with their knees for 53 seconds as he lay on the ground, and thus, officers were not entitled to qualified immunity from motorist's excessive force claim under § 1983, given that right to be free from excessive force was clearly established under Fourth Amendment's prohibition against unreasonable seizures of the person at time of arrest, and there was no governmental interest in continuing to exert force against motorist in attempt to obtain evidence he had put in his mouth. Coleman v. Rieck, D.Neb.2003, 253 F.Supp.2d 1101, affirmed 154 Fed.Appx. 546, 2005 WL 3068056. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Television cameraman's right to be free from excessive force in arrest was clearly established at time police officer arrested him; officer's conduct, forcing cameraman to the ground, holding him down by kneeling on his back, wrenching his arms behind him, and handcuffing him, was clearly excessive, given that cameraman was not fleeing, presented no danger to officer or others, and had complied with police instructions while filming demonstration. Durruthy v. City of Miami, S.D.Fla.2002, 235 F.Supp.2d 1291, reversed 351 F.3d 1080, rehearing and rehearing en banc denied 97 Fed.Appx. 908, 2004 WL 385594, certiorari denied 125 S.Ct. 45, 543 U.S. 917, 160 L.Ed.2d 201. Arrest 68(2); Civil Rights 1376(6)

Police officers who allegedly apprehended motorist, after coming to motorist's home to issue citations for traffic violations, and threw him against his car were not entitled to qualified immunity from motorist's § 1983 action alleging excessive force; motorist's right to be free from such conduct was clearly established. Hummel v. City of Carlisle, S.D.Ohio 2002, 229 F.Supp.2d 839. Civil Rights 1376(6)

Parole officer's actions in imposing neckhold upon parolee was not contrary to clearly established standards, and thus officer was entitled to qualified immunity on Fourth Amendment excessive force claim under § 1983 brought by parolee; neckhold imposed by officer, while alleged to have obstructed parolee's breathing, did not cause him to lose consciousness or pass out, did not cause damage to his trachea or larynx, and was administered for only very brief period of time, it was administered in context of parolee, who was a large man who had tested positive for cocaine use, who had a history of resisting arrest, resisting arrest in a small room with dangerous conditions, such as unsecured chairs and a sharp ledge, and civilians nearby. Ferguson v. Leiter, N.D.Ohio 2002, 220 F.Supp.2d 875. Civil Rights 1376(7)

It was clearly established right to be free of police officers' use of excessive force, and thus township was not entitled to qualified immunity from liability in individual's § 1983 action if officers did indeed use excessive force as result of township's failure to properly supervise and train its officers. Campbell v. Erie Tp., E.D.Mich.2001, 133 F.Supp.2d 953. Civil Rights 1376(4); Civil Rights 1376(6)

Due process right to be free from excessive force was not clearly established when passenger in school van was shot by police in attempt to stop driver who commandeered van, and thus officers enjoyed qualified immunity from § 1983 claim brought by administratrix of passenger's estate. Medeiros v. O'Connell, D.Conn.1997, 955 F.Supp. 21, affirmed 150 F.3d 164. Civil Rights 1376(6)

Hunters who exchanged gunfire with police officers sufficiently alleged violation of hunters' constitutional rights, for purpose of determining whether officers were entitled to qualified immunity in hunters' § 1983 action, where hunters asserted that officers used excessive force. Wicker v. City of Galveston, S.D.Tex.1996, 944 F.Supp. 553. Civil Rights 1396

It was clearly established in 1990 that unreasonable beating of arrestee by police officers violated persons rights and that denial of needed medical attention was also a violation. Gonsalves v. City of New Bedford, D.Mass.1996, 939 F.Supp. 921. Civil Rights 1376(6)

It was clearly established at time of encounter between deputy sheriff and arrestee in May of 1991 that Fourth Amendment provided protection against use of excessive force and that only that force which was reasonably necessary to defend against bodily harm while making the arrest was justified. Denmark v. Lee County, M.D.Fla.1996, 931 F.Supp. 831. Civil Rights 1376(6)

Section 1983 plaintiff failed to allege constitutional violation against town officer in connection with death of allegedly mentally ill individual who was shot by deputy during attempt by officer and deputy to execute involuntary commitment order; there was no evidence that officer shot individual or was in any way liable for deputy's actions, and officer was not required to immediately take individual into custody without identifying himself or deputy or informing individual of purpose of their visit. Dowdell v. Chapman, M.D.Ala.1996, 930

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42 U.S.C.A. § 1983

F.Supp. 533. Civil Rights 1088(4)

Police officers were entitled to qualified immunity on excessive force claim asserted by § 1983 plaintiff who was shot by one of officers while in process of demonstrating expressed intent to kill officer by throwing metal bar at officer, as plaintiff failed to show violation of clearly established law and that officers, acting reasonably, should have known that they were in violation of law; essence of excessive force claim was that officers exercised poor judgment when they failed to heed plaintiff's early demand to leave him alone, when they drew their weapons and pointed them at plaintiff, and when officer decided to shoot plaintiff rather than attempt to duck or dodge metal bar. McRae v. Tena, D.Ariz.1996, 914 F.Supp. 363, affirmed on other grounds 113 F.3d 1241. Civil Rights 1376(6)

Defendant police officer's alleged "violent" poking and pushing of motorist whom second officer had stopped for allegedly improper left turn was not statutory or constitutional violation of excessive force; motorist did not allege that he was physically injured by poke or push, motorist disobeyed defendant's order to stay in his car, and officers rejected motorist's statement suggesting that he be "locked up." Lanigan v. Village of East Hazel Crest, N.D.Ill.1996, 913 F.Supp. 1202. Civil Rights 1088(4)

Police officer was not entitled to qualified immunity in federal civil rights action brought by minors who alleged that officer had used excessive force in searching minors after they had been detained; it was clearly established in September 1993, when search occurred, that unresisting suspect had right not to be subjected to excessive force during search, and amount of force actually used was material fact in dispute. Irvin v. Kaczmaryn, N.D.Ill.1996, 913 F.Supp. 1190. Civil Rights 1376(6)

Police officer loses qualified immunity and can be sued under § 1983 if shooting by officer was constitutional violation and constitutional standards were clearly established at time of shooting. Estate of Saldana by Saldana v. Weitzel, E.D.Wis.1996, 912 F.Supp. 413. Civil Rights 1376(6)

Use of excessive force during arrest, investigatory stop, or any other seizure of person at liberty violates person's Fourth Amendment rights and is actionable under federal civil rights statute. Valanzuela v. Snider, D.Colo.1995, 889 F.Supp. 1409. Civil Rights 1088(4)

Police officer's alleged threat to break car window with crow bar and to physically drag driver out of the car did not rise to level of constitutional violation required to state claim under § 1983. Schilling v. Swick, W.D.Mich.1994, 868 F.Supp. 904. Civil Rights 1088(2)

Police officer did not violate any clearly established law in entering assault suspect's home with his weapon drawn, entitling officer to qualified immunity in civil rights action arising when suspect was fatally shot; officer knew that suspect had fled arrest and was currently threatening fellow officers with a knife could have reasonably believed that use of weapon to subdue suspect was necessary. Alto v. City of Chicago, N.D.Ill.1994, 863 F.Supp. 658. Civil Rights 1376(6)

Arrestee's Fourth Amendment right to be free of excessive force during arrest was clearly established at time of arrest and, thus, arresting officers did not have qualified immunity from arrestee's § 1983 claim for unreasonable use of force. Gibson v. City of Clarksville, Tenn., M.D.Tenn.1993, 860 F.Supp. 450. Civil Rights 1376(6)

Police did not violate clearly established Fourth Amendment rights of motorcyclist and passenger by engaging in high-speed chase or establishing roadblock, as needed to overcome claims that a doctrine of qualified immunity applied to § 1983 civil rights claims for liability against individual police officer; Supreme Court decision establishing rights of fleeing suspect who was shot did not apply to high-speed pursuit and roadblocks, police department training bulletin regarding use of deadly force was in context of using firearms, and operating procedure allowed use of roadblock when vehicle being pursued creates substantial risk of injury or death.

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Donovan v. City of Milwaukee, E.D.Wis.1992, 845 F.Supp. 1312, affirmed 17 F.3d 944. Civil Rights 1376(6)

Police chief, acting as reasonable person, could not have known that policies he was instituting and implementing to govern use of force on arrested persons would violate constitutional rights of allegedly intoxicated arrestee and, thus, chief was entitled to qualified immunity in civil rights action. Scott v. City of Lanett, M.D.Ala.1993, 845 F.Supp. 815. Civil Rights 1376(6)

Even if police officer's conduct in using pepper spray against an arrestee and striking the arrestee in the thigh with a flashlight had violated the arrestee's constitutional rights, the contours of those rights were not sufficiently clear that a reasonable official would have understood that what he was doing violated those rights, and thus, the officer was entitled to qualified immunity as to the arrestee's excessive force claim. Portillo v. Montoya, C.A.9 (Ariz.) 2006, 170 Fed.Appx. 453, 2006 WL 475457, Unreported. Civil Rights 1376(6)

Qualified immunity did not apply to shield from liability deputies who allegedly caused death of detainee by restraining him to point of positional asphyxia, following his arrest on misdemeanor charge of trespass, even though detainee, while uncooperative, was not endangering himself or officers, given that county's own regulations warned against danger of restraint chair causing positional asphyxia and that the law was clearly established that deputies could not deploy such potentially lethal force under existing circumstances. Agster v. Maricopa County Sheriff's Office, C.A.9 (Ariz.) 2005, 144 Fed.Appx. 594, 2005 WL 1684962, Unreported. Civil Rights 1376(6)

Even if police officer's conduct in effecting arrest of developmentally-disabled student, when she took student to ground, handcuffed him, and, with help of other officers, hobbled his legs and sent him to hospital on mental hold, violated student's Fourth Amendment rights against excessive force, officer was nonetheless entitled to qualified immunity because student's right was not clearly established at time incident occurred; general Fourth Amendment cases and even those in school context suggested that officer's conduct fell into hazy border between excessive and acceptable force. Hayenga ex rel. Hayenga v. Nampa School Dist. No. 131, C.A.9 (Idaho) 2005, 123 Fed.Appx. 783, 2005 WL 375731, Unreported. Civil Rights 1376(6)

Arresting officer was not entitled to qualified immunity from arrestee's suit under § 1983, despite lack of caselaw expressly prohibiting officer's specific conduct, where undisputed facts established prima facie case of claim for excessive force, no caselaw permitted officer's specific conduct, and Fourth Amendment right to be free from excessive use of force by law enforcement officers was clearly established; arrestee, teenage girl weighing less than 100 pounds, with no known history of violence, fled from officer attempting to arrest her for nonviolent offense of truancy, officer chased and tackled her, and her pelvis was broken as result of tackle. Brown v. Long Beach Police Dept., C.A.5 (Miss.) 2004, 105 Fed.Appx. 549, 2004 WL 1588214, Unreported. Civil Rights 1376(6)

Police officers did not have qualified immunity from claim that they assaulted victim in course of arresting him for disorderly conduct and public urination; assault in course of arrest clearly violated established statutory and constitutional rights of which officer was or should have been aware. Lazaratos v. Ruiz, S.D.N.Y.2003, 2003 WL 22283832, Unreported. Civil Rights 1376(6)

Defense of qualified immunity would not be available to arresting officer, on property owner's § 1983 excessive force claim, arising from deputy's alleged use of excessive force in grasping owner's wrist and alleged throwing of owner into back seat of police cruiser when owner was already hand-cuffed and not resisting, as right to be free from excessive force was sufficiently clear at time of arrest. Collin v. Stephenson, S.D.Ohio 2002, 2002 WL 31409874, Unreported. Civil Rights 1376(6)

Law was clearly established, for purposes of qualified immunity, that macing motorist for refusing to get into police cruiser, while she was handcuffed and was demanding to see trooper's identification, would violate motorist's Fourth Amendment rights; officer's conduct lay so obviously at very core of what Fourth Amendment

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prohibited that its unlawfulness was readily apparent to official, notwithstanding lack of case law. Martinez v. New Mexico Dept. of Public Safety, C.A.10 (N.M.) 2002, 47 Fed.Appx. 513, 2002 WL 1753176, Unreported, certiorari dismissed 123 S.Ct. 1015, 537 U.S. 1180, 154 L.Ed.2d 930. Civil Rights 1376(6)

3880. ---- Medical attention, police activities, clearly established right

Police sergeant's alleged conduct of brutally and incessantly questioning suspect, after he had been shot in the face, back, and leg, interfering with suspect's medical treatment while he was screaming in pain and going in and out of consciousness, and continuing the "interrogation" over suspect's pleas for him to stop so that he could receive treatment, if proven, violated suspect's clearly established due process rights, thus police sergeant was not entitled to qualified immunity in civil rights action brought by suspect. Martinez v. City of Oxnard, C.A.9 (Cal.) 2003, 337 F.3d 1091, rehearing en banc denied 354 F.3d 1168, certiorari denied 124 S.Ct. 2932, 542 U.S. 953, 159 L.Ed.2d 835. Civil Rights 1376(6)

Arrestee's allegations that police officers denied him medical attention for express reason that he had fled scene of accident without regard for plight of other victims, even though his face and chest were scarred with abrasions, he was in pain, he informed officers that he needed attention, and officers knew that he had been involved in automobile accident, were sufficient to allege violation of arrestee's clearly established right to medical attention, as required for arrestee to maintain civil rights action against officers. Nerren v. Livingston Police Dept., C.A.5 (Tex.) 1996, 86 F.3d 469. Civil Rights 1376(6)

Failure to render medical aid to intoxicated arrestee who had been involved in motorcycle accident by transporting him to hospital against his wishes did not violate any clearly established Fourth Amendment right, as required to deny qualified immunity to police officers. Patrick v. Lewis, D.Minn.2005, 397 F.Supp.2d 1134. Civil Rights 1376(6)

Police officers had qualified immunity from § 1983 action brought by wife of deceased husband for police officers' failure to assist when husband suffered heart attack, because wife presented no analogous cases which would suggest that officers acted or failed to act as required by Constitution, and therefore, police officers enjoyed benefit of doubt that they did not violate husband's clearly established statutory or constitutional rights of which a reasonable person would have known. Cowgill v. City of Marion, N.D.Ind.2000, 127 F.Supp.2d 1047. Civil Rights 1376(6)

3881. ---- Evidence, police activities, clearly established right

County law enforcement officers' alleged conduct in mishandling and destroying DNA sample that could have been used for DNA testing by citizen in challenging his conviction for kidnapping, rape, and murder violated citizen's well established due process right not to have officers fail to preserve potentially useful evidence in bad faith, and thus, officers were not entitled to qualified immunity on citizen's §§ 1983 claim, since citizen alleged that officers knew of the exculpatory value of the evidence at time it was destroyed. Yarris v. County of Delaware, C.A.3 (Pa.) 2006, 465 F.3d 129. Civil Rights 1376(6)

Homeowners asserted violation of constitutional right, as required to defeat police officers' claims of qualified immunity, when they alleged that officers intentionally disposed of evidence pertaining to theft of homeowners' property to prevent homeowners from suing person believed to be thief. Harrell v. Cook, C.A.7 (Ill.) 1999, 169 F.3d 428. Civil Rights 1376(6)

Deputy sheriff was not entitled to qualified immunity from claims alleging that he wrongfully investigated, prosecuted, convicted, and incarcerated plaintiffs, that he fabricated evidence and manufactured probable cause, that plaintiffs were held in custody despite a lack of probable cause to do so, and that deputy and others conspired to maliciously prosecute and convict them, since plaintiffs sufficiently raised claims that alleged violations of their

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constitutional rights, and these constitutional rights were clearly established at time in question. Spurlock v. Satterfield, C.A.6 (Tenn.) 1999, 167 F.3d 995. Civil Rights 1376(6)

Police department forensic criminalist had clearly established independent duty under *Brady* to disclose directly to a criminal defendant material serological evidence that was favorable to defendant, and therefore criminalist was not entitled to qualified immunity from §§ 1983 claim brought by former convict, who was released after DNA testing on the physical evidence used against him exonerated him of sex offenses for which he was convicted; criminalist had a significant role in the prosecution since he accompanied officers to the crime scene to collect evidence, tested that evidence, tested former convict, tested a boyfriend of one of the victims, and then lied on the stand about the inculpatory nature of his findings. Charles v. City of Boston, D.Mass.2005, 365 F.Supp.2d 82. Civil Rights 1376(6)

Police officer did not violate plaintiff's clearly established constitutional rights and was immune from monetary liability in civil rights action under § 1983 where his participation in case in which plaintiff may have been falsely imprisoned and maliciously prosecuted was limited to testimony before grand jury based on police file, offense/incident report, and packaging and labeling of some of the evidence sent to police laboratory, and where officer merely followed instruction of superior and there was no probative evidence that he knew of information pointing to lack of probable cause to arrest plaintiff, or that he gave testimony to grand jury which he knew to be false, or otherwise acted in bad faith. Dean v. Earle, W.D.Ky.1994, 866 F.Supp. 336. Civil Rights 1376(6)

Former police officer failed to state a claim for discrimination in connection with the denial of a pistol license; the notice of disapproval contained an independent ground for denial, namely his failure to disclose a suicide attempt, which did not pertain to any allegedly manufactured false statements. Acista v. City of New York, S.D.N.Y.2004, 2004 WL 691270, Unreported. Civil Rights 1072

3882. ---- False reports, police activities, clearly established right

Arrestee's allegation that fire marshall agent knowingly transmitted false statements over National Crime Information Center (NCIC) computer system, to cause unjustifiedly extended incarceration, stated violation of arrestee's clearly established Fourteenth Amendment rights of which reasonable agent would have known, as required to overcome marshall's qualified immunity defense. Clanton v. Cooper, C.A.10 (Okla.) 1997, 129 F.3d 1147. Civil Rights 1376(3)

Deputy marshal's alleged filing of false reports of animal cruelty by tenant on property subject to forfeiture did not violate clearly established constitutional right, and, thus, marshal was entitled to qualified immunity. Brayman v. U.S., C.A.8 (Iowa) 1996, 96 F.3d 1061. Civil Rights 1376(6)

Although police officers' filing of allegedly false reports, which were unsworn, was not itself actionable under § 1983, arrestee stated § 1983 claim by alleging that false reports served as basis for prosecution and that officers subsequently "ratified" filing of such reports by testifying falsely at suppression hearing and trial. Wilson v. Lyons, D.Me.2003, 270 F.Supp.2d 73. Civil Rights 1088(5)

3883. ---- Failure to act, police activities, clearly established right

Police officials were entitled to qualified immunity for their alleged conduct in implicitly condoning and encouraging officer's conduct in drinking excessively and driving, by drinking with officer on numerous occasions while on-duty and off-duty, for purpose of §§ 1983 substantive due process action asserted by family members of pedestrians who were killed when officer drank excessively with other officers and then drove his car through several red lights; it was not clearly established law that such conduct constituted implicit sanctioning of such behavior. Pena v. DePrisco, C.A.2 (N.Y.) 2005, 432 F.3d 98. Civil Rights 1376(6)

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District Court's determination in denying summary judgment on qualified immunity grounds to police officers in equal protection action against them that there were triable issues of fact as to whether officers acted out of illegitimate animus and improper motive, and not for any legitimate state objective, did not thwart Court of Appeals' jurisdiction to review purely legal question whether, at time of alleged misconduct, law was clearly established that refusal to arrest city councilman for domestic violence due to his official position constituted selective withdrawal of police protection in violation of Equal Protection Clause. Lunini v. Grayeb, C.A.7 (Ill.) 2005, 395 F.3d 761, amended on denial of rehearing. Federal Courts 579

Officer who stopped plaintiff was entitled to qualified immunity from § 1983 claim that officer breached his duty to protect plaintiff from another officer's use of excessive force, where other officer's use of force was reasonable, and there was no clearly established standard to govern actions of officer who stopped plaintiff. Lowery v. Stovall, C.A.4 (Va.) 1996, 92 F.3d 219, certiorari denied 117 S.Ct. 954, 519 U.S. 1113, 136 L.Ed.2d 841. Civil Rights 1376(6)

It was clearly established, at time of conduct giving rise to civil rights claim, that officer has affirmative duty for law enforcement official to intervene to prevent another law enforcement official's use of excessive force, for purposes of police officer's qualified immunity defense to civil rights claim against police officer who allegedly watched as another police officer allegedly used excessive force during investigative stop. Mick v. Brewer, C.A.10 (Kan.) 1996, 76 F.3d 1127, on remand 923 F.Supp. 181, on remand 1997 WL 225908. Civil Rights 1376(6)

Law was clearly established as of December 6, 2002, that law enforcement officer who failed to intervene, if he had opportunity, to prevent another officer's use of excessive force could be liable under §§ 1983, and, thus, officers were not qualifiedly immune from claim asserted by motorist's survivors. Reindl v. City of Leavenworth, Kansas, D.Kan.2006, 443 F.Supp.2d 1222. Civil Rights 1376(6)

Even if arrestee had an individual Second Amendment right to keep and bear arms, that right was not clearly established, and thus, law enforcement officers were entitled to qualified immunity on arrestee's §§ 1983 claim that officers violated arrestee's individual Second Amendment rights by seizing his firearms during search of his residence. Bloomquist v. Albee, D.Me.2006, 421 F.Supp.2d 162. Civil Rights 1376(6)

Alleged conduct of police officers in failing to report fellow officer's alleged use of excessive force did not violate any clearly established law, and therefore, officers who did not make report were entitled to qualified immunity from arrestee's § 1983 claims. Franklin v. City of Kansas City, D.Kan.1997, 959 F.Supp. 1380. Civil Rights 1376(6)

Duty of a law enforcement officer to intervene in an unlawful arrest was clearly established at time of arrest of mobile home occupant, as required to defeat qualified immunity claim of deputy sheriff in the arrestee's §§ 1983 action against the deputy for unlawful arrest, excessive force, and unlawful search in violation of the Fourth Amendment. Lepone-Dempsey v. Carroll County Com'rs, C.A.11 (Ga.) 2005, 159 Fed.Appx. 916, 2005 WL 3455821, Unreported. Civil Rights 1376(6)

3884. ---- Searches generally, police activities, clearly established right

Law enforcement officer was entitled to qualified immunity, for purpose of arrestee's §§ 1983 First Amendment retaliation claim, based on officer's search of arrestee's office and the seizure of arrestee's camera, allegedly in retaliation for lawsuit against county and other officers arising from prior arrest and other incidents; although the search was supported by probable cause, and a lack of probable cause was not required to prove retaliation claim, the right of an individual to be free of police action motivated by retaliatory animus, but supported by probable cause, was not clearly established at time officer conducted search. Skoog v. County of Clackamas, C.A.9 (Or.) 2006, 469 F.3d 1221. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police officer who frisked manager of office that was subject to search warrant as part of a vandalism investigation, when manager attempted to enter office while police were executing the warrant, was not entitled to qualified immunity for such conduct, in manager's §§ 1983 claim for violation of his Fourth Amendment right to be free from unreasonable searches and seizures; although case law allowed detention of persons on the premises during execution of a search warrant in situations involving dangerous circumstances or investigations of dangerous crimes, the law clearly did not permit searches of persons attempting to enter the premises, in a situation that did not involve dangerous circumstances. Denver Justice And Peace Committee, Inc. v. City Of Golden, C.A.10 (Colo.) 2005, 405 F.3d 923, certiorari dismissed 126 S.Ct. 1164, 163 L.Ed.2d 1016. Civil Rights 1376(6)

Although jury could find that strip searches and body cavity searches of arrestees were conducted in an unconstitutional manner, police officer was entitled to qualified immunity on arrestees' Fourth Amendment claims; the law was not clearly established at the time that application of some physical force to keep apparently resistant arrestees against the wall during the search, and anal and genital contact with a slender object, all accompanied by verbal abuse but in the absence of any injury or anal penetration, would violate arrestees' rights under the Fourth Amendment. Evans v. City of Zebulon, GA, C.A.11 (Ga.) 2003, 351 F.3d 485, rehearing granted, opinion vacated 364 F.3d 1298, on rehearing 407 F.3d 1272, rehearing and rehearing en banc denied 163 Fed.Appx. 850, 2005 WL 2314522. Civil Rights 1376(6)

For purposes of qualified immunity, homeowner's right to be free from a search of the curtilage of his home premised only upon reasonable suspicion, without probable cause plus either a warrant or exigent circumstances, was clearly established at the time of incident in August, 1997. Rogers v. Pendleton, C.A.4 (Va.) 2001, 249 F.3d 279. Civil Rights 1376(6)

Deputy sheriff's alleged reliance on legal advice in permitting search warrant for owner's home to be used to facilitate private individual in conducting independent search of home for items unrelated to those specified in warrant did not entitle deputy to qualified immunity in owner's resulting action alleging Fourth Amendment violation, where there was no indication that deputy's situation was otherwise extraordinary, and deputy did not follow advice he received. Buonocore v. Harris, C.A.4 (Va.) 1998, 134 F.3d 245. Civil Rights 1376(6)

Police officers, by permitting television crew to enter house and film during execution of search warrant, did not violate clearly established Fourth Amendment right of which they should have been aware and, thus, were entitled to qualified immunity in § 1983 action arising out of search. Parker v. Boyer, C.A.8 (Mo.) 1996, 93 F.3d 445, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1081, 519 U.S. 1148, 137 L.Ed.2d 216. Civil Rights 1376(6)

Allegation that federal agent and deputy sheriff invited private citizen into owner's home so that private citizen, acting independently of government agents, could conduct search for items not mentioned in search warrant stated violation of clearly established constitutional right, for purposes of agents' qualified immunity defense in homeowner's civil rights action. Buonocore v. Harris, C.A.4 (Va.) 1995, 65 F.3d 347. Civil Rights 1376(6)

Deputy sheriff and state police officer who prepared rape suspect profile on which deputy relied on seeking search warrant were entitled to qualified immunity in connection with § 1983 claim premised on inclusion of original profile's race component in warrant application; it was not clear that there was any infringement on plaintiff's rights and, even if there was, allegedly unconstitutional use of race component was not clearly established at time warrant was obtained in 1992. Simmons v. Poe, C.A.4 (Va.) 1995, 47 F.3d 1370. Civil Rights 1376(6)

Clearly established law existed at time of Secret Service agent's search of home that forbade bringing members of press into private home to observe and report on their activities, for purposes of determining whether agent was qualifiedly immune. Ayeni v. Mottola, C.A.2 (N.Y.) 1994, 35 F.3d 680, certiorari denied 115 S.Ct. 1689, 514 U.S. 1062, 131 L.Ed.2d 554. United States 50.10(3)

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42 U.S.C.A. § 1983

Arresting officer and police chief were entitled to qualified immunity from § 1983 claim arising from employment of force in obtaining blood sample from DUI arrestee; at time of arrest, case law had established that withdrawal of a subject's blood was permissible when subject was unconscious or objecting, provided that force used did not shock the conscience, and standard was not violated by arresting officer. Hammer v. Gross, C.A.9 (Cal.) 1991, 932 F.2d 842, certiorari denied 112 S.Ct. 582, 502 U.S. 980, 116 L.Ed.2d 607, on remand 981 F.2d 1115. Civil Rights 1376(6)

Police officers' search of another officer's closed, personal briefcase found inside automobile they were lawfully searching as part of internal misconduct investigation was reasonable and officers were immune from civil rights liability, since it was not clearly established at time of search that search as part of investigation into work-related misconduct would violate the Fourth Amendment. Shields v. Burge, C.A.7 (Ill.) 1989, 874 F.2d 1201. Civil Rights 1376(10)

Even if police sergeant did not have reasonable and articulable basis for making radio broadcast about possibility of there being weapons in vehicle, he was entitled to qualified immunity in § 1983 lawsuit brought by driver and passengers; driver and passengers did not have a "clearly established" right to immunity from suspicions of sergeant after he was informed by two detainees that driver and passengers had weapons inside of their vehicle. Alexander v. Haymon, S.D.Ohio 2003, 254 F.Supp.2d 820. Civil Rights 1376(6)

Even if arresting officer's pat-down searches outside opposite sex arrestees' clothing were unreasonable under the Fourth Amendment, officer would be entitled to qualified immunity in arrestees' civil rights action under § 1983, where arrestees did not show they had a clearly established Fourth Amendment right to be searched by a person of their own gender or in a different manner. Wyatt v. Slagle, S.D.Iowa 2002, 240 F.Supp.2d 931. Civil Rights 1376(6)

Even if police lieutenant had malicious state of mind when he ordered female officer to strip search female arrestee, and even if lieutenant did so to punish arrestee for refusing to answer his questions, lieutenant was nonetheless qualifiedly immune from arrestee's claim that search violated her Fourth Amendment rights; arrestee did not have clear right in circumstances not to be subjected to strip search, but rather, case law stood for opposite proposition. Swain v. Spinney, D.Mass.1996, 932 F.Supp. 25, affirmed in part, reversed in part 117 F.3d 1. Civil Rights 1376(6)

Motorist's claim of unreasonable seizure due to fact that officers who stopped her at roadblock did not identify themselves as officers was barred by qualified immunity as it had not been established at time of the incident in 1992 that the "knock and announce" rule had constitutional status or that the rule could apply to searches and seizures outside the home. Johnson v. Grob, W.D.Mo.1996, 928 F.Supp. 889. Civil Rights 1376(6)

Police officer could be held liable for unconstitutional search of arrestees only if reasonable person in her position would have been charged with knowledge that her actions violated clearly established rights of arrestees. Lopez v. City of New York, S.D.N.Y.1995, 901 F.Supp. 684. Civil Rights 1376(6)

Even if parolee had not consented to parole officer's warrantless search of his residence, and thus, in absence of authorizing regulation, search was unconstitutional, officer was entitled to qualified immunity from § 1983 liability, in that contours of constitutional right were not clearly established at time of search. Patterson v. Board of Probation and Parole of Com. of Pa., E.D.Pa.1994, 851 F.Supp. 194. Civil Rights 1376(7)

Conduct of probation and parole officers in forcibly entering parolee's home when he opened door, and conduct of those officers and police officers who were called in as backup, in searching the home after they handcuffed parolee when he began yelling at the officers, was not clearly unlawful, and thus, the officers were entitled to qualified immunity in parolee's §§ 1983 suit for alleged violations of his Fourth Amendment rights. Bruton v. Paesani, C.A.3 (Del.) 2006, 162 Fed.Appx. 151, 2006 WL 41276, Unreported. Civil Rights 1376(7)

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City police officers acted reasonably in light of clearly established law and information they possessed, as to body cavity search of shopper after she had activated security sensors when leaving store, and thus, officers were entitled to qualified immunity from shopper's §§ 1983 claim alleging violation of Fourth Amendment; she told male officer that she had no objection to being searched and that she had no objection to female officer being called to perform the search, and shopper cooperated with officers and did not refuse any of their requests. McNeal v. Roberts, C.A.5 (La.) 2005, 129 Fed.Appx. 110, 2005 WL 977674, Unreported. Civil Rights 1376(6)

3885. ---- Seizures, police activities, clearly established right

Officer who had no reason to suspect motel guest of arson or other crimes did not have qualified immunity for unreasonably seizing motel guest, as right to be free of unreasonable seizures was clearly established at time; officer should have realized before reaching room that it was not on fire as he originally suspected and that guest's closing of motel door did not give rise to reasonable suspicion of any particular crime. Turmon v. Jordan, C.A.4 (S.C.) 2005, 405 F.3d 202. Civil Rights 1376(6)

In arrestee's § 1983 action against detective, detective was entitled to qualified immunity for participating in staged "perp walk" that violated arrestee's Fourth Amendment rights; unconstitutionality of staged perp walk was not clearly established at time it occurred. Lauro v. Charles, C.A.2 (N.Y.) 2000, 219 F.3d 202. Civil Rights 1376(6)

Government officials were entitled to qualified immunity on deputy sheriffs' constitutional claims arising from their alleged seizure and questioning during an internal investigation into a citizen's claim that he was assaulted by one of the deputies who were near an intersection at a specific time; it was not clearly established at the time that deputies, who were ordered to remain at work to be questioned, were seized within the meaning of the Fourth Amendment, that probable cause did not support defendants' conduct given that the facts made it more likely than not that one of the deputies was the assailant, or that defendants' conduct in reassigning deputies after their refusal to answer investigator's questions violated a constitutional right. Aguilera v. Baca, C.D.Cal.2005, 394 F.Supp.2d 1203. Civil Rights 1376(6)

Assuming peace officer and other employees of not-for-profit animal protection organization acted under color of state law, their conduct, in searching animal owner's house and seizing some of her animals pursuant to facially valid warrant, did not violate clearly established statutory or constitutional rights of which reasonable person would have known, as would have caused forfeiture of their right to qualified immunity as government officials; it was objectively reasonable for employees to search home based upon warrant because of their belief, supported by complaints from public, that mistreatment of animals took place in owner's home, and it was objectively reasonable for employees to seize animals that were in apparent squalor, confined, and without food and water. Fabrikant v. French, N.D.N.Y.2004, 328 F.Supp.2d 303. Civil Rights 1373; Civil Rights 1376(6)

Police officer who had seized minors after their companion had been observed entering police car despite lacking probable cause to do so was not entitled to qualified immunity in federal civil rights action brought by minors challenging their detention; standards governing seizures under Fourth Amendment and probable cause were well-known to reasonable police officers in September 1993, when seizure occurred, and officer had failed to conduct any investigation before making seizure despite having been told that only companion entered police car. Irvin v. Kaczmaryn, N.D.Ill.1996, 913 F.Supp. 1190. Civil Rights 1376(6)

3886. ---- Applications for search warrants, police activities, clearly established right

Police department employees were entitled to qualified immunity for their involvement in invalid administrative search warrant for officer's garage, where interplay between Fourth Amendment rights of police officers and right of police departments to demand obedience was unclear at time of issuance of warrant in 1982, and employees had

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relied in good faith on advice of assistant city attorney. Los Angeles Police Protective League v. Gates, C.A.9 (Cal.) 1990, 907 F.2d 879, rehearing denied. Civil Rights 1376(10)

For purposes of determining whether state's attorney and sheriff's deputy were entitled to qualified immunity in preparation of search warrant applications allegedly permitting unconstitutional prior restraint of allegedly obscene materials, there was clearly established right to adversarial hearing prior to mass seizure, and judge's issuance of warrant did not, in itself, shield these defendants from liability, so that finding of qualified immunity depended on whether defendants' actions were reasonable. Hicks v. Cassilly, D.Md.1997, 971 F.Supp. 956, reversed 153 F.3d 720, certiorari denied 119 S.Ct. 1037, 525 U.S. 1143, 143 L.Ed.2d 45. Civil Rights 1376(6); Civil Rights 1376(9)

Police officers were not entitled to qualified immunity in § 1983 action arising out of officers' use of suspect profile which included suspect's race, even though race of assailant was unknown and victim's speculation as to assailant's race was different than race included in profile; law clearly prohibited use of race in profile as evidence in determining probable cause for search warrant. Simmons v. Baker, E.D.Va.1994, 842 F.Supp. 883, reversed in part 47 F.3d 1370. Civil Rights 1376(6)

Law on issue whether no-knock search warrant was permissible for six pounds of marijuana was not clearly established, and, thus, detective who prepared warrant application and captain who reviewed it were entitled to qualified immunity from § 1983 liability; training manual of police department contained dicta from Colorado Supreme Court to effect that any search for narcotics, regardless of any particularized showing that evidence may be destroyed, is presumptively exigent and justifies no-knock entry. Hall v. Lopez, D.Colo.1993, 823 F.Supp. 857. Civil Rights 1376(6)

Search of drug suspect's vagina was not so unreasonable as to violate clearly established constitutional right and deprive officer who applied for and initiated execution of warrant of qualified immunity; suspect did not have clearly established constitutional right to be free from manual body cavity search conducted by physician at hospital pursuant to warrant issued on probable cause. Rodriquez v. Furtado, D.Mass.1991, 771 F.Supp. 1245, affirmed 950 F.2d 805. Civil Rights 1376(6)

Alleged unconstitutionality of zoning ordinance upon which search warrant was based and alleged violation of landowners' constitutional rights were not sufficiently obvious to warrant waiver of police officers' qualified immunity. Johnson v. City of Willoughby Hills, N.D.Ohio 1989, 720 F.Supp. 612. Civil Rights 1376(6)

3887. ---- Execution of search warrants, police activities, clearly established right

Police officer who executed search warrant that ambiguously described location of search as apartment "upstairs on the right" violated clearly established Fourth Amendment rights of residents of apartment mistakenly searched, precluding qualified immunity in residents' §§ 1983 action against officer, where officer knew from his prior surveillance of same building that warrant was insufficiently particular due to building's twin opposite-facing entrances; although ambiguity alone did not render warrant defective, officer's knowledge required him to clarify description prior to execution, rather than using his own assumptions or deductions to resolve ambiguity. Jones v. Wilhelm, C.A.7 (Wis.) 2005, 425 F.3d 455. Civil Rights 1376(6)

County sheriff and sheriff's deputies were not entitled to qualified immunity from liability for their conduct in executing invalid search warrant for automobile, in automobile owner's §§ 1983 action against sheriff and deputies; the warrant described a vehicle completely different than the one ultimately searched, the Fourth Amendment prohibition on the search of one vehicle when the warrant described another vehicle was clearly established, and reliance on the obviously inaccurate warrant was objectively unreasonable. Knott v. Sullivan, C.A.6 (Ohio) 2005, 418 F.3d 561. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Strip-search of mother and her minor daughter in the course of execution of a search warrant for drugs at their home was in violation of their clearly established rights at the time the search occurred in 1999, and thus, officers who executed the search were not entitled to qualified immunity for the violation of the Fourth Amendment, where the search of the mother and daughter exceeded scope of the warrant and there was no probable cause to search them. Doe v. Groody, C.A.3 (Pa.) 2004, 361 F.3d 232, certiorari denied 125 S.Ct. 111, 543 U.S. 873, 160 L.Ed.2d 121. Civil Rights 1376(6)

Even if police officers' five to 12 second wait between knock and announce and entry into home for purpose of executing search warrant was violation of homeowners' Fourth Amendment rights, officers would be entitled to qualified immunity in homeowners' § 1983 action, based on homeowners' failure to establish that an interval of that length was unconstitutional at the time the search was conducted. Molina ex rel. Molina v. Cooper, C.A.7 (Ill.) 2003, 325 F.3d 963. Civil Rights 1376(6)

That officers searching claimants' house for evidence in murder investigation of claimants' former boarder were in claimants' bedroom, rather than boarder's, when claimants' cash and pistol were seized did not preclude application of plain view doctrine or qualified immunity for individual officers in claimants' § 1983 action; officers did not know which bedroom was claimants' and which was boarder's, and search of all bedrooms was authorized. Perkins v. City of West Covina, C.A.9 (Cal.) 1997, 113 F.3d 1004, certiorari granted 118 S.Ct. 1690, 523 U.S. 1105, 140 L.Ed.2d 812, reversed 119 S.Ct. 678, 525 U.S. 234, 142 L.Ed.2d 636, on remand 167 F.3d 1286. Civil Rights 1376(6); Searches And Seizures 47.1

Alleged general privacy violation occurring through presence of news reporter and camera crew at search of animal shelter and shelter operator's house was not established right that would overcome qualified immunity defense in operator's § 1983 action. Stack v. Killian, C.A.6 (Mich.) 1996, 96 F.3d 159, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(1)

Even if plain clothes police officers executing search warrant did not announce their identity and purpose before shooting suspect, officers were entitled to qualified immunity in civil rights action by wife of killed suspect, because duty to announce identity and state purpose was not "clearly established" at time suspect was shot, and because police officer had reasonable belief that he had to use deadly force against suspect when suspect reached for firearm. St. Hilaire v. City of Laconia, C.A.1 (N.H.) 1995, 71 F.3d 20, certiorari denied 116 S.Ct. 2548, 518 U.S. 1017, 135 L.Ed.2d 1068. Civil Rights 1376(6)

It was not clearly established in June 1987 that police officers executing warrant cannot rely on information gathered at scene to reinterpret warrant's identification of premises to be searched, even if warrant's identifications were regarded as erroneous, and police officers were entitled to qualified immunity in action under federal civil rights statute alleging that search of third home on street made after officers in executing warrant for search of fourth home on street in which named suspect was believed to live learned that suspect actually lived in third home was unlawful warrantless search. Velardi v. Walsh, C.A.2 (N.Y.) 1994, 40 F.3d 569. Civil Rights 1376(6)

Officer was entitled to qualified immunity in arrestee's civil rights action in connection with execution of search warrant even though party for which officer was searching lived at another residence as, even if probable cause to search was lacking, that conclusion was not the necessary result of clearly established laws; officer had found hand-rolled cigarettes in plastic bags, narcotics pipe, and bag of white powder and box of baggies in course of conducting search. Warlick v. Cross, C.A.7 (Ill.) 1992, 969 F.2d 303, rehearing denied. Civil Rights 1376(6)

Sheriff and deputy were not entitled to qualified immunity from property owner's civil rights claim for allegedly searching beyond scope of warrant that permitted search of gravel-filled well, lying in affidavit to obtain warrant, and searching land beneath pasture without warrant; alleged conduct would violate clearly established constitutional rights. Husband v. Bryan, C.A.5 (Tex.) 1991, 946 F.2d 27. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Officers who dragged resident out of bed by arm during execution of search warrant, pinned him up against entertainment center, pushed shotgun against his head, placed him in handcuffs, and searched his mouth were not entitled to qualified immunity at summary judgment stage in resident's §§ 1983 excessive force claim; although law that handcuffing person during search for evidence violated Fourth Amendment was not clearly established at time of search, law was sufficiently clear to place officer on notice that using this type of force against individual complying with search was unlawful. Hansen v. Schubert, E.D.Cal.2006, 459 F.Supp.2d 973. Civil Rights 1376(6)

At time of actions at issue, Fourth Amendment's prohibition against unreasonable searches did not require police to identify themselves as police and state their purpose, and thus officers were entitled to qualified immunity in arrestee's § 1983 suit for allegedly entering arrestee's residence pursuant to search warrant without identifying themselves as police. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 877. Civil Rights 1376(6)

Police officer who entered suspect's home to serve arrest warrant was entitled to qualified immunity in § 1983 action; reasonable officer could have concluded that suspect resided, and was present, in home at time officer attempted to serve warrant and that objectively valid arrest warrant authorized entry into home to effectuate service without consent, and officer did not violate any laws which, at time of his actions, were clearly established. Smith v. Tolley, E.D.Va.1997, 960 F.Supp. 977. Civil Rights 1376(6)

Where deputies were acting pursuant to M.C.L.A. § 780.656, specifically authorizing the breaking of doors and windows in order to execute warrants if, after notice of authority and purpose, officer is refused admittance, their actions in executing the warrant in that manner did not deprive them of qualified immunity in subsequent action under this section. Eliason Corp. v. Bureau of Safety and Regulation of Michigan Dept. of Labor, W.D.Mich.1983, 564 F.Supp. 1298. Civil Rights 1376(6)

3888. ---- Warrantless searches, police activities, clearly established right

Law as to whether an "all persons" warrant, authorizing the search of all persons present where search was to be executed, was constitutional was not clearly established at time occupants of residence were either strip-searched or patted-down pursuant to warrant authorizing search of residence and all persons located therein for drugs, and thus, county sheriff, deputy sheriff, and two unnamed county deputies were entitled to qualified immunity from civil rights action brought by occupants of searched residence, where neither Supreme Court nor Court of Appeals had addressed issue, and persuasive authority from other jurisdictions did not provide a clear view or consensus. Owens ex rel. Owens v. Lott, C.A.4 (S.C.) 2004, 372 F.3d 267, certiorari denied 125 S.Ct. 876, 543 U.S. 1050, 160 L.Ed.2d 771. Civil Rights 1376(6)

Apartment residents' allegation that officers from sheriff's department continued searching their apartment pursuant to search warrant even after officers independently verified that targets of investigation no longer occupied apartment alleged violation of residents' clearly established Fourth Amendment rights, thus precluding dismissal of residents' resulting § 1983 action at motion to dismiss phase based on officers' assertion of qualified immunity. Peterson v. Jensen, C.A.10 (Utah) 2004, 371 F.3d 1199. Civil Rights 1376(6)

Arrestee's right to be free from public exposure, touching, and penetration of her genitalia and kneading of her buttocks during search conducted in public view and incident to arrest for misdemeanor noise violation, when there was no security risk or threat of concealment or destruction of evidence, was clearly established at the time of search, and therefore officer who allegedly conducted search in such manner was not entitled to summary judgment in arrestee's § 1983 action on qualified immunity grounds. Amaechi v. West, C.A.4 (Va.) 2001, 237 F.3d 356. Civil Rights 1376(6)

Warrantless search of dentist's office by staff-investigator for state board of dental examiners was administrative search that did not violate any clearly established constitutional or statutory rights, and, thus, investigator was

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entitled to qualified immunity in dentist's § 1983 and Racketeer Influenced and Corrupt Organizations Act (RICO) action, even though investigator suspected dentist of criminal activity regarding improper use of controlled substances and he was accompanied by law enforcement officer; regulation and monitoring of use of controlled substances in dentistry profession was substantial state interest, records and documents in dental offices were subject to on-site inspections, inspection programs provided adequate substitute for warrant, and fact that investigator suspected dentist of criminal wrongdoing did not render administrative search unreasonable. Beck v. Texas State Bd. of Dental Examiners, C.A.5 (Tex.) 2000, 204 F.3d 629, rehearing denied, certiorari denied 121 S.Ct. 171, 531 U.S. 871, 148 L.Ed.2d 117. Civil Rights 1376(6)

Objectively reasonable law enforcement officer in wildlife conservation officer's position would have known that searches of taxidermist's home and business, seeking evidence of criminal wrongdoing, could only be carried out under properly executed warrant, and would have known that warrantless searches were not authorized by governing Pennsylvania administrative statute or regulation, thus precluding conservation officer from claiming qualified immunity from taxidermist's § 1983 suit. Showers v. Spangler, C.A.3 (Pa.) 1999, 182 F.3d 165. Civil Rights 1376(6)

Plaintiffs stated Fourth Amendment violation to which police officers were not entitled to qualified immunity on ground that warrantless entry of individual's house was justified by exigent circumstances; plaintiffs claimed that officers broke down door of empty home and left individual, who had been outside, there alone after they had determined that he was in dire need of care, that no emergency aid was given, and that, by moving him inside, officers prevented individual from receiving aid that had already been requested by others. Penilla v. City of Huntington Park, C.A.9 (Cal.) 1997, 115 F.3d 707, certiorari denied 118 S.Ct. 2059, 524 U.S. 904, 141 L.Ed.2d 137. Civil Rights 1376(6)

Police officers, police chief, and town were entitled to qualified immunity in § 1983 civil rights action in which plaintiff parents alleged that officers' entry into their home without search warrant to arrest their son, who did not reside at parents' home, violated their Fourth Amendment rights, since law was not settled whether police entry into home without search warrant to arrest nonresident subject of arrest warrant, when subject answers door, violates Fourth Amendment. Joyce v. Town of Tewksbury, Mass., C.A.1 (Mass.) 1997, 112 F.3d 19. Civil Rights 1376(4); Civil Rights 1376(6)

Highway patrol officer's random warrantless safety inspection of commercial propane truck, which occurred at port of entry after valid traffic stop on nearby road, did not violate clearly established law so as to preclude qualified immunity defense to § 1983 action. V-1 Oil Co. v. Means, C.A.10 (Wyo.) 1996, 94 F.3d 1420. Civil Rights 1376(6)

While some of the police officers involved in raid pursuant to search warrant on upper duplex unit had been present during previous warrant execution for that unit, initial mistake in entering the lower unit, for which there was no warrant, was a reasonable one under the circumstances, and was protected by qualified immunity, given the circumstances of raid at night when vision was poor and any delay could have been potentially detrimental to arrest of suspect and seizure of evidence, while prior search had been by daylight, was not a raid and door leading to stairs to upper unit was then open; further, any search or seizure that occurred while officers were still under mistaken but reasonable belief that they were in fact executing warrant at correct residence would be protected by qualified immunity, but any search or seizure thereafter would no longer be protected by qualified immunity. Pray v. City of Sandusky, C.A.6 (Ohio) 1995, 49 F.3d 1154. Civil Rights 1376(6)

Police officer, who conducted protective sweeps of house after arrests of homeowners and their guests upon neighbor's complaint about loud party, was protected by qualified immunity from claim that officer violated Fourth Amendment by conducting sweeps; sweeps were at least arguably permissible, as officer testified she did not know whether additional people were in house, that situation was chaotic, that everyone was aggressive toward officers, and that she did quick sweep to make sure no one else was in house for officer safety. Greiner v. City of Champlin,

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C.A.8 (Minn.) 1994, 27 F.3d 1346. Civil Rights 1376(6)

Homeowner never had clearly established right permitting plain view seizure of stolen property in her home only if discovery was inadvertent, and, thus, state troopers seeking discovery of the property while executing arrest warrant were entitled to qualified immunity from § 1983 liability, whether discovery was purposeful or inadvertent; majority of United States Supreme Court never believed that inadvertence is requirement of plain view doctrine. Bradway v. Gonzales, C.A.2 (N.Y.) 1994, 26 F.3d 313. Civil Rights 1376(6)

Parole officers were entitled to qualified immunity from claim that they exceeded scope of otherwise lawful protective sweep for dangerous individual when they searched between mattress and box spring of bed; it was unclear whether, during course of otherwise justified protective sweep, Fourth Amendment permits simultaneously conducted limited search of places that might contain weapon readily accessible to as-yet undiscovered individual. Crooker v. Metallo, C.A.1 (Mass.) 1993, 5 F.3d 583. Civil Rights 1376(7)

For purposes of determining qualified immunity of state official who conducted search of gas station property, the right of the gas station owner not to be inspected pursuant to a statute such as the Wyoming Environmental Quality Act without a search warrant was clearly established at the time of the search. V-1 Oil Co. v. State of Wyo., Dept. of Environmental Quality, C.A.10 (Wyo.) 1990, 902 F.2d 1482, certiorari denied 111 S.Ct. 295, 498 U.S. 920, 112 L.Ed.2d 249. Civil Rights 1376(3)

State officials were not entitled to qualified immunity arising from strip and body cavity search of citizen arrested for failure to pay parking tickets, in light of prior holdings that such searches were in violation of Fourth Amendment, and an absence of reasons objectively demonstrating need for the searches. Walsh v. Franco, C.A.2 (Vt.) 1988, 849 F.2d 66. Civil Rights 1376(3)

Departmental investigators were not entitled to qualified immunity on claim that they violated public employee's Fourth Amendment rights in conducting warrantless search of her home and seizing her personal computers as part of investigation into alleged workplace wrongdoing, as necessity of obtaining warrant to intrude on employee's privacy interest in her home was clearly established when investigators acted in 2002. Sabin v. Miller, S.D.Iowa 2006, 423 F.Supp.2d 943. Civil Rights 1376(10)

Officers were qualifiedly immune from §§ 1983 claim arising from their warrantless entry into suspect's residence, inasmuch as it would not be clear to reasonable officer that exigent circumstances did not exist, given volatile situation at residence and officers' knowledge of prior events that night, including suspect's involvement in fight. Davis v. Township of Paulsboro, D.N.J.2006, 421 F.Supp.2d 835. Civil Rights 1376(6)

Property owners' Fourth Amendment right to be free from unreasonable searches and seizures was clearly established, and thus employees of state Department of Environmental Management (DEM) were not entitled to qualified immunity from liability under § 1983 arising from their warrantless search of private property suspected of being site of illegal dumping, even though state statute permitted warrantless searches, where there were no exigent circumstances, state supreme court had not upheld statute's constitutionality, and DEM's proposed internal guidelines required warrant. Vinagro v. Reitsma, D.R.I.2003, 260 F.Supp.2d 425. Civil Rights 1376(3)

Police officer who searched student's vehicle at school after receiving anonymous tip that student had handgun in his vehicle was entitled to qualified immunity despite claimed absence of probable cause, in that it was not clearly established that probable cause was required. James By and Through James v. Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1407. Civil Rights 1376(6)

It was clear that sheriff deputy's act of ordering strip search of nonviolent minor offense arrestee was in violation of arrestee's Fourth Amendment right to be free from unreasonable searches, and thus officer was not entitled to qualified immunity from arrestee's § 1983 action alleging deprivation of her Fourth Amendment right. Dugas v.

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Jefferson County, E.D.Tex.1996, 931 F.Supp. 1315, affirmed 127 F.3d 33. Civil Rights 1376(6)

Strip search of motorist was not reasonable under clearly established law, and thus did not support qualified immunity of trooper from § 1983 liability, absent any evidence that motorist possessed drugs or any risk that motorist would be intermingled with general jail population; although motorist had been arrested for driving while under influence of marijuana, no drugs or drug paraphernalia had been found on motorist, on her passenger, or in her vehicle. Foote v. Spiegel, D.Utah 1995, 903 F.Supp. 1463, affirmed in part, reversed in part, dismissed in part 118 F.3d 1416, on remand 995 F.Supp. 1347. Civil Rights 1376(6)

Police officer could reasonably believe that his warrantless entry into misdemeanor suspect's home did not violate "clearly established" constitutional right, protecting officer from liability in civil rights action arising when suspect was fatally shot; officer knew that suspect had fled from two other officers when they had attempted to make *Terry* stop and was brandishing a knife and refusing one of the officer's request to put down the weapon. Alto v. City of Chicago, N.D.Ill.1994, 863 F.Supp. 658. Civil Rights 1376(6)

Individual officers were not entitled to qualified immunity on Fourth Amendment claims of deputy sheriff who brought § 1983 action based on drug test which was administered without her consent; deputy's Fourth Amendment right was clearly established at time of test, and no reasonable officer could have believed that recommended search of deputy was lawful. Pike v. Gallagher, D.N.M.1993, 829 F.Supp. 1254. Civil Rights 1376(10)

Female arrestee failed to show that pat-down search conducted by male officer after her arrest was unconstitutional and therefore, officers were entitled to qualified immunity on pat-down claim in § 1983 action; arrestee did not specifically argue that method in which officer conducted search gave rise to constitutional violation, but instead implied that because male officer, rather than female officer, conducted search, search was per se constitutional violation and arrestee's testimony that she felt search was inappropriate was too general a statement to satisfy arrestee's burden of showing that officer violated her clearly established constitutional rights. Greiner v. City of Champlin, D.Minn.1993, 816 F.Supp. 528, rescinded 27 F.3d 1346. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from parents' Fourth Amendment claim alleging that officers engaged in unconsented warrantless inspections of home and of child's vaginal area as part of criminal sexual abuse investigation; Fourth Amendment at time of search clearly established that officers were prohibited from conducting warrantless searches of home and of child's body for evidence, absent consent or exigent circumstances. Franz v. Lytle, D.Kan.1992, 791 F.Supp. 827, affirmed 997 F.2d 784. Civil Rights 1376(6)

State law enforcement officers did not violate clearly established constitutional norms in searching property, although property owners contended search was within curtilage and required warrant, and therefore, state law enforcement officers were entitled to qualified immunity from liability in civil rights action based on search; genuine dispute existed over whether area searched could reasonably have been thought to have been outside curtilage. Williams v. Garrett, W.D.Va.1989, 722 F.Supp. 254. Civil Rights 1376(6)

Police officers' warrantless search of arrestees' residence did not violate clearly established law, entitling officers to qualified immunity in subsequent civil rights action based on the search; resident at home had consented to search, and officers had reasonable grounds to believe that there was possible kidnapping in progress. Harris v. City of Kansas City, Kan., D.Kan.1988, 703 F.Supp. 1455, reconsideration denied 714 F.Supp. 1138. Civil Rights 1376(6)

Actions of state troopers in searching detainee's house after he withdrew consent and in the absence of exigent circumstances violated clearly established law of the Third Circuit so that they were not immune from liability in arrestee's action under federal civil rights statue, 42 U.S.C.A. § 1983. Metcalf v. Long, D.C.Del.1985, 615 F.Supp. 1108. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

3889. ---- Confiscation of property, police activities, clearly established right

Police chief's consultation with city attorney before chief's warrantless seizure of more than 70 purportedly derelict vehicles from landowner's property did not constitute "extraordinary circumstances" that prevented him from knowing the clearly established law, and so chief was not entitled to qualified immunity from landowner's suit for violation of her Fourth Amendment right against unreasonable seizures and her Fourteenth Amendment right to due process; chief and attorney never once discussed the applicable constitutional law governing his conduct, which required a warrant or notice-and-hearing, and chief pointed to nothing in his consultation with attorney that prevented him from knowing the law. Lawrence v. Reed, C.A.10 (Wyo.) 2005, 406 F.3d 1224. Civil Rights 1376(6)

It was not clearly established that city police officers' allegedly illegal eviction of residents of women's shelter constituted "seizure" of property for Fourth Amendment purposes, and thus officers were entitled to qualified immunity in residents' § 1983 action alleging that officers forced them to vacate their rooms at shelter without any colorable legal authority, where officers never asserted physical control over property in question. (Per opinion of Gilman, Circuit Judge, for a majority of the court). Thomas v. Cohen, C.A.6 (Ky.) 2002, 304 F.3d 563, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 2075, 538 U.S. 1032, 155 L.Ed.2d 1061. Civil Rights 1376(6)

Deputy sheriff was entitled to qualified immunity for federal civil rights claims against him individually for his participation in repossession of vehicle from plaintiffs by dealership where it was not clear that repossession effectuated by dealership was unlawful, and where, under plaintiffs' version of facts, repossession appeared to have been completed prior to officer's involvement; officer could not have known his actions might violate constitutional rights as no precedent clearly held that officer's mere presence at or after lawful instance of self-help repossession could violate Fourth and Fourteenth Amendments. Cofield v. Randolph County Com'n, C.A.11 (Ala.) 1996, 90 F.3d 468. Civil Rights 1376(6)

Police officer did not violate clearly established law at time he seized allegedly obscene videotapes by seizing all volumes of videotapes within two series named in warrant, entitling him to immunity from personal liability in video store owner's civil rights action, where warrant gave titles to two of the series without referring to specific volume number, leaving open reasonable interpretation that seizure of all volumes within series was permissible. Supreme Video, Inc. v. Schauz, C.A.7 (Wis.) 1994, 15 F.3d 1435, on remand 927 F.Supp. 321. Civil Rights 1376(6)

Officers were not entitled to qualified immunity from claim that they wrongfully seized detainee's property, without probable cause and without providing due process, by forcing him to disclaim interest in property after unlawful detention; probable cause requirements and right to due process were clearly established at time of seizure, and reasonable person would have understood that alleged actions would have violated detainee's rights. Craig v. St. Martin Parish Sheriff, W.D.La.1994, 861 F.Supp. 1290. Civil Rights 1376(6)

Alabama deputy sheriff who moved to dismiss, for failure to state claim, § 1983 action against him in his individual capacity arising from his participation in repossession of automobile was not entitled to qualified immunity at that stage of proceedings; he was clearly acting in his capacity as deputy sheriff in "repossessing" automobile without displaying court order or any other official documentation supporting appropriateness of his actions, and it was unclear whether reasonable person would have believed that he did not violate clearly established constitutional right not to be deprived of one's property without due process of law. Cofield v. Randolph County Com'n, M.D.Ala.1994, 844 F.Supp. 1499. Civil Rights 1376(6)

District of Columbia police officers were not entitled to qualified immunity in action by owner of stolen automobile alleging deprivation of property without due process where police, as part of undercover sting operation, held her automobile in storage; officer's conduct resulted in violation of clearly established

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constitutional rights of which reasonable person would have known. O'Callaghan v. District of Columbia, D.D.C.1990, 741 F.Supp. 273. Civil Rights 1376(6)

3890. ---- High speed chase, police activities, clearly established right

State police officer was entitled to qualified immunity in § 1983 suit arising out of fatal accident occurring during high-speed chase; officer violated no clearly established constitutional right of victim when he conducted high-speed chase of suspect without activating his lights or siren and without maintaining radio contact in fashion prescribed by police regulation. Magdziak v. Byrd, C.A.7 (Ill.) 1996, 96 F.3d 1045. Civil Rights 1376(6)

The law that, absent certain inapplicable exceptions, police officers may not without a warrant enter an area in which there is a reasonable expectation of privacy, was clearly established when police officers made warrantless entry into dressing room occupied by dancer at club which was subject to city's sexually-oriented business ordinance, and thus, the officers lacked qualified immunity to the dancer's §§ 1983 claim against the officers for violation of her Fourth Amendment right against unreasonable searches and seizures. Bevan v. Smartt, D.Utah 2004, 316 F.Supp.2d 1153. Civil Rights 1376(6)

Motorist's right not to be stopped without reasonable articulable suspicion was clearly established, and thus police officers were not entitled to qualified immunity in § 1983 action brought by innocent victims of high-speed chase that occurred after officers made attempt to stop motorist; motorist was legally stopped at stop sign when officers first saw him, and did not travel at high rate of speed until officers attempted to pull him over. Slusarchuk v. Hoff, D.Minn.2002, 228 F.Supp.2d 1007, reversed in part 346 F.3d 1178, certiorari denied 124 S.Ct. 2018, 541 U.S. 988, 158 L.Ed.2d 492. Civil Rights 1376(6)

Even if Fourth Amendment seizure occurred when operator of all terrain vehicle (ATV) crashed into drainage ditch while being pursued by police, pursuing officers were entitled to qualified immunity in civil rights suit as officers did not violate any clearly established statutory or constitutional rights of which reasonable persons would have known, in that there was no case law in which finding of unreasonable seizure was predicated solely on hot pursuit of fleeing suspect, even when pursuit follows suspect into known and dangerous obstacle. Wozniak v. Cavender, N.D.Ill.1995, 875 F.Supp. 526. Civil Rights 1376(6)

3891. ---- Harassment, police activities, clearly established right

Continued police surveillance of physician's office following search of office for evidence of Medicare fraud did not amount to harassment that violated clearly established right, as required to support federal civil rights claim. Mays v. City of Dayton, C.A.6 (Ohio) 1998, 134 F.3d 809, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 2352, 524 U.S. 942, 141 L.Ed.2d 722. Civil Rights 1376(6)

It was not clearly established, as of August 25, 2000, that inmate had a federal right to due process protections in connection with the revocation of good time credits which an auditor believed had been erroneously awarded in light of the inmate's refusal to admit to sex offenses, as required for admission into a sex offender treatment program (SOTP), an thus, prison officials were entitled to qualified immunity on the inmate's §§ 1983 claim; the revocation was in the nature of a ministerial action that retroactively implemented the consequences of the choice presented to the inmate at an adjustment review. U.S.C.A. Const. Amend. 5, 14; DeYonghe v. Ward, C.A.10 (Okla.) 2005, 121 Fed.Appx. 335, 2005 WL 165449, Unreported. Civil Rights 1376(7)

3892. ---- Special relationship, police activities, clearly established right

Bar fight participant was not in police custody either in bar parking lot or when he was driven by police to nearby service station to call for a ride home, where officer told participant he was free to leave from beginning, participant knew charges were not being pressed against him, participant was not handcuffed, child-safety lock on

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rear passenger compartment of squad car which would have prevented him from exiting was disengaged, and participant left squad car voluntarily and thanked officer for ride; accordingly, no "special relationship" implicating due process duty to provide protective services existed between participant and police, and qualified immunity protected police officers from liability in participant's estate's civil rights action. Estate of Stevens v. City of Green Bay, C.A.7 (Wis.) 1997, 105 F.3d 1169. Arrest 68(3); Civil Rights 1376(6); Constitutional Law 253(1)

3893. ---- State created danger, police activities, clearly established right

Police officers were entitled to qualified immunity from § 1983 claim arising from beating death of undercover operative during attempted drug buy; law surrounding violation of operative's asserted due process right to be protected from third-party violence in context of State endangerment was not sufficiently clear that reasonable officer would have understood that what he was doing violated that right. Butera v. District of Columbia, C.A.D.C.2001, 235 F.3d 637, 344 U.S.App.D.C. 265, rehearing denied. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from § 1983 due process claim brought by mother on behalf of her children, who were killed by father, allegedly as result of failure of police to provide protection from father, since whole question of constitutional duty not to affirmatively abuse governmental power so as to create danger to individuals and render them more vulnerable to harm was not clearly established at time children were killed. Soto v. Flores, C.A.1 (Puerto Rico) 1997, 103 F.3d 1056, certiorari denied 118 S.Ct. 71, 522 U.S. 819, 139 L.Ed.2d 32. Civil Rights 1376(6)

Any constitutional right of a vehicle passenger violated by a police officer's interactions with the vehicle's driver prior to an accident resulting in the driver's conviction for vehicular manslaughter and driving under the influence was not clearly established, thus defeating the passenger's claim, in a §§ 1983 suit, that the officer violated her Fourteenth Amendment right to substantive due process under the state-created danger doctrine; mere inaction in the face of a known or suspected danger was not enough to constitute a state-created danger. Jamison v. Storm, W.D.Wash.2006, 426 F.Supp.2d 1144. Civil Rights 1376(6)

Contours of constitutional duty arising under state endangerment theory were not sufficiently clear at time that postal supervisors' allegedly misrepresented to employees that facility was not contaminated with anthrax, and thus supervisors were entitled to qualified immunity from liability in employees' action alleging violation of their substantive due process rights, where case law in circuit was unclear as to whether state endangerment theory could apply to individual who voluntarily participated in activity that ultimately caused him harm. Briscoe v. Potter, D.D.C.2004, 355 F.Supp.2d 30. United States 50.10(1)

Deputy sheriffs had qualified immunity from § 1983 claim, of students wounded in attack on high school by two armed students, for alleged substantive due process violation based on alleged improper responses to the attack and lack of rescue efforts; although the law on which the wounded students relied, the state created/enhanced danger and special relationship exceptions to the to the general rule that a state is not obligated by substantive due process principles to protect individuals against private violence, were clearly established at the time of the attack, the contours of the rights flowing from these exceptions in the situation confronted were far from clear and provided no notice to reasonable officers that their conduct violated substantive due process rights. Schnurr v. Board of County Com'rs of Jefferson County, D.Colo.2001, 189 F.Supp.2d 1105. Civil Rights 1376(6)

Law enforcement officers were entitled to qualified immunity on claim of supervisory liability in § 1983 action brought by survivors of high school students who were shot and killed during shooting spree at school; even if supervisory liability for personal direction or actual knowledge and acquiescence in conduct violating constitutional rights was clearly established in the abstract, the rights allegedly violated related to the state-created danger and special relationship exceptions to the rule that a state has no duty to protect citizens from harm inflicted by third parties, and the contours of such rights were not sufficiently clear in the situation presented. Rohrbough v.

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Stone, D.Colo.2001, 189 F.Supp.2d 1088. Civil Rights 1376(6)

"State-created danger" due process right was not clearly established at time of neighborhood unrest arising from death of African-American child, and thus former mayor and city police commissioner were entitled to qualified immunity from § 1983 suit brought by members of Hasidic Jewish community, in which members claimed that defendants emboldened participants in unrest by failing to arrest individuals for unlawful assembly and by ignoring pleas for assistances by individuals and community at large. Estate of Rosenbaum by Plotkin v. City of New York, E.D.N.Y.1997, 975 F.Supp. 206. Civil Rights 1376(4); Civil Rights 1376(6)

3894. ---- Legal participants, police activities, clearly established right

Principle, that legal participants could be liable for violations by those under their control of due process right to bodily integrity, was not clearly established in 1993 when internal affairs division police personnel allegedly failed to prevent sexual assault on woman by police officer during sting operation, and internal affairs personnel thus were qualifiedly immune from woman's § 1983 suit alleging denial of such right. Callis v. Sellars, S.D.Tex.1996, 953 F.Supp. 793. Civil Rights 1376(6)

3895. ---- Reliance, police activities, clearly established right

State detective was not entitled to qualified immunity from civil rights action brought by individuals arrested for extortion on basis of detective's reliance on county prosecutor's determination that probable cause existed to support arrest; law was clearly established that threatening lawsuit for sexual harassment, and incident disclosure of extramarital affair, did not provide basis for crime of extortion in Michigan. Manetta v. County of Macomb, E.D.Mich.1997, 955 F.Supp. 771, reversed 141 F.3d 270. Civil Rights 1376(6)

3896. ---- Miscellaneous activities, police activities, clearly established right

Even if police officers were so involved in aiding title holder's repossession of boat from purported owner under contract for deed that the deprivation of the boat was state action, for purposes of the Fourteenth Amendment's due process guarantee, it was not clearly established that officers' conduct under the circumstances would amount to state action, and, thus, officers had qualified immunity from purported owner's civil rights action alleging that officers had deprived him of his property without due process when they permitted title holder to repossess boat; officers were required to make a close decision in midst of a repossession fracas and could not have determined they were becoming so entangled in title holder's private self-help remedy pursuant to Missouri law that they could be held liable under §§ 1983. Moore v. Carpenter, C.A.8 (Mo.) 2005, 404 F.3d 1043. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from suit under § 1983 for removing minor daughter from mother's custody pursuant to unenforceable custody order issued by court in another state, in violation of mother's and daughter's Fourth and Fourteenth Amendment rights; due process requirement of notice and opportunity to be heard in state court before daughter could be seized pursuant to out-of-state default order, and unreasonableness of seizing daughter pursuant to out-of-state order, were not clearly established. Dunn v. City of Elgin, Illinois, C.A.7 (Ill.) 2003, 347 F.3d 641, rehearing denied. Civil Rights 1376(6)

When police officers allegedly disposed of evidence of theft to preclude victims from suing suspected thief, it was not clear that such misconduct would amount to constitutional violation, rather than simple state tort action, and therefore officers were entitled to qualified immunity from victims' § 1983 claim alleging that officers' intentional disposal of evidence violated their right of access to the courts. Harrell v. Cook, C.A.7 (Ill.) 1999, 169 F.3d 428. Civil Rights 1376(6)

City's mayor, police officer, and parking monitor were entitled to qualified immunity in vehicle owner's civil rights action under § 1983 against them in their individual capacities, alleging that his constitutional right to due process

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was violated when a "wheel boot" was placed upon and immobilized his vehicle while parked in city, where each was acting in good faith in an effort to perform their respective jobs and to enforce city's ordinances as written, and law in area of "wheel booting" was not patently clear. Gross v. Carter, W.D.Ark.2003, 265 F.Supp.2d 995. Civil Rights 1376(4); Civil Rights 1376(6)

City and county law enforcement officers had qualified immunity as to claims brought against them in their individual capacities, in former tenant's §§ 1983 action alleging a violation of tenant's federal due process rights through alleged violation of Minnesota statute giving a residential tenant 24 hours to leave and take personal property from leased premises when writ of recovery is executed; officers did not violate a clearly established statutory or constitutional right. Pahnke v. Anderson Moving and Storage, D.Minn.2005, 393 F.Supp.2d 892. Civil Rights 1376(6)

Even if attorney's consensual, albeit adulterous, sexual activities with client in the confines of his private office fell within boundaries of constitutional protection, county officials were entitled to qualified immunity from claims arising from surveillance of attorney's activities, which occurred in response to client's complaint regarding attorney's actions with the Tennessee Board of Professional Responsibility, since law was not clearly established at the time of the investigation of attorney that attorney was entitled to constitutional protection. Cawood v. Haggard, E.D.Tenn.2004, 327 F.Supp.2d 863, affirmed 125 Fed.Appx. 700, 2005 WL 773946. Civil Rights 1376(6)

Even if police officers committed a First Amendment violation by erasing protesters' audio and video recordings, they were entitled to qualified immunity from §§ 1983 liability since it was not clearly established that destruction of recordings constituted violation of the First Amendment. McCormick v. City of Lawrence, D.Kan.2004, 325 F.Supp.2d 1191, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Civil Rights 1376(6)

For qualified immunity purposes, it was not clearly established that fact witnesses under a subpoena in a criminal prosecution were constitutionally entitled to police protection, or that providing temporary visible protection of such individuals gave rise to such a right. Clarke v. Sweeney, D.Conn.2004, 312 F.Supp.2d 277. Civil Rights 1376(6)

It was not clearly established at time that sheriff deputies arrested club patrons at club for violating Florida statute, prohibiting lewdness, that patrons' conduct had to offend someone other than law enforcement officers to be considered lewd, and thus deputies were entitled to qualified immunity from patrons' claims that arrests were made without probable cause in violation of the Fourth and Fourteenth Amendments; Florida statute did not explicitly contain "offensiveness to others" element, and preexisting case law had not construed statute to include such element. Hall v. Stewart, S.D.Fla.2004, 297 F.Supp.2d 1328. Civil Rights 1376(6)

City and county defendants were entitled to qualified immunity in claims for monetary damages in § 1983 action alleging unconstitutional use of wiretapping, inasmuch as the unconstitutionality of defendants' actions in concealing the existence of wiretaps was not clearly established at the time of the activity. Whitaker v. Garcetti, C.D.Cal.2003, 291 F.Supp.2d 1132. Civil Rights 1376(4)

House occupant's allegation that police officers intentionally burned house during search while occupant was present was sufficient to state violation of clearly established right to be free from unreasonable searches or use of excessive force, for purposes of determining officers' entitlement to qualified immunity in § 1983 action. Johnson v. City of Detroit, E.D.Mich.1996, 944 F.Supp. 586. Civil Rights 1376(6)

Police officers who transported an individual to a hospital without his consent for a psychiatric evaluation did not violate any clearly established constitutional right, and thus, were entitled to qualified immunity in the individual's § § 1983 suit; the individual presented no case law that would have put the officers on notice that his indisputably strange behavior did not rise to a level justifying an involuntary psychiatric evaluation. Must v. West Hills Police Dept., C.A.3 (Pa.) 2005, 126 Fed.Appx. 539, 2005 WL 605831, Unreported. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police chief and police officer were not entitled to qualified immunity in action, brought by murder victim's husband, claiming that officers violated his First Amendment privacy rights by disclosing honeymoon photographs, depicting the couple naked, to people not connected with the investigation; privacy right in such pictures was clearly established. Donohue v. Hoey, C.A.10 (Colo.) 2004, 109 Fed.Appx. 340, 2004 WL 2095661, Unreported, certiorari denied 125 S.Ct. 1641, 544 U.S. 921, 161 L.Ed.2d 478. Civil Rights 1376(6)

Police officers who left a mental health facility, after placing a violent patient in restraints at the request of staff members, without removing the restraints, again at the request of staff and on the assurance that the patient would shortly be transported to another facility, were entitled to qualified immunity in § 1983 action alleging unlawful seizure and due process violations; no clearly established law existed that would make it clear to any reasonable officer that their actions violated any constitutional right. Lucero v. City of Albuquerque, C.A.10 (N.M.) 2003, 77 Fed.Appx. 470, 2003 WL 22301239, Unreported. Civil Rights 1376(6)

Police officer did not violate any clearly established law in keeping a patient in custody and sending him to a hospital for evaluation in 1995, and thus was entitled to qualified immunity from § 1983 liability; police officers under the defendant officer's command knew that the patient was in psychiatric care, and the filthy conditions in his apartment and his refusal to respond to questions or allow a complete physical examination were evidence that he might not have been able to care for himself. Kerman v. City of New York, S.D.N.Y.2003, 2003 WL 328297, Unreported, reversed 374 F.3d 93. Civil Rights 1376(6)

Actions of police officer in pushing aside clothing worn by arrestee who had been apprehended by a police dog, and photographing areas of arrestee's body that he alleged had been injured by the dog, did not violate a clearly established right to privacy on part of arrestee, and thus, officer was entitled to qualified immunity in arrestee's § 1983 action. Franklin v. Texarkana, Arkansas Police Dept., C.A.8 (Ark.) 2000, 205 F.3d 1345, Unreported. Civil Rights 1376(6)

3897. Prisons and prisoners, clearly established right--Generally

Inmate's constitutional right is clearly established for purposes of determining whether prison official is entitled to qualified immunity if contours of right are sufficiently clear that reasonable official would understand that what he is doing violates that right. Prosser v. Ross, C.A.8 (Mo.) 1995, 70 F.3d 1005. Civil Rights 1376(7)

Qualified immunity shields prison officials from liability for their discretionary acts that do not violate clearly established statutory or constitutional rights of which reasonable person would have known. Hathaway v. Coughlin, C.A.2 (N.Y.) 1994, 37 F.3d 63, certiorari denied 115 S.Ct. 1108, 513 U.S. 1154, 130 L.Ed.2d 1074, on subsequent appeal 99 F.3d 550. Civil Rights 1376(7)

Prison officials are entitled to qualified immunity in § 1983 action by inmate unless officials violated inmate's clearly established constitutional rights; contours of such right must be sufficiently clear that reasonable official would understand what conduct violates that right. Brown v. Nix, C.A.8 (Iowa) 1994, 33 F.3d 951, rehearing denied. Civil Rights 1376(7)

Before prison official can be granted qualified immunity in civil rights suit brought by inmate, court must decide whether inmate has identified clearly established right alleged to have been violated and whether official reasonably should have known that conduct at issue was undertaken in violation of that right. Nelson v. Overberg, C.A.6 (Ohio) 1993, 999 F.2d 162. Civil Rights 1376(7)

Prison officials are entitled to qualified immunity unless their conduct violates clearly established statutory or constitutional rights; they knew or should have known right was clearly established; and they knew or should have known their conduct violated right. Smith v. Marcantonio, C.A.8 (Mo.) 1990, 910 F.2d 500. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

"Qualified immunity" allows law enforcement personnel and prison officials to perform their discretionary duties in good faith and shields them from civil damages for inadvertent infringements of constitutional rights; such immunity is not, however, available as defense if officer knew or reasonable should have known that law clearly proscribed action taken and that action violated clearly established statutory or constitutional rights. Oswald v. Graves, E.D.Mich.1993, 819 F.Supp. 680. Civil Rights 1376(6); Civil Rights 1376(7)

Prison employees were not entitled to qualified immunity from inmate's § 1983 claims, absent showing how the law or its applicability to them was unclear. Younger v. Chernovetz, D.Conn.1992, 792 F.Supp. 173. Prisons 10

3897A. ---- Administrative detention, prisons and prisoners, clearly established right

At time of prisoner's 399-day administrative detention, it was not clearly established that such confinement would deprive prisoner of constitutionally cognizable liberty interest, and, thus, officials of the Bureau of Prisons (BOP) were entitled to qualified immunity from prisoner's action under §§ 1983, alleging that conditions and duration of his administrative detention created a liberty interest triggering procedural due process protections which officials violated. Hill v. Fleming, C.A.10 (Colo.) 2006, 173 Fed.Appx. 664, 2006 WL 856201, Unreported. Civil Rights 1376(7)

3898. ---- Freedom of association, prisons and prisoners, clearly established right

Inmates had no clearly established constitutional right of association which was violated by policy authorizing strip and body cavity searches of visitors regardless of probable cause, for purpose of determining whether prison officials were entitled to qualified immunity. Long v. Norris, C.A.6 (Tenn.) 1991, 929 F.2d 1111, rehearing denied, certiorari denied 112 S.Ct. 187, 502 U.S. 863, 116 L.Ed.2d 148. Civil Rights 1376(7)

There was no clearly established constitutional right of Jewish inmates to a kosher diet free of all conditions from 1998 to 2000, and thus, officials of Colorado prison system were entitled to qualified immunity from liability in §§ 1983 action brought by Jewish inmates alleging that failure to provide them with a kosher diet from 1998 to 2000, free of any conditions, violated their First Amendment right to the exercise of their religion. Rachamim v. Ortiz, C.A.10 (Colo.) 2005, 147 Fed.Appx. 731, 2005 WL 2093018, Unreported. Prisons 10

3899. ---- Freedom of religion, prisons and prisoners, clearly established right

It was clearly established in 2000, for purposes of determining whether prison officials were qualifiedly immune from inmate's free-exercise and RLUIPA claims, that prison officials could not substantially burden inmates' right to religious exercise without some justification. Salahuddin v. Goord, C.A.2 (N.Y.) 2006, 467 F.3d 263. Civil Rights 1376(7)

The First Amendment right that, viewing the evidence in light most favorable to inmate, was violated when prison officials punished inmate for refusing to handle or assist in preparing pork while working in prison kitchen was a clearly established right, and thus, officials were not entitled to qualified immunity on inmate's §§ 1983 claim that officials violated his right to free exercise of religion; although neither Supreme Court nor Court of Appeals had directly addressed whether requiring Muslim inmate to handle pork violated right to free exercise of religion, other courts that had considered precise question had uniformly held that prison officials had to respect and accommodate, when practicable, Muslim inmate's religious beliefs regarding prohibitions on handling pork. Williams v. Bitner, C.A.3 (Pa.) 2006, 455 F.3d 186. Civil Rights 1376(7)

State prison officials were not entitled to qualified immunity against inmate's §§ 1983 claim that prison officials' hindering of his observance of religious fast violated his right to religious exercise; law was clearly established that prison officials must have a legitimate penological interest before imposing a substantial burden on the free

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exercise of an inmate's religion, even when that inmate is in disciplinary segregation, and prison officials offered insubstantial evidence to support their asserted interest in rigid sign-up deadline for participation in the religious fast. Conyers v. Abitz, C.A.7 (Wis.) 2005, 416 F.3d 580. Civil Rights 1376(7)

State corrections officials were not entitled to qualified immunity against inmate's § 1983 Free Exercise Clause claim arising from officials' refusal to serve Muslim religious feast to inmate in high-security area; inmate's right to receive diet consistent with his religious scruples was clearly established, as was his right to participate in religious services even in high-security area, and officials' belief that refusal did not violate these rights, based solely on opinion of corrections system's religious authorities that postponement of feast deprived it of its religious significance, was unreasonable. Ford v. McGinnis, C.A.2 (N.Y.) 2003, 352 F.3d 582. Civil Rights 1376(7)

State prison officials were entitled to qualified immunity from damages under § 1983 in inmate's action alleging that requiring inmate to unbraid his dreadlocked hair, to facilitate hair searches, violated inmate's right to free exercise of religion under Religious Freedom Restoration Act (RFRA) because inmate's hair style was dictated by his religion, absent clearly established right to be free from such searches or evidence that reasonable official would have understood that undoing inmate's dreadlocks violated such right. May v. Baldwin, C.A.9 (Or.) 1997, 109 F.3d 557, certiorari denied 118 S.Ct. 312, 522 U.S. 921, 139 L.Ed.2d 241. Civil Rights 1376(7)

It was not clearly established in 1984 or 1985 that denying an inmate kosher food violated his right to practice his religion, and accordingly, prison officials were entitled to qualified immunity from liability in inmate's § 1983 action, despite retroactivity of Religious Freedom Restoration Act (RFRA); Act could not be applied retroactively to make the law clear in such way as to create liability for prison officials. Friedman v. South, C.A.9 (Mont.) 1996, 92 F.3d 989. Civil Rights 1376(7)

Prison officials and female prison guard were entitled to qualified immunity against Muslim inmate's § 1983 action alleging that guard's participation in strip search and daily observations of male inmates violated inmate's First Amendment right to observe Muslim nudity taboos where, at time of events in question, it was not clear that a Muslim inmate's interest in observing religious nudity taboos outweighed prison's interests in having guards observe prisoners at all times and in all situations and in providing equal employment opportunity to women. Canedy v. Boardman, C.A.7 (Wis.) 1996, 91 F.3d 30. Civil Rights 1376(7)

Muslim inmates had clearly established right not to handle pork at time when inmate was disciplined for refusing to handle pork, for purposes of determining whether prison officials were qualifiedly immune from inmate's § 1983 suit; *Finney v. Hutto* , which was decided before inmate was disciplined, clearly established such right, and, given that case was decided in jurisdiction in which present case arose and involved same prison system, it would be unreasonable for officials to be unaware of such right. Hayes v. Long, C.A.8 (Ark.) 1995, 72 F.3d 70, rehearing denied. Civil Rights 1376(7)

New York state prison officials were not entitled to qualified immunity from civil rights liability in connection with their rejection of prisoner's requests in 1989 and 1990 for meals prepared in accordance with dietary laws of his religion; as early as 1975, United States Supreme Court had established that prison officials had to provide prisoner a diet that was consistent with his religious scruples, and that principle was not placed in any reasonable doubt by intervening rulings. Bass v. Coughlin, C.A.2 (N.Y.) 1992, 976 F.2d 98. Civil Rights 1376(7)

Superintendent of correctional facility and Commissioner of New York State Department of Correctional Services were entitled to qualified immunity in civil rights action brought against them by inmate disciplined for violating regulations prohibiting group prayer and prayer in prison yard, where, at time discipline was imposed, legitimate question existed as to whether prisoner had right to engage in group prayer in prison yard. Shabazz v. Coughlin, C.A.2 (N.Y.) 1988, 852 F.2d 697. Civil Rights 1376(7)

Prisoner who converted to Islam and legally changed name after he had been committed to state correctional

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institution did not have any "clearly established constitutional right" not to be disciplined for failing to respond to committed name during prison role call; accordingly, the prison officials who imposed such discipline were entitled to qualified immunity in prisoner's § 1983 action. Muhammad v. Wainwright, C.A.11 (Fla.) 1987, 839 F.2d 1422. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity in inmate's §§ 1983 action alleging that his First Amendment rights were violated by the denial of his newspaper subscription; enforcement against inmate of rules restricting certain inmates' ability to subscribe to newspaper, magazine, and newsletter publications did not violate a clearly established constitutional right. Calia v. Werholtz, D.Kan.2006, 426 F.Supp.2d 1210. Civil Rights 1376(7)

It was not clearly established in 2002 that atheism was "religion" for purposes of state inmate's request to form atheist study group, and prison officials thus were qualifiedly immune from inmate's Establishment Clause claim, where no case had held that atheism was religion, and, although courts had recognized that secular humanism and other non-theistic belief systems were protected by Free Exercise Clause, inmate did not tell officials he was adherent of any such belief system, and did not indicate that his proposed group was connected to "religious" principles. Kaufman v. McCaughtry, W.D.Wis.2006, 422 F.Supp.2d 1016. Civil Rights 1376(7)

Prison officials who provided prisoner with a pork-free diet but allegedly refused his request for the vegetarian diet purportedly required by his Muslim religion were not entitled to qualified immunity on prisoner's §§ 1983 claim for violation of his rights under the free exercise clause of the First Amendment; prisoner clearly alleged a deprivation of actual rights under the First Amendment, it was well established at the time of the alleged deprivation that prisoners retain their First Amendment rights inside prison walls, an objectively reasonable official would have known that he could not impinge on those rights unless his actions were reasonably related to legitimate penological interests, and genuine issues of material fact remained as to whether denial of prisoner's request for a vegetarian diet was reasonably related to legitimate penological concerns. Shaheed-Muhammad v. Dipaolo, D.Mass.2005, 393 F.Supp.2d 80. Civil Rights 1376(7)

Corrections employees and officials did not have qualified immunity in Muslim inmate's §§1983 claim against them alleging that they violated RLUIPA by disciplining him for refusing to assist in preparation of pork while working in prison kitchen, since the right of Muslim inmates to avoid handling pork was clearly established at time of incidents. Williams v. Bitner, M.D.Pa.2005, 359 F.Supp.2d 370. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity on prisoner's § 1983 claim of interference with his religious observance in violation of the First and Fourteenth Amendments; officials did not violate a clearly established law in following established policies and procedures while removing and disposing of prisoner's excess materials located inside his cell, and offering him options for disposing of those materials, which were in violation of those policies, which limited prisoners to possession of twelve books, plus one dictionary, one thesaurus and the primary religious text. Neal v. Lewis, D.Kan.2004, 325 F.Supp.2d 1231, reconsideration denied 2004 WL 2009427, affirmed 414 F.3d 1244. Civil Rights 1376(7)

State inmates' First Amendment right to reasonable meal and dining accommodations that complied with their religious beliefs was clearly established by 1998, for purposes of determining whether prison officials were entitled to summary judgment on qualified immunity grounds in Jewish inmate's § 1983 action alleging that officials unlawfully interfered with his right to take his meals in properly-secured booth during Sukkot. Wares v. VanBebber, D.Kan.2004, 319 F.Supp.2d 1237. Civil Rights 1376(7)

State prisoner's right to reasonable opportunity to exercise his religion was clearly established constitutional right at time that prison chaplain's alleged conduct in interfering with prisoner's ability to observe a particular religious holiday occurred, and thus chaplain was not entitled to qualified immunity in his individual capacity from prisoner's civil rights suit based on that conduct, where the Supreme Court and the Court of Appeals recognized that prisoner had right to reasonable opportunity to pursue his religion years before chaplain's alleged conduct.

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42 U.S.C.A. § 1983

Wares v. VanBebber, D.Kan.2002, 231 F.Supp.2d 1120. Civil Rights 1376(7)

State prisoner's right to reasonable opportunity to exercise his religion was clearly established constitutional right at time that prison chaplain's alleged conduct in interfering with prisoner's ability to observe a particular religious holiday occurred, and thus chaplain was not entitled to qualified immunity in his individual capacity from prisoner's civil rights suit based on that conduct, where the Supreme Court and the Court of Appeals recognized that prisoner had right to reasonable opportunity to pursue his religion years before chaplain's alleged conduct. Wares v. VanBebber, D.Kan.2002, 231 F.Supp.2d 1120. Civil Rights 1376(7)

Right of Shi'ite prisoners to be given separate religious accommodation from Sunnis was not clearly established at time that New York Department of Correctional Services (DOCS) employees allegedly violated inmate's free exercise right, and thus DOCS employees were entitled to qualified immunity on inmate's § 1983 free exercise claim. Cancel v. Mazzuca, S.D.N.Y.2002, 205 F.Supp.2d 128. Civil Rights 1376(7)

In related case brought by inmate, Court of Appeals' ruling that drug treatment program in which inmate participated while incarcerated at state correctional institution violated his rights under Establishment Clause, due to program's religious component, did not clearly establish any law in Seventh Circuit applicable when inmate was in prison, for purposes of state officials' qualified immunity defense in current case, since Court of Appeals' decision was issued after he was released. Kerr v. Puckett, E.D.Wis.1997, 967 F.Supp. 354, affirmed 138 F.3d 321 . Civil Rights 1376(7)

It was not clearly established in October 1993, prior to enactment of Religious Freedom Restoration Act (RFRA), that actions of prison officials in isolating prisoner, who refused to undergo tuberculosis (TB) screening test on religious grounds, in medical isolation unit until court order allowing test could be obtained violated prisoner's free exercise rights under First Amendment, and thus, officials were entitled to qualified immunity in prisoner's civil rights action; prior to enactment of RFRA, and its reinstatement of substantial burden test, officials would have had no reason to believe that their actions were unlawful. Jones-Bey v. Wright, N.D.Ind.1996, 944 F.Supp. 723. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from Muslim prisoner's civil rights claim based on prison's no hats policy; at time policy was enforced against prisoner, it was not clearly established that such rules violated prisoners' right to free exercise of religion. Muslim v. Frame, E.D.Pa.1995, 897 F.Supp. 215. Civil Rights 1376(7)

Inmate failed to prove that it was "clearly established" that First Amendment right to free exercise of religion precluded prison officials from requiring him to undo his dreadlocks in order to facilitate hair search prior to his transfer from facility and, thus, prison officials were qualifiedly immune from liability for damages in inmate's § 1983 suit; case law clearly established that prison officials could freely regulate style and length of inmates' hair without offending their right to free exercise of religion. May v. Baldwin, D.Or.1995, 895 F.Supp. 1398, affirmed 109 F.3d 557, certiorari denied 118 S.Ct. 312, 522 U.S. 921, 139 L.Ed.2d 241. Civil Rights 1376(7)

Prison officials enjoyed qualified immunity from liability for any alleged violation of the RFRA for conduct which occurred before enactment of the RFRA as the RFRA was clearly a change in the law so that prison officials' conduct could not have violated a clearly established statutory or constitutional right. Woods v. Evatt, D.S.C.1995, 876 F.Supp. 756, affirmed 68 F.3d 463. Civil Rights 1376(7)

Prison chaplain was entitled to qualified immunity on claim that he violated inmates' right to free exercise of religion in denying requests for diet in compliance with religious beliefs of inmates not affiliated with recognized religious group, though prisons should make all reasonable accommodations to any sincerely held religious dietary belief of prisoner; split in authority concerning prisoner's right to special religious diet and lack of controlling precedent demonstrated that right was not clearly established. Kurtz v. Denniston, N.D.Iowa 1994, 872 F.Supp.

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42 U.S.C.A. § 1983

631. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity respecting prisoners' claim that their constitutional rights were violated by officials' refusal to allow use of prison facilities for production of taped programs for broadcast on public-access television channel for purpose of promoting a particular religious belief, since law was not clear enough that reasonable official would have understood such refusal to be violation of constitutional rights; cases cited by prisoners were far removed from facts of instant case. Thompson v. Clarke, D.Neb.1994, 848 F.Supp. 1452. Civil Rights 1376(7)

Any right of protective custody inmates to participate in congregate religious services had not been clearly established, and, thus, warden and deputy warden were entitled to qualified immunity in prisoner's civil rights action, which alleged that voluntarily segregated prisoner had been wrongfully denied opportunity to participate in congregate religious services in violation of First Amendment. Jones v. Stine, W.D.Mich.1994, 843 F.Supp. 1186. Civil Rights 1376(7)

Arrestee who was held in county jail as pretrial detainee did not have clearly established constitutional right to additional servings of food permitted by his religious diet, even if arrestee made his religious diet requirements sufficiently clear to sheriff and deputies, entitling sheriff and deputies to qualified immunity on arrestee's civil rights claim that they unduly delayed providing arrestee with diet in compliance with his religious requirements. Fillmore v. Ordonez, D.Kan.1993, 829 F.Supp. 1544, affirmed 17 F.3d 1436. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity in inmate's claim that they violated his right to exercise his religious beliefs while he was in protective custody by failing to permit him to attend congregational religious services; at time inmate was incarcerated, prison officials could restrict inmate's desire to practice sincerely held religious belief upon showing that restriction was reasonably related to legitimate penological interest and did not clearly establish that prison officials were required to provide inmate with opportunity to attend congregational religious services, instead of, or in addition to providing inmate with religious counseling, Bible and other religious reading material. Gawloski v. Dallman, S.D.Ohio 1992, 803 F.Supp. 103. Civil Rights 1376(7)

3900. ---- Freedom of speech, prisons and prisoners, clearly established right

First Amendment right of prisoner to approach and speak to prison officer while officer was disciplining another inmate was not clearly established, and so even if officer fabricated accusation that he saw prisoner's mother pass contraband into prison, which led to administrative segregation of prisoner from general prison population, in retaliation for prisoner's remarks, officer was entitled to qualified immunity from prisoner's civil rights action. Rodriguez v. Phillips, C.A.2 (N.Y.) 1995, 66 F.3d 470. Civil Rights 1376(7)

Right to be free from retaliation for exercise of constitutional rights was clearly established at time prison officials banned prisoners' rights organization and its employees from prison during work strike threatening prison security, and thus, officials were not protected by qualified immunity from liability to organization and its employees for alleged violation of right to be free from retaliation for exercise of First Amendment right to speak out publicly about conditions at prison and to litigate to change conditions. Abel v. Miller, C.A.7 (Ill.) 1987, 824 F.2d 1522, rehearing denied 849 F.2d 1018. Civil Rights 1376(7)

State prison officials did not act outside scope of their qualified immunity from inmate's federal civil rights action for allegedly violating his free speech rights by suppressing distribution of revolutionary publication within the prison system by failing to clip those portions of the publication which officials found threatening to prison security and allowing remainder to be distributed where, when officials acted, free speech rights of prisoners and scope of prison censorship were not clearly established law. Hernandez v. Estelle, C.A.5 (Tex.) 1986, 788 F.2d 1154, rehearing denied 793 F.2d 1287. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Inmate's conduct of writing letters to supervisor of combined records for North Carolina Department of Corrections was not so clearly protected by U.S.C.A. Const. Amend. 1 as to make it a "clearly established constitutional right," and therefore, prison authorities were entitled to immunity for disciplining inmate under prison regulation. Ross v. Reed, C.A.4 (N.C.) 1983, 719 F.2d 689. Constitutional Law 90.1(1.3)

Prison employees' alleged creation of bogus misbehavior reports, improperly motivated prison transfers, and threats and attacks on inmate's life in retaliation for inmate's exercise of his First Amendment rights violated clearly established law, making qualified immunity unavailable in inmate's §§ 1983 action. Hernandez v. Goord, S.D.N.Y.2004, 312 F.Supp.2d 537. Civil Rights 1376(7)

State corrections officials had qualified immunity from damages on claim inmate's First Amendment rights were violated when he was punished for circulating petition among prisoners; no case had been cited that held as of May 8, 1987, that First Amendment barred prison officials from regulating circulation through prison of petition with language such as that included in inmate's petition. Richardson v. Coughlin, S.D.N.Y.1991, 763 F.Supp. 1228 . Civil Rights 1376(7)

First Amendment rights of prisoners were clearly established at time inmate wrote memorandum voicing opposition to disciplinary treatment of fellow inmate and, therefore, state corrections officials were not entitled to qualified immunity from liability in inmate's civil rights action. Salahuddin v. Harris, S.D.N.Y.1988, 684 F.Supp. 1224. Civil Rights 1376(7)

3901. ---- Privacy right, prisons and prisoners, clearly established right

Prison officials were entitled to qualified immunity from inmate's claim that his constitutional rights were violated by their disclosure of his human immunodeficiency virus (HIV)-positive status to other inmates or prison staff or by other measures taken against him on basis of his HIV status; at the time, an inmate's constitutional right to confidentiality of his HIV-positive status was not clearly established. Anderson v. Romero, C.A.7 (Ill.) 1995, 72 F.3d 518. Civil Rights 1376(7)

Inmates' constitutional right to bodily privacy was not clearly established at time female correctional officers viewed inmates while they were nude and, thus, correctional officials enjoyed qualified immunity from civil damages liability in inmates' § 1983 action but not from injunctive relief. Fortner v. Thomas, C.A.11 (Ga.) 1993, 983 F.2d 1024. Civil Rights 1376(7)

A state assistant attorney general was entitled to qualified immunity from liability in a civil rights action growing out of an inmate's claim that his right to privacy was violated by use of a presentence report to formulate requests for admissions in the inmate's civil defamation suit against a police officer; there was no clearly established constitutional right to privacy in information contained in a presentence report. Wheeler v. Gilmore, E.D.Va.1998, 998 F.Supp. 666. Civil Rights 1376(9)

Privacy rights of inmates concerning disclosure of their human immunodeficiency virus (HIV) status was not clearly established when prison employee allegedly disclosed inmate's HIV status to other inmates who were nearby when inmate cut himself; therefore, prison employee was entitled to qualified immunity from liability in inmate's § 1983 action brought alleging a violation of his constitutional rights due to employee's communication to others regarding inmate's HIV-positive status. Quinones v. Howard, W.D.N.Y.1996, 948 F.Supp. 251. Civil Rights 1376(7)

3902. ---- Arrestees, prisons and prisoners, clearly established right

Arresting officer could not reasonably have believed that his threat to disclose suspected homosexuality of 18-year-old arrestee to arrestee's grandfather was lawful in light of established law protecting privacy rights and

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officer's acknowledgement that disclosure of arrestee's sexuality was matter of private concern, and therefore officer was not entitled to qualified immunity against § 1983 claim asserted by executrix for estate of arrestee, who committed suicide following his release from custody, even though conduct such as officer's had not previously been held to be unlawful. Sterling v. Borough of Minersville, C.A.3 (Pa.) 2000, 232 F.3d 190. Civil Rights 1376(6)

In order to determine whether government official is entitled to qualified immunity from § 1983 claims, district court must first determine whether a constitutional right would have been violated on the facts alleged, and if so, court must determine whether right was clearly established at time such that it would be clear to objectively reasonable officer that his conduct violated that right. Lynn v. O'Leary, D.Md.2003, 264 F.Supp.2d 306. Civil Rights 1376(1); Civil Rights 1376(2)

3903. ---- Pretrial detainee status, prisons and prisoners, clearly established right

Pretrial detainee's right to be free from deliberate indifference to risk that he would attempt suicide was clearly established prior to his suicide attempt, for purposes of § 1983 action alleging police officer's deliberate indifference to risk of detainee's attempting suicide in holding cell. Cavalieri v. Shepard, C.A.7 (Ill.) 2003, 321 F.3d 616, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 531, 540 U.S. 1003, 157 L.Ed.2d 408 . Civil Rights 1376(7)

Drug Enforcement Agency (DEA) agents were not entitled to qualified immunity from Mexican national's § 1983 and Federal Tort Claims Act (FTCA) action, which arose out of national's abduction and transportation to United States to face murder charges, where complaint alleged that DEA agents threatened Mexican national during interrogation session, withheld food throughout interrogation, incarcerated him under false name, and denied him adequate medical attention. Alvarez-Machain v. U.S., C.A.9 (Cal.) 1996, 107 F.3d 696, certiorari denied 118 S.Ct. 60, 522 U.S. 814, 139 L.Ed.2d 23. United States 50.10(3)

Officer was not entitled to qualified immunity in connection with violation of arrestee's civil rights in denying arrestee access to telephone; state statute clearly provided that officer should have permitted arrestee up to three phone calls immediately upon being booked or at least within three hours thereof, and existence of due process protection for state-created liberty interests for prisoners had been clearly established since at least 1974. Carlo v. City of Chino, C.A.9 (Cal.) 1997, 105 F.3d 493, certiorari denied 118 S.Ct. 1336, 523 U.S. 1036, 140 L.Ed.2d 496 . Civil Rights 1376(6)

It was not clearly established in 1987 that 17-day detention of fugitive without bringing him before magistrate violated clearly established Fourth Amendment rights where he was being detained while sheriff awaited extradition papers from another state, so that sheriff was entitled to qualified immunity in civil rights suit arising out of that detention. Sivard v. Pulaski County, C.A.7 (Ind.) 1994, 17 F.3d 185. Civil Rights 1376(6)

It was clearly established law in late 1991 and early 1992 that blanket policy of strip searches for detainees was unconstitutional, so that sheriff was not qualified immunity in civil rights action arising out of strip searches. Chapman v. Nichols, C.A.10 (Okla.) 1993, 989 F.2d 393. Civil Rights 1376(6)

Police officer who was acting as jail houseman was entitled to qualified immunity in civil rights suit arising from jail detainee's suicide where officer's failure to remain at station to monitor detainees in lockup did not rise to level of "deliberate indifference" and it was not obvious that officer's conduct violated clearly established law. Bowen v. City of Manchester, C.A.1 (N.H.) 1992, 966 F.2d 13. Civil Rights 1376(7)

Police chief was entitled to qualified immunity on claim that he violated arrestee's Fourth Amendment rights to a probable cause hearing by allowing arrestee to remain in jail on disorderly conduct charges overnight, in small town with no court official on duty to conduct hearing; contours of law were not so developed that reasonable

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police officer would realize that immediate hearing was required. White v. Taylor, C.A.5 (Miss.) 1992, 959 F.2d 539. Civil Rights 1376(6)

Sheriff and deputy were not entitled to qualified immunity in § 1983 civil rights suit brought by relatives of pretrial detainee who hung himself in jail cell; unlawfulness of not doing anything to attempt to save detainee's life when he was found hanging in cell, even though body was warm and detainee's feet were touching floor, would have been apparent to reasonable officials in defendants' position in light of preexisting law. Heflin v. Stewart County, Tenn., C.A.6 (Tenn.) 1992, 958 F.2d 709, rehearing denied, on reconsideration 968 F.2d 1, certiorari denied 113 S.Ct. 598, 506 U.S. 998, 121 L.Ed.2d 535. Civil Rights 1376(6)

Police officer who shot and killed pretrial detainee during attempted escape was entitled to qualified immunity in detainee's parents' § 1983 lawsuit alleging violation of Fourth Amendment; right to press claim of excessive force under Fourth Amendment, asserted on behalf of pretrial detainee against whom deadly force was used during escape attempt was not clearly established when shooting occurred. Wright v. Whiddon, C.A.11 (Ga.) 1992, 951 F.2d 297. Civil Rights 1376(6)

Qualified immunity was not available to sheriff and deputies being sued in their official capacities for violating detainee's constitutional rights. Rivas v. Freeman, C.A.11 (Fla.) 1991, 940 F.2d 1491. Civil Rights 1376(6)

Utah law allowing involuntary medication of mental patient did not give jail psychiatrist qualified immunity from liability for involuntary medication of pretrial detainee since Utah law applied only after judicial involuntary commitment proceeding, which was not provided to detainee. Bee v. Greaves, C.A.10 (Utah) 1990, 910 F.2d 686. Civil Rights 1376(7)

Law which existed at time of police officers' action did not clearly establish right to have officers diagnose pretrial detainee's condition as prone to suicide and to take extraordinary measures to restrain pretrial detainee; therefore, police officers had qualified immunity from liability in civil rights action arising out of suicide of pretrial detainee. Danese v. Asman, C.A.6 (Mich.) 1989, 875 F.2d 1239, rehearing denied, certiorari denied 110 S.Ct. 1473, 494 U.S. 1027, 108 L.Ed.2d 610. Civil Rights 1376(7)

Unconstitutionality of strip search of arrestees for traffic violations and nonviolent minor offenses was clearly established at time of arrest for failure to appear for hearing on traffic violations, even though intermingling of arrestee with general population at jail was asserted basis for strip search, and, thus, county officers and employees were not entitled to qualified immunity in arrestee's § 1983 action; nothing supported reasonable belief that arrestee was carrying weapons or other contraband. Masters v. Crouch, C.A.6 (Ky.) 1989, 872 F.2d 1248, rehearing denied, certiorari denied 110 S.Ct. 503, 493 U.S. 977, 107 L.Ed.2d 506. Civil Rights 1376(4)

Deputy sheriffs were entitled to qualified immunity in their individual capacities in civil rights action for detention and transportation to sheriff's station of woman who reported coresident had been shot by unknown intruder, but was later found to have killed coresident herself, for seizure that was allegedly unlawful under Fourth Amendment; at time woman was detained, the law was ambiguous as to when detention of the only suspect/eyewitness to recent homicide became impermissible. Barts v. Joyner, C.A.11 (Fla.) 1989, 865 F.2d 1187, rehearing denied 871 F.2d 122, certiorari denied 110 S.Ct. 101, 493 U.S. 831, 107 L.Ed.2d 65. Civil Rights 1376(6)

County sheriff, in his individual capacity, and assistant supervisor of court services in sheriff's department were entitled to qualified immunity from liability arising from failure to release misidentified arrestee for some 11 hours after issue of his identification was first raised in court, where case law at time of defendant's arrest was not well-established, but merely suggested that some prerelease identification procedures could be so time-consuming as to violate Fourth Amendment. Lewis v. O'Grady, C.A.7 (Ill.) 1988, 853 F.2d 1366. False Imprisonment 15(1)

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42 U.S.C.A. § 1983

Jail doctor, warden, and assistant warden, whose alleged failure to provide medical treatment for epileptic condition of pretrial detainee resulted in detainee's death, were not entitled to invoke doctrine of qualified immunity, because Eighth Amendment right to adequate medical treatment was clearly established at time of detainee's incarceration. Miranda v. Munoz, C.A.1 (Puerto Rico) 1985, 770 F.2d 255. Civil Rights 1376(7)

Sheriff, who arrested plaintiff, was entitled to qualified immunity from liability in civil rights action for detaining plaintiff for 18 days without appearance before judge or magistrate where sheriff had followed his obligation under Indiana law to bring about first appearance by properly returning arrest warrant to clerk of court and repeatedly calling prosecutor's office to arrange time for the first appearance. Coleman v. Frantz, C.A.7 (Ind.) 1985, 754 F.2d 719. Civil Rights 1376(6)

Good faith of police officers, prison officials, and private citizens in question was no defense to claim that they were deliberately indifferent to pretrial detainee's serious medical needs; inasmuch as law requiring adequate medical attention in such instances is clearly established, the defendants were not entitled to any good-faith immunity. Whisenant v. Yuam, C.A.4 (N.C.) 1984, 739 F.2d 160. Civil Rights 1376(7)

Arresting officer and police chief were not entitled to the protection afforded by qualified immunity for violations of arrestee's due process rights resulting from arrestee's excessive detention since, at the time of arrestee's incarceration, the law clearly established that a pre-trial detainee could not be detained for twelve days without being brought before a judge or allowed to pay bail. Bunyon v. Burke County, S.D.Ga.2003, 285 F.Supp.2d 1310. Civil Rights 1376(6)

Police officer who shot pretrial detainee could not be held liable for violation of detainee's Fourth Amendment right to be free from unreasonable seizure; law on Fourth Amendment rights of pretrial detainees was not clearly established. Jordan v. Cobb County, Georgia, N.D.Ga.2001, 227 F.Supp.2d 1322. Civil Rights 1376(6)

Absent any evidence that detainee showed arresting officers suicidal tendencies, officers were entitled to immunity from civil rights action in connection with detainee's suicide as there was no clearly established right possessed by intoxicated detainees to be screened for suicidal tendencies. Dawson on Behalf of Young v. Campbell County, Tenn., E.D.Tenn.1994, 894 F.Supp. 1135. Civil Rights 1376(6)

Deputies and supervising officer at county jail were not entitled to qualified immunity from civil rights claim of administrators of arrestee's estate for their alleged deliberate indifference to arrestee's vulnerability to suicide and their alleged failure to take adequate measures to present his suicide attempt; constitutional right allegedly violated was clearly established, and extraordinary circumstances were not presented that would justify actions of deputies and supervisor in failing to maintain adequate suicide watch over arrestee and in leaving him with access to means to commit suicide. Camps v. City of Warner Robins, M.D.Ga.1993, 822 F.Supp. 724. Civil Rights 1376(7)

Officers' behavior in transporting to sheriff's station occupants of house in which homicide occurred during execution of search warrant was not reasonable in light of clearly established law that investigatory detention must employ least intrusive means to confirm or dispel officers' suspicions quickly, so that officers were not entitled to qualified immunity in occupants' § 1983 action, notwithstanding officers' contention that they were justified in detaining occupants until they determined whether their drug investigation, which prompted warrant, and homicide investigation provided them with probable cause to arrest any occupant; occupants were detained at station for 17 hours while officers investigated, and officers transported occupants for express purpose of custodial interrogation. Orozco v. County of Yolo, E.D.Cal.1993, 814 F.Supp. 885. Civil Rights 1376(6)

Jailers were entitled to qualified immunity with respect to claim alleging indifference to prisoner's medical needs brought by widow of intoxicated prisoner who had hung himself in jail; reasonable official could conclude that failure to include special accommodations for detainees subject to potential suicide did not violate clearly established constitutional rights. Zwalesky v. Manistee County, W.D.Mich.1990, 749 F.Supp. 815. Civil Rights

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42 U.S.C.A. § 1983

1376(7)

3904. ---- Access to courts, prisons and prisoners, clearly established right

Inmates have no clearly established right to transportation to court for purpose of filing criminal charges, and thus prison officials were entitled to qualified immunity in inmates' suit alleging that policy of screening inmate requests that they be transported to court to press criminal charges violated due process. Lopez v. Robinson, C.A.4 (Md.) 1990, 914 F.2d 486. Civil Rights 1376(7)

No clearly established law required state prisoner's presence during inspection of legal documents in his cell and thus, even if search did violate prisoner's First Amendment rights, officer was entitled to qualified immunity from damages liability. Giba v. Cook, D.Or.2002, 232 F.Supp.2d 1171. Civil Rights 1376(7); Prisons 4(7)

State prison official had fair warning in 2000 that he could not restrict prisoner communications unless such restrictions were reasonably related to legitimate penological interests, and thus was not entitled to qualified immunity from liability in inmate's § 1983 action alleging that another inmate's right to petition for redress for grievances was violated when he was placed in disciplinary confinement in retaliation for providing authorized legal assistance to other inmate as part of his assigned work activities. Auleta v. LaFrance, N.D.N.Y.2002, 233 F.Supp.2d 396. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity with regard to inmate's § 1983 claim that he had been unconstitutionally retaliated against for filing administrative complaints; inmate's right to seek redress of grievances without fear of retaliation was well-established, and reasonable person would have known of such right. Brown v. Coughlin, W.D.N.Y.1997, 965 F.Supp. 401. Civil Rights 1376(7)

Sheriff and director of county jail were not entitled to qualified immunity from inmate's claim that he was denied his constitutional right of access to court when he was not permitted to take his legal papers upon his transfer to state prison, and that loss of papers prevented his drafting complaint concerning alleged beating by jail guards; it was clearly established law at time of alleged deprivation that it was a violation of constitutional right of access to the courts to deprive a prisoner of legal papers needed for court proceedings. Banks v. Sheahan, N.D.Ill.1995, 914 F.Supp. 231. Civil Rights 1376(7)

Jail warden, as chief administrator of jail, was not entitled to qualified immunity in pretrial detainee's suit under § 1983 alleging that county jail officials deprived him of meaningful access to courts during his detention; relevant law was clearly established at time of detention that reliance on courthouse library paging system and court-appointed counsel in criminal proceedings was inadequate to provide meaningful access to courts, and no prison warden in jail warden's position could have believed that he was acting lawfully. Turiano v. Schnarrs, M.D.Pa.1995, 904 F.Supp. 400. Civil Rights 1376(7)

Prison officials were qualifiedly immune from inmates' claim for damages arising from prison's "ink tube policy," under which inmates confined in punitive segregation unit at prison were permitted to use only plastic inner ink insert from ballpoint pen for all legal and personal writing; although it was clearly established at time of conduct in question that prison officials were obligated to provide inmates with reasonable access to courts and with pen and paper to draft legal documents, it was clearly established that prison officials were obligated to provide inmates with any particular type of writing implement. Kirsch v. Smith, E.D.Wis.1995, 894 F.Supp. 1222, affirmed 92 F.3d 1187. Civil Rights 1376(7)

Chief clerk and motion clerk were entitled to qualified immunity from claim that clerks violated plaintiff's rights by failing to file his pro se motion for writ of habeas corpus because he was represented by counsel in pending state court criminal action; plaintiff had no clearly established right of access to court to present his petition or to proceed pro se while being represented by counsel. Woodard v. Mennella, E.D.N.Y.1994, 861 F.Supp. 192. Civil

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42 U.S.C.A. § 1983

Rights 1376(8)

Prison officials were not entitled to qualified immunity from liability in state inmate's § 1983 action alleging that he was forced to choose between law library time and outdoor recreation on any given day; rights of access to the courts and to outdoor exercise were clearly established rights and to sanction policy of forcing inmate to choose between them would be tantamount to denying inmate one of the rights. Allen v. City and County of Honolulu, D.Hawai'i 1993, 816 F.Supp. 1501, affirmed 39 F.3d 936. Civil Rights 1376(7)

Chief librarian was not entitled to qualified immunity in § 1983 action brought by inmate who alleged that his constitutional right of meaningful access to courts was violated; constitutional right of meaningful access to courts was clearly established well before conduct alleged in complaint and alleged pattern of harassment, exclusion, and confiscation in connection with inmate's use of law library clearly infringed his right of access to courts. Martin v. Ezeagu, D.D.C.1993, 816 F.Supp. 20. Civil Rights 1376(7)

Warden and other officials of Tennessee correctional institution were entitled to defense of qualified immunity in suit alleging deprivation of segregated inmates' constitutionally guaranteed right of access to the courts; although institution's arrangement for providing access to prison law library materials and legal assistance was insufficient, there was no body of authority such that any reasonable officer should have known in advance that arrangement was unconstitutional. Watson v. Norris, M.D.Tenn.1989, 729 F.Supp. 581. Civil Rights 1376(7)

3905. ---- Access to libraries, prisons and prisoners, clearly established right

Director of Virginia Department of Corrections was entitled to immunity against prisoner's claim that he had been denied sufficient access to adequate law library during his two and one-half years in city jail where, prior to a Supreme Court decision, reasonable public official could not be said to have been incorrect in stating that duties of local jails to their inmates were not clearly established and after the decision, the time period during which books were acquired for a law library was not so long that the director was stripped of his immunity. Harris v. Young, C.A.4 (Va.) 1983, 718 F.2d 620. Civil Rights 1376(7)

Prison librarian, who deprived inmate of free photocopying services and temporarily removed inmate's name from library call-out list, was entitled to qualified immunity from § 1983 liability; inmate had no clearly established statutory or constitutional right to free photocopying or specific amount of time in library. Oswald v. Graves, E.D.Mich.1993, 819 F.Supp. 680. Civil Rights 1376(7)

3905A. ---- Access to internet materials, prisons and prisoners, clearly established right

Prisoners' constitutional right to access internet-generated material was not clearly established at time prison officials denied access, and thus officials had qualified immunity, where they reasonably relied upon existing state appellate decision upholding policy, at time before pronouncement of federal decisions first finding that policy violated First Amendment. Nelson v. Giurbino, S.D.Cal.2005, 395 F.Supp.2d 946. Civil Rights 1376(7)

3906. ---- Access to mails, prisons and prisoners, clearly established right

Publisher's and prisoners' First Amendment rights in prisoners' receipt of subscription non-profit organization standard mail were not clearly established at time state corrections department enforced ban on receipt of such mail, and corrections officials were thus entitled to qualified immunity in publisher's and prisoners' resulting § 1983 action alleging First Amendment violation. Prison Legal News v. Cook, C.A.9 (Or.) 2001, 238 F.3d 1145. Civil Rights 1376(7)

Prisoner's claimed right to sealed exit of his mail going to governmental agency was not clearly established at time that prison officials refused to allow sealed mail to be sent by prisoner, and, thus, prison officials were entitled to

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qualified immunity from prisoner's § 1983 action alleging constitutional violation. Davidson v. Scully, C.A.2 (N.Y.) 1997, 114 F.3d 12. Civil Rights 1376(7)

Prison official neither knew nor could have known of relevant legal standard pertaining to inspection of outgoing legal mail from inmate who attempted to borrow additional postage for letter, but who refused to allow resident unit manager to inspect legal mail to determine if it qualified for postage loan, and, thus, official was entitled to qualified immunity in civil rights action; prison's policy directive was triggered only if inmate wanted subsidized postage, official's inspection was limited to scanning legal mail for docket numbers, case title, requests for documents, et cetera, inspection was conducted in inmate's presence in his cell, and inmate could seal his mail after inspection was completed. Bell-Bey v. Williams, C.A.6 (Mich.) 1996, 87 F.3d 832. Civil Rights 1376(7)

New York Department of Correctional Services directive requiring inmates desiring to correspond with one another to secure approval of superintendents of both prisons did not sufficiently curtail discretion of prison officials to clearly establish a protected liberty interest, and therefore prison superintendents were entitled to immunity from inmate's claim that revocation of his privilege to correspond with female inmate in a different facility violated his due process rights. Purnell v. Lord, C.A.2 (N.Y.) 1992, 952 F.2d 679. Prisons 10

Prison official who did not examine government surplus catalog before deciding to disallow inmate's request for catalog could not have reasonably assessed whether his conduct violated clearly established law, and thus was not entitled to qualified immunity from damages in a civil rights action. Allen v. Higgins, C.A.8 (Mo.) 1990, 902 F.2d 682, rehearing denied. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from civil rights action brought by inmate alleging that prison officials violated due process by failing to follow state regulation allowing inmate to receive books that did not threaten security where, by following invalid policy directive prohibiting inmates from receiving books except from publishers, prison officials violated clearly established conflicting state regulation. Spruytte v. Walters, C.A.6 (Mich.) 1985, 753 F.2d 498, certiorari denied 106 S.Ct. 788, 474 U.S. 1054, 88 L.Ed.2d 767. Civil Rights 1376(7)

State prison official had fair warning in 2000 that he could not restrict prisoner communications unless such restrictions were reasonably related to legitimate penological interests, and thus was not entitled to qualified immunity from liability in inmate's § 1983 action alleging that another inmate's right to petition for redress for grievances was violated when he was placed in disciplinary confinement in retaliation for providing authorized legal assistance to other inmate as part of his assigned work activities. Auleta v. LaFrance, N.D.N.Y.2002, 233 F.Supp.2d 396. Civil Rights 1376(7)

It was clearly established in October 1996 that absolute prohibition on receipt by prisoners of paid-for mail subscriptions, without any reasonable connection to legitimate, neutral prison policy, and failure to provide prisoner notice of rejection of subscription, violated prisoner's First Amendment and due process rights, so that prison officials were not entitled to qualified immunity in § 1983 action brought by prisoner after his subscription to newsletter regarding legal developments of significance to prisoners was rejected pursuant to prison bulk mail policy without his being notified. Miniken v. Walter, E.D.Wash.1997, 978 F.Supp. 1356. Civil Rights 1376(7)

Since their conduct did not violate clearly established statutory or constitutional rights of which reasonable person would have known, prison officials were entitled to qualified immunity with respect to prisoner's § 1983 claim alleging that they violated his constitutional rights by opening his incoming mail from Michigan Attorney General; contrary to requirements of Michigan Department of Corrections' mail policy, prisoner failed to show that he requested to be present at opening of this mail. Hall v. Conklin, W.D.Mich.1996, 966 F.Supp. 546. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

State prison officials were entitled to qualified immunity in inmate's suit against them in their individual capacities alleging that prison rule restricting personal correspondence between inmate and members of news media was facially unconstitutional; prison officials did not violate clearly established rights of inmate by enforcing rule since unconstitutionality of rule was not plainly apparent. Mujahid v. Sumner, D.Hawai'i 1992, 807 F.Supp. 1505, affirmed 996 F.2d 1226. Civil Rights 1376(7)

Prison official who read prisoner's legal mail during search of cell for contraband did not act unreasonably in violation of clearly defined legal duty, especially where envelopes were oversized and contained enclosures likely to contain contraband, and thus official was entitled to qualified immunity in civil rights suit. Proudfoot v. Williams, E.D.Pa.1992, 803 F.Supp. 1048. Civil Rights 1376(7)

Prison officials' policy of opening special mail adequately identified as such but which did not precisely comply with prison labeling requirements was not so obviously contrary to law as to deprive officials of qualified immunity from damages. Burt v. Carlson, C.D.Cal.1990, 752 F.Supp. 346. Civil Rights 1376(7)

Since constitutionality of prison procedure governing the opening of inmate mail was unclear, prison officials enjoyed a qualified immunity with respect to civil rights suit challenging opening of a particular piece of mail from the Federal Bureau of Investigation where the prison officials were acting pursuant to official regulations when they opened prisoner's mail. Campbell v. Sumner, D.C.Nev.1984, 587 F.Supp. 376. Civil Rights 1376(7)

3907. ---- Telephone access, prisons and prisoners, clearly established right

State prison officials were entitled to qualified immunity against liability to inmates for installing computerized collect telephone call system in prison should system be found unconstitutional, as parameters of inmates' right to use telephones were not clearly established. Carter v. O'Sullivan, C.D.Ill.1996, 924 F.Supp. 903. Civil Rights 1376(7)

3908. ---- Discipline generally, prisons and prisoners, clearly established right

Corrections officials were entitled to qualified immunity with respect to prisoner's due process claim that corrections officials ordered him disciplined without some reliable evidence of misconduct; due to the lack of clearly defined standards for determining what constituted "some evidence" in the context of prison disciplinary hearings, it was objectively reasonable for officials to think that an independent assessment of the credibility of the confidential informants who proffered evidence against prisoner satisfied due process, and that hearing officer could, without further inquiry, rely on the third-party hearsay disclosed by those informants as some reliable evidence of prisoner's participation in a prohibited strike. Sira v. Morton, C.A.2 (N.Y.) 2004, 380 F.3d 57. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from § 1983 liability for disciplinary action based on determination that prisoner's conversation with fellow inmate about obtaining handgun immediately upon prisoner's imminent release was sufficient plan to constitute attempt to possess firearm as convicted felon in violation of prison rules, absent established contrary judicial interpretation of distinction between prohibited planning and mere talk. Moorman v. Thalacker, C.A.8 (Iowa) 1996, 83 F.3d 970. Civil Rights 1376(7)

Inmate's due process right not to be disciplined for positive urine test for marijuana under prison rule prohibiting possession of dangerous contraband was not clearly established at time of discipline, so that prison officials were entitled to qualified immunity in inmate's § 1983 action; officials' reading of rule to cover marijuana violations was not unreasonable, and there was not yet judicial decision alerting them to inapplicability of rule to testing positive for marijuana. Mahers v. Harper, C.A.8 (Iowa) 1993, 12 F.3d 783, rehearing denied. Civil Rights 1376(7)

Procedural due process rights of prisoner placed on dry cell watch for contraband in bowel movements were not

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clearly established, and, thus, prison officials were entitled to qualified immunity from § 1983 liability for failing to provide notice of reason for action, opportunity to respond, and consideration of the response. Mendoza v. Blodgett, C.A.9 (Wash.) 1992, 960 F.2d 1425, certiorari denied 113 S.Ct. 1005, 506 U.S. 1063, 122 L.Ed.2d 154, certiorari denied 113 S.Ct. 1027, 506 U.S. 1071, 122 L.Ed.2d 173. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from prisoner's § 1983 claim brought against them in their individual capacities alleging that they violated his due process rights by denying him access to educational computers as discipline for his having allegedly downloaded pictures of women wearing bikinis from the Internet; prisoner's right to have some evidence supporting reason for discipline was clearly established at time of alleged violation, prisoner alleged that he was accused of and punished for actions that were impossible for him to have taken, and reasonable official would have known that any disciplinary action had to be supported by at least some evidence. Damron v. North Dakota Com'r. of Corrections, D.N.D.2004, 299 F.Supp.2d 970, affirmed 127 Fed.Appx. 909, 2005 WL 1076645. Civil Rights 1376(7)

It was clearly established in 1995 that fabricating disciplinary charge would violate constitutional rights of pretrial detainee if it resulted in detainee being deprived of liberty interest without due process of law, and thus, correctional officer who was alleged to have made up charges against detainee which resulted in detainee being placed in disciplinary segregation was not entitled to qualified immunity in detainee's federal civil rights action. Marshall v. Fairman, N.D.Ill.1997, 951 F.Supp. 128. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity against prisoners' claims for money damages based on the imposition of sanctions on prisoners for actual violation of prison rules prohibiting false or defamatory statements in grievances; previously, it was not clearly established that disciplining inmate for actual rules violations could run afoul of constitutional requirements. Hancock v. Thalacker, N.D.Iowa 1996, 933 F.Supp. 1449. Civil Rights 1376(7)

Corrections officer was entitled to qualified immunity in civil rights action brought by prisoner alleging that corrections officer in disciplining prisoner relied on tainted evidence in disciplinary report which was contradicted by testimony of officer who had cosigned and endorsed report in violation of prisoner's constitutional rights; although reliance on tainted evidence did not meet requirement that some evidence support prison disciplinary action and was improper, neither Supreme Court or Second Circuit had previously held that reliance on tainted evidence was violation of prisoner's due process rights, and officer was not placed on notice that such reliance was improper. Walsh v. Finn, S.D.N.Y.1994, 865 F.Supp. 126. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from liability for violation of prisoner's due process rights as result of failure to inform prisoner of penalties for misconduct with which he was charged where prisoner's right to be informed had not been previously established. McMillan v. Healey, S.D.N.Y.1990, 739 F.Supp. 153. Prisons 10

Prison officials were not entitled to qualified immunity for their failure to file a misbehavior report at any time during inmate's stay in "keeplock" which clearly defied well-delineated boundaries of official discretion at the time the actions were taken, and, in light of procedural significance of filing predicate misbehavior report, subjected them to liability under federal civil rights provision. Scott v. Coughlin, W.D.N.Y.1990, 727 F.Supp. 806. Civil Rights 1376(7)

3909. ---- Disciplinary hearings, prisons and prisoners, clearly established right

Correctional officials were entitled to qualified immunity on federal civil rights claim that prison disciplinary ruling that relied upon information from confidential informants was based on insufficient reliable evidence to satisfy due process; standards for determining what constitutes "some evidence" in the context of prison disciplinary hearings were not clearly established at time, notwithstanding due process obligation to make independent assessment of

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confidential informant's credibility, as it was objectively reasonable for defendants to think that independent assessment of informant's credibility allowed reliance on third-party hearsay disclosed by informant. Sira v. Morton, C.A.2 (N.Y.) 2004, 2004 WL 1719285, opinion withdrawn, superseded 380 F.3d 57. Civil Rights 1376(7)

Hearing officer's refusal to allow inmate to call witnesses in prison disciplinary hearing did not violate the inmate's clearly established rights, entitling the officer to qualified immunity in inmate's civil rights action, where the inmate was unwilling to state relevance of witnesses' proposed testimony and offered no defense to the charges against him. Walker v. McClellan, C.A.2 (N.Y.) 1997, 126 F.3d 127. Civil Rights 1376(7)

Procedure followed by hearing officer in prison disciplinary proceeding was not clearly established at time of hearing, or at the time of the instant opinion, to have been constitutionally inadequate independent examination of credibility of informants, and thus officer was protected by qualified immunity, where hearing officer did not rely solely on assessments of credibility by officer who wrote misbehavior report, but inquired whether informants had history of reliability, and author of report indicated number of years that she had dealt with each informant and stated that each had been extremely reliable, and hearing officer knew that reporting officer's confidential informants had been historically reliable. Russell v. Scully, C.A.2 (N.Y.) 1993, 15 F.3d 219, modified on denial of rehearing. Civil Rights 1376(7)

It was not clearly established at time of inmate's disciplinary hearing that under Second Circuit law he had right to have presiding officer independently examine credibility of confidential informants; therefore, prison officials were entitled to qualified immunity from liability in inmate's civil rights action alleging that officials' failure to make independent assessment of reliability of confidential informant deprived them of due process. Richardson v. Selsky, C.A.2 (N.Y.) 1993, 5 F.3d 616. Civil Rights 1376(7)

Prison officials did not violate inmate's clearly established rights when they gave inmate only five hours to review statement of charges prior to disciplinary hearing, entitling them to qualified immunity in inmate's subsequent civil rights action; although it was established that inmate was entitled to written notice of charges 24 hours before disciplinary hearing, no court had ruled that requirement meant that officials were required to allow inmate to retain written notice for 24 hours. Benitez v. Wolff, C.A.2 (N.Y.) 1993, 985 F.2d 662. Civil Rights 1376(7)

Hearing officer who imposed discipline on inmate in connection with mess hall riot was not entitled to qualified immunity from liability in inmate's § 1983 action; there was no reliable evidence of inmate's guilt and inmate's right not to be adjudicated guilty without some evidence to support the finding was clearly established when hearing occurred. Zavaro v. Coughlin, C.A.2 (N.Y.) 1992, 970 F.2d 1148. Civil Rights 1358

As of date of action, law was clearly established that any prison official actively involved in conducting investigation could not sit as member of disciplinary committee, reasonable prison official would have known about law, and prison supervisor who sat in judgment on her own complaint in disciplinary proceedings against inmate was aware that her conduct violated inmate's due process rights, and thus supervisor was not entitled to qualified immunity from inmate's § 1983 claim. Diercks v. Durham, C.A.8 (Mo.) 1992, 959 F.2d 710. Civil Rights 1376(7)

Prison officials did not violate clearly established law in 1976 prison disciplinary hearing entitling officials to qualified immunity in subsequent civil rights action, although official who investigated underlying incident later served on disciplinary committee. McDuffie v. Estelle, C.A.5 (Tex.) 1991, 935 F.2d 682. Civil Rights 1376(7)

Law was not clearly established that disciplinary committee of correctional center violated inmate's right to due process by failing to give inmate written notice of drug test results prior to disciplinary hearing, failing to provide inmate with copy of results, failing to let inmate view evidence log to establish chain of custody at hearing, and

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failing to administer second, corroborative drug test, and thus, members of disciplinary committee were entitled to qualified immunity from inmate's § 1983 claim. Harrison v. Dahm, C.A.8 (Neb.) 1990, 911 F.2d 37, rehearing denied. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from liability in inmate's § 1983 action alleging that he had been wrongfully restricted to his cell for ten days without receiving notice of charges against him and without receiving hearing; at time of inmate's confinement, it was clearly established that New York's keeplock regulations created liberty interest in remaining out of administrative confinement, and prison officials could not have reasonably believed that releasing inmate on his tenth day of confinement, without providing notice or opportunity to be heard, complied with due process. Russell v. Coughlin, C.A.2 (N.Y.) 1990, 910 F.2d 75. Civil Rights 1376(7)

Under doctrine of qualified immunity, prison officials were not liable to prisoner under federal civil rights statute for refusing to assist him in preparations for disciplinary proceeding and for failure to elicit testimony from two prison guards prisoner wished to have testify; officials' conduct did not violate clearly established constitutional right of which they should have been aware, as case law at time of disciplinary hearing did not require such assistance or the calling of requested witnesses. Fox v. Coughlin, C.A.2 (N.Y.) 1990, 893 F.2d 475. Civil Rights 1376(7)

Under laws that existed in 1982, inmate charged with violating state disciplinary regulations had clearly established constitutional right to hearing before hearing officer who had not prejudged his guilt, and thus prison officials were not entitled to qualified immunity in § 1983 action for alleged violation of that right. Francis v. Coughlin, C.A.2 (N.Y.) 1989, 891 F.2d 43, on remand 755 F.Supp. 618. Civil Rights 1376(7)

Since the hearing officer's obligation to conduct an independent assessment of confidential informant had not been established in the district, prison corrections officers were protected by qualified immunity from civil damages liability for failure to permit inmate to cross examine a confidential informant in prison disciplinary hearing. Rivera v. Wohlrab, S.D.N.Y.2002, 232 F.Supp.2d 117. Civil Rights 1376(7)

Department of Correctional Services (DOCS) employees did not violate clearly established law by denying prisoner an adjournment during disciplinary hearing, after correctional officer testified that time of incident as stated on misbehavior report was incorrect, and, thus, DOCS employees had qualified immunity from prisoner's action under §§ 1983, alleging claim for deprivation of his right to due process, where there was no precedent that indicated that a relatively modest inaccuracy or ambiguity concerning reported time of alleged incident could, without more, render a prisoner's notice of charges constitutionally inadequate. Wright v. Dixon, W.D.N.Y.2006, 409 F.Supp.2d 210. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity in § 1983 civil rights suit arising from prison disciplinary proceeding, based on allegations that inmate was not given fair notice that drafting and mailing legal pleadings for other inmates was prohibited; there was no clearly established law that inmates are entitled to send draft legal pleadings to one another. Schenck v. Edwards, E.D.Wash.1996, 921 F.Supp. 679, affirmed 133 F.3d 929. Civil Rights 1376(7)

Prison hearing officer was not entitled to qualified immunity with respect to inmate's claim of violation of his due process rights by denying right to assistant to aid him in preparing for disciplinary hearing, as at time of hearing there was clearly established right to inmate assistant in the Second Circuit, hearing officer's statements during hearing attested understanding that what he was doing violated inmate's right to assistant, and no reasonable officer could believe that inmate waived his right to assistant because, on initial and only visit of sergeant appointed to assist him, he told that sergeant that he would prefer one of the assistants he had chosen. Lee v. Coughlin, S.D.N.Y.1995, 902 F.Supp. 424, reconsideration granted 914 F.Supp. 1004, on reconsideration 26 F.Supp.2d 615. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Qualified immunity applied to § 1983 civil rights claims against Deputy Commissioner of Office of Mental Health by inmate, alleging that commissioner failed to properly supervise staff or clarify confusion that resulted in staff consulting with prison disciplinary hearing officer off the record, given that law as to whether psychiatric testimony should be presented to hearing officer was not clearly established at time of disputed hearing. Zamakshari v. Dvoskin, S.D.N.Y.1995, 899 F.Supp. 1097. Civil Rights 1376(3)

Prison officials were entitled to qualified immunity from inmate's claim that he was falsely or wrongly accused; since inmate was afforded his full due process rights with respect to his disciplinary hearing, inmate's claim did not allege violation of any clearly established statutory or constitutional right. Hodges v. Jones, N.D.N.Y.1995, 873 F.Supp. 737. Civil Rights 1376(7)

Prison officials had qualified immunity in § 1983 suit brought by prisoner claiming that officials refused to permit him to call witness from outside prison population in a disciplinary case; as there was a lack of precedent requiring point, there were no "contours of a protected federal right" of which officials should have been aware when they denied prisoner's request for outside witnesses. Matthews v. Selsky, S.D.N.Y.1994, 870 F.Supp. 66. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from § 1983 liability to inmate who alleged he was deprived of right to call witness and right to have disciplinary action supported by some evidence, in that such rights were clearly established at time of disciplinary hearing; however, right to independent assessment of confidential informant's credibility was not clearly established at time of hearing, and thus officials were immune from liability for any such failure. Gilbert v. Selsky, S.D.N.Y.1994, 867 F.Supp. 159, as amended. Civil Rights 1376(7)

3910. ---- Restraints, prisons and prisoners, clearly established right

Alabama prison guards were not entitled to qualified immunity from inmate's claim he was subjected to cruel and unusual punishment in violation of the Eighth Amendment when he was handcuffed to hitching post, in light of binding Eleventh Circuit precedent, an Alabama Department of Corrections (ADOC) regulation, and a Department of Justice (DOJ) report informing the ADOC of constitutional infirmity in its use of hitching post. Hope v. Pelzer, U.S.2002, 122 S.Ct. 2508, 536 U.S. 730, 153 L.Ed.2d 666, on remand 304 F.3d 1331. Civil Rights 1376(7)

Prison guard violated clearly established right of inmate to be free of excessive force, precluding grant of qualified immunity, when, as found by jury, guard hit inmate in face, knelt on him and otherwise inflicted pain in course of securing inmate in four point restraint. Ziemba v. Armstrong, D.Conn.2006, 433 F.Supp.2d 248. Civil Rights 1376(7)

Prison officials did not have qualified immunity from claim that they violated due process rights of inmate by placing him on his back, with restraints on arms and legs and over chest, for period of 47 hours and 20 minutes, with brief breaks, without providing any process to determine if restraint continued to be required; it was well established that restrained inmates were entitled to due process. Sadler v. Young, W.D.Va.2004, 325 F.Supp.2d 689, reversed 118 Fed.Appx. 762, 2005 WL 19486. Civil Rights 1376(7)

Prison's written procedures providing that superintendent of security would issue restraint order if supervisor determined "in his/her opinion" that particular inmate "may be assaultive" did not confer liberty interest on inmate to be free from handcuffs while outside his cell absent current restraint authorization order, and thus prison officials enjoyed qualified immunity against inmate's § 1983 claim arising out his having been handcuffed outside cell. Atkins v. Latanzio, W.D.N.Y.1995, 918 F.Supp. 668. Constitutional Law 272(2); Prisons 13(2)

3911. ---- Training and supervision, prisons and prisoners, clearly established right

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Sheriff of county to which pretrial detainee was transferred, because it had detoxification facilities and was thus better equipped to deal with detainee's delirium tremens, did not violate any clearly established right of which reasonable sheriff should have known in failing to instruct his staff on potentially life-threatening nature of medical conditions associated with delirium tremens, and was qualifiedly immune from any liability under section 1983 for failing to so instruct, given lack of evidence that any inmate had previously suffered adverse serious health problems which jail personnel handled inappropriately, or that sheriff had promulgated any policy that would deny or even impede prompt provision of medical care to detainee in distress. Thompson v. Upshur County, TX, C.A.5 (Tex.) 2001, 245 F.3d 447. Civil Rights 1376(6)

County jail nurse sued under §§ 1983 was not entitled to qualified immunity from claim that she was not deliberately indifferent to needs of detainee who committed suicide, in violation of detainee's substantive due process rights; law was clear that supervisor could be liable for condoning improper conduct of subordinate, and was aware of social worker's inadequate appraisal of detainee. Estate of Abdollahi v. County of Sacramento, E.D.Cal.2005, 405 F.Supp.2d 1194. Civil Rights 1376(7)

In 2003, it was clearly established, for purposes of qualified immunity, that a supervisor could be liable under §§ 1983 personally for omissions by his subordinates as to whom he has a duty to supervise and whose actions the supervisor has the ability to control. Billops v. Sandoval, S.D.Tex.2005, 401 F.Supp.2d 766. Civil Rights 1376(2)

Law enforcement officers could not assert defense of qualified immunity to supervisory liability claim of personal representative of teacher, since contours of supervisory liability claim itself and underlying substantive due process claims were clearly established as of date of officers' allegedly illegal conduct. Sanders v. Board of County Com'rs of County of Jefferson, Colorado, D.Colo.2001, 192 F.Supp.2d 1094. Civil Rights 1376(6)

3912. ---- Harassment, prisons and prisoners, clearly established right

Inmate's right, as male prisoner employed in prison laundry, not to be subject to male supervising officer's immature sexually-based diatribes, or be recipient of officer's feigned combative strikes toward inmate's groin area, was not clearly established under federal law at time of incident and, thus, official was qualifiedly immune from liability for alleged same-sex harassment. Blueford v. Prunty, C.A.9 (Cal.) 1997, 108 F.3d 251. Civil Rights 1376(7)

3913. ---- Retaliation, prisons and prisoners, clearly established right

State prison officials were not entitled to qualified immunity in inmate's § 1983 action alleging retaliation, as right to be free from retaliation was "clearly established" at time inmate's status was changed to Central Monitoring Case (CMC) following complaints regarding transfer to different facility. Rivera v. Senkowski, C.A.2 (N.Y.) 1995, 62 F.3d 80. Civil Rights 1376(7)

Correctional officers were not entitled to qualified immunity with respect to otherwise viable deliberate indifference and retaliation claims that implicated clearly established constitutional rights to be free of excessive force, other cruel and unusual punishments, and retaliation for exercising First Amendment rights. Thomas v. Walton, S.D.Ill.2006, 461 F.Supp.2d 786. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity in inmate's § 1983 action based on alleged administrative confinement of inmate in retaliation for prior complaints he made about prison conditions; at time of alleged confinement, courts had clearly established inmate's right to be free from retaliation for filing grievances. Sullivan v. Schweikhard, S.D.N.Y.1997, 968 F.Supp. 910. Civil Rights 1376(7)

3914. ---- Medical care, prisons and prisoners, clearly established right

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42 U.S.C.A. § 1983

Prisoner's right to receive medical information, derived from his due process right to refuse medical treatment, was not clearly established in 1997 when he had liver biopsy, and, thus, prison officials were qualifiedly immune from his claim that they violated his due process rights by performing biopsy and providing medication for his Hepatitis C without warning him of possible side effects. Pabon v. Wright, C.A.2 (N.Y.) 2006, 459 F.3d 241. Civil Rights 1376(7)

Corrections officers alleged delay in providing medical care to a jail inmate having a heart attack, whose condition was obviously life threatening, constituted conduct that violated clearly established law, and thus, officers were not entitled to qualified immunity, in inmate's §§ 1983 Eighth Amendment deliberate indifference claim. Plemmons v. Roberts, C.A.8 (Mo.) 2006, 439 F.3d 818. Civil Rights 1376(7)

Detainee's due process right to adequate medical care was clearly established at the time he was restrained by police officers and in their custody, and therefore officers were not entitled to qualified immunity from §§ 1983 liability on claim that officers denied detainee adequate medical care, resulting in his death, regardless of whether detainee had attempted to flee or resisted being taken into custody. Estate of Owensby v. City of Cincinnati, C.A.6 (Ohio) 2005, 414 F.3d 596, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 2023. Civil Rights 1376(6)

Never-competent patient who was in state custody and whose death was imminent did not have clearly established liberty interest in avoiding medical intrusions that would prolong the dying process, and thus state attorney general and assistant attorney general were entitled to qualified immunity in § 1983 action in which it was alleged that attorneys intervened in patient's medical care by directing the administration of invasive procedures to sustain patient's life. Blouin ex rel. Estate of Pouliot v. Spitzer, C.A.2 (N.Y.) 2004, 356 F.3d 348. Civil Rights 1376(9)

Sheriff of jail located in small rural county was qualifiedly immune from liability under section 1983 in connection with death of pretrial detainee from complications associated with his delirium tremens, following his transfer to another county with detoxification facilities that first county lacked; in allowing detainee to be transferred to another county, rather than instructing his staff to force detainee to submit to medical care against his clearly communicated wishes or to make reasonable effort to locate substitute decisionmaker, sheriff did not violate any clearly established right of which reasonable sheriff would have known. Thompson v. Upshur County, TX, C.A.5 (Tex.) 2001, 245 F.3d 447. Civil Rights 1376(6)

Pretrial detainee's right, under due process clause, to at least be free from law enforcement officials' deliberate indifference to detainee's serious medical needs was clearly established at time detainee committed suicide, for purpose of officials' claim of qualified immunity in resulting § 1983 action brought by detainee's estate. Hare v. City of Corinth, Miss., C.A.5 (Miss.) 1998, 135 F.3d 320. Civil Rights 1376(6)

Constitutional right of state prisoner in psychiatric hospital to specific medical approval of segregation and restraint was clearly established at time prison medical director approved such segregation and restraint, for purpose of director's qualified immunity claim in prisoner's resulting § 1983 action. Buckley v. Rogerson, C.A.8 (Iowa) 1998, 133 F.3d 1125. Civil Rights 1376(7)

Objective reasonableness standard asserted in § 1983 action by heirs of pretrial detainee who committed suicide in county jail, following warrantless arrest and prior to being taken before magistrate, was not clearly established at time of suicide, for purpose of qualified immunity defense asserted by county and county officers, as proper standard was in fact deliberate indifference, not objective reasonableness. Barrie v. Grand County, Utah, C.A.10 (Utah) 1997, 119 F.3d 862. Civil Rights 1376(7)

County sheriff and jailers were not entitled to qualified immunity in § 1983 action brought by administrator of estate of pretrial detainee who was chronic alcoholic and who died due to injury sustained while in custody at

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county jail because, despite knowledge that detainee had urgent medical condition which would be exacerbated by delay, sheriff and jailers delayed obtaining treatment for detainee until after he suffered seizure, which conduct amounted to deliberate indifference under clearly established law at that time. Lancaster v. Monroe County, Ala., C.A.11 (Ala.) 1997, 116 F.3d 1419. Civil Rights 1376(7)

Right at issue to qualified immunity defense in inmate's action alleging that fumes in cell rendered him unconscious and that correctional officers should have removed him during lock down was correctly defined as Eighth Amendment right to have prison officials avoid deliberate indifference to serious medical needs; thus, right at issue was clearly established. Kelley v. Borg, C.A.9 (Cal.) 1995, 60 F.3d 664. Civil Rights 1376(7)

Inmate's existing serious medical needs, arising from exposure to environmental tobacco smoke, was "clearly established" constitutional right, needed for inmate to state § 1983 civil rights claim based on prison officials' unwillingness to enforce smoking ban in inmate's room and unresponsiveness to inmate's protests despite qualified immunity defense asserted by officials. Weaver v. Clarke, C.A.8 (Neb.) 1995, 45 F.3d 1253. Civil Rights 1376(7)

At time arrestee committed suicide in jail cell, law did not clearly establish that police officers' failure to notify competent authorities of inmate's request for medication and psychiatric help were guilty of deliberate indifference to inmate's psychiatric needs, and thus officers, as sued in their individual capacities, were entitled to qualified immunity from that claim under § 1983; decided law at time of arrestee's death dealt with liability of physicians in state hospitals, and police officers' primary responsibility involved law enforcement, rather than mental health of inmates. Belcher v. City of Foley, Ala., C.A.11 (Ala.) 1994, 30 F.3d 1390. Civil Rights 1376(7)

In inmate's § 1983 action for denial of proper medical treatment for serious hand injury during preconviction incarceration, sheriff was not entitled to qualified immunity in his individual capacity; at time of inmate's incarceration, it was clearly established that knowledge of need for medical care and intentional refusal to provide that care constituted deliberate indifference, law was clearly established that for kind of serious injury suffered by inmate, delay of several weeks was too long to fail to properly respond to medical need, and thus delaying prescribed treatment for nearly two months was objectively unreasonable. Harris v. Coweta County, C.A.11 (Ga.) 1994, 21 F.3d 388. Civil Rights 1376(7)

Prison officials had qualified immunity from prisoner's action under § 1983 to challenge procedures used to abridge prisoner's right to refuse to take psychotropic drugs before issuance of judicial decision outlining constitutionally permissible procedures for forcing prisoners to remain on such drugs; officials' use of then-existing administrative rules, which required express findings of physician and warden that without drugs prisoner would endanger himself or others, did not violate prisoner's clearly established constitutional rights. Sullivan v. Flannigan, C.A.7 (Ill.) 1993, 8 F.3d 591, certiorari denied 114 S.Ct. 1376, 511 U.S. 1007, 128 L.Ed.2d 52. Civil Rights 1376(7)

At times prison officials acted in administering forced medications to inmate, contours of inmate's rights to avoid unwanted administration of antipsychotic drugs were not sufficiently clear; therefore, officials were entitled to qualified immunity from liability in inmate's § 1983 action based on forced medication. Gay v. Turner, C.A.8 (Mo.) 1993, 994 F.2d 425, rehearing denied. Civil Rights 1376(7)

Inmate failed to establish that examining physician deliberately withheld treatment for ruptured appendix in order to secure confession about ingestion of drug-filled balloons, and, thus, physician was entitled to qualified immunity in § 1983 action; physician was not told about inmate having vomited blood, found no etiology for abdominal pain, admitted inmate to hospital for observation, and made no mention of contraband or blood vomiting in clinical notes. Taylor v. Bowers, C.A.8 (Mo.) 1992, 966 F.2d 417, modified on rehearing, certiorari denied 113 S.Ct. 394, 506 U.S. 946, 121 L.Ed.2d 302. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Prison physician and nurse were qualifiedly immune from § 1983 liability in connection with forced administration of antipsychotic drug to inmate; in 1985, it was not clearly established that their action violated due process or Eighth Amendment. Williams v. Anderson, C.A.7 (Ill.) 1992, 959 F.2d 1411. Civil Rights 1376(7)

At time prison pharmacist withheld inmate's seizure medication, law clearly established that prison pharmacist could not intentionally interfere with or fail to carry out treatment prescribed for prisoner so as to preclude application of qualified immunity doctrine to pharmacist who intentionally refused to fill inmate's prescriptions. Johnson v. Hay, C.A.8 (Mo.) 1991, 931 F.2d 456. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from prisoner's claim that she wanted to have an abortion and was not enabled to do so as a result of their actions; it was not clearly established at time of alleged actions that constitution required federal prison employees to facilitate prisoners in their requests for an abortion, and there was no indication that officials did anything other than exercise their honest medical judgment. Gibson v. Matthews, C.A.6 (Ky.) 1991, 926 F.2d 532. Civil Rights 1376(7)

Inmate's right to another due process hearing before he could be forcibly injected with medication after transfer from security medical facility to penitentiary for treatment on outpatient basis was not clearly established, and, thus, prison officials, who forcibly injected medication, enjoyed qualified immunity from liability under statute, which prohibits deprivation of federal constitutional rights under color of state law, where inmate was given full hearing on issue of involuntary commitment to security medical facility, where inmate could be forcibly medicated while at security medical facility, and where district court conditioned release to penitentiary on continued medication. Lappe v. Loeffelholz, C.A.8 (Iowa) 1987, 815 F.2d 1173. Civil Rights 1376(7)

Prison officials were not immune from liability in civil rights action arising from death of prisoner by cardiorespiratory arrest on basis of good-faith immunity defense, since deliberate indifference or willful neglect standard for determining liability of prison officials was clearly established at time of prisoner's death. Bass by Lewis v. Wallenstein, C.A.7 (Ill.) 1985, 769 F.2d 1173. Civil Rights 1376(7)

Prison officials who were defendants in suit for damages under this section brought by administrator of estate of prisoner based on charge that prisoner suffered and died as result of inhumane conditions and inadequate medical care in hospital unit were not entitled to qualified or good-faith immunity, since law on willful neglect of prisoners' medical needs was clearly established at time prisoner died. Joseph v. Brierton, C.A.7 (Ill.) 1984, 739 F.2d 1244. Civil Rights 1376(7)

Prison officials violated clearly established law in 1999-2000 and thus were not eligible for qualified immunity, if they denied prisoner necessary Rebetron Therapy for his Hepatitis C, which had been unanimously recommended by prisoner's physicians, on basis of prisoner's failure of drug test, as same involved denial of medically necessary and available treatment based on non-medical considerations. Johnson v. Wright, S.D.N.Y.2002, 234 F.Supp.2d 352. Civil Rights 1376(7)

Inmate's Eighth Amendment right to be free from levels of second-hand smoke that posed an unreasonable risk of serious damage to inmate's future health was clearly established, and, thus, jail officials were not entitled to qualified immunity from inmate's Eighth Amendment claim based on exposure to environmental tobacco smoke (ETS). Abdullah v. Washington, D.D.C.2006, 437 F.Supp.2d 137. Civil Rights 1376(7)

With respect to claims of qualified immunity of government officials, the law regarding claims of deliberate indifference to a serious medical need and unconstitutional conditions of confinement was sufficiently established, at the time of the alleged violations of inmate's rights, to put correctional defendants on notice that they could be liable for violating the Eighth Amendment if they deliberately ignored evidence of stroke. Pimentel v. Deboo, D.Conn.2006, 411 F.Supp.2d 118. Civil Rights 1376(7)

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New York Department of Correctional Services (DOCS), its Commissioner, correctional facility superintendent and medical director, and correctional officers were not entitled to qualified immunity from liability under §§ 1983 to wheelchair-using prisoner who was allegedly injured while being transported in unsafe van, although neither Supreme Court nor Second Circuit had held that failure to provide safe transportation to wheelchair-using inmates constituted deliberate indifference to their serious medical needs under Eighth Amendment; defendants' alleged conduct amounted to more than ordinary lack of due care for prisoner's interest or safety in violation of Second Circuit's 1987 *Gill v. Mooney* decision, and their decision to place inmate back in wheelchair after he fell once demonstrated complete disregard for his safety. Allah v. Goord, S.D.N.Y.2005, 405 F.Supp.2d 265. Civil Rights 1376(7)

Law was clearly established that officials were required to act if they had knowledge of substantial risk to jail detainee, precluding qualified immunity defense to §§ 1983 claim that officials having contact with jail detainee violated his due process rights by not following suicide prevention steps that might have forestalled his death. Gaston v. Ploeger, D.Kan.2005, 399 F.Supp.2d 1211. Civil Rights 1376(7)

It was clearly established in *Estelle v. Gamble* that inmate's right to access to mental health services fell within ambit of Eighth Amendment, and thus prison officials were not entitled to qualified immunity from liability under § § 1983 as result of their alleged failure to timely provide medication or treatment to mentally ill inmate. Ziemba v. Armstrong, D.Conn.2004, 343 F.Supp.2d 173, affirmed in part, reversed in part and remanded 430 F.3d 623. Civil Rights 1376(7)

Qualified immunity was not available to orthopedic surgeon on incarcerated prisoner's claim that surgeon deliberately failed to schedule him for needed shoulder surgery for almost two years while knowing that excessive delay could mean permanent disability, as prisoner's Eighth Amendment right to be free from deliberate indifference to serious medical needs was clearly established; issue presented was whether surgeon failed to schedule operation in disregard of prisoner's right to adequate medical care. Benjamin v. Schwartz, S.D.N.Y.2004, 299 F.Supp.2d 196. Civil Rights 1376(7)

Security and nursing staff at state prison were not entitled to qualified immunity from prisoner's claims alleging that they were deliberately indifferent to her serious medical needs, since Eighth Amendment prohibition against deliberate indifference to a prisoner's serious medical needs was clearly established law. Doe v. Gustavus, E.D.Wis.2003, 294 F.Supp.2d 1003. Civil Rights 1376(7)

It was clearly established that prison officials could violate the Eighth Amendment through deliberate indifference to an inmate's exposure to levels of environmental tobacco smoke (ETS) that posed an unreasonable risk of future harm to the inmate's health, for purposes of correctional officer's qualified immunity defense from inmate's § 1983 claims for Eighth Amendment violations. Gill v. Smith, N.D.N.Y.2003, 283 F.Supp.2d 763. Civil Rights 1376(7)

Representative of inmate who died in custody of Alabama Department of Corrections failed to establish that warden would have known that failure to take steps to insure that inmate went to chronic care clinic was unlawful in light of clearly established law and information he possessed, and thus, warden had qualified immunity from representative's civil rights action based on warden's alleged deliberate indifference to inmate's serious medical need; representative failed to present any evidence from which it could be found or inferred that warden had anything to do with lack of transfer or that he was aware that medical personnel had determined that chronic care clinic was appropriate treatment for inmate. Pinkney v. Davis, M.D.Ala.1997, 952 F.Supp. 1561. Civil Rights 1376(7)

For purposes of asserting qualified immunity in civil rights action arising from pretrial detainee's suicide, law was clearly established at time of incident in 1989 that police officers had minimum duty to detainee not to be deliberately indifferent to her serious medical needs if they were subjectively aware of substantial risk of harm to

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detainee. Hare v. City of Corinth, Miss., N.D.Miss.1996, 949 F.Supp. 456, reversed 135 F.3d 320. Civil Rights 1376(7)

Prison doctor's refusal to provide inmate with "high performance" footwear, which was not specially made or even therapeutic, for inmate's ankle pain, while providing inmate with comprehensive course of appropriate treatment, was objectively reasonable and not in contravention of any clearly established federal or constitutional right, and thus doctor was entitled to qualified immunity from liability in inmate's claims in § 1983 suit alleging denial of equal protection and willful indifference to serious medical problem. Alston v. Howard, S.D.N.Y.1996, 925 F.Supp. 1034. Civil Rights 1376(7)

Even if prison nurse violated inmate's First and Eighth Amendment rights by yelling at inmate and threatening to punish him for directing method of surgery by which prison physician was to remove cyst-like growth on inmate's forehead, qualified immunity protected nurse from liability for damages in her individual capacity; nurse's alleged conduct did not violate any clearly established constitutional right of which reasonable nurse would have known. Arce v. Banks, S.D.N.Y.1996, 913 F.Supp. 307, as amended. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity on claim by inmate, purporting to be transsexual, that he was denied separate classification to accommodate his needs; officials did not violate any clearly established constitutional rights of which reasonable prison officials would have known, as claimant had no right to particular medical treatment or to be classified in certain way. Long v. Nix, S.D.Iowa 1995, 877 F.Supp. 1358, affirmed 86 F.3d 761, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(7)

Police officers have clearly established duty not to remain deliberately indifferent to arrestees' serious needs for psychological and medical treatment and, thus, officers would not be entitled to qualified immunity from liability in civil rights action if arrestee had told them that she had just been raped; although arrestee's right may have been somewhat general, it was necessary to consider that action for damages may have been only realistic avenue for vindication of constitutional guarantees as applied to particular facts. Carnell v. Grimm, D.Hawai'i 1994, 872 F.Supp. 746, reconsideration denied, affirmed in part, appeal dismissed in part 74 F.3d 977. Civil Rights 1376(6)

Prison officials were entitled to qualified immunity from incontinent prisoner's § 1983 civil rights action in which prisoner alleged that refusal of his request for daily showers was deliberate indifference to his condition in violation of Eighth Amendment, since law was not clearly established that defendant was entitled to daily showers. De La Paz v. Peters, N.D.Ill.1997, 959 F.Supp. 909. Civil Rights 1376(7)

Right of pretrial detainee to be free from deliberate indifference to her serious medical needs by arresting officer was "clearly established," barring officer's qualified immunity defense, in pretrial detainee's § 1983 action, alleging that officer denied her medical care; precedent establishing arresting officer's duty to provide medical care and establishing same protection from deliberate indifference to serious medical needs for pretrial detainees as for convicted prisoners was decided fifteen years prior to detainee's arrest. Prado v. Lane, C.A.10 (Okla.) 2004, 98 Fed.Appx. 757, 2004 WL 882149, Unreported. Civil Rights 1376(7)

3915. ---- Involuntary administration of medication, prisons and prisoners, clearly established right

Although prison psychiatrist who ordered administration of antipsychotic medications to prisoner without his consent, and without following state policy, thus giving rise to prisoner's § 1983 action, was entitled to qualified immunity with respect to administrations given before and within short period of time after Supreme Court's *Harper* decision, which set forth due process requirements for such administrations, psychiatrist should have known of that decision when she met with prisoner some three weeks after it was handed down, and thus, psychiatrist was not entitled to qualified immunity for administrations which occurred thereafter. Doby v. Hickerson, C.A.8 (Ark.)

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1997, 120 F.3d 111. Civil Rights 1376(7)

Prison physician did not violate clearly established law in ordering involuntary administration of psychotropic medication to prison inmate whose conduct constituted danger to himself or others without first conducting predeprivation hearing, despite prior holding in *Washington v. Harper*, and physician was thus entitled to qualified immunity with respect to such order; while *Harper* re-established inmate's constitutionally protected liberty interest in avoiding involuntary administration of psychotropic drugs, it did not establish any particular process required to precede one-time administration of antipsychotic drug in emergency circumstance at issue. Hogan v. Carter, C.A.4 (N.C.) 1996, 85 F.3d 1113, certiorari denied 117 S.Ct. 408, 519 U.S. 974, 136 L.Ed.2d 321. Civil Rights 1376(7)

3916. ---- Classification of inmates, prisons and prisoners, clearly established right

Prison officials were entitled to qualified immunity in § 1983 civil rights claim by inmates, alleging that randomly assigning new inmates to double cells produced increased risk of cellmate violence in violation of Eighth Amendment; diversity of precedent on need for classifying cellmates precluded finding that random cell assignment violated clearly established rights. Jensen v. Clarke, C.A.8 (Neb.) 1996, 94 F.3d 1191. Civil Rights 1376(7)

State official who recommended that inmate be classified as a sex offender based upon earlier rape charge that had been dismissed was entitled to qualified immunity from inmate's §§ 1983 claim for Due Process violation; at the time inmate was classified, it was not clearly established that the classification of an inmate as a sex offender implicated a liberty interest and that so classifying an inmate without procedural safeguards created liability under § § 1983. Kritenbrink v. Crawford, D.Nev.2006, 457 F.Supp.2d 1139. Civil Rights 1376(7)

Placement of mentally ill prison inmate in continuously illuminated maximum security cell without windows was not clearly established as conduct violative of inmates' Eighth Amendment rights, and consequently prison officials responsible for placement of mentally ill patient in maximum security had qualified immunity from inmate's damages suit under §§ 1983. Scarver v. Litscher, W.D.Wis.2005, 371 F.Supp.2d 986, affirmed 434 F.3d 972. Civil Rights 1376(7)

3916A. ---- Minimum housing standards, prisons and prisoners, clearly established right

Sheriff with supervisory responsibilities for city jail was not entitled to qualified immunity from claim that she violated Eighth Amendment right of inmate to minimum housing standards, leading to his contracting and dying from bacterial meningitis; existence of minimal housing right was clearly established at time inmate was in jail, and sheriff know it was being violated. Brown v. Mitchell, E.D.Va.2004, 327 F.Supp.2d 615. Civil Rights 1376(6)

3917. ---- Number of inmates in cell, prisons and prisoners, clearly established right

Prison officials were entitled to qualified immunity from inmates' claim that double celling of inmates violated Eighth Amendment; right claimed was not clearly established, and prison officials would have been reasonably justified in their belief that law did not proscribe their actions and that their actions did not violate inmates' statutory or constitutional rights. Barajas v. Waters, E.D.Mich.1993, 815 F.Supp. 222, affirmed 21 F.3d 427. Civil Rights 1376(7)

3918. ---- Temperature in cells, prisons and prisoners, clearly established right

Prison officials were not entitled to qualified immunity in § 1983 action brought by inmates alleging that they were subjected to freezing temperatures, even though the inmates were so subjected during period of abnormally cold

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weather and malfunctioning heating system; inmates had clearly established constitutional right to have adequate heat and shelter. Henderson v. DeRobertis, C.A.7 (Ill.) 1991, 940 F.2d 1055, rehearing denied, certiorari denied 112 S.Ct. 1578, 503 U.S. 966, 118 L.Ed.2d 220, on remand. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from inmate's claim that they failed to clean up or allow him to clean up human feces from his cell and claim that temperature in his cell fell below freezing during three days in January; inmate's rights were clearly established. Wilson v. Schomig, N.D.Ill.1994, 863 F.Supp. 789. Civil Rights 1376(7)

3919. ---- Exercise and recreation, prisons and prisoners, clearly established right

Inmate's Eighth Amendment right to exercise was clearly established, for purposes of qualified immunity asserted by prison official, at time inmate was confined to "medical keeplock" without opportunity for out-of-cell exercise unless he submitted to latent tuberculosis (TB) testing. Williams v. Greifinger, C.A.2 (N.Y.) 1996, 97 F.3d 699. Civil Rights 1376(7)

Contours of state inmates' right to exercise were not sufficiently clear in 1982 such that a reasonable prison official would understand that limiting state inmate to one hour exercise per day, five days a week every 30 days, as a punitive sanction, violated the Eighth Amendment and, accordingly, prison officials were entitled to qualified immunity from liability in inmate's § 1983 action alleging that limiting his outdoor exercise violated Eighth Amendment. Rodgers v. Jabe, C.A.6 (Mich.) 1995, 43 F.3d 1082. Civil Rights 1376(7)

Inmates had a clearly established right to some recreation over a one-year time period at time that manager of prison's segregation unit deprived inmate of all recreation time for over a year and thus manager was not entitled to qualified immunity from inmate's § 1983 suit. Watts v. Ramos, N.D.Ill.1996, 948 F.Supp. 739. Civil Rights 1376(7)

Prison inmate's alleged right to outdoor exercise while he was confined for 70 days in segregation was not clearly established in summer of 1994, so that prison official was immune from civil rights liability for his alleged wrongful denial of inmate's yard privileges, where inmate did not maintain that he was precluded from exercising in his cell or during his visits to medical unit, law library or visitation area. Thomas v. Ramos, N.D.Ill.1996, 918 F.Supp. 228, affirmed 130 F.3d 754, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(7)

3920. ---- Grooming standards, prisons and prisoners, clearly established right

Right of prisoner who was Hasidic Jew to grow his beard and sidelocks in contravention of state prison grooming regulations was not clearly established at time he was forced to cut his hair in 1996 and 1998, and thus prison officials were entitled to qualified immunity in § 1983 suit alleging violation of prisoner's First Amendment rights. Flagner v. Wilkinson, C.A.6 (Ohio) 2001, 241 F.3d 475, rehearing and rehearing en banc denied, certiorari denied 122 S.Ct. 678, 534 U.S. 1071, 151 L.Ed.2d 590. Civil Rights 1376(7)

Prison officials were not entitled to official immunity from inmate's claim that he was denied haircut in violation of state statute; inmate's claim was not novel. Anderson v. Romero, C.A.7 (Ill.) 1995, 72 F.3d 518. Prisons 10

3921. ---- Informants, prisons and prisoners, clearly established right

There was no clearly established right in 1998 that required police or jail guards to embargo and detain threatening prison mail or to protect cooperating confidential informants from retaliatory violence, for purposes of determining whether police officer was entitled to qualified immunity on civil rights claim brought by estate of cooperating

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witness who was murdered after prison mail identifying him as informant was released. Gatlin ex rel. Gatlin v. Green, D.Minn.2002, 227 F.Supp.2d 1064, affirmed 362 F.3d 1089, appeal after remand from federal court 2006 WL 1320467. Civil Rights 1376(6); Civil Rights 1376(7)

3922. ---- Intimidation, prisons and prisoners, clearly established right

Intimidation of state inmate by another inmate where intimidation did not result in any actual injury but only in inmate giving other inmate his pork and beef from his meals and being forced to sleep on mattress on floor of cell was not a violation of clearly established constitutional right; therefore, state officials were entitled to qualified immunity from liability in § 1983 action with respect to intimidation claims. Allen v. City and County of Honolulu, D.Hawai'i 1993, 816 F.Supp. 1501, affirmed 39 F.3d 936. Civil Rights 1376(7)

3923. ---- Assault, prisons and prisoners, clearly established right

County jail detainee had clearly established Fourteenth Amendment right to be free from a county correctional officer's deliberate indifference to assault by another inmate, for purpose of officer's claimed qualified immunity defense. Velez v. Johnson, C.A.7 (Wis.) 2005, 395 F.3d 732, rehearing and rehearing en banc denied. Civil Rights 1376(7)

Law was clearly established at time of inmate's injuries that prison officials could be liable for failure to protect inmate from use of excessive force if they were deliberately indifferent to substantial risk of serious harm to inmate, and thus, other members of "movement team," sent to restrain inmate and remove him from cell, were not entitled to qualified immunity from liability for failing to intercede when correctional officer assaulted inmate. Estate of Davis by Ostenfeld v. Delo, C.A.8 (Mo.) 1997, 115 F.3d 1388. Civil Rights 1376(7)

Deputy sheriff was entitled to qualified immunity from civil rights claim of prisoner who was assaulted by two other inmates at the county jail; law governing duty to protect inmates from other inmates was unclear when assault occurred, and there was no showing that sheriff had reason to know that this particular inmate was in danger. Price v. Sasser, C.A.4 (N.C.) 1995, 65 F.3d 342. Civil Rights 1376(6)

Prison superintendent was not entitled to qualified immunity from claim that he violated Eighth Amendment rights of inmates by permitting them to be homosexually raped by other inmates, as constitutional right to be free of sexual attacks by other inmates is a clearly established constitutional right about which superintendent either knew or should have known. Butler v. Dowd, C.A.8 (Mo.) 1992, 979 F.2d 661, certiorari denied 113 S.Ct. 2395, 508 U.S. 930, 124 L.Ed.2d 297. Civil Rights 1376(7)

Prison officer was not entitled to qualified immunity in civil rights actions arising when inmate was assaulted by fellow prisoners; officer failed to comply with clearly established constitutional duty of protecting prisoners from violence at hands of other prisoners when he failed to come to inmate's aid, and officer's failure to act was unreasonable. Ayala Serrano v. Lebron Gonzalez, C.A.1 (Puerto Rico) 1990, 909 F.2d 8. Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from paying damages in civil rights action brought as result of death of psychiatrically disturbed prisoner whose body was dismembered a few months after his transfer to district jail as result of "deliberate indifference" of prison officials to prisoner's health or safety problems; at time of prisoner's death it was well established that deliberate indifference to prisoner's health and safety violated Eighth Amendment, prison officials knew of federal court decree finding entire system unconstitutionally unsafe and medically deficient and emphasizing need for segregation of mentally ill prisoners from general population, and prison officials failed to take measures within their control, such as segregating mentally ill inmates, despite fact that prisoner in Puerto Rican jail was more likely to be murdered than prisoner in other penal institutions in United States. Cortes-Quinones v. Jimenez-Nettleship, C.A.1 (Puerto Rico) 1988, 842 F.2d 556, certiorari denied 109

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42 U.S.C.A. § 1983

S.Ct. 68, 488 U.S. 823, 102 L.Ed.2d 45. Civil Rights 1376(7)

Sheriff was not entitled to qualified immunity on §§ 1983 claim arising out of fatal assault on county jail inmate by other inmates; inmate's estate and his survivors made a prima facie case of a constitutional violation, and the allegedly violated duty of prison officials to take reasonable measures to guarantee inmate safety was clearly established at the time of the assault. Wilson v. Maricopa County, D.Ariz.2006, 463 F.Supp.2d 987. Civil Rights 1376(6)

County deputy sheriff alleged to have shoved a pretrial detainee without provocation, causing severe injury to the detainee's knee, was not entitled to qualified immunity in the detainee's §§ 1983 suit; case law put the officer on notice that his conduct was clearly unlawful. Harris v. Adams, S.D.Ohio 2005, 410 F.Supp.2d 707. Civil Rights 1376(6)

Detective was entitled to qualified immunity on arrestee's Eighth Amendment claim for failure to adequately protect arrestee while incarcerated; even if detective had a duty to inform the inmate reception center at the jail of arrestee's status as an immediate family member of a law enforcement officer, so that he could be segregated from the general prison population, such a duty had not been clearly established in the law of the circuit, and the evidence failed to establish that such failure constituted a "sufficiently serious" deprivation, viewed objectively, since arrestee was already segregated from the general population due to the nature of the charges against him. Ramirez v. County of Los Angeles, C.D.Cal.2005, 397 F.Supp.2d 1208. Civil Rights 1376(6)

At time of inmate's death following alleged beating by prison guards, it was clearly established that prison warden could face liability under §§ 1983 predicated on his failure to take reasonable steps in the face of a history of widespread abuse that created a known substantial risk of serious harm to inmates or his adoption of custom or policies that resulted in deliberate indifference to the constitutional rights of prison inmates, and thus, warden was not entitled to qualified immunity on §§ 1983 supervisory liability claim brought by estate of inmate. Valdes v. Crosby, M.D.Fla.2005, 390 F.Supp.2d 1084, affirmed 2006 WL 1474726. Civil Rights 1376(7)

Eighth Amendment violations alleged by inmate in §§ 1983 action against prison personnel, including beating by correction officers that required medical attention, and deliberate indifference to inmate's serious medical needs after beating and brain surgery, were violations of clearly established rights, and thus, prison personnel were not entitled to dismissal of complaint on qualified immunity grounds. Davis v. Carroll, D.Del.2005, 390 F.Supp.2d 415 . Civil Rights 1376(7)

Freedom from the use of excessive force is a clearly established constitutional right, for purpose of law enforcement officers' claim of qualified immunity in §§ 1983 action alleging Eighth Amendment violation. Atkins v. County of Orange, S.D.N.Y.2005, 372 F.Supp.2d 377. Civil Rights 1376(6)

Correctional officers, who allegedly caused detainee severely debilitating facial and head injuries by engaging in a physical struggle in an effort to apply restraints to his wrists after detainee refused an order to get on the water-covered floor of his cell, were not entitled to qualified immunity on pre-trial detainee's due process excessive force claim; pre-trial detainee's right to be free from constitutionally excessive force under the Fourteenth Amendment was "clearly established" as of September 1998, when the incident took place. Simms ex rel. Simms v. Hardesty, D.Md.2003, 303 F.Supp.2d 656, affirmed 104 Fed.Appx. 853, 2004 WL 1595700. Civil Rights 1376(7)

Even if deputy sheriff violated pretrial detainee's due process right to protection from violence at the hands of other inmates when the deputy housed the inmate, a gang member who told the deputy he had gang affiliation but did not identify his affiliation, in a cell with a member of a rival gang, the deputy was entitled to qualified immunity under § 1983; although the law was clearly established that a correctional officer could not disregard a substantial risk of serious harm to an inmate of which he was aware, there was no clearly established right for an inmate to choose his

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cellmates, and the law had not fleshed out at what point a risk of inmate assault became sufficiently substantial for Eighth Amendment or due process purposes. Mooring v. San Francisco Sheriff's Dept., N.D.Cal.2003, 289 F.Supp.2d 1110. Civil Rights 1376(6); Civil Rights 1376(7)

Inmate's Eighth Amendment right not to be intentionally punched in back of his head by correctional official after he had been successfully restrained and posed no apparent disciplinary threat was clearly established on February 1, 2001, and thus official was not entitled to qualified immunity from liability under § 1983 for his alleged beating of inmate. Bafford v. Nelson, D.Kan.2002, 241 F.Supp.2d 1192. Civil Rights 1376(7)

Jailer was entitled to qualified immunity with respect to § 1983 Fourteenth Amendment claim brought by arrestee who alleged that he was physically assaulted because jailer encouraged inmates to beat him up; law was not clearly established that prison officials violate constitutional laws when they make statements in presence of inmates that particular inmate is "sick" and "should have his ass beat." Martinez v. Mathis, S.D.Ga.1997, 970 F.Supp. 1047, reversed in part, vacated in part 159 F.3d 1360. Civil Rights 1376(7)

It was not clearly established in March of 1995 that inmate had constitutional right to be secure in bodily integrity and free from attack by prison guard, so as to defeat claim of qualified immunity by prison officials on Eighth and Fourteenth Amendment claims by inmate who claimed that she was raped by guard. Carrigan v. State of Del., D.Del.1997, 957 F.Supp. 1376. Civil Rights 1376(7)

State prison counselor who denied inmate's request for protective custody was not entitled to qualified immunity in inmate's § 1983 action; inmate had clearly established right not to be subjected through correctional officer's deliberate indifference to risk of serious harm from fellow prisoners. Hill v. Godinez, N.D.Ill.1997, 955 F.Supp. 945. Civil Rights 1376(7)

Director of security for county correctional facility was not qualifiedly immune from inmate's § 1983 claim that director violated inmate's due process rights by sodomizing and otherwise sexually abusing him; any reasonable director of security would know that it was objectively unreasonable, and a violation of inmate's rights, to try to force unwanted and prohibited acts on powerless inmate. Mathie v. Fries, E.D.N.Y.1996, 935 F.Supp. 1284, affirmed 121 F.3d 808. Civil Rights 1376(7)

Prison official who allegedly opened door of prisoner's cell, to allow another inmate to enter in order to "f___ that b____ up," was not entitled to qualified immunity; right of an inmate not to be recklessly subjected to attacks by other inmates was clearly established at time that incident occurred. Jones v. Banks, N.D.Ill.1995, 892 F.Supp. 988 . Civil Rights 1376(7)

Prison officials were not entitled to qualified immunity from liability in inmate's § 1983 action arising out of inmate's being stabbed by another inmate; inmate's constitutional right alleged to be at issue, the right to reasonable protection from inmate-on-inmate violence, was clearly established at time of assault, and previous court opinion had set forth conditions of confinement for open barracks unit which required a correctional officer in hallway to constantly monitor two opposing open barracks containing up to 100 inmates each and hourly security patrols, yet prison officials failed to carry out required security patrols and, thus, knew that they were violating clearly established constitutional rights. Smith v. Norris, E.D.Ark.1995, 877 F.Supp. 1296, affirmed in part, reversed in part 103 F.3d 637. Civil Rights 1376(7)

State inmate's claim that prison officials failed to protect him when he was attacked by fellow inmate did not allege violation of any clearly established statutory or constitutional rights; therefore, prison officials were entitled to qualified immunity from liability on inmate's § 1983 claim. Abdul-Matiyn v. New York State Dept. of Correctional Services, N.D.N.Y.1994, 871 F.Supp. 1542, affirmed 66 F.3d 309. Civil Rights 1376(7)

Corrections officers were not entitled to qualified immunity on a state prison inmate's claim of excessive force;

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right of inmates to be free from excessive force by their jailers was well established, and the inmate testified that one officer initiated the altercation without provocation, and that a second officer mauled him after he and the first officer had been separated. McCrory v. Belden, S.D.N.Y.2003, 2003 WL 22271192, Unreported. Civil Rights 1376(7)

State prison official responsible for articulating, copying, and distributing use of force policy was entitled to qualified immunity from civil rights action under § 1983, brought by estate of prison inmate who was shot and killed by guard during altercation between inmates in exercise yard, where, even if official had control over promulgation of policy, Court of Appeals had previously determined that identical use of force policy was constitutionally sound. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107989, Unreported. Civil Rights 1376(7)

3924. ---- Death of prisoner, prisons and prisoners, clearly established right

Police chief was entitled to qualified immunity in his individual capacity from liability for suicide of arrestee, who first threatened suicide, but then withdrew threat, where no clearly established law required chief to staff jail or train his officers more thoroughly to prevent suicide under circumstances; blanket, sheets and mattress were removed from arrestee's cell and she was observed every 15 minutes. Heggs v. Grant, C.A.11 (Ga.) 1996, 73 F.3d 317. Civil Rights 1376(7)

Chief criminal investigator for county and county jail guard were entitled to qualified immunity under § 1983 for any actions they took with regard to prisoner's suicide; officials were not physicians and were not responsible for meeting prisoner's psychiatric and medical needs while she was in jail and case law did not clearly establish constitutional or statutory rights in suicide situation. Haney v. City of Cumming, C.A.11 (Ga.) 1995, 69 F.3d 1098, certiorari denied 116 S.Ct. 1826, 517 U.S. 1209, 134 L.Ed.2d 931. Civil Rights 1376(6); Civil Rights 1376(7)

At time arrestee committed suicide in jail cell, law did not clearly establish that police officers' actions in leaving inmate unguarded in cell with barred doors and means to hang himself, when they knew that inmate had attempted suicide, constituted deliberate indifference to inmate's taking of his own life, and thus officers, as sued in their individual capacities, were entitled to qualified immunity from that claim under § 1983, where officers did take steps to prevent arrestee from committing suicide, including placing him in stripped-down cell and checking on him every five minutes. Belcher v. City of Foley, Ala., C.A.11 (Ala.) 1994, 30 F.3d 1390. Civil Rights 1376(7)

Warden was not entitled to qualified immunity from civil rights liability to family of inmate who hanged himself in cell, notwithstanding lack of "goose case" (i.e., controlling precedent) dealing with constitutional duty of warden to protect prisoner prone to suicide from self-destruction. Lewis v. Parish of Terrebonne, C.A.5 (La.) 1990, 894 F.2d 142, rehearing denied 901 F.2d 1110. Civil Rights 1376(7)

Prisoner's constitutional right to be free from wanton and obdurate misconduct of corrections officials that proximately causes prisoner's death under Fourteenth or Eighth Amendments was clearly established at time of alleged misconduct of state corrections officials in failing to prevent unexplained and violent murder of inmate, and reasonable corrections officials would have known of it, for purposes of officials' claim of qualified immunity from liability under civil rights statute. Harris By and Through Harris v. Maynard, C.A.10 (Okla.) 1988, 843 F.2d 414. Civil Rights 1376(7)

Corrections officers were not entitled to qualified immunity to § 1983 claims brought by estate and survivors of prisoner who committed suicide, since officers had clearly established affirmative duty under Eighth Amendment at time of prisoner's suicide to take reasonable measures to abate known risk that prisoner was suicidal, and reasonable officers would have understood that their behavior violated that right. Estate of Sisk v. Manzanares,

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D.Kan.2002, 262 F.Supp.2d 1162. Civil Rights 1376(7)

3925. ---- Release of prisoner, prisons and prisoners, clearly established right

Officials at county detention center were protected by qualified immunity from detainee's § 1983 claim alleging that officials should have released him on basis of order requiring detainee's release from detention facility in another county; detainee did not have constitutional or statutory right to be released from county detention center based on order, and, even if he did, it was not clearly established at time of detention that order was valid as to county detention center, even though center was not named therein. Scull v. New Mexico, C.A.10 (N.M.) 2000, 236 F.3d 588. Civil Rights 1376(7)

Executive Director of Colorado Department of Corrections (DOC), sued for damages in his individual capacity by inmate in § 1983 action alleging that Director improperly denied retroactive earned-time credits, had qualified immunity from suit; no court had interpreted governing statute at time of Director's decision, and statute did not clearly prohibit decision. Duncan v. Gunter, C.A.10 (Colo.) 1994, 15 F.3d 989. Civil Rights 1376(7)

Florida prison official was entitled to qualified immunity from civil rights action brought by former inmate who was allegedly not credited with proper gain time due to official's misinterpretation of amended gain-time statute, where only one decision by intermediate appellate court had construed new statute. (Per Curiam, with one Circuit Judge concurring specially.) Lee v. Dugger, C.A.11 (Fla.) 1990, 902 F.2d 822. Civil Rights 1376(7)

Defense of qualified immunity from § 1983 liability did not apply to prison officials who allegedly were deliberately indifferent to state inmate's constitutional right to timely release from prison, inasmuch as it was clearly established that inmate could not be held in prison beyond the end of his sentence and that prison official could not be deliberately indifferent to a claim of unlawful imprisonment when prisoner presented information reasonably raising issue, and inmate raised genuine dispute as to whether reasonable investigation of his claim for release was undertaken by officials. McCurry v. Moore, N.D.Fla.2002, 242 F.Supp.2d 1167. Civil Rights 1376(7)

For qualified immunity purposes, inmate had clearly established right in 1989 to be released prior to date sentence pronounced by the judge expired, in light of time served in county jail; Oregon law clearly established liberty interest in both time served credits, and in parole release date and prison term once those had been established by Parole Board, and that sheriff had duty to transmit credit for time served (CTS) certifications, and correctional institution's records department had duty to promptly forward those certificates to Parole Board once received. Plumb v. Prinslow, D.Or.1994, 847 F.Supp. 1509. Civil Rights 1376(7)

Commissioner of Department of Corrections and prison warden who were ordered by court to release certain prisoners to remedy prison overcrowding, but who refused to release them on orders of Governor, were not entitled to qualified immunity in civil rights action brought by prisoners who were to be released; officials knew that prisoners had been ordered released and that further incarceration was violation of clearly established constitutional rights. Tasker v. Moore, S.D.W.Va.1990, 738 F.Supp. 1005. Civil Rights 1376(7)

Even if former inmate established constitutional violation in connection with his alleged incarceration past his properly calculated release date, inmate could not show that his rights were clearly established in law, as was required to defeat Department of Correction (DOC) officials' qualified immunity to §§ 1983 claim; prior to Montana Supreme Court's holding all consecutive sentences merged into concurrent terms upon grant of parole, controlling precedent provided that rule applied only if sentencing court did not specify whether sentences were to run concurrently or consecutively, and each of inmate's three escape and attempted escape sentences was expressly stated to be consecutive by sentencing judge. Barnacascel v. Montana, Dept. of Corrections, C.A.9 (Mont.) 2004, 103 Fed.Appx. 195, 2004 WL 1447710, Unreported. Civil Rights 1376(7)

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3926. ---- Parolee status, prisons and prisoners, clearly established right

Legitimate question existed as to whether parolee possessed right to be free from visual observation while furnishing urine sample required as condition of parole status; thus, correction facility officials did not violate any clearly established constitutional right in requiring parolee to urinate in bottle in presence of correction official and had qualified immunity from civil rights liability. Tyler v. Barton, C.A.8 (Neb.) 1990, 901 F.2d 689. Civil Rights 1376(7)

Massachusetts Parole Board employees were immune from inmate's action for damages under § 1983 alleging that his due process rights were violated by rescission of his previously established reserve parole date; at time of rescission, no court had held that laws or practices of Massachusetts created a protected liberty interest in a reserve parole date. Lanier v. Fair, C.A.1 (Mass.) 1989, 876 F.2d 243. Pardon And Parole 56

Any due process right of state prison inmates to hearing before Parole Board comprised of members validly appointed under state law was not clearly established when inmates' parole hearings included members who were appointed by the Governor without Senate confirmation, in alleged violation of state statute requiring appointment of Parole Board members by the Governor with the advice and consent of the Senate, and thus, the Governor and Parole Board members were entitled to qualified immunity from inmates' § 1983 claim that such proceedings violated the inmates' due process rights, where state Attorney General's office had, after one such temporary appointment and before another, issued opinion that such appointments were valid under state law. Sonntag v. Papparozzi, D.N.J.2003, 256 F.Supp.2d 320, affirmed as modified 94 Fed.Appx. 970, 2004 WL 737021. Civil Rights 1376(7)

It was not clearly established in July 1996 that arbitrary and capricious behavior by employees of board of probation and parole in intentionally delaying processing of prisoner's reparole review and considering inaccurate information in deciding reparole status violated rights of prisoner which were protected under due process clause, and thus, employees were entitled to qualified immunity in § 1983 action by prisoner; while there was some precedent to the contrary, substantial authority existed upon which employees could reasonably believe that their conduct did not violate clearly established rights. Jubilee v. Horn, E.D.Pa.1997, 975 F.Supp. 761, affirmed 151 F.3d 1025. Civil Rights 1376(7)

Although parolee had protected right in legitimate employment, this right was not clearly established at time that parole officer impeded parolee's potential employment as paralegal and reasonable person in officer's position would not have known that his conduct would violate that right and therefore, officer was entitled to qualified immunity in parolee's § 1983 action. Kaufhold v. Bright, W.D.Va.1993, 835 F.Supp. 294. Civil Rights 1376(7)

Director and Deputy Director of Illinois Department of Corrections, superintendents of youth centers, Chairman of Illinois Prisoner Review Board, and Director, Deputy Administrator, and Supervisor of Illinois Department of Children and Family Services, who continued incarceration of juvenile parolee eligible for parole until finding of postparole placement, continued to retain custody over juvenile parolee in order to protect juvenile parolee, acted with rational relationship to legitimate governmental objective, did not violate "clearly established" equal protection rights of juvenile parolee, and, therefore, were entitled to qualified immunity on equal protection claim. Flood v. Lane, N.D.Ill.1986, 638 F.Supp. 677. Civil Rights 1376(7)

3927. ---- Parole revocation hearings, prisons and prisoners, clearly established right

It was not clearly established at time that prison officials refused to release inmate on expiration date of sentence that imposing short period of "delinquency time" without providing final parole revocation hearing violated due process rights of inmate, and thus, prison officials were entitled to qualified immunity in inmate's § 1983 claim alleging that extension of maximum expiration date by five days based upon "declaration of delinquency" without

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affording final parole revocation hearing violated due process. Calhoun v. New York State Div. of Parole Officers, C.A.2 (N.Y.) 1993, 999 F.2d 647. Civil Rights 1376(7)

Mississippi Commissioner of Corrections, who failed to establish adequate policies or procedures to govern preliminary hearing in parole revocation proceeding, an elementary case, should have known that his conduct violated clearly established right; therefore, Commissioner was not entitled to qualified immunity from liability in civil rights action brought by parolee. Farrish v. Mississippi State Parole Bd., C.A.5 (Miss.) 1988, 836 F.2d 969. Civil Rights 1376(7)

County sheriff was not required by Idaho law to provide a prisoner with notice of a claimed parole violation nor to advise prisoner of his right to a parole revocation hearing; thus, since the sheriff was holding the prisoner in custody under a state parole officer's warrant and had no authority to release the prisoner or interfere with state parole revocation procedures, his conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known and consequently he enjoyed a qualified immunity from damages under § 1983. Shouse v. Ljunggren, C.A.9 (Idaho) 1986, 792 F.2d 902. Civil Rights 1376(7)

3928. ---- Work release programs, prisons and prisoners, clearly established right

Constitutional right of inmate faced with revocation of work release status to due process protections of *Morrissey* -type hearing due to parolees, rather than to protections due in prison disciplinary hearings, was not clearly established at time inmate's work release status was revoked, and thus Director of Department of Corrections was entitled to qualified immunity for his failure to provide such hearing; although there were similarities between parolees and work release participants, department exercised significant control over work release inmates, and relevant statutes referred to work release participants as "inmates." Jackson v. Lockhart, C.A.8 (Ark.) 1993, 7 F.3d 1391. Civil Rights 1376(7); Constitutional Law 272(2)

State correctional officials were entitled to qualified immunity from civil rights claim of imprisoned resident alien who charged that revocation of his participation in work release program based on issuance of immigration warrant against him violated due process; while it was clear that liberty interest existed in work release program, boundaries of that interest were not drawn with such clarity that officials could know precisely what was required to remove alien from program. Severino v. Negron, C.A.2 (N.Y.) 1993, 996 F.2d 1439. Civil Rights 1376(7)

Non-consensual sex between prisoner and government employees with authority over prisoner violated clearly established federal law, and thus state drivers license examiner was not entitled to qualified immunity in prisoner's § 1983 suit alleging that he forced her to have sex with him in exchange for increased privileges while prisoner was on work release at drivers license examination center. Smith v. Cochran, N.D.Okla.2001, 216 F.Supp.2d 1286, affirmed 339 F.3d 1205. Civil Rights 1376(7)

Defendants, who were directors of State Division of Corrections during part of time that former prisoner was enrolled in work release program, were entitled to qualified immunity in civil rights suit brought to recover maintenance costs which had been deducted from prisoner's earnings while enrolled in program, in that their conduct was objectively reasonable and their discretionary acts violated none of the former prisoner's clearly established constitutional rights. Ervin v. Blackwell, W.D.Mo.1983, 585 F.Supp. 680, affirmed 733 F.2d 1282. Civil Rights 1376(7)

3929. ---- Searches generally, prisons and prisoners, clearly established right

Assuming that juvenile had Fourth Amendment right not to be required to strip to her undergarments upon admission to juvenile detention facility, such right was not clearly established in 1999, and county officials thus were qualifiedly immune from liability for any violation of such right, where there was no appellate decision from Supreme Court or any federal circuit ruling on such issue, and, although many courts had concluded that strip

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search of adult offenders without individualized suspicion was unreasonable, those cases did not consider interests involved when state had responsibility to act in loco parentis. Smook v. Minnehaha County, C.A.8 (S.D.) 2006, 457 F.3d 806. Civil Rights 1376(7)

Although strip searches and body cavity searches of arrestees were not supported by reasonable suspicion, police officer was entitled to qualified immunity because, as of January 22, 1999, the law was not clearly established that an arrestee detained in the general jail population could not constitutionally be strip searched without reasonable suspicion. Evans v. City of Zebulon, GA, C.A.11 (Ga.) 2003, 351 F.3d 485, rehearing granted, opinion vacated 364 F.3d 1298, on rehearing 407 F.3d 1272, rehearing and rehearing en banc denied 163 Fed.Appx. 850, 2005 WL 2314522. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from § 1983 claims asserted by arrestees who were subjected to illegal strip and visual body cavity searches, since, at time of searches, it was not clearly established that blanket strip searches of misdemeanant arrestees, conducted without particularized suspicion at maximum security prison, were unconstitutional, or that such searches were never constitutional when security needs they addressed could be met by less intrusive means. (Per Selya, Circuit Judge, by an equally divided court, with three judges concurring.) Savard v. Rhode Island, C.A.1 (R.I.) 2003, 338 F.3d 23, certiorari denied 124 S.Ct. 1074, 540 U.S. 1109, 157 L.Ed.2d 895. Civil Rights 1376(7)

It was not clearly established in October 1993 that male inmates had Fourth Amendment privacy interests prohibiting cross-gender body cavity searches, so that female guards were entitled to qualified immunity in civil rights suit by male prisoner whom they searched. Somers v. Thurman, C.A.9 (Cal.) 1997, 109 F.3d 614, certiorari denied 118 S.Ct. 143, 522 U.S. 852, 139 L.Ed.2d 90. Civil Rights 1376(7)

Although inmate suspected of drug use told truth when he said he could not urinate when sample for drug test was requested, and although prison guard and prison physician could have waited instead of inserting catheter up inmate's urinary tract, guard and physician were entitled to qualified immunity in inmate's civil rights action for violating his fourth amendment rights, since right to be free from having catheter inserted was not "clearly established" at time of procedure and inmate could have been lying. Sparks v. Stutler, C.A.7 (Ind.) 1995, 71 F.3d 259, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 357, 519 U.S. 948, 136 L.Ed.2d 249. Civil Rights 1376(7)

Female prisoners had "clearly established" Fourth Amendment right to be free from body-cavity searches in conjunction with general security search of prison, and thus, government officials were not entitled to immunity from section 1983 liability with regard to searches; prisoners alleged that searches were conducted by police officers, without medical personnel, involved touching, and were conducted in nonhygienic manner and in presence of male officers. Bonitz v. Fair, C.A.1 (Mass.) 1986, 804 F.2d 164. Civil Rights 1376(7)

Correction officials who ordered unconstitutional strip searches, unconstitutional body-cavity searches and searches pursuant to random-search policy were entitled to qualified immunity from liability for damages, in view of fact that they operated in area in which law was not charted clearly and in view of fact that it appeared that such searches were conducted based upon good-faith reliance on rules and regulations in effect at the time. Security and Law Enforcement Employees, Dist. Council 82, American Federation of State, County and Municipal Employees, AFL-CIO by Clay v. Carey, C.A.2 (N.Y.) 1984, 737 F.2d 187. Civil Rights 1376(7)

Right to be free from blanket strip-search policy under which all female, but not male, pre-presentment arrestees were strip searched, regardless of the offenses with which they were charged or any individualized suspicion that they were concealing contraband, was clearly established in arrestees' §§ 1983 action against former U.S. Marshal, such that marshal was not entitled to qualified immunity at pre-trial stage of action, since the unconstitutionality of such a policy would have been clear to any reasonable official in former marshal's position. Johnson v. District of Columbia, D.D.C.2006, 461 F.Supp.2d 48. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

County sheriff had qualified immunity from §§ 1983 claim that he violated Fourth Amendment rights of county jail detainees by implementing policy of strip searching all detainees alleged to have committed non-violent, non-weapon, non-drug felonies, without reasonable suspicion they were harboring contraband on or within their bodies; it was not clearly established that suspicion was required before felons in these categories could be strip searched. Tardiff v. Knox County, D.Me.2005, 397 F.Supp.2d 115. Civil Rights 1376(6)

Sheriffs were entitled to qualified immunity with respect to jail detainees' Fourth Amendment claims challenging jail's "strip search" policy, which required detainees to submit to a visual "front and back" inspection upon leaving a shower without regard to reasonable suspicion; policy in place at county jail did not violate clearly established rights of detainees at the time the searches were purportedly performed in 2003 and 2004. Powell v. Barrett, N.D.Ga.2005, 376 F.Supp.2d 1340. Civil Rights 1376(7)

Contours of the constitutional rights that parolees enjoy against unreasonable searches are not "clearly established" for qualified immunity purposes. Wilson v. City of Fountain Valley, C.D.Cal.2004, 372 F.Supp.2d 1178. Civil Rights 1376(7)

State corrections officer who conducted routine unclothed body cavity search of inmate during transfer from one segregation cell to another, which inmate found degrading and humiliating because of presence of female guard, was entitled to qualified immunity in inmate's §§ 1983 Fourth Amendment action against officer alleging unreasonable search; there was no clearly established right of inmates to be free from bodily exposure to guards of opposite sex. Lay v. Porker, C.D.Cal.2004, 371 F.Supp.2d 1159. Civil Rights 1376(7)

Former and current directors of county juvenile detention facility were not entitled to qualified immunity in detainees' §§1983 class action bringing Fourth Amendment challenge to facility's policy of conducting suspicionless strip searches of all juveniles admitted to facility regardless of charged offense; by time of searches in question it was clearly established that suspicionless strip searches of non-felony arrestees were unlawful, given Court of Appeals decision in circuit in which facility was located plus like decisions in seven other federal circuits, and national standards for operation of juvenile correctional facilities, on which directors purportedly relied, could not override clearly established law. Smook v. Minnehaha County, D.S.D.2004, 340 F.Supp.2d 1037, adhered to on reconsideration 353 F.Supp.2d 1059. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from male inmate's suit arising from use of force to conduct strip search after inmate refused to submit to strip search by female officer; clearly existing law at time of incident authorized prison officials to have male inmates strip searched by female officers, and use of force was restrained. Collins v. Scott, E.D.Tex.1997, 961 F.Supp. 1009. Civil Rights 1376(7)

Genuine issue of material fact as to whether group strip search of inmates, who alleged that search violated tenet of inmates' religion prohibiting exposure of genital area of body to others and which occurred after altercation involving employees and other inmates, was objectively reasonable and did not violate First and Fourth Amendments precluded summary judgment for prison officials on basis of qualified immunity in federal civil rights action brought by inmates. Show v. Patterson, S.D.N.Y.1997, 955 F.Supp. 182. Federal Civil Procedure 2491.5

Prison official was entitled to qualified immunity with respect to inmate's § 1983 claim that nonrandom urinalysis testing of inmate not based on reasonable suspicion violated inmate's Fourth Amendment rights; neither Supreme Court nor Second Circuit had held, as of time of test (or since), that nonrandom urine tests of prisoners not based on reasonable suspicion are unreasonable under Fourth Amendment. Strauch v. Demskie, S.D.N.Y.1995, 892 F.Supp. 503. Civil Rights 1376(7)

Requirement of consultation with clinician prior to strip and body cavity search was not clearly established by Due Process Clause at time of search of inmate in correction facility, and so facility officials had qualified immunity

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from suit brought on basis of failure to supervise search. Cameron v. Fair, D.Mass.1995, 887 F.Supp. 387. Civil Rights 1376(7)

Sheriff who was sued for civil rights violations that allegedly occurred during arrestee's strip-search was not entitled to qualified immunity merely because none of the case law on strip-searches specifically addressed particular factual scenario in question. Kelly v. Foti, E.D.La.1994, 870 F.Supp. 126, affirmed in part and remanded 77 F.3d 819, rehearing and suggestion for rehearing en banc denied 85 F.3d 627. Civil Rights 1376(6)

Law that required rectal cavity searches of prisoners to be conducted in reasonable manner was clearly established when digital, rectal cavity searches were conducted, and, thus, prison officials did not enjoy qualified immunity from liability. Vaughn v. Ricketts, D.Ariz.1987, 663 F.Supp. 401. Civil Rights 1376(7)

Jail officials were not entitled to qualified immunity on claim that jail policy permitted unconstitutional strip searches on jail detainees charged with minor offenses, as right to be free of a strip search absent reasonable suspicion was clearly established at time of incidents. Marriott v. County of Montgomery, N.D.N.Y.2005, 227 F.R.D. 159, affirmed 2005 WL 3117194. Civil Rights 1376(7)

3930. ---- Cell searches, prisons and prisoners, clearly established right

A prison guard was not entitled to qualified immunity from liability for civil damages by a prisoner subjected to retaliatory cell searches and conduct violations for bringing the illicit conduct of a prison guard to the attention of prison officials; although no court had previously held cell searches to amount to an Eighth Amendment violation, the unlawfulness of the retaliatory conduct was apparent. Scher v. Engelke, C.A.8 (Mo.) 1991, 943 F.2d 921, rehearing denied, certiorari denied 112 S.Ct. 1516, 503 U.S. 952, 117 L.Ed.2d 652. Civil Rights 1376(7)

Searching cell without inmate being present and reading legal pleadings found in cell could not be basis for § 1983 civil rights claim against prison officials; ordering search was not harassment in violation of Eighth Amendment in light of inmate's admission that he drafted legal pleading, which was contraband, for another inmate, inmate did not have constitutionally protected interest in being present during inspection of legal papers, and officials were entitled to qualified immunity given that inmate had no clearly established right to be present when officers inspected or read legal pleadings. Schenck v. Edwards, E.D.Wash.1996, 921 F.Supp. 679, affirmed 133 F.3d 929. Civil Rights 1098; Civil Rights 1376(7); Sentencing And Punishment 1545; Prisons 4(7)

3931. ---- Visitor searches, prisons and prisoners, clearly established right

In authorizing strip searches of prison visitors, prison superintendent did not violate their clearly established Fourth Amendment rights, thus entitling him to qualified immunity from visitors' § 1983 claims, since superintendent could have reasonably believed that there was reasonable suspicion that visitors would be bringing drugs to inmate, based on report from his staff stating that police detective had learned from two unconnected confidential informants that inmate's visitors were smuggling drugs into prison in her granddaughter's booties; although detective had actually reported uncorroborated, anonymous tip, and nature of tip was then erroneously reported to superintendent, he could not be charged with notice of facts that were not actually known to him when he made decision to authorize searches. Wood v. Clemons, C.A.1 (Me.) 1996, 89 F.3d 922. Civil Rights 1376(7)

Warden was not entitled to qualified immunity in civil rights action brought by prison visitor who was subjected to visual body cavity search before being permitted to visit her husband; at time of incident, search of prison visitors without at least reasonable suspicion that they carried contraband violated clearly established law. Daugherty v. Campbell, C.A.6 (Tenn.) 1991, 935 F.2d 780, rehearing denied, certiorari denied 112 S.Ct. 939, 502 U.S. 1060, 117 L.Ed.2d 110. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Sheriff and county jailers were not entitled to qualified immunity from § 1983 claim brought by jail visitor who alleged that her Fourth Amendment right was violated when she was searched at jail after visit to inmate, as nothing in prior cases suggested that Fourth Amendment rights of prison visitors not to be searched without a warrant could be abridged after their visit and after danger of smuggling contraband into jail had passed. Marriott By and Through Marriott v. Smith, C.A.8 (Mo.) 1991, 931 F.2d 517, rehearing denied. Civil Rights 1376(6); Civil Rights 1376(7)

Right of prison visitors to be free from strip and body cavity searches absent probable cause was not clearly established at time prison officials authorized such searches, for purpose of determining whether officials were entitled to qualified immunity. Long v. Norris, C.A.6 (Tenn.) 1991, 929 F.2d 1111, rehearing denied, certiorari denied 112 S.Ct. 187, 502 U.S. 863, 116 L.Ed.2d 148. Civil Rights 1376(7)

Qualified immunity did not, as a matter of law, protect prison officials from liability in 42 U.S.C.A. § 1983 action for alleged civil rights violations arising out of strip search of prison visitor, despite allegation that unit of state prison relied on state law and prison rule as authority to strip search indiscriminately anyone who entered prison, and allegation that prison officials had received informant's tip that visitor would be carrying drugs, where record was devoid of any information as to nature of tip or reliability of informant or decree of corroboration, visitor was 68-year-old mother of inmate who had been visiting inmate on weekly basis without incident over eight years, visitor had been strip searched seven times before with no contraband ever being discovered, and Fourth Amendment rights prohibiting search were "clearly established" at time search was conducted. Smothers v. Gibson, C.A.8 (Ark.) 1985, 778 F.2d 470. Civil Rights 1376(7)

3932. ---- Sentence, prisons and prisoners, clearly established right

Director of Illinois Department of Corrections (IDOC) was on notice that discriminating between prisoners based upon where they served their sentences, IDOC facility or non-IDOC facility, was probably unlawful and thus, qualified immunity did not protect director from claim for money damages sought in § 1983 action brought by former state prisoner who served time in both IDOC and non-IDOC facilities alleging that as result of director's policy of requiring inmates to serve at least 60 days in IDOC facility his incarceration exceeded time served by person with the same sentence who was incarcerated exclusively in IDOC facility. Rooding v. Peters, N.D.Ill.1994, 864 F.Supp. 732. Civil Rights 1376(7)

3933. ---- Solitary confinement or segregation of prisoners, prisons and prisoners, clearly established right

Prison officials' sentencing of inmate to nine years of administrative segregation for various disciplinary violations was not violation of substantive due process, thus, officials were entitled to qualified immunity in inmate's § 1983 action; inmate had no fundamental right to be housed in general prison population and officials' conduct did not shock the conscience. Brown v. Nix, C.A.8 (Iowa) 1994, 33 F.3d 951, rehearing denied. Civil Rights 1376(7); Constitutional Law 272(2); Prisons 13(4)

For purpose of prison officials' qualified immunity claim with respect to decision not to release prisoner from segregation, prisoner had clearly established right to be released from segregation after he no longer qualified for confinement in administrative segregation. Mackey v. Dyke, C.A.6 (Mich.) 1994, 29 F.3d 1086. Civil Rights 1376(7)

Liberty interest in prison inmate's involuntary confinement in special housing unit (SHU) was not established in 1983 when inmate was confined to SHU, and prison officials had qualified immunity with respect to inmate's claims that he was unconstitutionally placed into SHU. Wright v. Smith, C.A.2 (N.Y.) 1994, 21 F.3d 496. Civil Rights 1376(7)

Prison officials' placement of inmates in administrative segregation for nine, 13 and 15 days without hearing did

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not violate inmates' clearly established constitutional rights and therefore, prison officials were entitled to qualified immunity on due process claims raised in inmates' § 1983 action. Jones v. Coonce, C.A.8 (Mo.) 1993, 7 F.3d 1359, rehearing denied. Civil Rights 1376(7)

For purposes of determining whether prison officials were entitled to qualified immunity in connection with inmate's § 1983 claim that they failed to release him from special management facility after multiple recommendations for his release had been approved, requiring inmate's release after recommendation for release had been approved was clearly established at time of inmate's prolonged detention; although court had not specifically held at the time that prison regulations created a liberty interest, later decision so holding was predictable. Hall v. Lombardi, C.A.8 (Mo.) 1993, 996 F.2d 954, rehearing denied, certiorari denied 114 S.Ct. 698, 510 U.S. 1047, 126 L.Ed.2d 665. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity on inmate's § 1983 civil rights claim alleging that placement of inmate in administrative segregation for 15 days without hearing violated due process; Missouri law did not create liberty interest in avoiding administrative segregation when first transferred to new prison. Swenson v. Trickey, C.A.8 (Mo.) 1993, 995 F.2d 132, rehearing denied, certiorari denied 114 S.Ct. 568, 510 U.S. 999, 126 L.Ed.2d 468 . Civil Rights 1376(7)

Prison officials were shielded by doctrine of qualified immunity from inmate's damage claims arising out of administrative segregation in violation of procedural due process, where responsible prison officials at time of inmate's administrative segregation could reasonably have thought that prison rules did not create cognizable liberty interest triggering due process safeguards and, therefore, that noncompliance with procedures outlined in rules would not infract prisoner's constitutional rights. Rodi v. Ventetuolo, C.A.1 (R.I.) 1991, 941 F.2d 22. Civil Rights 1376(7)

Although Missouri statute requiring hearing within three working days after prisoner is confined in administrative segregation created protected liberty interest, statute did not give inmate due process right to hearing within three working days, entitling prison officials to qualified immunity in civil rights action based on alleged violation of statute. Brown v. Frey, C.A.8 (Mo.) 1989, 889 F.2d 159, rehearing denied, certiorari denied 110 S.Ct. 1156, 493 U.S. 1088, 107 L.Ed.2d 1059. Civil Rights 1376(7); Constitutional Law 272(2)

Prison officials enjoyed qualified immunity from civil rights suit based on denial of due process when inmate was placed in special housing unit for administrative purposes for four days where regulation creating liberty interest which was violated was not a model of clarity and there had been no prior judicial decision or interpretation of the regulation which could have guided the actions of the prison officials. Matiyn v. Henderson, C.A.2 (N.Y.) 1988, 841 F.2d 31, certiorari denied 108 S.Ct. 2876, 487 U.S. 1220, 101 L.Ed.2d 911. Civil Rights 1376(7)

Assuming state inmate's complaint implicated a liberty interest protected by due process clause and process he received was deficient in some manner, prison officials were entitled to qualified immunity from liability for damages in inmate's § 1983 action; it was not clearly established that inmate had a liberty interest in avoiding administrative segregation while prison officials conducted investigation of misconduct and while threats by other inmates were being directed toward inmate. Christianson v. Clarke, D.Neb.1996, 932 F.Supp. 1178. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from § 1983 action challenging prisoner's placement in segregation following his refusal to identify prisoner he had seen assaulting another prisoner; Supreme Court decision establishing prevailing law at time did not allow for due process complaints arising out of administrative segregation, and under circumstances officials could have reasonably believed that prisoner had been segregated for administrative purpose of expediting investigation of assault, and in any event he had received some due process consisting of notice prior to placement in segregation. Bruns v. Halford, N.D.Iowa 1996, 913 F.Supp. 1295 . Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Official of correctional center was not entitled to qualified immunity where, at time official acted, it was clearly established that placing inmate into segregative custody for no reason violated inmate's constitutional rights, even though Supreme Court had subsequently ruled otherwise. Leslie v. Doyle, N.D.Ill.1995, 896 F.Supp. 771, affirmed 125 F.3d 1132, rehearing denied. Civil Rights 1376(7)

Jail officials were entitled to qualified immunity in connection with 17-day confinement of pretrial detainee in administrative segregation, even if due process required provision of formal hearing in addition to periodic review of status, as there was no clearly established case law available to officials when they acted alerting them of that requirement and officials complied with applicable state regulations then in effect. Ramsey v. Squires, W.D.N.Y.1995, 879 F.Supp. 270, affirmed 71 F.3d 405. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity for civil rights claims asserted against them in their individual capacities for failure to segregate inmates who had tested positive for HIV (Human Immunodeficiency Virus) from the general inmate population and failure to disclose to general prison population which inmates had tested positive, as such failures were not clearly established violations of the Eighth Amendment prohibition against cruel and unusual punishment. Goss v. Sullivan, D.Wyo.1993, 839 F.Supp. 1532. Civil Rights 1376(7)

Question of whether administrative segregation of prisoners inheres due process rights was not settled in Hawaii at time that prisoner's due process rights were violated by state prison officials through placement in administrative segregation without notice or hearing, and thus, state prison officials were individuals entitled to limited immunity from § 1983 suit by prisoner alleging violation of procedural due process rights. Hatori v. Haga, D.Hawai'i 1989, 751 F.Supp. 1401. Civil Rights 1376(7)

3934. ---- Transfer of prisoners, prisons and prisoners, clearly established right

State prison officials were entitled to qualified immunity from liability on claim of human immunodeficiency virus (HIV)-positive inmate that his transfer to housing unit for HIV-positive inmates violated his constitutional rights of equal protection, privacy, due process, freedom from cruel and unusual punishment, and freedom of association; any such rights that inmate had were not clearly established at the relevant time period. Camarillo v. McCarthy, C.A.9 (Cal.) 1993, 998 F.2d 638. Civil Rights 1376(7)

At time of violation of inmate's due process rights by prison officials in conducting untimely posttransfer hearing, relevant law clearly established inmate's protected liberty interest, so that in § 1983 action, none of prison officials could claim immunity from damages for violation of inmate's due process rights unless one or more could show extraordinary circumstances supporting finding that he neither knew nor should have known of relevant legal standard. Maldonado Santiago v. Velazquez Garcia, C.A.1 (Puerto Rico) 1987, 821 F.2d 822. Civil Rights 1376(7)

No clearly established legal norm was violated by absence of hearing before federal prisoner was transferred from penitentiary to medical center, allegedly for physical and psychiatric evaluation, and prison officials were thus shielded by qualified immunity from burden of defending prisoner's civil rights action based on procedural due process claim. Trapnell v. Ralston, C.A.8 (Mo.) 1987, 819 F.2d 182. Civil Rights 1376(7)

State prison officials acted in good faith in confining prisoner, who was furnished medical treatment after complaining to prison authorities, to administrative unit at the institution, since the prison had no medical facilities and it was the only place to put the prisoner, and since the transfer was not for disciplinary reasons but rather for the purpose of continuing evaluation of his ailment, and was a decision made as a result of consultation between treating doctors and prison psychiatrist, and thus, the prison officials could not have known that they were violating "clearly established statutory or constitutional rights" of the inmate, and were entitled to immunity from section 1983 liability. Adams v. Brierton, C.A.11 (Fla.) 1985, 752 F.2d 546, rehearing denied 767 F.2d 938, certiorari denied 106 S.Ct. 538, 474 U.S. 1010, 88 L.Ed.2d 468. Civil Rights 1376(7)

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Prison defendants were entitled to qualified immunity on prisoner's § 1983 claim based on allegedly retaliatory transfer for exercise of First Amendment rights in filing Bar grievance against prison librarian; law on issue of transfer of a prisoner in response to an unfounded Bar grievance against a librarian with whom the prisoner had contact on a daily basis was not sufficiently clearly established at the time of the transfer. Osterback v. Kemp, N.D.Fla.2003, 300 F.Supp.2d 1238, on reconsideration 300 F.Supp.2d 1263. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity with respect to claims of inmate law clerks that there was a violation of a personal constitutional right of such clerks in transfer to other institutions, as there was no clearly established federal cause of action under civil rights statute for violation of personal constitutional right unique to law clerks. Adams v. James, M.D.Fla.1992, 797 F.Supp. 940. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from inmate's § 1983 suit for damages resulting from reassignment of prisoner, along with 21 other prisoners who worked with prisoner in Administration Building, from his job to another job after theft of engraver owned by Department of Corrections; officials demonstrated that their actions could have been objectively justified on security grounds by reasonable prison officials, and no clearly established law at time that defendants acted taught that such set of security-oriented transfers would be "disciplinary" within meaning of Illinois statute relating to disciplinary actions against prison inmates. Baptist v. O'Leary, N.D.Ill.1990, 742 F.Supp. 975, reconsideration denied. Civil Rights 1376(7)

Inmate's widow failed to prove that state prison warden and correctional sergeant violated any clearly established law in failing to transfer an inmate to another facility after the inmate testified against a correctional officer, and thus, they were entitled to qualified immunity in the widow's § 1983 action arising from a subsequent, fatal stabbing of the inmate; decision of where to house the inmate after he was subject to regulations providing that placement decisions were discretionary and to be based on a number of factors, and the defendants could have reasonably believed that a decision not to transfer the inmate was lawful. Boyd v. Fallman, N.D.Cal.2003, 2003 WL 262323, Unreported. Civil Rights 1376(7)

3935. ---- Work conditions, prisons and prisoners, clearly established right

Even if librarian who was assaulted while working in prison did have actionable due process claim against prison officials, right was not so clearly established in March of 1992 that prison officials would have understood that they were violating her due process rights by having her work in prison library in the absence of prison guard. Liebson v. New Mexico Corrections Dept., C.A.10 (N.M.) 1996, 73 F.3d 274. Civil Rights 1376(10)

Prison officials were not entitled to qualified immunity from liability to inmate who claimed he was injured on table saw which officials knew posed serious risk of injury; even though Supreme Court had not addressed specific issue of whether work-related injuries in prison environment could violate the Eighth Amendment, official should have known that alleged conduct violated clearly established prohibition against reckless indifference to prisoner's safety. Warren v. State of Mo., W.D.Mo.1990, 754 F.Supp. 150, affirmed 995 F.2d 130. Civil Rights 1376(7)

3936. ---- Visitor privileges, prisons and prisoners, clearly established right

State prison officials were entitled to qualified immunity from liability in pro se § 1983 action for damages brought by prisoner and his fiance, alleging that prison officials violated due process by postponing their marriage for a period of 12 months, as a consequence of the restriction of their visitation privileges due to a prison rules violation; it was not clearly established that such delay was unconstitutional. Martin v. Snyder, C.A.7 (Ill.) 2003, 329 F.3d 919, rehearing denied. Civil Rights 1376(7)

Superintendent of forensic program at mental health center was entitled to qualified immunity with respect to inmate's claim that he was deprived of visitation, as there was no authority expressly holding that state law provided a constitutional liberty interest in unimpeded visitation. Maust v. Headley, C.A.7 (Ill.) 1992, 959 F.2d

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644, rehearing denied. Civil Rights 1376(3)

Assistant warden was shielded by doctrine of qualified immunity from Illinois state prisoner's suit for alleged denial of his protected liberty interest in visitation; existence of statutorily created liberty interest in visitation in Illinois was not established at time of alleged denial. Gavin v. McGinnis, N.D.Ill.1994, 866 F.Supp. 1107. Civil Rights 1376(7)

Employees of Florida Department of Corrections were not entitled to qualified immunity from liability in inmate's § 1983 action arising out of denial of inmate visitation privileges; unlawfulness of denying inmate visitation privileges without legitimate penological objectives was clearly established at time of actions challenged. Van Poyck v. Dugger, M.D.Fla.1991, 779 F.Supp. 571. Civil Rights 1376(7)

3937. ---- Miscellaneous rights, prisons and prisoners, clearly established right

For purposes of warden and assistant warden's qualified immunity defense, inmate demonstrated violation of his clearly established Eighth Amendment rights when he alleged that, along with other members of his work crew, he was confined outdoors overnight with no shelter, jacket, blanket, or source of heat while temperature dropped and wind blew and without bathroom facilities for 49 inmates sharing small bounded area, which showed sufficiently serious deprivation, and also alleged that warden ordered "sleep-out" and threatened another such night outdoors if inmates refused to work, and that both warden and assistant warden were present during evening of "sleep-out," showing requisite deliberate indifference to inmate's health and safety, even though confinement lasted only 17 hours. Palmer v. Johnson, C.A.5 (Tex.) 1999, 193 F.3d 346. Sentencing And Punishment 1536; Prisons 17(1)

Prison officials were entitled to qualified immunity even if prisoner's constitutional right against self-incrimination prevents state officials from making benefits conditional on prisoner's admission of guilt and even if denial of parole, work release, and less restrictive confinement because he refused to admit to his crime and was thus ineligible for sex offender program constituted violation of his right, where no court with jurisdiction over the state had held that such conduct was a violation at time of officials' conduct and other courts had ruled on issue with mixed results. McMorrow v. Little, C.A.8 (N.D.) 1997, 109 F.3d 432. Civil Rights 1376(7)

Although prison officials' failure to repair oven, the door to which fell off and burned prisoner's arm, put at issue prisoner's need for personal safety, in light of clearly established principles at time of incident a reasonable prison official could have believed that failure to repair oven did not violate Eighth Amendment, and thus, prison officials were entitled to qualified immunity in prisoner's § 1983 suit, where prisoner failed to plead exacerbating conditions or facts rising to level of serious safety hazard. Osolinski v. Kane, C.A.9 (Cal.) 1996, 92 F.3d 934. Civil Rights 1376(7)

In action by prison inmate against prison officials for allegedly violating statutory and constitutional rights by refusing to process mail and documents in which inmate used his religious, rather than his committed, name, inmate's First Amendment interest in using his new, legal name, at least in conjunction with his committed name, was clearly established for purposes of qualified immunity. Malik v. Brown, C.A.9 (Wash.) 1995, 71 F.3d 724. Civil Rights 1376(7)

Mayor and corrections officials had qualified immunity from civil rights claims for injuries suffered by prison inmates and pretrial detainees during course of prison riot and fire in 1983; decisions concerning prison administration and alleviation of overcrowded conditions, which allegedly caused riot and fire, were in performance of defendants' discretionary functions related to prison administration, and constitutional rights asserted were not clearly established in 1983. Brogsdale v. Barry, C.A.D.C.1991, 926 F.2d 1184, 288 U.S.App.D.C. 311. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Aggravated second offender's right to good-conduct and work/study time credits was clearly established at time that territorial corrections official refused to add credits to offender's record, precluding qualified immunity in offender's post-release §§ 1983 action alleging that official and others unconstitutionally had extended her imprisonment; official continued to deny credits even after being advised on two separate occasions by attorney in corrections department's legal offices that offender was entitled to credits. Ayuso-Figueroa v. Rivera-Gonzalez, D.Puerto Rico 2005, 456 F.Supp.2d 309. Civil Rights 1376(7)

Any First Amendment right of prison inmates to receive gift publications was not "clearly established" in the middle of 2000, and thus, Kansas prison officials were entitled to qualified immunity against inmates' §§ 1983 claims for damages from alleged violation of the inmates' First Amendment rights from enforcement of state prison regulations prohibiting inmates from receiving publications ordered for them by third parties, where there was only one Ninth Circuit case with ambiguous relevant statements to support the existence of the right. Prison Legal News, Inc. v. Simmons, D.Kan.2005, 401 F.Supp.2d 1181. Civil Rights 1376(7)

Placement of mentally ill prison inmate in continuously illuminated maximum security cell without windows was not clearly established as conduct violative of inmates' Eighth Amendment rights, and consequently prison officials responsible for placement of mentally ill patient in maximum security had qualified immunity from inmate's damages suit under §§ 1983. Scarver v. Litscher, W.D.Wis.2005, 371 F.Supp.2d 986, affirmed 434 F.3d 972. Civil Rights 1376(7)

Sheriff's deputy who requested bail enhancement from $50,000 to allegedly excessive $1 million for well-respected attorney arrested for domestic violence, and deputy's superior who authorized enhancement request, were entitled to qualified immunity in arrestee's §§1983 Eighth Amendment action, based on lack of clearly established constitutional violation and lack of causation; deputy and superior reasonably could have believed that there was risk of flight, that arrestee posed danger to alleged victim given extent of her injuries, and that setting bail at amount arrestee could not pay was functional equivalent of pretrial detention unavailable under state law, and they provided no false information to judicial officer who enhanced bail. Galen v. County of Los Angeles, C.D.Cal.2004, 322 F.Supp.2d 1045. Civil Rights 1376(6)

Standard defining inmate's right to be free from compelled self-incrimination was not clearly established, and therefore qualified immunity applied to shield state prison officials from liability for monetary damages on inmate's claim that requiring him to divulge history of sexual conduct as part of sexual offender counseling program or face loss of good time credits violated his Fifth Amendment privilege against self-incrimination. Donhauser v. Goord, N.D.N.Y.2004, 314 F.Supp.2d 119. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from prisoner's § 1983 claim brought against them in their individual capacities alleging that they violated Due Process Clause by unlawfully removing legal papers from his cell; prisoner's right to be free from deprivation of property was not absolute, there was no evidence that prisoner's right to keep legal papers in cell was clearly established at time of alleged violation, and reasonable official might not have known that alleged actions violated prisoner's rights. Damron v. North Dakota Com'r. of Corrections, D.N.D.2004, 299 F.Supp.2d 970, affirmed 127 Fed.Appx. 909, 2005 WL 1076645. Civil Rights 1376(7)

The alleged due process right of a schizophrenic inmate to be free from requests to take his psychotropic medication, and the right to have counsel and any desired witnesses at a prison misconduct hearing, were not clearly established rights, and therefore, prison officials were entitled to qualified immunity from inmate's § 1983 claim for due process violations. Whittington v. Vaughn, E.D.Pa.2003, 289 F.Supp.2d 621. Civil Rights 1376(7)

Exposure of inmate to asbestos or any other substance causing delayed manifestation of harm could not present colorable Eighth Amendment claim at time of inmate's exposure and, thus, prison officials were entitled to qualified immunity on inmate's cruel and unusual punishment claim; inmate's exposure to asbestos predated

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controlling case law that found possible Eighth Amendment claims. Doyle v. Coombe, W.D.N.Y.1997, 976 F.Supp. 183, affirmed 159 F.3d 1346. Civil Rights 1376(7)

In challenging prison drug treatment programs, alleging, inter alia, that programs used psychological torture to achieve political and moral reeducation, former inmate failed to establish constitutional violations or to cite case law showing that constitutional standards were clearly established at time in question, thus entitling state prison officials to qualified immunity on inmate's damages claims for violations of due process, equal protection, cruel and unusual punishment, denial of court access, bills of attainder, and conspiracy. Kerr v. Puckett, E.D.Wis.1997, 967 F.Supp. 354, affirmed 138 F.3d 321. Civil Rights 1376(7)

It was clearly established by June, 1992, that Rehabilitation Act and Americans with Disabilities Act (ADA) applied to state correctional facilities, and thus, defendant prison officials were not entitled to qualified immunity in § 1983 action alleging that they violated those statutes after that time with respect to bilateral amputee parole violator who was awaiting trial on new charges. Kaufman v. Carter, W.D.Mich.1996, 952 F.Supp. 520. Civil Rights 1376(7)

Supervisors at prison did not have qualified immunity from civil rights action of prisoners, in which prisoners alleged that their exposure to high levels of environmental tobacco smoke (ETS) violated their Eighth Amendment rights, since supervisors were chargeable with knowledge of conditions of prison, and with knowledge that second hand smoke could cause serious health problems. Warren v. Keane, S.D.N.Y.1996, 937 F.Supp. 301, affirmed and remanded 196 F.3d 330. Civil Rights 1376(7)

It was not clearly established that placing hold on inmate's prison account in order to collect costs judgments violated prisoner's constitutional rights and, therefore, even if state procedures for placing hold on inmate's account were unsound, government officials were entitled to qualified immunity for their actions. Spradley v. Martin, M.D.Fla.1995, 897 F.Supp. 560, affirmed 104 F.3d 370. Civil Rights 1376(7)

Prohibiting cross-dressing and use of female makeup by male prisoner did not violate any clearly established constitutional right, and, thus, warden was entitled to qualified immunity from § 1983 liability. Star v. Gramley, C.D.Ill.1993, 815 F.Supp. 276. Civil Rights 1376(7)

State inmate's constitutional right not to inform against fellow inmates was not clearly established in 1993, and thus prison officials were entitled to qualified immunity against liability under §§ 1983 for retaliating against inmate for his refusal to act as informant. Allah v. Juchenwioz, C.A.2 (N.Y.) 2006, 2006 WL 962150, Unreported. Civil Rights 1376(7)

At time of prisoner's 399-day administrative detention, it was not clearly established that federal regulation governing housing of inmates in administrative detention provided prisoner with a "state-created" liberty interest, and, thus, officials of the Bureau of Prisons (BOP) were entitled to qualified immunity from prisoner's action under §§ 1983, alleging that conditions and duration of his administrative detention created a liberty interest triggering procedural due process protections which officials violated. Hill v. Fleming, C.A.10 (Colo.) 2006, 173 Fed.Appx. 664, 2006 WL 856201, Unreported. Civil Rights 1376(7)

It was objectively reasonable for a correction officer to believe that requiring an inmate to clean pesticide residue did not violate the inmate's constitutional rights, and thus, the officer was entitled to qualified immunity in the inmate's § 1983 suit; the officer did not violate a clearly established right when he relied on the department of correctional services for the appropriate usage of toxic materials at the prison. Croswell v. McCoy, N.D.N.Y.2003, 2003 WL 962534, Unreported. Civil Rights 1376(7)

When prison officials removed state prisoner from special diet, the law was clearly established that a decision that was not motivated by a retaliatory purpose or that advanced a legitimate penological interest was not actionable

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retaliation, thus entitling officials to judgment as a matter of law on qualified immunity defense asserted in prisoner's pro se § 1983 action; evidence showed that official spoke to doctor to process prisoner's request for a move to a special diet unit, and that prisoner was taken off medical diet because doctor who reviewed medical records determined that it was no longer medically necessary for him to remain on special diet, no reasonable prison guard would have thought it unlawful to check with a prison doctor to determine the prisoner's actual medical needs in processing a request for special housing, and no reasonable doctor would have thought it unlawful to take an inmate off a medically unnecessary special diet. Gray v. Terhune, N.D.Cal.2002, 2002 WL 31819232, Unreported. Civil Rights 1376(7)

3938. Property owners, clearly established right

Police chief's reliance on city's derelict vehicle ordinance, which provided no form of pre- or post-deprivation hearing, in seizing more than 70 purportedly derelict vehicles from landowner's property did not constitute "extraordinary circumstances" that prevented him from knowing the clearly established law, and so chief was not entitled to qualified immunity from landowner's suit for violation of her Fourth Amendment right against unreasonable seizures and her Fourteenth Amendment right to due process; because ordinance provided no hearing whatsoever, officer did not need to understand the niceties of the Supreme Court's *Mathews* balancing test to know that it was unconstitutional, as decisions of the Tenth Circuit, as well as other circuits, had made it abundantly clear that when the state deprives an individual of property, for example, by impounding an individual's vehicle, it must provide the individual with notice and a hearing. Lawrence v. Reed, C.A.10 (Wyo.) 2005, 406 F.3d 1224. Civil Rights 1376(6)

Owners of rental properties had clearly established substantive due process right to use and enjoyment of their property without arbitrary and capricious interference by borough officials, for purposes of determining whether officials were entitled to qualified immunity from owners' § 1983 claim alleging that officials' issuance of citations and condemnation notices were arbitrary and capricious in violation of their due process rights. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Civil Rights 1376(4)

3939. Prosecutor activities, clearly established right--Generally

Although a prosecutor is protected by absolute immunity for his actions in presenting evidence at trial, cases holding such acts unconstitutional served to inform every prosecutor that his knowing use of false evidence is unconstitutional and, for purposes of defeating qualified immunity, any prosecutor aware of these cases would have understood in 1996 that fabricating evidence in his investigative role violated the standards of due process and that a resulting loss of liberty was a denial of a constitutional right, though no court decided before 1996 that a prosecutor deprived a criminal defendant of liberty without due process by fabricating evidence in an investigative role under circumstances where it was reasonably foreseeable that the false evidence would be used to deprive the defendant of liberty, and two courts appeared to have reached a contrary conclusion. Zahrey v. Coffey, C.A.2 (N.Y.) 2000, 221 F.3d 342. Civil Rights 1376(9); District And Prosecuting Attorneys 10

Prosecutor did not violate gun shop owner's clearly established rights when he charged owner with reckless endangerment under Maryland law for failing to adequate secure guns and ammunition in his shop, and was entitled to qualified immunity in owner's civil rights action brought after charge was dropped; exception in Maryland's reckless endangerment statute for conduct involving manufacture, production, or sale of any product or commodity did not clearly apply to owner's conduct. Springmen v. Williams, C.A.4 (Md.) 1997, 122 F.3d 211. Civil Rights 1376(9)

Prosecutor was entitled to qualified immunity for compelling police officers, upon threat of job loss, to take polygraph examinations regarding suspected police involvement in shooting where officers were not compelled to waive their Fifth Amendment rights and no charges were ever brought against them; law was not clearly established as to whether compelling officers to take polygraph examination violated their right against

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self-incrimination, where statements were never used. Wiley v. Doory, C.A.4 (Md.) 1994, 14 F.3d 993. Civil Rights 1376(9); Civil Rights 1376(10)

State prosecutor's decision to retain personal property confiscated and retained in connection with third party's arrest after grand jury's decision not to indict did not violate owner's clearly established constitutional rights, and thus prosecutor was entitled to qualified immunity from liability under §§ 1983. Morris v. Jackson, C.A.11 (Ala.) 2006, 167 Fed.Appx. 750, 2006 WL 177575, Unreported. Civil Rights 1376(9)

3940. ---- Confessions, prosecutor activities, clearly established right

Prosecutor was not entitled to qualified immunity from liability for his demand that mother swear to her innocence on a bible in a church as a condition of dropping charges that she had sexually abused her son; right of mother not to be forced to participate in religious ceremony was clearly established. Doe v. Phillips, C.A.2 (N.Y.) 1996, 81 F.3d 1204, certiorari denied 117 S.Ct. 1244, 520 U.S. 1115, 137 L.Ed.2d 326. Civil Rights 1376(9)

Case law on whether suspect could constitutionally be asked to submit to hypnosis was not clearly established when prosecutor authorized interrogation of mother while hypnotized about shooting of her children and, thus, prosecutor was entitled to qualified immunity in mother's civil rights action after all charges were dropped against her; at time of interrogation, courts were split on validity of admitting confessions from suspects who complained about hypnosis, and opinions addressing hypnotically refreshed testimony did not address constitutionality of asking suspect to submit to hypnosis. Burns v. Reed, C.A.7 (Ind.) 1995, 44 F.3d 524, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 2583, 515 U.S. 1145, 132 L.Ed.2d 832. Civil Rights 1376(9)

Citizen's allegations that deputy district attorney assisted police officer in extracting involuntary confession stated civil rights claim against deputy district attorney to which qualified immunity did not extend, as law with respect to involuntary confessions and ability to knowingly waive constitutional rights was clear at time the questioning took place. Rex v. Teeples, C.A.10 (Colo.) 1985, 753 F.2d 840, certiorari denied 106 S.Ct. 332, 474 U.S. 967, 88 L.Ed.2d 316. Civil Rights 1398

3941. ---- Probation, prosecutor activities, clearly established right

Prosecutor was qualifiedly immune from liability in connection with his advice to probation officer to proceed with petition for probation revocation during pendency of appeal by probationer who had posted bail, allegedly in violation of Pennsylvania rule; rule in question did not clearly establish that filing of revocation petition while probationer was free on bail would be constitutional violation. Felker v. Christine, M.D.Pa.1992, 796 F.Supp. 135, affirmed 983 F.2d 1050. Civil Rights 1376(9)

Prosecuting attorney who took it upon himself to act as probation officer and who, in so doing, acted improperly by seeking issuance of warrant for arrest after arrestee's probation had expired, was not entitled to qualified immunity; prosecutor's conduct violated clearly established statutory or constitutional rights of which reasonable person would have known. Roberts v. Ross, S.D.Ohio 1987, 680 F.Supp. 1144. District And Prosecuting Attorneys 10

3942. Retaliatory prosecution, clearly established right

Postal inspectors were not entitled to qualified immunity in plaintiff's civil rights action alleging retaliatory prosecution based on plaintiff's public criticism of postal service, as retaliatory prosecution based on exercise of First Amendment rights was violation of clearly established law, and evidence indicated that two postal inspectors heard prosecutor state that plaintiff's innocence was irrelevant to prosecution. Moore v. Valder, C.A.D.C.1995, 65

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F.3d 189, 314 U.S.App.D.C. 209, rehearing and suggestion for rehearing in banc denied, certiorari denied 117 S.Ct. 75, 519 U.S. 820, 136 L.Ed.2d 35. United States 50.10(3)

Township supervisor was not entitled to qualified immunity with respect to §§ 1983 claim based on initiation of criminal investigations in retaliation for exercise of free speech under First Amendment; reasonable person in supervisor's position would have understood his actions to be violating clearly established right. Heller v. Fulare, W.D.Pa.2005, 371 F.Supp.2d 743. Civil Rights 1376(10)

3943. Retaliatory condemnation, clearly established right

Accepting as true all well-pleaded allegations, reasonable public officials would have understood that their actions in seeking condemnation of landowners' land in retaliation for landowners' exercise of First Amendment rights violated landowners' clearly established constitutional right to be free from retaliation for exercising their First Amendment right to free speech, and deprived landowners of their clearly established liberty interest in speech, and thus, city officials, in their individual capacities, were not entitled to qualified immunity from landowners' § 1983 action. Rolf v. City of San Antonio, C.A.5 (Tex.) 1996, 77 F.3d 823. Civil Rights 1376(4)

3944. Securities, clearly established right

Indiana Securities Commissioner's investigation and dissemination of her conclusions as to whether financial investment company had failed to supervise its alleged employee with due care were acts for which Commissioner was entitled to qualified immunity; in investigating company's alleged failure to properly supervise, Commissioner was carrying out duties she was obligated to perform and she therefore had no reason to believe that those actions violated company's constitutional rights. Trust and Inv. Advisors, Inc. v. Hogsett, S.D.Ind.1993, 830 F.Supp. 463, affirmed in part, reversed in part 43 F.3d 290. Civil Rights 1376(3)

3945. Social workers, clearly established right

State social worker was not entitled to qualified immunity in high school student's §§ 1983 action alleging that social worker and sheriff's deputy had unreasonably seized her by confronting her at school and coercing her into returning to live with her father rather than with her mother, in contravention of temporary restraining order still in effect against father; requirement that seizure must be, at minimum, justified at its inception, as well as Fourth Amendment's applicability to social workers, were clearly established at time of social worker's alleged actions. Jones v. Hunt, C.A.10 (N.M.) 2005, 410 F.3d 1221. Civil Rights 1376(3)

Warrantless entry into home by social workers and their seizure of 12-year-old child they suspected was a victim of Munchausen Syndrome by Proxy (MSBP) did not violate clearly established law under the Fourth Amendment, entitling workers to qualified immunity, where they had probable cause to believe that child's presence in his own home was the reason for his being restrained to a wheelchair and having to be fed through an intravenous tube even though he was not physically handicapped. Roska ex rel. Roska v. Peterson, C.A.10 (Utah) 2003, 328 F.3d 1230, on remand 311 F.Supp.2d 1307. Civil Rights 1376(3)

State social workers and private occult investigators whom they hired to assist in investigation of reports, by children in social workers' care, of ritual child abuse and murder were protected by qualified immunity from any liability on civil rights claims arising out of police sergeant's arrest and prosecution, notwithstanding expert criticism of allegedly coercive nature of interviewing techniques that were used, given eyewitness testimony implicating police sergeant in this alleged abuse, which testimony was corroborated, in some respects, by physical evidence; court could not say that no reasonable officer would have concluded that there was probable cause. Brown v. Lyford, C.A.5 (Tex.) 2001, 243 F.3d 185, certiorari denied 122 S.Ct. 46, 534 U.S. 817, 151 L.Ed.2d 17. Civil Rights 1373; Civil Rights 1376(3)

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At the time allegedly deficient child abuse investigation was conducted, social workers had little or no basis to conclude that their investigation, however flawed, potentially intruded upon "clearly established" rights to family integrity of subject of investigation and his son and stepson, and therefore social workers were entitled to qualified immunity against federal civil rights claims of father and children. Wilkinson ex rel. Wilkinson v. Russell, C.A.2 (Vt.) 1999, 182 F.3d 89, certiorari denied 120 S.Ct. 1160, 528 U.S. 1155, 145 L.Ed.2d 1072. Civil Rights 1376(2)

Social worker's decision allowing baby to leave safety of aunt's home and be taken by grandmother could not be basis for substantive due process claim, especially where she instructed that child not be returned to mother. Powell v. Georgia Dept. of Human Resources, C.A.11 (Ga.) 1997, 114 F.3d 1074. Constitutional Law 274(5); Infants 17

State social worker was entitled to qualified immunity from custodial father's § 1983 claim for violations of his constitutional rights to care, custody, and maintenance of his child, to family integrity, and to procedural due process; there was no clearly established constitutional right that required social worker to notify custodial father of whereabouts of his daughter when the social worker had done nothing to assist the non-custodial parent in taking or hiding the child, and social worker's conduct was objectively reasonable in light of what she knew at the time. Dunlap v. Hilgenkamp, D.Neb.2000, 82 F.Supp.2d 1052. Civil Rights 1376(3)

Social workers were entitled to qualified immunity from § 1983 claim that they deprived mentally disabled adult ward of his constitutional rights by transporting him without authorization; there was no clearly established federal law governing what employees had to do when guardian pushed ward into state's custody and guardian neither carried out his own responsibilities nor authorized state to pursue other reasonable options, and there was no evidence that social workers departed from accepted professional judgment, practice, or standards. Liverseed by Liverseed v. County of Rice, D.Minn.1997, 977 F.Supp. 952. Civil Rights 1376(4)

Juvenile's right to confer in private with counsel was not clearly established, and, therefore, social worker employed by Department for Social Services (DSS) had qualified immunity from civil rights claims under § 1983, where juvenile was in DSS custody as child in need of care and protection, rather than as delinquent, and action in which attorney was providing representation was against another state. Doe By and Through Doe v. Massachusetts Dept. for Social Services, D.Mass.1996, 948 F.Supp. 103. Civil Rights 1376(3)

County social worker should have known that her alleged conduct in thwarting parents' attempts to have children returned to parents' home, after children were removed due to unsanitary conditions, and in effectively denying parents prompt hearing on children's placement had effect of violating parents' clearly established rights to procedural due process by involuntarily depriving parents of physical custody of children, and therefore qualified immunity did not apply to preclude social worker's liability under §§ 1983. Smith v. Williams-Ash, C.A.6 (Ohio) 2005, 2005 WL 3304101, Unreported. Civil Rights 1376(4)

Mother had no clearly established constitutional right to state initiated hearing following her children's removal and placement, and thus social worker who handled removal and placement was entitled to qualified immunity from liability under § 1983 for alleged violation of mother's procedural due process rights, where children were placed with their father, who had joint legal custody. Shiraki v. Cannella, C.A.9 (Hawai'i) 2003, 83 Fed.Appx. 896, 2003 WL 22928726, Unreported. Civil Rights 1376(3)

3946. Taxation, clearly established right--Generally

Unconstitutionality of North Carolina taxation scheme granting state income tax exemptions to retired state employees but not to federal or private retirees was not clearly established at time former secretary for North Carolina Department of Revenue was enforcing taxation scheme and, therefore, former secretary was entitled to qualified immunity for her actions in collecting taxes from retired federal employees. Swanson v. Powers, C.A.4

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(N.C.) 1991, 937 F.2d 965, certiorari denied 112 S.Ct. 871, 502 U.S. 1031, 116 L.Ed.2d 777. Civil Rights 1376(3)

City property tax officials had qualified immunity from §§ 1983 suit by landowner, claiming breach of agreement to refrain from further tax enforcement proceedings if landowner made agreed upon payments toward back and current taxes; there were no court decisions warning officials that they were violating landowner's federally protected rights by concluding that landowner did not abide by repayment schedule. and seeking termination of landowner's equity of redemption, and there were state court determinations that officials did not violate landowner's rights. Matney v. City of North Adams, D.Mass.2005, 359 F.Supp.2d 20. Civil Rights 1376(4)

North Carolina Department of Revenue Controlled Substance Tax Division enforcement officer was entitled to qualified immunity in arrestee's §§ 1983 action arising out of assessment of controlled substance tax, penalty, and interest following his arrest while in possession of crack cocaine and cash; it would not have been clear to reasonable person in officer's shoes that his actions would possibly have violated plaintiff's rights, since state courts had upheld drug tax prior to assessment, and contrary decision had not yet been issued by Fourth Circuit Court of Appeals. Williams v. Starling, M.D.N.C.2005, 353 F.Supp.2d 607. Civil Rights 1376(3)

North Carolina Department of Revenue Controlled Substance Tax Division enforcement officer was entitled to qualified immunity in arrestee's §§ 1983 action arising out of assessment of controlled substance tax, penalty and interest following his arrest while in possession of crack cocaine and cash; it would not have been clear to a reasonable person in officer's shoes that his actions would possibly have violated plaintiff's rights, since state courts had upheld drug tax prior to the assessment, and contrary decision had not yet been issued by Fourth Circuit Court of Appeals. Williams v. Starling, M.D.N.C.2004, 345 F.Supp.2d 521, withdrawn from bound volume, superseded 353 F.Supp.2d 607. Civil Rights 1376(3)

3947. ---- Searches, taxation, clearly established right

Store owner's contention that Attorney General of Kansas acted without jurisdiction in applying for and executing search warrants against owner's business located on Indian reservation, in connection with Attorney's investigation into charges that owner failed to pay state sales tax and that she possessed untaxed cigarettes, could not survive Attorney General's claim of qualified immunity in § 1983 action; power of state to enforce state sales tax collections upon sales made to non-Indians on Indian reservations was recognized in the case law at the time of the searches. Kaul v. Stephan, D.Kan.1993, 828 F.Supp. 1504. Civil Rights 1376(9)

3947A. ---- Refunds, taxation, clearly established right

Director and enforcement officer of North Carolina Department of Revenue Controlled Substance Tax Division were entitled to qualified immunity in arrestee's §§ 1983 action arising out of their refusal after charges against arrestee were dismissed to refund controlled substance tax assessed against him when he was arrested while in possession of crack cocaine and cash; refund was not required by law, and thus reasonable people in director's and officer's positions would not have been aware that their failure to take action would violate arrestee's constitutional rights. Williams v. Starling, M.D.N.C.2004, 345 F.Supp.2d 521, withdrawn from bound volume, superseded 353 F.Supp.2d 607. Civil Rights 1376(3)

3948. ---- Seizures, taxation, clearly established right

At time that state agents filed North Carolina controlled substance tax assessment and tax lien, law was not clearly established that filing tax lien was seizure implicating Fourth Amendment, or that probable cause was required, thus entitling agents to qualified immunity from land owner's civil rights claims; determinative case was not decided until five months after events in question, and experienced officer could reasonably have reached opposite

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conclusion based on prior case law. Andrews v. Crump, W.D.N.C.1996, 984 F.Supp. 393. Civil Rights 1376(3)

State agents were entitled to qualified immunity from malicious prosecution claims under § 1983 alleging continuing unreasonable Fourth Amendment seizure of farm owner's property based on agents' failure to cancel North Carolina controlled substance tax assessment and tax lien, since law was not clearly established at time of occurrence, and reasonable, experienced officer could reasonably have concluded that Fourth Amendment was not implicated and that probable cause standard did not apply. Andrews v. Crump, W.D.N.C.1996, 984 F.Supp. 393. Civil Rights 1376(3)

3949. Trusts, clearly established right

Trustees of Office of Hawaiian Affairs (OHA) were entitled to qualified immunity from § 1983 liability that trustees violated Hawaii Admission Act by managing, administering, and expending public trust funds under referendum to define native Hawaiians as all people of Hawaiian ancestry; no clearly established law prohibited trustees from expending the funds in support of the referendum. Price v. Akaka, C.A.9 (Hawai'i) 1993, 3 F.3d 1220, as amended, certiorari denied 114 S.Ct. 1645, 511 U.S. 1070, 128 L.Ed.2d 365. Civil Rights 1376(3)

3950. Witness testimony, clearly established right

First Amendment protects right to testify truthfully at trial, and the law to that effect is clearly established for qualified immunity purposes. Langley v. Adams County, Colo., C.A.10 (Colo.) 1993, 987 F.2d 1473. Constitutional Law 90.1(1)

Solicitation of false testimony for use in criminal prosecution violates clearly established constitutional rights, and thus, government official who solicits false testimony is not entitled to qualified immunity in § 1983 suit. Spurlock v. Whitley, M.D.Tenn.1997, 971 F.Supp. 1166, affirmed 167 F.3d 995. Civil Rights 1376(2)

Even if detective violated arrestee's constitutional rights by testifying to grand jury with reckless disregard for the truth, she was entitled to qualified immunity in §§ 1983 action since those rights were not clearly established at the time of the alleged violation. Davidson v. Wakefield, C.A.9 (Ariz.) 2006, 167 Fed.Appx. 588, 2006 WL 122317, Unreported. Civil Rights 1375

3951. Zoning issues, clearly established right

Assistant city attorney and city fire inspector enjoyed qualified immunity from Fair Housing Act (FHA) lawsuit alleging that they conspired through use of zoning regulations to deny housing to emotionally disturbed women, since it was not clearly established at time of challenged conduct that FHA extended personal liability to municipal officials who were not involved in selling or renting of property and who did not have decision making authority. Meadowbriar Home for Children, Inc. v. Gunn, C.A.5 (Tex.) 1996, 81 F.3d 521. Civil Rights 1376(4)

Property owner's right to develop his property under recorded development plan and subdivision plan before acquiring building permit and commencing construction through some ground-breaking activity was not so "clearly established" as to strip local zoning officials and county attorney of qualified immunity defenses based on actions relating to rezoning of property to less intensive use; reasonable county officials could have believed their action voiding owner's record development plan was lawful in light of lack of clear discussion of vested rights doctrine by highest court in Delaware and complex nature of body of law underlying vested rights doctrine. Acierno v. Cloutier, C.A.3 (Del.) 1994, 40 F.3d 597. Civil Rights 1376(4)

Local official was entitled to qualified immunity on claim that he violated land developer's substantive due process

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rights by allegedly requiring mitigation payments to issue building permit, as it was not clearly established that allegations of corruption or bribery could make out substantive due process claim in land-use disputes, given reluctance to recognize any type of §§ 1983 claim in land-use context. Mongeau v. City of Marlborough, D.Mass.2006, 462 F.Supp.2d 144. Civil Rights 1376(4)

Landowners' constitutional right to approval of their subdivision plan for a commercial plaza was not clearly established at the time approval was denied, and, thus, individual members of planning commission were entitled to qualified immunity in landowners' claim alleging that by denying approval of their subdivision plan, the members violated their right to due process under the Fourteenth Amendment; the decision to deny approval was not prohibitively based solely on religious objections to the proposed use of property but rather against the aspects of the project which included alcohol sales and video lottery machines, as well as based on public opinion and emotional aspects. Pennington v. Teufel, N.D.W.Va.2005, 396 F.Supp.2d 715, affirmed 169 Fed.Appx. 161, 2006 WL 460921. Civil Rights 1376(4)

City officials who passed zoning ordinance prohibiting maintenance of farm animals, allegedly in retaliation for speech by property owners, had qualified immunity from action under §§ 1983 brought by daughter and son-in-law of owners, alleging violation of their First Amendment right of intimate association, where right of intimate association was not clearly established when officials passed farm animal ordinance. Moran v. City of New Rochelle, S.D.N.Y.2004, 346 F.Supp.2d 507. Civil Rights 1376(4)

Township officials did not have qualified immunity from § 1983 claim that they violated constitutional rights of abortion clinic operator, by selectively enforcing ordinance requiring that medical clinic be located on minimum three-acre plot; officials could not claim they were unaware that interference with right to obtain abortion was violation of known constitutional right. Associates In Obstetrics & Gynecology v. Upper Merion Tp., E.D.Pa.2003, 270 F.Supp.2d 633. Civil Rights 1376(4)

3952. Crime victims privacy right, clearly established right

Alleged rape victim's constitutionally protected privacy interest in the contents of the videotape depicting her alleged rape was clearly established at the time police officer disclosed the tape to the media, and thus, officer was not entitled to qualified immunity for the disclosure, in alleged victim's §§ 1983 claim, absent showing that officer had a compelling state interest for releasing the tape and that he used the least intrusive means of disclosing the tape; even though no prior case was directly on point, case law established that an individual had protected privacy interest in personal sexual matters. Anderson v. Blake, C.A.10 (Okla.) 2006, 469 F.3d 910. Civil Rights 1376(6)

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3981. Objective reasonableness requirement generally

Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken. Wilson v. Layne, U.S.Md.1999, 119 S.Ct. 1692, 526 U.S. 603, 143 L.Ed.2d 818. Civil Rights 1376(2)

Doctrine of qualified immunity shields public officials from damage actions unless their conduct was unreasonable in light of clearly established law. Elder v. Holloway, U.S.Idaho 1994, 114 S.Ct. 1019, 510 U.S. 510, 127 L.Ed.2d 344, on remand 22 F.3d 897. Civil Rights 1376(2)

Generally, government officials performing discretionary functions have qualified immunity, shielding them from civil damages liability as long as actions could reasonably have been thought consistent with rights they are alleged to have violated. Anderson v. Creighton, U.S.Minn.1987, 107 S.Ct. 3034, 483 U.S. 635, 97 L.Ed.2d 523, on remand 724 F.Supp. 654. Officers And Public Employees 114

Even defendants who violate constitutional rights enjoy qualified immunity that protects them from liability for damages unless it is further demonstrated that their conduct was unreasonable under the applicable standard. Davis v. Scherer, U.S.Fla.1984, 104 S.Ct. 3012, 468 U.S. 183, 82 L.Ed.2d 139, rehearing denied 105 S.Ct. 26, 468 U.S. 1226, 82 L.Ed.2d 919. Civil Rights 1376(2)

To meet their burden of showing that a reasonable public official would have known that his conduct was unlawful, as required to overcome a qualified immunity defense, a §§ 1983 plaintiff may point to closely analogous cases demonstrating that the conduct is unlawful or demonstrate that the violation is so obvious that a reasonable state actor would know that what he is doing violates the Constitution. Green v. Butler, C.A.7 (Ill.) 2005, 420 F.3d 689, rehearing en banc denied. Civil Rights 1376(2)

In § 1983 action in which public official claims qualified immunity, if public officers of reasonable competence could disagree on issue in dispute, qualified immunity should be recognized as official has shown that conduct did not violate any clearly established federal statutory or constitutional rights of which reasonable person would have

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known. McCloud v. Testa, C.A.6 (Ohio) 1996, 97 F.3d 1536, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(2)

To determine whether defendant is entitled to qualified immunity from plaintiff's claim of violation of civil rights, Court of Appeals first determines whether plaintiff has alleged violation of clearly established constitutional right, and if so, defendant is only entitled to qualified immunity if defendant's conduct was objectively reasonable. Nerren v. Livingston Police Dept., C.A.5 (Tex.) 1996, 86 F.3d 469. Civil Rights 1376(2)

Qualified immunity is available as matter of law when undisputed facts establish that it was objectively reasonable for defendants to believe that their actions did not violate clearly established rights. Defore v. Premore, C.A.2 (N.Y.) 1996, 86 F.3d 48. Civil Rights 1432

For purposes of determining civil rights violations, official's conduct is protected by qualified immunity if, in light of legal rules that were clearly established at time of action, it was objectively reasonable. Hale v. Townley, C.A.5 (La.) 1995, 45 F.3d 914, rehearing and suggestion for rehearing en banc denied 51 F.3d 1047. Civil Rights 1376(2)

Government official may claim qualified immunity from civil rights suit only when, in light of clearly established law and the information that official possesses, it was objectively reasonable for official to think that his actions were lawful. Hill v. City of New York, C.A.2 (N.Y.) 1995, 45 F.3d 653. Civil Rights 1376(2)

Qualified immunity shields government officials performing discretionary functions from civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Cotnoir v. University of Maine Systems, C.A.1 (Me.) 1994, 35 F.3d 6. Civil Rights 1376(2)

If reasonable public officials could differ on unlawfulness of public official's conduct claimed to have violated a constitutional right, public official is entitled to qualified immunity in civil rights action. White v. Taylor, C.A.5 (Miss.) 1992, 959 F.2d 539. Civil Rights 1376(2)

Even when plaintiff's federal rights are so clearly defined that reasonable public official would know that actions might violate those rights, qualified or good faith immunity would still be available as bar to § 1983 suit if it was objectively reasonable for public official to believe that acts did not violate those rights. Kaminsky v. Rosenblum, C.A.2 (N.Y.) 1991, 929 F.2d 922. Civil Rights 1376(2)

Government officials may be shielded from liability for damages in a § 1983 action if, at the time they acted, statutory or constitutional right which was allegedly violated was not clearly established; right must be sufficiently clear that reasonable officer would understand that what he or she did violated that right. Brown v. City of Fort Lauderdale, C.A.11 (Fla.) 1991, 923 F.2d 1474. Civil Rights 1376(2)

Qualified immunity shields public official from personal liability for constitutional violations if his conduct was objectively reasonable as measured by clearly established law; to overcome defense, contours of right must be clear enough to enable reasonable official to understand that what he or she is doing violates that right, though it is not necessary to show that very action in question has previously been held unlawful. Powell v. Basham, C.A.8 (Ark.) 1990, 921 F.2d 165. Civil Rights 1376(2)

In order to determine whether official is entitled to qualified immunity for his actions in a § 1983 case, appropriate standard is objective reasonableness of official's conduct, as measured by reference to clearly established law. Pfannstiel v. City of Marion, C.A.5 (Tex.) 1990, 918 F.2d 1178. See, also, Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo, C.A.2 (N.Y.) 1992, 981 F.2d 50; Enlow v. Tishomingo County, Miss., C.A.5 (Miss.) 1992, 962 F.2d 501, rehearing denied 971 F.2d 750; Duckett v. City of Cedar Park, Tex., C.A.5 (Tex.) 1992, 950

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F.2d 272. Civil Rights 1376(2)

For purposes of qualified immunity, it is not sufficient for plaintiff to claim that Fourteenth Amendment and § 1983 provide clearly established right to due process which defendants should have been aware of; test of whether clearly established law is violated must be applied at level such that reasonable public official would understand that specific action he is taking violates law. Horlock v. Georgia Dept. of Human Resources, C.A.11 (Ga.) 1989, 890 F.2d 388, rehearing granted and vacated. Civil Rights 1376(1)

Test for determining whether an official protected by qualified immunity acted in a manner which was objectively legally reasonable is a standard which is entirely objective. Melear v. Spears, C.A.5 (Tex.) 1989, 862 F.2d 1177. Civil Rights 1376(2)

Question of qualified immunity from liability under this section is one of reasonableness, i.e., whether reasonable person in shoes of defendant would have known that he was violating another's constitutional rights. B.C.R. Transport Co., Inc. v. Fontaine, C.A.1 (Mass.) 1984, 727 F.2d 7. Civil Rights 1376(2)

The touchstone of qualified immunity is objective reasonableness; thus, the appropriate inquiry is whether objectively it would be clear to all reasonable officials that the actions taken were unlawful under the situation the official faced, without any reference to the official's subjective motivations. Vukelic v. Bartz, D.N.D.2003, 245 F.Supp.2d 1068. Civil Rights 1376(2)

Whether an official protected by qualified immunity may be held personally liable under § 1983 for an allegedly unlawful official action generally turns on the objective legal reasonableness of the action, assessed in the light of the legal rules that were clearly established at the time it was taken. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1376(2)

Inquiry of "objective reasonableness" under qualified immunity defense to § 1983 liability includes consideration of whether rights alleged to have been violated by public official were clearly established at time of challenged action; if law supporting allegedly violated rights was not clearly established, then immunity must lie, but where law is clearly established, and no reasonable official could believe he was acting in accordance with it, qualified immunity will not attach. Castaldo v. Stone, D.Colo.2001, 192 F.Supp.2d 1124, reconsideration denied 191 F.Supp.2d 1196. Civil Rights 1376(2)

Test for qualified immunity is purely objective: immunity shields public officials insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Myers v. Town of Landis, M.D.N.C.1996, 957 F.Supp. 762, affirmed in part, dismissed in part 107 F.3d 867. Civil Rights 1376(2)

Whether defendant asserting qualified immunity may be personally liable turns on objective legal reasonableness of defendant's actions in light of clearly established law; this objective standard not only allows many claims to be decided on summary judgment, but also provides defendant officials with ability to anticipate when their conduct may give rise to liability for damages, and, if reasonable public officials could differ on lawfulness of defendant's actions, defendant is entitled to qualified immunity. Wicker v. City of Galveston, S.D.Tex.1996, 944 F.Supp. 553. Civil Rights 1376(2)

Actions taken by local officials are considered "objectively unreasonable," thus defeating application of qualified immunity, if right allegedly violated is clearly established in sufficiently particularized sense at time of actions at issue; as result of this reasonableness test, doctrine of qualified immunity applies to all but plainly incompetent or those who knowingly violate law. Van Loo v. Braun, E.D.Wis.1996, 940 F.Supp. 1390. Civil Rights 1376(2)

3982. Subjective standard distinguished, objective reasonableness requirement--Generally

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In evaluating official's conduct for purposes of determining his entitlement to qualified immunity, court does not focus on official's subjective state of mind, such as bad faith or malicious intention; rather, applicable standard requires court to make objective analysis of reasonableness of conduct in light of the facts actually known to officer and not consider individual officer's subjective assessment of those facts. Sheehy v. Town of Plymouth, C.A.1 (Mass.) 1999, 191 F.3d 15, on remand 2000 WL 110140. Civil Rights 1376(2)

Subjective intent is not relevant to reasonableness prong of qualified immunity test because that factor is governed by objective test. Sweaney v. Ada County, Idaho, C.A.9 (Idaho) 1997, 119 F.3d 1385. Civil Rights 1376(2)

For purposes of the doctrine of qualified immunity, court's inquiry does not focus on state actor's subjective intent, but rather on whether belief of state actor that actions taken were authorized would have been objectively reasonable. Rosario v. Brooks, D.Mass.1995, 877 F.Supp. 765. Civil Rights 1376(2)

Objective standard applied, in deciding whether Attorney Generals violated any clearly established right of undercover police informant in failing to provide him with hearing prior to terminating relocation and redocumentation assistance promised; Attorney Generals' subjective beliefs about nature of their relationship with informant was irrelevant to question of liability under civil rights statute. G-69 v. Degnan, D.N.J.1990, 748 F.Supp. 274. Civil Rights 1376(9)

Qualified immunity was defense to state employee's claim that officials' search of his office and desk in connection with investigation into allegations of misconduct was in fact in retaliation for complaints employee had made about one official's performance; whether good-faith immunity defense was unavailable to officials depended on whether they objectively knew that they were in violation of clearly established constitutional principles at time they conducted search and not on whether they subjectively had ulterior motive for conducting search. Ross v. Hinton, S.D.Ohio 1990, 740 F.Supp. 451, affirmed 937 F.2d 609. Civil Rights 1376(10)

3983. ---- Extraordinary circumstances, subjective standard distinguished, objective reasonableness requirement

Ordinarily, qualified immunity defense will fail if the law was clearly established at time action occurred since reasonably competent public official should know law governing his conduct; however, if official claims that extraordinary circumstances existed and can prove, based on objective facts, that he neither knew nor should have known relevant legal standard, defense should be applied. E-Z Mart Stores, Inc. v. Kirksey, C.A.8 (Ark.) 1989, 885 F.2d 476. Officers And Public Employees 114; Officers And Public Employees 116

Except in extraordinary circumstances, public officials' actual knowledge is irrelevant to determination as to whether they are entitled to good-faith immunity from suit. McKinley v. Trattles, C.A.7 (Wis.) 1984, 732 F.2d 1320. Officers And Public Employees 114

Even where law is clearly established, qualified immunity may apply if government official can prove extraordinary circumstances such that he or she neither knew nor should have known of relevant legal standard. Molloy v. Blanchard, D.R.I.1995, 907 F.Supp. 46, affirmed 115 F.3d 86. Civil Rights 1376(2)

Even if plaintiff shows defendant's alleged conduct violated the law and that the law was clearly established when the action was taken, defendant may prevail on claim of qualified immunity if he can show extraordinary circumstances and prove that he neither knew nor should have known of the relevant legal standard. Elam v. Williams, D.Kan.1990, 753 F.Supp. 1530, affirmed 953 F.2d 1391. Civil Rights 1376(2); Officers And Public Employees 114

3984. Legal question, objective reasonableness requirement

Judges rather than juries determine what limits the Constitution places on official conduct for purposes of a § 1983

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claim alleging excessive use of force by officials. Bell v. Irwin, C.A.7 (Ill.) 2003, 321 F.3d 637, certiorari denied 124 S.Ct. 84, 540 U.S. 818, 157 L.Ed.2d 36. Civil Rights 1429

To extent that relevant discrete, historic facts are undisputed, question of objective reasonableness of defendant's conduct, for purpose of determining whether defendant is entitled to qualified immunity in § 1983 action, is question of law. Pierce v. Smith, C.A.5 (Tex.) 1997, 117 F.3d 866. Civil Rights 1432

While reasonableness in the Fourth Amendment context will frequently be left to the trier of fact to determine, reasonableness in the qualified immunity context in a § 1983 action ordinarily should be decided by the court long before trial. Hummel v. City of Carlisle, S.D.Ohio 2002, 229 F.Supp.2d 839. Civil Rights 1432

In § 1983 action in which officials assert defense of qualified immunity, inquiry about objective reasonableness of officials' actions is one of law, not fact, that should be decided at earliest possible stage of litigation. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 877. Civil Rights 1432

3985. Reasonable in light of applicable law, objective reasonableness requirement

Doctrine of qualified immunity gives government officers qualified immunity in § 1983 suit unless they violate clearly established statutory or constitutional rights of which reasonable person would have known. Pallottino v. City of Rio Rancho, C.A.10 (N.M.) 1994, 31 F.3d 1023. Civil Rights 1376(2)

Relevant question in determining whether public official is entitled to qualified immunity is whether reasonable official could have believed that his or her actions were lawful in light of clearly established law and information the official had at time of his or her allegedly unlawful conduct. Doe By and Through Doe v. Massachusetts Dept. for Social Services, D.Mass.1996, 948 F.Supp. 103. Civil Rights 1376(2)

In performing analysis of whether state official is entitled to qualified immunity in federal civil rights action, court must focus on objective legal reasonableness of official's actions in light of rules which were clearly established at time of actions in question, and in so doing is not to look at broad, generalized statements of rights, but must consider rights in more particularized sense; contours of right must be sufficiently clear that reasonable official would understand that what he is doing violates that right, and in light of preexisting law, unlawfulness must be apparent. Hilliard v. Walker's Party Store, Inc., E.D.Mich.1995, 903 F.Supp. 1162. Civil Rights 1376(2)

Relevant inquiry in determining whether conduct of state official violated clearly established statutory or constitutional rights of which reasonable person would have known, as will prevent official from asserting defense of qualified immunity in federal civil rights action, focuses on whether reasonable official in defendant's position could have believed his conduct to be lawful, considering state of law as it existed when defendant took his challenged action. Hilliard v. Walker's Party Store, Inc., E.D.Mich.1995, 903 F.Supp. 1162. Civil Rights 1376(2)

Secretary of State and Deputy Secretary of State were entitled to defense of qualified immunity with respect to processing of plaintiffs' petition seeking civilian control board for metropolitan police department; deputy indicated in his affidavit that he followed all statutory and constitutional procedures and mandates, and plaintiffs failed to set forth specific facts indicating that actions of secretary and deputy were not reasonable in light of clearly established laws and information available at time of alleged violation. Tate v. Lau, D.Nev.1994, 865 F.Supp. 681. Civil Rights 1376(3)

Test for qualified immunity to liability of government official performing discretionary functions in § 1983 civil rights suit is objective and, thus, issue is what official with same information could reasonably have believed. Przyborowski v. Howard, D.Me.1994, 863 F.Supp. 22. Civil Rights 1376(2)

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If reasonable public officer in defendant officer's position could have believed that his conduct was lawful in light of clearly established law and information possessed at time conduct occurred, defendant is protected from liability by qualified immunity. Dennis v. Thurman, C.D.Cal.1997, 959 F.Supp. 1253. Civil Rights 1376(2)

3986. Deliberate indifference distinguished, objective reasonableness requirement

Objective qualified immunity standard and "deliberate indifference" standard differ in sense that former does not require inquiry into whether prison official "actually intended" to deprive prisoner of his constitutional right, provided that official's conduct satisfies objective good faith test. Miller v. Solem, C.A.8 (S.D.) 1984, 728 F.2d 1020, certiorari denied 105 S.Ct. 145, 469 U.S. 841, 83 L.Ed.2d 84. Civil Rights 1376(7)

"Deliberate indifference" is a stringent standard of fault in § 1983 action, requiring proof that a municipal actor disregarded a known or obvious consequence of his action. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1352(1)

3987. Mistaken judgments, objective reasonableness requirement

A police officer is entitled to qualified immunity from suit for alleged violation of Fourth Amendment rights in making arrest if he reasonably but mistakenly concluded that probable cause is present. Donovan v. Briggs, W.D.N.Y.2003, 250 F.Supp.2d 242. Civil Rights 1376(6)

Even officials who reasonably, but mistakenly, commit a constitutional violation are entitled to immunity from § 1983 claims. Herrera v. Medical Center Hosp., E.D.La.2002, 241 F.Supp.2d 601. Civil Rights 1376(2)

Law enforcement officials who reasonably but mistakenly conclude that probable cause for arrest is present are entitled to qualified immunity in § 1983 action; standard for immunity is objective one that leaves ample room for mistaken judgments. Cook v. Board of County Com'rs of County of Wyandotte, D.Kan.1997, 966 F.Supp. 1049. Civil Rights 1376(6)

Even law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity. Spiegel v. City of Chicago, N.D.Ill.1996, 920 F.Supp. 891, affirmed 196 F.3d 717, as amended, rehearing denied, certiorari denied 120 S.Ct. 2688, 530 U.S. 1243, 147 L.Ed.2d 961. Civil Rights 1376(6)

3988. Good faith, objective reasonableness requirement

Any entitlement of private defendants to good-faith defense to § 1983 claim would not establish their additional entitlement to the qualified immunity from suit accorded government officials. Wyatt v. Cole, U.S.Miss.1992, 112 S.Ct. 1827, 504 U.S. 158, 118 L.Ed.2d 504, on remand 994 F.2d 1113. Civil Rights 1373

Defendant's good faith or bad faith is irrelevant to qualified immunity inquiry in civil rights action. Burk v. Beene, C.A.8 (Ark.) 1991, 948 F.2d 489. Civil Rights 1376(2)

In considering good-faith component of qualified immunity defense in § 1983 action, courts apply objective standard: whether reasonable officer would have believed that his conduct violated plaintiff's clearly established rights. Williams v. City of Albany, C.A.11 (Ga.) 1991, 936 F.2d 1256, rehearing denied. Civil Rights 1376(2)

Label "good faith immunity" which refers to doctrine of qualified immunity which shields federal officials from liability when they are sued directly under Constitution in same manner that state officials are protected in civil rights action, incorrectly implies that subjective factors are important; central question is whether conduct complained of violated established constitutional or statutory rights, based on "state of the law" at time of act

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giving rise to litigation, and no other circumstances are relevant. Bates v. Jean, C.A.7 (Wis.) 1984, 745 F.2d 1146. Civil Rights 1376(2)

Government officials may be sued directly under § 1983, but enjoy qualified immunity if they have acted in good faith in carrying out their duties; purpose of qualified immunity is to shield government officials performing discretionary functions from civil trials and liability if their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Denno v. School Bd. of Volusia County, M.D.Fla.1997, 959 F.Supp. 1481, affirmed in part, reversed in part and remanded 182 F.3d 780, rehearing granted and vacated 193 F.3d 1178, reversed in part on rehearing 218 F.3d 1267, rehearing and suggestion for rehearing en banc denied 235 F.3d 1347, certiorari denied 121 S.Ct. 382, 531 U.S. 958, 148 L.Ed.2d 295. Civil Rights 1376(2)

Question of whether official is protected by qualified immunity turns not on subjective good faith of official, but on objective legal reasonableness of action, assessed in light of legal rules that were clearly established at time it was taken; under this standard, individual claims of immunity must be analyzed on fact-specific, case-by-case basis to determine whether plaintiff's federal or constitutional rights were so clearly established when alleged misconduct was committed that any official in defendant's position would understand that what one was doing violates those rights. Robertson v. Johnson County, Ky., E.D.Ky.1995, 896 F.Supp. 673. Civil Rights 1376(2)

Under § 1983, good faith on part of social worker or other state officer constitutes valid defense of qualified immunity unless individual defendant involved knew or reasonably should have known that action taken within officer's sphere of official responsibility would violate constitutional rights. Gottlieb v. County of Orange, S.D.N.Y.1994, 871 F.Supp. 625, affirmed 84 F.3d 511. Civil Rights 1376(3)

Doctrine of qualified immunity protects government officials from personal liability in § 1983 actions for actions taken in good faith pursuant to their discretionary authority. Sanders v. Miller, N.D.Ala.1992, 837 F.Supp. 1106. Civil Rights 1376(2)

Generally, government official is entitled to qualified immunity when she acts within her authority, though if she acts unlawfully, she must act in good faith; qualified immunity will protect her if reasonable person in her position would not have known at time that her conduct was unlawful. Heller v. Plave, S.D.Fla.1990, 743 F.Supp. 1553. Officers And Public Employees 114; Officers And Public Employees 116

Public officials are generally entitled to qualified immunity from liability under § 1983 for good faith performance of their official duties. Coleman v. McHenry, E.D.Va.1990, 735 F.Supp. 190, affirmed 945 F.2d 398. Civil Rights 1376(2)

Qualified immunity standard is one of objective legal reasonableness of official conduct and government official's objective good faith is not a part of qualified immunity inquiry. Grass Roots Organizing Workshop (GROW) v. Campbell, D.S.C.1988, 704 F.Supp. 644. Officers And Public Employees 114

School officials could not assert good faith defense to civil rights suit challenging adoption of mandatory drug testing of students which required students to strip to the waist and provide urine sample while being observed, despite claim that the testing was used as a mere "tool of exoneration." Anable v. Ford, W.D.Ark.1985, 663 F.Supp. 149. Civil Rights 1376(5)

3989. Malice, objective reasonableness requirement

Allegation of malice is not sufficient to defeat qualified immunity from liability in civil rights action for false arrest if defendant police officer acted in objectively reasonable manner. Hansen v. Black, C.A.9 (Idaho) 1989, 885 F.2d

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42 U.S.C.A. § 1983

642. Civil Rights 1376(6)

Objective legal reasonableness standard in § 1983 actions for determining whether government official violated plaintiff's "clearly established" constitutional rights eliminates from court's consideration allegations about official's subjective state of mind, such as bad faith or malicious intent. Hansen v. Lamontagne, D.N.H.1992, 808 F.Supp. 89 . Civil Rights 1376(2)

Qualified immunity depends on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, not upon malice or other subjective factors. Adams v. Thompson, M.D.La.1983, 560 F.Supp. 894. Officers And Public Employees 114

3990. Motive, objective reasonableness requirement

For purposes of determining whether defense of qualified immunity is available in context of retaliatory claim, conduct that is objectively reasonable is not converted into constitutional violation by mere allegation of unconstitutional motive. Mascetta v. Miranda, S.D.N.Y.1997, 957 F.Supp. 1346. Civil Rights 1376(2)

3991. Retaliation, objective reasonableness requirement

Reasonable public official should have known that he or she could not retaliate against subordinate employee for reporting environmental problem to state Department of Natural Resources or for initiating investigation of public office's billing practices, which was authorized by supervisory committee and taken up by corporation counsel, and thus county workers did not enjoy qualified immunity from employee's claim that he suffered retaliation for reporting highway department's open burning of potentially toxic materials, and requesting that corporation counsel investigate suspicious billing practices. Hulbert v. Wilhelm, C.A.7 (Wis.) 1997, 120 F.3d 648. Civil Rights 1376(10)

Governor was not qualifiedly immune from First Amendment retaliation claim of coal company's chairman, inasmuch as reasonable chief executive officer (CEO) of state could not have believed that publicly threatening close governmental scrutiny of political opponent's business affairs, resulting in reluctance of potential landlord to enter into lease with company, was justified if based solely upon content of chairman's speech. Blankenship v. Manchin, S.D.W.Va.2006, 410 F.Supp.2d 483. Civil Rights 1376(3)

City of Baltimore, its police department, chief of police and other officers were not entitled to qualified immunity on former police officer's claim she was discharged in retaliation for protected speech in form of statements about gender/discrimination and/or sexual harassment and horseplay within department; reasonable official in defendants' positions would have known under Supreme Court and Fourth Circuit law at time officer was discharged that some of her comments addressed matters of public concern. Campbell v. Town of Southern Pines, M.D.N.C.2005, 401 F.Supp.2d 480. Civil Rights 1376(10)

Member of borough council, assistant police chief, and police officer did not have qualified immunity from claim they retaliated against borough tax collector for exercise of his First Amendment right arising out of his state court lawsuit to have his office restored to borough government building; there was evidence showing that restoration of office was followed closely by claims that collector stole checks belonging to colleagues, placement of surveillance camera aimed at his desk, unauthorized search of desk and institution of criminal charges after tape recorder used to make unauthorized conversation recordings was discovered, and reasonable official would know that conduct violated right to be free from retaliation. Konopka v. Borough of Wyoming, M.D.Pa.2005, 383 F.Supp.2d 666. Civil Rights 1376(6)

3992. Banks and banking officials, objective reasonableness requirement-- Generally

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Pennsylvania Secretary of Banking's seizure and resolution of bank allegedly for political reasons and without necessity for emergency action violated clearly established due process rights of which reasonable person would have known, and, thus, Secretary was not entitled to qualified immunity from liability in § 1983 action. Kenworthy v. Hargrove, E.D.Pa.1993, 826 F.Supp. 138, affirmed 855 F.Supp. 101. Civil Rights 1376(3)

3993. ---- Attachment proceedings, banks and banking officials, objective reasonableness requirement

Bank was entitled to qualified immunity from liability for its invocation of Nebraska attachment mechanism which deprived wife of her property rights in jointly held property without due process of law because bank reasonably could not have known that it was violating wife's constitutional rights when it attached the jointly held property. Woodring v. Jennings State Bank, D.C.Neb.1985, 603 F.Supp. 1060. Civil Rights 1374

3994. Child welfare workers, objective reasonableness requirement--Generally

State officials who removed minor from parents' home after mother signed voluntary placement agreement (VPA) authorizing state to take temporary custody were qualifiedly immune from parents' claim that officials violated their constitutional right to parental control by administering medical treatment to which they did not consent; VPA authorized medical treatment, and reasonableness of officials' arranging for minor's hospitalization was shown by VPA, minor's reports of parental abuse, and her subsequent suicide attempts. Defore v. Premore, C.A.2 (N.Y.) 1996, 86 F.3d 48. Civil Rights 1376(3)

Employees of Nebraska Department of Social Services were entitled to qualified immunity in § 1983 claim alleging that employees violated father's federal due process rights by disregarding plan approved by Nebraska court aimed at reuniting him with his children; employee's actions were objectively reasonable and § 1983 claim alleged violation of state rather than federal law. Ebmeier v. Stump, C.A.8 (Neb.) 1995, 70 F.3d 1012. Civil Rights 1376(3)

Child welfare supervisor was entitled to qualified immunity from civil rights liability for sending letter asserting custodial authority over child, because his belief that emergency situation existed and his resulting assertion of custodial authority, based upon information from and recommendation of case worker, were objectively reasonable under clearly established law. Cecere v. City of New York, C.A.2 (N.Y.) 1992, 967 F.2d 826. Civil Rights 1376(4)

Genuine issues of material fact existed as to whether a reasonable Montana social worker could believe that the existence of pending, unadjudicated proceedings in another jurisdiction regarding another child established an imminent or apparent danger of harm to mother's newborn baby such that it was necessary for social worker to take the child from the hospital without judicial approval, precluding summary judgment in favor of social worker on basis of qualified immunity on mother's due process claim. Brown v. Montana, D.Mont.2006, 442 F.Supp.2d 982. Federal Civil Procedure 2491.5

County officials and employees were entitled to qualified immunity from liability on parents' claims that county violated their Establishment Clause rights by promoting their own faiths and forcing parents' children to listen to "Christian music," during child abuse interviews, as alleged violations were not so egregious that reasonable official would anticipate constitutional problem with their actions. Words of Faith Fellowship, Inc. v. Rutherford County Dept. of Social Services, W.D.N.C.2004, 329 F.Supp.2d 675. Civil Rights 1376(4)

3995. ---- Emergencies, child welfare workers, objective reasonableness requirement

In parents' §§ 1983 due process action alleging that state's child and family services agency had removed infant child from home without notice or hearing and without suspicion of immediate danger, agency officials were entitled to qualified immunity, since reasonably competent officers could have disagreed as to whether emergency

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circumstances had been present, and thus law governing pre-hearing removals was not clearly established; while examining physician had stated he was comfortable leaving infant in mother's care, there was evidence of significant head injury, questionable explanation from parents, and delay in seeking medical treatment. Gomes v. Wood, C.A.10 (Utah) 2006, 451 F.3d 1122. Civil Rights 1376(3)

Following Court of Appeals' 1999 holding that state officials violate procedural due process guarantees if they effect child's removal on "emergency" basis where there is reasonable time to obtain judicial authorization consistent with child's safety, child welfare workers would no longer be able to claim immunity from liability under § 1983 based on such principle not being clearly established; however, their actions would continue to be protected if it was objectively reasonable for them to believe that their acts did not violate these clearly established rights. Tenenbaum v. Williams, C.A.2 (N.Y.) 1999, 193 F.3d 581, certiorari denied 120 S.Ct. 1832, 529 U.S. 1098, 146 L.Ed.2d 776. Civil Rights 1376(4)

Police officer who made warrantless entry into home with social worker pursuant to anonymous tip that children were neglected and abused was chargeable with knowledge possessed by social worker that tip was some two weeks old and had been classified by social services agency as not presenting emergency situation, and thus officer was not entitled to qualified immunity from civil rights liability on basis that he reasonably believed that exigent circumstances were present. Rogers v. County of San Joaquin Human Services Agency, E.D.Cal.2004, 363 F.Supp.2d 1227. Civil Rights 1376(6)

Caseworkers' belief that their emergency removal of children from mother's home did not violate mother's Fourth Amendment rights was objectively reasonable, and thus caseworkers were entitled to qualified immunity from mother's § 1983 action, where foster child in mother's care had sustained serious injuries for which mother was unable to offer any reasonable explanation, and hospital had filed report of suspected child abuse as required under state law based upon pediatric radiologist's conclusion that foster child's injuries were caused by abuse. Taylor v. Evans, S.D.N.Y.1999, 72 F.Supp.2d 298. Civil Rights 1376(4)

Caseworkers' belief that emergency circumstances justified removal of children from mother's home without her consent and without court order was objectively reasonable, and thus caseworkers were entitled to qualified immunity from mother's § 1983 action based upon alleged procedural due process violation, where foster child in mother's care had sustained serious injuries for which mother was unable to offer any reasonable explanation, and pediatric radiologist who examined foster child's x-rays opined that injuries were due to abuse. Taylor v. Evans, S.D.N.Y.1999, 72 F.Supp.2d 298. Civil Rights 1376(4)

Caseworker's believe that emergency circumstances were present requiring her to remove children from their home without parental consent was objectively reasonable, and thus, caseworker was entitled to qualified immunity from § 1983 action by mother, her children and her boyfriend, where allegations by boyfriend's daughter gave caseworker reason to believe that children were subjected to ongoing emotional and physical abuse and neglect, there was no reason to believe that such conduct would not continue, some allegations were corroborated by child and judge's order expressly stated that no parental notice was required. Spencer v. Lavoie, N.D.N.Y.1997, 986 F.Supp. 717. Civil Rights 1376(4)

County social worker was immune from liability under Ohio Political Subdivision Tort Liability Act in guardian's § § 1983 action related to warrantless entrance into home and removal of children; social worker reasonably relied on police officer's assessment of home, dangers presented to children in home, and decision to enter home without warrant. Jordan v. Murphy, C.A.6 (Ohio) 2005, 145 Fed.Appx. 513, 2005 WL 1869506, Unreported, rehearing en banc denied. Civil Rights 1376(4)

Genuine issue of material fact existed as to whether city official had an objectively reasonable basis for concluding that foster children were in imminent danger of harm at the time of the children's emergency removal from grandmother's foster home without a hearing, precluding summary judgment in favor of official on grandmother's

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due process claim on basis of qualified immunity. Johnson v. City of New York, S.D.N.Y.2003, 2003 WL 1826122, Unreported. Federal Civil Procedure 2491.5

3996. ---- Child abuse and neglect investigations, child welfare workers, objective reasonableness requirement

Alleged conduct of state and county officials of removing minor child from his parents' home based on false allegations of child neglect by relatives was so severe that a reasonable person would have understood that he was violating child's constitutional rights, and therefore, officials' claims of qualified immunity did not defeat § 1983 action child brought as an adult. Brokaw v. Mercer County, C.A.7 (Ill.) 2000, 235 F.3d 1000. Civil Rights 1376(3); Civil Rights 1376(4)

Responsible government official would have known that consent or warrant was required for entry into parental home to conduct administrative search to protect welfare of children, where clearly established precedent established that Fourth Amendment was applicable to such searches and that entry without consent or warrant would violate parents' Fourth Amendment rights. Calabretta v. Floyd, C.A.9 (Cal.) 1999, 189 F.3d 808. Civil Rights 1376(2)

Employees of state social services agency were entitled to qualified immunity with regard to § 1983 claim premised on their alleged disparate treatment of members of religious community in handling complaints of possible abuse of children at community; even if employees' actions were motivated in part by prejudice against community's religious beliefs, such fact standing alone was not bar to claim of immunity, and, under circumstances and state of law as it existed at time (1993), it was not objectively unreasonable for employees to act as they did, i.e., placing one child in foster care, interviewing other children, and holding multidepartmental meeting of state officials. Foy v. Holston, C.A.11 (Ala.) 1996, 94 F.3d 1528. Civil Rights 1376(3)

Social worker to whom school-age children were referred to investigate possibility of parental abuse acted in objectively reasonable manner and did not violate any clearly established right of children's parents by detaining children for two-and-one-half hours for interview without notifying parents; accordingly, social worker was entitled to qualified immunity in civil rights action arising out of her alleged unlawful interference with parents' liberty interest in custody of their children. Williams v. Pollard, C.A.6 (Tenn.) 1995, 44 F.3d 433, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 69, 516 U.S. 815, 133 L.Ed.2d 30. Civil Rights 1376(2)

Social worker for private employers enjoyed qualified immunity in child's § 1983 action alleging that due process rights were violated when she was separated from her father as result of investigation by South Dakota Department of Social Services and subsequent dependency and neglect proceeding; mother's report of possible child abuse and child's confession of abuse by father gave social worker reasonable suspicion of abuse by father. Lux by Lux v. Hansen, C.A.8 (S.D.) 1989, 886 F.2d 1064. Civil Rights 1373

Teacher's actions in reporting her observations and concerns regarding suspected abuse of disabled student to child protective services (CPS) were objectively reasonable, and thus teacher was entitled to qualified immunity as to substantive due process claim brought by student's parents; there was uncontroverted evidence that other teachers saw student exhibit seemingly sexual behavior before teacher placed any calls to CPS, and that student had red mark on her breast that teacher saw. Martin v. Texas Dept. of Protective and Regulatory Services, S.D.Tex.2005, 405 F.Supp.2d 775. Civil Rights 1376(5)

State investigative social worker exercised her professional judgment in investigating alleged physical abuse of foster child, and thus was entitled to qualified immunity from liability under §§ 1983 after child was killed by her adoptive parent, even though social worker had received credible information from health care worker that foster parent was physically abusing child, brought case worker with her to interview parent, and failed to contact health care worker or child's physician, where social worker visited child and parent, nothing suspicious or indicative of

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danger was disclosed during interview, and social worker was handling more than twice number of cases she should have been assigned. Johnson ex rel. Cano v. Homes, D.N.M.2004, 377 F.Supp.2d 1039. Civil Rights 1376(3)

Police officer and social worker were not entitled to qualified immunity on civil rights claim that they violated parents' Fourth Amendment rights by making warrantless entry into home to perform welfare check on children, as reasonableness of their actions depended on disputed facts that were determinative of whether parents impliedly consented to entry and search of premises. Rogers v. County of San Joaquin Human Services Agency, E.D.Cal.2004, 363 F.Supp.2d 1227. Civil Rights 1376(4); Civil Rights 1376(6)

Actions of state social workers in suspecting and finding that foster parent abused foster child were objectively reasonable, and thus social workers were entitled to qualified immunity in foster parent's § 1983 action alleging gross abuse of power; although foster child had lied in the past about injuries, social workers spoke to school nurse, emergency room physician, school social worker, school principal, physician from child's pediatric group, child's therapist, and others to determine whether abuse had caused child's injuries, which consisted of a bump on his head, bruising, spots on his neck and under his eyes, and finger marks on his right cheek and left forearm. Carroll v. Ragaglia, D.Conn.2003, 292 F.Supp.2d 324, affirmed in part, reversed in part and remanded 109 Fed.Appx. 459, 2004 WL 2165397. Civil Rights 1376(3)

Assuming right to family integrity was a clearly established right, it was objectively reasonable for state officials to believe minor had been abused by her father and grandmother and were justified in removing her from their custody, entitling them to qualified immunity in § 1983 action brought by father and grandmother; officials investigated child's claims of abuse and followed up on leads provided by father and grandmother, who admitted handcuffing child to bed and locking in her room, probation office corroborated statements regarding abuse, and child's medical records confirmed concerns of her malnutrition. Strain v. Kaufman County Dist. Attorney's Office, N.D.Tex.1998, 23 F.Supp.2d 685. Civil Rights 1376(3)

City human rights official was entitled to qualified immunity from parents' § 1983 action alleging administration of x-rays without prior notice or parental consent, absent any evidence that official directed hospital to take skeletal x-rays of child for investigatory purposes or that x-rays were not medically necessary or advisable. Schwimmer v. Kaladjian, S.D.N.Y.1997, 988 F.Supp. 631, affirmed 164 F.3d 619. Civil Rights 1376(4)

County employees' conduct in temporarily removing developmentally disabled child from her parents' home based on child's allegations, through experimental communication technique, of sexual abuse by her father and in subsequently bringing child neglect petition against parents based on such information was objectively reasonable, as would entitle county employees to qualified immunity in § 1983 action for alleged violation of parents' right to custody of child, in light of disagreement among experts as to reliability of the experimental communication technique. Zappala v. Albicelli, N.D.N.Y.1997, 954 F.Supp. 538, affirmed 173 F.3d 848. Civil Rights 1376(4)

Social worker who sent police to remove two children from civil rights plaintiffs' family home was entitled to qualified immunity where social worker acted upon a good-faith belief that the children were being sexually abused by one of the plaintiffs, a household member subsequently convicted on a sexual assault charge. Cobb v. City and County of Denver, State of Colo., D.Colo.1991, 761 F.Supp. 105. Civil Rights 1376(2)

Social worker acted in an objectively reasonable manner, and was entitled to qualified immunity from damages in suit brought by mother and children, where decision to remove children from the home was made after receiving reports that one of the children had been subjected to sexual abuse and after talking with parents' grown children, some of whom asserted that their father had sexually abused them. Navis v. Fond du Lac County, E.D.Wis.1989, 721 F.Supp. 182. Civil Rights 1376(4)

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42 U.S.C.A. § 1983

Social worker was entitled to qualified immunity with regard to her role in filing child abuse petition against custodial grandparents requesting removal of child from their care since it was objectively reasonable for social worker to believe that she did not violate any federal rights when she filed her verified petition; at time petition was filed, no one could determine who was abusing the child, but it was recommended that she be removed from care of both grandparents and mother until a determination could be made. Reynolds by Reynolds v. Strunk, S.D.N.Y.1988, 688 F.Supp. 950. Civil Rights 1376(1)

County social worker was entitled to qualified immunity in §§ 1983 action brought by guardian of children related to warrantless entry into home and removal of children, since reasonable case worker would have understood that there was an imminent threat of physical harm to children inside home; social worker was assigned to investigate anonymous tip that guardian was caring for up to 25 children in home in deplorable conditions, upon arrival at home worker was told by police officer that he had observed children in home and that condition of house required immediate intervention to prevent physical harm, police officers made decision as to why, where, and how to enter home, and after officers gained access worker followed them inside. Jordan v. Murphy, C.A.6 (Ohio) 2005, 145 Fed.Appx. 513, 2005 WL 1869506, Unreported, rehearing en banc denied. Civil Rights 1376(4)

Employees of the Connecticut Department of Children and Families (DCF) were entitled to qualified immunity on foster parent's § 1983 claim that they investigated a claim of child abuse against him in a manner that was shocking to the conscience; facts appeared to demonstrate that the case workers did have a reasonable basis for their findings of abuse, as not only a DCF investigator and a caseworker but also the child's school social worker and hospital employees believed that it was possible, based upon the physical evidence, that abuse had occurred. Carroll v. Ragaglia, C.A.2 (Conn.) 2004, 109 Fed.Appx. 459, 2004 WL 2165397, Unreported. Civil Rights 1376(3)

3997. ---- Foster care placements, child welfare workers, objective reasonableness requirement

Caseworkers for city government agency having foster child placement responsibility, and independent contractor providing placements, had qualified immunity from claim they violated substantive due process rights of two children by placing them in unsuitable foster homes; it was not objectively unreasonable to leave children with foster parents, given statements of children, and inspections exonerating foster parents in two instances of alleged abuse reported by natural mother. Richards v. City of New York, S.D.N.Y.2006, 433 F.Supp.2d 404. Civil Rights 1376(4)

City caseworker's continuing approval of children's placement in foster home was not objectively unreasonable, and he thus was immune from suit under §§ 1983 based on federal doctrine of qualified immunity, even though two case records that he reviewed contained identical language, and even if contracting agency's caseworker made only one visit to foster home in six months instead of two as required by regulations, where second case record also contained updated information, and record indicated numerous contacts with children other than visit by agency caseworker. Tylena M. v. Heartshare Children's Services, S.D.N.Y.2005, 390 F.Supp.2d 296. Civil Rights 1376(4)

Social workers who removed children from home and placed them in foster care could have believed that, pursuant to consent order entered by juvenile and domestic relations court, they had the right to change the children's placement without advance hearing and to permit only supervised visitation and had qualified immunity from liability even if parents' constitutional rights were violated. Pfoltzer v. County of Fairfax, E.D.Va.1991, 775 F.Supp. 874, affirmed 966 F.2d 1443. Civil Rights 1376(2)

3998. Consumer affairs officials, objective reasonableness requirement

Puerto Rican officials could not reasonably have anticipated judicial interpretation of statute eliminating public hearing requirement for certain regulations of the Puerto Rico Department of Consumer Affairs and they were thus

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entitled to qualified immunity in action which sought damages for deprivation of due process arising out of Secretary of Consumer Affairs' issuance without hearing of new maximum interest rates for automobile loans. Altair Corp. v. Pesquera De Busquets, D.C.Puerto Rico 1984, 597 F.Supp. 104. Civil Rights 1376(3)

3999. Education and school officials, objective reasonableness requirement-- Generally

State university officials were entitled to qualified immunity in students' § 1983 action alleging that officials' decision to release list of black male students' names and addresses to law enforcement officers violated Family Educational Rights and Privacy Act (FERPA), because it was objectively reasonable for university officials to believe their acts were authorized under emergency exception to FERPA, in view of information that person who attacked victim with knife might be on campus and that list of students was necessary to address threat. Brown v. City of Oneonta, N.Y., Police Dept., C.A.2 (N.Y.) 1997, 106 F.3d 1125. Civil Rights 1376(5)

School principal's sighting of female high school student with male coach and his receipt of inconclusive response when he inquired of another coach whether there was "anything going" between coach and student did not constitute facts or pattern of inappropriate sexual behavior by subordinate pointing plainly toward sexual abuse of student, as would trigger principal's duty to report suspected sexual abuse and thus principal enjoyed qualified immunity from lawsuit alleging that he wrongfully failed to report abuse. Doe v. Rains County Independent School Dist., C.A.5 (Tex.) 1996, 76 F.3d 666. Infants 13

Principal and assistant principal were not entitled to qualified immunity from liability in civil rights action brought by former student for allegedly condoning sexual misconduct by teachers and school employees; there was testimony that principal and assistant principal discouraged and minimized reports of sexual misconduct by teachers and jury could reasonably conclude that the conduct communicated condonation of misconduct. Stoneking v. Bradford Area School Dist., C.A.3 (Pa.) 1989, 882 F.2d 720, rehearing denied, certiorari denied 110 S.Ct. 840, 493 U.S. 1044, 107 L.Ed.2d 835. Civil Rights 1376(5)

School officials were entitled to qualified immunity from student's civil rights action alleging that student was deprived of due process when officials failed to reinstate him to class attendance upon issuance of an interim order of the New York Commissioner of Education staying disciplinary proceedings against the student pending disposition of his criminal prosecution; it was not irrational, arbitrary, or capricious for the school officials to fail to heed the Commissioner's order on ground that, because it was based upon defective first hearing on student's suspension, it had been rendered moot by conducting a second hearing. Pollnow v. Glennon, C.A.2 (N.Y.) 1985, 757 F.2d 496. Civil Rights 1376(5)

High school superintendent and principal were entitled to qualified immunity from student's § 1983 claims, arising out of incident in which teacher allegedly used excessive force on student in violation of the Fourteenth Amendment; actions of superintendent and principal, with regards to instructing possible further investigation into student's complaints, and wanting to be kept apprised of any change in investigative findings, did not violate any of student's constitutional rights, and actions were objectively reasonable. Knicrumah v. Albany City School Dist., N.D.N.Y.2003, 241 F.Supp.2d 199. Civil Rights 1376(5)

Puerto Rico elementary school principal, social worker, and homeroom special education teacher were entitled to qualified immunity in §§ 1983 action by parents of autistic student as challenged actions did not amount to actionable retaliation; parents alleged they were retaliated against for exercising their rights under ADA and Rehabilitation Act through, inter alia, deprivation of services essential to their son's education, restriction of access to school premises, denial of access to their son's records, and filing of complaint against them before Department of Education (DOE), whereas defendants contended they had no reason to retaliate inasmuch as parent's complaints with Office of Civil Rights (OCR) were not brought against them personally, they had nothing to do with student's speech therapy and language services, and their DOE complaint was justified in light of parents' recorded negligence in responding to multiple reports regarding student's health and attitude. Vives v. Fajardo, D.Puerto

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Rico 2005, 399 F.Supp.2d 50. Civil Rights 1376(5)

School officials had qualified immunity from claim that they violated first amendment, privacy and due process rights of students and parents by offering middle and high school students opportunity to complete voluntary, anonymous and confidential questionnaire which contained sensitive questions regarding drug use and sexuality; reasonable school officials could not have known that their conduct violated constitution. C.N. ex rel. J.N. v. Ridgewood Bd. of Educ., D.N.J.2004, 319 F.Supp.2d 483, affirmed 430 F.3d 159. Civil Rights 1376(5)

Individual school board members who imposed year-long suspension upon high school student, after student drove brother's car containing knife, gun, and drug paraphernalia to school, were charged with knowing parameters of student's substantive due process rights at time of suspension, and thus were not entitled to qualified immunity against student's claim under Fourteenth Amendment; New Mexico statute upon which school suspension regulations were based stated that disciplinary measures applied only to students who knowingly brought weapons to school, and suspending student for unknowingly transporting weapon onto school campus did not rationally support legitimate state interest in maintaining school safety and discipline. Butler ex rel. Butler v. Rio Rancho Public School Bd. of Educ., D.N.M.2002, 245 F.Supp.2d 1188, reconsideration denied in part, reversed in part 341 F.3d 1197. Civil Rights 1376(5)

Principal and school resource officer were entitled to qualified immunity in action by parents of student who was killed with gun he took to school alleging that their failure to remove gun from school campus violated student's substantive and procedural due process rights; parents presented no binding law that declared similar conduct in similar circumstances to be violation of law such that reasonable official would have understood that what he was doing violated constitutional right. Niziol v. Pasco County Dist. School Bd., M.D.Fla.2002, 240 F.Supp.2d 1194. Civil Rights 1376(5)

Reasonable school officials should have known that student's constitutional right to be free from officials' deliberate indifference to, or affirmative acts that increased danger of serious injury from unjustified invasions of bodily integrity perpetrated by third parties was threatened by their custom of inviting and allowing older, heavier, more experienced alumni wrestlers to live wrestle students at practice, for purpose of determining whether officials were entitled to qualified immunity in injured student's § 1983 action. Sciotto v. Marple Newton School Dist., E.D.Pa.1999, 81 F.Supp.2d 559. Civil Rights 1376(5)

Where determination of parents' federal constitutional rights involved weighing and comparison of interests of parents and interests of state and school district in protecting child, superintendent could not have had any notice that actions of principal would violate parents' rights, and they could not state cause of action against him under § 1983. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1356

Reasonable official in principal's position would not have believed that principal's actions, including encouraging student to tell principal about sexual harassment that occurred and to identify harassers, moving student into new classes, indicating principal would make further suspensions if she verified student's complaints, and suspending other student who allegedly touched student's breast, were reasonably calculated to end sexual harassment reported to principal, and thus, principal, in her individual capacity, was not entitled to qualified immunity from student's § 1983 action to enforce rights under Title IX, forbidding sex discrimination in education program receiving federal financial assistance, where student alleged both verbal harassment and sexual assault. Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist., N.D.Cal.1997, 964 F.Supp. 1369. Civil Rights 1376(5)

It was objectively reasonable for state education department officials to believe their actions in publishing full names of HIV (human immunodeficiency virus) positive individuals in department training guide as persons living with HIV did not violate such individuals' constitutional right to privacy in their medical status, and therefore officials were entitled to qualified immunity in HIV positive individuals' § 1983 action, as law regarding waiver of right to privacy was uncertain at time training guide was published, the HIV positive individuals were visible

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participants in HIV/AIDS advocacy and awareness movement, and numerous persons knew of the individuals' HIV status. Doe v. Marsh, N.D.N.Y.1996, 918 F.Supp. 580, affirmed 105 F.3d 106. Civil Rights 1376(5)

4000. ---- Hazing, education and school officials, objective reasonableness requirement

University students, members of voluntary student military training organization and alleged perpetrators of violent hazing incidents, were not entitled to qualified immunity from suit brought under § 1983 by student injured in numerous hazing incidents, as no objectively reasonable persons in perpetrators' position could have believed that conduct such as that alleged was not violative of injured student's constitutional rights. Alton v. Hopgood, S.D.Tex.1998, 994 F.Supp. 827, affirmed 168 F.3d 196, rehearing denied. Civil Rights 1376(5)

4000A. ---- Assaults against students, education and school officials, objective reasonableness requirement

Qualified immunity applied to preclude §§ 1983 liability of school and police officials to high school student who was beaten by group of students, even though officials' alleged conduct in failing to address and in concealing ongoing attacks upon students by group of students gave rise to state-created danger supporting student's claim alleging deprivation of his substantive due process right to bodily integrity, given that, at the time student was attacked, a reasonable state actor in officials' position could reasonably have believed that their acts and omissions did not violate student's constitutional rights. Gremo v. Karlin, E.D.Pa.2005, 363 F.Supp.2d 771. Civil Rights 1376(5); Civil Rights 1376(6)

4001. ---- Freedom of speech, education and school officials, objective reasonableness requirement

School board members were entitled to qualified immunity on public high school students' First Amendment claims arising from superintendent's interpretation and application of dress code prohibition on wearing apparel advertising alcoholic beverages to t-shirts bearing phrase "The best of the night's adventures are reserved for people with nothing planned"; school board members could believe that dress code did not violate students' First Amendment rights and that wearing clothing advertising alcoholic beverages would materially interfere with teaching of adverse effects of alcohol and school discipline and there was no evidence that members approved of, directed or ratified superintendent's application of dress code provision to t-shirts. McIntire v. Bethel School, Independent School Dist. No. 3, W.D.Okla.1992, 804 F.Supp. 1415. Civil Rights 1376(5)

4002. ---- Discipline, education and school officials, objective reasonableness requirement

High school principal was not entitled to qualified immunity from liability in § 1983 action arising from his alleged use of constitutionally excessive force in disciplining student; although principal claimed that at time of incident in question the due process right to be free from corporal punishment was not clearly established, nature and extent of force he allegedly applied was clearly excessive and presented foreseeable risk of serious bodily injury. Kirkland ex rel. Jones v. Greene County Bd. of Educ., C.A.11 (Ala.) 2003, 347 F.3d 903, rehearing and rehearing en banc denied 88 Fed.Appx. 393, 2003 WL 22994441. Civil Rights 1376(5)

School teacher and principal did not have qualified immunity from liability to second-grade student who was tied to chair for entire school day, and for substantial portion of second day, as educational exercise, with no suggested justification, such as punishment or discipline; competent teacher knew or should have known that young student who was not being properly punished or disciplined had constitutionally protected substantive due process right not to be lashed to chair through school day and denied, among other things, basic liberty of access to bathroom when needed. Jefferson v. Ysleta Independent School Dist., C.A.5 (Tex.) 1987, 817 F.2d 303. Civil Rights 1376(5)

Even if high school student's First Amendment rights were violated by his suspension based on his conversations

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with fellow students concerning handguns and his subsequent possession of a handgun off school property, school official was entitled to qualified immunity; an objectively reasonable school official would not have known that disciplining student on basis of conclusion that student's conduct threatened the health, safety and welfare of the school would violate student's First Amendment right to free speech. Cohn v. New Paltz Central School Dist., N.D.N.Y.2005, 363 F.Supp.2d 421, appeal dismissed in part 2006 WL 522102. Civil Rights 1376(5)

Even if student's constitutional rights were violated and those rights were clearly established, school principal, who expelled student for possession of graphic and violent drawing depicting destruction of school and weapon, was entitled to qualified immunity since his acts were objectively reasonable in light of the law clearly established at the time principal acted. Porter ex rel. LeBlanc v. Ascension Parish School Bd., M.D.La.2004, 301 F.Supp.2d 576, affirmed 393 F.3d 608, certiorari denied 125 S.Ct. 2530, 544 U.S. 1062, 161 L.Ed.2d 1112. Civil Rights 1376(5)

Even if public school officials' enforcement of school policy by punishing certain high school students who had consumed alcohol on school trip was based on incorrect or incomplete information resulting in improper selective enforcement, school officials would be entitled to qualified immunity from students' equal protection claims; officials' reliance on information supplied by chaperones was reasonable, and their act of preventing students from participating in graduation ceremonies comported with clearly established equal protection jurisprudence. Carlino v. Gloucester City High School, D.N.J.1999, 57 F.Supp.2d 1, affirmed in part 44 Fed.Appx. 599, 2002 WL 1877011. Civil Rights 1376(5)

Sheriff, sheriff's deputies and teacher were entitled to qualified immunity in student's civil rights action in connection with placing eighth-grade student briefly in holding cell for misbehaving during class tour of detention facility, in that student's constitutional rights were not violated thereby. Harris by Tucker v. County of Forsyth, M.D.N.C.1996, 921 F.Supp. 325. Civil Rights 1376(5); Civil Rights 1376(6)

Teacher's actions in grabbing high school student by the wrist and elbow to send her from classroom was outside usual scope of corporal punishment and within bounds of school's disciplinary code, so that it would be unreasonable to expect him to know that his actions might constitute constitutional violation, and he was entitled to qualified immunity. Wallace by Wallace v. Batavia School Dist. 101, N.D.Ill.1994, 870 F.Supp. 222, affirmed 68 F.3d 1010. Civil Rights 1376(5)

4003. ---- Searches, education and school officials, objective reasonableness requirement

High school principal's alleged conduct of briefly detaining student in order to ascertain her identity, and then turning student over to police officer to ascertain her identity after his efforts at identifying her were unsuccessful, was reasonable, and thus did not violate the Fourth Amendment. M.W. ex rel. T.W. v. Madison County Bd. of Educ., E.D.Ky.2003, 262 F.Supp.2d 737. Schools 169.5

Faculty and staff members of state veterinary college were entitled to qualified immunity with respect to alleged constitutional violations arising out of their strip search of graduate student, even though search was conducted because student was suspected of cheating on exam rather than of violating any provision of penal code, and even recognizing that university students might possess higher degree of privacy than their similarly situated minor counterparts; officials were reasonable in concluding that search of student's person was justified, scope of search was not unreasonable, status of law with respect to scope of authority of state supported university faculty to conduct searches of university students was unclear, and officials were reasonably led to believe that student's ready acquiescence to search indicated her implied consent thereto. Carboni v. Meldrum, W.D.Va.1996, 949 F.Supp. 427, affirmed 103 F.3d 116. Civil Rights 1376(5)

Strip searching seventh-grade girls in effort to recover allegedly stolen $4.50 was not reasonable under the circumstances and, therefore, principal, teacher, and substitute teacher were not entitled to qualified immunity from

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girls' § 1983 action for damages. Oliver by Hines v. McClung, N.D.Ind.1995, 919 F.Supp. 1206. Civil Rights 1376(5); Schools 169.5

4004. Election officials, objective reasonableness requirement

Members of Board of Elections for the Commonwealth of the Northern Mariana Islands were not entitled to qualified immunity in § 1983 action in which voters challenged Board's implementation of new voter challenge procedures that resulted in voters being precluded from voting in island school board election, notwithstanding any reliance upon advice of legal counsel, inasmuch as reasonable elections official would have known that it would violate voters' equal protection rights and right to vote to handle voter challenges differently based on voter's political party, to decide to exclude voters in reliance on subjective testimony of head of opposing party, who also was responsible for asserting voter challenges at issue, and in failing to notify voters of changed decision, made on day of election, that allowed them to vote. Charfauros v. Board of Elections, C.A.9 (N.Mariana Islands)2001, 249 F.3d 941, amended on denial of rehearing. Civil Rights 1376(5)

Members of Ohio Elections Commission sued in their individual capacities were entitled to qualified immunity for carrying out of provision of election law plaintiff alleged was unconstitutional; at time of their action reasonably competent public officials in like circumstances would not reasonably have known that provisions of election law were unconstitutional in any respect. Pestrak v. Ohio Elections Com'n, S.D.Ohio 1987, 670 F.Supp. 1368, opinion clarified 677 F.Supp. 534, affirmed in part, reversed in part 926 F.2d 573, certiorari dismissed 112 S.Ct. 672, 502 U.S. 1022, 116 L.Ed.2d 763, certiorari dismissed 112 S.Ct. 673, 502 U.S. 1022, 116 L.Ed.2d 763. Civil Rights 1376(3)

4005. Employers, objective reasonableness requirement--Generally

Defendant is entitled to qualified immunity as school administrator in § 1983 employment discrimination action if reasonable officials in defendants' position at relevant time could have believed, in light of clearly established law, that their conduct comported with established legal standards. Long v. Board of Educ. of City of Philadelphia, E.D.Pa.1993, 812 F.Supp. 525, affirmed 8 F.3d 811. Civil Rights 1376(10)

4006. ---- First Amendment generally, employers, objective reasonableness requirement

No reasonable state employee could have thought that he was allowed to discipline an employee more severely because of the employee's expression of his First Amendment rights and, thus, police chief was not entitled to qualified immunity on §§ 1983 claims of former police officers, alleging that chief brought them before board of police commissioners because they exercised their First Amendment rights and did not charge or discipline other similarly-situated officers. Skehan v. Village of Mamaroneck, C.A.2 (N.Y.) 2006, 465 F.3d 96. Civil Rights 1376(10)

In employee's § 1983 claim alleging that individual public officials failed to reasonably accommodate his Sabbath observance in violation of free exercise clause, officials were qualifiedly immune from their actions that took place following Supreme Court's decision in *Employment Division v. Smith*, since officials could reasonably have believed at that time that actions taken in accordance with collective bargaining agreement that was reached to establish neutral and fair method of selecting work shifts, not to burden religion, would withstand free exercise challenge under that case. Genas v. State of N.Y. Dept. of Correctional Services, C.A.2 (N.Y.) 1996, 75 F.3d 825. Civil Rights 1376(10)

Police department official's intent or motive in developing and bringing disciplinary charges against police officer was appropriate consideration in determining whether official was entitled to qualified immunity in officer's § 1983 action alleging that charges were brought in retaliation for his exercise of his First Amendment rights. Broderick v. Roache, C.A.1 (Mass.) 1993, 996 F.2d 1294. Civil Rights 1376(10)

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Superior officers in Missouri State Highway Patrol were entitled to qualified immunity to trooper's claim that he was suspended in violation of his First Amendment rights for sending letter to Governor complaining that Patrol's new "minimum work standards" policy was in fact a ticket-writing quota system, even if letter was motivating factor in trooper's suspension. Bartlett v. Fisher, C.A.8 (Mo.) 1992, 972 F.2d 911. States 79

Police chief who was responsible for dismissing city police officer for exercising his First Amendment rights by writing letter requesting investigation of police department to Attorney General was not entitled to qualified immunity, as reasonable police chief should have been on notice that it would violate First Amendment to terminate police officer who wrote letter alleging, inter alia, antiunion animus, on part of chief, particularly where letter caused no significant disruption of police department operations. Wulf v. City of Wichita, C.A.10 (Kan.) 1989, 883 F.2d 842, rehearing denied. Civil Rights 1376(10)

Village mayor and former village employee's supervisor were not entitled to judgment on the pleadings, on ground of qualified immunity, on employee's claim that village did not rehire him when he was able to return from disability in retaliation for the exercise of his First Amendment rights, in filing complaint and notice of claim against village, where no reasonable official charged with hiring public employees could possibly have thought that it was constitutional to refuse to rehire an employee after his disability ended solely and simply because he was planning to sue village and village police officer for wrongfully breaking his arm. Torres v. Village of Sleepy Hollow, S.D.N.Y.2005, 379 F.Supp.2d 478, appeal dismissed 2006 WL 755958. Federal Civil Procedure 1061

City officials were not entitled to qualified immunity from claim of former city employee that he was denied seasonal leave and terminated because of his political affiliation in violation of the First Amendment; it was not objectively reasonable for officials to believe that denial of seasonal leave and termination based on political affiliation did not violate the law. Hennessy v. City of Long Beach, E.D.N.Y.2003, 258 F.Supp.2d 200. Civil Rights 1376(10)

4007. ---- Freedom of association, employers, objective reasonableness requirement

Superintendent of county school system was charged by Kentucky law with recommending hiring and personnel decisions to school board and, thus, superintendent could be required to be aware of and observe school board employee's right to freedom of association in her marriage relationship, and superintendent could not claim qualified immunity from employee's civil rights action for denial of continued public employment that allegedly resulted from employee's association with her husband. Adkins v. Board of Educ. of Magoffin County, Ky., C.A.6 (Ky.) 1993, 982 F.2d 952. Civil Rights 1376(10); Constitutional Law 91; Schools 63(3)

Reasonable person would have known in September 2003, for purposes of qualified immunity, that fire chief would violate firefighter's free association rights by instituting policy preventing him from speaking to city officials about fire department matters. Lilienthal v. City of Suffolk, E.D.Va.2003, 275 F.Supp.2d 684. Civil Rights 1376(10)

4008. ---- Freedom of speech, employers, objective reasonableness requirement

It was not objectively reasonable for County District Attorney to believe that he could demote an employee for making a hyperbolic statement to a reporter regarding the crime rate in the district without violating First Amendment right of public employees to be free from retaliation for speech on matters of public concern, and thus, District Attorney was not entitled to qualified immunity in employee's §§ 1983 action alleging adverse employment actions in retaliation for exercise of his First Amendment rights; it was well-established by Supreme Court precedent that hyperbolic speech was protected by First Amendment, and that speaker's motive was not dispositive of whether speech was protected. Reuland v. Hynes, C.A.2 (N.Y.) 2006, 460 F.3d 409. Civil Rights 1376(10)

University administrators were entitled to qualified immunity from university employee's claim that he was

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transferred as a penalty for protected speech in speaking out about director of university computer-based education and research laboratory given uncontroverted evidence establishing that employee was transferred only after administrators had received numerous complaints from coemployees concerning destruction of working relationships in laboratory and after completion of independent audit that absolved director of wrongdoing. Propst v. Bitzer, C.A.7 (Ill.) 1994, 39 F.3d 148, certiorari denied 115 S.Ct. 1400, 514 U.S. 1036, 131 L.Ed.2d 288. Civil Rights 1376(10)

Supervisors of black employee of county department of community affairs were entitled to qualified immunity for suspending employee for his remarks from his sermon appearing in newspaper, expressing his frustration at having to speak Spanish at restaurants and urging blacks to boycott white and Hispanic businesses; reasonable person in supervisors' positions could have believed that employee's statements were racially divisive, diminished his ability to perform his job and infuriated members of Hispanic community, and supervisors could have believed that their actions did not violate clearly established law. Sims v. Metropolitan Dade County, C.A.11 (Fla.) 1992, 972 F.2d 1230. Civil Rights 1376(10)

Sheriff was not entitled to qualified immunity from § 1983 liability suit brought by former deputy sheriff who allegedly was discharged in violation of his First Amendment free speech right for writing letter concerning sentencing of convicted criminal; letter unquestionably dealt with matters of public concern and there was no evidence to justify decision to punish sheriff for his speech. Buzek v. County of Saunders, C.A.8 (Neb.) 1992, 972 F.2d 992. Civil Rights 1376(10)

County officials were qualifiedly immune from § 1983 liability in connection with their termination of county board of health employee, as they could reasonably have believed that employee had knowingly or recklessly made false statements to media and to court involving functioning of board and, thus, that termination of employee for such statements would not violate her First Amendment rights. Gossman v. Allen, C.A.6 (Ky.) 1991, 950 F.2d 338 . Civil Rights 1376(10)

In determining whether university administrators were entitled to qualified immunity from university employee's claim that she was transferred as penalty for protected speech, which defense was premised on claim that law had not clearly established impropriety of transferring public employee whose speech created disturbance undermining productivity of other workers, question was not what conditions in laboratory where employee worked were, but rather was what administrators reasonably believed them to have been; objectively reasonable but mistaken conclusions would not violate the Constitution. Elliott v. Thomas, C.A.7 (Ill.) 1991, 937 F.2d 338, rehearing denied, certiorari denied 112 S.Ct. 973, 502 U.S. 1074, 117 L.Ed.2d 138, certiorari denied 112 S.Ct. 1242, 502 U.S. 1121, 117 L.Ed.2d 475. Civil Rights 1376(10)

Police officers who were allegedly denied promotions because of another officer's grievances concerning police department's promotional practices violated latter officer's clearly established free speech rights when they allegedly sought to have officer fired in retaliation, precluding officers from claiming qualified immunity in resulting civil rights action. Thompson v. City of Starkville, Miss., C.A.5 (Miss.) 1990, 901 F.2d 456. Civil Rights 1376(10)

Assuming that state court judge discharged his confidential secretary because she spoke to district attorney regarding individual being considered for prosecution, after judge instructed her not to, judge was entitled to qualified immunity on grounds that reasonable official in his circumstances could have concluded his action did not violate his employee's First Amendment rights; secretary's participation in investigation was not vital, there was evidence secretary had personal animus toward target of investigation, alleged crime was relatively minor, importance of keeping judicial office separate from prosecutorial functions was far reaching and crucial, and loyalty was essential quality for a confidential secretary to a judge. McDaniel v. Woodard, C.A.11 (Ala.) 1989, 886 F.2d 311. Judges 36

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42 U.S.C.A. § 1983

Provost and former dean were entitled to qualified immunity with respect to former university department head's claim that his removal was in retaliation for protected speech; reasonably competent university officials could have concluded that department head's criticism of his superior's actions regarding allocation of funds within department, review of faculty grievances, and departmental votes on faculty nonretention were not matters of public concern or, if they were, that department head's interest in speaking freely was outweighed by administration's interest in maintaining authority and good working relationships. Garvie v. Jackson, C.A.6 (Tenn.) 1988, 845 F.2d 647. Civil Rights 1376(10)

College officials were not entitled to immunity with respect to professor's action to recover for termination resulting from professor's exercise of his constitutionally protected rights, since a reasonable person should have known at the time of professor's termination that professor's speech, which was found to have been the basis for professor's termination, was constitutionally protected. Stern v. Shouldice, C.A.6 (Mich.) 1983, 706 F.2d 742, certiorari denied 104 S.Ct. 487, 464 U.S. 993, 78 L.Ed.2d 683. Civil Rights 1373

County sheriff was entitled to qualified immunity from liability under §§ 1983 in his individual capacity, for discharging jail employee who had filed grievance complaining about sheriff's violation of state open records law; even if jail employee's speech was protected, sheriff acted reasonably under the circumstances in discharging employee, about whom he had received complaints from coworkers and inmates. Shape v. Barnes County, N.D., D.N.D.2005, 396 F.Supp.2d 1067. Civil Rights 1376(10)

Police chief did not have qualified immunity from suit by police detective, claiming that chief transferred him in retaliation for his disclosure of letter from informant, asserting that drug house was being patronized by close relative of public official, who in turn was close personal friend of police chief; reasonable officer would have known that action taken in retaliation for exercise of First Amendment rights was unlawful. Delgado v. Jones, E.D.Wis.2003, 277 F.Supp.2d 956, affirmed 95 Fed.Appx. 185, 2004 WL 729172, certiorari denied 125 S.Ct. 346, 543 U.S. 925, 160 L.Ed.2d 223. Civil Rights 1376(10)

Reasonable person would have known in September 2003, for purposes of qualified immunity, that fire chief would violate firefighter's speech rights by instituting policy preventing him from speaking to city officials about fire department matters. Lilienthal v. City of Suffolk, E.D.Va.2003, 275 F.Supp.2d 684. Civil Rights 1376(10)

City council members alleged by former senior aid to have conspired to terminate aid because of their disapproval of one council member's voting record were not entitled to qualified immunity, in aid's § 1983 action for deprivation of First Amendment rights; no reasonable person could believe that council members' alleged conduct in warning council member that, because of his political views, they intended to fire aid, and their actions in carrying out threat were permissible under § 1983, and aid was not terminated for his political views but for those of council member. Camacho v. Brandon, S.D.N.Y.1999, 56 F.Supp.2d 370, on reconsideration in part 69 F.Supp.2d 546, appeal dismissed 236 F.3d 112. Civil Rights 1376(10)

City officials were qualifiedly immune from former city employee's § 1983 claim that his First Amendment rights were violated when city official issued memorandum discouraging city employees from discussing topics related to former employee's termination with former employee; reasonable public official would not have known that action of barring subordinates from talking with former employee regarding such topics was contrary to Constitution, in light of fact that right to receive speech from certain public employees after filing claims against city had not been defined by Second Circuit or Supreme Court. Walsh v. City of Auburn, N.D.N.Y.1996, 942 F.Supp. 788. Civil Rights 1376(10)

Secretary of the Pennsylvania Department of Public Welfare (DPW), Director of the Department's Bureau of Personnel, and Director of the Office of Hearings and Appeals (OH&A) were not entitled to qualified immunity with respect to § 1983 claim brought by attorney examiner with OH&A alleging that he was terminated in retaliation for writing letter to Pennsylvania governor accusing OH&A Director of incompetence; attorney's letter

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parroted statements made by member of governor's transition team who was not associated with attorney's employment problems and no reasonable public official could conclude that comments echoing statements made by official reviewing agency would not be protected speech. Sullivan v. Houstoun, M.D.Pa.1996, 928 F.Supp. 521. Civil Rights 1376(10)

Preliminary discovery was required on whether public officials' belief that terminating employee did not violate his freedom of speech rights was objectively reasonable before granting their motion to dismiss on qualified immunity grounds, where employee alleged that he spoke of official misconduct, sexual harassment, racial discrimination and corruption, which may be matters of public concern within free speech protection. Moray v. City of Yonkers, S.D.N.Y.1996, 924 F.Supp. 8. Federal Civil Procedure 1264; Federal Civil Procedure 1828

State officials were entitled to qualified immunity from liability in regard to former state general counsel's claim that she was discharged for engaging in protected speech in violation of First Amendment; as firing claimant comported with First Amendment, it followed that reasonable state officer could have believed that firing did not violate counsel's First Amendment rights, and even if counsel's speech was protected by First Amendment, law was sufficiently murky or factual question was sufficiently close that reasonable state officer could still believe that counsel's firing was permissible under Constitution. Volberg v. Pataki, N.D.N.Y.1996, 917 F.Supp. 909, affirmed 112 F.3d 507, certiorari denied 117 S.Ct. 1252, 520 U.S. 1119, 137 L.Ed.2d 333. Civil Rights 1376(10)

New Secretary of State was entitled to qualified immunity with respect to § 1983 suit brought by former employees who alleged that they were discharged based on their political affiliations in violation of the First Amendment; employees occupied confidential and policymaking positions within the Secretary of State's office, such as Legislative Director and Communications Director positions, and Secretary could reasonably have assumed that her relationship to employees' positions was confidential in nature, and, therefore, her decision to dismiss employees and hire people in whom she had complete trust was not clearly prohibited and it was reasonable for Secretary to assume that she could dismiss incompetent employee. Smith v. Cook, W.D.Mo.1995, 914 F.Supp. 348 . Civil Rights 1376(10)

Fire chief was not entitled to qualified immunity on fire department employee's § 1983 claim that chief violated employee's First Amendment rights by denying employee promotion in retaliation for employee's complaints about department to newspaper reporter; chief's alleged conduct would violate clearly established constitutional rights of which reasonable person would have known. Sundstrom v. Village of Arlington Heights, N.D.Ill.1993, 826 F.Supp. 1143. Civil Rights 1376(10)

Detective's allegations that sheriff's office employees recommended that sheriff fire her due to her alleged support of former sheriff, and that she was thereafter transferred, that subsequent transfers were actually demotions, and that she was subject to annoyance, harassment, humiliation, and ostracism for having exercised her free speech rights alleged sufficient facts to withstand motion to dismiss based on qualified immunity of sheriff and his employees. Morris v. Crow, M.D.Fla.1993, 825 F.Supp. 295. Civil Rights 1398

4009. ---- Political affiliation, employers, objective reasonableness requirement

Sheriff was not qualifiedly immune from jailer's § 1983 claims that sheriff terminated her on July 19, 1995 because of her association with her husband, who had opposed sheriff in election, in violation of her First Amendment rights of political and intimate association, inasmuch as her rights of political and intimate association were clearly established at that time, and it was objectively reasonable for sheriff to understand he was violating those rights when he terminated her. Sowards v. Loudon County, Tenn., C.A.6 (Tenn.) 2000, 203 F.3d 426, 123 A.L.R.5th 783, rehearing and suggestion for rehearing en banc denied, certiorari denied 121 S.Ct. 179, 531 U.S. 875, 148 L.Ed.2d 123. Civil Rights 1376(10)

County council chairman, county administrative director, and county councilman could have reasonably believed

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that termination of councilman's administrative assistant for political reasons was proper and therefore, they were entitled to qualified immunity from § 1983 suit brought by assistant; assistant did not have clearly established right to be free from patronage dismissals. Billingsley v. St. Louis County, C.A.8 (Mo.) 1995, 70 F.3d 61. Civil Rights 1376(10)

Sheriff and other supervisory members of sheriff's department were entitled to qualified immunity from claims of subordinates that they were transferred in retaliation for exercising their First Amendment right to support political opponent of sheriff; *Pickering* balancing did not lead to inevitable conclusion that transferring plaintiffs was unlawful, especially considering the transfers involved no loss of pay or rank, but were based on concerns that ability of supervisors to effectively direct and discipline subordinates had been compromised because of litigation. Rogers v. Miller, C.A.11 (Fla.) 1995, 57 F.3d 986. Civil Rights 1376(10)

Commissioner of Public Safety was not entitled to qualified immunity in § 1983 action brought by state trooper who was transferred as result of political activities; government failed to show that reasonable official would have found trooper's First Amendment rights were outweighed by government's interest in promoting effective law enforcement, and government was required to make stronger showing than merely perceiving potential threat to effective government operations, without verifying underlying allegations or affording trooper opportunity to respond. Bieluch v. Sullivan, C.A.2 (Conn.) 1993, 999 F.2d 666, certiorari denied 114 S.Ct. 926, 510 U.S. 1094, 127 L.Ed.2d 219. Civil Rights 1376(10)

Reasonable officials would have known that alleged conduct of officials of Puerto Rico Electric Power Authority (PREPA) in connection with employee's transfer, which involved treating him differently than similarly situated employees for being affiliated with certain political party with intent to injure his constitutional rights, would violate clearly established constitutional rights guaranteed by Due Process and Equal Protection Clauses, and, thus, officials were not qualifiedly immune from employee's §§ 1983 claims. Rivera Sanchez v. Autoridad de Energia Electrica, D.Puerto Rico 2005, 360 F.Supp.2d 302. Civil Rights 1376(10)

City's chief of police had qualified immunity from claims of police lieutenant that he was disciplined as result of political opinions; at time action was taken, it was unclear whether political affiliation was an appropriate job qualification for position of police lieutenant. Nitschneider v. Miller, N.D.Ill.1993, 821 F.Supp. 1258. Civil Rights 1376(10)

Administrator of state insurance fund was entitled to qualified immunity from employee's claim for monetary damages in civil rights action based on employee's dismissal from position as director of insurance fund's legal services division because of his political affiliation; reasonable person in administrator's position could believe that political affiliation was appropriate requirement for effective performance of director's job. Mafuz Blanco v. Tirado Delgado, D.Puerto Rico 1986, 641 F.Supp. 1287. Civil Rights 1376(10)

4010. ---- Privacy rights, employers, objective reasonableness requirement

Evidence that employee did not sign authorization for release of various documents because it was "an invasion of privacy," "too personal," "not necessary," and "unconstitutional," was sufficient to raise fact issue for jury on issue of whether employer's intrusion into the confidentiality of his medical records was the cause of his injury, or termination, in § 1983 action. Denius v. Dunlap, C.A.7 (Ill.) 2003, 330 F.3d 919. Civil Rights 1430

Fire fighter failed to demonstrate that no officer of reasonable competence would have required him to take drug urinalysis test as would preclude defense of qualified immunity to charge that test violated fire fighter's Fourth and Fourteenth Amendment rights. Nocera v. New York City Fire Com'r, S.D.N.Y.1996, 921 F.Supp. 192. Civil Rights 1376(10)

Individual defendants, including police chief, deputy police chief and police lieutenant, were entitled to qualified

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immunity in § 1983 action brought by police officer alleging that police department's requirement that she submit her mental health records during her continuing treatment for depression as condition for full reinstatement following suicide attempt violated her right to privacy, where, at worst, individual defendants exercised poor judgment in scope of their request and reasonably could have thought that their actions were consistent with rights they were alleged to have violated, and defendants acted in objectively reasonable manner. Thompson v. City of Arlington, Tex., N.D.Tex.1993, 838 F.Supp. 1137. Civil Rights 1376(10)

4011. ---- Racial discrimination, employers, objective reasonableness requirement

Given clear state of law prohibiting racial discrimination in public employment at the time two African-American members of board of county commissioners voted to replace white female clerk with African-American clerk, no reasonable commissioner, with information possessed by those board members would have believed that his or her discriminatory acts were constitutional; therefore, those members were not entitled to qualified immunity from liability in § 1983 action brought by white female clerk alleging violation of equal protection clause. Smith v. Lomax, C.A.11 (Ga.) 1995, 45 F.3d 402. Civil Rights 1376(10)

Mayor, police captain, police lieutenant and chief of city police did not have qualified immunity in individual capacities with respect to discharged black employee's § 1983 claim regarding racial harassment and discrimination in employment; equal protection clause afforded employee right to be free from racial discrimination. Busby v. City of Orlando, C.A.11 (Fla.) 1991, 931 F.2d 764. Civil Rights 1376(10); Constitutional Law 219.1

Black former police superintendent was not entitled to qualified immunity from discrimination claims of high-ranking white officers who alleged they were demoted without any just cause or complaint about their professional performance, but only because of race, so as to make their police supervisory command positions available to be filled by black officers, absent any evidence of affirmative action rationale; reasonable superintendent of major metropolitan police force could not have reasonably concluded that he could reorganize police department's highest level managers by reassigning or demoting 25 white officers from exempt rates, but demoting no black officers, and then promoting 13 black officers into new vacancies created by white demotions, all in total absence of any affirmative action concept or criteria, defective or otherwise. Auriemma v. Rice, C.A.7 (Ill.) 1990, 910 F.2d 1449, certiorari denied 111 S.Ct. 2796, 501 U.S. 1204, 115 L.Ed.2d 970. Civil Rights 1376(10)

City officials named in their individual capacities were not entitled to qualified immunity from § 1983 liability with regard to white female police officer's claim that she was terminated because of her race; it would not have been objectively reasonable for the officials to believe they could lawfully terminate the officer based, even in part, on her race. Disher v. Weaver, M.D.N.C.2004, 308 F.Supp.2d 614. Civil Rights 1376(10)

No reasonable official could have believed that it was lawful to discriminate against an employee on the basis of race in the way alleged by a city fire department employee, and thus, the employee's supervisors were not entitled to qualified immunity as to the employee's §§ 1983 claim of discrimination; the employee claimed that the supervisors refused to allow him to take a certification course required for a promotional position, which white employees were allowed to take, and that the supervisors issued him punishments of more heightened severity and frequency than those issued white employees for similar conduct, in an effort to sabotage his chance for a promotion. Jolivette v. Arrowood, C.A.11 (Ga.) 2006, 2006 WL 1308626, Unreported. Civil Rights 1376(10)

4012. ---- Sex discrimination, employers, objective reasonableness requirement

Municipal officials were not entitled to qualified immunity, in sex discrimination suit brought by police department employee, in that they should have reasonably known that their alleged harassment of and retaliation against employee violated constitutional norms; other defendants, who allegedly failed to report such harassment, however, were protected by qualified immunity, in that such failure would not presumably have been known to

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have constitutional implications. Dirksen v. City of Springfield, C.D.Ill.1994, 842 F.Supp. 1117. Civil Rights 1376(10)

4013. ---- Sexual harassment, employers, objective reasonableness requirement

Supervisor was not entitled to qualified immunity from liability for his conduct toward deputy sheriff, since no male officer could reasonably have thought at time conduct took place that it was not sexual harassment to announce that it was his turn to "make out" with woman who was subject to his command, especially when that woman had previously protested his gender oriented behavior. Beardsley v. Webb, C.A.4 (Va.) 1994, 30 F.3d 524. Civil Rights 1376(10)

County sheriff was entitled to qualified immunity under §§ 1983 from female correctional officer's claims of sexual harassment, where sheriff never sexually harassed plaintiff, never observed plaintiff's alleged sexual harassment, never took any adverse employment action against her, and was never personally aware of plaintiff's allegations of sexual harassment; moreover, sheriff also had a reasonable policy for his subordinates to pursue in the event they opted to complain of harassment, and sheriff investigated those matters brought to his attention. Dunbar v. County of Saratoga, N.D.N.Y.2005, 358 F.Supp.2d 115. Civil Rights 1376(10)

Physician employed by public transportation authority was not entitled to qualified immunity in female employee's § 1983 claim that physician sexually harassed her during physical examination, despite physician's contention that reasonable physician might have acted as he did, as reasonable physician would have known that intentional sexual harassment of patients violated clearly established constitutional rights. Ascolese v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1996, 925 F.Supp. 351. Civil Rights 1376(10)

Police chief was not entitled to qualified immunity from individual suit by female police officer under § 1983 on theory that police chief was acting in official capacity in violating officer's charges of sexual harassment at time officer filed her first complaint alleging sexual harassment, police chief should reasonably have known that intentionally permitting hostile work environment, including continuing harassment and retaliatory behavior against female police officers, deprived officer of her right to free speech and equal protection under the law. Poulsen v. City of North Tonawanda, N.Y., W.D.N.Y.1993, 811 F.Supp. 884. Civil Rights 1376(10)

4014. ---- Discharges or dismissals, employers, objective reasonableness requirement

As bearing upon good-faith immunity from liability for wrongful discharge, it was not unreasonable, under Fourteenth Amendment due process principles, for the Florida Department of Highway Safety and Motor Vehicles, as employer, to conclude that civil service employee had been provided with fundamentals of due process in view of fact that his statement of reasons and other relevant information were before senior official who made decision to discharge and in view of Florida law providing for full evidentiary hearing after termination. Davis v. Scherer, U.S.Fla.1984, 104 S.Ct. 3012, 468 U.S. 183, 82 L.Ed.2d 139, rehearing denied 105 S.Ct. 26, 468 U.S. 1226, 82 L.Ed.2d 919. Civil Rights 1376(10)

State official responsible for operation of state mental hospital was not entitled to qualified immunity with regard to violation of First Amendment free speech rights occurring when she failed to renew contract of psychiatrist who worked at hospital as independent contractor, allegedly in retaliation for his memoranda raising concerns on state of care at the facility; although official relied on new state bidding requirements when she did not renew the contract, she did not send non-renewal letters to other independent contractor physicians, and provided no plausible reason for her targeting of the physiatrist. Springer v. Henry, C.A.3 (Del.) 2006, 435 F.3d 268. Civil Rights 1376(3)

Even if deputy sheriffs were subject to patronage dismissal as matter of law in 1993, reasonable official would not have believed that deputy sheriffs and correctional officers should be treated the same for patronage purposes

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solely because the two offices were covered by same Illinois statutory provision regarding termination, for purposes of determining whether sheriff was qualifiedly immune from correctional officers' § 1983 action alleging patronage dismissal. Flenner v. Sheahan, C.A.7 (Ill.) 1997, 107 F.3d 459. Civil Rights 1376(10)

Members of city's board of education could not have reasonably believed that they were acting illegally in relieving school superintendent of his responsibilities while continuing to pay him economic benefits of position, and thus members as individuals were qualifiedly immune from superintendent's suit claiming deprivation of property right without due process; when board acted, courts agreed that public official had constitutionally protected property interest only in economic benefits of his position and did not have any right to actually hold position and execute its duties. Harris v. Board of Educ. of the City of Atlanta, C.A.11 (Ga.) 1997, 105 F.3d 591. Civil Rights 1376(10)

Police officers who allegedly sexually harassed dispatchers were entitled to qualified immunity in dispatchers' § 1983 action based on claim of constructive discharge; officers lacked any power or authority to discharge dispatchers, and they had no personal constitutional obligation to provide dispatchers with any kind of due process hearing in event dispatchers were discharged. Woodward v. City of Worland, C.A.10 (Wyo.) 1992, 977 F.2d 1392, rehearing denied, certiorari denied 113 S.Ct. 3038, 509 U.S. 923, 125 L.Ed.2d 724. Civil Rights 1376(10)

School board officials were entitled to qualified immunity on § 1983 claim alleging violation of due process brought by school principal whose contract was not renewed and who was instead reassigned to teaching position; New Mexico law did not afford principal any procedural protection for nonrenewal of her contract, and even if statute providing for certain procedural protections could be applied to principal, it was not shown that school board reasonably should have known that principal was entitled to such protections. Cole v. Ruidoso Mun. Schools, C.A.10 (N.M.) 1991, 947 F.2d 903. Civil Rights 1376(10)

Supervisor of managerial state employee was entitled to qualified immunity in employee's civil rights action challenging his removal from his position because, at time of removal, it would not have been apparent to reasonable supervisor that employee had property interest in his management service employment. Wheaton v. Webb-Petett, C.A.9 (Or.) 1991, 931 F.2d 613. Civil Rights 1376(10)

University officials could reasonably have believed that their investigation of plagiarism charges against tenured professor satisfied requirements of procedural due process and, thus, officials were entitled to qualified immunity in professor's civil rights action; professor was notified of charges against her and was given multiple opportunities to respond, explain, and defend, she was given opportunity to respond to reports filed by outside experts and by dean's committee, and she was allowed to call and cross-examine witnesses at hearing. Newman v. Com. of Mass., C.A.1 (Mass.) 1989, 884 F.2d 19, certiorari denied 110 S.Ct. 1132, 493 U.S. 1078, 107 L.Ed.2d 1037. Civil Rights 1376(10)

Former District of Columbia mayor was entitled to qualified immunity from personal liability for alleged violation of substantive due process rights of former Director of the District of Columbia (D.C.) Office of Human Rights (OHR); while director's termination allegedly created a stigma or disability that foreclosed his freedom to take advantage of other employment opportunities, the alleged unlawfulness of mayor's conduct would not have been apparent to a reasonable officer. Holman v. Williams, D.D.C.2006, 436 F.Supp.2d 68. Civil Rights 1376(10)

Objectively reasonable school board officials should have known that they were acting in disregard of clearly established law and public school regulations by failing to reinstate maintenance director to his position after it allegedly was recreated following its elimination ostensibly as a result of reduction-in-force, particularly when quality control/compliance department circulated memorandum acknowledging that board could be violating policy by advertising position to which director, as tenured employee, was entitled, and therefore qualified immunity did not apply to shield school board officials from liability on director's procedural due process claims. Brannan v. Amato, E.D.La.2006, 428 F.Supp.2d 523. Civil Rights 1376(10)

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Principal, who recommended African-American teacher's termination, was entitled to qualified immunity from teacher's individual capacity claims under § 1981 and § 1983; principal did not violate any of teacher's constitutional rights, in that, he was not decisionmaker who terminated her, and even if he had violated her constitutional rights, principal's recommendation to terminate teacher was objectively reasonable, in light of teacher's history of unprofessional behavior toward colleagues, students, and supervisors despite repeated warnings and reprimands. Bluitt v. Houston Independent School Dist., S.D.Tex.2002, 236 F.Supp.2d 703. Civil Rights 1376(10)

It was objectively reasonable for members of Port Authority's board of commissioners to believe that their adoption of resolution authorizing reductions in work force by department directors did not violate any contractual, property or procedural rights of Authority employees, and therefore commissioners were entitled to qualified immunity in § 1983 action brought by discharged employees; law with respect to rights vested in Authority employees had not been clearly defined and established. Baron v. Port Authority of New York and New Jersey, S.D.N.Y.1997, 977 F.Supp. 646, affirmed 271 F.3d 81. Civil Rights 1376(10)

Town manager's decision to terminate town police chief for lying under oath about authorship of pornographic letter, and in so lying, acting in manner unbecoming an officer was objective and reasonable and, therefore manager was protected by qualified immunity in police chief's § 1983 action where there was substantial evidence before manager that handwriting in letter was police chief's and that chief had lied about it under oath. Cronin v. Town of Amesbury, D.Mass.1995, 895 F.Supp. 375, affirmed 81 F.3d 257. Civil Rights 1376(10)

Four superiors of tax examiner employed by state were not protected by doctrine of qualified immunity with respect to tax examiner's claim that they abridged her Fifth Amendment right against self-incrimination by terminating her for failing to answer their questions about her conduct on the job after she had invoked right; superiors should have known that forcing her to choose between her job and her Fifth Amendment rights violated Constitution. Singer v. State of Me., D.Me.1994, 865 F.Supp. 19, reversed in part 49 F.3d 837. Civil Rights 1376(10)

Reasonable state court district judge would not have known that discharging secretary of judge's predecessor would violate secretary's due process rights and, thus, judge was entitled to qualified immunity as to discharged secretary's procedural due process claim; judge could reasonably have concluded that representations on part of predecessor that state personnel rules applied to secretary did not create property interest in her continued employment. Munroe v. Kautz, D.Wyo.1993, 833 F.Supp. 854, affirmed 33 F.3d 62. Civil Rights 1376(10)

In action by former teacher and athletic coach alleging that school district and district employees violated his due process, equal protection and First Amendment rights, individual employees were entitled to qualified immunity from liability absent showing by teacher that individual defendants knew or should have known that their failure to rehire teacher and coach violated his constitutional rights. Nelson v. Payne, S.D.Tex.1992, 827 F.Supp. 1273, affirmed 18 F.3d 935. Civil Rights 1376(10)

Members of city housing authority were not entitled to qualified immunity from civil rights liability for due process violation in failing to accord terminated executive director an impartial tribunal at termination hearing; disqualifying personal bias of authority members was readily apparent by any objective standard. Salisbury v. Housing Authority of City of Newport, E.D.Ky.1985, 615 F.Supp. 1433. Civil Rights 1376(10)

President of state university reasonably should have known that consideration of information not presented in hearing without affording university academic advisor notice and an opportunity to respond before dismissing advisor denied advisor due process, and thus, president, in his individual capacity, was not entitled to qualified immunity. Davis v. Alabama State University, M.D.Ala.1985, 613 F.Supp. 134. Civil Rights 1376(10)

Employee of Louisiana Department of Transportation and Development (LADOTD) sufficiently alleged, on

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supervisors' motion to dismiss based on qualified immunity, that supervisors' conduct was not objectively reasonable, as element for defeating qualified immunity, in §§ 1983 action alleging procedural due process violation relating to termination of employment; if it was true, as employee alleged, that supervisors forced him to choose between resigning or being terminated, without predeprivation hearing, then supervisors should have known that such an ultimatum would violate his right to procedural due process. Holden v. Knight, C.A.5 (La.) 2005, 155 Fed.Appx. 735, 2005 WL 3067824, Unreported. Civil Rights 1398

4015. ---- Promotions or demotions, employers, objective reasonableness requirement

Reasonable public official in May of 1991 could not have reasonably anticipated that following requirements of Kentucky statute, and thereby failing to provide predemotion hearing to public employee, would violate employee's right to constitutional due process and, thus, defendant officials were entitled to qualified immunity on employee's due process claim in § 1983 action. Williams v. Com. of Ky., C.A.6 (Ky.) 1994, 24 F.3d 1526, certiorari denied 115 S.Ct. 358, 513 U.S. 947, 130 L.Ed.2d 312. Civil Rights 1376(10)

Reasonable fire commissioner or personnel commissioner could have concluded that they could take race into consideration in promotions for limited reorganization of engineer and captain ranks and, thus, were entitled to qualified immunity from liability in equal protection challenge to affirmative action policy on promotion from ranks of fire fighter and lieutenant; city was bound by consent order to promote black and Hispanic persons; collective bargaining agreement had affirmative action provision; there was significant statistical disparity between the portion of minority members engineering and captain ranks compared to proportion in ranks immediately below; and affirmative action policy had limited duration. Chicago Fire Fighters Union Local No. 2 v. Washington, N.D.Ill.1990, 736 F.Supp. 923, affirmed 962 F.2d 1269, rehearing granted and vacated, on rehearing 989 F.2d 890, certiorari denied 114 S.Ct. 290, 510 U.S. 908, 126 L.Ed.2d 240, on remand. Civil Rights 1376(10)

4016. ---- Suspensions, employers, objective reasonableness requirement

School officials were entitled to qualified immunity from liability in high school teacher's § 1983 action based on their conduct in suspending teacher from her assignment as basketball coach; no reasonable school official would have known that suspending teacher and paying her full stipend due for coaching season pending investigation into complaints about her coaching conduct would have violated any clearly established constitutional rights to due process and equal protection. Schneeweis v. Jacobs, E.D.Va.1991, 771 F.Supp. 733, affirmed 966 F.2d 1444. Civil Rights 1376(10)

Allegations that city police detective was suspended without pay without presuspension hearing, that pretermination notice gave detective no reasons for his discharge beyond boilerplate statement, that operative work rules were vague and overbroad, and that applicable ordinance requiring progressive discipline was not followed, rendering discharge arbitrary and capricious, sufficiently set forth violations of clearly established law which reasonable state officials would not have believed were lawful so as to preclude qualified immunity defense of city officials in civil rights action. Byrd v. City of Atlanta, N.D.Ga.1988, 683 F.Supp. 804. Civil Rights 1376(10)

Housing authority officials possessed qualified immunity in action brought by former police officer against authority and officials, following officer's suspension and termination due to his alleged imminent arrest, since reasonable persons in officials' position would not have known that pre-suspension notice was required under Due Process Clause. Solomon v. Philadelphia Housing Authority, C.A.3 (Pa.) 2005, 143 Fed.Appx. 447, 2005 WL 1805616, Unreported. Civil Rights 1376(10)

4017. Government officials, objective reasonableness requirement

Department of motor vehicles investigator was entitled to qualified immunity to claim under § 1983 alleging

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malicious prosecution, since undisputed evidence demonstrated that investigator told prosecutor in timely fashion of information establishing plaintiff's innocence, and consequently, it was objectively reasonable for investigator to believe that his conduct did not violate any of plaintiff's clearly established rights. Kinzer v. Jackson, C.A.2 (N.Y.) 2003, 316 F.3d 139. Civil Rights 1376(3)

Chief engineer of California DSOD (Division of Safety of Dams) was entitled to qualified immunity from civil rights lawsuit filed by owners of homes near lake, and of dam and land beneath lake, arising out of breach of dam because reasonable dam safety engineering official, similarly situated, could have believed that breaching dam was lawful where engineer was responsible for safety of people downstream and was confronted with earthen dam, extensive portion of which had sloughed off in heavy rain, engineering officials advised him that dam should be breached, and there was likely possibility that there would not be another opportunity to breach dam if it filled up even partway. Sinaloa Lake Owners Ass'n v. City of Simi Valley, C.A.9 (Cal.) 1995, 70 F.3d 1095. Civil Rights 1376(3)

It was not objectively reasonable for member of town planning board to believe that he was not violating town councilwoman's equal protection right against selective enforcement when he swore out deposition indicating that town councilwoman's home had not received requisite building permit, and thus member was not entitled to qualified immunity from liability in councilwoman's §§ 1983 action, where deposition was not made until six years after alleged violations had occurred, four years after applicable statute of limitations had run, and less than two months before town building inspector's initiation of criminal proceedings against councilwoman, but shortly after councilwoman had publicly criticized inspector's performance, and deposition was facially incorrect. Burns v. Citarella, S.D.N.Y.2006, 443 F.Supp.2d 464. Civil Rights 1375

Mayor was not entitled to qualified immunity in §§ 1983 political discrimination action brought by lessors of vendor kiosk located in public market on city-owned property, alleging that lessors' political affiliation was motivating factor in mayor's refusal to permit enlargement of their kiosk; allegation, if true, established First Amendment violation, right not to be treated differently by government when it improved areas leased to individuals based only on lessor's political beliefs was clearly established, and similarly situated reasonable official would have understood that alleged action violated that right. Rodriguez Cruz v. Trujillo, D.Puerto Rico 2006, 443 F.Supp.2d 240. Civil Rights 1376(4)

Even if city restaurant inspector violated restaurant owner's due process rights when he temporarily closed restaurant based on exterminator's use of spray fogger to emit pesticide in restaurant and notified the media, inspector was entitled to qualified immunity; reasonable inspector would not have known that suspending a license after observing the improper application of a pesticide in a restaurant and notifying the media, was a constitutional violation. Camuglia v. City of Albuquerque, D.N.M.2005, 375 F.Supp.2d 1299, affirmed 448 F.3d 1214. Civil Rights 1376(4)

Director and enforcement officer of North Carolina Department of Revenue Controlled Substance Tax Division were entitled to qualified immunity in arrestee's §§ 1983 action arising out of their refusal, after charges against arrestee were dismissed, to refund controlled substance tax assessed against him when he was arrested while in possession of crack cocaine and cash; refund was not required by law, and thus reasonable people in director's and officer's positions would not have been aware that their failure to take action would violate arrestee's constitutional rights. Williams v. Starling, M.D.N.C.2005, 353 F.Supp.2d 607. Civil Rights 1376(3)

Former governor, former secretary of justice, and other officials of government of Puerto Rico were not entitled to qualified immunity in action brought by judgment creditor under § 1983, alleging that their conduct directed towards goal of evading payment of judgment against corporation which was allegedly commonwealth's alter ego violated substantive due process and equal protection; reasonable officials should have known that such conduct violated clearly established constitutional rights. Future Development of Puerto Rico v. Estado Libre Asociado De Puerto Rico, D.Puerto Rico 2003, 276 F.Supp.2d 228. Civil Rights 1376(3)

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42 U.S.C.A. § 1983

Reasonable official presiding over quasi-judicial body probably would not have known that action of stopping individual's speech during public comment period because speaker used names violated speaker's First Amendment rights, and thus chairperson of township zoning hearing board was entitled to qualified immunity from liability under § 1983 for violating of speaker's rights. Zapach v. Dismuke, E.D.Pa.2001, 134 F.Supp.2d 682. Civil Rights 1376(4)

Officer of the Mississippi Public Safety Commission (MPSC), in his individual capacity, was entitled to qualified immunity from §§ 1983 claim arising out of stop of commercial truck driver, even if Mississippi statute authorizing the inspection of motor vehicle by the MPSC did not limit the discretion of inspecting officers, driver failed to show that stop was not objectively reasonable in light of the legal rules clearly established at the time of the incident, since at least one Mississippi case had upheld the random stops of commercial truckers. Kelly v. Sheriff's Dept. of Sunflower County, Miss., C.A.5 (Miss.) 2004, 113 Fed.Appx. 582, 2004 WL 2341840, Unreported. Civil Rights 1376(3)

4018. Housing officials, objective reasonableness requirement

City building inspector was entitled to qualified immunity for any failure to provide predeprivation process in connection with emergency eviction of tenants, absent evidence that reasonable inspector could not have concluded that condition of structure posed immediate threat to safety of its occupants; examination of entire multiunit apartment building, rather than tenants' unit in isolation, was appropriate, and landlord's affidavit merely questioned inspector's judgment as to degree of seriousness of conditions. Flatford v. City of Monroe, C.A.6 (Mich.) 1994, 17 F.3d 162. Civil Rights 1376(4)

4019. Housing investigations, objective reasonableness requirement

Even if child abuse detective violated the Fair Housing Act by conducting an investigation of child abuse allegations at foster care facility, which allegedly resulted in the closing of the facility that house predominantly handicapped and minority children, the investigation was objectively reasonable, and thus detective was shielded from liability based on qualified immunity. Omni Behavioral Health v. Miller, C.A.8 (Neb.) 2002, 285 F.3d 646, rehearing and rehearing en banc denied.

4020. Licensing and permit officials, objective reasonableness requirement

Sheriff was not qualifiedly immune from § 1983 claim by bail bonding company arising from sheriff's suspension of company's right to act as surety on bail bonds; right to earn living by writing bail bonds was property interest protected by Texas Constitution since company owner's reputation and integrity were at stake, and no reasonable official could conclude that suspending bonding privilege without providing owner with opportunity to refute allegations of misconduct would not violate owner's procedural due process rights. Vera v. Tue, C.A.5 (Tex.) 1996, 73 F.3d 604. Civil Rights 1376(6)

Even after state courts had determined that landowners were entitled to zoning permits, it would not have been unreasonable for president of town zoning commission to give his opinion as to whether discretionary application for property swap should be granted, and he would enjoy qualified immunity with respect to denial of a property swap which landowners sought in order to meet property setback requirements. Natale v. Town of Ridgefield, C.A.2 (Conn.) 1991, 927 F.2d 101. Civil Rights 1376(4)

City council members did not enjoy qualified immunity from liability for constitutional injuries suffered by property owner after they arbitrarily and unreasonably withheld building permit for which owner qualified and bank then withdrew its loan commitment and foreclosed on property. Bateson v. Geisse, C.A.9 (Mont.) 1988, 857 F.2d 1300. Civil Rights 1376(4)

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State Department of Mental Health officials, who had adjudicated director of nursing at private mental health facility licensed by state guilty of misconduct with prior hearing, were qualifiedly immune from liability to nursing director on her due process claim; it was reasonable for state officials to conclude that state statute provided nursing director with adequate postdeprivation evidentiary hearing to adjudicate any challenge to her misconduct finding. Birkenholz v. Sluyter, C.A.8 (Mo.) 1988, 857 F.2d 1214, rehearing denied. Mental Health 20

Plainclothes Puerto Rico treasury agents were not entitled to qualified immunity from liability for violation of nightclub owner's Fourth Amendment rights occurring when they used force to attempt entry into nightclub to conduct warrantless licensing inspection; reasonable officer should have known that use of force would violate owner's rights. Alvarez Sepulveda v. Colon Matos, D.Puerto Rico 2003, 247 F.Supp.2d 76, reconsideration denied 306 F.Supp.2d 100. Civil Rights 1376(6)

It was not objectively reasonable for town building inspector to believe that he was not violating town councilwoman's equal protection right against selective enforcement when he issued appearance ticket and filed criminal information against her after she publicly criticized his performance, and thus inspector was not entitled to qualified immunity from liability in councilwoman's §§ 1983 action, where inspector did not enforce building code against councilwoman for six years, building code violations were governed by two year statute of limitations, councilwoman had required permits before criminal proceeding was commenced, and town maintained well-established policy of not prosecuting code violators. Burns v. Citarella, S.D.N.Y.2006, 443 F.Supp.2d 464.

City officials who suspended massage therapist's practitioner and massage establishment licenses due to alleged misconduct involving patient were not entitled to qualified immunity as to therapist's procedural due process claim stemming from failure to provide timely post-deprivation hearing; there was no evidence that officials had any governmental interest which necessitated 60-day hearing delay, and reasonable official would have known that delay was not justified without such interest. Jones v. City of Modesto, E.D.Cal.2005, 408 F.Supp.2d 935. Civil Rights 1376(4)

Oregon Bureau of Labor and Industries (BOLI) officials could reasonably believe that issuance, without notice and opportunity to object, of order summarily suspending farm and forest labor contractor's license did not violate procedural due process under the circumstances, and officials were thus entitled to qualified immunity from damages claims in § 1983 action; payroll records corroborated third party allegations that contractor had used untrained firefighters, presenting serious danger to general public and workers themselves, and while better course might have been to apply emergency order only to licensee's authority as forest contractor, law was not clearly established that failing to carve license into two categories would be unconstitutional. Lumbreras v. Roberts, D.Or.2004, 319 F.Supp.2d 1191, affirmed 156 Fed.Appx. 952, 2005 WL 3304174. Civil Rights 1376(3)

State liquor authority (SLA) official who denied restaurant owner's application to make alterations to restaurant, based on long-standing SLA order requiring disapproval of applications where revocation proceedings were pending, could reasonably have believed that his conduct did not violate owner's constitutional rights, even if he knew about prior plea agreement between SLA and owner under which assault charge against owner would be withdrawn in return for his guilty plea to noise charge, where the charges were pending at time of denial, had been brought by liquor licensing board, were scheduled to be heard by an administrative law judge, and were outside official's area of responsibility; thus, official's action, even if ministerial, did not subject him to liability in owner's § 1983 civil rights action. D'Agostino v. New York State Liquor Authority, W.D.N.Y.1996, 913 F.Supp. 757, affirmed 104 F.3d 351. Civil Rights 1376(3)

4021. Medical board officials, objective reasonableness requirement

Members of Michigan Board of Medicine, sued in their individual capacities under 42 U.S.C.A. § 1983, were not entitled to claim defense of absolute immunity, but could claim defense of qualified immunity, dependent upon

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appraisal of objective legal reasonableness of official's conduct, as measured by reference to clearly established law. Manion v. Michigan Bd. of Medicine, C.A.6 (Mich.) 1985, 765 F.2d 590. Civil Rights 1376(3)

4022. Mental hospital or institution officials, objective reasonableness requirement--Generally

Treating physician's interpretation of court order to permit involuntary administration of antipsychotic drugs to accused, who was found incompetent to stand trial but was ordered to be held in institution pending determination as to whether he could be restored to competency within reasonable period of time, was reasonable, and physician was thus entitled to qualified immunity in accused's resulting § 1983 action challenging forced medication. Kulas v. Valdez, C.A.9 (Ariz.) 1998, 159 F.3d 453, certiorari denied 120 S.Ct. 1187, 528 U.S. 1167, 145 L.Ed.2d 1093. Civil Rights 1376(1)

State mental health administrators acted in objectively reasonable manner based on what reasonably competent public official would know of law in deciding to eliminate special unit in mental hospital that was reserved for criminally insane and, thus, administrators had qualified immunity from § 1983 liability under creation of danger theory seeking recovery for death of activity therapist killed by patient transferred from special unit. Uhlrig v. Harder, C.A.10 (Kan.) 1995, 64 F.3d 567, certiorari denied 116 S.Ct. 924, 516 U.S. 1118, 133 L.Ed.2d 853. Civil Rights 1376(3); Civil Rights 1376(10)

Doctors and nurse were entitled to qualified immunity from plaintiff's due process and Fourth Amendment claims arising out of his involuntary commitment; it was objectively reasonable for doctors and nurse to believe that plaintiff was dangerous, in light of his hostile demeanor and extensive psychiatric history which included history of violent behavior, multiple instances of hospitalization for psychiatric care, and family history of mental illness. Glass v. Mayas, C.A.2 (N.Y.) 1993, 984 F.2d 55. Civil Rights 1376(3)

Program director of state psychiatric center, who allegedly ordered search of patient without a reasonable suspicion that he possessed weapons or contraband, was not entitled to qualified immunity from patient's § 1983 action; such conduct violated patient's clearly defined Fourth Amendment rights which a reasonable competent state official should have been aware. Aiken v. Nixon, N.D.N.Y.2002, 236 F.Supp.2d 211, affirmed 80 Fed.Appx. 146, 2003 WL 22595837. Civil Rights 1376(3)

Three supervisory officials of state psychiatric center were entitled to qualified immunity from § 1983 claims by patient who was strip searched, alleging that they failed to train center staff to follow lawful rules and procedures for searching patients other than center's own search policy; a reasonable official would not know that failure to train staff in policies and practices other than center's official policy violated clearly established law. Aiken v. Nixon, N.D.N.Y.2002, 236 F.Supp.2d 211, affirmed 80 Fed.Appx. 146, 2003 WL 22595837. Civil Rights 1376(3)

Even if actions of county official and subordinate social workers in causing the arrest of plaintiff, a released insanity acquitee, and recommitment to mental institution were not supported by probable cause, they were objectively reasonable under the circumstances, and therefore defendants were entitled to qualified immunity on § 1983 claim for false arrest; in light of plaintiff's past history of mental illness and violence, his noncompliance with his order of conditions, and the clinical evidence pointing to his decompensation, it was objectively reasonable for official and social workers to believe that plaintiff was dangerous. Vallen v. Connelly, S.D.N.Y.2004, 2004 WL 555698, Unreported. Civil Rights 1376(4)

4022A. ---- Restraints, mental hospital or institution officials, objective reasonableness requirement

State hospital employees did not act unreasonably in exerting some weight or pressure on arms, legs and back of involuntarily committed patient to restrain him, barring § 1983 excessive force claim brought by patient's family members against those employees after patient died; patient was large person, he had just struck another staff

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member in the face very hard, employees reacted to call for help from other staff members, after employees put patient to floor, they did not strike or attempt to hurt patient, and as soon as employees realized that patient was short of breath, they and others took action to revive and assist patient. Unzueta v. Steele, D.Kan.2003, 291 F.Supp.2d 1230. Civil Rights 1037

4023. ---- Medical care, mental hospital or institution officials, objective reasonableness requirement

Officials of state medical residency program were entitled to qualified immunity in resident's § 1983 action alleging that urinalysis drug testing required of resident after she slapped patient violated resident's Fourth Amendment rights; reasonable, similarly situated officials would not necessarily have believed that their conduct was unreasonable under the circumstances, and in violation of Fourth Amendment, upon balancing resident's privacy interests against interests of program. Pierce v. Smith, C.A.5 (Tex.) 1997, 117 F.3d 866. Civil Rights 1376(10)

Psychiatrist at state adolescent home who conducted initial evaluation of patient and later prescribed Vistaril (hydroxyzine pamoate) over telephone did not commit total departure from professional judgment, practice, or standards as would violate patient's due process rights, and was entitled to qualified immunity in federal civil rights action brought after patient attempted to hang himself three days after prescription; no other doctor or psychologist had suggested that patient be evaluated for antipsychotic medication at time of initial evaluation, and psychiatrist did not have entire record to review when making prescription and could rely on home staff to monitor patient. Dolihite v. Maughon By and Through Videon, C.A.11 (Ala.) 1996, 74 F.3d 1027, certiorari denied 117 S.Ct. 185, 519 U.S. 870, 136 L.Ed.2d 123. Civil Rights 1376(3); Constitutional Law 255(5); Mental Health 51.15

Reasonable actor in position of private psychiatric facility that participated in involuntary detention and treatment of arrestee pursuant to Indiana law could not have known what due process clause required with respect to forced administration of antipsychotic drugs to arrestee and, therefore, facility was entitled to qualified immunity from liability in arrestee's subsequent civil rights action. Sherman v. Four County Counseling Center, C.A.7 (Ind.) 1993, 987 F.2d 397. Civil Rights 1373

For purposes of objective reasonableness test for qualified immunity in patient's § 1983 action arising out of his suicide attempt while involuntarily committed to state mental health facility, mental health professionals, facility administrator, contractor which provided consultants, and state mental health officials demonstrated that they were acting within their discretionary authority; claims was based on alleged conditions at mental health facility and treatment decisions with respect to patient. Dolihite v. Videon, M.D.Ala.1994, 847 F.Supp. 918, affirmed in part, reversed in part 74 F.3d 1027, certiorari denied 117 S.Ct. 185, 519 U.S. 870, 136 L.Ed.2d 123. Civil Rights 1376(3)

4024. Parole officers, objective reasonableness requirement

No reasonable parole officer could believe that entering and remaining in bathroom stall while opposite sex parolee collected urine sample was lawful, for purposes of qualified immunity defense in § 1983 civil rights suit. Sepulveda v. Ramirez, C.A.9 (Cal.) 1992, 967 F.2d 1413, certiorari denied 114 S.Ct. 342, 510 U.S. 931, 126 L.Ed.2d 307, on remand. Civil Rights 1376(7)

A parole officer's reliance on a facially valid, although incorrect, parole release form was objectively reasonable in light of the law at the time and thus the officer was entitled to qualified immunity from a federal civil rights claim arising from the erroneous extension of a parole supervision term. Moiser v. Blum, C.A.8 (Mo.) 1989, 875 F.2d 202. Civil Rights 1376(7)

State parole officials reasonably applied new regulation governing the calculation of parole revokee's sentence in

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light of existing law, and thus, had qualified immunity, in their individual capacities, from § 1983 suit by former parole revokee for alleged violation of his Eighth and Fourteenth Amendment rights when they calculated his sentence, even though a state court subsequently found the application of the new regulation to parole revokee to be a violation of the ex post facto clause, where, at the time of the application of the new regulation to parole revokee, no state court had decided whether it could be applied to individuals who committed their underlying crime prior to its adoption and closely analogous state court case found no ex post facto violation. Young v. McKune, D.Kan.2003, 280 F.Supp.2d 1250, affirmed 85 Fed.Appx. 723, 2004 WL 95875. Civil Rights 1376(7)

State corrections officials and parole commissioners were qualifiedly immune from monetary damages in connection with ex post facto violation resulting from Division of Correction Directive (DCD) removing inmates serving life sentences to higher security classification, combined with Parole Commission's refusal to recommend parole unless inmates were on active work release, which required lower security classification, as a reasonable official would not have seen combination of actions as violation of inmates' clearly established ex post facto rights; only combination of different defendants' conduct violated ex post facto clause, and violation was found to exist only after fairly complex analysis of that less than commonly invoked constitutional provision. Knox v. Lanham, D.Md.1995, 895 F.Supp. 750, affirmed 76 F.3d 377. Civil Rights 1376(7)

Issue of whether it would be clear to reasonable parole officer that retroactive application of statute to avert inmate's unconditional release would violate inmate's due process rights involved fact question that could not be resolved on motion to dismiss on qualified immunity grounds inmate's § 1983 suit seeking damages for improper denial of unconditional release. Bollinger v. Oregon State Bd. of Parole & Post-Prison Supervision, C.A.9 (Or.) 2003, 86 Fed.Appx. 259, 2003 WL 23019018, Unreported, on remand 2005 WL 563742. Federal Civil Procedure 1831

4025. Police officers, objective reasonableness requirement--Generally

Under doctrine of qualified immunity, police officers are shielded from suit for damages if reasonable officer could have believed action taken was lawful in light of clearly established law and information officers possessed. Estate of Starks v. Enyart, C.A.7 (Ind.) 1993, 5 F.3d 230. Civil Rights 1376(6)

In determining whether police officer is shielded from liability for civil damages because officer's conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known, question is not whether law was settled when viewed abstractly but whether, measured by objective standard, reasonable officer would know that his or her conduct is illegal; certainty of the law must be measured against objectively reasonable view of the facts facing officer. White v. Walker, C.A.5 (Miss.) 1991, 950 F.2d 972. Civil Rights 1376(6)

Even if a police officer's conduct actually violates a citizen's constitutional rights, officer is entitled to qualified immunity in § 1983 action if conduct was objectively reasonable. Pfannstiel v. City of Marion, C.A.5 (Tex.) 1990, 918 F.2d 1178. Civil Rights 1376(6)

Officer is entitled to qualified immunity when his or her conduct is objectively reasonable based on information available at time of and in light of clearly established law. Torres Ramirez v. Bermudez Garcia, C.A.1 (Puerto Rico) 1990, 898 F.2d 224. Civil Rights 1376(2)

Police officer was entitled to qualified immunity from civil rights action under §§ 1983, alleging Fourth Amendment violation based on officer's actions in accidentally shooting motor vehicle passenger in the head while trying to extract passenger from vehicle, where no constitutional violation occurred, given that officer's actions were not objectively unreasonable. Tallman v. Elizabeth Police Dept., W.D.Ky.2004, 344 F.Supp.2d 992, affirmed 167 Fed.Appx. 459, 2006 WL 166610. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Qualified immunity inquiry is filtered through lens of officer's perceptions at time of incident, and using officer's perceptions limits judicial second-guessing of reasonableness of officer's actions with benefit of 20/20 hindsight which, almost inevitably, is better than limited opportunity afforded by fast-moving events which confront officer; use of this perspective limits need for decision makers to sort through conflicting versions of actual facts and allows them to focus instead on what officer reasonably perceived. Smith v. Tolley, E.D.Va.1997, 960 F.Supp. 977 . Civil Rights 1376(2)

For purposes of claim of qualified immunity asserted by police officer in connection with alleged violation of due process, court must look to facts with which officer acted and question whether unlawfulness of officer's act was apparent; unless unlawfulness of officer's act was so apparent that no reasonable officer in his or her position could have believed in lawfulness of act at time, qualified immunity doctrine protects officer from suit. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1376(6)

No objectively reasonable police officer informed by manual from the state's attorney that telephone call between a lawyer and a client cannot be monitored regardless of whether police actually listen to the recording of the call would believe that recording of conversations between arrestees and their attorneys was lawful, and officials thus could not assert qualified immunity to claim based on recording. In re State Police Litigation, D.Conn.1995, 888 F.Supp. 1235, appeal dismissed 88 F.3d 111. Civil Rights 1376(6)

Reasonable officer in deputy sheriff's position on April 23, 1992 would or should have known that forcing motorist to drive while intoxicated constituted unjustifiable intrusion on motorist's interest in personal security and, thus, deputy was not entitled to official immunity in motorist's § 1983 action alleging violation of his Fourteenth Amendment liberty interests. Russell v. Steck, N.D.Ohio 1994, 851 F.Supp. 859. Civil Rights 1376(6)

Evaluation of reasonableness of law enforcement officers' actions for purposes of qualified immunity defense in § 1983 action must be based on facts known to them at time of actions. Smith v. Walsh, W.D.Okla.1993, 833 F.Supp. 844, affirmed 48 F.3d 1233. Civil Rights 1376(6)

Police officer is entitled to qualified immunity from citizen's civil rights action if officer can establish as matter of law that reasonable officer, confronted with same circumstances, could have believed that actions, even if mistaken, were reasonable. Fittanto v. Klein, N.D.Ill.1992, 788 F.Supp. 1451. Civil Rights 1376(6)

4026. ---- First Amendment generally, police officers, objective reasonableness requirement

Sheriff's decision to order license checkpoints on either side of road leading to farm where "rock" concert was to be held was in nature of impermissible "prior restraint," which reasonable sheriff could not have believed was proper under the First Amendment, and which would prevent sheriff from successfully asserting qualified immunity defense to resulting civil rights claims, to the extent that checkpoints were set up to prevent concert from taking place, whether because sheriff did not want to receive complaints about another concert, because farm owner had not supported sheriff in election, or because sheriff wanted to elicit bribe. Collins v. Ainsworth, C.A.5 (Miss.) 2004, 382 F.3d 529, on subsequent appeal 2005 WL 3502174, certiorari denied 126 S.Ct. 1661, 164 L.Ed.2d 397. Civil Rights 1376(6)

Arrestee's disputed allegations, in action against police officer for civil rights violation, false arrest, use of excessive force, and violation of First Amendment rights, were sufficiently supported by record to overcome officer's qualified immunity defense that a reasonable officer could believe arrest was lawful; testimony of arrestee and his companion lent sufficient support that arrestee was not guilty of any disorderly conduct and that he was merely "walking around the country with his cross and preaching the Gospel of Jesus." Gainor v. Rogers, C.A.8 (Minn.) 1992, 973 F.2d 1379, rehearing denied. Civil Rights 1423

Police officers who assisted in evicting of citizen from public meeting of board of county commissioners enjoyed

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qualified immunity from liability in civil rights action growing out of citizen's claim that his First Amendment rights were violated when he was ruled out of order while addressing public meeting and then evicted. Collinson v. Gott, C.A.4 (Md.) 1990, 895 F.2d 994. Civil Rights 1376(6)

Arrestee's complaint that he was punished by arresting officer for refusing to give his name and address to the officer after the officer ordered him and his companion off of a frozen, fenced-in pond failed to allege facts to show the officer could have reasonably believed he was clearly acting unlawfully, and thus failed to show that arrestee's First Amendment right was violated because of his silence, and the officer was therefore entitled to qualified immunity against arrestee's § 1983 claim for a First Amendment violation. Kopec v. Tate, E.D.Pa.2002, 230 F.Supp.2d 619, reversed and remanded 361 F.3d 772, certiorari denied 125 S.Ct. 453, 543 U.S. 956, 160 L.Ed.2d 317. Civil Rights 1376(6)

4027. ---- Freedom of press, police officers, objective reasonableness requirement

Police officer was not entitled to qualified immunity from liability for violating news photographer's First Amendment rights at accident scene; officer was or should have been aware that his authority was limited to preventing photographer from interfering with police activity. Connell v. Town of Hudson, D.N.H.1990, 733 F.Supp. 465. Civil Rights 1376(6)

4028. ---- Freedom of religion, police officers, objective reasonableness requirement

Constitutional right in passing out religious leaflets does not constitute grounds of reasonable suspicion of solicitation for purposes of police officer's qualified immunity from suit in action alleging illegal arrest under Fourth Amendment. Gainor v. Rogers, C.A.8 (Minn.) 1992, 973 F.2d 1379, rehearing denied. Civil Rights 1376(6)

4029. ---- Freedom of speech, police officers, objective reasonableness requirement

State university campus police officer was qualifiedly immune from evangelist's claim that officer violated his speech rights by arresting him for disorderly conduct during confrontation with students, in that evangelist's remarks to lesbian were abusive, evangelist had been convicted before for similar conduct, scene to which officer was summoned was "near riot situation," and officer had limited information. Gilles v. Davis, C.A.3 (Pa.) 2005, 427 F.3d 197. Civil Rights 1376(6)

Reasonable officer could not have believed that, under federal and California law, violent protests that occurred in wake of verdict in highly publicized criminal trial in another city justified ban on all public demonstrations the following evening, and thus city police chief was not entitled to qualified immunity for his actions of ordering arrests of persons who had assembled to protest verdict; violence and disorder that had occurred the previous day had been limited, most of the city had been free from any form of unlawful conduct, and there had been other large demonstrations that had been completely peaceful. Collins v. Jordan, C.A.9 (Cal.) 1996, 110 F.3d 1363. Civil Rights 1376(6)

Antiabortion protestors did not have clearly established right to picket in route encompassing residence of administrator of medical facility which provided abortion services and two to three homes on either side of it, and thus arrest of protestors by officers was objectively reasonable in light of legal rules in existence at time action occurred and officers were entitled to qualified immunity from protestors' § 1983 action. Veneklase v. City of Fargo, C.A.8 (N.D.) 1996, 78 F.3d 1264, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 178, 519 U.S. 867, 136 L.Ed.2d 118. Civil Rights 1376(6)

Police officers were not qualifiedly immune from protest organization's claim that officers violated their free

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speech rights by forcing them to march on sidewalk after granting them permit to march in street, inasmuch as no reasonable officer could have believed that it was lawful to discriminate against marchers based on content of their speech or to deprive organization of its chosen public forum for reasons not related to vehicular or pedestrian traffic safety. Seattle Affiliate of October 22nd Coalition to Stop Police Brutality, Repression and Criminalization of a Generation v. City of Seattle, W.D.Wash.2006, 430 F.Supp.2d 1185. Civil Rights 1376(6)

City police chief and director of public safety were not entitled to qualified immunity on former police officer's §§ 1983 claim that chief and director increased the discipline officer received for a violation of department policy, and thereby effectively forced his retirement, in retaliation for his participation in an internal investigation of alleged criminal wrongdoing within police department, since a recent Court of Appeals opinion had made it clear to a reasonable official in chief's or director's position that increasing officer's punishment in retaliation for his participation in investigation would violate officer's First Amendment rights. Reilly v. City of Atlantic City, D.N.J.2006, 427 F.Supp.2d 507. Civil Rights 1376(10)

Police officers were entitled to protection of qualified immunity as to First Amendment free speech claim of person who was arrested for painting words on side of his automobile, which stated that he was "a fucking suicide bomber communist terrorist!" with "W.O.M.D. on Board," since reasonable officer could have concluded that language used was not protected by First Amendment; state of case law did not provide clear answer as to whether language on automobile was true threat or political commentary. Fogel v. Grass Valley Police Dept., E.D.Cal.2006, 415 F.Supp.2d 1084. Civil Rights 1376(6)

Reasonable police chief and town council members would not have known that terminating police officer because of his complaints to chief, his association with neighborhood watch group, or his political discussion would be violation of his First Amendment free speech rights, and thus chief and council members were entitled to qualified immunity from liability in officer's §§ 1983 action alleging retaliatory discharge under First Amendment. Conley v. Town of Elkton, W.D.Va.2005, 381 F.Supp.2d 514. Civil Rights 1376(10)

Reasonable police officer would have known that confiscating abortion protesters' signs depicting aborted fetuses at Halloween parade was not most narrowly tailored manner of handling hostilities that occurred between protesters and crowd, and thus officers were not entitled to qualified immunity from liability in protesters' §§ 1983 action alleging violations of their First Amendment rights of free speech, freedom of assembly, and free exercise of religion, even though protesters did not have permit to parade, where, apart from a few hecklers, there were no altercations between crowd and protesters as they walked parade route prior to being ushered to sidewalk by officers, and officers permitted protesters to parade after confiscating signs. Grove v. City of York, Penn., M.D.Pa.2004, 342 F.Supp.2d 291. Civil Rights 1376(6)

Police chief was entitled to qualified immunity from damages, in police officer's civil rights lawsuit under free speech clause of First Amendment, although chief violated officer's free speech rights; reasonable police chief could have objectively believed, based upon case law, that his conduct was constitutional because cases did not speak directly to precise situation at issue. Bates v. Mackay, D.Mass.2004, 321 F.Supp.2d 173. Civil Rights 1376(10)

Town resident's assertion of general propositions of First Amendment jurisprudence with respect to use of public forum were insufficient to overcome town marshall's qualified immunity defense in resident's civil rights action claiming that his First Amendment rights were violated after he allegedly engaged in nonverbal expression by removing ribbon from wall in town hall. Kirby v. Largo, D.Colo.1992, 790 F.Supp. 239. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity in civil rights action arising when they allegedly arrested arrestee for engaging in constitutionally protected speech. Elbrader v. Blevins, D.Kan.1991, 757 F.Supp. 1174. Civil Rights 1376(6)

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Police officer was not entitled to qualified immunity in civil rights action, where reasonable police officer in 1986 would have known that he would be violating gas station proprietor's free speech rights by appearing in uniform at proprietor's place of business, requesting and having private discussion behind closed door in proprietor's office, objecting to comments that proprietor had been making to media about local police, and telling proprietor to "quit talking to the media" and to "keep his mouth shut." Bennett v. Village of Oak Park, N.D.Ill.1990, 748 F.Supp. 1329. Civil Rights 1376(6)

4030. ---- State and local laws contrary to claimed right, police officers, objective reasonableness requirement

Police officers were entitled to qualified immunity from traveling ministers' § 1983 claims, alleging that first minister's arrest for disorderly conduct, while preaching on public sidewalk, violated both ministers' First Amendment rights; though ministers were engaging in protected speech in traditional public forum at time of arrest, officers had arguable probable cause to arrest minister, his arrest was content-neutral, and Alabama disorderly conduct statute was presumptively valid. Redd v. City of Enterprise, C.A.11 (Ala.) 1998, 140 F.3d 1378 . Civil Rights 1376(6)

Police officer that arrested demonstrator pursuant to city ordinance was entitled to qualified immunity in demonstrator's § 1983 action alleging that ordinance was unconstitutional restriction on free speech; ordinance was duly enacted by city council and was not so obviously unconstitutional as to require reasonable officer to refuse to enforce it. Grossman v. City of Portland, C.A.9 (Or.) 1994, 33 F.3d 1200. Civil Rights 1376(6)

Neither police officers nor sheriff had reason to believe, for purposes of qualified immunity from § 1983 action, that officers' conduct of monitoring wife's court-approved removal of various household items from marital home where husband lived, in connection with divorce proceeding, could have violated the husband's rights, although wife tape recorded the process of removing items and allegedly recorded unrelated information that was relevant to divorce proceedings; presence of officers during spouse's collection of personal property was authorized by statute. Todd v. City of Natchitoches, Louisiana, W.D.La.2002, 238 F.Supp.2d 793, appeal dismissed 72 Fed.Appx. 969, 2003 WL 21997581. Civil Rights 1376(6)

Police department officials were entitled to qualified immunity on § 1983 civil rights claim by police federation fundraiser alleging that prosecution under Colorado Fraud in Effecting Sales Act and Charitable Solicitation Act violated fundraiser's freedom of speech; numerous citizen reports of misrepresentation by fundraiser established reasonable belief that probable cause existed for prosecution. Gehl Group v. Koby, D.Colo.1993, 838 F.Supp. 1409, affirmed 63 F.3d 1528. Civil Rights 1376(6)

4031. ---- Enforcement of court orders, police officers, objective reasonableness requirement

Police officers were entitled to qualified immunity on wife's due process claim based on their failure to enforce domestic abuse restraining order; a reasonable officer would not have known that a restraining order, coupled with Colorado statute mandating its enforcement, would create a constitutionally protected property interest. Gonzales v. City of Castle Rock, C.A.10 (Colo.) 2004, 366 F.3d 1093, certiorari granted 125 S.Ct. 417, 543 U.S. 955, 160 L.Ed.2d 316, miscellaneous rulings 125 S.Ct. 945, 543 U.S. 1047, 160 L.Ed.2d 767, miscellaneous rulings 125 S.Ct. 1413, 543 U.S. 1185, 161 L.Ed.2d 187, reversed 125 S.Ct. 2796, 162 L.Ed.2d 658, on remand 144 Fed.Appx. 746, 2005 WL 2438875. Civil Rights 1376(6)

State troopers could not have objectively viewed family court's order, temporarily restraining custodial mother from residing with minor child's grandfather, as blanket authorization for troopers to enter grandfather's home to deliver custody of minor child to father, so as to provide qualified immunity to troopers. Hurlman v. Rice, C.A.2 (N.Y.) 1991, 927 F.2d 74. Civil Rights 1376(6)

Deputy sheriff's decision to hand over keys to debtor's premises to creditor was not unreasonable, and thus deputy

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was entitled to qualified immunity from liability under § 1983 for violation of debtor's Fourth Amendment rights, even though it was ultimately determined that creditor did not have right to possession of premises after completing inventory, where deputy initially permitted creditor to take possession of premises and to change locks pursuant to lawful replevin order. Audio Odyssey, Ltd. v. Brenton First Nat. Bank, S.D.Iowa 2003, 284 F.Supp.2d 1159. Civil Rights 1376(6)

Reasonable police officer could not conclude he had probable cause, under Hawai'i law, to arrest for disorderly conduct involving excessive noise proprietor of judgment debtor, who was protesting manner in which judgment was being executed on his property, precluding claim of qualified immunity from civil liability for arrest under § 1983; undisputed evidence indicated that while proprietor was initially shouting, he heeded officer's admonition that he quiet down. Pourny v. Maui Police Dept., County of Maui, D.Hawai'i 2000, 127 F.Supp.2d 1129. Civil Rights 1376(6)

Police officers reasonably believed that they could arrest abortion protestor for violating temporary restraining order (TRO) against yelling, shouting, or screaming that substantially interferes with services at abortion clinic, and, thus, officers were entitled to qualified immunity, even if enforcement of TRO was later found to be violation of right to free speech and peaceable assembly in public forum; officers could have assumed that TRO was facially valid and superseded any inconsistent training regarding First Amendment, applicability of otherwise clearly established law to circumstances was not evident, officers had right to resolve uncertainty in favor of arrest, and officers could reasonably find that protestor's speech, delivered while many fellow demonstrators were being arrested, substantially interfered with clinic operations. Habiger v. City of Fargo, D.N.D.1995, 905 F.Supp. 709, affirmed 80 F.3d 289, certiorari denied 117 S.Ct. 518, 519 U.S. 1011, 136 L.Ed.2d 407. Civil Rights 1376(6)

It was not objectively reasonable for police officers to refuse to go into basement of marital home to investigate as to whether husband was there upon wife's report of husband's violation of protective order, and thus, officers were not entitled to qualified immunity in § 1983 action. Eagleston v. County of Suffolk, E.D.N.Y.1992, 790 F.Supp. 416, affirmed 41 F.3d 865, certiorari denied 116 S.Ct. 53, 516 U.S. 808, 133 L.Ed.2d 18. Civil Rights 1376(6)

Deputy sheriffs were not entitled to qualified immunity from § 1983 liability with regard to their warrantless arrest of election poll watcher, even though deputies alleged they were dispatched to polling place pursuant to oral order given by judge, and allegedly received two orders from sheriff's department to remove poll watcher; judge allegedly ordered deputies to polls to "ascertain whether there was disturbance," not strictly to remove watcher, only individuals deputies spoke to were a deputy who had not intervened and election judge who had definite interest and possible bias in seeing watcher removed, thus any later order received from judge would have been based on the deputies' inadequate assessment of situation at polls. Shoop v. Dauphin County, M.D.Pa.1991, 766 F.Supp. 1327, affirmed 945 F.2d 396, certiorari denied 112 S.Ct. 1178, 502 U.S. 1097, 117 L.Ed.2d 422. Civil Rights 1376(6)

Actions of deputy sheriffs who executed temporary order of protection against ex-husband were objectively reasonable, and thus deputies were entitled to qualified immunity from §§ 1983 liability. Rosen v. County of Suffolk (New York), C.A.2 (N.Y.) 2005, 121 Fed.Appx. 885, 2005 WL 147743, Unreported. Civil Rights 1376(6)

4032. ---- Sex discrimination, police officers, objective reasonableness requirement

Police officials' decision to detain overnight disorderly conduct arrestees, who had disobeyed police orders to remain on sidewalk during large march/demonstration, rather than issuing desk appearance warrants (DATs) authorized under state law, was not objectively unreasonable under Fourth Amendment, precluding recovery in arrestees' §§1983 action against city and police; DATs were discretionary rather than required, length of detentions was well within range of flexibility allowed to states, and arrestees were all members of difficult-to-control crowd

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that demanded substantial police manpower, while additional paperwork required for DATs would have drawn officers off streets. Bryant v. City of New York, C.A.2 (N.Y.) 2005, 404 F.3d 128. Arrest 70(1)

Police officer loses qualified immunity to claim that facially neutral policy has been executed in discriminatory manner only if reasonable police officer would know that policy has discriminatory impact on women and that bias against women was motivating factor behind adoption of policy, and no important public interest is served by adoption of policy. Hynson By and Through Hynson v. City of Chester Legal Dept., C.A.3 (Pa.) 1988, 864 F.2d 1026, on remand 731 F.Supp. 1236. Civil Rights 1376(6)

4033. ---- Confiscation of property, police officers, objective reasonableness requirement

To be entitled to qualified immunity on a claim of unreasonable seizure, defendant police officers needed only to have possessed arguable probable cause to seize plaintiff, a fellow officer, not actual probable cause, and "arguable probable cause" exists when a reasonable police officer in the same circumstances and possessing the same knowledge as the officer in question could have reasonably believed that probable cause existed in the light of well established law. Cerrone v. Brown, C.A.2 (N.Y.) 2001, 246 F.3d 194, on remand 2001 WL 1217186. Civil Rights 1376(6)

State police officer's transfer of money discovered during search of arrestee to federal drug agency was reasonable, for purpose of officer's qualified immunity claim in resulting § 1983 action, even if drug dog did not "alert" to money, where second officer informed first officer that dog had alerted to money. Conrod v. Davis, C.A.8 (Mo.) 1997, 120 F.3d 92, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1531, 523 U.S. 1081, 140 L.Ed.2d 681. Civil Rights 1376(6)

Police officer's brief questioning of employee of debtor following self-help repossession by creditor under Michigan self-help statute was not objectively unreasonable and did not violate Fourth Amendment rights of employee so as to give rise to § 1983 liability, where officer acted under color of state authority, had legitimate reason for questioning employee, i.e., to gather information for his official report on repossession, and detention consumed, at most, only five minutes and was not otherwise unduly intrusive. Haverstick Enterprises, Inc. v. Financial Federal Credit, Inc., C.A.6 (Mich.) 1994, 32 F.3d 989. Arrest 63.5(5)

Patrol officer had arguably reasonable suspicion to search car after being informed of occupants' offer of approximately $2,500 in cash not to report accident to police and after finding $2,600 in cash on one passenger, and, thus, patrol officer was entitled to qualified immunity from liability for seizing money found in car; no one claimed the cash, and it was accompanied by handwritten receipts strikingly similar to receipt accompanying cash found in passenger's pocket. Lindsey v. Storey, C.A.11 (Ga.) 1991, 936 F.2d 554. Civil Rights 1376(6)

Search warrant, which clearly described with particularity place to be searched and objects to be seized, was not required to also articulate foundation for finding of probable cause; therefore, police officer's reliance upon warrant could not have been unreasonable and did not preclude him from asserting qualified immunity from liability in civil rights action brought by owners of property seized. Mills v. Graves, C.A.9 (Wash.) 1991, 930 F.2d 729, rehearing denied. Civil Rights 1376(6); Searches And Seizures 123.1

Reasonable law enforcement officer in position of deputy sheriff could have believed that seizure of truck was lawful, and thus deputy sheriff had immunity in civil rights action brought by truck owner, even though deputy did not have probable cause to seize truck; when deciding to seize truck, officers knew that federal inspection sticker was missing, that rivets securing plate bearing vehicle identification number appeared to have been tampered with, no vehicle with truck's license plates or vehicle identification number had been reported stolen, and vehicle identification number seemed not to be stamped in customary location on engine. Bigford v. Taylor, C.A.5 (Tex.) 1990, 896 F.2d 972, rehearing denied 901 F.2d 1110. Civil Rights 1376(6)

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A reasonable police chief who knew that there was a parking permit affixed to window of vehicle indicating that vehicle was legally parked could not have reasonably believed that he was authorized to allow his officers to tow vehicle as abandoned within meaning of New York Vehicle and Traffic Law, and thus, chief was not entitled to qualified immunity on vehicle owner's §§ 1983 claim alleging that chief deprived vehicle owner of her property without due process of law by directing officers to tow vehicle if it was not moved from its parking place, despite presence of parking permit affixed to window of vehicle indicating that it was legally parked. Calderon v. Burton, S.D.N.Y.2006, 457 F.Supp.2d 480. Civil Rights 1376(6)

Police officer who impounded motorcycle did not violate motorcycle purchaser's clearly established Fourth Amendment rights, as officer could reasonably have believed that impounding motorcycle was lawful under circumstances, entitling officer to qualified immunity from purchaser's § 1983 action; although motorcycle seller told him that motorcycle was subject of private dispute, officer knew that seller made report that vehicle was stolen, and purchaser refused to give officer any proof that he made payments toward the motorcycle or had ownership title to the motorcycle, and purchaser refused to give officer any information about location of the motorcycle. Pickens v. Miller, N.D.Cal.2002, 216 F.Supp.2d 1011. Civil Rights 1376(6)

Police lieutenant was shielded by qualified immunity from civil rights liability for his alleged participation in investigation and in raid, seizure, and destruction of fireworks; it was objectively reasonable for the lieutenant to believe that his actions, taken in reliance on information and instructions he received from inspector in command of operation, and from assistant district attorney and officer, did not violate fireworks owner's constitutional rights. East Coast Novelty Co., Inc. v. City of New York, S.D.N.Y.1992, 809 F.Supp. 285. Civil Rights 1376(6)

Police officers' suspicion that automobile owner's son was using automobile to facilitate sale of cocaine was objectively reasonable and, therefore, police officers were qualifiedly immune from liability in civil rights action arising out of seizure of automobile under forfeiture provision of Kansas Controlled Substances Act. Ulmer v. City of Overland Park, Kan., D.Kan.1992, 784 F.Supp. 807. Civil Rights 1376(6)

Treasury Department agents and police officers who were involved in dispute with travelers over inspection for possible tax violations of large, unmarked boxes travelers were attempting to bring into Puerto Rico were entitled to qualified immunity in travelers' subsequent action under § 1983 alleging violation of Fourth Amendment; conduct of agents and officers and seizure of boxes were reasonable. Salas Garcia v. Cesar Perez, D.Puerto Rico 1991, 777 F.Supp. 137. Civil Rights 1376(6)

As required to determine whether police chief was entitled to qualified immunity in §§ 1983 action by landowners alleging the police chief caused their personal property to be seized, in violation of the Fourth Amendment, from lot adjacent to lot foreclosed upon, view of facts favorable to the landowners showed that the police chief could not have believed that his actions in directing continued removal of property from the adjacent lot were reasonable, and thus, he was not entitled to qualified immunity, where the two lots were uniformly sized, sat on a grid where every other lot was also of equal size, and were divided by a fence and survey stakes. Hansen v. Cannon, C.A.7 (Ill.) 2004, 122 Fed.Appx. 265, 2004 WL 2829016, Unreported. Civil Rights 1376(6)

4034. ---- Detention, police officers, objective reasonableness requirement

Detention of suspects whose vehicle had been stopped in patrol car for period of almost one hour until eyewitness could be brought to scene to identify suspects was reasonable, and officers were entitled to qualified immunity in federal civil rights action brought by suspects, where suspects drove vehicle of same color and body type described by witnesses as having been used by perpetrators and wore some clothing matching description of perpetrators, vehicle was rented and was not leased in either suspect's name, woman's purse was found in vehicle, and suspect told police he was on probation. Alexander v. County of Los Angeles, C.A.9 (Cal.) 1995, 64 F.3d 1315. Arrest 63.5(8); Civil Rights 1376(6)

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Police officer had objectively reasonable belief in existence of probable cause to arrest detainee for misdemeanor larceny under North Carolina law and, thus, officer was protected by qualified immunity from liability to detainee respecting § 1983 unreasonable detention claim, where officer saw woman drop money, detainee pick it up, and detainee keep money, it appeared to officer that detainee knew identity of owner of money when he took it, officer observed detainee leave bus station where incident took place, which could be construed as flight, and officer confirmed with woman that money had not been returned before officer gave chase. Rowland v. Perry, C.A.4 (N.C.) 1994, 41 F.3d 167. Civil Rights 1376(6)

At time police allegedly injured arrestee by handcuffing her behind-her-back in mid-2000, it was clearly established, for purposes of qualified immunity, that when a non-threatening, non-flight-risk, cooperating arrestee for a minor crime tells the police she suffers from an injury that would be exacerbated by handcuffing her arms behind her back, the arrestee has a right to be handcuffed with her arms in front of her even if the injury is not visible. Aceto v. Kachajian, D.Mass.2003, 240 F.Supp.2d 121. Civil Rights 1376(6)

Assuming that city's operations manager for public works and city's senior utility worker violated a clearly established Fourth Amendment right of vehicle passenger by preventing vehicle from leaving city park until driver and passengers picked up trash from picnic area, reasonable officer could have believed that the alleged seizure did not violate passenger's Fourth Amendment rights, and thus, operations manager and utility worker were entitled to qualified immunity from passenger's §§ 1983 claim. Freece v. Clackamas County, D.Or.2006, 442 F.Supp.2d 1080 . Civil Rights 1376(4)

Corrections officials to whom an arrestee protested that he had been misidentified were not entitled to qualified immunity on the arrestee's claim of a due process violation in his 37-day detention; arrestee claimed that his constantly reasserted claims of misidentification were never investigated, even though his date of birth, physical appearance and Social Security number differed from that of the wanted suspect, and even though the officials had ready access to both parties' fingerprints, such that it would have been easy to confirm that he was not the man named in a warrant. Atkins v. City of Chicago, N.D.Ill.2006, 441 F.Supp.2d 921. Civil Rights 1376(7)

Reasonable officer reasonably could have believed that deputy sheriff's trainees being detained in connection with non-criminal investigation by sheriff's department into allegations of trainee misconduct had remained at school to avoid adverse employment action, rather than because they felt they were not free to leave, and so could have reasonably believed that no seizure under Fourth Amendment had taken place, or that seizure, if it had occurred, was not unreasonable in violation of Fourth Amendment, and therefore department employees were entitled to qualified immunity from liability on trainees' §§ 1983 claims alleging unlawful seizures. Myers v. Baca, C.D.Cal.2004, 325 F.Supp.2d 1095. Civil Rights 1376(10)

Police detective and captain who took fellow police officer into custody for psychiatric evaluation were protected from liability in § 1983 action under doctrine of qualified immunity, given lack of clearly established authority to put them on notice of what conduct would have violated rights in mental health seizures context; given report of officer's wife that he was threatening suicide and had pointed his service revolver both at himself and his wife during three previous days, and decline in his work performance, reasonable detective and captain would have concluded that involuntarily detaining officer was not only reasonable, but prudent. Ransom v. Baltimore County, D.Md.2000, 111 F.Supp.2d 704. Civil Rights 1376(6); Civil Rights 1376(10)

Even if officers' detention of naked occupant during drug search of house did violate her rights in some manner, individual officers would be entitled to qualified immunity, as it was objectively reasonable for officers to believe that reasonably prudent officer would have acted as they did, where occupant was not made to strip but, rather, was in shower when officers arrived and was simply made to remain where she was until other occupant had been removed and quick security sweep had been performed. Crosby v. Hare, W.D.N.Y.1996, 932 F.Supp. 490. Civil Rights 1376(6)

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Belief by police officers who continued detention of minors who had been seized and taken into police station after their companion had been observed entering police car that probable cause existed for detention was reasonable, and officers were entitled to qualified immunity in federal civil rights action based on detention even though probable cause did not exist for initial seizure, where mechanic at station who had observed entry into police car did not affirmatively tell officers that minors had done nothing wrong, and officers could reasonably have believed that minors were involved. Irvin v. Kaczmaryn, N.D.Ill.1996, 913 F.Supp. 1190. Civil Rights 1376(6)

It was objectively reasonable for police officer to believe he was not violating any clearly established law in keeping a patient in custody and sending him to a hospital for evaluation in 1995, and thus officer was entitled to qualified immunity from § 1983 liability; police officers under the defendant officer's command knew that the patient was in psychiatric care, and the filthy conditions in his apartment and his refusal to respond to questions or allow a complete physical examination were evidence that he might not have been able to care for himself. Kerman v. City of New York, S.D.N.Y.2003, 2003 WL 328297, Unreported, reversed 374 F.3d 93. Civil Rights 1376(6)

4035. ---- Restraints, police officers, objective reasonableness requirement

Officers were not entitled to qualified immunity from claim of unconstitutionally excessive force if they handcuffed non-threatening, cooperating arrestee with her arms behind her back after she informed them that she suffered from a shoulder injury that would be exacerbated by having her hands placed behind her body and requested handcuffing in front of her body. Aceto v. Kachajian, D.Mass.2003, 240 F.Supp.2d 121. Civil Rights 1376(6)

For purpose of qualified immunity analysis, arresting officer acted with objective reasonableness in executing a routine arrest for trespass, and thus, arrestee's complaint that the officer applied handcuffs with excessive tightness and maliciously refused to loosen the handcuffs within a reasonable time after arrestee complained about pain caused by the handcuffs failed to establish a Fourth Amendment violation. Kopec v. Tate, E.D.Pa.2002, 230 F.Supp.2d 619, reversed and remanded 361 F.3d 772, certiorari denied 125 S.Ct. 453, 543 U.S. 956, 160 L.Ed.2d 317. Arrest 68(2); Civil Rights 1376(6)

Police officers acted in objectively reasonable manner when they handcuffed suspect pursuant to his lawful arrest for public intoxication, and thus were entitled to qualified immunity in § 1983 action brought by individual; standard practice calls for officers to handcuff suspect after arrest to eliminate possibility of assault. Palacios v. City of Oakland, N.D.Cal.1997, 970 F.Supp. 732, affirmed 152 F.3d 928. Civil Rights 1376(6)

Reasonable officer could have believed that it was constitutional to place suspect, who matched some but not all particulars of description of murderer, in handcuffs in course of investigatory stop, and, thus, officers were entitled to qualified immunity from suspect's civil rights action. Lester v. Brown, N.D.Ill.1995, 889 F.Supp. 1039, reconsideration denied 1995 WL 447764. Arrest 63.5(7); Civil Rights 1376(6)

4036. ---- Evictions, police officers, objective reasonableness requirement

Police officers were entitled to qualified immunity in connection with their assistance in effectuating emergency eviction of tenants without warrant or other court order, allegedly in violation of Fourth Amendment; given extensive disrepair and dilapidation of wood-framed structure, officers had reasonable basis for believing city building inspector's determination that conditions posed immediate danger to its occupants and public. Flatford v. City of Monroe, C.A.6 (Mich.) 1994, 17 F.3d 162. Civil Rights 1376(6)

4037. ---- Extraditions, police officers, objective reasonableness requirement

Pennsylvania state troopers were not entitled to qualified immunity from civil damages under § 1983 for failing to obtain valid waiver to fugitive's extradition rights prior to releasing him to New York, since reasonable person in

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troopers' position would have known that more was required to waive extradition rights, under Pennsylvania and federal law, than equivocal statements by fugitive made without any verification that waiver was either knowing or voluntary. Morrison v. Stepanski, M.D.Pa.1993, 839 F.Supp. 1130. Civil Rights 1376(6)

4038. ---- High speed chase, police officers, objective reasonableness requirement

A reasonable officer in position of police officer who engaged in high-speed pursuit of suspect traveling in wrong lane on freeway in August 1996 either would or should have known that his actions potentially violated clearly established rights under due process clause, and thus, officer was not entitled to qualified immunity in § 1983 action brought after motorist who was traveling in proper direction on freeway suffered fatal injuries in head-on collision with suspect. Feist v. Simonson, C.A.8 (Minn.) 2000, 222 F.3d 455, rehearing dismissed. Civil Rights 1376(6)

In context of claim of qualified immunity, a reasonable police officer in defendant's position could not have believed his conduct in instituting pursuit of motorcycle and manner in which he conducted it was lawful; only apparent basis for instituting pursuit was that driver did not stop when officer yelled something, and officer must have known that extended, high-speed pursuit, with officer's patrol car following motorcycle very closely, placed driver and his passenger in great physical danger, and no reasonable officer could have believed such conduct was completely immune from liability. Lewis v. Sacramento County, C.A.9 (Cal.) 1996, 98 F.3d 434, certiorari granted 117 S.Ct. 2406, 520 U.S. 1250, 138 L.Ed.2d 173, reversed 118 S.Ct. 1708, 523 U.S. 833, 140 L.Ed.2d 1043. Civil Rights 1376(6)

Police officer was entitled to qualified immunity with regard to substantive due process claim asserted in § 1983 action based on fatal accident occurring when officer engaged in high-speed pursuit of suspect without activating warning siren and only using police cruiser's overhead emergency lights; even if, under law at time of pursuit (1991), third parties enjoyed substantive due process right to be free of injuries resulting from recklessly and callously indifferent behavior of police officer during high-speed pursuit, reasonable officer in defendant's position would not have known that her conduct constituted violation of such right. Corbin v. City of Springfield, D.Mass.1996, 942 F.Supp. 721. Civil Rights 1376(6)

A reasonable officer in deputy sheriff's circumstances at the time of fatal shooting of motorist could validly have inferred that motorist, who made high-speed flight through a residential neighborhood, posed a continuing danger to others, such that deputy sheriff was entitled to qualified immunity in §§ 1983 action brought by motorist's wife. Martin v. Dishong, C.A.4 (S.C.) 2004, 102 Fed.Appx. 780, 2004 WL 1535175, Unreported. Civil Rights 1376(6)

4039. ---- Informants, police officers, objective reasonableness requirement

Officer's decision to authorize release of prisoner's letter identifying confidential informant in murder investigation, after officer was unable to reach prosecuting attorney to determine whether release of letter was legally appropriate, was objectively reasonable, for purposes of qualified immunity, particularly where officer took other steps, including repeatedly warning informant and taking steps to enable him to leave state, to protect informant. Gatlin ex rel. Gatlin v. Green, D.Minn.2002, 227 F.Supp.2d 1064, affirmed 362 F.3d 1089, appeal after remand from federal court 2006 WL 1320467. Civil Rights 1376(6)

4040. ---- Interrogations, police officers, objective reasonableness requirement

Under objective reasonableness standard for qualified immunity, officer could reasonably believe that he was not violating arrestee's rights by telling arrestee, who had earlier disposed of gun, that officer was only interested in getting gun off street so that no child would find it and that any help that arrestee gave police in recovering gun

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could not be used against him since officer had not read arrestee his *Miranda* rights. Veilleux v. Perschau, C.A.1 (N.H.) 1996, 101 F.3d 1. Civil Rights 1376(6)

Police detectives were not entitled to qualified immunity as to statements made by them during a defendant's interrogation relative to inability of a lawyer to help him and threat of life sentence for refusal to cooperate, in that reasonable police officer should have known that it would be a violation of defendant's constitutional rights to denigrate the role of his lawyer and attempt, in lawyer's absence, to coerce defendant into cooperating, particularly in light of police department policies and procedures in effect at the time, precluding such conduct. Cinelli v. Cutillo, C.A.1 (Mass.) 1990, 896 F.2d 650. Civil Rights 1376(6)

Sheriff's office detective had probable cause to arrest murder suspect prior to his interrogation of suspect, and thus had qualified immunity in suspect's §§ 1983 action alleging that detective violated his Fourth Amendment rights by failing to videotape the interrogation so that he could fabricate suspect's confession, and by lying to Medical Examiner's Office about suspect's interrogation, causing state to prosecute suspect. Arline v. City of Jacksonville, M.D.Fla.2005, 359 F.Supp.2d 1300. Arrest 63.4(1); Civil Rights 1376(6)

Police commissioner and police chief were entitled to qualified immunity as to § 1983 claims asserted against them in their individual capacities by mother of minor who was allegedly interrogated in his home by police officer who entered without mother's knowledge or permission, which claims were based on allegations that defendants condoned police misconduct towards minors, selectively ignored civilian complaints, and had policy of harassment towards juveniles and teenagers; defendants' conduct was "discretionary" in light of various policy alternatives presented to them, and no reasonable jury could conclude that it was objectively unreasonable for defendants to believe that they were acting in fashion that did not violate established federally protected right. Johns v. Town of East Hampton, E.D.N.Y.1996, 942 F.Supp. 99. Civil Rights 1376(6)

In light of claim by government employee that city employees who conducted wrongful investigation of employee possessed evidence that exculpated employee from any wrongdoing at time of his seizure, seizure of his person and forced confession was objectively unreasonable so that public officials were not entitled to qualified immunity. Angara v. City of Chicago, N.D.Ill.1995, 897 F.Supp. 355. Civil Rights 1376(10)

4041. ---- Investigations, police officers, objective reasonableness requirement

Investigator was entitled to qualified immunity on arrestee's § 1983 claim alleging that arrest and prosecution were unsupported by probable cause, as investigator could reasonably have believed that probable cause existed; arrestee had lived with confessed narcotics dealer for many years, dealer was believed to have used apartment as base of operations for drug distribution activities, items consistent with conversion of cocaine into cocaine base and with drug distribution were found in common areas of apartment, and large amount of currency in arrestee's bedroom along with information disclosed in bank statements were consistent with involvement in cocaine distribution conspiracy. Taylor v. Waters, C.A.4 (Va.) 1996, 81 F.3d 429. Civil Rights 1376(6)

Officer and chief of university police were entitled to qualified immunity in federal civil rights action brought by victim of alleged sexual assault who alleged that extra-jurisdictional character of university police department's investigation of allegations violated her constitutional rights; officers had objectively reasonable basis for belief that they were within university's jurisdiction and that victim wanted investigation undertaken, and it was not clearly established in April 1991 that individual's right to privacy includes right to be free of investigation conducted in absence of jurisdiction. Cantu v. Rocha, C.A.5 (Tex.) 1996, 77 F.3d 795. Civil Rights 1376(6)

Social worker and deputy sheriffs were entitled to qualified immunity from foster parent's § 1983 claim for their alleged unconstitutional entry of foster parent's home to search for children, as social worker and deputy sheriffs correctly understood that natural parents had right to retrieve children, and foster parent's grudging willingness to return children and her invitation to social worker to help search justified reasonable belief that their assistance was

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also required. Wildauer v. Frederick County, C.A.4 (Md.) 1993, 993 F.2d 369. Civil Rights 1376(4); Civil Rights 1376(6)

Fact that seizure of children by Vermont state trooper and assistant state's attorney to investigate abuse reports may have violated state statutes did not deprive them of qualified immunity from any due process claim arising from seizure since taking of children was objectively reasonable under pertinent federal standards. Robison v. Via, C.A.2 (Vt.) 1987, 821 F.2d 913. Civil Rights 1376(6); Civil Rights 1376(9)

Police officer conducting official investigation of fellow officer's alleged withholding of narcotics was entitled to assert qualified immunity defense to civil rights action brought by subject of investigation; even if investigating officer alleged to have used fabricated evidence did violate subject's constitutional rights, he might still enjoy qualified immunity if he acted under objectively reasonable, albeit mistaken, belief that what he was doing was lawful. Tomer v. Gates, C.A.9 (Cal.) 1987, 811 F.2d 1240. Civil Rights 1376(6)

Officers did not act unreasonably in their investigation of student's complaint that teacher had touched him inappropriately, so as to lack probable cause to arrest teacher for alleged sexual assault of student, where principal and student's mother verified student's complaint, student's complaint was coherent and credible, and student said he had no reason to hurt teacher because teacher had given student's family gifts. Forest v. Pawtucket Police Dept., D.R.I.2003, 290 F.Supp.2d 215, affirmed 377 F.3d 52, certiorari denied 125 S.Ct. 1315, 543 U.S. 1149, 161 L.Ed.2d 111. Arrest 63.4(9)

Sheriff and sheriff's department employees were entitled to qualified immunity in § 1983 action by foster parents, individually and on behalf of their minor natural children who were injured by foster children, where there was no evidence that any of them participated in any conduct which they reasonably should have known would constitute a violation of constitutional rights; sole basis for the claim against one employee appeared to be the report he did concerning his investigation after the injuries complained of, and employee who responded to initial complaint was not asked to remove offending foster child from the home. Reed v. Knox County Dept. of Human Services, S.D.Ohio 1997, 968 F.Supp. 1212. Civil Rights 1376(6)

Police officers were protected by qualified immunity from liability in connection with investigation and arrest of restaurant's operator and manager, despite claim that officers demonstrated intentional or reckless disregard for truth of confidential informant's statements regarding purported drug buys through officers' awareness of "inconsistent" evidence and their failure to perform adequate investigation; officer's failure to corroborate informant's first two controlled buys and federal undercover agent's failure to purchase narcotics on separate occasion were not substantial evidence of intentional or reckless disregard for truth, nor was such disregard shown by alleged investigative inadequacies, magistrate's determination of probable cause would not have been altered even if all information alluded to had been included in application for arrest warrants, and evidence was insufficient to permit reasonable fact-finder to infer existence of willful conspiracy. Duca v. Martins, D.Mass.1996, 941 F.Supp. 1281. Civil Rights 1376(6)

Police detectives' actions with respect to investigation which implicated trainee police officers in robbery were objectively reasonable, despite fact that grand jury eventually no-billed trainee officers, and thus, detectives were entitled to qualified immunity with respect to trainee officers' § 1983 claims; fact that grand jury eventually no-billed trainee officers did not, without more, establish that investigation was in violation of trainee officers' civil rights, complainant gave detectives license number of car in which alleged perpetrator left the scene and that license plate belonged to trainee officer's car, and trainee officers were with the alleged perpetrator on night of the crime. Scott v. City of Dallas, N.D.Tex.1995, 876 F.Supp. 852. Civil Rights 1376(10)

Police officer who made warrantless entry into plaintiff's apartment was entitled to qualified immunity; landlord told officer that heat and water were inoperable in building due to leak in plaintiff's apartment, and there was objectively reasonable basis for officer to believe there existed exigency threatening health and safety of tenants.

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Osipova v. Dinkins, S.D.N.Y.1994, 864 F.Supp. 360. Civil Rights 1376(6)

Police officers were entitled to qualified immunity, in pre-trial detainee's civil rights lawsuit under Fourth Amendment alleging false arrest, since officers had reasonable belief that they could start investigation and make arrest when they responded to gunfire and encountered plaintiff standing near body of man who had just been shot dead at point-blank range with handgun. Graham v. Pinal County, C.A.9 (Ariz.) 2005, 138 Fed.Appx. 47, 2005 WL 1463483, Unreported. Civil Rights 1376(6)

Arresting officer conducted an objectively reasonable investigation before the arrest and had probable cause for arrest, and thus, was entitled to qualified immunity in arrestee's §§ 1983 action for violation of arrestee's Fourth Amendment rights, even though the officer did not interview arrestee for his version of the incident, where the officer knew arrestee was a suspect in a terroristic threat case and conducted investigation which included discovery of police interview of victim who detailed arrestee's death threat, and the officer requested victim to personally identify arrestee as the person who had threatened him. Alhofen v. Monteilh, C.A.9 (Hawai'i) 2004, 118 Fed.Appx. 170, 2004 WL 2725998, Unreported. Arrest 63.4(9); Arrest 63.4(13); Civil Rights 1376(6)

4042. ---- Line ups, police officers, objective reasonableness requirement

Genuine issues of material fact, regarding whether it was objectively reasonable for police officer, who allegedly arranged for witness to observe arrestee in jail cell, to believe that he acted in manner that was lawful at time of showup, precluded summary judgment for officer on claim against him in his individual capacity for use of unconstitutionally impermissible showup. Wray v. City of New York, E.D.N.Y.2004, 340 F.Supp.2d 291. Federal Civil Procedure 2491.5

Police officers were entitled to qualified immunity for lineup at precinct, in § 1983 lawsuit brought by citizen alleging that police violated his constitutional rights by subjecting him to unduly suggestive identifications, since ruling by state trial judge at *Wade* hearing, that lineup identifications were admissible, was not tainted by any false or mistaken testimony, and, thus, ruling was important consideration in determining whether reasonable official would have determined that lineup identifications were appropriate. Rojas v. Iannatto, S.D.N.Y.2003, 2003 WL 169798, Unreported. Civil Rights 1376(6)

4043. ---- Third parties injured by police actions, police officers, objective reasonableness requirement

Police officer did not act with any level of culpability beyond mere negligence in loaning gun to confidential informant for self-protection prior to shooting incident, and so officer's actions did not violate shooting victim's constitutional right to bodily integrity under the substantive component of the due process clause, for purposes of first prong of *Siegert* analysis for qualified immunity; although officer was informed that victim potentially posed threat to informant's safety, there was no indication that officer was aware that informant had any violent intentions toward victim, as informant had no criminal history and had a longstanding, positive working relationship with officer, officer had no reason to anticipate that informant and victim would have chance encounter, and so officer could not have predicted that informant would have opportunity to assault victim with gun. McClendon v. City of Columbia, C.A.5 (Miss.) 2002, 305 F.3d 314, certiorari denied 123 S.Ct. 1355, 537 U.S. 1232, 155 L.Ed.2d 196. Civil Rights 1376(6); Constitutional Law 274(2); Municipal Corporations 747(3)

Police officers who allowed child victim to return to custody of murderer after child was found naked and injured in street were entitled to qualified immunity in connection with substantive due process claims asserted by victim's family as victim was not "in custody" or in "special relationship" with officers as result of encounter, and circumstances surrounding encounter were not such that officers should have known that victim faced certain danger if allowed to stay with murderer. Estate of Sinthasomphone by Sinthasomphone v. City of Milwaukee, E.D.Wis.1993, 838 F.Supp. 1320. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

4044. ---- Training and supervision, police officers, objective reasonableness requirement

Supervisors of officer of state department of public safety who allegedly assaulted victim following routine traffic stop did not have qualified immunity from § 1983 suit claiming failure to adequately train and supervise officer; reasonable supervisors knew that supervisory failures could lead to liability in § 1983 actions. McGrath v. Scott, D.Ariz.2003, 250 F.Supp.2d 1218. Civil Rights 1376(6)

Material issues of fact existed as to whether need for additional supervision was obvious at the time town police officer sent unsigned search warrant to Internet service provider (ISP) to obtain subscriber information for sender of anonymous e-mail, and whether city's policymakers ignored alleged constitutional violations arising from purported policy permitting that practice, precluding summary judgment for town on e-mail sender's §§ 1983 claim alleging failure to supervise. Freedman v. American Online, Inc., D.Conn.2005, 412 F.Supp.2d 174. Federal Civil Procedure 2491.5

Reasonable police supervisor would have understood that failure to provide adequate training regarding on-duty/off-duty confrontations between officers where city had always armed/always on-duty policy could subject him to liability for unconstitutional seizure by his subordinate, for purposes of determining supervisors' entitlement to qualified immunity from liability in §§ 1983 action alleging that on-duty officer's shooting of off-duty officer in friendly fire incident violated Fourth Amendment, despite absence of other friendly fire cases, where there was evidence that police department was on notice of misidentification problems. Young v. City of Providence, D.R.I.2005, 396 F.Supp.2d 125. Civil Rights 1376(10)

Police chief could not be held liable in his individual capacity in arrestee's § 1983 action alleging excessive force by police officer in connection with her arrest; there was no evidence that police chief participated in officer's actions or acquiesced in them, and police chief was not officer's direct supervisor. Eberle v. City of Newton, D.Kan.2003, 289 F.Supp.2d 1269, motion to amend denied 296 F.Supp.2d 1276. Civil Rights 1358

City was not liable under § 1983 on grounds of inadequate supervision, deliberate indifference, or failure to properly train its officers when underlying shooting of suspect by police officer did not involve use of excessive force in violation of Fourth Amendment. Santana v. City of Hartford, D.Conn.2003, 283 F.Supp.2d 720. Civil Rights 1352(4)

Police chief was entitled to qualified immunity on § 1983 claim that he violated due process by failing to promulgate and enforce appropriate guidelines, regulations, policies, or procedures regarding suicide risk assessment and suicide prevention by members of police department, as no legal authority was found that required chief to promulgate policies and provide training and there was no evidence that any police department ever did more than city to prevent police suicide either before or after officer's death. Hanrahan v. City of Norwich, D.Conn.1997, 959 F.Supp. 118, affirmed 133 F.3d 907. Civil Rights 1376(6)

4045. ---- Medical attention, police officers, objective reasonableness requirement

Reasonable police officer would not have known on intake that pre-trial detainee, who was found standing next to creek, soaking wet, and reporting that his vehicle was going to "blow up," and who was combative during arrest, had objectively serious medical need, for purpose of qualified immunity analysis of deliberate indifference civil rights claim of detainee's estate under Fourteenth Amendment, since detainee sat calmly in back of patrol car once arrested, followed directions, answered questions posed, and remained quiet and seated on bench once inside jail. Grayson v. Ross, C.A.8 (Ark.) 2006, 454 F.3d 802. Civil Rights 1376(6)

Arresting police officer, who knew on intake that pretrial detainee likely was under influence of methamphetamine, did not subjectively know that detainee required medical attention, for purpose of qualified immunity analysis of deliberate indifference civil rights claim of detainee's estate under Fourteenth Amendment, since officer was unsure

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whether detainee was hallucinating. Grayson v. Ross, C.A.8 (Ark.) 2006, 454 F.3d 802. Constitutional Law 262

Police officers failed to present legitimate governmental objective for denying medical attention to arrestee, as required for denial to have been objectively reasonable so as to entitle officers to qualified immunity from arrestee's civil rights action; arrestee was not subject to any punishment, so that denial of medical attention to punish arrestee for his lack of concern for other accident victims, as arrestee alleged officers told him, would not have been objectively reasonable. Nerren v. Livingston Police Dept., C.A.5 (Tex.) 1996, 86 F.3d 469. Civil Rights 1376(6)

Officers who did not commit any constitutional violation in electing to transport severely wounded shooting victim to hospital in police wagon rather than waiting for ambulance crew were entitled to qualified immunity from claim that they violated victim's substantive due process rights by allegedly lessening his chances for survival. Hansberry v. City of Philadelphia, E.D.Pa.2002, 232 F.Supp.2d 404. Civil Rights 1376(6)

Police officers did not act unreasonably in failing to seek medical aid for arrestee during booking process for driving while intoxicated (DWI) following motorcycle accident, as required to violate any duty they owed under Fourth Amendment to provide medical care to arrestee, notwithstanding arrestee's intermittent expressions of discomfort, where arrestee never asked for medical assistance and denied that he needed medical assistance when asked, and nothing indicated that officers should have suspected that arrestee was suffering from internal injuries, as opposed to lacerations and intoxication. Patrick v. Lewis, D.Minn.2005, 397 F.Supp.2d 1134. Arrest 70(1)

Even if seizure of motorist was not supported by probable cause, officer had objective reasonable grounds for believing motorist to be intoxicated, and thus was entitled to qualified immunity on motorist's § 1983 claims based on seizure, including unlawful seizure, false arrest, and assault and battery, given that motorist was involved in single-car accident in which he crashed through traffic sign and fire hydrant before coming to rest on curb or roadside, motorist was in need of medical attention when officer arrived at scene of accident, and state's implied consent statute appeared to permit officer to take motorist into custody. Cuvo v. De Bias, E.D.Pa.2004, 339 F.Supp.2d 650, affirmed in part, reversed in part and remanded 169 Fed.Appx. 688, 2006 WL 332546. Civil Rights 1376(6)

Officers were qualifiedly immune from § 1983 excessive force claim challenging their use of force, including use of police canine, to subdue automobile passenger after stopping automobile and conducting pat-down search, inasmuch as reasonable officers could have believed force was necessary given passenger's vague, potentially threatening statements and sudden movements not authorized by police. Holeman v. City of New London, D.Conn.2004, 330 F.Supp.2d 99, reversed in part, appeal dismissed in part 425 F.3d 184. Civil Rights 1376(6)

Test for determining whether police officers had been deliberately indifferent to arrestee's needs for medical care, if arrestee had informed officers that she had just been raped, did not require criminal recklessness before officers could lose their qualified immunity. Carnell v. Grimm, D.Hawai'i 1994, 872 F.Supp. 746, reconsideration denied, affirmed in part, appeal dismissed in part 74 F.3d 977. Civil Rights 1376(6)

4046. ---- Arrests generally, police officers, objective reasonableness requirement

County sheriff did not have probable cause to arrest motorist who drove truck over bridge without a weight limit posting causing bridge to collapse for careless driving in violation of Arkansas law, for purpose of motorist's §§ 1983 unlawful arrest claim; reasonable law enforcement officer would not have believed that motorist collided with objects adjacent to the road, that motorist was inattentive in his driving, that he failed to maintain proper control over his truck, or that the careless driving statute was otherwise violated. Robinson v. White County, AR, C.A.8 (Ark.) 2006, 452 F.3d 706. Automobiles 349(2.1)

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Genuine issues of material fact existed as to whether it was objectively reasonable for officer to believe that probable cause existed to arrest arrestee for resisting arrest and disorderly conduct, precluding summary judgment for police officer on basis of qualified immunity in arrestee's §§ 1983 claims against police officer alleging Fourth Amendment violations arising from his arrest and prosecution. McClellan v. Smith, C.A.2 (N.Y.) 2006, 439 F.3d 137. Federal Civil Procedure 2491.5

Reasonable officer would have found probable cause to believe that arrestee had obstructed official business under Ohio law, by committing affirmative acts that interfered with police business, and so officer was entitled to qualified immunity with respect to false-arrest claim brought against her in arrestee's §§ 1983 action; arrestee not only prevented officer from questioning her daughter about an assault allegedly committed by daughter, by refusing to answer officer's questions about daughter and refusing to allow officer to take daughter to police station, but arrestee also exhibited uncooperative and hostile behavior, engaging in loud, profanity-laced yelling and finger-pointing at officer. Lyons v. City of Xenia, C.A.6 2005, 417 F.3d 565. Civil Rights 1376(6)

Arresting officers were not entitled to qualified immunity from liability, in arrestee's §§ 1983 wrongful arrest claim, since reasonable officer would not have concluded that there was probable cause to support arrest for burglary, or other criminal wrongdoing, under Ohio law; although arrestee was found to have entered the residence and owner of residence advised officers that arrestee had abandoned his apartment, officers were aware that arrestee and owner had a prior dispute, arrestee insisted to officers that he lived at residence and denied any wrongdoing, arrestee had personal property inside the residence, and arrestee's driver's license had address of residence on it. U.S.C.A. Const.Amend. 4; Radvansky v. City of Olmsted Falls, C.A.6 (Ohio) 2005, 395 F.3d 291 . Civil Rights 1376(6)

Police officers had probable cause to arrest special education teacher for the alleged sexual assault of a student, and thus were qualifiedly immune from liability in §§1983 claim brought by teacher alleging he was arrested without probable cause in violation of Fourth Amendment; although the officers did not interview the other students or teaching assistant who were present in the classroom at the time of the alleged assault, the officers interviewed the school principal, as well as the student and mother on evening of the alleged assault, and a written statement was provided indicating that teacher rubbed student's penis in the classroom. Forest v. Pawtucket Police Dept., C.A.1 (R.I.) 2004, 377 F.3d 52, certiorari denied 125 S.Ct. 1315, 543 U.S. 1149, 161 L.Ed.2d 111. Arrest 63.4(7.1); Civil Rights 1376(6)

Police officers were entitled to qualified immunity from liability for arresting abortion protestors who were demonstrating within two or three feet of street at busy intersection when protestors refused either to move back or to remove signs that were distracting drivers, despite being advised that the location and manner of their demonstrations were impeding the safe and free flow of traffic; officers had arguable probable cause to believe that protestors were violating loitering ordinance by impeding traffic. Frye v. Kansas City Missouri Police Dept., C.A.8 (Mo.) 2004, 375 F.3d 785, rehearing and rehearing en banc denied, certiorari denied 125 S.Ct. 1639, 544 U.S. 920, 161 L.Ed.2d 477. Civil Rights 1376(6)

Police officer was entitled to qualified immunity in arrestee's §§ 1983 action alleging that officer arrested him for assault without probable cause; officer consulted county prosecutor before making arrest, and thus had reasonable basis for believing that he had probable cause to make arrest. Kijonka v. Seitzinger, C.A.7 (Ill.) 2004, 363 F.3d 645 . Civil Rights 1376(6)

Police officers' use of pepper spray in attempt to disarm suspect armed with axe was objectively reasonable, and thus did not violate Fourth Amendment; police encountered situation fraught with hazard for themselves and for suspect, who was distraught, seemingly suicidal, had briefly held two hostages, and was refusing to comply with continuous requests to put down his axe. Isom v. Town of Warren, Rhode Island, C.A.1 (R.I.) 2004, 360 F.3d 7. Arrest 68(2)

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42 U.S.C.A. § 1983

Genuine issues of material fact as to whether police officer reasonably believed that arrestee was physically resisting him or inciting crowd of bystanders when officer arrested her for obstructing officer in performance of his duties and disorderly conduct under Illinois law precluded summary judgment for officer in arrestee's action under § 1983 alleging that officer arrested her without probable cause, in violation of Fourth Amendment, on basis of qualified immunity. Payne v. Pauley, C.A.7 (Ill.) 2003, 337 F.3d 767. Federal Civil Procedure 2491.5

A reasonable law enforcement officer could not have concluded that detainee consented to being transported to police station and interrogated by police detectives, barring detectives' qualified immunity defense in detainee's § 1983 Fourth Amendment action based upon arrest without probable cause; although detainee indicated that he would cooperate, and he signed waiver of *Miranda* rights during interrogation, such conduct occurred after police officers confronted detainee at door of his home with their guns drawn, pulled him out onto the grass where detectives handcuffed him, and then transported him to station, waiver form did not explain detainee's right to be free from arrest without probable cause or right to terminate consensual encounter, detainee's car was impounded, and detectives repeatedly declined to honor detainee's request to go home. Hatheway v. Thies, C.A.10 (N.M.) 2003, 335 F.3d 1199. Civil Rights 1376(6)

Sexual assault victim's undisputed clear and positive identification of arrestee as her attacker to county law enforcement officers would have led reasonable police officer to believe that officer was obeying Fourth Amendment's probable cause requirement in making arrest, and detective who made arrest was thus entitled to qualified immunity in arrestee's resulting § 1983 action alleging lack of probable cause for arrest. Tangwall v. Stuckey, C.A.7 (Ill.) 1998, 135 F.3d 510. Civil Rights 1376(6)

State police officer's act of arresting driver was objectively reasonable, for purpose of officer's claim of qualified immunity in § 1983 action, notwithstanding claim that arrest was racially motivated, as officer had probable cause to stop driver based on undisputed evidence that driver was speeding. Conrod v. Davis, C.A.8 (Mo.) 1997, 120 F.3d 92, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1531, 523 U.S. 1081, 140 L.Ed.2d 681. Civil Rights 1376(6)

Police officer who arrested two African-American men with assistance of at least three other officers, police dog, spotlight, and drawn weapons after officer decided that men, who had stopped at restaurant after professional baseball game, resembled vague description of serial robbery suspects was not entitled to qualified immunity from arrestees' § 1983 action; at time of arrest, law was clearly established concerning permissible degree of intrusiveness during *Terry* stop, and reasonable officer could not have believed that it was reasonable to employ so highly intrusive a means of making stop. Washington v. Lambert, C.A.9 (Cal.) 1996, 98 F.3d 1181. Civil Rights 1376(6)

It was objectively reasonable for state police officers in charge of investigation of misconduct by city officials to believe that they had probable cause to arrest city councilman for official misconduct, and officers were entitled to qualified immunity in context of councilman's subsequent 1983 action based on violation of his Fourth Amendment rights; while councilman relied on evidence purportedly showing that officers conducted investigation that negligently, issue in context of claim of arrest without probable cause was whether information gathered through investigation would warrant reasonable person to believe that offense had been or was being committed, and officers relied on taped conversations implicating councilman in fraudulent scheme to acquire for contractor gift shop concession at city airport, and there was no allegation that officers in any way altered tapes or misrepresented their context in affidavit of probable cause. Orsatti v. New Jersey State Police, C.A.3 (N.J.) 1995, 71 F.3d 480. Arrest 63.4(11); Civil Rights 1376(6)

If officer who arrests plaintiff without probable cause can show that it was objectively reasonable to believe he had probable cause or that officers could disagree about existence of probable cause, officer is entitled to qualified immunity, regardless of his underlying motives for arresting plaintiff. Cook v. Sheldon, C.A.2 (N.Y.) 1994, 41 F.3d 73. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Arresting officer has qualified immunity from civil rights claim of unlawful arrest either if it was objectively reasonable to believe that probable cause for arrest existed, or if reasonably competent officers could disagree on whether probable cause test was met. Wachtler v. County of Herkimer, C.A.2 (N.Y.) 1994, 35 F.3d 77. Civil Rights 1376(6)

Peace officer was entitled to qualified immunity in § 1983 action brought by arrestee for illegal arrest and detention based on mistaken identity because reasonable officer in peace officer's position could have believed that there was reasonable cause to believe that arrestee was individual named in facially valid warrant; arrestee was of the same height, weight, sex, race, and age and had the same nickname as individual named in warrant, arrestee was at location where officer expected to find individual named in warrant, there was no evidence that officer had available information as to individual's skin tone or facial features and discrepancies in hair and eye color or skin tone between arrestee and individual named in warrant were not determinative since use of hair dyes, cosmetic contact lenses and tanning salons was relatively common. Blackwell v. Barton, C.A.5 (Tex.) 1994, 34 F.3d 298. Civil Rights 1376(6)

In arrestee's § 1983 action against arresting officer, arising from arrest and prosecution for public intoxication, Court of Appeals' determination, for purposes of officer's qualified immunity defense, of whether arrestee had alleged sufficient facts from which it would be discerned that no reasonable officer could have believed that probable cause existed to make arrest for public intoxication, was objective one. Babb v. Dorman, C.A.5 (Tex.) 1994, 33 F.3d 472. Civil Rights 1398

Department store security guard acted reasonably under circumstances in detaining customer for shoplifting and was entitled to qualified immunity from § 1983 suit; security guard observed customer take computer disks, place them in shopping bag as he approached exit of store, customer was unable to produce receipt and customer did not have checkbook, cash or charge card with him. Sanders v. Sears, Roebuck & Co., C.A.8 (N.D.) 1993, 984 F.2d 972, rehearing denied. Civil Rights 1373

Police officers could have reasonably believed that there was probable cause to arrest, and thus were entitled to qualified immunity in civil rights action, where they were told by storekeeper that arrestees handled missing ring before leaving store and that no one else in the store had the ring, and where they learned that one of the arrestees had run into a rest room and asked everyone to exit, appearing to be attempting to make herself throw up, which was conduct consistent with an attempt to dispose of the ring after she was confronted by the storeowner, even though officers did not interview jewelry store owner prior to making the arrest. Fuller v. M.G. Jewelry, C.A.9 (Cal.) 1991, 950 F.2d 1437. Civil Rights 1376(6)

Officer acted with objective reasonableness and thus was entitled to immunity from civil rights claim brought by plaintiffs who were arrested for assault but later released when victim said plaintiffs were not actually his attackers, even though victim offered differing statements about cause of his injuries; victim originally identified plaintiffs as his attackers and officer's supervisor corroborated his judgment that he had probable cause to believe plaintiffs committed the assault. Torchinsky v. Siwinski, C.A.4 (N.C.) 1991, 942 F.2d 257. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from civil rights claims of security guard arrested for obstructing official business in violation of Ohio law, as reasonable police officer in like circumstances could have reasonably believed that security guard's arrest was lawful; security guard refused to permit officer entry onto private facility to issue traffic citation to driver who had just entered facility. Johnson v. Estate of Laccheo, C.A.6 (Ohio) 1991, 935 F.2d 109. Civil Rights 1376(6)

Police officers are entitled to qualified immunity in civil rights action arising from allegedly wrongful arrest if officers of reasonable competence could disagree on whether there was probable cause to make arrest. Simkunas v. Tardi, C.A.7 (Ill.) 1991, 930 F.2d 1287. Civil Rights 1376(6)

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Reasonable officers in same circumstances and possessing same knowledge as arresting deputies could have believed that probable cause existed to arrest lessor for leasing commercial premises used for prostitution, and deputies were entitled to qualified immunity from lessor's subsequent civil rights claim, even though lessor did not have knowledge of such use at time lease was executed and there was no evidence of mens rea, and irrespective of lessor's cooperation with authorities; evidence indisputably revealed that lessor knew prostitution was occurring at leased premises, reasonable officer could have believed that offense was violated by lessor who leased premises which were thereafter used for prostitution, provided lessor had knowledge of such use at any time during term of lease, and reasonably competent persons could disagree on whether offense required element of mens rea. Von Stein v. Brescher, C.A.11 (Fla.) 1990, 904 F.2d 572. Civil Rights 1376(6)

Sheriff who caused arrest to identify 42-year-old arrestee whose name was similar to suspect in mid 20s acted unreasonably and did not enjoy qualified immunity in § 1983 action; although arrestee and suspect had similar appearance and arrestee lived near drug sale, sheriff had approximately three months to investigate and resolve doubts about arrestee's identity. Tillman v. Coley, C.A.11 (Ga.) 1989, 886 F.2d 317, rehearing denied 893 F.2d 346. Civil Rights 1376(6)

Qualified immunity protects law enforcement officers in cases in which they mistakenly conclude that probable cause to arrest is present; actual probable cause is not necessary for arrest to be objectively reasonable. Gorra v. Hanson, C.A.8 (Minn.) 1989, 880 F.2d 95. Civil Rights 1376(6)

Whether police officer being sued for civil rights violation based on arrest is entitled to immunity depends upon whether officers of reasonable competence would disagree on issue of whether arrest was reasonable. Bailey v. Andrews, C.A.7 (Ind.) 1987, 811 F.2d 366. Civil Rights 1376(6)

Where plaintiff had been found in possession of stolen car and there was warrant out for arrest of his father in connection with theft of the car, where plaintiff had just dropped his father off at bus station and plaintiff was convicted felon out on parole and was driving with expired driver's license, and with plaintiff's statements "it was getting too hot" and "he probably dumped it" reviewed in light of other facts available to officer, officer could reasonably believe that plaintiff knew car was stolen prior to being questioned, and officer was immune from any liability under 1871 civil rights statute [42 U.S.C.A. § 1983] arising out of arrest. Floyd v. Farrell, C.A.1 (N.H.) 1985, 765 F.2d 1. Civil Rights 1376(6)

Supervisor was entitled to qualified immunity for directing Puerto Rico treasury agents to arrest nightclub owner for obstructing justice, for resisting agents' efforts to gain entry to club, notwithstanding that charge was later dismissed, as reasonably competent officer could have found probable cause. Alvarez Sepulveda v. Colon Matos, D.Puerto Rico 2003, 247 F.Supp.2d 76, reconsideration denied 306 F.Supp.2d 100. Civil Rights 1376(6)

Genuine issues of material fact as to whether county police sergeant, who responded to 9-1-1 emergency call regarding disturbance at city park, conducted an adequate investigation before arresting vehicle passenger for interference with a police officer and disorderly conduct, and as to events after sergeant took passenger by the arm, precluded summary judgment for sergeant, based on qualified immunity, in passenger's §§ 1983 action. Freece v. Clackamas County, D.Or.2006, 442 F.Supp.2d 1080. Federal Civil Procedure 2491.5

Police officers were not entitled to qualified immunity from wrongful arrest civil rights claim, as reasonable law enforcement officer, similarly situated, would have recognized he lacked probable cause assuming that facts were as asserted by arrestee, who alleged he was detained at gunpoint despite insufficient resemblance to suspect and lack of close proximity to place of trespass offense and then falsely arrested for alleged disobedience of officer's commands, based on animosity from his prior encounters with police. Burr v. Burns, S.D.Ohio 2006, 439 F.Supp.2d 779. Civil Rights 1376(6)

Police captain was not entitled to qualified immunity as to Fourth Amendment claim brought by arrested suspect,

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since no reasonable officer in captain's position could have thought that forcing suspect to come to police department for questioning against his will fell short of seizing him for custodial interrogation, and captain did not argue that he had probable cause to make arrest. Svitlik v. O'Leary, D.Conn.2006, 419 F.Supp.2d 189. Civil Rights 1376(6)

County police officer had arguable probable cause for the arrest of §§ 1983 plaintiff on simple assault charges, and therefore, officer was entitled to qualified immunity on plaintiff's claim for false arrest, where off-duty officer had informed him that plaintiff had threatened off-duty officer and her daughter, and assured responding officer that she had explained the situation to a magistrate judge and the judge had approved the arrest and would issue a warrant. Payne v. DeKalb County, N.D.Ga.2004, 414 F.Supp.2d 1158. Civil Rights 1376(6)

Police officers who arrested and removed alderman from session could reasonably belief they had probable cause, allowing them qualified immunity from false arrest suit under §§ 1983; state statute governing recording was not sufficiently clear that police knew or should have known they were violating alderman's rights when they arrested him. King v. Jefferies, M.D.N.C.2005, 402 F.Supp.2d 624. Civil Rights 1376(6)

Police officer's arrest of passenger of lawfully stopped vehicle and his use of force were shielded under the doctrine of qualified immunity; because his order to remain in the vehicle was lawful, officer's belief that passenger was violating the obstruction statute by getting out of the car was likewise reasonable, as was his use of force to effectuate the resulting arrest when passenger resisted arrest by pulling away from officer when he tried to handcuff her. Coffey v. Morris, W.D.Va.2005, 401 F.Supp.2d 542. Civil Rights 1376(6)

State police officers who arrested protestor on construction site were entitled to qualified immunity as to protestor's claims of false arrest and malicious prosecution brought under §§ 1983; in light of situation where construction truck was attempting to enter site flanked on all sides by protestors and their children, it would not have been clear to reasonable officer that there was no probable cause to arrest protestor for disorderly conduct under New York law. Zellner v. Summerlin, E.D.N.Y.2005, 399 F.Supp.2d 154. Civil Rights 1376(6)

Police detective who arrested rape suspect at hospital, based upon alleged victim's in-person identification of suspect and her description of alleged rape, had qualified immunity from suspect's §§ 1983 claims for false arrest and false imprisonment after charges were dismissed for lack of evidence; detective had objectively reasonable belief that totality of circumstances warranted suspect's arrest. Smith v. City of New York, S.D.N.Y.2005, 388 F.Supp.2d 179. Civil Rights 1376(6)

Police officer, called to scene of vehicular accident, had qualified immunity from false arrest suit brought under §§ 1983 by driver of pickup truck struck in rear by tractor trailer; it was objectively reasonable for officer to arrest driver, based on officer's review of conflicting written assessments of accident, presented by drivers, admission by pickup truck driver that he had braked in front of tractor trailer, and physical evidence. Christman v. Kick, D.Conn.2004, 342 F.Supp.2d 82. Civil Rights 1376(6)

Police officers were entitled to qualified immunity in arrestee's § 1983 action alleging false arrest and malicious prosecution in connection with her arrest on charges of obstructing governmental administration by failing to step away from a tree which officials were trying to remove, as police officers of reasonable competence could, at the very least, disagree as to presence of probable cause for arrest and prosecution. Wilder v. Village of Amityville, E.D.N.Y.2003, 288 F.Supp.2d 341, affirmed 111 Fed.Appx. 635, 2004 WL 2381295, certiorari denied 125 S.Ct. 1708, 544 U.S. 949, 161 L.Ed.2d 526. Civil Rights 1376(6)

Probable cause did not exist for police officer to find that television cameraman willfully failed to comply with police officer's direction regarding traffic laws, on officer's assertion of qualified immunity to cameraman's § 1983 and Florida law arrest without probable cause claims; statute was directed at preventing pedestrians from walking among vehicular traffic, but street had been shut off to vehicular traffic due to demonstrations, and cameraman was

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acting in scope of journalistic duties. Durruthy v. City of Miami, S.D.Fla.2002, 235 F.Supp.2d 1291, reversed 351 F.3d 1080, rehearing and rehearing en banc denied 97 Fed.Appx. 908, 2004 WL 385594, certiorari denied 125 S.Ct. 45, 543 U.S. 917, 160 L.Ed.2d 201. Arrest 63.4(5); Civil Rights 1376(6)

Reasonable police officer could not conclude he had probable cause to arrest for disorderly conduct under Hawai'i law proprietor of judgment debtor, who was protesting civil execution on his property by walking around premises and trying to persuade persons executing writ not to take exempt property, precluding claim of qualified immunity from civil liability under § 1983 arising from arrest; proprietor's activities did not constitute intentional or reckless conduct causing alarm to any member of public. Pourny v. Maui Police Dept., County of Maui, D.Hawai'i 2000, 127 F.Supp.2d 1129. Civil Rights 1376(6)

State troopers were entitled to qualified immunity from civil rights liability for allegedly unlawful arrest and search of armored car operators for suspected weapons violations; at time of arrest, operators were not hauling an armored load, they were dressed in street clothes rather than in uniforms, and they were driving armored semi-tractor trailer, rather than more conventional armored car. McGarvey v. Biswell, C.D.Ill.1998, 993 F.Supp. 1198. Civil Rights 1376(6)

Arresting officer is entitled to qualified immunity where it is either objectively reasonable for officer to believe that there was probable cause for arrest, or if officers of reasonable competence could disagree as to whether there was probable cause. Oliver v. Cuttler, E.D.N.Y.1997, 968 F.Supp. 83. Civil Rights 1376(6)

Federal officers were entitled to qualified immunity as a matter of law, even though they violated clearly established right to be free from arrest without probable cause, if undisputed facts and all permissible inferences favorable to civil rights claimant showed either that it was objectively reasonable for officers to believe that probable cause existed, or that officers of reasonable competence could disagree on whether probable cause existed. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. United States 50.10(3)

Investigating officers and prosecutors had objectively reasonable belief that there was probable cause to arrest arrestee on rape charges, entitling them to qualified immunity in civil rights action arising from arrestee's acquittal, despite existence of exculpatory evidence at time of arrest, including statements of five alibi witnesses; arrestee's vehicle and place of employment matched information provided by victim, and victim unequivocally identified arrestee in photographic lineup. Jackson v. Jackson County, Miss., S.D.Miss.1995, 956 F.Supp. 1294, affirmed 95 F.3d 47. Civil Rights 1376(6); Civil Rights 1376(9)

Objective reasonableness of probation officer's actions in arresting probationer for alleged violation of probation entitled probation officer to qualified immunity with regard to probationer's civil rights claim that he was unlawfully arrested in violation of Fourth Amendment, even if probationer could establish that probation officer had arrested him despite knowledge that probationer was innocent. Presley v. Morrison, E.D.Pa.1996, 950 F.Supp. 1298. Civil Rights 1376(7)

Police officers reasonably concluded that probable cause to arrest motorist existed, and were thus entitled to qualified immunity from motorist's action alleging violation of civil rights, malicious prosecution, false arrest, and false imprisonment, where one officer observed partially exposed "stun gun" in motorist's jacket in backseat of automobile while speaking with motorist. Jag v. City of Warren, E.D.Mich.1996, 944 F.Supp. 606. Civil Rights 1376(6)

State troopers who arrested antique gun dealer for alleged violations of state statutes governing sale of firearms were not entitled to qualified immunity from dealer's § 1983 claim since no reasonable police officer would have made arrest without at least some investigation into accuracy of claim that guns in question were not subject to statutes based on allegation that they were antiques. Cyprus v. Diskin, E.D.Pa.1996, 936 F.Supp. 259. Civil Rights 1376(6)

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It was not objectively unreasonable for police officers to arrest accused for third-degree assault of transit officer based solely on transit officer's uncorroborated allegations, and therefore police officers were entitled to qualified immunity in accused's subsequent civil rights action for false arrest, though transit officer's allegations did not provide probable cause for arrest, where police officers made arrest pursuant to police department patrol guide which required officers to arrest individuals upon transit officer's claim of assault, and state law allowed police officers to find probable cause based solely upon statements of crime eyewitnesses or victims. Wu v. City of New York, S.D.N.Y.1996, 934 F.Supp. 581. Civil Rights 1376(6)

Police officer's alleged conduct in arresting individual during traffic stop due to fact computer system check revealed outstanding warrant for his arrest, without making inquiry as to validity of warrant despite arrestee's protestations that warrant was no longer valid and despite fact police officer knew computer system was highly deficient, was unreasonable and violated clearly established constitutional rights of the arrestee to not be arrested pursuant to invalid warrant, and therefore, if alleged conduct was proven, police officer would not be entitled to qualified immunity on arrestee's § 1983 claim for violation of his constitutional rights in connection with his arrest pursuant to invalid warrant. McMurry v. Sheahan, N.D.Ill.1996, 927 F.Supp. 1082. Civil Rights 1376(6)

Belief of police officer that probable cause existed to arrest notary public for third degree felony of fraudulent transfer of motor vehicle title was reasonable, and officer was entitled to qualified immunity in federal civil rights action after fraudulent transfer and other charges were dismissed, where officer had knowledge of back-dating of notarization of automobile title transfer and of discrepancy between recorded direct transaction of automobile and actual transaction in which automobile was transferred to notary public and then to eventual purchaser. Mincieli v. Bruder, S.D.Fla.1994, 914 F.Supp. 512, affirmed 73 F.3d 1107, certiorari denied 117 S.Ct. 294, 519 U.S. 927, 136 L.Ed.2d 213. Civil Rights 1376(6)

It was objectively reasonable for police officers to have believed both that probable cause existed for arrest and that their actions did not contravene established federal right, and, consequently, they were immune from liability under federal civil rights statute on grounds of qualified immunity, where arrestee had been driving with high beams, and officers' assertions concerning arrestee's inability to perform some field sobriety tests were necessarily undisputed. Haussman v. Fergus, S.D.N.Y.1995, 894 F.Supp. 142. Civil Rights 1376(6)

Police officers reasonably reasonably believed that they had probable cause to make arrest under Hawai'i's disorderly conduct statute even if arrestee told them that she had been raped and was fleeing from rapist and, thus, officers were entitled to qualified immunity in arrestee's civil rights action; arrestee had been running on or near busy city street, she was agitated and resisted officers' attempts to calm her, and her conduct indicated that she could place herself and others who traveled on road at risk. Carnell v. Grimm, D.Hawai'i 1994, 872 F.Supp. 746, reconsideration denied, affirmed in part, appeal dismissed in part 74 F.3d 977. Civil Rights 1376(6)

Arrest of hospital visitor for assault was objectively reasonable, and therefore arresting officers were protected from § 1983 claim by qualified immunity; upon being summoned to hospital, officers were told by hospital employees that visitor had been found with her hand around her mother's neck as her mother was choking, and officer saw red marks on mother's throat. Velaire v. City of Schenectady, N.Y., N.D.N.Y.1994, 862 F.Supp. 774. Civil Rights 1376(6)

Police officer had probable cause to arrest resident of condominium complex for harassment of resident manager, and thus, officer was protected from liability under § 1983 pursuant to doctrine of qualified immunity, where resident followed manager around for three and one-half days before her arrest for express purpose of finding ways in which manager's job performance was lacking, there was no evidence that manager had received notification from his employers that his job performance would be under surveillance by resident, and manager was aware of surveillance and found it so intrusive that he contacted police on three separate occasions in effort to get resident to stop. Fraser v. County of Maui, D.Hawai'i 1994, 855 F.Supp. 1167. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Undercover officers were not entitled to qualified immunity in § 1983 action brought by fellow officer alleging lack of probable cause to arrest fellow officer during undercover operation for possession of controlled substances, where reasonable officer could not have believed that arrest of fellow officer was lawful in light of clearly established law and information that arresting officers possessed. Osborne v. Howard, E.D.Ark.1994, 844 F.Supp. 511. Civil Rights 1376(6)

Rule of qualified immunity shielded police officers from § 1983 claims by a plaintiff who was videotaping a public demonstration when he was arrested under a state statute prohibiting the recording of private conversations; reasonable officers could have believed that it was lawful to arrest the plaintiff for having recorded the conversation. Fordyce v. City of Seattle, W.D.Wash.1993, 840 F.Supp. 784, affirmed in part, vacated in part and reversed in part 55 F.3d 436, 147 A.L.R. Fed. 811, on remand 907 F.Supp. 1446. Civil Rights 1376(6)

Police officers were entitled to qualified immunity as against seventh grader's claim that they violated Fourth Amendment by taking her to police station, even though her mother testified that she did not consent to having her daughter taken to police station; officers believed in good faith that parental permission had been granted, as officer testified that vice principal of school told him that mother had given permission to allow police to take her daughter to station. Gardiner v. Incorporated Village of Endicott, N.D.N.Y.1993, 838 F.Supp. 32, affirmed 50 F.3d 151. Civil Rights 1376(6)

Police officer who arrived at scene after another police officer had pulled motorist over for failing to obey his traffic directions was entitled to rely on information communicated to him by this other officer regarding motorist's actions, and had arguable probable cause to arrest like this other officer, so as to be entitled to qualified immunity from liability under §§ 1983 for allegedly making false arrest. Carroll v. Henry County, Ga., N.D.Ga.2006, 336 B.R. 578. Criminal Law 394.1(3); Civil Rights 1376(6)

City police officers were entitled to qualified immunity in civil rights action as to claim that they used excessive force to seize suspect before handcuffing him, since a reasonable officer would not have believed that suspect's rights were violated by the force he said the officers used in an attempt to stop him from trying to drive away with them in his truck bed. Hill v. Kansas City Metro Task Force, C.A.8 (Mo.) 2006, 182 Fed.Appx. 620, 2006 WL 1479025, Unreported. Civil Rights 1376(6)

Deputy sheriff's belief that road that arrestee was blocking with flatbed trailer bed was a public road on which traffic laws were required to be enforced was a reasonable one, for purposes of determining whether deputy was entitled to qualified immunity from liability in arrestee's §§ 1983 action alleging violation of Fourth Amendment; road met definition of public road under Georgia law by virtue of undisputed fact that it was open to the public and intended or used for its enjoyment and for the passage of vehicles. Whitner v. Moore, C.A.11 (Ga.) 2005, 160 Fed.Appx. 918, 2005 WL 3501867, Unreported. Civil Rights 1376(6)

Warrant for arrestee's arrest for burglary was supported by arguable probable cause, and thus, arresting officer was entitled to qualified immunity in arrestee's §§ 1983 action against her alleging false arrest; officer attested to facts that victim owned apartment complex that was under construction, appliances had been stolen from apartments in new construction area, security guard identified arrestee in photographic line-up as person he saw on balcony of burglarized building and fleeing scene in maroon van that was parked in garage that had interior and exterior access to burglarized apartments, and that arrestee had co-signed for the van less than one month before burglaries. Brown v. Abercrombie, C.A.11 (Ga.) 2005, 151 Fed.Appx. 892, 2005 WL 2404574, Unreported. Civil Rights 1376(6)

Police officer had probable cause to believe that arrestee violated a South Carolina statute prohibiting pedestrians from walking in a roadway where a sidewalk is provided, and was thus entitled to qualified immunity in the arrestee's §§ 1983 claim for false arrest; officer observed the arrestee interacting with a motorcycle passenger, who was herself located in the roadway, and the arrestee conceded that he may have stepped down off of the sidewalk.

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Smith v. McCluskey, C.A.4 (S.C.) 2005, 126 Fed.Appx. 89, 2005 WL 567539, Unreported. Civil Rights 1376(6)

Parole officer's decision to arrest parolee for technical parole violations was not unreasonable, and thus officer was entitled to qualified immunity from liability under §§ 1983 for depriving parolee of his Fourth Amendment right to be free from unlawful seizure, even though officer was aware that intermediate appellate court had vacated parolee's conviction, and conviction was subsequently declared nolle prosequi, where officer was not aware that state supreme court had denied state's appeal or that conviction had been vacated. Donaldson v. Mugavero, C.A.3 (Pa.) 2005, 126 Fed.Appx. 63, 2005 WL 565282, Unreported. Civil Rights 1376(7)

Even if arrestee had established that city police officers had violated his constitutional rights, he failed to make out claim of municipal liability under § 1983 against city, where he did not offer any evidence suggesting a specific failure in police officers' training. Williams v. City of New York, S.D.N.Y.2003, 2003 WL 22434151, Unreported, affirmed 120 Fed.Appx. 388, 2005 WL 154275. Civil Rights 1352(4)

Former police detective had qualified immunity from arrestee's false arrest, false imprisonment, and malicious prosecution claims under § 1983, where it was objectively reasonable for detective to believe there was probable cause to arrest and prosecute arrestee, in light of repeated victim identifications of arrestee as assailant, coupled with arrestee's admission that he was present at scene of stabbing and that victim bore no animosity towards him. Williams v. City of New York, S.D.N.Y.2003, 2003 WL 22434151, Unreported, affirmed 120 Fed.Appx. 388, 2005 WL 154275. Civil Rights 1376(6)

4047. ---- Stops, police officers, objective reasonableness requirement

Deputy sheriff who served as a school resource officer (SRO) acted reasonably in stopping student to question her about her conduct, after witnessing student threaten to do something physically to teacher in her physical education class, even if neither of two teachers that was present feared for their safety, in view of state statute providing that certain verbal threats would constitute misdemeanor of harassment. Gray ex rel. Alexander v. Bostic, C.A.11 (Ala.) 2006, 458 F.3d 1295. Schools 169

Reasonable police officer would not have had specific, articulable suspicion of illicit activity necessary for brief, investigatory *Terry* stop in seizing mother and her four small children in vehicle, for purpose of claim to qualified immunity in civil rights lawsuit under Fourth Amendment, on basis that subject police officer was looking for fugitive who was believed to have been at location nearby, young man exited vehicle parked near house, he walked from vehicle into garage of house while carrying skateboard and then looked into window of house, and vehicle then drove into driveway of house, turned on its bright lights, and honked. Couden v. Duffy, C.A.3 (Del.) 2006, 446 F.3d 483. Civil Rights 1376(6)

Even if police officer lacked probable cause or reasonable suspicion to stop automobile driving in high crime neighborhood at approximately 4:30 a.m., officer's act of stopping automobile was not objectively unreasonable under clearly established federal law, and thus officer was entitled to qualified immunity as to claim that stop was unlawful, where officer was investigating a prowler call in the area at the time he observed the automobile, automobile was the only vehicle the officer saw on the road, and automobile had tinted windows, thereby obstructing officer's view into the vehicle. Holeman v. City of New London, C.A.2 (Conn.) 2005, 425 F.3d 184. Civil Rights 1376(6)

Sheriff's decision to institute license checkpoints on either side of road that led to farm where "rock" concert was to be held had impermissible programmatic purpose, which reasonable sheriff could not have believed was proper under the Fourth Amendment, and which would prevent sheriff from successfully asserting qualified immunity defense to resulting civil rights claims, to extent that checkpoints were set up to discourage concert from taking place, whether because sheriff did not want to receive complaints about another concert, because farm owner had

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not supported sheriff in prior election, or because sheriff wanted to elicit bribe. Collins v. Ainsworth, C.A.5 (Miss.) 2004, 382 F.3d 529, on subsequent appeal 2005 WL 3502174, certiorari denied 126 S.Ct. 1661, 164 L.Ed.2d 397. Civil Rights 1376(6)

Even if motorist's Fourth Amendment right against unreasonable stops was violated when police officer stopped his vehicle shortly after another officer had stopped and released him, officers' conduct was not objectively unreasonable, and officers were therefore entitled to qualified immunity against motorist's § 1983 claim; although first officer released motorist, he could have believed it that was permissible to alert second officer to his observations of possible intoxication and to recommend that second officer investigate situation, and second officer could have concluded, based on his own observations, that motorist's loud exhaust independently justified second stop. Nelson v. Kline, C.A.1 (Me.) 2001, 242 F.3d 33. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from arrestee's § 1983 malicious prosecution claim, arising from her forcible removal by officers from automobile registered to her husband, from whom she was separated, since it was objectively reasonable for officers to conclude that they had probable cause to believe arrestee obstructed governmental administration; husband showed police valid registration which officers verified, arrestee then locked herself in automobile and attempted to start engine with apparent intention of driving away, and arrestee refused to leave driver's seat after unlocking doors. Lennon v. Miller, C.A.2 (N.Y.) 1995, 66 F.3d 416. Civil Rights 1376(6)

Officers were entitled to qualified immunity in arrestee's action for damages stemming from violation of Fourth Amendment rights in relation to stop and pat-down search; although on direct appeal state appellate court found that officers did not have reasonably articulable suspicion on which to base investigatory stop of car, movements of car reasonably led officers to believe that arrestee might have been planning to commit robbery. Losee v. Dearinger, C.A.8 (Iowa) 1990, 911 F.2d 48. Municipal Corporations 189(3)

It was objectively reasonable for police officers to believe, based on a third police officer's radio call indicating that a motorist was traveling through a residential neighborhood at a high rate of speed, that there was reasonable suspicion to stop the motorist, and thus, the officers were entitled to qualified immunity on the motorist's §§ 1983 claim for false arrest. Siegel v. Miller, E.D.Pa.2006, 446 F.Supp.2d 346. Civil Rights 1376(6)

Police officers had right to stop and detain mentally handicapped minor child for purpose of investigating reported criminal behavior, and thus officers were entitled to qualified immunity as to §§ 1983 claim brought by child and parent, alleging violations of child's Fourth Amendment rights; officers had reasonable suspicion to believe that crime had been committed and that child was person reported by neighbor, and when child ran away officers reasonably believed that he had violated Texas statute making it misdemeanor to resist arrest. Barlow ex rel. Moncebaiz v. Owens, S.D.Tex.2005, 400 F.Supp.2d 980. Civil Rights 1376(6)

Genuine issue of material fact existed as to whether particular police officer was entitled to qualified immunity, on basis that he had reasonable suspicion to stop arrestee's vehicle, which led to questioning, frisk, car search, and ultimate arrest and strip search of arrestee by other officers, precluding summary judgment on arrestee's false arrest and false imprisonment claims against officer in lawsuit under §§ 1983. Travis v. Village of Dobbs Ferry, S.D.N.Y.2005, 355 F.Supp.2d 740. Federal Civil Procedure 2491.5

Police officers who allegedly made daytime stop in area known for drug transactions of driver on suspicion that he might have some drugs, based solely on their past associations with him and his narcotics record, were not entitled to qualified immunity on civil rights claim for unreasonable seizure; objectively reasonable officer could not have fairly believed that such investigatory detention was permitted under Fourth Amendment. Cowles v. Peterson, E.D.Va.2004, 344 F.Supp.2d 472. Civil Rights 1376(6)

Officers were not qualifiedly immune from § 1983 claim arising from stop of automobile, inasmuch as it would

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have been clear to reasonable officer that Fourth Amendment required more than observing automobile driving through high crime neighborhood at odd hour to show probable cause for traffic stop. Holeman v. City of New London, D.Conn.2004, 330 F.Supp.2d 99, reversed in part, appeal dismissed in part 425 F.3d 184. Civil Rights 1376(6)

Police officer had reasonable articulable suspicion to stop vehicle for failure to activate turn signal for distance required by state law, and thus police officers were entitled to qualified immunity on passengers' § 1983 claims of unreasonable detention, where passengers did not dispute that driver failed to activate turn signal for distance required. Lewis v. City of Topeka, Kansas, D.Kan.2004, 305 F.Supp.2d 1209. Automobiles 349(2.1); Civil Rights 1376(6)

County patrol officer was entitled to qualified immunity from civil liability under § 1983 for conducting investigatory stop of vehicle for which he lacked reasonable suspicion that criminal activity was afoot as required by Fourth Amendment; even though nothing suspicious about vehicle, which he observed exiting on late Saturday evening at what he considered an excessive speed from parking lot of fertilizer plant that was closed, gave him reason to suspect an improper purpose, reasonable minds could differ about reasonableness of officer's evaluation of circumstances so as to reach same conclusion as officer did in determining that stop was warranted. Liston v. Steffes, W.D.Wis.2002, 300 F.Supp.2d 742. Civil Rights 1376(6)

It was objectively reasonable for police officers to believe they had probable cause to stop motorist and issue summonses for violating state statute requiring commercial vehicles garaged in state to be registered in state, and thus officers were entitled to qualified immunity from liability as to motorist's § 1983 false arrest claim, even though officers cited statute applicable to non-commercial vehicles, where vehicle had business's name and telephone number painted on its sides, and officers had reason to believe that vehicle was most frequently garaged in state. Gagne v. DeMarco, D.Conn.2003, 281 F.Supp.2d 390. Civil Rights 1376(6)

Police officers acted in objectively unreasonable manner and thus were not entitled to qualified immunity for alleged constitutional violations surrounding search and arrest of arrestee, precluding summary judgment for police officers on arrestee's § 1983 claim; anonymous tip was insufficient to allow officers to conduct *Terry* stop, without *Terry* stop, there was no basis to effect search or arrest arrestee who complied with officers' commands to take his hands out of his pockets and did nothing to provoke manner in which he was arrested. Feathers v. Aey, N.D.Ohio 2002, 196 F.Supp.2d 530, reversed 319 F.3d 843, rehearing and rehearing en banc denied. Civil Rights 1376(6)

Reasonable officers could disagree on whether *Terry* stop escalated into de facto arrest without probable cause, and thus, federal officers were qualifiedly immune from arrestee's constitutional claims even though right to be free from arrest without probable cause was clearly established; reasonable officers could disagree on existence of probable cause and also whether detention of arrestee at bus station escalated into de facto arrest when officers removed arrestee from line boarding bus and ask that she accompany them into bus terminal while allowing bus to depart. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. United States 50.10(3)

Even if allegedly defective taillight on driver's vehicle was not in such need of repair that it justified allegedly wrongful investigative stop, officers were entitled to qualified immunity from driver's civil rights action, as reasonable officer observing broken taillight would have believed he had reasonable suspicion of traffic violation which would justify stopping truck. Fillmore v. Eichkorn, D.Kan.1995, 891 F.Supp. 1482, affirmed 77 F.3d 492. Civil Rights 1376(6)

Officer who initiated investigatory stop of suspect based upon directions from other officers was entitled to qualified immunity from suspect's civil rights suit for allegedly stopping suspect without reasonable articulable suspicion of criminal activity, so long as his reliance upon directions of other officers was in good faith, and he reasonably believed that other officers had lawful reasons to direct him to make investigatory stop. Braxton v.

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Matthews, S.D.W.Va.1994, 865 F.Supp. 345. Civil Rights 1376(6)

Officer was entitled to qualified immunity for encounter with driver of lead truck in house moving detail; reasonable officer would have thought that the encounter constituted investigatory stop, for which only reasonable suspicion was required, and reasonable officer could have thought that reasonable suspicion existed. Lyle v. Dodd, N.D.Ga.1994, 857 F.Supp. 958. Civil Rights 1376(6)

Police officer had reasonable suspicion that arrestee's squealing of her vehicle's tires was a violation of state traffic regulation prohibiting unnecessary noise, and thus acted lawfully in stopping vehicle, and had probable cause to arrest motorist when she committed criminal offense in his presence by refusing to sign traffic tickets, entitling officer to qualified immunity from civil damages in motorist's subsequent civil rights action based on stop and arrest. McPherson v. Auger, D.Me.1994, 842 F.Supp. 25. Civil Rights 1376(6)

Police officers enjoyed qualified immunity from liability in federal civil rights suit brought by detainees whose automobile was pulled over because passenger resembled description of robber; officers acted reasonably under Fourth Amendment standards in conducting investigatory stop and transporting passenger to scene of crime for showup; even if there had not been sufficient basis for stop or if 20-minute stop had been too long, it was nonetheless objectively reasonable for officer to believe that stop was lawful; fact that other competent officers might have acted differently was not controlling. Dempsey v. Town of Brighton, W.D.N.Y.1990, 749 F.Supp. 1215, affirmed 940 F.2d 648, certiorari denied 112 S.Ct. 338, 502 U.S. 925, 116 L.Ed.2d 278. Civil Rights 1376(6)

Police officers were entitled to qualified immunity in § 1983 action arising from their *Terry* stop of plaintiff; even if officers' actions violated plaintiff's federal constitutional rights, reasonable officer under circumstances faced by officers in question could have concluded that there were articulable facts supporting reasonable suspicion that plaintiff had committed criminal offense. Harbin v. City of Alexandria, E.D.Va.1989, 712 F.Supp. 67, affirmed 908 F.2d 967. Civil Rights 1376(6)

Police officer who arrested motorist for ignoring his hand signals to stop, and for instead driving out of community in motor vehicle that tow truck operator was attempting to repossess, had arguable probable cause to arrest, and was entitled to qualified immunity from liability under §§ 1983, notwithstanding that motorist was allegedly unable to see officer's hand signals, possibly due to headlights shining in his eyes. Carroll v. Henry County, Ga., N.D.Ga.2006, 336 B.R. 578. Civil Rights 1376(6)

4048. ---- Applications for arrest warrants, police officers, objective reasonableness requirement

Standard of objective reasonableness defines qualified immunity accorded an officer whose request for a warrant allegedly caused an unconstitutional arrest; only where warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will shield of immunity be lost and officer be liable for damages under section 1983. Malley v. Briggs, U.S.R.I.1986, 106 S.Ct. 1092, 475 U.S. 335, 89 L.Ed.2d 271. See, also, Krause v. Bennett, C.A.2 (N.Y.) 1989, 887 F.2d 362. Civil Rights 1376(6)

Even assuming that application for arrest warrant for assault and battery featuring alleged victim's identification of suspect was not supported by probable cause, officer who applied for warrant based on alleged victim's affidavit enjoyed qualified immunity in arrestee's §§ 1983 Fourth Amendment action alleging lack of probable cause; absence of probable cause would not have been evident to objectively reasonable officer, given prosecutor's and magistrate's independent judgments of probable cause. McKinney v. Richland County Sheriff's Dept., C.A.4 (S.C.) 2005, 431 F.3d 415. Civil Rights 1376(6)

When officer sought search and arrest warrants against suspect, officer's belief that probable cause existed was sufficient to support qualified immunity, where statements by suspect's girlfriend gave suspect plausible motive for shooting, suspect had opportunity to fire shots, another witness' account provided direct evidence that suspect was

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gunman, and suspect mentioned girlfriend as intended victim in conversation with officer; as disinterested party, witness had no apparent motive for lying, officer could have reasonably believed that girlfriend's reputation and intoxication did not seriously undermine the reliability of her account, which was consistent with account of suspect and other witnesses, and officer's failure to pursue other possible suspect did not make it unreasonable for her to seek warrants against actual suspect. Smith v. Reddy, C.A.4 (Md.) 1996, 101 F.3d 351. Civil Rights 1376(6)

Deputy sheriff who was accused of submitting a recklessly false affidavit in support of arrest warrant was entitled to qualified immunity in § 1983 action brought by arrestee because a corrected affidavit would still have provided probable cause to arrest. Bagby v. Brondhaver, C.A.8 (Ark.) 1996, 98 F.3d 1096. Civil Rights 1376(6)

Police officer does not have qualified immunity under § 1983 from claim that he lied in affidavit in order to obtain warrant to arrest innocent person to cover up officer's own unlawful acts; no reasonable officer could think that Fourth Amendment would permit arrest under such circumstances. Moody v. St. Charles County, C.A.8 (Mo.) 1994, 23 F.3d 1410, rehearing denied. Civil Rights 1376(6)

University officials and employees had qualified immunity from arrestee's suit under § 1983 for seeking arrest warrant without probable cause for assault of female student; officials and employees reasonably could have assumed that probable cause existed based on fact that arrestee's wallet was found at scene of crime, victim identified arrestee as her assailant, arrestee could not be located at his address after the incident, and arrestee gave inconsistent statements during the investigation. Hutsell v. Sayre, C.A.6 (Ky.) 1993, 5 F.3d 996, certiorari denied 114 S.Ct. 1071, 510 U.S. 1119, 127 L.Ed.2d 389. Civil Rights 1376(5)

Arresting officers failed to establish that they had objectively reasonable grounds for obtaining an arrest warrant to arrest defendant as suspected gambler and, thus, failed to establish their entitlement to qualified immunity in the defendant's subsequent civil rights action, even though officers found the defendant's name, address and phone number in rolodex in home of a suspected gambler, and had voice comparison of defendant's voice with voice of gambler who had same first name as defendant; voice identification was by person who did not have expert training in voice identification, tape of voice was made on hand-held tape recorder and entire conversation lasted less than 60 seconds. Ricci v. Urso, C.A.1 (R.I.) 1992, 974 F.2d 5. Civil Rights 1376(6)

Qualified immunity protected police officer who obtained warrant for arrest of former corrections officer who allegedly helped inmate escape, even though charges against corrections officer were subsequently dismissed; police officer's reliance on uncorroborated statements of prisoner informants who had provided other reliable information was objectively reasonable. Hoffman v. Reali, C.A.1 (R.I.) 1992, 973 F.2d 980. Civil Rights 1376(6)

Issue as to whether a police officer is entitled to qualified immunity for seeking arrest warrants is not whether affidavit actually established probable cause, but whether officer had an objectively reasonable belief that it established probable cause. Thompson v. Reuting, C.A.8 (Neb.) 1992, 968 F.2d 756. Civil Rights 1376(6)

Police officer need not have actual probable cause for arrest to be entitled to qualified immunity in action brought by arrestee; only where warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will the shield of immunity be lost. Lowe v. Aldridge, C.A.11 (Ga.) 1992, 958 F.2d 1565. Civil Rights 1376(6)

Intentional or reckless omissions of material information from magistrate may serve as basis for challenge to qualified immunity in § 1983 civil rights action against arresting officers for alleged arrest without probable cause; recklessness may be inferred where omitted information was critical to probable cause determination. Golino v. City of New Haven, C.A.2 (Conn.) 1991, 950 F.2d 864, certiorari denied 112 S.Ct. 3032, 505 U.S. 1221, 120 L.Ed.2d 902. Civil Rights 1376(6); Civil Rights 1404

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Director of Arkansas State Board of Private Career Education knew or at the very least should have known that certain material statements in her affidavit in support of arrest warrant were false, and therefore Director, in her individual capacity, was not entitled to qualified immunity in civil rights action brought by arrested instructor, where affidavit stated that unlicensed organization, with instructor as its representative, conducted seminar on five dates, but seminar was only planned for the last date, and Director was present when instructor cancelled seminar and left location after being advised that organization did not have proper license to conduct seminar. Burk v. Beene, C.A.8 (Ark.) 1991, 948 F.2d 489. Civil Rights 1376(3)

Evidence might be insufficient to sustain finding of probable cause for arrest warrant application, yet be adequate to establish it was reasonable for officer seeking warrant to believe he had good basis for his actions, such that officer would be entitled to qualified immunity; only where warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will shield of immunity be lost. Magnotti v. Kuntz, C.A.2 (Conn.) 1990, 918 F.2d 364. Civil Rights 1376(6)

Sheriff's investigator and Federal Bureau of Investigation agent were not entitled to qualified immunity from liability for violations of aggravated kidnapping arrestees' Fourth Amendment rights; investigator submitted affidavit found to contain material misstatements and omissions which no reasonable official would have submitted to magistrate, and agent had knowledge of exculpatory information which he failed to disclose to magistrate issuing arrest warrant. Hale v. Fish, C.A.5 (La.) 1990, 899 F.2d 390. Civil Rights 1376(6)

Police officer did not have qualified immunity, in § 1983 action, when he arrested, pursuant to warrant, owner of lawfully registered firearms and ammunition, on suspicion of uttering threats; occasional bellicose statements made in presence of officers did not support legitimate belief there was probable cause to arrest, required to support warrant. Walczyk v. Rio, D.Conn.2004, 339 F.Supp.2d 385. Civil Rights 1376(6)

Information available to police officer at time he sought warrant for arrest of store customer for larceny provided probable cause for issuance of warrant, and thus officer was entitled to qualified immunity from liability in his individual capacity in customer's §§ 1983 action, even though store later declined to press charges, where officer was told by store employees that customer had tendered bad check and left store with her groceries while employees were discussing problem with her check and before she was told that payment had been accepted. Kling v. Harris Teeter Inc., W.D.N.C.2002, 338 F.Supp.2d 667, affirmed 86 Fed.Appx. 662, 2004 WL 238337. Civil Rights 1376(6); Criminal Law 211(4)

In order to mount challenge to issuance of warrant by magistrate, so as to overcome arresting officer's qualified immunity defense, § 1983 plaintiff must make substantial preliminary showing that affiant knowingly and intentionally, or with reckless disregard for truth, made a false statement in his affidavit and that allegedly false statement was necessary to finding of probable cause. Abramowitz v. Romano, D.Conn.2004, 303 F.Supp.2d 79. Civil Rights 1376(6)

Police officer and detective were not entitled to qualified immunity from civil liability in false arrest and malicious prosecution claims brought by landlord under § 1983, who was arrested after seizing property from tenant pursuant to a self-help provision in lease which permitted landlord to enter tenant's garage and seize property if, as occurred, tenant fell behind in paying his rent, where officer and detective were aware of the agreement and the self-help provision but obtained an arrest warrant without disclosing to the issuing judge the existence of the lease agreement or the self-help provision. Noga v. Potenza, N.D.N.Y.2002, 221 F.Supp.2d 345. Civil Rights 1376(6)

Arrest warrant affiant's reliance on affidavits prepared by prosecutor's office did not make her actions objectively reasonable and, thus, she was not entitled to qualified immunity from civil rights liability for recklessly or intentionally submitting probable cause statement based on informant's tip, either knowing of omitted statements or with reckless disregard for truth about informant's reliability; there was no indication that affiant made full disclosure to prosecutor and she did not ask whether it was permissible to omit material information about a

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confidential informant from the probable cause statement. Haywood v. Nye, D.Utah 1998, 999 F.Supp. 1451. Civil Rights 1376(6)

Claim that police officers fabricated evidence put before magistrate or, at least, proceeded with reckless disregard for truth in seeking arrest warrant, if supported by sufficient facts, was viable under § 1983. Duca v. Martins, D.Mass.1996, 941 F.Supp. 1281. Civil Rights 1088(4)

For purposes of determining police detective's entitlement, in his individual capacity, to qualified immunity from arrestee's civil lawsuit alleging wrongful or illegal arrest, application for arrest warrant was not so lacking in indicia of probable cause as to render official belief in its existence unreasonable under totality of circumstances, where arrestee fit description of suspect given by inmate during his interview with detective, and detective had learned before arrest that arrestee was working at store at time theft occurred, that person who claimed to be eyewitness identified person matching arrestee's description, and that participant in theft had implicated arrestee. Byers v. City of Eunice, C.A.5 (La.) 2005, 157 Fed.Appx. 680, 2005 WL 3228114, Unreported. Civil Rights 1376(6)

Arrestee did not demonstrate that no reasonably competent official would have found indicia of probable cause supporting complaint and arrest warrant charging arrestee with attempting to intimidate witness, and therefore state prosecutor was entitled to qualified immunity on arrestee's § 1983 claim alleging that prosecutor made false or misleading statements in affidavit of probable cause in support of complaint. Coburn v. Nordeen, C.A.10 (Kan.) 2003, 72 Fed.Appx. 744, 2003 WL 21662064, Unreported. Civil Rights 1375; Civil Rights 1376(9)

4049. ---- Execution of arrest warrants, police officers, objective reasonableness requirement

Deputies had reasonable belief that suspect for whom they had valid Oregon felony warrant was residing at, and was in, third party's home when they went there to arrest her, and therefore reasonable officer in deputies' position could reasonably have believed that deputies could lawfully enter home by force to effect arrest, as required for deputies to be entitled to qualified immunity on suspect's § 1983 claims arising from arrest, particularly given that entry into home was consistent with state law. Case v. Kitsap County Sheriff's Dept., C.A.9 (Wash.) 2001, 249 F.3d 921. Civil Rights 1376(6)

Assuming that city officials effected Fourth Amendment seizure when they allowed police to set explosive on roof of building while attempting to make arrest and allowing resulting fire to burn and that seizure was unreasonable, officials were entitled to qualified immunity on basis that they reasonably could have considered their conduct to be lawful; use of explosives and burning of rooftop bunker to provide safe means to inject tear gas into house to arrest armed and dangerous occupants barricaded inside was in response to exceptional circumstances unprecedented in case law. In re City of Philadelphia Litigation, C.A.3 (Pa.) 1995, 49 F.3d 945, rehearing and suggestion for rehearing in banc denied, certiorari denied 116 S.Ct. 176, 516 U.S. 863, 133 L.Ed.2d 116, on remand 910 F.Supp. 212, on remand 938 F.Supp. 1264. Civil Rights 1376(4)

Officer's reliance on arrest warrant was reasonable, where information on which officer acted was not inherently unreliable or obviously less credible than evidence opposed to it, and thus officer was shielded from § 1983 liability for reliance on warrant. Stigall v. Madden, C.A.8 (Ark.) 1994, 26 F.3d 867. Civil Rights 1088(4)

Police officers who erroneously arrested plaintiff instead of his son were entitled to qualified immunity in plaintiff's subsequent civil rights action, inasmuch as officers attempted to execute facially valid arrest warrant based on federal indictment and their actions were supported by probable cause. Mensh v. Dyer, C.A.4 (Va.) 1991, 956 F.2d 36. Civil Rights 1376(6)

Police officer's actions in making arrest pursuant to facially valid warrant were objectively reasonable, despite arrestee's protestations that warrant had been withdrawn, entitling officer to qualified immunity in arrestee's civil rights action arising when it was discovered that warrant had been withdrawn. Duckett v. City of Cedar Park, Tex.,

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C.A.5 (Tex.) 1992, 950 F.2d 272. Civil Rights 1376(6)

Officers acted reasonably in arresting father for kidnapping his three-year-old daughter and were thus entitled to qualified immunity from liability under § 1983 based on information received via teletype from sheriff's department in another state and based on their confirmation of existence of arrest warrant from which they could infer that judicial officer had reviewed information and found probable cause. Lowrance v. Pflueger, C.A.7 (Wis.) 1989, 878 F.2d 1014. Civil Rights 1376(6)

Police officers were not immune from § 1983 liability arising from nighttime search of residence pursuant to daytime bench warrant for contempt issued by small claims court; police officers should have known that nighttime execution of the warrant was unreasonable under the Fourth Amendment. O'Rourke v. City of Norman, C.A.10 (Okla.) 1989, 875 F.2d 1465, certiorari denied 110 S.Ct. 280, 493 U.S. 918, 107 L.Ed.2d 260. Civil Rights 1376(6)

Police officer who reasonably relies upon bulletin that establishes existence of warrant for arrest is entitled to qualified immunity in civil rights action brought against him for unlawful arrest. Capone v. Marinelli, C.A.3 (Pa.) 1989, 868 F.2d 102. Civil Rights 1376(6)

Reasonable police officers could reasonably conclude that there was probable cause to make arrests and, therefore, officers were entitled to qualified immunity from arrestee's civil rights claim based upon alleged lack of probable cause for arrests, in view of information contained in search warrant affidavits, when combined with discovery of items listed on search warrants and arrestee's presence at places where items were found, and in view of information contained in arrest warrant. Jones v. City and County of Denver, Colo., C.A.10 (Colo.) 1988, 854 F.2d 1206. Civil Rights 1376(6)

Town police officer was entitled to qualified immunity from arrestee's § 1983 claim that he was arrested for breach of peace without probable cause; arrest was based on warrant, issued by judge, which created presumption that it was objectively reasonable for officer to believe that there was probable cause for arrest, and arrestee did not show that officer misled judge in order to obtain warrant, so as to overcome presumption. Abramowitz v. Romano, D.Conn.2004, 303 F.Supp.2d 79. Civil Rights 1376(6)

Decision of county district attorney, county chief detective, and state police officials to use state police sudden emergency response team (S.E.R.T.) to execute warrant for arrest of suspect on charges of harassment by communication and making terroristic threats was objectively reasonable, and thus, officials were entitled to qualified immunity in § 1983 action based on Fourth Amendment excessive force claim brought after suspect was fatally shot by S.E.R.T. team; history of threats by suspect, suspect's prior assault of police officer, and nature of crimes supported reasonable belief that suspect would pose immediate threat to safety of officers. Estate of Fortunato v. Handler, W.D.Pa.1996, 969 F.Supp. 963. Civil Rights 1376(6); Civil Rights 1376(9)

Police officers arguably possessed probable cause to arrest suspect for sexually assaulting neighbor between ages of five and ten, acted with objective reasonableness, and, therefore, were entitled to qualified immunity from § 1983 liability, even though officer omitted from affidavit fact of suspect's disability and confinement to wheelchair, even though discrepancies existed between account given by victim and accounts given by victim's mother and boyfriend as to victim's prior statements, and even though statement in affidavit was inconsistent with investigative report and victim's deposition as to when victim remembered the assaults; before seeking warrant, officers conducted reasonable investigation, reasonable person could find probable cause even with full disclosure of disability, disclosure of discrepancies in affidavit would not have undercut probable cause, and time that victim remembered the assault was immaterial. Mutter v. Town of Salem, D.N.H.1996, 945 F.Supp. 402. Civil Rights 1376(6)

Police officer was entitled to qualified immunity for arrest of defendant based on warrant which had been recalled,

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where the information which he obtained pursuant to computer warrant check and confirmation of the active status of the warrant with the dispatch center led him to believe that the warrant was valid. Lauer v. Dahlberg, N.D.Ill.1989, 717 F.Supp. 612, affirmed 907 F.2d 152, rehearing denied. Civil Rights 1376(6)

Police officer who executed an apparently valid arrest warrant could not be held liable under § 1983 for wrongful arrest, in absence of allegation the officer had any reason to question warrant. Theis v. Smith, N.D.Ill.1988, 676 F.Supp. 874. Civil Rights 1088(4)

State troopers acted in objectively reasonable manner when they handcuffed arrestee and shackled her to barracks wall, even if such conduct violated arrestee's clearly established constitutional rights, and therefore qualified immunity applied to shield officers from § 1983 liability; although arrestee contended that trooper who obtained arrest warrant should have instead issued her an appearance ticket, she did not appear at barracks when trooper was on duty. Ingersoll ex rel. Estate of Ingersoll v. LaPlante, C.A.2 (N.Y.) 2003, 76 Fed.Appx. 350, 2003 WL 21949752, Unreported. Civil Rights 1376(6)

4050. ---- Warrantless arrests, police officers, objective reasonableness requirement

No reasonable police officer could have believed that he had arguable probable cause to arrest, for obstruction of governmental operations or any other purported crime, citizen who, from considerable distance, observed police officers while they were engaged in traffic stop of two young men, and who spoke only when spoken to by officers and complied with request for identification after pointing out that he had done nothing wrong, regardless of whether state obstruction statute had been judicially construed at time of arrest, and therefore officer who arrested onlooker allegedly under such circumstances was not entitled to summary judgment based on qualified immunity in onlooker's §§ 1983 action. Walker v. City of Pine Bluff, C.A.8 (Ark.) 2005, 414 F.3d 989. Federal Civil Procedure 2491.5

Police officer did not have qualified immunity for his warrantless arrest of citizen for criminal mischief to city laundromat, for purpose of citizen's § 1983 action that alleged false arrest and malicious prosecution in violation of Fourth Amendment, because jury would not necessarily have concluded that officers of reasonable competence would disagree on whether probable cause test was met; even though officer had probable cause to arrest two other individuals who were removing equipment from laundromat, citizen had just dropped by to see how things were going and officer had no information suggesting citizen had committed any crime. Rogers v. City of Amsterdam, C.A.2 (N.Y.) 2002, 303 F.3d 155. Civil Rights 1376(6)

Police officers' alleged reliance on prosecutor's advice did not entitle them to qualified immunity from § 1983 claims alleging that they lacked probable cause in arresting bail bondsman on charges of first-degree burglary and second-degree assault, where prosecutor did not tell officers to arrest bondsman, but rather advised them to present their police report and warrant application in his office during the next business day. Womack v. City of Bellefontaine Neighbors, C.A.8 (Mo.) 1999, 193 F.3d 1028. Civil Rights 1376(6)

When considering qualified immunity in § 1983 case alleging arrest without probable cause, issue is not probable cause in fact, but arguable probable cause, as actual probable cause is not necessary for arrest to be objectively reasonable; it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and in such cases those officials should not be held personally liable. Madiwale v. Savaiko, C.A.11 (Fla.) 1997, 117 F.3d 1321. Civil Rights 1376(6)

Arresting officers acted in an objectively reasonable fashion in light of clearly established law at time they made warrantless arrest of suspected misdemeanant, and thus, officers were entitled to qualified immunity from liability in arrestee's § 1983 action; driver informed officers that suspected misdemeanant was driver of truck which collided with her vehicle and that suspected misdemeanant and other men in his vehicle smelled of alcohol and had glassy eyes. Vargas-Badillo v. Diaz-Torres, C.A.1 (Puerto Rico) 1997, 114 F.3d 3. Civil Rights 1376(6)

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Even if probable cause was lacking with regard to arrest despite police officers' subjective belief that they had probable cause, they were entitled to qualified immunity so long as their belief was objectively reasonable. Edwards v. Cabrera, C.A.7 (Ill.) 1995, 58 F.3d 290. Civil Rights 1376(6)

Reasonable police officer would have made further inquiries before effecting warrantless arrest, even though police had received original report that person had been kidnapped, and thus officers were not entitled to qualified immunity in civil rights action, where police officers subsequently obtained information that alleged victim of kidnapping had returned, knew that arrestee was local school teacher and victim's long-time boyfriend, also knew that suspect had telephoned police station and stated he was available for police questioning, and suspect was cooperative and volunteered his version of what happened at time of arrest. Merriman v. Walton, C.A.9 (Cal.) 1988, 856 F.2d 1333, certiorari denied 109 S.Ct. 3188, 491 U.S. 905, 105 L.Ed.2d 696. Civil Rights 1376(6)

Officer did not have a reasonable basis for warrantless arrest of mother for damage to property under the theory that mother herself had run car into garage, which was inconsistent with mother's statement that her child had done so, where officer did not avail himself of readily available information which would have clarified matters by making rudimentary inquiries of neighbors then on the scene who would have verified mother's assertion that her child, not she, had done the property damage; thus, officer did not have qualified immunity from damages. Sevigny v. Dicksey, C.A.4 (N.C.) 1988, 846 F.2d 953. Civil Rights 1376(6)

Taking the facts in light most favorable to arrestee, exigent circumstances did not exist to justify state troopers' warrantless arrest of arrestee, in violation of arrestee's well-established Fourth Amendment rights, and thus, troopers were not entitled to qualified immunity on arrestee's §§ 1983 false arrest claim against them; the only facts suggesting presence of exigent circumstances were that arrestee's alleged crime involved a firearm that was not accounted for, that residence where troopers effected the arrest was located some distance from trooper's vehicle, and that another suspect may have been involved, and incident underlying arrest occurred more than four hours before arrest. Manning v. Washington, W.D.Wash.2006, 463 F.Supp.2d 1229. Arrest 71.1(6)

Genuine issue of material fact as to whether county police sergeant had probable cause to arrest vehicle passenger for interference with a police officer and disorderly conduct precluded summary judgment for sergeant, based on qualified immunity, in passenger's §§ 1983 action alleging a Fourth Amendment violation. Freece v. Clackamas County, D.Or.2006, 442 F.Supp.2d 1080. Federal Civil Procedure 2491.5

There was reasonable basis for police to believe they had probable cause to arrest female apartment resident for murder of male companion, allowing for qualified immunity claim to false arrest action under §§ 1983; there was firearm with spent rounds in apartment, resident was observed trying to smuggle marijuana out of apartment in children's backpacks, and police were unable to find evidence substantiating resident's claim that an intruder was murderer. Richards v. City of New York, S.D.N.Y.2006, 433 F.Supp.2d 404. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from arrestee's §§ 1983 claim for violation of Fourth Amendment right to be free from unreasonable seizure based on warrantless arrest just inside door of arrestee's home; no officer could have reasonably concluded that it was lawful for officers to lie to arrestee about having a warrant in order to gain entry into her house, without a warrant or her consent and absent exigent circumstances, to arrest her for a minor offense. Breitbard v. Mitchell, E.D.N.Y.2005, 390 F.Supp.2d 237. Civil Rights 1376(6)

Police officer had qualified immunity from false arrest claim, arising from his arresting of employee as accomplice in armed robbery of restaurant; objectively reasonable officer could believe there was probable cause to arrest, based on suspicious conduct of employee who encountered robbers in parking lot outside of restaurant and led them into establishment. Sheppard v. Aloisi, D.Mass.2005, 384 F.Supp.2d 478. Civil Rights 1376(6)

Police officers could reasonably believe there was probable cause to arrest town meeting participant, who got into shouting match with crowd and accused them of being "assholes," allowing for qualified immunity from claims of

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improper arrest. Nolan v. Krajcik, D.Mass.2005, 384 F.Supp.2d 447. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity, in citizen's §§ 1983 lawsuit under Fourth Amendment, where they made warrantless arrest on tip given by informant, who indicated that citizen had been making drug buy each Friday, but police had been watching citizen for eight consecutive Fridays and they saw nothing at all to corroborate informant's story, and no augmentation or corroboration of tip otherwise occurred, and strip search was undertaken in hope that discovery of contraband would have corroborated officers' hunch that she might have been carrying drugs. Travis v. Village of Dobbs Ferry, S.D.N.Y.2005, 355 F.Supp.2d 740. Civil Rights 1376(6)

Three police officers were entitled to qualified immunity from motorist's claim, under §§ 1983, that warrantless arrest for driving under the influence was not supported by probable cause; weaving of motorist's pickup truck, redness of his eyes, his failure to follow instructions, and his ever-so-slight side step during walk-and-turn field sobriety test precluded finding that there was clearly no probable cause, or that no reasonably competent officer would have found probable cause. Blackstone v. Quirino, D.Me.2004, 309 F.Supp.2d 117. Civil Rights 1376(6)

It was not reasonable for police officers to believe that individual accused by neighbors of disturbing peace presented substantial and imminent risk to himself or others, and thus officers were not entitled to qualified immunity from liability under § 1983 arising from their warrantless arrest of individual and warrantless entry into his residence, even if arrestee was in violation of restraining order, had recently been placed under observation for suicide threats, and was allegedly mumbling and making rambling statements on eve of arrest, where complaining neighbors did not fear for their safety, there was no evidence that arrestee possessed any weapons, and arrestee did not make any suicidal gestures. Sepatis v. City and County of San Francisco, N.D.Cal.2002, 217 F.Supp.2d 992. Civil Rights 1376(6)

When warrantless arrest is subject of § 1983 action, arresting officer is entitled to qualified immunity if reasonable officer could have believed that probable cause existed to arrest plaintiff, and burden is on plaintiff to show that officer unreasonably arrested plaintiff without probable cause. Mason v. Stock, D.Kan.1997, 955 F.Supp. 1293. Civil Rights 1376(6); Civil Rights 1407

Police officer had arguable probable cause to arrest § 1983 plaintiff for disorderly conduct, for purposes of qualified immunity from claim that officer deprived plaintiff of liberty without due process, despite claim that plaintiff could not be arrested for creating public disturbance because she was on private property; reasonable law enforcement officers, possessing same knowledge and in same circumstances as officer, could have reasonably interpreted plaintiff's involvement in domestic disturbance as creating public inconvenience, annoyance, or alarm to neighbors or passersby, even while plaintiff was on private property. Rose v. Town of Jackson's Gap, M.D.Ala.1996, 952 F.Supp. 757. Civil Rights 1376(6)

Qualified immunity doctrine protected detective from any liability for any mistake as to who was responsible for attempting to flush cocaine down toilet just before detective arrived pursuant to search warrant relating to drug conspiracy, and, thus, qualified immunity protected detective from any liability for arresting conspiracy suspect's spouse who had just emerged from bathroom where cocaine was found on toilet seat and cocaine vials were found in toilet; detective reasonably believed that he had probable cause to arrest wife. Bryant v. Rudman, S.D.N.Y.1996, 933 F.Supp. 270. Civil Rights 1376(6)

Police officers had qualified immunity in connection with their arrest of civil rights complainant who was found in state of extreme intoxication while attempting to gain entrance to an apartment building, even if there was no reasonable cause to arrest, or circumstances allowing reasonable officer to believe there was reasonable cause to arrest, on charged crime of criminal trespass; reasonable officer could believe that he could arrest complainant for related charge of disorderly conduct. Fink v. Gonzalez, N.D.Ill.1996, 911 F.Supp. 332. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police officer who made warrantless arrest based on woman's complaint that arrestee had assaulted her and refused to leave her apartment had qualified immunity from arrestee's suit for damages under § 1983, regardless of whether arrestee was legitimate tenant of apartment; it was reasonable for officer to assume that arrestee had no right to be on the premises. Green v. City of Welch, S.D.W.Va.1993, 822 F.Supp. 1236. Civil Rights 1376(6)

Pennsylvania state trooper was not entitled to qualified immunity from § 1983 liability with regard to warrantless arrest of election poll watcher, even though trooper reasonably believed he had probable cause to arrest; trooper should have obtained warrant, trooper did not personally witness the watcher's fight with deputy sheriffs, and charges on which he argued that he had probable cause, assault and resisting arrest, were misdemeanors in Pennsylvania. Shoop v. Dauphin County, M.D.Pa.1991, 766 F.Supp. 1327, affirmed 945 F.2d 396, certiorari denied 112 S.Ct. 1178, 502 U.S. 1097, 117 L.Ed.2d 422. Civil Rights 1376(6)

Police officers' warrantless arrest of father for abduction and rape of his four-year-old daughter was "objectively reasonable," even if officers did not have probable cause to arrest father, entitling officers to qualified immunity in father's civil rights action arising when scientific tests indicated that father was not the perpetrator; victim had stated that "Daddy did it," and circumstances of abduction made it unlikely that someone other than the father could have entered victim's bedroom. Marx v. Gumbinner, S.D.Fla.1989, 716 F.Supp. 1434, affirmed 905 F.2d 1503. Civil Rights 1376(6)

After suspect had allegedly violated the law in Pennsylvania and left the state, it was not unreasonable for police officer to designate him as a "fugitive" for the purposes of arrest, regardless of the suspect's subjective intentions, and thus, the officer was entitled to qualified immunity as to the arrestee's civil rights claim challenging the fugitive designation. Mitchell v. Obenski, C.A.3 (Pa.) 2005, 134 Fed.Appx. 548, 2005 WL 1394940, Unreported. Civil Rights 1376(6)

Reasonable officer in the position of a sheriff's deputy, who was allegedly scratched in her arm by a dog's claws, teeth, or collar as the dog brushed past her while running from a house into a yard, could not reasonably have believed there was probable cause to arrest the dog's owner for assault in the second and third degrees and battery in the third degree, and thus, was not entitled to qualified immunity in the owner's §§ 1983 suit; owner never ordered the dog to attack, or did anything to encourage him to do so. Gaines v. Brewer, C.A.8 (Ark.) 2005, 132 Fed.Appx. 67, 2005 WL 1074811, Unreported. Civil Rights 1376(6)

For qualified immunity purposes in arrestee's §§ 1983 claim for arrest without probable cause, it was not objectively unreasonable for officer to believe probable cause existed to arrest arrestee, where a co-defendant of arrestee's made statements implicating arrestee in the murder of arrestee's girlfriend and son, arrestee failed polygraph examination, indicating that arrestee lied when he responded affirmatively that girlfriend was alive when he last saw her, arrestee failed to report girlfriend and son missing, and arrestee made inconsistent statements about whether he had argued with girlfriend on the last night he claimed he saw her. Gliatta v. Jones, C.A.5 (Miss.) 2004, 96 Fed.Appx. 249, 2004 WL 1114469, Unreported. Civil Rights 1376(6)

4051. ---- Excessive use of force, police officers, objective reasonableness requirement

Reasonable police officers would not have jumped on 14-year-old boy, put knee in his back, pointed guns at his head, handcuffed him, and sprayed him with mace on suspicion of burglary, for purpose of officers' claim to qualified immunity to boy's civil rights claim under Fourth Amendment, where boy exited vehicle parked near house, he walked from vehicle into garage of house while carrying skateboard and then looked into window of house, and boy was cooperative, four police officers were present, and police had no reason to believe that boy was armed or that any accomplice was present. Couden v. Duffy, C.A.3 (Del.) 2006, 446 F.3d 483. Civil Rights 1376(6)

Police officer confronted with mentally disturbed person who, during course of night's events, had refused to put

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down his rifle, discharged rifle into air while officers were nearby, and pointed rifle in general direction of law enforcement officers, had reason to believe that this person posed threat of serious harm to officers or others, and acted in objectively reasonable manner in using deadly force by shooting this person through the mouth, regardless of angle and direction in which rifle was pointed when officer discharged his weapon, and regardless of officer's knowledge about whether rifle was cocked or loaded; thus, officer did not violate person's Fourth Amendment rights by using deadly force against him and was not liable in damages under §§ 1983. Ballard v. Burton, C.A.5 (Miss.) 2006, 444 F.3d 391. Arrest 68(2)

Police officer was not entitled to qualified immunity on claim that he violated clearly established right to be free of excessive force in effecting seizure of arrestee who suffered dislocated right ankle and fracture of fibula near ankle, and who alleged that officer had used pepper spray after he was handcuffed, as reasonableness of officer's actions depended upon whose version of events was believed. Henderson v. Munn, C.A.8 (Ark.) 2006, 439 F.3d 497. Civil Rights 1376(6)

Law enforcement officers who suspected child molestation by babysitter's husband were entitled to qualified immunity from §§ 1983 liability for use of allegedly excessive force by entering babysitter's home in the middle of the night, physically separating her from her telephone, taking her by the arm, escorting her from her home, and placing her in the locked back seat of a patrol car; the officers' conduct was not so clearly unlawful under prior case law that a reasonable officer could not have believed the conduct was legal. Cortez v. McCauley, C.A.10 (N.M.) 2006, 438 F.3d 980. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity, for purpose of §§ 1983 excessive force claim brought by mother of drug trafficking suspect who was fatally shot by officer, where, viewing the facts in the light most favorable to the suspect's mother, the officer was in no immediate danger at time of shooting, and suspect did not pose immediate threat to other officers. Sigley v. City of Parma Heights, C.A.6 (Ohio) 2006, 437 F.3d 527. Civil Rights 1376(6)

No reasonable police officer could have believed that it was reasonable for officer to shoot with beanbag propellant unarmed suspect at riot who committed no crime and whose conduct did not suggest that he posed immediate threat to safety of officer and therefore officer was not entitled to qualified immunity against suspect's §§ 1983 excessive force claim; suspect alleged that he slowly approached officer with his hands in surrender position and there was no evidence to suggest that suspect was attempting to resist or evade arrest by flight. Ciminillo v. Streicher, C.A.6 (Ohio) 2006, 434 F.3d 461. Civil Rights 1376(6)

State police officers were not qualifiedly immune from §§ 1983 claims that they used excessive force in deciding to storm suspect's house, after state troopers had reported their belief that suspect had targeted officer with laser-sighted weapon, and Pennsylvania's Special Emergency Response Team (SERT) had been activated, inasmuch as severity of threat had lessened since activation, and members of SERT had since learned that suspect had heart problems and flashbacks to Vietnam. Estate of Smith v. Marasco, C.A.3 (Pa.) 2005, 430 F.3d 140. Civil Rights 1376(6)

Police officer's use of deadly force was reasonable, and thus officer was entitled to qualified immunity in civil rights action brought by shooting victim's mother pursuant to §§ 1983 alleging Fourth Amendment violations of unnecessary and excessive force, where shooting victim repeatedly refused to comply with the reasonable requests of law enforcement and continued his approach towards officer, ultimately reaching toward the officer's gun. Blossom v. Yarbrough, C.A.10 (Okla.) 2005, 429 F.3d 963. Civil Rights 1376(6)

Arrestee failed to show that police officer used excessive force in handcuffing her, and so officer was entitled to qualified immunity with respect to that claim in arrestee's §§ 1983 action; arrestee alleged little in the way of physical injuries caused by the handcuffing, more critically, she did not allege that her physical complaints to the officers went unheeded but, to the contrary, she did not even claim that she told the officers that the handcuffs were

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too tight, and so, absent an obvious physical problem caused by the handcuffs or a plea by arrestee to loosen them, it was fair to ask how a reasonable officer should have known that a problem had occurred. Lyons v. City of Xenia, C.A.6 2005, 417 F.3d 565. Arrest 68(2)

City, police department, and chief of police were not liable in §§ 1983 action brought by plaintiff who was shot by police officer, where no constitutional violation occurred inasmuch as officer's conduct was objectively reasonable. Jiron v. City of Lakewood, C.A.10 (Colo.) 2004, 392 F.3d 410. Civil Rights 1348; Civil Rights 1358

For qualified immunity purposes in §§ 1983 action brought by suspect's wife alleging officer's use of deadly force violated suspect's Fourth Amendment rights, officer's conduct of firing gun at suspect was reasonable, where officer was aware that suspect had violated protective order four times within several hours, officer was in radio contact with the other officers who were in pursuit of the suspect, the suspect had escaped from an armed policeman and the chase was still underway with a number of officers in pursuit, the suspect was running at full speed directly toward officer's police cruiser, and, ignoring orders to stop, the suspect kept charging at the officer who held his fire until the muzzle of his gun was two feet away from suspect. Carswell v. Borough of Homestead, C.A.3 (Pa.) 2004, 381 F.3d 235, certiorari denied 126 S.Ct. 236, 163 L.Ed.2d 219, rehearing denied, rehearing denied 126 S.Ct. 724, 163 L.Ed.2d 621. Civil Rights 1376(6)

Fact issues as to whether automobile that officer had pulled over was bearing down on officer, and as to whether officer tried but was unable to get driver to stop, precluded finding of either objective reasonableness of officer's use of deadly force, or reasonableness of officer's belief that his life was in danger, and in turn precluded summary judgment for officer in driver's estate's § 1983 excessive force action against officer and town. Cowan ex rel. Estate of Cooper v. Breen, C.A.2 (Conn.) 2003, 352 F.3d 756. Federal Civil Procedure 2491.5

Section 1983 protects plaintiffs from constitutional violations, not violations of state laws, police department regulations, or police practices. Scott v. Edinburg, C.A.7 (Ill.) 2003, 346 F.3d 752. Civil Rights 1027; Civil Rights 1088(1)

Police officer's conduct in drawing his gun upon exiting police cruiser after pursuing shooting victim's motor vehicle was not objectively unreasonable use of force, entitling officer to qualified immunity from liability in victim's § 1983 action, arising from shooting when officer slipped and his gun accidentally discharged, where suspect drove his vehicle into ditch, it was late at night, and there was no evidence that officer could see victim or the ice on which he slipped. McCoy v. City of Monticello, C.A.8 (Ark.) 2003, 342 F.3d 842. Civil Rights 1376(6)

Police officer who, in 1999, shot suspect with intention of killing him, as he had been trained, acted in objectively reasonable manner to perceived imminent threat to fellow officer to save his life, and fellow officer's subsequent shooting that did not strike either suspect was reaction to same perceived threat from distinctive sound of chambering of bullets to protect himself; thus, officers were entitled to qualified immunity from § 1983 liability for use of excessive force. Carr v. Tatangelo, C.A.11 (Ga.) 2003, 338 F.3d 1259, as amended. Civil Rights 1376(6)

Under the Constitution, for purposes of a § 1983 claim alleging excessive force, the right question to determine whether an officer's particular conduct was reasonable within the meaning of the Fourth Amendment is how things appeared to objectively reasonable officers at the time of the events, not how they appear in the courtroom to a cross-section of the civilian community. Bell v. Irwin, C.A.7 (Ill.) 2003, 321 F.3d 637, certiorari denied 124 S.Ct. 84, 540 U.S. 818, 157 L.Ed.2d 36. Arrest 68(2)

Officers' conduct of using bean-bag rounds to stun arrestee during standoff with arrestee was reasonable within the meaning of the Fourth Amendment, for purposes of arrestee's § 1983 claim alleging officers used excessive force, where arrestee acknowledged that he was armed with knives, drove his wife out of their home, refused to emerge or

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admit police for discussion, held a knife to his throat while threatening suicide, and made a move toward a propane tank. Bell v. Irwin, C.A.7 (Ill.) 2003, 321 F.3d 637, certiorari denied 124 S.Ct. 84, 540 U.S. 818, 157 L.Ed.2d 36. Arrest 68(2)

Police officer's conduct in killing unarmed felon by firing three shots into him at close range while felon was hiding behind water heater and brick column in dimly lit cellar was reasonable, for purpose of officer's assertion of qualified immunity to § 1983 claim under Fourth Amendment brought by parents of felon; even though parents told officers beforehand that felon was unarmed, officers were informed that felon was violent and armed with knife and officer did not fire until he thought he was shot after being hit by debris from ricochet from weapon that another officer discharged by accident. Seiner v. Drenon, C.A.8 (Mo.) 2002, 304 F.3d 810. Arrest 68(2); Civil Rights 1376(6)

Actions of sheriffs' deputies, who had responded to 911 call by husband and wife who reported that they had inadvertently triggered burglar alarm at convenience store, in throwing husband against the wall, kicking his legs apart, handcuffing him, and placing him in squad car after husband attempted to leave to turn off cooking device he had left on at his residence, and spraying wife twice in the face with pepper spray from close range after she reacted to handcuffing of her husband, were not objectively reasonable, so that deputies were not protected by qualified immunity in § 1983 action by husband and wife. Park v. Shiflett, C.A.4 (Va.) 2001, 250 F.3d 843. Civil Rights 1376(6)

Reasonable police officer would have believed that use of deadly force was necessary to prevent imminent death or great bodily harm to himself or another, and, thus, Florida police officer who had shot and killed suspect was entitled to qualified immunity in § 1983 action, where suspect was known drug abuser who had threatened to commit suicide, when officers arrived, suspect had already cut his wrists with box-cutter, officers located suspect in small bedroom where he was repeatedly told to drop box-cutter clenched in his fist, suspect instead shouted obscenities at officers and slid off dresser, with his momentum carrying him toward officers, and officer fired three shots in rapid succession when suspect came within six to eight feet of another officer. Wood v. City of Lakeland, FL, C.A.11 (Fla.) 2000, 203 F.3d 1288. Civil Rights 1376(6)

State trooper's failure to warn detainee before trooper twice shot detainee did not make trooper's conduct objectively unreasonable, and thus, did not preclude grant of summary judgment to him on qualified immunity grounds in detainee's § 1983 action alleging excessive force; trooper was lying on his back after being knocked down by detainee, detainee was standing nearby, and trooper thus had to immediately decide whether to shoot. Colston v. Barnhart, C.A.5 (Tex.) 1997, 130 F.3d 96, rehearing en banc denied 146 F.3d 282, certiorari denied 119 S.Ct. 618, 525 U.S. 1054, 142 L.Ed.2d 557. Civil Rights 1376(6)

Arrestee failed to meet burden of showing that no police officer reasonably could have believed that arrestee posed risk of serious physical injury to officer or others, as he fled with sawed-off shotgun in hand, and thus, officer was entitled to qualified immunity from arrestee's § 1983 excessive force claim, where arrestee had fired shotgun while in crowd of people in near-riot situation, arrestee failed to heed officer's repeated orders to drop shotgun, and arrestee's weapon was designed or altered and frequently used by criminals to kill people. Montoute v. Carr, C.A.11 (Fla.) 1997, 114 F.3d 181. Civil Rights 1376(6)

Officer who shot juvenile in midst of struggle over officer's weapon was entitled to qualified immunity against excessive force action as matter of law; no rational jury could find that officer's decision to use deadly force was so flawed that no reasonable officer would have made similar choice, as juvenile was actively resisting arrest, officer was being pummelled by more than five people, and officer shot juvenile "instinctively" in reaction to seeing juvenile's hand on barrel of his gun. Salim v. Proulx, C.A.2 (Conn.) 1996, 93 F.3d 86. Civil Rights 1376(6)

Officer was entitled to qualified immunity from § 1983 claim by plaintiff who was shot by that officer after being stopped by another officer; upon seeing plaintiff attack officer who stopped plaintiff and hearing that officer yell

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that plaintiff had a knife, officer who shot plaintiff would have had probable cause to believe that plaintiff posed threat of serious harm to officer who stopped plaintiff. Lowery v. Stovall, C.A.4 (Va.) 1996, 92 F.3d 219, certiorari denied 117 S.Ct. 954, 519 U.S. 1113, 136 L.Ed.2d 841. Civil Rights 1376(6)

Police officers did not use excessive force in detaining and arresting individual who died of "positional asphyxiation" after he was taken into custody and detained in automobile with his feet on rear seat and his head in space between front and rear seats, in which position he was unable to adequately inhale oxygen, and were entitled to qualified immunity in action brought following arrestee's death. Cottrell v. Caldwell, C.A.11 (Ala.) 1996, 85 F.3d 1480. Civil Rights 1376(6)

Deputy acted reasonably in using deadly force and, therefore was entitled to qualified immunity from civil rights claims asserted by shooting victim's estate, where victim was behaving erratically and had a weapon. Reynolds v. County of San Diego, C.A.9 (Cal.) 1996, 84 F.3d 1162. Civil Rights 1376(6)

Jury finding, that reasonable officer would not have believed himself to be in danger by suspect attempting to escape in car so as to justify shooting and killing suspect, as basis for conclusion that officer violated suspect's constitutional right by use of excessive force, was supported by sufficient evidence, even if car began to move while officer was in front of car; jury could have found from evidence that reasonable officer would have positioned himself facing driver closer to side of car so that officer could avoid injury when car moved slowly. Acosta v. City and County of San Francisco, C.A.9 (Cal.) 1996, 83 F.3d 1143, as amended, certiorari denied 117 S.Ct. 514, 519 U.S. 1009, 136 L.Ed.2d 403. Civil Rights 1420

Lack of bright line rules governing permissible use of force during *Terry* stop did not mean that officers who conducted *Terry* stop automatically were entitled to qualified immunity from detainee's civil rights claim against officers for use of allegedly excessive force; rather, question was whether officers' actions were objectively reasonable. Mick v. Brewer, C.A.10 (Kan.) 1996, 76 F.3d 1127, on remand 923 F.Supp. 181, on remand 1997 WL 225908. Civil Rights 1376(6)

There are three criteria for evaluating objective reasonableness of the force used for purposes of § 1983 claim alleging excessive force in violation of Fourth Amendment: what is severity of the crime at issue; whether suspect poses immediate threat to safety of officers or others; and whether suspect is actively resisting arrest or attempting to evade arrest by flight. Alexis v. McDonald's Restaurants of Massachusetts, Inc., C.A.1 (Mass.) 1995, 67 F.3d 341, on remand 1996 WL 463675. Civil Rights 1088(4)

Police officers were entitled to qualified immunity from arrestee's § 1983 excessive force claim, arising from her forcible removal by officers from automobile following her refusal to leave automobile on her own, since it was objectively reasonable for officers to believe that force alleged was objectively reasonable in light of circumstances; officer wrapped his arm around arrestee's neck, shoulder, and arm and pulled her from automobile. Lennon v. Miller, C.A.2 (N.Y.) 1995, 66 F.3d 416. Civil Rights 1376(6)

Determining whether force used during arrest is "reasonable," for purposes of § 1983 claim, requires balancing nature and quality of intrusion on individual's Fourth Amendment interests against countervailing governmental interests at stake; this standard evaluates reasonableness of force used by considering totality of circumstances faced by officer on scene. Lennon v. Miller, C.A.2 (N.Y.) 1995, 66 F.3d 416. Civil Rights 1088(4)

Police officer acted in objectively reasonable manner in drawing his gun and pointing it at suspect after extended pursuit of suspect for purposes of effecting arrest, and officer was entitled to qualified immunity in context of suspect's excessive force claim. Edwards v. Giles, C.A.8 (Neb.) 1995, 51 F.3d 155. Civil Rights 1376(6)

For purposes of determining, as part of civil rights claims, if objectively reasonable law enforcement officer would have known that force was excessive, defendant must show significant injury that resulted directly and only from

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use of force that was clearly excessive to need and that was objectively unreasonable. Hale v. Townley, C.A.5 (La.) 1995, 45 F.3d 914, rehearing and suggestion for rehearing en banc denied 51 F.3d 1047. Civil Rights 1376(6)

Police officer who shot intoxicated arrestee who became belligerent after police attempted to arrest him and who was carrying knives was entitled to qualified immunity in action by suspect under federal civil rights statute where arrestee was armed, tried to kick and strike at officers attempting to arrest him, and disobeyed repeated instructions to put down weapons, and where police had been told by suspect's wife that suspect had threatened to use knives against any policeman who approached him; conduct of officer was objectively reasonable, even though jury may have rationally been able to find that officer could have done better job. Roy v. Inhabitants of City of Lewiston, C.A.1 (Me.) 1994, 42 F.3d 691. Civil Rights 1376(6)

In determining whether defense of qualified immunity applied to shield police officer from liability for civil damages arising from use of deadly force against suspect, district court must carefully examine all evidence in record, such as medical reports, contemporaneous statements by officer and available physical evidence to determine whether officer's story is internally consistent and consistent with known facts, rather than simply accept what may be self-serving account by police officer. Scott v. Henrich, C.A.9 (Mont.) 1994, 39 F.3d 912, certiorari denied 115 S.Ct. 2612, 515 U.S. 1159, 132 L.Ed.2d 855. Civil Rights 1376(6)

Evidence supported finding that, under circumstances confronting them, police officers' use of police dog to locate bank robbery suspect and to secure him until he stopped struggling and was handcuffed was objectively reasonable, and officers were entitled to qualified immunity in connection with suspect's § 1983 excessive force claim. Mendoza v. Block, C.A.9 (Cal.) 1994, 27 F.3d 1357, as amended. Civil Rights 1376(6)

To determine whether police officers have used excessive force in effecting seizure, for purposes of determining whether officers are entitled to defense of qualified immunity, Fourth Amendment objective reasonableness standard is applied, under which officer's actions are considered objectively unreasonable only if right allegedly violated is clearly established in sufficiently particularized sense at time of actions at issue. Estate of Starks v. Enyart, C.A.7 (Ind.) 1993, 5 F.3d 230. Civil Rights 1376(6)

Though plain clothes police officer may have violated state law by attempting to arrest suspect for misdemeanor without displaying badge, when suspect sped toward officer with car, officer had probable cause to believe he was justified in shooting at suspect to prevent his death or great bodily harm, and thus was entitled to qualified immunity in suspect's subsequent civil rights suit. Drewitt v. Pratt, C.A.4 (Va.) 1993, 999 F.2d 774. Civil Rights 1376(6)

Police officer acted reasonably in chasing suspect into business who was attempting to evade arrest and in pulling gun when employee menacingly approached officer while he had handcuffed suspect in custody, and thus, officer was immune from § 1983 action. Mouille v. City of Live Oak, Tex., C.A.5 (Tex.) 1992, 977 F.2d 924, rehearing denied, certiorari denied 113 S.Ct. 2443, 508 U.S. 951, 124 L.Ed.2d 660. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from § 1983 liability for fatally shooting suspect; under witness' version of shooting, officers could not reasonably have believed that use of deadly force was lawful because victim did not point gun at officers and apparently was not facing them when they shot him the first time. Curnow By and Through Curnow v. Ridgecrest Police, C.A.9 (Cal.) 1991, 952 F.2d 321, certiorari denied 113 S.Ct. 460, 506 U.S. 972, 121 L.Ed.2d 369. Civil Rights 1376(6)

Narcotics officer participating in "sting" operation could have believed that arrestee whom he shot posed deadly threat, and thus was entitled to qualified immunity in arrestee's § 1983 claim alleging excessive use of force; past incidents involving weapons and violence had occurred at location of arrest, and arrestee ignored officer's order to raise his hands and instead turned toward officer with object in his hand. Slattery v. Rizzo, C.A.4 (Va.) 1991, 939

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F.2d 213. Civil Rights 1376(6)

Police officer's actions in arresting traffic violator in a business office were not entitled to qualified immunity in § 1983 action brought by a bystander; bystander incurred severe injury to groin and pinched nerve in leg while falling against a door trying to avoid officer, officer's action in bursting into office, yelling threats and expletives, drawing gun, waving it wildly at everyone in office, and pushing it against bystander's throat was greatly disproportionate to need for action, and his repeated threat to "blow [all bystanders'] heads off" established malice. Mouille v. City of Live Oak, C.A.5 (Tex.) 1990, 918 F.2d 548, rehearing denied 923 F.2d 851. Civil Rights 1376(6)

Whether police officer had qualified immunity from liability for use of excessive force in shooting suspect turned on whether the actions of the officer in using deadly force were objectively reasonable in light of the circumstances. Zuchel v. Spinharney, C.A.10 (Colo.) 1989, 890 F.2d 273. Civil Rights 1376(6)

Qualified immunity is available as a defense to monetary liability for objectively unreasonable use of excessive force by police under Fourth Amendment. Brown v. Glossip, C.A.5 (Tex.) 1989, 878 F.2d 871. Civil Rights 1376(6)

Government agents acted reasonably in authorizing use of fire in attempting to flush armed fugitive out of private residence, and were thus entitled to qualified immunity in connection with suit brought by residence owner to recover for loss of personal property in fire. Ginter v. Stallcup, C.A.8 (Ark.) 1989, 869 F.2d 384, rehearing denied. Civil Rights 1376(6)

Police officers who fired at fleeing burglary suspect reasonably believed that deadly force was necessary to prevent his escape and enjoyed qualified immunity from liability in § 1983 action, even if suspect was unarmed and did not threaten officers in any way; officers told suspect to halt and reasonably believed that suspect heard them; and suspect then got into car and began to drive away with no resistance from any other officer. Klein v. Ryan, C.A.7 (Ill.) 1988, 847 F.2d 368. Civil Rights 1376(6)

Any reasonably competent police officer would have known that it was not reasonable to handcuff arrestee so tightly as to cause injury that was immediately apparent because it was visible to the naked eye, and thus, officer who allegedly kept arrestee tightly cuffed for more than two hours despite his repeated cries of pain and redness and swelling of his hand and wrist that were apparent to the naked eye was not entitled to qualified immunity on arrestee's §§ 1983 claim alleging use of excessive force. Golio v. City of White Plains, S.D.N.Y.2006, 459 F.Supp.2d 259. Civil Rights 1376(6)

Police officer's alleged act of shooting into stolen car that posed no threat to officer because it was driving past him rather than at him constituted an unreasonable use of force against passenger in car who was hit by gunfire, in violation of passenger's clearly established right not to be seized by use of unreasonable deadly force, and thus, officer was not entitled to qualified immunity in passenger's §§ 1983 action alleging use of excessive force. Tubar v. Clift, W.D.Wash.2006, 453 F.Supp.2d 1252. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from arrestee's excessive force claim under the Fourth Amendment, where a reasonable officer should have known that repeatedly striking a subdued suspect violated a clearly established constitutional right not to be subjected to excessive force during arrest. Ostroski v. Town of Southold, E.D.N.Y.2006, 443 F.Supp.2d 325. Civil Rights 1376(6)

Reasonable police officer would not have known that physically restraining arms of citizen behind her back for one minute, after previously arresting her and then letting her go, while other police officer searched purse of citizen for her driver's license, was excessive use of force, and thus police officers were entitled to qualified immunity to excessive force claim under Fourth Amendment in lawsuit under §§ 1983, since law at that time would not have

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placed officers on notice that their actions were unlawful. Barton v. City and County of Denver, D.Colo.2006, 432 F.Supp.2d 1178. Civil Rights 1376(6)

Genuine issue of material fact as to whether security guards who worked at public hospital acted reasonably when they were involved in altercation with motorist during dispute over motorist's illegally parked vehicle precluded summary judgment on qualified immunity grounds in motorist's civil rights action. Monge v. Cortes, D.Puerto Rico 2006, 413 F.Supp.2d 42. Federal Civil Procedure 2491.5

Police officer's single baton strike of political party worker, incident to attempted arrest of worker during worker's physical confrontation with mayor, was not unreasonable use of force, and therefore, officer was entitled to qualified immunity from worker's §§ 1983 excessive force claim; officer was trying to re-establish order by herself in a large crowd gathered at a campaign event. Vega-Santiago v. Ortiz-Velez, D.Puerto Rico 2005, 405 F.Supp.2d 170. Civil Rights 1376(6)

Officers who allegedly slammed head of alderman against brick wall and concrete floor, in process of arresting him for refusal to leave board meeting when ordered to do so, were aware that their conduct constituted excessive force, precluding claim they were entitled to qualified immunity from Fourth Amendment action brought by alderman. King v. Jefferies, M.D.N.C.2005, 402 F.Supp.2d 624. Civil Rights 1376(6)

Determining whether force is reasonable under the Fourth Amendment, for purposes of §§ 1983 excessive force claim, requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing government interests, and court must gauge the reasonableness of the force from the perspective of the officer on the scene, rather than with 20/20 hindsight. Thomas v. City of Seattle, W.D.Wash.2005, 395 F.Supp.2d 992. Arrest 68(2)

Police officers, who did not render necessary assistance after using pepper spray without warning to arrest patrons of nightclub who were fighting among themselves but who posed no threat to officers safety and who had not resisted arrest, were not entitled to qualified immunity, in §§ 1983 lawsuit under Fourth Amendment alleging excessive force; although there was no case law directly on point, it would have been clear to reasonable officer that use of pepper spray had to be preceded by warning when officer's safety was not threatened and officer was not trying to overcome resistance to arrest. Logan v. City of Pullman, E.D.Wash.2005, 392 F.Supp.2d 1246. Civil Rights 1376(6)

Police officer who shot armed robbery suspect reasonably believed that suspect was armed, as would allow the use of deadly force; officers had been advised that a handgun was used in the robberies and that a search of the suspect's abandoned vehicle had not revealed a gun. Foster v. City of Fresno, E.D.Cal.2005, 392 F.Supp.2d 1140. Arrest 68(2)

Arresting police officers were not entitled to qualified immunity, in arrestee's §§ 1983 excessive force claim, where they allegedly used pepper spray on arrestee and hit him repeatedly with a baton, and arrestee was allegedly seated in his truck following a traffic stop, he allegedly did not resist or attempt to flee, and arrestee was allegedly passive and cooperative when officers sprayed him and began beating him. Reed v. City of Lavonia, M.D.Ga.2005, 390 F.Supp.2d 1347. Civil Rights 1376(6)

Fact question as to whether police officer could have reasonably believed that force he used following participant's removal from town meeting was within bounds of appropriate police responses precluded summary judgment, based on qualified immunity, on excessive force claim. Nolan v. Krajcik, D.Mass.2005, 384 F.Supp.2d 447. Federal Civil Procedure 2491.5

Police officer who allegedly broke arrestee's wrist even though he was not resisting arrest was not entitled to judgment on the pleadings, on ground of qualified immunity, on excessive force claim in arrestee's civil rights

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action under §§ 1983, where, if facts were as alleged by arrestee, no reasonable police officer could possibly have thought it was necessary to use the degree of force that officer allegedly used to make arrest. Torres v. Village of Sleepy Hollow, S.D.N.Y.2005, 379 F.Supp.2d 478, appeal dismissed 2006 WL 755958. Federal Civil Procedure 1061

Genuine issue of material fact existed as to whether handcuffing of arrestee was reasonable, precluding summary judgment on police officer's claim to qualified immunity in arrestee's civil rights action under Fourth Amendment which alleged use of excessive force during arrest. Nauman v. Bugado, D.Hawai'i 2005, 374 F.Supp.2d 893. Federal Civil Procedure 2491.5

Police officers' use of force in making arrest in response to domestic violence complaint was not objectively unreasonable, and thus officers were entitled to qualified immunity from liability in arrestee's §§ 1983 action, even though officers hit arrestee about neck, shoulders, and wrist with their nightsticks and wrestled him to ground, where arrestee refused to cooperate with officers, participated in altercation with officers, disarmed one officer, and grabbed another officer by groin. McLaurin v. New Rochelle Police Officers, S.D.N.Y.2005, 373 F.Supp.2d 385, subsequent determination 379 F.Supp.2d 475. Civil Rights 1376(6)

Officer had qualified immunity in arrestee's §§ 1983 action alleging the use of excessive force in effecting arrest; reasonable officer would have believed the use of force was necessary to subdue and arrest arrestee who had fled the scene of a search warrant and was potentially armed, and thus that it comported with clearly established law. Brown v. Pfaff, D.Del.2005, 357 F.Supp.2d 781. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity from arrestee's claim of excessive force in violation of Fourth Amendment, since reasonable officers would have known that it was unreasonable to forcibly handcuff unarmed woman, who was not resisting, and who had informed officers that she had disability preventing her from placing her hands behind her back, without making further inquiry. Rex v. City of Milwaukee, E.D.Wis.2004, 321 F.Supp.2d 1008. Civil Rights 1376(6)

Genuine issues of material fact existed as to whether victim was in possession of a knife, if so, whether he held the knife blade up or down, whether victim was walking briskly and aggressively toward the officers or whether he was merely "taking steps," whether victim was waiving his arms in an aggressive manner toward the officers, whether officer waited to see the effect of fellow officer's shots prior to firing, and whether victim made any threatening or aggressive gesture toward the officers that reasonably would place them in fear for their lives, precluding summary judgment in favor of officers on excessive force claims on grounds of qualified immunity. Murphy v. Bitsoih, D.N.M.2004, 320 F.Supp.2d 1174. Federal Civil Procedure 2491.5

Constable's shooting of residence inhabitant, while conducting protective sweep following drug arrest, was not objectively reasonable, precluding qualified immunity from excessive force suit by inhabitant; inhabitant was lying on her bed, obviously unarmed, her only movement when constable entered room was to incline her head in his direction, and constable's warning to "freeze" was uttered at same time he pulled trigger. Johnson v. Waters, E.D.Tex.2004, 317 F.Supp.2d 726, dismissed 120 Fed.Appx. 555, 2005 WL 350587. Civil Rights 1376(6)

No police officer could reasonably have believed that the law allowed officer to act as he did when he shot 28 times at motorist who was exiting crashed vehicle following car chase that led to motorist's arrest, given evidence that motorist had his hands out in front of him and was trying to surrender and that officer both overreacted and failed to reassess situation while he was shooting, and therefore officer, who sought judgment as a matter of law following adverse jury verdict on motorist's §§ 1983 claim for use of excessive force, was not entitled to qualified immunity. Parker v. Town of Swansea, D.Mass.2004, 310 F.Supp.2d 356. Civil Rights 1376(6)

Genuine issue of material fact existed with respect to reasonableness of the force that arresting officer used on plaintiff, precluding summary judgment in favor of officer on excessive force claim; officer allegedly had his

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weapon drawn and pointed directly at plaintiff, cocked the hammer of the firearm, then sprayed him with pepper spray, grabbed him in a choke hold and dragged him by the neck for several feet. Cea v. Ulster County, N.D.N.Y.2004, 309 F.Supp.2d 321. Federal Civil Procedure 2491.5

Three police officers were not entitled to qualified immunity from motorist's claim, under §§ 1983, that they used excessive force during warrantless arrest for driving under the influence; motorist offered no resistance to officers' efforts to place him under arrest, precluding finding that any reasonably well-trained officers confronted with similar circumstances could reasonably have believed that their actions were lawful under clearly established law. Blackstone v. Quirino, D.Me.2004, 309 F.Supp.2d 117. Civil Rights 1376(6)

Deadly force may be used if an officer has probable cause to believe that the suspect's actions place the officer or others in imminent danger of death or serious bodily harm; the standard is an objective one, i.e., whether the officer's belief was objectively reasonable in light of the facts and circumstances confronting him. Buchanan v. City of Milwaukee, E.D.Wis.2003, 290 F.Supp.2d 954. Arrest 68(2)

Reasonableness standard for judging police conduct, for purposes of a § 1983 suit premised on alleged use of excessive force, implores the court to consider factors including the alleged crime's severity, the degree of potential threat that the suspect poses to an officer's safety and to others' safety, and the suspect's efforts to resist or evade arrest. Eberle v. City of Newton, D.Kan.2003, 289 F.Supp.2d 1269, motion to amend denied 296 F.Supp.2d 1276. Civil Rights 1088(4)

Police officers were entitled to qualified immunity in arrestee's § 1983 action alleging excessive force premised on allegedly tight handcuffing, as handcuffing resulted only in slight, untreated inflammation of arrestee's wrists, which did not demonstrate objectively unreasonable use of force. Wilder v. Village of Amityville, E.D.N.Y.2003, 288 F.Supp.2d 341, affirmed 111 Fed.Appx. 635, 2004 WL 2381295, certiorari denied 125 S.Ct. 1708, 544 U.S. 949, 161 L.Ed.2d 526. Civil Rights 1376(6)

Police officer had qualified immunity from suit claiming that he violated Fourth Amendment by applying excessive force to automobile owner, in course of seizing his allegedly improperly parked automobile; no reasonable officer could conclude he was using excessive force when he rubbed owner on stomach and gave him gentle push, as owner was leaving area where automobile was parked. Qutb v. Ramsey, D.D.C.2003, 285 F.Supp.2d 33. Civil Rights 1376(6)

Officers who restrained and handcuffed resident by means including an officer's knee onto the resident's back, while making in-home arrest for supplying alcohol to minors, were not entitled to qualified immunity in arrestee's subsequent § 1983 action alleging use of excessive force; factual dispute existed regarding whether resident resisted arrest, rather than simply directing profanities and threats to sue at officers. Radloff v. City of Oelwein, N.D.Iowa 2003, 284 F.Supp.2d 1145, affirmed 380 F.3d 344, certiorari denied 125 S.Ct. 967, 543 U.S. 1090, 160 L.Ed.2d 900. Civil Rights 1376(6)

Even if police officer used excessive force when he discharged his firearm upon being charged by suspect with knife, other officer at scene reasonably could have believed that such conduct was in fact lawful under Fourth Amendment, and therefore was entitled to qualified immunity on § 1983 claim alleging failure to intercede to protect suspect against violation of his constitutional rights. Santana v. City of Hartford, D.Conn.2003, 283 F.Supp.2d 720. Civil Rights 1376(6)

Officer's action in firing non-lethal, beanbag round from shotgun from distance of 10 feet at citizen who had threatened third party and officers with knife was objectively reasonable when citizen emerged from her residence holding knife to her own throat and failed to comply with commands to drop knife, and thus officer was entitled to qualified immunity. Brown v. City of Bloomington, D.Minn.2003, 280 F.Supp.2d 889, appeal after remand from federal court 706 N.W.2d 519, review denied. Civil Rights 1376(6)

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Even if officers used excessive force in apprehending a fleeing suspect who physically attacked one officer, the officers were entitled to qualified immunity; officers were acting within their discretionary authority, and officers, whose use of minimal force resulted in only minor injuries, would not reasonably believe that their actions were unconstitutional. Moreland v. Dorsey, N.D.Ga.2002, 230 F.Supp.2d 1338. Civil Rights 1376(6)

Police officers' conduct, in forcing motorist to a stop and forcibly removing him from his truck through use of pepper spray, baton blows, and bites from a police dog, was such that an objectively reasonable officer would not have believed that it violated motorist's constitutional rights, and therefore officers were entitled to qualified immunity, in motorist's § 1983 action; stop was justified by need to investigate cause of motorist's erratic driving and to keep people from being killed by it, officers were entitled to use reasonable force to subdue motorist when he failed to comply with lawful orders to shut off his truck, and officers' escalating use of force was a measured response to motorist's continued refusal to obey orders and his perceived continuing danger to others. Moore v. Winer, D.Md.2002, 190 F.Supp.2d 804. Civil Rights 1376(6)

Police officers who allegedly broke arrestee's arm during unnecessary and unwarranted subduing and thereafter sprayed him with pepper spray, then allowed police dog to bite him after he was handcuffed and on ground, could not have believed that their conduct was warranted, and thus were not entitled as matter of law to qualified immunity as to claims against them in their individual capacities in arrestee's § 1983 suit. Wilkerson v. Thrift, W.D.N.C.2000, 124 F.Supp.2d 322. Civil Rights 1376(6)

Deputy sheriffs could have believed that arrestee whom they shot posed deadly threat, and thus were entitled to qualified immunity on arrestee's § 1983 claim alleging excessive use of force; deputies knew that arrestee had earlier threatened his sister with a stick and had violently resisted deputies when they entered his house to take him into custody, and arrestee repeatedly ignored deputies' requests to show his hands and instead turned toward deputies with object in his hand and assumed what appeared to be a shooting stance. Little v. Smith, W.D.N.C.2000, 114 F.Supp.2d 437. Civil Rights 1376(6)

Officer's conduct in handcuffing, shackling, and verbally harassing arrestee who he believed to have been involved in robbery and murder was objectively reasonable and not clearly excessive under the circumstances, and therefore, officer was not liable to arrestee for excessive force under § 1983; there was no evidence that officer hit or otherwise physically injured arrestee. Peters v. City of Biloxi, Mississippi, S.D.Miss.1999, 57 F.Supp.2d 366. Civil Rights 1088(4)

Officers were not entitled to qualified immunity for claimant's § 1983 excessive force claim, which claim was based on assertion that officers threw claimant to ground, applied substantial pressure to her back, handcuffed her, and patted her down, despite any lack of physical resistance by claimant; such force was so plainly excessive that no reasonable police officer would believe that force did not violate Fourth Amendment. DuFour-Dowell v. Cogger, N.D.Ill.1997, 969 F.Supp. 1107, motion to amend denied 980 F.Supp. 955. Civil Rights 1376(6)

Claims that a police officer used excessive force in making an arrest are properly analyzed under the Fourth Amendment's "objective reasonableness" test rather than under a substantive due process standard. Wallace v. City of Shelby, N.D.Ohio 1997, 968 F.Supp. 1204. Arrest 68(2)

Officer did not enjoy qualified immunity from claim that he pointed gun to motorist's head in course of arrest for reckless driving, striking motorist and causing him to fall, without provocation assuming that allegations were true. Oliver v. Cuttler, E.D.N.Y.1997, 968 F.Supp. 83. Civil Rights 1376(6)

Officers were entitled to qualified immunity in arrestee's claim that officers used excessive force by shooting arrestee after they entered his residence while executing search warrant; arrestee admitted that he grabbed his rifle to protect himself from "invaders" and to scare them away, arrestee admitted that he exhibited rifle in a threatening manner, and officers had probable cause to believe that arrestee had committed crime involving sale of drugs and

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further was committing serious crime of unlawful use of weapon. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 877. Civil Rights 1376(6)

Reasonableness inquiry in excessive force case is an objective one, for purposes of qualified immunity: question is whether officers' actions are objectively reasonable in light of facts and circumstances confronting them. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 877. Civil Rights 1376(6)

Sheriff and investigator were not entitled to qualified immunity from § 1983 claim that they used excessive force in seizing plaintiff and searching her motel room; officers' conduct in shoving plaintiff and striking her with wooden baton, in holding plaintiff on bed with baton at her throat, and in refusing to allow plaintiff to take her medication during time period in which room was searched was not objectively reasonable. Toth v. City of Dothan, Ala., M.D.Ala.1996, 953 F.Supp. 1502. Civil Rights 1376(6)

District court would not find, as matter of law, that federal law enforcement officer who shot plaintiff was entitled to qualified immunity in plaintiff's subsequent civil rights action alleging excessive force, as officer's use of deadly force was not reasonable absent evidence that plaintiff threatened officers in any way, and officer would not be deemed to have made reasonable mistake absent evidence that officer was in position of danger or subject to immediate threat. Harris v. Roderick, D.Idaho 1996, 933 F.Supp. 977, affirmed 126 F.3d 1189, certiorari denied 118 S.Ct. 1051, 522 U.S. 1115, 140 L.Ed.2d 114. United States 50.10(3)

Police officers' actions in seizing large, unkempt individual who exhibited bizarre behavior and tightly clenched two ballpoint pens in his fists while resisting officers' attempts to get him to release pens were objectively reasonable, and therefore officers were immune from suit under doctrine of qualified immunity, though detainee stopped breathing while he was detained and died next day, where officers attempted to talk to detainee to get him to release pens, seized detainee after he refused to release pens, brought detainee to ground, handcuffed detainee, and monitored detainee while he was on ground for no more than two minutes before ambulance arrived to transport him for mental health observation. Estate of Phillips v. City of Milwaukee, E.D.Wis.1996, 928 F.Supp. 817, affirmed 123 F.3d 586, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1052, 522 U.S. 1116, 140 L.Ed.2d 115. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from passenger's claim, under § 1983, that officers used excessive force in connection with stop of vehicle and arrest of driver and passenger; it was not unreasonable for officer to unholster gun while approaching vehicle, to separate driver and passenger, to handcuff passenger, or to transport handcuffed passenger to park office after driver was arrested. Wiers v. Barnes, D.Del.1996, 925 F.Supp. 1079. Civil Rights 1376(6)

Qualified immunity applied in civil rights suit against police officers for alleged unconstitutional use of deadly force given that reasonable officer could have believed that using deadly force against plaintiff was lawful act needed to prevent imminent loss of life; police officers observed plaintiff firing gun in small bedroom with another adult and two crying children present. Isquierdo v. Frederick, M.D.N.C.1996, 922 F.Supp. 1072, affirmed 121 F.3d 698. Civil Rights 1376(6)

Police officer's conduct in taking down arrestee who was allegedly screaming into telephone, refusing to follow directions, and attempting to strike officer with telephone was violation of arrestee's clearly established constitutional right to be free from excessive force, thus, officer was not entitled to qualified immunity on that claim in § 1983 action; officer's conduct was not reasonable under Fourth Amendment as videotape of incident showed no sign of physical aggression or violence by arrestee and officer grabbed arrestee and placed him in chokehold after phone was removed from arrestee's hand. Pyka v. Village of Orland Park, N.D.Ill.1995, 906 F.Supp. 1196. Civil Rights 1376(6)

Police officer who stood by and then left room while second officer engaged in unreasonably excessive use of force

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against arrestee was not entitled to qualified immunity as to § 1983 claim of failure to intervene, as reasonable officer would have made effort to prevent second officer's conduct. Pyka v. Village of Orland Park, N.D.Ill.1995, 906 F.Supp. 1196. Civil Rights 1376(6)

In determining whether qualified immunity will be accorded to police officers charged in civil rights action with excessive use of force in violation of Fourth Amendment, it is not expected that officers will be constitutional scholars able to make fine, academic distinctions about how the law may apply to circumstances they are confronting while they are in heat of arrest; rather, court will look to what reasonable officer can be expected to know and understand about contours and extent of Fourth Amendment excessive force law. Nemeckay v. Rule, E.D.Mich.1995, 894 F.Supp. 310. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from arrestee's claim in civil rights action that officers engaged in excessive use of force in violation of First Amendment by failing to loosen arrestee's handcuffs, thereby resulting in permanent wrist injury; it was not clear that reasonable officer would understand and comprehend that failure to respond to complaint about tight handcuffs and to loosen them could result in excessive force violation. Nemeckay v. Rule, E.D.Mich.1995, 894 F.Supp. 310. Civil Rights 1376(6)

Police officer who acted as leader of special weapons and tactics (SWAT) team dealing with hostage situation, and two SWAT officers whom leader ordered into building, and who shot and killed hostage taker when he pointed his rifle at them, were qualifiedly immune from hostage taker's § 1983 excessive force claim; even if leader's spontaneous decision to send officers into building were "premature," no objectively reasonable officer would believe that such decision would violate hostage taker's civil rights, and leader did not authorize use of excessive force at any time. Malignaggi v. County of Gloucester, D.N.J.1994, 855 F.Supp. 74. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity in arrestee's § 1983 claim alleging that officers used excessive force in making arrest by tackling and holding arrestee at scene of arrest; officers' belief that arrestee was guilty of burglary or drunk and disorderly conduct was unreasonable, and, although arrestee fled from police, there was no evidence that arrestee was armed. Nelson v. Mattern, E.D.Pa.1994, 844 F.Supp. 216. Civil Rights 1376(6)

City police officers were not entitled to qualified immunity in civil rights action as to claim that they used excessive force during and after handcuffing suspect, since there were disputed facts concerning whether the suspect resisted and, if not, whether the officers beat him anyway. Hill v. Kansas City Metro Task Force, C.A.8 (Mo.) 2006, 182 Fed.Appx. 620, 2006 WL 1479025, Unreported. Civil Rights 1376(6)

Officer was entitled to qualified immunity as to claim that she used excessive force in shooting drug crime suspect in home after being confronted with weapon upon entry, since evidentiary record did not support contention that officer shot suspect when he was helpless or after he was incapacitated. Sterling v. Weaver, C.A.9 (Idaho) 2005, 146 Fed.Appx. 136, 2005 WL 1994415, Unreported. Civil Rights 1376(6)

Police officer who grabbed fleeing suspect who was attempting to jump on train was entitled to qualified immunity on §§ 1983 excessive force claim brought by suspect, whose legs were severed when he fell beneath train, as officer's actions were objectively reasonable. Holmes v. City of Bastrop, C.A.5 (La.) 2005, 141 Fed.Appx. 315, 2005 WL 1793018, Unreported. Civil Rights 1376(6)

Police officers could reasonably believe they could use some force during arrest, and thus, they were entitled to qualified immunity with regard to suspect's civil rights claim that they used excessive force when they threw suspect to the ground during arrest, where officers were investigating a threatened shooting, they saw what appeared to be a weapon under suspect's shirt, and suspect gave evasive answer when asked whether he had a weapon and then attempted to brush the officers aside. Feinthel v. Payne, C.A.6 (Ohio) 2004, 121 Fed.Appx. 60, 2004 WL 3021780, Unreported. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Use of force by law enforcement officers was objectively reasonable under the Fourth Amendment, where officers encountered a man in the woods with two knives whose actions indicated he was prepared to use them against officers, man refused to drop the knives after repeatedly being instructed to do so and then advanced on one officer after expressly being warned not to come any closer, and, after first officer shot man, two other officers saw man continue to advance on first officer, prompting each to fire their weapons. Huggins v. Weider, C.A.4 (S.C.) 2004, 105 Fed.Appx. 503, 2004 WL 1729793, Unreported. Arrest 68(2)

Alleged conduct of state game and fish officer, when he arrested driver of pickup truck after the officer witnessed, from about a mile away, someone in the truck's bed shoot at an antelope, and after the officer gave chase to the truck, of screaming at the truck's occupants to raise their hands, having his hand near his holstered weapon, and threatening possible incarceration, was objectively reasonable, and thus, was not excessive force in violation of the Fourth Amendment, and entitled the officer to qualified immunity against truck driver's § 1983 claim for use of excessive force. Wheeler v. Scarafiotti, C.A.10 (N.M.) 2004, 85 Fed.Appx. 696, 2004 WL 37976, Unreported. Arrest 68(2); Civil Rights 1376(6)

Police officers were entitled to qualified immunity from paraplegic arrestee's § 1983 claim alleging they used excessive force when they arrested him, since there were no similar cases or authority rendering unreasonable their belief that their actions were lawful, and officers followed instructions of their supervisor and police procedures in effecting arrest. Brant v. Volkert, C.A.7 (Ill.) 2003, 72 Fed.Appx. 463, 2003 WL 21772148, Unreported. Civil Rights 1376(6)

City police chief was entitled to qualified immunity from detainee's § 1983 claims, arising from chief's alleged continuance of unconstitutional policy of treating uses of mace by police officers on detainees as "non-uses" of force; there was no showing that reasonable official in chief's position would have known that classifying use of mace as non-use of force violated clearly established constitutional right. Wallace v. City of Columbus, S.D.Ohio 2002, 2002 WL 31844688, Unreported. Civil Rights 1376(6)

Police officers had qualified immunity from excessive force claim brought by mother of teenaged arrestee, when mother protested alleged excessive force being used on arrestee by grabbing an officer's shoulder, officer threw her to ground and placed his knee on her neck; officer could consider force used on mother reasonable under circumstances, as arrestee was apparently intoxicated and was vigorously resisting arrest. Carrasco v. City of Vallejo, E.D.Cal.2001, 2001 WL 34098655, Unreported. Civil Rights 1376(6)

4051A. ---- Failure to act, police officers, objective reasonableness requirement

Genuine issue of material fact as to whether other officers participating in attempt to subdue and arrest detainee should have recognized that officer who knelt on detainee's back while he was lying on the ground was using unreasonable amount of force, and that they had a reasonable opportunity to intervene, precluded summary judgment in §§1983 action by detainee's estate against officers, alleging failure to intervene to prevent use of excessive force in violation of Fourth Amendment. Abdullahi v. City of Madison, C.A.7 (Wis.) 2005, 423 F.3d 763 . Federal Civil Procedure 2491.5

Police officer who was in surveillance position across street from where suspect was shot was entitled to qualified immunity in § 1983 action premised on his failure to intervene to prevent shooting of suspect by fellow officer; although he was in radio contact with fellow officers, his view was of suspects' backs and he was not in position to see whether they possessed weapon, and he did not participate in shooting and was unaware of rapidly developing situation until he heard racking of gun immediately preceding shooting, which gave him no time to react. Carr v. Tatangelo, C.A.11 (Ga.) 2003, 338 F.3d 1259, as amended. Civil Rights 1376(6)

Police officer who allegedly failed to intervene when he saw another officer keep arrestee tightly handcuffed for more than two hours despite arrestee's repeated cries of pain and redness and swelling of his hand and wrist that

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were apparent to the naked eye witnessed a clearly settled constitutional violation but did nothing to alleviate the problem, and thus, he was not entitled to qualified immunity on arrestee's §§ 1983 claim alleging failure to intervene in a situation where excessive force was being used by another officer. Golio v. City of White Plains, S.D.N.Y.2006, 459 F.Supp.2d 259. Civil Rights 1376(6)

Police officers did not have qualified immunity in lawsuit under §§ 1983 to substantive due process claims of patrons of restaurant and nightclub who suffered secondary exposure from pepper spray that officers used on persons who were fighting, since reasonable officer would have known that officers' refusal to provide assistance to injured patrons, refusal to allow patrons to assist one another, and refusal to allow patrons to exit building after pepper spray was used would have resulted in violation of patrons' Fourteenth Amendment rights. Logan v. City of Pullman, E.D.Wash.2005, 392 F.Supp.2d 1246. Civil Rights 1376(6)

Police officer is entitled to qualified immunity from liability in §§ 1983 alleging that officer failed to intercede to prevent his fellow officers from violating citizen's constitutional rights, unless his failure to intercede was under circumstances making it objectively unreasonable for him to believe that his fellow officers' conduct did not violate those rights. McLaurin v. New Rochelle Police Officers, S.D.N.Y.2005, 373 F.Supp.2d 385, subsequent determination 379 F.Supp.2d 475. Civil Rights 1376(6)

4052. ---- False arrests and imprisonments, police officers, objective reasonableness requirement

Allegations that police officers, who arrested plaintiff on the basis of an already-executed warrant, did so despite being shown facially authentic documentary evidence that the warrant was no longer effective, were sufficient to state a claim, in a §§ 1983 action, for false arrest and false imprisonment in violation of the Fourth Amendment; allegations would support a jury conclusion that officers acted unreasonably in arresting plaintiff and taking him into custody. Pena-Borrero v. Estremeda, C.A.1 (Puerto Rico) 2004, 365 F.3d 7. Civil Rights 1088(4)

Police department forensic chemist was not entitled to qualified immunity on claim under § 1983 for constitutional tort of malicious prosecution based on her alleged withholding of exculpatory evidence and fabrication of inculpatory evidence; an official in chemist's position in 1986 had "fair warning" that the deliberate or reckless falsification or omission of evidence was a constitutional violation, even though the arrest had already occurred. Pierce v. Gilchrist, C.A.10 (Okla.) 2004, 359 F.3d 1279. Civil Rights 1376(6)

Fear of dissuading police officers from enforcing domestic protection orders in the future did not warrant grant of qualified immunity from arrestee's action under § 1983, alleging Fourth Amendment false arrest claim, to officers who arrested husband on their mistaken belief that he had violated a protection order whose contents they had not ascertained, although officers might have believed they had probable cause to arrest had they read the order, since knowledge that they could be liable if they did not ascertain terms of a protection order would encourage officers to do so. Beier v. City of Lewiston, C.A.9 (Idaho) 2004, 354 F.3d 1058. Civil Rights 1376(6)

Sheriff's deputies were not qualifiedly immune from suspect's claim that they violated her Fourth Amendment rights in arresting her after telling her they believed she possessed stolen diamond and after she began to walk away, inasmuch as deputies could not have reasonably believed that they had probable cause to arrest, since they had failed to investigate convicted felon's statement that suspect had diamond, and suspect had been told, before she began to walk away, that she was not under arrest. Thompson v. Wagner, C.A.7 (Ill.) 2003, 319 F.3d 931, amended on denial of rehearing. Civil Rights 1376(6)

Department of motor vehicles investigator was entitled to qualified immunity to claim under § 1983 alleging malicious prosecution, since undisputed evidence demonstrated that investigator told prosecutor in timely fashion of information establishing plaintiff's innocence, and consequently, it was objectively reasonable for investigator to believe that his conduct did not violate any of plaintiff's clearly established rights. Kinzer v. Jackson, C.A.2 (N.Y.) 2003, 316 F.3d 139. Civil Rights 1376(3)

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Undisputed facts concerning drunk driving arrestee's appearance and behavior at time of arrest fell short of establishing officer's "objectively reasonable" belief that arrestee was intoxicated, precluding entitlement to qualified immunity as a matter of law in arrestee's § 1983 false arrest action against officer; arrestee's eyes were red, but officer was aware that arrestee had been burning brush on his property for some time, and arrestee answered "not very much" to question of whether he had been drinking, which was insufficient to imply intoxication. Kent v. Katz, C.A.2 (Vt.) 2002, 312 F.3d 568. Civil Rights 1376(6)

Police officer had qualified immunity for his warrantless arrest of citizens for criminal mischief to city laundromat, for purpose of citizens' § 1983 action that alleged false arrest in violation of Fourth Amendment, on basis that officers of reasonable competence could have disagreed as to whether probable cause existed to arrest citizens; even though citizens told officer that they were entitled to remove their equipment from laundromat, officer had no reason to believe that citizens were entitled to remove equipment and officer could have concluded that resultant damage to city owned building was intentional and deliberate. Rogers v. City of Amsterdam, C.A.2 (N.Y.) 2002, 303 F.3d 155. Civil Rights 1376(6)

Police cannot obtain qualified immunity for liability for false arrests by arresting people on preposterous charges and then pointing to absence of any judicial decision that declares statutory interpretation underlying charges to be preposterous; rather, their interpretation must be reasonable in light of existing law. Northen v. City of Chicago, C.A.7 (Ill.) 1997, 126 F.3d 1024, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1306, 523 U.S. 1023, 140 L.Ed.2d 471, on remand 1999 WL 342441. Civil Rights 1376(6)

Sheriff was entitled to qualified immunity from liability under § 1983 for false arrest in light of sufficient undisputed facts and information available to support reasonable law enforcement officer's belief that probable cause existed to arrest suspect for murder; at time of arrest, sheriff was aware of circumstances tending to point to arrestee as killer including that victim had been dating arrestee's ex-wife with whom arrestee sought renewed relationship, that victim was shot while driving on same highway in same direction at about same time as arrestee, that polygraph examination suggested arrestee lied about whether he was innocent of wrongdoing in killing, that arrestee had been with others who reported victim's vehicle off road, and that presumed accomplice was determined to be lying in separate polygraph examination. Johnson v. Schneiderheinz, C.A.8 (Neb.) 1996, 102 F.3d 340, rehearing denied. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from arrestee's § 1983 false arrest claim, arising from her forcible removal by officers from automobile registered to her husband, from whom she was separated, since it was objectively reasonable for officers to conclude that they had probable cause to believe arrestee obstructed governmental administration; husband showed police valid registration which officers verified, arrestee then locked herself in automobile and attempted to start engine with apparent intention of driving away, and arrestee refused to leave driver's seat after unlocking doors. Lennon v. Miller, C.A.2 (N.Y.) 1995, 66 F.3d 416. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity from Fourth Amendment false arrest claim arising from his arrest without probable cause of festival participant for taking pictures of officers assigned to festival security who also worked as undercover officers and whose photos might have been useful in carrying out death threat against one officer or in failing other officers' undercover operations; no officer could have reasonably concluded that probable cause existed for arrest where there was no link between such suspected criminal activity and festival participant. Williamson v. Mills, C.A.11 (Fla.) 1995, 65 F.3d 155. Civil Rights 1376(6)

Codirectors of four-county drug task force were protected by qualified immunity from § 1983 claim based on erroneous arrest of individual, even though mistake could have been avoided; records on which arrest was based provided reasonable basis for officers to believe that probable cause existed. Eversole v. Steele, C.A.7 (Ind.) 1995, 59 F.3d 710, rehearing denied. Civil Rights 1376(6)

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Officer had objectively reasonable basis to arrest plaintiff for public intoxication based on smell of alcohol on his breath, information that arrestee had been drinking beer, arrestee's belligerence and cumulative circumstances of the night, and therefore officer was entitled to qualified immunity on false arrest, malicious prosecution, and § 1983 claims to extent they were grounded on wrongful arrest. Gibson v. Rich, C.A.5 (Tex.) 1995, 44 F.3d 274. Arrest 63.4(15); Civil Rights 1376(6); False Imprisonment 15(1); Malicious Prosecution 42

Arresting officer was protected by qualified immunity from liability to arrestee in § 1983 action arising from arrest under Texas law for public intoxication, despite facts that officer changed charge of arrest from driving while intoxicated (DWI) after defendant took blood alcohol test and that arrestee was later acquitted of offense, where reasonable officer could have believed that he was justified in holding arrestee for public intoxication after arrestee had operated automobile after consuming five beers, had blood alcohol content of 0.08, and had entrusted to his care an extremely intoxicated passenger. Babb v. Dorman, C.A.5 (Tex.) 1994, 33 F.3d 472. Civil Rights 1376(6)

Arresting officer was not entitled to defense of qualified immunity in § 1983 action alleging unlawful arrest of father for alleged sexual abuse; reasonable officer could not have believed probable cause existed for arrest of father given that there was no medical evidence of abuse, the parents were involved in a dispute over custody of the child, and the county attorney had recently advised the officer to keep investigating. Ripson v. Alles, C.A.8 (Iowa) 1994, 21 F.3d 805, rehearing denied. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from citizen's § 1983 suit for false arrest arising out of his arrest for obstructing police officer, following arrest of driver of citizen's vehicle for driving under influence of alcohol, as under Illinois law, citizen's drunken tirade created probable cause to arrest him for disorderly conduct and facts surrounding driver's arrest created probable cause to arrest him for allowing another person to operate his vehicle in manner contrary to law. Biddle v. Martin, C.A.7 (Ill.) 1993, 992 F.2d 673. Civil Rights 1376(6)

Evidence supported jury finding that arresting officers were not entitled to qualified immunity from liability in § 1983 action alleging wrongful arrest for shoplifting; officers did not have sufficiently good view of one arrestee's action for reasonable officer to conclude that he had probable cause to arrest, officers failed to arrest and search arrestee when she left store from which sweater was allegedly taken evidencing lack of reasonable basis for probable cause, sweater was never found, and there was evidence that police had planted belt in arrestees' vehicle. Coates v. Daugherty, C.A.4 (Va.) 1992, 973 F.2d 290. Civil Rights 1423

Reasonable officer could not have concluded that suspect's former wife knew that suspect was a fugitive or that former wife intended to aid fugitive and, therefore, arrest lacked probable cause and arresting officer was not entitled to qualified immunity in civil rights action brought by former wife for false arrest; possibility that former wife could have inferred that officer was attempting to arrest suspect had been diminished by fact that suspect's arrest warrant had been sealed, police officer told former wife's co-worker that suspect was not wanted by the authorities, and police officer allegedly gave misleading testimony to grand jury about former wife's conduct in order to procure former wife's indictment. Juriss v. McGowan, C.A.7 (Ill.) 1992, 957 F.2d 345. Civil Rights 1376(6)

Deputy sheriffs were protected by qualified immunity from § 1983 liability for arrest, because plaintiff could reasonably have been suspected of aiding and abetting his brother's acts of false imprisonment of Wisconsin Department of Natural Resources conservation warden. Hughes v. Meyer, C.A.7 (Wis.) 1989, 880 F.2d 967, rehearing denied, certiorari denied 110 S.Ct. 2172, 495 U.S. 931, 109 L.Ed.2d 501. Civil Rights 1376(6)

Police officer was not entitled to qualified immunity from liability in civil rights action brought by arrestee, and owner of motorcycle, arising out of the arrest for possession of stolen motorcycle, and the owner's deprivation of the use of the motorcycle, alleging Fourth, Fifth, and Fourteenth Amendment violations, where motorcycle had not been reported stolen, and arrestee offered to provide paperwork showing ownership of motorcycle prior to arrest.

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Daley v. Harber, D.Mass.2002, 234 F.Supp.2d 27. Civil Rights 1376(6)

Police officers did not have qualified immunity to claim made by intravenous drug user, as participant in needle exchange program, that user's arrest for criminally possessing hypodermic instrument was not justified, in § 1983 action under Fourth Amendment, since no reasonable officer could have believed that circumstances established necessary probable cause; at time of user's arrest, there was no question pending in any court that would have called into question validity of needle exchange law, and user identified himself as authorized needle exchange program participant and his status as needle exchange program participant was not called into question. L.B. v. Town of Chester, S.D.N.Y.2002, 232 F.Supp.2d 227. Civil Rights 1376(6)

Fact questions as to whether probable cause supported state trooper's arrest of arrestee for disorderly conduct, and as to whether trooper's conduct was objectively reasonable under circumstances, precluded summary judgment on issue of whether trooper was entitled to qualified immunity from arrestee's § 1983 claims for unlawful arrest and false imprisonment. Mantz v. Chain, D.N.J.2002, 239 F.Supp.2d 486. Federal Civil Procedure 2491.5

Officer was not entitled to qualified immunity in §§ 1983 false arrest and false imprisonment action brought by arrestee, who suffered from a delusional disorder and was taken to medical center, since it was not objectively reasonable for officer to believe that arrestee was dangerous; there was no indication that arrestee ever threatened to harm herself or anyone else, there was no indication that arrestee intended to seek out or confront those she believed responsible for voices she heard, and while fact that arrestee had access to gun indicated that she had means to become dangerous, the fact that she was permitted to continue to hold gun permit suggested that police did not have cause to believe that she would use gun inappropriately. Hoyer v. DiCocco, D.Conn.2006, 457 F.Supp.2d 110.

Police officers had qualified immunity from arrestee's malicious prosecution claim in civil rights action under §§ 1983, arising out of prosecution which resulted in her acquittal on charge of obstruction of governmental administration, where arrestee's conviction on harassment charge resulting from same incident showed that there was probable cause to find that arrestee had struck an officer during search of her residence, which arguably gave rise to probable cause to believe that arrestee had obstructed governmental administration in connection with the search. Ostroski v. Town of Southold, E.D.N.Y.2006, 443 F.Supp.2d 325. Civil Rights 1376(6)

Police officer, acting as community caretaker, had qualified immunity from §§ 1983 claim that he falsely arrested resident of house when he entered bathroom, where resident had sequestered himself, subdued and handcuffed him and took him into another room, where he was placed on gurney for transportation to hospital emergency room; officer reasonably believed that resident, known to officer to be diabetic, may have been in need of medical treatment for drug reaction. Policky v. City of Seward, Neb., D.Neb.2006, 433 F.Supp.2d 1013. Civil Rights 1376(6)

Police officer had "arguable probable cause" to arrest, and thus officer was entitled to qualified immunity in arrestee's §§ 1983 claim premised on false arrest; evidence demonstrated that officer received report that arrestee was stalking complainants, was observed seated in her truck in parking lot, and that complainants were afraid of her. Crocco v. Advance Stores Co. Inc., D.Conn.2006, 421 F.Supp.2d 485. Civil Rights 1376(6)

County police officer was not entitled to qualified immunity from neighbor's §§ 1983 claim for false arrest since officer could not have reasonably believed, under clearly established law, that her neighbor had committed the crime of simple assault upon officer or officer's daughter by threatening harm if officer or daughter did not leave neighbor's property; neighbor's alleged threats to officer's daughter were made from upstairs window when daughter was in neighbor's yard, and neighbor's demand that officer leave her property did not create any immediate apprehension of violent injury. Payne v. DeKalb County, N.D.Ga.2004, 414 F.Supp.2d 1158. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police officer was entitled to qualified immunity on the false arrest claim asserted in a §§ 1983 suit by an arrestee who was arrested for no valid driver's license based on an outstanding bench warrant issued for another African-American female of similar height, with a similar first name, and the same last name and date of birth, even though she told the officer that she possessed a valid driver's license, she displayed the license, and backup vehicles contained computers on which the officer could allegedly have verified the name on the bench warrant and the arrestee's driver's license. Walker v. Prieto, S.D.Fla.2006, 414 F.Supp.2d 1148. Civil Rights 1376(6)

Prosecutors and police officers were not entitled to qualified immunity on arrestee's §§ 1983 claims of false arrest and prosecution in light of evidence that officials may have had always had exclupatory evidence in their possession, which was eventually discovered and led to arrestee's acquittal on charges of rape, robbery, and weapons law violations. Nunez Gonzalez v. Vazquez Garced, D.Puerto Rico 2005, 389 F.Supp.2d 214. Civil Rights 1376(9)

New York Department of Environmental Conservation officer who arrested property owner for spreading large amount of chlorine near swimming pool was entitled to qualified immunity from owner's §§ 1983 claim for false arrest, since it was objectively reasonable for officer to believe that owner had violated state Environmental Conservation Law (ECL) in light of established law and information he possessed. Segal v. Crotty, S.D.N.Y.2005, 352 F.Supp.2d 424. Civil Rights 1376(3)

There was at least arguable probable cause for police officers to make arrest, and it was objectively reasonable for officers on scene to believe that arrestee was one of robbers that they observed committing crime and then attempting to escape, and thus officers were entitled to qualified immunity against arrestee's claims against officers in their individual capacity for false arrest and false imprisonment. Wray v. City of New York, E.D.N.Y.2004, 340 F.Supp.2d 291. Civil Rights 1376(6)

Police officer was entitled to qualified immunity from arrestee's § 1983 claim alleging false arrest for burglary of hotel rooms, since it was objectively reasonable for officer to believe that probable cause existed for the arrest; arrestee was hotel employee who worked during the hours when rooms were burglarized, a stolen credit card was used at grocery store near arrestee's home when she was not at work, suspect in grocery store surveillance tape was wearing a black down jacket, and arrestee owned a black down jacket. Colon v. Ludemann, D.Conn.2003, 283 F.Supp.2d 747. Civil Rights 1376(6)

Police officer was entitled to qualified immunity from civil rights liability for any false arrest of female bar patron where it was reasonable for him to believe that arrest of patron for assault on bouncer was based on probable cause; bouncer had head laceration and neutral eyewitnesses reported that patron had assaulted bouncer, although patron claimed that there were other witnesses that would have supported her story that bouncer assaulted her. Maxwell v. City of New York, S.D.N.Y.2003, 272 F.Supp.2d 285, reconsideration denied, affirmed in part, vacated in part and remanded 380 F.3d 106, supplemented 108 Fed.Appx. 10, 2004 WL 1800645. Civil Rights 1376(6)

Arresting officer was entitled to qualified immunity against arrestee's § 1983 claim for false imprisonment based on continued detention after eye-witness retracted identification, as reasonably well-trained officer could reasonably believe that probable cause to detain arrestee existed, even after one eyewitness informed police that wrong man was in custody, based on statements and positive identifications of other eye-witnesses; arresting officer did not knowingly and willfully ignore substantial exculpatory evidence based on witness's retraction, especially where it was not shown that officer himself knew witness withdrew identification. Rowe v. Romano, E.D.Pa.1996, 940 F.Supp. 798. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from plaintiff's § 1983 false arrest and malicious prosecution claims since it was objectively reasonable to conclude officers had probable cause to believe that plaintiff violated order of protection with regard to complainant where officer was told by witness that plaintiff assaulted

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complainant, complainant presented order of protection against plaintiff, and officer observed bite marks on complainant despite statements by other witnesses that complainant initiated conflict. Steiner v. City of New York, E.D.N.Y.1996, 920 F.Supp. 333. Civil Rights 1376(6)

Arresting police officers were entitled to qualified immunity from arrestees' § 1983 false arrest claim, as it was objectively reasonable for officers to believe that they had probable cause to make arrest, where one officer had three opportunities to observe driver of car in high speed chase, chasing officer observed both driver and passenger outside of their vehicle, another officer was told by passing motorist that occupants of vehicle pursued by chasing officer had just fled around corner, turning that corner, other officer saw two individuals fitting description provided by chasing officer, he attempted to question individuals and struggle ensued, and after their apprehension, chasing officer identified individuals as driver and passenger which he had chased. Ferreira v. Westchester County, S.D.N.Y.1996, 917 F.Supp. 209. Civil Rights 1376(6)

Police officers who made arrest without probable cause were not entitled to qualified immunity from arrestee's § 1983 unlawful arrest suit, since no reasonable officer could have believed that probable cause existed, where warrantless arrest was made on basis of uncorroborated tip from anonymous bus driver that five black men were at bus station and may have engaged in drug deal, and on basis of officers' subsequent discovery of drugs in possession of arrestee's brother, but officers had no information linking arrestee to drugs in brother's bag or to any drug deal. Edwards v. Cabrera, N.D.Ill.1994, 861 F.Supp. 664, reversed 58 F.3d 290. Civil Rights 1376(6)

For purposes of affirmative defense of qualified immunity in civil rights case based on allegation of false arrest, objective reasonableness does not turn on whether probable cause in fact existed and can exist if it shown either that it was objectively reasonable for officer to believe that probable cause existed or that officers of reasonable competence could disagree on whether probable cause test was met. Miloslavsky v. AES Engineering Soc., Inc., S.D.N.Y.1992, 808 F.Supp. 351, affirmed 993 F.2d 1534, certiorari denied 114 S.Ct. 68, 510 U.S. 817, 126 L.Ed.2d 37. Civil Rights 1376(6)

Actions of county solicitor in deciding to prosecute motorist broke the chain of causation and entitled arresting officers to qualified immunity from liability under §§ 1983 on a malicious prosecution claim. Carroll v. Henry County, Ga., N.D.Ga.2006, 336 B.R. 578. Civil Rights 1376(6)

Even if probable cause to arrest was lacking because of an error in State computer records that was the fault of the system, it was objectively reasonable for police officers to believe, based on a computer record indicating the arrestee's motor vehicle registration was suspended, that probable cause existed for the arrest, and thus, they were entitled to qualified immunity on the arrestee's § 1983 claim for false arrest. Mayer v. City of New Rochelle, S.D.N.Y.2003, 2003 WL 21222515, Unreported. Civil Rights 1376(6)

Arresting officer's determination that he had probable cause to arrest sexual assault suspect was objectively reasonable, and thus he was entitled to qualified immunity from § 1983 liability arising out of allegedly false arrest; officer was entitled to rely on victim's complaint, absent showing that it was inherently incredible. Obilo v. City University of City of New York, E.D.N.Y.2003, 2003 WL 715749, Unreported, opinion corrected and superseded 2003 WL 1809471. Civil Rights 1376(6)

Even if actions of assistant district attorney (ADA), with respect to police officer's arrest and prosecution for perjury, were outside scope of his official duties, such that he was not entitled to absolute immunity from officer's § 1983 false arrest and malicious prosecution claims, attorney, as well as police officers and investigators, were entitled to qualified immunity from claims; it was reasonable for defendants to believe that officer had committed perjury at administrative hearing for motorist, who officer had arrested for driving while intoxicated (DWI). Tartaglione v. Pugliese, S.D.N.Y.2002, 2002 WL 31387255, Unreported, affirmed 89 Fed.Appx. 304, 2004 WL 474011. Civil Rights 1376(10); Civil Rights 1376(9)

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42 U.S.C.A. § 1983

Police officers had qualified immunity from false arrest suit brought under § 1983 by participant in neighborhood altercation; police could have reasonably believed probable cause existed to arrest participant, based upon statement of neighbor that participant had cracked windshield of her vehicle, and inspection of vehicle that revealed crack. Hughes v. Shestakov, E.D.Pa.2002, 2002 WL 1742666, Unreported, affirmed 76 Fed.Appx. 450, 2003 WL 22234866. Civil Rights 1376(6)

4053. ---- Searches generally, police officers, objective reasonableness requirement

Determination of whether it was objectively legally reasonable to conclude that given search was supported by probable cause or exigent circumstances, so that officer conducting search is protected by qualified immunity from civil liability, will often require examination of information possessed by searching officer. Anderson v. Creighton, U.S.Minn.1987, 107 S.Ct. 3034, 483 U.S. 635, 97 L.Ed.2d 523, on remand 724 F.Supp. 654. Civil Rights 1376(2)

For purposes of qualified immunity, reasonable parole agents would have known in 2003 that entering home in which parolee had rented room, without announcing their identity and purpose, absent manifest exigency or demonstration that compliance would be futile, would violate homeowner's Fourth Amendment rights, despite parolee's prior consent to search. Green v. Butler, C.A.7 (Ill.) 2005, 420 F.3d 689, rehearing en banc denied. Civil Rights 1376(7)

State police officer's acts of holding over $10,000 which was discovered during search of driver in connection with arrest and subjecting money to canine sniff were objectively reasonable, for purpose of officer's assertion of qualified immunity in driver's § 1983 action, in view of officer's knowledge that drug couriers often carried large amounts of cash in small denominations and fact that driver's explanation of where money came from conflicted with information from driver's mother who was in separate automobile. Conrod v. Davis, C.A.8 (Mo.) 1997, 120 F.3d 92, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1531, 523 U.S. 1081, 140 L.Ed.2d 681. Civil Rights 1376(6)

Even if reasonable jury could find that driver's oral and written consents to search his vehicle were involuntary, reasonable police officers in defendant officers' position could have believed that their search was constitutional in light of consents they had obtained, thus entitling them to qualified immunity from driver's § 1983 suit; reasonable officer in defendants' position could have believed that his conduct was lawful, in light of existing appellate decisions upholding findings of voluntary consent where evidence of duress or coercion was as strong or stronger than that relied on by driver. Valance v. Wisel, C.A.7 (Ind.) 1997, 110 F.3d 1269. Civil Rights 1376(6)

Objective reasonable officer could not have concluded that inviting television crew, or any third party not providing assistance to law enforcement, to participate in search of private home was within Fourth Amendment requirements, for purposes of determining whether Secret Service agent was qualifiedly immune from suit by residents of home. Ayeni v. Mottola, C.A.2 (N.Y.) 1994, 35 F.3d 680, certiorari denied 115 S.Ct. 1689, 514 U.S. 1062, 131 L.Ed.2d 554. United States 50.10(3)

Police officers were entitled to qualified immunity from civil rights claim that they unlawfully strip-searched misdemeanor arrestee who refused to provide pedigree information; arrestee's refusal to identify himself could provide reasonable suspicion that arrestee was engaged in criminal conduct of more serious nature than that for which he was arrested. Wachtler v. County of Herkimer, C.A.2 (N.Y.) 1994, 35 F.3d 77. Civil Rights 1376(6)

Police officers were entitled to qualified immunity in § 1983 action by suspect whose home was illegally searched, in violation of Fourth Amendment; officers' belief that "exigent circumstances" existed was objectively reasonable where suspect initially came to door with gun in hand, barricaded himself in home, and had history of violence and mental problems. O'Brien v. City of Grand Rapids, C.A.6 (Mich.) 1994, 23 F.3d 990, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

In determining whether law enforcement officer asserting qualified immunity from liability for Fourth Amendment violations objectively could have believed his conduct was lawful, court examines whether law governing official's conduct was clearly established and whether reasonable officer could have believed conduct was lawful, under that law. Act Up!/Portland v. Bagley, C.A.9 (Or.) 1993, 988 F.2d 868. Civil Rights 1376(6)

A reasonable police officer who arrived at scene after arrestee had been arrested for driving with a suspended license could have offered assistance to arresting officer by participating in search of arrestee, and thus, officer who arrived at scene after arrest and participated in search was entitled to qualified immunity on arrestee's §§ 1983 claim alleging false arrest. Golio v. City of White Plains, S.D.N.Y.2006, 459 F.Supp.2d 259. Civil Rights 1376(6)

Police officers had qualified immunity from arrestee's unreasonable search and seizure claim in civil rights action under §§ 1983, where officers had reasonable belief that owner of residence from which arrestee's weapons were seized had authority to consent to the search and seizure. Ostroski v. Town of Southold, E.D.N.Y.2006, 443 F.Supp.2d 325. Civil Rights 1376(6)

Genuine issues of material fact existed as to whether police officer conducted a second search of a detainee's person after failing to discover anything during first search, whether the cocaine was found in detainee's front right pocket or his small coin pocket, and whether the contraband seemed by touch to be a potential weapon, precluding summary judgment, on basis of qualified immunity, for officer in action alleging an illegal search; second search was not reasonably necessary to secure the officer's safety and size of the coin pocket made it unlikely a weapon would be discovered there. Johnson v. Anhorn, E.D.Pa.2006, 416 F.Supp.2d 338. Federal Civil Procedure 2491.5

A reasonable officer similarly situated to state drug enforcement agent who secured condominium by requiring tenants to either leave premises or allow officers to accompany them inside while awaiting issuance of warrant to search condominium would not have understood that securing residence from inside violated tenants' right to be free from unreasonable seizures, and thus, agent had qualified immunity in tenants' §§1983 action alleging illegal search and seizure; probable cause for search warrant was not clearly lacking when agent secured premises, and securing was necessary to preserve evidence and protect officers. Clark v. Webster, D.Me.2005, 384 F.Supp.2d 371. Civil Rights 1376(6)

Assistant chief of police for borough did not have qualified immunity from §§ 1983 claim, by tax collector, that his right to be secure from unreasonable search and seizure was violated when assistant chief opened drawer of collector's desk, without warrant or probable cause, discovering tape recorder collector was using to make unauthorized recordings of office conversations; no reasonable officer could believe that such action did not violate collector's rights. Konopka v. Borough of Wyoming, M.D.Pa.2005, 383 F.Supp.2d 666. Civil Rights 1376(6)

City police chief and officers who assisted in alleged illegal repossession action at restaurant were not entitled to qualified immunity from restaurant owner's §§ 1983 action, alleging Fourth Amendment violations; although officers did not actually commit illegal search or seizure themselves, they facilitated search of owner's business premises and seizure of his property, action was not necessarily reasonable under circumstances, and chief essentially instructed officers in their actions. Pruitt v. Pernell, E.D.N.C.2005, 360 F.Supp.2d 738, affirmed 2006 WL 870638. Civil Rights 1376(6)

Law enforcement officer who participates in search that violates Fourth Amendment may not be held personally liable for money damages under §§ 1983 if reasonable officer could have believed that search comported with Fourth Amendment. Demster v. City of Lenexa, Kan., D.Kan.2005, 359 F.Supp.2d 1182. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police officers were not entitled to qualified immunity in journalist's § 1983 challenge to home search warrant that lacked probable cause due to staleness; reasonable officer would have known that no probable cause existed for warrant based on statement of single individual who claimed to have been shown by journalist photographic images of terrorist attack, on one occasion six years earlier, on government-owned laptop computer in congressional office rather than in journalist's home. Arkansas Chronicle v. Easley, E.D.Va.2004, 321 F.Supp.2d 776. Civil Rights 1376(6)

Genuine issues of material fact as to whether county jail deputies believed statement of state trooper that he had smelled marijuana on vehicle's driver and passenger who had both been arrested following investigatory stop but were not visibly intoxicated or believed to be armed and were being released after they were booked, and whether deputies acted reasonably in strip-searching them based on trooper's statement that pat-down search and search of vehicle did not result in finding evidence of drugs, precluded summary judgment as to deputies' entitlement to qualified immunity from § 1983 claims of passenger and driver that their constitutional rights were violated. Liston v. Steffes, W.D.Wis.2002, 300 F.Supp.2d 742. Federal Civil Procedure 2491.5

California state officials were not entitled to qualified immunity against § 1983 claim by operator of day care center that officials seized and removed client files from center, destroying and losing some files in process; no reasonable official would have believed that alleged loss of files was authorized by Fourth Amendment, nor that state regulatory scheme, which authorized only reproduction of files, also authorized seizure. Golden Day Schools, Inc. v. Pirillo, C.D.Cal.2000, 118 F.Supp.2d 1037. Civil Rights 1376(3)

Application for warrant authorizing search of nonexistent address was not so lacking in indicia of probable cause as to deprive police detective of qualified immunity in § 1983 action brought by resident of searched home; application was objectively reasonable since suspect's own statement was corroborated by computer printout, and another officer provided a description of the property confirmed by a personal visit. Gales v. District of Columbia, D.D.C.1999, 47 F.Supp.2d 43. Civil Rights 1376(6)

Relevant question in § 1983 action with respect to claims of unreasonable search and seizure is the objective question whether reasonable officer could have believed search and seizure to be lawful, in light of clearly established law and information searching officers possessed. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 877. Civil Rights 1376(6)

Federal Bureau of Investigation (FBI) agent, having received from arrestee's father broadly worded consent forms to take from father's home "any letters, papers, or materials or other property which they may desire," did not violate any of arrestee's clearly established constitutional rights by seizing his firearms and certificates of title, even if no independent lawful cause existed for seizure of those items, and thus agent was entitled to qualified immunity, as was assistant United States Attorney(AUSA) who advised him, since reasonable person would have interpreted consent as extending to seizure of property at issue, and father never revoked or limited consent. Lavin v. Thornton, S.D.N.Y.1997, 959 F.Supp. 181. United States 50.10(3)

Sheriff, who was sued by arrestee for alleged civil rights violations that occurred when arrestee was strip-searched following arrest for minor traffic infraction, was not entitled to qualified immunity where subjecting arrestee to strip-search was not objectively reasonable, despite arrestee's lack of picture identification that would have enabled police to check her criminal history; arrestee's appearance and conduct at time of arrest and thereafter did not give rise to reasonable suspicion that arrestee had possible contraband. Kelly v. Foti, E.D.La.1994, 870 F.Supp. 126, affirmed in part and remanded 77 F.3d 819, rehearing and suggestion for rehearing en banc denied 85 F.3d 627. Civil Rights 1376(6)

Qualified immunity to § 1983 civil rights liability applied to police detective who returned allegedly stolen letter seized from auction house to law enforcement officials in state where theft allegedly occurred given that person who cosigned letter to auction house was not able to establish clear title to letter, detective made intention to obtain

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search warrant known, and reasonable police officer would have believed that letter was fruit of out-of-state crime and should be turned over to that state's authorities as evidence. Przyborowski v. Howard, D.Me.1994, 863 F.Supp. 22. Civil Rights 1376(6)

4054. ---- Applications for search warrants, police officers, objective reasonableness requirement

Affidavit in support of search warrant to take dental impressions from defendant, to see if these impressions matched bite marks found on murder victim's body, was not so lacking in probable cause as to overcome law enforcement officers' qualified immunity to defendant's § 1983 claims; probable cause existed on face of affidavit, and any omissions by officers were either neutral as to probable cause or helpful to defendant. Keko v. Hingle, C.A.5 (La.) 2003, 318 F.3d 639, rehearing en banc denied 61 Fed.Appx. 123, 2003 WL 342359. Civil Rights 1376(6)

Police officer was not objectively unreasonable in omitting, from application for search warrant, that informants had prior hostile relationship with homeowner, and thus officer enjoyed qualified immunity from claims that he deliberately left information out of application. Lombardi v. City of El Cajon, C.A.9 (Cal.) 1997, 117 F.3d 1117. Civil Rights 1376(6)

Police officers had reasonable grounds to believe probable cause supported warrant to search plaintiff's house, and thus, officers were entitled to qualified immunity from § 1983 claim, where officers knew about drug sales from plaintiff's address prior to informant's unsolicited offer to obtain drugs from plaintiff, informant bought cocaine from plaintiff in uncontrolled buy, and recorded conversation between plaintiff and informant indicated they were well acquainted and had recently engaged in some type of dealing. Martinez v. City of Schenectady, C.A.2 (N.Y.) 1997, 115 F.3d 111. Civil Rights 1376(6)

Police officers who unreasonably obtained and executed warrant to search all persons present for evidence were not entitled to qualified immunity; affidavit that supported warrant not only was lacking in any indicia of probable cause to search all persons but itself requested permission only to search two persons for evidence of crime under investigation and all others only for officer safety. Marks v. Clarke, C.A.9 (Wash.) 1996, 102 F.3d 1012, amended on denial of rehearing, certiorari denied 118 S.Ct. 264, 522 U.S. 907, 139 L.Ed.2d 190. Civil Rights 1376(6)

To constitute constitutional violation sufficient to overcome qualified immunity of arresting officer who allegedly omitted material statements and made false statements in affidavit underlying arrest warrant for plaintiffs, material misstatements and omissions must be of such character that no reasonable official would have submitted affidavit to magistrate, and specific omitted facts must be clearly critical to finding of probable cause. Morin v. Caire, C.A.5 (La.) 1996, 77 F.3d 116, 144 A.L.R. Fed. 719. Civil Rights 1376(6)

Omitted facts from deputy sheriff's search warrant application were not so clearly material that every reasonable law officer would have known that their omission would lead to search in violation of federal law, so as to overcome qualified immunity defense, where deputy had been physically present at what looked to be typical drug deal; reasonable officer in deputy's position could have concluded that informant's use of alias, tape recorder problems during drug buy operation, and greater than expected weight of substance purchased were not material. Haygood v. Johnson, C.A.11 (Ga.) 1995, 70 F.3d 92, rehearing denied, rehearing and suggestion for rehearing en banc denied 86 F.3d 1172, certiorari denied 117 S.Ct. 359, 519 U.S. 949, 136 L.Ed.2d 251. Civil Rights 1376(6)

Search warrant affidavit was so lacking in indicia of probable cause as to plaintiffs' residence that reasonable officer would not have sought a search warrant, making qualified immunity defense unavailable to requesting officer in civil rights action; affidavit provided almost no information about plaintiffs' residence, and officer contributed to magistrate's incorrect probable cause determination by applying for warrant during the night. Greenstreet v. County of San Bernardino, C.A.9 (Cal.) 1994, 41 F.3d 1306. Civil Rights 1376(6); Searches

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42 U.S.C.A. § 1983

And Seizures 114

Police officers were entitled to qualified immunity in § 1983 action based on their seeking and securing search warrant for residence; police officers' reliance on, and verification of, confidential informant's information was reasonable and adequate, and it was thus reasonable for officers to suspect illegal narcotics activity and to proceed to initiate and execute search warrant. George v. City of St. Louis, C.A.8 (Mo.) 1994, 26 F.3d 55. Civil Rights 1376(6)

Police officer's failure to inform magistrate judge that his search warrant affidavit was referring to title of series of allegedly obscene videotapes, rather than specific title of a movie did not expose him to liability in his personal capacity in civil rights action brought by video store owner; officer's assumption that use of word "copies" in his affidavit included all works within series was not objectively unreasonable. Supreme Video, Inc. v. Schauz, C.A.7 (Wis.) 1994, 15 F.3d 1435, on remand 927 F.Supp. 321. Civil Rights 1088(3)

Police officer had at least arguable probable cause for seeking search warrants based on the repeated, detailed and explicit statements of children that they had been ritualistically sexually abused by their father, grandmother and great-aunt, and were entitled to qualified immunity in civil rights action arising from searches, notwithstanding doctor's conflicting opinions as to whether there was physical evidence of sexual abuse. Lowe v. Aldridge, C.A.11 (Ga.) 1992, 958 F.2d 1565. Civil Rights 1376(6)

Police officer is qualifiedly immune from suit for damages arising from allegedly illegal arrest or search unless reasonably well-trained officer in his position would have known that his affidavit failed to establish probable cause and that he should not have applied for warrant. Forster v. County of Santa Barbara, C.A.9 (Cal.) 1990, 896 F.2d 1146. Civil Rights 1376(6)

Police officer who received tip that weapons were located in particular house, who knew that other officers had received similar anonymous tips, who presented facts to deputy district attorney and was told that probable cause existed for search warrant, and who obtained search warrant affidavit from deputy district attorney and who presented affidavit to judge who issued warrant was entitled to qualified immunity in civil rights action arising out of the suit. Ortiz v. Van Auken, C.A.9 (Cal.) 1989, 887 F.2d 1366. Civil Rights 1376(6)

Special agent for Kansas Bureau of Investigation (KBI) did not act with reckless disregard for the truth in preparing affidavit in support of search warrant that named the wrong trailer home to be searched, and thus, agent was entitled to qualified immunity from §§ 1983 claim brought by residents of trailer home that was searched; while agent did not see drug buyer enter a trailer home on the street on which the trailer home that was searched was located, and while drug buyer later stated that he had gone to another trailer home behind the one specified in the affidavit, agent clearly saw drug buyer leave the trailer home specified in the affidavit. Hernandez v. Conde, D.Kan.2006, 442 F.Supp.2d 1131. Civil Rights 1375

Detective was not entitled to qualified immunity on false arrest claim; no officer could reasonably conclude that the Constitution would permit arrest of suspect based on the manipulation of victim's identification, given its equivocal nature and inconsistencies in victim's description of her kidnapper. Ramirez v. County of Los Angeles, C.D.Cal.2005, 397 F.Supp.2d 1208. Civil Rights 1376(6)

Police officer's alleged intentional misleading of magistrate judge was not proximate cause of damage to arrestee for purposes of § 1983 action brought by arrestee against officer based upon unlawful arrest; although in his warrant application, officer incorrectly used the pronoun "they" when referring to single informant who had identified arrestee, any confusion was clarified by officer's sworn oral testimony before magistrate judge, so that judge made independent determination of probable cause. Peters v. City of Biloxi, Mississippi, S.D.Miss.1999, 57 F.Supp.2d 366. Civil Rights 1088(4)

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42 U.S.C.A. § 1983

Sheriff and investigator were entitled to qualified immunity from plaintiff's § 1983 action claiming that they subjected her to unreasonable search and seizure when they searched her motel room given that reasonably well-trained officer would have believed that search warrant affidavit established probable cause to search motel room, even though affidavit contained conclusory statements, where affidavit stated that informant had identified name of man accused of selling contraband and described counterfeit merchandise, and investigator corroborated informant's claims by affirming that suspect had previously been arrested for selling counterfeit merchandise. Toth v. City of Dothan, Ala., M.D.Ala.1996, 953 F.Supp. 1502. Civil Rights 1376(6)

Sheriff was not entitled to qualified immunity from § 1983 claim based on unconstitutional search and seizure; affidavit supporting search warrant contained so few indicia of probable cause as to render official belief in its existence entirely unreasonable, and sheriff could not have reasonably relied on any grounds for warrantless search. DePugh v. Penning, N.D.Iowa 1995, 888 F.Supp. 959. Civil Rights 1376(6)

Factual allegations in officer's affidavit in support of application for search warrant were sufficient to establish probable cause to believe one owner of residence possessed cocaine, and thus, officer was entitled to qualified immunity from liability, in civil rights action brought against officer by owners of residence searched; officer received information contained in affidavit from informant known for two years who had previously provided officer with reliable information, no evidence indicated that officer should have known that residence did not contain drugs, although none were found during search, warrant was executed three days after issuance, and no evidence indicated that officer should have known that informant harbored grudge against one owner, although affidavit did not allege precisely where in house cocaine was being kept. Harden v. Peck, N.D.Ill.1988, 686 F.Supp. 1254. Civil Rights 1376(6); Controlled Substances 149

4055. ---- Execution of search warrants, police officers, objective reasonableness requirement

Police officer who forcibly and mistakenly entered wrong apartment to serve search warrant targeting suspected methamphetamine laboratory, and allegedly waited only two seconds after knocking before doing so, was not entitled to qualified immunity in apartment residents' §§ 1983 Fourth Amendment action against officer alleging violation of knock-and-announce rule; nothing in warrant suggested or predicted particular risk of violence or destruction of evidence warranting brief interval, nor did interval permit inference of developing exigent circumstances. Jones v. Wilhelm, C.A.7 (Wis.) 2005, 425 F.3d 455. Civil Rights 1376(6)

Police detective who served attorney with search warrant for attorney's person and effects, while client was testifying before grand jury, was entitled to qualified immunity upon attorney's claim that search violated his due process right to practice his profession, as warrant expressly stated that it could be served at any time, warrant was served at direction of prosecutor, and detective had no control over timing of prosecutors' calling client to grand jury room. Gabbert v. Conn, C.A.9 (Cal.) 1997, 131 F.3d 793, certiorari granted in part 119 S.Ct. 39, 525 U.S. 809, 142 L.Ed.2d 30, reversed 119 S.Ct. 1292, 526 U.S. 286, 143 L.Ed.2d 399. Civil Rights 1376(6)

Police officers who dispense with knock-and-announce requirement in executing search warrant that does not authorize forcible entry are shielded by qualified immunity in ensuing § 1983 action only if they could reasonably have decided that urgent need existed for such entry into premises. Kornegay v. Cottingham, C.A.3 (Del.) 1997, 120 F.3d 392. Civil Rights 1376(6)

It was reasonable under prevailing law regarding plain view doctrine for officer to believe that starter pistol found during search of claimants' house, which pistol was not listed in search warrant, could have been used in criminal or gang activity to frighten victim, and therefore, officers were entitled to qualified immunity in claimants' § 1983 action alleging unlawful seizure of pistol, though starter pistol was not automatically considered firearm or deadly weapon. Perkins v. City of West Covina, C.A.9 (Cal.) 1997, 113 F.3d 1004, certiorari granted 118 S.Ct. 1690, 523 U.S. 1105, 140 L.Ed.2d 812, reversed 119 S.Ct. 678, 525 U.S. 234, 142 L.Ed.2d 636, on remand 167 F.3d 1286. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Police officer acted reasonably in concluding that in executing search warrant, immediate entry into suspect's home after knocking was needed to reduce risk that police would be met with violent resistance, and thus officer was entitled to qualified immunity in suspect's § 1983 suit; officer knew that suspect was housed within and that suspect had a history of violent offenses and a reputation for violence, and facts supported reasonable belief that suspect had received some warning that police were approaching residence. Thompson v. Mahre, C.A.9 (Cal.) 1997, 110 F.3d 716, certiorari denied 118 S.Ct. 414, 522 U.S. 967, 139 L.Ed.2d 317. Civil Rights 1376(6)

Police officers who conducted indiscriminate searches of all persons present at family homes where search warrant was executed failed to act in objectively reasonable manner and thus searches were not justified under "den of thieves" theory; large number of family members, including children, were, as officers might have anticipated, present before and during search. Marks v. Clarke, C.A.9 (Wash.) 1996, 102 F.3d 1012, amended on denial of rehearing, certiorari denied 118 S.Ct. 264, 522 U.S. 907, 139 L.Ed.2d 190. Searches And Seizures 148

Deputy sheriff was not entitled to qualified immunity from homeowners' § 1983 claim arising from execution of search warrant at wrong house, in light of deputy's failure to make reasonable effort to identify place to be searched as required by clearly established law; search warrant had been procured based on deputy's own prior observations, house searched was located on different part of street and was separated by another residence from house identified in warrant, numbers on both houses were clearly marked, and raid took place during daylight hours. Hartsfield v. Lemacks, C.A.11 (Ga.) 1995, 50 F.3d 950, as amended. Civil Rights 1376(6)

Drug agents were not entitled to qualified immunity in § 1983 action arising out of mistaken execution of valid search warrant on wrong premises; right not to be subjected to unreasonable mistaken execution of valid search warrant was clearly established, and there was question of fact about whether officers' entry of home was mistake amounting to plain incompetence. Dawkins v. Graham, C.A.8 (Ark.) 1995, 50 F.3d 532. Civil Rights 1376(6)

Doctrine of qualified immunity did not apply to officers and prosecutors who executed warrant for search of birthing clinic at two a.m., forcing parents of newborn child to sit in waiting room for over three hours, in that no objectively reasonable law enforcement officer could have believed that search was reasonable and, thus, individuals were not immune from liability in parents' § 1983 civil rights action. Hummel-Jones v. Strope, C.A.8 (Mo.) 1994, 25 F.3d 647, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(6); Civil Rights 1376(9)

As of date on which search was executed a reasonable police officer would not have known that it was violation of Fourth Amendment rights to participate purposefully in search, notwithstanding lack of knowledge regarding contents of warrant, by looking in otherwise concealed areas for and identifying stolen property not described in warrant during otherwise lawful search encompassing same areas for stolen items listed in warrant; therefore, police officers were entitled to qualified immunity from liability in civil rights action brought by owners of business searched. Crowder v. Sinyard, C.A.5 (Tex.) 1989, 884 F.2d 804, certiorari denied 110 S.Ct. 2617, 496 U.S. 924, 110 L.Ed.2d 638. Civil Rights 1376(6)

Police chief's approving the use of a special weapons and tactics (SWAT) team to execute a search warrant on arrestees' home was not objectively unreasonable, and thus, the chief was entitled to qualified immunity on the arrestees' §§ 1983 claim that he violated their Fourth Amendment rights; the chief relied on the Kansas Bureau of Investigation's (KBI) assessment that the SWAT team was required. Hernandez v. Conde, D.Kan.2006, 442 F.Supp.2d 1141. Civil Rights 1376(6)

State police officers were not entitled to qualified immunity as matter of law for allegedly unreasonably executing search warrant by violating knock and announce rule, remaining on premises after they became aware that warrant described wrong dwelling unit, and unreasonably damaging property, as their alleged actions were objectively unreasonable. Foreman v. Beckwith, D.Conn.2003, 260 F.Supp.2d 500. Civil Rights 1376(6)

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Officers who shot and killed homeowner during execution of search warrant were not entitled to qualified immunity where facts, as alleged by homeowner's estate, indicated that officers had no reasonable basis for believing homeowner posed immediate threat and that it was unreasonable for officers to mistake either phone or water bottle in homeowner's hands for gun. Wingrove v. Forshey, S.D.Ohio 2002, 230 F.Supp.2d 808. Civil Rights 1376(6)

Police officers were entitled to qualified immunity from suit under § 1983 with respect to execution of search warrant, despite fact that officers noticed serious discrepancies between searched premises and their information almost immediately upon commencement of search, absent any evidence that officers unreasonably continued to search after they knew they were in wrong apartment or that officers conducted search in manner inconsistent with its professed purpose, where officers' belief that execution of warrant did not violate occupants' Fourth Amendment rights was objectively reasonable. Lewis v. City of Mount Vernon, Mount Vernon Police Dept., S.D.N.Y.1997, 984 F.Supp. 748. Civil Rights 1376(6)

When police officer acts within scope of facially valid warrant, issued by judge, officer has acted in good faith in conducting search, for purposes of claim of qualified immunity. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 877. Civil Rights 1376(6)

Law enforcement officers were entitled to qualified immunity from *Bivens* or § 1983 liability for alleged violation of Fourth Amendment from evidentiary search conducted after execution of in rem seizure warrant, in light of officers' reasonable belief that homeowner orally consented to search, and despite homeowner's refusal to sign written consent form; officer was advised of legality of search by Assistant United States Attorney. Trujillo v. Simer, D.Colo.1996, 934 F.Supp. 1217. Civil Rights 1376(6); United States 50.10(3)

Law enforcement officers were entitled to qualified immunity from *Bivens* or § 1983 liability for alleged violation of Fourth Amendment during execution of in rem seizure warrant, absent violation of clearly established law, and in light of officers' reasonable belief that their conduct of looking in closets, cabinets and crawl spaces was lawful for purposes of inventorying their condition and contents and discovering potentially dangerous weapons. Trujillo v. Simer, D.Colo.1996, 934 F.Supp. 1217. Civil Rights 1376(6); United States 50.10(3)

County sheriff, captain and sergeant of sheriff's department acted reasonably, and thus were entitled to qualified immunity in § 1983 action based upon search of home of sheriff's department lieutenant for missing murder investigation file, where captain and sergeant simply executed search warrant obtained by prosecutor and signed by magistrate, and sheriff simply told captain and sergeant to execute warrant if it appeared valid. Davison v. Frey, E.D.Mich.1993, 837 F.Supp. 235. Civil Rights 1376(6)

In absence of evidence suggesting lack of good faith, police officers who were not involved in procuring no-knock search warrant were entitled to rely on its validity and implicit representation of exigent circumstances and, therefore, were entitled to qualified immunity from § 1983 liability; police work would not be feasible if officers were required to investigate background of every search warrant, arrest warrant, or request for back up deriving from another officer. Hall v. Lopez, D.Colo.1993, 823 F.Supp. 857. Civil Rights 1376(6)

Police officers were entitled to qualified immunity in trailer owner's § 1983 action regarding execution of search warrant; whether or not probable cause supported issuance of warrant or warrant was facially valid, reasonable officer reading that warrant would not have known that searching trailer was clearly illegal. Somavia v. Las Vegas Metropolitan Police Dept., D.Nev.1993, 816 F.Supp. 638, affirmed 15 F.3d 1089. Civil Rights 1376(6)

It was objectively reasonable for police officers to rely on validity of search warrant, even though the actual physical characteristics of the residence to be searched may have varied to some degree from the description contained in the warrant, and it was not unreasonable for officers to believe that warrant was not overbroad in including a cottage area to be searched, so that they were entitled to qualified immunity in civil rights action.

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Zawacki v. City of Colorado Springs, D.Colo.1991, 759 F.Supp. 655. Civil Rights 1376(6)

State and federal search warrants and officers' observations provided probable cause for arrest and attendant right to seize arrestee's weapons and other evidence and thus, officers were protected by qualified immunity from arrestee's claims that arrest and seizure of property violated his civil rights. Bemis v. Kelley, D.Mass.1987, 671 F.Supp. 837, affirmed 857 F.2d 14. Civil Rights 1376(6)

4056. ---- Warrantless searches, police officers, objective reasonableness requirement

Police officer was not entitled to qualified immunity for his alleged conduct in directing landlord to open tenant's apartment door, in tenant's §§ 1983 Fourth Amendment claim; although officer was dispatched to keep the peace during tenant's former boyfriend's repossession of his belongings from the apartment, it would be unreasonable for officer to act affirmatively to aid the repossession, and unreasonable for officer to assume that tenant consented to the entry, despite officer's knowledge that boyfriend's attorney sent tenant a letter advising her of the repossession and listing the items that the boyfriend intended to take from the apartment. Harvey v. Plains Tp. Police Dept., C.A.3 (Pa.) 2005, 421 F.3d 185, certiorari denied 126 S.Ct. 2325. Civil Rights 1376(6)

Officers were not entitled to qualified immunity for making forced warrantless entry into resident's home after resident attempted to end consensual encounter by closing partially opened doorway that was blocked by officer's foot, as entry into home was presumptively unreasonable and officers had no reasonable basis for believing their actions were justified under hot pursuit exception; they were not pursuing resident for commission of any crime in public place and should have realized that any claim that resident committed assault in public place by closing door was highly questionable. Cummings v. City of Akron, C.A.6 (Ohio) 2005, 418 F.3d 676, rehearing and rehearing en banc denied. Civil Rights 1376(6)

State parole officers who entered homeowner's residence without search warrant, to search for absconded parolee who they had been informed was residing there, were entitled under "special needs" doctrine and state parole rules and regulations to search home of parolee without probable cause or a warrant, and thus, officers were entitled to qualified immunity from homeowner's civil rights action alleging that officers violated her Fourth Amendment right to be free from unreasonable searches, although information regarding parolee's whereabouts turned out to be mistaken, where search was rationally related to officers' duty to supervise parolee, reasonable officer, in same circumstances, could have believed that search was consistent with the Fourth Amendment, and officers left residence as soon as they saw picture proving that homeowner's son and parolee were not same person. Moore v. Vega, C.A.2 (N.Y.) 2004, 371 F.3d 110. Civil Rights 1376(7); Pardon And Parole 68

Exigent circumstances justified officers' warrantless entry of home of individual with Down Syndrome, for purposes of individual's § 1983 claim against officers alleging Fourth Amendment violations, where a 911 call originated from the home and the caller claimed to be under attack. Anthony v. City of New York, C.A.2 (N.Y.) 2003, 339 F.3d 129. Searches And Seizures 42.1

For purposes of determining that police lieutenant was entitled to qualified immunity on arrestee's § 1983 claim that lieutenant conducted unreasonable warrantless search and seizure by removing door hinges to enter locked room, lieutenant could have reasonably believed that search was lawful in light of proprietor's consent to search building, although arrestee leased locked room, as proprietor did not inform lieutenant that locked room was leased and did not attempt to limit consent to search, and it was not clear from established Fourth Amendment precedent that lieutenant was required to ask consent giver for key to unlock room. Forman v. Richmond Police Dept., C.A.7 (Ind.) 1997, 104 F.3d 950, certiorari denied 118 S.Ct. 563, 522 U.S. 997, 139 L.Ed.2d 403. Civil Rights 1376(6)

Police officers had reasonable belief that someone inside house in which individual could be heard shouting was in imminent peril of bodily harm, and thus were qualifiedly immune from § 1983 action alleging that they violated

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Fourth Amendment by failing to knock and announce before entering; officers had been informed that drunk person inside house had fired nine shots, and it was not unreasonable for officers to infer from seeing taut telephone cord leading into another room that victim had grabbed telephone to call for help and could not be heard over drunk person's shouting. Dickerson v. McClellan, C.A.6 (Tenn.) 1996, 101 F.3d 1151. Civil Rights 1376(6)

Police officers involved in warrantless search of home were not entitled to qualified immunity in resident's subsequent § 1983 suit; although officers claimed that they did not obtain warrant because they were concerned for safety of resident's son, knowledge possessed by officers at time of search, which was second in two days, was not such that officers could have had rational basis for believing that exigent circumstances existed. Parkhurst v. Trapp, C.A.3 (Pa.) 1996, 77 F.3d 707. Civil Rights 1376(6)

Law enforcement officers, who conducted two warrantless raids on nightclub were not entitled to qualified immunity, in civil rights action by nightclub proprietors and patrons alleging violation of their Fourth Amendment rights, as officers could not have reasonably believed that probable cause for raids, which allegedly involved search of premises, seizure of all persons present at gunpoint for approximately one and one-half hours, and search of some of those detained, existed based on information from reliable informant regarding sales of narcotics in nightclub, undercover agent's completion of single drug transaction with person in nightclub before each raid, or arrest of seller during first raid. Swint v. City of Wadley, Ala., C.A.11 (Ala.) 1995, 51 F.3d 988. Civil Rights 1376(6)

Members of extradition squad were not entitled to qualified immunity in civil rights action brought by arrestee who had been taken into custody pursuant to "wanted person" request from another state, where they acted without arrest or search warrant or any exigent circumstances sufficient to justify the intrusion into arrestee's home. Buenrostro v. Collazo, C.A.1 (Puerto Rico) 1992, 973 F.2d 39. Civil Rights 1376(6)

Police officer, probation officer, and summer intern at probation office were acting within contours of law at time they made warrantless search of house rented by probationer's girlfriend and, thus, were entitled to qualified immunity from liability in § 1983 action brought by girlfriend; probationer had listed girlfriend's home as his home and girlfriend admitted that he resided in her home approximately one half of time so that reasonable police officer would have believed that girlfriend's home was probationer's residence, and warrantless entry was not a general search for criminal activity but was instead a search to determine if probationer had violated his probation. Shea v. Smith, C.A.3 (Pa.) 1992, 966 F.2d 127. Civil Rights 1376(6); Civil Rights 1376(7)

Reasonable police officers could have concluded that there was probable cause to search woman present at residence when search warrant was executed for concealed evidence and that warrantless strip search was justified by exigency to prevent woman from disposing of incriminating evidence, thus providing officers with qualified immunity in § 1983 civil rights action based on warrantless strip search; woman had been passenger in car of suspected drug dealer for approximately two hours prior to execution of warrant, the suspected drug dealer and known drug dealer openly conducted felonious cocaine distribution in the woman's immediate presence, and woman twice requested to use bathroom, but was refused permission to do so, before she was strip searched. Burns v. Loranger, C.A.1 (Me.) 1990, 907 F.2d 233. Civil Rights 1376(6)

Persons involved in warrantless entries of private property to abate suspected and known nuisances were not entitled to qualified immunity from suit on ground that warrant requirement was not clearly established in 1983 and 1985; existing case law made clear that Fourth Amendment's warrant requirement applied to entries onto private land to search for and abate suspected nuisances, and it was not reasonable to believe that same rule did not apply to known nuisances. Conner v. City of Santa Ana, C.A.9 (Cal.) 1990, 897 F.2d 1487, certiorari denied 111 S.Ct. 59, 498 U.S. 816, 112 L.Ed.2d 34. Civil Rights 1376(6)

In context of warrantless seizure made without probable cause, relevant question for determining whether law

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enforcement officer is immune from liability under federal civil rights statute is whether reasonable officer could have believed the warrantless search to be lawful, in light of clearly established law and information the searching officer possessed. Bigford v. Taylor, C.A.5 (Tex.) 1990, 896 F.2d 972, rehearing denied 901 F.2d 1110. Civil Rights 1376(6)

Since police officers should have known that their acts in entering house without a warrant violated clearly established constitutional standards of probable cause, defense of qualified immunity was unavailable to them in action under this section as a matter of law. Llaguno v. Mingey, C.A.7 (Ill.) 1984, 739 F.2d 1186, rehearing granted and vacated, on rehearing 763 F.2d 1560, on remand. Civil Rights 1376(6)

Given that police officer's traffic stop of motor vehicle was lawful, driver's Fourth Amendment rights were not violated by subsequent warrantless search of vehicle, following passenger's arrest after he handed marijuana to officer; search was a lawful search incident to arrest. Johnson v. Anhorn, E.D.Pa.2006, 416 F.Supp.2d 338. Automobiles 349.5(1)

Police officer of borough did not have qualified immunity from claim that he violated Fourth Amendment rights of tax collector, when he listened to audio tape from recorder taken from tax collector's desk by fellow officer, without warrant or probable cause to search desk. Konopka v. Borough of Wyoming, M.D.Pa.2005, 383 F.Supp.2d 666. Civil Rights 1376(6)

Police officer who searched motorist and his vehicle after he "mouthed off" was not entitled to judgment on the pleadings, on ground of qualified immunity, in motorist's civil rights action under §§ 1983, alleging claim for illegal search of his vehicle, where, if facts were as alleged by motorist, no reasonable police officer could possibly have believed he had probable cause to search either motorist or his car for cocaine. Torres v. Village of Sleepy Hollow, S.D.N.Y.2005, 379 F.Supp.2d 478, appeal dismissed 2006 WL 755958. Federal Civil Procedure 1061

Police officer had qualified immunity from claim that he violated Fourth and Fifth Amendment rights of girlfriend of recently deceased house owner, when he ordered her to remain outside house while separate wife searched for and removed items of personal property; officer was acting reasonably, simply preserving the peace, rather than collaborating with wife. Ostensen v. Suffolk County, E.D.N.Y.2005, 378 F.Supp.2d 140. Civil Rights 1376(6)

Police officers were not entitled to qualified immunity on claim that they engaged in unreasonable search of driver's car, where search followed allegedly unconstitutional investigatory stop of driver's car; objectively reasonable officer could not have fairly believed he was engaged in constitutional seizure, and thus, could not have believed that search was proper. Cowles v. Peterson, E.D.Va.2004, 344 F.Supp.2d 472. Civil Rights 1376(6)

Detective who arrested drug trafficking suspect had qualified immunity as to suspect's § 1983 claim alleging lack of probable cause for arrest, since objective officer, under totality of circumstances, could have concluded that suspect had constructive possession of drugs, drug paraphernalia and weapons in house where he was living; suspect had full access to bedroom, computer room, bathroom and living area where contraband was found. DeVatt v. Lohenitz, E.D.Pa.2004, 338 F.Supp.2d 588. Civil Rights 1376(6)

Police officers who entered homeowners' residence with warrant to arrest suspect were entitled to qualified immunity under § 1983 from homeowners' claims that officers violated their rights under Fourth Amendment and state constitution, even though officers mistakenly entered wrong home based on arrest warrant that described suspect's former address; officers were not involved in underlying investigation that led to determination of suspect's address, had no knowledge of facts that would have alerted them that suspect no longer lived at residence, and were under no duty to conduct own investigation, officers' presence at residence was based on facially valid arrest warrant and reasonable belief that suspect lived in residence and would be home when warrant was executed, and officers did not open any doors, unwrap any sealed containers, or remove any property so as to support that

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search was unreasonable. Tyson v. Willauer, D.Conn.2003, 290 F.Supp.2d 278. Civil Rights 1376(6)

Police officers who answered complaint of possible underage drinking at residence reasonably could have believed that they had probable cause to enter residence without warrant based on exigency, as required to assert qualified immunity against resident/arrestee's § 1983 Fourth Amendment action alleging unreasonable search and seizure; one officer saw individual he knew to be minor drinking beer in kitchen and observed several others run away or into house after officers arrived, and it was not clearly established that officers' knowledge that underage drinking was occurring inside house did not present exigency. Radloff v. City of Oelwein, N.D.Iowa 2003, 284 F.Supp.2d 1145, affirmed 380 F.3d 344, certiorari denied 125 S.Ct. 967, 543 U.S. 1090, 160 L.Ed.2d 900. Civil Rights 1376(6)

Arrestee who brought § 1983 action against police officers demonstrated that officers' training, pursuant to seizure and transportation of arrestee to premises of search warrant, was contrary to decided body of case law, as would preclude qualified immunity for officers' actions; since warrant to search arrestee in advance had been denied, and there was no probable cause subsequently to search him, it was not objectively reasonable in light of established precedent to detain him *en route* to search of premises. Pappas v. New Haven Police Dept., D.Conn.2003, 278 F.Supp.2d 296. Civil Rights 1376(6)

Police officer's arrest and prosecution of motorist after he was told by drug-sniffing dog's handler that dog had alerted to glove compartment were objectively reasonable, in light of fact that cocaine was in fact found in glove compartment, and thus officer was entitled to qualified immunity in motorist's malicious prosecution action under § 1983, even though subsequent prosecutions were dismissed on ground that dog did not alert. Jones v. Fountain, E.D.Tex.2000, 121 F.Supp.2d 571. Civil Rights 1376(6)

Claimant's Fourth Amendment rights were not violated when federal officers searched black bag that was in luggage portion of bus where claimant repeatedly denied ownership of black bag to officers and so forfeited any reasonable expectation of privacy in abandoned property. Bordeaux v. Lynch, N.D.N.Y.1997, 958 F.Supp. 77. Searches And Seizures 28

Police officers were qualifiedly immune from suit brought under § 1983, claiming alleged violations of Fourth Amendment rights in connection with warrantless search of social club; based on information possessed by them, it was objectively reasonable to believe that warrantless entry was lawful because club was open to public. Washington Square Post No. 1212 v. City of New York, S.D.N.Y.1992, 808 F.Supp. 264. Civil Rights 1376(6)

Officers who searched arrestee's truck were entitled to qualified immunity, in arrestee's subsequent illegal search claim; officers were unaware that arresting officer lacked reasonable suspicion to detain arrestee, and thus acted reasonably in assuming that search of truck followed lawful arrest. Schwab v. Wood, D.Del.1991, 767 F.Supp. 574 . Civil Rights 1376(6)

Even if warrantless search of home for fugitive violated owners' Fourth Amendment rights, officer conducting search was entitled to qualified immunity from damages; officer reasonably relied on advice of county district attorney and district justice that search warrant was unnecessary, because arrest warrant and probable cause to believe that fugitive was in residence were sufficient to conduct search. Bratton v. Toboz, M.D.Pa.1991, 764 F.Supp. 965. Civil Rights 1376(6)

City officials, police chief, and female clerk of city who conducted illegal warrantless strip search of homeowner at direction of police chief during search of homeowner's home pursuant to warrant were entitled to qualified immunity from liability for strip search; although clearly established law prohibited expanding scope of search warrant, and no true exigent circumstances could justify search, it was possible that reasonable officers might mistakenly believe that their actions to have been necessary response to emergency, i.e., homeowner's request to

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use bathroom and officers' fear of "furtive" disposal of evidence. Munz v. Ryan, D.Kan.1990, 752 F.Supp. 1537. Civil Rights 1376(4); Civil Rights 1376(6)

Genuine issue of material fact existed as to whether property owner, by blocking telephone worker's vehicle from leaving driveway, was restraining telephone worker or only telephone worker's vehicle, precluding summary judgment on deputy's §§ 1983 defense of qualified immunity to owner's unreasonable seizure claims arising from her arrest for unreasonable restraint. Collin v. Stephenson, S.D.Ohio 2002, 2002 WL 31409874, Unreported. Federal Civil Procedure 2491.5

Police did not have qualified immunity from suit, by mother arrested for interfering in arrest of her minor son, claiming that warrantless post arrest search of her house violated Fourth Amendment; no reasonable officer could conclude that protective sweep of house was necessary following arrests occurring outside of house, and in any event search exceed scope of protective sweep. Carrasco v. City of Vallejo, E.D.Cal.2001, 2001 WL 34098655, Unreported. Civil Rights 1376(6)

4057. ---- Officers' perceptions, police officers, objective reasonableness requirement

Pre-trial detainee, who was found standing next to creek, soaking wet, and reporting that his vehicle was going to "blow up," and who was combative during arrest, did not have objectively serious medical need on intake that required immediate medical attention, from perspective of arresting police officer, as layperson, for purpose of qualified immunity analysis of deliberate indifference civil rights claim of detainee's estate under Fourteenth Amendment, since detainee sat calmly in back of patrol car once arrested, followed directions, answered questions posed, and remained quiet and seated on bench once inside jail. Grayson v. Ross, C.A.8 (Ark.) 2006, 454 F.3d 802 . Constitutional Law 262

Police officer's actions in allowing plaintiff to leave her friend's apartment with her alleged abuser while officer drove her car back to her apartment was not objectively unreasonable, and therefore, officer was entitled to qualified immunity from § 1983 claim that he violated plaintiff's constitutional rights; plaintiff failed to alert officer about potential danger presented by alleged abuser. Waters v. City of Morristown, TN, C.A.6 (Tenn.) 2001, 242 F.3d 353. Civil Rights 1376(6)

Law enforcement officers who searched and effected seizure of truck were entitled to qualified immunity in truck owners' resulting § 1983 action, in view of suspicions raised under circumstances including fact that various vehicle identification numbers (VINs) were missing, that truck was registered to dealer, that truck's present condition did not match its damage record, that truck was reported stolen, that truck was sold with lien on it, that certification form indicating legitimacy of reconditioned truck was suspicious, and that truck was linked to alleged illegal "chop shop." Wren v. Towe, C.A.5 (Tex.) 1997, 130 F.3d 1154, certiorari denied 119 S.Ct. 51, 525 U.S. 815, 142 L.Ed.2d 40. Civil Rights 1376(6)

Under doctrine of qualified immunity for § 1983 purposes, perspective, that immunity inquiry must be filtered through lens of officer's perceptions at time of incident in question, serves two purposes: first, using officer's perception of facts at the time limits second-guessing reasonableness of actions with benefit of 20/20 hindsight and, second, using this perspective limits need for decision makers to sort through conflicting versions of "actual" facts. Rowland v. Perry, C.A.4 (N.C.) 1994, 41 F.3d 167. Civil Rights 1376(2)

Off-duty police officer was entitled to qualified immunity from liability in civil rights lawsuit under Fourth Amendment for officer's shooting and killing of unleashed 55 to 60 pound dog that was running in circles within approximately 15 feet of officer; even if officer's shooting of dog was unreasonable seizure, reasonably competent officers could have disagreed as to appropriate course of conduct when faced with potential harm posed by that situation. Dziekan v. Gaynor, D.Conn.2005, 376 F.Supp.2d 267. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

Town police officer and chief of police were entitled to qualified immunity from liability as to personal capacity claims brought by owner of pitbull dog seeking damages under § 1983 for officer's shooting and killing of pitbull when it escaped from residence and ran toward officer and police canine as they were attempting to track fleeing suspect; even if officer's shooting of pitbull was an unreasonable seizure under the Fourth Amendment, it was objectively reasonable for him to believe that his actions were lawful at the time. Warboys v. Proulx, D.Conn.2004, 303 F.Supp.2d 111. Civil Rights 1376(6)

Police officers of reasonable competence could disagree as to whether any rights of vehicle owner were violated when police officers towed vehicle owner's automobile without warrant, based on suspicion that it was involved in hit-and-run accident, and refused to allow owner to take vehicle, and therefore qualified immunity applied to protect officers from §§ 1983 liability on owner's claims alleging unlawful seizure of vehicle and false imprisonment in violation of his constitutional rights. Figetakis v. City of Cuyahoga Falls, C.A.6 (Ohio) 2004, 112 Fed.Appx. 393, 2004 WL 1859630, Unreported, rehearing en banc denied, certiorari denied 125 S.Ct. 2519, 544 U.S. 1064, 161 L.Ed.2d 1116. Civil Rights 1376(6)

Police officers' belief that probable cause to charge arrestee existed, based on an error in State computer records indicating that the arrestee's motor vehicle registration was suspended, was objectively reasonable, and thus, the officers were entitled to qualified immunity on the arrestee's malicious prosecution claim under § 1983; arrestee did not allege that, after his arrest and before he appeared in court, any officer received any other information regarding whether he had committed the offense. Mayer v. City of New Rochelle, S.D.N.Y.2003, 2003 WL 21222515, Unreported. Civil Rights 1376(6)

Police had qualified immunity from § 1983 claim that they arrested participant in neighborhood altercation for minor offense, not committed in presence of officers, without first obtaining arrest warrant; as law was unclear whether warrant was required in those circumstances, officers could reasonably believe they could arrest based upon probable cause. Hughes v. Shestakov, E.D.Pa.2002, 2002 WL 1742666, Unreported, affirmed 76 Fed.Appx. 450, 2003 WL 22234866. Civil Rights 1376(6)

4058. ---- Involuntary servitude, police officers, objective reasonableness requirement

Police officer and youth services officer involved in taking action against student involved in rock-throwing incident were entitled to qualified immunity in connection with student's mother's Thirteenth Amendment claim for involuntary servitude; while student had a clearly established right to be free from involuntary servitude, a reasonable public official would not be aware that instructing a minor in the custody of a juvenile officer to wash police vehicles or depriving minor of food for four hours would constitute involuntary servitude prohibited by the Thirteenth Amendment, and there was no evidence that officers used or threatened to use physical restraint or injury against student or used threat of coercion through law or legal process to compel student to wash vehicles. Buchanan v. City of Bolivar, Tenn., C.A.6 (Tenn.) 1996, 99 F.3d 1352. Civil Rights 1376(4); Civil Rights 1376(6)

4059. ---- Reliance, police officers, objective reasonableness requirement

Police officer who, along with Immigration and Naturalization Service (INS) agent, participated in allegedly unlawful arrest of arrestee for immigration offense was entitled to qualified immunity in arrestee's resulting § 1983 action, where officer relied on INS agent's statement that offense was committed, which was result of mistake of law, and officer's own lack of knowledge that such offense existed was not unusual under the circumstances. Liu v. Phillips, C.A.1 (Mass.) 2000, 234 F.3d 55. Civil Rights 1376(6)

Police officers were entitled to qualified immunity in arrestee's § 1983 action claiming use of tape recorded telephone conversation between arrestee and witness to convince witness to become confidential informant

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violated wiretap laws, where officers sought prosecutor's advice concerning how tape recording could be used, prosecutor specifically advised them that tape could not be used directly to prosecute arrestee but could be used to persuade witness to testify, officers had no reason to believe that advice was erroneous, and officers acted promptly after receiving advice. Davis v. Zirkelbach, C.A.7 (Ind.) 1998, 149 F.3d 614, certiorari denied 119 S.Ct. 902, 525 U.S. 1121, 142 L.Ed.2d 901. Civil Rights 1376(6)

When police officer makes arrest on basis of oral statements by fellow officers, officer will be entitled to qualified immunity from liability in civil rights suit for unlawful arrest provided it was objectively reasonable for him to believe, on basis of statements, that probable cause for arrest existed. Rogers v. Powell, C.A.3 (Pa.) 1997, 120 F.3d 446. Civil Rights 1376(6)

State trooper who, in making arrest, acted in reliance on statements of other arresting trooper that clearly and unambiguously related to existence of arrest warrant in adjoining county was protected by qualified immunity from § 1983 liability for unlawful arrest, in that it was objectively reasonable, as a matter of law, for trooper to believe that probable cause existed for arrest. Rogers v. Powell, C.A.3 (Pa.) 1997, 120 F.3d 446. Civil Rights 1376(6)

Emergency order purportedly authorizing police officers to take any steps necessary to cause dispersal of any gathering in city that endangered persons or property would not have led reasonable officer to believe that order altered long-standing California law that assemblies could be dispersed as unlawful only when they constitute clear and present danger, and thus officers were not entitled to qualified immunity for their actions in arresting and detaining protestors. Collins v. Jordan, C.A.9 (Cal.) 1996, 110 F.3d 1363. Civil Rights 1376(6)

Police officers' belief that mother gave her consent to removal of her daughter from school was objectively reasonable, so that officers were entitled to qualified immunity in mother's § 1983 action alleging that removal violated her constitutionally protected liberty interest in custody of daughter, regardless of whether she actually consented; school official told officers that mother consented to removal of daughter from school, and, given close working relationship between officers and official, officers had no reason to believe that mother did not actually consent. Gardiner v. Incorporated Village of Endicott, C.A.2 (N.Y.) 1995, 50 F.3d 151. Civil Rights 1376(6)

Police officers who reasonably relied on caseworkers' assessments when they assisted caseworkers in removing children from parents' home based on report of suspected child abuse were entitled to qualified immunity in parents' civil rights action. Chayo v. Kaladjian, S.D.N.Y.1994, 844 F.Supp. 163. Civil Rights 1376(6)

4060. ---- Private assistance, police officers, objective reasonableness requirement

Even if a request for assistance in making an arrest came from a known law enforcement official, a private defendant in a § 1983 suit for false arrest is not entitled to qualified immunity unless the defendant's belief that probable cause existed was objectively reasonable, as gauged by the standard of a reasonable private citizen in the defendant's position, rather than that of a reasonable law enforcement official; facts necessary to establish the objective reasonableness of a private actor's belief under this standard will necessarily turn on the circumstances of the case. Mejia v. City of New York, E.D.N.Y.2000, 119 F.Supp.2d 232. Civil Rights 1373

Private citizen's belief in the existence of probable cause, for purposes of a qualified immunity defense to a § 1983 suit for false arrest arising from assistance rendered to a law enforcement officer, is unreasonable when the assistance he furnishes to the officer is a patently abusive misuse of police authority. Mejia v. City of New York, E.D.N.Y.2000, 119 F.Supp.2d 232. Civil Rights 1373

4060A. ---- Miscellaneous acts, police officers, objective reasonableness requirement

Officer was not entitled to qualified immunity for allegedly ordering motorist to push her disabled vehicle along side of roadway in manner which officer himself was prohibited from doing under department rules and that

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allegedly endangered her safety in violation of due process and seized her in violation of Fourth Amendment. Lockhart-Bembery v. Town of Wayland Police Dept., D.Mass.2006, 447 F.Supp.2d 11. Civil Rights 1376(6)

It was objectively reasonable for police officers to take young children into custody when arresting their mother for murder of apartment occupant, providing qualified immunity from claim that action, undertaken without benefit of mother's consent or pre-deprivation hearing, violated mother's due process rights. Richards v. City of New York, S.D.N.Y.2006, 433 F.Supp.2d 404. Civil Rights 1376(6)

Reasonable police officer would have known that intentionally delaying arrestee's probable cause hearing was unconstitutional act on his part, for purpose of obtaining qualified immunity from §§ 1983 liability. Smith v. Eggbrecht, W.D.Ark.2005, 414 F.Supp.2d 882. Civil Rights 1376(6)

Police officer who ordered female motorist to push her inoperable vehicle from roadway, without his assistance, or face towing, was not entitled to qualified immunity from liability on civil rights claims, as it was unclear whether reasonable officer would have believed his actions were lawful under clearly established law. Lockhart-Bembery v. Town of Wayland Police Dept., D.Mass.2005, 404 F.Supp.2d 373. Civil Rights 1376(6)

4061. Prison officials, objective reasonableness requirement--Generally

A reasonable person in the position of state typist who was responsible for handling prisoners' paperwork would not have known that failing to inquire about inmate's sentencing status when he returned from court without the requisite "court return" form was unlawful, and therefore, typist was entitled to qualified immunity on former state inmate's § 1983 action against prison officials, alleging due process violations in connection with his 57-day incarceration after he was ordered released. Davis v. Hall, C.A.8 (Mo.) 2004, 375 F.3d 703, rehearing and rehearing en banc denied. Civil Rights 1376(7)

Qualified immunity is available to prison official if it was objectively reasonable for public official to believe that his acts did not violate inmate's federal rights. Hathaway v. Coughlin, C.A.2 (N.Y.) 1994, 37 F.3d 63, certiorari denied 115 S.Ct. 1108, 513 U.S. 1154, 130 L.Ed.2d 1074, on subsequent appeal 99 F.3d 550. Civil Rights 1376(7)

Prison officials, who acted "reasonably, but mistakenly" in making a good faith effort to put into effect what the Court of Appeals later characterized as its own legally erroneous interpretation of Maryland law concerning "diminution credits," were entitled to qualified immunity on claims that they violated procedural due process rights of released prisoners who were reincarcerated; rights of released prisoners to continued liberty and/or to procedural due process under the unique circumstances of the case were not so clearly established that a reasonable official should have known of them and that their alleged conduct violated them. Henderson v. Simms, D.Md.1999, 54 F.Supp.2d 499, affirmed 223 F.3d 267, certiorari denied 121 S.Ct. 770, 531 U.S. 1075, 148 L.Ed.2d 670. Civil Rights 1376(7)

To overcome official's qualified immunity defense, plaintiff must show that official knew or reasonably should have known that action he took within his sphere of official responsibility would violate constitutional rights of plaintiff; in addition, plaintiff must set forth facts underlying his claim, not mere conclusions, before he may subject public officials to trial or to pretrial discovery in § 1983 civil rights case. Jolly v. Klein, S.D.Tex.1996, 923 F.Supp. 931. Civil Rights 1376(2); Civil Rights 1398

Even if federal prisoner stated Eighth Amendment claim against high-level prison officials based on allegations that prisoner was assaulted and abused by other inmates based on his presumed status as homosexual, officials were entitled to qualified immunity absent showing that officials in responding to prisoner's letters violated clearly established law or were objectively unreasonable; prisoner conceded that officials responded to his letters, and letters themselves did not suggest anything other than reasonable action taken by officials. Risley v. Hawk,

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D.D.C.1996, 918 F.Supp. 18, affirmed 108 F.3d 1396, 323 U.S.App.D.C. 367, rehearing denied. United States 50.10(3)

Inmates sufficiently established allegations which properly raised legitimate question that their constitutional rights may have been violated by conditions at medium security unit of Nebraska State Penitentiary, and that prison officials knew or should have known that their conduct may have violated such rights; thus, officials were not entitled to defense of qualified immunity. Kitt v. Ferguson, D.Neb.1990, 750 F.Supp. 1014, affirmed 950 F.2d 725. Civil Rights 1376(7)

4061A. ---- Disparate treatment, prison officials, objective reasonableness requirement

Chief deputy county sheriff was entitled to qualified immunity to civil rights claim that he was deliberately indifferent to Eighth Amendment right of arrestee, who committed suicide while in custody; although sheriff told deputy to keep a close eye on arrestee and deputy was only other official available to help jailer with arrestee, deputy did not know that arrestee presented suicide risk and deputy did not know that sheriff forbade jailer from entering cell alone. Turney v. Waterbury, C.A.8 (S.D.) 2004, 375 F.3d 756, rehearing and rehearing en banc denied. Civil Rights 1376(6)

Prison officials were not entitled to qualified immunity from prisoner's § 1983 claim brought against them in their individual capacities alleging that officials treated him differently than other inmates in violation of his right to equal protection by taking away his calculator while allowing other inmates to keep similar calculators or calculators with more memory; prisoner sufficiently asserted a violation of a constitutional or statutory right by alleging that officials intentionally treated him differently than other similarly situated inmates without any rational basis for difference in treatment, right was clearly established at time of its alleged violation, and reasonable official would have known that alleged actions violated his right. Damron v. North Dakota Com'r. of Corrections, D.N.D.2004, 299 F.Supp.2d 970, affirmed 127 Fed.Appx. 909, 2005 WL 1076645. Civil Rights 1376(7)

4061B. ---- Due process, prison officials, objective reasonableness requirement

Correctional officers were not entitled to qualified immunity on due process claim that they withheld substance of evidence presented at disciplinary proceeding from prisoner, given lack of justification in record to withhold certain information supplied by confidential informants, which formed bulk of evidence against prisoner, and lack of any basis for reasonable officer to have thought otherwise. Sira v. Morton, C.A.2 (N.Y.) 2004, 2004 WL 1719285, opinion withdrawn, superseded 380 F.3d 57. Civil Rights 1376(7)

Prison officials who failed to release inmate for 57 days after judge ordered his release deprived him of his Fourteenth Amendment right to be free from wrongful, prolonged incarceration, thus precluding officials' claim of qualified immunity in inmate's subsequent § 1983 action, since a reasonable government actor would have known that failing to respond to the inmate's requests to be released in keeping with court order that he possessed was unlawful. Davis v. Hall, C.A.8 (Mo.) 2004, 375 F.3d 703, rehearing and rehearing en banc denied. Civil Rights 1376(7)

4061C. ---- Supervision, prison officials, objective reasonableness requirement

County jailer was entitled to qualified immunity to civil rights claim that she was deliberately indifferent to Eighth Amendment right of arrestee, who committed suicide while in custody, although arrestee had attempted suicide at another jail and jailer did not complete jail intake form, which was typically done when inmate arrived and included questions of whether inmate "ever tried suicide" and "If yes, where at." Turney v. Waterbury, C.A.8 (S.D.) 2004, 375 F.3d 756, rehearing and rehearing en banc denied. Civil Rights 1376(7)

4061D. ---- Excessive force, prison officials, objective reasonable requirement

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Reasonable corrections officers would have exerted force in response to inmate resisting their attempts to restrain him, and thus officers were entitled to qualified immunity from liability in inmate's §§ 1983 suit alleging that they used excessive force against him, where inmate was biting one officer, and there was no evidence that amount of force used was malicious and sadistic for purpose of causing harm. Wilkins v. Ramirez, S.D.Cal.2006, 455 F.Supp.2d 1080. Civil Rights 1376(7)

4062. ---- Freedom of religion, prison officials, objective reasonableness requirement

Prison officials were entitled to qualified immunity on inmate's claims against them for damages arising from officials' actions of requiring inmate to attend religion-based narcotics rehabilitation meetings under threat of being rated a higher security risk and suffering adverse effects for parole eligibility; reasonable prison official would not necessarily have known that her actions were unreasonable. Kerr v. Farrey, C.A.7 (Wis.) 1996, 95 F.3d 472. Civil Rights 1376(7)

Prison officials' decision to deny use of prison chapel to inmate who pastored small new denomination was objectively reasonable, as required for officials to enjoy qualified immunity from suit, since under law then applicable, inmates' religious freedom did not include right to receive facilities identical to that of more populous denominations. Ganther v. Ingle, C.A.5 (Tex.) 1996, 75 F.3d 207. Civil Rights 1376(7)

Prison officials had objectively reasonable belief that prisoner's participation in residential substance abuse program that allegedly contained religious elements did not violate his rights, and therefore were entitled to qualified immunity in prisoner's §§ 1983 action claiming that he was compelled to participate in program in violation of the Establishment Clause of the First Amendment; prison officials had previously taken actions in order to bring program into compliance with Establishment Clause, including making Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) participation optional, removing any religious references from inspirational readings, separating religious library materials from secular ones, making use of any religious library materials completely optional, and enacting a rule prohibiting participants from proselytizing but allowing them to discuss the role of religion in their personal recovery, and these steps created an objectively reasonable belief that the program complied with Establishment Clause. Gray v. Johnson, W.D.Va.2006, 436 F.Supp.2d 795. Civil Rights 1376(7)

State prison officials were entitled to qualified immunity from liability arising from their enforcement of grooming policy; at relevant time, officials had no reason to believe policy violated Rastafarian inmate's statutory or constitutional rights. Ragland v. Angelone, W.D.Va.2006, 420 F.Supp.2d 507. Civil Rights 1376(7)

Genuine issue of material fact as to whether state prison warden's determination to prohibit wearing of religious garb during transport of inmates outside of facility was reasonable restriction on inmate's free exercise of his religious practices, consistent with prison security needs, precluded summary judgment on qualified immunity grounds in inmate's §§ 1983 action alleging violation of his First Amendment free exercise rights. Boles v. Neet, D.Colo.2005, 402 F.Supp.2d 1237. Federal Civil Procedure 2491.5

Prison officials were not entitled to qualified immunity on prisoner's §§ 1983 claim arising from their confiscation of newspaper published by Muslim organization; prisoner clearly alleged a deprivation of actual rights under the First Amendment, it was well established by the time in question that prisoners retain their First Amendment rights inside prison walls, an objectively reasonable official would know that he could not impinge on those rights unless his actions were reasonably related to legitimate penological interests, and genuine issues of material fact existed as to whether officials' actions were reasonably related to legitimate penological concerns. Shaheed-Muhammad v. Dipaolo, D.Mass.2005, 393 F.Supp.2d 80. Civil Rights 1376(7)

Even if prison officials violated inmate's constitutional rights by transferring him from one correctional facility to another following his constitutionally protected activities of making complaints to prison and church officials while

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incarcerated, given inmate's disciplinary history and his attempt to obtain personal information about a staff member at first facility, it was objectively reasonable for officials to believe that inmate's transfer did not violate clearly established law, and thus they had qualified immunity in inmate's §§1983 retaliation action. Gonzalez v. Narcato, E.D.N.Y.2005, 363 F.Supp.2d 486. Civil Rights 1376(7)

Corrections employees and officials did not have qualified immunity in Muslim inmate's §§1983 claim against them alleging that they violated his First Amendment right to free exercise of religion by disciplining him for refusing to assist in preparation of pork while working in prison kitchen, since defendants should have known under governing law that their actions would constitute a deprivation of that constitutional right. Williams v. Bitner, M.D.Pa.2005, 359 F.Supp.2d 370. Civil Rights 1376(7)

Prison officials did not act in objectively reasonable manner when they forced inmate to participate in religious components of prison's alcohol and substance abuse treatment program, despite inmate's objections to program on religious grounds, and thus were not entitled to qualified immunity from inmate's § 1983 claim that his forced participation in program violated Establishment Clause; state's highest court had declared coerced entry into program unconstitutional three months before inmate was forced into program, and governing law did not condition Establishment Clause violation on sincerity of inmate's professed religious beliefs. Alexander v. Schenk, N.D.N.Y.2000, 118 F.Supp.2d 298. Civil Rights 1376(7)

Corrections officer was not entitled to qualified immunity from Muslim inmate's § 1983 claim for alleged violation of his First Amendment rights to freedom of religion; reasonable corrections officer in same position would have known that he could not shove inmate and disrupt his prayer when inmate was praying quietly during quiet time without disturbing others. Arroyo Lopez v. Nuttall, S.D.N.Y.1998, 25 F.Supp.2d 407. Civil Rights 1376(7)

Decision by prison employees to enforce prison rule restricting length of inmates hair was not objectively unreasonable so as to deprive them of qualified immunity for alleged § 1983 violation, where Director of Department of Rehabilitation and Correction had circulated memorandum informing managing officers that legal decision supported department's decision to apply uniformly policy requiring all inmates to receive haircuts and that no exceptions were to be made. Wellmaker v. Dahill, N.D.Ohio 1993, 836 F.Supp. 1375. Civil Rights 1376(7)

Absent evidence that prisoner informed officials that he considered drawing of blood contrary to his religious principles, officials would not have believed they were violating prisoner's First Amendment rights by proceeding with blood draw, and, thus, officials were entitled to qualified immunity from prisoner's First Amendment claim. Ryncarz v. Eikenberry, E.D.Wash.1993, 824 F.Supp. 1493. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity in state inmate's §§ 1983 action alleging that restrictions placed on his practice of his Native American Religion violated his rights under the First Amendment; restrictions placed on the tobacco and sweat-lodge ceremonies, and the denial of the Lowampi ceremony, were constitutional, and reasonable officials would not have understood they were violating any free-exercise rights in alleged denial of access to a religious advisor, denial of peyote, permitting female employees to handle religious objects or observe religious ceremonies, and denial of certain sacred foods. Runningbird v. Weber, C.A.8 (S.D.) 2006, 198 Fed.Appx. 576, 2006 WL 2466194, Unreported. Civil Rights 1376(7)

Prison officials could reasonably have believed that they effectively and validly revoked inmate's exemption from prison's beard-length policy when they personally informed him of the change in policy, first through corrections officer's giving inmate a copy of memo explaining policy change, and second through hearing on inmate's first misbehavior report conduct, such that they did not violate inmate's due process rights and, thus, officials were entitled to qualified immunity from suit under §§ 1983. Young v. Goord, C.A.2 (N.Y.) 2006, 192 Fed.Appx. 31, 2006 WL 2268237, Unreported. Civil Rights 1376(7)

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Reasonable prison official would not have known that denying inmate access to books pertaining to his religion violated First Amendment, and therefore prison officials were entitled to qualified immunity from liability on state inmate's free exercise claim. Roddy v. Banks, C.A.8 (Ark.) 2005, 124 Fed.Appx. 469, 2005 WL 433404, Unreported. Civil Rights 1376(7)

It was objectively reasonable for a superintendent of a correctional facility to deny an inmate's request for a larger room to conduct meetings of a religious organization and thus, the superintendent was entitled to qualified immunity in the inmate's § 1983 suit; the superintendent relied on a memorandum stating that the room provided for the meetings was "more than adequate." Croswell v. McCoy, N.D.N.Y.2003, 2003 WL 962534, Unreported. Civil Rights 1376(7)

State prison officials would not reasonably have known that placing inmate in medical keeplock for 41 days for his refusal, on religious grounds, to submit to a tuberculosis (TB) screening test, and subsequently for another 52 days when he refused to accept medication for tuberculosis after he agreed to submit to the test and tested positive, was a violation of his First Amendment freedom of religion rights at the time the conduct occurred in July and October, 1999, and thus, the prison officials were entitled to qualified immunity against the inmate's § 1983 claim for violation of his First Amendment rights. Delisser v. Goord, N.D.N.Y.2003, 2003 WL 133271, Unreported. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity on federal civil rights claims asserted by non-prisoner who claimed that he was teacher of Nation of Islam doctrine who had divine command to serve as prisoner's religious advisor, where the evidence did not indicate that prison officials were aware that the non-prisoner was prisoner's spiritual advisor, that officials' actions were preventing non-prisoner from fulfilling his divine command to serve as prisoner's religious advisor, that non-prisoner was similarly situated to other people who sent materials to inmates, or that non-prisoner was a member of the Nation of Islam. Proctor v. Toney, C.A.8 (Ark.) 2002, 53 Fed.Appx. 793, 2002 WL 31780046, Unreported. Civil Rights 1376(7)

4063. ---- Freedom of speech, prison officials, objective reasonableness requirement

Prison officials were entitled to qualified immunity from § 1983 liability for violation of prisoner's constitutional rights in connection with interpretation of regulation allowing punishment of inmates for circulating petition aimed at redressing grievances against prison conditions even though regulation was later held unconstitutionally vague as applied; reasonable official could have thought that regulation provided sufficient notice that inmate's actions could be punished. Wolfel v. Morris, C.A.6 (Ohio) 1992, 972 F.2d 712, rehearing denied. Civil Rights 1376(7)

Genuine issue of material fact as to whether reasonable person would have known that document that prisoner gave to correctional officer was draft of legal complaint against correctional officer, which fact issue was relevant to whether prison authorities violated clearly established constitutional rights of which reasonable person would have known, precluded summary judgment for prison authorities based on qualified immunity, in prisoner's §§ 1983 action alleging that prison authorities violated prisoner's First Amendment free speech rights by placing him in administrative segregation in alleged retaliation for exercising his First Amendment free speech rights by drafting a lawsuit against correctional officer. Bacon v. Taylor, D.Del.2006, 414 F.Supp.2d 475.

4064. ---- Access to mail, prison officials, objective reasonableness requirement

Reasonable prison administrators would not have realized that they were violating prisoners' First Amendment free speech rights by opening prisoners' legal mail outside of prisoners' presence to protect health and safety of prisoners and staff, although administrators maintained policy after three relatively uneventful years had passed after September 11 terrorist attacks and subsequent anthrax concerns; policy was reasonable when established and case upon which prisoners' claim had been based effectively had been overruled as to other point of law and

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otherwise had not been clarified as to claim. Jones v. Brown, C.A.3 (N.J.) 2006, 461 F.3d 353. Civil Rights 1376(7)

State prison officials were entitled to qualified immunity on prisoner's claim, under § 1983, that Oregon regulation prohibiting prisoner from receiving materials sent by bulk mail was unconstitutional; reasonable prison officials would have had no basis for assuming that regulation was unconstitutional in face of two district court decisions from district in which prison was located which had concluded that regulation was not unconstitutional, and fact that there was conflict in views of district court judges demonstrated that constitutionality of regulation was not clearly established until Court of Appeals held, eighteen months later, that prohibiting receipt of commercial bulk mail was unconstitutional. Bahrampour v. Lampert, C.A.9 (Or.) 2004, 356 F.3d 969. Civil Rights 1376(7)

Resident unit manager at correctional facility could reasonably have concluded that prison regulation prohibiting receipt of bulk mail by inmates was constitutional, and thus manager was entitled to qualified immunity from inmate's suit that alleged violations of his First Amendment right to receive mail. Sheets v. Moore, C.A.6 (Mich.) 1996, 97 F.3d 164, certiorari denied 117 S.Ct. 1261, 520 U.S. 1122, 137 L.Ed.2d 339. Civil Rights 1376(7)

Reasonable prison official would not believe that it was proper to punish an inmate for mailing out correspondence with both his committed name and his religious name on it, and thus prison officials were not entitled to summary judgment based on qualified immunity in action by inmate alleging violation of his statutory and constitutional rights by refusing to process out-going mail in which inmate used his religious, rather than his committed, name. Malik v. Brown, C.A.9 (Wash.) 1995, 71 F.3d 724. Civil Rights 1376(7)

It was objectively reasonable for prison officials who in November 1994 screened prison inmate's outgoing mail, which has been reclassified as "incoming" due to insufficient postage, pursuant to prison regulations, to believe that their actions did not violate inmate's First Amendment rights, and thus, officials were entitled to qualified immunity in inmate's § 1983 action; at time of events in question, existing law held that prison officials may permissibly inspect or read outgoing mail for good cause, which was established when letter was reclassified as "incoming" mail due to insufficient postage. Minigan v. Irvin, W.D.N.Y.1997, 977 F.Supp. 607. Civil Rights 1376(7)

Prison warden was entitled to qualified immunity from individual liability for money damages on inmate's civil rights claim based on prison policy directive banning bulk mail delivery, absent any binding precedent providing that inmate's right to receive bulk mail was clearly established constitutional right of which reasonable person would have known. Kalasho v. Kapture, E.D.Mich.1994, 868 F.Supp. 882. Civil Rights 1376(7)

4065. ---- Privacy rights, prison officials, objective reasonableness requirement

Prison officials were entitled to qualified immunity in inmate's action challenging alleged violation of his privacy rights resulting from design of prison dormitory's bathroom area; reasonable persons in officials' positions could have failed to appreciate that the construction of prison facility and guard assignments would violate inmate's rights. Arey v. Robinson, D.Md.1992, 819 F.Supp. 478. Prisons 10

4066. ---- Pretrial detainees, prison officials, objective reasonableness requirement

Reasonable jailer would not have known on intake that pre-trial detainee, who said that he had lost his straw when asked about taking drugs, had objectively serious medical need, for purpose of qualified immunity analysis of deliberate indifference civil rights claim of detainee's estate under Fourteenth Amendment, since detainee followed directions, answered questions posed, and remained quiet and seated on bench once inside jail. Grayson v. Ross, C.A.8 (Ark.) 2006, 454 F.3d 802. Civil Rights 1376(7)

Police officers' conduct regarding possibility that pretrial detainee would commit suicide was objectively

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reasonable in light of detainee's clearly established right to be free from officers' deliberate indifference to detainee's serious medical needs, and officers were thus entitled to qualified immunity in resulting, § 1983 action brought by detainee's estate, where officers removed detainee's shoes because they had laces, ensured that detainee had no belt, determined that detainee could not harm herself with blanket because she was not strong enough to tear it, and instructed others to keep close check on detainee. Hare v. City of Corinth, Miss., C.A.5 (Miss.) 1998, 135 F.3d 320. Civil Rights 1376(6)

City police officers were entitled to qualified immunity from § 1983 liability to female arrestee who alleged that bathroom at county jail was exposed to view of male officers and prisoners; officers were directed to bring detainees to jail, had no control over its design, and had no ability to permit arrestees to use other facilities, and, thus, reasonable officer would not have known about any illegality in taking arrestee to the designated jail. Walton v. City of Southfield, C.A.6 (Mich.) 1993, 995 F.2d 1331. Civil Rights 1376(6)

In determining whether officer was entitled to qualified immunity in connection with suicide death of jail detainee, issue was whether objective officer in officer's position would have reasonably believed that his conduct amounted to "deliberate indifference"--not whether officer's conduct was reasonable. Bowen v. City of Manchester, C.A.1 (N.H.) 1992, 966 F.2d 13. Civil Rights 1376(7)

County official acted reasonably in dealing with disruptive arrestee while in county jail, so as to receive qualified immunity from suit after arrestee died from choking on bar of soap; on previous day officer had ordered city, for whom county was providing facilities for part of time, to take patient away after she injured herself banging her head on bars, and on day in question official had observed arrestee pacing in partially flooded cell with excrement lying on floor, had ordered water turned off and arrestee returned to custody of city prior to soap swallowing incident. Hardin v. Hayes, C.A.11 (Ala.) 1992, 957 F.2d 845. Civil Rights 1376(7)

Jail officials acted with discretion with respect to their placement and treatment of a pretrial detainee, and thus, were entitled to official immunity under Minnesota law with respect to the negligence claims arising from the detainee's attempted suicide, absent any evidence that they acted maliciously; officials exercised their judgment and discretion in determining how to best care for the detainee in accordance with a physician's orders and with his conclusion that the detainee could be manipulating the system, and they promptly took the detainee to the hospital when they discovered he had harmed himself. Drake ex rel. Cotton v. Koss, D.Minn.2005, 393 F.Supp.2d 756, affirmed 439 F.3d 441, rehearing granted and vacated, on rehearing 445 F.3d 1038, rehearing and rehearing en banc denied. Prisons 10

Officers of sheriff's department did not violate clearly established law in 1986 when they allegedly denied pretrial detainee access to telephone for first 67 hours of his incarceration and, thus, officers were qualifiedly immune from § 1983 liability; detainee's attorney represented him at bond hearing one or two days after his incarceration and had conference with him at jail within two or three days, and detainee was allowed free phone access after fourth day of his incarceration. Tucker v. Randall, N.D.Ill.1993, 840 F.Supp. 1237. Civil Rights 1376(6)

County prison warden and deputy warden did not have qualified immunity from liability for violation of pretrial detainees' due process rights by doubling-up of detainees in cell designed for one inmate and forcing detainees to sleep on mattresses on cell floors for period greater than few days; warden and deputy warden should have known similar conduct had been declared unconstitutional. Newkirk v. Sheers, E.D.Pa.1993, 834 F.Supp. 772. Civil Rights 1376(7)

Police chief was not entitled to qualified immunity from liability for forcing middle school students, who had been detained for suspected disorderly conduct, to wash police patrol cars; reasonable officer at that time would have known that he could not punish pretrial detainees. C-1 by P-1 v. City of Horn Lake, Miss., N.D.Miss.1990, 775 F.Supp. 940. Civil Rights 1376(6)

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4067. ---- Access to counsel, prison officials, objective reasonableness requirement

Prison mailroom supervisor was entitled to qualified immunity from damages in inmate's suit challenging mailroom policy of preventing inmates' access to telephone directory listings of attorneys sent to them through mail, where supervisor reasonably believed that inmates had reasonable alternatives to acquire names of attorneys. Foster v. Basham, C.A.8 (Mo.) 1991, 932 F.2d 732, rehearing denied. Civil Rights 1376(7)

4068. ---- Access to court, prison officials, objective reasonableness requirement

Reasonable prison officer would have known that seizing computer-generated legal papers prepared on behalf of another inmate from prisoner's cell was unlawful, so that prison officials were not entitled to qualified immunity in prisoner's § 1983 action, as regulation that prohibited prisoner from possessing unauthorized materials could not be reasonably understood to give prisoner, who was also librarian, adequate notice that his conduct was forbidden, and in view of evidence that prison officials created regulation specifically governing possession of other prisoners' legal materials three weeks after incident. Newell v. Sauser, C.A.9 (Alaska) 1996, 79 F.3d 115. Civil Rights 1376(7)

Prison officials were not entitled to summary judgment on their claim of qualified immunity since inmate made adequate showing of actual injury to court access so as to show that prison officials' conduct in denying inmate photocopying services and use of pen, if true, violated clearly established constitutional rights; inmate was injured when his petition to court was refused since inmate submitted only a single copy, regardless of fact that inmate eventually had his petition duplicated and filed with court. Allen v. Sakai, C.A.9 (Hawai'i) 1994, 48 F.3d 1082. Federal Civil Procedure 2491.5

Prison officials were entitled to qualified immunity from liability for alleged denial of court access for prisoner who was housed in maximum security unit and was not allowed to use main law library, but was provided with satellite law library, paging system to obtain photocopies of materials at main law library, and varying degrees of assistance by paralegals and attorney; constitutional standard was inexplicitly defined, and reasonable officials could conclude that their conduct was not unlawful. Abdul-Akbar v. Watson, C.A.3 (Del.) 1993, 4 F.3d 195. Civil Rights 1376(7)

Prison library defendants were not entitled to dismissal of prisoner's access to courts and First Amendment retaliation claims on basis of qualified immunity; it was not objectively reasonable for defendants intentionally to frustrate prisoner's access to the courts by denying his initial requests for copies and requiring him to procure a court order to receive copies of a court-issued order to show cause (OTSC) when prison regulations did not require such an order and the OTSC could not be copied longhand nor was it reasonable for defendants to damage prisoner's typewriter to punish him for filing grievances and exercising his First Amendment rights. Collins v. Goord, S.D.N.Y.2006, 438 F.Supp.2d 399. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity on inmate's § 1983 claim for prison's refusal to send legal mail, where addressee was not listed as member of state bar in up-to-date edition of directory, and addressee's last name was similar to inmate's; officials could reasonably have concluded that addressee was attempting to mail personal letter to relative. Pacheco v. Comisse, N.D.N.Y.1995, 897 F.Supp. 671. Civil Rights 1376(7)

Illinois prison officials were not entitled to qualified immunity in inmate's civil rights action based on allegation that they withheld Washington state legal materials until after his Washington appeal had been dismissed; interference with inmate's right of access to courts was not objectively reasonable, and officials advanced no legitimate security justification for their actions. LaRue v. Fairman, N.D.Ill.1991, 780 F.Supp. 1190. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

For purpose of determining whether state prison officials had qualified immunity from liability under this section for depriving state prisoner of right of access to courts, the prison officials reasonably should have known, when they transferred the prisoner to a federal penitentiary which had allegedly had no state legal materials in its law library, of both the prisoner's constitutional right of access to the courts and their own duty to help provide for its fulfillment. Blake v. Berman, D.C.Mass.1984, 598 F.Supp. 1081. Civil Rights 1376(7)

It was objectively reasonable for prison officials to believe that inmate was not denied access to the courts by expecting him to cooperate with the contract attorney assigned to assist him, and by declining to provide him further legal assistance after he filed a bar complaint against the contract attorney who in fact had been attempting to assist him, and thus, officials were protected by qualified immunity in § 1983 action in which inmate alleged that their actions violated his right of access to the courts. Scholl v. Delaney, C.A.8 (S.D.) 2000, 230 F.3d 1363, Unreported. Civil Rights 1376(7)

Actions of state prison authorities in instituting and implementing a new inmate legal-assistance program, under which prison law library was closed in favor of providing contract attorneys to assist inmates with their legal needs, were objectively reasonable, and thus, authorities were protected by qualified immunity in § 1983 action in which inmate alleged that program violated his constitutional rights. Eaton v. Dooley, C.A.8 (S.D.) 2000, 230 F.3d 1362, Unreported. Civil Rights 1395(7)

4069. ---- Assault, prison officials, objective reasonableness requirement

Evidence that anonymous note was delivered to prison security officer, indicating that cellmate planned to stab inmate while inmate slept, and that officer failed to separate the two inmates or check for weapons in the barracks was insufficient to establish that officer recklessly disregarded known risk, so as bar qualified immunity defense in inmate's Eighth Amendment action arising when he was stabbed by cellmate in prison cafeteria; officer promptly investigated the note, both inmate and cellmate denied there were any problems. Jackson v. Everett, C.A.8 (Ark.) 1998, 140 F.3d 1149, rehearing and suggestion for rehearing en banc denied. Civil Rights 1376(7)

Inmate who had been beaten by another inmate failed to show that prison officials violated Eighth Amendment by failing to act reasonably despite knowledge of substantial risk of serious harm to inmate, and thus prison officials were entitled to qualified immunity; inmate's pleadings alleged that he had been threatened by attacker, but threats between inmates are common, prison officials consulted inmate prior to attacker's transfer to inmate's facility, prison officials had assurances from both inmates that there would be no trouble, and inmate and his attacker were incarcerated together for substantial period of time without incident. Prater v. Dahm, C.A.8 (Neb.) 1996, 89 F.3d 538. Sentencing And Punishment 1537; Prisons 17(4)

Prison officials were not held to higher standard of behavior than existing law at time in federal civil rights suit brought by prisoner who was burned in fire started by cellmate; prison officials admitted that they knew they had duty to protect inmates from other inmates and could not have reasonably believed that their indifference to prisoner's pleas for help was lawful. Haley v. Gross, C.A.7 (Ill.) 1996, 86 F.3d 630. Civil Rights 1093; Sentencing And Punishment 1537

Prison official was entitled to qualified immunity from inmate's § 1983 action that claimed that official failed to prevent attack by fellow inmate, given surprise nature of attack. Prosser v. Ross, C.A.8 (Mo.) 1995, 70 F.3d 1005. Civil Rights 1376(7)

Prison sergeant was not entitled to qualified immunity from claim that he pulled inmate from his cell by shoulder and hair, slammed inmate's head against bars of adjacent cell and struck him twice in the face and kneed him in the groin; reasonable prison sergeant should reasonably have known that such conduct violated Eighth Amendment. Hill v. Shelander, C.A.7 (Ill.) 1993, 992 F.2d 714. Civil Rights 1376(7)

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Corrections officer was not immune from inmate's § 1983 suit; it was not objectively reasonable for officer to stand by and watch another officer beat a handcuffed and naked inmate. Buckner v. Hollins, C.A.8 (Mo.) 1993, 983 F.2d 119, rehearing denied. Civil Rights 1376(7)

Prison guard who fatally shot prisoner who was attempting to escape could reasonably have believed his actions were lawful, and was thus entitled to qualified immunity in civil rights action based on the shooting; it was objectively reasonable for guard to believe escape could not reasonably be prevented in less violent manner, given that guard recognized prisoner and knew about prior incident involving serious assault by prisoner on correctional officer with mop wringer and of prior escape attempt by prisoner, and guard saw prisoner climb over interior fence, climb up perimeter fence and jump into open land which separated prison from wooded area, although numerous guards and inmates were calling to prisoner to stop. Clark v. Evans, C.A.11 (Ga.) 1988, 840 F.2d 876. Civil Rights 1376(7)

Warden, Director of Prisons, and Secretary of Corrections were not entitled to qualified immunity from money damages awarded prisoner who was subjected to water hosing, tear gas and beating, since officials had explicit legal guideposts to follow in discharging their duties, and they were or should have been aware of their firmly established duty to ensure that legitimate instruments of control were not misused; moreover, whether or not officials were actually aware of their constitutional and statutory obligations, they were presumed to know what the law required, and could be legally accountable for conduct that violated fixed standards. Slakan v. Porter, C.A.4 (N.C.) 1984, 737 F.2d 368, certiorari denied 105 S.Ct. 1413, 470 U.S. 1035, 84 L.Ed.2d 796. Civil Rights 1376(7)

State prison official was entitled to qualified immunity in inmate's § 1983 action for alleged deliberate indifference in violation of Eighth Amendment, in connection with official's response to incident in which he accidentally opened two cells, allowing inmates to get out and allegedly attack inmate, and did not immediately open another door to allow responding staff in to help, as a reasonable officer could have believed that his response was lawful. Glenn v. Berndt, N.D.Cal.2003, 289 F.Supp.2d 1120. Civil Rights 1376(7)

Prison guard was not entitled to affirmative defense of qualified immunity, in suit by inmate for Eighth Amendment violation in form of three blows to inmate's face; evidence showed that guard knew his actions were unlawful, guard acted with wanton state of mind, and law of circuit made it clear that contemporary standards of decency are always violated when prison guard wantonly applies force to a prisoner to cause harm regardless of whether significant injury is evident. Romaine v. Rawson, N.D.N.Y.2001, 140 F.Supp.2d 204. Civil Rights 1376(7)

Reasonable official in prison guard's alleged position would have understood that ignoring threat of assault upon inmate by another prisoner would violate inmate's Eighth Amendment right to be free from cruel and unusual punishment, and thus, guard was not entitled to qualified immunity in inmate's § 1983 suit. Rider v. Louw, E.D.Mich.1997, 957 F.Supp. 983. Civil Rights 1376(7)

Parents of inmate who was killed in prison sufficiently stated § 1983 claim against prison officials for damages for violation of both their son's constitutional rights and their own constitutional rights to parent-child relationship, and thus, officials were not entitled to qualified immunity; parents alleged that officials acted with deliberate indifference to son's constitutional right to be reasonably protected from attack from fellow inmates and reasonable jury could conclude that reasonable persons in officials' position could have known that their conduct violated constitutional right to be reasonably protected from attack by fellow inmates. Steffenhagen v. Armontrout, W.D.Mo.1990, 749 F.Supp. 997. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity in their individual capacities with regard to constitutional claims brought by widow of repeat prisoner who hung himself in jail; even if jailers violated state regulations, statutes or departmental procedure regarding jail staffing or observation of prisoners, jailers' conduct did not constitute deliberate indifference to prisoner's safety from self-harm and reasonable officer in each of jailers'

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positions could have believed that he was acting consistently with Constitution. Popham v. City of Talladega, N.D.Ala.1989, 742 F.Supp. 1504, affirmed 908 F.2d 1561. Civil Rights 1376(7)

Prison official alleged to have used excessive force when handcuffing an inmate was entitled to qualified immunity, given the inmate's admission that he violated cuffing procedures by withdrawing his uncuffed hand, disobeying the officer's orders, and demanding his other hand be uncuffed, together with the official's and other officers' reasonable belief that the inmate was attempting to pull the cuffs into his cell and might use them as a weapon. Avery v. Anderson, C.A.10 (Utah) 2004, 94 Fed.Appx. 735, 2004 WL 723243, Unreported. Civil Rights 1376(7)

Prison official was not shielded by qualified immunity against excessive force claim by state prisoner, arising from incident in which official allegedly punched prisoner in ribs during pat down search; reasonable official would have believed that punching prisoner in ribs violated prisoner's rights. Kalwasinski v. Artuz, S.D.N.Y.2003, 2003 WL 22973420, Unreported. Civil Rights 1376(7)

4070. ---- Classification of inmates, prison officials, objective reasonableness requirement

When associate warden reviewed inmate's classification and allowed him to be continued to be double-celled, reasonable correctional officer would not have clearly understood that risk of serious harm was so high that authorizing inmate's double-celling was impermissible under Eighth Amendment, and therefore associate warden was entitled to qualified immunity from § 1983 liability to estate and family of cellmate killed by inmate; although associate warden was aware of inmate's extensive history of violent behavior toward inmates and staff and knew that inmate could be housed in single cell while awaiting transfer to special handling unit, inmate had been under observation for two weeks since incident with different cellmate, had been returned on medications to unit without recommendation for single-celling, and had been housed safely with another cellmate for several days. Estate of Ford v. Ramirez-Palmer, C.A.9 (Cal.) 2002, 301 F.3d 1043. Civil Rights 1376(7)

Reasonable official in correctional officer's position could have believed that inmate did not pose substantial or intolerable safety risk to particular cellmate when officer had recently reviewed inmate's file, was aware of inmate's history of violence and aggressive behavior toward a cellmate when off medications, and knew that inmate and particular cellmate had previously been housed together without problems, had requested to cell together, were not enemies, did not have gang-related conflict, and were not considered "predator" and "victim" respectively; thus, officer was entitled to qualified immunity from liability under § 1983 and Eighth Amendment in connection with inmate's killing of cellmate, even though officer failed to re-review inmate's files before approving double-celling of inmate and cellmate. Estate of Ford v. Ramirez-Palmer, C.A.9 (Cal.) 2002, 301 F.3d 1043. Civil Rights 1376(7)

Corrections officials who were personally involved in involuntary protective custody (IPC) determination were not entitled to qualified immunity on prisoner's due process claims arising from her IPC confinement; officials' concerns for the safety and security of the facility did not support prisoner's IPC confinement, and officials' fears for prisoner's safety were not objectively reasonable. Smart v. Goord, S.D.N.Y.2006, 441 F.Supp.2d 631. Civil Rights 1376(7)

Prison officials sued under § 1983 did not have qualified immunity from prisoner's claim that they showed deliberate indifference to his safety when they moved him from administrative segregation, where he was placed after being stabbed by alleged gang member, back to same part of prison which housed gang, members of which had threatened to kill him; reasonable officer would know that return under those circumstances was Eighth Amendment violation. Sweet v. Hernandez, N.D.Cal.2003, 2003 WL 21920921, Unreported, affirmed 107 Fed.Appx. 775, 2004 WL 1859842. Civil Rights 1376(7)

4071. ---- Conditions of confinement, prison officials, objective reasonableness requirement

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Given known dangers of friable asbestos at time of alleged violation, reasonable person would have understood that exposing inmate to friable asbestos could violate Eighth Amendment, and thus defendant prison officials were not entitled to qualified immunity from inmate's Eighth Amendment deliberate indifference claim, alleging that inmate's continuous health problems caused by exposure to friable asbestos in air went unattended at correctional facility due to officials' failure to keep him in asbestos-free environment. LaBounty v. Coughlin, C.A.2 (N.Y.) 1998, 137 F.3d 68, on remand 1999 WL 165711. Civil Rights 1376(7)

Genuine issues of material fact as to whether reasonable correctional officers in a similar situation could disagree that correctional officer's alleged smoking in law library violated inmate's right to be free from involuntary exposure to unreasonable levels of environmental tobacco smoke (ETS), precluded summary judgment for officer based upon qualified immunity defense, in inmate's § 1983 action. Gill v. Smith, N.D.N.Y.2003, 283 F.Supp.2d 763. Federal Civil Procedure 2491.5

Correctional officers did not act unreasonably in assigning inmate with mental problems to double cell with plaintiff, and thus, they could not be held liable in §§ 1983 action alleging deliberate indifference in violation of Eighth Amendment, given uncontradicted evidence that inmate had been taking his prescribed medication, had been screened for classification placement, and had been cleared for general population housing. Jones v. Beard, C.A.3 (Pa.) 2005, 145 Fed.Appx. 743, 2005 WL 1995438, Unreported. Sentencing And Punishment 1538

4072. ---- Disciplinary hearings, prison officials, objective reasonableness requirement

Correctional officials were not entitled to qualified immunity on due process claim arising from inadequacies of prison disciplinary charge, as reasonable officer would not have believed that report, which did not provide notice of date of disciplinary offense or of identity of victims, and which did little more than track language of disciplinary rules, was sufficiently specific to allow inmate to prepare defense. Sira v. Morton, C.A.2 (N.Y.) 2004, 2004 WL 1719285, opinion withdrawn, superseded 380 F.3d 57. Civil Rights 1376(7)

Corrections officials were not entitled to qualified immunity on prisoner's due process claim of inadequate notice of charges constituting basis of prison disciplinary hearing; a reasonable corrections officer could not have believed that the misbehavior report, which was devoid of any factual detail and contained an inaccurate incident date, was adequate to permit prisoner to identify and marshal the facts pertinent to a defense, satisfied due process. Sira v. Morton, C.A.2 (N.Y.) 2004, 380 F.3d 57. Civil Rights 1376(7)

At time of hearing officers' decisions in prison disciplinary matter, reasonable officer would not have known that quantum of evidence relied on in finding prisoner guilty of stabbing another inmate, namely misbehavior report and letter from inmate claiming to have been stabbed by prisoner, together with fact that inmate had actually been stabbed, was clearly insufficient, and thus officers were entitled to qualified immunity in prisoner's § 1983 action for violation of his due process rights; "some evidence" standard employed at hearing was not precise, no controlling decisions existed on facts presented, and there was state law that arguably supported officers' positions. Luna v. Pico, C.A.2 (N.Y.) 2004, 356 F.3d 481. Civil Rights 1376(7)

It was objectively reasonable for prison superintendent to believe that it was permissible for inmate's administrative hearing to commence within 14 days of inmate's initial confinement for making overtures to female employee, even though confinement was initiated by filing of misbehavior report and pertinent state regulation required that disciplinary hearing with regard to misbehavior report be commenced within seven days, where inmate was transferred fairly promptly after his initial confinement from keeplock to involuntary protective custody (IPC) under prison's policy to treat displays of affection by male inmates toward female employees not as disciplinary matters but as matters for administrative confinement, requiring hearing within 14 days; thus, superintendent had qualified immunity in inmate's § 1983 complaint alleging violation of due process as result of superintendent's failure to commence hearing within seven days of initial confinement. Green v. Bauvi, C.A.2 (N.Y.) 1995, 46 F.3d

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42 U.S.C.A. § 1983

189. Civil Rights 1376(7)

Precluding prison monitor from testifying at disciplinary hearing was objectively reasonable since New York courts had found the policy to be reasonable, and, thus, prison officials were entitled to qualified immunity from § 1983 liability. Smith v. Coughlin, C.A.2 (N.Y.) 1991, 938 F.2d 19. Civil Rights 1376(7); Prisons 13(9)

Neither hearing officer presiding over prison disciplinary hearing nor reviewing officer could invoke protection of qualified immunity with respect to inmate's § 1983 action alleging that hearing officer's failure to make independent assessment of reliability of confidential informant violated inmate's right to due process; at time of hearing, clearly established law required prison disciplinary hearing officers to make independent assessment of reliability of confidential informants. Gomez v. Kaplan, S.D.N.Y.1997, 964 F.Supp. 830. Civil Rights 1376(7)

It was objectively reasonable, at prison disciplinary hearing, for hearing officer to believe that his questioning of two corrections officers regarding credibility of confidential informants, rather than questioning informants directly, was sufficient to satisfy his due process obligation to assess credibility of confidential informants, and therefore the hearing officer was protected by doctrine of qualified immunity in the prisoner's subsequent § 1983 action which alleged hearing officer's failure to interview confidential informants violated his due process rights. Campo v. Keane, S.D.N.Y.1996, 913 F.Supp. 814. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from inmate's claims that officials interfered with his exercise of his due process rights with regard to his release from prehearing confinement or disciplinary hearing, since it was objectively reasonable for officials to believe that their conduct was within constitutional limits. Hodges v. Jones, N.D.N.Y.1995, 873 F.Supp. 737. Civil Rights 1376(7)

No reasonable prison official would have believed that conduct of disciplinary hearing was unconstitutional and, thus, officials were entitled to qualified immunity from liability in inmate's § 1983 action; inmate's own testimony and clear record of hearing established that inmate was given opportunity to exercise his due process rights and there was no evidence supporting reasonable inference of bias. Abdul-Matiyn v. New York State Dept. of Correctional Services, N.D.N.Y.1994, 871 F.Supp. 1542, affirmed 66 F.3d 309. Civil Rights 1376(7)

Prison superintendent was not entitled to qualified immunity with respect to inmate's claim that he was allowed to call only two of his requested 21 witnesses, notwithstanding superintendent's contention that he was not involved in disciplinary hearing at which request was denied; at time of disciplinary proceeding, superintendent reasonably should have known that inmate had clearly established right not to be denied witnesses without reason, and inmate's statutory entitlement to superintendent's review of disciplinary board determinations potentially placed superintendent among those who might bear responsibility for screening officer's denial of witness request. Feagin v. Broglin, N.D.Ind.1988, 693 F.Supp. 736. Civil Rights 1376(7)

Members of prison disciplinary committee acted in objectively reasonable manner, and were entitled to qualified immunity for their acts, in enforcing visitation rule challenged by prisoner as unconstitutionally vague. Shaddy v. Gunter, D.Neb.1988, 690 F.Supp. 860. Prisons 10

4073. ---- Exercise or recreation, prison officials, objective reasonableness requirement

It would not have been objectively reasonable for prison official to believe that possibility of staff unrest, or of contagion, from inmate's refusal to submit to latent tuberculosis (TB) testing was sufficient to trigger safety exception to clearly established Eighth Amendment right to exercise and, thus, official was not entitled to qualified immunity from § 1983 liability for keeping inmate in "medical keeplock" without out-of-cell exercise until he submitted to testing; prisoners with latent TB were permitted to remain in general population, inmate had not objected to test for contagious active TB, and arrangements could have made for inmate to exercise separately.

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42 U.S.C.A. § 1983

Williams v. Greifinger, C.A.2 (N.Y.) 1996, 97 F.3d 699. Civil Rights 1376(7)

Prison officials' failure to provide inmate with outdoor recreation when officials had knowledge of prison's goal to provide five hours of exercise per week precluded summary judgment for prison officials on their claim of qualified immunity, even though officials claimed that logistical problems made it difficult to provide adequate exercise; inmate met both objective and subjective elements of his Eighth Amendment claim as he alleged deprivation of basic human need and proved that for six weeks, inmate was permitted out of his cell only weekly for exercise. Allen v. Sakai, C.A.9 (Hawai'i) 1994, 48 F.3d 1082. Federal Civil Procedure 2491.5

Warden and other prison official could not have reasonably believed that withholding out-of-cell exercise from inmate for six months, even during prison lockdown, was constitutionally justified, in light of prior case law that had firmly established that prisoners had constitutional right to exercise, and in light of both consent decree and case law that prohibited prolonged and severe denials of exercise; thus, warden and other officials were not entitled to qualified immunity with regard to inmate's § 1983 suit alleging that deprivation of exercise for six months was cruel and unusual punishment. Delaney v. DeTella, N.D.Ill.2000, 123 F.Supp.2d 429, order affirmed and remanded 256 F.3d 679. Civil Rights 1376(7)

Prison officials were entitled to qualified immunity from inmate's claims that they violated the Eighth Amendment's prohibition against cruel and unusual punishment by depriving him of outdoor exercise on certain occasions and for short periods of time; although it might have been apparent at the time that complete deprivation of outdoor exercise for substantial period of time violated the Eighth Amendment it was not apparent that limited and sporadic deprivations of such exercise were unlawful. Davidson v. Coughlin, S.D.N.Y.1997, 968 F.Supp. 121. Civil Rights 1376(7)

State prison officials were entitled to qualified immunity from civil rights action under § 1983, alleging that inmate's constitutional rights were violated on ground that officials knew of and disregarded obvious danger that there would be violent retaliation among inmates when groups who had been placed on lockdown were released into exercise yard together, where officials could reasonably have believed that their conduct in implementing yard release was lawful. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107989, Unreported. Civil Rights 1376(7)

4074. ---- Medical care, prison officials, objective reasonableness requirement

Jailer, who was aware that pretrial detainee likely was under influence of methamphetamine on intake, did not subjectively know that detainee required medical attention, for purpose of qualified immunity analysis of deliberate indifference civil rights claim of detainee's estate under Fourteenth Amendment, since jailer did not know amount of methamphetamine taken or time that it had been taken, jailer could not readily determine degree of detainee's intoxication because detainee would not answer questions about his drug use and later refused to consent to blood draw, and detainee's behavior at time of intake did not suggest high degree of intoxication. Grayson v. Ross, C.A.8 (Ark.) 2006, 454 F.3d 802. Constitutional Law 262

County sheriff had no knowledge of pre-trial detainee's serious medical needs, and thus was entitled to qualified immunity in §§ 1983 action brought by pre-trial detainee's sister under the Due Process clause alleging deliberate indifference to detainee's needs resulted in his death; the sheriff had no personal interaction with the pre-trial detainee during his incarceration, and there was no indication that the sheriff knew the pre-trial detainee had been vomiting for several hours, was not provided with his anti-depressant medication for two to three days preceding his death, or had heart problems that put him at risk for a heart attack. Vaughn v. Greene County, Ark., C.A.8 (Ark.) 2006, 438 F.3d 845. Civil Rights 1376(6)

Prison personnel's refusal to give prisoner medical treatment during his time in strip cage despite his complaints of pain and swelling in his leg was not objectively unreasonable in light of clearly established Eighth Amendment

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rights, for purpose of prison personnel's claim to qualified immunity in prisoner's civil rights lawsuit which alleged deliberate indifference to serious medical needs, since medical records did not support prisoner's argument that he suffered sufficiently serious injury such that even lay person easily would have recognized necessity for doctor's attention. Jarriett v. Wilson, C.A.6 (Ohio) 2005, 414 F.3d 634. Civil Rights 1376(7)

County sheriff was not entitled to qualified immunity to civil rights claim that he was deliberately indifferent to Eighth Amendment right of arrestee, who committed suicide while in custody, where sheriff knew of, but did not investigate, arrestee's earlier suicide attempt at jail from which he was transferred, sheriff did not permit jailer to complete arrestee's intake form, sheriff placed arrestee in cell alone with bed sheet and exposed ceiling bars, and sheriff ordered jailer not to enter arrestee's cell without backup and yet he left her as only official at jail. Turney v. Waterbury, C.A.8 (S.D.) 2004, 375 F.3d 756, rehearing and rehearing en banc denied. Civil Rights 1376(6)

Decision of director of prison's medical services to adhere to prison doctor's order that prison need not provide inmate with continuous positive air pressure machine (CPAP) to treat his obstructive sleep apnea (OSA) was objectively reasonable in light of legal rules in place at time of her adherence, and thus director was entitled to qualified immunity from liability under § 1983 for alleged Eighth Amendment violation, even though director had some medical training as nurse and inmate personally told director about his condition, where director was functioning in administrative role, and was not responsible for examining or treating inmate herself. Meloy v. Bachmeier, C.A.8 (N.D.) 2002, 302 F.3d 845. Civil Rights 1376(7)

Law was clearly established at time of detention that if reasonable official would have known that observation and treatment of detainee was necessary, refusal to provide access to treatment would constitute deliberate indifference to detainee's constitutional rights, for purposes of determining whether jail officials were entitled to qualified immunity from resulting civil rights claim. Foulks v. Cole County, Mo., C.A.8 (Mo.) 1993, 991 F.2d 454. Civil Rights 1376(7)

Prison officials who deliberately ignore serious medical needs of inmates cannot claim it was not apparent to reasonable person that such actions violated law, and officials have shown deliberate indifference precluding finding of qualified immunity. Hamilton v. Endell, C.A.9 (Alaska) 1992, 981 F.2d 1062. Civil Rights 1376(7)

Reasonable prison official who observed, or who was notified about, prisoner's injuries sustained from inappropriate footwear, would know that delays or failure to mitigate or prevent further pain and damage to prisoner's right foot would constitute the unnecessary and wanton infliction of pain, and would therefore violate a clearly established constitutional right, on qualified immunity analysis. Lavender v. Lampert, D.Or.2002, 242 F.Supp.2d 821. Civil Rights 1376(7)

Prison officials' alleged denial of necessary medical treatment recommended by prisoner's physicians for his Hepatitis C was not objectively reasonable, and thus could not form basis for qualified immunity against civil rights liability, if denial was in fact based upon prisoner's testing positive for marijuana and not for any medical reason. Johnson v. Wright, S.D.N.Y.2002, 234 F.Supp.2d 352. Civil Rights 1376(7)

Issue of whether reasonable physician in prison doctor's position would have understood that he was violating inmate's constitutional rights by withholding warm water compresses as treatment for his jaw condition involved fact question that could not be resolved on motion to dismiss inmate's §§ 1983 suit against doctor on qualified immunity grounds. Carter v. Fagin, S.D.N.Y.2005, 363 F.Supp.2d 661. Federal Civil Procedure 1831

Reasonable prison official ought to have understood in 1998 that restraining mentally ill prisoner for twenty-two hours, with no penal justification, no food or water, and no access to bathroom, violated that prisoner's Eighth Amendment rights, and thus officials were not entitled to qualified immunity from liability under §§ 1983. Ziemba v. Armstrong, D.Conn.2004, 343 F.Supp.2d 173, affirmed in part, reversed in part and remanded 430 F.3d 623. Civil Rights 1376(7)

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42 U.S.C.A. § 1983

Qualified immunity did not apply to shield from §§ 1983 liability prison medical employees who allegedly were deliberately indifferent to prisoner's urgent medical needs and city administrative employees who allegedly knew of, but failed to remedy, such constitutional violations by prison medical employees, inasmuch as deliberate indifference to prisoner's medical needs and failure to remedy deliberate indifference were not objectively reasonable actions. Carrasquillo v. City of New York, S.D.N.Y.2004, 324 F.Supp.2d 428. Civil Rights 1376(7)

Prison physicians, nurse, and social worker were entitled to qualified immunity from prisoner's suit alleging violation of Eighth Amendment based on delay in treatment of his mental illness, since reasonable persons could have disagreed whether prisoner's condition presented serious medical need, and whether failure to transfer prisoner to state psychiatric hospital, or not give other care, constituted denial of constitutionally adequate care and treatment. R.T. v. Gross, N.D.N.Y.2003, 298 F.Supp.2d 289. Civil Rights 1376(7)

Lieutenant in his individual capacity was entitled to qualified immunity to claim of deliberate indifference brought by guardian of head-injured arrestee, in § 1983 lawsuit under Fourteenth Amendment, where guardian only made conclusory allegation that lieutenant was present at jail when arrestee was injured; there were no allegations suggesting that lieutenant was present after arrestee had been treated, or that lieutenant had any direct knowledge that arrestee subsequently exhibited strange behavior or that his subordinates failed to transport arrestee to hospital after having been ordered to do so by doctor. Layman v. Alexander, W.D.N.C.2003, 294 F.Supp.2d 784. Civil Rights 1376(7)

Physicians and hospitals involved in treatment of state prison inmate's alleged kidney stones and other ailments were entitled to qualified immunity in inmate's § 1983 action for alleged violation of his Eighth Amendment rights; physicians and hospitals had objectively reasonable belief that their actions in treating inmate were appropriate and lawful, and none knowingly engaged in conduct that violated inmate's rights. Brown v. Selwin, S.D.N.Y.1999, 250 F.Supp.2d 299, affirmed 29 Fed.Appx. 762, 2002 WL 355901.

Physician, who was to provide supervision of medical care and evaluate programs, service, and adequacy of jail treatment facilities, trained nurses regarding alcohol withdrawal, and thus physician did not have sufficiently culpable state of mind as would defeat defense of qualified immunity to § 1983 failure to train claim on behalf of deceased pretrial detainee; physician provided nurses with protocols and policies to deal with alcohol with alcohol withdrawal and conducted monthly meetings during which the policies were discussed, and nurses were experienced licensed practical nurses (LPN). Smith v. LeJeune, D.Wyo.2002, 203 F.Supp.2d 1260. Civil Rights 1376(7)

Detention facility nurse was not entitled to qualified immunity from pre-trial detainee's claim under § 1983, where nurse reasonably should have understood that her conduct constituted deliberate indifference to detainee's serious medical needs, in violation of detainee's clearly established due process rights; nurse relied exclusively on detainee's pulse rate to determine that her vaginal bleeding was not miscarriage, made no attempt to confirm whether detainee was pregnant, refused to provide detainee with sanitary supplies, and thereafter left detainee without medical attention. Ferris v. County of Kennebec, D.Me.1999, 44 F.Supp.2d 62. Civil Rights 1376(7)

Conduct of correctional facility's superintendent, medical director, and staff physicians in attempting to remedy prisoner's foot discomfort was objectively reasonable, entitling officials to qualified immunity from § 1983 civil rights suit by prisoner alleging failure to provide appropriate medical care; officials responded promptly to prisoner's complaint, and both orthotics and special boots were requisitioned and fitted on numerous occasions. Williams v. Keane, S.D.N.Y.1996, 940 F.Supp. 566. Civil Rights 1376(7)

Prison nurse was not entitled to qualified immunity from liability for civil damages arising from nurse's administering a tranquilizer to inmate in each of his buttocks; it was not objectively reasonable for nurse to believe that her conduct was constitutionally permissible. Blissett v. Eisensmidt, N.D.N.Y.1996, 940 F.Supp. 449. Civil

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42 U.S.C.A. § 1983

Rights 1376(7)

County jail physician was not shown to be entitled to qualified immunity defense in inmate's § 1983 civil rights action against county jail physician, arising from alleged denial of prompt and adequate medical treatment of inmate's penile and testicular problems; inmate alleged specific facts that, if proven, indicated that physician knew or reasonably should have known that his actions and/or omissions would violate inmate's constitutional right to adequate medical care. Jolly v. Klein, S.D.Tex.1996, 923 F.Supp. 931. Civil Rights 1376(7)

Personal representative of estate of pretrial detainee who committed suicide in jail failed to demonstrate that reasonable person in shoes of police officers would have known that he or she was acting with deliberate indifference to detainee's serious medical needs, as would preclude officers from enjoying qualified immunity; detainee's behavior did not suggest that he was imminent danger to himself since he answered questions directly and clearly, walked to his cell without problems, ate breakfast, and engaged in telephone conversation. Estate of Frank v. City of Beaver Dam, E.D.Wis.1996, 921 F.Supp. 590. Civil Rights 1376(7)

Reasonable prison nurse would have been aware that failure to examine inmate complaining of stroke symptoms was in derogation of inmate's constitutional rights, and thus nurse was not entitled to qualified immunity from liability under § 1983 for damages arising from delay in procuring medical care for inmate. Tate v. Coffee County, Tenn., C.A.6 (Tenn.) 2002, 48 Fed.Appx. 176, 2002 WL 31245966, Unreported. Civil Rights 1376(7)

4075. ---- Probation, prison officials, objective reasonableness requirement

Prison officials did not act reasonably in light of preexisting law mandating due process in connection with Idaho program which placed individuals in correctional institutions to be evaluated for potential release on probation, and officials thus were not qualifiedly immune from suit alleging denial of due process; officials should have known, even though no court had specifically so held, that they violated inmates' rights when they informed inmates only 24 hours in advance of evaluation rebuttal hearing, failed to give inmates copies of recommendations regarding probation, and immediately placed inmates in solitary confinement so that they could not contact witnesses or use law library. Browning v. Vernon, C.A.9 (Idaho) 1995, 44 F.3d 818. Civil Rights 1376(7)

4076. ---- Plumbing, prison officials, objective reasonableness requirement

Doctrine of qualified immunity barred inmate's § 1983 claims against correctional facility officials, where claims were based on alleged cruel and unusual punishment arising from confinement in cell with inoperative sink for nine days; the confinement did not violate inmate's Eighth Amendment rights, and thus, reasonable person could not have perceived them to exist at time of alleged violation. Johnson v. Commissioner of Correctional Services, S.D.N.Y.1988, 699 F.Supp. 1071. Civil Rights 1376(7)

4077. ---- Retaliation, prison officials, objective reasonableness requirement

Prison warden was not entitled to qualified immunity on prisoner's claim that warden upheld disciplinary ticket written against prisoner in retaliation against prisoner for his exercise of his First Amendment rights by complaining about prison conditions, since a reasonable public official in warden's position would have understood that retaliating against a prisoner on the basis of his complaints about prison conditions was unlawful. Pearson v. Welborn, C.A.7 (Ill.) 2006, 471 F.3d 732. Civil Rights 1376(7)

Defense of qualified immunity was not available to prison official for allegedly retaliating against inmate for exercise of his constitutional right to petition government for redress of grievances. Pacheco v. Comisse, N.D.N.Y.1995, 897 F.Supp. 671. Civil Rights 1376(7)

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Even assuming that state inmate's conclusory allegations of retaliation for filing suit and denial of religiously acceptable diet could have implicated clear federal rights, no rational trier of fact could have found on the record before district court that prison officials did not have objectively reasonable belief that their conduct met requisite constitutional standards; therefore, prison officials were entitled to qualified immunity from liability in inmate's § 1983 action. Abdul-Matiyn v. New York State Dept. of Correctional Services, N.D.N.Y.1994, 871 F.Supp. 1542, affirmed 66 F.3d 309. Civil Rights 1376(7)

4078. ---- Searches, prison officials, objective reasonableness requirement

State prison officials were entitled to qualified immunity from liability in § 1983 action based on their implementation of policy permitting digital rectal probe searches on inmates prior to their entry into secured area of prison; reasonable officials could have believed that their conduct was lawful at the time given that such a policy was permissible and sanctioned by federal regulations, and officials testified that they had researched legality of searches before implementing policy. Hemphill v. Kincheloe, C.A.9 (Wash.) 1993, 987 F.2d 589, as amended. Civil Rights 1376(7)

Prison officials conducting violative searches are entitled to qualified immunity if searches are reasonably related to legitimate penological goal or if defendants reasonably could have believed that searches were conducted to further such a purpose. Vaughan v. Ricketts, C.A.9 (Ariz.) 1991, 950 F.2d 1464. Civil Rights 1376(7)

Prison officials' reasonable, although mistaken, conclusion that emergency existed permitting visual body cavity search conducted within visual range of prison guards of opposite sex entitled them to qualified immunity in inmate's § 1983 action alleging violations of Fourth Amendment. Cookish v. Powell, C.A.1 (N.H.) 1991, 945 F.2d 441. Civil Rights 1376(7)

Low-ranking correctional officers were entitled to qualified immunity for conducting strip search on jail visitor, who was arrested on warrant for serious non-violent felonies, pursuant to then-existing written policy calling for strip searches of prisoners, where reasonable officers in their position would not have known that their actions would violate Fourth Amendment. DeToledo v. County of Suffolk, D.Mass.2005, 379 F.Supp.2d 138. Civil Rights 1376(7)

4079. ---- Solitary confinement or segregation, prison officials, objective reasonableness requirement

Prison official's belief that inmate's three-day administrative confinement, without opportunity to be heard, did not violate inmate's Fourteenth Amendment due process rights, was reasonable in light of perceived threat to security and safety of prison from report that inmate's mother had passed contraband into prison, and time to search public spaces of cell block and interview informer, and so official had qualified immunity from inmate's civil rights action. Rodriguez v. Phillips, C.A.2 (N.Y.) 1995, 66 F.3d 470. Civil Rights 1376(7)

Prison official was entitled to qualified immunity on inmate's action alleging that he was placed in adjustment unit for more than ten days in violation of statute; such placement was established practice at prison at time official became head administrative officer and thus, official objectively had reason to believe that her behavior was lawful. Coffman v. Trickey, C.A.8 (Mo.) 1989, 884 F.2d 1057, rehearing denied, certiorari denied 110 S.Ct. 1523, 494 U.S. 1056, 108 L.Ed.2d 763. Prisons 10

Psychologists employed at state correctional institution were not entitled to qualified immunity from claim that lengthy seclusion placements they ordered violated substantive due process rights of civilly committed sexual offenders; reasonable professionals would have known that their treatment decisions had to conform to accepted professional norms. West v. Macht, E.D.Wis.2002, 235 F.Supp.2d 966, affirmed 333 F.3d 745. Civil Rights 1376(7)

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Doctrine of qualified immunity shielded members of prison disciplinary board from individual liability for money damages resulting from alleged violation of prisoner's due process rights by segregating him from general prison population; no reasonable prison official could have known that Morris Rules endowed Rhode Island prisoners with liberty interest protected by Fourteenth Amendment. Morgan v. Ellerthorpe, D.R.I.1992, 785 F.Supp. 295. Civil Rights 1376(7)

4080. ---- Strip cells, prison officials, objective reasonableness requirement

Prison officials did not violate inmate's clearly established Eighth Amendment rights when they confined inmate to strip cell for control purposes, entitling them to qualified immunity in inmate's subsequent civil rights action; officials could reasonably have believed that conditions in strip cell did not subject inmate to wanton infliction of pain or serious physical injury, in view of short duration of confinement and absence of injury. Johnson v. Boreani, C.A.8 (Ark.) 1991, 946 F.2d 67. Civil Rights 1376(7)

4081. ---- Transfer of prisoners, prison officials, objective reasonableness requirement

Prison officials were not entitled to qualified immunity from civil rights claims by inmate who alleged he was transferred in retaliation for exercise of constitutional rights; prisoner retained First Amendment right to respond to questions posed to him by prison investigator, and, under then existing law, it was not objectively reasonable for officials to punish prisoner because he participated in prison investigation that resulted in forced resignation of prison officer. Cornell v. Woods, C.A.8 (Iowa) 1995, 69 F.3d 1383. Civil Rights 1376(7)

Genuine issue of fact, as to objective reasonableness of officers' alleged use of arm bar twist to force female exercise walker to ground to effect arrest for suspected public intoxication without having identified themselves as police officers and as to objective reasonableness of their belief that walker was under influence of alcohol, precluded summary judgment in favor of officers on ground of qualified immunity on claims of unconstitutional arrest and use of unreasonable force. Newell v. City of Salina, D.Kan.2003, 276 F.Supp.2d 1148. Federal Civil Procedure 2491.5

Prison guard should reasonably have known that his action in transferring prisoner, who had reputation as a squealer and whose life had been threatened because of his involvement with task force investigating corruption in prison system, would violate prisoner's clearly established constitutional rights and, hence, guard was not entitled to any official immunity from prisoner's civil rights claim. Blizzard v. Quillen, D.C.Del.1984, 579 F.Supp. 1446. Civil Rights 1376(7)

Transfer of an inmate would have been a lawful exercise of prison superintendent's authority had he been involved, in light of a prison policy mandating a transfer whenever a civilian employee was assaulted by an inmate, and thus, the superintendent was entitled to qualified immunity regarding the allegedly retaliatory transfer in the inmate's § 1983 suit. Croswell v. McCoy, N.D.N.Y.2003, 2003 WL 962534, Unreported. Civil Rights 1376(7)

4082. ---- Visitor privileges, prison officials, objective reasonableness requirement

Prison officials were entitled to qualified immunity as to inmate's claim that his equal protection rights were violated when he was denied overnight visitation from his infant son while inmates of correctional facility for women were permitted similar visits; official could reasonably have believed that security concerns at the two prisons were distinguishable on basis of their security level designations and concomitant physical security structures and, further, official could have believed that denial of visitation was rationally related to legitimate penological objective of internal security. Bills v. Dahm, C.A.8 (Neb.) 1994, 32 F.3d 333. Civil Rights 1376(7)

Sheriff and jail administrator were entitled to qualified immunity with respect to restrictions on inmate visitation by

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minors unless accompanied by appropriate adult even if the policy violated First, Eighth and Fourteenth Amendment rights; reasonable official would not have known that alleged actions violated constitutional rights. Navin v. Iowa Dept. of Corrections, N.D.Iowa 1994, 843 F.Supp. 500, on reconsideration in part. Civil Rights 1376(7)

Correction officials were entitled to qualified personal immunity damages in § 1983 civil rights claim by death row inmate and girlfriend alleging violation of constitutional right to marry, even though there was no showing of interest needed to justify depriving plaintiffs of right to marry, since officials could reasonably have believed that regulation which denied girlfriend general visitation privileges should apply generally. Buehl v. Lehman, E.D.Pa.1992, 802 F.Supp. 1266. Civil Rights 1376(3)

4083. ---- Work assignment, prison officials, objective reasonableness requirement

Conduct of corrections officer in ordering student-inmate to participate in sandbagging in response to road flooding, after inmate informed officer that he was on "no duty status," was not objectively legally reasonable so as to entitle officer to qualified immunity on claim of cruel and unusual punishment in light of alleged emergency conditions; it appeared officer had time to check inmate's file, only students, rather than all available inmates, were ordered to participate in sandbagging, and little evidence was offered of the actual emergency circumstances. Sanchez v. Taggart, C.A.8 (Mo.) 1998, 144 F.3d 1154. Civil Rights 1376(7)

Conclusion by prison officials that assignment of inmate to work in prison mess hall did not constitute cruel and unusual punishment in violation of Eighth Amendment was objectively reasonable, so that officials were entitled to qualified immunity in inmate's § 1983 action; nothing had suggested, during course of events in question, that inmate had serious medical condition that would be exacerbated by mess hall work. Wilson v. Johnson, W.D.N.Y.1998, 999 F.Supp. 394. Civil Rights 1376(7)

4084. ---- Work release, prison officials, objective reasonableness requirement

Correctional officers were entitled to qualified immunity for failing to accord hearing to prisoner before revoking his participation in temporary release program in violation of his due process rights, where a reasonable officers could have believed that, because charges which formed basis for revocation had been sustained at disciplinary hearing and because prisoner was physically confined to prison for 30 days as result of disciplinary hearing, they had no discretion and no further hearing was required. Anderson v. Recore, C.A.2 (N.Y.) 2006, 446 F.3d 324. Civil Rights 1376(7)

New York prison officials' actions in removing prisoner from temporary work release were not objectively reasonable, and therefore they were not entitled to qualified immunity for violation of prisoner's due process rights; not only did officials fail to comply with their own regulations governing notice and a statement of reasons, regulations with which they presumably were familiar, they failed to provide any due process at all to prisoner, who was never charged with or found guilty of any misconduct or rule violation while in temporary work release program, who was not given an opportunity to call witnesses or present other evidence at his hearing, and who was not provided with reason for his removal. Quartararo v. Hoy, E.D.N.Y.2000, 113 F.Supp.2d 405. Civil Rights 1376(7)

4085. Privacy right, objective reasonableness requirement

Assuming that town council member violated police chief's right to privacy by publicly disclosing chief's diabetes, council member was entitled to qualified immunity against chief's § 1983 action; contours of confidentiality branch of Fourteenth Amendment's privacy protection were not sufficiently established such that reasonable public officer

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would have understood that such a disclosure would violate chief's rights, and in fact reasonable similarly situated officer would likely have concluded that no violation of privacy occurred. Pouliot v. Town of Fairfield, D.Me.2002, 226 F.Supp.2d 233. Civil Rights 1376(4)

4086. Probation officers, objective reasonableness requirement

Qualified immunity did not apply to claims that juvenile court probation officer and four employees of Illinois Department of Corrections violated juvenile's civil rights by failing to take reasonable steps in response to juvenile's suicidal tendencies; Eighth Amendment prohibited defendants from being deliberately indifferent to juvenile's strong risk of suicide and whether defendants' actions were reasonable was fact question. Viero v. Bufano, N.D.Ill.1996, 925 F.Supp. 1374. Civil Rights 1376(7); Sentencing And Punishment 1607

4087. Prosecutors, objective reasonableness requirement

Even assuming that Eighth Amendment right to be protected from harm inflicted by fellow inmates was properly invoked by inmate asserting § 1983 claim based on county attorney's public disclosure of plea agreement information allegedly leading to stabbing of inmate in prison by gang members, county attorney was qualifiedly immune; attorney could not have known that his actions would violate such right, and nature of his position would not put him on notice of potential § 1983 liability for his actions. Latimore v. Widseth, C.A.8 (Minn.) 1993, 7 F.3d 709, certiorari denied 114 S.Ct. 1124, 510 U.S. 1140, 127 L.Ed.2d 433. Civil Rights 1376(9)

County attorney was entitled to qualified immunity for presenting arrest warrant to clerk-magistrate, even if he vouched for truth of police officer's affidavit, based on sufficient facts supporting finding of probable cause that reasonable officers could disagree whether probable cause in fact existed; affidavit stated that plaintiff left restaurant while bar owner was eating when theft from bar owner's van occurred, plaintiff had no money to pay for hotel room, but he later paid for lodging with cash from large roll of bills. Kohl v. Casson, C.A.8 (Neb.) 1993, 5 F.3d 1141. District And Prosecuting Attorneys 10

District attorneys were not entitled to qualified immunity from civil rights action brought by family of murdered township officer, alleging that defendants failed to protect officer despite threats from perpetrator, with respect to interactions with perpetrator in attempting to elicit confession; unlawfulness of their actions under state-created danger theory of substantive due process should have been apparent to reasonable officials in their position. Walter v. Pike County, Pennsylvania, M.D.Pa.2006, 2006 WL 3437384. Civil Rights 1376(9)

City's corporate counsel was entitled to qualified immunity from §§ 1983 liability in firefighters' action alleging that their First Amendment rights were violated when disciplinary charges were initiated against them in retaliation for their political affiliation, where no reasonable lawyer/sexual harassment compliance officer in her position would have believed that she was violating the First Amendment by carrying out her investigative and advisory functions in conducting an investigation after receiving female fire dispatcher's letter complaining of harassment by firefighters, and then writing a memorandum to city manager recommending that charges should be brought against firefighters. Contes v. Porr, S.D.N.Y.2004, 345 F.Supp.2d 372. Civil Rights 1376(10)

As an attorney, assistant state's attorney was charged with greater knowledge of the law than are law enforcement officers, for purposes of determining, for qualified immunity purposes, the reasonableness of her reliance on validity of search warrant, when substantially involved in the execution of the warrant. Hicks v. Cassilly, D.Md.1997, 971 F.Supp. 956, reversed 153 F.3d 720, certiorari denied 119 S.Ct. 1037, 525 U.S. 1143, 143 L.Ed.2d 45. Civil Rights 1376(9)

Reasonable official would not have believed that probable cause existed to believe that arrestees had committed extortion under Michigan law, and so county prosecutor and state detective were not entitled to qualified immunity from § 1983 civil rights action brought by arrestees, even though arrestees sought money from former employer,

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where they did so in pursuit of settlement releasing right to bring action against for sexual harassment. Manetta v. County of Macomb, E.D.Mich.1997, 955 F.Supp. 771, reversed 141 F.3d 270. Civil Rights 1376(6); Civil Rights 1376(9)

Correctional officer did not have federally protected right to have investigatory interview of participant in crime in which officer was also alleged to have participated conducted outside presence of prosecuting attorney, and prosecuting attorney thus did not violate clearly established constitutional right of officer by being present at such interview and was entitled to qualified immunity from suit under § 1983 with respect to his presence at such interview. Rhodes v. Smithers, S.D.W.Va.1995, 939 F.Supp. 1256, affirmed 91 F.3d 132. Civil Rights 1376(9)

Prosecuting and district attorneys had qualified immunity in § 1983 action brought by prisoner alleging that they had wrongfully transmitted information to prison authorities and media in order to remove him from work release program; while prisoner had protectible liberty interest in not being removed from program without being accorded due process, reasonable prosecutor could believe that his or her conduct did not violate prisoner's due process rights. Quartararo v. Catterson, E.D.N.Y.1996, 917 F.Supp. 919. Civil Rights 1376(9)

Town attorney who had sought imposition of term of incarceration against defendant who had not paid fines imposed following her convictions for violations of town ordinances was entitled to qualified immunity in federal civil rights action brought by defendant alleging that incarceration violated defendant's civil rights due to her inability to pay fines where fact issue existed as to whether judge who sentenced defendant to incarceration had sufficiently considered alternative remedies, so that attorney could have reasonably believed incarceration was proper. Fahle v. Braslow, E.D.N.Y.1996, 913 F.Supp. 145, affirmed 111 F.3d 123. Civil Rights 1376(4)

4088. State created danger, objective reasonableness requirement

Danger creation doctrine was inapplicable to police officer's claim under §§ 1983 alleging his due process right to bodily integrity was violated by police chief's directive to use riot helmets during training exercises rather than more protective gear, resulting in an eye injury, where the bullet that injured the police officer was fired by a fellow officer and not a private party. Moore v. Guthrie, C.A.10 (Colo.) 2006, 438 F.3d 1036. Municipal Corporations 182

Reasonable officer would not have understood that his conduct, in connection with formation of initial perimeter around suspect's house, activation of Pennsylvania's Special Emergency Response Team (SERT), and officers' allegedly inadequate search for suspect in woods, was conscience-shocking, and officers thus were qualifiedly immune from state-created danger claim asserted under Fourteenth Amendment by suspect's survivors, arising from suspect's fatal heart attack. Estate of Smith v. Marasco, C.A.3 (Pa.) 2005, 430 F.3d 140. Civil Rights 1376(6)

Incident in which agency employee allegedly refused to allow resident of New Mexico Commission for the Blind Adult Orientation Center (AOC) to remove her sleep shades during cane traveling class so that she could use her limited vision to fight off her attacker, if proven, did not amount to state-created danger, so as to preclude qualified immunity defense to resident's claim of violation of her right to bodily integrity and personal security, inasmuch as resident successfully fended off attacker, and danger existed prior to employee's alleged intervention. Baumeister v. New Mexico Com'n for the Blind, D.N.M.2006, 425 F.Supp.2d 1250. Civil Rights 1376(3)

County police officer was not entitled to qualified immunity from wife's claims that officer violated due process and equal protection by driving wife's intoxicated estranged husband to her home and forcing wife admit husband, who subsequently assaulted wife; any reasonable officer in the officer's position should have been aware that an affirmative act on the part of an officer that places an individual in clear and imminent danger implicates that individual's constitutional liberty interest. Pullium v. Ceresini, D.Md.2002, 221 F.Supp.2d 600. Civil Rights 1376(6)

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42 U.S.C.A. § 1983

4089. Zoning officials, objective reasonableness requirement

Building inspectors were entitled to qualified immunity in landowner's § 1983 action alleging that revocation of building permit violated his substantive due process rights as their actions were objectively reasonable; landowner removed second floor of building he was renovating without submitting new plans to building department reflecting one story building, stop work order was issued, landowner did nothing to cure problem, revocation was initially upheld on appeal to zoning board, and town code expressly permitted revocation. Zahra v. Town of Southold, C.A.2 (N.Y.) 1995, 48 F.3d 674. Civil Rights 1376(4)

Town zoning commission president who had reasonable belief that land was not properly subdivided when landowners applied for zoning permit, and thus that town had discretion to deny application, enjoyed qualified immunity in civil rights action alleging violation of civil rights of the landowners. Natale v. Town of Ridgefield, C.A.2 (Conn.) 1991, 927 F.2d 101. Civil Rights 1376(4)

Township board of trustees did not act in objectively reasonable manner, precluding grant of qualified immunity in suit claiming that denial of real estate developer's rezoning request when other requests were granted was denial of equal protection; admissions tending to show predisposition to deny request precluded necessary finding that board members denied application with reasonable belief they were acting lawfully. J.D. Partnership v. Berlin Tp. Bd. of Trustees, S.D.Ohio 2005, 412 F.Supp.2d 772. Civil Rights 1376(4)

XXXV. PRACTICE AND PROCEDURE GENERALLY

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4111. Abatement or survival of action, practice and procedure generally

Section 1983 does not provide a cause of action on behalf of a deceased for events occurring after death. Riley v. St. Louis County of Mo., C.A.8 (Mo.) 1998, 153 F.3d 627, rehearing and suggestion for rehearing en banc denied, certiorari denied 119 S.Ct. 1113, 525 U.S. 1178, 143 L.Ed.2d 109. Civil Rights 1032

Pursuant to Oklahoma abatement statute, retired state employee's § 1983 suit, challenging state's forfeiture of more than two-thirds of his pension as result of his conviction for bribery, did not abate upon employee's death; because employee's suit alleging double jeopardy and excessive fines violations did not constitute claim for slander, libel, or malicious prosecution, Oklahoma law called for survival of his suit despite his death. Hopkins v. Oklahoma Public Employees Retirement System, C.A.10 (Okla.) 1998, 150 F.3d 1155. Abatement And Revival 58(.5)

State's motion to dismiss pro se civil rights appeal of prisoner who died while appeal was pending, on the ground that there had been no substitution for the party decedent, was premature where state filed motion less than one month after prisoner died and, while Court of Appeals supposed that the next of kin were notified of the death, it had no reason to believe that they were notified of prisoner's pending appeal; in those circumstances it was unreasonable to have expected next of kin to move to be substituted for prisoner and equally unreasonable to infer from their failure to file such motion that they decided to abandon the lawsuit. Ward v. Edgeton, C.A.7 (Ill.) 1995, 59 F.3d 652. Federal Courts 729

Action for alleged violation of plaintiff's civil rights survived upon the death of the defendant. Pritchard v. Smith, C.A.8 (Ark.) 1961, 289 F.2d 153. Abatement And Revival 52

Execution of a state prisoner could not be stayed in order that his civil rights action might proceed to judgment, in view of fact that such an action abates with death of injured party. Moss v. Jones, C.A.6 (Ky.) 1961, 288 F.2d 342, certiorari denied 82 S.Ct. 98, 368 U.S. 868, 7 L.Ed.2d 65, rehearing denied 82 S.Ct. 244, 368 U.S. 922, 7 L.Ed.2d 137. Sentencing And Punishment 1798

Action under this section against city officials who allegedly maliciously destroyed decedent's business by

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enactment of illegal ordinances and enforcement thereof survived decedent's death and passed to his representative. Nelson v. Knox, C.A.6 (Mich.) 1956, 230 F.2d 483. Abatement And Revival 58(.5)

Motorist's heirs inherited his claim under §§ 1983 against police officers, arising out of traffic stop during which motorist was allegedly injured by officers, where motorist died over a year after traffic stop of causes unrelated to claims asserted under §§ 1983. Gotay Sanchez v. Pereira, D.Puerto Rico 2004, 343 F.Supp.2d 65. Abatement And Revival 57; Civil Rights 1332(4)

General rule is that § 1983 claim survives plaintiff's death if that would be result under applicable state law. Cossio v. City and County of Denver, Colo., D.Colo.1997, 986 F.Supp. 1340, affirmed 139 F.3d 911. Abatement And Revival 57

Prisoner's civil rights action was brought against correctional officer in his personal capacity and, therefore, suit survived against officer's estate after officer purportedly died; prisoner alleged that officer violated his right to be free from cruel and unusual punishment by assaulting him without provocation for purpose of inflicting pain, based on personal bias against him. Young v. Patrice, S.D.N.Y.1993, 832 F.Supp. 721. Abatement And Revival 58(.5)

Death of civil rights plaintiff seeking "good time credit" warranted dismissal without prejudice. Devine v. Byrd, N.D.Tex.1982, 667 F.Supp. 414. Federal Civil Procedure 1721

Heirs, legal representatives, and estate of handicapped quadriplegic child whose death occurred while committed to care, custody and control of state school were vested with standing under law of Texas to maintain a survival action against state officials under substantive and conspiratorial civil rights statutes. Clift by Clift v. Fincannon, E.D.Tex.1987, 657 F.Supp. 1535. Death 31(3.1); Death 31(5)

Fact of civil rights complainant's death from causes unrelated to shooting by police officer did not abate cause of action against municipalities where such would clearly disserve purposes of this section. Larson v. Wind, N.D.Ill.1982, 542 F.Supp. 25. Abatement And Revival 57

Although no cause of action based solely on death of decedent survives under Wisconsin law, where decedent's estate in instant case sought to recover for deprivation of decedent's civil rights which occurred before his death, action brought under this section survived decedent's death. Bell v. City of Milwaukee, E.D.Wis.1980, 498 F.Supp. 1339. Abatement And Revival 57

4112. Continuances, practice and procedure generally

Plaintiff in civil rights action alleging, inter alia, that police officers used excessive force in course of apprehending him was not entitled to continuance, requested on day of trial and three years after incident in question, in order to extract bullet that physician had discovered in his hand six days earlier than trial and to prove that bullet came from one of officers' service revolvers and obtain expert opinion on extent of damage to hand. Scott v. James, C.A.8 (Mo.) 1990, 902 F.2d 672, certiorari denied 111 S.Ct. 198, 498 U.S. 873, 112 L.Ed.2d 160. Federal Civil Procedure 1855.1

In prisoner's civil action against warden in connection with alleged beating administered to prisoner, there was no abuse of discretion in denying continuance on ground of absence of prisoner witness where plaintiff prisoner's version of the events was sufficiently seconded by the testimony of several other prisoners. Ellis v. Capps, C.A.5 (Ala.) 1974, 500 F.2d 225. Federal Civil Procedure 1856

Federal district court's denial of plaintiff-prisoner's request for continuance in order to subpoena three potential witnesses for his civil rights case was abuse of discretion, where plaintiff had discovered identities of witnesses just

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before trial, timing issues prevented plaintiff from filing motion requesting subpoenas or a continuance any earlier than morning of trial, pro se prisoner was unable to explain his request for continuance clearly to court, and the additional witnesses could have led to discovery of evidence that was highly relevant to his claim. Woodham v. Sayre Borough Police Dept., C.A.3 (Pa.) 2006, 191 Fed.Appx. 111, 2006 WL 1371575, Unreported. Federal Civil Procedure 1857

4113. Stay of action, practice and procedure generally

Proper course for district court to take with regard to § 1983 excessive force claim which could have impact on plaintiff's state-court conviction, even though it neither depended upon nor necessarily resulted in conviction's invalidation, was to stay further proceedings on claim pending termination of plaintiff's state-court criminal proceedings, given that claim had accrued and statute of limitations was running. Jackson v. Suffolk County Homicide Bureau, C.A.2 (N.Y.) 1998, 135 F.3d 254. Action 69(5)

Appropriate action was to stay inmate's § 1983 action for damages arising out of disciplinary proceeding pending decision on habeas corpus petition seeking restoration of good-time credits which were taken away as a result of discipline, not dismiss habeas petition, given Supreme Court's decision in *Heck* that unless order depriving person of liberty has been set aside on collateral attack or in some other way, complaint about events leading to deprivation does not state a claim on which relief may be granted under § 1983 and given that time waiting for conclusion of § 1983 action was not excludable from time for bringing habeas petition. Post v. Gilmore, C.A.7 (Ill.) 1997, 111 F.3d 556. Habeas Corpus 679

District court properly stayed county jail inmate's civil rights action, alleging unlawful taking of blood and tissue samples from him and other violations of his constitutional rights, pending conclusion of state court criminal proceedings, where defendant did not allege that staying of civil rights suit would prejudice him in any way, inmate's claim for monetary relief would not be addressed in criminal prosecution, and magistrate judge had determined that adjudication of claim that blood and tissue samples were unconstitutionally seized could interfere with progress of state court proceedings. Lewis v. Beddingfield, C.A.5 (Tex.) 1994, 20 F.3d 123. Action 69(5)

Stay of proceedings was warranted in former police officers' § 1983 action against state officials, pending finalization of parallel state court action against state, even though parties were not identical, where state court judgment, if finalized, would have had res judicata effect under state law, determination in federal case could have directly contradicted findings of state court, and case involved multiple parties and witnesses. Lozano v. Corona, D.Puerto Rico 2003, 249 F.Supp.2d 144. Action 69(5)

Stay would issue against arrestee's going forward with false arrest and excessive force claims against police officer prior to resolution of pending criminal charge against arrestee for battery of officer, as favorable determination on false arrest claim would necessarily imply invalidity of any subsequent conviction of battery, thereby calling into play rationale of *Heck* rule, which requires favorable determination on underlying criminal conviction to bring civil rights action that necessarily calls validity of that conviction into question. Guillory v. Wheeler, M.D.La.2004, 303 F.Supp.2d 808. Action 69(5)

Overlap of issues between § 1983 claim brought by deceased police sergeant alleging that city negligently hired and supervised police officer who allegedly shot and killed sergeant by ignoring officer's psychological problems, and criminal action in which officer was prosecuted for two counts of second degree murder, provided support for city to seek stay of civil proceedings pending outcome of criminal prosecution; both actions arose from same underlying events, and evidence from criminal action concerning officer's emotional state during employment with city police department could have altered city's liability in civil action. Hicks v. City of New York, E.D.N.Y.2003, 268 F.Supp.2d 238. Action 69(5)

City did not demonstrate possibility of suffering undue prejudice as required to obtain stay of § 1983 action,

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brought by estate of deceased police sergeant alleging city negligently supervised police officer who had psychological problems and fatally shot sergeant, pending outcome of officer's prosecution for second degree murder; city did not demonstrate that homicide investigation was necessary to civil action, city could access officer's medical and personnel files to proceed with discovery as to officer's psychological state, and stay would needlessly delay resolution of civil case due to fact discovery had been stayed pending motion for stay. Hicks v. City of New York, E.D.N.Y.2003, 268 F.Supp.2d 238. Action 69(5)

Stay of § 1983 action would be appropriate, where anticipated United States Supreme Court decision could effect district court's ruling on issue of defendants' immunity. Wysinger v. City of Benton Harbor, W.D.Mich.1997, 968 F.Supp. 349. Action 69(5)

Section 1983 action brought by arrestee against city police department and police officer for damages for alleged wrongful detention arising from altercation would be stayed until parallel state court criminal proceedings against arrestee were resolved; section 1983 action and the state court criminal action were based on the same events, disposition of criminal charges might be determinative of arrestee's § 1983 claims, interest of judicial economy supported stay, and proceeding with civil discovery could prejudice police department and officer or even arrestee. Estes-El v. Long Island Jewish Medical Center, S.D.N.Y.1995, 916 F.Supp. 268. Action 69(5)

Rule that § 1983 claims that are merely related to admissibility of evidence issues in criminal proceedings are not prevented from accruing, for limitations purposes, because of existence of pending conviction means that a plaintiff who is ultimately successful in challenging conviction may have to bring § 1983 suit for unlawful arrest, search, or seizure prior to being able to obtain full amount of damages and court hearing civil suit may be considering Fourth Amendment claims that are also before court hearing criminal case; therefore, it may often be appropriate to stay proceedings or abstain in § 1983 suit while challenges to conviction are pending. Booker v. Ward, N.D.Ill.1995, 888 F.Supp. 869. Action 69(5); Federal Courts 48

Stay was not required for § 1983 claim of use of excessive force in arrest as whether excessive force was used had no bearing on arrestee's guilt or innocence with respect to assault charges pending in state court and conviction or acquittal on those charges would have no impact on excessive force claim; fact that alleged assault precipitated arrest did not mean that suit challenging manner in which arrest was performed had to be stayed pending resolution of assault charges. Manning v. Tefft, D.R.I.1994, 839 F.Supp. 126, 142 A.L.R. Fed. 795. Action 69(5)

Stay of arrestee's § 1983 action against police officers was warranted until resolution of pending criminal case against arrestee arising out of same incident; action alleged that arrestee was subjected to unconstitutional search, false arrest and malicious prosecution, in violation of his Fourth and Fourteenth Amendment rights, conviction in criminal case would bar false arrest and malicious prosecution claims, arrestee was indicted in criminal matter, and officers could be prejudiced if stay was not granted, since pendency of criminal case precluded their review of grand jury transcripts and prosecutor's records. Johnson v. New York City Police Dept., S.D.N.Y.2003, 2003 WL 21664882, Unreported. Action 69(5)

4113A. Pleadings

In suit alleging violations of § 1983, Equal Pay Act, ADA, Rehabilitation Act, and intentional infliction of emotional distress, by physician who had been employed for thirty years at District of Columbia medical clinic, District would be granted 90 day enlargement of time to file responsive pleading in suit, because of time span encompassed by complaint and attendant investigation demands. Turner v. District of Columbia, D.D.C.2003, 268 F.Supp.2d 23. Federal Civil Procedure 735

4114. Ripeness, practice and procedure generally

Federal constitutional issues were ripe for judicial review, in civil rights lawsuit which challenged amendment to

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state constitution, which limited state-recognized institution of marriage to heterosexual couples; although no court had struck down law passed by state legislature as inconsistent with amendment, bill that would have violated amendment, in opinion of state attorney general, did not advance out of legislative committee due to opinion. Citizens for Equal Protection v. Bruning, C.A.8 (Neb.) 2006, 455 F.3d 859. Constitutional Law 46(1)

Arrestee's potential false arrest claim under Fourth Amendment against police was not ripe until his underlying extortion, racketeering, and weapons convictions were reversed, as false arrest claim would have directly called into question propriety of convictions which could not stand without evidence stemming from arrest. Ienco v. Angarone, C.A.7 (Ill.) 2005, 429 F.3d 680. Federal Courts 13

Because a violation of the Takings Clause did not occur until just compensation had been denied, owners' takings claim was unripe because they did not use available state procedures to seek such compensation before they brought their § 1983 takings claim to federal court; although owners initially brought their claims to state court, they subsequently nonsuited city and demolition company, and therefore they had not been denied just compensation. John Corp. v. City of Houston, C.A.5 (Tex.) 2000, 214 F.3d 573. Eminent Domain 277

Claim under § 1983 based on unlawful search or arrest may be brought immediately, because violation of fourth amendment does not necessarily impugn validity of conviction--evidence may be properly admitted anyway, or it may be excluded and defendant convicted on other evidence. Gonzalez v. Entress, C.A.7 (Ill.) 1998, 133 F.3d 551. Civil Rights 1088(3); Civil Rights 1088(4)

Suit by personal injury law firm, against state bar, claiming violation of its First Amendment right to advertise that three members were named in book purporting to list best lawyers in country, was ripe for adjudication even though no formal disciplinary proceeding had been commenced against firm; there was credible threat of enforcement and uncertainties regarding advertisement was hardship to firm. Allen, Allen, Allen & Allen v. Williams, E.D.Va.2003, 254 F.Supp.2d 614. Constitutional Law 46(1)

Denial by zoning inspector, of request made by owner of undeveloped property for zoning permit, involved final decision by government agency or government agent responsible for applying township's zoning regulations to owner's zoning permit application, and, consequently, owner's equal protection civil rights claim against township was ripe for review; owner was not required to seek compensation from government because equal protection claim arose from land-use decision and it could be made independent of takings claim. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Zoning And Planning 570

Puerto Rico lessees' inverse condemnation takings claim under §§ 1983 was premature and unripe for adjudication before United States District Court, where Puerto Rico had adequate procedure in place through which lessees could seek just compensation for inverse condemnation and lessees had yet to pursue that remedy. Davison v. Puerto Rico Firefighters Corps, D.Puerto Rico 2006, 415 F.Supp.2d 33. Federal Courts 13.25

Teachers' union's and school counselor's §§ 1983 due process and equal protection action against school district, on behalf of themselves and district's female students, seeking to enjoin implementation of district's policy generally requiring parental notification of students' pregnancies, was unripe; there was evidence that few students in district became pregnant in any given year and almost all of those voluntarily reported pregnancy to their parents, precluding finding of any immediate dilemma that would make case fit for judicial resolution or suggest hardship to parties if court consideration was withheld. Port Washington Teachers' Ass'n v. Board of Educ. of Port Washington Union Free School Dist., E.D.N.Y.2005, 361 F.Supp.2d 69. Federal Courts 13.10

Section 1983 action brought against city by provider of supervised residential programs for ex-offenders following denial of application for special use permit, which allegedly violated provider's due process and equal protection rights, was ripe for adjudication, even though provider did not pursue administrative appeal of decision of board of adjustment. Bannum, Inc. v. City of Fort Lauderdale, S.D.Fla.1997, 996 F.Supp. 1230, affirmed 157 F.3d 819,

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rehearing and suggestion for rehearing en banc denied 166 F.3d 355, certiorari denied 120 S.Ct. 67, 528 U.S. 822, 145 L.Ed.2d 57. Federal Courts 13.10; Federal Courts 13.25

Physician's § 1983 claim against hospital officials alleging that officials had violated his First Amendment free speech rights through conspiracy of retaliatory harassment, which included refusal to recommend renewal of hospital privileges, was not premature, even though privileges had not yet been denied, since even if physician retained his privileges officials were still alleged to have committed multiple acts in retaliation for physician's exercise of his First Amendment free speech rights. Franzon v. Massena Memorial Hosp., N.D.N.Y.1997, 977 F.Supp. 160. Civil Rights 1384

Owners of proposed "physical culture establishment" catering predominantly to gay male clientele, who withdrew application for permit for club because of alleged bias of city board of standards and appeals, failed to demonstrate that it would have been futile to go through application process, and thus owners' § 1983 claim alleging disparate treatment was not ripe. Dix v. City of New York, S.D.N.Y.2002, 2002 WL 31175251, Unreported. Federal Courts 13.10

4115. Collateral attack, practice and procedure generally

State prisoner's claims against his public defender, alleging that he conspired with prosecuting attorney to deprive prisoner of his constitutional rights by fabricating evidence used at trial, withholding exculpatory evidence, suborning perjury, and attempting to intimidate him into accepting a guilty plea, were not cognizable under §§ 1983, since plaintiff's conviction had not been reversed on direct appeal or otherwise invalidated; even though plaintiff did not explicitly challenge the lawfulness of his conviction, plaintiff's allegations of extensive conspiratorial misconduct between defense counsel and the prosecution would have rendered the conviction invalid if they were proved. Peay v. Ajello, C.A.2 (Conn.) 2006, 470 F.3d 65. Conspiracy 7.5(1)

State prisoner's claim seeking post-conviction access to physical evidence from his criminal trial for the purpose of DNA testing was cognizable under §§ 1983; prisoner would not be released from prison, nor would his sentence be shortened, if he successfully gained access to the physical evidence, so that the claim would not intrude upon the territory of habeas relief. Savory v. Lyons, C.A.7 (Ill.) 2006, 469 F.3d 667. Civil Rights 1311

A prisoner subject to a single disciplinary proceeding that gave rise to sanctions that affected both the duration of his imprisonment and the conditions of his confinement may, without satisfying the favorable termination requirement that the challenged disciplinary proceedings or resulting punishments have been invalidated, maintain a §§ 1983 action challenging the sanctions or procedures affecting the conditions of confinement, but the prisoner may only bring such an action if he agrees to abandon forever any and all claims he has with respect to the sanctions that affected the length of his imprisonment. Peralta v. Vasquez, C.A.2 (N.Y.) 2006, 467 F.3d 98. Civil Rights 1092

Excessive force complaint brought by arrestee against deputy sheriff under §§ 1983 did not contain factual allegations that necessarily implied invalidity of arrestee's criminal convictions stemming from same confrontation, and thus was not barred as matter of law; complaint could have been read as alleging that arrestee never posed threat of violence, attempted escape, or resisted arrest to degree that would have justified use of deadly force as response. McCann v. Neilsen, C.A.7 (Ill.) 2006, 466 F.3d 619. Civil Rights 1395(6)

Former state prison inmate's §§ 1983 action asserting claims for damages based on issues related to his state convictions could not proceed, and was subject to dismissal under the statute governing in forma pauperis actions, where there was no indication that the convictions had been set aside. Michau v. Charleston County, S.C., C.A.4 (S.C.) 2006, 434 F.3d 725, petition for certiorari filed 2006 WL 1079075. Federal Civil Procedure 2734

Proper remedy for unfavorable final judgment of state supreme court in action for alleged constitutional violations

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was to seek review by writ of certiorari to Supreme Court of the United States, and not collateral attack in federal district court under this section. Almon v. Sandlin, C.A.5 (Ala.) 1979, 603 F.2d 503. Federal Courts 1142

This section is not a vehicle for collateral attack on final state court judgment. Brown v. DeLayo, C.A.10 (N.M.) 1974, 498 F.2d 1173. See, also, Cincinnati Bar Ass'n, C.A.6 (Ohio) 1970, 431 F.2d 1209; Rodes v. Municipal Authority of Borough of Milford, C.A.3 (Pa.) 1969, 409 F.2d 16, certiorari denied 90 S.Ct. 133, 396 U.S. 861, 24 L.Ed.2d 114, rehearing denied 90 S.Ct. 377, 396 U.S. 950, 24 L.Ed.2d 256. Judgment 828.21(1)

Legality of confinement of Florida prisoner allegedly extradited from Georgia to Florida on charge of issuing worthless checks instead of on charge of auto theft, the charge actually outstanding in Florida, should be raised either by direct appeal or by collateral proceedings in the state court, not through a federal damage action against Georgia judges and state of Georgia. Collins v. Moore, C.A.5 (Ga.) 1971, 441 F.2d 550. Civil Rights 1319

This section is not intended to allow person knowledgeable of procedures of law to ignore his chance to have error corrected and then attack in action for damages and administrators of justice who have thereby been denied opportunity to correct the error. Rhodes v. Meyer, C.A.8 (Neb.) 1964, 334 F.2d 709, certiorari denied 85 S.Ct. 263, 379 U.S. 915, 13 L.Ed.2d 186. Civil Rights 1315

This section does not confer jurisdiction upon a federal district court to collaterally attack a state criminal contempt conviction after it has been affirmed by the highest state court and certiorari has been denied by the United States Supreme Court where the plaintiff seeks a declaratory judgment which would relitigate the very issues which had been litigated in the state court. Goss v. State of Ill., C.A.7 (Ill.) 1963, 312 F.2d 257. Federal Courts 221

Decision that state inmate was entitled to damages due to revocation of inmate's parole, based on his alleged impermissible expulsion from residential treatment program, would imply that inmate was being improperly incarcerated and would bring into question validity of his parole revocation, which in turn went to fact or duration of his confinement, and therefore inmate could not proceed with his §§ 1983 action for damages against state probation and parole board and its employees until he established, first by resort to state-court remedies, that his confinement following parole revocation was improper. Boykin v. Siena House Gaudenzia Program, M.D.Pa.2006, 464 F.Supp.2d 416. Civil Rights 1097

Arrestee's §§ 1983 claim that police officers used excessive force against him in arresting him for criminal trespass did not carry a necessary implication of the invalidity of his criminal trespass conviction under Maine law, and thus, doctrine of issue preclusion did not apply to preclude arrestee's §§ 1983 claim. Smith v. Jackson, D.Me.2006, 463 F.Supp.2d 72. Judgment 828.20(1)

Heck v. Humphrey rule, which precluded actions which would imply invalidity of conviction or sentence, did not preclude state prisoner's civil rights action under §§ 1983, seeking DNA testing of biological evidence used eight years before in his felony murder trial, since the action did not necessarily imply the invalidity of prisoner's earlier conviction, given that the results of DNA testing could be exculpatory, inconclusive, or even inculpatory. Wade v. Brady, D.Mass.2006, 460 F.Supp.2d 226. Civil Rights 1088(5)

Individuals who were arrested and prosecuted on open burning charges, arising from their burning of a rainbow-colored flag at a gay pride parade, failed to show that their convictions were reversed, as was required to recover damages in a §§ 1983 action for harm allegedly caused by government actions whose unlawfulness would have rendered conviction invalid. Daubenmire v. City of Columbus, S.D.Ohio 2006, 452 F.Supp.2d 794. Civil Rights 1088(5)

State prisoner, who had been convicted of crime, could not bring civil rights action against public appellate defender, on basis that defender inadequately represented him by not timely filing his habeas petition, since prisoner's conviction had not been reversed by state court, expunged by executive order, declared invalid by state

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tribunal authorized to make such determination, or called into question by federal court's issuance of writ of habeas corpus. Stroman v. South Carolina Office of Appellate Defense, D.S.C.2005, 447 F.Supp.2d 515. Civil Rights 1088(5)

Arrestee's claims for damages for lack of probable cause for his arrest, misleading statements in a search warrant affidavit, and malicious prosecution called into question the validity of his conviction, which had not been overturned, and thus, the claims were not cognizable in his civil rights action. Fernandez v. Alexander, D.Conn.2006, 419 F.Supp.2d 128. Civil Rights 1088(5)

Defendant convicted of rape, sodomy and lesser crimes could not bring §§ 1983 action to recover damages from county, when prosecutors were found to have withheld exculpatory materials in violation of defendant's due process rights, convictions were set aside, defendant was found guilty of lesser charges, sentenced to time served and released; necessary showing that there was favorable termination of earlier case had not been made. Stein v. County of Westchester, N.Y., S.D.N.Y.2006, 410 F.Supp.2d 175. Civil Rights 1088(5)

Under *Heck*, arrestee could assert § 1983 claims against state officer for use of excessive force during arrest, even though state criminal charges were pending against arrestee for disorderly conduct, menacing, and resisting arrest; charges did not require showing that arrest was lawful, and arrestee could be convicted of all charges and still succeed on excessive force claim without invalidating convictions. Clark v. Kentucky, E.D.Ky.2002, 229 F.Supp.2d 718. Civil Rights 1088(4)

Party who pleaded guilty to various criminal offenses could not subsequently challenge those convictions by collateral attack in civil action alleging that prosecution of him violated his constitutional civil rights on ground that guilty plea was coerced or obtained upon advice of ineffective counsel; furthermore, there was no viable basis for damages arising out of party's arrest and prosecution on charges that were nol-prossed. Henley v. Octorara Area School Dist., E.D.Pa.1988, 701 F.Supp. 545. Civil Rights 1088(5); Judgment 501

This section is not available for state prisoners to collaterally attack their convictions; it is only when prisoner succeeds in obtaining habeas corpus relief because of a violation of his constitutional rights by someone affiliated with prosecution forces that he may bring a civil action against the person whose misconduct led to the illegal conviction, assuming that person does not have immunity in an action for damages. Jackson v. State of S. C., D.C.S.C.1979, 498 F.Supp. 186. Civil Rights 1090

If any valid claim existed against New Jersey State court judge who apparently entered orders for custody, visitation and support, such claim should have been raised in the New Jersey proceeding and on appeal from any final order or judgment in that proceeding and where no such claim was raised and no appeal appeared to have been taken, the custody order court not be collaterally attacked by suit in federal court based on allegation that N.J.S.A. 9:2-3, 4, unconstitutionally discriminated against fathers on the basis of their sex. Barbier v. Governor, State of N. J., D.C.N.J.1979, 475 F.Supp. 127. Judgment 828.5(3)

Federal prisoner's defective search warrant claim against Federal Bureau of Investigation (FBI), state drug task force, and city was not categorically barred by his conviction for distributing cocaine base, since success on the civil rights claim would not necessarily imply the invalidity of his conviction. Collins v. Bruns, C.A.8 (Mo.) 2006, 195 Fed.Appx. 533, 2006 WL 1961199, Unreported. United States 50.10(3)

Claims brought by state prisoner, alleging that his Fourth, Fifth, Eighth, and Fourteenth Amendment rights were violated by prosecutor's alleged use of peremptory strikes against African-American jurors, were not cognizable under §§ 1983, since prisoner's conviction had not been reversed, vacated, or called into question, and claims, if successful, necessarily would have implied invalidity of conviction. Cook v. City of Philadelphia, C.A.3 (Pa.) 2006, 2006 WL 1327817, Unreported. Civil Rights 1088(5)

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42 U.S.C.A. § 1983

State prisoner failed to state cognizable claim under § 1983, on allegations that parole officer and parole supervisor violated his due process rights by returning him to prison, since prisoner could not demonstrate that decision regarding incarceration had been invalidated. Vincent v. Borges, N.D.Cal.2003, 2003 WL 22519412, Unreported. Civil Rights 1097

District court's decision granting partial summary judgment to plaintiff in § 1983 suit against police officers was not appealable collateral order, despite fact that decision involved rejection of officers' qualified immunity defense, where officers' principal contention was that genuine issues of fact precluded summary judgment, and that they were not willing to accept plaintiff's version of facts for purposes of appeal. Brocuglio v. Proulx, C.A.2 (Conn.) 2003, 67 Fed.Appx. 58, 2003 WL 21369258, Unreported. Federal Courts 579

Inmate could not maintain § 1983 action against state officials for allegedly unconstitutional conviction and imprisonment due to their tampering with evidence and committing perjury during proceedings underlying his state convictions without first demonstrating that his convictions had been overturned. Nichols v. Simpson, C.A.8 (Ark.) 2000, 221 F.3d 1343, Unreported. Civil Rights 1088(5)

4116. Stare decisis, practice and procedure generally

Where factual situations in two civil rights actions were essentially the same as in prior civil rights action and law in regard to those facts were the same, doctrine of stare decisis was applicable. Rhodes v. Meyer, C.A.8 (Neb.) 1964, 334 F.2d 709, certiorari denied 85 S.Ct. 263, 379 U.S. 915, 13 L.Ed.2d 186. Courts 89

Section 1983 plaintiffs' claims relating to raid by Bureau of Alcohol, Tobacco and Firearms (ATF) agents were barred by doctrines of stare decisis, res judicata, and collateral estoppel, where plaintiffs had fully litigated propriety of the search and arrest warrants at previous criminal trial, and the warrants and the method of service were determined to be lawful; although not all § 1983 plaintiffs were involved in the previous criminal trial, the legal and factual determinations were equally binding upon them. Andrade v. Chojnacki, W.D.Tex.1999, 65 F.Supp.2d 431. Courts 89

The United States District Court sitting in Virginia was bound by decision of the Court of Appeals for the Fourth Circuit that exhaustion of state remedies, administratively or through the state court, is not a prerequisite to the exercise of federal jurisdiction under this chapter. Borror v. White, W.D.Va.1974, 377 F.Supp. 181. Courts 96(7)

District court was bound by prior decisions, under principle of stare decisis, to holding that exhaustion of state remedy was not prerequisite to proceeding under this section. Abbott v. Thetford, M.D.Ala.1973, 354 F.Supp. 1280, reversed 529 F.2d 695, on rehearing 534 F.2d 1101, certiorari denied 97 S.Ct. 1598, 430 U.S. 954, 51 L.Ed.2d 804. Courts 89

4117. Venue, practice and procedure generally

Georgia prisoner who had three cases pending in the federal district courts in the three federal districts in Georgia all relating to his claim of improper censorship of his mail was entitled to have his claim considered on merits in light of United States Supreme Court decisions, and claim would be determined in suit pending in the district in which he was presently incarcerated where he sought both damages and injunctive relief against, among others, the head of state prison system. Hardwick v. Brinson, C.A.5 (Ga.) 1975, 523 F.2d 798. Federal Courts 92

District court would transfer, rather than dismiss, §§ 1983 action filed in wrong venue, where identities of "John Doe" defendants, and thus their residences, remained unknown to plaintiffs, plaintiffs were first advised that defendants intended to challenge personal jurisdiction and venue after three-year statute of limitations had expired,

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plaintiffs claimed that they made numerous discovery requests about identity of "John Doe" defendants, only six months had elapsed since plaintiffs were first advised that defendants intended to contest personal jurisdiction and venue, less than eight months had elapsed since filing of action, and impact on defendants of transfer from Connecticut to Massachusetts was not negative. Bunn v. Gleason, D.Conn.2006, 462 F.Supp.2d 317.

Proper venue for § 1983 case alleging violation of constitutional rights in connection with arrest warrant allegedly issued improperly was area where warrant was issued, rather than where arrest took place. Clark v. Harp, D.D.C.1990, 737 F.Supp. 676. Federal Courts 74

Where inmate at State Correctional Institution at Dallas, Pennsylvania, filed civil rights action against warden of Schuylkill Prison, Superintendent of State Correctional Institution at Graterford, Pennsylvania, and Superintendent of State Correctional Institution at Dallas in the United States District for Eastern District of Pennsylvania, on ground of cruel and unusual punishment by reason of prison conditions, venue was proper; even if claims of suit as against the three defendants were improperly joined such issue was covered by rule 20, Federal Rules of Civil Procedure, Title 28, as to permissive joinder and did not present venue problem, and case was improperly transferred to Middle District of Pennsylvania. Buhl v. Jeffes, M.D.Pa.1977, 435 F.Supp. 1149. Federal Courts 122

Venue in the district court for the Western District of New York over civil rights action challenging constitutionality of practices which were authorized by the director of the New York State Division for Youth and which were in effect in state camps to which juveniles were civilly committed was proper, where claims of some plaintiffs arose in this district even though director had office in another district, and one plaintiff was confined to camp outside the district. King v. Carey, W.D.N.Y.1975, 405 F.Supp. 41. Federal Courts 91

Since all defendants except one resided in Western District of Arkansas and all events on which claim was based occurred in that district and there was no diversity of citizenship between plaintiff and any defendant, suit under this section involving alleged deprivation of constitutional rights in connection with election of physician to perform proposed operation on ward could be maintained only in the Western District; venue could not be changed on ground that jurors would be drawn from chancery circuit in which defendant state judge resided. Harley v. Oliver, W.D.Ark.1975, 400 F.Supp. 105. Federal Courts 74; Federal Courts 101

Civil rights complaint filed under § 1983 by pro se prisoner who was housed in state hospital, alleging various violations of his constitutional rights while he was housed at three state prison facilities, would be dismissed; venue for claims against two of the facilities was proper in different district court and would be dismissed without prejudice to prisoner raising them in proper venue, and remaining claim was raised in proper venue but did not state cognizable claim because it was based on allegation that officer who was attempting to place him in administrative segregation pushed him into a corner and left him with abrasion to his forehead, and allegation fell outside Eighth Amendment's recognition of excessive use of force. Brown v. California Dept. of Corrections, N.D.Cal.2003, 2003 WL 21321362, Unreported. Federal Courts 74; Prisons 13(4); Sentencing And Punishment 1548

4118. Service of process, practice and procedure generally

Indiana trial rules permitted inmate to serve associate warden and correctional officers with § 1983 complaint at their place of employment and permitted someone other than defendants to accept service if those persons were authorized to accept service; however, remand was required since it could not be determined whether prison mailroom employees who accepted service were authorized to accept service and, if they were authorized to accept service, whether receipt by them could be said to be adequate notice in context of prison environment. Robinson v. Turner, C.A.7 (Ind.) 1994, 15 F.3d 82, on remand 886 F.Supp. 1451, on remand 886 F.Supp. 1460. Federal Civil Procedure 423.1

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42 U.S.C.A. § 1983

Action of state attorney general in filing motion on behalf of Governor and State Post Prison Transfer Board (PPTB) to consolidate death row inmate's § 1983 action, in which inmate challenged constitutionality of clemency process and sought stay of execution, with inmate's prior § 1983 action, constituted entry of appearance on behalf of state defendants, and waived any claim with regard to alleged insufficiency of service of process. Perry v. Brownlee, E.D.Ark.1997, 972 F.Supp. 480, reversed 122 F.3d 20, rehearing and suggestion for rehearing en banc denied. Federal Civil Procedure 572

Section 1983 does not authorize nationwide service of process. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Federal Civil Procedure 467.1

State prisoner did not demonstrate good cause for his failure to prosecute civil rights action in timely fashion against correctional facilities and their personnel, by not serving defendants in timely fashion, on allegations that he sent waiver of service forms to defendants, with no response; defendants did not have obligation to waive service of process and it was not court's chore to serve defendants. Cooley v. Cornell Corrections, D.R.I.2004, 220 F.R.D. 171. Federal Civil Procedure 417; Federal Civil Procedure 1751

Prison guard would not be dismissed as defendant in prisoner's § 1983 excessive force action, for prisoner's failure to serve summons and complaint within 120 days of filing, where pro se inmate appeared to be making good faith effort to serve guard and had run into hurdles outside of his control. David v. G.M.D.C., S.D.N.Y.2002, 2002 WL 31748592, Unreported. Federal Civil Procedure 1751

State inmate's § 1983 claims against prison officials should be dismissed, as officials had never been served in action. Faison v. Travis, N.D.N.Y.2002, 2002 WL 31640541, Unreported. Federal Civil Procedure 1751

4119. Removal of actions, practice and procedure generally

Entire case alleging violations of § 1983 and state law was properly removed, and district court was therefore without discretion to remand it to state court, notwithstanding fact that federal and state courts shared concurrent jurisdiction over § 1983 claims. Williams v. Ragnone, C.A.8 (S.D.) 1998, 147 F.3d 700. Removal Of Cases 19(1); Removal Of Cases 101.1

Arrestee's state court suit against city and officers, alleging violations of his constitutional rights in contravention of § 1983, arose from federal statute, allowing removal of both § 1983 claim and related state tort claims. Jimenez v. New Jersey, D.N.J.2003, 245 F.Supp.2d 584. Federal Courts 15; Removal Of Cases 19(1)

Defendants' §§ 1983 counterclaim could not be considered in determining whether federal court had removal jurisdiction over action seeking protective order, where defendants did not assert counterclaim until after case had been removed to federal court. In re Whatley, D.Mass.2005, 396 F.Supp.2d 50. Removal Of Cases 15

Employer would be permitted to amend notice of removal after expiration of 30- day period governing removal, to plead supplemental jurisdiction over employee's state law claims, following determination that district court had federal question jurisdiction over action by virtue of employee's claim for damages for violation of his due process rights under §§ 1983; failure to allege court's supplemental jurisdiction did not divest court of its properly pleaded original jurisdiction over entire case, and any amendment of removal notice to plead supplemental jurisdiction would not add new ground for assuming jurisdiction but would only serve to clarify extent of court's existing jurisdiction. McNerny v. Nebraska Public Power Dist., D.Neb.2004, 309 F.Supp.2d 1109. Removal Of Cases 94

The filing of a § 1983 counterclaim and cross-claim in federal court after removal does not create removal jurisdiction in that court over those claims. Redevelopment Agency of City of San Bernardino v. Alvarez, C.D.Cal.2003, 288 F.Supp.2d 1112. Removal Of Cases 111

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42 U.S.C.A. § 1983

Federal district court in which plaintiffs had brought action against city under § 1983 and state tort law in connection with shooting involving sheriff's deputies who allegedly were also employed by city was not proper court in which to file petition for order relieving them from operation of provision of California law dealing with presentment of claims to public entities as precondition of bringing suit; relief provision contemplates petition for relief in separate civil proceeding, not motion in pending action; additionally, provision did not appear to include federal courts as "proper court" since such language was adopted to eliminate state venue problem. Luers v. Smith, C.D.Cal.1996, 941 F.Supp. 105. Courts 489(1)

State courts civil rights action brought under § 1983 was removable to federal court. Doran v. City of Clearwater, Fla., M.D.Fla.1993, 814 F.Supp. 1077. Removal Of Cases 70

That § 1983 grants state courts concurrent jurisdiction did not require district court to remand properly removed § 1983 suit, as nothing in § 1983 expressly prohibits removal. Aben v. Dallwig, E.D.Mich.1987, 665 F.Supp. 523. Removal Of Cases 13

Impact of state's Tender Offer Disclosure Act, G.S.N.C. § 78B-1 et seq., upon federal concerns was not encompassed within the interest protected by U.S.C.A.Const. Amend. 14 or this section, and thus removal predicated on this section was not warranted, whether pursuant to §§ 1343 or 1441 of Title 28. Eure v. NVF Co., E.D.N.C.1979, 481 F.Supp. 639.

This section, despite its obvious protection of civil rights, is not law providing for "equal civil rights" within meaning of removal statute, § 1443 of Title 28, at least where it is not invoked to vindicate racially motivated denial of equal protection. Sweeney v. Abramovitz, D.C.Conn.1978, 449 F.Supp. 213. Removal Of Cases 19(1)

This section providing civil action for deprivation of civil rights is not one providing for equal rights stated in terms of racial equality, and action not otherwise removable may not be removed through this provision. Denson v. Williams, S.D.Tex.1972, 341 F.Supp. 180. Removal Of Cases 70

Where an available and adequate state judicial remedy had not been exhausted, an impediment which was jurisdictional in nature arose, and secondary school discipline suit was not maintainable in federal court under this section, and was improvidently removed, and had to be remanded. Egner v. Texas City Independent School Dist., S.D.Tex.1972, 338 F.Supp. 931. Civil Rights 1317; Removal Of Cases 11

4119A. Remand, practice and procedure generally

Remand to the District Court was required, in civil litigant's § 1983 claim against officials of the Commonwealth of Puerto Rico, seeking injunction to secure Commonwealth court system's compliance with the ADA, if litigant intended to pursue that claim, in order to determine whether such claim was stated under the ADA, and whether the Eleventh Amendment barred that claim. Badillo-Santiago v. Naveira-Merly, C.A.1 (Puerto Rico) 2004, 378 F.3d 1. Federal Courts 947

4120. Joint or separate trials, practice and procedure generally

Death row inmate's § 1983 action challenging constitutionality of executive clemency proceeding would not be consolidated with his earlier § 1983 action, in which he alleged that his prior habeas corpus proceedings had been tainted by misinformation; only common factor in cases was that inmate sought injunction against his execution, and neither that fact nor judicial economy warranted consolidation, as issues were independent. Perry v. Brownlee, E.D.Ark.1997, 972 F.Supp. 480, reversed 122 F.3d 20, rehearing and suggestion for rehearing en banc denied. Federal Civil Procedure 8.1

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42 U.S.C.A. § 1983

Bifurcation of arrestee's § 1983 claims against booking officers from § 1983 claims against city, chief of police, and city commissioner of public safety was warranted, given likelihood of unfair prejudice against officers resulting from admission of evidence on *Monell* claim and efficiency concerns. Amato v. City of Saratoga Springs, N.D.N.Y.1997, 972 F.Supp. 120, affirmed in part, vacated in part 170 F.3d 311. Federal Civil Procedure 1956

Trial on all claims against police officer as well as § 1981 and state law claims against city would be separated from trial of § 1983 claim against city where trial of claims against police officer would be determinative of city's liability, § 1983 claim against city would involve great deal of evidence which was entirely unnecessary to resolution of the other claims, and § 1983 claim would present different and far more complicated standards of liability and causation for jury and greatly expand length and scope of trial. Ismail v. Cohen, S.D.N.Y.1989, 706 F.Supp. 243, affirmed 899 F.2d 183. Federal Civil Procedure 1959.1

Cases brought against state authorities on ground of violation of constitutional rights in isolated confinement of two children in state training schools would not be consolidated for trial, inasmuch as issue in one case of handcuffing of child did not arise in other case. Lollis v. New York State Dept. of Social Services, S.D.N.Y.1970, 322 F.Supp. 473. Federal Civil Procedure 8.1

4121. Joinder of claims, practice and procedure generally

District court did not abuse its discretion in rejecting county's motion to sever claims of § 1983 plaintiffs; even if each plaintiff had separate trial, evidence of pattern of misconduct would still have been admitted because each plaintiff presented claim against at least one individual defendant and against county. Davis v. Mason County, C.A.9 (Wash.) 1991, 927 F.2d 1473, certiorari denied 112 S.Ct. 275, 502 U.S. 899, 116 L.Ed.2d 227. Federal Civil Procedure 1956

Compulsory joinder of police officers was warranted in arrestee's claim against city alleging officers used unreasonable force in effecting his arrest, resulting in serious injuries; as the perpetrators of the alleged constitutional injury on which the city's liability was allegedly based, the officers' presence in the action was plainly desirable, and, as a practical matter, the city could have less interest than the officers in defending the constitutionality of the officers' conduct because even if arrestee suffered constitutional injury at the hands of the officers, the city could escape liability for the injury by showing that the officers did not act pursuant to official policy or custom. Frazier v. City of Norfolk, E.D.Va.2006, 236 F.R.D. 273. Federal Civil Procedure 219

Former deputies' § 1983 First Amendment claims against sheriff satisfied permissive joinder rule since all of deputies' allegations revolved around claims of termination after alleged violations of First Amendment rights; this included enforcement of the law as to sheriff's supporters and/or failure to support sheriff in his reelection bid and/or speaking at public meeting and such conduct could constitute a single transaction or occurrence for purposes of permissive joinder rule and the alleged discriminatory activity directly affecting each of the deputies included common legal and factual questions. Guedry v. Marino, E.D.La.1995, 164 F.R.D. 181. Federal Civil Procedure 256

4122. In forma pauperis, practice and procedure generally--Generally

Two-stage procedure is used to process a prisoner's pro se civil rights complaint filed in a forma pauperis, in that first the district court determines whether plaintiff satisfies economic eligibility criterion and, on finding of economic justification, the court should allow the complaint to be docketed without prepayment of fees and, second, once leave has been granted the complaint may be dismissed prior to service of process on a determination that it is frivolous or malicious. Woodall v. Foti, C.A.5 (La.) 1981, 648 F.2d 268. Federal Civil Procedure 1788.10; Federal Civil Procedure 2734

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42 U.S.C.A. § 1983

Where a constitutional right is one of great importance and proof of intentional and serious violation is clear and definite, enforcement should not be inhibited by reason of litigation costs. Stolberg v. Members of Bd. of Trustees for State Colleges of State of Conn., C.A.2 (Conn.) 1973, 474 F.2d 485. Federal Civil Procedure 2721

District court may condition continued in forma pauperis proceedings by prison inmate seeking civil rights relief upon his clarification and particularization of his complaint. Allison v. California Adult Authority, C.A.9 (Cal.) 1969, 419 F.2d 822. Federal Civil Procedure 2734

4123. ---- Discretion of court, in forma pauperis, practice and procedure generally

Trial court did not abuse its discretion by requiring state prisoner who had cash credit with the prison warden of $218 to pay $15 filing fee in civil rights action arising out of alleged unconstitutional parole revocation. In re Stump, C.A.1 1971, 449 F.2d 1297. Federal Civil Procedure 2734

Where complaint did not allege facts sufficient to constitute claim for relief under this section, denial of leave to file complaint in forma pauperis was not abuse of discretion. Alexander v. California Court Director of Correction, Adult Authority, C.A.9 (Cal.) 1970, 433 F.2d 360. Federal Civil Procedure 2734

In making finding that forma pauperis action is frivolous or malicious, district court has specially broad discretion in case wherein state prisoner seeks to prosecute a civil rights suit in forma pauperis against his keepers. Diamond v. Pitchess, C.A.9 (Cal.) 1969, 411 F.2d 565. Federal Civil Procedure 2734

4124. ---- Considerations governing, in forma pauperis, practice and procedure generally

District court is entitled to inquire whether, if prisoner who has no cash credit with warden at moment of filing of civil rights action, had disabled himself by recent drawing on his account, and if so, for what purposes, before permitting prisoner to proceed in forma pauperis. In re Stump, C.A.1 1971, 449 F.2d 1297. Federal Civil Procedure 2734

It is not necessary for litigant to improverish himself before he can appeal in forma pauperis, but it is necessary that he can show something more than mere hardship. Grisom v. Logan, C.D.Cal.1971, 334 F.Supp. 273. Federal Courts 663

4125. ---- Effect on merits, in forma pauperis, practice and procedure generally

Denial of leave to proceed in forma pauperis in action under this section was not adjudication on merits of complaint. Woods v. Crumlish, E.D.Pa.1966, 260 F.Supp. 473. Federal Civil Procedure 2734

4126. ---- Frivolous actions, in forma pauperis, practice and procedure generally

Inmate's in forma pauperis claim for damages against clerk of state circuit court for failure to provide inmate with transcript of his criminal trial for use on appeal had arguable basis in law, and thus was not subject to dismissal as frivolous; it was not clear that clerk's failure to provide transcript when ordered to do so by state circuit judge constituted discretionary act entitling clerk to immunity. McCullough v. Horton, C.A.8 (Ark.) 1995, 69 F.3d 918. Federal Civil Procedure 2734

Dismissal of jail inmate's pro se in forma pauperis § 1983 complaint as "frivolous" in raising claim of unreasonable search and seizure against four law enforcement officers and prosecutor was premature, where record did not clearly reflect that successful attack on inmate's arrest would implicate validity of his confinement; if inmate was tried and convicted and in his contested criminal case no evidence was presented resulting directly or indirectly from any of his arrests, illegality in any of his arrests may not be inconsistent with his conviction.

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42 U.S.C.A. § 1983

Mackey v. Dickson, C.A.5 (Tex.) 1995, 47 F.3d 744. Federal Civil Procedure 2734

Inmate's pro se and in forma pauperis § 1983 action against defense counsel and law enforcement officers challenged constitutionality of his state conviction or sentence by alleging ineffective assistance of counsel and failure to disclose exculpatory evidence, and thus action could be dismissed with prejudice as frivolous, absent showing that state conviction or sentence had been reversed, expunged, invalidated, or impugned by grant of writ of habeas corpus. Boyd v. Biggers, C.A.5 (Miss.) 1994, 31 F.3d 279. Federal Civil Procedure 2734

District court did not abuse its discretion in dismissing, on prisoner's application to proceed in form pauperis, prisoner's second § 1983 civil rights case as frivolous on ground of claim preclusion/res judicata, where prisoner's prior case was dismissed as frivolous on his application to proceed in forma pauperis, and both cases arose from failure of police to honor state court order requiring them to return property seized from prisoner when he was arrested. Hudson v. Hedge, C.A.7 (Ind.) 1994, 27 F.3d 274, certiorari denied 115 S.Ct. 641, 513 U.S. 1046, 130 L.Ed.2d 547. Federal Civil Procedure 2734

If civil rights suit by prison inmate is frivolous or malicious, district court may withdraw leave to proceed in forma pauperis. Allison v. California Adult Authority, C.A.9 (Cal.) 1969, 419 F.2d 822. Federal Civil Procedure 2734

Considering that civil rights action against state correctional authorities for delay in furnishing plaintiff with a transcript of his trial in state court was frivolous, it was not improper to deny plaintiff the right to proceed in forma pauperis. Davis v. Brierley, C.A.3 (Pa.) 1969, 412 F.2d 783. Federal Civil Procedure 2734

State prisoner's action under this section against warden, state director of corrections and several other state officers seeking injunctive and declaratory relief on basis that statute and regulations had been applied to curtail his liberty in penitentiary was frivolous and district court did not abuse its discretion in denying prisoner leave to commence and prosecute suit in forma pauperis. Shobe v. People of State of Cal., C.A.9 (Cal.) 1966, 362 F.2d 545, certiorari denied 87 S.Ct. 185, 385 U.S. 887, 17 L.Ed.2d 115. Federal Civil Procedure 2734

State prisoner's complaint under this section charging that prison official subjected him to religious prosecution, deprived him of rights under U.S.C.A.Const. Amends. 1 and 14, and denied him right to attend group services with his faith and to services of minister of faith and restricted his purchase of religious literature stated good cause under this section and complaint therefore met statutory requirement for leave to proceed in forma pauperis that action not be frivolous. Richey v. Wilkins, C.A.2 (N.Y.) 1964, 335 F.2d 1. Federal Civil Procedure 2734

State prison inmate's claim in § 1983 action, that her right to be free from cruel and unusual punishment was violated by a corrections officer who did nothing to protect her after being notified that a fellow inmate threatened plaintiff inmate, was not frivolous within meaning of in forma pauperis statute. Figalora v. Smith, D.Del.2002, 238 F.Supp.2d 658. Federal Civil Procedure 2734

In forma pauperis plaintiff's § 1983 claim which alleged that law enforcement officers violated his constitutional rights by issuing allegedly overbroad press release which resulted in his being charged with crimes to which he pled guilty was frivolous; plaintiff had no constitutional right to have his crimes remained undiscovered. Kleiss v. Short, S.D.Iowa 1992, 805 F.Supp. 726, affirmed 995 F.2d 229. Federal Civil Procedure 2734

Complaint in which former jail inmate alleged that he complained to sheriff of threats which he had received from other inmates, that no action was taken, and that those inmates later attacked him and inflicted severe injuries was not frivolous, so that he was entitled to proceed in forma pauperis. Smith v. Artison, E.D.Wis.1991, 779 F.Supp. 113. Federal Civil Procedure 2734

Pro se inmate's § 1983 claim that denial of his request to buy television with videotape machine built into it denied

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him his right to education on basis that he would use video player to take educational courses that involved viewing videotapes was frivolous and, accordingly, inmate was not entitled to proceed in forma pauperis; because prison was not community correctional center, state law gave inmate no property right to ownership of any recording device nor did inmate have constitutional right to educational, rehabilitative or vocational programs. Rial v. McGinnis, N.D.Ill.1991, 756 F.Supp. 1070. Federal Civil Procedure 2734

Inmate did not articulate nonfrivolous claim under § 1983, as required to have in forma pauperis status, in light of evidence supporting disciplinary finding against inmate in connection with assault where inmate did not claim that he was denied notice of charges against him. Umar v. Godinez, N.D.Ill.1993, 150 F.R.D. 139. Federal Civil Procedure 2734

Section 1983 claim that former governor of Utah, acting in her official capacity as governor, promoted and protected illegal corruption and prostitution of minors, which rested on plaintiff's belief that waitresses at local restaurant were prostitutes, was based on fantastic or delusional scenarios, warranting claim's dismissal, as "frivolous," under in forma pauperis (IFP) statute. Curiale v. Walker, C.A.10 (Utah) 2005, 136 Fed.Appx. 139, 2005 WL 1332350, Unreported. Federal Civil Procedure 2734

4127. ---- Pendency of like actions, in forma pauperis, practice and procedure generally

State prisoner's application to proceed in forma pauperis in his civil rights action claiming religious discrimination by prison officials was not to be denied by reason of pendency of like actions by fellow inmates. Richey v. Wilkins, C.A.2 (N.Y.) 1964, 335 F.2d 1. Federal Civil Procedure 2734

4128. ---- Appeal, in forma pauperis, practice and procedure generally

Appropriate procedure for prisoner claiming denial of medical attention would be to file a new action rather than pursue appeal of lawsuit involving events occurring about six years earlier, and accordingly leave to appeal in forma pauperis and appointment of counsel were denied. Clark v. Fortner, C.A.5 (Fla.) 1979, 590 F.2d 1309. Federal Courts 663

Inasmuch as it was error to dismiss state prisoner's complaint on pleadings without affording prisoner an opportunity to present evidence to substantiate his allegations, it was error to refuse to permit petition to be docketed without the payment of costs and likewise to refuse to allow appeal to proceed in forma pauperis. Campbell v. Beto, C.A.5 (Tex.) 1972, 460 F.2d 765. Federal Civil Procedure 2734; Federal Courts 662.1

Where complainant was barred by res judicata from prosecuting his "civil rights" complaint, order permitting appeal to court of appeals in forma pauperis was improvidently granted. Scott v. California Supreme Court, C.A.9 (Cal.) 1970, 426 F.2d 300. Federal Courts 662.1

Plaintiff, whose request to proceed in forma pauperis in civil rights action had been denied by district court on ground that action was "plainly without merit" was entitled to proceed in district court in forma pauperis, where district court had granted him leave to prosecute his appeal in forma pauperis on ground that court could not say that his claim was entirely frivolous. Lockhart v. D'Urso, C.A.3 (Pa.) 1969, 408 F.2d 354. Federal Civil Procedure 2734

In § 1983 action which plaintiffs' counsel had taken on contingency, plaintiffs qualified for in forma pauperis status on appeal; protracted nature of the case, which was caused in part by repeated transfer of the case for which plaintiffs bore no responsibility, made it unrealistic to assume that plaintiffs could readily obtain new counsel who could adequately represent them on appeal, and plaintiffs would have material difficulties advancing costs of their appeal. Fodelmesi v. Schepplerly, S.D.N.Y.1996, 944 F.Supp. 285. Federal Courts 663

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42 U.S.C.A. § 1983

Appeal from action brought under this section following judgment on verdict adverse to plaintiffs who claimed damages for wrongful death, conspiracy to deprive plaintiffs of right to recovery for wrongful death, wrongful injury to infant, and falsification of evidence to support perjury charge presented no issues arguable on law or facts, was frivolous and not taken in good faith, and was not to be permitted in forma pauperis. Grisom v. Logan, C.D.Cal.1971, 334 F.Supp. 273. Federal Courts 663

4129. ---- Affidavit, in forma pauperis, practice and procedure generally

Attack on truth of affidavit of poverty or sufficiency of complaint in civil rights action sought to be prosecuted in forma pauperis should be left for appropriate disposition after service has been made on the defendants. Lockhart v. D'Urso, C.A.3 (Pa.) 1969, 408 F.2d 354. Federal Civil Procedure 2734

4130. ---- Miscellaneous actions leave granted, in forma pauperis, practice and procedure generally

Inmate's in forma pauperis § 1983 complaint seeking to enjoin prosecutor and her successors from obstructing execution of writ of habeas corpus ad testificandum to allow inmate to testify in workers' compensation proceeding on his own behalf was not "frivolous"; it was at least arguable that continued imprisonment of inmate in face of validly issued state writ of habeas corpus, in absence of any justification or excuse, effectively denied inmate "meaningful" access to courts and unlawfully deprived him of writ's effect. Lemmons v. Law Firm of Morris and Morris, C.A.10 (Okla.) 1994, 39 F.3d 264. Federal Civil Procedure 2734

Where Negro prisoner filed complaint under this section alleging that although one-half of prison population was Negro only two Negro magazines were allowed in prison while 123 magazines catering to taste of white inmates were allowed, and that when he requested leave to subscribe to a Negro national magazine request was denied because magazine was not on official list of approval magazines issued by prison officials, district court properly permitted filing in forma pauperis but should not have dismissed without benefit fit of a responsive pleading. Owens v. Brierley, C.A.3 (Pa.) 1971, 452 F.2d 640. Federal Civil Procedure 1788.10; Federal Civil Procedure 2734

Pretrial detainee would be allowed to proceed in forma pauperis on § 1983 claim against medical staff of county department of corrections based on his assertion that he was denied medical attention by staff following prison bus accident; however, in view of fact that detainee was taken to hospital after accident, leave to proceed against members of hospital's medical staff would be denied, without prejudice to detainee's amending complaint to assert claim for deliberate indifference to serious medical needs. Harris v. Sheahan, N.D.Ill.1994, 847 F.Supp. 611. Federal Civil Procedure 2734

Indigent inmate was entitled to proceed in forma pauperis on his § 1983 claim against assistant district attorney, as inmate's allegation that assistant district attorney tried to cover up police department investigation misconduct, if proved, could demonstrate assistant district attorney was performing investigatory function and therefore enjoyed only qualified immunity. Chavers v. Teggatz, E.D.Wis.1992, 786 F.Supp. 759. Federal Civil Procedure 2734

State prisoner who alleged that police officer conducted search and seizure of his house and personal effects without warrant and in absence of probable cause would be permitted to proceed with complaint in forma pauperis even though claim presumably was determined adversely to prisoner in his criminal prosecution. Chavers v. Stuhmer, E.D.Wis.1992, 786 F.Supp. 756. Federal Civil Procedure 2734

Pretrial detainee confined in county jail would be granted permission to proceed in forma pauperis in federal civil rights suit filed against county officials, where detainee alleged serious charges of poor conditions at county jail which, if sufficiently developed, might constitute violation of Eighth Amendment. Kyle v. Allen, S.D.Fla.1990, 732 F.Supp. 1157. Federal Civil Procedure 2734

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42 U.S.C.A. § 1983

4131. ---- Miscellaneous actions leave denied, in forma pauperis, practice and procedure generally

Where detainee's in forma pauperis § 1983 action against police officer and department claimed that officer altered and destroyed evidence relevant to charges against detainee, in violation of due process, action could be dismissed with prejudice as "frivolous," absent showing that state conviction or sentence had been reversed, expunged, invalidated, or otherwise called into doubt, since finding that officer altered evidence would necessarily imply invalidity of subsequent convictions and sentences based on those charges. Hamilton v. Lyons, C.A.5 (Tex.) 1996, 74 F.3d 99. Federal Civil Procedure 2734

Complaint by state prisoner alleging that state officials denied him equal protection and due process of law in that they denied him the right to seek a writ of habeas corpus, the right to testify freely before a state court, the right to be free and secure from suffering prohibited punishment, and the right to prosecute an action under this section before a federal court was insufficient to entitle state prisoner to proceed in forma pauperis in action in federal district court under this section. Weller v. Dickson, C.A.9 (Cal.) 1963, 314 F.2d 598, certiorari denied 84 S.Ct. 97, 375 U.S. 845, 11 L.Ed.2d 72. Federal Civil Procedure 2734

Complaint in which Muslim inmate of state correctional facility alleged discriminatory application of regulation pursuant to which prison officials denied requests to bring food into cellhouse at night to permit Muslim inmates to properly celebrate Fast of Ramadan and placed limitations on attendance at Muslim services did not raise justiciable issues and therefore, inmate's motion to proceed in forma pauperis would be denied. Cochran v. Sielaff, S.D.Ill.1976, 405 F.Supp. 1126. Federal Civil Procedure 2734

Plaintiff was not entitled to file in forma pauperis in § 1983 action against police officer based on officer's allegedly false affidavit in prior civil rights action, as there was no legal basis for claim; officer was entitled to absolute immunity based upon his testifying as police officer in court proceedings. Hardiman v. Fitzsimmons, N.D.Ill.1993, 148 F.R.D. 592. Federal Civil Procedure 2734

4132. Assistance of counsel, practice and procedure generally--Generally

General rule that non-attorney parents may not represent their children applied to preclude hearing non-attorney mother's appeal from dismissal of claims brought on behalf of her child under IDEA, Rehabilitation Act, ADA, and §§ 1983, regardless of whether mother was actually capable of representing child. Tindall v. Poultney High School Dist., C.A.2 (Vt.) 2005, 414 F.3d 281. Infants 90

Court must bear in mind, when counsel has been appointed or recruited for § 1983 action, that usual assumptions about agency relationship between lawyer and client must be relaxed; thus, in considering dismissal for want of prosecution, court should satisfy itself that appointed counsel is on the job and should consider appointing substitute counsel in cases in which fault seems to lie primarily with lawyer. Dunphy v. McKee, C.A.7 (Ill.) 1998, 134 F.3d 1297. Civil Rights 1442

Trial court did not err in denying request for appointed counsel made by teacher bringing age discrimination claim against school district, based on analysis of appointed counsel requests followed in § 1983 cases; case did not involve great complexity and prior history of claims effort established teacher's ability to represent himself. Salmon v. Corpus Christi Independent School Dist., C.A.5 (Tex.) 1990, 911 F.2d 1165, rehearing denied. Civil Rights 1557

Generally, no right to counsel exists in cases under this section. Hardwick v. Ault, C.A.5 (Ga.) 1975, 517 F.2d 295 . Civil Rights 1442

Town's attorneys were not disqualified from representing town for a conflict of interest on resident's claim under § 1983 that the town had a custom and policy of retaliating against whistle-blowers who reported misconduct by

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town officials, although attorneys represented town officials as individuals in another case, where after consultation officials expressly consented to representation, and other case was not a substantially related matter and involved different parties and legal issues. Bochese v. Town of Ponce Inlet, M.D.Fla.2003, 267 F.Supp.2d 1240. Attorney And Client 21.5(2)

District court did not abuse its discretion by dismissing §§ 1983 action without first considering plaintiff's arguments regarding alleged unethical and negligent behavior of his prior counsel; action was not the proper forum to consider those complaints, and any impropriety by prior counsel did not affect the result of the case inasmuch as case was dismissed due to plaintiff's failure to comply with court order requiring him to retain new counsel and have new counsel make an appearance by a certain deadline. Castrodad-Soto v. Rivera-Sanchez, C.A.1 (Puerto Rico) 2004, 103 Fed.Appx. 401, 2004 WL 1379655, Unreported. Federal Civil Procedure 1832

4133. ---- Prisons and prisoners, assistance of counsel, practice and procedure generally

Prison inmate asserting claim that prison officials failed to protect inmate from violence by other inmates, in violation of Eighth Amendment, was entitled to appointment of counsel, as inmate had colorable claim, and inmate may have been ill-equipped to represent himself in view of medical evidence that inmate suffered from paranoid delusional disorder. Hamilton v. Leavy, C.A.3 (Del.) 1997, 117 F.3d 742. Civil Rights 1445

Assertion by inmate bringing pro se § 1983 action that his "mental anguish" prevented his attending to suit did not satisfy "exceptional circumstances" requirement for appointment of counsel. Cooper v. Sheriff, Lubbock County, Tex., C.A.5 (Tex.) 1991, 929 F.2d 1078. Civil Rights 1445

Appointing counsel for inmate was appropriate in civil rights action alleging sexual abuse and deliberate indifference to medical needs; the sensitive nature of the sexual abuse claims made appointment of counsel appropriate, and the inmate had a likelihood of success on some claims. Wood v. Idaho Dept. of Corrections, D.Idaho 2005, 391 F.Supp.2d 852. Civil Rights 1445

Counsel would not be appointed for inmate in his pro se §§ 1983 action against prison health care provider, where inmate was able to articulate alleged facts clearly, his allegations coincided with provider's records, issue was predominately legal one that would not be decided by credibility determinations, inmate was able to undertake his own factual inquiry and obtain medical records, and case most likely would not require expert testimony. Daniels v. Correctional Medical Services, Inc., D.Del.2005, 380 F.Supp.2d 379, affirmed 2006 WL 623039. Civil Rights 1445

No compelling reason existed for appointment of counsel in pro se inmate's § 1983 action against corrections officials alleging overcollection of court filing fees as well as interference with legal correspondence; difficult factual issues were not involved, inmate could argue issue of interpretation of Prisoner Litigation Reform Act (PLRA) based on his access to prison law library, and inmate was experienced in § 1983 litigation and was both articulate and reasonably cognizant of procedural requirements. Davidson v. Goord, W.D.N.Y.2002, 259 F.Supp.2d 236, appeal denied 259 F.Supp.2d 238. Civil Rights 1445

Court would not appoint counsel for inmate, suing prison employees under §§ 1983 for providing insufficient medical care; issues were simple and clear, and inmate's communications with court showed ability to represent himself. Green v. Howard R. Young Correctional Institution, D.Del.2005, 229 F.R.D. 99. Civil Rights 1445

Denial of inmate's request for appointment of counsel was a proper exercise of discretion in the inmate's §§ 1983 suit claiming that prison officers subjected him to a cruel and excessive strip search; district court determined that the case did not involve complex, technical issues, that counsel could not affect the outcome because the case had little merit, and that the inmate's pleadings and numerous past lawsuits showed him to be sufficiently experienced to try the case. Cherry v. Frank, C.A.7 (Wis.) 2005, 125 Fed.Appx. 63, 2005 WL 589975, Unreported. Civil

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42 U.S.C.A. § 1983

Rights 1445

Indigent state prisoner was not entitled to court-appointed counsel, in 1983 action against various correctional officers; although prisoner's ability to investigate facts could be limited, claim focused on single incident, factual circumstances surrounding claim were not complicated, there was no showing that appointment of counsel would increase the likelihood of just determination of the case, and prisoner had made no other effort to secure representation on his own. Allen v. Sakellardis, S.D.N.Y.2003, 2003 WL 22232902, Unreported. Civil Rights 1445

Appointment of pro bono counsel for state prison inmate bringing pro se in forma pauperis § 1983 action against prison officials for alleged improper medical treatment was not warranted where inmate demonstrated an ability to investigate and present the relevant facts; inmate, on his own, engaged in discovery, filed motions to compel and amend, and responded to defendants' motions to dismiss, generally appeared capable of understanding and presenting the legal issues raised by his claims, and the factual circumstances surrounding his claims did not appear complicated. Verley v. Goord, S.D.N.Y.2003, 2003 WL 22047859, Unreported. Civil Rights 1445

Refusal to recruit an attorney to help state prison inmate conduct discovery in his § 1983 suit against prison officials for alleged use of excessive force by prison guards was within district court's discretion absent any evidence that he adequately tried to obtain private counsel or that circumstances prevented his doing so. Bieber v. Wisconsin Dept. of Corrections, C.A.7 (Wis.) 2003, 62 Fed.Appx. 714, 2003 WL 1870892, Unreported, certiorari denied 124 S.Ct. 113, 540 U.S. 843, 157 L.Ed.2d 78. Civil Rights 1445

Prison inmate was not constitutionally entitled to representation in connection with his § 1983 action against prison nurse. Beers v. Stockton, C.A.8 (Neb.) 2000, 242 F.3d 373, Unreported. Civil Rights 1445

4134. ---- Merits of claim, assistance of counsel, practice and procedure generally

If it is apparent to district court that pro se litigant has colorable claim but lacks capacity to present it, district court should appoint counsel to assist him. Gordon v. Leeke, C.A.4 (S.C.) 1978, 574 F.2d 1147, certiorari denied 99 S.Ct. 464, 439 U.S. 970, 58 L.Ed.2d 431. Attorney And Client 23

Factors district court must consider in determining whether to appoint counsel to a pro se civil litigant are same in both the Title VII and § 1983 context: court should first determine whether indigent's position seems likely to be of substance, if claim meets this threshold requirement, court should then consider indigent's ability to investigate crucial facts, whether conflicting evidence implicating need for cross-examination will be major proof presented to fact finder, indigent's ability to present case, complexity of legal issues and any special reason in case why appointment of counsel would be more likely to lead to a just determination. Dean v. New York City Transit Authority, E.D.N.Y.2004, 297 F.Supp.2d 549. Civil Rights 1446; Civil Rights 1557

Counsel would not be appointed to represent state prisoner in civil rights action where a prisoner's complaint was without merit. Sanno v. Preiser, S.D.N.Y.1975, 397 F.Supp. 560. Attorney And Client 23

If civil rights case by state prisoner against arresting officer and city for false arrest and illegal detention has merit and a trial is required, counsel for state prisoner should be appointed. Chubbs v. City of New York, E.D.N.Y.1971, 324 F.Supp. 1183. Civil Rights 1445

Where state prisoner's action under this section against warden for alleged grievances was frivolous, prisoner's application for assignment of counsel would be denied. U. S. ex rel. Stuart v. Yeager, D.C.N.J.1968, 293 F.Supp. 1079, affirmed 419 F.2d 126, certiorari denied 90 S.Ct. 1400, 397 U.S. 1055, 25 L.Ed.2d 673. See, also, Roberts v. Pepersack, D.C.Md.1966, 256 F.Supp. 415, certiorari denied 88 S.Ct. 175, 389 U.S. 877, 19 L.Ed.2d 165. Attorney And Client 23

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42 U.S.C.A. § 1983

Indigent state prisoner satisfied the threshold requirement that he make a showing of merit for appointment of counsel in § 1983 action against correctional officers by alleging that officers restrained him in a headlock and repeatedly banged his head against the wall, that he suffered lacerations to the face and head, which required medical attention, that officers fabricated story that prisoner had assaulted the officers, and that prisoner was sentenced to solitary confinement and charged with felony as a result. Allen v. Sakellardis, S.D.N.Y.2003, 2003 WL 22232902, Unreported. Civil Rights 1445

4135. ---- Indigent parties, assistance of counsel, practice and procedure generally

Trial court should have appointed counsel for indigent prisoner seeking to bring § 1983 action against jail officials with regard to restraints used against him; district court should have realized that it was highly probable that prisoner would not have recognized need to call expert witnesses to present prima facie case. Jackson v. County of McLean, C.A.7 (Ill.) 1992, 953 F.2d 1070. Civil Rights 1445

Civil rights suit brought in forma pauperis by inmate against prison officials for alleged infringement of his constitutional right to practice religion and for retaliation for his practice of religion and his exercise of legal rights did not present "exceptional circumstances" justifying appointment of counsel; claims were relatively straightforward and involved incidents which took place in prison, most of which inmate witnessed himself, and inmate was accomplished writ writer who was capable of representing himself adequately, as demonstrated by quality of his written pleadings and his conduct at trial. Fowler v. Jones, C.A.11 (Ala.) 1990, 899 F.2d 1088. Civil Rights 1445

There was no constitutional or statutory right for indigent to have appointed counsel in civil case and counsel should not be appointed in every civil rights case filed by state prisoner. Randall v. Wyrick, C.A.8 (Mo.) 1981, 642 F.2d 304. Civil Rights 1445

In civil rights action brought by state prisoner in forma pauperis, trial court did not abuse its discretion in denying appointment of counsel. Wimberly v. Rogers, C.A.9 (Mont.) 1977, 557 F.2d 671. Civil Rights 1445

Inmate's § 1983 claim alleging deprivation of eyeglasses, access to courts, and soap and toilet paper as well as censorship of his mail was not sufficiently complex to warrant appointment of counsel pursuant to in forma pauperis statute. Williams v. ICC Committee, N.D.Cal.1992, 812 F.Supp. 1029. Federal Civil Procedure 2734

Appointment of pro bono counsel for citizen was not warranted in § 1983 action, even though citizen demonstrated that he was indigent, he was disabled, and he made threshold showing of merit; citizen did not detail nature or extent of his disability and his disability did not significantly hamper his ability to prosecute his case, citizen was not incarcerated and he did not present any other reason why he would be unable to pursue and present evidence relevant to his claims, he was capable of understanding and presenting legal issues raised by his claims, and he did not make sufficient effort to obtain lawyer. Walters v. NYC Health Hosp. Corp., S.D.N.Y.2002, 2002 WL 31681600, Unreported. Civil Rights 1447

Indigent arrestee was not unable to pursue and present evidence relevant to his false arrest and malicious prosecution claims, and thus he was not entitled to appointment of pro bono counsel to represent him in civil rights action under § 1983 and state law against city, where he was not incarcerated, and he had shown a substantial ability to investigate and present relevant facts. Rissman v. City of New York, S.D.N.Y.2002, 2002 WL 31499003, Unreported. Civil Rights 1445; Federal Civil Procedure 1951

Indigent arrestee's allegations describing circumstances of his arrest and reasons why he claimed city's conduct with respect to that arrest was improper were sufficient to make threshold showing of merit as to false arrest and malicious prosecution claims, as would support arrestee's application for appointment of pro bono counsel to

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represent him in civil rights action under § 1983 and state law against city. Rissman v. City of New York, S.D.N.Y.2002, 2002 WL 31499003, Unreported. Civil Rights 1445; Federal Civil Procedure 1951

4136. ---- Time for assistance, assistance of counsel, practice and procedure generally

Where plaintiff seeking relief for alleged misconduct of police officers after his arrest was pursuing proceedings in state courts in connection therewith which were not final and where plaintiff had assistance of counsel in state proceedings, counsel would not be assigned for plaintiff and court would not consider whether counsel should be assigned until state proceedings had reached final decision. Beyer v. Werner, E.D.N.Y.1969, 299 F.Supp. 967. Attorney And Client 23

4137. ---- On remand, assistance of counsel, practice and procedure generally

Court of appeals was not persuaded that it should order that counsel be appointed for indigent prison inmates on remand following vacation of judgment dismissing civil rights complaint asserting improper restrictions on exercise of religion by prison officials, and would instead leave matter to trial judge's consideration as he examines case. Kennedy v. Meacham, C.A.10 (Wyo.) 1976, 540 F.2d 1057. Federal Courts 943.1

4138. Hearing, practice and procedure generally--Generally

While certain prisoner suits under this section and habeas corpus suits may be dismissed without requiring a hearing, when the file and record requires the district court to make credibility choices, a petitioner is entitled to a day in court with live testimony; however, this does not mean that the petitioner's presence will always be required. Ballard v. Spradley, C.A.5 (Fla.) 1977, 557 F.2d 476. Federal Civil Procedure 1825

Where there are substantial allegations of violations of constitutional rights in treatment of state prisoners, civil rights complaint must be considered on its merits by proper hearing. Gregory v. Wyse, C.A.10 (Colo.) 1975, 512 F.2d 378. Civil Rights 1395(7)

Allegation that procedural due process was denied in prison disciplinary proceedings should no longer require district court, except perhaps in extreme case, to hold evidentiary hearing. Willis v. Ciccone, C.A.8 (Mo.) 1974, 506 F.2d 1011. Prisons 13(3)

4139. ---- Presence of petitioner, hearing, practice and procedure generally

Inmate had no right to attend pretrial conferences held in his § 1983 suit against the correctional facility and its officers and doctors. Woods v. Goord, S.D.N.Y.2002, 2002 WL 31296325, Unreported. Federal Civil Procedure 1921

4140. ---- Miscellaneous hearings granted, practice and procedure generally

Inmate, who brought action against prison officials seeking declaratory relief, injunctive relief and damages after he was held in segregation before hearing on charges regarding various violations of prison rules in connection with taking of books, raised issues of material fact as to which he was entitled to a hearing in district court. Muhammad v. Rowe, C.A.7 (Ill.) 1981, 638 F.2d 693. Civil Rights 1092; Federal Civil Procedure 2491.5

Claims that former prisoner at training center for men had been prevented personally from participating in church worship services and Bible study classes, from wearing long hair and beard as incident of exercise of his religion or from distributing religious literature of his church were not frivolous and, in absence of the prisoner having had opportunity to litigate those claims, evidentiary hearing must be held by district court to determine truth of his

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claims and, if true, whether his civil rights had been violated. Green v. White, C.A.8 (Mo.) 1979, 605 F.2d 376, certiorari denied 100 S.Ct. 1038, 444 U.S. 1083, 62 L.Ed.2d 767, certiorari denied 100 S.Ct. 1060, 444 U.S. 1093, 62 L.Ed.2d 782. Civil Rights 1424

Where Nevada State Prison inmate alleged in civil rights complaint that he had been subjected to cruel and unusual punishment as the result of overcrowded cell conditions, denial of showers and basic sanitary items, denial of miscellaneous items such as shoes and tobacco and by a diet consisting entirely of cold and possibly inadequate good, such allegations, when read liberally as was appropriate in reviewing a motion to dismiss, were sufficient to require that a hearing be held at which facts and circumstances surrounding the allegations could be developed. Shapley v. Wolff, C.A.9 (Nev.) 1978, 568 F.2d 1310. Civil Rights 1395(7)

In civil rights action brought by female inmates at correctional facility who sought preliminary injunction enjoining assignment of male correction officers to duties in housing and hospital units of facility on claim of deprivation of constitutionally guaranteed right to privacy by causing inmates to be "involuntarily exposed" to officers, fact that briefs and affidavits presented disputed issues of fact required an evidentiary hearing to determine credibility issues. Forts v. Ward, C.A.2 (N.Y.) 1977, 566 F.2d 849, on remand 471 F.Supp. 1095. Civil Rights 1424

Allegation of state prisoner relative to the alleged directive that he tell his correspondents not to send him postage stamps sufficiently alleged infringement of rights under U.S.C.A.Const. Amend. 1 to require a hearing thereon in action brought under this section. Morgan v. LaVallee, C.A.2 (N.Y.) 1975, 526 F.2d 221. Civil Rights 1395(7)

State prisoner was entitled to full evidentiary hearing on his claim under this section that he received inadequate medical treatment while awaiting trial because physician employed as a county health officer diagnosed the prisoner's problem as hemorrhoids when the prisoner was suffering from rectal cancer. Robinson v. Jordan, C.A.5 (Tex.) 1974, 494 F.2d 793. Civil Rights 1424

Allegations by African-American licensed sidewalk vendors that they received no notice of new application procedure which restricted vending to certain locations in city whereas vendors who were not African-American did receive notice and that this was part of deliberate plan on part of city stated claim for denial of equal protection entitling African-American vendors to evidentiary hearing in support of motion for preliminary injunction. Lindsay v. City of Philadelphia, E.D.Pa.1994, 844 F.Supp. 229. Constitutional Law 219

Even if Medicaid provider experienced repercussions from Department of Social Service's letter expressing concerns about quality of his medical care, he was not entitled to evidentiary hearing to challenge Department's denial of reenrollment in Medicaid program; denial of reenrollment was equivalent to denial of initial application and was not sanction interrupting provider's continuing participation. Senape v. Constantino, S.D.N.Y.1990, 740 F.Supp. 249, affirmed 936 F.2d 687. Administrative Law And Procedure 470; Health 505(2)

4141. ---- Miscellaneous hearings denied, practice and procedure generally

District court in civil rights action by nonresident fireman challenging city's residency ordinance was not required to hold evidentiary hearing where "compelling interest test" on which plaintiffs solely relied did not apply and it was not claimed that complaint stated sufficient facts to invalidate ordinance under rationality test. Wright v. City of Jackson, Mississippi, C.A.5 (Miss.) 1975, 506 F.2d 900. Civil Rights 1424

Due process was not violated by village's termination of waste disposal and recycling contract without a hearing, for § 1983 purposes, as contractor had readily available state court remedies both before and after termination date. Crown Recycling and Waste Services, Inc. v. Village of Lyons, N.D.Ill.1996, 940 F.Supp. 1262. Constitutional Law 276(2); Municipal Corporations 252

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42 U.S.C.A. § 1983

Claimed denial of phone call to plaintiff's attorney while plaintiff was in county jail awaiting postconviction case and one isolated instance of failure to mail a letter, even if true, were not of sufficient merit to justify hearing in suit brought under this section in view of counsel's affidavit that he was afforded access to plaintiff at all times and had sufficient communication with him. Russell v. Enser, D.C.S.C.1979, 496 F.Supp. 320, affirmed 624 F.2d 1095. Civil Rights 1424

In civil rights action challenging prison's visitor strip-search policy, alleged failures by prison officials to recall details as to information they had received that prisoner's wife would be bringing contraband to prison, ambiguity about details, and failure to reveal identities of sources, did not amount to an offer of proof pointing to specific portions of affidavits which were falsely made, either intentionally or with reckless disregard for the truth, so as to warrant an evidentiary hearing as to whether searches of prisoner's wife were undertaken with reasonable suspicion or probable cause. Cate v. Reynolds, E.D.Tenn.1991, 138 F.R.D. 95. Evidence 154

4142. Magistrates, practice and procedure generally

Section 1983 claims challenging county sheriff department's requirement that person in custody wear jail clothing when appearing in nonjury proceedings, brought by individual placed in state mental health facility after being found incompetent to stand trial, did not involve conditions of confinement, so that district court did not have jurisdiction to refer matter to magistrate to conduct evidentiary hearing on merits of § 1983 action. Houghton v. Osborne, C.A.9 (Mont.) 1987, 834 F.2d 745. United States Magistrates 21

Order of district court authorizing magistrates to issue appropriate writs in habeas corpus proceedings and in performing certain duties in criminal actions did not authorize magistrate to conduct evidentiary hearing in civil rights case. Cruz v. Hauck, C.A.5 (Tex.) 1975, 515 F.2d 322, certiorari denied 96 S.Ct. 1118, 424 U.S. 917, 47 L.Ed.2d 322. United States Magistrates 20

In action under this section brought by inmate alleging that he had been subjected to unreasonable body cavity search, genuine issue of material fact remained as to whether body probe of inmate's rectum preceded enema which inmate gave himself in presence of correctional officer, which issue would be resolved in hearing before magistrate and, in accordance with inmate's request, with a jury. Coleman v. Hutto, E.D.Va.1980, 500 F.Supp. 586. United States Magistrates 21

4143. Special masters, practice and procedure generally

Since progress of prison officials in obtaining compliance with court order showed that assistance was required with respect to many of the terms, all steps taken by the officials would be supervised, coordinated, and approved by special master acting for the court and the special master would have the authority to state to the prison officials the actions required to be taken by them to effectuate full compliance with the order and to seek orders from the court requiring prison officials to show cause why they should not be punished for contempt for failure to carry out such actions. Taylor v. Perini, N.D.Ohio 1976, 413 F.Supp. 189. Prisons 4(2.1)

4144. Jury selection, practice and procedure generally

Sheriff's counsel's explanation for exercising peremptory challenge against black school board employee based on counsel's experience that school board employees were "pro-labor" and "pro-employee" was not legally insufficient as matter of law, even though white school board employees were not challenged during jury selection in employment discrimination action. Barfield v. Orange County, C.A.11 (Fla.) 1990, 911 F.2d 644, rehearing denied 920 F.2d 13, certiorari denied 111 S.Ct. 2263, 500 U.S. 954, 114 L.Ed.2d 715. Jury 33(5.15)

Assuming that *Batson*, wherein Supreme Court held that in criminal trials peremptory strikes cannot be used for racial reasons, applied to civil suits, civil rights plaintiff failed to establish prima facie case of racial discrimination;

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civil rights plaintiff was white and potential jurors who were excluded were black and essential element of claim for relief under *Batson* is that peremptory challenges were used to remove from venire members of complaining party's race. Wilson v. Cross, C.A.8 (Ark.) 1988, 845 F.2d 163. Civil Rights 1422

Where jurors were aware that their service was not limited to two weeks and furthermore plaintiff agreed to bifurcated trial, with liability and damages tried separately, court was not required to question jurors as to whether their judgment on liability issue in civil rights case would be affected by fact that they would have to return for subsequent trial on damages, based on plaintiff's counsel's concern that jurors, on last day of their two weeks' service, would favor the defense because it would enable them to go home earlier. Armstrong v. Borie, E.D.Pa.1980, 494 F.Supp. 902. Jury 131(4)

4145. Jury trial, practice and procedure generally--Generally

Action under § 1983 seeking legal relief is an "action at law," within the meaning of Seventh Amendment right to jury trial. City of Monterey v. Del Monte Dunes at Monterey, Ltd., U.S.Cal.1999, 119 S.Ct. 1624, 526 U.S. 687, 143 L.Ed.2d 882. Jury 14(1.5)

To extent that discharged teacher pressed civil rights action against school board members in their individual capacities, the individuals were entitled to trial by jury. Burt v. Board of Trustees of Edgefield County School Dist., C.A.4 (S.C.) 1975, 521 F.2d 1201. Jury 14(1.4)

Sheriff was not entitled to bifurcate §§ 1983 action brought against him by former detainee in county jail, which alleged deprivation of Fourteenth Amendment due process right to be released from confinement within reasonable time after reason for confinement ended, into two phases, the first to determine whether detainee was deprived of a federally protected right and second to determine whether sheriff had unconstitutional policy; it was essentially conceded that detainee was detained too long, principal issue was whether sheriff's policies were moving force behind delay in release, bifurcation would unduly confuse jury, and there was little risk of undue prejudice to sheriff if matter was not bifurcated. Green v. Baca, C.D.Cal.2005, 226 F.R.D. 624, clarified 2005 WL 283361. Federal Civil Procedure 1959.1

With respect to when a jury trial can be granted or denied, a civil rights suit is no different from any other civil action. Devore v. Edgefield County School Dist., D.C.S.C.1975, 68 F.R.D. 423. Jury 14(1.5)

Trial of liability and damages issues would be bifurcated in a § 1983 action arising from a deputy sheriff's fatal shooting of a victim, to avoid exposing the jury to evidence of the victim's extensive criminal history before the jury had determined the question of liability, despite claim that the victim's criminal history was relevant to explain the deputy's behavior and to prove his motive and intent, and that the victim's conduct immediately before the shooting was characteristic of his "habitual behavior when intoxicated and in a jealous rage"; there was a strong likelihood jurors would tend to judge the liability facts in favor of the deputy if they were aware of the victim's criminal record, even if the court gave a limiting instruction. Estate of Layman ex rel. Layman v. Blalack, D.Or.2003, 2003 WL 21087975, Unreported. Federal Civil Procedure 1961

4146. ---- Judge/jury combined trial, jury trial, practice and procedure generally

Where government was entitled to nonjury trial of count of complaint seeking damages against it under 33 V.I.C. § § 3408 et seq., 3413, for alleged assault and battery perpetrated upon plaintiff by government officer, government officer was entitled to a jury to hear count seeking to recover damages from him under this section, both claims involved identical fact situations, civil rights claim was the broader of the two issues in terms of evidence necessary to prove it and all evidence on the assault and battery was relevant to civil rights claim, counts would not be severed but combined judge/jury procedure would be used and trial would proceed on evidentiary plane as if it were on civil right claims alone and court at end of evidence would decide question of assault and battery on that

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part of evidence relevant thereto. Simon v. Lovgren, D.C.Virgin Islands 1973, 368 F.Supp. 265. Federal Civil Procedure 1; Jury 12(1.2)

4147. ---- Back pay, jury trial, practice and procedure generally

Prayer for back pay, by Negro school teachers alleging violation of civil rights in failure of school district to renew teaching contract when school system was desegregated, was not claim for damages but was integral part of equitable remedy of injunctive reinstatement, and thus neither such claim nor factual issues which formed the basis of claim for reinstatement were appropriate for trial by jury. Harkless v. Sweeny Independent School Dist., C.A.5 (Tex.) 1970, 427 F.2d 319, certiorari denied 91 S.Ct. 451, 400 U.S. 991, 27 L.Ed.2d 439. Jury 13(12)

Applicant, who alleged that Pennsylvania Housing Finance Agency discriminated against him by rejecting his application for employment because of his race, sex and religion, had right to jury trial on claim for back pay under this section. Powell v. Pennsylvania Housing Finance Agency, M.D.Pa.1983, 563 F.Supp. 419. Jury 14(1.5)

With respect to allegations by plaintiffs, who alleged that their termination from employment was motivated by their efforts to promote union organization among ports authority employees, under this section, it was apparent that equitable relief in form of back pay and reinstatement was being sought, which was not subject to jury trial; moreover, plaintiffs did not change the essentially equitable nature of their claim merely by adding "unsupported allegations of compensatory and punitive damages." Hodges v. Tomberlin, S.D.Ga.1980, 510 F.Supp. 1280. Jury 14(1.5)

4148. ---- Damages, jury trial, practice and procedure generally

Where employment discrimination complaint requested both compensatory and punitive damages in addition to request for equitable relief, trial court properly placed case on its jury docket. Whiting v. Jackson State University, C.A.5 (Miss.) 1980, 616 F.2d 116, rehearing denied 622 F.2d 1043. Jury 14(1.5)

In action for damages under federal statute governing civil action for deprivation of rights, U.S.C.A.Const. Amend. 7 requires a jury trial upon demand where amount in controversy exceeds $20. Burt v. Abel, C.A.4 (S.C.) 1978, 585 F.2d 613, on remand 466 F.Supp. 1234. Jury 15

Defendants are not entitled to a jury trial under the Seventh Amendment on front-pay requests under Title VII, § 1981, or § 1983; front pay draws upon those classic broad principles of fairness that a trial judge would rely upon in granting or denying equitable relief in general. Kennedy v. Alabama State Bd. of Educ., M.D.Ala.2000, 78 F.Supp.2d 1246. Jury 14(1.5)

Right to trial by jury existed in action under this section brought by tenant against landlord, public housing authority, and its officers and agents that sought compensatory and punitive damages to enforce tenant's "legal rights," sounded essentially in tort, and was analogous to an action for intentional infliction of distress. Douglas v. Burroughs, N.D.Ohio 1984, 598 F.Supp. 515. Jury 12(1.1)

Defendants' motion to strike plaintiff's request for a jury trial in civil rights action was subject to being denied where plaintiff not only sought reinstatement and back pay, but also sought compensatory damages for alleged violation of his civil rights arising under U.S.C.A.Const. Amend. 14 and, under this section, plaintiff had a right to a jury trial in an action for monetary damages. Terrien v. Metropolitan Milwaukee Criminal Justice Council, E.D.Wis.1978, 455 F.Supp. 1375. Jury 14(1.5)

Where action was brought under this section for injunctive and monetary relief and to challenge constitutionality of state prison regulations pursuant to which defendant correction officials allegedly refused to deliver to plaintiff law books purchased by him and brought to prison by his relatives, prohibited plaintiff from keeping prison library law

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books in his cell overnight and on weekends and limited his use of such law books to two hours per week, defendants were entitled to jury trial on the damage claim. Van Ermen v. Schmidt, W.D.Wis.1974, 374 F.Supp. 1070. Jury 14(1.5)

Defendants in action under this section for damages were not entitled to jury trial. Lawton v. Nightingale, N.D.Ohio 1972, 345 F.Supp. 683, 31 Ohio Misc. 263, 60 O.O.2d 417. Jury 14(1.5)

4149. ---- Equitable relief, jury trial, practice and procedure generally

Action against city official for alleged violation of fireman's civil rights in connection with his discharge was subject to being tried to court without a jury where relief sought by fireman was essentially equitable in nature. Gerrin v. Hickey, E.D.Ark.1979, 464 F.Supp. 276. Jury 14(1.5)

Inmate of state prison who raises solely equitable claims against prison officials has no constitutional right to a jury trial. Johnson v. Teasdale, W.D.Mo.1978, 456 F.Supp. 1083. Jury 14(1.5)

Essentially, injunctive, equitable nature of state prisoner's action for relief under this section would preclude a jury. Lee v. Crouse, D.C.Kan.1967, 284 F.Supp. 541, affirmed 396 F.2d 952.

4150. ---- Reinstatement, jury trial, practice and procedure generally

Probationary teacher who brought civil rights action against board of education asserting an illegal discharge from employment was not entitled to a jury trial on issue of his entitlement to reinstatement. Lombard v. Board of Ed. of City of New York, E.D.N.Y.1976, 407 F.Supp. 1166. Jury 14(11)

4151. ---- Time for request, jury trial, practice and procedure generally

Inmate who was appointed counsel in § 1983 action against state correctional officials and officers after time for requesting jury trial had passed was not entitled to jury trial, in absence of persuasive reason to grant belated request. Wise v. Lanham, D.Md.1997, 171 F.R.D. 187. Jury 25(6)

4152. ---- Waiver, jury trial, practice and procedure generally

Statement by plaintiff's counsel that "I'm not jumping up and down to try it before a jury," made in response to district court's suggestion that trial to jury would result in delay, coupled with counsel's commencement of trial without objection before the court constituted a waiver of an earlier demand for jury trial of plaintiff's civil rights action. Amburgey v. Cassady, C.A.6 (Ky.) 1974, 507 F.2d 728. Jury 28(5)

4153. ---- Miscellaneous jury trials granted, practice and procedure generally

Suit in which property owner sued city under § 1983, alleging that city's repeated rejections of owner's development proposals effected a regulatory taking without providing just compensation, was an "action at law," within meaning of Seventh Amendment right to jury trial; action sounded in tort, and owner sought damages for unconstitutional denial of just compensation, which is a legal remedy. City of Monterey v. Del Monte Dunes at Monterey, Ltd., U.S.Cal.1999, 119 S.Ct. 1624, 526 U.S. 687, 143 L.Ed.2d 882. Jury 14(1.5)

Under this section and § 1985 of this title pertaining to conspiracy to deprive of rights, demoted department head was entitled to jury trial. An-Ti Chai v. Michigan Technological University, W.D.Mich.1980, 493 F.Supp. 1137.

Even though suit wherein plaintiff sought monetary redress from defendant prison officials for alleged constitutional deprivations suffered while he was incarcerated in state penitentiary was brought pursuant to this

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section as a special statutory claim independent of common law, right to jury trial attached under U.S.C.A.Const. Amend. 7, where analogy of cause of action established a claim in tort. Cook v. Cox, E.D.Va.1973, 357 F.Supp. 120. Jury 14(1.5)

4153A. Witnesses

District court's decision, to not allow prisoner to call childhood physician to testify as to treatment he received for his original hip infection and as to physician's opinion that he would require hip replacement surgery at some point in future, was not abuse of discretion, in § 1983 lawsuit under Eighth Amendment, since medical service provider stipulated to any facts physician might have presented as to surgery and care he gave physician 25 years before his hip replacement surgery. Herman v. Correctional Medical Services, Inc., C.A.10 (Wyo.) 2003, 66 Fed.Appx. 183, 2003 WL 21235499, Unreported. Evidence 509

4154. Issues determinable, practice and procedure generally

District court's decision in county employee's civil rights action alleging that his dismissal violated his substantive due process rights was not limited to due process claims but could include examination of facts behind county's decision to terminate employment; employee's legal arguments were inextricably intertwined with his factual allegations about county's method of operation. Adams v. Sewell, C.A.11 (Fla.) 1991, 946 F.2d 757. Civil Rights 1122

Since state prisoner had not shown a deprivation of a constitutionally protected interest, in that denial of parole did not amount to loss of liberty in the due process context, federal court, in prisoner's civil rights action against State Parole Board, did not need to address whether the board's procedures comported with due process. Jackson v. Reese, C.A.5 (Ga.) 1979, 608 F.2d 159. Constitutional Law 46(1)

In action brought by Canadian citizen challenging McKinney's N.Y. Social Services Law § 131-k rendering aliens unlawfully residing in United States ineligible for benefits under aid to families with dependent children program, in which action district court awarded retroactive welfare benefits against county commissioner of social services but denied such award against state commissioner of social services, there was no persuasive reason to consider plaintiff's elaborate theory supporting contention that state defendant was not entitled to immunity under U.S.C.A.Const. Amend. 11 where plaintiff was entitled to judgment against county defendant for same amount she could recover against state defendant. Holley v. Lavine, C.A.2 (N.Y.) 1979, 605 F.2d 638, certiorari denied 100 S.Ct. 1843, 446 U.S. 913, 64 L.Ed.2d 266. Federal Courts 757

When a constitutional claim is made under this section that is of "sufficient substance" to support federal jurisdiction, a district court has power under § 1343 of Title 28 to consider other claims based on this section without determining that latter claims, standing alone, are sufficient to support jurisdiction. Gonzalez v. Young, C.A.3 (N.J.) 1977, 560 F.2d 160, certiorari granted 98 S.Ct. 1232, 434 U.S. 1061, 55 L.Ed.2d 761, affirmed 99 S.Ct. 1905, 441 U.S. 600, 60 L.Ed.2d 508, on remand 599 F.2d 111. Federal Courts 219.1

Since record in civil rights action of terminated college instructor, claiming infringement of his constitutional right to free speech, contained sufficient evidence to indicate that termination was justified in light of those charges delineated in termination letter other than the charge involving issue of free speech, considering record as a whole trial court did not err in failing to determine claim under U.S.C.A.Const. Amend. 1. Stewart v. Bailey, C.A.5 (Ala.) 1977, 556 F.2d 281, on rehearing 561 F.2d 1195, rehearing denied 565 F.2d 163. Constitutional Law 46(1)

A prisoner's custodians cannot lawfully deny him adequate medical care even in instances of deliberate self-injury and, thus, issue whether plaintiff injured himself while incarcerated in penal institution administered by defendants was irrelevant to issues in action wherein plaintiff sought to recover against defendants on ground that he suffered

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two amputation operations to his right arm because he was denied adequate medical treatment during his incarceration. Scharfenberger v. Wingo, C.A.6 (Ky.) 1976, 542 F.2d 328. Civil Rights 1091

Where court found that nonrenewal of nontenured school teacher's contract of employment involved no property or liberty interest such as to require procedural due process, it was not required, in teacher's civil rights action against board, to consider teacher's contention that nonrenewal was substantively arbitrary and capricious. Weathers v. West Yuma County School Dist. R-J-1, C.A.10 (Colo.) 1976, 530 F.2d 1335. Federal Courts 757

In action challenging school disciplinary procedures, issues which person who had not been made party plaintiff might have had standing to raise as a representative plaintiff but which plaintiffs had no standing to raise were not properly before the court. Black Coalition v. Portland School Dist. No. 1, C.A.9 (Or.) 1973, 484 F.2d 1040. Federal Civil Procedure 881

Where junior high school teacher had no right to hearing in connection with nonrenewal of his contract for succeeding term, adequacy of hearing gratuitously granted to him was not open to review. Woodward v. Hereford Independent School Dist., N.D.Tex.1976, 421 F.Supp. 93. Schools 147.44

A state official may act unlawfully under state law without thereby violating Federal Constitution, and thus district court could not by indirection in reaching federal issues pass judgment on adequacy of conduct addressed by state laws. Karr v. Blay, N.D.Ohio 1976, 413 F.Supp. 579, 1 O.O.3d 221. Federal Courts 192

4155. Presence of petitioner, practice and procedure generally

Federal district court did not abuse its discretion by conducting trial of state prison inmate's §§ 1983 action against corrections officials by videoconference, with pro se inmate, defense counsel, and witnesses all appearing remotely; there was evidence that inmate was high escape risk and aggressive, requiring two officer escorts to court from prison 120 miles away, there were approximately 20 potential witnesses from state's corrections department scattered in various locations, court put appropriate safeguards in place to allow jurors to see all parties at same time, and action was one with straightforward issues. Thornton v. Snyder, C.A.7 (Ill.) 2005, 428 F.3d 690, rehearing and rehearing en banc denied, certiorari denied 2006 WL 584103. Federal Civil Procedure 1951

In order to determine whether prisoner should appear at trial of his civil litigation, court must consider such factors as whether prisoner's presence will substantially further resolution of the case, security risk presented by prisoner's presence, expense of prisoner's transportation and safekeeping, and whether suit could be stayed until prisoner is released without prejudice to the cause; consideration of those factors ensures that district court properly weighs interest of inmate in presenting his case in person against interest of state in maintaining inmate's incarceration. Latiolais v. Whitley, C.A.5 (La.) 1996, 93 F.3d 205. Convicts 6

In determining whether prisoner should be present for trial of his civil action, district court should consider the following factors: whether prisoner's presence will substantially further resolution of case and whether alternative ways of proceeding, such as trial on depositions, offer acceptable alternative, expense and potential security risk entailed in transporting and holding prisoner in custody for duration of trial, and likelihood that stay pending prisoner's release will prejudice his opportunity to present his claim, or defendant's right to speedy resolution of claim. Muhammad v. Warden, Baltimore City Jail, C.A.4 (Md.) 1988, 849 F.2d 107. Federal Civil Procedure 1951

Inmate had no right to attend pretrial conferences held in his § 1983 suit against the correctional facility and its officers and doctors. Woods v. Goord, S.D.N.Y.2002, 2002 WL 31296325, Unreported. Federal Civil Procedure 1921

4156. Dismissal, practice and procedure generally

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42 U.S.C.A. § 1983

Dismissal of debtors' § 1983 takings claims for failure to prosecute was warranted, since one-year statute of limitations for such claims had expired, district court on appeal had given debtors 20 days to amend their complaint but they did not do so, and even though years had passed, bankruptcy court asked them if they planned to amend and debtors answered "no." In re George, C.A.9 2003, 322 F.3d 586. Bankruptcy 2162

Dismissal with prejudice of arrestee's § 1983 suit against city and police alleging malicious prosecution was justified, under rule governing sanctions for discovery violations and under court's inherent authority to address flagrant contempt, even though the suit might have had some merit, where arrestee filed suit using false name, served unverified interrogatory answers containing lies about his true identity, birth date, and arrest record, lied under oath about his name and birth date in related case, gave same false name to avoid outstanding arrest warrants when underlying arrest was made, and used same false name throughout multi-year duration of his three state criminal trials and incarceration. Dotson v. Bravo, C.A.7 (Ill.) 2003, 321 F.3d 663. Federal Civil Procedure 1537.1; Federal Civil Procedure 2791; Federal Civil Procedure 2820

Issue of whether police officer deliberately refused for several minutes to help arrestee cover her breast while rear-handcuffed presented fact questions that could not be resolved on motion to dismiss on qualified immunity grounds arrestee's § 1983 action alleging violation of her Fourth Amendment rights. Fieldcamp v. City of New York, S.D.N.Y.2003, 242 F.Supp.2d 388. Federal Civil Procedure 1831

Pro se inmate's failure to timely serve doctor and nurse warranted dismissal of his §§ 1983 claims against them, where inmate complied with District Court's order to submit United States Marshal 285 forms for all defendants but, because doctor and nurse were no longer employed by prison's health care provider, forms were returned unexecuted, and inmate made no further attempts to serve doctor and nurse or to obtain their addresses. Daniels v. Correctional Medical Services, Inc., D.Del.2005, 380 F.Supp.2d 379, affirmed 2006 WL 623039. Federal Civil Procedure 1751

Voluntary dismissal without prejudice, of pro se plaintiff's § 1983 action alleging fraud, intentional infliction of emotional distress, and invasion of privacy, was warranted where defendant debt collection agency would not suffer any plain legal prejudice by grant of the motion; parties were still in early stages of the litigation. Estate of Williams-Moore v. Alliance One Receivables Management, Inc., M.D.N.C.2004, 335 F.Supp.2d 636. Federal Civil Procedure 1700

In forma pauperis civil rights suit of prisoner was subject to dismissal without prejudice under Prison Litigation Reform Act (PLRA) based on assertion of claims against arresting officer and public defender that did not state a claim because they were based on non-existent constitutional rights, were barred by guilty plea, involved actions not taken under color of state law, were based on speculation unsupported by factual allegations, or challenged validity of conviction without first satisfying *Heck* rule requiring favorable termination of habeas or postconviction challenges to conviction. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Federal Civil Procedure 2734

Issue of whether city had permanent and well settled unwritten policy and practice of heavy-handed abusive enforcement against African-Americans presented fact questions that could not be resolved on city's motion to dismiss § 1983 claims against it under respondeat superior theory arising from shooting death of African-American suspect by police officer. Leisure v. City of Cincinnati, S.D.Ohio 2003, 267 F.Supp.2d 848. Federal Civil Procedure 1831

Issue whether prison officials were entitled to qualified immunity on §§ 1983 free speech claims arising from officials' alleged interception of prisoner's outgoing, non-legal mail, could not be resolved at motion to dismiss phase, due to issues of fact relating to issue of whether officials' conduct was reasonable. Knight v. Keane, S.D.N.Y.2002, 247 F.Supp.2d 379. Federal Civil Procedure 1831

Issue of whether prisoner stated due process claim against prison officials, arising from being kept for 365 days in

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"keeplock" conditions could not be resolved at motion to dismiss phase, absent factual discovery as to whether prison officials complied with due process requirements. Knight v. Keane, S.D.N.Y.2002, 247 F.Supp.2d 379. Federal Civil Procedure 1831

Upon determining that mother's civil rights action against state and its officials, challenging child custody decisions, was barred by *Rooker-Feldman* doctrine, district court should have dismissed all of mother's claims, i.e., her state and federal claims, without prejudice, not just her state claims; jurisdictional deficiency in action derived from structural limitation on power of lower federal courts to review state court decisions, it did not turn on particular legal grounds on which mother attempted to obtain such review. Atkinson-Bird v. Utah, Div. of Child and Family Services, C.A.10 (Utah) 2004, 92 Fed.Appx. 645, 2004 WL 267754, Unreported. Federal Courts 15

Prisoner failed to establish that circuit court dismissed his prior petition for writ of certiorari, disputing prison disciplinary conviction, based on prisoner's failure to provide court with copy of past grievance form, as required to support prisoner's §§ 1983 action against prison officials alleging they denied him access to courts by refusing to give him copies of previous grievances; writ of certiorari was denied because prisoner did not include correct filing fee and several necessary documents, and grievance form was not listed as one of missing documents. Tyler v. Bett, C.A.7 (Wis.) 2004, 86 Fed.Appx. 970, 2004 WL 102875, Unreported. Prisons 4(10.1)

State prison inmate who had filed untimely motion to substitute successors for deceased corrections officials in § 1983 due process action against officials in their individual capacities, which also named wrong parties to be substituted, would not be given additional time prior to dismissal of claims against deceased officials in order to file amended motion naming proper successors and attempting to show excusable neglect for delay; there was no evidence that one official, then chief executive of entire corrections system, had any personal involvement in subject disciplinary proceedings, and claim against other official was totally conclusory. Swiggett v. Coombe, S.D.N.Y.2003, 2003 WL 174311, Unreported. Federal Civil Procedure 364

Issue of whether prosecution was terminated in arrestee's favor, so that arrestee could maintain malicious prosecution claim against village police department, county, county sheriff's department, and police officers, could not be resolved at motion to dismiss phase of § 1983 action because of factual dispute as to whether charges against arrestee were validly adjourned in contemplation of dismissal (ACD). Freedman v. Monticello Police Dept., S.D.N.Y.2003, 2003 WL 135751, Unreported. Federal Civil Procedure 1831

Sanction of dismissal of § 1983 complaint against police officer was warranted, where plaintiff failed to timely file amended complaint as ordered by the court and to serve the complaint and summons on defendant within time limit. Carreras-Rosa v. Alves-Cruz, C.A.1 (Puerto Rico) 2000, 215 F.3d 1311, Unreported, certiorari denied 121 S.Ct. 1356, 532 U.S. 920, 149 L.Ed.2d 286. Federal Civil Procedure 1741; Federal Civil Procedure 1751

Claim by prison inmate whose § 1983 action was dismissed without prejudice, after he failed to respond to second motion to dismiss within 30 days, that he had in fact responded, but that response was not timely filed in district court by authorities, was properly raised by moving for reconsideration of dismissal, rather than for first time on appeal. Shields v. Harris, C.A.8 (Ark.) 2000, 208 F.3d 218, Unreported. Federal Courts 625

4157. Summary judgment, practice and procedure generally--Generally

District court did not abuse its discretion in denying motion by agent of Puerto Rico Justice Department's Special Investigations Bureau (SIB) for reconsideration of grant of summary judgment for agent's superiors in action under § 1983 and § 1985, alleging retaliation for speech on matter of public concern and termination without due process; district court exhaustively chronicled agent's repeated delays and missed deadlines, counted at least fifteen requests for extensions of time by agent, and had been more than generous in offering agent repeated extensions of time. Torres-Rosado v. Rotger-Sabat, C.A.1 (Puerto Rico) 2003, 335 F.3d 1. Federal Civil Procedure 2651.1

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42 U.S.C.A. § 1983

Grant of summary judgment against pro se civil rights litigant had to be reversed, where litigant did not have adequate notice of district court's intention to treat government's filing as Rule 12(b)(6) motion converted into Rule 56 motion for summary judgment. Neal v. Kelly, C.A.D.C.1992, 963 F.2d 453, 295 U.S.App.D.C. 350. Federal Courts 914

In artist's civil rights action under §§ 1983 and 1988 against city, alleging that city ordinance which prohibited him from selling his art on city's streets and parks without first obtaining a license violated his rights under the First and Fourteenth Amendments, artist's claim in his reply brief to city's opposition to his motion for partial summary judgment that his art was constitutionally protected simply because it was art was clearly and unequivocally set forth in his motion, and thus, reply would not be struck on ground that it contained new claim; artist claimed in his motion that art was always entitled to First Amendment protection because it always communicated some idea or concept. White v. City of Sparks, D.Nev.2004, 341 F.Supp.2d 1129. Federal Civil Procedure 2554

Genuine issue of material fact existed as to whether statute of limitations had run on citizen's civil rights complaint against Puerto Rican municipality and mayor, precluding summary judgment. Class v. Commonwealth of Puerto Rico, D. Puerto Rico 2004, 309 F.Supp.2d 235. Federal Civil Procedure 2491.5

Genuine issue of material fact existed, as to reasonableness of city's action in dropping bomb on building in order to arrest occupants, and precluded summary judgment for city on resulting civil rights claims. In re City of Philadelphia Litigation, E.D.Pa.1995, 910 F.Supp. 212. Federal Civil Procedure 2491.5

District court had jurisdiction to reconsider grant of summary judgment against one of multiple § 1983 defendants on issue of liability, as court had not directed entry of opinion and order determining liability as "final judgment." Waste Conversion, Inc. v. Sims, D.N.J.1994, 868 F.Supp. 643. Federal Civil Procedure 2643.1

Pro se plaintiff's filing, in §§ 1983 action, entitled "Dispositive Motion of Facts," did not comply with requirements of local rule setting forth additional summary judgment motion procedures, and thus, could not be accepted as a summary judgment motion, where the filing provided factual statements, but those propositions were neither the results of a stipulation between the parties nor supported by evidentiary citations. Guy v. Maio, E.D.Wis.2005, 227 F.R.D. 498. Federal Civil Procedure 2547.1

4158. ---- Evidence, summary judgment, practice and procedure generally

Failure of university student editors to submit copies of potential newspaper articles that were not published due to dean's act of calling publishing company and directing that school newspaper not be published until approved by a university official was not a complete failure of proof entitling dean to summary judgment in § 1983 suit brought by university student editors against dean alleging First Amendment violations, as there was a copy of the last newspaper printed prior to dean's call in the record and there was nothing in the record indicating that future copies of the paper would have differed. Hosty v. Carter, C.A.7 (Ill.) 2003, 325 F.3d 945, rehearing granted, opinion vacated. Federal Civil Procedure 2491.5

4159. ---- Color of law, summary judgment, practice and procedure generally

State action requirement for relief under civil rights statute is necessarily fact based, but can properly be the subject of summary judgment. Rodriguez-Garcia v. Davila, C.A.1 (Puerto Rico) 1990, 904 F.2d 90. Federal Civil Procedure 2491.5

In civil rights and pendent state law wrongful death action brought against hospital, physician, county, county commissioners, and sheriff by administratrix of estate of patient who during treatment for his diabetic condition at hospital was diagnosed as suffering from delirium tremens and transported at treating physician's request to county jail, where he later died of acute alcohol abstinence syndrome, material fact issue existed as to whether the

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physician was acting under color of state law when he arranged to remove the patient to the county jail, precluding summary judgment for the physician on the civil rights claim. Morrison v. Washington County, Ala., C.A.11 (Ala.) 1983, 700 F.2d 678, certiorari denied 104 S.Ct. 195, 464 U.S. 864, 78 L.Ed.2d 171. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether city councilman was acting under color of state law when he allegedly used his position as a councilman to try to influence police not to arrest him after his male cohabitant called 911 to report domestic violence, precluding summary judgment on the cohabitant's § 1983 claim against the councilman for alleged violation of his equal protection rights. Lunini v. Grayeb, C.D.Ill.2004, 305 F.Supp.2d 893, reversed in part 395 F.3d 761, amended on denial of rehearing. Federal Civil Procedure 2491.5

Genuine issues of material fact regarding whether police officer was acting under color of law at time he injured his former spouse precluded summary judgment on § 1983 excessive force claims against officer and city, though it was uncontested that officer was on duty and in uniform in marked squad car when he stopped spouse's car, where reason that officer pulled spouse over was disputed. Czajkowski v. City of Chicago, Ill., N.D.Ill.1992, 810 F.Supp. 1428. Federal Civil Procedure 2491.5

Genuine issues of material fact existed, precluding summary judgment, on whether public television stations and members of commission governing Pennsylvania's state-funded public television network conspired to deny funding to applicant and, thus, whether television stations were state actors potentially liable for alleged constitutional deprivations. Independence Public Media of Philadelphia, Inc. v. Pennsylvania Public Television Network Com'n, E.D.Pa.1992, 808 F.Supp. 416, reconsideration denied 813 F.Supp. 335. Federal Civil Procedure 2491.5

Evidence raised fact issue as to whether newspaper and reporter conspired with state actor when newspaper published story containing information taken from confidential police report, precluding summary judgment on grounds that newspaper and reporter did not act under color of state law in civil rights action brought by police officer and his wife, who were subject of the reports; evidence indicated that reporter received the reports from another police officer with intent that reports be published. Scheetz v. Morning Call, Inc., E.D.Pa.1990, 747 F.Supp. 1515, affirmed 946 F.2d 202, rehearing denied, certiorari denied 112 S.Ct. 1171, 502 U.S. 1095, 117 L.Ed.2d 417. Federal Civil Procedure 2491.5

4160. ---- Custom or policy, summary judgment, practice and procedure generally

Material issues of fact as to whether it was policy of jail not to inform detainees of their bail status until they asked and whether this policy was reasonably related to legitimate goals precluded summary judgment for city on § 1983 action brought by arrestee who alleged that his due process rights were violated by keeping him in jail for five-day period without a hearing before magistrate and by not informing him about his bail status. Gaylor v. Does, C.A.10 (Colo.) 1997, 105 F.3d 572. Federal Civil Procedure 2491.5

Material issue of fact as to whether need for municipality to be alert for new civilian complaints filed against abusive police officer after his reinstatement to full-duty status was obvious, precluding summary judgment in § 1983 claimant's action against municipality and police department for police officer's excessive use of force against claimant following claimant's bus accident with off-duty police officer's automobile, was presented by evidence that police officer had been identified by police department as "violent-prone" individual who had personality disorder manifested by frequent quick-tempered demands for "respect," escalating into physical confrontations for which he always disavowed responsibility. Vann v. City of New York, C.A.2 (N.Y.) 1995, 72 F.3d 1040. Federal Civil Procedure 2491.5

There were genuine issues of material fact, precluding summary judgment in favor of city as to claims of civil

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rights violation under § 1983, concerning whether harassment of antiabortion protesters was city policy; evidence could have allowed trier of fact to infer existence of general municipal practice of First Amendment violations against antiabortion protesters. Cannon v. City and County of Denver, C.A.10 (Colo.) 1993, 998 F.2d 867. Federal Civil Procedure 2491.5

Evidence concerning alleged municipal policy permitting police officers to exercise unlimited discretion in making arrest and handling arrested persons in jail following arrest raised fact issue as to whether city approved unconstitutional practices, precluding summary judgment for city in action arising when arrestee died following arrest. Fields v. City of South Houston, Tex., C.A.5 (Tex.) 1991, 922 F.2d 1183, rehearing denied. Federal Civil Procedure 2491.5

Material question of fact, whether a prison policy contributed to health care professionals' alleged improper denial of pain medication to inmate suffering from granulocytic leukemia, precluded entry of summary judgment for prison officials in inmate's § 1983 action. Crooks v. Nix, C.A.8 (Iowa) 1989, 872 F.2d 800. Federal Civil Procedure 2491.5

Substantial issues of material fact existed as to whether city and police department followed policy or custom of affording less protection to victims of domestic violence than to victims of nondomestic attacks, precluding summary judgment in civil rights action brought against city by domestic abuse victim alleging violation of civil rights and equal protection. Watson v. City of Kansas City, Kan., C.A.10 (Kan.) 1988, 857 F.2d 690. Federal Civil Procedure 2491.5

Arrestee's testimony that police officers questioning him about theft "charged" him after he referred to theft accusation as "bullshit," threw him down on ground and punched him several times, kicked him repeatedly, then stood him up in an aggressive and brutal manner even though he did not resist arrest created fact question as to whether excessive force was used, precluding summary judgment in arrestee's § 1983 excessive force claim against officers. Wilson v. Lyons, D.Me.2003, 270 F.Supp.2d 73. Federal Civil Procedure 2491.5

Genuine issues of material fact, as to whether consensual sexual relationships between correctional officers and female jail inmates were so widespread that policymaking officials had constructive knowledge of them yet did nothing, precluded summary judgment on claim that sexual assault on female jail inmate by correctional officer was result of municipal custom or practice of ignoring sexual misbehavior. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Federal Civil Procedure 2491.5

Genuine issues of material fact regarding whether county sheriff and his department had a custom or policy of condoning a "code of silence," which sought to inhibit officers from reporting each other's malfeasance, precluded summary judgment on officer's § 1983 claim against sheriff and his department, alleging that such custom resulted in harassment by coworkers after officer reported fellow officer's misconduct. Baron v. Hickey, D.Mass.2003, 242 F.Supp.2d 66. Federal Civil Procedure 2497.1

Occupant of house that was allegedly intentionally burned by city police officers during search failed to create genuine issue of material fact regarding whether city had policy or custom of authorizing or allowing its officers to set houses ablaze in course of their duties as would preclude summary judgment on occupant's § 1983 claim against city for use of excessive force in violation of Fourth Amendment, where occupant did not point to any provision of police department manual which authorized burning of houses and also failed to prevent any evidence of other incidents of police officers' intentional burning of houses. Johnson v. City of Detroit, E.D.Mich.1996, 944 F.Supp. 586. Federal Civil Procedure 2491.5

Evidence that city manager possessed policy-making authority for municipality was essential element to § 1983 civil rights claim seeking to impose municipal liability for alleged retaliatory transfer and, thus, employee's failure to present evidence of policy-making authority entitled city to summary judgment. Jones v. City of Elizabeth City,

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N.C., E.D.N.C.1991, 840 F.Supp. 398, affirmed 2 F.3d 1149. Civil Rights 1351(5); Federal Civil Procedure 2497.1

Genuine issue of material fact as to whether practice challenged by motorists was county policy precluded summary judgment for board of county commissioners in action brought by motorists claiming that investigatory stops violated Fourth Amendment's prohibition against unreasonable seizures. Whitfield v. Board of County Com'rs of Eagle County, Colo., D.Colo.1993, 837 F.Supp. 338. Federal Civil Procedure 2491.5

County and county commissioners were entitled to judgment as a matter of law in § 1983 action based on search of home of sheriff's department lieutenant pursuant to search warrant, where lieutenant made no showing of policy, practice or custom on part of county or board of supervisors which led to alleged constitutional violations. Davison v. Frey, E.D.Mich.1993, 837 F.Supp. 235. Civil Rights 1351(4)

Genuine issues of material fact as to whether police department implemented adequate disciplinary procedures, whether there was customary practice within department of condoning use of excessive force and domestic violence against wives of police officers, whether the continued existence of such practices amounted to deliberate indifference, and whether there was a causal link between such practices and injuries to officer's spouse and child precluded summary judgment for city on civil rights claim of spouse and child for officer's alleged use of excessive force. Czajkowski v. City of Chicago, Ill., N.D.Ill.1992, 810 F.Supp. 1428. Federal Civil Procedure 2491.5

Fact question as to existence of police department policy of permitting arrest and incarceration without probable cause precluded summary judgment on council member's claim arising out of her arrest. Brown v. Smythe, E.D.Pa.1991, 780 F.Supp. 274. Federal Civil Procedure 2491.5

Evidence in § 1983 suit arising from mistaken arrest and jailing of plaintiff for failure to appear to serve sentence he had in fact already served raised disputed factual issues regarding whether alleged constitutional violations resulted from policy of sheriff's or from a custom of which sheriff was actually or constructively aware, precluding summary judgment on claim against sheriff in his official capacity. McDonald v. Dunning, E.D.Va.1991, 760 F.Supp. 1156. Federal Civil Procedure 2491.5

Issue of material fact as to whether municipal officials' allegedly deliberate indifference to inmate's serious medical needs was result of official policy, custom or decision of involved municipal entities precluded summary judgment for entities in inmate's § 1983 action alleging respondeat superior liability. Brown v. Coughlin, S.D.N.Y.1991, 758 F.Supp. 876, on reargument 869 F.Supp. 196. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether county had policy allowing tape-recording of employees' conversations and whether director of certain county office was policy maker precluded summary judgment on office employees' § 1983 claim against county for alleged violation of their constitutional rights in connection with director's tape-recording of their conversations in office. Dorris v. Absher, M.D.Tenn.1997, 959 F.Supp. 813, affirmed in part, reversed in part 179 F.3d 420. Federal Civil Procedure 2497.1

4161. ---- Deliberate indifference, summary judgment, practice and procedure generally

Genuine issue of material fact existed as to whether dentist's conduct displayed a deliberate indifference to prisoner's serious medical need, precluding summary judgment in prisoner's § 1983 action against dentist for allegedly violating his Eighth Amendment rights in delaying for 15 months before providing him with dentures. Farrow v. West, C.A.11 (Ala.) 2003, 320 F.3d 1235. Federal Civil Procedure 2491.5

Regarding first two attacks, prisoner failed to present sufficient evidence that prison officials knew of risk to his safety and disregarded risk to survive summary judgment in § 1983 action alleging Eighth Amendment violation; officials had no knowledge that he was at risk prior to first attack, prior to second attack prisoner did not

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specifically seek protection from attackers, identify gang members who threatened him after first attack, or inform officials of threats against him on day of second attack, after prisoner made officials aware that gang targeted him, officials transferred prisoner, and officials did not know before second attack that attackers belonged to gang. Lewis v. Richards, C.A.7 (Ind.) 1997, 107 F.3d 549. Federal Civil Procedure 2491.5

Fact issue as to whether city had been deliberately indifferent to rights of citizens precluded summary judgment in federal civil rights action brought against city after police officer, about whose hiring reservations had been expressed by several officials within hiring process due to officer's driving record, struck and fatally injured motorist while driving through intersection at high speed without turning on siren while responding to emergency call. Williams v. City and County of Denver, C.A.10 (Colo.) 1996, 99 F.3d 1009, rehearing granted, opinion vacated 140 F.3d 855, on rehearing 153 F.3d 730. Federal Civil Procedure 2491.5

Fact issue as to whether prison officials had knowledge of risk to safety of prisoner posed by other inmates as would allow finding of deliberate indifference to rights of prisoner, precluding summary judgment in federal civil rights action brought by prisoner after he was assaulted by other inmates, was presented by prisoner's testimony that he had prior to assaults identified to prison officials source of threats which had been made to him and by evidence that inmate who was believed to be posing threat was present at meeting at which inmate alleged that he informed officials of threats. Hayes v. New York City Dept. of Corrections, C.A.2 (N.Y.) 1996, 84 F.3d 614. Federal Civil Procedure 2491.5

Material issue of fact as to whether municipality and police department acted with "deliberate indifference" to dangers posed by abusive policeman who had been fully restored to full duty service, precluding summary judgment in § 1983 claimant's action against municipality and police department for police officer's excessive use of force against claimant following claimant's bus accident with off-duty police officer's automobile, was presented by evidence that police department understaffed its supervisory units that dealt with problem officers and that there was systematic lack of communication to supervisory divisions of information with regard to new civilian complaints against officers. Vann v. City of New York, C.A.2 (N.Y.) 1995, 72 F.3d 1040. Federal Civil Procedure 2491.5

Genuine issue of material fact existed, precluding summary judgment for sheriff and county, on whether sheriff knowingly or recklessly disregarded risk of serious harm from conditions in group cell but failed to take reasonable measures to abate it, for purposes of showing sheriff's deliberate indifference to risk as required to support § 1983 claim arising from pretrial detainee's injuries suffered in beating by other inmates; although sheriff worked toward construction of new jail, existing jail had no policy for classifying and segregating inmates, jailer had received no professional training, and jailer was stationed out of eyesight and earshot of cell. Hale v. Tallapoosa County, C.A.11 (Ala.) 1995, 50 F.3d 1579. Federal Civil Procedure 2491.5

When party fails to timely object to trial court's evidentiary rulings during proceedings, those rulings are reviewed under plain error standard. Abrams v. Lightolier Inc., C.A.3 (N.J.) 1995, 50 F.3d 1204. Federal Courts 635

Genuine issue of material fact precluding summary judgment existed in prisoner's civil rights action based on alleged inadequate medical treatment as to whether physician-in-charge at state correctional facility knew that prisoner, who had suffered stroke, should receive physical therapy and deliberately failed to provide it for nonmedical reasons, where, at time physician first saw prisoner, prisoner had already spent over seven months in prison system without receiving physical therapy prescribed by his preincarceration physician despite prisoner's notification to authorities of his deteriorating condition and need for immediate therapy, time was of essence since physical therapy must take place within approximately 18 months of stroke to be effective, physician sent prisoner to neurologist for expert evaluation rather than beginning physical therapy, physician then sent prisoner to other doctors for over four and one-half months before following neurologist's recommendation of physical therapy, and physical therapy would have placed considerable burden and expense on prison. Durmer v. O'Carroll, C.A.3 (N.J.) 1993, 991 F.2d 64. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

Issue of material fact as to whether corrections officer failed to intervene in altercation between inmate and other corrections officer precluded summary judgment for corrections officer on inmate's § 1983 claim; officer's failure to intervene to stop beating of inmate who was naked, handcuffed, and defenseless would provide ample basis for jury to conclude that officer had acted with deliberate indifference. Buckner v. Hollins, C.A.8 (Mo.) 1993, 983 F.2d 119, rehearing denied. Federal Civil Procedure 2491.5

Whether physician intentionally prolonged surgical intervention in order to prompt inmate to confess to swallowing drug-filled balloons was question of fact precluding summary judgment on issue whether physician was deliberately indifferent to inmate's need for surgery for ruptured appendix. Taylor v. Bowers, C.A.8 (Mo.) 1992, 966 F.2d 417, modified on rehearing, certiorari denied 113 S.Ct. 394, 506 U.S. 946, 121 L.Ed.2d 302. Federal Civil Procedure 2491.5

Material fact issues existed as to whether detainee made suicide threats to fellow inmates, whether inmates reported such threats to jail personnel in such manner as to be taken seriously, and whether jail personnel responded reasonably or with deliberate indifference, precluding summary judgment for jail personnel in civil rights action. Elliott v. Cheshire County, N.H., C.A.1 (N.H.) 1991, 940 F.2d 7. Federal Civil Procedure 2491.5

Questions of fact precluded summary judgment on whether juvenile's caseworkers with Massachusetts Department of Youth Services were recklessly or callously indifferent and violated juvenile's due process right of access to courts when caseworkers failed to tell juvenile and court of parent's statement indicating fabrication of charge that led to delinquency adjudication of juvenile. Germany v. Vance, C.A.1 (Mass.) 1989, 868 F.2d 9, rehearing denied. Federal Civil Procedure 2491.5

Genuine issues of material fact, as to whether state prison officials were aware of danger of rape which certain inmates posed to others and whether those officials acted in deliberate indifference to that danger, precluded summary judgment in rape victim inmate's civil rights suit. Roland v. Johnson, C.A.6 (Mich.) 1988, 856 F.2d 764. Federal Civil Procedure 2491.5

Material issues of fact existed as to whether state correctional officials evidenced deliberate indifference in connection with inmate's unexplained death in order to hold correctional officials liable under § 1983 for death of inmate, precluding summary judgment; inmate's mother had made phone calls to prison officials expressing son's need for protection from other inmates, order requiring separation of inmate from fellow inmate was not enforced, and inmate's mother had been denied access to deceased inmate's personal effects, including threatening letters from other inmate. Harris By and Through Harris v. Maynard, C.A.10 (Okla.) 1988, 843 F.2d 414. Federal Civil Procedure 2491.5

Whether the Due Process Clause triggers a duty on the part of governmental actors to provide protection against an attack by private actors in a given factual setting is a question of law appropriate for resolution on summary judgment in a §§ 1983 action. Matican v. City of New York, E.D.N.Y.2006, 424 F.Supp.2d 497. Federal Civil Procedure 2491.5

Genuine issue of material fact, as to whether failure to treat prisoner's cavities and broken tooth for at least seven months, during which time prisoner complained of pain, constituted deliberate indifference on part of prison medical contractor, precluded summary judgment in contractor's favor in civil rights damages suit. Goodnow v. Palm, D.Vt.2003, 264 F.Supp.2d 125. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether police officials had actual knowledge of an objectively substantial risk of harm to pretrial detainee who committed suicide while in their custody, and whether they responded to that risk with deliberate indifference, precluding summary judgment for officials on issue of liability in civil rights action based on that suicide. Hare v. City of Corinth, Miss., N.D.Miss.1996, 949 F.Supp. 456, reversed 135 F.3d 320. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

Genuine issue of material fact precluded summary judgment on whether New York correctional superintendent's knowledge and failure to intercede regarding prisoner's requests for medical treatment and medically necessary diet constituted deliberate indifference to prisoner's medical needs for purposes of his individual liability for § 1983 claim. Mandala v. Coughlin, E.D.N.Y.1996, 920 F.Supp. 342. Federal Civil Procedure 2491.5

Material issues of fact, precluding summary judgment on behalf of prison officials, existed as to whether prisoner had been subjected to cruel and unusual punishment by being left in cell without running water in sink; there was dispute as to whether prisoner had notified authorities, and as to whether officers had shown necessary deliberate indifference to his plight. Thomas v. Brown, N.D.Ind.1993, 824 F.Supp. 160. Federal Civil Procedure 2491.5

Material fact issues remained as to whether sheriff and deputies acted with deliberate indifference to suicidal detainee's medical needs, precluding summary judgment on issue of liability for alleged § 1983 civil rights violation. Merideth v. Grogan, N.D.Ga.1992, 812 F.Supp. 1223, affirmed 985 F.2d 579. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether officer physically harmed his former spouse, whether officer's partner knew or should have known that officer was assaulting former spouse, and whether partner acted deliberately indifferent in either turning away or failing to attempt to stop officer precluded summary judgment on former spouse's civil rights claims against partner. Czajkowski v. City of Chicago, Ill., N.D.Ill.1992, 810 F.Supp. 1428. Federal Civil Procedure 2491.5

4162. ---- Discrimination

Georgia Environmental Protection Division (EPD) was entitled to summary judgment in neighborhood association's civil rights action for alleged racial discrimination in the siting and permitting of solid waste landfill given complete absence of any showing of discriminatory conduct by EPD coupled with plaintiffs' apparent abandonment of any such claims by concession during oral argument; it was county, not EPD, which selected site, and principal responsibility of EPD lay in ascertaining technical suitability of already chosen site. Rozar v. Mullis, C.A.11 (Ga.) 1996, 85 F.3d 556. Civil Rights 1073; Federal Civil Procedure 2498.3

Genuine issue of material fact as to whether defendant mayor and municipality would have refused to accept employee's resignation until after elections, which included mayoral race in which defendant and employee were candidates, regardless of employee's political affiliation precluded summary judgment for defendants in employee's action alleging political discrimination in violation of the First Amendment. Rivera Torres v. Ortiz Velez, D.Puerto Rico 2002, 306 F.Supp.2d 76, appeal denied 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Federal Civil Procedure 2497.1

Material issues of fact, as to whether city parks official intentionally discriminated against black representatives of nonprofit organization by denying presence of vendors when granting meeting permit and refusing to clean up park, precluded summary judgment that parks department had not violated representatives' equal protection rights. Epileptic Foundation v. City and County of Maui, D.Hawai'i 2003, 300 F.Supp.2d 1003. Federal Civil Procedure 2491.5

Material issues of fact, as to whether enhanced scrutiny was given to work of African-American employees of state department of human services, and attempt was made to fire one of them, in response to their prior employment discrimination complaints, precluded summary judgment against employees in their § 1983 action claiming unlawful retaliation. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Federal Civil Procedure 2497.1

Fact question as to whether non-minority city employees who engaged in similar alterations with other employees

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as African-American employee were treated differently than plaintiff precluded summary judgment on plaintiff's § 1983 claim for failure to state prima facie case. 42 U.S.C.A. § 1983. Chandler v. City of Newark, D.Del.2001, 2001 WL 902209, Unreported. Federal Civil Procedure 2497.1

4163. ---- Personal participation, summary judgment, practice and procedure generally

Genuine issue of material fact existed as to whether state prison official's personal involvement in classification decision with respect to inmate was sufficient to create liability for violating inmate's Fourteenth Amendment rights due to the failure to hold hearing prior to administrative segregation precluded summary judgment in favor of prison official in § 1983 action. Hardin v. Straub, C.A.6 (Mich.) 1992, 954 F.2d 1193. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether named physician was personally involved with plaintiff's care or whether he was being sued on respondeat superior basis, precluding summary judgment in inmate's § 1983 action. Brown v. Sheridan, N.D.N.Y.1993, 150 F.R.D. 462. Federal Civil Procedure 2491.5

4164. ---- Child welfare, summary judgment, practice and procedure generally

Genuine issues of material fact existed as to whether child welfare caseworker deliberately disregarded mother's religious beliefs by placing child with Catholic foster home against wishes of Jewish mother, and whether caseworker made a reasonable effort to find a Jewish home for child, precluding summary judgment for caseworker in § 1983 claim brought by mother alleging caseworker violated mother's free exercise right under the First Amendment. Bruker v. City of New York, S.D.N.Y.2004, 337 F.Supp.2d 539. Federal Civil Procedure 2491.5

Genuine issue of material fact existed, as to whether admitted neglect of duties by city worker supervising foster care placement of child proximately caused deprivation of child's constitutional liberty interest in not being sexually abused, and precluded summary judgment for worker; worker's neglect exposed child to high risk of repeat sexual abuse by child's brother, an event which did occur, and furthermore, child's expert's report and human services' manual both indicated that, as previous victim, child was at high risk for sexual abuse by others as well, an event which also occurred. Wendy H. By and Through Smith v. City of Philadelphia, E.D.Pa.1994, 849 F.Supp. 367. Federal Civil Procedure 2515

Genuine issues of material fact, as to whether children who had been involuntarily placed in custody of Philadelphia Department of Human Services were being provided with adequate food, shelter, clothing, medical care, and reasonable safety, precluded summary judgment on their substantive due process claim alleging violation of their constitutional right to be free from harm while in foster care. Baby Neal v. Casey, E.D.Pa.1993, 821 F.Supp. 320, vacated in part, remanded 43 F.3d 48, reconsideration denied 1995 WL 728589. Federal Civil Procedure 2491.5

4165. ---- Education, schools and students, summary judgment, practice and procedure generally

Genuine issue of material fact as to whether state-university professor's use of nickname for female student based on her supposed physical resemblance to White House intern involved in widely-covered, scandalous affair with President of the United States, and comments to student based on same theme, were severe enough to transcend bounds of propriety and decency precluded summary judgment on student's claim under § 1983 alleging that professor violated her equal protection rights by engaging in sexual harassment. Hayut v. State University of New York, C.A.2 (N.Y.) 2003, 352 F.3d 733, 197 A.L.R. Fed. 659. Federal Civil Procedure 2491.5

Material issue of fact as to whether school officials treated male student who was subject to harassment and harm by other students, due to his sexual orientation, differently than female students who suffered similar harassment precluded summary judgment on student's § 1983 claim against school officials alleging equal protection violation,

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in view of evidence that student was treated differently than other students, that different treatment was based on student's gender, and that officials acted with at least deliberate indifference. Nabozny v. Podlesny, C.A.7 (Wis.) 1996, 92 F.3d 446. Federal Civil Procedure 2491.5

Genuine issue of material fact existed regarding whether school board removed book on voodoo and hoodoo practices from all parish school libraries for constitutionally impermissible reasons, thereby precluding summary judgment in favor of parents who challenged decision; while circumstances surrounding book removal suggested unconstitutional motivation, single decisive motivation behind school board's removal decision could not be determined upon record where there was no undisputed statement by school board as single voting body as to reason for its action. Campbell v. St. Tammany Parish School Bd., C.A.5 (La.) 1995, 64 F.3d 184. Federal Civil Procedure 2491.5

Whether high school principal violated student's Fourteenth Amendment rights when during "field" trip he broke through locked bathroom door in student's hotel room and knocked her against wall involved disputed fact questions, precluding summary judgment in student's § 1983 suit; alleged blows were not struck in school context where need for immediate disciplinary control is at its greatest, principal was "in loco parentis" to student during trip, and there was dispute as to whether blows were disciplinary in nature or were motivated by anger. Webb v. McCullough, C.A.6 (Tenn.) 1987, 828 F.2d 1151. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether group home's placement of Jewish foster child in a Catholic school, rather than a public high school, was reasonable, and whether foster child encountered significant Catholic influence as a result of the placement, precluding summary judgment for group home in First Amendment claim brought by child's mother alleging group home failed to accommodate mother's religion in violation of the First Amendment's guarantee to free exercise. Bruker v. City of New York, S.D.N.Y.2004, 337 F.Supp.2d 539. Federal Civil Procedure 2491.5

Material issues of fact as to whether student was denied free appropriate public education (FAPE) over approximately 12-month period in violation of Individuals with Disabilities Education Act (IDEA) precluded summary judgment for school district on student's § 1983 claim. O.F. ex rel. N.S. v. Chester Upland School Dist., E.D.Pa.2002, 246 F.Supp.2d 409. Federal Civil Procedure 2491.5

There were issues of fact, precluding summary judgment, as to whether graduate student was retaliated against by faculty members for exercising free speech rights in accusing advisor of misappropriating his research, in light of evidence that student was barred from using laboratory and required to choose new dissertation topic. Qvyjt v. Lin, N.D.Ill.1997, 953 F.Supp. 244. Federal Civil Procedure 2491.5

Material issue of fact as to whether students were provided minimal due process rights which should have taken place prior to their punishment precluded summary judgment for public school officials, in their individual capacities, on basis of qualified immunity with regard to students' procedural due process claims. Orange v. County of Grundy, E.D.Tenn.1996, 950 F.Supp. 1365. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether school district was a state actor which could be sued under § 1983 by workers' compensation claimants for denial of medical benefits under Pennsylvania workers' compensation law. Sullivan v. Barnett, E.D.Pa.1996, 913 F.Supp. 895. Federal Civil Procedure 2491.5

Issue of material fact as to whether elementary school teacher violated student's substantive due process rights by striking student on head with grade book precluded summary judgment for teacher in student's § 1983 action; disputes existed as to whether teacher had disciplinary reason for administering punishment, extent of student's injury, and teacher's state of mind. Meyer by Wyrick v. Litwiller, W.D.Mo.1990, 749 F.Supp. 981. Federal Civil Procedure 2491.5

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Material issue of fact as to whether university intended to discriminate against women's intercollegiate athletic programs precluded summary judgment in action alleging unlawful discrimination, where university explicitly classified intercollegiate athletic teams on basis of gender. Haffer v. Temple University of the Com. System of Higher Educ., E.D.Pa.1987, 678 F.Supp. 517, on reconsideration.

4166. ---- Employment, summary judgment, practice and procedure generally

Whether public employer's search of hospital supervisor's office was reasonable, both in its inception and in its scope, presented factual question precluding summary judgment in supervisor's civil rights action, where employer characterized search as motivated by need to secure state property, but supervisor contended that search was investigatory search whose purpose was simply to discover evidence that would be of use in administrative proceedings. (Per Justice O'Connor, with the Chief Justice and two Justices concurring and one Justice concurring in judgment.) O'Connor v. Ortega, U.S.Cal.1987, 107 S.Ct. 1492, 480 U.S. 709, 94 L.Ed.2d 714, on remand 817 F.2d 1408. Federal Civil Procedure 2491.5

District court did not abuse its discretion in dismissing physician's supplemental state law claims for premium pay and wrongful termination from position with Department of Public Health, following grant of summary judgment to defendants on physician's § 1983 due process claim, the sole federal claim before it. Dyack v. Commonwealth of Northern Mariana Islands, C.A.9 (N. Mariana Islands)2003, 317 F.3d 1030. Federal Courts 18

District court could have entered summary judgment sua sponte in favor of city on police officer's § 1983 First Amendment claim, and district court's grant of summary judgment on that claim thus would be affirmed, despite fact that premature dismissal of § 1983 claim prevented officer from responding to summary judgment motion that specifically addressed First Amendment claim; no dispute of material fact existed, and issues relevant to First Amendment claim were fully argued in individual defendant's summary judgment motion and officer's response to that motion. David v. City and County of Denver, C.A.10 (Colo.) 1996, 101 F.3d 1344, rehearing denied, certiorari denied 118 S.Ct. 157, 522 U.S. 858, 139 L.Ed.2d 102. Federal Courts 914

Genuine issue of material fact regarding whether proffered reasons for borough's denial of promotion to black police sergeant, that each of candidates were evaluated by same criteria and that chosen candidates had received highest evaluation scores, were pretext precluded summary judgment on black police sergeant's race discrimination claims, where member of reviewing committee stated that committee had minimized importance of recommendation the sergeant had received from his black supervisor, record did not indicate that race of any other evaluator was source of concern for reviewing committee, black police sergeant received lower score for education and self-improvement than chosen candidate who, unlike the sergeant, had not yet obtained college degree, and black police sergeant received lower score for length and merit of service than candidates with fewer years of service. Hampton v. Borough of Tinton Falls Police Dept., C.A.3 (N.J.) 1996, 98 F.3d 107. Federal Civil Procedure 2497.1

Assuming he had standing, unsuccessful candidate for power plant maintenance worker position at state-fun facility made sufficient allegations to raise genuine issue of material fact, precluding summary judgment against him, in claiming that his rights were infringed by unfair advantage temporary job inevitably bestowed on alleged political appointee in contest for permanent position. Tarpley v. Jeffers, C.A.7 (Ill.) 1996, 96 F.3d 921. Federal Civil Procedure 2497.1

Former village employee failed to create genuine issue of material fact regarding whether elimination of his full-time civil service position as building inspector for asserted economic and efficiency reasons was in fact undertaken in bad faith to avoid protections afforded to him by state civil service law as would preclude summary judgment on issue of damages in his § 1983 claim against village, village's board of trustees and individual board members for deprivation of alleged property interest without due process, where former village employee merely cited to village's decision to appoint another individual to part-time building inspector position, overall increase in

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village's budget in year following elimination of his position, village mayor's testimony that his motivation in abolishing position was to revamp building operations department, and village's creation of three positions which entailed functions previously performed by former village employee. Cifarelli v. Village of Babylon, C.A.2 (N.Y.) 1996, 93 F.3d 47. Federal Civil Procedure 2497.1

As there was no evidence in record as to whether county property appraiser's office even implicated partisan concerns for purposes of determining whether appraiser's office employees could be discharged for their political affiliation, summary judgment for appraiser, in his official capacity, in former employees' action, alleging that appraiser violated their First Amendment rights by firing them because they supported appraiser's opponent in recent election, would be vacated. Parrish v. Nikolits, C.A.11 (Fla.) 1996, 86 F.3d 1088, certiorari denied 117 S.Ct. 1818, 520 U.S. 1228, 137 L.Ed.2d 1027. Federal Civil Procedure 2497.1; Federal Courts 914

Former city police officer, who was allegedly discharged by biased police committee and city council and who was allegedly not given adequate time to speak in his posttermination hearing, failed to create genuine issue of material fact regarding whether he was denied procedural due process as would preclude summary judgment on his § 1983 claim against city, city's mayor and city's police chief, as evidence indicated that former police officer was in no way restricted from being represented by counsel or examining and cross-examining witnesses during his posttermination hearing, and administrative and judicial review available under state system provided adequate remedy to redress alleged wrongs. Bell v. City of Demopolis, Ala., C.A.11 (Ala.) 1996, 86 F.3d 191. Federal Civil Procedure 2497.1

Genuine issue of material fact existed as to whether county employee's statements to co-workers and others accusing supervisor of mismanagement and possible criminal conduct involved matters of public concern so as to be protected by First Amendment, precluding summary judgment in § 1983 action brought by county employee alleging that she was discharged in violation of First Amendment because of statements she made about her supervisor. Johnson v. Multnomah County, Or., C.A.9 (Or.) 1995, 48 F.3d 420, certiorari denied 115 S.Ct. 2616, 515 U.S. 1161, 132 L.Ed.2d 858. Federal Civil Procedure 2497.1

Genuine issue of material fact regarding whether legislative auditor's contacts with Federal Bureau of Investigation (FBI) played substantial role in legislature's decision to terminate him precluded summary judgment on his § 1983 First Amendment claim on lack of causation grounds. Barnard v. Jackson County, Mo., C.A.8 (Mo.) 1995, 43 F.3d 1218, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 53, 516 U.S. 808, 133 L.Ed.2d 17. Federal Civil Procedure 2497.1

Genuine issues of material fact existed regarding whether terminated public employee/deputy director of examinations had given legislative committee answers that were responsive and truthful, precluding summary judgment against her on her § 1983 action which alleged that she had been terminated in violation of her free speech rights. Piesco v. Koch, C.A.2 (N.Y.) 1993, 12 F.3d 332, on remand 1994 WL 67833. Federal Civil Procedure 2491.5

Fact questions as to whether employees impliedly consented to vehicle searches as they left parking lot they had earlier entered with knowledge of posted signs authorizing search of their vehicles, or whether they were seized, whether any such seizure was unlawful and thus whether employees consented to search by cooperating with it, precluded summary judgment in employee's § 1983 class action arising out of the search. McGann v. Northeast Illinois Regional Commuter R.R. Corp., C.A.7 (Ill.) 1993, 8 F.3d 1174, rehearing and suggestion for rehearing en banc denied. Federal Civil Procedure 2491.5

Material fact issues existed as to whether deputy's off-duty comments to fellow deputy about possible misconduct by superior and about likelihood that departmental investigation would reveal such misconduct interfered with proper functioning of department such that department's interest as employer in promoting effective and efficient public service outweighed deputy's First Amendment rights, precluding summary judgment for either deputy or

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county and sheriff in deputy's civil rights action. Glass v. Dachel, C.A.7 (Wis.) 1993, 2 F.3d 733. Federal Civil Procedure 2491.5

Material issues of fact existed surrounding public employee's demotion, precluding summary judgment for state on employee's claim that he was discriminated against on basis of his political affiliation in violation of § 1983. Aponte-Santiago v. Lopez-Rivera, C.A.1 (Puerto Rico) 1992, 957 F.2d 40. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether interest of employee of medical examiner's office in responding to newspaper reporter's inquiry about racial discrimination charges brought against office outweighed county's interest in promoting efficiency in its operations and whether her response was substantial or motivating factor in decision to transfer or otherwise penalize her, precluding summary judgment on her claim that she was transferred in violation of the First Amendment. Boger v. Wayne County, C.A.6 (Mich.) 1991, 950 F.2d 316. Federal Civil Procedure 2497.1

Allegations by employee that employer knew that he had to make financial sacrifices to take job with employer, including moving his household from another state and having his wife give up her old job and take less desirable job, were sufficient, under Alabama law, to raise genuine question of fact, precluding summary judgment, as to whether employee provided some substantial consideration for contract of "permanent" employment apart from services to be rendered. Green v. City of Hamilton, Housing Authority, C.A.11 (Ala.) 1991, 937 F.2d 1561, rehearing denied 949 F.2d 1164. Federal Civil Procedure 2497.1

Evidence that was determined to be sufficient to create genuine issue of material fact as to intentional discrimination for purposes of Title VII and the Age Discrimination in Employment Act also served to create genuine issue of material fact for purposes of discrimination claim under § 1983. Sischo-Nownejad v. Merced Community College Dist., C.A.9 (Cal.) 1991, 934 F.2d 1104. Federal Civil Procedure 2497.1

Genuine issues of material fact existed, precluding summary judgment for employers, on question of whether employee's position as legal investigator with city's law department was policy-making or confidential position for which political affiliation would have been appropriate requirement. Matlock v. Barnes, C.A.7 (Ind.) 1991, 932 F.2d 658, certiorari denied 112 S.Ct. 304, 502 U.S. 909, 116 L.Ed.2d 247. Federal Civil Procedure 2497.1

Material issues of fact existed as to whether state employee's constitutional right to pretermination process was respected in connection with his removal, precluding summary judgment for employee's supervisor in employee's action under § 1983. Wheaton v. Webb-Petett, C.A.9 (Or.) 1991, 931 F.2d 613. Federal Civil Procedure 2497.1

No order or paper in case put former regional managers of Puerto Rico Automobile Accident Compensation Administration on notice that they had to bring forward all their evidence about nature of regional manager's job, so that district court should not have granted summary judgment sua sponte in respect to their entire complaint, including their request for reinstatement to their former jobs and for certain vacation and sick leave benefits that they claimed were unlawfully taken from them and should only have ruled on qualified immunity issue; former regional managers might have additional evidence about the responsibility of the job as it was actually practiced and to explain nature of their claims for vacation and other benefits. Bonilla v. Nazario, C.A.1 (Puerto Rico) 1988, 843 F.2d 34. Federal Civil Procedure 2497.1

Material issues of fact existed as to whether any city employee with final policymaking authority retaliated against city contractor by failing to renew contract based on contractor's speech allegedly addressing matter of public concern, precluding summary judgment for city on contractor's First Amendment retaliation claim under § 1983. Bolden v. City of Topeka, D.Kan.2004, 318 F.Supp.2d 1076. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether defendant mayor and municipality would have denied municipal

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employee's proposed transfer to Commonwealth department regardless of employee's political affiliation precluded summary judgment for defendants in employee's action alleging political discrimination in violation of the First Amendment. Rivera Torres v. Ortiz Velez, D.Puerto Rico 2002, 306 F.Supp.2d 76, appeal denied 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Federal Civil Procedure 2497.1

Genuine issue of material fact, as to whether black director of curriculum and assessment for Connecticut public school district was in fact treated differently because of her race, precluded summary judgment on claim by superintendent and deputy superintendent that they were entitled to qualified immunity from liability to director under §§ 1983; director's equal protection right to be free from race discrimination was well-established at time of events giving rise to suit, and reasonable official would not have thought it acceptable to treat director differently because of her race. Grey v. City of Norwalk Bd. of Educ., D.Conn.2004, 304 F.Supp.2d 314. Federal Civil Procedure 2497.1

Genuine issues of material fact as to whether county sheriff knew that employee was in an interracial marriage at the time he made decision not to place employee on the jail officer eligibility list, and at the time he terminated employee's part-time position with the county, precluded summary judgment, in employee's action against sheriff, under § 1981, § 1981, and Title VII. Jones v. Adams County, Wisconsin, W.D.Wis.2003, 297 F.Supp.2d 1132. Federal Civil Procedure 2497.1

Genuine issues of material fact existed as to whether working conditions and duties of employee's new position, following reclassification of her prior position as trust position and her transfer, were equal to or similar to those of her previous career position, as required by Puerto Rico law, and, if they were not, as to whether transfer was motivated by discriminatory animus, precluding summary judgment in political discrimination action under § 1983. Huertas Morales v. Agosto Alicea, D.Puerto Rico 2003, 278 F.Supp.2d 164. Federal Civil Procedure 2497.1

Material issues of fact, as to whether state department of human services took adverse action against African-American employees after they complained about improper recruitment of new department member and sought information about her hiring under state freedom of information statute, precluded summary judgment for department in § 1983 action claiming First Amendment violations. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Federal Civil Procedure 2497.1

Genuine issue of material fact regarding whether former state employee was constructively discharged after exercising his free speech rights in press conference precluded summary judgment on his § 1983 claims against his former supervisors that he was constructively discharged in violation of First Amendment. Flood v. State of Ala. Dept. of Indus. Relations, M.D.Ala.1996, 948 F.Supp. 1535, affirmed 136 F.3d 1332. Federal Civil Procedure 2497.1

Material issues of fact as to whether worker was terminated from his town park manager position or resigned and when that event finally concluded his employment precluded summary judgment for town on worker's § 1983 due process claim. Krennerich v. Inhabitants of Town of Bristol, D.Me.1996, 943 F.Supp. 1345. Federal Civil Procedure 2497.1

Genuine issues of material fact existed as to whether sexual harassment in police department was so widespread as to constitute constructive acquiescence of senior policymakers of police department and whether police department provided adequate training for its employees to prevent sexual harassment, precluding summary judgment on female police officer's sexual harassment in the workplace claim asserted under § 1983. Wise v. New York City Police Dept., S.D.N.Y.1996, 928 F.Supp. 355. Federal Civil Procedure 2497.1

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Issues of material fact existed as to whether police officials could reasonably have believed that their alleged acts of retaliation against female police officer who had filed discrimination complaints did not violate her clearly established rights, precluding summary judgment in female officer's § 1983 action; alleged acts implicated system-wide discrimination and thus involved matter of public concern. Domenech v. City of New York, S.D.N.Y.1996, 927 F.Supp. 106. Federal Civil Procedure 2497.1

Genuine issue of material fact regarding whether physician employed by public transportation authority intentionally discriminated against female employee during physical examination precluded summary judgment on female employee's § 1983 claim against physician for sexual harassment, where female employee alleged that physician had made inappropriate physical contact during physical examination, that physician had complimented female employee on her tattoo during examination and that physician told female employee that she could call him "Louie," and physician merely presented letter of another physician stating that alleged incidents of physical contact were "likely" to have been inadvertent and incidental. Ascolese v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1996, 925 F.Supp. 351. Federal Civil Procedure 2497.1

Fact questions as to whether community college president was motivated to suspend tenured teacher because teacher exercised First Amendment right to free association precluded summary judgment in teacher's § 1983 civil rights action. Gardetto v. Mason, D.Wyo.1994, 854 F.Supp. 1520. Federal Civil Procedure 2497.1

Genuine issue of material fact as to whether county human rights commission was liable for violating free speech rights of commission's executive director when it decided to terminate him precluded summary judgment in director's § 1983 action. Barrett v. Orange County Human Rights Com'n, S.D.N.Y.2003, 2003 WL 1699534, Unreported. Federal Civil Procedure 2497.1

4167. ---- Housing, summary judgment, practice and procedure generally

Material issues of fact, precluding summary judgment on behalf of housing authority in civil rights action, existed as to whether authority had appropriately established amount of utility fees includable as reasonable utility allowance and subject to 30% of income overall rent limit, and what portion was excess and subject to surcharge; tenants had produced evidence that occurrence of surcharging was as high as 75%, authority conceded it had not adopted new allowances or formally readopted old ones after new federal regulations were imposed, and it had failed to provide documentation that old allowances were consistent with new federal guidelines. Dorsey v. Housing Authority of Baltimore City, C.A.4 (Md.) 1993, 984 F.2d 622. Federal Civil Procedure 2491.5

4168. ---- Objective reasonableness, summary judgment, practice and procedure generally

Genuine issue of material fact existed as to whether state police officers' activation of the special emergency response team (SERT) against suspect who had known psychological and medical conditions, arrival at suspect's residence with a helicopter, use of bright lights, breaking of windows, and tear gas use were objectively reasonable responses to situation that arose when neighbor lodged complaint against suspect and responding officers believed that suspect might be targeting them with a laser-sighted firearm, precluding summary judgment for officers in Fourth Amendment excessive force claim brought by survivors of suspect who suffered a fatal heart attack allegedly resulting from the incident. Estate of Smith v. Marasco, C.A.3 2003, 318 F.3d 497, on remand 2004 WL 633276. Federal Civil Procedure 2491.5

4169. ---- Police activities, summary judgment, practice and procedure generally

Genuine issues of material fact as to whether police officers knew or should have known that arrestee was a current tenant of the residence into which he entered, and whether officers ignored substantial exculpatory evidence and relied solely on landlord's claim that arrestee was not a tenant, precluded summary judgment in favor of officers, on issue of whether officers had probable cause to support arrest for burglary of the residence or other criminal

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wrongdoing, under Ohio law, in arrestee's §§ 1983 wrongful arrest claim. U.S.C.A. Const.Amend.4; Radvansky v. City of Olmsted Falls, C.A.6 (Ohio) 2005, 395 F.3d 291. Federal Civil Procedure 2491.5

Genuine issues of material fact existed underlying determination as to whether police officers, who were informed that apartment resident was experiencing a seizure, used excessive force to quiet resident, who was flailing his arms due to his seizure, whose face was allegedly repeatedly pushed into the floor by officers, and who allegedly was struck in the head with a flashlight which had previously been jammed into his mouth, precluding summary judgment in favor of officers on section 1983 excessive force claim. Rivas v. City of Passaic, C.A.3 (N.J.) 2004, 365 F.3d 181. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether emergency medical technicians (EMTs), who responded to an emergency in an apartment where resident was experiencing a seizure, deprived resident of his substantive due process right to be free from a state-created danger, precluding summary judgment in favor of EMTs on section 1983 claim; issues of material fact existed as to whether resident was a member of a "discrete class" of individuals subjected to a potential harm caused by EMTs' actions, whether EMTs consciously disregarded a great risk of serious harm to resident by falsely accusing resident of acting violently and then abandoning resident to the police, and whether EMTs created an opportunity for harm that would not have otherwise existed. Rivas v. City of Passaic, C.A.3 (N.J.) 2004, 365 F.3d 181. Federal Civil Procedure 2491.5

Allegation by homeowners, that one of 17 police officers who executed search warrant for home caused damage to their truck, was insufficient to raise factual dispute necessary to survive officers' motion for summary judgment in homeowners' § 1983 action; homeowners did not actually see any of the officers damage the truck, acknowledged that their sons had access to the garage where the truck was located, and relied solely on admission by officer that he was inside the truck at one point. Molina ex rel. Molina v. Cooper, C.A.7 (Ill.) 2003, 325 F.3d 963. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether fatal heart attack suffered by suspect was a foreseeable consequence of state police officers' conduct of arriving at suspect's residence with a helicopter, using bright lights, breaking windows, and using tear gas, precluding summary judgment for officers in substantive due process claim under state-created danger doctrine brought by survivors of suspect. Estate of Smith v. Marasco, C.A.3 2003, 318 F.3d 497, on remand 2004 WL 633276. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether officers' conduct both with regard to activating Special Emergency Response Team (SERT) and with regard to searching woods for suspect shocked the conscience, precluding summary judgment for officers in substantive due process claim under state-created danger doctrine brought by survivors of suspect, who allegedly suffered a fatal heart attack resulting from officers' conduct. Estate of Smith v. Marasco, C.A.3 2003, 318 F.3d 497, on remand 2004 WL 633276. Federal Civil Procedure 2491.5

Fact issue as to whether conduct of police officer, who sped against red light through intersection on major boulevard without slowing down or activating his siren while responding to nonemergency call, could be viewed as reckless and conscience-shocking, creating substantive due process violation, precluded summary judgment in federal civil rights action brought after officer struck and fatally injured motorist in intersection. Williams v. City and County of Denver, C.A.10 (Colo.) 1996, 99 F.3d 1009, rehearing granted, opinion vacated 140 F.3d 855, on rehearing 153 F.3d 730. Federal Civil Procedure 2491.5

Genuine issue of material fact, as would preclude summary judgment, was not created by minor discrepancy, in civil rights action, between officer's testimony that he shot from six inches away and medical evidence that victim suffered a contact wound. Reynolds v. County of San Diego, C.A.9 (Cal.) 1996, 84 F.3d 1162. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

Material issue of fact as to whether officer's sudden, unannounced, violent seizure and removal of customer's person from restaurant was objectively reasonable precluded summary judgment for officer in customer's § 1983 action alleging excessive force in violation of Fourth Amendment. Alexis v. McDonald's Restaurants of Massachusetts, Inc., C.A.1 (Mass.) 1995, 67 F.3d 341, on remand 1996 WL 463675. Federal Civil Procedure 2491.5

Fact issue as to whether police office was aware of search of detainee by other officers conducting raid, and thus could be held liable for civil rights violation, was presented by fact of his presence in the small apartment where protracted search took place. Baker v. Monroe Tp., C.A.3 (N.J.) 1995, 50 F.3d 1186, rehearing and suggestion for rehearing in banc denied. Civil Rights 1429

Reasonableness of police officers' mistaken execution of valid search warrant on wrong premises involved questions of fact precluding summary judgment in § 1983 action alleging unlawful entry and arrest and excessive force. Dawkins v. Graham, C.A.8 (Ark.) 1995, 50 F.3d 532. Federal Civil Procedure 2491.5

If officer who arrests plaintiff without probable cause can show that it was objectively reasonable to believe he had probable cause or that officers could disagree about existence of probable cause, officer is entitled to qualified immunity, regardless of his underlying motives for arresting plaintiff. Cook v. Sheldon, C.A.2 (N.Y.) 1994, 41 F.3d 73. Civil Rights 1376(6)

Summary judgment for police officer on defense of qualified immunity from liability for civil rights claim was precluded by existence of genuine issues of material fact on whether police officer conducted roadblock with knowledge or reason to know that roadblock was likely to result in serious injury to approaching motorcyclist and passenger. Buckner v. Kilgore, C.A.6 (Tenn.) 1994, 36 F.3d 536, rehearing and suggestion for rehearing en banc denied. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether arresting officer used excessive force and whether force used was objectively reasonable so as to render officer entitled to defense of qualified immunity, precluding summary judgment for officer in arrestee's § 1983 action. Harper v. Harris County, Tex., C.A.5 (Tex.) 1994, 21 F.3d 597, rehearing denied 29 F.3d 626. Federal Civil Procedure 2491.5

Fact issue as to whether police officer executed warrant authorizing seizure of allegedly obscene videotapes in constitutionally sufficient fashion precluded summary judgment on video store owner's claim for declaratory relief in his civil rights action against the officer in his official capacity. Supreme Video, Inc. v. Schauz, C.A.7 (Wis.) 1994, 15 F.3d 1435, on remand 927 F.Supp. 321. Federal Civil Procedure 2500.5

Genuine issue of material fact existed, as to whether city police officer and police chief committed intentional race discrimination by authorizing and participating in raids of nightclub owned and frequented by African Americans, and precluded summary judgment for officer and chief on equal protection claims of owners and patrons; officer allegedly stated that police intended to close down club because of race of owners and patrons. Swint v. City of Wadley, Ala., C.A.11 (Ala.) 1994, 11 F.3d 1030. Federal Civil Procedure 2491.5

Testimony that witnesses had seen police officers beat arrestee, using their hands as well as flashlight or billy club, did not warrant judgment as matter of law in arrestee's civil rights action; conflicting evidence was for jury about whether officers reasonably suspected that arrestee had ingested crack cocaine, on whether officers used reasonable amount of force to investigate what was in arrestee's mouth, and on whether arrestee had resisted arrest and attempted to flee. Estwick v. City of Omaha, C.A.8 (Neb.) 1993, 9 F.3d 56. Civil Rights 1429

Fact question as to whether police seized property from pawnbroker for investigatory purposes, or to return property to person reporting it stolen in circumvention of required statutory procedure precluded summary judgment on pawnbroker's § 1983 claim. G & G Jewelry, Inc. v. City of Oakland, C.A.9 (Cal.) 1993, 989 F.2d

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42 U.S.C.A. § 1983

1093. Federal Civil Procedure 2491.5

Genuine issue of fact existed as to reasonableness of force used against arrestee to secure his arrest, precluding summary judgment for police officer in action for use of excessive force. Gainor v. Rogers, C.A.8 (Minn.) 1992, 973 F.2d 1379, rehearing denied. Federal Civil Procedure 2491.5

Issue of material fact as to whether FBI agents utilized impoundment of arrestee's vehicle with attendant inventory search as pretext for conducting investigatory search in violation of arrestee's Fourth Amendment rights precluded summary judgment for agents in arrestee's pro se civil rights action; arrestee's version of events differed from that of agent, who had given contradictory accounts of events. Sammons v. Taylor, C.A.11 (Ga.) 1992, 967 F.2d 1533. Federal Civil Procedure 2491.5

Material issues of fact precluded granting summary judgment in favor of police officer in civil rights action alleging excessive force brought on behalf of person who was shot nine times by the police officer; medical evidence in record undermined officer's version of events in numerous ways, and it could not be said as matter of law that the officer acted reasonably when he used deadly force against person a second time. Hopkins v. Andaya, C.A.9 (Cal.) 1992, 958 F.2d 881, as amended. Federal Civil Procedure 2491.5

Genuine issues of material fact existed, precluding summary judgment in civil rights action by resident of premises searched pursuant to warrant, on whether officers exceeded scope of their authority under warrant when they invited private security guard to participate in search and look for items stolen from his employer that had not been mentioned in warrant; there was evidence indicating that police officers actively procured private security guard to tour residence with a camera for purposes utterly unconnected with search warrant that had already been executed. Bills v. Aseltine, C.A.6 (Mich.) 1992, 958 F.2d 697. Federal Civil Procedure 2491.5

Plaintiff, who was mistakenly identified and arrested by police officers who mistook him for escaped felon who had threatened to shoot any officer who tried to return him to prison, failed to raise triable issue of fact as to whether force used by arresting officers was excessive; plaintiff and felon were of similar physical appearance and plaintiff was arrested near apartment at which felon was believed to be staying and where he was later found, under circumstances known to officers, it would have been unreasonable not to effect intended arrest with adequate alacrity and sufficient force to subdue arrestee as quickly and surely as practicable without unnecessary harm to him or unnecessary risk to officers or innocent bystanders, facts that plaintiff offered no resistance and was taller than felon were not determinative, and plaintiff's injuries were minor. Dean v. City of Worcester, C.A.1 (Mass.) 1991, 924 F.2d 364. Civil Rights 1429

Material issues of fact, precluding summary judgment, existed as to whether police officer's use of force while making an arrest of a traffic violation suspect in a business office was excessive in § 1983 case brought by a bystander; bystander incurred severe injury to groin and pinched nerve in leg while falling against a door trying to avoid officer, officer's action in bursting into office, yelling threats and expletives, drawing gun, waving it wildly at everyone in office, and pushing it against employee's throat was greatly disproportionate to need for action, and his repeated threat to "blow [all bystanders'] heads off" established malice. Mouille v. City of Live Oak, C.A.5 (Tex.) 1990, 918 F.2d 548, rehearing denied 923 F.2d 851. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether pedestrian's flight from police officer after the officer detained the pedestrian at gunpoint and after the pedestrian dropped his handgun, presented an immediate threat of serious harm to the officer or others at the time the officer fired a shot that struck the fleeing pedestrian in the back, precluding summary judgment for the officer on pedestrian's § 1983 claim for use of excessive force under the Fourth Amendment. Pablo Hernandez v. City of Miami, S.D.Fla.2004, 302 F.Supp.2d 1373, affirmed 124 Fed.Appx. 642, 2004 WL 3106626. Federal Civil Procedure 2491.5

Material issues of fact, as to whether city incorrectly trained police officer conducting automobile stop to rush

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vehicle, with drawn gun, precluded summary judgment that city was not liable for shooting of driver, in § 1983 action, for inadequate supervision and training. Parker v. Town of Swansea, D.Mass.2003, 270 F.Supp.2d 92. Federal Civil Procedure 2491.5

Material issues of fact, as to whether house occupant was lunging at police officer when he was shot to death, precluded summary judgment of nonliability on part of officer alleged to have used excessive force. La v. Hayducka, D.N.J.2003, 269 F.Supp.2d 566. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether police officer had probable cause to pursue arrest and prosecution of arrestee suspected of distributing drugs and if he did not, whether he was entitled to qualified immunity, precluded summary judgment in arrestee's civil rights action against officer; after arrestee was named as person who had handed drugs to undercover police officer, informant told officers he did not know anyone by that name and requested to see mug shots, and no photographs were shown to informant. Tyler v. State of N.Y., W.D.N.Y.1997, 953 F.Supp. 63. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether police officers were acting within their discretionary authority when they impounded § 1983 plaintiff's vehicle following arrest and when they assisted third party in removal of plaintiff's personal property from mobile home, precluding summary judgment on qualified immunity defense. Rose v. Town of Jackson's Gap, M.D.Ala.1996, 952 F.Supp. 757. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether actions of police officers toward pretrial detainee who committed suicide while in their custody were objectively reasonable in light of existing law, precluding summary judgment for officers based on qualified immunity in civil rights action brought in connection with suicide. Hare v. City of Corinth, Miss., N.D.Miss.1996, 949 F.Supp. 456, reversed 135 F.3d 320. Federal Civil Procedure 2491.5

Genuine issues of material fact, precluding summary judgment for police officer in § 1983 action by arrestee who was acquitted of drug charges for which officer arrested him, existed as to whether officer knew that contraband in question was not arrestee's, and that informant was trying to "set up" arrestee. Lewis v. Meloni, W.D.N.Y.1996, 949 F.Supp. 158. Federal Civil Procedure 2491.5

Occupant of house that was allegedly intentionally burned by city police officers during search failed to create genuine issue of material fact regarding whether city had inadequately trained officers or whether such lack of adequate training reflected deliberate indifference on part of city as would preclude summary judgment on occupant's § 1983 claim against city for excessive use of force in violation of Fourth Amendment, where occupant merely alleged that officers were instructed in police department's rules and regulations over ten years ago and were not required to revisit those rules since then, and there was no evidence suggesting that such alleged inadequacy of training was obvious to city. Johnson v. City of Detroit, E.D.Mich.1996, 944 F.Supp. 586. Federal Civil Procedure 2491.5

Fact issue as to whether actions of police officer who had responded to call regarding dispute between mother and father regarding custody of child had constituted unreasonable seizure of mother in violation of Fourth Amendment, precluding summary judgment in federal civil rights action brought by mother, was presented by mother's testimony that officer had told her that in his opinion, divorce order entitled father to visitation, and that if she refused to give child to father she would be arrested, creating situation in which mother could not ignore threat of arrest. Bennett v. Town of Riverhead, E.D.N.Y.1996, 940 F.Supp. 481. Federal Civil Procedure 2491.5

Genuine issues of material fact, precluding summary judgment for police officer in § 1983 action by black arrestee who alleged that white police officer violated Equal Protection Clause by arresting him because of his race, existed as to whether officer's statement, "You people don't know what you want," combined with his conduct, evidenced racial or color-based animus. Humphrey v. Demitro, N.D.Ill.1996, 931 F.Supp. 571, reversed in part 148 F.3d 719,

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rehearing denied. Federal Civil Procedure 2491.5

Genuine issues of material fact whether police officers and police chief acted with reckless or callous disregard for arrestee's rights or on intentional violation of federal law or with malice in using excessive force to effect arrest precluded summary judgment in favor of police officers and police chief on arrestee's claims under state and federal law for punitive damages. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Federal Civil Procedure 2491.5

Genuine issue of material fact as to reasonableness of conduct of police officer who shot § 1983 plaintiff, and of officers who failed to intervene to prevent shooting, precluded summary judgment against plaintiff on ground that there was no excessive use of force; plaintiff was shot while preparing to throw metal bar at officer after announcing that he intended to kill officer by throwing bar at officer. McRae v. Tena, D.Ariz.1996, 914 F.Supp. 363, affirmed on other grounds 113 F.3d 1241. Federal Civil Procedure 2491.5

Genuine issue of material fact existed, as to what sheriff actually knew at time he made arrest without a warrant, and precluded summary judgment on arrestee's claim under § 1983 that he was arrested without warrant and without probable cause and that thereafter sheriff falsely reported to prosecuting authorities facts regarding probable cause. Johnson v. Schneiderheinz, D.Neb.1996, 913 F.Supp. 1353, reversed 102 F.3d 340, rehearing denied. Federal Civil Procedure 2491.5

Fact issue as to whether police officers who detained and conducted search of minors had used excessive force, precluding summary judgment in federal civil rights action brought by minors, was presented by statements of minors that they suffered bruises when officer kicked their feet apart for purposes of search and that personal property in their pockets was crushed by force of search, and by fact that statements of minors were not rebutted by any objective evidence from officers. Irvin v. Kaczmaryn, N.D.Ill.1996, 913 F.Supp. 1190. Federal Civil Procedure 2491.5

Evidence in arrestee's civil rights action against arresting officer raised genuine issue of material fact as to whether officer's arrest for obstructing legal process was objectively reasonable, precluding summary judgment in favor of officer on qualified immunity grounds; officer alleged that arrestee had to be told three times to assume search position, was uncooperative and belligerent, and shifted his feet during search, making officer's job more difficult, while arrestee and witness testified that arrestee was cooperative and compliant throughout his interaction with officer, except when officer took his wallet. Williams v. Weber, D.Kan.1995, 905 F.Supp. 1502, reconsideration overruled. Federal Civil Procedure 2491.5

Whether § 1983 civil rights plaintiff was picketing solely in front of particular residence when arrested for violating residential antipicketing ordinance was fact question precluding summary judgment in suit against city for failure to train a police officer. Copper v. City of Fargo, D.N.D.1995, 905 F.Supp. 703. Federal Civil Procedure 2491.5

On remand of civil rights action against city and chief of police arising out of disciplinary action taken against city police officer, neither city nor police chief in his official capacity were entitled to summary judgment; although Court of Appeals reversed denial of summary judgment to police chief in his individual capacity on ground that, based on undisputed facts, it was objectively reasonable to discipline the officer, Court's opinion did not address denial of motion for summary judgment brought by city or by police chief in his official capacity. Morro v. City of Birmingham, N.D.Ala.1995, 897 F.Supp. 553. Federal Courts 951.1

Drivers in § 1983 action against police officer for issuing ticket for tinted car windows failed to create an issue of triable fact precluding summary judgment on the ground that the officer did not issue, or cause to be issued, a ticket to them after trial court ruling that statutory prohibition against tinted windows was unconstitutional as applied to them; the dismissal of a ticket prior to ticket by officer noted the failure of a trooper to appear, the most plausible

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reading of that dismissal was that the trial court did not decide the constitutional issue, a probationary officer issued the only ticket after the ruling on constitutionality, and although deposition testimony of officers referred to police officer's statement about invalidity of medical excuse, the depositions showed that the police officer arrived after the traffic stop and that the decision was made by probationary officer or that officer and his supervisor. Wiggins v. Gulley, C.A.7 (Ill.) 2004, 95 Fed.Appx. 833, 2004 WL 785289, Unreported. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether arrestee resisted arrest by city police officers and attempted to grab one of the officer's weapons, and whether officers acted reasonably in applying minimal force necessary to subdue him, precluded summary judgment as to officers' alleged entitlement to qualified immunity under §§ 1983 from arrestee's claim that officers used excessive force in violation of his Fourth Amendment rights. Aczel v. Labonia, C.A.2 (Conn.) 2004, 92 Fed.Appx. 17, 2004 WL 287164, Unreported. Federal Civil Procedure 2491.5

District court did not abuse its discretion, in § 1983 action alleging false arrest, malicious prosecution, and illegal search, in refusing to consider summary judgment affidavit of arrestee's wife, stating that she felt fearful of being arrested if she tried to leave while she was restricted from entering her home while a search warrant was being obtained; affidavit contradicted affiant's earlier statement that she did not want to leave her home, and affiant had not mentioned her alleged fear of arrest in her deposition testimony. Price v. Cochran, C.A.10 (Kan.) 2003, 66 Fed.Appx. 781, 2003 WL 21054706, Unreported. Federal Civil Procedure 2539

Genuine issue of material fact existed as to whether police officers knew or should have been expected to know that witnesses would have been present at crime scene before they transported citizen there, or if there was some other important reason to go there, on question of whether police officers acted reasonably regarding crime scene identifications, precluding summary judgment, in citizen's § 1983 lawsuit alleging that police violated his constitutional rights by subjecting him to unduly suggestive identifications that resulted in his detention for nearly seven years until he was acquitted on retrial. Rojas v. Iannatto, S.D.N.Y.2003, 2003 WL 169798, Unreported. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether city intentionally delayed arrestee's arraignment, precluding summary judgment, in § 1983 lawsuit brought by arrestee alleging false imprisonment. Sorensen v. City of New York, S.D.N.Y.2003, 2003 WL 169775, Unreported, affirmed in part, appeal dismissed in part 413 F.3d 292. Federal Civil Procedure 2491.5

4170. ---- Probable cause, summary judgment, practice and procedure generally

Genuine issue of material fact as to whether prosecution of arrestee for possession of stolen property was supported by probable cause precluded summary judgment for defendants in arrestee's § 1983 action for malicious prosecution. Boyd v. City of New York, C.A.2 (N.Y.) 2003, 336 F.3d 72. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether police had probable cause to make arrest precluded summary judgment in arrestee's §§1983 action against city for arrest on drug possession charges after arrestee allegedly transferred a bag containing methadone and heroin to another individual outside of a methadone clinic. Giannullo v. City of New York, C.A.2 (N.Y.) 2003, 322 F.3d 139. Federal Civil Procedure 2491.5

Although, generally, the question of probable cause in a § 1983 damage suit is one for the jury, a district court may conclude that probable cause did exist as a matter of law if the evidence, viewed most favorably to plaintiff, reasonably would not support a contrary factual finding, and may enter summary judgment accordingly. Estate of Smith v. Marasco, C.A.3 2003, 318 F.3d 497, on remand 2004 WL 633276. Federal Civil Procedure 2491.5

To survive a defendant officer's motion for summary judgment on the issue of wrongful procurement of a search warrant, plaintiffs in civil rights action must (1) make an offer of proof supporting specific allegations of deliberate

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or reckless misrepresentation, (2) show that the alleged misrepresentations are legally relevant to the probable cause determination, and (3) show that there is a genuine issue of fact about whether the magistrate would have issued the warrant on the basis of corrected affidavits; summary judgment is inappropriate in doubtful cases, because the weight that a neutral magistrate would have given such information is a question for the finder of fact. Spafford v. Romanowsky, S.D.N.Y.2004, 348 F.Supp.2d 40. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether officials of Utah's Medicaid Fraud Control Unit (MFCU) knowingly targeted neurologist for prosecution without sufficient basis to believe there was probable cause she committed a crime, precluding summary judgment for officials on neurologist's §§ 1983 malicious prosecution claim, based on investigation and prosecution of her for "upcoding," i.e., the practice of improperly billing Medicaid for a more expensive service than was actually provided to the patient. Becker v. Kroll, D.Utah 2004, 340 F.Supp.2d 1230. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether there was probable cause to make arrest precluded summary judgment on § 1983 claim for false arrest. Taylor v. City of New York, E.D.N.Y.2003, 269 F.Supp.2d 68, clarified 2003 WL 21781941. Federal Civil Procedure 2491.5

4171. ---- Prisons and prisoners, summary judgment, practice and procedure generally

Genuine issue of material fact as to whether county correctional officer adequately responded and investigated when county jail detainee pressed emergency call button, precluded summary judgment on basis of qualified immunity in favor of officer, in detainee's §§ 1983 deliberate indifference claim against officer, alleging that officer failed to protect him from an assault by another inmate. Velez v. Johnson, C.A.7 (Wis.) 2005, 395 F.3d 732, rehearing and rehearing en banc denied. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether prisoner with only two lower teeth had a serious medical need for dentures, precluding summary judgment in his § 1983 action against dentist for allegedly violating his Eighth Amendment rights in delaying for 15 months before providing him with dentures. Farrow v. West, C.A.11 (Ala.) 2003, 320 F.3d 1235. Federal Civil Procedure 2491.5

Material issues of fact and credibility precluded summary judgment either for prison officials on qualified immunity or for inmate on prison officials' liability for inmate's stabbing by another prisoner, where evidence conflicted as to whether prison officials were complying with court order requiring them to make regular security checks of open barracks, evidence indicated that correctional officer walked through barracks only minutes before stabbing and that guard was posted out in hall all night, and district court relied on its own factual findings that permitting inmates to have hobby craft tools in open barracks created pervasive risk of harm. Smith v. Arkansas Dept. of Correction, C.A.8 (Ark.) 1996, 103 F.3d 637. Federal Civil Procedure 2491.5

Genuine issues of material fact as to date that sentence of confinement expired and terms and conditions of inmate's release precluded summary judgment against inmate on his claim under § 1983 that he was confined to prison beyond expiration of his sentence, even accepting that inmate refused parole. Homoki v. Northampton County, C.A.3 (Pa.) 1996, 86 F.3d 324. Federal Civil Procedure 2491.5

Material issues of fact as to whether city's practice of allowing single male jailer to guard female pretrial detainees was reasonably related to legitimate governmental goal precluded summary judgment for city and police chief in § 1983 action by pretrial detainee who was sexually assaulted by jailer, alleging inadequate staffing. Scott v. Moore, C.A.5 (Tex.) 1996, 85 F.3d 230, rehearing granted, opinion vacated, on rehearing 114 F.3d 51. Federal Civil Procedure 2491.5

Material issues of fact concerning whether prison officials' body cavity search of inmate was reasonable under Fourth Amendment precluded summary judgment to prison officials in inmates' § 1983 action; inmate alleged that

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he was unnecessarily subjected to search in presence of over 100 people, including female secretaries and case managers from other buildings, prison official's explanation for search was not sworn and did not include affidavits based on personal knowledge, and explanation did not explain which female staff members were allowed to view search, what their functions were, and why those functions were important to search itself or to other prison functions. Hayes v. Marriott, C.A.10 (Colo.) 1995, 70 F.3d 1144, rehearing denied. Federal Civil Procedure 2491.5

Corroborating affidavits by fellow prisoners created fact issue precluding summary judgment against prisoner on his federal civil rights claim alleging that correctional officer cited him for disciplinary violations because of his race and his prior litigation activities in violation of equal protection clause. Harris v. Ostrout, C.A.11 (Fla.) 1995, 65 F.3d 912. Federal Civil Procedure 2491.5

Genuine issues of material fact, precluding summary judgment for city in former prisoner's civil rights action, existed as to whether prisoner suffered constitutional deprivations caused by city custom of inadequate selection or training of jail employees with regard to prisoners' psychiatric needs, where it could not be determined whether instruction provided to particular guards charged with prisoner's care was sufficient; evidence of details of city's training program was absent from record, and city did not submit any evidence concerning selection of jail employees. Young v. City of Augusta, Ga. Through DeVaney, C.A.11 (Ga.) 1995, 59 F.3d 1160. Federal Civil Procedure 2491.5

Fact issue as to whether prison officials had framed prisoner of contraband violations in retaliation for prisoner's two prior suits precluded summary judgment in prisoner's § 1983 action. Colon v. Coughlin, C.A.2 (N.Y.) 1995, 58 F.3d 865. Federal Civil Procedure 2491.5

Absence of evidence as to governmental interest and burden associated with provision of sweat lodge to facilitate exercise of prisoner's chosen religion, Native American shamanism, precluded summary judgment for prison officials in state prisoner's civil rights action alleging unconstitutional interference with prisoner's free exercise of religion. Werner v. McCotter, C.A.10 (Utah) 1995, 49 F.3d 1476, certiorari denied 115 S.Ct. 2625, 515 U.S. 1166, 132 L.Ed.2d 866, rehearing denied 116 S.Ct. 31, 515 U.S. 1183, 132 L.Ed.2d 913. Federal Civil Procedure 2491.5

Whether documents used in prison disciplinary proceeding with noncontemporaneous entries added after inmate's copies had been delivered had been forged or wrongfully altered was fact question precluding summary judgment in inmate's § 1983 suit alleging that use of altered documents violated due process. Grillo v. Coughlin, C.A.2 (N.Y.) 1994, 31 F.3d 53. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether inmate was denied right to produce witnesses in his defense in disciplinary proceeding precluded summary judgment in favor of prison officials on inmate's § 1983 claim that disciplinary hearing violated his right to due process. Walker v. Sumner, C.A.9 (Nev.) 1994, 14 F.3d 1415. Federal Civil Procedure 2491.5

Material issues of fact, as to whether corrections officer believed it was necessary to use force against pretrial detainee in order to restore order to county jail and as to relationship between amount of force used and amount of force necessary, precluded summary judgment on issue whether officer had violated detainee's Eighth Amendment rights, for purposes of detainee's § 1983 claim. Rankin v. Klevenhagen, C.A.5 (Tex.) 1993, 5 F.3d 103. Federal Civil Procedure 2491.5

There were genuine issues of material fact, precluding summary judgment for prison officials, in civil rights action brought by prison who claimed he was assaulted by officials during prison disturbance as to whether disturbance was in progress at time of assault; if assault occurred during disturbance, guards were permitted to use greater force than normally necessary to control prisoner. Moore v. Holbrook, C.A.6 (Ohio) 1993, 2 F.3d 697. Federal

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42 U.S.C.A. § 1983

Civil Procedure 2491.5

Genuine issues of fact existed as to whether prison official knew of threat to inmate by fellow prisoners, yet disregarded it, despite availability of relatively effortless ways of addressing threat, and whether conduct amounted to conscious lack of concern or aloofness, precluding summary judgment, in civil rights suit brought by inmate against official following beating of inmate by fellow prisoners. Nelson v. Overberg, C.A.6 (Ohio) 1993, 999 F.2d 162. Federal Civil Procedure 2491.5

Inmate's assertion that she did not sign two voluntary commitment applications did not create a material fact issue precluding summary judgment for prison superintendent in inmate's § 1983 action arising out of her detention at state mental hospital; inmate did not assert that superintendent submitted falsified record or forced her to sign voluntary commitment applications and she did not support her assertion that superintendent did not have reasonable cause to believe that inmate was in need of care in mental hospital. Gay v. Turner, C.A.8 (Mo.) 1993, 994 F.2d 425, rehearing denied. Federal Civil Procedure 2491.5

Former prisoner did not adequately respond to defendants' summary judgment motion on his civil rights claims arising from alleged conspiracy by prison officials to deny him due process and subject him to cruel and unusual punishment while he was imprisoned; although he filed response, former prisoner failed to support his allegations that conspiracy existed, that defendants were deliberately indifferent to his serious medical needs, that he was denied due process at disciplinary hearing, or that he was subjected to cruel and unusual punishment. Settle v. Ross, C.A.8 (Mo.) 1993, 992 F.2d 162. Federal Civil Procedure 2547.1

Whether prison attack against inmate was caused by prosecutor's statements to media that inmate had agreed to testify in murder case against gang members involved questions of fact precluding summary judgment in inmate's action against prosecutor for violation of Eighth Amendment rights, even though inmate's name was on witness list and his willingness to cooperate was matter of public record of plea hearing. Latimore v. Widseth, C.A.8 (Minn.) 1993, 986 F.2d 292, rehearing granted, vacated 1993 WL 437746, on rehearing 7 F.3d 709, certiorari denied 114 S.Ct. 1124, 510 U.S. 1140, 127 L.Ed.2d 433. Federal Civil Procedure 2491.5

Material issue of fact as to whether female corrections officer subjected inmates to sexually harassing and physically intrusive pat-down searches precluded summary judgment for corrections officer in § 1983 suit. Watson v. Jones, C.A.8 (Mo.) 1992, 980 F.2d 1165. Federal Civil Procedure 2491.5

Genuine issues of material fact as to ghastliness of inmate's prison conditions and state of mind of prison officials precluded summary judgment against inmate in § 1983 action against prison officials, where inmate's affidavit stated that he was forced to live with filth, rodents, inadequate heating, no toilet paper, and drinking water containing small black worms which turned into small black flies, and that officials visited his unit routinely, observed conditions described, but failed to take adequate corrective measures. Jackson v. Duckworth, C.A.7 (Ind.) 1992, 955 F.2d 21. Federal Civil Procedure 2491.5

Whether unsanitary conditions combined with overcrowding rendered confinement unconstitutional was fact question which precluded summary judgment in prisoner's § 1983 civil rights action for money damages where verified complaint alleged that cell was overcrowded, cell toilet was constantly coated with urine, four showers were available for 96 inmates, floors leading to showers were constantly flooded with sewage, prisoner was deprived of blankets and coats, and that prison was infested with insects and vermin. Williams v. Griffin, C.A.4 (N.C.) 1991, 952 F.2d 820. Federal Civil Procedure 2491.5

Summary judgment was improper in prisoner's § 1983 action challenging application of restitution statute where there was insufficient evidence in record for court to determine what type of hearing prisoner received or what type of hearing he was entitled to under Louisiana statutes and regulations regarding order of restitution imposed as part of prison disciplinary process for value of state property damaged and for cost of medical attention required

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following prisoner's act of self-mutilation. Longmire v. Guste, C.A.5 (La.) 1991, 921 F.2d 620. Federal Civil Procedure 2491.5

Genuine issues of material fact affecting reasonableness of jail policy mandating strip searches with visual body cavity inspections after contact visits precluded summary judgment in favor of county in misdemeanor arrestee's civil rights suit. Wood v. Hancock County, D.Me.2003, 245 F.Supp.2d 231. Federal Civil Procedure 2491.5

Genuine issue of fact as to whether there was "custom" at jail to strip search misdemeanor arrestees without reasonable suspicion that arrestee harbored contraband or weapons, arising from dispute as to frequency with which admission to jail was accompanied by strip search and evidence suggesting that officers did not comply with recording requirements for strip searches, precluded summary judgment in county's favor in arrestee's civil rights suit. Wood v. Hancock County, D.Me.2003, 245 F.Supp.2d 231. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether prison medical staff were deliberately indifferent to serious medical needs of prisoner, who had an inverted right foot, a clawing deformity of his right toes, and chronic pain, all resulting from a prior gunshot injury, and who needed help with chronic pain management and properly fitted orthopedic footwear, precluding summary judgment on prisoner's deliberate indifference claims. Lavender v. Lampert, D.Or.2002, 242 F.Supp.2d 821. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether prison medical care providers were reasonable in allegedly failing to respond to prisoner's frequent requests for effective pain treatment, allowing prisoner's pain medication prescriptions to lapse, and cancelling or reducing prisoner's pain medication while he was in segregated unit, precluding summary judgment on providers' qualified immunity defense to prisoner's §§ 1983 deliberate indifference to serious medical needs claim. Lavender v. Lampert, D.Or.2002, 242 F.Supp.2d 821. Federal Civil Procedure 2491.5

Genuine issue of material fact existed as to whether delays in providing prisoner, who had spastic partial paralysis causing right foot to flex and curl toes into claw and related chronic pain, with proper footwear, failure to provide prisoner with wheelchair to use during duration of footwear problem, and failure to reassign prisoner to housing complex that did not have hilly terrain that would exacerbate prisoner's orthopedic problems constituted appropriate medical attention, precluding summary judgment on inmate's deliberate indifference claims against prison medical care providers. Lavender v. Lampert, D.Or.2002, 242 F.Supp.2d 821. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether prison supervisor was responsible for determining whether inmate who claimed to be transsexual should have received medical treatment precluded summary judgment for supervisor on inmate's § 1983 claim on the ground that he was not personally involved in alleged violation of inmate's Eighth Amendment rights. Brooks v. Berg, N.D.N.Y.2003, 270 F.Supp.2d 302, vacated in part 289 F.Supp.2d 286. Federal Civil Procedure 2491.5

Genuine issues of material fact in prisoner's civil rights damages suit against private medical contractor for prison system, as to whether its policies provided insufficient checks on its dentists to ensure treatment within reasonable period and whether it was chargeable with institutional awareness of prisoner's broken tooth because of prisoner's repeated complaints of pain to at least one nurse and two dentists, precluded summary judgment in contractor's favor on ground that it could not be held personally responsible on respondeat superior theory for any neglect by its employees. Goodnow v. Palm, D.Vt.2003, 264 F.Supp.2d 125. Federal Civil Procedure 2491.5

Genuine issue of material fact, as to whether private medical contractor's failure to treat prisoner's broken tooth within seven months constituted good faith reliance on policies calling for treatment within 24 hours when prisoner presents with significant pain and calling for placement on appointment list for other problems, precluded summary judgment in favor of contractor in civil rights damages suit. Goodnow v. Palm, D.Vt.2003, 264 F.Supp.2d 125.

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42 U.S.C.A. § 1983

Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether legitimate penological concerns existed to justify denial of prison inmate's requests to attend religious services, precluding summary judgment in inmate's § 1983 action alleging denial of his First Amendment free exercise rights. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Federal Civil Procedure 2491.5

Affidavit submitted by corrections officials, in inmate's § 1983 action alleging violations of his free exercise rights under First Amendment, warranted denial of his summary judgment motion as premature; officials had not had sufficient opportunity for pretrial discovery as to circumstances surrounding inmate's requests for permission to attend services, whether requests were timely and compliant with corrections policies, whether they were denied and, if so, whether the denial was related to legitimate penological concerns. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Federal Civil Procedure 2553

Genuine issues of material fact regarding whether county corrections officer's resignation, following harassment by coworkers, was voluntary precluded officer's § 1983 claim alleging constructive discharge in violation of the due process clause. Baron v. Hickey, D.Mass.2003, 242 F.Supp.2d 66. Federal Civil Procedure 2497.1

Genuine issues of material fact as to whether correctional official beat inmate after inmate was restrained and posed no apparent disciplinary threat, and whether beating resulted in swelling and lumps to back of inmate's head, precluded summary judgment in inmate's § 1983 suit alleging violations of his Eighth Amendment rights. Bafford v. Nelson, D.Kan.2002, 241 F.Supp.2d 1192. Federal Civil Procedure 2491.5

Material issues of fact existed as to whether county corrections center supervisor knew that inmate had serious medical needs as a result of being beaten by two corrections officers, notwithstanding screams, moans, and other noises emanating from inmate's cell, precluding summary judgment for inmate's widow on claim for deliberate indifference to inmate's serious medical needs under § 1983 and Eighth Amendment. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Federal Civil Procedure 2491.5

In light of strong preference for adjudicating cases on merits, summary judgment would not be granted in inmate's favor on federal civil rights claims based on prison officials' failure to respond to his request for admissions. Warren v. Irvin, W.D.N.Y.1997, 985 F.Supp. 350. Federal Civil Procedure 2491.5

Genuine issue of material fact precluded summary judgment in prisoner's § 1983 action on whether prisoner had shown that prison officials knew of and disregarded risk to prisoner's health arising out of his knee condition, officials' alleged refusal to allow prisoner to undergo regimen of physical therapy and their actions in taking away his knee brace. Hall v. Artuz, S.D.N.Y.1997, 954 F.Supp. 90. Federal Civil Procedure 2491.5

Prison officials failed to establish that inmate's maximum sentence would have expired before an established future parole eligibility date and, therefore, were not entitled to summary judgment in inmate's § 1983 action, alleging violation of due process liberty interest in receiving future parole eligibility date enumerated in statutory schedule when denied parole. Watson v. DiSabato, D.N.J.1996, 933 F.Supp. 390. Federal Civil Procedure 2491.5

Genuine issues of fact as to whether correctional officer sexually abused pretrial detainee by grabbing his genitals precluded partial summary judgment in favor of either pretrial detainee or correctional officer in pretrial detainee's § 1983 action claiming violation of substantive due process. Banks v. Lackawanna County Com'rs, M.D.Pa.1996, 931 F.Supp. 359. Federal Civil Procedure 2491.5

Existence of material issues of fact rendered premature prisoner's summary judgment motion in his § 1983 action against prison officials challenging his removal from work release program without predeprivation hearing. Roucchio v. Coughlin, E.D.N.Y.1996, 923 F.Supp. 360. Federal Civil Procedure 2491.5

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42 U.S.C.A. § 1983

Genuine issue of material fact as to whether it was objectively unreasonable for officer to refuse inmate's request to attend religious congregational services which conflicted with scheduled callout of inmate for appointment with mental health clinician precluded summary judgment for officer and another official in inmate's § 1983 action alleging violation of his First Amendment rights; inmate's right to attend services was clearly established, and mental health callout was not mandatory, such that there was no reason to deny inmate's request. Boomer v. Irvin, W.D.N.Y.1995, 919 F.Supp. 122. Federal Civil Procedure 2491.5

Prisoner failed to create genuine issue of material fact regarding whether hearing officer at his disciplinary hearing was biased as would preclude summary judgment on his § 1983 claim that he was deprived of due process protection of fair and impartial hearing officer, as claim was based on officer's failure to interview particular witness and failure to personally assess credibility of confidential informants, court previously determined that neither of these actions violated prisoner's due process rights, and hearing officer's findings were supported by some evidence in record. Campo v. Keane, S.D.N.Y.1996, 913 F.Supp. 814. Federal Civil Procedure 2491.5

Inmate who made federal civil rights claim failed to support factual allegations that police officer at jail violated inmate's constitutional rights by failing to protect him from attack by other inmates and failed to show that officer knew about assault when it occurred, and, thus, summary judgment determination was proper; video cameras viewed by officer provided segmented view of unit and inmate did not claim that officer saw assault on video screen and failed to respond. Abrams v. Hunter, M.D.Fla.1995, 910 F.Supp. 620, affirmed 100 F.3d 971. Federal Civil Procedure 2491.5

Inmate who moved for summary judgment on claim that urinalysis testing violated his civil rights failed to comply with fundamental procedural rule requiring personal knowledge of facts asserted in affidavits, where he did not submit his own affidavit attesting to the number of urinalysis tests he underwent, but that of another individual who, lacking personal knowledge on this issue, could only attest that she overhead inmate say how many times he was tested. McDiffett v. Stotts, D.Kan.1995, 902 F.Supp. 1419. Federal Civil Procedure 2539

Evidence that inmate had lodged numerous complaints against correctional facility superintendent, that superintendent applied tuberculosis (TB) policy inconsistently, and that superintendent did not test inmate for TB with any alternative means precluded summary judgment for superintendent on inmate's § 1983 claim that superintendent retaliated against him for exercising his constitutional right to petition government for redress of grievances by confining him for nine months for refusing to take TB test. Pacheco v. Comisse, N.D.N.Y.1995, 897 F.Supp. 671. Federal Civil Procedure 2491.5

Failure of pro se plaintiff, incarcerated felon, to interpose defense to prison officials' motion for summary judgment in § 1983 action and to respond to court's repeated attempts to contact him provided sufficient justification for granting of prison officials' motion by default. LaSalle v. Coughlin, E.D.N.Y.1995, 893 F.Supp. 185. Federal Civil Procedure 2491.5

Whether former pretrial detainee satisfied initial burden under Religious Freedom Restoration Act, of demonstrating that regulations prohibiting wearing of head gear in common areas of county prison placed substantial burden on detainee's exercise of religion, was fact question precluding summary judgment in § 1983 civil rights suit in light of evidence that Muslim prayer cap is symbol of religion that teaches that men should cover their head during prayer, similar head wear is worn throughout Muslim culture, and wearing cap indicates Muslim's respect in deference to Allah. Muslim v. Frame, E.D.Pa.1995, 891 F.Supp. 226. Federal Civil Procedure 2491.5

In inmate's claim under First Amendment and Religious Freedom Restoration Act (RFRA), genuine issue of material fact existed as to whether prison officials provided inmate and other Muslim inmates with kosher diet during month of Ramadan and for Eid, and therefore summary judgment was inappropriate, where inmate submitted affidavits stating that, but for one instance, Muslim inmates were not served Kosher food during

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Ramadan and for Eid. Tyson v. Ratelle, C.D.Cal.1996, 166 F.R.D. 442. Federal Civil Procedure 2491.5

Prison officials' *Martinez* report addressing pro se inmate's § 1983 failure-to-protect claim, in which they stated that, if court did not dismiss case based on report, they "will file motion for summary judgment" did not adequately apprise inmate of possibility that district court would treat report as motion for summary judgment, and thus entry of summary judgment in favor of officials was reversible error. Dickey v. Merrick, C.A.10 (Utah) 2003, 90 Fed.Appx. 535, 2003 WL 22977649, Unreported. Federal Civil Procedure 2533.1; Federal Courts 914

District court was not required to compel production of ambulance report before granting summary judgment for state corrections officers on inmate's § 1983 claims when hearing officer did not commit due process violation by refusing to admit ambulance report at inmate's administrative hearing, and therefore production of such document would not have allowed inmate to avoid summary judgment. Yihnidabney v. Ricks, C.A.2 (N.Y.) 2003, 64 Fed.Appx. 253, 2003 WL 1867924, Unreported. Federal Civil Procedure 1593; Federal Civil Procedure 2553

Issue of material fact as to whether state prisoner had been prevented from filing grievances precluded summary judgment on prison's claim that prisoner's § 1983 suit was barred by his failure to first exhaust administrative remedies. Preslar v. Dr. Tan, W.D.N.Y.2003, 2003 WL 553273, Unreported. Federal Civil Procedure 2491.5

4172. ---- Real property, summary judgment, practice and procedure generally

Genuine issues of material fact as to whether city officials denied property owner's right to procedural due process as the result of a city policy, practice, or custom when they revoked conditional use permit without a pre-deprivation hearing precluded summary judgment on owner's procedural due process claim against city. Holman v. City of Warrenton, D.Or.2002, 242 F.Supp.2d 791. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether town imposed temporary development moratoria in order to provide town with more time to gather funds necessary to acquire property and whether moratoria substantially advanced town's purported environmental concerns precluded summary judgment in developers' §§ 1983 action against town alleging that moratoria constituted illegal temporary takings. W.J.F. Realty Corp. v. Town of Southampton, E.D.N.Y.2004, 351 F.Supp.2d 18. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether town planning board's eight-year delay in approving developers' request for determination on their subdivision application was extraordinary precluded summary judgment on ripeness grounds in developers' §§ 1983 action against town alleging illegal temporary taking. W.J.F. Realty Corp. v. Town of Southampton, E.D.N.Y.2004, 351 F.Supp.2d 18. Federal Civil Procedure 2491.5

Genuine issues of material fact existed as to whether county violated landowners' First Amendment, Fourteenth Amendment due process, and Fourteenth Amendment equal protection rights in denying landowners' request to open a section line as a road, precluding summary judgment in § 1983 action. Fry v. Board of County Com'rs of County of Baca, D.Colo.1991, 837 F.Supp. 330, affirmed 7 F.3d 936, rehearing denied. Federal Civil Procedure 2491.5

Genuine issues of material fact as to whether city's restrictions on drilling for oil and gas within city limits were reasonably necessary to protect the public health, safety and welfare and were actually designed to foreclose, indirectly, such drilling, despite ordinance which permitted such activity, precluded summary judgment in favor of city on inverse condemnation claim resulting from denial of conditional use permit. Mid Gulf, Inc. v. Bishop, D.Kan.1992, 792 F.Supp. 1205, reconsideration granted in part. Federal Civil Procedure 2506; Federal Civil Procedure 2504

4173. ---- Shocks the conscience test, summary judgment, practice and procedure generally

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42 U.S.C.A. § 1983

Genuine issue of material fact existed as to whether officers' conduct both with regard to activating Special Emergency Response Team (SERT) and with regard to searching woods for suspect shocked the conscience, precluding summary judgment for officers in substantive due process claim under state-created danger doctrine brought by survivors of suspect, who allegedly suffered a fatal heart attack resulting from officers' conduct. Estate of Smith v. Marasco, C.A.3 2003, 318 F.3d 497, on remand 2004 WL 633276. Federal Civil Procedure 2491.5

To establish a violation of a right to substantive due process, a plaintiff asserting a §§ 1983 claim must demonstrate not only government action but also that the government action was so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience. Matican v. City of New York, E.D.N.Y.2006, 424 F.Supp.2d 497. Constitutional Law 251.2

Genuine issues of material fact as to whether mayor and police commissioner had adopted regulations regarding the use of firearms by officers, whether officers were trained in the regulations, and whether the officers followed those regulations when they shot arrestee who was fleeing parking ramp where cars were burning, with object in his hand, precluded summary judgment on arrestee's § 1983 claim against officers, mayor and police commissioner. Whitfield v. Municipality of Fajardo, D.Puerto Rico 2003, 279 F.Supp.2d 115. Federal Civil Procedure 2491.5

4174. ---- Training

Genuine issues of material fact regarding whether county police department's training program on restraint techniques was inadequate with respect to teaching dangers of hog-tie restraint precluded summary judgment on § 1983 action against county, alleging that county officers' use of hog-tie restraint on arrestee, which caused his death, constituted excessive force in violation of the Fourth Amendment. Garrett v. Unified Government of Athens-Clarke County, M.D.Ga.2003, 246 F.Supp.2d 1262, reversed in part 378 F.3d 1274. Federal Civil Procedure 2491.5

Genuine issue of material fact as to whether police officers were inadequately trained in dealing with the mentally ill and using impact projectiles, and whether such inadequate training was cause of death of mentally ill individual who was shot and killed by police officers after shooting of individual with bean bag pellets and using pepper spray did not subdue individual enough to take him into custody, precluded summary judgment for municipality and officers in their official capacities, in § 1983 action alleging violation of individual's civil rights. Herrera v. Las Vegas Metropolitan Police Dept., D.Nev.2004, 298 F.Supp.2d 1043. Federal Civil Procedure 2491.5

4175. Law of case, practice and procedure generally

Law of the case doctrine did not preclude consideration of fire district board's later motion for summary judgment in firefighter's action under § 1983 against board; in prior appeal from grant of summary judgment, Court of Appeals did not explicitly or implicitly decide issue of whether firefighter could not prevail on his due process claims. Greenawalt v. Sun City West Fire Dist., D.Ariz.2003, 250 F.Supp.2d 1200. Federal Courts 950

Law of case doctrine did not apply to prevent civil rights plaintiff from arguing that his false arrest claim under the Fourth Amendment did not accrue until his criminal convictions were reversed, where only references to whether claim was time-barred appeared in dicta and issue was never litigated in district court or Court of Appeals on prior appeals. Ienco v. Angarone, C.A.7 (Ill.) 2005, 429 F.3d 680. Federal Courts 917

New evidence submitted by defendant corrections officer with his motion for summary judgment provided no compelling reason for transferee judge to overturn prior determination of transferor judge, who denied officer's motion to dismiss, that plaintiff, a former pretrial detainee, had exhausted his administrative remedies in accord with the Prison Litigation Reform Act (PLRA), and determination was thus binding, under law of the case doctrine,

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in detainee's §§ 1983 action alleging use of excessive force; detainee's original complaint alleged that he filed grievance within time prescribed by corrections department policy, and relevant facts had not changed at time officer presented his summary judgment motion. Brengettcy v. Horton, C.A.7 (Ill.) 2005, 423 F.3d 674. Courts 99(7)

4176. New trial, practice and procedure generally

New trial was not warranted in municipal employee's successful § 1983 sex discrimination action against city and city officials; outcome of case depended heavily on credibility of witnesses, jury chose to believe one party's witnesses over other party's, and verdict thus did not shock conscience. Rodriguez Sostre v. Municipio De Canovanas, D.Puerto Rico 2003, 251 F.Supp.2d 1055. Federal Civil Procedure 2340

Excerpt of corrections officer's testimony from officer's criminal trial and portions of warden's deposition testimony from another lawsuit constituted newly discovered evidence of facts which existed at the time of inmate's § 1983 action against city corrections department and corrections officers for alleged use of excessive force during institutional search, and thus supported inmate's motion for new trial based on newly discovered evidence, given that inmate was unaware of such evidence before he contacted legal aid society post-trial and that corrections officer's trial, incidents addressed by corrections officer's testimony, and warden's deposition and incidents discussed therein all occurred prior to trial on inmate's claims. Berry v. Department of Corrections, S.D.N.Y.2004, 2004 WL 287666, Unreported. Federal Civil Procedure 2350.1

District court, on its own initiative, ordered a new trial of individual's § 1983 claims against a police officer, notwithstanding jury verdict finding that individual had not established liability with respect to any of the four police officer defendants; police officer never appeared at the trial and was not subject to cross-examination, and the officer did not inform his counsel of his whereabouts and remained out of range of counsel's attempts of communication. Revelle v. Trigg, E.D.Pa.2003, 2003 WL 22358488, Unreported, appeal dismissed 112 Fed.Appx. 808, 2004 WL 2165870. Federal Civil Procedure 2332; Federal Civil Procedure 2364

Evidence in § 1983 suit supported determination that patient suffered no actual damages as a result of police officer's decision to send him to a hospital for evaluation, thus precluding new trial on damages; hospital records showed that the patient was in no distress when he arrived at the hospital, it was physicians who were responsible for the patient being held overnight, and it was necessary to take him to the hospital on a gurney because the patient, a 270-300 pound man, passively resisted going. Kerman v. City of New York, S.D.N.Y.2003, 2003 WL 328297, Unreported, reversed 374 F.3d 93. Federal Civil Procedure 2344

District court did not abuse its discretion in granting new trial in arrestee's § 1983 action against police officer, based upon jury returning note, along with verdict against officer, stating that jury defined "planting evidence on him," which "is not defined in the law," to mean assigning possession of marijuana, which had been found in vehicle in which arrestee had been passenger, to arrestee rather than driver; jury's adopted definition transcended arrestee's own theory of liability as well as evidence presented at trial, and demonstrated that jury misunderstood factual predicate of arrestee's claim. Olivas v. City of Hobbs, C.A.10 (N.M.) 2002, 50 Fed.Appx. 936, 2002 WL 31497308, Unreported. Federal Civil Procedure 2338.1

4177. Question of law, practice and procedure generally--Generally

Question whether facts presented will support a claim under this section presents question of law to be determined after and not before court has assumed jurisdiction. Travers v. Paton, D.C.Conn.1966, 261 F.Supp. 110. Civil Rights 1424

4178. ---- Arrests, question of law, practice and procedure generally

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42 U.S.C.A. § 1983

In absence of genuine dispute over material facts, issue of whether police officer had reasonable articulable suspicion to justify stopping automobile is question of law. Thompson v. Reuting, C.A.8 (Neb.) 1992, 968 F.2d 756. Civil Rights 1429

4179. ---- Conflicts of laws, question of law, practice and procedure generally

Because question whether university police department's policy of confidentiality of accident reports conflicted with other laws was a question of law, determination of such question was properly in province of district court. Williams v. Board of Regents of University System of Georgia, C.A.5 (Ga.) 1980, 629 F.2d 993, rehearing denied 629 F.2d 1350, certiorari denied 101 S.Ct. 3063, 452 U.S. 926, 69 L.Ed.2d 428. Records 63

4180. ---- Immunity, question of law, practice and procedure generally

In a civil rights action in which the factual record is not in serious dispute, the court should decide the issue of qualified immunity as a matter of law, preferably on a pretrial motion for summary judgment when possible, or on a motion for directed verdict, and if there are unresolved factual issues which prevent an early disposition of the defense, the jury should decide those issues on special interrogatories, and ultimate legal determination of whether a reasonable police officer should have known he acted unlawfully is a question of law better left for court. Warren v. Dwyer, C.A.2 (Conn.) 1990, 906 F.2d 70, certiorari denied 111 S.Ct. 431, 498 U.S. 967, 112 L.Ed.2d 414. Civil Rights 1432; Federal Civil Procedure 2153.1; Federal Civil Procedure 2491.5

Question of qualified immunity is a question of law for the court, not for the jury. Alvarado v. Picur, C.A.7 (Ill.) 1988, 859 F.2d 448, rehearing denied. Civil Rights 1432

Qualified immunity is question of law for court to decide. Rallis v. Stone, E.D.Mich.1993, 821 F.Supp. 466. Civil Rights 1432

In making qualified immunity determination, question of whether reasonable officer could have believed that his conduct was proper under established law is one of law for the district court, which must also determine whether officers acted reasonably under settled law in the circumstances, not whether another reasonable or more reasonable interpretation of the events can be constructed years after the fact. Sinaloa Lake Owners Ass'n, Inc. v. Stephenson, C.D.Cal.1992, 805 F.Supp. 824, affirmed 70 F.3d 1095. Civil Rights 1432

Qualified immunity is an issue of law rather than fact and, once the defense is raised, plaintiff must come forward with facts and allegations which convince the court that the defendant's alleged conduct violated the law and that the law was clearly established. Elam v. Williams, D.Kan.1990, 753 F.Supp. 1530, affirmed 953 F.2d 1391. Civil Rights 1432; Officers And Public Employees 114

4181. ---- Policy-making authority, question of law, practice and procedure generally

Whether an official is a final policymaker under state law, as required to subject municipality to section 1983 liability, is to be resolved by judge before case is submitted to jury; judge should consider whether government official is a final policymaker for local government in a particular area, or on the particular issue involved in action. Stein v. Janos, S.D.N.Y.2003, 269 F.Supp.2d 256. Civil Rights 1351(1); Civil Rights 1432

Under Endangered Species Act (ESA), Fish and Wildlife Service must make decision to list a species as endangered or threatened "solely on the basis of the best scientific and commercial data available," and thus cannot take into consideration the economic impacts of listing. Home Builders Ass'n of Northern California v. U.S. Fish and Wildlife Service, E.D.Cal.2003, 268 F.Supp.2d 1197. Environmental Law 528

Whether official has final policymaking authority so as to subject, by his actions, municipality to § 1983 liability is

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a question of state law; it is not a question of federal law or a question of fact in the normal sense. Lightner v. Town of Ariton, Ala., M.D.Ala.1995, 902 F.Supp. 1489. Civil Rights 1426; Federal Courts 411

Question of whether official possesses policy-making authority needed to impose liability on municipality for § 1983 civil rights violation is legal question to be answered by reference to state and local law. Jones v. City of Elizabeth City, N.C., E.D.N.C.1991, 840 F.Supp. 398, affirmed 2 F.3d 1149. Civil Rights 1426; Federal Courts 411

Question as to whether official has final policy-making authority for municipality, for purposes of determining whether municipality is liable under § 1983, is question of law to be resolved by trial court judge. Mizell v. Lee, M.D.Ga.1993, 829 F.Supp. 1338. Civil Rights 1426

4182. ---- Property interests, question of law, practice and procedure generally

Issues of whether city's repeated rejections of property owner's development proposals deprived owner of all economically viable use of land, and whether city's decision to reject development plan bore a reasonable relationship to its proffered justifications and thus substantially advanced legitimate public interests, were properly submitted to jury in owner's § 1983 action alleging that city's rejections of proposals effected a regulatory taking without providing just compensation, which was action at law to which Seventh Amendment was applicable. City of Monterey v. Del Monte Dunes at Monterey, Ltd., U.S.Cal.1999, 119 S.Ct. 1624, 526 U.S. 687, 143 L.Ed.2d 882 . Jury 14(1.5)

For purposes of § 1983, whether state law has created property interest is legal question for court to decide. Key West Harbour Development Corp. v. City of Key West, Fla., C.A.11 (Fla.) 1993, 987 F.2d 723. Civil Rights 1426

District court should have decided legal issue of whether city charter would have permitted employee to have due process property interest in continued employment before submitting question of fact to jury about whether there was mutual understanding between city and employee that employee could be discharged only for cause; city's claim that its charter deprived employee of any property interest in employment should not have been submitted to jury as factual issue. Driggins v. City of Oklahoma City, Okl., C.A.10 (Okla.) 1992, 954 F.2d 1511, certiorari denied 113 S.Ct. 129, 506 U.S. 843, 121 L.Ed.2d 84. Civil Rights 1430

4183. ---- Rules and regulations, question of law, practice and procedure generally

Pretrial detainee states cause of action under this section for deprivations of liberty interest under U.S.C.A.Const. Amend. 14 when, pursuant to a regulation or standard practice he has been subjected to punishment, but does not do so when the regulation or standard practice is merely regulatory in character; the proper characterization of such a regulation or standard practice turns on the intent of its adoption and is a legal issue for the court and not a factual question for the jury. Soto v. City of Sacramento, E.D.Cal.1983, 567 F.Supp. 662. Civil Rights 1090

4184. ---- Schools and students, question of law, practice and procedure generally

Question, arising in student's civil rights action against school officials, whether school officials have any settled undisputed obligations under the constitution to student under the circumstances presented by the case is so inextricably intertwined with legal analysis that it is an appropriate decision for the court rather than the jury. Picha v. Wielgos, N.D.Ill.1976, 410 F.Supp. 1214. Civil Rights 1427

4185. ---- State action, question of law, practice and procedure generally

It was within province of district court to decide merits of issue of existence of state action necessary to maintain

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suit under this section, and plaintiffs were not denied U.S.C.A.Const. Amend. 7 right to jury trial by court's determining that requisite state action was lacking, especially since all parties had testified and little, if anything remained to be presented on the issue. Menchaca v. Chrysler Credit Corp., C.A.5 (Tex.) 1980, 613 F.2d 507, rehearing denied 622 F.2d 1043, certiorari denied 101 S.Ct. 358, 449 U.S. 953, 66 L.Ed.2d 217. Jury 31.2(1)

4186. ---- Miscellaneous questions of law, question of law, practice and procedure generally

In action under this section arising out of law officers' entry into plaintiffs' premises and exchange of gunfire, credibility choices and resolution of conflicting testimony were for judge, sitting without jury, subject only to "clearly erroneous" rule. Rodriguez v. Jones, C.A.5 (Tex.) 1973, 473 F.2d 599, certiorari denied 93 S.Ct. 3023, 412 U.S. 953, 37 L.Ed.2d 1007. Federal Courts 858

Whether public employer's interest qua employer outweighs individual's First Amendment right is question of law for district court to resolve. Dartland v. Metropolitan Dade County, S.D.Fla.1988, 681 F.Supp. 1539, reversed on other grounds 866 F.2d 1321, on remand 717 F.Supp. 1544, on remand 760 F.Supp. 196. Constitutional Law 90.1(7.2)

4187. Mixed questions of law and fact, practice and procedure generally

In civil rights case, whether plaintiffs were to be deemed improperly "excluded" from public education was a mixed question of fact and law. Frederick L. v. Thomas, E.D.Pa.1976, 408 F.Supp. 832, affirmed 557 F.2d 373. Civil Rights 1427

4188. Transcripts, practice and procedure generally

See, also, Notes of Decisions under section 1343 of Title 28.

District court did not abuse its discretion in awarding police officer costs of deposition transcripts, even though depositions were not offered into evidence in civil rights action in which officer prevailed on arrestee's claims of excessive force. Soler v. Waite, C.A.7 (Ill.) 1993, 989 F.2d 251, rehearing denied. Federal Civil Procedure 2738

Federal district court, in civil rights action, had no power to compel Missouri Supreme Court to supply plaintiff with a transcript of his state conviction of burglary. Barnes v. Dorsey, C.A.8 (Mo.) 1973, 480 F.2d 1057. Courts 494

Where indigent bringing action under this section to compel superintendent of state farm to supply all records concerning his conviction did not show need for transcript, there was no constitutional right to transcript, regardless of how easily and inexpensively state could furnish it. Jones v. Superintendent, Virginia State Farm, C.A.4 (Va.) 1972, 460 F.2d 150, adhered to on rehearing 465 F.2d 1091, certiorari denied 93 S.Ct. 1380, 410 U.S. 944, 35 L.Ed.2d 611. Civil Rights 1476

4189. Survival of action

Under West Virginia's survival statute, cause of action against school board and supervisors of school employee who worked as both a teacher and school principal, for alleged sexual abuse of student by employee, survived student's death, and thus cause of action under § 1983 likewise survived, where injury of sexual abuse was not alleged to have led to death. Bell ex rel. Bell v. Board of Educ. of County of Fayette, S.D.W.Va.2003, 290 F.Supp.2d 701. Abatement And Revival 54

XXXVI. JURISDICTION GENERALLY

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42 U.S.C.A. § 1983

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4211. Jurisdictional nature of section, jurisdiction generally

While § 1983 provides plaintiffs with cause of action, it does not confer subject matter jurisdiction on federal district court. Ayala Serrano v. Lebron Gonzalez, C.A.1 (Puerto Rico) 1990, 909 F.2d 8. Federal Courts 219.1

Civil rights statute [42 U.S.C.A. § 1983] is not a jurisdictional statute and, therefore, does not give federal courts the power to decide claims that arise under it. Daigle v. Opelousas Health Care, Inc., C.A.5 (La.) 1985, 774 F.2d 1344. Federal Courts 219.1

This section, which authorizes civil action for deprivation of rights under color of state law is only remedial; it recognizes a cause of action but does not of itself bestow jurisdiction of the action on federal courts. Curtis v. Taylor, C.A.5 (Fla.) 1980, 625 F.2d 645, rehearing denied and modified on other grounds 648 F.2d 946. Federal Courts 222

This section, which creates a federal cause of action against persons whose misconduct under color of state law violates the constitutional rights of another, is not a jurisdictional grant. Cervoni v. Secretary of Health, Ed. and Welfare, C.A.1 (Puerto Rico) 1978, 581 F.2d 1010. Federal Courts 222

This section is not jurisdictional. Blue v. Craig, C.A.4 (N.C.) 1974, 505 F.2d 830.

This section creates cause of action but does not confer jurisdiction. Ybarra v. Town of Los Altos Hills, C.A.9 (Cal.) 1974, 503 F.2d 250. Federal Courts 219.1

This section is not a jurisdictional statute and is significant only to extent that it creates a cause of action. Tyler v. Russel, C.A.10 (Colo.) 1969, 410 F.2d 490. Civil Rights 1003

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42 U.S.C.A. § 1983

Federal statute providing subject matter jurisdiction over claims for civil rights violations and civil rights conspiracy could not vest court with jurisdiction over complaint that failed to state claims under either § 1983 or § 1985. Russo v. Glasser, D.Conn.2003, 279 F.Supp.2d 136. Federal Courts 244

Fact that prisoner sought injunctive relief as remedy for § 1983 claim that Ohio Parole Authority violated his due process rights was not ground for district court to refuse to exercise jurisdiction over claim, on ground that proper remedy was to file action "at law" in state court; relief sought was order compelling Parole Authority to conduct new hearing in compliance with due process, and action would have been no less one for injunctive relief in state court. Buhrman v. Wilkinson, S.D.Ohio 2003, 257 F.Supp.2d 1110, supplemented 2004 WL 2044055, report and recommendation adopted 2004 WL 2044056. Federal Courts 54

Federal civil rights statute does not create federal court jurisdiction. Polite v. Casella, N.D.N.Y.1995, 901 F.Supp. 90. Federal Courts 219.1

Section 1983, as a remedial statute, does not confer federal jurisdiction independently. Ernst & Young v. Depositors Economic Protection Corp., D.R.I.1994, 862 F.Supp. 709, affirmed 45 F.3d 530. Federal Courts 219.1

Federal civil rights statute § 1983 does not by itself create jurisdiction or establish any substantive right, but rather, only fulfills procedural or remedial role; thus, party seeking to assert § 1983 claim in federal court must point to separate jurisdiction-conferring statute. Envirotech Sanitary Systems, Inc. v. Shoener, M.D.Pa.1990, 745 F.Supp. 271. Civil Rights 1305

This section is not jurisdictional statute, but, rather, is enabling statute allowing individual to sue state officers. Anderson v. Luther, N.D.Ill.1981, 521 F.Supp. 91.

This section is not an Act of Congress providing for equal rights or for the protection of civil rights for purposes of exercise of civil rights jurisdiction by a federal court. Arko v. Broom, D.C.Colo.1981, 518 F.Supp. 669. Federal Courts 220

This section is not in itself jurisdictional; therefore, assertion of a claim under this section does not automatically invoke federal jurisdiction. Ruffin v. Beal, E.D.Pa.1978, 468 F.Supp. 482.

This section creating cause of action for deprivation of federally protected rights does not grant jurisdiction and thus could not provide federal district court with original jurisdiction over action. State ex rel. Bruce v. Larkin, E.D.Wis.1972, 346 F.Supp. 1065. Federal Courts 220

This section authorizing suit to redress deprivation under color of state law of any rights, privileges, or immunities secured by constitution gives a cause of action for deprivation of federal civil rights, but does not grant jurisdiction to federal district courts. Griffin v. Abbott, E.D.Tenn.1975, 68 F.R.D. 241. Federal Courts 220

The Court of Federal Claims does not have jurisdiction over civil rights claims brought under Title VII of the Civil Rights Act of 1964 or other civil rights statutes. Osborn v. U.S., Fed.Cl.2000, 47 Fed.Cl. 224. Federal Courts 1073.1

Court of Federal Claims lacked subject matter jurisdiction over state prisoner's §§ 1983 complaint, which did not set forth any substantive law mandating compensation by the Federal Government. Alexander v. U.S., C.A.Fed.2005, 131 Fed.Appx. 275, 2005 WL 1060262, Unreported. Federal Courts 1073.1

4212. Statutory basis of jurisdiction, jurisdiction generally--Generally

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42 U.S.C.A. § 1983

In determining whether claim otherwise cognizable under federal civil rights statute must be adjudicated in courts of Puerto Rico unless complainant establishes $10,000 jurisdictional amount, language of statute providing that district court shall have original jurisdiction of civil actions to redress deprivation under color of state law of any right, privilege or immunity secured by Constitution or by act of Congress providing for equal rights, purposes of Congress in enacting such statute, and circumstances under which words were employed had to be examined. Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero, U.S.Puerto Rico 1976, 96 S.Ct. 2264, 426 U.S. 572, 49 L.Ed.2d 65. Federal Courts 333

Former § 41(14) [now 1343] of Title 28 conferred federal jurisdiction of suits brought under this section in which right asserted was inherently incapable of pecuniary valuation. Hague v. Committee for Indus. Organization, U.S.N.J.1939, 59 S.Ct. 954, 307 U.S. 496, 83 L.Ed. 1423.

When a sheriff in his official capacity appeals the denial of summary judgment in a § 1983 action interlocutorily, asserting that he has Eleventh Amendment immunity, this presents a threshold immunity-from-suit issue over which Court of Appeals has jurisdiction. Manders v. Lee, C.A.11 (Ga.) 2003, 338 F.3d 1304, certiorari denied 124 S.Ct. 1061, 540 U.S. 1107, 157 L.Ed.2d 892. Federal Courts 579

Federal courts have jurisdiction to entertain complaints brought under this section providing civil action for deprivation of rights under color of law, in view of its jurisdictional counterpart. Zeller v. Donegal School Dist. Bd. of Ed., C.A.3 (Pa.) 1975, 517 F.2d 600.

This section, and sections 1981 and 1984 of this title do not grant jurisdiction, but merely provide remedy in cases in which jurisdiction is present pursuant to section 1343 of Title 28. Giles v. Equal Employment Opportunity Commission, E.D.Mo.1981, 520 F.Supp. 1198.

This section providing for civil action for deprivation of rights, while providing a substantive right of action, is not a jurisdictional provision; jurisdictional counterpart for this section is § 1343 of Title 28 which gives district court original jurisdiction of civil action commenced to redress deprivation, under color of state law, of constitutional right or to recover damages or to secure equitable or other relief under any Act of Congress providing for protection of civil rights. Johnson v. City of Arcadia, Fla., M.D.Fla.1978, 450 F.Supp. 1363. Federal Courts 220

This section creating federal causes of action for the deprivation under color of state law of the constitutional rights of citizens are not, by themselves, jurisdiction conferring; they are cognizable as actions in federal court only by virtue of § 1343 of Title 28 giving district courts original jurisdiction of action to redress deprivation of right secured by federal Constitution and statutes. Freeman and Bass, P.A. v. State of N. J. Commission of Investigation, D.C.N.J.1973, 359 F.Supp. 1053. Federal Courts 220

This section making persons who deprive others of rights or privileges secured by Constitution and laws liable to party injured, is an Act of Congress providing for the protection of civil rights within meaning of § 1343 of Title 28 giving federal court jurisdiction over actions to recover damages or other relief under congressional Act providing for protection of civil rights. McClellan v. University Heights, Inc., D.C.R.I.1972, 338 F.Supp. 374. Federal Courts 221

This section and § 1981 of this title governing respectively civil action for deprivation of rights and equal rights under the law do not grant jurisdiction; they merely afford remedy in cases to which jurisdiction is granted by § 1343 of Title 28 governing civil rights and elective franchise. Quarles v. State of Tex., S.D.Tex.1970, 312 F.Supp. 835. Federal Courts 226

Jurisdiction over action for deprivation of rights resides in district court by virtue of § 1343 of Title 28 pertaining thereto and is not dependent upon usual requisites of amount in controversy and diversity of citizenship. Whaley v.

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Cavanagh, N.D.Cal.1963, 237 F.Supp. 900, affirmed 341 F.2d 295, certiorari denied 86 S.Ct. 102, 382 U.S. 872, 15 L.Ed.2d 110. See, also, Gordon v. Garrson, D.C.Ill.1948, 77 F.Supp. 477. Federal Courts 220

4213. ---- Amount in controversy, statutory basis of jurisdiction, jurisdiction generally

There is no required minimum amount in controversy in a federal civil rights suit. Holly v. Woolfolk, C.A.7 (Ill.) 2005, 415 F.3d 678, rehearing denied, certiorari denied 126 S.Ct. 1166, 163 L.Ed.2d 1130. Federal Courts 333

Section 1343 of Title 28 relating to civil rights and elective franchise and its interplay with this section relating to civil action for deprivation of rights adequately supplied jurisdiction in suit by migratory workers under Wagner-Peyser Act, § 49 et seq. of Title 29, as against contention that requisite jurisdictional amount was not claimed. Gomez v. Florida State Employment Service, C.A.5 (Fla.) 1969, 417 F.2d 569. Federal Courts 221

Section 1343 of Title 28, providing that district court shall have original jurisdiction of civil action, confers federal jurisdiction without regard to amount in controversy over claims arising under this section. Howard v. Higgins, C.A.10 (Okla.) 1967, 379 F.2d 227.

Suits brought under this section assert jurisdiction under section 1343 of Title 28 and need not fulfill jurisdictional amount requirement. Anderson v. Luther, N.D.Ill.1981, 521 F.Supp. 91.

Where action to enjoin enforcement of C.G.S.A. § 52-369 was brought under this section, there was no jurisdictional requirement that plaintiff prove a minimum amount in controversy and statutory prohibition on federal court injunctions against state court proceedings did not apply. Abbit v. Bernier, D.C.Conn.1974, 387 F.Supp. 57. Federal Courts 333

Action arising in part under this section could be brought in federal district court without regard to the amount in controversy. Forbush v. Wallace, M.D.Ala.1971, 341 F.Supp. 217, affirmed 92 S.Ct. 1197, 405 U.S. 970, 31 L.Ed.2d 246. See, also, Davis v. Caldwell, D.C.Ga.1971, 53 F.R.D. 373. Federal Courts 333

4214. ---- Diversity of citizenship, statutory basis of jurisdiction, jurisdiction generally

District court would decline to exercise diversity jurisdiction over arrestee's state law claim for intentional infliction of emotional distress, once her § 1983 claim was dismissed on officers' motion for summary judgment. Colon v. Ludemann, D.Conn.2003, 283 F.Supp.2d 747. Federal Courts 18

Cause of action under this section requires neither diversity of citizenship nor amount in controversy. Woosley v. Hi-Plains Harvestore, Inc., W.D.Okla.1981, 550 F.Supp. 161. Federal Courts 219.1

Diversity of citizenship is not prerequisite to federal court jurisdiction under this section relating to deprivation of constitutional rights under color of state law. Hofferber v. First Nat. Bank of Guymon, Oklahoma, W.D.Okla.1977, 437 F.Supp. 788. Federal Courts 222

Diversity of citizenship is not a prerequisite to action under this section. Gaulter v. Capdeboscq, E.D.La.1975, 404 F.Supp. 900, injunction dissolved 423 F.Supp. 823, affirmed in part on other grounds 594 F.2d 127. Federal Courts 219.1

Diversity of citizenship is not necessary in a case brought under this section. Jaso v. Traczyk, N.D.Ind.1973, 367 F.Supp. 434.

Neither diversity of citizenship nor amount in controversy is prerequisite to federal court jurisdiction of cause of

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action asserted under this section. Mini Cinema 16 Inc. of Fort Dodge v. Habhab, N.D.Iowa 1970, 326 F.Supp. 1162. Federal Courts 219.1; Federal Courts 333

4215. ---- Federal question, statutory basis of jurisdiction, jurisdiction generally

Court of Appeals had jurisdiction to hear appeal of department of motor vehicles investigator, in § 1983 lawsuit, even though district court denied investigator's motion for summary judgment on his qualified immunity defense; question of whether investigator was under clearly established constitutional obligation to notify prosecutor of newly received information establishing plaintiff's innocence could be adjudicated without reference to disputed facts. Kinzer v. Jackson, C.A.2 (N.Y.) 2003, 316 F.3d 139. Federal Courts 579

Mother of junior high student who committed suicide at home after twice attempting it at school presented "substantial federal question" in her § 1983 action against school board, thus invoking district court's subject matter jurisdiction; mother alleging that third party informed school official of student's suicide attempt at school, that official stated that he would "take care" of situation, that third party would have made mother aware of suicide attempt but for official's assurances, and that school board thereby assumed duty of care. Wyke v. Polk County School Bd., C.A.11 (Fla.) 1997, 129 F.3d 560, certified question withdrawn 137 F.3d 1292. Federal Courts 221

District court had subject matter jurisdiction over survivors' action arising from city police officers' alleged beating of individual which resulted in that individual's death, as survivors asserted that police department ratified pattern of excessive force by officers and that city failed to review or identify incidents involving excessive force, which would support claim under § 1983, and complaint specifically alleged deprivation of federal constitutional rights. Green v. Nevers, C.A.6 (Mich.) 1997, 111 F.3d 1295, rehearing and rehearing en banc denied, certiorari denied 118 S.Ct. 559, 522 U.S. 996, 139 L.Ed.2d 400. Federal Courts 221

Defendants' allegations of §§ 1983 violations in their right to marry and travel did not provide basis for civil rights removal jurisdiction. In re Whatley, D.Mass.2005, 396 F.Supp.2d 50. Removal Of Cases 70

Lawsuit brought by Indian tribes against state and municipal defendants, seeking declaration of ownership and right to possess approximately 12,000 acres of land in northern New York, and into which United States intervened, was civil action that arose under Constitution, laws, or treaties of United States, for purpose of federal district court's exercise of original subject matter jurisdiction over it under federal question statute, since, inter alia, Indian Commerce Clause and Treaty Clause under United States Constitution had broad impact on authority or jurisdiction of Congress, and federal courts, over Indian matters. U.S.C.A. Const.Art. 1, §§ 8, cl. 3; U.S.C.A. Const.Art. 2, §§ 2, cl. Canadian St. Regis Band of Mohawk Indians v. New York, N.D.N.Y.2005, 388 F.Supp.2d 25.

Court had subject matter jurisdiction over claim by black county employee working at animal shelter, that he was demoted because of race and nature of his political associations, in violation of First and Fourteenth Amendments. Hodge v. City of Long Beach, E.D.N.Y.2003, 306 F.Supp.2d 288. Federal Courts 176; Federal Courts 178.5; Federal Courts 182

Regardless of whether § 1983 suit could be maintained against Virginia Department of Education (VDOE) and its officials for violations of the IDEA, district court had subject matter jurisdiction over action, pursuant to statutory provisions granting it jurisdiction over actions raising federal questions or actions seeking to redress civil rights violations. Virginia Office of Protection and Advocacy v. Virginia, Dept. of Educ., E.D.Va.2003, 262 F.Supp.2d 648. Federal Courts 221

Statute and regulation requiring states participating in Medicaid to comply with standards pertaining to expenditure

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of federal Medicaid monies created federal rights upon which unsuccessful bidder could maintain private cause of action under § 1983 to challenge state's award of contract for management of certain Medicaid behavioral health services to successful bidder. Value Behavioral Health, Inc. v. Ohio Dept. of Mental Health, S.D.Ohio 1997, 966 F.Supp. 557, vacated, appeal dismissed. Action 3

Parents' claim that due process right to direct upbringing and education of their children entitled them to have their daughter inspected by school doctor rather than school nurse before being readmitted to public school after showing symptoms of contagious disease was unreasonable and so devoid of merit as to fail to state a justiciable federal claim under § 1983, so that district court lacked subject matter jurisdiction, despite claims of violations of right to privacy and equal protection as well as due process. Kampfer v. Gokey, N.D.N.Y.1997, 955 F.Supp. 167, affirmed 175 F.3d 1008. Civil Rights 1070; Federal Courts 13.10; Federal Courts 221

Cigarette manufacturers' claim in action seeking declaratory and injunctive relief that state attorney general, who threatened action against manufacturers to recover certain expenses paid by state under its Medicaid program, acted with others to deprive manufacturers of their federal rights, in violation of § 1983, was sufficient to support federal question jurisdiction over manufacturers' action. Philip Morris Inc. v. Harshbarger, D.Mass.1996, 946 F.Supp. 1067. Federal Courts 228

Civil rights statute, creating cause of action against any person who, acting under color of state law, abridges rights created by Constitution and laws of United States, does not create federal court jurisdiction; it creates cause of action against those who violate federal law while acting under state government authority, and federal court jurisdiction exists under federal question jurisdiction statute. Greene v. Hawes, N.D.N.Y.1996, 913 F.Supp. 136. Federal Courts 219.1

Hotel owners' claim in civil rights action against city and city officials that due process protection extended to contractual right to benefits of owning and operating hotel was sufficiently substantial to support exercise of federal question jurisdiction. Hotel Syracuse, Inc. v. Young, N.D.N.Y.1992, 805 F.Supp. 1073. Federal Courts 244

Regardless of whether Springfield, Illinois, Board of Education is a "person" within meaning of this section, jurisdiction over the Board was proper where plaintiff alleged jurisdiction under § 1331 of Title 28 and sought recovery directed under the Constitution. Newborn v. Morrison, S.D.Ill.1977, 440 F.Supp. 623. Federal Courts 243

Federal question jurisdiction may be invoked in an action asserting constitutional rights under U.S.C.A.Const. Amend. 14 against municipalities immune from liability under this section making every person who deprives another person of any rights secured by law liable in an action at law; however, to give federal court jurisdiction under § 1331 of this title, federal question alleged must be substantial. McCarther v. Grady County, Okl., W.D.Okla.1977, 437 F.Supp. 828. Federal Courts 177; Federal Courts 242.1

Though district court did not have jurisdiction over municipality as a "person" under this section governing deprivation of civil rights under color of state law, district court did have jurisdiction over municipality by virtue of § 1331 of Title 28 where plaintiff alleged requisite amount in controversy as well as federal questions respecting cancellation of his indefinite contract by defendants as a tenured teacher in school system. Mejia v. School City of Gary, N.D.Ind.1976, 415 F.Supp. 370. Federal Courts 13.30; Federal Courts 334

Doctor and hospital were not state actors as required to establish federal question jurisdiction over patient's §§ 1983 claim alleging medical malpractice related to patient's treatment after alleged exposure to a biological agent used by military scientists; although doctor and hospital may have received state funding for clinical research, receipt of state funds, without more, did not make a state actor, and patient did not allege that doctor or hospital formed a conspiracy with a state actor to violate his constitutional rights. Norman v. Campbell, C.A.7 (Ill.) 2003,

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42 U.S.C.A. § 1983

87 Fed.Appx. 582, 2003 WL 23018570, Unreported. Civil Rights 1326(5); Civil Rights 1326(7)

Federal district court lacking federal question jurisdiction over lessors of house, in § 1983 action, could not dismiss claim with prejudice; only allowable disposition was dismissal without prejudice. Olsen v. Aebersold, C.A.10 (N.M.) 2003, 71 Fed.Appx. 7, 2003 WL 21580577, Unreported. Federal Courts 30

Prisoner's allegations against the Governor of New Mexico, Secretary of Corrections, and Department of Corrections for violations of contractual provisions and state laws did not allege violations of federally protected rights under § 1983 as required for federal jurisdiction. Florez v. Johnson, C.A.10 (N.M.) 2003, 63 Fed.Appx. 432, 2003 WL 1605857, Unreported. Civil Rights 1098

4216. Exclusive jurisdiction, jurisdiction generally

District of Columbia Administrative Procedure Act, D.C.Code 1981, § 1-1510, did not bar landlords' attempt to bring cause of action under this section in federal court alleging that District of Columbia agency responsible for administering local rent control laws intentionally deprived them of due process in carrying out adjudicatory functions and, therefore, District of Columbia courts did not have exclusive jurisdiction over landlords' case. District Properties Associates v. District of Columbia, C.A.D.C.1984, 743 F.2d 21, 240 U.S.App.D.C. 21. Civil Rights 1318

New York Public Health Council (PHC) did not have jurisdiction over issues presented by § 1983 action in which physician alleged that hospital officials had violated his First Amendment free speech rights through conspiracy of retaliatory harassment, which included refusal to recommend renewal of hospital privileges, and thus, primary jurisdiction doctrine did not bar court from considering § 1983 action even though PHC had not yet considered denial of privilege renewal; while function of PHC is to determine whether there is any medical justification for withdrawal of privileges, maintenance of privileges was entirely unrelated to physician's § 1983 claims. Franzon v. Massena Memorial Hosp., N.D.N.Y.1997, 977 F.Supp. 160. Civil Rights 1321

While federal courts are given original jurisdiction over civil action for deprivation of rights, that jurisdiction is not exclusive. Tomsick v. Jones, D.C.Colo.1979, 464 F.Supp. 371. Courts 489(1)

4217. Concurrent jurisdiction, jurisdiction generally

Although in enacting this section Congress altered the balance of judicial power between the state and federal courts, Congress did so by adding to the jurisdiction of the federal courts and not by subtracting from that of the state courts. Allen v. McCurry, U.S.Mo.1980, 101 S.Ct. 411, 449 U.S. 90, 66 L.Ed.2d 308, on remand 647 F.2d 167. Federal Courts 4

Maryland courts have concurrent jurisdiction over claims based on this section and the Federal Constitution. Kutzik v. Young, C.A.4 (Md.) 1984, 730 F.2d 149. Courts 489(1)

Although a § 1983 claim is a federal claim, state courts have concurrent jurisdiction with federal courts to adjudicate claims arising under that statute. Redevelopment Agency of City of San Bernardino v. Alvarez, C.D.Cal.2003, 288 F.Supp.2d 1112. Courts 489(1); Federal Courts 219.1

Claim under § 1983 may be brought in state court. Koziara v. City of Casselberry, M.D.Fla.2002, 239 F.Supp.2d 1245. Courts 489(1)

State district courts have concurrent jurisdiction to hear constitutional claims arising under § 1983. Charchenko v. City of Stillwater, D.Minn.1993, 821 F.Supp. 1284. Courts 489(1)

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42 U.S.C.A. § 1983

State courts have concurrent jurisdiction with federal courts over § 1983 actions. Coffman v. Wilson Police Dept., E.D.Pa.1990, 739 F.Supp. 257. Courts 489(1)

Fact that woman who claimed she was involuntarily and unjustifiably confined at state psychiatric center had also filed state court action against state, which federal court had dismissed as party defendant in federal court action, did not affect woman's right to proceed in federal court with her claim under the civil rights statute. Brandman v. North Shore Guidance Center, E.D.N.Y.1986, 636 F.Supp. 877. Civil Rights 1321

4218. Primary jurisdiction, jurisdiction generally

Doctrine of primary jurisdiction did not preclude court from considering civil rights challenge to state's due process hearing procedures under the Education of the Handicapped Act and alleged violation of the Rehabilitation Act. Mrs. W. v. Tirozzi, C.A.2 (Conn.) 1987, 832 F.2d 748, on remand 706 F.Supp. 164.

Office of juvenile justice and delinquency prevention lacked authority to require state compliance with Juvenile Justice and Delinquency Prevention Act and could only cut off funding; office thus did not have primary jurisdiction over juveniles' claim and doctrine of "primary jurisdiction" did not bar juveniles' 1983 claim seeking to enforce compliance with the Act. Hendrickson v. Griggs, N.D.Iowa 1987, 672 F.Supp. 1126, appeal dismissed 856 F.2d 1041. Civil Rights 1456; Infants 280

Notwithstanding existence of various state remedies for discrimination in employment, doctrine of primary jurisdiction did not preclude federal court from entertaining civil rights actions based on claim that labor unions, contractors and others involved in building industry engaged in discriminatory employment practices. Byrd v. Local Union No. 24, Intern. Broth. of Elec. Workers, D.C.Md.1974, 375 F.Supp. 545. Courts 489(9)

4219. In personam jurisdiction, jurisdiction generally

Virginia corrections officials who received transferred New Mexico state prisoner and implemented New Mexico's classification and work authorization policies pursuant to the Interstate Corrections Compact (ICC) did not have the minimum contacts necessary with New Mexico for the New Mexico district court to assert personal jurisdiction over the Virginia officials in their official capacities in prisoner's §§ 1983 action claiming his constitutional rights were violated during his incarceration in Virginia; all relevant conduct by Virginia officials occurred in Virginia, without any indication that acts were aimed at or had effect in New Mexico. Trujillo v. Williams, C.A.10 (N.M.) 2006, 465 F.3d 1210. Federal Courts 76.35

Nonresident county did not purposefully avail itself of forum state's law even though county sheriff allegedly conspired to have plaintiff wrongfully arrested in forum state and, thus, district court lacked jurisdiction over county in § 1983 action, where there was no evidence that county commissioners knew of, or took any action in connection with, plaintiff's arrest, nor evidence that sheriff who caused plaintiff's arrest acted pursuant to any county policy, custom, or ordinance. Ziegler v. Indian River County, C.A.9 (Cal.) 1995, 64 F.3d 470. Federal Courts 76.35

Federal district court in District of Columbia did not have personal jurisdiction under District of Columbia long-arm statute over Director of Virginia Department of Corrections (VDOC), Warden of state prison, and individuals or entities employed by VDOC, in §§ 1983 lawsuit brought by prisoner of District of Columbia who was subject to prisoner custody arrangement with Virginia and who alleged that he was subject to variety of constitutional deprivations, since Virginia defendants did not live in District of Columbia, they did not transact business in District, and all acts alleged by prisoner to connect defendants to forum related to actions taken in their official capacities. Ibrahim v. District of Columbia, D.D.C.2004, 357 F.Supp.2d 187. Federal Courts 1037

Director of Ohio Department of Public Safety did not have sufficient contacts with Alabama, as required under

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Alabama's procedural rules, to permit federal district court sitting in Alabama to assert personal jurisdiction over her in driver's § 1983 action, which was based on Department's referral to national drivers register of Ohio default judgment against driver, allegedly resulting in suspension of driver's Alabama driver's license; neither director nor her department acted or failed to act in Alabama with respect to driver, and director, who acted under Ohio law, had no other contacts with Alabama making it fair and reasonable to require her to defend action there. Bledsoe-Colvin v. Alexander, M.D.Ala.2001, 127 F.Supp.2d 1326. Federal Courts 76.5

Unknown physician who allegedly gave state inmate incorrect initial medical classification would be dismissed as party from inmate's § 1983 action even though district court had not yet acquired personal jurisdiction over physician; in view of fact that court had determined that inmate had no due process right in receiving particular classification, attempt to obtain jurisdiction over physician would serve no purpose. Treadwell v. Murray, E.D.Va.1995, 878 F.Supp. 49. Federal Civil Procedure 388

District court lacked personal jurisdiction over Washington officials in connection with inmate's § 1983 claim against them; inmate, incarcerated at District of Columbia facility, alleged no contacts between Washington officials and District which would bring them within reach of District's long-arm statute. Charles v. Kelly, D.D.C.1992, 790 F.Supp. 344, appeal dismissed. Federal Courts 1041

District court lacked personal jurisdiction over chief dental officer of District of Columbia's Department of Corrections sued in his official capacity by prisoner claiming he had been provided inadequate dental care, where prisoner did not assert that official policy was responsible for deprivation of his constitutional rights. Fields v. District of Columbia Dept. of Corrections, D.D.C.1992, 789 F.Supp. 20. Civil Rights 1351(4)

Serious questions existed as to whether Minnesota state judge was subject to personal jurisdiction in federal district court in Oregon, for purpose of determining whether trust beneficiaries were entitled to preliminary injunction in civil rights action claiming that they were deprived of access to the courts by Minnesota judge's injunction against further prosecution of Oregon action alleging trust mismanagement, where judge had taken no action in Oregon and had not enjoined Oregon action, but rather judge's order was directed only to parties who voluntarily submitted to jurisdiction of Minnesota courts. Schroll v. Plunkett, D.Or.1990, 760 F.Supp. 1378, affirmed 932 F.2d 973. Civil Rights 1457(7)

Nonresidents who allegedly participated in illegal surveillance that led to prisoner's conviction did not obtain any personal benefit that would justify exercise of personal jurisdiction over them in their individual capacities in civil rights action brought in New York; possible desire to increase stature in government or actions motivated by racism were not "personal benefits" sufficient to confer personal jurisdiction. Wahad v. F.B.I., S.D.N.Y.1990, 132 F.R.D. 17. Federal Courts 76.35

Pennsylvania hospital that treated inmate at Pennsylvania prison was not subject to personal jurisdiction under New York's long-arm statute in civil rights action brought by inmate who resided in New York following his release from prison; inmate failed to show either that any tortious act by hospital caused injury to a person "within" New York, or that hospital derived substantial revenue from services rendered "in" New York. Hartman v. Low Sec. Correctional Institution Allenwood, S.D.N.Y.2004, 2004 WL 34514, Unreported. Federal Courts 76.35

4220. Comity, jurisdiction generally

Principle of comity barred state taxpayers' suit for damages brought in federal court under this subchapter to address allegedly unconstitutional administration of state tax system. Fair Assessment in Real Estate Ass'n, Inc. v. McNary, U.S.Mo.1981, 102 S.Ct. 177, 454 U.S. 100, 70 L.Ed.2d 271. Federal Courts 27

Federal district court lacked jurisdiction over purported § 1983 action; rather than mounting general constitutional challenge that was reviewable by district court, it was evident from face of complaint that civil rights plaintiff

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impermissibly sought to review merits of state court decision in "particular case." Branson v. Nott, C.A.9 (Cal.) 1995, 62 F.3d 287, certiorari denied 116 S.Ct. 565, 516 U.S. 1009, 133 L.Ed.2d 491. Courts 509

Power to create special assessment districts to pay cost of street improvements is a legislative process grounded in taxing power of sovereign; therefore, taxpayer challenging assessment is barred by principles of comity from asserting Section 1983 actions in federal court against validity of that state tax system. Miller v. City of Los Angeles, C.A.9 (Cal.) 1985, 755 F.2d 1390, certiorari denied 106 S.Ct. 408, 474 U.S. 995, 88 L.Ed.2d 359. Federal Courts 27

Considerations of comity do not preclude federal district court from hearing civil rights claims of refusal on part of state district courts to docket and hear pro se motions, but complaints of such refusal did not state claim upon which equitable or monetary relief could be granted where plaintiffs had not been unrepresented by court-appointed counsel nor did complaint assert specific instances where courts' refusal to docket particular pro se motion had caused hardship to some particular criminal defendant but, rather, gravamen of complaint was that refusal to docket and hear pro se motions of criminal defendants who were already represented by counsel of itself deprived plaintiffs of constitutional right of access to courts. Tarter v. Hury, C.A.5 (Tex.) 1981, 646 F.2d 1010. Civil Rights 1395(5); Courts 490

District court lacked subject matter jurisdiction over husband's § 1983 action seeking temporary restraining order and injunction prohibiting state court judge from proceeding with his divorce case; despite husband's denomination of case as civil rights action, husband was in essence seeking reversal of judge's decisions in state court case, and husband could not appeal decisions of state court judge under guise of civil rights action. Tufano v. Alpert, E.D.N.Y.1997, 968 F.Supp. 112. Courts 509

District court was barred based on principle of comity from entertaining subject matter jurisdiction over Shawnee tribe member's civil rights action against Kansas and county officials alleging that cigarette tax scheme utilized violated Constitution and several Indian treaties and that state was without jurisdiction to tax and regulate purchase and sale of cigarettes by Indian on Indian land, where remedies that Kansas provided met minimum procedural requirements. Oyler v. Finney, D.Kan.1994, 870 F.Supp. 1018, reconsideration denied, affirmed 52 F.3d 338. Courts 490

Taxpayer's state law remedies for county's allegedly unconstitutional procedures for considering property tax abatement petitions were adequate, so that taxpayer's § 1983 action for damages was barred by doctrine of comity, even though taxpayer might not have been permitted to raise its constitutional concerns on appeal of denial of petition to board of assessment appeals; taxpayer could have brought either state § 1983 action or action for declaratory relief. Home Life Ins. Co. v. Board of County Com'rs of Arapahoe County, Colo., D.Colo.1993, 832 F.Supp. 309. Courts 490

Principles of comity barred federal action alleging that Florida homestead tax exemption statute was unconstitutional where declaration that statute was facially invalid would have impact on state fisc and where taxpayers had choice of remedies under Florida law which were plain, adequate, and complete. Winicki v. Mallard, M.D.Fla.1985, 615 F.Supp. 1244, affirmed 783 F.2d 1567, certiorari denied 107 S.Ct. 70, 479 U.S. 815, 93 L.Ed.2d 27. Courts 490

4221. Waiver, jurisdiction generally

County waived any defense of lack of personal jurisdiction, in employee's sex discrimination action against county prosecutor in which judgment was entered against county, but county was not named as defendant; county was pervasively involved in litigation, and county counsel openly acknowledged that it was representing county's interests, which were indistinguishable from those of prosecutor's office. Coleman v. Kaye, C.A.3 (N.J.) 1996, 87 F.3d 1491, certiorari denied 117 S.Ct. 754, 519 U.S. 1084, 136 L.Ed.2d 691. Federal Courts 95

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42 U.S.C.A. § 1983

4222. Takings, jurisdiction generally

Federal court cannot entertain a takings claim in an action under § 1983 unless or until the complaining landowner has been denied an adequate postdeprivation remedy. City of Monterey v. Del Monte Dunes at Monterey, Ltd., U.S.Cal.1999, 119 S.Ct. 1624, 526 U.S. 687, 143 L.Ed.2d 882. Civil Rights 1310

4223. Political questions, jurisdiction generally

Elementary school student's § 1983 claim against New Jersey Department of Education and Commissioner of Education, alleging that defendants aided in local education officials' violation of student's First Amendment rights by failing to either exercise supervisory powers or implement policy to allow for expression of religious beliefs in classroom, was not nonjusticiable political question; claim for relief could be construed as demand for defendants to cease their wrongful behavior and adhere to constitutional principles, rather than simple request to adopt basic policies. C.H. v. Oliva, D.N.J.1997, 990 F.Supp. 341, affirmed 166 F.3d 1204, rehearing granted, opinion withdrawn, on rehearing 195 F.3d 167, rehearing granted, opinion vacated 197 F.3d 63, on rehearing 226 F.3d 198, certiorari denied 121 S.Ct. 2519, 533 U.S. 915, 150 L.Ed.2d 692. Constitutional Law 68(1)

4224. Supplemental jurisdiction, jurisdiction generally

When plaintiff pleads violations of United States Constitution, over which district court has jurisdiction under §§ 1983, district court has supplemental jurisdiction to address additional state law claims related to the federal claims. Voyticky v. Village of Timberlake, Ohio, C.A.6 (Ohio) 2005, 412 F.3d 669. Federal Courts 15

District court could exercise supplemental jurisdiction over foster child's state law tort claims against his foster father in child's §§ 1983 action against various individuals and entities responsible for his foster placement, where the §§ 1983 claims arose out of the same incident as the tort claims. Harris ex rel. Litz v. Lehigh County Office of Children & Youth Services, E.D.Pa.2005, 418 F.Supp.2d 643. Federal Courts 15

Court did not have original or supplemental jurisdiction over former county employee's Article 78 claim under New York law challenging validity of his dismissal, as Article 78 proceeding was novel and special creation of New York state law, which vested exclusive jurisdiction in New York Supreme Court, and claim did not go to essence of employee's federal §§ 1983 claims so as to potentially be within court's residual jurisdictional authority under All Writs Act. Beckwith v. Erie County Water Authority, W.D.N.Y.2006, 413 F.Supp.2d 214. Federal Courts 14.1

District Court had supplemental jurisdiction over former public employee's state law breach of contract claim, alleging that defendants' retaliatory conduct breached parties' settlement agreement in earlier employment discrimination action, where it had original jurisdiction over employee's claims under §§§§ 1983 and 1985, and breach of contract claim was related to claims under §§§§ 1983 and 1985. Rivera v. State Ins. Fund Corp., D.Puerto Rico 2006, 410 F.Supp.2d 57. Federal Courts 18

Federal district court would decline to exercise supplemental jurisdiction over dog owner's state-law claims against county prosecuting attorney, county sheriff, and county deputy sheriff for assault and battery, witness intimidation, and failure to perform official duties, relating to failure to investigate alleged theft of plaintiff's dog by deputy sheriff's cousin and prosecuting attorney's alleged assault of plaintiff by shoving her in the back repeatedly when ordering her out of his office, where district court dismissed plaintiff's federal civil rights claims. Curry v. Weiford, N.D.W.Va.2005, 389 F.Supp.2d 704, appeal dismissed 133 Fed.Appx. 50, 2005 WL 1220816. Federal Courts 18

District court would exercise supplemental jurisdiction over §§ 1983 plaintiffs' state law claim for negligence, even after §§ 1983 claims were dismissed on city's motion for summary judgment, where substantial judicial resources

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had been committed to the dispute and remanding the matter to state court would have caused a duplication of efforts. Johnson v. City of Seattle, W.D.Wash.2005, 385 F.Supp.2d 1091. Removal Of Cases 101.1

District Court would, in exercise of its discretion, refuse to maintain supplemental jurisdiction over state law claims asserted by employee of Office of Legislative Auditor challenging office policy in §§ 1983 action; unlike with respect to §§ 1983 claims, Office could be sued directly on state law claims and held liable on state law claims on basis of respondeat superior, facts and legal principles on which state law claims were based were substantially different than federal claims, and there was definite possibility of juror confusion if trial of both state and federal claims were tried at same time. Levy v. Office of Legislative Auditor, M.D.La.2005, 362 F.Supp.2d 729. Federal Courts 15

District court would not exercise supplemental jurisdiction over state law claims of personal representative and surviving spouse of county jail inmate, who died after suicide attempt while in custody at the jail, against county, sheriff, and jail administrator, after grant of summary judgment for defendants on §§ 1983 claims for deliberate indifference to the inmate's known risk of suicide and deliberately indifferent failure to train. Harvey v. County of Ward, D.N.D.2005, 352 F.Supp.2d 1003. Federal Courts 18

Irrespective of whether employer sufficiently alleged supplemental jurisdiction in removal notice as to employee's state law claims, district court would exercise supplemental jurisdiction over them, given that federal subject matter jurisdiction existed on basis of employee's federal law claims; employee subjected himself to potential removal of action by asserting §§ 1983 claims alleging that employer, a state agency, violated his right to due process, both federal and state law claims arose out of common nucleus of operative fact regarding employee's loss of employment, and relationship between federal and state law claims permitted finding that entire action compromised but one constitutional case. McNerny v. Nebraska Public Power Dist., D.Neb.2004, 309 F.Supp.2d 1109. Federal Courts 15

Dismissal of pro se arrestee's federal claims for malicious prosecution against county warranted refusal to exercise supplemental jurisdiction over arrestee's state-law claims against county for malicious prosecution; however, court's jurisdiction over arrestee's § 1983 claims against city for false arrest and unlawful imprisonment supported court's exercise of supplemental jurisdiction over state-law claim against city for malicious prosecution. Anderson v. County of Nassau, E.D.N.Y.2004, 297 F.Supp.2d 540. Federal Courts 18

Upon dismissing without prejudice county corrections officer's federal civil rights claims for failure to arbitrate claims under collective bargaining agreement (CBA), District Court would retain supplemental jurisdiction over officer's Pennsylvania Human Relations Act (PHRA) claims, where officer could file amended complaint reasserting civil rights claims after completion of arbitration proceedings if warranted. Fralin v. County of Bucks, E.D.Pa.2003, 296 F.Supp.2d 609. Federal Courts 18

District Court would decline to exercise supplemental jurisdiction over outrage claim brought by administratrix of estate of former state employee, once administratrix's § 1983 claim and claims under the Kentucky Constitution and Kentucky Civil Rights Act (KCRA) were dismissed on employer's motion to dismiss for failure to state a claim. Levinson v. Mucker, W.D.Ky.2003, 289 F.Supp.2d 848. Federal Courts 18

District court would decline to exercise supplemental jurisdiction over registered voters' state law claims for violations of New York and city election law, once voters' civil rights claims and dilution claim under the Voting Rights Act were dismissed on city officials' motions to dismiss for failure to state a claim and for summary judgment. Baines v. Masiello, W.D.N.Y.2003, 288 F.Supp.2d 376. Federal Courts 18

District court would decline to exercise supplemental jurisdiction over arrestee's state law claims for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and assault and battery, once arrestee's § 1983 claims were dismissed on county's motion for summary judgment. Harrell v. Purcell,

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42 U.S.C.A. § 1983

M.D.N.C.2002, 236 F.Supp.2d 526. Federal Courts 18

Inmate's claim of conversion was not sufficiently related to his claims under § 1983 to fall within court's supplemental jurisdiction; claim involved prison official not implicated by any of inmate's remaining § 1983 claims, and facts surrounding alleged conversion had nothing to do with substance of § 1983 claim, which related to his placement in general prison population, as opposed to protective custody. Bullock v. Barham, N.D.Ill.1997, 957 F.Supp. 154. Federal Courts 15

District court's exercise of supplemental jurisdiction over claims by patient in state hospital that psychiatrist and psychologist refused to permit patient to review his mental health records in violation of California law was not warranted following dismissal of patient's claims under § 1983 that such refusal violated patient's rights under federal constitution and laws. Collins v. Khoury, N.D.Cal.2002, 2002 WL 1941150, Unreported. Federal Courts 18

4225. Bankruptcy court, jurisdiction generally

Bankruptcy court had jurisdiction to dismiss debtors' § 1983 takings claim, which was based on actions by city, as creditor, in leasing property to third parties after property had been surrendered by debtors, even though debtors' state claims had been previously dismissed without prejudice and state court had not ruled whether debtors had been deprived of adequate compensation; there could have been no cognizable taking without just compensation since debtors had no valid right to possess or develop the property because court had previously ruled, and it had been sustained on appeal, that lease was rejected and surrender was valid. In re George, C.A.9 2003, 322 F.3d 586 . Bankruptcy 2162

4226. Tribal courts, jurisdiction generally

Tribal court does not have authority to entertain federal civil rights claims under § 1983. Nevada v. Hicks, U.S.2001, 121 S.Ct. 2304, 533 U.S. 353, 150 L.Ed.2d 398. Indians 32(7)

4227. Pendent jurisdiction, jurisdiction generally

The Court of Appeals would not exercise pendent jurisdiction over protesters' cross-appeal claims, in police officers' interlocutory appeal, challenging the denial of their motion for summary judgment on qualified immunity grounds, in protesters' §§ 1983 First Amendment and excessive force claims, arising out of officers' conduct in dispersing protesters' demonstration; the cross-appeal claims challenged the dismissal of protesters' First Amendment conspiracy, equal protection, false arrest, and imprisonment claims, the grants of summary judgment to county sheriff and state police superintendent, and the sua sponte rulings dismissing all claims against county, sheriff's department, and two police officers, each of which involved issues entirely separate and distinct from the qualified immunity analysis at issue in the interlocutory appeal. Jones v. Parmley, C.A.2 (N.Y.) 2006, 465 F.3d 46. Federal Courts 770

XXXVII. ABSTENTION

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4251. Abstention generally

Actions brought under this section are not exempt from the abstention doctrine. Anonymous J. v. Bar Ass'n of Erie County, C.A.2 (N.Y.) 1975, 515 F.2d 435, certiorari denied 96 S.Ct. 71, 423 U.S. 840, 46 L.Ed.2d 60. Federal Courts 48

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42 U.S.C.A. § 1983

Where fundamental civil rights are at issue, federal court should hesitate to abstain. Jones v. Metzger, C.A.6 (Ohio) 1972, 456 F.2d 854, 62 O.O.2d 232. Federal Courts 48

Existence of a remedy under this section governing deprivation of civil rights does not require that federal courts entertain all suits in which unconstitutional deprivations are asserted. Freeman v. Flake, C.A.10 (Utah) 1971, 448 F.2d 258, certiorari denied 92 S.Ct. 1292, 405 U.S. 1032, 31 L.Ed.2d 489. Federal Courts 220

Younger abstention doctrine warranted district court's abstention from fraud, § 1983 and Racketeer Influenced and Corrupt Organizations Act (RICO) claims brought by former husband against former wife and against receiver appointed, pursuant to divorce proceeding, to sell couple's property and divide proceeds; claims were brought primarily to attack receiver's authority to act as receiver, which was within state's important interest in resolution of divorce proceedings, receiver had not yet completed his duties, and former husband could have asserted federal civil rights claims in state court. Huszar v. Zeleny, E.D.N.Y.2003, 269 F.Supp.2d 98. Federal Courts 48

District of Columbia qualifies as state for purposes of *Younger* equitable restraint doctrine. Ford v. Tait, D.D.C.2001, 163 F.Supp.2d 57. Federal Courts 41

Younger doctrine did not provide basis for federal district court's abstention from § 1983 action brought by attorneys in connection with state disciplinary proceedings against them, where attorneys were not requesting that district court enjoin those proceedings. Thaler v. Casella, S.D.N.Y.1997, 960 F.Supp. 691. Federal Courts 48

The *Younger* doctrine, which states that federal district court must abstain from exercising jurisdiction in suit when state criminal proceeding is pending against plaintiff at same time, represents independent barrier to § 1983 suits that seek injunctive and declaratory relief. Tilton v. Smith, N.D.Tex.1993, 827 F.Supp. 404. Federal Courts 51; Federal Courts 54

Principles of federal-state relationships, abstention and comity must be given full deference, but it does not follow that, if there is federal jurisdiction and if defendants and others under their control are violating plaintiff's constitutional or other federal rights, court should not or would not act. Hickey v. District of Columbia Court of Appeals, D.C.D.C.1978, 457 F.Supp. 584. Federal Courts 42

"Abstention doctrine" provides that federal court should refrain from exercising its jurisdiction in order to avoid needless conflict with administration by a state of its own affairs. Silvestri v. Barbieri, W.D.Pa.1977, 434 F.Supp. 1200. Federal Courts 41

An exception to the abstention doctrine has not been established in a civil rights case. Bell v. Bell, W.D.Wash.1976, 411 F.Supp. 716. Federal Courts 48

There is no per se exception to the abstention doctrine for civil rights cases. Sea Ranch Ass'n v. California Coastal Zone Conservation Commission, D.C.Cal.1975, 396 F.Supp. 533, remanded on other grounds 537 F.2d 1058, on remand 527 F.Supp. 390. Federal Courts 48

Doctrine of abstention may be appropriate in civil rights actions. Surowitz v. New York City Emp. Retirement System, S.D.N.Y.1974, 376 F.Supp. 369. Federal Courts 48

4252. Disfavor of abstention

Use of abstention doctrine in cases involving civil rights is not to be encouraged. Devlin v. Sosbe, C.A.7 (Ind.) 1972, 465 F.2d 169. Federal Courts 48

Although abstention doctrine has not been entirely abnegated and instances may arise in which it is appropriate,

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cases involving vital questions of civil rights are the least likely candidates for abstention. Wright v. McMann, C.A.2 (N.Y.) 1967, 387 F.2d 519, on remand 321 F.Supp. 127. See, also, Canton v. Spokane School Dist. No. 81, C.A.9 (Wash.) 1974, 498 F.2d 840; Moreno v. Henckel, C.A.5 (Tex.) 1970, 431 F.2d 1299. Federal Courts 48

Abstention is particularly not favored in civil rights actions. Kohler v. Hirst, E.D.Va.1978, 460 F.Supp. 412. Federal Courts 48

Abstention is not generally favored in actions brought under this section. Bergman v. Stein, S.D.N.Y.1975, 404 F.Supp. 287. Federal Courts 48

Although abstention by federal courts is not foreclosed in civil rights cases, it is disfavored in such cases. Wall v. American Optometric Ass'n, Inc., N.D.Ga.1974, 379 F.Supp. 175, affirmed 95 S.Ct. 166, 419 U.S. 888, 42 L.Ed.2d 134, rehearing denied 95 S.Ct. 648, 419 U.S. 1061, 42 L.Ed.2d 659. Federal Courts 48

Because of delay caused by abstention doctrine, it is particularly disfavored in U.S.C.A.Const. Amend. 1 or civil rights cases. Montalvo v. Colon, D.C.Puerto Rico 1974, 377 F.Supp. 1332. Federal Courts 53

Power of a federal court to abstain is narrowly circumscribed in actions brought under this section. Stern v. Massachusetts Indem. & Life Ins. Co., E.D.Pa.1973, 365 F.Supp. 433. Federal Courts 48

4253. Discretion of court, abstention

While exercise of abstention is discretionary, federal courts have a special duty to exercise jurisdiction in civil rights cases. Cochran v. Ensweiler, N.D.Ind.1974, 372 F.Supp. 471. Federal Courts 48

Invocation of doctrine of abstention rests within district court's discretionary exercise of its equitable powers. (Per Kerr, J., with one Judge concurring in result.) Alcala v. Wyoming State Bd. of Barber Examiners, D.C.Wyo.1973, 365 F.Supp. 560. Federal Courts 41

If other prerequisites are met, mere fact that a claim is brought under this section should not prevent application of abstention doctrine which gives federal district court the discretion to decline or postpone exercise of its jurisdiction in deference to a state court resolution of underlying issues of state law. Bascom v. Perry, N.D.Iowa 1973, 357 F.Supp. 431. Federal Courts 48

4254. Considerations governing, abstention--Generally

In determining whether federal court should abstain from civil rights suits, the following factors should be considered: the effect abstention will have on the rights to be protected; whether there are available state remedies; whether the challenged state law is unclear; whether the challenged state law is fairly susceptible of an interpretation that would avoid any federal constitutional question; and whether abstention will avoid unnecessary federal interference in state operations. George v. Parratt, C.A.8 (Neb.) 1979, 602 F.2d 818. Federal Courts 48

In general, three essential conditions for invocation of doctrine of abstention are that state statute be unclear or issue of state law uncertain, that resolution of federal issue depend upon interpretation to be given state law, and that state law be susceptible of interpretation that would avoid or modify federal constitutional issue. McRedmond v. Wilson, C.A.2 (N.Y.) 1976, 533 F.2d 757. Federal Courts 46

Abdication of obligation to decide cases in civil rights action can be justified under judicial abstention doctrine only in exceptional circumstances where order to parties to repair to state court would clearly serve an important countervailing interest. Atchison v. Nelson, D.C.Wyo.1978, 460 F.Supp. 1102. Federal Courts 392

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4255. ---- Availability of state remedy, considerations governing, abstention

Even if federal district court was required to abstain from deciding claims for money damages and attorney fees arising from allegedly illegal search of business by state officials, district court had no discretion to dismiss rather than to stay claims for monetary relief that could not be redressed in related state proceeding; sizeable portion of relief sought in federal complaint was intended to compensate for injuries allegedly sustained in violation of federal constitutional rights, and state criminal proceeding could provide only equitable relief, thereby requiring separate state action for damages. Deakins v. Monaghan, U.S.N.J.1988, 108 S.Ct. 523, 484 U.S. 193, 98 L.Ed.2d 529. Federal Courts 65

Rooker-Feldman doctrine barred federal court of appeals from considering physician's claim that state's revocation of his medical license violated ADA, even though physician was not permitted to assert ADA claim in state court proceedings challenging revocation on the basis that they were not properly preserved for appeal, where physician sought the relief of judicial reinstatement of his medical license, which would require review of the state court decision affirming license revocation. Guttman v. Khalsa, C.A.10 (N.M.) 2005, 401 F.3d 1170, vacated 126 S.Ct. 321, 163 L.Ed.2d 29, on remand 446 F.3d 1027. Courts 509

Indications of bias on part of territorial environmental agency that had proposed $76 million fine against owner of gasoline station's underground storage tanks were insufficient to trigger bias exception to *Younger* abstention doctrine, precluding district court from entertaining owner's motion to enjoin agency's ongoing hearings concerning fine, which owner had filed as part of §§1983 due process action against agency officials; territorial law did not bar owner from seeking interlocutory review of its due process claim in territorial courts, and thus owner fell short of irreparable-harm criterion for *Younger* bias exception. Esso Standard Oil Co. v. Cotto, C.A.1 (Puerto Rico) 2004, 389 F.3d 212. Federal Courts 48; Federal Courts 54

Younger abstention principles apply in a § 1983 action for damages in which the federal plaintiff brings a constitutional challenge to a state proceeding when that proceeding is ongoing, the state proceeding is of a judicial nature, implicating important state interests, and the federal plaintiff is not barred from litigating his federal constitutional issues in that proceeding. Gilbertson v. Albright, C.A.9 (Or.) 2004, 381 F.3d 965, on remand 2005 WL 2044006. Federal Courts 48

Land surveyor's § 1983 claims, that members of Oregon's State Board of Examiners for Engineering and Land Surveying violated his speech, due process, and equal protection rights in revoking his surveying license, could be litigated in state proceedings brought by surveyor, as required for *Younger* abstention, where state appellate courts had authority to develop full factual record, and, although state procedures were not adequate for purpose of seeking monetary relief, that obstacle would be obviated by federal court's staying, rather than dismissing, action. Gilbertson v. Albright, C.A.9 (Or.) 2004, 381 F.3d 965, on remand 2005 WL 2044006. Federal Courts 55; Federal Courts 65

Despite landowner's lack of good faith in fully advocating its takings, equal protection, and due process claims in state court, following *Burford* abstention in § 1983 action arising out of town's failure to extend sewer lines to landowner's property as required by annexation order, federal court jurisdiction existed following resulting state proceedings, in which landowner was determined not to have state law damages remedy and state court expressly refused to entertain landowner's federal claims as matter of comity, making continued abstention inappropriate. Front Royal and Warren County Indus. Park Corp. v. Town of Front Royal, Va., C.A.4 (Va.) 1998, 135 F.3d 275. Federal Courts 47.1; Federal Courts 48

District of Columbia's Office of Employee Appeals (OEA) proceedings, together with availability of judicial review in District of Columbia's courts, did not present adequate forum in which former government employee could fully and fairly pursue his § 1983 claim that his discharge violated his constitutional and statutory rights, and therefore *Younger* doctrine of equitable restraint did not require dismissal of former government employee's federal

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action, even assuming District of Columbia was state for purposes of *Younger* doctrine of equitable restraint, as former government employee sought millions of dollars in compensatory and punitive damages on his § 1983 claims, and OEA and District of Columbia's courts were authorized by statute to grant only reinstatement with back pay and some associated benefits, but not punitive and compensatory damages. Bridges v. Kelly, C.A.D.C.1996, 84 F.3d 470, 318 U.S.App.D.C. 30. Federal Courts 48

Persons challenging procedure for resolving parking ticket disputes in city had adequate remedy in state court forums to which they could have appealed from administrative officer's decision, so that federal court could abstain from considering the constitutional challenges. O'Neill v. City of Philadelphia, C.A.3 (Pa.) 1994, 32 F.3d 785, certiorari denied 115 S.Ct. 1355, 514 U.S. 1015, 131 L.Ed.2d 213. Federal Courts 47.1

Arkansas Motor Vehicle Commission was incompetent to decide issues before it, with regard to the propriety of its resolution of dispute between motorcycle company and dealer, based upon bias of commissioner, and thus federal district court could not abstain from motorcycle company's action to enjoin enforcement of commission's decision on *Younger* grounds, where commissioner had pecuniary interest, as dealer of competing motorcycles, in eradicating motorcycle company from state, and had prejudged the issues. Yamaha Motor Corp., U.S.A. v. Riney, C.A.8 (Ark.) 1994, 21 F.3d 793, rehearing denied. Federal Courts 54

Pending state proceedings would provide adequate forum for litigating newspaper's First Amendment challenge to restrictive order entered by state court regarding extrajudicial statements by trial participants prior to commencement of sensational criminal trial, for purposes of *Younger* abstention analysis, though newspaper was not afforded expedited review by state appellate court and did not receive all relief desired, where expedited review procedure was inapplicable to order that did not exclude press or public from trial, newspaper did not ask for expedited review, newspaper's petition for review of restrictive order was pending before state appellate court at time newspaper filed its federal action, state appellate court ruled on restrictive order, and newspaper's motion for rehearing was pending when it moved for reconsideration in federal district court. The News-Journal Corp. v. Foxman, C.A.11 (Fla.) 1991, 939 F.2d 1499. Federal Courts 53

Even if all three special circumstances warranting *Pullman* abstention were present, advantages of abstaining were significantly outweighed by disadvantages of abstaining in prisoner's civil rights action, which asserted that his constitutional rights were violated due to continued confinement in "capital sentence unit" after his death sentence was vacated by New Jersey Supreme Court; prisoner, who was again sentenced to death, might not be alive by the time that case would wind through state court system and return to federal district court, and availability of state forum to adjudicate issue of whether prison officials violated New Jersey statute was uncertain, as state court might conclude that order relating to construction of confinement statute might be akin to issuing advisory opinion. (Per Cowen, Circuit Judge, with one Circuit Judge concurring separately.) Biegenwald v. Fauver, C.A.3 (N.J.) 1989, 882 F.2d 748. Federal Courts 50

State court decided essential elements of discharged teacher's First Amendment claim arising from his discharge in retaliation for his alleged accusations against superintendent and other school personnel when it concluded that school board did not arbitrarily or capriciously discharge teacher, and teacher had fair opportunity to litigate claim in state court; therefore, Arkansas doctrine of claim preclusion foreclosed teachers's claim in civil rights action for violation of First Amendment rights. Gahr v. Trammel, C.A.8 (Ark.) 1986, 796 F.2d 1063. Federal Courts 420; Judgment 828.17(1)

Abstention was appropriate in § 1983 suit seeking declaratory relief and money damages against county, attorney and county attorneys office and legal assistant therein based on alleged denial of plaintiff's Sixth Amendment right to counsel because of delay in appointing counsel due to difficulties in extraditing plaintiff from sister state; plaintiff could adequately litigate the constitutional claim in ongoing state criminal proceedings. Mann v. Jett, C.A.9 (Ariz.) 1986, 781 F.2d 1448, on remand 628 F.Supp. 974. Federal Courts 48

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42 U.S.C.A. § 1983

Federal district court lacked jurisdiction over § 1983 action claiming that municipal landlord violated constitutional rights of tenants by offering building to neighborhood entrepreneur rather than making arrangement for management by tenants; constitutional claims could and should have been raised in Article 78 proceeding. Reyes v. Erickson, S.D.N.Y.2003, 238 F.Supp.2d 632. Civil Rights 1318

Availability of adequate post-deprivation remedies under state law for being suspended from public school, as alleged improper deprivation of property, did not foreclose high school students' due process civil rights claim against county school district and school officials, since officials acted pursuant to established procedure. Alexander v. Underhill, D.Nev.2006, 416 F.Supp.2d 999. Schools 177

Even if landowners had a protectable property interest in obtaining plat approval for their commercial plaza, landowners had an adequate post-deprivation remedy under state law, defeating claim of denial of due process against planning commission; landowners obtained a speedy reversal of the planning commission's decision by certiorari review by county circuit court, as provided for under state law. Pennington v. Teufel, N.D.W.Va.2005, 396 F.Supp.2d 715, affirmed 169 Fed.Appx. 161, 2006 WL 460921. Zoning And Planning 565

District court would not invoke *Younger* abstention to dismiss §§ 1983 action bought by licensed pharmacist and wholesaler of pharmaceuticals against California State Board of Pharmacy and its executive director, who sought to revoke or suspend pharmacist's pharmaceutical license and wholesaler's permit for exporting pharmaceuticals to foreign countries; Board's enforcement of matters in administrative proceeding implicated important state interests, and pharmacist and wholesaler would not have adequate opportunity to litigate alleged dormant commerce clause violation, as their license and permit were subject to revocation or suspension before they had opportunity to have constitutional claim considered. Adibi v. California State Bd. of Pharmacy, N.D.Cal.2005, 393 F.Supp.2d 999. Federal Courts 48

Because prisoner could pursue claim in a state court action, there was no cognizable due process claim under §§ 1983 for loss of personal property when he was transferred to a higher security level in the prison. Nicholson v. Carroll, D.Del.2005, 390 F.Supp.2d 429. Civil Rights 1319

Availability of malicious prosecution claim under state law barred federal civil rights claim based on alleged false arrest in violation of the Fourth Amendment; arrest occurred after arrestee was indicted by grand jury and arrest warrant was issued by a judge, so that claim sounded in malicious prosecution, rather than false arrest. Mutual Medical Plans, Inc. v. County of Peoria, C.D.Ill.2004, 309 F.Supp.2d 1067. Civil Rights 1319

Employee's appeal of demotion before state Personnel Commission was not parallel to action he brought under §§ 1983 against Secretary of Wisconsin Department of Revenue in which he alleged that demotion from chief legal counsel to attorney without pre-deprivation hearing violated his right to procedural due process, so as to warrant abstention under *Colorado River* doctrine; post-deprivation hearing before Commission was not determinative of issue pending in §§ 1983 action as to whether employee should have received pre-deprivation hearing, and Commission proceedings did not provide money damages to employee in event he was successful. Evans v. Morgan, W.D.Wis.2003, 304 F.Supp.2d 1100. Federal Courts 58

Younger abstention was not appropriate in case seeking to restrain enforcement of orders revoking insurance agents' and broker's licenses without pre-deprivation notice and hearing, as investigation by office of Insurance Commissioner had not been judicial in nature and licensees did not have opportunity to raise constitutional challenge before having their licenses revoked; investigation had concluded by time licensees sought judicial relief, and licensees sought protection of their rights while they pursued state remedies. Guillemard Gionorio v. Contreras Gomez, D.Puerto Rico 2004, 301 F.Supp.2d 122, appeal dismissed 161 Fed.Appx. 24, 2005 WL 3382638. Federal Courts 55

State court proceedings in antitrust suit brought against parties to corporate merger by Puerto Rico's Secretary of

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Justice would provide federal plaintiffs with an adequate opportunity to raise their constitutional challenge based on the Commerce Clause of the United States Constitution, as would support application of *Younger* abstention doctrine in parties' civil rights action against Secretary, since Puerto Rico was subject to constraints of the Commerce Clause, and Secretary clearly represented to District Court that she did not intend to contest applicability of the Commerce Clause to the Commonwealth of Puerto Rico in her state lawsuit. Wal-Mart Stores, Inc. v. Rodriguez, D.Puerto Rico 2002, 236 F.Supp.2d 200. Federal Courts 48

Attorney would have adequate opportunity to raise his § 1983 claims arising out attorney disciplinary proceeding with District of Columbia Court of Appeals, warranting equitable restraint under *Younger* doctrine; there was no barrier to District of Columbia Court of Appeals hearing attorney's constitutional claims and attorney was primarily seeking equitable relief under federal law, rather than damages. Ford v. Tait, D.D.C.2001, 163 F.Supp.2d 57. Federal Courts 48; Federal Courts 55

Dog owner's § 1983 claim alleging that city deprived him of right to judicial review of hearing officer's decision ordering euthanasia of dog by euthanizing dog before owner received notice of decision, and seeking monetary damages therefor, was not precluded by *Younger* abstention principles; owner likely could not have recovered money damages in state proceeding. Van Patten v. City of Binghamton, N.D.N.Y.2001, 137 F.Supp.2d 98. Federal Courts 56

State court proceedings held under New Jersey sex offender registration and notification statute ("Megan's Law") did not provide adequate opportunity for persons subject to statute's requirements to raise federal constitutional claims, and thus, *Younger* abstention doctrine did not prevent federal court from considering challenge to statute in § 1983 action; New Jersey Supreme Court's determination that statute was constitutional bound lower courts, and tier determination hearings held under statute were summary in nature and did not provide adequate forum to raise constitutional challenges. Alan A. v. Verniero, D.N.J.1997, 970 F.Supp. 1153, vacated 135 F.3d 763. Federal Courts 50

Hawai'i provided plain, adequate, and complete state remedies by which to challenge constitutionality of state excise tax, thus barring taxpayer's § 1983 claim as matter of comity, where taxpayer could either pay tax and appeal to district court of review or directly to Tax Appeal Court, taxpayer could alternatively pay tax under protest and then commence action in Tax Appeal Court within 30 days, taxpayer could raise any constitutional objections in the Tax Appeal Court, and if still aggrieved, taxpayer could appeal to the Hawaiian Supreme Court. Moore v. Kamikawa, D.Hawai'i 1995, 940 F.Supp. 260, affirmed 82 F.3d 423. Civil Rights 1321

Abstention was inappropriate in civil rights action against governor of Pennsylvania and Secretary of Pennsylvania Department of Public Welfare on behalf of children in custody of Philadelphia Department of Human Services; claims asserted were beyond scope and jurisdiction of family court case review proceedings. Baby Neal v. Casey, E.D.Pa.1993, 821 F.Supp. 320, vacated in part, remanded 43 F.3d 48, reconsideration denied 1995 WL 728589. Federal Courts 48

Younger abstention doctrine did not apply to childrens' claim that their constitutional rights were infringed by city foster care officials' refusal to allow them to associate and visit with one another; there was no allegation that claim could have been raised in pending family court proceeding, and claim was not dependent on any determination of claims involving relationship between mother and her children. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Federal Courts 48

Ongoing state administrative proceedings, in which town police officer was contesting the disciplinary charges imposed by town when it terminated his employment, did not afford the police officer with an adequate opportunity to raise his federal claims against town and its employees, as element for federal court's *Younger* abstention in police officer's §§ 1983 action alleging town employees manipulated civil service procedures to deprive him of his job without due process. Prevost v. Township of Hazlet, C.A.3 (N.J.) 2005, 159 Fed.Appx. 396, 2005 WL

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42 U.S.C.A. § 1983

3449072, Unreported. Federal Courts 58

Under New York law, even if state failed to give property owner constitutionally adequate notice of foreclosure sale, an adequate state remedy existed, and thus principle of comity barred property owner's action under §§ 1983; because owner claimed that he did not receive adequate notice of the sale, the statute of limitations on owner's action would not have begun to run and owner could have maintained an action under New York law. MacNaughton v. Warren County, New York, C.A.2 (N.Y.) 2005, 123 Fed.Appx. 425, 2005 WL 176532, Unreported. Civil Rights 1318

Civil rights defendants, including Illinois prison officials who allegedly violated inmate's constitutional rights by failing to ship over 2,800 pounds of property to a California prison after prisoner was transferred from Illinois to California prison, failed to prove that inmate did not exhaust his available administrative remedies in Illinois, as required by Prison Litigation Reform Act, where inmate had consistently maintained that he had no idea that his boxes would not be shipped until after he arrived in California from Illinois, and once in California, it was doubtful that he could avail himself of Illinois' administrative remedies. Walker v. Page, C.A.7 (Ill.) 2003, 59 Fed.Appx. 896, 2003 WL 1120232, Unreported. Civil Rights 1319

Former prisoner who alleged that he was wrongly charged for meals while he was housed at county jail had an adequate post-deprivation remedy in state court, and thus could not seek relief under § 1983. Butler v. Smith, C.A.8 (Ark.) 2000, 208 F.3d 217, Unreported. Civil Rights 1319

4256. ---- Avoidance of federal issue, considerations governing, abstention

Code Supp.1958, §§ 18-349.9 to 18-349.24, concerning rendering of financial assistance in litigation, activities relating to passage of racial legislation, advocacy of racial integration or segregation and raising and expenditure of funds in connection with racial litigation and with stirring up litigation, left reasonable room for construction for Virginia courts which might avoid in whole or in part necessity for federal constitutional adjudication or at least materially change nature of problem, and federal district court should have abstained from deciding merits of issues tendered to it in an action brought against Attorney General of Virginia and other officials for declaratory and injunctive relief with respect to such statutes so as to afford Virginia courts a reasonable opportunity to construe statutes in the first instance. Harrison v. National Ass'n for the Advancement of Colored People, U.S.Va.1959, 79 S.Ct. 1025, 360 U.S. 167, 3 L.Ed.2d 1152. Federal Courts 48

District court should have abstained from considering constitutional challenges to conditions of confinement at juvenile facility, where challenged conditions arguably violated West's Ann.Cal. Welfare S. Inst. Code, §§ 202 and 851, where those sections had not yet been interpreted with respect to claims made in the case, and where review by California courts of conditions under statutory standards could well have obviated need for constitutional adjudication. Manney v. Cabell, C.A.9 (Cal.) 1980, 654 F.2d 1280, certiorari denied 102 S.Ct. 1630, 455 U.S. 1000, 71 L.Ed.2d 866. Federal Courts 43

Trial court did not abuse its discretion in declining to abstain in civil rights action seeking declaratory judgment that state civil commitment procedures violated due process rights, despite contention that state courts might find all or a part of the commitment scheme violative of the state constitution, where there appeared to be neither ambiguity in the challenged statutory provisions nor doubt about how they operated in practice, and there was no ongoing state proceeding challenging the statutes. Chancery Clerk of Chickasaw County, Miss. v. Wallace, C.A.5 (Miss.) 1981, 646 F.2d 151. Federal Courts 48

In action by employer claiming that New York State Labor Department's deregistration of employer's state apprenticeship training program violated its rights under U.S.C.A.Const. Amend. 14, abstention was not justified where all relevant state proceedings had terminated without interpretation of pertinent state statutes in a way that might render unnecessary the resolution of the constitutional issues raised by employer. Action Elec. Contracting

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Corp. v. Ross, C.A.2 (N.Y.) 1981, 644 F.2d 44. Federal Courts 43

District court properly abstained from deciding constitutional issue raised by applicant for medicaid benefits in civil rights action challenging denial of medicaid benefits for services rendered by Christian Science practitioner and asserting unconstitutionality of New York medicaid statute if so construed to deny coverage, where there was pending in New York state court a proceeding by applicant challenging denial of medicaid benefits for Christian Science practitioner care, interpretation of state law as to coverage was unclear and decision of state court might result in an avoidance of federal constitutional issue. Winters v. Lavine, C.A.2 (N.Y.) 1978, 574 F.2d 46. Federal Courts 47.1

Assuming that timely and adequate state-court review was available, pursuant to *Burford* abstention doctrine, district court would not decline to consider §§ 1983 action bought by licensed pharmacist and wholesaler of pharmaceuticals against California State Board of Pharmacy and its executive director, which sought declaratory and injunctive relief after Board sought to revoke or suspend pharmacist's pharmaceutical license and wholesaler's permit for exporting pharmaceuticals to foreign countries; alleged dormant commerce clause violation was easily separable from complicated state law issues and presented issue over which state courts did not have special competence. Adibi v. California State Bd. of Pharmacy, N.D.Cal.2005, 393 F.Supp.2d 999. Federal Courts 54

Temporary restraining order (TRO) hearing in District Court was a contested matter, and together with District Court's grant of requested TRO, was a "proceeding of substance on the merits" that took place before defendant filed her state court action, and thus *Younger* abstention doctrine did not require federal abstention, where it had to consider merits of federal case in ruling on elements of test for TRO, especially plaintiffs' likelihood of success on the merits of their claim. Wal-Mart Stores, Inc. v. Rodriguez, D.Puerto Rico 2002, 236 F.Supp.2d 200. Federal Courts 54

Federal district court should abstain from deciding eating clubs' claim that State Division of Civil Rights' exercise of jurisdiction over female university student's claim that eating clubs violated state law against discrimination by admitting only male students violated clubs' civil rights under Federal Constitution; it was unclear whether eating clubs were "distinctly private" institutions under state law so that state law against discrimination would apply, and determination that state discrimination law did not apply to eating clubs would obviate need to adjudicate federal constitutional issues. Tiger Inn v. Edwards, D.N.J.1986, 636 F.Supp. 787. Federal Courts 48

4257. ---- Bad faith, considerations governing, abstention

Exception to rule of abstention where district court finds that state court proceeding is motivated by desire to harass or is conducted in bad faith could not be utilized against state court justices who held plaintiffs in contempt for disobeying subpoenas to appear in supplemental proceedings brought by judgment debtors in attempt to collect judgments where there were neither allegations, proof, nor findings that justices were enforcing the contempt procedures in bad faith or motivated by a desire to harass. Juidice v. Vail, U.S.N.Y.1977, 97 S.Ct. 1211, 430 U.S. 327, 51 L.Ed.2d 376. Courts 508(3)

District court's determination that bad faith exception to *Younger* doctrine applied, in action brought by school district against teacher to enforce statutory prohibition of electioneering within 100 feet of polling place during school board election, was not clearly erroneous, even though bad faith exception has been deemed to be narrow, where district court found past history of conflict with teacher, and that action had imposed chilling effect on teacher's First Amendment rights. Cullen v. Fliegner, C.A.2 (N.Y.) 1994, 18 F.3d 96, certiorari denied 115 S.Ct. 480, 513 U.S. 985, 130 L.Ed.2d 393. Federal Courts 62; Federal Courts 855.1

Bad-faith exception to *Younger* abstention doctrine did not apply to allow federal court to consider driver's civil rights claims for injunctive and declaratory relief against city and municipal judge during pendency of state criminal proceedings against driver for violating city's overtime parking ordinance, even though driver had

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received 36 parking tickets for violation of challenged ordinance, absent showing that citations resulted from bad faith of city officials, as opposed to driver's own parking habits. Ballard v. Wilson, C.A.5 (Tex.) 1988, 856 F.2d 1568, rehearing denied 861 F.2d 1279. Federal Courts 56

Claim of civil rights plaintiffs, who were employees of adult bookstores and subject of multiple state prosecutions for possession with intent to disseminate obscenity, disseminating obscenity, and violating restrictions on adult establishments, of bad-faith enforcement of state obscenity statutes was not sufficient to invoke bad-faith exception to *Younger* abstention doctrine, where civil rights plaintiffs had not established that prosecutions had been brought without reasonable expectation of obtaining valid convictions. Suggs v. Brannon, C.A.4 (N.C.) 1986, 804 F.2d 274 . Federal Courts 48

Because of governmental interest of State of Washington in enforcing its Consumer Protection Act, RCWA 19.86.010 et seq., federal abstention was required and district court could not intervene to halt state proceedings in absence of finding that state's action in state court was brought in bad faith or for purpose of harassment or that challenged state statute was flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph and in whatever manner and against whomever an effort might be made to apply it. Williams v. State of Wash., C.A.9 (Wash.) 1977, 554 F.2d 369. Courts 508(2.1)

Arrestee failed to show that his political affiliation was substantial or motivating factor for his prosecution for bribery in violation of Puerto Rico law, or even that Puerto Rico officials involved in his commonwealth criminal prosecution knew his political affiliation, and, thus, alleged political motivation was insufficient to show bad faith and harassing prosecution necessary to invoke exception to *Younger* abstention doctrine, as would allow District Court to preliminarily enjoin, in civil rights suit under §§ 1983, criminal proceeding in Puerto Rico court against arrestee. Olson v. Fajardo-Velez, D.Puerto Rico 2006, 419 F.Supp.2d 32. Federal Courts 54

Arrestee failed to show in lawsuit under § 1983 that his ongoing prosecution by government of Puerto Rico was motivated by bad faith, and, consequently, exception to *Younger* abstention doctrine did not apply; although prosecution of arrestee may have been motivated by desire to retaliate against prominent supporters of particular political party, arrestee had not been subjected to multiple charges or prosecutions, and arrestee had opportunity to bring his allegations of selective prosecution to jury as affirmative defense to claim for which he was charged at Puerto Rico court proceeding. Rivera-Schatz v. Rodriguez, D.Puerto Rico 2004, 310 F.Supp.2d 405. Federal Courts 48

Younger abstention applied and precluded district court from presiding over civil rights action presenting challenges to state court's resolution of property issues in pending marriage dissolution proceedings, absent showing that opportunity to raise constitutional claims in dissolution action would be inadequate or of any bad faith, harassment, or other extraordinary circumstance that would make *Younger* abstention inappropriate. Steffens v. Steffens, D.Colo.1997, 955 F.Supp. 101. Federal Courts 48; Federal Courts 48

Exception to application of *Younger* abstention for bad faith initiation of state proceeding applied in liquor license applicants' § 1983 action against municipality for allegedly violating their constitution rights when municipality denied their liquor license applications, where applicants alleged that state municipality denied applications not for purpose of fairly and uniformly enforcing municipal liquor ordinance, but for sole purpose of exacting retaliation against applicants for successfully challenging municipality in prior legal proceeding. Esmail v. Macrane, N.D.Ill.1994, 862 F.Supp. 217, reversed 53 F.3d 176. Federal Courts 48

Video rental store operators established prima facie case of harassment by county and city prosecutors to cause operators to cease sale and distribution of sexually explicit videotapes by bringing criminal charges or suits under Ohio's civil nuisance abatement law, and thus, federal district court was not required, under *Younger* to abstain from exercising jurisdiction over civil rights suit by store operators against prosecutors seeking declaratory and injunctive relief; 12 suits were pending against operators in three counties and operators claimed that they had also

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been subjected to prior criminal prosecutions, two of which ended in mistrial, one of which resulted in acquittal, and two of which were terminated after juries were unable to reach verdict. Video Store, Inc. v. Holcomb, S.D.Ohio 1990, 729 F.Supp. 579. Federal Courts 53

Child abuse petition filed in family court against parents was not brought in bad faith or with purpose of harassing parents and, therefore, parents' civil rights action challenging placement of children in foster care did not fall within exception to *Younger* abstention. Donkor v. City of New York Human Resources Admin. Special Services for Children, S.D.N.Y.1987, 673 F.Supp. 1221. Federal Courts 48

4258. ---- Constitutional issues of significance, considerations governing, abstention

Under *Younger* and its progeny, federal courts may enjoin a pending state criminal proceeding where the challenged statute is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it. Rivera-Schatz v. Rodriguez, D.Puerto Rico 2004, 310 F.Supp.2d 405. Federal Courts 49

Abstention was not appropriate in federal civil rights action brought by parents of student subjected to strip search by high school disciplinarian, even though parents had previously filed parallel Louisiana state court action; action did not involve any res or property over which either court had taken control, federal forum was no more or less convenient than state forum, danger of piecemeal litigation was slight, and serious federal constitutional issues had been raised. Allen v. Koon, E.D.La.1989, 720 F.Supp. 570. Federal Courts 48

The abstention doctrine is less favored when the plaintiff has alleged the violation of a fundamental right. Frederick L. v. Thomas, E.D.Pa.1976, 408 F.Supp. 832, affirmed 557 F.2d 373. Federal Courts 41

4259. ---- State constitutional issues of significance, considerations governing, abstention

Application of *Pullman* abstention to due process civil rights claims of owner of undeveloped property was not warranted, with regard to township's denial of owner's application for permits to develop property, where owner's federal suit had been filed two years previously and related state action was still pending. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Federal Courts 56

Abstention doctrine precluded consideration of § 1983 damages claim, by physician whose license had been suspended pending administrative hearing, where claim was based entirely on assertion that state's scheme for disciplining doctors was unconstitutional. Moran v. Connecticut Dept. of Public Health and Addition Services, D.Conn.1997, 954 F.Supp. 484. Federal Courts 48

4260. ---- Defendant's willingness to proceed in federal court, considerations governing, abstention

Where plaintiff had right to choose federal forum for his constitutional claim brought under this section, federal district court cannot abstain simply because defendant would prefer to be in state court, nor can it require the plaintiff to exhaust state law remedies before bringing action under this section. Schwartz v. Judicial Retirement System of New Jersey, D.C.N.J.1984, 584 F.Supp. 711. Federal Courts 48

District court would decline to abstain in action brought against city and city officials by a city fireman who was discharged for his violation of city civil service rule and the city charter by becoming a candidate for county commissioner in a nearby county, considering the uncertainty of plaintiff's state remedies, the defendants' willingness to proceed in district court, and the relative clarity of the pendent state law claims. Stone v. City of Wichita Falls, N.D.Tex.1979, 477 F.Supp. 581, affirmed 646 F.2d 1085, certiorari denied 102 S.Ct. 637, 454 U.S. 1082, 70 L.Ed.2d 616. Federal Courts 48

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4261. ---- Delay in federal action, considerations governing, abstention

Defense motion, based on the abstention doctrine, to dismiss civil rights suit challenging the constitutionality of South Dakota statute, SDCL 37-27-1 et seq., regulating solicitation of charitable contributions was properly denied, since the state administrative agency charged with interpreting, influencing and applying the statute lacked the power to resolve the constitutional claims of plaintiffs, since, though an appeal from the pending administrative proceeding to the South Dakota court system might resolve the dispute, requiring such action would permit a considerable delay and the holding of an administrative hearing which the plaintiffs claimed the state had no right to hold, and since plaintiffs might not be able to assert their claims of constitutional invalidity at any stage of the administrative hearing or in any appeal that might follow. Walker v. Wegner, C.A.8 (S.D.) 1980, 624 F.2d 60. Federal Courts 47.1

If abstention in favor of a state court adjudication would be likely to cause delay in civil rights case, or if the evidentiary and ultimate facts on which claims depend are in dispute, federal court should exercise its discretion against abstaining on ground of avoiding premature decision of a federal constitutional issue. Conover v. Montemuro, C.A.3 (Pa.) 1972, 477 F.2d 1073. Federal Courts 48

Delay which follows from application of abstention doctrine is not to be countenanced in cases involving such strong national interest as right to vote. Edwards v. Sammons, C.A.5 (Ga.) 1971, 437 F.2d 1240. Federal Courts 52

California Coastal Zone Act, West's Ann.Cal.Public Resources Code, §§ 27001, 27400 to 27404, 27403(c), 27650, regulating land use in coastal areas and controlling further development presented certain ambiguities including the provisions on vested rights which had not been definitively interpreted by California courts, so that the challenge to its provisions in federal court on federal constitutional grounds in suit under this section presented an appropriate case for abstention, notwithstanding possibility of delay which was outweighed by the inappropriateness of federal court interjecting itself into evolution of important state statutory schemes. Sea Ranch Ass'n v. California Coastal Zone Conservation Commission, D.C.Cal.1975, 396 F.Supp. 533, remanded on other grounds 537 F.2d 1058, on remand 527 F.Supp. 390. Federal Courts 56

Court would not abstain from deciding constitutional issues presented by plaintiff's complaint that denial of her appointment to position of policewoman was based entirely on her association with a man with a criminal record in violation of her U.S.C.A.Const. Amend. 1 rights, where abstention could only serve to delay plaintiff without resolving her basic claim under U.S.C.A.Const. Amend. 1. Brown v. Bronstein, S.D.N.Y.1975, 389 F.Supp. 1328. Federal Courts 58

4262. ---- Administrative review discretionary, considerations governing, abstention

District court did not abuse its discretion in refusing to abstain from entertaining gas consumers' suit for declaratory and injunctive relief against unreasonable termination procedures where review by Public Utilities Commission was discretionary and case was important civil rights case. Palmer v. Columbia Gas of Ohio, Inc., C.A.6 (Ohio) 1973, 479 F.2d 153, 72 O.O.2d 337. Federal Courts 48

4263. ---- Disruption of state regulatory scheme, considerations governing, abstention

Burford abstention was required in §§ 1983 challenge to Virginia's means for determining in-state tuition eligibility involving student's argument he was denied his rights, privileges, and immunities as Virginia citizen and right to travel by having his application for in-state tuition subjected to illegal wealth test and supplemental claims of entitlement to review on basis of the record as to whether University of Virginia's (UVA's) decision was arbitrary, capricious or otherwise contrary to law; state's legitimate or even important interest in charging preferential tuition rates, which required it to distinguish between bona fide residents and those who had come solely for educational

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purposes, allowed it to establish reasonable criteria for in-state status, and to that end, Virginia had adopted unified scheme of statutes and regulations that specified substantive standards and the administrative and appeals process governing in-state tuition eligibility determinations. Goodhart v. Board of Visitors of University of Virginia, W.D.Va.2006, 451 F.Supp.2d 804. Federal Courts 62

Abstention under "*Burford* doctrine" was appropriate in § 1983 suit challenging decision of West Virginia Public Service Commission (PSC), requiring Ohio solid waste disposal service to obtain certificate of convenience and necessity, in accordance with state statute, in order to haul waste in state; West Virginia had established extensive and complex regulatory structure related to regulation of solid waste, it had provided adequate means of judicial review of constitutional claims associated with its procedure, and federal judicial decision on merits of challenge could conceivably disturb regulatory scheme. Harper v. Public Service Com'n of West Virginia, S.D.W.Va.2003, 291 F.Supp.2d 443, reversed 396 F.3d 348, on remand 416 F.Supp.2d 456. Federal Courts 48

New Jersey's public school system was not complex regulatory scheme warranting application of *Burford* abstention doctrine to prevent district court from hearing elementary school student's § 1983 claim, alleging that State Department of Education and its Commissioner aided in local education officials' violation of student's First Amendment rights by failing to exercise supervisory powers or implement policy to allow for expression of religious beliefs in classroom; state public school system was not beyond understanding of federal court and did not require special or technical expertise or interpretations. C.H. v. Oliva, D.N.J.1997, 990 F.Supp. 341, affirmed 166 F.3d 1204, rehearing granted, opinion withdrawn, on rehearing 195 F.3d 167, rehearing granted, opinion vacated 197 F.3d 63, on rehearing 226 F.3d 198, certiorari denied 121 S.Ct. 2519, 533 U.S. 915, 150 L.Ed.2d 692. Federal Courts 62

In § 1983 action brought by plaintiff, who was charged with criminal offense under state law, federal district court would abstain, under *Younger*, from exercising its jurisdiction over plaintiff's claim that defendants denied him right to effective assistance of counsel; plaintiff did not show threat of irreparable injury sufficient to overcome general policy that federal courts should not unduly interfere with state's good faith efforts to enforce its own laws in its own courts. Roberts v. Childs, D.Kan.1997, 956 F.Supp. 923, reconsideration denied 1997 WL 83398, affirmed 125 F.3d 862. Federal Courts 48

Burford abstention was appropriate in reinsurance pool member's § 1983 action claiming that it owned funds transferred to New York Superintendent of Insurance by trustee after pool filed for bankruptcy and that funds were distributed to Superintendent in violation of retrocessionaire agreements; even though member sought to hold Superintendent, deputy, and general counsel personally liable, Superintendent could only have exercised control over disputed funds subject to approval of liquidation court and only in official capacity, and Superintendent's denial of claim could not transform actions into ultra vires act. Capitol Indem. Corp. v. Curiale, S.D.N.Y.1994, 871 F.Supp. 205. Federal Courts 48

Burford abstention was appropriate in landowners' § 1983 action claiming that county's rejection of permit for alternative discharging sewage system violated Virginia statutes and Constitution and Federal Constitution; system set out in Virginia statutes for regulating sewage disposal represented type of complex scheme held to warrant abstention and resolution of claims both state and federal required analysis of state sewage disposal law and local zoning policies. Graham v. County of Albemarle, W.D.Va.1993, 826 F.Supp. 167, affirmed as modified 19 F.3d 11 . Federal Courts 48

Federal court's abstention from jurisdiction was appropriate under *Burford* doctrine due to parallel proceedings before Wisconsin Employment Relations Commission where it appeared that Commission's efforts to establish coherent Wisconsin policy concerning fair share agreements in public school contracts would be disrupted if court were to exercise jurisdiction; Commission was specialized Wisconsin agency with discretion in area of labor law and number of cases challenging fair share agreements under relevant statute throughout state indicated that state policy in area was under attack. Jordi v. Sauk Prairie School Bd., W.D.Wis.1987, 651 F.Supp. 1566. Federal

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Courts 62

Burford abstention was inappropriate for purposes of civil rights suit arising out of state takeover of private water utility, in view of fact that ruling as to constitutionality of alleged taking and other related claims would not cause great disruption of state regulatory scheme. Highfield Water Co. v. Public Service Commission, D.C.Md.1980, 488 F.Supp. 1176. Federal Courts 48

In absence of pending state court proceeding or of ambiguities in statute for state court to resolve, individuals seeking relief under this section need not present their federal constitutional claims in state court before coming to federal forum and there is no doctrine requiring abstention merely because resolution of federal question may result in overturning of a state policy. Wiesenfeld v. State of N. Y., S.D.N.Y.1979, 474 F.Supp. 1141. Civil Rights 1315; Federal Courts 47.1

Federal district court would not abstain from deciding action charging city, county and various government officials with violating plaintiffs' constitutional rights by taking their property without just compensation, notwithstanding California's complex regulatory scheme of land use control since unique factual circumstances suggest that any decision would not likely have significant precedential value or upset any particular scheme of regulation. Barbaccia v. Santa Clara County, N.D.Cal.1978, 451 F.Supp. 260. Federal Courts 42

4264. ---- Domestic relations proceedings, considerations governing, abstention

Doctrine of abstention barred mother's equitable claims, including those for injunctive relief and unspecified damages under § 1983 for alleged tortious interference by state, city and school district with her parental rights after state courts had terminated her parental rights; redress for this alleged interference could not be granted without first disturbing state court adjudication terminating her parental rights, a matter of substantial public concern and court lacked authority to review state court's termination of mother's parental rights. Amerson v. State of Iowa, C.A.8 (Iowa) 1996, 94 F.3d 510, certiorari denied 117 S.Ct. 696, 519 U.S. 1061, 136 L.Ed.2d 618. Courts 509; Federal Courts 48; Federal Courts 54

Younger abstention was appropriate with regard to husband's claims for injunctive relief in civil rights action alleging that due process was violated by Ohio statute enabling domestic violence victims to receive ex parte civil protection order (CPO), and by Ohio civil rule allowing parties in divorce proceeding to obtain restraining orders without hearing, where underlying divorce case was pending at time that husband filed action, challenged provisions affected underlying divorce and involved important state interests, and there was no reason to question ability or willingness of Ohio courts to address husband's constitutional questions. Kelm v. Hyatt, C.A.6 (Ohio) 1995, 44 F.3d 415. Federal Courts 54

Federal district court would abstain from § 1983 civil rights suit brought against state court judge alleging that judge presided over ex parte hearings which resulted in restriction of plaintiff's child visitation rights and thereby infringed plaintiff's due process rights with respect to claim for injunctive relief; there was a well-established policy that federal courts should abstain from exercising jurisdiction in domestic relations cases, plaintiff had not attacked constitutionality of rules or statutes governing family court's procedures, and claims against state judge were enmeshed in underlying domestic relations controversy. Holeman v. Elliott, S.D.Tex.1990, 732 F.Supp. 726, affirmed 927 F.2d 601, certiorari denied 112 S.Ct. 59, 502 U.S. 812, 116 L.Ed.2d 35. Federal Courts 48

Mother's civil rights action, attacking state court child custody decisions, which resulted in termination of her parental rights with respect to four of her children and the placement of her other two children in long-term foster care, was barred by *Rooker-Feldman* doctrine; action sought to overturn state court decisions and damages for matters that were found to be proper under state law, and to adjudicate mother's action would, of necessity, involve court in relitigating various child custody issues, and potentially second-guessing state court decisions. Atkinson-Bird v. Utah, Div. of Child and Family Services, C.A.10 (Utah) 2004, 92 Fed.Appx. 645, 2004 WL

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267754, Unreported. Courts 509

Federal courts lacked jurisdiction, in mother's three § 1983 actions alleging that psychiatric professionals, attorneys, and a state court judge illegally stripped her of custody of her adult, developmentally disabled son, and ended her visitation privileges; federal courts lacked jurisdiction to issue custody decrees. Flejter v. Smith, C.A.7 (Ill.) 2003, 61 Fed.Appx. 257, 2003 WL 721724, Unreported. Federal Courts 8

4265. ---- Economic considerations, considerations governing, abstention

In deference to economic considerations, it should be only for the most compelling reasons that federal courts accept the invitation to extend their writ into dense tangle of discord inevitably arising from local school administration. Egner v. Texas City Independent School Dist., S.D.Tex.1972, 338 F.Supp. 931. Federal Courts 62

4266. ---- Exhaustion of state remedies, considerations governing, abstention

Fact that state Supreme Court had upheld constitutionality of discovery rules which were challenged in federal court did not preclude *Younger* abstention on the grounds that there was no adequate opportunity to present claims in state court. Dubinka v. Judges of Superior Court of State of Cal. for County of Los Angeles, C.A.9 (Cal.) 1994, 23 F.3d 218. Federal Courts 47.1

Younger doctrine, under which federal court may not interfere with pending state criminal prosecution in absence of extraordinary circumstances, applies to situation where state appellate remedies have yet to be exhausted when § 1983 action is filed; as for § 1983 damages actions, it is appropriate to stay federal action pending conclusion of state criminal proceedings. Kyricopoulos v. Town of Orleans, C.A.1 (Mass.) 1992, 967 F.2d 14. Action 69(5)

Neither Younger nor Pullman abstention was required where, in lawyers' suit to enjoin state authorities from continuing criminal obscenity prosecution without affording hearing on their application to represent defendants pro hac vice, it appeared that lawyers could not raise their claim in the pending state proceedings and had in fact exhausted their state trial and appellate remedies prior to filing of federal suit. Flynt v. Leis, C.A.6 (Ohio) 1978, 574 F.2d 874, reversed on other grounds 99 S.Ct. 698, 439 U.S. 438, 58 L.Ed.2d 717, 11 O.O.3d 302, rehearing denied 99 S.Ct. 2185, 441 U.S. 956, 60 L.Ed.2d 1060. Courts 508(7)

Fact that junior high school students did not first seek pertinent state remedy prior to filing federal suit under this section challenging hair regulation as violating rights of free speech, free exercise of religion, equal protection and due process, did not require that federal court invoke doctrine of abstention, in light of passage of time and attendant need to resolve issues in dispute. New Rider v. Board of Ed. of Independent School Dist. No. 1, Pawnee County, Oklahoma, C.A.10 (Okla.) 1973, 480 F.2d 693, certiorari denied 94 S.Ct. 733, 414 U.S. 1097, 38 L.Ed.2d 556, rehearing denied 94 S.Ct. 1456, 415 U.S. 939, 39 L.Ed.2d 497. Federal Courts 62

Former municipal employee's failure to pursue an available Article 78 proceeding under New York law following his termination barred him from succeeding on his §§ 1983 due process claim against his former supervisor. McLaurin v. New Rochelle Police Officers, S.D.N.Y.2005, 363 F.Supp.2d 574. Civil Rights 1320

Younger abstention was not warranted in §§ 1983 suit against county police officers for Fourth Amendment violations after plaintiff was detained on suspicion of towing car in violation of county criminal ordinance, where no state prosecution was pending and plaintiff did not seek to enjoin such prosecution. Poole v. Pass, E.D.Va.2005, 351 F.Supp.2d 473. Federal Courts 48

A party may not escape the jurisdictional bar of the Rooker-Feldman doctrine by merely refashioning its attack on the state court judgment as a § 1983 claim. Rogers v. Swepston, S.D.W.Va.2003, 267 F.Supp.2d 549. Courts

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Younger abstention was not required in case in which reporter challenged state court order gagging parties from talking to press as violative of his First Amendment rights, even though party to state court litigation had taken appeal from order and reporter might have intervened in appeal and thus availed himself of opportunity for judicial review in state proceedings; although reporter's rights may have been derivative of party's First Amendment right to free speech, their interests and constitutional issues were not identical and reporter was not required to exhaust state court remedies. Brown v. Damiani, D.Conn.2001, 154 F.Supp.2d 317. Federal Courts 53

Although the district court was concerned that plaintiff who brought § 1983 action arising out of state trial court's interlocutory order of common-law marriage which required him to immediately pay a significant amount of attorneys' fees and temporary alimony to defendant might not have an ultimate remedy for return of payments if final judgment were later reversed on appeal, the court was required to abstain from deciding constitutional issues which had not been presented to state court. Winfield v. Renfro, S.D.Tex.1989, 718 F.Supp. 613. Federal Courts 48

Both aspects of tenant's § 1983 claim against her landlord, which were that there were omissions from her eviction notice and that omitted Housing and Urban Development (HUD) regulations rendered her lease illegal, were germane to issue of possession and could have been raised in state court proceedings, and thus, *Rooker-Feldman* doctrine deprived federal district court of jurisdiction over tenant's subsequent § 1983 claim; although under Illinois law only claims or defenses that are germane to the right of possession may be raised in a forcible entry and detainer proceeding, one category of such issues includes claims challenging the validity or enforceability of agreement on which plaintiff bases right to possession. Chambers v. Habitat Co., C.A.7 (Ill.) 2003, 68 Fed.Appx. 711, 2003 WL 21377492, Unreported, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 1064, 540 U.S. 1119, 157 L.Ed.2d 913. Courts 509

4266A. ---- Rooker-Feldman doctrine, considerations governing, abstention

Rooker-Feldman doctrine, which recognized that federal district courts did not have subject matter jurisdiction to hear appeals from state court decisions, did not bar civil rights action brought by former state prisoner under Eighth Amendment claiming that he had been detained in jail longer than he should have been due to "deliberate indifference and delay" of corrections officials in granting him jail credit, although state courts had denied prisoner jail credit that he believed he had been owed; prisoner subsequently obtained credit through department of corrections and deliberate indifference claim had not been presented to state courts. Burke v. Johnston, C.A.7 (Wis.) 2006, 452 F.3d 665. Courts 509

Rooker-Feldman doctrine, which prevents federal district courts from reviewing state court judgments, did not bar physician's suit in same matter that was filed with federal district court while his petition for certiorari to state supreme court was pending, and thus district court had subject matter jurisdiction to hear case, since state suit was not final. Guttman v. Khalsa, C.A.10 (N.M.) 2006, 446 F.3d 1027. Courts 509

Rooker-Feldman doctrine did not preclude property owner from bringing suit in federal district court claiming numerous civil rights violations by city arising from destruction of his buildings, despite state court's prior denial of his request for injunctive relief, where state court judgment permitted city to demolish buildings, but did not require their demolition, owner did not ask district court to overturn state court judgment, and allegations underlying owner's federal claim would have been identical if there had been no state court proceeding. Bolden v. City of Topeka, Kan., C.A.10 (Kan.) 2006, 441 F.3d 1129. Courts 509

Rooker-Feldman doctrine did not insulate prior reclassification decision of county property tax assessment board from review by federal court in subsequent civil rights lawsuit under equal protection clause, although lawsuit in effect asked lower federal court to reverse result of state court decision because state supreme court ultimately held

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that assessor's reclassification complied with state law; *Rooker-Feldman* doctrine was not applicable because it did not apply to judicial review of state agency decisions and no state court had rendered decision in the case at time suit was filed in federal district court. Jicarilla Apache Nation v. Rio Arriba County, C.A.10 (N.M.) 2006, 440 F.3d 1202. Courts 509

Rooker-Feldman doctrine did not bar federal district court's consideration of §§1983 takings clause action brought by distributor of video gaming machines challenging state statute prohibiting possession of such machines, since distributor had not been party to earlier state-court action asserting similar challenge. Holliday Amusement Co. of Charleston, Inc. v. State of South Carolina, C.A.4 (S.C.) 2005, 401 F.3d 534, certiorari denied 126 S.Ct. 357, 163 L.Ed.2d 65. Courts 509

The *Rooker-Feldman* doctrine did not prevent exercise of federal jurisdiction over terminated New York City police officer's equal protection claim based on suspect classification, raised for the first time in federal § 1983 action and not in state court Article 78 proceeding in which officer claimed that ALJ's determination he used excessive force was not supported by substantial evidence. Vargas v. City of New York, C.A.2 (N.Y.) 2004, 377 F.3d 200. Courts 509

Procedural requirements of *Rooker-Feldman* doctrine were met as to due process claims brought by parents and child against city, foster care agency and foster parent, stemming from injuries allegedly suffered by child either during stay at city facility or placement in foster home; although additional factual questions remained as to whether termination of parental rights and adoption were appropriate, initial removal decision was fully assessed by state court and found to be proper. Phillips ex rel. Green v. City of New York, S.D.N.Y.2006, 453 F.Supp.2d 690. Courts 509

Rooker-Feldman abstention doctrine was inapplicable in case, where individuals who were arrested and prosecuted on open burning charges, arising from their burning of a rainbow-colored flag at a gay pride parade, stated claims for declaratory and injunctive relief, and monetary damages, but did not seek to overturn the state court's previous decision finding them guilty of open burning charges. Daubenmire v. City of Columbus, S.D.Ohio 2006, 452 F.Supp.2d 794. Courts 509

Lessees' equal protection challenge to Puerto Rico fire code as it was applied in one particular instance against them, which was brought in federal court after fire escape access order had been fully considered and affirmed by Puerto Rico judiciary, did not fit within exception to *Rooker-Feldman* doctrine, that United States district courts always have subject matter jurisdiction over general constitutional challenges over state laws, whether or not lessees raised equal protection claim in Puerto Rico courts vel non, since lessees were not challenging constitutionality of fire code as a whole. Davison v. Puerto Rico Firefighters Corps, D.Puerto Rico 2006, 415 F.Supp.2d 33. Courts 509

Rooker-Feldman doctrine did not bar federal civil rights action of primary candidate, whose name was placed on party ballot for town council after successful state court litigation, and who subsequently won position in general election, as plaintiff did not complain of the state court judgment, and his suit against board of elections members did not invite review or rejection of state judgment. Bodkin v. Garfinkle, E.D.N.Y.2006, 412 F.Supp.2d 205. Courts 509

Rooker-Feldman did not bar detainee's civil access to court and counsel claims brought against county defendants since those claims were distinct from the issue that was litigated before judge in state court criminal proceedings, and detainee was not complaining of injuries caused by judge's order directing county jail to allow attorney/client contact between arrestee and his counsel and was not directly appealing the order. Glisson v. Sangamon County Sheriff's Dept., C.D.Ill.2006, 408 F.Supp.2d 609. Courts 509

Rooker-Feldman doctrine barred exercise of federal jurisdiction over §§ 1983 action against state court judge and

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state and county officials involved in state water court case allegedly brought in retaliation for plaintiff's criticism of the officials; plaintiff essentially sought to disrupt or undo the water court judgment, and relief requested, restoration of plaintiff's water plus damages for lost use of that water, was inextricably intertwined with the state water court case. Tatum v. Simpson, D.Colo.2005, 399 F.Supp.2d 1159. Courts 509

Rooker-Feldman doctrine, precluding lower federal court review of state court decision, precluded assertion of subject matter jurisdiction over claims that employees of Federal Home Loan Bank (FHLB) conspired with plaintiff in state court action, to enforce allegedly wrongly decided state court temporary restraining order against employee, in violation of Civil Rights Act guarantee of access to public accommodations, Fair Housing Act (FHA), Civil Rights Act racial discrimination and conspiracy provisions. Zhu v. Federal Housing Finance Bd., D.Kan.2005, 389 F.Supp.2d 1253, reconsideration denied 2005 WL 2874996. Courts 509

Rooker-Feldman doctrine did not preclude District Court from exercising jurisdiction over father's claims under §§ 1983 alleging that state family court officials violated his constitutional rights by refusing to process his ex parte petition for visitation, where those claims were not actually litigated in family court, and thus were not inextricably intertwined with family court's adjudication; no state court had decided those claims, and, if District Court should rule in father's favor on those claims, such a finding would have no effect on family court's orders regarding father's custody rights. McKnight v. Baker, E.D.Pa.2004, 343 F.Supp.2d 422. Courts 509

Rooker-Feldman doctrine precluded District Court from exercising jurisdiction over father's claims under §§ 1983 alleging he was deprived of his constitutionally protected parental rights, to extent he sought relief that would void or render ineffectual state family court's custody orders governing his visitation rights, where such claims were inextricably intertwined with family court's adjudication; father's ostensibly federal claims represented an indirect attack on custody determination already adjudicated in family court. McKnight v. Baker, E.D.Pa.2004, 343 F.Supp.2d 422. Courts 509

Rooker-Feldman doctrine, precluding lower federal court review of state court decisions, barred grant of injunction barring justices of village court from participating in illegal scheme to ticket and collect fines from motorists, after police jurisdiction was ceded to county. Wood v. Incorporated Village of Patchogue of New York, E.D.N.Y.2004, 311 F.Supp.2d 344. Courts 509

Rooker-Feldman doctrine, which prevented federal courts from reconsidering matters finally decided by state courts, applied to preclude real property owner's claim before federal district court in civil rights lawsuit under Fourteenth Amendment, after state trial court determined that real property should be sold in private sale and Supreme Court of Georgia affirmed trial court's decision, where issues presented before district court were inextricably intertwined with state courts' judgments, parties were identical, and owner had reasonable opportunity to raise his federal claims in state court proceedings. Ransom v. State of Georgia, C.A.11 (Ga.) 2006, 2006 WL 1313171, Unreported. Courts 509

Since nonprofit corporation's §§ 1983 action for declaratory judgment and injunctive relief against the state of Ohio, a state-court judge, and a court-appointed receiver unquestionably asserted that judge in state court action had improperly found that a receiver should be appointed to take control of corporation's nationwide assets, corporation's federal claim was inextricably intertwined with a state court decision, precluding the federal district court from exercising jurisdiction under the *Rooker-Feldman* doctrine. ADSA, Inc. v. Ohio, C.A.6 (Ohio) 2006, 176 Fed.Appx. 640, 2006 WL 1008319, Unreported. Courts 509

Rooker-Feldman doctrine, precluding lower federal court review of state court decisions, barred state prisoner's §§ 1983 claim against district attorney, sheriff, and others, challenging state court proceedings, which granted forfeiture petition against prisoner's commercial property. Walker v. Abraham, C.A.3 (Pa.) 2005, 156 Fed.Appx. 536, 2005 WL 3339810, Unreported. Courts 509

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42 U.S.C.A. § 1983

Former state court litigant's in forma pauperis §§ 1983 claim that his due process rights were violated in state court domestic relations case, primarily on ground that state courts disregarded evidence that he presented, could have been raised in state court, and was intertwined with and sought to undo his earlier state court decision, and thus, was barred under *Rooker-Feldman* doctrine. Donahou v. Oklahoma, C.A.10 (Okla.) 2005, 153 Fed.Appx. 471, 2005 WL 2746766, Unreported. Courts 509

Rooker-Feldman doctrine barred plaintiff's federal civil rights claims against his deceased mother's former guardian and judge, based on allegedly improper sale of his mother's home, where federal claims were merely an obvious attempt to sidestep the appeal process in the state courts. Daggett v. Key, C.A.7 (Wis.) 2005, 123 Fed.Appx. 721, 2005 WL 332452, Unreported. Courts 509

Rooker-Feldman doctrine, preventing federal court review of state court decisions, barred public housing tenant's § 1983 action against city housing authority and property manager for violation of the Quality Housing and Work Responsibility Act (QHWRA), the United States Housing Act, and the due process and equal protection clauses, where tenant sought relief from judgment of state court granting restitution of rental property to city housing authority. Flowers v. Columbus Metropolitan Housing Authority, C.A.6 (Ohio) 2004, 90 Fed.Appx. 893, 2004 WL 237410, Unreported. Courts 509

Rooker-Feldman doctrine, which provides that inferior federal courts have no subject matter jurisdiction over cases that effectively seek review of judgments of state courts and that federal review, if any, can occur only by way of a certiorari petition to the Supreme Court, barred action by disbarred attorney, under § 1983 and other civil rights statutes against court officials and his counsel, alleging racial discrimination in his disbarment, and seeking injunctive relief in the form of reinstatement to the practice of law or a hearing regarding the alleged violations; disbarred attorney was essentially challenging his disbarment. Brooks v. Ross, C.A.2 (N.Y.) 2003, 76 Fed.Appx. 356, 2003 WL 21961174, Unreported. Courts 509; Federal Courts 1142

Under *Rooker-Feldman* doctrine, federal district court did not have subject matter jurisdiction over civil rights lawsuit brought by citizen in forma pauperis against county and ex-wife under due process clause challenging his original child support order on jurisdictional grounds, disputing his total child support arrearages, and alleging that county's garnishment order against his disability benefits payments was invalid, since citizen's claims were inextricably intertwined with ruling of state court. Rucker v. County of Santa Clara, State of California, N.D.Cal.2003, 2003 WL 21440151, Unreported. Courts 509

4267. ---- Flagrantly unconstitutional state statutes, considerations governing, abstention

Provisions authorizing contempt proceedings against debtors who disobeyed subpoenas to appear in supplemental proceedings brought by judgment creditors in attempt to collect judgments in New York are not so patently or flagrantly unconstitutional as to invoke exception to rule of abstention from interfering in state proceedings. Juidice v. Vail, U.S.N.Y.1977, 97 S.Ct. 1211, 430 U.S. 327, 51 L.Ed.2d 376. Courts 508(3)

District court erred in holding that it should abstain from determining constitutionality of LSA-R.S. 14:358 et seq. pending authoritative interpretation of statutes in state courts, where complaint under this section attacked such statutes as being unconstitutional on their face as abridging free expression or as applied for purpose of discouraging protected activities. Dombrowski v. Pfister, U.S.La.1965, 85 S.Ct. 1116, 380 U.S. 479, 14 L.Ed.2d 22. Federal Courts 53

Even if plaintiff, who challenged constitutionality of A.R.S. § 13-991 subsec. 3 providing that a person who roams about from place to place without any lawful business shall be punished as a vagrant, was currently subject to a state criminal prosecution, federal abstention would not be warranted since A.R.S. § 13-991 subsec. 3 was patently unconstitutional on its face and was currently being used for the purpose of making arrests to permit investigation of other activities. Anderson v. Nemetz, C.A.9 (Ariz.) 1973, 474 F.2d 814. Federal Courts 49

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4268. ---- Intermingled state and federal claims, considerations governing, abstention

Exceptional circumstances which would support abstention or dismissal under *Colorado River* test were not present in wife's civil right action claiming that bank, under color of state law, had taken her property without due process when it seized property in which it had security interest after filing complaint which named only her husband as defendant where federal and state courts were not both determining rights in property, there was no inconvenience in the federal forum, wife had filed federal suit before being added as party to state court suit, federal law provided rule of decision in the federal claim, and Congress had expressly granted civil rights plaintiffs a federal forum. Forehand v. First Alabama Bank of Dothan, C.A.11 (Ala.) 1984, 727 F.2d 1033. Federal Courts 48

Since all of developers' state and federal claims necessarily depended upon construction of state land use law concerning scope of authority of local planning bodies and boards of supervisors, proper interpretation of state and local land use law and county zoning practices and procedure, court of appeals would abstain from considering appeal from judgment entered in favor of county, county board of supervisors, and county zoning administrator in action alleging that board's refusal to approve site plan for development of parcel of land violated state and local law, and various federal rights of developers. Caleb Stowe Associates, Ltd. v. Albemarle County, Va., C.A.4 (Va.) 1984, 724 F.2d 1079. Federal Courts 56

Constitutional claims against Illinois National Guard and officers thereof, alleging sexual harassment and retaliation including rape and sexual assault, illegal and discriminatory demotion, transfer, discharge, and denial of promotions, were barred under *Bivens* and § 1983; claims sought relief for incidents arising from plaintiffs' military status or status as federal technicians, a job inextricably entwining civilian and military functions. Bartley v. U.S. Dept. of Army, C.D.Ill.2002, 221 F.Supp.2d 934. Civil Rights 1376(10); United States 50.10(5)

Issues raised by § 1983 action in which federal constitutional challenge to New Jersey sex offender registration and notification statute ("Megan's Law") was raised by offenders subject to statute were inextricably intertwined with merits of prior state court decision, so that *Rooker-Feldman* doctrine did not bar consideration of action by court; plaintiffs did not seek review of tier determination hearing under statute, but rather alleged that proceedings were unconstitutional, and plaintiffs were not parties in prior action in which New Jersey Supreme Court held statute to be constitutional. Alan A. v. Verniero, D.N.J.1997, 970 F.Supp. 1153, vacated 135 F.3d 763. Courts 509

Exceptional circumstances existed so as to make abstention appropriate with regard to § 1983 claims filed by widow of trainee who died as result of injuries he suffered in accident at Massachusetts police academy pending final resolution of matter in state courts, where piecemeal litigation would prove costly and troublesome to parties, state law provided rule of decision for twelve of fourteen counts in complaint, and six of fourteen counts had to be remanded under Eleventh Amendment to state court. Shepard v. Egan, D.Mass.1990, 767 F.Supp. 1158. Federal Courts 48

Parent's claim that her constitutional rights were violated as result of state court's refusal to permit journalist to participate in dependency and neglect proceeding was inextricably intertwined with prior state court judgment declaring journalist to be special respondent and barring her from being involved in proceedings, and thus *Rooker-Feldman* doctrine barred federal civil rights action by parent and journalist, even though they had not raised federal claims in state court. Shell v. Meconi, C.A.10 (Colo.) 2005, 123 Fed.Appx. 866, 2005 WL 256550, Unreported. Courts 509

Review of claim citizen brought against magistrate judge and clerk of state district court alleging his rights were violated under § 1983 when a transcript was not made of hearing in which a protective order was issued against citizen in favor of his former spouse was precluded by the *Rooker-Feldman* doctrine; complaint sought appellate review of protective order issued against citizen by magistrate judge, and constitutional violations allegedly committed by magistrate and clerk were inextricably intertwined with the state court protective order issued against

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citizen. Sherkat v. Vano, C.A.10 (Kan.) 2003, 76 Fed.Appx. 242, 2003 WL 22147622, Unreported, certiorari denied 124 S.Ct. 822, 540 U.S. 1055, 157 L.Ed.2d 709. Courts 509

Father's § 1983 action against state Family Court judge, mother, and others, asserting constitutional claims relating to dispute involving child custody, visitation, and child support payments, was barred under *Rooker-Feldman* doctrine, precluding lower federal court jurisdiction over cases that effectively sought review of state court judgments, where action was inextricably intertwined with state court adjudications regarding custody, visitation, and child support, and claims could have been raised in state court. Formanek v. Pines, C.A.2 (N.Y.) 2003, 69 Fed.Appx. 504, 2003 WL 21697413, Unreported. Courts 509

4269. ---- Irreparable injury, considerations governing, abstention

Despite fact that state courts had not yet interpreted McKinney's N.Y. General Business Law § 136(a), relating to exhibition or display of the flag, federal district court properly refused to abstain from considering civil rights suit challenging constitutionality of that statute since, in the circumstances of the case, abstention could cause irreparable harm to plaintiffs and to others similarly situated and could effectively nullify their rights under U.S.C.A.Const. Amend. 1. Long Island Vietnam Moratorium Committee v. Cahn, C.A.2 (N.Y.) 1970, 437 F.2d 344, affirmed 94 S.Ct. 3197, 418 U.S. 906, 41 L.Ed.2d 1153. Federal Courts 53

Doctrine of equitable restraint did not preclude consideration of religious societies' claims of violation of right under U.S.C.A.Const. Amend. 1 to proselytize religious beliefs at state fair arising from enforcement of regulations prohibiting roving solicitation on state fairgrounds, where it was unequivocal intent of state fair officials to utilize any available means to prevent roving solicitation by members of societies and where such threat resulted in societies refraining from conducting such solicitations. International Soc. for Krishna Consciousness, Inc. v. Evans, S.D.Ohio 1977, 440 F.Supp. 414. Constitutional Law 84.5(16)

Real possibility that state law claim could be adjudicated without abstention, together with possible irreparable harm from further delay in decision of case, precluded application of abstention doctrine in civil rights case on claim that children with specific learning disabilities were discriminated against by failure of defendants to provide instructions specifically suited to such children's handicaps. Frederick L. v. Thomas, E.D.Pa.1976, 408 F.Supp. 832, affirmed 557 F.2d 373. Federal Courts 62

Where it appeared that bookstore operator might well succeed in his challenge to constitutionality of ordinances and that abstention by federal district court could well result in denial of any effective safeguard against loss of protected freedoms of expression, abstention was not appropriate. Amato v. Ruth, D.C.Wis.1970, 332 F.Supp. 326 . Federal Courts 53

Inasmuch as suit under this section for declaration that plaintiff's Kansas conviction and sentence were in violation of the Constitution and to enjoin state from enforcing same amounted to nothing more than a collateral attack on a state court conviction, action would be dismissed under doctrine of abstention in absence of showing of irreparable harm or any indication that state and state officials had proceeded in anything other than good faith. Davis v. State of Kan., D.C.Kan.1971, 327 F.Supp. 963. Federal Courts 48

4270. ---- Nature of state court relief sought, considerations governing, abstention

Pullman abstention was inappropriate in civil rights case in which former prisoner sought damages from three individuals who allegedly withheld exculpatory evidence where case posed no possibility that state statute allowing motions for DNA testing of evidence would be held unconstitutional unless narrowed. Bembenek v. Donohoo, E.D.Wis.2005, 355 F.Supp.2d 942. Federal Courts 48

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42 U.S.C.A. § 1983

Pending state court appeals of zoning dispute did not require that district court abstain from exercising its jurisdiction over § 1983 suit brought by landowners based on same facts as state case, where landowners had already obtained desired injunctive relief from state court, and § 1983 action sought additional relief in form of money damages and attorney fees for alleged violations of their constitutional rights. Koncelik v. Town of East Hampton, E.D.N.Y.1991, 781 F.Supp. 152. Federal Courts 48

Federal district court would not abstain from preliminarily enjoining enforcement of city ordinance providing for revocation of license of business violating antipornography laws where, despite pendency of criminal matters in city court implicating constitutionality of such ordinance, injunctive relief against such prosecution was not sought, but relief was sought only against future enforcement of challenged ordinance and such relief was therefore entirely prospective in nature. Eagle Books, Inc. v. Ritchie, D.C.Utah 1978, 455 F.Supp. 73. Courts 508(2.1)

Where dancers who brought action against various state and city officials to preclude enforcement of regulations prohibiting them from mingling with customers in the lounges where they worked did not seek to enjoin any state proceedings and where the regulations were enforceable only against the owner of the lounge so that the dancers could not be subject to any proceedings, and where they sought declaratory relief and other relief necessary to insure future compliance with the declaration which they sought, federal court would not abstain from deciding the case. Olitsky v. O'Malley, D.C.Mass.1978, 453 F.Supp. 1052, affirmed 597 F.2d 295. Federal Courts 51

4271. ---- Peculiarly state issues, considerations governing, abstention

Although district court abstaining on *Pullman* grounds would ordinarily retain jurisdiction pending authoritative interpretation by state courts, retaining jurisdiction was not appropriate in § 1983 action alleging that Tennessee statutes made illegal the practice of collecting jail fees from persons convicted of driving under the influence (DUI), and that such illegal practice was unconstitutional; no authoritative determination could possibly leave grounds for further action by district court. Brown v. Tidwell, C.A.6 (Tenn.) 1999, 169 F.3d 330. Federal Courts 65

City had significant and substantial interest in regulation of on-street parking and vindication of the system implemented to adjudicate violation of those regulations for *Younger* abstention purposes. O'Neill v. City of Philadelphia, C.A.3 (Pa.) 1994, 32 F.3d 785, certiorari denied 115 S.Ct. 1355, 514 U.S. 1015, 131 L.Ed.2d 213. Federal Courts 47.1

District court did not abuse its discretion in invoking *Burford* abstention doctrine in developer's civil rights action against county and county agencies and officials, in which argument boiled down to assertion that subdivision plan complied with zoning laws and that local authorities wrongfully disapproved of plan by misapplying the laws and abusing their authority and decision-making process, despite vague equal protection claim that plan received dissimilar treatment without rational legally sufficiently basis. Pomponio v. Fauquier County Bd. of Sup'rs, C.A.4 (Va.) 1994, 21 F.3d 1319, certiorari denied 115 S.Ct. 192, 513 U.S. 870, 130 L.Ed.2d 125. Federal Courts 48

Younger abstention was proper with respect to attorneys' suit against Ohio Supreme Court and its justices as well as Ohio Bar Association and its committees seeking declaratory judgment, injunctive relief, money damages and costs with respect to state's disciplinary proceedings against attorneys; disciplinary proceedings were within constitutionally prescribed jurisdiction of Supreme Court of Ohio, were carried out by committees which were arms of Ohio Supreme Court, regulation of legal profession was of great importance to Ohio, and attorneys had opportunity to present their constitutional claims in their answer to complaint against them. Berger v. Cuyahoga County Bar Ass'n, C.A.6 (Ohio) 1993, 983 F.2d 718, rehearing denied, certiorari denied 113 S.Ct. 2416, 508 U.S. 940, 124 L.Ed.2d 639. Federal Courts 51; Federal Courts 54

Federal district court correctly abstained in motorist's action against three Iowa Department of Transportation officials seeking damages, declaratory relief, and injunctions for violations of his constitutional rights and state law

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based upon suspension of his driver's license and motor vehicle registration based upon three speeding citations all with 60-day period; state's interest in safety of its roadways is considerable, motorist would have adequate opportunity to raise his constitutional claims in state proceeding, and several of constitutional challenges to state statutes and Department rule involved required interpretation of state provisions. Ronwin v. Dunham, C.A.8 (Iowa) 1987, 818 F.2d 675. Federal Courts 55

Exercise of pendent jurisdiction over state law claims in civil rights action was not warranted, where federal claims under §§ 1983 were dismissed on summary judgment, and only state law claims remained. Vega v. Vivoni, D.Puerto Rico 2005, 389 F.Supp.2d 160. Federal Courts 15

Employee's state law claims regarding his loss of employment did not substantially predominate over his federal law claim for damages under §§ 1983 against state employer, so as to warrant district court's dismissal of state law claims for resolution by state law tribunals; scope of issues presented, damages alleged, and evidence required to prove both types of claims were substantially the same. McNerny v. Nebraska Public Power Dist., D.Neb.2004, 309 F.Supp.2d 1109. Federal Courts 18

Burford abstention was not appropriate in case challenging administrative revocation of insurance licenses on due process grounds, even assuming that licensees had adequate state court remedies, as case raised purely federal claims, rather than complex, policy-laden state law issues, and would not disrupt state efforts to establish coherent policy. Guillemard Gionorio v. Contreras Gomez, D.Puerto Rico 2004, 301 F.Supp.2d 122, appeal dismissed 161 Fed.Appx. 24, 2005 WL 3382638. Federal Courts 55

Abstention under "*Younger* abstention doctrine" was appropriate in § 1983 suit challenging decision of West Virginia Public Service Commission (PSC), requiring Ohio solid waste disposal service to obtain certificate of convenience and necessity, in accordance with state statute, in order to haul waste in state; proceedings before PSC with respect to issue were judicial in nature and ongoing, proceedings implicated important state interest in protecting health and welfare of its citizens, and there was adequate opportunity in state proceedings for owner and operator of service to raise constitutional challenges. Harper v. Public Service Com'n of West Virginia, S.D.W.Va.2003, 291 F.Supp.2d 443, reversed 396 F.3d 348, on remand 416 F.Supp.2d 456. Federal Courts 48

Purported state interest in regulating sewage disposal did not rise to level of significant state interest justifying federal court's relinquishment of jurisdiction under *Younger* abstention doctrine in landowners' § 1983 suit alleging that county's denial of alternative discharging sewage system violated Virginia law and United States Constitution. Graham v. County of Albemarle, W.D.Va.1993, 826 F.Supp. 167, affirmed as modified on other grounds 19 F.3d 11. Federal Courts 48

Burford abstention was not required in § 1983 action against Pennsylvania Secretary of Banking, although administering state banking system had significant importance to Pennsylvania; state court did not have any special competence in determining whether Secretary's actions comported with due process. Kenworthy v. Hargrove, E.D.Pa.1993, 826 F.Supp. 138, affirmed 855 F.Supp. 101. Federal Courts 48

Federal court abstention from issuance of injunction prohibiting town from enforcing local law against firm engaged in solid waste processing was not required on *Younger* grounds, based upon existence of state court injunction barring processor from violating law; although state court had some interest in proceeding, interest was not vital to operation of state government. C & A Carbone, Inc. v. Town of Clarkstown, S.D.N.Y.1991, 770 F.Supp. 848. Federal Courts 54

Serious questions existed as to whether *Younger* abstention was appropriate with respect to trust beneficiaries' claim in civil rights action that they were deprived of access to courts by Minnesota state judge's injunction against further prosecution of Oregon action alleging trust mismanagement, for purpose of determining whether

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beneficiaries were entitled to preliminary injunction against judge, since Minnesota had interest in proper administration of trusts under its jurisdiction, Minnesota had strong interest in reviewing constitutionality of judge's order, state proceedings implicated important state interest, and there was adequate opportunity in Minnesota actions to raise federal question. Schroll v. Plunkett, D.Or.1990, 760 F.Supp. 1378, affirmed 932 F.2d 973. Civil Rights 1457(7)

Younger doctrine justified abstention from action challenging state court custody and visitation rulings, where appeal of visitation order was still pending, state court had paramount if not exclusive interest in the case, and plaintiff mother had had more than sufficient opportunity to litigate federal issues in state courts. Neustein v. Orbach, E.D.N.Y.1990, 732 F.Supp. 333. Federal Courts 48

Younger abstention was appropriate in civil rights action in which state inmate challenged conditions of confinement and alleged official retaliation; state habeas proceedings were ongoing and would afford inmate opportunity to raise constitutional claims; moreover, state had considerable interest in claim of official retaliation. Burgos v. Koehler, S.D.N.Y.1990, 727 F.Supp. 847. Federal Courts 50

District court lacked subject matter jurisdiction over §§ 1983 action in which father sought to attack state-court child custody judgment awarding custody of adopted son to state agency. Crawford v. Wilker, C.A.10 (Wyo.) 2005, 153 Fed.Appx. 468, 2005 WL 2660501, Unreported. Courts 509

4272. ---- Pending state proceedings, considerations governing, abstention

If state criminal defendant brings federal civil rights lawsuit during pendency of his criminal trial, appeal, or state habeas action, abstention may be appropriate response to parallel state-court proceeding. Heck v. Humphrey, U.S.Ind.1994, 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383. Federal Courts 48

Where there was no pending state court proceeding in which plaintiff could have challenged Wisconsin statute, W.S.A. 245.10, providing that certain residents could not marry within state or elsewhere without first obtaining court permission, there were no statutory ambiguities for the state courts to resolve, and case did not involve complex issues of state law, abstention was not required in class action challenging Wisconsin statute as violative of the equal protection and due process clauses. Zablocki v. Redhail, U.S.Wis.1978, 98 S.Ct. 673, 434 U.S. 374, 54 L.Ed.2d 618. Federal Courts 47.1

District court did not abuse its discretion in failing to abstain from deciding attorney's §§ 1983 First Amendment challenge against city ordinance limiting display of political signs to residential areas, where there was no state criminal, civil, or administrative proceedings underway, and there was no risk that a federal injunction would interfere with any pending state proceedings; any such proceedings ended when attorney removed her campaign sign from the front of her law office. Beaulieu v. City of Alabaster, C.A.11 (Ala.) 2006, 454 F.3d 1219. Federal Courts 56

Pending state court action in which licensed psychiatrist who was subject to disciplinary proceedings sought declaration that statute requiring suspension of his license due to his failure to submit to ordered psychiatric examination was unconstitutional on its face and as applied, and to recover damages from various state officials, required federal court to abstain under *Younger* from exercising jurisdiction over § 1983 action in which psychiatrist sought identical relief; state proceeding was an ongoing action, and state court provided an adequate forum for constitutional claims. Weitzel v. Division of Occupational and Professional Licensing of Dept. of Commerce of State of Utah, C.A.10 (Utah) 2001, 240 F.3d 871. Federal Courts 55

In light of hotel owner's pending state court mandamus action challenging city Board of Permit Appeals' (BPA) decision that classified hotel as residential, thus subjecting it to city's amended Hotel Conversion Ordinance (HCO), *Pullman* abstention was appropriate in hotel owner's § 1983 action, alleging that ordinance constituted

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facial taking of property without just compensation because it was not sufficiently related to legitimate state interests; land use planning was sensitive area of social policy, landowner's entire case hinged on designation of his hotel as residential, which was precise issue raised in his state mandamus action, this claim raised numerous uncertain issues of state law, and state court reversal of BPA's ruling would moot owner's constitutional claim. San Remo Hotel v. City and County of San Francisco, C.A.9 (Cal.) 1998, 145 F.3d 1095. Federal Courts 56

Anti-abortion activist's § 1983 action seeking to strike down state court injunction that limited picketing at physician's home, OB/GYN office, and abortion clinic was not barred under *Colorado River* abstention doctrine, absent any ongoing state proceeding parallel to federal case. Gottfried v. Medical Planning Services, Inc., C.A.6 (Ohio) 1998, 142 F.3d 326, rehearing and suggestion for rehearing en banc denied, certiorari denied 119 S.Ct. 592, 525 U.S. 1041, 142 L.Ed.2d 534. Federal Courts 48

Even if transaction between Iowa Department of Health and nonprofit operator of family planning clinics regarding whether proposed clinic construction was subject to Iowa's certificate of need requirements could be characterized as ongoing proceedings, for purposes of *Younger* abstention doctrine, they were not judicial in nature, and thus did not mandate abstention from operator's related § 1983 action; no application was pending before Department, which conducted no investigation, held no hearings, received no evidence, kept no record, and enforced no liabilities. Planned Parenthood of Greater Iowa, Inc. v. Atchison, C.A.8 (Iowa) 1997, 126 F.3d 1042. Federal Courts 48

Younger abstention was not appropriate in § 1983 action seeking monetary relief for delay in instituting forfeiture proceeding against plaintiff's seized vehicle, even though state Supreme Court had recognized that forfeiture proceeding was quasi-criminal, and even though plaintiff sought both damages and return of her car in pending state tort action. Alexander v. Ieyoub, C.A.5 (La.) 1995, 62 F.3d 709. Federal Courts 48

Even though persons who received parking citations filed lawsuit in federal court in lieu of appealing hearing examiner's determination and raising their constitutional claims in the state forum, there was "pending" state proceeding for purposes of *Younger* abstention. O'Neill v. City of Philadelphia, C.A.3 (Pa.) 1994, 32 F.3d 785, certiorari denied 115 S.Ct. 1355, 514 U.S. 1015, 131 L.Ed.2d 213. Federal Courts 47.1

Alleged identity in restrictions imposed under predecessor interim county zoning ordinance regulating adult bookstores and successor permanent ordinance did not establish that owner had opportunity to raise constitutional issues in pending state action challenging predecessor ordinance such that *Younger* abstention was appropriate with respect to challenge to successor ordinance; successor ordinance was not even adopted until end of trial regarding predecessor ordinance, and two ordinances were dissimilar in form such that owner lacked incentive to raise constitutional challenge in suit involving interim ordinance. Wiener v. County of San Diego, C.A.9 (Cal.) 1994, 23 F.3d 263. Federal Courts 56

District court properly abstained, on basis of *Younger* doctrine, from hearing claim for equitable relief brought by litigants complaining of manner in which Michigan circuit judge conducted divorce, custody and support hearings; all plaintiffs had domestic relations cases that were all apparently still pending in Michigan circuit court, state proceedings involved paramount state interest and plaintiffs had not shown that Michigan courts could not or would not provide adequate opportunity to raise their constitutional claims. Mann v. Conlin, C.A.6 (Mich.) 1994, 22 F.3d 100, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 126. Federal Courts 51; Federal Courts 54

Claims by Catholic priest that state district attorney's office violated his state and federal constitutional rights to due process by breaching transactional immunity agreement and his rights to fair trial by releasing allegedly confidential materials to public were premature, where both criminal and civil proceedings were still pending in state court, and any damages would be purely speculative. Cinel v. Connick, C.A.5 (La.) 1994, 15 F.3d 1338, certiorari denied 115 S.Ct. 189, 513 U.S. 868, 130 L.Ed.2d 122. Civil Rights 1384

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Younger abstention doctrine did not permit abstention in newspaper reporter's civil rights action challenging constitutionality of provisions of Puerto Rico Rule of Criminal Procedure closing preliminary hearings in felony cases, as district court's grant of declaratory relief did not enjoin or interfere with any state proceeding pending against reporter or anyone whose interests were intertwined with his; criminal cases that reporter wished to attend were future preliminary hearings of third person criminal defendants. Rivera-Puig v. Garcia-Rosario, C.A.1 (Puerto Rico) 1992, 983 F.2d 311. Federal Courts 48

Younger abstention doctrine applied so as to preclude federal court, in § 1983 action brought by real estate developer, from enjoining township board of supervisors from interfering with developer's lawful use of property, and from entering developer's property in violation of developer's constitutional rights, to extent that such injunction would nullify pending state court action seeking to prevent developer from cutting trees on property pending completion of state condemnation proceeding. Gwynedd Properties, Inc. v. Lower Gwynedd Tp., C.A.3 (Pa.) 1992, 970 F.2d 1195. Federal Courts 54

Younger abstention was appropriate in civil rights suit in which former client alleged conspiracy between law firm, judges and attorneys, city, and municipal court clerk, even though client contended that pending state court suit merely involved fee dispute between himself and law firm; client had filed counterclaim against firm after he had been unsuccessful in filing grievance with state bar, and basis of civil rights suit was manner in which firm's suit and client's counterclaim had been handled in state court. Nilsson v. Ruppert, Bronson & Chicarelli Co., L.P.A., C.A.6 (Ohio) 1989, 888 F.2d 452, rehearing denied. Federal Courts 48

Abstention was warranted under *Younger v. Harris* with respect to criminal defendant's § 1983 civil rights action alleging that Virginia police officers engaged in unconstitutional actions during course of their investigation of murder of defendant's ex-wife in view of fact that constitutional issues raised in § 1983 action were potentially subject to adjudication in pending reprosecution of defendant on murder charge in Maryland after defendant's murder conviction had been reversed by the Virginia Court of Appeals on ground that venue was not properly laid in Virginia; that criminal proceedings were pending in another state than that of officials whose conduct was subject of constitutional challenge in § 1983 action did not alter essential comity concerns warranting abstention, nor did fact that § 1983 suit sought not only injunctive and declaratory relief but money damages as well. Traverso v. Penn, C.A.4 (Va.) 1989, 874 F.2d 209. Federal Courts 48

Federal courts were required to abstain from hearing state appellate court justice's civil rights action seeking to enjoin state judicial disciplinary proceedings on grounds those proceedings violated his free speech rights, where state judicial inquiry board had determined to file complaint against the judge, and state disciplinary proceedings gave the justice an opportunity to raise his constitutional claim. Pincham v. Illinois Judicial Inquiry Bd., C.A.7 (Ill.) 1989, 872 F.2d 1341, rehearing denied, certiorari denied 110 S.Ct. 497, 493 U.S. 975, 107 L.Ed.2d 501. Federal Courts 54

Abstention by district court due to pendency of state court appeal was not appropriate where pending litigation did not involve vital state interest and tenant's § 1983 and § 1985 claims for money damages could not be addressed in pending state proceedings; sole issue in state proceeding was whether tenant was entitled to stay of state trial court's decision in landlord's forcible detainer action pending appeal. Litteral v. Bach, C.A.6 (Ky.) 1989, 869 F.2d 297. Federal Courts 48

City police officer's §§ 1983 First Amendment retaliation claim, alleging that city and police commissioner commenced meritless lawsuit in state court seeking to disqualify officer's attorneys in the disciplinary action against officer, was not barred under *Younger* abstention doctrine, by the pending state court lawsuit challenging the ability of the attorneys to represent officer in the disciplinary proceeding; no state interest was implicated in the state court action, and nothing in the §§ 1983 lawsuit would address the merits of the disciplinary proceedings against officer. Chittenden v. Connors, S.D.N.Y.2006, 460 F.Supp.2d 463. Federal Courts 56

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42 U.S.C.A. § 1983

Application of the *Younger* doctrine of federal non-intrusion in the state criminal process, along with principle that constitutional issues relevant to disposition of pending state criminal charges could not be adjudicated in a federal civil rights damage action, precluded pretrial detainee from maintaining §§ 1983 action, in which he alleged he was subjected to search and seizure without probable cause and sought monetary damages and injunctive relief. Cade v. Newman, D.N.J.2006, 422 F.Supp.2d 463. Federal Courts 54

Younger abstention doctrine barred District Court from, in civil rights suit under §§ 1983, preliminarily enjoining criminal proceeding in Puerto Rico court against arrestee, where arrestee was currently being prosecuted for alleged offer of bribery in violation of Puerto Rico law, Puerto Rico had legitimate interest in enforcing its laws concerning alleged offers of bribery of its officers, and pending proceeding in Puerto Rico court afforded arrestee an adequate opportunity to raise his federal claims and issues. Olson v. Fajardo-Velez, D.Puerto Rico 2006, 419 F.Supp.2d 32. Federal Courts 54

Colorado River abstention was not warranted in §§ 1983 action in which government contractor and its principals alleged that Puerto Rico Health Insurance Administration and its executive director and director of internal auditing engaged in scheme to hurt plaintiffs' reputation and business goodwill so as to justify cancellation of contracts by which contractor coordinated delivery of mental healthcare services to persons eligible for Medicare and Medicaid benefits, notwithstanding desirability of avoiding piecemeal litigation; given that action was predicated on alleged violations of federal constitutional rights, there was no reason to defer to state court's interpretation of legal issues involved, and plaintiffs had reasonable explanation for filing simultaneous state and federal actions, in that, due to sovereign immunity, certain retroactive compensatory damages could only be requested in local court. Behavioral Healthcare Partners, Inc. v. Gonzalez-Rivera, D.Puerto Rico 2005, 392 F.Supp.2d 191. Federal Courts 1024

Former prisoner's civil rights action against three individuals who allegedly denied her access to exculpatory evidence was not parallel to state court proceeding in which prisoner was appealing denial of DNA testing of evidence in criminal case, and thus civil rights action would not be stayed on basis of *Colorado River* abstention. Bembenek v. Donohoo, E.D.Wis.2005, 355 F.Supp.2d 942. Federal Courts 48

Abstention was not warranted in nursing home owners' action asserting § 1983 and *Bivens* claims against state and federal officials arising out of alleged misuse of regulatory powers that forced nursing home to close, where there were no pending state proceedings other than action under New York Article 78, which provided for action against governmental body or officer, and that action was not pursued after decision holding action should be transferred to appellate division. Beechwood Restorative Care Center v. Leeds, W.D.N.Y.2004, 317 F.Supp.2d 248, affirmed in part, vacated in part and remanded 436 F.3d 147. Federal Courts 48

Court was required to abstain under *Younger* in lawsuit under § 1983 from considering whether prosecution of arrestee by Puerto Rico violated arrestee's rights under First, Fifth, and Fourteenth Amendments, although arrestee had standing to challenge constitutionality of such prosecution and his claims were ripe for adjudication; arrestee's prosecution was ongoing, government had legitimate interest in enforcing its laws, and pending governmental proceeding afforded arrestee with opportunity to raise his constitutional challenge. Rivera-Schatz v. Rodriguez, D.Puerto Rico 2004, 310 F.Supp.2d 405. Federal Courts 48

Federal proceedings could not interfere with "ongoing" state proceedings, as would support application of the *Younger* abstention doctrine, which precluded federal courts from exercising jurisdiction over suits aimed at restraining certain pending state actions, where at time federal complaint was filed, state proceeding was threatened, but state complaint had not yet been filed. Wal-Mart Stores, Inc. v. Rodriguez, D.Puerto Rico 2002, 236 F.Supp.2d 200. Federal Courts 54

Ongoing state court proceedings challenging citations issued to corporate landlord for building code violations and condemnation of certain rental properties did not preclude federal court, under *Younger* abstention doctrine, from

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hearing § 1983 claims by corporate landlord and its president, alleging that citations and condemnations were in retaliation for constitutionally protected activity such as filing lawsuits; finding in plaintiffs' favor would not disrupt function of local government. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Federal Courts 48

Abstention by federal court based on *Colorado River* doctrine was not appropriate where issues in actions brought against city and county for personal injuries and death that resulted from decision to pursue suspect fleeing police at high speed were severable, and all defendants potentially involved in the § 1983 suit were included in the federal complaint, and so risk was negated that adjudicating the § 1983 claims and attendant state law claims against the municipal defendants would result in piecemeal or incomplete relief; plaintiffs had legitimate reasons to file in state court as well as in federal court and so suits were not repetitive, where filing of state lawsuits might have been made to protect plaintiffs' interests under state law provisions. Epps v. Lauderdale County, W.D.Tenn.2000, 139 F.Supp.2d 859. Federal Courts 47.1; Federal Courts 48; Federal Courts 56

Federal district court was not required, under *Younger* abstention doctrine, to abstain from considering claim that municipality was violating civil rights of bakery owner when using regulatory power to deny territorial expansion of building, in deference to appeals of zoning board decisions being considered in state court; there was lack of interference, as federal action was challenging use of zoning ordinances for improper purpose, rather than validity of ordinances or outcomes reached through their application. Pellegrino Food Products Co., Inc. v. City of Warren, W.D.Pa.2000, 136 F.Supp.2d 391. Federal Courts 56

District court would abstain under *Colorado River* from deciding § 1983 case arising from police officer's termination pending disposition of parallel state court action; although state court had not assumed jurisdiction over property federal forum was inconvenient to village, interpretation of federal constitutional law would be required, removal of state action was not available, and federal claim did not appear to be vexatious or contrived, state proceeding had progressed further than federal proceeding, concurrent jurisdiction existed over § 1983 action, state court action was adequate to protect officer's federal rights, and state action could preclude need for further proceedings in federal court. Ericksen v. Village of Willow Springs, N.D.Ill.1995, 876 F.Supp. 951. Federal Courts 48

Younger abstention was warranted, in parents' § 1983 action alleging state social services agency's interference in their relationship with daughter; agency had filed petition in state court alleging parents' obstruction of investigation of inappropriate discipline charge, and parents' claims could be raised in that forum. Renn By and Through Renn v. Garrison, E.D.N.C.1994, 845 F.Supp. 1127. Federal Courts 48

Abstention was appropriate where condominium owner's taking and civil rights claims were pending in state court and state proceeding implicated important state interests and afforded owner adequate opportunity to raise his federal claims; therefore, in light of principles of comity and interests of judicial economy, owner's complaint against city manager would be dismissed and not remanded. Belair v. Lombardi, M.D.Fla.1993, 828 F.Supp. 50, clarified on other grounds 151 F.R.D. 698.

Younger abstention was appropriate in § 1983 suit brought by developer alleging violation of substantive due process and "takings" clause of Federal and State Constitutions, arising from decision of county prohibiting developer from building commercial building within setback area on his property; developer had separate action pending in state court, state proceedings implicated important state interests in land use planning, and developer would have adequate opportunity in state court to litigate constitutional issues. Rodrigues v. County of Hawaii, D.Hawai'i 1993, 823 F.Supp. 798. Federal Courts 47.1

Younger abstention was proper in § 1983 civil rights action by prisoner claiming that state law enforcement officials, attorneys, and judges conspired to systematically and deliberately deprive prisoner of constitutional rights in an attempt to induce prisoner to plead guilty in the state criminal proceeding; it was not role of federal district

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court to supervise state criminal prosecution. Kramer v. Metro-Dade Corrections and Rehabilitation Dept., S.D.Fla.1993, 822 F.Supp. 1572. Federal Courts 48

In mother's action against city foster care officials based on alleged sexual abuse of her children while in foster care, *Younger* abstention applied to mother's claim that officials violated her constitutional liberty interest in custody and visitation of her children after her parental rights were terminated and claim that officials violated childrens' constitutional liberty interests in maintaining relations with mother after her parental rights were terminated; adjudication of such claims would have required court to address questions pending before state family court. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Federal Courts 48

Dismissal of federal lawsuit brought by mobile home park owner challenging city mobile home rent control ordinance was warranted on *Younger* grounds; there was ongoing state lawsuit covering same question which had been commenced 16 months previously, while federal suit was only four and one-half months old, development of state regulatory scheme was an important state interest, and owner had adequate opportunity to raise federal claims in state proceeding. Mission Oaks Mobile Home Park v. City of Hollister, N.D.Cal.1992, 788 F.Supp. 1117, affirmed 989 F.2d 359, certiorari denied 114 S.Ct. 1052, 510 U.S. 1110, 127 L.Ed.2d 373. Abatement And Revival 12

Younger abstention was appropriate with regard to claims for declaratory and injunctive relief asserted by plaintiffs who brought suit challenging denial of permits to operate adult entertainment establishment, considering that there was a pending criminal prosecution of plaintiffs in state court, the state proceeding implicated important state interest in controlling through zoning the negative effects of adult entertainment establishments, and the state proceedings afforded an adequate opportunity for plaintiffs to raise their federal claims. Lui v. Commission on Adult Entertainment Establishments of State of Delaware, D.Del.2003, 213 F.R.D. 166, affirmed in part, reversed in part and remanded 369 F.3d 319, on remand 2004 WL 1635526. Federal Courts 51; Federal Courts 54

Younger abstention was warranted in physician's §§ 1983 actions against members of state disciplinary board and state agency alleging improper conspiracy to deprive him of his license, where state disciplinary proceeding was pending, proceeding was judicial in nature, proceeding implicated important state interest of assuring professional conduct of physicians, board's final decision was subject to review in state court, and there was no evidence of bad faith. Suster v. Jefferson-Moore, C.A.7 (Wis.) 2004, 118 Fed.Appx. 87, 2004 WL 2828948, Unreported. Federal Courts 55

Dismissal of pretrial detainee's pro se § 1983 action against various county officials, alleging violation of his constitutional rights in the course of his criminal prosecution, was warranted, pursuant to *Younger* abstention doctrine, where state criminal proceeding was pending against detainee, in which state had important interest, and during which detainee would have adequate opportunity to raise his constitutional claims. Peterson v. Contra Costa County Superior Court, N.D.Cal.2004, 2004 WL 443457, Unreported. Federal Courts 50

Proper forum for pretrial detainee's § 1983 claims involving restrictions on his telephone, mail, and visitation privileges was his state criminal case, rather than the federal district court; detainee was still an active litigant. Lee v. Bernard, C.A.7 (Ill.) 2003, 62 Fed.Appx. 670, 2003 WL 1796012, Unreported, on remand 2004 WL 2973779. Courts 493(2)

If criminal charges resulting from defendants' allegedly unlawful conduct were still pending against state prisoner, he had no § 1983 claim against them, inasmuch as federal court could not intervene in ongoing criminal proceedings absent the most extraordinary circumstances and clear showing of great and immediate harm. Peralta v. Leavitt, C.A.2 (N.Y.) 2003, 56 Fed.Appx. 534, 2003 WL 151262, Unreported. Courts 508(7)

Younger abstention was warranted in attorney's § 1983 action against participants in on-going state disciplinary proceedings. Brooks v. New York State Supreme Court, Appellate Div. First Dept., E.D.N.Y.2002, 2002 WL

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31528632, Unreported, affirmed 76 Fed.Appx. 356, 2003 WL 21961174. Federal Courts 48

Younger abstention was warranted, in § 1983 lawsuit brought by custodial parents of minor children who sought prospective declaratory relief against judge of county domestic relations court, on allegations that ex parte custody procedures followed by judge violated their due process rights, since state court proceeding was pending, important state interest was involved, and constitutional claims asserted by parents could be raised both in state court and by way of appeal once final order was issued. Butterfield v. Steiner, S.D.Ohio 2002, 2002 WL 31159304, Unreported. Federal Courts 51

4273. ---- Unsettled state law, considerations governing, abstention

District court properly applied *Pullman* abstention doctrine when declining to consider claim that amendment to state employment discrimination statute to prohibit discrimination based on "affectional and sexual orientation," as applied, violated First Amendment rights of claimants asserting that their religion compelled opposition to homosexuality; state law as to whether claimants might have aider and abettor liability under statute was unclear, state courts could construe such liability so as not to conflict with activities claimed to be protected by First Amendment, substantially narrowing scope of federal constitutional claim, and if federal courts were to erroneously conclude that aider and abettor provisions violated claimants' First Amendment rights, decision might eviscerate aiding and abetting provision as it applied to other types of discrimination prohibitions, such as those involving race, gender and creed, thus disrupting important state antidiscrimination policies. Presbytery of New Jersey of the Orthodox Presbyterian Church v. Whitman, C.A.3 (N.J.) 1996, 99 F.3d 101, certiorari denied 117 S.Ct. 1334, 520 U.S. 1155, 137 L.Ed.2d 494. Federal Courts 53

Court of Appeals would not apply *Pullman* abstention to avoid considering ranchers' takings claim against Wyoming Game and Fish Commission concerning licensing limits on right to hunt surplus game on ranchers' land even though state had not addressed existence of property right to hunt, in light of constitutionality of licensing limits, reasonableness of property right to hunt, failure of state to argue for abstention, delay that would result form abstention, and Court's obligation to consider constitutional claims brought under § 1983. Clajon Production Corp. v. Petera, C.A.10 (Wyo.) 1995, 70 F.3d 1566. Federal Courts 47.1

To warrant *Pullman* abstention, there must be a substantial uncertainty over the meaning of the state law at issue and reasonable possibility that state court's clarification of rule will obviate need for a federal constitutional ruling; when federal claim is entangled with complicated unresolved state law questions, abstention is inappropriate. Rivera-Puig v. Garcia-Rosario, C.A.1 (Puerto Rico) 1992, 983 F.2d 311. Federal Courts 46

Court of Appeals abstained from determining whether school district's refusal to mail various notices to father, who had joint legal custody of children with mother under separation agreement, violated father's due process right to control his children's upbringing, in that father, in effect, asked Court to relieve mother of duties which New York courts had continuing power to modify or enforce, New York law would be controlling on the issues, and claim involved emerging body of law insofar as it related to relationships among joint custodial divorced parents, their children, and children's educators. Fay v. South Colonie Cent. School Dist., C.A.2 (N.Y.) 1986, 802 F.2d 21. Federal Courts 62

Where question of whether teacher had a substantive property interest in continued employment sufficient to trigger procedural protections of due process depended upon whether R.S.Supp.Neb.1976, § 79-1254 was to be given retroactive effect and where statute was subject to two interpretations and where there was pending in the state Supreme Court a case involving the same factual situation, federal court would abstain from resolving the teacher's claim until such time as the state Supreme Court decision became final. Easter v. Olson, C.A.8 (Neb.) 1977, 552 F.2d 252. Federal Courts 48

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Although, because complaint's due process allegations were not wholly insubstantial or frivolous, federal court had jurisdiction of local district attorney's civil rights suit seeking to enjoin state district judge, alleged to be prejudiced against the district attorney, from presiding at an inquiry into the district attorney's conduct of office, the case was an appropriate one for application of the abstention principle, since the case turned on an unsettled question of Texas law that was important because its solution might make any determination of the federal constitutional claim unnecessary and because it went directly to the state's interest in enforcing the integrity of its judicial process. Neal v. Brim, C.A.5 (Tex.) 1975, 506 F.2d 6. Federal Courts 54

Federal court should abstain if decision concerning question of state law is necessary to disposition of case and answer to state question involves unclear state law or matter of paramount interest to state, but if such factors are not present in suit, it is not enough to justify abstention that state courts are as competent to decide federal questions as are federal-courts. Gere v. Stanley, C.A.3 (Pa.) 1971, 453 F.2d 205. Federal Courts 43

Pullman abstention requires three essential conditions: that state statute be unclear, that resolution of federal issue depends upon interpretation to be given to state law, and that state law is susceptible of interpretation that would avoid or modify federal constitutional issue. Winters v. Meyer, S.D.N.Y.2006, 442 F.Supp.2d 82. Federal Courts 46

Abstention was not warranted, pursuant to *Pullman* doctrine, as to action brought by employee pursuant to §§ 1983 against Secretary of Wisconsin Department of Revenue in which he alleged that demotion from chief legal counsel to attorney without pre-deprivation hearing violated his Fourteenth Amendment right to procedural due process; doctrine was not applicable because clarification of state law was not at issue, nor was a state court involved. Evans v. Morgan, W.D.Wis.2003, 304 F.Supp.2d 1100. Federal Courts 58

Abstention under *Pullman* doctrine was not warranted, in § 1983 lawsuit brought by intravenous drug users under Fourth Amendment, who participated in state authorized needle exchange programs (NEPs), against city, police department, and police officers, alleging that police targeted NEP members for arrest, even though issue in case had not been considered by New York state courts; statutes and regulation governing issue were straightforward and mandated one reading, federal court did not have option of certifying to New York Court of Appeals, and since there was no related case pending in state courts, delay that would have resulted counseled against abstention. Roe v. City of New York, S.D.N.Y.2002, 232 F.Supp.2d 240. Federal Courts 48

Pullman abstention was appropriate in landowners' § 1983 action claiming that county's rejection of permit for alternative discharging sewage system violated Virginia and Federal Constitutions and Virginia statutes; issues raised required interpretation of unsettled state law and policy in area of sewage disposal and case could be disposed of by resolving state law questions without resort to adjudication of federal constitutional issues. Graham v. County of Albemarle, W.D.Va.1993, 826 F.Supp. 167, affirmed as modified on other grounds 19 F.3d 11. Federal Courts 48

Neither *Pullman* nor *Burford* abstention was appropriate in civil rights action brought by landowners challenging zoning change to allow construction of electric power substation where there were no uncertain issues of state law, no difficult questions of state law, and exercise of federal review would not disrupt state efforts to establish a coherent zoning policy because each county had its own zoning law. MacNamara v. County Council of Sussex County, D.Del.1990, 738 F.Supp. 134, affirmed 922 F.2d 832. Federal Courts 48

Abstention by federal district court was not warranted in action by school superintendents challenging on due process and equal protection grounds state legislation creating incentives for early retirement by certain state employees and excluding the superintendents from that class, where the statutes were clear and not fairly susceptible to any interpretation other than that asserted by plaintiffs, and retaining jurisdiction would have negligible impact on the operations of the state. Haley v. Hall, E.D.Ark.1990, 733 F.Supp. 1275. Federal Courts 62

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42 U.S.C.A. § 1983

Federal district court had right, and perhaps obligation, to sua sponte consider whether abstention was proper in § 1983 action challenging validity of Connecticut Hunter Harassment Act, an issue which had not been litigated in Connecticut's state courts. Dorman v. Satti, D.Conn.1988, 678 F.Supp. 375, affirmed 862 F.2d 432, certiorari denied 109 S.Ct. 2450, 490 U.S. 1099, 104 L.Ed.2d 1005. Federal Courts 65

4274. Effect of abstention order

A party remitted to state court by an abstention order of a federal court has right to return to federal district court, for determination of his federal constitutional claims, after the authoritative state ruling has been obtained. Arrow v. Dow, C.A.10 (N.M.) 1980, 636 F.2d 287, on remand 544 F.Supp. 458. Federal Courts 65

If party files a suit under this section in federal court challenging constitutionality of a state statute and court abstains to permit state courts to initially interpret statute, litigant may return to federal forum to continue his attack after state ruling is made. Thistlethwaite v. City of New York, S.D.N.Y.1973, 362 F.Supp. 88, affirmed 497 F.2d 339, certiorari denied 95 S.Ct. 686, 419 U.S. 1093, 42 L.Ed.2d 686. Courts 491

4275. Lifting of abstention order

See, also, Notes of Decisions under section 1343 of Title 28.

District court would continue to abstain from exercising jurisdiction over federal civil rights challenge to Puerto Rican mayoral candidate's election; although passage of time was factor to be considered, fact that local action in election case was still pending after more than six months did not justify lifting abstention order. Granados Navedo v. Acevedo, D.Puerto Rico 1989, 717 F.Supp. 34. Federal Courts 52

City police chief could not be held individually liable under § 1983 for injuries arising from arresting officers' alleged use of excessive force, where chief did not personally participate in arrestee's arrest or prosecution, did not exercise any immediate supervision or control over arresting officers, and did not knowingly acquiesce in unlawful conduct on part of those, or any other, officers that served to violate arrestee's constitutional rights. Fitzpatrick v. Gates, C.D.Cal.2003, 2003 WL 22385397, Unreported. Civil Rights 1358

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4301. Exhaustion of remedies generally

An action under this section is free of requirements of exhaustion of state judicial or administrative remedies. Ellis v. Dyson, U.S.Tex.1975, 95 S.Ct. 1691, 421 U.S. 426, 44 L.Ed.2d 274, on remand 518 F.2d 553. See, also, Katris v. City of Waukegan, N.D.Ill.1980, 498 F.Supp. 48; Ledet v. Fischer, M.D.La.1982, 548 F.Supp. 775. Civil Rights 1315; Civil Rights 1316

There was no requirement that plaintiffs first exhaust state remedies before bringing federal claims under this section to federal court. Allee v. Medrano, U.S.Tex.1974, 94 S.Ct. 2191, 416 U.S. 802, 40 L.Ed.2d 566. See, also, Meyer v. Frank, C.A.2 (N.Y.) 1977, 550 F.2d 726, certiorari denied 98 S.Ct. 112, 434 U.S. 830, 54 L.Ed.2d 90; Redhail v. Zablocki, D.C.Wis.1976, 418 F.Supp. 1061, affirmed 98 S.Ct. 673, 434 U.S. 374, 54 L.Ed.2d 618; Pyles v. Keane, D.C.N.Y.1976, 418 F.Supp. 269; Roe v. Ray, D.C.Iowa 1976, 407 F.Supp. 351, affirmed 551 F.2d 241; Tonwal Realties, Inc. v. Beame, D.C.N.Y.1976, 406 F.Supp. 363; Watters v. Parrish, D.C.Va.1975, 402 F.Supp. 696; Lopez v. Williams, D.C.Ohio 1973, 372 F.Supp. 1279, affirmed 95 S.Ct. 729, 419 U.S. 565, 42 L.Ed.2d 725. Civil Rights 1315

A prisoner must exhaust his or her administrative remedies prior to filing a claim under § 1983. Richardson v. Goord, C.A.2 (N.Y.) 2003, 347 F.3d 431. Civil Rights 1311

Rule that exhaustion of state administrative remedies is generally not required prior to bringing § 1983 action in federal court is subject to exception where Congress explicitly provides that state administrative remedies must be exhausted before bringing suit under particular federal law pursuant to § 1983 and where Congress implicitly requires exhaustion of state administrative remedies such that obligation to require exhaustion of administrative remedies may be fairly understood from congressional action. Talbot v. Lucy Corr Nursing Home, C.A.4 (Va.) 1997, 118 F.3d 215. Civil Rights 1316

Civil rights plaintiff is normally not required to exhaust his administrative or judicial remedies. Greene v. Meese, C.A.7 (Ind.) 1989, 875 F.2d 639. Administrative Law And Procedure 229; Civil Rights 1307; Civil Rights 1308

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42 U.S.C.A. § 1983

No exhaustion requirement exists before bringing lawsuit pursuant to § 1983 which prohibits deprivation of civil rights under color of state law. Majette v. O'Connor, C.A.11 (Fla.) 1987, 811 F.2d 1416. Civil Rights 1315

Federal courts may not require exhaustion of state administrative or judicial remedies as a prerequisite to maintaining suit under this section to recover damages for deprivation of a constitutional right. Ehlers v. City of Decatur, Georgia, C.A.5 (Ga.) 1980, 614 F.2d 54. Civil Rights 1315; Civil Rights 1316

Doctrine of exhaustion of remedies is usually inapplicable in an action brought pursuant to this section governing deprivation of civil rights. Spence v. Latting, C.A.10 (Okla.) 1975, 512 F.2d 93, certiorari denied 96 S.Ct. 198, 423 U.S. 896, 46 L.Ed.2d 129. Civil Rights 1315

A plaintiff need not exhaust state administrative remedies before filing suit in federal court under § 1983. D.L. v. Unified School Dist. # 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090. Civil Rights 1316

Plaintiffs ordinarily need not exhaust administrative remedies before filing suit under § 1983. Caraballo Seda v. Javier Rivera, D.Puerto Rico 2003, 261 F.Supp.2d 76. Civil Rights 1308

A § 1983 plaintiff is not required to exhaust state administrative or legal remedies before proceeding to court. Middlebrooks v. Coughlin, W.D.N.Y.1997, 970 F.Supp. 210. Civil Rights 1315; Civil Rights 1316

No exhaustion requirement exists with respect to claims arising under § 1983. Kelly v. Borough of Sayreville, D.N.J.1996, 927 F.Supp. 797, affirmed 107 F.3d 1073. Civil Rights 1307

There is no requirement of administrative or judicial exhaustion in § 1983 cases. Van Harken v. City of Chicago, N.D.Ill.1995, 906 F.Supp. 1182, affirmed as modified 103 F.3d 1346, certiorari denied 117 S.Ct. 1846, 520 U.S. 1241, 137 L.Ed.2d 1049. Civil Rights 1308

Section 1983 generally allows plaintiffs with federal or constitutional claims the right to sue in federal court without first resorting to state judicial remedies or state administrative remedies. Marshall v. Switzer, N.D.N.Y.1995, 900 F.Supp. 604. Administrative Law And Procedure 229; Civil Rights 1315; Civil Rights 1316

Because substantive due process is violated at the moment harm occurs, the existence of postdeprivation state remedies does not bar a federal civil rights action based on violation of substantive due process under color of state law. Arroyo Vista Partners v. County of Santa Barbara, C.D.Cal.1990, 732 F.Supp. 1046. Civil Rights 1315

4302. Supplementary nature of section, exhaustion of remedies

Federal remedy provided under this section is intended to supplement state remedies so that the latter need not be exhausted before the former is invoked. Walker v. Wegner, C.A.8 (S.D.) 1980, 624 F.2d 60. Civil Rights 1315

As a supplemental federal remedy, this section prohibiting deprivation of civil rights under color of state law gives plaintiffs right to seek relief for violations of a constitutional right despite existence or nonexistence of a state remedy; general rule in such cases is that exhaustion of remedies is not required. Carder v. Michigan City School Corp., N.D.Ind.1982, 552 F.Supp. 869. Civil Rights 1315

A forum state's remedy for violation of a specific substantive constitutional guaranty does not deprive a plaintiff of a federal claim in that the federal remedy is supplementary to the state remedy where the claim concerns a right

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secured by the U.S.C.A.Const. or federal laws other than the due process clause of U.S.C.A.Const.Amend. 14. Holmes v. Wampler, E.D.Va.1982, 546 F.Supp. 500. Courts 489(1)

Although the federal remedy under this section is supplementary to the state remedy and the latter need not be first sought and refused before the federal one is invoked, a federal court is not prohibited from requiring such plaintiff to exhaust administrative remedies. Adams v. City of Chicago, N.D.Ill.1980, 491 F.Supp. 1257. Civil Rights 1316

Federal remedy for vindication of civil rights deprivations is supplemental to any state remedies, and exhaustion of state administrative remedies is not prerequisite to exercise of federal jurisdiction under this section. Morales v. Vega, D.C.Puerto Rico 1978, 461 F.Supp. 656, affirmed 604 F.2d 730. Civil Rights 1315; Civil Rights 1316

Federal remedy under this section is supplementary to state remedy and latter need not be first sought and refused before federal one is invoked. Ruffler v. Phelps Memorial Hospital, S.D.N.Y.1978, 453 F.Supp. 1062. Civil Rights 1315

General rule is that there is no need to exhaust possible state remedies before pursuing civil rights action in federal court; federal remedy is supplementary to state remedy, and latter need not be first sought and refused before federal one is invoked. Snyder v. Altman, C.D.Cal.1978, 444 F.Supp. 1269. Civil Rights 1315

Suits under this section are generally excepted from rule that litigant must exhaust available and adequate state administrative remedies before seeking relief in federal courts, since remedy afforded by this section is supplementary to state remedy. David Gonzalez v. Calero, D.C.Puerto Rico 1977, 440 F.Supp. 989. Civil Rights 1316

4303. Judicial remedies, exhaustion of remedies

Exhaustion of state judicial remedies is not a prerequisite to adjudication of claims under this section. Swan v. Stoneman, C.A.2 (Vt.) 1980, 635 F.2d 97.

There is no need for a plaintiff to present a claim to the state courts before raising the same claim in a civil action for deprivation of rights. Drexler v. Southwest Dubois School Corp., C.A.7 (Ind.) 1974, 504 F.2d 836. Civil Rights 1315

A plaintiff asserting a constitutional claim normally is not required to exhaust similar state judicial remedies before resorting to federal courts. Almenares v. Wyman, C.A.2 (N.Y.) 1971, 453 F.2d 1075, certiorari denied 92 S.Ct. 962, 405 U.S. 944, 30 L.Ed.2d 815. Federal Courts 171

In civil rights action, plaintiff is not required to exhaust state judicial remedies. Bally Mfg. Corp. v. Casino Control Commission of New Jersey, D.C.N.J.1982, 534 F.Supp. 1213. Civil Rights 1315

Exhaustion of state judicial remedies is not required of plaintiff in action brought under this section, since Congress' intent was to provide such persons with alternate forum for vindication of their constitutional rights. Clark v. Lutcher, M.D.Pa.1977, 436 F.Supp. 1266. Civil Rights 1315

Federal court not only may but has the obligation, with certain exceptions, to adjudicate claimed violations of constitutional rights brought pursuant to this section without requiring plaintiff to initially exhaust state judicial remedies. Cicero v. Olgiati, S.D.N.Y.1976, 410 F.Supp. 1080, motion denied 426 F.Supp. 1210, motion denied 426 F.Supp. 1213. Civil Rights 1315

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42 U.S.C.A. § 1983

4304. Administrative remedies, exhaustion of remedies

There is no general or automatic requirement of administrative exhaustion of remedies as prerequisite to filing of case under this section but there must be ripeness to the extent that there must be at least some definitive administrative or institutional determination before an action may arise; contrary decisions disapproved. Raper v. Lucey, C.A.1 (Mass.) 1973, 488 F.2d 748. Civil Rights 1316

Administrative remedies need not be sought if they are inadequate or are applied in such a manner as in effect deny a person his rights thereunder. McCoy v. Greensboro City Bd. of Ed., C.A.4 (N.C.) 1960, 283 F.2d 667. Administrative Law And Procedure 228.1

Inmate's § 1983 claim, that West Virginia Department of Corrections policy prohibiting inmates from receiving or possessing obscene material violated First and Fourteenth Amendments as applied in purge of prison library of materials containing allegedly sexually arousing passages, was dismissed; inmate failed to exhaust his administrative remedies for the claim. Cline v. Fox, N.D.W.Va.2003, 266 F.Supp.2d 489, reconsideration granted in part 282 F.Supp.2d 490, on reconsideration in part 319 F.Supp.2d 685. Civil Rights 209

Administrative exhaustion, as required by IDEA, is necessary even where plaintiffs seek only monetary damages under § 1983. Frazier v. Fairhaven School Committee, D.Mass.2000, 122 F.Supp.2d 104, affirmed 276 F.3d 52. Schools 155.5(3)

Exhaustion of unreviewed administrative remedies is not required before bringing § 1983 claim. Merritt v. Brantley, S.D.Ga.1996, 936 F.Supp. 988. Administrative Law And Procedure 229; Civil Rights 1308

Section 1983 does not require filing with Equal Employment Opportunity Commission (EEOC). Regenbogen v. Mustille, N.D.N.Y.1995, 908 F.Supp. 1101. Civil Rights 1302

Administrative hearing before hearing officer would have been inadequate to remedy claims of mental health advocacy center concerning conditions at mental health facility as hearing officer lacked jurisdiction to hear advocacy organization's constitutional claims; as a result, organization was not required to exhaust administrative remedy before bringing federal civil rights action. Gonzalez v. Martinez, S.D.Fla.1991, 756 F.Supp. 1533.

Where an action brought under this section which provides a cause of action to any person who under color of state law is deprived of a right, privilege or immunity secured by the Constitution or federal law is brought for vindication of rights under federal provision which contains its own administrative remedies, exhaustion of those administrative remedies, if they are adequate, is required. Ryans v. New Jersey Com'n For The Blind and Visually Impaired, D.C.N.J.1982, 542 F.Supp. 841. Civil Rights 1308

Where constitutional claims are brought under this section, there is no general requirement of exhaustion of administrative remedies. Kinzli v. City of Santa Cruz, N.D.Cal.1982, 539 F.Supp. 887. Civil Rights 1316

In action under this section exhaustion of administrative remedies was not required. Lawson v. Brown, W.D.Va.1972, 349 F.Supp. 203. See, also, Thompson v. Southwest School Dist., W.D.Mo.1980, 483 F.Supp. 1170; McKenna v. Fargo, D.C.N.J.1978, 451 F.Supp. 1355, affirmed 601 F.2d 575; Turano v. Board of Ed. of Island Trees Union Free School Dist. No. 26, D.C.N.Y.1976, 411 F.Supp. 205; Gill v. Monroe County Dept. of Social Services, D.C.N.Y.1978, 79 F.R.D. 316, motion to decertify class denied 95 F.R.D. 518. Civil Rights 1316

Action may be brought under this section without exhaustion of administrative remedies. Craddock v. Hill, W.D.Mo.1970, 324 F.Supp. 183. See, also, McClelland v. Sigler, C.A.8 (Neb.) 1972, 456 F.2d 1266; Cook v. Edwards, D.C.N.H.1972, 341 F.Supp. 307; Sullivan v. Houston Independent School Dist., D.C.Tex.1969, 307

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F.Supp. 1328, supplemented 353 F.Supp. 1149, vacated on other grounds 475 F.2d 1071, rehearing denied 475 F.2d 1404, certiorari denied 94 S.Ct. 461, 414 U.S. 1032, 38 L.Ed.2d 323.

State prison inmate sufficiently exhausted his administrative remedies before suing under § 1983 even though his prison complaint alleging retaliation by prison employee did not clearly allege that employee had locked him up in retaliation for filing a complaint, where the complaint alerted the prison to the nature of the wrong for which redress was sought by alleging that employee wrongly placed inmate in temporary lockup because another employee had read his earlier complaint; although inmate did not specifically allege employee's retaliatory motive, the complaint alerted the prison to the alleged wrongdoing. Charles v. Reichel, C.A.7 (Wis.) 2003, 67 Fed.Appx. 950, 2003 WL 21377500, Unreported. Civil Rights 1319

City prison inmates were not required to exhaust administrative remedies before bringing § 1983 class action alleging that city department of correction (DOC), city board of education, and state department of education had not provided them with educational services to which they were entitled under federal and state law, where DOC did not have jurisdiction to address failure to provide educational services to city prison inmates. Handberry v. Thompson, S.D.N.Y.2003, 2003 WL 194205, Unreported, affirmed in part, vacated in part and remanded 436 F.3d 52, opinion amended on rehearing 446 F.3d 335. Civil Rights 1319

Pursuant to the Prison Litigation Reform Act (PLRA), inmate's failure to exhaust his administrative remedies deprived the court of subject matter jurisdiction over the inmate's § 1983 suit against officers at a county correctional facility, despite his claims that his stay at the facility was too short for him to have initiated any grievance procedure, that he was never advised by any staff member of any grievance program or procedure, and that the grievance procedure would have been futile. Paulino v. Amicucci, Warden Westchester County Jail, S.D.N.Y.2003, 2003 WL 174303, Unreported. Civil Rights 1319

4305. State administrative remedies, exhaustion of remedies

Availability of state administrative procedures ordinarily does not foreclose resort to § 1983. Wilder v. Virginia Hosp. Ass'n, U.S.Va.1990, 110 S.Ct. 2510, 496 U.S. 498, 110 L.Ed.2d 455. Civil Rights 1316

Exhaustion of state administrative remedies was not prerequisite to action under Civil Rights Act of 1871. Patsy v. Board of Regents of State of Fla., U.S.Fla.1982, 102 S.Ct. 2557, 457 U.S. 496, 73 L.Ed.2d 172, on remand 693 F.2d 558. Civil Rights 1316

In determining whether exhaustion of state administrative remedies is required, initial question should be answered by reference to congressional intent and courts should not defer exercise of jurisdiction under federal statute unless it is consistent with that intent. Patsy v. Board of Regents of State of Fla., U.S.Fla.1982, 102 S.Ct. 2557, 457 U.S. 496, 73 L.Ed.2d 172, on remand 693 F.2d 558. Civil Rights 1316

Administrative remedies remained "available" to state prisoner who claimed that prison guards violated his constitutional rights by beating him without provocation and then refusing to provide medical care for injuries they inflicted, even though prison's administrative review board took six months to decide prisoner's appeal from denial of his grievance despite aspirational prison regulation providing for decision within 60 days "whenever possible," and thus, under Prison Litigation Reform Act (PLRA), prisoner could not bring suit under § 1983 until after board issued its decision. Ford v. Johnson, C.A.7 (Ill.) 2004, 362 F.3d 395. Civil Rights 1319

Mere provision of state administrative remedies is not enough to demonstrate implicit Congressional intent to impose exhaustion requirement on plaintiff seeking to bring § 1983 action. Talbot v. Lucy Corr Nursing Home, C.A.4 (Va.) 1997, 118 F.3d 215. Civil Rights 1316

Exhaustion of state administrative remedies is not ordinarily a prerequisite to commencing a § 1983 action.

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42 U.S.C.A. § 1983

Virginia Hosp. Ass'n v. Baliles, C.A.4 (Va.) 1989, 868 F.2d 653, rehearing denied, certiorari granted in part 110 S.Ct. 49, 493 U.S. 808, 107 L.Ed.2d 18, affirmed 110 S.Ct. 2510, 496 U.S. 498, 110 L.Ed.2d 455. Administrative Law And Procedure 229; Civil Rights 1316

The plaintiff who brings action against state under this section for alleged deprivation, under color of state law, of right, privilege, or immunity secured by the Constitution and laws is not required to exhaust available state administrative remedies before bringing federal lawsuit no matter what state administrative avenues for relief are open to him. Beale v. Blount, C.A.5 (Fla.) 1972, 461 F.2d 1133. Civil Rights 1316

Plaintiff with a claim for relief under this section is not required to exhaust state judicial remedies but must exhaust state administrative remedies. James v. Board of Ed. of Central Dist. No. 1 of Towns of Addison et al., C.A.2 (N.Y.) 1972, 461 F.2d 566, certiorari denied 93 S.Ct. 529, 409 U.S. 1042, 34 L.Ed.2d 491, rehearing denied 93 S.Ct. 1355, 410 U.S. 947, 35 L.Ed.2d 617, on remand 385 F.Supp. 209. Civil Rights 1315; Civil Rights 1316

Section 1983 plaintiff is not required to exhaust state administrative remedies before bringing her claim. Winters v. Meyer, S.D.N.Y.2006, 442 F.Supp.2d 82. Civil Rights 1316

In order for there to be a requirement that a plaintiff exhaust state administrative remedies before a federal court may entertain a civil rights suit, it must be first shown that certain minimum conditions have been met before resorting to state remedies can be made a prerequisite to proceeding under this section. Shinholster v. Graham, N.D.Fla.1981, 527 F.Supp. 1318. Civil Rights 1316

District court would entertain suit brought under this section despite plaintiff's failure to exhaust adequate state administrative remedies, in view of fact that defendants never raised issue of exhaustion and exhaustion of such remedies is nonjurisdictional. Dulany v. Board of School Com'rs of Mobile County, S.D.Ala.1981, 512 F.Supp. 685. Civil Rights 1316

4306. Discretion of court, exhaustion of remedies

A person who alleges a violation of civil rights under color of state law is not required to exhaust existing state remedies prior to prosecuting an action in federal court, but this does not mean that in every case a district court must exercise its jurisdiction prior to filing of a suit in a state of concurrent jurisdiction, especially where strands of local law are so woven into case as to require their untangling prior to exercise of federal jurisdiction. Cornist v. Highland Parish School Bd., C.A.5 (La.) 1971, 448 F.2d 594. Civil Rights 1315

Unless statutorily mandated, application of exhaustion doctrine to § 1983 claims is not jurisdictional requirement, but within discretion of district court. Caraballo Seda v. Javier Rivera, D.Puerto Rico 2003, 261 F.Supp.2d 76. Civil Rights 1307

4307. State remedies generally, exhaustion of remedies

In general, exhaustion of state remedies is not prerequisite to action under § 1983, even in action by state prisoner. Heck v. Humphrey, U.S.Ind.1994, 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383. Civil Rights 1319

Relief under this section may not be defeated because relief was not first sought under state law which provides a remedy. McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill., U.S.Ill.1963, 83 S.Ct. 1433, 373 U.S. 668, 10 L.Ed.2d 622. See, also, Monroe v. Pape, Ill.1961, 81 S.Ct. 473, 365 U.S. 167, 5 L.Ed.2d 492; Friedlander v. Cimino, C.A.2 (N.Y.) 1975, 520 F.2d 318; Scott v. Vandiver, C.A.4 (S.C.) 1973, 476 F.2d 238; Lynch v. Snepp, C.A.4 (N.C.) 1973, 472 F.2d 769, certiorari denied 94 S.Ct. 1576, 415 U.S. 983, 39 L.Ed.2d 880; Russo v. Central School Dist. No. 1, Towns of Rush, Et Al., Monroe County, State of N.Y., C.A.2 (N.Y.)

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1972, 469 F.2d 623, certiorari denied 93 S.Ct. 1899, 411 U.S. 932, 36 L.Ed.2d 391; Toney v. Reagan, C.A.9 (Cal.) 1972, 467 F.2d 953, certiorari denied 93 S.Ct. 951, 409 U.S. 1130, 35 L.Ed.2d 263; Padilla v. Ackerman, C.A.9 (Cal.) 1972, 460 F.2d 477; Corby v. Conboy, C.A.2 (N.Y.) 1972, 457 F.2d 251; Jones v. Metzger, 1972, 456 F.2d 854; Hayes v. Secretary of Dept. of Public Safety, C.A.4 (Md.) 1972, 455 F.2d 798. Civil Rights 1315

Section 1983 does not require that plaintiffs exhaust state remedies. Veterans Legal Defense Fund v. Schwartz, C.A.7 (Ill.) 2003, 330 F.3d 937. Civil Rights 1315

Retired state employee was not required to exhaust his state administrative remedies prior to bringing § 1983 suit against Oklahoma Public Employees Retirement System (OPERS), challenging state's forfeiture of most of his pension as result of his conviction for bribery; exhaustion was not required for suits under § 1983, and, in any event, Oklahoma's administrative exhaustion doctrine applied only when litigant sought "review of agency decisions," while employee was challenging constitutionality of pension forfeiture statute itself. Hopkins v. Oklahoma Public Employees Retirement System, C.A.10 (Okla.) 1998, 150 F.3d 1155. Civil Rights 1320

Medicare Act's explicit requirement that federal administrative remedies be exhausted before Medicare recipient may bring claim contesting determination of entitlement to benefits did not bar former nursing home resident's § 1983 action which sought damages for nursing home's alleged violation of statutory resident rights provisions even though resident failed to exhaust state administrative remedies. Talbot v. Lucy Corr Nursing Home, C.A.4 (Va.) 1997, 118 F.3d 215. Civil Rights 1321

Electric membership corporations failed to state § 1983 claims against Georgia Department of Corrections officials for procedural due process violations, arising from award of contracts to electric utility for provision of electric service to new prison, alleging that officials violated state law competitive bidding requirements and deprived corporations of property right; procedural due process claims were not ripe for review, as state had provided at least one vehicle for bringing action in state court for appropriate relief for bidding requirement violation, and corporations had not brought such state court actions. Flint Elec. Membership Corp. v. Whitworth, C.A.11 (Ga.) 1995, 68 F.3d 1309, modified 77 F.3d 1321. Civil Rights 1318; Civil Rights 1321

Members of airport authority alleging that they had been improperly dismissed by city mayor were not entitled to relief in federal court based upon deprivation of their due process rights, even though they had established a property interest in their positions; due process of law was available to them to obtain remedy for alleged wrong through quo warranto proceeding in state court. Thornton v. Barnes, C.A.7 (Ind.) 1989, 890 F.2d 1380. Aviation 222; Constitutional Law 278.4(5)

Availability of state tort remedies for state officials' failure to follow established eviction procedures precluded § 1983 claims and satisfied requirements of procedural due process. Reese v. Kennedy, C.A.8 (S.D.) 1989, 865 F.2d 186. Civil Rights 1318

Availability of state remedy did not defeat teacher's claim under 42 U.S.C.A. § 1983 that failure to provide her with notice and opportunity to be heard concerning negative evaluation prior to school district's decision to bypass her and to remove her from eligibility list deprived her of procedural due process. Stana v. School Dist. of City of Pittsburgh, C.A.3 (Pa.) 1985, 775 F.2d 122. Civil Rights 1320

In view of fact that there were available remedies under state law for recovery of damages for property improperly seized, even though intentionally seized by authorities, recovery could not be had in a claim under this section. Coney v. Smith, C.A.11 (Fla.) 1984, 738 F.2d 1199. Civil Rights 1319

When action is brought under this section raising federal constitutional claims, prior resort to state courts is not required even where there may be an available state remedy; there is no doctrine of exhaustion of state remedies applicable to the civil rights jurisdiction of the federal courts. Conover v. Montemuro, C.A.3 (Pa.) 1972, 477 F.2d

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42 U.S.C.A. § 1983

1073. Civil Rights 1315

Section 1983 claim based on alleged taking without just compensation in violation of Fifth Amendment is not ripe for review if state offers cause of action such as inverse condemnation and plaintiff has not pursued such action. McCormack Sand Co. v. Town of North Hempstead Solid Waste Management Authority, E.D.N.Y.1997, 960 F.Supp. 589. Civil Rights 1318

Availability of remedy in courts of Kansas for failure to award state contract to lowest bidder as required by statute did not foreclose lowest bidder from bringing section 1983 action, inasmuch as there was no general exhaustion of state remedies requirement, at least when alternative state remedy was through court-ordered injunctive relief as opposed to being step in administrative process that denied plaintiff his property interest in first place. Andersen-Myers Co., Inc. v. Roach, D.Kan.1987, 660 F.Supp. 106. Civil Rights 1318; Civil Rights 1321

Police officer who was allegedly deprived of procedural due process when he was demoted without notice or hearing could not maintain civil rights action under 42 U.S.C.A. § 1983 in view of available state postdeprivation remedies. Gresham v. Dell, N.D.Ga.1986, 630 F.Supp. 1135. Civil Rights 1320

Federal district court did not have subject matter jurisdiction over parent's § 1983 challenge to decision of state family court, directing plaintiff to attend counseling or lose his unsupervised visitation sessions with his child; to challenge constitutionality of such determination, parent was required to appeal it through state appellate courts before seeking federal review, not in federal district court, but in United States Supreme Court. Conway v. Garvey, S.D.N.Y.2003, 2003 WL 22510384, Unreported, affirmed 117 Fed.Appx. 792, 2004 WL 2786380. Courts 509; Federal Courts 1142

4308. Adequacy of remedies, exhaustion of remedies

As relating to inmate's allegation that prison officer's intentional destruction of his property violated his due process rights, fact that he might not have been able to recover under available state remedies full amount which he might have received in a civil rights action under federal law was not determinative of adequacy of the state remedies. Hudson v. Palmer, U.S.Va.1984, 104 S.Ct. 3194, 468 U.S. 517, 82 L.Ed.2d 393, on remand 744 F.2d 22 . Civil Rights 1319

Landlords' failure to plead and prove inadequacy of their state and administrative court remedies to protest city's practices of holding them liable for their tenants' delinquent water bills barred their procedural due process claim under § 1983; city water division regulations provided landlords with right to hearing regarding their objections to water bills, landlords could appeal any decision resulting from those hearings to court of common pleas and in fact, record contained examples of disputes that had been settled in common pleas court, and landlords had several self-help remedies at their disposal, such as inquiring whether tenant had any delinquencies before releasing security deposit or evicting tenant. Mansfield Apartment Owners Ass'n v. City of Mansfield, C.A.6 (Ohio) 1993, 988 F.2d 1469. Civil Rights 1318

When state remedies are adequate to protect individual's due process rights, federal deprivation of civil rights action alleging violation of those rights will not stand. Brogan v. San Mateo County, C.A.9 (Cal.) 1990, 901 F.2d 762. Civil Rights 1315

Demoted corrections department sergeant was barred from recovery under deprivation to civil rights statute for deprivation of property without due process, where employee failed to demonstrate that remedies provided to her under state law were inadequate to rectify any errors. Sewell v. Jefferson County Fiscal Court, C.A.6 (Ky.) 1988, 863 F.2d 461, rehearing denied, certiorari denied 110 S.Ct. 75, 493 U.S. 820, 107 L.Ed.2d 42. Civil Rights 1320

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42 U.S.C.A. § 1983

Property owner who was arbitrarily denied building permit by city council after he had qualified for its issuance did not have a § 1983 cause of action against council members and city for unconstitutional taking of his property without just compensation for loss of fair market value of his property, where property owner had adequate state remedy under Montana's inverse condemnation case law. Bateson v. Geisse, C.A.9 (Mont.) 1988, 857 F.2d 1300. Civil Rights 1318

Exhaustion of state administrative remedies prior to adjudication of claim under this section in federal court is not required if adequate and speedy state remedies are not available, or if inadequacy of state administrative remedy is coextensive with merits of plaintiff's constitutional claim. Jose P. v. Ambach, C.A.2 (N.Y.) 1982, 669 F.2d 865. Civil Rights 1316

Obligor, who alleged that city agency violated his due process rights by garnishing his wages in order to pay off child support arrears, had an adequate post-deprivation remedy available under New York law, and therefore could not sue agency under section 1983; upon an adverse determination by agency, a party could seek review in a CPLR article 78 proceeding. Vazquez Martinez v. New York City Support Collection Enforcement Unit, D.Puerto Rico 2003, 255 F.Supp.2d 4. Civil Rights 1321

Since some of the declaratory and compensatory damage relief sought by parent was available under Individuals with Disabilities Education Act (IDEA), she was required to exhaust her administrative remedies prior to bringing suit under §§ 1983 predicated on IDEA, Americans with Disabilities Act (ADA) and Rehabilitation Act violations. Hesling v. Avon Grove School Dist., E.D.Pa.2006, 428 F.Supp.2d 262. Schools 155.5(3)

Plaintiff bringing § 1983 action based on alleged due process violation is not required to exhaust administrative or state judicial remedies, but, at a minimum, must substantiate why such remedies would be inadequate were they pursued. Sears, Roebuck de Puerto Rico, Inc. v. Soto-Rios, D.Puerto Rico 1996, 920 F.Supp. 266. Administrative Law And Procedure 229; Civil Rights 1315; Civil Rights 1316

District court would not consider § 1983 action brought by state litigant against county prothonotary, seeking recovery of interest on amounts paid into court, even though there was United States Supreme Court case providing that withholding of such funds was an unconstitutional taking in violation of Fifth Amendment; there was an adequate state remedy, based upon statute limiting prothonotary from imposing any charge on deposited funds except poundage, which would preclude retention of interest in question. Rivkin v. County of Montgomery, E.D.Pa.1993, 838 F.Supp. 1009. Federal Courts 48

Arrestees who brought § 1983 action alleging Fourteenth Amendment violation arising from alleged failure by police to return tools removed from arrestees' vehicle following arrest failed to show that state and administrative remedies available to them for recovering the property were inadequate or violated due process. Swanson v. Fields, D.Kan.1993, 814 F.Supp. 1007, affirmed 13 F.3d 407. Civil Rights 1319

Owners and operators of day-care center and certain of its employees were precluded from bringing procedural due process claims in connection with investigation into allegations of sexual abuse at center; no predeprivation safeguards would have been of any use in preventing the kind of deprivations alleged, and state procedural safeguards provided adequate postdeprivation remedies. Simmons v. Chemung County Dept. of Social Services, W.D.N.Y.1991, 770 F.Supp. 795, affirmed 948 F.2d 1276. Constitutional Law 287.2(1)

4309. Bad faith, exhaustion of remedies

Lessee of theater which state court had ordered closed under state nuisance statute, R.C. § 3767.01 et seq., was required to exhaust state appellate remedies before seeking relief in federal district court, unless he could show that state proceeding was conducted with an intent to harass or in bad faith or that the nuisance statute was flagrantly and patently unconstitutional. Huffman v. Pursue, Ltd., U.S.Ohio 1975, 95 S.Ct. 1200, 420 U.S. 592, 43 L.Ed.2d

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482, rehearing denied 95 S.Ct. 1969, 421 U.S. 971, 44 L.Ed.2d 463. Courts 508(2.1)

4310. Expertise of court, exhaustion of remedies

Claim under this section governing deprivation of civil rights under color of state law, involving as it did right to housing without regard to race and right of an extended family to live together, involved a constitutional issue that was within expertise of courts rather than expertise of municipal board of adjustment and, hence, was not barred for failure to exhaust administrative remedies. Green v. Ten Eyck, C.A.8 (Mo.) 1978, 572 F.2d 1233. Civil Rights 1318

Where Army Board for Correction of Military Records was empowered to grant all relief sought by plaintiff in action alleging that State Adjutant General and various federal officials had wrongfully convicted him of cheating and forced him to resign his captain's commission in National Guard except monetary damages, attorney fees and costs, and only consequence of delay would be postponement of plaintiff's opportunity to obtain damages and fees, considerations of efficiency and agency expertise outweighed inconvenience to plaintiff caused by Board's inability to grant plaintiff full relief and thus plaintiff would be required to resort to Board before seeking judicial relief under this section. Sanders v. McCrady, C.A.4 (S.C.) 1976, 537 F.2d 1199. Civil Rights 1321

New York probationary teacher, who alleged that he was discharged for activity protected by U.S.C.A.Const. Amend. 1 and in a manner that deprived him of his right to procedural due process and who sought reinstatement, back pay and damages, was not required to exhaust administrative remedies before New York State Commissioner of Education before bringing suit under this section since not only was the administrative remedy not adequate, in that procedural nature thereof was not designed to effectively resolve the primarily factual issues at hand, but the constitutional issues raised particularly in the area of U.S.C.A.Const. Amend. 1 lay within the expertise of courts, and the Commissioner had no power to award damages for conspiracy to violate plaintiff's civil rights. Plano v. Baker, C.A.2 (N.Y.) 1974, 504 F.2d 595. Civil Rights 1320

4311. Flagrantly unconstitutional state statutes, exhaustion of remedies

When statute is being challenged as unconstitutional on its face, plaintiff is not required to exhaust his administrative remedies before bringing suit under this section. United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) v. State Farm Ins. Co., N.D.Ill.1972, 350 F.Supp. 522. Civil Rights 1316

4312. Futility of remedies, exhaustion of remedies

Where circumstances surrounding almost eight-year delay of federal habeas corpus petitioner's state appeal were such that there was little likelihood that his petitioning for writ of coram nobis in state courts would have been effective, petitioner was not required to exhaust state remedies before filing his federal petition. Brooks v. Jones, C.A.2 1989, 875 F.2d 30, on remand. Habeas Corpus 377

Where property owner had been in touch with planning board and Department of Public Works of Puerto Rico off and on for years without success, submitting planned development inconsistent with public classification of land would almost certainly have been futile, property owner's predecessor in interest had submitted such plan in 1968 only to have it rejected by planning board because property was reserved for public use, and action was brought under this section governing deprivation of civil rights, failure to exhaust administrative remedies was not bar to action. Urbanizadora Versalles, Inc. v. Rivera Rios, C.A.1 (Puerto Rico) 1983, 701 F.2d 993. Civil Rights 1318

State prison inmate's belief that, based on his previous experience with filing an administrative grievance, his efforts to use the grievance process would be futile, did not excuse his failure to exhaust his administrative

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remedies under state's three-step review process for inmate grievances, as required by the Prison Litigation Reform Act (PLRA), prior to bringing § 1983 action against prison official for use of excessive force in violation of the Eighth Amendment. Baker v. Krieger, W.D.N.Y.2003, 287 F.Supp.2d 207. Civil Rights 1319

University professor failed to show that her filing of appeal of grievance alleging inadequate compensation for "professional units" (PUs) of work performed and alleging entitlement to payment for travel expenses would be futile, as would excuse professor from exhausting administrative remedies before filing complaint under Title VII and § 1983; professor did not challenge award of payment she received for some of PUs and for additional research, nor did she contend that she timely submitted a request for payment of her travel expenses. Guerrero v. University of District of Columbia, D.D.C.2002, 238 F.Supp.2d 32, withdrawn from bound volume, amended and superseded 251 F.Supp.2d 13.

Plaintiff in § 1983 action challenging local warehousing requirements of Wholesale Liquor Industry Storage Act as commerce clause violation was not required to first seek exemption from District of Columbia Alcoholic Beverage Control Board; exhaustion of remedies was not normally required under § 1983, and such act would have been futile since Board could not have provided adequate relief. Milton S. Kronheim & Co., Inc. v. District of Columbia, D.D.C.1995, 877 F.Supp. 21, reversed 91 F.3d 193, 319 U.S.App.D.C. 389, rehearing denied, certiorari denied 117 S.Ct. 1468, 520 U.S. 1186, 137 L.Ed.2d 681. Civil Rights 1321

4313. Irreparable injury, exhaustion of remedies

Suspended student would suffer irreparable harm by waiting nearly one month for administrative hearing and, therefore, was not required to exhaust administrative remedies in order to bring claim for violation of procedural due process under statute that prohibits deprivation of federal statutory or constitutional rights under color of state law. Doe v. Rockingham County School Bd., W.D.Va.1987, 658 F.Supp. 403. Civil Rights 1309

4314. Nature of relief sought, exhaustion of remedies

Under Ill.S.H.A. ch. 85, ¶¶ 1-101 et seq., 2-104, 2-206; ch. 110, ¶ 2-701, plaintiffs, allegedly deprived of property without procedural due process, could sue for declaratory relief but not damages, and since state procedure would not "make the complainant whole," suit in federal district court was not precluded. LaSalle Nat. Bank v. Lake County, N.D.Ill.1984, 579 F.Supp. 8.

Rule that federal litigant need not exhaust state remedies prior to maintaining civil rights action is applicable where the relief sought is damages or where the only available state remedy is also in equity. Kahn v. Shainswit, S.D.N.Y.1976, 414 F.Supp. 1064. Civil Rights 1315

Even if doctrine of exhaustion of administrative remedies were applicable to civil rights actions, such doctrine did not bar action based on alleged denial of minimally adequate education for mentally retarded children, where plaintiffs did not request a change in placement, but sought only damages on behalf of such children, one of whom was past school age, and where administrative procedure provided machinery for challenging placement but did not provide any compensation for past injuries. Fialkowski v. Shapp, E.D.Pa.1975, 405 F.Supp. 946. Civil Rights 1317

Federal forum is available, without prior exhaustion of state remedies, for civil rights actions in which prisoners seek money damages rather than equitable relief. Galloway v. Watts, D.C.Md.1975, 395 F.Supp. 729. Civil Rights 1319

Requirement of prior exhaustion of state remedies as a condition precedent to equitable actions under this section does not apply to suits for damages. Wilson v. Garnett, W.D.Mo.1970, 332 F.Supp. 888. Civil Rights 1316

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42 U.S.C.A. § 1983

4315. Piecemeal litigation, exhaustion of remedies

Connecticut special deputy sheriffs who sued high sheriff and other sheriff's department officials, asserting state constitutional and common-law claims, based on allegations that defendants retaliated against plaintiffs for union organizing activities, discriminated against them, and required them to pay improper "dues" to county sheriff's association, were not required to first exhaust administrative remedies; no single Connecticut agency would have jurisdiction over all state constitutional and common-law claims, resulting in piecemeal proceedings before various state agencies, and no agency was empowered to award damages for intentional infliction of emotional distress, to award punitive damages, or to award full remedy (legal, injunctive, and declaratory) for violation of plaintiffs' constitutional rights. St. George v. Mak, D.Conn.1993, 842 F.Supp. 625. Labor And Employment 1996

4316. Prejudice or bias of tribunal, exhaustion of remedies

Terminated executive director of city housing authority was not required to exhaust state administrative or judicial remedies before bringing Section 1983 Civil Rights Act suit complaining of denial of impartial decisionmaker at termination hearing, which was in effect both a pretermination and posttermination hearing, complaint was not that procedures were insufficient in quantity but that although procedures were facially adequate they were so tainted by the bias of the tribunal as to be illusory and deficiencies in the crucial quality of impartiality was not compensated for by the limited review accorded under state law. Salisbury v. Housing Authority of City of Newport, E.D.Ky.1985, 615 F.Supp. 1433. Civil Rights 1320

4317. Class actions, exhaustion of remedies

Where class action was brought under this section by welfare recipient to challenge portion of state plan for aged, blind and disabled, court need not consider questions of abstention or exhaustion of administrative remedies. Owens v. Parham, N.D.Ga.1972, 350 F.Supp. 598. Civil Rights 1321; Federal Courts 59

4318. Civil Rights of Institutionalized Persons Act, exhaustion of remedies

Court may require exhaustion of administrative remedies by inmate bringing civil rights action if Attorney General or court has determined that the administrative remedies provided by the state are in substantial compliance with minimum acceptable standards set forth in the Civil Rights of Institutionalized Persons Act. Maulick v. Central Classification Bd., E.D.Va.1986, 659 F.Supp. 24.

4319. Condemnation, exhaustion of remedies

The second prudential requirement for regulatory taking claim brought against state entity in federal court, i.e., that plaintiff has sought compensation through procedures the state has provided for doing so, stems from Fifth Amendment's proviso that only takings without just compensation infringe that Amendment. Suitum v. Tahoe Regional Planning Agency, U.S.Nev.1997, 117 S.Ct. 1659, 520 U.S. 725, 137 L.Ed.2d 980, on remand 123 F.3d 1322. Eminent Domain 277

Indiana's inverse condemnation procedure, while available, was nevertheless inadequate for challenging plan commission's vacation of restrictive covenants as to other lots in plaintiffs' plat, and thus takings suit under § 1983 was within the futility exception to ripeness requirement of exhaustion of state judicial remedies, because the manner in which the plan commission allegedly took the plaintiffs' property left them without a definable pecuniary loss, in that the plan commission had to, and did, find that the surrounding plat would suffer no injury to the value of lot owners' land. Daniels v. Area Plan Com'n of Allen County, C.A.7 (Ind.) 2002, 306 F.3d 445. Eminent Domain 277

Landowners who brought § 1983 compensation action for completed physical taking of their property by village,

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which taking was without notice and wholly in violation of statutory requirements governing appropriation of property, would not be required to pursue any further remedies in state court to obtain compensation for taking which was concededly illegal and for which village admitted that landowners were due compensation, in light of village's steadfast refusal to compensate landowners. Kruse v. Village of Chagrin Falls, Ohio, C.A.6 (Ohio) 1996, 74 F.3d 694, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 71, 519 U.S. 818, 136 L.Ed.2d 31. Eminent Domain 277

Landowners who claimed that their property had been damaged by state's actions in issuing permit for waste water treatment plant were required to exhaust state remedies in inverse condemnation proceeding before their due process claim could be considered in federal civil rights action. Hammond v. Baldwin, C.A.6 (Ky.) 1989, 866 F.2d 172, rehearing denied. Civil Rights 1318

Takings claim asserted under Fifth Amendment by mine operators based on sale by town waste management authority of sand and other materials left behind at mine site after authority purchased site and operators' license was terminated was not ripe for review in § 1983 action where operators had not pursued inverse condemnation claim or any other remedy available under New York law. McCormack Sand Co. v. Town of North Hempstead Solid Waste Management Authority, E.D.N.Y.1997, 960 F.Supp. 589. Civil Rights 1318

Landowner had to pursue inverse condemnation proceedings at local and state level before pursing § 1983 action based on substantive due process claim in federal court. Front Royal and Warren County Indus. Park Corp. v. Town of Front Royal, Va., W.D.Va.1996, 922 F.Supp. 1131, reversed 135 F.3d 275. Civil Rights 1318

Property owners' failure to utilize available measures under Arkansas law for obtaining compensation for alleged temporary taking of their property by city historic district commission required dismissal of their § 1983 action to obtain compensation for such temporary taking. Roy v. City of Little Rock, E.D.Ark.1995, 902 F.Supp. 871. Civil Rights 1318

Landowner who brought § 1983 action against city for allegedly "taking" landowner's land without just compensation failed to exhaust his administrative remedies; Massachusetts law provides means by which plaintiff may seek redress for alleged deprivation of property, but landowner failed to invoke that statute. Marietta Realty, Inc. v. Springfield Redevelopment Authority, D.Mass.1995, 902 F.Supp. 310. Eminent Domain 277

Landowners were required to seek just compensation for alleged taking of land through inverse condemnation procedure, prior to commencing § 1983 action on basis that taking of land violated their constitutional rights; though landowners were not required to exhaust state remedies to bring § 1983 action, takings claim was not ripe where no government actor had reached final determination on compensation issue. Mercado v. Perez Vega, D.Puerto Rico 1993, 853 F.Supp. 42. Civil Rights 1318; Eminent Domain 277

Although exhaustion of state remedies is generally not prerequisite to § 1983 claim, exhaustion is required for inverse condemnation claim brought under § 1983. Cap'n Hook Auto Parts, Inc. v. Board of Tp. Trustees, Liverpool Tp., N.D.Ohio 1991, 773 F.Supp. 71. Civil Rights 1318; Eminent Domain 277

Putative landowner would have to pursue inverse condemnation remedy in Puerto Rico court before bringing § 1983 action for Fifth Amendment taking. Asociacion de Pescadores de Vieques, Inc. v. Santiago, D.Puerto Rico 1990, 747 F.Supp. 134. Eminent Domain 277

Property owner alleging taking without just compensation must utilize state procedures for obtaining compensation before bringing § 1983 action. Edelweiss Development Corp. v. County of Susquehanna, M.D.Pa.1988, 738 F.Supp. 879, affirmed 908 F.2d 962. Civil Rights 1318

Landowners who brought civil rights action challenging zoning change to allow construction of electric power

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substation were not required to pursue inverse condemnation proceeding in state court. MacNamara v. County Council of Sussex County, D.Del.1990, 738 F.Supp. 134, affirmed 922 F.2d 832. Civil Rights 1318

Mechanisms provided by State of Missouri, its subdivisions, and municipalities for compensating property owners whose property is either taken for public use or demolished for failure to conform to building code requirements precluded owner of vacant apartment building and lot from asserting a due process claim under section 1983 after building was condemned and demolished by city. Lewis v. City of St. Louis, E.D.Mo.1985, 607 F.Supp. 614, affirmed 786 F.2d 1169. Civil Rights 1318

Although courts in other circuits have held that there is no cause of action under this section where plaintiff alleges a "taking" of his property by the state without due process and does not first attempt to avail himself of adequate state procedures for compensation following the de facto appropriation, the Court of Appeals for the Fifth Circuit has not required first resort to state courts; the remedy in federal court is deemed "supplementary to any remedy any state might provide." Stearns v. Smith, S.D.Tex.1982, 551 F.Supp. 32. Civil Rights 1318

Plaintiff property owners which claimed violation of civil rights under this section arising out of conspiracy or misuse of condemnation powers by state officials and private developer of urban renewal property in order to deprive plaintiffs of their properties without just compensation were not required to first exhaust state remedies. Archer Gardens, Ltd. v. Brooklyn Center Development Corp., S.D.N.Y.1979, 468 F.Supp. 609. Civil Rights 1318

Where landowner had right to maintain collateral attack on condemnation proceeding in Texas, he could by establishing federal jurisdiction proceed in federal forum without exhaustion of state court remedy. Joiner v. City of Dallas, N.D.Tex.1974, 380 F.Supp. 754, affirmed 95 S.Ct. 614, 419 U.S. 1042, 42 L.Ed.2d 637, rehearing denied 95 S.Ct. 818, 419 U.S. 1132, 42 L.Ed.2d 831. Courts 489(12)

4320. Education, schools and students, exhaustion of remedies

Students' claims under §§ 504 of Rehabilitation Act and §§ 1983, both of which sought to ensure free appropriate public education (FAPE) that was also available under IDEA, were both subject to IDEA exhaustion requirement. J.S. ex rel. N.S. v. Attica Central Schools, C.A.2 (N.Y.) 2004, 386 F.3d 107, certiorari denied 125 S.Ct. 1727, 544 U.S. 968, 161 L.Ed.2d 616, on remand 2006 WL 581187. Schools 155.5(3)

Retaliation claim under the Rehabilitation Act, as well as § 1983 claim intended "to enforce the anti-retaliation provision of IDEA," were subject to the IDEA requirement of exhaustion of administrative remedies as claims "seeking relief that is available under [IDEA]" where plaintiff parent had standing to bring her retaliation claim under IDEA. Weber v. Cranston School Committee, C.A.1 (R.I.) 2000, 212 F.3d 41. Schools 155.5(3)

High school student failed to exhaust her state remedies regarding appeal of her challenge to school district's decision that her tattoo was gang symbol and that she was required to get tattoo removed for purposes of student's claim that school denied her due process by failing to provide adequate appeals process regarding decision. Stephenson v. Davenport Community School Dist., C.A.8 (Iowa) 1997, 110 F.3d 1303, rehearing and suggestion for rehearing en banc denied. Civil Rights 1317

Parents of handicapped children who alleged a statewide pattern and practice of systematic Education of the Handicapped Act violations unable to be addressed at the due process hearings provided in the state were not required to exhaust administrative remedies of the due process hearings before bringing civil rights action challenging the violations. Mrs. W. v. Tirozzi, C.A.2 (Conn.) 1987, 832 F.2d 748, on remand 706 F.Supp. 164.

Civil rights claim did not identify due process violation based on infringement of student's liberty interests; rather, plaintiffs argued that defendants violated this section by failing to obey commands of the Education for All

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Handicapped Children Act, section 1401 et seq. of Title 20, and the Rehabilitation Act, section 794 of Title 29, and plaintiffs could not circumvent procedural requirements of section 1401 et seq. of Title 20 by going directly into federal court under this section. Austin v. Brown Local School Dist., C.A.6 (Ohio) 1984, 746 F.2d 1161, certiorari denied 105 S.Ct. 2114, 471 U.S. 1054, 85 L.Ed.2d 479. Schools 155.5(3)

Student who did not, in complaint against professor who had given him failing grade because of determination that student had committed plagiarism, deny the charge and who was informed that he had a right to appeal the professor's penalties using the university's own internal procedures but never attempted to do so was precluded by failure to exhaust administrative remedies, from having court order that his grades be "corrected". (Per Kunzig, J., with one Justice concurring specially.) Hill v. Trustees of Indiana University, C.A.7 (Ind.) 1976, 537 F.2d 248. Colleges And Universities 9.35(2)

Where various school officials had already upheld regulation requiring student who refuses to salute flag to either stand silently or leave room, student who brought action under this section attacking such regulation was not required to exhaust administrative remedies even if such requirement existed in such cases. Goetz v. Ansell, C.A.2 (N.Y.) 1973, 477 F.2d 636. Civil Rights 1317

Middle school students and parents who sued school district, school board, and officials, stemming from students' expulsions due to BB gun shooting incident, properly exhausted their administrative remedies, as required to maintain procedural due process claims, where state court of appeals reversed school board's decision to expel students because their waivers to expulsion hearing were invalid. S.K. v. Anoka-Hennepin Independent School Dist. No. 11, D.Minn.2005, 399 F.Supp.2d 963. Civil Rights 1317

Parents of home-schooled autistic child whose school playground privileges were withdrawn were required to exhaust administrative remedies available through the IDEA before pursuing claims under federal civil rights laws, notwithstanding fact that no IDEA claim was being pursued, given that the relief parents were seeking, including restoration of playground privileges and damages, was available under the IDEA, and state special education regulations provided due process hearing procedures that satisfied IDEA due process hearing requirement. Fitzpatrick v. Town of Falmouth, D.Me.2004, 324 F.Supp.2d 95, appeal after remand from federal court 879 A.2d 21. Schools 155.5(3)

Unless exhaustion under the IDEA is excused because pursuit of administrative remedies would be futile or the child would be irreparably harmed, or because of one of the other narrow exceptions to the exhaustion requirement, parents must pursue the administrative remedies available to them under the IDEA, meaning, due process hearings and appeals to state agencies where provided by the state, before they may bring a civil action in state or federal court for violations of the IDEA or § 1983 claims repackaging the IDEA claims in different legal wrapping. Pardini v. Allegheny Intermediate Unit, W.D.Pa.2003, 280 F.Supp.2d 447, reversed and remanded 420 F.3d 181, certiorari denied 126 S.Ct. 1646, 164 L.Ed.2d 353. Schools 155.5(3)

Requirement that allegedly disabled student exhaust administrative remedies before suing for violations of IDEA, ADA, and Rehabilitation Act, was not excused, even though student had left school and was seeking only monetary damages via § 1983 action, where there had not yet been any administrative determination of whether student was disabled. Lindsley ex rel. Kolodziejczack v. Girard School Dist., W.D.Pa.2002, 213 F.Supp.2d 523. Schools 155.5(3)

Parents of learning disabled child had to first exhaust their administrative remedies under IDEA before bringing § 1983 claim based on IDEA and constitutional violations: mere fact that parents sought a remedy of damages in addition to their requested general relief was not dispositive of the exhaustion requirement; and by merely appending nominal claim for damages to § 1983 claim, aggrieved parties could avoid the mandate of both Congress and the Supreme Court that provision of free appropriate public education (FAPE) and related matters first should be dealt with on the local level between parents and school. Doe v. Alfred, S.D.W.Va.1995, 906

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F.Supp. 1092, dismissed 79 F.3d 1141. Administrative Law And Procedure 229; Civil Rights 1309; Schools 155.5(3)

Exhaustion requirement of Education for All Handicapped Children Act applied to parents' action under § 1983, alleging that parents should have been given opportunity to dispute whether part of or all of their major medical benefits were properly paid towards cost of mental health services for children and youth program as medical expenses, or whether part or all of such expenses were educational expenses for which school board was responsible. Laura V. v. Providence School Bd., D.R.I.1988, 680 F.Supp. 66.

Student was not required to exhaust administrative remedies available within school department before seeking to vindicate her rights under U.S.C.A. Const.Amend. 1 under this section to have published next to her picture in high school yearbook quotation which she had previously selected for inclusion. Stanton By and Through Stanton v. Brunswick School Dept., D.C.Me.1984, 577 F.Supp. 1560. Civil Rights 1317

As constitutional harm to student who was suspended from school for parent's failure to pay textbook fees had already occurred, no procedure provided by school could obviate that fact; therefore, student's failure to exhaust putative administrative remedies did not preclude right to bring action under this section prohibiting the deprivation of civil rights under color of state law. Carder v. Michigan City School Corp., N.D.Ind.1982, 552 F.Supp. 869. Civil Rights 1317

Student's failure to appeal his suspension in excess of one term to college's board of trustees did not bar him from proceeding with civil rights action arising out of the suspension. Turof v. Kibbee, E.D.N.Y.1981, 527 F.Supp. 880 . Civil Rights 1309

Failure of plaintiffs to present a written verified complaint to school officials within three months after accrual of their claim as required by McKinney's N.Y. Education Law § 3813 did not operate to preclude plaintiffs from bringing action under this section for declaratory and injunctive relief against alleged unconstitutional refusal of defendant school officials to allow use of a room in school for a communal prayer meeting immediately prior to beginning of school each day. Brandon v. Board of Ed. of Guilderland Central School Dist., N.D.N.Y.1980, 487 F.Supp. 1219, affirmed 635 F.2d 971, certiorari denied 102 S.Ct. 970, 454 U.S. 1123, 71 L.Ed.2d 109, rehearing denied 102 S.Ct. 1493, 455 U.S. 983, 71 L.Ed.2d 694. Civil Rights 1725

Administrative remedies within educational institution must first be exhausted before recourse may be had to federal courts for necessarily drastic relief from allegedly unconstitutional regulations. Romans v. Crenshaw, S.D.Tex.1971, 354 F.Supp. 868. Civil Rights 1317

Fact that pupil indefinitely suspended from school appealed from superintendent's decision to local school board did not require her to exhaust administrative remedies before bringing action under this section. Cook v. Edwards, D.C.N.H.1972, 341 F.Supp. 307. Civil Rights 1317

4321. Employment, exhaustion of remedies--Generally

Employee was not required to exhaust administrative remedies before bringing claim under § 1981. Aramburu v. Boeing Co., C.A.10 (Kan.) 1997, 112 F.3d 1398. Civil Rights 1312

Public servant may sue her employer for discrimination under § 1983 without having to satisfy Title VII's administrative preconditions to suit. Murray v. Kutzke, N.D.Ill.1997, 967 F.Supp. 337. Civil Rights 1312

While waiver of immunity can be limited to specified circumstances, exhaustion of state administrative judicial remedies has never been required where a claim under this section attacked the regular policies, procedures or employment methods generally ascribed to by the state. Meeker v. Addison, S.D.Fla.1983, 586 F.Supp. 216. Civil

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42 U.S.C.A. § 1983

Rights 1316; Civil Rights 1320

4322. ---- Firefighters, employment, exhaustion of remedies

District court could not dismiss without prejudice employee's Title VII action against employer, in order to allow employee to pursue unexhausted administrative remedies, where employee lacked valid cause of action to begin with since alleged discrimination was based on "political ideas" rather than on any suspect classification covered by Title VII. Soler v. Puerto Rico Telephone Co., D.Puerto Rico 2002, 230 F.Supp.2d 232. Federal Civil Procedure 1700

Fire department employee's failure to utilize Illinois procedure to seek review of village board of fire and police commissioners' decision not to promote him did not bar his § 1983 claim against fire chief alleging that denial of promotion was in retaliation for employee's protected speech to newspaper reporter; nothing suggested that any potential state administrative review of board's action would afford any remedy against fire chief individually. Sundstrom v. Village of Arlington Heights, N.D.Ill.1993, 826 F.Supp. 1143. Administrative Law And Procedure 229; Civil Rights 1320

Black female fire fighter with District of Columbia Fire Department was not required to exhaust her administrative remedies under District of Columbia Human Rights Act in order to bring federal civil rights action against fire department under federal civil rights statutes, so that three-year limitations period applicable to her civil rights action was not tolled while her claims were filed with District of Columbia Office of Human Rights. Deskins v. Barry, D.D.C.1989, 729 F.Supp. 1. Administrative Law And Procedure 229; Civil Rights 1320

4323. ---- Law enforcement officers, employment, exhaustion of remedies

Remedies under this section are supplementary to any pertinent state remedies and deputy sheriffs were not required to exhaust administrative remedies before suing to challenge validity of distinction between themselves and firemen and policemen. Gillette v. McNichols, C.A.10 (Colo.) 1975, 517 F.2d 888. Civil Rights 1320

District of Columbia system could not grant full relief to terminated police officer in connection with his federal civil rights claims, and officer was accordingly not required to file claim through District of Columbia's Office of Employee Appeals (OEA) to exhaust administrative remedies under the District of Columbia Comprehensive Merit Personnel Act (CMPA) before filing federal suit; officer requested compensatory and punitive damages that OEA was not authorized to grant, and OEA's administrative forum could not have provided full and fair opportunity to litigate federal claims. Crockett v. District of Columbia Metropolitan Police Dept., D.D.C.2003, 293 F.Supp.2d 63 . Civil Rights 1320

Resort to state Public Employment Relations Commission or any state administrative proceeding was not a prerequisite to police officers' seeking relief in federal court under civil rights statute with respect to claims that township resolution restricting outside employment of off-duty police officers violated their constitutional rights. Bowman v. Township of Pennsauken, D.N.J.1989, 709 F.Supp. 1329. Civil Rights 1320

Where police officer was discharged in accordance with city charter provision for refusing to waive his immunity from prosecution when he was called to testify before a grand jury, he was not required to seek relief in a state court before bringing an action for reinstatement under this section. Romer v. Leary, S.D.N.Y.1969, 305 F.Supp. 366, affirmed 425 F.2d 186. Civil Rights 1320

4324. ---- Professionals, employment, exhaustion of remedies

This section, also cited as a basis for lawsuit against defendant university and others for denial of admittance to psychiatric residency program because plaintiff suffered from multiple sclerosis, did not require plaintiff to exhaust

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administrative remedies by taking such remedial action as the Department of Health and Human Services deemed necessary to overcome the effects of unlawful discrimination. Pushkin v. Regents of University of Colorado, C.A.10 (Colo.) 1981, 658 F.2d 1372. Civil Rights 1309

Where applicant who was denied admission to the New York bar petitioned Appellate Division of New York Supreme Court for an order to admit him to the bar, Appellate Division denied petition and held that McKinney's N.Y. CPLR 9406, subd. 3, requiring a six months' actual residency for admission to bar required a permanent residency and that applicant's ten months' residency was temporary and applicant did not appeal such decision to the New York Court of Appeals on the merits or on the question of whether McKinney's N.Y. CPLR 9406, subd. 3, violated equal protection, federal district court lacked jurisdiction over applicant's subsequent action under this subchapter raising same constitutional issues. (Per Mulligan, Circuit Judge, with one Judge concurring in the result.) Tang v. Appellate Division of New York Supreme Court, First Dept., C.A.2 (N.Y.) 1973, 487 F.2d 138, certiorari denied 94 S.Ct. 1611, 416 U.S. 906, 40 L.Ed.2d 111. Courts 509

Plaintiff alleging in action under this section that action of State Board of Examiners in Psychology in denying him use of "Ph.D." designation in context of his psychology practice was an unconstitutional action under color of official right was not required to exhaust administrative appeal process, where through an agreed order plaintiff was not deprived of that usage pending court's determination of issue. Buxton v. Lovell, S.D.Ind.1983, 559 F.Supp. 979. Civil Rights 1321

4325. ---- Teachers, employment, exhaustion of remedies

Teacher was not required to exhaust state remedies with respect to her discharge before filing § 1983 claim, arising out of discharge, in federal court. Hall v. Marion School Dist. No. 2, C.A.4 (S.C.) 1994, 31 F.3d 183. Civil Rights 1320

Where nontenured teacher's civil rights action under this section charged defendants with retaliating against him by dismissing him for the exercise of his rights under U.S.C.A.Const. Amend. 1, he was not required to exhaust administrative remedies prior to commencing action in federal court. Hochman v. Board of Ed. of City of Newark, C.A.3 (N.J.) 1976, 534 F.2d 1094. Civil Rights 1320

Employees of school district asserting unconstitutionality of policy of terminating teachers under certain circumstances because they were married were not required to exhaust state court remedies before bringing action in federal court under this section. Keckeisen v. Independent School Dist. 612, C.A.8 (Minn.) 1975, 509 F.2d 1062, certiorari denied 96 S.Ct. 57, 423 U.S. 833, 46 L.Ed.2d 51. Civil Rights 1320

Public school teacher, who was discharged for wearing a black armband as a symbolic protest against the Vietnam War and who had an opportunity to litigate claim before New York Commissioner of Education, was not required to appeal the Commissioner's decision upholding discharge to the New York courts prior to bringing claim for relief under this section. James v. Board of Ed. of Central Dist. No. 1 of Towns of Addison et al., C.A.2 (N.Y.) 1972, 461 F.2d 566, certiorari denied 93 S.Ct. 529, 409 U.S. 1042, 34 L.Ed.2d 491, rehearing denied 93 S.Ct. 1355, 410 U.S. 947, 35 L.Ed.2d 617, on remand 385 F.Supp. 209. Civil Rights 1320

Maine tenured public school teacher, who failed to exhaust administrative remedies in accordance with 20 M.R.S.A. §§ 161, subd. 5, 473, subd. 4 by refusing to further participate in hearing before school committee after certain procedural objections were overruled, was not entitled to maintain an action under this section for deprivation of rights in connection with discharge. Beattie v. Roberts, C.A.1 (Me.) 1971, 436 F.2d 747. Civil Rights 1320

Failure of college teacher claiming that he was dismissed on constitutionally impermissible grounds to pursue administrative remedies did not preclude him from bringing action to enjoin alleged violation of civil rights.

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42 U.S.C.A. § 1983

Rainey v. Jackson State College, C.A.5 (Miss.) 1970, 435 F.2d 1031. Civil Rights 1455; Injunction 108

University professor was not required to appeal to District of Columbia Superior Court from university president's denial of professor's appeal from university's decision to terminate professor pursuant to reduction in force (RIF), in order to exhaust administrative remedies before filing discrimination complaint under Title VII and § 1983, where claims asserted in complaint were not based upon termination decision but upon university's failure to rehire professor and its alleged appointment of other persons to positions for which professor was allegedly better qualified, and university resolution as to RIF did not require professor to raise rehire issue with president. Guerrero v. University of District of Columbia, D.D.C.2002, 238 F.Supp.2d 32, withdrawn from bound volume, amended and superseded 251 F.Supp.2d 13.

If new position of high school administrative assistant was "similar" to tenured teacher's former position of high school dean, school board's action in discharging teacher without allowing him to occupy new position was substantively defective under due process clause and existence of postdeprivation state law remedies thus did not bar teacher's civil rights action. DeSimone v. Board of Educ., South Huntington Union Free School Dist., E.D.N.Y.1985, 604 F.Supp. 1180. Civil Rights 1320; Constitutional Law 278.5(3)

Even if teacher whose contract is nonrenewed has property interest in continued employment, where teacher's contract is nonrenewed allegedly in violation of Ark.Stats. § 80-1264.2, and for that reason only, and that teacher is afforded full state remedy including full procedural safeguards with opportunity for pretermination hearing by school board and right to appeal school board's decision to courts of state for judicial determination of whether said statute has been violated, then that teacher is precluded from bringing action under this section. Sutton v. Marianna School Dist. A, E.D.Ark.1983, 573 F.Supp. 159. Civil Rights 1133

4326. ---- Miscellaneous employees, employment, exhaustion of remedies

Where before state civil service employees commenced their action in district court under this section they had been charged by state Personnel Board with patent violations of 74 Okl.St.Ann. § 801 et seq., patterned on § 7324 of Title 5, and Board, on employees' application, had ordered its proceedings stayed pending adjudication of federal constitutional questions in district court, and district court when advised of Board's decision and in absence of any objections from enforcement officers proceeded, it was unnecessary to determine whether employees would have been required to proceed to hearing before Board prior to pursuing their civil rights action. Broadrick v. Oklahoma, U.S.Okla.1973, 93 S.Ct. 2908, 413 U.S. 601, 37 L.Ed.2d 830. Federal Courts 478

Retired public school employee failed to exhaust his state court remedies with respect to his claim that state illegally used public school employees' health insurance premiums to subsidize state employees' health insurance premiums, as required to bring action under §§ 1983 alleging that state officials violated the Fifth and Fourteenth Amendments by taking his private property without just compensation. Carter v. Arkansas, C.A.8 (Ark.) 2004, 392 F.3d 965. Civil Rights 1320

Since purpose of administrative remedy provided by statute and county merit system rule was to remedy, rather than forestall deprivation, employees in county assessor's office who were suspended and eventually fired after they did not comply with rule requiring male employees to wear their hair cut above the collar were not required to exhaust such remedy before bringing civil rights action. Jacobs v. Kunes, C.A.9 (Ariz.) 1976, 541 F.2d 222, certiorari denied 97 S.Ct. 1109, 429 U.S. 1094, 51 L.Ed.2d 541. Civil Rights 1320

Plaintiff, who had allegedly been discharged from employment because of his complaints regarding discriminatory employment practices based on race, had independent actions against employer under this section and Equal Employment Opportunity Act, § 2000e et seq. of this title; plaintiff was not required to exhaust administrative procedure before Equal Employment Opportunity Commission before maintaining action under this section.

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42 U.S.C.A. § 1983

Caldwell v. National Brewing Co., C.A.5 (Fla.) 1971, 443 F.2d 1044, certiorari denied 92 S.Ct. 931, 405 U.S. 916, 30 L.Ed.2d 785. Civil Rights 1312

Workforce Investment Act (WIA) did not expressly foreclose § 1983 claims against municipal consortium by employees who alleged political discrimination; even though provision governing political discrimination required that regulations adopt standards and procedures for enforcement, it did not state that administrative procedures were required to be exhausted or that procedures were exclusive remedy available. Delgado-Greo v. Trujillo, D.Puerto Rico 2003, 270 F.Supp.2d 189, appeal dismissed as improvidently granted 395 F.3d 7. Civil Rights 1126; Civil Rights 1312

Exhaustion of state or territorial administrative remedies is not required prior to commencement of an action under this section and, thus, failure of terminated director of Utilities and Sanitation in Department of Public Works of the Virgin Islands to pursue whatever administrative remedies he might have had was no basis for dismissing complaint charging that dismissal was based solely on political affiliation and violated rights under U.S.C.A.Const.Amend. 1 of association and belief. Moorhead v. Government of Virgin Islands, D.C.Virgin Islands 1982, 542 F.Supp. 213. Civil Rights 1320

Failure of former federal employee dismissed on basis of statements in which he articulated dislike of drug addicts and working for a woman, to exhaust his administrative remedies did not bar his suit under this section, because protection of rights under U.S.C.A.Const. Amend. 1 was involved. Williams v. Trimble, S.D.N.Y.1981, 527 F.Supp. 910. Civil Rights 1320

State employee who claimed that his civil rights were being violated by order placing him in a collective bargaining unit would be required to exhaust administrative remedies by appealing the ruling to the Public Employment Relations Board. Jacobson v. Director, Bureau of Mediation Services, State of Minn., D.C.Minn.1981, 508 F.Supp. 715. Civil Rights 1320

Plaintiff who has failed to exhaust administrative prerequisites necessary to maintain action under the Equal Employment Opportunity Act, § 2000e et seq. of this title, may, nonetheless, maintain action for racial discrimination in employment under Civil Rights Acts of 1870, § 1981 of this title and 1871, this section. Gibson v. State of Wis. Dept. of Health, E.D.Wis.1980, 489 F.Supp. 1048. Civil Rights 1312

4327. First amendment, exhaustion of remedies

Owner of adult bookstore was not required to exhaust state remedies before bringing suit in federal court to enjoin enforcement of municipal ordinance prohibiting location of such places of business within 1,000 feet of each other on allegations that enforcement of such ordinance would chill right under U.S.C.A.Const. Amend. 1. Shangri-La Enterprises, Ltd. v. Brennan, E.D.Wis.1980, 483 F.Supp. 281. Civil Rights 1318

4328. Individuals with Disabilities Education Act, exhaustion of remedies

Exhaustion of administrative remedies provided under IDEA was required before bringing a federal civil rights action for relief that was also available under IDEA. Association for Community Living in Colorado v. Romer, C.A.10 (Colo.) 1993, 992 F.2d 1040. Administrative Law And Procedure 229; Schools 155.5(3)

Congress expressly authorized § 1983 suits to vindicate violations of rights protected under the Individual with Disabilities in Education Act (IDEA). Roe ex rel. Preschooler II v. Nevada, D.Nev.2004, 332 F.Supp.2d 1331. Schools 155.5(2.1)

4329. Labor and unions, exhaustion of remedies

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42 U.S.C.A. § 1983

Terminated county transit authority bus driver could not complain about any alleged deficiencies in union grievance procedure, since he did not file any grievance prior to commencing action under this section in district court, nor did he show that his failure to file a grievance was result of any shortcomings in grievance provisions of collective bargaining agreement. Lewis v. Hillsborough Transit Authority, C.A.11 (Fla.) 1983, 726 F.2d 664, rehearing denied 726 F.2d 668, certiorari denied 105 S.Ct. 95, 469 U.S. 822, 83 L.Ed.2d 41. Civil Rights 1312

Failure by county corrections officer when administratively appealing excessive-force reprimand to go through last of four steps in collective bargaining agreement's grievance/arbitration procedure precluded, on exhaustion grounds, officer's §§1983 procedural due process action against county; only evidence of officer's contention that appeal process was inadequate was fact that warden had deleted arguably exculpatory statements from internal investigation file before deputy warden conducted step-one hearing, but warden himself at step two reduced discipline to written reprimand from five-day suspension imposed by deputy warden. Keim v. County of Bucks, E.D.Pa.2004, 322 F.Supp.2d 587. Constitutional Law 46(1)

Former city employee's failure to utilize grievance procedures provided under collective bargaining agreement (CBA) did not preclude him from bringing § 1983 suit alleging that he was terminated because of his political affiliation in violation of the First Amendment. Hennessy v. City of Long Beach, E.D.N.Y.2003, 258 F.Supp.2d 200. Civil Rights 1312

Assuming that employee of county sheriff's department was employed under collective bargaining agreement providing grievance procedure, failure to exhaust contractual grievance procedure did not preclude employee's civil rights claims asserted under § 1983 in connection with his termination. Scheideman v. Shawnee County Bd. of County Com'rs, D.Kan.1995, 895 F.Supp. 279, motion denied 1996 WL 89367. Civil Rights 1312

Federal district court would not exercise jurisdiction over claim seeking declaration that Connecticut statute excluding special deputy sheriffs from the class of state employees entitled to form labor unions applies retroactively where the issue had not been addressed by any state court, although state labor board had made such a ruling. Lajoie v. Connecticut State Bd. of Labor Relations, D.Conn.1993, 837 F.Supp. 34. Federal Courts 15; Federal Courts 47.1

Collective bargaining agreement expressly prohibiting discrimination as defined by federal law and providing for arbitration of any violation obligated employee to arbitrate § 1981 race discrimination claim against employer. Almonte v. Coca-Cola Bottling Co. of N.Y., Inc., D.Conn.1997, 959 F.Supp. 569. Labor And Employment 1549(17)

Consumer organization seeking injunction against enforcement of state court injunction against its picketing and leafleting activities was not required to exhaust available state remedies before bringing action under this section. Concerned Consumers League v. O'Neill, E.D.Wis.1974, 371 F.Supp. 644. Civil Rights 1321

4330. Licenses and permits, exhaustion of remedies

Licensee was not required to exhaust state remedies before challenging constitutionality of driver's license revocation procedures that clearly violated procedural due process. Smith v. Commissioner of Georgia Dept. of Public Safety, M.D.Ga.1987, 673 F.Supp. 446. Civil Rights 1321

Airport director's revocation of taxi cab operator's permit to operate at airport was not grounds for federal court action pursuant to 42 U.S.C.A. § 1983 alleging that operator was deprived of property without due process of law, where both county law and state law [W.S.A. 68.01-68.16] provided right of appeal from director's decision. Tumneff v. Milwaukee County Dept. of Public Works, Airport Div., E.D.Wis.1986, 628 F.Supp. 745. Federal Courts 223

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42 U.S.C.A. § 1983

It was unnecessary for operators of sanitary landfill to exhaust available state remedies before commencing action alleging violation of their due process rights resulting from denial by state Environmental Protection Agency of operating permit for waste disposal trenches. Martell v. Mauzy, N.D.Ill.1981, 511 F.Supp. 729. Environmental Law 665

4331. Medical malpractice, exhaustion of remedies

Relatives of involuntarily committed patient at state hospital were not required to exhaust remedies of Virginia Medical Malpractice Act, Va.Code 1950, §§ 8.01-581.1 to 8.01-581.9, before bringing claim under this section and pendent wrongful death claims against treating physicians in federal court. Herer v. Burns, W.D.Va.1984, 577 F.Supp. 762. Civil Rights 1321

4332. Medicare or medicaid, exhaustion of remedies

District court correctly adjudicated merits of controversy as to constitutionality of state regulation denying aid to dependent children of mother who "cohabits" with able-bodied man without requiring exhaustion of state administrative remedies. King v. Smith, U.S.Ala.1968, 88 S.Ct. 2128, 392 U.S. 309, 20 L.Ed.2d 1118. Social Security And Public Welfare 194.21

Relief under this section could not be denied welfare claimants on ground that they had not first sought relief under state laws providing administrative remedies. Damico v. California, U.S.Cal.1967, 88 S.Ct. 526, 389 U.S. 416, 19 L.Ed.2d 647. Civil Rights 1321

Medicaid applicant was not required to exhaust state administrative remedies prior to bringing §§ 1983 action challenging state's denial of Medicaid benefits, and challenging questions posed on Medicaid application about details of loan made by applicant; although Medicaid Act required availability of state administrative hearing process, Act contained no explicit or implicit administrative exhaustion requirement. Roach v. Morse, C.A.2 (Vt.) 2006, 440 F.3d 53. Civil Rights 1321

Res judicata would not operate to defeat § 1983 claims of Medicaid recipients challenging Connecticut Department of Social Services' (DSS) decisions to deny their prior authorization requests for durable medical equipment (DME), even if unreviewed state administrative proceedings barred subsequent claims arising out of same transaction, inasmuch as recipients, under state law, could not have raised § 1983 claims in administrative proceedings. DeSario v. Thomas, C.A.2 (Conn.) 1998, 139 F.3d 80, vacated 119 S.Ct. 864, 525 U.S. 1098, 142 L.Ed.2d 767. Health 508

Former resident of nursing home was not required to exhaust state administrative remedies before bringing § 1983 action alleging that nursing home violated resident rights provisions of Medicare Act and its implementing regulations, as Congress neither expressly nor implicitly evidenced intent to require exhaustion of remedies under such circumstances, notwithstanding existence of state administrative review procedures. Talbot v. Lucy Corr Nursing Home, C.A.4 (Va.) 1997, 118 F.3d 215. Civil Rights 1321

Fact that Medicaid statute providing that state must make various assurances that are satisfactory to Secretary of Health and Human Services to obtain home care waiver required oversight by Secretary of Health and Human Services did not prevent applicant for home care waiver from bringing § 1983 action for alleged violations of Medicaid Act, as administrative oversight and private enforcement were not incompatible. Wood v. Tompkins, C.A.6 (Ohio) 1994, 33 F.3d 600, rehearing and suggestion for rehearing en banc denied. Civil Rights 1052

Medicaid provider was not required to exhaust its Alabama judicial remedies before bringing action under 42 U.S.C.A. § 1983 to challenge decision of Commissioner of Alabama medicaid agency which denied dual care provider contract application, even if provider could have been required to exhaust state administrative remedies.

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42 U.S.C.A. § 1983

Alacare, Inc.-North v. Baggiano, C.A.11 (Ala.) 1986, 785 F.2d 963, certiorari denied 107 S.Ct. 111, 479 U.S. 829, 93 L.Ed.2d 59. Health 509

Existence of state administrative review in challenge to state Medicaid reimbursements rates did not preclude a § 1983 action for declaratory and injunctive relief. Heartland Hosp. v. Stangler, W.D.Mo.1992, 792 F.Supp. 670. Civil Rights 1321; Declaratory Judgment 41

Exhaustion of administrative remedies is not required in § 1983 action to enforce AFDC (Aid to Families with Dependent Children) statute to assist children and their families in collecting child support. Behunin v. Jefferson County Dept. of Social Services, D.Colo.1990, 744 F.Supp. 255. Civil Rights 1313

Families who would lose medicaid eligibility because they were no longer eligible for AFDC benefits were not required to exhaust state judicial remedies before bringing federal civil rights action against state welfare official, where plaintiffs did not claim due process violation based on protected state property right, but rather claimed violation of federal law caused by defendant's procedures and policies. Reed v. Blinzinger, S.D.Ind.1986, 639 F.Supp. 130, adopted 816 F.2d 296. Civil Rights 1321

Aid to Families with Dependent Children recipient's action under this section challenging her disqualification for benefits under "lump sum" rule was excluded from exhaustion of administrative remedies rule. Walker v. Adams, W.D.Ky.1983, 578 F.Supp. 50, affirmed 741 F.2d 116. Civil Rights 1313

Action brought by medicaid providers against the Texas Department of Human Resources, its officials, and administrator of medicaid program in Texas alleging deprivation of civil rights and due process in defendants' recovering of overpayments would be dismissed for failure of the providers to exhaust administrative remedies. St. Joseph Hosp., a Div. of Sisters of Charity of The Incarnate Word v. Electronic Data Systems Corp., S.D.Tex.1983, 573 F.Supp. 443. Civil Rights 1313

4333. Minors and juveniles, exhaustion of remedies

Two allegedly delinquent juveniles who were in custody pursuant to challenged provisions of Pennsylvania juvenile pretrial detention statutes, 42 Pa.C.S.A. §§ 6325, 6335, 6341, were not required to exhaust state remedies before bringing civil rights action challenging constitutionality of the statutes. Coleman v. Stanziani, E.D.Pa.1983, 570 F.Supp. 679, appeal dismissed, mandamus denied 735 F.2d 118, certiorari denied 105 S.Ct. 515, 469 U.S. 1037, 83 L.Ed.2d 404. Civil Rights 1319

Exhaustion of administrative remedies by inmates of juvenile corrections system was not prerequisite to civil rights action attacking conditions of confinement. Inmates of Boys' Training School v. Affleck, D.C.R.I.1972, 346 F.Supp. 1354. Civil Rights 1319

4333A. Military matters

National Guard officer was not required to exhaust available intraservice remedies before bringing civil rights action under §§ 1983 against his superior officers, alleging claims for retaliation and invasion of his right to privacy under the First, Fourth, and Fourteenth Amendments. Culbreth v. Ingram, E.D.N.C.2005, 389 F.Supp.2d 668. Militia 10

4334. Police activities, exhaustion of remedies

Habeas exhaustion requirement of *Heck v. Humphrey* did not apply to state prisoner's § 1983 suit against corrections officer seeking compensatory and punitive damages, based on allegation that officer charged him with

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threatening behavior and subjected him to mandatory prehearing lockup in retaliation for prior lawsuits and grievance proceedings against officer, as suit did not seek a judgment at odds with prisoner's conviction or with the state's calculation of time to be served in accordance with the underlying sentence. Muhammad v. Close, U.S.2004, 124 S.Ct. 1303, 540 U.S. 749, 158 L.Ed.2d 32, on remand 379 F.3d 413. Civil Rights 1092; Civil Rights 1319

Civil rights plaintiff who was convicted of being felon in possession of firearm could not maintain § 1983 action alleging that officers falsely arrested him for burglary where officers discovered firearm as result of plaintiff's arrest and firearm conviction had not been invalidated; if officers lacked probable cause to arrest plaintiff for burglary, firearm discovered in his possession would be subject to suppression as fruit of illegal arrest implying invalidity of firearm conviction. Hudson v. Hughes, C.A.5 (La.) 1996, 98 F.3d 868. Civil Rights 1088(4)

Dog owner's claim under § 1983 against town, chief of police, and police officer, alleging that his Fifth Amendment rights were violated when officer shot and killed his pitbull dog and thereby deprived him of property without just compensation, was unripe for resolution; dog owner had not complied with compensation requirement by first seeking just compensation from the state prior to bringing civil action. Warboys v. Proulx, D.Conn.2004, 303 F.Supp.2d 111. Eminent Domain 277

Criminal defendant alleging malicious prosecution by police officer was required to exhaust his state court remedies before proceeding with § 1983 claim in federal court. LaBoy v. Zuley, N.D.Ill.1990, 747 F.Supp. 1284, motion to vacate denied 749 F.Supp. 184. Civil Rights 1319

Claim could be maintained based on the Fourteenth Amendment for deprivation of liberty based on alleged negligent or intentional conduct of defendant police officer in shooting plaintiff, regardless of postdeprivation tort remedy under state law. Martin v. Afflerbach, D.C.Me.1985, 623 F.Supp. 565. Civil Rights 1088(2)

Fact that recourse to state tort remedies was available to person who was allegedly beaten by police who responded to domestic disturbance call did not preclude action under this section in federal court for deprivation of substantive due process, given the alleged liberty deprivation sufficiently serious to shock the conscience and officers' willful and deliberate abuse of state authority, in manner which could not be characterized as random. Frost v. City and County of Honolulu, D.C.Hawai'i 1984, 584 F.Supp. 356. Civil Rights 1319

Person deliberately and viciously assaulted by policy officer without cause is not precluded from bringing civil rights claim against officer merely because state remedies would permit state tort action for assault against the officer. Roman v. City of Richmond, N.D.Cal.1983, 570 F.Supp. 1554. Civil Rights 1319

Federal courts should not be called upon to determine whether state officials have properly exercised police authority or whether the federal rights of a citizen of the United States have been invaded by a state, until exhaustion of administrative remedies. Thomas v. Chamberlain, E.D.Tenn.1955, 143 F.Supp. 671, affirmed 236 F.2d 417. Administrative Law And Procedure 229; Civil Rights 1316

4335. Prisons and prisoners, exhaustion of remedies--Generally

Exhaustion of administrative remedies, pursuant to Prison Litigation Reform Act (PLRA), is required for all prisoner suits seeking redress for prison circumstances or occurrences, regardless of whether they involve general circumstances of incarceration or particular episodes, and whether they allege Eighth Amendment violation based on use of excessive force or some other wrong. Porter v. Nussle, U.S.2002, 122 S.Ct. 983, 534 U.S. 516, 152 L.Ed.2d 12. Civil Rights 1311; Civil Rights 1319; Convicts 6

In general, exhaustion of state remedies is not prerequisiteto action under § 1983, even in action by State prisoner. Heck v. Humphrey, U.S.Ind.1994, 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383. Civil Rights 1319

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42 U.S.C.A. § 1983

Pursuant to plain language of Prison Litigation Reform Act (PLRA), plaintiff who was not a prisoner confined in jail, prison, or other correctional facility at the time he brought §§ 1983 action challenging conditions of former confinement was not required to exhaust administrative remedies. Norton v. The City Of Marietta, OK, C.A.10 (Okla.) 2005, 432 F.3d 1145. Civil Rights 1311

State prisoner's alleged blindness did not excuse him from the Prison Litigation Reform Act's (PLRA's) exhaustion requirement. Ferrington v. Louisiana Dept. of Corrections, C.A.5 (La.) 2002, 315 F.3d 529, certiorari denied 124 S.Ct. 206, 540 U.S. 883, 157 L.Ed.2d 150. Convicts 6

A prisoner must exhaust his or her administrative remedies prior to filing a claim under § 1983. Richardson v. Goord, C.A.2 (N.Y.) 2003, 347 F.3d 431. Civil Rights 1311

Prison Litigation Reform Act (PLRA) did not preclude, on basis of state inmate's failure to exhaust administrative remedies, inmate's § 1983 action against corrections officer, where inmate's action was pending when PLRA was signed into law; PLRA's compulsory exhaustion requirement could not be applied retroactively, and district court made no finding about the adequacy of available remedies. Scott v. Coughlin, C.A.2 (N.Y.) 2003, 344 F.3d 282. Civil Rights 1006; Civil Rights 1319

Prisoner lacked available administrative remedies for his Eighth Amendment conditions of confinement claims, for purposes of meeting exhaustion requirement, under the Prison Litigation Reform Act (PLRA), where prisoner was unable to file a grievance because prison officials refused to provide him with the necessary grievance forms. Mitchell v. Horn, C.A.3 2003, 318 F.3d 523, on remand 2005 WL 1060658. Civil Rights 1311

Inmate's failure to exhaust administrative remedies before filing § 1983 suit, in violation of Prison Litigation Reform Act (PLRA), would not be excused on ground that he exhausted such remedies after filing suit, in order to deter premature filing by other potential litigants. Underwood v. Wilson, C.A.5 (Tex.) 1998, 151 F.3d 292, certiorari denied 119 S.Ct. 1809, 526 U.S. 1133, 143 L.Ed.2d 1012. Civil Rights 1311

Action brought under this section raising issues that go directly to constitutionality of state prisoner's conviction or confinement is not properly before federal court until state remedies have been exhausted. Edwards v. Joyner, C.A.5 (Ga.) 1978, 566 F.2d 960. Civil Rights 1319

State prisoner was not required to exhaust state judicial remedies before bringing action against correctional personnel comprising the prison classification board for damages under this section. Palmigiano v. Mullen, C.A.1 (R.I.) 1974, 491 F.2d 978. Civil Rights 1319

Civil rights action may be maintained by state prisoner without exhaustion of state remedies unless prisoner seeks collateral review of conviction or outright release from custody. Padilla v. Ackerman, C.A.9 (Cal.) 1972, 460 F.2d 477. Civil Rights 1319

Exhaustion of administrative remedies requirement of Prison Litigation Reform Act (PLRA) was not applicable to § § 1983 action brought by relatives of inmate, who died while incarcerated in a Puerto Rico state prison, since inmate, at the time the complaint was filed, was no longer "confined" for purposes of the PLRA. Rivera-Quinones v. Rivera-Gonzalez, D.Puerto Rico 2005, 397 F.Supp.2d 334. Civil Rights 1319

State prison inmate's exhaustion of administrative remedies, on claim that authorities showed deliberate indifference to sudden blindness, did not satisfy exhaustion requirement in connection with claim that he was improperly required to take ani-tuberculosis medicine that produced severe side effects. Lee v. Carson, W.D.N.Y.2004, 310 F.Supp.2d 532. Prisons 13(10)

The Prison Litigation Reform Act's (PLRA) requirement that a prisoner exhaust available administrative remedies

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before bringing a civil action did not apply to general state tort claim procedures. Blackmon v. Crawford, D.Nev.2004, 305 F.Supp.2d 1174. Convicts 6

Heck favorable termination rule precluded assertion of claims against public defender in federal civil rights action that called into doubt validity of prisoner's conviction, absent showing that prisoner had challenged his conviction on direct appeal or in postconviction proceeding and had obtained a favorable result. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Civil Rights 1088(5)

Formal grievance program of correctional facility which detained juvenile adjudicated as a delinquent was not the exclusive means available to juvenile to exhaust his administrative remedies before bringing claim against employees of Office of Children and Family Services under § 1983 as required by Prison Litigation Reform Act (PLRA); handbook juvenile received at orientation to facility stated concerns may be brought by filling out grievance form, but also listed other methods to make concerns known and no document indicated that formal program was only method. Lewis ex rel. Lewis v. Gagne, N.D.N.Y.2003, 281 F.Supp.2d 429. Civil Rights 1321

Whether the plaintiff has exhausted his administrative remedies, as required under the Prison Litigation Reform Act (PLRA), prior to instituting § 1983 suit, is a question for the court to decide as a matter of law. Evans v. Jonathan, W.D.N.Y.2003, 253 F.Supp.2d 505. Civil Rights 244

Where an inmate alleges that his attempts to comply with the exhaustion requirement of the Prison Litigation Reform Act (PLRA) were hampered by the defendants' conduct, dismissal of a § 1983 is not warranted. Sweet v. Wende Correctional Facility, W.D.N.Y.2003, 253 F.Supp.2d 492. Civil Rights 194

Inmate was not required to exhaust administrative remedies before bringing § 1983 claim based on attack by other prisoners, notwithstanding contention that inmate was required exhaust grievance procedure to seek protective custody; grievance procedure could not have compensated inmate for his injuries once they occurred, as procedure did not offer such remedy, and whether inmate sought protective custody related to issue of officials' knowledge of risk of imminent serious harm to inmate, not to whether he could proceed with claim in federal court. Freeman v. Godinez, N.D.Ill.1998, 996 F.Supp. 822. Civil Rights 1319

Administrative exhaustion requirement of Prison Litigation Reform Act (PLRA) was not jurisdictional prerequisite to prisoner's suit under Civil Rights Act of 1871; PLRA exhaustion requirement did not contain explicit bar to district court jurisdiction but indicated that only those actions shall be brought in which administrative remedies have been exhausted. Lacey v. C.S.P. Solano Medical Staff, E.D.Cal.1997, 990 F.Supp. 1199. Civil Rights 1311; Civil Rights 1319

Prisoner was not required to comply with notice-of-claim provisions in California Tort Claims Act (CTCA) in order to exhaust his administrative remedies and allege federal civil rights cause of action against prison officials. Barry v. Ratelle, S.D.Cal.1997, 985 F.Supp. 1235. Civil Rights 1319

Prisoner was required to exhaust state court remedies for challenging conviction before bringing § 1983 civil rights action for damages against county sheriff and city police detectives alleging that prisoner was unconstitutionally convicted and imprisoned. Lee v. Purpero, E.D.Wis.1993, 816 F.Supp. 498. Civil Rights 1319

Section 1983 plaintiff's failure to avail himself of available postdeprivation remedies may, in some cases, defeat due process claim of deprivation of liberty interest. Loukas v. Hofbauer, E.D.Mich.1991, 784 F.Supp. 377. Constitutional Law 43(1)

A state prisoner may obtain injunctive relief against prison officials without first exhausting state administrative remedies. U. S. ex rel. Hoss v. Cuyler, E.D.Pa.1978, 452 F.Supp. 256. Civil Rights 1319

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42 U.S.C.A. § 1983

Inmate's alleged actions of sending a letter to the sheriff's department requesting a grievance form, having his attorney call to the sheriff's department, and filing a grievance with the sheriff's department did not constitute exhaustion of his administrative remedies, as required prior to filing claim under §§ 1983 against county sheriff's department and city police department alleging deliberate indifference to his safety, where the inmate rules and regulations for the county detention center specified that a grievance be directed to the county detention center. Watford v. Kankakee Police Dept., C.A.7 (Ill.) 2004, 118 Fed.Appx. 77, 2004 WL 2698955, Unreported, certiorari denied 125 S.Ct. 1841, 544 U.S. 980, 161 L.Ed.2d 734. Civil Rights 1319

State inmate failed to exhaust available administrative remedies, as required by Prison Litigation Reform Act (PLRA), prior to bringing §§ 1983 action against correctional officers alleging officers violated his constitutional rights by deducting or withholding money from his prisoner's account to pay for certain expenses related to his incarceration. Schelin v. Haun, C.A.10 (Utah) 2004, 92 Fed.Appx. 688, 2004 WL 363481, Unreported. Civil Rights 1319

State inmate failed to satisfy administrative exhaustion requirement imposed by Prison Litigation Reform Act (PLRA) on prisoner claims challenging conditions of confinement when he did not exhaust available administrative remedies before filing his §§ 1983 action, warranting dismissal of action without prejudice. Waters v. Schneider, S.D.N.Y.2004, 2004 WL 137416, Unreported. Civil Rights 1319

Under either a jurisdictional or affirmative defense interpretation of the Prison Litigation Reform Act's (PLRA) exhaustion requirement, inmate's § 1983 complaint had to be dismissed where the defense of failure to exhaust had been asserted, and the inmate's failure to exhaust appeared on the face of the pleadings. Delio v. Morgan, S.D.N.Y.2003, 2003 WL 21373168, Unreported. Civil Rights 1398

Inmate failed to exhaust his administrative remedies with respect to his § 1983 claim for injuries allegedly suffered from exposure to environmental tobacco smoke (ETS), and thus, the court lacked jurisdiction to consider the claim; inmate grievance records did not indicate any grievances filed by the inmate regarding ETS, and even if he had filed an "institutional grievance form" relating to his ETS claim, he had not alleged that he followed any of the administrative procedures for appellate review of his grievance. Flowers v. Grant, S.D.N.Y.2003, 2003 WL 1565940, Unreported. Civil Rights 1311

4335A. ---- Prison conditions, prisons and prisoners, exhaustion of remedies

Exhaustion of administrative remedies with respect to prison conditions before bringing suit under §§ 1983 is mandatory, regardless of the relief offered through administrative procedures. Ornelas v. Giurbino, S.D.Cal.2005, 358 F.Supp.2d 955. Civil Rights 1311

Exhaustion of administrative remedies is required for all actions brought with respect to prison conditions whether under § 1983 or any other federal law. Phillips v. Carrasquillo, D.Conn.2002, 268 F.Supp.2d 127. Civil Rights 1311; Convicts 6

Former federal prison inmate failed to exhaust administrative remedies before filing *Bivens* suit in federal court alleging excessive force by corrections officer; even if inmate filed request for administrative remedy with institution and then appealed negative ruling with regional director, she did not seek relief from general counsel, as required by regulations governing prison condition claims. Phillips v. Carrasquillo, D.Conn.2002, 268 F.Supp.2d 127. United States 50.3

4335B. ---- Sentencing, prisons and prisoners, exhaustion of remedies

To the extent Kansas state prisoner, who was bringing civil rights case against state officials, was seeking to challenge execution of his Kansas sentence, he first needed to proceed on petition for a writ of habeas corpus after

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first exhausting available state court remedies. Brownfield v. Stovall, C.A.10 (Kan.) 2003, 85 Fed.Appx. 123, 2003 WL 23033727, Unreported. Civil Rights 1311; Civil Rights 1319

4336. ---- Pro se complaints, prisons and prisoners, exhaustion of remedies

Pro se petitions by prisoners are not to be misused as devices to challenge authority and relationship but rather are to be considered and used only as bona fide grievances and claims to be resolved, and thus constitutional rights as well as other civil rights must be exercised by initial use of administrative channels, not to resolve constitutional issues nor to consider damages but to provide some fact-finding so that, when or if matter reaches trial court, it will have some starting place. Brice v. Day, C.A.10 (Okla.) 1979, 604 F.2d 664, certiorari denied 100 S.Ct. 1045, 444 U.S. 1086, 62 L.Ed.2d 772. Civil Rights 1395(7)

Exhaustion of state remedies was not required before entertaining prison inmate's pro se complaint brought under this section. Blair v. Rockefeller, C.A.2 (N.Y.) 1972, 469 F.2d 641. Civil Rights 1319

Inmate's allegations concerning prison officials' alleged loss of money order and his voice on audio tape submitted to copyright office was frivolous, precluding inmate from proceeding in forma pauperis on his civil rights claim against prison officials, absent showing that remedies provided inmate by state law were inadequate. Ferguson v. McCaughtry, E.D.Wis.1991, 774 F.Supp. 534. Federal Civil Procedure 2734

Pro se inmate was required to exhaust his administrative remedies prior to seeking judicial relief as to §§ 1983 claims against correctional facility superintendent, police sergeant, and unidentified persons who allegedly assaulted him upon arrival at facility, and thus, complaint was properly recommended to be dismissed by magistrate judge under Prison Litigation Reform Act (PLRA) for failure to exhaust administrative remedies; magistrate found that inmate's argument that exhaustion requirement should be excused lacked merit, inmate made no objections to magistrate's report, and magistrate's determinations were supported by record and the law. Postelli v. Superintendent, Green Haven Corr. Fac., S.D.N.Y.2004, 2004 WL 51223, Unreported. Civil Rights 1311

Pro se inmate's § 1983 complaint would be deemed filed on the date of the date stamp from a Pro Se Office. Rodney v. Goord, S.D.N.Y.2003, 2003 WL 21108353, Unreported. Federal Civil Procedure 664

4337. ---- Access to courts, prisons and prisoners, exhaustion of remedies

State prisoner alleging that prison authorities had violated this section by confiscating legal materials and seeking return of material would not be required to resort to state administrative remedies of appealing to deputy commissioner of correction and attorney general. Houghton v. Shafer, U.S.Pa.1968, 88 S.Ct. 2119, 392 U.S. 639, 20 L.Ed.2d 1319. Civil Rights 1319

Inmate did not detrimentally rely on prison officials who allegedly lost his grievance, and officials thus were not equitably estopped, in inmate's § 1983 action alleging denial of right of access to courts, from relying on defense of failure to exhaust administrative remedies as required by Prison Litigation Reform Act (PLRA), assuming equitable estoppel applied in such context, where inmate was told his grievance had been lost or misfiled and was given opportunity to cure. Jernigan v. Stuchell, C.A.10 (Okla.) 2002, 304 F.3d 1030. Estoppel 62.2(2)

Inmate asserting § 1983 claim, on ground that prison librarian's refusal to photocopy legal forms deprived him of procedural due process, failed to exhaust administrative remedies; inmate had filed requisite grievance, but had failed to appear for scheduled grievance interview. Oswald v. Graves, E.D.Mich.1993, 819 F.Supp. 680. Administrative Law And Procedure 229; Civil Rights 1311; Constitutional Law 272(2)

Prison inmates claiming deprivation of constitutional right of access to courts were not required to exhaust state remedies prior to action under this section. Jordan v. Johnson, E.D.Mich.1974, 381 F.Supp. 600, affirmed 513

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F.2d 631, certiorari denied 96 S.Ct. 96, 423 U.S. 851, 46 L.Ed.2d 75. Civil Rights 1319

4338. ---- Access to mail, prisons and prisoners, exhaustion of remedies

Where action under which state prisoner sought injunctive relief by requiring prison officials to forward his mail to state officials was brought pursuant to this section and § 1985 of this title authorizing civil actions for deprivation of rights and pertaining to conspiracy to interfere with civil rights, argument that prisoner had not exhausted state remedies was not applicable. LeVier v. Woodson, C.A.10 (Kan.) 1971, 443 F.2d 360. Civil Rights 1319; Injunction 108

4339. ---- Confiscation of property, prisons and prisoners, exhaustion of remedies

Although state prisoner is not required to exhaust administrative remedies before bringing § 1983 claim for constitutional claims other than alleged due process violation, redress for most prisoner actions, including alleged constitutional violations, is available under extensive process provided by Michigan law; in addition to those provided by Administrative Procedures Act, post-deprivation remedies include action for claim and deliver allowed by court rule, civil action to recover possession of or damages for goods and chattels unlawfully taken or detained, and procedure in court of claims to compensate for alleged unjustifiable acts of state officials. Copeland v. Machulis, C.A.6 (Mich.) 1995, 57 F.3d 476. Civil Rights 1319

Arrestee, whose money was seized when he was arrested for possession with intent to distribute heroin, failed to state a due process claim against members of police department where he failed to properly petition for the return of his money. Dixon v. Baltimore City Police Department, D.Md.2003, 345 F.Supp.2d 512, affirmed 88 Fed.Appx. 610, 2004 WL 335167. Constitutional Law 319.5(1); Searches And Seizures 84

Wisconsin prison inmate was required to exhaust administrative remedies before bringing civil rights action complaining of deprivation of typewriter worth allegedly over $900, a pair of stereo head phones worth approximately $25 as well as confiscation of ball point pens and erasers and $34 damage to typewriter by prison guard. McKeever v. Israel, E.D.Wis.1979, 476 F.Supp. 1370. Civil Rights 1319

4340. ---- Disciplinary proceedings, prisons and prisoners, exhaustion of remedies

District Court's decision to stay § 1983 action challenging disciplinary hearing procedures that resulted in loss of good-time credits, while prisoner sought restoration of his good-time credits and exhausted state remedies, was error as there was no exhaustion requirement. Edwards v. Balisok, U.S.Wash.1997, 117 S.Ct. 1584, 520 U.S. 641, 137 L.Ed.2d 906. Civil Rights 1319

Inmates were not required to exhaust state remedies before bringing federal civil rights action alleging that actions of state defendants throughout disciplinary process violated their due process and equal protection rights, even though the action involved revocation of good time; significant sanctions other than loss of good time credits were imposed, and relief sought from the federal court would not directly impact the sentences served. Sisk v. CSO Branch, C.A.9 (Ariz.) 1992, 974 F.2d 116. Civil Rights 1319

Section 1983 claim of inmate seeking restoration of lost good will time as well as money damages on the basis that his due process rights were violated by disciplinary committee which found inmate guilty of drug abuse did not present issue on which unresolved question of fact or of state law might have important bearing such that court must insist on complete exhaustion of administrative remedies prior to considered merits of inmate's petition. Harrison v. Dahm, C.A.8 (Neb.) 1990, 911 F.2d 37, rehearing denied. Civil Rights 1311

Prisoners who failed to exhaust state remedies were not barred from bringing federal civil rights action challenging

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procedures used at a disciplinary hearing which resulted in the imposition of significant sanctions other than the revocation of good time, notwithstanding argument that exhaustion was required because judgment for inmates would act as collateral estoppel in later habeas corpus proceeding seeking restoration of good time credits which had been revoked as discipline. Viens v. Daniels, C.A.7 (Ill.) 1989, 871 F.2d 1328, rehearing denied. Civil Rights 1319

Personal grievances of federal prison inmates concerning procedures before institution's disciplinary committee should have been presented, in the first instance, by administrative remedies available to prisoners within the Bureau of Prisons rather than by way of suit under his section seeking declaratory and injunctive relief. Rivera v. Toft, C.A.10 (Okla.) 1973, 477 F.2d 534. Declaratory Judgment 203

State prison inmate satisfied exhaustion of administrative remedies requirement for §§ 1983 suit against prison when he claimed, on administrative appeal of conviction for violating prison rule against spreading rumors, that he was retaliated against after his mother advertised on Internet for legal assistance in pursuing inmate's earlier grievance; appeals claim was sufficient to support allegations, in present case, that inmate (1) was denied access to courts and right to seek counsel, (2) was retaliated against, and (3) was subjected to punishment under prison rule that was unconstitutionally vague and overbroad. Cassels v. Stalder, M.D.La.2004, 342 F.Supp.2d 555. Civil Rights 1319

Court in which § 1983 action is brought by prisoner who challenges disciplinary action can make no finding that would justify vacating or reversing disciplinary decision or punishment; in other words, if factual findings necessary for successful § 1983 claim would, if made by state court, vacate or reverse disciplinary decision or punishment, court may not hear § 1983 case. Norton v. Garro, E.D.Wis.1997, 957 F.Supp. 1067. Civil Rights 1319

Exhaustion of state administrative remedies was not prerequisite to inmate's § 1983 action premised on alleged violations of his due process rights in disciplinary proceedings. McConnell v. Selsky, S.D.N.Y.1994, 877 F.Supp. 117. Civil Rights 1319

Prisoner failed to exhaust his administrative remedies before filing § 1983 suit against prison guard for allegedly retaliating against him for filing grievance, even though guard was mentioned in underlying grievance, where prisoner did not mention guard's alleged retaliatory conduct in grievance or during administrative proceedings. Garrison v. Walters, C.A.6 (Mich.) 2001, 18 Fed.Appx. 329, 2001 WL 1006271, Unreported. Civil Rights 1311

Inmate's failure to exhaust administrative challenges to disciplinary sanctions before bringing § 1983 action was not so plain from face of complaint as to warrant dismissal for frivolousness under screening statute. Jerricks v. Schomig, C.A.7 (Ill.) 2003, 65 Fed.Appx. 57, 2003 WL 1586485, Unreported, rehearing denied. Civil Rights 1311

4341. ---- Good time credits, prisons and prisoners, exhaustion of remedies

Inmate serving life sentence was required to exhaust his state remedies before he could maintain civil rights action challenging loss of good time credit; possibility that sentence could be commuted to term of years was enough to invoke rule that federal court should not deprive state court system of first opportunity to address merits of constitutional issue and state courts provided method through which inmate could challenge loss of his good time credits, regardless of his life sentence. Blair-Bey v. Nix, C.A.8 (Iowa) 1990, 919 F.2d 1338, certiorari denied 112 S.Ct. 275, 502 U.S. 899, 116 L.Ed.2d 227. Civil Rights 1319

Before Arkansas prisoner could seek relief under § 1983 and restoration of "good-time" credits on due process theories that disciplinary hearing took place outside applicable limitations period and that he was factually innocent

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of disciplinary charges against him, inmate had to first succeed in having his disciplinary conviction set aside, either in habeas corpus proceeding, or some other appropriate forum. Richmond v. Duke, E.D.Ark.1995, 909 F.Supp. 626. Civil Rights 1092

4342. ---- Grievance procedures, prisons and prisoners, exhaustion of remedies

State prison inmate who alleged that corrections official had violated her right to be free from cruel and unusual punishment could not fulfill administrative exhaustion requirement for § 1983 Eighth Amendment action against official by voluntarily participating in corrections department's investigation that led to official's resignation, or by voluntarily providing additional information to department beyond that initially sought in its investigation; rather, inmate was obligated to comply with all stages of department's written grievance procedures, since those procedures provided prison officials with authority to provide some form of relief or take some form of action in response to inmate's complaint, and did not provide any alternative grievance mechanisms. Hock v. Thipedeau, D.Conn.2003, 245 F.Supp.2d 451, reconsideration denied 2003 WL 21003431. Civil Rights 1319

Fact that state corrections official had resigned in response to corrections department's investigation of official's relationship with inmate, and that inmate's subsequent § 1983 Eighth Amendment action based on same facts sought only money damages, which were not available under corrections department's written grievance procedures, did not render grievance procedures "unavailable" to inmate, or moot statutory administrative exhaustion requirement for inmate's suit; deciding factor was that written procedures provided prison officials with authority to provide some form of relief or take some form of action in response to inmate's complaint, e.g. corrective action or changes in policies, regardless of whether there was specific provision for monetary relief. Hock v. Thipedeau, D.Conn.2003, 245 F.Supp.2d 451, reconsideration denied 2003 WL 21003431. Civil Rights 1319

New evidence submitted by defendant corrections officer with his motion for summary judgment provided no compelling reason for transferee judge to overturn prior determination of transferor judge, who denied officer's motion to dismiss, that plaintiff, a former pretrial detainee, had exhausted his administrative remedies in accord with the Prison Litigation Reform Act (PLRA), and determination was thus binding, under law of the case doctrine, in detainee's §§ 1983 action alleging use of excessive force; detainee's original complaint alleged that he filed grievance within time prescribed by corrections department policy, and relevant facts had not changed at time officer presented his summary judgment motion. Brengettcy v. Horton, C.A.7 (Ill.) 2005, 423 F.3d 674. Courts 99(7)

State prison inmate bringing § 1983 action against corrections officials had not failed to exhaust administrative remedies under Prison Litigation Reform Act (PLRA) by failing to appear in person before prison review board that heard his grievance, where board had no rule requiring grievants to appear in person, and inmate allegedly was not informed that board wanted him to appear in person. Carroll v. Yates, C.A.7 (Ill.) 2004, 362 F.3d 984. Civil Rights 1319

Court of Appeals would not exercise jurisdiction on basis of diversity where defendant had the burden to plead this basis in its notice of removal, and it did not. Ervast v. Flexible Products Co., C.A.11 (Ga.) 2003, 346 F.3d 1007, rehearing and rehearing en banc denied 88 Fed.Appx. 393, 2003 WL 22994329, certiorari denied 125 S.Ct. 30, 543 U.S. 808, 160 L.Ed.2d 10. Removal Of Cases 107(7)

State prison inmate's proposed amended §§ 1983 complaint against corporate administrator of prison was insufficient to plead exhaustion of administrative remedies as required under the Prison Litigation Reform Act (PLRA), even though the proposed complaint alleged that the inmate completed incident report and verbally complained to staff members after he was assaulted and battered by prison guard, and that he exhausted all administrative remedies of which he was made aware, where he neither claimed to have filed a grievance as it was defined under the prison's administrative grievance procedure, nor that the grievance procedure was made

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unavailable to him. Torres v. Corrections Corp. of America, N.D.Okla.2005, 372 F.Supp.2d 1258. Civil Rights 1395(7)

Prison Litigation Reform Act's (PLRA) requirement that prisoner exhaust available administrative remedies before bringing civil action did not apply to general state tort-claim procedures, as opposed to institutional grievance procedures; thus, state inmate's failure to timely file administrative tort claim against corrections officials whose misconduct allegedly resulted in personal injury did not preclude his filing §§ 1983 action against officials following exhaustion of institutional grievance. Wisenbaker v. Farwell, D.Nev.2004, 341 F.Supp.2d 1160. Civil Rights 1319

Receipt by state prisoner, of letter from inmate grievance review committee (IGRC) regarding another matter, stating that medical decisions were not grievable issues, did not excuse prisoner's failure to exhaust administrative remedies on claim against administrative nurse, that he was improperly forced to take anti-tuberculosis medication which had severe side effects in violation of his Eighth Amendment rights, to extent failure extended over three month period from onset of side effects until receipt of letter. Lee v. Carson, W.D.N.Y.2004, 310 F.Supp.2d 532. Prisons 13(10)

State prison inmate who alleged that corrections officers had assaulted him satisfied PLRA's administrative exhaustion requirement prior to filing his pro se § 1983 Eighth Amendment action against officers, even though he may not have technically exhausted state regulations' prescribed procedures; inmate made both formal and informal attempts to register grievance, and did not receive formal response to his formal grievance until five months after it was filed, and wrote additional informal letters to officials during that time. Jenkins v. Raub, W.D.N.Y.2004, 310 F.Supp.2d 502. Civil Rights 1319

The Prison Litigation Reform Act (PLRA) did not require dismissal of a state prisoner's pro se § 1983 action against prison officials for violation of his Eighth Amendment rights when they allegedly failed to provide adequate medical treatment, on ground that he failed to totally exhaust available administrative remedies, where he met exhaustion requirement as to only one of his two claims; rather, the prisoner would be allowed 20 days in which to amend his complaint to remove the unexhausted claim. Blackmon v. Crawford, D.Nev.2004, 305 F.Supp.2d 1174. Federal Civil Procedure 1788.10; Federal Civil Procedure 1838

Prison inmate failed to satisfy exhaustion of administrative remedies requirement, imposed by Prison Litigation Reform Act (PLRA) before § 1983 suit could be brought claiming that officials imperiled him by identifying him to prison population as gang member; inmate bypassed formal prison grievance procedures by communicating informally with higher level prison officials, after discussions with superintendent did not produce desired offer of protection. Labounty v. Johnson, W.D.N.Y.2003, 253 F.Supp.2d 496. Civil Rights 194

State inmate did not exhaust his administrative remedies, as required by Prison Litigation Reform Act (PLRA) with respect to his § 1983 claims against correction officers; although inmate filed grievance, he never took any further steps to prosecute or appeal his grievance after prison officials failed to respond. Santos v. Hauck, W.D.N.Y.2003, 242 F.Supp.2d 257. Civil Rights 1319

State inmate exhausted her administrative remedies prior to filing § 1983 suit, despite her failure to follow proper procedures for initiating grievance against prison guard, where inmate forwarded several handwritten letters to prison officials complaining of guard's conduct, which resulted in department investigating guard and his voluntary resignation. Hock v. Thipedeau, D.Conn.2002, 238 F.Supp.2d 446, vacated in part on reconsideration 245 F.Supp.2d 451, reconsideration denied 2003 WL 21003431. Civil Rights 1319

County correctional facility inmate exhausted his administrative remedies, as required under Prison Litigation Reform Act, before commencing § 1983 action claiming physical mistreatment, when he submitted written grievance to grievance coordinator, and county took no action. Abney v. County of Nassau, E.D.N.Y.2002, 237

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42 U.S.C.A. § 1983

F.Supp.2d 278. Civil Rights 1319

It was optional under rules governing Pennsylvania prison grievance system for inmate to request legal relief, and thus, inmate's failure to request monetary relief throughout Pennsylvania prison grievance process did not constitute failure to exhaust administrative remedies with respect to §§ 1983 claim for monetary relief. Williams v. Pennsylvania, Dept. of Corrections, C.A.3 (Pa.) 2005, 146 Fed.Appx. 554, 2005 WL 1950801, Unreported. Civil Rights 1319

State inmate in private prison facility was required to file grievance challenging his transfer on state grievance form, rather than on private facility's grievance form, and thus inmate did not exhaust his administrative remedies before filing federal civil rights suit by submitting private facility's form, where only state was involved in decision to transfer. Ziegler v. Watkins, C.A.10 (Okla.) 2004, 92 Fed.Appx. 684, 2004 WL 318720, Unreported, certiorari denied 125 S.Ct. 41, 543 U.S. 824, 160 L.Ed.2d 35. Civil Rights 1311; Civil Rights 1319

State prisoner failed to exhaust administrative remedies following prison officials alleged allowance of a co-prisoner to beat him up, as required to support prisoner's § 1983 claim against officers, where prisoner admitted he did not follow the grievance procedure in effect at the time of the alleged events. Smith v. Corrections Corp. of America, Inc., C.A.10 (Okla.) 2004, 92 Fed.Appx. 649, 2004 WL 267772, Unreported. Civil Rights 1319

Requirement that pretrial detainee exhaust administrative remedies before bringing § 1983 action for use of excessive force during strip search was not excused, even though he was moved from county jail to county jail and kept in solitary confinement until deadline for filing grievance had passed, was never informed of grievance procedure, and monetary relief he was seeking was not available under applicable grievance policy; detainee was not actively prevented from filing grievance. Turrietta v. Barreras, C.A.10 (N.M.) 2004, 91 Fed.Appx. 640, 2004 WL 214451, Unreported. Civil Rights 1319

Second amended complaint of pro se state inmate who sought damages under § 1983 for two incidents in which two correctional officers allegedly used excessive force, in which alleged that he availed himself of grievance procedures pertaining to what happened in an incident, would be dismissed for failure to exhaust his administrative remedies, but without prejudice to inmate's filing of third amended complaint demonstrating exhaustion of his remedies as to both incidents and both officers; complaint failed to allege that grievances were filed with respect to both incidents alleged, and it was impossible to determine whether he had exhausted his remedies as to either. Richardson v. Lorenzo, S.D.N.Y.2004, 2004 WL 66691, Unreported. Civil Rights 1319; Federal Civil Procedure 1838

State prisoner failed to exhaust his administrative remedies, as required prior to filing civil rights action under § 1983 against prison employees, seeking money damages for their alleged failure to protect him from an assault by fellow inmates, where he never appealed denial of his grievance, and he never grieved assault at issue. Wilson v. Keane, S.D.N.Y.2003, 2003 WL 22132865, Unreported. Civil Rights 1319

Prisoner did not exhaust his administrative remedies prior to bringing civil rights case alleging that various employees of state correctional facility assaulted him; although prisoner alluded to scores of other grievances relating to other incidents from other times, he did not file any grievances or appeals relating to alleged assault. Sedney v. Hasse, S.D.N.Y.2003, 2003 WL 21939702, Unreported. Civil Rights 1319

State prison inmate's obligation, under the Prison Litigation Reform Act of 1995 (PLRA), to exhaust his available administrative remedies before bringing civil rights action against sheriff's deputies who apprehended him when he exited courtroom during sentencing proceeding was not met by fact that sheriff's department conducted internal affairs investigation into the matter after Department of Corrections employee who interviewed inmate and documented his injuries filed complaint with the sheriff's department; sheriff's department internal affairs investigations are separate and distinct from grievance procedures. Bokin v. Davis, N.D.Cal.2003, 2003 WL

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42 U.S.C.A. § 1983

21920922, Unreported. Civil Rights 1319

Pro se inmate's § 1983 complaint, alleging that he attempted to file a grievance to address his claims of retaliation, that he attempted to informally make his claim to various prison officials, and that he wrote a letter to the superintendent of the prison with respect to alleged retaliation, indicated, when liberally read, that he may have attempted to exhaust his administrative remedies, and thus sua sponte dismissal of complaint under Prison Litigation Reform Act for lack of exhaustion was unwarranted. Davidson v. Pearson, C.A.2 (N.Y.) 2003, 71 Fed.Appx. 885, 2003 WL 21891187, Unreported. Federal Civil Procedure 657.5(3); Federal Civil Procedure 1824

State prisoner did not exhaust administrative remedies available to him, as required under the Prisoner Litigation Reform Act to bring civil rights suit under § 1983 alleging that he was subjected to several unconstitutional prison conditions, where he did not file written grievances, but rather, pursued his complaints by submitting a civil litigation. Dixon v. Laboriel, S.D.N.Y.2003, 2003 WL 21729834, Unreported. Civil Rights 1319

Prisoner's sending in an appeal to the highest level available in California prison administrative grievance system was not sufficient to establish exhaustion of his administrative remedies required to file a civil rights action; prisoner had to wait until he received a response from the highest level of review before filing federal complaint. Tolbert v. McGrath, N.D.Cal.2002, 2002 WL 31898207, Unreported. Civil Rights 1319

4343. ---- Loss of property, prisons and prisoners, exhaustion of remedies

Indigent prisoner, who alleged that prison guard took his property without due process of law, had adequate postdeprivation remedy in Mississippi despite fact Mississippi did not allow for in forma pauperis appeals and, thus, prisoner was not denied right to procedural due process; under Mississippi law, prisoner could have commenced civil conversion action in forma pauperis against prison guard. Nickens v. Melton, C.A.5 (Miss.) 1994, 38 F.3d 183, rehearing and suggestion for rehearing en banc denied 43 F.3d 672, certiorari denied 115 S.Ct. 1376, 514 U.S. 1025, 131 L.Ed.2d 230. Constitutional Law 272(2); Prisons 10

Prisoner could not bring action under 42 U.S.C.A. § 1983 for negligent loss of personal property by prison authorities, especially when he could have instituted action in state court which would have provided postdeprivation remedies sufficient to satisfy due process requirements. McIntyre v. Portee, C.A.4 (S.C.) 1986, 784 F.2d 566. Civil Rights 1098

Although prison officials could not be liable to prisoner under this section for negligent loss of prisoner's property when there was state tort remedy available to prisoner, mere existence of state tort remedy by which prisoner could be compensated for his loss did not preclude availability of claim under this section for intentional constitutional deprivations. Tunnell v. Office of Public Defender, E.D.Pa.1984, 583 F.Supp. 762. Civil Rights 1319

4344. ---- Medical care, prisons and prisoners, exhaustion of remedies

State prisoner was required to exhaust his administrative remedies before filing suit under § 1983 for the Louisiana Department of Corrections' (LDOC's) alleged negligent and intentional violations of his Eighth Amendment right to medical treatment, even though the Louisiana Supreme Court had recently found the state's statutory prison grievance system to be unconstitutional in part; although the Louisiana Supreme Court's *Pope* decision held Louisiana's prison grievance system unconstitutional to the extent it purported to deprive state courts of original jurisdiction over prisoner cases, the prison grievance system remained in force, and, under the Prison Litigation Reform Act (PLRA), all "available" remedies had to be exhausted, regardless of the nature of the relief offered. Ferrington v. Louisiana Dept. of Corrections, C.A.5 (La.) 2002, 315 F.3d 529, certiorari denied 124 S.Ct. 206, 540 U.S. 883, 157 L.Ed.2d 150. Civil Rights 1311

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42 U.S.C.A. § 1983

By deciding state prisoner's appeal from denial of grievance alleging that prison guards violated his constitutional rights by beating him without provocation and then refusing to provide medical care for injuries they inflicted, after prisoner refused to appear to explain what had happened, prison's administrative review board established that prisoner had exhausted his administrative remedies, as required under Prison Litigation Reform Act (PLRA) before prisoner could bring § 1983 action. Ford v. Johnson, C.A.7 (Ill.) 2004, 362 F.3d 395. Civil Rights 1319

Failure of state prisoner, who alleged deliberate indifference by prison doctor to his serious medical condition, to have filed an offender complaint against the doctor was a lack of exhaustion of administrative remedies that precluded §§ 1983 action. Adsit v. Kaplan, W.D.Wis.2006, 410 F.Supp.2d 776. Civil Rights 1319

State prison inmate failed to exhaust administrative remedies, precluding §§ 1983 claim that his medications were reduced by nurse practitioner in retaliation for inmate's negative comments about physician who was friend of nurse, when his administrative complaint emphasized medical unsoundness of reduction decision and mentioned retaliation only in closing paragraph; petition did not give authorities notice that retaliation was being claimed, so that they could consider claim and potentially resolve it prior to suit. Reimann v. Frank, W.D.Wis.2005, 397 F.Supp.2d 1059. Civil Rights 1319

New York prisoner failed to exhaust his administrative remedies as to any defendant besides prison nurse before suing under §§ 1983 where his grievance alleged nothing more than one discrete instance of maltreatment at the hands of nurse; nothing in prisoner's grievance would have alerted other prison authorities that he was making an allegation of failure to correct systemic problems with prison infirmary, nor would an official investigating prisoner's grievance reasonably be expected to have explored such matters. Turner v. Goord, W.D.N.Y.2005, 376 F.Supp.2d 321. Civil Rights 1319

State prison inmate's failure to exhaust administrative remedies barred his suit against administrative nurse claiming deliberate indifference to his serious medical needs, in violation of Eighth Amendment, alleging inadequate response when he began to experience side effects from tuberculosis medication he was unnecessarily forced to take; failure to exhaust was not excused by nurse's assertion that side effects were just temporary reaction to medicine. Lee v. Carson, W.D.N.Y.2004, 310 F.Supp.2d 532. Prisons 13(10)

State inmate was required to fully exhaust his administrative remedies before filing § 1983 suit alleging that prison's health services director violated his Eighth Amendment rights by establishing policy that no medical procedures that were not life-saving in nature were to be performed on inmates, thereby denying inmate adequate treatment for his hernia. Lawrence v. Virginia Dept. of Corrections, E.D.Va.2004, 308 F.Supp.2d 709. Civil Rights 1319

State prison inmate did not exhaust his administrative remedies, as required under the Prison Litigation Reform Act (PLRA), for his § 1983 claim that prison doctor failed to properly treat his hepatitis C condition in violation of his Eighth Amendment rights, where his administrative grievances did not mention hepatitis C and he filed the grievances before the alleged mistreatment of his hepatitis C began. Blackmon v. Crawford, D.Nev.2004, 305 F.Supp.2d 1174. Civil Rights 1319

State prisoner was not required to exhaust prison administrative remedies, under Prison Litigation Reform Act (PLRA), before suing under § 1983 on claims that prison officials showed deliberate indifference to his physical condition following two assaults, under exception to exhaustion requirement applicable when damage has been done and administrative action could provide no remedy. Ford v. Page, N.D.Ill.2001, 169 F.Supp.2d 831.

Prisoner seeking damages for lack of medical attention did not have to exhaust state tort claims procedures before filing civil rights action in federal court. Lacey v. C.S.P. Solano Medical Staff, E.D.Cal.1997, 990 F.Supp. 1199.

State prisoner's § 1983 claim for improper medical attention would not be dismissed even though § 1983 claim was

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asserted in petition also seeking habeas corpus relief based on violation of speedy trial rights as to which prisoner had not exhausted state remedies. Greer v. St. Tammany Parish Jail, E.D.La.1988, 693 F.Supp. 502. Civil Rights 1319

California state prisoner failed to exhaust administrative remedies, as required under Prison Litigation Reform Act (PLRA), by failing to obtain final decision from Director of the California Department of Corrections as to his § 1983 claims against prison officials for violation of Eighth Amendment, arising from his exposure to second-hand tobacco smoke and lack of medical attention for his ulcer and anxiety attacks. McElroy v. Lamarque, N.D.Cal.2004, 2004 WL 287365, Unreported. Civil Rights 1319

State prisoner exhausted his administrative remedies prior to filing his §§ 1983 action against prison officials, in connection with officials' alleged failure to provide prisoner with appropriate medical treatment for hepatitis C; prisoner filed complaint with state Commission of Corrections Medical Review Board, filed a grievance complaint with the prison administrators, and appealed the denial of his grievance. McKenna v. Wright, S.D.N.Y.2004, 2004 WL 102752, Unreported, appeal dismissed 386 F.3d 432. Civil Rights 1319

Inmate's § 1983 claim for deliberate indifference to medical needs would not be dismissed for failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA), where all that was clear was that matters under investigation by the Office of Inspector General (OIG) were non-grievable, and that the inmate had lodged a complaint with the OIG; even the PLRA's rigid exhaustion requirements did not obligate the inmate to fill in the blanks left by an administrative grievance resolution directive. Pressley v. Green, S.D.N.Y.2004, 2004 WL 97701, Unreported. Civil Rights 1319

State prison inmate failed to exhaust administrative remedies, prior to commencing suit against prison claiming that he was denied medical treatment for glaucoma, in violation of Eighth Amendment, when only claim made administratively was application to be excused from academic program due to eye condition. Singleton v. Perilli, S.D.N.Y.2004, 2004 WL 74238, Unreported. Civil Rights 1319

Former inmate asserting claims of inadequate medical care and nursing care failed to exhaust his administrative remedies before commencing his § 1983 suit, such that the action was barred by the Prison Litigation Reform Act (PLRA), despite his claim that his extensive period of hospitalization prevented him from complying with the applicable grievance procedures in a timely manner; applicable regulations provided for consideration of belated grievances or appeals due to mitigating circumstances, and despite his hospitalization, there was no indication that he sought permission to file a late grievance, or that he took additional steps to seek administrative review after failing to receive a further response to his letters. Roa v. Fowler, W.D.N.Y.2003, 2003 WL 21383264, Unreported. Civil Rights 1311

4345. ---- Parole, prisons and prisoners, exhaustion of remedies

District of Columbia prisoner could bring §§ 1983 action challenging the procedures used by United States Parole Commission in determining whether he was eligible for reparole, and did not have to first petition for habeas relief, where successful prosecution of prisoner's claims would not necessarily imply, or automatically result, in speedier release from prison. Fletcher v. District of Columbia, C.A.D.C.2004, 370 F.3d 1223, 361 U.S.App.D.C. 499, vacated on rehearing 391 F.3d 250, 364 U.S.App.D.C. 1, rehearing en banc denied. Civil Rights 1097; Civil Rights 1311

State prisoner's claim that statutory amendment increasing length of time between parole reconsideration hearings was unconstitutional ex post facto law did not assert that prisoner was entitled to parole and, thus, prisoner made cognizable § 1983 claim which did not require exhaustion of prisoner's state remedies. Roller v. Cavanaugh, C.A.4 (S.C.) 1993, 984 F.2d 120, certiorari granted 113 S.Ct. 2412, 508 U.S. 939, 124 L.Ed.2d 635, certiorari dismissed

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as improvidently granted 114 S.Ct. 593, 510 U.S. 42, 126 L.Ed.2d 409, on remand 932 F.Supp. 729. Civil Rights 1319

Prisoner dissatisfied with procedures used to consider his application for parole is not required to exhaust all remedies in state court before commencing federal litigation; because challenge to procedures that state uses in considering applications for parole does not draw into question basis of confinement, it need not be brought under § 2254 and exhaustion of state remedies is unnecessary. Clark v. Thompson, C.A.7 (Ill.) 1992, 960 F.2d 663. Civil Rights 1319

Federal civil rights action alleging that state Prison Review Board violated due process and equal protection rights by arbitrarily and capriciously denying parole could be brought in federal court only after prisoner, who simultaneously brought habeas corpus petition, exhausted state remedies which would permit bringing of habeas corpus petition. Crump v. Lane, C.A.7 (Ill.) 1986, 807 F.2d 1394. Civil Rights 1319

Since exhaustion of state remedies is not required in actions under this section, state prisoner who claimed that parole board had improperly considered prior invalid convictions in determining his parole eligibility was not required to exhaust state remedies. Strader v. Troy, C.A.4 (N.C.) 1978, 571 F.2d 1263. Civil Rights 1319

Heck v. Humphrey's favorable termination rule did not bar parolee's constitutional claim against police officers where it was unclear either that parolee diligently pursued state remedies to challenge the decision revoking his parole, or that, even if parolee did so, he would have obtained a ruling from court before he had completed the sentence for the underlying parole violation. Wilson v. City of Fountain Valley, C.D.Cal.2004, 372 F.Supp.2d 1178. Civil Rights 1097

Inmate's challenge to prison regulation affecting his eligibility for parole fell under § 1983, and could be addressed without first filing petition for habeas corpus and exhausting state remedies; inmate did not allege that he was entitled to parole itself, and his lawsuit did not address actual fact or length of his confinement, but only regulation pursuant to which inmate's parole eligibility date could be extended if inmate was found guilty of assault. Lewis v. Driskell, M.D.Tenn.1994, 850 F.Supp. 678. Civil Rights 1311; Civil Rights 1319; Habeas Corpus 516.1

State prisoner could not prosecute his claim for monetary damages based on alleged miscalculation of his date for parole eligibility without exhausting state remedies. Ringenberg v. Cox, E.D.Va.1981, 524 F.Supp. 112. Civil Rights 1319

State prisoners bringing civil rights action challenging procedures of parole board were not required to exhaust state judicial remedies. La Bonte v. Gates, D.C.Conn.1976, 406 F.Supp. 1227. Civil Rights 1319

Inmate's allegations detailing toiletries and other items he was denied and describing the condition of his toilet while in segregation adequately identified and described shortcomings inmate was complaining about in grievance, and, thus, his administrative remedies on claim were exhausted, for purposes of bringing § 1983 action based on allegation that withholding of personal hygiene items and cleaning supplies violated his right to be free from cruel and unusual punishment. James v. O'Sullivan, C.A.7 (Ill.) 2003, 62 Fed.Appx. 636, 2003 WL 1466486, Unreported. Civil Rights 1311

4346. ---- Release, prisons and prisoners, exhaustion of remedies

Parolee's §§ 1983 retaliation claim based on search of his residence was not barred by *Heck v. Humphrey*'s favorable termination rule since granting relief on that claim would not necessarily imply that parolee's parole revocation, which stemmed from the search was itself invalid. Wilson v. City of Fountain Valley, C.D.Cal.2004, 372 F.Supp.2d 1178. Civil Rights 1097

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42 U.S.C.A. § 1983

Dismissal of inmate's § 1983 action against prison officials for failure to exhaust administrative remedies was not warranted where inmate had been released from prison and could not be ordered to exhaust remedies. Liner v. Goord, S.D.N.Y.2000, 115 F.Supp.2d 432. Civil Rights 1311

Even if inmate's complaint, seeking to preliminarily enjoin warden of correctional facility from determining inmate's institutional status and eligibility for temporary release on basis of allegedly lapsed detainer issued by Texas authorities, was to be treated as stating civil rights claim under this section, it was appropriate to require initial exhaustion of state administrative remedies where there was no showing that such would be inadequate to secure relief sought; considerations of federal-state comity and judicial economy equally supported requiring inmate to seek adjudication of Texas charges as prerequisite to expungement. Jones v. Cummings, W.D.N.Y.1981, 528 F.Supp. 1078. Civil Rights 1319

Inasmuch as former inmate sought damages only in civil rights suit against parole board and prison board and their members and employees on basis that he was arbitrarily denied participation in work release and furlough programs, plaintiff was not required to exhaust state remedies in order to maintain the federal suit. Gahagan v. Pennsylvania Bd. of Probation and Parole, E.D.Pa.1978, 444 F.Supp. 1326. Civil Rights 1319

4347. ---- Segregation or solitary confinement, prisons and prisoners, exhaustion of remedies

Existence of administrative procedures to obtain relief from segregated housing of prison inmates would not preclude action for relief in federal court under this section. McClelland v. Sigler, C.A.8 (Neb.) 1972, 456 F.2d 1266. Civil Rights 1319

Prison inmate who was no longer being housed in administrative segregation lacked standing to bring § 1983 action alleging that practice of randomly double-celling inmates in administrative segregation constituted deliberate indifference to his rights, absent showing that he was in substantial and immediate danger of being double-celled again. Kellensworth v. Norris, C.A.8 (Ark.) 2000, 221 F.3d 1342, Unreported. Civil Rights 1331(4)

4348. ---- Transfers, prisons and prisoners, exhaustion of remedies

Exhaustion of state remedies was not prerequisite to state prison inmates' civil rights action to enjoin their transfer from state mental hospital to general prison system without prior hearing. Cruz v. Ward, S.D.N.Y.1976, 424 F.Supp. 1277, reversed on other grounds 558 F.2d 658, certiorari denied 98 S.Ct. 740, 434 U.S. 1018, 54 L.Ed.2d 765. Civil Rights 1319

Action by state prisoner against state officials charging that his out-of-state transfer to federal penitentiary violated his right to due process and that the conditions or circumstances of continued incarceration in federal institution amounted to cruel and unusual punishment could be maintained under this section and prisoner was not required to exhaust state remedies prior to maintaining action. Tai v. Thompson, D.C.Hawai'i 1975, 387 F.Supp. 912. Civil Rights 1319

4349. Small businesses, exhaustion of remedies

Civil rights action brought by American Indian and construction company of which he allegedly owned 51 percent of the stock would not be held in abeyance due to plaintiffs' alleged failure to exhaust administrative remedies, because there is no requirement under this section that state remedies be exhausted, and defendants did not establish what federal remedies plaintiffs had failed to exhaust. Cornelius v. La Croix, E.D.Wis.1983, 575 F.Supp. 1392. Civil Rights 1321

4350. Utilities, exhaustion of remedies

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42 U.S.C.A. § 1983

This section did not require that home-owners, bringing class action challenging procedures by which electric power company terminates service to delinquent accounts, exhaust remedies before the state corporation commission. Cottrell v. Virginia Elec. & Power Co., E.D.Va.1973, 363 F.Supp. 692. Civil Rights 1321

4351. Voting and elections, exhaustion of remedies

Unintentional irregularities in primary election one day after judge order removal of candidate's name from ballot was not actionable under § 1983, if adequate and fair state-law remedy existed, even though several voters lacked even opportunity to vote, and even if board of elections made foolish decisions regarding delegation of power and used relay system of communication through several intermediaries to contact school custodians; the late-issued order and breakdown in communication system delayed arrival of voting machines, and technicians committed merely human error in herculean task of disabling levers and collecting ballots in all voting machines. Gold v. Feinberg, C.A.2 (N.Y.) 1996, 101 F.3d 796. Civil Rights 1321

Federal claim arising under this section was supplementary to any state remedies that might be available to plaintiffs in action challenging constitutionality of LSA-R.S. 42:39 and Code of Judicial Conduct, Canon 7, subd. A(3) requiring a judge to resign before becoming a candidate for nonjudicial elective office; there was no requirement that the plaintiffs, a Louisiana appellate judge and those who wished to support him in a possible mayoral campaign, exhaust state remedies in order for district court to assert jurisdiction over the civil rights claim. Morial v. Judiciary Commission of State of La., E.D.La.1977, 438 F.Supp. 599, reversed on other grounds 565 F.2d 295, certiorari denied 98 S.Ct. 1887, 435 U.S. 1013, 56 L.Ed.2d 395. Civil Rights 1321

Even assuming arguendo that claim under § 2000d et seq. of this title was supportable by complaint of residents of Crown Heights area of Brooklyn, New York, seeking to have decision of New York City Board of Estimate to divide such area into two separate community planning districts declared null and void, such claim could not lie where plaintiffs had failed to exhaust their administrative remedies. Cave v. Beame, E.D.N.Y.1977, 433 F.Supp. 172. Civil Rights 1318

Action challenging validity of six-month residence requirement imposed by Connecticut on persons seeking to register to vote in town where they reside as violative of equal protection clause of U.S.C.A.Const. Amend. 14 would not be dismissed on ground that plaintiffs had failed to exhaust state administrative remedies since it would be wholly unrealistic to expect a board for admission of electors to rule squarely contrary to state's constitutional and statutory commands. Nicholls v. Schaffer, D.C.Conn.1972, 344 F.Supp. 238. Elections 112

Prospective candidate would not be required to exhaust administrative step by requesting executive committee of state political party to provide alternative to payment of qualifying fee before filing suit to enjoin enforcement of party resolution which required payment of fee to be party as prerequisite to becoming candidate in party primary. Harper v. Vance, N.D.Ala.1972, 342 F.Supp. 136. Injunction 80

Voters and incumbent candidate sufficiently demonstrated that quo warranto was inadequate state remedy to correct alleged deprivation of right to vote, in lawsuit under §§ 1983 based on claim that voting machines miscounted votes resulting in election of opponent; state law did not provide for remedial measures when it was determined that machine malfunction did occur, process could have taken entire term of two years in which opponent held office, and there was no danger of protracted vacancy in office because parties agreed that incumbent would remain in office pending resolution of litigation. Shannon v. Jacobowitz, N.D.N.Y.2004, 2004 WL 180253, Unreported, reversed and remanded 394 F.3d 90. Civil Rights 1321; Quo Warranto 4

4352. Workers' compensation, exhaustion of remedies

A disappointed New York workmen's compensation claimant had right to sue under this section for money damages for alleged conspiracy to deprive him of his constitutional rights by means of unlawful and dilatory tactics

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designed to hinder processing of his claim, notwithstanding that he may have failed to exhaust administrative remedy. Powell v. Workmen's Compensation Bd. of State of N. Y., C.A.2 (N.Y.) 1964, 327 F.2d 131. Civil Rights 1321; Conspiracy 1.1

4353. Zoning, exhaustion of remedies

Even if city's issuance of certificate of zoning noncompliance was "final decision," claim by landowner that certificate based on setback and side yard zoning requirements allegedly waived by city was violation of takings clause would still not be ripe for adjudication in federal civil rights action against city and mayor, because landowner failed to first seek compensation from city pursuant to Utah's inverse condemnation law. Bateman v. City of West Bountiful, C.A.10 (Utah) 1996, 89 F.3d 704. Federal Courts 13.25

Landowner who wished to build wood-chipping project on his property was not required to appeal city's temporary suspension of project's approval under local building code before filing federal civil rights action challenging the temporary suspension, where city's zoning decisions were not subject to review under code. A.A. Profiles, Inc. v. City of Ft. Lauderdale, C.A.11 (Fla.) 1988, 850 F.2d 1483, rehearing denied 861 F.2d 727, certiorari denied 109 S.Ct. 1743, 490 U.S. 1020, 104 L.Ed.2d 180. Civil Rights 1318

Claim that city redevelopment ordinance violated due process and equal protection could be pursued in action under federal civil rights statute [42 U.S.C.A. § 1983] without regard to adequacy of state remedies. Williams v. City of St. Louis, C.A.8 (Mo.) 1986, 783 F.2d 114. Civil Rights 1318

Displaced business owner's claim under civil rights statute [42 U.S.C.A. § 1983] against city and certain public officials who were administering city's urban renewal program was not barred by failure to exhaust federal administrative remedies in view of fact that there did not exist any procedure designed to redress allegations that urban renewal program was being administered improperly. Pietroniro v. Borough of Oceanport, N.J., C.A.3 (N.J.) 1985, 764 F.2d 976, certiorari denied 106 S.Ct. 570, 474 U.S. 1020, 88 L.Ed.2d 554. Civil Rights 1310

Where state offers panoply of administrative and judicial remedies, litigants may not ordinarily obtain federal court review of local zoning and planning disputes by means of federal statute governing civil action for deprivation of rights. Raskiewicz v. Town of New Boston, C.A.1 (N.H.) 1985, 754 F.2d 38, certiorari denied 106 S.Ct. 135, 474 U.S. 845, 88 L.Ed.2d 111. Civil Rights 1073

Finality and exhaustion requirements did not apply to civil rights claim of owner of undeveloped property alleging that township violated its due process rights by arbitrarily, capriciously, and willfully ignoring owner's compliance with township's legitimate zoning standards to deny owner its requested zoning certificates. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Zoning And Planning 570

Developer of proposed subdivision was not required to exhaust its available state remedies prior to bringing action under §§ 1983 against town, its planning board, and several board members, alleging that defendants' actions in connection with its site plan application violated its constitutional rights. Ridgeview Partners, LLC v. Entwistle, S.D.N.Y.2005, 354 F.Supp.2d 395. Civil Rights 1318

If village's deprivation of nursery school's due process right to notice of any hearing that might affect its property rights was random and unauthorized, there was no way that village could have prevented it, and school would be required to exhaust any adequate, postdeprivation remedies provided by state before seeking relief in civil rights action in federal court. Bennett-Beil v. Village of Hartland, E.D.Wis.1997, 958 F.Supp. 407. Civil Rights 1318

A developer would not be barred from maintaining a civil rights action for review of a local zoning dispute on basis that developer had allegedly failed to take advantage of adequate remedies under town ordinance; there was

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no administrative procedure by which the developer could have appealed the refusal to extend the site plan approval. Mays-Ott Co., Inc. v. Town of Nags Head, E.D.N.C.1990, 751 F.Supp. 82. Civil Rights 1318

Landowners could be required to seek variance from terms of challenged ordinance before instituting § 1983 action attacking application of ordinance. Martinez v. Junta de Planificacion de Puerto Rico, D.Puerto Rico 1990, 736 F.Supp. 413. Civil Rights 1318

Property owner's failure to seek compensation through available state inverse condemnation procedures for alleged "taking" arising from refusal to grant application for rezoning precluded his maintenance of § 1983 suit alleging violation of takings clause of Fifth Amendment. Calibre Spring Hill, Ltd. v. Cobb County, Ga., N.D.Ga.1989, 715 F.Supp. 1577. Civil Rights 1318

Civil rights plaintiff was not required to appeal denial of use and occupancy permit to zoning hearing board prior to bringing federal civil rights action contending that permit denial denied him his liberty or property without due process of law; plaintiff alleged that denial of permit was authorized act resulting from established governmental procedure. Forest v. Banko, E.D.Pa.1984, 662 F.Supp. 275. Civil Rights 1318

4354. Miscellaneous actions, exhaustion of remedies

Rule of *United States ex rel. Kennedy v. Tyler*, that state court proceedings evolving out of conflicting state and tribal rulings had to be exhausted before federal court could consider habeas petition raising same subject matter, would not be extended to bar district court jurisdiction over § 1983 action regarding membership of tribal council until state court proceeding concerning same issue had been exhausted. Bowen v. Doyle, C.A.2 (N.Y.) 2000, 230 F.3d 525. Civil Rights 1321; Indians 27(3)

General rule that § 1983 permits plaintiffs with federal or constitutional claims to sue in federal court without first exhausting state judicial or administrative remedies did not apply so as to permit city contractor that failed to pursue state postdeprivation remedy for its alleged de facto debarment from city procurements without due process to bring § 1983 claim against city and city officials; requisite constitutional violation never occurred, given existence of adequate postdeprivation remedy. Hellenic American Neighborhood Action Committee v. City of New York, C.A.2 (N.Y.) 1996, 101 F.3d 877, certiorari dismissed 118 S.Ct. 15, 521 U.S. 1140, 138 L.Ed.2d 1048. Civil Rights 1321

Younger abstention was not warranted in attorney's §§ 1983 action challenging refusal of state commission on judicial conduct to permit him to withdraw from representing judge, even though state disciplinary proceedings against judge were ongoing, where attorney sought vindication of constitutional rights that were completely independent of judge's rights, and relief sought by attorney would not interfere with commission's proceedings. Kunz v. New York State Com'n on Judicial Conduct, N.D.N.Y.2005, 356 F.Supp.2d 188. Federal Courts 55

To the extent that it was required to exhaust administrative remedies prior to bringing enforcement action under § 1983 and Protection and Advocacy for Mentally Ill Individuals Act (PAMII), agency designated by state to provide protection and advocacy services to disabled and mentally ill individuals satisfied such requirement when it attempted to request pertinent records from state's corrections department and department declined to provide them. Protection & Advocacy For Persons With Disabilities v. Armstrong, D.Conn.2003, 266 F.Supp.2d 303, 191 A.L.R. Fed. 661. Civil Rights 1311

In bringing due process taking claim and related conspiracy claim, plaintiff did not have to exhaust all state administrative and judicial procedures before bringing § 1983 claim; however, plaintiff did have to satisfy "finality" requirement. Doty v. City of Tampa, M.D.Fla.1996, 947 F.Supp. 468. Federal Courts 13.25

Any person whose rights under FCC regulations have been denied by local government has cause of action under §

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42 U.S.C.A. § 1983

1983, without exhaustion of state or local administrative remedies. Cawley v. City of Port Jervis, S.D.N.Y.1990, 753 F.Supp. 128. Administrative Law And Procedure 229; Civil Rights 1029; Civil Rights 1321

42 U.S.C.A. § 1983, **42 USCA § 1983**

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42 U.S.C.A. § 1983

Effective: October 19, 1996

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

→§ 1983. Civil action for deprivation of rights

<Notes of Decisions for 42 USCA § 1983 are displayed in four separate documents. Notes of Decisions for subdivisions XXXIX to end are contained in this document. For text of section, historical notes, references, and Notes of Decisions for subdivisions I to IX, see first document for 42 USCA § 1983. For Notes of Decisions for subdivisions X to XXVIII, see the second ranked document for 42 USCA § 1983. For Notes of Decisions for subdivisions XXIX to XXXVIII, see the third ranked document for 42 USCA § 1983.>

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4381. Persons entitled to maintain action generally

This section is designed for redress through federal court action of a party or class of persons injured by subjection to deprivation of constitutional rights, privileges, or immunities, not for enforcement of abstract rights nor for redress for conduct whose only impact is injury to plaintiff in common with all members of the public. Manion v. Holzman, C.A.7 (Ill.) 1967, 379 F.2d 843, certiorari denied 88 S.Ct. 479, 389 U.S. 976, 19 L.Ed.2d 470.

Regulation does not create federal right, which is enforceable under § 1983, unless it defines or fleshes out content of enforceable right contained in governing statute. Rabin v. Wilson-Coker, D.Conn.2003, 266 F.Supp.2d 332, reversed 362 F.3d 190. Civil Rights 1027

Only the person toward whom the state action was directed, and not those incidentally affected, may maintain a §§ 1983 claim; a person may not sue or recover for the deprivation of the civil rights of another. Ramirez-De Leon v.

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Mujica-Cotto, D.Puerto Rico 2004, 345 F.Supp.2d 174. Civil Rights 1332(1)

Provision of Medicaid statute, which created a duty of the state to furnish medical assistance in a reasonably prompt manner, did not create a federal right for claimant with pulmonary dysfunction to obtain a vest airway clearance system, precluding claimant's § 1983 action alleging that state department of social and rehabilitative services' denial of his request for system violated Medicaid Act. Sanders ex rel. Rayl v. Kansas Dept. of Social and Rehabilitation Services, D.Kan.2004, 317 F.Supp.2d 1233. Civil Rights 1052

Students endured actual, imminent, concrete, and particularized injury resulting from school district's nonresident admissions policy, and, thus, they had standing to pursue relief under procedural due process clause to extent that school denied hearing which students requested. D.L. v. Unified School Dist. # 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090. Constitutional Law 42.2(1)

A person may not sue or recover under Section 1983 for the deprivation of the civil rights of another. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1332(1)

In determining whether statute creates private right of action in favor of particular plaintiff, unless legislative intent can be inferred from statutory language, structure, or some other source, essential predicate for implication of private remedy simply does not exist. Hodgson v. Mississippi Dept. of Corrections, E.D.Wis.1997, 963 F.Supp. 776. Action 3

4382. Considerations governing, persons entitled to maintain action-- Generally

A person has standing to assert claims under this section if that person was aggrieved or injured by conduct, even if that person was not object of conduct allegedly in violation of this section. Coggins v. Carpenter, E.D.Pa.1979, 468 F.Supp. 270. Civil Rights 1333(1)

To have standing to bring action in federal court, individual plaintiff must have sufficient personal interest to impart concrete adverseness required, and interest which plaintiff seeks to protect must be within zone of interests to be protected or regulated by statute or constitutional guarantee in question. Grier v. Specialized Skills, Inc., W.D.N.C.1971, 326 F.Supp. 856. Federal Civil Procedure 111

4383. ---- Exhaustion of remedies, considerations governing, persons entitled to maintain action

Patients and former patients of state mental institutions did not lack standing to challenge constitutionality of Maryland involuntary commitment statutes, Code Md.1957, art. 59, §§ 1, 21; Supp. art. 59, §§ 14, 15, because they had not exhausted available state remedies. Anderson v. Solomon, D.C.Md.1970, 315 F.Supp. 1192. Civil Rights 1321

4384. ---- Injury, considerations governing, persons entitled to maintain action

Where plaintiff challenges discrete governmental decision as being based on impermissible criterion and it is undisputed that government would have made same decision regardless, there is no cognizable injury warranting relief under § 1983. Texas v. Lesage, U.S.Tex.1999, 120 S.Ct. 467, 528 U.S. 18, 164 A.L.R. Fed. 785, 145 L.Ed.2d 347. Civil Rights 1031; Civil Rights 1333(1)

Parade participants as volunteers of unincorporated association had standing to seek compensatory damages for the denial of parade permits, even though permits were later issued in association's name; the participants suffered injury by the alleged abridgement of their First Amendment rights when the City denied the parade permits, and a favorable decision would redress their injury. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204.

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42 U.S.C.A. § 1983

Constitutional Law 42.2(1)

Advocates for gay and lesbian rights suffered "injury in fact," for purpose of having standing in civil rights lawsuit alleging violation of their federal constitutional rights, by amendment to state constitution, which limited state-recognized institution of marriage to heterosexual couples, since imposition of barrier resulted in denial of equal treatment. Citizens for Equal Protection v. Bruning, C.A.8 (Neb.) 2006, 455 F.3d 859. Civil Rights 1333(6)

Feelings of frustration experienced by signature collectors stemming from their disagreement with the Oregon Secretary of State's application of unwritten rules governing Oregon's initiative petition process were not sufficiently concrete to constitute the "injury-in-fact" required for Article III standing in their §§ 1983 action seeking declaratory and injunctive relief. Gest v. Bradbury, C.A.9 (Or.) 2006, 443 F.3d 1177. Civil Rights 1333(6)

Faculty member and student at municipal university had standing to bring §§ 1983 action against university seeking nominal damages for alleged Establishment Clause violation arising from temporary campus display of sculpture allegedly hostile to Roman Catholic Church; sculpture was displayed at prominent location, and plaintiffs were frequently brought into direct and unwelcome contact with it, or forced to alter their behavior to avoid contact with it. O'Connor v. Washburn University, C.A.10 (Kan.) 2005, 416 F.3d 1216, certiorari denied 126 S.Ct. 1469, 164 L.Ed.2d 247. Civil Rights 1331(2)

Police officer's wife lacked standing to assert First Amendment claim against police department and city officials, based upon allegations that police presence at club where she was employed as exotic dancer negatively impacted her working conditions and forced her to quit her job, and that by discharging officer, defendants sought to chill wife's freedom of expression by removing income from her home; wife failed to present evidence of any actual or inhibitory effect on her freedom of speech, evidence of change in income was speculative, and any injury to her income was not fairly traceable to defendants' conduct. Eddings v. City of Hot Springs, Ark., C.A.8 (Ark.) 2003, 323 F.3d 596. Constitutional Law 42.2(1)

White male police officers lacked standing to challenge sergeants' promotional process based on city's failure to grant them a hearing regarding city's decision to alter number of candidates proceeding to oral examination after written examination was administered, since officers failed to show that they were injured by denial of any hearing to which they might be entitled; if officers had successfully challenged alleged affirmative action policies at a hearing, they still would not have been placed on sergeants' promotional list. Byers v. City of Albuquerque, C.A.10 (N.M.) 1998, 150 F.3d 1271. Civil Rights 1333(5)

Hearing officer at prison disciplinary hearing denied request for witnesses without any finding that testimony would be immaterial or redundant, and, thus, absent showing of good reason for denial of request, fact that prisoner was successful in administrative appeal process did not bar his claim for relief under § 1983. Walker v. Bates, C.A.2 (N.Y.) 1994, 23 F.3d 652, certiorari denied 115 S.Ct. 2608, 515 U.S. 1157, 132 L.Ed.2d 852. Civil Rights 1092

Federally funded organization advocating for persons with developmental disabilities did not suffer injury in fact, and thus it lacked organizational standing to maintain suit under Fair Housing Act and federal civil rights statutes, where suit alleged that county injured developmentally disabled minor by moving him to temporary home, and that neighborhood association's obstruction of group home would inhibit future development of group homes for disabled individuals. Association for Retarded Citizens of Dallas v. Dallas County Mental Health & Mental Retardation Center Bd. of Trustees, C.A.5 (Tex.) 1994, 19 F.3d 241, suggestion for rehearing denied 24 F.3d 241. Associations 20(1)

All that is required for a plaintiff to have standing to sue for a constitutional or a statutory violation is a showing of

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injury in fact. Park View Heights Corp. v. City of Black Jack, C.A.8 (Mo.) 1972, 467 F.2d 1208. Federal Civil Procedure 111

Teacher asserting desire to address school board regarding denial of tenure lacked standing to assert § 1983 claims, absent allegation that she was likely to suffer any constitutional injury; there was no allegation that teacher had been or would be refused opportunity to speak at past or future public board meetings. Prestopnik v. Whelan, N.D.N.Y.2003, 253 F.Supp.2d 369, affirmed 83 Fed.Appx. 363, 2003 WL 22955861. Civil Rights 1331(5)

Owner of undeveloped property suffered actual injury by denial of his application for zoning permit to develop property for commercial use on basis of floating size cap, and, therefore, he had standing to make civil rights challenge to township zoning resolution and standards for particular development on basis that cap was unconstitutionally vague. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Zoning And Planning 571

Former elected town trustee, who was recalled by voters in a recall election after he refused to recite the Pledge of Allegiance at meetings of the town board of trustees, and nonprofit corporation promoting separation of church and state lacked standing to bring §§ 1983 and declaratory judgment claim challenging the Pledge of Allegiance itself, given that plaintiffs failed to establish an injury caused by the Pledge statute; since that statute does not compel recitation, it appeared that the alleged injury underlying the complaint, namely, the recall election, could not have been caused by Pledge on its face. Habecker v. Town of Estes Park, Colorado, D.Colo.2006, 452 F.Supp.2d 1113. Declaratory Judgment 300

Plaintiffs who did not show that they were subject to provisions of state statute prohibiting registered sex offenders' residence within 1,000 feet of any school, i.e. could not show that they had been convicted of offense requiring registration, or that they lived within 1,000 feet of school, or that they had served term of imprisonment for sex offense after date certain or been adjudicated habitual sex offender, so as to require registration, lacked Article III standing to bring §§ 1983 challenge to statute's constitutionality, regardless of whether challenge was facial. Coston v. Petro, S.D.Ohio 2005, 398 F.Supp.2d 878. Civil Rights 1333(4)

Requirement that state prison inmate sustain injury, in order to have claim that inmate was denied constitutionally protected access to court, was satisfied when inmate was supplied with attorney allowed only to give "off the cuff" advice, without being able to do legal research; because of limitation inmate did not pursue his nonfrivolous claim that noncompliance with extradition procedures invalidated his conviction, out of concern that suit would reopen his plea bargain and subject him to further penalties, when legal research would have shown that claim could be brought under §§ 1983 without upsetting bargain. White v. Kautzky, N.D.Iowa 2005, 386 F.Supp.2d 1042, motion to amend denied 2006 WL 141854. Prisons 4(11)

Nonunion city employees' declarations that they would have allocated their funds under flexible benefit plan for optional dental insurance plan in prior open enrollment period sufficiently alleged past injury to confer standing on employees to bring §§ 1983 action alleging that city and union unlawfully coerced them to join union by failing to provide them eligibility for enrollment in dental plan. Brannian v. City of San Diego, S.D.Cal.2005, 364 F.Supp.2d 1187. Civil Rights 1333(5)

Parents of student whose continued participation on school swim team was conditioned on receiving a negative drug test result lacked standing to assert federal civil rights claims against school defendants since parents, whose son remained on swim team after passing drug test, did not allege any injury relating to their federal claims. Dominic J. v. Wyoming Valley West High School, M.D.Pa.2005, 362 F.Supp.2d 560. Civil Rights 1333(2)

Whether independent contractor could establish actual loss, as required for eligibility for compensation under §§ 1983 for the alleged injury to its ability to fulfill its mission of providing housing to persons with HIV/AIDS, as result of city's retaliation against it for engaging in First Amendment activities by terminating its contracts, could

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not be determined on record before Court on city's motion to dismiss. U.S.C.A. Const.Amend. 1; Housing Works, Inc. v. Turner, S.D.N.Y.2005, 362 F.Supp.2d 434. Federal Civil Procedure 1831

Teachers' union and school counselor lacked standing to bring §§1983 due process and equal protection action against school district, on behalf of themselves and district's female students, seeking to enjoin implementation of district's policy generally requiring parental notification of students' pregnancies; union and counselor had suffered no injury in fact from policy's implementation, and no realistic danger of negative consequences to them was shown, i.e. there was no evidence that teachers' or counselors' jobs would be at risk if they violated policy, as demonstrated by superintendent's testimony that he had no intention of disciplining staff members for failing to comply. Port Washington Teachers' Ass'n v. Board of Educ. of Port Washington Union Free School Dist., E.D.N.Y.2005, 361 F.Supp.2d 69. Civil Rights 1331(5); Civil Rights 1332(2)

Indirect effect on corporate plaintiff, if any, from actions of municipality against principal in alleged violation of principal's First Amendment free speech and Fourteenth Amendment due process rights, did not give corporate plaintiff Article III standing in lawsuit under §§ 1983. Colon Rodriguez v. Lopez Bonilla, D.Puerto Rico 2004, 344 F.Supp.2d 333. Civil Rights 1332(6)

Speakers at public college students' event suffered no constitutional injury when college officials allegedly delayed event because of aversion toward speakers, and thus, they lacked standing to bring §§ 1983 action against college and officials, seeking money damages for alleged violations of their rights under the First Amendment, where event went on as planned after short delay. Ford v. Reynolds, E.D.N.Y.2004, 326 F.Supp.2d 392, affirmed 167 Fed.Appx. 248, 2006 WL 354636. Civil Rights 1333(2)

Solid waste generator that generated waste only in incorporated municipality lacked Article III standing to bring § 1983 Commerce Clause challenge against county ordinance that regulated flow of solid waste generated in unincorporated areas of county only. Seacoast Sanitation Ltd., Inc. v. Broward County, Florida, S.D.Fla.2003, 275 F.Supp.2d 1370. Constitutional Law 42.2(1)

Anti-abortion association and members that brought § 1983 action against city and officials, stemming from denial of parade permits, failed to allege actual, concrete and particularized injury stemming from municipal order denying permit, and thus lacked standing to bring claims based upon such order; association's assertion that it was deterred from bringing future permit applications by order demonstrated merely hypothetical injury. Lippoldt v. City of Wichita, Kansas, D.Kan.2003, 265 F.Supp.2d 1228. Associations 20(1); Civil Rights 1333(6)

Organization dedicated to eliminating homophobia and intolerance in schools suffered immediate and threatened injury sufficient to confer associational standing to bring claims under § 1983, the California Education Code, and the California Unruh Civil Rights Act, against school district and school officials, where harms sought be redressed by organization on behalf of its individual members were suffered and would continue to be suffered by members; members were current and prospective students who had been spit on, threatened, had property damaged, been attacked, harassed and actively encouraged to transfer from regular high school curriculum, in effect denying them from a free public education. Gay-Straight Alliance Network v. Visalia Unified School Dist., E.D.Cal.2001, 262 F.Supp.2d 1088. Associations 20(1)

Plaintiff, suing state of Texas under § 1983 to require state to accept an out-of-time appeal of criminal conviction, lacked standing to invoke jurisdiction of federal court where, despite his subjective fear, plaintiff did not present any evidence that he was in danger of having his probation revoked or that he had suffered any injury in fact. Jones v. State, E.D.Tex.1995, 893 F.Supp. 643. Civil Rights 1333(4)

Court will recognize psychological injury as a cognizable injury upon which plaintiff may base standing to sue under this section. Jackson v. Sargent, D.C.Mass.1975, 394 F.Supp. 162, affirmed 526 F.2d 64. Civil Rights 1333(1)

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42 U.S.C.A. § 1983

4384A. ---- Criminal statutes exception to injury, considerations governing, persons entitled to maintain action

State statute that prohibited registered sex offenders' residence within 1,000 feet of a school was not criminal statute, and thus persons not subject to its terms lacked standing to bring §§ 1983 facial challenge to it under criminal-statute exception to injury-in-fact criterion of Article III standing; statute imposed no criminal sanctions but rather granted right to bring civil action for injunctive relief against sex offender, had nonpunitive purpose of protecting public from sex offenders, and also lacked punitive effect since it did not impose traditional form of punishment, did not impose physical restraint, and had rational connection to its nonpunitive purpose. Coston v. Petro, S.D.Ohio 2005, 398 F.Supp.2d 878. Civil Rights 1333(2)

4385. ---- Redress for injuries, considerations governing, persons entitled to maintain action

Former elected town trustee, who was recalled by voters in a recall election after he refused to recite the Pledge of Allegiance at meetings of the town board of trustees, and nonprofit corporation promoting separation of church and state did not have standing to bring §§ 1983 and declaratory judgment claim challenging board's alleged policy requiring recitation of the Pledge; the injury was caused not by a forced recitation of the Pledge or by penalties imposed for silence, neither of which happened, but by the reaction of, first, recall committee defendants, and then the voters, to trustee's actions in failing to recite the Pledge. Habecker v. Town of Estes Park, Colorado, D.Colo.2006, 452 F.Supp.2d 1113. Declaratory Judgment 300

Operator of horse-drawn carriage business had standing to bring §§ 1983 action against competitor, alleging that competitor, in conjunction with city officials, deprived operator of his Equal Protection and Commerce Clause rights through practice of applying for and receiving renewals of permits that were not used, but nonetheless counted against cap of 46 allowable permits, precluding operator from expanding his business. Avalon Carriage Service Inc. v. City of St. Augustine, FL, M.D.Fla.2006, 417 F.Supp.2d 1279. Civil Rights 1331(6)

Nonprofit religious group that engaged in solicitations for donations, and member of group engaged in such solicitations, had standing to facially challenge city's solicitation ordinance as violative of First Amendment's free speech clause, even though neither group nor member ever had attempted to comply with ordinance; both were directly affected by it. United Youth Careers, Inc. v. City of Ames, IA, S.D.Iowa 2006, 412 F.Supp.2d 994. Constitutional Law 42.2(1)

Speakers at public college students' event had standing to sue college officials under §§ 1983 for alleged violation of their First Amendment rights, based on officials' refusal to pay them agreed-upon honoraria allegedly in retaliation for content of their speeches; speakers alleged that they suffered real rather than hypothetical injury, pecuniary injury was inflicted in retaliation for constitutionally protected conduct, it was traceable to officials' unlawful conduct, and it was redressable by money damages. Ford v. Reynolds, E.D.N.Y.2004, 326 F.Supp.2d 392, affirmed 167 Fed.Appx. 248, 2006 WL 354636. Civil Rights 1333(2)

Motorist issued citation in wake of collision had standing to bring § 1983 First Amendment action against state trooper alleging that trooper wrote citation to retaliate for motorist's husband's accusing trooper of mishandling accident investigation; husband's enjoyment of his free speech rights was inextricably bound up with motorist's interest in not receiving citation, and husband did not have standing to assert his own right since he had not suffered injury. Persaud v. McSorley, S.D.N.Y.2003, 275 F.Supp.2d 490. Civil Rights 1332(4)

Declaratory judgment or preliminary injunction in favor of organization dedicated to eliminating homophobia and intolerance in schools could likely alleviate the alleged harassment and discrimination against gay and lesbian students, as well as those perceived to be gay or lesbian, and therefore, a favorable decision in organization's case was likely to redress its injury, as required for associational standing to bring claims under § 1983, the California Education Code, and the California Unruh Civil Rights Act. Gay-Straight Alliance Network v. Visalia Unified School Dist., E.D.Cal.2001, 262 F.Supp.2d 1088. Associations 20(1); Declaratory Judgment 300

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Former state university students, claiming that they had been sexually harassed by soccer coach, lacked standing to seek equitable relief in § 1983 action against university employees in their official capacities; because former students were no longer on team, they had no stake in coach's removal, which was only equitable relief being sought. Jennings v. University of North Carolina at Chapel Hill, M.D.N.C.2002, 240 F.Supp.2d 492. Civil Rights 1331(2)

Employee who brought § 1983 action against county community service board, alleging retaliation for exercise of First Amendment rights, had no equitable remedy available to her in event of success on merits, since she could not be reinstated to interim position which no longer existed, and thus employee could not maintain claim. Collier v. Clayton County Community Service Bd., N.D.Ga.2002, 236 F.Supp.2d 1345, affirmed 82 Fed.Appx. 222, 2003 WL 22227530. Civil Rights 1448; Counties 67

Plaintiff had no standing to bring § 1983 claim alleging that he offered to serve as volunteer registrar and was denied opportunity to engage in this activity by board of registrars when board refused to deputize plaintiff; plaintiff failed to show that injury he suffered was likely to be redressed by favorable decision since plaintiff was not resident of city where he sought to become deputy registrar, and board could not deputize plaintiff because he was not resident. Morse v. Martineau, D.N.H.1988, 685 F.Supp. 860. Civil Rights 1331(6)

4386. ---- Third-party rights, considerations governing, persons entitled to maintain action

Attorneys lacked third-party standing on behalf of hypothetical future clients to challenge constitutionality of a Michigan statute denying appellate counsel to criminal defendants who pleaded guilty or nolo contendere. Kowalski v. Tesmer, U.S.2004, 125 S.Ct. 564, 543 U.S. 125, 160 L.Ed.2d 519. Constitutional Law 42.1(3)

Terminated city council employee who had worked as aide to dissenting council member had third-party standing to assert § 1983 claim that council had fired him in retaliation for dissenting member's exercise of free speech and free association; termination constituted injury to employee, employee and dissenting member had very close professional and personal relationship that would allow employee to advocate for dissenting member's rights, there was testimony that employee had been warned that his job would be in jeopardy if dissenting member continued to oppose majority, and dissenting member could be hindered in vindicating his own rights. Camacho v. Brandon, C.A.2 (N.Y.) 2003, 317 F.3d 153. Civil Rights 1332(5)

One may not sue for the deprivation of another's civil rights. Hall v. Wooten, C.A.6 (Ky.) 1974, 506 F.2d 564. Civil Rights 1332(1)

Generally, litigant may only assert his own constitutional rights or immunities. O'Malley v. Brierley, C.A.3 (Pa.) 1973, 477 F.2d 785. Constitutional Law 42(1)

Owners of strawberry crop that was to have been harvested by farm and forest labor contractor whose license was suspended failed to satisfy prudential requirements for standing in § 1983 action against Oregon Bureau of Labor and Industries (BOLI) officials; crop owners' equal protection argument rested on allegations that BOLI's conduct in suspending license treated contractor, not them, differently from others similarly situated and record did not even show that officials were aware of relationship between crop owners and contractor, and crop owners' due process claims also did not allege deprivation of their own constitutional rights or interests. Lumbreras v. Roberts, D.Or.2004, 319 F.Supp.2d 1191, affirmed 156 Fed.Appx. 952, 2005 WL 3304174. Civil Rights 1332(6); Civil Rights 1333(6)

A person is not entitled to bring a § 1983 claim arising from harm suffered by a corporation, but must allege a separate harm to himself/herself personally in order to have standing. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Civil Rights 1333(1)

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42 U.S.C.A. § 1983

Former senior aid to city council had third-party standing to bring § 1983 claim for deprivation of council member's First Amendment rights which allegedly resulted when other city council members conspired to fire aid because of their disapproval of council member's voting record; vindicating rights of council member was inextricably bound up with aid's own cause of action in that aid could only prevail if he proved that council member engaged in speech that was protected by First Amendment and proved there was a causal connection between that speech and his termination, and council member suffered no cognizable injury that would permit him to bring suit to protect constitutional right at stake. Camacho v. Brandon, S.D.N.Y.1999, 56 F.Supp.2d 370, on reconsideration in part 69 F.Supp.2d 546, appeal dismissed 236 F.3d 112. Civil Rights 1332(5)

Prudential limitation on third party standing prevented executive director of nonprofit organization, who was not party to contract between organization and Department of Corrections (DOC), from being proper party to § 1983 action arising from DOC's allegedly unlawful closure of youthful offender transition program run by organization; relationship between director and organization was not such that director would be as effective an advocate as organization, and organization's participation in litigation demonstrated lack of obstacle to organization asserting its constitutional rights for itself. North Florida Educational Development Corp. v. Woodham, N.D.Fla.1996, 942 F.Supp. 542. Civil Rights 1332(4)

Person may not sue, nor recover damages, under § 1983 for deprivation of another person's civil rights. Quiles ex rel. Project Head Start, Municipality of Utuado v. Hernandez Colon, D.Puerto Rico 1988, 682 F.Supp. 127. Civil Rights 1332(1)

In action invoking this section and U.S.C.A.Const. Amend. 14, plaintiffs lacked standing to assert rights or legal interests of third persons who were not parties to the suit. Cowart v. City of Ocala, Fla., M.D.Fla.1979, 478 F.Supp. 774. Civil Rights 1332(1)

One may not sue under this section for deprivation of another's constitutional rights. Javits v. Stevens, S.D.N.Y.1974, 382 F.Supp. 131. Civil Rights 1332(1)

Plaintiff lacked standing to bring § 1983 action against insurance company; plaintiff's alleged deprivation of his own rights depended entirely upon alleged violation of rights of his unnamed home attendant, which was not the sort of personal injury necessary to confer standing under § 1983. Schachter v. U.S. Life Ins. Co. in City of New York, C.A.2 (N.Y.) 2003, 77 Fed.Appx. 41, 2003 WL 22273044, Unreported. Civil Rights 1332(6)

4387. ---- Threat of injury, considerations governing, persons entitled to maintain action

Personal injury law firm had standing to sue state bar, for violating firm's First Amendment right to advertise that three firm members were named in book purporting to list best lawyers in country, even though no formal disciplinary action had taken on response to advertisement; there was considerable threat of action. Allen, Allen, Allen & Allen v. Williams, E.D.Va.2003, 254 F.Supp.2d 614. Constitutional Law 42.2(1)

Injury-in-fact criterion for Article III standing was unmet in §§ 1983 challenge to state statute prohibiting registered sex offenders' residence within 1,000 feet of any school, which alleged that statute failed to give adequate notice to offenders of where they could live; possibility that plaintiff offenders, who did not currently live within regulated distance, might find themselves subject to expulsion if new school was constructed within 1,000 of their established residences, was speculative, not concrete. Coston v. Petro, S.D.Ohio 2005, 398 F.Supp.2d 878. Civil Rights 1333(4)

Public college students suffered no constitutional injury when college officials allegedly delayed student event because of aversion toward proposed speakers, and thus, they lacked standing to bring §§ 1983 action against college and officials, seeking money damages for alleged violations of their rights under the First Amendment; even if defendants' decisions with respect to event were unlawful, and in fact affected students' protected First

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Amendment interests, a delay of only a few hours was not a sufficient injury to invoke protections of Article III of the Constitution. Ford v. Reynolds, E.D.N.Y.2004, 326 F.Supp.2d 392, affirmed 167 Fed.Appx. 248, 2006 WL 354636. Civil Rights 1333(2)

4388. Abortions, persons entitled to maintain action

Doctor, who was prevented from operating an abortion clinic in city by unconstitutional zoning ordinances specifically aimed at him, had standing to not only challenge the ordinances in question but also to raise personal civil rights claim for monetary damages. Haskell v. Washington Tp., C.A.6 (Ohio) 1988, 864 F.2d 1266. Civil Rights 1331(3); Zoning And Planning 23.1

Where there was intimate relationship between family-planning organization and its patients and right of pregnant women to secure abortion was inextricably bound up with ability of such organization to provide one, family-planning organization had standing to assert patients' constitutional claims in its suit against city asserting that ordinance imposing moratorium on abortion facilities pending further study was unconstitutional. Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action, C.A.8 (Minn.) 1977, 558 F.2d 861. Municipal Corporations 121

Plaintiff who brought suit for declaratory and injunctive relief against enforcement of policy of medical center of prohibiting abortions except those done for the purpose of saving the life of the mother retained standing even though subsequent to the district court's denial of relief she obtained an abortion outside the state. Doe v. Charleston Area Medical Center, Inc., C.A.4 (W.Va.) 1975, 529 F.2d 638. Declaratory Judgment 300

Unincorporated association of anti-abortion activists was "person" entitled to seek relief under § 1983, stemming from denial of parade permit, since association was not political subdivision of state, and labor unions, corporations, municipal corporations, non-profit organizations, and Indian tribes had all been recognized as "persons" for such purpose. Lippoldt v. City of Wichita, Kansas, D.Kan.2003, 265 F.Supp.2d 1228. Civil Rights 1331(6)

4389. Private clubs, persons entitled to maintain action

Where plaintiff, a Negro who because of his race had been denied food and beverage service as a guest of member of private club, had not applied for or been denied membership in the club, he had no standing to contest the club's membership practices, but he did have standing to litigate the constitutional validity of the club's policies relating to the service of guests of members. Moose Lodge No. 107 v. Irvis, U.S.Pa.1972, 92 S.Ct. 1965, 407 U.S. 163, 32 L.Ed.2d 627. Constitutional Law 42.2(2)

Black and Jewish applicants for membership in defendant private yacht club, who claimed racial and religious discrimination, had standing in federal civil rights action to assail the admission policies of defendant club. Golden v. Biscayne Bay Yacht Club, C.A.5 (Fla.) 1975, 521 F.2d 344, on rehearing 530 F.2d 16, certiorari denied 97 S.Ct. 186, 429 U.S. 872, 50 L.Ed.2d 152. Civil Rights 1331(6)

Plaintiffs who alleged that private club's exclusion of public from property which club leased from state was illegal and that, if injunctive and declaratory relief were granted, plaintiffs would be entitled to obtain access to such public property without complying with private club's membership requirements had standing to assert claim of right of access to such property, whether or not they would ultimately prevail on merits of the claim. Besig v. Friend, N.D.Cal.1979, 463 F.Supp. 1053. Constitutional Law 42.2(1)

4390. Search and seizure, persons entitled to maintain action

Where city police officers' wrongful use of mace against plaintiffs in making arrest was not authorized by city

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policy, and there was no showing that plaintiffs were likely to again suffer mace assault from police in future, plaintiffs did not have standing to obtain, in civil rights action, injunction against city to limit police officers' use of mace to certain specified conditions. Curtis v. City of New Haven, C.A.2 (Conn.) 1984, 726 F.2d 65. Civil Rights 1331(4)

Arrestee lacked standing to maintain his § 1983 claim that alleged city policy of not disciplining police officers who were found by civil jury to have used excessive force actually encouraged officers to use excessive force, in absence of any allegation that arrestee was likely to suffer future injury from officers using excessive force because they were not disciplined, or who believed they would not be disciplined if they did so. Posr v. City of New York, S.D.N.Y.1993, 835 F.Supp. 120, affirmed 22 F.3d 1091. Civil Rights 1333(4)

Imperial Wizard of the Ku Klux Klan who regularly attended Klan rallies in Connecticut and who alleged that he had been stopped and searched at such rallies on numerous occasions was directly affected by actions of state officials in stopping and searching persons in attendance at Klan rallies, was alleging specific and concrete injuries resulting from the challenged practice, and showed that a remedy was available, thus giving him standing to challenge the actions of state officials. Wilkinson v. Forst, D.C.Conn.1984, 591 F.Supp. 403. Civil Rights 1331(4)

4391. Segregation, persons entitled to maintain action

Negroes confined in various Alabama jails had standing to bring class action to challenge validity of Alabama statutes requiring segregation of races in prisons and jails. Lee v. Washington, U.S.Ala.1968, 88 S.Ct. 994, 390 U.S. 333, 19 L.Ed.2d 1212. Federal Civil Procedure 186.10

Party challenging alleged separation in operation of nonrecreational public facility lacks standing to challenge alleged discrimination unless he has been aggrieved and either he or class of which he is a member may be aggrieved by the use of the segregated facility. Palmer v. Thompson, C.A.5 (Miss.) 1967, 391 F.2d 324, on rehearing 419 F.2d 1222, certiorari granted 90 S.Ct. 1364, 397 U.S. 1035, 25 L.Ed.2d 646, affirmed 91 S.Ct. 1940, 403 U.S. 217, 29 L.Ed.2d 438. Constitutional Law 42(2)

Negroes as users of carriers' segregated facilities had standing to maintain suit to enjoin enforcement of Code 1942, §§ 2351, 2351.5, 2351.7, 7784 to 7785.5 affecting carriers and to enjoin maintenance of racial segregation. Bailey v. Patterson, C.A.5 (Miss.) 1963, 323 F.2d 201, certiorari denied 84 S.Ct. 666, 376 U.S. 910, 11 L.Ed.2d 609. Civil Rights 1331(6); Injunction 114(2)

Evidence disclosed that four Negro residents of city had been sufficiently aggrieved by segregation policies of city to have standing to bring class action to enjoin enforcement of segregation of races in certain public and private facilities in city and that demand had been made on defendants to put an end to the racially discriminatory practices. Anderson v. City of Albany, C.A.5 (Ga.) 1963, 321 F.2d 649. Federal Civil Procedure 186.15

Plaintiffs, even though white, had standing to bring action alleging unconstitutional racial segregation of school units in violation of this section. Husbands v. Com. of Pennsylvania, E.D.Pa.1975, 395 F.Supp. 1107. Civil Rights 1331(2)

4392. Parens patriae, persons entitled to maintain action

City does not enjoy the quasi-sovereign status of a state, and may not bring civil rights action in a parens patriae capacity on behalf of its citizens. The City of Safety Harbor v. Birchfield, C.A.5 (Fla.) 1976, 529 F.2d 1251. Municipal Corporations 1017

New York state officials had standing to maintain parens patriae action challenging denial of building permits for

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adult care facility for homeless persons with Acquired Immune Deficiency Syndrome (AIDS) since state had quasi-sovereign interest in health and well-being of its citizens and alleged injury was to substantial segment of population. Support Ministries For Persons With Aids, Inc. v. Village of Waterford, N.Y., N.D.N.Y.1992, 799 F.Supp. 272. Zoning And Planning 571

Commonwealth of Pennsylvania did have standing to maintain action to enjoin city officials from allegedly engaging in unlawful racial discrimination in the recruiting, testing and hiring of applicants for position of fire fighter in city in Commonwealth under the doctrine of parens patriae. Com. of Pa. v. Glickman, W.D.Pa.1974, 370 F.Supp. 724. Civil Rights 1331(5)

4393. Administrators, persons entitled to maintain action

Wrongful death of decedent resulting from tort, which gave rise to cause of action for benefit of his heirs, was not equivalent to decedent's personal civil rights claim, and decedent's administratrix was therefore without standing in federal forum to commence action, pursuant to this section or section 1988 of this title, under either Ohio R.C. § 2125.05 or § 2305.21. Jaco v. Bloechle, C.A.6 (Ohio) 1984, 739 F.2d 239. Civil Rights 1332(1)

Administratrix of decedent was not entitled under this section to recover against municipal corporation and prosecuting officials of such corporation for alleged deprivation of decedent's civil rights. Wise v. City of Chicago, C.A.7 (Ill.) 1962, 308 F.2d 364, certiorari denied 83 S.Ct. 934, 372 U.S. 944, 9 L.Ed.2d 969. Civil Rights 1332(4)

4394. Adult bookstore or theater owners, persons entitled to maintain action

Adult theater owner and its employees showed requisite likelihood that future injury would occur, thus giving them standing to seek relief against city based on custodial arrest of theater dancers, based on content of their dancing, before judicial determination was made that dancers' expression was not constitutionally protected speech; city's alleged "pattern" of effecting only custodial arrests of dancers rendered plaintiff subject to threat of future interference of their rights to perform what they claimed was constitutionally protected expression, and there was threat of self-censorship stemming from plaintiffs' fear of arrest for performing constitutionally protected expression, just as they had suffered in past. Admiral Theatre v. City of Chicago, N.D.Ill.1993, 832 F.Supp. 1195. Constitutional Law 42.2(1)

Because plaintiffs, the corporate proprietors of so-called "adult" book stores, showed that their business had been disrupted and was suffering due to defendant law enforcement officers' allegedly unconstitutional actions in the bad-faith enforcement of obscenity laws, plaintiffs had standing to pursue their lawsuit for injunctive relief; moreover, they had standing to assert the claim that defendants' conduct, allegedly aimed at discouraging the distribution of sexually explicit publications and films, would dilute their patrons' U.S.C.A.Const. Amend. 1 right to purchase such materials. Black Jack Distributors, Inc. v. Beame, S.D.N.Y.1977, 433 F.Supp. 1297. Civil Rights 1333(4)

Allegation that unconstitutional application of McKinney's NY CPL §§ 140.10, 690.05 et seq. to operators of adult bookstores disrupted their businesses and caused them monetary loss gave the bookstore owners requisite standing to bring action to enjoin application of the procedures against them. 227 Book Center, Inc. v. Codd, S.D.N.Y.1974, 381 F.Supp. 1111. Courts 508(7)

4395. Agents, persons entitled to maintain action

Builder, who did not own the property but alleged that she was the authorized agent and representative of the owners of the property and that she had the authority to build a house, lacked standing to maintain action under this section seeking to compel a city to issue a building permit for a single-family Geodesic dome home. Eaton v. City

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of Solon, N.D.Ohio 1984, 598 F.Supp. 1505. Civil Rights 1331(3)

Agent of principal does not have standing to assert claim pursuant to § 1983 on behalf of principal. Kshel Realty Corp. v. City of New York, S.D.N.Y.2003, 2003 WL 21146650, Unreported. Civil Rights 1332(1)

4396. Aliens, persons entitled to maintain action

Illegal alien who intended to apply for admission at various Virginia post-secondary educational institutions had standing to challenge as unconstitutional their policy of denying admission to illegal aliens or persons they believed to have an "illegal," "unlawful," or "undocumented" immigration status; alleged admissions policies of those institutions would cause alien imminent injury, and injunction preventing the implementation of those policies would redress that injury. Equal Access Educ. v. Merten, E.D.Va.2004, 305 F.Supp.2d 585. Constitutional Law 42.1(4)

Aliens may bring suit under 42 U.S.C.A. § 1983 for deprivation of civil rights under color of state law. Jaffe v. Boyles, W.D.N.Y.1985, 616 F.Supp. 1371. Civil Rights 1009

Alien seeking to be licensed as engineer and alien seeking to be licensed as physical therapist had no standing to represent other professions in challenging requirements of McKinney's N.Y. Education Law §§ 6524(6), 6534(6), 6554(6), 6604(6), 6805(6), 7206.1(6), 7324.1(6), 7504.1(6), 7804(6), for citizenship for licensing. Kulkarni v. Nyquist, N.D.N.Y.1977, 446 F.Supp. 1269.

Plaintiffs, including alien resident plaintiff, each of whom alleged injury from violation of U.S.C.A.Const. Amend. 14 by defendant state agency officials because of allegedly racial discriminatory hiring and promoting practices come within the zone of interests protected by this section. Jackson v. Sargent, D.C.Mass.1975, 394 F.Supp. 162, affirmed 526 F.2d 64. Civil Rights 1333(5)

This section applies to aliens. Simon v. Lovgren, D.C.Virgin Islands 1973, 368 F.Supp. 265.

4397. Associations, persons entitled to maintain action

Association of adult school directors, teachers and support staff lacked standing to bring § 1983 suit on behalf of its members against Department of Education of Puerto Rico and its officials, alleging that director's contract was not renewed because of her political affiliation; relief requested would require individual members' participation in lawsuit insofar as neither complaint nor opposition specified what injuries they had allegedly suffered, and court was reluctant to assume that monetary damages requested were common to all members or that any award should be shared by all in equal degree. Hatfield Bermudez v. Rey Hernandez, D.Puerto Rico 2003, 245 F.Supp.2d 383. Associations 20(1)

Unincorporated association is not a "person" within the meaning of §§ 1983 protecting citizens of the United States or other person within the jurisdiction thereof, and, thus, the association is not entitled to bring a claim under §§ 1983; while the Dictionary Act of 1871 extended the meaning of "person" to include corporations and municipalities, it did not do the same for unincorporated associations. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Civil Rights 1329

Anti-abortion association and members that brought § 1983 action against city and officials, stemming from denial of parade permits, possessed standing to bring claims based upon application of city's parade ordinance, since some permits were requested by individual members, members alleged actual, concrete and particularized injury, and association had right to relief on behalf of allegedly injured members. Lippoldt v. City of Wichita, Kansas, D.Kan.2003, 265 F.Supp.2d 1228. Associations 20(1); Civil Rights 1333(6)

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Organization dedicated to eliminating homophobia and intolerance in schools sought only declaratory and injunctive relief in action against school district under § 1983, the California Education Code, and the California Unruh Civil Rights Act, and therefore, its members were not required to participate directly in the litigation in order for organization to have associational standing. Gay-Straight Alliance Network v. Visalia Unified School Dist., E.D.Cal.2001, 262 F.Supp.2d 1088. Associations 20(1)

Association lacked associational standing to maintain allegations of excessive force and sexual assault committed against arrested antiabortion protestors, where it was not alleged that any of the individual plaintiffs were members of the organization and since allegations were fact intensive so that testimony of individual plaintiffs would be necessary to sustain the claims. Amnesty America v. County of Allegheny, W.D.Pa.1993, 822 F.Supp. 297. Associations 20(1)

Homeowners associations had standing to assert claims on behalf of their members in seeking injunctive relief in action challenging construction of stadium; participation of individual members was not required in assessing whether injunction was appropriate. Lake Lucerne Civic Ass'n, Inc. v. Dolphin Stadium Corp., S.D.Fla.1992, 801 F.Supp. 684. Associations 20(1)

4398. Attorneys, persons entitled to maintain action

Attorney, who had no client funds in accounts bearing interest that was to be paid to Lawyers Trust Fund of Illinois, lacked standing to challenge legality of rules requiring deposit of money in interest bearing accounts and payment of interest to Fund in order to provide legal services for the poor. Greening v. Moran, C.D.Ill.1990, 739 F.Supp. 1244, affirmed 953 F.2d 301, rehearing denied, certiorari denied 113 S.Ct. 77, 506 U.S. 824, 121 L.Ed.2d 42.

Attorney had no standing to maintain cause of action under § 1983 against attorneys and judge, which was based upon their alleged conspiracy to "fix" lawsuit; attorney was not party to action and thus had no personal stake in proceeding. Lepley v. Dresser, W.D.Mich.1988, 681 F.Supp. 418. Conspiracy 17

4399. Attorneys-in-fact, persons entitled to maintain action

Attorney-in-fact for vehicle's owner did not, pursuant to general power of attorney, have right to assert owner's due process claim in federal civil rights action arising from incident in which vehicle was stopped, towed, and stored; constitutional claim was personal and could not be asserted vicariously, and attorney-in-fact, as non-attorney, could not appear as attorney for others. Johns v. County of San Diego, C.A.9 (Cal.) 1997, 114 F.3d 874. Attorney And Client 11(2.1)

4400. Banks, persons entitled to maintain action

Operating subsidiary of national bank did not have right to bring § 1983 suit against Connecticut Banking Commissioner, claiming that its right to conduct mortgage lending activities was harmed; while Congress showed intent to confer right in passing statute restricting visitation of national banks to national bank inspectors, there was no showing of any similar Congressional intent to establish actionable right underlying regulation placing subsidiaries under federal regulatory control. Wachovia Bank, N.A. v. Burke, D.Conn.2004, 319 F.Supp.2d 275, affirmed in part, reversed in part and remanded 414 F.3d 305, petition for certiorari filed 2005 WL 2463529, miscellaneous rulings 126 S.Ct. 791, 163 L.Ed.2d 626. Action 3

Bank was entitled to maintain an action under this section, despite claim that it could not do so as a creature of the state. Roslindale Co-op. Bank v. Greenwald, D.C.Mass.1979, 481 F.Supp. 749, affirmed 627 F.2d 1087, affirmed 638 F.2d 258, certiorari denied 102 S.Ct. 128, 454 U.S. 831, 70 L.Ed.2d 108. Civil Rights 1329

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4401. Bidders, persons entitled to maintain action

Unsuccessful bidder on contract to demolish abandoned school building had standing to seek declaratory judgment that board of education's minority business enterprise set aside requirements for construction contractors violated equal protection clause; unsuccessful bidder alleged that its bid was lowest submitted and there was no other cause for its rejection by board other than failure to meet allegedly unconstitutional set aside requirements, and bidder alleged that it suffered injury because of classifications. Main Line Paving Co., Inc. v. Board of Educ., School Dist. of Philadelphia, E.D.Pa.1989, 725 F.Supp. 1349. Declaratory Judgment 301

Disappointed bidder for legal services contract with state medicaid agency had standing to bring § 1983 action challenging agency's award of contract to another bidder, on ground that agency awarded contract without complying with procedures required in applicable federal regulations and Office of Management and Budget circular; bidder's claims were limited, however, by virtue of Eleventh Amendment to prospective injunctive relief only. Connecticut Legal Services, Inc. v. Heintz, D.Conn.1988, 689 F.Supp. 82. Civil Rights 1331(6); Federal Courts 272

4402. Bystanders, persons entitled to maintain action

Daughter who witnessed deputy sheriff's use of excessive force against her mother, who had protested her husband's arrest, was a bystander who could not recover under § 1983, although she struck deputy over the head with her fist, causing him to release her mother. Thomas v. Frederick, W.D.La.1991, 766 F.Supp. 540. Civil Rights 1332(4)

4403. Municipalities, persons entitled to maintain action

City of Milwaukee, Wisconsin, had no standing, on basis of injury to itself, to bring action charging the Attorney General with failing to enforce civil rights laws in suburban communities where city failed to allege the requisite injury in fact; averment that city expended considerable money in response to Attorney General's recommendations concerning city employment practices did not constitute an allegation that expenditures were result of asserted nonenforcement of the law in suburban communities and, furthermore, voluntary expenditures designed to comply with the law cannot fairly be characterized as a legal wrong or injury likely to be redressed by a favorable decision. City of Milwaukee v. Saxbe, C.A.7 (Wis.) 1976, 546 F.2d 693. Civil Rights 1331(5)

4404. City councils, persons entitled to maintain action

Since city council did not allege that it was involved in discriminatorily and invidiously compelling city and its inhabitants to assume cost of municipal services grossly disproportionate to that assumed by its contiguous towns with respect to state's method of financing public education, the city council members were not subject to liability under this section for the manner in which public education was financed and thus did not have standing to bring action to challenge method of financing public education in the state of Connecticut on theory that they might be subject to personal civil and criminal liability for action taken in violation of due process and equal protection. Athanson v. Grasso, D.C.Conn.1976, 411 F.Supp. 1153. Civil Rights 1070; Constitutional Law 42.3(3)

4405. Commissions, persons entitled to maintain action

City Human Relations Commission, which made no allegation of personal stake in outcome of action charging racial discrimination in city police force hiring procedures either for itself as a body or for its individual members and which merely sought to bring suit in its own name on behalf of its "black clientele," had no standing to bring suit. Erie Human Relations Commission v. Tullio, C.A.3 (Pa.) 1974, 493 F.2d 371. Civil Rights 1522

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42 U.S.C.A. § 1983

4406. Contractors, persons entitled to maintain action

Owner and president of accounting corporation that contracted with municipality did not have standing to bring §§ 1983 action against municipality and mayor based on termination of corporation's contract. Ramirez v. Arlequin, D.Puerto Rico 2005, 357 F.Supp.2d 416, affirmed in part, reversed in part 447 F.3d 19. Corporations 202; Corporations 506

White-owned contractor had standing to assert claim of pattern or practice of discrimination against county, where contractor alleged that county's systematic award of contracts to minority or female business enterprises under its affirmative action program injured contractor in connection with county's award of project to minority owned business. Webster v. Fulton County, GA, N.D.Ga.1999, 44 F.Supp.2d 1359, affirmed in part, vacated in part 283 F.3d 1254, rehearing and rehearing en banc denied 45 Fed.Appx. 881, 2002 WL 1424417, certiorari denied 123 S.Ct. 623, 537 U.S. 1046, 154 L.Ed.2d 519. Civil Rights 1333(6)

Contractors had standing to challenge state's highway department's minority enterprise program and the federal regulations on which the state program was based. Central Alabama Paving, Inc. v. James, M.D.Ala.1980, 499 F.Supp. 629.

4407. Corporations, persons entitled to maintain action--Generally

Individual plaintiffs, but not corporate plaintiff, were authorized to maintain suit in equity to restrain infringement of rights of freedom of speech and freedom of assembly. Hague v. Committee for Indus. Organization, U.S.N.J.1939, 59 S.Ct. 954, 307 U.S. 496, 83 L.Ed. 1423. Constitutional Law 252

Telecommunications service provider could not maintain private right of action for violation of preemption provision of Telecommunications Act, proscribing local regulations which have effect of prohibiting any entity from providing telecommunications service, under §§ 1983; preemption provision of Act was not focused on benefits granted to providers, but on restricting type of telecommunications regulations that a local authority could enforce, and there was no clear manifestation of congressional intent to create a private right of action under that provision of the Act. Qwest Corp. v. City of Santa Fe, New Mexico, C.A.10 (N.M.) 2004, 380 F.3d 1258. Civil Rights 1041; Action 3

Corporations are persons whose rights are protected by this section providing for liability for deprivation of rights secured by the Constitution and laws. Des Vergnes v. Seekonk Water Dist., C.A.1 (Mass.) 1979, 601 F.2d 9, on remand 498 F.Supp. 463. Civil Rights 1329

Corporation had standing to assert violations of U.S.C.A.Const. Amends. 1 and 14 § 1 under this subchapter. Advocates for Arts v. Thomson, C.A.1 (N.H.) 1976, 532 F.2d 792, certiorari denied 97 S.Ct. 254, 429 U.S. 894, 50 L.Ed.2d 177.

Corporate plaintiff can assert rights under U.S.C.A.Const. Amend. 14, § 1 and suits under this section by corporate plaintiffs are also permissible. California Diversified Promotions, Inc. v. Musick, C.A.9 (Cal.) 1974, 505 F.2d 278. Civil Rights 1329; Constitutional Law 252

Large out-of-state manufacturer stated equal protection claim under §§ 1983 against Commissioner of New York State Department of Environmental Conservation and Attorney General of State of New York, on allegations that New York Architectural and Industrial Maintenance Coatings regulations, which were designed to reduce ozone emissions as required under Clean Air Act (CAA), did not have rationally related government interest and that resulting classification of manufacturers based upon output of product was arbitrary and capricious; although regulations did not contain explicit classification of manufacturers by size, they contained small manufacturer's exemption, and no showing was made on undisputed facts that no classification existed. Sherwin-Williams Co. v.

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Crotty, N.D.N.Y.2004, 334 F.Supp.2d 187. Constitutional Law 250.5; Environmental Law 287

Corporate landlord had standing to challenge, under § 1983, condemnation of two of its properties and multiple citations that were issued against it as retaliatory and in violation of its substantive due process rights; corporation owned the condemned properties, could not continue with its normal operations of those properties, and was required to remedy cited conditions despite its belief that changes were not required by law. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Civil Rights 1331(3)

Private corporation did not show deprivation of constitutionally protected rights arising out of arrest of corporation's employee during police raid or causation required to show standing in § 1983 action, where alleged conduct was directed at employee rather than corporation and any injury to corporation was too abstract and speculative. Alvarez Sepulveda v. Puerto Rico, D. Puerto Rico 2002, 218 F.Supp.2d 170. Civil Rights 1332(4); Civil Rights 1333(4)

Corporation that operated electronics store, in addition to individual officer of corporation, could maintain § 1983 equal protection claim against county based on alleged religious discrimination in enforcement of consumer fraud law, where corporation as well as officer had been named in fraud complaints. Hassoun v. Cimmino, D.N.J.2000, 126 F.Supp.2d 353. Civil Rights 1331(6)

Corporation had standing to bring § 1983 claim for violation of its due process rights as corporation was "person" within meaning of due process clause. Auburn Medical Center, Inc. v. Peters, M.D.Ala.1996, 953 F.Supp. 1518. Civil Rights 1331(1); Constitutional Law 252

Private corporation which ran private school for boys adjudicated delinquent by the courts had standing to bring action against school district and township alleging discriminatory treatment on the basis of race in violation of Fourteenth Amendment; corporation did not assert any claims on behalf of students but sought redress for losses it claimed to have suffered because of its association with black and Latino students. Board of Managers of Glen Mills Schools v. West Chester Areas School Dist., E.D.Pa.1993, 838 F.Supp. 1035, affirmed in part, reversed in part 52 F.3d 313. Civil Rights 1331(2)

4408. ---- Officers and directors, corporations, persons entitled to maintain action

President of corporate owner of rental properties had standing to challenge citations that were issued against him personally, including citation for failing to maintain rental property free from weeds and citation for allowing workers to enter condemned property, as retaliatory under § 1983; president alleged that he personally suffered cognizable injury, distinct from any suffered by corporation. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Civil Rights 1333(3)

Directors of bank had standing to institute civil rights action in name of bank challenging a certification decision and claiming that such amounted to deprivation of constitutional rights. Roslindale Co-op. Bank v. Greenwald, D.C.Mass.1979, 481 F.Supp. 749, affirmed 627 F.2d 1087, affirmed 638 F.2d 258, certiorari denied 102 S.Ct. 128, 454 U.S. 831, 70 L.Ed.2d 108. Civil Rights 1332(6)

Officers and shareholders of sawmill products corporation who asserted personal standing to bring action under this section as result of alleged injury suffered by the corporation and who alleged no direct personal injury as result of alleged conduct of town, various public officials, and local residents, did not have standing to maintain action under this section. Sawmill Products, Inc. v. Town of Cicero, Cook County, Ill., N.D.Ill.1979, 477 F.Supp. 636. Civil Rights 1332(1)

Officer-shareholders of corporation had no standing to sue under this section and § 1985 of this title for damages suffered by corporation despite argument that they as officers suffered personal losses of anticipated salaries which

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would not be received through damages paid to corporation through lost profits. Marty's Adult World of New Britain, Inc. v. Guida, D.C.Conn.1978, 453 F.Supp. 810. Civil Rights 1333(6)

4409. ---- Shareholders, corporations, persons entitled to maintain action

Section 1983 affords no right of action to individual shareholders of corporation when corporation itself has sued, in the same complaint and on the same theories, for the same harm. Pagan v. Calderon, C.A.1 (Puerto Rico) 2006, 448 F.3d 16. Corporations 202

The principal owners and shareholders of corporation through which they owned former nightclub had standing to assert § 1983 civil rights claim against city arising from city's actions taken against the club under city's public nuisance abatement ordinance where, in addition to asking for compensation for injury to the corporation, they also alleged personal injury and sought damages for themselves, as individuals, for intentional infliction of emotional distress and for defamation, and alleged violations of their First and Fourteenth Amendment rights as individuals. RK Ventures, Inc. v. City of Seattle, C.A.9 (Wash.) 2002, 307 F.3d 1045. Civil Rights 1333(6)

Shareholders did not have standing to seek redress for emotional and reputational injuries that they sustained as result of bank's alleged wrongful ex parte seizure of premises of their corporation, including loss of business relationships with customers and suppliers; any such injuries were derivative of those sustained by corporation. Audio Odyssey, Ltd. v. Brenton First Nat. Bank, C.A.8 (Iowa) 2001, 245 F.3d 721, reconsideration granted, vacated en banc, opinion reinstated 286 F.3d 498, certiorari denied 123 S.Ct. 475, 537 U.S. 990, 154 L.Ed.2d 359, on remand 284 F.Supp.2d 1159. Corporations 202

Sole shareholder of corporate lessee lacked standing to bring § 1983 action against municipal port authority manager in connection with termination of leasing agreement under which lessee had exclusive right to solicit and lease office space to tenants in building owned by port authority, as shareholder did not allege that he personally suffered direct, nonderivative injury; although shareholder claimed that manager's threat to terminate lease if shareholder did not curtail his criticism of city mayor was directed at shareholder personally, and not to corporation, deprivation of such abstract free speech right was not justiciable unless legally protectable interest were at stake. Potthoff v. Morin, C.A.8 (Minn.) 2001, 245 F.3d 710. Civil Rights 1333(3); Federal Courts 13.10

Individual shareholders and debenture holders did not have standing to maintain § 1983 action for damages suffered by corporation; filing under § 1983 does not diminish requirement that shareholder suffer some individual, direct injury. Flynn v. Merrick, C.A.7 (Wis.) 1989, 881 F.2d 446. Corporations 202; Corporations 473

Individual shareholders of state chartered bank were not the proper parties to maintain suit under this section complaining of alleged injury to the bank; likewise, the bank, which had been taken over by state authorities, was also an improper party-plaintiff. Gregory v. Mitchell, C.A.5 (Ala.) 1981, 634 F.2d 199. Civil Rights 1391

Stockholder could not maintain action under this section for damages suffered by corporation. Erlich v. Glasner, C.A.9 (Cal.) 1969, 418 F.2d 226. Civil Rights 1332(1)

A shareholder, even when he is the sole shareholder, does not have standing to bring an action under §§ 1983 on behalf of a corporation. Ramirez v. Arlequin, D.Puerto Rico 2005, 357 F.Supp.2d 416, affirmed in part, reversed in part 447 F.3d 19. Corporations 202

Corporation operating ambulance service and its shareholders could not maintain § 1983 action against municipality, alleging that grant of ambulance permit to another service violated complaining service's procedural due process rights; Constitution did not protect corporation's ability to conduct business and expectancy of being

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able to do so profitably, and shareholders lacked standing to bring § 1983 claim for injury to corporation. Forest Ambulance Service, Inc. v. Mercy Ambulance of Richmond, Inc., E.D.Va.1997, 952 F.Supp. 296. Civil Rights 1331(6); Constitutional Law 287.3

Shareholder did not have individual standing to bring civil rights action against city for alleged legal injury suffered by corporation; shareholder's injuries as alleged were indirectly caused by harm to corporation, and, therefore, shareholder's injuries were not distinct from those of corporation. Caravella v. City of New York, C.A.2 (N.Y.) 2003, 79 Fed.Appx. 452, 2003 WL 22441790, Unreported, certiorari denied 125 S.Ct. 253, 543 U.S. 840, 160 L.Ed.2d 63. Corporations 202

4410. Debtors, persons entitled to maintain action

Although judgment debtors' payment of contempt fine for disobeying subpoena to appear in supplemental proceeding brought by judgment creditors in attempt to collect judgment did not satisfy the judgment, the speculative prospect of further contempt orders against debtors did not give debtors the requisite constitutional standing to seek to enjoin the contempt processes as unconstitutional. Juidice v. Vail, U.S.N.Y.1977, 97 S.Ct. 1211, 430 U.S. 327, 51 L.Ed.2d 376. Injunction 114(2)

Violation of discharge injunction by state actor proceeding under color of state law will not support civil rights action under § 1983, for deprivation of rights, privileges or immunities secured by Constitution and laws of the United States. In re Lesniewski, Bkrtcy.E.D.Pa.2000, 246 B.R. 202. Bankruptcy 2364; Civil Rights 1056

4411. Deceased persons, persons entitled to maintain action

A "deceased" is not "person" for purposes of this section or Ku Klux Klan Act, § 1985 of this title or constitutional rights which this section serves to protect. Guyton v. Phillips, C.A.9 (Cal.) 1979, 606 F.2d 248, certiorari denied 100 S.Ct. 1276, 445 U.S. 916, 63 L.Ed.2d 600.

Events occurring post obit could form no part of decedent's action under this section or § 1985 of this title, essence of claim under either section being deprivation of a person's constitutional rights; after death, one is no longer "person" within constitutional and statutory framework, and has no rights of which he may be deprived. Whitehurst v. Wright, C.A.5 (Ala.) 1979, 592 F.2d 834. Civil Rights 1333(1); Conspiracy 7.5(2)

After death, one is no longer a "person" within constitutional and statutory framework, and has no rights of which he may be deprived, for purposes of § 1983 analysis. Love v. Bolinger, S.D.Ind.1996, 927 F.Supp. 1131. Civil Rights 1329

Claims under this section for false arrest and imprisonment on part of defendant West Virginia officials and deliberate indifference to medical needs of plaintiff's decedent did not, save any possible wrongful death claim, survive death of plaintiff's decedent under most analogous West Virginia statute and laws. Jones v. George, S.D.W.Va.1982, 533 F.Supp. 1293. Death 10

4412. Developers, persons entitled to maintain action

Subdivision developer had standing to bring civil rights action alleging that conditions imposed by town planning board on development of subdivision were result of racial animus toward developer's purchasers, all of whom had Italian surnames, even though developer himself was apparently not of Italian origin. Cutting v. Muzzey, C.A.1 (N.H.) 1984, 724 F.2d 259. Civil Rights 1332(3)

Real estate developer, even though not a member of a minority, had standing to sue under this section for alleged

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deprivations of various constitutional rights by county and county council in denying him a building permit to construct low-income apartments where developer alleged that county council, in conspiracy with certain private landowners, acted with racially discriminatory intent when it directed withholding of building permit. Scott v. Greenville County, C.A.4 (S.C.) 1983, 716 F.2d 1409. Civil Rights 1332(3)

4413. Elected officials, persons entitled to maintain action

Where neither mayor nor citizens of city whom he purported to represent were parties to agreement between three cities with respect to areas in which each would provide services in surrounding unincorporated territory, complaint in action brought by the mayor and his city against certain legislators who had allegedly conspired to deprive them of civil rights by virtue of supporting bill which provided for annexation of a portion of the territory being served by the city in question into another city did not allege violation of rights of mayor or citizens and the mayor thus did not have standing to challenge the action of the legislators. City of Safety Harbor v. Birchfield, C.A.5 (Fla.) 1976, 529 F.2d 1251. Conspiracy 18

4414. Employees, persons entitled to maintain action--Generally

To have standing to complain of racial discrimination in public employment a party must allege at a minimum a personal stake in the outcome of the action. Erie Human Relations Commission v. Tullio, C.A.3 (Pa.) 1974, 493 F.2d 371. Civil Rights 1532

4415. ---- Firefighters, employees, persons entitled to maintain action

In suit for declaratory judgment brought under this section by city fire captain against city officials who had suspended him for a temporary period of 20 days, notwithstanding that fire captain had been reinstated, he carried a classic "personal stake" in outcome of litigation as a blot on his record and, even though such stake may not rise to level of a liberty interest, it was enough to satisfy the injury-in-fact requirement of standing. Sims v. Young, C.A.5 (Fla.) 1977, 556 F.2d 732. Declaratory Judgment 300

Firefighters who ranked lower than 146 on promotional eligibility list lacked standing to maintain § 1983 action challenging out-of-rank promotions of black and Hispanic firefighters to captain position, where white firefighters would not have been promoted even if strict rank order had been followed. McNamara v. City of Chicago, N.D.Ill.1997, 959 F.Supp. 870, affirmed 138 F.3d 1219, rehearing and suggestion for rehearing en banc denied, certiorari denied 119 S.Ct. 444, 525 U.S. 981, 142 L.Ed.2d 398. Civil Rights 1331(5)

Firemen who had been discharged for failure to comply with hair-length regulation had standing to sue. Michini v. Rizzo, E.D.Pa.1974, 379 F.Supp. 837, affirmed 511 F.2d 1394. Civil Rights 1331(5)

4416. ---- Police officers, employees, persons entitled to maintain action

White police sergeant had standing to raise § 1983 claim that city denied him opportunity to compete for one promotion by not strictly following rank order in referral process and by promoting black officer who had more seniority but scored lower than police sergeant on test city used to rank job applicants in first round where police sergeant would have been considered for opening had rank order been strictly followed given his order on list rank of candidates. Donaghy v. City of Omaha, C.A.8 (Neb.) 1991, 933 F.2d 1448, rehearing denied, certiorari denied 112 S.Ct. 938, 502 U.S. 1059, 117 L.Ed.2d 109. Civil Rights 1331(5)

Association composed of employed policemen lacked standing to challenge discrimination in hiring. Minority Police Officers Ass'n of South Bend v. City of South Bend, Ind., C.A.7 (Ind.) 1983, 721 F.2d 197. Civil Rights 1331(5)

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White police officers had standing to challenge city's allegedly discriminatory promotion requirements under §§ 1981, 1983, and Michigan's Elliott-Larsen Civil Rights Act, where officers showed that, but for requirements, they could have been promoted. Kresnak v. City of Muskegon Heights, W.D.Mich.1997, 956 F.Supp. 1327. Civil Rights 1331(5); Civil Rights 1736

4417. ---- Applicants, employees, persons entitled to maintain action

Unsuccessful white applicant for position as police officer lacked standing to assert claim for damages in § 1983 action alleging that city's affirmative action program for hiring police officers violated equal protection clause; applicant would not have been hired even under race-neutral hiring policy, since his name was too far down on list of eligible candidates. Donahue v. City of Boston, C.A.1 (Mass.) 2002, 304 F.3d 110, on remand 264 F.Supp.2d 74. Civil Rights 1331(5)

4418. ---- Miscellaneous employees, persons entitled to maintain action

White city employee had standing to sue city and individual defendants under § 1983 for retaliation based on his assistance of black person and exercise of free speech rights, where he was not suing on behalf of anyone else, but rather, asserted his own right to be free from retaliation, alleged injuries that were personal to him, and was only affected plaintiff who could bring suit. Maynard v. City of San Jose, C.A.9 (Cal.) 1994, 37 F.3d 1396, as amended, on remand 1996 WL 101192. Civil Rights 1331(5)

Motorist, who was prosecuted for a traffic violation which occurred while driving her employer's vehicle, did not have standing to bring §§ 1983 claim on behalf of her employer, alleging that city and city attorneys conspired to intimidate her due to her association with her employer, absent an injury to her own personal constitutional rights. King v. Knoll, D.Kan.2005, 399 F.Supp.2d 1169. Conspiracy 7.5(1)

Employee of the Child Welfare Administration (CWA) of the City of New York who was suspended for violating City's executive order after she was interviewed by network news program in connection with report about child who allegedly died from physical abuse by her mother had standing to bring § 1983 First Amendment claim challenging constitutionality of executive orders which provide that all contacts with media regarding any policies or activities of child welfare agency must be submitted to media relations office prior to the communication being made and the media relations office will then determine appropriate manner in which to handle media contacts. Harman v. City of New York, S.D.N.Y.1996, 945 F.Supp. 750, motion denied 1997 WL 76509, affirmed 140 F.3d 111. Constitutional Law 42.3(3)

Permanent city employees and noncity employee lacked standing to attack section of city's substance abuse policy applying to city employees holding "safety/sensitive positions" and restricted to those safety positions "whose activities are regulated by either the United States Department of Transportation's Guidelines or the Louisiana Department of Safety," absent allegation that any plaintiff was such an employee. Roe v. City of New Orleans, E.D.La.1991, 766 F.Supp. 1443. Civil Rights 1331(5)

4419. Executors, persons entitled to maintain action

Plaintiff had standing and capacity as executor of decedent's estate to initiate lawsuit against defendants in their capacities as a police officer and police commissioner for alleged violation of this section as long as plaintiff was suing by virtue of his status as executor of decedent's estate and not in his own right. Baffa v. Black, E.D.Pa.1979, 481 F.Supp. 1083. Civil Rights 1332(4); Death 31(3.1)

Since, in action brought under this section by the executors of deceased New York attorney's estate, his widow, children, grandchildren and assignee for injunctive and declaratory relief vacating an order of the New York Appellate Division, which suspended the attorney from the practice of law for a period of three years, effective

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Feb. 5, 1971, the relatives and assignee of decedent sought relief, in counts II and III, based solely on an alleged violation of decedent's constitutional rights, not their own, they lacked standing to sue under this section. Javits v. Stevens, S.D.N.Y.1974, 382 F.Supp. 131. Civil Rights 1332(6)

4420. Family members, persons entitled to maintain action--Generally

Mother and minor children of decedent allegedly killed as result of officer's use of excessive force lacked standing to assert survival action under § 1983 and Fourth Amendment, given that Nevada law required survival actions to be brought by official representatives of decedent's estate and neither mother nor children alleged that their claims were brought in representative capacity. Moreland v. Las Vegas Metropolitan Police Dept., C.A.9 (Nev.) 1998, 159 F.3d 365, as amended. Civil Rights 1332(4)

Son-in-law had no privacy interest in his mother-in-law's house and thus could not maintain civil rights action against police officers who searched the house to effect his arrest. Lee v. Gilstrap, C.A.4 (N.C.) 1981, 661 F.2d 999, certiorari denied 102 S.Ct. 1755, 456 U.S. 907, 72 L.Ed.2d 165. Civil Rights 1088(3); Constitutional Law 82(7)

Arrestee's family members did not have standing to bring §§ 1983 claims against officers and prosecutors involved in arrest and prosecution of arrestee for rape, robbery, and weapons law violations, absent any evidence that officers' or prosecutors' conduct was directed at the family relationship. Nunez Gonzalez v. Vazquez Garced, D.Puerto Rico 2005, 389 F.Supp.2d 214. Civil Rights 1332(4)

Family members of alleged victim of excessive force lacked standing to assert § 1983 claim based on deprivation of the right to familial association, absent allegations or evidence of intent by law enforcement defendants to interfere with their relationship with victim. Murphy v. Bitsoih, D.N.M.2004, 320 F.Supp.2d 1174. Civil Rights 1331(4)

Family members do not have an independent claim under § 1983 unless the constitutionally defective conduct or omission was directed at the family relationship. Rodriguez-Oquendo v. Toledo-Davila, D.Puerto Rico 1999, 39 F.Supp.2d 127. Civil Rights 1332(4); Husband And Wife 209(4)

Family members do not have an independent claim under § 1983 unless the constitutionally defective conduct or omission was directed at the family relationship. Rodriguez-Oquendo v. Toledo-Davila, D.Puerto Rico 1999, 39 F.Supp.2d 127. Civil Rights 1332(1)

Family members of adult victim of fatal shooting allegedly perpetrated by police officer could not state claim under § 1983 for liberty interest violation or due process violation based on victim's death. Rivera v. Medina, D.Puerto Rico 1997, 963 F.Supp. 78. Civil Rights 1332(4); Constitutional Law 253(1)

Members of decedent's immediate family may not bring § 1983 action to recover for deprivation of parent-child relationship in wrongful death context. Kelly v. Wehrum, S.D.Ohio 1997, 956 F.Supp. 1369. Civil Rights 1332(1)

Family members of person arrested, prosecuted, and eventually acquitted of criminal sexual conduct lacked standing to bring § 1983 civil rights actions, where they did not allege that their own constitutional rights had been violated, but that they had suffered injury to the extent of requiring medical treatment as a result of the arrest and prosecution of family member. Pierzynowski v. Police Dept. City of Detroit, E.D.Mich.1996, 941 F.Supp. 633. Civil Rights 1332(4)

Individual does not have cause of action under § 1983 for due process violation based on injury or death of family member. Soto v. Carrasquillo, D.Puerto Rico 1995, 878 F.Supp. 324, affirmed 103 F.3d 1056, certiorari denied

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42 U.S.C.A. § 1983

118 S.Ct. 71, 522 U.S. 819, 139 L.Ed.2d 32. Civil Rights 1332(1)

4421. ---- Children, family members, persons entitled to maintain action

When construed in light most favorable toward children whose father was killed in shootout, material allegations of complaint asserting claims under § 1983 adequately requested compensation for father's alleged constitutional injuries in children's representative capacities as co-administrators of his estate, and therefore claims could not be dismissed for lack of standing to initiate personal claims stemming from alleged violations of father's constitutional rights, even though certain allegations of complaint also appeared to aver that children suffered personal losses as result of alleged violations. Claybrook v. Birchwell, C.A.6 (Tenn.) 2000, 199 F.3d 350. Civil Rights 1395(5)

Deceased inmate's daughter could maintain action against prison officials based on her inheritance of inmate's right to bring civil rights action for pain and suffering while incarcerated at prison and during his gruesome death at hands of other inmates. Velazquez-Martinez v. Colon, D.Puerto Rico 1997, 961 F.Supp. 362. Civil Rights 1332(4)

Loss of companionship claim by children of parent who has suffered constitutional deprivation is not cognizable in § 1983 civil rights suit; any damage sustained by children is merely incidental, rather than independent constitutional deprivation. Broadnax v. Webb, E.D.Mich.1995, 892 F.Supp. 188. Civil Rights 1332(1)

Civil rights claims which were based on First Amendment violations and which alleged that town and various officials retaliated against children for things their parents did and said failed to state claims where children did not contend that their own First Amendment rights were chilled by defendants' conduct. Penney v. Town of Middleton, D.N.H.1994, 888 F.Supp. 332. Civil Rights 1395(1)

High school student had standing to assert his father's First Amendment rights in action challenging school's decision to deny student admission into National Honor Society in alleged retaliation for his father's prior criticisms of school administration; activity student wished to pursue and his father's right to voice his opinion on public matters were inextricably bound up if retaliation animated decision to reject student from National Honor Society, and father's monetary damages could not be easily calculated. Dangler on Behalf of Dangler v. Yorktown Cent. Schools, S.D.N.Y.1991, 771 F.Supp. 625. Civil Rights 1332(2)

Adoption Act created individual rights in foster children, enforceable under § 1983, to services to facilitate permanency plan; foster children were clearly intended beneficiaries of Act, since language of Act focused on needs of individual foster children, Act lacked enforcement mechanism, and Act was not too vague and amorphous to be enforced by judiciary. Kenny A. ex rel. Winn v. Perdue, N.D.Ga.2003, 218 F.R.D. 277. Civil Rights 1057

State prisoner appearing pro se in civil rights action under § 1983 could not pursue claims against city for its alleged violations of his mother's and grandmother's constitutional rights. Green v. City of Oakland, N.D.Cal.2002, 2002 WL 31855312, Unreported. Attorney And Client 62; Civil Rights 1332(4)

4422. ---- Parents, family members, persons entitled to maintain action

Mother of detainee who died while in police custody lacked standing under Arkansas law to assert §§ 1983 wrongful death claim against police, as complaint named the mother individually and "on behalf of the heirs at law" of the deceased detainee; mother was not detainee's estate's personal representative at the time complaint was filed, Arkansas law required that wrongful death action be brought by all the heirs of the deceased when there was no personal representative, and mother was only plaintiff actually named. Williams v. Bradshaw, C.A.8 (Ark.) 2006, 459 F.3d 846. Death 31(7)

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Mother whose son was murdered by his wife had standing, as a parent, to assert a § 1983 claim for the wrongful death of her son in violation of his constitutional rights, where the spouse-murderer was precluded from recovery under state law and state wrongful death statute, under which the mother had standing to assert a claim, was incorporated into federal law under § 1988. Carringer v. Rodgers, C.A.11 (Ga.) 2003, 331 F.3d 844. Civil Rights 1332(6)

Rule precluding parent or guardian from bringing action on behalf of minor child without retaining lawyer did not violate free exercise clause, notwithstanding father's claim that, by becoming guardian ad litem and hiring lawyer to represent minor son in federal civil rights action, he was abrogating his responsibility under Holy Bible to exercise duties of caring for, nurturing, and providing for son; free exercise clause was not violated by limiting legal representation of others to licensed attorneys authorized to practice before court. Johns v. County of San Diego, C.A.9 (Cal.) 1997, 114 F.3d 874. Constitutional Law 84.5(1); Infants 71

Parents of African-American students lacked standing to bring § 1983 action alleging that school board discriminated against them during search to hire superintendent; parents had no constitutional right to have African-American considered for position, any constitutional violation by board was violation of rights of African-American applicants for position rather than of parents, parents were not best suited to bring suit regarding infringements on applicants' rights, parents did not allege unlawful expenditure of municipal funds so as to have standing as municipal taxpayers, and, even if parents had legally protected interest in facts of case, they failed to allege that they suffered harms distinct from those suffered by citizenry of city. Clay v. Fort Wayne Community Schools, C.A.7 (Ind.) 1996, 76 F.3d 873. Civil Rights 1332(5); Schools 111

Parent failed to show injury-in-fact and, therefore, lacked standing to sue under § 1983 for damages resulting from school district's maintenance of Bible distribution policy, under which son had received Bible, where parent failed to demonstrate how maintenance of policy continued to injure, or even threatened to injure, parent or son. Schanou v. Lancaster County School Dist. No. 160, C.A.8 (Neb.) 1995, 62 F.3d 1040. Civil Rights 1333(2)

Father had standing to assert § 1983 claim based on injuries to and death of his son, who committed suicide in jail cell, either in his own name or as administrator of son's estate. Frey v. City of Herculaneum, C.A.8 (Mo.) 1995, 44 F.3d 667. Civil Rights 1332(4)

Mother of pretrial detainee who committed suicide had standing under § 1983 to recover for her own injuries allegedly resulting from deprivation of detainee's constitutional rights; mother was within class of people entitled to recover under Texas law for wrongful death of a child, and § 1988 incorporated that wrongful death remedy into § 1983. Rhyne v. Henderson County, C.A.5 (Tex.) 1992, 973 F.2d 386, rehearing denied. Civil Rights 1332(4)

Victim's parents had due process liberty interest in companionship and society of victim and, therefore, were proper plaintiffs in § 1983 action to recover for police officers' shooting of victim. Ward v. City of San Jose, C.A.9 (Cal.) 1991, 967 F.2d 280, amended on denial of rehearing. Civil Rights 1389

Parents of pupil who was paddled by teacher could not maintain cause of action under this section against teacher and school officials. Hall v. Tawney, C.A.4 (W.Va.) 1980, 621 F.2d 607.

Although parents of pre-trial detainee who was murdered in county jail could not recover under Washington's general survival statute and wrongful death statutes because they were not financially dependent upon detainee, parents could seek recovery from county defendants under §§ 1988 for violations of detainee's constitutional rights; §§ 1988 permitted courts to "borrow" state wrongful death statutes to the extent they were consistent with §§ 1983, and allowing such recovery would further the goals of §§ 1983. Rentz v. Spokane County, E.D.Wash.2006, 438 F.Supp.2d 1252. Federal Courts 411

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Parent's Fourth Amendment unreasonable seizure and excessive force claims against county school district and school officials under §§ 1983 were not preempted by Title VI; although parent alleged discriminatory motive behind her arrests, parent could not bring Title VI claim. Alexander v. Underhill, D.Nev.2006, 416 F.Supp.2d 999 . Civil Rights 1309

Parents of robbery suspect shot by police officer lacked standing, under California law, to bring action alleging, inter alia, use of excessive force, in violation of Fourth Amendment, and state law claims; parents were not financially dependent on suspect. Foster v. City of Fresno, E.D.Cal.2005, 392 F.Supp.2d 1140. Parent And Child 7(6)

Father of a defendant sentenced to death failed to show that the defendant was unable to litigate his own claim, and thus, lacked standing to proceed as the defendant's next friend in a §§ 1983 suit alleging that the defendant's federal civil rights were being violated by the State of Connecticut's lethal injection protocol; while the father alleged that the defendant suffered from substantial mental diseases and/or defects which affected his ability to manage his affairs and care for himself, the only evidence offered to support that assertion was that by waiving his right to further appeal his death sentence, the defendant was endangering his health by committing "state-assisted suicide." Ross ex rel. Ross v. Rell, D.Conn.2005, 392 F.Supp.2d 224. Civil Rights 1332(4)

Parent of Asian-American elementary school student, who alleged that her individual interest in care, custody, and management of her child was violated by alleged deliberate indifference of school district and school officials to pupils' abuse of student, lacked standing to assert personal violation of her substantive due process and equal protection rights under § 1983; rights of parent and student were inextricably bound up with one another, and even if parent's individual claims were recognized, they were dependent on student's claims alleging violations of his constitutional rights for which officials were determined not to have acted with deliberate indifference. Yap v. Oceanside Union Free School Dist., E.D.N.Y.2004, 303 F.Supp.2d 284. Civil Rights 1332(2)

Parents of motorist killed by police officer during traffic stop had standing to pursue § 1983 action against officers and city; although decedent was an adult and had fathered a child, he had never become part of another family unit than that of his parents, in that he had never married, child was not born until after decedent's death, and decedent lived in mother's home, worked only part-time, and did not provide financial support to any other person. Russ v. Watts, N.D.Ill.2002, 190 F.Supp.2d 1094. Civil Rights 1332(4)

Mother lacked standing to bring individual claims under § 1983 based upon a deprivation of her daughter's constitutional rights. Morgan v. City of New York, S.D.N.Y.2001, 166 F.Supp.2d 817. Civil Rights 1332(1)

State action that affects the parental relationship only incidentally, even though the deprivation may be permanent, as in the case of an unlawful death, is not sufficient to establish a violation of an identified liberty interest, so as to confer standing to assert due process claim under § 1983. Reyes Vargas v. Rosello Gonzalez, D.Puerto Rico 2001, 135 F.Supp.2d 305. Civil Rights 1331(6); Constitutional Law 274(5)

Mother of elementary school student had standing, in her capacity as student's guardian ad litem, to proceed with § 1983 suit against Commissioner of New Jersey Department of Education, but she did not have standing to sue in her individual capacity, since right asserted against, and relief requested from, Commissioner, i.e., the adoption of policy to prevent future violations of students' constitutional rights, was not her own. C.H. v. Oliva, D.N.J.1997, 990 F.Supp. 341, affirmed 166 F.3d 1204, rehearing granted, opinion withdrawn, on rehearing 195 F.3d 167, rehearing granted, opinion vacated 197 F.3d 63, on rehearing 226 F.3d 198, certiorari denied 121 S.Ct. 2519, 533 U.S. 915, 150 L.Ed.2d 692. Civil Rights 1332(2)

Parent can challenge state's severance or termination of parent-child relationship, which is protected liberty interest, under § 1983. Palacios v. City of Oakland, N.D.Cal.1997, 970 F.Supp. 732, affirmed 152 F.3d 928. Civil Rights 1057

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42 U.S.C.A. § 1983

Parent's personal claim for loss of companionship and loss of parent-child relationship concerning death of her child was not cognizable under § 1983; although child's constitutional rights might have been violated, any damage suffered by parent from loss of her child did not amount to independent constitutional deprivation of any of her constitutional rights. Gravely v. Madden, S.D.Ohio 1995, 964 F.Supp. 260. Civil Rights 1332(1)

Parents who were suspected of abusing infant lacked standing to raise § 1983 civil rights claims against city, challenging city's policy and practice for investigating child abuse reports, absent showing that city policy or practice violated United States Constitution. Dietz v. Damas, E.D.N.Y.1996, 932 F.Supp. 431, motion to vacate denied 948 F.Supp. 198. Civil Rights 1331(6)

Even if father had standing to assert § 1983 claims on behalf of son, son's status as fugitive from justice barred pursuit of such claims. Messa v. Rubin, E.D.Pa.1995, 897 F.Supp. 883. Civil Rights 1332(4)

Mother of decedent shot by deputy sheriff had standing to sue under § 1983 for loss of companionship, society and comfort; application of state law rule under which mother lacked standing would be inconsistent with § 1983 goals of compensation and deterrence when applied to mother's own injuries and would limit deterrent effect of § 1983 by allowing state actors to avoid compensating for full extent of injuries they cause. Reynolds v. County of San Diego, S.D.Cal.1994, 858 F.Supp. 1064, affirmed in part, remanded in part 84 F.3d 1162. Civil Rights 1331(4)

Parent could not pursue § 1983 claim for wrongful death damages based on her son's death; alleged actions of corrections officers were directed at son rather than parent, and only person toward whom action is directed, and not those incidentally affected, can maintain § 1983 claim. Natriello v. Flynn, D.Mass.1993, 837 F.Supp. 17. Civil Rights 1332(4)

Mother had standing to bring civil rights claim on behalf of her children against foster care contractors based on alleged sexual abuse of her children while in foster care, where mother had custody of children and had obligation to support them. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Civil Rights 1332(6)

Decedent's mother could not maintain § 1983 civil rights action attempting to recover on her own behalf for alleged excessive force imposed upon her son by police officers; federally protected rights that are enforceable under § 1983 are personal to injured party. Rose v. City of Los Angeles, C.D.Cal.1993, 814 F.Supp. 878. Civil Rights 1332(4)

4423. ---- Siblings, family members, persons entitled to maintain action

Victim's siblings lacked due process liberty interest in victim's companionship and, therefore, were not proper plaintiffs in § 1983 action to recover for police officers' shooting of victim. Ward v. City of San Jose, C.A.9 (Cal.) 1991, 967 F.2d 280, amended on denial of rehearing. Civil Rights 1389

Mother and sister had standing to assert their own claim under 42 U.S.C.A. § 1983 governing deprivation of civil rights based upon alleged wrongful death of their son and brother while incarcerated in county jail, where mother and daughter alleged that death deprived them of their constitutional right of familial association. Trujillo v. Board of County Com'rs of Santa Fe County, C.A.10 (N.M.) 1985, 768 F.2d 1186. Civil Rights 1331(4)

Individual lacked standing to assert his deceased brother's civil rights claim, based on allegation that nonfeasance in supervising administration of state penitentiary resulted in murder of brother, then inmate of the prison by fellow inmates. Cunningham v. Ray, C.A.8 (Iowa) 1981, 648 F.2d 1185. Civil Rights 1331(4)

Siblings of pre-trial detainee who was murdered in county jail did not have a constitutionally protected liberty interest in the companionship of their brother, and therefore could not assert Fourteenth Amendment substantive

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due process causes of action against county defendants for loss of companionship with their brother. Rentz v. Spokane County, E.D.Wash.2006, 438 F.Supp.2d 1252. Prisons 4(4)

Siblings of motorist killed by police officer during traffic stop did not have standing to pursue § 1983 action against officers and city based on loss of due process right to associate with their brother. Russ v. Watts, N.D.Ill.2002, 190 F.Supp.2d 1094. Civil Rights 1332(4)

Sister of arrestee who committed suicide following arrest could not recover under § 1983 for loss of society and companionship, thus, sister lacked standing to maintain claim against police officers. Pyka v. Village of Orland Park, N.D.Ill.1995, 906 F.Supp. 1196. Civil Rights 1332(4)

Parents and siblings of man shot by police had no cognizable liberty interest which was violated permitting them to maintain action against police under § 1983, where state action in question was clearly aimed solely at man who was shot. Carmona Pacheco v. Betancourt y Lebron, D.Puerto Rico 1993, 820 F.Supp. 45. Civil Rights 1332(4)

Arrestee lacked standing to bring claims of police harassment on behalf of his wife or her sister, in civil rights action under §§ 1983 against police department. James v. York County Police Dept., C.A.3 (Pa.) 2005, 160 Fed.Appx. 126, 2005 WL 3313029, Unreported. Civil Rights 1332(4)

4424. ---- Spouses, family members, persons entitled to maintain action

Wife of husband and children who were purportedly beaten in their home alleged a personal intrusion into her rights under the Fourth and Fourteenth Amendments sufficient to support § 1983 action against police officers. Gora v. Costa, C.A.7 (Ill.) 1992, 971 F.2d 1325. Civil Rights 1395(6)

Wife of man who was shot inside his trailer home by deputies after he had fired shots at them when they approached could not recover for violation of her civil rights where wife was with deputies when incident occurred; however, man's four-year-old daughter, who was in trailer at time of incident, could recover in light of evidence that shots were fired into trailer when deputies knew that persons other than the man were in the trailer. Coon v. Ledbetter, C.A.5 (Miss.) 1986, 780 F.2d 1158. Civil Rights 1088(2)

High school instructor lacked standing to bring §§ 1983 First Amendment retaliation claim on basis of speech in his spouse's letter to school board about qualifications of instructor's supervisor, who was hired for position over instructor's spouse despite her alleged superior qualifications. Trujillo v. Board of Educ. of Albuquerque Public Schools, D.N.M.2005, 377 F.Supp.2d 994. Constitutional Law 42.3(3)

Only wife, and not husband nor their conjugal partnership, could maintain suit under §§ 1983 claiming that employer violated wife's federally protected rights. Figueroa-Garay v. Municipality of Rio Grande, D.Puerto Rico 2005, 364 F.Supp.2d 117. Civil Rights 1332(5); Husband And Wife 221

Puerto Rico employee's spouse could not sue under §§ 1983 for alleged violation of employee's constitutional rights. Ramirez-De Leon v. Mujica-Cotto, D.Puerto Rico 2004, 345 F.Supp.2d 174. Civil Rights 1332(5)

Wife of victim of police beating and their conjugal partnership could not bring § 1983 action against police officers and superintendent of police department, where claims alleged by wife and partnership rested upon violation of victim's civil rights by police officers. Rodriguez-Oquendo v. Toledo-Davila, D.Puerto Rico 1999, 39 F.Supp.2d 127. Civil Rights 1332(4); Husband And Wife 209(4)

Tenured university professor's allegations, in complaint against university officials under § 1983, that officials harmed his family income by electing not to renew his wife's teaching contract, that harm was inflicted in

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retaliation for professor's public criticism of university, that he and his family derived part of their support from wife's income, and that he was concretely injured by loss of that income, demonstrated causal connection between wrongs alleged and injury in fact, and that his alleged harms would be likely to be redressed by relief requested, and were therefore sufficient to convey standing to bring First Amendment free speech claim. Anderson-Free v. Steptoe, M.D.Ala.1997, 970 F.Supp. 945. Constitutional Law 42.3(3)

Husband failed to demonstrate that incarcerated wife was unable to assert directly her §§ 1983 claims challenging validity of her arrest and prosecution, and therefore husband lacked standing to assert those claims himself. McDonald v. Van Houtte, C.A.10 (Okla.) 2005, 160 Fed.Appx. 673, 2005 WL 3307432, Unreported. Husband And Wife 221

Husband lacked standing to assert a § 1983 claim for the violation of his wife's rights. Juncewicz v. Patton, W.D.N.Y.2002, 2002 WL 31654957, Unreported, appeal dismissed 63 Fed.Appx. 44, 2003 WL 21105332. Civil Rights 1332(5)

4425. ---- Miscellaneous family members, persons entitled to maintain action

Where father-in-law of Indiana state probationer alleged in civil rights complaint that he was deprived of the right to associate with his granddaughter by the terms of probation imposed on his daughter-in-law, complaint sufficiently alleged an injury and such a personal stake in the outcome of the controversy as to insure presentation of the dispute in an adversary context and, therefore, father-in-law had standing to invoke jurisdiction of federal court. Drollinger v. Milligan, C.A.7 (Ind.) 1977, 552 F.2d 1220. Civil Rights 1333(4)

Family members of victim could not maintain derivative Section 1983 claims on victim's behalf arising out of law enforcement officers' unlawful use of force; rather, estate of victim was the appropriate party to bring the derivative Section 1983 action. Murphy v. Bitsoih, D.N.M.2004, 320 F.Supp.2d 1174. Civil Rights 1332(4); Civil Rights 1389

Family members of arrestee who had allegedly suffered injury at hands of police could not assert excessive force claim under § 1983 against city and police officers, as Fourth Amendment rights of arrestee which were allegedly violated were personal rights which could not be vicariously asserted. Palacios v. City of Oakland, N.D.Cal.1997, 970 F.Supp. 732, affirmed 152 F.3d 928. Civil Rights 1332(4)

Boyfriend of children's mother lacked any First Amendment associational rights to be with children, precluding claims under § 1983 or statutory provision prohibiting conspiracy to violate civil rights, that state officials violated those rights in removing children from boyfriend's home. Wittman v. California Dept. of Social Services, N.D.Cal.2002, 2002 WL 31398711, Unreported, affirmed in part, reversed in part and remanded 108 Fed.Appx. 548, 2004 WL 1987357. Conspiracy 7.5(2); Constitutional Law 82(10); Infants 222

4426. Fetuses, persons entitled to maintain action

Fetus could not state civil rights claims under § 1983, although it was protected from criminal conduct under state law. Reed v. Gardner, C.A.7 (Ill.) 1993, 986 F.2d 1122, rehearing denied, certiorari denied 114 S.Ct. 389, 510 U.S. 947, 126 L.Ed.2d 337. Civil Rights 1329

Child could assert § 1983 cause of action based upon killing of his father by alleged police "death squad," notwithstanding that child was a fetus at time of father's death, since child's injury and cause of action for loss of familial companionship did not arise until his birth. Crumpton v. Gates, C.A.9 (Cal.) 1991, 947 F.2d 1418. Civil Rights 1332(6)

Infant plaintiff could not maintain civil rights action, alleging his rights were violated during his mother's alleged

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beating by police officers, where infant plaintiff had not yet been born on night of incident; infant had no constitutional rights until his birth. Ruiz Romero v. Gonzalez Caraballo, D.Puerto Rico 1988, 681 F.Supp. 123. Civil Rights 1331(4); Constitutional Law 82(1)

A fetus is not a "person" or "citizen" within contemplation of U.S.C.A.Const. Amend. 14 and this section. McGarvey v. Magee-Womens Hospital, W.D.Pa.1972, 340 F.Supp. 751, affirmed 474 F.2d 1339.

4427. Foreign nations, persons entitled to maintain action

Foreign nation was neither a "person" nor a person "within the jurisdiction" of the United States, and accordingly was not authorized to bring suit under federal civil rights statute. Breard v. Greene, U.S.Va.1998, 118 S.Ct. 1352, 523 U.S. 371, 140 L.Ed.2d 529. Civil Rights 1329

4428. Foster children, persons entitled to maintain action

Child involuntarily placed in a foster home is in a situation so analogous to a prisoner in a penal institution and a child confined in a mental health facility that the foster child may bring a § 1983 action for violation of Fourteenth Amendment rights. Rayburn ex rel. Rayburn v. Farnesi, N.D.Ga.1999, 70 F.Supp.2d 1334, vacated in part 241 F.3d 1341. Civil Rights 1057

Adoption Act created individual rights in foster children, enforceable under § 1983, to services to facilitate permanency plan; foster children were clearly intended beneficiaries of Act, since language of Act focused on needs of individual foster children, Act lacked enforcement mechanism, and Act was not too vague and amorphous to be enforced by judiciary. Kenny A. ex rel. Winn v. Perdue, N.D.Ga.2003, 218 F.R.D. 277. Civil Rights 1057

4429. Fugitives, persons entitled to maintain action

Under "fugitive from justice rule," courts strongly disfavor § 1983 claims brought by fugitives from justice, particularly when they are based on facts intimately associated with convictions that plaintiffs are fleeing. Messa v. Rubin, E.D.Pa.1995, 897 F.Supp. 883. Civil Rights 1088(5)

4430. Guarantors, persons entitled to maintain action

Guarantors of corporate debts, who were in no different position than other unsecured creditors of corporation who had extended credit with expectation of corporation's ability to repay its debt out of operating income, and who did not allege that city disposed of or in some way impaired value of collateral securing guaranteed debt, possessed no civil rights right of action separate and apart from any that corporation might possess. Odal Typographers, Inc. v. City of New York, S.D.N.Y.1983, 560 F.Supp. 558. Civil Rights 1332(6)

4431. Homebuyers, persons entitled to maintain action

Black resident of city had standing to maintain action challenging constitutional validity, and validity under Fair Housing Act, of city's programs designed to freeze existing racial composition of the city, which was 75% white and 25% black, by steering white home buyers to city's housing market and black home buyers away from the area, on ground that city's steering policies stigmatized the black resident as inferior member of community in which he lived, even though city's motive for the unequal treatment might have been benign. Smith v. City of Cleveland Heights, C.A.6 (Ohio) 1985, 760 F.2d 720, certiorari denied 106 S.Ct. 795, 474 U.S. 1056, 88 L.Ed.2d 772.

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42 U.S.C.A. § 1983

4432. Indians, persons entitled to maintain action

Indian tribe was not "person" who could sue under § 1983 to vindicate sovereign rights allegedly violated by county's execution of otherwise valid search warrant in course of welfare fraud investigation; statute was designed to secure private rights against government encroachment, not to advance sovereign's prerogative to withhold evidence relevant to criminal investigation. Inyo County, Cal. v. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, U.S.2003, 123 S.Ct. 1887, 538 U.S. 701, 155 L.Ed.2d 933. Civil Rights 1331(4); Indians 27(1)

Indian tribe was not "person" who could sue under § 1983 to vindicate sovereign rights allegedly violated by state's claimed right to collect motor vehicle fuel taxes from tribally-operated businesses. Winnebago Tribe of Nebraska v. Kline, D.Kan.2004, 297 F.Supp.2d 1291. Civil Rights 1331(6); Indians 27(1)

Lac Courte Oreilles Band of Lake Superior Chippewa Indians comprised class of citizens or "other persons" entitled to sue under § 1983 for purpose of determining whether subject matter jurisdiction existed to entertain band's § 1983 claim against state that would permit recovery of attorneys' fees under § 1988. Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. State of Wis., W.D.Wis.1987, 663 F.Supp. 682, appeal dismissed 829 F.2d 601. Civil Rights 1009

Members and residents of Indian reservation were each a "person within the jurisdiction" of the United States and thus could bring suit under this section to redress alleged deprivation of rights, privileges or immunities secured by the Constitution and laws. Thompson v. State of N. Y., N.D.N.Y.1979, 487 F.Supp. 212. Civil Rights 1329

4433. Indigents, persons entitled to maintain action

Indigent defendants did not have standing to enjoin city's policy of jailing indigents without counsel; city did not have control over municipal judge who failed to advise defendants of their rights to counsel, and whether plaintiffs would commit future crimes in city, be indigent, plead guilty, and be sentenced to jail was speculative. Eggar v. City of Livingston, C.A.9 (Mont.) 1994, 40 F.3d 312, certiorari denied 115 S.Ct. 2566, 515 U.S. 1136, 132 L.Ed.2d 818. Civil Rights 1331(4)

Where civil rights action challenging constitutionality of the requirement of bond to appeal from conviction in municipal court to the circuit court was filed while plaintiff was still in jail, the prisoner had standing to present it and was a proper representative of class composed of indigent persons who were convicted in the municipal court or other municipal or recorder courts in the state from which they wished to appeal but were unable to do so because of financial inability to post bond. Tucker v. City of Montgomery Bd. of Com'rs, M.D.Ala.1976, 410 F.Supp. 494. Federal Civil Procedure 181

4434. Intervenors, persons entitled to maintain action

Legal aid society and prelaw association, for black members, could not intervene as of right in lawsuit brought by white law school applicants who claimed they were denied positions in entering class because of affirmative action program under which black students with lessor credentials were required to be admitted; even though black groups claimed that state would not represent its interests because it was required to balance those against interests of white population, there was no indication that state would not vigorously defend its own affirmative action program, and blacks could give state benefit of their perspective through serving as friends of court. Hopwood v. State of Tex., C.A.5 (Tex.) 1994, 21 F.3d 603. Federal Civil Procedure 331

An intervenor, in a school desegregation case, seeking relief under remedial provisions of final desegregation order that in part were fashioned by court to protect his rights, has standing to enforce such rights by applying for relief

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to district court presiding over school case, when jurisdiction to enforce remedial provisions of final decree has been retained. Lee v. Pike County Bd. of Ed., C.A.5 (Ala.) 1978, 578 F.2d 1159. Schools 13(18.1)

4435. Insurers and insured, persons entitled to maintain action

Absent any showing that insurers were injured by alleged illegal search and false arrest of third persons, the insurers, complaining that employees of state insurance department directed uniform police officers to position themselves on insurers' premises and search persons entering or leaving the building, had no standing to raise such issues in suit under this section. Safeguard Mut. Ins. Co. v. Miller, E.D.Pa.1979, 477 F.Supp. 299. Civil Rights 1333(4)

Even assuming that there had been adequate state involvement to support claim under this section against named private insurance companies for issuing discriminatory disability insurance policies, holder of policy issued by one insurance company did not have standing to bring civil rights claim against other insurance companies where, even though policyholder consulted independent sales agent before selecting her policy, other companies established that agent had no authority to represent them or represented that he had such authority. Reichardt v. Payne, D.C.Cal.1975, 396 F.Supp. 1010, affirmed in part and remanded 591 F.2d 499, on remand 485 F.Supp. 56. Civil Rights 1331(6)

4436. Job applicants, persons entitled to maintain action

Black resident of Boston, Massachusetts, had no standing to bring action against Governor and heads of 16 state agencies claiming racial discrimination in state's hiring practices where he had himself never applied for employment with any of such agencies. Jackson v. Dukakis, C.A.1 (Mass.) 1975, 526 F.2d 64. Civil Rights 1331(5)

White candidates for newly created positions of community service assistant in human services agencies throughout state of New York had no liberty or property interest in such position such as to give them standing to claim that lack of job-relatedness of examination given for such positions deprived them of substantive due process rights under U.S.C.A.Const. Amend. 14 § 1. Jackson v. Nassau County Civil Service Commission, E.D.N.Y.1976, 424 F.Supp. 1162. Constitutional Law 254.1; Constitutional Law 277(2)

4437. Journalists, persons entitled to maintain action

Newspaper publisher and journalist had standing to bring civil rights action against Governor of Puerto Rico, seeking declaratory and injunctive relief with respect to enforcement of executive order issued by Governor restricting disclosure of public documents; publisher and journalist claimed that order was facially overbroad and that they were presently and would be prospectively subjected to order. El Dia, Inc. v. Hernandez Colon, D.Puerto Rico 1991, 783 F.Supp. 15, reversed on other grounds 963 F.2d 488. Civil Rights 1331(6); Declaratory Judgment 300

4438. Licensees and permittees, persons entitled to maintain action

Owner of entertainment business which had closed lacked standing to assert former patrons' rights in owners § 1983 claim, in which he asserted that conditional use permit disproportionately impacted racial minorities; award of § 1983 compensatory damages to owner could not redress any injury suffered by former patrons. Conti v. City of Fremont, C.A.9 (Cal.) 1990, 919 F.2d 1385. Civil Rights 1332(3)

Owner of adult theater had standing to challenge facial validity of city's public place of amusement license

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requirement, even though owner never sought to comply with licensing procedures; by its terms, license requirement sought to regulate conduct commonly associated with expression (along with nonexpression-related conduct). Admiral Theatre v. City of Chicago, N.D.Ill.1993, 832 F.Supp. 1195. Constitutional Law 42.1(6)

4439. Medicaid or Medicare providers, persons entitled to maintain action

Chain pharmacy, as Medicaid provider, was not intended beneficiary of Social Security Act's Medicaid equal access provision, and thus had no right of action under § 1983 to challenge state's alleged violation of provision consisting of tiered reimbursement of pharmacies for Medicaid-covered prescription drugs, regardless of pharmacy's contention that it challenged reimbursement system not as denial of equal access but as violation of provision's "efficiency, economy, and quality of care" clause. Walgreen Co. v. Hood, C.A.5 (La.) 2001, 275 F.3d 475, certiorari denied 122 S.Ct. 2645, 536 U.S. 951, 153 L.Ed.2d 823. Civil Rights 1052; Civil Rights 1330(6); Health 507

Provider of medical services to qualified Medicare beneficiaries (QMBs) had standing to challenge state's reimbursement rates, in § 1983 action, even though provider did not provide services directly but sold services to nursing homes which provided services to QMBs. Paramount Health Systems, Inc. v. Wright, C.A.7 (Ill.) 1998, 138 F.3d 706, certiorari denied 119 S.Ct. 335, 525 U.S. 929, 142 L.Ed.2d 276, on remand 2000 WL 28264. Civil Rights 1332(6)

Nonprofit organization composed of public and private health care providers had associational standing to bring § 1983 action challenging Virginia's procedures for reimbursing hospitals for cost of treating Medicaid patients. Virginia Hosp. Ass'n v. Baliles, C.A.4 (Va.) 1989, 868 F.2d 653, rehearing denied, certiorari granted in part 110 S.Ct. 49, 493 U.S. 808, 107 L.Ed.2d 18, affirmed 110 S.Ct. 2510, 496 U.S. 498, 110 L.Ed.2d 455. Associations 20(1)

Neither Medicaid beneficiaries nor providers had a claim under § 1983 to enforce the provisions in the Medicaid statute relating to managed care plans; those statutory provisions were addressed to the Secretary of Health and Human Services, were designed to reduce the State's costs, and did not unequivocally confer rights on either providers or beneficiaries. Clayworth v. Bonta, E.D.Cal.2003, 295 F.Supp.2d 1110. Civil Rights 1052

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Federal Medicaid statute requiring that providers, beneficiaries, and their representatives be given reasonable opportunity for review and comment on proposed reimbursement rates, methodologies, and justifications created right enforceable under § 1983 by beneficiaries and providers, in that statute reflected congressional intent to benefit beneficiaries and providers, unambiguously created binding obligation on participating state through its use of mandatory terms, and provided set of clear and understandable requirements that were within judicial competence to enforce. Long Term Care Pharmacy Alliance v. Ferguson, D.Mass.2003, 260 F.Supp.2d 282, vacated 362 F.3d 50. Civil Rights 1052

Health care provider was intended beneficiary of equal access provision of Medicaid Act, so as to have standing to bring § 1983 claim based on that provision. Moody Emergency Medical Services, Inc. v. City of Millbrook, M.D.Ala.1997, 967 F.Supp. 488. Civil Rights 1331(6)

4440. Patients, persons entitled to maintain action

A civil committee cannot seek to overturn his civil commitment proceedings in a civil rights action under §§ 1983

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for damages and injunctive relief. Hubbs v. Alamao, C.D.Cal.2005, 360 F.Supp.2d 1073. Civil Rights 1037

Community Mental Health Center Act, §§ 2689 to 2689aa of this title, embodied Congressional commitment to principle of treatment or habilitation in least restrictive setting, and thus ultimate beneficiaries of §§ 2689 to 2689aa of this title were those persons, such as plaintiffs, mentally retarded children and young adults, who were afforded improved mental health services in their community with concomitantly reduced restraint on their liberty, and thus plaintiffs could state claim for alleged failure of state officials to comply with §§ 2689 to 2689aa of this title, pursuant to this subchapter governing civil action for deprivation of rights inasmuch as they were individuals most directly affected by administration of program. Medley v. Ginsberg, S.D.W.Va.1980, 492 F.Supp. 1294. Civil Rights 1331(6)

Although Code 1950, § 32-423 pertaining to surgical sexual sterilization operated as to physicians, potential recipient of medical treatment had standing to contest constitutionality of statute on ground that it denied equal protection to physicians. Doe v. Temple, E.D.Va.1976, 409 F.Supp. 899. Constitutional Law 42.2(2)

Although plaintiffs, who were patients at several mental institutions, did not have standing as potential employees to challenge employment practices of Alabama Mental Health Board, they did nevertheless, have standing to bring the action because of the secondary effect on plaintiffs as patients of the discrimination against staff personnel. Marable v. Alabama Mental Health Bd., M.D.Ala.1969, 297 F.Supp. 291. Civil Rights 1331(5)

4441. Military officers, persons entitled to maintain action

Air national guard officer was a "citizen of the United States" within meaning of this section authorizing civil action for deprivation of rights. Bollen v. National Guard Bureau, W.D.Pa.1978, 449 F.Supp. 343. Civil Rights 1329

4442. Minors, persons entitled to maintain action

Federal civil rights action was properly dismissed as to minor, who lacked capacity to sue on his own under California law. Johns v. County of San Diego, C.A.9 (Cal.) 1997, 114 F.3d 874.

Minors and their parents had standing to challenge constitutionality of ordinance providing for a daily curfew which had been applied to and enforced against person under circumstances identical to those in which the plaintiffs found themselves at the time of bringing the action, even though none of the plaintiffs had been arrested or fined or threatened with arrest or a fine. Naprstek v. City of Norwich, C.A.2 (N.Y.) 1976, 545 F.2d 815. Municipal Corporations 121

Because child was the one who allegedly suffered a constitutional deprivation and her sexual abuse at the hands of police officer was a wrong directed against her person, rather than her family relationships, mother could only bring suit under Section 1983 on behalf of child and not on her own behalf. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Civil Rights 1332(4)

Neglected and dependent children, through their next friends, may obtain injunctive and declaratory relief for violations of Titles IV and XX of the Social Security Act, sections 601 et seq. and 1397 et seq. of this title. Joseph A. by Wolfe v. New Mexico Dept. of Human Services, D.C.N.M.1982, 575 F.Supp. 346, vacated 69 F.3d 1081, rehearing denied, certiorari denied 116 S.Ct. 1678, 134 L.Ed.2d 781. Declaratory Judgment 300

4443. Mortgagors, persons entitled to maintain action

Mortgagor whose land had been sold pursuant to power of sale contained in the mortgage had no standing to

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maintain a civil rights action against police officer who went upon the premises to advise other occupants that they would be subject to arrest for criminal trespass if they remained on the land following the sale. Dieffenbach v. Buckley, D.C.N.H.1979, 464 F.Supp. 670. Civil Rights 1331(4)

4444. Newspapers, persons entitled to maintain action

Two publishers of newspapers, which reported on proceedings of state government, and professional journalism society had standing to maintain class action against all district attorneys of the state of Alabama and other persons authorized to refuse or grant plaintiffs access to public places or public records, challenging constitutionality of that section of Alabama Ethic Statute requiring reporters who cover the state legislature or state government to file statements of economic interest and to enjoin enforcement of such section. Lewis v. Baxley, M.D.Ala.1973, 368 F.Supp. 768. Federal Civil Procedure 181

4445. Nonminorities, persons entitled to maintain action

Nonminority individual who was sole shareholder of property management company which provided low income housing to minorities had standing to maintain § 1983 claim against town and town officials for selective enforcement in violation of equal protection clause. Pisello v. Town of Brookhaven, E.D.N.Y.1996, 933 F.Supp. 202. Civil Rights 1332(3)

4446. Organizations, persons entitled to maintain action--Generally

It is not fatal to standing of an organization that its members might be in a position to litigate their own claims; so long as nature of the claim and of relief sought does not make individual participation of each injured party indispensable to proper resolution of the cause, the organization may vindicate its members' justiciable claims. International Woodworkers of America, AFL-CIO, CLC v. Chesapeake Bay Plywood Corp., C.A.4 (Md.) 1981, 659 F.2d 1259. Associations 20(1)

4447. ---- Civil rights organizations, persons entitled to maintain action

In view of fact that no state bar disciplinary proceeding could be brought against civil rights organization, organization had no independent standing to challenge disciplinary proceeding against attorney who performed legal services for the organization. American Civil Liberties Union v. Bozardt, C.A.4 (S.C.) 1976, 539 F.2d 340, certiorari denied 97 S.Ct. 639, 429 U.S. 1022, 50 L.Ed.2d 623. Attorney And Client 47.1

School district's alleged policies of transferring gay or lesbian students, and ignoring complaints regarding the safety, harassment, and discrimination against gay and lesbian students, and those perceived to be gay or lesbian, frustrated purpose of organization dedicated to eliminating homophobia and intolerance in schools, and thus, organization had direct standing to bring claims against school district and school officials under § 1983, the California Education Code, and the California Unruh Civil Rights Act. Gay-Straight Alliance Network v. Visalia Unified School Dist., E.D.Cal.2001, 262 F.Supp.2d 1088. Associations 20(1)

Civil rights organization which had as members many persons who were involved in marches in which the marchers were allegedly assaulted by police officers and by bystanders who were encouraged by the police officers had standing to maintain action against the police or city officials. Dunlap v. City of Chicago, N.D.Ill.1977, 435 F.Supp. 1295. Civil Rights 1331(4)

4448. ---- Nonprofit organizations, persons entitled to maintain action

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42 U.S.C.A. § 1983

Nonprofit organization had associational standing to bring §§ 1983 action alleging that New York's system for nominating and electing Supreme Court judges violated political association rights, inasmuch as it was clearly likely that organization's members had suffered concrete injury to their First Amendment rights that was fairly traceable to State's conduct and could be remedied by court action, interests that suit sought to vindicate were germane to organization's purpose of making government more responsive and open to citizens, and neither claim asserted nor injunctive and declaratory relief requested required that organization's individual members participate in suit. Lopez Torres v. New York State Bd. of Elections, C.A.2 (N.Y.) 2006, 462 F.3d 161. Judges 3

Unincorporated not-for-profit organization providing advocacy on behalf of and assistance to day laborers lacked standing to pursue §§ 1983 action against New York village, mayor and police chief on its own behalf, as it had not demonstrated injury in fact caused by defendants' actions; injury complained of was to Latino day laborers by virtue of limitation on their ability to seek work in that village, organization's entire reason for being was to advocate on laborers' behalf, and it offered no evidence of some other type of work it did from which it was diverted by virtue of having to send representatives to that village. Doe v. Village of Mamaroneck, S.D.N.Y.2006, 462 F.Supp.2d 520. Civil Rights 1333(5)

Non-profit corporation which published issue advocacy relating to its stated goal of obtaining recognition and respect for sanctity of human life alleged intention to engage in conduct in apparent violation of Vermont campaign finance reform statutes, which regulated political advertising, and had curtailed or refrained from expressive activity in order to comply with statutes, and thus had standing to bring § 1983 action challenging statutes under First Amendment. Vermont Right to Life Committee, Inc. v. Sorrell, D.Vt.1998, 19 F.Supp.2d 204, reversed 216 F.3d 264, withdrawn from bound volume, amended and superseded 221 F.3d 376, 192 A.L.R. Fed. 615. Civil Rights 1331(6)

Executive director of nonprofit organization, who was not party to contract between organization and Department of Corrections (DOC), did not suffer "injury in fact" sufficient to meet constitutional standing requirements for § 1983 action arising from DOC's allegedly unlawful closure of youthful offender transition program run by organization; most language in complaint alleged injury to organization rather than to director and to extent that complaint contained allegations that director herself suffered injuries, those injuries were premised on organization's claims. North Florida Educational Development Corp. v. Woodham, N.D.Fla.1996, 942 F.Supp. 542 . Civil Rights 1333(4)

Nonprofit corporation that entered into contract with New York State to provide protection and advocacy services to mentally disabled persons had standing to pursue civil rights action against private hospital and physician who initiated involuntary commitment proceedings against patients, even if nonprofit corporation did not personally suffer injury in fact; Protection Advocacy System for Mentally Ill Individuals Act gave corporation the right to pursue legal remedies on behalf of clients. Rubenstein v. Benedictine Hosp., N.D.N.Y.1992, 790 F.Supp. 396. Civil Rights 1332(6)

4449. ---- Political organizations, persons entitled to maintain action

League of Women Voters did not have standing under this section to assert rights of its members in challenging county's weighted voting system for its board of supervisors as unconstitutional. League of Women Voters of Nassau County v. Nassau County Bd. of Sup'rs, C.A.2 (N.Y.) 1984, 737 F.2d 155, certiorari denied 105 S.Ct. 783, 469 U.S. 1108, 83 L.Ed.2d 778. Constitutional Law 42.1(1)

Citizens that had sponsored citizen-initiated amendment to State Constitution, together with organizational sponsor, had standing to bring civil rights action against governor based on governor's alleged violation of First Amendment rights in taking steps to defeat amendment. Colorado Taxpayers Union, Inc. v. Romer, D.Colo.1990, 750 F.Supp. 1041, appeal dismissed 963 F.2d 1394, certiorari denied 113 S.Ct. 1360, 507 U.S. 949, 122 L.Ed.2d 739. Associations 20(1); Civil Rights 1331(1)

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42 U.S.C.A. § 1983

4450. ---- Professional organizations, persons entitled to maintain action

Teachers' association had standing to bring class action on behalf of its black members against school district on account of racial discrimination in salaries, even though it was not an individual member of class it represented particularly since there was an alternative party plaintiff who was a member of class. Arkansas Ed. Ass'n v. Board of Ed. of Portland, Ark. School Dist., C.A.8 (Ark.) 1971, 446 F.2d 763. Federal Civil Procedure 187.5

Organization seeking standing as representative of its members to challenge layoffs of city police officers under the Constitution, sections 1981 and 1985(3) of this title, Title VI of Civil Rights Act of 1964, section 2000d et seq. of this title, this section, and state laws could obtain standing only if neither the claim asserted, nor relief requested, required participation of individual members in lawsuit. N.A.A.C.P., Detroit Branch v. Detroit Police Officers Ass'n (D.P.O.A.), E.D.Mich.1981, 525 F.Supp. 1215.

4451. ---- Religious organizations, persons entitled to maintain action

Evangelist and member of his campus ministry group lacked standing to bring free speech challenge to state university's policy governing solicitation permits, inasmuch as they never applied for permit, after-the-fact application by another member of organization could not confer standing on evangelist and first member, and policy did not unduly restrict First Amendment freedoms or deter third parties from engaging in protected expression. Gilles v. Davis, C.A.3 (Pa.) 2005, 427 F.3d 197. Constitutional Law 42.4

Religious organizations which oversaw broad community service program and sought to maintain presence of church in area and foster and perpetuate individual missions of parishes lacked standing to bring § 1983 action alleging that hospital's shifting of obstetric and pediatric services to another location discriminated against Medicaid patients and on the basis of race. Mussington v. St. Luke's-Roosevelt Hosp. Center, S.D.N.Y.1993, 824 F.Supp. 427, motion to amend denied 1993 WL 319454, affirmed 18 F.3d 1033. Civil Rights 1331(6)

Members of international religious organization who sought to proselytize and solicit donations in public places had standing to maintain action challenging constitutionality of county ordinance which required that persons who wanted to sell or distribute printed or written matter or to engage in any solicitation on county airport premises first secure written permission from the airport director; the members had standing to maintain such action whether or not their conduct could be proscribed by a properly drawn ordinance and whether of not they had ever applied for a permit. International Soc. for Krishna Consciousness, Inc. v. Wolke, E.D.Wis.1978, 453 F.Supp. 869. Constitutional Law 42.2(1)

4452. ---- Voting organizations, persons entitled to maintain action

Association dedicated to increasing political power of the poor and unemployed, but having no members who were not registered to vote, did not have standing to litigate in federal court the question whether U.S.C.A. Const. Amend. 1 required state to permit local election officials to register voters in the state's public aid and unemployment compensation offices. People Organized for Welfare and Employment Rights (P.O.W.E.R.) v. Thompson, C.A.7 (Ill.) 1984, 727 F.2d 167. Civil Rights 1331(6)

Voters' association had standing to bring § 1983 suit challenging state statutory requirement, that no vote cast in forthcoming gubernatorial recall election be counted for any candidate unless the voter also voted on the recall question itself, as a violation of free speech, due process, and equal protection rights. Partnoy v. Shelley, S.D.Cal.2003, 277 F.Supp.2d 1064, as modified on reconsideration. Associations 20(1)

Nonprofit public interest groups did not have standing to join individual plaintiffs in challenge to state's ballot initiative scheme, absent allegations that groups or any of their individual members had been injured by scheme or that they had even been involved in particular initiatives at issue in challenge. Campbell v. Buckley, D.Colo.1998,

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11 F.Supp.2d 1260, affirmed 203 F.3d 738, certiorari denied 121 S.Ct. 68, 531 U.S. 823, 148 L.Ed.2d 33. Declaratory Judgment 305

4453. ---- Miscellaneous organizations, persons entitled to maintain action

Operator of methadone clinic had standing as an individual plaintiff to assert action against township, alleging that state law and township zoning ordinance, prohibiting the establishment of methadone clinics within 500 feet of certain other facilities, and township's denial of operator's change of use permit violated the Americans with Disabilities Act (ADA), the Rehabilitation Act, its due process rights, and its equal protection rights; broad language of enforcement provisions of the ADA and the Rehabilitation Act evidenced Congressional intent to extend standing to the full limits permitted by Article III, and §§ 1983 gave operator standing to seek damages for constitutional violations on its own behalf, so that prudential limits for organizational standing did not apply. Addiction Specialists, Inc. v. Township of Hampton, C.A.3 (Pa.) 2005, 411 F.3d 399. Civil Rights 1331(3)

Animal rights organization that had staged protests at junior high school lacked standing to bring § 1983 First Amendment facial challenge against state statute prohibiting disruption of higher education classes, under which organization's members had been mistakenly threatened with arrest, and lacked standing to bring claim for prospective relief against police officer and others based on mistaken application of statute; organization did not have good chance of being threatened again. PeTA, People for the Ethical Treatment of Animals v. Rasmussen, C.A.10 (Utah) 2002, 298 F.3d 1198. Civil Rights 1333(4)

Citizen's advocacy group met "willingness of speaker" requirement for standing at pleadings stage of § 1983 action to challenge state judge's gag orders issued to parties involved in child custody case, where complaint alleged that foster parents were willing to talk about case at some point prior to gag orders, as evidenced by book they released regarding custody battle, and that judge threatened to remove child from foster parent's home if they discussed case publicly. FOCUS v. Allegheny County Court of Common Pleas, C.A.3 (Pa.) 1996, 75 F.3d 834. Civil Rights 1331(6)

That organization plaintiffs would incur expenses in processing claims of police misconduct unless federal equity court intervened, assuming injury in fact, was not within zone of interests protected by U.S.C.A.Const. Amend. 14 so as to provide organization plaintiffs with a basis for standing to sue as representatives of their members. Calvin v. Conlisk, C.A.7 (Ill.) 1976, 534 F.2d 1251. Constitutional Law 42.3(1)

Private organization created to maintain separation between church and state had standing to contest validity of federal law authorizing grants for library and instructional materials for use of pupils and teachers in public and private, including parochial, schools. Protestants and Other Americans United for Separation of Church and State v. U. S., C.A.6 (Ohio) 1970, 435 F.2d 627, certiorari denied 91 S.Ct. 2277, 403 U.S. 955, 29 L.Ed.2d 865. Constitutional Law 42.1(4)

Organizations representing developmentally disabled individuals had standing to bring § 1983 action against state for violations of Americans with Disabilities Act (ADA), Medicaid Act, and Nursing Home Reform Amendments (NHRA); one organization pled that it was a statewide organization comprised of persons with mental retardation, their parents and friends, and mental retardation professionals, other organization asserted that its funding was determined by Rehabilitation Services Administration (RSA) and that state had impeded organization's funding, and claims were appropriate for class-based adjudication. Rolland v. Cellucci, D.Mass.1999, 52 F.Supp.2d 231. Civil Rights 1332(6)

4454. Partnerships, persons entitled to maintain action

Where partnership which sought to develop low income racially integrated housing had interest in property which it sought to develop, partnership had standing, under this section which creates federal cause of action against

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persons whose misconduct under color of state law violates constitutional rights of another, to challenge public officials action in denying building permits. Gordon v. City of Cartersville, Georgia, N.D.Ga.1981, 522 F.Supp. 753. Civil Rights 1331(3)

4455. Personal representatives, persons entitled to maintain action

Decedent's widow and mother lacked standing to assert violation of decedent's Fourth Amendment rights in § 1983 action, given failure to allege representative capacity in complaint or to introduce any evidence that they were decedent's successors in interest under California law. Byrd v. Guess, C.A.9 (Cal.) 1998, 137 F.3d 1126, certiorari denied 119 S.Ct. 405, 525 U.S. 963, 142 L.Ed.2d 329. Civil Rights 1332(4)

Decedent's brother had standing as personal representative of decedent's estate to bring § 1983 claims for alleged violation of decedent's constitutional rights. Sollars v. City of Albuquerque, D.N.M.1992, 794 F.Supp. 360. Civil Rights 1332(1)

Under this section, citizen's personal representative had standing to bring claim alleging that city police officer-county deputy sheriff wrongfully assaulted and battered and then wrongfully shot and killed citizen, even though officer-deputy asserted that in reality such claim was a wrongful death action which had to be brought by citizen's heirs. Sanchez v. Marquez, D.C.Colo.1978, 457 F.Supp. 359. Civil Rights 1332(4)

4456. Physicians, persons entitled to maintain action

Absent any direct injury to themselves, white doctors lack standing to assert discrimination against black physicians by operation of statutory appointments to Mississippi State Board of Health; white physicians were members of state medical association and did not assert any desire to resign and even requirement of membership in such association as prerequisite to nomination did not create any injury to them; also, that white physicians desired to join as pendent parties to state law claims did not suffice to give them standing as to federal claims. Finch v. Mississippi State Medical Ass'n, Inc., C.A.5 (Miss.) 1979, 594 F.2d 163.

Physicians who were willing to provide medical services to involuntarily sterilized persons and who allegedly were unable to provide adequate service due to alleged refusal to appropriately notify sterilized persons as to their medical status and alternatives lacked standing to bring civil rights action on behalf of those individuals involuntarily sterilized under then existing Virginia involuntary sterilization statute, Acts 1924, c. 394, but not notified of their status. Poe v. Lynchburg Training School and Hospital, W.D.Va.1981, 518 F.Supp. 789. Civil Rights 1331(6)

4457. Political candidates, persons entitled to maintain action

Candidates in primary elections for Illinois seats in United States Senate and House of Representatives had standing to bring § 1983 action challenging constitutionality of statute under which person circulating a nominating petition must be a voter registered in political subdivision for which candidate is seeking office, even though candidates had been able to obtain required number of signatures to be included on ballot; statute caused injury, in that candidates were deprived of solicitors of their choice and required to allocate additional resources to gather signatures, and ability to enjoin enforcement of statute made harm redressable. Krislov v. Rednour, C.A.7 (Ill.) 2000, 226 F.3d 851, certiorari denied 121 S.Ct. 1085, 531 U.S. 1147, 148 L.Ed.2d 960. Civil Rights 1331(6)

Former political candidate had standing to bring § 1983 action alleging that municipal ordinances regulating posting of political signs during her campaign violated her freedom of speech under First Amendment, even though candidate was permitted to post her signs, only one town took action to enforce sign ordinances, and candidate never applied for permit to post her signs, where candidate alleged that threat of enforcement and negative publicity it would have generated discouraged her from posting signs as early in campaign as she would have liked,

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and she was unable to post larger signs and was limited to posting signs at permitted locations only. Sugarman v. Village of Chester, S.D.N.Y.2002, 192 F.Supp.2d 282. Civil Rights 1333(6)

Denial of candidate's petition to be listed as a committeeman candidate in primary election constitutes sufficient aggrievement to grant the candidate standing to sue under this section. Lizak v. Kusper, N.D.Ill.1974, 399 F.Supp. 1270, affirmed 506 F.2d 1405. Civil Rights 1331(6)

Where prospective candidate for United States Senate lacked not only personal resources, but also lacked funds contributed by supporters, to pay fee to political party in order to become candidate at party primary, candidate had standing to challenge constitutionality of party resolution which required payment of fee to the party in order to become candidate at party primary. Harper v. Vance, N.D.Ala.1972, 342 F.Supp. 136. Constitutional Law 42.1(1)

4458. Political subdivisions, persons entitled to maintain action

General preclusion that one political subdivision lacks standing under § 1983 to sue another political subdivision of same state did not deprive county of standing to sue its former county manager, based on alleged conspiracy to deprive county of funds through series of self-dealing transactions, since county was not, in practice, countersuing itself. Naranjo v. County of Rio Arriba, State of N.M., D.N.M.1994, 862 F.Supp. 328. Civil Rights 1331(6)

4459. Prisoners, persons entitled to maintain action--Generally

Inmates of prison at time of uprising lacked standing to challenge actions of state correctional officials by which they influenced decision of state solicitor to oppose issuance of arrest warrants for prosecution of prison guards which prisoners contended had unnecessarily beaten them, where there was no guaranty that issuance of arrest warrant would remedy claimed past misconduct of guards or prevent future misconduct and prisoners had access to judicial procedures to redress any claims wronged. Leeke v. Timmerman, U.S.S.C.1981, 102 S.Ct. 69, 454 U.S. 83, 70 L.Ed.2d 65, rehearing denied 102 S.Ct. 1041, 454 U.S. 1165, 71 L.Ed.2d 322. Civil Rights 1331(4)

Inmate incarcerated at District of Columbia contract facility had standing to bring §§ 1983 equal protection action against United States Parole Commission challenging regulation that effectively denied him representation at his parole hearing while permitting prisoners at federal facilities to be represented, and seeking new hearing; inmate averred that he would have sought counsel if he had been permitted and believed he would have been successful, and, since injury alleged was denial of representation rather than denial of parole, inmate did not have to demonstrate that he would have obtained parole if he had had representation. Settles v. U.S. Parole Com'n, C.A.D.C.2005, 429 F.3d 1098, 368 U.S.App.D.C. 297. Civil Rights 1333(4)

Heck rule, which precluded §§ 1983 actions that would implicitly question the validity of conviction or duration of sentence, did not apply to inmate's challenge of incarceration in detention facility for probation violation in light of district court's order prescribing that he be confined in halfway house for violation, where complaint challenged only fact that he was confined to one facility rather than another and did not challenge fact or duration of confinement. Taylor v. U.S. Probation Office, C.A.D.C.2005, 409 F.3d 426, 366 U.S.App.D.C. 156. Civil Rights 1088(5); Civil Rights 1098

Prisoner seeking damages under § 1983 on claim that visual strip search of his body cavities violated his due process rights did not show that officials' conduct was maliciously and sadistically applied for purpose of causing harm, and thus could not defeat officials' claim of qualified immunity, where officials neither touched prisoner nor subjected him to possible injury. Thompson v. Souza, C.A.9 (Cal.) 1997, 111 F.3d 694. Civil Rights 1376(7)

Inmate who brought civil rights action seeking relief against state prison officials on ground that prison's policy regulating smoking by inmates violated his constitutional rights failed to show that he had standing to sue, since he

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did not allege that he was a smoker. Beauchamp v. Sullivan, C.A.7 (Wis.) 1994, 21 F.3d 789. Civil Rights 1331(4)

Prison inmate did not have standing to assert free speech rights of prison guards relative to prison policy prohibiting guards from communicating directly with parole board on behalf of prisoners; interests of prisoners and guards were not aligned, and no evidence was presented of guards' inability to protect their own rights. Harris v. Evans, C.A.11 (Ga.) 1994, 20 F.3d 1118, certiorari denied 115 S.Ct. 641, 513 U.S. 1045, 130 L.Ed.2d 546. Constitutional Law 42.2(1)

Inmates lacked standing to bring denial of access claims on behalf of inmates in closed housing units, where complaint did not allege that inmates in closed units were prevented from receiving legal assistance or were unable to assert claims themselves. Hamm v. Groose, C.A.8 (Mo.) 1994, 15 F.3d 110, rehearing and suggestion for rehearing en banc denied. Civil Rights 1332(4)

Inmates lacked standing to challenge prohibition against food service employment by inmates testing positive for human immunodeficiency virus (HIV); even if named inmate in class had been identified HIV-positive as early as pleading stage, no named inmate ever stated that he or she was interested in food service job, and no named inmate applied for one. Casey v. Lewis, C.A.9 (Ariz.) 1993, 4 F.3d 1516. Civil Rights 1331(4)

Allegations that prison officials harassed inmate to prevent him from carrying out his duties as prison law clerk merely addressed conditions under which inmate performed his law clerk job and was not cognizable under § 1983; inmate could not assert jus tertii standing in view of fact that prison officials had permitted him to keep his job and could not state claim for relief based on retaliatory conduct since he had not been fired. Hamm v. Moore, C.A.8 (Mo.) 1992, 984 F.2d 890, rehearing denied. Civil Rights 1098; Civil Rights 1331(4)

Prisoner's civil rights claim alleging that arresting officer included false statements in his report and provided that false information to the prosecutor was not cognizable under §§ 1983 where prisoner had not shown that his conviction for robbery in the third degree has been invalidated. Nicholson v. Lenczewski, D.Conn.2005, 356 F.Supp.2d 157. Civil Rights 1088(4); Civil Rights 1088(5)

State inmate's claim that mandatory disclosure provision of prison system's sex offender treatment program violated her right against self-incrimination did not necessarily imply that she would serve shorter sentence, and thus claim was properly raised as §§ 1983 action, rather than as petition for habeas corpus, where inmate primarily sought prospective invalidation of certain policies and procedures of state department of corrections and parole board. Wolfe v. Pennsylvania Dep't of Corrections, E.D.Pa.2004, 334 F.Supp.2d 762. Civil Rights 1098; Habeas Corpus 513

Prisoner did not have standing to pursue claim that his incoming mail had been returned without notification without specifying prison employees whose actions were fairly traceable to actual injury that deprived him of right or privilege secured by Constitution or federal law. Oliver v. Powell, E.D.Va.2002, 250 F.Supp.2d 593. Civil Rights 1333(4); Civil Rights 1395(7)

Prisoner who had been convicted of sexually oriented offense prior to effective date of Ohio's sexual predator registration law, but who had not yet faced sexual predator adjudication hearing, which would be held at undetermined time in future, did not have standing to challenge constitutionality of law, as he could not allege harm to concrete personal interest and could not properly assert violation of constitutional rights personal to unnamed third parties. Miller v. Taft, N.D.Ohio 2001, 151 F.Supp.2d 922, affirmed 22 Fed.Appx. 605, 2001 WL 1631830. Constitutional Law 42.1(3)

Inmate whose four prior in forma pauperis complaints were dismissed as frivolous had standing to challenge constitutionality of "three strikes" provision of Prison Litigation Reform Act (PLRA), under which he was

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precluded from proceeding in forma pauperis in instant § 1983 action; inmate showed that fee requirements imposed by PLRA deprived him of access to court, as he did not have $150 necessary to file civil action. Ayers v. Norris, E.D.Ark.1999, 43 F.Supp.2d 1039. Constitutional Law 42.1(1)

Inmates at United States Disciplinary Barracks lacked standing in civil rights action against Department of Defense (DOD) to challenge conditions of confinement in special housing unit and death row housing, where they were not themselves subject to conditions of confinement in those areas. Amen-Ra v. Department of Defense, D.Kan.1997, 961 F.Supp. 256, affirmed 149 F.3d 1190. Civil Rights 1331(4)

Prison inmate lacked standing to bring civil rights action against sheriff and prison warden challenging prison's medical copayment policy, which required inmates to pay part of cost of their medical care, where inmate did not claim that he requested, was denied, or was charged for medical services under the policy. Hutchinson v. Belt, W.D.La.1996, 957 F.Supp. 97. Civil Rights 1331(4)

Inmate who alleged that he had been, or would be, required to use funds from outside sources to pay for prison services and that this violated his constitutional rights personally suffered some actual or threatened injury to his constitutionally and federally protected rights, such that he had standing to bring § 1983 action alleging that New Jersey regulation defining "indigent inmate" violated equal protection and due process clauses. Robinson v. Fauver, D.N.J.1996, 932 F.Supp. 639. Civil Rights 1333(4)

State inmate's success on §§ 1983 claims that police officers falsified police reports and provided false information at probable cause hearing would imply invalidity of his conviction for drug possession, and therefore *Heck* rule precluding recovery of damages for allegedly unconstitutional conviction or imprisonment, unless conviction or sentence had been reversed, expunged, declared invalid, or called into question, barred inmate's claims, even if inmate's time for filing state motion for postconviction relief had passed. Rogers v. Adams, C.A.8 (Neb.) 2004, 103 Fed.Appx. 63, 2004 WL 1496841, Unreported. Civil Rights 1088(5)

Dismissal of state inmate's § 1983 action, based on inmate's ineligibility to proceed in forma pauperis due to restrictions imposed by Prison Litigation Reform Act (PLRA), did not bar inmate from bringing her claims in a paid complaint. Johnson v. Ashcroft, N.D.Cal.2003, 2003 WL 22384762, Unreported. Federal Civil Procedure 2734

4460. ---- Former prisoners, persons entitled to maintain action

Arrestee who was out on bond at time he was added to complaint did not have standing to file § 1983 suit challenging county justice center's policy of allowing prisoners to make only collect telephone calls; for arrestee to have been placed in detention again, he would have had to fail to appear for scheduled court date on his pending matters, violate conditions of his pretrial release in some other way, or commit some other conduct leading to his arrest. Lynch v. Leis, C.A.6 (Ohio) 2004, 382 F.3d 642, rehearing en banc denied, certiorari denied 125 S.Ct. 1709, 544 U.S. 949, 161 L.Ed.2d 526. Civil Rights 1331(4)

Former prisoner who was no longer in custody, and thus unable to obtain habeas relief, could not recover damages under § 1983 for his alleged unconstitutional confinement, in absence of showing that some authorized tribunal or executive body had overturned or otherwise invalidated his conviction. Randell v. Johnson, C.A.5 (Tex.) 2000, 227 F.3d 300, certiorari denied 121 S.Ct. 1601, 532 U.S. 971, 149 L.Ed.2d 468. Civil Rights 1088(5); Civil Rights 1311

Citizen who had been convicted of various narcotics offenses could bring § 1983 action challenging constitutionality of his convictions, where citizen had been released from custody. Guerrero v. Gates, C.D.Cal.2000, 110 F.Supp.2d 1287. Civil Rights 1088(5)

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42 U.S.C.A. § 1983

4461. Property owners, persons entitled to maintain action

Property owner had standing to assert § 1983 claim under Fourth Amendment against police officers arising from their allegedly unreasonable execution of search warrant at house on property, because officers "seized" her property within meaning of Fourth Amendment, despite owner's lack of reasonable expectation of privacy at house; alleged damage, which included broken doors, mutilated vinyl siding, cracked commode, holes in walls, broken dishes, and trampled personal belongings, rose to level of meaningful interference with owner's possessory interests. Bonds v. Cox, C.A.6 (Tenn.) 1994, 20 F.3d 697. Civil Rights 1331(4)

Property owner had sustained a concrete and immediate injury, as basis for standing to bring §§ 1983 action alleging that city's ordinance requiring inspections of properties to determine if they have sump pumps or other devices making prohibited discharges into city's sanitary sewer system violated Fourth Amendment protection against warrantless searches, though owner's property had not been searched, where owned was being assessed a utility surcharge of $100 per month pursuant to the ordinance because he had failed to comply with ordinance's inspection requirement. Yanke v. City of Delano, D.Minn.2005, 393 F.Supp.2d 874, affirmed 171 Fed.Appx. 532, 2006 WL 708915. Civil Rights 1333(3)

Inmate lacked standing to bring § 1983 action alleging that defense counsel and Pennsylvania officials conspired to cause forfeiture of property owned by his wife; inmate failed to allege that he owned forfeited property, and, although he claimed equitable interest in property because it belonged to his wife, such interest did not alone establish ownership under Pennsylvania law for purposes of forfeiture challenge. Stocker v. Hood, E.D.Pa.1996, 927 F.Supp. 871. Conspiracy 7

Plaintiff, who stated in amended complaint that he was equitable owner of property in respect to which defendants in civil rights action had allegedly blocked efforts to obtain a permit to build an indoor roller skating rink, and who had attached a copy of sales agreement to amended complaint with respect to his purchase of property, had standing to bring action over assertion that he was not actual owner of property and, hence, had not suffered any threatened or actual injury as a result of alleged illegal action. Riccobono v. Whitpain Tp., E.D.Pa.1980, 497 F.Supp. 1364. Civil Rights 1388

Where property owner had been charged with criminal acts under challenged municipal ordinances and threat of future similar charges remained, property owner sufficiently pleaded an "injury" so that he did have standing to seek redress for damages allegedly caused by defendant housing inspectors, policemen, and city, despite city's dismissal of criminal suit. Weisdorffer v. Tufaro, E.D.La.1980, 492 F.Supp. 261. Municipal Corporations 121

Ex-wife who, pursuant to divorce decree, was awarded car free and clear of any interest held by ex-husband, but who failed to take the necessary steps to transfer car's certificate of title from ex-husband's name to her name had a sufficient interest in the car to provide her with standing to sue under § 1983 for violation of her property rights as protected under the Fourteenth Amendment, stemming from sheriff department's allegedly wrongful towing of her car; although car was not titled in ex-wife's name, ex-wife was clearly the primary operator of the car and had enforceable ownership interest in the car. Petty v. Board of County Com'rs of County of Wyandotte, Kan., D.Kan.1996, 168 F.R.D. 46. Civil Rights 1331(4)

In action brought by landowner against county brought pursuant to §§ 1983 alleging county violated his substantive due process and equal protection rights by requiring, in bad faith, proof of legal access to his property prior to processing any land use applications, allegations that if the county had been successful in depriving landowner of access to his property, it would have reduced the value of the property, claimed injuries that were conjectural and hypothetical, and therefore insufficient to provide a basis for standing. Heath v. Board of County Comr's of Boulder County, C.A.10 (Colo.) 2004, 92 Fed.Appx. 667, 2004 WL 304341, Unreported. Civil Rights 1333(3)

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42 U.S.C.A. § 1983

4462. Public aid recipients, persons entitled to maintain action--Generally

Public housing applicant challenging site selection process for housing project that excluded site in nonracially impacted area sufficiently asserted direct injury as result of discriminatory county policy barring consideration of alternative site to have standing to maintain civil rights claims under §§ 1982 and 1983. Jackson v. Okaloosa County, Fla., C.A.11 (Fla.) 1994, 21 F.3d 1531. Civil Rights 1333(3)

Individual recipients of Aid to Families With Dependent Children (AFDC) have standing to bring private action against state under § 1983 to enforce their right to prompt disbursement of their child support entitlements under the Social Security Act. Albiston v. Maine Com'r of Human Services, C.A.1 (Me.) 1993, 7 F.3d 258. Civil Rights 1331(6)

Applicants eligible for expedited issuance of food stamps as residents of desperately poor households, if not vested with a private right of action under Food Stamp Act, were vested with standing under civil rights statute to seek declaratory and injunctive relief against alleged failure of program administrator to allow and encourage all prospective applicants to apply for benefits when they first entered a food stamp office and to effectuate rights of applicants to expedited issuance. Harley v. Lyng, E.D.Pa.1986, 653 F.Supp. 266. Declaratory Judgment 292

4463. ---- Medicaid or Medicare, public aid recipients, persons entitled to maintain action

Medicaid beneficiaries had a cause of action under § 1983 to enforce quality and access provisions of Medicaid statute; however, Medicaid providers had no such right of enforcement, given that economy, efficiency, quality, and equal access provisions did not evince an intent to benefit providers. Clayworth v. Bonta, E.D.Cal.2003, 295 F.Supp.2d 1110. Civil Rights 1330(6)

Medicaid beneficiaries had a cause of action under § 1983 to enforce quality and access provisions of Medicaid statute; however, Medicaid providers had no such right of enforcement, given that economy, efficiency, quality, and equal access provisions did not evince an intent to benefit providers. Clayworth v. Bonta, E.D.Cal.2003, 295 F.Supp.2d 1110. Civil Rights 1330(6)

Individual plaintiffs had standing to bring § 1983 action alleging that hospital's reduction of obstetric and pediatric services discriminated against Medicaid patients and on basis of race; plaintiffs claimed that lowered level or elimination of service will lessen health resources available to them, which resources were likely to be needed by plaintiffs in the near future. Mussington v. St. Luke's-Roosevelt Hosp. Center, S.D.N.Y.1993, 824 F.Supp. 427, motion to amend denied 1993 WL 319454, affirmed 18 F.3d 1033. Civil Rights 1331(6)

Class of patients eligible for Medicaid assistance could not maintain cause of action under civil rights statute, § 1983, against city officials responsible for alleged deficiencies in standard of care afforded at municipal hospital which was an accredited health care provider under state's approved Medicaid plan; patients could not seek relief in terms of "necessary, adequate and timely" health care where no statute or regulation used such phrase and it was used by patients to synthesize the requirements of various federal and state standards for Medicaid care, and none of the specific statutes invoked unambiguously conferred rights as against the municipal defendants. Evelyn V. v. Kings County Hosp. Center, E.D.N.Y.1993, 819 F.Supp. 183. Civil Rights 1052

4464. Publishers, persons entitled to maintain action

For purposes of section 1983 liability, municipal policy may be inferred from the informal acts or omissions of supervisory municipal officials; where a municipality has notice of a pattern of constitutionally offensive acts by its employees, but fails to take any remedial steps in response, the municipality may be held liable for similar subsequent acts, if the inaction is determined to have been the result of "deliberate indifference" or "tacit authorization" of the offensive acts--in effect, an unlawful municipal policy of ratification of unconstitutional

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conduct. Brewster v. Nassau County, E.D.N.Y.2004, 349 F.Supp.2d 540. Civil Rights 1352(1); Civil Rights 1401

Although ban of sale of internationally distributed magazine was not initiated directly against magazine publisher as removal of magazine from airport newsstands was due to contract between city and concessionaire of airport newsstands, where magazine publisher, nonetheless, experienced some palpable injury as the result of removal of magazine from newsstands, publisher had requisite "locus standi" to proceed with action seeking to enjoin enforcement of concession agreement between city and concessionaire. Penthouse Intern. LTD. v. Putka, N.D.Ohio 1977, 436 F.Supp. 1220. Injunction 114(2)

4465. School officials, persons entitled to maintain action

Where defendant college officials claimed that representative plaintiffs were not disciplined by the college and, hence, lacked standing to bring suit under this section complaining of alleged due process violations in disciplinary proceedings but plaintiffs controverted such and claimed that the named plaintiffs were either placed on probation or reprimanded, such sufficiently stated distinct and palpable injury so as to confer standing. Jackson v. Hayakawa, C.A.9 (Cal.) 1979, 605 F.2d 1121, certiorari denied 100 S.Ct. 1601, 445 U.S. 952, 63 L.Ed.2d 787. Civil Rights 1331(2)

Dean of school which offered graduate programs in science with creationist and Christian interpretation and student at school had standing to bring civil rights action against state agencies after school was notified that it was not authorized, in that alleged deprivation of constitutional rights under color of state law could have directly damaged dean and student in their ability to teach and learn free from religious interference. ICR Graduate School v. Honig, S.D.Cal.1991, 758 F.Supp. 1350. Civil Rights 1331(3)

4466. School organizations, persons entitled to maintain action

Court of appeals reversed district court's finding of lack of standing for honor society to the Department of Health, Education and Welfare [now Department of Education] in light of University's admission that but for Department's actions, society would not have been excluded from campus activities. Iron Arrow Honor Soc. v. Califano, C.A.5 (Fla.) 1979, 597 F.2d 590, on remand 499 F.Supp. 496. Civil Rights 1331(2); Colleges And Universities 10; Federal Civil Procedure 131; Federal Civil Procedure 147

Interests that organization dedicated to eliminating homophobia and intolerance in schools sought to protect, which included students' safety, and ending taunting, humiliation and discrimination by students, teachers, counselors and administrators within school district, was germane to the organization's purpose of fighting intolerance, homophobia, and discrimination against gay and lesbian students, as required to confer associational standing to bring claims under § 1983, the California Education Code, and the California Unruh Civil Rights Act. Gay-Straight Alliance Network v. Visalia Unified School Dist., E.D.Cal.2001, 262 F.Supp.2d 1088. Associations 20(1)

4467. Schools and universities, persons entitled to maintain action

Higher Education Act was intended to benefit students, not private vocational school, so school could not state proper § 1983 claim against officials of state student aid commission who discontinued students' access to loans under particular loan program by revoking school's eligibility to participate in the program, in alleged violation of the Act. Dumas v. Kipp, C.A.9 (Cal.) 1996, 90 F.3d 386. Civil Rights 1070

State university, as creature of state, lacked standing to sue or to seek to enjoin State Board of Education under

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civil rights statute and Fourteenth Amendment. U.S. v. State of Ala., C.A.11 (Ala.) 1986, 791 F.2d 1450, rehearing denied 796 F.2d 1478, certiorari denied 107 S.Ct. 1287, 479 U.S. 1085, 94 L.Ed.2d 144. Civil Rights 1331(2)

School district was not an "other person" who could sue agency of its creating state under § 1983; § 1983 was enacted as civil remedy for all individual citizens and people whose constitutional rights have been deprived under color of state law and allowing state or one of its political subdivisions to bring suit under § 1983 effectively turns the statute on its head. Barbara Z. v. Obradovich, N.D.Ill.1996, 937 F.Supp. 710. Civil Rights 1332(2)

University of Denver, which is a private educational institution of higher learning and which is operated by a corporation chartered pursuant to an Act of the Colorado Territorial Legislature, is a "citizen or other person" entitled to bring an action under this section and, hence, was entitled to bring a suit under this section against college athletic association; likewise, the defendant, which is a voluntary, unincorporated association of colleges and universities and which was created to maintain intercollegiate athletics as an integral part of the educational program, was a "person" subject to suit under this section. Colorado Seminary (University of Denver) v. National Collegiate Athletic Ass'n, D.C.Colo.1976, 417 F.Supp. 885, affirmed 570 F.2d 320. Civil Rights 1331(2); Civil Rights 1337

4468. States, persons entitled to maintain action

State had constitutional standing to appeal district court's continuation of injunctive relief, in § 1983 class action alleging that overcrowding at county jail resulted in cruel and unusual punishment, which included requiring state to remove transferable prisoners from jail within certain time period, because state had personal stake in outcome that amounted to injury in fact, and both causation and redressability requirements of standing were satisfied because injunctions precipitated state law violations, while termination of injunctions would end them. Castillo v. Cameron County, Tex., C.A.5 (Tex.) 2001, 238 F.3d 339. Federal Courts 544

Agency designated by state to provide protection and advocacy services to disabled and mentally ill individuals had standing to bring § 1983 action to enforce its rights under Protection and Advocacy for Mentally Ill Individuals Act (PAMII) against commissioner of state corrections department, despite contention that it was illogical for state agency to sue another state member; agency had representative function, and thus was entrusted with protecting civil rights of individuals with mental illness. Protection & Advocacy For Persons With Disabilities v. Armstrong, D.Conn.2003, 266 F.Supp.2d 303, 191 A.L.R. Fed. 661. Civil Rights 1332(4)

Commonwealth of Pennsylvania had standing to bring civil rights suit against policeman and borough officials alleging repeated civil rights violations in order to protect constitutional rights of Commonwealth's citizens. Com. of Pa. v. Porter, W.D.Pa.1979, 480 F.Supp. 686, affirmed in part, reversed in part on other grounds 659 F.2d 306, certiorari denied 102 S.Ct. 3509, 458 U.S. 1121, 73 L.Ed.2d 1383. Civil Rights 1331(1)

State is not a "citizen" or "person" within meaning of this section or § 1985 of this title. Buda v. Saxbe, E.D.Tenn.1974, 406 F.Supp. 399.

4469. Students, persons entitled to maintain action

Plaintiff, a former high school student, lacked standing to seek injunctive relief on his § 1983 claim alleging that dog sniff of students at public high school violated Fourth Amendment, since plaintiff was no longer a student at high school or at any other school in defendant school district, he had not been a student at high school since time of dog sniff incident, and he had no plans to return to school anywhere in the district. B.C. v. Plumas Unified School Dist., C.A.9 (Cal.) 1999, 192 F.3d 1260. Civil Rights 1331(2)

University student lacked standing to bring § 1983 action against university for handicap discrimination, based on

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university's failure to offer free handicap parking permits on campus, where student had not actually applied for free handicap parking permit, even though university parking policies did not comply with Rehabilitation Act; university was willing to adjust its parking policy once Office of Civil Rights (OLR) determined that policy conflicted with Act, and thus court would not presume that university was unwilling to waive or change existing policies had student made concrete request for free parking. Madsen v. Boise State University, C.A.9 (Idaho) 1992, 976 F.2d 1219. Civil Rights 1333(2)

Class of Mexican-American students had standing to complain of, and a private cause of action for relief from, alleged discrimination by school district in hiring and promotion of teachers and staff under Equal Educational Opportunities Act, § 1701 et seq. of Title 20, and under this section. Castaneda v. Pickard, C.A.5 (Tex.) 1981, 648 F.2d 989. Civil Rights 1070; Civil Rights 1331(5)

Student members of homosexual organization which had sought and been denied official registration as a student organization at a state university had standing to bring suit challenging the denial of recognition. Gay Student Services v. Texas A & M University, C.A.5 (Tex.) 1980, 612 F.2d 160, rehearing denied 620 F.2d 300, certiorari denied 101 S.Ct. 608, 449 U.S. 1034, 66 L.Ed.2d 495. Declaratory Judgment 300

Illegal alien who had not yet applied for admission at two Virginia post-secondary educational institutions had standing to challenge as unconstitutional their policy of denying admission to illegal aliens or persons they believed to have an "illegal," "unlawful," or "undocumented" immigration status, where alien had concrete plans to apply for admission to both those institutions in less than a year's time. Equal Access Educ. v. Merten, E.D.Va.2004, 305 F.Supp.2d 585. Constitutional Law 42.1(4)

In order for applicant to law school to have standing to challenge minority admissions program, he would be required to show either that he possessed the qualifications to have been admitted if there were only a single admissions program or that he was prohibited from competing for any of the minority program seats simply because of his race. Doherty v. Rutgers School of Law-Newark, D.C.N.J.1980, 487 F.Supp. 1291, affirmed 651 F.2d 893. Civil Rights 1402

Negro plaintiffs, who were refused admission to barber school on basis of their race, and who brought suit seeking injunctive relief with respect to such refusal, also had standing to challenge refusal of school to accept black patrons as customers of practical skills department. Grier v. Specialized Skills, Inc., W.D.N.C.1971, 326 F.Supp. 856. Action 53(1); Constitutional Law 42.3(1)

State university students who paid out-of-state tuition had standing to bring action against university system and commissioner of higher education challenging schools' state residency policies under §§ 1983, where system and commissioner had duty to create and enforce residency presumptions in accordance with constitutional requirements and participation in creating residency requirements created causal connection to students' alleged injuries. Young v. Crofts, C.A.9 (Mont.) 2006, 162 Fed.Appx. 712, 2006 WL 44452, Unreported. Civil Rights 1333(2)

Civil rights plaintiffs, who were state university students who paid out-of-state tuition but who claimed that they would have qualified for in-state status, were not deprived of standing by fact that they failed to make a formal application for residency status; although those students' constitutional rights were not violated by the act of the university defendants rejecting their applications, the defendants might still be liable if, for example, they instituted an unconstitutional policy, or if they knew that their subordinates were acting unconstitutionally and failed to prevent their acts, and that policy or those acts led reasonable students to conclude that application for residency status would be denied. Young v. Crofts, C.A.9 (Mont.) 2003, 64 Fed.Appx. 24, 2003 WL 1875504, Unreported. Colleges And Universities 9.20(2)

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42 U.S.C.A. § 1983

4470. Taxpayers, persons entitled to maintain action

Taxpayers did not have standing, under § 1983, to raise Free Exercise challenge to state's use of public funds to provide abortions to low-income women, despite contention that taxpayers sought to enforce Medicaid statute as amended by Hyde Amendment; taxpayers were not intended beneficiaries of amendment, in that they did not seek Medicaid reimbursement or medical services, and, even if taxpayers were beneficiaries of Hyde Amendment, amendment concerned only expenditure of federal funds and not state funds at issue in claim. Tarsney v. O'Keefe, C.A.8 (Minn.) 2000, 225 F.3d 929, certiorari denied 121 S.Ct. 1364, 532 U.S. 924, 149 L.Ed.2d 292. Constitutional Law 42.3(2)

White taxpayer of territory was not entitled to injunction against disposal of public moneys, appropriated for care of dependent children, their mothers, and certain aged residents of territory and relief of destitution, on ground of unconstitutional discrimination against Indians and Eskimos, excepted by the law providing for expenditure of such appropriations; plaintiff not being injured as taxpayer. Demmert v. Smith, C.C.A.9 (Alaska) 1936, 82 F.2d 950. Territories 29

Municipal taxpayers and residents, who failed to allege that they sustained actual injury as result of city's sale of school to religious organization for one dollar, lacked standing to challenge the sale on ground that city's alleged subsidization of one religious group resulted in differential treatment of that religious group vis-a-vis all other persons within the city. Annunziato v. New Haven Bd. of Aldermen, D.C.Conn.1982, 555 F.Supp. 427. Federal Civil Procedure 103.7; Municipal Corporations 990

Negro citizen taxpayer with domicile in parish school district, who was suing on her own behalf and others similarly situated without alleging that she had any children attending the public or private schools, that she had any connection with the schools or that she had suffered financial damage of any kind, did not have sufficient standing to bring suit to enjoin parish school board from lending free public school textbooks to children attending private schools; leasing publicly owned buildings to private schools; and providing free bus transportation for students attending private schools. Brown v. Lutz, E.D.La.1970, 316 F.Supp. 1096. Schools 111

4471. Teachers, persons entitled to maintain action

Claims contesting directly motives and procedures surrounding local school board's decision not to rehire two teachers were properly litigated not by the students, whose injury was highly attenuated, but by the teachers who suffered the harm. Zykan v. Warsaw Community School Corp., C.A.7 (Ind.) 1980, 631 F.2d 1300. Schools 147.31

A public school teacher who was discharged or denied tenure because of the exercise of U.S.C.A.Const. Amend. 1 rights may maintain an action under this section. Manchester v. Lewis, C.A.6 (Mich.) 1974, 507 F.2d 289. Civil Rights 1244

Black teachers were entitled to seek relief from allegedly racially motivated nonrenewals of their teaching contracts. Sparks v. Griffin, C.A.5 (Tex.) 1972, 460 F.2d 433.

Teacher did not, based upon her approval of student's project to publish independent newspaper, have independent or third-party standing to assert First Amendment claim relating to shutting down of newspaper and alleged retaliatory conduct. Moody v. Jefferson Parish School Bd., E.D.La.1992, 803 F.Supp. 1158, affirmed 2 F.3d 604. Civil Rights 1332(2); Civil Rights 1332(5)

4472. Tenants, persons entitled to maintain action

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Tenant had standing to challenge adults-only rental policy of apartment under this section and U.S.C.A.Const. Amend. 14 on ground that it violated his right to raise family and discriminated against families with children. Halet v. Wend Inv. Co., C.A.9 (Cal.) 1982, 672 F.2d 1305. Civil Rights 1331(3)

Persons, who asserted they had been displaced and represented four classes of low-income Negroes and Puerto Ricans who also had been subject to discrimination in connection with city urban renewal project which allegedly displaced persons within area without making adequate provision for low income housing elsewhere, had clear standing to sue since the stake in outcome of case of individual plaintiffs was immediate and personal. Norwalk CORE v. Norwalk Redevelopment Agency, C.A.2 (Conn.) 1968, 395 F.2d 920. Federal Civil Procedure 147

White tenants who operated nightclub had standing to bring civil rights action against landlords based on landlords' alleged racially discriminatory actions which drove away black patrons of nightclub, hampered tenants' efforts to conduct their business, and caused tenants economic loss. Yesteryears, Inc. v. Waldorf Restaurant, Inc., D.Md.1989, 730 F.Supp. 1341. Civil Rights 1331(3)

4473. Unincorporated associations, persons entitled to maintain action

Unincorporated association, though possessed of a capacity to sue and be sued under law of Virginia, lacked standing to maintain civil rights action on its own behalf and on behalf of class it purported to represent, where complaint, though alleging that members of association had been injured, failed to allege that association itself had suffered either an injury in fact or a deprivation of any constitutionally protected right. Richmond Black Police Officers Ass'n v. City of Richmond, E.D.Va.1974, 386 F.Supp. 151. Federal Civil Procedure 165

4474. Unions, persons entitled to maintain action

If union members were subject to unlawful arrest and intimidation for engaging in union organizational activity protected by U.S.C.A.Const. Amend. 1, union's capacity to communicate was unlawfully impeded and union in such case had standing to complain of arrests and intimidation and to bring action under this section. Allee v. Medrano, U.S.Tex.1974, 94 S.Ct. 2191, 416 U.S. 802, 40 L.Ed.2d 566. Civil Rights 1331(5)

Individual fire fighters' union members lacked standing to argue that disputed provision of labor agreement violated their free speech rights as individual fire fighters; provision by its plain terms applied only to union and not to its individual members and, even if individual members made showing that provision might chill their freedom of expression when they speak as union representatives, they made no showing that provision inhibited their freedom to speak as individuals. Leonard v. Clark, C.A.9 (Or.) 1993, 12 F.3d 885, as amended. Labor And Employment 1323

Only those police officers who personally engaged in any union-related activity stated claim under § 1983 for retaliation for participation in union activity. Bradshaw v. Township of Middletown, D.N.J.2003, 296 F.Supp.2d 526, affirmed 145 Fed.Appx. 763, 2005 WL 2077137. Civil Rights 1244

Police collective bargaining representative had standing to pursue in civil rights action claims that exercise of its own First Amendment rights had been chilled by harassment and retaliation against its primary advocate, its president. Broderick v. City of Boston, D.Mass.1991, 755 F.Supp. 482. Civil Rights 1331(5)

4475. Veterans, persons entitled to maintain action

Veteran, whose application for benefits under Massachusetts veterans services program was denied on the ground that he failed to meet the durational residence requirement, had standing, by virtue of injury in fact, to maintain action seeking to declare invalid and enjoin operation of durational residence requirement as condition to receipt of such benefits. Strong v. Collatos, D.C.Mass.1978, 450 F.Supp. 1356, affirmed 593 F.2d 420. Federal Civil

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42 U.S.C.A. § 1983

Procedure 103.2

4476. Voters, persons entitled to maintain action

Petitioners who do not claim to be newly arrived residents of state and did not claim that they had moved from one county to another or even that they had changed their residence at all within relevant period could not represent class to which they did not belong and lacked standing to assert that New York voter registration requirement established durational residence requirement which was unconstitutional and violated right to travel. Rosario v. Rockefeller, U.S.N.Y.1973, 93 S.Ct. 1245, 410 U.S. 752, 36 L.Ed.2d 1, rehearing denied 93 S.Ct. 1920, 411 U.S. 959, 36 L.Ed.2d 419. Constitutional Law 42.3(1)

Residents of certain counties in the state, allegedly qualified to vote for members of the General Assembly representing counties in which they resided, suing on their own behalf and on behalf of all qualified voters of their respective counties and in behalf of all voters of the state similarly situated, had standing to maintain a suit in federal court for a declaration that a state statute effected an apportionment that deprived plaintiffs of equal protection. Baker v. Carr, U.S.Tenn.1962, 82 S.Ct. 691, 369 U.S. 186, 7 L.Ed.2d 663, on remand 206 F.Supp. 341 . Constitutional Law 42.1(1)

Negro against whom county election officials discriminated, acting under color of 26 Okl.St.Ann. § 74, which inherently operated discriminatorily against negroes, would be entitled to sue under this section notwithstanding that negro asserted that said § 74 was unconstitutional as against contention that on assumption of invalidity of that section there was no statute under which negro could register, and hence that no right to registration had been denied. Lane v. Wilson, U.S.Okla.1939, 59 S.Ct. 872, 307 U.S. 268, 83 L.Ed. 1281.

Plaintiffs who filed complaint in 1966 on basis of 1960 census data showing that Chicago residents constituted 69.22% of population of Cook County, and who alleged that their votes for members of Cook County Board of Commissioners were being unconstitutionally debased and diluted in violation of the "one-man, one-vote" principle, lacked standing to seek vindication of rights they asserted, where plaintiffs lived in Chicago and where 1970 census data, available prior to disposition of appeal from dismissal of complaint, showed that only 61.23% of population of Cook County then resided in Chicago whose voters elected 66.67% of membership of the County Board. Skolnick v. Board of Com'rs of Cook County, C.A.7 (Ill.) 1970, 435 F.2d 361. Constitutional Law 42(2)

Voters' association had standing to bring § 1983 suit challenging state statutory requirement, that no vote cast in forthcoming gubernatorial recall election be counted for any candidate unless the voter also voted on the recall question itself, as a violation of free speech, due process, and equal protection rights. Partnoy v. Shelley, S.D.Cal.2003, 277 F.Supp.2d 1064, as modified on reconsideration. Associations 20(1)

4477. Miscellaneous persons, persons entitled to maintain action

Former nightclub owners had standing to bring § 1983 suit against city alleging that city's efforts against the club under the city's public nuisance abatement ordinance were designed to prevent them from playing the music of their choice, in violation of their First Amendment free expression rights. RK Ventures, Inc. v. City of Seattle, C.A.9 (Wash.) 2002, 307 F.3d 1045. Civil Rights 1331(6)

Manufacturer of arcade "crane" amusement game had standing to challenge city's license revocations and blanket ban against issuance of new licenses for the game on ground that city policies were destroying market for crane games in area. Wedges/Ledges of California, Inc. v. City of Phoenix, Ariz., C.A.9 (Ariz.) 1994, 24 F.3d 56.

Complainant did not have standing to bring civil rights action against Oklahoma Bar Association, its executive director, general counsel, assistant general counsel, and two members of Professional Responsibility Commission

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(PRC), and also lacked standing to appeal dismissal of that action, which related to disposition of grievance against attorney, since the only person who stands to suffer direct injury in disciplinary proceeding is lawyer involved. Doyle v. Oklahoma Bar Ass'n, C.A.10 (Okla.) 1993, 998 F.2d 1559. Civil Rights 1331(6)

Two plaintiffs had standing to challenge city's parking regulations though they had already paid their fines, where entire thrust of complaint was that the parking regulations were unconstitutional on their face and plaintiffs were seeking damages as well as injunctive and declaratory relief. Friedman v. Beame, C.A.2 (N.Y.) 1977, 558 F.2d 1107. Municipal Corporations 122

Litigant's allegations that state officials fabricated evidence on which to base unauthorized practice of law complaint against non-attorney who purportedly assisted her in § 1983 suit, and then initiated subpoena against litigant without any objective basis to do so, were sufficient to confer standing on litigant to bring § 1983 suit against state officials based on alleged interference with her First Amendment association rights. McCormick v. City of Lawrence, Kansas, D.Kan.2003, 253 F.Supp.2d 1156. Civil Rights 1331(6)

Allegation by litigant's husband that assistant state attorney general threatened his wife not to obtain help from him on her § 1983 suit was sufficient to confer standing on husband to bring suit against official for violation of his First Amendment right to associate with his wife, even though threat was not told to him directly. McCormick v. City of Lawrence, Kansas, D.Kan.2003, 253 F.Supp.2d 1156. Constitutional Law 42.2(1)

Beneficiaries of public land trust under Hawaii's Admissions Act have standing to bring § 1983 action against trustees of that trust for breach of trust. Arakaki v. Cayetano, D.Hawai'i 2002, 299 F.Supp.2d 1090, reconsideration denied 299 F.Supp.2d 1107, affirmed on other grounds 423 F.3d 954, vacated 2006 WL 295202, certiorari denied 2006 WL 558422, reconsideration denied 299 F.Supp.2d 1114, reconsideration denied 299 F.Supp.2d 1129. Civil Rights 1331(3)

Shopkeeper whose store was located near site of public festival which was cancelled by police due to its size lacked standing to bring federal civil rights action alleging that actions of police in using rubber bullets, batons, and nightsticks to disperse crowd violated liberty interests of persons attending festival; shopkeeper did not allege that he or his employees were dispersed from festival, and persons who may have been subjected to police conduct had ability to file suit to protect their own interests. Cevallos v. City of Los Angeles, C.D.Cal.1996, 914 F.Supp. 379. Civil Rights 1332(4)

Virginia Department of Corrections (VDOC) is not person amenable to § 1983 suit. Staples v. Virginia Dept. of Corrections, E.D.Va.1995, 904 F.Supp. 487. Civil Rights 1348

Both director and associate director of Rhode Island Department of Elderly Affairs were "persons" under § 1983 potentially liable for monetary damages. Tang v. State of R.I., Dept. of Elderly Affairs, D.R.I.1995, 904 F.Supp. 55. Civil Rights 1360

Rooker-Feldman doctrine did not bar homeowners' § 1983 action alleging that city building code inspectors violated their constitutional rights by entering their house, removing them and their cats, and ordering them to vacate house pending cleanup, despite state court judgment finding that homeowners violated an animal control ordinance and requiring them to reimburse city for expense of removing and destroying cats, where damages sought by owners were not for cats' removal, but for acts unrelated to ordinance violation, including their seizure and civil commitment. Bielenberg v. Griffiths, C.A.7 (Ill.) 2003, 61 Fed.Appx. 293, 2003 WL 1342989, Unreported, rehearing denied. Courts 509

Purported property owner's sister-in-law, who stopped and got out of her car when she saw another person on the property, had standing to bring civil rights action against various law enforcement officials who allegedly refused to protect her from the person after he allegedly yelled and swore at her. Brown v. Millard County, C.A.10 (Utah)

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2002, 47 Fed.Appx. 882, 2002 WL 31105253, Unreported. Civil Rights 1331(4)

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4501. Parties generally

There is no longer a need to bring official-capacity actions against local government officials, because under Monell, local government officials can be sued directly under § 1983 for damages and injunctive or declaratory relief. Kentucky v. Graham, U.S.Ky.1985, 105 S.Ct. 3099, 473 U.S. 159, 87 L.Ed.2d 114, on remand 791 F.2d 932 . Civil Rights 1386

Denial of plaintiff prison inmate's motion to proceed under pseudonym, in § 1983 action alleging that defendant corrections official had denied inmate funds for transportation and medical expenses for abortion services, was not abuse of discretion, where district court adequately weighed inmate's claimed right to privacy against public interest, and inmate's identity was already known to defendant, state corrections agency, and staff. M.M. v. Zavaras, C.A.10 (Colo.) 1998, 139 F.3d 798. Federal Civil Procedure 101

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42 U.S.C.A. § 1983

Government bodies are persons who can be sued directly under section 1983. Terry Properties, Inc. v. Standard Oil Co. (Ind.), C.A.11 (Ala.) 1986, 799 F.2d 1523. Civil Rights 1343

Former police officer's wrongful termination claim under § 1983 against borough's manager and former police chief, in their official capacities, would not be dismissed as redundant on ground that such claims were functionally same as claim against borough, where dismissal of official capacity claims would serve no laudable purpose given that officials were also sued in their individual capacities. Capresecco v. Jenkintown Borough, E.D.Pa.2003, 261 F.Supp.2d 319. Federal Civil Procedure 675.1

4502. Amicus curiae, parties generally

In civil rights action brought by a corporate educational association and four of its member-teachers challenging constitutionality of statute forfeiting salary increases of teachers who participated in certain types of activity, it would not be proper to allow the association to participate as a party plaintiff where there was no claim that the association itself suffered injury or that the members' rights sought to be protected were such that they would be compromised if the members themselves sought to protect those rights; rather, the association's participation would be considered as that of an amicus curiae. Alabama Ed. Ass'n v. Wallace, M.D.Ala.1973, 362 F.Supp. 682. Civil Rights 1390

4503. Guardians ad litem, parties generally

Father, who was also conditionally appointed as guardian ad litem, could not bring federal civil rights action on minor son's behalf without retaining lawyer; it was not in minor's best interests to be represented by non-attorney, and father, as non-attorney, lacked authority to appear as attorney for others than himself. Johns v. County of San Diego, C.A.9 (Cal.) 1997, 114 F.3d 874. Attorney And Client 11(2.1)

In view of the possibility that the interests of parents, bringing action under this section on behalf of their children confined in state home for mentally retarded, might conflict with those of their children residing at the home, discreet course would be to appoint a guardian ad litem who would not displace the parents as representatives of the plaintiff children but would be alert to recognize potential and actual differences in positions. Horacek v. Exon, D.C.Neb.1973, 357 F.Supp. 71. Infants 78(1)

4504. Counterclaims, parties generally

Missouri Department of Corrections was not proper party to counterclaim for abuse of process against inmate who filed § 1983 action allegedly for purposes of escape and to harass prison officials; state agency could not counterclaim as party when state employees were sued in their official capacity. Nitcher v. Does, C.A.8 (Mo.) 1992, 956 F.2d 796, rehearing denied. States 192

4505. Appropriate parties, parties generally

Mississippi chancery judges and clerks were not the appropriate defendants in class civil rights action challenging constitutionality of Mississippi's procedures for involuntary commitment of adults to state mental institutions, since such judicial officers, unlike officials with executive responsibility for defending the challenged civil commitment procedures, did not have sufficiently personal stake in the outcome of the controversy to assure that concrete adverseness which sharpens the presentation of issues on which the court so largely depends for illumination of difficult constitutional questions. Chancery Clerk of Chickasaw County, Miss. v. Wallace, C.A.5 (Miss.) 1981, 646 F.2d 151. Federal Civil Procedure 139

Plaintiffs stated claim against city and its Department of Human Services regarding policy and custom for

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investigating child abuse allegations despite not identifying any persons, groups of persons, or official offices responsible for alleged unconstitutional policy; plaintiffs could name appropriate city officials at later stage of litigation after discovery. Miller v. City of Philadelphia, E.D.Pa.1997, 954 F.Supp. 1056, affirmed 174 F.3d 368. Civil Rights 1395(1)

4506. Indispensable parties, parties generally

State was not an indispensable party to civil rights action challenging constitutionality of operation of state institution. Welsch v. Likins, C.A.8 (Minn.) 1977, 550 F.2d 1122. Civil Rights 1391

United States was indispensable party in action against state Governor and Director of Office of Economic Opportunity wherein VISTA volunteers removed by Governor sought back pay. Zapata v. Smith, C.A.5 (Tex.) 1971, 437 F.2d 1024. United States 135

Candidates for county legislature were not indispensable parties in voters' §§ 1983 action alleging that county elections board's refusal to tally their absentee ballots violated their federal constitutional rights, and thus dismissal of action was not warranted due to fact that candidates were barred by res judicata from contesting board's actions; court could order ballots to be counted without joining candidates, and voters' suit did not impede candidates' ability to seek relief from United States Supreme Court. Hoblock v. Albany County Bd. of Elections, N.D.N.Y.2004, 341 F.Supp.2d 169, remanded 422 F.3d 77, on remand 233 F.R.D. 95. Federal Civil Procedure 211; Federal Civil Procedure 1748

Consortium of municipalities was indispensable party in § 1983 action against municipality and mayor brought by former local director of consortium, where employee sought reinstatement, which could be addressed only by consortium. Gonzalez-Caratini v. Garcia-Padilla, D.Puerto Rico 2003, 278 F.Supp.2d 189. Federal Civil Procedure 219

Nine South Dakota Indian tribes were not indispensable parties to civil rights action brought by Aid to Families with Dependent Children (AFDC) recipients whose children had absent parents residing on Indian reservations within South Dakota, claiming that they have been denied child support collection services secured them under the Social Security Act, and thus, failure to join tribes did not warrant dismissal of suit. Howe v. Ellenbecker, D.S.D.1991, 774 F.Supp. 1224, affirmed 8 F.3d 1258, certiorari denied 114 S.Ct. 1373, 511 U.S. 1005, 128 L.Ed.2d 49. Federal Civil Procedure 331

In view of fact that federal regulations affecting Reserve Army Officer Training Corps programs clearly established that the commandant of such a unit is responsible to the authorities of the host institution for conducting the program in accordance with institutional rules and that the head of the institution exercises the same control over the department of military science as over other departments of the institution, commander of such a unit at state university was not an indispensable party to civil rights action to redress alleged sex discrimination. Zentgraf v. Texas A & M University, S.D.Tex.1980, 492 F.Supp. 265. Civil Rights 1387

All 98 pilots who brought wage action against airline would be indispensable parties to action seeking injunctive relief against the pilots resorting to use of 32 L.P.R.A. § 3133 in their action for wages; absent request for class certification to include all the pilots, requested injunction could not be issued even if the pilots were found amenable to an action under this subchapter. Puerto Rico Intern. Puerto Rico Intern. Airlines, Inc. v. Colon, D.C.Puerto Rico 1975, 409 F.Supp. 960. Civil Rights 1390

4507. Permissible parties, parties generally

Governor and members of state legislature could have been made parties to suit challenging constitutionality of

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operation of state institution but their presence was not necessary where state's interest appeared to be adequately represented by state officers who were made defendants. Welsch v. Likins, C.A.8 (Minn.) 1977, 550 F.2d 1122. Civil Rights 1391

Illinois Racing Board as an agency of state cannot be made a party defendant in a federal civil rights action under this section. Edelberg v. Illinois Racing Bd., C.A.7 (Ill.) 1976, 540 F.2d 279. Civil Rights 1391

Where state Attorney General had no connection with enforcement of state two-year durational residency requirement for divorce, Attorney General could not be party to civil rights action challenging constitutionality of requirement. Mendez v. Heller, C.A.2 (N.Y.) 1976, 530 F.2d 457. Civil Rights 1391

County district attorney's office in New York State was not suable entity and thus not proper party to §§ 1983 action alleging unconstitutional bias on part of prosecutors in prosecuting rape case. Michels v. Greenwood Lake Police Dept., S.D.N.Y.2005, 387 F.Supp.2d 361. Civil Rights 1389

4508. Necessary parties, parties generally

Complaint in which it was alleged that Negro plaintiffs were charged excessive and discriminatory prices for their homes, that discriminatory policies practiced by federal agencies enabled vendors to extract excessive prices from plaintiffs and in which it was asked that mortgages and installment contracts be reformed or voided, would not be dismissed as against Federal Savings and Loan Insurance Corporation, which, as purported successor-in-interest of defunct defendant-lender savings and loan associations held such mortgages and owned homes subject to installment contracts, inasmuch as Corporation may have been necessary party for giving of complete relief. Baker v. F & F Inv. Co., C.A.7 (Ill.) 1973, 489 F.2d 829. Federal Civil Procedure 1750

Warden who reduced prisoner's grade, resulting in lengthening of the time before prisoner would have earned a hearing before parole board, was not a "necessary party" to action brought by prisoner seeking declaratory relief and injunction to resolve dispute as to whether he was eligible for hearing before parole board. U. S. ex rel. Campbell v. Pate, C.A.7 (Ill.) 1968, 401 F.2d 55. Declaratory Judgment 294

Under Prison Litigation Reform Act (PLRA), state prison inmate's identification in his administrative grievance of some, but not all, state physicians involved in alleged mistreatment of his diabetes did not automatically preclude naming previously unnamed physicians as defendants in inmate's §§ 1983 Eighth Amendment action that followed grievance; state regulations governing grievance procedure called for specific description of problem and action requested, as well as names of persons contacted by inmate, but did not impose absolute requirement that inmate identify every individual by name. Boomer v. DePerio, W.D.N.Y.2005, 405 F.Supp.2d 259. Prisons 13(6)

Judge was not necessary party in attorney's §§ 1983 action alleging that state commission on judicial conduct violated his constitutional rights by refusing to permit him to withdraw from representing judge in disciplinary proceedings, where judge had proceeded with another attorney, had not indicated any desire to reemploy attorney, and was capable of representing himself pro se. Kunz v. New York State Com'n on Judicial Conduct, N.D.N.Y.2005, 356 F.Supp.2d 188. Federal Civil Procedure 219

Fact that other members of landlord investment association that previously sued borough, besides landlord currently alleging that citation issued to it by borough building inspector was in retaliation for association's prior suits, had not brought any retaliation claims against borough or its officials did not preclude First Amendment retaliation claim. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497 . Constitutional Law 91; Health 392

United States Department of Housing and Urban Development (HUD) was not necessary party to § 1983 action by holders of rental assistance vouchers under federal housing program challenging city housing authority's refusal to

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extend vouchers. Chesir v. Housing Authority of City of Milwaukee, E.D.Wis.1992, 801 F.Supp. 244. Federal Civil Procedure 219

Action challenging censorship of student newspaper was not subject to dismissal for failure to join authors of articles in question, since there was no reason why authors of articles were necessary to give plaintiffs their requested declaratory or equitable relief, and there was no substantial risk of defendants incurring multiple or inconsistent obligations with respect to students' claims. Kuhlmeier v. Hazelwood School Dist., E.D.Mo.1984, 578 F.Supp. 1286. Federal Civil Procedure 1748

Police officers who received promotions following examinations were "necessary parties" to civil rights action brought by police officers who alleged that village and various bodies and officials falsified and rigged results of the competitive examinations and unlawfully manipulated criteria for determining numerical rank of each candidate on statutorily mandated promotional eligibility roster; however, failure to join the promoted officers did not require dismissal of the complaint for reason that they were easily joinable. Hermes v. Hein, N.D.Ill.1979, 479 F.Supp. 820. Federal Civil Procedure 219; Federal Civil Procedure 1748

Airline lessees of New York Port Authority were necessary parties defendant in action by religious organization questioning constitutionality of regulations concerning dissemination of religious literature and solicitation of contributions where airlines' rights under their lease agreements would be substantially affected if court should decide that Authority, and not airlines, had power to make regulations regarding licensing of activities under U.S.C.A.Const. Amend. 1 in lease areas of airports. International Soc. for Krishna Consciousness, Inc. v. New York Port Authority, S.D.N.Y.1977, 425 F.Supp. 681. Federal Civil Procedure 225

Although Secretary of State is the chief state election officer in Florida, in view of fact that Florida Governor must certify electors of successful presidential candidate, Governor was not an unnecessary party in civil rights action by independent presidential candidate who sought place on Florida ballot. McCarthy v. Askew, S.D.Fla.1976, 420 F.Supp. 775, affirmed 540 F.2d 1254. Elections 179

District judges of Tarrant County, Texas, were necessary parties defendant to action brought by former employees of Adult Probation Office alleging that their dismissal denied their civil rights. Shore v. Howard, N.D.Tex.1976, 414 F.Supp. 379. Civil Rights 1390

Kentucky state court judges were not necessary and indispensable parties in action alleging that disposition of juveniles pursuant to state law violated the federal Juvenile Justice and Delinquency Prevention Act, as it was fair to presume that state judges would comply with federal district court's interpretation of the mandates of federal law. James v. Jones, W.D.Ky.1993, 148 F.R.D. 196. Federal Civil Procedure 219

4509. Real parties in interest, parties generally

Where action is in essence one for recovery of money from state, state is real, substantial party in interest and is entitled to invoke its sovereign immunity from suit pursuant to U.S.C.A.Const. Amend. 11. Matter of Kahr Bros., Inc., Bkrtcy.D.N.J.1980, 5 B.R. 765. Federal Courts 268.1

4510. Addition of parties, parties generally--Generally

Eleven-month delay in § 1983 plaintiff's filing of amended complaint to add city as a defendant, after district court had initially granted plaintiff's request for leave to amend his complaint, would not have prejudiced city, and therefore, district court erred in subsequently denying plaintiff leave to file an amended complaint to add city as a defendant; city had notice from court's initial order granting leave to amend as well as from plaintiff's initial complaint against the police department, the claims set forth in the second amended complaint were typical of those alleged in § 1983 actions, and city already had most of the necessary evidence in its possession. Roberson v.

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Hayti Police Dept., C.A.8 (Mo.) 2001, 241 F.3d 992. Federal Civil Procedure 392

City and police officer whom plaintiff mistakenly listed as defendant in § 1983 false arrest action had sufficient identity of interest with arresting officers that notice of action's filing could be imputed to arresting officers, who could thus be added as defendants after expiration of limitations period; city attorney answered original complaint on behalf of city and mistakenly-named officer and, to do so, presumably investigated allegations, so that arresting officers knew or should have known that, but for arrestee's mistaken belief as to arresting officer's identity, action would have been brought against them. Jacobsen v. Osborne, C.A.5 (La.) 1998, 133 F.3d 315. Limitation Of Actions 124

County commissioners were on notice that county jail inmate was not only seeking damages against county in his civil rights action, but was also seeking damages against them in their individual capacities, where inmate amended complaint by listing individual names of county commissioners as additional defendants and magistrate judge entered order construing lists filed by inmate to be motion to add defendants; thus, county commissioners were properly joined in their individual capacities. Moore v. Morgan, C.A.11 (Ala.) 1991, 922 F.2d 1553. Civil Rights 1395(7)

Failure of plaintiff in § 1983 action for unreasonable use of force brought initially against John Doe defendant to identify to her attorney the police officer who allegedly injured her until after deadline to add parties had passed was not good cause warranting late amendment of complaint to name officer, where plaintiff learned officer's identity before deadline passed. Smith v. Barber, D.Kan.2004, 316 F.Supp.2d 992. Federal Civil Procedure 392

College board of regents and individual regents would be permitted to join in codefendants' motion for summary judgment in civil rights action under § 1983 that was based on statute of limitations, even though board of regents and regents sought to join in the summary judgment motion two days after expiration deadline for filing pretrial motions; board and regents had asserted defense of statute of limitations in pretrial order filed with court, so plaintiff employee had been on notice that board and regents asserted statute of limitations barred the employee's action. Bates v. Board of Regents of Northern New Mexico Community College, D.N.M.1988, 699 F.Supp. 1489. Federal Civil Procedure 2531

Where original civil rights complaint is drawn without benefit of counsel, plaintiff should not be penalized because he seeks to add a defendant who would have been a proper party at the outset. Keaton v. Kennedy, E.D.N.Y.1973, 60 F.R.D. 690. Civil Rights 1386

Amended complaint adding corrections employee as new defendant in prisoner's § 1983 complaint outside applicable limitations period "related back" to timely filed complaint where claim against official arose out of the same conduct referred to in the original complaint, employee, whose counsel was on notice to prepare a defense for an unnamed but easily identifiable defendant mentioned in original complaint, had "constructive notice," and prisoner's failure to name employee as a defendant until the filing of the amended complaint was due to a mistake. Muhammad v. Pico, S.D.N.Y.2003, 2003 WL 21792158, Unreported. Limitation Of Actions 124

4511. ---- Effectuation of appropriate relief, addition of parties, parties generally

In suit under this section for alleged retaliation by town and certain officers for plaintiff's exercise of rights under U.S.C.A.Const. Amend. 1 by refusing to give fair consideration to plaintiff's application for appointment to regular police force, allegation that presence of police chief as defendant was reasonably necessary to effectuate appropriate relief to plaintiff was insufficient to sustain motion to add police chief as party defendant. Valcourt v. Hyland, D.C.Mass.1980, 503 F.Supp. 630. Civil Rights 1390

Plaintiffs in suit for declaratory and injunctive relief against allegedly unconstitutional civil commitment provisions

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of McKinney's N.Y. Mental Hygiene Law §§ 9.13, 9.27, and 9.39 would be granted request to add as a party defendant a hospital director so as to assure plaintiffs complete relief should they prevail on the merits in action. Project Release v. Prevost, E.D.N.Y.1978, 463 F.Supp. 1033. Federal Civil Procedure 286

4512. Intervention of parties, parties generally

Registered voter did not have standing to intervene in action brought by candidate, who sought injunction directing Illinois county board of election commissioners to place candidate's name on primary ballot for seat on county board despite candidate's failure to paginate petition, as voter did not have an "interest" that might be impaired or impeded by the judgment. Moy v. Cowen, C.A.7 (Ill.) 1992, 958 F.2d 168. Federal Civil Procedure 331

Denial of motion by prison guards' union to intervene in proceeding by inmates against officials for injunctive relief was not error where union did not present motion until three weeks after preliminary relief was granted albeit that it was aware of litigation and knew that relief sought by inmates might impinge on interest it sought to assert. Preston v. Thompson, C.A.7 (Ill.) 1978, 589 F.2d 300. Federal Civil Procedure 320

In view of extensive changes made in posture of school desegregation case by court of appeals, previous denial of intervention to teachers association would be vacated and court below directed to reconsider that motion. Ross v. Houston Independent School Dist., C.A.5 (Tex.) 1977, 559 F.2d 937, on remand 457 F.Supp. 18. Federal Courts 946

Though district court should have exercised its discretion on merits of petition to intervene as amicus curiae in private damage action under this subchapter before court dismissed complaint, denial of request to intervene would be affirmed where it clearly would have been within discretion of court to have denied intervention. Ammlung v. City of Chester, C.A.3 (Pa.) 1974, 494 F.2d 811. Federal Courts 817

Negro teacher who intervened in pending class action to desegregate school to compel board of public instruction to transfer her to position in business education in a white school had to take pending case in posture in which she found it, and as issue of faculty desegregation was already in pending case, but was held in abeyance until after case in the court of appeals, which resulted in holding requiring specifically that any school district desegregate its faculties, was decided, it was not error for trial court to deny individual injunctive relief sought by teacher. Knowles v. Board of Public Instruction of Leon County, Fla., C.A.5 (Fla.) 1969, 405 F.2d 1206. Injunction 189

Where bonding company admitted that prison guard sued in federal court for deprivation of civil rights of prisoner had demanded payment of judgment and bonding company still delayed more than four months before attempting to intervene in such suit, trial court did not abuse discretion in rejecting application of bonding company as untimely. Lumbermens Mut. Cas. Co. v. Rhodes, C.A.10 (Kan.) 1968, 403 F.2d 2, certiorari denied 89 S.Ct. 1319, 394 U.S. 965, 22 L.Ed.2d 567. Federal Civil Procedure 320

Voters who had challenged eligibility of recently registered voters would be allowed to intervene, in §§ 1983 suit brought by representatives of recently registered voters against state election officials, claiming their rights under National Voter Registration Act and Due Process Clause were violated when they were not given notice of hearing scheduled regarding political party's challenge to their eligibility; intervention motion was filed day after suit was commenced, state law claimants had interest which could be impaired by outcome of suit, and claimants' interest in avoiding dilution of their votes was different from interest of state election officials scheduling hearing, who were seeking efficient and accurate election process, reducing likelihood that officials could adequately represent interest of intervenors. Miller v. Blackwell, S.D.Ohio 2004, 348 F.Supp.2d 916, stay denied 388 F.3d 546. Federal Civil Procedure 331

Motion by tenants to intervene as of right as defendants in action challenging procedures in housing court was

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timely even though not brought after filing of original complaint, but nearly three and one-half years later, when amended complaint was filed; motion was filed after tenants learned that landlords intended to file amended complaint, only two weeks after case was taken off suspense docket, landlords' amended complaint contained new claims, and there was no showing that prejudice would result if intervention was allowed. Miller v. Silbermann, S.D.N.Y.1993, 832 F.Supp. 663. Federal Civil Procedure 320

Motion by right to life association to intervene in action by abortion clinic operator challenging denial of certificate of occupancy for abortion clinic was denied where court was confronted with the motion at in-chambers conference held immediately before trial, plaintiffs strenuously argued that it would incur substantial prejudice if trial was delayed for the requested 30-day period in which to file formal petition of intervention and counsel for intervenors could offer no suitable explanation for delay in seeking intervention nor crystalize any actual harm that might occur to intervenors if motion were denied. Bossier City Medical Suite, Inc. v. City of Bossier City, W.D.La.1980, 483 F.Supp. 633. Federal Civil Procedure 320

4513. Retention of parties, parties generally

Where individual members of village board of trustees would be required to implement any orders of district court which were made in connection with action by village police chief in which he contended that he had been wrongfully deprived of his position without due process pre-termination hearing, trustees would be retained as parties defendant despite their contentions that they were immune from action for damages by virtue of their elected positions. Jenner v. Board of Trustees of Village of East Troy, E.D.Wis.1974, 389 F.Supp. 430. Federal Civil Procedure 219

Even though vice-president of medical center might not have offered direct participation in complained of actions leading to plaintiff's unwilling departure from student ranks of state medical school, his controlling position dictated his retention as a defendant. Depperman v. University of Kentucky, E.D.Ky.1974, 371 F.Supp. 73. Colleges And Universities 10

4514. Severance of parties, parties generally

Action to end racial segregation of hospital patients did not arise from same circumstances, within rule 20, Federal Rules of Civil Procedure, Title 28, governing permissive joinder of parties, as action to end racial segregation in other city institutions and severance was ordered. Wood v. Hogan, W.D.Va.1963, 215 F.Supp. 53. Federal Civil Procedure 242

4515. Substitution of parties, parties generally

Because former court referee's employment discrimination action against administrative judge of an Ohio domestic relations court was effectively a claim against the office of administrative judge, the claim, if otherwise valid, survived particular judge's departure from the bench; thus, substitution of successor in former judge's stead did not render plaintiff's claim moot. Mumford v. Basinski, C.A.6 (Ohio) 1997, 105 F.3d 264, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 298, 522 U.S. 914, 139 L.Ed.2d 229. Federal Courts 13.10

Mother of decedent patient, who died after altercation while he was under involuntary commitment order at state hospital, could be substituted as plaintiff in capacity of administrator of simplified estate of decedent in § 1983 action against hospital employees; although prior district court order appointing mother as special administrator only authorized her to bring legal action against hospital and not its employees, mother's delay in motion for substitution did not prejudice employees' ability to defend action, and delay resulted from mistake as to scope of legal authority of prior order. Unzueta v. Steele, D.Kan.2003, 291 F.Supp.2d 1230. Federal Civil Procedure 364

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42 U.S.C.A. § 1983

Although three named plaintiffs' claims in § 1983 class action by inmates alleging violations of their right of access to courts stemming from operation prison law library were rendered moot by their deportation, transfer or release, plaintiffs would be allowed to substitute new named plaintiffs who had valid claims in their place. Gomez v. Vernon, D.Idaho 1997, 962 F.Supp. 1296. Federal Civil Procedure 352.1

In action by Negro citizen against members of personnel board of county and director of board for redress for deprivation of civil rights guaranteed by U.S.C.A.Const. Amend. 14 because they refused to permit Negro citizen to take examination for position of police patrolman of city solely because of his race and color, new board member, who became member of the board after the action was brought, could not be substituted as a defendant in place of member who resigned, in absence of showing that new member had adopted or continued or threatened to adopt or continue the action of his predecessor. Johnson v. Yeilding, N.D.Ala.1958, 165 F.Supp. 76. Federal Civil Procedure 365

Fact that former wife of deceased prison employee had not been involved in prisoner's §§ 1983 claim against her husband did not preclude her substitution as a defendant; wife had been married to employee until his death, and had been involved in litigation since being named a candidate for substitution. Graham v. Henderson, N.D.N.Y.2004, 224 F.R.D. 59. Federal Civil Procedure 362

With respect to this section's survivability as governed by West Virginia law, where defendant did not suggest plaintiff's death, motion for substitution of party plaintiff was timely filed more than one year after death of plaintiff. Roberts v. Rowe, S.D.W.Va.1981, 89 F.R.D. 398. Federal Civil Procedure 363.1

Non-party would not be substituted as plaintiff in arrestee's action under § 1983 based on city's seizure and retention of his automobile following arrest, based upon arrestee's purported assignment to him of title to automobile, where non-party's motion for substitution provided no basis for determining whether arrestee intended to assign either his automobile or claims, whether non-party had title to automobile under New York law, and whether non-party would have standing to assert arrestee's claims. Wifeman v. Property Clerk, New York Police Dept., S.D.N.Y.2003, 2003 WL 22251315, Unreported. Federal Civil Procedure 359

In light of former inmate's pro se status, 90-day period for substituting proper party following death of prison official sued in his individual capacity would run from the date of the present opinion, which was the first notice to the inmate of the procedural consequences of the official's death. Labounty v. Coughlin, S.D.N.Y.2003, 2003 WL 21692766, Unreported. Federal Civil Procedure 363.1

4516. Dismissal of parties, parties generally--Generally

Where it appeared that no purpose would be served by allowing more than one plaintiff to pursue legal action on nonfrivolous conditions of prison confinement claims, and there was every reason to believe that one plaintiff could move forward adequately on jointly alleged claims, other plaintiffs would be dismissed. Griffin v. Smith, W.D.N.Y.1980, 493 F.Supp. 129. Federal Civil Procedure 1788.10

4517. ---- Allegations of complaint, dismissal of parties, parties generally

Where certain defendants were not specifically named in text of pleadings in civil rights action, they were entitled to be dismissed from suit, though broad allegations were made, without specifying capacities of such defendants, that all of defendants were vested with power and duties encompassing maintenance supervision at state prison and, as such, had "direct responsibility for the Petitioners proper care and custody." Hopkins v. Hall, E.D.Okla.1974, 372 F.Supp. 182. Civil Rights 1389

Where complaint under this section and § 1985 of this title failed to allege facts which indicated that anyone other than named policeman participated in alleged beating of plaintiff and the unnamed "others" were never served with

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process, complaint would be dismissed as to the unnamed "others". Nugent v. Sheppard, N.D.Ind.1970, 318 F.Supp. 314. Civil Rights 1395(5)

Civil rights action filed by state prisoners would be dismissed as to defendants who were not mentioned in any portion of body of complaint, since no specific acts on the parts of such defendants were alleged. Linebarger v. Williams, E.D.Okla.1977, 77 F.R.D. 682. Federal Civil Procedure 1788.10

District court did not abuse its discretion in dismissing § 1983 complaint against three defendants because they were not identified or summoned over more than three year period; plaintiffs did not point to any evidence explaining inaction or to support claim that their efforts to obtain discovery relating to unidentified defendants was thwarted and plaintiff's failed to follow court's orders as to the named defendant. Carreras-Rosa v. Alves-Cruz, C.A.1 (Puerto Rico) 2000, 215 F.3d 1311, Unreported, certiorari denied 121 S.Ct. 1356, 532 U.S. 920, 149 L.Ed.2d 286. Federal Civil Procedure 1758.1

4518. ---- Cities, dismissal of parties, parties generally

City was properly dismissed as party defendant from widow's action under this section and U.S.C.A.Const. Amend. 14 alleging that city police officers' negligent failure to take into custody city fireman with history of mental illness after being informed that he was behaving dangerously and before he shot and killed plaintiff's husband deprived victim of life without due process of law, since city is not "person" within meaning of provision of this section. Jamison v. McCurrie, C.A.7 (Ill.) 1977, 565 F.2d 483. Civil Rights 1349

City police chief was dismissed as defendant in federal civil rights action where chief was sued only in his official capacity and city, which was public entity he was alleged to represent, had been joined as defendant. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1389

In action against city and its police department arising from alleged denial of civil rights by police officers, city was not only the real, but the only, party in interest, and police department would be dismissed as party to the action. Edmonds v. Dillin, N.D.Ohio 1980, 485 F.Supp. 722. Federal Civil Procedure 1750

To extent that count alleging employment discrimination against plaintiff teacher on account of sex under this section and § 1985 of this title sought compensatory and punitive damages, and not declaratory or injunctive relief, complaint was subject to being dismissed as against city, school committee, and individual defendants in their official capacities, considering that a municipal corporation is not a person within meaning of said sections, whether money damages or equitable relief was sought, that finances and affairs of school committee were so intimately connected with those of city that committee could not be considered to constitute a "person" independent of city, and that any recovery against individual defendants would be taken from municipal treasury. Curran v. Portland Superintending School Committee, City of Portland, Me., D.C.Me.1977, 435 F.Supp. 1063. Civil Rights 1376(10); Conspiracy 17

Even though plaintiffs in civil rights action sought an accounting, restitution and injunctive and declaratory relief, rather than damages, district court did not have jurisdiction to hear action insofar as it was brought against city, and the court would, sua sponte, dismiss city as a party. Muzquiz v. City of San Antonio, W.D.Tex.1974, 378 F.Supp. 949. Federal Civil Procedure 388; Federal Courts 222

4519. ---- Private defendants, dismissal of parties, parties generally

Private defendants were properly dismissed from plaintiff's claim under this section which alleged that the state's attorney acted through a conspiracy with private defendants to discriminatorily enforce zoning ordinances, that the state's attorney and his assistant sought to conceal the conspiracy of the private parties, and that he had been

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deprived of his civil rights by all the defendants acting jointly and severally, separately and conspiratorially and conspiring with each other, in that contents of complaint were essentially conclusory allegations, unsupported by specific facts, plaintiff had filed two amended complaints, without alleging any factual basis suggesting the meeting of minds necessary to establish his claim, and plaintiff had given no reason to believe that he could prove any facts in support of his claim. Tarkowski v. Robert Bartlett Realty Co., C.A.7 (Ill.) 1980, 644 F.2d 1204. Federal Civil Procedure 388

Discrimination plaintiff's § 1983 claim would be stricken, where she brought claim against private company and private individual. Whitehead v. AM Intern., Inc., N.D.Ill.1994, 860 F.Supp. 1280. Civil Rights 1326(4)

Private developers would not be dropped as defendants in action challenging implementation of urban renewal project, even though private developers did not exercise government authority and could not suppress speech unconstitutionally nor condemn land, where if proprietors of business engaged in the selling and exhibiting of sexually-explicit books, films and performances were able to state cause of action against government defendants under First Amendment and statute governing deprivation of civil rights, proprietors might also be able to demonstrate that all defendants, including private developers, acted in concert under color of state law to deny them their constitutional rights through development of urban renewal project. G. & A. Books, Inc. v. Stern, S.D.N.Y.1985, 604 F.Supp. 898, affirmed 770 F.2d 288, certiorari denied 106 S.Ct. 1195, 475 U.S. 1015, 89 L.Ed.2d 310. Civil Rights 1388

4520. ---- States, dismissal of parties, parties generally

District court order continuing injunctive relief that required county and state officials to take actions directed to reduction of jail population, and that set caps on jail population, in detainees' § 1983 action alleging that jail overcrowding resulted in cruel and unusual punishment, were "prisoner release orders," within meaning of standing provision of the Prison Litigation Reform Act (PLRA), and state thus had standing to oppose continuation of such relief and to seek termination of such relief, even though state had been dismissed from action. Castillo v. Cameron County, Tex., C.A.5 (Tex.) 2001, 238 F.3d 339. Civil Rights 1331(5)

Dismissal of the state of New Mexico as a defendant in civil rights action was required inasmuch as a state could not be sued in federal court under this section. Glaros v. Perse, C.A.1 (Mass.) 1980, 628 F.2d 679. Federal Courts 264.1

Attorney General of Virginia should have been dismissed as a defendant with respect to claim of North Carolina prisoner that he had been denied parole because of improper consideration of prior invalid Virginia convictions since the Attorney General had no interest in the outcome of that litigation and since the Commonwealth of Virginia was not a "person" within meaning of this subchapter. Strader v. Troy, C.A.4 (N.C.) 1978, 571 F.2d 1263 . Habeas Corpus 662.1

4521. ---- Miscellaneous parties dismissed, dismissal of parties, parties generally

Where, after indictment was issued against officer, police chief suspended officer with pay pending completion of investigation, chief signed and delivered officer's letter of termination only after being ordered twice to do so by mayor and only after informing mayor of his belief that proposed termination was unlawful, chief requested city police and fire commission to uphold discharge immediately after delivery of termination letter, and chief believed that he was required by law to obey mayor's orders, district court properly dismissed police chief from officer's action arising out of unlawful termination. Busche v. Burkee, C.A.7 (Wis.) 1981, 649 F.2d 509, certiorari denied 102 S.Ct. 396, 454 U.S. 897, 70 L.Ed.2d 212. Municipal Corporations 185(3)

Official capacity § 1983 claims against individual school district employees were redundant to claims being brought against district itself, and so would be dismissed. Booker v. Board of Educ., Baldwinsville Central School

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District, N.D.N.Y.2002, 238 F.Supp.2d 469. Civil Rights 1346

When both a local government officer and the government entity are named in action under § 1983 or action for conspiracy to deprive plaintiff of rights, and officer is named in official capacity only, officer is a redundant defendant and may be dismissed. Luke v. Abbott, C.D.Cal.1997, 954 F.Supp. 202. Civil Rights 1354

Where federal prosecutor did not prosecute cases against plaintiff and was not shown to have had any other involvement in decision regarding disposition of disputed money that was seized from plaintiff, the prosecutor was dismissed as a party defendant to suit wherein plaintiff, an inmate of a federal penitentiary, sought return of property and cash allegedly seized from his person and residence and thereafter turned over to a bank, assertedly in violation of plaintiff's due process rights. Totaro v. Lyons, D.C.Md.1980, 498 F.Supp. 621. Federal Civil Procedure 388

Indian organization and its members were dismissed as defendants in suit under this section where the only contact between the organization and its members and the government defendants occurred when the organization met with the city and where this contact was a purely private action and was not even the subject of plaintiffs' claim that the government-related defendants had engaged in discrimination in withdrawing police and fire protection from Indian reservation. Thompson v. State of N. Y., N.D.N.Y.1979, 487 F.Supp. 212. Federal Civil Procedure 1750

Because none of the defendant park commissioners had personally committed acts violative of the plaintiffs' constitutional rights in enforcing county ordinances, those defendants would be dismissed from civil rights action, though they would remain in the case for purposes of declaratory and injunctive relief. Milwaukee Mobilization for Survival v. Milwaukee County Park Commission, E.D.Wis.1979, 477 F.Supp. 1210. Federal Civil Procedure 1750

Claim by allegedly illegally discharged town policeman for reinstatement would be dismissed as to police commissioner and mayor in their individual capacities since, as individuals, rather than as members of board of commissioners, mayor and commissioner were powerless to order reinstatement. O'Brien v. Galloway, D.C.Del.1973, 362 F.Supp. 901. Federal Civil Procedure 1750

Under law of the case doctrine, parole board chairman should be dismissed from state inmate's § 1983 action, challenging timing of his parole hearings, since chairman had already been dismissed from inmates' earlier case based on finding that he had no involvement in very same parole hearings that were raised in instant case. Faison v. Travis, N.D.N.Y.2002, 2002 WL 31640541, Unreported. Courts 99(6)

4522. ---- Miscellaneous parties not dismissed, dismissal of parties, parties generally

Although student athletes who had participated on private university hockey team but who had graduated might not be entitled to injunctive relief they were not required to be dismissed from suit challenging athletic association's imposition of sanctions against university, which initially failed to declare several of its hockey players ineligible for participation in intercollegiate hockey, since the players also sought damages for having been forced off the hockey team at the insistence of the association. Colorado Seminary (University of Denver) v. National Collegiate Athletic Ass'n, D.C.Colo.1976, 417 F.Supp. 885, affirmed 570 F.2d 320. Civil Rights 1387

XLI. PROPER PARTIES

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4551. Proper parties generally

District court could determine whether plaintiff's allegations were sufficient to trigger liability under this section, even though the proper defendants remained unnamed. Dunkin v. Lamb, D.C.Nev.1980, 500 F.Supp. 184. Civil Rights 1391

As long as officials being sued are both responsible for a constitutional deprivation and able to implement, in their official capacity, equitable relief requested, they are proper parties under this section and court may hear a claim against them for back pay as part of a remedy of reinstatement. D'Iorio v. Delaware County, E.D.Pa.1978, 447 F.Supp. 229, reversed on other grounds 592 F.2d 681. Civil Rights 1390

4552. Attorneys general, proper parties

Civil rights action to challenge statutes which provided exceptions from prosecution for those who fail to provide adequate care for children because they treat physical or mental illness or defects in children by spiritual means only did not allege any action or threat of action by defendant Attorney General, and therefore *Ex parte Young* exception to Eleventh Amendment immunity of state officials did not apply; also, plaintiffs did not seek to enjoin enforcement of allegedly unconstitutional statute as was required for immunity exception. Children's Healthcare is a Legal Duty, Inc. v. Deters, C.A.6 (Ohio) 1996, 92 F.3d 1412, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1082, 519 U.S. 1149, 137 L.Ed.2d 217. Federal Courts 269; Federal Courts 272

Attorney general had no interest in outcome of divorce suit and no duty to enforce any order made in it, and thus attorney general was not proper party to civil rights suit challenging constitutionality of McKinney's N.Y. Domestic

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Relations Law § 237 which empowered trial court to order husband to pay wife's fees in regard to divorce suit, but failed to provide for husband making application for such fees in proper circumstances. Gras v. Stevens, S.D.N.Y.1976, 415 F.Supp. 1148. Civil Rights 1391

4553. Civil service commissions, proper parties

Where members of civil service commission were appointed by mayor and paid by city, and where practices of police department were directly in issue, city officials were proper parties defendant in suit alleging discriminatory practices against members of black patrolmen's league. Robinson v. Conlisk, N.D.Ill.1974, 385 F.Supp. 529. Civil Rights 1390

4554. Cities, proper parties

City was proper defendant in section 1983 action brought by alleged owners of barge for deprivation of property without due process based upon burning of barge by superintendent of public works and two city employees; city commissioners approved superintendent's act, and city policy left final decision as to whether barge should be destroyed to superintendent's discretion. Messick v. Leavins, C.A.11 (Fla.) 1987, 811 F.2d 1439, rehearing denied 817 F.2d 761. Civil Rights 1347

City was not proper party to former high school vice principal's action, alleging age discrimination, violations of § 1983, and breach of contract, given that during relevant period, State of Connecticut transferred all authority for management of school district to State Board of Trustees, such that city had no ability to influence events within school system, either positively or negatively, and ceased to be an employer. Lee v. City of Hartford/Hartford Public Schools, D.Conn.2003, 289 F.Supp.2d 25, opinion adhered to on reconsideration. Civil Rights 1390; Civil Rights 1531; Schools 147.51

Local governing bodies can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where action that is alleged to be unconstitutional implements or executes policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Thornton v. City of St. Helens, D.Or.2002, 231 F.Supp.2d 1019. Civil Rights 1351(1)

Section 1983 claim is properly pled against a municipality either by naming the municipality itself or by naming a municipal official in her official capacity; naming either is sufficient, but naming both is redundant. Davoll v. Webb, D.Colo.1996, 943 F.Supp. 1289, affirmed 194 F.3d 1116. Civil Rights 1394

City of Yonkers was proper party to Civil Rights Act suit charging racial segregation of the state created school system functioning in the city where although Yonkers board of education was a separate state created entity from the city, the city was legally responsible for allocating funds to the school district, for appointing school board members and for retaining legal title to property designated for educational use; city could significantly affect racial composition by virtue of its subsidized housing policies and city could be called on to respond to school desegregation decrees issued by a federal court. U.S. v. Yonkers Bd. of Educ., S.D.N.Y.1985, 624 F.Supp. 1276, affirmed 837 F.2d 1181, certiorari denied 108 S.Ct. 2821, 486 U.S. 1055, 100 L.Ed.2d 922. Schools 13(18.1)

Municipalities are proper parties in actions brought under this section. United Steelworkers of America, AFL-CIO-CLC v. Dalton, E.D.Va.1982, 544 F.Supp. 282. Civil Rights 1386

Action wherein plaintiff tavern owners alleged that refusal of defendant city to renew their liquor licenses on basis of entertainment provided by them in their establishments constituted a denial of their rights under U.S.C.A.Const. Amend. 1 as incorporated in U.S.C.A.Const. Amend. 14, § 1 was within jurisdiction of federal district court and city was a proper party defendant considering that plaintiff sought only equitable relief. Bruno v. City of Kenosha, E.D.Wis.1971, 333 F.Supp. 726, probable jurisdiction noted 93 S.Ct. 909, 409 U.S. 1105, 34 L.Ed.2d 685.

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42 U.S.C.A. § 1983

Federal Courts 224; Intoxicating Liquors 102

4555. Commissioners or directors, proper parties

In federal civil rights action brought by plaintiff inmates alleging numerous unconstitutional conditions and practices at Massachusetts county jail and house of correction, Commissioner of Correction was proper party defendant in view of his own statutory duty and his subsequent claimed failure to act with consequent constitutional injuries. Dimarzo v. Cahill, C.A.1 (Mass.) 1978, 575 F.2d 15, certiorari denied 99 S.Ct. 312, 439 U.S. 927, 58 L.Ed.2d 320. Civil Rights 1389

In action under this section challenging constitutionality of city public chauffeur's licensing ordinance, only the Commissioner of the Public Vehicle License Commission was a proper party defendant. Freitag v. Carter, C.A.7 (Ill.) 1973, 489 F.2d 1377. Civil Rights 1350; Civil Rights 1391

Correction commissioner was not liable in inmate's civil rights action in connection with hearing officer's denial of inmate's due process right to assistant at disciplinary hearing; fact that inmate appealed hearing officer's decision to commissioner did not establish commissioner's personal involvement, and inmate's limited communication with Office of the Commissioner, without more, could not establish constitutional violation. Lee v. Coughlin, S.D.N.Y.1995, 902 F.Supp. 424, reconsideration granted 914 F.Supp. 1004, on reconsideration 26 F.Supp.2d 615. Civil Rights 1358

Although members of board of county commissioners alleged that they had no authority to hire or fire motor vehicle department personnel, board was involved in motor vehicle department employee's termination and was in a position to prevent any injury, assuming such injury existed; therefore, they would not be dismissed from employee's civil rights action arising out of allegedly wrongful termination of employment. Laughlin v. Board of County Com'rs of Johnson County, Kan., D.Kan.1984, 647 F.Supp. 937. Civil Rights 1390

In suit brought against federal and state officials allegedly responsible for disseminating to law enforcement agencies a telex message that erroneously accused plaintiffs of devising a plan to kill police officers, the Commissioner of the Connecticut State Police was an improper defendant on a defamation claim, since the facts demonstrated that he was in no way responsible for the contents of the telex or its dissemination to persons outside the Connecticut State Police. Gonzalez v. Leonard, D.C.Conn.1980, 497 F.Supp. 1058. Libel And Slander 77

Commissioner of Department of Corrections and Secretary of the Justice Cabinet were proper defendants in action alleging that state was violating provisions of the Juvenile Justice and Delinquency Prevention Act. James v. Jones, W.D.Ky.1993, 148 F.R.D. 196. Injunction 114(3)

4556. Comptrollers, proper parties

Inasmuch as in his capacity as comptroller of county, defendant's signature appeared on emergency checks received by Aid to Families with Dependent Children applicant, some of responsibility for issuing checks within required time period necessarily devolved upon his office and he was, therefore, a proper party to suit by Aid to Families with Dependent Children recipients seeking injunction against state practices which allegedly denied federal rights to such benefits. Rodriguez v. Swank, N.D.Ill.1970, 318 F.Supp. 289, affirmed 91 S.Ct. 2202, 403 U.S. 901, 29 L.Ed.2d 677. Civil Rights 1391; Injunction 114(3)

4557. County officials, proper parties

County was not properly served and was not proper codefendant in civil rights action by operators of detention home who had sued former probate court administrator who prepared assessment for juvenile's placement and

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incorrectly labelled him nonviolent where, at time complaint was filed, administrator no longer worked for county and complaint did not name county itself or proper county official in his official capacity. Bush v. Rauch, C.A.6 (Mich.) 1994, 38 F.3d 842. Civil Rights 1389

In civil rights action in which plaintiff alleged that county, its board of health and its board of social services, and several individuals wrongfully caused her sterilization after informing her that she had sickle cell trait, county was a proper and necessary party to resolve plaintiff's claim against the boards, where neither board of health nor board of social services is a legal entity separate and apart from county, and boards are created by, and are extensions of, county. Avery v. Burke County, C.A.4 (N.C.) 1981, 660 F.2d 111. Civil Rights 1391

Under Kansas law, county, rather than State of Kansas, was liable under § 1983 for actions of county sheriff who allegedly denied promotions to two employees who made statements they claimed were protected by First Amendment to outside law enforcement agencies regarding sheriff department activities, even though county sheriff's position was created by state legislation and he did not answer to any other branch of county government; county was corporate being that could only act through its officers, sheriff's department was branch of county government, and attributing sheriff's actions to state would subject state to liability for actions of all county officers while negating Supreme Court precedent holding that local government could be held accountable under § 1983. Blume v. Meneley, D.Kan.2003, 283 F.Supp.2d 1171. Civil Rights 1349

Section 1983 action was brought against government officials in their respective official capacities, regardless of the manner in which damages were pled, where caption of the amended complaint and jury demand, like that of the initial complaint, named government officials as defendants in their capacities as mayor of the city and county, chief of city police department, and manager of safety for city and county. Davoll v. Webb, D.Colo.1996, 943 F.Supp. 1289, affirmed 194 F.3d 1116. Civil Rights 1359

Absent indication that county sheriff's department had enjoyed separate legal existence under Texas law, it was not proper party in civil rights suit arising out of alleged planting of drugs on plaintiff. Jacobs v. Port Neches Police Dept., E.D.Tex.1996, 915 F.Supp. 842. Sheriffs And Constables 99

County employees were proper defendants in action brought for deprivation of a constitutional right under color of state law because this section was designed to remedy deprivations of constitutional rights by officials who abuse their governmental positions. Savina v. Gebhart, D.C.Md.1980, 497 F.Supp. 65. Civil Rights 1391

4558. County agencies, proper parties

County Department of Corrections was not a proper defendant in § 1983 action; Department of Corrections was an agency of the county and the county, as opposed to agency of the county, was a proper defendant in § 1983 action. Vance v. County of Santa Clara, N.D.Cal.1996, 928 F.Supp. 993. Civil Rights 1389

Claim brought by public assistance recipient pro se in § 1983 action, that county failed to schedule expedited fair hearing in connection with denial of emergency assistance and that, as result, he suffered violation of his constitutional right to due process, was dismissed without prejudice subject to renewal, since state department of social service was party against whom claim should have been made, and leave to amend pleading was to be freely given when justice required. Hart v. Westchester County Dept. of Social Services, S.D.N.Y.2003, 2003 WL 22595396, Unreported. Federal Civil Procedure 1744.1; Federal Civil Procedure 1838

4559. District attorneys, proper parties

In view of district attorney's relationship to handling of civilian complaints against police misconduct, he was properly retained as party to civil rights actions based on alleged widespread violations of constitutional rights of minority citizens by police. Council of Organization on Philadelphia Police Accountability and Responsibility v.

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Rizzo, E.D.Pa.1973, 357 F.Supp. 1289, affirmed 506 F.2d 542, certiorari granted 95 S.Ct. 1443, 420 U.S. 1003, 43 L.Ed.2d 760, reversed on other grounds 96 S.Ct. 598, 423 U.S. 362, 46 L.Ed.2d 561. Civil Rights 1389

4560. Educational officials, proper parties

School superintendent is not ordinarily responsible for individual acts of discrimination committed by teachers or employees, but is a proper party when it is alleged that schools which he heads are guilty of discriminatory policies. Floyd v. Trice, C.A.8 (Ark.) 1974, 490 F.2d 1154. Civil Rights 1356; Civil Rights 1387

Board of education, rather than any individual board member, was the real party in interest in public school teacher's § 1983 action challenging school's response to her wearing a tee shirt in the classroom with the words "Jesus 2000," and therefore, teacher could not state cognizable claim against individual board members; board members were sued only in their official capacities, and teacher did not allege that any individual board members were personally involved in the alleged conduct. Downing v. West Haven Board of Ed., D.Conn.2001, 162 F.Supp.2d 19. Civil Rights 1390

Those trustees of community college and those administrative officials who did not participate in alleged constitutional violation, i.e., discharge of tenured professor without prior notice and opportunity for hearing, could not be held individually liable for monetary damages; however, they were nonetheless proper parties to suit under this section in their official capacities. West v. Williamsport Area Community College, M.D.Pa.1980, 492 F.Supp. 90. Civil Rights 1359; Civil Rights 1390

Where professor at state university brought action against state university, its board of governors and president, and individual faculty members alleging that professor had been wrongfully denied tenure and seeking damages and back pay pursuant to this section and § 1985 of this title and where complaint contained no allegations that president of university personally deprived professor of any right secured by the Constitution and where only time president's name was mentioned in complaint was where it was alleged that president had granted tenure to professor, president of university was not a proper party to action. Bennun v. Board of Governors of Rutgers, State University of New Jersey, D.C.N.J.1976, 413 F.Supp. 1274. Civil Rights 1390; Conspiracy 17

Individual regents of University of California were proper parties to action for equitable relief under this section. League of Academic Women v. Regents of University of Cal., N.D.Cal.1972, 343 F.Supp. 636.

4561. Governors, proper parties

State governor was improper party defendant to sex discrimination suit brought under this section by employee of school of design where, although employee alleged that governor contributed to harm she complained of by failing to implement recommendations of State Human Rights Commission resulting from complaint filed by her, she failed to demonstrate necessary financial dependence of school on state funds which governor could have withdrawn, and thus failed to show that alleged discrimination was consequence of governor's actions. Melanson v. Rantoul, D.C.R.I.1976, 421 F.Supp. 492, affirmed 561 F.2d 409. Civil Rights 1390

Governor's general duty to enforce state laws was not sufficient to make him proper party defendant in civil rights action attacking constitutionality of McKinney's N.Y. Domestic Relations Law § 237 governing matrimonial actions. Gras v. Stevens, S.D.N.Y.1976, 415 F.Supp. 1148. Civil Rights 1391

4562. Judges, proper parties

Because Code Va.1950, § 54-48 gave Virginia Supreme Court independent authority on its own to initiate proceedings against attorneys, Court and its members were proper defendants in suit for declaratory and injunctive relief to bar enforcement of advertising ban in Virginia Code of Professional Responsibility. Supreme Court of

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Virginia v. Consumers Union of U. S., Inc., U.S.Va.1980, 100 S.Ct. 1967, 446 U.S. 719, 64 L.Ed.2d 641, on remand 505 F.Supp. 822. Declaratory Judgment 303

For jurisdictional purposes, judge of district court of Puerto Rico was proper party defendant in civil rights suit challenging constitutionality of provisions of Puerto Rico Rule of Criminal Procedure closing preliminary hearings in felony cases; as enforcer or administrator of those provisions, judge had interest adverse to those seeking access to preliminary hearings conducted before him. Rivera-Puig v. Garcia-Rosario, C.A.1 (Puerto Rico) 1992, 983 F.2d 311. Civil Rights 1389

Where wife who sought to challenge state durational residency requirements for divorce had made no attempt to secure divorce, but brought civil rights action based on hypothetical assumption that her divorce complaint would be rejected pro forma, state court justice was not a proper party defendant, despite contention that justice was sued only in his capacity as administrative superior of court clerk who would assertedly reject wife's complaint on initial screening. Mendez v. Heller, C.A.2 (N.Y.) 1976, 530 F.2d 457. Civil Rights 1391

Generally, only state circuit court judge who was actually present at meetings of judges in which recommendation to fill vacancy in position of friend of court was postponed and then readvertised could be charged with act of discrimination against plaintiff, who was not selected, and only judge who was at meeting at which plaintiff was passed over in favor of a male could properly be included as defendant for that act of discrimination. Cronovich v. Dunn, E.D.Mich.1983, 573 F.Supp. 1330. Civil Rights 1359

4563. Medical associations, proper parties

Former members of Illinois Medical Disciplinary Board who revoked physician's license to practice medicine were not proper parties with regard to physician's claim for injunctive relief, seeking restoration of his license, where former members were no longer in office and were in no position to afford physician restoration remedy. McCabe v. Caleel, N.D.Ill.1990, 739 F.Supp. 387, affirmed 931 F.2d 895, rehearing denied. Civil Rights 1391

District court's dismissal of suit by former federal detainee at county jail against county jail officials and nurses for alleged deliberate indifference to his serious medical needs, for nonfeasibility of joining the United States Marshals Service (USMS) as an indispensable party, was an abuse of discretion where the district court failed to explain why the suit was not allowed to proceed under *Bivens* against USMS marshals against whom the applicable limitations period had not expired at the time detainee moved for joinder and against whom he had stated a viable *Bivens* claim, and failed to explain why detainee could not pursue his medical claims related to the treatment of his amputated leg against only the nonfederal defendants if necessary. Webb v. Pennington County Bd. of Com'rs, C.A.8 (S.D.) 2003, 92 Fed.Appx. 364, 2003 WL 22998109, Unreported. Federal Civil Procedure 1748

4564. Municipal departments, proper parties

For purposes of section 1983 liability, municipal policy may be inferred from the informal acts or omissions of supervisory municipal officials; where a municipality has notice of a pattern of constitutionally offensive acts by its employees, but fails to take any remedial steps in response, the municipality may be held liable for similar subsequent acts, if the inaction is determined to have been the result of "deliberate indifference" or "tacit authorization" of the offensive acts--in effect, an unlawful municipal policy of ratification of unconstitutional conduct. Brewster v. Nassau County, E.D.N.Y.2004, 349 F.Supp.2d 540. Civil Rights 1352(1); Civil Rights 1401

Naming a municipal department as a defendant is not appropriate means of pleading § 1983 action against municipality since term "persons," as used in § 1983, does not encompass municipal departments. Vance v. County of Santa Clara, N.D.Cal.1996, 928 F.Supp. 993. Civil Rights 1394

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42 U.S.C.A. § 1983

4565. Police personnel, proper parties

Allegations, in a §§ 1983 action, that plaintiff was arrested on basis of an already-executed warrant despite showing officers facially authentic documentary evidence that the warrant was no longer effective, were sufficient to state a claim for false arrest and false imprisonment, in violation of the Fourth Amendment, against an officer even though he was mentioned by name in complaint only once; allegations were properly attributable to each of the officers on the scene. Pena-Borrero v. Estremeda, C.A.1 (Puerto Rico) 2004, 365 F.3d 7. Civil Rights 1395(6)

Police dog who bit arrestee as he was attempting to flee from police was not a "person" subject to liability under § 1983. Dye v. Wargo, C.A.7 (Ind.) 2001, 253 F.3d 296. Civil Rights 1339

City of Chicago and Superintendent of Police and other known and unknown police officers were proper parties to action by news photographers who covered 1968 Democratic National Convention in Chicago and attendant street activities for permanent injunction preventing police from interfering with photographers' constitutional right to gather and report news and to photograph news events. Schnell v. City of Chicago, C.A.7 (Ill.) 1969, 407 F.2d 1084 . Federal Civil Procedure 139

Police officers could be sued in their personal capacities under § 1983 for actions taken in their official capacities. Wilkerson v. Thrift, W.D.N.C.2000, 124 F.Supp.2d 322. Civil Rights 1358

Student expelled for possession of handgun on school property failed to state § 1983 due process claim against police officer who conducted search of vehicle which disclosed gun, based on allegations that student was not given proper notice nor allowed to confront alleged informant, and that school district guidelines were not followed, where it was uncontroverted that officer had no involvement in decision to suspend and expel student. James By and Through James v. Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1407. Civil Rights 1062

City police department was not proper party defendant in action alleging that plaintiff's arrest was without probable cause and violated her constitutional rights, where department was integral part of city government and was merely vehicle through which city government fulfilled its policing functions. Shelby v. City of Atlanta, N.D.Ga.1984, 578 F.Supp. 1368. Civil Rights 1389

County sheriff department and city police department were proper parties to civil rights action, arising under this section authorizing civil action for deprivation of rights under color of state law, in which plaintiff sought damages for false arrest and use of excessive force. Reese v. Milwaukee County Sheriff Dept., E.D.Wis.1980, 505 F.Supp. 88. Civil Rights 1389

Police chief, mayor, vice squad chief and acting corporation counsel were proper defendants in action under this section challenging constitutionality of Chicago ordinance prohibiting certain categories of persons from congregating in public places or in places where intoxicating liquors are sold. Farber v. Rochford, N.D.Ill.1975, 407 F.Supp. 529. Civil Rights 1391

New York City police department was not suable entity, for purposes of arrestee's § 1983 claims. Nance v. New York City Police Dept. ex rel. McKay Chung, E.D.N.Y.2003, 2003 WL 1955164, Unreported. Civil Rights 1348

4566. Political parties, proper parties

Republican organization of county and Republican county central committee were not proper parties defendant in action wherein Democrats, who had been discharged as investigators in Illinois Secretary of State's office, alleged,

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inter alia, that discharge for purpose of permitting appointment of Republicans denied equal protection, freedom of association and speech and due process where, though such organizations were alleged to be beneficiaries of Secretary and Under Secretary's employment practices, organizations were not alleged to have played any part in discharge of plaintiffs or hiring of their successors. Janda v. State, N.D.Ill.1972, 348 F.Supp. 568. Civil Rights 1390

4567. Prison personnel, proper parties

New Mexico inmate who was imprisoned in California pursuant to Interstate Corrections Compact (ICC) was required to bring civil rights suit against California custodians, rather than New Mexico prison officials, to challenge constitutionality of his classification and conditions of confinement in California, as relief he sought could only be granted against and implemented by California officials. Garcia v. Lemaster, C.A.10 (N.M.) 2006, 439 F.3d 1215. Civil Rights 1358

Prisoner's § 1983 action failed to state cause of action that guards' beating of him violated his Eighth Amendment rights because he failed to name guards responsible for beating in complaint and he did not allege any personal involvement of warden and director of corrections. Mitchell v. Maynard, C.A.10 (Okla.) 1996, 80 F.3d 1433. Civil Rights 1395(7)

Individual who was warden of Illinois prison when prisoner sought relief under this section on theory that he had been attacked, beaten, placed in isolation for 15 days and in segregation for 15 months, and deprived of good time solely on religious grounds was a proper party although the alleged deprivation of good time occurred before individual became a warden and prisoner had appealed to the nonparty Illinois prison merit board and director of public safety. Weaver v. Pate, C.A.7 (Ill.) 1968, 390 F.2d 145. Federal Civil Procedure 258

Genuine issue of material fact as to whether chairpersons of state parole board had actual knowledge or acquiesced to parole board policies that allegedly violated Ex Post Facto Clause precluded summary judgment in inmate's action seeking to hold chairpersons personally liable under §§ 1983. Wolfe v. Pennsylvania Dep't of Corrections, E.D.Pa.2004, 334 F.Supp.2d 762. Federal Civil Procedure 2491.5

Prison chaplain was appropriate defendant in civil rights suit filed by inmate alleging violation of free exercise clause of First Amendment on basis of prison policy prohibiting Nation of Islam from holding services at prison without outside Islam, even though chaplain was not alleged to have instituted allegedly unconstitutional policy, where chaplain was responsible for enforcement of policy and failed to assert any affirmative defenses to claims made by plaintiff. Hobbs v. Pennell, D.Del.1991, 754 F.Supp. 1040. Civil Rights 1389

Superintendent of Wisconsin correctional institution was not proper party defendant in civil rights action brought by inmate who alleged that his access to Wisconsin courts was infringed by his transfer to Minnesota prison pursuant to prisoner exchange agreement between the two states absent some greater involvement in transfer decision other than superintendent's mere supervision over institution from which inmate was transferred. Hudson v. Israel, E.D.Wis.1984, 594 F.Supp. 664. Civil Rights 1389

Two prison officials who were served with inmate's § 1983 complaint but who were not named in the caption of the complaint were not proper defendants, in action arising from inmate's placement in administrative segregation after he led large group of inmates in unauthorized gathering after the group was told it could not use the chapel until two weeks later due to scheduling conflict, where one official was nowhere mentioned in the body of the complaint and the other was mentioned twice, but only to explain that he was the chaplain who initially gave the inmate permission to meet in the chapel and that he was the inmate's religious sponsor, there were no allegations that he committed any violations, and there was no claim for relief against him. Derrick v. Ward, C.A.10 (Okla.) 2004, 91 Fed.Appx. 57, 2004 WL 38545, Unreported. Civil Rights 1389; Civil Rights 1395(7)

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42 U.S.C.A. § 1983

4568. School districts, proper parties

Teacher made allegations sufficient to make distinct claims against school district and school board as defendants in civil rights suit by alleging that former authorized superintendent to harass certain teachers and latter had unwritten policy of cutting services to special education students and intimidating teachers who advocated for them. Montanye v. Wissahickon School Dist., E.D.Pa.2004, 327 F.Supp.2d 510. Civil Rights 1395(8)

In class action to establish entitlement of handicapped children, under equal protection guarantee, to specialized education at public expense, joint school district was an improper party to action under this section, and motion to dismiss portions of complaint which purported to state a cause of action against it was granted. Panitch v. State of Wis., E.D.Wis.1974, 390 F.Supp. 611. Civil Rights 1387; Federal Civil Procedure 1750

4568A. School officials

Terminated high school teacher could bring §§ 1983 suit against principal, seeking monetary damages for violation of teacher's federal constitutional rights arising from alleged wrongful termination. Maizner v. Hawaii, Dept. of Educ., D.Hawai'i 2005, 405 F.Supp.2d 1225. Civil Rights 1133

4569. Secretary of Health and Human Services, proper parties

Where § 602 of this title under which California enacted regulations which permit summary termination of welfare benefits prior to a hearing was not challenged under § 2282 of Title 28, Secretary of Health, Education and Welfare [now Secretary of Health and Human Services] would be dismissed as improper party defendant. Yee-Litt v. Richardson, N.D.Cal.1973, 353 F.Supp. 996, affirmed 93 S.Ct. 2753, 412 U.S. 924, 37 L.Ed.2d 152. Federal Civil Procedure 388

4570. Social workers, proper parties

In action wherein plaintiff alleged deprivation of her right to custody of her children under color of state law, case-worker for county department of public welfare who filed petitions which resulted in removal of plaintiff's children was a proper defendant in action. McGhee v. Moyer, W.D.Va.1973, 60 F.R.D. 578. Civil Rights 1391

4571. Spouses, proper parties

Wife, who sought court order directing husband to pay costs of defending against husband's divorce suit, was not proper party in husband's civil rights action challenging McKinney's N.Y. Domestic Relations Law § 237 authorizing state courts to issue such orders, since wife was not acting "under color of state law." Gras v. Stevens, S.D.N.Y.1976, 415 F.Supp. 1148. Civil Rights 1326(9)

4572. States, proper parties

State's violation of its own laws and procedural rules, creating rights beyond those guaranteed by the Constitution, cannot support a federal due process claim and is of no consequence in civil rights action under § 1983. Hodge v. Jones, C.A.4 (Md.) 1994, 31 F.3d 157, certiorari denied 115 S.Ct. 581, 513 U.S. 1018, 130 L.Ed.2d 496. Civil Rights 1027; Constitutional Law 253(1)

State was not proper party to suit against state officials under this section. Seltzer v. Ashcroft, C.A.8 (Mo.) 1982, 675 F.2d 184, on remand 555 F.Supp. 1381. Civil Rights 1391

State of Missouri was not a proper party to action brought under this section in which plaintiff sought relief and

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damages from a state court probate judgment that she could not inherit under her father's will. Aubuchon v. State of Mo., C.A.8 (Mo.) 1980, 631 F.2d 581, certiorari denied 101 S.Ct. 1358, 450 U.S. 915, 67 L.Ed.2d 341. Civil Rights 1391

No reason existed to disturb conclusions of district court in pro se civil rights action brought by Minnesota prison inmate that state and certain individual defendants were not proper defendants because there was no allegation that named individuals were personally involved in the alleged deprivation of rights or that any violations resulted from official prison policy or custom, that there was no violation of procedural due process requirements in prison disciplinary proceeding, and that legal materials which prison inmate claimed were denied him were not relevant to the disciplinary hearings at issue. Kelsey v. State of Minn., C.A.8 (Minn.) 1980, 622 F.2d 961. Federal Courts 858

State was not a proper party defendant in state prisoner's civil rights action. Neal v. State of Ga., C.A.5 (Ga.) 1972, 469 F.2d 446. Civil Rights 1389

An action under this section was not state insofar as plaintiff intended the Commonwealth of Massachusetts to be named a party in action on complaint alleging civil rights violations by state correctional officials. Billings v. Com. of Mass., D.C.Mass.1980, 498 F.Supp. 883. Civil Rights 1395(7)

State of Ohio was not proper party defendant in action brought under this subchapter to declare invalid, as vague and overbroad, R.C. § 2923.04 prohibiting any person from furnishing legal services to criminal syndicate with purpose of establishing or maintaining syndicate or facilitating its activities. Amusement Devices Ass'n v. State of Ohio, S.D.Ohio 1977, 443 F.Supp. 1040, 10 O.O.3d 235. Civil Rights 1391

Although State was protected from section 1983 action brought by registered voter for deprivation of right to vote for candidates for newly created county judicial position, motion to add state as defendant for sole purpose of assessing against it attorney fees and costs for the action would be allowed. Madden v. Cleland, N.D.Ga.1985, 105 F.R.D. 520. Civil Rights 1391

4573. Town boards, proper parties

Town board member who had authority to direct enforcement of town ordinances and town building inspector who issued citations to enforce such ordinances was proper party in civil rights action seeking declaration that certain town ordinances were unconstitutional. Martin v. Wray, E.D.Wis.1979, 473 F.Supp. 1131. Civil Rights 1391

4574. Foreign officials, proper parties

Paraguayan Consul General, in bringing suit to set aside Paraguayan national's conviction and sentence based on state authorities' violation of consular notification provision of the Vienna Convention, was acting only in his official capacity, for the benefit of Paraguay, and had no greater ability to proceed under federal civil rights statute than did the country he represented. Breard v. Greene, U.S.Va.1998, 118 S.Ct. 1352, 523 U.S. 371, 140 L.Ed.2d 529. Civil Rights 1331(4)

4575. Miscellaneous parties, proper parties

Members of groups of Mexican-Americans, women, young people between ages of 18 and 28, and poor people with income below "poverty level," were, at preliminary stage of litigation, proper parties to bring civil actions seeking to establish that grand juries convened in two Texas counties were composed in contravention of Constitution's requirements because those groups had allegedly been excluded from consideration. Ciudadanos Unidos De San Juan v. Hidalgo County Grand Jury Com'rs, C.A.5 (Tex.) 1980, 622 F.2d 807, certiorari denied 101 S.Ct. 1479, 450 U.S. 964, 67 L.Ed.2d 613. Constitutional Law 42.3(1)

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42 U.S.C.A. § 1983

Where sheriff and town marshal had prevented Jehovah's Witnesses from using public park for religious meeting and town council had denied permission to use park, the sheriff, marshal, mayor, and the town were proper defendants in action to enjoin interference with Jehovah's Witnesses' rights of freedom of speech and assembly. Sellers v. Johnson, C.C.A.8 (Iowa) 1947, 163 F.2d 877, certiorari denied 68 S.Ct. 356, 332 U.S. 851, 92 L.Ed. 421 . Civil Rights 1389

Representative of motorist's estate was the appropriate party to bring any claims based on the deprivation of motorist's rights, including claims under §§ 1983, while motorist's mother was the proper party to bring a wrongful death action under Kansas law based on the violation of her individual rights. Reindl v. City of Leavenworth, D.Kan.2005, 361 F.Supp.2d 1294. Civil Rights 1389; Death 31(7)

Members of California Board of Barbering and Cosmetology and California Attorney General were proper defendants in suit by African hair styling and natural hair care businesses for prospective injunctive relief under § 1983. Cornwell v. California Bd. of Barbering and Cosmetology, S.D.Cal.1997, 962 F.Supp. 1260. Civil Rights 1391

Private developers were properly joined as defendants in section 1983 action against redevelopment corporations and government defendants by owner and lessee to enjoin proposed condemnation of building for redevelopment as unconstitutional taking, even though private developers either lacked eminent domain power or would not exercise it in case, where redevelopment project was result of concerted activity of all defendants, including private developers. Rosenthal & Rosenthal Inc. v. New York State Urban Development Corp., S.D.N.Y.1985, 605 F.Supp. 612, affirmed 771 F.2d 44, certiorari denied 106 S.Ct. 1204, 475 U.S. 1018, 89 L.Ed.2d 317. Federal Civil Procedure 251

XLII. CLASS ACTIONS

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4601. Class actions generally

In evaluating proffered evidence at evidentiary hearing for class certification, district court should be guided by generous policies underlying the class action device and civil rights legislation. Jones v. Diamond, C.A.5 (Miss.) 1975, 519 F.2d 1090. Federal Civil Procedure 173

Class action may be appropriate for action under this section. U. S. ex rel. Sero v. Preiser, S.D.N.Y.1974, 372 F.Supp. 660.

4602. Duty of court, class actions

Whether or not plaintiffs, bringing action under this section against various city officials, charging that city police

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department was engaged in certain surveillance tactics which were designed to and which did have effect of chilling plaintiffs in exercise of their rights under U.S.C.A.Const. Amend. 1 could maintain suit as a class action turned on factual situation more complex than presented in the usual case, and under the circumstances the class action determination was left for judge to whom matter was assigned following ruling that complaint stated a claim upon which relief could be granted. Handschu v. Special Services Division, S.D.N.Y.1972, 349 F.Supp. 766. Federal Civil Procedure 181

4603. Discretion of court, class actions

A district court in a civil right action has broad discretion in deciding whether to allow maintenance of a class action. Pearson v. Townsend, D.C.S.C.1973, 362 F.Supp. 207. Federal Civil Procedure 162

4604. Considerations governing, class actions--Generally

Official paucity of support for plaintiff's proposed class of inmates was not determinative of question whether class should be certified, for in class actions under this section the trial court bears a substantial management responsibility over the conduct of the litigation, which arises the moment the class is requested. Jones v. Diamond, C.A.5 (Miss.) 1975, 519 F.2d 1090. Federal Civil Procedure 186.10

4605. ---- Intervention as alternative, considerations governing, class actions

City fire department members, who brought action under this section, for injunctive relief and declaratory judgment with respect to such members' suspension for ten days without pay and threatened further serious disciplinary action for violation by such members of fire commissioner's memorandum regulating length and manner of grooming of sideburns, chin whiskers, and mustaches, would not be entitled to maintain such action as class action where intervention, liberally allowed, would sufficiently protect all persons affected by such memorandum. Elko v. McCarey, E.D.Pa.1970, 315 F.Supp. 886. Federal Civil Procedure 184.5

4606. ---- Persons benefitted, considerations governing, class actions

In civil rights suit wherein racial discrimination on part of city officials was established, decree would necessarily run to benefit not only of named plaintiffs but also for all persons similarly situated, and there was no prejudice by denial of class action treatment. United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach, Florida, C.A.5 (Fla.) 1974, 493 F.2d 799. Federal Courts 893

Negroes suing to enjoin enforcement of state and municipal segregation laws affecting common carriers and to enjoin maintenance of racial segregation were entitled to decree running not only to benefit of Negro plaintiffs but also for all persons similarly situated, regardless whether action was properly brought as class action under rule 23, Federal Rules of Civil Procedure, Title 28. Bailey v. Patterson, C.A.5 (Miss.) 1963, 323 F.2d 201, certiorari denied 84 S.Ct. 666, 376 U.S. 910, 11 L.Ed.2d 609. Civil Rights 1451; Injunction 189

It was unnecessary to determine whether class action treatment should be accorded suit charging members of planning commission with racial discrimination in connection with denial of application by black church for special exception to operate day-care center in residential area since the decree to which the plaintiffs were entitled, i.e., injunction, was the same whether the purported class was certified; nature of relief awarded required that the decree run to the benefit of not only the named plaintiffs but to all persons similarly situated. Church of God of Louisiana, Inc. v. Monroe- Ouachita Regional Planning Commission, W.D.La.1975, 404 F.Supp. 175. Federal Civil Procedure 186.15

Action for injunctive and declaratory relief to permit distribution of issue of state prison newspaper and its continued publication without interference or censorship by state could not be maintained as class action on behalf

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of outside subscribers in that relief applicable to individual outside subscriber, who, contrary to defendants' motion, would not be dropped as a plaintiff, would be applicable to entire class of subscribers. The Luparar v. Stoneman, D.C.Vt.1974, 382 F.Supp. 495. Declaratory Judgment 305; Federal Civil Procedure 186.10

4607. Effect on individual claims, class actions

Since plaintiff in civil rights case was member of class and would be bound by decision in class action challenging adequacy of all Pennsylvania prison law libraries, district court in federal civil rights action properly refused to consider merits of inmate's challenge to adequacy of law library. Bryan v. Werner, C.A.3 (Pa.) 1975, 516 F.2d 233 . Federal Civil Procedure 186.10

4608. Typicality of claims or defenses, class actions

Owners who presented innocent owner defense to forfeiture of property and alleged unconstitutionally lengthy delay in bringing forfeiture proceedings under Illinois Drug Asset Forfeiture Procedure Act could not show "typicality" required to be entitled to bring class action; reasons for delay in forfeiture proceedings were necessarily too fact specific to allow for class certification as violation of due process would require showing of length of delay, reason for delay, assertion of right, and prejudice to defendant. Jones v. Takaki, C.A.7 (Ill.) 1994, 38 F.3d 321, rehearing and suggestion for rehearing en banc denied. Federal Civil Procedure 181

In action brought by Vermont public assistance applicants challenging alleged delays in processing applications for three public assistance programs, determination that applicants did not suffer delays with regard to one of the programs did not preclude class action certification for lack of typicality with regard to the other two programs. Robidoux v. Celani, C.A.2 (Vt.) 1993, 987 F.2d 931, on remand 876 F.Supp. 575. Federal Civil Procedure 189

Typicality requirement for class certification was satisfied in county jail detainees' §§1983 action alleging that sheriff's department had required them to sleep on cell floors while detained; class members' alleged injuries were identical, arose from same course of conduct, i.e. sheriff's department's alleged policy, and raised same legal theory, i.e. that policy violated their constitutional rights. Thomas v. Baca, C.D.Cal.2005, 231 F.R.D. 397. Federal Civil Procedure 186.10

In action against state employees association, members of Hawaii Public Employment Relations Board and others alleging that certification and collection of collective bargaining service fee from state employees constituted denial of constitutional rights under color of law, state employee and retired state employee failed to show that their claims or defenses were typical of those of the class or that they would fairly and adequately protect the interests of the class, and thus class certification was denied. Jordan v. Hawaii Government Employees' Ass'n, Local 152, AFSCME, AFL-CIO, D.C.Hawai'i 1979, 472 F.Supp. 1123. Federal Civil Procedure 184.5

Plaintiff's unconditional release from confinement under state statutes respecting treatment and rehabilitation of alcoholics did not make his claim under this subchapter dissimilar to that of class of persons consisting of those who "have been" committed. Rakes v. Coleman, E.D.Va.1970, 318 F.Supp. 181. Federal Civil Procedure 186.10

Typicality requirement of class action rule was satisfied by proposed class in § 1983 action of all persons strip searched at county jail during specified time who were arrested for misdemeanor or ordinance offenses unrelated to weapons or illegal drugs with respect to claims against county, and against county sheriff and county jail captain in their official capacities; named plaintiff arrestees were forced to remove their clothing and submit to visual inspection, plaintiffs alleged strip searches were pursuant to policy calling for indiscriminate searches, and there was sufficient indication of such a policy to support class certification, notwithstanding defendants' denials of such uniform policy. Blihovde v. St. Croix County, Wis., W.D.Wis.2003, 219 F.R.D. 607, subsequent determination

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42 U.S.C.A. § 1983

2003 WL 23200374. Federal Civil Procedure 186.10

Claim of owner of vehicles seized by police when driver was arrested for second offense of operating motor vehicle under the influence of alcohol (OMVI) pursuant to Ohio statute permitting police to seize and immobilize vehicles of persons who have been arrested for second OMVI offense who alleged she was an innocent owner of the vehicle was typical of that of other nondriver owners of vehicles seized under statute, as required for class certification. Putnam v. Davies, S.D.Ohio 1996, 169 F.R.D. 89. Federal Civil Procedure 181

4609. Fair and adequate representation, class actions--Generally

Motion of plaintiff, in action against insurer alleging that insurer refused to sell disability insurance to women containing the same terms and conditions available to men solely on the basis of sex, for confirmation of class would be denied where it was probable that plaintiff would encounter considerable difficulty in adequately representing a class which had potentially millions of members. Stern v. Massachusetts Indem. & Life Ins. Co., E.D.Pa.1973, 365 F.Supp. 433. Federal Civil Procedure 181

4610. ---- Antagonistic interests, fair and adequate representation, class actions

Interests of plaintiff black teacher were not antagonistic to other members of class, as to subject matter of suit on account of alleged racial discrimination in school salaries, so as to prevent her from acting as plaintiff in class action, although she alleged that she had received lower wages than white teachers as well as several negro teachers. Arkansas Ed. Ass'n v. Board of Ed. of Portland, Ark. School Dist., C.A.8 (Ark.) 1971, 446 F.2d 763. Federal Civil Procedure 187.5

4611. ---- Injury, fair and adequate representation, class actions

In action brought under this subchapter governing civil actions for deprivation of rights by welfare recipients on behalf of themselves and other welfare recipients against county welfare department to recover damages arising from department's practice of retaining court-ordered child support payments as reimbursements for amounts already paid to welfare recipients as Aid to Families with Dependent Children, welfare department failed to establish that damages suffered by plaintiff recipients were not recoverable, and thus denial of class certification on ground that plaintiffs had suffered no harm and were therefore not representative of purported class was improper. Mackey v. Stanton, C.A.7 (Ind.) 1978, 586 F.2d 1126, certiorari denied 100 S.Ct. 172, 444 U.S. 882, 62 L.Ed.2d 112. Federal Civil Procedure 189

Where allegations in civil rights complaint established no more than that plaintiffs shared some attributes common to persons who may have been subjects of illegal discrimination, but did not establish any injury to plaintiffs, plaintiffs were no more than concerned bystanders, and could not proceed as representatives of injured class. Urban Contractors Alliance of St. Louis v. Bi-State Development Agency, C.A.8 (Mo.) 1976, 531 F.2d 877. Federal Civil Procedure 181

Where inmate of state institution did not allege that brutality or other misconduct had been practiced on him, but in effect alleged that he was part of institutional population which must live from day to day under constant threat of brutality and misconduct, plaintiff was "injured," was a member of a class which was "injured" and was thus competent to maintain class action for himself and others similarly situated under this section against officials of institution to require that it be administered in such a manner as not to violate inmate's rights. Hayes v. Secretary of Dept. of Public Safety, C.A.4 (Md.) 1972, 455 F.2d 798. Federal Civil Procedure 186.10

4612. ---- Membership in class, fair and adequate representation, class actions

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As regarded civil rights action challenging the constitutional validity of forfeiture of plaintiff prisoner's accumulated earnings from work performed at an honor camp, class certification was properly denied since plaintiff was not incarcerated at the time the action was filed, as were the persons whom he sought to represent, and his averments did not show that he was a member of the class he sought to represent at any pertinent time during the course of the proceedings. Johnson v. Duffy, C.A.9 (Cal.) 1978, 588 F.2d 740. Federal Civil Procedure 186.10

Student organization's representation of purported class composed of other organizations similarly situated in suit to have declared unconstitutional S.H.A. ch. 122, § 30-17 dealing with revocation of scholarship aid for misconduct was not precluded on ground that student organization lacked standing because it was not a member of class which it sought to represent. Undergraduate Student Ass'n v. Peltason, N.D.Ill.1973, 359 F.Supp. 320. Federal Civil Procedure 187.5

Deceased plaintiff whose only recovery would be for retroactive benefits could not represent class in action seeking to enjoin enforcement of F.S.A. §§ 409.205(2), 409.225(3), denying old-age assistance benefits and disability benefits to noncitizen resident aliens. Zarate v. State Dept. of Health and Rehabilitative Services, S.D.Fla.1971, 347 F.Supp. 1004, affirmed 92 S.Ct. 2462, 407 U.S. 918, 32 L.Ed.2d 803, rehearing denied 93 S.Ct. 107, 409 U.S. 903, 34 L.Ed.2d 166. Federal Civil Procedure 181

Where action under this section to require state director of Department of Public Health and Welfare to hold administrative hearing on plaintiff's eligibility for Aid to Dependent Children benefits had not been declared a class action by court and plaintiff had been granted relief which she sought individually so that she was no longer in position of proposed class of persons facing prospect of future delay in hearings as to Aid to Dependent Children benefits, plaintiff was not entitled to maintain action as a class action. Callier v. Hill, W.D.Mo.1970, 326 F.Supp. 669. Federal Civil Procedure 181

4613. ---- Moot claims, fair and adequate representation, class actions

Tenant, whose individual plans against landlord in civil rights action were either moot or without merit, was not an adequate representative of proposed class of other tenants similarly situated. Pernas v. Parkview Towers Management Corp., D.C.N.J.1980, 502 F.Supp. 1099. Federal Civil Procedure 181

4614. ---- Pro se plaintiffs, fair and adequate representation, class actions

Federal prisoners who brought action attacking various conditions in city jail in which they were formerly confined did not present a case for class certification, where the prisoners were acting pro se, and had been transferred to facilities other than the city jail. Fore v. Godwin, E.D.Va.1976, 407 F.Supp. 1145. Federal Civil Procedure 186.10

Action challenging New York Department of Correctional Services' refusal to permit prisoners to participate in interprison exchange of legal materials and assistance between prisoners in different states could not be maintained as class action where plaintiff was prisoner who was proceeding pro se. Shaffery v. Winters, S.D.N.Y.1976, 72 F.R.D. 191. Federal Civil Procedure 186.10

Pro se prisoner could not bring class action challenging parole revocation proceedings of the Board of Prison Terms; prisoner was not an adequate class representative able to fairly represent and adequately protect the interests of the class. Reed v. Board of Prison Terms, N.D.Cal.2003, 2003 WL 21982471, Unreported. Federal Civil Procedure 186.10

4615. ---- Standing to maintain action, fair and adequate representation, class actions

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42 U.S.C.A. § 1983

Named plaintiffs had standing to bring class action under § 1983 alleging that county violated the Fourth Amendment by failing to provide prompt judicial determinations of probable cause to persons arrested without a warrant, where, at time complaint was filed, plaintiffs had been arrested without warrants and were being held in custody without having received a probable cause determination, prompt or otherwise, as injury was, at that moment, capable of being redressed through injunctive relief. County of Riverside v. McLaughlin, U.S.Cal.1991, 111 S.Ct. 1661, 500 U.S. 44, 114 L.Ed.2d 49, on remand 943 F.2d 36. Federal Civil Procedure 186.10

Plaintiff, as a black who alleged injury in fact by virtue of city officials' discriminatory policies with respect to hiring for positions in fire department, had standing to bring action based on alleged racial discrimination in the recruiting, testing and hiring of applicants for position of fire fighter and such standing, along with a showing of general prerequisites to maintenance of class action as well as the opposing parties' refusal to act on grounds generally applicable to class, assured that the litigation could proceed as a class action. Com. of Pa. v. Glickman, W.D.Pa.1974, 370 F.Supp. 724. Federal Civil Procedure 184.10

White plaintiffs would have standing to maintain civil rights action challenging alleged school segregation and named plaintiffs could maintain class action although they were not designated as black or white. Husbands v. Com. of Pa., E.D.Pa.1973, 359 F.Supp. 925. Civil Rights 1331(2); Federal Civil Procedure 187.5

4616. ---- Miscellaneous representation adequate, fair and adequate representation, class actions

Named class representatives adequately represented class of patients institutionalized for mental illness in mental health facilities operated by state in action under § 1983; representatives' claims were typical of claims of rest of class. K.L. v. Edgar, N.D.Ill.1996, 948 F.Supp. 44. Federal Civil Procedure 181

Former prison inmate could serve as representative party in class action brought against sheriff and county board relating to conditions in jail, even though representative had been released day after suit was filed; sufficient guarantees that suit would be properly prosecuted were provided by representative seeking monetary damages and from experience and competency of his trial counsel. McKenzie v. Crotty, D.S.D.1990, 738 F.Supp. 1287. Federal Civil Procedure 186.10

Suit under this section to redress alleged arbitrary exclusion of inmates from parole because of reliance on unconstitutional discipline records could properly be maintained as class suit on behalf of inmates who were "set off" for parole consideration or who were reclassified or denied consideration for work release or educational and vocational opportunities in reliance on challenged records; fact that named class representative might not be currently eligible for work release was not solely dispositive of his ability to adequately represent members of the class who were denied consideration for work release. Leonard v. Mississippi State Probation and Parole Bd., N.D.Miss.1974, 373 F.Supp. 699, reversed 509 F.2d 820, rehearing denied 515 F.2d 510, certiorari denied 96 S.Ct. 428, 423 U.S. 998, 46 L.Ed.2d 373. Federal Civil Procedure 186.10

4617. ---- Miscellaneous representation inadequate, fair and adequate representation, class actions

President of association of minority prisoners would not fairly and adequately protect interests of class, and therefore his motion to certify class of association members in suit under this section against superintendents and staff of prison would be denied. Ethnic Awareness Organization v. Gagnon, E.D.Wis.1983, 568 F.Supp. 1186. Federal Civil Procedure 186.10

Prisoners who proceeded pro se seeking declaratory and injunctive relief to remedy prison conditions, were not entitled to class certification, where, if they prevailed on nonfrivolous claims, relief provided might sufficiently nullify any need to go forward as legal class and they did not demonstrate sufficiently that they would be able to represent all class members fairly and adequately. Griffin v. Smith, W.D.N.Y.1980, 493 F.Supp. 129. Federal Civil Procedure 186.10

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42 U.S.C.A. § 1983

Black high school student, whose mother had consented to initial infliction of corporal punishment and who was threatened with a second administration of such punishment, could not represent all other black students of her junior high school for purpose of class action challenging infliction of corporal punishment as racially motivated. Sims v. Waln, S.D.Ohio 1974, 388 F.Supp. 543, affirmed 536 F.2d 686, certiorari denied 97 S.Ct. 1693, 431 U.S. 903, 52 L.Ed.2d 386. Federal Civil Procedure 187.5

Plaintiff, who had been readmitted to school, was not a proper class representative to bring an action attacking school authorities' practices with respect to suspension. Boyd v. Smith, N.D.Ind.1973, 353 F.Supp. 844. Federal Civil Procedure 187.5

Eight named inmates, formerly incarcerated in county jails and now imprisoned in Mississippi State Penitentiary, who had only individual claims for monetary damages, and four other named plaintiffs, awaiting transfer from county jails to state penitentiary, who were subject to like disqualification from injunctive and declaratory relief concerning allegedly unconstitutional conditions existing in the county jails, could not assure, as required by rule 23, Federal Rules of Civil Procedure, Title 28, governing class actions, that inmates confined presently or in the future in county jails would have their dominant interest in eliminating unconstitutional jail conditions and practices pressed with same vigor as claims of representative plaintiffs for large damages were likely to be. Stewart v. Winter, N.D.Miss.1980, 87 F.R.D. 760, affirmed 669 F.2d 328. Federal Civil Procedure 186.10

4618. Common questions of law and fact, class actions--Generally

Action by certain plaintiffs challenging numerous state criminal laws and municipal ordinances for alleged vagueness and overbreadth and for invalidity as applied to named plaintiffs and others similarly situated was not, in absence of a showing of common questions of law and fact, properly maintainable as a class action. Brooks v. Briley, M.D.Tenn.1967, 274 F.Supp. 538, affirmed 88 S.Ct. 1671, 391 U.S. 361, 20 L.Ed.2d 647. Federal Civil Procedure 181

It is not necessary that all members of class wish to seek relief from defendants' alleged unconstitutional actions or that all members take an interest in the maintenance of the suit, for purposes of determining whether test of commonality in civil rights case has been met, nor is it necessary that all members of proposed class be identically situated or that all be aggrieved by defendants' conduct or policies. Glover v. Johnson, E.D.Mich.1977, 85 F.R.D. 1 . Federal Civil Procedure 165

4619. ---- Acting or refusing to act on common grounds, common questions of law and fact, class actions

Termination policies of public utility applied to all of proposed class members in class action alleging deprivation of constitutional right under color of law; thus utility board members opposing class action had acted or refused to act on grounds generally applicable to the class, making final declaratory and injunctive relief with respect to entire class both appropriate and necessary. Bradford v. Edelstein, S.D.Tex.1979, 467 F.Supp. 1361. Federal Civil Procedure 219

Where pregnant teachers' primary claim against school board involved equitable relief, with damages in the form of back pay being but a part of the equitable relief needed to obviate the alleged past discrimination, class action was maintainable pursuant to rule 23, Federal Rules of Civil Procedure, Title 28, pertaining to cases in which the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or declaratory relief rather than as a class action in which adjudications with respect to individual members of the class would be dispositive of the interests of the other members not parties to the adjudications. Paxman v. Wilkerson, E.D.Va.1975, 390 F.Supp. 442. Federal Civil Procedure 184.15

4620. ---- Defenses, common questions of law and fact, class actions

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It was no bar to maintenance of class action challenging practice of state officials, acting under various state statutes, of confining alcoholics for treatment and rehabilitation that certain defenses might be available to defendants against certain other class members' claims. Rakes v. Coleman, E.D.Va.1970, 318 F.Supp. 181. Federal Civil Procedure 186.10

Proposed class in § 1983 action of all persons strip searched at county jail during specified time who were arrested for misdemeanor or ordinance offenses unrelated to weapons or illegal drugs was sufficiently cohesive to satisfy requirement that common questions of law or fact predominate and support class action certification as to liability determination, although staying decision on whether to certify issue of damages for class resolution, where class was only certified as to defendants in their official capacities; challenge was to allegedly uniform policy, damages issue could be separately determined after ruling on general liability issue, and damages for each claimant were likely to be small. Blihovde v. St. Croix County, Wis., W.D.Wis.2003, 219 F.R.D. 607, subsequent determination 2003 WL 23200374. Federal Civil Procedure 186.10

4621. ---- Individual relief, common questions of law and fact, class actions

Class action seeking injunctive relief for alleged constitutional conditions and practices in Georgia prison system did not bar inmates from bringing action seeking both injunctive relief and monetary damages for alleged violations of their right to due process in prison disciplinary proceedings. Fortner v. Thomas, C.A.11 (Ga.) 1993, 983 F.2d 1024. Federal Civil Procedure 180

Predominance and superiority requirements for maintaining class action were met in county jail detainees' §§1983 action alleging that sheriff's department had required them to sleep on cell floors while detained, regardless of necessity for individualized damages determinations; central issues for every class member were fact question of whether they had been required to sleep on floor and legal question of whether that fact permitted recovery under § §1983, while individualized questions were peripheral, and individual members had low interest in controlling individual prosecutions and low potential for recovery relative to cost of prosecuting action. Thomas v. Baca, C.D.Cal.2005, 231 F.R.D. 397.

Propriety of alleged delays in bringing state detainees to trial could best be determined by allowing civil rights action to be maintained as a class action, even though specific relief such as release on bail or dismissal of an indictment might depend on facts in an individual case. Wallace v. McDonald, E.D.N.Y.1973, 369 F.Supp. 180. Federal Civil Procedure 186.10

Inasmuch as racial discrimination charged against governing body of sanitary district by district employees constituted class discrimination, action under this subchapter and for injunctive relief under U.S.C.A.Const. Amend. 14 was properly brought as class action even though individual rights were involved. Bennett v. Gravelle, D.C.Md.1971, 323 F.Supp. 203, affirmed 451 F.2d 1011, certiorari dismissed 92 S.Ct. 2451, 407 U.S. 917, 32 L.Ed.2d 692. Federal Civil Procedure 184.10

4622. ---- Miscellaneous questions common, common questions of law and fact, class actions

Individual plaintiffs who were displacees from urban renewal project could properly bring a class action on behalf of themselves and other displacees on a complaint alleging that Negroes and Puerto Ricans were being discriminated against in connection with relocation and allegations clearly raised questions of fact common to class. Norwalk CORE v. Norwalk Redevelopment Agency, C.A.2 (Conn.) 1968, 395 F.2d 920. Federal Civil Procedure 147; Federal Civil Procedure 181

Commonality requirement for class certification was met, in county jail detainees' §§1983 action alleging that sheriff's department had required them to sleep on cell floors while detained; allegation presented common fact question, and all class members also shared legal claim that department policy or custom was behind alleged

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practice, and that practice amounted to deprivation of their federally protected rights. Thomas v. Baca, C.D.Cal.2005, 231 F.R.D. 397. Federal Civil Procedure 186.10

Proposed class action brought under this section to challenge constitutionality of 25 Del.C. § 3901 authorizing the sale of motor vehicles to satisfy a repairman's lien met requirement for maintenance of a class action that the suit present common questions of law and fact. Swiggett v. Watson, D.C.Del.1977, 441 F.Supp. 254. Federal Civil Procedure 181

Proposed class of nondriver vehicle owners whose vehicles were seized by police under Ohio statute requiring police to seize and immobilize vehicles of persons who have been arrested for second offense of operating motor vehicle while under the influence of alcohol (OMVI) met commonality requirement necessary for class certification; action challenged routine and uniformly applied procedure when driver was arrested for repeat offense of drunk driving, and question of statute's constitutionality would not vary among class members. Putnam v. Davies, S.D.Ohio 1996, 169 F.R.D. 89. Federal Civil Procedure 181

4623. ---- Miscellaneous questions not common, common questions of law and fact, class actions

Class action was properly denied in connection with civil rights suit against sheriff for latter's action in confining prisoner is solitary confinement in "strip cell," where there were no allegations or evidence proffered suggesting that other prisoners were accorded treatment given to plaintiff. McMahon v. Beard, C.A.5 (Fla.) 1978, 583 F.2d 172. Federal Civil Procedure 186.10

Issues respecting postarrest detention of state prisoners were not cognizable in civil rights class action, where indictments of different persons would present different facts as to continuing detention after arrest. Carter v. Kilbane, C.A.6 (Ohio) 1975, 519 F.2d 1370. Federal Civil Procedure 186.10

Where plaintiff contended that test served to discriminate in 20 job categories, it would be unreasonable to require employer in a single lawsuit to show that test accurately predicted performance in each and factual issues were too diverse to warrant class treatment. Cooper v. Allen, C.A.5 (Ga.) 1972, 467 F.2d 836, on remand. Federal Civil Procedure 184.10

Where Negro voter had been struck from list of registrations under LSA-R.S. 18:132, 18:133, respecting challenges to allegedly illegal registrations and during the same period many other Negroes in parish had also been struck from list of registered voters by allegedly unconstitutional and illegal actions of parish registrar of voters in mailing out more challenges than could be handled by her office within the short period required to answer, right of each voter depended upon actions taken with respect to his own case, class action could not be maintained. Reddix v. Lucky, C.A.5 (La.) 1958, 252 F.2d 930. Federal Civil Procedure 186.15

Civil rights proceeding instituted by state inmates was not a proper class action, in that every inmate presented a different problem with regard to treatment necessary, proper and required for him as an individual. Gray v. Creamer, W.D.Pa.1974, 376 F.Supp. 675. Federal Civil Procedure 186.10

4624. Difficulties in management of action, class actions

Civil rights action contesting confinement of prisoners in "segregation unit" was not maintainable as class action where record was not so developed that court would be assured it would not encounter unforeseen and substantial difficulties in management of class action. Carter v. McGinnis, W.D.N.Y.1970, 320 F.Supp. 1092. Federal Civil Procedure 186.10

4625. Numerosity, class actions

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Class of persons whose applications for public assistance had allegedly been delayed unlawfully by the Vermont Department of Social Welfare satisfied numerosity requirement for class action certification; plaintiffs presented documentary evidence of delays in 22 to 133 cases per month; potential class members were distributed over entire state, and were economically disadvantaged, making individual suits difficult to pursue. Robidoux v. Celani, C.A.2 (Vt.) 1993, 987 F.2d 931, on remand 876 F.Supp. 575. Federal Civil Procedure 189

Numerosity requirement of rule 23, Federal Rules of Civil Procedure, Title 28, must be read liberally in the context of civil rights suits; this is especially true when the class action falls under alternative requirement that party opposing class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Jones v. Diamond, C.A.5 (Miss.) 1975, 519 F.2d 1090. Federal Civil Procedure 163

Class of twenty black teachers in school district was sufficiently large to permit class action on ground of salary discrimination where some teachers were no longer in district, those in district could have natural fear or reluctance to sue on individual basis, and district had filed nondiscriminatory salary schedule reducing potential members of class and lessening chance of individual actions. Arkansas Ed. Ass'n v. Board of Ed. of Portland, Ark. School Dist., C.A.8 (Ark.) 1971, 446 F.2d 763. Federal Civil Procedure 187.5

Determination of whether requisites for class certification had been met in civil rights action based on alleged discrimination in hiring of firefighters would be delayed until plaintiffs had opportunity to discover actual numbers and names of potential class members from city defendants, as court did not have clear basis on which to determine size of alleged class and whether members desired employment with city. Caldwell v. Rowland, E.D.Tenn.1996, 932 F.Supp. 1018. Federal Civil Procedure 175

In civil rights action brought against city police officers to enjoin defendants from future surveillance or harassment of individuals thought to be gay, district court would not certify class composed of owners of gay bars within city, since plaintiff alleged only four gay bars in their complaint, and thus the alleged class fell for lack of numerosity. Cyr v. Walls, N.D.Tex.1977, 439 F.Supp. 697. Federal Civil Procedure 181

Class composed of 38 juveniles civilly committed to state camps after being adjudged delinquent or in need of supervision was so numerous as to make joinder impractical, for purposes of determining whether civil rights action by two juveniles challenging constitutionality of certain practices at camps was appropriate for class action treatment. King v. Carey, W.D.N.Y.1975, 405 F.Supp. 41. Federal Civil Procedure 186.10

Where no other resident of communal farm had been denied employment by county board of education and no other resident desired to apply for position with the board and there was no showing that the number of residents who possessed qualifications to teach and who might desire to teach in the public schools was so great that the joinder would be impracticable, teacher was not entitled to maintain as a class action her civil rights lawsuit against board of education to obtain injunctive and monetary relief as result of board's alleged denial of employment on basis of teacher's residence at communal farm. Doherty v. Wilson, M.D.Ga.1973, 356 F.Supp. 35. Federal Civil Procedure 184.10

In view of the thousands of qualified voters and of voluntary unpaid registrars whose interests were the same as the named plaintiffs, plaintiffs were entitled to maintain as a class action their civil rights suit attacking state statutes which closed registration during month of September preceding general election and which provided that only enrolled members of the two major parties could act as registrars. Bishop v. Lomenzo, E.D.N.Y.1972, 350 F.Supp. 576. Federal Civil Procedure 181

High school student's action under this section against enforcement of portion of dress code was properly brought as class action in light of evidence as to how many students were or potentially might be affected. Karr v. Schmidt, W.D.Tex.1970, 320 F.Supp. 728, reversed on other grounds 460 F.2d 609, certiorari denied 93 S.Ct. 307, 409 U.S.

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989, 34 L.Ed.2d 256. Federal Civil Procedure 187.5

Class of nondriver vehicle owners whose vehicles were seized pursuant to Ohio statute requiring police to seize and immobilize vehicles of persons who have been arrested for second offense of operating motor vehicle while under the influence of alcohol (OMVI) met numerosity requirement for class action certification; class of potential plaintiffs numbered in the thousands and would be always changing, and nature of claims made individual challenges to constitutionality of statute impractical and unlikely. Putnam v. Davies, S.D.Ohio 1996, 169 F.R.D. 89 . Federal Civil Procedure 181

4626. Membership in class, class actions

For purposes of relief directed at police misconduct generally rather than to any particular state statute, named plaintiffs intimidated by misconduct may represent all others in class of those similarly abused, without regard to asserted state statutory basis for police actions. Allee v. Medrano, U.S.Tex.1974, 94 S.Ct. 2191, 416 U.S. 802, 40 L.Ed.2d 566. Federal Civil Procedure 181

In civil rights action brought against city police officers to require destruction of lists of automobile license numbers allegedly recorded by defendants during meeting of state gay conference, district court would certify the class of all persons whose numbers were taken by police officers. Cyr v. Walls, N.D.Tex.1977, 439 F.Supp. 697. Federal Civil Procedure 181

Plaintiffs challenging constitutionality of McKinney's N.Y. Correction Law § 213 and practices of the New York Parole Board for class would be allowed to maintain action as a class action on behalf of all individuals under the control and jurisdiction of the New York State Department of Correctional Services who had been either denied parole or who will soon become eligible for parole consideration and a subclass would be allowed composed of all black and Spanish surnamed individuals under control of and jurisdiction of the Department of Correctional Services who had either been denied parole or who will soon become eligible for parole consideration. Cicero v. Olgiati, S.D.N.Y.1976, 410 F.Supp. 1080, motion denied 426 F.Supp. 1210, motion denied 426 F.Supp. 1213. Federal Civil Procedure 186.10

Class represented in civil rights action which was brought by two juveniles civilly committed to state camps upon being adjudicated delinquent or in need of supervision and which challenged the constitutionality of certain camp practices included all minors who were civilly committed to such camps and who were required to participate in programs similar to those complained of by class representatives. King v. Carey, W.D.N.Y.1975, 405 F.Supp. 41. Federal Civil Procedure 186.10

In interests of justice, defendant class in civil rights action against school boards would be amended, sua sponte, to include the "members" of all such school boards which maintained allegedly discriminatory policies with regard to maternity leave for pregnant teachers. Paxman v. Wilkerson, E.D.Va.1975, 390 F.Supp. 442. Federal Civil Procedure 392

Civil rights action by individual plaintiffs for declaratory and injunctive relief against alleged discriminatory employment practices in police department was maintainable, upon fulfillment of numerosity and commonality requirements, on behalf of all present black employees of police department and all future employees and applicants for employment with department, but was not maintainable on behalf of all black persons residing in the city entitled to police protection and all past black employees and applicants for employment with police department. Richmond Black Police Officers Ass'n v. City of Richmond, E.D.Va.1974, 386 F.Supp. 151. Federal Civil Procedure 184.10

It was not too difficult to ascertain identity of members to certify proposed class in § 1983 action of all persons strip searched at county jail during specified time who were arrested for misdemeanor or ordinance offenses

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unrelated to weapons or illegal drugs on theory meaning of strip search was broad and subjective and inquiry into merits of case would be necessary to determine whether class member was strip searched, but class definition would be amended by court to clarify meaning of strip search; Seventh Circuit had defined strip search as visual inspection of naked person without intrusion into body cavities, policy of county sheriff's department that led to suit was similar, and subjective purpose of officers involved was not relevant to whether strip search had occurred. Blihovde v. St. Croix County, Wis., W.D.Wis.2003, 219 F.R.D. 607, subsequent determination 2003 WL 23200374 . Federal Civil Procedure 186.10

4627. Subclasses, class actions

Alleged subclasses consisting of litigants of moderate or modest means represented by unincorporated association of attorneys and all persons of advanced age or in minority and underprivileged groups, in civil rights action alleging violation of rights under U.S.C.A.Const. Amends. 6 and 14 in failure of state to provide adequate court facilities, in addition to lacking identity of interests, were set out in terms too vague to define the class. Ad Hoc Committee on Judicial Administration v. Com. of Mass., C.A.1 (Mass.) 1973, 488 F.2d 1241, certiorari denied 94 S.Ct. 2389, 416 U.S. 986, 40 L.Ed.2d 763. Federal Civil Procedure 181

In context of motion for class certification in action under state and federal law challenging manner in which city administered and scored detectives' promotional exam, subclasses would have to be certified if blacks and hispanics as well as whites were part of proposed plaintiff class and if proposed class consisted of both officers who did advance to oral portion of exam and those who did not; complaint in part alleged that scores were weighted in favor of blacks and hispanics, and there could be antagonism if those races were in single class with white officers, and arguments of officers who did or did not proceed to oral portion could diverge. Majeske v. City of Chicago, N.D.Ill.1990, 740 F.Supp. 1350. Federal Civil Procedure 184.10

Subclass of alleged discriminatees which would be allowed to come forward on claim for alleged employment discrimination brought against city fire department under this section could not include persons whose individual claims had become barred, as of date action was filed in district court, by applicable California statute of limitations applying to actions for liability upon a statute. League of United Latin American Citizens v. City of Salinas Fire Dept., N.D.Cal.1980, 88 F.R.D. 533. Federal Civil Procedure 176

4628. Notice, class actions

In class action, brought under this section challenging constitutionality of state statute which requires certain residents to obtain court permission before they can marry, brought against defendant class of county clerks, all of whom were required by W.S.A. 245.10(1, 4, 5), to refuse to issue marriage licenses to members of class of plaintiffs without court order, no prejudgment notice to members of either class was required by either rule 23, Federal Rule of Civil Procedure, Title 28, or due process; however, notice of judgment would be provided to members of defendant class. Redhail v. Zablocki, E.D.Wis.1976, 418 F.Supp. 1061, probable jurisdiction noted 97 S.Ct. 1096, 429 U.S. 1089, 51 L.Ed.2d 534, affirmed 98 S.Ct. 673, 434 U.S. 374, 54 L.Ed.2d 618. Constitutional Law 309(1.5); Federal Civil Procedure 177.1

An action brought for injunctive and ancillary relief from discrimination in employment is properly maintainable as a class action under class action provision relating to actions for injunctive relief and does not require notice of opportunity to opt out of the class. Oburn v. Shapp, E.D.Pa.1975, 393 F.Supp. 561, affirmed 521 F.2d 142. Federal Civil Procedure 184.10

In civil rights action against defendants who had allegedly refused to rent to Negroes and who thereby denied to Caucasian residents opportunity to live in integrated housing, initial and primary issues central to both class claims was whether defendants violated this section in which event equitable relief would be forthcoming, and issue of

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money damages would be determined if such initial violations were established; notice to class would also be dispensed with until after adjudication on question of liability. Harris v. Dumont Co., Inc., E.D.Pa.1973, 61 F.R.D. 423. Civil Rights 1453; Civil Rights 1462; Federal Civil Procedure 186.15

4629. Conditional certification, class actions

Civil rights action challenging various aspects of procedures by which housing authority and its officials were instituting summary process actions for eviction of tenants for nonpayment of rent would be conditionally certified as a class action on behalf of class consisting of all of the authority's tenants against whom summary process actions were filed with specified return date. New Haven Tenants' Representative Council, Inc. v. Housing Authority of City of New Haven, D.C.Conn.1975, 390 F.Supp. 831. Federal Civil Procedure 181

4630. Decertification, class actions

That factual determinations pertaining to individual class members would be necessary did not preclude court from aiding class to obtain its just restitution, and where it would be necessary for court in each case to determine only whether student was Pennsylvania resident at time of paying nonresident tuition and, if so, amount of restitution due, class was not unmanageable on restitution issue and, at least without investigation into possible use of subclasses, decertification of class was error. Samuel v. University of Pittsburgh, C.A.3 (Pa.) 1976, 538 F.2d 991. Federal Civil Procedure 187.5

Where original, individual plaintiff in inmates' civil rights class action was a proper representative of the class at time of certification, intervenor plaintiff's subsequent escape from correctional center did not require the decertification of class action. Doe v. Lally, D.C.Md.1979, 467 F.Supp. 1339. Federal Civil Procedure 186.10

4631. Relation back of certification, class actions

Where six days after welfare recipient and welfare rights organization filed class action suit challenging Pennsylvania emergency assistance regulations plaintiff recipient received a payment which solved her exigent needs, and thereafter four other individuals filed motion to intervene as plaintiffs, and although "sum" of claims of intervenors had been remedied the issue presented was capable of repetition, yet evading review, certification of class related back to the time of the complaint and class had standing to sue. Williams v. Wohlgemuth, C.A.3 (Pa.) 1976, 540 F.2d 163. Federal Civil Procedure 189

4632. Particular actions maintainable, class actions

County jail detainees' §§1983 action, alleging that sheriff's department had required them to sleep on cell floors while detained, was maintainable as class action on basis that department had "acted ... on grounds generally applicable to the class"; department was alleged to have floor-sleeping policy that was generally applicable to all detainees, and class comprised present and future detainees as well as former ones, so that injunctive relief was appropriate. Thomas v. Baca, C.D.Cal.2005, 231 F.R.D. 397. Federal Civil Procedure 186.10

Class certification was appropriate in civil rights action challenging constitutionality of Nevada procedural rule for use in death penalty cases brought by defendant charged with death penalty offense on behalf of all individuals who were or would be directly subjected to rule; class consisted of infinite and uncertain amount of members, questions of law or fact common to class existed, typicality existed, representation was adequate, prosecution of separate actions would create risk of inconsistent adjudications or substantially impair ability of subsequent plaintiff to protect his interests, and party opposing class acted on grounds applicable to all criminal defendants facing rule. Riley v. Nevada Supreme Court, D.Nev.1991, 763 F.Supp. 446. Federal Civil Procedure 186.10

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For purposes of certification as class action, pleadings and stipulations in action by utility customer against members of utility board alleging deprivation of constitutional right under color of law were sufficient to establish that joinder of all members of proposed class was impractical, that there were questions of law or fact common to the class, that representative customer would fairly and adequately protect interest of class and that claims of representative customer were typical of those of the entire class. Bradford v. Edelstein, S.D.Tex.1979, 467 F.Supp. 1361. Federal Civil Procedure 219

Rock concert patrons satisfied prerequisite for bringing class action challenging constitutionality of warrantless searches of patrons of rock concerts at public auditorium on behalf of that class of persons who have and will attend rock concerts at auditorium and who have been and will be subject to searches. Stroeber v. Commission Veteran's Auditorium, S.D.Iowa 1977, 453 F.Supp. 926. Federal Civil Procedure 181

Action brought against state official alleging unconstitutionality of statute requiring law enforcement officers to seize and immobilize vehicles of persons who have been arrested for second offense of operating motor vehicle while under the influence of alcohol (OMVI) was maintainable as class action under rule permitting class action to be maintained when defendants have acted or refused to act on grounds generally applicable to class. Putnam v. Davies, S.D.Ohio 1996, 169 F.R.D. 89. Federal Civil Procedure 181

Class would be certified in lawsuit challenging state's policy of placing minors over 12 years of age on waiting list between time state court signed order committing minor to Department of Mental Health and Mental Retardation (DMH/MR) and time minor was taken into physical custody in state institution to include "all minors over the age of 12 years old who have been or will be ordered committed to the custody of the Alabama Department of Mental Health and Mental Retardation and who are or will be placed on a waiting list for admission to a DMH/MR facility." D.W. by M.J. on Behalf of D.W. v. Poundstone, M.D.Ala.1996, 165 F.R.D. 661, affirmed 113 F.3d 1214 . Federal Civil Procedure 186.10

4633. Particular actions not maintainable, class actions

Class certification, in action challenging municipal judge's general order authorizing impoundment of vehicles for certain nonmoving violations and impoundment of plaintiff's vehicle, was not appropriate, where plaintiff provided no detailed guidance how class was to be defined or identified, plaintiff did not establish commonality and typicality requirements in light of wide range of infractions which triggered impoundment, and plaintiff did not support claim of numerousness with reliable standards or estimates. Coleman v. Watt, C.A.8 (Ark.) 1994, 40 F.3d 255. Federal Civil Procedure 181

District court did not abuse its discretion in denying motion for class certification by motorists challenging constitutionality of Hawaii statute providing for administrative revocation of driver's licenses for driving while intoxicated; any possible plaintiffs either would have license revocation proceedings pending in state court, in which case *Younger* abstention would apply, or would be collaterally attacking final state judgments, in which case *Rooker-Feldman* doctrine would apply. Aiona v. Judiciary of State of Hawaii, C.A.9 (Hawai'i) 1994, 17 F.3d 1244 . Federal Civil Procedure 181

Class certification was denied to suit under this section brought by pro se Virginia state prisoner seeking to sue on behalf of all persons confined in all of the Virginia prisons. Hummer v. Dalton, C.A.4 (Va.) 1981, 657 F.2d 621. Federal Civil Procedure 186.10

Where there was no evidence of intentional discrimination on part of city, plaintiff's complaint had to be that implementation of test did in fact disqualify more blacks than whites from job and should be banned regardless of presence or absence of intent to disqualify a disproportionate number of blacks and to meet the challenge city had to show with respect to each job category at issue that test was substantially related to one's performance in position sought, and class treatment for all 20 job classifications under attack was inappropriate. Cooper v. Allen,

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42 U.S.C.A. § 1983

C.A.5 (Ga.) 1972, 467 F.2d 836, on remand. Civil Rights 1405; Federal Civil Procedure 184.10

Certification of class of plaintiffs harmed by inclusion of race in profile used to support probable cause affidavit to justify search warrant was inappropriate in individual plaintiff's § 1983 action, in light of individuality of probable cause determinations; suspect could not establish numerosity, typicality or commonality. Simmons v. Baker, E.D.Va.1994, 842 F.Supp. 883, reversed in part 47 F.3d 1370. Federal Civil Procedure 181

Civil rights action filed by patients who had been involuntarily committed involved fact-specific inquiry into whether patients were dangerous to themselves or others and, therefore, action was not appropriate for certification as class action. Rubenstein v. Benedictine Hosp., N.D.N.Y.1992, 790 F.Supp. 396. Federal Civil Procedure 186.10

Proposed class of taxpayers for industrial, commercial or residential real estate who filed specific objections challenging taxes, paid the challenged taxes and obtained a refund of the challenged taxes would not be certified as a class because it would have included not only those taxpayers who received a refund after their claims were tried to judgment but also those who received a refund pursuant to settlement, and because latter group could not be included in the class since the court would have to examine the facts of each settled case to determine whether state violated this section in connection with the assessment. North American Cold Storage Co. v. Cook County, N.D.Ill.1982, 531 F.Supp. 1003. Federal Civil Procedure 181

Class treatment of challenge to routine strip and cavity searches of inmates before and after court appearances and visitations was inappropriate, in light of fact that constitutionality of individual searches was fact-specific inquiry that depended upon why each inmate was searched and security risks presented, and the issue of damages would necessitate particularized and fact-specific inquiries. Klein v. DuPage County, N.D.Ill.1988, 119 F.R.D. 29. Federal Civil Procedure 186.10

4634. Settlements

Allocation of cumulative sum certain for distribution to all class members who submitted claims was fair method of distribution in settlement of §§ 1983 action against District of Columbia Department of Corrections challenging Department's strip-search policy, even though class members would not know size of their individual awards until all claims had been processed; allocation method permitted Department to be certain of its liability. Bynum v. District of Columbia, D.D.C.2006, 412 F.Supp.2d 73. Compromise And Settlement 61

Preliminary approval of proposed settlement was warranted in §§1983 action against District of Columbia Department of Corrections challenging Department's policy of conducting suspicionless strip searches of inmates declared releasable after court appearances, and challenging alleged over-detentions; terms of proposed agreement served best interests of class members as well as applicable civil procedure rule and due process, including payment of $12 million to members and their attorneys and for costs of injunctive relief that included plan to henceforth divert inmates ordered released to secure location outside jail's open population where they would not be subject to suspicionless strip searches. Bynum v. Government of Dist. of Columbia, D.D.C.2005, 384 F.Supp.2d 342, subsequent determination 412 F.Supp.2d 73. Constitutional Law 309(1.5)

XLIII. COMPLAINT

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4661. Duty of court, complaint

When examining suit brought under § 1983 it is duty of court to examine whether plaintiff has alleged sufficient facts which, if proved, would comprise actionable deprivation of federal right. Waldron v. Rotzler, N.D.N.Y.1994, 862 F.Supp. 763. Civil Rights 1394

Even though complaint in civil rights action frames the action in terms of civil conspiracy, the court examines other possible theories of recovery, including statutory action for deprivation of rights under this section, in accordance with its duty to examine complaint to determine if there were grounds for relief on any possible theory. Huey v. Barloga, N.D.Ill.1967, 277 F.Supp. 864. Federal Civil Procedure 1829

Though state prisoner complaining that custody in Maryland House of Correction violated U.S.C.A.Const. Amend. 14, that U.S.C.A.Const. Amend. 1 protected right to demonstrate or protest in manner involved, and that he was deprived of constitutional rights, privileges, and immunities had not selected statute under which relief could be granted, district court had duty to frame his allegations in terms of appropriate statute. Roberts v. Pepersack, D.C.Md.1966, 256 F.Supp. 415, certiorari denied 88 S.Ct. 175, 389 U.S. 877, 19 L.Ed.2d 165. Habeas Corpus 670(1)

4662. Prior court approval, complaint

Numerous questionable actions filed by inmate, along with his failure to prosecute those actions diligently, showed abuse of process, warranting requirement that inmate obtain prior court approval before filing future actions under this section. Ferguson v. Dier-Zimmel, E.D.Wis.1992, 809 F.Supp. 668. Injunction 26(3)

4663. Construction of pleadings, complaint--Generally

Terminated firefighter's complaint stated § 1983 claim against Arizona fire district for violation of due process, where liberal reading of firefighter's complaint showed an inference that district, as final policy maker on hiring, acted under color of state law to terminate his employment in violation of his federal rights. Greenawalt v. Sun City West Fire Dist., D.Ariz.2003, 250 F.Supp.2d 1200. Civil Rights 1395(8)

Arrestee did not state civil rights claim for violation of his Fourth Amendment rights to be free from use of excessive force and from unreasonable searches by merely alleging violation of those rights, without pleading facts giving rise to alleged violations. Garcia Rodriguez v. Andreu Garcia, D.Puerto Rico 2005, 403 F.Supp.2d 174. Civil Rights 1395(6)

Developer whose complaint asserted § 1983 claim against city for alleged equal protection violation when city failed to approve his redevelopment proposal could not, in response to city's summary judgment motion, assert that his complaint might also contain basis for a First Amendment retaliation claim, where his complaint failed to set forth a short and plain statement of a First Amendment retaliation claim that would give the city fair notice of what his claim was and the grounds upon which it rested, and failed to establish the retaliation claim as a separate count. Klauber v. City of Sarasota, M.D.Fla.2002, 235 F.Supp.2d 1263, affirmed 350 F.3d 1301. Federal Civil Procedure 2497.1

Plaintiff's § 1983 Fourth Amendment cause of action for warrantless search and seizure of her former premises could be liberally construed to state claim for use of excessive force in enforcing the writ of possession and as

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such, that claim did not run afoul of the Rooker-Feldman doctrine, providing that federal district courts lack jurisdiction to review state court judgments or to hear constitutional claims that are inextricably intertwined with state court's decision; plaintiff pleaded that, during eviction, deputy sheriff had gun drawn and she was "grabbed" by another deputy, but plaintiff did not allege that she was physically harmed or injured by deputies. Busch v. Torres, C.D.Cal.1995, 905 F.Supp. 766. Courts 509; Federal Courts 221; Federal Courts 244

Employment discrimination complaint mistakenly filed by federal employee under § 1983 would not be construed as complaint under Title VII, though defendants had suffered no prejudice from employee's error. Murray v. U.S. Dept. of Justice, E.D.N.Y.1993, 821 F.Supp. 94, affirmed 14 F.3d 591. Civil Rights 1502

Civil rights complaints are to be liberally construed. Buckey v. County of Los Angeles, C.A.9 (Cal.) 1992, 957 F.2d 652, amended on other grounds and superseded on denial of rehearing 968 F.2d 791, certiorari denied 113 S.Ct. 599, 600, 121 L.Ed.2d 536. Stevens v. Dutchess County, N. Y., S.D.N.Y.1977, 445 F.Supp. 89.

4664. ---- Pro se complaints, construction of pleadings

Prisoner's pro se civil rights complaint, however inartfully pleaded, is held to less stringent standards than formal pleadings drafted by lawyers. Hughes v. Rowe, U.S.Ill.1980, 101 S.Ct. 173, 449 U.S. 5, 66 L.Ed.2d 163.

Handwritten pro se civil rights complaint of prisoner was to be liberally construed and must be held to less stringent standards than formal pleadings by lawyer, and complaint could be dismissed for failure to state a claim only if it appeared beyond doubt that plaintiff could prove no set of facts in support of claim which would entitle him to relief. Estelle v. Gamble, U.S.Tex.1976, 97 S.Ct. 285, 429 U.S. 97, 50 L.Ed.2d 251, rehearing denied 97 S.Ct. 798, 429 U.S. 1066, 50 L.Ed.2d 785, on remand 554 F.2d 653. Federal Civil Procedure 657.5(3); Federal Civil Procedure 1788.6

Where prison inmate who filed civil rights complaint was proceeding pro se, court had to construe complaint with particular generosity in deciding whether it could properly be dismissed as failing to state claim. Davis v. Goord, C.A.2 (N.Y.) 2003, 320 F.3d 346. Federal Civil Procedure 657.5(3)

Inmate's pleading in civil rights action would be interpreted liberally, as he filed complaint pro se and continued pro se on appeal. Swoboda v. Dubach, C.A.10 (Kan.) 1993, 992 F.2d 286, on remand 1995 WL 530601. Civil Rights 1395(7)

Inmate's pro se claim for retaliation against prison employees under §§1983 satisfied rule requiring a complaint to contain a short and plain statement of the claim; inmate alleged several attacks and threats on his life as specific factual instances of retaliation against him because he had filed grievances, including attempted bodily injury and threats on his life. Hernandez v. Goord, S.D.N.Y.2004, 312 F.Supp.2d 537. Civil Rights 1395(7)

Where inmate represents himself pro se in § 1983 action, court holds his pleadings to less stringent standard than that applied to lawyers. Barber v. Grow, E.D.Pa.1996, 929 F.Supp. 820. Federal Civil Procedure 657.5(1)

Allegations did not support § 1983 claim against prison officials for alleged retaliation when in addition to alleging that officials punished his disciplinary infractions unduly harshly to retaliate for his filing of petition for writ of habeas corpus and prison grievances, state inmate attached to complaint documents which dispelled any reasonable inference that officials punished inmate for exercising constitutionally protected right by showing that nature of inmate's disciplinary offenses, pending conduct reports, and inmate's poor behavior justified punishments imposed. Sanders v. Bertrand, C.A.7 (Wis.) 2003, 72 Fed.Appx. 442, 2003 WL 21490953, Unreported. Civil Rights 1395(7)

Dismissal, for failure to state claim, of pro se plaintiff's § 1983 claims arising from state court domestic

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proceedings was appropriate, where it was patently obvious plaintiff could not prevail on facts alleged, as his conclusory allegations merely reflected his frustration and reiterated his grievances, and plaintiff's litigation history indicated that allowing him to amend his complaint would have been futile. Collins v. Johnson County, KS, C.A.10 (Kan.) 2002, 56 Fed.Appx. 852, 2003 WL 42164, Unreported. Federal Civil Procedure 657.5(2); Federal Civil Procedure 1788.6; Federal Civil Procedure 1838

4665. Frivolous complaint

Court would sanction county employee under Rule 11, and permit county to recover attorney fees from employee, for employee's filing of frivolous § 1983 action premised on claim that employee was fired after running for public office, in alleged violation of the First and Fourteenth Amendment, where employee did not allege that the county engaged in viewpoint discrimination as a matter of policy. Nisenbaum v. Milwaukee County, C.A.7 (Wis.) 2003, 333 F.3d 804. Federal Civil Procedure 2771(5); Federal Civil Procedure 2814

Section 1983 action by county employee against county executive for allegedly having a role in the abolition of his job based on his running for office was frivolous, warranting Rule 11 sanctions; executive's only role was transmitting budget from employer to county board, after which board eliminated employee's position, and though caselaw held that officials could not be held liable under § 1983 for introducing legislation, employee ignored the subject and claimed that executive should remain party to suit "on the off-chance" that he knew of department director's supposed antipathy to employee's running for office, without distinguishing precedent. Nisenbaum v. Milwaukee County, C.A.7 (Wis.) 2003, 333 F.3d 804. Federal Civil Procedure 2771(5)

County employee's § 1983 action against his department director's deputy, department's human resources manager, and his supervisor was frivolous, warranting imposition of Rule 11 sanctions; employee claimed that the abolition of his job position was in retaliation for running for office, but conceded that the individuals in question did not know of his intent to run for office, that his job position was replaced by another position prior to his running for office, and that defendants could not have hired him for replacement position since he had not applied for job. Nisenbaum v. Milwaukee County, C.A.7 (Wis.) 2003, 333 F.3d 804. Federal Civil Procedure 2771(5)

Civil rights complaint, filed in forma pauperis, may be dismissed as frivolous if it lacks arguable basis in law or fact. Siglar v. Hightower, C.A.5 (Tex.) 1997, 112 F.3d 191. Federal Civil Procedure 2734

State prisoner's § 1983 complaint alleging only negligence in connection with his fall in bathroom, and no violation of Constitution or federal law, lacked an arguable basis in law and was properly dismissed as frivolous. Walker v. Reed, C.A.8 (Ark.) 1997, 104 F.3d 156. Federal Civil Procedure 2734

When screening prisoners' civil rights actions to determine whether action is frivolous or malicious, fails to state claim upon which relief may be granted, or seeks monetary relief against defendant who is immune from such relief, district courts apply same standard as when addressing motion to dismiss complaint for failure to state claim. Baltoski v. Pretorius, N.D.Ind.2003, 291 F.Supp.2d 807. Civil Rights 1395(7)

Pro se litigant's § 1983 action against Georgia trial and appellate judges and opposing party's attorney, arising from litigant's unsuccessful state-court action challenging Florida foreclosure judgment, was patently frivolous and warranted dismissal with prejudice, where litigant alleged that because he had proceeded in state-court action only as trustee of property at issue, state's trial and appellate courts lacked personal jurisdiction over him individually, and therefore judges and attorney were required to pay him $1,500,000 in damages for treating him as individual in those proceedings. Johnson v. Barnes, S.D.Ga.2003, 283 F.Supp.2d 1297. Civil Rights 1056

State inmate's appeal was not taken in good faith, and thus inmate could not proceed in forma pauperis on appeal of district court order dismissing his §§ 1983 action as frivolous, where inmate's final complaint consisted solely of conclusory allegations and failed to present any legal theory or specific fact that could conceivably amount to

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constitutional violation. Fish v. Golder, C.A.10 (Colo.) 2005, 133 Fed.Appx. 472, 2005 WL 1189781, Unreported. Federal Courts 663

State prisoner's § 1983 action against prison officials was frivolous, so that dismissal was warranted under Prison Litigation Reform Act (PLRA); complaint did not allege with particularity how or when any of the 20 named defendants engaged in the allegedly unconstitutional acts. Gadlin v. Watkins, C.A.10 (Colo.) 2004, 93 Fed.Appx. 204, 2004 WL 474010, Unreported. Civil Rights 1395(7)

Pro se state prisoner's action against assistant state district attorney and unnamed employee of United States Attorney's Office pursuant to § 1983 and *Bivens*, respectively, alleging that they failed to turn over certain pieces of physical evidence in state criminal prosecution in violation of due process, was frivolous, warranting dismissal under Prison Litigation Reform Act (PLRA); prisoner's right to review physical evidence that may have been exculpatory, material to his defense, or used by prosecution in its case in chief, was scrupulously protected at his criminal trial. Pitera v. Mintz, C.A.2 (N.Y.) 2003, 65 Fed.Appx. 733, 2003 WL 174623, Unreported, petition for certiorari filed 2006 WL 1327722. Civil Rights 1395(7); United States 50.20

Section 1983 complaint against state court arising from plaintiff's dissatisfaction with state court proceedings and the distribution of property following his mother's death was frivolous, warranting its dismissal. Sidles v. Nebraska Court of Appeals, C.A.8 (Neb.) 2000, 221 F.3d 1343, Unreported. Federal Civil Procedure 1788.6

Arrestee's conviction for offense for which he was arrested was complete defense in his subsequent § 1983 action against arresting officers asserting that his arrest and detention were without probable cause. Bell v. McCord, C.A.8 (Ark.) 2000, 221 F.3d 1341, Unreported. Civil Rights 1088(4)

4666. Conclusory allegations, complaint

Allegations, in action under §§§§ 1983 and 1988, that police officers conspired to violate arrestee's Fourth and Fourteenth Amendment rights, were wholly conclusory and therefore were inadequate to state a claim; arrestee's counsel admitted that claim was thinly developed. Pena-Borrero v. Estremeda, C.A.1 (Puerto Rico) 2004, 365 F.3d 7. Conspiracy 18

Conclusory statement in complaint brought against county school board by student who had been sexually assaulted by teacher that she was suing county by and through county board of education was insufficient to state claim under federal civil rights statute; student failed to articulate or plead any policy which was attributable to county itself. Doe v. Claiborne County, Tenn. By and Through Claiborne County Bd. of Educ., C.A.6 (Tenn.) 1996, 103 F.3d 495. Civil Rights 1395(2)

Minimal and conclusory allegations were insufficient to state § 1983 claim for alleged First Amendment free speech violation. Dumas v. Kipp, C.A.9 (Cal.) 1996, 90 F.3d 386. Civil Rights 1394

District court's failure to order civil rights plaintiffs to file either statement of facts or reply to defendant's assertion of qualified immunity, where plaintiffs' initial complaint pleaded only conclusions, was clear error; remand to allow plaintiffs opportunity to amend their pleadings was not required, however, as circumstances indicated that plaintiffs had pleaded their best case. Morin v. Caire, C.A.5 (La.) 1996, 77 F.3d 116, 144 A.L.R. Fed. 719. Civil Rights 1398; Federal Courts 946

Section 1983 complaint based on suicide of individual in jail cell failed to state claim upon which relief could be granted, even under liberal standard for notice pleading, as it was entirely conclusory, and gave no idea what acts individual defendants were accused of that could result in liability; claims were apparently asserted against more than 20 defendants, including municipalities, police officers, jail officials, mayors and city council members, with no indication of their involvement. Frey v. City of Herculaneum, C.A.8 (Mo.) 1995, 44 F.3d 667. Civil Rights

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42 U.S.C.A. § 1983

1395(7)

Mere conclusory allegations of deprivation of civil rights are insufficient to withstand motion to dismiss. Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc., C.A.5 (Tex.) 1992, 961 F.2d 1148, certiorari denied 113 S.Ct. 1046, 506 U.S. 1079, 122 L.Ed.2d 355. Federal Civil Procedure 1788.6

Prisoner's conclusory allegations of intent with respect to destruction of religious items confiscated from him were insufficient to state civil rights claim based on intentional destruction of his property in violation of due process. Hall v. Bellmon, C.A.10 (Okla.) 1991, 935 F.2d 1106. Civil Rights 1395(7)

Arrestee who was subsequently discovered to have suffered stroke failed to state Fourth Amendment claim against county arising from arrest for driving while intoxicated based on conclusory allegations that county failed to train and monitor its officers and acquiesced in their civil rights violation. Aguilera v. County of Nassau, E.D.N.Y.2006, 425 F.Supp.2d 320. Civil Rights 1395(6)

Unsupported and conclusory allegation that the chief of a fire district instructed the district's auditor and moderator regarding the conduct of the district's annual meeting and approved all of his actions was an insufficient basis on which to hold the chief liable for the moderator's actions at the meeting, which firefighters claimed violated their First Amendment rights; both the chief and the moderator testified at their depositions that, although they knew each other, they did not speak about the conduct of the meeting. Carlow v. Mruk, D.R.I.2006, 425 F.Supp.2d 225. Municipal Corporations 196

Conclusory allegations by pro se state prisoner that an independent laboratory could find that the water at the prison was contaminated and that the food at the prison was nutritionally inadequate or unsanitary were insufficient to avoid grant of summary judgment in favor of prison officials, in prisoner's §§ 1983 conditions of confinement claim, absent any evidence that water was contaminated, that anyone became ill from drinking the water or eating the food, or that food was lacking in nutritional value. MacLeod v. Kern, D.Mass.2005, 379 F.Supp.2d 103. Federal Civil Procedure 2491.5

Conclusory allegations, that counsel for opponent in state lawsuit acted "in concert with the state court Minute Clerk," that the Minute Clerk "participated with and assisted" counsel, and that their "actions were materially and affirmatively aided" by her, were inadequate to state claim in lawsuit under §§ 1983 for conspiracy with state actors to deprive plaintiffs of their right of due process. U.S.C.A. Const.Amend 14; Guimbellot v. Rowell, E.D.La.2004, 356 F.Supp.2d 644. Conspiracy 18

Police officers, who alleged First Amendment retaliation claims against policymakers for engaging in protected speech or union activities, failed to state claim against township under § 1983 based on failure to train theory where complaint was entirely conclusory and did not allege that the need for more or different training was so obvious and so likely to lead to the violation of constitutional rights that the township's failure to respond amounted to deliberate indifference. Bradshaw v. Township of Middletown, D.N.J.2003, 296 F.Supp.2d 526, affirmed 145 Fed.Appx. 763, 2005 WL 2077137. Civil Rights 1395(8)

Conclusory allegations that state university employees failed to take preventative action in response to repeated reports of sexual harassment by soccer coach were sufficient to state claim against them for supervisory liability under § 1983. Jennings v. University of North Carolina at Chapel Hill, M.D.N.C.2002, 240 F.Supp.2d 492. Civil Rights 1395(2)

District Attorney and County Detective were not liable to teacher under § 1983 for alleged defamatory statements related to letter sent by County Detective to school principal which addressed investigation of teacher's alleged sexual misconduct with student; teacher's complaint did not allege more than state law causes of action, teacher did not say that he was fired from his job as teacher as result of County Detective's letter to principal, nor did he

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articulate any facts in complaint that he suffered specific adverse employment action, but rather merely alleged in conclusory fashion that he "ha [d] sustained and [would] continue to sustain loss of income, loss of earning capacity." Manion v. Sarcione, E.D.Pa.2001, 192 F.Supp.2d 353. Civil Rights 1088(1); Civil Rights 1395(5)

Conclusory allegation that university president's decision to go against recommendation of faculty grievance committee and terminate contract of nontenured instructor was result of bias against instructor was insufficient to state claim under § 1983 for due process violation. Anderson-Free v. Steptoe, M.D.Ala.1997, 970 F.Supp. 945. Civil Rights 1395(8)

Single, conclusory allegations of conspiracy advanced by personal representative of decedent's estate in civil rights claims against attorney for estate claimant and District of Columbia superior court judge, which asserted that attorney and judge conspired in underlying estate action to deprive her of constitutional rights, without alleging facts in support of conspiracy, and which suggested that personal representative lacked direct knowledge of conspiracy, were too vague to meet minimal pleading requirements and heightened pleading standard for governmental conspiracy claims. Burt v. Barry, D.D.C.1997, 962 F.Supp. 185, appeal dismissed 1997 WL 573477 . Conspiracy 18

Even pro se § 1983 complaint must be dismissed if it contains only conclusory, vague, or general allegations of conspiracy to deprive person of constitutional rights. Jemzura v. Public Service Com'n, N.D.N.Y.1997, 961 F.Supp. 406. Federal Civil Procedure 657.5(2)

Pro se claimant could not maintain actionable § 1983 claim based on alleged conspiracy to deprive claimant of his constitutional right to fair trial where he failed to provide more than conclusory allegations. Molina v. Kaye, E.D.N.Y.1996, 956 F.Supp. 261. Conspiracy 18

Even if defendant's claim based on alleged constitutional violations in state court convictions was not dismissed on ground that habeas corpus was sole possible federal relief, defendant did not establish actionable § 1983 claim where he made only conclusory statements and offered no factual support for his claim of conspiracy by former governor and state to build more prisons and segregate minorities that resulted in his unconstitutional conviction. Molina v. State of N.Y., E.D.N.Y.1995, 956 F.Supp. 257. Conspiracy 18

Plaintiff in § 1983 action must state with factual detail and particularity basis for claim which necessarily includes why defendant-official cannot successfully maintain defense of qualified immunity; plaintiff must plead specific facts, not merely conclusory allegations. Baker v. Putnal, S.D.Tex.1994, 865 F.Supp. 389, affirmed in part, reversed in part 75 F.3d 190. Civil Rights 1398

Delinquent taxpayers' conclusory allegations, that county sheriff and justice of the peace had conspired with tax sale purchasers to deprive taxpayers of their home, were not sufficiently specific and factually based to state claim under federal civil rights statute. Hirsch v. Copenhaver, D.Wyo.1993, 839 F.Supp. 1524, affirmed 46 F.3d 1151. Conspiracy 18

Conclusory claims that fire investigators conspired to abridge homeowners' Fourth Amendment rights were insufficient to withstand judgment on the pleadings. Stanley v. City of Norton, C.A.6 (Ohio) 2005, 124 Fed.Appx. 305, 2005 WL 65522, Unreported. Civil Rights 1395(1)

Complaint against university, whose employees allegedly carried out medical experiments in racially discriminatory manner, failed to state § 1983 claim absent nonconclusory allegation such discrimination was carried out pursuant to university policy, custom or practice. Johnson ex rel. Johnson v. Columbia University, S.D.N.Y.2003, 2003 WL 22743675, Unreported. Civil Rights 1395(2)

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42 U.S.C.A. § 1983

State inmate's civil rights conspiracy claims could not be dismissed under statute requiring district court to screen civil actions by prisoners seeking redress from government entities or employees on grounds that allegations were too vague or conclusory, in that complaint was required only to state claim, and not to plead facts which, if true, would establish claim's validity. McMillian v. Litscher, C.A.7 (Wis.) 2003, 72 Fed.Appx. 438, 2003 WL 21489717, Unreported. Conspiracy 18

Unspecific, conclusory, and unsupported allegations were insufficient to support § 1983 conspiracy claim. Silverman v. City of New York, C.A.2 (N.Y.) 2003, 64 Fed.Appx. 799, 2003 WL 1970472, Unreported. Conspiracy 18

Allegations that police chief and officer combined together in form of orchestrated conspiracy and entered into plan to punish plaintiff, another officer, and to threaten, intimidate and coerce plaintiff into relinquishing constitutional rights granted to him, and that conduct was combination entered into for unlawful purpose and employed unlawful means in attempting to procure same, were conclusory and, as such, insufficient to support § 1983 civil conspiracy action against chief and officer. Rosenfeld v. Egy, D.Mass.2003, 2003 WL 222119, Unreported, affirmed 346 F.3d 11. Conspiracy 18

4667. Standing, complaint

Arrestee's § 1983 complaint asserting a bare claim for injunctive relief against a prosecutor who gave advice to a police officer setting bail lacked any allegations that showed the arrestee's standing to seek such relief, e.g., that he remained in custody pursuant to the officer's bail determination, or that there was a real or immediate threat that he would be wronged again by the prosecutor improperly ordering or advising an officer in connection with setting bail for the arrestee. Sanchez v. Doyle, D.Conn.2003, 254 F.Supp.2d 266. Civil Rights 1331(4)

4668. Motive, complaint

Former school director for adult education program stated § 1983 claim against Department of Education of Puerto Rico and its officials for political discrimination, in particular the motivation element of such claim, by alleging that her education contract was not renewed "because of her administrative identification" to past New Progressive Party (NPP) Administration. Hatfield Bermudez v. Rey Hernandez, D.Puerto Rico 2003, 245 F.Supp.2d 383. Civil Rights 1395(8)

4669. Color of law, complaint

Card dealer failed to state cause of action under § 1983 in complaint against National Indian Gaming Commission (NGIC) and its chairman, arising from suspension of her gaming license without hearing and tribe's failure to adopt certain gaming ordinance, where complaint alleged only actions taken under color of federal law. Hartman v. Kickapoo Tribe Gaming Com'n, C.A.10 (Kan.) 2003, 319 F.3d 1230. Civil Rights 1327

Account holder's claim against bank and bank's chief executive officer (CEO) for violation of account holder's Fourth and Fourteenth Amendment rights, based upon defendants' alleged failure to return original cancelled checks to account holder, was barred, absent allegations that defendants violated a civil rights statute, and that they were government actors or acting under state or federal law when alleged violations were committed. Smartt v. First Union National Bank, M.D.Fla.2003, 245 F.Supp.2d 1229. Civil Rights 1041; Civil Rights 1327; Civil Rights 1326(4)

4670. Pending state proceedings, complaint

If criminal charges against state prisoner resulting from defendants' allegedly unlawful conduct were no longer pending against prisoner, he failed to state cause of action in complaint under § 1983, where he failed to allege that

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such charges were terminated in his favor. Peralta v. Leavitt, C.A.2 (N.Y.) 2003, 56 Fed.Appx. 534, 2003 WL 151262, Unreported. Civil Rights 1088(5)

4671. State created danger, complaint

State prisoner sufficiently alleged prior to pre-trial evidentiary hearing in §§ 1983 action that he was denied his blood-pressure medication for the nine days he spent in isolation, and, thus, district court abused its discretion in disallowing testimony at the evidentiary hearing as to such a claim; prisoner's original complaint and its attachments indicated that corrections officers denied him prescribed "treatment," and a supporting brief filed the same day as the original complaint and an amended complaint alleged that prisoner had requested treatment from the corrections officers because he was experiencing high-blood-pressure symptoms, the nurse needed to check his blood pressure, and he may have needed to take some of his blood-pressure medication. Munn v. Toney, C.A.8 (Ark.) 2006, 433 F.3d 1087. Civil Rights 1397

For purpose of determining applicability of the state-created or enhanced danger doctrine in § 1983 action against deputy sheriffs by students wounded in high school library shooting, for alleged substantive due process violation based on alleged improper responses to armed attack on the school by other students and lack of rescue efforts, plaintiff students did not sufficiently allege that the deputies acted recklessly in conscious disregard of the known and obvious danger that the armed students would attack the persons in the library; there were no allegations supporting inference that the deputies harbored intent to harm the library students, and in light of the rapidly developing and unpredictable crisis, the deputies' decisions could not be viewed as unreasonable. Schnurr v. Board of County Com'rs of Jefferson County, D.Colo.2001, 189 F.Supp.2d 1105. Constitutional Law 278.5(5.1)

4672. Prayer for relief, complaint

Welfare applicant's failure to ask for eligibility determination hearing under Medicaid Catastrophic Care Act (MCCA) was not fatal to her §§ 1983 claim challenging revised Medicaid eligibility rules of Colorado Department of Health Care Policy and Financing, which permitted consideration of self-funded retirement accounts. Houghton ex rel. Houghton v. Reinertson, C.A.10 (Colo.) 2004, 382 F.3d 1162. Civil Rights 1321

Pro se prisoner's prayer for "such other relief as it may appear plaintiff is entitled" would be viewed as prayer for nominal damages in §§ 1983 action alleging Eighth Amendment violations; prisoner's brief on appeal made clear he was seeking nominal damages. Calhoun v. DeTella, C.A.7 (Ill.) 2003, 319 F.3d 936, on remand 2003 WL 1964248. Civil Rights 1395(7)

4673. Specificity of allegations, complaint--Generally

Private health care provider who contracted with county to provide medical care to county jail inmates was not entitled to assert a qualified immunity defense, in § 1983 action brought by executor of estate of county jail inmate who died of acute renal failure while incarcerated, as provider was non-governmental entity; thus, executor was not required to satisfy the heightened pleading requirements for the § 1983 action. Swann v. Southern Health Partners, Inc., C.A.11 (Ala.) 2004, 388 F.3d 834. Civil Rights 1373; Civil Rights 1398

Individual who was involuntarily committed failed to include in her complaint any language or facts from which an inference could be drawn that hospital in which she was committed had a policy or custom of illegal involuntary commitments, as required to state claim under §§ 1983 against hospital. Crumpley-Patterson v. Trinity Lutheran Hosp., C.A.8 (Mo.) 2004, 388 F.3d 588. Civil Rights 1395(1)

Heightened pleading requirement exists for complaints charging violations of federal civil rights statute, and the complaint must state specific facts, not mere conclusory allegations. Colle v. Brazos County, Tex., C.A.5 (Tex.) 1993, 981 F.2d 237. Civil Rights 1394

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42 U.S.C.A. § 1983

Section 1983 plaintiff must comply with heightened pleading requirements and state with factual detail and particularity the basis of its claim; mere conclusory allegations and bold assertions are insufficient to meet this heightened standard. Streetman v. Jordan, C.A.5 (Tex.) 1990, 918 F.2d 555, rehearing denied 923 F.2d 851. Civil Rights 1394

That individual plaintiff failed to specifically allege a claim under this section covering deprivation of civil rights did not operate to preclude him from recovering on that claim in event allegations showed and proof supported claim. Greene v. City of Memphis, C.A.6 (Tenn.) 1976, 535 F.2d 976. Federal Civil Procedure 674

Section 1983 only provides method for vindicating federal rights elsewhere conferred; it does not create any substantive rights, and thus one cannot go into court and claim a violation of §§ 1983, for §§ 1983 by itself does not protect anyone against anything. Alberti v. County of Nassau, E.D.N.Y.2005, 393 F.Supp.2d 151. Civil Rights 1305

Owners, employees, and customers of Latino-owned business who brought §§ 1983 action against city and police officers, stemming from execution of search warrant at premises, failed to match their claims to specific officers, and thus officers would be properly dismissed from action; complaint was overbroad in stating that all officers were engaged in certain violations, and personnel from county and federal agencies also participated in raid. Panaderia La Diana, Inc. v. Salt Lake City Corp., D.Utah 2004, 342 F.Supp.2d 1013. Civil Rights 1395(6)

State employee who had worked as chief legal counsel for Wisconsin Department of Revenue alleged sufficient facts to suggest that Department Secretary violated his procedural due process rights in violation of the Fourteenth Amendment by demoting him to position of attorney without pre-deprivation hearing; even though complaint did not contain sufficient facts to allow determination of whether Secretary's conduct was predictable and consequently preventable by pre-deprivation procedures, complaint was not required to contain all the elements of procedural due process claim. Evans v. Morgan, W.D.Wis.2003, 304 F.Supp.2d 1100. Civil Rights 1395(8)

A § 1983 complaint need not allege all that a plaintiff must eventually prove. Jones v. District of Columbia, D.D.C.2003, 273 F.Supp.2d 61. Civil Rights 1397

Employees stated a claim for gender discrimination under § 1983 against the District of Columbia Department of Corrections related to their termination of employment by alleging that the department had a long standing policy of favoring male employees and not favoring female employees in hiring, working conditions, promotions, and firing. Jones v. District of Columbia, D.D.C.2003, 273 F.Supp.2d 61. Civil Rights 1395(8)

Although plaintiff has considerable leeway in framing complaint, § 1983 plaintiff must allege with some specificity facts which make out his claim; some factual detail in pleadings is necessary to adjudication of § 1983 claims, particularly in cases involving qualified immunity, where court must determine whether defendant's actions violated clearly established right. Connor v. Halifax Hosp. Medical Center, M.D.Fla.2001, 135 F.Supp.2d 1198, affirmed 45 Fed.Appx. 878, 2002 WL 1423597, for text, see 2002 WL 32290997. Civil Rights 1394; Civil Rights 1398

Complaints based on civil rights statutes must include specific allegations of facts showing violation of rights "instead of a litany of general conclusions that shock but have no meaning." X-Men Sec., Inc. v. Pataki, E.D.N.Y.1997, 983 F.Supp. 101, on reconsideration, reversed 196 F.3d 56. Civil Rights 1394

Heightened pleading standard is applied to suits seeking § 1983 damages against government officials; pleading must contain enough specificity to give defendant notice of nature of claim, so he or she can respond and move for judgment on basis of qualified immunity if applicable. Coller v. State of Mo., Dept. of Economic Development, W.D.Mo.1997, 965 F.Supp. 1270. Civil Rights 1398

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Unsupported allegations which fail to specify in detail factual basis necessary to enable defendants intelligently to prepare their defense will not suffice to sustain claim of governmental conspiracy to deprive plaintiffs of their constitutional rights. Burt v. Barry, D.D.C.1997, 962 F.Supp. 185, appeal dismissed 1997 WL 573477. Conspiracy 18

Civil rights complaint containing conclusory, vague, and general allegations of conspiracy will be dismissed as insufficient. Searcy v. Singletary, M.D.Fla.1995, 894 F.Supp. 1565, affirmed 87 F.3d 1329. Conspiracy 18

Dismissal is not appropriate if pro se litigant's pleadings, when liberally construed, would support existence of cause of action under § 1983, even if litigant does not specifically assert § 1983 violation. Hunter v. City of Beaumont, E.D.Tex.1994, 867 F.Supp. 496. Federal Civil Procedure 657.5(2)

Complaints based on civil rights statutes must include specific allegations of facts showing a violation of rights instead of a litany of general conclusions that shock but have no meaning. Velaire v. City of Schenectady, N.Y., N.D.N.Y.1994, 862 F.Supp. 774. Civil Rights 1394

Complaints based on civil rights statutes must include specific allegations of facts showing violation of rights instead of litany of general conclusions that "shock" but have no meaning. Waldron v. Rotzler, N.D.N.Y.1994, 862 F.Supp. 763. Civil Rights 1394

There are principally two reasons underlying requirement that § 1983 plaintiff must allege with specificity facts giving rise to his complaint: to protect state (or local) officials from deluge of frivolous claims and to allow state (or local) officials sufficient notice of nature of claims against them to enable them to respond. Rogers v. Mount Union Borough by Zook, M.D.Pa.1993, 816 F.Supp. 308. Civil Rights 1394

Plaintiffs in § 1983 actions must plead all facts with particularity and demonstrate specifically how their federal rights have been violated by each defendant. Maxwell v. Henry, S.D.Tex.1993, 815 F.Supp. 213. Civil Rights 1394

General standard for motions to dismiss for failure to state claim upon which relief can be granted is modified in case of civil rights claims brought under § 1983 by adding requirement that complaint contain modicum of factual specificity, identifying particular conduct of defendants that is alleged to have harmed plaintiff. Gilbert v. Feld, E.D.Pa.1992, 788 F.Supp. 854. Federal Civil Procedure 1788.6

There is added pleading requirement in civil rights cases that complaint contain a modicum of actual specificity, identifying particular conduct of defendant that is alleged to have harmed plaintiff. DeFerro v. Coco, E.D.Pa.1989, 709 F.Supp. 643. Civil Rights 1394

Complaint, which did not contain any allegations or even identify the defendants, failed to state any type of claim, at least in the traditional sense, much less a claim which showed that indigent prisoner was entitled to relief, even though prisoner appeared to be attempting to bring pro se §§ 1983 action seeking replacement of all religious monuments which had been removed from courthouses. Awala v. People Who Want To Restrict Our First Amendment Rights, C.A.3 (Pa.) 2005, 164 Fed.Appx. 215, 2005 WL 3313140, Unreported. Civil Rights 1395(7)

4674. ---- Heightened standard, specificity of allegations, complaint

Federal court may not apply "heightened pleading standard," more stringent than usual pleading requirements of civil rule, in civil rights cases alleging municipal liability under this section. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, U.S.Tex.1993, 113 S.Ct. 1160, 507 U.S. 163, 122 L.Ed.2d 517, on remand 993 F.2d 1177. Civil Rights 1394

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42 U.S.C.A. § 1983

Heightened pleading requirements did not apply to state prisoner's pro se civil rights complaint, in which he alleged denial of access to the courts in violation of the due process clause, infliction of cruel and unusual punishment by denying essential medical treatment, and retaliation for seeking to use the legal process to petition for redress of grievances. Thomson v. Washington, C.A.7 (Ill.) 2004, 362 F.3d 969. Civil Rights 1395(7); Federal Civil Procedure 657.5(3)

Plaintiffs asserting § 1983 claims against municipality need only comply with conventional standards of notice pleading and are not required to meet any heightened pleading standard; nevertheless, boilerplate allegations of a municipal policy entirely lacking in factual support are insufficient to state claim. Bills by Bills v. Homer Consol. School Dist. No. 33-C, N.D.Ill.1997, 967 F.Supp. 1063. Civil Rights 1394

Heightened pleading standard does not apply to § 1983 claims alleging local government liability. Denno v. School Bd. of Volusia County, M.D.Fla.1997, 959 F.Supp. 1481, affirmed in part, reversed in part and remanded 182 F.3d 780, rehearing granted and vacated 193 F.3d 1178, reversed in part on rehearing 218 F.3d 1267, rehearing and suggestion for rehearing en banc denied 235 F.3d 1347, certiorari denied 121 S.Ct. 382, 531 U.S. 958, 148 L.Ed.2d 295. Civil Rights 1394

Section 1983 claim may not be held to heightened pleading standard, but must contain more than merely broad based, conclusory statements. Davidson v. Garry, E.D.N.Y.1996, 956 F.Supp. 265, affirmed 112 F.3d 503. Civil Rights 1394

Courts may not apply heightened pleading standard in § 1983 civil rights cases. Mann by Parent v. Meachem, N.D.N.Y.1996, 929 F.Supp. 622. Civil Rights 1394

Federal courts are prohibited from applying "heightened pleadings standard" to § 1983 civil rights cases. Garg v. Albany Indus. Development Agency, N.D.N.Y.1995, 899 F.Supp. 961, affirmed 104 F.3d 351.

Vague and unspecific allegations did not satisfy heightened pleading requirement for federal civil rights claims against government officials. Argon Financial Group v. Marro, D.D.C.1995, 897 F.Supp. 568. Civil Rights 1394

There is no requirement that facts supporting § 1983 claim be pleaded with heightened degree of particularity. Frazier v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1994, 868 F.Supp. 757. Civil Rights 1394

Survivors of person shot by police officer were not required to satisfy heightened pleading standard with regard to their § 1983 suit against city, but were required to meet heightened pleading standard with respect to action against individual defendants. Baker v. Putnal, S.D.Tex.1994, 865 F.Supp. 389, affirmed in part, reversed in part 75 F.3d 190. Civil Rights 1395(5)

Federal courts are prohibited from applying heightened pleadings standard to § 1983 cases. Waldron v. Rotzler, N.D.N.Y.1994, 862 F.Supp. 763. Civil Rights 1394

Pleadings in § 1983 civil rights suits must set forth more particularized allegations than those normally required by liberal pleading rules in federal civil cases. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Civil Rights 1394

4675. ---- Color of law, specificity of allegations, complaint

Allegations that county officials were acting under color of state law when they intercepted and re-directed private parties' electronic communications to other elected officials, and that such conduct was intended to discourage them from exercising their rights to free speech and to petition the government, stated claim under §§ 1983 against

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county and county officials for violation of private parties' First Amendment rights to freedom of speech and to petition the government for a redress of grievances, even if the communications at issue did not present a public concern. Ferrone v. Onorato, W.D.Pa.2006, 439 F.Supp.2d 442. Counties 146

Allegations by driver involved in collision with vehicle driven by off-duty city police officer, that such officer was at all times material to the complaint acting under color of state law, were sufficient to state §§ 1983 claim. McDorman v. Smith, N.D.Ill.2006, 437 F.Supp.2d 768. Civil Rights 1396

Conclusory allegation, that counsel for opponent in state lawsuit "acted in a capacity normally undertaken by law enforcement personnel" in obtaining what amounted to court order to conduct discovery in the form of testing building for mold, was inadequate to state due process claim in lawsuit under §§ 1983 that counsel acted under color of state law in performing what was traditionally exclusive public function. U.S.C.A. Const.Amend 14; Guimbellot v. Rowell, E.D.La.2004, 356 F.Supp.2d 644. Civil Rights 1396

Developer who alleged that defendants withheld police protection from construction area and withheld zoning decisions with intent to reduce value of his property because of his use of black subcontractors stated a cause of action under § 1983, considering that developer specifically pleaded names of certain persons who allegedly deprived him of his constitutional rights, and clearly pleaded that such persons acted in their official capacities under color of state law. de Furgalski v. Siegel, N.D.Ill.1985, 618 F.Supp. 295. Civil Rights 1395(3)

4676. ---- Discrimination, specificity of allegations, complaint

African-American and Hispanic residents of impoverished and largely minority neighborhood stated a claim of intentional discrimination under Title VI and Equal Protection Clause against New Jersey Department of Environmental Protection (NJDEP) defendants based on their granting application for air permits to operate a proposed cement grinding facility in the neighborhood; residents alleged facts which, if proven true, would show not only that the operation of the cement grinding facility would have a disparate impact upon the predominantly minority community, but also that NJDEP was well-aware of the potential disproportionate and discriminatory burden placed upon that community and failed to take measures to assuage that burden. South Camden Citizens in Action v. New Jersey Department of Environmental Protection, D.N.J.2003, 254 F.Supp.2d 486. Civil Rights 1395(1)

Employee of state correctional institution failed to plead claim of racial discrimination and conspiracy, when he alluded to specified federal and state statutes in general allegations, but failed to specify which statutes were being relied upon when citing specific instances of discrimination. Clark v. Maryland Dept. of Public Safety and Correctional Services, D.Md.2003, 247 F.Supp.2d 773. Civil Rights 1395(8); Civil Rights 1532; Civil Rights 1740; Conspiracy 18

Allegation that 90% of all persons arrested for shoplifting at department store were African-American or Hispanic was insufficient, without more, to raise inference of discrimination, as required to create prima facie case under §§ 1982 against department store whose shoplifting charges against African-American shopper had been dismissed. Wilson v. McRae's, Inc., C.A.7 (Ill.) 2005, 413 F.3d 692. Civil Rights 1406

Former school employee's amended §§ 1983 complaint adequately stated claim for racially discriminatory discharge, insofar as it sufficiently alleged discriminatory motive to overcome school official's motion to dismiss on basis of qualified immunity; complaint alleged that actions of school district's director of human resources violated employee's statutory rights under §§ 1981. Dockery v. Unified School Dist. No. 231, D.Kan.2006, 406 F.Supp.2d 1219. Civil Rights 1398

Owners of school bus service business sufficiently alleged, under liberal notice pleading standards, claims for damages under § 1983 for violations of their federal constitutional rights against state trooper, who allegedly

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discriminated against them in violation of state and federal law by deliberately making it difficult for them to operate business because of their hiring of employees of Russian heritage; owners alleged that state trooper's actions were performed willfully and were motivated by his prejudice against Russian immigrants, that his conduct resulted in loss of at least one bus contract with school district, and that they suffered economic and other damages and were denied the Constitutional right to employ persons regardless of race or national origin. Lecrenski Bros. Inc. v. Johnson, D.Mass.2004, 312 F.Supp.2d 117. Civil Rights 1395(5)

Male middle school student, who alleged that he was forced to wear a pink sign which posed the question "will you go with me?," did not plead facts sufficient to support his allegation that his treatment was based on his sex, and therefore failed to state claim under §§ 1983 against teacher or principal. Cockerham ex rel. Cockerham v. Stokes County Bd. of Educ., M.D.N.C.2004, 302 F.Supp.2d 490. Civil Rights 1395(2)

Transferred employee of Puerto Rico's Right to Work Administration (RWA) failed to state cause of action in complaint for supervisory liability under § 1983, in connection with complaint of political discrimination in violation of her free speech and association rights, where she failed to make averment that causally or logically linked supervisors' actions to transfer. Torres Ocasio v. Melendez, D.Puerto Rico 2003, 283 F.Supp.2d 505. Civil Rights 1395(8)

Allegation that scientists, conducting psychiatric study of juvenile offenders' younger brothers during which study participants were given a drug that allegedly caused plaintiff participant severe physical and emotional harm, limited study to African American and Hispanic-American subjects was sufficient to assert discriminatory motivation element of equal protection claim. Johnson ex rel. Johnson v. Columbia University, S.D.N.Y.2003, 2003 WL 22743675, Unreported. Constitutional Law 215.2; Health 706

State prison inmate's § 1983 complaint, which lacked allegations that inmate was treated differently than similarly situated inmates, failed to sufficiently allege equal protection claim. Sterling/Sayyed v. Banks, C.A.8 (Ark.) 2003, 72 Fed.Appx. 504, 2003 WL 21802122, Unreported. Civil Rights 1395(7)

4676A. ---- Class, specificity of allegations, complaint

Allegations by driver involved in collision with vehicle driven by off-duty city police officer, defining a class for equal protection purposes based on her status as a victim of alleged tortious conduct by the officer and other officers who responded to the scene, were insufficient to state that she was a member of a protected class, as required to establish equal protection claim under §§ 1983. McDorman v. Smith, N.D.Ill.2006, 437 F.Supp.2d 768 . Municipal Corporations 747(3)

4677. ---- Pattern of conduct, specificity of allegations, complaint

Inmate stated §§ 1983 claim against county and city related to assault he received in county jail by alleging that assault was consistent with county and city's policies and customs. Sulik v. Taney County, Mo., C.A.8 (Mo.) 2005, 393 F.3d 765. Civil Rights 1351(4)

Allegation in § 1983 complaint that city and police department maintained "code of silence," that disciplinary complaints against police officers almost never resulted in official censure, and that that practice hurt arrestee who had been shot by police during execution of search warrant sufficiently stated civil rights claim on which relief could be granted. Sledd v. Lindsay, C.A.7 (Ill.) 1996, 102 F.3d 282. Civil Rights 1395(6)

Pleadings of administrator of estate of state prison inmate who was killed by fellow inmates failed to allege facts with sufficient specificity to support § 1983 claim against state prison officials, where complaint averred that inmate's death was result of pattern of conduct by prison guards and inmates and that state prison officials knew of the misconduct, malfeasance, acts and/or omissions, and did nothing to stop it, or condoned it; pleading cited no

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conduct or specific omissions that would have causally linked defendants to the death, and, at best, alleged negligence action. Jacquez v. Procunier, C.A.5 (Tex.) 1986, 801 F.2d 789.

Allegations of former county police officer, that city had policy of indifference toward claims of retaliation for exercise of First Amendment protected speech, satisfied minimum pleading requirements and thus were sufficient to sustain §§ 1983 claim of municipal liability for supervisors' failure to properly investigate claims that he was subjected to adverse employment action in retaliation for his criticism of department. Wallace v. Suffolk County Police Dept., E.D.N.Y.2005, 396 F.Supp.2d 251. Civil Rights 1395(8)

Arrestee's allegations that District of Columbia "tolerated and permitted a pattern of police harassment, false arrest, and malicious prosecution," that through its police department it "permitted and tolerated a pattern and practice of unjustified, unreasonable, and unlawful harassment and deprivation of liberty and property without due process of law," and that its "policies and customs" encouraged police misconduct met the pleading standards necessary to state false arrest and due process claims under § 1983. Amons v. District of Columbia, D.D.C.2002, 231 F.Supp.2d 109. Civil Rights 1395(6)

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Plaintiff, in his § 1983 action alleging assault by unnamed sheriff's deputies, failed to allege facts sufficient to show a pattern or practice of abuse by parish deputies; plaintiff did not allege any other instances of physical abuse by the deputies. Yates v. Unidentified Parties, C.A.5 (La.) 2003, 73 Fed.Appx. 19, 2003 WL 21744384, Unreported, certiorari denied 124 S.Ct. 1081, 540 U.S. 1123, 157 L.Ed.2d 920. Civil Rights 1395(5)

4678. ---- Custom or usage, specificity of allegations, complaint

Complaint sufficiently alleged failure to train police officers in use of force for purposes of § 1983 action against District of Columbia; allegation that officer shot plaintiff in broad daylight on city street quickly after ordering him to "freeze" stated facts that may reasonably have suggested misconduct sufficiently serious and obvious to justify allegation of improper training in use of force despite fact that complaint only alleged one instance of unconstitutional conduct. Atchinson v. District of Columbia, C.A.D.C.1996, 73 F.3d 418, 315 U.S.App.D.C. 318. Civil Rights 1395(6)

Failure of jail inmates to plead specific facts, in connection with § 1983 action brought against county for alleged civil rights violations by county sheriff's department, that would tend to prove county policy or custom was proximate cause of alleged deprivation of their constitutional rights did not warrant dismissal of inmates' complaint; under notice pleading system set up by Federal Rules of Civil Procedure, § 1983 complaint against municipality need only include short plain statement of claim showing that pleader is entitled to relief. Ashe v. Corley, C.A.5 (Tex.) 1993, 992 F.2d 540. Civil Rights 1395(7)

Section 1983 complaint against municipality failed to allege municipal custom or policy with requisite specificity where it stated no facts to support assertions that city's policies, or its failure to implement policies, in any way violated shooting victim's constitutional rights or contributed to his unfortunate death. Fraire v. City of Arlington, C.A.5 (Tex.) 1992, 957 F.2d 1268, rehearing denied, certiorari denied 113 S.Ct. 462, 506 U.S. 973, 121 L.Ed.2d 371. Civil Rights 1395(5)

Conclusory allegations of wrongdoing on the part of police officers were insufficient to impose § 1983 liability on

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city, absent any evidence pertaining directly to policies or customs of city. Birdsall v. City of Hartford, D.Conn.2003, 249 F.Supp.2d 163. Civil Rights 1395(5)

Proof of a single incident of unconstitutional activity is not sufficient to impose §§ 1983 liability against a municipality, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker. Claudio v. City of New York, S.D.N.Y.2006, 423 F.Supp.2d 170. Civil Rights 1351(1)

In asserting that municipality and its officials violated the employees' rights under § 1983 by terminating them or not renewing their employment based on political affiliation, municipal employees were not required to specifically allege that any policy or custom attributable to the municipality or any of its officials was the moving force behind their injuries; municipality's liability arose directly from the official policy actions of its mayor. Hernandez Carrasquillo v. Rivera Rodriguez, D.Puerto Rico 2003, 281 F.Supp.2d 329. Civil Rights 1395(8)

Mere assertion that municipality has custom or policy condoning constitutional violation is insufficient to establish municipal liability in § 1983 action. Richardson v. Nassau County, E.D.N.Y.2003, 277 F.Supp.2d 196. Civil Rights 1417

Complaint alleging that high school student was injured by teacher's excessive force in consequence of the conduct and policies of school defendants including inadequate recruitment, hiring, training, retention, supervision, discipline, and security was sufficient to state claims under § 1983 against individual supervisory defendants. Tsotesi v. Board of Educ. of City School Dist. of City of New York, S.D.N.Y.2003, 258 F.Supp.2d 336. Civil Rights 1395(2)

Suggestion that city should adopt specific policy requiring presence of female officers during execution of search warrants in certain circumstances was not sufficient to meet pleading requirements for § 1983 claim against city under vicarious liability theory, which required pleading of existence of unconstitutional practice, custom or policy by city as it related to facts of case, involving execution of search warrant for house in the middle of the night and affecting lightly-clad female residents. Laise v. City of Utica, E.D.Mich.1997, 970 F.Supp. 605. Civil Rights 1395(6)

Student who had been interrogated by city police officer who was investigating fire at school failed to sufficiently allege policy or custom on part of city which resulted in violation of student's Fourth and Fifth Amendment rights, as required to state § 1983 claim against officer in his official capacity; allegations that policies and customs included deliberate indifference in the training of, and customs of, officers who interrogate students, and that students were seized and interrogated without legal cause and in violation of their *Miranda* rights, did not contain specific facts suggesting that other students were treated in same manner, and contained nothing more than boilerplate allegations of municipal policy. Bills by Bills v. Homer Consol. School Dist. No. 33-C, N.D.Ill.1997, 967 F.Supp. 1063. Civil Rights 1395(6)

Section 1983 claim against municipality and municipal officials, alleging failure to train police officers, failed to allege municipal policy of insufficient training with requisite specificity; bald allegations were not enough to survive motion for summary judgment. Morgan v. Barry, D.D.C.1992, 785 F.Supp. 187. Federal Civil Procedure 2491.5

Civil rights plaintiffs' allegation that deputy sheriffs acted "pursuant to the policies, procedures, directives, instructions and practices of [county]" failed to establish basis for finding official policy. Shoop v. Dauphin County, M.D.Pa.1990, 766 F.Supp. 1323. Civil Rights 1395(5)

Mere boilerplate assertions of authority or official tolerance of employee misconduct are not sufficient for pleading municipal liability under § 1983. Hickombottom v. City of Chicago, N.D.Ill.1990, 739 F.Supp. 1173. Civil Rights

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42 U.S.C.A. § 1983

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Civil rights plaintiffs' failure to specifically allege that discriminatory acts were caused by municipal policy or custom did not warrant dismissal of claims against municipality, to the extent that existence of municipal policy or custom could be inferred from fact that discriminatory acts were allegedly performed by police chief and other supervisory personnel. Baltzer v. City of Sun Prairie/Police Dept., W.D.Wis.1989, 725 F.Supp. 1008. Civil Rights 1401

Complaint that alleged that defendants' actions deprived arrestees of their rights "to be secure in their persons and home, to be free from excessive use of force, to due process, and not to be subject to cruel and unusual punishment" met notice pleading requirements in § 1983 action against city for excessive force, false arrest, and malicious prosecution. Briley v. City of Trenton, D.N.J.1995, 164 F.R.D. 26. Civil Rights 1395(6)

Allegation, that city's release of juvenile offender information to scientists conducting psychiatric study of such offenders' younger brothers violated privacy rights of study subject, was insufficient to state § 1983 claim against city, absent allegation of facts to support conclusory assertion that release was pursuant to city custom, policy or practice. Johnson ex rel. Johnson v. Columbia University, S.D.N.Y.2003, 2003 WL 22743675, Unreported. Civil Rights 1395(5)

For inmate to state § 1983 excessive force claim against city based on custom or usage, inmate would have to allege that incident complained of occurred as result of city's failure to respond to repeated charges of misconduct by prison guards similar to that alleged by him. David v. Santiago, S.D.N.Y.2003, 2003 WL 1345216, Unreported. Civil Rights 1352(4)

Dismissal of § 1983 action in which inmate sued county jail and fellow inmate who had allegedly raped her while she was being held in county jail, on basis that inmate had failed to allege that constitutional deprivation she suffered was due to a county custom or policy, or that fellow inmate was jointly engaged with a state actor, would be modified to a dismissal without prejudice, so that inmate could refile and name any individual jail employees who may have failed to protect her from the rape. Hutchinson v. Jefferson Cty. Jail, C.A.8 (Ark.) 2000, 242 F.3d 375, Unreported. Federal Courts 931

4679. ---- Miscellaneous allegations, specificity of allegations, complaint

University employees' complaint, alleging that they were subjected to adverse employment actions in response to protected associations or expressions documented in "suspicious" files university maintained about their activities, was insufficient to state claim for violation of their First Amendment free speech rights; complaint failed to identify the associations or expressions about which the university gathered information, and failed to identify any particular adverse employment actions. Aponte-Torres v. University Of Puerto Rico, C.A.1 (Puerto Rico) 2006, 445 F.3d 50. Civil Rights 1395(8)

Where specific constitutional provision prohibits government action, plaintiffs seeking redress for that prohibited conduct in §§ 1983 suit cannot make reference to broad notion of substantive due process. Velez v. Levy, C.A.2 (N.Y.) 2005, 401 F.3d 75. Civil Rights 1028

Allegations by property owner that building inspector and other city officials engaged in unreasonable search and seizure, denied him notice and an opportunity to be heard, and attempted to take his property for private use when they entered his land, demolished his dog house, and ripped up his flower bed only 27 days after giving him notice to do so on his own stated § 1983 claim against city officials for violation of property owner's constitutional rights; although complaint did not contain all of the facts that would be necessary to prevail, it adequately notified the officials of the principal events. Hoskins v. Poelstra, C.A.7 (Wis.) 2003, 320 F.3d 761. Civil Rights 1395(6)

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Allegations in prison inmate's pro se complaint, concerning hostile and disparaging comments allegedly directed at him by officials in medium-security prison to which he was transferred after filing prison grievance, regarding officials' alleged misconduct in denying him a high fiber diet and in having him wait for medical appointment, and as to fact that, when he complained to officials, they allegedly responded that they had "heard all about [him]," did not sufficiently allege either adverse action or requisite causal connection between such action and his earlier protected activity in filing grievance, and were insufficient to state First Amendment retaliation claim; however, district court should not have dismissed with prejudice, without allowing inmate to amend his complaint. Davis v. Goord, C.A.2 (N.Y.) 2003, 320 F.3d 346.

Arrestee who brought § 1983 action against county and county coroner for allegedly falsifying autopsy report, leading to arrestee's false arrest and prosecution on murder charges, was not required to plead with particularity the coroner's alleged falsifications which led prosecutor to charge arrestee with murder, specific allegations that coroner knew that statements in report were false, or how the falsifications caused the charging decision, to establish coroner's improper motive, but only a short and plain statement of the claim showing that arrestee was entitled to relief; overruling *Branch v. Tunnell*, 937 F.2d 1382, *Branch v. Tunnell*, 14 F.3d 449, and *Housley v. United States*, 35 F.3d 400. Galbraith v. County of Santa Clara, C.A.9 (Cal.) 2002, 307 F.3d 1119. Civil Rights 1395(5); Civil Rights 1395(6)

Allegations that in ordering school custodial employees to remove asbestos-containing materials under carpeting, public school officials caused injuries to custodial employees in willful, wanton, malicious, and reckless disregard for employees' health and safety, in violation of the due process clause of the Fourteenth Amendment, stated claim under § 1983. Upsher v. Grosse Pointe Public School System, C.A.6 (Mich.) 2002, 285 F.3d 448, certiorari denied 123 S.Ct. 88, 537 U.S. 880, 154 L.Ed.2d 135. Civil Rights 1395(8)

Pro se prisoner alleged sufficiently serious condition of confinement to state § 1983 claim for violation of his Eighth Amendment rights in allegedly forcing him to live in feces-covered cell for three days, in light of his objections to report and recommendation for dismissal of claim, which clarified that cleaning supplies in his unit were not made available to prisoners to clean individual cells. McBride v. Deer, C.A.10 (Okla.) 2001, 240 F.3d 1287. Civil Rights 1395(7)

Police chief was not required to allege what statements he would have made but for gag order prohibiting him from speaking to media about investigation into his alleged misconduct in order to state cause of action under § 1983 for free speech violation; because gag order was directed at him personally, it could reasonably be inferred that he would have spoken about investigation but for gag order. Jackson v. City of Columbus, C.A.6 (Ohio) 1999, 194 F.3d 737, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(8)

Arrestee's boilerplate allegations regarding police department's and police chief's involvement in his false imprisonment following false arrest sufficiently stated § 1983 false imprisonment claim against police department and police chief so as to survive motion for judgment on pleadings. Ortega v. Christian, C.A.11 (Fla.) 1996, 85 F.3d 1521. Civil Rights 1395(6)

Amended complaint failed to conform to heightened pleading standard governing § 1983 actions; it failed to indicate precise content and form of complaints and challenges which allegedly led to retaliation, context in which they were made, and when and to whom they were made; moreover, with exception of one defendant, complaint did not allege wrongdoing by any particular defendant. Veney v. Hogan, C.A.6 (Ohio) 1995, 70 F.3d 917, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(8)

By arguing that he was arrested for exercising his freedom of speech and setting forth a particularized, fact-specific complaint, demonstrator stated claim for constitutional violation on First and Fourth Amendment grounds. Johnston v. City of Houston, Tex., C.A.5 (Tex.) 1994, 14 F.3d 1056. Civil Rights 1395(6)

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A civil rights plaintiff cannot defeat an official's claim of qualified immunity simply by alleging violation of extremely abstract rights; there must be a "particularized" showing that a reasonable official would understand that what he is doing violates that right. Givens v. Jones, C.A.8 (Mo.) 1990, 900 F.2d 1229. Civil Rights 1376(2)

Employee of state correctional institution failed to plead claim of wrongful discharge, when allegations seemed to embrace both theories of discrimination and retaliation. Clark v. Maryland Dept. of Public Safety and Correctional Services, D.Md.2003, 247 F.Supp.2d 773.

Foster child's complaint satisfied heightened pleading requirements applicable to § 1983 claims, in action against Florida Department of Children and Families (DCAF) employees for allegedly inappropriate foster care placement and adoption by an abusive parent, in violation of his Fourteenth Amendment liberty interest in a physically safe environment, despite employees' claims that only general violation of constitutional rights was alleged and that conclusory allegations made it impossible to conduct fact-sensitive examination of controlling case law required for qualified immunity, or to assess how immunity applied to each employee. Omar ex rel. Cannon v. Lindsey, M.D.Fla.2003, 243 F.Supp.2d 1339, affirmed 334 F.3d 1246. Civil Rights 1395(1); Civil Rights 1398

Foster child's complaint, which repeatedly alleged that Florida Department of Children and Families (DCAF) employees knew of his egregious abuse by foster parent and did nothing to rescue him, adequately pleaded that abuse was proximately caused by deliberate indifference of employees such as to warrant possible employee liability in § 1983 action for violation of child's liberty interest. Omar ex rel. Cannon v. Lindsey, M.D.Fla.2003, 243 F.Supp.2d 1339, affirmed 334 F.3d 1246. Civil Rights 1395(1)

Detainee's complaint sufficiently pled both that he was denied minimal civilized measure of life's necessity, and that county jail correctional officer had a culpable state of mind, as required for Eighth Amendment cruel and unusual punishment claim; complaint alleged that detainee was purposefully subjected to dehumanizing conditions when he was denied access to facilities both to go to the restroom and to clean himself up during five hour period in which he sat in his feces, and that officer displayed hostility towards him during his denial, using insulting and offensive language and expressions. Mitchell v. Newryder, D.Me.2003, 245 F.Supp.2d 200. Sentencing And Punishment 1539; Sentencing And Punishment 1554

Even assuming that parent of special education students adequately alleged retaliation by school district superintendent for parent's advocacy on behalf of her children, parent failed to state §§ 1983 claim for violations of her rights under the First and Fourteenth Amendments since she did not adequately allege or offer evidence of a policy of retaliation by the school district against parent or others similarly situated; parent's allegations fell short of establishing that superintendent's failure to supervise the district administrators, who allegedly authorized letter defaming parent, reflected deliberate indifference to parent's First Amendment rights. Hesling v. Avon Grove School Dist., E.D.Pa.2006, 428 F.Supp.2d 262. Civil Rights 1395(2)

Detainee's allegations against individual police officers, alleging that police officers struck, kicked, and used taser guns to restrain her and to transport her to medical center, identified alleged violations of the Fourth Amendment right to be free from unreasonable seizure and a Fourteenth Amendment right to due process of law, as required to state a claim pursuant to §§ 1983. Batiste v. City of Beaumont, E.D.Tex.2005, 421 F.Supp.2d 969. Civil Rights 1395(6)

Former employee's allegations that his claims were brought "pursuant to §§ 1983" were insufficient to state a claim under §§ 1983, where the only tangential reference to any state action in the amended complaint was employee's allegation that the employer was a corporation formed by the State University of New York to operate the laboratory. Schiappa, Sr. v. Brookhaven Science Associates, LLC, E.D.N.Y.2005, 403 F.Supp.2d 230. Civil Rights 1396

Prisoner's allegations were sufficient to state First Amendment retaliation claims against corrections officers;

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prisoner alleged that he was falsely charged with possessing illegal substances after several failed retaliation attempts from officers against him, a suggestive temporal proximity between the filing of his original compliant against other prison officials and the first instance less than one month later when those officers subjected him to false accusations, and sufficient facts to indicate that officers' motivations were suspect. Kounelis v. Sherrer, D.N.J.2005, 396 F.Supp.2d 525. Civil Rights 1395(7)

State prison inmate's proposed amended §§ 1983 complaint against corporate administrator of prison was insufficiently specific to meet the requirements of the exhaustion of administrative remedies provision of the Prison Litigation Reform Act (PLRA), where the proposed complaint alleged that the inmate filed a grievance in the form of an incident report after he was assaulted and battered by prison guard, and that the guard was subsequently terminated from employment at the prison, but the complaint provided no written documentation, did not state what relief, if any, the inmate sought by filing the report and did not describe any kind of proceeding that took place as a result of his complaints. Torres v. Corrections Corp. of America, N.D.Okla.2005, 372 F.Supp.2d 1258. Civil Rights 1395(7)

Allegations by former employees of Puerto Rico Department of Education, that their contracts were not renewed because of political motives, and that said discriminatory policy was established and implemented by Department officials, were sufficient to state §§ 1983 claim against those officials in their individual capacities; while complaint may not have served as a model pleading, it stated enough facts to survive dismissal. Rivera-Torres v. Rey-Hernandez, D.Puerto Rico 2004, 352 F.Supp.2d 152. Civil Rights 1395(8)

Poor articulation of §§1983 claim, and fact that complaint read like vague political harangue with no specific factual allegations supporting its claims, did not compel dismissal for failure to state claim, since rules required only "short and plain statement" of claim and supporting grounds. Batista Rivera v. Gonzalez, D.Puerto Rico 2004, 338 F.Supp.2d 266. Civil Rights 1395(1)

Allegations by family members of two men, that an FBI agent and a police officer framed the men for murder or other offenses, failed to state claims, pursuant to *Bivens* and §§ 1983, for intentional interference with their family relationships; conduct was not directly aimed at severing or affecting those relationships. Limone v. U.S., D.Mass.2004, 336 F.Supp.2d 18. Civil Rights 1088(1); United States 50.10(3)

Claims raised in complaint filed by pro se hotel guest who sought compensatory and punitive damages pursuant to § 1983 in which he asserted that hotel and its employees violated the ADA and Title VII and attempted to murder him after he became ill from a hamburger he ate at hotel bar and was discharged prematurely from hotel, could not possibly secure relief even when read liberally; claims did not set forth any elements for actionable claims under either federal statutes referenced by guest or any other conceivably relevant federal statutes. Williams v. Holiday Inn Washington, DC on the Hill, D.D.C.2003, 295 F.Supp.2d 27. Civil Rights 1395(1); Federal Civil Procedure 657.5(2)

Pro se prisoner complied with judge's directive to amend his complaint to plead facts sufficient to meet "atypical and significant hardship" requirement for due process claim, and dismissal of his § 1983 claim thus was not warranted, where judge directed that amended complaint would be reviewed for substantive sufficiency before being assigned to another district judge, and such assignment occurred, indicating that prisoner managed to plead enough facts to satisfy first judge, acting in his function as gatekeeper. McKenzie v. O'Gara, S.D.N.Y.2003, 289 F.Supp.2d 389. Federal Civil Procedure 1788.10

Inmate failed to make specific allegation that a particular grievance was disregarded or destroyed by prison officials, as required to support § 1983 claim alleging that his civil rights were violated by the denial of his First Amendment right to petition government for redress of grievances; officials provided 14 different grievances filed by inmate over 10-month period over matters such as denial of phone access to have his wife charged and arrested, missed meals when he went to court, and contesting a ticket for fainting, officer stated that inmate was encouraged

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to write grievances so he would remain quiet, and officials showed that most of inmate's grievances went through entire appellate process. Govan v. Campbell, N.D.N.Y.2003, 289 F.Supp.2d 289. Civil Rights 1395(7)

Municipal employees sufficiently alleged that municipality dismissed them or did not renew their employment because of their active participation in political activities, that municipality's reason of precarious financial situation was a pretext for political discrimination, and gave examples of how they were harassed by municipality, as required to create inference of intentional discrimination to support claim that municipality engaged in political discrimination in violation of the First Amendment; employees alleged that municipality knew of their affiliation to political party, replaced employees with members of political party to which mayor and other municipality staff belonged, and engaged in campaign aimed at making employees relinquish their positions. Hernandez Carrasquillo v. Rivera Rodriguez, D.Puerto Rico 2003, 281 F.Supp.2d 329. Civil Rights 1395(8)

Fifth Amendment, which applied to the District of Columbia, could support employee's allegations of disparate treatment against the District of Columbia Department of Corrections under § 1983 for gender discrimination. Jones v. District of Columbia, D.D.C.2003, 273 F.Supp.2d 61. Constitutional Law 254(3); Constitutional Law 278.4(3)

Prisoner failed to state § 1983 cruel and unusual punishment claim against prison officials, arising from alleged confinement for 365 days in "keeplock," absent specific allegations of serious deprivation, rather than general allegations of "emotional and psychological trauma," that prison officials had wanton state of mind when engaging in alleged misconduct, and that Prison Litigation Reform Act's (PLRA) exhaustion requirements had been fulfilled. Knight v. Keane, S.D.N.Y.2002, 247 F.Supp.2d 379. Sentencing And Punishment 1553

Complaint failed to allege sufficient facts to establish that warrantless search of food distribution business was result of custom or policy of police department, as required to state a § 1983 claim against department; complaint alleged no incidents other than search in question. Chin v. City of Baltimore, D.Md.2003, 241 F.Supp.2d 546. Civil Rights 1395(6)

State prison inmate's claim in § 1983 action, that unnamed defendants interfered with her First Amendment right of access to the courts by refusing to allow her son to take a picture to document injury allegedly caused by a fellow inmate, would be dismissed for lack of specificity where complaint did not indicate who actually prevented the pictures from being taken. Figalora v. Smith, D.Del.2002, 238 F.Supp.2d 658. Civil Rights 1395(7)

Father failed to provide specific facts showing how former wife's private attorney, private medical facilities, and a number of employees of those private medical facilities colluded with a state official to deprive him of his constitutional rights in child custody matters, as required to establish § 1983 claim based upon alleged conspiracy with government officials to violate his civil rights. Nielson v. Legacy Health Systems, D.Or.2001, 230 F.Supp.2d 1206. Civil Rights 1396; Conspiracy 18

Complaint, in nontenured university instructor's action against university officials under § 1983, which alleged that instructor's due process rights were violated by officials' failure to provide impartial decisionmaker with respect to decision not to renew her contract, was sufficiently detailed to put defendants on notice that instructor alleged property interest in her continued employment based on faculty handbook. Anderson-Free v. Steptoe, M.D.Ala.1997, 970 F.Supp. 945. Civil Rights 1395(8)

Inmate failed to state claim with requisite specificity against prison officials for retaliation for pursuing grievances; inmate identified neither the officer to whom he made alleged complaint nor the basis of alleged complaint, and inmate merely described officials' actions as "retaliatory conduct." Sullivan v. Schweikhard, S.D.N.Y.1997, 968 F.Supp. 910. Civil Rights 1395(7)

Job applicant suing individual members of school board under § 1983 based on alleged violation of equal

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protection clause failed to satisfy heightened pleading requirement as to some of those members, where he made no more than general accusations against those individuals without any evidentiary support. Reynolds v. Glynn County Bd. of Educ., S.D.Ga.1996, 968 F.Supp. 696, affirmed 119 F.3d 11. Civil Rights 1395(8)

Inmate who was allegedly beaten in prison by correctional officers failed to plead § 1983 cause of action against warden and former commissioner of city department of corrections, where inmate merely included defendants' names in complaint, but did nothing more. Taylor v. City of New York, S.D.N.Y.1997, 953 F.Supp. 95. Civil Rights 1395(7)

Complaint by representative of estate of patient who died after employee of state mental hospital dispensed wrong medication alleged enough facts indicating that patient was being held involuntarily to avoid dismissal of claim against hospital physician to recover damages under federal civil rights statute for deprivation of patient's substantive due process right to receive adequate medical care, even though admission form stated that patient was admitted voluntarily. Bushey v. Derboven, D.Me.1996, 946 F.Supp. 96. Civil Rights 1395(1)

Allegations by property management company, which provided housing to low income minorities, and its sole shareholder that town officials refused to process permit applications for property in which company sought to locate its offices, that town and town officials closed company's offices without prior notice and without threat to public health or safety, that town and town officials singled out minority-occupied properties managed by company for inspections, that town councilman caused social service applications filed by company's minority clients to be delayed and that town officials issued false press release regarding company were of sufficient particularity to state § 1983 claims against town and town officials for violation of constitutional rights. Pisello v. Town of Brookhaven, E.D.N.Y.1996, 933 F.Supp. 202. Civil Rights 1395(3)

Plaintiffs' complaint alleging discrimination under § 1983 against all defendants was ambiguous and, as such, violated federal rule requiring that each averment of a pleading be simple, concise, and direct; although plaintiffs named 15 individual defendants in their complaint, complaint failed to spell any factual allegations as to specific incidents of deprivation chargeable to any of the individual defendants. Vance v. County of Santa Clara, N.D.Cal.1996, 928 F.Supp. 993. Civil Rights 1394

Arrestee's allegations that clerk of circuit court and county sheriff knew, as result of prior lawsuits, that computer systems listing outstanding arrest warrants were deficient for their failure to process quashed and recalled orders and that clerk and sheriff were persons responsible for setting polices and mandating procedures in their respective offices were sufficient to state § 1983 claim against clerk and sheriff in their individual capacities for violation of arrestee's constitutional rights in connection with his unlawful arrest pursuant to invalid warrant. McMurry v. Sheahan, N.D.Ill.1996, 927 F.Supp. 1082. Civil Rights 1395(6)

Prisoner in Florida state correctional institution who brought civil rights action against correction officials failed to state claim based on conspiracy allegations where prisoner did not allege any factual support to show that the officials communicated about or reached understanding to deny prisoner his rights. Searcy v. Singletary, M.D.Fla.1995, 894 F.Supp. 1565, affirmed 87 F.3d 1329. Conspiracy 18

Civil rights complaint under § 1983 failed to allege with sufficient particularity violations of constitutional rights by individual defendant who was employee of county department of human resources, and failed to state claim even under notice proceeding where, from complaint, court had no idea what the basis of liability was as to such employee, though it appeared that plaintiffs might be attempting to hold him directly liable for alleged acts of subordinate who allegedly directed sheriff's officers to violate plaintiffs' rights. Ross v. State of Ala., M.D.Ala.1995, 893 F.Supp. 1545. Civil Rights 1395(5)

Prisoner failed to state claim under § 1983 against probation officers who allegedly provided false information to sentencing court; prisoner did not identify any specific false information which was provided to sentencing court

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or relied on by sentencing court and which prisoner was not given chance to rebut. Bieros v. Nicola, E.D.Pa.1994, 860 F.Supp. 223. Civil Rights 1395(7)

Inmate's allegations revealing prison supervisors' knowledge of direct interference with inmate's right of access to law library by chief librarian and supervisors' inaction in face of such knowledge were sufficient to meet heightened pleading requirement for § 1983 action; allegations were specific and disclosed several meetings and written communications with supervisors regarding inmate's treatment at law library. Martin v. Ezeagu, D.D.C.1993, 816 F.Supp. 20. Civil Rights 1395(7)

Pro se amended complaint filed by prisoner under §§ 1983 was defective under pleading rule governing complaints and would be dismissed with leave to amend, where complaint listed thirty individual defendants in its caption, but only made averments concerning twenty-one of them, it contained numerous paragraphs that made no reference to actions taken by any of the defendants, and plaintiff's paragraphs, or "Legal Points," contained more than one factual allegation. Washington v. Reilly, E.D.N.Y.2005, 226 F.R.D. 170, subsequent determination 2005 WL 2464694. Federal Civil Procedure 657.5(3); Federal Civil Procedure 1838

Arrestee's complaint against police officers alleging that officers acted with deliberate indifference to his medical needs in violation of the Eighth Amendment, asserting that officers ignored his repeated requests for medical attention for injuries he sustained during a fight and delayed the medical treatment that he ultimately received, conformed to the notice-pleading standard for pro se civil rights complaints, and thus district court's sua sponte dismissal was abuse of discretion. Askew v. Jones, C.A.3 (N.J.) 2005, 160 Fed.Appx. 140, 2005 WL 3409617, Unreported. Federal Civil Procedure 1824

Parents' unsupported allegations in §§ 1983 action arising from investigation of alleged physical abuse of one minor child, indicating that second minor child was "ordered to stay with" her maternal grandmother in an "unsafe environment," did not state claim against county child services agency or its employees. Brown v. Daniels, C.A.3 (Pa.) 2005, 128 Fed.Appx. 910, 2005 WL 943525, Unreported. Civil Rights 1395(1)

Inmate's allegations that prison employees retaliated against inmate by verbally harassing inmate and by filing two false disciplinary reports against inmate after inmate filed a grievance was sufficient to state a claim for retaliation. Perez v. Sullivan, C.A.7 (Ill.) 2004, 100 Fed.Appx. 564, 2004 WL 1245299, Unreported. Prisons 13(7.1)

Plaintiff's failure to delineate, clearly and succinctly, the exact reason or reasons she was suing each defendant, and persistence in attempting to sue the Department of Corrections (DOC) after having been informed that the DOC was protected by Eleventh Amendment immunity, warranted dismissal of plaintiff's claims brought pursuant to § 1983 alleging that she received inadequate medical care and that she was denied participation in the institutional grievance procedures. Romo v. Department of Corrections (Women's Facility), C.A.10 (Colo.) 2004, 85 Fed.Appx. 184, 2004 WL 49844, Unreported. Federal Civil Procedure 1788.10

Complaint against city officials, who provided juvenile offender information to scientists conducting psychiatric study of juvenile offenders' younger brothers, failed to state equal protection claim, though study was allegedly limited to African American and Hispanic-American subjects, absent allegation that officials based collection or dissemination of information on race. Johnson ex rel. Johnson v. Columbia University, S.D.N.Y.2003, 2003 WL 22743675, Unreported. Civil Rights 1395(5)

Indigent state inmate's allegations that he suffered from discrimination, harassment and retaliation, conspiracy and on-going violations of his constitutional rights were insufficient to state claim for relief under § 1983, where inmate's assertions consisted of jumble of rambling, incoherent rants presented in undifferentiated and conclusory fashion, unsupported by specific factual averments or legal authority. Rainey v. Bruce, C.A.10 (Kan.) 2003, 74 Fed.Appx. 8, 2003 WL 21907609, Unreported. Federal Civil Procedure 2734

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42 U.S.C.A. § 1983

State prison inmate's § 1983 complaint, which alleged that inmate was denied a subscription to the newspaper of his choice, sufficiently alleged a First Amendment violation even though complaint itself did not allege who denied him the newspaper or who was responsible for the policy limiting him to a particular newspaper; attachments to complaint named two defendants involved in implementing and enforcing the policy. Sterling/Sayyed v. Banks, C.A.8 (Ark.) 2003, 72 Fed.Appx. 504, 2003 WL 21802122, Unreported. Civil Rights 1395(7)

State inmate pleaded himself out of court on § 1983 conspiracy claim when he alleged conspiracy by state officials to violate his First, Ninth, and Fourteenth Amendment rights, but then alleged specific actions contradicting that claim by asserting that former governor had pursued policy restricting prisoner access to pornography for political reasons, successfully lobbied state legislature to change existing policy, and then had state's corrections department carry out new policy; such allegations did not support existence of agreement to deprive inmate of his constitutional rights, or suggest that state officials' acts deprived him of a constitutional right. McMillian v. Litscher, C.A.7 (Wis.) 2003, 72 Fed.Appx. 438, 2003 WL 21489717, Unreported. Conspiracy 18

4680. More definite statement, complaint

When plaintiff sues public official for civil rights violation, district court must insist on heightened pleading by plaintiff, demanding that plaintiff file short and plain statement of complaint that rests on more than conclusions alone; court may, in its own discretion, insist that plaintiff file reply tailored to answer which pleads defense of qualified immunity, but court's discretion not to order such reply is very narrow when greater detail might assist. Morin v. Caire, C.A.5 (La.) 1996, 77 F.3d 116, 144 A.L.R. Fed. 719. Civil Rights 1398; Civil Rights 1394

The dismissal of a civil rights complaint with prejudice for failure to state a sufficiently definite claim exceeded trial court's discretion, where the pro se plaintiff's more definite statement had been served but not filed, and thus pro se plaintiff would be afforded another opportunity to comply with order, absent showing of a clear record of delay or contumacious conduct by pro se plaintiff. Pardee v. Moses, C.A.5 (Fla.) 1979, 605 F.2d 865. Federal Civil Procedure 1788.6

Allegations of plaintiffs in civil rights suit that defendants, including both public officials and private citizens, acted jointly and severally, separately and conspiratorily and that they did conspire with each other with respect to activities that allegedly deprived plaintiffs of constitutional rights were sufficient to defeat motion of private citizens to dismiss, absent any effort to obtain a more definite statement as to that matter. Gillibeau v. City of Richmond, C.A.9 (Cal.) 1969, 417 F.2d 426. Federal Civil Procedure 1789

While it was doubtful that alleged interference by defendant state officials with right of plaintiff to work as a superintendent in a boys' school stated any valid constitutional violation, it was not impossible that a violation of a right of privacy occurred, and preferable remedy was, thus, to encourage defendants to move for a more definite statement of constitutional rights alleged to have been violated. Holladay v. State of Mont., D.C.Mont.1981, 506 F.Supp. 1317. Federal Civil Procedure 1018.1

County prison guard's complaint, under this subchapter, for wrongful discharge from employment at county prison was not so vague or ambiguous that a party could not reasonably be required to frame responsive pleading and the guard would not be required to file a more definite statement. Bond v. Delaware County, E.D.Pa.1973, 368 F.Supp. 618. Federal Civil Procedure 988.1

Where assistant university professor, in his action under this section that it was impossible for him personally to allege all incidents with certainty because defendants had remained silent as to any reason for termination of his employment and that he would amend his complaint to conform to proof when all facts were elicited from defendants through discovery, motion for more definite statement was denied. Wolfe v. O'Neill, D.C.Alaska 1972, 336 F.Supp. 1255. Federal Civil Procedure 971

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42 U.S.C.A. § 1983

4681. Answer, complaint

Police officer did not make binding admission that he acted under color of state law, for purposes of § 1983, in allegedly raping plaintiff, when officer answered complaint by stating that he admitted allegations of paragraph stating that his conduct described in complaint was taken under color of state law; in light of officer's denial of central factual components of plaintiff's case, the most he could justly be said to have admitted was that when he did not rape plaintiff he was acting under color of state law. Almand v. DeKalb County, Ga., C.A.11 (Ga.) 1997, 103 F.3d 1510, rehearing and suggestion for rehearing en banc denied 114 F.3d 1204, certiorari denied 118 S.Ct. 411, 522 U.S. 966, 139 L.Ed.2d 314. Federal Civil Procedure 744.1

Where state prisoners' pro se civil rights complaint had been referred to a magistrate and the magistrate had ordered that defendants submit an administrative report to the court, unverified administrative report that was thereafter submitted by defendants should have been treated at most as an answer to the inmates' complaint, thus setting the stage for further pretrial proceedings in which, once the issues had been delineated, it could be determined whether any factual issues remained to be litigated in a bench trial or, if either party demanded it, in a trial by jury. Mitchell v. Beaubouef, C.A.5 (La.) 1978, 581 F.2d 412, rehearing denied 586 F.2d 842, certiorari denied 99 S.Ct. 2416, 441 U.S. 966, 60 L.Ed.2d 1072. Federal Civil Procedure 731; Federal Civil Procedure 1927

In the interest of justice, board of education and school principal sued in civil rights action by discharged teacher seeking injunctive relief would be permitted to amend answer to include defense of applicable statute of limitations. Lombard v. Board of Ed. of City of New York, E.D.N.Y.1976, 407 F.Supp. 1166. Federal Civil Procedure 844.1

Because of existence of substantial jurisdictional issue as to whether private security guards in employ of city-owned college could be deemed to be acting under color of state law, defendant security guard who was in default would be granted additional time in which to answer, move, or otherwise plead in civil rights action. Huggins v. White, S.D.N.Y.1970, 321 F.Supp. 732. Federal Civil Procedure 735

4682. Amendment of answer, complaint

County correctional facility could amend answer to inmate's § 1983 complaint, alleging physical mistreatment, to assert affirmative defense of failure to exhaust administrative remedies, when Supreme Court issued decision requiring assertion of exhaustion as affirmative defense after original answer was filed. Abney v. County of Nassau, E.D.N.Y.2002, 237 F.Supp.2d 278. Federal Civil Procedure 846

4683. Docketing or filing, complaint

District court should allow suit by prison inmate to be docketed without prepayment of costs and then, if appropriate, dismiss it instead of refusing to allow case to be docketed, even though at that stage it is judicially determined that complaint does not state a claim on which relief could be granted. Taylor v. Gibson, C.A.5 (Ala.) 1976, 529 F.2d 709. Federal Civil Procedure 2734

It was error for district court to refuse to file petition, in which state prisoner sought damages from prison officials because of an alleged conspiracy to murder him, because the court deemed petition frivolous on its face; the complaint should have been filed and, if the district court was still satisfied that it was frivolous or failed to state a claim for federal relief, district court should enter an appropriate judgment. Finney v. Arkansas Bd. of Correction, C.A.8 (Ark.) 1974, 505 F.2d 194, on remand 410 F.Supp. 251. Federal Civil Procedure 664

4684. Amendment, complaint--Generally

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42 U.S.C.A. § 1983

State prison inmate who brought § 1983 action containing mixture of administratively exhausted and unexhausted claims against corrections officials should have been permitted to file amended petition containing only exhausted claims, as inmate requested in motion to amend accompanying his objections to Magistrate Judge's recommendation for dismissal, rather than having entire action dismissed. Kozohorsky v. Harmon, C.A.8 (Ark.) 2003, 332 F.3d 1141. Federal Civil Procedure 1838

Leave to amend prisoner's mental and emotional injury complaint to include statement of physical injuries he suffered as result of deprivation of food, drink, and sleep for four days he was placed in filthy cell was warranted, for purpose of meeting physical injury requirement of Prison Litigation Reform Act (PLRA), as physical injuries could have resulted from deprivations alleged. Mitchell v. Horn, C.A.3 2003, 318 F.3d 523, on remand 2005 WL 1060658. Federal Civil Procedure 839.1

Since district court, following dismissal of prisoner's pro se civil rights complaint, was willing to accept prisoner's subsequent letters as pleadings, such letters should have been construed as an amendment to the complaint or as an addition in nature of an amendment. Woodall v. Foti, C.A.5 (La.) 1981, 648 F.2d 268. Federal Civil Procedure 839.1

Prisoners' additional documents, one denominated "complaint," and the other "brief in support of plaintiffs," such documents having been filed by prisoners in response to motion to dismiss their complaints of denial of due process in disciplinary proceedings, were properly treated by court as amendments to original complaint. Winfrey v. Brewer, C.A.8 (Iowa) 1978, 570 F.2d 761. Federal Civil Procedure 851

Allegations by woman who had been sexually assaulted by police officer and who participated in sting operation aimed at officer which was set up by internal affairs department that internal affairs officers had allowed officer to remove her clothing and make sexual contact before attempting to arrest officer were insufficient to state violation of her due process right to bodily integrity, as neither of internal affairs officer had physical contact with woman or had "legal control" over assaulting officer; however, woman would be allowed to amend complaint, as pleadings did not allow determination of whether right was violated or whether officer was entitled to qualified immunity. Callis v. Sellars, S.D.Tex.1996, 931 F.Supp. 504. Civil Rights 1395(5); Federal Civil Procedure 839.1

4685. ---- As of right, amendment, complaint

Plaintiff was not entitled to amend his civil rights complaint as of right because some defendants had not filed responsive pleadings in that plaintiff had already amended his complaint once. Glaros v. Perse, C.A.1 (Mass.) 1980, 628 F.2d 679. Federal Civil Procedure 827

Where defendant prison officials did not file an answer to original pleading of prisoners, suing for damages, but rather asserted a motion to dismiss or for summary judgment, the motion did not constitute a responsive pleading so that prisoners had a right to amend plea without leave and the allegations of amended complaint superseded those of the original complaint filed in case; court erred in failing to consider such amended complaint. La Batt v. Twomey, C.A.7 (Ill.) 1975, 513 F.2d 641. Federal Civil Procedure 852.1

Prisoner showed good cause for leave to amend his complaint beyond deadline in scheduling order in civil rights action under §§ 1983 against correctional officers, where his counsel had been having difficulty contacting prisoner because prisoner had been moved more than once to different facilities. Murphy v. Goord, W.D.N.Y.2006, 445 F.Supp.2d 261. Federal Civil Procedure 1938.1

4686. ---- Discretion of court, amendment, complaint

Denying plaintiff leave to amend her §§1983 complaint a fourth time after dismissing her third amended complaint based on her failure to delineate defendants and identify their respective acts or omissions was not abuse of

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discretion; plaintiff's delay in delineating defendants and complying with discovery schedule had directly prejudiced defendants' ability to mount effective qualified immunity defense, and granting leave to amend would have only prejudiced defendants further. Doe v. Cassel, C.A.8 (Mo.) 2005, 403 F.3d 986. Federal Civil Procedure 839.1

District judge did not abuse his discretion in refusing to allow § 1983 plaintiff to amend his complaint third time to include illegal seizure claim against police officer who allegedly positioned squad car in path of plaintiff's motorcycle; proposed third amendment came nearly four years after collision and less than one month prior to trial, and, contrary to plaintiff's claim, plaintiff and his counsel were aware that he could have asserted illegal seizure claim against officer prior to taking of officer's deposition. Thompson v. Boggs, C.A.7 (Ill.) 1994, 33 F.3d 847, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 1692, 514 U.S. 1063, 131 L.Ed.2d 556. Federal Civil Procedure 840

Permission to amend complaint after dismissal of action rests in sound discretion of court, but amendment to correct deficiency in pleading should be freely given when justice so requires, particularly where action arises under this subchapter. Gaffney v. Silk, C.A.1 (Mass.) 1973, 488 F.2d 1248. Federal Civil Procedure 1838

Inmate would be granted leave to file an amended complaint, in his § 1983 action alleging deliberate indifference to his medical needs, as to grievances he was allegedly prevented from filing, where district court was unable to determine from inmate's motion papers whether a reasonable attempt to comply with administrative exhaustion requirements under Prison Litigation Reform Act (PLRA) occurred. Woodrich v. Greiner, S.D.N.Y.2003, 2003 WL 22339264, Unreported. Federal Civil Procedure 839.1

4687. ---- Pro se complaints, amendment

Though pro se civil rights complaint, based on two occasions on which prison official had allegedly opened inmate's legal mail outside of his presence, was insufficient to state claim for violation of inmate's free speech rights or right of access to courts, district court should have dismissed complaint without prejudice to allow inmate to amend pleading to allege requisite injury, especially where inmate alleged that prison official opened his outgoing legal mail, which was entitled to greater protection. Davis v. Goord, C.A.2 (N.Y.) 2003, 320 F.3d 346. Federal Civil Procedure 1838

Incarcerated, pro se § 1983 plaintiff who failed to name individual officials of sheriff's department as defendants in his complaint, instead naming department itself, was entitled to amend complaint to name individual defendants, even though they were not named in caption of his motions to amend complaint; it was sufficient that his proposed amended complaint listed individual defendants, describing officers by shift. Donald v. Cook County Sheriff's Dept., C.A.7 (Ill.) 1996, 95 F.3d 548. Federal Civil Procedure 392

Former temporary county jail inmate, who was no longer imprisoned at county jail, who did not seek damages for deprivation of his rights while he was at county facility, and who prayed only for injunctive and declaratory relief to improve conditions for those inmates still imprisoned at facility, might not have standing to bring civil rights suit but inmate, who was proceeding pro se, should be given opportunity to amend complaint to attempt to allege requisite "personal stake" in the suit. Weaver v. Wilcox, C.A.3 (Pa.) 1981, 650 F.2d 22. Federal Civil Procedure 839.1

State prisoner was entitled to an opportunity to amend his pro se civil rights complaint so as to attempt to allege facts sufficient to support an action for deliberate indifference to his medical needs; while it was a close question as to whether his complaint was frivolous, dismissal of his complaint was inappropriate. Broughton v. Cutter Laboratories, C.A.9 (Ariz.) 1980, 622 F.2d 458. Federal Civil Procedure 839.1; Federal Civil Procedure 1788.10

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42 U.S.C.A. § 1983

A pro se plaintiff, particularly one bringing a civil rights action, should be afforded an opportunity fairly freely to amend his complaint. Holmes v. Goldin, C.A.2 (N.Y.) 1980, 615 F.2d 83, on remand 566 F.Supp. 863. Federal Civil Procedure 839.1

In state prisoner's action to recover damages for loss of watch allegedly stolen during shake down search, trial court erred in denying pro se plaintiff leave to amend his complaint, notwithstanding fact that plaintiff did not state in his motion for leave how he would cure the deficiencies in his pleading. Gordon v. Leeke, C.A.4 (S.C.) 1978, 574 F.2d 1147, certiorari denied 99 S.Ct. 464, 439 U.S. 970, 58 L.Ed.2d 431. Federal Civil Procedure 839.1

Complaints under this section must be specifically pleaded to avoid a motion to dismiss, but this rule does not subvert the liberal policy favoring amendment of complaint, and such rule must be balanced against the equally important policies that pro se litigants not be denied opportunity to state a civil rights claim because of technicalities and that litigation should be decided on merits, where possible. Kauffman v. Moss, C.A.3 (Pa.) 1970, 420 F.2d 1270, certiorari denied 91 S.Ct. 93, 400 U.S. 846, 27 L.Ed.2d 84. Civil Rights 1394

Arrestee proceeding in forma pauperis was entitled after dismissal to leave to amend pro se complaint liberally construed as a civil rights action under §§ 1983, alleging that police officers injured him during arrest, where there may be discernible assault claim buried in arrestee's vague and conclusory allegations. Velez v. Hayes, S.D.N.Y.2004, 346 F.Supp.2d 557. Federal Civil Procedure 1838

Given pro se status of female employee of city transit authority, district court would deem employee's Title VII complaint against supervisors as amended to include gender discrimination and retaliation claims against supervisors under § 1983. Dean v. New York City Transit Authority, E.D.N.Y.2004, 297 F.Supp.2d 549. Federal Civil Procedure 657.5(2)

Inmate's pro se, in forma pauperis habeas complaint seeking declaratory and injunctive relief for alleged denial of due process during parole proceedings was properly construed as complaint under § 1983, and thus, it was subject to "three strikes" provision of Prison Litigation Reform Act (PLRA); even though it was court, and not inmate, who determined that his action was civil action, relief sought could not be obtained in habeas petition, and inmate could not avoid effects of PLRA by mislabeling pleadings. Ayers v. Norris, E.D.Ark.1999, 43 F.Supp.2d 1039. Federal Civil Procedure 2734

Amendment of inmate's pro se complaint which alleged claims against prison officials under § 1983 and state law, to substitute complaint drafted by counsel which dropped state law claims, was proper, even though inmate's § 1983 claims had previously been dismissed and proposed amendments to complaint would thus result in dismissal of entire action; denying motion to amend would have had potential to harm defendants, in that they would then be compelled to litigate state law claims inmate no longer wished to bring. Cespedes v. Coughlin, S.D.N.Y.1997, 956 F.Supp. 454, on reconsideration 969 F.Supp. 254. Federal Civil Procedure 839.1

Request by pro se plaintiff, whose federal civil rights action based on alleged violation of liberty interests of other persons was dismissed based on plaintiff's lack of standing to assert due process rights of others, for leave to amend complaint to add additional plaintiffs to establish standing was denied; as layperson, plaintiff could not adequately represent interests of other class plaintiffs sought to be added. Cevallos v. City of Los Angeles, C.D.Cal.1996, 914 F.Supp. 379. Federal Civil Procedure 164; Federal Civil Procedure 392

Residents, whose dwelling constructed on lands owned by state of Hawaii was destroyed on grounds that they were trespassing, were entitled to amend pro se complaint against state officials to assert claim in officials' individual capacities; although complaint requested injunctive relief, plaintiffs did cite § 1983 as jurisdictional ground, officials had addressed possibility of § 1983 claim against them, and officials asserted that they had anticipated that residents might seek to amend complaint to seek damages against officials in their individual capacity, and claimed only that proposed amendment would prolong litigation. Grace v. Drake, D.Hawai'i 1991, 832 F.Supp. 1399,

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affirmed 8 F.3d 26. Federal Civil Procedure 392

Court would deem inmate's pro se § 1983 complaint to be amended to include allegations that conditions under which he was transported to hospital amounted to cruel and unusual punishment and that he was denied vitamin treatment and necessary special diet pass, rather than dismissing those allegations, which were raised in opposition to summary judgment, as beyond scope of lawsuit. Charles v. Kelly, D.D.C.1992, 790 F.Supp. 344, appeal dismissed. Federal Civil Procedure 841

Considering his pro se status, public preacher effectively supplemented his § 1983 complaint to assert claim based on notice of violation issued after he filed his complaint, such that constitutionality of provision of New York City Administrative Code generally prohibiting "unnecessary noise" was at issue, where, consistent with district court's direction, preacher filed "Supplement for Plaintiff's Draft Pretrial Order," alleging that police continued to violate his constitutional rights, referring to attached copies of several summonses he received, including notice of violation at issue. Dae Woo Kim v. City of New York, S.D.N.Y.1991, 774 F.Supp. 164. Federal Civil Procedure 866

District court did not abuse its discretion in denying pro se pretrial detainee's motion to amend his complaint a second time in § 1983 action against county jail officials alleging deliberate indifference to his serious medical needs in violation of Eighth Amendment, since detainee did not allege that his second amended complaint would have been materially different from his first. Sandifer v. Green, C.A.10 (Kan.) 2003, 57 Fed.Appx. 857, 2003 WL 297562, Unreported, on remand 2004 WL 784934. Federal Civil Procedure 851

4688. ---- Futility, amendment, complaint

Leave to amend complaint alleging ERISA preemption of state tax laws to state claim under § 1983 for state tax refunds was properly denied as futile; state and state officials acting in their official capacities were not "persons" within meaning of § 1983, and claim for tax refunds was claim for damages from which state and its officials were immune under Eleventh Amendment. Thiokol Corp. v. Department of Treasury, State of Mich., Revenue Div., C.A.6 (Mich.) 1993, 987 F.2d 376, rehearing denied, on remand 858 F.Supp. 674. Federal Civil Procedure 851

Where proposed amendment would have added nothing new to complaint, which alleged in essence that state police officer had violated inmate's right under U.S.C.A.Const. Amends. 4 and 14 § 1 to be free from unreasonable search and seizure and also alleged violation of his civil rights, district court properly exercised its discretion in denying leave to amend to state that officer's conduct violated inmate's rights under U.S.C.A.Const. Amends. 4 and 5. Bouse v. Bussey, C.A.9 (Or.) 1977, 573 F.2d 548. Federal Civil Procedure 839.1

Federal court which had determined that constitutional claims asserted by riparian landowners had already been decided adversely to them in South Dakota trial court and South Dakota Supreme Court would not permit the landowners to amend their complaint to allege deprivation of civil rights under this section. Smiley v. State of S. D., C.A.8 (S.D.) 1977, 551 F.2d 774. Federal Civil Procedure 841

Family court litigant, bringing §§ 1983 action against family court judge and court officials, would not be allowed to amend complaint to add claims under federal conspiracy statutes; as statutes did not allow for private causes of action, amendment would be futile. Hom v. Brennan, E.D.N.Y.2004, 304 F.Supp.2d 374. Federal Civil Procedure 851

Permitting inmate to amend, after dismissal, his § 1983 complaint against city warden arising from warden's alleged failure to complete inmate's transfer to state custody within 10 to 14 days of sentencing would not cure deficiencies in original complaint even if inmate had opposed warden's motion to dismiss, given that complaint was devoid of allegations suggesting inmate had protected liberty interest in transfer within 10 to 14 days, that

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complaint pointed to no city or state policy giving rise to such liberty interest, that complaint did not allow for inference that delay in transfer constituted atypical and significant hardship, that complaint alleged nothing more than negligence, and that complaint failed to allege personal involvement on part of warden. Wallace v. Conroy, S.D.N.Y.1996, 945 F.Supp. 628. Federal Civil Procedure 1838

Plaintiff's lack of standing to sue under Social Security Act did not render amendment to complaint to add § 1983 constitutional claims futile; addition of § 1983 count would provide court with jurisdictional basis to hear plaintiff's constitutional claims. Nutritional Support Services, L.P. v. Miller, N.D.Ga.1992, 806 F.Supp. 977. Federal Civil Procedure 851

Inmate would be denied leave to amend his § 1983 complaint insofar as complaint related to five inmate grievance complaint forms; amendment would be futile inasmuch as forms were not timely filed and therefore failed to satisfy administrative exhaustion requirement under Prison Litigation Reform Act (PLRA). Woodrich v. Greiner, S.D.N.Y.2003, 2003 WL 22339264, Unreported. Federal Civil Procedure 851

4689. ---- Relation back, amendment, complaint

Pro se inmate's lack of knowledge regarding identities of deputy sheriffs was not a mistake concerning the identity of the proper party, and thus, inmate's amendment to § 1983 complaint arising from beating by fellow inmates, to replace "John Doe" deputy sheriffs with specifically-named defendants, did not relate back to original complaint, so as to avoid limitations bar. Wayne v. Jarvis, C.A.11 (Ga.) 1999, 197 F.3d 1098, certiorari denied 120 S.Ct. 1974, 529 U.S. 1115, 146 L.Ed.2d 804. Limitation Of Actions 121(2)

Amendment to arrestee's § 1983 complaint, adding individual arresting officers as defendants, would relate back to original complaint so long as officers would not be prejudiced in maintaining defense on the merits; claim against officers arose out of conduct, transaction or occurrence set forth or attempted to be set forth in original pleading, and initial decision to name police department only and not the individual officers was not a matter of litigation strategy. Urrutia v. Harrisburg County Police Dept., C.A.3 (Pa.) 1996, 91 F.3d 451. Limitation Of Actions 124

Amendment to New York State Division for Youth employee's civil rights complaint adding claims against employee's co-workers and supervisors did not relate back to date of filing of original complaint, for limitations purposes, absent any claim by employee that she would have named co-workers and supervisors as defendants in her original complaint but for mistake concerning identity; plainly, employee knew identities of co-workers and supervisors who she contended had harassed and discriminated against her. Cornwell v. Robinson, C.A.2 (N.Y.) 1994, 23 F.3d 694. Limitation Of Actions 124

Prison officials and correction officers' knowledge of § 1983 action being brought against them in their personal capacities could not be imputed from service of process on attorney general in original habeas corpus proceeding in which action was brought against them in their official capacities, for purposes of determining whether amendment to add new defendant would relate back to original complaint. Moore v. State of Ind., C.A.7 (Ind.) 1993, 999 F.2d 1125. Limitation Of Actions 124

Police officer did not receive notice that plaintiff in § 1983 action was suing officer in his individual capacity until several months after 120-day period allowed for service of summons and complaint had passed, and, thus, amendment to pleading did not relate back to date of original pleading for limitations purposes; original complaint clearly stated plaintiff's intent to hold state responsible for officer's actions so that officer had no reason to believe he would be held personally liable. Lovelace v. O'Hara, C.A.6 (Ky.) 1993, 985 F.2d 847. Limitation Of Actions 124

Amended § 1983 complaint naming deputy court clerk as additional defendant did not relate back to filing against

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court clerk, and thus was untimely, where deputy clerk received no notice of action until filing of amended complaint. Moore v. Long, C.A.5 (Tex.) 1991, 924 F.2d 586. Limitation Of Actions 124

Although supervisory personnel were aware of employee's race discrimination suit, their participation in that suit on behalf of employer was not proper notice that they could be sued as individuals, for purposes of determining whether a § 1983 claim amended to include supervisory personnel as new defendants would relate back to the filing of the original complaint. Keller v. Prince George's County, C.A.4 (Md.) 1991, 923 F.2d 30. Limitation Of Actions 124

Amended complaint, which named sheriff individually an in his official capacity as defendant in suit brought under this section, related back to time of filing of original complaint, which improperly named Parish and sheriff's office as defendants and therefore action was not barred even if one-year prescriptive period of LSA-R.S. 33:1442 for wrongful death actions applied to suit against sheriff for failure to afford decedent prompt ambulance service. Kirk v. Cronvich, C.A.5 (La.) 1980, 629 F.2d 404. Limitation Of Actions 121(2)

Because teacher's amended pleading arose out of the same conduct set forth in the original pleading and provided school district, superintendent of the district, and the board members of school district with fair notice of the occurrences called into question, namely the circumstances surrounding teacher's discharge, teacher's amended pleading setting forth §§ 1983 claim related back to the original complaint's date and, thus, was not barred by Idaho's two-year statute of limitations which was applicable to §§1983 actions; teacher's §§1983 claim did not introduce new facts of which school district, superintendent of the district, and the board members of school district were unaware. Martin v. School Dist. No. 394, D.Idaho 2005, 393 F.Supp.2d 1028.

Arrestee who brought § 1983 action against county, stemming from his lengthy detention prior to initial court appearance, established that amendments to original complaint, adding claims against sheriff and jail administrator in their official and individual capacities, related back to date original complaint was filed; allegations against sheriff and administrator arose out of same events outlined in original complaint, sheriff and administrator received notice that arrestee had filed suit, sheriff and administrator knew or should have known that action would have been brought against them if arrestee had legal background or legal representation, and county filed answer to original complaint within one month of being served. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Limitation Of Actions 127(3)

Section 1983 claims in third amended complaint against county related back to initial complaint, for purposes of determining whether claims were time-barred, where the complaints set forth virtually identical facts, first amended complaint named several county employees in their official capacities, such that county had notice of plaintiffs' claim, and, although such notice occurred 11 days after prescribed notice period, delay was not caused by plaintiffs' lack of diligence, county was not prejudiced by delay, and plaintiffs were proceeding pro se. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Limitation Of Actions 127(3)

African-American arrestees' claims that police officials and city attorney conspired to violate their civil rights by covering up use of excessive force by perjuring themselves in state court proceedings were not apparent from arrestees' original § 1983 complaint alleging conspiracy to deprive them of their rights to due process and fair trial, and thus did not relate back in time; element of racial animus was not alleged initially, and could not be inferred by fact that all defendants were white. Wilkerson v. Thrift, W.D.N.C.2000, 124 F.Supp.2d 322. Limitation Of Actions 127(12)

Claims under § 1983 against deputy sheriff in his individual capacity, which claimants sought to add to amended complaint two years after underlying incidents took place, related back to filing of original complaint and, therefore, were not barred by two-year statute of limitations; original complaint named another deputy sheriff in his official capacity, and therefore, deputy sheriff who would be added was already part of case from its initiation and had notice of suit. DuFour-Dowell v. Cogger, N.D.Ill.1997, 969 F.Supp. 1107, motion to amend denied 980

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42 U.S.C.A. § 1983

F.Supp. 955. Limitation Of Actions 124

In determining whether inmate's amended civil rights complaint against corrections officer, filed after statute of limitations expired, related back to filing of inmate's original complaint, identifying officer as "John Doe" defendant, inmate's inability to discover officer's name before running of statute of limitations was "mistake," where inmate made series of efforts to obtain officer's identity without prompting before end of limitations period, and defense counsel failed to disclose officer's identity until after limitations period had run. Byrd v. Abate, S.D.N.Y.1997, 964 F.Supp. 140. Limitation Of Actions 121(2)

To extent that second amended complaint alleged discrimination in hiring and promotion practices and disparate impact on present opportunities for promotion of women in city police department, claims related back to original complaint for limitations purposes where original complaint alleged additional and historical discrimination against women in hiring police officers, but counts alleging disparate treatment based on sex, sexual harassment, and existence of hostile work environment did not relate back to original complaint. Barcume v. City of Flint, E.D.Mich.1993, 819 F.Supp. 631. Limitation Of Actions 127(3); Limitation Of Actions 127(12)

Letter advising police officers that they might be "named as a defendant" in a civil rights action which was accompanied by amended complaint against "John Doe" defendant provided actual notice for purposes of relating amendment back to date of original complaint. Felix v. New York City Police Dept., S.D.N.Y.1992, 811 F.Supp. 124. Limitation Of Actions 124

City police chief was not given sufficient notice that he would be sued in his individual capacity as plaintiff sought to do by third amended complaint in civil rights suit, and that complaint accordingly did not relate back to earlier filing for limitations purposes; although third amended complaint related to same occurrence set forth in prior complaints, earlier complaints did not give chief notice that he would be held liable in his individual capacity when the majority of case against city relied on incidents which occurred before police chief became chief. Saviour v. City of Kansas City, Kan., D.Kan.1992, 793 F.Supp. 293. Limitation Of Actions 124

Inmate's amended § 1983 complaint, naming specific prison employees, related back to timely original complaint, which named Connecticut Department of Correction, correction officer and unnamed correction officers, where named defendants shared identity of interests such that they should have known of the suit. Younger v. Chernovetz, D.Conn.1992, 792 F.Supp. 173. Limitation Of Actions 124

In moving to amend complaint to add town board members as named defendants in place of "John Doe" and "Jane Doe" defendants, real estate developers did not seek to correct misnomer or misidentification in complaint, in that developers never made mistake concerning board members' identities, but rather did not know identities when complaint initially was filed, and therefore amendment to add individual board members did not relate back to filing of original complaint and was barred on statute of limitations grounds. Hampton Bays Connections, Inc. v. Duffy, E.D.N.Y.2003, 212 F.R.D. 119. Limitation Of Actions 121(2)

4690. ---- Capacity of parties, amendment, complaint

District court did not abuse its discretion in denying civil rights plaintiff leave to amend his complaint to sue police officer in his individual capacity in addition to suing officer in his official capacity where plaintiff did not move to amend complaint until nearly two years after filing complaint, on eve of trial, when discovery was complete, and officer was prejudiced in that had he known he could be personally liable for damages, he could have chosen to retain private counsel, discovery propounded by and against officer would most likely have differed from that which occurred, and strategy and nature of officer's defense probably would have been altered. Atchinson v. District of Columbia, C.A.D.C.1996, 73 F.3d 418, 315 U.S.App.D.C. 318. Federal Civil Procedure 840; Federal Civil Procedure 842

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42 U.S.C.A. § 1983

Employee of sheriff's department should have been allowed by district court to amend her complaint under § 1983 against county commissioners in their official capacities, arising from alleged pay differential between male and female employee, instead of dismissing complaint with prejudice, since more carefully drafted complaint might have stated claim upon which relief could be granted; sheriff could have been exercising county's authority under Alabama law in setting employee's salary, and county commission could be liable for those acts of sheriff as ultimate repository of county authority. Welch v. Laney, C.A.11 (Ala.) 1995, 57 F.3d 1004. Federal Civil Procedure 1838

Party who is unclear in argument as to capacity in which defendant can be pursued in civil rights action should not lightly be deemed to have withdrawn claim that was expressly stated; when party's defense of her stated claim bespeaks doctrinal confusion, court should not presume that there has been abandonment, but should instead give party opportunity either to abandon claim or to pursue it with corrected understanding as to what proof will be required to establish it. Frank v. Relin, C.A.2 (N.Y.) 1993, 1 F.3d 1317, certiorari denied 114 S.Ct. 604, 510 U.S. 1012, 126 L.Ed.2d 569, on remand 851 F.Supp. 87. Federal Civil Procedure 111

Plaintiffs, who filed suit in 1978 seeking injunctive relief and a declaration that certain North Carolina rules regarding admission to the practice of law are unconstitutional, were properly denied leave to amend their complaint in 1978 to seek damages from the members of the Board of Law Examiners in their individual capacities, since plaintiffs expressly chose not to seek monetary damages in their original complaint, since, during the three-year pendency of the case, they did nothing to indicate that their conscious choice to eschew monetary relief was anything but unequivocal, and since the amendment would inject for the first time the element of individual liability on the part of Board members. Nestler v. Board of Law Examiners of State of N. C., C.A.4 (N.C.) 1980, 611 F.2d 1380. Declaratory Judgment 324

Where discharged teacher had evidently attempted to sue members of school board and the board itself under this section, but where action against the board and the school district failed because neither was a person within meaning of this section, teacher would be allowed, on remand, to amend her complaint to allege other possible bases of jurisdiction against the board, qua board. Burt v. Board of Trustees of Edgefield County School Dist., C.A.4 (S.C.) 1975, 521 F.2d 1201. Federal Courts 952

Leave to amend complaint for action under § 1983 to add another deputy sheriff in his official and individual capacity would not cause undue prejudice; claims against deputy in his individual capacity were based on his personal participation in promulgating official policy or custom and such issue already existed with respect to another deputy named in action, and only claimants, not deputy, would need any additional investigation into deputy's conduct. DuFour-Dowell v. Cogger, N.D.Ill.1997, 969 F.Supp. 1107, motion to amend denied 980 F.Supp. 955. Federal Civil Procedure 392

Plaintiff was permitted to amend § 1983 complaint in order to emphasize that defendants were being sued in their individual capacities, where amendment only made explicit what was already evident from original complaint, amendment involved no substantive change, and defendants were not prejudiced by amendment. Pieve-Marin v. Combas-Sancho, D.Puerto Rico 1997, 967 F.Supp. 667. Federal Civil Procedure 839.1

Civil rights plaintiffs were not entitled to amend complaint to name director of state mental health institute as a defendant in his individual capacity as well as his official capacity following defendant's motion for summary judgment and after close of discovery; clear language of complaint described acts of defendant in his supervisory capacity and nothing had prevented plaintiff from originally naming official in individual capacity in both complaint and notice of claim and describing acts committed in that capacity. Lindsay v. Northern Virginia Mental Health Institute, E.D.Va.1990, 736 F.Supp. 1392. Federal Civil Procedure 392

Though school board is not a "person" giving rise to cause of action under this subchapter, action against board under this subchapter by teacher whose employment as a "temporary professional employee" for one year was

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terminated prior to expiration of such term would not be dismissed without giving teacher leave to amend to name individual members of board as parties defendant. English v. North East Bd. of Ed., W.D.Pa.1974, 385 F.Supp. 1174. Federal Civil Procedure 1746

Proper party to be substituted upon death of defendant, in civil rights action brought against police officer in his individual capacity, was legal representative of officer's estate. Palmer v. Stewart, S.D.N.Y.2003, 2003 WL 21279440, Unreported. Federal Civil Procedure 362

4691. ---- Adding or dropping parties, amendment, complaint

Pretrial detainee's failure to name individual officers as defendants within limitations period for § 1983 action arising from attack by other detainees was mistake concerning identity of proper parties, which thus supported relation back of amendment to complaint; any officers aware of lawsuit should have known that they, rather than correctional facility named in original complaint, were subject to liability for attack in absence of allegations of any custom or policy of inadequate protection of detainees. Soto v. Brooklyn Correctional Facility, C.A.2 (N.Y.) 1996, 80 F.3d 34. Limitation Of Actions 124

Amendment to complaint adding employees of university and university police force as defendants in civil rights action arising from allegedly unlawful search satisfied requirement for relation back to date of original complaint that newly named defendants "should have known" that, but for mistake concerning identity of proper party, action would have been brought against them, as every state's sovereign immunity, and all state employees' personal exposure to, § 1983 liability for constitutional torts was clearly established when lawsuit was filed, and such knowledge was imputed to defendants. Woods v. Indiana University-Purdue University at Indianapolis, C.A.7 (Ind.) 1993, 996 F.2d 880. Limitation Of Actions 124

Although complaint in action under this section against city was devoid of any allegations that alleged deprivations of civil rights were caused by city employees carrying out municipal policy or customs, plaintiffs would be allowed leave to amend where decision in Monell v. Department of Social Services of New York, 436 U.S. 658, intervened between dismissal of complaint for failure to state claim and decision on appeal. Marrero v. City of Hialeah, C.A.5 (Fla.) 1980, 625 F.2d 499, certiorari denied 101 S.Ct. 1353, 450 U.S. 913, 67 L.Ed.2d 337. Federal Civil Procedure 839.1

Prisoner was entitled to leave to supplement his complaint to add First Amendment retaliation claims against previously unnamed corrections officers who allegedly took retaliatory actions against him for initiating original action against other prison officials; as newly asserted defendants, corrections officers would not suffer any prejudice nor would previously named defendants as no new claims were asserted against them, and there were no dilatory tactics or bad faith on the part of prisoner. Kounelis v. Sherrer, D.N.J.2005, 396 F.Supp.2d 525. Federal Civil Procedure 864.1

Justice would not be served by granting state university professor's motion to amend complaint to add dean and chancellor as defendants, purportedly to remedy procedural deficiency or pleading defect in §§ 1983 claim; amendment was proposed solely to circumvent university's motion to dismiss on ground that as agent of state, it was not "person" subject to suit under §§ 1983, allowing amendment each time complaint was challenged would wreak havoc on judicial system by adding substantial delay and undermining Federal Rules of Civil Procedure, and university, as well as the newly-named defendants, would be prejudiced by further amendment. Googerdy v. North Carolina Agr. and Technical State University, M.D.N.C.2005, 386 F.Supp.2d 618. Federal Civil Procedure 392

Substituting for or adding to official capacity claims with individual capacity claims in § 1983 action may relate back to original complaint, even when original complaint contained only official capacity claims and misnamed government entity. DuFour-Dowell v. Cogger, N.D.Ill.1997, 969 F.Supp. 1107, motion to amend denied 980

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42 U.S.C.A. § 1983

F.Supp. 955. Limitation Of Actions 121(2)

Pro se inmate was permitted to amend § 1983 civil rights complaint alleging improper medical care to name county rather than detention center as defendant; no prejudice would result in that county had actual notice of suit and commonality of representation existed with corrections officer who was also defendant. Guidry v. Jefferson County Detention Center, E.D.Tex.1994, 868 F.Supp. 189. Federal Civil Procedure 392

Amendment to complaint to add additional parties in *Bivens* action would be denied where amendment would have been futile, given plaintiff's inability to comply with heightened pleading standard applicable to individuals asserting qualified immunity. Todd v. Hawk, N.D.Tex.1994, 861 F.Supp. 35, reversed 66 F.3d 320, published in full at 72 F.3d 443. Federal Civil Procedure 392

Inmate in civil rights action arising from a near-fatal assault by fellow inmates in maximum security prison was entitled to amend his complaint to add as a defendant the penal guard who witnessed the assault despite the running of limitations where, aside from fact that guard presumably had notice of original action against his immediate superiors and colleagues, guard knew or should have know that, but for mistake concerning identity of proper party, action would have been brought against him and, in any event, was charged with constructive notice by reason of knowledge on part of attorneys representing parties originally sued. Ayala Serrano v. Collazo Torres, D.Puerto Rico 1986, 650 F.Supp. 722, on subsequent appeal 909 F.2d 8. Limitation Of Actions 124

Jail inmate bringing conditions of confinement claim would not be allowed to amend complaint, to add county; there was no evidence that alleged exclusion of inmate from library was based on any county policy or custom, as required for municipal entity liability under § 1983. Avent v. Solfaro, S.D.N.Y.2003, 2003 WL 21361730, Unreported. Federal Civil Procedure 392

Plaintiffs were not denied opportunity, in their § 1983 action alleging false arrest, malicious prosecution, and illegal search, to amend their complaint so as to add additional unknown officers allegedly involved; court merely observed that naming unknown officers as defendants was not appropriate, and plaintiffs did not file a motion to amend the complaint or add additional parties. Price v. Cochran, C.A.10 (Kan.) 2003, 66 Fed.Appx. 781, 2003 WL 21054706, Unreported. Federal Civil Procedure 392

State prisoner, alleging that guard had filed false report resulting in lock-down, would be allowed to amend § 1983 complaint so as to add guard's superiors, who allegedly maintained lock-down even after learning that report was false. Bryant v. Hernandez, S.D.N.Y.2003, 2003 WL 133233, Unreported. Federal Civil Procedure 392

4692. ---- New claims, amendment, complaint

County employee's §§ 1983 complaint would not be dismissed on ground that her allegations against another employee for which she allegedly suffered retaliation were not constitutionally protected speech where Supreme Court's *Garcetti* decision came down after complaint was filed, and employee would be given 20 days in which to file new complaint containing factual allegations that would satisfy §§ 1983; it would be inappropriate for district court to determine, as matter of law and based solely on defendants' allegations, that employee's claim necessarily fell within parameters of *Garcetti* decision. Winters v. Meyer, S.D.N.Y.2006, 442 F.Supp.2d 82. Civil Rights 1395(8)

Magistrate Judge did not clearly err in denying arrestee leave to amend §§ 1983 complaint to include claim under Sixth and Fourteenth Amendments that county sheriff violated her right to fair trial by fabricating evidence, based on Magistrate's rejection of arrestee's argument that her delay in seeking amendment was based on her reasonable belief that she had sufficiently alleged such claim, where complaint's references to allegedly misleading "funds schedule" were consistent with her malicious prosecution claims, complaint did not reference "right to fair trial" or "fabrication of evidence," and count that purportedly set forth fair trial claim was against all defendants, despite

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fact that arrestee sought to assert fair trial claim only against sheriff. Palmer v. Monroe County Sheriff, W.D.N.Y.2005, 378 F.Supp.2d 284. Federal Civil Procedure 840

Employee's amended employment-discrimination complaint that asserted Title VII claim against former employer but was outside Title VII 90-day limit did not relate back to timely original complaint, which had asserted only §§ 1983 claims against individual defendants; not only did original complaint not allege Title VII claim or name employer, but individual defendants were not served with original complaint, so that constructive notice to employer could not be inferred. Barna v. Morgan, N.D.N.Y.2004, 341 F.Supp.2d 164. Civil Rights 1530; Limitation Of Actions 124

Former police officer could not amend § 1983 complaint to add search and seizure claim to original claim for denial of due process; amendment was not sought until two days after jury selection and one week before scheduled trial date, after considerable discovery had been conducted, and new claim was barred by three-year state statute of limitations. Moffitt v. Town of Brookfield, D.Conn.1991, 759 F.Supp. 94. Federal Civil Procedure 840; Federal Civil Procedure 851

Failure to provide any details regarding two alleged assaults precluded amendment of inmate's §§ 1983 complaint against prison officials, alleging insufficient medical care, to include assaults. Green v. Howard R. Young Correctional Institution, D.Del.2005, 229 F.R.D. 99. Federal Civil Procedure 851

Pro se inmate's additional allegations in objection to a United States Magistrate Judge's report and recommendation, combined with the allegations in his complaint, could support a section 1983 claim against a prison physician for deliberate indifference to the inmate's serious medical needs, and thus, the inmate would be granted an opportunity to file and serve an amendment to the complaint incorporating the additional allegations following dismissal. Perkins v. Obey, S.D.N.Y.2004, 2004 WL 238036, Unreported. Federal Civil Procedure 1838

4693. ---- New theory of liability, amendment, complaint

Even if a monetary remedy existed against municipality under U.S.C.A.Const. Amend. 14 for its alleged negligence in training and supervising police officers who were alleged to have acted negligently and wrongfully in refusing to incarcerate an individual who randomly shot and killed plaintiff's decedent, amendment of complaint to allow proof of failure to train and supervise was inappropriate, where basic nature of plaintiff's claim concerned an attack on alleged failure to arrest, plaintiff presented no evidence as to why she had taken over two years to develop a completely new slant to litigation, and defendants would be unduly prejudiced by imposition of a new round of discovery on a fundamentally new issue. Jamison v. McCurrie, N.D.Ill.1975, 388 F.Supp. 990. Federal Civil Procedure 840

XLIV. NECESSARY AND REQUISITE ALLEGATIONS

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4721. Necessary and requisite allegations generally

Officers sued in a civil action for damages under § 1983 have the same right to fair notice as do defendants charged with the criminal offense defined in statute making it a crime for a state official to act "willfully" and under color of law to deprive a person of rights protected by the Constitution. Hope v. Pelzer, U.S.2002, 122 S.Ct. 2508, 536 U.S. 730, 153 L.Ed.2d 666, on remand 304 F.3d 1331. Civil Rights 1376(2)

It is essentially true that habeas corpus petition or civil rights complaint need only set forth facts giving rise to cause of action. Bounds v. Smith, U.S.N.C.1977, 97 S.Ct. 1491, 430 U.S. 817, 52 L.Ed.2d 72.

To state § 1983 claim, plaintiff must allege facts which show deprivation of right, privilege or immunity secured by Constitution or federal law by person acting under color of state law. Lopez v. Department of Health Services, C.A.9 (Ariz.) 1991, 939 F.2d 881. Civil Rights 1394; Civil Rights 1396

A § 1983 complaint must state specific facts, not simply legal and constitutional conclusions. Fee v. Herndon, C.A.5 (Tex.) 1990, 900 F.2d 804, certiorari denied 111 S.Ct. 279, 498 U.S. 908, 112 L.Ed.2d 233. Civil Rights 1394

Under Federal Rules of Civil Procedure, Title 28, plaintiff in civil rights action is only required to set forth specific illegal misconduct and resultant harm in a way which will permit informed ruling whether the wrong complained of is of federal cognizance. Durso v. Rowe, C.A.7 (Ill.) 1978, 579 F.2d 1365, certiorari denied 99 S.Ct. 1033, 439 U.S. 1121, 59 L.Ed.2d 82. Civil Rights 1394

Louisiana fire protection district employee's conclusory allegation that she "had a recognized property interest in her continued state employment" and was "deprived of that right" by defendants failed to state §§ 1983 claim for deprivation of due process; complaint did not allege that employee had been terminated from her job, or that she had otherwise lost her alleged property interest in her employment. Aucoin v. Kennedy, E.D.La.2004, 355

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42 U.S.C.A. § 1983

F.Supp.2d 830. Civil Rights 1395(8)

Allegations by female police officer with university that she repeatedly complained about male superior's sexual harassment to supervisors, that, despite her complaints, supervisors failed to take any remedial action against superior and instead interrogated officer about what she might have done to cause harassment, and that alleged harassment did not cease after officer complained to her supervisors were sufficient to state claim for supervisory liability, under §§ 1983, against supervisors, though complaint was thin on detail. Alston v. North Carolina A & T State University, M.D.N.C.2004, 304 F.Supp.2d 774. Civil Rights 1395(8)

An inmate's pro se status in a § 1983 action does not, by itself, exempt the inmate from compliance with relevant procedural rules or relieve him from the application of governing substantive law. Johnson v. New York, S.D.N.Y.2003, 256 F.Supp.2d 186. Attorney And Client 62

To state valid civil rights claim under § 1983, plaintiff must allege facts showing that person acting under color of state law deprived plaintiff of right, privilege or immunity secured by United States Constitution or laws of United States. Interboro Institute, Inc. v. Maurer, N.D.N.Y.1997, 956 F.Supp. 188. Civil Rights 1304

In order to state a valid civil rights claim under § 1983, plaintiff must allege that he was deprived of a right, privilege or immunity guaranteed to him under the Constitution or federal statute by defendant acting under color of state law, and focus is not initially on whether a defendant violated some federal statute, but whether the statute at issue vests plaintiff with some enforceable right, privilege or immunity. Gundlach v. Reinstein, E.D.Pa.1996, 924 F.Supp. 684, affirmed 114 F.3d 1172. Civil Rights 1304

To allege valid § 1983 claim, plaintiff must allege denial of right, privilege or immunity secured by federal law. De Young v. State of Kan., D.Kan.1995, 890 F.Supp. 949, affirmed 69 F.3d 547, certiorari denied 116 S.Ct. 1882, 517 U.S. 1236, 135 L.Ed.2d 177. Civil Rights 1394

Inmate failed to state §§ 1983 claim for deliberate indifference to his serious medical needs based on allegations that inmates were routinely denied bandages for openly bleeding cuts or scrapes, given inmate's failure to allege that any particular inmate was denied bandages or how policy affected him. Taggart v. MacDonald, C.A.9 (Mont.) 2005, 131 Fed.Appx. 544, 2005 WL 1127089, Unreported. Sentencing And Punishment 1546

4722. Bad faith, necessary and requisite allegations

African-American employee failed to state First Amendment retaliation claim against her governmental employer; employee, who alleged that she was fired after she spoke out about the employer's violation of open meetings law, failure to follow personnel procedures, and waste of public funds, failed to allege any official policy or custom by her employer that would subject it to §§ 1983 liability based on a First Amendment violation. Davis v. Durham Mental Health Developmental Disabilities Substance Abuse Area Authority, M.D.N.C.2004, 320 F.Supp.2d 378. Civil Rights 1351(5)

Allegations that members of Kansas Adult Authority knew or should have known that assailant posed special danger to those individuals who might at any given time be present in university medical center emergency room, including plaintiffs' decedents, established sufficient showing of possibility of bad faith to state cause of action under this section, notwithstanding Adult Authority members' assertion of qualified immunity. Beck v. Kansas University Psychiatry Foundation, D.C.Kan.1984, 580 F.Supp. 527, reconsideration denied 671 F.Supp. 1552. Civil Rights 1395(1)

In action brought against court clerk based on clerk's performance of ministerial task, bad faith or maliciousness is essential allegation, as mere negligence or carelessness is insufficient to overcome court clerk's defense of qualified immunity. Kane v. Yung Won Han, E.D.N.Y.1982, 550 F.Supp. 120. Clerks Of Courts 72

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42 U.S.C.A. § 1983

A plaintiff in a civil rights action brought against a public official must allege and prove that the official acted in bad faith to state a valid cause of action. Morales v. Vega, D.C.Puerto Rico 1979, 483 F.Supp. 1057. Civil Rights 1395(3)

Plaintiff alleging cause of action against executive department officials under this section must plead as well as prove facts showing bad faith. Roslindale Co-op. Bank v. Greenwald, D.C.Mass.1979, 481 F.Supp. 749, affirmed 627 F.2d 1087, affirmed 638 F.2d 258, certiorari denied 102 S.Ct. 128, 454 U.S. 831, 70 L.Ed.2d 108.

Allegation of complaint that defendants, who were a Pennsylvania state administrator and five professional employees of Pennsylvania state mental hospitals, "knew or should have known that their actions violated the plaintiff's rights" was sufficient; it was not necessary to allege that defendants acted in bad faith or unreasonably. Eubanks v. Clarke, E.D.Pa.1977, 434 F.Supp. 1022. Civil Rights 1395(1)

Complaint alleging that defendants, acting under color of their authority as state police officers, entered plaintiff's premises and removed and damaged certain photographs on ground that they were obscene was insufficient to assert a claim for relief under this section, in absence of allegations that defendants did not act in good faith and that their erroneous conclusion as to obscene nature of photographs was not result of honest mistake. Cox v. Shepherd, S.D.Cal.1961, 199 F.Supp. 140. Civil Rights 1395(6)

That officer applied for arrest warrant nine months after underlying search of arrestee's residence was insufficient, standing alone, to support inference of bad faith supporting arrestee's § 1983 claim for Fourth Amendment violation, given absence of evidence that arrestee's prosecution was barred by statute of limitations. DeFelice v. Ingrassia, C.A.2 (Conn.) 2003, 66 Fed.Appx. 240, 2003 WL 1970490, Unreported. Civil Rights 1404

4723. Constitutional deprivations, necessary and requisite allegations

Former plumber for the New Mexico State Fair failed to sufficiently allege facts that an adverse employment action was taken against plumber as a result of engaging in protected speech, as required for plumber's First Amendment retaliation action; the allegations showed only that plumber was unable to get the response to his complaints that he desired from his employer and his amended complaint was completely devoid of any supporting factual allegations as to what made his work environment or work conditions hostile. Moya v. Schollenbarger, C.A.10 (N.M.) 2006, 465 F.3d 444. Civil Rights 1395(8)

Allegations by business owner that members of the township board of supervisors engaged in a campaign of harassment and intimidation in retaliation against owner for exercising his First Amendment rights, and that the retaliatory action has chilled owner's speech and discouraged him from seeking judicial redress, were adequate, when construed in owner's favor, to state First Amendment retaliation claim against board members under §§ 1983. Thomas v. Independence Tp., C.A.3 (Pa.) 2006, 463 F.3d 285. Civil Rights 1395(1)

State inmate was not required to establish or demonstrate in his complaint that original speech was truthful in order to state First Amendment retaliation claim against prison officials under §§ 1983, where complaint set out inmate's grievance clearly enough to put officials on notice. Simpson v. Nickel, C.A.7 (Wis.) 2006, 450 F.3d 303. Civil Rights 1395(7)

Following Supreme Court's decision that Title II of the Americans With Disabilities Act (ADA) validly abrogated state sovereign immunity insofar as it created a private cause of action for damages against the states for conduct that actually violated the Fourteenth Amendment, in action against state, state Department of Corrections, and state prison officials, on remand, paraplegic prisoner was required to specify (1) what specific conduct he alleged violated the Eighth and Fourteenth Amendments and was actionable under §§ 1983, (2) to what extent the alleged conduct also violated Title II of the ADA, (3) what specific conduct, if any, allegedly violated Title II of the ADA

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but did not violate the Eighth and Fourteenth Amendments, and (4) which defendants were sued under §§ 1983, Title II of the ADA, or both, and in what capacity each named defendant was sued. Goodman v. Ray, C.A.11 (Ga.) 2006, 449 F.3d 1152.

University employees' complaint, alleging that they were subjected to adverse employment actions on basis of information documented in "suspicious" files university maintained about their activities, was insufficient to state claim for violation of equal protection; even assuming that employees sufficiently pled that other non-surveilled employees constituted a similarly situated group, they did not give specific account of the associations and expressions about which information supposedly was gathered, or provide specific instances of discriminatory conduct. Aponte-Torres v. University Of Puerto Rico, C.A.1 (Puerto Rico) 2006, 445 F.3d 50. Civil Rights 1395(8)

Former employee of state criminal bureau did not allege facts indicating that state attorney general personally directed her transfer to lesser position or allege facts suggesting that state attorney general had contemporaneous personal knowledge of transfer and acquiesced in it, and thus failed to state §§ 1983 retaliation claim against state attorney general in his individual capacity, given that complaint did not identify date on which transfer was ordered, who ordered it, date or means by which former employee was informed of transfer, who told her that she was being transferred, or where that communication was made, nor did complaint specify that any named "underling" of state attorney general orchestrated her transfer; complaint could not merely hypothesize that state attorney general was somehow involved in transfer due to his position. Evancho v. Fisher, C.A.3 (Pa.) 2005, 423 F.3d 347. Civil Rights 1395(8)

Removed New York City community school board member failed to state claim for violation of substantive due process; defendants' purported actions would not, but for allegations of First Amendment violations or abandoned Equal Protection Clause violations, be sufficiently shocking, so claim was either subsumed in more particularized allegations or doomed to fail. Velez v. Levy, C.A.2 (N.Y.) 2005, 401 F.3d 75. Constitutional Law 278.5(1); Schools 53(5)

Wife adequately stated a procedural due process claim based on police officers' refusal to enforce domestic abuse restraining order; wife alleged that, due to the city's policy and custom of failing to properly respond to complaints of restraining order violations, she was denied the process when police failed to follow process established by statute requiring consideration the merits of any request to enforce a restraining order and a determination of probable cause. Gonzales v. City of Castle Rock, C.A.10 (Colo.) 2004, 366 F.3d 1093, certiorari granted 125 S.Ct. 417, 543 U.S. 955, 160 L.Ed.2d 316, miscellaneous rulings 125 S.Ct. 945, 543 U.S. 1047, 160 L.Ed.2d 767, miscellaneous rulings 125 S.Ct. 1413, 543 U.S. 1185, 161 L.Ed.2d 187, reversed 125 S.Ct. 2796, 162 L.Ed.2d 658, on remand 144 Fed.Appx. 746, 2005 WL 2438875. Civil Rights 1352(4); Constitutional Law 253(1); Municipal Corporations 740(1)

Police officer was entitled to qualified immunity in § 1983 action alleging that she violated physician's constitutional rights by over-medicating child; physician did not explain in his briefs or pleadings what right of his was violated, and, while physician's counsel did state at oral argument that officer's action violated due process pursuant 14th Amendment, that claim was nonspecific. Madiwale v. Savaiko, C.A.11 (Fla.) 1997, 117 F.3d 1321. Civil Rights 1376(6)

Complaint of middle school student who was sexually abused by teacher did not adequately plead claim against school administrators for violation of substantive due process right to bodily integrity by reason of inclusion of catchall phrase in allegation that administrators violated student's constitutional rights "including but not limited to" rights to equal protection and privacy, particularly where trial court specifically denied amendment that would have added substantive due process claims. Kline ex rel. Arndt v. Mansfield, E.D.Pa.2006, 454 F.Supp.2d 258. Civil Rights 1395(2)

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42 U.S.C.A. § 1983

Former Puerto Rico housing department employees failed to allege when they were subjected to adverse employment actions, or that any specific actions were taken because of political animosity, as required to plead political discrimination claim in action under §§ 1983. Gutierrez v. Molina, D.Puerto Rico 2006, 447 F.Supp.2d 168. Civil Rights 1395(8)

Allegations that county violated foster child's substantive due process rights in his personal security and well-being when it placed him in foster care while operating under policies or customs which negatively impacted the safety of foster children, resulting in child suffering injuries in accident while passenger in vehicle driven by his foster father, were sufficient under notice pleading standards to state §§ 1983 action against county. Harris ex rel. Litz v. Lehigh County Office of Children & Youth Services, E.D.Pa.2005, 418 F.Supp.2d 643. Civil Rights 1395(1)

Physical therapist's complaint, indicating that her complaints to school district generally pertained to district's alleged failure to provide disabled students with services as required by state and federal rules, regulations, and laws, adequately alleged that she engaged in constitutionally protected speech involving matters of public concern, as required to state cause of action under §§ 1983 for retaliation for engaging in speech. Ryan v. Shawnee Mission U.S.D. 512, D.Kan.2006, 416 F.Supp.2d 1090. Schools 63(1)

Veterans failed to allege the violation of an actual constitutional right, namely, the right of access to the courts, and therefore Department of Veterans Affairs (VA) and the Defense Threat Reduction Agency (DTRA) defendants were entitled to qualified immunity from veterans' claims for service-related death and disability veterans benefits resulting from exposure to radiation from United States atomic detonations between 1945 and 1962; none of the VA or DTRA defendants' alleged actions involved an affirmative misrepresentation to the veterans designed to prevent them from filing benefits claims based on alleged in-service exposure to ionizing radiation since the VA and the DTRA defendants only become involved with the VA claims process after it had been initiated by the individual claimant. Broudy v. Mather, D.D.C.2005, 366 F.Supp.2d 3. United States 50.10(5)

State prisoner's allegations, that prison captain refused to send letter whose contents were not gang-related and did not advocate violence or other disruptive behavior, and that captain disciplined him for sending letter, were sufficient to state claim for violation of his free speech rights. Koutnik v. Brown, W.D.Wis.2004, 351 F.Supp.2d 871. Constitutional Law 90.1(1.3); Prisons 4(9)

Attorney, whose conviction of two counts of attempt to patronize prostitution was overturned on appeal, failed to sufficiently allege constitutional malicious prosecution claim; assuming that sheriff's department investigator was the person who "charged" attorney, she did so under the direction of district attorney after a review of the evidence, and therefore attorney was not prosecuted in the absence of probable cause. Cawood v. Haggard, E.D.Tenn.2004, 327 F.Supp.2d 863, affirmed 125 Fed.Appx. 700, 2005 WL 773946. Civil Rights 1088(5)

County employee stated claim that his First Amendment rights were violated, by alleging several instances of harassment, and a demotion, after he publicly supported opposition party candidate for county executive position. Hodge v. City of Long Beach, E.D.N.Y.2003, 306 F.Supp.2d 288. Civil Rights 1395(8)

State employee who had worked as chief legal counsel for Wisconsin Department of Revenue sufficiently alleged that he was deprived of protected property interest when Department Secretary demoted him to position of attorney without pre-deprivation hearing; Wisconsin law provided that permanent status employee could be demoted only for just cause, chief legal counsel position was assumed to be permanent status position, and employee may have suffered loss of a property interest even if he remained employed by the state due to possibility of loss of immediate pay and status, and possibility of loss of future income and professional development potential. Evans v. Morgan, W.D.Wis.2003, 304 F.Supp.2d 1100. Constitutional Law 278.4(3); States 53

African-American female school district employee sufficiently alleged intent to disadvantage groups of which she was member, as required to state equal protection claim under § 1983; she alleged that board of education,

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superintendent and deputy superintendent discriminated against her on basis of her race, national origin and sex by harassing her and ultimately causing her constructive discharge. Grey v. City of Norwalk Bd. of Educ., D.Conn.2004, 304 F.Supp.2d 314. Civil Rights 1395(8)

Restauranteurs failed to state claim that certain rules and procedures governing restaurant inspections, adopted by New York City Department of Health and Mental Hygiene (DOHMH), violated their substantive due process rights, since complaint did not allege facts demonstrating government action that was outrageously arbitrary, conscience shocking, or gross abuse of governmental authority. New York State Restaurant Association v. New York City Dept. of Health and Mental Hygiene, E.D.N.Y.2004, 303 F.Supp.2d 265. Civil Rights 1395(1)

Those police officers who alleged First Amendment retaliation claims against policymakers for engaging in protected speech or union activities stated claims under § 1983 against governmental entities under policymaker theory. Bradshaw v. Township of Middletown, D.N.J.2003, 296 F.Supp.2d 526, affirmed 145 Fed.Appx. 763, 2005 WL 2077137. Civil Rights 1395(8)

State prison inmate's complaint, which included allegations that prison officers used excessive and unnecessary force against him or failed to intervene to prevent the improper misuse of force, and that a prison sergeant told other prison officers to assault the inmate, was sufficient, when inmate was given the benefit of the inferences to which he was entitled at the pleadings stage, to state a claim for excessive use of force in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Civil Rights 1395(7)

To state claim under § 1983, plaintiff must allege violation of rights secured by the Constitution and laws of the United States, and he must show person acting under color of law committed alleged deprivation. Baltoski v. Pretorius, N.D.Ind.2003, 291 F.Supp.2d 807. Civil Rights 1304

Allegation that town's failure to train its police officers and its policy of allowing officers to serve as escorts in civil disputes led to police officer's conduct in escorting private individual into locked building to retrieve items from storekeeper's premises without notice, in deprivation of storekeeper's property rights under Due Process Clause, sufficiently pled claim for municipal liability under § 1983. Yeomans v. Wallace, D.Conn.2003, 291 F.Supp.2d 70 . Civil Rights 1395(3); Civil Rights 1395(5)

Foster child's allegations that employees of Department of Children and Families (DCF) violated her due process right to be kept free from harm while in foster care, by leaving her in emergency shelter where they knew she was being abused, and keeping the fact of her abuse secret rather than removing her from this placement, stated a § 1983 claim, even under heightened pleading requirement for § 1983 actions. Danielle v. Adriazola, S.D.Fla.2003, 284 F.Supp.2d 1368. Civil Rights 1395(1)

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When assessing a claim of qualified immunity, the court should first consider whether the allegations of the complaint make out a constitutional rights claim; if the answer to this inquiry is in the affirmative, the court must then determine, as a matter of law, whether the constitutional right in question was clearly established at the time of the alleged violation, and if so, whether a similarly situated official reasonably should have understood that his or her conduct violated that right. Flores Camilo v. Alvarez Ramirez, D.Puerto Rico 2003, 283 F.Supp.2d 440. Civil Rights 1376(1); Civil Rights 1376(2); Civil Rights 1432

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42 U.S.C.A. § 1983

Real estate developers sufficiently alleged that town planning board denied their applications for permits for construction of surgical center in retaliation for applying for construction of fast food restaurant to state First Amendment claim under § 1983; developers alleged that town planning administrator told them that restaurant application would hurt application for surgical center, that administrator told town planning board of additional requirements developers had to meet, that board then declared moratorium on issuance of zoning approvals, but applied it only to developers, refused to consider applications in timely manner, and later attempted to change zoning law to preclude development, and that as result developers lost opportunity to enter into $17 million lease for surgical center. Hampton Bays Connections, Inc. v. Duffy, E.D.N.Y.2001, 127 F.Supp.2d 364. Civil Rights 1395(3)

Driver sufficiently alleged violation of due process right to protect her liberty interest in her bodily integrity in order to bring § 1983 action against sheriff, for purposes of motion to dismiss for failure to state a claim; driver alleged she was in custody and told that she was going to detention center at time her rights were violated and that she was detained by deputy. Battista v. Cannon, M.D.Fla.1996, 934 F.Supp. 400. Civil Rights 1395(6)

Mayor, city manager and council members were entitled to qualified immunity in § 1983 action in which former employee claimed that he was discharged in retaliation for speech protected by First Amendment; employee did not assert violation of constitutional right as he failed to plead facts connecting his speech and subsequent termination and conclusory allegations were insufficient. Ford v. City of Oakwood, Ga., N.D.Ga.1995, 905 F.Supp. 1063. Civil Rights 1376(10)

Section 1983 complaint filed by minor cancer patient and his parents, who were arrested for refusing to subject patient to chemotherapy, adequately alleged an affirmative link between alleged constitutional deprivation and either exercise of control or discretion by director of Utah's Division of Child and Family Services or his failure to supervise, as was required to hold him directly liable in his individual capacity, by alleging that director's office had intensive, day-to-day involvement in patient's case, which, in light of entire complaint, supported inference that director personally participated in, exercised control or discretion over, or failed to supervise his employees' actions in case. P.J. ex rel. Jensen v. Utah, D.Utah 2006, 2006 WL 1702585, Unreported. Civil Rights 1395(6)

Police officer's complaint against township and police chief failed to properly allege violation of his civil rights arising under First Amendment, and thus, officer's complaint failed to state any claim under §§ 1983; officer's complaint alleged that township's and police chief's conduct deprived him of rights guaranteed under First Amendment to freedom of association and right to engage in constitutionally protected activity and right to be free from retaliatory actions, but these conclusory allegations did not identify any constitutionally-protected associational ties or expressive activities that allegedly gave rise to retaliatory actions. Young v. New Sewickley Tp., C.A.3 (Pa.) 2005, 160 Fed.Appx. 263, 2005 WL 3547341, Unreported. Civil Rights 1395(8)

State prison inmate who failed to allege sufficient facts in his pro se §§ 1983 complaint to support his claim that state's application of amended parole reconsideration rule which changed the frequency of parole hearings from one year to eight years violated the Ex Post Facto clause was nonetheless entitled to opportunity to file a motion to amend his complaint and add more specific allegations on remand, where he raised on appeal more specific allegations that were sufficient for an individualized inquiry into his Ex Post Facto claim. Smith v. Georgia Bd. of Pardons and Paroles, C.A.11 (Ga.) 2005, 160 Fed.Appx. 836, 2005 WL 3481338, Unreported. Federal Courts 952

Arrestee who brought § 1983 action against county officials, alleging civil rights violations, failed to raise any specific factual allegations showing constitutional violations, and thus claims against officials would be properly dismissed; arrestee's purportedly vulnerable position as resident and businessman was result of his criminal activity, officials were not prohibited from speaking with each other regarding arrestee, and indictment of arrestee was public information. Lee v. Alfonso, N.D.N.Y.2003, 2003 WL 22208020, Unreported. Civil Rights

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42 U.S.C.A. § 1983

1395(6)

Former employee's § 1983 claim against former employer, which failed to allege violation of federal rights other than those protected by Title VII, did not state cognizable claim; § 1983 only applied to violations of federal statutes or Constitution, and former employee had sufficient remedies under Title VII and state human rights law. Jones v. New York City Health and Hosp. Corp., S.D.N.Y.2003, 2003 WL 21262087, Unreported. Civil Rights 1312; Civil Rights 1502

4724. Capacity, necessary and requisite allegations

Prisoner's pleading in § 1983 action gave prison guards sufficient notice that they were being sued in their individual capacities where, in motion to bar Attorney General from representing guards, prisoner specifically stated that guards had acted outside scope of their employment and in bad faith when they cut his hair in connection with allegedly unprovoked assault. Pelfrey v. Chambers, C.A.6 (Ohio) 1995, 43 F.3d 1034, certiorari denied 115 S.Ct. 2269, 515 U.S. 1116, 132 L.Ed.2d 273. Civil Rights 1395(7)

Complaint in which tribes sought damages after prohibition of fishing for Spring Chinook Salmon during summer of 1991 in area of Salmon River traditionally fished by tribes did not name individual members of Idaho Fish and Game Commission and, thus, Eleventh Amendment barred claims against unnamed officials. Shoshone-Bannock Tribes v. Fish & Game Com'n, Idaho, C.A.9 (Idaho) 1994, 42 F.3d 1278. Federal Courts 269

Although arrestee failed to specify in his § 1983 civil rights action that he was suing state trooper in her individual capacity, it was clear from both pleadings and course of litigation that he was doing so, and so suit was not barred by Eleventh Amendment; arrestee sued for punitive damages, which are not available against state, trooper raised defense of qualified immunity, which indicated action was for individual capacity, and arrestee maintained his suit against individual trooper after she left employ of state, rather than amending to substitute current state officer. Pride v. Does, C.A.10 (Kan.) 1993, 997 F.2d 712. Federal Courts 269

Arrestee failed to set forth "official capacity" in § 1983 civil rights claim against police captain who released expunged arrest record pursuant to subpoena since arrestee produced no evidence to establish: that captain was policymaker; captain did in fact establish some relevant policy; what policy might have been; or that policy was connected with release of purported protected information. Morton v. City of Little Rock, C.A.8 (Ark.) 1991, 934 F.2d 180. Civil Rights 1351(4)

Inmates seeking damages under § 1983 were required to clearly set forth in their pleadings that they were suing state defendants in their individual capacities for damages, not simply in their capacities as state officials. Wells v. Brown, C.A.6 (Mich.) 1989, 891 F.2d 591, rehearing denied. Civil Rights 1395(7)

Suing individual in his capacity as officer of government, although necessary to secure relief from government, is not indispensable to allegation of governmental action. Bishop v. Tice, C.A.8 (Ark.) 1980, 622 F.2d 349. Civil Rights 1386

Failure to allege official capacity of defendant in caption of civil rights complaint was merely a formal error and not a fatal defect; the allegations in the complaint would be examined to determine the nature of the cause of action. Parker v. Graves, C.A.5 (Fla.) 1973, 479 F.2d 335. Federal Civil Procedure 626

Hotel patron who was allegedly assaulted by hotel security personnel, and detained on suspicion of having shoplifted from coffee shop in hotel lobby, failed to allege that any state official acted in concert with the private security personnel to deprive him of his constitutional rights, as would support patron's claim under §§ 1983. Zuyus v. Hilton Riverside, E.D.La.2006, 439 F.Supp.2d 631. Civil Rights 1326(5)

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42 U.S.C.A. § 1983

Police officer's complaint did not adequately allege §§ 1983 claim for municipal liability against District of Columbia for violation of equal protection component of Fifth Amendment due process; one supervisor's decision to require officer to perform police duties without accommodating his medical condition, a susceptibility to seizures, and another supervisor's subsequent issuance of notice of proposed suspension of his motor vehicle permit had a reasonably conceivable rational basis, and thus did not give rise to a Fifth Amendment equal protection violation. Mitchell v. Yates, D.D.C.2005, 402 F.Supp.2d 222. District Of Columbia 7

Arrestee failed to plead any facts supporting his allegation of the existence of an official policy or custom endorsing police officer's alleged misconduct, as was required to maintain §§ 1983 action against township. Walker v. North Wales Borough, E.D.Pa.2005, 395 F.Supp.2d 219. Civil Rights 1395(6)

Police officer failed to state §§ 1983 claim against city or police chief in his official capacity, even though officer alleged that chief had policymaking authority, where officer made only conclusory allegations regarding purported policy that was implemented and/or created by chief without defining or describing what that policy was; chief's alleged actions in a specific case were not per se an official policy. Neveu v. City of Fresno, E.D.Cal.2005, 392 F.Supp.2d 1159. Civil Rights 1395(8)

Section 1983 claim upon which relief could be granted was not stated against mayor in her individual or official capacity by driver arrested for driving under the influence and held while city jail determined status of outstanding capias, where driver alleged only that mayor oversaw municipal offices and departments and was legally responsible for overall operation of city police department or division under her jurisdiction and alleged no personal action against mayor. Edwards v. Oberndorf, E.D.Va.2003, 309 F.Supp.2d 780, affirmed 63 Fed.Appx. 756, 2003 WL 21224212. Civil Rights 1358

The requirements for holding a municipality liable under § 1983 for unconstitutional acts by a municipal employee below the policymaking level apply not only in actions against local governments, but also in actions against individually-named municipal agents sued in their official capacities. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1354

District court would construe detainee's § 1983 complaint against state mental hospital and its physician as being brought against them in their official capacities only, where complaint was silent on the issue. Tinius v. Carroll County Sheriff Dept., N.D.Iowa 2003, 255 F.Supp.2d 971. Civil Rights 1360

Complaint alleging Fourth Amendment violations under § 1983, in connection with hostage-rescue training exercise at public high school conducted by city and county emergency response teams (ERTs), was insufficient to state claim against individual county ERT members; complaint did not unambiguously state that individual members were being sued in either their official or individual capacities, complaint failed to differentiate between county, city, or separately named county ERT members, and plaintiffs did not pursue a claim for punitive damages. Miskovich v. Independent School Dist. 318, D.Minn.2002, 226 F.Supp.2d 990. Civil Rights 1395(5)

Reference by § 1983 plaintiffs to "individual capacity" of defendants, who were also public officials, in their response defendants' motion for summary judgment, was sufficient to permit court to assume, in deciding defendants' motion for summary judgment, that suit was brought against defendants in both their official and individual capacities. Matheny v. Boatright, S.D.Ga.1997, 970 F.Supp. 1039. Civil Rights 1360

District court looks to substance of plaintiff's claim, relief sought, and course of proceedings to determine nature of § 1983 suit when plaintiff fails to allege whether he is suing defendant in individual or official capacity. Pieve-Marin v. Combas-Sancho, D.Puerto Rico 1997, 967 F.Supp. 667. Civil Rights 1354

In the absence of allegations or evidence regarding identity of individuals who allegedly harassed inmate or stole his legal documents, inmate did not state claim for constitutional violation. Davie v. Wingard, S.D.Ohio 1997, 958

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42 U.S.C.A. § 1983

F.Supp. 1244, 166 A.L.R. Fed. 709. Civil Rights 1395(7)

Plaintiff failed to state federal civil rights claim against county defendants in their official capacity where he did not allege facts that implied existence of unconstitutional municipal policy or custom and did not allege which governmental entity officers represented in their official capacity. Robinson v. Howell, S.D.Ind.1995, 902 F.Supp. 836. Civil Rights 1351(1)

Pro se complaint alleging that prison's mail room supervisor selectively enforced prison regulations pertaining to erotic photographs on basis of race was sufficient to put supervisor on notice that he was being sued under § 1983 in his individual capacity; use of phrase "acts under color of law," did not mean that supervisor was being sued only in his official capacity. Johnson v. Daniels, E.D.Mich.1991, 769 F.Supp. 230, affirmed 70 F.3d 1272. Civil Rights 1395(7)

Civil rights complaint alleging that law enforcement officers searched family and its vehicle and fired handgun while family was on their own property for purpose of having picnic would not be dismissed to extent that officers were being sued in their personal capacities; however, family would have to amend complaint to express more clearly their intention to sue officers in their personal capacities and to rectify any deficiencies in pleading. Kjorlie v. Lundin, D.Kan.1991, 765 F.Supp. 671, reconsideration denied. Civil Rights 1395(6); Federal Civil Procedure 1838

Bar of U.S.C.A.Const. Amend. 11 against obtaining money from state should not lightly be assumed from face of complaint; instead, where plaintiff has not specified whether defendants are sued in their official or personal capacities, allegations against state officials should be liberally construed in plaintiff's favor. Parrilla v. Cuyler, E.D.Pa.1978, 447 F.Supp. 363. Federal Courts 265

Arrestee stated claim against United States Marshals Service (USMS) agents in their individual capacities for violation of his Fourth and Fifth Amendment rights in arrest, although in form complaint pro se plaintiff arrestee checked box indicating that he was suing each defendant in official capacity; context of complaint and surrounding documents indicated that arrestee was also asserting claims against defendants in their individual capacities, arrestee indicated he was proceeding pursuant to §§ 1983 or *Bivens* in application to proceed in forma pauperis, and defendants were not prejudiced by failure to indicate they were sued in official capacities, as they specifically raised defenses of qualified immunity and quasi-judicial immunity. Trapp v. U.S. Marshals Service, C.A.10 (Kan.) 2005, 139 Fed.Appx. 12, 2005 WL 1168439, Unreported, on remand 2005 WL 3179471. Civil Rights 1395(6)

4724A. Custom or practice, necessary and requisite allegation

Parent of junior high school student who died after falling ill on school band trip failed to state a §§ 1983 substantive due process claim against school district upon which relief could be granted, since complaint alleged no policy or custom of the district that caused an alleged constitutional violation. Lee v. Pine Bluff School Dist., C.A.8 (Ark.) 2007, 472 F.3d 1026. Civil Rights 1351(2)

Arrestee failed to state §§ 1983 claims against city and city police department when complaint contained only conclusory allegations regarding existence of formal or de facto policy on city's part respecting alleged violations of arrestee's constitutional rights, without alleging any facts tending to support inference that formal practice or custom endorsed by city actually existed. Williams v. City of Mount Vernon, S.D.N.Y.2006, 428 F.Supp.2d 146. Civil Rights 1395(6)

4725. Causation, necessary and requisite allegations

In ascertaining whether complaint alleges deprivation of "stigma-plus" liberty interest protected by due process,

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court need only determine that both "stigma" and "plus" are claimed to be sufficiently proximate; this requirement will be satisfied where (1) stigma and plus would to a reasonable observer appear connected, e.g., due to their order of occurrence, or their origin, and (2) actor imposing plus adopted, explicitly or implicitly, those statements in doing so; there is no rigid requirement that both "stigma" and "plus" issue from the same government actor or at the same time. Velez v. Levy, C.A.2 (N.Y.) 2005, 401 F.3d 75. Constitutional Law 255(1)

Discharged public employee does not always successfully resist summary judgment motion, in § 1983 actions based on alleged discharge in violation of First Amendment, by asserting that certain protected speech caused termination from public employment. Barnard v. Jackson County, Mo., C.A.8 (Mo.) 1995, 43 F.3d 1218, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 53, 516 U.S. 808, 133 L.Ed.2d 17. Federal Civil Procedure 2497.1

Professor failed to show any basis for holding city college system liable for alleged violation of civil rights in connection with system's failure to extend professor's paid sabbatical leave; professor alleged neither existence of municipal policy or custom, nor requisite causal connection between alleged policy and constitutional deprivations. Leahy v. Board of Trustees of Community College Dist. No. 508, County of Cook, State of Ill., C.A.7 (Ill.) 1990, 912 F.2d 917, rehearing denied. Civil Rights 1351(5)

Allegations in inmate's pro se complaint that he directly informed state commissioner of corrections of his unconstitutional treatment and the commissioner neglected his responsibility to adequately address those complaints pled a causal connection between commissioner's alleged failure to act and inmate's alleged deprivation of civil rights while he was incarcerated, as required to state §§ 1983 claim. Niemic v. Maloney, D.Mass.2005, 409 F.Supp.2d 32. Civil Rights 1395(7)

In order for school district to be liable on §§ 1983 retaliatory discharge claim stemming from his termination after he exercised his First Amendment right to complain to district superintendent about racial bullying and harassment of his children, former school employee had to show that governmental entity's policies caused the constitutional violation. Dockery v. Unified School Dist. No. 231, D.Kan.2006, 406 F.Supp.2d 1219. Civil Rights 1351(5)

Complaint of residents who were arrested without a warrant in their home, alleging that, in light of number of city's police officers involved in number of alleged constitutional violations, city failed to train and supervise its police officers, was insufficient to state §§ 1983 claim against city for failing to train its police officers, absent allegation of, inter alia, any facts indicating that city's training procedures were constitutionally inadequate, that they did not comply with state-mandated training, or that city failed to supervise its officers, any facts showing that city's policymaker was deliberately indifferent, or any facts showing how inadequate training or supervision directly caused their injuries. Gast v. Singleton, S.D.Tex.2005, 402 F.Supp.2d 794. Civil Rights 1395(6)

Parent sufficiently alleged causal connection between conduct of county youth services department and allegedly unlawful seizure of child, as required to maintain §§ 1983 action claiming seizure violated parent's federally protected rights; parent alleged that department employee falsely told judge issuing seizure order that parent violated voluntary safety plan requiring that she keep child away from father. Bowser v. Blair County Children and Youth Services, W.D.Pa.2004, 346 F.Supp.2d 788. Civil Rights 1057

Parents and child stated claim against municipality, of intentional and invidious discrimination under equal protection clause, with respect to denial of playground privileges to home-schooled, autistic child, on allegations that conduct of school officials created and implemented different standards, conditions, and education of handicapped children when contrasted to non-handicapped children, even though the allegations were sometimes confusing. Fitzpatrick v. Town of Falmouth, D.Me.2004, 321 F.Supp.2d 119, subsequent determination 324 F.Supp.2d 95, appeal after remand from federal court 879 A.2d 21. Civil Rights 1395(2)

Plaintiff, alleging employment discrimination under § 1983, need not plead a prima facie case of discrimination, in

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order to survive motion to dismiss for failure to state claim, but rather, consistent with notice pleading standard, complaint need only provide short and plain statement of claim showing that pleader is entitled to relief which must give defendant fair notice of what plaintiff's claim is and grounds upon which it rests. Dean v. New York City Transit Authority, E.D.N.Y.2004, 297 F.Supp.2d 549. Civil Rights 1395(8)

Female employee of city transit authority failed to allege that "harassment" and resultant disparate treatment she received from supervisor was based upon her gender or was in retaliation for her exercise of her First Amendment free speech rights, as required to state § 1983 claims against supervisor. Dean v. New York City Transit Authority, E.D.N.Y.2004, 297 F.Supp.2d 549. Civil Rights 1395(8)

City was not liable under § 1983 for acts of judge and hearing officer in conducting hearing to determine whether bail bondsman had outstanding bonds; bondsman's complaint failed to allege how city had caused constitutional tort, and judge and hearing officer were protected by mantle of judicial immunity. Jefferson v. City of Hazlehurst, S.D.Miss.1995, 936 F.Supp. 382. Civil Rights 1376(8); Civil Rights 1395(1)

School district was not liable under § 1983 for school bus driver's supervisor's nonrenewal of school bus driver's contract allegedly in violation of her First Amendment rights; supervisor did not have authority to terminate driver but only ability to make a recommendation to superior or to school board, there was no evidence that school board had delegated any policymaking authority to supervisor, and there was no evidence that even if school district retained its decisionmaking power, it acted with deliberate indifference to driver's First Amendment rights in approving her nonrenewal. Reidenbach v. U.S.D. No. 437, D.Kan.1996, 912 F.Supp. 1445. Civil Rights 1351(5)

To establish retaliation claim under § 1983, plaintiff must demonstrate that his conduct is deserving of First Amendment protection and that defendant's conduct was motivated by or substantially caused by his exercise of free speech. Cooper v. Town of East Hampton, E.D.N.Y.1995, 888 F.Supp. 376. Civil Rights 1032

Civil rights plaintiff must allege that he has suffered some injury in fact, that the interests sought to be protected are arguably within zone of interest to be protected by the constitutional guarantee in question, and that there is a fairly traceable causal connection between alleged deprivation or injury and the alleged conduct of the defendants. Lesser v. Neosho County Community College, D.Kan.1990, 741 F.Supp. 854. Civil Rights 1394

To establish a claim under this section, plaintiff must allege and prove that defendants acted under color of state or local law, that plaintiff was deprived of specific articulable rights, privileges or immunities secured by the Constitution and laws of the United States, and that defendants' conduct was a cause in fact of plaintiff's deprivation, and in support of these allegations plaintiff must set forth highly specific facts and not merely conclusionary allegations. German v. Killeen, E.D.Mich.1980, 495 F.Supp. 822.

Inmate's allegations that prison officials personally failed to act on knowledge of the assault on inmate were insufficient to state an independent constitutional violation, for purposes of §§ 1983, absent causal relationship between alleged failures and assault. Dukes v. Deputy Supt. of Sec., C.A.2 (N.Y.) 2005, 153 Fed.Appx. 772, 2005 WL 2899781, Unreported. Civil Rights 1093

Workers' compensation claimant stated direct § 1983 claim against Pinnacol by alleging facts indicating that Pinnacol violated her constitutional rights through acts of its authorized agents who carried out Pinnacol's decision to terminate or refuse to pay her benefits. Roberson v. Pinnacol Assur., C.A.10 (Colo.) 2004, 98 Fed.Appx. 778, 2004 WL 1059799, Unreported. Civil Rights 1351(6)

To the extent a developer asserted a § 1983 claim based on conduct unrelated to the revocation of a tax exemption, it was insufficiently elaborated in his brief to permit meaningful review and was therefore waived. Lugo Rodriguez v. Puerto Rico Institute of Culture, C.A.1 (Puerto Rico) 2004, 98 Fed.Appx. 15, 2004 WL 964272, Unreported,

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certiorari denied 125 S.Ct. 416, 543 U.S. 958, 160 L.Ed.2d 321. Federal Courts 714; Federal Courts 915

Client's conclusory allegation, that law firm, which was private entity and which was retained in connection with proceeding before New York State Worker's Compensation Board, acted under color of state law by conspiring with "unknown" judge on Board to discriminate against him because of his race and national origin, was insufficient to demonstrate that firm acted in concert with judge, as required to state § 1983 claim against firm for violation of First and Fourteenth Amendments; pleadings did not identify with whom firm conspired, allegations described unilateral conduct by firm, and ruling by Board in client's favor undermined claim that one of its members participated in conspiracy. O'Diah v. New York City, S.D.N.Y.2003, 2003 WL 22481029, Unreported. Civil Rights 1396; Conspiracy 18

4726. Damage or injury, necessary and requisite allegations

Complaint under this section seeking declaratory relief and injunction restraining defendants from prosecuting or threatening to prosecute plaintiffs for alleged violations of Louisiana Subversive Activities and Communist Control Law and Communist Propaganda Control Law, LSA-R.S. 14:358 et seq., alleged sufficient irreparable injury to justify equitable relief. Dombrowski v. Pfister, U.S.La.1965, 85 S.Ct. 1116, 380 U.S. 479, 14 L.Ed.2d 22. Civil Rights 1395(5); Courts 508(7)

Female magistrate could not establish prima facie case of retaliation under §§ 1983, Title VII, or Ohio Civil Rights Act (OCRA) based on presiding judge's "termination" of her during meeting after she complained about unequal pay, where he rescinded termination in his next breath and she continued to be employed as magistrate. Birch v. Cuyahoga County Probate Court, C.A.6 (Ohio) 2004, 392 F.3d 151. Civil Rights 1249(2)

Allegations that police officer showed up at claimant's work while in uniform and on duty, placed his hand under her sweatshirt, fondled her breast and chest, and implied they should engage in further sexual contact, in larger context of his threatening adverse official action by way of speeding ticket and following her in his police car, stated substantive due process claim against officer and city under § 1983. Haberthur v. City of Raymore, Missouri, C.A.8 (Mo.) 1997, 119 F.3d 720. Civil Rights 1395(5)

Civil rights complaint which requested recovery for "mental anguish and suffering and loss of companionship, contribution, society, affection, and comfort" adequately pled claim for damages for the victim's mother in her own right. Flores v. Cameron County, Tex., C.A.5 (Tex.) 1996, 92 F.3d 258, rehearing denied. Civil Rights 1395(1)

Restrictions imposed upon inmates in protective custody to use of library were minor and incidental and thus, in order to prevail in his § 1983 action, inmate was required to plead prejudice; although prison banned inmate from its library, it permitted clerks to personally meet with inmate and to research on his behalf. Jenkins v. Lane, C.A.7 (Ill.) 1992, 977 F.2d 266. Civil Rights 1098

Inmate's alleged losses including cost of underwear and shoes during eight months he was denied access to clothes and his property due to misdelivery of property by prison officials, cost of mailing misdelivered boxes from District of Columbia to Florida facility, and emotional distress did not establish actual injury to support § 1983 claim of denial of right of access to law libraries or legal assistance. Crawford-El v. Britton, C.A.D.C.1991, 951 F.2d 1314, 293 U.S.App.D.C. 47, rehearing denied, certiorari denied 113 S.Ct. 62, 506 U.S. 818, 121 L.Ed.2d 29, on remand 844 F.Supp. 795. Civil Rights 1094

Pro se inmate bringing § 1983 action in connection with allegedly unconstitutional deprivation of food alleged "harm" by stating that he had suffered "substantial weight loss." Cooper v. Sheriff, Lubbock County, Tex., C.A.5 (Tex.) 1991, 929 F.2d 1078. Civil Rights 1395(7)

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When subjected to illegal search and seizure, special damages need not be alleged in deprivation of civil rights under color of state law action because victim is harmed by invasion of his zone of privacy. Day v. Morgenthau, C.A.2 (N.Y.) 1990, 909 F.2d 75, amended on rehearing, on remand 769 F.Supp. 472. Civil Rights 1395(6)

A state prisoner's allegation that he was frightened and had suffered bad dreams as a result of the use of excessive force upon his apprehension following an escape when a deputy sheriff handcuffed him, placed a revolver in his mouth, threatened to blow his head off, and twice punched him in the stomach, did not sufficiently allege significant injury required to recover money damages under § 1983 for use of excessive force in an illegal arrest. Wisniewski v. Kennard, C.A.5 (Tex.) 1990, 901 F.2d 1276, certiorari denied 111 S.Ct. 309, 498 U.S. 926, 112 L.Ed.2d 262. Civil Rights 1395(7)

Access-to-courts complaint, which alleged that prison rules prevented adequate legal research and counseling, stated sufficient allegation of prejudice to withstand motion to dismiss for failure to state claim upon which relief could be granted; when inmate complains of prison rules that substantially and continuously limit access to legal materials and counseling, complaint carries inherent allegation of prejudice, and prison officials had repeatedly admitted that rules created "problem of legal assistance" for inmates. DeMallory v. Cullen, C.A.7 (Wis.) 1988, 855 F.2d 442. Civil Rights 1395(7)

Inmate's allegations regarding correctional officer's physical abuse when inmate initially refused to comply with order that he return to his cell did not state viable claim under § 1983, in absence of any claim that abuse caused severe injuries, was grossly disproportionate to need for action under circumstances, or was inspired by malice. Hines v. Boothe, C.A.5 (Tex.) 1988, 841 F.2d 623. Civil Rights 1395(7)

No physical injury was required before civil rights claim could be stated against police officer who allegedly forced citizens to travel at high speeds in an attempt to flee the terrorizing police officer. Checki v. Webb, C.A.5 (La.) 1986, 785 F.2d 534. Civil Rights 1088(1)

Prisoner failed in his §§ 1983 complaint against prison official to allege any actual harm from interference with his legal mail and, therefore, he failed to state a First Amendment violation with respect to access to the courts. Strong v. Woodford, C.D.Cal.2006, 428 F.Supp.2d 1082. Civil Rights 1395(7)

State prison inmate's § 1983 Eighth Amendment claims against prison officers could not go forward without allegations of physical injury. Minifield v. Butikofer, N.D.Cal.2004, 298 F.Supp.2d 900. Civil Rights 1463

Allegations that teacher seized the arm of high school student without cause or legitimate reason and twisted it behind her back, ultimately breaking the arm, were sufficient to state claim against school board defendants; parent was not obliged to plead evidence supporting his allegations of the existence of a custom or policy that allegedly caused the injury in question. Tsotesi v. Board of Educ. of City School Dist. of City of New York, S.D.N.Y.2003, 258 F.Supp.2d 336. Civil Rights 1395(2)

Tenant in public housing project did not allege injury in fact and, thus, did not have standing to prosecute civil rights action by security guard service that challenged termination of its contract; tenant did not allege that she had been or would be crime victim as result of contract termination. X-Men Sec., Inc. v. Pataki, E.D.N.Y.1997, 983 F.Supp. 101, on reconsideration, reversed 196 F.3d 56. Civil Rights 1333(3)

Prisoner asserting claim of interference with his access to courts must plead and prove that he has been prejudiced with regard to specific litigation. Hall v. Conklin, W.D.Mich.1996, 966 F.Supp. 546. Civil Rights 1397

Plaintiffs' § 1983 substantive due process claim against city, arising from city's demolition of plaintiffs' fire-damaged building and intent to seek demolition costs from plaintiffs, was sufficient; plaintiffs claimed that city deprived plaintiffs of access to property during nuisance abatement period based on racial prejudice against

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plaintiffs. Homan v. City of Reading, E.D.Pa.1997, 963 F.Supp. 485. Civil Rights 1395(3)

Arrestee failed to state civil rights claim against police officer asserting violation of due process from showup identification procedure used by officer, absent any allegation that evidence derived from identification prejudiced arrestee's right to fair trial. Williams v. Hutchens, N.D.Ill.1994, 870 F.Supp. 857. Civil Rights 1395(5)

Inmate asserting § 1983 civil rights claim based on alleged use of excessive force in violation of Eighth Amendment must allege that some injury arose from incident, even if injury was insignificant. Guidry v. Jefferson County Detention Center, E.D.Tex.1994, 868 F.Supp. 189. Civil Rights 1093

Inmate failed to allege that any harm had befallen him as a result of alleged indifference shown by physician and prison official as to his asserted claustrophobia, as required to state Eighth Amendment claim. Lee v. Akture, E.D.Wis.1993, 827 F.Supp. 556. Sentencing And Punishment 1547; Prisons 17(2)

In § 1983 action by insurance companies against official of Illinois Department of Insurance, in which companies alleged that official had personal vendetta against companies' principal, companies failed to allege any direct harm arising from official's direct actions, thus requiring dismissal; only direct harm alleged by one company was cost of investigation initiated by Tennessee Insurance Department, and all acts leading up to any purported harm were done by officials from State of Tennessee, and principal did not even own other insurer during period of most of actions complained of and, with respect to time following his purchase of that company, that company failed to allege any specific injury to its business, either reputational or financial. Universal Sec. Ins. Co. v. Koefoed, N.D.Ill.1991, 775 F.Supp. 240. Civil Rights 1395(1)

Property owner's allegations that, as result of officer's allegedly unconstitutional conduct, she was forced to sell property and leave town, and that she suffered embarrassment and mental anguish, were sufficient to state elements of injury which were compensable in § 1983 action. Eyer v. City of Reynoldsburg, S.D.Ohio 1991, 756 F.Supp. 344. Civil Rights 1395(5)

Alleged conduct of prison officials in making incorrect entries in inmate's medical file caused inmate no harm or inconvenience and thus allegations did not state claim under § 1983 for violation of his Eighth Amendment rights. Smith v. Huffman, W.D.Va.1987, 670 F.Supp. 176. Civil Rights 1395(7)

Where each named plaintiff allegedly had suffered injury due to conditions at youth study center or conduct by youth study center personnel, and supervisory defendants were linked to such conditions and misconduct through their statutory duties and allegations that mistreatment was direct consequence of policies and practices authorized or acquiesced in by them, complaint in civil rights action challenging conditions of confinement and treatment at center demonstrated both injury to named plaintiffs and defendants' connection to those injuries. Santiago v. City of Philadelphia, E.D.Pa.1977, 435 F.Supp. 136. Civil Rights 1395(7)

Inmate was barred from seeking damages under § 1983 as result of his allegedly unconstitutional conviction, absent showing that his conviction or sentence had been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal authorized to do so, or called into question by federal court's issuance of writ of habeas corpus. Henry v. Purvis, C.A.2 (N.Y.) 2004, 111 Fed.Appx. 622, 2004 WL 2190919, Unreported. Civil Rights 1088(5)

State prisoner failed to state § 1983 claim that his Sixth Amendment right to release and his Eighth Amendment right to be free from cruel and unusual punishment had been violated; although prisoner alleged that department of corrections official created false sentence computation data form, he did not allege that lack of accurate sentence computation data form affected him in any way. Peterson v. Tomaselli, S.D.N.Y.2003, 2003 WL 22213125, Unreported. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

4727. Deliberate indifference, necessary and requisite allegations

Allegations that officers who detained person for emergency psychiatric evaluation used pepper spray and hand and leg restraints when taking him into custody and then placed him face down in the police car and in the emergency room, resulting in his death from sudden cardiac arrhythmia possibly caused by a combination of stimulant drug intoxication and physical restraint, fell short of alleging deliberate indifference, so as to support a claim of substantive due process violation; even if pepper spray is dangerous for a phencyclidine (PCP) user, the complaint alleged only that detainee was behaving strangely and that the autopsy revealed that he had PCP in his system, and there was no allegation that the officers knew or even suspected detainee was under the influence of PCP, and given detainee's erratic behavior and his struggle with the officers, the mere use of pepper spray could not be considered a due process violation. Young v. City of Mount Ranier, C.A.4 (Md.) 2001, 238 F.3d 567. Civil Rights 1395(6); Constitutional Law 255(5); Mental Health 51.20

Prisoner failed to produce evidence showing any knowledge on part of named prison officials of his physical condition or that he requested and was denied medical care for his injuries, and thus, because he failed to allege any deliberate indifference on part of officials, prisoner failed to state § 1983 claim that denial of medical treatment constituted violation of Eighth Amendment. Mitchell v. Maynard, C.A.10 (Okla.) 1996, 80 F.3d 1433. Civil Rights 1420

Prisoner alleged requisite "deliberate indifference" to support Eighth Amendment claim by alleging that he was denied Rebetron Therapy by prison officials for 15 months, because he had tested positive for use of controlled substances, despite unanimous agreement by his treating physicians that Therapy was proper treatment for his Hepatitis C. Johnson v. Wright, S.D.N.Y.2002, 234 F.Supp.2d 352. Prisons 17(2); Sentencing And Punishment 1546

Allegation that Commissioner of the Department of Correctional Services was "grossly negligent in supervising [his] subordinates," resulting in prisoner's failure to get Rebetron Therapy for his Hepatitis C, was sufficient to state claim for supervisory liability under § 1983 on Eighth Amendment deliberate indifference claim, despite contention that allegation was conclusory. Johnson v. Wright, S.D.N.Y.2002, 234 F.Supp.2d 352. Civil Rights 1395(7)

Pretrial detainee who sued private jail corporation, stemming from attack while incarcerated, properly stated §§ 1983 claim for failure to train and/or supervise employees regarding proper inmate segregation; complaint averred that such failure constituted deliberate indifference to detainee's constitutional rights, and that constitutional violations were proximate cause of his injuries. Stephens v. Correctional Services Corp., E.D.Tex.2006, 428 F.Supp.2d 580. Civil Rights 1395(7)

California state prison inmate who could not recover in §§ 1983 action from prison's chief medical officer on theory his Eighth Amendment right to be free from cruel and unusual treatment was violated as he had not alleged deliberate indifference on part of medical officer would be granted leave to amend, as it was possible that inmate could cure deficiencies in his complaint by pleading additional facts showing medical officer knew of and consciously disregarded need for mental health treatment of inmate, who was follower of Islam and did not consume pork, but was allegedly misled into consuming unlabeled pork product. Lewis v. Mitchell, S.D.Cal.2005, 416 F.Supp.2d 935. Federal Civil Procedure 1838

While the theory of respondeat superior does not support liability under §§ 1983, a plaintiff can state a §§ 1983 claim for supervisory liability where he alleges with some foundation that the defendant's acts or omissions amounted to a reckless or callous indifference to the constitutional rights of others. Niemic v. Maloney, D.Mass.2005, 409 F.Supp.2d 32. Civil Rights 1355

Allegations of state inmate's complaint, stating that policy existed that resulted in officials being deliberately

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indifferent to his serious medical need, that there was continuous pattern of his medical treatment being delayed for non-medical reasons, and that policy failed to address immediate needs of inmates with serious medical conditions, and suggesting absence of basic policies to insure that medical orders of treating physicians were reasonably followed and that medical orders of physicians were reasonably transmitted, stated cause of action under §§ 1983 for deliberate indifference to serious medical need. Jackson v. First Correctional Medical Services, D.Del.2005, 380 F.Supp.2d 387. Civil Rights 1352(4)

Prisoner stated claim under §§ 1983 against corrections officer, as Interstate Compacts Administrator for District of Columbia, on allegations that officer acted with deliberate indifference toward prisoner's health and safety when she chose not to inform transferee prisons of existence of separation orders. Ashford v. District of Columbia, D.D.C.2004, 306 F.Supp.2d 8. Civil Rights 1395(7)

State prison inmate's § 1983 complaint, alleging that a doctor prescribed a pain reliever and muscle relaxer and physical therapy for his medical problems, but that a prison official canceled this treatment on ground the prison could not afford the cost, was sufficient under notice pleading standards to state a claim for deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Civil Rights 1395(7)

Former inmate failed to allege any constitutional violation by sheriff, sheriff's department, or medical department, or a constitutional harm related to his slip and fall in the shower while incarcerated, as required to state a claim under § 1983; allegation that a rubber mat was not provided in wet shower area did not trigger protections of Fourteenth Amendment. Jones v. Nassau County Sheriff Dept., E.D.N.Y.2003, 285 F.Supp.2d 322. Constitutional Law 272(2); Prisons 17(1)

4728. Exhaustion of remedies, necessary and requisite allegations

Former pretrial detainee adequately alleged exhaustion of administrative remedies to satisfy Prison Litigation Reform Act (PLRA), thus precluding dismissal of his §§ 1983 action alleging excessive force; detainee alleged that he filed grievance within time prescribed by corrections department's grievance policy, but that department never responded to original grievance or subsequently-filed grievances. Brengettcy v. Horton, C.A.7 (Ill.) 2005, 423 F.3d 674. Civil Rights 1319

While inmate's complaint did not specifically state that he had failed to exhaust grievance procedures available to him, he alleged sufficient facts to show that he used prison grievance system and that he might be able to prove that he exhausted grievance procedures, thus precluding dismissal of his § 1983 suit on that ground for failure to state claim; inmate alleged that he had filed three grievances, and that in response to third grievance, he received new hearing pursuant to which his disciplinary ticket was dismissed. Evans v. Allen, N.D.Ill.1997, 981 F.Supp. 1102. Civil Rights 1395(7)

Plaintiff did not state § 1983 procedural due process claim, where he failed to allege that any of defendants refused to make available procedural means to remedy any of alleged deprivations, he admitted that he availed himself of appellate rights available to him, and he admitted that he was ultimately awarded permits and approvals that he sought. Coletta v. City of North Bay Village, S.D.Fla.1997, 962 F.Supp. 1486. Civil Rights 1395(3)

Former director of dental services at state psychiatric facility failed to establish § 1983 claim premised on claim that he was forced to resign without pre or posttermination hearing, where he failed to allege that state law did not afford adequate pre or postdeprivation remedy for his constructive discharge. Koch v. Mirza, W.D.N.Y.1994, 869 F.Supp. 1031. Civil Rights 1395(8)

Where claimant can genuinely assert that it was entitled to predeprivation hearing under *Matthews* balancing test, it need not allege unavailability of state remedies in order to state § 1983 procedural due process claim. Lanmar

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Corp. v. Rendine, D.R.I.1993, 811 F.Supp. 47. Civil Rights 1315

Industrial revenue bond applicants, whose application was denied by town council despite satisfaction of all requirements and who claimed only random, unauthorized actions, were required to allege that they availed themselves of private right of action under Massachusetts conflict of interest laws or any other remedy provided by state law or to explain why Massachusetts remedies were inadequate in order to state section 1983 claim for violation of procedural due process. Fisichelli v. Town of Methuen, D.Mass.1987, 653 F.Supp. 1494, appeal dismissed 884 F.2d 17. Civil Rights 1321

Where state prisoner's petition did not allege that he had exhausted state remedies or that they were inadequate to afford him relief upon his complaint that he had been required to wait one hour before being permitted to go to prison hospital for treatment for backache, no federal claim was stated. Bailey v. Beto, S.D.Tex.1970, 313 F.Supp. 918. Federal Courts 244

School board administrative employee could not challenge his demotion under § 1983 as a violation of due process where complaint did not allege that employee exhausted all administrative and judicial remedies prior to filing suit. Gilliard v. School Bd. of Miami-Dade County, FL, S.D.Fla.2003, 2003 WL 251936, Unreported. Civil Rights 1312

4729. Immunity, necessary and requisite allegations

A civil rights complaint filed under §§ 1983 against a government official need only satisfy the notice pleading standard, regardless of the availability of a qualified immunity defense. Thomas v. Independence Tp., C.A.3 (Pa.) 2006, 463 F.3d 285. Civil Rights 1398

Plaintiff need not plead the absence of immunity, at least where such immunity is not absolute, in an action brought under statute authorizing civil action for deprivation of rights under color of state law. McDaniel v. Rhodes, S.D.Ohio 1981, 512 F.Supp. 117. Civil Rights 1398

Absence of factual allegations that state-court judges acted outside scope of their judicial capacity or lacked jurisdiction in matter precluded, on grounds of judicial immunity, litigant's claims against state-court judges, based upon judges' rulings or their in-court comments, alleging intentional tort, conspiracy, perjury, subornation of perjury, felony, fraud, breach of civil obligation, oppression, obstruction of justice, malice, harassment, defamation and slander, endangerment, civil rights violation, racial discrimination, intentional gross negligence, and abuse of judicial power. Haile v. Sawyer, N.D.Cal.2003, 2003 WL 1907661, Unreported, affirmed 76 Fed.Appx. 129, 2003 WL 22145851. Civil Rights 1376(8); Judges 36

4730. Knowledge and intent, necessary and requisite allegations

Allegations in complaint, that it was highly likely, given circumstances at certain protest location during Presidential Inaugural Parade, that police officers would violate protestors' constitutional rights, failed to state cause of action under § 1983 for police supervisors' personal liability, through inaction or failure to supervise, for constitutional violations in connection with officers' alleged pepper spraying of protestors, absent allegation that supervisors had actual or constructive knowledge of past transgressions or were responsible or aware of clearly deficient training. International Action Center v. U.S., C.A.D.C.2004, 365 F.3d 20, 361 U.S.App.D.C. 108. Civil Rights 1358

Police officers failed to allege that police union acted with intent to deprive white officers of equal protection as would support § 1983 or federal conspiracy statute claim by alleging that city, with assistance of union, used race and national origin as motivating factor in excluding whites from promotion on police force. Majeske v. Fraternal Order of Police, Local Lodge No. 7, C.A.7 (Ill.) 1996, 94 F.3d 307. Civil Rights 1395(8)

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Allegation that agency official selectively enforced law maliciously and in bad faith, but without intent to injure group or punish exercise of constitutional right, was insufficient to state § 1983 claim against official of state environmental agency for violation of property owner's equal protection rights. Futernick v. Sumpter Tp., C.A.6 (Mich.) 1996, 78 F.3d 1051, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 296, 519 U.S. 928, 136 L.Ed.2d 215. Civil Rights 1088(1)

Mother and sister's complaint in which they alleged that various officials and public bodies of both city and county violated their civil rights through wrongful death of their son and brother while he was incarcerated at county jail, by depriving mother and sister of their constitutional right of familial association failed to state claim under 42 U.S.C.A. § 1983 governing deprivation of civil rights, where complaint did not allege intent on part of defendants to deprive mother and sister of their protected relationship with their son and brother. Trujillo v. Board of County Com'rs of Santa Fe County, C.A.10 (N.M.) 1985, 768 F.2d 1186. Civil Rights 1395(5)

In order to state a due process claim under this section, it is not necessary to allege a purpose on part of defendant to deprive plaintiff of any federal right. DeWitt v. Pail, C.A.9 (Cal.) 1966, 366 F.2d 682. Civil Rights 1394

Former supervisor could not be liable under §§ 1983 for alleged employment discrimination against former public employees, absent allegations, aside from conclusory generalizations, that reflected a political animus behind any action or inaction on the part of former supervisor. Gutierrez v. Molina, D.Puerto Rico 2006, 447 F.Supp.2d 168. Civil Rights 1395(8)

Lessors of vendor kiosk located on city-owned property in public market stated claim that their political affiliation was motivating factor in mayor's refusal to permit enlargement of their kiosk, as required to support lessors' §§ 1983 political discrimination action against mayor and others, by alleging that lessor had publicly campaigned for mayor's opponent in recent election, that since election mayor had refused to discuss lessors' petition for enlargement, and that meanwhile mayor had enlarged several kiosks leased by members of mayor's party and had assigned larger spaces in public market to members of same party. Rodriguez Cruz v. Trujillo, D.Puerto Rico 2006, 443 F.Supp.2d 240. Municipal Corporations 720

Conscious or intentional conduct supporting section 1983 claim for violation of First Amendment free exercise of religion rights was sufficiently alleged as to California state prison cook by inmate who was follower of Islam and who did not eat pork, and who claimed he asked cook three times to determine if turkey ham contained pork, was told by cook that he checked product and it did not contain pork, and was thereby misled into consuming pork. Lewis v. Mitchell, S.D.Cal.2005, 416 F.Supp.2d 935. Civil Rights 1395(7)

To state a claim under §§ 1983 for violation of Equal Protection Clause of the Fourteenth Amendment, plaintiff must show that defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class. Neveu v. City of Fresno, E.D.Cal.2005, 392 F.Supp.2d 1159. Constitutional Law 211(1)

Allegations that officers through their collective or individual negligence or willful intent suppressed and destroyed or hid important exculpatory evidence which caused arrestee to be prosecuted for rape, robbery, and weapons law violations that he did not commit, stated §§ 1983 claim against officers for conspiracy. Nunez Gonzalez v. Vazquez Garced, D.Puerto Rico 2005, 389 F.Supp.2d 214. Conspiracy 18

Veterinarian failed to state "class of one" equal protection claim against executive secretary of state racing commission and commission members when he alleged that he was treated differently from similarly situated individuals in being denied temporary license to treat racehorses and by directive prohibiting racehorses treated off racetrack premises by veterinarian ineligible for commission license from racing for 14 days, given absence of allegation that allegedly disparate treatment to which he was subjected was either intentional or irrational. VanHorn v. Nebraska State Racing Com'n, D.Neb.2004, 304 F.Supp.2d 1151. Civil Rights 1395(1)

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42 U.S.C.A. § 1983

Female employee of city transit authority failed to allege that "harassment" and resultant disparate treatment she received from supervisor was based upon her gender or was in retaliation for her exercise of her First Amendment free speech rights, as required to state § 1983 claims against supervisor. Dean v. New York City Transit Authority, E.D.N.Y.2004, 297 F.Supp.2d 549. Civil Rights 1395(8)

Low bidder who was not awarded local landfill contract did not establish § 1983 equal protection claim against county; bidder did not allege that county intentionally discriminated against it because of its membership in protected class, bidder did not offer proof of discriminatory intent, and allegation that county departed from normal procedures in rejecting low bid was insufficient to establish clear and intentional discrimination in light of broad discretion which county had in awarding contract. City-Wide Asphalt Paving, Inc. v. Alamance County, M.D.N.C.1997, 966 F.Supp. 395. Civil Rights 1041

Virginia state prisoner housed in Tennessee failed to state claim that incarceration in Tennessee constituted cruel and unusual punishment, even though prisoner asserted that he was assaulted and lived in fear of being beaten or forced to join gang, where prisoner failed to allege that defendants, the director of Virginia department of corrections and the director of the Virginia parole board, knew of and disregarded an excessive risk to his safety. Tucker v. Angelone, E.D.Va.1997, 954 F.Supp. 134, affirmed 116 F.3d 473. Sentencing And Punishment 1537

Plaintiff who contended that state defendants violated § 1983 because they knowingly continued to fund an agency that discriminated on basis of race stated a claim for which relief could be granted. Seeney v. Kavitski, E.D.Pa.1994, 866 F.Supp. 206, affirmed 107 F.3d 8. Civil Rights 1395(1)

In cause of action under this section for discrimination in employment, plaintiff must show purposeful discriminatory act; something more than discriminatory impact must be shown. Perham v. Ladd, N.D.Ill.1977, 436 F.Supp. 1101. Civil Rights 1405

To extent that racial segregation at youth study center was challenged under this section providing for liability for deprivation of rights under color of state law, intentional action had to be alleged in order to plead a constitutional deprivation, and, similarly, intentional conduct had to be shown in connection with alleged denial of adequate medical treatment by defendants. Santiago v. City of Philadelphia, E.D.Pa.1977, 435 F.Supp. 136. Civil Rights 1395(7); Civil Rights 1406

In pro se § 1983 complaint, allegation by prisoner injured during softball game that prison superintendent knew of dangerous condition of recreation area was sufficient to satisfy subjective element required to state Eighth Amendment claim. Slacks v. Grenier, S.D.N.Y.2003, 2003 WL 22232942, Unreported. Civil Rights 1395(7)

4731. Malice, necessary and requisite allegations

In teachers' civil rights action against board of education for the board allegedly causing and prolonging teachers' confinement for contempt by misrepresenting facts to state appeals court during habeas hearing, complaint failed to state claim upon which relief could be granted where it contained no allegation of malice. Lucsik v. Board of Ed. of Brunswick City School Dist., C.A.6 (Ohio) 1980, 621 F.2d 841. Civil Rights 1395(1)

Where actual malice on part of publisher was not alleged, allegations that newspaper publisher suppressed judicial scandals, failed to furnish reporter to cover plaintiff's trial on criminal charges and engaged in distorted coverage of trial were not sufficient to state claim upon which relief could be granted under this section. Page v. Sharpe, C.A.1 (Me.) 1973, 487 F.2d 567. Civil Rights 1395(1)

Plaintiff in § 1983 action failed to allege that defendants acted with malice or willfully and wantonly, as was prerequisite to recovery of punitive damages. San Filippo v. Bongiovanni, D.N.J.1990, 743 F.Supp. 327, reversed

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on other grounds 961 F.2d 1125, certiorari denied 113 S.Ct. 305, 506 U.S. 908, 121 L.Ed.2d 228. Civil Rights 1465(1)

Attorneys' civil rights complaint which alleged that acts of prison officials in restricting attorney's access to their client were malicious, intentional and deliberate was sufficient to state claim for punitive damages. Keker v. Procunier, E.D.Cal.1975, 398 F.Supp. 756. Civil Rights 1395(7)

4732. Overt acts, necessary and requisite allegations

A complaint brought under this section governing civil actions for deprivation of rights is insufficient if it fails to allege overt acts by the defendant, or that acts were done at defendant's direction, or that they were done with his knowledge and consent. Young v. Peoria Housing Authority, C.D.Ill.1979, 479 F.Supp. 1093. Civil Rights 1394

Complaint which alleged that Chicago electoral board had rendered a decision unfavorable to candidate and had previously rendered an inconsistent decision favoring a member of a different political party and that the difference resulted from arbitrary, capricious and discriminatory conduct did not state a claim of invidious discrimination necessary to support relief under this section where there were no allegations of overt acts committed by the board in the course of the alleged violations. Lizak v. Kusper, N.D.Ill.1974, 399 F.Supp. 1270, affirmed 506 F.2d 1405. Civil Rights 1395(1)

4733. Personal involvement, necessary and requisite allegations--Generally

Borough manager's allegations that he reported to the borough council consisting of six elected council members, which served as manager's supervisor, and, in respect to some subjects, to the elected mayor of the borough, was sufficient to allege that the mayor had the power to constructively discharge manager, even though only the borough council could fire the manager outright, as required for manager's claims against mayor that he was retaliated against in violation of the First Amendment. Hill v. Borough of Kutztown, C.A.3 (Pa.) 2006, 455 F.3d 225. Municipal Corporations 156

Dismissing plaintiff's third amended §§1983 complaint based on plaintiff's failure to delineate defendants and identify their respective acts or omissions, as ordered by district court, was not abuse of discretion; at time of dismissal, litigation had been pending for approximately 18 months, district court had recently admonished plaintiff for failure to comply with the discovery schedule, and plaintiff's failure to articulate specific factual allegations tied to specific defendants, well into discovery, denied defendants protection of qualified immunity. Doe v. Cassel, C.A.8 (Mo.) 2005, 403 F.3d 986. Federal Civil Procedure 1741

Plainclothes officer who instructed uniformed officer to determine who plaintiff demonstrator was and what he was doing was entitled to qualified immunity from plaintiff's § 1983 claim; complaint failed to allege sufficient involvement by plainclothes officer to lay foundation for recovery under § 1983. Johnston v. City of Houston, Tex., C.A.5 (Tex.) 1994, 14 F.3d 1056. Civil Rights 1398

Inmate's allegations that prison superintendent ignored repeated malicious acts of corrections officer against inmate was sufficient to plead that superintendent was personally involved in alleged deprivation of inmate's constitutional rights, as required to state a claim under §§ 1983 against supervisory official. Locicero v. O'Connell, S.D.N.Y.2006, 419 F.Supp.2d 521. Civil Rights 1395(7)

Claim was stated under §§ 1983, that director of human resources at university which owned nursing home facility violated federal rights of nurse, through allegations that director was involved in wrongful decision to terminate, and that he signed termination letter. Pinero v. Long Island State Veterans Home, E.D.N.Y.2005, 375 F.Supp.2d

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42 U.S.C.A. § 1983

162. Civil Rights 1395(8)

State prisoner's free speech complaint under §§ 1983, which did not allege any involvement on part of warden or secretary of state department of corrections in censorship of prisoner's outgoing mail, and did not allege facts from which inference could be drawn that warden or secretary knew of censorship at any time relevant to case, failed to state claim. Koutnik v. Brown, W.D.Wis.2004, 351 F.Supp.2d 871. Civil Rights 1395(7)

Employee of Puerto Rico Department of the Family failed to plead cognizable claim of political discrimination against Department's Secretary and Assistant Secretary of Administration; employee failed to allege direct involvement at hand of those individuals and could not meet burden of establishing that her party affiliation was substantial or motivating factor for alleged adverse employment actions taken against her, let alone prove she suffered all those actions. Rosado De Velez v. Zayas, D.Puerto Rico 2004, 328 F.Supp.2d 202. Civil Rights 1395(8)

Inmate adequately alleged personal involvement of supervisory prison official in alleged campaign of harassment in retaliation for exercising his First Amendment right to file grievances and pursue other related remedies to state § § 1983 claim against the official; inmate had filed previous grievances and litigations against the supervisor at another facility, and alleged that he was harassed and retaliated against by security staff once supervisor arrived at facility where he was confined. Hernandez v. Goord, S.D.N.Y.2004, 312 F.Supp.2d 537. Civil Rights 1358

To state a § 1983 claim, a plaintiff must allege that defendant, while acting under color of state law, deprived plaintiff of his constitutional or statutory rights. Perkins v. Brown, E.D.N.Y.2003, 285 F.Supp.2d 279. Civil Rights 1304

Arrestee could not maintain § 1983 claim for false arrest against unnamed officer where she had never deposed any member of police department in an effort to determine the identity of unnamed officer, and time for discovery had past. Colon v. Ludemann, D.Conn.2003, 283 F.Supp.2d 747. Federal Civil Procedure 101

Child failed to state cause of action for supervisory liability under § 1983 in complaint, against directors of county department of family services and mental health center, absent allegations with respect to directors' role in decision to remove child, or allegation that directors had knowledge of decision to remove. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Civil Rights 1395(1)

Inmate's failure to identify "John Doe" corrections officer who transported him between facilities and allegedly made some rude remarks to him, and failure to state alleged constitutional violations with more particularity, precluded inmate's § 1983 claim. Johnson v. New York, S.D.N.Y.2003, 256 F.Supp.2d 186. Civil Rights 1395(7)

Allegation that a prison official responded to a inmate's letter was insufficient to establish his personal involvement in an alleged constitutional violation arising from asbestos particles purportedly present in the air in the prison's workroom, visiting room and common basement, thus precluding imposition of liability on prison official in inmate's § 1983 suit. Labounty v. Coughlin, S.D.N.Y.2003, 2003 WL 21692766, Unreported. Civil Rights 1358

State prisoner failed to allege that prison officials participated personally in alleged violation of his Eighth Amendment right to humane conditions of confinement, as required to state § 1983 claims against officials. Britt v. Department of Corrections, S.D.N.Y.2003, 2003 WL 1338684, Unreported. Civil Rights 1395(7)

4733A. ---- Class actions, personal involvement, necessary and requisite allegations

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42 U.S.C.A. § 1983

Former borough manager failed to state a claim for equal protection violations under the "class of one" theory absent allegations of the existence of similarly situated individuals, specifically, borough managers, who the mayor treated differently. Hill v. Borough of Kutztown, C.A.3 (Pa.) 2006, 455 F.3d 225. Civil Rights 1395(8)

4734. Ratification of private action, necessary and requisite allegations

Complaint alleging that two white residents of city with full knowledge and acquiescence of city councilmen erected and maintained fence across public street in such manner as to deny black residents of city public access to and from their homes for the sole purpose of denying black citizens the same rights to enjoy real property as is enjoyed by white citizens stated a cognizable claim against city and its councilmen under this section, and with respect to claim against private parties it was impossible to conclude that no evidence could exist which would bring into play concepts by which actions of private individuals become state action. Jennings v. Patterson, C.A.5 (Ala.) 1972, 460 F.2d 1021. Civil Rights 1395(1)

Complaint alleging that arresting officers acted on police chief's instruction in arresting nude dancer and that their actions were subsequently ratified and approved by him and complaint alleging that there was past history of police harassment of theatrical endeavors at premises where arrest in question occurred stated claim against police chief for authorizing and approving police enforcement of obscenity ordinance at premises in question, which enforcement resulted, according to complaint, in violation of rights of production company that employed dancer under U.S.C.A.Const. Amend. 1. Ziegman Productions Inc. v. City of Milwaukee, E.D.Wis.1981, 511 F.Supp. 717 . Civil Rights 1395(6)

In action brought against law enforcement officers and sheriff alleging deprivation of civil rights arising out of arrest and detention of plaintiff, allegation that actions of the officers were committed at sheriff's direction or with his knowledge and consent, or were afterward approved and ratified by him, if proved, and assuming underlying conduct of the officers to have violated plaintiff's rights, was sufficient to impose liability on sheriff. Coyne v. Boeckmann, E.D.Wis.1981, 511 F.Supp. 667. Civil Rights 1395(6)

Complaint alleging that agents of defendant hospital and others had conspired to unlawfully remove plaintiff's staff privileges at hospital because of his opposition to a merger of hospital with a predominately white facility was not sufficient to state a cause of action under this section in absence of an allegation that state, either through neglect or purposeful failure to properly regulate defendant, sanctioned or gave tacit approval to defendant's conduct. Spencer v. Community Hospital of Evanston, N.D.Ill.1975, 393 F.Supp. 1072. Conspiracy 18

4735. State created danger, necessary and requisite allegations

For purpose of determining the applicability of the state-created or enhanced danger doctrine, in § 1983 action, by student who was wounded during attack on high school by two armed students, against school district security director for substantive due process violation based on alleged failure to protect, student sufficiently alleged that director acted recklessly in conscious disregard of the known and obvious danger from students who were allegedly known to be talking about blowing up the school. Ireland v. Jefferson County Sheriff's Dept., D.Colo.2002, 193 F.Supp.2d 1201. Constitutional Law 278.5(5.1); Schools 63(3)

4736. State of mind, necessary and requisite allegations

For purpose of showing prima facie case under § 1983, no state of mind requirement exists independent from required inquiry into whether plaintiff can establish that constitutional violation occurred, and thus negligent deprivation of constitutional right is actionable under § 1983; once § 1983 plaintiff establishes that defendant committed constitutional deprivation, plaintiff need not show that defendant acted with any particular state of mind. Edwards v. Cabrera, N.D.Ill.1994, 861 F.Supp. 664, reversed 58 F.3d 290. Civil Rights 1031

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42 U.S.C.A. § 1983

4737. Conspiracy, necessary and requisite allegations

In order to state a section 1983 conspiracy claim, plaintiff must allege: (1) an agreement between two or more state actors or between a state actor and a private entity (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal, and causing some harm. Brewster v. Nassau County, E.D.N.Y.2004, 349 F.Supp.2d 540. Conspiracy 18

Allegations of police officer's complaint against member of town political committee, that political committee member disclosed information sent to town board member, who was state actor and political committee member's significant other, to police chief and police lieutenant, both state actors, and that political committee member, acting on behalf of board member, demanded that officer not be given position in police department's administration, were sufficiently specific to allege conspiracy to violate §§ 1983. Kelly v. Marchiano, S.D.N.Y.2004, 332 F.Supp.2d 687. Conspiracy 18

Family court litigant failed to state §§ 1983 claim that county legal services attorney, who was private actor, conspired to violate his federally protected rights; allegations that status report prepared at request of family court judge contained errors, and that he bribed law department office employees with donuts to get advance look at court document, did not show any concerted action. Hom v. Brennan, E.D.N.Y.2004, 304 F.Supp.2d 374. Civil Rights 1326(10)

Estate of high school student satisfied particularity requirements for stating § 1983 claim of conspiracy by school and police officials to violate First Amendment rights of student through detailed allegations of planning and execution of alleged concerted action involving school disciplinary proceedings against student, and police inaction on student's criminal complaint against teacher who assaulted him. Estate of Morris ex rel. Morris v. Dapolito, S.D.N.Y.2004, 297 F.Supp.2d 680. Conspiracy 18

Complaint, which alleged that labor union president and supervising police sergeant were friends, was insufficient to support conclusion that sergeant or union conspired with police department so as to deprive detective of his rights in order to state claim against union on § 1983 conspiracy theory; neither union nor its president were state actors, and complaint did not allege union or its president acted under color of state law or in conspiracy with state actors. Barton v. City of Bristol, D.Conn.2003, 294 F.Supp.2d 184. Conspiracy 18

State prisoner failed to state claim against department of corrections official for conspiracy; although prisoner asserted that assistant district attorney "conspired with" official to have her generate and distribute false sentence computation data form, complaint did not allege deprivation of equal protection of laws or equal privileges or immunities under the law, it did not allege acts done in furtherance of conspiracy, it did not assert injury or deprivation of rights based on false documentation, and it made no contention that official acted with class-based discriminatory animus. Peterson v. Tomaselli, S.D.N.Y.2003, 2003 WL 22213125, Unreported. Conspiracy 18

Conclusory allegations regarding conspiracy between private defendants and public officials failed to state § 1983 conspiracy claim against private defendants, for alleged discrimination and harassment based on race, national origin, Christian values, and Republican party affiliation; no details of time and place were provided, and the factual basis necessary to enable the defendants to intelligently prepare their defense was not described. O'Diah v. New York City, S.D.N.Y.2002, 2002 WL 1941179, Unreported, reconsideration denied 2002 WL 31246508, reconsideration denied 2003 WL 223418. Conspiracy 18

XLV. COLOR OF LAW ALLEGATIONS

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4761. Color of law allegations generally

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42 U.S.C.A. § 1983

Sufficiency of color-of-law allegation of § 1983 claim is tested under standard for failure to state claim, rather than for jurisdictional deficiency. Monsky v. Moraghan, C.A.2 (Conn.) 1997, 127 F.3d 243, certiorari denied 119 S.Ct. 66, 525 U.S. 823, 142 L.Ed.2d 52. Civil Rights 1396

To state viable claim under federal civil rights statute, plaintiff must allege violation of federal right by person acting under color of state law. Circa Ltd. v. City of Miami, C.A.11 (Fla.) 1996, 79 F.3d 1057. Civil Rights 1304

To state cause of action under § 1983, plaintiff must allege that some person, acting under state or territorial law, has deprived him of federal right. Cinel v. Connick, C.A.5 (La.) 1994, 15 F.3d 1338, certiorari denied 115 S.Ct. 189, 513 U.S. 868, 130 L.Ed.2d 122. Civil Rights 1394

To state claim under § 1983, plaintiff must allege both deprivation of federal right and that alleged action was taken under color of state law. Buckley Const., Inc. v. Shawnee Civic & Cultural Development Authority, C.A.10 (Okla.) 1991, 933 F.2d 853. Civil Rights 1394; Civil Rights 1396

4762. Custom or usage, color of law allegations--Generally

Local government entity cannot be held liable under § 1983 unless plaintiff alleges that action inflicting injury flowed from either explicitly adopted or tacitly authorized governmental policy. Ortez v. Washington County, State of Or., C.A.9 (Or.) 1996, 88 F.3d 804. Civil Rights 1351(1)

Single incident of unconstitutional conduct, allegedly perpetrated pursuant to policy or custom of governmental entity, is inadequate to state a cause of action under this section; rather, plaintiff must plead, in addition to specific incident of misconduct in governmental policy or custom of perpetrating such wrongs upon persons, the existence of other, similar incidents and while it is not necessary to plead specific details of similar incidents of misconduct, such similar instances involving either plaintiff or other similarly situated persons must be pled. Mui v. Dietz, N.D.Ill.1983, 559 F.Supp. 485. Civil Rights 1351(1)

A complaint does not state a cause of action under this section in absence of allegations that the conduct alleged was in pursuance of a systematic policy of discrimination against a class or group of persons. Roberts v. Barbosa, S.D.Cal.1964, 227 F.Supp. 20.

4763. ---- Counties, custom or usage, color of law allegations

Even if mother alleged constitutional violation when, in asserting § 1983 claim against county and county social services agency, mother alleged that she was denied her constitutionally protected rights in companionship, care, custody, and management of her minor daughter by agency's failure to consult mental health professionals to whom daughter had described sexual abuse by her father during agency's investigation of abuse allegations, mother failed to assert prima facie claim under § 1983, given absence of allegation that policy or custom of agency or county led to such violation; assertions that county lacked policy requiring reasonable investigations, or that county had such a policy, but it was breached with respect to challenged investigation, were insufficient to state claim. Marran v. Marran, C.A.3 (Pa.) 2004, 376 F.3d 143. Civil Rights 1351(6)

Arrestee failed to state claim against county under § 1983 arising from sheriff's deputy's alleged violation of her due process rights by detaining her on basis of misidentification of her as fugitive; arrestee alleged facts supporting her contention that she was arrested in violation of state law and her due process rights, but did not allege any facts to indicate that alleged violation was result of county policy or practice. Cannon v. Macon County, C.A.11 (Ala.) 1993, 1 F.3d 1558, modified on rehearing 15 F.3d 1022. Civil Rights 1395(6)

Widow of pretrial detainee stated civil rights claim against county by alleging that it had, through the sheriff,

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official policies of maintaining on-duty jail supervisory staff that did not include anyone with authority to transfer an inmate to a medical facility and of inadequate monitoring of pretrial detainees. Colle v. Brazos County, Tex., C.A.5 (Tex.) 1993, 981 F.2d 237. Civil Rights 1395(6)

Arrestee alleged sufficient facts, amounting to county police "policy or custom," to state claims against arresting officer, officer who searched arrestee, and head of county police department in their official capacities; arrestee alleged that county police department failed to effectively train arresting officer not to unlawfully detain persons without probable cause to arrest. Farred v. Hicks, C.A.11 (Ga.) 1990, 915 F.2d 1530. Civil Rights 1395(6)

Allegations asserting legal conclusions about municipal policy of inadequate training of deputy sheriffs failed to state § 1983 claim against sheriff in his official capacity and board of county commissioners to recover for off-duty deputy's alleged shooting of victim; allegations were not supported by facts to suggest any specific deficiencies in training for off-duty conduct; and allegations also failed to claim anything but aberrational act by individual officer. Revene v. Charles County Com'rs, C.A.4 (Md.) 1989, 882 F.2d 870. Civil Rights 1395(5)

Former county police officer sufficiently alleged that deliberate action attributable to county itself was moving force behind deprivation of his federal rights, and thus avoided dismissal of his §§ 1983 claim against county. Longo v. Suffolk County Police Dept. County of Suffolk, E.D.N.Y.2006, 429 F.Supp.2d 553. Civil Rights 1395(8)

City and county could not be held liable under §§ 1983 for prosecuting and sentencing plaintiff as an adult while he was in fact still a juvenile, absent claim that alleged constitutional deprivations were caused by or occurred pursuant to an official custom or policy. Jordan v. New York, W.D.N.Y.2004, 343 F.Supp.2d 199. Civil Rights 1351(4)

Inmate's allegations that county district attorney and county sheriff failed to prosecute corrections officers who had threatened him were insufficient to state §§1983 claim against county, absent allegation that any of the alleged constitutional deprivations were caused by or occurred pursuant to an official custom or policy of county. Lewis v. Gallivan, W.D.N.Y.2004, 315 F.Supp.2d 313. Civil Rights 1351(4)

Court would elect to treat civil rights claim improperly brought under § 1983 as *Bivens* claim against county officers acting under color of federal law, rather than dismissing for failure to state claim. North Carolina ex rel. Haywood v. Barrington, M.D.N.C.2003, 256 F.Supp.2d 452. United States 50.20

Inmate in county jail could not maintain § 1983 action under Indiana law against county council or its members for injuries he allegedly sustained in county jail; actions of county sheriff could not be attributed to county council on respondent superior theory; moreover, inmate failed to allege policy or custom of council which caused the inmate injury. Markley v. Walters, N.D.Ind.1992, 790 F.Supp. 190. Civil Rights 1348; Civil Rights 1351(4)

Inmate's conclusory allegations that employees of county and sheriff's department routinely treated African pretrial detainees in abusive fashion was inadequate to raise inference that alleged abuse of inmate was part of official policy. Martin v. O'Grady, N.D.Ill.1990, 738 F.Supp. 1191. Civil Rights 1404

County employee's allegations that her supervisor persistently harassed female employees, that she would have been promoted earlier but for his conditioning favorable recommendation to salary board on her acceptance of dinner invitation, and that county acquiesced in supervisor's behavior were sufficient to state cause of action for illegal employment discrimination under both Title VII and Section 1983, as well as claim for intentional infliction of emotional distress. Blessing v. Lancaster County, E.D.Pa.1985, 609 F.Supp. 485.

4764. ---- Corporations, custom or usage, color of law allegations

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Even assuming private corporation acted under color of state law, it could not be held liable under § 1983 for actions of its employee in allegedly wrongfully detaining customer for shoplifting, where claimant did not plead that employer had policy or custom of false arrests or malicious prosecutions. Sanders v. Sears, Roebuck & Co., C.A.8 (N.D.) 1993, 984 F.2d 972, rehearing denied. Civil Rights 1341

4765. ---- Educational institutions, custom or usage, color of law allegations

Parents' allegations that both they and their daughter attempted to complain and object to grades and racial bias and certain school policies at elementary school did not adequately plead policy or custom on part of the school corporation so as to support § 1983 claim against it. Baxter by Baxter v. Vigo County School Corp., C.A.7 (Ind.) 1994, 26 F.3d 728. Civil Rights 1395(2)

Physical therapist's complaint, stating that school district, acting through supervisor, "had a policy or custom of bullying individuals into acquiescing to violations of state and federal statutes pertaining to special education requirements," adequately alleged that supervisor acted in conformity with official policy, custom, or practice of district, as required to state cause of action under §§ 1983 for retaliation for engaging in speech, notwithstanding that complaint also alleged that supervisor's actions were beyond scope of her authority. Ryan v. Shawnee Mission U.S.D. 512, D.Kan.2006, 416 F.Supp.2d 1090. Civil Rights 1395(8)

Claims that town and school district violated statute prohibiting discrimination against handicapped by programs receiving federal financial assistance and thus violated federal civil rights statute could not succeed where plaintiffs failed to allege that any of defendants' violations were the result of official policy, training protocol, or custom. Penney v. Town of Middleton, D.N.H.1994, 888 F.Supp. 332. Civil Rights 1351(2)

Guardian of student failed to allege that a custom or policy of the school district caused student's alleged constitutional deprivation, as required to state a claim under § 1983 that school district, principal, and president of school board, in their official capacities, violated student's constitutional rights under the Fourth and Fourteenth Amendments by allowing police officers to interview student privately at school. Douglas v. Beaver County School Dist. Bd., C.A.10 (Utah) 2003, 82 Fed.Appx. 200, 2003 WL 22872699, Unreported. Civil Rights 1351(2)

4766. ---- Hospitals, custom or usage, color of law allegations

Where there was no allegation that public hospital or its officials followed a practice of assigning performance of tubal ligations to doctors in such a way that hospital had effectively adopted a practice of refusing to perform ligations, patient who had been scheduled to have tubal ligation at same time that she had Caesarean section but who was required to return a second time for tubal ligation because the anesthesiologist assigned to the original operation refused to assist because of his religious beliefs was not entitled to recover against hospital or hospital officials for violation of her constitutional rights. Padin v. Fordham Hospital, S.D.N.Y.1975, 392 F.Supp. 447. Health 684

4767. ---- Juvenile supervisory agencies, custom or usage, color of law allegations

Childrens' allegations concerning conduct of supervisory officials while they were in foster care were sufficient to support inference that officials were deliberately indifferent to insuring childrens' security, and thus, were acting pursuant to "custom" or "policy," as required to state § 1983 civil rights claim; children alleged more than single incident in which they were placed in foster home where they were sexually abused. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Civil Rights 1395(1)

Children who claimed they were physically and sexually abused during time they were committed to county home sufficiently alleged existence of official policy or custom that was moving force of their injuries to state civil rights

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claim against county and county social services agency; children alleged pattern and practice of grossly inadequate screening, care, treatment, training, and supervision. E.J. v. Hamilton County, Ohio, S.D.Ohio 1989, 707 F.Supp. 314. Civil Rights 1395(1)

4768. ---- Municipalities, custom or usage, color of law allegations

Unconstitutional policy or custom, such as would support municipal liability under § 1983, can take three forms: (1) express policy that, when enforced, causes constitutional deprivation; (2) widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute "custom or usage" with force of law; or (3) allegation that constitutional injury was caused by person with final policymaking authority. Rasche v. Village of Beecher, C.A.7 (Ill.) 2003, 336 F.3d 588. Civil Rights 1351(1)

City prosecutor's failure to notify murder victim's mother of contemplated reduction of charge against perpetrator, allegedly in violation of Ohio victim impact law, did not give rise to municipal liability under § 1983 of civil rights laws; prosecutor did not possess final authority to establish municipal policy and mother did not allege that violation of victim impact law resulted from custom or policy. Pusey v. City of Youngstown, C.A.6 (Ohio) 1993, 11 F.3d 652, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 2742, 512 U.S. 1237, 129 L.Ed.2d 862. Civil Rights 1351(4)

Complaint alleging that city knowingly failed to train police officers with respect to obligation to protect citizens engaged in First Amendment activity, but not alleging any facts other than officers' inaction in the face of beating of demonstrators in the instance complained of in the present case, failed to adequately plead custom or policy on the part of the city contributing to demonstrator's injuries, so as to state a claim against city or against officers in their official capacities under civil rights statute. Dwares v. City of New York, C.A.2 (N.Y.) 1993, 985 F.2d 94. Civil Rights 1395(5)

Pawn shop could not recover damages from city in § 1983 action based on police officer's seizure of rings which he thought were stolen and release of rings to their purported owner without judicial hearing, where pawn shop did not claim that alleged constitutional violations were caused by policy statement, ordinance, regulation, or decision, officially adopted and promulgated by city, that was itself unconstitutional. Surplus Store and Exchange, Inc. v. City of Delphi, C.A.7 (Ind.) 1991, 928 F.2d 788. Civil Rights 1351(4)

Allegation that city within Indian reservation had custom or practice of using city police to detain and arrest white persons based on tribal orders was sufficient to state cause of action against city under § 1983. Evans v. McKay, C.A.9 (Mont.) 1989, 869 F.2d 1341. Civil Rights 1395(6)

Allegations by tow car company and its owner that city's denial of tow car medallions was irrational did not state section 1983 claim which could be heard in federal court where complaint contained no allegations that alleged unconstitutional actions were ever taken pursuant to policy, custom, or practice of city. Alfaro Motors, Inc. v. Ward, C.A.2 (N.Y.) 1987, 814 F.2d 883. Civil Rights 1395(1)

Arrestee's allegations concerning off duty police officers' use of excessive force during arrest were insufficient to state civil rights claim against city; arrestee failed to allege that there were prior incidents which, if taken as true, would reveal existence of unconstitutional custom on part of city in training of its officers. Palmer v. City of San Antonio, Tex., C.A.5 (Tex.) 1987, 810 F.2d 514, on remand 717 F.Supp. 1218. Civil Rights 1395(6)

Section 1983 complaint of parents of pretrial detainee who committed suicide, alleging that police department's custom of inadequate care for suicidal detainees was "familiar" to the city, was arguably insufficient to allege that the custom was so persistent, widespread, common, and well settled as to represent municipal policy as to justify holding city liable; however, parents would be granted leave to file amended complaint against city, since remand was necessary on other claims and facts alleged in complaint were sufficient to support allegation that the custom

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of inadequate care was persistent and widespread. Partridge v. Two Unknown Police Officers of City of Houston, Tex., C.A.5 (Tex.) 1986, 791 F.2d 1182. Civil Rights 1395(7); Federal Civil Procedure 1838

Criminal contemnor failed to state valid §§ 1983 claim against city absent any allegation of the existence of a specific municipal policy or practice and a causal connection between that policy or practice and the alleged deprivation of her constitutional rights. Qader v. New York, S.D.N.Y.2005, 396 F.Supp.2d 466. Civil Rights 1395(5)

Claim under §§ 1983 was not stated against town based on allegations that town was responsible for issuance of an all points bulletin for plaintiff's arrest, placement of plaintiff's name and the fact that he was "driving black" into the police computer system, with the result that the police surrounded plaintiff's house and frightened his children since there was no allegation that a policy or custom of the town caused plaintiff's constitutional injury. Collins v. West Hartford Police Dept., D.Conn.2005, 380 F.Supp.2d 83. Civil Rights 1351(4)

Absence of evidence that city had policy or custom of considering contractor speech on matters of public concern or retaliating against them by failing to renew their contracts precluded city's liability under § 1983 to contractor, whose contract allegedly was terminated in retaliation for engaging in protected speech, on grounds that city had policy or custom of causing violations of constitutional rights. Bolden v. City of Topeka, D.Kan.2004, 318 F.Supp.2d 1076. Civil Rights 1351(6)

Female employee of city transit authority failed, even under relaxed pleading standards, to allege that supervisors' allegedly gender-based discriminatory conduct resulted from any municipal policy, practice, or custom, as required to state gender discrimination claim, under § 1983, against authority; employee did not allege pervasive and widespread pattern of discrimination or actions of official with final authority on policy matters. Dean v. New York City Transit Authority, E.D.N.Y.2004, 297 F.Supp.2d 549. Civil Rights 1395(8)

In order to state a § 1983 claim against municipality for allegedly unconstitutional actions of its employees, plaintiff is required to plead official policy or custom that causes the plaintiff to be subjected to a denial of a constitutional right; municipal policy may however be inferred from the informal acts or omissions of supervisory municipal officials, but the mere assertion of such a policy is not sufficient in the absence of allegations of fact tending to support, at least circumstantially, such an inference. Massey v. Town of Windsor, D.Conn.2003, 289 F.Supp.2d 160. Civil Rights 1394; Civil Rights 1401

To support a § 1983 claim against a municipality, the plaintiff may prove a municipal custom, policy or practice by showing that a municipal official with final policymaking authority directly committed or commanded the constitutional violation, showing that a policy maker indirectly caused the misconduct of a subordinate municipal employee by acquiescing in a longstanding practice or custom which may fairly be said to represent official policy, or showing that a municipal policymaker failed to adequately train their subordinates, if such failure amounts to deliberate indifference to the rights of the individuals who interact with the municipal employees. Jones v. Nassau County Sheriff Dept., E.D.N.Y.2003, 285 F.Supp.2d 322. Civil Rights 1351(1); Civil Rights 1352(1)

To establish municipal liability in an action under § 1983 for unconstitutional acts by a municipal employee below the policymaking level, a plaintiff must show that the violation of his constitutional rights resulted from a municipal policy or custom. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439 . Civil Rights 1351(1)

Where suit is brought against a municipality under § 1983, the municipality is only liable when the plaintiff can show that the municipality itself, by implementing a municipal policy, regulation, or decision either formally adopted or informally adopted through custom, actually caused the alleged constitutional transgression. Okocci v. Klein, E.D.Pa.2003, 270 F.Supp.2d 603, affirmed 100 Fed.Appx. 127, 2004 WL 1396358, certiorari denied 125 S.Ct. 878, 543 U.S. 1061, 160 L.Ed.2d 790. Civil Rights 1351(1)

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42 U.S.C.A. § 1983

Vacating of final rule designating critical habitat for Alameda whipsnake, upon remand, was warranted in light of determination that designation violated Endangered Species Act (ESA) and Administrative Procedure Act (APA) on numerous grounds, even though existence of critical habitat designation did not impose significantly greater burdens on trade associations, state chamber of commerce, and private landowners than were imposed by listing of whipsnake as threatened under ESA, inasmuch as statutory protections afforded by designating critical habitat paralleled those afforded by listing, and therefore vacating rule would not expose whipsnake to significantly greater threats of extinction. Home Builders Ass'n of Northern California v. U.S. Fish and Wildlife Service, E.D.Cal.2003, 268 F.Supp.2d 1197. Environmental Law 528

Absent any evidence suggesting that official policy was cause of harm suffered by jail inmate when she was sexually assaulted by corrections officer, county had no municipal civil rights liability based on policy decisions. Faas v. Washington County, D.Me.2003, 260 F.Supp.2d 198. Civil Rights 1351(4)

To demonstrate a municipal custom or policy which gives rise deprivation of civil rights, plaintiff must at least allege a pattern of similar incidents in which citizens were injured or endangered by intentional or negligent policy misconduct or that serious incompetence or misbehavior was general or wide spread. Hickman v. U.G. Lively, S.D.Tex.1995, 897 F.Supp. 955. Civil Rights 1351(1)

Plaintiff whose civil rights were allegedly violated by security guard employed by company under contract to Chicago Housing Authority (CHA) identified official policy of CHA so as to state § 1983 claim against CHA; plaintiff alleged that CHA had policy and practice of deliberate indifference to the illegal and reckless conduct of company and its security guards and alleged 13 incidents of CHA indifference to guards' brutality. Lowe v. Brown, N.D.Ill.1995, 896 F.Supp. 793. Civil Rights 1351(3)

Federal civil rights claim against municipality or municipal subdivision such as school district must allege that municipal policymaker intentionally adopted policy, implemented training protocol, or allowed custom to develop, that the challenged policy, training protocol, or custom caused violation of federally protected rights, and that the policymaker acted with at least deliberate indifference to the strong likelihood that violation of federally protected rights would result from the implementation of the policy, training protocol, or custom. Penney v. Town of Middleton, D.N.H.1994, 888 F.Supp. 332. Civil Rights 1351(1)

Trial court would not dismiss count of employee's §§ 1981 and 1983 complaint against city, even thought employee did not allege express municipal custom or policy caused her injury, as employee alleged that she was victim of series of discriminatory actions taken by city library employees, rather than single event, and it was possible to infer that city was aware of misconduct and tacitly authorized or condoned it, where plaintiff sued city for racial discrimination following incident in which employee was assaulted by co-worker and subsequently was not promoted and was transferred to different branch of library, and library did not investigate assault incident as it indicated it would. Simmons v. Chicago Public Library, N.D.Ill.1994, 860 F.Supp. 490. Civil Rights 1395(8)

City employee who claimed that she was unlawfully discharged due to her national origin failed to plead § 1983 claim against city that had employed her; employee alleged only that alleged discriminatory conduct occurred in relation to her and not as custom or policy of city, and she offered no argument that city officially sanctioned or ordered alleged discriminatory conduct or that it was within city's custom or policy to discriminate against employees by way of layoff or to prevent their rehire. Underwood v. City of Fort Myers, M.D.Fla.1993, 836 F.Supp. 823. Civil Rights 1395(8)

Section 1983 claim based upon municipal policy or custom was sufficiently alleged by claims that police officers acted under color of city law in detaining plaintiff, that municipal customs, policies, or practices of systematically failing to properly train, supervise, investigate, review, and/or discipline police officers resulted in deprivation of Fourth Amendment rights and due process, and that policy or custom was intentional. Fluellen v. U.S. Dept. of Justice Drug Enforcement Admin., E.D.Mich.1993, 816 F.Supp. 1206. Civil Rights 1395(5)

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42 U.S.C.A. § 1983

Complaint against city which alleged existence of municipal policy implementation of which caused plaintiff's injuries and conduct of city's inspector general in establishing and implementing policy was sufficient to state claim against city under 42 U.S.C.A. § 1983. Rae v. Klusak, N.D.Ill.1993, 810 F.Supp. 983. Civil Rights 1395(1)

Complaint stated cause of action against city by alleging that there was de facto custom or policy of discrimination against racial minorities which allegedly resulted in officers not taking proper action in responding to emergency call concerning beaten, naked Asian boy whom they eventually returned to the custody of the person who then killed him. Estate of Sinthasomphone by Sinthasomphone v. City of Milwaukee, E.D.Wis.1992, 785 F.Supp. 1343 . Civil Rights 1395(5)

Arrestee who was allegedly shot and beaten by police officers during raid of arrestee's home pursuant to search warrant allegedly obtained with false information failed to plead facts sufficient to show city policymaker was deliberately indifferent in failing to take adequate corrective measures when it allegedly knew of excessive force tendencies of many police officers, code of silence, and use of false charges in violation of § 1983, where arrestee's inclusion of statistics concerning complaints against police officers failed to identify specific factual patterns in complaints relevant to deprivation of his rights, arrestee offered no specific factual allegations showing pattern of misconduct by officers who arrested him or showing connection between officers' conduct and city policy or custom, and arrestee provided no facts showing that any specific individuals agreed to follow alleged code of silence. Sledd v. Lindsay, N.D.Ill.1991, 780 F.Supp. 554. Civil Rights 1395(6)

Allegation that police department official misapplied vacation policy in order to deprive police officer of unused vacation time was insufficient to demonstrate municipal liability, absent allegation that any policy or custom of city was proximate cause of deprivation; policy that officer sought to use to demonstrate municipal liability was the same policy he relied upon to establish property interest in vacation time. Saffold v. City of Chicago, N.D.Ill.1991, 775 F.Supp. 1126. Civil Rights 1351(5)

Section 1983 complaint alleging that police officers acted pursuant to city custom or policy in arresting driver and charging him without probable cause insufficiently pleaded facts establishing unconstitutional custom or practice. Ford v. City of Rockford, N.D.Ill.1990, 770 F.Supp. 402. Civil Rights 1395(6)

City was not liable under federal civil rights statute to police officer who was arrested for perjury, absent evidence of city policy, practice, or custom of intentionally creating and using false evidence during course of investigations or of inadequate training or supervision of police officers evidencing deliberate indifference to rights of its citizens. Dees v. City of Miami, S.D.Fla.1990, 747 F.Supp. 679. Civil Rights 1351(4)

Young black men who claimed they were subject to excessive force on part of police officers alleged sufficient facts to show that "code of silence" under which officers would not report disciplinary violations to superiors was widespread, that policy-making individuals knew of code, and that individuals failed to take steps to eliminate it which stated claim against city for violation of civil rights as part of city policy or custom. McLin By and Through Harvey v. City of Chicago, N.D.Ill.1990, 742 F.Supp. 994. Civil Rights 1395(5)

Civil rights claimant who merely alleged that city officials failed to train police officers who had custody of decedent at the time that he committed suicide but who did not identify any facts indicating a lack of appropriate training or that the lack of training constituted a city policy did not state a claim against the city for violation of city rights. McDay on Behalf of McDay v. City of Atlanta, N.D.Ga.1990, 740 F.Supp. 852, affirmed 927 F.2d 614. Civil Rights 1395(6)

Exception to general rule that one needs to allege more than single event to establish municipal custom, for purposes of imposing § 1983 liability on municipality, may exist where other evidence of policy has been presented and single incident in question involves concerted action of large contingent of individual municipal employees such that the event itself provides some proof of existence of underlying policy or custom. Lavoie v. Town of

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Hudson, D.N.H.1990, 740 F.Supp. 88. Civil Rights 1351(1)

Civil rights plaintiffs could not prevail on civil rights claim against municipality arising out of their alleged false arrest by police officers, where plaintiffs failed to allege a municipal policy which caused their false arrest. McKenzie v. City of Milpitas, N.D.Cal.1990, 738 F.Supp. 1293, affirmed 953 F.2d 1387. Civil Rights 1395(6)

Plaintiff alleged facts which would establish policy that could subject city to municipal liability under § 1983; plaintiff offered facts such as internal memoranda and mayor's deposition, which alleged that mayor had final decision regarding certain policies which plaintiff alleged injured him. Biondolillo v. City of Sunrise, S.D.Fla.1990, 736 F.Supp. 258. Civil Rights 1398

Alleged violation of Fourth Amendment rights of owner and operator of adult entertainment business, arising when owner was allegedly not served with copy of warrant and search allegedly began prior to arrival of warrant, was not causally linked to city, absent any claim that city's actions or policies were moving force behind alleged injury, and thus allegations did not state civil rights claim against city. Ways v. City of Lincoln, D.Neb.2002, 2002 WL 1742664, Unreported, affirmed 331 F.3d 596. Civil Rights 1348

4769. ---- Police departments, custom or usage, color of law allegations

Complaint alleging that county prosecutor ordered police to keep prisoner in custody overnight until lineup could be arranged, and that such order led to prisoner's death from suicide, failed to state cause of action for violation of prisoner's Fourth and Fourteenth Amendment rights under § 1983, absent any allegation that police were under duty to follow prosecutor's orders or suggestions, and absent any allegation that prosecutor's statements caused police to hold prisoner in unreasonable fashion. Anderson v. Simon, C.A.7 (Ill.) 2000, 217 F.3d 472, rehearing and rehearing en banc denied, certiorari denied 121 S.Ct. 765, 531 U.S. 1073, 148 L.Ed.2d 666. Civil Rights 1395(7)

Allegation of police chief's complaint, that to his knowledge no other city official or citizen had ever been subjected to gag or banishment order, was insufficient to establish that he was treated differently from similarly situated non-minority employee, required for prima facie § 1983 case of race discrimination under equal protection clause. Jackson v. City of Columbus, C.A.6 (Ohio) 1999, 194 F.3d 737, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(8)

Driver failed to sufficiently allege claim that police officer stopped driver based on only driver's race and that custom and practice of officer's police department was to stop and detain people, without justification, if they were black, absent allegation that officer said something indicating racial motive or suggestion of fact, indicative of such pattern, that might be within driver's personal knowledge. Ford v. Wilson, C.A.7 (Ill.) 1996, 90 F.3d 245, certiorari denied 117 S.Ct. 1110, 520 U.S. 1105, 137 L.Ed.2d 311. Civil Rights 1395(6)

Allegations of plaintiff's *in forma pauperis*, *pro se* civil rights complaint and in plaintiff's response to magistrate judge's questionnaire failed to allege policy, practice or custom of city causing allegedly improper search during valid traffic stop, as required to impose liability on city police department, where plaintiff identified policy causing his damages as prohibition against excessive force by state and federal law. Macias v. Raul A. (Unknown), Badge No. 153, C.A.5 (Tex.) 1994, 23 F.3d 94, certiorari denied 115 S.Ct. 220, 513 U.S. 883, 130 L.Ed.2d 147. Civil Rights 1395(6)

Inmate's bald allegations that county district attorney and county sheriff failed to investigate and prosecute corrections officers who had threatened him were insufficient to state §§1983 claim for violation of equal protection, absent factual allegations that the defendants would have responded differently to another, similarly situated inmate. Lewis v. Gallivan, W.D.N.Y.2004, 315 F.Supp.2d 313. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

Relatives of murder victims adequately pleaded in §§ 1983 lawsuit that municipality and police officers in their official capacities deprived them of constitutional rights and did so pursuant to custom that amounted to illegal policy of cover-up, on allegations that lead detective in murder investigation had conflict of interest, deliberately removed evidence from murder scene and automobile of victim, repeatedly misled relatives, and acted in concert with other police officers, and police chief allowed for custom of permitting his officers to make loan shark collections, fostered detective's conflict of interest, and allowed for detective to conduct the investigation as lead detective despite such conflict. Kammeyer v. City of Sharonville, S.D.Ohio 2003, 311 F.Supp.2d 653. Civil Rights 1395(5)

Municipal liability may only be had in § 1983 actions in limited circumstances, including where an officer's constitutional violation is part of an ongoing practice or custom of the municipality. Avalos v. City of Glenwood, S.D.Iowa 2003, 269 F.Supp.2d 1091, reversed 382 F.3d 792, rehearing and rehearing en banc denied. Civil Rights 1351(1)

Municipal defendants, which were members of multijurisdictional drug task force, could be subject to liability under § 1983 for failure to protect victim from shooting by father who was duped by police into believing that his daughter was facing a prison sentence because of victim based on task force policies and procedures; actions of police detective, who was employed by one municipal member of task force, could be attributed to the task force since policies and procedures of the task force did not compel the officers to seek any form of approval, or give any further thought to sending angry parents as confidential informants on a drug sting operation while their daughter waited in jail expecting to go to prison for the next eighty years. Avalos v. City of Glenwood, S.D.Iowa 2003, 269 F.Supp.2d 1091, reversed 382 F.3d 792, rehearing and rehearing en banc denied. Civil Rights 1351(4)

In his suit under federal civil rights statute, plaintiff failed to allege that any official policies, customs, or practices of police department or city deprived him of his constitutional rights, and therefore plaintiff did not state claim against superintendent of police department in his official capacity. Cooper v. Smith, N.D.Ill.1996, 936 F.Supp. 515. Civil Rights 1358

Arrestee who brought § 1983 civil rights action against municipal police department, alleging that officers had arrested him without cause, beaten him, and denied him medical treatment, failed as a matter of law to state claim against department by not alleging the officers' conduct resulted from an official policy or practice or including any facts to support existence of such a policy beyond the single event of which he complained. Clark v. New York City Police Dept., E.D.N.Y.1996, 927 F.Supp. 61. Civil Rights 1351(4)

Police department employee sufficiently alleged sexual harassment claim against city where complaint charged custom or practice of discrimination at highest levels of police department policy making. Dirksen v. City of Springfield, C.D.Ill.1994, 842 F.Supp. 1117. Civil Rights 1395(8)

Plaintiff who alleged that police department did not notify him when it released his impounded car to towing company established, for purposes of § 1983 liability, that police department had a policy of failing to notify owners of vehicles when releasing them to third parties; in addition to plaintiff's uncontroverted allegation that police department did not notify him when it released his car, plaintiff also provided evidence of written policies of police department, which did not provide for notice to owner; moreover, policies were adopted by policymaker of city, its police chief. Johnson v. Bradshaw, D.Nev.1991, 772 F.Supp. 501, affirmed 5 F.3d 537. Civil Rights 1351(4)

Complaint alleging a "custom" among city police officers of violating rights of epileptics and charging police department policy or custom of failing to train police officers adequately to deal with epileptics stated cause of action under this section against city and its police department based on failure to properly treat plaintiff epileptic detainee, as plaintiff alleged a reckless disregard of his rights. Paul v. John Wanamakers, Inc., E.D.Pa.1984, 593

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42 U.S.C.A. § 1983

F.Supp. 219. Civil Rights 1395(6)

Complaint against county sheriff department and city police department, which alleged that plaintiff was falsely arrested on five different occasions, sufficiently pleaded a governmental policy or custom to state a claim under this section authorizing civil action for deprivation of rights under color of state law. Reese v. Milwaukee County Sheriff Dept., E.D.Wis.1980, 505 F.Supp. 88. Civil Rights 1396

Minor plaintiff, who was shot and wounded while business visitor in shop during robbery, and who based her claim of inadequate police protection on allegation that police department had policy of not responding to calls for assistance unless and until crime had actually been committed and on alleged failure to provide adequate police protection in high crime area, did not state claim against city for any constitutional due process or equal protection violation, such as failure to provide her with police protection because of her race, color or creed. Reiff v. City of Philadelphia, E.D.Pa.1979, 471 F.Supp. 1262. Civil Rights 1395(5)

Even if police officers lacked probable cause to arrest, arrestee's failure to specify any city policy or custom causing alleged constitutional violation precluded city's liability in arrestee's civil rights action. Manuel v. City of Columbus, C.A.6 (Ohio) 2004, 86 Fed.Appx. 852, 2004 WL 103008, Unreported. Civil Rights 1351(4)

4770. ---- Prisons, custom or usage, color of law allegations

State prisoner who alleged that he had been abused by fellow inmates and that correctional officers were present but declined to intervene could not obtain injunctive relief against warden and Commissioner of Department of Correction, since prisoner did not suggest that incident of which he complained was anything other than isolated one or that it resulted from any administrative policy established or maintained by warden or Commissioner. Gordon v. Leeke, C.A.4 (S.C.) 1978, 574 F.2d 1147, certiorari denied 99 S.Ct. 464, 439 U.S. 970, 58 L.Ed.2d 431. Prisons 4(2.1)

Pretrial detainee failed to state claim for official capacity liability under § 1983 in connection with conditions at county jail; detainee failed to allege that policy, custom or practice of defendant sheriff caused conditions at jail, design and funding of which was controlled by county board of commissioners, not sheriff's office. Stone-El v. Sheahan, N.D.Ill.1995, 914 F.Supp. 202. Civil Rights 1395(6)

4771. ---- Villages, custom or usage, color of law allegations

Motorist stated § 1983 cause of action against village for maintaining policy of inadequate training or supervision of police officers in violation of his constitutional rights. Lanigan v. Village of East Hazel Crest, Ill., C.A.7 (Ill.) 1997, 110 F.3d 467. Civil Rights 1395(5)

Allegations of actions by village implementing an official policy of harassment and encroachment upon free speech rights stated a claim for damages and injunctive relief against village. Heimbach v. Village of Lyons (Wayne County, N. Y.), C.A.2 (N.Y.) 1979, 597 F.2d 344. Civil Rights 1395(1)

Mere assertion that municipality has custom or policy is insufficient to hold municipality liable under § 1983, in absence of allegations of fact tending to support, at least circumstantially, such an inference. Pravda v. City of Albany, N.Y., N.D.N.Y.1997, 956 F.Supp. 174. Civil Rights 1394

Complaint which alleged no facts to support allegation that township had official policy and custom of permitting or encouraging illegal arrest and use of excessive force did not state claim against township under federal civil rights statute even though he alleged that the township failed to discipline, prosecute, or in any manner deal with known incidents of excessive force, refused to investigate complaints or previous incidents of excessive force, and failed and refused to properly train its officers in limitations on using stun guns and nightsticks. Carroll v. Bristol

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Tp., E.D.Pa.1993, 827 F.Supp. 332. Civil Rights 1395(6)

Plaintiff who claimed that arresting officers used excessive force and made false charges against him in connection with incident at restaurant stated a § 1983 claim against town; plaintiff alleged that town had a general policy of ignoring police misconduct and a particular policy, paid for with bribes, of siding with restaurant in law enforcement matters; moreover, although plaintiff made no references to any other incidents involving restaurant and police, only one incident was required when top policymakers were alleged to be involved. Hammond v. Town of Cicero, N.D.Ill.1993, 822 F.Supp. 512. Civil Rights 1351(4); Civil Rights 1395(5)

Terminated police officer could not maintain § 1983 civil rights action against police officers in their official capacities where his complaint failed to allege that constitutional deprivations emanated from execution of any policy or custom established by village. O'Donnell v. Village of Downers Grove, N.D.Ill.1987, 656 F.Supp. 562. Civil Rights 1395(8)

Civil rights complaint against chief of police and members of board of selectmen based upon injuries sustained by plaintiff in course of arrest failed to state claim under 42 U.S.C.A. § 1983 governing deprivation of civil rights, where plaintiff alleged no policy of town that caused him to be subjected to excessive force at hands of town's police officers, nor did he allege that failure to train rose to level of gross negligence or deliberate indifference. Scarpa v. Murphy, D.Mass.1985, 624 F.Supp. 33. Civil Rights 1395(6)

4772. ---- Miscellaneous custom or usage, color of law allegations

Civil rights complaint alleging that failure of parish police jury in Louisiana to provide adequate supervision and protection to its jail inmates resulted in inmate's being beaten by other inmates was insufficient to support claim against police jury, where inmate did not intimate that jail was in any respect physically inadequate, much less that police jury knew of its inadequacies, or that jail was underfunded, nor did inmate allege any official police jury custom or policy. O'Quinn v. Manuel, C.A.5 (La.) 1985, 773 F.2d 605. Civil Rights 1395(7)

Female former public employee's allegations that public employer had long engaged in a continuing course of conduct, policy, and custom whereby women had been treated differently than similarly situated men in terms and conditions of employment, including discipline and prosecution for wrongdoing, that described acts were a pattern and practice within operations of public employer and reflected policy and practice of employer and was a substantial factor forming basis of conduct of employer, adequately pled existence of local government policy or custom required to state a cause of action under § 1983 for a violation of former employee's constitutional rights. Orozco v. County of Monterey, N.D.Cal.1996, 941 F.Supp. 930. Civil Rights 1395(8)

Complaint which alleged that village employees acted under color of law in violating political activist's constitutional rights by interfering with his distribution of leaflets, that they interfered with his activities on the basis of his race, and that they violated his right to privacy, satisfied pleading requirements for § 1983 action; activist was not required to plead all elements of his claim or all of the facts necessary to support them. Chapman v. Stricker, C.A.7 (Ill.) 2003, 81 Fed.Appx. 77, 2003 WL 22717969, Unreported. Civil Rights 1395(1); Civil Rights 1396

4773. Defendants clothed with authority of state, color of law allegations

In order to show that defendants were acting "under color of state law," thus giving rise to action under this section, it is not necessary to allege that the action taken was authorized by the state as long as facts are stated which show that defendants were clothed with the authority of the state and were purporting to act thereunder. Sykes v. State of Cal. (Dept. of Motor Vehicles), C.A.9 (Cal.) 1974, 497 F.2d 197. Civil Rights 1396

For purposes of action under this section, requirement that defendants act "under state law" is satisfied if

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complaint alleges that alleged constitutional deprivations resulted from a misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law. Coggins v. Carpenter, E.D.Pa.1979, 468 F.Supp. 270. Civil Rights 1396

In order that one may seek redress pursuant to this section, for deprivation of rights, privileges or immunities secured by Constitution or laws of the United States, it is not necessary to allege that acts in question were authorized by state or its political subdivision; however facts must be stated showing that the defendants were clothed with authority of the state and were purporting to act thereunder. Penthouse Intern. LTD. v. Putka, N.D.Ohio 1977, 436 F.Supp. 1220. Civil Rights 1394

4774. Statutory language, color of law allegations

Though deprivation of rights must be under color of state law, custom, or usage, in order to give plaintiff cause of action under this section required factual situation may be described in complaint without the use of the particular words "under color of law." Geach v. Moynahan, C.A.7 (Ill.) 1953, 207 F.2d 714.

4775. Antipoverty organizations, color of law allegations

Allegation that plaintiff's employer, an antipoverty agency which was a private nonprofit corporation receiving federal funding with all funding requests approved by members of various local governments, showed a sufficient nexus between plaintiff's employer, which allegedly dismissed him for racial and religious reasons, and state to constitute action of employer state action within meaning of U.S.C.A.Const. Amend. 14 § 1. Robinson v. Price, C.A.5 (Tex.) 1977, 553 F.2d 918. Constitutional Law 254(4)

Complaint was sufficient to state claim that nonprofit corporation which was organized under state law as an antipoverty organization and its employees and directors deprived discharged employee of the corporation of his civil rights under color of state law and, therefore, federal court had jurisdiction over the case, even though complaint contained allegation that the corporation was federally financed and funded. Robison v. Wichita Falls & North Texas Community Action Corp., C.A.5 (Tex.) 1975, 507 F.2d 245. Civil Rights 1396; Federal Courts 223

4776. Attorneys, color of law allegations--Generally

Former inmate did not plead sufficient facts that, if true, would render private attorneys that represented him in criminal prosecution amenable to suit under § 1983; there was no allegation of complicity between those attorneys and any other state actors allegedly involved in former inmate's arrest and prosecution. Pete v. Metcalfe, C.A.5 (Tex.) 1993, 8 F.3d 214. Civil Rights 1396

Complaint, alleging that private attorney accompanied his client and police officers to plaintiff's apartment, consented to police officers' wrongful search thereof and their wrongful damaging and seizure of plaintiff's property, and that attorney failed to identify himself as private attorney when police identified themselves to apartment building superintendent, was sufficient to state claim under this section. Fine v. City of New York, C.A.2 (N.Y.) 1975, 529 F.2d 70, on remand 71 F.R.D. 374. Civil Rights 1395(6)

Former husband who was civilly arrested for failure to pay alimony as ordered by state court divorce decree failed to state § 1983 claim against former wife's attorney, who petitioned for arrest, because husband failed to sufficiently plead that attorney conspired with state officials in effecting civil arrest absent any facts tending to show existence of tainted agreement, such as "backroom" meeting between alleged coconspirators. MacFarlane v. Smith, D.N.H.1996, 947 F.Supp. 572, affirmed 129 F.3d 1252. Civil Rights 1396

Complaint, which merely alleged that attorney rendered professional legal advice to school district, did not allege

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conduct constituting action "under color of state law" and, thus, did not state a claim against attorney on which relief could be granted under this section in favor of permanent employee of school district, who was arrested for a series of thefts at school district offices and shortly thereafter terminated from his employment without any hearing. Goetz v. Windsor Cent. School Dist., N.D.N.Y.1984, 593 F.Supp. 526. Civil Rights 1396

Allegation that bank's attorney was able to abuse or usurp judicial power to violate plaintiffs' constitutional rights when bank obtained ex parte restraining order to prevent plaintiffs from selling business inventory did not meet minimum standard of particularity in detailing alleged conspiracy between bank, its officers and judges to deprive plaintiffs of their constitutional rights, and, therefore, did not satisfy "under color of state law" element of civil rights action. Dannhausen v. First Nat. Bank of Sturgeon Bay, E.D.Wis.1982, 538 F.Supp. 551. Conspiracy 18

Plaintiff failed to allege facts which, if proven, would state a cause of action under this section governing deprivation of constitutional rights under color of state law where he alleged that his constitutional rights were violated by the failure of his attorney in criminal action to perfect an appeal on his behalf, in that attorney, as a private citizen, could not be sued under this section for acts or omissions during representation of plaintiff. Anderson v. Byars, W.D.Okla.1980, 505 F.Supp. 32. Civil Rights 1396

Allegations that attorney was retained by plaintiff to represent her and accepted retainer therefor, but abandoned her on day of trial and then filed false sworn document with appellate division concerning matter were insufficient to support claim for relief against attorney under this section governing civil action for deprivation of rights, where amended complaint contained no allegation that attorney was, at time of question, public official, and there was no suggestion that his alleged conduct was performed in concert with public officials. Gutierrez v. Vergari, S.D.N.Y.1980, 499 F.Supp. 1040. Civil Rights 1395(1)

4777. ---- Court-appointed attorneys, color of law allegations

Prisoner's civil rights complaint adequately stated claim against court-appointed attorney and against agents of Federal Bureau of Investigation, even though the attorney and the agents might not themselves have acted under color of state law, where the complaint alleged that the agents and the attorney were part of single conspiracy involving several other defendants who did act under color of state law. Williams v. Rhoden, C.A.5 (Fla.) 1980, 629 F.2d 1099. Conspiracy 18

Plaintiff's complaint brought under this section against attorneys, judges, a prosecuting attorney and a local police officer, alleging that their violations of his civil rights led to his incarceration, failed to set forth facts which would enable him to recover money damages, in that conduct of plaintiff's court-appointed counsel in representing plaintiff did not constitute state action under color of state law, alleged improprieties of prosecuting attorney were done within his official capacity and were immune from suit under this section, any actions taken by judge presiding over plaintiff's case were not alleged to have been outside of his judicial capacity and were thus not a proper subject of the suit, and plaintiff failed to allege facts that would allow him to make out a cause of action against the police officer. Fast v. Wead, N.D.Ohio 1981, 509 F.Supp. 744. Civil Rights 1395(5)

4778. ---- District attorneys, color of law allegations

An arrestee stated a cognizable § 1983 claim against a county based on allegations that the county encouraged the district attorney to demand releases of civil rights claims against county and its employees arising from police misconduct before dismissing baseless criminal charges; district attorney did not follow a state dictate if he engaged in such practice and, thus, was not per se a state official for purposes of § 1983 and district attorney could have been acting as the county's agent for purposes of § 1983. Sassower v. City of White Plains, S.D.N.Y.1990, 742 F.Supp. 157. Civil Rights 1395(5)

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42 U.S.C.A. § 1983

4779. ---- Prosecutors, attorneys, color of law allegations

Complaint stated claim for relief under this subchapter for deprivation of rights under color of state law on theory that one defendant, as special prosecutor, undertook investigation and prosecution of plaintiff for purposes of extortion and thereby abused process, that second defendant was able to perform key role in scheme because he was clothed with power of district attorney's office and that third defendant, who allegedly made false statements providing basis for criminal process, had conspired with defendant public officials. Jennings v. Shuman, C.A.3 (Pa.) 1977, 567 F.2d 1213. Civil Rights 1396; Conspiracy 18

4780. ---- Public defenders, attorneys, color of law allegations

Claim that public defender failed to file motion to correct sentence failed to state cause of action under this section, where complaint revealed that public defender informed plaintiff that she had been appointed to represent him solely in probation revocation proceeding and where, because of limited scope of public defender's authority to represent plaintiff, any action regarding correction of plaintiff's sentence, including failure to file motion, was outside scope of her authority and therefore not under color of state law. Singleton v. Hoester, E.D.Mo.1980, 505 F.Supp. 54. Civil Rights 1395(5)

4781. ---- Miscellaneous attorneys, color of law allegations

In pro se complaint filed by state prisoner, allegation that associate city circuit counsel offered to drop charges against plaintiff in 1969, did not appear to be within associate city counsel's duties and therefore was not under color of law and allegation did not state cause of action for deprivation of plaintiff's civil rights. Tyler v. Ryan, E.D.Mo.1976, 419 F.Supp. 905. Civil Rights 1396

4782. Banks, color of law allegations

Plaintiffs' allegations in § 1983 action that bank officer executed fraudulent affidavit in support of bank's position in replevin action, that petition in replevin contained numerous material false representations, that bank officer and bank fraudulently prepared, filed, prosecuted, and executed petition, and that bank and bank officer knew or should have known that order of delivery issued by circuit court together with writ in replevin and judgment was fraudulently procured by bank and bank officer were nothing more than allegations of private misuse of Missouri replevin statutes by bank officer and bank, and thus petitioner failed to state claim for relief under § 1983. Hassett v. Lemay Bank and Trust Co., C.A.8 (Mo.) 1988, 851 F.2d 1127. Civil Rights 1396

Civil rights plaintiff's contention that bank violated his right to privacy by releasing copies of his records, in form of cancelled checks, to police officer without subpoena or other legal process failed to state claim against bank under statute governing deprivation of civil rights, where plaintiff failed to allege that any actions of bank were taken under color of state law. Fullman v. Graddick, C.A.11 (Ala.) 1984, 739 F.2d 553. Civil Rights 1396

There was sufficient allegation of action under color of state law so as to state a claim under this section in view of allegations that defendant bank and its counsel agreed to institute criminal proceedings against plaintiff to collect a civil debt owing the bank and that acting pursuant to such agreement defendants induced and persuaded a county district justice and law enforcement officer to prosecute plaintiff and to file necessary papers and, also, complaint met the specificity requirements of pleading civil rights cases. Arment v. Commonwealth Nat. Bank, E.D.Pa.1981, 505 F.Supp. 911. Civil Rights 1396; Federal Civil Procedure 633.1

4783. Bar associations, color of law allegations

Class action by law student members of American Bar Association on behalf of themselves and others attending law schools not approved by Association alleging discriminatory amendment of bylaws depriving plaintiffs of

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rights as members of Association failed to state claim for relief on theory that United States government had become interdependent with Association and involved in its business to such extent as to make Association's amendment of bylaws an act of government, an unconstitutional act of discrimination, and a deprivation of property in violation of U.S.C.A.Const. Amend. 5, in absence of indication that the government had intruded into management and operation of the Association. Jackson v. American Bar Ass'n, C.A.9 (Cal.) 1976, 538 F.2d 829. Constitutional Law 278.5(1)

4784. Boards of education, color of law allegations

Complaint alleging violation of due process and other rights in issuance to professor of terminal contract rather than regular contract stated cause of action against Board of Regents under this section, since issuance of contract represented a matter of official action by the Board. Harris v. Arizona Bd. of Regents, D.C.Ariz.1981, 528 F.Supp. 987. Civil Rights 1395(8)

Complaint of nontenured college instructor whose employment was not renewed, which failed to allege that any of actions of defendant institutions or officials were undertaken in execution of a government's policy or custom, failed to state claim against city board of higher education under this section prohibiting conspiracies to deprive persons of civil rights. Jones v. Kneller, E.D.N.Y.1979, 482 F.Supp. 204, affirmed 633 F.2d 204, certiorari denied 101 S.Ct. 318, 449 U.S. 920, 66 L.Ed.2d 147. Conspiracy 18

4785. Boards of social services, color of law allegations

Complaint by recipients of Aid to Families with Dependent Children payments, alleging that payments were reduced because of the unconstitutional or illegal claim of credit by the state and local administrative agencies for outside income and other resources available to only one child in family group, was sufficient to state a cause of action cognizable under this section relating to persons deprived of rights secured by Constitution and laws and was within the jurisdiction of district court under § 1343 of Title 28 giving district courts original jurisdiction of civil action to redress deprivation of such rights under color of any state law, notwithstanding claim that the actions of state officials were under federal law. Gilliard v. Craig, W.D.N.C.1971, 331 F.Supp. 587, affirmed 93 S.Ct. 39, 409 U.S. 807, 34 L.Ed.2d 66, rehearing denied 93 S.Ct. 892, 409 U.S. 1119, 34 L.Ed.2d 704. Civil Rights 1327

4786. Building or construction companies, color of law allegations

Alleged facts that defendant construction companies received a portion of their income from projects financed in whole or in part by state governmental agencies and that defendant corporations were protected and promoted as "legal entities" by virtue of government statutes and regulation were insufficient to show "state action" for purposes of this subchapter, in connection with alleged discrimination against black carpenter, in absence of any alleged existence of connection between the government's funding and regulation of defendants and their alleged discriminatory conduct. Bethel v. Jendoco Const. Corp., C.A.3 (Pa.) 1978, 570 F.2d 1168. Civil Rights 1326(11)

In civil rights class action brought against builders and vendors of homes in metropolitan area by black purchasers who were allegedly discriminated against in respect to prices and terms, the lack of state action emasculated those portions of the complaint dealing with this subchapter creating a federal cause of action against persons whose misconduct under color of state law violates the constitutional rights of another; also, since U.S.C.A.Const. Amend. 14 § 1 requires some activity by the state or one acting under color of its law, there could be no valid claim made independently under U.S.C.A.Const. Amend. 14 § 1. Clark v. Universal Builders, Inc., N.D.Ill.1976, 409 F.Supp. 1274. Civil Rights 1395(3)

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42 U.S.C.A. § 1983

4787. Child welfare personnel, color of law allegations

Allegations that defendant acted in concert with chief deputy juvenile officer and as agent of officer in transfer of custody, care, and control of child from his parents to defendant without court order or other legal authority and in violation of state law sufficiently alleged that she acted under color of state law. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1326(5)

Estate of prison inmate who was shot and killed by correctional officer during altercation between inmates at state prison failed to show that prison official responsible for articulating, copying, and distributing use of force policy acted with deliberate indifference to inmate's constitutional rights by authorizing policies and practices that were different from policy as written, as would support estate's deliberate indifference claim under § 1983 against official, where estate failed to allege that official knew of and disregarded substantial risk to inmate's safety while overseeing articulation of policy. Estate of Torres v. Terhune, E.D.Cal.2002, 2002 WL 32107989, Unreported. Civil Rights 1358

4788. City councils, color of law allegations

Claim that city council denied due process and equal protection in awarding cable television contract alleged sufficient state action to state cause of action under this section. Three Rivers Cablevision, Inc. v. City of Pittsburgh, W.D.Pa.1980, 502 F.Supp. 1118. Civil Rights 1395(1)

Inmate would be denied leave to amend his § 1983 complaint insofar as complaint related to five inmate grievance complaint forms; amendment would be futile inasmuch as forms were not timely filed and therefore failed to satisfy administrative exhaustion requirement under Prison Litigation Reform Act (PLRA). Woodrich v. Greiner, S.D.N.Y.2003, 2003 WL 22339264, Unreported. Federal Civil Procedure 851

4789. Conspiracy, color of law allegations

Allegations of police officer's complaint, that member of town political party committee, in "close cooperation" with defendant town officials, violated officer's constitutional rights, sufficiently alleged action under color of state law, as required to state cause of action under §§ 1983. Kelly v. Marchiano, S.D.N.Y.2004, 332 F.Supp.2d 687. Civil Rights 1396

Apartment resident stated claim of conspiracy to violate federally protected rights, cognizable under § 1983, by alleging that other apartment residents and police officers, including one resident and one officer who were romantically involved, conspired to drive resident from apartment by making false charges against him and arresting him based on charges, regardless of whether the traditional pleading requirements for conspiracy claims or the arguably less stringent standards of *Swierkiewicz* applied. Bullard v. City of New York, S.D.N.Y.2003, 240 F.Supp.2d 292. Conspiracy 18

Agent of car dealership that employed motorist who was arrested while driving one of dealership's vehicles did not act under color of state law by conspiring with police officer to violate motorist's constitutional rights when he told officer that motorist did not have permission to drive vehicle and that he wanted to press charges, and thus neither agent nor car dealership were liable under § 1983. Smith v. City of Gretna Police Dept., E.D.La.2001, 175 F.Supp.2d 870. Civil Rights 1326(5); Civil Rights 1326(9)

A claim that a private party acted in concert with or conspired with state agents, as would allow it to be held liable under § 1983 for acting under color of state law, requires an allegation of facts showing particularly what defendants did to carry the conspiracy into effect, whether such acts fit within the framework of the conspiracy alleged, and whether such acts, in the ordinary course of events, would proximately cause injury to the plaintiff. Otani v. City and County of Haw., D.Hawai'i 1998, 126 F.Supp.2d 1299, affirmed 246 F.3d 675. Civil Rights

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42 U.S.C.A. § 1983

1326(5); Civil Rights 1396

Neighbors did not conspire with state authorities to sufficient degree to render them "state actors" against whom plaintiff could bring § 1983 action for wrongful arrest due to fact that they furnished information to police that ultimately led to plaintiff's allegedly wrongful arrest. Torgerson v. Writsel, E.D.N.Y.2000, 109 F.Supp.2d 107, affirmed 121 Fed.Appx. 893, 2005 WL 195103. Civil Rights 1326(5)

Allegations by opponent of judge's election claiming that police officer threatened arrest in order to allow judge's spouse to remove flyers placed by opponent on car windshields and that spouse conspired with police asserted state action necessary for liability of spouse under § 1983. Chapman v. Village of Homewood, N.D.Ill.1997, 960 F.Supp. 127. Civil Rights 1326(5)

Allegations of conspiracy between court-appointed attorney in postconviction case and public defender in underlying state trial did not satisfy state action requirement for § 1983 claim. Stubbs v. Hunter, D.S.C.1992, 806 F.Supp. 81. Civil Rights 1326(10)

Civil rights claims of conspiracy that are vague and provide no basis in fact must be dismissed. Conway v. Garvey, S.D.N.Y.2003, 2003 WL 22510384, Unreported, affirmed 117 Fed.Appx. 792, 2004 WL 2786380. Conspiracy 18

4790. Court reporters, color of law allegations

Attorney stated claim for damages under § 1983 against court reporter for Connecticut superior court in her personal capacity for her alleged failure to file certain documents in connection with attorney's appeal from legal malpractice judgment so as to survive motion to dismiss; attorney adequately alleged that reporter, when she allegedly failed to file attorney's appeal certifications, was acting under color of state law and although thrust of attorney's argument revolved around reporter's alleged negligence, complaint alleged, in the alternative, that reporter's actions were willful. Presnick v. Santoro, D.Conn.1993, 832 F.Supp. 521. Civil Rights 1395(1); Civil Rights 1396

4791. Churches, color of law allegations

Absent an allegation of a deprivation of rights by one acting under color of state law, plaintiff failed to state a cause of action under this section by alleging conduct on part of defendant church and others in holding her in peonage and involuntary servitude. Turner v. Unification Church, D.C.R.I.1978, 473 F.Supp. 367, affirmed 602 F.2d 458. Civil Rights 1396

4792. Cities, color of law allegations

Allegations in civil rights complaint that defendant city, a municipality chartered in Ohio, established and operated city jail in which plaintiffs were allegedly injured as pretrial detainees, that jail was negligently constructed, equipped and maintained, and that defendant city in general acted under color of law was sufficient to comply with rules in Gomez and Monroe requiring civil rights plaintiffs to include allegations that each defendant acted under color of law. Watson v. McGee, S.D.Ohio 1981, 527 F.Supp. 234. Civil Rights 1395(7)

4793. Civic associations, color of law allegations

Complaint alleging that civic association and its members had conspired and acted to harass and delay Hasidic Jews who sought to establish a housing development on land they owned in New York and that such amounted to constitutional deprivations failed to state cause of action under this section inasmuch as complaint alleged no state

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or municipal activity and all defendants were private parties notwithstanding claim that active civic association had no purpose but to work in and through government and hence use of civic association as a vehicle for repression adequately satisfied color of state law requirement. Weiss v. Willow Tree Civic Ass'n, S.D.N.Y.1979, 467 F.Supp. 803. Civil Rights 1395(3)

4794. Contractors and subcontractors, color of law allegations

Owner of disadvantaged trucking business failed to state claim against private contractors and trucking subcontractors under sections 1981 and 1983 in connection with award of subcontracting work on freeway project; owner lumped all contractors and subcontractors together in single, broad allegation and did not allege basis of claim against each contractor and subcontractor, and owner failed to allege that contractors and subcontractors acted under color of state law. Gauvin v. Trombatore, N.D.Cal.1988, 682 F.Supp. 1067. Civil Rights 1395(1); Civil Rights 1396

Prisoner's allegations that private companies under contract to provide medical services to inmates negligently supervised physician employees were insufficient to support inmate's civil rights action, absent allegations that an official policy of the companies caused the violation. Bond v. Cullinan, C.A.7 (Ill.) 2004, 90 Fed.Appx. 164, 2004 WL 363349, Unreported. Civil Rights 1339

4795. Contractor associations, color of law allegations

Assuming the truth of allegations of complaint, brought under this section alleging racial discrimination on part of contractors' association and union, they were insufficient to establish that the acts complained of were committed under color of state law. Allen v. Pipefitters Local Union No. 208, of Denver, Colorado of United Ass'n of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of U. S. and Canada (AFL-CIO), D.C.Colo.1972, 56 F.R.D. 473. Civil Rights 1396

4796. Corporations, color of law allegations

Plaintiffs did not state § 1983 claim because the conduct complained of was solely that of private individuals or corporations and was in no way taken under "color of law." Scarborough v. Brown Group, Inc., W.D.Tenn.1995, 935 F.Supp. 954. Civil Rights 1326(4)

Where complaint did not contain any clarification or specification as to how employment decisions of private corporations were "under color of law," civil rights complaint against the corporations did not state a claim for relief. Foreman v. General Motors Corp., E.D.Mich.1979, 473 F.Supp. 166. Civil Rights 1396

Complaint in which former supervisory employees of subsidiary corporation alleged that they had been discharged because of their membership in labor organization failed to state claims against subsidiary and parent corporations within jurisdiction of this section, absent allegation that corporations had acted jointly or willingly with the state or as agents of the state. Rodriguez v. Conagra, Inc., D.C.Puerto Rico 1974, 387 F.Supp. 951, affirmed 527 F.2d 540. Civil Rights 1395(8)

Where plaintiff's complaint charging that he had been arrested pursuant to warrant charged out by defendant as president of corporation for feloniously removing television from its residence, though plaintiff had not in fact done so, did not aver that defendant was state official or was acting under color of state authority, the complaint did not state a cause of action under this section. Motley v. Virginia Hardware & Mfg. Co., W.D.Va.1968, 287 F.Supp. 790. Civil Rights 1396

4797. Educational institutions, color of law allegations

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42 U.S.C.A. § 1983

Plaintiff did not state cause of action in civil rights suit on ground that rejection of his application by law school of defendant university was result of arbitrary selection process which violated plaintiff's rights to due process and equal protection of laws, in absence of plaintiff alleging any nexus whatsoever between any rule, regulation or conduct on part of Commonwealth and the university's admissions policy. Krohn v. Harvard Law School, C.A.1 (Mass.) 1977, 552 F.2d 21. Civil Rights 1396

Complaint alleging that University of Louisville was municipal institution supported by public funds and that plaintiffs were dismissed from university by procedures which violated due process adequately alleged that defendants acted under color of state law within meaning of this section. Brown v. Strickler, C.A.6 (Ky.) 1970, 422 F.2d 1000. Civil Rights 1396

Former assistant professor stated First Amendment claim under § 1983 against dean and faculty members of state university school of architecture in their individual capacities, notwithstanding contention that professor failed to allege in § 1983 count of complaint that dean and faculty members were acting under color of state law; professor alleged elsewhere in complaint that faculty members were acting under color of state law, professor alleged that dean and faculty members denied him tenure was holding him to different standard of review and considering issues other than merit in tenure deliberations, and dean and faculty members could not have conspired to deny professor tenure unless they possessed some state authority over hiring decisions. Collin v. Rector and Bd. of Visitors of University of Virginia, W.D.Va.1995, 873 F.Supp. 1008. Civil Rights 1396

Former law student, who suffered from epilepsy, failed to state claim under § 1983 against private law school for discrimination on basis of disability and for retaliation for his complaints; although student alleged that law school was acting in compliance with specific laws and court rules, he did not allege that law school ever acted in any governmental capacity or in conjunction with any governmental agency. Rothman v. Emory University, N.D.Ill.1993, 828 F.Supp. 537. Civil Rights 1395(2)

Mere allegation that private university received federal financial assistance was insufficient to establish requisite state action for purpose of suit under this section seeking plaintiff's readmission and other relief in connection with course grading. Rivera Carbana v. Cruz, D.C.Puerto Rico 1984, 588 F.Supp. 80, affirmed 767 F.2d 905. Civil Rights 1396

Although complaint alleging that university and union jointly and willfully discriminated against male professors on basis of sex by paying them lower salaries than those paid to female professors of less or equal educational qualifications and/or experience was deficient in alleging state action, university's activities satisfied requirement of state action under this section, since university was fully accredited institution of higher education, was a part of Commonwealth system of higher education and was initially organized and reorganized pursuant to 24 Pa.P.S. § 2510-1 et seq. Lyon v. Temple University of Com. System of Higher Ed., E.D.Pa.1981, 507 F.Supp. 471. Civil Rights 1396

Complaint alleging that dismissal of plaintiff tenured teacher violated this section and Constitution was not subject to dismissal for failure to allege that defendant acted under color of state law, where in the complaint plaintiff described each defendant, all of whom were either officials of county school district or members of county school board, and his official position. Marshall v. Spangler, W.D.Va.1975, 397 F.Supp. 200. Federal Civil Procedure 1788.6

Complaint wherein plaintiff alleged that she was deprived of tenure in pay as an associate professor at institution because of her sex in violation of U.S.C.A.Const. Amend. 14 did not state claim on which relief could be granted against institution under this section, in that, though it was alleged that institution co-operated with state and was dependent on its approval in many respects, "state action" was not alleged, in absence of allegation of state involvement of any of personnel practices complained of. Cohen v. Illinois Institute of Technology, N.D.Ill.1974, 384 F.Supp. 202, affirmed 524 F.2d 818, certiorari denied 96 S.Ct. 1683, 425 U.S. 943, 48 L.Ed.2d 187. Civil

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42 U.S.C.A. § 1983

Rights 1396

Former college professor's allegations that college against which she brought sex discrimination action operated by virtue of state's grant of permission by way of its licensing procedures and that the college received financial advantages from the state including exemptions from tax liability, although they lacked specificity, were sufficient to preclude dismissal of civil rights action on theory that there was no state action involved. Presseisen v. Swarthmore College, E.D.Pa.1976, 71 F.R.D. 34. Federal Civil Procedure 1788.6

4798. Employers, color of law allegations

Employee could not maintain action against employer under this section absent allegation that employer exercised direct control over activities of the general public and that, therefore, state action was involved. DeMatteis v. Eastman Kodak Co., C.A.2 (N.Y.) 1975, 511 F.2d 306, on rehearing 520 F.2d 409. Civil Rights 1396

A plaintiff can be said to have sufficiently pled a due process violation in a civil rights action under §§ 1983 when he or she alleges first that he or she had a property interest as defined by state law and, second, that the defendants, acting under color of state law, deprived him or her of that property interest without constitutionally adequate process. Gutierrez v. Molina, D.Puerto Rico 2006, 447 F.Supp.2d 168. Civil Rights 1324

Employee did not establish § 1983 claim, absent allegation that employer was acting under color of state law in connection with any of the actions taken against employee. Marthel v. Bridgestone/Firestone, Inc., M.D.Tenn.1996, 926 F.Supp. 1293. Civil Rights 1326(11)

Hispanic state employee's allegations that her supervisor's refusal to promote her and his harassing actions toward her were under color of state or local law and were in retaliation against her because of her advocacy of equal protection for members of the Hispanic race stated a claim under civil rights statute [42 U.S.C.A. § 1983] upon which relief could be granted. Saldivar v. Cadena, W.D.Wis.1985, 622 F.Supp. 949. Civil Rights 1395(8)

Where plaintiff's allegations in complaint and in his reply to private accounting firm's motion to dismiss and exhibits annexed thereto, merely described general scenario, based on speculations and conjectures, which imputed to private accounting firm participation as party in alleged conspiracy solely for its having submitted audit report with conclusions adverse to civil rights plaintiff's interest, but plaintiff failed to allege that private accounting firm acted under color of state law, complaint failed to state cause of action under statutes prohibiting deprivation of civil rights and conspiracy to interfere with civil rights. Betances v. Quiros, D.C.Puerto Rico 1985, 603 F.Supp. 201. Civil Rights 1396; Conspiracy 18

Employee's complaint under this section against former employer for discharging him for failing to accept his paychecks with tax withheld failed to state claim for relief where there was no allegation that employer was acting under color of state law in discharging employee. Jenkins v. Rockwell Intern. Corp., D.C.Nev.1984, 595 F.Supp. 399. Civil Rights 1396

Federal employee who alleged employment discrimination was not entitled to assert an action under this section, since employee made no claim that defendants were operating under color of state law. Munoz v. Orr, W.D.Tex.1983, 559 F.Supp. 1017. Civil Rights 1327

4799. Employees, color of law allegations

Terminated hotel security officer failed to state § 1983 claim against employees of hotel as a matter of law, where he did not allege that conduct of hotel employees was "under color of any statute * * * of any state." Jones v. Adam's Mark Hotel, S.D.Tex.1993, 840 F.Supp. 66. Civil Rights 1396

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42 U.S.C.A. § 1983

4800. Employment agencies, color of law allegations

Migratory workers who brought action under Wagner-Peyser Act, § 49 et seq. of Title 29, stated a claim for which relief could be granted either against employer, against county sanitarian, or against employees of Florida State Employment Service, where state action necessary under this section relating to civil action for deprivation of rights clearly existed as to all defendants. Gomez v. Florida State Employment Service, C.A.5 (Fla.) 1969, 417 F.2d 569. Labor And Employment 2724

4801. Estate administrators, color of law allegations

There was no state action or color of law in the acts of administrator of an estate who was charged with the settlement of private individual's affairs, despite fiduciary obligations to creditors and the state, and certainly none on the part of purchasers of real estate in a sale by the administrator approved by state court, where complaint was only about administrator's alleged misuse of probate procedures and not an attack on the procedural scheme created by I.C. § 29-1-1 et seq. and thus widow of decedent could not maintain action under this section against administrator and a purchasers on theory that actions taken, allegedly without notice to her, constituted deprivation of due process. Loyd v. Loyd, C.A.7 (Ind.) 1984, 731 F.2d 393. Civil Rights 1326(9)

4802. Guardians, color of law allegations

Allegations that plaintiff's daughter and her husband through court proceedings and in deprivation of due process secured plaintiff's confinement in mental hospital did not allege conduct taken "under color of" state law, and thus did not state claim for relief under this section, despite contention that daughter initiated commitment proceedings in her official capacity as state-appointed guardian. Dahl v. Akin, C.A.5 (Tex.) 1980, 630 F.2d 277, certiorari denied 101 S.Ct. 1977, 451 U.S. 908, 68 L.Ed.2d 296. Civil Rights 1396

4803. Hospitals, color of law allegations

Complaint alleging that hospital was financed in part by federal funds and was the only one in the county and that lease of hospital land from governing body of county for nominal consideration required that board of directors contain at least one member from each magisterial district in county and that hospital foundation assume obligations made by county in securing federal funds and that lease made provisions with respect to maintenance and operation of hospital sufficiently alleged state action for purposes of action for deprivation of rights of doctor who alleged he was denied due process and equal protection when he was dismissed from staff. O'Neill v. Grayson County War Memorial Hospital, C.A.6 (Ky.) 1973, 472 F.2d 1140. Civil Rights 1396

Allegations that both physician who treated paralyzed patient and hospital at which patient was treated were licensed by state, and that hospital was extensively regulated, received funding from both state and federal sources, and had monopoly as a rehabilitation facility, were insufficient to establish "state action" necessary to state federal civil rights claim with respect to denial of patient's request to remove gastronomy tube; hospital was private nonprofit corporation and treating physician was a private individual who did not receive any public funds. Ross v. Hilltop Rehabilitation Hosp., D.Colo.1987, 676 F.Supp. 1528. Civil Rights 1396

Allegation that mental health center, its director and staff doctors negligently treated patient who subsequently shot and killed plaintiffs' decedents failed to state cause of action under this section, where defendants were employees of private concerns, there was no allegation that supposed "public function" which defendants performed was traditionally exclusive prerogative of state, and defendants, even if arguably acting under color of state law, were not responsible for release of patient from state custody. Beck v. Kansas University Psychiatry Foundation, D.C.Kan.1984, 580 F.Supp. 527, reconsideration denied 671 F.Supp. 1552. Civil Rights 1395(1); Civil Rights 1396

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42 U.S.C.A. § 1983

Plaintiff's allegation that university and its medical school received 40 percent of their funding from the state was sufficient to allege state action for purposes of plaintiff's claims brought under U.S.C.A.Const. Amend. 14 and this section in which plaintiff charged medical school with engaging in discriminatory hiring and employment practices. Davidson v. Yeshiva University, S.D.N.Y.1982, 555 F.Supp. 75. Civil Rights 1396

Ophthalmologist, who alleged no facts to support claim that state regulated or in any way controlled personnel decisions of hospital, and who merely alleged at most that substantial portion of hospital's funding came from state and that state generally regulated hospital matters unrelated to hiring decisions, failed to demonstrate that hospital and its officers acted under color of state law when they allegedly discriminatorily denied his application for staff privileges as required to support claim under this section. Pao v. Holy Redeemer Hosp., E.D.Pa.1982, 547 F.Supp. 484. Civil Rights 1396

Plaintiffs' allegations of conspiracy with state judge who issued order removing plaintiffs' son from their custody and appointing guardian to consent to medical treatment and to administration of blood transfusions to child did not suffice to show that private hospital had acted in concert with state or its agents so as to meet state action requirement of this subchapter providing for liability for deprivation of rights under color of state law. Staelens v. Yake, N.D.Ill.1977, 432 F.Supp. 834. Conspiracy 18

In determining whether plaintiff, alleging that agents of defendant hospital conspired unlawfully to remove plaintiff's staff privileges at hospital, stated a cause of action for relief under this section, controlling consideration was whether there was a sufficient relationship between alleged private entity (hospital) and state to make private entity a de facto public body, activities of which constituted state action. Spencer v. Community Hospital of Evanston, N.D.Ill.1975, 393 F.Supp. 1072. Conspiracy 7.5(3)

Employee of hospital under contract to city, terminated from position as nurse at city prison, failed to state § 1983 claim arising from termination against city corrections official and against hospital's human resources director, by alleging mere laundry list of constitutional amendments employee felt were violated by corrections department investigation and by termination, without including any facts to back up those claims. Pierce v. Marano, S.D.N.Y.2002, 2002 WL 1858772, Unreported. Civil Rights 1395(8)

4803A. Health care providers, color of law allegations

Social Security claimants who sued mental health care providers, alleging misappropriation of benefits payments while acting as representative payees, failed to aver that providers were acting under color of state law, as required to state claim under federal civil rights statute; complaint did not allege that providers' status as payees was necessarily contingent on their providing mental health services to claimants on behalf of District of Columbia. Bates v. Northwestern Human Services, Inc., D.D.C.2006, 2006 WL 3590049. Civil Rights 1396

4804. Indians, color of law allegations

Allegedly unconstitutional arrests, arising out of trial court orders, but executed by agents of Bureau of Indian Affairs empowered to provide law enforcement protection and enforce city ordinances, were under color of state law, as required to state § 1983 claim. Evans v. McKay, C.A.9 (Mont.) 1989, 869 F.2d 1341. Civil Rights 1327

Complaint filed by enrolled member of the Eastern Band of Cherokee Indians who sought a writ of mandamus against federal officials and declaratory and injunctive relief against the Tribal Council and its members and officials relative to her possessory rights in tribal lands did not state a claim under either this section governing civil actions for depriving persons of rights or privileges or § 1985 of this title governing deprivation of rights as granting of charter of incorporation to the tribe by the State of North Carolina did not make the Tribe an arm or agency of the state and since plaintiff and all of the Indian defendants were members of the tribe and were Indians,

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there could be no meritorious claim of invidious racial discrimination. Toineeta v. Andrus, W.D.N.C.1980, 503 F.Supp. 605. Civil Rights 1395(1)

Where nonmembers of Lac Courte Oreilles Band of Lake Superior Chippewa Indians who owned property on or around reservation brought action against Tribal Governing Board of Band challenging promulgation and enforcement of tribal conservation code and tribal court code insofar as codes infringed upon plaintiffs' hunting, fishing and riparian rights but where complaint did not allege that defendants acted under color of any statute, ordinance, regulation, custom, or usage of any state or territory, complaint failed to state claim under this section. Citizens League For Civil Rights, Inc. v. Baker, W.D.Wis.1978, 464 F.Supp. 1389. Civil Rights 1395(1)

Complaint, which sought declaratory and injunctive relief and monetary damages against named officials of the Seneca Nation of Indians and against a corporation negotiating with the Nation to locate a factory in an industrial park to be developed by the Nation on its reservation, stated no claim, on which relief could be granted, for violation of this section relating to deprivation of rights by an act under color of state law, since there was no allegation that the corporation was acting under color of state law, nor could it be said that the Nation was a state instrumentality or that the Indian defendants were acting under color of state law. Seneca Constitutional Rights Organization v. George, W.D.N.Y.1972, 348 F.Supp. 51. Civil Rights 1396

4805. Insurance companies, color of law allegations

Life policy beneficiary, charging credit investigator, state of Florida and six insurers with abridging his constitutional rights to privacy and freedom of speech, alleged the requisite state action necessary to a claim under this section as he charged all defendants with conspiring to deprive him of his civil rights. Fadjo v. Coon, C.A.5 (Fla.) 1981, 633 F.2d 1172. Conspiracy 18

Complaint which alleged that defendant insurer refused to sell disability insurance to women containing the same terms and conditions available to men solely on the basis of sex sufficiently set forth requirements of state action, under this section, in light of the regulatory scheme enacted by the Commonwealth of Pennsylvania relating to insurance companies. Stern v. Massachusetts Indem. & Life Ins. Co., E.D.Pa.1973, 365 F.Supp. 433. Civil Rights 1396

4806. Internal Revenue Service, color of law allegations

Taxpayer failed to state § 1983 cause of action arising from Internal Revenue Service's attempt to collect past due taxes; taxpayer did not allege any state action and all that could be ascertained was that the defendant United States was acting pursuant to federal law. Powers v. Karen, E.D.N.Y.1991, 768 F.Supp. 46, affirmed 963 F.2d 1522. Civil Rights 1396

4807. Judges, color of law allegations

Complaint in Negroes' class action to enjoin state from maintaining state training schools for juvenile boys on racially segregated basis alleging that juvenile judges had acted pursuant to "state law" incorporated by reference the statutes establishing the institutions. Board of Managers of Ark. Training School for Boys at Wrightsville v. George, C.A.8 (Ark.) 1967, 377 F.2d 228, certiorari denied 88 S.Ct. 105, 389 U.S. 845, 19 L.Ed.2d 114. Federal Civil Procedure 628

Complaint, which alleged that justice of peace was acting under color of law in issuing unlawful writs of garnishment before judgment, was insufficient to state a claim upon which injunctive relief, money damages, or a declaratory judgment could be rendered because of judicial immunity of justice of peace to suit for acts performed in his official capacity. Tate v. Arnold, C.A.8 (Ark.) 1955, 223 F.2d 782. Declaratory Judgment 319; Injunction 118(3); Justices Of The Peace 28(3)

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42 U.S.C.A. § 1983

Arrestee's § 1983 action against undercover and arresting officers for alleged violation of his Fourth Amendment rights when he was arrested and searched in undercover drug bust was barred by collateral estoppel where the same issue, the lawfulness of his arrest, was the subject of hearing on arrestee's suppression motion in state court drug prosecution arising from the arrest and search, at which hearing testimony was taken from what appeared to be one of the arresting officers and at which arrestee had the opportunity to call witnesses on his behalf and to cross-examine prosecution witnesses, and which resulted in determination that the arrest was lawful. Mitchell v. Hartnett, S.D.N.Y.2003, 262 F.Supp.2d 153. Judgment 828.8

Prisoner bringing § 1983 action against judge did not make required allegations that judge was acting in clear absence of jurisdiction, as required in order to maintain action; claims by prisoner contested judge's exercise of jurisdiction, rather than absence. Cook v. DiNubile, E.D.Pa.1993, 838 F.Supp. 231, motion to amend denied 1994 WL 34254. Civil Rights 1395(5)

Complaint, which did not allege that police were part of conspiracy between plaintiff's parents and deprogramming foundation to deprive him of his constitutional rights and did not allege that police shared this goal, but, rather, only pleaded that police assisted in effectuation of a court order, and which did not allege that superior court judge was conspiring with parents and foundation or shared their intention to deprive plaintiff of his constitutional rights, failed to allege necessary "joint participation" so as to demonstrate required state action for purposes of plaintiff's claim under this section. Baer v. Baer, N.D.Cal.1978, 450 F.Supp. 481. Conspiracy 18

Police lieutenant was not precluded from bringing civil rights action against county court judge because of absence of showing that acts of judge were performed under color of state law. Harris v. Harvey, E.D.Wis.1976, 419 F.Supp. 30. Civil Rights 1326(2)

4808. Landlords, color of law allegations

Lessee failed to allege sufficient "state action" to support § 1983 claim against lessor and related parties, so that district court did not have subject matter jurisdiction over claim; there was no allegation that defendants were state actors, that they acted under color of state law, except for marginal possibility of institution of state court eviction proceedings by defendants, or that defendants abused state judicial process, lessee did not question constitutionality of eviction procedures, and alleged actions by city officials were perpetrated against nonparty. Eidson v. Arenas, M.D.Fla.1993, 837 F.Supp. 1158. Civil Rights 1396

Tenant who alleged that landlords engaged in conspiracy with attorney to force him to vacate his apartment while his lease was still in effect and that landlord-tenant action brought in state court was a sham complaint intended to harass him and to carry out illegal eviction but who did not allege that state was involved in supposed deprivation of his constitutional rights or that landlords conspired with state officials to violate his rights did not state cause of action under this section. Hohensee v. Dailey, M.D.Pa.1974, 383 F.Supp. 6. Conspiracy 18

Where serviceman failed to allege that defendants were acting under color of state law when defendant landlord caused serviceman's goods stored with defendant storage company to be sold at distress sale, complaint failed to state claim under this section, and district court lacked jurisdiction under § 1343 of Title 28 granting district courts original jurisdiction over civil actions under this section. Huftstetler v. Davies, N.D.Ga.1970, 309 F.Supp. 1372. Civil Rights 1396; Federal Courts 244

4809. Local officials, color of law allegations

Allegations that town commissioners utilized power conferred on them by state, statutes and town ordinances to take challenged actions satisfied "color of state law" element required for action under this section. Rodgers v. Tolson, C.A.4 (Md.) 1978, 582 F.2d 315. Civil Rights 1396

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42 U.S.C.A. § 1983

Attorney's complaint against town supervisor adequately alleged that town supervisor and town acted under color of state law, and stated § 1983 cause of action, where complaint alleged that as attorney attempted to leave meeting with town supervisor and other town officials concerning town's denial of general assistance to some of his clients, town supervisor approached him, grabbed him, and hit him from behind, causing injuries. Borek v. Town of McLeansboro, S.D.Ill.1985, 609 F.Supp. 807. Civil Rights 1396

Complaint alleging in effect that individual defendants, as past or present members of city commission, misused their legislative authority under Ohio R.C. §§ 715.01-715.67 by failing to remedy known dangerous conditions at jail in which plaintiffs were housed as pretrial detainees was sufficient to satisfy the "under color of state law" requirement for a cause of action under this section. Watson v. McGee, S.D.Ohio 1981, 527 F.Supp. 234. Civil Rights 1396

Allegations of the complaint satisfied the "color of state law" requirement for a claim under this section against borough councilman and building inspector, since it was by virtue of those defendants' positions with the borough that they were able to act against plaintiff in the ways alleged. Di Maggio v. O'Brien, E.D.Pa.1980, 497 F.Supp. 870. Civil Rights 1396

Complaint stated claim for relief against county on theory that civil rights of plaintiff, a former city employee, had been violated under color of law by plaintiff's supervisor's recording of conversation of plaintiff without his consent and by such conduct being ratified by a county employee who was one whose edicts and acts might fairly be said to represent official policy of county. Halsworth v. Hatfield, D.C.Or.1980, 487 F.Supp. 751. Civil Rights 1396

4810. Mayors, color of law allegations

Allegations of plaintiffs against city mayor in action under § 1983 to compel access to intercom system giving outsiders their sole access to closed community satisfied both prongs of *Lugar* test for § 1983 liability; "state action" and "under color of state law" prongs collapsed into single inquiry, which was satisfied by allegation that mayor abused his authority under applicable law by delegating powers improperly and by failing to intervene with neighborhood association on plaintiffs' behalf. Figueroa v. Fernandez, D.Puerto Rico 1996, 921 F.Supp. 889. Civil Rights 1396

Complaint alleging in effect that defendant deprived plaintiff of due process of law during time when defendant was mayor of a city by abuse of court processes was insufficient to state a cause of action under this section in view of lack of assertion that defendant acted on state authority as it was delegated or vested in him as mayor, or that he abused such delegated or vested authority, and in view of lack of assertion that anything defendant did was based on authority in defendant as mayor by virtue of state law. Sinchak v. Parente, W.D.Pa.1966, 262 F.Supp. 79. Civil Rights 1396

4811. Mortuaries, color of law allegations

Complaint which alleged that mortuary, which had contract with county to provide morgue services, and which was regulated by the State, refused, after having provided morgue service with respect to deceased Indians, to provide funeral services and to sell casket to deceased Indian's Indian relatives did not allege discrimination taken under color of state law. Scott v. Eversole Mortuary, C.A.9 (Cal.) 1975, 522 F.2d 1110. Civil Rights 1396

4812. Nursing homes, color of law allegations

Plaintiffs failed to allege that specific state actor insinuated itself into a position of interdependence with nursing home staff as required to support § 1983 claim against staff under nexus/joint action test; conclusory allegation that hospital had custom or practice of allowing and encouraging its employees to administer inappropriate and lethal

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doses of medication to elderly and infirm patients was insufficient to meet heightened pleading requirements for § 1983 claim. Connor v. Halifax Hosp. Medical Center, M.D.Fla.2001, 135 F.Supp.2d 1198, affirmed 45 Fed.Appx. 878, 2002 WL 1423597, for text, see 2002 WL 32290997. Civil Rights 1396

Where complainant, who brought suit against nursing home and union alleging discrimination in termination of employment, failed to show that such termination was done "under color of state law," complainant failed to state cause of action under this section. Mills v. Fox, E.D.N.Y.1976, 421 F.Supp. 519. Civil Rights 1396

4813. Parent associations, color of law allegations

Absent any allegation that nonofficial parents' groups were in complicity with the state or its agents in actions which allegedly deprived candidate for school board election of equal opportunity to be elected, parents' groups could not be held liable under this subchapter. Buck v. Board of Elections of City of New York, C.A.2 (N.Y.) 1976, 536 F.2d 522. Civil Rights 1337

4814. Parents, color of law allegations

"Color of state law" requirement of § 1983 was satisfied by allegations that child's mother and her husband willfully accused grandparents falsely of child sexual abuse and that those false accusations became sole basis for recommendation to remove infant from grandparents' home and for state court proceeding which required grandparents to rebut prima facie case against them. Reynolds by Reynolds v. Strunk, S.D.N.Y.1988, 688 F.Supp. 950. Civil Rights 1396

4815. Pharmaceutical state boards, color of law allegations

Insurer, challenging validity of Alabama's Third Party Prescription Program Act, Ala.Code 1975, § 34-23-110 et seq., failed to state claim under this section governing deprivation of civil rights against Alabama Board of Pharmacy and its members where insurer did not allege any action by Board or its members, neither Board nor its members acted under color of state law and there were no actions attributable to state inasmuch as Board never tried to enforce Ala.Code 1975, § 34-23-110 et seq. Blue Cross and Blue Shield of Alabama v. Peacock's Apothecary, Inc., N.D.Ala.1983, 567 F.Supp. 1258. Civil Rights 1395(1); Civil Rights 1396

4816. Physicians, color of law allegations

Complaint alleging that private psychiatrist whose evaluation allegedly played a role in placing a state employee on involuntary leave acted as an agent of state agency and acted in his official capacity sufficiently alleged that all acts of the psychiatrist were those of a state official, so as to satisfy the "under color of state law" requirement of civil rights statute as well as state action requirement of the Fourteenth Amendment. Santiago v. New York State Dept. of Correctional Services, S.D.N.Y.1989, 725 F.Supp. 780, reargument denied 734 F.Supp. 653, reversed on other grounds 945 F.2d 25, certiorari denied 112 S.Ct. 1168, 502 U.S. 1094, 117 L.Ed.2d 414. Civil Rights 1396

Where civil rights complaint alleged that physician employed by state of Virginia had refused to perform sexual sterilization requested by plaintiff because plaintiff's husband had not consented, and that such refusal was pursuant to policy of state-controlled hospital actions complained of were taken "under color of state law" so as to involve state action, and facts alleged were sufficient to state claim that physician and hospital officer had applied Code 1950, § 32-423 pertaining to sterilization in manner prejudicial to plaintiff's constitutional rights. Doe v. Temple, E.D.Va.1976, 409 F.Supp. 899. Civil Rights 1396

4817. Police officers, color of law allegations

Section 1983 complaint which alleged that police officers, acting under color of state law, violated rights of

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decedent who was killed when stolen car he had been driving at high speeds to elude pursuing police crashed into police roadblock, stated cause of action under Fourth Amendment on basis that seizure was unreasonable due to excessive force; complaint alleged that roadblock was placed in such manner as to be likely to kill decedent. Brower v. County of Inyo, U.S.Cal.1989, 109 S.Ct. 1378, 489 U.S. 593, 103 L.Ed.2d 628, on remand 884 F.2d 1316. Civil Rights 1395(6)

Arrestee stated § 1983 civil rights cause of action against police department and detective by alleging that during course of executing allegedly invalid search warrant for heroin, cash was intentionally taken from arrestee and his bedroom, that no receipt was given and no cash was returned, notwithstanding dismissal of drug charge for want of evidence, and that his Fourth Amendment right to be free of unreasonable searches and seizures and Fourteenth Amendment right not to be deprived of property without due process were thereby violated, and by alleging that officers were acting under color of state law when they allegedly deprived arrestee of constitutional rights. Hernandez v. Maxwell, C.A.5 (Tex.) 1990, 905 F.2d 94. Civil Rights 1395(6); Civil Rights 1396

Granting pro se plaintiff expansive reading of his complaint, allegations that police officers broke door lock and seized property was sufficient to state claim that plaintiff was subject to unlawful search and seizure conducted by state law enforcement officers acting under color of state law for purpose of section 1983 action. Byrd v. Stewart, C.A.11 (Ga.) 1987, 811 F.2d 554. Civil Rights 1395(6)

Pro se complaint by process servers, who alleged that sheriff and deputy sheriff were on duty when sheriff committed unprovoked assaults and batteries on them in presence of deputy after being served with summons, did not allege requisite action under color of state law necessary for recovery under this section where servers did not allege that underlying suit for which summons was issued was related to official duties of sheriff and deputy. Blomberg v. Schneiderheinz, C.A.8 (Neb.) 1980, 632 F.2d 698. Civil Rights 1395(1)

No cause of action was stated against police lieutenant under § 1983 where police officers' complaint did not allege that lieutenant violated their constitutional or federal statutory rights under color of law. Bradshaw v. Township of Middletown, D.N.J.2003, 296 F.Supp.2d 526, affirmed 145 Fed.Appx. 763, 2005 WL 2077137. Civil Rights 1396

A § 1983 complaint alleging that an unnamed police officer drove wife's estranged husband to her home and ordered wife to admit husband, who subsequently assaulted wife, was not deficient in failing to detail defendant officer's specific role in her complaint, when the information related to that role was in the exclusive control of county and county police officer defendants. Pullium v. Ceresini, D.Md.2002, 221 F.Supp.2d 600. Civil Rights 1395(5)

Allegations that at time police officers allegedly beat suspects officers waved identification badges, carried firearms, told suspects they were police officers, threatened suspects with criminal charges, and arrested, handcuffed, and jailed suspects, were sufficient to allege state action under § 1983. Adorno Colon v. Toledo Davila, D.Puerto Rico 2001, 137 F.Supp.2d 39. Civil Rights 1396

To succeed on § 1983 claim against judge's spouse, opponent of judge's election was required to show unconstitutional reasons for police officer to allow spouse to remove flyers placed on windshields by opponent; officer's own reasons for conduct allegedly violating the equal protection clause and right to free speech had to be unconstitutional and not simply imputed from judge's spouse. Chapman v. Village of Homewood, N.D.Ill.1997, 960 F.Supp. 127. Civil Rights 1032; Civil Rights 1033(2)

Driver alleged facts that would be sufficient for jury to find that deputy was acting under color of state law at time driver alleged her constitutional rights were violated, for purposes of motion to dismiss § 1983 action for failure to state a claim; complaint alleged that deputy's misconduct occurred while he was on duty, wearing uniform, driving market patrol car, conducting official business and that deputy used authority given him by state in order to deprive

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driver of her constitutional rights. Battista v. Cannon, M.D.Fla.1996, 934 F.Supp. 400. Civil Rights 1396

Motorist's complaint under §§ 1981 and 1983 sufficiently alleged that police officer detained her because she was Hispanic and that officer violated motorist's right to equal protection; complaint alleged that officer told motorist that he "know[s] how Puerto Rican girls are" and that officer compared motorist to ex-wife, whom he described as also Hispanic. Antia v. Thurman, N.D.Ill.1996, 914 F.Supp. 256. Civil Rights 1395(6)

Civil rights complaint under § 1983 failed to allege deprivations of constitutional rights by employee of county department of human resources (DHR) with sufficient particularity in alleging that such employee instructed officers of sheriff's department to forcibly enter plaintiff's residence, threaten parent-plaintiffs and touch children-plaintiffs in offensive unlawful manner and improperly intrude into parent-child relationship in violation of First, Fourth and Fourteenth Amendments; complaint should go beyond conclusory allegation that employee "instructed" sheriff's officers to act, should state how employee acted in violation of each cited constitutional provision, should detail facts as to why defense or qualified immunity could not be sustained, and should allege facts stating employee's role in the lawsuit, where he was involved in investigation of reports of child abuse and complaint did not state his specific role. Ross v. State of Ala., M.D.Ala.1995, 893 F.Supp. 1545. Civil Rights 1395(5)

Deputy sheriff stated civil rights cause of action by alleging that sheriff solicited letter under color of state law from state attorney which deprived deputy of ability to find meaningful employment, and that sheriff's action in doing so was unprecedented and constituted substantial departure from established custom and policy. Morris v. Crow, M.D.Fla.1993, 817 F.Supp. 102. Civil Rights 1126

Allegations in § 1983 complaint were sufficient to allege that officer, who allegedly arrested plaintiff without probable cause, was acting under color of state law; it was alleged that officer, who was in uniform and riding in police squad car, acted in her official capacity in affecting arrest and taking plaintiff to police station. Davis v. Kirby, N.D.Ill.1990, 755 F.Supp. 199. Civil Rights 1396

Allegations in complaint that minor plaintiff had been shot by township police officer without just cause or provocation, kicked by officer, refused company of friends while being taken to hospital, and refused permission to telephone parents sufficiently alleged that the acts had been done "under color of law" and sufficiently alleged deprivation of constitutional rights under this section. Roberts v. Trapnell, E.D.Pa.1962, 213 F.Supp. 49. Civil Rights 1396

4818. Prison officials, color of law allegations

Allegations that superintendent of state penitentiary was fully aware of numerous assaults as a result of insufficient guard supervision stated § 1983 claim to recover for injuries resulting from assault by fellow inmates. Pool v. Missouri Dept. of Corrections and Human Resources, C.A.8 (Mo.) 1989, 883 F.2d 640. Civil Rights 1395(7)

Plaintiff who alleged violations of Fourth, Eighth and Fourteenth Amendments and facts sufficient to establish that New York correctional officers who arrested him following his release from Georgia imprisonment acted under color of state law adequately pleaded claim under federal statute governing civil action for deprivation of rights. Gordon v. Watley, S.D.N.Y.1985, 601 F.Supp. 1512, on reargument 624 F.Supp. 1138, affirmed 792 F.2d 136. Civil Rights 1395(6)

4819. Prisoners, color of law allegations

Complaint alleging that plaintiff as pretrial detainee suffered bodily pain and injuries, etc., as result of arson committed by co-detainee failed to show that such defendant co-detainee acted under color of state law and thus failed to state claim against such defendant under this section. Thibodeaux v. Bordelon, C.A.5 (La.) 1984, 740

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F.2d 329. Civil Rights 1396

Complaint by prisoner in state institution against a fellow prison inmate for injuries sustained when fellow inmate allegedly assaulted plaintiff by pouring a mixture of lye upon plaintiff's face and head while he was lying in bed failed to state a cause of action maintainable under this section, and was subject to being dismissed, but without prejudice to reassert any claims arising out of applicable facts in appropriate state court, where there was no express allegation in complaint, nor could it be fairly implied from facts set forth in complaint that fellow inmate was at any time acting under color of state law, either by ordinance, regulation, prison rule, customs or usage. Barnes v. Childs, N.D.Miss.1974, 63 F.R.D. 628. Civil Rights 1395(7); Federal Civil Procedure 1827.1

4820. Private parties, color of law allegations

Allegation that an official act of a state court judge was the product of a corrupt conspiracy involving bribery of the judge was sufficient to assert that the private parties who conspired with the judge were acting under color of state law for purposes of this section. Dennis v. Sparks, U.S.Tex.1980, 101 S.Ct. 183, 449 U.S. 24, 66 L.Ed.2d 185. Civil Rights 1396; Conspiracy 18

Figure skating coach failed to state actionable § 1983 claims against private figure skating club where coach did not allege that club acted in concert with any state actors, or that conspiracy or agreement existed between club and defendant city or its employees, and coach did not allege that any policy under which club may have operated was exercise of power specifically authorized by state. Mertik v. Blalock, C.A.6 (Ohio) 1993, 983 F.2d 1353, rehearing denied. Civil Rights 1396

Allegations that competitor and his attorneys abused District of Columbia court system failed to allege that private parties acted "under color of law" within meaning of § 1983 when they litigated dispute over right to service station franchise. Hoai v. Vo, C.A.D.C.1991, 935 F.2d 308, 290 U.S.App.D.C. 142, rehearing denied, certiorari denied 112 S.Ct. 1578, 503 U.S. 967, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 504 U.S. 936, 118 L.Ed.2d 602. Civil Rights 1326(9); Civil Rights 1326(10)

Although private parties jointly engaged with state or local officials in prohibited conduct can be said to act under color of state law, general allegations of cooperation between private individuals and unspecified government agencies do not make out a claim of action taken under color of state law. Glaros v. Perse, C.A.1 (Mass.) 1980, 628 F.2d 679. Civil Rights 1396

Allegations against private individual, consisting of little more than that he "displayed a conduct of threats and reprisal against plaintiffs," without any further description of the individual's actions, were insufficient to depict a violation of a federally protected right or to state a claim under color of state law, and therefore stated no §§ 1983 claim, notwithstanding generalized statements that private individual and government officials acted in conspiracy. Chevere Rodriguez v. Pagan, D.Puerto Rico 2006, 411 F.Supp.2d 59. Civil Rights 1396

Section 1983 claims of property owners against companies which allegedly conspired to acquire their real estate at lower than its true value by misrepresenting condemnation powers and concealing coal companies' involvement in right-of-way acquisition and construction of rail line did not sufficiently allege state action to state § 1983 claim; defendants were purely private parties and were not alleged to have commenced condemnation proceedings or any other formal action against landowners which would convert their conduct into state action. Anderson v. Consol-Pennsylvania Coal Co., W.D.Pa.1990, 740 F.Supp. 1126, affirmed 945 F.2d 394, certiorari denied 112 S.Ct. 975, 502 U.S. 1075, 117 L.Ed.2d 139, affirmed 945 F.2d 395, affirmed 945 F.2d 396. Civil Rights 1396

Private citizens did not act under color of state law so as to be subject to civil rights action in connection with arrest of plaintiff, absent allegations that county attorney acted in collusion or conspired with private citizens, in case in which warrant was issued against plaintiff based solely on complaint filed by one of the defendants,

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alleging assault. Kraemer v. Padgett, D.Kan.1987, 685 F.Supp. 1166. Civil Rights 1326(4); Civil Rights 1326(5)

Allegation of private misuse or abuse of state statute or procedure does not describe conduct that can be attributable to state for purposes of establishing claim for invasion of constitutional right of privacy. Miami Herald Pub. Co., Div. of Knight-Ridder Newspaper, Inc. v. Ferre, S.D.Fla.1985, 636 F.Supp. 970. Civil Rights 1326(4)

Complaint alleging that private citizen aided, abetted and conspired with police officers to violate plaintiff's civil rights stated claim against private citizen. Unger v. Hacker, E.D.Pa.1983, 578 F.Supp. 143. Civil Rights 1396

4821. Professional review boards, color of law allegations

Complaint by plaintiff alleging that action of State Board of Examiners in Psychology in denying him use of "Ph.D." designation in context of his psychology practice was an unconstitutional action under color of official right was sufficient to state a claim for relief under this section. Buxton v. Lovell, S.D.Ind.1983, 559 F.Supp. 979. Civil Rights 1072

4822. Prothonotaries, color of law allegations

Complaint alleging that county prothonotary and sheriff acted upon judgment which they knew or should have known to have been invalid and unenforceable and that defendants acted in concert with government officials to deprive plaintiff of her property through execution process under color of law, allegations were sufficient to meet pleading requirements of state action under U.S.C.A.Const. Amend. 14. Demp v. Emerson Enterprises, E.D.Pa.1980, 504 F.Supp. 281. Civil Rights 1396

4823. Publications, color of law allegations

Complaint of inmate in federal medical center in Missouri alleging publication by defendant of magazine containing "libelous and harmful story" did not state claim under this section in absence of any allegation that defendant was acting under color of state law or of conspiracy to deny inmate any federal civil rights. White v. Fawcett Publications, W.D.Mo.1970, 324 F.Supp. 403. Civil Rights 1395(1)

4824. Racing associations, color of law allegations

In view of fact that field of training thoroughbred race horses was state controlled and required access to race tracks, where assistant race horse trainer alleged in civil rights complaint that defendants had deprived him of the opportunity to pursue his occupation by denying him access to certain race tracks, allegation was sufficient to state claim for deprivation of a constitutionally protected "liberty" and "property" right. Whetzler v. Krause, E.D.Pa.1976, 411 F.Supp. 523, affirmed 549 F.2d 797. Civil Rights 1395(1)

4825. Railroads, color of law allegations

State action could not be imputed to coal companies and railroad so as to establish a cause of action under this section governing deprivation of civil rights of ground that complaint alleged that they sought state court injunctions against labor organizations in bad faith and with improper purpose of infringing unions' rights under U.S.C.A. Const. Amend. 1 in absence of an allegation that they invoked a state court remedy that they knew to be unconstitutional or that remedy was among those questionable prejudgment remedies used by private creditors. District 28, United Mine Workers of America, Inc. v. Wellmore Coal Corp., C.A.4 (Va.) 1979, 609 F.2d 1083. Civil Rights 1326(11)

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42 U.S.C.A. § 1983

Federal civil rights complaint against railroad and railroad police officers would not be dismissed against railroad for failure to adequately plead "state action" where, under New York law, the law enforcement authority of the state was granted to railroad police only through the efforts and for the benefit of their employer, whose decision to employ them involved a utilization for its benefit of state law enforcement authorities sufficient to satisfy "state action" requirement of federal civil rights law. Merola v. National R.R. Passenger Corp., S.D.N.Y.1988, 683 F.Supp. 935. Civil Rights 1326(8); Civil Rights 1396

Petition by black coach passenger against railroad alleging that conductor with aid of police officers threatened him with physical harm and imprisonment, placed him under arrest, physically evicted him from car restricted to white passengers and forced him into another restricted to colored persons, but failing to allege that railroad, agents or employees, acted or purported to act as state officials or possibly, in conspiracy with state officials did not state a cause of action under this section on theory that acts were committed under color of state laws. Moore v. Atlantic Coast Line R. Co., E.D.Pa.1951, 98 F.Supp. 375. Civil Rights 1396

4826. Security employees, color of law allegations

Customer who claimed to have been unlawfully detained by private store security officers failed to adequately allege that he was detained pursuant to a "pre-arranged association" with police, by which the police substituted the judgment of private parties for their own official authority, as required to establish a state action needed to support a civil rights claim; customer merely alleged that the security officers did not call police for almost an hour and a half. Vassallo v. Clover, Div. of Strawbridge & Clothier, E.D.Pa.1990, 767 F.Supp. 651. Civil Rights 1396

Complaint under 42 U.S.C.A. § 1983 that plaintiff's detention under West Virginia's shoplifting statute [W.Va.Code, 61-3A-4] involved constitutionally protected speech and seizure failed to state a claim under 42 U.S.C.A. § 1983 because required element of action could not be proved; no joint action between defendant merchant and the state was asserted because only connection between them was the statute. Hurt v. G.C. Murphy Co., S.D.W.Va.1986, 624 F.Supp. 512, affirmed 800 F.2d 260. Civil Rights 1396

Insofar as customer's complaint under this section alleged that store and its employee intentionally or negligently failed to preserve and safeguard merchandise that the customer allegedly shoplifted and realleged an agreement between the store and the police, it did not allege facts sufficient to make the store's conduct "state action"; moreover, it failed to allege that the employee acted under color of state law. Newman v. Bloomingdale's, S.D.N.Y.1982, 543 F.Supp. 1029. Civil Rights 1396

Complaint alleging that security employees of department store, acting on wrongful assumption that complainants' decedent was in act of shoplifting, detained and arrested decedent in violation of his rights, which resulted in his stroke and death, was insufficient to show that employees had acted "under color of state law," and thus failed to state claim under this section. Iodice's Estate v. Gimbels, Inc., E.D.N.Y.1976, 416 F.Supp. 1054. Civil Rights 1396

4827. Sports organizations, color of law allegations

Complaint failed to state claim for injunctive relief under this section on theory of sex discrimination arising out of refusal of federally chartered children's baseball league to permit local league to operate while allowing a girl to participate on team, in view of withdrawal of state action or participation in activity complained of. King v. Little League Baseball, Inc., C.A.6 (Mich.) 1974, 505 F.2d 264. Civil Rights 1395(1)

4828. Stores, color of law allegations

Complaint which alleged that patron of store was held at gunpoint, arrested without cause and beaten by a sales clerk and a security guard, who was also a county detective, did not allege that store was acting under color of state

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law or conspiring with a state official and thus did not state a claim under this subchapter. Fowler v. Nicholas, E.D.Pa.1981, 522 F.Supp. 655. Civil Rights 1396; Conspiracy 18

Absent allegation that store acted in concert with police prior to their arrival, any illegal detention of plaintiff, who was suspected of shoplifting, by store alone was not action under color of state law and could not be asserted as a violation of this section. Jones v. Sears, Roebuck & Co., S.D.Ga.1980, 495 F.Supp. 319. Civil Rights 1326(1)

4829. Tow operators, color of law allegations

Allegations that private persons who towed away automobiles did so at direction of state police and only in response to and in reliance on authority of state police were sufficient to allege actions taken "under color of state law" for purposes of this section. Watters v. Parrish, W.D.Va.1975, 402 F.Supp. 696. Civil Rights 1396

4830. Unions, color of law allegations

Teacher failed to allege facts which, if true, would show that union, a private entity, was acting under color of state law when it refused to take his grievance against college to arbitration; thus, union was not liable to teacher under § 1983. Leahy v. Board of Trustees of Community College Dist. No. 508, County of Cook, State of Ill., C.A.7 (Ill.) 1990, 912 F.2d 917, rehearing denied. Civil Rights 1326(11)

Complaint alleging that union and officials thereof brought meritless suits against members in federal and state courts to punish and reprimand them for their prior suits against union and its officials did not state a federal claim for civil rights violations under this section since it was not alleged that the deprivation of rights in question was under color of state law; fact that in the alleged deprivation resort was had to courts of the state did not supply the necessary "state action." Phillips v. International Ass'n of Bridge, Structural and Ornamental Iron Workers, Local 118, C.A.9 (Cal.) 1977, 556 F.2d 939. Civil Rights 1396

Complaint alleging that National Labor Relations Board field examiner who investigations unfair labor practice charges by employees against employers and union was a member of union and hence did not make an impartial investigation, and that general counsel knowing of such membership was induced to accept the field examiner's report was insufficient to state a claim for relief under this section creating right of action for deprivation of rights, in absence of allegation that employers and union acted under color of any state or territorial law, custom or usage. Schatte v. International Alliance of Theatrical Stage Emp. and Moving Picture Mach. Operators of U.S. and Canada, C.A.9 (Cal.) 1950, 182 F.2d 158, rehearing denied 183 F.2d 685, certiorari denied 71 S.Ct. 64, 340 U.S. 827, 95 L.Ed. 608, rehearing denied 71 S.Ct. 194, 340 U.S. 885, 95 L.Ed. 643. Civil Rights 1396

In action brought by black and Puerto Rican union members against union local and its business manager alleging that defendants intentionally discriminated against plaintiffs by failing to press grievances filed after a series of allegedly wrongful terminations by employers and also alleging that employment assignments by the union had been discriminatory, claim under this section prohibiting the deprivation of civil rights failed since no state action had been alleged or demonstrated. U. T. B., United Third Bridge, Inc. v. Local No. 3, Intern. Broth. of Elec. Workers, New York State AFL-CIO, S.D.N.Y.1981, 512 F.Supp. 298. Civil Rights 1532

Complaint which did not allege that any action taken by international union or its officials with regard to merger of local union into another local union was taken under color of authority of a state did not state cause of action under this section. Local No. 1 (ACA), Broadcast Emp. of Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, E.D.Pa.1976, 419 F.Supp. 263. Civil Rights 1396

As against motion to dismiss, allegations in civil rights action based on claim that labor unions, contractors and others involved in building industry engaged in discriminatory employment practices were sufficient to establish

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that joint apprentice training committee acted under color of state law and engaged in conspiracy to deprive plaintiffs of their rights. Byrd v. Local Union No. 24, Intern. Broth. of Elec. Workers, D.C.Md.1974, 375 F.Supp. 545. Civil Rights 1396; Conspiracy 18

4831. Utilities, color of law allegations--Generally

Customer's allegation that electric company deprived her of property without due process of law in holding her responsible for tampering, in billing her $100 for electricity consumed while meter was inoperable, and in requiring a $100 deposit before permitting resumed service, all without a hearing, would state a claim under this section over which federal court might entertain jurisdiction only if customer could allege and show that denial of a hearing was attributable to action or involvement on part of state, as distinguished from private action on part of electric company; answer depended on whether there was a sufficiently close nexus between the state and the challenged action of regulated entity so that action of the latter might be fairly stated as that of the state itself. Taylor v. Consolidated Edison Co. of New York, Inc., C.A.2 (N.Y.) 1977, 552 F.2d 39, certiorari denied 98 S.Ct. 147, 434 U.S. 845, 54 L.Ed.2d 111. Federal Courts 244

Plaintiff's allegations at most concerning employer's public service functions and failing to show or tend to show intrusion by state into matters of employer-utility's internal management did not show that utility in discharging plaintiff from its employment was acting under color of state authority within meaning of this section. Martin v. Pacific Northwest Bell Telephone Co., C.A.9 (Or.) 1971, 441 F.2d 1116, certiorari denied 92 S.Ct. 89, 404 U.S. 873, 30 L.Ed.2d 117. Civil Rights 1395(8)

4832. ---- Commissions, utilities, color of law allegations

Amended complaint which alleged that chairman of Public Utility Commission pursuant to conspiracy caused damage to plaintiffs' property "under color of his high office," but which did not allege conduct under authority or color of any identifiable state statute, ordinance regulation, custom or usage, did not state claim under this section. Peoples Cab Co. v. Bloom, W.D.Pa.1971, 330 F.Supp. 1235, affirmed 472 F.2d 163. Conspiracy 18

4833. Zoning boards, color of law allegations

Complaint by residential property owners against borough, its zoning officer and the members of its council and zoning board, wherein it was alleged that defendants willfully refused to enforce restrictions on occupancy permit issued to paper mill owner, stated a valid cause of action, since the members of the zoning board were persons acting under color of state law and their action or inaction in the involvement of zoning ordinances could cause a deprivation of civil rights. Beaver v. Borough of Johnsonburg, W.D.Pa.1974, 375 F.Supp. 326. Civil Rights 1396

4834. Miscellaneous allegations, color of law allegations

Allegations that ordinary citizens were not permitted to bring their dogs into clerk of court's office, that state judge was known to, and deferred to by, personnel of office, and that judge was allowed to enter office with his dog, and remain there during alleged harassment of litigant, because he was a judge satisfied color-of-law element of litigant's § 1983 claim against judge. Monsky v. Moraghan, C.A.2 (Conn.) 1997, 127 F.3d 243, certiorari denied 119 S.Ct. 66, 525 U.S. 823, 142 L.Ed.2d 52. Civil Rights 1396

Absent allegation connecting intervenors in prior proceeding resulting in termination of natural father's parental rights with state action, complaint failed to allege facts satisfying "color of state law" requirement of this section, and thus complaint did not state claim upon which relief could be granted against the intervenors. Martin v. Aubuchon, C.A.8 (Mo.) 1980, 623 F.2d 1282. Civil Rights 1396

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42 U.S.C.A. § 1983

Former personnel director, hospital physician and dental student's complaints simply failed to allege any set of facts supporting conclusion or inference that defendants either acted as a state instrumentality, performed traditionally exclusive sovereign functions, or were compelled or even encouraged by state to make challenged dismissal, suspension and expulsion decisions and thus failed to demonstrate requisite state action to maintain civil rights suits. Musso v. Suriano, C.A.7 (Wis.) 1978, 586 F.2d 59, certiorari denied 99 S.Ct. 1534, 440 U.S. 971, 59 L.Ed.2d 788. Civil Rights 1396

Complaint alleging that private citizens had filed false affidavits with district attorney resulting in a state charge against plaintiff stated no claim within the jurisdiction of the district court under this section which provides civil action for deprivation of rights, since no state action was involved, and likewise failed to state a claim under § 1985 of this title which provides for cause of action for depriving persons of rights or privileges. Howard v. Lemmons, C.A.5 (Tex.) 1977, 547 F.2d 290. Federal Courts 244

Complaint which did not reveal deprivation, under color of state authority, of plaintiff's constitutional rights did not state cause of action under this section relating to deprivation of civil rights or under § 1985 of this title relating to conspiracy to interfere with civil rights. Ehrlich v. Van Epps, C.A.7 (Ill.) 1970, 428 F.2d 363. Civil Rights 1395(1); Conspiracy 18

Plaintiffs who did not allege that at least one of defendants acted under color of state law to injure them or deny them federally protected right did not state cause of action under this section. Rutherford v. American Medical Ass'n, C.A.7 (Ill.) 1967, 379 F.2d 641, certiorari denied 88 S.Ct. 787, 389 U.S. 1043, 19 L.Ed.2d 835, rehearing denied 88 S.Ct. 1027, 390 U.S. 975, 19 L.Ed.2d 1195. Civil Rights 1396

Eleventh Amendment did not bar § 1983 claims against Oregon Bureau of Labor and Industries (BOLI) officials, despite complaint's express usage of "official capacity" language; read in full, complaint was abundantly clear in alleging loss caused by their individual conduct and in seeking money damages, and complaint's use of "official capacity" language was best viewed as attempt merely to emphasize that defendants were acting under color of state law or as half-hearted attempt to state claims against them in both their official and personal capacities. Lumbreras v. Roberts, D.Or.2004, 319 F.Supp.2d 1191, affirmed 156 Fed.Appx. 952, 2005 WL 3304174. Federal Courts 269

XLVI. PERSONAL PARTICIPATION ALLEGATIONS

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4861. Personal participation allegations generally

A complaint that essentially regurgitates the relevant personal involvement standard for §§ 1983 claim against a supervisory official in his individual capacity, without offering any facts indicating that, or how, an individual defendant in a supervisory role was personally involved in a constitutional violation, cannot withstand dismissal. Murphy v. Goord, W.D.N.Y.2006, 445 F.Supp.2d 261. Civil Rights 1394

An element of a §§ 1983 claim is that defendant must be personally and directly involved in causing the violation of the plaintiff's federally protected rights; element requires a showing of a causal connection between the specific defendant and plaintiff's federal rights deprivation, which may consist of direct acts by the defendant, certain acts performed at defendant's direction, or his knowledge and consent. Ramirez-De Leon v. Mujica-Cotto, D.Puerto Rico 2004, 345 F.Supp.2d 174. Civil Rights 1335

The doctrine of respondeat superior is not available to establish liability under § 1983; rather, particularized allegations of personal direction or of actual knowledge and acquiescence are necessary to show personal involvement. Gerber v. Sweeney, E.D.Pa.2003, 292 F.Supp.2d 700. Civil Rights 1336; Civil Rights 1394

A defendant may be personally involved in a constitutional deprivation within the meaning of Section 1983 if he directly participated in the infraction, or if he is a supervisory official, and he (1) failed to remedy the wrong after learning of the violation though a report or appeal; (2) created or continued a custom or policy under which unconstitutional practices occurred; or (3) was grossly negligent in managing subordinates who caused the unlawful condition or event. Jones v. Nassau County Sheriff Dept., E.D.N.Y.2003, 285 F.Supp.2d 322. Civil Rights 1335; Civil Rights 1355

To state a claim for damages under § 1983, plaintiff must allege specific facts to demonstrate that defendants were personally or directly involved in the violation, that is, that there was personal participation by one who had knowledge of the facts that rendered the conduct illegal. McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Civil Rights 1335

Complaint asserting § 1983 claim is fatally defective on its face if it fails to allege that defendants were directly and personally responsible for purported unlawful conduct. Adams v. Galletta, S.D.N.Y.1997, 966 F.Supp. 210. Civil Rights 1394

To hold individual liable under § 1983, plaintiff must allege facts that demonstrate individual defendant's personal involvement in alleged deprivations; personal involvement may be based on allegations that defendant participated directly in alleged constitutional violation, that defendant failed to remedy the wrong after being informed of violation through report or appeal, that defendant created policy or custom under which unconstitutional practices occurred or allowed continuance of such policy or custom, that defendant was grossly negligent in supervising subordinates who committed wrongful acts, or that defendant exhibited deliberate indifference to rights of citizens by failing to act on information indicating that unconstitutional acts were occurring. Pravda v. City of Albany, N.Y., N.D.N.Y.1997, 956 F.Supp. 174. Civil Rights 1335; Civil Rights 1355

In order to meet minimum pleading standards and state claim under § 1983, complaint must allege personal involvement by named defendants. Lovanyak v. Cogdell, E.D.N.Y.1996, 955 F.Supp. 172. Civil Rights 1394

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42 U.S.C.A. § 1983

To succeed on claim under § 1983, plaintiff must allege personal involvement by each defendant in alleged constitutional deprivation. Schmelzer v. Norfleet, S.D.N.Y.1995, 903 F.Supp. 632. Civil Rights 1394

Defendants' personal involvement in alleged constitutional violation is prerequisite to recover damages under § 1983 and plaintiff must allege that defendants were directly and personally responsible for purported unlawful conduct. Herrera v. Scully, S.D.N.Y.1993, 815 F.Supp. 713. Civil Rights 1335

Plaintiff must establish personal involvement or knowledge of defendant before he can recover monetary damages in civil rights action brought pursuant to statute which creates federal cause of action against any person whose misconduct under color of state law violates constitutional rights of another. Owens v. Coughlin, S.D.N.Y.1983, 561 F.Supp. 426. Civil Rights 1335

In Tenth Circuit, personal participation of defendants is essential allegation in complaint brought pursuant to this section. Rucker v. Grider, W.D.Okla.1980, 526 F.Supp. 617. Civil Rights 1394

Employees for state thruway authority were not personally involved in decision to terminate employment of former employee, as required to support former employee's claims that he was terminated in violation of due process and equal protection rights, where the decision to pursue disciplinary action was made by thruway authority's labor department independently on the basis of an evidentiary hearing and upon recommendation of an unbiased hearing officer. Dolson v. New York State Thruway Authority, C.A.2 (N.Y.) 2003, 80 Fed.Appx. 694, 2003 WL 22513581, Unreported. Civil Rights 1359

4862. Conspiracy with state actors, personal participation allegations

Plaintiff seeking to hold private party liable on § 1983 civil rights claim must allege, at the very least, that there was mutual understanding or meeting of the minds between private party and state actor. Mershon v. Beasley, C.A.8 (Mo.) 1993, 994 F.2d 449, certiorari denied 114 S.Ct. 1055, 510 U.S. 1111, 127 L.Ed.2d 376. Civil Rights 1326(5)

Section 1983 complaint alleging that police officers told "skinheads" that officers would permit the "skinheads" to assault demonstrators, that one of the "skinheads" informed reporter of verbal license given by the officers, that the "skinheads" did assault plaintiff in the presence of officers, and that officers present refrained from interfering sufficiently alleged a conspiracy. Dwares v. City of New York, C.A.2 (N.Y.) 1993, 985 F.2d 94. Conspiracy 18

Complaint alleging that special agents with National Investigative Service (NIS) and employees with sheriff's department "combined, confederated and conspired to falsely accuse" plaintiffs of murder and armed robbery and that subsequent goal of the conspiracy was to manufacture evidence was sufficient to state claim for conspiracy to violate plaintiffs' constitutional rights. Kunik v. Racine County, Wis., C.A.7 (Wis.) 1991, 946 F.2d 1574. Conspiracy 18

Allegations in civil rights complaint of a conspiracy between city and its water and sewer commission and a private firm of consulting engineers to fabricate a need to condemn landowners' property, and thus pressure them to settle lawsuit against city and commission, were sufficient to implicate firm of consulting engineers; alleged involvement of state officials in conspiracy plainly provided state action essential to show direct violation of landowners' constitutional rights. Harrison v. Springdale Water & Sewer Com'n, C.A.8 (Ark.) 1986, 780 F.2d 1422. Conspiracy 18

Allegations of conspiratorial action by persons acting under color of law to carry out a purpose in which both state officials and private persons joined stated a claim under this section. Colaizzi v. Walker, C.A.7 (Ill.) 1976, 542 F.2d 969, certiorari denied 97 S.Ct. 1610, 430 U.S. 960, 51 L.Ed.2d 811. Conspiracy 18

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Detainee, who alleged that he was targeted by the police and abused by corrections officers, that the district attorney was aware of those misdeeds but did not drop the criminal case against him, and that legal aid society waived his rights and failed to represent him effectively, failed to state a section 1983 conspiracy claim against legal aid society, since detainee did not allege any facts indicating an agreement to act in concert to harm him. Brewster v. Nassau County, E.D.N.Y.2004, 349 F.Supp.2d 540. Conspiracy 18

Civil rights complaint by security guard service did not allege "meeting of the minds" between private owners of housing project and public officials that would permit service to maintain civil rights conspiracy action against private owners after failure to renew guard service's contract; allegations that owners "set back" and "resisted" efforts and had to be "pressured" to terminate contract did not support claim that owners wilfully collaborated with any state actors. X-Men Sec., Inc. v. Pataki, E.D.N.Y.1997, 983 F.Supp. 101, on reconsideration, reversed 196 F.3d 56. Conspiracy 18

Without allegations that they acted in concert with county official, defendants, standing alone in positions of foster parents, did not act under color of state law in assuming custody of child. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1326(1)

Cable television operator alleged with sufficient particularity collaboration between cable television news programmer and city to deprive operator of its free speech, due process, and Cable Communications Policy Act rights so as to state counterclaims against programmer for conspiracy in violation of § 1983, in programmer's action against operator, arising from operator's decision not to carry programmer's news program on operator's cable channels in city; operator described numerous overt acts by programmer and city in execution of claimed conspiracy designed to coerce private entity to give up its rights because of desire of public officials to reward and ingratiate themselves with competitor, and those could not be characterized as "normal dealings" with state. Fox News Network, L.L.C. v. Time Warner Inc., E.D.N.Y.1997, 962 F.Supp. 339. Conspiracy 18

Arrestee failed to state claim against private citizen for false arrest and malicious prosecution under § 1983; only evidence offered by arrestee on his claim that citizen was involved in a preconceived plan or mutual understanding with government officials consisted of allegation that citizen and police officer who effected arrest appeared to know each other and that citizen and officer talked in back of citizen's restaurant during officer's investigation. Pravda v. City of Albany, N.Y., N.D.N.Y.1997, 956 F.Supp. 174. Civil Rights 1326(5)

Failure to allege specific acts by conspirators in furtherance of conspiracy, or to plead overt acts indicating existence of conspiracy, will warrant dismissal of claim alleging conspiracy to violate civil rights. Federico v. Board of Educ. of Public Schools of Tarrytowns, S.D.N.Y.1997, 955 F.Supp. 194. Conspiracy 18

University professor failed to state claim against university donor, who was not a public actor, under § 1983, arising from allegations that donor showed letters from professor to university officials, resulting in deprivation of professor's property interest in his job; donor did not conspire with university officials to deprive professor of constitutional rights, in that no agreement existed between officials and donor to cause termination. Gressley v. Deutsch, D.Wyo.1994, 890 F.Supp. 1474. Civil Rights 1326(11)

Plaintiffs' claim that city officials engaged in cover up to deprive them of information vital to their state court suit, causing them to settle claim for far less than it was actually worth, was sufficient to state claim for violation of established constitutional right, for purposes of federal civil rights claim. Foster v. City of Lake Jackson, Tex., S.D.Tex.1993, 813 F.Supp. 1262, reversed 28 F.3d 425, rehearing denied. Civil Rights 1056

To state claim against private actor under § 1983, complaint must allege facts demonstrating that private entity acted in concert with state actor to commit unconstitutional or unlawful act. Chan v. City of New York, S.D.N.Y.1992, 803 F.Supp. 710, affirmed 1 F.3d 96, certiorari denied 114 S.Ct. 472, 510 U.S. 978, 126 L.Ed.2d 423. Civil Rights 1396

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42 U.S.C.A. § 1983

Allegations that local government officials and private person conspired to conceal cause of individual's death stated § 1983 conspiracy claim. Stump v. Gates, D.Colo.1991, 777 F.Supp. 808, affirmed 986 F.2d 1429. Conspiracy 18

Workers' compensation claimant failed to state § 1983 claim that Pinnacol conspired with private actors to deprive her of medical benefits by terminating her benefits without reopening her case; allegation that medical evaluator scheduled appointment stated no facts indicating evaluator's agreement and concerted action, and claimant failed to state facts indicating that Pinnacol had plan to terminate her benefits without reopening award when it scheduled examinations or that doctors were aware of such a plan and conspired with Pinnacol to reach that end. Roberson v. Pinnacol Assur., C.A.10 (Colo.) 2004, 98 Fed.Appx. 778, 2004 WL 1059799, Unreported. Conspiracy 18

4863. Joint participation, personal participation allegations

District court should not have dismissed debtor's § 1983 claim against bank for failure to allege state action since debtor could prevail if he could show that private defendants willfully participated in joint action with state official. McCartney v. First City Bank, C.A.5 (Tex.) 1992, 970 F.2d 45. Civil Rights 1326(5)

Allegations that attorneys who participated in state court case and state trial judge engaged in ex parte communication and that trial judge adopted findings and conclusion of law proposed by those attorneys in entering adverse ruling were insufficient to state claim against the attorneys under either conspiracy or "joint participation" theories, absent allegations tending to show that attorneys had understanding or agreed plan with the judge. Crabtree By and Through Crabtree v. Muchmore, C.A.10 (Okla.) 1990, 904 F.2d 1475. Conspiracy 18

Allegations that private person acted jointly with state official are sufficient to allege that he acted under color of state law for purposes of federal civil rights claim. Hawley v. Nelson, E.D.Mo.1997, 968 F.Supp. 1372, affirmed 141 F.3d 1168. Civil Rights 1326(5)

For purposes of question whether hypnotist acted "under color of state law" for § 1983 civil rights purposes, arrestee sufficiently stated claim of state action under joint participation or conspiracy theory against hypnotist in arrestee's action arising from arrest and conviction for arson and second-degree murder for which arrestee was retried and acquitted, where arrestee alleged conspiracy among hypnotist, police officers, and other defendants to violate arrestee's rights by, among other things, bringing false criminal charges based on false recollection of fatal house fire by witness subjected to hypnotism. Dinicola v. DiPaolo, W.D.Pa.1996, 945 F.Supp. 848. Civil Rights 1396

To state claim under this section there must be allegation that defendant acted under color of state law, and private parties may only be liable where they are willful participants in joint activity with state or its agents. Davis v. Carson Pirie Scott & Co., N.D.Ill.1982, 530 F.Supp. 799.

4864. Supervisory personnel, personal participation allegations

Allegations, in a §§ 1983 action, that plaintiff was arrested on basis of an already-executed warrant despite showing officers facially authentic documentary evidence that the warrant was no longer effective, were sufficient to state a claim for false arrest and false imprisonment, in violation of the Fourth Amendment, against the supervising officer at the scene; supervisor presumably had authority to call off the arrest or check with the issuing precinct when presented with evidence casting doubt on the warrant's continuing validity. Pena-Borrero v. Estremeda, C.A.1 (Puerto Rico) 2004, 365 F.3d 7. Civil Rights 1358

Allegation that director within state agency attended and actively participated in meeting to review female employee's salary to determine whether pay inequity existed was insufficient to show that director was personally involved in determining amount of pay raise that previously had been granted to employee, and therefore director

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was not liable under § 1983 for alleged violation of employee's equal protection rights arising from gender-based disparate pay raise she purportedly received. Hildebrandt v. Illinois Dept. of Natural Resources, C.A.7 (Ill.) 2003, 347 F.3d 1014. Civil Rights 1359

To recover damages under this section against federal officials who have a qualified immunity, plaintiff must allege the official's direct and personal responsibility for the purportedly unlawful conduct of its subordinates and the general doctrine of respondeat superior does not suffice. Black v. U. S., C.A.2 (N.Y.) 1976, 534 F.2d 524. Civil Rights 1394

Allegations of involvement by all individual defendants, including the Department of Corrections and various corrections officials, in initiating incidents of discrimination and retaliation, and encouraging subordinates to use racial slurs against African-American employee, sufficiently put each defendant on notice as to the individual conduct which led to the equal protection and due process claims against them and thus employee would not be required to file a more definite statement. Vaden v. Lantz, D.Conn.2006, 459 F.Supp.2d 149. Federal Civil Procedure 988.1

A supervisor is not liable under § 1983 unless an affirmative link exists between the constitutional deprivation and either the supervisor's personal participation, his exercise of control or direction, or his failure to supervise; a supervisor must have participated in or acquiesced in the constitutional violation of the prisoner to be held liable. Estate of Sisk v. Manzanares, D.Kan.2002, 262 F.Supp.2d 1162. Civil Rights 1355

A supervisor cannot be liable for damages under § 1983 solely by virtue of being a supervisor. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1355

A supervisory official can be liable under § 1983 if (1) the supervisor directly participated in the action, or (2) the supervisor, after learning of the violation through a report or appeal, failed to remedy the wrong, or (3) the supervisor created or allowed to continue a policy or custom under which unconstitutional practices occurred, or (4) the supervisor was grossly negligent in managing the subordinates who caused the unlawful event. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1355

In prison inmate's § 1983 complaint alleging cruel and unusual punishment, based upon alleged denial of a noon meal and exercise periods during four days served in keeplock, as well as on two 21-day periods of keeplock confinement, officials who were involved only in alleged infringements of inmate's free exercise rights lacked personal involvement in the alleged cruel and unusual punishment, as required for liability under § 1983. Gill v. Hoadley, N.D.N.Y.2003, 261 F.Supp.2d 113. Civil Rights 1358

Allegations that supervisors of undercover drug agents improperly selected and enlisted agents, selected agents with poor psychological profiles and inclinations towards violence, fostered and condoned violent traits among agents, and had knowledge of and failed to investigate past incidents of brutality, were sufficient to state claim of supervisory liability under § 1983 arising from alleged brutality by agents. Adorno Colon v. Toledo Davila, D.Puerto Rico 2001, 137 F.Supp.2d 39. Civil Rights 1395(5)

Former employee of state Department of Labor (DOL), who claimed that series of adverse employment actions had been taken against her because of her political affiliation and associations, made sufficient allegations of personal involvement on part of commissioner of DOL, as required to recover in § 1983 action based on alleged violation of her First and Fourteenth Amendment rights; complaint specifically alleged that commissioner, and other named defendants, were directly involved in certain employment actions, and also alleged that commissioner had authorized, sanctioned, encouraged, and perpetuated alleged conduct. Hayes v. Sweeney, W.D.N.Y.1997, 961 F.Supp. 467. Civil Rights 1395(8)

Former inmate at county jail failed to allege that supervisor of jail employees had participated in administrative

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hearing which resulted in inmate being confined in disciplinary segregation, as required to state federal civil rights claim based on his segregation and alleged assault by jail employees which occurred while he was in segregation. Marshall v. Fairman, N.D.Ill.1997, 951 F.Supp. 128. Civil Rights 1395(7)

Sheriff could be held liable for violation of plaintiff's Eighth Amendment rights by officers based on plaintiff's allegation that he implicitly authorized, approved, or knowingly acquiesced in officers' unconstitutional conduct, in civil rights action by plaintiff who allegedly suffered severe beatings by officers while being taken into custody after summary conviction for criminal contempt; plaintiff sufficiently alleged that sheriff was present or knew of impending incident, and that he had opportunity to intervene. Sharp v. Kelsey, W.D.Mich.1996, 918 F.Supp. 1115. Civil Rights 1358

Allegations that high school principal supported music teacher who chose explicitly Christian religious music for school choir's performances, met with choir class before graduation, took microphone away from student that called for singing of Christian religious music at graduation, and then sat down when singing continued after his request that it stop failed to show sufficient affirmative link of school principal with alleged tortious acts of music teacher so as to state claim under § 1983 for supervisory liability. Bauchman By and Through Bauchman v. West High School, D.Utah 1995, 900 F.Supp. 254, affirmed 132 F.3d 542, certiorari denied 118 S.Ct. 2370, 524 U.S. 953, 141 L.Ed.2d 738. Civil Rights 1395(2)

Defendants were not liable under § 1983; plaintiff did not allege that defendants actually knew of and acquiesced in conduct causing violation of his civil rights and plaintiff failed to show that defendants directly participated in violating his civil rights. Harrington v. Lauer, D.N.J.1995, 893 F.Supp. 352. Civil Rights 1341

Claims relying on supervisory responsibility cannot form basis for § 1983 liability. Johnson v. Turner, W.D.Tenn.1994, 855 F.Supp. 228, affirmed 125 F.3d 324, rehearing and suggestion for rehearing en banc denied. Civil Rights 1355

Parents' allegation that their civil rights were violated when caseworkers removed their children from their home based on report of suspected child abuse was insufficient to state claim against supervisory official in his official capacity, absent allegation that official established policy under which alleged violation occurred. Chayo v. Kaladjian, S.D.N.Y.1994, 844 F.Supp. 163. Civil Rights 1395(1)

Plaintiff bringing action under this section prohibiting the deprivation of constitutional rights must allege personal involvement or knowledge on part of defendants to state a claim for monetary damages against supervisory personnel. Williams v. Franzen, N.D.Ill.1980, 499 F.Supp. 304. Civil Rights 1394

Where an individual is not charged under this section with having participated directly in complained of conduct, but rather is alleged to be liable for that conduct by virtue of his position as supervisor of those directly responsible, complaint nevertheless must aver personal involvement on part of supervisor, at least to extent that he knew of, and acquiesced in, unconstitutional conduct of his subordinates. Dawes v. Philadelphia Gas Commission, E.D.Pa.1976, 421 F.Supp. 806. Civil Rights 1394

4865. Attorneys general, personal participation allegations

Prisoner's complaint failed to state claim against Attorney General and Director of Federal Bureau of Prisons for failure to provide medically prescribed low-sodium diet, where complaint did not allege that Attorney General and Director participated in any decision or approve any policy relating to case. Cameron v. Thornburgh, C.A.D.C.1993, 983 F.2d 253, 299 U.S.App.D.C. 228. Prisons 17(3); United States 50.10(3)

Assistant state attorney general was not subject to liability in his individual capacity under §§ 1983 for alleged violation of publisher's constitutional rights as result of state transportation officials' decision to relocate publisher's

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newsracks at public rest areas along interstate highways, absent allegation that assistant attorney general personally moved any newsracks, instructed anyone else to do so, or had any authority regarding placement of newsracks. Jacobsen v. Department of Transp., N.D.Iowa 2004, 332 F.Supp.2d 1217, affirmed 2006 WL 1312184. Civil Rights 1360

Failure of prisoner to allege that Attorney General of the United States, warden of correctional center, and Director of Bureau of Prisons were personally involved in defective condition of showers which resulted in injury to prisoner precluded maintaining action against such individuals in their individual capacity. Beshaw v. Fields, W.D.Wis.1980, 484 F.Supp. 1390. Attorney General 8; Prisons 10

4866. Prosecutors, personal participation allegations

Arrestee who alleged that county assistant district attorney deprived him of free speech and due process by advising arresting officer that arrestee's conduct, namely "flipping the bird" to officer, amounted to disorderly conduct under Kansas law did not state § 1983 free speech and due process claim against county; arrestee did not allege that assistant district attorney acted pursuant to government policy or custom or that attorney's advice or acts might fairly be said to represent official policy. Cook v. Board of County Com'rs of County of Wyandotte, D.Kan.1997, 966 F.Supp. 1049. Civil Rights 1088(4)

4867. Governors, personal participation allegations

Governor could not be held liable in his individual capacity under s 1983 based on state transportation officials' alleged interference with placement of newsracks at public rest areas along interstate highways, where there was no allegation that governor took prohibited action himself or failed to take any required action that caused publisher's alleged constitutional deprivation. Jacobsen v. Department of Transp., N.D.Iowa 2004, 332 F.Supp.2d 1217, affirmed 2006 WL 1312184. Civil Rights 1360

Vehicle owner failed to state § 1983 claim against state governor absent any allegation of personal involvement by the governor in the suspension of owner's driver's license or the seizure and subsequent sale of owner's vehicle; the only mention of the governor's name was in the caption of the amended complaint. Iwachiw v. New York State Dept. of Motor Vehicles, E.D.N.Y.2004, 299 F.Supp.2d 117, affirmed 396 F.3d 525. Civil Rights 1395(3)

Business partner failed to state § 1983 claims against governor and state Attorney General, in partner's action alleging denial of equal protection and procedural due process, arising from electric utility's refusal to provide electrical line extension, given cursory and conclusory allegations in complaint; partner pled legal theory of conspiracy without offering any proof of governor's and Attorney General's personal involvement in or connection to relevant matter, failed to state purpose of or any overt acts perpetrated by them which reasonably related to claimed conspiracy, and failed to allege violation of his federally protected rights. Jemzura v. Public Service Com'n, N.D.N.Y.1997, 961 F.Supp. 406. Conspiracy 18

Prisoner's complaint, alleging that State Governor, Commissioner of Department of Corrections and warden of penitentiary were liable for loss of property taken from prisoner's cell during penitentiary shakedown, did not state cause of action under this section on theory that defendants were responsible for ordering and carrying out all actions during the time in question since there was no allegation that defendants personally directed or had actual knowledge of alleged actions of the troopers or guards responsible for the loss of property. Parker v. Rockefeller, N.D.W.Va.1981, 521 F.Supp. 1013. Civil Rights 1395(7)

Prisoner stated claims under § 1983 for deliberate indifference to his serious medical needs against non-medical prison staff who had direct contact with him and whom he alleged interfered with his ability to get medical care; prisoner constantly complained about pain while he was incarcerated and the failure to get him adequate medical care caused further physical injuries, and therefore claims were not barred by provision of Prison Litigation

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Reform Act limiting recovery for mental or emotional injuries. Scantling v. Vaughn, E.D.Pa.2004, 2004 WL 306126, Unreported. Civil Rights 1463; Prisons 17(2); Sentencing And Punishment 1546

4868. Comptrollers, personal participation allegations

Allegation by junior college that state Comptroller, after being informed of wrongful conduct of Deputy Comptroller and former state Commissioner for Higher and Professional Education with respect to audits of college's certification of state Tuition Assistance Payment (TAP) funds conducted by them, failed to remedy wrongs alleged was sufficient to state cause of action against Comptroller under § 1983. Interboro Institute, Inc. v. Maurer, N.D.N.Y.1997, 956 F.Supp. 188. Civil Rights 1395(2)

4869. Child welfare personnel, personal participation allegations

Utah police officer's amendment to §§ 1983 complaint against city, adding police chief as defendant, related back to date of original complaint's filing, and §§ 1983 claims against chief stemming from officer's removal from strike force more than four years before amendment thus were not time-barred; original complaint alleged relevant facts and charges, referred to §§ 1983, and put chief on notice about officer's charges because it mentioned chief by name. Sivulich-Boddy v. Clearfield City, D.Utah 2005, 365 F.Supp.2d 1174. Limitation Of Actions 124

Commissioner of Department of Children and Families (DCF) did not have sufficient personal involvement in investigation of foster parent on child abuse charges to support § 1983 liability in action by foster parent; foster parent claimed he wrote to Commissioner to request an administrative hearing on the charges, but admitted that Commissioner was not personally involved in either the scheduling or conduct of the hearing, and claimed that he called Commissioner to complain generally about DCF, but did not indicate precise time of such calls or that he complained about anything unconstitutional. Carroll v. Ragaglia, D.Conn.2003, 292 F.Supp.2d 324, affirmed in part, reversed in part and remanded 109 Fed.Appx. 459, 2004 WL 2165397. Civil Rights 1360

Foster child's allegations that former secretary of Department of Children and Families (DCF) knew that foster child was being abused at emergency shelter, and personally intervened in foster child's case, were sufficient to state a claim of personal involvement in events constituting foster child's § 1983 claim, as opposed to respondeat superior claim based on actions of other DCF employees. Danielle v. Adriazola, S.D.Fla.2003, 284 F.Supp.2d 1368. Civil Rights 1395(1)

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Deprived child's complaint, which alleged that county commissioners had responsibility for providing for an funding necessary child welfare services, that had those services been provided his return to his mother would have been facilitated, that commissioners were aware, or should have been aware, that his continued restrictive placement deprived him of his rights, and that he was deprived of his rights pursuant to commissioners' official policy, alleged sufficient personal involvement by commissioners to entitle deprived child to adduce evidence in support of his claim under this section. Cameron v. Montgomery County Child Welfare Service, E.D.Pa.1979, 471 F.Supp. 761. Civil Rights 1395(1)

Absence of allegations that county employee's supervisor was involved in alleged violations of parents' constitutional rights precluded supervisor's liability to parents under §§ 1983, under which supervisor could not be held liable pursuant to respondeat superior theory. Brown v. Daniels, C.A.3 (Pa.) 2005, 128 Fed.Appx. 910, 2005 WL 943525, Unreported. Civil Rights 1360

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42 U.S.C.A. § 1983

4870. County officials, personal participation allegations

Pretrial detainee who was injured in county jail stated no § 1983 cause of action against county commissioners, who allegedly knew or should have known of conditions at jail; plaintiff alleged no personal involvement or sufficient causal connection to support § 1983 cause of action but, rather, his allegations were no more than attempt to hold commissioners liable under respondeat superior theory. Dean v. Barber, C.A.11 (Ala.) 1992, 951 F.2d 1210 . Civil Rights 1395(6)

In prisoner's pro se civil rights action against county, county board of supervisors, public defender and others for alleged inadequate representation by the public defender during robbery prosecution, complaint adequately stated civil rights claim against members of county board of supervisors and against county offender advocate where complaint alleged that the offender advocate was responsible for public defender's actions because he established rules and procedures for her to follow, and similar allegations were made as to involvement of county board of supervisors. Dodson v. Polk County, C.A.8 (Iowa) 1980, 628 F.2d 1104, certiorari granted 101 S.Ct. 1478, 450 U.S. 963, 67 L.Ed.2d 612, reversed on other grounds 102 S.Ct. 445, 454 U.S. 312, 70 L.Ed.2d 509. Civil Rights 1395(5)

Former county employee who brought action against county officials, alleging disclosure of her sexual harassment accusations and identity to news media, failed sufficiently to allege that defendants conspired to deprive her of constitutional rights, as required to state §§ 1983 conspiracy claim; complaint did not aver any facts supporting officials' participation in publication of former supervisor's sexual misconduct. Nassau County Employee "L" v. County of Nassau, E.D.N.Y.2004, 345 F.Supp.2d 293. Conspiracy 18

Employees of municipality failed to establish discrimination by the director of public works based on employees' political affiliation under § 1983 by failing to allege the director's personal involvement in the alleged deprivation of their rights; employees all testified during deposition that they did not know the director and that they had no reason to believe that he was aware of their political affiliation or involved in the decision to not renew their contracts. Garcia Sanchez v. Roman Abreu, D.Puerto Rico 2003, 270 F.Supp.2d 255. Civil Rights 1359

Former inmate at county jail failed to allege personal involvement of director of county department of corrections in connection with alleged assault of inmate by jail employees, as required for recovery in federal civil rights action; inmate alleged only that director had sole responsibility for all actions by his staff, and did not allege that director even knew of events described in complaint. Marshall v. Fairman, N.D.Ill.1997, 951 F.Supp. 128. Civil Rights 1395(7)

4871. Education and school officials, personal participation allegations

Since student failed to assert participation by individual trustees of university and any violation of his rights with respect to failing grades, he could not recover from the trustees for denial of civil rights. (Per Kunzig, J., with one Justice concurring specially.) Hill v. Trustees of Indiana University, C.A.7 (Ind.) 1976, 537 F.2d 248. Civil Rights 1356

Where student in his suit arising out of alleged suspension without due process did not claim that either of two school boards had acted in the suspension proceedings or that any member of such boards had recommended suspension, his claim for compensatory damages against such boards could not stand. Cameron v. Whirlwindhorse, C.A.8 (N.D.) 1974, 494 F.2d 110. Schools 177

Former paraprofessional at school failed to establish that principal was personally involved in the alleged violation of his due process rights by not referring his termination to paraprofessional's union, and thus principal could not be individually liable under § 1983; under collective bargaining agreement principal was only responsible for referring matter to human resources which was thereafter responsible for taking steps to notify paraprofessional of

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termination, and principal did refer matter to human resources. Sharif v. Buck, W.D.N.Y.2004, 338 F.Supp.2d 435, affirmed 152 Fed.Appx. 43, 2005 WL 2650070. Civil Rights 1359

Vice president for student affairs and assistant director of student life could not be held liable under § 1983 for college president's actions in nullifying student government election and scheduling new one based on student newspaper's support for particular slate of candidates; although they may have advised president on how to proceed, her decision was intervening step between any actions on their part and resulting harm to plaintiffs, who were newspaper editors or staff, candidates on that slate, and student who voted in election. Husain v. Springer, E.D.N.Y.2004, 336 F.Supp.2d 207. Civil Rights 1356

Former custodial employee of school district alleged sufficient personal involvement of school district superintendent and plant facilities director to state a § 1983 claim against them arising from his termination, where he alleged that superintendent was aware that he previously filed a complaint with the New York State Division of Human Rights (NYSDHR), that he informed director that he thought Hispanic employee was being singled out because of his accent, and as a result, director placed a written memorandum in his personnel file, and gave him the termination letter that was written by superintendent. Tekula v. Bayport-Blue Point School Dist., E.D.N.Y.2003, 295 F.Supp.2d 224. Civil Rights 1359

By sexually molesting child, police officer, who was acting under color of state law, violated child's substantive due process right to bodily integrity, and therefore could be held liable under Section 1983. Medina Perez v. Fajardo, D.Puerto Rico 2003, 257 F.Supp.2d 467. Constitutional Law 274(5); Municipal Corporations 747(3)

Allegation that university president referred matter of seizure by campus police of sexually explicit videotape to faculty investigative committee was sufficient allegation of causation to survive president's motion to dismiss § 1983 action brought by owner of tape, under heightened pleading standard applicable to § 1983 claims involving government officials in their individual capacities; decision to refer matter to committee was tantamount to administrative delay, which could in and of itself constitute constitutional deprivation. Andre v. Castor, M.D.Fla.1997, 963 F.Supp. 1158, affirmed in part, reversed in part 144 F.3d 55. Civil Rights 1395(2)

Allegations by junior college that president of state Higher Education Services Corporation (HESC) adopted allegedly defective and ill-motivated audit of college's certification of state Tuition Assistance Payment (TAP) funds despite knowledge of college's objections thereto, that he denied college's request for hearing, and that he sought recoupment of disallowances in furtherance of bad faith motive to shut college down, were sufficient to state cause of action against president under § 1983. Interboro Institute, Inc. v. Maurer, N.D.N.Y.1997, 956 F.Supp. 188. Civil Rights 1395(2)

Complaint alleging that voluntary nonprofit organization's regulation prohibiting interscholastic athletic competition between boys and girls violated female high school students' rights under U.S.C.A.Const. Amend. 14 and that state superintendent of schools had final responsibility for administering laws and rules of state as they affected public schools failed to state claim on which relief could be granted against superintendent under this section, in view of failure to allege any action taken by superintendent to deprive plaintiffs of due process. Kelly v. Wisconsin Interscholastic Athletic Ass'n, E.D.Wis.1974, 367 F.Supp. 1388. Civil Rights 1395(2)

4872. Housing officials, personal participation allegations

Non-legislator municipal defendants were entitled to qualified immunity on claims arising out of enactment of ordinances which imposed occupancy limits on residential rental property in areas which were zoned for single family residences where plaintiff landlords and tenants failed to allege facts sufficient to establish that each individual defendant personally participated in the alleged violations of their constitutional rights. Jones v.

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Wildgen, D.Kan.2004, 320 F.Supp.2d 1116, on reconsideration in part 349 F.Supp.2d 1358. Civil Rights 1398

Complaint alleging that negligence and carelessness of state officer who negligently lost court record, thus precluding timely transfer pursuant to court order, would be attributed to city housing authority and its chairman failed to state cause of action against chairman under this section providing for civil action for deprivation of rights inasmuch as he was in no way responsible for state officer's conduct and complaint alleged no acts or conduct by him. Seldon v. Goodman, S.D.N.Y.1980, 487 F.Supp. 30. Civil Rights 1395(1)

4873. Internal Revenue Service officials, personal participation allegations

Complaint of income tax preparer and clients under this subchapter for monetary damages against the Secretary of the Treasury and the Commissioner of Internal Revenue Service because of alleged illegal activities of subordinates in the harassment of preparer's client was insufficient to state a claim where complaint failed to allege the direct and personal responsibility of the defendant officials for the purportedly unlawful conduct of subordinates. Black v. U. S., C.A.2 (N.Y.) 1976, 534 F.2d 524. Civil Rights 1395(1)

4874. Mental health officials, personal participation allegations

Mental patients asserting § 1983 claim against administrators of mental hospitals, alleging deprivation of due process liberty interest in having treatment which included community visitations when patients were confined to facilities, could not simply assert liability because administrators were "in charge" at time; respondeat superior liability was not allowed under § 1983. Barna v. Hogan, D.Conn.1997, 964 F.Supp. 52. Civil Rights 1350

Mentally retarded patients claiming deprivation of rights adequately pleaded that state Commissioners of Departments of Mental Health and Mental Retardation had sufficient knowledge of the creation of alleged constitutional deprivations affecting patients, or had shown acquiescence in or failed to correct alleged constitutional deprivations so as to be personally involved with patients as required for suit under § 1983. Mihalcik v. Lensink, D.Conn.1990, 732 F.Supp. 299. Civil Rights 1395(1)

4875. Police officials, personal participation allegations

Police chief could not be liable under §§ 1983 for any violation of the Fourth Amendment rights of tavern owner convicted for setting up illegal gaming machines, in connection with a search warrant for tavern premises, where another officer was responsible for signing the affidavit supporting the search warrant, judge signed the warrant, and there was no showing that police chief was involved in obtaining or executing the warrant. Kramer v. Village of North Fond du Lac, C.A.7 (Wis.) 2004, 384 F.3d 856. Civil Rights 1358

Allegations that sheriff knew of wrongful detention, and continued detention in spite of that knowledge, were sufficient to state civil rights claim under § 1983 for sheriff's personal involvement in unconstitutional deprivation of due process. Sivard v. Pulaski County, C.A.7 (Ind.) 1992, 959 F.2d 662, on remand 809 F.Supp. 631. Civil Rights 1395(6)

Liberally construed, prisoner's allegations that sheriff was aware of and directly involved in his detention for 45 days without a probable cause hearing and knew that there was a statutory requirement regarding detention of an individual were sufficient to show the sheriff's knowledge of a prisoner's wrongful detention; thus, prisoner's claim against sheriff was not based on a respondeat superior theory and his allegations were sufficient to state a claim against sheriff under § 1983. Webster v. Gibson, C.A.8 (Ark.) 1990, 913 F.2d 510. Civil Rights 1395(6)

Captain of Texas Rangers could not be liable under this section for alleged deprivation of property without due process by subordinates where claimant alleged in his pleadings only that captain was responsible for action of

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rangers as their superior officer, and was negligent in his failure to supervise them and made no allegations of personal involvement, collaboration, direction, or approval of rangers' acts by captain nor that policies instituted by captain were unconstitutional, illegal, or wrongful, and that it was following of these policies by subordinates which caused claimant's deprivation. Reimer v. Smith, C.A.5 (Tex.) 1981, 663 F.2d 1316. Civil Rights 1357; Civil Rights 1358

Former husband's allegations that police officer conspired with former wife to harass him by improperly stopping him for driving without automobile liability insurance failed to state claim against the officer for which relief could be granted where there was no claim that the officer participated in effecting unauthorized cancellation of former husband's automobile liability insurance, and former husband did not allege harm flowing from claimed verbal harassment and abuse. Cole v. Cole, C.A.4 (N.C.) 1980, 633 F.2d 1083. Municipal Corporations 742(4)

Allegations in complaint that officer was "among the officers who conducted the raid" of housing project, and that officer was "grossly negligent," without more, was not sufficient to state a §§ 1983 claim against officer, brought on behalf of individual who was shot and killed during police raid. Martinez-Rivera v. Sanchez Ramos, D.Puerto Rico 2006, 430 F.Supp.2d 47. Civil Rights 1395(5)

Former county police officer sufficiently alleged chief's personal involvement in claimed constitutional violations to avoid dismissal of his §§ 1983 claim against former county police chief in his individual capacity. Longo v. Suffolk County Police Dept. County of Suffolk, E.D.N.Y.2006, 429 F.Supp.2d 553. Civil Rights 1395(8)

Retired county police officer sufficiently alleged personal involvement of deputy commissioner in adverse employment actions undertaken in retaliation for exercise of First Amendment rights, occurring during three-year statute of limitations period for §§ 1983 suits, to reject claim that suit was untimely, even though specific instances of improper conduct cited in complaint all occurred outside of limitations period. Wallace v. Suffolk County Police Dept., E.D.N.Y.2005, 396 F.Supp.2d 251. Civil Rights 1395(8)

Arrestee's allegations that police officer directly participated in tackling arrestee from behind, throwing him to the ground, holding him in custody for a significant period of time, and accusing arrestee of being drunk or intoxicated stated particular facts indicating that officer had personal involvement with arrestee's treatment, as was required to maintain §§ 1983 claims against officer in his personal capacity. Walker v. North Wales Borough, E.D.Pa.2005, 395 F.Supp.2d 219. Civil Rights 1395(6)

Material issues of fact, in action under § 1983, as to whether police supervisor was involved in drafting of affidavit submitted in support of warrant for arrest of suspect for threatening, precluded summary judgment whether supervisor was liable for false arrest. Walczyk v. Rio, D.Conn.2004, 339 F.Supp.2d 385. Federal Civil Procedure 2491.5

Police chief was not vicariously liable for the actions of a subordinate police official who ordered the unlawful mass arrest of a group of people, including demonstrators, who were gathered at or near an intersection, and thus chief was entitled to qualified immunity in arrestees' §§ 1983 action; chief was not personally involved inasmuch as he was not on the scene of the arrests, and he could not be charged with supervisory liability based on any failure to supervise his subordinates. Barham v. Ramsey, D.D.C.2004, 338 F.Supp.2d 48, affirmed in part 434 F.3d 565, 369 U.S.App.D.C. 146. Civil Rights 1358; Civil Rights 1376(6)

Conclusory allegations of institutional involvement in purported unlawful use of trespass form by district attorney's office and village police officers to prosecute arrestee did not establish county custom or policy actionable under §§ 1983, precluding county's municipality liability on arrestee's §§ 1983 claims. Vineyard v. County of Nassau, E.D.N.Y.2004, 329 F.Supp.2d 364. Civil Rights 1351(4)

Sheriff was not liable to arrestee under §§ 1983 in his individual capacity for acts arising from invasion of

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arrestee's home by law enforcement personnel, where arrestee did not allege that sheriff was present during the incident or that he was in any way personally involved in the acts that allegedly violated his constitutional rights, and, although arrestee alleged in a conclusory fashion that sheriff condoned or adopted the actions of his subordinates, he offered no evidence to support that claim. Cea v. Ulster County, N.D.N.Y.2004, 309 F.Supp.2d 321. Civil Rights 1358

Alien's claims against county police department, in conjunction with § 1983 action that alien filed against village and various county departments and officers who allegedly violated his civil rights through his arrest and detention, failed to allege sufficient personal involvement of county police department to comply with rule requiring short and plain statement showing that pleader was entitled to relief; because complaint against county police department did not allege any facts against the department, it was unclear what, if any, claims were alleged. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1395(6)

Assertion, in complaint under § 1983, that three campus police officers "assisted" another officer in stopping public exhibition by managing editor of college publication of sexually explicit videotape and in seizing such videotape without warrant was sufficient, under heightened pleading standard applicable to § 1983 claims involving government officials in their individual capacities, to put officers on notice of nature of constitutional claims against them and permit them to frame arguments with regard to qualified immunity, and therefore was sufficient to survive officers' motions to dismiss. Andre v. Castor, M.D.Fla.1997, 963 F.Supp. 1158, affirmed in part, reversed in part 144 F.3d 55. Civil Rights 1395(5)

Allegations in § 1983 action that superintendent of police failed to implement existing disciplinary system intended to detect unconstitutional behavior, and that, had superintendent implemented that policy, police officer's shooting of plaintiffs' family member would have been avoided, were sufficient to withstand superintendent's motion to dismiss on qualified immunity grounds. Rivera v. Medina, D.Puerto Rico 1997, 963 F.Supp. 78. Civil Rights 1398

Student expelled for possession of handgun on school property failed to state claim under § 1983 against school district superintendent and chief of police on theory of respondeat superior where student made only conclusory allegations against those defendants and presented no specific allegations that either directed alleged violation or had actual knowledge of alleged violation by associate principal and police officer; allegation that such defendants had constructive knowledge was not sufficient. James By and Through James v. Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1407. Civil Rights 1395(2)

Arrestee failed to state claim under § 1983 against police chief and mayor in their individual capacities for use of excessive force; arrestee did not allege that chief or mayor had a direct involvement with his arrest, that they knew about his arrest, that it was brought to their attention, or that they were grossly negligent in any way. Pravda v. City of Albany, N.Y., N.D.N.Y.1997, 956 F.Supp. 174. Civil Rights 1358

Plaintiff who was acquitted of criminal charges sufficiently stated claim against federal deputy marshals based on allegation that marshals violated plaintiff's Fourth Amendment rights by conspiring to misrepresent plaintiff's role in incident involving exchange of gunfire with marshals and that such conduct led to plaintiff's subsequent illegal arrest, as complaint detailed formation of conspiracy, motivation behind its creation, and actions of participants in furthering its alleged ends. Harris v. Roderick, D.Idaho 1996, 933 F.Supp. 977, affirmed 126 F.3d 1189, certiorari denied 118 S.Ct. 1051, 522 U.S. 1115, 140 L.Ed.2d 114. Conspiracy 18

Police officer stated cause of action in complaint against police chief for violations of § 1983 arising from his arrest, alleged denial of medical treatment, and discharge from employment following his suicide attempt; officer alleged that police chief was directly involved in investigation, incarceration, and termination, rather than alleging that police chief was liable through operation of respondeat superior. Houck v. City of Prairie Village, Kan., D.Kan.1996, 912 F.Supp. 1428, on reconsideration 942 F.Supp. 493, reconsideration denied 950 F.Supp. 312,

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affirmed 166 F.3d 347. Civil Rights 1395(8)

Arrestee who claimed that he was subjected to choke hold and thrown to floor by officer and that he was harassed by police because of prior complaints about police conduct stated claim for civil rights liability against town and police chief by alleging that they systematically whitewashed evidence of police brutality, conveyed to officers the notion that the type of mistreatment to which arrestee was subjected was within constitutional bounds, and failed to properly train officers. Illiano v. Clay Tp., E.D.Pa.1995, 892 F.Supp. 117. Civil Rights 1395(6)

Plaintiff who alleged that she was falsely arrested by deputy failed to state § 1983 action against sheriff who was the only defendant named in complaint, absent allegation of nexus between actions of deputy and any custom, policy or personal involvement of sheriff. Lucas v. Cannon, M.D.Fla.1994, 848 F.Supp. 168. Civil Rights 1395(6)

In order to survive motion to dismiss, claimant alleging city's liability for failure to train police officer must state specific evidentiary facts which would raise inference that city officials knew or should have known that officer's training, or lack of training, posed substantial risk. Rosentreter v. Munding, N.D.Ill.1990, 736 F.Supp. 165. Municipal Corporations 742(4)

Arrestee's assertion that unnamed arresting officer dug his heel into arrestee's back and kicked him failed to establish liability of named officers, in arrestee's §§ 1983 excessive force claim; even if arrestee did not see who committed those acts, arrestee stated that there were numerous witnesses, some of whom videotaped the arrest, and two of whom were deposed, but arrestee failed to present evidence of the identity of the alleged perpetrators. Blackmore v. City of Phoenix, C.A.9 (Ariz.) 2005, 126 Fed.Appx. 778, 2005 WL 270331, Unreported. Civil Rights 1358

No cause of action existed against Attorney General under § 1983 for alleged beating administered by various police officers; plaintiff did not allege that Attorney General directly participated in the alleged beating or learned of the violation of plaintiff's constitutional rights and failed to remedy it, or created a policy or custom under which the violation occurred, or allowed a policy or custom to continue. Flemming v. New York City, S.D.N.Y.2002, 2002 WL 31761532, Unreported. Civil Rights 1358

4876. Prison officials, personal participation allegations

Prison officials who allegedly participated in denial of medical treatment for prisoner's hepatitis C virus, had responsibility for enforcing or allowing continuation of policies that resulted in denial of treatment, and rejected prisoner's administrative grievance were not entitled to qualified immunity from prisoner's claim for denial of adequate medical care in violation of the Eighth Amendment; officials had sufficient personal involvement in denial of medical treatment to justify liability under §§ 1983. McKenna v. Wright, C.A.2 (N.Y.) 2004, 386 F.3d 432. Civil Rights 1358; Civil Rights 1376(7)

State inmate could assert § 1983 claims against corrections officials in their individual capacities, even though his complaint did not specify that officials were being sued in their individual capacities, given that inmate complained specifically about alleged acts of officials, rather than any official custom or policy, and requested punitive damages, which reflected intent to sue officials in their individual capacities, and given that inmate was proceeding pro se. Wynn v. Southward, C.A.7 (Ind.) 2001, 251 F.3d 588. Civil Rights 1397

It was reasonable construction of prisoner's pled facts, in § 1983 complaint against prison superintendent for denial of scribe materials necessary to conform pro se appeal of denial of postconviction relief to state procedural rules, that superintendent knew of denial of scribe materials, based on many letters sent by prisoner, and that continued denial of scribe materials was policy of superintendent's, at least to level of turning blind eye, thus entitling prisoner to proceed with suit against superintendent. Gentry v. Duckworth, C.A.7 (Ind.) 1995, 65 F.3d 555,

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rehearing denied. Civil Rights 1395(7)

Inmate's claim against deputy prison superintendents for undue delay in commencement of disciplinary hearing was properly dismissed, where undisputed evidence established that it was responsibility of superintendent to appoint hearing officer and deputy superintendents were not personally involved in delay. Green v. Bauvi, C.A.2 (N.Y.) 1995, 46 F.3d 189. Civil Rights 1420

Inmate sufficiently alleged that each prison official named as defendant in complaint, except for prison's chief administrative officer, was involved in beatings or other forms of harassment inflicted upon inmate to state cause of action for retaliation against them, and no defendant other than chief administrative officer should have been dismissed from suit after entry of default. Black v. Lane, C.A.7 (Ill.) 1994, 22 F.3d 1395, rehearing and suggestion for rehearing en banc denied. Civil Rights 1395(7)

Former prisoner did not state cause of action under § 1983 against prison superintendent absent any allegation involving superintendent's participation in or direct responsibility for alleged constitutional deprivation. Moore v. State of Ind., C.A.7 (Ind.) 1993, 999 F.2d 1125. Civil Rights 1395(7)

Although prisoner's § 1983 complaint failed to specify which defendants participated in which actions, the in forma pauperis complaint was improperly dismissed as frivolous without allowing prisoner to conduct discovery; information that would enable prisoner to identify alleged attackers--duty rosters and personnel records--could be readily obtainable. Murphy v. Kellar, C.A.5 (Tex.) 1992, 950 F.2d 290. Federal Civil Procedure 2734

Inmate's claims against Texas Department of Corrections officials and employees, asserting they were negligent in their training and supervision of correctional officers and in their investigation of alleged assault against inmate, were properly dismissed; inmate failed to state claim against those defendants in their supervisory roles and did not allege defendants' personal involvement in assault, sufficient causal connection between their conduct and assault, or harm giving rise to constitutional claims independent of assault. Oliver v. Collins, C.A.5 (Tex.) 1990, 904 F.2d 278. Civil Rights 1395(7)

Allegations by inmate that he had been kept in close confinement for 11 months without any review of his status as required by state prison regulations, which required several kinds of "writeups," after his acquittal on charges of stabbing fellow inmate, sufficiently alleged that members of the review team were involved in causing injury inmate suffered. McQueen v. Tabah, C.A.11 (Fla.) 1988, 839 F.2d 1525. Civil Rights 1395(7)

State prisoner failed to allege personal involvement in alleged deprivations of his constitutional rights required to maintain action under §§ 1983 against commissioner of state correctional department and prison superintendent, where his allegations that beating inflicted on him by correctional officers was directed, tolerated, or encouraged by commissioner and superintendent's wrongful practices were so broad and conclusory that they did not provide fair notice of what prisoner's claim was and grounds upon which it rested, and his allegations that commissioner and superintendent had "direct and specific" prior notice of the assault were not supported by any facts. Murphy v. Goord, W.D.N.Y.2006, 445 F.Supp.2d 261. Civil Rights 1395(7)

Complaint alleging that corrections officer was responsible for the initial determination that prisoner continue to be held in involuntary protective custody (IPC) sufficiently alleged officer's personal involvement in violation of prisoner's due process rights arising from her continued confinement and therefore officer could be subject to §§ 1983 liability. Smart v. Goord, S.D.N.Y.2006, 441 F.Supp.2d 631. Civil Rights 1358

California state prison inmate could not recover in §§ 1983 action against California Department of Corrections (CDC) director or prison warden, where inmate alleged essentially that they were liable because of acts and omissions of their subordinates, prison food service manager and cooks, in misleading inmate who was follower of Islam and did not eat pork into consuming pork in violation of his First Amendment right to free exercise of

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religion, and did not allege any facts showing personal involvement of director or warden. Lewis v. Mitchell, S.D.Cal.2005, 416 F.Supp.2d 935. Civil Rights 1395(7)

New York Department of Correctional Services (DOCS), its Commissioner, correctional facility superintendent and medical director, and correctional officers were all sufficiently alleged to have been personally involved in deprivation of inmate's civil rights when he was injured while being transported back from outside medical appointment in allegedly unsafe van; one officer was allegedly passenger in vehicle in which inmate was injured and "wrapped (inmate) in a bear hug and placed him back in his wheelchair" following incident, and other defendants knew or should have known there was foreseeable risk of serious harm from alleged deficiencies in that other prisoners in custody of DOCS who required wheelchair for mobility had been injured while being transported back in the same manner. Allah v. Goord, S.D.N.Y.2005, 405 F.Supp.2d 265.

For purposes of screening provision of Prison Litigation Reform Act (PLRA), prisoner failed to state §§ 1983 claim against major alleged to have participated in retaliation for his refusal to be a "snitch" by filing a false disciplinary case against him; filing of a single disciplinary case did not establish chronology of events from which retaliation could possibly be inferred, and mere fact that major was supervisor of the allegedly corrections officer who allegedly retaliated against prisoner did not establish major's personal involvement, a prerequisite for §§ 1983 liability. David v. Hill, S.D.Tex.2005, 401 F.Supp.2d 749. Civil Rights 1395(7)

State prison inmate stated personal involvement element of his §§ 1983 Eighth and Fourteenth Amendment action against commissioner of state's department of corrections, which alleged department policy or custom of affirming constitutionally infirm disciplinary determinations and then reversing those affirmances if a prisoner filed a state-court proceeding; inmate asserted that commissioner and deputy had created policy, that commissioner knew of policy and was deliberately indifferent to prisoners' rights by failing to act on information that unconstitutional practices were occurring, and that he failed to provide adequate training and supervision to corrections employees who conducted disciplinary hearings. James v. Aidala, W.D.N.Y.2005, 389 F.Supp.2d 451. Civil Rights 1358

Allegations that state prison inmate had written letters to correctional department employees complaining about threats to his safety, which they ignored, and that an employee retaliated against inmate by directing that inmate be handcuffed from behind whenever he was outside his cell did not establish personal involvement of employees, as would support a claim under §§ 1983 against employees in their individual capacities. Withrow v. Goord, W.D.N.Y.2005, 374 F.Supp.2d 326. Civil Rights 1358

Inmate who slipped and fell on wet floor outside shower area failed to allege that county sheriff was directly involved in his injuries, or, to extent that sheriff was state actor in supervisory role, that he created or allowed any custom regarding wet floors to exist or acted in grossly negligent manner in managing officers he supervised, as required to establish that sheriff was personally involved in alleged constitutional deprivation, as element of § 1983 claim. Davis v. Reilly, E.D.N.Y.2004, 324 F.Supp.2d 361. Civil Rights 1358

Prisoner failed to plead sufficient personal involvement on the part of the Commissioner of New York State Department of Correctional Services (DOCS) to impose supervisory liability for alleged constitutional violations arising from change in DOCS policy which limited inmates in the general population to one blanket, along with one laundered towel, two laundered sheets, and one laundered pillow case per week. Davidson v. Conway, W.D.N.Y.2004, 318 F.Supp.2d 60. Civil Rights 1395(7)

Prison superintendent and state corrections commissioner had insufficient personal involvement to be potentially liable in prison inmate's § 1983 Eighth Amendment action alleging corrections officers' assault on and retaliation against inmate; commissioner never saw inmate's letters containing allegations against officers, and superintendent received one letter alleging excessive force on part of officer involved in § 1983 action and forwarded it for investigation, resulting in finding that allegation was meritless, and did not receive notice of imminent assault by corrections officers or indications of substantial risk of serious harm from officers. Liner v. Goord,

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42 U.S.C.A. § 1983

W.D.N.Y.2004, 310 F.Supp.2d 550. Civil Rights 1358

State prison officials had no supervisory responsibility under § 1983 for alleged violation of inmate's Eighth Amendment rights by allegedly failing to properly train or supervise their subordinates who allegedly used excessive force on inmate, where the inmate did not allege that the officials were personally involved in the excessive use of force. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Civil Rights 1358

Superintendent and assistant superintendent of correctional facility could not be held personally liable under § 1983 for deprivation of inmate's constitutional rights that allegedly occurred when correctional officer sexually assaulted her in her cell; defendants were not personally involved in assault, nor did they have actual or constructive knowledge of constitutional violations, which would support holding them liable on basis that they failed to remedy the wrong, created a policy or custom of allowing such violations, were grossly negligent in supervising employees, and were deliberately indifferent to unconstitutional conduct. Morris v. Eversley, S.D.N.Y.2003, 282 F.Supp.2d 196. Civil Rights 1358

Former inmate's § 1983 claims against corrections officer and prisoner's medical staff members had to be dismissed where former inmate failed to plead any facts suggesting that such defendants were personally aware of or involved in any of alleged constitutional violations, and certain defendants were not even mentioned in complaint. McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Civil Rights 1395(7)

Complaint asserting § 1983 claims against wardens based on their responsibility for overall operation of particular houses of detention was fatally defective on its face absent allegation that wardens were personally involved in alleged violations of pretrial detainee's civil rights concerning placement in maximum security. Adams v. Galletta, S.D.N.Y.1997, 966 F.Supp. 210. Civil Rights 1395(7)

Allegations that official ignored prisoner's letter are insufficient to establish § 1983 liability on part of official. Watson v. McGinnis, S.D.N.Y.1997, 964 F.Supp. 127. Civil Rights 1098

Prisoners could not recover for cruel and unusual punishment, based on alleged denial of recreation, commissary privileges, telephone access, mail, showers, rehabilitative programs, fresh air, personal hygiene items and cleaning products, as they failed to allege personal action on part of defendants. Alley v. Angelone, E.D.Va.1997, 962 F.Supp. 827. Civil Rights 1395(7)

Personal involvement may be established against prison officials through allegations of actual knowledge and acquiescence, for purposes of prisoner's civil rights claim under § 1983. Saunders v. Horn, E.D.Pa.1997, 960 F.Supp. 893. Civil Rights 1358

Arrestee failed to state excessive force claim under § 1983 against county jail superintendent and county sheriff in their individual capacities, where arrestee merely offered conclusory allegations that defendants were responsible for supervising officers involved in alleged mistreatment and that they were responsible for setting county policy. Pravda v. City of Albany, N.Y., N.D.N.Y.1997, 956 F.Supp. 174. Civil Rights 1395(6)

Prison inmates who alleged that they were isolated and forced to stand naked in their cell in violation of tenets of their religion after other inmate was involved in altercation with police captain failed to allege personal involvement of warden or captain in claimed improper use of force and strip search, as required to recover in federal civil rights action; no allegation of personal involvement was made, Department of Corrections records did not indicate any personal involvement, and no allegation was made that captain and warden established impermissible policy or supervised subordinates in grossly negligent manner. Show v. Patterson, S.D.N.Y.1997, 955 F.Supp. 182. Civil Rights 1358

Prison inmate's § 1983 action alleging that corrections captain was liable, as correction officer's direct supervisor,

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for injuries inmate sustained in beating by other inmates failed to state claim upon which relief could be granted, where inmate did not allege that corrections captain was personally involved in correction officer's alleged absence from his post. Wright v. Nunez, S.D.N.Y.1997, 950 F.Supp. 610. Civil Rights 1358

Inmate's § 1983 complaint alleging constitutional deprivation resulting from warden's failure to follow city's inmate transfer policy did not state claim against warden in his individual capacity where complaint was devoid of any suggestion that warden was personally involved in depriving inmate of any constitutional right. Wallace v. Conroy, S.D.N.Y.1996, 945 F.Supp. 628. Civil Rights 1395(7)

Where prisoner did not allege that prison official personally participated in alleged constitutional deprivations of medical treatment, although he alluded in complaint to existence of a history of widespread abuses at prison that would have put official on notice of need for improved training or supervision, and did not submit any evidence in support of that allegation or identify any official policy or informal practice promulgated by official which resulted in alleged deprivations, he could not recover from official on civil rights claim. Shiflet v. Cornell, M.D.Fla.1996, 933 F.Supp. 1549. Civil Rights 1358

Pretrial detainee failed to state claim against defendant officials for liability under § 1983 in their individual capacities in connection with conditions at county jail; detainee did not claim that officials personally caused conditions, officials were merely custodians at jail and could not limit number of pretrial detainees assigned there or appropriate funds to improve conditions, and it was not alleged that they intentionally withheld available resources that could have improved conditions at jail. Stone-El v. Sheahan, N.D.Ill.1995, 914 F.Supp. 202. Civil Rights 1395(6)

Inmates' allegations of chief prison official's knowledge for several years of presence of asbestos in prison air in violation of state health codes sufficiently demonstrated subjective culpability of prison officials to overcome motion to dismiss pro se § 1983 claim for violation of Eighth Amendment. Gonyer v. McDonald, D.Mass.1995, 874 F.Supp. 464. Civil Rights 1395(7)

Inmate's allegations that Commissioner of Department of Correctional Services for New York State was responsible for overseeing correctional facilities and failed to properly train and adequately supervise various prison administrators and hearing officers did not allege personal involvement in constitutional violations needed to state § 1983 civil rights claim. Gaston v. Coughlin, W.D.N.Y.1994, 861 F.Supp. 199, affirmed in part, vacated in part 249 F.3d 156. Civil Rights 1358

Prison supervisors were not liable in inmate's § 1983 action under respondeat superior theory for their subordinate's alleged retaliation against inmate; inmate did not claim that supervisors were directly involved, and did not allege that constitutional deprivation was caused by exercise of policy or custom for which supervisors were responsible. Dillon v. Murray, W.D.Va.1994, 853 F.Supp. 199. Civil Rights 1358

Correctional officer's civil rights complaint was subject to dismissal to extent that he sought relief under equal protection clause against defendant officials in their individual capacities, where complaint completely failed to allege facts indicating personal involvement of any defendant in denying correctional officer promotion to lieutenant; while correctional officer was not required to prove case at pleading stage, he was required to allege facts, not mere conclusions, indicating the defendants' personal involvement. Perez v. Lane, C.D.Ill.1992, 794 F.Supp. 286. Civil Rights 1395(7)

Inmate failed to state § 1983 cause of action against prison superintendent, as agent of state correctional department responsible for supervising hearing officer, or as to correctional officer for failing to properly investigate an incident where complaint did not allege that either defendant was directly or indirectly involved in conduct at issue. Winston v. Coughlin, W.D.N.Y.1992, 789 F.Supp. 118. Civil Rights 1395(7)

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42 U.S.C.A. § 1983

Inmate's complaint which alleged that Commissioner of Corrections and his designee entertained appeal from disciplinary hearing at which due process rights were violated and affirmed the hearing sufficiently alleged personal involvement by the Commissioner to state a claim for violation of civil rights. Cepeda v. Coughlin, S.D.N.Y.1992, 785 F.Supp. 385. Civil Rights 1395(7)

Prisoner failed to state § 1983 claim against commissioner of department of corrections and warden for failure to provide adequate medical treatment absent allegation that commissioner and warden were responsible for conduct of unnamed corrections officers or health service. Roman v. Koehler, S.D.N.Y.1991, 775 F.Supp. 695. Civil Rights 1395(7)

Allegations in inmate's civil rights complaint, regarding revocation of good-time credits when contraband was discovered in cell, were not sufficient to state claim against former director of state department of corrections or warden, absent any allegation that former director or warden were directly involved in alleged misconduct or recklessly indifferent to constitutional violations of which they had some knowledge. Hamilton v. Scott, N.D.Ill.1991, 762 F.Supp. 794, affirmed 976 F.2d 341, rehearing denied. Civil Rights 1395(7)

Inmate could not maintain § 1983 action against Commissioner of State Department of Correctional Services based on allegations that Commissioner ignored inmate's letter of protest and request for investigation of allegations that inmate was wrongfully confined in special housing unit, charged with disciplinary violations, and transferred to different facility; inmate did not allege that Commissioner was personally involved in preparation of misbehavior report or decision to confine inmate in special housing unit. Garrido v. Coughlin, S.D.N.Y.1989, 716 F.Supp. 98. Civil Rights 1395(7)

Pretrial detainee's assertion that named county corrections officials encouraged, authorized, directed, ratified, or acquiesced in their subordinates' acts which violated detainee's constitutional rights was not sufficiently specific to support detainee's federal civil rights action under § 1983 against those officials for personal liability for detainee's treatment. Jackson v. Elrod, N.D.Ill.1987, 655 F.Supp. 1130. Civil Rights 1395(7)

Inmate failed to allege that any of three prison officials personally authorized, supervised or participated in the decisions regarding his medical care, as required to state a §§ 1983 claim for deliberate indifference to his serious medical needs, in violation of his Eighth Amendment right to be free from cruel and unusual punishment. Horton v. Ward, C.A.10 (Okla.) 2005, 123 Fed.Appx. 368, 2005 WL 419814, Unreported. Prisons 17(2); Sentencing And Punishment 1546

Absence of allegation that prison officials either personally participated in or knew of alleged deprivation of state inmate's constitutional rights precluded liability on part of officials under §§ 1983. Perry v. Kramer, C.A.9 2005, 121 Fed.Appx. 191, 2005 WL 81176, Unreported. Civil Rights 1358

Inmate could not maintain §§ 1983 action against supervisory officials at prison arising out of an assault on him by fellow inmates, where he failed to allege any of supervisors' personal involvement in inmate assault nor did complaint fall into any of narrowly tailored categories that allow for supervisory liability without supervisors' participation in alleged wrongdoing. Haywood v. Alcantara, C.A.2 (N.Y.) 2004, 103 Fed.Appx. 443, 2004 WL 1539575, Unreported. Civil Rights 1358

Inmate's §§ 1983 claim against warden alleging denial of reasonable medical care failed to state claim upon which relief could be based, where inmate alleged only that he had copied warden on correspondence outlining his complaints about his medical care, and failed to allege or demonstrate affirmative link between any constitutional deprivation and warden's personal participation or failure to supervise. Davis v. Arkansas Valley Correctional Facility, C.A.10 (Colo.) 2004, 99 Fed.Appx. 838, 2004 WL 1119941, Unreported. Civil Rights 1358

Inmate failed to prove that warden personally participated in depriving the inmate of medical treatment or that the

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warden was deliberately indifferent to the inmate's medical difficulties, thus precluding imposition of § 1983 liability on the warden; conclusory averments in the summary judgment affidavits offered by the inmate, to the effect that the warden and his deputy were "hands-on" managers to whom all departments of the facility reported directly, were insufficient. McDaniels v. McKinna, C.A.10 (Colo.) 2004, 96 Fed.Appx. 575, 2004 WL 887356, Unreported. Civil Rights 1358; Federal Civil Procedure 2491.5

Prisoner's allegations that "some or all" of defendant prison guards may have participated in alleged beating of prisoner were insufficient to give prison guards fair notice of the claim against them, as required to support prisoner's excessive force claim under § 1983. Bright v. Gillis, C.A.3 (Pa.) 2004, 89 Fed.Appx. 802, 2004 WL 363301, Unreported, certiorari denied 125 S.Ct. 89, 543 U.S. 904, 160 L.Ed.2d 178. Civil Rights 1395(7)

Official at Inmate Grievance Program Central Office Review Committee (CORC), by either himself investigating or directing someone else to investigate state prisoner's claims arising from his inability to obtain proper medical treatment following denial by prison's health care provider of surgical referral, was sufficiently personally involved for prisoner to state §§ 1983 claim against him for deliberate indifference to prisoner's medical needs in violation of his Eighth and Fourteenth Amendment rights. Manley v. Mazzuca, S.D.N.Y.2004, 2004 WL 253314, Unreported. Civil Rights 1358

In pro se § 1983 complaint, contention by prisoner injured during softball game as result of dangerous condition of recreational area, that prison superintendent had personally visited recreational area and observed softball playing conditions, adequately alleged superintendent's personal involvement in Eighth Amendment violation. Slacks v. Grenier, S.D.N.Y.2003, 2003 WL 22232942, Unreported. Civil Rights 1395(7)

Prisoner's allegations stated § 1983 claim against prison supervisory official since prisoner sufficiently alleged personal involvement of official in the alleged constitutional violation resulting from failure to honor prisoner's medical passes and failure to follow the orders of outside specialists and prison doctors; official allegedly investigated prisoner's grievance against the members of security personnel and responded in their favor, and changed or tried to change the orders of prison doctor, the outside orthopedic specialists and several of the physical therapists. Williams v. Fisher, S.D.N.Y.2003, 2003 WL 22170610, Unreported. Civil Rights 1395(7)

Prison inmate satisfied personal involvement requirement for stating § 1983 claim against certain prison personnel by alleging that one prison officer hit him in face and pushed him out of his wheelchair, causing injuries, that other named officers constantly harassed and threatened him, that doctor refused to treat his wounds after assault, that another doctor stopped providing acquired immune deficiency syndrome (AIDS) medication, and that third doctor supported the violations of other defendants and was deliberately indifferent to his needs. Hucks v. Artuz, S.D.N.Y.2003, 2003 WL 22019744, Unreported. Civil Rights 1358

Court of Appeals lacked jurisdiction to consider dismissal of prison inmate's separate claims against other corrections officers in connection with his appeal following dismissal of § 1983 action he had brought against prison nurse, where his notice of appeal did not list earlier dismissal order, and named only prison nurse as "defendant" in the caption. Beers v. Stockton, C.A.8 (Neb.) 2000, 242 F.3d 373, Unreported. Federal Courts 666

4877. Private employers, personal participation allegations

Allegations by former municipal employees in jobs funded through statutorily created employment opportunities development fund that, as municipality's personnel director, the director necessarily had something to do the non renewal of their employment contracts, were conclusory and failed to establish that personnel direct violated the employees' constitutional rights, for purposes of employees' §§ 1983 claim alleging that they were not rehired as the result of political discrimination. Cruz-Baez v. Negron-Irizarry, D.Puerto Rico 2005, 360 F.Supp.2d 326. Civil Rights 1395(8); Civil Rights 1421

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42 U.S.C.A. § 1983

Where retail store customer alleged in civil rights complaint that his detention and subsequent arrest on suspicion of shoplifting were without probable cause and were "in accordance with a customary plan" between the corporate store owner and the city police department and where customer also alleged that the corporate employee and the police officer were operating in accordance with this preconceived plan in detaining customer, allegations of direct involvement on part of corporate owner were sufficient to state a claim for relief against the corporation. Classon v. Shopko Stores, Inc., E.D.Wis.1977, 435 F.Supp. 1186. Civil Rights 1395(6)

4878. Public aid officials, personal participation allegations

Physician's action against director of Illinois Department of Public Aid personally arising out of reimbursement which physician was paid for treating medicaid recipient must fail because the complaint failed to allege any personal involvement on part of the director. Shashoua v. Quern, C.A.7 (Ill.) 1979, 612 F.2d 282. Civil Rights 1395(1)

Recipient of public assistance failed to state § 1983 claim, that county violated his due process rights under Fourteenth Amendment by not scheduling timely or expedited fair hearing following denial of his request for emergency assistance, since allegation was made against county rather than state department of social services; fair hearing process was administered by state, and local social services agency merely was party to fair hearing, along with person for whom fair hearing was requested. Hart v. Westchester County Dept. of Social Services, S.D.N.Y.2003, 2003 WL 22595396, Unreported. Constitutional Law 278.7(3); Social Security And Public Welfare 8.5

4879. Village officials, personal participation allegations

Complaint filed by discharged village police chief sufficiently stated cause of action against village board of trustees for illegal discharge without prior hearing before decision maker and without supporting evidence; complaint alleged sufficient individual participation by trustees to permit award of damages against individual trustees. Starke v. Bergles, E.D.Wis.1978, 444 F.Supp. 469. Civil Rights 1395(8)

4880. Miscellaneous participants, personal participation allegations

Complaint, which sought to recover for violation of children's constitutional rights and for torts committed against children resulting from their separation and concealment from father in 1967 as result of their relocation for their protection after mother's husband testified against certain members of organized crime, but which, in asserting that state defendants "acted in concert with" federal defendants in releasing mother's husband, did not allege that any of these defendants participated in removal or concealment of children from father, did not state a claim against state defendants. Leonhard v. U. S., C.A.2 (N.Y.) 1980, 633 F.2d 599, certiorari denied 101 S.Ct. 1975, 451 U.S. 908, 68 L.Ed.2d 295. Civil Rights 1395(1)

A federal claim was not stated against law partnership for alleged wrongdoing in handling a partition sale and in distributing proceeds of sale, where there were no allegations that partnership participated in any acts of wrongdoing on part of petition commissioners or was part of any conspiracy. Ashbrook v. Hoffman, C.A.7 (Ind.) 1980, 617 F.2d 474. Monopolies 28(6.2)

Puerto Rico Environmental Quality Board official, who neither made a decision or took any adverse personnel action against employee, lacked the personal involvement required to impose liability under §§ 1983 for alleged deprivation of employee's constitutional rights resulting from agency's postponement of decision to accept or reject employee's resignation pending an administrative investigation; official did not have the authority to accept or deny employee's resignation from employment nor could he approve the liquidation of accumulated vacation days for an employee, and official did not participate in the drafting of the letter requesting an investigation, nor did official recommend requesting an investigation. Ramirez-De Leon v. Mujica-Cotto, D.Puerto Rico 2004, 345 F.Supp.2d

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42 U.S.C.A. § 1983

174. Civil Rights 1359

Mayor was not vicariously liable for the actions of police officials who approved and ordered the unlawful mass arrest of a group of people, including demonstrators, who were gathered in a park, and thus mayor was entitled to qualified immunity in arrestees' §§ 1983 action; mayor was not on the scene before the arrests and was not consulted about and did not approve them in advance. Barham v. Ramsey, D.D.C.2004, 338 F.Supp.2d 48, affirmed in part 434 F.3d 565, 369 U.S.App.D.C. 146. Civil Rights 1358; Civil Rights 1376(4)

A merely conclusory allegation that private entity acted in concert with state actor does not suffice to state a §§ 1983 claim of conspiracy against private entity; rather, complaint must allege facts demonstrating that private entity acted in concert with state actor to commit unconstitutional act. Rivoli v. Gannett Co., Inc., W.D.N.Y.2004, 327 F.Supp.2d 233. Conspiracy 18

Non-legislator municipal defendants were entitled to qualified immunity on claims arising out of enactment of ordinances which imposed occupancy limits on residential rental property in areas which were zoned for single family residences where plaintiff landlords and tenants failed to allege facts sufficient to establish that each individual defendant personally participated in the alleged violations of their constitutional rights. Jones v. Wildgen, D.Kan.2004, 320 F.Supp.2d 1116, on reconsideration in part 349 F.Supp.2d 1358. Civil Rights 1398

Former employee of the Puerto Rico Highway Authority (PRHA) who alleged that his termination constituted political discrimination failed to state claim against various officials of the PRHA, absent evidence they were personally and directly involved in alleged violation of his rights; claim against them was a general and unsubstantiated "conspiracy theory" that they all conspired with Executive Director of the PRHA to provoke employee into confrontations in order to justify his dismissal. Rivera v. Fagundo, D.Puerto Rico 2004, 301 F.Supp.2d 103, affirmed 414 F.3d 124. Civil Rights 1359

Former employee of state's office of deputy comptroller for city sufficiently alleged state comptroller's personal involvement in her discharge, so as to state § 1983 claim against state comptroller in his individual capacity for discharge in violation of her constitutional rights, where former employee alleged that she was dismissed by all defendants, including state comptroller, that first deputy state comptroller had said he had informed state comptroller that former employee would not cause any trouble if fired and that first deputy state comptroller initially told former employee that she could speak with state comptroller to make her case against discharge. Fry v. McCall, S.D.N.Y.1996, 945 F.Supp. 655. Civil Rights 1395(8)

Pro se civil rights complaint which contained no specific factual averments which explained how corporation was personally involved in alleged deprivation of plaintiff's rights when defendants allegedly "confiscated his life's possessions," and which lacked any allegation supported by fact that any conduct of the corporation or its employees was undertaken in an official capacity or under color of state law did not state cause of action under federal civil rights statute. Signore v. City of McKeesport, Pa., W.D.Pa.1988, 680 F.Supp. 200, affirmed 877 F.2d 54. Civil Rights 1395(1); Civil Rights 1395(3); Civil Rights 1396

XLVII. DEFENSES

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4901. Defenses generally

At least to some extent, the defenses allowed to state officers are available in suits under this section. Fidtler v. Rundle, C.A.3 (Pa.) 1974, 497 F.2d 794. Civil Rights 1376(3); Civil Rights 1366

Eleventh Amendment did not bar state inmate's §§ 1983 action alleging that prison system's sex offender treatment program violated her constitutional rights, where inmate sought prospective injunctive relief against state officials in their official capacities, and damages against officials in their individual capacities only. Wolfe v. Pennsylvania Dep't of Corrections, E.D.Pa.2004, 334 F.Supp.2d 762. Federal Courts 269; Federal Courts 272

Under New York law, father was collaterally estopped from challenging state court's finding that father's failure to appear at hearing at which his parental rights were terminated was willful, and thus *Rooker-Feldman* doctrine barred father's subsequent § 1983 action alleging that city department of social services violated his due process rights by failing to notify him of hearing, where state court specifically considered issue of department's conduct in making its decision. King v. Commissioner and New York City Police Dept., C.A.2 (N.Y.) 2003, 60 Fed.Appx. 873, 2003 WL 1343011, Unreported. Courts 509; Infants 232

4902. Affirmative defenses

State-law based affirmative defenses, raised in anticipation of possibility that §§ 1983 plaintiff might amend complaint to include state law claims, were immaterial to the action and would be stricken. Quintana v. Baca, C.D.Cal.2005, 233 F.R.D. 562. Federal Civil Procedure 1108.1

City waived its claim that developer's equal protection lawsuit was precluded by its failure to challenge city's decision via administrative writ, even though city listed preclusion as affirmative defense in its answer, where allegation in answer was conclusory and failed to provide clear notice of particular nature of preclusion argument currently advanced, city did not raise specific argument until one year after trial on issue of liability, and developer suffered undue prejudice as result of city's delay. North Pacifica, LLC. v. City of Pacifica, N.D.Cal.2005, 366 F.Supp.2d 927. Federal Civil Procedure 758

Failure of prison employees to plead inmate's failure to exhaust administrative remedies as an affirmative defense

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in their original motion to dismiss, or in the alternative, motion for summary judgment, in inmate's § 1983 action for alleged violation of his Fifth and Eighth Amendment rights, did not amount to waiver of that defense, where defense was raised in response to inmate's amended complaint. Chase v. Peay, D.Md.2003, 286 F.Supp.2d 523, affirmed 98 Fed.Appx. 253, 2004 WL 1205695. Federal Civil Procedure 751

In action brought pursuant to § 1983, District Court may consider, sua sponte, affirmative defenses, including statute of limitations, that are apparent from face of complaint, and need not wait to see if such defenses will be asserted in defensive pleading. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Federal Civil Procedure 755

Defendants, in state inmate's § 1983 action for an alleged assault, were entitled to amend their pleadings to add affirmative defense that inmate failed to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA), although defendants were presumably aware of the exhaustion requirement at the time they filed their answer, where it would have been futile for them to assert an exhaustion defense at that time, given the then-existing law that the exhaustion requirement did not apply to claims pertaining to isolated incidents affecting particular inmates. Livingston v. Piskor, W.D.N.Y.2003, 215 F.R.D. 84. Federal Civil Procedure 846

Prison employees being sued by inmate under § 1983 for alleged deliberate indifference to serious medical needs did not waive affirmative defense of failure to exhaust administrative remedies despite failure to plead the defense in their answer, and thus, on their summary judgment motion, district court would amend their answer to include the affirmative defense, absent any evidence that they acted with bad faith in failing to raise the defense before their summary judgment motion and absent any demonstration by inmate that he would suffer any actual prejudice. Boston v. Takos, W.D.N.Y.2002, 2002 WL 31663510, Unreported. Federal Civil Procedure 751; Federal Civil Procedure 846

Inmate's failure to exhaust his administrative remedies was affirmative defense in § 1983 suit against prison officials, and thus it was abuse of discretion for district court to sua sponte dismiss suit for failure to exhaust, where it was not clear on face of complaint that there had been failure to exhaust. Howe v. Litscher, C.A.7 (Wis.) 2002, 52 Fed.Appx. 859, 2002 WL 31804970, Unreported. Civil Rights 1395(7); Civil Rights 1398

4903. Congressional foreclosure, defenses

Defendants bear burden of establishing congressional foreclosure of enforcement of right under § 1983 and must point to remedial scheme so comprehensive that allowing plaintiffs to sue under § 1983 would be inconsistent with Congress's carefully tailored scheme. Evelyn V. v. Kings County Hosp. Center, E.D.N.Y.1997, 956 F.Supp. 288. Civil Rights 1027; Civil Rights 1401

Section 1983 does not provide a remedy for statutory violations where Congress has foreclosed private enforcement of statute in the enactment itself and where statute did not create enforceable rights within meaning of § 1983. Backlund v. Hessen, D.Minn.1995, 904 F.Supp. 964, reversed 104 F.3d 1031, rehearing denied, on remand 176 F.R.D. 316. Civil Rights 1027

4904. Common law, defenses

Aside from the immunity from suit available to state officers acting within scope of their official discretion, other defenses, likewise derived from the common law, are also available in suits to recover for deprivation of civil rights under color of state law. Anthony v. White, D.C.Del.1974, 376 F.Supp. 567. Civil Rights 1366

4905. Tort defenses

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42 U.S.C.A. § 1983

This section is to be read in harmony with general principles of tort immunities and defenses rather than in derogation of them. Imbler v. Pachtman, U.S.Cal.1976, 96 S.Ct. 984, 424 U.S. 409, 47 L.Ed.2d 128. Civil Rights 1366; Civil Rights 1373

As in conventional tort cases, defense of intervening or supervening cause involving another tort-feasor does not apply in actions under 1871 civil rights statute, 42 U.S.C.A. § 1983, where other tort-feasor's actions are of precisely the type the first tort-feasor has had reason to know would be encouraged by its own misconduct, such as its own failure to supervise or discipline like conduct in the past. Payne v. City of LaSalle, N.D.Ill.1985, 610 F.Supp. 606. Civil Rights 1333(1)

In action against police officers in the nature of common law tort actions of false arrest and false imprisonment, brought pursuant to this subchapter, defenses available at common law remained available under this subchapter. Pouncey v. Ryan, D.C.Conn.1975, 396 F.Supp. 126. Civil Rights 1369

This section must be read in manner consistent with background of common-law tort liability which allows only for recognized tort defenses. Jenkins v. Meyers, N.D.Ill.1972, 338 F.Supp. 383, affirmed 481 F.2d 1406. Civil Rights 1366

Motorist was not prejudiced by granting of town's motion to amend its answer in § 1983 action to add defense of legal justification, and district court thus did not abuse its discretion in granting motion, notwithstanding motorist's contention that he conducted discovery under assumption that legal justification would not be issue, where there was no indication he sought to reopen discovery, and he failed to identify any lines of inquiry he might have pursued if allowed further discovery. Best v. Town of Clarkstown, C.A.2 (N.Y.) 2003, 61 Fed.Appx. 760, 2003 WL 1785892, Unreported. Federal Civil Procedure 846

4906. Convictions, defenses

Village and police chief waived defense that *Heck v. Humphrey*, barring any civil rights action that would necessarily render a conviction or sentence invalid, applied to §§ 1983 selective prosecution and due process claims brought against them by tavern owner, convicted for setting up illegal gaming machines; village and police chief failed to raise such defense to those particular claims. Kramer v. Village of North Fond du Lac, C.A.7 (Wis.) 2004, 384 F.3d 856. Civil Rights 1369; Federal Civil Procedure 751

Felony murder conviction barred § 1983 civil rights suit against police officers and assistant state's attorneys alleging malicious prosecution, even if claims implicated rights protected by Fourth Amendment; malicious prosecution claim requires showing that criminal proceeding had been terminated in plaintiff's favor. Simpson v. Rowan, C.A.7 (Ill.) 1995, 73 F.3d 134, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 104, 519 U.S. 833, 136 L.Ed.2d 58. Civil Rights 1088(5)

Where law enforcement officers have made arrest, resulting conviction is defense to section 1983 action asserting that arrest was made without probable cause. Cameron v. Fogarty, C.A.2 (N.Y.) 1986, 806 F.2d 380, certiorari denied 107 S.Ct. 1894, 481 U.S. 1016, 95 L.Ed.2d 501. Civil Rights 1088(4)

Initial conviction or finding of probable cause does not bar subsequent action by defendant challenging conviction under federal civil rights statute if conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal authorized to make such determination, or called into question by federal court's issuance of writ of habeas corpus. Haddock v. Christos, M.D.Pa.1994, 866 F.Supp. 170. Civil Rights 1088(5)

Plaintiff's conviction of weapons possession charges in state court barred his civil rights claim insofar as claim was based on allegation that he was unlawfully deprived of his liberty in that criminal proceedings were instituted

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against him based upon a coerced confession, since question of voluntariness of plaintiff's statements to the police was litigated at trial and jury was instructed it should disregard statements of defendant if it found them to have been involuntarily made. Camarano v. City of New York, S.D.N.Y.1984, 577 F.Supp. 18. Judgment 559

4907. Custom or usage, defenses

Municipality's court-ordered sexual harassment policy could not insulate municipality from § 1983 liability based on deliberate indifference to constitutional rights of female inmate who was forced to perform striptease in front of other inmates and female and male guards, even though guards' acts were against policy; policy was never posted, some guards did not recall receiving it, inmates never received it, there was no evidence of training that was supposed accompany policy, and municipality was indifferent to blatant violations of policy. Daskalea v. District of Columbia, C.A.D.C.2000, 227 F.3d 433, 343 U.S.App.D.C. 261. Civil Rights 1352(4)

4908. Double jeopardy, defenses

Arrestee's filing civil rights action seeking punitive damages for alleged use of excessive force while arrestee was in holding cell at police station did not trigger double jeopardy clause, even if officer had already been punished in criminal proceeding. Stewart v. Roe, N.D.Ill.1991, 776 F.Supp. 1304. Double Jeopardy 23

4909. Equitable estoppel, defenses

Fixed-base operator at municipal airport's allegations that airport commission made misrepresentations about high levels of traffic at airport to induce operator to enter contract with airport and then later produced false documents purporting to show the fictitious levels of traffic after operator made inquiries about unexpected slow traffic levels triggered doctrine of equitable estoppel; commission's alleged use of false documents concealed evidence from operator that it needed in order to determine that it had a claim against commission. Barry Aviation Inc. v. Land O'Lakes Municipal Airport Com'n, C.A.7 (Wis.) 2004, 377 F.3d 682, on remand 2004 WL 2778437. Limitation Of Actions 13

School superintendent's representation that teacher did not qualify for early retirement benefits did not equitably estop school district from asserting limitations as defense to teacher's subsequent federal civil rights claims, inasmuch as statement was not made with intent to mislead teacher into trap of time bar. Waterman v. Nashua-Plainfield Community School Dist., N.D.Iowa 2006, 446 F.Supp.2d 1018. Limitation Of Actions 13

African-American employee alleging that he was constructively discharged in retaliation for asserting race discrimination claim was not judicially estopped from seeking back pay on his retaliation claims under Title VII and § 1983 by fact that he applied and was approved for disability benefits before ending his employment; there was no evidence that employee acted in bad faith, as employee turned down benefits in order to continue working, and uncontested evidence by employee's physician indicated that he was capable of working for four years after ending his employment. Price v. Delaware Dept. of Correction, D.Del.1999, 40 F.Supp.2d 544. Estoppel 68(2)

Developers were not estopped from challenging town's utility system impact fees and tap fees for water and sewer services, as violating the equal protection clause and state law, on ground that developers paid the fees in question and received the benefits of connecting to the town's water and sewer systems, where town accepted payment of the fees without reliance on such payment in determining its course of action, ordinance did not require payment of fees as a condition to forego construction of additional facilities that would have been beneficial to town, and developers were not allowed to develop their property in a manner not otherwise allowable except for payment of the fees. South Shell Inv. v. Town of Wrightsville Beach, N.C., E.D.N.C.1988, 703 F.Supp. 1192, affirmed 900 F.2d 255. Estoppel 63; Estoppel 92(1)

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Subsequent payment of rent by evicted tenant cannot amount to a waiver of a civil rights claim arising out of eviction or an estoppel to assert claim. Carrasco v. Klein, E.D.N.Y.1974, 381 F.Supp. 782. Civil Rights 1368

Chapter 11 debtor-tenant was equitably estopped from pursuing previously undisclosed § 1983 claim asserted against creditor-landlord; claim was precipitated by purportedly unlawful preconfirmation conduct of creditor, that is, entry of confessed judgments for both possession and accelerated rent and issuance of execution thereon, debtor was admittedly aware of judgments, debtor failed to list even contingent or unliquidated claim or right of setoff in its bankruptcy schedules and statement of financial affairs, and debtor failed to include any specific reference to potential § 1983 claim anywhere in either plan or disclosure statement. In re Okan's Foods, Inc., Bkrtcy.E.D.Pa.1998, 217 B.R. 739. Bankruptcy 3568(2)

4910. Full faith and credit, defenses

Same policies which favor relaxed principle of res judicata in civil rights suits also militated against giving full faith and credit to the state judgment so as to bar civil rights suit alleging that city councilman candidate was unconstitutionally denied access to the ballot and in turn that voters were unconstitutionally denied right to vote for him. Williams v. Sclafani, S.D.N.Y.1978, 444 F.Supp. 906, affirmed 580 F.2d 1046. Judgment 828.21(1)

District court was required to give full faith and credit to state court's judgment of dismissal with prejudice in action against county board of commissioners and, therefore, plaintiff could not relitigate his claims against board in action under this section against various officials connected with county jail, including board. Schott v. Hepler, N.D.Ind.1984, 101 F.R.D. 99. Judgment 828.4(2)

4911. Laches, defenses

Laches was not available to bar contractor's legal claims for damages under § 1983 against city which were otherwise timely filed under § 1983's three-year limitations period, as borrowed from analogous state law; federal legislative decision to borrow state statute of limitations for § 1983 is legislative choice that separation of powers principles compels court to respect. Ivani Contracting Corp. v. City of New York, C.A.2 (N.Y.) 1997, 103 F.3d 257, certiorari denied 117 S.Ct. 1695, 520 U.S. 1211, 137 L.Ed.2d 821. Civil Rights 1384

District court abused its discretion by granting laches dismissal of civil rights action against Illinois Department of Human Rights based on its failure to process employment discrimination claims; delay of 28 months in filing suit was not unreasonable given uncertain state of law created by pendency of United States Supreme Court decision, and delay could not have harmed Department. Bennett v. Tucker, C.A.7 (Ill.) 1987, 827 F.2d 63, on remand 127 F.R.D. 501, on remand 720 F.Supp. 1331. Civil Rights 1383

Pro se inmate's two-year delay in taking any action to prosecute his civil rights claims against prison officials warranted dismissal of his complaint, even though suit implicated important public policy concerns, and officials were not prejudiced by delay, where inmate provided no explanation for delay, and lesser sanctions were not likely to be effective. Wade v. Ratella, S.D.Cal.2005, 407 F.Supp.2d 1196. Federal Civil Procedure 1760

Civil rights action brought against prison guard by inmate who was nearly struck by gun shot fired by guard during prison disturbance was barred by laches; action was brought more than four years after incident, and unavailability of witnesses, destruction of records, and absence of contemporaneous evidence would have been prejudicial to guard. Jabbar-El v. Sullivan, E.D.Mich.1992, 811 F.Supp. 265. Civil Rights 1382

Laches is not, as a matter of law, a defense to a civil rights action under this section or under § 1985(3) of this title. DeLuca v. Sullivan, D.C.Mass.1977, 450 F.Supp. 736. Civil Rights 1379

Even though independent presidential candidate who sought place on Florida ballot was notified of his status under

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Florida law in May, 1975, but waited until August, 1976 to file civil rights action to challenge as unconstitutional Florida statutory scheme which denies such independent candidate any means to obtain place on ballot, delay was not so unreasonable or prejudicial as to bar relief where plaintiffs might reasonably have assumed that issue would be addressed at spring 1976 session of Florida Legislature and where less than three months elapsed between date when legislative resolution of problem was foreclosed and date suit was filed. McCarthy v. Askew, S.D.Fla.1976, 420 F.Supp. 775, affirmed 540 F.2d 1254. Elections 179

Action brought by former city clerk against city and certain individual officials alleging his removal from employment without due process was not barred by laches where defendants failed to cite relevant authority for suggestion that action was tardy and where they failed to show any prejudice by timing of commencement of action. De Luca v. Starck, E.D.Wis.1976, 414 F.Supp. 18. Civil Rights 1383

Where prison authorities worked for one year and ten months to achieve compliance with consent decree regarding prison conditions before requesting court to issue order declaring them to be in compliance with consent decree, prisoners' motion seeking enforcement of consent decree, which was filed the day after the prison authority's motion, was timely and not barred by laches. Padgett v. Stein, M.D.Pa.1975, 406 F.Supp. 287. Federal Civil Procedure 2397.6

Where a replacement drama coach was hired at same time plaintiff was fired as high school drama coach and as late as seven months after firing the board of directors of school district had promised to review determination, former drama coach, seeking reinstatement, could not be found guilty of laches in commencing civil rights action some six months after events complained of took place. Webb v. Lake Mills Community School Dist., N.D.Iowa 1972, 344 F.Supp. 791. Schools 147.47

Plaintiffs who had not inexcusably delayed in instituting action for declaratory and injunctive relief under this section were not barred by laches. Shakman v. Democratic Organization of Cook County, N.D.Ill.1969, 310 F.Supp. 1398, reversed 435 F.2d 267, certiorari denied 91 S.Ct. 1383, 402 U.S. 909, 28 L.Ed.2d 650, on remand 356 F.Supp. 1241. Declaratory Judgment 255; Injunction 113

Complaint by alien seeking damages for alleged rejection of application for civil service position because of rule requiring applicant to be citizen adequately stated claim under this section and was not tainted by laches. Kilaru v. Watts, E.D.Wis.1973, 59 F.R.D. 569. Action 6; Civil Rights 1395(8)

State prisoner failed to establish cause for his undue delay in bringing action under §§ 1983 challenging California's lethal injection method of execution, which he brought only eight days prior to his scheduled execution date. Cooper v. Rimmer, N.D.Cal.2004, 2004 WL 231325, Unreported, affirmed 379 F.3d 1029. Civil Rights 1382

Virtual absence of prosecution for five years, and flagrant disregard of court orders, warranted dismissal of arrestee's § 1983 action alleging violations of their civil rights arising from arrest for shoplifting. Alen-Guitierrez v. Acevedo-Miranda, C.A.1 (Puerto Rico) 2003, 66 Fed.Appx. 226, 2003 WL 21355978, Unreported. Federal Civil Procedure 1741; Federal Civil Procedure 1759

4912. Necessity, defenses

"Rule of necessity" did not bar terminated community college president from pursuing claims under § 1983 against board of trustees and its individual members based upon alleged bias of board in making termination decision and in conducting posttermination hearing, even though state statute and president's employment contract gave board nondelegable duty to make such employment determinations; since board did not admit that any of its individual members were biased, jury finding that quorum of board was in fact biased and should have recused itself from termination decision or participation in post-termination hearing would have been required in order to permit board

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to claim that it was required to make decisions regardless of bias, and posttermination hearing could have been delayed until after ill board member became well and new member was appointed to fill vacancy. Bakalis v. Board of Trustees of Community College Dist. No. 504, County of Cook, State of Ill. (Triton College), N.D.Ill.1996, 948 F.Supp. 729, affirmed 125 F.3d 576. Civil Rights 1133

4913. Notice of claim requirements, defenses

Former teacher's failure to serve timely notice of claim under Indiana Tort Claims Act within 180 days after alleged slander and defamation did not bar federal civil rights action based on allegedly defamatory remarks. Vukadinovich v. Board of School Trustees of Michigan City Area Schools, N.D.Ind.1991, 776 F.Supp. 1325, affirmed 978 F.2d 403, rehearing denied, certiorari denied 114 S.Ct. 133, 510 U.S. 844, 126 L.Ed.2d 97. Schools 112

Former chief of police's failure to comply with town charter notice provisions did not bar action against town seeking reinstatement after termination in alleged violation of civil rights; plaintiff seeking to maintain claim under federal civil rights statute is not required to adhere to notice provisions provided under state law. Meding v. Hurd, D.C.Del.1985, 607 F.Supp. 1088. Civil Rights 1312

Alleged noncompliance with municipal notice of claim statute McKinney's N.Y. General Municipal Law § 50-i was not a defense to civil rights action for deprivation of rights brought against former police officers and city for fatal shooting of ten-year-old child, since notice of claim requirement is inapplicable to civil rights actions for deprivation of rights under color of state law. Glover v. City of New York, E.D.N.Y.1975, 401 F.Supp. 632. Civil Rights 1382

4914. Pleas, defenses

Plaintiff's guilty plea in state-court criminal proceeding to charge of manufacturing a controlled substance did not constitute a waiver of antecedent claims under U.S.C.A. Const.Amend. 4; thus, plaintiff was not precluded from bringing subsequent civil rights action directly challenging legality of police conduct. Haring v. Prosise, U.S.Va.1983, 103 S.Ct. 2368, 462 U.S. 306, 76 L.Ed.2d 595. Civil Rights 1088(1); Criminal Law 273.4(2)

State prisoner's guilty plea to stealing provided complete defense to prisoner's civil rights claims that arrest was without probable cause. Bey v. Bridgeton Police Dept., E.D.Mo.1991, 775 F.Supp. 1255. Civil Rights 1088(4)

Plaintiff's plea of guilty to charges of disorderly conduct and harassment arising out of incident which was subject to civil rights litigation barred civil rights action based on claim of false arrest and false imprisonment. Griffen v. City of Mount Vernon, S.D.N.Y.1983, 553 F.Supp. 1047. False Imprisonment 7(5)

4915. Releases from lawsuit, defenses

Although in some cases, release-dismissal agreements whereby criminal defendant releases his right to file a civil rights action in return for a prosecutor's dismissal of pending criminal charges may infringe important interests of criminal defendant and of society as a whole, mere possibility of harm to such interests does not require a per se rule invalidating all such agreements. Town of Newton v. Rumery, U.S.N.H.1987, 107 S.Ct. 1187, 480 U.S. 386, 94 L.Ed.2d 405. Compromise And Settlement 7.1; Criminal Law 40; Release 20

Arrestee voluntarily entered release-dismissal agreement, in which criminal charges against arrestee were dropped and he waived all rights to sue city and police officers, for purposes of determining whether agreement barred arrestee's §§ 1983 action arising from arrest, even though arrestee signed release out of concern for others charged

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in events giving rise to his arrest; arrestee was a 34-year-old college graduate who was represented by counsel and was not incarcerated when he signed agreement, and there was no evidence arrestee did not have ample time to consider the agreement before signing it. MacBoyle v. City of Parma, C.A.6 (Ohio) 2004, 383 F.3d 456. Release 15

Release of right to bring civil rights suit, given in exchange for dismissal of criminal charges, could not be upheld unless it withstood district court's scrutiny as to whether there was prosecutorial overreaching and whether release-dismissal agreement advanced public interest. Livingstone v. North Belle Vernon Borough, C.A.3 (Pa.) 1993, 12 F.3d 1205. Release 19; Release 20

City and its police officers had to establish enforceability of release-dismissal agreement because they were asserting agreement as defense to arrestee's § 1983 claim and to do this, they had to show that agreement was voluntary, there was no evidence of prosecutorial overreaching and enforcement of agreement would not adversely affect relevant public interests. Hill v. City of Cleveland, C.A.6 (Ohio) 1993, 12 F.3d 575. Release 55

Whether county prisoner's release of claims under this section based on beating with nightstick was voluntary was to be determined with reference to coerciveness of atmosphere during execution of release, including lack of counsel, prisoner's testimony that he felt refusal to sign waiver would cause him to be more harshly treated, fact that only minimal attempt was made to explain nature or extent of rights waived, fact that sentence was still pending at time release was executed and fact that following beating prisoner was placed in special segregation facility for 19 days before release was offered. Jones v. Taber, C.A.9 (Or.) 1981, 648 F.2d 1201. Release 18

Where arrestee who executed release of police officers and city for liability in exchange for dismissal of charges of disorderly conduct and resisting a police officer thought she would be put in jail because she would not be able to pay the fines, release was secured in such an inherently coercive context that arrestee did not effectively waive her civil rights action, and it was immaterial that arrestee's counsel commenced negotiations leading to the release. Boyd v. Adams, C.A.7 (Ill.) 1975, 513 F.2d 83. Release 18

Evidence did not establish arrestee had voluntarily executed agreement to waive or release his right to sue city police officer and prosecutor under § 1983, which agreement was executed in connection with negotiated no-contest plea in abeyance to charges, in Utah state court, of interference with police officer and disorderly conduct; arrestee had not been advised at arraignment or at plea hearing of his right to counsel with respect to entry of plea, and did not receive such advisement before his obligation to sign a release became binding through expiration of 30-day period under Utah law to withdraw the plea. Jimenez v. Brunner, D.Utah 2004, 328 F.Supp.2d 1208, subsequent determination 2005 WL 1000246. Criminal Law 40; Release 15

Release signed by black university basketball coach, as part of contract renewal, precluded application in Title VII action of mixed motive analysis to subsequent adverse employment actions of state university, otherwise required in light of direct evidence of racial animus created by racist comment of athletic director made prior to date of release. Richardson v. Sugg, E.D.Ark.2004, 325 F.Supp.2d 919, affirmed 448 F.3d 1046. Release 38

Even if release which arrestee signed was a release-dismissal agreement, whereby arrestee released her right to file a § 1983 action in return for prosecutor's dismissal of pending criminal charges, release was still enforceable, where agreement was freely and voluntarily entered into, and prior to release, prosecutor had dismissed the charges on the basis of lack of evidence. Eberle v. City of Newton, D.Kan.2003, 289 F.Supp.2d 1269, motion to amend denied 296 F.Supp.2d 1276. Criminal Law 40; Release 15; Release 20

Civil liability release contained in Connecticut's waiver of extradition form served no extradition-related public purpose, and was therefore void as against public policy, and did not shield town and police officers who used the form from § 1983 liability against detainee who signed the form. Cuba-Diaz v. Town of Windham, D.Conn.2003, 274 F.Supp.2d 221. Release 20

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42 U.S.C.A. § 1983

Jury question precluding summary judgment remained on whether bar owner released his § 1983 civil rights claim against city by paying liquor license fee, accepting liquor license, and reopening business, where there was no evidence on owner's intent; there was no reference in correspondence between parties to "release of claims," "waiver of cause of action," or language of similar intent. Flesner v. City of Ely, D.Minn.1994, 863 F.Supp. 971. Federal Civil Procedure 2491.5

Town's alleged breach of agreement that it would not raise police officer's voluntary departure as a defense to any workers compensation claim then pending did not invalidate officer's release of any and all claims arising out of his employment, including § 1983 claims, or his knowing and voluntary assent to it. Clorofilla v. Town of New Castle, C.A.2 (N.Y.) 2004, 106 Fed.Appx. 90, 2004 WL 1800491, Unreported. Release 15

Arrestee's release, which discharged claims against chief of police and explicitly released chief of police from "all, and all manner of action, causes of action, controversies, ... claims and demands whatsoever in law or in equity, which against [him] he ever had, [or] now has ... especially in connection" with the arrest, could reasonably be read to release claims against chief of police in his individual capacity. Taylor v. Windsor Locks Police Dept., C.A.2 (Conn.) 2003, 71 Fed.Appx. 877, 2003 WL 21697441, Unreported. Release 27

4916. Ripeness, defenses

Pursuant to *Heck*, inmate did not yet have § 1983 claim against prison officials based on alleged due process violations in disciplinary proceedings resulting in loss of his good time credits when he did not have requisite ruling setting aside loss of credits, even though inmate only sought monetary damages. Dixon v. Chrans, C.A.7 (Ill.) 1996, 101 F.3d 1228. Civil Rights 1092

Due process or equal protection cause of action against Puerto Rico Secretary of Health, which was brought by owners and operators of medical facilities under §§ 1983 for transfer of possession of hospital to another private group, was not ripe, since Secretary did not have any immediate intention to privatize facility. Centro Medico Del Turabo, Inc. v. Feliciano De Melecio, D.Puerto Rico 2004, 321 F.Supp.2d 285, affirmed 406 F.3d 1. Constitutional Law 46(1)

State prison inmate's § 1983 claim that prison officials refused to process legal material presented to them in violation of his First Amendment right to petition for redress of grievances was premature absent any allegation that he was actually prevented from filing a civil action because the prison officials frustrated his attempts to file and pursue grievances. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Federal Courts 13.10

State prison inmate's Ex Post Facto claim for monetary damages under §§ 1983 against prison officials who allegedly conspired to extend his sentence was premature until the basis for his parole denial was rendered invalid. Jones v. Maher, C.A.3 (Pa.) 2005, 131 Fed.Appx. 813, 2005 WL 1155914, Unreported. Conspiracy 7.5(1)

4917. Settlements, defenses

Where counsel for school teacher, who had been discharged without hearing, informed her that she could pursue her rights against board of directors and executive director or could accept board's check in settlement of claims arising out of termination and teacher accepted check bearing notation that her position had been terminated and that two and one half months' salary was being paid in lieu of ample notice because of consolidation of job, acceptance of check constituted knowing waiver of any right to notice and hearing before board and constituted complete settlement of claim, founded on alleged violation of procedural due process, against educational center, its board of directors and executive director arising out of termination. Cochran v. Odell, N.D.Tex.1971, 334 F.Supp. 555. Compromise And Settlement 5(2)

4918. Statute of frauds, defenses

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Ohio statute of frauds, R.C.Ohio §§ 1335.04, 1335.05 is not defense to action to recover under this section. Newbern v. Lake Lorelei, Inc., S.D.Ohio 1968, 308 F.Supp. 407, 24 Ohio Misc. 201, 52 O.O.2d 189, 53 O.O.2d 290.

4919. Stipulations, defenses

Where officials of state agency negotiated stipulation with nursing home owners in state enforcement proceedings, a stipulation waived owners' right to judicial review, state officials were immune from suits for damages. Zapiler v. Robbins, D.C.Colo.1981, 507 F.Supp. 973. Civil Rights 1376(3)

4920. State immunity, defenses

Oklahoma Governmental Tort Claims Act did not immunize city, company under contract to manage city's pedestrian mall, and company's director from § 1983 liability arising out of defendants' denial of permit to use amplified sound on mall in alleged violation of First Amendment rights of religious evangelists. Tiemann v. Tul-Center, Inc., C.A.10 (Okla.) 1994, 18 F.3d 851. Civil Rights 1373; Civil Rights 1376(4)

Eleventh Amendment did not bar §§ 1983 suit by former motor pool director, against current Secretary of Administration for State of Kansas, in Secretary's official capacity, seeking prospective equitable relief in form of reinstatement, as remedy for allegedly wrongful termination by prior Secretary. Spiess v. Fricke, D.Kan.2005, 386 F.Supp.2d 1178. Federal Courts 272

4921. Failure to prosecute, defenses

Citizen, as pro se plaintiff, failed to establish facts to show in civil rights action that his circumstances were sufficiently extraordinary to vacate judgment entered against him for failure to prosecute, on allegations that he was in and out of hospital, suffering from mental condition, and in and out of prison, since citizen was able to file other documents with district court and Court of Appeals in spite of his cycle of ill health and incarceration, and yet he delayed five years in bringing motion to vacate. Broadway v. City of New York, S.D.N.Y.2003, 2003 WL 21209635, Unreported. Federal Civil Procedure 2651.1

4922. Criminal defense, defenses

Limitation of entrapment doctrine to criminal cases precluded claimant, bringing §§ 1983 civil action for damages, following alleged false arrest on extortion charges, from arguing entrapment as refutation of claim he had taken money from police officer in return for influencing his girlfriend to drop rape charges against friend of officer. Dawkins v. Williams, N.D.N.Y.2006, 413 F.Supp.2d 161. Civil Rights 1088(4)

4923. Probable cause

Probable cause to arrest constitutes justification and is a complete defense to an action for false arrest, whether that action is brought under New York law or §§ 1983. Rizzo v. Edison, Inc., W.D.N.Y.2005, 419 F.Supp.2d 338. False Imprisonment 13

XLVIII. LIMITATIONS

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4941. Limitations generally

For limitations purposes, a simple, broad characterization of all section 1983 civil rights claims best fits the statute's remedial purpose. Wilson v. Garcia, U.S.N.M.1985, 105 S.Ct. 1938, 471 U.S. 261, 85 L.Ed.2d 254. Civil Rights 1379

Discrete discriminatory acts, such as termination, failure to promote, denial of transfer, or refusal to hire, are not actionable under § 1983 if time barred, even when they are related to acts alleged in timely filed charges. Ruiz-Sulsona v. University of Puerto Rico, C.A.1 (Puerto Rico) 2003, 334 F.3d 157. Limitation Of Actions 58(1)

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42 U.S.C.A. § 1983

Issue of whether state prisoner's claims were barred by statute of limitations could not be resolved at motion to dismiss phase of civil rights action under §§ 1983 because of factual dispute as to when prisoner learned or reasonably could have learned of various county officials' alleged violation of his constitutional rights, by refusing to surrender blood and semen samples for DNA testing. Wade v. Brady, D.Mass.2006, 460 F.Supp.2d 226. Federal Civil Procedure 1831

Section 1983 does not contain a statute of limitations, but instead borrows the appropriate limitations period from state law. Gedrich v. Fairfax County Dept. of Family Services, E.D.Va.2003, 282 F.Supp.2d 439. Federal Courts 425

Section 1983 does not itself contain a specific statute of limitations and therefore, courts look to law of the state where injury occurred to determine the applicable statute of limitations. Horton v. Marovich, N.D.Ill.1996, 925 F.Supp. 540. Federal Courts 425

4942. Constitutional challenges, limitations

Section 1983 action by owner of adult-oriented newsstand, seeking injunction on First Amendment grounds prohibiting enforcement of city ordinance regulating placement of adult-oriented establishments, raised a facial challenge to the ordinance, and therefore, no statute of limitations applied; owner argued that ordinance precluded any adult establishment from locating in the city. Frye v. City of Kannapolis, M.D.N.C.1999, 109 F.Supp.2d 436. Civil Rights 1384

4943. Personal injury nature of action, limitations

Claims under this section, are best characterized as personal injury actions, for limitations purposes. Wilson v. Garcia, U.S.N.M.1985, 105 S.Ct. 1938, 471 U.S. 261, 85 L.Ed.2d 254. Civil Rights 1379

Bivens actions, like actions under §§ 1983, are considered as personal injury claims and are governed by the personal injury statute of limitations and tolling laws in the state where the alleged injury occurred. Molina-Acosta v. Martinez, D.Puerto Rico 2005, 392 F.Supp.2d 210. United States 50.20

All § 1983 claims are characterized as claims for personal injuries for statute of limitations purposes. Steiner v. City of New York, E.D.N.Y.1996, 920 F.Supp. 333. Civil Rights 1379

4944. Tort limitations statutes generally

Statute of limitations for § 1983 action challenging validity of municipal ordinance requiring permit before rental units could be converted into condominiums or cooperative apartments was Massachusetts three-year limitation for commencement of tort actions. Gilbert v. City of Cambridge, C.A.1 (Mass.) 1991, 932 F.2d 51, certiorari denied 112 S.Ct. 192, 502 U.S. 866, 116 L.Ed.2d 153, rehearing denied 112 S.Ct. 922, 502 U.S. 1051, 116 L.Ed.2d 820. Civil Rights 1381

4945. Personal injury limitations statutes--Generally

Where rural county water association, in suing to enforce its alleged exclusive right to sell water to customers within its area of service while it was indebted to federal government on Farmers' Home Administration (FmHA) loan, had brought suit against municipality that allegedly infringed on its exclusive service rights under §§ 1983, water association was subject to same two-year limitations period applicable to personal injury claims under Oklahoma law, and could not pursue claim for sales activity which predated its suit by more than two years, before water association repurchased its FmHA debt and entered into second FmHA loan. Pittsburg County Rural Water

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Dist. No. 7 v. City of McAlester, C.A.10 (Okla.) 2004, 358 F.3d 694, certiorari denied 125 S.Ct. 44, 543 U.S. 810, 160 L.Ed.2d 13, certiorari denied 125 S.Ct. 54, 543 U.S. 811, 160 L.Ed.2d 13. Civil Rights 1384

Because §§ 1983 does not contain its own statute of limitations, a federal court must borrow the statute of limitations applicable to personal injury claims in the forum state. Wilson v. City of Fountain Valley, C.D.Cal.2004, 372 F.Supp.2d 1178. Federal Courts 425

Section 1983 claims are governed by state statute of limitations for general personal injury actions. Feldman v. Nassau County, E.D.N.Y.2004, 349 F.Supp.2d 528, affirmed 434 F.3d 177. Federal Courts 425

In New York, arrestee's § 1983 action against sheriff deputies was governed by three-year limitations period for personal injury actions, and not one-year period for suits against sheriff or sheriff's deputy. Houghton v. Cardone, W.D.N.Y.2003, 295 F.Supp.2d 268. Civil Rights 1382

State statutes of limitations applicable to general personal injury claims supply limitations periods for § 1983 claims. McCall v. Board of Com'rs of County of Shawnee, KS, D.Kan.2003, 291 F.Supp.2d 1216. Civil Rights 1379; Federal Courts 425

Inmate's allegations of various incidents occurring over a three-year period, including being issued a citations for misconduct for possession of barber shop tools and being in a restricted area without a pass, did not constitute a continuing pattern of discrimination or harassment directed toward inmate and the Muslim prison population, and thus inmate's claims relating to such incidents was barred by Oklahoma's two-year statute of limitations for personal injury actions, absent evidence that the incidents were anything more than unrelated actions of misconduct on the part of the inmate. Roberts v. Champion, N.D.Okla.2003, 255 F.Supp.2d 1272, affirmed 91 Fed.Appx. 108, 2004 WL 249617. Limitation Of Actions 58(1)

Pro se claimant's § 1983 claim based on alleged conspiracy to deprive claimant of his constitutional right to fair trial seven years earlier was barred by statute of limitations, which was three years based on state's personal injury statute; claim that he was entitled to have trial videotaped accrued no later than date of conviction as claimant knew or had reason to know of any injury stemming from failure to videotape trial at that time. Molina v. Kaye, E.D.N.Y.1996, 956 F.Supp. 261. Conspiracy 16

New York has a three-year statute of limitations for § 1983 actions which is derived from New York's general personal injury statute of limitations. Lee v. Donnaruma, C.A.2 (N.Y.) 2003, 63 Fed.Appx. 39, 2003 WL 21105326, Unreported. Civil Rights 1379

4946. ---- Civil rights limitation statutes, personal injury limitations statutes

Inmate's §§ 1983 claims against police officers based on assault which occurred in county jail were governed by Missouri's five-year personal injury statute of limitations, and not three-year statute of limitations; overruling *Sulik v. Taney County, Mo.*, 316 F.3d 813. Sulik v. Taney County, Mo., C.A.8 (Mo.) 2005, 393 F.3d 765. Civil Rights 1382

Three-year limitations period began to run on attorney's claim in Massachusetts under §§ 1983 against court officers when attorney allegedly was physically assaulted and sustained immediate injuries at hands of those officers. Keane v. Navarro, D.Mass.2004, 345 F.Supp.2d 9. Limitation Of Actions 58(1)

Virginia's two-year statute of limitations for personal injury actions barred Virginia prisoner's § 1983 claims against prison officials alleging disability discrimination insofar as they were based on events that occurred more than two years before his complaint was filed, especially considering that he had filed similar claims more than two years before present complaint was filed. Garrett v. Angelone, W.D.Va.1996, 940 F.Supp. 933, affirmed 107 F.3d

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42 U.S.C.A. § 1983

865. Limitation Of Actions 95(15)

In Illinois, the two-year personal injury statute of limitations applies to § 1983 actions and to actions under civil rights statute prohibiting persons from conspiring for the purpose of depriving any person of the equal protection of the laws. Horton v. Marovich, N.D.Ill.1996, 925 F.Supp. 540. Civil Rights 1379; Conspiracy 16

Most analogous state statute of limitations, which district court had to borrow in assessing timeliness of § 1983 action, was Utah's residual statute of limitations for personal injury claims, rather than statute of limitations specifically enacted by Utah legislature to govern federal civil rights actions; Utah's statute of limitations for federal civil rights actions did not even purport to deal with similar state created or recognized causes of action. Sheets v. Lindsey, D.Utah 1991, 783 F.Supp. 577, affirmed 45 F.3d 1383, certiorari denied 116 S.Ct. 74, 516 U.S. 817, 133 L.Ed.2d 34. Civil Rights 1379

Former school district employee's §§ 1983 claim, asserting that district racially discriminated against her in pay and benefits for the first four months of her employment, was subject to Georgia's two-year statute of limitations. Palmer v. Stewart County School Dist., C.A.11 (Ga.) 2006, 178 Fed.Appx. 999, 2006 WL 1275850, Unreported. Civil Rights 1383

4947. ---- Intentional tort limitation statutes, personal injury limitations statutes

Section 1983 action in state with more than one statute of limitations is governed by residual or general personal injury statute of limitations, rather than statute of limitations for enumerated intentional torts. Owens v. Okure, U.S.N.Y.1989, 109 S.Ct. 573, 488 U.S. 235, 102 L.Ed.2d 594. Civil Rights 1379

4948. Commencement of period, limitations--Generally

Involuntary dismissal of §§1983 action, denominated "without prejudice" but expressly imposed as sanction for noncompliance with district court's discovery and related orders, did not cause limitations period to run anew from date of dismissal, as would normally be the case for non-prejudicial dismissal under applicable Puerto Rico limitations law; application of territorial restart rule would frustrate policy of repose, applicable in federal lawsuits. Lopez-Gonzalez v. Municipality of Comerio, C.A.1 (Puerto Rico) 2005, 404 F.3d 548. Limitation Of Actions 130(5)

Although under continuing violation doctrine each day that county's allegedly unconstitutional waste-disposal ordinance was in effect started new limitations period for solid waste hauler's § 1983 cause of action against county, doctrine did not render statute of limitations irrelevant; hauler could still recover only damages caused by ordinance on or after date that preceded filing of action by length of state's limitations period for § 1983 actions. Seacoast Sanitation Ltd., Inc. v. Broward County, Florida, S.D.Fla.2003, 275 F.Supp.2d 1370. Limitation Of Actions 58(1)

Limitations period applicable to § 1983 claim against city and police commissioner, alleging that they had fostered policy pursuant to which perjury and falsification of documents were methods of securing indictments and convictions of innocent individuals, did not accrue for limitations purposes until date underlying criminal action against plaintiff was terminated in plaintiff's favor by decision of state appellate court. Crespo v. New York City Police Com'r, S.D.N.Y.1996, 930 F.Supp. 109. Limitation Of Actions 58(1)

Limitations period for bringing civil rights action based upon purported selective enforcement by members of state racing commission administrative penalty procedures began to run on date on which plaintiff and member of commission entered into confidential agreement. Cirasuola v. Westrin, E.D.Mich.1996, 915 F.Supp. 909, affirmed 124 F.3d 196. Limitation Of Actions 58(1)

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New York statute of limitations governing plaintiff's § 1983 and *Bivens* claims premised on alleged presentation of false and misleading statements in affidavits in support of warrant to search his residence began to run when warrant was presented and search executed, and was not delayed due to fact that warrant and supporting affidavits were sealed following presentation and execution; although plaintiff claimed that he had no way of knowing until documents were unsealed that warrant was illegal, he was clearly aware of search and seizure at time of execution and should have been aware at that time that there was possible violation of his rights. Triestman v. Probst, N.D.N.Y.1995, 897 F.Supp. 48. Limitation Of Actions 95(15)

Limitations periods for purposes of § 1983 action begin to run in response to discriminatory acts themselves and not in response to the continuing effects of past discriminatory acts. Barcume v. City of Flint, E.D.Mich.1993, 819 F.Supp. 631. Limitation Of Actions 58(1)

4949. ---- Knowledge of injury, commencement of period, limitations

State prisoner's §§ 1983 claim seeking post-conviction access to physical evidence for the purpose of DNA testing accrued, for limitations purposes, on the date that the state court denied his request for DNA testing under state law; on that date, prisoner became aware of his alleged injury. Savory v. Lyons, C.A.7 (Ill.) 2006, 469 F.3d 667. Limitation Of Actions 95(15)

Property owner's §§ 1983 claim and Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim against police officers and prosecutors, challenging the seizure of his automotive repair tools, trailers, and other equipment from his son-in-law's automotive shop, under the Fourth Amendment, accrued, for statute of limitations purposes, at the time of that the owner received constructive notice of the seizure, or at the latest, by the date that he filed a claim for return of his property, rather than on the date of the subsequent forfeiture proceeding; gravamen of the claim was that the defendants illegally seized his property, preventing him from using it. Kripp v. Luton, C.A.10 (Okla.) 2006, 466 F.3d 1171. Limitation Of Actions 95(15)

Georgia's two-year statute of limitations for personal injury actions, which applied to prisoners' §§ 1983 action against former and current members of Georgia Board of Pardons and Paroles, began to run on date prisoners knew that they would have to serve more than one-third of their judicially imposed sentences and longer sentences than parole decision guidelines dictated, as a result of secret parole policy. Porter v. Ray, C.A.11 (Ga.) 2006, 461 F.3d 1315. Limitation Of Actions 95(15)

A §§ 1983 claim accrues, and the statute of limitations begins to run, on the date that the plaintiff knows or has reason to know of the act which is the basis for the claim. Nieves-Vega v. Ortiz-Quinones, C.A.1 (Puerto Rico) 2006, 443 F.3d 134. Limitation Of Actions 95(15)

Fixed-base operator at municipal airport's cause of action against airport commission and municipal officials for fraudulent inducement to contract under Racketeer Influenced and Corrupt Organizations Act (RICO) and §§ 1983 accrued, and six and four year statutes of limitations began to run, when operator became aware gradually of the possibility of injury as business levels continued to fall short of anticipated goals. Barry Aviation Inc. v. Land O'Lakes Municipal Airport Com'n, C.A.7 (Wis.) 2004, 377 F.3d 682, on remand 2004 WL 2778437. Limitation Of Actions 100(12)

Candidate's §§ 1983 claims against county clerk, alleging violations of candidate's rights under the Fourth, Fifth, and Fourteenth Amendments to an election free from fraud, stemming from clerk's tampering with ballots, accrued on the date of the election, rather than on the date the fraudulent ballots were seized from clerk; candidate had no reason to suspect that she had suffered constitutional injury until she was made aware of the inexplicable decision on the date of the election to commingle the fraudulent ballots with the untainted ones, irrevocably tainting the results of the election. Hileman v. Maze, C.A.7 (Ill.) 2004, 367 F.3d 694, rehearing and rehearing en banc denied. Limitation Of Actions 95(15)

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42 U.S.C.A. § 1983

Statute of limitations on prisoner's § 1983 action challenging retroactive application of a new Georgia parole policy began to run at time prisoner became aware that his parole reconsideration was being held outside the three-year maximum that was mandated by the Georgia Parole Board policy that was in place at the time he committed his crime; each time prisoner's parole reconsideration hearing was set, it did not amount to a distinct and separate injury warranting separate statute-of-limitations calculations, rather, inmate's injury, to the extent it ever existed, was when parole board applied its new policy, eliminating the requirement of parole review every three years for prisoner, retroactively. Brown v. Georgia Bd. of Pardons & Paroles, C.A.11 (Ga.) 2003, 335 F.3d 1259. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

In most instances, date of accrual of limitations period for § 1983 action occurs when plaintiff knows, or has reason to know, of injury on which action is based. Ruiz-Sulsona v. University of Puerto Rico, C.A.1 (Puerto Rico) 2003, 334 F.3d 157. Limitation Of Actions 95(15)

In wrongful discharge suits under § 1983, statute of limitations begins to run when plaintiff learns of decision to terminate his employment; to qualify as accrual date, it is only necessary that employee reliably knew he had lost his job, not the date when employer dotted particular "i" or crossed a particular "t." Ruiz-Sulsona v. University of Puerto Rico, C.A.1 (Puerto Rico) 2003, 334 F.3d 157. Limitation Of Actions 95(15)

One-year limitations period in which professor had to file § 1983 action against university and faculty members, alleging that he was discharged based on his political beliefs in violation of the First Amendment, accrued when employee learned that university would not renew his contract, not when dean met with professor and informed professor that he would not be re-hired or hired for any teaching position. Ruiz-Sulsona v. University of Puerto Rico, C.A.1 (Puerto Rico) 2003, 334 F.3d 157. Limitation Of Actions 95(15)

Equitable tolling of limitations period, in which professor had to file § 1983 action against university and faculty members after his contract was not renewed, allegedly due to political discrimination in violation of the First Amendment, was not warranted; applying limitations period would create no injustice to professor, who claimed that he knew all along that he was being discriminated against for his political beliefs. Ruiz-Sulsona v. University of Puerto Rico, C.A.1 (Puerto Rico) 2003, 334 F.3d 157. Limitation Of Actions 104.5

Claims that city and state transportation department acted in racially discriminatory manner by allocating limited funds to erect sound barriers for highway construction project in predominantly Caucasian neighborhood, while not providing such barriers for similar project in predominantly African-American community, accrued when request by residents of African-American community for sound barriers was denied and residents knew or should have known that sound barriers were to be constructed around project in Caucasian neighborhood. Tolbert v. State of Ohio Dept. of Transp., C.A.6 (Ohio) 1999, 172 F.3d 934. Limitation Of Actions 95(15)

In § 1983 action challenging allegedly unconstitutional medical or psychiatric confinement, action accrues, for limitations purposes, when plaintiff knows or has reason to know of injury which is basis of action; such knowledge depends on particular circumstances of case and does not necessarily accrue either at date of initial confinement or at date of plaintiff's release from custody. Ormiston v. Nelson, C.A.2 (N.Y.) 1997, 117 F.3d 69. Limitation Of Actions 95(15)

Even if arrestee did not have actual knowledge of officer's allegedly improper conduct at lineup until he received transcript of *Wade* hearing, he had reason to know of those facts, for purposes of accrual of his civil rights claim, at the time of the *Wade* hearing, which his attorney attended. Veal v. Geraci, C.A.2 (N.Y.) 1994, 23 F.3d 722. Limitation Of Actions 95(15)

City police officer's §§ 1983 First Amendment retaliation claim and his selective prosecution claim, based on city employer's filing of disciplinary charges against officer, allegedly for commenting on matters of public concern, accrued, for limitations purposes, on the date that officer was advised of the disciplinary charges brought against

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him, rather than on the date of effective service on officer of the disciplinary charges. Chittenden v. Connors, S.D.N.Y.2006, 460 F.Supp.2d 463. Limitation Of Actions 95(15)

Homeowners' equal protection claims under §§ 1983 and Massachusetts Civil Rights Act (MCRA) accrued on date when town issued an order of conditions affirmatively authorizing the purchasers to build a home on lot across from homeowners' lot; when the public order of conditions issued, homeowners knew or should reasonably have known of the facts necessary to assert their equal protection claim based on allegations that town officials intentionally and without a rational basis assured them that lot was unbuildable, but later authorized the purchasers to construct a home on the very same property, thus compromising homeowners' privacy and view. Sampson v. Town of Salisbury, D.Mass.2006, 441 F.Supp.2d 271. Limitation Of Actions 95(15)

Genuine issue of material fact as to when former employee for not-for-profit corporation charged with administering federal workforce-training funds for municipalities learned that she would not be hired by replacement workforce development system precluded summary judgment on limitations grounds in employee's §§ 1983 action against municipalities. Krause v. Buffalo and Erie County Workforce Development Consortium, Inc., W.D.N.Y.2006, 425 F.Supp.2d 352. Federal Civil Procedure 2497.1

The §§ 1983 cause of action accrues and the statute of limitations commences when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action. Guseh v. North Carolina Cent. University, M.D.N.C.2005, 423 F.Supp.2d 550. Limitation Of Actions 95(15)

A §§ 1983 claim accrues when the plaintiff knows or has reason to know of the injury that is the basis of the claim. Wilson v. City of Fountain Valley, C.D.Cal.2004, 372 F.Supp.2d 1178. Limitation Of Actions 95(15)

Limitations period did not commence running on released prisoner's civil rights claims until she became of aware of alleged nondisclosure of exculpatory evidence and misleading statements made by prosecutor, firearms examiner, and lab analyst, although she was injured several years earlier when she pleaded guilty to second-degree murder without benefit of alleged exculpatory evidence. Bembenek v. Donohoo, E.D.Wis.2005, 355 F.Supp.2d 942. Limitation Of Actions 95(15)

Legal duty to investigate and bring § 1983 action against employees of Florida Department of Children and Families (DCAF) in their individual capacities, for permitting child to live with abusive parent as foster child and adopted child between ages 2 and 6, would not be imputed, for purposes of commencing the limitations period, to guardian ad litem who had been appointed solely for purposes of child dependency proceeding with respect to adoptive parent. Omar ex rel. Cannon v. Lindsey, M.D.Fla.2004, 328 F.Supp.2d 1287. Limitation Of Actions 72(1)

Housing developer's equal protection claims against city officials for selective enforcement of city codes against him accrued when he first knew or had reason to know of the injury that was the basis of each claim. Thompson v. City of Shasta Lake, E.D.Cal.2004, 314 F.Supp.2d 1017. Limitation Of Actions 95(15)

Section 1983 action by parent against school board and school officials, arising from their failure to place her disabled son in special education classes, accrued, and two year limitations period began to run, when decision not to place student in special education classes was rendered; even though parent was not advised of her appeal rights following decision, she did learn of the basis of her claim when decision was rendered. Smith ex rel. Duck v. Isle of Wight County School Bd., E.D.Va.2003, 284 F.Supp.2d 370, affirmed in part, reversed in part and remanded 402 F.3d 468. Limitation Of Actions 95(15)

Under New Jersey law, two-year statute of limitations on neighbors' civil rights claims against police officer, which arose when officer allegedly took neighbor's son to police station after the son had thrown rocks and dirt into officer's swimming pool, began to accrue on day of swimming pool incident, even if the neighbors were unaware of

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their legal rights, as they had knowledge on the day of the incident of what happened and the persons involved. Simone v. Narducci, D.N.J.2003, 262 F.Supp.2d 381. Limitation Of Actions 95(15)

Prisoner's § 1983 due process claim, based on police officers' failure to comply in good faith with court order requiring them to run fingerprints found at murder scene through automated fingerprint identification system, did not accrue until when officer admitted, five years after initially reporting that the fingerprints were not found on system, that fingerprints from murder scene had matched those of certain individual; prisoner had no reason to know until that time that police department's original response to court order had been inaccurate. Newsome v. James, N.D.Ill.1997, 968 F.Supp. 1318. Limitation Of Actions 58(1)

Statute of limitations began to run on fraud claim under § 1983 when plaintiff became aware that he had suffered injury or had sufficient information to know that he had suffered injury. Porter v. Charter Medical Corp., N.D.Tex.1997, 957 F.Supp. 1427. Limitation Of Actions 100(1)

Section 1983 claim accrues when plaintiff knows or has reason to know of injury that forms basis of his or her cause of action. Johnson v. Cullen, D.Del.1996, 925 F.Supp. 244. Limitation Of Actions 95(15)

All actions brought under § 1983 are subject to one-year statute of limitations which begins to run when plaintiff knows, or reasonably should know of alleged injury. Santa Fe Springs Realty Corp. v. City of Westminster, C.D.Cal.1995, 906 F.Supp. 1341. Limitation Of Actions 95(15)

Claims accrued under federal civil rights provisions when plaintiff knew or had reason to know of injury which was basis for action and thus federal civil rights claims based on injuries which were such that plaintiff would have known or had to reason to know of injuries immediately and thus claims were time-barred under three-year limitations period for personal injury actions absent showing of grounds for tolling statute. Benyi v. Broome County, N.Y., N.D.N.Y.1995, 887 F.Supp. 395, reconsideration denied. Limitation Of Actions 95(15)

Civil rights claimant's § 1983 cause of action against state investigators for concealment of, or tampering with, exculpatory evidence in underlying state murder trial accrued when Pennsylvania Supreme Court discharged claimant from state custody and barred retrial which finally terminated charges in claimant's favor, rather then on date of prior order reversing conviction and remanding for retrial due to evidentiary grounds unrelated to basis of § 1983 claim. Smith v. Holtz, M.D.Pa.1995, 879 F.Supp. 435, affirmed 87 F.3d 108, certiorari denied 117 S.Ct. 611, 519 U.S. 1041, 136 L.Ed.2d 536. Limitation Of Actions 58(1)

Civil rights suit by arrestee alleging excessive force accrued, and New York's three-year statute of limitations for personal injury suits began to run, on date of shootout with police giving rise to suit. Perez v. Police Dept. of City of New York, S.D.N.Y.1994, 872 F.Supp. 49, affirmed 71 F.3d 405. Limitation Of Actions 58(1)

Issues of fact as to when former student's § 1983 action against school district, arising out of elementary school teacher's alleged sexual molestation of her and alleging that school promulgated policies allowing sexual abuse to flourish, accrued precluded summary judgment on limitations grounds, even though alleged molestation took place 13 years before action was filed; it was not clear when person in student situation would have realized that she was injured by district's allegedly unconstitutional conduct. Doe v. Paukstat, E.D.Wis.1994, 863 F.Supp. 884. Federal Civil Procedure 2491.5

For purposes of limitations period governing § 1983 claim, as a matter of law, former junior high school student knew or had reason to know of alleged sexual abuse by former teacher before he sought counseling, even though student claimed to have repressed memory of abuse until he underwent counseling; no reasonable finder of fact could believe that boy molested repeatedly between his 13th and 16th birthdays would not have known what was occurring, although case might be different if victim was younger or abuse more threatening. Ernstes v. Warner, S.D.Ind.1994, 860 F.Supp. 1338. Limitation Of Actions 95(15)

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42 U.S.C.A. § 1983

Under Federal law, civil rights action accrues when plaintiff knows or has reason to know of injury which is basis of action. Clay v. LaPorta, E.D.Va.1993, 815 F.Supp. 911, affirmed 36 F.3d 1091. Limitation Of Actions 95(15)

Statutory period for bringing § 1983 civil rights claim begins to run under New York law upon accrual of claim, i.e., when claimant knows or has reason to know of injury which underlies action. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Limitation Of Actions 95(15)

Civil rights claim alleging improper documentation in parole file was time-barred when parolee knew of parole officer's alleged improper record-keeping for more than three years before filing suit. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Limitation Of Actions 95(15)

Civil rights claims against supervising parole officer arising from imposition of curfew accrued when parolee obtained knowledge of officer's supervisory role over decision, and thus were time-barred when brought more than three years thereafter. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Limitation Of Actions 95(15)

4950. ---- Ordinance enactments, commencement of period, limitations

In view of fact that state law provided no remedy for regulatory takings at time alleged taking occurred, § 1983 claim based on facial challenge to ordinance accrued when final version of ordinance was passed, notwithstanding property owner's contention that cause of action did not accrue until property values increased, and that statute of limitations was inapplicable to claim for declaratory judgment. Levald, Inc. v. City of Palm Desert, C.A.9 (Cal.) 1993, 998 F.2d 680, certiorari denied 114 S.Ct. 924, 510 U.S. 1093, 127 L.Ed.2d 217. Limitation Of Actions 58(1)

Advertising company's allegation of unconstitutional taking resulting from city ordinance restricting off-premise outdoor advertising sign accrued for limitation purposes at time ordinance was enacted and not at time city's demanded that nonconforming signs be removed; it was clear when ordinance was approved that signs not located on federal highway system were subject to ordinance. National Advertising Co. v. City of Raleigh, C.A.4 (N.C.) 1991, 947 F.2d 1158, certiorari denied 112 S.Ct. 1997, 504 U.S. 931, 118 L.Ed.2d 593. Limitation Of Actions 58(1)

Statute of limitations on constitutional challenge to county's mobile home rent control ordinance brought by owners of mobile home parks began to run from date of ordinance's enactment, not from date county amended ordinance to remove sunset provision, and new cause of action did not accrue each time tenant sold mobile home to new tenant and owners were precluded by ordinance from raising rent. De Anza Properties X, Ltd. v. County of Santa Cruz, C.A.9 (Cal.) 1991, 936 F.2d 1084. Limitation Of Actions 58(1)

Section 1983 action for temporary taking of landowner's property caused by ultimately invalidated city zoning ordinances did not accrue until final decision of state appellate court invalidating zoning ordinance and ordering city to accept landowner's site plan application; action did not accrue with passage of unlawful zoning ordinance or denial of landowner's site plans. Corn v. City of Lauderdale Lakes, C.A.11 (Fla.) 1990, 904 F.2d 585. Limitation Of Actions 105(1)

Waste hauler's claim against county under § 1983 for adopting waste disposal ordinance that allegedly violated dormant commerce clause accrued when ordinance took effect, not when it was passed. Randy's Sanitation, Inc. v. Wright County, Minn., D.Minn.1999, 65 F.Supp.2d 1017. Limitation Of Actions 58(1)

Company's action challenging constitutionality of village sign code and ordinance granting company 12-year variance from that code accrued when company's billboard became subject to sign code and to ordinance, not when

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variance expired. Universal Outdoor, Inc. v. Elk Grove Village, N.D.Ill.1997, 969 F.Supp. 1125. Limitation Of Actions 58(1)

Viewed as facial challenge, apartment buildings covered by ordinance which prohibited owners of apartments subject to rent control from ceasing to rent them without removal permit, were burdened, if at all, upon mere enactment of ordinance; thus, statute of limitations on facial challenge to ordinance under § 1983 began to run upon enactment of ordinance. Gilbert v. City of Cambridge, D.Mass.1990, 745 F.Supp. 42, affirmed 932 F.2d 51, certiorari denied 112 S.Ct. 192, 502 U.S. 866, 116 L.Ed.2d 153, rehearing denied 112 S.Ct. 922, 502 U.S. 1051, 116 L.Ed.2d 820. Limitation Of Actions 58(1)

4951. ---- Ordinance enforcement, commencement of period, limitations

City's decision to institute formal hearings against nightclub under city's public nuisance abatement ordinance, and its notice to nightclub owners of that decision, rather than actual beginning of the abatement hearing itself, was the "operative decision" that triggered the statute of limitations for nightclub owners' § 1983 claims against city for violation of their free expression, equal protection and due process rights; the hearing was simply the effect of that decision and was not a separately unconstitutional act. RK Ventures, Inc. v. City of Seattle, C.A.9 (Wash.) 2002, 307 F.3d 1045. Limitation Of Actions 58(1)

Newly-formed krewe's claim for damages under § 1983 arising from application of parish's allegedly unconstitutional ordinance requiring payment of security costs to obtain Mardi Gras parade permit accrued when payment was demanded. Toga Soc., Inc. v. Lee, E.D.La.2004, 323 F.Supp.2d 779. Limitation Of Actions 58(1)

Although under continuing violation doctrine each day that county's allegedly unconstitutional waste-disposal ordinance was in effect started new limitations period for solid waste hauler's § 1983 cause of action against county, doctrine did not render statute of limitations irrelevant; hauler could still recover only damages caused by ordinance on or after date that preceded filing of action by length of state's limitations period for § 1983 actions. Seacoast Sanitation Ltd., Inc. v. Broward County, Florida, S.D.Fla.2003, 275 F.Supp.2d 1370. Limitation Of Actions 58(1)

Under North Carolina law, there is no independent cause of action for civil conspiracy; claim can arise only where there is underlying claim for unlawful conduct. Byrd v. Hopson, W.D.N.C.2003, 265 F.Supp.2d 594, affirmed 108 Fed.Appx. 749, 2004 WL 1770261. Conspiracy 1.1

4952. ---- Arrests, commencement of period, limitations

The two-year limitations period applicable to arrestee's Fourth Amendment claim for false arrest against city police officer who allegedly planted evidence to support his arrest commenced to run when charges against him were dismissed, not at the time of the arrest, if it were determined on remand that arrestee's attack on his arrest would challenge the only evidence supporting a potential conviction; if arrestee was arrested and prosecuted solely on the basis of drugs planted by arresting officers, then any attack on the arrest would necessarily challenge the legality of a prosecution premised on the planted drugs. Wiley v. City of Chicago, C.A.7 (Ill.) 2004, 361 F.3d 994, rehearing and rehearing en banc denied, certiorari denied 125 S.Ct. 61, 543 U.S. 819, 160 L.Ed.2d 28, certiorari denied 125 S.Ct. 68, 543 U.S. 819, 160 L.Ed.2d 28. Limitation Of Actions 58(1)

Arrestee's claim of false arrest under § 1983 did not accrue, and statute of limitations did not begin to run, until his state conviction for murdering his parents was reversed on direct appeal and state dropped charges against him, since conviction was based in large part on arrestee's post-arrest statements, which would have been inadmissible against him if he was falsely arrested. Gauger v. Hendle, C.A.7 (Ill.) 2003, 349 F.3d 354, rehearing and rehearing en banc denied. Limitation Of Actions 58(1)

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42 U.S.C.A. § 1983

Former criminal defendant's § 1983 claim for his alleged unlawful arrest accrued, for limitations purposes, at time of arrest, prior to vacation of defendant's conviction, as defendant's success on his § 1983 claim would not necessarily undermine validity of his conviction. Booker v. Ward, C.A.7 (Ill.) 1996, 94 F.3d 1052, certiorari denied 117 S.Ct. 952, 519 U.S. 1113, 136 L.Ed.2d 840. Limitation Of Actions 58(1)

Claim under § 1983 for injuries sustained during arrest "accrued" for limitations purposes at time of arrest; accordingly, under California law, arrestee's disability, consisting of continuous custody from time of arrest until arrestee had served his prison sentence, existed at time claim accrued and tolled applicable limitations period. Elliott v. City of Union City, C.A.9 (Cal.) 1994, 25 F.3d 800. Limitation Of Actions 75

Arrestee's civil rights claim against officer based on allegedly suggestive lineup accrued no later than date on which he was sentenced for crimes of which he was convicted with the aid of that identification. Veal v. Geraci, C.A.2 (N.Y.) 1994, 23 F.3d 722. Limitation Of Actions 58(1)

Iowa's two-year statute of limitations, applicable to arrestee's civil rights action against police officers who allegedly assaulted him during his arrest, commenced to run at time of arrest, rather than when criminal charges brought in connection with arrest were dismissed; although arrestee claimed he was unaware he had civil rights claim until charges were dismissed, he alleged that he had told officers that he would bring legal action against them for assaulting him at time of his arrest. Davis v. Ross, C.A.8 (Iowa) 1993, 995 F.2d 137. Limitation Of Actions 58(1)

Latest date that arrestee could have been aware that his civil rights were violated for purposes of determining whether action was time barred under Idaho's limitations period for personal injury action, was when charges against him were dismissed. Hallstrom v. City of Garden City, C.A.9 (Idaho) 1993, 991 F.2d 1473, certiorari denied 114 S.Ct. 549, 510 U.S. 991, 126 L.Ed.2d 450. Limitation Of Actions 95(15)

Civil rights claims challenging alleged unlawful interrogations, searches and seizures, forcible entries and arrest by police accrued when the actions actually occurred and thus were time barred under applicable two-year statute of limitations, absent any showing as to why plaintiff did not know of injuries at time of police actions which allegedly caused injuries. Johnson v. Johnson County Com'n Bd., C.A.10 (Kan.) 1991, 925 F.2d 1299. Limitation Of Actions 95(15)

Undercover police officer's civil rights claim based on allegation that he was wrongfully arrested for participating in undercover investigation accrued at time of his arrest. McCune v. City of Grand Rapids, C.A.6 (Mich.) 1988, 842 F.2d 903. Limitation Of Actions 58(1)

Former employee's cause of action against his former employers for deprivation of civil rights arising from his conviction for retaining tools owned by his former employers after he quit his job during wage dispute arose when complaint was filed against him and his arrest occurred and not when his conviction was subsequently reversed, and thus former employee's claim was barred under I.C. § 5-218. Gowin v. Altmiller, C.A.9 (Idaho) 1981, 663 F.2d 820. Limitation Of Actions 58(1)

Cause of action for assault accrued, and three-year statute of limitations under New York law, applicable to claims under §§§§ 1983 and 1985, began to run, when arrestee was allegedly beaten, kicked, and punched during his arrest. Hussain v. Commissioner (John Doe) of Nassau County Police Dept., E.D.N.Y.2005, 368 F.Supp.2d 216. Limitation Of Actions 55(4); Limitation Of Actions 58(1)

Former one-year statute of limitations on false arrest and imprisonment claims did not begin to accrue as to civil rights plaintiff's false arrest civil rights claims until charges against him were dismissed by local prosecutor, and thus, where claims were not yet time-barred upon effective date of new two-year state limitations period for false arrest claims, plaintiff had two years from date of dismissal of criminal charges in which to file civil rights claims.

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Thompson v. City of Shasta Lake, E.D.Cal.2004, 314 F.Supp.2d 1017. Limitation Of Actions 58(1)

Civil rights claims for deprivation of parent's First Amendment rights, false arrest, and false imprisonment, arising from issuance of restraining order prohibiting parent's entrance into public schools and his subsequent arrest for violating order, accrued, at latest, upon parent's arrest, such that claims brought more than three years thereafter were time barred. Assegai v. Bloomfield Bd. of Educ., D.Conn.2004, 308 F.Supp.2d 65, affirmed 165 Fed.Appx. 932, 2006 WL 304793. Limitation Of Actions 58(1)

District of Columbia's residual three-year statute of limitations applied to § 1983 claims alleging use of excessive force, false arrest and imprisonment, malicious prosecution, and conspiracy. Parker v. Grand Hyatt Hotel, D.D.C.2000, 124 F.Supp.2d 79. Conspiracy 16; Civil Rights 1382; Civil Rights 1384

Claim under § 1983 alleging false arrest accrues on date of plaintiff's arrest. Torres v. McLaughlin, E.D.Pa.1997, 966 F.Supp. 1353, reversed 163 F.3d 169, certiorari denied 120 S.Ct. 797, 528 U.S. 1079, 145 L.Ed.2d 672. Limitation Of Actions 58(1)

Section 1983 claim against police detectives for arrest without probable cause accrued, for purposes of limitations, when plaintiff was arrested. Booker v. Ward, N.D.Ill.1995, 888 F.Supp. 869. Limitation Of Actions 58(1)

A § 1983 claim for false arrest and false imprisonment accrued, for purposes of Pennsylvania two-year personal injury statute of limitations applicable to § 1983 actions, when plaintiff knew or had reason to know of injury forming basis of action and that point was date on which plaintiff alleged she was improperly arrested. Hamidian v. Occulto, M.D.Pa.1994, 854 F.Supp. 350. Limitation Of Actions 95(15)

Section 1983 action alleging false imprisonment accrued on date of arrest, and two-year Illinois statute of limitations began to run on date of arrest. Anderson v. City of Chicago, N.D.Ill.1992, 803 F.Supp. 1327, reconsideration denied. Limitation Of Actions 58(1)

Plaintiff's claim of constitutional violations stemming from illegal search and seizure, unlawful arrest and imprisonment, and physical abuse accrued on date on which events occurred and were not affected by subsequent dismissal of criminal charges so that actions were untimely where they were filed more than two years after events occurred. Blackmon v. Perez, E.D.Va.1992, 791 F.Supp. 1086. Civil Rights 1382; Limitation Of Actions 58(1)

Statute of limitations on plaintiff's civil rights claim against police officers for alleged improper failure to arrest husband for violating protective order began to run on dates that officers failed to act and not on date that plaintiff was physically injured by her husband due to officers' prior failures to act. Eagleston v. County of Suffolk, E.D.N.Y.1992, 790 F.Supp. 416, affirmed 41 F.3d 865, certiorari denied 116 S.Ct. 53, 516 U.S. 808, 133 L.Ed.2d 18. Limitation Of Actions 58(1)

Puerto Rico's one-year limitations period applicable to civil rights action arising from police officer's alleged use of excessive force in dealing with arrestee commenced to run on date of arrest and expired 365 days later. Olivo Ayala v. Lopez Feliciano, D.Puerto Rico 1990, 729 F.Supp. 9. Time 4; Time 9(2)

Civil rights action under § 1983, seeking damages stemming from prosecutions under ordinance, which restricted placement of political signs on private property and which was later found to be unconstitutional, accrued at time of citizens' arrest or at their conviction, not when ordinance was definitively declared unconstitutional. Jordan v. Rocco, N.D.Ohio 1986, 648 F.Supp. 942. Limitation Of Actions 58(1)

Three-year statute of limitations for excessive force claim brought under § 1983, supplied by New York law, began to run on date that law enforcement officer punched homicide arrestee in stomach, as part of interrogation. Quiles

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v. City of New York, S.D.N.Y.2003, 2003 WL 21961008, Unreported. Limitation Of Actions 58(1)

Limitations period governing arrestee's § 1983 suit against state police department, its superintendent, and state troopers for alleged violations of his constitutional rights in the search of his person and vehicle, and in the alleged use of excessive force at the time of his arrest ran from the date of the injury, rather than being equitably tolled until the date he allegedly learned that he could file a legal action, or the date on which he received from the department documents related to the incident at issue; such documents were not necessary for him to acquire actual knowledge of the facts forming the basis for his action. Irizarry v. Whittel, S.D.N.Y.2002, 2002 WL 31760240, Unreported, on reconsideration 2003 WL 221736. Limitation Of Actions 58(1); Limitation Of Actions 104.5

4953. ---- Child welfare, commencement of period, limitations

Claim of grandmother of severely mentally retarded teenager that no fair hearing was held on teenager's school placement and that state officials failed to give grandmother notice of proceedings for foster care were barred by statue of limitations where they were not brought within two years of date of incident. Gardner by Gardner v. Parson, C.A.3 (Del.) 1989, 874 F.2d 131. Civil Rights 1380

4953A. ---- Adoption, commencement of period, limitations

Adopted child's § 1983 claim against employees of Florida Department of Children and Families (DCAF) in their individual capacities, for permitting him to be adopted by abusive parent, did not accrue, for limitations purposes, when child was removed from adoptive parent's custody at age six; a six-year-old child could not have been cognizant of his rights. Omar ex rel. Cannon v. Lindsey, M.D.Fla.2004, 328 F.Supp.2d 1287. Limitation Of Actions 72(1)

4954. ---- Confiscation of property, commencement of period, limitations

Property owner's §§ 1983 claim and Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim against prosecutors and others challenging the forfeiture of his seized property, on ground that the forfeiture process operated in violation of owner's due process rights by failing to give him fair notice of the proceeding, accrued, for limitations purposes, on the date of the forfeiture proceeding, rather than on the date of the seizure; the date of the forfeiture was the date that owner was permanently deprived of his property without notice. Kripp v. Luton, C.A.10 (Okla.) 2006, 466 F.3d 1171. Limitation Of Actions 58(1)

Landowner's §§ 1983 takings claim against Puerto Rico officials accrued for purposes of Puerto Rico's one-year statute of limitations when landowner's property was sold to government of Puerto Rico with understanding that it would be used for expressway project, not 30 years later, when landowner learned that government had no intention of building the expressway at time the property was acquired; landowner should have been on notice that investigation was warranted when the property was abandoned and no other parcel was frozen in entire 30- mile stretch where expressway was to have been constructed. Vistamar, Inc. v. Fagundo-Fagundo, C.A.1 (Puerto Rico) 2005, 430 F.3d 66. Limitation Of Actions 95(15)

Two-year statute of limitations on civil rights action arising out of forfeitures arose when state officials searched and seized the property, not when state court action challenging the seizure was concluded. Kaster v. State of Iowa, C.A.8 (Iowa) 1992, 975 F.2d 1381, rehearing denied. Limitation Of Actions 58(1)

Statute of limitations on arrestee's §§ 1983 action against North Carolina Department of Revenue Controlled Substance Tax Division enforcement officer for damages arising out of officer's garnishment of funds in arrestee's possession at time of his arrest on charges of sale of cocaine began to run when Division issued assessment against arrestee, rather than when charges were subsequently dismissed. Williams v. Starling, M.D.N.C.2005, 353

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F.Supp.2d 607. Limitation Of Actions 58(1)

Taking occurred at the moment the property was adversely possessed by state and an easement by prescription was created, and state law claim accrued, for limitations purposes, at time record owner's predecessor was aware or should have been aware of the injury; thus, three year limitations period barred underlying state claim for just compensation, and consequently federal claim, which was filed twenty-six years after taking occurred but within three years of Rhode Island Supreme Court's final decision that state had acquired owner's property by adverse possession and easement by prescription, was similarly barred by the statute of limitations. Pascoag Reservoir & Dam, LLC v. Rhode Island, D.R.I.2002, 217 F.Supp.2d 206, affirmed 337 F.3d 87, certiorari denied 124 S.Ct. 962, 540 U.S. 1090, 157 L.Ed.2d 795. Limitation Of Actions 95(7)

Section 1983 claim arising from defendants' allegedly illegal seizure of plaintiffs' personal property pursuant to writ of seizure accrued no later than date upon which both plaintiffs became aware that seizure occurred and that process of obtaining writ may have been infirm, rather than upon subsequent date on which property was returned to plaintiffs when writ of seizure was vacated; "continuing violation" doctrine was inapplicable, as alleged deprivation of property involved single act, i.e., seizure of property pursuant to writ later adjudged invalid, and, although plaintiffs were deprived of their property until it was returned to them, that was continual ill effect of original act of seizure. Johnson v. Cullen, D.Del.1996, 925 F.Supp. 244. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

Inmate's *Bivens* action arising out of forfeiture of money accrued, for purposes of Georgia two-year statute of limitations applicable to §§ 1983 actions, in year that he claimed Drug Enforcement Agency agents knew his identity and other personal information and issued a declaration of forfeiture allegedly without notifying him. McKenzie v. U.S. Department of Justice, Drug Enforcement Agency, C.A.11 (Ga.) 2005, 143 Fed.Appx. 165, 2005 WL 1669597, Unreported. Limitation Of Actions 58(1)

4955. ---- Conspiracy, commencement of period, limitations

Civil rights plaintiffs' cause of action based on alleged conspiracy between judge and attorneys accrued when plaintiffs learned of conspiracy. Kimes v. Stone, C.A.9 (Cal.) 1996, 84 F.3d 1121. Limitation Of Actions 95(15)

Accused's § 1983 and *Bivens* claims against state and federal law enforcement officers, for allegedly conspiring to violate accused's rights during criminal prosecution, accrued when accused first learned that state officers had in fact been promised compensation for their participation in criminal investigation, contrary to their sworn statements, rather than at completion of accused's habeas corpus proceeding when his conviction was reversed. Bagley v. CMC Real Estate Corp., C.A.9 (Wash.) 1991, 923 F.2d 758, certiorari denied 112 S.Ct. 1161, 502 U.S. 1091, 117 L.Ed.2d 409. Limitation Of Actions 95(15)

Although civil rights plaintiff asserted claims for false arrest and false imprisonment as well as for malicious prosecution, all claims essentially related to alleged conspiracy to "frame" him for murder of police officer and statute of limitations did not accrue until conspiracy ran its course. Robinson v. Maruffi, C.A.10 (N.M.) 1990, 895 F.2d 649. Limitation Of Actions 55(1)

Accrual of civil rights causes of action arising out of conspirators' separate wrongs against plaintiff was not postponed until conspiracy was complete. Assegai v. Bloomfield Bd. of Educ., D.Conn.2004, 308 F.Supp.2d 65, affirmed 165 Fed.Appx. 932, 2006 WL 304793. Limitation Of Actions 58(1)

Prisoner's § 1983 civil conspiracy claim against police officers based on their actions in maliciously prosecuting him for murder did not accrue until date charges against him were dropped. Newsome v. James, N.D.Ill.1997, 968 F.Supp. 1318. Limitation Of Actions 58(1)

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42 U.S.C.A. § 1983

Section 1983 claim against private citizen in connection with alleged conspiracy to conceal exculpatory evidence in state murder prosecution accrued on date of plaintiff's discharge from state custody, and action was thus timely when brought within two years of that date. Smith v. Wambaugh, M.D.Pa.1995, 887 F.Supp. 752, affirmed 87 F.3d 108, certiorari denied 117 S.Ct. 611, 519 U.S. 1041, 136 L.Ed.2d 536. Limitation Of Actions 95(15)

Civil rights § 1983 claim by state court plaintiff for misconduct involving state court judge, state court defendant, his attorney, and witness who failed to appear under subpoena, with respect to which last specific instance of alleged misconduct cited was judge's having punished plaintiff for contempt in November 1982, was time barred under borrowed Connecticut three-year general tort statute; action was commenced in February 1986, plaintiff did not allege active concealment of conspiracy, and plaintiff could not simply postpone accrued suit claims indefinitely for discrete, patent wrongs on ground of connecting and ongoing conspiracy. Vitale v. Nuzzo, D.Conn.1986, 674 F.Supp. 402. Limitation Of Actions 58(1)

4956. ---- Education benefits, commencement of period, limitations

Disabled student's IDEA, ADA, Rehabilitation Act, and § 1983 claims, based on school system's refusal to continue providing sign language interpreter after initial school year, accrued, for limitations purposes, at beginning of second school year; under circumstances, it was reasonable for student's parents to wait until start of school year before concluding that system would not provide interpreter. Nieves-Marquez v. Puerto Rico, C.A.1 (Puerto Rico) 2003, 353 F.3d 108. Limitation Of Actions 58(1); Schools 155.5(2.1)

Statute of limitations on parents' claim under § 1983 for reimbursement for private school tuition began to run when their disabled child was removed from public school and placed in private school; parents knew that public school was not providing an intensive, systematic, phonics method of reading and that their child was "suffering terribly" in public school, and parents had received booklet two years before that time informing them of their rights, including their right to initiate due process hearing. James v. Upper Arlington School Dist., S.D.Ohio 1997, 987 F.Supp. 1017, affirmed and remanded 228 F.3d 764, rehearing and suggestion for rehearing en banc denied, certiorari denied 121 S.Ct. 1655, 532 U.S. 995, 149 L.Ed.2d 637. Limitation Of Actions 95(15)

4957. ---- Employment, commencement of period, limitations

The rule in an employment discrimination case is that the limitations period begins to run when the plaintiff receives unambiguous and authoritative notice of the discriminatory act which is another way of saying that the period begins to run when the employee learns of the adverse employment action. Nieves-Vega v. Ortiz-Quinones, C.A.1 (Puerto Rico) 2006, 443 F.3d 134. Limitation Of Actions 95(15)

Limitations period for §§ 1983 action by director-level employee of Puerto Rico territorial agency against agency officials, alleging that employee's transfer and change of duties amounted to demotion that was motivated by political affiliation discrimination, commenced when employee wrote letter to agency's executive director objecting that transfer was politically motivated act that effectively relieved him of his directorship, not several months later when employee was removed from his original office space and lost his remaining perquisites of directorship, and new official took over employee's old duties. Villanueva-Mendez v. Nieves-Vazquez, C.A.1 (Puerto Rico) 2006, 440 F.3d 11. Limitation Of Actions 95(15)

Statute of limitations on § 1983 action, alleging wrongful termination of employment due to race and politics, began to run on date that employer sent employee letter indicating that he was suspended indefinitely, rather than later date on which employee received another letter from employer indicating that two internal charges had been lodged against him and offering him an opportunity to defend himself. Morris v. Government Development Bank of Puerto Rico, C.A.1 (Puerto Rico) 1994, 27 F.3d 746. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

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42 U.S.C.A. § 1983

Director of university sports complex's § 1983 claim, alleging demotion on basis of political affiliation during reorganization, accrued no later than on date on which director wrote letter acknowledging his duties under reorganization, which established that applicable personal injury statute of limitations under Puerto Rico law expired one year from date of letter and full month before director filed complaint. Muniz-Cabrero v. Ruiz, C.A.1 (Puerto Rico) 1994, 23 F.3d 607. Limitation Of Actions 58(1)

Civil service employee's § 1983 claim arising out of his termination accrued when he received his accumulated vacation pay. Rivera-Muriente v. Agosto-Alicea, C.A.1 (Puerto Rico) 1992, 959 F.2d 349. Limitation Of Actions 58(1)

Assistant city manager's civil rights claim against city for discharging him without pretermination hearing accrued, for limitations purposes, on date that his employment was actually terminated, rather than on earlier date that he received notice that he would be discharged; to trigger statute of limitations on date before actual termination of employment, assistant city manager had to receive not only notice of discharge decision, but unequivocal notice that decision was final and that it would be followed by no further process. Hoesterey v. City of Cathedral City, C.A.9 (Cal.) 1991, 945 F.2d 317, certiorari denied 112 S.Ct. 1941, 504 U.S. 910, 118 L.Ed.2d 546. Limitation Of Actions 58(1)

The three-year statute of limitations governing an employee's discrimination claims under Massachusetts law began running when the employee found out that his employer had decided to terminate his employment, not on the date the employee was formally notified that he was terminated. Ching v. Mitre Corp., C.A.1 (Mass.) 1990, 921 F.2d 11 . Limitation Of Actions 58(1)

Teachers' civil rights cause of action began to accrue on day they received notice of school district's layoff decision, and not on date of actual termination, where teachers claimed they were unconstitutionally laid off, and illegal act giving rise to that claim was layoff decision. Kuemmerlein v. Board of Educ. of Madison Metropolitan School Dist., C.A.7 (Wis.) 1990, 894 F.2d 257. Limitation Of Actions 58(1)

School district superintendent's refusal to reinstate coordinator of evaluation subsequent to coordinator's demotion was not separate act of discrimination, but rather a consequence of initial demotion, and limitation period for coordinator's § 1983 action commenced as of date coordinator received notice of demotion. De Leon Otero v. Rubero, C.A.1 (Puerto Rico) 1987, 820 F.2d 18. Limitation Of Actions 58(1)

Cause of action brought under §§ 1983, based on public employee's demotion without a hearing, accrued, and one-year limitations period under Puerto Rico law began to run, when employee received letter that informed him he was being demoted on ground that he had been improperly promoted in the first place. Gutierrez v. Molina, D.Puerto Rico 2006, 447 F.Supp.2d 168. Limitation Of Actions 95(15)

Three-year statute of limitations applicable to university professor's employment discrimination claims began to run upon alleged failure to promote professor more than three years before he filed suit. Guseh v. North Carolina Cent. University, M.D.N.C.2005, 423 F.Supp.2d 550. Limitation Of Actions 58(1)

Date on which official from Puerto Rico Electric Power Authority (PREPA) allegedly advised employee that PREPA should approve his retirement due to mental impairment and that his emotional condition was not work related, and on which employee was notified of charges against him for alleged illegal appropriation of electrical materials, was accrual date for his §§ 1983 political discrimination claim, inasmuch as discrimination alleged was not related only to his ADA claim. Rivera Sanchez v. Autoridad de Energia Electrica, D.Puerto Rico 2005, 360 F.Supp.2d 302. Limitation Of Actions 58(1)

Demoted Puerto Rican agency employee's §§ 1983 claim, alleging that demotion was politically motivated, accrued, for limitations purposes, on date he received notice of demotion. Camacho-Cardona v. Lopez Pena,

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D.Puerto Rico 2005, 360 F.Supp.2d 298. Limitation Of Actions 95(15)

Statute of limitations on former government employees' §§ 1983 claims was tolled from date they file petition for class certification until date class certification was denied. Rivera-Torres v. Rey-Hernandez, D.Puerto Rico 2004, 352 F.Supp.2d 152. Limitation Of Actions 126.5

Former employee's § 1983 claims against former employer and its executive director accrued on the date that former employee was dismissed, given former employee's assertion, in charge filed with Equal Employment Opportunity Commission (EEOC), that last discriminatory act she experienced occurred on that date. Iravedra v. Public Building Authority, D.Puerto Rico 2003, 283 F.Supp.2d 570. Limitation Of Actions 58(1)

Statute of limitations for violation of physician's rights under § 1983 began to run on date physician received notice of termination from staff of county hospital, rather than earlier date when county board voted to terminate him; letter stated that termination was effective immediately, and made no reference to date of any earlier action. Draghi v. County of Cook, N.D.Ill.1997, 985 F.Supp. 747. Limitation Of Actions 95(15)

For statute of limitations purposes, causes of action under § 1983 based on refusal to renew nontenured university instructor's contract accrued on date she received letter notifying her of nonrenewal of her contract, rather than from dates of events allegedly forming basis for non-renewal decision. Anderson-Free v. Steptoe, M.D.Ala.1997, 970 F.Supp. 945. Limitation Of Actions 58(1)

Statute of limitations period for §§ 1983 and 1985 civil rights actions based on employment discrimination begins when complainant is first notified of original employment decision. Lara v. City of Chicago, N.D.Ill.1997, 968 F.Supp. 1278. Limitation Of Actions 95(15)

Public employee's § 1983 employment discrimination claim accrued no later than at time she had filed several grievances concerning incidents underlying her § 1983 claim. Gutierrez-Usera v. Puerto Rico Telephone Co., D.Puerto Rico 1997, 967 F.Supp. 35. Limitation Of Actions 95(15)

Female teachers' alleged injuries from application of state teachers' retirement fund "break-in-service" rules occurred upon teachers' return to teaching and thus claims were time barred when § 1983 action was filed more than three years after their return. Shelford v. New York State Teachers Retirement System, E.D.N.Y.1994, 889 F.Supp. 89, affirmed 60 F.3d 811. Limitation Of Actions 58(1)

Civil rights claims arising from discharge from employment accrue when employee is notified of employer's decision, not on date decision becomes effective. Uhl v. Swanstrom, N.D.Iowa 1995, 876 F.Supp. 1545, affirmed 79 F.3d 751. Limitation Of Actions 95(15)

Police officer's § 1983 complaint against village arising from termination was not barred by six-month laches period; village failed to demonstrate prejudice in that it failed to identify individuals who were allegedly unavailable due to delay, and allegation that back pay exposure was increased by delay was insufficient to establish prejudice since suit was filed before expiration of two-year statute of limitations but after six-month laches period. Ericksen v. Village of Willow Springs, N.D.Ill.1995, 876 F.Supp. 951. Civil Rights 1383

Statute of limitations on § 1983 action arising from elementary school principal's termination began to run when principal learned that board voted not to renew her contract, regardless of fact that principal may have believed that defendants violated her alleged continued right to employment by so voting. Asllani v. Board of Educ. of City of Chicago, N.D.Ill.1993, 845 F.Supp. 1209. Limitation Of Actions 95(15)

Three-year statute of limitation applicable to plaintiff's § 1983 race discrimination claim arising from alleged preselection based on race of African American to position of Deputy Director of Emergency Ambulance Bureau

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of District of Columbia Fire Department did not begin to run until plaintiff obtained through discovery document referring to preselection; until that time, plaintiff could not reasonably have known facts surrounding preselection, since person had been appointed "acting" Deputy Director and fire department solicited applications for post. Zervas v. District of Columbia, D.D.C.1993, 817 F.Supp. 148. Limitation Of Actions 95(15)

Police officer's § 1983 action against city arising out of her termination accrued, for purposes of Florida four-year statute of limitations for personal injury actions, on date she received notice from police chief of imminent termination, even if notice was oral and not written. Farmer v. City of Fort Lauderdale, S.D.Fla.1993, 814 F.Supp. 1101. Limitation Of Actions 58(1)

Discharged city employee's § 1983 action alleging politically motivated discharge accrued on day he was notified of his dismissal, not on day his dismissal became effective. Conde v. Beltran Pena, D.Puerto Rico 1992, 793 F.Supp. 33. Limitation Of Actions 58(1)

Puerto Rico public employees's civil rights suit under § 1983, alleging discrimination because of political affiliation, accrued, for limitations purposes, no later than the date of his retirement. Reyes Coreano v. Puerto Rico Ports Authority, D.Puerto Rico 1992, 790 F.Supp. 36. Limitation Of Actions 58(1)

Discharged county airport authority employees' § 1983 claims for discharge without due process did not accrue when employees received notice of layoffs, but rather accrued when authority's executive director and board of trustees overturned decisions of grievance panels that employees had been wrongfully denied transfers to new positions in lieu of layoff, thereby causing termination to become official and true harm to occur. Clements v. Airport Authority of Washoe County, D.Nev.1991, 781 F.Supp. 1493. Limitation Of Actions 58(1)

Former assistant high school principal's § 1983 claim alleging that his termination for lapse of required state certification violated procedural due process accrued, for statute of limitations purposes, when principal was terminated, not when state department of education reinstated certification. Moiles v. Marple Newtown School Dist., E.D.Pa.2002, 2002 WL 1964393, Unreported. Limitation Of Actions 58(1)

4958. ---- Fair trial denial, commencement of period, limitations

Section 1983 claims against author, investigators, and state attorney for damages resulting from unlawful conviction and confinement, based on alleged suppression of exculpatory evidence and contrived inculpatory evidence, did not accrue until state Supreme Court ordered murder charges against claimant dismissed, inasmuch as, until then, successful claim would necessarily have implied invalidity of conviction in claimant's pending criminal prosecution. Smith v. Holtz, C.A.3 (Pa.) 1996, 87 F.3d 108, certiorari denied 117 S.Ct. 611, 519 U.S. 1041, 136 L.Ed.2d 536. Civil Rights 1088(5)

Acquitted arson and murder defendant's § 1983 claim for denial of fair trial arising from withholding or conspiracy to withhold exculpatory evidence, or for malicious prosecution, accrued when charges against him were dismissed. Girdler v. Dale, D.Ariz.1994, 859 F.Supp. 1279. Limitation Of Actions 58(1)

Section 1983 plaintiff's causes of action for denial of fair trial, equal protection and due process accrued no later than date on which he knew that prosecution in criminal case against him had failed to turn over exculpatory evidence, rather than date of his discharge from incarceration, despite claim that defendants' actions constituted "continuing course of conduct"; concealment of exculpatory evidence did not continue through date of plaintiff's discharge, pendency of plaintiff's state appeal had no effect on running of limitations period, and Pennsylvania law did not toll running of statute during period of incarceration. Smith v. Holtz, M.D.Pa.1994, 856 F.Supp. 227, on reconsideration 879 F.Supp. 435, affirmed 87 F.3d 108, certiorari denied 117 S.Ct. 611, 519 U.S. 1041, 136 L.Ed.2d 536. Limitation Of Actions 95(15)

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42 U.S.C.A. § 1983

4959. ---- Labor relations, commencement of period, limitations

Nursing home operator's National Labor Relations Act-premised § 1983 claim, that union officials and state representatives improperly interfered with collective bargaining negotiations, accrued at time operator knew of his failure to pay wage parity pursuant to bargaining agreement, allegedly because of officials' and representatives' failure to perform on their representations, and, thus, claim was barred under New York's three-year limitations period. Local 144, Hotel, Hosp., Nursing Home and Allied Services Union, SEIU, AFL-CIO v. C.N.H. Management Associates, Inc., S.D.N.Y.1990, 741 F.Supp. 415. Limitation Of Actions 95(15)

4960. ---- Malicious prosecutions, commencement of period, limitations

Ex-convict's § 1983 claim based on prosecution's violation of *Brady v. Maryland* by withholding exculpatory evidence in state murder trial accrued, for statute of limitations purposes, when conviction was vacated in federal habeas corpus proceedings and case was remanded with instructions to either conduct new trial or order ex-convict's release from prison; as of that date, § 1983 suit would not have demonstrated invalidity of murder conviction, as it had been vacated, and retrial necessarily could not have implicated same constitutional violations. Smith v. Gonzales, C.A.10 (N.M.) 2000, 222 F.3d 1220. Limitation Of Actions 58(1)

Civil rights claims pursuant to § 1983 that arose from arrest of claimants pursuant to warrant predicated on false allegations by undercover officer and informant, and subsequent prosecutions, more closely resembled common law tort of malicious prosecution than false imprisonment, since arrest occurred incident to warrant, and so claims accrued when prosecutions ended in acquittals. Calero-Colon v. Betancourt-Lebron, C.A.1 (Puerto Rico) 1995, 68 F.3d 1. Limitation Of Actions 58(1)

Accrual date of nursing home employee's §§ 1983 Fourth Amendment claim for false arrest/false imprisonment was date of her arrest, which followed investigation into alleged patient abuse, where evidence used against her in criminal trial was not gathered subsequent to arrest. Mitchell v. Home, S.D.N.Y.2005, 377 F.Supp.2d 361. Limitation Of Actions 58(1)

Claims brought under §§ 1983 against state investigators and others by child of parents who were convicted of child rape and molestation, alleging that he was wrongfully removed from his aunt's home, placed in the custody of Child Protective Services (CPS), and coerced into making false allegations of sexual abuse against his parents, accrued when child was removed from his aunt's home, interrogated, and testified at his parents' trial. Doggett v. Perez, E.D.Wash.2004, 348 F.Supp.2d 1169. Limitation Of Actions 58(1)

Arrestees' §§1983 claims for deliberate fabrication of evidence, resulting in unlawful seizure and convictions, did not accrue until the charges against them were dismissed, rather than the date their criminal convictions were reversed. Doggett v. Perez, E.D.Wash.2004, 348 F.Supp.2d 1169. Limitation Of Actions 58(1)

Claim for malicious prosecution does not accrue until wrongful conviction is invalidated. Newsome v. James, N.D.Ill.1997, 968 F.Supp. 1318. Limitation Of Actions 55(1)

Claim under § 1983 alleging malicious prosecution does not accrue until favorable termination is obtained. Torres v. McLaughlin, E.D.Pa.1997, 966 F.Supp. 1353, reversed 163 F.3d 169, certiorari denied 120 S.Ct. 797, 528 U.S. 1079, 145 L.Ed.2d 672. Limitation Of Actions 58(1)

Connecticut's three-year limitations period, which was applicable to § 1983 action for malicious prosecution, accrued as of date of favorable termination of criminal proceedings so that suit filed less than one year after termination was timely. Brown v. Wargo, D.Conn.1992, 815 F.Supp. 59. Limitation Of Actions 58(1)

Malicious prosecution claim under § 1983 does not accrue until underlying criminal proceedings have been

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terminated in manner favorable to civil rights plaintiff. Blackmon v. Perez, E.D.Va.1992, 791 F.Supp. 1086. See, also, Brummett v. Camble, C.A.5 (Tex.) 1991, 946 F.2d 1178, rehearing denied, certiorari denied 112 S.Ct. 2323, 504 U.S. 965, 119 L.Ed.2d 241. Limitation Of Actions 58(1)

Limitations period applicable to subway passenger's state law and civil rights claims against his arresting officer and city transit authority were not tolled to extent those claims sounded in false arrest, where passenger had brought and settled state court action for false arrest and malicious prosecution against transit authority prior to commencing action, conclusively demonstrating knowledge of the false arrest. Yeadon v. New York City Transit Authority, S.D.N.Y.1989, 719 F.Supp. 204. Limitation Of Actions 95(4.1)

Date of acquittal of plaintiff for violation of alcoholic beverages law, not dates on which plaintiff was charged, threatened, or learned of indictment, was date her cause of action for violation of civil rights based upon malicious prosecution accrued. Rohena Encarnacion v. Department of Treasury, D.Puerto Rico 1987, 665 F.Supp. 102. Limitation Of Actions 55(1)

4961. ---- Medical benefits, commencement of period, limitations

New York three-year statute of limitations for personal injury actions began to run on § 1983 and Title VI action alleging that hospital's shifting of certain services to another location discriminated against Medicaid patients and on the basis of race when plan for reduction of services was approved. Mussington v. St. Luke's-Roosevelt Hosp. Center, S.D.N.Y.1993, 824 F.Supp. 427, motion to amend denied 1993 WL 319454, affirmed 18 F.3d 1033. Limitation Of Actions 58(1)

4962. ---- Records, commencement of period, limitations

Three-year statute of limitations for § 1983 civil rights action in Arkansas against city and policemen for alleged wrongful release of expunged arrest record accrued on date that record was released. Morton v. City of Little Rock, C.A.8 (Ark.) 1991, 934 F.2d 180. Limitation Of Actions 58(1)

Nursing home employee's Sixth Amendment fair trial claim against special investigator (SI) from Medicaid Fraud Control Unit (MFCU) of office of New York's Attorney General, which arose from patient-abuse investigation, accrued when she was arrested, which is when she knew or should have known of alleged fabrication of evidence against her, and that she suffered injury as result. Mitchell v. Home, S.D.N.Y.2005, 377 F.Supp.2d 361. Limitation Of Actions 95(15)

Section 1983 action by subject of alleged file of city police bureau on his political views and activities, against the city and city officials for maintaining the file in violation of state law and the First and Fourteenth Amendments accrued, at the very latest, when he filed a motion for an order to show cause in a state court case, stating that the city police bureau was currently maintaining non-criminal information on him and his association, even if he did not then know the full extent to which the police bureau was maintaining non-criminal information on him. Handelman v. City of Portland, C.A.9 (Or.) 2004, 118 Fed.Appx. 136, 2004 WL 2625085, Unreported. Limitation Of Actions 95(15)

4963. ---- Prisons and prisoners, commencement of period, limitations

Arrestee's §§ 1983 claims asserting use of excessive force at time of his arrest accrued on day of arrest, and not on date three months earlier when arrestee was allegedly subjected to excessive force during search of his home, as claims relating to the different incidents were distinct. Price v. Philpot, C.A.10 (Okla.) 2005, 420 F.3d 1158. Limitation Of Actions 58(1)

Amended California statute reducing to two years the period during which statutes of limitations were tolled for

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prisoners incarcerated for less than life terms could be retroactively applied to former inmate's inadequate medical care claim without manifest injustice, given that former inmate had at least three years to file action, including reasonable time after statutory amendment became effective and two and half months following his actual release from prison. Fink v. Shedler, C.A.9 (Cal.) 1999, 192 F.3d 911, amended on denial of rehearing, certiorari denied 120 S.Ct. 1979, 529 U.S. 1117, 146 L.Ed.2d 808. Limitation Of Actions 6(1)

State prisoner's § 1983 action for alleged violation of his due process rights in connection with disciplinary hearing accrued on date state court had reversed disciplinary ruling, rather than on date of disciplinary hearing, and therefore trial court erroneously denied prisoner leave to amend his complaint to add correction officer as party on ground action was time barred. Hynes v. Drake, C.A.2 (N.Y.) 1997, 111 F.3d 283. Limitation Of Actions 58(1); Limitation Of Actions 124

District court did not abuse its discretion by dismissing, as frivolous, inmate's in forma pauperis and pro se § 1983 action asserting deliberate exposure to asbestos in state prison, on basis that claim was time-barred on its face under Maryland's three-year limitations period running from time that inmate possessed sufficient knowledge of cause of action to place him on inquiry notice; inmate knew of his exposure, knew who was responsible for exposure, was aware others in prison had been injured by exposure, and was aware of nature of his own injuries, but did not file complaint until four years later after he read news reports of lawsuits asserting that similar injuries had been caused by asbestos. Nasim v. Warden, Maryland House of Correction, C.A.4 (Md.) 1995, 64 F.3d 951, certiorari denied 116 S.Ct. 1273, 516 U.S. 1177, 134 L.Ed.2d 219, rehearing denied 116 S.Ct. 1561, 517 U.S. 1163, 134 L.Ed.2d 661. Federal Civil Procedure 2734; Limitation Of Actions 95(15)

Civil rights action for damages against various government officials attributable to unconstitutional conviction and sentence accrued no earlier than date on which conviction was invalidated; thus, action would not be barred by one-year statute of limitation before district court determined whether conviction had been invalidated. Guzman-Rivera v. Rivera-Cruz, C.A.1 (Puerto Rico) 1994, 29 F.3d 3. Limitation Of Actions 58(1)

Civil rights claim of federal pretrial detainees under due process clause, that jail and county officials' deliberate indifference toward detainee's care and welfare caused detainee to become infected with head and body lice as result of providing him with dirty bed linen or mattresses, was barred by Pennsylvania two-year statute of limitations, as alleged infestation commenced before two years prior to filing of complaint. Kost v. Kozakiewicz, C.A.3 (Pa.) 1993, 1 F.3d 176. Civil Rights 1382; Limitation Of Actions 58(1)

Alleged injury in civil rights action brought by inmate against prison officials was not punishment imposed on inmate, but alleged failure of prison officials to abide by established disciplinary or grievance procedures in imposing punishment, and thus, injury occurred when procedures were disregarded or abused so as to begin running of statute of limitations for § 1983 action. Gartrell v. Gaylor, C.A.5 (Tex.) 1993, 981 F.2d 254. Limitation Of Actions 58(1)

Where inmate's transfer, detention and segregation, and mail losses were all accomplished by March of 1982, his claims accrued by then and civil rights action brought more than five years thereafter was time barred. Street v. Vose, C.A.1 (Mass.) 1991, 936 F.2d 38, certiorari denied 112 S.Ct. 948, 502 U.S. 1063, 117 L.Ed.2d 117. Limitation Of Actions 58(1)

State inmates' § 1983 action against prison officials could not be dismissed on grounds that action was barred by Arizona statute of limitations applicable to inmates absent any evidence as to whether inmates knew or reasonably should have known of their right to bring civil rights action at least two years before they filed their complaints. Vaughan v. Grijalva, C.A.9 (Ariz.) 1991, 927 F.2d 476. Limitation Of Actions 180(7)

Territorial inmate's §§ 1983 cause of action, alleging that corrections officials unconstitutionally had extended her imprisonment by denying her proper amount of good-time and other credits, accrued, for statute of limitations

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purposes, on date of inmate's release from prison, not earlier when she had become aware of lack of proper good-time credits and had exhausted administrative actions; any §§ 1983 claim prior to release would have been premature since, if successful, it would have implied invalidity of sentence. Ayuso-Figueroa v. Rivera-Gonzalez, D.Puerto Rico 2005, 456 F.Supp.2d 309. Limitation Of Actions 58(1)

State inmate's §§ 1983 claim against prison officials for deliberate indifference to his serious medical needs did not accrue until inmate's administrative appeals were exhausted at all levels, where inmate could neither know nor have reason to know of full extent of medical care he would be provided until completion of grievance procedure. Wade v. Ratella, S.D.Cal.2005, 407 F.Supp.2d 1196. Limitation Of Actions 95(15)

Federal prisoner's Eighth Amendment *Bivens* claim against prison medical staff, arising out of injuries he received as result of allegedly unnecessary surgery and from later surgery done to correct prior surgery, accrued, for limitations purposes, on dates of those surgery. Molina-Acosta v. Martinez, D.Puerto Rico 2005, 392 F.Supp.2d 210. Limitation Of Actions 55(1)

Inmate's § 1983 civil rights claim against corrections officer accrued for limitations purposes on date he was attacked and injured by another inmate in prison recreation room that officer was stationed to observe. Byrd v. Abate, S.D.N.Y.1997, 964 F.Supp. 140. Limitation Of Actions 58(1)

State inmate's § 1983 claim against prison physician for deliberate indifference to his serious medical needs, based on failure to perform surgery on broken nose, accrued no later than seven to eight days after inmate was seen by another doctor, who had recommended surgery within that time frame. Hill v. Godinez, N.D.Ill.1997, 955 F.Supp. 945. Limitation Of Actions 95(15)

Inmate knew or should have known that he was injured and by whom he was injured with respect to his claim of forcible shaving in violation of Eighth Amendment and due process violations in disciplinary hearings more than two years prior to filing of action so as to bar claims based upon expiration of statute of limitations. Abiff v. Slaton, N.D.Ga.1992, 806 F.Supp. 993, affirmed 3 F.3d 443. Limitation Of Actions 95(15)

Inmate's § 1983 claims against district attorneys accrued, for limitations purposes, when he learned of injuries caused by district attorneys' alleged misconduct, rather than when he understood that district attorneys' earlier acts were part of alleged ongoing conspiracy, where inmate failed to plead specific facts in support of his claim of conspiracy. Pinaud v. County of Suffolk, E.D.N.Y.1992, 798 F.Supp. 913, affirmed in part, remanded in part 52 F.3d 1139. Limitation Of Actions 95(15)

Puerto Rico's one-year statute of limitations for general personal injury suits began to run on arrestee's § 1983 suit from date of his alleged beating by prison guards, rather than from date he discovered names of guards; names of perpetrators of injury had no bearing on question of whether arrestee was able to either discover injury or discover what caused injury. Martinez Torrado v. Colon Montes, D.Puerto Rico 1991, 779 F.Supp. 668. Limitation Of Actions 95(15)

Inmate knew of his injury and its connection to jail officials at the time that the alleged assault took place, despite his lack of knowledge of the names of the individuals who allegedly assaulted him, and one-year state statute of limitations on his § 1983 action began to run at that time. Richmond v. McElyea, E.D.Tenn.1990, 130 F.R.D. 377. Limitation Of Actions 95(15)

Georgia's two-year statute of limitations for personal injury actions began to run on federal prisoner's §§ 1983 action to recover forfeited property he claimed was taken in violation of his constitutional rights from date of judgment against his forfeiture claim in state court in his attempt to recover his seized property. Berry v. Keller, C.A.11 (Ga.) 2005, 157 Fed.Appx. 227, 2005 WL 3292476, Unreported. Limitation Of Actions 58(1)

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42 U.S.C.A. § 1983

Inmate's §§ 1983 claim that an adjustment review violated his Fifth and Fourteenth Amendment rights to due process because there were only two officials at the review, not three as required by an Oklahoma statute, accrued for limitations purposes on the date of the review, despite his claim that he only learned of the requirement of three officials years later. DeYonghe v. Ward, C.A.10 (Okla.) 2005, 121 Fed.Appx. 335, 2005 WL 165449, Unreported. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

State prisoner's conditions of confinement claims under § 1983 accrued, for limitations purposes, on date that prisoner knew or had reason to know of the injuries upon which claims were based. Allah v. Artuz, C.A.2 (N.Y.) 2004, 86 Fed.Appx. 455, 2004 WL 119365, Unreported. Limitation Of Actions 95(15)

State inmate's claim under § 1983 that state parole board ordered parole without statutory authority to retard his good-time release date accrued when state supreme court set aside his parole. Bollinger v. Oregon State Bd. of Parole & Post-Prison Supervision, C.A.9 (Or.) 2003, 86 Fed.Appx. 259, 2003 WL 23019018, Unreported, on remand 2005 WL 563742. Limitation Of Actions 58(1)

Mississippi's three-year statute of limitations for personal injury actions began to run on prisoner's § 1983 claim when he knew he had suffered injury; whether prisoner did not understand legal significance of defendants' alleged actions and omissions until he was later informed of his rights was irrelevant. Brown v. Pool, C.A.5 (Miss.) 2003, 79 Fed.Appx. 15, 2003 WL 22391532, Unreported. Limitation Of Actions 95(14)

State prisoner's § 1983 claim against police detective, asserting that detective altered documents in order to bolster criminal charge against him, accrued, at the latest, on the date prisoner was released from jail, where prisoner alleged that he discovered the altered documents prior to his release. Rivera v. Baton Rouge City Police Dept., C.A.5 (La.) 2003, 75 Fed.Appx. 287, 2003 WL 22139578, Unreported. Limitation Of Actions 95(15)

Limitations period for § 1983 action filed in Illinois by prisoner's estate, alleging deliberate indifference to serious medical needs in violation of Eighth Amendment, commenced by time that prisoner learned he had cancer and that earlier diagnoses had been incorrect. Garner v. Cullinan, C.A.7 (Ill.) 2003, 66 Fed.Appx. 654, 2003 WL 21259754, Unreported, rehearing and rehearing en banc denied. Limitation Of Actions 95(15)

4963A. ---- Police activities, commencement of period, limitations

Arrestee's §§ 1983 claim against arresting officer for use of excessive force in violation of Fourth Amendment necessarily implied the invalidity of arrestee's underlying criminal conviction for violating Cleveland's resisting arrest ordinance, and thus, limitations period for excessive force claim did not begin to run until arrestee's conviction had been overturned on appeal, since ordinance provided that a lawful arrest was an essential element of a conviction for resisting arrest. Swiecicki v. Delgado, C.A.6 (Ohio) 2006, 463 F.3d 489. Limitation Of Actions 58(1)

Statute of limitations on sexual assault victim's civil rights claim against police for allegedly violating her equal protection rights in conducting faulty investigation accrued no later than date on which suspect was arraigned on misdemeanor charge, if not on earlier date when police officer informed victim that only misdemeanor charge would be brought, allegedly refused to interview suspect, allegedly blamed victim for not timely reporting rape, and allegedly refused to interview victim's friends, as victim had reason to know of her injury by that date. Michels v. Greenwood Lake Police Dept., S.D.N.Y.2005, 387 F.Supp.2d 361. Limitation Of Actions 95(15)

4963B. ---- Parole, commencement of period, limitations

Parolee's cause of action under §§ 1983 based on former governor's reversals of parole board's decision to grant parole accrued, and California's two-year statute of limitations for personal injury actions began to run, no later than date of parolee's eventual release from prison custody. Miller v. Davis, C.D.Cal.2006, 420 F.Supp.2d 1108.

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42 U.S.C.A. § 1983

Limitation Of Actions 58(1)

4964. ---- Real property, commencement of period, limitations

Developer's civil rights action against county based on county's delay in acting on developer's preliminary plat application accrued when county made its final decision approving the application rather than when developer became aware that county had treated it differently from other applicants and would not act within times provided by statute. Norco Const., Inc. v. King County, C.A.9 (Wash.) 1986, 801 F.2d 1143. Limitation Of Actions 95(15)

Limitations period governing homeowners' section 1983 lawsuit against city, alleging that various city officials fraudulently represented to owners that their land was not susceptible to flooding, commenced at time of first flood and not several years later when homeowners learned through newspaper article that city had been on notice of potential flooding problems before they purchased their home. Longoria v. City of Bay City, Tex., C.A.5 (Tex.) 1986, 779 F.2d 1136. Limitation Of Actions 100(12)

Developers' §§ 1983 takings claim against town accrued on date state's highest court denied their motion for leave to appeal decision denying compensation for town's delay in approving their subdivision application, rather than on date town imposed administrative hold on application. W.J.F. Realty Corp. v. Town of Southampton, E.D.N.Y.2004, 351 F.Supp.2d 18. Limitation Of Actions 58(1)

Civil rights cause of action against New York municipality for maliciously violating property owners' rights by authorizing construction of electronically controlled gate accrued when permit and certificate of completion for gate were issued, as acts were only state action involved in suit, and thus suit was time-barred when not brought within three years thereafter. Bobrowsky v. Curran, S.D.N.Y.2004, 333 F.Supp.2d 159. Limitation Of Actions 58(1)

Landowners were able to, and did, contemplate that village's finding of public purpose and authorization of land disposition agreement with developer covering use of eminent domain incidental to implementation of urban redevelopment project would expose their property to prospect of condemnation, and triggering of New York's general personal injury action statute of limitations applicable to §§ 1983 claims brought within New York state was accordingly not delayed until developer and principal allegedly attempted to exact cash buyout from them, when landowners alleged they first suffered injury. Didden v. Village of Port Chester, S.D.N.Y.2004, 322 F.Supp.2d 385, affirmed 2006 WL 898093. Limitation Of Actions 95(15)

Two-year statute of limitations for personal injury commenced on date when city and building inspector issued stop work order prohibiting real estate developer from doing certain additions to building on his property, and not date of issuance of subsequent stop work order two years later, despite claim that earlier stop work order was part of continuous violation; developer had not alleged intervening acts sufficient to establish continuous pattern of wrongdoing. Carr v. Town of Dewey Beach, D.Del.1990, 730 F.Supp. 591. Limitation Of Actions 55(6)

4965. ---- Retirement benefits, commencement of period, limitations

Alleged impairment of firefighter's deferred compensation plan should have been apparent to him when he received notice of statutory amendment requiring plan participants to retire at end of five years, and thus contracts clause claim accrued at that time, rather than at time of his subsequent termination pursuant to the statutory amendment; constitutional injury, triggering statute of limitations for § 1983 claim, occurred when amendment became law, not when consequence of that constitutional injury manifested itself. Smith v. City of Enid By and Through Enid City Com'n, C.A.10 (Okla.) 1998, 149 F.3d 1151. Limitation Of Actions 95(15)

Former teacher's §§ 1983 claims against school district for denial of due process and equal protection in connection

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with rejection of her application for early retirement benefits accrued under two-year limitations period under Iowa law for personal injury actions when teacher was informed by superintendent that she did not qualify for early retirement program because of her age. Waterman v. Nashua-Plainfield Community School Dist., N.D.Iowa 2006, 446 F.Supp.2d 1018. Limitation Of Actions 95(15)

Former city employee's § 1983 action challenging denial of his pension application on due process grounds--application was automatically denied due to employee's failure to vest his rights prior to his dismissal--accrued on date employee was dismissed, which was date employee became ineligible to vest rights, and not on later date when application for benefits was denied or when arbitrator held that dismissal had been proper; employee knew or should have known at time of his dismissal that his pension rights were in jeopardy. Fleischman v. Grinker, S.D.N.Y.1991, 769 F.Supp. 147. Limitation Of Actions 95(15)

4966. ---- Wiretapping, commencement of period, limitations

Four-year limitations period applicable to civil rights action arising from alleged wiretapping at victim's residence did not accrue until victim discovered wiretapping and identity of perpetrators. Scutieri v. Estate of Revitz, S.D.Fla.1988, 683 F.Supp. 795. Limitation Of Actions 95(15)

4967. ---- Zoning, commencement of period, limitations

Church's § 1983 claim against village for allegedly discriminatory denial of special use zoning permit accrued when village board of trustees denied application at regularly scheduled meeting, and discovery rule did not apply to postpone limitations period for three days until church's agents received actual notice of vote, in light of public announcement at administrative meeting that special use zoning permit would be placed on agenda for next regular meeting, front page article in local newspaper on upcoming vote, and church's motivation to determine when action would be taken. Cathedral of Joy Baptist Church v. Village of Hazel Crest, C.A.7 (Ill.) 1994, 22 F.3d 713, certiorari denied 115 S.Ct. 197, 513 U.S. 872, 130 L.Ed.2d 129. Limitation Of Actions 95(15)

Fact that landowner sold property after zoning and before state court upheld zoning did not mean that its claim for temporary regulatory taking accrued on the date of sale rather than on the date of the state court decision; state court allowed landowner's claims to proceed to final judgment, indicating that landowner had suffered injury-in-fact, and, while the injury may have ended when landowner sold the property, its claim could not accrue until state proceedings had concluded. New Port Largo, Inc. v. Monroe County, C.A.11 (Fla.) 1993, 985 F.2d 1488, certiorari denied 114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373, on remand 856 F.Supp. 659, on remand 873 F.Supp. 633. Limitation Of Actions 55(5)

Property owner's § 1983 action against township, for allegedly depriving him of due process rights by refusing to hear curative amendment challenge to zoning ordinance, accrued on date that township cancelled hearing on challenge and refused to reschedule. de Botton v. Marple Tp., E.D.Pa.1988, 689 F.Supp. 477. Limitation Of Actions 58(1)

Real estate developers' § 1983 claim for alleged equal protection violation by town board members began to accrue when town board allegedly took improper vote to deny developers' petition for exemption from moratorium on zoning approvals. Hampton Bays Connections, Inc. v. Duffy, E.D.N.Y.2003, 212 F.R.D. 119. Limitation Of Actions 95(15)

4968. ---- Miscellaneous, commencement of period, limitations

One year statute of limitations for takings claim asserted by Puerto Rico dairy farmers against government officials accrued when regulatory agency issued its decision to cancel farmers' milk production quotas, as valuable right to

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sell given amount of milk, and revoke their license to sell milk, rather than when milk manufacturing plant actually discontinued picking up farmers' milk; actual economic harm did not have to be felt before takings claim accrued because farmers were simply waiting for decision to be enforced and agency always clearly denied that any compensation would be due for loss of value of quota. Gonzalez-Alvarez v. Rivero-Cubano, C.A.1 (Puerto Rico) 2005, 426 F.3d 422. Limitation Of Actions 95(15)

Involuntary dismissal of §§1983 action, denominated "without prejudice" but expressly imposed as sanction for noncompliance with district court's discovery and related orders, did not cause limitations period to run anew from date of dismissal, as would normally be the case for non-prejudicial dismissal under applicable Puerto Rico limitations law; application of territorial restart rule would frustrate policy of repose, applicable in federal lawsuits. Lopez-Gonzalez v. Municipality of Comerio, C.A.1 (Puerto Rico) 2005, 404 F.3d 548. Limitation Of Actions 130(5)

Physician assistant's § 1983 claims arising from acts occurring during a disciplinary hearing process accrued when she received letter notifying her of medical board's proposal to deny her license reinstatement; letter was adequately final and represented the board's official position. Olsen v. Idaho State Bd. of Medicine, C.A.9 (Idaho) 2004, 363 F.3d 916. Limitation Of Actions 95(15)

For purposes of determining when statute of limitations began to run, widespread publicity about medical tests conducted in 1945 using elementary school students was sufficient to charge alleged test subject with constructive knowledge of events underlying her § 1983 claim against government, university, and others involved in testing; press release issued by university, which conducted study, led to publication of front-page stories in leading newspapers of city in which alleged subject resided, and, one year later, same newspapers and major television network issued reports on nearly identical lawsuit filed by another purported test subject, and, although alleged subject claimed that she did not hear or read any such media reports, objective standard governed test for date of discovery of claim. Hughes v. Vanderbilt University, C.A.6 (Tenn.) 2000, 215 F.3d 543, rehearing and suggestion for rehearing en banc denied. Limitation Of Actions 95(15)

Civil rights claims asserting that defendants' misconduct in prior civil rights action deprived plaintiffs of their due process rights accrued, for statute of limitation purposes, when plaintiffs lost their prior cases in trial court and judgment was entered against them, and not upon their unsuccessful exhaustion of all appeals of that judgment. Morales v. City of Los Angeles, C.A.9 (Cal.) 2000, 214 F.3d 1151. Limitation Of Actions 58(1); Limitation Of Actions 106

Any §§ 1983 claims arising from movie's allegedly wrongful portrayal of Native Americans accrued when movie was released. Dontigney v. Paramount Pictures Corp., D.Conn.2006, 411 F.Supp.2d 89. Limitation Of Actions 58(1)

Truck driver's § 1983 claim arising out of alleged constitutional deprivations sustained as result of recipient's refusal to assist in unloading accrued at time truck was unloaded. Poucher v. Intercounty Appliance Corp., E.D.N.Y.2004, 336 F.Supp.2d 251. Limitation Of Actions 58(1)

California's one-year statute of limitations on Native American mother's § 1983 claim, alleging ineffective assistance of counsel in state court termination of parental rights proceeding, did not begin to run until date of counsel's last appearance as mother's representative. Doe v. Mann, N.D.Cal.2003, 285 F.Supp.2d 1229, affirmed 415 F.3d 1038, certiorari denied 126 S.Ct. 1909, certiorari denied 126 S.Ct. 1911. Limitation Of Actions 58(1)

Three-year statute of limitations on state university students' § 1983 and Title IX claims began to run on date of each alleged act of sexual harassment by soccer coach, except to extent it could be shown that acts were part of single hostile environment practice, in which case limitations period did not begin to run until last constituent act

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occurred. Jennings v. University of North Carolina at Chapel Hill, M.D.N.C.2002, 240 F.Supp.2d 492. Limitation Of Actions 58(1)

Alleged § 1983 action against United States for actions of agent of Department of Transportation began to accrue less than three years before suit was filed. Warlick v. Wilson, M.D.N.C.1995, 902 F.Supp. 90. Limitation Of Actions 58(1)

A plaintiff's cause of action against city of Philadelphia and police officers accrued and was vested on day he was shot by police officers in 1989, and not when his complaint was filed in 1991, and a 1990 ordinance repealing a 1971 ordinance that waived governmental immunity could not be applied retroactively to deprive plaintiff of cause of action. Strauss v. Springer, E.D.Pa.1992, 817 F.Supp. 1203. Municipal Corporations 120; Municipal Corporations 742(1)

Cause of action for alleged civil rights violation by being denied residency in state and forced to pay out-of-state tuition accrued, and limitations period began to run, when students were denied in-state residency status based on status as full-time students. Young v. Crofts, C.A.9 (Mont.) 2006, 162 Fed.Appx. 712, 2006 WL 44452, Unreported. Limitation Of Actions 58(1)

Two-year statute of limitations on homeowners' §§ 1983 claim, alleging borough zoning hearing board improperly sustained "stop work" order for their home renovation project, accrued on the date they received "stop work" order. Soppick v. Borough of West Conshohocken, C.A.3 (Pa.) 2004, 118 Fed.Appx. 631, 2004 WL 2965384, Unreported. Limitation Of Actions 58(1)

Section 1983 claims of county jail inmate, seeking to recover for injuries sustained when he tripped over a section of concrete pavement that was allegedly not level, accrued for limitations purposes at the time he tripped. Paramo v. Santa Clara County, N.D.Cal.2003, 2003 WL 262302, Unreported. Limitation Of Actions 58(1)

Cause of action for Constitutional violations accrued, and one-year limitations period under § 1983 began to run, at time of delay allegedly caused by county and design review commission's discriminatory decision-making with respect to approving property owner's construction plans, even though owners did not know exact quantity until they learned amount of increased construction costs due to delay. Chang v. Sonoma County, N.D.Cal.2003, 2003 WL 223425, Unreported, affirmed 97 Fed.Appx. 116, 2004 WL 950230. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

4969. Commencement of action, limitations

Under "mailbox rule" established by United States Supreme Court in *Houston*, prisoner's pro se complaint alleging § 1983 action against state prison officials would be deemed "filed" as of date he deposited it in prison mail system, not as of date it was received by district court clerk. Cooper v. Brookshire, C.A.5 (Tex.) 1995, 70 F.3d 377, rehearing and suggestion for rehearing en banc denied 77 F.3d 481. Limitation Of Actions 118(2)

Inmate's pro se civil rights complaint was effectively "filed" when he delivered correspondence directed to district court to prison officials, in light of inherent disadvantage suffered by incarcerated pro se litigants in their inability to monitor course of litigation. Dory v. Ryan, C.A.2 (N.Y.) 1993, 999 F.2d 679, modified on rehearing 25 F.3d 81 . Limitation Of Actions 118(2)

For limitation purposes, civil complaint of incarcerated pro se litigant was "filed" within meaning of civil procedure rules pertaining to commencement of action and filing of pleadings when prisoner delivered complaint to prison authorities for mailing to clerk of the district court, and not when clerk of district court received complaint. Lewis v. Richmond City Police Dept., C.A.4 (Va.) 1991, 947 F.2d 733. Limitation Of Actions 118(2)

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42 U.S.C.A. § 1983

Prisoner's pro se civil rights complaint was timely filed, for purposes of statute of limitations, when it was lodged with the court even though it was technically deficient under local rules. Lyons v. Goodson, C.A.8 (Ark.) 1986, 787 F.2d 411. Limitation Of Actions 118(2)

Prisoner's § 1983 complaint against city, detective, and prosecutor, which arose in connection with rape charges against prisoner that were later dismissed for lack of probable cause, was deemed filed, for limitations purposes, on date that prisoner delivered his paperwork to prison officials for mailing. Gibbs v. Deckers, D.Del.2002, 234 F.Supp.2d 458. Limitation Of Actions 118(1)

Charge of discrimination is timely filed under § 1983 as to all discriminatory acts encompassed by the violation so long as charge is filed during the life of the violation. Tang v. State of R.I., Dept. of Elderly Affairs, D.R.I.1995, 904 F.Supp. 55. Limitation Of Actions 58(1)

Inmate's civil rights complaint would be deemed timely under judicially created "mailbox rule" for prisoners proceeding pro se, even though no evidence established precise date on which inmate mailed his complaint; complaint had entered prison mail system before governing statute of limitations expired, and "mailbox rule" extended no special privilege to inmate, but merely considered his inability to personally deliver his complaint or deposit it at United States Post Office. Higgenbottom v. McManus, W.D.Ky.1994, 840 F.Supp. 454. Limitation Of Actions 118(1); Time 3.5

Pro se complaint naming stenographers in charge of transcribing trial minutes provided stenographers with sufficient notice of pendency of § 1983 lawsuit against them; thus, suit was timely filed under applicable statute of limitations. Mathis v. Bess, S.D.N.Y.1991, 761 F.Supp. 1023, opinion modified on denial of reargument on other grounds 763 F.Supp. 58, reconsideration denied 767 F.Supp. 558. Limitation Of Actions 123

4970. Tolling of limitations period--Generally

Inmate's section 1983 action against State prison officials was time barred, as inmate did not file action until 23 months after amendment to Illinois tolling statute, which made that statute inapplicable to claims against past or present employees of Illinois Department of Corrections, which was not "reasonable time" after that amendment. Wilson v. Giesen, C.A.7 (Ill.) 1992, 956 F.2d 738. See, also, Farrell v. McDonough, C.A.7 (Ill.) 1992, 966 F.2d 279, rehearing denied, certiorari denied 113 S.Ct. 1059, 506 U.S. 1084, 122 L.Ed.2d 364. Limitation Of Actions 6(1)

Equitable tolling did not allow landowner to maintain her §§§§ 1983 and 1985 claims, which were filed almost two years after expiration of the limitations period; she alleged no facts or circumstances that would support equitable tolling. Edwards v. Media Borough Council, E.D.Pa.2006, 430 F.Supp.2d 445. Limitation Of Actions 104.5

Continuing violation doctrine did not apply to toll limitations period for former mayor's claim that city's refusal to pay him accumulated vacations and sick leave was result of political discrimination, even though mayor continued to suffer adverse effects for non-payment, and city continued to ignore mayor's written requests, where city's actions arose from single action that had continuing consequences. Llantin-Ballester v. Negron-Irrizary, D.Puerto Rico 2005, 353 F.Supp.2d 206. Limitation Of Actions 55(6)

Statute of limitations on § 1983 claim against state trooper was not tolled while claim was pending before executive officer, even though plaintiff was required by Massachusetts law to wait six months before filing suit while his claim was considered by that agency, and even though limitations period is tolled in federal actions; dual requirements of Massachusetts law, i.e., presentment to executive officer within two years and filing of civil action within three years of cause of action's accrual, were unambiguous, and analogous federal law did not control application of Massachusetts statutes of limitation. Ball v. Carroll, D.Mass.1996, 932 F.Supp. 388, affirmed 107

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42 U.S.C.A. § 1983

F.3d 1. Federal Courts 427; Limitation Of Actions 105(1)

Federal equitable tolling doctrine did not toll running of statute of limitations governing former junior high school student's § 1983 claims in connection with alleged sexual abuse by former teacher, notwithstanding student's claim to have repressed memory of abuse; student waited 13 months after claiming to have discovered through counseling necessary facts, and such delay was unreasonable as a matter of law. Ernstes v. Warner, S.D.Ind.1994, 860 F.Supp. 1338. Limitation Of Actions 104.5

Court clerk's mere receipt of civil rights complaint tolls statute of limitations for filing § 1983 action, even though actual filing order is not entered until later. Redd v. Gilless, W.D.Tenn.1994, 857 F.Supp. 601. Limitation Of Actions 118(1)

New York's tolling provision which applies to one-year statute of limitations for intentional tort claims does not apply to toll and extend three-year statute of limitations for § 1983 actions, which is borrowed from New York's statute for personal injury actions. Bezerra v. County of Nassau, E.D.N.Y.1994, 846 F.Supp. 214. Federal Courts 427

Accrual of civil rights claims when parole officers imposed allegedly improper curfew on parolee was not tolled by fact that parolee did not know of officers' attribution to parolee of certain prostitution convictions that allegedly belonged to another person; reason why curfew was imposed was peripheral to true claim for loss of liberty caused by curfew. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Limitation Of Actions 95(15)

4971. ---- Concealment of facts by defendant, tolling of limitations period

Statute of limitations for § 1983 employment discrimination action would not be equitably tolled; employee had not established that he was unaware of employer's discriminatory animus and presented no evidence that employer had mislead him to his detriment, in connection with his termination. Morris v. Government Development Bank of Puerto Rico, C.A.1 (Puerto Rico) 1994, 27 F.3d 746. Limitation Of Actions 104.5

Arresting officers did not fraudulently conceal their identities from arrestee, such that statute of limitations applicable to arrestee's civil rights claims against officers would be equitably tolled, though arrestee stated that he was in too much pain to think clearly and seek names of officers immediately after his arrest, that prosecution avoided revealing names of arresting officers by offering arrestee very generous plea bargain before discovery process began, and that police department completely stonewalled arrestee's attempts to uncover officers' names; failure to name officers was due to arrestee's own lack of diligence in learning their identities. Worthington v. Wilson, C.A.7 (Ill.) 1993, 8 F.3d 1253. Limitation Of Actions 104(2)

Neither continuing nature of conspiracy nor allegations of concealment tolled Missouri's five-year statute of limitations applicable to civil rights lawsuit, where conspiratorial acts of which plaintiff complained all occurred prior to five-year period, and no evidence suggested that defendants prevented plaintiff from discovering his cause of action. Carr v. Aubuchon, C.A.8 (Mo.) 1992, 969 F.2d 714. Limitation Of Actions 58(1); Limitation Of Actions 104(1)

Evidence indicating concealment of police officer's alleged sexual assault of plaintiff from the public did not support fraudulent concealment from her, given her detailed knowledge of the assault, the investigation, the lack of action to prosecute her assailant, and fact that the investigatory file was lost or destroyed, and therefore statute of limitations for civil rights claims based on excessive force, conspiracy to obstruct justice, negligent failure to prevent a conspiracy to obstruct justice, and deprivation of constitutional rights were not subject to equitable tolling based on fraudulent concealment; with due diligence plaintiff could have discovered the existence of investigatory file which would have provided additional facts to support her causes of action, and merely having been told by her prior attorney and the Mayor that there was no file was insufficient to support a claim of

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fraudulent concealment. Paige v. Police Dept. of City of Schenectady, N.D.N.Y.2000, 121 F.Supp.2d 723, affirmed 264 F.3d 197. Limitation Of Actions 104(2)

Plaintiff's claim that her constitutional rights were violated when she was sexually abused by public school teacher under circumstances created by school administrators did not accrue, as matter of law, at time of last alleged incident of sexual abuse against plaintiff while she was minor student, and, therefore, her civil rights claims were not barred by Illinois' two-year statute of limitations; plaintiff alleged that administrators took action to conceal or cover up teacher's sexual misconduct with other students, and, thus, it was not reasonable to expect minor student to have effectively discovered those efforts and to have reason to know that her constitutional rights had been violated. Doe v. Board of Educ. of Hononegah Community High School Dist. No. 207, N.D.Ill.1993, 833 F.Supp. 1366. Limitation Of Actions 95(15); Limitation Of Actions 104(1)

Plaintiff's allegations that defendants concealed preselection based on race of African American to position of Deputy Director of Emergency Ambulance Bureau of District of Columbia Fire Department through sham application process was sufficient to support tolling of three-year statute of limitations applicable to plaintiff's § 1983 race discrimination claim. Zervas v. District of Columbia, D.D.C.1993, 817 F.Supp. 148. Limitation Of Actions 179(2)

Two-year limitations period applicable to physician's action seeking reinstatement of his license to practice medicine after license was revoked by Illinois Medical Disciplinary Board was not tolled due to alleged fraudulent concealment of Board's allegedly illegal political composition; although physician claimed that he obtained the last certified documents pursuant to a request under the Illinois Freedom of Information Act only three months before filing suit, reasonable diligence in pursuing issues would have put physician into position to advance claim more than two years before he actually did so. McCabe v. Caleel, N.D.Ill.1990, 739 F.Supp. 387, affirmed 931 F.2d 895, rehearing denied. Limitation Of Actions 104(1)

Insurers had notice of their civil rights claims against insureds and county officials based on alleged conspiracy and arson no later than date on which federal court held in another case that plaintiff could sue county for its alleged involvement in racketeering activity, and alleged fraudulent concealment of claims by defendants did not preclude cause of action from accruing on that date. Continental Ins. Co. v. Pierce County, Wash., W.D.Wash.1987, 690 F.Supp. 930, affirmed 877 F.2d 64. Limitation Of Actions 95(15)

4972. ---- Continuing violations or torts, tolling of limitations period

Continuing violation doctrine did not operate to extend the limitations period for state prisoner's § 1983 complaint, which alleged that defendants violated his constitutional right against ex post facto laws by changing the frequency of his parole consideration under a newly enacted law; defendants' act, deciding not to consider prisoner for parole again until the specified year, was a one-time act with continued consequences. Lovett v. Ray, C.A.11 (Ga.) 2003, 327 F.3d 1181. Limitation Of Actions 58(1)

The state's failure to release physical evidence from state prisoner's trial for post-conviction DNA testing was not a continuing violation, and thus, the limitations period for prisoner's §§ 1983 claim seeking access to the physical evidence was not extended, under the continuing violation doctrine. Savory v. Lyons, C.A.7 (Ill.) 2006, 469 F.3d 667. Limitation Of Actions 58(1)

Continuing violation doctrine did not toll the two-year limitations period of New Jersey police officer's §§ 1983 claims that denial of promotion, failure to expunge disciplinary record, and transfer were in retaliation for his exercise of First Amendment rights by assisting with federal corruption investigation, since claims involved discrete acts and not a hostile environment. O'Connor v. City of Newark, C.A.3 (N.J.) 2006, 440 F.3d 125. Limitation Of Actions 58(1)

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42 U.S.C.A. § 1983

Decision by county and county jail officials to file disciplinary charges against black corrections officers, on basis of their alleged involvement in scheme to provide inmates with drugs, was not tantamount to an ongoing policy of discrimination, as would toll limitations period, under continuing violation doctrine, for officers' race discrimination claims under §§ 1983 and statute requiring racial equality in contracting; rather, decision was a single act, discrete in its nature. Washington v. County of Rockland, C.A.2 (N.Y.) 2004, 373 F.3d 310. Limitation Of Actions 58(1)

Doctrine of continuing violation did not apply to landowner's § 1983 claim that the city violated landowner's constitutional rights by authorizing a competing developer to install pipes on landowner's land, for purposes of Illinois' two-year-statute of limitations on § 1983 actions; even though the alleged trespass was, by landowner's description, permanent, that did not convert the discrete act of installing pipes into one long continuing wrong. Clark v. City of Braidwood, C.A.7 (Ill.) 2003, 318 F.3d 764. Limitation Of Actions 58(1)

City's continued prosecution of public abatement nuisance proceeding against nightclub was not a separately actionable event, for statute of limitations purposes in nightclub owners' § 1983 action against the city, apart from the city's earlier initiation of the abatement proceeding; prosecution of the proceeding was the inevitable consequence of the initiation of the proceeding. RK Ventures, Inc. v. City of Seattle, C.A.9 (Wash.) 2002, 307 F.3d 1045. Limitation Of Actions 58(1)

Any deliberate refusal by city to remove "SLUM PROPERTY" signs it had placed on residential property was not fresh violation for purposes of statute of limitations on § 1983 claim, asserted by officers of landlords' association, that city placed such signs in retaliation for officers engaging in protected speech. Pitts v. City of Kankakee, Ill., C.A.7 (Ill.) 2001, 267 F.3d 592, rehearing and rehearing en banc denied, certiorari denied 122 S.Ct. 2586, 536 U.S. 922, 153 L.Ed.2d 776. Limitation Of Actions 58(1)

Deprivation of trucking company's asserted liberty interest in right to intrastate travel created by county ordinance banning through truck traffic on county roads was continuing violation, so that statute of limitations applicable to trucking company's civil rights claim did not start to run until ordinance was overturned. Kuhnle Brothers, Inc. v. County of Geauga, C.A.6 (Ohio) 1997, 103 F.3d 516. Limitation Of Actions 58(1)

Township's affirmative acts in allegedly improperly taxing plaintiff's property as commercial lot year after year did not constitute Fifth Amendment "taking," and thus, did not warrant finding that township was engaged in "continuing wrong" that would toll statute of limitations on landowner's inverse condemnation claim against township. 287 Corporate Center Associates v. Township of Bridgewater, C.A.3 (N.J.) 1996, 101 F.3d 320. Eminent Domain 2.4; Limitation Of Actions 55(6)

Race discrimination claim against school district arises each day that child is assigned to school under racially discriminatory policy and, thus, § 1983 civil rights suit against school district alleging that closing junior high school located in predominantly black neighborhood three years before suit was commenced was timely, despite two-year Illinois statute of limitations; racial discrimination in operation of schools was a continuing violation. Palmer v. Board of Educ. of Community Unit School Dist. 201-U, Will County, Ill., C.A.7 (Ill.) 1995, 46 F.3d 682. Limitation Of Actions 58(1)

Against background of New York State Division for Youth's gender-discriminatory policies and hostile work environment created by female employee's male co-workers, acts of discrimination and harassment by employee's co-workers and supervisors constituted continuing wrong, delaying statute of limitations period applicable to employee's civil rights claims, that did not end until employee was finally driven from juvenile offender facility. Cornwell v. Robinson, C.A.2 (N.Y.) 1994, 23 F.3d 694. Limitation Of Actions 58(1)

Director of university sports complex failed to show that any allegedly discriminatory actions by university officials within applicable limitations period were separate actionable § 1983 violations under serial continuing

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violation theory; alleged incidents within limitations period were merely natural and foreseeable consequences of prior department reorganization outside limitations period, rather than independent new acts of discrimination on basis of director's political affiliation. Muniz-Cabrero v. Ruiz, C.A.1 (Puerto Rico) 1994, 23 F.3d 607. Limitation Of Actions 58(1)

Advertising company did not suffer continued violation as result of alleged unconstitutional taking of its property by means of city ordinance restricting off-premises billboard advertising where company was aware of ordinance from date of its enactment, participated in rule-making proceedings prior to adoption of ordinance, and was required by law to be aware of restrictions placed on its billboards once ordinance was enacted; for limitations purposes, company was in position to challenge ordinance once it was adopted. National Advertising Co. v. City of Raleigh, C.A.4 (N.C.) 1991, 947 F.2d 1158, certiorari denied 112 S.Ct. 1997, 504 U.S. 931, 118 L.Ed.2d 593. Limitation Of Actions 55(6)

School system employees' § 1983 action challenging exclusion from participation in school employees' retirement system did not fall under "continuing violation" doctrine so as to escape Ohio's two-year limitations period; once retirement system members were separated from nonmembers, it was not a civil rights violation to treat member employees differently. Dixon v. Anderson, C.A.6 (Ohio) 1991, 928 F.2d 212, rehearing denied. Limitation Of Actions 58(1)

"Continuing violation" theory applied to render § 1983 claims by nontenured black female teacher timely; teacher alleged discriminatory working conditions throughout term of her employment which were related to her discharge, and, prior to events surrounding her discharge, teacher was not warranted in filing race discrimination suit. Hull v. Cuyahoga Valley Joint Vocational School Dist. Bd. of Educ., C.A.6 (Ohio) 1991, 926 F.2d 505, rehearing denied, certiorari denied 111 S.Ct. 2917, 501 U.S. 1261, 115 L.Ed.2d 1080. Limitation Of Actions 58(1)

Mere adherence of school officials to a discrete decision regarding high school student's academic standing in the fall of 1987 do not suffice to state a claim for continuing violation for purposes of state statute of limitations governing § 1983 action when student was denied 12th grade status in the fall of 1988. Vandiver v. Hardin County Bd. of Educ., C.A.6 (Ky.) 1991, 925 F.2d 927. Limitation Of Actions 58(1)

Student who sought to bring civil rights action against state university based upon her expulsion from graduate program could not evade prescriptive period by contending that university's actions amounted to continuing tort; claims accrued when student was expelled and barred from campus and it was irrelevant for purposes of prescription that student remained expelled and barred at present. Davis v. Louisiana State University, C.A.5 (La.) 1989, 876 F.2d 412, rehearing denied. Limitation Of Actions 58(1)

Sheriff's repeated garnishment of employee's wages created a continuing violation of employee's due process rights for purposes of civil rights provision limitations period. Jackson v. Galan, C.A.5 (La.) 1989, 868 F.2d 165, rehearing granted. Limitation Of Actions 55(6)

Continuing violations exception applied to municipal employee's § 1983 claims against municipality, its mayor, and other officials, alleging political affiliation discrimination and retaliation; employee alleged ongoing discriminatory conduct by defendants, including that defendants waged harassment and persecutory campaign against employee, that they effectively demoted employee, and that defendants had guards following employee around his work area. Valentin Rodriguez v. Municipality of Barceloneta, D.Puerto Rico 2002, 236 F.Supp.2d 189 . Limitation Of Actions 58(1)

Alleged continuous police harassment of homeowner and his family did not, under continuous violation doctrine, save their otherwise time-barred claims against county police officer, seeking redress under §§ 1983 and claiming civil rights conspiracy, intentional infliction of emotional distress and loss of consortium, where there was no evidence that the officer engaged in an act of misconduct during the application limitations period. Kashaka v.

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Baltimore County, Maryland, D.Md.2006, 450 F.Supp.2d 610. Limitation Of Actions 58(1)

Corporate ferry service asserted a §§ 1983 challenge to town law that continued to prevent it from establishing vehicular or high-speed ferry service to and from the town even more than three years after passage of law, thus alleging a continuing violation for limitations purposes. Town of Southold v. Town of East Hampton, E.D.N.Y.2005, 406 F.Supp.2d 227. Limitation Of Actions 58(1)

At an irreducible constitutional minimum, Article III standing requires that the plaintiff have suffered an injury in fact, an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Town of Southold v. Town of East Hampton, E.D.N.Y.2005, 406 F.Supp.2d 227. Federal Civil Procedure 103.2

Allegations of hostile work environment are treated differently than allegations of discrete discriminatory acts for purposes of §§ 1983 statute of limitations challenges; hostile work environment claim is created by series of separate acts that collectively constitute one unlawful employment practice, whereas each discrete discriminatory act constitutes stand-alone actionable unlawful employment practice. Sanchez v. Public Building Authority, D.Puerto Rico 2005, 402 F.Supp.2d 393. Limitation Of Actions 58(1)

Discrete employment actions, including failure to promote, are not subject to continuing violations doctrine. Neveu v. City of Fresno, E.D.Cal.2005, 392 F.Supp.2d 1159. Limitation Of Actions 58(1)

Agency employee, who allegedly was illegally suspended and terminated from his position due to his political affiliations, did not show ongoing violation of his rights in form of hostile work environment claim, or make allegations respecting ongoing policy of politically motivated suspensions or terminations, and thus lacked basis for invoking continuing violations doctrine to avoid statute of limitations bar on §§ 1983 claim challenging termination. Vega v. Hernandez, D.Puerto Rico 2005, 381 F.Supp.2d 31. Limitation Of Actions 58(1)

Employer committed alleged discrete violations of federally protected rights of employee, each with its own one-year statute of limitations period for bringing of §§ 1983 claim, and did not commit serial acts allowing for suit alleging all acts if one act occurred within limitations period, when employee alleged that employer had (1) suddenly transferred her to different work locations, (2) made unannounced changes in work schedules, (3) stripped her of duties and responsibilities, (4) made unfounded and repeated threats of disciplinary measures, (5) undertook unfounded disciplinary actions, and (6) denied requests for reasonable disability accommodation. Figueroa-Garay v. Municipality of Rio Grande, D.Puerto Rico 2005, 364 F.Supp.2d 117. Limitation Of Actions 58(1)

Demoted Puerto Rican agency employee, asserting §§ 1983 claim based on allegation that demotion was politically motivated, failed to allege continuing violation, for limitations purposes, absent allegation that defendants committed any specifically discriminatory acts within limitations period. Camacho-Cardona v. Lopez Pena, D.Puerto Rico 2005, 360 F.Supp.2d 298. Limitation Of Actions 58(1)

There was no continuing violation, extending three year statute of limitations period governing §§ 1983 action brought by retired state court judge, challenging decision of administrative judges to deny him appointment as judicial hearing officer; denial was discrete action, accompanied by notice and opportunity to bring timely claim, and retired judge did not allege he was victim of any policy or practice. Levine v. McCabe, E.D.N.Y.2005, 357 F.Supp.2d 608. Limitation Of Actions 58(1)

Pursuant to continuing violation doctrine, Puerto Rico employee's §§ 1983 political discrimination claim was not time-barred, even though reduction of his functions occurred outside of limitations period, where officials subsequently brought disciplinary sanctions against him, submitted him to administrative proceeding, and placed written admonition letter in his permanent file. Amador Parrilla v. Ayala Santiago, D.Puerto Rico 2004, 340

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42 U.S.C.A. § 1983

F.Supp.2d 103. Limitation Of Actions 58(1)

Conduct of Puerto Rico Secretary of Health, in giving preference to medical schools in contract to manage public hospital, was discrete act that did not come within purview of serial violation branch of continuing violation doctrine, and as such, other claims of medical facilities' owners and operators, that were based upon Secretary's denial of certificates of necessity and convenience (CNC), which occurred more than one year prior to filing of suit, were not brought within one year statute of limitations by owners' assertion of timely preference claim, since plaintiffs believed many years previously that Secretary was discriminating against them at every turn and turned to Commonwealth courts in order to vindicate their rights and preference claim differed from other purported discrimination in that the law itself dictated that Secretary would not have to comply with formal bidding process. Centro Medico Del Turabo, Inc. v. Feliciano De Melecio, D.Puerto Rico 2004, 321 F.Supp.2d 285, affirmed 406 F.3d 1. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

Claims based on alleged discrete acts of discriminatory enforcement of city codes against housing developer that were not yet time-barred under old one-year limitations period when new two-year limitations period for residual claims became effective were timely when brought within two years of their accrual. Thompson v. City of Shasta Lake, E.D.Cal.2004, 314 F.Supp.2d 1017. Limitation Of Actions 6(1)

Where municipal employee alleged discrete acts of political discrimination in § 1983 action against municipality, he could not, under continuing violation theory, use discrete acts that occurred within the statute of limitations to save discrete time-barred acts of discrimination, regardless of whether untimely acts were substantially related to the timely acts. Rivera Torres v. Ortiz Velez, D.Puerto Rico 2002, 306 F.Supp.2d 76, appeal denied 341 F.3d 86, certiorari denied 124 S.Ct. 1875, 541 U.S. 972, 158 L.Ed.2d 466, rehearing denied 124 S.Ct. 2433, 541 U.S. 1083, 158 L.Ed.2d 1001, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Limitation Of Actions 58(1)

Continuing violations doctrine was inapplicable to Native American plaintiff's § 1983 claims arising out of his arrest following a prayer march, and therefore any such claims accruing more than four years before the filing of his complaint were barred by Nebraska statute of limitations. Poor Bear v. Nesbitt, D.Neb.2004, 300 F.Supp.2d 904. Limitation Of Actions 58(1)

The continuous violation doctrine was not applicable to § 1983 claims. Blume v. Meneley, D.Kan.2003, 283 F.Supp.2d 1189. Limitation Of Actions 58(1)

Bus driver's allegation that school district's discrete acts of retaliation evidenced policy or custom of retaliation, in violation of § 1983, was sufficient to invoke continuing violations doctrine, for limitations purposes. Branch v. Guilderland Cent. School Dist., N.D.N.Y.2003, 239 F.Supp.2d 242. Limitation Of Actions 58(1)

Continuing violation theory in cases when employer has, for period of time, covertly followed practice of discrimination, did not operate to toll police officers' claims outside two-year statute of limitations period for his actions under §§ 1983 and 1985(3), where allegations in complaint indicated that officer was, or should have been, aware of alleged incident of punishment or retaliation directed toward him outside limitation period. Lara v. City of Chicago, N.D.Ill.1997, 968 F.Supp. 1278. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

Inmate could maintain § 1983 claim that supervisors of correctional facility denied him medical care following assault by fellow inmates, even though claim was not filed until three years after injuries occurred; violation was ongoing, as record showed inmate made frequent complaints of pain without response from supervisors. Ingalls v. Florio, D.N.J.1997, 968 F.Supp. 193. Limitation Of Actions 58(1)

With regard to state inmate's § 1983 claim against prison physician for deliberate indifference to his serious medical needs, based on failure to perform surgery on broken nose, physician's failure to perform surgery beyond

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7-8 day period that had been recommended by another doctor did not constitute a continuing course of treatment that delayed running of statute of limitations. Hill v. Godinez, N.D.Ill.1997, 955 F.Supp. 945. Limitation Of Actions 58(1)

Alleged discriminatory job assignments, elimination of position and refusals to hire which occurred outside two-year limitations period for city employee's § 1983 sex discrimination claims against supervisor were sporadic and isolated, rather than part of series of discriminatory acts involving supervisor's alleged failure to investigate city employee's sex discrimination and harassment complaints during limitations period, and therefore city employee's § 1983 claims arising from discriminatory job assignments, position elimination and refusals to hire were untimely and could not be revived by continuing violation theory. Houck v. City of Prairie Village, D.Kan.1996, 924 F.Supp. 120. Limitation Of Actions 58(1)

Before series of allegedly related acts demonstrates continuing violation, for purposes of determining timeliness of discrimination claim, court must find dogged pattern of discrimination as distinguished from isolated and sporadic outbreaks; three inquiries are relevant to finding such pattern: subject matter--whether violations constitute same type of discrimination, frequency, and permanence--whether nature of violations should trigger employee's awareness of need to assert his or her rights and whether consequences of act would continue even in absence of continuing intent to discriminate. Houck v. City of Prairie Village, D.Kan.1996, 924 F.Supp. 120. Limitation Of Actions 58(1)

Under continuing violation theory, plaintiff who shows continuing policy and practice of discrimination that operated within the statutory period has satisfied statute of limitations requirements for § 1983 action. Newsome v. County of Santa Fe, D.N.M.1996, 922 F.Supp. 519. Limitation Of Actions 58(1)

Former public employee's complaint against director and associate director of Rhode Island Department of Elderly Affairs alleged continuing violation of § 1983 such that each of the plaintiff's charges of discrimination was timely filed. Tang v. State of R.I., Dept. of Elderly Affairs, D.R.I.1995, 904 F.Supp. 55. Limitation Of Actions 58(1)

Black female deputy sheriff's § 1983 complaint alleged continuing violation extending into California personal injury action one-year limitations period and, thus, complaint against county, sheriff's department, supervisors, co-workers, and civilian jail employee was not time barred; deputy sheriff alleged acts of harassment and discrimination which were motivated by endemic racial and sexual animus and retaliation for particular forms of speech, and alleged acts were related by common motive, theme, target, and function in workplace. Anthony v. County of Sacramento, Sheriff's Dept., E.D.Cal.1994, 845 F.Supp. 1396. Limitation Of Actions 58(1)

Civil rights action challenging Virginia State Medicaid Plan Amendments was not barred by Virginia two-year statute of limitations for personal actions even though brought more than two years after the respective enactments; violations were continuing since state continued to apply payment limitations under the enactments and approval of the enactments by the Secretary of the United States Department of Health and Human Services (HHS) persisted. Rehabilitation Ass'n of Virginia, Inc. v. Kozlowski, E.D.Va.1993, 838 F.Supp. 243, affirmed 42 F.3d 1444, certiorari denied 116 S.Ct. 60, 516 U.S. 811, 133 L.Ed.2d 23. Limitation Of Actions 58(1)

Suspension of liquor license fell within "single act" category, and was not "continuing injury" under § 1983 for purposes of statute of limitations, where single act which was source of alleged violation of licensee's civil rights was decision by Alcoholic Beverage Control Board (ABCB) to suspend license and each day of suspension ordered by ABCB did not constitute separate act. Brossette v. City of Baton Rouge, M.D.La.1993, 837 F.Supp. 759, affirmed 29 F.3d 623, certiorari denied 115 S.Ct. 443, 513 U.S. 971, 130 L.Ed.2d 353. Limitation Of Actions 58(1)

"Politically discriminatory action" in violation of § 1983 civil rights law, such as demotion followed by repeated refusals to reinstate plaintiff, does not constitute continuing violation which tolls statute of limitations. Cabrero v.

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Ruiz, D.Puerto Rico 1993, 826 F.Supp. 591, affirmed 23 F.3d 607. Limitation Of Actions 58(1)

Fact that hospital, which was going to shift some services to another location, continued to receive federal funds and plan shift did not establish continuing violation of discrimination against Medicaid patients and on the basis of race and did not toll New York three-year personal injury statute of limitations applicable to § 1983 and Title VI action. Mussington v. St. Luke's-Roosevelt Hosp. Center, S.D.N.Y.1993, 824 F.Supp. 427, motion to amend denied 1993 WL 319454, affirmed 18 F.3d 1033. Limitation Of Actions 58(1)

Decision by town to pursue abatement action against owners of gravel and topsoil evacuation business, for activities related to business that were allegedly barred by local zoning ordinance, was not tantamount to an ongoing policy of discrimination, as would toll limitations period, under continuing violation doctrine, for §§ 1983 claims against town. Lee v. Town Bd. of Town of Ellicott, New York, C.A.2 (N.Y.) 2005, 151 Fed.Appx. 18, 2005 WL 2373887, Unreported. Limitation Of Actions 58(1)

Even if continuing violation doctrine making claims accrue for limitations purposes at culmination of continuous injury applied to §§1983 actions, alleged denial of padded wheelchair for three days within applicable state law statute of limitations period to pre-trial detainee who was confined to wheelchair and recovering from decubitis ulcer was not sufficiently serious injury to warrant application of continuing violation doctrine to sustain detainee's action against county detention center's medical providers for deliberate indifference to serious medical needs in violation of due process clause. Burkley v. Correctional Healthcare Management Of Oklahoma, Inc., C.A.10 (Okla.) 2005, 141 Fed.Appx. 714, 2005 WL 1595699, Unreported. Limitation Of Actions 58(1)

Assuming that state prisoner had not been transferred from more than three years prior to the filing of his section 1983 complaint alleging that a pattern and practice of religious discrimination against Shi'ite Muslims existed during the entire time of his incarceration at transferor facility, statute of limitations had not elapsed under a "continuing violation" theory. Cancel v. Mazzuca, S.D.N.Y.2003, 2003 WL 1702011, Unreported. Limitation Of Actions 58(1)

Issue of whether prison medical officials' alleged failure to treat inmate's back condition constituted continuing violation presented fact questions that could not be resolved on motion to dismiss inmate's § 1983 deliberate indifference claims against officials on limitations grounds. Pratts v. Coombe, C.A.2 (N.Y.) 2003, 59 Fed.Appx. 392, 2003 WL 1025095, Unreported. Federal Civil Procedure 1831

Continuing violation doctrine did not apply to retired police officer's claims of retaliation in violation of his free speech rights, so as to make § 1983 action timely as to incidents outside limitations period, absent evidence demonstrating that his constitutionally protected speech was substantial motivating factor for actions and decisions taken after limitations period began. Crosland v. Safir, C.A.2 (N.Y.) 2002, 54 Fed.Appx. 504, 2002 WL 31867823, Unreported. Limitation Of Actions 58(1)

Denials of former assistant high school principal's repeated requests for reinstatement following his termination did not constitute a continuing violation, for purposes of triggering statute of limitations on principal's § 1983 due process claim. Moiles v. Marple Newtown School Dist., E.D.Pa.2002, 2002 WL 1964393, Unreported. Limitation Of Actions 58(1)

4973. ---- Discovery delays, tolling of limitations period

Firefighter did not establish delay in accrual date of his impairment of contracts claim based on assessment of the law by former member of pension system's board of directors, with respect to impact of statutory amendment requiring deferred compensation plan participants to retire at end of five years; former member's statements were hearsay, he was not member of system board when statements were made and did not speak on behalf of board in representative capacity, and firefighter had notice of generally applicable statutory amendment, under which his

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employment would unquestionably end if applied to him. Smith v. City of Enid By and Through Enid City Com'n, C.A.10 (Okla.) 1998, 149 F.3d 1151. Limitation Of Actions 95(15)

Statute of limitations for § 1983 civil rights action arising out of death of black arrestee in county jail in 1960 was not tolled, as to city and its employees, by failure of arrestee's surviving family members to obtain autopsy report, which contradicted theory of death given at coroner's inquest by county employees, until 1984; failure to obtain the autopsy report earlier was not reasonable under all the circumstances, and climate of racial prejudice prevailing in the state during the early sixties could not excuse family members' failure to press their claims earlier. Williams v. Hartje, C.A.8 (Ark.) 1987, 827 F.2d 1203. Limitation Of Actions 95(15)

Equitable tolling of three-year New York statute of limitations on civil rights action against federal officials was justified by delay of other federal officials in providing discovery and in massive amount of documents eventually produced; prisoner's counsel had been sufficiently diligent in culling through massive amounts of documents to warrant equitable relief. Wahad v. F.B.I., S.D.N.Y.1990, 132 F.R.D. 17. Limitation Of Actions 104.5

Federal prisoner was not entitled to any tolling of Georgia's two-year statute of limitations for personal injury actions for time he spent pursuing relief in state court; nothing in state or federal law required prisoner to exhaust his claims in state court before pursuing §§ 1983 action to recover forfeited property he claimed was taken in violation of his constitutional rights. Berry v. Keller, C.A.11 (Ga.) 2005, 157 Fed.Appx. 227, 2005 WL 3292476, Unreported. Limitation Of Actions 105(2)

4974. ---- Equitable estoppel, tolling of limitations period

State prisoner was not entitled to equitable tolling of the statute of limitations for his §§ 1983 claim seeking post-conviction access to physical evidence for the purpose of DNA testing; although DNA testing was not available at the time of prisoner's conviction, and prisoner claimed actual innocence, his §§ 1983 claim did not accrue until after prisoner demonstrated that he was aware that DNA technology was available, and claim of actual innocence was insufficient to warrant equitable tolling. Savory v. Lyons, C.A.7 (Ill.) 2006, 469 F.3d 667. Limitation Of Actions 104.5

Prison mailbox rule was not implicated by late delivery of records request to pro se litigant as delay did not derive from problems uniquely associated with incarceration and was not attributable to prison officials or vagaries of mail, but solely to court clerk's delay in processing request, and thus mailbox rule did not apply to excuse late filing of civil rights complaint that concerned information in records, but which did not require filing of records. Walker v. Jastremski, C.A.2 (Conn.) 2005, 430 F.3d 560, certiorari denied 126 S.Ct. 1887. Time 3.5

Pro se prisoner was not entitled to equitable tolling of limitations period on federal civil rights claims based on his late receipt of court documents that had been requested shortly before expiration of limitations period on civil rights claims, where documents were not necessary to file legally sufficient complaint; facts supporting claims were already within prisoner's knowledge, and prisoner's faulty memory and his misplacement of his copy of documents were not grounds for equitable tolling. Walker v. Jastremski, C.A.2 (Conn.) 2005, 430 F.3d 560, certiorari denied 126 S.Ct. 1887. Limitation Of Actions 104.5

Law school officials were not equitably estopped from asserting limitations defense to handicapped student's civil rights claims, that officials denied him due process by failing to inform him of his right to appeal their denial of his requests for specific accommodations, merely because officials offered alternate accommodations and allegedly induced student to think that additional accommodations would be forthcoming; student's failure to timely assert his rights was not result of any representations of law school officials, but of his own failure to act with reasonable diligence and learn of his right to appeal. McGregor v. Louisiana State University Bd. of Sup'rs, C.A.5 (La.) 1993, 3 F.3d 850, certiorari denied 114 S.Ct. 1103, 510 U.S. 1131, 127 L.Ed.2d 415. Limitation Of Actions 13

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42 U.S.C.A. § 1983

Equitable estoppel doctrine applied to inmate's § 1983 claim against prosecuting attorney and police officer witness, arising from alleged extrajudicial conspiracy to deny him fair trial 11 years before inmate filed his claim and, thus, statute of limitations was extended until inmate could have reasonably found out about conspiracy. Dory v. Ryan, C.A.2 (N.Y.) 1993, 999 F.2d 679, modified on rehearing 25 F.3d 81. Limitation Of Actions 13

Under Nevada equitable tolling principles as predicted by federal district court, equitable tolling was appropriate in state prison inmate's second §§ 1983 action against corrections officials, for duration of inmate's previous pro se §§ 1983 action arising from same incident, which had been filed before resolution of administrative grievance and had been dismissed without prejudice for that reason, but which had remained pending beyond expiration of limitations period; inmate apparently had been diligent, timely filing both administrative grievance and first §§ 1983 suit, and officials would not be prejudiced by equitable tolling given first suit, which had same facts and same defendants. Wisenbaker v. Farwell, D.Nev.2004, 341 F.Supp.2d 1160. Limitation Of Actions 104.5

Equitable tolling did not apply to four-year limitations period applicable to former employee's claims of deprivation of liberty interests based upon written reprimands, poor performance evaluations, and memorandum regarding alleged criminal conduct, in § 1983 lawsuit under due process clause of Fourteenth Amendment, since employee was aware of facts that formed basis of his claims, notwithstanding any negligence or fraud by way of alleged concealment of employee's personnel files by county, as employer. Cotton v. Martin County, Fla., S.D.Fla.2004, 306 F.Supp.2d 1182, affirmed 125 Fed.Appx. 977, 2004 WL 2805781. Limitation Of Actions 104.5

Equal Employment Opportunity Commission (EEOC) had no jurisdiction over alleged violations of former employee's constitutional rights asserted in § 1983 claims, and therefore former employee's filing of charges for alleged Title VII violations with EEOC could not serve as "extrajudicial" claim capable of tolling limitations period for § 1983 claims under Puerto Rico law, even if § 1983 claims arose from same events giving rise to EEOC charges, and even if basis for § 1983 claims could be a Title VII claim. Iravedra v. Public Building Authority, D.Puerto Rico 2003, 283 F.Supp.2d 570. Limitation Of Actions 105(1)

Arrestee failed to establish that police officers induced him not to bring federal civil rights suit, and thus failed to establish that officers were equitably estopped from pleading New York statute of limitations defense to civil rights suit alleging excessive force; arrestee merely claimed that "liaison" between city police department and District Attorney's office existed, making arrestee appear as if he acted without justification. Perez v. Police Dept. of City of New York, S.D.N.Y.1994, 872 F.Supp. 49, affirmed 71 F.3d 405. Limitation Of Actions 13

Attorney's § 1983 claim and various state law claims alleging violations in connection with disciplinary proceedings were barred by applicable limitations period, as attorney had knowledge of basic facts necessary to make out his numerous causes of action at least 13 years prior to filing complaint; furthermore, there was no indication that defendants engaged in any misconduct causing attorney to delay institution of proceeding, so as to toll running of limitations period under New York law based on equitable estoppel. Babigian v. Association of the Bar of the City of New York, S.D.N.Y.1990, 744 F.Supp. 47, affirmed 912 F.2d 462, certiorari denied 111 S.Ct. 581, 498 U.S. 1012, 112 L.Ed.2d 586. Limitation Of Actions 95(15)

4975. ---- Employment discrimination, tolling of limitations period

Under Puerto Rico law, former mayor's communication to state comptroller seeking assistance in collecting accumulated vacations and sick leave from city did not constitute extrajudicial claim sufficient to toll statutory period for bringing §§ 1983 suit against city; communication did not seek same relief that mayor sought in §§ 1983 suit, and communication was not addressed to city. Llantin-Ballester v. Negron-Irrizary, D.Puerto Rico 2005, 353 F.Supp.2d 206. Limitation Of Actions 105(2)

Statute of limitations is tolled in cases where employer's decisionmaking takes place over period of time, making it

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difficult to determine actual date of alleged discriminatory act, for equitable reasons similar to those underlying federal equitable tolling doctrine under which person injured by unlawful act need not sue until she knows, or through exercise of reasonable diligence would have known, not only that she has been injured but also that she has been injured by wrongful act of defendant. Lara v. City of Chicago, N.D.Ill.1997, 968 F.Supp. 1278. Limitation Of Actions 95(15)

4976. ---- Imprisoned plaintiffs, tolling of limitations period

State statute that suspended limitations periods for persons under legal disability, including prisoners, until one year after disability has been removed was consistent with s 1983's remedial purpose and thus, inmate's s 1983 action was not time barred though it had been filed after expiration of three-year statute of limitations period for personal injury actions. Hardin v. Straub, U.S.Mich.1989, 109 S.Ct. 1998, 490 U.S. 536, 104 L.Ed.2d 582, on remand 878 F.2d 382. Limitation Of Actions 75

Prison mailbox rule was not implicated by late delivery of records request to pro se litigant as delay did not derive from problems uniquely associated with incarceration and was not attributable to prison officials or vagaries of mail, but solely to court clerk's delay in processing request, and thus mailbox rule did not apply to excuse late filing of civil rights complaint that concerned information in records, but which did not require filing of records. Walker v. Jastremski, C.A.2 (Conn.) 2005, 430 F.3d 560, certiorari denied 126 S.Ct. 1887. Time 3.5

Inmate's alleged placement of §§ 1983 complaint in prison mail system did not satisfy prison mailbox rule, as would establish that complaint was filed on date of such placement rather than date complaint was received by court, absent either indication that inmate used system for legal mail or execution by inmate of notarized statement or sworn declaration setting forth date of deposit in regular mail system and stating that inmate included prepaid postage. Price v. Philpot, C.A.10 (Okla.) 2005, 420 F.3d 1158. Limitation Of Actions 118(2)

Letter that inmate mailed to district court stating that motion to reconsider summary judgment had been mailed out, but stating no substantive grounds for relief, could not be construed as a motion to alter or amend judgment or a motion for relief from judgment, and thus did not toll running of 30-day period for filing notice of appeal from summary judgment. Searles v. Dechant, C.A.10 (Kan.) 2004, 393 F.3d 1126. Federal Courts 669

Prisoner "brought suit" when he mailed complaint to court in § 1983 action, for purposes of determining whether prisoner had exhausted administrative remedies before he brought suit, as required under Prison Litigation Reform Act (PLRA), even though complaint was not filed until it had been reviewed by district court, and filing fee was paid, or prisoner was permitted to proceed in forma pauperis. Ford v. Johnson, C.A.7 (Ill.) 2004, 362 F.3d 395. Civil Rights 1311

Statute of limitations on former inmate's § 1983 claim against his daughter's guardian ad litem, based on guardian's failure to inform court of guardian's alleged knowledge that inmate's daughter had fabricated her sexual abuse charge against inmate, began to run, at very latest, as of September 1, 1987, when Texas deleted statute providing that imprisonment was disability that would toll limitations period. Pete v. Metcalfe, C.A.5 (Tex.) 1993, 8 F.3d 214 . Limitation Of Actions 75

Article of Puerto Rico Code of Civil Procedure excluding time spent in prison from limitations period was implicitly repealed by Puerto Rico legislature when it removed from penal code remnants of civil law concept of interdiction, and thus, incarcerated plaintiff's § 1983 action was barred by Puerto Rico's one-year statute of limitations for tort actions. Sierra-Serpa v. Martinez, C.A.1 (Puerto Rico) 1993, 995 F.2d 325. Statutes 167(1)

Legislature's removal of imprisonment as a basis for tolling the statute of limitations was not inconsistent with federal policy, so that his imprisonment did not toll his federal civil rights claim. Street v. Vose, C.A.1 (Mass.)

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1991, 936 F.2d 38, certiorari denied 112 S.Ct. 948, 502 U.S. 1063, 117 L.Ed.2d 117. Limitation Of Actions 6(11)

Civil rights plaintiff was not "imprisoned" at time of alleged unlawful arrest, within meaning of Michigan tolling provision applicable to those imprisoned when cause of action accrues; plaintiff's arrest and pretrial detention were not equivalent of "imprisonment," within meaning of Michigan statute. Jones v. City of Hamtramck, C.A.6 (Mich.) 1990, 905 F.2d 908, certiorari denied 111 S.Ct. 265, 498 U.S. 903, 112 L.Ed.2d 222. Limitation Of Actions 75

Period of limitations on civil rights action was not tolled under Michigan law by plaintiff's imprisonment; claim was based on conduct of police in arresting plaintiff and thus accrued before plaintiff was imprisoned. Perreault v. Hostetler, C.A.6 (Mich.) 1989, 884 F.2d 267. Limitation Of Actions 75

Kentucky tolling statute, that excluded time of confinement in penitentiary from limitations period, applied to inmate's § 1983 action against police department and police officer, alleged to have violated inmate's civil rights while acting under color of state law when he shot inmate three times during arrest. Bell v. Cooper, C.A.6 (Ky.) 1989, 881 F.2d 257. Federal Courts 427

Texas law would be interpreted to commence running of statute of limitations on arrestee's § 1983 civil rights action alleging excessive force by police officer during arrest on day arrestee escaped from custody, after being found guilty and sentenced to imprisonment; escapee would not be permitted to assert imprisonment disability for period of his fugitive status under Texas law. Glover v. Johnson, C.A.5 (Tex.) 1987, 831 F.2d 99. Limitation Of Actions 75

Arizona two-year statute of limitations applicable to prison inmate's civil rights action against a corrections officer was tolled during the inmate's period of confinement in prison, pursuant to the Arizona tolling statute. Marks v. Parra, C.A.9 (Ariz.) 1986, 785 F.2d 1419. Limitation Of Actions 75

State inmate was not entitled to equitably toll statutory period for filing §§ 1983 action against prison officials for excessive force and deliberate indifference to his serious medical needs, even if prison officials did not demonstrate any specific prejudice as result of delay, where inmate's claims were premised on injuries he sustained during altercation with prison guards, and inmate provided no excuse or explanation for his two year delay in filing his first inmate appeal. Wade v. Ratella, S.D.Cal.2005, 407 F.Supp.2d 1196. Limitation Of Actions 104.5

Limitations period for state inmate to file §§ 1983 action based on prison officials' actions in locking him in unventilated room was equitably tolled until inmate was represented by counsel, where inmate suffered severely debilitating heat stroke as result of officials' actions, preventing him from communicating effectively or from accessing relevant medical and correctional records. Moody v. Kearney, D.Del.2005, 380 F.Supp.2d 393. Limitation Of Actions 104.5

Applicable limitations period for state prisoner's pro se §§ 1983 action against correctional officers, prison supervisors, and prison medical personnel, alleging excessive force, retaliation, and denial of medical care, was tolled for period of six months after dismissal of prior lawsuit against same defendants, alleging same claims, pursuant to New York tolling statute, where prior lawsuit was dismissed without prejudice for failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA). Allaway v. McGinnis, W.D.N.Y.2005, 362 F.Supp.2d 390. Limitation Of Actions 130(5)

Under Nevada equitable tolling principles as predicted by federal district court, limitations period for state prison inmate's § 1983 action against corrections officials was equitably tolled during pendency of inmate's administrative grievance against officials, since administrative exhaustion of grievance was required under Prison Litigation Reform Act (PLRA). Wisenbaker v. Farwell, D.Nev.2004, 341 F.Supp.2d 1160. Limitation Of Actions 104.5

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42 U.S.C.A. § 1983

Under Louisiana law, prescriptive period for inmate to file § 1983 action challenging prison disciplinary action was tolled for 90 days after inmate filed administrative remedy request pursuant to inmate handbook, even though inmate received correspondence from prison official before expiration of 90-day period, where handbook stated that grievance was deemed denied if there was no response in 90 days, and it was unclear whether official was referring to instant grievance. Tilmon v. Prator, W.D.La.2003, 292 F.Supp.2d 898, affirmed 368 F.3d 521. Limitation Of Actions 105(2)

Pro se prisoner's § 1983 complaint is deemed filed, for statute of limitations purposes, when it is delivered to prison officials. McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Limitation Of Actions 118(2)

Limitations period for inmates' § 1983 action alleging violations of constitutional rights during disciplinary proceeding, which period was that of Nevada's two-year statute of limitations for personal injury claims, was tolled prior to when disciplinary committee member testified at criminal trial, which was when inmates said they learned of official's alleged orders to disciplinary committee to find inmates guilty of charges regardless of evidence presented. Reynolds v. Wolff, D.Nev.1996, 916 F.Supp. 1018. Limitation Of Actions 95(15)

Prisoner's section 1983 claims, which sought monetary damages as result of alleged violation of speedy trial provisions of Interstate Agreement on Detainers, were not time barred where prisoner remained incarcerated. Murray v. District of Columbia, D.D.C.1993, 826 F.Supp. 4, appeal dismissed 1993 WL 483949, certiorari denied 114 S.Ct. 1556, 511 U.S. 1038, 128 L.Ed.2d 203. Limitation Of Actions 75

Ohio savings statute did not apply to inmate's § 1983 action alleging deprivation of medical care so as to render action timely, where inmate's original action was both filed and voluntarily withdrawn within two-year limitations period, rather than being timely filed and withdrawn after end of limitations period. Johnson v. University Hosp. of Cleveland, C.A.6 (Ohio) 2002, 46 Fed.Appx. 238, 2002 WL 2027251, Unreported. Limitation Of Actions 130(5)

4977. ---- Infant plaintiffs, tolling of limitations period

Under Washington law, three-year statute of limitations on claims brought under §§ 1983 against state investigators and others by child of parents who were convicted of child rape and molestation, alleging that he was wrongfully removed from his aunt's home, placed in the custody of Child Protective Services (CPS), and coerced into making false allegations of sexual abuse against his parents, were tolled until child reached the age of majority. Doggett v. Perez, E.D.Wash.2004, 348 F.Supp.2d 1169. Limitation Of Actions 72(1)

Statute of limitations on § 1983 action brought by administrator of minor student's estate, based on alleged constitutional violations accompanying minor's sexual abuse by school employee who was both a teacher and principal, was not tolled by West Virginia's savings statute, which prevented statute of limitations from running against persons under a disability until the disability is lifted, since administrator was a competent adult, even though claim was based on minor's injuries. Bell ex rel. Bell v. Board of Educ. of County of Fayette, S.D.W.Va.2003, 290 F.Supp.2d 701. Limitation Of Actions 72(1)

Two year limitations period in which disabled student had to bring § 1983 action against school board and school officials, arising out of their decision not to place him in special education classes, was tolled, under Virginia law, during period of student's infancy. Smith ex rel. Duck v. Isle of Wight County School Bd., E.D.Va.2003, 284 F.Supp.2d 370, affirmed in part, reversed in part and remanded 402 F.3d 468. Limitation Of Actions 72(1)

Fact that parent's child was minor at time of his meeting with county attorney, at which attorney allegedly threatened child, did not toll parent's § 1983 claim that attorney interfered and retaliated against her when she attempted to exercise her constitutionally protected right to custody of her child, where parent was not minor at time of meeting. Storck v. Suffolk County Dept. of Social Services, E.D.N.Y.2000, 122 F.Supp.2d 392.

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42 U.S.C.A. § 1983

Limitation Of Actions 72(1)

One-year statute of limitations governing civil rights action arising out of alleged rape of minor detainee by county jail deputy jailer stopped being tolled on account of detainee's minority at time of her first marriage ceremony, which took place before detainee's 18th birthday and without her parents' consent; first marriage ceremony removed disability of minority and was voidable rather than void from outset under state law, and detainee ratified first ceremony after her 18th birthday by engaging in sexual relations with her husband and participating in second ceremony. Holbert v. West, E.D.Ky.1990, 730 F.Supp. 50. Limitation Of Actions 72(5)

4978. ---- Mentally incompetent plaintiffs, tolling of limitations period

In order to survive motion to dismiss for failure to state claim, § 1983 plaintiff asserting deprivation of liberty arising from medical or psychiatric confinement, whose claim would be time-barred if it accrued at time of confinement, must plead facts indicating that plaintiff was not able to comprehend nature of his circumstances when he was taken into custody; where plaintiff so pleads, allegations of complaint must be taken as true, and ordinarily motion to dismiss will be denied. Ormiston v. Nelson, C.A.2 (N.Y.) 1997, 117 F.3d 69. Limitation Of Actions 179(2)

Test for determining whether Georgia's statutory incompetency tolling provision tolled statute of limitations applicable to individual's federal civil rights action was whether individual, being of unsound mind, could not manage ordinary affairs of his life; individual was not required to establish that he had been declared "legally incompetent" or that he was "mentally retarded" or "mentally ill." Lawson v. Glover, C.A.11 (Ga.) 1987, 957 F.2d 801. Limitation Of Actions 74(1)

Patient who had been confined at state mental institution was not "insane" during period following his release such that two-year West Virginia statute of limitations applicable to his civil rights and malpractice claims was tolled, and claims were time barred; although legal aid attorney testified that former patient exhibited "bizarre" behavior, was incoherent, and appeared unable to assist in his legal situation, attorney also admitted that he did not believe that patient needed to be institutionalized, and that it was not necessary to have guardian or committee appointed, and patient had been able to effectuate his release from state institution by judicial writ on three occasions. Cobb v. Nizami, C.A.4 (W.Va.) 1988, 851 F.2d 730, rehearing denied, certiorari denied 109 S.Ct. 1177, 489 U.S. 1046, 103 L.Ed.2d 244. Limitation Of Actions 74(1)

4979. ---- Pendency of other actions or proceedings, tolling of limitations period

Puerto Rico dairy farmers' prior challenges to agency's cancellation of their milk production quotas did not toll one year statute of limitations applicable to their subsequent civil rights takings claim against government officials which sought damages, since farmers previously had not sought damages and Puerto Rico law required remedies sought in both suits to be identical in order for tolling to occur. Gonzalez-Alvarez v. Rivero-Cubano, C.A.1 (Puerto Rico) 2005, 426 F.3d 422. Limitation Of Actions 105(2)

Medical laboratory acted reasonably and in good faith in filing § 1983 action against state controller, controller's employees, and state Department of Health Services (DHS) officials, arising from controller's impoundment of laboratory's Medicaid funds, supporting equitable tolling of limitations period in § 1983 action, under California law; prior state court order directed controller to release funds, laboratory had reason to believe that controller would comply with state court order, and only after controller, employees, and DHS officials acted in cooperation in repeatedly failing to comply with order did laboratory file § 1983 action. Azer v. Connell, C.A.9 (Cal.) 2002, 306 F.3d 930, on subsequent appeal 87 Fed.Appx. 684, 2004 WL 291187. Limitation Of Actions 104.5

Civil rights claims of state employee were not tolled until he received "unequivocal" notice that State Personnel Board of Review (SPBR) decision was final and would be followed by no further process, as administrative code

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provided him with notice of process he would, and did, receive. Collyer v. Darling, C.A.6 (Ohio) 1996, 98 F.3d 211, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 2439, 520 U.S. 1267, 138 L.Ed.2d 199. Limitation Of Actions 105(1)

Fact that criminal charges had been stricken with leave to reinstate (SOL) did not preclude finding that civil rights action based on arrest for allegedly threatening school officials was time barred where it was filed more than five years after the arrest, despite claim that the status of the criminal prosecution was precluding plaintiffs from exercising their First Amendment right to criticize school officials because of fear that charges would be reinstated; likelihood of further prosecution was purely conjectural and neither real nor immediate, and prosecution had not done anything in the ensuing to cause plaintiffs to legitimately fear that their case would be reinstated. Mitchell v. Keenan, C.A.7 (Ill.) 1995, 50 F.3d 473, certiorari denied 116 S.Ct. 160, 516 U.S. 856, 133 L.Ed.2d 103. Limitation Of Actions 58(1)

Under Oklahoma law, plaintiff's § 1983 suit against school district, which was otherwise untimely, was saved by Oklahoma savings provision; suit was filed month after plaintiff dismissed previous action which named the school district. Brown v. Hartshorne Public School Dist. No. 1, C.A.10 (Okla.) 1991, 926 F.2d 959. Limitation Of Actions 130(5)

California's doctrine of equitable tolling did not operate to toll statute of limitations on civil rights claim during pendency of administrative proceedings where the claims raised in the administrative proceedings, resisting efforts of state agency to suspend plaintiff's teaching credential, were separate and distinct from claims raised in a civil rights action against school district and several of its officials for attempting to have the credential revoked. Del Percio v. Thornsley, C.A.9 (Cal.) 1989, 877 F.2d 785. Limitation Of Actions 105(1)

Under California law, statute of limitations for plaintiff's civil rights action, against police officers and alleging excessive force, was not equitably tolled during pending of state court suit arising out of same acts, where federal suit was filed to avoid loss of cause of action, after state court threatened to dismiss action due to plaintiff's delay without good cause. Bacon v. City of Los Angeles, C.A.9 (Cal.) 1988, 843 F.2d 372. Limitation Of Actions 105(2)

Former state prisoner's filing of civil rights suit against official of Mississippi Department of Corrections arising from failure to execute state court order vacating his judgment of conviction which had been entered on guilty plea and ordering him to local jail pending anticipated trial did not toll running of statute of limitations against county court and law enforcement officials against whom the former prisoner subsequently filed a § 1983 claim. Shelby v. McAdory, C.A.5 (Miss.) 1986, 781 F.2d 1053. Limitation Of Actions 105(2)

Under the Prison Litigation Reform Act (PLRA), the administrative claims filed by federal prisoner pursuant to the Federal Tort Claims Act (FTCA) did not equitably toll the limitations period for filing an Eighth Amendment *Bivens* claim against corrections officers and prison medical staff, arising from injuries that prisoner allegedly received as result of unnecessary surgery and later surgeries to correct prior surgery; administrative FTCA claims were filed after the applicable limitations period had run, and the tort claims under the FTCA and the *Bivens* claim were not identical causes of action. Molina-Acosta v. Martinez, D.Puerto Rico 2005, 392 F.Supp.2d 210. Limitation Of Actions 104.5

Filing of administrative complaint will not toll running of statute of limitations for tort actions or violations of constitutional rights, provided that administrative agency, such as Puerto Rico Police Department's Internal Affairs Office or Equal Employment Opportunity Commission (EEOC), does not possess jurisdiction over such matters. Sanchez Ramos v. Puerto Rico Police Dept., D.Puerto Rico 2005, 392 F.Supp.2d 167. Limitation Of Actions 105(1)

Former employee's pending administrative challenge to his alleged illegal suspension from government agency was

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not discrete discriminatory act in ongoing series of violations of former employee's civil rights, but rather was ongoing effect of allegedly discriminatory act, and thus did not trigger continuing violations doctrine permitting former employee to assert otherwise time-barred claim that he was illegally terminated due to his political affiliations. Vega v. Hernandez, D.Puerto Rico 2005, 381 F.Supp.2d 31. Limitation Of Actions 58(1)

Claims by employee under §§ 1983, that she was suspended without pay in violation of her political rights, was timely when tolled by suit commenced within one year of dates of suspensions, even though suits were dismissed without prejudice before employer was served. Figueroa-Garay v. Municipality of Rio Grande, D.Puerto Rico 2005, 364 F.Supp.2d 117. Limitation Of Actions 130(5)

"Related" claim that was pending in state court did not provide basis to equitably toll three year statute of limitations that applied to attorney's §§ 1983 claim which alleged that court officers physically assaulted him, since attorney was immediately aware of his injuries, and state court proceeding would not have prevented attorney from also timely filing in federal court and requesting stay of proceedings. Keane v. Navarro, D.Mass.2004, 345 F.Supp.2d 9. Limitation Of Actions 104.5

State suits against Puerto Rico Secretary of Health in her official capacity for judicial review of administrative decisions did not toll statute of limitations for §§ 1983 claim against Secretary in her individual capacity for compensatory and punitive damages for alleged constitutional violations under First, Fifth, and Fourteenth Amendments of United States Constitution which were based on same facts; Secretary was not called upon to defend damages suit with different issues not applicable to administrative revision appeal, since most that state court could have done was strike Secretary's order, but it could not award damages. Centro Medico Del Turabo, Inc. v. Feliciano De Melecio, D.Puerto Rico 2004, 321 F.Supp.2d 285, affirmed 406 F.3d 1. Limitation Of Actions 105(2)

Puerto Rico employee's filing of claim with Equal Employment Opportunity Commission (EEOC) or Anti-Discrimination Unit of Department of Labor did not toll limitations period for § 1983 claim; EEOC had no jurisdiction over § 1983 claims. Padilla Cintron v. Rossello Gonzalez, D.Puerto Rico 2003, 247 F.Supp.2d 48. Limitation Of Actions 105(1)

Grievance procedures and collateral reviews of employment decisions do not toll running of limitations periods under § 1983, particularly when grievance procedure would not rectify the problem giving rise to the grievance. Wagner v. Texas A & M University, S.D.Tex.1996, 939 F.Supp. 1297. Limitation Of Actions 105(1)

Limitations period for filing § 1983 claim was not renewed upon conclusion of tolling period representing request for certification of class denial of request, such that putative class members would have two years from date of final disposition on appeal to file their claims; to apply tolling period in that manner would counter two objectives underlying limitations periods and would encourage plaintiffs to act in dilatory fashion. Nelson v. County of Allegheny, W.D.Pa.1994, 860 F.Supp. 1080, affirmed 60 F.3d 1010, rehearing denied, certiorari denied 116 S.Ct. 1266, 516 U.S. 1173, 134 L.Ed.2d 213. Limitation Of Actions 126.5

Limitations period applicable to § 1983 action arising out of arrest or conviction begins to run despite pendency of habeas corpus action in federal court or direct appeal in state court; such proceedings do not toll statute or defer start of limitations period. Smith v. Holtz, M.D.Pa.1994, 856 F.Supp. 227, on reconsideration 879 F.Supp. 435, affirmed 87 F.3d 108, certiorari denied 117 S.Ct. 611, 519 U.S. 1041, 136 L.Ed.2d 536. Limitation Of Actions 105(1); Limitation Of Actions 106

Lessee's § 1983 action challenging constitutionality of state default judgment was not saved under New York tolling statute by lessee's petition in bankruptcy court to collaterally attack default judgment, where portion of bankruptcy action that was based on same transaction as § 1983 action had ended before six months tolling period for filing § 1983 action, even though entire bankruptcy proceeding was terminated within six-month tolling period.

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Baker v. Latham Sparrowbush Associates, S.D.N.Y.1992, 808 F.Supp. 981, affirmed 72 F.3d 246. Limitation Of Actions 58(1)

California Tort Claims Act tolled statute of limitations in connection with § 1983 action based on police shooting; although relatives and estate of decedent could have disregarded Act and filed § 1983 action immediately, they were also entitled to wait until resolution of administrative proceedings in order to file state law claims and § 1983 claim together. Hood v. City of Los Angeles, C.D.Cal.1992, 804 F.Supp. 65. Limitation Of Actions 105(1)

Georgia's two-year statute of limitations applicable to § 1983 claim alleging racially discriminatory denial of membership in national guard was not tolled during 28-year period between denial and filing of complaints with Army Board for the Correction of Military Records. Banks v. Commander of Detachment 1, First Battalion (M) of 121st Infantry of Georgia Army Nat. Guard, M.D.Ga.1992, 797 F.Supp. 984, affirmed 998 F.2d 1023. Limitation Of Actions 58(1)

Although statute of limitations may have been tolled during pendency of fair hearing procedure with respect to claim under civil rights statute that state officials miscalculated amount of recoupment from retroactive award of SSI benefits to compensate for interim benefits provided by state, claim as to unconstitutionality of postrecoupment, as opposed to prerecoupment, hearings was not tolled. Williams v. King, E.D.N.Y.1992, 796 F.Supp. 737. Limitation Of Actions 105(1)

Limitations period governing § 1983 action arising from arrest was not tolled while state criminal proceedings were pending against arrestee and equitable tolling was not warranted absent any showing of continuing harm or improper inducement. Hackenburg v. Zukowski, M.D.Pa.1991, 754 F.Supp. 409. Limitation Of Actions 104.5; Limitation Of Actions 105(1)

One-year statute of limitations governing terminated California fire department employee's federal civil rights claim was not equitably tolled during pendency of Equal Employment Opportunity Commission (EEOC) proceeding; thus, civil rights complaint was untimely and could not serve as basis for pendent jurisdiction over state claims. Reese v. City of Emeryville Fire Dept., N.D.Cal.1990, 746 F.Supp. 987. Limitation Of Actions 105(1)

Deputy sheriffs' union grievances of their terminations did not toll statutory period for deputies to file § 1983 suit challenging their terminations. Chance v. Mahoning County, C.A.6 (Ohio) 2004, 105 Fed.Appx. 644, 2004 WL 1491622, Unreported. Limitation Of Actions 105(1)

Pursuant to the doctrine of equitable tolling, false arrest claims against individual police officers did not continue to run, for limitations purposes, during the pendency of the arrestee's appeal from a dismissal of his claims as time-barred; if the clock were to continue to run during the pendency of the appeal, the viability of the claims would have been directly tied to the speed in which the appeal was decided. Morris v. City of New York, S.D.N.Y.2003, 2003 WL 22533399, Unreported. Limitation Of Actions 104.5

4980. ---- Pursuit of state remedies, tolling of limitations period

Statute of limitation applicable to taxpayers' § 1983 actions based upon claims that they were deprived of state tax abatement on tax increases resulting from real estate improvements without due process was not tolled during pendency of state litigation for declaratory judgment; federal complaint was not dismissed before final judgment in state court was reached on merits, and taxpayers could have filed § 1983 claims in state court along with declaratory complaint. Hondo, Inc. v. Sterling, C.A.7 (Ind.) 1994, 21 F.3d 775. Limitation Of Actions 105(2)

Section 1983 cause of action based on revocation of liquor license accrued on date of revocation, and not on date on which bar actually was closed by city officials; city's decision not to enforce revocation until bar owners had

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exhausted their state appeals did not have any effect on accrual date of alleged due process violation. Kelly v. City of Chicago, C.A.7 (Ill.) 1993, 4 F.3d 509, rehearing denied. Limitation Of Actions 58(1); Limitation Of Actions 95(15)

Under Louisiana law, arrestee's pursuit of state habeas remedies for prosecution's failure to disclose exculpatory evidence in police investigatory file in violation of *Brady* tolled prescriptive period applicable to arrestee's §§ 1983 and 1985 claims based on prosecution's action. Burge v. Parish of St. Tammany, C.A.5 (La.) 1993, 996 F.2d 786, rehearing denied 5 F.3d 1493. Limitation Of Actions 105(1)

Inmate had colorable claim that Texas common-law tolling rule which operated to toll running of statute of limitations in cases where state prisoner was required to exhaust state administrative remedies before proceeding with claim in federal court operated to toll limitations period on § 1983 claim against prison officials until prisoner had exhausted those procedures so as to preclude dismissal of complaint pursuant to in forma pauperis statute. Gartrell v. Gaylor, C.A.5 (Tex.) 1993, 981 F.2d 254. Federal Civil Procedure 2734

Texas statute of limitations applicable to pro se litigant's § 1983 action was equitably tolled from time that his initial § 1983 claim was dismissed, as being in effect habeas corpus action necessitating exhaustion of state remedies, until time that state trial court dismissed prosecution, following grant of federal habeas relief, considering litigant's diligence and persistence, and intervening change to Texas tolling statute eliminating incarceration as a basis for tolling. Rodriguez v. Holmes, C.A.5 (Tex.) 1992, 963 F.2d 799. Limitation Of Actions 130(5)

Rule that federal courts must employ applicable state statute of limitations in federal civil rights deprivation cases requires federal courts to give civil rights plaintiff benefit of any toll effected by his compliance with state exhaustion of administrative remedies requirement. Lawson v. Glover, C.A.11 (Ga.) 1987, 957 F.2d 801. Federal Courts 427

Iowa statute allowing tolling when commencement of action is stayed by injunction or statutory prohibition did not apply to toll limitations period applicable to inmate's civil rights action against prison officials while inmate exhausted state remedies. Lown v. Brimeyer, C.A.8 (Iowa) 1992, 956 F.2d 780, rehearing denied, certiorari denied 113 S.Ct. 176, 506 U.S. 860, 121 L.Ed.2d 122. Limitation Of Actions 105(1)

Under New York law, limitations period applicable to civil rights action could not be tolled by dismissing action to permit exhaustion of state remedies. Jewell v. County of Nassau, C.A.2 (N.Y.) 1990, 917 F.2d 738. Limitation Of Actions 105(2)

Former CETA employee's voluntary pursuit of federal administrative remedies against prime sponsor did not operate to toll running of statute of limitations in subsequent civil rights action, in light of clear congressional intent not to require exhaustion. Black v. Broward Employment and Training Admin., C.A.11 (Fla.) 1988, 846 F.2d 1311. Limitation Of Actions 105(1)

Plaintiffs' proposed amended answer in earlier state court action against defendants did not qualify as an "original pleading," and thus, plaintiffs' later complaint in civil rights action under § 1983 against defendants could not be timely under New York's three-year limitations period for personal injury actions on ground that it related back to proposed amended answer; plaintiffs were not permitted to file amended answer in state court action. Perez v. County of Nassau, E.D.N.Y.2003, 294 F.Supp.2d 386. Limitation Of Actions 130(6)

Limitations period applicable to federal civil rights claims of former municipal employee were not tolled by employee's pursuance of grievance and arbitration process under collective bargaining agreement. Campbell v. Van Osdale, W.D.Mich.1992, 810 F.Supp. 205. Limitation Of Actions 105(1)

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42 U.S.C.A. § 1983

Pursuit by former employee of administrative and state court remedies under Illinois law did not toll limitations period with respect to his § 1983 cause of action. Coleman v. O'Grady, N.D.Ill.1992, 803 F.Supp. 226, affirmed 19 F.3d 21. Limitation Of Actions 105(1)

Federal court would not be obligated to abstain from hearing insurance agent's §§ 1983 claims against state Insurance Department, alleging malicious prosecution and interference with right to do business and freely choose one's profession, during pendency of state proceedings on agent's appeal from revocation of his license, as would toll statute of limitations on agent's federal claims; state appeals process initiated by agent was remedial, not coercive, in nature. Wyatt v. Keating, C.A.3 (Pa.) 2005, 130 Fed.Appx. 511, 2005 WL 834462, Unreported. Federal Courts 55

Three-year statute of limitations for bringing section 1983 claim was not tolled the during the period in which state prisoner pursued a remedy in the state courts; state remedy did not need not be first sought and refused before the federal one was invoked. Cancel v. Mazzuca, S.D.N.Y.2003, 2003 WL 1702011, Unreported. Limitation Of Actions 105(2)

4981. ---- Voluntary withdrawal of claim, tolling of limitations period

Notwithstanding Illinois' two-year statute of limitations for § 1983 actions, developers' civil rights action against city was timely, when removed to federal court by city after developers dismissed and refiled state court case on eve of trial after prosecuting it for five years, under statute which allowed developers one year following voluntary dismissal to start over, inasmuch as Illinois' tolling and extension rules under dismissal-and-refiling procedure did not undermine any federal interest. Gosnell v. City of Troy, Ill., C.A.7 (Ill.) 1995, 59 F.3d 654. Federal Courts 427

Connecticut's Accidental Failure of Suit Act did not save from limitations bar a § 1983 action challenging termination of teaching contract; the Act provides that if an action originally commenced within the applicable limitations period is dismissed for specified reasons, including lack of jurisdiction, plaintiff may commence a new action within one year of the dismissal; although 1983 action was brought within one year of dismissal for want of jurisdiction of plaintiff's state court suit, the Act does not extend the limitations period for actions that have been voluntarily withdrawn, and plaintiff's § 1983 action alleged a violation of federal due process, a claim he voluntarily withdrew in state court. LaCroix v. Board of Educ. of City of Bridgeport, C.A.2 (Conn.) 1988, 844 F.2d 88. Limitation Of Actions 130(4)

4982. Waiver, limitations

Fact that county was required by statute to give notice to plaintiff as to how much time she had to file court action on claim against county did not preclude doctrines of waiver or estoppel from applying to bar county's assertion of statute of limitations as defense to plaintiff's § 1983 action, where county was not required to give warning which they gave stating that plaintiff had six months from date of receipt of warning to file cause of action and could have made more clear that warning only applied to state claims, rather than § 1983 claims. Halus v. San Diego County Assessment Appeals Bd., S.D.Cal.1992, 789 F.Supp. 327. Limitation Of Actions 13; Limitation Of Actions 175

Officers did not waive their right to assert statute of limitations as defense to § 1983 unlawful arrest claim, based on representations of city corporation counsel in agreed discovery plan; officers were not bound by any representations of corporation counsel not made specifically on their behalf, prior to filing of appearance of counsel on their behalf. Davis v. Frapolly, N.D.Ill.1990, 742 F.Supp. 971. Limitation Of Actions 175

4983. Miscellaneous claims time barred, limitations

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Civil rights complaint filed by Georgia state prisoner, who filed his complaint more than two years after he knew or should have known all of the facts necessary to pursue a cause of action, was untimely. Lovett v. Ray, C.A.11 (Ga.) 2003, 327 F.3d 1181. Limitation Of Actions 95(15)

Arrestee's claims against police officers for use of excessive force, conspiracy, and unreasonable search and seizure did not relate back to the filing of the original complaint, so as to avoid a limitations bar; the arrestee was aware of the names of many of the defendants prior to the conclusion of the limitations period because he had filed several other actions against them. Fernandez v. Alexander, D.Conn.2006, 419 F.Supp.2d 128. Limitation Of Actions 124

Puerto Rico's one year limitations period for arrestee's §§ 1983 claim for false arrest began to run from the time he was arrested, and therefore, his §§ 1983 claim filed almost two years after his arrest was time-barred. Morales v. Fantauzzi, D.Puerto Rico 2005, 389 F.Supp.2d 147. Limitation Of Actions 58(1)

Health clinic physician's §§ 1983 claims based on discrete acts involving her "involuntary discharge" from position of Bureau Chief and failure to inform her of salary enhancement program were untimely under applicable three-year residual statute of limitations for personal injury claims in District of Columbia. Turner v. District of Columbia, D.D.C.2005, 383 F.Supp.2d 157. Limitation Of Actions 58(1)

Suit under §§ 1983, claiming federal unconstitutionality of state constitutional provision, mandating that judges retire at age 70, and statute setting forth circumstances under which retired judges could be hired as judicial hearing officers, was time barred when raised more than three years after claiming judge reached 70 and retired. Levine v. McCabe, E.D.N.Y.2005, 357 F.Supp.2d 608. Limitation Of Actions 58(1)

Tenant's §§ 1983 claims against New York State Division of Housing and Community Renewal (DHCR) defendants were time-barred to extent that they were based on DHCR orders issued more than three years before complaint was filed. Dibbs v. Roldan, S.D.N.Y.2005, 356 F.Supp.2d 340. Limitation Of Actions 58(1)

Three year statute of limitations had expired in § 1983 action brought by owners of real estate against municipality and private developers, claiming that condemnation violated their due process rights, constituted taking without compensation, denied them equal protection, and involved illegal delegation of eminent domain powers, all in violation of federal constitution; suit was brought five years after initial agreement between municipality and developers, putting owners on notice their property might be condemned. Didden v. Village of Port Chester, S.D.N.Y.2004, 304 F.Supp.2d 548. Limitation Of Actions 95(15)

Former special investigator's disparate treatment claims against executive director of Kansas Human Rights Commission (KHRC) under § 1981 and § 1983 were time-barred, where they either accrued more than two years beforehand or former investigator did not allege the date of the allegedly discriminatory acts. Delatorre v. Minner, D.Kan.2002, 238 F.Supp.2d 1280. Limitation Of Actions 58(1); Limitation Of Actions 178

Limitations period ran on § 1983 claim that inmate in correctional facility suffered from cold temperatures, delays in medical care for unspecified illnesses, and inadequate portions of food, during incarceration which ended five and one half years before suit. Ingalls v. Florio, D.N.J.1997, 968 F.Supp. 193. Limitation Of Actions 58(1)

Three year statute of limitations barred claim brought under § 1983 against state education officials, alleging violation of educational rights assured under federal law and Mississippi Constitution of 1868-1869; unlawful act was adoption of Mississippi Constitution of 1890, and plaintiffs could make no showing that they were not aware of harm inflicted by that Constitution more than three years prior to bringing of suit. A-1 By D-2 v. Molpus, S.D.Miss.1995, 906 F.Supp. 375. Civil Rights 1380; Limitation Of Actions 95(15)

Equal protection and due process claims asserted by physician against state university for which he had been

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professor of medicine, were barred by statute of limitations, as § 1983 provides exclusive remedy for securing redress of constitutional violations, and § 1983 claims were time barred. Yoonessi v. State University of New York, W.D.N.Y.1994, 862 F.Supp. 1005, leave to appeal denied 56 F.3d 10, certiorari denied 116 S.Ct. 779, 516 U.S. 1075, 133 L.Ed.2d 730. Action 35; Limitation Of Actions 170

Any civil rights claim for violation of teacher's due process property rights during time that teacher's name was improperly placed on invalid file list was time barred by applicable three-year statute of limitations. Lombard v. Board of Educ. of City of New York, E.D.N.Y.1992, 784 F.Supp. 1029. Civil Rights 1383

Untimely civil rights claims for false arrest and illegal search were not made viable by frivolous allegations that false arrest had been part of conspiracy; merely alleging series of interlocking violative events is not enough to constitute conspiracy sufficient to postpone accrual of claims. Day v. Moscow, S.D.N.Y.1991, 769 F.Supp. 472, affirmed 955 F.2d 807, certiorari denied 113 S.Ct. 71, 506 U.S. 821, 121 L.Ed.2d 37. Limitation Of Actions 58(1)

Nursing home proprietor's § 1983 claim, which was asserted as affirmative defense to union local's action against him, arising out of proprietor's alleged failure to disburse money received from state for purpose of bringing employee wages up to industry-wide levels was time barred; proprietor's § 1983 claim did not derive from same transaction or series of transaction as union local's claim, in that proprietor's claim was claim against state officials for recoupment. Local 144 Hotel, Hosp., Nursing Home and Allied Services Union, SEIU, AFL-CIO v. C.N.H. Management Associates, Inc., S.D.N.Y.1990, 752 F.Supp. 1195. Limitation Of Actions 40(1)

Civil rights claims against city and city council members for alleged violation of plaintiffs' constitutional rights by refusing to pay ten-year-old judgments as moral obligations were barred by statute of limitations. Stengel v. City of Columbus, Ohio, S.D.Ohio 1989, 737 F.Supp. 1460, affirmed 902 F.2d 35. Civil Rights 1384

Second amended complaint asserting §§ 1983 claims of false arrest and false imprisonment did not relate back to the filing date of the original complaint for limitations purposes, with regard to a defendant against whom claims in the original complaint were dismissed on the ground that there was no vicarious liability in §§ 1983 actions; the plaintiff alleged no new facts suggesting any direct or personal involvement by the defendant in the events relating to his arrest. Young-Flynn v. Kelly, S.D.N.Y.2006, 234 F.R.D. 70. Limitation Of Actions 124

Plaintiff's claims under § 1983 and the Racketeer Influenced and Corrupt Organizations (RICO) Act would be dismissed for failure to state a claim without leave to amend, where they were brought outside their statutes of limitations, and thus any amendment was futile. Barry Aviation, Inc. v. Land O'Lakes Municipal Airport Com'n, W.D.Wis.2003, 219 F.R.D. 457, reversed and remanded 377 F.3d 682, on remand 2004 WL 2778437. Federal Civil Procedure 1838

There was sufficient evidence to support jury's finding that school nurse's §§ 1983 claims against school officials for failing to protect her from physically aggressive student did not fall within limitations period, even though student assaulted nurse once within limitations period, where nurse did not suffer any injury in that assault, and record contained evidence that nurse experienced serious symptoms before any incidents with student. Buchholz v. Midwestern Intermediate Unit IV, C.A.3 (Pa.) 2005, 128 Fed.Appx. 890, 2005 WL 899961, Unreported. Limitation Of Actions 197(1)

Because virtually everything of which civil rights plaintiffs complained took place two years before plaintiffs filed their lawsuit, plaintiffs' civil rights claims were barred by Illinois' two year limitations period for civil rights claims, and plaintiffs' tort claims against municipality entity were barred by one-year limitations period, and thus, claims were subject to dismissal with prejudice. Callico v. City of Belleville, C.A.7 (Ill.) 2004, 99 Fed.Appx. 746, 2004 WL 1178208, Unreported, rehearing denied, certiorari denied 125 S.Ct. 1114, 543 U.S. 1121, 160 L.Ed.2d 1069. Limitation Of Actions 55(1); Limitation Of Actions 58(1); Limitation Of Actions 180(7)

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42 U.S.C.A. § 1983

State prisoner's disability of imprisonment did not warrant equitable tolling of California's two-year limitations period, and thus, his pro se cause of action under § 1983, alleging that conditions of confinement violated his constitutional rights, was time-barred and would be dismissed for failure to state a claim upon which relief could be granted. Galindo v. Smith, N.D.Cal.2003, 2003 WL 22717775, Unreported. Limitation Of Actions 104.5

Arrestee did not show that mistake as to their identities caused his initial failure to bring § 1983 claims arising out of his arrest and detention against mayor, magistrate who presided at his criminal trial, assistant chief of police, and church leader, and therefore claims, which were untimely when filed, did not relate back to date of arrestee's original complaint. Murray v. Town of Mansura, C.A.5 (La.) 2003, 76 Fed.Appx. 547, 2003 WL 22135637, Unreported. Limitation Of Actions 121(2)

Statute of limitations barred former jail inmate's § 1983 action, alleging denial of medical and dental care while incarcerated, even if complaint was filed within one year of his transfer from the jail and despite contention that violations continued until his transfer; complaint was filed more than a year after action accrued. Skufca v. Ervin, C.A.6 2003, 72 Fed.Appx. 366, 2003 WL 21920018, Unreported. Limitation Of Actions 58(1)

4984. Miscellaneous claims not time barred, limitations

Under Puerto Rico's tolling statute, municipal employee's timely filed suit in Puerto Rico court tolled one year limitations period for her later filed federal civil rights suit against municipality, its mayor and vice-mayor, alleging political affiliation discrimination and retaliation for exercising her free speech rights; employee sought same type of relief in each suit, and the causes of actions in each suit were substantively identical, albeit asserted via different procedural vehicles and described in different terms. Rodriguez-Garcia v. Municipality of Caguas, C.A.1 (Puerto Rico) 2004, 354 F.3d 91. Limitation Of Actions 105(1)

Former assistant fire chief's § 1983 claim against director of county's public safety commission, challenging allegedly discriminatory decision to deny her fire chief position, did not rest on any alleged violation of Title VII, but on alleged violation of her equal protection rights, and thus § 1983 claim was not barred as unlawful attempt to bootstrap untimely Title VII claim. Arrington v. Cobb County, C.A.11 (Ga.) 1998, 139 F.3d 865, as amended, rehearing denied. Civil Rights 1502

Even if an inmate's §§ 1983 suit had been filed one day outside the governing limitations period under a local rule, the court would have exercised its discretion to allow the action to be treated as timely filed; the inmate employed an attorney who appeared to have filed electronically under a mistaken belief that he had a credit card authorization on file with the clerk's office that would pay any necessary filing fees, there was no statement in the Federal Rules of Civil Procedure that required a fee to be paid before a complaint could be considered filed, and counsel contacted the clerk and filed a copy of the complaint via facsimile, though it was unclear whether counsel received permission to do so. Cornett v. Weisenburger, W.D.Va.2006, 454 F.Supp.2d 544.

Puerto Rico public employee's claim for demotion was sufficiently pled as component of hostile work environment claim, and claims for withheld vacation pay, written warnings, investigation of insubordination, and ethics grievance also would not have been independently actionable and could proceed as component of hostile work environment claim, for limitations purposes. Sanchez v. Public Building Authority, D.Puerto Rico 2005, 402 F.Supp.2d 393. Limitation Of Actions 178

Amendment of police officer's complaint against Utah city adding §§ 1983 as legal basis for relief related back to date of original complaint, and §§ 1983 claims related to officer's removal from strike force more than four years before amendment thus were not subject to dismissal as untimely; original complaint referred to §§ 1981 but it was mistyped as §§ 1981, and reference to §§ 1983, written as §§ 1981, put city and its agents on notice that officer sought to vindicate violations of civil and constitutional rights. Sivulich-Boddy v. Clearfield City, D.Utah 2005, 365 F.Supp.2d 1174. Limitation Of Actions 127(3)

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42 U.S.C.A. § 1983

Retired judge adequately claimed deprivation of constitutional right, as required to state §§ 1983 claim, within three year limitations period applicable in New York, by mentioning in complaint that judicial hearing officer selection committee rejected his judicial hearing officer application without affording him either an interview or hearing on application. Levine v. McCabe, E.D.N.Y.2005, 357 F.Supp.2d 608. Limitation Of Actions 58(1)

Civil rights action by outdoor advertising company and its president, seeking declaratory and injunctive relief in connection with ordinance that allegedly violated First Amendment with its regulation of billboards and other signs, was not barred by six-year statute of limitations on basis that company's president had objected to ordinance as overly restrictive and unconstitutional prior to its adoption more than six years before commencement of present action. Lavey v. City of Two Rivers, E.D.Wis.1998, 994 F.Supp. 1019, affirmed 171 F.3d 1110. Limitation Of Actions 58(1)

Inmate could maintain § 1983 action against supervisors of correctional facility, alleging denial of medical attention, even though suit was filed five days after limitations period expired; denial of care was ongoing violation. Ingalls v. Florio, D.N.J.1997, 968 F.Supp. 193. Limitation Of Actions 58(1)

Former student's action for malicious prosecution was not barred by the statute of limitations, even though he was initially arrested and prosecuted more than 19 years before he filed his malicious prosecution, where the action was filed within three years after nolle prosequi was filed; after being convicted of assault of police officer, student discovered photographs showing that he had not attacked officer. Emory v. Logan, D.Mass.1992, 801 F.Supp. 899 . Limitation Of Actions 55(1)

Oklahoma's savings statute applied to save from a limitations bar § 1983 plaintiff's claims against defendants who were also named in an earlier suit, which was dismissed otherwise than upon the merits; while the defendants were not included in the actual caption on the first page of the complaint in the earlier suit, presumably because of the limited space on the pre-printed form, it was clear from the second page and the allegations in the complaint that the plaintiff intended for them to be defendants. Williams v. City Of Guthrie, Oklahoma, C.A.10 (Okla.) 2004, 109 Fed.Appx. 283, 2004 WL 1987294, Unreported. Limitation Of Actions 130(11)

Arrestee's §§ 1983 claim, in an amended complaint, against a police officer who allegedly arrested her without probable cause related back to her original complaint against the Ohio Department of Public Safety, and thus, was not time-barred; naming of an immune governmental entity as the defendant was exactly the sort of mistake contemplated by the drafters of the applicable relation-back provision, and the officer showed, by his filings in the district court, that he actually knew, within 120 days of the original complaint, that the action would have been brought against him but for the arrestee's mistake concerning the identity of the proper party. Black-Hosang v. Ohio Dept. of Public Safety, C.A.6 (Ohio) 2004, 96 Fed.Appx. 372, 2004 WL 950066, Unreported, on remand 2005 WL 1514133. Limitation Of Actions 121(2)

XLIX. MOOT QUESTIONS

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5011. Moot questions generally

Actions, which are brought under this section, and which seek injunctive and/or declaratory relief, are moot when practices, procedures, or regulations challenged are no longer in use. Gross v. Pomerleau, D.C.Md.1979, 465 F.Supp. 1167. Action 6

5012. Change of policy or rules, moot questions

Abortion protesters' free speech, free assembly, due process, and equal protection claims seeking prospective injunctive and declaratory relief against city, arising from city ordinance, were mooted, although claims seeking nominal damages due to application of old ordinance was not mooted, where city passed new ordinance. Trewhella v. City of Lake Geneva, Wis., E.D.Wis.2003, 249 F.Supp.2d 1057. Civil Rights 1461; Constitutional Law 46(1); Declaratory Judgment 128

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42 U.S.C.A. § 1983

Indian tribe's request in civil rights case for prospective injunctive relief on equal protection grounds, regarding county property tax assessor's reclassification of land from agricultural to miscellaneous non-agricultural, was mooted by passage of statute by New Mexico legislature for tax years after effective date of statute, since statute resolved underlying state tax questions for the future in tribe's favor and effectively gave tribe all that it sought to achieve through its injunctive action. Jicarilla Apache Nation v. Rio Arriba County, C.A.10 (N.M.) 2006, 440 F.3d 1202. Civil Rights 1456

Issuance by state Department of Public Aid of rules amending earlier procedures did not render moot § 1983 claim brought by clients of Aid For Dependent Children alleging that the Department's policy regarding denial or termination of benefits for noncooperation with efforts to locate absent parent violated their federally protected due process rights. Doston v. Duffy, N.D.Ill.1988, 732 F.Supp. 857. Federal Courts 13.5

Pregnant teachers' civil rights actions against state and county school board officials for reinstatement and back pay in connection with allegedly discriminatory maternity leave policy were not made moot by the subsequent maternity leave policy changes adopted by the school boards. Paxman v. Wilkerson, E.D.Va.1975, 390 F.Supp. 442. Action 6

5013. Consent decrees, moot questions

Consent decree in separate litigation, under which Director of Illinois Department of Children and Family Services (DCFS) agreed to provide "reasonable efforts" to maintain and reunify families, did not render moot appeal raising issue whether "reasonable efforts" clause of Adoption Assistance and Child Welfare Act created rights enforceable by suit; separate action did not involve children living at home under protective order and thus involved more narrow class of plaintiffs, and consent decree did not address injunction that ordered Director to provide case worker within three days of when child would be first removed from his or her home. Suter v. Artist M., U.S.Ill.1992, 112 S.Ct. 1360, 503 U.S. 347, 118 L.Ed.2d 1, on remand 968 F.2d 1218. Federal Courts 724

Where it appeared from its terms that injunction was still in force and that, unless set aside, compliance would be required in the future, and where, in any event, mandated modification of consent decree continued its impact on parties in that, unless overturned, court rulings would remain in effect and would require city to obey modified consent decree and to disregard its seniority agreement in making future layoffs of employees, case was not moot as against contention that all white employees laid off as result of injunction had been restored to duty only one month after layoff and those who had been demoted had since been offered back their old positions. Firefighters Local Union No. 1784 v. Stotts, U.S.Tenn.1984, 104 S.Ct. 2576, 467 U.S. 561, 81 L.Ed.2d 483, on remand 762 F.2d 1011. Federal Courts 460.1

Tennessee state prisoner was not entitled, in his civil rights action, to damages from the Tennessee Secretary of State and various election commissioners on the ground that he had been deprived of his right to vote; his action was rendered moot by a consent decree and his constitutional right to vote in May 6, 1980 primary was not infringed, in that his original complaint referred only to the Nov. 1980 general election, and he made no effort to vote in the May 6th primary. Wright v. Crowell, C.A.6 (Tenn.) 1982, 674 F.2d 521. Action 6

5014. Dismissals with prejudice, moot questions

Construction business operators' claim for equitable relief in action under this section seeking return of business documents which had allegedly been seized illegally was moot, in light of operators' representations that they no longer sought any equitable relief in federal court, as long as operators' equitable claims were dismissed with prejudice from federal action. Deakins v. Monaghan, U.S.N.J.1988, 108 S.Ct. 523, 484 U.S. 193, 98 L.Ed.2d 529. Federal Courts 452

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42 U.S.C.A. § 1983

5015. Settlements or agreements, moot questions

School administrator's cross-appeal challenging the district court's denial of his motion to enforce a settlement agreement concerning a discovery dispute was rendered moot by the Court of Appeals determination that superintendent and school board members were entitled to qualified immunity, in administrator's §§ 1983 action, alleging that his suspension and termination violated his due process rights. Kirkland v. St. Vrain Valley School Dist. No. Re-1J, C.A.10 (Colo.) 2006, 464 F.3d 1182. Federal Courts 724

Where administrator of estate of individual who was shot and killed while allegedly fleeing scene of burglary brought civil rights action against police officer, where district court entered judgment in favor of administrator, where police officer's insurance carrier paid judgment and settled case with consent of police officer's counsel, and where police officer failed to claim any specific injury from finding of liability, court of appeals was without power to grant relief from order appealed from and case was moot, despite fact that settlement made it impossible for police officer to argue vindication of his good name to court of appeals on appeal of judgment against him. Phillips v. Cheltenham Tp., C.A.3 (Pa.) 1978, 575 F.2d 72. Federal Courts 543.1

City transit authority (TA) employee, who brought § 1983 claim alleging that TA director of labor relations' offer to place employee in exchange for waiver of civil rights claim violated First Amendment, had not already received all relief to which she would be entitled in prior arbitration proceeding, and thus, claim was not rendered moot by prior arbitration decision, where, in court, employee claimed TA's conduct warranted injunctive relief, compensatory damages and punitive damages and only remedial issue before arbitrator was back pay. Scott v. Goodman, E.D.N.Y.1997, 961 F.Supp. 424, affirmed 191 F.3d 82. Federal Courts 13.10

Section 1983 claim brought by prisoner alleging that state hospital in which he was confined had no library was rendered moot by Commonwealth's agreement to create law library at hospital; moreover, prisoner did not allege or demonstrate any damages, and was no longer confined in state hospital. Murray v. Didario, E.D.Pa.1991, 762 F.Supp. 109. Federal Courts 13.10

5016. Identity of remedies, moot questions

Finding that claim for equitable relief in action under this section was moot did not preclude consideration of propriety of district court's dismissal of related claims under state and federal law for monetary relief. Deakins v. Monaghan, U.S.N.J.1988, 108 S.Ct. 523, 484 U.S. 193, 98 L.Ed.2d 529. Federal Courts 452

5017. Declaratory judgments, moot questions

Action by state prisoner for injunctive relief and a declaration that his transfer from a medium security to a maximum security prison without being given a hearing was in violation of Constitution and laws of United States was rendered moot where before district court's ruling thereon prisoner had been transferred back to the medium security prison, no adverse action was taken against him since his retransfer and a notation was made in his file expressly stating that transfer should have no bearing on future determinations made by board of parole or time allowance committee. Preiser v. Newkirk, U.S.N.Y.1975, 95 S.Ct. 2330, 422 U.S. 395, 45 L.Ed.2d 272. Declaratory Judgment 204

Although primary election had been completed and allegedly disenfranchised petitioners would be eligible to vote in next scheduled New York primary election, their action for declaratory judgment was not moot because question which they raised was one capable of repetition, yet evading review. Rosario v. Rockefeller, U.S.N.Y.1973, 93 S.Ct. 1245, 410 U.S. 752, 36 L.Ed.2d 1, rehearing denied 93 S.Ct. 1920, 411 U.S. 959, 36 L.Ed.2d 419. Declaratory Judgment 212

Declaratory judgment claims by former elected town trustee and nonprofit corporation promoting separation of

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church, arising out of trustee's recall from office based on his refusal to recite the Pledge of Allegiance at meetings of the town board of trustees, were rendered moot by former trustee's testimony that he was no longer a trustee on the board and that he was probably not going to run for reelection in the next four-year term. Habecker v. Town of Estes Park, Colorado, D.Colo.2006, 452 F.Supp.2d 1113. Declaratory Judgment 212

Action under §§1983 by former member of Puerto Rico Senate against former Secretary of Justice, for declaratory judgment invalidating Puerto Rico's Riot Act, was moot; Riot Act charges against former senator had been dismissed, she was no longer in office, administration that prosecuted her was no longer in power, and other leaders of former senator's political party who were prosecuted under Riot Act had been acquitted by jury in highly publicized trial, making it unlikely that Department of Justice would again expose itself to public embarrassment by selectively prosecuting officials under Riot Act for voicing differences with government. Ramirez v. Rodriguez, D.Puerto Rico 2005, 389 F.Supp.2d 143, affirmed 438 F.3d 92. Declaratory Judgment 124.1

Procedural due process claim of students and their parents, that they were denied hearing after school district denied admission because they were nonresidents, was within capable of repetition yet evading review exception to mootness doctrine, since there was reasonable probability that plaintiffs would seek resident admission to school district, that district would deny them admission, and that plaintiffs would again request due process hearing. D.L. v. Unified School Dist. # 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090. Constitutional Law 46(1)

Although applicant's loss of his interest in property for which he sought special use permit mooted claim for injunctive relief, claim for declaratory relief remained viable, since applicant's damages claim was contingent upon finding of deprivation of constitutional rights. Marks v. City Council of City of Chesapeake, Va., E.D.Va.1988, 723 F.Supp. 1155, affirmed 883 F.2d 308. Declaratory Judgment 209

5018. Incomplete resolution of issues, moot questions

Suit by personal injury law firm, against state bar, claiming violation of its First Amendment right to advertise that three members were named in book purporting to list best lawyers in country, would not be dismissed for mootness, even though advisory opinion had been issued allowing for mention of listing; there were unresolved questions as to whether firm could comment further upon listing, and if so, what could be said. Allen, Allen, Allen & Allen v. Williams, E.D.Va.2003, 254 F.Supp.2d 614. Constitutional Law 46(1)

5019. Injunctions, moot questions

Case for injunctive relief against use of chokeholds by police was not moot where moratorium by chief of police was, by its terms, not permanent. City of Los Angeles v. Lyons, U.S.Cal.1983, 103 S.Ct. 1660, 461 U.S. 95, 75 L.Ed.2d 675. Federal Courts 13.15

Passage of statute by state legislature, that effectively gave Indian tribe, as taxpayer, all prospective real estate tax relief that it sought to achieve through its injunctive action, did not moot civil rights claims brought by tribe under equal protection clause for retrospective relief in form of damages, declaratory relief, and injunctive relief in connection with tax assessments for years before effective date of statute. Jicarilla Apache Nation v. Rio Arriba County, C.A.10 (N.M.) 2006, 440 F.3d 1202. Federal Courts 13.10

Faculty member's and student's §§ 1983 action against municipal university alleging Establishment Clause violation from temporary campus display of sculpture allegedly hostile to Roman Catholic Church, to extent that it sought declaratory and injunctive relief, was mooted by scheduled end to display; university's ceasing of challenged activity was done in normal course of events rather than to evade judicial review, and there was no evidence that sculpture in question, as opposed to some hypothetical future religiously themed exhibit, would

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return to campus. O'Connor v. Washburn University, C.A.10 (Kan.) 2005, 416 F.3d 1216, certiorari denied 126 S.Ct. 1469, 164 L.Ed.2d 247. Declaratory Judgment 210

Otherwise moot controversy over facial constitutionality of original sign ordinance was not kept alive after its amendment by claim that challenger incurred damages under pre-amendment version of ordinance or by challenger's potential receipt of attorney fees were it to be a prevailing party. Lamar Advertising of Penn, LLC v. Town of Orchard Park, New York, C.A.2 (N.Y.) 2004, 356 F.3d 365. Zoning And Planning 570

Injunctive relief sought by students, to prevent public college from taking any further disciplinary action against them, or any other student, for peaceful acts in violation of speakers ban enforced at college, had become moot, in § 1983 lawsuit under First, Fifth, and Fourteenth Amendments, since each named student graduated from college without suffering any further disciplinary action, and there was no allegation that any other student still attending college was at risk of disciplinary action arising out of particular event. Ford v. Reynolds, C.A.2 (N.Y.) 2003, 316 F.3d 351, on remand 326 F.Supp.2d 392. Federal Courts 13.10

Prisoners' request for injunctive relief in their action under federal civil rights statutes alleging violation of federal constitutional rights was moot, where the requested injunctive relief had already been granted in related civil action brought by prisoners in state court. Layne v. Fair, D.Mass.1987, 671 F.Supp. 98. Injunction 22

Inmate's claim for injunctive relief against prison officials to prevent future construction work at prison on windows during winter was moot; at time of trial, where inmate had been transferred to a different correctional center. Smith v. Cooper, C.A.7 (Ill.) 2003, 83 Fed.Appx. 837, 2003 WL 23095527, Unreported. Injunction 22

5020. Parties to proceedings, moot questions

Federal district court decision from different district, that state statute criminalizing employer's execution of contracts with day or temporary labor service agencies to provide replacement workers for employer's regular employees during strike was preempted by NLRA, did not moot §§ 1983 action in which employer sought declaratory judgment that statute was preempted by NLRA; defendant state officials had not acquiesced in federal-court decision, and were not bound by it, leaving intact credible threat of criminal prosecution. 520 Michigan Ave. Associates, Ltd. v. Devine, C.A.7 (Ill.) 2006, 433 F.3d 961. Declaratory Judgment 126

Where plaintiff failed to state claim against judge upon which relief could be granted, motion to substitute successor to judge as defendant in action alleging violation of civil rights was moot. Careaga v. James, E.D.Mo.1979, 474 F.Supp. 464, affirmed 616 F.2d 1062, certiorari denied 101 S.Ct. 140, 449 U.S. 851, 66 L.Ed.2d 62. Civil Rights 1391

5021. Class actions, moot questions

Although claims of named plaintiffs in class action alleging that county violated the Fourth Amendment by failing to provide prompt judicial determination of probable cause for warrantless arrests were rendered moot when plaintiffs either received probable cause determinations or were released, plaintiffs preserved merits of controversy for review by the Supreme Court by obtaining class certification, as termination of class representative's claim does not moot claims of unnamed members of class; moreover, fact that class was not certified until after named plaintiffs' claims had become moot did not deprive Supreme Court of jurisdiction, since claims were so inherently transitory that "relation back" doctrine was applicable to preserve merits of case for judicial resolution. County of Riverside v. McLaughlin, U.S.Cal.1991, 111 S.Ct. 1661, 500 U.S. 44, 114 L.Ed.2d 49, on remand 943 F.2d 36. Federal Courts 452

Individual plaintiff's marriage in Illinois did not moot issues raised in class action challenging constitutionality of Wisconsin statute which provides that members of certain class of Wisconsin residents may not marry without first

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obtaining court permission since individual claim of plaintiff, whose Illinois marriage was void under Wisconsin statutory provisions, was unaffected and since dispute over statute's constitutionality remained live with respect to other class members. Zablocki v. Redhail, U.S.Wis.1978, 98 S.Ct. 673, 434 U.S. 374, 54 L.Ed.2d 618. Federal Courts 13

Conviction of the named plaintiffs, who brought class action under this section challenging constitutionality of Florida procedures whereby a person arrested without a warrant and charged by information could be jailed without an opportunity for probable cause determination, did not moot the claims of the unnamed class members since the case fell within exception to general rule, in that such claim was distinctly capable of repetition yet evading review, there was a continuing class of persons suffering such deprivation and the representative plaintiffs' attorney had other clients with a continuing live interest in the case. Gerstein v. Pugh, U.S.Fla.1975, 95 S.Ct. 854, 420 U.S. 103, 43 L.Ed.2d 54, on remand 511 F.2d 528. Federal Civil Procedure 186.10

Remand was required, in § 1983 class action by tenants of foreclosed apartment buildings against sheriff and county for alleged due process violations regarding eviction procedures, to determine if changed procedures used by sheriff in light of amended foreclosure statute rendered action moot; if sheriff continued to evict tenant's only generically named in order of possession, then action was not moot. Rembert v. Sheahan, C.A.7 (Ill.) 1995, 62 F.3d 937. Federal Courts 937.1

Civil rights class action against Secretary of Louisiana Department of Corrections for injunctive and declaratory relief alleging that failure of prison to provide toilet and hand-washing facilities in the field for inmates caused harm to inmates was moot for limited purpose of challenging denial of class certification where class representative's claim had been rendered moot before denial of motion for class certification and case did not fall within exception for claim capable of repetition, yet evading review, since there were other inmates who were capable of bringing action. Rocky v. King, C.A.5 (La.) 1990, 900 F.2d 864. Federal Courts 13.10

In plaintiff's class action civil rights suit on claim of incarceration on a warrantless arrest without a probable cause hearing within a reasonable time, release of named plaintiff did not render his claim moot and did not moot the claim of the class. McGill v. Parsons, C.A.5 (Ala.) 1976, 532 F.2d 484. Action 6

Mootness of deaf inmate's personal constitutional claims for failure to accommodate her hearing impairment did not require dismissal of class action; other hearing-impaired inmates had sought to intervene, indicating strong likelihood that some other named plaintiff existed who would be able to represent putative class adequately. Clarkson v. Coughlin, S.D.N.Y.1992, 783 F.Supp. 789. Federal Civil Procedure 1742(2)

The escape from custody of one of named plaintiffs in inmates' civil rights class action did not moot inmates' claims for money damages and injunctive relief; inmate's essential right to relief pursuant to civil rights claims should not depend on his remaining within institution where deprivation occurred. Doe v. Lally, D.C.Md.1979, 467 F.Supp. 1339. Action 6; Injunction 22

Although plaintiffs were no longer students in public schools within school district, certification of civil rights action as a class action precluded any viable claim of mootness. Hernandez v. Hanson, D.C.Neb.1977, 430 F.Supp. 1154. Action 6

Fact that issues related to prayer for injunctive and declaratory relief in civil rights action challenging physical conditions in wing of correctional center where pretrial detainees were housed while awaiting trial had become moot with respect to the plaintiffs who had been transferred from the center subsequent to filing of suit did not preclude certification of action as proper class action. LaReau v. Manson, D.C.Conn.1974, 383 F.Supp. 214. Federal Civil Procedure 186.10

5022. Aliens and nationality, moot questions

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42 U.S.C.A. § 1983

Complaint by alien seeking damages for alleged rejection of application for civil service position because of rule requiring applicant to be citizen adequately stated claim under this section and was not rendered moot by alien subsequently acquiring citizenship. Kilaru v. Watts, E.D.Wis.1973, 59 F.R.D. 569. Action 6; Civil Rights 1395(8)

5023. Education, schools and students, moot questions--Generally

In civil rights action wherein it was alleged that children with specific learning disabilities were discriminated against by failure of defendants to provide instructions specially suited to such children's handicaps, fact that state board of education subsequently enacted regulations which, allegedly, provided plaintiffs with relief at least equal to any that court could grant as result of suit, did not render suit moot, notwithstanding emphasis placed on procedures for parent initiated due process hearings. Frederick L. v. Thomas, E.D.Pa.1976, 408 F.Supp. 832, affirmed 557 F.2d 373. Action 6

5024. ---- Graduation, education, schools and students, moot questions

Prayer for injunctive relief in civil rights action by law student alleging that his classification by university as an out-of-state student for tuition purposes violated equal protection clause of U.S.C.A.Const. Amend. 14 and his right to travel would be considered moot, in light of fact that law student had graduated from law school. Hooban v. Boling, C.A.6 (Tenn.) 1974, 503 F.2d 648, certiorari denied 95 S.Ct. 1585, 421 U.S. 920, 43 L.Ed.2d 788. Civil Rights 1452

Claim for personal liability against individual defendants under this section was not mooted by plaintiff's graduation from university before certification of suit as a class action, nor was plaintiff's claim for attorney's fees under § 1988 of this title, but plaintiff's individual claim under § 1681 of Title 20, and her individual claim for injunctive relief under this section were mooted. Zentgraf v. Texas A & M University, S.D.Tex.1981, 509 F.Supp. 183. Action 6

Action under this section for alleged unconstitutional refusal of defendant school officials to allow communal prayer meetings was not moot by reason of graduation of three plaintiffs where, besides the fact that remaining students clearly have a legally cognizable interest in outcome of action, pleadings indicated that action was commenced by plaintiffs, not only on their own behalf but as representatives of the organization "Students for Voluntary Prayer" and on behalf of all students similarly situated. Brandon v. Board of Ed. of Guilderland Central School Dist., N.D.N.Y.1980, 487 F.Supp. 1219, affirmed 635 F.2d 971, certiorari denied 102 S.Ct. 970, 454 U.S. 1123, 71 L.Ed.2d 109, rehearing denied 102 S.Ct. 1493, 455 U.S. 983, 71 L.Ed.2d 694. Civil Rights 1717

Issue of whether student plaintiffs would suffer irreparable harm if they were suspended or expelled after allegedly retaliatory disciplinary proceedings was moot where the student plaintiffs had all graduated, and hence no longer faced suspension or expulsion. Ford v. Reynolds, C.A.2 (N.Y.) 2006, 167 Fed.Appx. 248, 2006 WL 354636, Unreported. Colleges And Universities 10

5025. ---- Termination of student status, education, schools and students, moot questions

Class action wherein high school students, one of whom was suspended for period of school's chocolate drive for passing out leaflets opposed to such drive and other of whom was reprimanded and threatened with suspension if she again wore tag bearing slogan "Boycott Chocolates.", alleged infringement of rights of free speech and due process and sought expunging from school records of all mention of such disciplinary action was not rendered moot by fact that such students were no longer students at school, in that disciplinary measures remained unexpunged from school records. Hatter v. Los Angeles City High School Dist., C.A.9 (Cal.) 1971, 452 F.2d 673. Civil Rights 1452; Injunction 22

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42 U.S.C.A. § 1983

5026. Employment, moot questions

Section 1983 claim by technicians of Property Registry of Puerto Rico, challenging disciplinary sanctions imposed on them allegedly for missing work to lobby in favor of salary increases, was rendered moot when Department lifted all existing and proposed sanctions, repaid any docked wages, and stated that no sanctions would be imposed against technicians who had been threatened with disciplinary action; circumstances of mass lobbying effort were peculiar and not likely to reoccur, and fact that discipline might occur in different circumstances was no argument against mootness. Mendez-Soto v. Rodriguez, C.A.1 (Puerto Rico) 2006, 448 F.3d 12. Federal Courts 13.10

Affidavit submitted by successor to state agency's former inspector general, stating that she sent no letters or newsletters to employees containing language that existed in directives issued by former inspector general that were determined to be prior restraint on employees' speech in violation of First Amendment, was adequate to establish that successor did not consider directives to continue in force under her tenure, as required to support finding that employees' claims against her for continuing violation of their federal rights were moot. Wernsing v. Thompson, C.D.Ill.2003, 286 F.Supp.2d 983, reversed and remanded 423 F.3d 732, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 1476, 164 L.Ed.2d 249. Federal Courts 13

Rehiring of some of deputy clerk union's members did not moot union's § 1983 claims for relief since union sought damages as well as the reinstatement of its members who were not rehired by chief court administrator of the State of Connecticut and thus, union's § 1983 claims alleging that administrator terminated its members' employment without due process and discriminated against them on the basis of their union activities would not be dismissed as moot. Local 749, AFSCME, Council 4, AFL-CIO v. Ment, D.Conn.1996, 945 F.Supp. 30. Federal Civil Procedure 1741; Federal Courts 13.10

Where former public employee had appealed to the Civil Service Commission before filing his lawsuit and hearing was held on his appeal and he was reinstated with backpay, former public employee's action alleging denial of his federal and constitutional and statutory rights to substantive and procedural due process and to equal protection resulting from official policy and procedure of discharging employees of the Pennsylvania Department of Public Welfare solely because of prior criminal record without regard to actual job performance was moot, notwithstanding claim that former public employee was entitled to punitive damages under this section. Vinson v. Freeman, E.D.Pa.1981, 524 F.Supp. 63. Federal Courts 13.10

5027. Forfeitures, moot questions

Civil rights action by owner whose vehicle was allegedly taken without prompt probable cause determination was moot, where owner prevailed in forfeiture trial and vehicle was returned. Jones v. Takaki, N.D.Ill.1993, 832 F.Supp. 1224, affirmed 38 F.3d 321, rehearing and suggestion for rehearing en banc denied. Federal Courts 13.10

5028. Licenses and permits, moot questions

Claims challenging constitutionality of Hawaii statute providing for administrative revocation of driver's licenses for driving while intoxicated were moot as to motorists whose revocations had been rescinded during administrative revocation proceedings or by state court during judicial review, despite claim that declaratory judgment would expunge damage to motorists' reputations, and that claims were capable of repetition yet evading review; motorists had already received declaration in state court that their revocations were improper, and conditions for review of claims capable of repetition yet evading review did not exist. Aiona v. Judiciary of State of Hawaii, C.A.9 (Hawai'i) 1994, 17 F.3d 1244. Federal Courts 13

Claim for money damages filed by applicants for parade permit did not become moot when seven-nation economic summit ended, even though the applicants were seeking a parade permit for the summit's opening day; if the

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applicants' rights were violated by denial of the permit, and if that refusal caused actual damages, the applicants stated a live claim under federal civil rights statute. Henschen v. City of Houston, Tex., C.A.5 (Tex.) 1992, 959 F.2d 584. Federal Courts 13.10

Owner did not have to apply for construction permit within three years from initial approval of planned-unit development plan, and thus owner's civil rights claims that were brought more than three years after initial approval under due process and equal protection clauses were not moot, where development standards proposed 10 to 12 year construction time and noted that development would proceed as "market conditions dictate." Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Zoning And Planning 432

Where motorist satisfied judgment which had led to suspension of driving and owners privileges which were then restored and where second motorist's licenses had been restored when state learned of illegal revocation, and official implemented administrative procedure to avoid such improper revocations in future, federal action on claim of deprivation of civil rights were moot. Leonhart v. McCormick, W.D.Pa.1975, 395 F.Supp. 1073. Action 6

5029. Mental patients, moot questions

Although plaintiff was no longer confined in state mental institution, her civil rights action for damages for physical intrusion on her person contrary to her religious beliefs was not moot; where state still retained photographs and fingerprints allegedly taken contrary to requirements of Constitution, action for their return was not moot. Winters v. Miller, E.D.N.Y.1969, 306 F.Supp. 1158, reversed on other grounds 446 F.2d 65, certiorari denied 92 S.Ct. 450, 404 U.S. 985, 30 L.Ed.2d 369. Action 6

5030. Minors, moot questions

On appeal, § 1983 action brought by minors and their parents to challenge constitutionality of city's juvenile curfew ordinance was not moot, where at least one of minors was not yet 18 years of age and her parent was also named plaintiff. Nunez by Nunez v. City of San Diego, C.A.9 (Cal.) 1997, 114 F.3d 935. Federal Courts 724

5031. Prisons and prisoners, moot questions--Generally

Section 1983 pro se action for injunctive relief brought by state prisoner and fiance against prison officials, alleging violation of due process resulting from officials' restriction of couples' visitation privileges and delay of marriage, was moot, where restriction was subsequently lifted and couple was allowed to marry. Martin v. Snyder, C.A.7 (Ill.) 2003, 329 F.3d 919, rehearing denied. Civil Rights 1454

Prisoner's claim for injunctive relief in action under § 1983, alleging that he was exposed to unreasonably high levels of secondhand smoke in violation of Eighth Amendment, was not moot despite transfer of prisoner to different housing block, and prison's implementation of restrictive smoking policy, since prisoner was housed in block without individual cell windows, in conditions similar to those he experienced prior to transfer, and prisoner asserted that prison's new smoking policy was not being enforced. Davis v. New York, C.A.2 (N.Y.) 2002, 316 F.3d 93. Federal Courts 13.10

Claim, in civil rights action brought by female prisoners, in which they alleged that their equal protection rights were violated due to unequal access to educational programs, was moot where, during pendency of appeal, prison abandoned programs completely for both male and female inmates. Keevan v. Smith, C.A.8 (Mo.) 1996, 100 F.3d 644. Federal Courts 13.10

State prisoner's claims for injunctive relief against state prison officials under § 1983 for alleged violations of his

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Eighth and Fourteenth Amendment rights were moot after he was transferred from the prison facility at which the violations allegedly occurred, absent any evidence that he was likely to be retransferred. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Civil Rights 1454

Where action, which was brought pursuant to this section to challenge city police department's involuntary commitment procedures for admitting arrested individuals suspected of mental illness to psychiatric screening and evaluation unit at city hospital, sought monetary relief in addition to injunctive and declaratory relief, fact that injunctive and declaratory relief would be of no avail did not mean that case was moot. Gross v. Pomerleau, D.C.Md.1979, 465 F.Supp. 1167. Action 6

Former state inmate's § 1983 claims for injunctive relief against prison officials, arising out of conditions of his confinement, were moot, where inmate was released from incarceration in state. DeFoe v. Correction Officers Tucker, D.Del.2002, 2002 WL 31422864, Unreported. Federal Courts 13.10

5032. ---- Classification of prisoners, prisons and prisoners, moot questions

Prisoner's allegations in suit under this section challenging termination of his minimum custody status by California prison officials and asserting claim for damages for mental and emotional distress arising from failure to observe his procedural rights asserted claim which could be compensable, and regardless of actual damages, be could be entitled to nominal damages if he prevailed, and thus his action was not mooted by his return to minimum custody though he also requested injunctive relief. Lokey v. Richardson, C.A.9 (Cal.) 1979, 600 F.2d 1265, certiorari denied 101 S.Ct. 238, 449 U.S. 884, 66 L.Ed.2d 110, on remand 534 F.Supp. 1015. Action 6; Civil Rights 1395(7)

5033. ---- Correction of disciplinary proceeding, prisons and prisoners, moot questions

Former state prisoner's federal habeas petition, challenging prison disciplinary proceedings which resulted in the forfeiture of gain time, was rendered moot by prisoner's release on expiration of his sentence, regardless of whether petitioner's release removed the bar to any civil cause of action he might have, under §§1983 or otherwise, for challenging revocation of his gain time. Doss v. Crosby, N.D.Fla.2005, 357 F.Supp.2d 1334. Habeas Corpus 231

Administrative reversal of administrative detention of prisoner after disciplinary hearing did not cure any wrongful deprivation of liberty and trust resulting from due process violation at disciplinary hearing, and, thus, prison officials were not entitled to summary judgment in prisoner's civil rights claim. Porter v. Novak, N.D.N.Y.1995, 898 F.Supp. 79. Civil Rights 1092

Claim, in civil rights proceeding, that state inmates' rights to procedural due process were violated by virtue of subjection to administrative segregation without being afforded a disciplinary hearing or notice of charges against them was moot, in that bureau of corrections' administrative directive, which required disciplinary hearing for inmates charged with major misconduct, had gone into effect. Gray v. Creamer, W.D.Pa.1974, 376 F.Supp. 675. Constitutional Law 46(1)

5034. ---- Disciplinary records, prisons and prisoners, moot questions

Where disciplinary infractions resulting from prison inmate's possession of newspaper entitled "Muhammad Speaks" had been deleted from inmate's prison records, inmate's civil rights complaint with regard to such infractions was moot. Northern v. Nelson, N.D.Cal.1970, 315 F.Supp. 687, affirmed 448 F.2d 1266. Prisons 13(3)

5035. ---- Freedom of religion, prisons and prisoners, moot questions

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42 U.S.C.A. § 1983

Where none of eight New York state prisoners who brought civil rights action to challenge prison policy which limited to 15 the number of inmates who could participate in certain religious instruction and Arabic classes was presently at the correctional facility demand for injunction against class size limitation was moot. Tawwab v. Metz, C.A.2 (N.Y.) 1977, 554 F.2d 22. Injunction 22

State prisoner's civil rights action, based on claim that he had been prevented from attending congregate religious services, was not rendered moot by fact that at time of argument he could attend services, where he sought actual and punitive damages. U. S. ex rel. Jones v. Rundle, C.A.3 (Pa.) 1971, 453 F.2d 147. Action 6

Claims for injunctive relief, in §§ 1983 action alleging that enforcement against prison inmate of rules restricting certain inmates' ability to subscribe to newspaper, magazine, and newsletter publications violated his First Amendment rights, were moot, where inmate had been released from prison. Calia v. Werholtz, D.Kan.2006, 426 F.Supp.2d 1210. Civil Rights 1454

Section 1983 claim against county officials alleging that juvenile detention facility's policy of asking detainees about their religious preferences and practices violated First Amendment was mooted by combination of fact that plaintiffs had withdrawn their claim for monetary damages, leaving only claim for injunctive relief, and that officials had discontinued practice, rendering it impossible for court to grant any effectual relief. Smook v. Minnehaha County, D.S.D.2004, 340 F.Supp.2d 1037, adhered to on reconsideration 353 F.Supp.2d 1059. Federal Courts 13.10

In state inmate's civil rights action for declaratory and injunctive relief against regulation of state department of corrections, allegation as to unequal allotment of religious budget was moot where inmate's affidavit stated that denial of budget allotment for Muslim faith had been overturned through institutional grievance procedures. Cochran v. Sielaff, S.D.Ill.1976, 405 F.Supp. 1126. Declaratory Judgment 204; Injunction 22

5036. ---- Parole, prisons and prisoners, moot questions

State prisoners' release on parole following filing of class action civil rights suit claiming denial of due process by Montana Board of Pardons in determining parole eligibility did not render action moot, where prisoners sought compensatory damages in addition to declaratory and injunctive relief. Board of Pardons v. Allen, U.S.Mont.1987, 107 S.Ct. 2415, 482 U.S. 369, 96 L.Ed.2d 303. Federal Courts 13.15

Section 1983 challenge to constitutionality of United States Parole Commission regulation effectively denying representation to District of Columbia prisoner at his parole hearing was not mooted by revision to regulation permitting all District of Columbia Code offenders to have representation at parole hearings; prisoner was still incarcerated, and sought injunctive relief in form of new parole hearing. Settles v. U.S. Parole Com'n, C.A.D.C.2005, 429 F.3d 1098, 368 U.S.App.D.C. 297. Constitutional Law 46(1)

State prisoners' § 1983 class action against State Board of Pardons and Paroles, challenging constitutionality of change in method for calculating tentative parole month of certain crime severity level of offenders under parole decision guidelines system, had become moot as to prisoners who had now been paroled and as to other prisoners who had served new minimum tentative parole month time period but had not been paroled, as class did not seek actual release on parole, but simply setting of tentative parole date under old rules. Jones v. Georgia State Bd. of Pardons and Paroles, C.A.11 (Ga.) 1995, 59 F.3d 1145. Federal Courts 13.10

Prisoner's civil rights action against state prison officials, alleging that Corrections Department's decision to deny him work release violated due process and that application to him of later regulation establishing more restrictive criteria for eligibility to participate in work release program violated ex post facto clause, was not mooted by fact that prisoner had been paroled, where prisoner had sought compensatory and punitive damages as well as declaratory and injunctive relief. Francis v. Fox, C.A.11 (Ala.) 1988, 838 F.2d 1147. Federal Courts 13.10

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42 U.S.C.A. § 1983

Former prison inmate's §§ 1983 claim against prison officials for alleged violation of his due process rights when they allegedly failed to provide timely preliminary and parole revocation hearings following his arrest, resulting in Parole Commission's failure to consider inmate for a discretionary early release program, was moot where the inmate was released from prison on the same day as he would have been had he received prompt hearings. Stewart v. Gaines, D.D.C.2005, 370 F.Supp.2d 293. Constitutional Law 46(1)

Claim by prisoner that he was denied due process by state parol board's failure to consider his application for exceptional progress in manner required by New Jersey law was rendered moot by board's decision to deny parole and to establish future eligibility date. Johnson v. Fauver, D.N.J.1992, 786 F.Supp. 442, affirmed 970 F.2d 899. Federal Courts 13.15

Inmate's civil rights action against prison officials for failure to accommodate hearing impairment was rendered moot by inmate's release on parole where inmate sought declaratory and injunctive relief, not damages or compensation. Clarkson v. Coughlin, S.D.N.Y.1992, 783 F.Supp. 789. Declaratory Judgment 204

Although since commencement of prisoner's suit for alleged violations of his civil rights, by confinement in punitive segregation without adequate due process hearing and thereafter by his transfer to another institution in which he was segregated from general prison population without hearing, for which violations he sought declaratory judgment, damages, and expungement of all references to incident and punishment from his prison records, prisoner had been released on parole and his maximum release date had passed, since he sought monetary relief, matter was not moot; however, expungement issue was moot. Mack v. Johnson, E.D.Pa.1977, 430 F.Supp. 1139, affirmed 582 F.2d 1275, affirmed 582 F.2d 1276. Action 6

5037. ---- Releases, prisons and prisoners, moot questions

On appeal from dismissal of civil rights action brought by county jail inmates seeking relief from conditions in jail, claims for injunctive relief were moot where suit was neither filed nor certified as class action, and where, with exception of one inmate who was rearrested, all inmates who sought injunctive relief were released during pendency of appeal and were no longer subjected to alleged mistreatment. Inmates v. Owens, C.A.4 (Va.) 1977, 561 F.2d 560. Federal Courts 757

Appeals from summary dismissal of civil rights actions which challenged conditions of confinement at two state institutions, which were not class actions and which did not seek damages might properly be dismissed for mootness in light of concession that none of plaintiffs were presently incarcerated at such institutions. Carroll v. Brown, C.A.4 (N.C.) 1977, 560 F.2d 1177. Federal Courts 724

Since the two plaintiff state penitentiary inmates sought damages in civil rights action against prison officials claiming restrictions of right to practice religion in violation of U.S.C.A.Const. Amend. 1, and the status of one of the plaintiffs remained the same, the release of one plaintiff from one prison did not render contentions moot. Kennedy v. Meacham, C.A.10 (Wyo.) 1976, 540 F.2d 1057. Action 6

Recovery of damages for alleged violations of federal prisoner's constitutional rights by placing him in segregation did not turn on his continued presence in segregation; thus, release from segregation did not render damage claim moot. Chapman v. Kleindienst, C.A.7 (Ill.) 1974, 507 F.2d 1246. Civil Rights 1092

Claim for money damages for violation of prisoner's civil rights was not rendered moot by prisoner's release from confinement. Cruz v. Estelle, C.A.5 (Tex.) 1974, 497 F.2d 496. Action 6

Inmate's release from state prison rendered moot his ADA, §§ 1983, and Rehabilitation Act claims for injunctive relief concerning the provision of medical care or proper accommodation for his disabilities by the former Connecticut Commissioner of Correction or the Connecticut Department of Correction. Roque v. Armstrong,

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42 U.S.C.A. § 1983

D.Conn.2005, 392 F.Supp.2d 382. Civil Rights 1454

Facts that prisoner had been released from medical separation unit and returned to general population mooted prisoner's claims for injunctive and declaratory relief in federal civil rights action in which he alleged that prison's placement of him in isolation because of his refusal to submit to tuberculosis (TB) screening test. Jones-Bey v. Wright, N.D.Ind.1996, 944 F.Supp. 723. Declaratory Judgment 84

Where plaintiff, a state prisoner, was challenging conditions of confinement, instead of fact or duration thereof, he was not required to exhaust state remedies as prerequisite to bringing action under this subchapter, and where he was seeking not only declaratory and injunctive relief but also money damages, his claims were not moot merely because he was no longer incarcerated in county jail. Carter v. Newburgh Police Dept., S.D.N.Y.1980, 523 F.Supp. 16. Action 6; Civil Rights 1319

Prisoner's claim for declaratory and injunctive relief with respect to alleged violations under U.S.C.A.Const. Amends. 1 and 8 was moot where the prisoner was no longer incarcerated at the correctional facility at which the alleged violations occurred. Leon v. Harris, S.D.N.Y.1980, 489 F.Supp. 221. Declaratory Judgment 204

Where prison official's own affidavits revealed that prison inmate had history of psychiatric difficulties for which he was twice committed to mental institution and that he continued to need psychiatric care, prisoner's civil rights action, in which he contended that he had improperly been committed to mental institution without being given hearing, was not mooted by fact that he had thereafter been returned to penitentiary. Evans v. Paderick, E.D.Va.1977, 443 F.Supp. 583. Action 6

Any civil rights claim for injunctive relief based upon alleged illegality of confinement of state prisoner was moot, where state prisoner had been released from the particular conditions of confinement of which he complained. Tyrrell v. Taylor, E.D.Pa.1975, 394 F.Supp. 9, modified on other grounds 535 F.2d 823. Action 6

5038. ---- Transfers, prisons and prisoners, moot questions

Mentally ill state prisoner's due process challenge to his treatment with antipsychotic drugs against his will without judicial hearing was not rendered moot by virtue of fact that state had ceased administering antipsychotic drugs; prisoner was still diagnosed as suffering from schizophrenia, continued to serve his sentence in state prison system, and was subject to transfer to center for mentally ill prisoners, to which he had already been transferred twice, at any time. Washington v. Harper, U.S.Wash.1990, 110 S.Ct. 1028, 494 U.S. 210, 108 L.Ed.2d 178. Federal Courts 13.15

Prisoner's transfer from prison at which segregation unit was located rendered his claims for injunctive relief moot, despite his contention that actions of prison officials with regard to his placement in that unit were capable of repetition but avoiding review; prisoner's allegation that his return to prison in question was a virtual certainty did not amount to showing or demonstration of the likelihood of retransfer. Higgason v. Farley, C.A.7 (Ind.) 1996, 83 F.3d 807. Civil Rights 1454

Prisoner's transfer mooted § 1983 civil rights claims for injunctive and declaratory relief for alleged cruel and unusual punishment resulting from overcrowding combined with unsanitary conditions; prisoner was unlikely to return to prison and prisoner requested transfer in order to facilitate family visitation rights. Williams v. Griffin, C.A.4 (N.C.) 1991, 952 F.2d 820. Federal Courts 13.10

Inmate's transfer to another prison rendered moot his claims for equitable relief in connection with allegedly unconstitutional deprivation of food at former prison. Cooper v. Sheriff, Lubbock County, Tex., C.A.5 (Tex.) 1991, 929 F.2d 1078. Federal Courts 13.10

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42 U.S.C.A. § 1983

Prisoner's transfer to Missouri State Penitentiary rendered moot his claim for injunctive relief arising out of alleged deprivation of constitutional rights in Iowa State Penitentiary; however, prisoner's claim for pecuniary damages was not rendered moot as a result of prisoner's transfer. Wycoff v. Brewer, C.A.8 (Iowa) 1978, 572 F.2d 1260. Action 6; Injunction 22

Where prison inmate was no longer incarcerated at particular prison, his request for injunction restraining officials at such prison from violating his civil rights was moot, but his claim for money damages stemming from same allegedly unconstitutional actions survived. Mawhinney v. Henderson, C.A.2 (N.Y.) 1976, 542 F.2d 1. Federal Courts 757

State prison inmate's civil rights complaint seeking declaration that prison's policies and practices concerning temporary lockup violated his due process rights and injunction preventing prison from punishing him without due process would be dismissed as moot where inmate had been transferred back to general population, was no longer suffering any deprivation ordered by disciplinary committee, and there was no indication that inmate ever lost any good-time credit as a result of disciplinary committee's recommendation. Franklin v. Israel, W.D.Wis.1982, 537 F.Supp. 1112. Federal Courts 13.15

Inmate's appeal of the dismissal of his §§ 1983 action against prison officials challenging the conditions of his confinement was moot; inmate was transferred to another correctional facility while appeal was pending, and thus inmate was no longer subject to conditions of which he complained. Goff v. Clements, C.A.8 (Mo.) 2005, 138 Fed.Appx. 851, 2005 WL 1162938, Unreported. Federal Courts 724

5039. Public assistance, moot questions

Where all complainants had received determinations of eligibility for Aid to Dependent Children and, under state law, no past benefits were lost because of any delay in action upon application, civil rights cause based on such delay in alleged deprivation of due process was moot. Craddock v. Hill, W.D.Mo.1970, 324 F.Supp. 183. Injunction 22

Fact that plaintiffs had received their unlawfully delayed benefits after lawsuit was commenced did not render moot their purported class action under § 1983 alleging that New York City failed to process public assistance grants pursuant to Aid for Families with Dependent Children (AFDC) program in a timely fashion; action would be certified as class action, even if named plaintiffs were no longer suffering the harm alleged, since others similarly situated were. Brown v. Giuliani, E.D.N.Y.1994, 158 F.R.D. 251. Federal Courts 13.10

5040. Zoning, moot questions

Amendments to township zoning resolution, which limited retail space within particular development to 65,000 square feet, did not apply retroactively to application for zoning permit to build 220,000 square foot building that was made by owner of undeveloped property six months before enactment of amendment, and thus owner's civil rights claims under due process and equal protection clauses were not moot, since right to existing zoning classification under Ohio law vested upon submission of application. Wedgewood Ltd. Partnership I. v. Township of Liberty, Ohio, S.D.Ohio 2006, 456 F.Supp.2d 904. Zoning And Planning 376

Apartment building owner's § 1983 claim against city was not rendered moot by expiration of challenged zoning ordinance prohibiting condominium time share plans; owner no longer owned subject property and did not seek to operate time share plan, but rather sought damages for injuries caused by city's allegedly wrongful deprivation of its constitutional rights. Jackson Court Condominiums, Inc. v. City of New Orleans, E.D.La.1987, 665 F.Supp. 1235, affirmed 874 F.2d 1070. Federal Courts 13.10

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5061. Res judicata generally

Generally, state court decisions of federal constitutional claims are accorded res judicata effect in subsequent actions brought under this section. Fernandez v. Trias Monge, C.A.1 (Puerto Rico) 1978, 586 F.2d 848. Judgment 828.21(1)

Issues actually litigated in state court proceeding are entitled to same preclusive effect in subsequent federal § 1983 suit as they enjoy in courts of state where judgment was rendered. Treister v. City of Miami, S.D.Fla.1992, 893 F.Supp. 1057, affirmed 56 F.3d 1389.

Rules of res judicata and collateral estoppel apply to federal civil rights actions brought after state court judgment. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Judgment 828.21(1)

Federal court in federal civil rights action must give to a state court judgment the same preclusive effect as would be given that judgment under law of state in which judgment was rendered. Dennison v. County of Frederick, W.D.Va.1989, 726 F.Supp. 137, affirmed 921 F.2d 50, certiorari denied 111 S.Ct. 2828, 501 U.S. 1218, 115 L.Ed.2d 998. Judgment 828.20(1)

Cases brought under this section are not exempt from normal principles of res judicata and collateral estoppel. Colvin v. Deaton, W.D.Va.1984, 577 F.Supp. 925.

Judgment in state civil action could have res judicata effect in federal civil rights action under this section proscribing the deprivation of rights. Omernick v. LaRocque, W.D.Wis.1976, 406 F.Supp. 1156, affirmed 539 F.2d 715. Judgment 828.1

Res judicata is applicable to suits brought under this section. Mertes v. Mertes, D.C.Del.1972, 350 F.Supp. 472, affirmed 93 S.Ct. 2141, 411 U.S. 961, 36 L.Ed.2d 681. See, also, Crowe v. Leeke, C.A.4 (S.C.) 1977, 550 F.2d 184; Spence v. Latting, C.A.10 (Okl.) 1975, 512 F.2d 93, certiorari denied 96 S.Ct. 198, 423 U.S. 896, 46 L.Ed.2d 129; 290 Madison Corp. v. Capone, D.C.N.J.1980, 485 F.Supp. 1348; Smith v. Sinclair, D.C.Okl.1976, 424 F.Supp. 1108. Judgment 550

Res judicata should be used sparingly in actions brought under this section and its application is only proper when there has been previous action between parties or their privies involving same subject matter terminating in final judgment on merits. Bricker v. Sceva Speare Memorial Hospital, D.C.N.H.1972, 339 F.Supp. 234. Judgment 644

5062. Personal liberty restraints, res judicata

That a civil rights action involves a restraint on personal liberty does not preclude application of principles of res judicata and collateral estoppel. Sylvander v. New England Home For Little Wanderers, D.C.Mass.1978, 444 F.Supp. 393, affirmed 584 F.2d 1103. Judgment 550; Judgment 644

5063. Time of judgments, res judicata

Where improper treatment by prison officials alleged by inmate in action under this section had occurred after trial

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of previous class action challenging conditions of confinement which resulted in ongoing injunctive decree, inmate's equitable claims were not barred by doctrine of res judicata, although his action was properly transferred to district court which had fashioned injunctive decree in previous class action, to assure consistency, evenhanded relief for inmates, and orderly administration of prison system. Johnson v. McKaskle, C.A.5 (Tex.) 1984, 727 F.2d 498, on remand 591 F.Supp. 511. Federal Courts 113; Judgment 605

Civil rights suit against prison officials for injuries sustained by prisoner when he was stabbed by fellow inmate was not barred by res judicata where record in prior action challenging condition of confinement in prison was closed two months before stabbing injury. Bogard v. Cook, C.A.5 (Miss.) 1978, 586 F.2d 399, rehearing denied 591 F.2d 102, certiorari denied 100 S.Ct. 173, 444 U.S. 883, 62 L.Ed.2d 113. Judgment 590(4)

Civil rights action filed in federal court by prisoner against state prison officials could have been filed in state court or could have been concurrently filed in both courts and could have proceeded to judgment in either; whichever court first rendered an in personam judgment would have been entitled to have its judgment receive res judicata effect in the other court. Crawford v. Loving, E.D.Va.1979, 84 F.R.D. 80. Courts 489(1); Judgment 828.1; Judgment 829(1)

5064. Full and fair opportunity to present issues, res judicata--Generally

Although all three components of doctrine of res judicata were present with respect to prison inmate's § 1983 suit arising out of action taken by disciplinary committee at correctional facility and prior state court certiorari proceeding, inasmuch as neither the disciplinary committee nor the state court had jurisdiction to award damages, inmate did not have full and fair opportunity to pursue claim for damages and res judicata did not bar the § 1983 action. Bates v. Department of Corrections, E.D.Wis.1991, 774 F.Supp. 536. Judgment 828.16(1)

5065. ---- Assistance of counsel, full and fair opportunity to present issues, res judicata

Doctrine of res judicata did not bar natural mother's action under this section seeking relief from Texas district court's judgment permanently terminating her parental rights where mother, in the action under this section, claimed that entire state proceeding was constitutionally defective since she was not provided with counsel, mother was not attempting to relitigate any of substantive issues underlying Texas court's judgment, and it appeared, from record, that it would be manifestly unjust to refuse to hear mother's claim of right to counsel on basis that she should have raised it before the Texas court. Rhoades v. Penfold, C.A.5 (Tex.) 1983, 694 F.2d 1043, rehearing denied 719 F.2d 404. Judgment 828.12

Civil rights litigant was not entitled to relief from issue preclusive effect of summary judgment in first civil rights suit by reason of fact that litigant was unrepresented in first civil rights suit or under claim that defendants in earlier suit committed fraud on court, without clear and convincing evidence that defendants deliberately defrauded the court. McNally v. Colorado State Patrol, C.A.10 (Colo.) 2004, 122 Fed.Appx. 899, 2004 WL 2445576, Unreported. Judgment 660; Judgment 713(1)

5066. ---- Erroneous decisions, full and fair opportunity to present issues, res judicata

Where a party has been afforded full and fair hearing in state court, § 1983 does not allow relitigation of same issues in federal court simply because state court's decision may have been erroneous; due process is satisfied if party receives full and fair adjudication of its constitutional claims in state court. Peduto v. City of North Wildwood, C.A.3 (N.J.) 1989, 878 F.2d 725. Constitutional Law 315; Judgment 828.11(2)

5067. ---- Time for trial preparation, full and fair opportunity to present issues, res judicata

Under New York law, inmate lacked full and fair opportunity to litigate prior state negligence claim, precluding

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application of res judicata or collateral estoppel in subsequent federal civil rights action, where counsel had been appointed for inmate in federal matter, inmate had at best a single day's notice of state trial, appointed counsel in federal case was never notified of parallel state litigation, and inmate showed prejudice in availability of eyewitness who could have been called to testify in state action if inmate had more notice and had been more knowledgeable about court procedures. West v. Ruff, C.A.2 (N.Y.) 1992, 961 F.2d 1064. Judgment 828.16(1)

5068. ---- Miscellaneous opportunities full and fair, full and fair opportunity to present issues, res judicata

Under Massachusetts doctrines of claim and issue preclusion, state prosecution of driver under statute prohibiting refusal to stop when signaled by police officer barred § 1983 action alleging unconstitutionality of statute under Fourth Amendment, whether or not driver raised the constitutional challenge in the prosecution; the prosecution provided opportunity to present constitutional arguments. Willhauck v. Halpin, C.A.1 (Mass.) 1991, 953 F.2d 689, rehearing denied. Judgment 828.8

Owners of residential property were precluded, under doctrine of res judicata, from challenging constitutionality of city ordinances concerning maintaining property in unsightly or unsanitary manner, where constitutional challenges were not raised in state court in enforcement actions, or were raised and adverse judgment was not appealed; procedures and avenues for relief available to owners in state court afforded them full and fair opportunity to litigate their constitutional defenses. Pliska v. City of Stevens Point, Wis., C.A.7 (Wis.) 1987, 823 F.2d 1168. Judgment 828.16(1); Judgment 828.16(4)

Doctrine of res judicata barred ex-husband's claims under § 1983 that attorneys who represented his former wife during Minnesota state court proceedings that resulted in his marriage dissolution and in award of custody over his minor son to this ex-wife violated husband's rights under United States Constitution; attorneys were in privity with their law firm, which was named as defendant in husband's prior state court civil rights action, husband's current claims were no different from those he advanced, or that he could have advanced, in that state court civil rights action, and there was no evidence that his state court claims, as subsequently considered by three appellate courts--including United States Supreme Court--did not receive full and fair hearing. Nelson v. Butler, D.Minn.1996, 929 F.Supp. 1252, affirmed 108 F.3d 1382. Judgment 828.14(3)

Court in § 1983 action alleging racially discriminatory discharge would give preclusive effect to state Personnel Commission's factual findings that race was not determining factor in discharge decision or in decision not to have Affirmative Action Office prevent termination, inasmuch as Commission decision involved identical issues as employee's § 1983 claim, Commission was acting in judicial capacity, employee's claim was properly before it and employee had adequate opportunity to litigate his claim. Pugh v. State of Wis. Dept. of Natural Resources, E.D.Wis.1990, 749 F.Supp. 205. Administrative Law And Procedure 501; Civil Rights 1711

Where child's natural mother had full and fair opportunity to litigate constitutionality of state's failure to serve her with notice prior to initial dependency hearing before North Carolina district and appellate courts, she was bound by state court decisions and thus claim under this section was barred by principles of res judicata and collateral estoppel. Yow v. Crater, M.D.N.C.1981, 526 F.Supp. 240. Judgment 828.20(1)

Where state prisoners who brought civil rights action against police officers had a full and fair opportunity, at state suppression hearing, to litigate claims with respect to searches, seizures and arrests, plaintiffs could not try those issues anew in federal civil rights action. Pyles v. Keane, S.D.N.Y.1976, 418 F.Supp. 269. Judgment 828.8

Doctrines of res judicata and collateral estoppel barred §§ 1983 claims in which former adoptive parents of minor child challenged validity of second adoption of child by another couple, which was fully litigated in state court and decided against former parents. Campbell v. Schneller, C.A.5 (Miss.) 2004, 109 Fed.Appx. 652, 2004 WL 1835999, Unreported, modified on denial of rehearing 109 Fed.Appx. 708, 2004 WL 2278492. Adoption 14

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5069. ---- Miscellaneous opportunities not full and fair, full and fair opportunity to present issues, res judicata

Plaintiff was justified in believing that state suit for damages alleging illegal arrest would have no preclusive effect on later federal action brought under 42 U.S.C.A. § 1983, and plaintiff did not have full and fair opportunity to present his federal claim in earlier state action so as to bar subsequent federal action under principles of claim preclusion, where law in circuit, at time Pennsylvania action was brought, was that federal civil rights actions would not be barred by earlier state court litigation unless federal claim had actually been pressed in, and decided by, state court. Wade v. City of Pittsburgh, C.A.3 (Pa.) 1985, 765 F.2d 405. Judgment 828.16(1)

5070. Merit determination, res judicata

Res judicata barred relitigation under Section 1983 of plaintiffs' claim that their church had been wrongfully dissolved, since Michigan circuit court's order dissolving the church was based on findings of fact following an extensive bench trial and was a judgment on the merits, as was the Michigan Court of Appeals' determination that the challenge to the dissolution order was "without merit," since plaintiffs' challenge to the dissolution order was the very issue resolved in the prior state case, and since each federal plaintiff was either a party to the first suit or privy to parties in that suit. Fellowship of Christ Church v. Thorburn, C.A.6 (Mich.) 1985, 758 F.2d 1140. Judgment 828.9(3); Judgment 828.9(7); Judgment 828.12

When due process claim was not raised in first instance before New York civil service commission by dismissed New York City transit authority employee and the state courts on that basis alone perceived themselves as powerless under McKinney's N.Y. Civil Service Law, § 76, to hear dismissed employee's belated Article 78 due process claim, state courts' determination that employee's election to appeal to commission precluded his maintaining court action was a final determination on the "merits" which, under principle of res judicata, federal court should not disturb. Taylor v. New York City Transit Authority, C.A.2 (N.Y.) 1970, 433 F.2d 665. Judgment 828.9(3)

Where State Commissioner of Health, following hearing, denied request to change sex designation on birth certificate and, on appeal to state court, plea in abatement was sustained on ground that petition was not filed within 30 days after mailing of notice of the final decision of the Commissioner, neither the Commissioner's decision nor the court's refusal to reverse the same was res judicata as to claim, asserted in action under this section that Commissioner's refusal to make the change violated plaintiff's rights under this section. Darnell v. Lloyd, D.C.Conn.1975, 395 F.Supp. 1210. Judgment 828.20(1)

State court order dismissing police officer's petition for reinstatement of his license to carry firearms based on mootness was not decision on the merits, so as to preclude officer's subsequent § 1983 claim regarding suspension of his license under doctrine of res judicata. Rosenfeld v. Egy, D.Mass.2003, 2003 WL 222119, Unreported, affirmed 346 F.3d 11. Judgment 828.9(5)

5071. Finality of prior judgment, res judicata--Generally

Civil rights activist who brought § 1983 action against city and police officers, stemming from his arrest while attempting to film traffic stop, declined to file second amended complaint for earlier claim based upon prior arrest incident, even though he received permission from court to do so, and thus activist's present action was not precluded under res judicata doctrine, since there was no final judgment on merits as to earlier claim. McCormick v. City of Lawrence, D.Kan.2003, 271 F.Supp.2d 1292, amended 289 F.Supp.2d 1264, affirmed 130 Fed.Appx. 987, 2005 WL 1221632. Judgment 564(1)

Determination on appeal of Equal Employment Opportunity Commission (EEOC) decision that Small Business Administration (SBA) employee had not been discriminated against because of his race when he was discharged

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had res judicata effect in employee's subsequent civil rights action against United States and SBA officials. Matthews v. U.S., E.D.Wis.1992, 805 F.Supp. 712, affirmed 28 F.3d 1216. Judgment 642

5072. ---- Affirmance of denial of certiorari, finality of prior judgment, res judicata

Under Wisconsin law of res judicata, state court proceedings in which denial of certiorari to review decision of municipal annuity and pension board denying duty disability benefits to police officer was affirmed would be given preclusive effect and, accordingly, federal court would do likewise in § 1983 action involving same parties and same operative facts; that is, decision by applicant to pursue his claim in the state courts to a final judgment on the merits precluded his maintaining the federal suit. Krison v. Nehls, C.A.7 (Wis.) 1985, 767 F.2d 344. Judgment 828.15(1)

5073. ---- Pendency of appeal, finality of prior judgment, res judicata

Pendency of appeal in inmate's federal habeas corpus proceeding did not deprive judgment of res judicata effect in inmate's separate civil rights action. Hawkins v. Risley, C.A.9 (Mont.) 1993, 984 F.2d 321. Habeas Corpus 901; Judgment 663

5074. ---- Failure to appeal, finality of prior judgment, res judicata

Where parties to parental rights termination proceeding in Iowa state courts and in federal court action brought under this section providing for civil action for deprivation of rights were identical in that parents resisted a termination of their parental rights in Iowa state courts and presently complained that their civil rights were violated by the termination, and where causes of action in each proceeding were the same in that parents argued in state court as they did in federal court that their parental rights were unjustly and unconstitutionally terminated, federal court action was based on same nucleus of operative facts before Iowa courts and failure of parents to raise issues before Iowa Supreme Court resulted in claim preclusion in federal court. Robbins v. District Court of Worth County, Iowa, C.A.8 (Iowa) 1979, 592 F.2d 1015, certiorari denied 100 S.Ct. 107, 444 U.S. 852, 62 L.Ed.2d 69. Judgment 828.16(3)

Where law clerk to state court judge sought relief from rule under which clerk could not remain in position as clerk unless he withdrew from candidacy for office of school director, where Supreme Court of Pennsylvania considered and rejected clerk's contention that rule was in derogation of clerk's federal constitutional rights, and where clerk failed to apply for writ of certiorari from Supreme Court of the United States, decision of Supreme Court of Pennsylvania was "res judicata" as to clerk's contentions of denial of federal constitutional rights, and clerk was precluded from challenging constitutionality of rule in civil rights action brought in federal district court. Silvestri v. Barbieri, W.D.Pa.1977, 434 F.Supp. 1200. Judgment 828.20(1)

5075. Dismissals, res judicata

District court's order dismissing Puerto Rico public employee's political discrimination claim against his supervisor on res judicata grounds was not plainly erroneous; dismissal of claim was not remotely a case of manifest injustice and thus did not satisfy fourth prong of plain error test. Diaz-Seijo v. Fajardo-Velez, C.A.1 (Puerto Rico) 2005, 397 F.3d 53. Federal Courts 634

Sheriff's voluntary dismissal of one charge against deputy during state court proceedings did not prevent proceedings from resulting in final judgment on merits that was res judicata as to deputy's federal civil rights claim that sheriff's complaint before merit commission was in retaliation for deputy's statements to Department of Corrections employees about county jail system; allegation in federal complaint indicated that deputy considered retaliation claim as defense to all charges, so that dismissal of one charge did not release him from presenting claim as defense in prior proceeding. Lolling v. Patterson, C.A.7 (Ill.) 1992, 966 F.2d 230. Judgment 828.9(5)

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Demoted city employee's civil rights action was barred by dismissal of his prior petition seeking relief under consent decree controlling city's use of political patronage in employment matters, under principles of res judicata; suits involved same cause of action in that they arose from single core of operative fact, and prior decision to dismiss on grounds of laches or statute of limitations was "on the merits." Smith v. City of Chicago, C.A.7 (Ill.) 1987, 820 F.2d 916. Judgment 570(5); Judgment 585(2)

Suspended medical student's civil rights claim against medical school for violating his right to equal educational opportunity through discriminatory practices was barred under doctrine of res judicata by state court judgment dismissing his complaint for failure to state cause of action under New York law, which was dismissed on merits; student failed to allege any additional facts not considered by state court in support of his claim that suspension decision was motivated by racial bias. Garg v. Albert Einstein College of Medicine of Yeshiva University, S.D.N.Y.1990, 747 F.Supp. 231. Judgment 828.9(4)

Dismissal of prior lawsuit for failure to comply with notice of injury requirements was not on the merits and did not preclude subsequent civil rights action. Johnson v. Panizzo, N.D.Ill.1987, 664 F.Supp. 336. Judgment 654

An action under this section would be dismissed on ground of res judicata where subsequent action in state court based on same underlying facts had been dismissed on merits. Cairo v. Skow, E.D.Wis.1982, 544 F.Supp. 158. Federal Civil Procedure 1755

State court's jurisdictional ruling, in false arrest suit, dismissing defendant police officers because of plaintiff's failure to comply with jurisdictional prerequisite of providing notice was not binding upon federal court as res judicata and did not preclude federal court from reaching merits of plaintiff's civil rights action based upon federal question jurisdiction under this section and §§ 1331 and 1343 of Title 28, so long as plaintiff satisfied federal requisites for jurisdiction. Luker v. Nelson, N.D.Ill.1972, 341 F.Supp. 111. Judgment 828.9(5)

Where many of issues in action in federal district court for alleged violation of civil rights of plaintiff had been raised in earlier action, which was dismissed, and United States court of appeals affirmed dismissal without opinion and thereafter denied rehearing, doctrine of res judicata applied as to those issues. Arnold v. McGuiness, N.D.Cal.1968, 289 F.Supp. 210, affirmed 400 F.2d 392, certiorari denied 89 S.Ct. 1190, 394 U.S. 918, 22 L.Ed.2d 451. Judgment 720

Dismissal of plaintiff's prior §§ 1983 action against officers in their official capacities did not bar, on res judicata grounds, plaintiff's subsequent §§ 1983 action, even though both suits involved same set of facts against some of same defendants, where prior action was dismissed for lack of jurisdiction, not on merits. Cook v. Gibbons, C.A.8 (Ark.) 2005, 124 Fed.Appx. 475, 2005 WL 465588, Unreported, on remand 2005 WL 2260689. Judgment 570(9)

5076. Summary judgment, res judicata

Summary judgment in state court based on immunity granted by Pennsylvania Political Subdivision Tort Claims Act was not a resolution on the merits, and thus it had no preclusive effect on plaintiff's federal civil rights claim under section 1983 arising out of same occurrence. Ligas v. Allen, C.A.3 (Pa.) 1985, 765 F.2d 53. Judgment 828.9(1)

Civil rights action against police detective for malicious prosecution for issuing bad check was barred under res judicata by summary judgment granted in state court proceeding holding that the detective was entitled to quasi-judicial immunity. Conway v. Village of Mount Kisco, N.Y., C.A.2 (N.Y.) 1984, 750 F.2d 205, appeal decided 758 F.2d 46, certiorari granted in part 106 S.Ct. 878, 474 U.S. 1100, 88 L.Ed.2d 915, certiorari dismissed 107 S.Ct. 390, 479 U.S. 84, 93 L.Ed.2d 325. Judgment 828.9(1)

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5077. Directed verdicts, res judicata

Parents' civil rights claims against city and police officers and city officials in their official capacities were barred by res judicata where directed verdict had been entered in favor of city and officer in son's civil rights action against city and city police arising out of same cause of action and parents' allegations were analogous to claims for loss of consortium for purposes of res judicata. Willard v. City of Myrtle Beach, SC, D.S.C.1989, 728 F.Supp. 397 . Judgment 713(2)

5078. Consent judgments or decrees, res judicata

Under Illinois law, res judicata barred farmers' civil rights suit against bank which repossessed their livestock; prior state court consent judgment between parties having identical basis in fact, state court's jurisdiction, Appellate Court affirmance of judgment and declination of review by United States Supreme Court demonstrated finality of prior judgment. Hunziker v. German-American State Bank, N.D.Ill.1988, 697 F.Supp. 1007, affirmed 908 F.2d 975, rehearing denied, certiorari denied 111 S.Ct. 798, 498 U.S. 1073, 112 L.Ed.2d 859, rehearing denied 111 S.Ct. 1433, 499 U.S. 955, 113 L.Ed.2d 485. Judgment 828.9(6)

Consent decree entered in action challenging use of governmental patronage to coerce support of political party and its candidates was not res judicata or collateral estoppel for separate actions brought under statute prohibiting deprivation of civil rights and alleging violation of principle that unless public office is one for which party affiliation is appropriate requirement for effective performance, officer may not be discharged for political reasons. Auriemma v. City of Chicago, N.D.Ill.1984, 601 F.Supp. 1080. Judgment 567

Civil rights action could not be used to obtain federal court review of the underpinnings of valid consent decrees entered by Pennsylvania state court in enforcing the police power of the Commonwealth of Pennsylvania as set forth in the Clean Streams Law, 35 P.S.Pa. §§ 691.1 et seq., 691.401. Environmental Aid, Inc. v. Goddard, D.C.Pa.1977, 433 F.Supp. 906. Civil Rights 1321

5079. Settlements, res judicata

Grievance settlement between employer and union requiring employee to submit to drug testing before returning to work, to which employee did not consent, did not preclude employee's federal civil rights claim arising from discharge following refusal to submit to testing, under the doctrines of res judicata or collateral estoppel. Bolden v. Southeastern Pennsylvania Transp. Authority, C.A.3 (Pa.) 1991, 953 F.2d 807, certiorari denied 112 S.Ct. 2281, 504 U.S. 943, 119 L.Ed.2d 206, on remand 820 F.Supp. 949. Labor And Employment 1599

Prisoner's settlement of state lawsuit concerning right to use and possession of word processor barred his subsequent civil rights claim that his right of access to courts was impaired in that litigation, given his inability to allege harm to that litigation caused by civil rights defendants; prisoner was able to and did seek contempt order in state action, and decision on question of contempt was not barred by defendants' interference with prisoner's getting word processor, but instead by prisoner's decision to settle state action. Spruytte v. Govorchin, W.D.Mich.1997, 961 F.Supp. 1094. Compromise And Settlement 17(1)

Where there was no factual support or evidence, other than arrestee's own conclusory statements, that agreement to settlement of civil rights action was made by mistake, fraud, duress, undue influence, or any other factor, settlement agreement to which arrestee assented in settlement conference was binding despite his later refusal to sign agreement. Mattingly v. City of Chicago, N.D.Ill.1995, 897 F.Supp. 375. Compromise And Settlement 5(1); Compromise And Settlement 8(1)

Grievance settlement between union and public employer did not cut off public employee's § 1983 claim based on unconstitutional drug test leading to employee's discharge, since union's authority to settle his wrongful discharge

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claim was limited to work-related matters, including drug testing and other conditions of reemployment. Bolden v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1993, 820 F.Supp. 949, affirmed 21 F.3d 29. Civil Rights 1312

Res judicata based on prior state court mandamus action to enforce settlement agreement did not bar present suit for violation of civil rights based upon breach of settlement agreement; Ohio Court of Appeals' implicit determination that plaintiff possessed adequate remedy at law for certain claims prevented plaintiff from offering certain arguments in mandamus, and thus, there was no identity of causes of action. Dwyer v. City of Middletown, S.D.Ohio 1989, 733 F.Supp. 264. Judgment 828.15(1)

Settlement of state court wrongful death action arising out of shooting death of victim at hands of police did not bar subsequent civil rights suit against police where plaintiffs alleged fraud, concealment and broad-based cover-up on part of police and district attorney. Bell v. City of Milwaukee, E.D.Wis.1981, 514 F.Supp. 1363. Judgment 828.11(1)

Where plaintiff in prisoner's civil rights action first requested federal court to approve the res, i.e., the settlement of the action, before seeking approval of settlement from state court, it was the federal court which was empowered to proceed to judgment so that settlement approval obtained from the state court was not res judicata with respect to the federal court's approval or disapproval of the settlement. Crawford v. Loving, E.D.Va.1979, 84 F.R.D. 80. Judgment 828.10(1)

5080. Stipulations, res judicata

Stipulation regarding amount due guardian ad litem appointed in state juvenile proceeding was not res judicata of claim against guardian for violation of this section during guardianship. Roe v. Borup, E.D.Wis.1980, 500 F.Supp. 127. Judgment 828.15(1)

5081. Necessity of determination, res judicata

Neither res judicata nor collateral estoppel precluded § 1983 claims of previously jailed juveniles concerning alleged violations of Juvenile Justice and Delinquency Prevention Act, where there was no evidence that issues in question were actually litigated or necessarily decided in any previous juvenile court proceedings. Hendrickson v. Griggs, N.D.Iowa 1987, 672 F.Supp. 1126, appeal dismissed 856 F.2d 1041.

Although finding of probable cause to arrest was not necessary to sustain plaintiff's prior New York conviction for possessing a stolen automobile, the conviction, sustained on appeal, necessarily included, under New York law, a finding that there was probable cause to arrest and thereby barred a subsequent § 1983 action against the arresting officers challenging existence of probable cause for the arrest. Cameron v. Fogarty, E.D.N.Y.1985, 649 F.Supp. 3, affirmed 806 F.2d 380, certiorari denied 107 S.Ct. 1894, 481 U.S. 1016, 95 L.Ed.2d 501. Judgment 828.8

5082. Issues litigated or subject to litigation, res judicata--Generally

Rule that state court judgment must be given same res judicata effect in federal civil rights action that it would be given in courts of rendering state applies to issues actually litigated and those which could have been but were not litigated in state court proceedings. Vandenplas v. City of Muskego, C.A.7 (Wis.) 1985, 753 F.2d 555, certiorari denied 105 S.Ct. 3481, 472 U.S. 1018, 87 L.Ed.2d 616. Judgment 828.16(1); Judgment 828.16(3)

Issues actually litigated in a state-court proceeding are entitled to the same preclusive effect in a subsequent federal §§ 1983 suit as they enjoy in the courts of the state where the judgment was rendered. Willhite v. Collins, D.Minn.2005, 385 F.Supp.2d 926. Federal Courts 420

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42 U.S.C.A. § 1983

In civil rights actions, doctrine of res judicata precludes party from relitigating in federal court those issues actually pressed before, and decided by, state tribunal. Korup v. Flaherty, E.D.Pa.1981, 524 F.Supp. 1160. Judgment 828.21(1)

Doctrine of res judicata, even as narrowly defined in the context of civil rights actions under this section, normally operates to preclude a federal court from adjudicating a claim that has been subject of a prior adjudication in state court, except where claim was not actually litigated and determined in the state court suit. Halprin v. New York City Conciliation and Appeals Bd., S.D.N.Y.1981, 521 F.Supp. 529, affirmed 661 F.2d 909, certiorari denied 102 S.Ct. 393, 454 U.S. 895, 70 L.Ed.2d 210. Judgment 828.16(4)

Principles of res judicata are fully applicable to actions brought under this section, and thus, where a cause of action which encompasses a claim under this section reaches judgment in one court, the judgment of that court will be given the same preclusive effect by a second court as would any other judgment of that first court. Bennun v. Board of Governors of Rutgers, State University of New Jersey, D.C.N.J.1976, 413 F.Supp. 1274. Judgment 550

Doctrine of res judicata extends not only to matters previously litigated but also to matters which, although not litigated, were properly subject to litigation in former action. Chambers v. Colonial Pipeline Co., E.D.Tenn.1968, 296 F.Supp. 555, appeal dismissed 408 F.2d 678, certiorari denied 90 S.Ct. 590, 396 U.S. 1020, 24 L.Ed.2d 512, rehearing denied 90 S.Ct. 937, 397 U.S. 929, 25 L.Ed.2d 112. Judgment 713(2)

5083. ---- Constitutional claims generally, issues litigated or subject to litigation, res judicata

Under Puerto Rico law, Commonwealth employee's territorial-court, territorial-law action alleging political discrimination and seeking injunction only, once finalized, was preclusive, under doctrine of res judicata, as to employee's federal-court §§ 1983 action for damages against same defendant officials and arising from same facts; although officials did not object to voluntary dismissal of territorial-court action in territorial court, officials had already lodged, in federal court, express objection to splitting of claims between state and federal courts, employee could have asserted §§ 1983 claim in territorial court, and employee requested voluntary dismissal with prejudice. Barreto-Rosa v. Varona-Mendez, C.A.1 (Puerto Rico) 2006, 470 F.3d 42. Judgment 828.9(5)

Judgment which had been entered in state court in favor of state Department of Corrections (DOC) in action brought by prisoner alleging that DOC had deprived him of personal belongings when he was transferred to more secure facility without adequate justification or due process barred under doctrine of res judicata subsequent federal civil rights action to extent that prisoner sought to assert equal protection and due process claims arising from alleged deprivation of property. Klein v. Zavaras, C.A.10 (Colo.) 1996, 80 F.3d 432, rehearing denied. Judgment 828.16(1); Judgment 828.16(3)

State family court was not "court of competent jurisdiction" to determine constitutionality of city's system-wide policy of resolving any ambiguity in child abuse investigation in favor of finding that abuse had occurred, and thus court's judgments in child protective proceedings did not bar on res judicata grounds § 1983 action by parents and legal guardians of children who had been removed pursuant to policy, even though court was able to consider federal constitutional claims, where court could not award money damages or grant full breadth of injunctive and declaratory relief available under § 1983. People United for Children, Inc. v. City of New York, S.D.N.Y.2000, 108 F.Supp.2d 275. Judgment 828.7

Doctrine of res judicata did not apply to bar federal civil rights action against a city and related parties on basis of a prior state court proceeding, even though enumerated issues remaining to be litigated involved incidents which were subject of prior state proceeding, where, in the prior state proceeding, the issues were limited to those which could be raised on appeal with no new discovery or evidence presented to the appellate court, and plaintiffs could not have raised their constitutional concerns. Benline v. City of Deland, M.D.Fla.1989, 731 F.Supp. 464, affirmed

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42 U.S.C.A. § 1983

897 F.2d 1127. Judgment 828.16(4)

Civil rights suit by former member of New York City Police Department was not barred by res judicata by reason of final judgment that had been entered in previous New York state court proceeding arising out of the officer's dismissal where, even though the same facts were alleged in the state and federal proceedings, the former officer did not raise explicit federal constitutional claims in the state court action. Williams v. Codd, S.D.N.Y.1978, 459 F.Supp. 804. Judgment 828.16(4)

Doctrine of res judicata did not bar property owner's federal civil rights action against county, even though owner previously had sought review in Florida circuit court of county's denial of owner's applications to use his property for commercial "borrow pit," where there had not been final judgment on merits with regard to petitions, since owner voluntarily dismissed the first two petitions for review, and court denied third petition, which was for writ of certiorari, and where constitutional claims could not have been presented in petition for certiorari, which would have been limited to record of commission hearing on permit request. Daugherty v. Sarasota County, Fla., M.D.Fla.1994, 157 F.R.D. 542. Judgment 828.7

5084. ---- Constitutional claims not mentioned in court opinion, issues litigated or subject to litigation, res judicata

State court judgments rejecting plaintiff's claim that she had life estate in real property were res judicata and precluded her from relitigating in federal § 1983 action the constitutional claims that she unsuccessfully raised in state courts; that state courts' opinions failed to mention constitutional claims did not prevent application of res judicata. Clark v. Clark, C.A.8 (Iowa) 1993, 984 F.2d 272, rehearing denied, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60. Judgment 828.16(1)

Former police officer's civil rights action alleging that city violated his equal protection rights by requiring him to take polygraph test as basis for his fitness to continue his employment was barred by res judicata where officer raised constitutional issues in state court, even though state court in denying relief failed to specifically rule on claims. Sturgeon v. City of Bloomington, S.D.Ind.1982, 532 F.Supp. 89. Judgment 828.17(1)

Judgment of Court of Common Pleas, on appeal by tenured teacher from termination of his contract, holding that termination was not illegal, arbitrary or an abuse of discretion, was a conclusive adjudication of entire cause of action and barred federal civil rights action where teacher had asserted constitutional claims in brief filed in Court of Common Pleas, even though that court failed to give explicit attention or recognition to the constitutional claims. Kaufman v. Somers Bd. of Ed., D.C.Conn.1973, 368 F.Supp. 28. Judgment 828.20(1)

Under Arkansas law, res judicata did not bar construction company's § 1983 action against city and city officials for damages arising from their violation of its constitutional rights, despite company's prior appeal of city council's decision to state court, where company could not have raised damages claim in state court, and state court assumed that company could have brought separate damages action. Forrest Const., Inc. v. City of Greenwood, C.A.8 (Ark.) 2003, 77 Fed.Appx. 386, 2003 WL 22295908, Unreported. Judgment 828.7; Judgment 828.16(4)

5085. ---- Due process, issues litigated or subject to litigation, res judicata

Wrecking yard owners' unsuccessful state-court declaratory judgment action against city alleging that city lacked authority to withhold approval of application for state wrecking license renewal was preclusive of owners' subsequent §§ 1983 due process action against city challenging ordinance that conditioned license renewal upon compliance with local land-use regulations; issue of city's power under state law to require compliance with local regulations lay at heart of both actions, regardless of fact ordinance was not directly involved in first action. Thornton v. City of St. Helens, C.A.9 (Or.) 2005, 425 F.3d 1158. Judgment 828.20(1)

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42 U.S.C.A. § 1983

Employee's § 1983 claims against city were part of same claim that he asserted in prior state court action against city and thus, res judicata prevented employee from bringing federal claims; employee's § 1983 claim alleged that city violated his right to be free from unreasonable searches by administering drug test without reasonable suspicion, and his right to due process by failing to provide adequate procedures in connection with his termination for testing positive for marijuana, but in state action employee argued unsuccessfully that city lacked good cause for termination. Strickland v. City of Albuquerque, C.A.10 (N.M.) 1997, 130 F.3d 1408. Judgment 828.15(1)

To extent that landowner claimed that city's demand that environmental impact report be prepared before owner could erect multiple dwelling on property earlier rezoned for such use was a denial of his due process rights, landowner was precluded on res judicata grounds from raising point due to failure to include argument in an earlier mandamus action brought in state court. Jama Const. v. City of Los Angeles, C.A.9 (Cal.) 1991, 938 F.2d 1045, certiorari denied 112 S.Ct. 1293, 503 U.S. 919, 117 L.Ed.2d 516. Judgment 828.16(3)

Record did not establish that plaintiff had presented to state court his claim that his rights to due process and equal protection had been violated by state statute requiring that claims of members of board of education retirement system for accident disability retirement be made within two years of date of accident; thus res judicata principles did not bar plaintiff's actions under this section for deprivation of such constitutional rights. Ornstein v. Regan, C.A.2 (N.Y.) 1978, 574 F.2d 115. Judgment 828.22

Under Tennessee law, prior state court judgment dismissing landowner's state and federal claims challenging zoning board's revocation of zoning variance had preclusive res judicata effect on landowner's § 1983 action in federal court asserting substantive and procedural due process claims and inverse condemnation or takings claim based on same revocation, even though state court erroneously applied law. Rainey Bros. Const. Co., Inc. v. Memphis and Shelby County Bd. of Adjustment, W.D.Tenn.1997, 967 F.Supp. 998, affirmed 178 F.3d 1295, certiorari denied 120 S.Ct. 172, 528 U.S. 871, 145 L.Ed.2d 145, rehearing denied 120 S.Ct. 569, 528 U.S. 1040, 145 L.Ed.2d 444. Judgment 828.11(2)

Assuming the existence of a due process claim, plaintiff, a former city police officer who alleged that his dismissal from the police department was in violation of his civil rights, submitted the federal claims he was not attempting to assert in his prior Article 78 proceeding brought in state court, and having thus had his day in court, the matters he now raised could not be relitigated as claimed constitutional violations. Bergersen v. Codd, E.D.N.Y.1979, 482 F.Supp. 223, affirmed 628 F.2d 1344. Judgment 828.20(1)

Plaintiffs, whose claim that they were deprived of procedural due process when medicare and medicaid benefits were terminated by state and federal defendants without a prior administrative hearing was previously rejected on ground that plaintiffs' property interest would be sufficiently vindicated by means of a post-termination hearing, were estopped, whether under doctrine of collateral estoppel or res judicata, from subsequently asserting that same conduct formed a basis for a claim under this section because it deprived plaintiffs of their property without due process. Schwartzberg v. Califano, S.D.N.Y.1979, 480 F.Supp. 569. Judgment 713(2)

Pennsylvania court's findings that township, in disapproving landowners' development plans, acted in violation of its own ordinances and a court order, were not essential to its final judgment that landowners' plan was deemed approved under Pennsylvania law, and therefore were not entitled to preclusive effect in landowners' § 1983 action alleging that the disapproval of their plans violated their due process rights. Lindquist v. Buckingham Tp., C.A.3 (Pa.) 2004, 106 Fed.Appx. 768, 2004 WL 1598735, Unreported, certiorari denied 125 S.Ct. 1072, 543 U.S. 1121, 160 L.Ed.2d 1069. Zoning And Planning 727

Res judicata barred civil rights claims against parole officers attacking imposition of curfews on parolee on due process grounds, where curfews were attacked in earlier civil rights suit brought against same officers. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Judgment 585(2)

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5086. ---- Cruel and unusual punishment, issues litigated or subject to litigation, res judicata

Determination in state habeas corpus proceeding that state prisoner had not been mistreated while incarcerated in county jail did not, under theory of res judicata, preclude federal district court, in suit under this subchapter from determining whether prisoner's solitary confinement constituted cruel and unusual punishment since even if res judicata applies in civil rights suits the federal court did not lose jurisdiction of civil rights claim when it severed the habeas corpus claim for state exhaustion and was exercising its original jurisdiction in deciding the claim of cruel and unusual punishment, which claim had not been presented to the state court. Campise v. Hamilton, S.D.Tex.1974, 382 F.Supp. 172, appeal dismissed 541 F.2d 279, certiorari denied 97 S.Ct. 1127, 429 U.S. 1102, 51 L.Ed.2d 552. Habeas Corpus 901

5087. ---- Equal protection, issues litigated or subject to litigation, res judicata

Res judicata did not bar New Mexico State Highway and Transportation Department (NMSHTD) employee from going forward with equal protection claim for purpose of recovering full range of damages available under § 1983, notwithstanding state district court decision affirming State Personnel Board (SBP) reinstatement order, although order in state proceeding was binding with regard to terms of reinstatement and calculation of back pay. Nichols v. Danley, D.N.M.2003, 266 F.Supp.2d 1310. Judgment 828.7; Judgment 828.16(4)

Where osteopath either raised or could have raised his claims under civil rights statute in state court proceedings during appeal of revocation of license, osteopath's federal court action under this section alleging that he was denied equal protection and due process of law during license revocation proceedings was barred by res judicata. Vance v. Bowen, D.C.Utah 1984, 596 F.Supp. 1101. Judgment 828.16(1); Judgment 828.16(3)

Determination which was adverse to plaintiff on his Article 78 petition in state court was res judicata and, hence, operated to preclude plaintiff from obtaining legal and equitable relief on his civil rights complaint in federal district court, where assertions made by plaintiff in federal action as to alleged violations of his constitutional rights to due process and equal protection by reason of his termination by defendants from his position as a member of environmental quality control commission of town were identical to those which were considered and rejected on their merits in state proceeding. Hammer v. Town of Greenburgh, S.D.N.Y.1977, 440 F.Supp. 27, affirmed 578 F.2d 1368. Judgment 828.16(1)

5088. ---- Freedom of speech, issues litigated or subject to litigation, res judicata

School board's discharge determination, which was unreviewed by state courts, did not bar, under doctrine of res judicata or collateral estoppel, teacher's § 1983 action alleging that her dismissal violated First Amendment; teacher did not argue before board that she was being discharged in violation of First Amendment and, thus, board did not resolve any disputed issues of fact regarding First Amendment claim which parties had adequate opportunity to litigate. Hall v. Marion School Dist. No. 2, D.S.C.1993, 860 F.Supp. 278, affirmed 31 F.3d 183. Administrative Law And Procedure 501; Schools 147.31

Teacher's action claiming that termination violated her rights to free speech and procedural due process was barred, pursuant to doctrine of res judicata, by South Carolina state court judgment upholding board of education's decision not to renew her contract, with respect to which teacher could have raised constitutional claims, but failed to do so; named defendants in present case were, at least, in privity with parties to state court proceedings, claims in present action were identical to subject matter involved in state court proceedings, and state court rendered final determination on merits. Briggs v. Newberry County School Dist., D.S.C.1992, 838 F.Supp. 232, affirmed 989 F.2d 491. Judgment 828.16(3)

Former city police officer raised his constitutional claims against city arising from his termination in state court so as to bar relitigation of claims on basis of res judicata in federal district court, where officer alleged in his notice of

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appeal to Ohio Court of Common Pleas that appointing authority had no right to restrict him from commenting on matter of public concern in which he himself was being vilified, and officer cited to trial judge First Amendment authority in support of his position, and trial judge found in his findings of fact and conclusions of law that defendants did not infringe upon officer's right to free speech. Krauss v. City of Reading, S.D.Ohio 1992, 810 F.Supp. 212. Judgment 828.7

Where discharged state college official raised for the first time in his federal civil rights action the contention that the actions of defendants were motivated by desire to interfere with the exercise by official of his constitutional right to freely express himself, prior adverse action by state court in discharged official's mandamus action relating to the termination of employment was not res judicata with respect to claimed violation of constitutionally protected freedom of speech. deMarrais v. Community College of Allegheny County, W.D.Pa.1976, 407 F.Supp. 79. Judgment 828.16(4)

5089. ---- Privacy, issues litigated or subject to litigation, res judicata

Even if common-law privacy claim differed from constitutional privacy claim which had been adjudicated against plaintiff, claim currently asserted by the plaintiff was barred by res judicata, since it was clear that plaintiff had already pressed such claim in earlier proceedings. McLaughlin v. Bradlee, D.C.D.C.1984, 599 F.Supp. 839, affirmed 803 F.2d 1197, 256 U.S.App.D.C. 119. Judgment 720

5090. ---- Attorneys, issues litigated or subject to litigation, res judicata

After the Illinois Supreme Court rejected attorney's constitutional challenges to assessment of annual fee by the Illinois Attorney Registration and Disciplinary Commission, attorney was barred, under the doctrine of res judicata, from bringing § 1983 action to challenge the fee assessment; under applicable Illinois law, final decision is preclusive not only on claims and defenses actually presented but also on those that could have been presented. Greening v. Moran, C.A.7 (Ill.) 1992, 953 F.2d 301, rehearing denied, certiorari denied 113 S.Ct. 77, 506 U.S. 824, 121 L.Ed.2d 42. Judgment 828.16(3)

Where constitutional claims concerning suspension of plaintiff from membership in Puerto Rican bar were presented to and considered by Puerto Rico Supreme Court, any particular claims that were not presented would be barred by doctrine of res judicata, and thus plaintiff's subsequent complaint in district court alleging that members of Puerto Rico Supreme Court violated his constitutional rights in suspending him from membership in Puerto Rican bar was barred by res judicata. Martinez Rivera v. Trias Monge, C.A.1 (Puerto Rico) 1978, 587 F.2d 539. Judgment 828.16(3)

Attorneys' claim for damages in § 1983 action for alleged civil rights violations in course of disciplinary proceedings against them would not be precluded by res judicata based on state appellate court's dismissal of their motion to dismiss disciplinary proceedings, which alleged the same civil rights violations, since attorneys were not able to seek damages in their motion to dismiss or in their appeal. Thaler v. Casella, S.D.N.Y.1997, 960 F.Supp. 691. Judgment 828.16(4)

Judgment of Supreme Court of South Carolina disbarring attorney from practice of law was res judicata bar to attorney's federal civil rights action challenging disciplinary rule providing that disbarred person can never be readmitted to practice in South Carolina, where attorney failed to file exceptions to Executive Committee report recommending disbarment and failed to present any constitutional challenges in state disciplinary proceeding. Czura v. Supreme Court of South Carolina As Committee On Rules of Admission To Practice of Law In South Carolina by Ness, D.S.C.1986, 632 F.Supp. 267, affirmed 813 F.2d 644. Judgment 828.8

5091. ---- Condemnation, issues litigated or subject to litigation, res judicata

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Res judicata barred condemned warehouse lessee's § 1983 action arising out of condemnor's computation of relocation expenses, where all claims raised in lessee's action were or could have been litigated both in course of lessee's efforts to resist eviction and in prior action in state court, notwithstanding that hearing had not actually been granted by the state courts. Bartel Dental Books Co., Inc. v. Schultz, C.A.2 (N.Y.) 1986, 786 F.2d 486, certiorari denied 106 S.Ct. 3298, 478 U.S. 1006, 92 L.Ed.2d 713. Eminent Domain 243(2)

Where city's right to condemn property had been litigated between city and plaintiff's assignor, and determined adversely to plaintiff's assignor after full discovery and hearing, plaintiff's civil rights claim, resting upon relitigation of city's right to condemn, was barred by res judicata and collateral estoppel principles. Chasteen v. Trans World Airlines, Inc., C.A.8 (Mo.) 1975, 520 F.2d 714. Judgment 828.16(1)

Claimant who had been found in previous state court action to have no interest in property could not maintain § 1983 claim that condemnation of that property had denied him his civil rights. Smith v. Metropolitan Development Housing Agency By and Through Nicely, M.D.Tenn.1994, 857 F.Supp. 597. Judgment 828.16(1)

5092. ---- Employment, issues litigated or subject to litigation, res judicata

Res judicata did not preclude municipal employee's claim of political discrimination to extent it was premised on new conduct occurring after employee's return to work following settlement in earlier litigation; employee alleged that, after his return, municipality and mayor failed to assign him to any meaningful duties or responsibilities, and that he was harassed and excluded from participation despite his appointment to career position. Gonzalez-Pina v. Rodriguez, C.A.1 (Puerto Rico) 2005, 407 F.3d 425. Judgment 585(5)

Prison warden's grievance hearing was not sufficiently like a judicial proceeding for finding of no retaliation by Director of state Department of Corrections to be given preclusive effect in warden's § 1983 action for First Amendment retaliation, where Director had been personally involved in underlying events and was unavailable as witness, warden was unable to subpoena witnesses, witnesses were not sworn, hearing lasted only two hours, and Director's decision letter did not make detailed findings of fact and conclusions of law. Campbell v. Arkansas Dept. of Correction, C.A.8 (Ark.) 1998, 155 F.3d 950, rehearing and suggestion for rehearing en banc denied. Administrative Law And Procedure 501; Prisons 7

Former police officer's civil rights action against town's board of selectmen for its alleged selective enforcement against him of residency requirement was barred, pursuant to doctrine of res judicata, as result of police officer's failure to raise selective enforcement claim in action in Massachusetts state court, wherein he sought declaration that bylaw establishing requirement was invalid because it conflicted with state law and injunction barring enforcement of bylaw. Mulrain v. Board of Selectmen of Town of Leicester, C.A.1 (Mass.) 1991, 944 F.2d 23. Judgment 828.16(3)

Allegedly new claims presented by suspended jockey in civil rights action had actually been litigated in prior New York state court proceeding challenging suspension, barring jockey from relitigating such claims. Vasquez v. Van Lindt, C.A.2 (N.Y.) 1983, 724 F.2d 321. Judgment 828.16(1)

Discharged police officer who had previously sued in state court attacking the sufficiency of the evidence to support findings of rules violations was barred, by res judicata, from subsequently maintaining federal civil rights action challenging the termination of his employment; federal civil rights claims could and should have been raised in the state court proceedings. Brown v. St. Louis Police Dept. of City of St. Louis, C.A.8 (Mo.) 1982, 691 F.2d 393, certiorari denied 103 S.Ct. 1882, 461 U.S. 908, 76 L.Ed.2d 812. Judgment 828.16(3)

Where discharged teacher's employment discrimination claim against school board had already been adjudicated on merits in state court action, doctrines of res judicata or collateral estoppel barred teacher's subsequent suit in federal court asserting same claim against school district under this section. Jennings v. Caddo Parish School Bd.,

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C.A.5 (La.) 1976, 531 F.2d 1331, certiorari denied 97 S.Ct. 260, 429 U.S. 897, 50 L.Ed.2d 180. Judgment 828.12

Decisions of Oklahoma Supreme Court holding that 11 Okl.St.Ann. § 541s requiring a specified "Board of Review" in dismissal proceedings involving police officers was not applicable in action by discharged officer so as to require a board hearing when pension and retirement rights were not involved were res judicata in subsequent civil rights action wherein police officer sought reinstatement and money damages for alleged denial of procedural due process, where officer was suing same city officials or their successors on same facts, and core of his claim, i.e., dismissal from employment without a due process hearing, remained the same. Spence v. Latting, C.A.10 (Okla.) 1975, 512 F.2d 93, certiorari denied 96 S.Ct. 198, 423 U.S. 896, 46 L.Ed.2d 129. Judgment 828.12

Due process claims arising from police officer's termination were not barred by officer's successful proceeding in New York state court challenging termination under Article 78. Clow v. Deily, N.D.N.Y.1997, 953 F.Supp. 446. Judgment 828.16(1); Municipal Corporations 185(12)

Registered nurse anesthetist's civil rights claim under § 1983 and her request for declaratory judgment against termination of privileges at hospital could have been brought in Mississippi Chancery Court, and thus, nurse was precluded from bringing them in federal court, even though § 1983 claim was constitutionally based. Wicker v. Union County General Hosp., N.D.Miss.1987, 673 F.Supp. 177. Judgment 828.16(3)

Under principles of res judicata, State Superior Court judgment which upheld state employee's demotion on both substantive and procedural grounds precluded employee's subsequent federal action under this section challenging his demotion on due process and equal protection grounds, and fact that employee added new claims not previously litigated did not change such result, where employee either expressly waived them below or did so implicitly by failing to assert them at either administrative or state judicial levels. Howkins v. Caldwell, N.D.Ga.1983, 587 F.Supp. 98, affirmed 749 F.2d 731, certiorari denied 105 S.Ct. 2361, 471 U.S. 1117, 86 L.Ed.2d 261. Judgment 828.21(1)

Where examination of record of discharged city employee's state proceedings revealed nothing from which it could be inferred that federal constitutional issues were either raised or decided in such proceedings, res judicata did not bar consideration of the constitutional claims in subsequent federal civil rights action. Ohland v. City of Montpelier, D.C.Vt.1979, 467 F.Supp. 324. Judgment 828.16(4)

5093. ---- Environment, issues litigated or subject to litigation, res judicata

City's section 1983 action claiming that State Environmental Protection Agency was unconstitutionally enforcing state fluoridation law was barred by res judicata; city could have raised that issue in initial state court litigation which involved identical overall issue as to enforceability of fluoridation legislation, and which had essentially identical parties, with mere addition of two private plaintiffs in federal action. City of Canton, Ohio v. Maynard, C.A.6 (Ohio) 1985, 766 F.2d 236. Judgment 828.16(3)

5094. ---- Tax assessments, issues litigated or subject to litigation, res judicata

Under Colorado claim preclusion principles, property owner that pursued state administrative and judicial review of its property tax assessment could have raised federal civil rights claim in state court and, therefore, state court judgment had res judicata effect in subsequent civil rights action in federal court. Crocog Co. v. Reeves, C.A.10 (Colo.) 1993, 992 F.2d 267, rehearing denied. Judgment 828.16(3)

Where landowner failed in her state court action to have conveyance of her home by city, which had acquired title by sale of property for failure of owners to pay installment due under bonded improvement assessment levied by city, set aside on grounds that she did not have notice of delinquency, sale or rights under state law to redeem

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property, owner was barred by doctrine of res judicata from bringing separate action in federal district court under this section in which she sought to regain title to land under contentions that her civil rights were violated by sale of her property without notice. Scoggin v. Schrunk, C.A.9 (Or.) 1975, 522 F.2d 436, certiorari denied 96 S.Ct. 807, 423 U.S. 1066, 46 L.Ed.2d 657. Judgment 828.21(1)

Since school board and county which sought to assess additional taxes against electric company could have argued in state court action to assess taxes that denial of those taxes while the electric company was constructing its power plant denied equal protection in the tax exempt charities did not receive exemption while their facilities were being constructed, equal protection argument did not arise only when state supreme court denied allocatur in the action so that the state court judgment barred, under res judicata doctrine, federal court's civil rights action to recover the taxes. Lancaster County v. Philadelphia Elec. Co., E.D.Pa.1975, 386 F.Supp. 934. Judgment 828.16(3)

5095. ---- Miscellaneous issues, issues litigated or subject to litigation, res judicata

Debtor could have raised his claims that judgment debt was fraudulently obtained by invoking bankruptcy jurisdiction of district court when it heard his § 1983 claim alleging that he was deprived of his right to fair trial in state court suit, and thus adverse district court judgment was res judicata barring subsequent fraud claim. Browning v. Navarro, C.A.5 (Tex.) 1989, 887 F.2d 553, rehearing denied 894 F.2d 99. Judgment 713(2)

Where tenants, in their amended answer to unlawful detainer complaint filed by landlord in state court, raised constitutional question of whether issues other than right to possession must be allowed to be presented in an unlawful detainer action, so that issue was preserved for appeal through state courts, plaintiffs were precluded by principles of res judicata from subsequently raising same constitutional issue in a separate action in federal court involving same parties, even though it was brought as a civil rights action, after an adverse determination by state court. Hutcherson v. Lehtin, C.A.9 (Cal.) 1973, 485 F.2d 567. Judgment 828.20(1)

Harness race horse driver could not have brought his § 1983 claim for the first time when he moved to reargue before New York's Supreme Court, Appellate Division, or when he moved for leave to appeal to New York's Court of Appeals and therefore, driver was not barred from bringing his § 1983 claim before federal district court by New York's doctrine of res judicata; substance of reargument and claims on appeal were limited to those claims which had been squarely before court in original Article 78 proceeding. Parker v. Corbisiero, S.D.N.Y.1993, 825 F.Supp. 49. Judgment 828.16(4)

Under New Jersey law, physician's § 1983 claim could have been brought in his prior state court action, and thus, § 1983 claim was barred by doctrine of claim preclusion as result of state court's entry of summary judgment for defendants on all of physician's state law claims. Untracht v. West Jersey Health System, D.N.J.1992, 803 F.Supp. 978, affirmed 998 F.2d 1006. Judgment 828.16(3)

Res judicata barred alleged victim of phone harassment and stalking from making claims against city and its officials in current civil rights action, for failure to include defendants as parties in previous litigation; although trial court denied victim's motion to amend to add those parties to prior action, victim litigated that denial. Khan v. Mecham, C.A.10 (Utah) 2003, 80 Fed.Appx. 50, 2003 WL 22436237, Unreported, certiorari denied 125 S.Ct. 302, 543 U.S. 825, 160 L.Ed.2d 37. Judgment 574; Judgment 632

Prior dismissal of mental patient's § 1983 suit challenging his continued confinement as sexual predator on ground that it was frivolous precluded, on res judicata grounds, patient's subsequent § 1983 suit asserting claims previously found to have been frivolous. Von Flowers v. Wisconsin Dep't of Health & Family Servs., C.A.7 (Wis.) 2003, 58 Fed.Appx. 649, 2003 WL 352039, Unreported. Judgment 570(5)

Parolee's prior civil rights claims arising out of parole officers' allegedly erroneous use of rap sheets in imposition special conditions upon parole did not present res judicata bar to claim that officers' systematic concealment of

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third-party rap sheets was arbitrary and capricious, as later claim required affirmative act by parole officers, which was not raised or litigated in prior actions. Pena v. Travis, S.D.N.Y.2002, 2002 WL 31886175, Unreported. Judgment 585(3)

5096. Identity of claims, res judicata--Generally

When a civil rights action is brought in federal court which presents same issue as was decided in a prior state civil action, that prior state judgment may have a collateral estoppel, or res judicata, effect upon federal suit, and this result may be reached without regard to highly technical notions of mutuality. Mastracchio v. Ricci, C.A.1 (R.I.) 1974, 498 F.2d 1257, certiorari denied 95 S.Ct. 828, 420 U.S. 909, 42 L.Ed.2d 838. Judgment 828.21(1)

Prior state court adjudication of federal constitutional right bars subsequent federal action seeking vindication of same right. Brown v. DeLayo, C.A.10 (N.M.) 1974, 498 F.2d 1173. Judgment 828.20(1)

Fact that former prisoner did not receive damages in his prior state court action for mandamus and habeas corpus which resulted in his release from prison did not preclude application of res judicata to his § 1983 action which was based on same facts as state court action; under Illinois law, former prisoner was entitled to recover both damages and costs as prevailing plaintiff in state court mandamus action, and former prisoner could have joined claim for damages in prior action under § 1983. Rooding v. Peters, N.D.Ill.1995, 876 F.Supp. 946, reversed 92 F.3d 578, on remand 173 F.R.D. 511. Judgment 828.16(3)

The principle of res judicata applies to actions under this section and operates as bar to relitigation of constitutional issues actually raised as well as to constitutional issues that could have been raised in a prior lawsuit if the second lawsuit concerned the same operative nucleus of fact. Vorbeck v. Whaley, E.D.Mo.1979, 478 F.Supp. 1117, affirmed 620 F.2d 191. Judgment 713(2); Judgment 720

5097. ---- Employment generally, identity of claims, res judicata

Decision and Order issued by university's Civil Service Merit Board did not decide issue identical to that decided in subsequent §§ 1983 race discrimination action, and collateral estoppel thus did not apply pursuant to Illinois law, inasmuch as Decision and Order did not incorporate hearing officer's findings of fact, and merely held that proceeding had been conducted in compliance with Illinois law, that Board had jurisdiction, that transcript and hearing record did not support and sustain charges of employer, and that employer failed to establish just cause for demotion. Goodwin v. Board of Trustees of University of Ill., C.A.7 (Ill.) 2006, 442 F.3d 611. Colleges And Universities 8.1(5)

Race horse trainer's § 1983 claims against track which excluded him from racing in 1981 arose out of same "transaction or series of transactions," for res judicata purposes, as previously litigated § 1983 claims against same track based on his exclusion from racing in 1985 and 1986; in both instances, trainer had been excluded based on same allegations that he was running ringers. Catrone v. Ogden Suffolk Downs, Inc., D.Mass.1988, 683 F.Supp. 302. Judgment 609

Res judicata did not preclude current civil rights lawsuit against city brought by Latino and African-American police officers claiming discrimination, although police officer previously brought case against city alleging that policy which required police officers to obtain permission before testifying or speaking publicly on police department matters was unconstitutional; some events at issue in current case antedated filing of prior suit, but evidence needed to support prior action did not include sort of discrimination claimed in current suit, and facts essential to proof of current case were not present in prior case. Latino Officers Ass', Inc. v. City of New York, S.D.N.Y.2003, 2003 WL 21437057, Unreported. Judgment 585(3)

5098. ---- Discharge or dismissal, identity of claims, res judicata

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42 U.S.C.A. § 1983

Federal full faith and credit statute did not apply to determination of preclusive effect, in teacher's § 1983 action alleging that school district's termination of her employment violated First Amendment, of school board's factual findings, but, rather, federal common-law rules of issue preclusion applied; teacher did not appeal termination in state court and, thus, federal court was presented with unreviewed state administrative decision. Hall v. Marion School Dist. No. 2, C.A.4 (S.C.) 1994, 31 F.3d 183. Federal Courts 433

Former city employee's § 1983 suit claiming that his discharge violated his due process and freedom of speech rights was barred by res judicata where it concerned same claim involving constitutionality of city work rule under which employee was discharged and which had been subject of employee's unsuccessful state court action. Medvick v. City of University City, Mo., C.A.8 (Mo.) 1993, 995 F.2d 857, certiorari denied 114 S.Ct. 468, 510 U.S. 976, 126 L.Ed.2d 419. Judgment 828.15(1)

Claim in § 1983 civil rights action, that former county employee was dismissed without due process, was barred by res judicata under Ohio law and full faith and credit clause where employee's due process cause of action was previously advanced in a state court suit based on same necessary facts. Osborn v. Ashland County Bd. of Alcohol, Drug Addiction and Mental Health Services, C.A.6 (Ohio) 1992, 979 F.2d 1131. Judgment 828.4(2); Judgment 828.15(1)

School teacher's civil rights action against school district challenging her dismissal was barred by a prior unsuccessful litigation in California state court; any procedural disadvantages which might have accrued to teacher had she attempted first to litigate her section 1983 claims in a federal forum were insufficient to justify an exception to the traditional doctrines of preclusion. Takahashi v. Board of Trustees of Livingston Union School Dist., C.A.9 (Cal.) 1986, 783 F.2d 848, certiorari denied 106 S.Ct. 2916, 476 U.S. 1182, 91 L.Ed.2d 545. Judgment 828.8

Police officer, who had brought state court action alleging that his dismissal was result of race discrimination, was barred on res judicata grounds from maintaining subsequent civil rights suit in federal court based on claim that his discharge was discriminatory. Lee v. City of Peoria, C.A.7 (Ill.) 1982, 685 F.2d 196. Judgment 828.15(1)

Under Maine law, state criminal court's determination, in prosecution that ended with acquittal, that police had probable cause to arrest was not preclusive in acquittee's subsequent § 1983 action against police officers alleging that arrest lacked probable cause, since acquittee never had opportunity to appeal adverse probable cause ruling. Wilson v. Lyons, D.Me.2003, 270 F.Supp.2d 73. Judgment 828.8

Discharged employee's § 1983 claim was not precluded by doctrine of res judicata due to state agency decision reinstating employee with back pay; administrative decision-making process, subject only to limited judicial review, was distinguishable from § 1983 action involving full trial with right to have factual issues resolved by jury. Helms v. Rafter, W.D.N.C.1994, 853 F.Supp. 897. Administrative Law And Procedure 501; Officers And Public Employees 72.33(1)

Former deputy sheriff's § 1983 action against county challenging his discharge was barred by res judicata and collateral estoppel because deputy had already litigated issue of his alleged wrongful termination through civil service commission and state court, and former deputy had opportunity to raise any and all arguments underlying his claim for wrongful termination through state court proceedings. Roberts v. Wood County Com'n, S.D.W.Va.1992, 782 F.Supp. 45, affirmed 993 F.2d 1538. Judgment 828.7; Judgment 828.16(1)

State court decision, which found that county employee had not established elements of constructive discharge or involuntary resignation, and thus that his resignation was not grievable under employee manual, acted as res judicata to preclude county employee from bringing civil rights action in federal court against county, which alleged that his resignation was involuntary discharge in violation of his First and Fourteenth Amendment rights; review of briefs filed by parties in state court proceeding showed that the elements of involuntary resignation of

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deliberate intent of employer and intolerability of working conditions were squarely before state court and argued by counsel. Dennison v. County of Frederick, W.D.Va.1989, 726 F.Supp. 137, affirmed 921 F.2d 50, certiorari denied 111 S.Ct. 2828, 501 U.S. 1218, 115 L.Ed.2d 998. Judgment 828.20(1)

There was no identity of causes of action between state court proceeding in which former township police chief challenged dismissal and his action in federal court alleging that his dismissal violated his constitutional rights where Police Tenure Act, 2 Pa.C.S.A. § 754 et seq., which governed the former police chief's state court challenge to his dismissal, did not provide for making of claim for damages for violations of constitutional or statutory rights, state courts reviewing the discharge, although able to reinstate successful party with back pay, were directed entirely to affirming or modifying decision of local agency, and former police chief sought damages in his federal court action, and thus doctrine of res judicata did not bar the former police chief's federal court action. Kelly v. Warminster Tp. Bd. of Sup'rs, E.D.Pa.1981, 512 F.Supp. 658, affirmed 681 F.2d 806, certiorari denied 103 S.Ct. 76, 459 U.S. 834, 74 L.Ed.2d 74. Judgment 828.15(1)

Res judicata barred federal action alleging that plaintiff had been discharged in retaliation for exercise of his rights under U.S.C.A.Const. Amend. 1 and had been denied due process in that special discharge meeting had been illegal under state law, where same issues had been ruled upon by state court and differences between the two proceedings were merely technical. Tomsick v. Jones, D.C.Colo.1979, 464 F.Supp. 371. Judgment 828.12

Where discharged college official had argued in his brief in unsuccessful mandamus action in state court that he had been denied procedural due process with respect to the termination of his employment, action of state court was res judicata with respect to causes of action founded on denial of procedural due process in federal civil rights action. deMarrais v. Community College of Allegheny County, W.D.Pa.1976, 407 F.Supp. 79. Judgment 828.16(1)

Former policeman who, upon his discharge and at every stage of Article 78 proceeding, raised constitutional issue of deprivation of due process by reason of claimed administrative finding of "suspicion" of involvement in homicide without being charged of homicide, could not, under doctrine of res judicata, relitigate same constitutional issue by asserting a claim under this section. Hanzimanolis v. Codd, S.D.N.Y.1975, 404 F.Supp. 719, affirmed 538 F.2d 309. Judgment 828.16(1)

Res judicata did not bar Latino and African-American police officers in current civil rights lawsuit against city from claiming discrimination in discipline and retaliation, although minority officer brought prior action challenging police department's refusal to recognize minority police officer association in alleged violation of its associational and other constitutional rights; claims in former action did not have anything in common with claims in current action, and city could not be in better position with respect to individual officers than it enjoyed with respect to association. Latino Officers Ass', Inc. v. City of New York, S.D.N.Y.2003, 2003 WL 21437057, Unreported. Judgment 585(3)

5099. ---- Promotion, identity of claims, res judicata

Claim by former employee of department of children and family services (DCFS) that she was denied promotion on basis of her sex in violation of § 1983 and Title VII involved different cause of action than did state challenge to propriety of her subsequent dismissal, and thus, state court's affirmance of decision that dismissal was not improper did not bar on res judicata grounds federal claims for denial of promotion; denial of promotion would have been of marginal, if any, relevance to defense of charges against employee in state proceedings, and vast majority of events giving rise to dismissal occurred after alleged denial of promotion. Welch v. Johnson, C.A.7 (Ill.) 1990, 907 F.2d 714.

Action under this section alleging that metropolitan district commission violated patrolmen's due process and equal protection rights as result of failure to follow promotional hiring procedures was barred by res judicata where

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patrolmen raised substantially same claims in state and federal court actions and sought same relief, even though patrolmen claimed that they did not raise federal civil rights claims in state court. Casagrande v. Agoritsas, C.A.1 (Mass.) 1984, 748 F.2d 47. Judgment 828.15(1)

5100. ---- Reinstatement, identity of claims, res judicata

Portion of plaintiff's federal civil rights complaint alleging deprivation of constitutional rights in connection with defendants' failure to comply with decision of civil service board was barred, under doctrine of res judicata, by prior California State court action in which plaintiff sought writ of mandamus compelling museum to comply with civil service board's order of reinstatement, since decision of civil service board relied on in federal action was very matter which was subject of state court litigation. Gallagher v. Frye, C.A.9 (Cal.) 1980, 631 F.2d 127. Judgment 828.21(1)

Judgment, in prior Article 78 proceeding which was brought in state court by county public employer relations board to enforce order directing professor's reinstatement with back pay and in which professor participated, that evidence was insufficient to prove professor's claim that her contract was not renewed because of her union activities was res judicata in subsequent civil rights action brought in federal court by professor for reinstatement and damages on issue of whether professor's contract was no renewed because of her union activities. Roode v. Michaelian, S.D.N.Y.1974, 373 F.Supp. 53. Judgment 828.14(8)

5101. ---- Landlord and tenant, identity of claims, res judicata

Tenant's §§ 1983 claims against housing officials and landlord's architect were precluded by the doctrine of res judicata where claims based on the same factual predicate, and similar allegations were previously dismissed based on statute of limitations grounds. Dibbs v. Roldan, S.D.N.Y.2005, 356 F.Supp.2d 340. Judgment 570(5); Judgment 585(2)

Doctrine of res judicata precluded recovery in civil rights action brought by landlords alleging that city officials arbitrarily, capriciously and unlawfully regulated the rents they were permitted to charge their tenants in one apartment building since allegations of complaint were essentially the same as those in prior unsuccessful inverse condemnation action asserted in state court. 290 Madison Corp. v. Capone, D.C.N.J.1980, 485 F.Supp. 1348. Judgment 828.12

5102. ---- Licenses and permits, identity of claims, res judicata

Where question of constitutionality of local park rule against pamphleteering without a license was at issue and determined against the plaintiffs in a state court trial for violating the rule, res judicata barred the plaintiffs from again litigating the issue in a civil rights suit in federal court. Thistlethwaite v. City of New York, C.A.2 (N.Y.) 1974, 497 F.2d 339, certiorari denied 95 S.Ct. 686, 419 U.S. 1093, 42 L.Ed.2d 686. Judgment 828.11(3)

Under either "same evidence" test or "transactional" test, § 1983 claim of owners of day care center against Department of Children and Family Services (DCFS) official for allegedly sending letter to parents of children enrolled in day care center informing them of licensing violations and recommending they find alternative day care arrangements in retaliation for owners' request for administrative hearing on license revocation was same cause of action as claim previously brought in Illinois state court against DCFS challenging revocation of license, where same proof would have been used to establish § 1983 claim against official as would have been used to show that DCFS improperly revoked license, and both actions arose out of same group of operative facts. Cooper v. Suter, C.D.Ill.1993, 834 F.Supp. 282. Judgment 828.15(1)

Physician's civil rights action arising from state's revocation of his license to practice medicine was precluded by prior state court decision, which rejected physician's appeal from revocation order, and prior federal court action,

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in which district court held that revocation of medical license did not create federal civil rights claim; physician's due process claim had already been litigated twice. Damino v. Barrell, E.D.N.Y.1988, 702 F.Supp. 954, affirmed 875 F.2d 307, certiorari denied 110 S.Ct. 69, 493 U.S. 817, 107 L.Ed.2d 36. Judgment 715(2); Judgment 828.7

Where motor vehicle parts business which was originally refused necessary permits and licenses to move business to different location had thereafter brought successful state court action vindicating business' entitlement to permits and licenses, parts business had not been deprived of any substantive due process right under U.S.C.A. Const. Amend. 14, and could not, in form of action under this section against city and city council, relitigate in federal court issue of propriety of city council's decision. Minneapolis Auto Parts Co., Inc. v. City of Minneapolis, D.C.Minn.1983, 572 F.Supp. 389. Civil Rights 1072

5103. ---- Prisons and prisoners, identity of claims, res judicata

Jury verdict, in transsexual inmate's § 1983 action against subordinate prison officials, which found those officials not liable for the inmate's injuries in an assault by another inmate, did not preclude liability on the part of the warden, in the transsexual inmate's action alleging deliberate indifference to a risk of harm to her, in violation of the Eighth Amendment; issues of whether warden was aware of a substantial risk to the transsexual inmate's safety, and whether he failed to take reasonable steps to guard against that risk, were not litigated in the prior case. Greene v. Bowles, C.A.6 (Ohio) 2004, 361 F.3d 290. Civil Rights 1358

State inmate's claim in §§ 1983 action that prison officials deprived him of his right to access law library in connection with his federal habeas proceeding was barred under doctrine of res judicata, where inmate had raised issue in his prior §§ 1983 suit based on same underlying facts, court granted officials summary judgment in prior suit, and warden and prison librarian were named in both suits. Brooks v. Alameida, S.D.Cal.2006, 446 F.Supp.2d 1179. Judgment 627

Previous action brought by state prisoner in New York Court of Claims, seeking damages from state and state officials in their official capacities for failure to protect him from asbestos exposure, was not res judicata bar to prisoner's subsequent §§ 1983 action against officials in their individual capacities, alleging that same conduct violated his constitutional rights; Court of Claims had lacked jurisdiction to adjudicate current claim. Pack v. Artuz, S.D.N.Y.2004, 348 F.Supp.2d 63. Judgment 828.7

Section 1983 claim brought by condemned prisoner against state Department of Corrections, alleging civil rights violations through manner of pending execution, was not barred by res judicata, notwithstanding summary judgment against prisoner in prior state proceeding, where Amended Execution Protocol that was basis of prisoner's present challenge was not made available to prisoner in prior proceeding. Oken v. Sizer, D.Md.2004, 321 F.Supp.2d 658, stay vacated 124 S.Ct. 2868, 542 U.S. 916, 159 L.Ed.2d 290. Judgment 828.8; Judgment 828.16(4)

Circumstance that in each of two civil rights actions prisoner charged conspiracy against him by prison officials did not cause earlier action to be res judicata on issues pleaded in the later action where the later action involved alleged deprivation of rights during a later time period and at different penal institution than were involved in the earlier action. Wells v. McGinnis, S.D.N.Y.1972, 344 F.Supp. 594. Judgment 585(3)

Issue preclusion barred litigation of civil rights false imprisonment claim based on post-conviction confinement, as claim was merely variant of claim for malicious prosecution, and previous litigation had determined that officers and prosecutor had probable cause to arrest and prosecute civil rights plaintiff on criminal charges. McNally v. Colorado State Patrol, C.A.10 (Colo.) 2004, 122 Fed.Appx. 899, 2004 WL 2445576, Unreported. Judgment 715(2)

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42 U.S.C.A. § 1983

District court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine over prisoner's § 1983 action against sheriff's department alleging officials failed to provide him with legal research materials, where prisoner had previously litigated case against same defendants and raising same legal arguments in state court. Smith v. Lawrence County Sheriff's Department, C.A.6 (Ohio) 2003, 84 Fed.Appx. 562, 2003 WL 23095570, Unreported. Courts 509

Prior Illinois state court judgment, in which court had dismissed prison inmate's writ of mandamus action in which he demanded that Illinois prison officials ship 99 boxes of his property to California where he had been transferred, had the same preclusive effect in federal court as it would have in Illinois' courts; thus, res judicata precluded inmate's subsequent federal civil rights case involving the same parties and the same series of events that he litigated in prior mandamus action. Walker v. Page, C.A.7 (Ill.) 2003, 59 Fed.Appx. 896, 2003 WL 1120232, Unreported. Judgment 828.8; Judgment 828.12

5104. ---- Real property, identity of claims, res judicata

Under *Rooker-Feldman* doctrine, district court lacked subject matter jurisdiction to consider §§ 1983 claims arising from property line dispute which had been resolved in state courts; whether framed as state or federal claims, plaintiffs' facts and allegations were for all intents and purposes identical to those litigated in state court cases, and plaintiffs asked the federal court not only to legally recognize and enforce a survey which was precisely contrary to the boundary line established by state courts, but to direct county officials to act in a fashion contrary to the state courts' holdings. Willhite v. Collins, D.Minn.2005, 385 F.Supp.2d 926. Courts 509

Claim brought by landowner against town, municipal employees, and building inspector, stemming from town's demolition of dangerous structure on premises, arose from same factual grouping as landowner's earlier § 1983 action involving town's initial search of property, and thus res judicata barred claim as to all individual defendants except inspector; town became aware of structural problems during initial search, to which all individual defendants except inspector were party. Davis v. Town of Hempstead, E.D.N.Y.2003, 296 F.Supp.2d 376, affirmed in part, vacated in part and remanded 167 Fed.Appx. 235, 2006 WL 172216, on remand 2006 WL 656995 . Judgment 585(2); Judgment 707

State court judgment declaring deeds fraudulent and void was res judicata in federal civil rights action wherein plaintiff sought to assert ownership of real property conveyed by deeds. Hohensee v. Grier, M.D.Pa.1974, 373 F.Supp. 1358, affirmed 524 F.2d 1403, certiorari denied 96 S.Ct. 2659, 426 U.S. 940, 49 L.Ed.2d 392, rehearing denied 97 S.Ct. 196, 429 U.S. 874, 50 L.Ed.2d 158. Judgment 828.20(1)

Property owner's claim against county, stemming from demolition of dangerous structure on premises, was barred by res judicata, where claim arose from same factual grouping as landowner's earlier §§ 1983 action involving initial search of property and contained no new allegation that county was involved in demolition. Davis v. Town of Hempstead, C.A.2 (N.Y.) 2006, 167 Fed.Appx. 235, 2006 WL 172216, Unreported. Judgment 585(2)

Property owner's § 1983 claims against town and town officials, based upon the demolition of building on his property were not precluded, under doctrine of res judicata, by owner's prior § 1983 action against same defendants, where building had not been demolished at time prior suit was filed. Davis v. Ferdico, C.A.2 (N.Y.) 2003, 67 Fed.Appx. 43, 2003 WL 21309149, Unreported. Judgment 585(5)

5105. ---- Taking without compensation, identity of claims, res judicata

Federal takings claim, based on claim that airplane flights over property constituted taking, was essentially the same as that raised in Florida inverse condemnation action, and therefore doctrine of res judicata would bar subsequent federal takings action, even though, unlike under Florida law, federal takings law did not include requirement that property owner establish absolute decree in property value over time. Fields v. Sarasota Manatee

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Airport Authority, C.A.11 (Fla.) 1992, 953 F.2d 1299. Judgment 828.15(1)

Cause of action asserted in civil rights action claiming that public utility acting under color of state law of eminent domain deprived plaintiff of rights secured to him by U.S.C.A.Const. Amends. 5 and 14 § 1 was the same as that alleged in prior condemnation action, where violation of right to own and hold property free from unlawful interference was alleged in both actions; thus, theory posited for first time in the civil rights action that condemnor had acted beyond scope of its statutory authority could have been litigated in the condemnation suit and principle of res judicata prevented its being litigated in civil rights action. Brown v. Georgia Power Co., S.D.Ga.1973, 371 F.Supp. 543, affirmed 491 F.2d 117, certiorari denied 95 S.Ct. 66, 419 U.S. 838, 42 L.Ed.2d 65. Eminent Domain 243(2)

5106. ---- Tax assessments, identity of claims, res judicata

Prior Washington court judgment determining that county had written duty to proceed on sewer project and levy assessment without initiative election involved same subject matter, same "transactional nucleus of facts," and qualitatively identical parties as did subsequent § 1983 action in which landowners alleged that public officials conspired to deprive them of their civil rights by denying them their right to vote on project and by assessing them cost of project, and thus, res judicata barred § 1983 action, because rights established in state court action would be impaired by prosecution of federal action, because only change of parties was the addition of county assessor treasurer, in her official capacity, in civil rights action, and because allegations of conspiracy could have been raised by defense or counterclaim in state action. Sewer Alert Committee v. Pierce County, C.A.9 (Wash.) 1986, 791 F.2d 796. Judgment 828.16(1); Judgment 828.16(3)

5107. ---- Voting and elections, identity of claims, res judicata

Doctrine of res judicata barred candidates for county legislature from bringing §§ 1983 action alleging that county elections board's refusal to tally absentee ballots violated their federal constitutional rights, where candidates were parties to prior state court decisions invalidating absentee ballots used in election. Hoblock v. Albany County Bd. of Elections, N.D.N.Y.2004, 341 F.Supp.2d 169, remanded 422 F.3d 77, on remand 233 F.R.D. 95. Judgment 828.14(1); Judgment 828.15(1)

Civil rights action challenging number of signatures required for recall of officials of particular water and sanitation district was barred by res judicata effect of prior state court action, even though in prior state court action, plaintiffs raised challenge based on state equal protection grounds while in federal action they asserted federal equal protection claims and their right to petition government for redress of grievance under U.S.C.A. Const. Amend. 1. Delve v. Three Lakes Water & Sanitation Dist., D.C.Colo.1983, 568 F.Supp. 662. Judgment 828.21(1)

Where city councilman candidate did not allege or argue denial of due process in the state courts but rather sole constitutional claim made by him in state courts was that McKinney's N.Y.Election Law § 153 would be unconstitutional unless there was a compelling state interest for interpreting it as the lower court had done and another candidate's "due process claim" was not adjudicated by the state courts, res judicata did not bar candidate and other plaintiffs from pursuing their federal civil rights claim that candidate, and hence voters, had been unconstitutionally denied access to the ballot on due process grounds. Williams v. Sclafani, S.D.N.Y.1978, 444 F.Supp. 906, affirmed 580 F.2d 1046. Judgment 828.15(1)

Where claim which disbarred attorney sought to litigate in federal district court in his civil rights action against state Supreme Court justices and other state officers and which alleged that Supreme Court's decision aborting his candidacy for office of justice violated his constitutional rights was same claim previously passed upon by state Supreme Court when it denied his placement on ballot for the office of justice, doctrine of res judicata was applicable to bar federal suit. Peterson v. Knutson, D.C.Minn.1973, 367 F.Supp. 515, affirmed 505 F.2d 736.

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42 U.S.C.A. § 1983

Judgment 828.20(1)

5108. ---- Zoning, identity of claims, res judicata

Restaurant's § 1983 action based on selective enforcement of zoning restriction was not barred by claim preclusion under New York law where prior state action against zoning board sought to reverse board's decision on restaurant's application to eliminate from its variance the restriction that cabaret hours were to start no earlier than ten p.m., harassment of restaurant alleged in discriminatory enforcement of laws did not arise from same set of facts as prior action, did not involve same actors, and new suit depended on allegations of summonses, violations, fines, arrest, and selective discriminatory treatment that were not involved in prior action. LaTrieste Restaurant and Cabaret Inc. v. Village of Port Chester, C.A.2 (N.Y.) 1994, 40 F.3d 587. Judgment 828.15(1)

Landowner's cause of action against city for temporary taking of his property through invalid zoning was not barred by res judicata on basis of earlier action against city, in which landowner had sought mandamus to compel approval of preliminary site plans and challenged validity of ordinances; none of issues presented by taking claim were actually litigated in earlier state proceedings; and determination, judicially or otherwise, that acts were proper under applicable ordinance would not have dictated finding that there was no taking. Corn v. City of Lauderdale Lakes, C.A.11 (Fla.) 1990, 904 F.2d 585. Judgment 828.16(4)

Adult entertainment establishment's action seeking declaration that city ordinance, under which establishment's license was revoked, was unconstitutional, and seeking to enjoin enforcement of the ordinance, would be barred by res judicata; parties in instant action had been involved in state court appeal of revocation, state court and instant actions sought same relief, establishment had raised constitutional arguments in state court, state court had jurisdiction to decide both injunction and declaratory judgment issues, and actions were based on same factual predicate. Koziara v. City of Casselberry, M.D.Fla.2002, 239 F.Supp.2d 1245. Judgment 828.7; Judgment 828.15(1)

Landowner challenging zoning board's revocation of zoning variance under state law in state court had to also raise his federal takings claims challenging same revocation to avoid res judicata, even though federal claims were not ripe until state court ruled on state claims. Rainey Bros. Const. Co., Inc. v. Memphis and Shelby County Bd. of Adjustment, W.D.Tenn.1997, 967 F.Supp. 998, affirmed 178 F.3d 1295, certiorari denied 120 S.Ct. 172, 528 U.S. 871, 145 L.Ed.2d 145, rehearing denied 120 S.Ct. 569, 528 U.S. 1040, 145 L.Ed.2d 444. Judgment 828.16(3)

New Jersey claim preclusion or "entire controversy" doctrine barred litigation of claim under this section alleging that zoning ordinance was unconstitutional, where parties were identical to those in earlier state court action, facts underlying action were identical, and issues were identical. Tancrel v. Mayor and Council of Bloomfield Tp., D.C.N.J.1984, 583 F.Supp. 1548. Judgment 828.21(1)

Claims, which were grounded under this section and which were to effect that landowner's due process and equal protection rights under U.S.C.A.Const. Amend. 14 were violated by actions taken by village officials before and after denying rezoning, were, with one exception, barred by res judicata under Illinois law, in view of fact that a prior state court judgment, which determined that there had been no denial of due process or equal protection, had involved the same parties or privies and that the action under this section and state proceeding were rooted in same core of operative facts. Ossler v. Village of Norridge, N.D.Ill.1983, 557 F.Supp. 219. Judgment 828.16(1)

Federal constitutional questions which have been litigated in a state court cannot be relitigated in a federal court; this principle applies where the state court litigation was for a declaratory judgment that a zoning ordinance was unconstitutional and the later federal action was for damages under this section. Dells, Inc. v. Mundt, S.D.N.Y.1975, 400 F.Supp. 1293. Judgment 828.11(3)

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5109. ---- Miscellaneous claims, identity of claims, res judicata

Determination in prior action challenging disciplinary proceedings conducted by college that due process was violated where decision to discipline was based solely on police report but did not show any evidence of misconduct on part of plaintiffs was entitled to res judicata effect in subsequent civil rights action challenging disciplinary proceeding on the same, as well as additional grounds. Jackson v. Hayakawa, C.A.9 (Cal.) 1979, 605 F.2d 1121, certiorari denied 100 S.Ct. 1601, 445 U.S. 952, 63 L.Ed.2d 787. Judgment 715(1)

Mentally retarded individuals' § 1983 action, challenging city policy of allowing its officials to consent to elective surgical procedures on mentally retarded citizens, was not barred by res judicata; action was not same cause of action as prior litigation, which challenged city's treatment of mentally retarded individuals and resulted in consent judgment, some claims in pending action arose after consent judgment was entered in prior action, and city did not demonstrate that plaintiffs were parties to prior action. Does I through III v. District of Columbia, D.D.C.2002, 238 F.Supp.2d 212. Judgment 567; Judgment 585(3); Judgment 955

Under Pennsylvania law, doctrine of res judicata applied to bar due process claim of construction company and its owner arising out of decision by borough council to preclude company, as non-responsible bidder, from bidding on future borough construction projects, inasmuch as §§ 1983 action in which company and owner asserted due process claim involved identical parties, arose out of same factual allegations, and sought compensation for same damages as prior state court action in which final judgment had been entered by trial court, and due process claim could have been raised in that prior action. Osiris Enterprises v. Borough of Whitehall, W.D.Pa.2005, 398 F.Supp.2d 400. Judgment 828.15(1)

Criminal contemnor's §§ 1983 action against city for alleged deprivation of her constitutional rights when she was fingerprinted and photographed, and when she was denied medical treatment, was precluded under the doctrine of res judicata where her two previous actions against the city and/or the city police department concerning the same event had already been dismissed on the ground that she failed to allege the existence of a municipal policy or practice, or that any of her alleged injuries were proximately caused by such a policy or practice. Qader v. New York, S.D.N.Y.2005, 396 F.Supp.2d 466. Judgment 570(11)

Claim preclusion barred former property owners who failed to pay taxes from raising constitutional and statutory civil rights claims relating to city's alleged auction of residence, where owners raised claims that alleged auction violated their constitutional and statutory civil rights in two previous actions and both actions were dismissed on the merits. Green v. City of Boston, D.Mass.1997, 966 F.Supp. 117, affirmed 132 F.3d 30, certiorari denied 119 S.Ct. 75, 525 U.S. 827, 142 L.Ed.2d 59, rehearing denied 119 S.Ct. 578, 525 U.S. 1034, 142 L.Ed.2d 482. Judgment 570(5)

District court's dismissal on the merits of ex-husband's claims in prior action stemming from child support modification proceedings had preclusive effect in ex-husband's § 1983 action raising the same or similar claims, despite ex-husband's claims of new evidence, since district court had rejected claims, even accepting truth of allegations which allegedly constituted the new evidence. McArthur v. Caputo, E.D.N.Y.1996, 913 F.Supp. 152. Judgment 570(5)

Civil rights action against city, state and federal officials who allegedly subjected pro se plaintiff to surveillance after he reported potential case of police corruption was barred by res judicata, where prior claims based on same transactions or occurrences had been dismissed for failure to state a claim upon which relief could be granted. Sadler v. Brown, S.D.N.Y.1992, 793 F.Supp. 87. Judgment 570(11)

Res judicata barred employee's second discrimination and retaliation action against her employer under Title VII and federal civil rights statutes, following dismissal with prejudice of her first action which had been filed pro se; dismissal was a final decision on the merits, the same statutes formed basis of claims for relief in both suits, and

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although employee did not have second right-to-sue letter when she initiated first lawsuit, at time she elected to dismiss her first lawsuit employee was aware of every allegation that she later raised in second Equal Employment Opportunity Commission (EEOC) charge and could have submitted that charge before dismissing lawsuit. Sanders v. Tyco Electronics Corp., W.D.N.C.2006, 235 F.R.D. 315. Judgment 585(2)

Property owner's §§ 1983 claims against town, based upon the demolition of building on his property, were not precluded, under doctrine of res judicata, by owner's prior §§ 1983 action against town and its official, where building had not been demolished at time prior suit was filed. Davis v. Town of Hempstead, C.A.2 (N.Y.) 2006, 167 Fed.Appx. 235, 2006 WL 172216, Unreported. Judgment 585(5)

Determination in prior civil rights suit that probable cause issue was barred by issue preclusion was itself final, preclusive determination, and as such, barred argument in second civil rights suit that earlier reversal of criminal convictions for ineffective assistance of counsel demonstrated that civil rights plaintiff was deprived of full and fair opportunity to litigate probable cause in criminal prosecution. McNally v. Colorado State Patrol, C.A.10 (Colo.) 2004, 122 Fed.Appx. 899, 2004 WL 2445576, Unreported. Judgment 650; Judgment 720

Prior dismissal of proprietor's complaint against city and federal officials and others alleging violations of Racketeer Influenced and Corrupt Organizations Act (RICO) in connection with her relocation in economic development zone barred, under doctrine of res judicata, proprietor's subsequent action against same officials alleging that denial of relocation funds violated Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), Title VI, and §§ 1983, where both actions were based upon same facts. Burton v. Cleveland Ohio Empowerment Zone, C.A.6 (Ohio) 2004, 102 Fed.Appx. 461, 2004 WL 1367275, Unreported, certiorari denied 125 S.Ct. 661, 543 U.S. 1024, 160 L.Ed.2d 502, rehearing denied, rehearing denied 125 S.Ct. 1108, 543 U.S. 1132, 160 L.Ed.2d 1089. Judgment 570(1); Judgment 585(2)

Prior order dismissing § 1983 action alleging that police department violated individual's constitutional rights by defaming him barred, under doctrine of res judicata, individual's subsequent suit alleging violations of § 1983 by city, where claim was adjudicated on merits, and employee's current claims could have been raised in previous action. Valle v. Bally Total Fitness, S.D.N.Y.2003, 2003 WL 22244552, Unreported. Judgment 570(4); Judgment 585(2)

Res judicata precluded retaliation and discrimination in discipline claims of Latino and African-American police officers against city in current civil rights action, up to date of complaint in prior action, since police officer litigated prior civil rights action against city on allegations that he was retaliated against, improperly disciplined, and subjected to hostile work environment as consequence of, inter alia, his filing of internal complaint regarding alleged discrimination against African American and Latino police officers. Latino Officers Ass', Inc. v. City of New York, S.D.N.Y.2003, 2003 WL 21437057, Unreported. Judgment 585(2)

5110. Identity of parties, res judicata--Generally

Plaintiff, suing police officers and police chiefs for deprivation of constitutional rights, had a separate cause of action against each defendant, and was not precluded on theory of res judicata from acting against one defendant by judgment against another. McClelland v. Facteau, C.A.10 (N.M.) 1979, 610 F.2d 693. Judgment 678(1)

5111. ---- Capacity, identity of parties, res judicata

That officials responsible for denial of former police officer's accident disability retirement benefits were sued only in their official capacities in officer's prior state suit did not prevent doctrine of claim preclusion from barring subsequent federal suit against same officials in their individual capacities. Lawrence v. McGuire, S.D.N.Y.1987, 651 F.Supp. 312. Judgment 828.14(6)

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Individual town officers in their individual capacities were not entitled to benefits of claim preclusion by former chief of police's prior state court judgment arising from same alleged termination in violation of civil rights. Meding v. Hurd, D.C.Del.1985, 607 F.Supp. 1088. Judgment 828.14(11)

5112. ---- Privity, identity of parties, res judicata

Even though former college professor who brought civil rights action in federal court seeking reinstatement was not technically a party in prior Article 78 proceeding brought in state court by county public employment relations board to enforce its order directing college to reinstate professor with back pay, where board was acting solely on behalf of professor and representing her interests in bringing proceeding and professor filed brief amicus curiae in proceeding and had opportunity at hearing to present whatever evidence she had in support of her claim, there was sufficient identity of interests between board and professor to establish privity for purposes of res judicata. Roode v. Michaelian, S.D.N.Y.1974, 373 F.Supp. 53. Judgment 675(1); Judgment 677

Purported action under this subchapter against plaintiff's former employer and officers of union was barred by res judicata and collateral estoppel arising from summary judgment against plaintiff in favor of the same defendants, or those in privity with them, in prior action based upon substantially similar allegations. Drusky v. Judges of Supreme Court, W.D.Pa.1971, 324 F.Supp. 332. Judgment 569; Judgment 653

State prisoner's § 1983 action against prison officials, alleging that officials unconstitutionally seized property from his cell, was barred, under doctrine of res judicata, by prior Illinois Court of Claims action, in which prisoner sued state for the value of the property that was seized; prior action reached final judgment on the merits, in that it held that prisoner was not entitled to compensation, and state and prison officials shared identity of interest in vindicating the seizure of the property, so that state and officials were in privity. Powell v. Snyder, C.A.7 (Ill.) 2003, 84 Fed.Appx. 650, 2003 WL 22977486, Unreported, rehearing and rehearing en banc denied. Judgment 828.9(3); Judgment 828.13

5113. ---- Class actions, identity of parties, res judicata

Prison inmate's civil rights complaint against prison officials seeking damages for violations of the Eighth Amendment was not barred by res judicata due to class action litigation involving conditions at the prison where inmate was not notified that participation in the class action would bar subsequent individual damage action. Wright v. Collins, C.A.4 (Md.) 1985, 766 F.2d 841. Judgment 677

Decisions in previous class actions wherein a number of practices and conditions in Arkansas penal institutions were found to be unconstitutional and enjoined were binding on petitioner who was a member of class represented in previous actions and who sought in subsequent civil rights action to obtain injunctive and declaratory relief against alleged racial discrimination, inadequate food and overcrowding and punitive isolation cells, inadequate medical care and facilities, interference with mail, religious and racial discrimination, and brutality by prison employees. Cotton v. Hutto, C.A.8 (Ark.) 1978, 577 F.2d 453. Judgment 677

Under Tennessee law, res judicata barred federal civil rights action which challenged constitutionality of Tennessee statute which required parents to have bachelor's degree or statutory exemption to home school their children beyond eighth grade, as plaintiffs had been "virtually represented" in previous state lawsuit which decided same issue. Floyd v. Smith, E.D.Tenn.1993, 820 F.Supp. 350, vacated 23 F.3d 406. Judgment 828.14(8); Judgment 828.16(1)

Where judgment in prior school desegregation class action never described class, it was not given res judicata effect in subsequent school desegregation case; however such judgment was binding on named parties to action; evidence from period before judgment was relevant background to show patterns and practices continuing after

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date which indicated that race was factor in decision making of school authorities. Bell v. Board of Ed., Akron Public Schools, N.D.Ohio 1980, 491 F.Supp. 916, affirmed 683 F.2d 963. Judgment 668(1); Judgment 677; Judgment 956(2)

5114. ---- Intervenors, identity of parties, res judicata

Where although plaintiff was not party to original action on appeal from decision of personnel board plaintiff did file motion to intervene, was present at hearing in court with his interests protected by personnel board and findings of state courts addressed issues of notice, intervention and entitlement and did not find for plaintiff, and where his petition for allowance of appeal to Pennsylvania Supreme Court was denied, though without opinion, his claim under this section in federal district court was barred by res judicata and collateral estoppel. Mack v. Municipality of Penn Hills, W.D.Pa.1982, 547 F.Supp. 863. Judgment 828.14(6)

5115. ---- College students and faculty, identity of parties, res judicata

After jury found for state university on former professor's Title VII claim, res judicata did not bar subsequent civil rights action against university employees who were involved in his termination, since privity was lacking as between university and its employees, where first suit was only against university for violation of Title VII, while subsequent action was brought under § 1983 against university employees in their individual capacities. De Llano v. Berglund, C.A.8 (N.D.) 1999, 183 F.3d 780, rehearing and rehearing en banc denied, on remand 142 F.Supp.2d 1165. Judgment 670

Adverse judgment in state license revocation proceedings in which only college was a party and which did not involve free exercise and establishment of religious issues did not, on theory of res judicata, bar the college and churches, parents, students and faculty member of college from maintaining federal action for violation of this section involving the issues of U.S.C.A.Const. Amend. 1. New Jersey-Philadelphia Presbytery of the Bible Presbyterian Church v. New Jersey State Bd. of Higher Educ., C.A.3 (N.J.) 1981, 654 F.2d 868. Judgment 828.14(7); Judgment 828.16(1)

5116. ---- Plaintiffs or defendants, identity of parties, res judicata

Persons who had unsuccessfully asserted federal civil rights claims in state court action could not thereafter assert them in federal court action even though they had been defendants, rather than plaintiffs, in the state court action. Billingsley v. Seibels, C.A.5 (Ala.) 1977, 556 F.2d 276, certiorari denied 98 S.Ct. 1499, 435 U.S. 929, 55 L.Ed.2d 524, rehearing denied 98 S.Ct. 2257, 436 U.S. 914, 56 L.Ed.2d 416. Judgment 828.12

5117. ---- Organizations and members, identity of parties, res judicata

Action by leader of civil rights organization was barred, under doctrine of res judicata, by prior action brought by organization on behalf of itself and its members and involving same set of operative facts, where organization had represented plaintiff's First Amendment right of association and plaintiff had participated extensively in earlier litigation. Diaz v. City of Chicago, N.D.Ill.1984, 601 F.Supp. 1251. Judgment 677

5118. ---- Parents and children, identity of parties, res judicata

Fact that state court had found that there was no evidence to indicate that police officer's killing of minor was not justifiable or excusable homicide did not operate as either res judicata or collateral estoppel to bar civil rights action, predicated on Oklahoma wrongful death statutes, 12 Okl.St.Ann. §§ 1053, 1054, brought by minor's parents against police officer and the police chief as minor's parents were not parties in the state court action. Smith v. Wickline, W.D.Okla.1975, 396 F.Supp. 555. Judgment 828.8

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5119. ---- State agencies and employees, identity of parties, res judicata

State employee's civil rights action against individual state officials challenging constitutionality of Florida statute governing termination of state employees who had permanent status in career service [F.S.1977, § 110.061], officials' failure to accord employee a pretermination hearing, and officials' refusal to reinstate employee in accordance with Career Service Commission reinstatement order was not barred under doctrine of res judicata by prior state court action against state agencies in which employee sought back pay only in view of lack of identity of parties, identity of cause of action, and identity of thing sued for. Casines v. Murchek, C.A.11 (Fla.) 1985, 766 F.2d 1494, rehearing denied 773 F.2d 1239. Judgment 828.12; Judgment 828.15(1)

5120. ---- Veniremember, identity of parties, res judicata

Identity of interests between veniremember excluded from jury in civil trial and plaintiffs in that civil trial, and adequacy of civil trial plaintiffs' representation of veniremembers' equal protection interests, were such that veniremember and plaintiffs were in privity, and thus judge's determination during prior trial that defendants in that trial had based peremptory challenge on neutral nondiscriminatory reasons was entitled to preclusive effect in veniremember's civil action alleging violation of equal protection rights. Shaw v. Hahn, C.A.9 (Cal.) 1995, 56 F.3d 1128, certiorari denied 116 S.Ct. 418, 516 U.S. 964, 133 L.Ed.2d 336. Judgment 678(1)

5121. ---- Voters, identity of parties, res judicata

Neither the certiorari proceeding instituted by primary election candidate in Rhode Island Supreme Court, nor the motion to reargue filed by another candidate, barred, under principles of res judicata and collateral estoppel, federal civil rights action brought by voters who were not parties to those earlier proceedings. Griffin v. Burns, C.A.1 (R.I.) 1978, 570 F.2d 1065. Judgment 828.14(7)

Doctrine of res judicata did not bar voters from bringing §§ 1983 action alleging that county elections board's refusal to tally their absentee ballots violated their federal constitutional rights, even though candidates were parties to prior state court decisions invalidating absentee ballots used in special election for county legislature, where voters were not parties to state court actions, and never had full and fair opportunity to litigate federal constitutional issues. Hoblock v. Albany County Bd. of Elections, N.D.N.Y.2004, 341 F.Supp.2d 169, remanded 422 F.3d 77, on remand 233 F.R.D. 95. Judgment 828.14(7)

5122. ---- Criminal proceedings, identity of parties, res judicata

Finding in favor of state's attorney in criminal prosecution arising out of alleged illegal police raid was no bar to subsequent suit under this section against attorney where none of plaintiffs in civil suit was a party to criminal judgment. Hampton v. City of Chicago, Cook County, Ill., C.A.7 (Ill.) 1973, 484 F.2d 602, certiorari denied 94 S.Ct. 1413, 415 U.S. 917, 39 L.Ed.2d 471, certiorari denied 94 S.Ct. 1414, 415 U.S. 917, 39 L.Ed.2d 471. Judgment 828.14(7)

Where issues concerning plaintiff's arrest and search had been presented to federal court in plaintiff's prosecution for bank robbery and directly determined by court adversely to plaintiff, doctrine of issue preclusion prevented relitigation of same issues in plaintiff's civil rights action brought against law enforcement officials, notwithstanding fact that defendant law enforcement officials were not parties to plaintiff's criminal proceedings. Smith v. Sinclair, W.D.Okla.1976, 424 F.Supp. 1108. Judgment 632

5123. ---- Zoning, identity of parties, res judicata

Findings of Washington Utilities and Transportation Commission (WUTC) in administrative hearing on medical waste collection company's failure to obtain state certificate had to be given preclusive effect in subsequent § 1983

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action challenging constitutionality of certificate statute, in view of adjudicative nature of hearing on matter properly before WUTC, and in view of preclusive effect that findings would have been given in state court; parties were afforded notice, evidence was introduced, and counsel had opportunity to cross-examine witnesses. Kleenwell Biohazard Waste and General Ecology Consultants, Inc. v. Nelson, C.A.9 (Wash.) 1995, 48 F.3d 391, certiorari denied 115 S.Ct. 2580, 515 U.S. 1143, 132 L.Ed.2d 830. Administrative Law And Procedure 501; Carriers 18(1)

Louisiana res judicata rule, LSA-C.C. art. 2286, precluded relitigation of city's zoning decision in action under this section, where parties were identical in action under this section and prior state action, both actions dealt with city's refusal to rezone plaintiff's property and legal rights and liabilities which emanated from that refusal, and thing demanded in both actions was identical. Hernandez v. City of Lafayette, C.A.5 (La.) 1983, 699 F.2d 734. Judgment 828.15(1)

5124. Remedies, res judicata--Generally

Operative facts in suit under this section against city for deprivation of property without due process were same as in prior Maine Supreme Judicial Court suit affirming superior court judgment against plaintiff in action seeking to have a licensee's license to operate pool and billiard room declared void, and therefore principles of res judicata barred plaintiff's subsequent suit under this section against city, notwithstanding that remedy sought in civil rights suit, namely damages, was different from remedies sought in earlier case. Roy v. City of Augusta, Maine, C.A.1 (Me.) 1983, 712 F.2d 1517. Judgment 585(2)

Holder of leasehold interest in oil and gas was not barred by doctrines of res judicata or collateral estoppel from challenging reasonableness of city's regulations restricting oil and gas drilling in city limits pursuant to § 1983 takings claim due to leaseholder's previous challenge to reasonableness of regulations in state court requesting that regulations be set aside; counts that were dismissed by state court with prejudice were brought pursuant to Kansas statute providing mechanism to set aside unreasonable zoning ordinances and Kansas statute did not authorize award of money damages. Mid Gulf, Inc. v. Bishop, D.Kan.1992, 792 F.Supp. 1205, reconsideration granted in part. Judgment 828.15(1)

Doctrine of res judicata applied to bar plaintiffs' federal civil rights claims against a city and related parties by virtue of state court proceedings, even though remedies in the state action and the federal action differed, and even though shareholder of company was named in federal action but not state action, where plaintiffs could have demanded all remedies in state court proceedings which were sought in federal court action, city and code enforcement board were either named in both complaints or in privity with those originally named, and parties had same intent to adequately litigate against plaintiffs' claims and raise available defenses in both state court proceedings and federal court action. Benline v. City of Deland, M.D.Fla.1989, 731 F.Supp. 464, affirmed 897 F.2d 1127. Judgment 828.16(3)

5125. ---- Availability of remedies, res judicata

Res judicata did not bar foster parent's claims under § 1983 that his due process rights were violated when State of Alabama terminated long-term foster care contract and removed foster child from foster parent's care, where evidence concerning child's best interest with regard to custody only overlapped minimally with evidence concerning procedural sufficiency of removal proceedings, due process claims are neither affirmative defenses nor compulsory counterclaims to State's termination of foster parent's rights, and under Alabama law foster parent could not have raised those claims as part of state proceedings due to limited nature of common-law certiorari which was only avenue of appeal available to foster parent. Webb v. State of Ala., Dept. of Pensions and Sec., C.A.11 (Ala.) 1988, 850 F.2d 1518. Judgment 828.7

Massachusetts judgment in inmate's action for declaratory and injunctive relief seeking release from incarceration

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due to state officials' withholding of computation of sentencing credits precluded subsequent § 1983 civil rights action in federal court involving same parties and based on same wrong, where inmate could have sought monetary remedy in Massachusetts proceeding. Pasterczyk v. Fair, C.A.1 (Mass.) 1987, 819 F.2d 12. Judgment 828.16(3)

Prior Article 78 proceeding under New York law does not preclude subsequent federal civil rights action for damages, as damages for civil rights violations are not available in the Article 78 proceeding. Cepeda v. Coughlin, S.D.N.Y.1992, 785 F.Supp. 385. Judgment 828.16(4)

Plaintiffs' federal civil rights action for damages arising out of city agencies' denial of demolition permit was not barred under principles of res judicata where state court, in previously reviewing agencies' action, could not consider damages claim. Weissman v. Fruchtman, S.D.N.Y.1987, 658 F.Supp. 547. Judgment 828.7

Having obtained injunctive relief in New York courts in an Article 78 proceeding in which he challenged denial of racing privileges, a jockey could not turn to federal court to obtain damages from same defendants for same series of transactions since, even if damages could not have been obtained in Article 78 proceeding, the New York court could have converted the damage claim into an action at law and awarded damages; thus, under broad transactional approach to res judicata utilized by New York courts, jockey's present claim for damages under civil rights statute was barred by conclusion of prior Article 78 proceeding even though claim was based upon a different theory and a different remedy was sought. Saumell v. New York Racing Ass'n, Inc., E.D.N.Y.1985, 600 F.Supp. 819. Judgment 828.16(3)

5126. Legal theory of recovery, res judicata

Where state court action was based on different legal theory of recovery under same set of factual allegations, but where there was no risk of double recovery since there was no recovery in first Texas state lawsuit, res judicata would not bar federal court action brought under this section by plaintiff who was allegedly injured by act or omission of state actor while plaintiff student was attending school and was participating in a class. Flores v. Edinburg Consol. Independent School Dist., S.D.Tex.1983, 554 F.Supp. 974. Judgment 828.15(1)

5127. Administrative proceedings, res judicata--Generally

Court of Appeals had to accord referee's finding in Pennsylvania Unemployment Compensation Review Board proceeding the same preclusive effect as would Pennsylvania courts, in terminated employee's § 1983 action. Swineford v. Snyder County Pa., C.A.3 (Pa.) 1994, 15 F.3d 1258. Federal Courts 433

Under North Carolina law of res judicata, state court judgment upholding award in administrative proceeding alleging discharge without just cause from public employment did not preclude § 1983 claim alleging that discharge was politically motivated; proceedings alleged different wrongs, leading to different injuries, entitling to different remedies. Davenport v. North Carolina Dept. of Transp., C.A.4 (N.C.) 1993, 3 F.3d 89. Judgment 548

Prior state court affirmance of state administrative ruling was entitled to res judicata and collateral estoppel effect in a subsequent federal civil rights action under § 1983, notwithstanding that state court's review was limited to determination of whether there was "any evidence" in record sufficient to support factual findings of administrative tribunal. Gorin v. Osborne, C.A.11 (Ga.) 1985, 756 F.2d 834. Judgment 828.7

Res judicata barred relitigating due process concerns raised before state chiropractic board in decision that revoked chiropractor's license, where board acted in judicial capacity, chiropractor had adequate opportunity to litigate and to raise any constitutional defenses before board, and board conducted evidentiary hearing. Mason v. Arizona,

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D.Ariz.2003, 260 F.Supp.2d 807. Administrative Law And Procedure 501; Health 222(3)

Fairness requirements of *Utah Construction* permitting application of federal common law of preclusion to state administrative adjudication of legal and factual issues were met with respect to food stamp recipient's request for income deductions in calculating her 1995 benefits by hearing officer's decision on income deductions recipient requested with respect to calculation of her 1994 food stamp benefits; hearing officer acted in judicial capacity and made independent determinations of law, deductions and applications of regulations to plaintiff were properly before agency, and parties had opportunity to fully brief and argue their positions with respect to each deduction recipient requested. Kolander v. Weeks, D.Or.1996, 916 F.Supp. 1042. Agriculture 2.6(4); Federal Courts 433

Former state employee was not barred by res judicata from litigating in her federal civil rights action issue of whether adverse employment actions were taken against her to her political affiliation, notwithstanding contention that employee could have raised such issue in state administrative proceedings; general question of whether employee's rights under First Amendment were violated by job actions taken by employing agency fell outside scope of issues over which state personnel board had jurisdiction, and board could not award employee damages and attorney fees she sought. Lupo v. Voinovich, S.D.Ohio 1994, 858 F.Supp. 699. Administrative Law And Procedure 501; States 53

State court's entry of temporary injunction in favor of plaintiff challenging state practice of charging filing fee for initiation of protection orders, followed by court's issuance of permanent administrative order barring such charges, was res judicata barring plaintiff's subsequent § 1983 claim against county seeking damages. Hardin v. Harshbarger, N.D.Ill.1993, 814 F.Supp. 703. Judgment 828.8

Former school principal's claim in § 1983 action that superintendent, school board, and individual board members violated his due process rights during investigation of former school employee's claim of hostile work environment in violation of Title VII, and in terminating principal, was not barred by doctrine of res judicata under North Carolina law by state-court administrative review of termination; administrative claim involved violation of statutorily-protected rights, permitted only limited judicial review, and would only have entitled principal to reinstatement and back pay, while § 1983 claim alleged violations of constitutional rights, allowed full trial with right to jury, and available remedies included compensatory and punitive damages. Kirkcaldy v. Richmond County Bd. of Educ., M.D.N.C.2002, 212 F.R.D. 289. Judgment 828.7

5128. ---- Employee commissions, administrative proceedings, res judicata

University Civil Service Merit Board acted in judicial capacity, as required for its factual findings to be preclusive in foreman's race discrimination action under §§ 1983, inasmuch as Board was created by Illinois law, Board was subject to Illinois Administrative Review Law, hearing officer presided over administrative hearing, counsel questioned and cross-examined witnesses who were under oath, hearing officer issued findings of fact, and Board issued final decision and order thereafter. Goodwin v. Board of Trustees of University of Ill., C.A.7 (Ill.) 2006, 442 F.3d 611. Colleges And Universities 8.1(5)

Under Alabama Law, even if county commission acted in judicial capacity when it passed on former commission employee's civil rights claim against county, commission's factual finding that employee's positions were not eliminated due to employee's acting as poll watcher for political adversary of another commission member was not entitled to preclusive effect in employee's subsequent civil rights suit; unlike situation in which commission takes administrative action on matters such as liquor licenses, where commission essentially has final authority, commission has no such final authority when passing on claim against county, and giving commission's findings preclusive effect would place potentially insurmountable obstacle in front of plaintiff who sought to sue county. Steadham v. Sanders, C.A.11 (Ala.) 1991, 941 F.2d 1534. Administrative Law And Procedure 501; Civil Rights 1711

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42 U.S.C.A. § 1983

Under doctrine of administrative claim preclusion, District of Columbia Office of Employee Appeals (OEA) Administrative Judge's findings that former police Commander's position was equivalent to that of Deputy Chief and he had no right to appeal his demotion did not preclude litigation of his due process claims under §§ 1983; while OEA Judge was acting in judicial capacity, issue of whether Commander position was "at will" was not fully litigated in the administrative proceedings. Fonville v. District of Columbia, D.D.C.2006, 448 F.Supp.2d 21. District Of Columbia 7

District court was precluded, due to res judicata, from adjudicating employee's rights arising from his alleged improper conduct and termination, in §§ 1983 action, where employee voluntarily subjected his claims of political discrimination to hearing examiners at the administrative level, and, upon examiners reaching results, chose not to exercise his right to appeal before administrative appellate forum, allowed decision to become final and, only then, made a collateral attack on decision. Silva Rivera v. State Ins. Fund Corp., D.Puerto Rico 2006, 443 F.Supp.2d 218. Labor And Employment 846

Fact that employee of state's transportation department previously raised his race discrimination claims in department's grievance procedure did not preclude him from bringing separate lawsuit under Title VII, §§ 1981 and 1983 to redress the alleged discrimination. Smith v. State of Alabama, M.D.Ala.1998, 996 F.Supp. 1203. Civil Rights 1312; Civil Rights 1502

Agency was not acting in judicial capacity in "Step 3" hearing on discharge of employee, for purposes of barring subsequent discrimination action on res judicata grounds, where hearing officer told employee that he "had to speak with his boss" before he issued a decision. Yohannan v. Patla, N.D.Ill.1997, 971 F.Supp. 323. Administrative Law And Procedure 501; Officers And Public Employees 72.16(1)

5129. ---- Police merit boards, administrative proceedings, res judicata

County police merit board's finding that former police officer's discharge was proper was entitled to preclusive effect in officer's federal civil rights action alleging that county violated officer's constitutional rights during departmental investigation leading up to his discharge, even though merit board's decision was not judicially reviewed; board was acting in judicial capacity in reviewing officer's discharge after full evidentiary hearing with opportunity for state court review, board's decision would have been given preclusive effect by Kentucky courts, and board specifically ruled against officer on constitutional claim sought to raised in federal action. Nelson v. Jefferson County, Ky., C.A.6 (Ky.) 1988, 863 F.2d 18, rehearing denied, certiorari denied 110 S.Ct. 76, 493 U.S. 820, 107 L.Ed.2d 42. Administrative Law And Procedure 501; Officers And Public Employees 72.33(1)

5130. Arbitration proceedings, res judicata

In an action under this section, a federal court should not afford res judicata or collateral estoppel effect to an unappealed arbitration proceeding brought pursuant to terms of a collective-bargaining agreement. McDonald v. City of West Branch, Mich., U.S.Mich.1984, 104 S.Ct. 1799, 466 U.S. 284, 80 L.Ed.2d 302. Judgment 828.1

5131. Criminal proceedings, res judicata--Generally

Where plaintiff had unsuccessfully brought actions in state court to have six state criminal convictions declared illegal and expunged from his records, doctrine of res judicata precluded relitigation of same issues in subsequent federal civil rights action. Wiggins v. Murphy, C.A.4 (Md.) 1978, 576 F.2d 572, certiorari denied 99 S.Ct. 874, 439 U.S. 1091, 59 L.Ed.2d 57. Judgment 828.8

A state criminal conviction precludes a subsequent § 1983 action only with respect to matters litigated and decided in previous trial, and not those which could have been raised. Lillios v. Justices of New Hampshire Dist. Court, D.N.H.1990, 735 F.Supp. 43. Judgment 559

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42 U.S.C.A. § 1983

Convictions of livery and taxicab operators in state misdemeanor court for violation of city ordinances barred, on basis of res judicata, operators' § 1983 action challenging constitutionality of ordinances where constitutionality could have been raised in state proceedings. Mustfov v. Superintendent of Chicago Police Dept., N.D.Ill.1990, 733 F.Supp. 283. Judgment 828.8

Preclusive effect is given in § 1983 action to issues previously decided in state court criminal proceedings as well as civil proceedings, provided that same effect is given in state court. Brown v. De Fillipis, S.D.N.Y.1989, 717 F.Supp. 172. Federal Courts 420; Judgment 828.8

Final judgments on the merits in two state cases, one of which embodied two criminal prosecutions, precluded relitigation of certain decided issues and certain claims, which were or could have been litigated, in federal civil rights action against various state officials under this section. Omernick v. LaRocque, W.D.Wis.1976, 406 F.Supp. 1156, affirmed 539 F.2d 715. Judgment 828.8; Judgment 828.16(3)

Decisions attendant to state criminal proceeding are not automatically dispositive of claims presented in federal civil rights action arising from that prosecution, but multiple litigation of rejected claim is not favored. Hamilton v. Ford, E.D.Ky.1973, 362 F.Supp. 739. Judgment 828.8

5132. ---- Fraudulent convictions, criminal proceedings, res judicata

Common law did not bar convict in receiving stolen property case from bringing § 1983 action against police officers, claiming they had procured his conviction by altering transcript of tape recording, withholding exculpatory evidence, and suborning perjury; common law would not bar relitigation of issue of plaintiff's criminal guilt if prosecution had procured conviction by fraud. King v. Goldsmith, C.A.7 (Ind.) 1990, 897 F.2d 885, rehearing denied. Judgment 559

5133. ---- Pleas, criminal proceedings, res judicata

Where there apparently was no search or extrajudicial confession incident to or resulting from arrest of civil rights plaintiff, and no such arrest or fruits of search were offered in evidence, legality of arrest could not have been litigated in state criminal proceeding in which civil rights plaintiff had pled guilty to offenses of public profanity and resisting arrest; thus, state criminal judgment did not operate, by res judicata or collateral estoppel, to bar civil rights complaints as to arrest in respect to both offenses to which guilty pleas were entered or to offense of carrying concealed weapon which was dismissed. Brown v. Edwards, C.A.5 (Miss.) 1984, 721 F.2d 1442. Judgment 559

Arrestee, who had entered a plea of guilty in Colorado court to information charging unlawful possession of heroin, was precluded from relitigating issue of whether there was probable cause for issuance of search warrant in action by arrestee for money damages under this section against police officers who had performed search of premises where narcotics were found and where arrestee was arrested. Metros v. U. S. Dist. Court for Dist. of Colo., C.A.10 (Colo.) 1970, 441 F.2d 313. Judgment 828.8

State trial court's independent finding of probable cause was not fatal to neurologist's §§ 1983 malicious prosecution claim against officials of Utah's Medicaid Fraud Control Unit (MFCU), based on investigation and prosecution of neurologist for "upcoding," i.e., the practice of improperly billing Medicaid for a more expensive service than was actually provided to the patient. Becker v. Kroll, D.Utah 2004, 340 F.Supp.2d 1230. Civil Rights 1088(5)

County corrections officer's conviction on guilty plea to violating federal criminal conspiracy statute by conspiring to deprive inmate of his right to be free from cruel and unusual punishment conclusively established his civil

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liability for conspiring to deprive inmate of his Eighth Amendment right to be free from cruel and unusual punishment as incarcerated inmate. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Judgment 🔑 648

Although livery and taxicab operators, by pleading guilty to violation of city ordinances, may have waived any claim for damages or declaratory relief in § 1983 action based on their convictions under allegedly unconstitutional ordinances, claim for damages resulting from activity of officers alleged to have violated Fourth Amendment and occurring prior to plea proceedings were not barred on basis of res judicata. Mustfov v. Superintendent of Chicago Police Dept., N.D.Ill.1990, 733 F.Supp. 283. Judgment 🔑 828.8

5134. ---- Arrests, criminal proceedings, res judicata

Arrestee's success on illegal seizure claim against officers who entered his home upon detecting odor of marijuana from front doorway would not necessarily imply invalidity of his state conviction for misdemeanor assault for struggling with officers upon their entry, and thus *Heck v. Humphrey* rule did not bar assertion of claim in federal civil rights suit, as lawfulness of arrest was not element of crime of conviction. Cummings v. City of Akron, C.A.6 (Ohio) 2005, 418 F.3d 676, rehearing and rehearing en banc denied. Civil Rights 🔑 1088(4)

Under Kentucky res judicata law, arrestee was barred from bringing civil rights claim against police officers, on basis that officers arrested him without probable cause; in ruling on arrestees's motion to suppress evidence during state court criminal trial, trial court determined that officers had probable cause to believe arrestee had assaulted his mother, such that arrest was valid. Donovan v. Thames, C.A.6 (Ky.) 1997, 105 F.3d 291. Judgment 🔑 828.8

Preliminary probable cause hearing heard in state court did not preclude arrestee, who was bringing civil rights action based upon arrest, from disputing that arresting officer had probable cause for arrest, where probable cause determination was designed to evaluate sufficiency, but not integrity, of evidence against arrestee, arrestee sought to prove in his civil rights trial that arresting officer could not have reasonably believed that arrestee was committing disorderly conduct and that his arrest was therefore in bad faith, and arrestee was not allowed to present evidence, nor allowed to cross-examine state's witnesses at probable cause determination. Bailey v. Andrews, C.A.7 (Ind.) 1987, 811 F.2d 366. Judgment 🔑 648

5135. ---- Excessive force, criminal proceedings, res judicata

Former pretrial detainee's §§ 1983 claim alleging excessive force was not barred, under *Heck v. Humphrey*, by detainee's state conviction, resulting from same incident, for aggravated battery on a peace officer, since detainee's claim that defendant corrections officer used excessive force after detainee hit officer did not undermine the conviction or punishment for detainee's own acts of aggravated battery. Brengettcy v. Horton, C.A.7 (Ill.) 2005, 423 F.3d 674. Civil Rights 🔑 1088(4)

Under Kentucky res judicata law, arrestee's state court conviction for resisting arrest did not bar arrestee's excessive force civil rights claim against police officers; conviction for resisting arrest did not require finding that officers did not use excessive force in effecting arrest, and there was no evidence that issue of excessive force was actually litigated in state court, or that arrestee could have raised his excessive force claim as separate cause of action in state court. Donovan v. Thames, C.A.6 (Ky.) 1997, 105 F.3d 291. Judgment 🔑 828.8

Res judicata is applicable in context of this section, but cause of action in the two proceedings must be the same, and excessive use of force and subsequent coverup were two separate and distinct wrongs resting on different factual bases. Landrigan v. City of Warwick, C.A.1 (R.I.) 1980, 628 F.2d 736. Judgment 🔑 585(1); Judgment 🔑 585(3)

Res judicata applies only when claim is based on same cause of action as that which was previously litigated, and

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thus res judicata was inapplicable to bar relitigation, in civil rights action claiming use of excessive force, of issue involved in previous criminal prosecution for resisting arrest. Hernandez v. City of Los Angeles, C.A.9 (Cal.) 1980, 624 F.2d 935. Judgment 585(1); Judgment 648

Res judicata precluded civil rights action under § 1983 against police officer for alleged assault upon, and attempted murder of, plaintiff in light of prior state conviction of plaintiff for resisting arrest and attempted assault, in which defendant raised defense of justification pursuant to which jury was instructed that it could convict only if it found beyond reasonable doubt that plaintiff struck the police officer and was the initial aggressor. Orraca v. City of New York, S.D.N.Y.1995, 897 F.Supp. 148. Judgment 828.8

State court judgment that police officers did not use excessive force against arrestee under Michigan constitutional law did not collaterally estop relitigation of excessive force issue in § 1983 action; even though state court judge used federal law jury instruction, excessive force issues were not the same. White v. City of Taylor, E.D.Mich.1994, 849 F.Supp. 1186, affirmed in part, reversed in part, dismissed in part 65 F.3d 169, certiorari denied 116 S.Ct. 1317, 517 U.S. 1103, 134 L.Ed.2d 470. Judgment 828.16(1)

Criminal prosecution of police officer for beating arrestee in holding cell did not bar, on grounds of res judicata, arrestee's civil rights action for alleged use of excessive force. Stewart v. Roe, N.D.Ill.1991, 776 F.Supp. 1304. Judgment 828.8

5136. Habeas corpus proceedings, res judicata

Under New York law, doctrine of res judicata did not bar § 1983 claim of indigent civil litigant against state corrections officials who allegedly failed to protect him from attacks by other inmates, even though litigant had previously petitioned state court for writ of habeas corpus to seek transfer to federal prison based on same alleged failure to protect him; since court presiding over habeas proceeding could not have awarded litigant full measure of relief, including compensatory and punitive damages, sought in § 1983 action, doctrine of res judicata did not apply, but questions remained as to whether doctrine of collateral estoppel barred relitigation of any issues. Burgos v. Hopkins, C.A.2 (N.Y.) 1994, 14 F.3d 787, on remand 1995 WL 151811. Habeas Corpus 901

State prisoner's prior state habeas corpus action did not present res judicata bar to instant § 1983 action; habeas petition and § 1983 action were premised on different wrongs and requested different relief, even though both actions arose from his being placed in administrative segregation. Rhodes v. Hannigan, C.A.10 (Kan.) 1993, 12 F.3d 989. Habeas Corpus 901

Final judgment denying inmate's Missouri state court suit seeking habeas corpus relief to enforce preliminary parole release date and for monetary damages under § 1983 in event of nonrelease barred his subsequent federal § 1983 suit under doctrine of res judicata, despite inmate's contention that relief currently sought was different in that he previously sought release regardless of denial of his access to Missouri sexual offenders program upon which parole release date was based and he currently complained about denial of access to program. Jones v. Moore, C.A.8 (Mo.) 1993, 996 F.2d 943, rehearing denied. Habeas Corpus 901; Judgment 828.15(1)

Fact that federal district court for Eastern District of New York, in dismissing state prisoner's complaint in habeas corpus, gave both substantive grounds and alternative procedural ground of failure to meet requirement of exhaustion of state remedies, did not rob substantive grounds of res judicata effect as to any subsequent decision on any identical claim contained in civil action for deprivation of rights previously filed by same prisoner in federal district court for Southern District of New York. Williams v. Ward, C.A.2 (N.Y.) 1977, 556 F.2d 1143, certiorari dismissed 98 S.Ct. 469, 434 U.S. 944, 54 L.Ed.2d 323. Habeas Corpus 901

5137. Justice of the peace proceedings, res judicata

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42 U.S.C.A. § 1983

Action wherein plaintiff challenged provisions of Delaware Code requiring a losing defendant in an action brought in a justice of the peace court to post a surety bond within 15 days of judgment in order to appeal for a trial de novo in superior court was not barred by res judicata, notwithstanding that plaintiff had raised his constitutional objection to appeal bond before a justice of the peace, where negative response of justice to request that plaintiff waive appeal bond because of its allegedly unconstitutional impact was neither a "judgment" nor the kind of judicial determination to which res judicata attached. Lecates v. Justice of Peace Court No. 4 of State of Del., D.C.Del.1976, 423 F.Supp. 1379. Judgment 828.9(1)

5138. Events occurring following judgment, res judicata

Doctrine of res judicata did not preclude college instructor from maintaining his § 1983 action with regard to events and conduct which occurred since the date of the prior state court judgment on the same claims where there was no definite statement of the facts in the state court judgment with which the reviewing court could compare the college's subsequent conduct or present conditions. Clark v. Yosemite Community College Dist., C.A.9 (Cal.) 1986, 785 F.2d 781. Judgment 828.16(4)

African-American orthopedic surgeon's 1996 race discrimination claim was barred by res judicata since it sprang from the same triable group of underlying facts as his previous state contract action; however, his claims based on rejections by same employers again in 1998 and 1999 could not be precluded by the prior action since those claims only accrued after the state court litigation. Carr v. Health Ins. Plan of Greater New York, Inc., S.D.N.Y.2000, 111 F.Supp.2d 403, reconsideration denied 2002 WL 1974131. Judgment 828.15(1); Judgment 828.16(4)

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5161. Collateral estoppel generally

Collateral estoppel principles apply to § 1983 actions and will require federal district court to give binding effect to decision of state court in some circumstances. Nelson v. Howard, E.D.Pa.1992, 810 F.Supp. 161. Judgment 644; Judgment 828.21(1)

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42 U.S.C.A. § 1983

Doctrine of collateral estoppel applies to civil rights suits under § 1983, and preclusive effect must be given to state court judgment if the matter involved in the civil rights suit has already been litigated and the state's preclusion rules apply to bar the claim. Stokes v. City of Chicago, N.D.Ill.1990, 744 F.Supp. 183. Judgment 828.8

State court judgments can have collateral estoppel effect in subsequent section 1983 proceedings. Anderson v. City of New York, S.D.N.Y.1985, 611 F.Supp. 481. Judgment 828.21(1)

5162. State law, collateral estoppel

Former county employee's § 1983 action arising from interruption of his employment was not barred, under Wisconsin claim preclusion principles, by his prior action in Wisconsin court seeking certiorari review of county's termination decision, inasmuch as he was not required to bring present civil rights claims in connection with petition for certiorari. Wilhelm v. County of Milwaukee, C.A.7 (Wis.) 2003, 325 F.3d 843. Judgment 828.7

Doctrine of collateral estoppel could not bar detainee from relitigating in federal § 1983 suit any issue adjudicated in Louisiana forfeiture proceeding, due to fact that collateral estoppel did not exist in Louisiana at time suit was filed. Craig v. St. Martin Parish Sheriff, W.D.La.1994, 861 F.Supp. 1290. Federal Courts 420; Judgment 828.3

Finding of no probable cause in New York State Division of Human Rights (SDHR) proceeding did not collaterally estop black New York City Department of Correction (DOC) Officer from litigating issue of race discrimination under federal civil rights statutes and Fourteenth Amendment. James v. City of New York, S.D.N.Y.2003, 2003 WL 21991591, Unreported. Administrative Law And Procedure 501; Civil Rights 1711

5163. Federal judgment as federal court action bar, collateral estoppel

Where civil rights claim under § 1983 was erroneously dismissed as barred by limitations though it was in fact timely filed, and where Title VII action was tried to the court and findings adverse to employee were reversed, application of doctrine of collateral estoppel to prevent trial of the § 1983 claim would result in abrogation of plaintiff's Seventh Amendment right to jury trial on her legal claim. Farber v. Massillon Bd. of Educ., C.A.6 (Ohio) 1990, 917 F.2d 1391, rehearing denied, certiorari denied 111 S.Ct. 952, 498 U.S. 1082, 112 L.Ed.2d 1041, certiorari denied 111 S.Ct. 2851, 501 U.S. 1230, 115 L.Ed.2d 1019.

Collateral estoppel did not bar relitigation of sex discrimination plaintiff's § 1983 claim even though Title VII claim based on same facts was decided adversely to plaintiff, considering that if district court had not committed legal error in dismissing § 1981 claim, plaintiff would have been entitled to jury's resolution of factual issues underlying § 1981 claim, and district court would have been bound by such findings in deciding whether to grant Title VII relief. Volk v. Coler, C.A.7 (Ill.) 1988, 845 F.2d 1422. Judgment 731

Where it was plain from examination of both present complaint and prior complaint and district court's minute entry memoranda that at heart of each complaint was basic decisive charge of racial discrimination in discharge of nontenured black teacher, and where it was clear that judge in dismissing the earlier suit on its merits categorically rejected claim of discrimination, second suit if not barred by res judicata was barred by collateral estoppel. Burns v. East Baton Rouge Parish School Bd., C.A.5 (La.) 1976, 530 F.2d 1201, rehearing denied 533 F.2d 1135, certiorari denied 97 S.Ct. 386, 429 U.S. 960, 50 L.Ed.2d 328. Judgment 588

5164. Time of state court judgment, collateral estoppel

Where federal suit under this section is commenced before final decision by state court in litigation arising out of same controversy, state court judgment forecloses litigant from raising grievances in federal courts only if such

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claims have been pressed before, and decided by, state tribunal. New Jersey Ed. Ass'n v. Burke, C.A.3 (N.J.) 1978, 579 F.2d 764, certiorari denied 99 S.Ct. 252, 439 U.S. 894, 58 L.Ed.2d 239. Courts 493(3)

5165. Final judgment on merits, collateral estoppel

Under Wisconsin law, prison disciplinary board's factual finding that inmate's accusations in prior suit were false and malicious, and thus that discipline imposed by prison officials did not violate inmate's First Amendment right to petition for redress of grievances, was not binding on reviewing court, and thus did not collaterally estop inmate from filing §§ 1983 action against officials. Simpson v. Nickel, C.A.7 (Wis.) 2006, 450 F.3d 303. Prisons 13(10)

Civil rights plaintiff's failure to appeal adverse rulings following guilty plea in underlying criminal prosecution resulted in final judgment sufficient for purposes of applying collateral estoppel in civil rights action based on alleged Fourth Amendment violation involved in underlying criminal prosecution. Ayers v. City of Richmond, C.A.9 (Cal.) 1990, 895 F.2d 1267. Judgment 648

5166. Exhaustion of state remedies, collateral estoppel--Generally

Plaintiff was collaterally estopped from seeking damages from Connecticut Commissioner of Motor Vehicles, under this section, where criminal prosecution for driving with a suspended operator's license was not plaintiff's initial opportunity to challenge constitutional validity of suspension order; plaintiff, having elected to forego a challenge to suspension order and continue driving and thereby invite a likely state criminal prosecution, could not now avoid the preclusive effect of the adverse state court adjudication; even if his flouting of suspension order might not have precluded plaintiff from attacking its validity in state court this was a circumstance that would bar a second round of litigation in federal courts; collateral estoppel applied notwithstanding lack of identity between the parties in the instant suit and the state criminal case. Pueschel v. Leuba, D.C.Conn.1974, 383 F.Supp. 576. Judgment 828.21(1)

5167. ---- Appeals, exhaustion of state remedies, collateral estoppel

Condemnees who had not appealed from state court condemnation awards which did not make allowance for attorney fees, even though state courts allegedly provided full and adequate forum for presentation of claims, were collaterally estopped from bringing action in federal court against condemnor and others to recover amounts equal to attorney fees on theory that constitutional rights of the condemnees had been violated by condemnor's failure to make its initial offers in amounts equal to the fair market value of the homes as determined by condemnor's appraiser, thus forcing condemnees to hire attorneys to represent them in court proceedings in order to obtain fair market value. Rhodes v. City of Chicago for Use of Schools, C.A.7 (Ill.) 1975, 516 F.2d 1373. Judgment 828.18

Claimant who failed to appeal state court order incarcerating him for failure to pay jail bill was collaterally estopped from claiming that incarceration violated § 1983; under applicable Missouri law, claimant waived any challenge to constitutionality of sentence by failing to raise issue on direct appeal. Burks v. County of Miller, Mo., W.D.Mo.1990, 750 F.Supp. 408. Judgment 828.8

5168. ---- Habeas corpus, exhaustion of state remedies, collateral estoppel

Where inmate had exhausted state postconviction remedies with respect to claim that discipline imposed by prison officials violated his constitutional rights, state proceedings had to be given collateral estoppel effect in subsequent § 1983 damage action based on same discipline, even though collateral estoppel would not apply in subsequent federal habeas corpus proceeding. Gross v. Heikien, C.A.8 (Iowa) 1992, 957 F.2d 531, rehearing denied, certiorari denied 113 S.Ct. 233, 506 U.S. 881, 121 L.Ed.2d 168. Judgment 828.8

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5169. Identity of issues, collateral estoppel

Under Pennsylvania law as predicted by Court of Appeals, Unemployment Compensation Review Board (UCRB) findings, that there was no evidence that terminated county commissioner's office clerk violated her employer's rules or that her actions were detrimental to employer's business, did not, under doctrine of issue preclusion, preclude employer and supervisors in clerk's subsequent § 1983 action from rebutting her allegation that they fired her because of her protected speech, as issues in proceedings were different; issue before UCBR was whether clerk was ineligible for unemployment compensation due to willful misconduct, and issue in § 1983 action was whether termination violated clerk's First Amendment rights. Swineford v. Snyder County Pa., C.A.3 (Pa.) 1994, 15 F.3d 1258.

Determination by Illinois Industrial Commission that former employee's discharge did not cause his subsequent stroke collaterally estopped him from relitigating that issue in his § 1983 political firing case, despite his claim that issue decided in worker's compensation case, whether his stroke "arose out of and in the course of his employment," differed from issue in political firing case of whether his "stroke was caused by his firing." Crot v. Byrne, C.A.7 (Ill.) 1992, 957 F.2d 394. Administrative Law And Procedure 501; Workers' Compensation 1793

Since negative answer of jury on constitutional issue of whether chief jailer had violated plaintiff's constitutional rights by deliberate indifference to serious medical needs of plaintiff meant either that jury found no deliberate indifference or that plaintiff's medical needs were not sufficiently serious to reach level of constitutional violation, doctrine of collateral estoppel did not require the setting aside of award of punitive damages in second trial in which jury found that conduct of chief jailer had been malicious, wanton and oppressive. Haywood v. Ball, C.A.4 (N.C.) 1980, 634 F.2d 740. Courts 99(7)

Since issues determined by plaintiff's state court guilty plea, aggravated assault and possession of instrument of crime, were not the issues addressed in his subsequent § 1983 case, namely whether officer used excessive force in shooting plaintiff, collateral estoppel did not bar plaintiff's civil suit. DiJoseph v. Vuotto, E.D.Pa.1997, 968 F.Supp. 244. Judgment 828.8

Inmate's state court conviction for attempted assault in connection with an altercation with corrections officers did not collaterally estop him from asserting an excessive-force claim in a § 1983 suit against the officers; conviction established only that he attempted to assault a peace officer while in a correctional facility, which did not preclude him from offering evidence that the officers employed excessive force either before or after he attempted to cause injury to the officer. McCrory v. Belden, S.D.N.Y.2003, 2003 WL 22271192, Unreported. Judgment 828.8

5170. Identity of parties, collateral estoppel--Generally

A plaintiff who has a constitutional claim decided against him in state court is foreclosed under doctrine of collateral estoppel from asserting the same claim in federal district court, even if federal court action involves a different defendant, and it does not matter whether plaintiff had a choice of forum in the prior litigation. Hammer v. Town of Greenburgh, S.D.N.Y.1977, 440 F.Supp. 27, affirmed 578 F.2d 1368. Judgment 828.12

5171. ---- Privity, identity of parties, collateral estoppel

Where defendants in civil rights damage action were city police officers not directly employed by state and had no measure of control whatsoever over criminal proceeding against plaintiff and no direct individual personal interest in its outcome, there was no privity sufficient to invoke doctrine of collateral estoppel as to issues of consent to officers' entry into plaintiff's hotel room and of probable cause for his arrest resolved in plaintiff's favor in state criminal proceedings, and district court did not fail to give full faith and credit to state determination by submitting the questions to jury in civil rights damage action. Davis v. Eide, C.A.9 (Cal.) 1971, 439 F.2d 1077, certiorari

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denied 92 S.Ct. 139, 404 U.S. 843, 30 L.Ed.2d 78. Judgment 828.12

After discharged teacher brought first action against school board in Connecticut state court relating to his discharge, doctrine of claim preclusion barred second action against town, superintendent of schools, and board of education members in their official capacities, but not in their individual capacities; additional parties named in second action were in privity with board of education, as party in first action, based on agent-principal or master-servant relationship. Meehan v. Town of East Lyme, D.Conn.1996, 919 F.Supp. 80, affirmed 104 F.3d 352, certiorari denied 117 S.Ct. 1336, 520 U.S. 1156, 137 L.Ed.2d 495. Judgment 828.14(6)

There was not privity between corporate owner of fireworks and its manager at suppression hearing in criminal prosecution against the manager, and result of that hearing would not be given collateral estoppel effect in subsequent civil rights action brought by the owner of the fireworks. East Coast Novelty Co., Inc. v. City of New York, S.D.N.Y.1992, 781 F.Supp. 999, reargument denied 141 F.R.D. 245. Judgment 828.8

Arresting officer was not in privity with state, though he testified in prosecution of defendant charged with resisting arrest, and thus officer was not collaterally estopped from litigating issue of reasonable suspicion in acquitted defendant's subsequent § 1983 action alleging false arrest. Schwab v. Wood, D.Del.1991, 767 F.Supp. 574. Judgment 648

5172. ---- Class members, identity of parties, collateral estoppel

Where all of issues concerning conditions at District of Columbia jail had been fully litigated and resolved in recent substantial identical case, defendants had had every opportunity to contest the facts involved and those facts could no longer be open to any dispute, application of collateral estoppel was appropriate, even though plaintiff class in prior case consisted of persons not yet convicted and in the later case all class members had been convicted. Inmates, D. C. Jail v. Jackson, D.C.D.C.1976, 416 F.Supp. 119. Judgment 677

5173. ---- Partners and partnerships, identity of parties, collateral estoppel

Partners of nursing home were collaterally estopped from litigating in federal district court, under this section, action for injunction restraining enforcement of grand jury subpoena duces tecum for records of one partner on theory that criminal procedure law, McKinney's N.Y. CPL 190.40, granting immunity to grand jury witnesses unless evidence was required to be produced by subpoenas duces tecum and witness did not possess privilege against self-incrimination with respect to such evidence, left partners in doubt with respect to their privilege where partnership was party to previous action in state court which held that very same records did not enjoy protection of U.S.C.A.Const. Amend. 5. Notey v. Hynes, E.D.N.Y.1976, 418 F.Supp. 1320. Judgment 828.8

5174. ---- Police officers, identity of parties, collateral estoppel

Mutuality requirement for collateral estoppel under Georgia law was not present in civil rights suit brought by arrestee against officers and head of county police department and, thus, prior state court denial of suppression motion did not bar arrestee from bringing civil rights suit against officers and head of department based on allegedly illegal search; neither officers nor head of county police department were parties to criminal case. Farred v. Hicks, C.A.11 (Ga.) 1990, 915 F.2d 1530. Judgment 828.8

Plaintiff, who brought action against police officers seeking damages for beating allegedly received during course of his arrest and for allegedly illegal search of his home, could not invoke collateral estoppel offensively with regard to ruling in his criminal case concerning legality of search and seizure of evidence from his home since the present defendants were not parties to the prior state court proceedings. McCurry v. Allen, C.A.8 (Mo.) 1982, 688 F.2d 581. Judgment 648

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42 U.S.C.A. § 1983

White police officer was not collaterally estopped from presenting complaint that he was victim of unlawful racial discrimination when he was denied promotions granted to black officers with lower examination scores; although officer had a "strong community of interest" with party to previous suit which ended in consent decree establishing affirmative action program, plaintiff himself was not a party to prior suit. Puckett v. City of Louisville, W.D.Ky.1992, 819 F.Supp. 589, affirmed 991 F.2d 796. Judgment 707

Fact that arresting officer and United States did not participate in administrative trial of sergeant before police department's adverse act panel did not bar application of issue preclusion against arrestee in action for violation of § 1983, common-law torts, and violation of Federal Tort Claims Act. Stevens v. Stover, D.D.C.1990, 727 F.Supp. 668. Administrative Law And Procedure 501; Municipal Corporations 185(11)

State troopers charged in action under this section with having unconstitutionally arrested plaintiff and searched his motor vehicle were not precluded from raising plea of collateral estoppel on basis of state court ruling in criminal action on theory that there was no mutuality of parties. Moran v. Mitchell, E.D.Va.1973, 354 F.Supp. 86. Judgment 828.8

5175. ---- Prisoners, identity of parties, collateral estoppel

Prison inmate was estopped from bringing § 1983 action against prison officials alleging that circumstances of his transfer and administrative segregation were unlawful; all inmate's basic contentions had been resolved by state court actions involving, in substance, same parties. Chappell v. Mills, D.Kan.1989, 726 F.Supp. 293. Judgment 828.20(1)

5176. ---- Foreclosure proceedings, identity of parties, collateral estoppel

Where issue of constitutionality of 12 V.S.A. § 4601 requiring a defendant in foreclosure to obtain leave of court to appeal was raised by mortgagor in state court proceedings incident to foreclosure and was summarily decided against mortgagor, the mortgagor was collaterally estopped from raising the issue anew in subsequent federal civil rights actions brought against the mortgagor bank as well as various state officials, notwithstanding that the latter officials were not parties to the original foreclosure proceeding. Dieffenbach v. Attorney General of Vermont, C.A.2 (Vt.) 1979, 604 F.2d 187. Judgment 828.14(6)

5177. Full and fair opportunity to litigate issues, collateral estoppel-- Generally

In federal actions, including actions under this section, a state-court judgment will not be given collateral-estoppel effect where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court. Haring v. Prosise, U.S.Va.1983, 103 S.Ct. 2368, 462 U.S. 306, 76 L.Ed.2d 595. Judgment 828.14(1)

Collateral estoppel effect may be accorded state court judgments or decisions in federal court actions under this section; nothing in language or legislative history of this section shows congressional intent to deny binding effect to a state court determination where the state court, acting within its proper jurisdiction, be it civil or criminal, has given the parties a full and fair opportunity to litigate federal claims and thereby shown itself willing and able to protect federal rights and collateral estoppel is not precluded on theory that one asserting a federal right is entitled to one unencumbered opportunity to litigate such right in federal district court regardless of the legal posture in which the federal claim arises. Allen v. McCurry, U.S.Mo.1980, 101 S.Ct. 411, 449 U.S. 90, 66 L.Ed.2d 308, on remand 647 F.2d 167. Judgment 828.4(1)

Collateral estoppel barred state Highway and Transportation Commission (HTC) officials from litigating, in §§ 1983 suit by Ku Klux Klan (KKK) members to enjoin HTC officials from denying local KKK chapter's application

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to participate in HTC's adopt-a-highway program under revised regulation, the issue of whether HTC could deny KKK's application because of KKK's racial discrimination in membership, where Court of Appeals had ruled, in previous suit against HTC by another KKK member, that HTC unconstitutionally denied KKK's application under previous regulation based on KKK's racial superiority beliefs and advocacy, and in reaching that conclusion, rejected HTC's purported reasons for denying the application, one of which was the KKK's discriminatory membership criteria. Robb v. Hungerbeeler, C.A.8 (Mo.) 2004, 370 F.3d 735, rehearing and rehearing en banc denied, certiorari denied 125 S.Ct. 908, 543 U.S. 1054, 160 L.Ed.2d 776. Judgment 632; Judgment 702; Judgment 720

Findings of New York Supreme Court, Appellate Division, that refusal by Department of Correctional Services and prison officials to permit Native American corrections officer to wear his hair longer than set forth in hair length regulation substantially encumbered officer's right to freely practice his chosen religion and that Department and officials showed no legitimate state interest that would be advanced by refusing to grant hair length exception were material to determination by district court of whether failure to grant exception violated federal and/or constitutional law such that officer could recover under § 1983 and, thus, Department and officials would be estopped from relitigating those issues in trial on officer's § 1983 claim unless they could show that they did not have full and fair opportunity to litigate issues in prior proceeding. Rourke v. New York State Dept. of Correctional Services, N.D.N.Y.1995, 915 F.Supp. 525. Judgment 828.20(1)

Federal civil rights statute does not operate as a device to collaterally attack adverse state court decisions and, as long as plaintiff was accorded a full and fair opportunity to litigate an issue in state court, doctrine of collateral estoppel applies to the civil rights claim. Esteves v. Ortiz Alvarez, D.Puerto Rico 1988, 678 F.Supp. 963. Judgment 828.5(1); Judgment 828.20(1)

A party who has had a full and fair opportunity to litigate constitutional issues before the highest state court cannot use this section as a substitute for a right of appeal or as a means of collateral attack on the final judgment of the state court. Sylvander v. New England Home For Little Wanderers, D.C.Mass.1978, 444 F.Supp. 393, affirmed 584 F.2d 1103. Judgment 828.21(1)

5178. ---- Assistance of counsel, full and fair opportunity to litigate issues, collateral estoppel

Plaintiff, who received no response to his requests for legal assistance in maintenance of state court suit against state for negligently allowing assault upon him when he was transferred from one cellblock to another, was so ill-able to represent himself as to have lacked a full opportunity to present his claims; thus, plaintiff's subsequent action under this section against state agency and individual correction officers seeking to impose individual liability on basis of allegation that he was a victim of unnecessary force applied by certain correction officers while they were transferring him from one cellblock to another was not barred by collateral estoppel despite fact that state court based its dismissal of plaintiff's claims upon a finding that no excessive force had been used on plaintiff. Clark v. Department of Correctional Services, S.D.N.Y.1983, 564 F.Supp. 787. Judgment 828.1

Under Illinois law, convicted murder defendant had had full and fair opportunity to litigate his unreasonable search and seizure claim via motion to suppress evidence during his state criminal trial, and thus collateral estoppel precluded his subsequent assertion of §§1983 Fourth Amendment claim against police officers who had executed search, even though defendant had represented himself at murder trial with standby counsel; defendant's lack of skill in conducting his case pro se, purported history of psychological impairment, and attention-deficit disorder did not constitute lack of full and fair opportunity, since defendant himself had refused assistance of counsel and had acted to get criminal trial under way as quickly as possible. Simpson v. Rowan, C.A.7 (Ill.) 2005, 125 Fed.Appx. 720, 2005 WL 513483, Unreported. Judgment 828.8

5179. ---- Incentive to litigate issue, full and fair opportunity to litigate issues, collateral estoppel

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Prison officials did not have sufficiently strong incentive in civil rights action to litigate issue of whether prison disciplinary system violated due process, precluding application of offensive collateral estoppel to bar qualified immunity defense in inmate's subsequent civil rights action based on alleged due process violation occurring at disciplinary proceeding; only equitable relief was sought in prior action and relief granted did not require prison to undergo disruptive or revolutionary changes. McDuffie v. Estelle, C.A.5 (Tex.) 1991, 935 F.2d 682. Judgment 632

Prior Article 78 proceeding which found that prison disciplinary hearing officer's failure to call witnesses requested by inmate at disciplinary hearing was improper did not collaterally estop officer from relitigating the issue in inmate's § 1983 action, where officer had no incentive nor full opportunity to litigate federal claims during Article 78 proceeding. Ramirez v. Selsky, S.D.N.Y.1993, 817 F.Supp. 1090. Judgment 828.16(1)

Determination of state trial court, in criminal prosecution of police officer, that police officer injured his former spouse had collateral estoppel effect, pursuant to Illinois law, with respect to civil rights claims against officer, though only misdemeanor charges were raised in prosecution, considering that potential for imprisonment and adverse impact on officer's employment if found guilty provided objectively adequate incentive to fully defend case. Czajkowski v. City of Chicago, Ill., N.D.Ill.1992, 810 F.Supp. 1428. Judgment 828.8

5180. ---- Review procedures, full and fair opportunity to litigate issues, collateral estoppel

State court judgment in favor of developers on their counterclaim to city's action to enjoin developers from digging lagoon in residential subdivision did not preclude developers from raising issues in federal civil rights litigation which had not been raised in counterclaim, where state appellate court had vacated dismissal of city's claims and remanded for further proceedings which were still pending. Gosnell v. City of Troy, Ill., C.A.7 (Ill.) 1995, 59 F.3d 654. Judgment 828.9(7); Judgment 828.10(2)

Under doctrine of issue preclusion, or collateral estoppel, police officer was precluded by prior administrative agency decisions from relitigating reason for his discharge in subsequent § 1983 action wherein he alleged that he was fired in retaliation for exercising his First Amendment rights; Pennsylvania Unemployment Compensation Board of Review, affirmed by Commonwealth Court, found that officer was discharged for insubordination and neglect of duty, Civil Service Commission found that officer's speech concerning his suspension violated directive of police department manual, providing that officers should not publicly criticize department, and that directive was valid constitutional limitation on officer's right to free speech, and officer had full and fair opportunity to litigate issue since he appealed decision to Court of Common Pleas before abandoning claim. Edmundson v. Borough of Kennett Square, E.D.Pa.1992, 818 F.Supp. 798, affirmed in part, reversed in part 4 F.3d 186, rehearing and suggestion for rehearing en banc denied.

Arrestee was not denied a full and fair opportunity to litigate menacing conviction, for purposes of determining whether facts therein decided had collateral estoppel effect in his subsequent civil rights action against officers, by fact that menacing conviction, because it resulted in only $100 fine, was not subject to direct appeal or by fact that there was some confusion in scope of review afforded by writ of certiorari under Delaware law; even though Delaware courts seemed unclear on scope of review afforded pursuant to writ of certiorari, arrestee could not raise issue where he did not attempt to obtain writ. Looney v. City of Wilmington, Del., D.Del.1989, 723 F.Supp. 1025. Judgment 828.8

Inmate was collaterally estopped by virtue of prior Oregon state court proceeding from bringing civil rights action alleging due process violations through placement in disciplinary segregation; under Oregon law, judicial affirmance of administrative determination could be given preclusive effect in subsequent proceeding, identical issues were raised in state court and necessarily determined in administrative review proceeding, and inmate received full and fair opportunity to litigate. McClure v. Santos, D.Or.1987, 669 F.Supp. 344, affirmed 878 F.2d 386. Judgment 828.20(1)

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42 U.S.C.A. § 1983

5181. ---- Preliminary hearings, full and fair opportunity to litigate issues, collateral estoppel

Under Oklahoma law, arrestee who was ultimately acquitted of criminal charges for which she was arrested was collaterally estopped, in her subsequent civil rights action against police officers, from relitigating issue of probable cause to arrest because question of probable cause was determined conclusively at preliminary hearing, at which time arrestee had full and fair opportunity to litigate issue. Hubbert v. City of Moore, Okl., C.A.10 (Okla.) 1991, 923 F.2d 769. Judgment 🔑 648

5182. ---- Suppression proceedings, full and fair opportunity to litigate issues, collateral estoppel

State court's finding, in suppression hearing, that omissions in police officer's application for warrant to search home were deliberate and vitiated probable cause did not collaterally estop officer from claiming qualified immunity from homeowner's subsequent § 1983 claim in federal court; in ruling on suppression motion, state court had no opportunity to consider objective reasonableness of those omissions, in light of clearly established law. Lombardi v. City of El Cajon, C.A.9 (Cal.) 1997, 117 F.3d 1117. Judgment 🔑 828.8

State court determination, following full and fair opportunity to defendant to litigate the issue, denying defendant's suppression motion collaterally estopped him from asserting Fourth Amendment violation in civil rights action against officers. Munz v. Parr, C.A.8 (Iowa) 1992, 972 F.2d 971. Judgment 🔑 828.8

Collateral estoppel barred *Bivens* claims for constitutional rights violation by federal officers, brought by driver against Drug Enforcement Administration (DEA) task force agents who allegedly illegally seized cash from vehicle, where validity of search, seizure, or arrest at issue was previously upheld in state court suppression hearing. Pou v. U.S. Drug Enforcement Admin., S.D.N.Y.1996, 923 F.Supp. 573, affirmed 107 F.3d 3. Judgment 🔑 828.8

If state court determinations at suppression hearing prior to § 1983 plaintiff's trial for driving under influence were final, issue preclusion would prevent plaintiff from relitigating whether arresting officers used excessive force and whether hospital withdrew plaintiff's blood without his consent in violation of Fourth Amendment, where plaintiff had full and fair opportunity to litigate his civil rights contentions at suppression hearing, where issues of excessive force and consent to withdraw blood were distinctly put at issue in suppression hearing, where findings concerning probable cause and excessive force were essential to judgment denying suppression of blood alcohol test results, and where suppression motion could not have been denied without finding that drawing of plaintiff's blood was consistent with Fourth Amendment. Ashford v. Skiles, E.D.Pa.1993, 837 F.Supp. 108. Judgment 🔑 828.8

Plaintiff in civil rights action was not collaterally estopped from raising issues pertaining to search of his house and seizure of his property by denial of his motion to suppress by state court in a state criminal case where, in light of fact that the criminal charges had been dropped, he had not been afforded a full and fair opportunity to litigate issues raised in the suppression hearing. Glover v. Hunsicker, E.D.Pa.1985, 604 F.Supp. 665. Judgment 🔑 828.8

As to complaint, in action under this section, that officers seized items not named in search warrant and that seizure was not authorized by any exception to warrant requirement, plaintiff had been accorded full and fair opportunity to litigate such claim in state court by motion to suppress, and proper arguments having been asserted and correct body of case law having been applied, and there being no evidence that officer perjured himself in his testimony at suppression hearing, and in view of defendant's opportunity to litigate his claim in state court, doctrine of collateral estoppel precluded raising such issue. Lucien v. Roegner, N.D.Ill.1983, 574 F.Supp. 118. Judgment 🔑 648

5183. ---- Miscellaneous opportunities not full and fair, full and fair opportunity to litigate issues, collateral estoppel

Although issue of whether contraband found in prisoner's cell was planted by prison officials was fully litigated and

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resolved against prisoner in disciplinary proceeding, proceeding did not have preclusive effect on that issue in § 1983 proceeding, in light of evidence that proceeding did not occur under review by unbiased hearing officer, including evidence that hearing officer refused even to consider merits of prisoner's principal defense to charges against him. Colon v. Coughlin, C.A.2 (N.Y.) 1995, 58 F.3d 865. Judgment 828.8

Findings of Texas State Board of Education that nonrenewal of teacher's contract was not discriminatorily motivated were not entitled to collateral estoppel effect in federal civil rights action under this section where the Board did not explain its reversal of credibility determinations made by hearing examiner and approved by State Commissioner of Education and the Board ex parte requested the district to prepare findings in advance of actual or nominal decision time and adopted those findings without affording teacher an opportunity to respond. Griffen v. Big Spring Independent School Dist., C.A.5 (Tex.) 1983, 706 F.2d 645, certiorari denied 104 S.Ct. 525, 464 U.S. 1008, 78 L.Ed.2d 709. Judgment 641

Under New York law, collateral estoppel, or issue preclusion, did not bar primary election candidate's federal civil rights claims alleging that actions of members of local board of elections in rejecting his nominating petitions violated his federal due process and equal protection rights, where prior state court action, in which candidate secured place on ballot, litigated and necessarily decided only whether nominating petitions conformed to requirements of state law. Bodkin v. Garfinkle, E.D.N.Y.2006, 412 F.Supp.2d 205. Judgment 828.16(4)

Under Pennsylvania law, doctrine of collateral estoppel did not apply to establish liability of borough, borough council members, and borough officials in §§ 1983 action by construction company and its owner for alleged due process violation by barring relitigation of issue of whether council's decision to preclude company, as non-responsible bidder, from bidding on future borough construction projects was arbitrary and capricious, based on prior state court decision enjoining borough from declaring company to be non-responsible bidder, given that issues presented in the two actions were not identical and that defendants did not have full and fair opportunity in state court to litigate defenses that they raised to §§ 1983 claim. Osiris Enterprises v. Borough of Whitehall, W.D.Pa.2005, 398 F.Supp.2d 400. Judgment 828.16(1)

North Carolina state university grievance committee's findings, in support of its denial of terminated employee's complaint of sex discrimination and retaliation, would not be given preclusive effect in employee's judicial action so as to warrant dismissal of her claims under §§ 1983 and Title IX; employee had alleged facts sufficient to undermine adequacy of opportunity afforded her to litigate her claims through university's grievance process by contending that university's administrative process was deficient in that, inter alia, she was not allowed to examine witnesses directly, testimony was not under oath, there was no discovery process, she was prohibited from asking certain questions, she was prevented from presenting certain evidence, and committee did not file findings of fact or conclusions supporting their decision to uphold her termination. Hooper v. North Carolina, M.D.N.C.2005, 379 F.Supp.2d 804. Colleges And Universities 8.1(5)

Where a §§ 1983 action is brought by an unsuccessful Article 78 plaintiff, only collateral estoppel will trigger the *Rooker-Feldman* bar; New York's res judicata rule does not apply because a state court entertaining an Article 78 proceeding does not have the power to award the full measure of relief available in subsequent section 1983 litigation. Dibbs v. Roldan, S.D.N.Y.2005, 356 F.Supp.2d 340. Courts 509

In § 1983 action alleging that city maintained an unconstitutional policy of strip searching all pre-arraignment prisoners without reasonable suspicion, state court's decision in a prior case did not, under New York law, collaterally estop city's claims; court's decision to allow prior plaintiff to amend her complaint after both parties had finished presenting their cases prevented city from having a full and fair opportunity to litigate the issue, and city was unable to conduct discovery related to issue or otherwise sufficiently prepare. Maneely v. City of Newburgh, S.D.N.Y.2003, 256 F.Supp.2d 204. Judgment 828.16(1)

Under New York law, inmate did not have full and fair opportunity to litigate his claims in his prior related state

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court of claims action and, thus, collateral estoppel did not preclude inmate from litigating issues decided in that action in his present § 1983 civil rights action in federal court against corrections officers, alleging that he was beaten by officers in violation of his Eighth Amendment rights, given inmate's apparent mental confusion and his resulting inability to effectively represent himself after being denied appointed counsel in state court of claims action. Cruz v. Root, W.D.N.Y.1996, 932 F.Supp. 66. Judgment 828.7; Judgment 828.16(1)

Individual who was convicted of rape in state court but was later pardoned was not collaterally estopped, in § 1983 action against city and police officers, from raising issues that individual gave no confession, as asserted by police officers, and that police misconduct tainted victim's identification; those issues were not litigated in state courts, individual may not have had full and fair opportunity to litigate those issues in state courts, and it was unclear whether Virginia courts would apply collateral estoppel in civil action with respect to issues decided in prior criminal proceedings. Snyder v. City of Alexandria, E.D.Va.1994, 870 F.Supp. 672. Judgment 828.8

Defendants, in civil rights action against two members of city police department for allegedly directing and/or conducting unlawful search and seizure, were not collaterally estopped from raising issue of probable cause to make such search, even though such issue had been decided in favor of plaintiff in prior habeas corpus proceeding, where defendants had not had full and fair opportunity to litigate such issue in either state or federal court, state conceded in habeas corpus proceeding that search was conducted without probable cause while defendants denied such conclusion, and defendants were entitled to jury trial on some of the issues raised by plaintiff's complaint so that a different result was possible. Henderson v. Goeke, E.D.Pa.1971, 329 F.Supp. 1160, affirmed 491 F.2d 749. Habeas Corpus 901; Judgment 713(1)

Under Oklahoma law, state magistrate judge's preliminary-hearing determination that sufficient evidence warranted binding arrestee over for trial on the issue whether the arrestee had committed two counts of assault on an officer did not preclude the arrestee from pursuing a false-arrest claim in a §§ 1983 suit; the arrestee never had a full and fair opportunity to litigate the issue of probable cause, and there was evidence to show that the magistrate court's probable-cause ruling was erroneous. Gouskos v. Griffith, C.A.10 (Okla.) 2005, 122 Fed.Appx. 965, 2005 WL 375858, Unreported. Judgment 828.8; Judgment 828.11(2)

Inmate, in large part due to his pro se status, lacked a full and fair opportunity to litigate in a proceeding before a state court, and thus, that court's determination, that the force used by a corrections officer was reasonable and not excessive, did not, under New York law, present a collateral estoppel bar to redetermination of the appropriateness of the officer's conduct, and the *Rooker-Feldman* doctrine therefore did not preclude litigation of the issue in the inmate's instant § 1983 suit; the inmate was unaware of his ability to take discovery and to compel witnesses on his behalf, and thus, was woefully unprepared to present his case and to counter the State's evidence. Palmer v. Goss, S.D.N.Y.2003, 2003 WL 22519446, Unreported. Courts 509; Judgment 828.8; Judgment 828.16(1)

5184. ---- Miscellaneous opportunities full and fair, full and fair opportunity to litigate issues, collateral estoppel

Municipal employee who returned to work following settlement of earlier litigation against employer was collaterally estopped from claiming that his current salary and position did not comply with terms of settlement agreement; employee had full and fair opportunity to litigate issues in contempt proceeding challenging employer's compliance with stipulations pertaining to his salary and appointment, and employee had opportunity to object to magistrate judge's finding in contempt proceeding prior to it becoming final order but did not, nor did he appeal once district court adopted magistrate's decision. Gonzalez-Pina v. Rodriguez, C.A.1 (Puerto Rico) 2005, 407 F.3d 425. Judgment 646; Judgment 650; Judgment 713(1)

Because inmate had full and fair opportunity to litigate constitutional challenges to prison disciplinary proceeding in prior state court action under New York's Article 78, collateral estoppel barred relitigation of those issues in subsequent civil rights action against state prison officials; issues presented were questions of law, and therefore limited review under Article 78, for substantial evidence on administrative record, did not disadvantage inmate.

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Giakoumelos v. Coughlin, C.A.2 (N.Y.) 1996, 88 F.3d 56. Judgment 828.8

State court judgment granting state Attorney General's motion to compel religious society and its head to comply with subpoenas issued in connection with administrative investigation to determine whether society was engaged in fraud barred, on grounds of collateral estoppel, action brought by religious society and its head alleging civil rights violations and civil rights conspiracy; state court adversely resolved issues central to constitutional claims when it denied cross motion of religious society and its head to quash subpoenas and granted state Attorney General's motion to enforce and religious society and its head had full and fair opportunity to litigate those issues in state court. Temple of Lost Sheep Inc. v. Abrams, C.A.2 (N.Y.) 1991, 930 F.2d 178, certiorari denied 112 S.Ct. 193, 502 U.S. 866, 116 L.Ed.2d 153. Judgment 828.8

Under New York law, collateral estoppel, or issue preclusion, barred litigation in federal civil rights suit of propriety under state law of actions of members of local election board in rejecting primary candidate's nominating petition, where candidate had successfully challenged their actions in state court action that provided full and fair opportunity to litigate matter. Bodkin v. Garfinkle, E.D.N.Y.2006, 412 F.Supp.2d 205. Judgment 828.16(1)

Prior proceeding before New York State Division of Human Rights (NYSDHR) afforded employee full and fair opportunity to litigate his racial discrimination claim against public employer, for purpose of employer's assertion of collateral estoppel in subsequent lawsuit brought by employee alleging racial discrimination under civil rights statutes; although NYSDHR made its determination based solely upon documentation submitted and did not conduct hearing, employee had been represented by competent counsel, employee had initiative to litigate issue, and employee did not explain how hearing or discovery would have altered outcome. Johnson v. County of Nassau, E.D.N.Y.2006, 411 F.Supp.2d 171. Civil Rights 1711

New York State Public Employment Relations Board's (PERB) determination, made after a hearing in which both parties were represented by counsel and had the opportunity to examine and cross-examine witnesses, that union's conduct was not arbitrary and outrageous in violation of state law, collaterally estopped municipal bus driver from litigating §§ 1981 claim alleging that the union violated her due process and equal protection rights on the basis of her race; PERB acted in a quasi-judicial capacity, and even though the constitutionality of union's conduct was not before PERB, a determination of union's motivation and intent was necessary and crucial to PERB's conclusion that the Act was not violated, and the same factual findings were central to driver's due process and equal protection claims. Perry v. Metropolitan Suburban Bus Authority, E.D.N.Y.2005, 390 F.Supp.2d 251. Labor And Employment 1834

Property owners' allegations that mortgage banking company and its president participated in conspiracy to deprive them of their property without due process of law were fully and fairly litigated, and necessarily determined and resolved adversely to property owners in prior state and federal actions and thus doctrine of collateral estoppel prevented owners from relitigating those issues by recasting their assertions as basis for § 1983 conspiracy claim. Green v. Kadilac Mortg. Bankers, Ltd., S.D.N.Y.1996, 936 F.Supp. 108. Judgment 713(1); Judgment 724; Judgment 828.16(1)

In considering whether defendant was afforded opportunity to litigate Fourth Amendment claim in state criminal hearing in order to apply collateral estoppel in federal civil rights action, fact that state court denied defendant's application to call co-defendants or obtain their grand jury testimony did not mean that he was deprived of a full and fair opportunity to litigate the issue of the legality of the arrest, search and seizure in the state court suppression hearing. Wallace v. Roche, E.D.N.Y.1996, 921 F.Supp. 946. Judgment 559

Doctrine of collateral estoppel under North Carolina law precluded county employee from relitigating due process issues regarding his suspension and termination including lack of sufficient specificity in suspension notice through § 1983 action, failure to comply with procedural requirements during investigatory suspension and failure of director to afford employee unbiased predismissal conference; issues were identical, were raised, litigated, and

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actually determined in prior administrative proceeding, were necessary to resulting judgment and judgment was final decision on merits which employee had full and fair opportunity to litigate. Gray v. Laws, E.D.N.C.1994, 915 F.Supp. 747, on reconsideration in part 915 F.Supp. 762, affirmed in part, vacated in part 51 F.3d 426. Administrative Law And Procedure 501; Counties 67

Arrestee charged with driving under influence of alcohol had full and fair opportunity to litigate issue of whether police officer had probable cause to arrest her during her Illinois state court proceeding to rescind statutory suspension of her driver's license, and thus arrestee was collaterally estopped from relitigating issue in action brought against officer under federal civil rights statute and under state law for false arrest, false imprisonment, and malicious prosecution. Mosley v. La Mastus, N.D.Ill.1990, 741 F.Supp. 724. Judgment 713(1)

Claims by employee of city agency that she had been discriminated against because of race, sex and age were barred by collateral estoppel as result of an adverse determination in hearing conducted by State Division of Human Rights; at hearing employee had opportunity to litigate her claims through counsel, call witnesses and cross examine them. Nurse v. City of New York, S.D.N.Y.1990, 735 F.Supp. 69. Administrative Law And Procedure 501; Civil Rights 1711

Indigent state prisoner's action challenging actions which allegedly occurred during state criminal trial, direct appeal and collateral attack upon conviction was barred by collateral estoppel where prisoner had previously attacked nearly every aspect of judicial process which resulted in adjudication of his guilt, since there had been three state postconviction proceedings, six federal habeas petitions and numerous civil rights suits, and it was inconceivable that there remained issue which had not yet been fully explored. Holsey v. Bass, D.C.Md.1981, 519 F.Supp. 395, affirmed 712 F.2d 70. Judgment 715(1)

Employee could seek damages for emotional suffering for acts taken by city, as employer, under New York State Human Rights Law, New York City Human Rights Law, Rehabilitation Act, and § 1983; although employee was estopped from seeking any back pay because Civil Service Commission gave employee full and fair hearing and denied his request for back pay, Commission did not have power to award money damages for emotional suffering. Varone v. City of New York, S.D.N.Y.2003, 2003 WL 21787475, Unreported. Administrative Law And Procedure 501; Municipal Corporations 218(8)

5185. Issues actually raised in prior proceedings, collateral estoppel-- Generally

Where constitutional issue has been actually raised in state court, litigant has made his choice and may not relitigate that issue in federal court in civil rights action for deprivation of rights. Ornstein v. Regan, C.A.2 (N.Y.) 1978, 574 F.2d 115. Judgment 828.16(1)

The 1871 civil rights statute did not prevent state court judgment from having preclusive effect on constitutional issues raised in subsequent federal proceeding which either were raised or could have been raised in state court proceeding. Collard v. Incorporated Village of Flower Hill, E.D.N.Y.1984, 604 F.Supp. 1318, affirmed 759 F.2d 205, certiorari denied 106 S.Ct. 88, 474 U.S. 827, 88 L.Ed.2d 72. Judgment 828.16(1); Judgment 828.16(3)

5186. ---- Reservation of federal claims, issues actually raised in prior proceedings, collateral estoppel

Doctrines of collateral estoppel and res judicata were properly applied by federal court in civil rights suit in view of similar state suit, notwithstanding that plaintiff had not submitted federal claims to state court for determination, as he did voluntarily submit for determination the issues underlying his federal claims which he fully litigated and were found by federal court to be identical with those raised in civil rights suit. Atchison v. State of Wyo., C.A.10 (Wyo.) 1985, 763 F.2d 388. Judgment 828.16(1)

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With respect to issue whether federal constitutional claim was actually litigated in juvenile court and was thus barred by collateral estoppel, express reservation of federal claim in juvenile court was not necessary where motion did not reasonably appear to raise such claim and no evidence indicated that the juvenile judge nonetheless actually proceeded to decide it. Fernandez v. Trias Monge, C.A.1 (Puerto Rico) 1978, 586 F.2d 848. Judgment 828.16(1)

5187. ---- Cruel and unusual punishment, issues actually raised in prior proceedings, collateral estoppel

Even if doctrine of collateral estoppel bars relitigation in a civil rights suit of questions determined in prior state habeas corpus proceedings, doctrine did not preclude federal district court, following state habeas corpus determination that state prisoner had not been mistreated during solitary confinement, from deciding issue whether conditions of confinement constituted cruel and unusual punishment since issues were not identical, in that state issue was whether mistreatment caused defendant to plead guilty, issue of cruel and unusual punishment was not actually litigated in state court, and any finding of no cruel and unusual punishment was not essential to determination that guilty plea was voluntary. Campise v. Hamilton, S.D.Tex.1974, 382 F.Supp. 172, appeal dismissed 541 F.2d 279, certiorari denied 97 S.Ct. 1127, 429 U.S. 1102, 51 L.Ed.2d 552. Habeas Corpus 901

5188. ---- Due process, issues actually raised in prior proceedings, collateral estoppel

Court of Appeals had jurisdiction to review district court's order applying collateral estoppel to preclude relitigation of liability issues decided in § 1983 action by 20 former municipal employees alleging that massive layoff in aftermath of mayoral election violated their First Amendment and due process rights in three severed trials of claims by 62 additional employees; four cases began as single lawsuit, district court's order bound defendants as of date of its entry, and application of collateral estoppel in subsequent trials was beyond any speculation. Acevedo-Garcia v. Monroig, C.A.1 (Puerto Rico) 2003, 351 F.3d 547. Federal Courts 554.1

Collateral estoppel did not preclude foster parent from bringing § 1983 action asserting his due process rights were violated when long-term foster care agreement was terminated by state and foster child removed from foster parent's care, where state appeals consisted of legal determination that application of best interest of child standard was correct and factual determination that sufficient evidence supported decision to remove foster child from foster parent's care, and foster parent could not have raised due process claims in original administrative hearing because those claims arose as result of hearing itself. Webb v. State of Ala., Dept. of Pensions and Sec., C.A.11 (Ala.) 1988, 850 F.2d 1518. Judgment 828.7

Discharged teacher was barred from relitigating issue of due process against school superintendent and board of education members in their individual capacities, where he argued in his administrative appeal and before Connecticut state court that his termination violated his state and federal due process rights. Meehan v. Town of East Lyme, D.Conn.1996, 919 F.Supp. 80, affirmed 104 F.3d 352, certiorari denied 117 S.Ct. 1336, 520 U.S. 1156, 137 L.Ed.2d 495. Judgment 828.7

5189. ---- Probable cause, issues actually raised in prior proceedings, collateral estoppel

Former criminal defendant was not estopped from bringing civil rights action against police officer for wrongful search and seizure of property by failure to challenge underlying probable cause for search warrant at suppression hearing in prior criminal prosecution. B.C.R. Transport Co., Inc. v. Fontaine, C.A.1 (Mass.) 1984, 727 F.2d 7. Judgment 828.8

Arrestee's § 1983 claim for damages against police officers was precluded under Wisconsin principles of collateral estopppel, where state court had determined that arrest and search were supported by probable cause, state court made such determination after hearing in which arrestee cross-examined officers, testified himself, and called another witness, and arrestee could not have been convicted if police had been acting without probable cause.

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Timbuktu v. Koch, C.A.7 (Wis.) 2003, 62 Fed.Appx. 676, 2003 WL 1796016, Unreported. Judgment 828.8

5190. ---- Conspiracy, issues actually raised in prior proceedings, collateral estoppel

Arrestee's §§1983 action against prosecutor and arresting officers, alleging that, following his arrest on drug charges, defendants had attempted to recruit informants to entangle him in a sting operation, was barred by collateral estoppel; issues of whether defendants had unfairly targeted arrestee had already been addressed in prior actions. Leventry v. Price, W.D.Pa.2004, 319 F.Supp.2d 562. Judgment 715(2)

Plaintiff's allegation of conspiracy in course of his conviction for felony-murder was barred by collateral estoppel whereas plaintiff had raised those issues in state postconviction proceedings in which it was found that plaintiff failed to show improper inquest occurred, that false cause of death was put on victim's death certificate or that any misconduct by local officials occurred. O'Dell v. McSpadden, E.D.Mo.1991, 780 F.Supp. 639, affirmed 994 F.2d 843, certiorari denied 114 S.Ct. 260, 510 U.S. 895, 126 L.Ed.2d 212. Judgment 828.8

5191. ---- Employment, issues actually raised in prior proceedings, collateral estoppel

State court judgment that found former employee's dismissal had a rational basis did not collaterally estop former employee's federal court claim of wrongful termination under Title VII, claim of interference with his right to contract, § 1983 claim that he was deprived of constitutional rights under color of state law, conspiracy claim alleging he was deprived of equal protection or equal privileges or immunities, and claims under analogous provisions of the New York State Human Rights Law (NYSHRL) or the New York City Human Rights Law (NYCHRL); resolution of these claims hinged on whether race or some other impermissible characteristic was a motivating factor in the police department's decision to terminate him, and finding in state court that his termination was rational did not preclude the possibility that race or other impermissible factor formed the basis for former employee's termination. Latino Officers Ass'n v. City of New York, S.D.N.Y.2003, 253 F.Supp.2d 771. Judgment 828.8; Judgment 828.17(3)

City was barred in § 1983 action, under doctrine of collateral estoppel, from raising issue of whether police officer voluntarily relinquished her property interest in continued employment when district attorney delivered officer's letter of resignation to police commissioner, where such issue was clearly raised in officer's prior Article 78 proceeding in New York state court, and where city had full and fair opportunity to litigate that issue in such prior proceeding. Clow v. Deily, N.D.N.Y.1997, 953 F.Supp. 446. Judgment 828.16(1)

Discharged teacher's due process claim under § 1983 arose from same transaction or series of transactions as his earlier administrative appeal in state court, triggering claim preclusion bar, where comparison of his complaint with pleadings in administrative appeal and Superior Court judgment demonstrated that group of facts or transactions in both actions involved his termination and surrounding circumstances. Meehan v. Town of East Lyme, D.Conn.1996, 919 F.Supp. 80, affirmed 104 F.3d 352, certiorari denied 117 S.Ct. 1336, 520 U.S. 1156, 137 L.Ed.2d 495. Judgment 828.7

Fact that terminated corrections officer's successful action to have Department of Correctional Service's hair length policy declared unconstitutional was brought as Article 78 proceeding in New York state courts did not foreclose application of collateral estoppel to preclude relitigation of certain issues in federal civil rights action even though such defenses as absolute or qualified immunity and certain remedies available in § 1983 action were not available in Article 78 proceeding; as officer was not precluded from asserting any claims, Department and prison officials were not foreclosed from asserting affirmative defenses to those claims, even though they would be precluded from relitigating certain issues, and officer could assert § 1983 claim and pursue all available remedies even though Article 78 proceeding did not provide full relief on issue of damages. Rourke v. New York State Dept. of Correctional Services, N.D.N.Y.1995, 915 F.Supp. 525. Judgment 828.8

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For collateral estoppel purposes in former state employee's federal civil rights action, state personnel board's determination that employing agency did not act in bad faith in connection with job actions taken against employee did not involve same factual issue as question of whether employee was discharged due to her political affiliation; there was no indication in board's decision that employee advanced political affiliation argument, and single reference in administrative record to political affiliation was reference to employee's purported friendship with wife of former governor. Lupo v. Voinovich, S.D.Ohio 1994, 858 F.Supp. 699. Administrative Law And Procedure 501; States 53

Where discharged state employee was collaterally estopped, by virtue of state court order, from arguing that he was qualified for position on day he was terminated, he was precluded from recovering under § 1983 and Title VII. Payne v. State of Neb., Dept. of Correctional Services, D.Neb.1993, 854 F.Supp. 608, affirmed 45 F.3d 433. Civil Rights 1128

Civil rights action brought by former township police chief seeking damages for allegedly improper dismissal was barred, under doctrine of collateral estoppel, by previous state court proceeding in which the former police chief challenged his dismissal, even though the former police chief used word "conspiracy" for first time in federal action to describe investigatory process, where federal action amounted to no more than rephrasing of challenge made in state court action that there was denial of due process because body which fired former police chief was, administratively, investigator, prosecutor and judge, and record established that defendants in federal action were in privity with township, which was party defendant to state court action. Kelly v. Warminster Tp. Bd. of Sup'rs, E.D.Pa.1981, 512 F.Supp. 658, affirmed 681 F.2d 806, certiorari denied 103 S.Ct. 76, 459 U.S. 834, 74 L.Ed.2d 74 . Judgment 828.15(1)

Issue preclusion applied to bar employee from asserting employment discrimination claim against employer for refusing to sponsor him for apprenticeship program allegedly because of his Hispanic ethnicity, since issues raised were identical to those litigated in employee's prior action against employer; employee's current claim involved application of same civil rights law as that involved in prior litigation, there was substantial overlap between evidence and argument advanced in current case and that advanced in prior action, pretrial preparation and discovery related to matter presented in prior case could reasonably have been expected to embrace matter presented in current case, and current claim was closely related to employment discrimination claim in prior litigation. Reynaga v. Sun Studs, Inc., C.A.9 (Or.) 2004, 97 Fed.Appx. 729, 2004 WL 1043099, Unreported. Judgment 715(2)

5192. ---- Licenses and permits, issues actually raised in prior proceedings, collateral estoppel

Virginia resident who was denied taxicab license in Maryland was not collaterally estopped under Maryland law from asserting in federal civil rights action that consideration of residency in determining entitlement to license violated privileges and immunities and commerce clauses, although Virginia resident had raised issue before Maryland circuit court reviewing licensing decision, where Maryland court did not address that issue. O'Reilly v. County Bd. of Appeals for Montgomery County, Md., C.A.4 (Md.) 1990, 900 F.2d 789, rehearing denied. Judgment 828.16(4)

5193. ---- Prisons and prisoners, issues actually raised in prior proceedings, collateral estoppel

Article 78 proceeding only addressed issue of whether prisoner's due process rights were violated by refusal to permit prisoner to question witness regarding whether reasonable grounds supported search of prisoner's cell, and so prisoner was not precluded from raising issue in § 1983 action of whether disciplinary proceedings were instituted against him on basis of retaliation for his two prior lawsuits. Colon v. Coughlin, C.A.2 (N.Y.) 1995, 58 F.3d 865. Judgment 828.16(1)

Where prior action brought by prisoners challenging constitutionality of mail regulations did not specifically raise

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the question of whether prison officials could open mail from lawyers outside the inmate addressee's presence, judgment entered in the prior action, which was class action in which all prisoners were members of the class, upholding the prison's mail regulations did not bar, by collateral estoppel, prisoners who were members of the class in the first action from maintaining a second action to challenge specifically the actions of prison officials in opening mail from lawyers outside of the inmates' presence. Crowe v. Leeke, C.A.4 (S.C.) 1977, 550 F.2d 184. Judgment 715(3)

State inmate was collaterally estopped from raising claim against prison officials in §§ 1983 action for denying him access to law library, where inmate alleged in prior §§ 1983 suit that he was injured by having his petition for habeas corpus dismissed with prejudice and his certificate of appealability denied due to lack of opportunity to conduct adequate legal research, current action was based on same alleged injury, and parties to prior action were same or in privity with current parties. Brooks v. Alameida, S.D.Cal.2006, 446 F.Supp.2d 1179. Judgment 715(2)

Issues already decided by state court concerning fire in inmate's cell were barred by the doctrine of collateral estoppel from being reconsidered in inmate's federal civil rights action against prison employees. Hernandez v. Goord, S.D.N.Y.2004, 312 F.Supp.2d 537. Judgment 828.16(1)

State prisoner asserting claims under § 1983 and Americans with Disabilities Act (ADA) against prison officials was collaterally estopped from litigating factual issue of whether disability discrimination had been basis for denying him access to vocational rehabilitation program, where issue had been decided against him in his prior federal action raising equal protection claim and resolution of that action necessarily required litigation of that issue, notwithstanding that prior action was against different defendants. Garrett v. Angelone, W.D.Va.1996, 940 F.Supp. 933, affirmed 107 F.3d 865. Judgment 632; Judgment 724

Prison officials asserting collateral estoppel in prisoner's § 1983 action challenging his removal from work release program without predeprivation hearing failed to meet their burden of showing that prisoner's prior Article 78 proceeding actually and necessarily decided issue of whether prisoner's federal constitutional rights were violated through absence of constitutionally sufficient procedures. Roucchio v. Coughlin, E.D.N.Y.1996, 923 F.Supp. 360. Judgment 828.16(1)

Doctrine of claim preclusion barred prison inmate's civil rights suit against warden for failing to provide inmate, an effeminate homosexual or "drag queen," with adequate protection from physical abuse by other inmates, in light of prior suit against the same warden for failing to protect plaintiff-inmate from rape by cellmate, where prior action was dismissed on the merits and claim arose out of the same core of operative facts and, though inmate did not presently allege rape, his broad allegations that warden had not provided him with adequate protection were fully addressed in the prior suit. Jones v. Warden of Stateville Correctional Center, N.D.Ill.1995, 918 F.Supp. 1142. Judgment 570(5); Judgment 585(2)

5194. Issues determined in prior proceeding, collateral estoppel--Generally

State prisoner's failure to file formal grievance regarding cold temperatures in prison cell did not preclude claim that prison officials were deliberately indifferent to prisoner's right to constitutionally adequate conditions of confinement, since prisoner clearly complained via other channels. Dixon v. Godinez, C.A.7 (Ill.) 1997, 114 F.3d 640. Civil Rights 1319

Where a constitutional issue has been actually raised and determined in state court and was necessary to the decision therein, such issue may not be litigated in an action under this section. Dieffenbach v. Attorney General of Vermont, C.A.2 (Vt.) 1979, 604 F.2d 187. Judgment 828.16(1)

Under New York law, former public health nurse's constitutional claims arising out of her termination were fully

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litigated in prior state court Article 78 proceedings, and thus her § 1983 claims arising out of her termination were barred by collateral estoppel in subsequent federal proceeding. Wachtmeister v. Swiesz, C.A.2 (N.Y.) 2003, 59 Fed.Appx. 428, 2003 WL 1191164, Unreported, certiorari denied 124 S.Ct. 166, 540 U.S. 860, 157 L.Ed.2d 110. Judgment 828.8; Judgment 828.16(1)

5195. ---- Necessity of determination, issues determined in prior proceeding, collateral estoppel

Under rules of collateral estoppel applied by Virginia courts, judgment of conviction based upon plaintiff's guilty plea to charge of manufacturing a controlled substance did not bar, under section 1738 of title 28 which requires federal courts to give preclusive effect to state-court judgments whenever the courts of the state from which the judgments emerged would do so, subsequent action under this section challenging legality of the search which had produced inculpatory evidence for reasons that legality of search of plaintiff's apartment was not actually litigated in the criminal proceedings, that the criminal proceedings did not actually decide against plaintiff on an issue on which he was required to prevail in order to establish his claim and that none of the issues in the Section 1983 action could have been "necessarily" determined in criminal proceeding. Haring v. Prosise, U.S.Va.1983, 103 S.Ct. 2368, 462 U.S. 306, 76 L.Ed.2d 595. Judgment 828.8

5196. ---- Constitutional claims not mentioned in court opinion, issues determined in prior proceeding, collateral estoppel

Where applicant for medicaid benefits in state proceeding challenging denial of medicaid benefits for services rendered by Christian Science nurse raised issue of constitutionality of New York medicaid statute if it denied coverage for Christian Science nursing and New York state court considered and expressly rejected claim that Christian Science nursing care was expense covered by state's medicaid program and entered decision upholding denial of medicaid benefits, state court, although its opinion did not allude to constitutional issue, necessarily resolved constitutional issue adverse to applicant so that its judgment collaterally estopped applicant from relitigating constitutional issue in subsequent federal civil rights action brought against same defendants. Winters v. Lavine, C.A.2 (N.Y.) 1978, 574 F.2d 46. Judgment 828.20(1)

Rooker-Feldman doctrine barred restaurant patron's §§1983 action against restaurant's alleged insurers and others alleging denial of patron's right to fair trial in his previous state-court negligence action against restaurant and insurers, and asserting other constitutional claims and tort claims; crux of federal suit was alleged scheme to conceal identity of restaurant's insurer in connection with personal injuries suffered at restaurant, state court had already dismissed negligence-type claims on merits, and constitutional claims were inextricably intertwined with state-court judgment. Williams v. Liberty Mutual Ins. Co., C.A.5 (La.) 2005, 2005 WL 776170, Unreported. Courts 509

5197. ---- Due process, issues determined in prior proceeding, collateral estoppel

Where state claims and federal civil rights claims depended on determination of question whether teacher was denied due process, judgment in prior state action operated as an estoppel as to those matters in issue or points controverted and determined. Brown v. DeLayo, C.A.10 (N.M.) 1974, 498 F.2d 1173. Judgment 828.12

Judgment of state trial court, as affirmed by state Supreme Court, that medico-legal activities of physician had not played a substantial role in refusal of private hospital to reappoint him to its medical staff, that bylaws of hospital did not require that physician be given a written specification of charges against him, and that hospital's actions were neither arbitrary nor unreasonable operated to collaterally estop physician from asserting in action brought under this section that he had been deprived of due process through hospital's refusal to provide him with a requested specification of charges. Bricker v. Crane, C.A.1 (N.H.) 1972, 468 F.2d 1228, certiorari denied 93 S.Ct. 1368, 410 U.S. 930, 35 L.Ed.2d 592. Judgment 828.21(1)

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Doctrine of collateral estoppel did not preclude state prisoner from bringing civil rights action under §§ 1983, seeking DNA testing of biological evidence used eight years before in his felony murder trial, where state court did not actually decide prisoner's due process claim when it denied his motions for DNA testing, reconsideration, and new trial, and state court never even acknowledged existence of constitutional principle on which prisoner's claim for DNA testing was based. Wade v. Brady, D.Mass.2006, 460 F.Supp.2d 226. Judgment 828.20(1)

Prior state court ruling that corporate owner of buildings destroyed as unsafe received notice by certified mail of unsafe building proceedings estopped officer of owner and officer's father and brother from relitigating issue of conformity with New York City Administrative Code's notice provisions, and thus, officer and family could not complain that they were denied constructive notice which they were due, in subsequent civil rights action against city. Friedman v. New York City Dept. of Housing and Development Admin., S.D.N.Y.1988, 688 F.Supp. 896, affirmed 876 F.2d 890, certiorari denied 110 S.Ct. 2570, 495 U.S. 961, 109 L.Ed.2d 752. Judgment 828.17(1)

Doctrine of collateral estoppel did not prevent former city police officer from litigating claim that various officials acted under color of state law to deprive him of his due process rights in connection with disciplinary proceedings where the due process issue was not necessary to decisions that were rendered in prior New York State proceedings arising out of the officer's dismissal and where the officer prevailed in the state courts. Williams v. Codd, S.D.N.Y.1978, 459 F.Supp. 804. Judgment 828.16(2)

Where state court determination that street registrants' signatures on designating petition were invalid was not relevant to instant question whether city board of elections' erroneous advice and ultra vires conduct led to denial of due process by unconstitutionally denying city councilman candidate, and hence voters, access to the ballot, and state courts neither expressly nor impliedly determined issue as to whether there was justifiable reliance by candidate and voters on board's advice, there was no collateral estoppel as to any plaintiffs on reliance issue. Williams v. Sclafani, S.D.N.Y.1978, 444 F.Supp. 906, affirmed 580 F.2d 1046. Judgment 828.12

High school teacher could not relitigate in federal court his claim that termination of his employment violated due process in that he had acquired tenure by estoppel under New York law where question of acquisition of tenure by estoppel had already been decided adversely to him in state court proceeding. LaBarr v. Board of Ed. of Union Free School Dist. No. 1, Town of Hempstead, Nassau County, N. Y., E.D.N.Y.1977, 425 F.Supp. 219. Judgment 828.20(1)

Prior decision by Pennsylvania Common Pleas Court that Southeastern Pennsylvania Transportation Authority (SEPTA) denied employee due process through its post-termination hearing procedure did not collaterally estop District Court's decision in employee's § 1983 claim that SEPTA did not violate employee's due process rights, where Pennsylvania Commonwealth Court had vacated decision of the Common Pleas Court. Krenzel v. Southeastern Pennsylvania Transp. Authority, C.A.3 (Pa.) 2004, 91 Fed.Appx. 199, 2004 WL 188091, Unreported. Judgment 828.9(7)

5198. ---- Medical need of prisoners, issues determined in prior proceeding, collateral estoppel

Doctrine of collateral estoppel was not applied to bar sheriff and chief jailor of county jail from relitigating issue as to whether prisoner had serious medical need while incarcerated at county jail, which issue had been decided in prisoner's favor in previous § 1983 action brought by prisoner against three deputy sheriffs involving the same incident, where federal district court had vague, disquieting feeling, admittedly unsupported by any evidence, that first jury's verdict may have been designed to offer prisoner solace by allowing him to prevail on issue of serious medical need, while having already decided that prisoner would lose on second issue of deputy sheriffs' deliberate indifference to that need. Fate v. Dixon, E.D.N.C.1986, 649 F.Supp. 551. Judgment 720

5199. ---- Retaliatory discharge, issues determined in prior proceeding, collateral estoppel

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Elementary school principal's suit under civil rights statute against school district superintendent and others for alleged violation of his rights under U.S.C.A. Const.Amend. 1 by preventing his reemployment as elementary school principal in retaliation for his opposition to certain candidates for school board was precluded on collateral estoppel grounds by earlier state court judgment entered following litigation of same issues presented in case at hand, which were necessary to support state court decree entered, despite fact that initial fact-finding was made by an administrative body. Holmes v. Jones, C.A.5 (Miss.) 1984, 738 F.2d 711. Judgment 828.12

Section 1983 claim by terminated employee of state agency, alleging that he was terminated in retaliation for his political party affiliation, in violation of First Amendment, was actually and necessarily decided in employee's prior New York article 78 proceeding in which he challenged his termination under state law, as required for collateral estoppel to apply under New York law; in state proceeding, employee's allegations included that reason which state provided for his termination was pretextual and that action taken by state against him resulted from his political enemies' discovery of his appointment with agency, state Appellate Division's finding on appeal that employee's termination was not arbitrary and capricious but was supported by substantial evidence subsumed question of whether it was made with discriminatory intent, and both state Supreme Court and Appellate Division expressly found employee's other claims to be without merit. Dolan v. Roth, N.D.N.Y.2004, 325 F.Supp.2d 122, affirmed in part, reversed in part 170 Fed.Appx. 743, 2006 WL 558578. Judgment 828.7; Judgment 828.16(1); Judgment 828.17(3)

5200. ---- Taking without compensation, issues determined in prior proceeding, collateral estoppel

Store proprietor who had claimed low earnings on federal tax returns was not estopped from inconsistently claiming higher earnings in his §§1983 action against city and city's corporation counsel; credibility of proprietor's evidence of business profits, in light of inconsistency with his tax return, was for jury to assess. Kassim v. City of Schenectady, C.A.2 (N.Y.) 2005, 415 F.3d 246. Estoppel 68(2)

State court in inverse condemnation proceeding brought by landowner against transit authority addressed landowner's federal constitutional claims as well as state constitutional claims, and thus, state court determination collaterally estopped landowner from asserting federal constitutional claims in civil rights suit in federal court; state court instructions to jury explicitly mentioned both State and United States Constitutions with respect to "taking," and state court jury concluded that neither landowner's property nor property rights had been taken or damaged by transit authority without just compensation first being paid. Fountain v. Metropolitan Atlanta Rapid Transit Authority, C.A.11 (Ga.) 1988, 849 F.2d 1412. Judgment 828.8

Where claim in civil rights action that zoning classification constituted the taking of property for public use without just compensation raised exactly the same constitutional issues litigated and decided in state court declaratory judgment action concerning validity of zoning classification established by prior resolution, although the claim was directed to the resolution which was adopted after the state court judgment, the doctrine of collateral estoppel prevented relitigation of the issue in civil rights action. Dells, Inc. v. Mundt, S.D.N.Y.1975, 400 F.Supp. 1293. Judgment 828.11(3)

5201. ---- Miscellaneous issues, issues determined in prior proceeding, collateral estoppel

Dairy farmer was collaterally estopped from bringing subsequent civil rights claim, which alleged that Puerto Rican government deprived him of his personal property without due process of law, since key issues of claim had been litigated previously, and decided against him, in Puerto Rico courts. Gonzalez-Alvarez v. Rivero-Cubano, C.A.1 (Puerto Rico) 2005, 426 F.3d 422. Judgment 828.20(1)

Decision in state habeas corpus proceeding that patient met statutory conditions for involuntary confinement for mental illness precluded, under New York doctrine of issue preclusion, patient's § 1983 claims challenging his involuntary confinement; matters actually litigated and determined in state court included whether patient suffered

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a mental illness and whether, due to illness, patient posed a substantial risk of harm to himself or others so that he was in need of further retention, and those questions were identical to issues asserted with respect to confinement claims in § 1983 action. Kulak v. City of New York, C.A.2 (N.Y.) 1996, 88 F.3d 63. Habeas Corpus 901

Issue preclusion aspect of res judicata did not bar prisoner's civil rights action even though prior favorable order in habeas corpus proceeding was vacated because prisoner had escaped, where district court had resolved competency of counsel issue in favor of prisoner, the court of appeals did not decide that issue on the merits, and there were issues in the civil rights action not precluded by the competency of counsel issue. Quarles v. Sager, C.A.11 (Ala.) 1982, 687 F.2d 344. Judgment 735; Habeas Corpus 901

Where issue of state constitutional ban on legislators' holding appointive positions was not litigated in civil rights action brought by college teacher, who was also a legislator, who contended that nonrenewal of his teaching contract and denial of tenure was a denial of rights under U.S.C.A.Const. Amends. 1 and 14 § 1 and where the teacher was perfectly aware of the issue and did not stress the point that it might affect his right to return to the college, doctrine of collateral estoppel did not preclude college, which had been ordered to reinstate the teacher with tenure, from asserting the constitutional ban on dual jobs when teacher sought to hold various state officials in contempt for failing to reinstate him and pay his salary. Stolberg v. Members of Bd. of Trustees for State Colleges of State of Conn., C.A.2 (Conn.) 1976, 541 F.2d 890, certiorari denied 97 S.Ct. 260, 429 U.S. 897, 50 L.Ed.2d 181 . Judgment 715(3)

Under doctrine of collateral estoppel, federal court was bound to accept as true finding of fact by state court that at time of appeal to civil service commission transit authority's employee was aware of conflict of interest of member of transit authority who voted to approve referee's report recommending employee's discharge, such finding being necessary to decision of state courts to dismiss action. Taylor v. New York City Transit Authority, C.A.2 (N.Y.) 1970, 433 F.2d 665. Judgment 828.20(1)

Claim for lost profits asserted by property owner in § 1983 suit alleging that city officials violated due process when they denied owner a building permit was not barred by claim preclusion arising from prior mandamus proceeding in which owner successfully compelled issuance of permit; under Oregon law, plaintiff could not have pursued his claim for lost profits during the mandamus proceeding under any theory because those damages arose from conduct of city officials that gave rise to the mandamus proceeding rather than from a false return of the writ during the mandamus proceeding. Holman v. City of Warrenton, D.Or.2002, 242 F.Supp.2d 791. Judgment 552

State court tax evasion convictions, based on rejection of taxpayers' claim that state tax regulations were inconsistent with and thus preempted by federal statute, collaterally estopped taxpayers from asserting preemption issue in subsequent §§ 1983 action seeking declaratory judgment. Enyeart v. Minnesota, D.Minn.2006, 408 F.Supp.2d 797. Judgment 828.8

Employee stated defense of equitable estoppel to claim that complaint of racial discrimination in contracting under §§ 1981 must be dismissed due to failure of employee to sue within 300 days after discriminatory event occurred; employee alleged that presence of settlement agreement, resolving earlier discrimination complaint, delayed filing of claim in present instance. Tardd v. Brookhaven Nat. Laboratory, E.D.N.Y.2006, 407 F.Supp.2d 404. Limitation Of Actions 179(1)

Police chief's malicious prosecution claim asserted against arrestee who sued him under §§ 1983 was barred, under doctrine of collateral estoppel, by decision granting summary judgment dismissing prior lawsuit brought by police chief against another arrestee who filed §§ 1983 claim against him; both §§ 1983 claims relied on same evidence of supervisory liability, so that malicious prosecution claims were identical, and police chief had adequate opportunity to litigate the malicious prosecution claim in prior action. Gausvik v. Perez, E.D.Wash.2005, 396 F.Supp.2d 1173. Judgment 715(2)

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42 U.S.C.A. § 1983

Homeowner who sued police officers, alleging that they used excessive force in breaking up party at his home, was collaterally estopped from relitigating issue of whether there was loud noise on premises at time of arrest, for purposes of determining existence of probable cause, since homeowner had been found guilty in state court of violating town's noise ordinance. Raphael v. County of Nassau, E.D.N.Y.2005, 387 F.Supp.2d 127. Judgment 828.17(1)

Objective component of Eighth Amendment claim of excessive force requires that violation be sufficiently serious by objective standards, taking into account context and contemporary standards of decency. Jeanty v. County of Orange, S.D.N.Y.2005, 379 F.Supp.2d 533. Sentencing And Punishment 1548

County jail inmate's conviction for assault on corrections officer did not preclude §§ 1983 action against officers claiming they violated his Eighth Amendment rights when they beat him to point of breaking his arm, after alleged assault had ceased and inmate was subdued. Jeanty v. County of Orange, S.D.N.Y.2005, 379 F.Supp.2d 533. Civil Rights 1093

Earlier state court decision that city's farm animal ordinance was valid did not have collateral estoppel effect barring owners from arguing that ordinance was invalid, in action under §§ 1983 against city and its officials, alleging violation of their constitutional rights, where judge in earlier case did not actually reach issue of ordinance's validity, because judge held that owners would not have been entitled to exception for prior non-conforming use anyway given that their use was not substantial enough. Moran v. City of New Rochelle, S.D.N.Y.2004, 346 F.Supp.2d 507. Zoning And Planning 727

Doctrine of nonmutual collateral estoppel, on basis of prior Iowa judgment dismissing county's petition for disposition of allegedly neglected horses which had been removed from farm, did not apply in farmer's § 1983 action alleging that removal of the horses violated her federal and Iowa constitutional rights; issue decided by Iowa court was whether the horses had been neglected, whereas issue before federal court, which was not raised before Iowa court, was whether county's execution of search warrant violated farmer's constitutional rights. McClendon v. Story County Sheriff's Dept., S.D.Iowa 2004, 312 F.Supp.2d 1146, affirmed in part, reversed in part 403 F.3d 510. Judgment 828.13; Judgment 828.16(4)

Civil rights action in federal district court based on alleged due process violations by chief counsel and law clerk for grievance committee during investigation of possible attorney misconduct by plaintiffs would be barred on collateral estoppel grounds by previous decision of state appellate court denying motions to dismiss disciplinary proceedings, provided that plaintiffs were afforded a full and fair opportunity to litigate due process claim in state court. Thaler v. Casella, S.D.N.Y.1997, 960 F.Supp. 691. Judgment 828.16(1)

Arrestee was collaterally estopped from relitigating in his § 1983 action issue of correctional officer's alleged use of excessive force in connection with one incident inasmuch as issue of excessive force with respect to that incident was litigated and decided in arrestee's state criminal trial, which resulted in his conviction of menacing, and arrestee failed to establish that his sentence for that offense had been reversed on direct appeal, expunged by executive order, or declared invalid by authorized state tribunal. Robertson v. Johnson County, Ky., E.D.Ky.1995, 896 F.Supp. 673. Judgment 828.8

Excessive force claim brought by citizens against police officers as civil rights claim was precluded by principles of res judicata or collateral estoppel where federal action involves same parties as those in previously decided state court action, and pivotal issue of whether reasonable officer would have acted as defendant officers acted under same circumstances was clearly determined in state court, which found that amount of force used was not egregious but was reasonable in light of circumstances that officers were faced with. Franklin v. City of Pontiac, E.D.Mich.1995, 887 F.Supp. 978. Judgment 828.16(1)

One-sentence state court order denying plaintiff's motion for rule to show cause why the confiscated items should

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not be returned did not collaterally estop plaintiff from bringing civil rights action based on allegations that defendants violated plaintiff's civil rights by seizing alleged fireworks and destroying some of the fireworks without testing them to determine whether, in fact, they were fireworks, since court had no indication as to basis of court's denial of plaintiff's motion. Jones v. Logue, W.D.Pa.1985, 615 F.Supp. 442. Judgment 828.17(1)

Plaintiff who brought section 1983 action alleging violation of his civil rights when police used a photograph they illegally retained in contravention of expungement order to arrest him on criminal charges of which he was ultimately found not guilty was not collaterally estopped from relitigating question whether use of illegally retained photograph caused deprivation of his liberty, because question was not necessarily decided by state court which decided issue of admissibility of pretrial lineup and in-court identifications of defendant provided by two witnesses who saw the unlawfully retained photograph. Anderson v. City of New York, S.D.N.Y.1985, 611 F.Supp. 481. Judgment 648

In view of judgments of state court appointing receiver for alleged vendor and enjoining alleged purchaser from exercising any rights consistent with ownership of property under deed, purchaser was collaterally estopped from asserting in federal civil rights action his ownership of property under deed or his controlling ownership of vendor corporation. Hohensee v. Grier, M.D.Pa.1974, 373 F.Supp. 1358, affirmed 524 F.2d 1403, certiorari denied 96 S.Ct. 2659, 426 U.S. 940, 49 L.Ed.2d 392, rehearing denied 97 S.Ct. 196, 429 U.S. 874, 50 L.Ed.2d 158. Judgment 828.20(1)

Where use made of telephones at plaintiffs' store was actually raised and adjudicated in prior criminal prosecution for gambling and consideration of that issue was necessary to finding of guilty therein, doctrine of collateral estoppel was applicable to action under this subchapter against telephone company and police officers seeking damages by reason of allegedly wrongful removal of telephones. Palma v. Powers, N.D.Ill.1969, 295 F.Supp. 924. Judgment 648

Ruling of Nebraska Court of Appeals, reversing arrestee's conviction for possession of crack cocaine because it found that pat-down search of arrestee was illegal, did not have collateral estoppel effect, in arrestee's subsequent § § 1983 action in federal court against city police officer alleging illegal search, as to whether officer was entitled to qualified immunity; Nebraska court did not address whether officer was entitled to qualified immunity, and officer was not in privity with state and did not have opportunity to litigate qualified immunity in the prior action. Coleman v. Rieck, C.A.8 (Neb.) 2005, 154 Fed.Appx. 546, 2005 WL 3068056, Unreported. Judgment 828.14(11)

5202. Administrative proceedings, collateral estoppel

Facts found at school administrator's disciplinary hearing, conducted under statute governing disciplinary hearings for disciplining tenured teachers and administrators in the New York state school system, had preclusive effective in administrator's §§ 1983 claim of retaliation; administrator's hearing properly adjudicated multiple charges of misconduct and determined that there was just cause for termination, administrator had an adequate, full, and fair opportunity to litigate the question of cause for her termination, including motion practice, bills of particulars, mandatory disclosure, discovery, subpoena power, right to counsel, cross-examination, testimony under oath, and a full record, and the hearing occupied a total of 14 days over a three-month period, and included the testimony of 20 witnesses, including five expert medical witnesses. Burkybile v. Bd. of Educ. of Hastings-On-Hudson Union Free School Dist., C.A.2 (N.Y.) 2005, 411 F.3d 306, certiorari denied 126 S.Ct. 801, 163 L.Ed.2d 628. Schools 63(1)

Under New York law, ALJ's finding at arrestee's parole revocation hearing that arresting officer struck arrestee after arrestee reached for something in his socks did not have collateral estoppel effect in arrestee's subsequent civil rights action against the officer based on officer's alleged use of excessive force; ALJ's statement that arrestee reached for his sock was not necessary to the outcome of the parole revocation hearing, since arrestee's parole

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could have been revoked because he struck the officer, whether or not he reached for his sock. Curry v. City of Syracuse, C.A.2 (N.Y.) 2003, 316 F.3d 324. Administrative Law And Procedure 501; Pardon And Parole 91

Under New York law, ALJ's finding at arrestee's parole revocation hearing that arresting officer struck arrestee after arrestee reached for something in his socks did not have collateral estoppel effect in arrestee's subsequent civil rights action against the officer based on officer's alleged use of excessive force; ALJ's statement that arrestee reached for his sock was not necessary to the outcome of the parole revocation hearing, since arrestee's parole could have been revoked because he struck the officer, whether or not he reached for his sock. Curry v. City of Syracuse, C.A.2 (N.Y.) 2003, 316 F.3d 324. Administrative Law And Procedure 501; Pardon And Parole 91

Student was barred by doctrine of issue preclusion from relitigating facts in federal court in connection with civil rights action, even though student requested damages in § 1983 action which were unavailable at State Board hearing, where Iowa law would give issues of fact preclusive effect because at State Board level, evidentiary hearing was conducted at which student raised and litigated due process claim, State Board rejected student's factual allegations that he suffered prejudice, which were clearly material to its disposition of the case, and both student's guilt and finding of no prejudice were necessary findings in State Board's affirmance of School Board's expulsion; had State Board found student suffered prejudice, it would have reversed School Board's decision. Plough By and Through Plough v. West Des Moines Community School Dist., C.A.8 (Iowa) 1995, 70 F.3d 512. Administrative Law And Procedure 501; Schools 177

Issue preclusion could not be applied to Civil Service Commission's unreviewed finding that police officer's public criticism of his superior officer was not protected by First Amendment and, thus, did not bar officer's subsequent § 1983 action alleging that he was discharged in retaliation for his exercise of free speech; constitutional adjudication was not within Commission's competence so as to bar a federal court from reexamining that legal issue. Edmundson v. Borough of Kennett Square, C.A.3 (Pa.) 1993, 4 F.3d 186, rehearing and suggestion for rehearing en banc denied. Administrative Law And Procedure 501; Municipal Corporations 185(11)

Section 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings. Wagner ex rel. Wagner-Garay v. Fort Wayne Community Sch ools, N.D.Ind.2003, 255 F.Supp.2d 915. Civil Rights 1062

Administrative proceedings before city planning commission and city council regarding developer's objections to condition of approval imposed on project did not have essential procedural characteristics of court, and thus their determinations were not entitled to preclusive effect in developer's subsequent §§ 1983 action, even though developer was given some time to present oral argument at city council hearing, and state court review of determinations was possible, where developer was not allowed to present evidence, to subpoena, call, or cross-examine witnesses under oath, or to subpoena documents in hands of city material to its constitutional equal protection claim, state court review was limited to administrative record, and developer did not initiate administrative proceedings. North Pacifica, LLC. v. City of Pacifica, N.D.Cal.2005, 366 F.Supp.2d 927. Zoning And Planning 363

Judicial discipline committee's order censuring state judge for engaging in sexually and racially harassing conduct towards female African-American secretary did not collaterally estop judge from litigating his liability in secretary's racial and sexual hostile work environment action under § 1983, § 1981, New York State Human Rights Law (NYCHRL), and New York City Human Rights Law (NYCHRL); judge lacked full and fair opportunity to litigate issues in disciplinary proceeding, and essential element of secretary's hostile work environment claim was not "necessarily decided" by committee. Bland v. New York, E.D.N.Y.2003, 263 F.Supp.2d 526. Administrative Law And Procedure 501; Judges 11(8)

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42 U.S.C.A. § 1983

Under Mississippi law, teacher's prior state court action appealing nonrenewal of her contract barred, under collateral estoppel principles, her subsequent federal § 1983 action alleging that nonrenewal violated First Amendment, even though initial proceedings were conducted by administrative body; issue in both actions was alleged violation of First Amendment rights, all factual circumstances surrounding alleged constitutional violation were raised in chancery court and on appeal to Mississippi Supreme Court, issue was actually litigated, and essential determination of issue was necessary and critical parts of judgment in both courts. Gates v. Walker, S.D.Miss.1994, 865 F.Supp. 1222, affirmed 62 F.3d 394. Judgment 828.7; Judgment 828.16(1)

Judge was not collaterally estopped from litigating, in connection with terminated bailiff's § 1983 claim, factual issues that were decided in administrative proceeding before Department of Employment and Training Services, where judge was not party to prior proceeding and "just cause" issue presented in prior proceeding was not identical to issues presented in § 1983 action. Kelly v. Municipal Court of Marion County, S.D.Ind.1994, 852 F.Supp. 724, affirmed 97 F.3d 902. Administrative Law And Procedure 501

Federal court could look to Georgia law to determine if administrative law judge's (ALJ) finding that firefighter was not promoted to position of fire engineer was entitled to preclusive effect in § 1983 action, where ALJ was performing judicial function, firefighter was given adequate opportunity to litigate issue and issue was properly before ALJ; ALJ's finding was entitled to preclusive effect, under Georgia law, where "promotion" issue was actually litigated before ALJ, issue was necessary to ALJ's ultimate conclusions and issue was identical to issue before court in § 1983 action. Hunter v. City of Warner Robins, Ga., M.D.Ga.1994, 842 F.Supp. 1460. Federal Courts 433

Courts are allowed in § 1983 actions to afford collateral estoppel effect to state administrative proceedings. Farley v. North Bergen Tp. Bd. of Educ., D.N.J.1989, 705 F.Supp. 223. Administrative Law And Procedure 501

Former pretrial detainee who brought §§ 1983 action against county sheriff and correctional officers could not contradict deposition testimony that he did not appeal denial of his administrative grievances with his subsequent affidavits or errata sheets stating alternatively that he did not receive responses and that he appealed, upon defendants' motion for summary judgment based on detainee's failure to exhaust remedies in accord with requirements of the Prison Litigation Reform Act (PLRA), notwithstanding detainee's assertion that he was merely clarifying earlier deposition. Truly v. Sheahan, C.A.7 (Ill.) 2005, 135 Fed.Appx. 869, 2005 WL 1316961, Unreported. Federal Civil Procedure 2539

5203. Arbitration proceedings, collateral estoppel

To determine if federal district court could give any preclusive effect to Illinois sheriff's merit board's decision that police officer was terminated for just cause, court had to determine whether board acted in judicial capacity, whether officer had adequate opportunity to litigate issues before board, and whether board's decision would be given preclusive effect by Illinois courts and if these three factors were met, court then had to determine whether this particular board decision should be given preclusive effect for purposes of officer's § 1983 action. Falk v. Cook County Sheriff's Office, N.D.Ill.1995, 904 F.Supp. 797. Administrative Law And Procedure 501; Federal Courts 433; Municipal Corporations 185(11)

Limited scope of judicial review of arbitral awards under New York law prevented district court from applying collateral estoppel to Article 75 proceeding confirming Tripartite Arbitration Board determination in favor of employee; accordingly, Article 75 proceeding was not entitled to preclusive effect in either of employee's Title VII or § 1983 actions in federal court. Sewell v. New York City Transit Authority, E.D.N.Y.1992, 809 F.Supp. 208. Judgment 828.8

5204. Consent decrees, collateral estoppel

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42 U.S.C.A. § 1983

Former administrative assistants of state's attorney's office were not foreclosed under collateral estoppel principles from bringing civil rights action raising issue that their termination was due to their political affiliation and thus violated U.S.C.A. Const.Amend. 1 by prior litigation involving constitutional rights of voters and candidates to fair elections in which it was determined that their positions were politically affiliated where judgment in the prior litigation was obtained by consent decree and did not contain any findings or any agreement precluding relitigation of issue of political affiliation for positions and where it was unclear whether that issue was actually decided. Gannon v. Daley, N.D.Ill.1983, 561 F.Supp. 1377. Judgment 651; Judgment 720

Until such time as valid consent decree entered in Pennsylvania state court was vacated, that decree and stipulations contained therein remained in full force and effect and party to consent decree was collaterally estopped from contending in civil rights action in federal district court that the consent decree was illegally procured by agents of the Commonwealth of Pennsylvania. Environmental Aid, Inc. v. Goddard, D.C.Pa.1977, 433 F.Supp. 906. Judgment 828.9(2)

5205. Criminal proceedings, collateral estoppel--Generally

Principle of collateral estoppel applies to §§ 1983 damages actions that necessarily require plaintiff to prove the unlawfulness of his conviction or confinement, just as it has always applied to actions for malicious prosecution; if judgment in plaintiff's favor would necessarily imply that his conviction is invalid, then §§ 1983 action is not cognizable unless conviction has been reversed on direct appeal, expunged, declared invalid, or otherwise called into question in habeas proceeding. Ballard v. Burton, C.A.5 (Miss.) 2006, 444 F.3d 391. Judgment 648

Collateral estoppel applies generally in actions for deprivation of civil rights when issues have been decided adversely in state criminal trial. Smith v. Marchewka, N.D.N.Y.1981, 519 F.Supp. 897. Judgment 828.8

While, in some situations, issues raised in state criminal prosecutions may not be relitigated in federal action brought under this section, if reasonable doubt as to applicability of estoppel exists, it must be resolved against precluding litigation of the issue. Clark v. Lutcher, M.D.Pa.1977, 436 F.Supp. 1266. Judgment 828.8

Collateral estoppel applies in a civil rights action where issue preclusion is based upon a prior state criminal judgment. Pyles v. Keane, S.D.N.Y.1976, 418 F.Supp. 269. Judgment 828.8

Supreme Court's *Heck v. Humphrey* decision, precluding collateral attacks on convictions or sentences, did not apply to § 1983 suit challenging parole revocation, made after claimant's sentence expired. Hernandez v. Wells, S.D.N.Y.2003, 2003 WL 22771982, Unreported. Civil Rights 1097

5206. ---- Preliminary hearings, criminal proceedings, collateral estoppel

Judge's finding at preliminary hearing that there was probable cause to bind an accused over to grand jury for indictment did not collaterally estop accused from subsequently suing arresting officer under this section for false arrest, because civil rights suit did not attack sufficiency of evidence to bind defendant over but, rather, charged that arresting officer's bad faith vitiated the finding, because accused's decision not to raise alibi defense at preliminary hearing did not amount to a waiver of the defense, and because judge at preliminary hearing had no occasion to consider accused's alibi or quality of arresting officer's investigations and reports. Whitley v. Seibel, C.A.7 (Ill.) 1982, 676 F.2d 245, certiorari denied 103 S.Ct. 254, 459 U.S. 942, 74 L.Ed.2d 198. Judgment 828.8

Section 1983 plaintiff was collaterally estopped from arguing that she was arrested without probable cause; at preliminary examination in underlying drug case, plaintiff contested issue of probable cause, plaintiff was represented by counsel who cross-examined witnesses produced by prosecution, and court found probable cause to believe that felony had been committed and that plaintiff committed it. White v. Tamlyn, E.D.Mich.1997, 961

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42 U.S.C.A. § 1983

F.Supp. 1047. Judgment 828.16(1)

5207. ---- Suppression hearings, criminal proceedings, collateral estoppel

Under Illinois law, plaintiff was not collaterally estopped from relitigating in her §§ 1983 action whether her confession was *Miranda*-infirm or involuntary because state court had determined, at a suppression hearing in prior criminal action, that her confession was voluntary; it would be unfair to hold plaintiff to the unappealable judgment of a court that used unsound reasoning to resolve credibility. Sornberger v. City of Knoxville, Ill., C.A.7 (Ill.) 2006, 434 F.3d 1006. Judgment 828.8

State court's finding, in suppression hearing, that police officer's false statement, in application for warrant to search home, that officer had met with informant, was not material, did not collaterally estop homeowner from claiming that false statement was material in § 1983 action against officer; prior ruling was not final and homeowner could not have obtained review of decision to suppress evidence from search. Lombardi v. City of El Cajon, C.A.9 (Cal.) 1997, 117 F.3d 1117. Judgment 828.8

Under New York law, arrestee's cause of action against arresting officers under § 1983 for false arrest and malicious imprisonment was not precluded by doctrine of collateral estoppel, where arrestee was acquitted of charge on which he had been arrested, despite litigation of issue of probable cause for arrest in pretrial suppression hearing; before jury's verdict, any appeal of state court's ruling of probable cause would have been premature, issue was moot after final judgment was entered, and arrestee thus had no opportunity to appeal adverse finding of probable cause. Johnson v. Watkins, C.A.2 (N.Y.) 1996, 101 F.3d 792. Judgment 828.8

Collateral estoppel barred inmate's § 1983 excessive force claim against deputies, that issue having been tried at suppression hearing in state circuit court; subject of state hearing was whether defendant had been beaten, state trial judge, in denying motion to suppress, necessarily found that inmate's confession was not coerced, and West Virginia Supreme Court of Appeals affirmed that ruling. Gray v. Farley, C.A.4 (W.Va.) 1993, 13 F.3d 142. Judgment 828.8

Finding at suppression hearing that there was probable cause for arrest barred, under Illinois law on offensive use of collateral estoppel, litigation concerning legality of arrest that was being challenged in § 1983 action for unlawful arrest and malicious prosecution. Arnold v. City of Chicago, N.D.Ill.1991, 776 F.Supp. 1259. Judgment 648

A decision rendered on a suppression motion, followed by conviction on the relevant criminal charges, is a "final judgment" for purposes of collateral estoppel. Rodriguez v. Beame, S.D.N.Y.1976, 423 F.Supp. 906. Judgment 650

5208. ---- Admissibility of evidence, criminal proceedings, collateral estoppel

Where issue whether defendant was denied constitutional rights during course of his criminal trial in state court by reason of admission of certain identification testimony was fully litigated in the course of criminal trial and subsequent appellate review and where state court judgment of conviction stood unreversed and unvacated, doctrine of collateral estoppel foreclosed subsequent civil rights action for damages and injunctive relief for alleged denial of constitutional rights during criminal trial arising out of admission of such evidence. Rimmer v. Fayetteville Police Dept., C.A.4 (N.C.) 1977, 567 F.2d 273. Judgment 828.8

Action of court in suppressing evidence relating to whether or not plaintiff had voluntarily submitted to a breathalyzer test following his arrest for driving under the influence of liquor was at most a matter of doubtful relevance to the issues presented in plaintiff's subsequent action against police officers under this section to recover damages for beatings allegedly administered to him by officers in station, and action of court in criminal action did

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not collaterally estop plaintiff from bringing subsequent action for damages. Collum v. Butler, C.A.7 (Ill.) 1970, 421 F.2d 1257. Judgment 🔑 648

Claimant's drunk driving conviction in state court collaterally estopped him from bringing § 1983 claim in federal court based on improper administration of breathalyzer test and on allegation that arresting officer had violated his constitutional rights by administering breath test; state court necessarily determined, in denying claimant's suppression motion, that claimant had voluntarily taken breath test. Grochowski v. Com. of Va., W.D.Va.1990, 741 F.Supp. 1230, affirmed 928 F.2d 399, certiorari denied 112 S.Ct. 176, 502 U.S. 859, 116 L.Ed.2d 139. Judgment 🔑 828.8

5209. ---- Confessions, criminal proceedings, collateral estoppel

Previous state trial court's determination, during suppression hearing before state court murder trial, that defendant's confession had not been obtained by use of illegal force, would not collaterally estop defendant's civil rights suit against police officers involved in interrogation; defendant might have cause of action for excessive force under Fourth Amendment as result of his illegal arrest, and lower court's ruling merely determined there was no violation of defendant's Fifth Amendment rights. Thomas v. Riddle, N.D.Ill.1987, 673 F.Supp. 262. Judgment 🔑 828.8

Under Missouri law of collateral estoppel, ruling by state court in criminal prosecution of defendant that defendant's incriminating statements were not coerced by police violence and that victim's identification of defendant was not improperly induced by police officer's hypnosis of victim precluded defendant from maintaining § 1983 suit against two officers alleging false arrest and beatings incident to defendant's confession and against one officer alleging that officer improperly obtained victim's identification testimony; however, defendant was not estopped from maintaining § 1983 claim that two officers used excessive force at time of arrest. Conley v. Whitener, E.D.Mo.1985, 617 F.Supp. 86. Judgment 🔑 828.8

State court's determination in prior criminal action that inmate's confession was not product of coercion during interrogation was implicit rejection of inmate's allegation that detective intimidated him by displaying gun and by refusing to permit him to phone his wife, and therefore, inasmuch as state court also expressly found that inmate was never told that he would not need a lawyer, inmate's claims of violations of rights under this section arising from threats made during interrogation were barred by collateral estoppel. Langert v. Festa, E.D.N.Y.1983, 563 F.Supp. 692. Judgment 🔑 828.8

State prisoner's claims against city detective for alleged violation of constitutional rights in course of arrest and interrogation were precluded under the doctrine of collateral estoppel by decision in pretrial suppression hearing in which state court held that defendant's confessions were validly obtained. Rodriguez v. Beame, S.D.N.Y.1976, 423 F.Supp. 906. Judgment 🔑 648

Determination of administrative law judge, that arrestee had assaulted police officer in course of arrest, made during parole revocation hearing, did not have collateral estoppel effect in arrestee's § 1983 action against officers for deprivation of federally protected rights; at time of revocation hearing, arrestee and judge did not know that one of two testifying officers had previously falsified incident reports. Hernandez v. Wells, S.D.N.Y.2003, 2003 WL 22771982, Unreported. Pardon And Parole 🔑 91

5210. ---- Excessive force, criminal proceedings, collateral estoppel

Though woman who had been shot by law enforcement officers after allegedly throwing knife at officer engaged in altercation with her brother was not collaterally estopped from bringing § 1983 action against officers, for their alleged unlawful use of excessive force, merely because she had previously been convicted of attempted murder based on this same incident, preclusive effect of criminal conviction operated to limit what facts could be found by

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jury for qualified immunity purposes, and barred woman from denying that she had thrown knife at officer, just before she was shot, in an attempt to kill him. Willingham v. Loughnan, C.A.11 (Fla.) 2001, 261 F.3d 1178, rehearing and rehearing en banc denied 32 Fed.Appx. 536, 2002 WL 370031, vacated 123 S.Ct. 68, 537 U.S. 801, 154 L.Ed.2d 2, on remand 321 F.3d 1299. Judgment 648

Fact that arrestee was later convicted in state court did not have collateral estoppel affect on arrestee's § 1983 action against arresting officer for use of excessive force; while arrestee admittedly was wrong in resisting arrest she did not seek to recover for that wrong but instead sought to recover for use of excessive force. Kane v. Hargis, C.A.4 (Va.) 1993, 987 F.2d 1005. Judgment 828.8

House occupant's conviction for culpable negligence, arising out of gunfight with police which he started by firing six shots through closed front door as police approached, did not constitute collateral estoppel bar under Florida law to occupant's § 1983 action alleging excessive force by police; police's subsequent conduct in response to initial shots, which was issue in § 1983 action, was not critical element of judgment in earlier case, as jury in that case did not have to consider whether police response was excessive in order to find occupant culpably negligent. Vazquez v. Metropolitan Dade County, C.A.11 (Fla.) 1992, 968 F.2d 1101. Judgment 828.8

Arrestees were not collaterally estopped from suing arresting officers under 42 U.S.C.A. § 1983 based on alleged use of excessive force during arrest, even though Colorado court that conducted criminal trial arising from arrest ruled that officers had reasonable suspicion to stop and probable cause to arrest arrestees; whether officers had reasonable suspicion to stop arrestees was not in dispute, whether officers had probable cause to arrest arrestees would not preclude litigation of critical issue of unreasonable excessive force, and arrestees did not have full and fair opportunity in prior proceeding to litigate issue of probable cause to arrest. Dixon v. Richer, C.A.10 (Colo.) 1991, 922 F.2d 1456, rehearing denied. Judgment 828.8

Where records of conviction of plaintiff for battery and resisting arrest were not authenticated by any proper person and police reports concerning defendants' conduct were unsupported by affidavits, it was error to rely on reports and records in applying doctrine of collateral estoppel to preclude plaintiff from raising in subsequent civil rights action against arresting officers issues of use of excessive force in effecting arrest, justification for attack on officer at station house and plaintiff's illegal detention. Williams v. Liberty, C.A.7 (Ill.) 1972, 461 F.2d 325. Evidence 366(2); Evidence 366(3)

State court conviction of county jail inmate, for assaulting corrections officer, did not have collateral estoppel effect barring inmate's §§ 1983 suit alleging excessive force in violation of Eighth Amendment, arising out of same cell search incident; excessive force issue was neither relevant nor raised in criminal action. Jeanty v. County of Orange, S.D.N.Y.2005, 379 F.Supp.2d 533. Judgment 828.20(1)

Fact that arrestee received criminal conviction in New York state court for resisting arrest meant that force used to apprehend him was presumptively valid, and thus, under New York law, he was collaterally estopped from pursuing federal § 1983 claim alleging that arresting officer used excessive force in effecting the arrest. Caridi v. Forte, S.D.N.Y.1997, 967 F.Supp. 97. Judgment 828.8

Section 1983 plaintiff who was convicted in underlying drug case was not collaterally estopped from claiming excessive force in arrest, where jurors in underlying case never made finding with respect to issue of excessive force; jurors could have disbelieved officers' denials of delivering blows to plaintiff in her vaginal area but still found that officers did not fabricate evidence and returned guilty verdict on drug charges. White v. Tamlyn, E.D.Mich.1997, 961 F.Supp. 1047. Judgment 828.16(4)

New York conviction for resisting arrest by kicking state trooper did not collaterally estop litigation of issues whether trooper used excessive force, assaulted arrestee, or was negligent toward him after he kicked trooper, even though trooper contended that events before and after the kick constituted a single occurrence. Pastre v. Weber,

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42 U.S.C.A. § 1983

S.D.N.Y.1988, 717 F.Supp. 987. Judgment 828.8

Arrestee's guilty plea to state law obstruction of justice charge did not collaterally estop him from contending in his §§ 1983 action against police officer who shot him during his arrest that he was not running toward officer at time he was shot. Few v. Cobb County, Georgia, C.A.11 (Ga.) 2005, 147 Fed.Appx. 69, 2005 WL 2030722, Unreported. Judgment 828.8

Inmate was collaterally estopped, in his § 1983 action, from relitigating issue of whether officers used unreasonable force in arresting him, even though inmate's conviction under California law for making false allegations against the defendants was reversed on ground that statute was unconstitutional; jury's finding in state criminal action, that inmate's claim of unreasonable force was false, remained presumptively conclusive. Sogbandi v. Markham, N.D.Cal.2002, 2002 WL 31855299, Unreported. Judgment 828.8

5211. ---- Obscenity, criminal proceedings, collateral estoppel

Petitioner who had been convicted in state court of obscenity with respect to certain exhibits was collaterally estopped, in federal court action under this section from litigating obscenity of exhibits. Pinkus v. Arnebergh, C.D.Cal.1966, 258 F.Supp. 996. Judgment 828.8

5212. ---- Perjury or false statements, criminal proceedings, collateral estoppel

Civil rights plaintiff alleging that defendant police officers suborned perjury in state criminal proceedings against the present plaintiff was collaterally estopped from relitigating claims already decided on denial of motion to dismiss indictment in state court. Stokes v. City of Chicago, N.D.Ill.1990, 744 F.Supp. 183. Judgment 828.8

Murder conviction collaterally estopped plaintiff from maintaining civil rights action in which he claimed that autopsy report had been falsified and that alleged victim died natural death; cause of death was necessarily decided by conviction. Green v. City of New York Medical Examiner's Office, S.D.N.Y.1989, 723 F.Supp. 973. Judgment 828.8

5213. ---- Pleas, criminal proceedings, collateral estoppel

State prisoner, who alleged that police officers used excessive force in effectuating his lawful arrest, stated valid cause of action under this section and fact that he pleaded guilty to offense charged did not estop him from raising such claim. Courtney v. Reeves, C.A.5 (Tex.) 1981, 635 F.2d 326. Civil Rights 1395(6)

Prisoner's plea of guilty to selling heroin admitted element of making a "sale," as against prisoner's contention that he engaged in transaction in belief he was assisting state agents in their investigation of a supplier, and subsequent civil rights action for damages against district attorney and state agents based on allegations of police conduct akin to entrapment was barred by collateral estoppel, particularly in view of prisoner's option of removing bar imposed by the guilty plea through a habeas corpus petition. Brazzell v. Adams, C.A.5 (Tex.) 1974, 493 F.2d 489. Judgment 559

Adverse ruling on merits in state postconviction proceedings of claim that prosecutors breached plea agreement presented collateral estoppel bar to relitigation of identical issue in federal civil rights suit. Buhrman v. Wilkinson, S.D.Ohio 2003, 257 F.Supp.2d 1110, supplemented 2004 WL 2044055, report and recommendation adopted 2004 WL 2044056. Judgment 648

County corrections officers who pleaded guilty to conspiring to deprive, and depriving, inmate of his right to be free from cruel and unusual punishment resulting in bodily injury and death were collaterally estopped from

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disputing their § 1983 liability for conspiracy to violate inmate's Eighth Amendment rights. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Judgment 🔑 648

Defendant's conviction pursuant to guilty plea to drug charges operated as complete defense to defendant's later § 1983 action alleging that arrest which led to charges was made without probable cause. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 890. Civil Rights 🔑 1088(4)

Defendant's conviction following guilty plea on drug charges relating to purported drug sale operated to bar defendant's § 1983 action against police officer based on allegedly improper arrest which gave rise to charges; in order to prevail on § 1983 claim, defendant would be required to prove unlawfulness of his conviction, which would be impermissible collateral attack on conviction due to defendant's failure to place any evidence before court that guilty plea to drug charge had been reversed or otherwise called into question. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 890. Civil Rights 🔑 1088(4)

Under Colorado law of collateral estoppel, civil rights plaintiff's prior state criminal proceeding in which he entered *Alford* plea did not bar his § 1983 Fourth Amendment based claims for unlawful arrest and illegal search and seizure; propriety of authorities' actions was never actually litigated in state criminal proceeding, issue of whether authorities' conduct violated plaintiff's Fourth Amendment rights was not necessarily determined in criminal proceeding, and propriety of authorities' conduct was not essential to trial court's acceptance of plaintiff's plea. Cortese v. Black, D.Colo.1993, 838 F.Supp. 485. Judgment 🔑 828.8; Judgment 🔑 828.16(1)

Dismissal of escape charge pursuant to guilty plea "estopped" arrestee from claiming in subsequent civil rights action premised upon false arrest that police officer lacked probable cause. Jones v. Village of Villa Park, N.D.Ill.1993, 815 F.Supp. 249. Judgment 🔑 828.8

Under Ohio law, party's plea of guilty to underlying criminal charges did not estop him from asserting, in subsequent civil rights action, that arresting officer's conduct deprived him of constitutional rights; propriety of officer's actions was never "actually litigated" in criminal proceeding, and would not have been "necessarily determined" in such proceeding. Eyer v. City of Reynoldsburg, S.D.Ohio 1991, 756 F.Supp. 344. Judgment🔑 828.8

5214. ---- Searches and seizures, criminal proceedings, collateral estoppel

Under Ohio law, prior suppression order in Ohio state court criminal proceeding against son of automobile owner, determining that search of the automobile violated the Fourth Amendment, did not bar, under doctrine of issue preclusion, subsequent consideration in federal court of issue of whether search of automobile violated automobile owner's Fourth Amendment rights, for purpose of owner's §§ 1983 action against law enforcement officers; a judgment in a criminal proceeding did not have collateral estoppel effect in civil action, and none of the parties in the prior state court criminal proceeding were parties to the subsequent §§ 1983 action. Knott v. Sullivan, C.A.6 (Ohio) 2005, 418 F.3d 561. Judgment 🔑 828.8

Where questions concerning legality of plaintiff's arrest and subsequent search of his vehicle were never considered on their merits at plaintiff's criminal trial and, again, in a later, unsuccessful federal habeas corpus proceeding, plaintiff was not collaterally estopped from raising them in his subsequent civil rights action, though summary dismissal of arrest and automobile claims was proper, where photographic identification furnished probable cause for arrest, and seizure of articles, being in "plain view," was justified. Jackson v. Official Representatives and Emp. of Los Angeles Police Dept. In and For Los Angeles County, C.A.9 (Cal.) 1973, 487 F.2d 885. Judgment 🔑 648

Motorist's state court misdemeanor conviction for running stop sign did not bar, under *Heck v. Humphrey*, motorist's §§ 1983 action against police officers who made stop, where motorist's federal claims were predicated

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on unreasonable stop, unreasonable detention, and unreasonable search, motorist was no longer in custody when he filed suit, and misdemeanor conviction was not necessarily binding under state law in subsequent civil action. Cole v. Doe 1 thru 2 Officers of City of Emeryville Police Dept., N.D.Cal.2005, 387 F.Supp.2d 1084. Civil Rights 1088(4)

Under Missouri law, doctrine of collateral estoppel did not preclude arrestee from challenging legality of search and seizure by bringing § 1983 action, even though arrestee had pleaded guilty in state court to offenses for which he was arrested; constitutionality of search and seizure was neither raised nor litigated in state proceeding, and there was no indication that arrestee had a full and fair opportunity to litigate issue in state court proceeding or that arrestee made any concession with respect to his constitutional claims. Rice v. Barnes, W.D.Mo.1997, 966 F.Supp. 877. Judgment 828.8

Finding of Fourth Amendment violation in criminal case could not be used to collaterally estop individual law enforcement officers from defending *Bivens* and § 1983 claims against them concerning their execution of in rem seizure warrant and subsequent search of property, absent privity between individual officers and assistant United States attorney who prosecuted criminal case, and absent identity of issues in both cases; officers had no control over how criminal case was handled and no ability to appeal decision, and homeowners had burden in civil case to prove violation of their Fourth Amendment rights and that officers were not entitled to qualified immunity. Trujillo v. Simer, D.Colo.1996, 934 F.Supp. 1217. Judgment 648

Under California law of collateral estoppel, state prisoner could not relitigate in § 1983 suit in federal court constitutional claim of unlawful search previously decided against him by California court in criminal proceeding; prisoner had motivation to fully litigate Fourth Amendment issue in his criminal trial because he was charged with four separate felony counts, prisoner received a full and fair trial, claim that police officers lacked probable cause to search motel room was identical to issue of legality of search raised in motion to suppress, and privity existed. Lato v. Sieverman, C.D.Cal.1996, 919 F.Supp. 336. Judgment 828.8

Defendant who pleaded guilty in state court to drug charge was collaterally estopped from challenging his arrest and subsequent search and seizure in civil rights action where defendant did not argue that his plea of guilty was unknowing or involuntary, court at pleading explained to defendant options as well as rights he waived by pleading guilty, defendant at pleading told court that he accepted prosecutor's story of crime and that he apologized for mistake he committed, and defendant at no time denied his guilt. Tenorio v. Murphy, E.D.N.Y.1994, 866 F.Supp. 92. Judgment 828.8

State court conviction for illegal weapons possession would collaterally estop claim for unlawful arrest by arrestee under 42 U.S.C.A. § 1983, the civil rights statute, if arrestee had been charged with illegal weapons possession at time of his arrest. Camarano v. City of New York, S.D.N.Y.1986, 624 F.Supp. 1144. Judgment 828.8

Where issue of unlawful search and seizure of nude photos from inmate's wife had been decided in state courts, there could be no action for deprivation of civil rights in federal court based on same issue. Smith v. Marchewka, N.D.N.Y.1981, 519 F.Supp. 897. Judgment 828.8

5215. ---- Self-incrimination, criminal proceedings, collateral estoppel

Nursing home operators who were unsuccessful in attempting to have state court quash subpoena for nursing home records were collaterally estopped from relitigating issue of self-incrimination in connection with action brought in federal court to enjoin enforcement of subpoena because of alleged violation of civil rights. Sreter v. Hynes, E.D.N.Y.1976, 419 F.Supp. 546. Judgment 828.20(1)

5216. ---- Probable cause, criminal proceedings, collateral estoppel

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42 U.S.C.A. § 1983

Under Vermont law, judge's inscription on information in prosecution for driving while intoxicated (DWI), stating finding of probable cause for arrest, did not have preclusive effect as to issue of existence of probable cause, and thus could not collaterally estop arrestee's subsequent § 1983 false arrest claim against arresting officer; finding was not final judgment but was open to challenge, arrestee ultimately pled to lesser charge of negligent operation rather than DWI, which did not require finding as to probable cause to arrest for DWI, and issue of probable cause to arrest for DWI was never litigated. Kent v. Katz, C.A.2 (Vt.) 2002, 312 F.3d 568. Judgment 🔑 648

Prisoner was not collaterally estopped from asserting a claim in a § 1983 action that he was deprived of his constitutional right to a prompt determination of probable cause even though he was convicted on the underlying charge since the issue was not actually litigated or decided during the state criminal proceeding. Webster v. Gibson, C.A.8 (Ark.) 1990, 913 F.2d 510. Judgment 🔑 828.8

Finding by state judge at preliminary hearing that there was probable cause for arrestee's arrest did not bar, on collateral estoppel grounds, arrestee from pursuing his civil rights action against arresting officer, because a different more stringent standard of probable cause was applicable in criminal preliminary hearing than was applicable in civil rights action questioning resulting arrest and confinement. Whitley v. Seibel, C.A.7 (Ill.) 1980, 613 F.2d 682. Judgment 🔑 648

State court determination, made in course of criminal prosecution, that there was probable cause to arrest was not collateral estoppel in subsequent action for damages against arresting officers under this section and U.S.C.A.Const. Amend. 4. Brubaker v. King, C.A.7 (Ind.) 1974, 505 F.2d 534. Judgment 🔑 828.16(1)

State criminal court's finding at conclusion of preliminary hearing, that probable cause existed to bind over defendants for trial for conspiracy to defraud, collaterally estopped defendants from litigating absence of probable cause in their subsequent §§ 1983 malicious prosecution claim; issues were identical, issue was actually and necessarily litigated, finding became final when defendants' appeal of it was denied, and identity of parties/privity was satisfied even though one defendant's prosecution had been severed prior to preliminary hearing, since severed defendant conducted family business with other defendants and thus had commonality of interest as to probable cause determination. Ayala v. KC Environmental Health, E.D.Cal.2006, 426 F.Supp.2d 1070. Judgment🔑 828.12

State court's prior dismissal of loitering charge against suspect did not bar police officers and city, under doctrine of collateral estoppel, from asserting that officers had probable cause to arrest suspect for loitering, in suspect's § 1983 false arrest action against officers and city; although lack of probable cause was argued by suspect's counsel at motion to dismiss, judge failed to state the basis for dismissal, and criminal complaint did not contain all information known to officers at time of arrest. Hernandez v. City of Rochester, W.D.N.Y.2003, 260 F.Supp.2d 599. Judgment 🔑 828.8; Judgment 🔑 828.9(5)

Plaintiff was collaterally estopped from asserting § 1983 claim based on allegation that he was seized or arrested without probable cause, where trial judge in state proceedings altered earlier finding, cited by plaintiff, of improper arrest or seizure, defendant was convicted in those proceedings, and on appeal state court held that actions of officer were lawful and that officer had an articulable basis to stop and detain plaintiff based on his observations. Liner v. Ward, S.D.N.Y.1991, 754 F.Supp. 32. Judgment 🔑 828.8

Plaintiff's false arrest claim in his civil rights action was foreclosed by doctrine of issue preclusion on the basis of prior state court criminal proceedings in which he was convicted of illegal possession or transportation of alcohol and driving while intoxicated, in light of acknowledgment that state judge found his arrest was supported by probable cause, and this necessarily prevented assertion of any federal civil rights claim based on false arrest, including conspiracy, coverup and negligence in connection with that arrest. Spallone v. Village of Roselle, N.D.Ill.1984, 584 F.Supp. 1387. Judgment 🔑 828.8

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Doctrine of issue preclusion, or collateral estoppel, was unavailable as a defense in civil rights action in the nature of common law tort actions of false arrest and false imprisonment where issue of probable cause which plaintiffs sought to litigate was not determined in, and was not necessary to the judgment in, the state criminal court proceeding, in which the present plaintiffs pleaded guilty. Pouncey v. Ryan, D.C.Conn.1975, 396 F.Supp. 126. Judgment 828.16(4)

5217. ---- Summary procedure, criminal proceedings, collateral estoppel

Under Vermont law, initiation of summary procedure for civil suspension of driver's license of drunk driving arrestee did not have preclusive effect as to issue of existence of probable cause, and thus could not collaterally estop arrestee's subsequent § 1983 false arrest claim against arresting officer; proceeding was not criminal prosecution, and did not require officer to show probable cause. Kent v. Katz, C.A.2 (Vt.) 2002, 312 F.3d 568. Automobiles 144.2(1)

5218. ---- Conviction, criminal proceedings, collateral estoppel

Tavern owner's Fourth Amendment unreasonable search claim would not render his state court misdemeanor conviction for setting up illegal gaming machines invalid, and thus, his §§ 1983 Fourth Amendment claim against village and police chief, was not barred, under *Heck v. Humphrey*; although tavern owner's original felony commercial gambling conviction reversed on appeal, he pled guilty to the misdemeanor offense. Kramer v. Village of North Fond du Lac, C.A.7 (Wis.) 2004, 384 F.3d 856. Civil Rights 1088(3)

Even when state prisoner does not seek damages under § 1983, his suit may be barred under *Heck v. Humphrey* if he must negate an element of the offense of which he has been convicted in order to prevail, or if he contends that the statute under which he was convicted is unconstitutional. Hughes v. Lott, C.A.11 (Ala.) 2003, 350 F.3d 1157. Civil Rights 1088(5)

Plaintiff was collaterally estopped from relitigating facts undergirding his claims against parish sheriff, deputies and several insurers that his arrest, prosecution, conviction and detention were accomplished in violation of the Constitution so long as his state court conviction, based on the same facts, was still valid. Martin v. Delcambre, C.A.5 (La.) 1978, 578 F.2d 1164. Judgment 828.8

Mayor's federal criminal conviction for two counts of acting under color of law to deprive minor of constitutional right to be free from unwanted sexual abuse did not have collateral estoppel effect, in two minors' §§ 1983 action against mayor in his individual capacity, where jury had been instructed in criminal action that it could convict mayor if it found each element of the offense with respect to either of the two victims; jury did not necessarily find each element of the offense was established as to both victims or as to one victim. Doe v. City of Waterbury, D.Conn.2006, 453 F.Supp.2d 537. Judgment 648

Favorable termination rule, under which state prisoner generally may not assert §§ 1983 claim that implicates constitutionality of conviction or sentence, did not preclude inmate's §§ 1983 claims alleged under First, Fifth, Eighth, and Thirteenth Amendments, where most of the alleged acts occurred well after the inmate's more recent conviction and went to constitutionality of circumstances surrounding inmate's civil commitment, not his criminal convictions. Yoder v. Ryan, N.D.Ill.2004, 318 F.Supp.2d 601. Civil Rights 1037; Civil Rights 1088(5)

Court, in determining the applicability of a collateral bar on federal civil rights claim based on state criminal proceeding, must look beyond the mere presence of a conviction by verdict or guilty plea and assess whether there is identity of the issue that has necessarily been decided in the prior action; the operation of issue preclusion in federal civil rights actions is narrowly limited. Wallace v. Roche, E.D.N.Y.1996, 921 F.Supp. 946. Judgment 559; Judgment 725(1)

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42 U.S.C.A. § 1983

State court criminal conviction which by definition involved litigation and adverse resolution of any allegation in defendant's subsequent civil rights action that there was conspiracy to prosecute him in violation of his constitutional rights precluded him from raising the alleged constitutional deprivations in such civil rights suit. Von Lusch v. C & P Tel. Co., D.C.Md.1978, 457 F.Supp. 814. Judgment 828.8

A state criminal conviction will estop a defendant who is a subsequent plaintiff in a civil rights action from litigating in that action issues which were necessarily resolved against him in prior criminal proceeding. Zurek v. Woodbury, N.D.Ill.1978, 446 F.Supp. 1149. Judgment 828.8

So long as plaintiff's conviction was not vacated, corrected or amended, bar of collateral estoppel applied to any civil rights action brought by plaintiff against law enforcement officers based on allegations of violations of plaintiff's constitutional rights, which grounds had already been adjudicated adversely to plaintiff in criminal proceedings. Smith v. Sinclair, W.D.Okla.1976, 424 F.Supp. 1108. Judgment 648

Arrestee's guilty-plea conviction to a later-charged offense of being a felon in possession of a firearm was not a complete defense to his §§ 1983 action in which he sought damages for mental anguish and for alleged unlawful search, arrest on a federal probation revocation, and detention; defendant alleged he was arrested after officers had illegally entered his home, and he was not collaterally estopped from bringing action, as record did not reflect whether issues regarding arrest were actually litigated during criminal proceeding. Thurmond-Green v. Hodges, C.A.8 (Ark.) 2005, 128 Fed.Appx. 551, 2005 WL 775387, Unreported. Civil Rights 1369

State prisoner was precluded from litigating his claims of trial error that allegedly occurred during state murder prosecution, including insufficiency of the evidence to support conviction, in § 1983 due process action against prison corrections officers. Encarnacion v. Dann, C.A.2 (N.Y.) 2003, 80 Fed.Appx. 140, 2003 WL 22533188, Unreported. Civil Rights 1088(5)

Suit attacking constitutionality of city ordinance under which owner and operator of adult entertainment establishment was convicted and fined was not improper collateral attack on conviction under *Heck* doctrine, which provides that damages may not recovered for allegedly unconstitutional conviction absent reversal of conviction or other indication of invalidity, as rule was inapplicable to persons who were not in custody and therefore could not invoke habeas corpus jurisdiction. Ways v. City of Lincoln, D.Neb.2002, 2002 WL 1742664, Unreported, affirmed 331 F.3d 596. Civil Rights 1088(5)

5219. Habeas corpus, collateral estoppel

The Stone v. Powell decision, i.e., preclusion of search and seizure issue on federal habeas petition where state court accorded petitioner a full and fair opportunity to litigate the issue, did not furnish a logical doctrinal source for ruling that unavailability of federal habeas corpus prevented defendant police officers from raising state criminal courts' partial rejection of plaintiff's Fourth Amendment claim as a collateral estoppel defense to civil rights damage suit brought against the officers based on the same search and seizure. Allen v. McCurry, U.S.Mo.1980, 101 S.Ct. 411, 449 U.S. 90, 66 L.Ed.2d 308, on remand 647 F.2d 167. Courts 90(1)

Original ruling of district court on accused's habeas petition, that government's failure to disclose that state law enforcement officers had been compensated for their efforts in investigation was harmless error, did not collaterally estop accused from bringing civil rights action against state and federal officers for violating his civil rights, and thus did not excuse accused's failure to commence civil rights action in timely manner; if individual officers violated accused's constitutional rights under color of state or federal law, accused's civil rights claim would not be totally defeated even if their misconduct was harmless in his criminal trial, and, in any event, accused could have filed civil rights action within limitations period and then requested stay of action pending outcome of habeas petition. Bagley v. CMC Real Estate Corp., C.A.9 (Wash.) 1991, 923 F.2d 758, certiorari denied 112 S.Ct. 1161, 502 U.S. 1091, 117 L.Ed.2d 409. Habeas Corpus 901

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42 U.S.C.A. § 1983

Where claim of prosecutorial misconduct was tried and rejected in state habeas corpus proceeding, doctrine of collateral estoppel precluded reconsideration of such issue in federal civil rights action even though federal habeas corpus relief was not available. Sperl v. Deukmejian, C.A.9 (Cal.) 1981, 642 F.2d 1154. Habeas Corpus 901

Decision denying inmate's petition for habeas corpus did not collaterally estop inmate from bringing § 1983 action against trooper with respect to issues relating to trooper's alleged no knock entry into inmate's apartment and the scope of the search because habeas judge did not make final decision regarding these issues. Rosario v. Brooks, D.Mass.1995, 877 F.Supp. 765. Habeas Corpus 901

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5241. Discovery and inspection--Generally

Discovery regarding merits of civil rights case was required to be stayed pending resolution of police officers' appeal from denial of qualified immunity. Hegarty v. Somerset County, C.A.1 (Me.) 1994, 25 F.3d 17. Federal Civil Procedure 2553

In any civil rights case, it is essential that the plaintiff be given every reasonable opportunity to develop and fashion a remedy for any grievance he may legitimately harbor; on the other hand, it is also important to prevent the court's processes, especially expensive and burdensome discovery proceedings, from being employed to harass defendants for imaginary grievances. Edwards v. Columbia University, S.D.N.Y.1979, 479 F.Supp. 983. Civil Rights 1303

Only strong public policies should be permitted to prevent disclosure, particularly in civil rights cases, where enforcement of statute is placed solely in hands of individual citizens acting in capacity of private attorneys-general. Gaison v. Scott, D.C.Hawai'i 1973, 59 F.R.D. 347. Federal Civil Procedure 1600(1)

5242. ---- Custom or usage, discovery and inspection, evidence and witnesses

It is not appropriate to require civil rights plaintiffs before commencing suit to obtain detailed information regarding pattern or custom of inadequate supervision by government officials. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Civil Rights 1352(1)

5243. ---- Immunity, discovery and inspection, evidence and witnesses

Qualified immunity means more than just immunity from liability in civil rights suit, but also immunity from burdens of defending suit, including burdens of pretrial discovery, and thus courts have obligation to carefully scrutinize plaintiff's claim before subjecting public officials to burdens of broad reaching discovery, and failure to do so is immediately appealable. Wicks v. Mississippi State Employment Services, C.A.5 (Miss.) 1995, 41 F.3d 991, certiorari denied 115 S.Ct. 2555, 515 U.S. 1131, 132 L.Ed.2d 809. Civil Rights 1376(1); Federal Civil Procedure 1266; Federal Courts 579

When a plaintiff's pleadings in a § 1983 action assert facts which, if proven, would defeat a qualified immunity defense, limited discovery may be permitted tailored to issue of qualified immunity. Geter v. Fortenberry, C.A.5 (Tex.) 1988, 849 F.2d 1550. Federal Civil Procedure 1825

Police officers' personnel files, documents regarding complaints against them, and information regarding training they received were not proper subjects for discovery from them once qualified immunity issue had been raised in arrestee's action for false arrest and excessive force; however, the information was discoverable with regard to §§ 1983 claim against police department, city and county, and since those defendants were more appropriate sources for the information, and institutional defendants were not entitled to stay of discovery, court would direct them to respond to requests as if they had been served directly. Rome v. Romero, D.Colo.2004, 225 F.R.D. 640. Federal Civil Procedure 1553

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Documents in the possession of individual police officer defendants concerning the series of incidents described in arrestee's complaint for false arrest and excessive force were independently discoverable, notwithstanding their claim of qualified immunity, because the request related directly to the specific conduct underlying the claims and the defense of immunity; since the parties had offered differing versions of the underlying incident, limited discovery regarding the actual conduct was appropriate. Rome v. Romero, D.Colo.2004, 225 F.R.D. 640. Federal Civil Procedure 1553

5244. ---- State action, discovery and inspection, evidence and witnesses

Though allegations of complaint, even if accepted as true, were insufficient to establish that state had directly involved itself with alleged discriminatory acts or that there was a "symbiotic relationship" between state and employer, where plaintiff alleged in complaint that discovery would disclose other facets of intricate relationship between state and employer, plaintiff would be allowed a limited amount of time for discovery of other possible grounds for state action within this subchapter governing deprivation of civil rights. Milner v. National School of Health Technology, E.D.Pa.1976, 409 F.Supp. 1389. Federal Civil Procedure 1271

Deliberative process privilege did not protect pre-decisional deliberations of board of education to terminate employee who worked on board as HVAC supervisor; employee alleged that he was terminated in violation of § 1983 because he failed to participate in illegal bidding scheme for heating conversion project and because he attempted to unearth scheme, inquiry into board members' pre-decisional mental impressions and discussions was necessary to employee's challenge to board's purported reason for terminating him, and board's decision to terminate employee was routine operating decision rather than public policy. Scott v. Board of Educ. of City of East Orange, D.N.J.2004, 219 F.R.D. 333. Witnesses 216(1)

Where allegations in complaint were sufficient to preclude dismissal of civil rights action on theory that there was no state action, court would allow discovery to proceed on the state action issue and would then hold an evidentiary hearing. Presseisen v. Swarthmore College, E.D.Pa.1976, 71 F.R.D. 34.

5245. ---- Miscellaneous discovery and inspection, evidence and witnesses

Trial court's grant of summary judgment to correction officers without first allowing any discovery was not a grounds for vacatur in inmate's § 1983 action alleging that imposition and enforcement of deprivation order violated his Eighth Amendment rights, although it may have been preferable to allow limited discovery, where the inmate was afforded discovery, including deposition of the key defendants in a prior Article 78 state court proceeding, wherein inmate asserted that the corrections officers violated state law and federal constitutional law. Trammell v. Keane, C.A.2 (N.Y.) 2003, 338 F.3d 155. Federal Civil Procedure 2553

Nonmembers bringing § 1983 challenging union's calculation of "service fee" or "agency fee" charged to nonmembers for collective bargaining on their behalf were entitled to discover identification of people who had calculated fees and documents underlying calculations, notwithstanding that arbitrator decided in arbitration of same matter that fee was properly calculated. Bromley v. Michigan Educ. Association-NEA, C.A.6 (Mich.) 1996, 82 F.3d 686, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 682, 519 U.S. 1055, 136 L.Ed.2d 607. Federal Civil Procedure 1275

Denial of prison inmate's discovery motions in suit alleging that inmate was forced to participate in mass tuberculosis experiment was not abuse of discretion given that inmate had not indicated what information he desired, did not state how he was deprived of information he needed, and defendants offered to produce documentation for inspection. Lee v. Armontrout, C.A.8 (Mo.) 1993, 991 F.2d 487, rehearing denied, certiorari denied 114 S.Ct. 209, 510 U.S. 875, 126 L.Ed.2d 166, rehearing denied 114 S.Ct. 462, 510 U.S. 973, 126 L.Ed.2d 394. Federal Civil Procedure 1271

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42 U.S.C.A. § 1983

In former detainee's civil rights action against sheriff alleging failure to timely release from jail, sheriff's late disclosure of documents regarding jail's grievance procedure was justified, where detainee first raised issue of his complaints to jail personnel in opposition to sheriff's motion for summary judgment. Green v. Baca, C.D.Cal.2005, 226 F.R.D. 624, clarified 2005 WL 283361. Federal Civil Procedure 1633

Citizen properly was required, in §§ 1983 lawsuit against police officers alleging violation of his constitutional rights during criminal investigation and prosecution of murder case, to answer contention interrogatory that requested all facts supporting his denial that police officers were not aware of any exculpatory evidence prior to citizen's murder conviction and that citizen reasonably should have been aware of exculpatory evidence prior to his conviction, since citizen was not required to disclose any privileged information, request was not asked early on in pretrial process, and citizen presumptively was in final stages of organizing and preparing his case for trial. Tennison v. City & County of San Francisco, N.D.Cal.2005, 226 F.R.D. 615. Federal Civil Procedure 1506

Magistrate judge's discovery order, which narrowed the arrestee's motion to compel defendants to answer interrogatories and to produce all documents concerning claims against defendants for overdetention in the last five years, and directed defendants to produce records and information concerning written claims, demands, and suits alleging overdetention, as well as back-up documentation supporting the overdetention statistics, was not vague, ambiguous or overbroad, in arrestee's § 1983 action against county sheriff, county, and others, alleging unlawful detention. Green v. Baca, C.D.Cal.2003, 219 F.R.D. 485. Federal Civil Procedure 1538; Federal Civil Procedure 1636.1

Fact that Evanston police department records were obtained by Chicago police officers after the close of discovery in arrestee's § 1983 action was not sufficient ground for excluding records which purportedly contained probative evidence of fact that injuries arrestee claimed to have suffered at hands of police officers were actually incurred during an earlier incident, particularly where material was provided to arrestee as soon as it was obtained and well in advance of the filing of a final pretrial order; it did not follow from fact that court had set date for close of discovery that all investigation into party's claims or defenses had to come to halt on that date. Charles v. Cotter, N.D.Ill.1994, 867 F.Supp. 648. Federal Civil Procedure 1551

Representative for estate of wife who was killed by husband following reported incidents of domestic violence was entitled to access, subject to appropriate protective order, to police records necessary to perform statistical study in support of his equal protection claim under § 1983, examining disparities in treatment of assault complaints based on gender of complainant and whether assault occurred in domestic context, because yearly summaries provided to representative by police did not contain information necessary to develop such statistical evidence. Cellini v. City of Sterling Heights, E.D.Mich.1994, 856 F.Supp. 1215. Federal Civil Procedure 1593

State act governing open public meetings did not protect from disclosure a city school board's pre-decisional deliberations that led to decision to terminate employee who served on board as HVAC supervisor and who brought § 1983 claims alleging that he was terminated in violation of his rights under First and Fourteenth Amendments for refusing to participate in allegedly illegal heating conversion bidding scheme; act enabled board as a public body to exclude the public from particular meetings, but had no effect on whether employee could access board's pre-decisional deliberations contributing to his termination. Scott v. Board of Educ. of City of East Orange, D.N.J.2004, 219 F.R.D. 333. Schools 57

Subject to prospective redaction and prospective protective order, arrestee bringing civil rights action against arresting officer, supervisors, and municipality was entitled to discovery of personnel files and internal affairs files of all police officers of the municipality, except that files of non-defendant officers containing no citizen complaint, internal investigation, or other record of disciplinary action need not be produced, where defendants merely made conclusory claims, unrelated to any particular piece or type of information, that discovery of personnel files would disseminate highly private information, threaten the safety of officers and their families, and harm investigative and citizen complaint candor. Floren v. Whittington, S.D.W.Va.2003, 217 F.R.D. 389. Federal Civil Procedure

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42 U.S.C.A. § 1983

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Inmate alleging in § 1983 suit that prison officials interfered with his right to access courts and counsel was required, in response to interrogatory, to state which legal actions or proceedings, or potential proceedings, were affected by officials' alleged actions or inaction, how in fact officials' conduct adversely affected such legal matters, and status of such cases. Davidson v. Goord, W.D.N.Y.2003, 215 F.R.D. 73, appeal denied 259 F.Supp.2d 238. Federal Civil Procedure 1502

Individual whose civil rights were allegedly violated by deputy sheriff was not entitled to discover deputy's personnel file to establish county's derivative liability in civil rights case until facts relevant to his allegations of direct wrongdoing were well enough developed to determine whether deputy was liable. Jackson v. County of Sacramento, E.D.Cal.1997, 175 F.R.D. 653. Federal Civil Procedure 1591

In former inmate's § 1983 excessive force action against prison officials, official was required to produce documents regarding his prior arrest for assault pursuant to inmate's discovery request, despite fact that assault charges were later dismissed due to official's good behavior for six months. Cox v. McClellan, W.D.N.Y.1997, 174 F.R.D. 32. Federal Civil Procedure 1581

For purposes of ruling on police officer's motion for summary judgment in arrestee's §§ 1983 action against officer alleging that officer used excessive force in shooting arrestee, arrestee's deposition testimony should not have been disregarded because it was inconsistent with his sworn statement to internal affairs officer who investigated shooting; arrestee offered an explanation for his prior inconsistent statement, creating an issue for factfinder as to truth of statement. Few v. Cobb County, Georgia, C.A.11 (Ga.) 2005, 147 Fed.Appx. 69, 2005 WL 2030722, Unreported. Federal Civil Procedure 2541

Inmate was not entitled to more time to conduct discovery before court ruled on prison officials' summary judgment motion in § 1983 action, where he failed to demonstrate how more discovery would have helped him defeat motion for summary judgment, instead asserting generally that additional discovery was vital to presentation of his case. Green v. Litscher, C.A.7 (Wis.) 2004, 103 Fed.Appx. 24, 2004 WL 1445831, Unreported, certiorari denied 125 S.Ct. 927, 543 U.S. 1074, 160 L.Ed.2d 813. Federal Civil Procedure 2553

In § 1983 action alleging false arrest, malicious prosecution, and illegal search, denial of plaintiffs' motion for protective order, in their impending depositions, as to certain subjects, was not an abuse of discretion; subjects over which protection was sought included both the arrests and prosecutions that formed basis for plaintiffs' claims, and plaintiffs failed to establish that disclosure of the information would result in a clearly defined and very serious injury. Price v. Cochran, C.A.10 (Kan.) 2003, 66 Fed.Appx. 781, 2003 WL 21054706, Unreported. Federal Civil Procedure 1361

In order for correction officers to preclude inmate from conducting discovery in § 1983 suit regarding complaints of excessive force made against officers by other inmates, officers had to agree not to dispute issue of intent, such that trial court would be justified in sustaining objection to any subsequent cross-examination or jury argument seeking to raise issue and in charging jury to resolve issue against officers. Sedney v. Hasse, S.D.N.Y.2002, 2002 WL 31108409, Unreported. Federal Civil Procedure 1272.1

Dismissal of inmate's § 1983 action for failure to comply with court's order to submit to deposition was not abuse of discretion, despite inmate's contentions that his medical condition prohibited him from sitting for lengthy deposition and that he was fearful of repercussions from answering questions, where inmate provided no medical support for his claim, inmate's public court filings contained allegations against corrections officials, and court warned inmate that failure to comply would result in dismissal. Torres v. Levesque, C.A.2 (Conn.) 2002, 52 Fed.Appx. 155, 2002 WL 31681879, Unreported, certiorari denied 123 S.Ct. 1941, 538 U.S. 1018, 155 L.Ed.2d 859. Federal Civil Procedure 1451

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42 U.S.C.A. § 1983

5246. Judicial notice, evidence and witnesses

In state prisoner's civil rights action, court could not take judicial notice of conditions of punitive segregation in state correctional institution. U.S. ex rel. Tyrrell v. Speaker, C.A.3 (Pa.) 1973, 471 F.2d 1197, on remand 394 F.Supp. 9. Evidence 23(1)

In action for damages under this section by former county jail inmate, based on jail policy prohibiting inmates from receiving books and magazines from outside jail, though it may have been improper to consider on motion to dismiss defendants' affidavit stating that such policy was predicated on state regulations, without giving plaintiff the opportunity to submit counteraffidavits, it was proper for the court to take judicial notice of such regulations. Christman v. Skinner, C.A.2 (N.Y.) 1972, 468 F.2d 723. Evidence 47

5246A. In camera inspection

Declining to conduct in camera inspection of prisoners' parole files and statistics and documents from Georgia Board of Pardons and Paroles, in §§ 1983 action, to determine whether Board applied de facto policy, requiring prisoners to serve a minimum of 90% of court-imposed term of incarceration before becoming eligible for an initial parole hearing, was not an abuse to discretion; prisoners' complete parole files were "confidential state secrets" under Georgia law, and prisoners failed to show how requested information would show that alleged policy was applied to them. Porter v. Ray, C.A.11 (Ga.) 2006, 461 F.3d 1315. Witnesses 223

5247. Stipulations, evidence and witnesses

City police officers were not entitled to reformation of stipulation agreement upon which judgment order was based in judgment creditor's action under this section to include reference that judgment creditor agreed to proceed exclusively against the city under the police officers' indemnity statute, Ill.S.H.A. ch. 24, ¶1-4-5, and collect the judgment from the city's tort judgment fund where affidavits filed by police officers failed to establish that parties intended that exclusive means of collection would be through the judgment fund, and modification of stipulation was onerous on judgment creditor in that there was at least four-year deferral of collection against city's tort judgment fund, while interest accrued only at rate substantially below current market. Balark v. Curtin, C.A.7 (Ill.) 1981, 655 F.2d 798. Reformation Of Instruments 2

Under Kansas law, arrestee's pretrial diversion agreement barred his § 1983 action against law enforcement officers for unlawful seizure or arrest; through diversion agreement, arrestee in effect stipulated that officer had reason and cause to apprehend him. Swanson v. Fields, D.Kan.1993, 814 F.Supp. 1007, affirmed 13 F.3d 407. Civil Rights 1088(4)

5248. Inferences, evidence and witnesses--Generally

Fact that state officials were informed by defendants as to the time and place of plaintiff's arrival in the state or were given proof of his identity in order that they might arrest him pursuant to lawfully issued warrant was insufficient to raise inference of purposeful participation by members of sheriff's department to assist the defendants in enticing the plaintiff into the state so that he could be arrested and thus did not provide basis for claim under 42 U.S.C.A. § 1983. Singer v. Bell, S.D.N.Y.1985, 613 F.Supp. 198. Civil Rights 1088(4)

5249. ---- Custom or usage, inferences, evidence and witnesses

Constructive knowledge of existence of custom justifying recovery against municipality under § 1983 may be inferred from widespread extent of municipality's practices, general knowledge of their existence, manifest opportunities and official duty of responsible policymakers to be informed, or combinations of these. Cox v. District of Columbia, D.D.C.1993, 821 F.Supp. 1, as amended, affirmed 40 F.3d 475, 309 U.S.App.D.C. 219.

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42 U.S.C.A. § 1983

Civil Rights 1401

In action against city under 1871 civil rights statute, policy or practice on the part of city could not be inferred from one incident, i.e., the incident in which plaintiff was involved. Arancibia v. Berry, S.D.N.Y.1985, 603 F.Supp. 931 . Civil Rights 1401

5250. ---- Deliberate indifference, inferences, evidence and witnesses

School district could be liable on student's §§ 1983 claim alleging that school district was deliberately indifferent to his physical and emotional integrity by repeatedly failing to take remedial action to prevent teacher's sexual molestation of young male students only if the evidence showed that the need to act was so obvious that the school district's failure to act could be said to amount to an official policy of inaction. Williams ex rel. Hart v. Paint Valley Local School Dist., C.A.6 (Ohio) 2005, 400 F.3d 360. Civil Rights 1352(2)

Evidence in § 1983 action for violation of rights of pretrial detainee who committed suicide in jail made question for jury whether city violated detainee's rights through deliberately indifferent failure to train officers responsible for intoxicated detainees in suicide detection and prevention and was sufficient for jury to infer that the failure to train actually caused detainee's injury. Simmons v. City of Philadelphia, C.A.3 (Pa.) 1991, 947 F.2d 1042, rehearing denied, certiorari denied 112 S.Ct. 1671, 503 U.S. 985, 118 L.Ed.2d 391. Civil Rights 1404; Civil Rights 1429

In civil rights action by foster child against placement agency for failing to supervise placement adequately, deliberate indifference was not to be inferred from failure to act as readily as might have been done in prison context, since in foster care situation, there were obvious alternative explanations for family being given benefit of doubt and agency refusing to intervene. Doe v. New York City Dept. of Social Services, C.A.2 (N.Y.) 1981, 649 F.2d 134. Civil Rights 1406

5251. ---- Discrimination, inferences, evidence and witnesses

Proof that defendants engaged in racially discriminatory practices and policies prior to period of time for which relief is available under statute of limitations is relevant in civil action for deprivation of rights since it creates inference that discrimination continued, particularly when there has been little change in decision-making process. Williams v. Anderson, C.A.8 (Ark.) 1977, 562 F.2d 1081. Civil Rights 1409

For purposes of proving prima facie case of employment discrimination, tenured university professor who was Jewish failed to present evidence that nonminority faculty members were treated more leniently where the cited faculty member who was, like the professor, charged with sexual harassment-type misconduct was also member of protected class and had also received same discipline as the professor; thus, professor failed to raise inference of discrimination. Wexley v. Michigan State University, W.D.Mich.1993, 821 F.Supp. 479, affirmed 25 F.3d 1052. Civil Rights 1421

5252. ---- Knowledge, inferences, evidence and witnesses

Individuals and entities that owned parcel of land, as plaintiffs, knew or should have known of alleged equal protection violation and accompanying alleged conspiracy when local resident engineer for Virginia Department of Transportation (VDOT) testified at hearing in state court proceeding that he would require plaintiffs to obtain commercial entrance permit for their land, in §§1983 action against adjoining landowners and engineer. Shooting Point, L.L.C. v. Cumming, E.D.Va.2002, 238 F.Supp.2d 729, motion to amend denied 243 F.Supp.2d 536, affirmed 368 F.3d 379. Limitation Of Actions 95(15)

Municipal liability under § 1983 can be based on municipal supervisors' knowing acquiescence in unconstitutional

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behavior of their subordinates; knowledge of supervisors may be inferred from persistent violation of statutory duty to inquire about unconstitutional behavior of their subordinates and failure to prevent unconstitutional acts. Thomas v. New York City, E.D.N.Y.1993, 814 F.Supp. 1139. Civil Rights 1352(1)

5253. ---- Statistics, inferences, evidence and witnesses

While civil rights action contemplates possibility of proving racial discrimination by numerical comparisons, inferences to be drawn from statistics must result from substantial discrepancies, either from comparing employment totals with population totals or by other statistically demonstrable unequal employment practices, such as promotions or dismissals. Roche v. Foulger, D.C.Utah 1975, 404 F.Supp. 705. Civil Rights 1405

5254. Presumptions, evidence and witnesses--Generally

Federal court in civil rights action must assume that state court, in performance of its duty, will afford a fair trial and equal protection to individual's legal rights under Constitutions and laws of both United States and the states. Temple v. Pergament, D.C.N.J.1964, 235 F.Supp. 242. See, also, Chaffee v. Johnson, D.C.Miss.1964, 229 F.Supp. 445, affirmed 352 F.2d 514, certiorari denied 86 S.Ct. 1582, 384 U.S. 956, 16 L.Ed.2d 553. Evidence 82

Documents in the possession of individual police officer defendants concerning the series of incidents described in arrestee's complaint for false arrest and excessive force were independently discoverable, notwithstanding their claim of qualified immunity, because the request related directly to the specific conduct underlying the claims and the defense of immunity; since the parties had offered differing versions of the underlying incident, limited discovery regarding the actual conduct was appropriate. Rome v. Romero, D.Colo.2004, 225 F.R.D. 640. Federal Civil Procedure 1553

5255. ---- Discriminatory purpose, presumptions, evidence and witnesses

Evidence in civil action for deprivation of rights established prima facie case of purposeful racial discrimination on part of school district in Arkansas with respect to assignment, salary, promotion and hiring of black faculty members for up to and including 1972-1973 school year; rebuttable presumption in favor of individual relief was therefore established. Williams v. Anderson, C.A.8 (Ark.) 1977, 562 F.2d 1081. Civil Rights 1545; Civil Rights 1544; Civil Rights 1547; Civil Rights 1548

Discriminatory action on part of mayor sued for actual and punitive damages for alleged violation of civil rights could not be presumed. Mosher v. Beirne, C.A.8 (Mo.) 1966, 357 F.2d 638. Civil Rights 1401

To create a presumption of discriminatory purpose, plaintiff must demonstrate that a government decision (a) made a racial classification on its face (b) was applied in discriminatory manner or (c) had a reasonably foreseeable discriminatory effect. Johnson v. City of Arcadia, Fla., M.D.Fla.1978, 450 F.Supp. 1363. Civil Rights 1401

5256. ---- Immunity, presumptions, evidence and witnesses

Filing of criminal complaint immunizes investigating officers from damages accruing thereafter, it being presumed that prosecutor filing complaint exercised independent judgment in determining that probable cause for arrest existed at such time, but such presumption may be rebutted, in which event immunity is removed. Smiddy v. Varney, C.A.9 (Cal.) 1981, 665 F.2d 261, certiorari denied 103 S.Ct. 65, 459 U.S. 829, 74 L.Ed.2d 66, on remand 574 F.Supp. 710. False Imprisonment 7(3)

5257. ---- Rebuttable presumptions, evidence and witnesses

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42 U.S.C.A. § 1983

Probative value of evidence of sheriff's alleged other acts of over-detentions of other detainees at county jail outweighed danger of prejudice in former detainee's §§ 1983 action against sheriff alleging violation of Fourteenth Amendment due process right to be released from county jail within reasonable time after reason for confinement ended; other acts evidence was key evidence offered to prove that sheriff had an unconstitutional policy, custom, or practice. Green v. Baca, C.D.Cal.2005, 226 F.R.D. 624, clarified 2005 WL 283361. Evidence 139

Lard wholesale distributor, who contended that application of certain price control regulation to him amounted to intentional and purposeful attempt to drive him out of business in retaliation for exercise of his rights under U.S.C.A.Const. Amend. 1, had not adequately rebutted presumption of good faith that attached to official state action. Gual v. Denton, D.C.Puerto Rico 1979, 476 F.Supp. 804. Constitutional Law 48(4.1)

5258. Burden of proof, evidence and witnesses--Generally

Burden to demonstrate that Congress has expressly withdrawn remedy under this section for violation of particular federal right is on defendant. Golden State Transit Corp. v. City of Los Angeles, U.S.Cal.1989, 110 S.Ct. 444, 493 U.S. 103, 107 L.Ed.2d 420, on remand 895 F.2d 1281. Civil Rights 1401

Plaintiff's burden in an action under § 1981 of this title or this section may differ in some respects from that of plaintiff in action brought under § 2000e et seq. of this title, but criteria set forth in Supreme Court's decision in McDonnell Douglas provide useful guide to plaintiff's burden. Tagupa v. Board of Directors, C.A.9 (Hawai'i) 1980, 633 F.2d 1309. Civil Rights 1532; Courts 96(7)

In civil actions for deprivation of rights, plaintiffs ordinarily retain burden of proof throughout trial. Clark v. Mann, C.A.8 (Ark.) 1977, 562 F.2d 1104. Civil Rights 1401

While public officials asserting defense of qualified immunity have burden of pleading the defense, plaintiff bears burden of demonstrating that conduct at issue violated a right that was clearly established when the conduct occurred. Abbott v. Village of Winthrop Harbor, N.D.Ill.1996, 953 F.Supp. 931. Civil Rights 1407

To state retaliation claim under § 1983, inmate bears burden of showing that he engaged in constitutionally protected conduct, and that such conduct was a substantial or motivating factor in decision of prison officials to discipline him. Justice v. Coughlin, N.D.N.Y.1996, 941 F.Supp. 1312. Civil Rights 1092

Plaintiff in § 1983 action bears burden of establishing critical issue that right allegedly violated was clearly established under stated standard. Roberts v. City of Forest Acres, D.S.C.1995, 902 F.Supp. 662. Civil Rights 1407

5259. ---- Shifting of burden, burden of proof, evidence and witnesses

While *McDonnell Douglas* involved Title VII claim, its burden-shifting analysis applies equally to § 1983 claims of race discrimination in violation of the Equal Protection Clause. Burns v. Board of County Com'rs of Jackson County, C.A.10 (Kan.) 2003, 330 F.3d 1275. Civil Rights 1405

If plaintiff who alleges retaliation by employer for exercise of his First Amendment free speech rights through denial of sought position meets burden of showing that protected conduct was substantial or motivating factor in defendant's action, burden then shifts to defendant to prove by preponderance of the evidence that plaintiff would not have attained position he sought even without protected speech considerations. Cromley v. Board of Educ. of Lockport Tp. High School Dist. 205, C.A.7 (Ill.) 1994, 17 F.3d 1059, certiorari denied 115 S.Ct. 74, 513 U.S. 816, 130 L.Ed.2d 28. Civil Rights 1405

In civil rights action brought by owners of "adult" bookstore against certain city and parish officials, challenging

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defendants' action in revoking occupational licenses under which bookstore had been operating, once plaintiff showed that government had restrained dissemination of materials presumed protected by U.S.C.A.Const. Amend. 1 and introduced evidence tending to show that the restraint was based on the content of the materials, then burden shifted to government officials to demonstrate that any restraint imposed comported with substantive and procedural requirements of U.S.C.A.Const. Amend. 1. Bayou Landing, Ltd. v. Watts, C.A.5 (La.) 1977, 563 F.2d 1172, certiorari denied 99 S.Ct. 79, 439 U.S. 818, 58 L.Ed.2d 109. Civil Rights 1406

In analyzing whether conduct was unlawfully discriminatory for purposes of § 1983, the burden-shifting framework of Title VII claims applies. Padilla v. Harris, D.Conn.2003, 285 F.Supp.2d 263. Civil Rights 1405

Once a § 1983 defendant pleads qualified immunity and shows that he is a governmental official whose position involves the exercise of discretion, the plaintiff bears the burden of rebutting this defense by establishing that the official's wrongful conduct violated clearly established law; "clearly established" means that the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Herrera v. Medical Center Hosp., E.D.La.2002, 241 F.Supp.2d 601. Civil Rights 1376(2); Civil Rights 1407

Once employer satisfies its burden under § 1983 of producing sufficient evidence to raise genuine issue of fact as to whether employer discriminated against employee, employee has burden of persuading court that profferred reason for employment decision at issue is pretext for discrimination; this burden may be satisfied either directly, by persuading court that discriminatory reason more than likely motivated employer, or indirectly, by persuading court that proffered reason is not worthy of belief. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Civil Rights 1405

Proof by individual § 1983 plaintiff of immediate past history of racial discrimination by employer, without more, can be sufficient to shift to employer burden of justifying its employment decisions by clear and convincing evidence; once pattern and practice of discrimination is established, rebuttable presumption that plaintiff was unlawfully discriminated against and is entitled to recovery obtains, and may be overcome only with clear and convincing evidence that job decisions made at time discriminatory policy was in force were not made in pursuit of that policy. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Civil Rights 1405

If prima facie case of employment discrimination case is established, burden then shifts to employer to rebut presumption by producing evidence that employer made employment decision for legitimate, nondiscriminatory reason. Thomas v. St. Luke's Health Systems, Inc., N.D.Iowa 1994, 869 F.Supp. 1413, affirmed 61 F.3d 908. Civil Rights 1536

If employer meets its burden of production with respect to legitimate, nondiscriminatory reason for employment decision, legal presumption of discrimination that would justify judgment as matter of law based on discrimination plaintiff's prima facie case simply drops out of picture, and plaintiff bears burden of persuading finder of fact that proffered reasons are pretextual and that employment decision was result of discriminatory intent. Thomas v. St. Luke's Health Systems, Inc., N.D.Iowa 1994, 869 F.Supp. 1413, affirmed 61 F.3d 908. Civil Rights 1536

In employment discrimination cases based on circumstantial evidence, courts apply analytical framework of shifting burdens developed in *McDonnell Douglas* and its progeny, under which employment discrimination plaintiff has initial burden of establishing prima facie case of discrimination by producing evidence that would entitle him to prevail unless contradicted and overcome by evidence produced by defendant. Thomas v. St. Luke's Health Systems, Inc., N.D.Iowa 1994, 869 F.Supp. 1413, affirmed 61 F.3d 908. Civil Rights 1536

Statistics and other evidence of discrimination showing imbalance of men and women with tenure in department at university made out prima facie case of sex discrimination, imposing upon university the duty of going forward with rebutting evidence, in action brought under this section, wherein plaintiff sought preliminary injunction

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restraining her discharge pending determination of her action. Johnson v. University of Pittsburgh, W.D.Pa.1973, 359 F.Supp. 1002. Civil Rights 1537; Civil Rights 1549

5260. ---- Clear and convincing evidence, burden of proof, evidence and witnesses

Decedent's father's contention that jury could have disbelieved police officer's account of fatal shooting of decedent was insufficient to survive city's and officer's motion for summary judgment in father's action under § 1983 and Illinois Wrongful Death Act alleging excessive force; father needed to provide specific evidence when attacking officer's credibility, such as contradictory eyewitness accounts or other impeachment evidence. Muhammed v. City of Chicago, C.A.7 (Ill.) 2002, 316 F.3d 680. Federal Civil Procedure 2491.5

Burden was on defendant board of education, charged with violating black teacher's civil rights by refusing to reemploy her because of her race, to establish by clear and convincing evidence its assertion that her nonretention was based on professional incompetency. Jones v. Pitt County Bd. of Ed., C.A.4 (N.C.) 1975, 528 F.2d 414. Civil Rights 1421

Where employment discrimination against class has been proved, and individual employee has brought himself within class and has shown deleterious economic consequences suffered, burden of proof shifts to employer to show by clear and convincing evidence that each would not have been hired, absent discrimination. Mims v. Wilson, C.A.5 (Fla.) 1975, 514 F.2d 106.

Phrase "clear and convincing," as used with respect to burden of school board to demonstrate by "clear and convincing" evidence that dismissal of black teacher was not due to racial considerations, demanded more than just a "preponderance of the evidence"; on the other hand, "beyond a reasonable doubt" standard was not appropriate because on balance the need for certainty was not as great as it is when accused faces possibility of criminal sanction. Alexander v. Warren, Ark., School Dist. No. 1 Bd., C.A.8 (Ark.) 1972, 464 F.2d 471. Civil Rights 1421

5261. ---- Preponderance of evidence, burden of proof, evidence and witnesses

In suits alleging deprivation of civil rights under color of state law, burden is on defendant official claiming official immunity to come forward and to convince trier of fact by preponderance of evidence that official immunity should attach. Skehan v. Board of Trustees of Bloomsburg State College, C.A.3 (Pa.) 1976, 538 F.2d 53, certiorari denied 97 S.Ct. 490, 429 U.S. 979, 50 L.Ed.2d 588, on remand 431 F.Supp. 1379. Civil Rights 1407

In § 1983 action in which party alleges deprivation of constitutional rights, privileges, and immunities by official's abuse of position, plaintiff must first carry initial burden of establishing prima facie case, which requires plaintiff to come forward with evidence that constitutionally protected conduct was substantial or motivating factor in discharge; if plaintiff succeeds in establishing prima facie case, burden shifts to defendant to show, by preponderance of evidence, that defendant would have reached same decision even in absence of constitutionally protected conduct of plaintiff. Olmeda v. Schneider, D.Virgin Islands 1995, 889 F.Supp. 228. Civil Rights 1405

When evaluating public employee's claim of retaliation for exercising right to free speech, court must first determine whether plaintiff has proved that she was engaged in protected activity, and must then determine whether plaintiff has shown that the protected activity was substantial and motivating factor behind the adverse employment decision, and if plaintiff proves these two elements, defendant must show by preponderance of the evidence that it would have made the same employment decision even if plaintiff had not engaged in the protected activity. Mazurek v. Wolcott Bd. of Educ., D.Conn.1993, 815 F.Supp. 71. Constitutional Law 90.1(7.2)

Civil rights plaintiffs alleging class-wide pattern-and-practice retaliation were required to prove by preponderance

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of evidence that retaliation for First-Amendment activities was police chief's and mayor's standard operating procedure. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Civil Rights 1421

5262. ---- Color of law, burden of proof, evidence and witnesses

Where institution accused of constitutional violation is a private institution, plaintiff in action under this section will bear heavier burden of showing that questioned conduct is really tantamount to that of state. Bailey v. McCann, C.A.5 (Fla.) 1977, 550 F.2d 1016. Civil Rights 1401

Where plaintiff sought damages for alleged malicious false arrest and false imprisonment by defendants pursuant to alleged conspiracy to deprive plaintiff of his civil rights guaranteed by U.S.C.A.Const. Amend. 14, and plaintiff alleged that acting sheriff and deputy and president of race track conspired to deprive plaintiff of his civil rights and liberties by ejecting him from race track, burden was on plaintiff to prove that defendants in ejecting him from race track were acting under color of some statute of Arkansas and not merely as individuals as agents only of the track. Watkins v. Oaklawn Jockey Club, C.A.8 (Ark.) 1950, 183 F.2d 440. Conspiracy 19

Guardian ad litem of adopted child failed to meet burden of persuasion of showing that parents who sought to be released from obligations to adopted child did not state claim against guardian under § 1983; guardian did not show that guardians never acted under color of state law so that court was unable to determine whether guardian functioned as adversary to state. Kohl v. Murphy, N.D.Ill.1991, 767 F.Supp. 895. Civil Rights 1395(1)

5263. ---- Custom or usage, burden of proof, evidence and witnesses

County employee was not required to prove that dismissal from employment due to his political affiliation resulted from custom or practice of county, in order to recover from county under § 1983 for violation of First Amendment rights, where ultimate decision-making authority of county itself committed unlawful act. Felton v. Board of Com'rs of County of Greene, C.A.7 (Ind.) 1993, 5 F.3d 198. Civil Rights 1351(5)

In order to establish that civil rights of detainee who committed suicide in jail were violated as result of municipal policy or custom of deliberate indifference to serious medical needs of intoxicated and potentially suicidal detainees, plaintiff was required to show that responsible policymakers were aware of number of suicides in city lockups and of alternatives for preventing them, but either deliberately chose not to pursue those alternatives or acquiesced in longstanding policy or custom of inaction. Simmons v. City of Philadelphia, C.A.3 (Pa.) 1991, 947 F.2d 1042, rehearing denied, certiorari denied 112 S.Ct. 1671, 503 U.S. 985, 118 L.Ed.2d 391. Civil Rights 1351(4)

To establish existence of governmental custom of failing to receive, investigate and act upon complaints of violation of constitutional rights, for purpose of holding governmental entity liable under § 1983, plaintiff must prove existence of continuing, widespread, persistent pattern of unconstitutional misconduct by governmental entity's employees, deliberate indifference to or tacit authorization of such conduct by governmental entity's policymaking officials after notice to officials of that misconduct, and that plaintiff was injured by acts pursuant to governmental entity's custom, i.e., that custom was moving force behind constitutional violation. Thelma D. By and Through Delores A. v. Board of Educ. of City of St. Louis, C.A.8 (Mo.) 1991, 934 F.2d 929. Civil Rights 1352(1)

Policy of condoning unreasonable searches of homes, necessary for municipal liability for unlawful search in § 1983 action, was not established through submission of state court records showing Fourth Amendment violations in searches of other homes. Carrasco v. City of Vallejo, E.D.Cal.2001, 2001 WL 34098655, Unreported. Civil Rights 1351(4)

5263A. ---- Exhaustion of administrative remedies, burden of proof, evidence and witnesses

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42 U.S.C.A. § 1983

Deputy sheriff claiming that county jail inmate bringing § 1983 action against the deputy failed to exhaust his administrative remedies before filing the action as required under Prison Litigation Reform Act (PLRA) was required to present evidence of county jail system's administrative grievance procedures and requirements for exhaustion of remedies within that system. Mooring v. San Francisco Sheriff's Dept., N.D.Cal.2003, 289 F.Supp.2d 1110. Civil Rights 1404

5264. ---- Damages, burden of proof, evidence and witnesses

Once plaintiff in § 1983 action has presented evidence of damages, defendant has burden of establishing failure to properly mitigate damages; to satisfy such burden, defendant must establish that substantially equivalent positions were available and that plaintiff failed to exercise reasonable care and diligence in seeking those positions. Meyers v. City of Cincinnati, C.A.6 (Ohio) 1994, 14 F.3d 1115, rehearing and suggestion for rehearing en banc denied. Civil Rights 1471

Employee who seeks lost wages for period of discrimination has initial burden of establishing amount of damages, after which burden shifts to employer to prove, as affirmative defense, that employee failed to mitigate damages; in order to prove failure to mitigate, employer must show that employee failed to exercise reasonable diligence to mitigate damages, and that there was reasonable likelihood that employee might have found comparable work by exercising reasonable diligence. Fleming v. County of Kane, State of Ill., C.A.7 (Ill.) 1990, 898 F.2d 553. Civil Rights 1405; Civil Rights 1471

When an inmate seeks damages against a defendant, as opposed to declaratory or injunctive relief, under § 1983, the inquiry into causation must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation. Mooring v. San Francisco Sheriff's Dept., N.D.Cal.2003, 289 F.Supp.2d 1110. Civil Rights 1031; Civil Rights 1335

Former public employee fulfilled initial burden of establishing proper amount of postjudgment back pay in § 1983 action for termination in violation of due process clause; although former employee did not give in-depth assessment of his calculations, he indicated amount which be believed he would have earned had there been no wrongful termination, he reduced such amount by his various income offsets, and employer failed to rebut his calculations. Coleman v. Lane, N.D.Ill.1996, 949 F.Supp. 604. Civil Rights 1471

5265. ---- Discrimination, burden of proof, evidence and witnesses

Once plaintiff has met burden of proving prima facie case of racial discrimination, defendant must present evidence that raises a genuine issue of fact as to whether it discriminated against plaintiff and explanation provided must be legally sufficient to justify judgment for defendant; defendant need not persuade court that it was actually motivated by proffered reason, since burden of persuasion regarding discriminatory animus remains at all times with plaintiff. Taylor v. Jones, C.A.8 (Ark.) 1981, 653 F.2d 1193. Civil Rights 1401

Normally, the burden of proving intent to discriminate rests with plaintiff in an action brought under this section, and intent has to be found by a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. Thompson v. School Dist. of Omaha, in Douglas County, in State of Neb., C.A.8 (Neb.) 1980, 623 F.2d 46.

Entrepreneur failed to show under § 1983 that mayor, municipality, and its personnel violated entrepreneur's right to political affiliation without discrimination under First Amendment, for failure to show that defendants knew of his political affiliation, where entrepreneur did not provide any evidence, apart from his self-serving allegations, that he was affiliate of defendants' opponent or that defendants were aware of his alleged affiliation, and defendants proffered uncontested facts, admitted by entrepreneur, which established that he was not affiliate of opponent party. Colon Rodriguez v. Lopez Bonilla, D.Puerto Rico 2004, 344 F.Supp.2d 333. Civil Rights 1422

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Former paraprofessional in school failed to establish that he was performing job duties satisfactorily, as required to establish prima facie case of religious discriminatory discharge against principal; evaluations for two years preceding termination stated paraprofessional needed improvement, paraprofessional received a number of verbal and written warnings, and paraprofessional received two written reprimands for neglect of duty and insubordination. Sharif v. Buck, W.D.N.Y.2004, 338 F.Supp.2d 435, affirmed 152 Fed.Appx. 43, 2005 WL 2650070. Civil Rights 1157

Failure to provide any evidence of racial discrimination, other than claim that one defendant alleged bigotry on part of another defendant, precluded claim that county discriminated against employee by demoting him. Hodge v. City of Long Beach, E.D.N.Y.2003, 306 F.Supp.2d 288. Civil Rights 1421; Civil Rights 1548

Puerto Rico municipal employee failed to establish, in § 1983 action premised on First Amendment, a prima facie case of political discrimination, allegedly in retaliation for his support of mayor's political rival in primary campaign, through evidence that, despite having been appointed to career position, his supervisors failed to assign him any duties or responsibilities and merely asked for his help on certain discrete tasks or projects and unsupported allegations that he was restricted access to information and that mayor and others refused to speak with him; evidence consisted of employee's bare, uncorroborated allegations. Gonzalez Pina v. Rodriguez, D.Puerto Rico 2003, 278 F.Supp.2d 195, affirmed 407 F.3d 425. Civil Rights 1421

Inmate challenging the constitutionality of the prison's policy of separating its Islamic prayer services into two separate groups, in § 1983 action, bore the burden of demonstrating that the prison's policy was invalid. Garcia v. Board Of County Com'rs of Lehigh County, E.D.Pa.2003, 276 F.Supp.2d 404. Civil Rights 1404

5266. ---- Searches, burden of proof, evidence and witnesses

Government's search of residence was so clearly in error that it had burden of establishing reasonableness of search, including establishing bona fides and credibility of confidential source whose information provided basis for warrant, in civil rights action seeking to recover damages caused by search; warrant described residence as possessing "grey front door with silver screen door," and residence searched had white metal screen door and black front door. Holland v. O'Bryant, D.D.C.1997, 958 F.Supp. 10. Civil Rights 1404

5267. ---- Good faith, burden of proof, evidence and witnesses

In order to establish good-faith defense from personal liability in actions brought under this section, defendant official must show that he was acting within scope of his discretionary authority when allegedly wrongful acts occurred; once defendant establishes his good faith, burden shifts to plaintiff to show lack of good faith. Zeigler v. Jackson, C.A.11 (Ala.) 1983, 716 F.2d 847. Civil Rights 1407

Qualified immunity based on good faith performance of official duty is affirmative defense that defendant has burden of pleading. Evans v. Dillahunty, C.A.8 (Ark.) 1981, 662 F.2d 522. See, also, Thomas v. Board of Trustees of Galveston Independent School Dist., D.C.Tex.1981, 515 F.Supp. 280. Civil Rights 1398

5268. ---- Isolated cases, burden of proof, evidence and witnesses

In "isolated individual" case alleging unlawful gender discrimination in employment under § 1983, employer has burden of production, not of persuasion, and thus does not have to persuade court that it was actually motivated by reason advanced by it in making employment decision at issue. Shuford v. Alabama State Bd. of Educ., M.D.Ala.1997, 968 F.Supp. 1486. Civil Rights 1405

5269. ---- Immunity, burden of proof, evidence and witnesses

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Burden is on the state official claiming immunity in the civil rights action to demonstrate his entitlement. Dennis v. Sparks, U.S.Tex.1980, 101 S.Ct. 183, 449 U.S. 24, 66 L.Ed.2d 185. Civil Rights 1407

Inmate bringing pro se § 1983 action alleging deprivation of food would have burden to show that jail officials violated clearly settled law of which reasonable person would know, if officials were acting within scope of their authority and in their official capacity. Cooper v. Sheriff, Lubbock County, Tex., C.A.5 (Tex.) 1991, 929 F.2d 1078. Civil Rights 1407

5270. ---- Absolute immunity, burden of proof, evidence and witnesses

State actors who seek absolute immunity bear burden of showing that public policy requires exemption of that scope. Young v. Selsky, C.A.2 (N.Y.) 1994, 41 F.3d 47, certiorari denied 115 S.Ct. 1837, 514 U.S. 1102, 131 L.Ed.2d 756. Officers And Public Employees 119

Burden is on government official claiming absolute immunity from § 1983 liability to show that exemption from personal liability is justified by public policy or by principles of common-law immunity in existence at time of enactment of § 1983. Union Pacific R. Co. v. Village of South Barrington, N.D.Ill.1997, 958 F.Supp. 1285. Civil Rights 1407

5271. ---- Qualified immunity, burden of proof, evidence and witnesses

Jury did not clearly err in finding that any disruption caused by probationary special education teacher's allegations of violations of law in school district's special education program was outweighed by teacher's interest in free expression, and teacher's core First Amendment rights were implicated, and thus school district officials were not entitled to qualified immunity in teacher's § 1983 First Amendment retaliation action arising from nonrenewal of her contract; district presented very little evidence of disruption or injury, and teacher made no public statements but rather communicated via internal channels. Settlegoode v. Portland Public Schools, C.A.9 (Or.) 2004, 371 F.3d 503, certiorari denied 125 S.Ct. 478, 543 U.S. 979, 160 L.Ed.2d 356. Civil Rights 1376(10); Civil Rights 1421

Where § 1983 defendant pleads qualified immunity and shows that defendant is governmental official whose position involves exercise of discretion, plaintiff then has burden to rebut this defense by establishing that official's allegedly wrongful conduct violated clearly established law; official is not required to demonstrate that he did not violate clearly established federal rights. Pierce v. Smith, C.A.5 (Tex.) 1997, 117 F.3d 866. Civil Rights 1407

Plaintiff bringing § 1983 action against individual law enforcement officer bears burden of showing that right allegedly violated was clearly established at time of alleged misconduct. Perkins v. City of West Covina, C.A.9 (Cal.) 1997, 113 F.3d 1004, certiorari granted 118 S.Ct. 1690, 523 U.S. 1105, 140 L.Ed.2d 812, reversed 119 S.Ct. 678, 525 U.S. 234, 142 L.Ed.2d 636, on remand 167 F.3d 1286. Civil Rights 1407

Burden of proof in § 1983 qualified immunity cases is placed on plaintiff only in regard to factual disputes where whether defendant actually committed acts that are alleged to be in violation of federal law is salient issue. McCloud v. Testa, C.A.6 (Ohio) 1996, 97 F.3d 1536, rehearing and suggestion for rehearing en banc denied. Civil Rights 1407

Once state university president and dean of graduate studies presented facts indicating that they were acting within their discretionary authority, burden of proving that qualified immunity did not apply fell on plaintiff professor, for purposes of his civil rights claims alleging that president's and dean's handling of his tenure denial grievance violated his right to procedural due process and equal protection. Purisch v. Tennessee Technological University, C.A.6 (Tenn.) 1996, 76 F.3d 1414. Civil Rights 1407

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42 U.S.C.A. § 1983

Arrestee did not meet his burden of proof showing clearly established law in support of his claim that police officers' decision to arrest him was solely in retaliation for his refusal to give his name and address and, therefore, police officers were entitled to qualified immunity defense in § 1983 action, as arrestee had no clearly established right to ignore police requests at scene of investigation for his name and address. Pallottino v. City of Rio Rancho, C.A.10 (N.M.) 1994, 31 F.3d 1023. Civil Rights 1376(6)

In order to overcome police officers' qualified immunity from civil rights claims against officers in their individual capacities, as arising out of arrestee's suicide while in jail, arrestee's estate was required to establish that officers' conduct violated clearly established statutory or constitutional right of which reasonable person would have known, where officers' allegedly unconstitutional actions fell within their discretionary authority. Belcher v. City of Foley, Ala., C.A.11 (Ala.) 1994, 30 F.3d 1390. Civil Rights 1376(7)

With respect to claim of qualified immunity, it is plaintiff's burden to show that when defendant acted, law established contours of right so clearly that reasonable official would have understood his acts were unlawful. Spivey v. Elliott, C.A.11 (Ga.) 1994, 29 F.3d 1522, on reconsideration 41 F.3d 1497. Civil Rights 1376(2)

Prison officials who kept inmate in administrative segregation after he no longer qualified for segregation had burden of coming forward with facts showing that they were acting within their discretionary authority at time in question so as to have qualified immunity, with the ultimate burden of proof resting on inmate to show that officials were not entitled to qualified immunity. Mackey v. Dyke, C.A.6 (Mich.) 1994, 29 F.3d 1086. Civil Rights 1407

Plaintiff in § 1983 action bears burden of proving that right allegedly violated was clearly established at time of official's impermissible conduct, for purposes of determining whether official is entitled to qualified immunity. Camarillo v. McCarthy, C.A.9 (Cal.) 1993, 998 F.2d 638. Civil Rights 1407

In a political discharge civil rights case in which defendants claim qualified immunity, plaintiff must initially allege the violation of some constitutional right, he must then attempt to show the right is clearly established by reference to analogous cases which would put defendants on notice that their acts were illegal, and finally that defendants must respond by proving that they could reasonably have believed that their acts were constitutionally permissible, either because the right was not clearly established or because political allegiance was a legitimate job requirement in the particular case. Pounds v. Griepenstroh, C.A.7 (Ind.) 1992, 970 F.2d 338, certiorari denied 113 S.Ct. 1256, 507 U.S. 910, 122 L.Ed.2d 654. Civil Rights 1376(10)

Plaintiff opposing dismissal on basis of qualified immunity must demonstrate that right in question was clearly established at time of defendant's conduct and cannot meet that burden merely by identifying clearly established right and then alleging that defendant violated it; plaintiff must come forward with necessary factual allegations. Sawyer v. County of Creek, C.A.10 (Okla.) 1990, 908 F.2d 663. Civil Rights 1398

Qualified immunity is an affirmative defense for which the defendant carries the burden of proof. Vukelic v. Bartz, D.N.D.2003, 245 F.Supp.2d 1068. Civil Rights 1398; Civil Rights 1407

After a defendant pleads qualified immunity to a claim in a § 1983 lawsuit, the plaintiff bears the burden of coming forward with sufficient facts to show that the defendant's actions violated a federal constitutional or statutory right and demonstrating that the right violated was clearly established at the time of the conduct at issue; in order to carry this burden, the plaintiff must do more than identify in the abstract a clearly established right and allege that the defendant has violated it, rather, the plaintiff must articulate the clearly established constitutional right and the defendant's conduct which violated the right with specificity. Schroeder v. Kochanowski, D.Kan.2004, 311 F.Supp.2d 1241. Civil Rights 1376(2); Civil Rights 1407

Test for whether governmental defendant is entitled to qualified immunity from liability in his or her individual

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capacity involves two-step analysis: government official first must demonstrate that he was acting within scope of his discretionary authority when allegedly wrongful acts occurred, and if defendant satisfies this burden, plaintiff must then show either that official lacked good faith or that official's actions violated clearly established constitutional law or federal statute at time of challenged action. Ferguson v. City of Montgomery, M.D.Ala.1997, 969 F.Supp. 674, affirmed 141 F.3d 1189. Civil Rights 1376(2)

For qualified immunity purposes, burden of establishing that constitutional right violated was clearly established rests on plaintiff suing public officer under § 1983. Smith v. Tolley, E.D.Va.1997, 960 F.Supp. 977. Civil Rights 1407

Initially, plaintiff bears burden of setting out claims sufficient to state cause of action under § 1983, and once defendant responds with assertion of qualified immunity, burden of proof shifts to defendant; once defendant has satisfied his burden of proof, burden shifts back to plaintiff who must then allege and prove that defendant violated clearly established right that any government official in defendant's position would have clearly understood that he was under affirmative duty to refrain from such conduct. McCrea v. Zieba, N.D.Ohio 1996, 955 F.Supp. 801. Civil Rights 1407

For purposes of determining whether qualified immunity bars claim, plaintiff who seeks damages for violation of constitution or statutory rights bears initial burden of proving that rights allegedly violated were clearly established at time of alleged misconduct, and court must examine universe of statutory or decisional law to determine whether right allegedly violated was clearly established; qualified immunity is thus protective rule which provides ample support to all but the most plainly incompetent or those who knowingly violate law. Reed v. Iranon, D.Hawai'i 1996, 940 F.Supp. 1523. Civil Rights 1376(2); Civil Rights 1407

To defeat claim of qualified immunity, § 1983 plaintiff bears burden of establishing existence of clearly established right; that burden requires plaintiff to offer either closely analogous case or evidence that defendants' conduct is so patently violative of constitutional right that reasonable officials would know without guidance from courts. Van Loo v. Braun, E.D.Wis.1996, 940 F.Supp. 1390. Civil Rights 1376(2)

Burden is on plaintiff in § 1983 action to plead specific facts showing violation of clearly established law by defendant, or complaint is subject to dismissal. Swenson v. Culberson County, W.D.Tex.1996, 925 F.Supp. 478. Civil Rights 1398

Test for whether governmental defendant is entitled to qualified immunity from liability in his or her individual capacity is as follows: defendant public official must first prove that he was acting within scope of his discretionary authority when allegedly wrongful acts occurred and once defendant satisfies his burden of moving forward with evidence, burden shifts to plaintiff to show lack of good faith on defendant's part and this burden is met by proof demonstrating that defendant public official's actions violated clearly established constitutional law or federal statute. Gorman v. Roberts, M.D.Ala.1995, 909 F.Supp. 1479. Civil Rights 1376(2); Civil Rights 1407

Burden of proof was on § 1983 plaintiff to show that defendants were not entitled to qualified immunity; defendants bore initial burden of coming forward with facts to suggest that they were acting within scope of their discretionary authority during incident in question, with burden then shifting to plaintiff to establish that any official in defendants' position would have clearly understood that they were under affirmative duty to refrain from such conduct. Robertson v. Johnson County, Ky., E.D.Ky.1995, 896 F.Supp. 673. Civil Rights 1407

After defendant government official has raised defense of qualified immunity by motion to dismiss, by affirmative defense, or by motion for summary judgment, burden of pleading facts which, if true, describe violation of clearly established statutory or constitutional right of which reasonable public official, under an objective standard, would have known, rests on plaintiff, and if plaintiff fails to meet burden of pleading sufficient facts to state a violation of

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clearly established law, government official pleading qualified immunity is entitled to dismissal before commencement of discovery. Gregory v. Hunt, W.D.Tenn.1991, 872 F.Supp. 476, clarified 1992 WL 695478, affirmed 24 F.3d 781. Civil Rights 1398; Federal Civil Procedure 1752.1

Once public official raises qualified immunity defense, plaintiff has burden of proving that official's conduct violated clearly established statutory or constitutional rights. Telfair v. Gilberg, S.D.Ga.1994, 868 F.Supp. 1396, affirmed 87 F.3d 1330. Civil Rights 1407

Where qualified immunity was raised as defense to civil rights suit, plaintiff had burden of identifying with particularity clearly established law and conduct by defendant which violated that law. Kaul v. Stephan, D.Kan.1994, 868 F.Supp. 1253, affirmed 83 F.3d 1208. Civil Rights 1407

Official seeking immunity from civil rights claim bears initial burden of showing that public policy requires such exemption; burden then shifts to plaintiff to show facts which, if true, defeat assertion of the doctrine. Schilling v. Swick, W.D.Mich.1994, 868 F.Supp. 904. Civil Rights 1407

In determining whether official has qualified immunity from civil rights claim, plaintiff bears burden of proving that right was clearly established at time it was allegedly violated and official has burden to prove that disputed acts were objectively reasonable. Defore v. Premore, N.D.N.Y.1994, 863 F.Supp. 91, affirmed 86 F.3d 48. Civil Rights 1407

Once issue of qualified immunity is properly injected into civil rights case, plaintiff has burden of demonstrating that defendants violated some "clearly established" constitutional right, by showing the existence of a right sufficiently particularized to have put potential defendants on notice that their conduct was probably unlawful at time of alleged violation. Olzinski v. Maciona, E.D.Wis.1989, 714 F.Supp. 401. Civil Rights 1376(2); Civil Rights 1407

In order to properly raise defense of qualified immunity, defendants must assert that they were performing discretionary functions; plaintiff then has burden to convince court that law relied upon by plaintiff was clearly established at time defendants allegedly deprived plaintiff of his or her civil rights and if plaintiff fails to convince court, defendants are qualifiedly immune and court must enter judgment in favor of defendants who have pleaded defense; however, if plaintiff convinces court that law was clearly established, court must proceed to determine whether defendants have raised issue as to whether exceptional circumstances exist such that reasonable persons in their position would not have known of relevant legal standard. Burk v. Unified School Dist. No. 329, Wabaunsee County, Kan., D.Kan.1986, 646 F.Supp. 1557. Civil Rights 1376(2); Civil Rights 1407

5272. Admissibility of evidence, evidence and witnesses--Generally

Whether testimony of witness in suit, pursuant to this section, that mayor had made a public statement that he was not going to appoint any more Negroes to the school board reflected either newspaper account or television report of statement it was nonetheless hearsay. Mayor of City of Philadelphia v. Educational Equality League, U.S.Pa.1974, 94 S.Ct. 1323, 415 U.S. 605, 39 L.Ed.2d 630. Evidence 317(2)

Police officers' conduct of signing disciplinary records for violating firearms procedures and indicating that they accepted the recommended penalty was not an adoptive admission of allegations in the records, for purposes of determining whether the disciplinary records were admissible in §§ 1983 civil rights action brought by arrestee for excessive force, given that the officers declined to admit any wrongdoing and only accepted the penalty imposed, not the facts underlying it. Garcia-Martinez v. City and County of Denver, C.A.10 (Colo.) 2004, 392 F.3d 1187. Evidence 220(6)

In action alleging that state social workers failed to protect a minor Native American child from abuse by his

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natural parents, district court did not abuse its discretion in rejecting evidence of one defendant's attitude toward minorities; statement, allegedly made by a co-worker in an interview with Kansas Human Rights Commission, did not comply with evidentiary procedure inasmuch as it was evidenced solely by an undated and unsigned loose typed sheet. Roe ex rel. Roe v. Keady, C.A.10 (Kan.) 2003, 329 F.3d 1188. Evidence 373(1)

Graphic evidence of injuries from unrelated incidents of police dog bites and police dog training techniques, offered to show that police dog policy of police chief and city was unconstitutional, was excludable as premature in first stage of arrestee's bifurcated § 1983 trial in which only individual officers' use of police dog against arrestee was at issue; evidence could have unfairly prejudiced chief and city and confused jury as it considered individual officers' actions. Quintanilla v. City of Downey, C.A.9 (Cal.) 1996, 84 F.3d 353, certiorari denied 117 S.Ct. 972, 519 U.S. 1122, 136 L.Ed.2d 856. Civil Rights 1412; Evidence 146

In civil rights deprivation prosecution of police officer arising out of beating of motorist, officer's statement that he went to police station intending to report use of force was not barred from admission on grounds that actions were motivated by opinions; testimony about action was not inadmissible because action was motivated by opinions or beliefs. U.S. v. Koon, C.A.9 (Cal.) 1994, 34 F.3d 1416, rehearing and suggestion for rehearing en banc denied 45 F.3d 1303, as amended, certiorari granted in part 116 S.Ct. 39, 515 U.S. 1190, 132 L.Ed.2d 920, affirmed in part, reversed in part 116 S.Ct. 2035, 518 U.S. 81, 135 L.Ed.2d 392, on remand 91 F.3d 1313. Criminal Law 448(2)

Admission of Spanish-language documents at trial without contemporaneous translation was warranted in § 1983 political discrimination action brought by Commonwealth of Puerto Rico employees against Commonwealth officials; employees possessed limited financial resources while cost of certified translations was high thus threatening employees' ability to fully present their case, there was no indication that admission affected parties' due process rights, and admission comported with long-standing local court rule. Torres Santa v. Rey Hernandez, D.Puerto Rico 2003, 279 F.Supp.2d 124. Federal Courts 1024

Allowing presentation of videotaped testimony of witness was not an abuse of discretion, in §§ 1983 action against regional police officer alleging violations of plaintiff's First, Fourth, and Fourteenth Amendment rights as well as his rights under Pennsylvania state law; both parties had reviewed the videotape and transcript to excise objectionable testimony before videotape was played for jury, plaintiff's objection, while videotape was being played for jury, to a section that had not been marked for redaction was untimely, and testimony in that section was not so prejudicial as to cause miscarriage of justice. Haeseker v. Reynolds, C.A.3 (Pa.) 2005, 128 Fed.Appx. 857, 2005 WL 859284, Unreported. Witnesses 228

5273. ---- Relevancy, admissibility of evidence, evidence and witnesses

District court in Arkansas did not abuse its discretion by excluding Arkansas State Jail Standards from evidence in trial, in civil rights lawsuit brought by estate of pretrial detainee against jailers alleging deliberate indifference under Fourteenth Amendment, since jail standards did not represent minimum constitutional standards. Grayson v. Ross, C.A.8 (Ark.) 2006, 454 F.3d 802. Civil Rights 1412

In pretrial detainee's estate's §§1983 Eighth Amendment action against county contractor that provided medical and mental health services at jail, arising from detainee's suicide while in jail, evidence of alcohol-impaired nurse, intake backlogs, and claims of delayed or denied medical care to other inmates was relevant to contractor's knowledge and state of mind and therefore admissible; evidence was circumstantial proof of contractor's failure to act in face of known violations of its written policies other than policies governing treatment of suicidal detainees. Woodward v. Correctional Medical Services of Illinois, Inc., C.A.7 (Ill.) 2004, 368 F.3d 917. Civil Rights 1412; Evidence 129(5)

Limitation of evidence regarding arrestee's medical examinations and treatments to those received immediately after arrest was reversible error in arrestee's § 1983 action against police officers for use of excessive force during

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arrest; subsequent examinations and treatments were relevant and essential to prove severity of injuries sustained and amount of force used, and to verify arrestee's credibility. Martin v. Heideman, C.A.6 (Ky.) 1997, 106 F.3d 1308, rehearing and suggestion for rehearing en banc denied. Civil Rights 1412; Federal Courts 901.1

Law enforcement association's model standards and policies concerning prohibition against off-duty officers engaging in traffic stops under circumstances where they are personally involved in infraction were excludable from excessive force suit involving high-speed chase and shooting death of suspect, as irrelevant to key issue of whether force used after suspect was collared was excessive under the circumstances. Soller v. Moore, C.A.7 (Wis.) 1996, 84 F.3d 964. Civil Rights 1412

In inmate's § 1983 suit against guards for unreasonable use of force, evidence that one guard had allegedly filed false claim for worker's compensation and had been previously suspended for giving false information was relevant to issue of guard's credibility as a witness. Hynes v. Coughlin, C.A.2 (N.Y.) 1996, 79 F.3d 285. Witnesses 344(5)

Police officers' testimony about facts known to them regarding vehicle passenger's criminal history was admissible in passenger's civil rights action against officers after they stopped car for traffic violation, directed him and other occupants to exit it and subdued him with batons when struggle ensued, as the testimony was relevant to objective reasonableness of officers' actions, and was not so unfairly prejudicial as to warrant exclusion. Ruvalcaba v. City of Los Angeles, C.A.9 (Cal.) 1995, 64 F.3d 1323, certiorari denied 116 S.Ct. 1841, 517 U.S. 1216, 134 L.Ed.2d 943. Civil Rights 1415; Evidence 146

Evidence concerning high school student's sexual relationships with men other than truant officer was relevant, in student's § 1983 action against truant officer based upon alleged nonconsensual sexual relationship, since truant officer was not responsible for any damages caused by student's sexual activities with other men. Berry v. Deloney, C.A.7 (Ill.) 1994, 28 F.3d 604. Civil Rights 1410

Evidence of incident involving municipal police officer's alleged use of force while making arrest during domestic violence incident was properly excluded in arrestee's suit against municipality alleging civil rights violations committed by the officer while making arrest during domestic violence incident where evidence was from incident that occurred subsequent to incident involved in plaintiff's claim. Calusinski v. Kruger, C.A.7 (Ill.) 1994, 24 F.3d 931. Evidence 129(2)

Evidence that arrestee's girlfriend had told police officers that arrestee was crack dealer and that she had seen him put piece of tin foil into his mouth was admissible in arrestee's civil rights action challenging amount of force used after arrest; arrestee had included statement in his complaint and evidence was relevant in determining reasonableness of officers' actions. Estwick v. City of Omaha, C.A.8 (Neb.) 1993, 9 F.3d 56. Civil Rights 1412

Evidence as to whether police officer had shot anyone previously should not have been admitted in civil rights action in that it was not relevant; intent was not an issue, but, rather, question to be resolved was whether the officer's use of force had been excessive. Gates v. Rivera, C.A.9 (Cal.) 1993, 993 F.2d 697. Civil Rights 1412

Evidence that police officer had previously shot burglary suspect after suspect stabbed his police dog to death was relevant in action based on officer's alleged use of excessive force when effecting arrest arising when officer struck robbery suspect in the head after suspect kicked officer's dog. Kopf v. Skyrm, C.A.4 (Md.) 1993, 993 F.2d 374. Evidence 129(5)

Inmate conduct violation reports were admissible in inmate's § 1983 action alleging use of excessive force by correctional officers as being relevant, not just on question of subjective state of mind of officers in moving inmate, but on question as to what was reasonable force by any officer who knew inmate's reputation. McCrary-El v.

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Shaw, C.A.8 (Mo.) 1993, 992 F.2d 809. Civil Rights 1412

Trial court did not abuse its discretion in allowing, in civil rights action against police officers arising out of shooting of fleeing arrestee, limited use of details of arrestee's pending charges and prior convictions; determination of reasonableness of actions of officers required evaluation of their conduct in light of what they knew at time of shooting. Geitz v. Lindsey, C.A.7 (Ill.) 1990, 893 F.2d 148. Evidence 106(5)

Parolee's §§ 1983 claim that he suffered seizures as a result of the alleged head trauma caused by parole officers' use of excessive force was not something that jurors could determine from their own knowledge or experience; thus, unless parolee's medical records demonstrated the causal connection between his seizures and the actions of the officers, parolee would be precluded from presenting lay testimony that explicitly tied the conduct of the officers to the seizures in terms of proximate cause. Turner v. White, E.D.N.Y.2005, 443 F.Supp.2d 288. Evidence 493

State agency investigatory file was properly before district court on public employer's motion to dismiss for failure to state claim, which was made on basis that agency's prior finding of "no probable cause" collaterally estopped employee from subsequently litigating his racial discrimination civil rights claim; although employee did not attach file for court to review and employer did not submit file until reply papers had been filed, employee was aware of and possessed file, he did not dispute its authenticity, and entire thrust of employee's opposition was that he did not have full and fair opportunity to litigate his claims before agency. Johnson v. County of Nassau, E.D.N.Y.2006, 411 F.Supp.2d 171. Federal Civil Procedure 1832

Plaintiff who brought § 1983 civil rights action against city and city police officer who shot him in the back allegedly because officer was in such poor physical condition that he was incapable of pursuing plaintiff on foot was entitled to production of officer's medical records in worker's compensation file, as they were directly relevant regarding officer's physical condition on the day of the shooting, and whether city fulfilled its duty both to train its officers and also to monitor their physical condition to assure their fitness for duty. Hutton v. City of Martinez, N.D.Cal.2003, 219 F.R.D. 164. Federal Civil Procedure 1598

Evidence of arrestee's convictions for disorderly conduct and resisting arrest were admissible in arrestee's § 1983 action against police officers alleging excessive force as being probative of reasonableness of police officers' conduct. Graack v. Borough of Nazareth, E.D.Pa.1994, 852 F.Supp. 370. Judgment 648

5274. ---- Rebuttal evidence, admissibility of evidence, evidence and witnesses

Plaintiffs in civil rights action challenging constitutionality of state's foster care program were not entitled to admission of documents in their possession relating to Louisiana child welfare system as whole as rebuttal evidence to help court understand why alleged violations by state occurred, where proof of violations did not require proof of causation. Del A. v. Roemer, E.D.La.1991, 777 F.Supp. 1297. Civil Rights 1414

5275. ---- Arbitration, admissibility of evidence, evidence and witnesses

An arbitrator's decision pursuant to arbitration under collective-bargaining agreement may be admitted as evidence in a Civil Rights Act suit. McDonald v. City of West Branch, Mich., U.S.Mich.1984, 104 S.Ct. 1799, 466 U.S. 284, 80 L.Ed.2d 302. Labor And Employment 1597

5276. ---- Statistics, admissibility of evidence, evidence and witnesses

Statistical proof may be used in actions under federal civil rights statute, and cases and regulations promulgated under Title VII furnish useful guides to the interpretation of the statute. Black v. City of Akron, Ohio, C.A.6 (Ohio) 1987, 831 F.2d 131. Civil Rights 1413; Statutes 219(6.1)

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42 U.S.C.A. § 1983

5277. ---- Custom or usage, admissibility of evidence, evidence and witnesses

District Court's refusal to consider existence of county policy which allegedly authorized county officials to euthanize animals deemed to be sick or injured was warranted, for purpose of motion to alter or amend judgment by owner of dogs and cats that were euthanized, following summary judgment in favor of county officials, in owner's §§ 1983 procedural due process claim; owner's excuse for not submitting the county policy to the Court prior to consideration of the summary judgment motion was that her attorneys did not foresee that Court would rely on *Parratt/Hudson* doctrine, which barred relief under §§ 1983 for procedural due process claims if the officials' conduct was random and unauthorized. Bogart v. Chapell, C.A.4 (S.C.) 2005, 396 F.3d 548. Federal Civil Procedure 2655

Excluding investigative report from evidence admitted in § 1983 action brought by pretrial detainee, who claimed that jailers and sheriff ignored his warnings that he was at risk of assault and denied him adequate medical treatment after he was attacked by other prisoners, was not abuse of discretion; although the investigative report tended to prove pattern of similar constitutional violations, its relevance was questionable because it substantially predated the detainee's incarceration and the sheriff's appointment. Johnson v. Busby, C.A.8 (Ark.) 1991, 953 F.2d 349. Civil Rights 1412

Actions taken subsequent to event giving rise to civil rights claim are admissible if, and to the extent that, they provide reliable insight into the city's policy in force at the time of the incident complained of. Foley v. City of Lowell, Mass., C.A.1 (Mass.) 1991, 948 F.2d 10. Civil Rights 1409

Where evidence did not establish university police department ever communicated policy of confidentiality of accident reports to lieutenant, who was discharged allegedly for violating such policy, and such policy was vague because it was neither expressly formulated nor consistently applied, and, even if such policy existed, it was void as matter of public policy, district court was within its discretion in holding that evidence tending to establish such policy was irrelevant and immaterial as respects lieutenant's civil rights action for wrongful discharge. Williams v. Board of Regents of University System of Georgia, C.A.5 (Ga.) 1980, 629 F.2d 993, rehearing denied 629 F.2d 1350, certiorari denied 101 S.Ct. 3063, 452 U.S. 926, 69 L.Ed.2d 428. Civil Rights 1413

Police department's internal affairs investigation files containing civilian complaints and police department's resultant investigations covering previous eight years were relevant and necessary to plaintiffs' burden of establishing requisite policy or custom in federal civil rights action alleging that city had failed to properly train its officers, and thus, order for disclosure of records would not be limited to two-year time period prior to complaint, even though city and individual defendants contended that two-year limitations period was applicable to civil rights claims asserted. Torres v. Kuzniasz, D.N.J.1996, 936 F.Supp. 1201. Federal Civil Procedure 1593

5277A. ---- Color of law, admissibility of evidence, evidence and witnesses

In minor child's §§ 1983 suit against District of Columbia seeking recovery for child abuse which allegedly occurred in foster care group homes operated by private, foster care contractors, child was entitled to obtain deposition testimony regarding the financial relationship between contractors and the District, including but not limited to any funding contractors by the District, profit sharing between the District and contractors, the District tax provisions relating to contractors, and contractors' ability to satisfy judgments from the District treasury; such information was relevant to child's claim that contractors were acting under color of state law. Doe v. District of Columbia, D.D.C.2005, 230 F.R.D. 47. Federal Civil Procedure 1403

5278. ---- Deliberate indifference, admissibility of evidence, evidence and witnesses

Absent showing that *Brady* violation was highly probable consequence of sheriff's record-keeping policies, or that such violation was inordinately difficult to discover, exonerated murder suspect could not rely on single *Brady*

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violation, which resulted in his wrongful conviction and imprisonment, to establish that sheriff was deliberately indifferent to suspect's right to fair trial, as required to impose liability on sheriff under § 1983. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Civil Rights 1358

In civil rights action by foster child against placement agency for failing to supervise placement properly, district court should have admitted memorandum of assistant commissioner reminding city agencies of their duty to report all suspected cases of child abuse, since fact that agency failed to report incident with foster child in face of recent reminder that reporting must be done in all cases was relevant to issue of deliberate indifference. Doe v. New York City Dept. of Social Services, C.A.2 (N.Y.) 1981, 649 F.2d 134. Civil Rights 1414

5279. ---- Discrimination, admissibility of evidence, evidence and witnesses

Even if admissible, statement by one defendant's co-worker, which simply noted that defendant declined to call another worker to get the address and phone number of the Bureau of Indian Affairs (BIA) in Oklahoma, was insufficient to provide evidence as to the defendant's attitude toward minorities, for purposes of action alleging that state social workers failed to protect a minor Native American child from abuse by his natural parents. Roe ex rel. Roe v. Keady, C.A.10 (Kan.) 2003, 329 F.3d 1188. Civil Rights 1422

Evidence of alleged discriminatory act which provided basis for prior lawsuits against city by female police officers was admissible in action by female police officers charging hostile work environment and sexual harassment, evidence could be admitted to support claims of discrimination in terms of employment even though plaintiffs in previous cases settled action. Barcume v. City of Flint, E.D.Mich.1993, 819 F.Supp. 631. Evidence 129(5)

5280. ---- Knowledge and intent, admissibility of evidence, evidence and witnesses

In political discrimination case under § 1983, error from blanket exclusion of testimony of deputy secretary for legal affairs and norms for Puerto Rican municipality, regarding his meeting with mayor for ostensible purpose of discussing ground rules for hiring of "Law 52" employees, was prejudicial; testimony went to linchpin of mayor's claim that his actions were objectively reasonable, and harmful effect of its exclusion was compounded by court's refusal to allow mayor to testify as to particular advice he received from that witness. Gomez v. Rivera Rodriguez, C.A.1 (Puerto Rico) 2003, 344 F.3d 103. Federal Courts 901.1

Evidence that defendant corrections officer twice visited plaintiff inmate in hospital after inmate allegedly was assaulted in his cell by other inmates, that officer brought two assailants on one such visit, and that officer discussed assault with plaintiff on that visit and threatened to kill him if plaintiff pressed charges, was admissible in § 1983 action alleging that officer either opened plaintiff's cell door for assailants or permitted someone else to do so; such evidence showed defendant's collaboration with attackers, and his acknowledgement of personal involvement. Fischl v. Armitage, C.A.2 (N.Y.) 1997, 128 F.3d 50. Civil Rights 1412

Reports of violent behavior involving arresting officer were admissible in arrestee's civil rights action to show that police chief and city had knowledge of officer's propensity for violence and failed to do anything to prevent rape of arrestee; previous assaults could not be pigeonholed as distinct and unrelated crimes, but rather, had to be viewed as related acts of violence. Parrish v. Luckie, C.A.8 (Ark.) 1992, 963 F.2d 201. Evidence 137

Evidence of prison officials' beliefs with regard to allegedly invalid actions under § 1983 is required in civil rights action to show that beliefs are reasonable. Dawes v. Carpenter, N.D.N.Y.1995, 899 F.Supp. 892. Civil Rights 1376(7)

Evidence of specific injuries that other inmates in prisoner's housing unit suffered on the date of alleged assault

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upon prisoner was not admissible on the issue of whether prison guards acted with malice, in prisoner's Eighth Amendment excessive force action against prison guards under § 1983. Bright v. Gillis, C.A.3 (Pa.) 2004, 89 Fed.Appx. 802, 2004 WL 363301, Unreported, certiorari denied 125 S.Ct. 89, 543 U.S. 904, 160 L.Ed.2d 178. Civil Rights 1412

5281. Subsequent wrongful acts, evidence and witnesses

Trial court presiding over civil rights action based on allegedly improper traffic stop abused its discretion in admitting evidence of one plaintiff's subsequent traffic stop and arrest, since evidence was within scope of discovery requests for documentation obtained from criminal databases but not disclosed until trial, and failure to disclose information was extremely prejudicial to plaintiffs' case. Ryan v. Board of Police Com'rs of City of St. Louis, C.A.8 (Mo.) 1996, 96 F.3d 1076, rehearing denied. Federal Civil Procedure 1636.1

5282. Statistics, evidence and witnesses

Statistical evidence of disparate impact on women as result of physical capabilities selection examination established by city for purpose of hiring fire fighters did not alone establish prima facie case of discriminatory intent. Zamlen v. City of Cleveland, C.A.6 (Ohio) 1990, 906 F.2d 209, rehearing denied, certiorari denied 111 S.Ct. 1388, 499 U.S. 936, 113 L.Ed.2d 444. Civil Rights 1421

In a civil rights class action for racially discriminatory employment practices, the district court's judgment for defendant employer was supported by statistical evidence which indicated that the percentage of minorities working for defendant as a whole and within most departments was greater than the percentage of minority workers in the relevant work force, and by nonstatistical evidence which showed that an appreciable number of blacks preferred "dead-end jobs" in the housekeeping department to jobs in other departments, and that the distribution of workers among the several departments was largely the result of such factors as employee preferences, job qualifications, and economic conditions affecting job availability. Hilton v. Wyman-Gordon Co., C.A.1 (Mass.) 1980, 624 F.2d 379. Civil Rights 1544

Black Democratic county voter registrars bringing § 1983 claim against state officials established prima facie case of disparate treatment in violation of equal protection clause with statistical evidence that after Republicans took office and fired Democrats, Blacks fell from 24.9% to 6% of county registrars. Jackson v. James, M.D.Ala.1996, 952 F.Supp. 737. Civil Rights 1421

5283. Circumstantial evidence, evidence and witnesses

Evidence, although circumstantial and not overwhelming, supported determination that state police officials retaliated against female officer for speaking out against discriminatory treatment of women at state police academy; there was evidence that official had been informed of officer's complaints before he ordered internal investigations of her conduct. Pontarelli v. Stone, C.A.1 (R.I.) 1991, 930 F.2d 104. Civil Rights 1421

Employment discrimination need not be proved by direct evidence, and doing so is often impossible, because there will seldom be eyewitness testimony to employer's mental processes. Thomas v. St. Luke's Health Systems, Inc., N.D.Iowa 1994, 869 F.Supp. 1413, affirmed 61 F.3d 908. Civil Rights 1544

When evaluating indirect evidence of discrimination in equal protection cases under § 1983, district court must consider entire context of allegedly discriminatory actions, and must consider whether defendants' actions impacted more heavily on one race than another, historical background of those actions, sequence of events which led up to challenged actions, any departures by defendants from normal procedures or disregard for factors normally considered important, and statements made by decision makers. Board of Managers of Glen Mills Schools v. West

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42 U.S.C.A. § 1983

Chester Areas School Dist., E.D.Pa.1993, 838 F.Supp. 1035, affirmed in part, reversed in part 52 F.3d 313. Constitutional Law 215

To establish prima facie case based on circumstantial evidence, plaintiff alleging civil rights violation from termination of employment must show by preponderance of evidence that he belongs to protected class, that he was qualified for his job, that he was constructively discharged despite qualifications without valid cause, and that defendants have replaced him or sought to replace him with person of comparable qualifications. Wexley v. Michigan State University, W.D.Mich.1993, 821 F.Supp. 479, affirmed 25 F.3d 1052. Civil Rights 1421

5284. Calling and production of witnesses, evidence and witnesses

Refusal to subpoena additional inmate witnesses requested by convict on his excessive force civil rights claims against correctional officers was not abuse of discretion, where prisoner did not establish what further testimony witnesses would have provided, some witnesses had no knowledge of incidents, and court had credited inmate's testimony and hospital records as to injuries he received during incidents. Guerra v. Drake, C.A.8 (Ark.) 2004, 371 F.3d 404. Witnesses 4

Discharged black employee was entitled to present testimony of witness who claimed to have heard racial slurs, referring to employee, made by police department employees to demonstrate that black employee was subjected to atmosphere of racial harassment and discrimination while on job; evidence went directly to issue of racial harassment on job. Busby v. City of Orlando, C.A.11 (Fla.) 1991, 931 F.2d 764.

In former detainee's §§ 1983 action against sheriff, in his official capacity, alleging violation of Fourteenth Amendment due process rights for failure to release him from county jail within reasonable time after reason for confinement ended, detainee could call sheriff to testify regarding jail release policies, where sheriff was final policymaker for county in setting and implementing jail release policies and sheriff did not assert that he had no knowledge of policies. Green v. Baca, C.D.Cal.2005, 226 F.R.D. 624, clarified 2005 WL 283361. Witnesses 4

Attorney could not serve as counsel in citizen's § 1983 action against members of sheriff's department when citizen indicated intent to call attorney as witness to give impeachment testimony and attorney did not show applicability of any exception to professional rule barring attorney from acting as advocate before jury in such circumstances. Benas v. Baca, C.D.Cal.2003, 2003 WL 21530209, Unreported, clarified 2003 WL 21692037. Attorney And Client 22

District court did not abuse its discretion by denying prison inmate's request for a second witness in § 1983 action after making determination that the witness's testimony would be cumulative. Thompson v. Linzy, C.A.8 (Ark.) 2000, 208 F.3d 218, Unreported. Federal Civil Procedure 2011

5285. Expert witnesses, evidence and witnesses

Defense expert's testimony, in civil rights action against police officer for excessive use of force, that officer suffered from post-traumatic stress syndrome following shooting of plaintiff's husband, for purposes of explaining officer's varying accounts of incident impermissibly bolstered officer's credibility, since reliability of officer's statements was credibility issue which should have been left in exclusive province of jury. Westcott v. Crinklaw, C.A.8 (Neb.) 1995, 68 F.3d 1073, rehearing and suggestion for rehearing en banc denied. Evidence 506; Witnesses 318

Purported expert improperly testified that city police department's failure to discipline officers for using improper deadly force amounted to "deliberate indifference" in civil rights action; "deliberate indifference" was legal term, and it was responsibility of court, not testifying witnesses, to define legal terms. Berry v. City of Detroit, C.A.6

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(Mich.) 1994, 25 F.3d 1342, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 902, 513 U.S. 1111, 130 L.Ed.2d 786. Evidence 506

Trial court could allow expert in police training to testify, in § 1983 action against city arising from police officer's shooting of suspect, that, under accepted police practices, officer should have used options other than deadly force, notwithstanding city's contention that, as officer was under no legal duty to retreat when faced with deadly force, expert's testimony redefined law; expert agreed that officer reasonably perceived threat of deadly force only when asked to assume version of facts most favorable to officer, and expert did not testify that resort to other options was required by state law, but, rather, by generally accepted police practices. Zuchel v. City and County of Denver, Colo., C.A.10 (Colo.) 1993, 997 F.2d 730, rehearing denied. Evidence 516

Excluding expert testimony on proper use of police dogs and slapjacks in effecting arrest was abuse of discretion in action arising when arrestee was seriously injured when bitten by police dog and struck in the head by slapjack while being arrested. Kopf v. Skyrm, C.A.4 (Md.) 1993, 993 F.2d 374. Evidence 512

Medical expert's report was not sufficient to establish that publicly-employed physicians violated medical standards in referring city correctional officer to psychiatric hospital, and physicians thus were not liable under §§ 1983 for due process violations in their individual capacities, in that report never articulated, in any legally cognizable way, what standards of medical community governed involuntary commitment, and expert simply expressed his personal disagreement with physicians' treatment decisions. Algarin v. New York City Dept. of Correction, S.D.N.Y.2006, 460 F.Supp.2d 469. Health 926

Board certified neurological surgeon who treated thousands of spinal cord injuries during his career and extensively reviewed arrestee's medical records, was imminently qualified to offer an expert opinion regarding cause of arrestee's broken neck in § 1983 action against police officers. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Evidence 544

Testimony from § 1983 plaintiff's expert that expert did not perceive any act of aggression on plaintiff's part when he watched videotape of incident involving correction officers was admissible in excessive force action, even though testimony by defendants concerning their subjective beliefs about incident had been excluded. Schultz v. Amick, N.D.Iowa 1997, 955 F.Supp. 1087. Evidence 510

Flat rate fee of $2000 for defendants' expert, nationally recognized in field of law enforcement, to give his deposition at his own office to plaintiffs in §§ 1983 action against sheriff and deputy for use of excessive force, was exorbitant and unreasonable, even if the expert blocked out an entire day for the deposition, absent any explanation why he blocked out an entire day for a deposition, even short ones, and where the issues on which he would render an opinion, police standards, were not complex, and the flat fee could amount to over $600 per hour. Massasoit v. Carter, M.D.N.C.2005, 227 F.R.D. 264. Federal Civil Procedure 1333

5286. Examination of witnesses, evidence and witnesses

Court's error in denying plaintiff the opportunity to cross-examine police officer concerning the charges officer had in mind when he first tried to arrest plaintiff was prejudicial to plaintiff's §§ 1983 excessive force claim; by wrongly removing the unconstitutional false arrest claim from the trial and rejecting plaintiff's attempts right after that to ask officer about the charges he had in mind, the jury may have incorrectly concluded that the court disbelieved plaintiff's version of the events. Davis v. Rodriguez, C.A.2 (Conn.) 2004, 364 F.3d 424. Federal Courts 903

Trial judge's questioning of police officer during direct examination by defense counsel, in § 1983 suit against second police officer in which arrestee alleged that second officer assaulted arrestee, was within judge's discretion and did not indicate that judge was biased against defendant, where testifying officer was closest to arrestee when

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alleged assault occurred and judge questioned officer to clarify officer's statement about officer's lack of memory of assault. Deary v. City of Gloucester, C.A.1 (Mass.) 1993, 9 F.3d 191. Witnesses 246(2)

Martial arts instructor was qualified to offer a limited opinion regarding the types of bodily responses generally associated with pressurized neck restraints based on his experience in martial arts in § 1983 action brought by arrestee whose neck was broken in arrest. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Evidence 537

The fact that lay opinion witness may not have ever personally seen anyone's neck broken in the fashion she claimed arrestee's neck was broken did not automatically render her eyewitness account of the events in question inadmissible in arrestee's § 1983 action; witness could testify to what she observed. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Evidence 474(3)

Exclamation of witness, upon seeing police officer restrain arrestee, "they just broke his neck," was an excited utterance admissible as hearsay exception in arrestee's § 1983 action. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Evidence 121(1)

5287. Weight and sufficiency of evidence, evidence and witnesses

Female corrections officers, who were subjects of two inmate letters containing drawing and sexually explicit language and who showed that male supervisor failed to report the slanderous letter to a higher-ranking authority, failed to conduct any credible investigations about its authorship or circulation, and engaged in inappropriate conversations with supervisors and officers about the contents/targets of the defamatory letters, provided sufficient evidence to demonstrate intentional harassment by male co-workers and supervisor, based on sex, sufficiently extensive to render the work environment hostile in violation of equal protection. Dawson v. County of Westchester, S.D.N.Y.2004, 351 F.Supp.2d 176. Constitutional Law 224(3); Prisons 10

District court considering summary judgment motion of defendants in police detainee's § 1983 action against police officers, police chief, and city for alleged use of excessive force in violation of detainee's Fourth Amendment rights could properly consider evidence of over 70 excessive force complaints made against city police department in four years, as evidence that the city and the police department knew that citizens were accusing its officers of using excessive force in the course of their duties, and that the city acted with deliberate indifference, as required to support detainee's *Monell* claim. Jones v. City of Hartford, D.Conn.2003, 285 F.Supp.2d 174. Evidence 137; Federal Civil Procedure 2545

Discharged police officer did not establish § 1983 cause of action against town for alleged harassment; there was insufficient evidence to establish that the alleged harassment endured by officer and his wife at their home was so widespread that, although not authorized by written law or express municipal policy, it was so permanent and well settled as to constitute custom or usage with the force of law. Lightner v. Town of Ariton, Ala., M.D.Ala.1995, 902 F.Supp. 1489. Civil Rights 1421

5288. Privileged information, evidence and witnesses

Information as to whether undercover police officers were present at demonstration was not protected from discovery in §§ 1983 action pursuant to law enforcement privilege. Kunstler v. City of New York, S.D.N.Y.2006, 439 F.Supp.2d 327. Witnesses 216(1)

Citizen expressly waived work product privilege to investigation that his criminal defense attorney conducted after citizen was convicted of murder, when he allowed his attorney to testify during hearing on his motion for new trial in state court about conversations with citizen regarding other person's involvement in murder, for purpose of §§ 1983 lawsuit against police officers alleging violation of his constitutional rights during criminal investigation and

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prosecution of murder case, although waiver was limited to fact work product, and not opinion work product, and to documents that reflected citizen's or his attorney's knowledge of evidence and testimony at issue in suit. Tennison v. City & County of San Francisco, N.D.Cal.2005, 226 F.R.D. 615. Federal Civil Procedure 1600(5)

Defendant in § 1983 civil rights action could not rely on right of privacy available explicitly under the California Constitution to withhold medical records from treating physician contained in worker's compensation file, as such could be abrogated where justified under federal law. Hutton v. City of Martinez, N.D.Cal.2003, 219 F.R.D. 164. Constitutional Law 82(7); Federal Civil Procedure 1598

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5311. Definitional instructions

District court's failure to give proffered instruction defining policymakers for purposes of § 1983 civil rights action as review committee, task force director, and squad leader was not prejudicial error; instruction given adequately apprised jury of who could be policymaker, where it was clear from evidence that only review committee and task force director could make policy for task force. Maltby v. Winston, C.A.7 (Ill.) 1994, 36 F.3d 548, certiorari denied 115 S.Ct. 2576, 515 U.S. 1141, 132 L.Ed.2d 827, rehearing denied 116 S.Ct. 17, 515 U.S. 1178, 132 L.Ed.2d 901. Federal Courts 911

Error, if any, in failing to give definitional instructions in arrestee's civil rights action was not reversible; once jury determined that arrestee suffered no "injury" as result of alleged use of excessive force, jury never reached interrogatories that could have been affected by definitions on concepts of "color of law," "unreasonable force," "denial of medical attention," "conspiracy," "joint tort-feasors," and "municipal liability." Knight v. Caldwell, C.A.5 (Tex.) 1992, 970 F.2d 1430, certiorari denied 113 S.Ct. 1298, 507 U.S. 926, 122 L.Ed.2d 688. Federal Courts 911

5312. Curative or limiting instructions

Curative instructions by trial judge in § 1983 action by inmate with respect to improper testimony by government's witness as to inmate's prior incarceration in hospital for criminally insane did not render testimony harmless, where testimony related to sensitive issue of inmate's mental illness, testimony was elicited, apparently by prearrangement, by counsel representing public officials, testimony was given close to end of trial, testimony risked undermining inmate's credibility in close case where parties' conflicting testimony was virtually only evidence, and retrial would not take long. Davidson v. Smith, C.A.2 (N.Y.) 1993, 9 F.3d 4. Federal Courts 896.1

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Testimony by motorist's fiancée, that motorist had smoked marijuana did not require mistrial of § 1983 civil rights action arising from administration of breathalyzer test and DUI charge following motorist's collision with police van since cautionary instruction to jury adequately cured any possible prejudicial effect caused by testimony. Donald v. Rast, C.A.8 (Mo.) 1991, 927 F.2d 379, certiorari denied 112 S.Ct. 96, 502 U.S. 827, 116 L.Ed.2d 68, rehearing denied 112 S.Ct. 921, 502 U.S. 1051, 116 L.Ed.2d 820. Federal Civil Procedure 2011

In civil rights action by foster child against placement agency for failing to supervise placement adequately, fact that foster child had recently borne out-of-wedlock child was not relevant on theory offered by agency that child's having borne child showed that her capacity to perform and enjoy sex was not greatly harmed by her abuse in foster home, and, therefore, foster child was entitled to have cautionary instruction to jury that her having had out-of-wedlock child, or, for that matter, any sort of sexual conduct, should no be taken as bearing on credibility. Doe v. New York City Dept. of Social Services, C.A.2 (N.Y.) 1981, 649 F.2d 134. Civil Rights 1414; Federal Civil Procedure 2173

5313. Supplemental instructions

Giving jurors in civil rights action supplemental instructions and allowing them to redeliberate after jury announced its initial verdict and damages award which was apparently incomplete and reflected jury confusion or uncertainty was proper; by resubmitting verdict, judge did not coerce jurors but rather aided them by describing means of properly translating their previous findings of fact into legal outcome. Hafner v. Brown, C.A.4 (Md.) 1992, 983 F.2d 570. Federal Civil Procedure 1974.1; Federal Civil Procedure 1975

5314. Arrests, instructions--Generally

Jury instruction that arrestee could prevail under § 1983 against officer, who told fellow officers assembled for roll call that arrestee could be lawfully arrested for criminal trespass, only if officer arrested arrestee was incorrect because one who directs or assists unlawful arrest may be liable. Gordon v. Degelmann, C.A.7 (Ill.) 1994, 29 F.3d 295, rehearing and suggestion for rehearing en banc denied. Civil Rights 1437

In action under this section to recover for injuries plaintiffs suffered, during and after their arrest, at hands of several deputies, judge's instructions and special verdict form adequately explained all claims and theories advanced by both parties. Keyes v. Lauga, C.A.5 (La.) 1981, 635 F.2d 330. Federal Civil Procedure 2174

5315. ---- Deadly force, arrests, instructions

Instruction in civil rights action arising out of police shooting that jury had to determine whether police officer had reasonable belief that deadly force was necessary to prevent death or great bodily harm to him or another when he fired his weapon was proper, despite claim that court did not limit jury's consideration of alternative options or strategies which police officer might have followed. Palmquist v. Selvik, C.A.7 (Ill.) 1997, 111 F.3d 1332, rehearing and suggestion for rehearing en banc denied. Civil Rights 1437

Evidence did not support deadly force instructions in arrestee's § 1983 action asserting that use of police dog during arrest constituted excessive force; arrestee suffered only nonlife-threatening injuries that did not require serious medical attention, dog was trained to release on command and did in fact release arrestee on command, and no admissible evidence indicated particular dog's capacity for harm. Quintanilla v. City of Downey, C.A.9 (Cal.) 1996, 84 F.3d 353, certiorari denied 117 S.Ct. 972, 519 U.S. 1122, 136 L.Ed.2d 856. Civil Rights 1437

5316. ---- Excessive force, arrests, instructions

Trial judge's instructions on §§ 1983 claim for excessive use of force against officer based on officer's failure to intervene in the beating of a juvenile by a fellow officer, specifically that the officer had to have a realistic

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opportunity to prevent the officer's actions from the perspective of a reasonable officer on the scene, adequately took into account the question of whether the officer had enough time to intervene. Torres-Rivera v. O'Neill-Cancel, C.A.1 (Puerto Rico) 2005, 406 F.3d 43. Civil Rights 1437

Proffered instruction on suspect's right to use self-defense during attempted seizure, when officer has made deliberate effort to conceal his identity as police officer, was properly refused as confusing in excessive force suit involving high-speed chase and shooting death of suspect by off-duty officer, considering that officer made repeated attempts to identify himself as police officer and that correct instructions were given on law governing excessive force claims. Soller v. Moore, C.A.7 (Wis.) 1996, 84 F.3d 964. Civil Rights 1437

"Heat of battle" instruction that standard for judging reasonableness of police officers' use of force in making arrests was not what was appropriate in quiet sanctity in court room but, rather, that standard appropriate to circumstances in which incident happened was proper in arrestees' § 1983 action against police officers for excessive use of force, in view of evidence that some of arrestees' injuries were suffered while police were restraining them and bringing them under control. Cox v. Treadway, C.A.6 (Ky.) 1996, 75 F.3d 230, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 78, 519 U.S. 821, 136 L.Ed.2d 37. Civil Rights 1437

Giving instruction that arrestee needed to establish that force grossly disproportionate to cause and inspired by malice had produced severe injury, while error, did not require reversal where arrestee did not state grounds for requesting one instruction rather than another; jury should have been instructed on objective reasonableness standard. Hebron v. Touhy, C.A.7 (Ill.) 1994, 18 F.3d 421, rehearing denied. Civil Rights 1437; Federal Courts 631

Instruction that police officer is prohibited from using more force than reasonably necessary to effect the arrest and that whether the degree of force used in the case before the jury was excessive or unreasonable in a constitutional sense is to be determined in light of all the facts and circumstances was not unfairly repetitive of initial excessive force instruction which stated that the Fourth Amendment protects a person from the use of unreasonable force while being arrested by a law enforcement officer. Stachniak v. Hayes, C.A.7 (Ill.) 1993, 989 F.2d 914. Civil Rights 1437

District court in § 1983 suit alleging that officer used excessive force in obtaining blood sample from plaintiff arrested for driving under the influence of alcohol properly refused instruction which might have misled jury to believe that use of approved medical procedures was a complete defense to charge of unreasonable force asserted by plaintiff. Hammer v. Gross, C.A.9 (Cal.) 1991, 932 F.2d 842, certiorari denied 112 S.Ct. 582, 502 U.S. 980, 116 L.Ed.2d 607, on remand 981 F.2d 1115. Civil Rights 1440

Instructions given in action under this section against city for fatal injury sustained by arrestee, which charged that jurors could find city maintained a custom of using excessive police force through its high-ranking officials whom were defined as the mayor, city council, police chief or some similarly ranked official whose acts may be fairly said to represent official policy did not comply with applicable standards; moreover, court further erred in allowing jury to consider whether "some similarly ranked official" maintained a custom of using excessive force that overrode city policy where the only "officials" involved in the case were the mayor and the city council and the police chief and a number of lesser officers and where there was no proof that any police officer subordinate to chief even possibly could have occupied the role of a city policymaker. Webster v. City of Houston, C.A.5 (Tex.) 1984, 735 F.2d 838, on rehearing 739 F.2d 993. Civil Rights 1437

In §§ 1983 action brought by construction site protestor against state police officers, alleging false arrest and malicious prosecution, court's allegedly erroneous jury instructions on excessive force did not warrant new trial; applicable law did not clearly hold that any force exerted during course of unlawful arrest was excessive as matter of law, and it was therefore not fundamental error to include jury instruction to that effect. Zellner v. Summerlin,

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E.D.N.Y.2005, 399 F.Supp.2d 154. Federal Civil Procedure 2336

Instruction, in § 1983 plaintiff's excessive force action, that defendants and plaintiff were involved in altercation wherein force was used thereby "creating a situation where the plaintiff, while in the physical control of the defendants, either fell or was dropped to the ground," did not improperly allow jury to find liability on basis of negligence; statement, though perhaps not faultless, adequately conveyed to jury that plaintiff ended up on ground as result of use of force by defendants, not by defendants' mere inadvertence or negligence. Schultz v. Amick, N.D.Iowa 1997, 955 F.Supp. 1087. Civil Rights 1437

5317. ---- Probable cause, arrests, instructions

Submission of erroneous jury instruction on emergency measures defense, as could allow jury to improperly find that arrestee's conduct of striking off-duty police officer with telephone receiver after telling officer to get off the phone because there was an emergency created by a stalled truck on the highway was justified, under New York law, as would support finding that officer lacked probable cause to arrest, warranted new trial in arrestee's § 1983 false arrest and malicious prosecution claims against arresting officer. Jocks v. Tavernier, C.A.2 (N.Y.) 2003, 316 F.3d 128. Federal Civil Procedure 2336

Trial court's instruction on probable cause properly directed jury to consider only whether police officer had probable cause for charging civil rights plaintiff with breach of peace rather than whether officer had probable cause for additional charge of threatening imposed after defendant was arrested; jury focus on breach of peace charge was substantial enough for it to request a copy of the actual statutory language, and no similar request was made for statute prohibiting threatening. Warren v. Dwyer, C.A.2 (Conn.) 1990, 906 F.2d 70, certiorari denied 111 S.Ct. 431, 498 U.S. 967, 112 L.Ed.2d 414. Civil Rights 1437

In § 1983 action brought by arrestee against police officers, stemming from his seizure and transportation to premises of search warrant, court properly declined to instruct jury on defense theories permitting brief detentions of individuals based on reasonable suspicion of wrongdoing, since probable cause was required to support level of intrusion upon arrestee, and thus officers' motions for judgment as matter of law and for new trial would be properly denied. Pappas v. New Haven Police Dept., D.Conn.2003, 278 F.Supp.2d 296. Civil Rights 1437; Federal Civil Procedure 2336

5318. Bail, instructions

If, on retrial, defendant Florida county judge, charged with violating plaintiff's civil rights in restraining him, conducting contempt proceedings against him and ordering him incarcerated, asserted defense of qualified immunity based on nonjudicial acts such as conservator of the peace, jury was to be charged with regard to statute dealing with bail and first appearance procedures as germane to question of good faith in its "objective" sense. Harper v. Merckle, C.A.5 (Fla.) 1981, 638 F.2d 848, certiorari denied 102 S.Ct. 93, 454 U.S. 816, 70 L.Ed.2d 85. Federal Courts 943.1

5319. Burden of proof, instructions

Erroneous jury instructions regarding civil rights plaintiff's burden of proof did not prejudice plaintiff's ability to obtain a fair trial regarding claim that second arrest was not supported by probable cause; evidence contained two dramatically conflicting versions of events regarding the second arrest, if jury believed arrestee's version confusing jury instructions would have no bearing on probable cause finding, and jury was explicitly instructed of constitutional requirement that officer ascertain reason for arrestee's accidental contact with officer. Tatro v. Kervin, C.A.1 (Mass.) 1994, 41 F.3d 9. Federal Courts 910

Plaintiff did not belong to any protected class when certified with one other on list of eligible candidates sent to

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mayor for position of fire chief and, hence, was given more protection than he was legally entitled to when, in suit based on allegation of intentional discrimination, trial court gave instruction to effect that, should jury find that mayor considered impermissible factors in his promotional decision, burden of proof was on mayor to show that he would have selected candidate he chose irrespective of any political considerations. DiPiro v. Taft, C.A.1 (R.I.) 1978, 584 F.2d 1, certiorari denied 99 S.Ct. 1229, 440 U.S. 914, 59 L.Ed.2d 463. Municipal Corporations 196

Where instruction allocating burden of proof on qualified official immunity defense to defendant officials was accepted without protest by both parties to civil rights suit, the parties were bound by it. Soto v. Chardon, D.C.Puerto Rico 1981, 514 F.Supp. 339, affirmed in part, reversed in part on other grounds 681 F.2d 42, certiorari granted 103 S.Ct. 339, 459 U.S. 987, 74 L.Ed.2d 382, certiorari denied 103 S.Ct. 343, 459 U.S. 989, 74 L.Ed.2d 384, affirmed 103 S.Ct. 2611, 462 U.S. 650, 77 L.Ed.2d 74. Federal Civil Procedure 2177.1

5319A. Sufficiency of evidence, instructions

District court's erroneous jury instruction, in corrections officers' *Olech*-based "class of one" equal protection claim, that certain findings made by arbitrator in prior employment arbitration proceedings were binding on jury as matter of law, was not harmless; instruction effectively precluded jury from weighing any evidence that Department of Corrections (DOC) submitted in support of their theory that rational basis existed for decision to discipline corrections officers, thereby causing prejudice to DOC. Cobb v. Pozzi, C.A.2 (N.Y.) 2004, 363 F.3d 89. Federal Courts 909

Instruction in § 1983 action, stating that Caucasian librarians had to prove, by preponderance of evidence, that acts of race discrimination by members of board of trustees for public library system and director of system were proximate or legal cause of damages sustained by librarians adequately instructed jury not to find for librarians if they believed the librarians would have been transferred irrespective of race. Bogle v. McClure, C.A.11 (Ga.) 2003, 332 F.3d 1347, rehearing and rehearing en banc denied 77 Fed.Appx. 510, 2003 WL 21804722, certiorari dismissed 124 S.Ct. 1168, 540 U.S. 1158, 157 L.Ed.2d 1059. Civil Rights 1438

5320. Causation, instructions

Jury instruction on causality, in civil rights deprivation case arising out of a shooting by police, was proper even though it did not specifically state that "affirmative link" must be established between supervisors and activity of police officers in question in order for supervisors to be liable. Gutierrez-Rodriguez v. Cartagena, C.A.1 (Puerto Rico) 1989, 882 F.2d 553. Civil Rights 1437

There was no error in giving the standard general proximate cause instruction in § 1983 suit arising out of suicide of pretrial detainee. Roberts v. City of Troy, C.A.6 (Mich.) 1985, 773 F.2d 720. Civil Rights 1437

5321. Conspiracy, instructions

Instruction in § 1983 action which implied that mere acquiescence by one police officer in other officers' beating of plaintiff was sufficient to constitute civil conspiracy under § 1983 was proper; testimony of eyewitness that police officer watched others beat plaintiff combined with official relationship which officer shared with other police officers sufficed to demonstrate, indirectly, agreement between them. Hafner v. Brown, C.A.4 (Md.) 1992, 983 F.2d 570. Conspiracy 21

When considered in its entirety, instruction on conspiracy in connection with plaintiff's claim that district attorney had conspired with state police to deprive him of his civil rights by charging him with unlawful assembly was not erroneous on ground that it was too restrictive in requiring a showing of invidious discrimination. Valdez v. Black, C.A.10 (N.M.) 1971, 446 F.2d 1071, certiorari denied 92 S.Ct. 1167, 405 U.S. 963, 31 L.Ed.2d 238. Trial 295(4); Federal Civil Procedure 2182.1

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42 U.S.C.A. § 1983

5322. Damages, instructions--Generally

Damages instructions in section 1983 suit based on alleged violations of the First and Fourteenth Amendments permitted jury to award damages based on abstract value of the constitutional rights and did not focus solely on plaintiff's injury where instructions were divided into three distinct segments of compensatory damages for harm to plaintiff, punitive damages, and additional compensatory damages for violations of constitutional rights. Memphis Community School Dist. v. Stachura, U.S.Mich.1986, 106 S.Ct. 2537, 477 U.S. 299, 91 L.Ed.2d 249, on remand 803 F.2d 721. Civil Rights 1434

Absent basis for inferring that cause of public employee's reported stress was denial of due process rather than his termination, district court was not required to instruct jury that they could award damages for emotional suffering caused by denial of due process with respect to employee's discharge; employee's testimony of posttermination depression and stress did not distinguish between emotional suffering due to termination and suffering due to denial of due process, and employee offered no witness to corroborate his testimony as to his mental state. Koopman v. Water Dist. No. 1 of Johnson County, Kan., C.A.10 (Kan.) 1994, 41 F.3d 1417, on remand 1995 WL 646786, certiorari denied 116 S.Ct. 420, 516 U.S. 965, 133 L.Ed.2d 337. Damages 216(10)

In civil rights action brought by administrator of prisoner's estate arising from prisoner's death by cardiorespiratory arrest, trial court erroneously instructed jury to assess as damages pecuniary loss suffered by prisoner's children as result of his death, and such error required reversal, since action was brought on behalf of estate to recover for injuries suffered by prisoner. Bass by Lewis v. Wallenstein, C.A.7 (Ill.) 1985, 769 F.2d 1173. Civil Rights 1437; Federal Courts 909

In former inmate's action under this section against correctional officers arising from alleged beating, in which plaintiff's testimony at trial established that he suffered actual, compensable injury as a consequence of the beating, instruction telling the jury to consider as an element of damages the fact that the rights lost were constitutional rights was not improper as allowing monetary damages for constitutional deprivation in itself as opposed to injuries resulting from the deprivation. Freeman v. Franzen, C.A.7 (Ill.) 1982, 695 F.2d 485, certiorari denied 103 S.Ct. 3553, 463 U.S. 1214, 77 L.Ed.2d 1400. Civil Rights 1437

5323. ---- Mitigation, damages, instructions

Trial court's mitigation of damages charge was sufficient to apprise jury of plaintiff's duty to mitigate damages and, without evidence in the record showing that plaintiff made no attempt to find employment elsewhere, further charge on the particulars of the responsibility to mitigate was not necessary. Selzer v. Fleisher, C.A.2 (N.Y.) 1980, 629 F.2d 809, certiorari denied 101 S.Ct. 2046, 451 U.S. 970, 68 L.Ed.2d 348. Labor And Employment 874

5324. ---- Punitive, damages, instructions

In civil rights action, instruction on punitive damages was erroneous where it failed to inform jury that wrongful acts had to be done in reckless or callous disregard of plaintiff's rights and where it stated that there had to be an intentional and willful deprivation by defendant in order to award plaintiff punitive damages; proper instruction was that jury could award punitive damages if it found that defendant willfully and intentionally deprived plaintiff of his federally protected rights or if defendant engaged in conduct that exhibited a reckless or callous disregard of plaintiff's rights. Grimm v. Leinart, C.A.6 (Tenn.) 1983, 705 F.2d 179, rehearing granted 710 F.2d 233, certiorari denied 104 S.Ct. 1415, 465 U.S. 1066, 79 L.Ed.2d 741. Civil Rights 1434

An instruction on punitive damages in a civil rights action is appropriate when facts are such that jury can find that action and conduct of defendants was willful and malicious apart from any showing of personal animosity between parties. Gill v. Manuel, C.A.9 (Cal.) 1973, 488 F.2d 799. Civil Rights 1434

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42 U.S.C.A. § 1983

Any error in instruction regarding assessment of punitive damages in § 1983 action brought by university employees found to have been discharged in retaliation for exercise of their constitutional free speech rights did not prejudice defendant university officials; jury was instructed that punitive damages were designed to punish wrongdoer who has purposely committed act of extraordinary, outrageous misconduct and has maliciously deprived another of his or her rights. Sanchez v. Sanchez, D.N.M.1991, 777 F.Supp. 906. Federal Courts 908.1

5325. ---- Nominal, damages, instructions

Instruction on nominal damages was warranted in § 1983 action premised on excessive force; plaintiffs failed to produce medical testimony regarding their physical injuries, with nearly all of their damages evidence consisting of their own testimony, and there was evidence from which jury could have disbelieved extent of plaintiffs' physical and emotional injuries. Briggs v. Marshall, C.A.7 (Ind.) 1996, 93 F.3d 355. Civil Rights 1437

District court should have instructed jury that it was required to award nominal damages if it found that § 1983 plaintiff's Eighth Amendment rights were violated, and court should have provided corresponding special verdict form. Gibeau v. Nellis, C.A.2 (N.Y.) 1994, 18 F.3d 107. Civil Rights 1437; Federal Civil Procedure 2237.1

Police officers being sued for damages for use of excessive force were not entitled to an instruction on nominal damages where arrestee testified that officer kneed him in the groin and kicked him while he was lying on the stairwell, and that another officer punched him in the nose, choked him, threw him into a brick wall, and also kicked him when he was down, and where police officers contended that arrestee was injured when they were forced to respond to his violent efforts and there was no denial that arrestee suffered physical injuries during the incident. Stachniak v. Hayes, C.A.7 (Ill.) 1993, 989 F.2d 914. Civil Rights 1437

5326. Deliberate indifference, instructions

Court was not required to instruct jurors to find by preponderance of the evidence that county or some policy-making official made a conscious choice or was deliberately indifferent to establishing custom which caused deprivation of juvenile detainee's constitutional rights where it did instruct that inadequacy of detention officers' training could provide a basis for liability only where failure to train or supervise them amounted to deliberate indifference or the failure to train represented deliberate or conscious choice by the county. Flores v. Cameron County, Tex., C.A.5 (Tex.) 1996, 92 F.3d 258, rehearing denied. Federal Civil Procedure 2183

In suit against prison guards for violation of inmate's Eighth Amendment rights on ground that they witnessed inmate's beating by other inmates but refused to intervene, instruction that jurors could infer guards acted with deliberate indifference if they had actual knowledge of impending injury and that injury, or further injury was "readily preventable" was proper despite contention that court should have used the term "reasonably preventable"; guard's intent is not to be determined by reference to objective standards of reasonableness, and "readily preventable" language simply addressed guards' subjective intent and did not define the scope of their duties or obligations towards inmates. Gibbs v. Franklin, C.A.7 (Ind.) 1995, 49 F.3d 1206, certiorari denied 116 S.Ct. 167, 516 U.S. 860, 133 L.Ed.2d 109. Civil Rights 1437

Erroneously instructing jury that "deliberate indifference" standard applied in evaluating police officer's conduct was not plain error in civil rights action arising when police officer fatally shot victim during traffic stop; error was invited by parties, and did not seriously affect fairness of trial, its integrity, and/or its public reputation. Turner v. White, C.A.8 (Mo.) 1992, 980 F.2d 1180. Federal Courts 630.1

5327. Due care, instructions

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42 U.S.C.A. § 1983

Instruction to jury that lack of due care was sufficient to create liability under § 1983 was erroneous, and instruction given prejudiced police officers in action arising out of shooting by police officer, so that in light of conflicting evidence presented as to whether police officer acted intentionally or negligently in shooting civil rights claimant, new trial was required. Rinker v. Napa County, C.A.9 (Cal.) 1987, 831 F.2d 829. Civil Rights 1437; Federal Civil Procedure 2336

5328. Due process, instructions

Once district court had ruled as matter of law that public employee had been denied pretermination and posttermination hearing, court was not required to instruct jury on procedural requirements of due process, despite employee's contention that jury could not answer whether employee was afforded constitutional due process without knowing what due process involved; as case was submitted, all jury needed to decide was whether employee's medical condition was sufficient reason for his termination and whether employer could have provided job opening suitable for him. Koopman v. Water Dist. No. 1 of Johnson County, Kan., C.A.10 (Kan.) 1994, 41 F.3d 1417, on remand 1995 WL 646786, certiorari denied 116 S.Ct. 420, 516 U.S. 965, 133 L.Ed.2d 337. Civil Rights 1438

Under this section, action for damages on ground that summary disciplinary action taken against plaintiffs while they were being held in county jail violated their constitutional rights, plaintiffs' requested instructions defining due process and noting irrelevance of plaintiffs' guilt were, when district court's charge was read as a whole, not improperly refused as unnecessarily repetitive or improper statements of the law. Gardner v. Joyce, C.A.5 (Fla.) 1973, 482 F.2d 283, certiorari denied 94 S.Ct. 731, 414 U.S. 1096, 38 L.Ed.2d 555. Federal Civil Procedure 2176.3

5329. Employment, instructions--Generally

Submission to jury of instruction on Wyoming law on rights of continuing contract teachers, including procedure necessary for proper termination, was not prejudicial and confusing due to fact that teacher was not terminated formally, in teacher's civil rights suit alleging retaliation by principal for her exercise of First Amendment rights in sending letter to Wyoming Education Association asking that principal be investigated where teacher was suspended and principal had twice recommended to school board that teacher be fired. Wren v. Spurlock, C.A.10 (Wyo.) 1986, 798 F.2d 1313, certiorari denied 107 S.Ct. 1287, 479 U.S. 1085, 94 L.Ed.2d 145. Federal Courts 908.1

5330. ---- Academic freedom, employment, instructions

In civil rights action arising out of discharge of tenured public school teacher wherein school superintendent testified at length that the teacher's unsatisfactory evaluation was based on his inability to provide an "instruction-like atmosphere" conductive to learning and wherein both parties offered evidence concerning the teacher's philosophy of teaching and its effect on classroom discipline, district court did not abuse discretion by instructing the jury that under U.S.C.A.Const. Amend. 14, a public school teacher has some measure of academic freedom in the classroom itself and that a teacher cannot be discharged for using a particular teaching method or technique relevant to the proper teaching of the subject unless the school district establishes that the teacher had prior notice that he should not use such method or technique. Simineo v. School Dist. No. 16, Park County, Wyoming, C.A.10 (Wyo.) 1979, 594 F.2d 1353. Civil Rights 1438

5331. ---- Custom or usage

Hispanic customer who had been arrested for shoplifting was not prejudiced by jury instruction and special interrogatory in civil rights action that addressed department store's liability as security guard's employer on

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whether employer had policy, custom, or usage to discriminate against Hispanic customers on account of race or national origin, rather than whether store had policy of discrimination against "minorities"; there was no direct evidence of discrimination against minority groups other than Hispanics, and instruction and special interrogatory made it clear that district court was referring to group that had been traditionally victimized by discrimination. Rojas v. Alexander's Dept. Store, Inc., C.A.2 (N.Y.) 1990, 924 F.2d 406, certiorari denied 112 S.Ct. 52, 502 U.S. 809, 116 L.Ed.2d 30, rehearing denied 112 S.Ct. 622, 502 U.S. 1000, 116 L.Ed.2d 644. Federal Courts 909

5332. ---- Freedom of speech, employment, instructions

Jury charge in employee's civil rights action against government employer based on constructive discharge allegedly in violation of First Amendment must instruct jury, if employee claims that adverse decision was based on protected speech and employer claims that decision was based on something else, what to do if jury concludes that employer had both motives. Gooden v. Neal, C.A.7 (Ill.) 1994, 17 F.3d 925, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 73, 513 U.S. 816, 130 L.Ed.2d 28. Civil Rights 1438

Jury in § 1983 action was properly instructed as to protected nature of speech by university employees, who had circulated petition critical of university administration, particularly absent indication that university's interest in effective and efficient fulfillment of its responsibilities to public was threatened by petition. Sanchez v. Sanchez, D.N.M.1991, 777 F.Supp. 906. Civil Rights 1438

5333. ---- Political affiliation, employment, instructions

In action brought by public employees against public officials alleging that officials conspired together to bring about their resignations in violation of their rights to due process of law, that terminations were politically motivated and violated employees' rights to political association under U.S.C.A.Const. Amend 1 protected by U.S.C.A.Const. Amend. 14, § 1, trial court failed to adequately instruct on issue of whether terminations were necessitated by financial crisis and were not due in any way to their political affiliation. Rosaly v. Ignacio, C.A.1 (Puerto Rico) 1979, 593 F.2d 145. Conspiracy 21

Instruction to effect that, in event position of fire chief was a policymaking one, mayor was permitted to take political affiliation into consideration in choosing from top three candidates was not erroneous in action wherein plaintiff alleged that he was denied equal protection when mayor based his decision to appoint a person other than plaintiff to position of fire chief on political motive rather than merit. DiPiro v. Taft, C.A.1 (R.I.) 1978, 584 F.2d 1, certiorari denied 99 S.Ct. 1229, 440 U.S. 914, 59 L.Ed.2d 463. Municipal Corporations 196

5334. ---- Scope of employment, instructions

Refusal to award prisoner punitive damages on excessive force civil rights claims against prison guards was not abuse of discretion, where inmate admittedly disobeyed orders and resisted officers, and prison had not developed policies governing use of "restraint" chair in which prisoner was left for prolonged periods. Guerra v. Drake, C.A.8 (Ark.) 2004, 371 F.3d 404. Civil Rights 1465(1)

Trial court's instruction, issued at close of discharged black employee's civil rights action, regarding dismissal of official-capacity defendants amounted to prejudicial error in suit against city, which was remaining defendant; court's characterization of individual defendants' actions as "legal actions" within scope of their employment could only have left jury with impression that judge had already determined that these individuals had done no wrong. Busby v. City of Orlando, C.A.11 (Fla.) 1991, 931 F.2d 764. Civil Rights 1438; Federal Courts 908.1

5335. Good faith, instructions

Instructions, taken as whole, in excessive use of force action brought against police officers arising out of officers'

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shooting of security guard, did not mislead jury, even though jury was erroneously instructed on officers' good faith belief and on affirmative defense of qualified immunity; court correctly instructed jury on established law of excessive use of force, instruction required jury to determine reasonableness of officers' conduct considering all facts and circumstances, jury found that officers did not violate guard's constitutional rights, and there was no evidence that jury found that officers were entitled to qualified immunity. Ansley v. Heinrich, C.A.11 (Fla.) 1991, 925 F.2d 1339. Civil Rights 1437; Civil Rights 1440

In action against police officers, under this section, instructions that defendant who acts in good faith and with reasonable belief that his conduct is constitutional cannot be found liable under this section did not sharply etch "two-hurdle" requirement as well as might have been, but issues were nonetheless fairly put to jury, which must have concluded both that probable cause was lacking for arrest and that officers did not reasonably believe in good faith that probable cause existed. Smiddy v. Varney, C.A.9 (Cal.) 1981, 665 F.2d 261, certiorari denied 103 S.Ct. 65, 459 U.S. 829, 74 L.Ed.2d 66, on remand 574 F.Supp. 710. Civil Rights 1440

In civil rights action arising out of treatment given to juveniles at a Wisconsin juvenile correctional institution, content of requested instruction as to whether defendants acted in good faith was adequately reflected in the instruction given, that a defendant's belief that his acts were lawful were required to be reasonable in order to amount to good faith. Mary and Crystal v. Ramsden, C.A.7 (Wis.) 1980, 635 F.2d 590. Federal Civil Procedure 2176.3

Where it appeared in action under this section on theory of false imprisonment that defendant sheriff had continued to keep plaintiff imprisoned because of typographical error in grand jury report, and where sheriff timely requested instruction outlining requirements for reasonable, good-faith defense, such instruction should have been given. Bryan v. Jones, C.A.5 (Tex.) 1976, 530 F.2d 1210, certiorari denied 97 S.Ct. 174, 429 U.S. 865, 50 L.Ed.2d 145. Civil Rights 1440

In civil rights suits against city and public officials for shooting deaths, good-faith immunity was affirmative defense, and thus jury instructions which did not require plaintiffs to prove unlawful killing but which did require defendants to prove good-faith defense were proper, and, in any case, because standards for determining "unlawfulness" and good-faith immunity were identical and because jury found against immunity jury would also have found unlawfulness, any error in failure of particular instructions to require proofs that killings were unlawful was harmless. Roman v. City of Richmond, N.D.Cal.1983, 570 F.Supp. 1544. Civil Rights 1437; Federal Courts 912

5336. Immunity, instructions

A jury instruction on qualified immunity from liability in a civil rights action was not so inherently contradictory that it was confusing to the jury, where the essence of the charge to the jury was first to determine whether plaintiff's conduct was sufficient to justify a reasonable person in believing there was reasonable ground for arresting the plaintiff and, if not, the jury was to consider whether a reasonable police officer would have found that probable cause existed that the plaintiff had committed or was committing the criminal acts for which he was arrested. Warren v. Dwyer, C.A.2 (Conn.) 1990, 906 F.2d 70, certiorari denied 111 S.Ct. 431, 498 U.S. 967, 112 L.Ed.2d 414. Civil Rights 1440

In university police lieutenant's civil rights action for wrongful discharge, district court properly refused to instruct jury as to qualified immunity on part of chief of university police force and director of university's division of public safety, since jury could not have found that they acted in good faith in discharging the lieutenant, inasmuch as they attempted to rely on a nonexistent confidentiality policy, inconsistent with state law and never communicated to the lieutenant, discharge had resulted after they had engaged in wrongdoing, and circumstances of discharge evidenced malicious retaliation. Williams v. Board of Regents of University System of Georgia, C.A.5 (Ga.) 1980, 629 F.2d 993, rehearing denied 629 F.2d 1350, certiorari denied 101 S.Ct. 3063, 452 U.S. 926, 69

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42 U.S.C.A. § 1983

L.Ed.2d 428. Civil Rights 1440

When the jury, in civil rights action brought against jail officials for cruel and unusual punishment, was instructed that, in order to find defendants liable, it had to find a "conscious purpose to inflict suffering" or "rampant deficiencies" due to a "callous indifference" to the deceased prisoner's medical needs, it was adequately apprised of the threshold conduct necessary to negate defendants' qualified immunity; accordingly, there was no error in failing to give separate charges with respect to liability and immunity, though this would have been the better practice. Fielder v. Bosshard, C.A.5 (Tex.) 1979, 590 F.2d 105. Civil Rights 1440

University officials alleged to have discharged employees in retaliation for employees exercising their free speech rights were not entitled to jury instruction addressing their qualified immunity defense. Sanchez v. Sanchez, D.N.M.1991, 777 F.Supp. 906. Civil Rights 1440

Prison officials were not entitled to qualified immunity instruction in action brought by inmate alleging that prison officials used excessive force against her while she was incarcerated in violation of Eighth Amendment; jury would be instructed that in order to recover under Eighth Amendment, plaintiff must show that defendant's conduct was obdurate or wanton, and if jury so found, it could not find at same time that reasonable correctional officer would not have known that defendant was violating clearly established law under circumstances of case. Valdez v. Farmon, E.D.Cal.1991, 766 F.Supp. 1529. Civil Rights 1440

5337. Inferences, instructions

Absent any evidence of bad faith, arrestee who filed civil rights claims arising out of false arrest was not entitled to an instruction allowing jury to draw adverse inference from destruction of powder in his possession at time of arrest; arrestee claimed powder was sugar substitute, not cocaine, and thus that arresting officer who tasted powder lacked probable cause for arrest. Berkovich v. Hicks, C.A.2 (N.Y.) 1991, 922 F.2d 1018. Federal Civil Procedure 2173.1(2)

During pretrial proceedings, district court could decide issue of whether state inmate was entitled, at trial on his § 1983 claims, to have adverse inference instruction given to jury based on prison superintendent's failure to preserve certain videotapes as required by stipulation entered in prior action, despite defendants' contention that inmate lacked viable claim and notwithstanding possibility that issue would be rendered moot as a result of defendants' success on proposed motion for summary judgment or because case would prove to be triable only to court. Rush v. Artuz, S.D.N.Y.2003, 2003 WL 1937203, Unreported. Federal Civil Procedure 2173

5338. Injury, instructions

While "severe injury" may not have been element of constitutional tort, judgment against inmate would not be disturbed, where inmate himself proposed instruction informing jury that "severe injury" was an essential element. Williams v. Boles, C.A.7 (Ill.) 1988, 841 F.2d 181. Federal Courts 774

5339. Knowledge and intent, instructions

Instruction indicating that jury must find that police officer acted "knowingly" in order to establish § 1983 liability for officer's actions in shooting youth properly stated the law and did not tend to confuse the issue by suggesting that jury must find that officer harbored subjective malicious intent to kill youth; instruction clarified word "knowingly" to mean that the officer acted voluntarily and did not discharge weapon by mistake, and taken as a whole, instruction properly directed jury to consider only whether officer's actions were objectively reasonable in light of the circumstances as they would have appeared to him at the time. Samples v. City of Atlanta, C.A.11 (Ga.) 1990, 916 F.2d 1548. Civil Rights 1440

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42 U.S.C.A. § 1983

Trial court's refusal to give instruction that arresting officers' lack of specific intent or purpose to deprive arrestee of civil rights would not absolve officers from liability, if they did in fact deprive arrestee of rights, required reversal in civil rights action, where trial court erroneously charged jury that officers would not be liable if they acted in good faith and with reasonable belief that conduct was constitutional. Holt v. Artis, C.A.6 (Ky.) 1988, 843 F.2d 242. Civil Rights 1437; Federal Courts 908.1

5340. Malice, instructions

Jury instruction in § 1983 civil rights action by former prisoner alleging cruel and unusual punishment, directing jury to look to all surrounding circumstances when deciding whether defendants acted maliciously, was inadequate; instruction failed to provide jury with sufficient objective criteria with which it could infer maliciousness and how to use those factors to arrive at conclusion regarding defendants' state of mind. Romano v. Howarth, C.A.2 (N.Y.) 1993, 998 F.2d 101. Civil Rights 1437

5341. Medical treatment, instructions

Instructing jury that finding of medical malpractice precluded finding of deliberate indifference was reversible error in inmate's civil rights action against prison doctor. Hathaway v. Coughlin, C.A.2 (N.Y.) 1996, 99 F.3d 550. Civil Rights 1437; Federal Courts 908.1

Jury instruction defining "serious medical need" as "one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention," was proper, in § 1983 action brought by pretrial detainee who claimed that jailers and sheriff ignored his warnings that he was at risk of assault and denied him adequate medical treatment after he was attacked by other prisoners; jailers and sheriff could not act with deliberate indifference to medical problems that were not obvious or diagnosed. Johnson v. Busby, C.A.8 (Ark.) 1991, 953 F.2d 349. Civil Rights 1437

5342. Negligence, instructions

There was no error in refusing to give a negligence based instruction in § 1983 suit arising out of suicide of pretrial detainee where there was no evidence of intentional conduct which met the "shocks the conscience" test, for Eighth Amendment liability and state law provided a damage remedy. Roberts v. City of Troy, C.A.6 (Mich.) 1985, 773 F.2d 720. Civil Rights 1437

5343. Prison rules and regulations, instructions

In action brought under this section by state prisoner against prison officials, the trial court, in defining the proper test for measuring the validity of prison rules and regulations governing the practice of the Muslim religion by plaintiff and other black inmates, correctly charged that the test was whether the rules and regulations were "unreasonable and unjustified with respect to the needs of prison restraints and discipline." Wilson v. Prasse, C.A.3 (Pa.) 1972, 463 F.2d 109. Civil Rights 1437

5344. Right to counsel, instructions

Inmate bringing § 1983 action against prison officials was not entitled to instruction that inmates in Nevada state prison were entitled to hire attorneys to represent them in disciplinary proceedings; even if consent decree conferred on inmates charged with major disciplinary violations a liberty interest in retaining counsel, prison officials did not violate that right with respect to inmate in question, since inmate was not convicted of major violation with which he was initially charged. Smith v. Sumner, C.A.9 (Nev.) 1993, 994 F.2d 1401. Civil Rights 1437; Prisons 13(9)

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42 U.S.C.A. § 1983

5345. Reckless disregard, instructions

Giving of jury instruction that police officer had to have acted with deliberate or reckless indifference was reversible error in arrestee's § 1983 action against police officer alleging use of excessive force and arrest without probable cause; appropriate inquiry on both claims was an objective one, and instruction given injected an element of subjective intent to arrestee's claims. Mosley v. Wilson, C.A.3 (Pa.) 1996, 102 F.3d 85. Civil Rights 1437; Federal Courts 908.1

Jury instructions in § 1983 action allowing jury to find municipal liability for failure to train deputies concerning use of force only upon showing of "reckless disregard" or "deliberate indifference" were not inconsistent with "deliberate indifference" standard enunciated by Supreme Court; definition of "reckless disregard" was effectively the same as cited Supreme Court language. Davis v. Mason County, C.A.9 (Wash.) 1991, 927 F.2d 1473, certiorari denied 112 S.Ct. 275, 502 U.S. 899, 116 L.Ed.2d 227. Civil Rights 1437

5346. Search and seizure, instructions

Submission of unobjected-to jury instruction asking whether defendant police officer had probable cause to believe that plaintiff arrestees possessed cocaine was not plain error in arrestees' § 1983 action alleging false arrest, despite arrestees' claim that, because they did not dispute that officers found cocaine in arrestees' room, only issue was ownership of that cocaine, thus making probable cause question of law; district court properly instructed jury relative to applicable legal standards, and factual issue was presented by arrestees' claim that defendant officer planted drugs upon which probable cause determination was based. Simms v. Village of Albion, N.Y., C.A.2 (N.Y.) 1997, 115 F.3d 1098. Federal Courts 907

Instructing jury to apply Illinois state law standards, precluding strip searches of misdemeanor arrestees for marijuana, was prejudicial error in arrestee's civil rights action against police officers based on alleged Fourth Amendment violation; instruction essentially required jury to conclude that if strip search was for marijuana, it was unreasonable. Doe v. Burnham, C.A.7 (Ill.) 1993, 6 F.3d 476, on remand 1994 WL 330243. Civil Rights 1437; Federal Courts 908.1

In prisoner's civil rights action against warden and correctional officers arising from detention and strip search following prison uprising, district court's charge as whole, instructing jury to determine whether under Fourth Amendment defendants acted in "objectively reasonable manner" during detention and strip search, did not adequately inform jury of applicable law regarding invasion of privacy under Fourth Amendment. Cornwell v. Dahlberg, C.A.6 (Ohio) 1992, 963 F.2d 912. Civil Rights 1440

5347. Vicarious liability, instructions

Instruction that Title VII standards for retaliation claims applied to former state trooper's claims against former supervisor under § 1983 was misleading in that jury could have erroneously concluded that former supervisor could be held vicariously liable for violations of § 1983 committed by subordinates. Gierlinger v. New York State Police, C.A.2 (N.Y.) 1994, 15 F.3d 32. Civil Rights 1438

In civil rights action for unlawful seizure, instruction which would have made seizing officer liable for acts of other officers even if he had not authorized them was properly refused because it failed to state correct law. Kaiser v. Lief, C.A.10 (Wyo.) 1989, 874 F.2d 732. Civil Rights 1437

5348. Miscellaneous instructions

In §§ 1983 action brought by corrections officers alleging equal protection violations, jury instruction that certain findings made by arbitrator were binding on jury as matter of law improperly accorded collateral estoppel effect to

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arbitrator's findings in arbitration proceedings concerning employment charges against corrections officers; officers' burden in arbitration was less exacting than that shouldered in district court. Cobb v. Pozzi, C.A.2 (N.Y.) 2004, 363 F.3d 89. Arbitration 82(1); Civil Rights 1438

Instruction that both juvenile board and chief juvenile probation officer were policymakers for county required reversal of judgment against county in civil rights action where only the board was shown to be an official policymaker. Flores v. Cameron County, Tex., C.A.5 (Tex.) 1996, 92 F.3d 258, rehearing denied. Civil Rights 1437

Instruction in federal civil rights action brought by prisoner who had been attacked by fellow inmates against prison guards alleging violation of prisoner's Eighth Amendment rights which stated that guards could be found liable if they were aware or should have been aware of risk of harm to prisoner improperly stated law and required new trial following entry of judgment for prisoner; instruction allowed jury to find liability under objective standard of culpability, which has been rejected. Randle v. Parker, C.A.8 (Ark.) 1995, 48 F.3d 301. Civil Rights 1437; Federal Civil Procedure 2336

Inmates in § 1983 action were not entitled to instruction concerning correctional officers' failure to provide protective clothing for cleaning up sewage of correctional center's hospital, where case hinged on officers' knowledge that inmates were being exposed to potentially infectious sewage contaminated by AIDS (Acquired Immune Deficiency Syndrome) patients housed in hospital. Burton v. Armontrout, C.A.8 (Mo.) 1992, 975 F.2d 543, rehearing denied, certiorari denied 113 S.Ct. 2960, 508 U.S. 972, 125 L.Ed.2d 661. Civil Rights 1437

In civil rights action against state prison officials, instruction on claim of brutality, although perhaps open to criticism on ground that it did not expressly require finding that force used was shocking or violative of universal standards of decency, did not constitute clear miscarriage of justice, particularly in light of evidence that one prisoner suffered cracked jaw, which bled profusely, and required hospitalization and pain medication for several days. Furtado v. Bishop, C.A.1 (Mass.) 1979, 604 F.2d 80, on remand 84 F.R.D. 671, certiorari denied 100 S.Ct. 710, 444 U.S. 1035, 62 L.Ed.2d 672. Federal Civil Procedure 2015

Any error in giving of missing witness charges in a § 1983 action brought by former probationary corrections officer for county against county undersheriff and others was harmless where those missing witnesses were expected to testify regarding former probationary officer's various rules infractions but undersheriff did not rely on those violations as justification for termination of officer. Sagendorf-Teal v. County of Rensselaer, N.D.N.Y.1995, 904 F.Supp. 95, affirmed 100 F.3d 270. Federal Civil Procedure 2336

In prisoner's civil rights action against prison superintendents in connection with loss of prisoner's legal brief, trial court properly instructed jury that adequate state court remedy existed in state court of claims in connection with loss of ordinary property; charge could not have distracted jury from its ultimate task of finding whether losses of ordinary property without corrective action might provide basis to find that superintendents deliberately denied prisoner his legal materials, because sanctioned losses of ordinary property might inevitably create condition in which legal materials would be lost. Morello v. James, W.D.N.Y.1992, 797 F.Supp. 223. Civil Rights 1437

LIV. QUESTIONS FOR JURY

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5371. Causation, questions for jury

Whether superintendent of facility that was combination prison and hospital had responsibilities that ran to medical care and treatment of prisoners and whether any act of failure by superintendent was proximate cause of death of asthmatic prisoner presented questions for jury in § 1983 action brought against superintendent by prisoner's widow. Howell v. Burden, C.A.11 (Ga.) 1994, 12 F.3d 190. Civil Rights 1429

Evidence that various city officials who were named defendants in civil rights action may have affirmatively promoted a policy which sanctioned actions resulting in due process violations required that jury be permitted to determine whether official directives of policy and procedure pertaining to taking custody of children in emergencies without obtaining prompt judicial ratification were the proximate cause of constitutional deprivation suffered by plaintiffs. Duchesne v. Sugarman, C.A.2 (N.Y.) 1977, 566 F.2d 817. Civil Rights 1431

In father's suit against county police officer seeking recovery for alleged wrongful death of his son, who was shot and killed by officer, issues as to credibility, proximate cause and contributory negligence were for jury, which could reasonably have found that use by police officer of force beyond that necessary for effective subjugation, including use of deadly weapon aimed at the body, was not proximately caused by son's self-induced hallucinatory state. Haber v. Nassau County, C.A.2 (N.Y.) 1977, 557 F.2d 322. Counties 224

Jury question was presented as to whether teacher's alleged use of excessive force against high school student was result of creation and perpetuation of policies that reflected deliberate indifference to the rights of pupils so as to preclude qualified immunity defense raised by supervisory school defendants on individual capacity claims brought against them under § 1983. Tsotesi v. Board of Educ. of City School Dist. of City of New York, S.D.N.Y.2003, 258 F.Supp.2d 336. Civil Rights 1427

5372. Credibility of witnesses, questions for jury

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Questions in regard to credibility of witnesses on issue of malice, and determination whether facts presented were sufficient for an award of punitive damages were issues reserved for determination by trier of fact in civil rights action arising from altercation between plaintiffs and defendant police officers. Gill v. Manuel, C.A.9 (Cal.) 1973, 488 F.2d 799. Civil Rights 1424

5373. Cruel and unusual punishment, questions for jury

Whether conditions of confinement of prisoner, who had been placed in solitary confinement and who alleged that he was deprived of adequate and sanitary food, medical and psychiatric treatment and that he was subjected to beatings by prison officials constituted cruel and unusual punishment presented issue of fact for determination by the district court in proceeding by prisoner for relief from alleged cruel and unusual treatment. Courtney v. Bishop, C.A.8 (Ark.) 1969, 409 F.2d 1185, certiorari denied 90 S.Ct. 235, 396 U.S. 915, 24 L.Ed.2d 192. Civil Rights 1454

5374. Damages, questions for jury

In university police lieutenant's civil rights action for wrongful discharge, evidence of compensatory and punitive damages was for jury. Williams v. Board of Regents of University System of Georgia, C.A.5 (Ga.) 1980, 629 F.2d 993, rehearing denied 629 F.2d 1350, certiorari denied 101 S.Ct. 3063, 452 U.S. 926, 69 L.Ed.2d 428. Civil Rights 1430

If on remand of discharged teacher's civil rights action against school board, plaintiff was able in good faith to allege actual damages exceeding $20 stemming from procedural defects in discharge, jury issue existed as to amount of actual damages attributable thereto. Burt v. Abel, C.A.4 (S.C.) 1978, 585 F.2d 613, on remand 466 F.Supp. 1234. Civil Rights 1430

Apart from special monetary damages it is for jury in a case involving alleged violation of civil rights to make a determination as to amount that plaintiff is entitled to be awarded for the deprivation, which should also include the subjective pain and suffering and humiliation. Rhoads v. Horvat, D.C.Colo.1967, 270 F.Supp. 307. Civil Rights 1464

5375. Due process, questions for jury

In civil rights suit by landowners against town, alleging that town, with knowledge of landowners' claim of title to strip of land and without taking action to determine or settle competing claims between town and landowners, knocked down landowners' fences, bulldozed strip and built street thereon, evidence that landowners were not afforded due process prior to taking was sufficient for jury. McCulloch v. Glasgow, C.A.5 (Miss.) 1980, 620 F.2d 47. Civil Rights 1428

5376. Employment, questions for jury

Issue of whether school district would have decided not to renew probationary special education teacher's contract because of inadequacy of teacher's individualized education programs (IEPs), even absent teacher's criticisms of district's special education programs, was for jury, in teacher's § 1983 suit alleging First Amendment retaliation and violation of Rehabilitation Act; teacher presented substantial evidence that content of her speech was factor in nonrenewal, and evidence concerning IEPs was far from clear, featuring only one example of alteration of one of teacher's IEPs, and no evidence at all of other teachers being fired for drafting inadequate IEPs or any showing that it was unusual for new teachers to struggle with IEP writing. Settlegoode v. Portland Public Schools, C.A.9 (Or.) 2004, 371 F.3d 503, certiorari denied 125 S.Ct. 478, 543 U.S. 979, 160 L.Ed.2d 356. Civil Rights 1430; Civil Rights 1555

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Record uncovered sufficient evidence for reasonable jury to conclude that former fire chief's speech in opposition to paramedic cuts and city's public safety officer (PSO) program was substantial factor leading to his termination; city manager's testimony that mayor demanded fire chief's termination because of fire chief's opposition to paramedic cuts and PSO program was direct evidence of discriminatory intent on part of mayor, testimony was corroborated by city manager's letter of resignation, and fire chief produced copious circumstantial evidence which, when viewed in light most favorable to fire chief, supported reasonable conclusion that his termination was retaliatory. Beckwith v. City of Daytona Beach Shores, Fla., C.A.11 (Fla.) 1995, 58 F.3d 1554. Civil Rights 1421

Ordinarily, issue of whether public employee's protected speech played substantial role in his or her termination is issue of fact to be resolved by jury in § 1983 action based on alleged discharge in violation of First Amendment. Barnard v. Jackson County, Mo., C.A.8 (Mo.) 1995, 43 F.3d 1218, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 53, 516 U.S. 808, 133 L.Ed.2d 17. Civil Rights 1430

Conduct of supervisor toward deputy sheriff was sufficiently egregious to create question for jury to determine whether it met standards for punitive damages outlined by trial court, where supervisor made series of sexually inappropriate comments to deputy sheriff, in response to deputy's complaint about that conduct, supervisor said that she chose to work in field occupied primarily by men, and if she did not like it she could "just get out," and supervisor engaged in retaliation when she complained further. Beardsley v. Webb, C.A.4 (Va.) 1994, 30 F.3d 524 . Civil Rights 1474(1)

Whether deputies' protected conduct in declaring their candidacies for sheriff was substantial motivating factor in sheriff's decision to transfer them and whether sheriff transferred deputies due to personnel shortage presented questions for jury in deputies' First Amendment retaliation action against sheriff and county, given deputies' evidence that they were performing their jobs satisfactorily before transfer, that they were transferred around time second candidacy was announced, that there were significant transfers in other direction, and that sheriff threatened to discharge one of them after primary. Click v. Copeland, C.A.5 (Tex.) 1992, 970 F.2d 106. Civil Rights 1430

In civil rights action brought against sheriff for discharge of deputy on asserted ground that plaintiff had not voted for sheriff, sheriff was entitled to have jury decide whether, under North Carolina law, plaintiff had been subject to be released at the will of sheriff because of the character of plaintiff's position, the nature of his responsibilities and his identification with the sheriff. McCollum v. Stahl, C.A.4 (N.C.) 1978, 579 F.2d 869, certiorari denied 99 S.Ct. 1225, 440 U.S. 912, 59 L.Ed.2d 460. Sheriffs And Constables 21

It was for jury to decide whether questions asked of female applicant for position as police officer concerning whether she could handle physical situations with criminals and whether she would turn in male officer who took interest in her constituted harassment, even though interview questions did not show disparate treatment; applicant claimed that slightly built male candidates were not asked similar questions. Barcume v. City of Flint, E.D.Mich.1993, 819 F.Supp. 631. Civil Rights 1555

University professors' claims that there was a mutually explicit understanding based on custom, policy, and oral assurances with respect to reappointment was a question for trier of fact. Colburn v. Trustees of Indiana University, S.D.Ind.1990, 739 F.Supp. 1268, affirmed 973 F.2d 581, rehearing denied. Civil Rights 1430

5377. Freedom of speech and press, questions for jury

Evidence created jury questions whether female and male detectives and sergeant engaged in protected activities of free speech and association by speaking against gender discrimination concerning female detective, whether unit commander, inspector, and chief inspector knew of protected activity prior to approving transfers, whether police commissioner knew of actions of subordinates, and whether protected activities were motivating factor in transfers;

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it was reasonable to infer that knowledge of activities of female detective's coworkers was passed along with information on detective's case. Keenan v. City of Philadelphia, C.A.3 (Pa.) 1992, 983 F.2d 459, rehearing denied. Civil Rights 1430

Whether mayor and alderman attempted to force alderwoman member to resign from council because of exercise of her First Amendment rights was question for jury in civil rights action brought by alderwoman. O'Brien v. City of Greers Ferry, C.A.8 (Ark.) 1989, 873 F.2d 1115, rehearing denied. Civil Rights 1430

Question whether involvement of college faculty members in student boycott materially impaired operation of college or their working relationships there, and if not, whether president of college would not have withheld their equalization pay increases but for the exercise of rights under the free speech and press clause of U.S.C.A.Const. Amend. 1 was question for jury in suit by the two members, who were nonblack, alleging discrimination on the part of the administration of predominately black college with respect to compensation as was question whether administration assigned the preparation and administration of federal grant to members of faculty other than to two nonblack members, one white and one born in Korea of Asian extraction, for racial reasons. Kim v. Coppin State College, C.A.4 (Md.) 1981, 662 F.2d 1055. Civil Rights 1555

5378. Good faith, questions for jury

In action under this section brought by pretrial detainees who claimed that they had been subjected to cruel and unusual treatment by county sheriff and his deputies, issue of good faith of sheriff was question of fact for jury where jury could find that sheriff reacted to danger of successful escape by using reasonable force or that sheriff was acting maliciously or intended to punish pretrial detainee unlawfully. Putman v. Gerloff, C.A.8 (Mo.) 1981, 639 F.2d 415. Civil Rights 1432

Had a policy of confidentiality existed as respects university police accident reports and had chief of university police force and director of university's division of public safety relied on such policy in deciding to discharge police lieutenant, such evidence as to immunity defense would have existed sufficient to raise jury question as to good faith of the chief and the director. Williams v. Board of Regents of University System of Georgia, C.A.5 (Ga.) 1980, 629 F.2d 993, rehearing denied 629 F.2d 1350, certiorari denied 101 S.Ct. 3063, 452 U.S. 926, 69 L.Ed.2d 428. Civil Rights 1432

Because good faith is dependent on motivation and conduct of the defendant as established at trial, the validity of the defense of good faith is ordinarily a question for the jury, in a civil rights action. Landrum v. Moats, C.A.8 (Neb.) 1978, 576 F.2d 1320, certiorari denied 99 S.Ct. 282, 439 U.S. 912, 58 L.Ed.2d 258. Civil Rights 1432

5379. Immunity, questions for jury

District court improperly found that officer was entitled to qualified immunity, after jury found that officer had violated suspect's constitutional rights by use of excessive force when officer shot and killed suspect, since those findings were dispositive of qualified immunity claim; right to be free from excessive use of force was well established, and jury findings resolved issue of whether it was objectively reasonable for officer to believe that use of deadly force was lawful. Acosta v. City and County of San Francisco, C.A.9 (Cal.) 1996, 83 F.3d 1143, as amended, certiorari denied 117 S.Ct. 514, 519 U.S. 1009, 136 L.Ed.2d 403. Civil Rights 1376(6)

Whether police officer reasonably could have believed that identifying information supplied by custodial detainee was inadequate or that train fare infraction warranted detention so as to entitle officer to qualified immunity from liability on detainee's Fourth Amendment claim was question for jury, in detainee's § 1983 civil rights action arising from her detention for four hours for identification following citation for boarding train without proof of payment of fare. Pierce v. Multnomah County, Or., C.A.9 (Or.) 1996, 76 F.3d 1032, certiorari denied 117 S.Ct. 506, 519 U.S. 1006, 136 L.Ed.2d 397. Civil Rights 1432

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When district judge determines that factual dispute exists which precludes summary judgment on the issue of qualified immunity or when defendant fails to move for summary judgment, trier of fact must determine the objective legal reasonableness of an officer's conduct by construing the facts in dispute. Melear v. Spears, C.A.5 (Tex.) 1989, 862 F.2d 1177. Civil Rights 1432

Determination as to whether reasonable person in shoes of police officer would have known he was violating another's constitutional rights in obtaining and executing search and arrest warrants and therefore of whether police officer was qualifiedly immune from liability under this section was for jury. B.C.R. Transport Co., Inc. v. Fontaine, C.A.1 (Mass.) 1984, 727 F.2d 7. Civil Rights 1376(6)

As a general proposition, the question of qualified immunity of a state official is a matter for factual resolution, but the issue need not always be a jury question. Reese v. Nelson, C.A.3 (Pa.) 1979, 598 F.2d 822, certiorari denied 100 S.Ct. 463, 444 U.S. 970, 62 L.Ed.2d 384. Civil Rights 1432

Whether the actions of Internal Revenue Service agents in telling tax accountant's clients to cease doing business with him and in warning them that if they continued to patronize the accountant their income tax returns would be audited were taken palpably beyond the authority or whether the actions had more or less connection with general matters committed by law to their control or supervision so as to give the agents a qualified official immunity was question for the trier of fact in accountant's action under this section against the agents to recover damages for violation of constitutional rights. Mark v. Groff, C.A.9 (Cal.) 1975, 521 F.2d 1376. Civil Rights 1432

Whether to grant qualified immunity is normally a question of law for the court, but when this question turns upon what version of contested facts one accepts, the jury not the judge must determine liability under § 1983. Fultz v. Whittaker, W.D.Ky.2003, 261 F.Supp.2d 767, appeal dismissed 88 Fed.Appx. 896, 2004 WL 360389. Civil Rights 1432

In addressing issue of qualified immunity of public official, District Court must determine whether official established that he or she acted within scope of his or her discretionary authority when allegedly wrongful acts occurred, and whether plaintiff demonstrated that official's actions violated clearly established rights. Faragher v. City of Boca Raton, S.D.Fla.1994, 864 F.Supp. 1552, affirmed in part, reversed in part 76 F.3d 1155, rehearing granted, opinion vacated 83 F.3d 1346, affirmed in part, reversed in part 111 F.3d 1530, certiorari granted 118 S.Ct. 438, 522 U.S. 978, 139 L.Ed.2d 337, reversed 118 S.Ct. 2275, 524 U.S. 775, 157 A.L.R. Fed. 663, 141 L.Ed.2d 662, on remand 166 F.3d 1152. Officers And Public Employees 114

When a defendant accused in a § 1983 action of violating a plaintiff's Fourth and Fourteenth Amendment rights raises the defense of "qualified immunity" at a trial where many factual issues material to the defense remain in dispute, the qualified immunity issue should be resolved by the jury, rather than the judge. Brisk v. City of Miami Beach, Fla., S.D.Fla.1989, 726 F.Supp. 1305. Civil Rights 1432

In civil rights action, public official's claim to immunity from damages, whether absolute or qualified, is not a claim that jurisdiction is absent; therefore, rule that permits judges to engage in fact-finding in jury cases on questions of subject-matter jurisdiction does not authorize judge to perform fact-finding necessary to decide whether immunity is present. Mason v. Melendez, W.D.Wis.1981, 525 F.Supp. 270. Federal Civil Procedure 2264.1

Arrestee bringing §§1983 false arrest/excessive force action against arresting police officer was not unduly prejudiced by federal district court's committing issue of qualified immunity to jury, which found qualified immunity, rather than making ultimate determination as to qualified immunity itself; jury found that officer's actions were consistent with his police training and that he believed them to be consistent, mandating finding that officer's actions were not clearly unlawful and in turn mandating finding of qualified immunity. Kent v. Katz, C.A.2 (Vt.) 2005, 125 Fed.Appx. 334, 2005 WL 387943, Unreported. Civil Rights 1432; Federal Courts

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5380. Knowledge and intent, questions for jury

Question of whether mayor's decision not to rehire police officer after he resigned was racially motivated under Title VII and § 1983 was for jury. Richardson v. Leeds Police Dept., C.A.11 (Ala.) 1995, 71 F.3d 801, on remand 990 F.Supp. 1331. Civil Rights 1430; Civil Rights 1555

In employment discrimination case, ultimate inquiry is whether employer intentionally discriminated against plaintiff, but if defendant's proffered reasons for employment decision are rejected, trier of fact may infer ultimate fact of intentional discrimination. Thomas v. St. Luke's Health Systems, Inc., N.D.Iowa 1994, 869 F.Supp. 1413, affirmed 61 F.3d 908. Civil Rights 1137; Civil Rights 1535

Where at time defendants acted in violation of this subchapter the state of the law was not unclear, whether defendants acted with actual knowledge or reckless disregard so as to be liable for punitive damages became a matter for the trier of fact not a matter for disposition by summary judgment. Luria Bros. & Co., Inc. v. Allen, W.D.Pa.1979, 469 F.Supp. 575. Federal Civil Procedure 2491.5

5381. Joint liability, questions for jury

In civil rights action brought by pretrial detainees who claimed that they had been subjected to cruel and unusual treatment by county sheriff and his deputies, deputy could be held jointly liable with sheriff for failing to intervene when sheriff used excessive force on pretrial detainees and, therefore, issue of deputy's liability should have been submitted to jury for factual determination. Putman v. Gerloff, C.A.8 (Mo.) 1981, 639 F.2d 415. Civil Rights 1358; Civil Rights 1429

Whether conduct of superintendent of state penitentiary in confining racial protest demonstrators to cells containing inadequate hygienic facilities was foreseeable by city police chief prior to time he made arrangements for removal of demonstrators to state penitentiary after denying them their right under state law to be taken before a magistrate was question for jury in determining whether police chief was jointly and severally liable with superintendent under this subchapter for infliction of summary punishment without due process. Anderson v. Nosser, C.A.5 (Miss.) 1972, 456 F.2d 835, certiorari denied 93 S.Ct. 53, 409 U.S. 848, 34 L.Ed.2d 89. Civil Rights 1429

5382. Prisons and prisoners, questions for jury--Generally

Whether prison visitor was subjected to strip search before being permitted to visit her inmate father in retaliation for father's naming deputy and correctional officer as suppliers of cocaine on which he overdosed, rather than based upon any individualized suspicion whatsoever, presented question for jury, in prison visitor's civil rights action, considering absence of any evidence that prison visitor ever violated prison visitation rule or ever supplied father with drugs, and deputy's indefinite testimony as to reliability of his confidential informant. Cochrane v. Quattrocchi, C.A.1 (R.I.) 1991, 949 F.2d 11, certiorari denied 112 S.Ct. 2965, 504 U.S. 985, 119 L.Ed.2d 586. Civil Rights 1429

5383. ---- Assaults, prisons and prisoners, questions for jury

Whether incarcerated criminal contemnor suffered even minor compensable injury proximately caused by jail officer's use of excessive force, so as to mandate award of compensatory damages, was for jury in contemnor's § 1983 suit; prior to officer's use of force in striking contemnor in head three times with flashlight, contemnor had been involved in altercation with another officer, who struck contemnor in head, jury may have concluded that only last of flashlight blows was excessive, and that head contusion was caused by first blow, and contemnor never

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established that excessive force caused him pain, suffering, humiliation or fear. Gibeau v. Nellis, C.A.2 (N.Y.) 1994, 18 F.3d 107. Civil Rights 1429

Question of whether assault on inmate was committed or orchestrated by fellow prisoner who threatened inmate, so as to causally link inmate's injury to prison officials' alleged deliberate indifference, was for jury in inmate's § 1983 action alleging Eighth Amendment violation. Hendricks v. Coughlin, C.A.2 (N.Y.) 1991, 942 F.2d 109. Civil Rights 1429

Issues of whether prison officials conspired to cause attack to be made on inmate or failed to protect inmate from attack by fellow inmate, in violation of inmate's civil rights, were for jury. Mayberry v. Walters, C.A.3 (Pa.) 1988, 862 F.2d 1040. Conspiracy 48.1(2.1)

State prison guard was liable under § 1983 for failing to prevent beating of prisoner by other inmates; evidence was sufficient for jury to find that guard had adequate time to assess serious threat facing prisoner and opportunity to afford him protection at no risk to himself or security of prison, but nevertheless callously refused to permit prisoner to pass with guard to safety behind administration door. Stubbs v. Dudley, C.A.2 (N.Y.) 1988, 849 F.2d 83, certiorari denied 109 S.Ct. 1095, 489 U.S. 1034, 103 L.Ed.2d 230. Civil Rights 1420

Absence of any record that corrections officials had responded to state prison inmate's grievance alleging excessive force by corrections officers, or had informed inmate of his right to appeal decision on grievance, as required by state's regulations, raised fact question as to what had occurred with respect to grievance, precluding summary judgment against inmate on grounds of failure to administratively exhaust under PLRA in inmate's § 1983 Eighth Amendment action against officers and officials. Liner v. Goord, W.D.N.Y.2004, 310 F.Supp.2d 550. Federal Civil Procedure 2491.5

5384. ---- Medical care, prisons and prisoners, questions for jury

Evidence of actual practices of county contractor in providing medical and mental health services at jail presented questions for jury as to whether contractor had been deliberately indifferent to medical needs of pretrial detainee who committed suicide while in jail, and as to whether such indifference had caused suicide, in detainee's estate's §§ 1983 Eighth Amendment action against contractor; estate proffered evidence that contractor failed to adequately train its employees and condoned employees' not completing mental health intake forms and social worker's practice of challenging suicide watch referrals, and that employees knew detainee was suicidal but failed several times to place him on suicide watch, in violation of its own written procedures. Woodward v. Correctional Medical Services of Illinois, Inc., C.A.7 (Ill.) 2004, 368 F.3d 917. Civil Rights 1429

Evidence in § 1983 action for violation of rights of detainee who committed suicide in jail made question for jury whether city was deliberately indifferent in failing to take steps to meet serious medical needs of intoxicated and suicidal detainees and was sufficient to support conclusion that city's deliberate indifference was the moving force behind violation of rights of detainee who hung himself while intoxicated and alone in cell block during interval between turnkey's periodic inspections. Simmons v. City of Philadelphia, C.A.3 (Pa.) 1991, 947 F.2d 1042, rehearing denied, certiorari denied 112 S.Ct. 1671, 503 U.S. 985, 118 L.Ed.2d 391. Civil Rights 1420; Civil Rights 1429

5385. ---- Religious practices, prisons and prisoners, questions for jury

Given the history of the Black Muslim religion, the problems associated with the teachings of the Honorable Elijah Muhammad, and superintendent's testimony at trial that there had been trouble in the past with the Black Muslims and that some of the literature sent into the prison for them was inflammatory, the requisite circumstances were present in action brought under this section by state prisoner against prison officials, to submit to the jury the issue of the reasonableness of the prison rules and regulations governing the practice of the Muslim religion by black

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inmates. Wilson v. Prasse, C.A.3 (Pa.) 1972, 463 F.2d 109. Civil Rights 1429

5386. Police activities, questions for jury--Generally

Whether testimony from witnesses who saw plaintiff being struck and beaten was such as to establish liability of defendant deputy sheriff and defendant police officer under this section because defendant deputy sheriff did something more than enter an ongoing fray with intent of stopping it and defendant police officer did more than simply conduct a pat-down search was question of fact to be resolved by jury. Vetters v. Berry, C.A.6 (Tenn.) 1978, 575 F.2d 90. Civil Rights 1429

When material facts are undisputed, the question of whether a given proposition of law was clearly established at the time of a § 1983 defendant's action was a question of law, whereas the issue of what a reasonable officer would have believed was a mixed question of fact and law appropriate for determination by a jury if material facts remained in dispute at trial. Brisk v. City of Miami Beach, Fla., S.D.Fla.1989, 726 F.Supp. 1305. Civil Rights 1432

5387. ---- Arrests, police activities, questions for jury

To find that there was an unlawful arrest in violation of Fourth Amendment, jury in § 1983 action need only have found that under facts and circumstances within arresting officer's knowledge, a reasonable officer could not have believed that an offense had been or was being committed by person to be arrested. Mosley v. Wilson, C.A.3 (Pa.) 1996, 102 F.3d 85. Civil Rights 1088(4)

Evidence presented jury questions, as to whether vegetable matter on floor of driver's car appeared to be marijuana, as to whether police officers were entitled to qualified immunity from driver's civil rights claim, under § 1983, that police lacked reasonable suspicion for investigatory stop and as to whether police violated Fourth Amendment. Karnes v. Skrutski, C.A.3 (Pa.) 1995, 62 F.3d 485. Civil Rights 1429

Issue of probable cause, which was predominantly factual in nature, was properly presented to jury in civil rights action against police officer for unlawful arrest and malicious prosecution. Moore v. Comesanas, C.A.2 (N.Y.) 1994, 32 F.3d 670. Civil Rights 1429

In § 1983 actions, existence of probable cause to arrest is question for jury. De Anda v. City of Long Beach, C.A.9 (Cal.) 1993, 7 F.3d 1418, 143 A.L.R. Fed. 769. Civil Rights 1429

Whether police officer had probable cause to arrest driver for violation of city ordinance forbidding cutting across private property to avoid traffic regulation was for jury in action for civil rights violations and related state claims. Evans v. Detlefsen, C.A.6 (Tenn.) 1988, 857 F.2d 330. Civil Rights 1429

In suit for false arrest and imprisonment under § 1983, jury question was presented as to reasonableness of 11 hours it took sheriff to process administrative release of arrestee after issue of whether he was individual named in outstanding warrant was first raised in court. Lewis v. O'Grady, C.A.7 (Ill.) 1988, 853 F.2d 1366. Civil Rights 1429

In civil rights action brought against sheriff by black plaintiffs alleging that their constitutional rights were violated by illegal arrest, based on evidence that at time of arrest there was major disturbance in which at least 100 shots were fired, and that arrest occurred same evening as disturbance, whether sheriff had probable cause to arrest plaintiffs was question for jury. Wilson v. Attaway, C.A.11 (Ga.) 1985, 757 F.2d 1227, rehearing denied 764 F.2d 1411. Civil Rights 1429

Evidence that jail commander knew that plaintiff motorist had been in custody for 11 1/2 hours after he had been

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picked up for public intoxication, that motorist was not released because commander concluded, on examination, that he was not in condition to be free and that when plaintiff was reexamined some 16 hours after arrest the commander decided to continue holding him on intoxication charge, was sufficient to make jury issue on whether commander had falsely imprisoned motorist, whose condition was not due to intoxication but to a massive stroke. Reeves v. City of Jackson, Miss., C.A.5 (Miss.) 1979, 608 F.2d 644. Civil Rights 1429

In civil rights action, evidence concerning whether arresting officer had probable cause to make warrantless arrest presented jury question, despite evidence that individual was arrested after driving wrong way down one-way street, that individual admitted having had two drinks, and that blood alcohol level at time of arrest was 0.085 to 0.09 percent, and that individual had barbiturates and alcohol in her blood five and one-half hours after arrest, in view of evidence that medical exam performed less than two hours after arrest revealed no medical signs of intoxication and in view of testimony of jail personnel that individual appeared sober during entire time she was in custody following her arrest. Patzig v. O'Neil, C.A.3 (Pa.) 1978, 577 F.2d 841. Civil Rights 1429

In action brought under this section, should officers assert that their actions in dealing with plaintiff were taken under circumstances which lawfully justified degree of detention and custodial interrogation they contended was employed, they were entitled to have jury resolve that issue under proper instructions which defined rights of one in plaintiff's situation to be free of official detention and set out circumstances which would support a reasonable good faith belief by defendants that they had legal right or duty to deprive him of his freedom. Dowsey v. Wilkins, C.A.5 (Ala.) 1972, 467 F.2d 1022. Civil Rights 1440

Issue of whether motorist was seized within Fourth Amendment when police officer ordered her to move her immobilized vehicle off roadway or have it towed was for jury in federal civil rights suit. Lockhart-Bembery v. Town of Wayland Police Dept., D.Mass.2006, 447 F.Supp.2d 11. Civil Rights 1429

Although issue of whether probable cause existed in effecting arrest is typically decided by jury in §§ 1983 malicious prosecution action, district court may conclude that probable cause did exist as matter of law if evidence, viewed most favorably to plaintiff, reasonably would not support contrary factual finding, and may enter summary judgment accordingly. Imbergamo v. Castaldi, M.D.Pa.2005, 392 F.Supp.2d 686. Federal Civil Procedure 2491.5

5388. ---- Excessive force, police activities, questions for jury

Issue of causal connection between constitutional violation and city's inadequate training of police officers with respect to use of force while off-duty was for jury in motorist's § 1983 action against city arising from shooting by off-duty officer; officer testified that he was attempting to make what he believed was lawful arrest when he shot motorist, and, although jury found that officer was acting outside scope of his employment, that finding was related to Colorado indemnity statutes, not to § 1983 claim. Brown v. Gray, C.A.10 (Colo.) 2000, 227 F.3d 1278. Civil Rights 1429

To find that police officer used excessive force, jury was required in § 1983 action to determine whether officer used force that was objectively reasonable under the circumstances and facts confronting him at that time, without regard to his underlying motivation. Mosley v. Wilson, C.A.3 (Pa.) 1996, 102 F.3d 85. Civil Rights 1088(2)

Evidence that deputy sheriff grabbed child's arm during arrest of child's father, allegedly causing injuries to child's arm, was for jury in action alleging that deputy used excessive force against child, in violation of child's civil rights. Ikerd v. Blair, C.A.5 (La.) 1996, 101 F.3d 430. Civil Rights 1429

Whether city knew about and acquiesced in custom tolerating tacit use of excessive force by its police officer, for purposes of holding city liable in civil rights action by victim of alleged police brutality, was question for jury; jury could have inferred from numerous similar written complaints that police department knew of officer's propensity

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for violence, reasonable jury could have found that investigatory procedures were structured to curtail disciplinary action and stifle investigations into credibility of officers in light of exclusion of witness testimony and failure to formally track complaints for individual officers, and expert testimony was not required to show deficiencies in procedures. Beck v. City of Pittsburgh, C.A.3 (Pa.) 1996, 89 F.3d 966, certiorari denied 117 S.Ct. 1086, 519 U.S. 1151, 137 L.Ed.2d 219. Civil Rights 1429

Issue of whether seizure effected by use of deadly force by deputy sheriff who fatally shot in back of head individual on whom deputy was attempting to serve ex parte order of protection was reasonable under Fourth Amendment was for jury in federal civil rights action brought by individual's wife; evidence presented by wife, primarily through deputy's testimony, would have allowed reasonable jury to conclude that shooting was unreasonable and excessive use of force, even though wife did not produce testimony describing events at exact moment individual was shot. Gardner v. Buerger, C.A.8 (Mo.) 1996, 82 F.3d 248, appeal after new trial 163 F.3d 602. Civil Rights 1429

Question of whether police officers reasonably believed that their use of force was not excessive, for purposes of determining whether they were entitled to qualified immunity from liability, was a jury issue in section 1983 action brought by arrestee. Posr v. Doherty, C.A.2 (N.Y.) 1991, 944 F.2d 91. Civil Rights 1432

Factual issues surrounding whether it was objectively reasonable for police officer to use deadly force were for jury in civil rights action brought by victim who was shot by officer in dark hallway of private residence at 2:45 a.m., after officer failed to indicate his identity. Yates v. City of Cleveland, C.A.6 (Ohio) 1991, 941 F.2d 444, rehearing denied. Civil Rights 1432

In determining whether force used by arresting officer against DUI arrestee to obtain a blood sample was unreasonable, jury in § 1983 suit brought by arrestee was entitled to consider: fact that arrestee was actively resisting extraction of his blood; severity of the crime; whether arrestee posed an immediate threat to safety of officers or others; whether police refused to respect reasonable request to undergo a different form of testing; and degree of need for blood sample. (Per Canby, J., with three Judges concurring, two Judges concurring in part, and five Judges dissenting.). Hammer v. Gross, C.A.9 (Cal.) 1991, 932 F.2d 842, certiorari denied 112 S.Ct. 582, 502 U.S. 980, 116 L.Ed.2d 607, on remand 981 F.2d 1115. Civil Rights 1088(4)

Whether police officer struck arrestee with his nightstick, thus depriving arrestee of his constitutional rights by unnecessary use of brutal force in effecting arrest, was question for jury in civil rights action brought by arrestee. McDowell v. Rogers, C.A.6 (Tenn.) 1988, 863 F.2d 1302. Civil Rights 1429

On retrial of father's suit against county police officer seeking recovery for alleged wrongful death of son, who was shot and killed by officer while in self-induced hallucinatory state, whether officer's reckless disregard of son's safety and wanton use of excessive force made out case for liability or whether emergency negated wantonness and self-protection excused disregard of son's safety would be for jury. Haber v. Nassau County, C.A.2 (N.Y.) 1977, 557 F.2d 322. Counties 224

Where arrestee obviously suffered physical pain as result of injuries inflicted by police officer, and may well have suffered some mental anguish and humiliation, and where arrestee had small hospital and medical expenses and lost some time from work as result of incident, jury was justified in finding on conflicting evidence that police officer employed excessive that police officer dealings with arrestee, and in further finding that quality of police officer's conduct warranted award of punitive as well as actual damages. Linn v. Garcia, C.A.8 (Neb.) 1976, 531 F.2d 855. Assault And Battery 39

The reasonableness of the force used in making an arrest under all circumstances is a question for the jury, and the standard is the conduct of ordinary, prudent man under the existing circumstances. Hamilton v. Chaffin, C.A.5 (Miss.) 1975, 506 F.2d 904. Arrest 68(2)

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A question for the jury was presented in an action under this section against arresting police officers for denial of civil rights, as to whether force used in making the arrest was unnecessary, unreasonable or violent, where defendants admitted the arrest was made and that force was used. Morgan v. Labiak, C.A.10 (Colo.) 1966, 368 F.2d 338. Civil Rights 1429

Conflicting testimony as to events surrounding arrest proffered by arrestees and by arresting officers raised jury question as to use of excessive force, in arrestees' §§ 1983 action against officers. Diaz ex rel Lopez Claudio v. Vivoni, D.Puerto Rico 2003, 301 F.Supp.2d 92. Civil Rights 1429

Evidence on whether police officer used excessive force in detaining suspect was sufficient for presentation to jury, in suspect's § 1983 action. Jarvis v. Government of Virgin Islands, D.Virgin Islands 1996, 919 F.Supp. 177. Civil Rights 1429

Whether sheriff's deputy used more than "necessary and reasonable force" when entering residence without consent to execute search warrant, as authorized by Florida statute, was fact question precluding summary judgment in § 1983 civil rights suit by resident who testified to being struck in stomach with flashlight by deputy. McClain v. Crowder, S.D.Fla.1994, 840 F.Supp. 897. Federal Civil Procedure 2491.5

5389. State of mind, questions for jury

Where there are disputed issues of material fact as to plaintiff's state of mind at time of confinement, in § 1983 action alleging unconstitutional medical or psychiatric confinement, resolution of these factual questions should be left to trier of fact. Ormiston v. Nelson, C.A.2 (N.Y.) 1997, 117 F.3d 69. Civil Rights 1429

5390. Miscellaneous questions for jury

Once court determines as a matter of law that legal standard governing governmental action at issue was clearly established, there is no qualified immunity in civil rights action and factual question of whether defendant's conduct violated the established constitutional standard is then resolved by jury at trial. Warren v. City of Lincoln, Neb., C.A.8 (Neb.) 1987, 816 F.2d 1254, rehearing granted 825 F.2d 176, on rehearing 864 F.2d 1436, certiorari denied 109 S.Ct. 2431, 490 U.S. 1091, 104 L.Ed.2d 988. Civil Rights 1373; Civil Rights 1426

Given unrest in city on day of arrests, brief period for which civil rights plaintiffs were incarcerated, testimony permitting jury to conclude that no feasible alternatives to use of particular jail existed, and absence of recurring violation, whether exigent or emergency circumstances permitted use of jail without violating either constitutional rights of arrestees or consent decree entered in separate class action which permanently enjoined sheriff and commissioners of county from incarcerating any person in jail without first having complied with series of requirements, including maximum capacities, was question for jury. Wilson v. Attaway, C.A.11 (Ga.) 1985, 757 F.2d 1227, rehearing denied 764 F.2d 1411. Civil Rights 1429

Whether plaintiff in position as deputy sheriff was deprived of a liberty interest because defendant sheriff, in connection with plaintiff's termination from employment, issued a press release in which plaintiff was associated with an attempted illegal entry, because remarks seriously damaged plaintiff's reputation in community, and because plaintiff was not involved in any wrongdoing and was not provided adequate notice or sufficient opportunity to clear her name was a question of fact for jury. Johnson v. Rogers, C.A.8 (Minn.) 1980, 621 F.2d 300. Civil Rights 1430

Whether information released to newspaper by county school board, superintendent, and board members was personally identifiable and, thus, in violation of Family Educational Rights and Privacy Act, was jury question in § 1983 civil rights suit by student. Doe v. Knox County Bd. of Educ., E.D.Ky.1996, 918 F.Supp. 181. Civil Rights

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LV. JUDICIAL REMEDIES OR RELIEF GENERALLY

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5411. Judicial remedies or relief generally

Propriety of actions brought under this section is not to be determined solely on basis of relief sought. Courtney v. Reeves, C.A.5 (Tex.) 1981, 635 F.2d 326. Civil Rights 1394

Where legal rights have been invaded, and this section provides for general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done. Donahue v. Staunton, C.A.7 (Ill.) 1972, 471 F.2d 475, certiorari denied 93 S.Ct. 1419, 410 U.S. 955, 35 L.Ed.2d 687. Civil Rights 1448

When federally secured rights are invaded, federal courts must adjust their remedies to grant the appropriate relief. Ute Indian Tribe of Uintah and Ouray Reservation v. Probst, C.A.10 (Utah) 1970, 428 F.2d 491, certiorari denied 91 S.Ct. 189, 400 U.S. 926, 27 L.Ed.2d 186, certiorari denied 91 S.Ct. 189, 400 U.S. 927, 27 L.Ed.2d 186. Federal Courts 371

By its terms, § 1983 creates no substantive rights; rather, it merely provides remedies for deprivations of rights established elsewhere. Johnson v. Cullen, D.Del.1996, 925 F.Supp. 244. Civil Rights 1305

In determining appropriate remedies to be awarded to a prevailing employee in a civil rights action, district court should fashion remedies ensuring that victims are made whole. Sagendorf-Teal v. County of Rensselaer, N.D.N.Y.1995, 904 F.Supp. 95, affirmed 100 F.3d 270. Civil Rights 1448

Plaintiff who seeks enforcement of a federal right against a state should not be abandoned by federal court if any reasonable remedy can be fashioned. Robinson v. Pratt, D.C.Mass.1980, 497 F.Supp. 116. Federal Courts 264.1

5412. Power and duty of court, judicial remedies or relief generally

Courts have the power and duty to fashion affirmative relief so as to provide an effective federal remedy where this section is violated. Johnson v. Capitol City Lodge No. 74, Fraternal Order of Police, C.A.4 (W.Va.) 1973, 477 F.2d 601. Civil Rights 1448

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District court has wide power sitting as a court of equity to fashion relief enforcing the Congressional mandate of this section and the constitutional guarantees of the equal protection of the law and to eradicate the effects of past discriminations. Carter v. Gallagher, C.A.8 (Minn.) 1971, 452 F.2d 315, rehearing and suggestion for rehearing granted, on remand, certiorari denied 92 S.Ct. 2045, 406 U.S. 950, 32 L.Ed.2d 338. Civil Rights 1448; Injunction 189

District court has jurisdiction to entertain suits for equitable relief under §§ 1983. J.D. v. Manatee County School Bd., M.D.Fla.2004, 340 F.Supp.2d 1316. Federal Courts 7

Court was not equipped to operate adult correctional institution but had duty to remedy massive and serious constitutional violations established by plaintiff prisoners. Jefferson v. Southworth, D.C.R.I.1978, 447 F.Supp. 179, affirmed 616 F.2d 598, certiorari denied 101 S.Ct. 115, 449 U.S. 839, 66 L.Ed.2d 45. Prisons 4(3)

5413. Discretion of court, judicial remedies or relief generally

In areas of prison administration, convict classification and prison security, much must be left to discretion of prison administrators, and federal courts should go no further in given case than constitutional necessities require, but have power and duty to protect constitutional rights of prisoners and, as courts of equity, have broad discretion in devising appropriate remedies. Kelly v. Kelly v. Brewer, C.A.8 (Iowa) 1975, 525 F.2d 394. Prisons 13(3); Prisons 13(6)

District court carries broad discretion in determining appropriate remedies in employment civil rights action, and where district court makes a specific finding that an awarded back pay was sufficient to make a plaintiff whole, no abuse of discretion can be found. Sagendorf-Teal v. County of Rensselaer, N.D.N.Y.1995, 904 F.Supp. 95, affirmed 100 F.3d 270. Civil Rights 1448; Civil Rights 1471

District Court did not abuse its discretion in denying inmate's motion for recusal based on alleged bias or hostility to inmate or inmate's claims for relief, which alleged his Eighth Amendment rights to be free from cruel and unusual punishment were violated under § 1983 by the demonstration of deliberate indifference to his serious medical needs; presiding judge's comments to inmate about his naming of certain persons as defendants, numerosity of inmate's claims, and inmate's access to health care derived from litigation itself and not an extrajudicial source. Baker v. Simmons, C.A.10 (Kan.) 2003, 65 Fed.Appx. 231, 2003 WL 21008830, Unreported. Judges 49(2)

Refusing to appoint counsel for state inmate in § 1983 action was not abuse of discretion, given that pertinent issues could be resolved on the transcript of underlying prison administrative hearing and did not require investigation, that legal issues were not complex, that inmate capably represented himself, and that case was resolved without any necessity for cross-examination. Yihnidabney v. Ricks, C.A.2 (N.Y.) 2003, 64 Fed.Appx. 253, 2003 WL 1867924, Unreported. Civil Rights 1445

5414. Creation of remedy, judicial remedies or relief generally

This section does not create a remedy, but merely complements other statutes that do create federal causes of action, furnishing suitable remedies through principles of state law when federal law is unsuited or insufficient. Donaldson v. Hovanec, E.D.Pa.1979, 473 F.Supp. 602. Civil Rights 1305

5415. Foreclosure of remedy by Congress, judicial remedies or relief generally

Availability of administrative mechanisms to protect plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose § 1983 remedy; rather, statutory framework must be such that allowing plaintiff to bring § 1983 action would be inconsistent with Congress' carefully tailored scheme to preclude § 1983

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remedy for violation of federal right. Golden State Transit Corp. v. City of Los Angeles, U.S.Cal.1989, 110 S.Ct. 444, 493 U.S. 103, 107 L.Ed.2d 420, on remand 895 F.2d 1281. Civil Rights 1308

In some instances, action may be maintained under this section when state or local officials violate rights created by federal statutes, and thus party may proceed under this section to remedy violation of federal statutory right unless Congress intended to foreclose private enforcement of this section or unless the statute does not create enforceable "right" under this section. Polchowski v. Gorris, C.A.7 (Ill.) 1983, 714 F.2d 749. Civil Rights 1027

Plaintiff may not bring § 1983 action for violation of statute if Congress foreclosed private enforcement of that statute in enactment itself or statute does not create enforceable rights in plaintiff. Behunin v. Jefferson County Dept. of Social Services, D.Colo.1990, 744 F.Supp. 255. Civil Rights 1027

5416. Supplementary nature of remedy, judicial remedies or relief generally

Relief under this section does not depend upon unavailability of state remedies, but is supplementary to them. Hall v. Tawney, C.A.4 (W.Va.) 1980, 621 F.2d 607. See, also, Bonner v. Coughlin, C.A.7 (Ill.) 1975, 517 F.2d 1311, on rehearing 545 F.2d 565, certiorari denied 98 S.Ct. 1507, 435 U.S. 932, 55 L.Ed.2d 529; Freeman v. Flake, C.A.10 (Utah) 1971, 448 F.2d 258, certiorari denied 92 S.Ct. 1292, 405 U.S. 1032, 31 L.Ed.2d 489; Sostre v. McGinnis, C.A.2 (N.Y.) 1971, 442 F.2d 178, certiorari denied 92 S.Ct. 719, 404 U.S. 1049, 30 L.Ed.2d 740, certiorari denied 92 S.Ct. 1190, 405 U.S. 978, 31 L.Ed.2d 254; Hussey v. Sullivan, D.C.Mass.1980, 498 F.Supp. 594, affirmed 651 F.2d 74; Atchison v. Nelson, D.C.Wyo.1978, 460 F.Supp. 1102. Civil Rights 1315

Remedy under this section is supplementary to that under state law and was designed to fill remedial void where state law even though adequate in theory was not enforced in practice for whatever reason. Popow v. City of Margate, D.C.N.J.1979, 476 F.Supp. 1237. Civil Rights 1315

5417. Concurrent remedy, judicial remedies or relief generally

Cause of action under this section and state pendent assault and battery claim did not merge into one claim, and, hence, jury's finding, in judging federal civil rights claim, that sheriff's deputy acted in good faith in using excessive force against inmate did not bar recovery on state pendent law claim of assault and battery, for which jury made no such good-faith finding. Williams v. Thomas, C.A.5 (Tex.) 1982, 692 F.2d 1032, certiorari denied 103 S.Ct. 3115, 462 U.S. 1133, 77 L.Ed.2d 1369. Civil Rights 1424

Federal and state rights may of course exist in parallel, and federal courts may not avoid obligation to define and vindicate federal constitutional rights merely because of coincidence of related rights and remedies in federal and state systems. Hall v. Tawney, C.A.4 (W.Va.) 1980, 621 F.2d 607. Civil Rights 1027

Rights under this section and rights arising under the state common law, although similar are nonetheless distinct remedies; accordingly, although the same set of facts may give rise to violations of both this section and the state common law, the rights protected are not necessarily identical nor are the criteria essential to state a cause of action necessarily the same under both. Briley v. State of Cal., C.A.9 (Cal.) 1977, 564 F.2d 849. Civil Rights 1304; Civil Rights 1394

5418. Election of remedies, judicial remedies or relief generally

Issue of whether unreviewed state administrative decision which found in favor of city employee on his substantive claim of illegal termination precluded his subsequent § 1983 claim alleging denial of procedural due process in course of that termination was not properly addressed as issue of election of remedies, but, rather, was issue of res judicata; employee's claim involved no legally or factually inconsistent remedies, and back pay and lost benefits

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award in administrative proceeding would reduce any damages that employee might recover in § 1983 action. Dionne v. Mayor and City Council of Baltimore, C.A.4 (Md.) 1994, 40 F.3d 677. Administrative Law And Procedure 501

When employee of state or local governmental entity presents claim for reinstatement to state administrative agency, that is not "election of remedies" which will preclude later pursuit of claims for violation of federal constitutional rights in federal court; overruling *Punton*, 805 F.2d 1378. Haphey v. Linn County, C.A.9 (Or.) 1992, 953 F.2d 549. Election Of Remedies 7(1)

Fact that teacher's racial discrimination claim might have been maintainable under Title VII did not preempt teacher's § 1983 claim that he was terminated on basis of race, since discrimination claim could be brought under either statute or both. Bradley v. Pittsburgh Bd. of Educ., C.A.3 (Pa.) 1990, 913 F.2d 1064.

Although a state or local employee's preexisting remedies are not preempted by Title VII, employee may not maintain a § 1983 action in lieu of Title VII if the only alleged deprivation is of employee's rights created by Title VII. Johnson v. Ballard, N.D.Ga.1986, 644 F.Supp. 333.

When faced with pending or threatened prosecution for violation of state statute, litigant may elect to raise constitutional contentions in state trial and, if conviction is entered, pursue his challenge on appeal in state courts, but if litigant has so elected, principles of res judicata or collateral estoppel, to extent applicable, should limit subsequent relitigation of constitutional claim, or facts underlying it, in suit under this section; and litigant's only entry lines into federal court system would be on petition for writ of certiorari to Supreme Court or, if litigant is in custody, through federal habeas corpus. Thistlethwaite v. City of New York, S.D.N.Y.1973, 362 F.Supp. 88, affirmed 497 F.2d 339, certiorari denied 95 S.Ct. 686, 419 U.S. 1093, 42 L.Ed.2d 686. Judgment 828.11(3)

An aggrieved school student whose state administrative and judicial remedies are demonstrably adequate and available both in theory and in practice may not proceed in federal court under this section on basis that the remedy under this section is an electable alternative to state remedies. Egner v. Texas City Independent School Dist., S.D.Tex.1972, 338 F.Supp. 931. Civil Rights 1317

5419. Conviction validity, judicial remedies or relief generally

State prisoner's claim for damages is not cognizable under § 1983 if a judgment in favor of prisoner would necessarily imply the invalidity of his conviction or sentence, unless the prisoner can demonstrate that the conviction or sentence has previously been invalidated. Edwards v. Balisok, U.S.Wash.1997, 117 S.Ct. 1584, 520 U.S. 641, 137 L.Ed.2d 906. Civil Rights 1088(5)

Inmate could not maintain § 1983 action, which sought, among other things, compensatory and punitive monetary damages, but which did not request injunctive relief, where damage claims challenged legality of conviction, but neither conviction nor sentence had been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal authorized to make such determination, or called into question by federal court's issuance of writ of habeas corpus. Heck v. Humphrey, U.S.Ind.1994, 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383. Civil Rights 1088(5)

Party who had been extradited from Georgia to New York to begin serving sentence on New York conviction could maintain § 1983 action against parties responsible for his extradition, for allegedly proceeding in absence of signed extradition warrant, waiver of his extradition rights or habeas hearing, without first invalidating underlying conviction or sentence for which he was extradited or demonstrating that he was not extraditable through proper procedures; thus, his civil rights action was not barred by rule of *Heck*, under which state prisoner may not maintain cause of action under § 1983 if direct or indirect effect of granting relief would be to invalidate state

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sentence that he is serving. Harden v. Pataki, C.A.11 (Ga.) 2003, 320 F.3d 1289. Civil Rights 1088(5)

When civil rights plaintiff has pending appeal from his criminal conviction, district court must consider whether judgment in favor of plaintiff would necessarily imply invalidity of his conviction or sentence; if it would, complaint must be dismissed unless plaintiff can demonstrate that conviction or sentence has already been invalidated. Jackson v. Suffolk County Homicide Bureau, C.A.2 (N.Y.) 1998, 135 F.3d 254. Civil Rights 1088(5)

No cause of action will lie on § 1983 claim that depends on finding that criminal conviction or sentence was invalidly obtained, unless conviction or sentence that would be impugned has already been reversed on direct appeal, expunged by executive order, invalidated by state tribunal authorized to do so, or called into question by federal court's grant of writ of habeas corpus. Anderson v. County of Montgomery, C.A.7 (Ill.) 1997, 111 F.3d 494, certiorari denied 118 S.Ct. 371, 522 U.S. 951, 139 L.Ed.2d 289. Civil Rights 1088(5)

That it may be difficult, or perhaps even impossible, to get conviction reversed or expunged due to lapse of time does not constitute reason for relieving civil rights claimant of burden of first obtaining relief from that conviction, prior to bringing civil rights claim which implicates validity of conviction. Anderson v. County of Montgomery, C.A.7 (Ill.) 1997, 111 F.3d 494, certiorari denied 118 S.Ct. 371, 522 U.S. 951, 139 L.Ed.2d 289. Civil Rights 1088(5)

When prisoner files civil rights action that cannot be resolved without inquiring into validity of confinement, court should dismiss suit without prejudice; district court is not authorized to convert action into habeas corpus proceeding. Copus v. City of Edgerton, C.A.7 (Wis.) 1996, 96 F.3d 1038, on remand 959 F.Supp. 1047. Civil Rights 1311

Detainee's in forma pauperis § 1983 claims against police officer and department alleging that conditions of confinement in city jail violated Constitution were unrelated to validity of detainee's subsequent convictions and sentences; thus, judgment finding that conditions were unconstitutional would not necessarily imply invalidity of convictions and sentences, and detainee did not have to prove that convictions or sentences were invalidated to state cognizable § 1983 claim. Hamilton v. Lyons, C.A.5 (Tex.) 1996, 74 F.3d 99. Civil Rights 1098; Federal Civil Procedure 2734

Guardian ad litem's § 1983 suit against Mississippi state court officials, state Department of Public Welfare and its commissioner, state Attorney General, and county welfare department employees alleging violation of right of access to courts and due process seeking to have United States District Court set aside custody rulings of Chancellor and to award custody of minor to Department of Social Services, to require defendants to pay for comprehensive physical, psychological, and psychiatric evaluation of minor and seeking compensatory and punitive damages was inextricably intertwined with state court judgment awarding custody of minor to father and paternal grandmother and constituted impermissible attempt to collaterally attack validity of state court judgment, where guardian ad litem failed to explain how relief she sought in federal district court differed from that available if direct appeal had been taken in state court and why interested parties failed to seek such relief; Mississippi courts were well equipped to review violations of federal constitutional law. Chrissy F. by Medley v. Mississippi Dept. of Public Welfare, C.A.5 (Miss.) 1993, 995 F.2d 595, rehearing denied 3 F.3d 441, certiorari denied 114 S.Ct. 1336, 510 U.S. 1214, 127 L.Ed.2d 684. Judgment 828.5(2)

Convict could not recover any damages under § 1983 when determination in his favor would undermine the validity of his conviction. Berthesi v. Pennsylvania Bd. of Probation, E.D.Pa.2003, 246 F.Supp.2d 434. Civil Rights 1088(5)

In order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the

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conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus; a claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Mosley v. Yaletsko, E.D.Pa.2003, 275 F.Supp.2d 608. Civil Rights 1088(5)

In determining whether civil rights claim would either negate element of crime of which plaintiff was convicted or necessarily imply invalidity of conviction, court must consider whether judgment in favor of plaintiff would necessarily imply invalidity of his conviction and, if it would, plaintiff has no § 1983 claim unless he can prove that conviction has been previously invalidated; if court determines that plaintiff's action, even if successful, would not demonstrate invalidity of any outstanding criminal judgment, court should allow action to proceed. Crooms v. P.O. Mercado, No. 41, N.D.Ill.1997, 955 F.Supp. 985. Civil Rights 1088(5)

Inmate's § 1983 action alleging that defense counsel and various state officials conspired to convict him would be dismissed pursuant to *Heck v. Humphrey*, since state court conviction had never been reversed or declared invalid, judgment in inmate's favor would necessarily imply invalidity of conviction, and, were inmate to succeed, result would be direct conflict between state court judgment of conviction and federal judgment that conviction was flawed. Stocker v. Hood, E.D.Pa.1996, 927 F.Supp. 871. Conspiracy 7.5(1)

In order to recover damages under civil rights statute for harm caused by allegedly unconstitutional conviction or imprisonment or for other actions that, if unlawful, would render conviction or sentence invalid, plaintiff must demonstrate that conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal authorized to make such determination, or called into question by federal court's issuance of writ of habeas corpus. Aleotti v. Baars, D.D.C.1995, 896 F.Supp. 1, affirmed 107 F.3d 922, 323 U.S.App.D.C. 289. Civil Rights 1088(5)

Regardless of whether plaintiff seeks monetary damages or injunctive relief in § 1983 claim, if plaintiff's claim necessarily involves determination of lawfulness of state conviction, sentence or imprisonment, then district court must make further determinations on whether claim is cognizable under § 1983 before proceeding. Hand v. Young, D.Nev.1994, 868 F.Supp. 289. Civil Rights 1311

General rule that, to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render conviction or sentence invalid, civil rights plaintiff must prove that conviction has been invalidated, is not limited to incarcerated plaintiffs, but applies with equal force when plaintiff is no longer incarcerated and is seeking only money damages. Dees v. Vendel, D.Kan.1994, 856 F.Supp. 1531, reconsideration denied. Civil Rights 1088(5)

One convicted of crime is not entitled to make collateral attack on the conviction in civil action under this section; the only basis for collateral attack on federal conviction is by petition to vacate judgment and sentence. Lathon v. Jefferson Parish, E.D.La.1973, 358 F.Supp. 558. Judgment 518

State prisoner could not proceed in forma pauperis on claim that his parole revocation hearing and consequent incarceration were invalid due to alleged violation of his rights under Americans with Disabilities Act (ADA) and Constitution, since he was not entitled to any relief, because parole board's decision had not been reversed, expunged, set aside, or otherwise called into question, and his claims would have impermissibly called into question revocation of his parole and his current confinement if successful. Jones v. Stevenson, N.D.Cal.2003, 2003 WL 22533565, Unreported. Civil Rights 1097; Federal Civil Procedure 2734

Pro se prisoner's civil rights claim against various state and county officials alleging, inter alia, constitutional infirmities and conspiracy in connection with his criminal conviction and sentence in state court, was barred by *Heck v. Humphrey* doctrine, which requires civil rights plaintiffs to show that conviction been reversed, expunged,

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declared invalid, or called into question by issuance of writ of habeas corpus, in order for civil rights claim to be cognizable. Bloom v. Social Sec. Admin., C.A.10 (Kan.) 2003, 72 Fed.Appx. 733, 2003 WL 21513214, Unreported. Civil Rights 1098; Conspiracy 7.5(1)

Former prisoner whose parole was revoked could not bring § 1983 action alleging perjury by government witness at revocation hearing, or false imprisonment as result of revocation, absent showing that revocation had been invalidated; both claims constituted collateral attack on revocation determination. Harris v. City of New York, S.D.N.Y.2003, 2003 WL 554745, Unreported. Civil Rights 1097

5420. Sentence validity, judicial remedies or relief generally

State prisoner's due process claims alleging that two correctional facility employees improperly deducted 59 hours' work time from his earned work time credits were not cognizable under § 1983; such claims challenged validity of prisoner's sentence. Barela v. Variz, S.D.Cal.1999, 36 F.Supp.2d 1254. Civil Rights 1092

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5441. Damages generally

Both *Bivens* and § 1983 allow a plaintiff to seek money damages from government officials who have violated his Fourth Amendment rights. Wilson v. Layne, U.S.Md.1999, 119 S.Ct. 1692, 526 U.S. 603, 143 L.Ed.2d 818. Civil Rights 1088(1); United States 50.10(1)

Text of § 1983 purports to create damages remedy against every state official for the violation of any person's federal constitutional or statutory rights; coverage of statute is thus broader than preexisting common law of torts. Kalina v. Fletcher, U.S.Wash.1997, 118 S.Ct. 502, 522 U.S. 118, 139 L.Ed.2d 471. Civil Rights 1304

In § 1983 action, both compensatory and punitive damages are available upon proper proof; principles governing propriety of such damages are derived from common law. Cunningham v. City of Overland, State of Mo., C.A.8 (Mo.) 1986, 804 F.2d 1066. Civil Rights 1462; Civil Rights 1465(1)

Damages are available under this section for actions found to have been violative of constitutional rights and to have caused compensable injury. Endicott v. Huddleston, C.A.7 (Ill.) 1980, 644 F.2d 1208. Civil Rights 1479

General principles of damages apply to civil rights actions. Zarcone v. Perry, C.A.2 (N.Y.) 1978, 572 F.2d 52. Civil Rights 1462

Damages are recoverable under this section both for misfeasance and for nonfeasance. Byrd v. Brishke, C.A.7 (Ill.) 1972, 466 F.2d 6. Civil Rights 1039

The provision in this section that the offending person "shall be liable to the party injured in an action at law" connotes damages of some kind. Basista v. Weir, C.A.3 (Pa.) 1965, 340 F.2d 74. Civil Rights 1460

High school student could not recover monetary damages for any violation of Pennsylvania Constitution's prohibition against unreasonable searches and seizures, inasmuch as student might have remedy under §§ 1983. Klump v. Nazareth Area School Dist., E.D.Pa.2006, 425 F.Supp.2d 622. Civil Rights 1704

Outdoor advertising company was not entitled to damages in civil rights case, even if court concluded that sign ordinance was unconstitutionally applied to company, since company could not show any injury caused by any allegedly unconstitutional restriction in sign ordinance; company's permit applications would have been rejected anyway for failing to meet other constitutional requirements contained in sign ordinance, including height and area limitations as well as prohibition against animated signs. Granite State Outdoor Advertising, Inc. v. City of St. Pete Beach, FL, M.D.Fla.2004, 322 F.Supp.2d 1335. Civil Rights 1462

As long as payment is not required from state coffers, a plaintiff can state a claim for money damages under § 1983 against a state officer in his individual capacity. Mercer v. Brunt, D.Conn.2002, 272 F.Supp.2d 181. Federal Courts 269

Section 1983 allows for award of consequential damages which trier of fact may reasonably find based on the evidence. Schaefer v. Tannian, E.D.Mich.1995, 895 F.Supp. 175. Civil Rights 1462

Damages are available under this section making violation of an individual's civil rights under color of state law actionable for actions found to have been violative of constitutional rights, which such actions are proved to have caused compensable injury. Pizzolato v. Perez, E.D.La.1981, 524 F.Supp. 914. Civil Rights 1462

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42 U.S.C.A. § 1983

5442. Purpose, damages generally

Basic purpose of § 1983 damages award should be to compensate persons for injuries caused by deprivation of constitutional rights. Farrar v. Hobby, U.S.Tex.1992, 113 S.Ct. 566, 506 U.S. 103, 121 L.Ed.2d 494. Civil Rights 1459

Basic purpose of damages award under this section should be to compensate person for injuries caused by the deprivation of constitutional rights, and thus such awards should be governed by the principle of compensation. Carey v. Piphus, U.S.Ill.1978, 98 S.Ct. 1042, 435 U.S. 247, 55 L.Ed.2d 252. Civil Rights 1462

Focus of any award of damages under § 1983 is to compensate for actual injuries caused by particular constitutional deprivation; amount of damages to be awarded should be grounded in determination of plaintiff's actual losses. Gilmere v. City of Atlanta, Ga., C.A.11 (Ga.) 1989, 864 F.2d 734, rehearing denied 871 F.2d 122, certiorari denied 110 S.Ct. 70, 493 U.S. 817, 107 L.Ed.2d 37. Civil Rights 1464

5443. Statutory exceptions, damages generally

Local talk show producer's § 1983 action against city public access television committee and city council, challenging decision to ban him from public access channel based on content of his show, arose from "regulation of cable service" within meaning of provision of Cable Communications Policy Act limiting remedies in actions against franchising authority or other governmental entity to injunctive and declaratory relief, and therefore producer could not recover monetary damages or attorney fees. Coplin v. Fairfield Public Access Television Committee, C.A.8 (Iowa) 1997, 111 F.3d 1395. Civil Rights 1460; Civil Rights 1479

5444. Prerequisites to award, damages generally

Allegations of personal involvement by any defendant is a prerequisite to an award of damages against that defendant under § 1983. Marshall v. Switzer, N.D.N.Y.1995, 900 F.Supp. 604. Civil Rights 1335

Personal involvement of defendants in alleged constitutional deprivations is a prerequisite to award of damages under § 1983, although direct participation in violation need not be established if it is shown that defendant had actual or constructive notice of unconstitutional practices. Winston v. Coughlin, W.D.N.Y.1992, 789 F.Supp. 118. Civil Rights 1336

5445. Waiver, damages generally

High school students bringing § 1983 action seeking damages arising out of alleged violation of establishment clause caused by student prayer at graduation ceremonies waived damages claims on appeal where their briefs offered no connection between damages and student prayer, offered no indication as to any of circumstances surrounding graduation prayer, failed to even allege that student prayer was delivered during graduation ceremony at high school, and omitted to enumerate specific relief sought. Adler v. Duval County School Bd., C.A.11 (Fla.) 1997, 112 F.3d 1475, rehearing and suggestion for rehearing en banc denied 120 F.3d 276. Federal Courts 714

5446. Compensatory damages, damages generally

Plaintiff, who prevailed on his Fourth Amendment claim for unlawful seizure and his state-law claim for false imprisonment, was entitled to compensatory, not merely nominal, damages for his loss of liberty for the time spent in postsearch confinement without his consent; plaintiff's involuntary detention in the hospital for some period of time was a foreseeable consequence of officer's sending him there. Kerman v. City of New York, C.A.2 (N.Y.) 2004, 374 F.3d 93. Civil Rights 1462; False Imprisonment 33

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42 U.S.C.A. § 1983

Compensatory damages in § 1983 action may include not only out-of-pocket loss and other monetary harms, but also such injuries as impairment of reputation, personal humiliation and mental anguish and suffering. Coleman v. Rahija, C.A.8 (Iowa) 1997, 114 F.3d 778. Civil Rights 1462; Civil Rights 1463

Jewish operators of nursing home could maintain § 1983 action against surveyors from state Department of Public Health, claiming that surveyors' issuance of report claimed to contain "false, fabricated and meritless findings" of deficiencies violated their equal protection rights on the grounds that surveyors were anti-Semitic, even though operators arguably suffered no damage because Department withdrew findings, renewed license and recommended that federal authorities take no decertification action, and it was claimed that operators had not sustained damages of sufficient constitutional magnitude to sustain § 1983 suit; while claim that legal procedures had cured violation would bar suit based upon deprivation of due process rights, cure had affect only on quantum of damages in an equal protection claim. Sherwin Manor Nursing Center, Inc. v. McAuliffe, C.A.7 (Ill.) 1994, 37 F.3d 1216, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 172, 516 U.S. 862, 133 L.Ed.2d 113, on remand 1997 WL 367368. Civil Rights 1072

No compensatory damages may be awarded under § 1983 absent proof of actual injury. Jolivet v. Deland, C.A.10 (Utah) 1992, 966 F.2d 573. Civil Rights 1462

Compensatory damages may be awarded under certain circumstances in a case under this section although no out-of-pocket expenses are shown. Paton v. La Prade, C.A.3 (N.J.) 1975, 524 F.2d 862. Civil Rights 1462

Jury properly awarded compensatory damages in §§ 1983 action brought by construction site protestor against state police officers, alleging false arrest and malicious prosecution; court's purported error in instructing jury to enter separate awards against individual defendants was not so fundamental as to require new trial in light of defendants' failure to object, and award of $80,000 was not so high as to shock conscience in light of protestor's maltreatment after arrest. Zellner v. Summerlin, E.D.N.Y.2005, 399 F.Supp.2d 154. Federal Civil Procedure 2336

Compensatory damages for wrongful denial of parade permits sought by anti-abortion groups, in violation of First Amendment, could not be based upon estimates of lost freewill offering revenue, when offerings had not been solicited at earlier parades. Lippoldt v. Cole, D.Kan.2004, 311 F.Supp.2d 1263. Civil Rights 1462

Jury award of $125,000 for loss of income to agent for Special Investigations Bureau (S.I.B.) of Puerto Rico Department of Justice (D.O.J.), based on finding he was fired in retaliation for protected speech, had substantial basis in evidence and was not so grossly excessive as to mandate either new trial or remittitur; award was within $3,000 of amount agent would have received had his monthly salary remained constant over six-year period and did not reflect automatic salary increases and other benefits like vacation and sick leave or consider any future loss of income to which he would be entitled. Tejada-Batista v. Fuentes Agostini, D.Puerto Rico 2003, 258 F.Supp.2d 18, affirmed 424 F.3d 97. Civil Rights 1473

Although former professional boxer and his corporation could rely upon the Fourteenth Amendment, through § 1983, to establish federal question jurisdiction, allowing amendment of complaint against Indian tribe, its casino, tribal officials, and off-reservation entity to add due process and equal protection claims would be futile; Fourteenth Amendment by its terms did not apply to Indian tribe, and there was no allegation that off-reservation entity was state actor. Frazier v. Turning Stone Casino, N.D.N.Y.2003, 254 F.Supp.2d 295, reconsideration denied 2005 WL 2033483. Federal Civil Procedure 851

Compensatory damage awards of $75,000 and $115,800 in favor of inmates in § 1983 action arising from beating by guards were not excessive; guards took prisoners to cells and beat them with fists and nightsticks while inmates were wearing handcuffs, inmates required medical attention including medication for one inmate's injury to his mental health, and inmates were in fear of reprisals for 168 days they remained at prison. Grimm v. Lane, S.D.Ohio 1995, 895 F.Supp. 907. Civil Rights 1464

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42 U.S.C.A. § 1983

In order for public school employee to recover compensatory damages under § 1983 on her due process claim, in which she alleged procedural breach by school board in assigning another employee to alternative post created at time that plaintiff employee's position was abolished, employee was required to show that decision not to give her alternative post was improper on substantive grounds, absent evidence that employee suffered damages specifically caused by procedural infirmity, and assuming procedural breach did occur. Fairbairn v. Board of Educ. of South Country Cent. School Dist., E.D.N.Y.1995, 876 F.Supp. 432. Civil Rights 1132

Jail inmate was not entitled to award of compensatory damages in amount greater than $50 for violation of his procedural due process rights occurring when he was not permitted to make statement to correctional officer prior to inmate's confinement in 24-hour keeplock where result would not have been any different if inmate had been given opportunity to talk to officer; in any event, there was no evidence of actual injury. McCann v. Phillips, S.D.N.Y.1994, 864 F.Supp. 330. Civil Rights 1464

Inmate was entitled to $500 in compensatory damages in his § 1983 alleging that staff member violated his Eighth Amendment rights by failing to use emergency beeper and intervene in assault by four other inmates; inmate demonstrated actual physical and emotional injury, but some of those injuries were caused by earlier assault which staff member did not see. Holloway v. Wittry, S.D.Iowa 1994, 842 F.Supp. 1193. Civil Rights 1464

In assessing damages for deprivation of right to procedural due process, court must determine whether civil rights plaintiff suffered any actual damages from deprivation. Rogers v. Kelly, E.D.Ark.1987, 674 F.Supp. 1372, affirmed 866 F.2d 997, rehearing denied. Civil Rights 1462

Having been deprived of her federally protected civil rights, plaintiff was entitled to damages for such constitutional violation; plaintiff was to be put in the same position, so far as money could do it, as she would have been in had there been no injury; that is, court was to compensate her for injury actually sustained. Krueger v. Miller, E.D.Tenn.1977, 489 F.Supp. 321, affirmed 617 F.2d 603. Civil Rights 1484

Prisoner, who established that prison officials violated his due process rights by removing money from his account without first providing him with notice and an opportunity to respond, was not entitled to compensatory damages since he did not show that he suffered any actual injury. Brown v. Brown, C.A.6 (Ohio) 2002, 46 Fed.Appx. 324, 2002 WL 31072072, Unreported. Civil Rights 1462

5447. General damages, damages generally

City fire fighter who was suspended in violation of his First Amendment right to make public statements expressing fire fighters' grievances over pay and working conditions could recover general damages even in absence of showing of actual damages. Walje v. City of Winchester, Ky., C.A.6 (Ky.) 1985, 773 F.2d 729. Civil Rights 1470

Where, although he was improperly denied tenure and reemployment by members of Utah State Board of Education and officials of junior college, associate professor at junior college found another position with state at comparable or better salary, professor was not entitled to award of general damages even though defendants' actions had infringed professor's civil rights. Smith v. Losee, C.A.10 (Utah) 1973, 485 F.2d 334, certiorari denied 94 S.Ct. 2604, 417 U.S. 908, 41 L.Ed.2d 212. Civil Rights 1470

5448. Nominal damages, damages generally--Generally

State prisoner is entitled to recover at least nominal damages under § 1983 if he proves that procedures in hearing depriving him of good-time credits were wrong and violated due process, without also proving that the result of depriving him of good-times credits was wrong as a substantive matter. Edwards v. Balisok, U.S.Wash.1997, 117

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S.Ct. 1584, 520 U.S. 641, 137 L.Ed.2d 906. Civil Rights 1461

City's denial of parade permits before district court ordered city to allow the parades did not entitle members of anti-abortion association to compensatory damages, and nominal damages of $1 were not clearly erroneous for violation of First Amendment; members were ultimately able to hold the parades as requested in their applications and merely speculated about the amount of damages based upon an alleged potential decrease in offerings received from the evening rallies. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Civil Rights 1462

When court finds constitutional violation in action seeking monetary relief under §§1983, court or jury must at least award nominal damages. People for Ethical Treatment of Animals, Inc. v. Gittens, C.A.D.C.2005, 396 F.3d 416, 364 U.S.App.D.C. 386, rehearing denied, on remand 2005 WL 3536193. Civil Rights 1461

Nominal damages award of one dollar was plain error in § 1983 action against city and police officer, alleging that officer used excessive force when he shot and killed suspect during attempted burglary; award could not be reconciled with jury's finding of excessive force and stipulation of some actual damages, and, although it was beyond question that if suspect would have been arrested, his personal and financial situation would suffer, there was evidence that suspect, who was twenty-five year old first-time offender, would probably have received probation and would not have lost his job. Westcott v. Crinklaw, C.A.8 (Neb.) 1998, 133 F.3d 658. Federal Courts 633

Award of nominal damages was warranted, in action for, among other things, § 1983 procedural due process violation, where jury expressly found that plaintiff's procedural due process rights were violated. Caban-Wheeler v. Elsea, C.A.11 (Ga.) 1996, 71 F.3d 837. Civil Rights 1461

Nominal compensatory damages award to black inmates whose equal protection rights were violated by general policy of segregating two-person cells was not clearly erroneous in absence of evidence that inmates were confined without privileges when vacancies existed in two-person cells occupied by white inmates. Sockwell v. Phelps, C.A.5 (La.) 1994, 20 F.3d 187. Civil Rights 1461

Nominal damages must be awarded in a § 1983 suit if plaintiff proves a violation of his constitutional rights. George v. City of Long Beach, C.A.9 (Cal.) 1992, 973 F.2d 706, certiorari denied 113 S.Ct. 1269, 507 U.S. 915, 122 L.Ed.2d 664. Civil Rights 1461

Abortion protester was entitled to nominal damages of $1.00, arising from city's violation of protester's right to free speech; in requiring protester to obtain permit before demonstrating outside abortion clinic, pursuant to unconstitutional ordinance, city denied protester his right to speak on matter of public interest. Trewhella v. City of Lake Geneva, Wis., E.D.Wis.2003, 249 F.Supp.2d 1057. Civil Rights 1461

State prison inmate who was denied access to court, in violation of his First and Fourteenth Amendment rights, would be awarded nominal compensatory damages of one dollar in §§ 1983 action; inmate was not entitled to compensatory damages equal to estimated amount of legal fees that would have been incurred had he proceeded with lawsuit he would have undertaken if provided with adequate legal advice, as he would have been entitled to free counsel, he suffered no physical injury, and he was precluded from recovering for mental or emotional injury by Prison Litigation Reform Act (PLRA). White v. Kautzky, N.D.Iowa 2005, 386 F.Supp.2d 1042, motion to amend denied 2006 WL 141854. Civil Rights 1462

Nominal damages of one dollar, and attorney fees, would be awarded to anti-abortion group and individuals, following denial of parade permits in violation of their First Amendment rights. Lippoldt v. Cole, D.Kan.2004, 311 F.Supp.2d 1263. Civil Rights 1461; Civil Rights 1482

Only nominal damages would be awarded to inmate for due process violation resulting from placement, without a

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hearing, of inmate, who was of alleged female gender but was anatomically situated as a male due to the presence of a penis, in segregated confinement for a period of 438 days, with concomitant severely limited privileges, solely because of the condition and status of ambiguous gender since inmate was unable to prove damages; even if inmate would have been able to participate in the housing decision meetings, she still would not have been housed with the general population, and therefore, court would not award damages upon the difference between her actual segregated confinement and the general population. DiMarco v. Wyoming Dept. of Corrections Div. of Prisons, Wyo. Women's Center, D.Wyo.2004, 300 F.Supp.2d 1183. Civil Rights 1461

Award of $37,000 in nominal damages in § 1983 action, representing $1 in damages for each class member, would be prohibitively substantial, and award of $1 to each class representative in their representative capacity would satisfy purpose of nominal damages. Cummings v. Connell, E.D.Cal.2003, 281 F.Supp.2d 1187, reversed and remanded 402 F.3d 936, amended 2005 WL 1154321, on remand 2006 WL 1716160. Civil Rights 1464

African-American employees of state human services department could proceed under § 1983 against department and its principal officials in their official capacities, seeking injunctive relief for alleged employment discrimination, even though damages claims were barred. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Civil Rights 1359; Civil Rights 1455

With respect to public employee's due process pretermination hearing claim, only nominal damages can be obtained under § 1983 for procedural breach if decision itself was proper, unless plaintiff suffered damages specifically caused by a procedural infirmity, as opposed to loss of her job. Fairbairn v. Board of Educ. of South Country Cent. School Dist., E.D.N.Y.1995, 876 F.Supp. 432. Civil Rights 1469

Motorist, who had been convicted of alcohol-related driving offense, was entitled to $1 in damages for county probation department's violation of establishment clause by requiring probationer to attend alcoholism recovery program, Alcoholics Anonymous (AA), meetings as condition of probation; alleged harm suffered from delay in getting driver's license back due to failure to attend enough AA meetings was unconvincing, given motorist's other contemporaneous alcohol-related driving offenses, and damage claim for freedom of conscience violation and waste of time were similarly unconvincing. Warner v. Orange County Dept. of Probation, S.D.N.Y.1994, 870 F.Supp. 69, remanded 115 F.3d 1068, on remand 968 F.Supp. 917. Civil Rights 1461

Nominal damages of $1 may be recovered for constitutional violation in § 1983 cases and will carry with them reasonable legal fees. Harrison v. Sobol, S.D.N.Y.1988, 705 F.Supp. 870. Civil Rights 1461; Civil Rights 1479

Citizens' constitutional rights are of such a value that nominal damages are presumed to flow from the deprivation of such rights. Bell v. Gayle, N.D.Tex.1974, 384 F.Supp. 1022. Civil Rights 1461

Proof of a wrong done in violation of this section is taken as sufficient proof of nominal damages. Berry v. Macon County Bd. of Ed., M.D.Ala.1971, 380 F.Supp. 1244. Civil Rights 1461

In action under this section, nominal damages have been proved once an invasion or deprivation of a right to which plaintiff was entitled has been shown. Magnett v. Pelletier, D.C.Mass.1973, 360 F.Supp. 902, remanded on other grounds 488 F.2d 33. Civil Rights 1461

Jury finding that police officer's sending patient to hospital had not caused the patient any damage did not preclude judgment for the arrestee in his § 1983 suit alleging claims of unlawful seizure and false imprisonment; § 1983 actions based on Fourth Amendment violations were actionable for nominal damages without proof of actual injury. Kerman v. City of New York, S.D.N.Y.2003, 2003 WL 328297, Unreported, reversed 374 F.3d 93. Civil Rights 1461

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42 U.S.C.A. § 1983

5449. ---- Actual injury, nominal damages, damages generally

Nominal, as opposed to compensatory, damages must be awarded whenever civil rights plaintiff establishes violation of his due process rights, but is unable to prove actual injury. Farrar v. Hobby, U.S.Tex.1992, 113 S.Ct. 566, 506 U.S. 103, 121 L.Ed.2d 494. Civil Rights 1461

Denial of procedural due process should be actionable for nominal damages without proof of actual injury. Carey v. Piphus, U.S.Ill.1978, 98 S.Ct. 1042, 435 U.S. 247, 55 L.Ed.2d 252. Civil Rights 1461

Non-students were not entitled to nominal damages in their § 1983 action against state university officials, even though district court granted them declaratory relief, ruling that paved area between university building and public sidewalk was public forum so university could not impose outright ban on non-students handing out leaflets in that area; since court also found that non-students were impeding visitors to building while handing out leaflets and that campus police were justified in asking them to move, it was not university's treatment of plaintiffs, but, rather, university's leafleting ban that court found to be unconstitutional. Brister v. Faulkner, C.A.5 (Tex.) 2000, 214 F.3d 675, certiorari denied 121 S.Ct. 442, 531 U.S. 985, 148 L.Ed.2d 447. Civil Rights 1461

Nominal damages are available in civil rights action if plaintiff can show he was denied due process, even without proof of actual injury. Bradley v. Coughlin, C.A.2 (N.Y.) 1982, 671 F.2d 686. Civil Rights 1461

Nominal damages of $100 for each corporate plaintiff, non-minority engineering firms, was appropriate for violation of their constitutional rights resulting from county's unconstitutional minority and women business enterprise (MWBE) programs, which established "participation goals" for minority and women business enterprises in awarding county architectural and engineering (A & E) contracts where plaintiffs did not present sufficient evidence, lay or expert, to substantiate their lost profits or "lost opportunity cost" theories. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla., S.D.Fla.2004, 333 F.Supp.2d 1305. Civil Rights 1461; Civil Rights 1464

Class of prison's general population inmates and class of prison's segregation and orientation inmates were each entitled to award of $1 in nominal damages, rather than actual or compensatory damages, for prison officials' complete and systematic denial of their constitutional right of access to courts, where there was no evidence that any inmates had missed an appeal deadline or lost their case because of their inability to get into or have adequate assistance in law library, and there was no evidence that inmates suffered emotional distress as result of violation of their right to court access. Klinger v. Nebraska Dept. of Correctional Services, D.Neb.1995, 902 F.Supp. 1036, reversed 107 F.3d 609. Civil Rights 1461

Where there is no proof of actual injury to plaintiff who establishes deprivation of his civil rights, recovery is limited to nominal damages not to exceed one dollar. Pierce v. Stinson, E.D.Tenn.1979, 493 F.Supp. 609. Civil Rights 1461

Under this section governing deprivation of rights, court may award nominal damages not to exceed one dollar without proof of actual injury for denial of procedural due process. Rheuark v. Shaw, D.C.Tex.1979, 477 F.Supp. 897, affirmed in part, reversed in part on other grounds 628 F.2d 297, certiorari denied 101 S.Ct. 1392, 450 U.S. 931, 67 L.Ed.2d 365. Civil Rights 1461

5450. Back pay, damages generally--Generally

Where the constitutional violation complained of by a public employee is the denial of procedural due process, not the discharge from public employment, damages must be limited to those caused by the due process violation, and may include a full award of back pay only when there is a finding that the discharge would not have occurred if the employee's procedural due process rights had been observed. Brewer v. Chauvin, C.A.8 (Ark.) 1991, 938 F.2d 860

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42 U.S.C.A. § 1983

. Civil Rights 1471

Although, ordinarily, back pay is not awarded in civil rights actions except as part of an equitable decree of reinstatement, an award of back pay alone is within the sound discretion of the district court. Burt v. Board of Trustees of Edgefield County School Dist., C.A.4 (S.C.) 1975, 521 F.2d 1201. Civil Rights 1471

Once it is determined that plaintiff or complaining class has sustained economic loss from discriminatory employment practice, back pay should normally be awarded unless special circumstances are present, and this principle is fully applicable not only to employees who have been denied promotion and equal opportunity after hire but also to applicants who have not been hired, solely because of their race. Mims v. Wilson, C.A.5 (Fla.) 1975, 514 F.2d 106. Civil Rights 1571

Eleventh Amendment barred state employees' claims against state for back pay based on their politically motivated terminations, where individual defendants were protected from money damages under §§ 1983 by qualified immunity. Sueiro Vazquez v. Torregrosa de la Rosa, D.Puerto Rico 2006, 414 F.Supp.2d 124. Federal Courts 265

Issue of back pay in a §§ 1983 case should be submitted to the jury. Gansert v. Colorado, D.Colo.2004, 348 F.Supp.2d 1215. Civil Rights 1430

African-American former community college instructor could not receive back pay and lost benefits from president of community college in his official capacity after community college made racially discriminatory decision not to renew instructor's contract. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Civil Rights 1471

5451. ---- Good faith, back pay, damages generally

Award of back pay is an element of equitable relief, and such relief is not precluded by a good-faith defense; schoolteacher whose contract had not been renewed because of exercise of U.S.C.A.Const. Amend. 1 rights was entitled to recover back pay from school district and school board members in their official capacities, notwithstanding their claim of good faith. Bertot v. School Dist. No. 1, Albany County, Wyo., C.A.10 (Wyo.) 1979, 613 F.2d 245. Civil Rights 1471

In action brought by two public school teachers challenging allegedly unconstitutional maternity leave policies enforced by school boards, monetary relief in the form of back pay could not be awarded from school boards' treasury by suing individual school board members in their official capacities since members acted in good faith without knowledge that acts they took would violate constitutional rights and members did not act with malicious intent. Paxman v. Campbell, C.A.4 (Va.) 1980, 612 F.2d 848, certiorari denied 101 S.Ct. 951, 449 U.S. 1129, 67 L.Ed.2d 117. Civil Rights 1471

5452. ---- Period for fixing award, back pay, damages generally

Claimant who brought successful § 1983 action claiming wrongful termination would be entitled to recover back pay for those quarterly periods during which income she would have earned on job from which she was terminated exceeded income earned in alternate employment, even though her earnings from alternate job were higher than earnings would have been had she remained on original job, when measured from termination until she was reoffered original job. Kendrick v. Jefferson County Bd. of Educ., C.A.11 (Ala.) 1994, 13 F.3d 1510. Civil Rights 1471

High school history teacher whose constitutional rights were violated when her contract was not renewed because of activity protected by U.S.C.A.Const. Amend. 1 was entitled to back pay from the time of her termination until

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effective reinstatement, subject to principles of mitigation. Kingsville Independent School Dist. v. Cooper, C.A.5 (Tex.) 1980, 611 F.2d 1109. Civil Rights 1471

Remedy for plaintiff, who was improperly demoted by junior college from his position as registrar to the position of teacher for the 1977-78 academic year, included back pay for the period between his demotion and his postdeprivation hearing, which was held prior to the expiration of the 1977-78 academic year; but the award of back pay could not extend beyond the time of the postdeprivation hearing, since plaintiff had no reasonable expectation of continued employment as registrar beyond the 1977-78 academic year, and defendants cured the deprivation of procedural due process by holding March 1978 hearing before the next consecutive year in which plaintiff could have been employed as registrar. Johnson v. San Jacinto Jr. College, S.D.Tex.1980, 498 F.Supp. 555. Colleges And Universities 8.1(7)

5453. ---- Reductions, back pay, damages generally

Public employee's interim earnings following dismissal had to be set off against any back pay award to employee in § 1983 action. Figueroa-Rodriguez v. Aquino, C.A.1 (Puerto Rico) 1988, 863 F.2d 1037. Civil Rights 1471

Front- and back-pay award in terminated school district employee's §§1983 First Amendment retaliation action against district was not offsetable by employee's retirement benefits received from state teacher's retirement fund, where there was evidence of employee's contributions to fund, but no evidence of any contributions by district toward state's share of contributions toward fund. Salge v. Edna Independent School Dist., S.D.Tex.2004, 320 F.Supp.2d 542. Civil Rights 1471

Jury awards in § 1983 action for past lost wages and lost pensions would be remitted by amount awards exceeded expert testimony, absent evidence to support larger awards. Denton v. Morgan, N.D.Tex.1996, 940 F.Supp. 1015, affirmed 136 F.3d 1038, rehearing denied. Civil Rights 1473

Back pay relief to which plaintiff, who was improperly demoted by junior college from registrar to teacher, was entitled for denial of procedural due process consisted of lost wages including the value of any employment benefits lost as a result of the unlawful demotion, less any actual subsequent earnings of plaintiff in regular daytime employment during that period. Johnson v. San Jacinto Jr. College, S.D.Tex.1980, 498 F.Supp. 555. Colleges And Universities 8.1(7)

5454. Front pay, damages generally

District court did not abuse its discretion in awarding only two years of front pay, under § 1983, to state employee who was terminated and replaced by individual who contributed to governor's campaign; court heard extensive testimony of each side's expert witness, and balanced employee's positive work history and impressive credentials against potentially negative impact employee's discharge and subsequent bankruptcy might have on potential employers. Mason v. Oklahoma Turnpike Authority, C.A.10 (Okla.) 1997, 115 F.3d 1442, appeal decided 124 F.3d 217, on remand 1998 WL 2018163. Civil Rights 1471

Jury's award of $500,000 in front pay to public housing employee, who was discharged from his position of director of internal audit department in violation of First Amendment, was supported by testimony of employee's actuarial expert as to employee's lost future income, using several sophisticated calculations that produced various figures, the lowest of which was $30,000 more than jury's verdict, and by lack of evidence controverting expert. Feldman v. Philadelphia Housing Authority, C.A.3 (Pa.) 1994, 43 F.3d 823. Civil Rights 1473

If reinstatement is not feasible remedy for violation of public employee's free speech rights, court may grant front pay as alternative equitable remedy. Grantham v. Trickey, C.A.8 (Mo.) 1994, 21 F.3d 289. Civil Rights 1471

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42 U.S.C.A. § 1983

Decision not to award front pay to teachers who had succeeded on § 1983 claim that nonrenewal of their contracts was motivated by activities protected by First Amendment was not an abuse of discretion; teachers were all probationary teachers with one-year contracts and jury award compensated them for three school years immediately following nonrenewal. Standley v. Chilhowee R-IV School Dist., C.A.8 (Mo.) 1993, 5 F.3d 319, rehearing and suggestion for rehearing en banc denied. Civil Rights 1471

In a §§ 1983 case, an award of "front pay" is a matter for the court to decide. Gansert v. Colorado, D.Colo.2004, 348 F.Supp.2d 1215. Civil Rights 1430

Former employee who prevailed in § 1983 action against city and city police department arising out of her discharge was entitled to reinstatement rather than front pay, where defendants had stipulated at trial that if employee prevailed she would be offered reinstatement, employee did not request front pay before or during trial, and her trial evidence regarded back pay issues only. Murphy v. City of Elko, D.Nev.1997, 976 F.Supp. 1359. Civil Rights 1448; Civil Rights 1471

Professor who brought § 1983 action against his former employer was not entitled to recover damages for front and back pay or for research grants because professor obtained new employment at higher salary without any interim period of unemployment and any monetary loss from loss of research grants was loss suffered by university, not by professor. San Filippo v. Bongiovanni, D.N.J.1990, 743 F.Supp. 327, reversed 961 F.2d 1125, certiorari denied 113 S.Ct. 305, 506 U.S. 908, 121 L.Ed.2d 228. Civil Rights 1471

Where jury in civil rights action had already considered plaintiff's claims for money damages, court could not award additional damages as "equitable" relief under the rubric of "front pay." Swanson v. Martwick, N.D.Ill.1989, 726 F.Supp. 210. Civil Rights 1471

5455. Compensable items, damages generally--Generally

City's conduct in discouraging church participation in anti-abortion rallies was irrelevant to determining whether parade organizer and anti-abortion association director demonstrated compensable injury from denial of parade permits in violation of First Amendment; organizer and director did not show that city's other conduct was a constitutional violation. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Civil Rights 1462

Lessee/proprietor who suffered procedural due process violation when city evicted him from leased premises with inadequate, same-day notice was not entitled in his §§1983 action against city to recover money damages as compensation for lack of predeprivation hearing, absent evidence of loss or practical harm that went beyond 30 days' lost profits and value of lost or damaged property, which damages award covered; there was no showing of harm or loss flowing directly from failure to provide hearing. Kassim v. City of Schenectady, C.A.2 (N.Y.) 2005, 415 F.3d 246. Civil Rights 1462

Compensatory damages in action under § 1983 may include not only out-of-pocket loss and other monetary harms, but also such injuries as impairment of reputation, personal humiliation, and mental anguish and suffering. Acevedo-Garcia v. Monroig, C.A.1 (Puerto Rico) 2003, 351 F.3d 547. Civil Rights 1462; Civil Rights 1463

Compensatory damages awarded § 1983 civil rights claims are governed by common-law tort principles. Sockwell v. Phelps, C.A.5 (La.) 1994, 20 F.3d 187. Civil Rights 1462

Appropriate compensatory damages in civil rights death action would include medical and burial expenses, pain and suffering before death, loss of earnings based upon probable duration of victim's life had the injury not occurred, victim's loss of consortium, and other damages recognized in common-law tort actions. Berry v. City of Muskogee, Okl., C.A.10 (Okla.) 1990, 900 F.2d 1489. Civil Rights 1462

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Organization that was improperly denied parade permit based on content of anticipated message was not entitled in § 1983 action to compensation for the fact of the constitutional violation itself. Nationalist Movement v. City of Boston, D.Mass.1998, 12 F.Supp.2d 182. Civil Rights 1462

5456. ---- Intrinsic value, compensable items, damages generally

Abstract value of the constitutional right may not form the basis for section 1983 damages; hence, damages could not be awarded school teacher solely for abstract value of his free speech and due process rights violated in his suspension; disapproving *Herrera v. Valentine*, 653 F.2d 1220 (CA8); *Corriz v. Naranjo*, 667 F.2d 892 (CA10); *Bell v. Little Axe Independent School Dist. No. 70*, 766 F.2d 1391 (CA10); *Konczak v. Tyrrell*, 603 F.2d 13 (CA7) . Memphis Community School Dist. v. Stachura, U.S.Mich.1986, 106 S.Ct. 2537, 477 U.S. 299, 91 L.Ed.2d 249, on remand 803 F.2d 721. Civil Rights 1462; Civil Rights 1470

Jury could not compensate arrestee, asserting civil rights claims against officers, for intrinsic value of deprivation of his right not to be subjected to excessive force. Hay v. City of Irving, Tex., C.A.5 (Tex.) 1990, 893 F.2d 796. Civil Rights 1462

Damages based on abstract value or importance of constitutional rights were not permissible element of compensatory damages in section 1983 case. Bailey v. Andrews, C.A.7 (Ind.) 1987, 811 F.2d 366. Civil Rights 1462

5457. ---- Aggravation of injuries, compensable items, damages generally

Motorist who was injured in automobile accident and then arrested by state trooper and taken to jail where deputy sheriff delayed taking him to hospital even though he was suffering from fractured ulna could recover damages for aggravation of his preexisting injuries or for pain and suffering proximately caused by unreasonable delay in taking him to the hospital but could not recover from sheriff, deputy sheriff, and state trooper for injuries received in the accident itself. Shannon v. Lester, C.A.6 (Tenn.) 1975, 519 F.2d 76. Civil Rights 1462

5458. ---- Attorney fees, compensable items, damages generally

Teacher was entitled to attorney fees on appeal from favorable judgment in §§ 1983 suit against school district; teacher succeeded on appeal in obtaining a broader injunction and successfully defended the cross-appeal in which district challenged the district court's award of an injunction and damages, as well as attorney fees. Warnock v. Archer, C.A.8 (Ark.) 2005, 397 F.3d 1024. Civil Rights 1492

Court of Appeals would defer to Utah district court's decision that hourly rate for attorney fees in § 1983 action should be $105, notwithstanding plaintiff's argument that court failed to take into account increases in attorney fee rates during five-year span of litigation, where plaintiff failed to provide any record evidence on issue of attorney fees. Youren v. Tintic School Dist., C.A.10 (Utah) 2003, 343 F.3d 1296. Federal Courts 714

Plaintiff who claimed that violation of her constitutional rights occurred when police searched her home for a missing child was not entitled to award of attorney fees, even though she was technically a "prevailing party" in her § 1983 action, where jury returned verdict for no compensatory damages and plaintiff obtained one dollar in nominal damages only after moving for them. Caruso v. Forslund, C.A.2 (Conn.) 1995, 47 F.3d 27. Civil Rights 1482

Suit against District of Columbia school district and its officials, alleging violations of Individuals with Disabilities Education Act (IDEA) and resulting in injunctive relief in form of "stay-put" protection and reimbursement for expenses associated with maintaining their educational placements at school, was properly brought and decided under IDEA rather than §§ 1983, for purposes of determining amount of attorney fees to be awarded; court had

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ability to fashion appropriate equitable remedies under IDEA, including reimbursement. Spilsbury v. District of Columbia, D.D.C.2005, 377 F.Supp.2d 1. Schools 155.5(5)

Attorney fee award of 33% of settlement fund of $12 million was reasonable, in §§ 1983 action against District of Columbia Department of Corrections challenging Department's strip-search policy and alleged over-detentions; counsel had engaged in protracted efforts over four years to obtain outstanding settlement in both monetary and injunctive terms, case was complex and involved novel issues, case carried serious risk of lack of success, and settlement met with high level of class satisfaction. Bynum v. District of Columbia, D.D.C.2006, 412 F.Supp.2d 73 . Attorney And Client 155

Cable television provider that prevailed in its action against city under §§ 1983 to enforce provision of the Communications Act setting maximum franchise fee that city could collect was not entitled to award of attorney fees under the civil rights attorney fee statute. Time Warner Cable-Rochester v. City of Rochester, W.D.N.Y.2004, 342 F.Supp.2d 143. Civil Rights 1482

For prevailing plaintiff in § 1983 action to receive attorney's fee award, he must not only show that he is entitled to award, but must also document appropriate hours expended and hourly rates. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1482; Civil Rights 1490

A prevailing plaintiff under § 1983 is entitled to attorney fees . Jackson v. Austin, D.Kan.2003, 267 F.Supp.2d 1059. Civil Rights 1482

Secretary of Puerto Rico Department of Justice (DOJ) was not entitled to attorney fee award as prevailing defendant based on his ultimate dismissal from § 1983 action, alleging First Amendment retaliation, by discharged agent for Special Investigations Bureau (SIB); complaint against Secretary, who had signed agent's termination letter, was not completely meritless and unfounded at time of filing, claim survived motion to dismiss filed by Secretary and subsequent motions for summary judgment by all defendants, and not until presentation of evidence at trial was court left with no option other than to dismiss case against Secretary due to former agent's failure to establish that Secretary had any knowledge of protected expressions. Tejada-Batista v. Fuentes-Agostini, D.Puerto Rico 2003, 267 F.Supp.2d 156. Civil Rights 1484

Award of attorney fees to prevailing codefendant in § 1983 case would be inequitable, even assuming arguendo that claim against that defendant was frivolous; plaintiff's financial condition was weak and award of damages against other defendants was conservative in light of longevity of case and time elapsed between filing of complaint and final adjudication, which delay was caused in part by that codefendant's repeated attempts to avoid trial and filing of summary judgment motions even after court had stated it would not entertain any more such motions. Tejada-Batista v. Fuentes-Agostini, D.Puerto Rico 2003, 267 F.Supp.2d 156. Civil Rights 1484

Arrestee's spouse was prevailing party in §§ 1983 action against state police corporal brought on behalf of herself, daughter, and arrestee's estate, so as to be entitled to attorney fees and costs following court's award of nominal damages on multiple claims based on jury's determination that corporal had entered arrestee's home unlawfully but had not used excessive force; arrestee's spouse prevailed even though only a partial victory was won, and determination that spouse and her family acted rightly in defending Fourth and Fourteenth Amendment rights was significant when coupled with legal significance of unreasonable search and seizure and public purpose of deterring such behavior. Buss v. Quigg, C.A.3 (Pa.) 2004, 91 Fed.Appx. 759, 2004 WL 234962, Unreported. Civil Rights 1476; Civil Rights 1482

Given that district court had already determined that insurer, as prevailing party in § 1983 action by policy holders, challenging constitutionality of insurer's conversion from mutual life insurance company to stock insurance company, was entitled to award of attorney fees and expense, magistrate court, in determining amount of fee award, was without authority to revisit issues, such as timeliness of insurer's fee application, that went to policy

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holders' liability and which policy holders already raised or could have raised before district court. Tancredi v. Metropolitan Life Ins. Co., S.D.N.Y.2003, 2003 WL 22299203, Unreported, report and recommendation adopted 2003 WL 22493855. United States Magistrates 20

Following appellate court's determination that district court did not have jurisdiction to conduct second trial of protesters' claim for damages against city and police officer under § 1983 for their arrest for violating residential antipicketing ordinance, and reinstatement of jury verdict of first trial in protesters' favor, protesters were entitled to attorney fees and costs, even though trial court had vacated award against officer following first trial; protesters were prevailing party in first jury trial and were entitled to attorney fees and costs under law of case, and all proceedings after first trial were null and void. Copper v. City of Fargo, ND, C.A.8 (N.D.) 2003, 68 Fed.Appx. 752, 2003 WL 21448423, Unreported. Civil Rights 1482; Courts 99(6)

5459. ---- Commuting expenses, compensable items, damages generally

Discriminatorily discharged school teachers, a husband and wife, were not entitled to consequential damages for living and commuting expenses incurred as the result of their work outside the vicinity of their permanent home. Jackson v. Wheatley School Dist. No. 28 of St. Francis County, Arkansas, C.A.8 (Ark.) 1973, 489 F.2d 608. Schools 147.54

Where teachers were unlawfully terminated from their employment for discriminatory reasons, and as result were required to find other employment and to incur commuting expenses which would not have been incurred had it not been for wrongful termination, teachers were entitled to recover such increased commuting expenses as damages from school district. Harkless v. Sweeny Independent School Dist., S.D.Tex.1978, 466 F.Supp. 457, affirmed and remanded on other grounds 608 F.2d 594. Schools 144(3)

5460. ---- Costs, compensable items, damages generally

Plaintiff proceeding in forma pauperis is not protected from taxation of costs to which prevailing defendant is entitled. Warren v. Guelker, C.A.9 (Wash.) 1994, 29 F.3d 1386. Federal Civil Procedure 2734

Awarding costs against state prisoner who presented unsuccessful civil rights claim was not abuse of discretion, even if prisoner was indigent; award of costs served valuable purpose of discouraging unmeritorious claims and treated unsuccessful litigants alike rather than having improper chilling effect on prisoners' civil rights litigation. McGill v. Faulkner, C.A.7 (Ind.) 1994, 18 F.3d 456, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 233, 513 U.S. 889, 130 L.Ed.2d 157. Federal Civil Procedure 2731

Pro se litigant was entitled to recover actual costs reasonably incurred in prosecuting § 1983 civil rights action to extent that attorney could have received costs under § 1988 attorney's fees award, including: reasonable costs of paralegal and secretarial assistance, reasonable costs actually incurred for copying pleadings which otherwise would have been reimbursed through overhead implicit an attorney's hourly fee, statutory nonexpert witness fee, and any photo blow-up expenses which were reasonably necessary to assist the court. Burt v. Hennessey, C.A.9 (Cal.) 1991, 929 F.2d 457. Civil Rights 1476

For illegal exaction of tuition fees by universities, defendant state officials were liable along with university for plaintiffs' costs in bringing that litigation, and U.S.C.A.Const. Amend. 11 did not bar award of costs against such state officials. Samuel v. University of Pittsburgh, C.A.3 (Pa.) 1976, 538 F.2d 991. Federal Civil Procedure 2731; Federal Courts 268.1

College teacher whose contract was breached because of his testimony at obscenity trial and resulting publicity, although other pretexts were adopted, and who brought civil rights action could recover costs, on account of unreasonable and obdurate obstinacy throughout proceedings which culminated in injunction requiring

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reinstatement pending appeal, but was not entitled to costs as to subsequent proceedings which were no more than run of mill litigation in which defendants were not obstinate in defending his moot claim or claim for subsequent year which was added by amendment. Rainey v. Jackson State College, C.A.5 (Miss.) 1973, 481 F.2d 347. Civil Rights 1476

Defendants in dismissed action by former corrections officer, which had alleged that Department of Correction's sick leave policy violated the Equal Protection Clause as applied to him and others slated for permanent disability, were not entitled to bill of costs; action entailed substantial legal issues raising fair ground for litigation, officer had prosecuted his claims diligently and in good faith, imposing costs would unduly discourage effective enforcement of statutory and constitutional rights, and, because officer had refiled his action in state court, much of the costs for which defendants sought reimbursement would have been incurred in any event. Torres v. City of New York, S.D.N.Y.2003, 262 F.Supp.2d 317. Civil Rights 1476; Civil Rights 1484

Risk of prohibitive arbitration costs was too speculative to require invalidation of police chief's arbitration agreement with town which required him to pay arbitration-related expenses arising out of his Title VII and § 1983 actions against town, where police chief only provided anticipated arbitration costs, his financial situation would be factored into assessment of costs under hardship provision, and police chief provided no evidence of comparative expense of litigation. Boyd v. Town of Hayneville, AL, M.D.Ala.2001, 144 F.Supp.2d 1272. Arbitration 6.2

Inmate who filed successful civil rights action to obtain life-saving coronary surgery was not entitled to have federal government pay for discovery and contacting of medical advisors and expert witnesses where cause of action did not arise out of federal confinement, nor did it arise against federal officials. Catala-Fonfrias v. Izquierdo-Mora, D.Puerto Rico 1990, 741 F.Supp. 30, affirmed 971 F.2d 744. United States 147(11.1)

A district court has discretion to assess costs against losing party in an action under this section prohibiting the deprivation of civil rights by state action even when that party is a prisoner proceeding pro se who received in forma pauperis status pursuant to section 1915 of Title 28; section 1915 of Title 28 does not waive payment of necessary fees and costs when the action is filed, but only postpones decision of whether to assess those fees and costs until a final determination of the case. Partee v. Lane, N.D.Ill.1981, 528 F.Supp. 1254. Civil Rights 1476

Expenses that prevailing party incurred in § 1983 action in printing documents prepared for appeal were not taxable as costs by District Court, even though party was successful on appeal; those costs should have been taxed to opponent by Court of Appeals. Kraebel v. New York City Dept. of Housing Preservation and Development, S.D.N.Y.2003, 2003 WL 1846332, Unreported. Civil Rights 1492

5461. ---- Embarrassment and humiliation, compensable items, damages generally

Compensatory damages awarded by jury to terminated career employees in Puerto Rico municipal sanitation department, for mayor's violation of their First Amendment political affiliation rights, were rationally related to employees' economic loss as well as to their impairment of reputation, their mental anguish, and their suffering, which were standard components of compensatory damages in §§ 1983 action, where many employees were without their jobs and associated benefits for substantial period of time and employees testified that they were humiliated and stunned by loss of their "career" jobs. Borges Colon v. Roman-Abreu, C.A.1 (Puerto Rico) 2006, 438 F.3d 1. Civil Rights 1472

Property owners subjected to unlawful search in violation of their civil rights were entitled to damages for humiliation and personal indignity visited on each of them as result both of wrongful application for and improper execution of search warrant. Baskin v. Parker, C.A.5 (La.) 1979, 602 F.2d 1205. Civil Rights 1463

Arrestee who brought successful § 1983 action against county, sheriff and jail administrator, stemming from his

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excessive detention prior to initial court appearance, established that he suffered personal and pecuniary injuries from deprivation of constitutional rights, and thus would be properly entitled to compensatory damages; arrestee's reputation in community was compromised as result of his confinement, arrestee suffered mental anguish, emotional distress and physical pain while incarcerated, and arrestee was financially injured when his home and property were left unattended for 38-day period. Hayes v. Faulkner County, Ark., E.D.Ark.2003, 285 F.Supp.2d 1132, affirmed 388 F.3d 669. Civil Rights 1462; Civil Rights 1463

In civil rights cases, compensable injuries may include not only monetary losses such as out-of-pocket expenses, but also injuries such as personal humiliation and mental anguish. Dejesus v. Village of Pelham Manor, S.D.N.Y.2003, 282 F.Supp.2d 162. Civil Rights 1462; Civil Rights 1463

A plaintiff in an action under this section may recover damages for humiliation and mental distress. Sebastian v. Texas Dept. of Corrections, S.D.Tex.1983, 558 F.Supp. 507. Civil Rights 1463

5462. ---- Emotional and mental distress, compensable items, damages generally

Mental and emotional distress caused by denial of procedural due process itself is compensable under Civil Rights Act of 1871, but neither the likelihood of such injury nor the difficulty of proving it is so great as to justify awarding compensatory damages without proof that such injury actually was caused. Carey v. Piphus, U.S.Ill.1978, 98 S.Ct. 1042, 435 U.S. 247, 55 L.Ed.2d 252. Civil Rights 1032; Civil Rights 1463

Fact that pretrial detainee's emotional distress was caused both by his reaction to his own criminal conduct and resulting incarceration, and by sexual assault committed against him by jail official, did not mandate finding that $250,000 compensatory damage award for detainee was excessive in his § 1983 action against official; court noted that award included finding that part of detainee's emotional distress was caused by circumstances for which he could not recover, i.e., his own criminal conduct and resulting incarceration. Mathie v. Fries, C.A.2 (N.Y.) 1997, 121 F.3d 808. Civil Rights 1464

Medical assistance benefits claimants who brought § 1983 class action challenging Indiana's provision for administrative appeals of administrative law judge (ALJ) decisions, following state's appeal of ALJ decisions in claimants' favor, could not receive money damages to compensate for anxiety or delay created by administrative appeals. Egan v. Davis, C.A.7 (Ind.) 1997, 118 F.3d 1148. Civil Rights 1463

Evidence supported jury's determination that pretrial detainee did not suffer compensable harm, and was not entitled to compensatory damages, as result of corrections officer's conduct in intentionally provoking or inciting detainee into "rage attacks" by relentlessly taunting him, so that she could subsequently discipline him by imposing administrative lock down, where detainee put forward evidence of damages related to his mental and emotional suffering endured as result of officer's actions, but did not present any evidence of economic damages. O'Connor v. Huard, C.A.1 (Me.) 1997, 117 F.3d 12, certiorari denied 118 S.Ct. 691, 522 U.S. 1047, 139 L.Ed.2d 636. Civil Rights 1420

Mental and emotional distress, which include mental suffering and emotional anguish, constitute compensable injury under § 1983. Coleman v. Rahija, C.A.8 (Iowa) 1997, 114 F.3d 778. Civil Rights 1463

Arrestee presented sufficient evidence of harm to justify award of $8,500 in § 1983 suit against officer arising from illegal search and arrest; arrestee testified that search and arrest left him nervous, restless, and unable to sleep, arrestee testified that officer had handcuffed and roughly shoved arrestee, and doctor of chiropractic testified that he had treated arrestee 14 times for mild back injury. Chatman v. Slagle, C.A.6 (Ohio) 1997, 107 F.3d 380. Civil Rights 1464

Awards in civil rights action of compensatory damages of $40,800 each to husband and wife and $20,400 to son

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for mental distress and inconvenience and hardship suffered because home lacked running water, as a result of violation of substantive due process in denial of street excavation permit for connection of home to public water system, were not excessive in case in which home was without water for some three and one-half months as result of attempt of town's superintendent of highways to extort deed of part of the land in exchange for grant of permit. Walz v. Town of Smithtown, C.A.2 (N.Y.) 1995, 46 F.3d 162, certiorari denied 115 S.Ct. 2557, 515 U.S. 1131, 132 L.Ed.2d 810. Civil Rights 1464

Plaintiff in federal civil rights action cannot recover for emotional distress unless he or she presents evidence of actual injury, as there is no right to damages other than nominal one for violation of a constitutional right unless actual injury is proven. Bolden v. Southeastern Pennsylvania Transp. Authority, C.A.3 (Pa.) 1994, 21 F.3d 29. Civil Rights 1463

Evidence of medical attention was not required to support claim of emotional distress in § 1983 action; while evidence of medical attention supports claim for emotional distress, it is not required nor necessarily probative. Miner v. City of Glens Falls, C.A.2 (N.Y.) 1993, 999 F.2d 655. Civil Rights 1463; Civil Rights 1472

Awarding inmate $250 in compensatory damages for emotional distress he suffered when prison employee copied love letters inmate had written to another inmate's ex-wife and showed copies to other inmate was not abuse of discretion in inmate's civil rights action. Jolivet v. Deland, C.A.10 (Utah) 1992, 966 F.2d 573. Civil Rights 1464

Police officer who had been wrongfully dismissed for exercising his free speech rights was not entitled to recover emotional distress damages, absent showing he actually experienced demonstrable emotional distress; it did not suffice just to point to circumstances of constitutional violation which might support inference of such injury. Biggs v. Village of Dupo, C.A.7 (Ill.) 1990, 892 F.2d 1298. Damages 57.58

Assuming liability is found under this section for violation of an individual's constitutional rights through use of excessive force in completing an arrest, jury may assess compensatory damages based upon, inter alia, physical harm suffered, the emotional harm suffered even though no actual damages are proven, and violation of a plaintiff's substantive right to liberty; jury may award more than a nominal sum for deprivation of certain substantive constitutional rights including the due process and liberty interests in freedom from excessive force at hands of police officers, independent of any recovery for actual physical and emotional injury. Bauer v. Norris, C.A.8 (S.D.) 1983, 713 F.2d 408. Civil Rights 1461

In a civil rights suit brought under this section compensation for damage to reputation and emotional distress must not be denied simply because it is not easily quantified; conversely, such injuries cannot be presumed to flow from every deprivation of constitutional rights, but, instead, plaintiff must prove existence and magnitude of subjected injuries with competent evidence. Busche v. Burkee, C.A.7 (Wis.) 1981, 649 F.2d 509, certiorari denied 102 S.Ct. 396, 454 U.S. 897, 70 L.Ed.2d 212. Damages 57.1

Where protestor's right to free expression was violated by police officers who tore up her protest sign, protestor could recover not only for out-of-pocket expenses but also for emotional and mental distress. Glasson v. City of Louisville, C.A.6 (Ky.) 1975, 518 F.2d 899, certiorari denied 96 S.Ct. 280, 423 U.S. 930, 46 L.Ed.2d 258. Civil Rights 1463

An organization cannot recover for humiliation or other emotional distress in a §§1983 action. Mason v. Wolf, D.Colo.2005, 356 F.Supp.2d 1147. Civil Rights 1463

Compensatory damages award of $1 million was excessive, in patient's §§ 1983 action alleging involuntary admission and confinement to mental hospital, and thus would be subjected to remittitur in amount of $450,000, where patient was kept in hospital for four days, he was not informed of precise reasons for his confinement,

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patient had been previously diagnosed with bipolar disorder, but that fact was not advertised prior to events in question, information used to pick-up and confine patient was uncorroborated hearsay that he had made threat days earlier, and patient was not subjected to physical abuse. Ruhlmann v. Smith, N.D.N.Y.2004, 323 F.Supp.2d 356. Civil Rights 1464

Civilian maintenance worker employed in state police barracks could recover compensatory damages from state police officer in suit alleging §§ 1983 and Pennsylvania state law civil battery claims for officer's holding worker in headlock while bringing loaded service revolver up near worker's head, where the incident scared and humiliated worker and continued to reduce his quality of life both at home and at work in that his anxiety interfered with his sleeping and he was not as happy as he used to be at work. Schall v. Vazquez, E.D.Pa.2004, 322 F.Supp.2d 594. Assault And Battery 37; Civil Rights 1472

Although physical injury resulting from emotional distress buttresses the basis for damages for such a claim, shock, anxiety, fear and humiliation alone may be sufficient to establish compensatory damages in civil rights cases. Dejesus v. Village of Pelham Manor, S.D.N.Y.2003, 282 F.Supp.2d 162. Civil Rights 1463

Former inmate could not establish damages in constitutional challenge to prison drug treatment programs, since any claims for mental distress or emotional injury were barred by Prison Litigation Reform Act (PLRA), and his claim of delayed release was defeated by Wisconsin Parole Commission chairperson's unrebutted affidavit stating that inmate's failure to participate in and complete treatment programs did not deter chairperson from granting his parole. Kerr v. Puckett, E.D.Wis.1997, 967 F.Supp. 354, affirmed 138 F.3d 321. Civil Rights 1097; Civil Rights 1463

County employee was entitled to $4,500 in damages for mental distress in § 1983 action in which employee was terminated in violation of her procedural due process rights under Fourteenth Amendment but was not entitled to award for future medical expenses, where although psychologist testified that a year or two of therapy might be helpful, employee indicated that she would be too afraid to seek treatment. Smith v. Milwaukee County, E.D.Wis.1997, 954 F.Supp. 1314. Civil Rights 1470; Civil Rights 1472; Civil Rights 1473

Each member of the subclass consisting of women who were hired by city police department would be paid tort-like non-economic damages for personal injuries resulting from constitutional violations under § 1983, including impairment of reputation, embarrassment, and emotional distress, in the amount of $1,890.05 pursuant to consent judgment remedying discriminatory practices engaged in by department. Schaefer v. Tannian, E.D.Mich.1995, 902 F.Supp. 746. Federal Civil Procedure 2397.2

Damages which police officer could recover for retaliatory discrimination in violation of Title VII and § 1983 were $50 per month in pay for period of 18 months for additional pay police officer would have received if he had been granted his transfer to detective division and $15,000 for emotional distress and humiliation resulting from denial of transfer. McClam v. City of Norfolk Police Dept., E.D.Va.1995, 877 F.Supp. 277. Municipal Corporations 185(15)

Inmate was entitled to damages for severe emotional distress suffered during her confinement in segregation unit based upon her HIV positive status in violation of her due process rights; conditions of confinement of inmate in segregation unit with other inmates who were suicidal or demonstrated severe psychiatric problems constituted ample evidence of inmate's psychological trauma from confinement to support award of damages. Nolley v. County of Erie, W.D.N.Y.1992, 802 F.Supp. 898. Damages 57.34

Daughter who viewed police officer's use of excessive force in restraining her mother was entitled to award of $5,000 to compensate her for emotional distress and mental anguish proximately caused by deputy's conduct; daughter had recently been released from mental hospital, witnessing use of excessive force against mother aggravated her mental condition, and she subsequently attempted to commit suicide. Thomas v. Frederick,

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W.D.La.1991, 766 F.Supp. 540. Damages 140.5

Physician whose medical center was forcibly entered and unreasonably searched in violation of Fourth Amendment rights could not recover compensatory damages for emotional distress in federal civil rights suit under § 1983, under Ohio law on trespasses which governed recovery of damages, where earlier legal search of medical center pursuant to warrant had taken place, physician was subject of prosecution for medicaid fraud and obstruction of justice and suffered criminal trials and conviction on one count, as well as family problems, and physician did not produce evidence demonstrating what portion of complained of stress was directly attributable to the forcible entry and unreasonable search that violated his Fourth Amendment rights. Pembaur v. City of Cincinnati, S.D.Ohio 1990, 745 F.Supp. 446, affirmed 947 F.2d 945. Civil Rights 1463

Compensatory damages for therapy and emotional distress are appropriate in action under federal civil rights statute, within the court's discretion. Jones v. Rivers, D.D.C.1990, 732 F.Supp. 176. Civil Rights 1462; Civil Rights 1463

5463. ---- Good-time credits, compensable items, damages generally

Loss of good-time credits by state prisoner may not be claimed as an element of damages in a suit under this section. Derrow v. Shields, W.D.Va.1980, 482 F.Supp. 1144. Civil Rights 1462

5464. ---- Funeral expenses, compensable items, damages generally

Plaintiff was entitled to recover for funeral and burial expenses, medical expenses, and decedent's conscious pain and suffering between time decedent was fatally shot through illegal force by defendant police officer and time of his death. Phillips v. Ward, E.D.Pa.1975, 415 F.Supp. 976. Death 82; Death 84

5465. ---- Future earnings, compensable items, damages generally

Whether contract of psychiatrist at state mental hospital would have been renewed but for his memoranda criticizing state of healthcare at the hospital, so as to support award of economic damages, was question of fact for jury in psychiatrist's §§ 1983 action arising when his contract was not renew in alleged retaliation for exercising his First Amendment free speech rights. Springer v. Henry, C.A.3 (Del.) 2006, 435 F.3d 268. Civil Rights 1431

State prisoner transferred to another facility in violation of his constitutional rights was entitled under § 1983 to compensatory damages for the loss of his position as a para-law library clerk at the transferor facility, measured by the difference between the salary he would have earned in that position and the salary he earned at the transferee facility. Castle v. Clymer, E.D.Pa.1998, 15 F.Supp.2d 640. Civil Rights 1462

Transit authority employees who were denied promotion as a result of due process violations in connection with drug-testing program were entitled to proportional recovery, based on the compensation the employee would have received if promoted multiplied by the employee's chances of having received the promotion had he passed the drug test. Burka v. New York City Transit Authority, S.D.N.Y.1990, 747 F.Supp. 214. Civil Rights 1473

Public school music teacher who was unjustly terminated in violation of his constitutional rights was not entitled to award of damages for commercial music income loss arising from discharge, in view of fact that amount of financial damage suffered by teacher was too speculative to permit an award, despite fact that teacher's net income from commercial music in years prior to discharge was proven with specificity through his wife's largely unchallenged testimony from the couple's federal income tax returns. Eckerd v. Indian River School Dist., D.C.Del.1979, 475 F.Supp. 1350. Schools 144(3)

An award for impairment to future earning capacity of plaintiff's decedent was entirely speculative and was,

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therefore, inappropriate where plaintiff's actuarial testimony was premised on assumption that decedent would have taken a full time job when, though appropriate jobs may have been available, evidence failed to establish that decedent would have accepted a job in that decedent, considering his past work history, his school record, and his involvement with criminal activity, lacked any desire to work and most likely would not have earned more than his personal maintenance expenses. Phillips v. Ward, E.D.Pa.1975, 415 F.Supp. 976. Death 95(2)

5466. ---- Interest, compensable items, damages generally

Civil rights plaintiff was presumptively entitled to prejudgment interest on verdict against city from the date of suit until the date of final judgment. Foley v. City of Lowell, Mass., C.A.1 (Mass.) 1991, 948 F.2d 10. Interest 47(1)

Jury's rejection of prejudgment interest did not preclude district court from awarding prejudgment interest on state recovery for false imprisonment, where it appeared that district court had instructed jury that its question on prejudgment interest was intended to relate only to federal civil rights finding on false arrest claim. Lewis v. Kendrick, C.A.1 (Mass.) 1991, 944 F.2d 949. Interest 39(2.50)

County employee who prevailed on procedural due process challenge to his discharge could recover prejudgment interest on ascertainable wages he was denied after his discharge until he was given predischarge hearing or, if such was not afforded, until date of verdict in his favor. Winter v. Cerro Gordo County Conservation Bd., C.A.8 (Iowa) 1991, 925 F.2d 1069. Interest 39(2.40)

Award of prejudgment interest in § 1983 action is matter left to sound discretion of trial court, and is governed by considerations of fairness, making plaintiff whole or compensation, and balancing equities. Murphy v. City of Elko, D.Nev.1997, 976 F.Supp. 1359. Interest 39(2.45)

Prejudgment interest for former county employee was warranted after jury determined back-pay award, though she did not request prejudgment interest from jury, where she was deprived of money that she otherwise would have earned but for discriminatory acts of county employer. Frank v. Relin, W.D.N.Y.1994, 851 F.Supp. 87. Interest 39(2.45); Interest 66

Prejudgment interest is recoverable in civil rights cases, and it is ordinarily an abuse of discretion not to award prejudgment interest. Zicherman v. Korean Air Lines Co., Ltd., S.D.N.Y.1993, 814 F.Supp. 605, supplemented 1993 WL 118498, affirmed 43 F.3d 18, certiorari granted in part 115 S.Ct. 1689, 514 U.S. 1062, 131 L.Ed.2d 554, affirmed in part, reversed in part 116 S.Ct. 629, 516 U.S. 217, 133 L.Ed.2d 596, on remand 92 F.3d 126. Interest 39(2.45)

Equities favored granting applicant for renewal of taxicab franchise prejudgment interest on verdict in its favor in its § 1983 action alleging that city's conduct in interfering with applicant's labor dispute was preempted by National Labor Relations Act and violated its rights to due process and equal protection; prejudgment interest was necessary to compensate applicant for loss of use of money it otherwise would have had and to fulfill the purpose of § 1983 to compensate the victim. Golden State Transit Corp. v. City of Los Angeles, C.D.Cal.1991, 773 F.Supp. 204. Interest 39(2.45)

Transit authority employees who prevailed in civil rights action in establishing due process violations in connection with drug-testing program were not entitled to prejudgment interest, in that prejudgment interest was not necessary to meaningfully compensate the employees, unconstitutional treatment of employees did not enable transit authority to obtain financial benefits to which employees would have equitable claim of entitlement, authority was a public corporation providing a basic necessity to the community, and prejudgment interest would have no deterrent value as there was no evidence that authority was acting in bad faith. Burka v. New York City Transit Authority, S.D.N.Y.1990, 747 F.Supp. 214. Interest 39(2.45)

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42 U.S.C.A. § 1983

In measuring damages recoverable by teachers who had been unlawfully terminated by school district, prejudgment interest would be awarded on expenses of suit. Harkless v. Sweeny Independent School Dist., S.D.Tex.1978, 466 F.Supp. 457, affirmed and remanded on other grounds 608 F.2d 594. Interest 39(2.20)

5467. ---- Loss of consortium, compensable items, damages generally

Loss of consortium damages were not recoverable in wife's § 1983 action alleging that police officer used excessive force when he shot and killed wife's husband during attempted burglary, as record did not support wife's characterization of her suit as wrongful death action; although wife's complaint sought damages on behalf of husband's estate and on "her own behalf," record made clear that wife sued as personal representative of husband's estate to recover damages for deprivation of husband's constitutional rights. Westcott v. Crinklaw, C.A.8 (Neb.) 1998, 133 F.3d 658. Civil Rights 1462

Children of motor vehicle passenger who was shot and killed by police officer, following a high-speed motor vehicle chase, had no cause of action under §§ 1983 for loss of consortium. Tallman v. Elizabeth Police Dept., W.D.Ky.2004, 344 F.Supp.2d 992, affirmed 167 Fed.Appx. 459, 2006 WL 166610. Parent And Child 7.5

5467A. ---- Loss of companionship, compensable items, damages generally

Parents of pre-trial detainee who was murdered in county jail were entitled to assert Fourteenth Amendment substantive due process causes of action against county defendants to vindicate their constitutional rights for loss of companionship with their adult son. Rentz v. Spokane County, E.D.Wash.2006, 438 F.Supp.2d 1252. Constitutional Law 262

5468. ---- Loss of life, compensable items, damages generally

Estate of arrestee who was shot and killed by police officer could recover loss of life damages in federal civil rights action, even though Wisconsin wrongful death statutes do not permit a victim's estate to recover damages for loss of life, and even though officer's shooting was not motivated by racial animus, officer was dead so that there was no need to deter any further conduct on his part, award of damages could not deter others who might act under an insane delusion, and damages would be ultimately paid by municipalities under the Wisconsin indemnity statute. Graham v. Sauk Prairie Police Com'n, C.A.7 (Wis.) 1990, 915 F.2d 1085. Civil Rights 1462

5468A. ---- Loss of profit, compensable items, damages generally

Transporter of solid waste failed to show that it would have received contract from department of sanitation (DOS) to transport and process city's waste, as required to support § 1983 claim for lost profits allegedly resulting from city's decision to release itself from lease of property on which transporter intended to operate waste collection facility and from county improvement authority's denial of transporter's application to participate in solid waste management plan (SWMP) as was required to obtain required permit; there was no evidence that transporter's contract with DOS was pending or even reasonably probable given that transporter was not included among top tier of proposals, and numerous variables in DOS's bidding process broke chain of causation necessary to support inference that conduct of city and county caused lost profits. American Marine Rail NJ, LLC v. City of Bayonne, D.N.J.2003, 289 F.Supp.2d 569. Civil Rights 1462

5469. ---- Out of pocket expenses, compensable items, damages generally

A public school teacher may recover compensatory damages, under Civil Rights Act of 1871, for out-of-pocket expenses, mental and emotional distress, community humiliation, and loss of professional reputation caused by infringement of his constitutionally protected speech. Knapp v. Whitaker, C.A.7 (Ill.) 1985, 757 F.2d 827, appeal dismissed, certiorari denied 106 S.Ct. 36, 474 U.S. 803, 88 L.Ed.2d 29. Civil Rights 1471; Civil Rights

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If police officer, who struck plaintiff while the latter was photographing a group of officers engaged in apprehending a boy on street, was found liable under this section, plaintiff was entitled to recover compensatory damages including cost of his destroyed camera, and expense for medical treatment to remove the scar caused by the incident as well as award for pain and suffering. Shillingford v. Holmes, C.A.5 (La.) 1981, 634 F.2d 263, on remand 512 F.Supp. 656. Civil Rights 1462

Volunteer for pro-life organization whose First Amendment free speech rights were violated when he was restricted from demonstrating in designated public forum area of state higher education center's campus, and who was arrested when he tried to relocate to the designated public forum area, was entitled to $2,000 compensatory damages under §§ 1983, where he lost sponsor who was providing him with a $100 monthly stipend, and was deprived of his right to address passersby on the date in question, but became paid director of the organization 20 months after the incident. Mason v. Wolf, D.Colo.2005, 356 F.Supp.2d 1147. Civil Rights 1464

Organization from which city improperly withheld a parade permit based on anticipated content of parade's message was entitled to compensatory damages for the extra expenses that organization's leader incurred in coming to city earlier and staying longer than he would have if permit had been issued without controversy. Nationalist Movement v. City of Boston, D.Mass.1998, 12 F.Supp.2d 182. Civil Rights 1462

Prisoner who was inadvertently improperly incarcerated for 31 days was not entitled to obtain compensatory damages against state Director of Inmate Classification and Movement; prisoner suffered no monetary harm and offered no evidence of mental or emotional suffering or distress or physical discomfort, and credit for excess time served was given against subsequent sentence. Satchell v. Clark, E.D.N.Y.1989, 725 F.Supp. 691. Civil Rights 1462; Civil Rights 1463

5470. ---- Pain and suffering, compensable items, damages generally

Awards of noneconomic compensatory damages for pain and suffering resulting from political harassment and pain and suffering resulting from dismissal, and punitive damages, to 20 former municipal employees in action under § 1983 alleging that massive layoff in aftermath of mayoral election violated their First Amendment and due process rights were not excessive; individualized nature of 20 verdicts reflected jury's careful attention to peculiar circumstances of each plaintiff, and evinced jury's desire to craft appropriate award for each claimant. Acevedo-Garcia v. Monroig, C.A.1 (Puerto Rico) 2003, 2003 WL 21982002, withdrawn and superseded on rehearing 351 F.3d 547. Civil Rights 1474(1)

Evidence of physical pain and suffering may support award of compensatory damages in § 1983 action in excess of any actual out-of-pocket medical expenses. Coleman v. Rahija, C.A.8 (Iowa) 1997, 114 F.3d 778. Civil Rights 1462

Evidence was sufficient to support finding that employee suffered actual injury, for which compensatory damages were recoverable from county prosecutor in § 1983 action; reasonable jury could credit employee's testimony as to personal anguish she suffered as result of being passed over for promotion. Coleman v. Kaye, C.A.3 (N.J.) 1996, 87 F.3d 1491, certiorari denied 117 S.Ct. 754, 519 U.S. 1084, 136 L.Ed.2d 691. Civil Rights 1421

Inmate was entitled to damages for pain, suffering and humiliation, as a result of incident in which corrections officers pinned him against a shower wall with a plexiglass riot shield following his refusal to give them his coat. Burgin v. Iowa Dept. of Corrections, C.A.8 (Iowa) 1991, 923 F.2d 637. Civil Rights 1462; Civil Rights 1463

In a federal civil rights action based upon claimed false imprisonment, suffering caused by the very fact of

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incarceration is one element related to damages, in the absence of any issue concerning the condition of or reason for the incarceration. Bryan v. Jones, C.A.5 (Tex.) 1975, 519 F.2d 44, on rehearing 530 F.2d 1210, certiorari denied 97 S.Ct. 174, 429 U.S. 865, 50 L.Ed.2d 145. Civil Rights 1462

Compensatory damage award of $100,000 in §§ 1983 action was not so excessive as to shock conscience, when guard allegedly dug knee in back of inmate, and used nerve compression technique on head to inflict great pain, while securing inmate in four point horizontal restraint, where he remained for over 22 hours. Ziemba v. Armstrong, D.Conn.2006, 433 F.Supp.2d 248. Civil Rights 1464

California's survivorship statute that precluded all recovery for pain and suffering was inconsistent with federal civil rights statute where victim's death was not a result of the constitutional violation; recovery of such damages was important in federal civil rights claims and California statute that cut off all recovery for pain and suffering had substantial effect on damages recoverable where victim dies before judgment is entered. Williams v. City of Oakland, N.D.Cal.1996, 915 F.Supp. 1074. Civil Rights 1462

Evidence, in arrestee's federal civil rights action against police officers, police chief and city for injuries sustained when officers used excessive force and denied him medical attention after he resisted alcohol confiscation at public fireworks display, supported $200,000 compensatory damage award for permanent physical injuries, denial of medical treatment and pain and suffering; injuries included extended nerve damage and permanent loss of sensation in one hand, chronic lumbar strain, abdominal pain, vomiting and nausea, severe bruising, abrasions, lacerations, fear of police, fear of being arrested and put in similar situation, inability to sleep, nightmares, flashbacks and cold sweats. Hogan v. Franco, N.D.N.Y.1995, 896 F.Supp. 1313. Civil Rights 1464

Survivors of woman who was subjected to deputy sheriff's use of excessive force were entitled to recover past medical bills incurred by woman to treat her resulting back injury, as well as $150,000 for her past pain and suffering, mental anguish, emotional distress, embarrassment, and humiliation. Thomas v. Frederick, W.D.La.1991, 766 F.Supp. 540. Civil Rights 1462; Civil Rights 1463

Although no award in inmate civil rights action could be made for denials of constitutional rights of inmates in protective custody as such, inmates were entitled to damages for injuries that could be measured in monetary terms, including pain, suffering and mental anguish, and back pay for lost wages from failure of prison authorities to provide inmates in protective custody with opportunities to have jobs and to participate in educational or vocational programs, as well as for impairment of their earning capacities. Williams v. Lane, N.D.Ill.1986, 646 F.Supp. 1379, affirmed 851 F.2d 867, rehearing denied, certiorari denied 109 S.Ct. 879, 488 U.S. 1047, 102 L.Ed.2d 1001. Civil Rights 1462; Civil Rights 1463

Where prison officer acted improperly in spraying "crop duster gas" on prison inmates while they were locked in their cells, where there was no clear evidence that inmates suffered any property damage or loss as a result of spraying, but where inmates' faces were burned and within a day or so after incident skin on their faces peeled off altogether, inmates, who brought civil rights action against prison officer, were entitled to damages awards of $500 each for pain and suffering caused by tear gas incident. McCargo v. Mister, D.C.Md.1978, 462 F.Supp. 813. Prisons 10

Where the full extent of prison inmate's injury was that he was "hurting all over" and felt "all messed up," damages in the amount of $250 fairly and adequately compensated him for pain and suffering. Vargas v. Correa, S.D.N.Y.1976, 416 F.Supp. 266. Civil Rights 1462

State prisoners who established violation of constitutional rights by state officers as through improper subjection to solitary confinement, would be awarded, respectively, $15,303, $3,605, and $2,357, for pain and suffering and loss of prison wages, but wages lost due to requiring prisoner to serve full sentence would not be awarded in view of lack of method by which court could ascertain such wages. Landman v. Royster, E.D.Va.1973, 354 F.Supp. 1302.

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Civil Rights 1464

Damages awarded to plaintiff following bench trial on §§ 1983 claim were not duplicative, in that district court apparently awarded $25,000 for past and present personal injuries to compensate plaintiff for his disfigurement, awarded $30,000 for past and present pain and suffering and $55,000 for past and present emotional damages to compensate for plaintiff's pain and suffering and emotional injuries suffered during incident underlying claim, and awarded $165,000 for permanent injury and future pain, suffering, and emotional damage as collective award for future injury, medical expenses, pain and suffering, and emotional damages. Combs v. Holman, C.A.5 (Miss.) 2005, 134 Fed.Appx. 669, 2005 WL 1287051, Unreported. Civil Rights 1464

5471. ---- Pension benefits, compensable items, damages generally

Insofar as civil rights action brought against school board by teacher was one at law, teacher, who was found to have been discharged without being given procedural due process rights, was entitled to be compensated for loss of pension rights suffered as result of illegal discharge. Burt v. Board of Trustees of Edgefield County School Dist., C.A.4 (S.C.) 1975, 521 F.2d 1201. Civil Rights 1470

5472. ---- Reputation injury, compensable items, damages generally

Jury could award police officer $253,188 in suit against superior officer and city, claiming he had been wrongfully terminated and had suffered damage to his reputation following false accusation that he had falsified speeding ticket; officer had 15 honorable years in law enforcement, and amount awarded was less than that requested and estimated by his expert. Palmer v. City of Monticello, C.A.10 (Utah) 1994, 31 F.3d 1499. Civil Rights 1473

In § 1983 action for denial of name-clearing hearing, discharged public employee's damages for loss of opportunity to clear name of false and defamatory charges include any harm to reputation and career caused by charges made against him that he is able to prove. Rosenstein v. City of Dallas, Tex., C.A.5 (Tex.) 1989, 876 F.2d 392, rehearing granted 884 F.2d 174, opinion reinstated in part 901 F.2d 61, certiorari denied 111 S.Ct. 153, 498 U.S. 855, 112 L.Ed.2d 119. Civil Rights 1470

In suit under this section arising out of wrongful discharge of police officer prior to hearing, injury to officer's reputation caused by truthful and foreseeable publicity of unlawful termination was properly considered by district court as an element of damages, as officer was entitled to fair compensation for injuries caused by deprivation of his constitutional right to due process of law. Busche v. Burkee, C.A.7 (Wis.) 1981, 649 F.2d 509, certiorari denied 102 S.Ct. 396, 454 U.S. 897, 70 L.Ed.2d 212. Civil Rights 1470

Volunteer for pro-life organization whose First Amendment free speech rights were violated when he was restricted from demonstrating in designated public forum area of state higher education center's campus, and who was arrested when he tried to relocate to the designated public forum area, was not entitled to compensatory damages under §§ 1983 based on injury to his reputation and on his humiliation and embarrassment over being arrested, where events after the arrest indicated the arrest may have been more of a badge of honor than a humiliation for him, and the defendant found liable for the constitutional violation did not direct or necessarily cause the arrest. Mason v. Wolf, D.Colo.2005, 356 F.Supp.2d 1147. Civil Rights 1462; Civil Rights 1463

Public school teacher, claiming that school district policy prohibiting her from participating in religious group's meetings held on school property violated her First Amendment rights, was not entitled to monetary damages, absent evidence supporting her claim that she had suffered loss of reputation, embarrassment, or humiliation. Wigg v. Sioux Falls School Dist. 49-5, D.S.D.2003, 274 F.Supp.2d 1084, affirmed in part, reversed in part 382 F.3d 807, rehearing and rehearing en banc denied. Civil Rights 1470; Civil Rights 1472

Teacher whose employment was terminated in violation of due process requirements was entitled to award of

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damages for remaining unpaid balance due under contract with school district and to $7,500 damages for stigma and impact of constitutional deprivation upon her professional future, including its impact upon her ability to obtain employment following dismissal. Cochran v. Chidester School Dist. of Ouachita County, Ark., W.D.Ark.1978, 456 F.Supp. 390. Schools 144(3); Schools 147.54

5473. ---- Salary differential, compensable items, damages generally

Negro principal whose termination was racially discriminatory was entitled to damages in amount of difference between his salary as principal and his salary at new job and to nominal award for expenses in obtaining new employment. McBeth v. Board of Ed. of DeVall's Bluff School Dist. No. 1, Ark., E.D.Ark.1969, 300 F.Supp. 1270 . Schools 147.54

5474. ---- Taking of property, compensable items, damages generally

District court properly reduced its damages award following bench trial in § 1983 action, in which plaintiff sought to recover after photograph transparencies that had been seized from him were destroyed by state police evidence custodian, from $24,000 to $12,000, on basis that it had improperly applied *Bigelow* principle twice, where court initially concluded that peak publication rate was two prints per year, even though plaintiff had published no more than two prints over ten-year period, and after using that rate to arrive at figure of $12,000 in damages, court then doubled award on basis that destruction of transparencies may have hindered plaintiff's ability to prove damages. Raishevich v. Foster, C.A.2 (N.Y.) 2001, 247 F.3d 337. Civil Rights 1464

5475. ---- Transcripts, compensable items, damages generally

If trial transcript was taken from state prisoner's cell during shakedown search by prison guards, prisoner would be entitled to compensation regardless of the limited and uncertain monetary value of the transcript. Bonner v. Coughlin, C.A.7 (Ill.) 1975, 517 F.2d 1311, on rehearing 545 F.2d 565, certiorari denied 98 S.Ct. 1507, 435 U.S. 932, 55 L.Ed.2d 529. Prisons 10

5476. ---- Medical expenses, compensable items, damages generally

Medical expenses may constitute element of damages in successful § 1983 excessive force action arising from force used by police officer. Rowland v. Perry, C.A.4 (N.C.) 1994, 41 F.3d 167. Civil Rights 1462

Loss of spousal consortium claim cannot be brought in conjunction with claim under Title VII or statute affording to all contractual rights of white persons. Edsall v. Assumption College, D.Mass.2005, 367 F.Supp.2d 72. Husband And Wife 209(3); Husband And Wife 209(4)

5477. Amount of recovery, damages generally--Generally

When plaintiffs under this section seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to the principles derived from the common law of torts. Memphis Community School Dist. v. Stachura, U.S.Mich.1986, 106 S.Ct. 2537, 477 U.S. 299, 91 L.Ed.2d 249, on remand 803 F.2d 721. Civil Rights 1459

Damages recoverable on an unlawful arrest claim include damages suffered because of the use of force in effecting the arrest. Bashir v. Rockdale County, Ga., C.A.11 (Ga.) 2006, 445 F.3d 1323. False Imprisonment 34

Minor discrepancy in awards of compensatory economic damages to 20 former municipal employees in action under § 1983 alleging that massive layoff in aftermath of mayoral election violated their First Amendment and due

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process rights in excess of actual lost wages, ranging from $2,600 to $10,900, was sufficiently small to preclude finding that verdict was grossly excessive, inordinate, shocking to the conscience of the court, or so high that it would have been denial of justice to permit it to stand. Acevedo-Garcia v. Monroig, C.A.1 (Puerto Rico) 2003, 351 F.3d 547. Civil Rights 1473

Damages claim of false arrest in violation of Fourth Amendment under § 1983 cover time of detention up until issuance of process or arraignment, but not more. Gauger v. Hendle, C.A.7 (Ill.) 2003, 349 F.3d 354, rehearing and rehearing en banc denied. Civil Rights 1088(4)

Award of $500,000 in compensatory damages in § 1983 action per Caucasian librarian, who sustained emotional harm due to race discrimination by members of board of trustees for public library system, and director of system, was not abuse of discretion. Bogle v. McClure, C.A.11 (Ga.) 2003, 332 F.3d 1347, rehearing and rehearing en banc denied 77 Fed.Appx. 510, 2003 WL 21804722, certiorari dismissed 124 S.Ct. 1168, 540 U.S. 1158, 157 L.Ed.2d 1059. Civil Rights 1473

In § 1983 excessive force action, jury's award of $300,000 in compensatory damages and $1 million in punitive damages, while generous, was not so grossly excessive or inordinate as to warrant setting it aside, given evidence of pain and suffering. Diaz ex rel Lopez Claudio v. Vivoni, D.Puerto Rico 2003, 301 F.Supp.2d 92. Civil Rights 1464; Civil Rights 1465(1)

In §§ 1983 excessive force action, jury's award of $300,000 in compensatory damages and $1 million in punitive damages, while generous, was not so grossly excessive or inordinate as to warrant setting it aside, given evidence of pain and suffering. Diaz ex rel Lopez Claudio v. Vivoni, D.Puerto Rico 2003, 301 F.Supp.2d 92. Civil Rights 1464; Civil Rights 1465(1)

Damage award for injuries suffered by pre-trial detainee from beating and denial of medical treatment was not excessive, where plaintiff was unable to run, walked with limp, had total hip replacement, had broken wrist, had blurred vision, had significant hearing loss, and experienced significant psychological trauma. Pulliam v. Shelby County, Tenn., W.D.Tenn.1995, 902 F.Supp. 797. Civil Rights 1464

Level of damages awarded under § 1983 is ordinarily determined according to principles derived from common law of torts. Faison v. Parker, E.D.Pa.1993, 823 F.Supp. 1198. Civil Rights 1464

5478. ---- Objective standard, amount of recovery, damages generally

Fact that amount of damages for deprivation of an intangible constitutional right cannot be determined by reference to an objective standard, such as pecuniary loss, does not preclude an award of nonpunitive damages. Hostrop v. Board of Jr. College Dist. No. 515, Cook and Will Counties and State of Ill., C.A.7 (Ill.) 1975, 523 F.2d 569, certiorari denied 96 S.Ct. 1748, 425 U.S. 963, 48 L.Ed.2d 208. Civil Rights 1462

The amount of compensatory damages to be awarded for deprivations of constitutional rights cannot be determined by reference to an objective standard. Hild v. Bruner, D.C.N.J.1980, 496 F.Supp. 93. Civil Rights 1462

Although amount of damages for compensable injuries under this section prohibiting deprivation of rights cannot be determined by reference to an objective standard, nonpunitive damages may be granted for deprivation of intangible rights for which no pecuniary loss can be shown. Bryant v. McGinnis, W.D.N.Y.1978, 463 F.Supp. 373 . Civil Rights 1462

5479. ---- Actual injury, amount of recovery, damages generally

Appropriate amount that city could recover in restitution, following reversal of order permanently enjoining it from

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implementing plan to charge newspaper publishers' profit-conscious rents for use of newsracks at airport, was amount that city was actually enjoined from collecting, with appropriate adjustments, not higher amount that city would have charged under revised plan; city had failed to put new plan at issue in publishers' §§ 1983 First Amendment action challenging original plan. Atlanta Journal and Constitution v. City of Atlanta Dept. of Aviation, C.A.11 (Ga.) 2006, 442 F.3d 1283. Injunction 260

Compensatory damages award of $4 million under §§ 1983 solely for police shooting victim's mental and physical pain and suffering was grossly disproportionate to the evidence of victim's injuries, and award of $2 million would sufficiently compensate victim for his pain and suffering; although some of victim's injuries were permanent, victim, who was shot twice in the back of the left leg and sustained a 48 percent impairment of his left lower extremity and a 19 percent impairment of his entire body, could walk normally and had ceased taking any pain medication. Whitfield v. Melendez-Rivera, C.A.1 (Puerto Rico) 2005, 431 F.3d 1. Civil Rights 1464

Compensatory damages award of $198,960 was not excessive in former public employee's §§ 1983 political discrimination suit against her former supervisors, where award reflected compensation for lost earnings, which amount could be reached mathematically from evidence presented at trial. Lopez-Sanchez v. Vergara-Agostini, D.Puerto Rico 2006, 419 F.Supp.2d 78. Civil Rights 1473

Property management company that sued town, stemming from denial of certificate of occupancy for home built on previously undeveloped parcels, was entitled to damages of $57,750, plus simple interest, on its substantive due process claim brought under §§ 1983, representing 21 months of fair rental value for home while it was unoccupied. O'Mara v. Town of Wappinger, S.D.N.Y.2005, 400 F.Supp.2d 634. Interest 60

As in all tort actions, amount of damages awarded pursuant to this section creating tort liability for deprivation of rights, privileges and immunities secured by the Constitution must be related to injuries suffered. Reyes v. Edmunds, D.C.Minn.1979, 472 F.Supp. 1218. Civil Rights 1462

5480. ---- Settlements, amount of recovery, damages generally

Damages recoverable by federal civil rights plaintiffs had to be reduced by amount of settlement received where some defendants settled with plaintiffs. Miller v. Apartments and Homes of New Jersey, Inc., C.A.3 (N.J.) 1981, 646 F.2d 101. Civil Rights 1464

5480A. ---- Class actions, amount of recovery

Final approval was warranted for settlement in §§ 1983 action against District of Columbia Department of Corrections challenging Department's policy of conducting suspicionless strip searches of inmates declared releasable after court appearances, and challenging alleged over-detentions; distribution fund of $12 million was very favorable especially in view of low number of opt-outs and objectors, there was no collusion between parties or their counsel, and settlement comported with rule governing class actions and with due process requirements. Bynum v. District of Columbia, D.D.C.2006, 412 F.Supp.2d 73. Compromise And Settlement 61

5481. Mitigation, damages generally

Plaintiff has duty to mitigate damages in an action under this section. Meyers v. City of Cincinnati, C.A.6 (Ohio) 1994, 14 F.3d 1115, rehearing and suggestion for rehearing en banc denied. Civil Rights 1462

While § 1983 plaintiff has a duty to mitigate damages, defendant has the burden of proving a failure to mitigate damages properly. Wolfe v. Village of Brice, Ohio, S.D.Ohio 1998, 997 F.Supp. 939. Civil Rights 1401

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In § 1983 action for termination in violation of due process clause, in which reinstatement has been ordered, former public employee is required to continue his or her efforts at mitigating postverdict but prereinstatement losses; where, however, former employee is genuinely unable to find work or is forced to "lower his or her sights" and accept inferior position, former employer will be responsible for the difference between what employee would have earned and what employee actually earned prior to reinstatement. Coleman v. Lane, N.D.Ill.1996, 949 F.Supp. 604. Civil Rights 1471

5482. Source of payment, damages generally

In "official capacity action" under § 1983, any award of damages is recovered against governmental entity, rather than personal assets of any specific officer. Pennington v. Hobson, S.D.Ind.1989, 719 F.Supp. 760. Civil Rights 1354

5483. Effect of failure to award, damages generally

Jury's failure to award compensatory damages to civil rights plaintiff on his claims of excessive force and arrest without probable cause did not preclude finding that plaintiff was injured by defendants' actions; failure to award compensatory damages was not dispositive of question whether plaintiff suffered deprivation of his constitutional rights. King v. Macri, S.D.N.Y.1992, 800 F.Supp. 1157. Civil Rights 1424

5484. Presumptions, damages generally

In a civil rights action, damages must be proved, rather than presumed. Williams v. Board of Regents of University System of Georgia, C.A.5 (Ga.) 1980, 629 F.2d 993, rehearing denied 629 F.2d 1350, certiorari denied 101 S.Ct. 3063, 452 U.S. 926, 69 L.Ed.2d 428. Civil Rights 1401

Violation of constitutional right of access to courts, even if violation is complete and systematic, is not type of injury where presumed damages may be used as substitute for actual or compensatory damages. Klinger v. Nebraska Dept. of Correctional Services, D.Neb.1995, 902 F.Supp. 1036, reversed 107 F.3d 609. Civil Rights 1462

Damages to one who establishes deprivation of his civil rights will not be presumed. Pierce v. Stinson, E.D.Tenn.1979, 493 F.Supp. 609. Civil Rights 1401

LVII. PUNITIVE DAMAGES

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5511. Punitive damages generally

Title VII cap on punitive damages awards for race discrimination was not determinative with respect to awards available for race discrimination in § 1983 action, as § 1983 did not contain a cap. Bogle v. McClure, C.A.11 (Ga.) 2003, 332 F.3d 1347, rehearing and rehearing en banc denied 77 Fed.Appx. 510, 2003 WL 21804722, certiorari dismissed 124 S.Ct. 1168, 540 U.S. 1158, 157 L.Ed.2d 1059. Civil Rights 1474(1)

Punitive damages are awarded in § 1983 action to punish defendant for his or her willful or malicious conduct and to deter others from similar behavior. Coleman v. Rahija, C.A.8 (Iowa) 1997, 114 F.3d 778. Civil Rights 1465(1)

In appropriate circumstances, punitive damages are recoverable in an action under this section. Bradshaw v. Zoological Soc. of San Diego, C.A.9 (Cal.) 1978, 569 F.2d 1066. See, also, Stengel v. Belcher, C.A.6 (Ohio) 1975, 522 F.2d 438, certiorari granted 96 S.Ct. 1505, 425 U.S. 910, 47 L.Ed.2d 760, certiorari dismissed 97 S.Ct. 514, 429 U.S. 118, 50 L.Ed.2d 269; Stolberg v. Members of Bd. of Trustees for State Colleges of State of Conn., C.A.2 (Conn.) 1973, 474 F.2d 485; Pizzolato v. Perez, E.D.La.1981, 524 F.Supp. 914. Civil Rights 1465(1)

Action for damages for deprivation of civil rights sounds in tort, and jury may award exemplary or punitive damages. Hague v. Committee for Industrial Organization, C.C.A.3 (N.J.) 1939, 101 F.2d 774, certiorari granted 59 S.Ct. 486, 306 U.S. 624, 83 L.Ed. 1028, modified 59 S.Ct. 954, 307 U.S. 496, 83 L.Ed. 1423. See, also, Basista v. Weir, C.A. 3 (Pa.) 1965, 340 F.2d 74; Davis v. Board of Trustees of Ark. A & M College, D.C.Ark.1967, 270 F.Supp. 528, affirmed 396 F.2d 730, certiorari denied 89 S.Ct. 401, 393 U.S. 962, 21 L.Ed.2d

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375; Antelope v. George, D.C.Idaho 1962, 211 F.Supp. 657. Civil Rights 1465(1)

No civil rights plaintiff has an entitlement to punitive damages, even upon the requisite showing. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla., S.D.Fla.2004, 333 F.Supp.2d 1305. Civil Rights 1465(1)

Punitive damages could be awarded to redress a civil rights victim. Cook v. City of Miami, S.D.Fla.1979, 464 F.Supp. 737. Civil Rights 1465(1)

Actual and punitive damages as well as attorney fees may be awarded in proper cases under this section. Smith v. Woodhollow Apartments, W.D.Okla.1978, 463 F.Supp. 16. Civil Rights 1462; Civil Rights 1465(1); Civil Rights 1478

Punitive or exemplary damages are recoverable in a civil rights action. Keker v. Procunier, E.D.Cal.1975, 398 F.Supp. 756. Civil Rights 1465(1)

Punitive damages may and should be awarded under appropriate circumstances in private actions to recover for violations of federal civil rights statutes. Hughes v. Dyer, W.D.Mo.1974, 378 F.Supp. 1305. Civil Rights 1465(1)

5512. Deterrent function, punitive damages

Punitive damages may be awarded in appropriate circumstances in order to punish violations of constitutional rights. City of Newport v. Fact Concerts, Inc., U.S.R.I.1981, 101 S.Ct. 2748, 453 U.S. 247, 69 L.Ed.2d 616. Civil Rights 1465(1)

Purpose of punitive damages in § 1983 civil rights claim is to deter future egregious conduct in violation of constitutional rights. Sockwell v. Phelps, C.A.5 (La.) 1994, 20 F.3d 187. Civil Rights 1465(1)

Punitive damages are appropriate means of punishing discriminatory employment practices and deterring defendants from future racially discriminatory actions. Brown v. Freedman Baking Co., Inc., C.A.1 (Mass.) 1987, 810 F.2d 6. Civil Rights 1575(1)

Despite its utility as a deterrent, punitive damage remedy must be reserved for cases in which defendant's conduct amounts to something more than a bare violation of civil rights justifying compensatory damages or injunctive relief. Cochetti v. Desmond, C.A.3 (Pa.) 1978, 572 F.2d 102. Civil Rights 1465(1)

Any award of punitive damages in civil rights action should not go beyond deterrence and become a windfall. Perez v. Cucci, D.N.J.1989, 725 F.Supp. 209, affirmed 898 F.2d 139, affirmed 898 F.2d 141, affirmed 898 F.2d 142. Civil Rights 1465(1)

Purpose of deterrence underlying this section would be subverted by slavish application of state survivorship rule denying punitive damages and thus survivors were entitled to seek punitive damages in connection with civil rights claim for shooting of original complainant by municipal police officer. Larson v. Wind, N.D.Ill.1982, 542 F.Supp. 25. Abatement And Revival 57

One function of punitive damages is its deterrent impact on defendant to curb future violations. U. S. ex rel. Motley v. Rundle, E.D.Pa.1972, 340 F.Supp. 807. Damages 87(1)

5513. Discretion of trier of facts, punitive damages

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In § 1983 case, both compensatory and punitive damages are available upon proper proof; but unlike compensatory damages, which are mandatory and are awarded as matter of right once liability is found, punitive damages are awarded or rejected in particular case at discretion of fact finder once sufficiently serious misconduct by defendant is shown. Coleman v. Rahija, C.A.8 (Iowa) 1997, 114 F.3d 778. Civil Rights 1465(1)

Punitive damages award totalling $4,000 in § 1983 civil rights claim by black prisoners alleging that general policy of segregating two-person cells violated equal protection was not abuse of discretion. Sockwell v. Phelps, C.A.5 (La.) 1994, 20 F.3d 187. Civil Rights 1465(1)

In a civil rights suit brought under this section, award of punitive damages was within discretion of trial court. Busche v. Burkee, C.A.7 (Wis.) 1981, 649 F.2d 509, certiorari denied 102 S.Ct. 396, 454 U.S. 897, 70 L.Ed.2d 212 . Civil Rights 1465(1)

Infliction of punitive damages and amount thereof are of necessity within discretion of trier of fact, but since punitive damages are assessed as an example and warning to others, they are not favored in law and are to be allowed only with caution and within narrow limits. Lee v. Southern Home Sites Corp., C.A.5 (Miss.) 1970, 429 F.2d 290.

Whether to award punitive damages against justice of the peace and notary, who deprived plaintiff of her immunity against unreasonable seizures by pretending to possess power of deputy sheriff and causing plaintiff to submit to his pretended official custody, was in discretion of trier of the facts. Krueger v. Miller, E.D.Tenn.1977, 489 F.Supp. 321, affirmed 617 F.2d 603. Civil Rights 1465(1)

Punitive damages may be awarded in discretion of trier of facts in action under section governing deprivation of rights if trier of facts finds that plaintiff is entitled to receive compensatory damages and that the act which proximately caused the injury to the plaintiff was maliciously, wantonly, or oppressively done. Rheuark v. Shaw, D.C.Tex.1979, 477 F.Supp. 897, affirmed in part, reversed in part on other grounds 628 F.2d 297, certiorari denied 101 S.Ct. 1392, 450 U.S. 931, 67 L.Ed.2d 365. Civil Rights 1465(1)

When a civil rights plaintiff has established liability for deprivation of civil rights, an award of compensatory or punitive damages, or both, is necessarily left to discretion of trier of fact in absence of out-of-pocket or other loss or injury. Manfredonia v. Barry, E.D.N.Y.1975, 401 F.Supp. 762. Civil Rights 1462; Civil Rights 1465(1)

5514. Necessity of compensatory damage award, punitive damages

Under circumstances of civil rights suit, punitive damage awards on excessive force and hostileness claims for which no compensatory awards were made were not vitiated by the absence of compensatory or nominal damage awards; jury was explicitly told, without objection, that it could make punitive award without any compensatory award, and jury was not instructed that award of nominal damages could be made. King v. Macri, C.A.2 (N.Y.) 1993, 993 F.2d 294. Civil Rights 1465(1)

Award of compensatory damages in favor of public employee was not required, in employee's §§ 1983 political affiliation discrimination action, although jury determined that public employer was liable for discrimination, and awarded $5000 in punitive damages. Acevedo Luis v. Zayas, D.Puerto Rico 2006, 419 F.Supp.2d 115. Civil Rights 1470

5515. Absence of actual damages, punitive damages

Punitive damages may be awarded in a § 1983 action even without a showing of actual loss by plaintiff if the

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plaintiff's constitutional rights have been violated. Baltezore v. Concordia Parish Sheriff's Dept., C.A.5 (La.) 1985, 767 F.2d 202, certiorari denied 106 S.Ct. 817, 474 U.S. 1065, 88 L.Ed.2d 790. Civil Rights 1465(1)

In proper case under this section, exemplary or punitive damages may be awarded with specific purpose of determining or punishing violations of constitutional rights, and these damages may be available even in absence of actual loss to plaintiff. Endicott v. Huddleston, C.A.7 (Ill.) 1980, 644 F.2d 1208. Civil Rights 1465(1)

Even in absence of actual damages, failure to award punitive damages for violation of this section will not be lightly overturned. Stolberg v. Members of Bd. of Trustees for State Colleges of State of Conn., C.A.2 (Conn.) 1973, 474 F.2d 485.

Punitive damages may be awarded in a § 1983 action even without a showing of actual loss by the plaintiff if the plaintiff's constitutional rights have been violated. Bunyon v. Burke County, S.D.Ga.2003, 285 F.Supp.2d 1310. Civil Rights 1465(1)

District court would not give effect to jury's award of punitive damages in § 1983 action; jury did not reach issue of whether plaintiff had suffered compensatory damages, because it was instructed not to do so if it found that plaintiff had not established necessary elements of her claims, and jury's subsequent award of punitive damages, in absence of any finding of plaintiff's constitutional rights being violated, was mere surplusage. Peden v. Suwannee County School Bd., M.D.Fla.1993, 837 F.Supp. 1188, affirmed 51 F.3d 1049. Civil Rights 1465(1)

Homeless mother and her children were not entitled to punitive damages from school officials for exclusion from school on grounds of nonresidency, even though school officials knew or should have known that they were required under due process clause to provide adequate notice of their proposed action and opportunity for hearing to children prior to termination, where actual damages flowing from four or five day exclusion from school until dispute was resolved were trivial and willfulness as well as motive upon part of school officials for taking unconstitutional action were entirely lacking. Harrison v. Sobol, S.D.N.Y.1988, 705 F.Supp. 870. Civil Rights 1465(1)

To recover punitive damages in a suit under this section it is not necessary that actual damages be shown; if a claim of a violation of a constitutionally guaranteed right to sustained by sufficient proof, nominal damages may be presumed and, in appropriate circumstances, may support an award of exemplary damages. Campise v. Hamilton, S.D.Tex.1974, 382 F.Supp. 172, appeal dismissed 541 F.2d 279, certiorari denied 97 S.Ct. 1127, 429 U.S. 1102, 51 L.Ed.2d 552. Civil Rights 1465(1)

5516. Considerations governing, punitive damages--Generally

Unlike her claim under Title VII, state employee's § 1983 claim that she received disparate pay raise based on gender, in violation of equal protection principles, could result in award of punitive damages. Hildebrandt v. Illinois Dept. of Natural Resources, C.A.7 (Ill.) 2003, 347 F.3d 1014. Civil Rights 1474(1)

Punitive damages may be awarded under § 1983 when defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to federally protected rights of others. Coleman v. Kaye, C.A.3 (N.J.) 1996, 87 F.3d 1491, certiorari denied 117 S.Ct. 754, 519 U.S. 1084, 136 L.Ed.2d 691. Civil Rights 1465(1)

Fact that defendant's actions were objectively unconstitutional is not considered when determining whether to award punitive damages in civil rights action; award of punitive damages requires assessment of defendant's subjective state of mind. Jolivet v. Deland, C.A.10 (Utah) 1992, 966 F.2d 573. Civil Rights 1465(1)

5517. ---- Aggravating circumstances, considerations governing, punitive damages

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Where evidence shows no more than that an exasperated police officer, acting in the heat of the moment, made an objectively unreasonable mistake, punitive damages will not lie on a § 1983 claim for false arrest. Iacobucci v. Boulter, C.A.1 (Mass.) 1999, 193 F.3d 14. Civil Rights 1465(1)

Punitive damages are recoverable in an action under this section proscribing the deprivation of rights provided aggravating circumstances are found. Silver v. Cormier, C.A.10 (Colo.) 1976, 529 F.2d 161. Civil Rights 1465(1)

Provided certain aggravating circumstances are shown, punitive damages are recoverable under federal law in action under this section. Spence v. Staras, C.A.7 (Ill.) 1974, 507 F.2d 554. Damages 89(1)

Punitive damages were not available in state prisoner's action under §§ 1983 alleging that prison officials violated his right of access to courts, where prisoner did not allege that officials acted with evil motive or intent, or that officials acted recklessly or with callous indifference to his federally protected rights. Hayes v. Woodford, S.D.Cal.2006, 444 F.Supp.2d 1127. Civil Rights 1465(1)

Accused was not entitled to punitive damages in connection with claim for noncompliance with extradition procedures where accused failed to show existence of any "aggravating circumstances" justifying or warranting imposition of such damages. McBride v. Soos, N.D.Ind.1981, 512 F.Supp. 1207, affirmed 679 F.2d 1223. Civil Rights 1465(1)

Punitive damages are recoverable in an action under this section, provided certain aggravating circumstances are shown. Newborn v. Morrison, S.D.Ill.1977, 440 F.Supp. 623. Civil Rights 1465(1)

5518. ---- Bad faith, considerations governing, punitive damages

Focus, in determining propriety of punitive damages in § 1983 action, is on intent of defendant, and whether defendant's conduct is of sort that calls for deterrence and punishment over and above that provided by compensatory awards. Coleman v. Rahija, C.A.8 (Iowa) 1997, 114 F.3d 778. Civil Rights 1465(1)

In civil rights action brought by members of town redevelopment authority against town and members of its board of selectmen alleging violation of their First Amendment rights in connection with their removal from office, punitive damage award against board of selectmen was supported by jury finding that defendants did not act in good faith in attempting to discharge members of redevelopment authority but rather acted by threat, intimidation or coercion to deprive them of their First Amendment rights. Miller v. Town of Hull, Mass., C.A.1 (Mass.) 1989, 878 F.2d 523, certiorari denied 110 S.Ct. 501, 493 U.S. 976, 107 L.Ed.2d 504. Civil Rights 1474(1)

Where chaplain's superiors at state mental hospital acted in bad faith in discharging chaplain because of his exercise of rights under U.S.C.A.Const. Amend. 14, award to chaplain of punitive damages was proper. Donahue v. Staunton, C.A.7 (Ill.) 1972, 471 F.2d 475, certiorari denied 93 S.Ct. 1419, 410 U.S. 955, 35 L.Ed.2d 687. States 79

Punitive damages were warranted, in action against police officers for deprivation of civil rights, where it was found that defendants did not act in good faith when they went to plaintiff's home, while one plaintiff remained in custody at police station, demanded admission, and conducted a search without a warrant. Caperci v. Huntoon, C.A.1 (Mass.) 1968, 397 F.2d 799, certiorari denied 89 S.Ct. 299, 393 U.S. 940, 21 L.Ed.2d 276. Civil Rights 1465(1)

Although for purposes of official immunity doctrine school superintendent was found to have acted in bad faith in accusing nontenured teacher of persistent insubordination, punitive damages would not be awarded against the

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superintendent since it appeared that his misguided efforts had some relationship to his perception of problems that the school officials could face because of a parent's complaint against teacher and her nonrenewal was not result of any systematic practice, racial discrimination or other denial of constitutional rights. Morris v. Board of Ed. of Laurel School Dist., D.C.Del.1975, 401 F.Supp. 188. Civil Rights 1474(1)

There must be some showing of bad faith or some indication of deterrent impact to warrant punitive damages in civil rights action. Caplin v. Oak, S.D.N.Y.1973, 356 F.Supp. 1250. Civil Rights 1465(1)

To be entitled to a recovery of punitive damages there must be more than a mere mention of punitive damages in the prayers of a complaint; there must be an indication of bad faith by the defendant sufficient to justify such an award. Rappaport v. Little League Baseball, Inc., D.C.Del.1975, 65 F.R.D. 545. Damages 151

5519. ---- Callous indifference, considerations governing, punitive damages

Prison's deputy warden and mail room clerk were "callously indifferent" to inmate's First Amendment free exercise rights when they twice denied him materials mailed by Church of Jesus Christ Christian (CJCC), thus warranting $1000 punitive damage award in inmate's ensuing § 1983 action; when materials were first withheld, deputy warden knew that blanket ban on CJCC materials had been held unconstitutional in different case and that blanket ban remained in effect in his prison, yet he did nothing to correct situation, and in rejecting materials second time, clerk did not consult list naming CJCC materials as approved because she believed blanket ban remained in effect, despite her knowledge that it was unconstitutional. Williams v. Brimeyer, C.A.8 (Iowa) 1997, 116 F.3d 351, rehearing and suggestion for rehearing en banc denied. Civil Rights 1465(1)

City's African-American mayor had acted with reckless and callous indifference to white police officer's due process and equal protection rights in ordering officer's termination regardless of what transpired at officer's pretermination hearing, despite having been advised on at least two occasions that such summary termination would violate officer's due process rights, and in attempting to justify such conduct by claiming that officer was hurting his popularity among black voters who had elected him, and therefore officer was entitled to recover punitive damages from mayor in § 1983 action. Wagner v. City of Memphis, W.D.Tenn.1997, 971 F.Supp. 308. Civil Rights 1474(1)

5520. ---- Intent or knowledge, considerations governing, punitive damages

Evidence supported award of punitive damages in Caucasian librarians' § 1983 action against members of board of trustees for public library system and director of system, alleging race discrimination; defendants knew at the time they transferred librarians that it violated federal law to transfer people on basis of race, defendants were warned by county attorney, personnel department, and director about legal problems with transfers, but defendants still transferred the librarians. Bogle v. McClure, C.A.11 (Ga.) 2003, 332 F.3d 1347, rehearing and rehearing en banc denied 77 Fed.Appx. 510, 2003 WL 21804722, certiorari dismissed 124 S.Ct. 1168, 540 U.S. 1158, 157 L.Ed.2d 1059. Civil Rights 1474(1)

Evidence of malicious or evil intent in correctional officer's beating restrained inmate about the head and face while inmate offered no resistance, and in taunting and threatening inmate the following day, supported punitive damage award of $5,000 against correctional officer, in inmate's § 1983 suit for correctional officer's use of excessive force. Estate of Davis by Ostenfeld v. Delo, C.A.8 (Mo.) 1997, 115 F.3d 1388. Civil Rights 1465(1)

Jury's findings that county prosecutor and/or his subordinates intentionally discriminated against employee on three occasions provided sufficient foundation to support jury award of punitive damages against county in § 1983 action alleging violations of New Jersey's Law Against Discrimination (LAD). Coleman v. Kaye, C.A.3 (N.J.) 1996, 87 F.3d 1491, certiorari denied 117 S.Ct. 754, 519 U.S. 1084, 136 L.Ed.2d 691. Civil Rights 1474(2)

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42 U.S.C.A. § 1983

Test for determining whether punitive damages should be awarded for civil rights violations is whether defendant acted with actual knowledge that he was violating a federally protected right or with reckless disregard of whether he was doing so. Cochetti v. Desmond, C.A.3 (Pa.) 1978, 572 F.2d 102. Civil Rights 1465(1)

Award of punitive damages to juvenile, who was found to have been knowingly shot and wounded by defendant officer while fleeing scene of a misdemeanor, was warranted. Palmer v. Hall, C.A.5 (Ga.) 1975, 517 F.2d 705, rehearing denied 521 F.2d 815. Civil Rights 1464

Genuine issues of material fact existed as to state mental health hospital's intent in taking adverse actions against nurse, precluding summary judgment as to whether she should be awarded punitive damages on her §§ 1983 claim that hospital retaliated against her for exercising her speech rights. Barclay v. Michalsky, D.Conn.2006, 451 F.Supp.2d 386. Federal Civil Procedure 2497.1

Massage therapist whose practitioner and massage establishment licenses were suspended due to alleged misconduct involving patient failed to establish that city officials were motivated by evil intent or reckless or callous indifference to therapist's procedural due process rights, as required to establish claim for punitive damages under §§ 1983; therapist merely averred that officials were careless and negligent. Jones v. City of Modesto, E.D.Cal.2005, 408 F.Supp.2d 935. Civil Rights 1465(1)

Punitive damages against county commissioners were not warranted under §§ 1983 for county's unconstitutional minority and women business enterprise (MWBE) programs, which established "participation goals" for minority and women business enterprises in awarding county architectural and engineering (A & E) contracts; county commissioners did not vote to apply MWBE set-asides and goals in A & E contracts with evil motive or callous indifference to non-minority engineering firms' constitutional rights, and non-minority firms lumped all the commissioners together in their punitive damages analysis, no matter how different each commissioner's intent and reasons for continuing to apply the MWBE programs to A & E contracts. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla., S.D.Fla.2004, 333 F.Supp.2d 1305. Civil Rights 1465(1)

Punitive damages may be awarded under § 1983 action when defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to federally protected rights of others. Veneklase v. City of Fargo, D.N.D.1995, 904 F.Supp. 1038, reversed in part, appeal dismissed in part 78 F.3d 1264, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 178, 519 U.S. 867, 136 L.Ed.2d 118. Civil Rights 1465(1)

Under 42 U.S.C.A. § 1983, homeowner who was subjected to warrantless strip search by city clerk at direction of police officers executing warrant to search homeowner's home could not recover punitive damages against clerk as there was no evidence that would suggest either evil intent or reckless indifference to homeowner's constitutional rights against illegal searches and seizures. Munz v. Ryan, D.Kan.1990, 752 F.Supp. 1537. Civil Rights 1465(1)

Test for determining whether punitive damages should be awarded in a civil rights action is whether defendant acted with actual knowledge that he was violating a federally protected right or with reckless disregard of whether he was doing so. Hild v. Bruner, D.C.N.J.1980, 496 F.Supp. 93. Civil Rights 1465(1)

If successful in showing that the members of the town board passed ordinance restricting first trimester abortions with full knowledge of the unconstitutionality of the ordinance, abortion clinic could obtain punitive damages from the members of the town board. Fox Valley Reproductive Health Care Center, Inc. v. Arft, E.D.Wis.1978, 454 F.Supp. 784. Civil Rights 1465(1)

Where there was no showing that warden of Tennessee state prison had intentionally sought to violate either the guidelines or the constitutional rights of inmates in prison disciplinary proceedings, failure to provide limited

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written record of hearing wherein inmates were deprived of rights protected by due process would not justify imposition of punitive damages. Bills v. Henderson, E.D.Tenn.1978, 446 F.Supp. 967, affirmed in part, reversed in part on other grounds 631 F.2d 1287. Civil Rights 1465(1)

In order to recover punitive damages for deprivation of his civil rights, a plaintiff must show more than a mere violation of the particular civil rights statute involved, although he need not show that defendant specifically intended to deprive him of a recognized federal right. Hughes v. Dyer, W.D.Mo.1974, 378 F.Supp. 1305. Civil Rights 1401

5521. ---- Malice, considerations governing, punitive damages

Jury may be permitted to assess punitive damages in an action under this section when a defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to federally-protected rights of others and such threshold applies even when the underlying standard of liability for compensatory damages is one of recklessness. Smith v. Wade, U.S.Mo.1983, 103 S.Ct. 1625, 461 U.S. 30, 75 L.Ed.2d 632. See, also, Davis v. Mason County, C.A.9 (Wash.) 1991, 927 F.2d 1473, certiorari denied 112 S.Ct. 275, 116 L.Ed.2d 227. Civil Rights 1465(1)

Determination that volunteer ambulance service was not entitled to punitive damages was premature in its action against town arising when town terminated its relationship with the service and seized ambulances and other equipment without notice, where trial had been limited to issue of whether service owned the ambulances and equipment, and parties had made no effort to present evidence as to whether the seizure was prompted by a motivation or state of mind on the part of town superintendent that could justify an award of punitive damages against him. New Windsor Volunteer Ambulance Corps, Inc. v. Meyers, C.A.2 (N.Y.) 2006, 442 F.3d 101. Civil Rights 1465(2)

Although police officer made an objectively unreasonable split-second decision when he arrested journalist, no evidence suggested that he harbored any malice or acted with reckless indifference to the journalist's constitutional rights, as required for an award of punitive damages on the journalist's § 1983 claim for false arrest; officer called a selectman to get a better sense of the Massachusetts Open Meeting Law, he made several attempts to defuse a contentious situation, and only after his attempted intercessions were rebuffed did he effect an arrest. Iacobucci v. Boulter, C.A.1 (Mass.) 1999, 193 F.3d 14. Civil Rights 1465(1)

Corrections officer's conduct in intentionally provoking or inciting pretrial detainee into "rage attacks" by relentlessly taunting him, so that she could subsequently discipline him by imposing administrative lock down, did not register such malicious intent, reckless disregard, or callous indifference to detainee's constitutional rights that jury was unreasonable in failing to award detainee punitive damages. O'Connor v. Huard, C.A.1 (Me.) 1997, 117 F.3d 12, certiorari denied 118 S.Ct. 691, 522 U.S. 1047, 139 L.Ed.2d 636. Civil Rights 1465(1)

Reprehensibility of police officer's conduct in filing false and subsequently nolled charges against arrestee and extent to which officer had notice of potential penalties for officer's wrongful conduct supported award of punitive damages in substantial multiple of nominal compensatory damages on arrestee's malicious prosecution claim. Lee v. Edwards, C.A.2 (Conn.) 1996, 101 F.3d 805. Malicious Prosecution 68

Sufficient evidence authorized jury's award of punitive damages in civil rights action brought by former county employee against various county departments and employees for race or national origin discrimination and violation of her due process rights in connection with her termination; she presented evidence from which reasonable jury could have concluded that defendants maliciously, wantonly, or oppressively quashed subpoenas at review hearing, and that portions of tape recordings from hearing were maliciously, wantonly or oppressively erased. Caban-Wheeler v. Elsea, C.A.11 (Ga.) 1996, 71 F.3d 837. Civil Rights 1474(1)

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42 U.S.C.A. § 1983

Punitive damages are available in § 1983 actions; however, punitive damages are to be awarded only when defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to federally protected rights of others. Jolivet v. Deland, C.A.10 (Utah) 1992, 966 F.2d 573. Civil Rights 1465(1)

Failure to make any showing that state Department of Corrections acted maliciously when Department provided attorneys to inmates for limited purpose of advising and conferring regarding proposed lawsuits without allowing attorneys to conduct any legal research precluded award of punitive damages in §§ 1983 action following determination that limitation violated inmate's right to have access to courts. White v. Kautzky, N.D.Iowa 2005, 386 F.Supp.2d 1042, motion to amend denied 2006 WL 141854. Civil Rights 1465(1)

High school student who was suspended for driving car containing knife, gun, and drug paraphernalia to school failed to plead facts sufficient to demonstrate that disciplinary actions taken by individual school board members maliciously, intentionally, or with callous indifference deprived student of substantive due process rights under Fourteenth Amendment, and thus student was not entitled to punitive damages against board members. Butler ex rel. Butler v. Rio Rancho Public School Bd. of Educ., D.N.M.2002, 245 F.Supp.2d 1188, reconsideration denied in part, reversed in part 341 F.3d 1197. Civil Rights 1465(1)

Punitive damages may be awarded in § 1983 case when defendant's conduct is shown to be motivated by evil motive or intent or when it involves reckless or callous indifference to the federally protected rights of others. Annis v. County of Westchester, S.D.N.Y.1996, 939 F.Supp. 1115, affirmed in part, vacated in part and remanded 136 F.3d 239. Civil Rights 1465(1)

State representative sufficiently alleged claim for punitive damages in action under § 1983 by alleging that members of county board of elections acted maliciously in suspending representative's certification as winner in election due to fact that representative changed party affiliation. Barley v. Luzerne County Bd. of Elections, M.D.Pa.1995, 937 F.Supp. 362. Civil Rights 1395(1)

In § 1983 action in which police officers' warrantless search of residence for missing minor child was found to be unreasonable, resident was not entitled to punitive damages, where she failed to offer evidence that officers had requisite evil intent, or callous or reckless indifference to her rights. Caruso v. Forslund, D.Conn.1994, 842 F.Supp. 1497, affirmed 47 F.3d 27. Civil Rights 1465(1)

Punitive damages are recoverable in civil rights action under 42 U.S.C.A. § 1983 only upon proof by preponderance of the evidence that defendant acted with ill will or with reckless indifference to another's federally protected rights. Hopkins v. City of Wilmington, D.C.Del.1985, 615 F.Supp. 1455. Civil Rights 1417

Punitive damages are possible in an appropriate case under this section in situation where the defendants have acted with the malicious intention to deprive a person of his rights. O'Connor v. Several Unknown Correctional Officers, E.D.Va.1981, 523 F.Supp. 1345. Civil Rights 1465(1)

Act of defendant guard at county jail in intentionally maneuvering himself into becoming a member of search party for sole purpose of obtaining an unsigned letter that plaintiff had written accusing him of dealing in hard drugs was unjustified and motivated by a malicious and wanton infringement of plaintiff's U.S.C.A.Const. Amend. 4 right against an unreasonable search and seizure and, given plaintiff's reasonable expectation of privacy against such a deliberate and unwarranted intrusion, was such as to render defendant guard liable for nominal and punitive damages. Brooks v. Shipman, W.D.Pa.1980, 503 F.Supp. 40, affirmed 681 F.2d 804. Civil Rights 1465(1); Prisons 4(7)

In order to recover punitive damages in civil rights action based upon alleged wrongful arrest of plaintiffs, plaintiffs would have to show that defendants acted maliciously. Pierce v. Stinson, E.D.Tenn.1979, 493 F.Supp.

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42 U.S.C.A. § 1983

609. Civil Rights 1404

Prisoner, who established that prison officials violated his due process rights by removing money from his account without first providing him with notice and an opportunity to respond, was not entitled to punitive damages since prison officials' conduct was the result of an improper motive or was recklessly indifferent to his due process rights. Brown v. Brown, C.A.6 (Ohio) 2002, 46 Fed.Appx. 324, 2002 WL 31072072, Unreported. Civil Rights 1465(1)

5522. ---- Official capacity, considerations governing, punitive damages

Oregon public school district was immune from punitive damages under §§ 1983. C.O. v. Portland Public Schools, D.Or.2005, 406 F.Supp.2d 1157. Civil Rights 1465(2)

State university, its president, vice president, and athletic director, acting in their official capacities as State officers, were immune from former track coach's §§ 1983 claim for punitive damages, but president, vice president, and athletic director were not immune from claims asserted against them as individuals. Wells v. Board of Trustees of California State University, N.D.Cal.2005, 393 F.Supp.2d 990. Civil Rights 1474(1)

School district was a public entity, and thus, could not be sued for punitive damages under § 1983. Gay-Straight Alliance Network v. Visalia Unified School Dist., E.D.Cal.2001, 262 F.Supp.2d 1088. Civil Rights 1465(2)

Pretrial detainee could not recover punitive damages on his § 1983 claim that jail administrators and sheriff violated his right to access courts and make bail by denying him access to telephones and mail, as a result of placing detainee in disciplinary segregation, where claims against administrators and sheriff were official capacity claims only. Simpson v. Gallant, D.Me.2002, 231 F.Supp.2d 341. Civil Rights 1465(2)

Punitive damages may not be assessed under § 1983 against municipality or against individual defendants sued in their official capacities. Davis v. Olin, D.Kan.1995, 886 F.Supp. 804. Civil Rights 1465(2)

5523. ---- Personal animosity, considerations governing, punitive damages

A showing of personal animosity or involvement between parties may present a stronger case for awarding of punitive damages in a civil rights action. Gill v. Manuel, C.A.9 (Cal.) 1973, 488 F.2d 799. Civil Rights 1434; Civil Rights 1465(1)

5524. ---- Recklessness, considerations governing, punitive damages

In arrestees' §§ 1983 action against arresting police officers, alleging use of excessive force, evidence was sufficient to establish that officers acted in the face of a perceived and flatly unacceptable risk that their actions would compromise arrestees' Fourth Amendment rights, so as to support award of punitive damages; arrestee and his fiancee testified that officers attacked arrestees without any provocation and savagely beat them. Casillas-Diaz v. Palau, C.A.1 (Puerto Rico) 2006, 463 F.3d 77. Civil Rights 1465(1)

Jury's finding that county prosecutor engaged in two acts of intentional discrimination against employee, after having been put on notice of prior act of discrimination against same employee, was sufficient to support punitive damages award against prosecutor in his individual capacity under § 1983, since finding evinced requisite reckless or callous indifference to employee's federally protected rights. Coleman v. Kaye, C.A.3 (N.J.) 1996, 87 F.3d 1491, certiorari denied 117 S.Ct. 754, 519 U.S. 1084, 136 L.Ed.2d 691. Civil Rights 1465(1)

Punitive damages are generally available in action pursuant to § 1983 when defendant's conduct is shown to be

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motivated by evil motive or intent, or when it involves reckless or callous indifference to federally protected rights of others. Ricketts v. City of Hartford, C.A.2 (Conn.) 1996, 74 F.3d 1397, amended on rehearing in part, certiorari denied 117 S.Ct. 65, 519 U.S. 815, 136 L.Ed.2d 26. Civil Rights 1465(1)

Punitive damages are available in § 1983 cases if defendants have acted with reckless or callous disregard of or indifference to rights and safety of others. Keenan v. City of Philadelphia, C.A.3 (Pa.) 1992, 983 F.2d 459, rehearing denied. Civil Rights 1465(1)

Submission of punitive damages issue and consequent award by jury were reasonable and proper in civil rights action against superintendent of county police by officers whose resignations were allegedly coerced by superintendent's subordinates; evidence before jury was sufficient to find that superintendent knew what was going on, participated and approved of activities, and acted with reckless and callous indifference to rights of officers. Angarita v. St. Louis County, C.A.8 (Mo.) 1992, 981 F.2d 1537. Civil Rights 1474(1)

Inmate could properly be awarded punitive damages on his civil rights claim arising out of prison guards dropping the inmate head first from the back of pickup truck while his hands were shackled behind his back, even though inmate was not awarded compensatory damages; evidence was presented that guards' actions were motivated by racial animus and desire to punish inmate for unsuccessful attempted escape. Davis v. Locke, C.A.11 (Fla.) 1991, 936 F.2d 1208. Civil Rights 1465(2)

Arrest of plaintiff for grand theft without probable cause constituted reckless disregard for her right not to be arrested without probable cause, thereby justifying jury's award of punitive damages in civil rights action brought against arresting officers. Kennedy v. Los Angeles Police Dept., C.A.9 (Cal.) 1989, 901 F.2d 702. Civil Rights 1465(1)

For plaintiff in action under civil rights statute to qualify for a punitive damages award, defendant's conduct must be, at a minimum, reckless or callous, and though punitive damages may also be allowed if conduct is intentional or motivated by evil motive, defendant's action need not necessarily meet this higher standard. Savarese v. Agriss, C.A.3 (Pa.) 1989, 883 F.2d 1194, rehearing denied. Civil Rights 1465(1)

Mayor, who acted under advice of city attorney, did not act with reckless or careless disregard of police officer's rights and, therefore, was not liable for punitive damages in § 1983 action. Angell v. Leslie, C.A.4 (W.Va.) 1987, 832 F.2d 817. Civil Rights 1474(1)

State inmate was not entitled to recover punitive damages in his §§ 1983 action alleging that prison warden violated his First Amendment free exercise rights by prohibiting him from wearing religious garb during transport outside of facility, despite inmate's contention that warden acted with reckless disregard for his rights, where inmate's filings at most asserted that prison staff took actions that could be construed as interfering with his religious rights, but did not support finding that warden himself acted with evil motive or callous disregard for inmate's rights. Boles v. Neet, D.Colo.2005, 402 F.Supp.2d 1237. Civil Rights 1465(1)

Genuine issues of material fact existed as to whether white city employee's supervisors demonstrated reckless indifference to her federally protected rights in connection with alleged racial harassment of employee, precluding summary judgment as to whether employee was entitled to punitive damages on her §§ 1983 and Title VII claims. Brantley v. City of Macon, M.D.Ga.2005, 390 F.Supp.2d 1314. Federal Civil Procedure 2497.1

Issue of whether physicians' conspiracy with city and county officials to confine former county employee in mental hospital involved reckless or callous indifference to employee's federally protected rights, and thus whether punitive damages were warranted, was for jury in employee's §§ 1983 false imprisonment suit against physicians. Ruhlmann v. Smith, N.D.N.Y.2004, 323 F.Supp.2d 356. Civil Rights 1430

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State police officer acted with reckless indifference toward civilian maintenance worker employed in state police barracks by intentionally placing worker in position where he was at risk of death or serious injury, and worker was accordingly entitled to punitive damages in §§ 1983 action against officer, who placed worker in headlock and brought loaded service revolver up near worker's head following lunchroom conversation; worker admitted that he should not have unholstered revolver, and doing so was reckless with regard to worker's safety and personal dignity. Schall v. Vazquez, E.D.Pa.2004, 322 F.Supp.2d 594. Civil Rights 1474(1)

Physician's claim for § 1983 punitive damages against individual hospital defendants in their individual capacity for revocation of staff privileges was appropriate for jury determination where defendants allegedly failed to follow extensive set of bylaws that governed termination of medical privileges and failed to provide even a basic pre-termination hearing; evidence sufficiently demonstrated that defendants may have acted with recklessness or callous indifference towards termination of physician's medical privileges. Medeiros v. Randolph County Hosp. Ass'n, Inc., M.D.Ala.1997, 968 F.Supp. 1469. Civil Rights 1431

Allegations that elementary school principal engaged in abusive, threatening, and intimidating daily interrogations of student over a period of five days alleged recklessness or evil motive sufficient to state claim for exemplary or punitive damages in § 1983 action based on alleged violation of Fourth Amendment rights. Bills by Bills v. Homer Consolidated School Dist. No. 33- C, N.D.Ill.1997, 959 F.Supp. 507. Civil Rights 1395(2)

Punitive damages in civil rights suit under § 1983 are recoverable against public officials in their individual capacities only if individual's conduct involves reckless or callous indifference to plaintiff's federally protected rights or if the conduct was based on an evil motive or intent. Rojicek v. Community Consol. School Dist. 15, N.D.Ill.1996, 934 F.Supp. 280. Civil Rights 1465(1)

Under federal law, punitive damages are available in § 1983 action upon jury finding that defendants acted with reckless or callous disregard for plaintiff's rights or in intentional violation of federal law. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1465(1)

Punitive damages may be recovered in § 1983 action based on showing of reckless or callous indifference to plaintiff's civil rights. Green v. Zendrian, D.Md.1996, 916 F.Supp. 493. Civil Rights 1465(1)

Former prison superintendents were not recklessly or callously indifferent to inmates' constitutional right to court access, and therefore general population and segregation and orientation inmates were not entitled to punitive damages award for superintendents' denial of such right, where plans were made to move law library as soon as it was apparent that library was overcrowded, one superintendent sought information on correspondence courses which could be offered to inmates to assist them in use of law library, and other superintendent was temporary superintendent who had little time to familiarize himself with problems at the prison during his five-month term. Klinger v. Nebraska Dept. of Correctional Services, D.Neb.1995, 902 F.Supp. 1036, reversed 107 F.3d 609. Civil Rights 1465(1)

Punitive damages in § 1983 civil rights actions are appropriate where defendant's conduct is motivated by evil intent or involves callous or reckless indifference to federally protected rights. Fletcher v. State of Fla., M.D.Fla.1994, 858 F.Supp. 169. Civil Rights 1465(1)

Appropriateness of punitive damages in any case involving reckless or callous disregard for plaintiff's rights may be considered by jury in civil rights litigation. Logan v. Drew, N.D.Ill.1992, 790 F.Supp. 181. Civil Rights 1426

Homeowners claiming civil rights violation arising out of police misidentification of their house as target for drug search warrant were not entitled to punitive damages; there was no evidence police conduct was motivated by evil motive or intent, or reflected reckless or callous indifference to their rights. Gonzalez v. Romanisko,

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M.D.Pa.1990, 744 F.Supp. 95, affirmed 941 F.2d 1201. Civil Rights 1465(2)

Plaintiff could recover punitive damages under § 1983 against town officials sued in their individual capacity, but only if plaintiff prevailed on his claim and established that actions of officials involved reckless or callous indifference to his constitutionally protected rights. Bourque v. Town of Bow, D.N.H.1990, 736 F.Supp. 398. Civil Rights 1465(1)

5525. ---- Willfulness, considerations governing, punitive damages

Punitive damages were warranted in inmates' § 1983 action against prison guards where guards beat inmates and then deliberately refused medical assistance for pain caused by beating. Cooper v. Casey, C.A.7 (Ill.) 1996, 97 F.3d 914. Civil Rights 1465(1)

Punitive damages may be imposed if defendant has acted willfully and in gross disregard for rights of complaining party. Lee v. Southern Home Sites Corp., C.A.5 (Miss.) 1970, 429 F.2d 290. Damages 91.5(1)

In seeking punitive damages under §§ 1983 on claim for First Amendment retaliation, teacher adequately alleged that school district superintendent, assistant superintendent, and district employee acted with requisite motivation, even though complaint did not use words "evil intent" or "reckless or callous indifference," given teacher's assertions that defendants were unlawfully motivated by desire to prevent public from learning how they had unlawfully kept information from students and parents regarding purportedly unsafe conditions at school district buildings, and that defendants demonstrated blatant disregard for teacher's rights and health. Smith v. Central Dauphin School Dist., M.D.Pa.2005, 419 F.Supp.2d 639. Civil Rights 1395(8)

Award of punitive damages for violations of those rights secured by this section is appropriate where the violation is willful and in gross disregard for the rights of the complaining party. Pizzolato v. Perez, E.D.La.1981, 524 F.Supp. 914.

Award of punitive damages against city mayor was appropriate in action arising out of city police officer's unlawful termination from employment with police department where mayor committed wilful violation of officer's statutory right to due process prior to termination of employment by ordering his termination without prior hearing. Busche v. Bosman, E.D.Wis.1979, 474 F.Supp. 484, affirmed 649 F.2d 509, certiorari denied 102 S.Ct. 396, 454 U.S. 897, 70 L.Ed.2d 212. Civil Rights 1474(1)

Punitive damages against state in action brought by welfare recipients to force compliance with federal welfare regulations relating to early and periodic screening, diagnoses and treatment program for medicare recipients would not serve proper functions of deterrence and punishment and, since there was no showing of willfulness and malicious action by individual defendants so as to deprive recipients of their civil rights, punitive damages could not be awarded against individual defendants either. Bond v. Stanton, N.D.Ind.1974, 372 F.Supp. 872, affirmed 504 F.2d 1246, certiorari denied 95 S.Ct. 1415, 420 U.S. 984, 43 L.Ed.2d 666. Civil Rights 1465(2)

Punitive damages may be awarded, in action under this section, where defendants have acted willfully and in gross disregard for rights of complaining party, or where defendants have acted in bad faith or for an improper motive, even though behaving like gentlemen. Lykken v. Vavreck, D.C.Minn.1973, 366 F.Supp. 585. Civil Rights 1465(1)

5526. ---- Joinder of claims, considerations governing, punitive damages

Fact that claim under this section was joined with employment discrimination claim under the Civil Rights Act of 1964, § 2000e et seq. of this title, did not preclude award of punitive damages. Bradshaw v. Zoological Soc. of

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San Diego, C.A.9 (Cal.) 1978, 569 F.2d 1066.

5527. ---- Pattern of behavior, considerations governing, punitive damages

Federal district court did not abuse its discretion by letting stand $1.5 punitive damages award in pretrial detainee's estate's §§1983 Eighth Amendment action against county contractor that provided medical and mental health services at jail, arising from detainee's suicide while in jail; estate proffered ample evidence permitting conclusion that contractor was deliberately indifferent to risk of suicide at jail, including management's condoning of employees' routine disregard for policies and procedures. Woodward v. Correctional Medical Services of Illinois, Inc., C.A.7 (Ill.) 2004, 368 F.3d 917. Civil Rights 1465(1)

Public school teacher who was found to have been denied renewal of his contract in retaliation for his exercise of free speech rights was not entitled to award of punitive damages, since there was no classwide wrong, there was no systematic suppression, and no continuous course of harassment. Brown v. Bullard Independent School Dist., C.A.5 (Tex.) 1981, 640 F.2d 651, certiorari denied 102 S.Ct. 120, 454 U.S. 828, 70 L.Ed.2d 103. Schools 147.54

Punitive damages should not be awarded in action brought under this section unless there is showing that proscribed action has been constant pattern or practice of behavior of defendants and that such practice has been willful and in gross disregard for rights of plaintiff. Urbano v. McCorkle, D.C.N.J.1971, 334 F.Supp. 161, supplemented 346 F.Supp. 51, affirmed 481 F.2d 1400. Civil Rights 1465(1)

5528. ---- Recoverability under local law, considerations governing, punitive damages

Punitive damages may be awarded under 42 U.S.C.A. § 1983 even where they would not normally be recoverable under local law in state where violation occurred. Gordon v. Norman, C.A.6 (Tenn.) 1986, 788 F.2d 1194. Civil Rights 1465(1)

5529. Amount of award, punitive damages--Generally

In arrestees' §§ 1983 action against arresting police officers, alleging use of excessive force, award of $1,000,000 in punitive damages did not exceed amount reasonably necessary to punish the officers and deter similar conduct; officers' misconduct in attacking arrestees without any provocation and savagely beating them was well outside the acceptable norms of police work, jury could reasonably have concluded that officers' filing of felony charges against arrestees that were later dropped demonstrated officers' improper motives and callous indifference to arrestees' rights, award was reasonable in proportion to compensatory damage awards totaling $300,000, and award was in line with punitive damages awards upheld in comparable cases. Casillas-Diaz v. Palau, C.A.1 (Puerto Rico) 2006, 463 F.3d 77.

Punitive damages award of $20,000 did not exceed maximum permissible amount in action brought by African-American former coworker against corrections officer for civil rights violations and intentional infliction of emotional distress arising from assault in which corrections officer and others sprayed former coworker with mace, covered him with shaving cream, and taunted him with racial slurs, inasmuch as assault was thoroughly reprehensible incident, particularly in light of its racial motivation, punitive damages represented relatively small fraction of $100,000 compensatory damages awarded on emotional distress claim, and corrections officer should have appreciated gravity of racially motivated assault on fellow officer and should have understood that such conduct could have adverse economic consequences. Patterson v. Balsamico, C.A.2 (N.Y.) 2006, 440 F.3d 104. Damages 94.10(1)

Punitive damages award, in § 1983 action, of approximately $2 million to each Caucasian librarian, who was discriminated against on basis of race by members of board of trustees for public library system and director of

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system, was reasonable and not excessive in violation of the due process clause; there was evidence that defendants knew their conduct was illegal, and concocted plan to hide their discriminatory motives, and punitive damages award was reasonable and proportionate to amount of harm to librarians and to general damages recovered. Bogle v. McClure, C.A.11 (Ga.) 2003, 332 F.3d 1347, rehearing and rehearing en banc denied 77 Fed.Appx. 510, 2003 WL 21804722, certiorari dismissed 124 S.Ct. 1168, 540 U.S. 1158, 157 L.Ed.2d 1059. Civil Rights 1474(1); Constitutional Law 303

Jury's $200,000 punitive damages award, on arrestee's malicious prosecution claim, against police officer who filed false and subsequently nolled charges against arrestee was excessive, and would be reduced to $75,000 if arrestee agreed to remittitur, in light of *Gore* factors and comparison of award with other punitive damages awards in similar cases involving police misconduct. Lee v. Edwards, C.A.2 (Conn.) 1996, 101 F.3d 805. Malicious Prosecution 69

Punitive damage award against prison guards who participated in beating of inmates and then deliberately refused medical treatment was not excessive even though it was 12 times award of compensatory damages; highest punitive damage award against any one of seven defendants was only $22,500. Cooper v. Casey, C.A.7 (Ill.) 1996, 97 F.3d 914. Civil Rights 1465(1)

Award of $9,500 punitive damages against town's superintendent of highways, in civil rights action, as result of substantive due process violation in denial of street excavation permit for connection of home to public water system, in attempt to extort from homeowners a deed of land for widening street, was not excessive. Walz v. Town of Smithtown, C.A.2 (N.Y.) 1995, 46 F.3d 162, certiorari denied 115 S.Ct. 2557, 515 U.S. 1131, 132 L.Ed.2d 810. Civil Rights 1465(1)

Jury's award of $175,000 in compensatory damages and $175,000 in punitive damages based on Puerto Rico treasury agent's use of unreasonable force in conducting warrantless administrative inspection of nightclub was not excessive and did not shock the judicial conscience, so as to warrant remittitur in nightclub owner's civil rights action. Alvarez Sepulveda v. Colon Matos, D.Puerto Rico 2004, 306 F.Supp.2d 100. Civil Rights 1464; Civil Rights 1465(1)

Award of $50,000 in punitive damages was not excessive in arrestee's § 1983 action against police officer, in light of evidence that arrestee was innocent bystander, did nothing to provoke police except for fact that he was expressing concern about police misconduct against others, and was compliant with officers and submitted to arrest, officer gratuitously struck him in back of head, kneed him, and threw him to ground after he was handcuffed, and other officers made no attempt to identify officer despite witnesses' detailed description. Burbank v. Davis, D.Me.2003, 238 F.Supp.2d 317. Civil Rights 1465(1)

Award of $200,000 in punitive damages to detainee in § 1983 action against police officer who participated in coercing confession from detainee was so great as to shock the judicial conscience and to constitute a denial of justice and a windfall for detainee; officer never touched detainee, and police officer's conduct consisted primarily of failing to stop security officer's illegal behavior toward detainee. Niemann v. Whalen, S.D.N.Y.1996, 928 F.Supp. 296, affirmed 107 F.3d 3. Civil Rights 1465(1)

Award of $100,000 in punitive damages against county sheriff in his personal capacity was not so large as to be impermissible in civil rights action arising when deputy allegedly beat arrestee; arrestee received traumatically caused cataract at hands of sheriff's department, testified he did nothing to encourage blows he received, no disciplinary investigation ensued, and arrestee was charged with resisting arrest with violence in same form deputy used to explain his use of force. Colvin v. Curtis, M.D.Fla.1993, 860 F.Supp. 1503, vacated 62 F.3d 1316. Civil Rights 1465(1)

Punitive damages are imposed in civil rights actions primarily for their effect on defendant and to vindicate public

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interest in deterring malicious or wanton conduct by public officials, and, in arriving at appropriate amount to be awarded in punitive damages, court must take into consideration severity of constitutional violation and what is necessary to reasonably deter such conduct in the future. Aumiller v. University of Delaware, D.C.Del.1977, 434 F.Supp. 1273. Civil Rights 1465(1)

5530. ---- Financial status of defendant, amount of award, punitive damages

Punitive damages of $20,000 that were awarded against corrections officer in former coworker's action for civil rights violations and intentional infliction of emotional distress were excessive in light of personal finances of corrections officer, who earned annual salary of approximately $37,632, was married, and had two children, whereas award of no more than $10,000 would provide sufficient punishment and deter future conduct like the racially motivated assault on former coworker underlying award; thus, remand for new trial on punitive damages was warranted unless former coworker agreed to remit portion of punitive damages award that exceeded $10,000. Patterson v. Balsamico, C.A.2 (N.Y.) 2006, 440 F.3d 104. Damages 94.10(1)

Although defendant in civil rights action was aware of potential liability for punitive damages, since he did not choose to offer proof of his net worth he could not successfully complain that punitive damages were awarded without regard to his net worth. Zarcone v. Perry, C.A.2 (N.Y.) 1978, 572 F.2d 52. Civil Rights 1465(1)

Evidence of public official's wealth or ability to pay was not required to support punitive damages award of $5000, in §§ 1983 political affiliation discrimination action by employee of Puerto Rico Family Department; amount was sufficiently conservative for jury not to have to speculate about official's ability to pay. Acevedo Luis v. Zayas, D.Puerto Rico 2006, 419 F.Supp.2d 115. Civil Rights 1474(1)

Award of $31,650 in punitive damages against prison official in civil rights action was excessive and would be reduced to $7,500; although official had annual salary of approximately $47,000 and assets in the amount of $6,722, she had liabilities totaling almost $85,000. Blissett v. Eisensmidt, N.D.N.Y.1996, 940 F.Supp. 449. Civil Rights 1465(1)

District court would consider evidence of defendant's earning capacity in addition to evidence of defendant's net worth in setting punitive damages in civil rights action for housing discrimination consisting of cross burning, notwithstanding Illinois case law suggesting that Illinois courts would not do so; Illinois state law did not govern § 1983 action, and court would not apply a doctrine that would reward defendant for having been a total idler and wastrel. Johnson v. Smith, N.D.Ill.1995, 890 F.Supp. 726, motion to amend denied. Civil Rights 1465(1)

Plaintiff who established that county discriminated against her based on her gender in refusing to hire her for weed superintendent position was entitled to award of $2,000 in punitive damages against one county commissioner and $1,000 as against other county commissioner, despite absence of evidence concerning financial status of defendants. Bruhn v. Foley, D.Neb.1993, 824 F.Supp. 1345. Civil Rights 1474(1)

5531. Governmental authority, punitive damages

Although punitive damages may lie against individuals in § 1983 action, such damages are not available against municipality. Scott-Harris v. City of Fall River, C.A.1 (Mass.) 1997, 134 F.3d 427, certiorari granted 117 S.Ct. 2430, 520 U.S. 1263, 138 L.Ed.2d 192, reversed 118 S.Ct. 966, 523 U.S. 44, 140 L.Ed.2d 79, certiorari denied 118 S.Ct. 1184, 523 U.S. 1003, 140 L.Ed.2d 315. Civil Rights 1465(2)

Punitive damages were not available against school district in student's §§ 1983 action, since school was public entity. Klump v. Nazareth Area School Dist., E.D.Pa.2006, 425 F.Supp.2d 622. Civil Rights 1465(2)

Public entity cannot be sued under §§ 1983 for punitive damages. Neveu v. City of Fresno, E.D.Cal.2005, 392

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F.Supp.2d 1159. Civil Rights 1465(2)

Punitive damages could not be assessed against city in § 1983 action for improperly denying parade permit to organization based on the anticipated content of parade's message. Nationalist Movement v. City of Boston, D.Mass.1998, 12 F.Supp.2d 182. Civil Rights 1465(2)

Although municipalities may be directly liable for monetary, declaratory, and injunctive relief under § 1983, such liability does not extend to liability for punitive damages. Lewis v. Village of Minerva, N.D.Ohio 1996, 934 F.Supp. 268. Civil Rights 1465(2)

Municipality is immune from punitive damages under § 1983. Ferguson v. City of Phoenix, D.Ariz.1996, 931 F.Supp. 688, affirmed 157 F.3d 668, as amended, certiorari denied 119 S.Ct. 2049, 526 U.S. 1159, 144 L.Ed.2d 216. Civil Rights 1465(2)

Punitive damages are not available under § 1983 on theory of municipal liability. Comfort v. Town of Pittsfield, D.Me.1996, 924 F.Supp. 1219. Civil Rights 1465(2)

Punitive damages are not available against a municipality itself in federal civil rights action. Williams v. City of Oakland, N.D.Cal.1996, 915 F.Supp. 1074. Civil Rights 1465(2)

Punitive damages may not be awarded against governmental authority under § 1983, and officials sued in their official capacities are also immune to punitive damages under that statute; however, officials sued in their individual capacity in a 1983 suit may be liable for punitive damages to plaintiff if the official's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to federally protected rights of others. Scheideman v. Shawnee County Bd. of County Com'rs, D.Kan.1995, 895 F.Supp. 279, motion denied 1996 WL 89367. Civil Rights 1465(2)

Punitive damages are not available under § 1983 from governmental entity. Garrett v. Clarke County Bd. of Educ., S.D.Ala.1994, 857 F.Supp. 949. Civil Rights 1465(2)

5532. Municipalities, punitive damages

Award of $3,000 per employee in punitive damages for mayor's termination of employees in Puerto Rico municipal sanitation department in violation of their First Amendment political affiliation rights did not exceed amount necessary to punish and deter alleged misconduct. Borges Colon v. Roman-Abreu, C.A.1 (Puerto Rico) 2006, 438 F.3d 1. Civil Rights 1474(1)

A municipality, including a municipal agency, is immune from punitive damages under §§ 1983. Farmer v. Wilson Housing Authority, E.D.N.C.2004, 393 F.Supp.2d 384. Civil Rights 1465(2)

Punitive damages are not available under §§ 1983 against a municipality. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla., S.D.Fla.2004, 333 F.Supp.2d 1305. Civil Rights 1465(2)

Municipality was immune from punitive damages under § 1983. Bunyon v. Burke County, S.D.Ga.2003, 285 F.Supp.2d 1310. Civil Rights 1465(2)

Municipality is immune from punitive damages under § 1983. Radloff v. City of Oelwein, N.D.Iowa 2003, 284 F.Supp.2d 1145, affirmed 380 F.3d 344, certiorari denied 125 S.Ct. 967, 543 U.S. 1090, 160 L.Ed.2d 900. Civil Rights 1465(2)

Municipalities are not subject to punitive damages in § 1983 actions, even though municipality can be liable for

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compensatory damages arising out of violation of individual's constitutional rights. Myers v. Town of Landis, M.D.N.C.1996, 957 F.Supp. 762, affirmed in part, dismissed in part 107 F.3d 867. Civil Rights 1465(2)

5533. Duplicative awards, punitive damages

Punitive damage awards on both § 1983 and wrongful discharge claim are not duplicative per se. Mason v. Oklahoma Turnpike Authority, C.A.10 (Okla.) 1997, 115 F.3d 1442, appeal decided 124 F.3d 217, on remand 1998 WL 2018163. Damages 15

5534. Miscellaneous awards, punitive damages

Evidence that psychiatrist at state mental hospital was the only independent contractor physician whose contract was non-renewed after he wrote memoranda criticizing state of healthcare there, received non-renewal notice only two days before proposal deadline, was not given extension that would have allowed him sufficient time to fill out requisite 30 page application form, and that state official that operated hospital was unhappy and unset with psychiatrist was sufficient to support of award of punitive damages in official's §§ 1983 action against the official. Springer v. Henry, C.A.3 (Del.) 2006, 435 F.3d 268. Civil Rights 1465(1)

Award of punitive damages against mayor and former supervisor, in terminated city employee's § 1983 action alleging race discrimination and violation of her speech and political association rights, was supported by sufficient evidence, including evidence that employee's efforts to bring questionable activities to light were met with contempt, hostility, and anger. Hardeman v. City of Albuquerque, C.A.10 (N.M.) 2004, 377 F.3d 1106. Civil Rights 1474(1)

Police officers were not liable for punitive damages on citizen's § 1983 claim under Fourth Amendment alleging illegal search and seizure and unreasonable force, since citizen did not offer any evidence that officers' conduct was driven by evil motive or intent or by reckless or callous indifference to citizen's rights. Ehrlich v. Town of Glastonbury, C.A.2 (Conn.) 2003, 348 F.3d 48. Civil Rights 1465(1)

Evidence was sufficient to support award of punitive damages against school superintendent, in terminated female teacher's § 1983 action alleging, inter alia, that male teacher favored his polygamist family members and attempted to initiate sexual relationships with students; there was evidence that female teacher's efforts to bring questionable activities to light were met with contempt, and it was important to protect whistleblowers in public schools. Youren v. Tintic School Dist., C.A.10 (Utah) 2003, 343 F.3d 1296. Civil Rights 1474(1)

Awards of punitive damages to arrestee and against police officer of $625,000 for use of excessive force and $650,000 for abuse of process were excessive, requiring remittitur to $75,000 total, or new trial on issue of punitive damages; while officer engaged in highly reprehensible conduct and acted with malice in violently slamming arrestee against a wall, choking her to the point where she began to lose vision, and pushing her to the ground and striking her, awards exceeded those in comparable cases. DiSorbo v. Hoy, C.A.2 (N.Y.) 2003, 343 F.3d 172. Damages 94.10(1); Process 171

Finding that, under both § 1983 and Pennsylvania "whistleblowers" statute, public housing authority employee who was discharged in retaliation for filing audit reports critical of authority, was entitled to punitive damages against chairman of authority's board of commissioners as well as its executive director was supported by evidence that chairman and director worked together closely on authority matters and that employee report's implicated both chairman and director in mismanagement of authority, by director's testimony that before firing employee he spoke to chairman about matter and chairman concurred in decision and that he and chairman discussed one of pretextual reasons for firing employee. Feldman v. Philadelphia Housing Authority, C.A.3 (Pa.) 1994, 43 F.3d 823. Civil Rights 1421; Municipal Corporations 218(10)

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Punitive damages award of $15,000 in corrections officer's §§ 1983 claim against co-workers, alleging he was assaulted during a practical joke gone awry, was not so excessive as to be in violation of the constitutional guarantee of due process, notwithstanding nominal compensatory award of one-dollar; although the conduct was an isolated event and was motivated by misguided camaraderie rather than malice, it did involve a degrading physical assault, including binding the officer with handcuffs and leg irons, pulling down his pants, taping his genitalia to his leg, and taking pictures of him. Givens v. O'Quinn, W.D.Va.2006, 447 F.Supp.2d 593. Constitutional Law 303

Punitive damages award of $150,000 would be sustained, in §§ 1983 action brought by inmate claiming that guard used excess force while placing him in four point restraint; guard engaged in reprehensible conduct by hitting inmate after inmate was secured, punitive damages were only 50% higher than compensatory damages, and amount was reasonably in line with criminal penalty of one year imprisonment and $2,000 fine. Ziemba v. Armstrong, D.Conn.2006, 433 F.Supp.2d 248. Civil Rights 1465(1)

Award of $5000 in punitive damages in favor of employee of Puerto Rico Family Department was not excessive, in employee's §§ 1983 political affiliation discrimination action; jury could have found that an employee with 25-year record of exemplary service was transferred and given no job responsibilities, despite the fact that other positions that were comparable to employee's previously-held position were available. Acevedo Luis v. Zayas, D.Puerto Rico 2006, 419 F.Supp.2d 115. Civil Rights 1474(1)

Jury's award of $5,500 in punitive damages in §§ 1983 action brought by construction site protestor against state police officers, alleging false arrest and malicious prosecution, was within reasonable range and did not constitute denial of justice; jury properly found that officers, lacking probable cause, arrested protestor and kept him in jail overnight, and that they maliciously initiated and permitted continuation of criminal proceedings against protestor until case was dismissed for failure to prosecute. Zellner v. Summerlin, E.D.N.Y.2005, 399 F.Supp.2d 154. Civil Rights 1465(1)

Alien was not entitled to punitive damages from village police officer in his individual capacity or other detectives, police officers and medical doctors in their official and individual capacities for allegedly violating his civil rights by falsely arresting and detaining him, in absence of separate claim for punitive damages; however, he may have been entitled to punitive damages as part of damages on claims of false arrest, malicious prosecution, deliberate indifference to medical treatment, and conspiracy. Carbajal v. County of Nassau, E.D.N.Y.2003, 271 F.Supp.2d 415. Civil Rights 1465(1)

Punitive damages of $500,000 would be awarded in § 1983 action to inmate who was sexually abused by county correctional facility's director of security; director used his position as director to forcibly sodomize inmate under his total control in outrageous abuse of power and authority. Mathie v. Fries, E.D.N.Y.1996, 935 F.Supp. 1284, affirmed 121 F.3d 808. Civil Rights 1465(1)

Jury's award of punitive damages in detainee's § 1983 suit against police officer for coercing detainee's confession to a theft was supported by evidence that police officer and security officer held detainee for four hours, that security officer told her that she could not leave until she confessed, that security officer threatened to search her home in front of her children and to tell her husband's employer about investigation, and that police officer did nothing to prevent security officer from conducting interview in that manner. Niemann v. Whalen, S.D.N.Y.1996, 928 F.Supp. 296, affirmed 107 F.3d 3. Civil Rights 1465(1)

Allegations of arrestee who claimed that he was subjected to choke hold and thrown to floor by officer, that he was harassed by police because of prior complaints about police conduct, and that chief systematically whitewashed evidence of police brutality and conveyed to officers the notion that the type of mistreatment to which arrestee was subjected was within constitutional bounds were sufficient to support award of punitive damages against officer and police chief. Illiano v. Clay Tp., E.D.Pa.1995, 892 F.Supp. 117. Civil Rights 1465(1)

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LVIII. EQUITABLE RELIEF GENERALLY

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5561. Affirmative action, equitable relief generally--Generally

Where clearly established pattern and practice of racial discrimination in employment is found, it is proper to consider necessity and feasibility of directing affirmative recruitment efforts aimed at black population. Mims v. Wilson, C.A.5 (Fla.) 1975, 514 F.2d 106. Civil Rights 1562

Where pattern of past employment discrimination appears, recruitment procedures that might otherwise be classified as neutral will no longer be accepted as non-discriminatory; additional methods must then be devised to compensate for the effects of past discriminatory practices and to guard against their perpetuation or recurrence. Gresham v. Chambers, C.A.2 (N.Y.) 1974, 501 F.2d 687. Civil Rights 1121; Civil Rights 1140

On finding that private fraternal organization of police officers, which operated under color of state law, discriminated against black policemen in its membership policies, with system of exclusion being institutionalized in rule permitting five members to veto application of any prospective member, district court should not merely have ordered lodge to cease discriminatory membership policy but should have taken further affirmative action by ordering lodge to abandon five-man-veto rule entirely and to accept forthwith as members police officers currently in good standing on city police force. Johnson v. Capitol City Lodge No. 74, Fraternal Order of Police, C.A.4 (W.Va.) 1973, 477 F.2d 601. Civil Rights 1448

In order to eradicate effects of past discrimination in hiring firemen, as result of which fire department employing 535 men in city with total minority population of 6.44 percent had no minority members, it would be proper for the district court to mandate that minority persons be hired on a one to two ratio until 20 qualified minority persons have been hired. Carter v. Gallagher, C.A.8 (Minn.) 1971, 452 F.2d 315, rehearing and suggestion for rehearing granted, on remand, certiorari denied 92 S.Ct. 2045, 406 U.S. 950, 32 L.Ed.2d 338. Civil Rights 1448; Injunction 189

District court sitting as a court of equity in suit challenging entrance level and promotion examinations in city police department, which were shown not to be job related, had wide power and discretion to fashion its decree not only to prohibit present discrimination against minorities but to eradicate effects of past discriminatory practices including the authority to construct an equitable remedy involving imposition of requirement of racial hiring to correct past discriminatory conduct and to avoid repetition of past conduct in the future. Officers for Justice v. Civil Service Com'n of City and County of San Francisco, N.D.Cal.1973, 371 F.Supp. 1328. Civil Rights 1562

Where parties claiming that union was guilty of discrimination against nonwhites did not show any specific instances of discrimination by trade association of employers which engaged in collective bargaining on behalf of its members and which had equal representation in running apprenticeship program, but there was showing of lack of nonwhite employment in industry generally, trade association would not be held liable for damages but would be required to take appropriate affirmative action to correct situation. U.S. v. Local 638 Enterprise Ass'n of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Compressed Air, Ice Machine, Air Conditioning and General Pipefitters, S.D.N.Y.1973, 360 F.Supp. 979, affirmed as modified and remanded 501 F.2d 622. Civil Rights 1567

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5562. ---- Quotas, affirmative action, equitable relief generally

Where hiring test had been used for policemen which was not validated and which was not job related, judge did not abuse his discretion in imposing hiring quotas but, where there was no finding that promotion examination was not job related, imposition of quotas above rank of patrolman constituted an abuse of discretion and was clearly erroneous. Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Commission, C.A.2 (Conn.) 1973, 482 F.2d 1333, on remand. Civil Rights 1562; Federal Courts 865

5563. Contribution or indemnification, equitable relief generally

Even if there is right to contribution generally under § 1983, district court in action challenging conditions in county jail could not grant county contribution against its state; there was no allegation that relief from unconstitutional jail conditions was impossible without enjoining state, and there was no evidence of unequivocal expression of congressional intent to subject states to claims for contribution from their own political subdivisions. Harris v. Angelina County, Tex., C.A.5 (Tex.) 1994, 31 F.3d 331, rehearing and suggestion for rehearing en banc denied. Federal Courts 265

Prison doctor's liability for damages to paralyzed prisoner whose civil rights were violated by doctor's deliberate indifference to prisoner's serious medical needs could not be apportioned, even though security personnel and other unnamed parties may have also been liable for damages; liability of other persons did not diminish doctor's liability. Weeks v. Chaboudy, C.A.6 (Ohio) 1993, 984 F.2d 185, rehearing denied. Civil Rights 1358

Under Pennsylvania law, debt financing exclusion in public officials liability insurance policy issued to insured county, barring coverage for any debt financing, including but not limited to bonds, notes, debentures and guarantees of debt, did not preclude coverage for § 1983 claim asserted by property owner against county and county officials, for county's alleged failure to satisfy the county's mortgage against his property and release its lien, in violation of property owner's due process rights; exclusion applied only when the county was the borrower, not the lender. Continental Casualty Co. v. County of Chester, E.D.Pa.2003, 244 F.Supp.2d 403. Insurance 2350(1)

Motorist's constitutional claims against employees of the Georgia Bureau of Investigation, alleging that employees conspired to withhold from law enforcement officials and prosecutors involved in motorist's prosecution for driving under the influence information regarding lab technician's improper testing of motorist's blood sample for presence of alcohol, existed wholly apart and separate from lab technician's acts, and, thus, employees were not entitled to contribution or indemnification from lab technician, in motorist's civil rights action under §§ 1983. Katka v. Mills, N.D.Ga.2006, 422 F.Supp.2d 1304. Indemnity 64

City being sued under Title VII and § 1983 for using firefighter promotion examination that was allegedly racially biased could not assert contribution or indemnification claims against state department of civil service, though department created examination. M.O.C.H.A. Society, Inc. v. City of Buffalo, W.D.N.Y.2003, 272 F.Supp.2d 217. Contribution 5(6.1); Indemnity 64; Officers And Public Employees 11.7

State and county were not entitled to indemnity or contribution from inmate's attorneys in inmate's action under § 1983, and for false imprisonment under Oregon law, alleging that inmate was over-detained in prison as result of miscalculation of pretrial time served on burglary charge; attorneys never acted under color of state law, and never acted with intent to confine inmate. Biberdorf v. Oregon, D.Or.2002, 243 F.Supp.2d 1145. Contribution 5(6.1); Indemnity 65

No right to contribution or indemnification existed in federal civil rights action. TCI Cablevision, Inc. v. City of Jefferson, Mo., W.D.Mo.1984, 604 F.Supp. 845.

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No right of contribution exists under civil rights statutes. TCI Cablevision, Inc. v. City of Jefferson, Mo., W.D.Mo.1984, 604 F.Supp. 845. See, also, Valdez v. City of Farmington, D.C.N.M.1984, 580 F.Supp. 19. Contribution 5(6.1)

City and its police chief had no federal common-law right to seek contribution from union on employee's section 1981 or section 1983 claims. Gray v. City of Kansas City, Kan., D.C.Kan.1985, 603 F.Supp. 872. Contribution 5(6.1)

Contribution is not available to a defendant found in violation of this subchapter. Anderson v. Local Union No. 3, Intern. Broth. of Elec. Workers, S.D.N.Y.1984, 582 F.Supp. 627, affirmed 751 F.2d 546.

Any claims for indemnification by city and city police chief against third-party defendants involved in manufacture, distribution, or sale of mattress which was placed in jail cell of arrestee based directly upon 42 U.S.C.A. § 1983, the civil rights statute, were impermissible, in action under § 1983 for death of inmate after fire broke out in her cell; sale of allegedly defective mattress to governmental body was not an action taken "under color of state law" so as to permit § 1983 relief, and there was no indication that § 1983 provided for right of contribution or indemnity. Banks v. City of Emeryville, N.D.Cal.1985, 109 F.R.D. 535. Civil Rights 1326(1); Civil Rights 1326(8)

5564. Declaratory judgment, equitable relief generally--Generally

Though restoration to state prisoners of good-time improperly taken is foreclosed in action under civil rights statute since habeas corpus is the proper remedy, with the concomitant requirement of exhausting state remedies, declaratory judgment as a predicate to a damage award is not barred in a civil rights action. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Declaratory Judgment 203

Where federal civil rights jurisdiction had been established, separate remedy available through declaratory judgment could also proceed. Gay Student Services v. Texas A & M University, C.A.5 (Tex.) 1980, 612 F.2d 160, rehearing denied 620 F.2d 300, certiorari denied 101 S.Ct. 608, 449 U.S. 1034, 66 L.Ed.2d 495. Declaratory Judgment 272

This section permitting bringing of civil action for deprivation of rights is expressly authorized exception to § 2283 of Title 28 and is appropriate vehicle for obtaining declaratory relief. Chertkof v. Mayor & City Council of Baltimore, D.C.Md.1980, 497 F.Supp. 1252. Courts 508(1); Declaratory Judgment 276

Declaratory relief based on this section creating civil action for deprivation of rights is available when appropriate pleadings are filed. Glancy v. Parole Bd. of Michigan Dept. of Corrections, W.D.Mich.1968, 287 F.Supp. 34. See, also, Shellburne, Inc. v. New Castle County, D.C.Del.1968, 293 F.Supp. 237; Davis v. Cook, D.C.Ga.1948, 80 F.Supp. 443. Declaratory Judgment 82

5565. ---- First Amendment actions, declaratory judgment, equitable relief generally

Parade participants' claim for declaratory relief that city violated First Amendment by denying applications for parade permits did not become moot after parades were held; participants challenged denial of compensatory damages, and deputy police chief and assistant city attorney challenged liability under §§ 1983. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Federal Courts 13

Declaratory and injunctive relief by federal court was not appropriate, in § 1983 action challenging state injunction restricting antiabortion protests in vicinity of abortion clinics as unconstitutional restriction on plaintiffs' right to free speech; relief sought was insult to state judicial and law enforcement officials, was interference with ongoing

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state court proceeding, and was an empty but potentially mischievous command to officials to avoid committing any errors in enforcement of its injunction. Hoover v. Wagner, C.A.7 (Wis.) 1995, 47 F.3d 845, rehearing and suggestion for rehearing en banc denied. Courts 508(2.1); Declaratory Judgment 204

Even though ordinances attempting to regulate rights under U.S.C.A.Const. Amend. 1 had not been used in manner that would indicate deliberate attempt to suppress constitutional rights of civil rights demonstrators, demonstrators were entitled to declaratory judgment that defective ordinances were unconstitutional. Baker v. Bindner, W.D.Ky.1967, 274 F.Supp. 658. Declaratory Judgment 128

5566. ---- Racial discrimination actions, declaratory judgment, equitable relief generally

Negro citizens using public transportation of city of New Orleans were entitled to bring a declaratory judgment action to determine constitutionality of Louisiana statutes requiring segregation of races on buses, street cars, etc., without first being arrested for violation of such statutes. Morrison v. Davis, C.A.5 (La.) 1958, 252 F.2d 102, certiorari denied 78 S.Ct. 1008, 356 U.S. 968, 2 L.Ed.2d 1075, rehearing denied 78 S.Ct. 1383, 357 U.S. 944, 2 L.Ed.2d 1558. Declaratory Judgment 125

Where federal district court was convinced that school board had made a prompt and reasonable start toward doing away within segregation in public schools in independent school district and was proceeding in good faith compliance with decisions of the United States Supreme Court in school segregation cases, federal district court did not abuse its discretion in declining to enter a decree declaring the rights of the parties in class action brought by Negro children, or enjoining against discrimination. Avery v. Wichita Falls Independent School Dist., C.A.5 (Tex.) 1957, 241 F.2d 230, certiorari denied 77 S.Ct. 816, 353 U.S. 938, 1 L.Ed.2d 761. Declaratory Judgment 274.1

Negro citizens and taxpayers were entitled to declaratory judgment that they were entitled to nonsegregated use of county owned and administered public recreational facility and to injunctive relief against continuance of segregation. Willie v. Harris County, Tex., S.D.Tex.1962, 202 F.Supp. 549. Civil Rights 1451; Declaratory Judgment 209; Injunction 94

5567. ---- Child custody, declaratory judgment, equitable relief generally

In action brought by prospective adoptive mother challenging constitutionality of actions taken by city department of public welfare and its employees while evaluating her suitability to adopt child, director of Virginia Department of Welfare who was not subject to liability in his official or individual capacities would be fully dismissed from action, and district court would decline to entertain an action for declaratory relief against director since declaratory judgment did not appear to be a necessary predicate for any future action to be undertaken by plaintiff, and it would serve little purpose to keep Director in the suit solely on the strength of plaintiff's prayer for declaratory relief. Wooldridge v. Com. of Va., E.D.Va.1978, 453 F.Supp. 1333. Declaratory Judgment 204

5568. ---- Employment, declaratory judgment, equitable relief generally

School teacher whose summary discharge violated procedural due process requirements was entitled to declaration that discharge was invalid, to reinstatement in same, similar, or comparable position, and to determination of damages for period between discharge and effective date of reinstatement, subject to normal rules of mitigation. Cooley v. Board of Ed. of Forrest City School Dist., C.A.8 (Ark.) 1972, 453 F.2d 282. Declaratory Judgment 385; Declaratory Judgment 386.1; Declaratory Judgment 388

Federal district court has duty to decide the appropriateness and merits of declaratory request by discharged municipal employee, asserting deprivation of rights under U.S.C.A.Const. Amend. 1 in that the city regulation

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under which he was discharged was overbroad and therefore unconstitutional, irrespective of its conclusion as to propriety of issuance of injunction. Moreno v. Henckel, C.A.5 (Tex.) 1970, 431 F.2d 1299. Declaratory Judgment 366

5569. ---- Medicare or medicaid, declaratory judgment, equitable relief generally

Although practice of denying to welfare recipients benefits accruing from informal procedure adjustment of nonsupport claims did constitute invidious discrimination against them, since the informal procedure had been abolished as to all nonsupport cases and was not likely to be reestablished, granting of injunctive relief to plaintiff welfare recipients aimed at preventing further denial of access to such procedure was inappropriate and, on consideration of the same equitable principles, declaratory relief was likewise inappropriate. Haley v. Troy, D.C.Mass.1972, 338 F.Supp. 794. Declaratory Judgment 209; Injunction 22

5570. ---- Prisons and prisoners, declaratory judgment, equitable relief generally

Prisoners allegedly confined in violation of their constitutional rights were not entitled to declaratory relief, where unconstitutional conditions at jail had been remedied before case came to trial, and prisoners failed to establish that there was any danger these conditions would recur. Pembroke v. Wood County, Tex., C.A.5 (Tex.) 1993, 981 F.2d 225, certiorari denied 113 S.Ct. 2965, 508 U.S. 973, 125 L.Ed.2d 665. Declaratory Judgment 84

Because transfer of jailhouse lawyer from state farm to state prison violated rights of other farm inmates, jailhouse lawyer was entitled to declaratory and injunctive relief that his transfer was improper. Buise v. Hudkins, C.A.7 (Ind.) 1978, 584 F.2d 223, certiorari denied 99 S.Ct. 1234, 440 U.S. 916, 59 L.Ed.2d 466. Civil Rights 1448

Because former inmate had been released on parole and was no longer incarcerated in any Wisconsin prison when he filed civil rights suit challenging prison drug programs, his claims for injunctive and declaratory relief did not present justiciable case or controversy; as remedy for alleged First Amendment and other constitutional violations, inmate sought systemic changes to Wisconsin Department of Corrections drug treatment programs. Kerr v. Puckett, E.D.Wis.1997, 967 F.Supp. 354, affirmed 138 F.3d 321. Federal Courts 13

Prisoner's pro se § 1983 complaint against prison officials who had placed him in punitive segregation was not barred merely because § 1983 suits may not seek money damages or retrospective relief against states or state officials acting in their official capacities; since § 1983 does not prohibit suits for injunctive or declaratory relief, court was required to address prisoner's claim that he was deprived of liberty without due process. Morgan v. Ellerthorpe, D.R.I.1992, 785 F.Supp. 295. Civil Rights 1395(7)

By depriving prison inmate of liberty without procedural due process of law prison officials violated this section, and inmate was thus entitled to declaratory relief. U. S. ex rel. Hoss v. Cuyler, E.D.Pa.1978, 452 F.Supp. 256. Civil Rights 1098

5571. ---- Zoning, declaratory judgment, equitable relief generally

County could properly be subjected to suit for declaratory and injunctive relief under U.S.C.A.Const. Amend. 14 for changing zoning of plaintiff's property from commercial to residential. Shellburne, Inc. v. New Castle County, D.C.Del.1968, 293 F.Supp. 237. Declaratory Judgment 129; Zoning And Planning 568

5572. Assistance of counsel, equitable relief generally

Claims for equitable relief based on ineffective assistance and state trial court deficiencies must be pursued initially in habeas corpus proceedings, rather than § 1983 claim. Johnson v. McElveen, C.A.5 (La.) 1996, 101 F.3d 423. Civil Rights 1311; Habeas Corpus 321

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5573. Desegregation, equitable relief generally

Until such time as facts reveal in future that the authorities are not carrying out spirit and letter of court's detailed order for improvement in handling of juveniles and jail facilities which were required to be desegregated, court order was an acceptable disposition of suit by parents on behalf of juveniles for damages and declaratory relief with respect to facilities in county jail and practices of authorities in handling of juveniles. Patterson v. Hopkins, C.A.5 (Miss.) 1973, 481 F.2d 640. Civil Rights 1448

Any Negro child who claims that he is being denied constitutional rights through being required to attend particular school because of race or color can file complaint in appropriate federal court and, subject to establish equitable principles, such as that of exhaustion of administrative remedies before one is entitled to injunction, courts will consider various elements referred to in Supreme Court desegregation decision, including adequacy of any plans which school officials may choose to propose, and thereafter enter such order or decree as may be appropriate. Robinson v. Board of Ed. of St. Mary's County, D.C.Md.1956, 143 F.Supp. 481. Federal Courts 6

5574. Expungement of records, equitable relief generally--Generally

Patient, who was involuntarily confined at psychiatric center and who commenced § 1983 action against physician, could be entitled to remedy of expungement of psychiatric records, and New York Mental Hygiene law, providing New York Supreme Court may seal patient's mental health records, could neither limit remedies available in § 1983 action nor remedies available in federal court. DeMarco v. Sadiker, E.D.N.Y.1996, 952 F.Supp. 134. Civil Rights 1448; Federal Courts 433

Discharged county employee, who was successful in civil rights suit on claim that he was discharged in violation of First Amendment free speech rights, was not entitled to have his employment file purged; although jury found in employee's favor that his First Amendment exercise was a cause of his firing, that provided no justification for employee's conduct toward his boss and employee never asked for such equitable relief in his pleadings, in his final pretrial order, in his trial brief or at trial. Fleming v. Kane County, N.D.Ill.1988, 686 F.Supp. 1264, affirmed 898 F.2d 553. Civil Rights 1448; Civil Rights 1455

Where demotion to probationary status of Texas schoolteachers who had passed probationary period and had been employed under three-year contracts was in retaliation for their political associations, judgment was entered directing school board members, in their official capacities, to expunge from the records all evidence that the teachers were returned to probationary status in year at issue or any time thereafter; also, injunction issued against further action conditioning teachers' employment on a restriction of their political beliefs or associations at least until their actions destroyed their effectiveness as teachers. Guerra v. Roma Independent School Dist., S.D.Tex.1977, 444 F.Supp. 812. Injunction 78; Schools 147.12

5575. ---- Prison records, expungement of records, equitable relief generally

Federal district court was without power to order expungement of state bad-check convictions on alleged ground that statute under which convictions had been obtained was unconstitutional. Carter v. Hardy, C.A.5 (Tex.) 1976, 543 F.2d 555, rehearing denied 547 F.2d 573. Criminal Law 1226(3.1)

State writ of certiorari did not provide constitutionally adequate postdeprivation remedy for alleged failure of prison officials to afford prisoner adequate notice before disciplinary proceedings, so that prisoner could bring § 1983 action against prison officials despite fact that failure was result of random and unauthorized deviation of state employees from state statutes; prisoner could seek expungement of conduct report and recovery of his lost good-time credits under certiorari procedure, but he could not recover damages for eight days he spent in administrative segregation. Sturdevant v. Haferman, E.D.Wis.1992, 798 F.Supp. 536. Civil Rights 1319

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Inmate was entitled to expungement from his prison records of conduct reports that were found to be processed as major offenses in violation of his due process rights or on which he was found guilty without adequate statement of reasons, as remedy in federal civil rights action; inmate's interest in avoiding undeserved adverse consequences outweighed prison officials' interest in maintaining adequate records and insuring prison security. Robinson v. Young, W.D.Wis.1987, 674 F.Supp. 1356. Civil Rights 1448; Civil Rights 1454

5576. Mandamus, equitable relief generally

Plaintiff challenging district court's order dismissing § 1983 claim on basis of judicial immunity was not entitled to relief in form of mandamus; plaintiff could pursue direct appeal after final judgment on remaining claims, delay in pursuing appeal would not damage or prejudice plaintiff, order was not clearly erroneous, subject matter was not oft-repeated error and did not manifest persistent disregard of federal rules, and dismissal did not raise new and important problem or issue of law of first impression. Branson v. City of Los Angeles, C.A.9 (Cal.) 1990, 912 F.2d 334. Mandamus 4(4); Mandamus 43

Pro se civil rights complaint which sought an order requiring state court clerk to expunge certain state convictions from all official records within his custody, and for a declaratory judgment that such convictions were constitutionally invalid, as well as such other and further relief as might appear just and proper, did not seek improper mandamus relief against a state official but, rather, properly sought a mandatory injunction under this section. Carter v. Hardy, C.A.5 (Tex.) 1976, 526 F.2d 314, rehearing denied 528 F.2d 928, certiorari denied 97 S.Ct. 108, 429 U.S. 838, 50 L.Ed.2d 105. Federal Courts 11

If allegations of complaint filed by black residents of Model Neighborhood Area alleging racial discrimination by city and its officials in changing administrative structure of Model Cities Program by consolidating that program with other federally funded programs were established by proof, court would have power and duty to effect remedy by use of mandamus. Dupree v. City of Chattanooga, Tenn., E.D.Tenn.1973, 362 F.Supp. 1136. Federal Courts 11; Federal Courts 182

Federal courts have no authority, even under this section to issue writs in nature of mandamus to direct state courts and their judicial officers in performance of their duties. Lamar v. 118th Judicial Dist. Court of Tex., N.D.Tex.1970, 318 F.Supp. 285, affirmed 440 F.2d 383. Federal Courts 11

Federal district court could not compel state officials to follow state law, and thus, federal district court properly dismissed citizen's civil rights claim for writ of mandamus in which citizen sought to compel state court to render decisions on citizen's post-conviction motions in citizen's littering conviction, and federal district court also properly dismissed citizen's claim for writ of prohibition in which citizen sought to enjoin the municipal court from proceeding in the dumping case against citizen. Cochran v. Municipal Court of City of Barberton, Summit County, C.A.6 (Ohio) 2003, 91 Fed.Appx. 365, 2003 WL 23095546, Unreported. Federal Courts 269; Federal Courts 272

5577. Prison conditions, equitable relief generally--Generally

In federal civil rights action brought by plaintiff inmates alleging numerous unconstitutional conditions and practices in Massachusetts county jail and house of corrections, district court did not exceed its equitable power by ordering the closing of facility if certain mandated corrections were not implemented, since remedy did not exceed constitutional violations and mandated changes were modest in nature, fair to inmates and not oppressive for correction authorities. Dimarzo v. Cahill, C.A.1 (Mass.) 1978, 575 F.2d 15, certiorari denied 99 S.Ct. 312, 439 U.S. 927, 58 L.Ed.2d 320. Civil Rights 1448

Where state prison did not provide basic emergency medical service, much less any assurance of more complete medical treatment when necessary, district court would be directed to hold additional hearings and to delineate,

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within specific terms and time limitations, not only an overall long-range plan for improvement of facilities at the prison but an immediate plan to update all medical equipment at the facilities, to ensure that every inmate in need of medical attention would be seen by qualified physician when necessary. Finney v. Arkansas Bd. of Correction, C.A.8 (Ark.) 1974, 505 F.2d 194, on remand 410 F.Supp. 251. Prisons 17(2)

Court may find that untrained or poorly trained prison employee has violated inmate's constitutional rights, and provide a remedy, and official's failure to act, in violation of duties imposed upon him by statute, may subject him to liability under the 1871 civil rights statute, 42 U.S.C.A. § 1983, but court will not require prisons to have adequate training programs because same is impermissible judicial involvement with minutiae of prison administration. Cook v. Housewright, D.C.Nev.1985, 611 F.Supp. 828. Civil Rights 1090; Prisons 13(3)

In action against county jail officials, court entered order for renovation and alteration of main cellblocks, for confinement of prisoners pending reconstruction and renovation of cells, for the institution and maintenance of recreational program, for maintenance of medical program, for house cleaning and laundering and for continuation of visitation program, all as directed by the court. Johnson v. O'Brien, E.D.Mo.1977, 445 F.Supp. 122. Civil Rights 1448

5578. ---- Good-time credits restoration, prison conditions, equitable relief generally

Actual restoration of good-time credits to prisoners in action under this section was foreclosed, but where damage claim was also properly before the court, the procedures for depriving prisoners of good-time credits could be considered in the civil rights action. Wolff v. McDonnell, U.S.Neb.1974, 94 S.Ct. 2963, 418 U.S. 539, 41 L.Ed.2d 935, 71 O.O.2d 336. Civil Rights 1448

Restoration of good and honor time of plaintiffs, who were inmates in state prison, was not an appropriate remedy for violation of inmates' due process rights in connection with transfer to administrative segregation. Bills v. Henderson, C.A.6 (Tenn.) 1980, 631 F.2d 1287. Civil Rights 1448

Restoration of good time credits and eligibility for parole were not within scope of civil rights proceeding, but this jurisdictional limitation in no way affected availability of this subchapter to grant money damages and appropriate equitable relief for deprivation of in-prison procedural due process. Gregory v. Wyse, C.A.10 (Colo.) 1975, 512 F.2d 378. Civil Rights 1448

5579. ---- Visitation rights, prison conditions, equitable relief generally

Under circumstances of case, orderly increase in contacts between prison inmates and their visitors, attorneys and counselors, and among inmates themselves was feasible and safe interim remedy for constitutional violations including unjustified confinement in isolation. Jefferson v. Southworth, D.C.R.I.1978, 447 F.Supp. 179, affirmed 616 F.2d 598, certiorari denied 101 S.Ct. 115, 449 U.S. 839, 66 L.Ed.2d 45. Prisons 4(5); Prisons 4(6); Prisons 4(11)

5580. Prisoner release, equitable relief generally

This section did not entitle state prisoner to release from custody so that he might frequent law library of his choice. Bradenburg v. Beaman, C.A.10 (Wyo.) 1980, 632 F.2d 120, certiorari denied 101 S.Ct. 1522, 450 U.S. 984, 67 L.Ed.2d 820. Civil Rights 1094

Although district court, on finding that double celling of pretrial detainees at Brooklyn and Queens Houses of Detention violated detainees' constitutional rights, was in no position to order New York City to raise necessary funds to build additional facilities, the court could order release of persons held under conditions which deprived them of rights guaranteed by the Constitution unless such conditions were corrected within a reasonable time.

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Detainees of Brooklyn House of Detention for Men v. Malcolm, C.A.2 (N.Y.) 1975, 520 F.2d 392, on remand 421 F.Supp. 832. Civil Rights 1448

Remedy of release from custody is not available under this section to prisoner who claimed that prison officials unjustifiably beat him. Wiltsie v. California Dept. of Corrections, C.A.9 (Cal.) 1968, 406 F.2d 515. Civil Rights 1448

A civil rights suit cannot be used to effect a release from incarceration. Scot v. Merola, S.D.N.Y.1983, 555 F.Supp. 230. Civil Rights 1090

Where unconstitutional overcrowding was found in state prison, counsel would be ordered to agree upon an appropriate plan for eliminating overcrowding which would then be submitted to court for consideration and approval and if no agreement could be reached as to measures to be adopted and time for their implementation, court would itself determine injunctive and declaratory relief to be entered, including, as a last resort, the drastic and unwanted measure of ordering the release of certain prisoners. Johnson v. Levine, D.C.Md.1978, 450 F.Supp. 648, judgment affirmed in part and remanded on other grounds 588 F.2d 1378. Prisons 17(1)

Release from incarceration is an improper remedy under a civil rights complaint brought by an inmate. Marks v. Calendine, N.D.W.Va.1978, 80 F.R.D. 24. Civil Rights 1448

5581. Prisoner transfers, equitable relief generally

Federal district court, which determined that quality of incarceration at jail used by county denied due process, had authority, for purposes of accomplishing single cell occupancy, to order Massachusetts Commissioner of Corrections, who had statewide transfer powers and authority to establish minimum standards for care and custody of county inmates, to transfer women confined in such jail and to transfer male detainees with state felony records, notwithstanding contention that Commissioner could not be ordered to make such transfers without showing of unconstitutional conduct on his part. Inmates of Suffolk County Jail v. Eisenstadt, C.A.1 (Mass.) 1974, 494 F.2d 1196, certiorari denied 95 S.Ct. 239, 419 U.S. 977, 42 L.Ed.2d 189. Prisons 13.5(3); Prisons 17(1)

5582. Receiverships, equitable relief generally

Where in over six years since Alabama prisons were ordered to correct conditions of confinement the Board of Corrections made little progress and although there was lack of adequate funding the board could have ameliorated conditions confronting it but, instead, contributed to gravity of the situation by its indifference and incompetence and appointment of monitors offered little, if any, hope of swift compliance, such extraordinary circumstances dictated that only alternative to noncompliance was appointment of the governor as receiver for the Alabama prisons. Newman v. State of Ala., M.D.Ala.1979, 466 F.Supp. 628. Prisons 4(3)

5583. Reinstatement, equitable relief generally--Generally

Absent a property interest in continued employment, reinstatement is not ordinarily an appropriate remedy for deprivation of a liberty interest. McGhee v. Draper, C.A.10 (Okla.) 1981, 639 F.2d 639. Civil Rights 1448

Like reinstatement, instatement is considered preferred remedy to compensate aggrieved party for loss of future earnings as result of illegal, adverse employment actions, including actions that violate §§ 1983; however, instatement may not be feasible in all cases, particularly those in which position is no longer available at time of judgment or relationship between parties has been so damaged by animosity that instatement is impracticable. Bullen v. Chaffinch, D.Del.2004, 336 F.Supp.2d 357. Civil Rights 1448; Civil Rights 1564

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Full reinstatement is not the required remedy for failure to provide due process prior to a final determination of the renewal of an employment contract. Skehan v. Board of Trustees of Bloomsburg State College, M.D.Pa.1977, 436 F.Supp. 657, affirmed and remanded on other grounds 590 F.2d 470, certiorari denied 100 S.Ct. 61, 444 U.S. 832, 62 L.Ed.2d 41, on remand 501 F.Supp. 1360. Civil Rights 1448

5584. ---- Municipal employees, reinstatement, equitable relief generally

Guided by particular circumstances of case, district court has broad discretion in determining whether reinstatement is appropriate remedy for discharge that violates § 1983 and its determination is reviewed under abuse-of-discretion standard. Feldman v. Philadelphia Housing Authority, C.A.3 (Pa.) 1994, 43 F.3d 823. Civil Rights 1448; Federal Courts 813

Municipal employees who were determined to be discharged in violation of First Amendment based upon their political affiliation could be denied reinstatement, in view of scant evidence supporting their First Amendment claims, amount of damages awarded, and fact that employees were hired illegally in violation of Puerto Rico's personnel laws. Velazquez v. Figueroa-Gomez, C.A.1 (Puerto Rico) 1993, 996 F.2d 425, certiorari denied 114 S.Ct. 553, 510 U.S. 993, 126 L.Ed.2d 454. Civil Rights 1448

Ordering reinstatement of municipal employees who were discharged because of their political affiliation was not abuse of discretion in their § 1983 action, even if the employees were ineligible for appointment under Puerto Rico law. Hiraldo-Cancel v. Aponte, C.A.1 (Puerto Rico) 1991, 925 F.2d 10, rehearing denied, certiorari denied 112 S.Ct. 637, 502 U.S. 1004, 116 L.Ed.2d 655. Civil Rights 1448

City employee who was discharged as result of racial discrimination and retaliation was entitled to reinstatement to his former position, despite district court's finding that general hostility remained impossibly high; most of those making complaint against employee were no longer employed by city in employee's division and, due to nature of employee's training and experience, comparable positions were not quickly or easily found. Jackson v. City of Albuquerque, C.A.10 (N.M.) 1989, 890 F.2d 225. Civil Rights 1563; Municipal Corporations 218(11)

Chief deputy appraiser of property tax appraisal district, who was denied promotion because of pregnancy in violation of state and federal civil rights laws, was entitled to recover from each board member of central appraisal district exemplary and punitive damages of $500 and $24,000 back pay from district from date of constructive discharge to date of judgment, and was entitled to reinstatement as chief appraiser as soon as reasonably possible. Herrin v. Newton Cent. Appraisal Dist., E.D.Tex.1987, 687 F.Supp. 1072. Civil Rights 1448; Civil Rights 1455; Civil Rights 1473; Civil Rights 1769

5585. ---- State employees, reinstatement, equitable relief generally

District court did not abuse its discretion in ordering reinstatement of career employees in Puerto Rico municipal sanitation department, for mayor's violation of First Amendment political affiliation rights of career employees, where employees presented strong evidence of First Amendment violation, many career employees had not found work in aftermath of their termination, any possibility of workplace antagonism and upheaval that would have been caused by finding jobs for terminated workers was foreseeable sequelae of mayor's wrongdoing, damage awards did not obviate need for reinstatement, and employees did not reapply for their jobs because they had every reason to believe they were unwelcome. Borges Colon v. Roman-Abreu, C.A.1 (Puerto Rico) 2006, 438 F.3d 1. Civil Rights 1448

Balance of considerations favored reinstatement of former employee who brought § 1983 action against Puerto Rico Department of Justice and former co-employees, alleging wrongful discharge, and thus employee's motion for

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reinstatement would be properly granted; evidence presented at trial was sufficient to justify having jury determine that employee's First Amendment rights had been violated, employee had been unable to find comparable work since discharge, employee had property right in position he had held, and employee was still eligible for position. Tejada-Batista v. Fuentes-Agostini, D.Puerto Rico 2003, 263 F.Supp.2d 321, reconsideration denied 267 F.Supp.2d 156. Civil Rights 1448

Even if former state employee were able to establish § 1983 claim that her discharge from employment, and state official's refusal to re-employ her while discharged, were in violation of employee's First Amendment rights, employee, who was reinstated to her old position and served in it until she voluntarily retired, would not be entitled, in addition to full monetary compensation for wrongdoing, to order compelling state to re-employ her in different position. Lupo v. Voinovich, S.D.Ohio 2002, 235 F.Supp.2d 782. Civil Rights 1455

5586. ---- Police officers, reinstatement, equitable relief generally

White Delaware state police officers were ordered instated to next available sergeant positions, with promotions made retroactive for purposes of benefits, pensions and seniority rights; officers' eligibility for promotion was not at issue in light of jury's finding they were denied promotions as result of illegal discrimination, and remaining facts and circumstances, such as lack of animosity between parties, favored instatement. Bullen v. Chaffinch, D.Del.2004, 336 F.Supp.2d 357. Civil Rights 1448; Civil Rights 1564; Civil Rights 1565

City police officer who was demoted for supporting unsuccessful mayoral candidate was entitled to reinstatement at experience level that he would have occupied at time of his retirement, absent evidence that there was irreparable animosity between officer and those with whom he worked. Perez v. Cucci, D.N.J.1989, 725 F.Supp. 209, affirmed 898 F.2d 139, affirmed 898 F.2d 141, affirmed 898 F.2d 142. Civil Rights 1455

5587. ---- Sheriffs, reinstatement, equitable relief generally

Deputy sheriff was not entitled to reinstatement to his position upon prevailing in § 1983 action alleging that he was wrongfully terminated from his position, where new sheriff had been elected subsequent to the termination and applicable Florida statute authorized sheriff to name such deputies as he saw fit. Lucas v. O'Loughlin, C.A.11 (Fla.) 1987, 831 F.2d 232, certiorari denied 108 S.Ct. 1595, 485 U.S. 1035, 99 L.Ed.2d 909. Civil Rights 1448

5588. ---- Teachers and school officials, reinstatement, equitable relief generally

Extraordinary circumstances justified denial of reinstatement following finding of § 1983 liability for nonrenewal of teaching contracts motivated by activities protected under First Amendment, where hostility between teachers and those with whom they would have had to work in tiny, rural school district would have made future cooperation impossible. Standley v. Chilhowee R-IV School Dist., C.A.8 (Mo.) 1993, 5 F.3d 319, rehearing and suggestion for rehearing en banc denied. Civil Rights 1448

Reinstatement and back pay could be awarded against school board under this section. Moore v. Tangipahoa Parish School Bd., C.A.5 (La.) 1979, 594 F.2d 489. Civil Rights 1448

Teachers who were dismissed in retaliation for lawful exercise of freedoms protected by U.S.C.A.Const. Amend. 1 were entitled to be reinstated. Greminger v. Seaborne, C.A.8 (Mo.) 1978, 584 F.2d 275. Schools 147.47

Extraordinary equitable remedy of reinstatement of discharged college teacher whose constitutional rights are violated is commonly imposed only in those cases involving racial discrimination and dismissals in reprisal for exercise of rights under U.S.C.A.Const. Amend. 1. Decker v. North Idaho College, C.A.9 (Idaho) 1977, 552 F.2d 872. Colleges And Universities 8.1(7)

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42 U.S.C.A. § 1983

Plaintiff, who was unlawfully demoted by college from registrar to teacher, was not entitled to reinstatement as registrar because his protectible property interest in being registrar extended through only one academic year and his ineligibility for the position was reaffirmed in a due process hearing before the next academic year. Johnson v. San Jacinto Jr. College, S.D.Tex.1980, 498 F.Supp. 555. Colleges And Universities 8.1(7)

5589. Restitution, equitable relief generally

The "make whole" standard of relief has been adopted to restore the victim of employment discrimination as wholly as possible to the economic position in which he or she would have been in the absence of the employment discrimination. Gurmankin v. Costanzo, C.A.3 (Pa.) 1980, 626 F.2d 1115, certiorari denied 101 S.Ct. 1375, 450 U.S. 923, 67 L.Ed.2d 352. Civil Rights 1560

Appropriate remedy for county employees' union's failure to comply with requirements for withholding of fair-share fees from nonmembers was to order restitution of wrongfully withheld fees, not restitution of all fair-share fees. Laramie v. County of Santa Clara, N.D.Cal.1992, 784 F.Supp. 1492. Labor And Employment 1039(1)

U.S.C.A.Const. Amend. 11, as extended to cover suits against a state by citizens of that state, stood as a bar to any decree ordering "restitution" in the form of retroactive welfare payments wrongfully withheld, as such a decree would eventually necessitate an appropriation by the Virginia Assembly, and would in effect be an order to the state to take affirmative political action which it could not be said to have consented to take. Frye v. Lukehard, W.D.Va.1973, 364 F.Supp. 1379. Federal Courts 268.1

5590. Specific performance, equitable relief generally

Where lot had been sold to bona fide purchaser, specific action toward such lot arising out of alleged deprivation of right to buy lot in violation of this section could not be maintained. Newbern v. Lake Lorelei, Inc., S.D.Ohio 1968, 308 F.Supp. 407, 24 Ohio Misc. 201, 52 O.O.2d 189, 53 O.O.2d 290. Civil Rights 1071

5591. Tenure, equitable relief generally

District court was exercising its discretion in holding that tenure would not be an appropriate award under circumstances respecting unconstitutional policy of school district in preventing blind teachers from teaching sighted students. Gurmankin v. Costanzo, C.A.3 (Pa.) 1980, 626 F.2d 1115, certiorari denied 101 S.Ct. 1375, 450 U.S. 923, 67 L.Ed.2d 352. Civil Rights 1560

LIX. INJUNCTIVE RELIEF

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5621. Injunctive relief generally

Provision of Civil Rights Act authorizing a suit in equity to redress deprivation under color of state law or any rights, privileges, or immunities secured by Constitution is within "expressly authorized" exception of federal anti-injunction statute prohibiting a federal court from enjoining a state court proceeding except as expressly authorized by act of Congress. Mitchum v. Foster, U.S.Fla.1972, 92 S.Ct. 2151, 407 U.S. 225, 32 L.Ed.2d 705. Courts 508(2.1)

Prisoner who had knowledge of his pending execution date for over three months before filing §§ 1983 claim seeking stay of execution that was the "functional equivalent" of a second habeas petition 14 days before his scheduled execution, was not entitled to an equitable stay of his execution; prisoner's requested stay of execution was directly attributable to his own failure to bring his claims to court in a timely fashion, and there was no reasonable basis for prisoner's decision to wait ten months after the dismissal of his first habeas corpus petition to re-style his claim as a §§ 1983 action. Hutcherson v. Riley, C.A.11 (Ala.) 2006, 468 F.3d 750. Habeas Corpus

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42 U.S.C.A. § 1983

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Less rigorous fair-ground-for-litigation standard for preliminary injunction, which was inapplicable in cases involving injunctive relief sought to stay governmental action taken in the public interest pursuant to statutory scheme, did not apply in §§ 1983 action in which professionals subject to Kansas statute requiring doctors, teachers, and others to notify state government of suspected injury to minor resulting from sexual abuse challenged statute's constitutionality as applied to incidents involving consensual sexual activity between minors of similar ages. Aid for Women v. Foulston, C.A.10 2006, 441 F.3d 1101, on remand 427 F.Supp.2d 1093. Civil Rights 1457(7)

This section authorizing suit to redress deprivation under color of state law of any rights, privileges, or immunities secured by Constitution constitutes a Congressionally carved out exception to § 2283 of Title 28. Boraas v. Village of Belle Terre, C.A.2 (N.Y.) 1973, 476 F.2d 806, probable jurisdiction noted 94 S.Ct. 234, 414 U.S. 907, 38 L.Ed.2d 145, reversed on other grounds 94 S.Ct. 1536, 416 U.S. 1, 39 L.Ed.2d 797. See, also, Shaw v. Garrison, C.A.5 (La.) 1972, 467 F.2d 113, certiorari denied 93 S.Ct. 467, 409 U.S. 1024, 34 L.Ed.2d 317; Palaio v. McAuliffe, C.A.5 (Ga.) 1972, 466 F.2d 1230. Courts 508(1)

This section providing that every person who causes a citizen of United States to be deprived of his rights under federal Constitution and laws "shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" authorizes issuance of federal injunctions, in highly unusual and limited circumstances, to protect exercise of civil rights. Honey v. Goodman, C.A.6 (Ky.) 1970, 432 F.2d 333. Civil Rights 1450

Entitlement to absolute immunity from a §§ 1983 claim for damages does not bar the granting of injunctive relief or of other equitable relief. Adibi v. California State Bd. of Pharmacy, N.D.Cal.2005, 393 F.Supp.2d 999. Civil Rights 1448

Payday loan business did not show that it was likely that municipal ordinance, which stated that "[n]o payday loan business may be open between the hours of 9:00 p.m. and 6 a.m.," was unconstitutional due to vagueness, for purpose of its request for preliminary injunction in § 1983 lawsuit, on allegation that there was some question whether it could continue to offer other services, such as its currency exchange and notary service; language was obvious that payday loan business could not offer other services at night within its payday loan store without violating ordinance. Payday Loan Store of Wisconsin, Inc. v. City of Madison, W.D.Wis.2004, 339 F.Supp.2d 1058. Civil Rights 1457(7)

African-American employees of state human services department could proceed under § 1983 against department and its principal officials in their official capacities, seeking injunctive relief for alleged employment discrimination, even though damages claims were barred. Bankhead v. Arkansas Dept. of Human Services, E.D.Ark.2003, 264 F.Supp.2d 805, reversed 360 F.3d 839, certiorari denied 125 S.Ct. 57, 543 U.S. 818, 160 L.Ed.2d 26. Civil Rights 1359; Civil Rights 1455

For § 1983 plaintiff to be entitled to injunctive relief, he must show that he has sustained or is immediately in danger of sustaining some direct injury as result of challenged official conduct, and injury or threat of injury must be both real and immediate, not conjectural or hypothetical. Ryan v. Illinois Dept. of Children & Family Services, C.D.Ill.1997, 963 F.Supp. 1490, reversed 185 F.3d 751. Civil Rights 1450

Civil rights actions are exempt from usual prohibition on federal court injunctions of state court proceedings. Schroll v. Plunkett, D.Or.1991, 760 F.Supp. 1385, affirmed 932 F.2d 973. Courts 508(2.1)

Injunctive relief is available in action brought under this section. International Prisoners' Union v. Rizzo, E.D.Pa.1973, 356 F.Supp. 806.

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42 U.S.C.A. § 1983

Basic civil rights are within ambit of personal rights to be protected by injunction. Dreyer v. Jalet, S.D.Tex.1972, 349 F.Supp. 452, affirmed 479 F.2d 1044. Civil Rights 1450

Injunctive relief is appropriate under this section. Henson v. City of St. Francis, E.D.Wis.1970, 322 F.Supp. 1034.

Federal injunction dealing with state law enforcement is extraordinary remedy and it requires much to induce its use. Koen v. Long, E.D.Mo.1969, 302 F.Supp. 1383, affirmed 428 F.2d 876, certiorari denied 91 S.Ct. 877, 401 U.S. 923, 27 L.Ed.2d 827. Courts 508(7)

Inmate's request for order directing Bureau of Prisons (BOP) and employees of both the BOP and state penitentiary to, among other things, cease assaulting inmate, place inmate in protective custody, preserve videotape of an alleged assault on inmate, and provide inmate with administrative remedies, although designated as a motion for a temporary restraining order, requested relief only available by a preliminary injunction, and was thus reviewable by the Court of Appeals in connection with inmate's § 1983 action against defendants for alleged forcible interviews and corrupt administrative remedy system. Neal v. Federal Bureau of Prisons, C.A.5 (La.) 2003, 76 Fed.Appx. 543, 2003 WL 22120976, Unreported. Federal Courts 579

5622. Power of court, injunctive relief

In proceeding under this section the trial court has broad power to grant or deny equitable relief sought. Knowles v. Board of Public Instruction of Leon County, Fla., C.A.5 (Fla.) 1969, 405 F.2d 1206. Civil Rights 1448

A district court has power to grant injunctive relief where there has been deprivation of civil rights. Sewell v. Pegelow, C.A.4 (Va.) 1961, 291 F.2d 196. See, also, Schnell v. City of Chicago, C.A.7 (Ill.) 1969, 407 F.2d 1084; Dixon v. Duncan, D.C.Va.1963, 218 F.Supp. 157. Civil Rights 1450

5623. Duty of court, injunctive relief

When there is deprivation of constitutionally guaranteed right, duty of federal court to use injunctive power to interfere with conduct of state officers cannot be avoided. Woods v. Wright, C.A.5 (Ala.) 1964, 334 F.2d 369. Federal Courts 171

5624. Discretion of court, injunctive relief

It was within district court's discretion and scope of the injury to grant injunctive relief for insufficient supervision of open barracks prisons after court concluded that threat of harm to inmates from other prisoners violated Eighth Amendment, though there was one guard who remained in barracks hallway, where two inmates were violently stabbed while asleep in their beds, evidence indicated that violence, robbery, rape, gambling, and use of weapons by inmates were prevalent in open barracks, and guard in hallway could not enter barracks while in possession of keys even if altercation were in progress, so that no official was immediately available to stop any illegal activity; prison officials failed to use additional staff provided by legislature to fulfill their own promise to add security to open barracks. Smith v. Arkansas Dept. of Correction, C.A.8 (Ark.) 1996, 103 F.3d 637. Injunction 105(1)

Question of whether an injunction should issue in a suit under this section or suit involving violation of rights under U.S.C.A.Const. Amend. 14 § 1 is a question within the sound discretion of the district court. Brown v. Board of Ed. of City of Chicago, N.D.Ill.1974, 386 F.Supp. 110. Civil Rights 1450

Federal district court has no discretion to deny injunctive relief to person who clearly establishes, after trial on merits, that he is being denied his constitutional rights; decree may also provide for retention of jurisdiction to insure that injunctive order is carried out in orderly fashion, or to allow for amendment of state rules to conform

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with decree, but injunction must issue. Sostre v. Rockefeller, S.D.N.Y.1970, 312 F.Supp. 863, affirmed in part, reversed in part on other grounds 442 F.2d 178, certiorari denied 92 S.Ct. 719, 404 U.S. 1049, 30 L.Ed.2d 740, certiorari denied 92 S.Ct. 1190, 405 U.S. 978, 31 L.Ed.2d 254. Federal Courts 54

Remedy of injunction is discretionary. Thompson v. Housing Authority of City of Miami, Fla., S.D.Fla.1966, 251 F.Supp. 121. Injunction 1

To the extent that inmate alleged that no evidence was produced at his robbery trial to show that money seized by police officers came from robbery victim, inmate's § 1983 claim seeking return of seized money, on grounds that police officers violated his due process rights by failing to give him voucher and adequate notice of procedures for recovering seized money, was impermissible collateral attack on inmate's conviction, and therefore was precluded pursuant to *Heck* rule barring § 1983 claims that implicated validity of underlying convictions which had not yet been declared invalid. Erber v. Peterson, E.D.N.Y.2003, 2003 WL 22171899, Unreported. Civil Rights 1088(3)

5625. State and local officials, injunctive relief

Recognition of need for proper balance between state and federal authority counsels restraint in issuance of injunctions against state officers engaged in administration of the states' criminal laws in absence of irreparable injury which is both great and immediate. City of Los Angeles v. Lyons, U.S.Cal.1983, 103 S.Ct. 1660, 461 U.S. 95, 75 L.Ed.2d 675. Courts 508(7)

Sensitivity to principles of equity, comity, and federalism dictate that federal courts should ordinarily refrain from enjoining ongoing state criminal prosecutions; in all but unusual cases, a pending state proceeding provides the federal plaintiff with the necessary vehicle for vindicating his constitutional rights, and, thus, restraining of an ongoing prosecution entails an unseemly failure to give effect to the principle that state courts have solemn responsibility, equally with federal courts, to protect federal constitutional rights. Steffel v. Thompson, U.S.Ga.1974, 94 S.Ct. 1209, 415 U.S. 452, 39 L.Ed.2d 505, conformed to 494 F.2d 691. Courts 508(7)

Although, at time of dismissal of village residents' civil rights action attacking constitutionality of zoning ordinances, no state criminal proceeding was "pending" against them raising same constitutional issues as defenses, where only action of federal district court as to residents at time state criminal proceedings were begun was a sua sponte dismissal of civil rights action for lack of jurisdiction, their federal request for declaratory and injunctive relief was properly denied in interest of comity so as not to interfere with state criminal proceedings. Giulini v. Blessing, C.A.2 (N.Y.) 1981, 654 F.2d 189. Civil Rights 1448

Claims under § 1983 are barred against state officers in their official capacity except to the extent that the plaintiff seeks prospective injunctive relief. Mercer v. Brunt, D.Conn.2002, 272 F.Supp.2d 181. Federal Courts 269; Federal Courts 272

Although Eleventh Amendment bars damage claims against state officials acting in their official capacity, federal courts can enjoin state officials acting in their official capacity, as long as injunction governs only the officer's future conduct and no retroactive remedy is provided; rule extends to declaratory judgments also. Ippolito v. Meisel, S.D.N.Y.1997, 958 F.Supp. 155. Declaratory Judgment 387; Federal Courts 269; Federal Courts 272; Injunction 189

Younger abstention was warranted, and federal district court would refuse to enjoin state proceedings before state insurance commission charging insurer with making untrue, deceptive or misleading statements in connection with advertisements or mailings; state proceedings were judicial in nature, state proceedings implicated important state interest in prohibiting unfair and deceptive practices in business of insurance; and insurer had adequate

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opportunity in state court to litigate constitutional issues surrounding its claim that proceedings had been undertaken to suppress its political speech and not to regulate trade practices. State Farm Mut. Auto. Ins. Co. v. Metcalf, D.Hawai'i 1995, 902 F.Supp. 1216. Federal Courts 54

Where in civil rights case it was simply alleged that, for variety of reasons, county jails had become overcrowded to point of violating Constitution, and was not alleged that bail, sentencing or calendar control practices in these counties were unconstitutional, comity considerations precluded granting injunctive relief against state court judges who were not themselves alleged to have directly and personally engaged in unconstitutional conduct. Inmates of Middlesex County v. Demos, D.C.N.J.1981, 519 F.Supp. 770. Courts 490

Federal district court had power to grant injunction relief with respect to operation of city jail in which federal prisoners were detained, but power would be exercised with restraint, especially where results to be anticipated had already been substantially achieved, albeit under pressure of litigation. Johnson v. Lark, E.D.Mo.1973, 365 F.Supp. 289. Prisons 4(2.1)

5626. Considerations governing, injunctive relief--Generally

To be entitled to preliminary injunctive relief, state employee alleging that the elimination of his position violated the ADA, § 1983, and Nevada law had to show either that he would suffer irreparable injury if injunction was not granted, he would probably prevail on the merits, state would not be harmed by injunction more than he was helped by it, and granting injunction was in public interest, or he must show either a combination of probable success on the merits and possibility of irreparable injury or that serious questions were raised and balance of hardships tipped sharply in his favor. Remlinger v. State of Nev., D.Nev.1995, 896 F.Supp. 1012. Civil Rights 1568

Factors to be considered on application for preliminary injunction, in case based on alleged violation of civil rights, are the relative importance of rights asserted, acts to be enjoined, hardship that would result from granting or refusing to grant the injunction, probability of ultimate success and the public interest. Moran v. School Dist. #7, Yellowstone County, D.C.Mont.1972, 350 F.Supp. 1180. Civil Rights 1457(1)

Provisions of this section cannot override elemental discretionary rule, which federal courts of equity must respect, that, in absence of irreparable injury, clear and imminent, injunctions must be denied by federal court as long as remedy sufficient to redress alleged injury lies through state's appellate procedure with right of petition to United States Supreme Court. DeVasto v. Hoyt, S.D.N.Y.1951, 101 F.Supp. 908. Federal Courts 6

5627. ---- Exceptional circumstances generally, considerations governing, injunctive relief

Parade participants lacked standing to seek a permanent injunction after district court issued temporary restraining order (TRO) and ordered city to allow the parades; they failed to allege a concrete, present plan to apply for another parade permit in the future. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Injunction 114(2)

Where transcript of grand jury hearing which was on file with Mississippi state court contained testimony obtained in bad faith and in violation of plaintiffs' rights under U.S.C.A.Const. Amend. 1 and where that transcript, by order of state court judge, could be made available to any state or federal officer or any subsequent grand jury and report of grand jury suggested that witnesses were suspected of some kind of wrongful conduct, circumstances were exceptional and necessitated federal relief and plaintiffs who sought expungement of unconstitutionally obtained testimony were not required to resort to Mississippi state court to redress abuse of grand jury process. Ealy v. Littlejohn, C.A.5 (Miss.) 1978, 569 F.2d 219. Courts 489(1)

Absent evidence presented which could be characterized as irreparable injury, bad faith, harassment, or other special circumstances, to defendant arising out of state court prosecution, which had valid basis independent of immunized federal grand jury testimony, defendant, as an intervenor plaintiff in action brought by United States

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Attorney General for an injunction, could not prevail on his claim, even though intervenor's claim was asserted under provisions of this subchapter proscribing the deprivation of rights. U. S. v. Kuehn, C.A.7 (Ill.) 1977, 562 F.2d 427. Courts 508(7)

Only manifest oppression justifies federal court's interference with state administrative officers acting under color of office in good faith effort to perform their duties, and there must be exceptional circumstances and clear showing of necessity for protection of constitutional rights by injunction. National Ass'n for Advancement of Colored People v. Gallion, C.A.5 (Ala.) 1961, 290 F.2d 337, vacated on other grounds 82 S.Ct. 4, 368 U.S. 16, 7 L.Ed.2d 85. See, also, Rhodes v. Houston, D.C.Neb.1962, 202 F.Supp. 624, affirmed 309 F.2d 959, certiorari denied 83 S.Ct. 724, 372 U.S. 909, 9 L.Ed.2d 719, certiorari denied 86 S.Ct. 1282, 383 U.S. 971, 16 L.Ed.2d 311, motion denied 258 F.Supp. 346, affirmed 418 F.2d 1309 certiorari denied 90 S.Ct. 1382, 397 U.S. 1049, 25 L.Ed.2d 662; Progress Development Corp. v. Mitchell, D.C.Ill.1960, 182 F.Supp. 681, affirmed in part, reversed in part on other grounds 286 F.2d 222; Chapman v. Trustees of Delaware State College, D.C.Del.1951, 101 F.Supp. 441. Injunction 75

Plaintiffs' § 1983 complaint failed to assert an "extraordinary circumstance" requiring injunctive relief against justices of the Puerto Rico Supreme Court and superior court judge's orders, and thus trial court properly granted motion to dismiss where complaint did not allege that the justices or judge acted outside their adjudicatory capacity in issuing orders and judgment in state court proceedings. Rullan v. Council of Co-Owners of McKinley Court Condominium, D.Puerto Rico 1995, 899 F.Supp. 857. Civil Rights 1395(1)

In absence of extraordinary circumstances, three-judge court would grant neither declaratory nor injunctive relief, notwithstanding that suit was in nature of civil rights action. Kister v. Ohio Bd. of Regents, S.D.Ohio 1973, 365 F.Supp. 27, affirmed 94 S.Ct. 855, 414 U.S. 1117, 38 L.Ed.2d 747.

5628. ---- Anticipated or future wrongs, considerations governing, injunctive relief

Parade participants lacked standing to seek a permanent injunction after district court issued temporary restraining order (TRO) and ordered city to allow the parades; they failed to allege a concrete, present plan to apply for another parade permit in the future. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Injunction 114(2)

In order to obtain prospective injunctive relief to compel state officials to furnish indigent accused with adequate legal representation, accused should not have been required to allege and prove "future inevitability of ineffective assistance" under existing state system in accordance with test for ineffective assistance established in *Strickland v. Washington*, but only likelihood of substantial and immediate irreparable injury and inadequacy of remedies at law. Luckey v. Harris, C.A.11 (Ga.) 1988, 860 F.2d 1012, rehearing denied 896 F.2d 479, certiorari denied 110 S.Ct. 2562, 495 U.S. 957, 109 L.Ed.2d 744. Civil Rights 1454

No basis existed for grant of injunctive relief, which would permit state prisoner to maintain official capacity claims against correctional officers based on alleged past use of excessive force and cruel and unusual punishment, absent any credible evidence of a threat of future injury or of continuing adverse effects from any past injury. Thomas v. Walton, S.D.Ill.2006, 461 F.Supp.2d 786. Federal Courts 272

Present and past employees of police department were entitled to injunction prohibiting mayor and police chief from retaliating against them for their participation in past litigation against the mayor and police chief, but court would not issue injunction as to cases which were not filed; mayor and chief had previously retaliated against officers involved in the litigation, but prediction could not be made as to future cases. Green v. City of Montgomery, M.D.Ala.1992, 792 F.Supp. 1238. Civil Rights 1455

Inmate's alleged injuries suffered at hands of sheriff during pretrial detention were not evidence of real and immediate danger of harm sufficient to warrant issuance of injunction. Martin v. O'Grady, N.D.Ill.1990, 738

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42 U.S.C.A. § 1983

F.Supp. 1191. Civil Rights 1454

Injunctive relief should not be granted, on inmates' Eighth Amendment claim, unless there is threat of future inhumane conditions of confinement and wanton infliction of pain. DeGidio v. Pung, D.Minn.1989, 704 F.Supp. 922, affirmed 920 F.2d 525. Civil Rights 1454

A person is entitled to injunction in civil rights action only where it is shown that others are taking some action against person in violation of his civil rights or have threatened to take any action in the future. Shelton v. McCarthy, W.D.N.Y.1988, 699 F.Supp. 412. Civil Rights 1456

5629. ---- Adequacy of remedy at law, considerations governing, injunctive relief

Where workers seeking to organize lawful union were intimidated by state authorities in that workers were placed in fear of exercising their constitutionally protected rights of free expression, assembly and association, remedy at law was shown to be inadequate, for purpose of seeking injunctive relief. Allee v. Medrano, U.S.Tex.1974, 94 S.Ct. 2191, 416 U.S. 802, 40 L.Ed.2d 566. Courts 508(7)

Injunctive relief was not warranted for payment of honoraria, in students § 1983 lawsuit against public college under First, Fifth, and Fourteenth Amendments, since any harm suffered could have been remedied by monetary damages. Ford v. Reynolds, C.A.2 (N.Y.) 2003, 316 F.3d 351, on remand 326 F.Supp.2d 392. Civil Rights 1452

Distributors of leaflets to voters were not entitled to injunction from United States Court of Appeals to stay state court injunction prohibiting distribution of leaflets, pending disposition of their appeal from federal district court's order refusing, on *Younger* abstention grounds, to interfere with state court injunction; fair and adequate state remedy was available when federal court intervention was sought, federal intervention would have unnecessarily disturbed state's administration of its own election process, which it had compelling interest in preserving, and federal intervention was not counseled by any bad faith or misconduct. Family Foundation, Inc. v. Brown, C.A.4 (Va.) 1993, 9 F.3d 1075. Injunction 33

Voters and incumbent candidate who ran for reelection for town supervisor sufficiently demonstrated that quo warranto was inadequate state remedy to correct alleged deprivation of right to vote, as required to support entitlement to preliminary injunctive relief under § 1983 based on claim that malfunctioning voting machines miscounted votes and improperly resulted in election of opponent despite evidence that incumbent was clear winner; state law provided that attorney general had discretion to bring quo warranto action after alleged usurper took office but did not provide for remedial measures when it was determined that machine malfunction did occur, process could take entire term of two years in which opponent held office, and there was no danger of protracted vacancy in office because parties agreed that incumbent would remain in office pending resolution of litigation. Shannon v. Jacobowitz, N.D.N.Y.2003, 301 F.Supp.2d 249. Quo Warranto 11

While neither state nor its officials acting in their official capacities are persons amenable to suit for monetary damages under § 1983, state officials, even when acting in their official capacities, may be subject to declaratory or injunctive relief pursuant to § 1983. Tang v. State of R.I., Dept. of Elderly Affairs, D.R.I.1995, 904 F.Supp. 55. Civil Rights 1450; Declaratory Judgment 204

Landowner adjacent to airport was not entitled to permanent injunction requiring city and airport commission to negotiate lease agreement to provide landowner with runway access, since jury's award of damages in landowner's § 1983 action, in which city and commission were found to have acted unconstitutionally in denying access to runway, constituted adequate legal remedy, more than ten years had passed since unconstitutional actions, such that no continuing or future injury was threatened, and landowner did not have property right to runway access. Jade Aircraft Sales, Inc. v. City of Bridgeport, D.Conn.1994, 849 F.Supp. 10. Civil Rights 1453

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Injunctive relief was appropriate for property owners who alleged civil rights and antitrust causes of actions against developer, city, city officials, and city urban renewal authority arising out of urban renewal plan which allegedly misrepresented area to be redeveloped as blighted so as to bring about condemnation of property in that no adequate state remedy existed for defendants' alleged fraudulent actions. Oberndorf v. City and County of Denver, D.Colo.1986, 653 F.Supp. 304. Civil Rights 1453; Monopolies 24(7.1)

Plaintiff who complained of delay in receiving AFDC benefits after her child was returned to her home following a period of foster care had adequate legal remedies through civil rights action under federal law or through state law procedures and thus did not have standing to seek injunction against future illegal conduct. Grant v. Cohen, E.D.Pa.1985, 630 F.Supp. 513. Civil Rights 1331(6)

5630. ---- Availability of other remedies, considerations governing, injunctive relief

No injunctive relief was available to state prison inmate, who succeeded on §§ 1983 claim that Department of Corrections violated his First and Fourteenth Amendment right to have access to court by providing him with attorney not permitted to do legal research, which would have shown inmate that he had unfounded concerns that reopening of his plea bargain would occur if he sued claiming that extradition violations invalidated his conviction; statute of limitations had run, barring attack on conviction due to extradition errors. White v. Kautzky, N.D.Iowa 2005, 386 F.Supp.2d 1042, motion to amend denied 2006 WL 141854. Civil Rights 1454

Proper remedy for any deprivations suffered by prisoners that violated existing jail policies was individual § 1983 action, not continuance of system-wide injunction; any violations incurred in spite of policies, not because policies did not exist. Merriweather v. Sherwood, S.D.N.Y.2002, 235 F.Supp.2d 339. Injunction 211

District court could not properly entertain civil rights action for redress of constitutional rights, in which plaintiff sought to enjoin state court judge from enforcing his injunctive orders, where there existed several available state forums in which to raise same constitutional questions arising under federal law and where plaintiffs had not yet sought relief through the available state court forums. Blue v. Revels, M.D.Fla.1977, 441 F.Supp. 308. Courts 508(3)

Availability of legal remedies to plaintiff, a black police lieutenant complaining of actions of county judge who conducted John Doe proceedings inquiring into allegations of battery by police lieutenant, precluded equitable relief. Harris v. Harvey, E.D.Wis.1977, 436 F.Supp. 143. Civil Rights 1454

Section 1983 barred parent's claim for injunctive relief against state-court judge, given lack of showing that judge or related defendants violated declaratory decree or that declaratory relief was unavailable. Conway v. Garvey, C.A.2 (N.Y.) 2004, 117 Fed.Appx. 792, 2004 WL 2786380, Unreported. Civil Rights 1360

5631. ---- Bad faith, considerations governing, injunctive relief

Plaintiffs failed to establish that Georgia's prosecuting officer acted in bad faith in removing their prosecution from "dead docket" and reactivating it after plaintiffs initiated civil damages action against their arresting officers on grounds of alleged battery and illegal arrest; thus, plaintiffs were not entitled to federal injunctive protection from their continued prosecution. Wilson v. Thompson, C.A.5 (Ga.) 1981, 638 F.2d 799. Civil Rights 1420

Federal court may not grant injunctive relief against a pending state criminal prosecution in an action under this section authorizing civil action for deprivation of rights under color of state law, unless there is a showing of "bad faith" or "harassment" by the state in bringing the prosecution or when the state law is "flagrantly and patently violative of express constitutional provisions." Shirey v. Bensalem Tp., E.D.Pa.1980, 501 F.Supp. 1138. Courts 508(7)

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Where county had intentionally continued to practice racial discrimination and had not seen fit to follow civil rights legislation and where county officials had acted with a deliberate intent to discriminate, general injunctive prohibition against discrimination by the county in its treatment of complaining employee, for so long as he continued to be a county employee, would be issued. Wells v. Hutchinson, E.D.Tex.1980, 499 F.Supp. 174. Civil Rights 1455

A showing of bad faith and harassment on the part of state officials, while perhaps appropriate, is not a prerequisite to the granting of injunctive relief against state prosecution. Scoma v. Chicago Bd. of Ed., N.D.Ill.1974, 391 F.Supp. 452. Courts 508(7)

In proper case, where state statute in question is either patently unconstitutional on its face, or is being applied in bad faith attempt to discourage constitutionally protected activities, particularly where U.S.C.A.Const. Amend. 1 rights are involved, federal court should be available to fully vindicate rights of citizens by injunction. Gardner v. Ceci, E.D.Wis.1970, 312 F.Supp. 516. Courts 508(1)

Special circumstances requiring injunctive relief may be present even absent bad faith enforcement of a constitutionally objectionable statute if U.S.C.A.Const. Amend. 1 rights are at stake. Original Fayette County Civic & Welfare League, Inc. v. Ellington, W.D.Tenn.1970, 309 F.Supp. 89. Federal Courts 176

5632. ---- Balancing of equities, considerations governing, injunctive relief

Even if city board of elections had sought stay, pending appeal, of district court judgment in the first instance in the district court, stay of judgment directing board to place candidate's name on ballot would still not be granted; alleged irreparable injury suffered by board was product of board's own delay in seeking stay six days before election, candidate would have been substantially injured by having his name removed from ballot, and public's interest in having candidate as additional choice on ballot clearly outweighed any interest board may have had in removing candidate's name days before election. Hirschfeld v. Board of Elections in City of New York, C.A.2 (N.Y.) 1993, 984 F.2d 35. Federal Courts 686

Balance of hardships tipped decidedly in the favor of professor who was suspended without pay for refusing to undergo psychiatric examination, as required for professor to be entitled, on her class-of-one equal protection claim under §§ 1983 against university administrators, to preliminary injunction to prevent administrators from requiring her to undergo psychiatric examination in order to keep her position; professor was barred from teaching, had no access to university services, and was receiving no wages or benefits, including health insurance, while university had other options available to address its issues with professor's unprofessional conduct, short of requiring a psychiatric examination. Appel v. Spiridon, D.Conn.2006, 2006 WL 3479414.

Fact that prison inmate was facing death did not automatically ensure that balance of hardships favored issuance of temporary restraining order barring execution until inmate received further medical attention allegedly needed to ensure his full participation in clemency proceeding. Allen v. Hickman, N.D.Cal.2005, 407 F.Supp.2d 1098. Civil Rights 1457(5)

An asbestos manufacturer was not entitled to a preliminary injunction to prevent consolidated state court asbestos cases from going forward; the balance of hardships clearly weighed in favor of the state of Maryland, whose judicial system would be swamped by 9,000 pending asbestos cases, and the manufacturer was unlikely to succeed on the merits of its federal civil rights claim that its due process rights would be violated by the consolidation in light of established principles of federalism requiring a respect for state court judicial proceedings. Owens-Illinois, Inc. v. Levin, D.Md.1992, 792 F.Supp. 429. Courts 508(2.1)

Interests of female student, who wished to participate on boys' golf team, as to an opportunity to enhance her reputation and to instruction afforded by coaching staff outweighed state's interest in not allowing her to participate

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because of enforcement of rules unfettered by student attacks and financial savings so as to entitle the student to preliminary injunction enjoining interschool activities association and various school officials from prohibiting her from participating on the team. Reed v. Nebraska School Activities Ass'n, D.C.Neb.1972, 341 F.Supp. 258. Civil Rights 1457(3)

Preliminary injunction is an extraordinary remedy which should be issued only upon a clear showing of probable success and possible irreparable injury to the moving party; however, burden of showing probable success is less where the balance of hardships weighs decidedly more heavily upon party requesting the temporary relief. Smoake v. Fritz, S.D.N.Y.1970, 320 F.Supp. 609. Injunction 132; Injunction 147

Prisoner was not entitled to injunctive relief against prison warden whom he claimed violated his Eighth Amendment right to be free from inhumane conditions of confinement by exposing him to environmental tobacco smoke (ETS) after placing him in cell with inmate who allegedly smoked 20 cigarettes a day; there was no evidence that at time suit was filed warden had knowingly and unreasonably disregarded an intolerable risk of harm and would continue to do so, and prisoner's claim was moot because he was transferred to a different cell. Washington v. Davis, N.D.Cal.2003, 2003 WL 1873272, Unreported, affirmed 76 Fed.Appx. 147, 2003 WL 22170675. Civil Rights 1454; Injunction 22

Impermanent injury to community's appearance by alleged failure to remove political signs after election was less injurious than candidate's irreparable injury of not being allowed to utilize political signs prior to election, in context of application for temporary restraining order in § 1983 lawsuit brought by candidate for elective office alleging violation of his right to free speech. Lawless v. Lower Providence Township, E.D.Pa.2002, 2002 WL 31356304, Unreported. Civil Rights 1457(7)

5633. ---- Conflicting judicial decisions, considerations governing, injunctive relief

In light of conflicting judicial decisions on the subject, without decisions by the sixth circuit or the Supreme Court, county jail inmates were not entitled to a preliminary injunction with regard to the establishment of a law library by jail authorities. Tate v. Kassulke, W.D.Ky.1975, 409 F.Supp. 651. Injunction 138.21

5634. ---- Continuing deprivation of rights, considerations governing, injunctive relief

Even in face of ongoing unconstitutional conduct on part of state law enforcement officers, injunction may not be issued to halt that conduct absent great and immediate threat that named plaintiff will suffer irreparable injury for which there would be inadequate remedy at law. Nava v. City of Dublin, C.A.9 (Cal.) 1997, 121 F.3d 453. Civil Rights 1454

Inmate who filed civil rights action was not entitled to injunctive relief against prison officials who were allegedly continuing to retaliate against him for filing the action, absent any evidence in the record showing that inmate requested injunction on that basis, or that retaliation, abusive behavior or racially derogatory remarks were continuing. Green v. Johnson, C.A.10 (Okla.) 1992, 977 F.2d 1383. Civil Rights 1454

In the absence of ongoing constitutional violation of rights of Muslim inmates, there was no basis for entry of injunctive relief, especially for injunctive relief which transcended that which the court had erroneously found or which was statewide in nature. Al-Alamin v. Gramley, C.A.7 (Ill.) 1991, 926 F.2d 680. Injunction 11

In order to obtain injunctive or declaratory relief against public officials, there must be some indication that they intend to continue the unconstitutional practices alleged in the complaint. Tara Enterprises, Inc. v. Humble, C.A.8 (Neb.) 1980, 622 F.2d 400. Civil Rights 1450; Declaratory Judgment 201

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42 U.S.C.A. § 1983

State prisoner's request, in action brought under this section for injunctive relief could not be granted in absence of showing that he was presently suffering deprivation of any rights which he asserted. U.S. ex rel. Tyrrell v. Speaker, C.A.3 (Pa.) 1973, 471 F.2d 1197, on remand 394 F.Supp. 9. Prisons 13(3)

Although successors to state prison officials instituted new policies to ensure safety of inmates from other inmates, action for injunctive and declaratory relief by inmates was not moot, absent showing by officials that there was no reasonable expectation that successors would not continue to fail to protect inmates in violation of the Eighth Amendment. Skinner v. Uphoff, D.Wyo.2002, 234 F.Supp.2d 1208. Declaratory Judgment 84

Prison inmate who brought §§ 1983 action against corrections officials, alleging that constant illumination in his cell in security housing unit (SHU) constituted cruel and unusual punishment, was not entitled to preliminary injunction against illumination; not only did inmate fail to establish objective component of deliberate indifference standard, i.e. that illumination gravely affected his sleep, but balance of harms was in favor of officials, since there was evidence establishing security purpose for illumination. Wills v. Terhune, E.D.Cal.2005, 404 F.Supp.2d 1226. Civil Rights 1457(5)

Foster parent's failure to re-initiate administrative process for reviewing finding of Department of Children and Families (DCF) that foster parent abused foster child precluded court from considering foster parent's § 1983 claim for injunctive relief premised on alleged violations of his procedural due process rights; although foster parent claimed that he sought to appeal through administrative process and that DCF officials stayed the process pending criminal proceedings, foster parent had notice that he could reinstate process. Carroll v. Ragaglia, D.Conn.2003, 292 F.Supp.2d 324, affirmed in part, reversed in part and remanded 109 Fed.Appx. 459, 2004 WL 2165397. Civil Rights 1321

Virgin Islands property taxpayers did not have adequate remedy at law as required to support injunction to prohibit Tax Assessor from continuing to deprive them of their federal statutory right to have real property assessed at its actual value, since Assessor violated federal statute, remedy of money damages was not available in Section 1983 suit against Virgin Islands, no remedy at law would adequately redress the continuing cycle of litigation and/or continuing unlawful assessments, and plaintiffs would suffer continuing harm absent injunction, due to Assessor's refusal to acknowledge that present system of assessment did not produce credible and reliable appraisals of actual value of real property; appeal to Tax Review Board was a non-exclusive option available to aggrieved taxpayer, but it was a futile option that did not constitute an adequate remedy at law, since Tax Review Board had consistently demonstrated it was incapable of timely resolving tax appeals. Berne Corp. v. Government of Virgin Islands, D.Virgin Islands 2003, 262 F.Supp.2d 540, modified 276 F.Supp.2d 435, affirmed 105 Fed.Appx. 324, 2004 WL 1443889, opinion clarified 313 F.Supp.2d 522. Taxation 2712

Prisoner seeking permanent injunction requiring Michigan Department of Corrections to refrain from due process violations in deciding issues prior to hearings failed to state claim for relief, given failure to establish required constitutional deprivation in first instance. Spruytte v. Govorchin, W.D.Mich.1997, 961 F.Supp. 1094. Civil Rights 1454

There was no basis for federal district court's taking the extraordinary step of issuing an injunction to require Connecticut state court to hear attorney's appeal from legal malpractice judgment entered against him in state court since no continuing wrong existed; alleged violation of attorney's rights was a singular and arguably unique one, court reporter's alleged negligence in failing to file attorney's certifications with the court, nothing was alleged that would prevent attorney from appealing order dismissing his appeal by certification to Connecticut Supreme Court or, thereafter, to United States Supreme Court, nothing barred attorney from pursuing his tort claims against reporter in state court or under § 1983 in a federal forum and no potential plaintiffs would be deterred by failure of attorney's prayer for injunctive relief. Presnick v. Santoro, D.Conn.1993, 832 F.Supp. 521. Injunction 32

5635. ---- Federalism, considerations governing, injunctive relief

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Principles of federalism may prevent injunction, by federal court, of state civil proceeding once begun. Rizzo v. Goode, U.S.Pa.1976, 96 S.Ct. 598, 423 U.S. 362, 46 L.Ed.2d 561. Courts 508(2.1)

Federal court could grant injunctive relief under Civil Rights Act to compel state court judges to comply with federal district court's declaratory judgment, which held that denial of appellate counsel to indigents who had pled guilty or nolo contendere was unconstitutional; such relief was available pursuant to civil rights statute once declaratory decree had been violated, and Declaratory Judgment Act also allowed federal court to grant further necessary or proper relief based on declaratory judgment against party whose rights had been determined by judgment. Tesmer v. Kowalski, E.D.Mich.2000, 114 F.Supp.2d 622, vacated 295 F.3d 536, rehearing granted, judgment withdrawn 307 F.3d 459, on rehearing 333 F.3d 683, certiorari granted 124 S.Ct. 1144, 540 U.S. 1148, 157 L.Ed.2d 1041, reversed and remanded 125 S.Ct. 564, 543 U.S. 125, 160 L.Ed.2d 519. Civil Rights 1454; Declaratory Judgment 274.1

When federal rights are asserted against state employees sued in their official capacities, Eleventh Amendment prohibits claims for retrospective monetary relief paid from state treasury, but not prospective equitable relief. LaFleur v. Wallace State Community College, M.D.Ala.1996, 955 F.Supp. 1406. Federal Courts 269; Federal Courts 272

When injunction against state criminal proceeding is sought under § 1983, principles of equity, comity, and federalism must restrain federal court. Kelly v. Intermountain Planned Parenthood, Inc., D.Mont.1992, 828 F.Supp. 788. Courts 508(7)

The power of a federal court under this section to enjoin state proceedings is not to be used to upset federalism and centralize power. Fisher v. Federal Nat. Mortg. Ass'n, D.C.Md.1973, 360 F.Supp. 207. Courts 508(1)

5636. ---- Harassment, considerations governing, injunctive relief

Under "harassment" exception to general rule precluding federal court from issuing injunction restraining enforcement of challenged state statute while state criminal proceedings are pending under such statute against federal plaintiff, more than a mere allegation and more than a conclusory finding are required, and a finding of sufficient harassment must be supported by specific evidence from which it can be inferred that state officials had been enforcing the statute against the plaintiff in bad faith and for purposes of harassment. Grandco Corp. v. Rochford, C.A.7 (Ill.) 1976, 536 F.2d 197. Courts 508(7)

Where simple battery prosecution was being maintained by state attorney in bad faith and for purposes of harassment, there was no legitimate state interest in reprosecution of accused, reprosecution would deter and suppress exercise of federal secured rights by Negroes in parish, and no statutory bar to injunctive relief appeared, accused was entitled to order restraining reprosecution. Duncan v. Perez, C.A.5 (La.) 1971, 445 F.2d 557, certiorari denied 92 S.Ct. 282, 404 U.S. 940, 30 L.Ed.2d 254. Courts 508(7)

Injunction issued in civil rights action enjoining defendants, who included sheriff and clerk of court, and all others acting in concert with them or under their instructions from trespassing on or destroying plaintiff's property, from harassing, disturbing and intimidating plaintiff and from encouraging others to do so, with injunction to remain in effect until legal ownership of property was determined in pending state court proceedings. Gaulter v. Capdeboscq, E.D.La.1975, 404 F.Supp. 900, injunction dissolved 423 F.Supp. 823, affirmed in part on other grounds 594 F.2d 127. Civil Rights 1454

5637. ---- Hardship on defendant, considerations governing, injunctive relief

Where it was apparent that police academy cadet class would suffer injury by grant of injunction, any claimed irreparable harm by allegedly discriminatory exclusion of the plaintiffs from the class did not require granting of

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temporary injunctive relief. Oburn v. Shapp, C.A.3 (Pa.) 1975, 521 F.2d 142. Civil Rights 1568

Personal injury law firm was entitled to preliminary injunction precluding state bar from initiating disciplinary proceedings for use of specified advertisements stating that three members were named in book purporting to list best lawyers in country; hardship to firm if injunction were not granted was substantially greater than any harm to bar, firm was likely to succeed on merits of claim that advertisements were commercial speech protected by First Amendment, and injunction furthered public interest in being able to obtain accurate information about lawyers. Allen, Allen, Allen & Allen v. Williams, E.D.Va.2003, 254 F.Supp.2d 614. Civil Rights 1457(7)

Prisoner was not entitled to interim injunctive relief in civil rights damages action based on mere speculation that defendants might hide or transfer assets during pendency of case. Osuch v. Gregory, D.Conn.2004, 303 F.Supp.2d 189. Civil Rights 1457(5)

Issuance of permanent injunction requiring township to provide actual notice and opportunity for mobile home tenants to be heard at hearing on whether the mobile homes violated township zoning ordinance would not harm the township so as to bar issuance of the injunction; issuance of the injunction would not mean that the township could not enforce the ordinance or eventually collect fines from landlord. Ruiz v. New Garden Tp., E.D.Pa.2002, 232 F.Supp.2d 418, reversed 376 F.3d 203. Civil Rights 1453

Balance of hardship weighed in favor of territorial employees who were terminated by newly-elected governor after occupying highly visible positions in election campaign of governor's opponent, for purposes of determining whether employees were entitled to preliminary injunction in § 1983 action; governor failed to allege any hardship should employees be reinstated to their former positions, and employees testified as to their difficulty in finding steady employment and in making ends meet. Olmeda v. Schneider, D.Virgin Islands 1995, 889 F.Supp. 228. Civil Rights 1457(6)

Enforcement of police department rules which had been applied so as to require policeman to generally remain in his apartment while on sick leave would be preliminarily enjoined to the extent that, on 24 hours' advance notice, policeman would be allowed to visit his attorney and doctor when necessary and to visit his children during periods permitted by state court order, since the injunction order would impose no great hardship on the police department. Gissi v. Codd, E.D.N.Y.1974, 391 F.Supp. 1333. Injunction 138.69

5638. ---- Irreparable injury, considerations governing, injunctive relief

Though action was brought under this section, plaintiffs were required to show irreparable injury as prerequisite for obtaining injunctive relief. Allee v. Medrano, U.S.Tex.1974, 94 S.Ct. 2191, 416 U.S. 802, 40 L.Ed.2d 566. Civil Rights 1457(1)

Plaintiff who had been seized pursuant to search warrant that was based in part on inclusion of race component in rape suspect profile was not entitled to injunctive or declaratory relief under § 1983; since plaintiff had been released from custody and eventually eliminated from list of suspects, he could not show either continuing wrong or real or immediate threat that he would likely be irreparably injured by use of race component. Simmons v. Poe, C.A.4 (Va.) 1995, 47 F.3d 1370. Civil Rights 1454; Declaratory Judgment 84

Employer would suffer "irreparable harm" if police were not enjoined from relying on exception to West Virginia trespass statute to refuse to enforce statute against striking workers who, by forming picket line across company bridge, had virtually shut employer down; employer's ability to bring other judicial remedies against union did not diminish its showing of irreparable harm, especially given its inability to obtain damages from the state in action under civil rights statute. Rum Creek Coal Sales, Inc. v. Caperton, C.A.4 (W.Va.) 1991, 926 F.2d 353, on remand. Injunction 138.48

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42 U.S.C.A. § 1983

High school student was being irreparably harmed by allegedly improper expulsion, for purpose of obtaining preliminary injunctive relief; student's loss of right to free public education was not accurately measurable or adequately compensable by money damages. Johnson v. Collins, D.N.H.2002, 233 F.Supp.2d 241. Civil Rights 1457(3)

Medicaid beneficiaries, seeking preliminary injunction, preventing immediate termination of their Medicaid benefits to satisfy state budget cuts, pending trial on merits of § 1983 suit, would be irreparably harmed, absent injunction. Rabin v. Wilson-Coker, D.Conn.2003, 266 F.Supp.2d 332, reversed 362 F.3d 190. Injunction 138.66

Death row inmate was not likely to suffer irreparable harm as result of any defects in state's lethal injection protocol, and thus inmate was not entitled to preliminary injunction pending resolution of his §§ 1983 action challenging protocol's constitutionality, where it was highly unlikely that inmate would be conscious and able to feel pain during administration of chemicals, inmate was dilatory in seeking relief, inmate was not likely to succeed on merits, and society's interest in retribution for criminal activity would erode rapidly if patently dilatory suits were permitted to derail administration of justice. Lenz v. Johnson, E.D.Va.2006, 443 F.Supp.2d 785. Civil Rights 1457(5)

Inmate who sued correctional officials and employees under §§ 1983 failed to demonstrate immediate and irreparable injury, as required to obtain preliminary injunctive relief from purported physical abuse by employee; although inmate alleged past injury in complaint, he neither alleged nor demonstrated that any serious injuries were imminent, and inmate and employee at issue were not be in proximity with each other. Lyons v. Wall, D.R.I.2006, 431 F.Supp.2d 245. Civil Rights 1457(5)

District Court was not required, in civil rights suit under §§ 1983, to preliminarily enjoin criminal proceeding in Puerto Rico court against arrestee, to prevent an immediate irreparable injury, where only injury defendant had shown was the hardship of defending against pending criminal prosecution, and each alleged threat to arrestee's federally protected rights could be raised, and, if the claims were meritorious, eliminated by his defense of the pending criminal prosecution. Olson v. Fajardo-Velez, D.Puerto Rico 2006, 419 F.Supp.2d 32. Courts 508(7)

Parents and high school student who was suspended for creating online parody profile of principal, who were seeking temporary restraining order (TRO) against further discipline, had not demonstrated that they would suffer irreparable harm if temporary restraining order (TRO) was not issued; court was unable to conclude that violations of plaintiffs' constitutional rights had occurred or were occurring, and while student's placement in Alternative Curriculum Education Program was not academically ideal, it was not so onerous that harm to student would truly be irreparable. Layshock ex rel. Layshock v. Hermitage School Dist., W.D.Pa.2006, 412 F.Supp.2d 502. Civil Rights 1457(3)

Possibility of irreparable harm did not warrant granting of temporary restraining order (TRO) in action brought by prospective exhibitors against county agricultural society, stemming from ban of livestock at county fair following positive test for prohibited substance, since exhibitors did not substantially demonstrate constitutional violation from challenged action. Farmer v. Pike County Agr. Society, S.D.Ohio 2005, 411 F.Supp.2d 838. Civil Rights 1457(7)

State prisoner and his attorney-friend demonstrated irreparable injury under alternative preliminary injunction test, in lawsuit under §§ 1983, where they alleged injury to their First Amendment and other constitutional rights from prison officials' blanket prohibition of all legal mail perceived by officials as not directly pertaining to prisoner's case; First Amendment rights of both writer and intended reader were impinged when correspondence was censored by prison officials. Evans v. Vare, D.Nev.2005, 402 F.Supp.2d 1188. Civil Rights 1457(5)

Irreparable harm requirement for preliminary injunction was unmet in teachers' union's and school counselor's §§

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1983 due process and equal protection action against school district, on behalf of themselves and district's female students, seeking to enjoin implementation of district's policy generally requiring parental notification of students' pregnancies; superintendent, the ultimate arbiter of whether to notify parents, testified that he would exercise his discretion as to whether to notify if made aware of abuse or other countervailing considerations, and there was possibility of irreparable harm to district if injunction was granted given district's potential liability if parents were not notified and injury to student occurred. Port Washington Teachers' Ass'n v. Board of Educ. of Port Washington Union Free School Dist., E.D.N.Y.2005, 361 F.Supp.2d 69. Civil Rights 1457(3); Civil Rights 1457(6)

State trooper was entitled to preliminary injunction prohibiting State Police supervisors from enforcing oral directives not to speak to press about matters of public concern in a manner inconsistent with the First Amendment; trooper suffered irreparable harm because his right to speak under the First Amendment had been chilled, and trooper was likely to succeed on the merits of his First Amendment claim. Lauretano v. Spada, D.Conn.2004, 339 F.Supp.2d 391. Civil Rights 1457(6)

Owner of gasoline station's underground storage tanks did not satisfy requirements for preliminary injunction against proceedings by Puerto Rico Environmental Quality Board on order to show cause why owner should not be fined approximately $76,000,000 in connection with environmental contamination at station, even though it appeared substantially likely that owner would prevail on claim alleging procedural due process violations, given owner's inability to show irreparable harm in light of proceedings' ongoing status and availability of relief through state judicial review process, adverse impact that injunction would have for board in its role as administrative agency, and adverse impact that injunction could have on public interest in protecting environment and natural resources by depriving board of its power to remedy contamination at station. ESSO Standard Oil Co. (Puerto Rico) v. Mujica Cotto, D.Puerto Rico 2004, 327 F.Supp.2d 110, affirmed 389 F.3d 212. Civil Rights 1457(7)

Entertainers' loss of First Amendment freedoms, for even minimal periods of time, constituted "irreparable injury," for purpose of motion by municipality in lawsuit under § 1983 to set aside preliminary and permanent injunction regarding entertainers' use of municipal theater to perform show, although show could have been produced at later date and entertainers did not demonstrate that they would have incurred any financial costs as result of cancellation. Producciones Gran Escenario, Inc. v. Ruiz, D.Puerto Rico 2004, 310 F.Supp.2d 440. Civil Rights 1451; Civil Rights 1457(2)

Voters and incumbent candidate who ran for reelection to position of town supervisor sufficiently demonstrated that they would suffer irreparable harm to right to vote absent a preliminary injunction preventing elections board from certifying opponent as winner in town election, as required to support claim for preliminary injunctive relief under § 1983 based on claim that malfunctioning voting machines miscounted votes and improperly resulted in election of opponent; under state law the board of elections had no option but to certify opponent the winner despite evidence that incumbent was clear winner, opponent rather than incumbent would govern despite fact incumbent won election, and voters' governance by candidate they did not elect would violate fundamental right to vote for which there otherwise was no recourse. Shannon v. Jacobowitz, N.D.N.Y.2003, 301 F.Supp.2d 249. Injunction 138.51

State judges who were running for reelection to serve partial terms were entitled to temporary restraining order to enjoin state officials from placing their names on ballots in manner other than "yes or no" retention ballot, in § 1983 civil rights action in which judges alleged that failure to afford them such reelection ballots violated their rights to due process; fact that requirement that judges undergo judicial evaluation to warrant retention ballots only applied to judges seeking to serve full terms indicated that judges had strong likelihood of succeeding on merits, fact that judges would be denied constitutional guarantees established that irreparable harm would occur in absence of relief, and affording relief would further public policy of insulating judges from political activity. Lillard v. Burson, W.D.Tenn.1996, 933 F.Supp. 698. Civil Rights 1457(7)

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42 U.S.C.A. § 1983

University professor and an untenured lecturer did not show irreparable harm necessary for issuance of preliminary injunction in § 1983 action in which they claimed that university retaliated against them for exercising First Amendment rights by speaking out on alleged discrepancy in treatment of male and female students in sports programs as preliminary injunction would do nothing to abate chilling effect of alleged actions of university. Meadows v. State University of New York at Oswego, N.D.N.Y.1993, 832 F.Supp. 537. Civil Rights 1457(6)

Employee who alleged that he was transferred from one job position to another in violation of his First Amendment rights was not entitled to a preliminary injunction returning him to his former position absent showing that any irreparable harm, including chilling of First Amendment rights, had occurred or would occur; threatened job transfer for exercise of right to free speech was not direct infringement on First Amendment right. Costello v. McEnery, S.D.N.Y.1991, 767 F.Supp. 72, affirmed 948 F.2d 1278, certiorari denied 112 S.Ct. 2957, 504 U.S. 980, 119 L.Ed.2d 579. Injunction 138.69

Inmate in segregation unit who sought preliminary injunction directing that he be allowed to have plastic rosary and extended visits with priest failed to establish possibility of irreparable injury due to prison prohibiting his possession of rosary or that balance of hardships tipped in his favor sufficient to warrant issuance of a preliminary injunction; rosary and extended visits with Catholic priest were not essential elements of religion and could be withheld from inmate in disciplinary segregation unit, even though provided to inmates in general population. McClaflin v. Pearce, D.Or.1990, 739 F.Supp. 537. Civil Rights 1457(5); Prisons 4(14)

In order to obtain injunctive relief, inmate who alleged abuse by a sheriff during pretrial detention must show that he would suffer irreparable injury with no adequate remedy at law. Martin v. O'Grady, N.D.Ill.1990, 738 F.Supp. 1191. Civil Rights 1454

Physician, bringing civil rights action against employer hospital, was entitled to preliminary injunction requiring hospital immediately to process physician's application to become attending physician in division of pulmonary medicine and restraining hospital from taking any further action to eliminate that position; physician demonstrated the threat of irreparable injury and established sufficient likelihood of success on the merits of claim that his application had not been processed and position was being eliminated as result of his exercising First Amendment rights by participating in protests over various hospital policies, notwithstanding hospital's claim that budgetary considerations provided independent permissible grounds for actions. Cohen v. Cook County, Ill., N.D.Ill.1988, 677 F.Supp. 547. Civil Rights 1457(6)

Where deprivations of First Amendment freedoms are involved, irreparable injury is presumed for purpose of determining appropriateness of injunctive relief under § 1983. Donrey Media Group v. Ikeda, D.Hawai'i 1996, 959 F.Supp. 1280. Civil Rights 1450

Federal court should not issue injunction unless there is both irreparable injury and lack of adequate remedy at law; if injury cannot be adequately remedied at law, because damages would be either inadequate or unascertainable, injury is generally held irreparable. International Ass'n of Firefighters, Local 2069 v. City of Sylacauga, N.D.Ala.1977, 436 F.Supp. 482. Injunction 14; Injunction 16; Injunction 17

Plaintiffs on motion for preliminary injunction must demonstrate likelihood of immediate, irreparable harm flowing from defendants' proposed conduct. Einhorn v. Maus, E.D.Pa.1969, 300 F.Supp. 1169. Injunction 147

State employee's assertion that she wished to be reinstated to her former position and might need future job recommendations was insufficient to establish a real and immediate threat of future injury in connection with her §§ 1983 retaliation claim against former supervisor, rendering her claim for injunctive relief moot. Clark v. Alabama, C.A.11 (Ala.) 2005, 141 Fed.Appx. 777, 2005 WL 1317037, Unreported. Civil Rights 1455

Inmate failed to establish substantial threat of irreparable injury, as required for preliminary injunction ordering

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Bureau of Prisons (BOP) and employees of both the BOP and state penitentiary to cease assaulting inmate, to avoid contact with inmate pending an investigation, to identify all prison staff involved in alleged assault on inmate, to place inmate in protective custody, to preserve videotape of alleged assault, and to provide inmate with access to administrative remedies, in § 1983 action for, among other things, alleged forcible interviews and corrupt administrative remedy system. Neal v. Federal Bureau of Prisons, C.A.5 (La.) 2003, 76 Fed.Appx. 543, 2003 WL 22120976, Unreported. Civil Rights 1457(5)

Possibility existed that ordinance restricting use of political signs would cause irreparable injury to candidate for elective office, in context of application for temporary restraining order in § 1983 lawsuit alleging violation of candidate's right to free speech, since inability to post signs bearing candidate's name could have impaired his ability to successfully compete in election. Lawless v. Lower Providence Township, E.D.Pa.2002, 2002 WL 31356304, Unreported. Civil Rights 1457(7)

Loss of readership and patronage that billboard owner allegedly would suffer if denied preliminary injunction barring enforcement of town ordinance banning owner's billboards did not establish irreparable harm supporting preliminary injunctive relief, inasmuch as reasonable figure could be calculated to reflect any loss of revenue due to loss of billboards. Richards "Of Course", Inc. v. Town of DeWitt, N.D.N.Y.1985, 1985 WL 669278, Unreported. Injunction 138.48

5639. ---- Likelihood of repetition, considerations governing, injunctive relief

Class of juveniles who had been subjected to partial strip searches upon admission to juvenile detention facility lacked standing in §§ 1983 action to seek injunctive relief with respect to future searches, where allegations of complaint related entirely to past conduct, and there was no assertion that juveniles expected to commit additional minor offenses or were likely to be detained at facility. Smook v. Minnehaha County, C.A.8 (S.D.) 2006, 457 F.3d 806. Civil Rights 1331(4)

Inmate who prevailed in § 1983 suit claiming that his Eighth Amendment rights were violated by prison officials who permitted him to be homosexually raped by other inmates did not establish entitlement to injunctive relief, where inmate did not show substantial likelihood that unconstitutional practices he complained about at trial would recur or affect him in the future; injunctive relief which plaintiff requested would only benefit other inmates, particularly new inmates. Butler v. Dowd, C.A.8 (Mo.) 1992, 979 F.2d 661, certiorari denied 113 S.Ct. 2395, 508 U.S. 930, 124 L.Ed.2d 297. Civil Rights 1454; Injunction 22

Arrestee was not entitled to injunction barring further enforcement of North Carolina Department of Revenue Controlled Substance Tax Division's assessment of controlled substance tax, penalty, and interest following his arrest while in possession of crack cocaine and cash, where questionable constitutionality of drug tax assessments and fact that arrestee would be incarcerated for extended period of time made future enforcement of assessment extremely remote possibility. Williams v. Starling, M.D.N.C.2005, 353 F.Supp.2d 607. Taxation 3712

State inmate's motion seeking injunctive relief based on alleged wrongful conduct at two correctional facilities would be dismissed as moot in inmate's § 1983 action; inmate had been transferred to at least two different correctional facilities since he filed motion and failed to show demonstrated probability that he was likely to be retransferred and subject to same alleged conduct. Klos v. Haskell, W.D.N.Y.1993, 835 F.Supp. 710, affirmed 48 F.3d 81. Federal Civil Procedure 1741

Prisoner who stated § 1983 claim for violation of civil rights based on denial of request to call witnesses at disciplinary hearing was potentially entitled to relief only to the extent that his "booking" and determination that he committed infraction charged be quashed and expunged; other injunctive and declaratory relief sought was inappropriate, since there were no allegations that deprivations were likely to recur. Morgan v. Ellerthorpe, D.R.I.1992, 785 F.Supp. 295. Civil Rights 1454; Declaratory Judgment 204

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42 U.S.C.A. § 1983

Juvenile who alleged that he was deprived of his constitutional rights while incarcerated in a county jail for alleged unauthorized use of motor vehicle was not entitled to injunctive relief against county from future conduct absent any likelihood of reincarceration; juvenile relied exclusively on past wrong to suggest threat of future harm and thus could not be granted standing. Grenier By and Through Grenier on Behalf of Grenier v. Kennebec County, Me., D.Me.1990, 748 F.Supp. 908. Civil Rights 1454

Prison officials' inadequate response to tuberculosis epidemic, as evidenced by instances of substandard care and lack of administrative organization, even if violative of inmates' Eighth Amendment rights, did not warrant injunctive relief in that, since initiation of litigation, officials had significantly remedied deficiencies to point where medical care and tuberculosis control were not inconsistent with contemporary standards of decency, and there was no evidence that past problems were likely to recur unless enjoined. DeGidio v. Pung, D.Minn.1989, 704 F.Supp. 922, affirmed 920 F.2d 525. Civil Rights 1455

Prison inmate who brought § 1983 action alleging a violation of his right of access to courts by officials at facility in which he was being held, but who was transferred to another facility by time his claim was heard, was not entitled to grant of injunctive relief. Brooks v. Terry, C.A.8 (Ark.) 2000, 208 F.3d 217, Unreported. Civil Rights 1454

5640. ---- Likelihood of success, considerations governing, injunctive relief

Professionals subject to Kansas statute requiring doctors, teachers, and others to notify state government of suspected injury to minor resulting from sexual abuse did not establish substantial likelihood of success on the merits of §§ 1983 claim alleging that statute violated their minor patients' and clients' constitutional rights to informational privacy in seeking preliminary injunction against enforcement of statute in the context of voluntary sex between minors of similar ages, given that unchallenged state law criminalized all sexual conduct with minors, such that patients and clients likely had no privacy right in their sexual activity, and given professionals' failure to show, in light of state's interests in enforcing its criminal laws, protecting minors, and promoting public health, that balance between asserted privacy rights and state's interests was substantially likely to weigh in their favor. Aid for Women v. Foulston, C.A.10 2006, 441 F.3d 1101, on remand 427 F.Supp.2d 1093. Civil Rights 1457(7)

Parents of student suffering from attention deficit hyperactivity disorder (ADHD), who sought preliminary injunction against school district requiring district to administer student's school time doses of Ritalin (methylphenidate hydrochloride), failed to establish likelihood of success on merits of their substantive claims against school district under § 1983; parents produced no evidence that their right to determine care of their child extended to district's administration of medication to him or that district violated this right or violated due process by refusing to administer his medication. Davis v. Francis Howell School Dist., C.A.8 (Mo.) 1997, 104 F.3d 204. Civil Rights 1457(3)

Child care worker who used marijuana during her pregnancy lacked standing to seek injunctive relief preventing Child Protective Services from taking any action against her or informing any federal, state, or local agency of her drug use, absent proof that agency intended to report her as child abuser to any federal, state, or local agency, that agency had actually done so, or that any federal, state, or local agency had any record on her other than original investigation. Kruse v. State of Hawai'i, C.A.9 (Hawai'i) 1995, 68 F.3d 331. Injunction 114(2)

State corrections officer was not entitled to preliminary injunction against enforcement of regulation requiring corrections officers to wear an American flag patch on their uniform; officer did not show reasonable likelihood of success on merits with respect to his compelled expression claim under the First Amendment, as he did not make necessary threshold showing that mere act of wearing a uniform with a flag patch on it constituted expressive or communicative "use" of the flag. Troster v. Pennsylvania State Dept. of Corrections, C.A.3 (Pa.) 1995, 65 F.3d 1086, certiorari denied 116 S.Ct. 708, 516 U.S. 1047, 133 L.Ed.2d 663. Injunction 138.69

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42 U.S.C.A. § 1983

Inmate bringing Eighth Amendment challenge to conditions of his confinement in strip cell failed to show that prison officials knowingly disregarded, were disregarding, and would continue to disregard objectively intolerable risk of harm to his health or safety, as required to prevail on claim for injunctive relief; while inmate did not have any clothing or bedding, he was given three meals per day, including milk, and was sheltered from elements. Williams v. Delo, C.A.8 (Mo.) 1995, 49 F.3d 442. Sentencing And Punishment 1553

Substantial likelihood of success on the merits was one of conditions that public housing tenants had to satisfy to justify preliminary injunction in tenants' class action against city housing authority and its executive director, requesting declaratory and injunctive relief and damages under § 1983, arising from continued tenancy requirement, in conversion of housing from central to individual electric metering, that tenants pay electric utility deposit and any prior nonpublic-housing utility arrearage. Crochet v. Housing Authority of City of Tampa, C.A.11 (Fla.) 1994, 37 F.3d 607. Injunction 138.31

Homeless persons failed to establish likelihood of prevailing on merits of claim that city had formal policy to expel them from city or deprive them of their constitutional rights and, thus, were not entitled to preliminary injunction preventing city, its agents, and its employees from implementing such a policy; city councilman may have made statements to media that homeless persons who did not work and contribute to community should be shown city limits, but there was no showing that councilman was city's principal policymaker or its final policymaker with respect to the homeless, existence of formal policy to remove homeless was belied by testimony of city police officer and homeless advocate, and although city may have removed homeless from under bridges and overpasses, the Constitution did not confer right to trespass on public lands. Church v. City of Huntsville, C.A.11 (Ala.) 1994, 30 F.3d 1332. Civil Rights 1456

Texas Catastrophe Property Insurance Association (CATPOOL) established substantial likelihood of success on merits of its claim that Texas statute requiring it to be represented by Texas Attorney General violated its constitutional right to be represented by counsel of its choice in civil actions, warranting preliminary injunctive relief in CATPOOL's civil rights action challenging statute. Texas Catastrophe Property Ins. Ass'n v. Morales, C.A.5 (Tex.) 1992, 975 F.2d 1178, rehearing denied 980 F.2d 1442, certiorari denied 113 S.Ct. 1815, 507 U.S. 1018, 123 L.Ed.2d 446. Civil Rights 1457(7)

White-owned road construction company was entitled to preliminary injunction on equal protection grounds to prevent enforcement of minority-owned business set-aside requirement of a District of Columbia Minority Contracting Act in light of strong showing of likelihood of prevailing on merits, plaintiff would have little hope of obtaining adequate compensation or relief and would sustain irreparable injury if relief were not granted, and balance of hardships favored plaintiff since it sought forward-looking injunction only which would not upset contractual relations already in place. O'Donnell Const. Co. v. District of Columbia, C.A.D.C.1992, 963 F.2d 420, 295 U.S.App.D.C. 317, on remand. Civil Rights 1457(7)

Village was properly preliminarily enjoined from enforcing ordinance that required fingerprinting of prospective door-to-door solicitors, given demonstrated likelihood of success on merits of claim that fingerprinting requirement unnecessarily impeded First Amendment freedom of speech and served little or no legitimate governmental purpose. National People's Action v. Village of Wilmette, C.A.7 (Ill.) 1990, 914 F.2d 1008, certiorari denied 111 S.Ct. 1311, 499 U.S. 921, 113 L.Ed.2d 245. Civil Rights 1457(7)

White foster parents whose black foster child was removed from their care solely on basis of race, were entitled to preliminary injunction requiring city to return child to their care; parents showed that they would probably succeed on their due process and equal protection claims, and expert testimony indicated that child was suffering from depression since he had been removed from parents' care and would be irreparably injured if relief requested was not granted. McLaughlin v. Pernsley, C.A.3 (Pa.) 1989, 876 F.2d 308. Civil Rights 1457(7)

Prison inmates were entitled to preliminary injunction against implementation of changes in prison's legal

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assistance program on ground that inmates demonstrated likelihood of success on merits of claim that new plan did not provide reasonable alternative to old plan's provision for access to courts, that implementation of new plan would cause irreparable harm by offering inmates inadequate legal access and that in weighing all factors greater harm would accrue to inmates through implementation of plan. Valentine v. Beyer, C.A.3 (N.J.) 1988, 850 F.2d 951. Injunction 138.60

New Hampshire high school student whose expulsion was summarily reinstated upon alleged violation of readmission agreement was likely to prevail on due process deprivation claim, for purpose of obtaining preliminary injunctive relief; agreement contained no waiver of student's constitutional rights. Johnson v. Collins, D.N.H.2002, 233 F.Supp.2d 241. Civil Rights 1457(3)

Determination of whether public employee was likely to succeed on merits of his claim that he had been subjected to political discrimination depended on jury's weighing of parties' credibility, and thus issuance of preliminary injunction was not warranted in employee's §§ 1983 action. Lopez Quinonez v. Puerto Rico Nat. Guard, D.Puerto Rico 2006, 455 F.Supp.2d 60. Civil Rights 1457(6)

Inmate in state correctional facility did not establish that he would likely prevail on his claims that corrections officials were deliberately indifferent to his medical needs in violation of Eighth Amendment, that he was improperly transferred to another facility in retaliation for his ongoing legal claims, and that he was denied access to legal materials, and thus he was not entitled to a preliminary injunction addressing these matters; evidence suggested that inmate had received adequate medical care, there was no evidence of deliberate indifference, documentation suggested that inmate was transferred for non-retaliatory reasons, and inmate presently had access to legal materials. Niemic v. Maloney, D.Mass.2006, 448 F.Supp.2d 270. Civil Rights 1457(5)

Preliminary injunction staying state inmate's execution was warranted in §§ 1983 action challenging Ohio's lethal injection protocol on Eighth Amendment grounds, inasmuch as inmate intervened in action immediately after his cause of action accrued and thus did not delay in seeking relief, mounting evidence called into question Ohio's lethal injection protocol and same or similar protocols of other states and inmate, at the least, demonstrated stronger likelihood of success on the merits than plaintiffs who preceded him, there was unacceptable risk that inmate could suffer unnecessary and excruciating pain while being executed, harm from injunction to state's interests would be minimal in light of both state's ability to correct protocol's flaws and delay in case due to state's interlocutory appeal, and injunctive relief served public interests. Cooey v. Taft, S.D.Ohio 2006, 430 F.Supp.2d 702.

Parents and high school student who was suspended for creating online parody profile of principal, who were seeking temporary restraining order (TRO) against further discipline, had not demonstrated reasonable probability of success on the merits of their constitutional challenge; student's actions appeared to have substantially disrupted school operations and interfered with rights of others which, along with student's apparent violation of school rules, provided sufficient legal basis for defendants' actions. Layshock ex rel. Layshock v. Hermitage School Dist., W.D.Pa.2006, 412 F.Supp.2d 502. Civil Rights 1457(3)

Prospective exhibitors who sued county agricultural society, stemming from ban of livestock at county fair following positive test for prohibited substance, failed to establish strong likelihood of success on claim that ban violated their substantive due process rights, as required to obtain temporary restraining order (TRO); agricultural society's action to protect integrity of livestock competitions via ban did not shock conscience. Farmer v. Pike County Agr. Society, S.D.Ohio 2005, 411 F.Supp.2d 838. Civil Rights 1457(7)

State prison inmate, scheduled for execution, did not establish likelihood of succeeding on merits or serious questions going to merits of his claim that officials violated his Eighth Amendment right to be free of cruel and unusual punishment, as required for injunctive relief, when inmate alleged that officials declined to provide treatment for various medical conditions, allegedly needed to enable him to adequately assist in preparation of

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clemency petition, and to develop claim of organic brain damage as grounds for clemency. Allen v. Hickman, N.D.Cal.2005, 407 F.Supp.2d 1098. Civil Rights 1457(5)

Death row inmate had no likelihood of success on claim that use of a cut-down procedure to gain access to his veins for his execution would violate the Eighth Amendment, and thus, was not entitled to preliminary injunction against such a technique, where warden testified that a cut-down procedure had not ever been used, was not authorized, and would not be employed in the execution of the inmate or any other inmate. Boyd v. Beck, E.D.N.C.2005, 404 F.Supp.2d 879. Civil Rights 1457(5)

User of public library who was barred from using library's computers failed to establish the likelihood of irreparable harm or likelihood or success on the merits, as required for preliminary injunction forcing library to expunge his electronic library record and allow him unfettered access to library's internet computers during his §§ 1983 lawsuit against library which alleged that the ban violated his right to procedural due process. Miller v. Northwest Region Library Bd., M.D.N.C.2004, 348 F.Supp.2d 563. Civil Rights 1457(2)

Voters were likely to prevail on merits of their claim that county elections board's refusal to tally their absentee ballots in special county legislative election violated their Fourteenth Amendment rights, and thus were entitled to preliminary injunction barring board from tallying ballots and certifying winners of elections without including contested absentee ballots, even though voters did not file new absentee ballot applications, as required by state law, where board had improperly sent ballots to voters as result of its erroneous interpretation of court order, voters submitted ballots in good faith, there was no allegation of fraud, and there were no challenges to absentee ballots until after rest of votes were tallied. Hoblock v. Albany County Bd. of Elections, N.D.N.Y.2004, 341 F.Supp.2d 169, remanded 422 F.3d 77, on remand 233 F.R.D. 95. Injunction 138.51

Payday loan business did not show that it was likely that municipal ordinance, which required nighttime closing of payday loan stores, did not have rational basis, for purpose of its request for preliminary injunction in § 1983 lawsuit under equal protection clause of Fourteenth Amendment; although municipality allowed nighttime operation of automatic teller machines (ATM) and retailers who provided cash back from purchases, municipality could have rationally believed that ordinance would have helped reduce crime, nighttime traffic, and noise. Payday Loan Store of Wisconsin, Inc. v. City of Madison, W.D.Wis.2004, 339 F.Supp.2d 1058. Civil Rights 1457(7)

Student, who sought preliminary injunction preventing city defendants from taking any adverse action against him for engaging in a fight with another student in response to hate-based harassment or threats, failed to demonstrate a likelihood of success of the merits on his claim for false arrest; police officer acted in response to a fight in the hall-ways of the school, arresting both students involved and charging them with disorderly conduct, and student was unable to demonstrate that the arrest was employed to restrain student from engaging in constitutionally protected conduct. Doe v. Perry Community School Dist., S.D.Iowa 2004, 316 F.Supp.2d 809. Civil Rights 1457(5)

Pub owners, who brought action challenging municipal ordinance prohibiting sale of alcoholic beverages from midnight to seven in the morning in certain areas of municipality as violative of their equal protection and due process rights, were not entitled to preliminary injunction to enjoin enforcement of ordinance; owners could not show likelihood of success on the merits, alleged damages were in the form of economic loss, and grant of injunction could have deleterious effect on public interest, since crime rate reportedly declined after implementation of ordinance. Broadwell v. Municipality of San Juan, D.Puerto Rico 2004, 312 F.Supp.2d 132. Civil Rights 1457(7)

Licensees were entitled to preliminary relief restraining enforcement of orders of Puerto Rico Insurance Commissioner revoking their agents' and broker's licenses without pre-deprivation hearing; licensees were likely to prevail on merits of their due process claims, licensees risked irreparable injury from damage to their reputations, state did not show necessity of immediate revocation, and public interest would not be adversely affected by

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issuance of injunction. Guillemard Gionorio v. Contreras Gomez, D.Puerto Rico 2004, 301 F.Supp.2d 122, appeal dismissed 161 Fed.Appx. 24, 2005 WL 3382638. Civil Rights 1457(7)

Prisoner was entitled to preliminary injunction reinstating his release under state intensive supervision program (ISP) pending determination of his claim that his reincarceration was in retaliation for his exercising his protected First Amendment right to advocate legalization of marijuana; prisoner demonstrated likelihood of success on merits, absence of relief would result in irreparable harm in form of loss of liberty, state defendants would not suffer any irreparable harm, protecting constitutional right was in public interest, and risk to public was minimal, where prisoner would be under supervision and had not broken any laws while on prior release. Forchion v. Intensive Supervised Parole, D.N.J.2003, 240 F.Supp.2d 302. Civil Rights 1457(5)

Adult entertainment establishment was not likely to succeed on its due process claims arising from revocation of license, as required to support establishment's action to enjoin enforcement of city ordinance; revocation of license was based on criminal activity, rather than prior restraint of First Amendment expression, ordinance furthered city's interest in curbing illegal activities at adult entertainment establishments, and ordinance was least restrictive means of furthering interests. Koziara v. City of Casselberry, M.D.Fla.2002, 239 F.Supp.2d 1245. Civil Rights 1457(7)

Parties to proposed merger, who would likely prevail on their contention that unconstitutional conditions were demanded and requested by the Secretary of Justice in order to approve the transaction, were entitled to preliminary injunction prohibiting further deprivation of rights; without a preliminary injunction, acquiring corporation would suffer irreparable harm in both economic and non-economic form, strong public interests favored the status quo, and the harm caused to Secretary by the issuance of a preliminary injunction was less considerable than the harm to the parties. Wal-Mart Stores, Inc. v. Rodriguez, D.Puerto Rico 2002, 238 F.Supp.2d 395, remanded 322 F.3d 747, vacated. Injunction 138.42

Scienter requirements in Wisconsin act criminalizing performance of "partial-birth abortion" rendered vagueness challenge to act unlikely to succeed on its merits and supported denial of request for preliminary injunction in § 1983 action; act required that physician cause "death of the partially delivered child with the intent to kill the child," and expressly required that physician "intentionally performs a partial-birth abortion." Planned Parenthood of Wisconsin v. Doyle, W.D.Wis.1998, 9 F.Supp.2d 1033, reversed 162 F.3d 463, on remand 44 F.Supp.2d 975. Civil Rights 1457(7)

Plain meaning of Wisconsin act imposing civil and criminal liability for performance of "partial-birth abortion" refers only to intact dilation and extraction (D&E) procedure in which intact fetus is partially delivered into vagina, despite doctors' claims that act could reach other types of abortion procedures, which thus rendered vagueness challenge to act unlikely to succeed on its merits and supported denial of request for preliminary injunction in § 1983 action. Planned Parenthood of Wisconsin v. Doyle, W.D.Wis.1998, 9 F.Supp.2d 1033, reversed 162 F.3d 463, on remand 44 F.Supp.2d 975. Abortion And Birth Control 1.21; Civil Rights 1457(7)

For purposes of determining whether to grant heavy metal rock music band and concert promoters preliminary injunction prohibiting New Jersey Sports and Exposition Authority (NJSEA) from preventing concert including band at stadium, band and promoters established likelihood of success on the merits of their § 1983 claim that Authority's prevention of concert constituted First Amendment free speech violation, even assuming that stadium was nonpublic forum; Authority's motivation appeared to be content-based rather than viewpoint-neutral, Authority put forth no evidence that its proffered safety concerns were legitimate rather than pretextual, and it appeared that Authority's requirement that all performers sign contract allowing Authority to regulate morality of concert programs might be unreasonable restriction on access. Marilyn Manson, Inc. v. New Jersey Sports & Exposition Authority, D.N.J.1997, 971 F.Supp. 875. Civil Rights 1457(7)

Buyers seeking preliminary injunction ordering return of their repossessed truck failed to establish likelihood of

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success on merits of their § 1983 claim, thus mandating denial of their motion, where, although police officer was present at scene and verbally intervened to prevent physical violence, he did not assist in effectuating the repossession, and, consequently, no state action was involved. Barrett v. Harwood, N.D.N.Y.1997, 967 F.Supp. 744, affirmed 189 F.3d 297, certiorari denied 120 S.Ct. 2719, 530 U.S. 1262, 147 L.Ed.2d 984. Injunction 138.37

Individual plaintiffs were not entitled to preliminary injunction, prohibiting city and city clerk from holding election for city officers unless ballot would include referendum calling for citizens' police review board, in plaintiffs' § 1983 civil rights action arising from denial of referendum petition as untimely filed and lacking requisite number of signatures; regardless of whether city charter or state statutory requirements applied, plaintiffs failed to demonstrate substantial likelihood of success on the merits, as challenge to petition validation procedures was little more than conjecture, and there appeared no risk of irreparable injury to plaintiffs, according to whom drive for police civilian review board would continue. Lee v. Smith, E.D.Tex.1996, 927 F.Supp. 205. Civil Rights 1457(7)

Producer of cable public access program failed to show that cable company's alleged violation of First and Fourteenth Amendments by curtailing program's cable cast dates to two per month occurred under color of state law and, therefore, failed to show likelihood of success on merits of §§ 1981 and 1983 claims or that balance of hardships tipped decidedly in her favor, for purposes of motion for preliminary injunction; it was at best unclear whether cable company acted under state law, producer merely offered conclusory allegation that cable company's decision to reduce dates occurred under color of state law because it was compelled or significantly encouraged by state officials, and cable company submitted affidavit of director of government and public affairs for cable company that she made decision to reschedule public access cablecast dates and was under no pressure from any public officials. Glendora v. Hostetter, S.D.N.Y.1996, 916 F.Supp. 1339, affirmed 104 F.3d 353, certiorari denied 117 S.Ct. 1708, 520 U.S. 1217, 137 L.Ed.2d 833. Civil Rights 1457(7)

Residential squatters occupying apartments in buildings owned by city did not demonstrate reasonable likelihood of success or fair basis for litigation as required for preliminary injunction, in their § 1983 civil rights action against city mayor and commissioner of housing preservation and development, contending that city's prior acquiescence in squatters' otherwise illegal occupation created interest sufficient to entitle them to due process before their forcible removal; squatters had come forward with little evidence of city's acquiescence and toleration as to squatters' possession of apartments, and anecdotal evidence on public record, if anything, reflected determined effort by city to avoid legitimizing illegal squatting throughout city. Walls v. Giuliani, E.D.N.Y.1996, 916 F.Supp. 214. Civil Rights 1457(4)

African-American sidewalk vendors failed to establish likelihood of prevailing on merits of claim that implementation of ordinance regulating sidewalk vending violated their equal protection rights by reducing number of African-American sidewalk vendors and, thus, vendors were not entitled to preliminary injunction; there was no city policy to treat African-American sidewalk vendors differently because of their race, and disproportionate reduction in African-American vendors was not an obvious result of restriction of vending locations nor of methods used by city to notify vendors of application procedure. Lindsay v. City of Philadelphia, E.D.Pa.1994, 844 F.Supp. 224. Civil Rights 1457(7)

State inmate failed to show probability of prevailing on merits of civil rights claim that he was denied access to legal materials, and accordingly, inmate was not entitled to temporary restraining order or preliminary injunction directing superintendent of prison to return legal materials which had been confiscated; security needs of disciplinary segregation unit in which inmate was housed justified significant restrictions on program for access to legal materials of inmates in segregation unit, and inmate did not point out any specific instance or manner in which restrictions prejudiced him. McClaflin v. Pearce, D.Or.1990, 739 F.Supp. 537. Civil Rights 1457(5)

Newspaper publishers established likelihood of prevailing on merits of claim that action of city and airline in

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seizing or relocating coin-operated news boxes in airline passenger concourse area violated publishers' First Amendment rights and that publishers would be irreparably injured as a result; therefore, publishers were entitled to preliminary injunction restraining city and airline from seizing or relocating news boxes. Chicago Tribune Co. v. City of Chicago, N.D.Ill.1989, 705 F.Supp. 1345. Civil Rights 1457(7)

Preliminary injunction would not be issued requiring state prison to transport inmate to facility where magnetic resonance imaging (MRI) test could be performed on hand, prior to resolution of §§ 1983 suit against prison employees claiming level of medical treatment violated his federal rights; inmate failed to show likelihood of prevailing on merits of his treatment claim, and inmate would not be irreparably harmed by denial of injunction. Green v. Howard R. Young Correctional Institution, D.Del.2005, 229 F.R.D. 99. Civil Rights 1457(5)

Standard by which to judge likelihood of success was whether Aid for Families with Dependent Children (AFDC) recipients made showing that probability of their prevailing was better than 50% as opposed to a heightened level of scrutiny, namely a substantial likelihood of success, for purposes of obtaining preliminary injunction in § 1983 action alleging that New York City failed to process public assistance grants pursuant to AFDC program in a timely fashion; preliminary relief would not be complete because injunction sought by recipients would end if their claims ultimately proved to be unsuccessful and recipients sought more in the way of ultimate relief than they sought preliminarily. Brown v. Giuliani, E.D.N.Y.1994, 158 F.R.D. 251. Injunction 138.66

Lack of evidence concerning burden, e.g. cost, imposed on theater operators from complying with city ordinance requiring that off-duty police officer be part of theater's security team precluded preliminary injunction against enforcement of ordinance pending resolution of operators' §§1983 First Amendment action against city; operators' probability of success under applicable intermediate-scrutiny standard's "narrowly tailored" component could not be determined. Terminello v. City of Passaic, C.A.3 (N.J.) 2004, 118 Fed.Appx. 577, 2004 WL 2850114, Unreported. Civil Rights 1457(7)

State prisoner failed to show likelihood of success on merits of his claim that California's lethal injection protocol was cruel and unusual on ground that it would subject him to unreasonable risk of unnecessary pain, as would support temporary restraining order or preliminary injunction to prevent his execution pursuant to California's lethal injection protocol, in light of ample legal authority that lethal injection comported with current societal norms regarding execution. Cooper v. Rimmer, N.D.Cal.2004, 2004 WL 231325, Unreported, affirmed 379 F.3d 1029. Civil Rights 1457(5)

State prisoners who brought § 1983 claim against state Department of Corrections (DOC) officials, alleging that officials provided them with ill-fitting wheelchairs, in deliberate indifference to their medical needs, in violation of the Eighth Amendment, could not show substantial likelihood of success on the merits, barring issuance of preliminary injunction to enjoin officials from providing them with wheelchairs; physical therapist measured prisoners for wheelchairs, purchase request forms from prison had different specifications for wheelchairs ordered, and new wheelchairs were adjusted to particular needs of each prisoner. Johnson v. Newport Lorillard, S.D.N.Y.2003, 2003 WL 169797, Unreported. Civil Rights 1457(5)

5641. ---- Public interest, considerations governing, injunctive relief

High school student who was suspended for creating online parody profile of principal had not demonstrated that public interest favored issuance of temporary restraining order (TRO) against further discipline by school district and its officials; despite court's reservations regarding appropriateness of student's punishment, public interest was best served by allowing school officials to administer their high school and discipline their students as they determined. Layshock ex rel. Layshock v. Hermitage School Dist., W.D.Pa.2006, 412 F.Supp.2d 502. Civil Rights 1457(3)

Considerations of public interest did not warrant granting of temporary restraining order (TRO) in action brought

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by prospective exhibitors against county agricultural society, stemming from ban of livestock at county fair following positive test for prohibited substance, since such interest was best served by deferring to society's efforts to ensure integrity of its livestock competitions. Farmer v. Pike County Agr. Society, S.D.Ohio 2005, 411 F.Supp.2d 838. Injunction 150

Possibility of irreparable harm did not warrant granting of temporary restraining order (TRO) in action brought by prospective exhibitors against county agricultural society, stemming from ban of livestock at county fair following positive test for prohibited substance, since exhibitors did not substantially demonstrate constitutional violation from challenged action. Farmer v. Pike County Agr. Society, S.D.Ohio 2005, 411 F.Supp.2d 838. Civil Rights 1457(7)

Public interest would best be served, as factor weighing in favor of issuance of permanent injunction requiring township to provide actual notice and opportunity for mobile home tenants to be heard at hearing on whether the mobile homes violated township zoning ordinance, by providing the tenants with notice and an opportunity to be heard before the board, even though enforcement of zoning ordinances generally promotes the public interest. Ruiz v. New Garden Tp., E.D.Pa.2002, 232 F.Supp.2d 418, reversed 376 F.3d 203. Civil Rights 1453

Issuance of temporary restraining order, restricting application of township ordinance that restricted use of political signs before election, was in public's best interest, in § 1983 lawsuit brought by candidate for elective office alleging violation of his right to free speech, since public interest was best served by protecting unfettered dissemination of political ideas and thought, especially at time so close to election. Lawless v. Lower Providence Township, E.D.Pa.2002, 2002 WL 31356304, Unreported. Civil Rights 1457(7)

5642. ---- Serious question, considerations governing, injunctive relief

Professor established sufficiently serious questions going to merits of her class-of-one equal protection claim under §§ 1983 against university administrators, challenging her suspension for refusing to undergo psychiatric examination, to make them a fair ground for litigation, as required for professor to be entitled to preliminary injunction to prevent administrators from requiring her to undergo examination in order to keep her position; administrators testified no other faculty member had been subject to involuntary psychiatric examination as prerequisite to continued employment, and it was likely professor would establish that requirement of involuntary psychiatric evaluation before being given opportunity to modify the behavior deemed unacceptable was arbitrary and irrational. Appel v. Spiridon, D.Conn.2006, 2006 WL 3479414. Civil Rights 1457(6)

State prison inmate, scheduled for execution, did not establish likelihood of succeeding on merits or serious questions going to merits of his claim that officials violated his due process rights, or his right to counsel, as required for injunctive relief, when inmate alleged that officials declined to provide treatment for various medical conditions, allegedly needed to enable him to adequately assist in preparation of clemency petition, and to develop claim of organic brain damage as grounds for clemency. Allen v. Hickman, N.D.Cal.2005, 407 F.Supp.2d 1098. Civil Rights 1457(5)

State correctional officers failed to establish serious questions as to merits of their claim that disciplinary actions based on their association with motorcycle gang violated their equal protection rights, and thus were not entitled to preliminary injunction barring state from effecting disciplinary actions, absent showing that there existed anyone similarly situated to them. Piscottano v. Murphy, D.Conn.2004, 317 F.Supp.2d 97. Civil Rights 1457(6)

Prisoners at women's prison who had brought federal civil rights action challenging constitutionality of proposed rules restricting visitation rights were not entitled to preliminary injunction against enforcement of rules; even assuming that prisoners had met burden with respect to factors of irreparable injury, balance of harms, and public interest, prisoners could not show that serious question existed as to merits of challenges to regulations. Bazzetta v. McGinnis, E.D.Mich.1995, 902 F.Supp. 765, affirmed 124 F.3d 774, supplemented 133 F.3d 382, rehearing and

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suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 2371, 524 U.S. 953, 141 L.Ed.2d 739. Civil Rights 1457(5)

5643. ---- Statutory provisions, considerations governing, injunctive relief

Issuance of successive preliminary injunctions in § 1983 class action to allow Muslim state prisoners to attend Muslim prayer service did not render nugatory provision of statute governing preliminary injunctive relief in prison condition cases and providing for automatic expiration of such injunctions after 90 days, even though prisoners relied on law of the case doctrine to justified continued relief; consistent with statute, which required periodic reconsideration of propriety of continued relief, prisoners bore burden of justifying successive injunction, and reliance on law of the case simply reflected that the record was unchanged and preliminary relief was thus still warranted. Mayweathers v. Terhune, E.D.Cal.2001, 136 F.Supp.2d 1152. Civil Rights 1457(5); Courts 99(4)

5644. Moot claims, injunctive relief

Parade participants' claim for compensatory damages from city's denial of parade permits was not rendered moot by the fact that parades were held after court issued temporary restraining order (TRO); the participants could still contest the district court's denial of compensatory damages. Lippoldt v. Cole, C.A.10 (Kan.) 2006, 468 F.3d 1204. Federal Courts 13

Injunctive element of inmate's § 1983 civil rights action against court clerk and court reporter for failing for over 15 months to fulfill request for trial documents was dismissed, where inmate had received requested documents since filing action. Johnson v. Miller, E.D.Pa.1996, 925 F.Supp. 334. Federal Civil Procedure 1741

Inmate's application for injunctive relief from prison's "ink tube policy" was moot, as he was no longer incarcerated at that prison, and there was no evidence that he was likely to return there. Kirsch v. Smith, E.D.Wis.1995, 894 F.Supp. 1222, affirmed 92 F.3d 1187. Civil Rights 1454

5645. Miscellaneous requests, injunctive relief

Court could consider detainee's request for injunctive relief barring further interference with his rights by county jail correctional officer, in connection with his claim of cruel and unusual punishment as a result of being made to sit in his feces for five hours after his requests to use the restroom were denied by officer. Mitchell v. Newryder, D.Me.2003, 245 F.Supp.2d 200. Civil Rights 1454

Plaintiff was not entitled to injunction in civil rights action to prevent judge from presiding over future cases by plaintiff, where he did not allege that a declaratory decree was violated or that declaratory relief was unavailable and the injunctive relief addressed the actions of judge in his judicial capacity. Azubuko v. Royal, C.A.3 (N.J.) 2006, 443 F.3d 302. Injunction 27

Former faculty member who sought prospective injunctive relief only against state college board of trustees did not bring claim against "person" for purposes of federal civil rights statute. Gaby v. Board of Trustees of Community Technical Colleges, C.A.2 (Conn.) 2003, 348 F.3d 62. Civil Rights 1349

Eleventh Amendment did not bar claims that school district and officials violated rights of gay high school student, under state Constitution, Education Code and Civil Rights Act, to extent that relief sought was prospective, rather than retrospective; claims seeking injunction prohibiting defendants from "discriminating and harassing plaintiffs on the basis of actual or perceived sexual orientation," "selectively enforcing disciplinary rules," engaging in "viewpoint based censorship," and "disclosing sexual orientation or other private information" sought prospective relief, and complaint alleged reasonable fear of future violations. C.N. v. Wolf, C.D.Cal.2005, 410 F.Supp.2d 894.

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42 U.S.C.A. § 1983

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Death row inmate was not entitled to preliminary injunctive relief concerning any invasive surgical procedure to obtain access to his veins; he could have challenged his method of execution much earlier than a few weeks before the scheduled execution, threat of defendants using an invasive surgical technique on the inmate to gain access to his veins that violated the Eighth Amendment was extremely remote, state had significant interest in meting out a sentence of death in a timely fashion, and public interest would be substantially harmed if the stay were granted. Boyd v. Beck, E.D.N.C.2005, 404 F.Supp.2d 879. Civil Rights 1457(5)

Based on district court's evaluation of factors outlined in Eighth Circuit's *Dataphase* decision, state university professor was not entitled to preliminary injunction in suit alleging that nonrenewal of his employment contract violated his free speech rights; suit was employment case in which money damages would be adequate remedy, professor made no showing of irreparable harm if injunction were not granted, harm that university defendants would incur if they were required to reemploy professor was greater in that forced reemployment would be disruptive to at least his department at university, professor was unlikely to succeed on merits of his First Amendment claim in that his speech did not address matter of public concern and *Pickering* balancing favored defendants, and public interest would not be served by forcing institution of higher education to unwillingly accept faculty member back for duration of litigation he was quite likely to ultimately lose. Keating v. University of South Dakota, D.S.D.2005, 386 F.Supp.2d 1096. Civil Rights 1457(6)

Wheelchair-bound inmate was not entitled to injunctive relief requiring that he be provided with physical therapy in his § 1983 suit, despite his claim that he was being denied such therapy in retaliation for having filed a lawsuit against the correctional facility and its officers and doctors; the inmate made no specific claims of retaliation, and he was not likely to succeed on his underlying claim, particularly as a physician did provide some physical therapy treatment, i.e., the lifting of a can of beans, even if it was not what was ordered by a surgeon. Woods v. Goord, S.D.N.Y.2002, 2002 WL 31296325, Unreported. Civil Rights 1454

Wheelchair-bound inmate was not entitled to injunctive relief requiring that he be sent to specialized hospitals in his § 1983 suit; he did not explain the harm he faced if treated at the correctional facility, where he had received extensive care for his rheumatoid arthritis, degenerative joint disease, and leukemia. Woods v. Goord, S.D.N.Y.2002, 2002 WL 31296325, Unreported. Civil Rights 1454

Wheelchair-bound inmate was not entitled to injunctive relief requiring that he be granted a feed-in permit allowing him to have food brought to him in his cell in his § 1983 suit, despite his claim that a prior feed-in permit was revoked in retaliation for his having filed a lawsuit against the correctional facility and its officers and doctors; he was not singled out, but rather, the feed-in permits of a whole group of inmates was revoked on the ground that they could move about with the assistance of a wheelchair, and he was granted a feed-in permit for breakfast, when he was less mobile. Woods v. Goord, S.D.N.Y.2002, 2002 WL 31296325, Unreported. Civil Rights 1454

LX. HABEAS CORPUS

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5671. Habeas corpus generally

Both Civil Rights Act of 1871 and federal habeas corpus statute provide access to federal forum for claims of unconstitutional treatment at hands of state officials, but they differ in their scope and operation. Heck v. Humphrey, U.S.Ind.1994, 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383. Civil Rights 1307; Habeas Corpus 447

Both Civil Rights Act of 1871 and federal habeas corpus statute provide access to federal forum for claims of unconstitutional treatment at hands of state officials, but they differ in their scope and operation. Heck v. Humphrey, U.S.Ind.1994, 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383. Civil Rights 1307; Habeas Corpus 447

Petition for habeas corpus attacks fact or duration of prisoner's confinement and seeks remedy of immediate release or shortened period of confinement, whereas civil rights action for damages pursuant to § 1983 attacks conditions of prisoner's confinement and requests monetary compensation for such conditions. Rhodes v. Hannigan, C.A.10 (Kan.) 1993, 12 F.3d 989. Civil Rights 1090; Habeas Corpus 207; Habeas Corpus 208

Although § 1983 is not available once the prisoner seeks release from or reduction of confinement, it is available when prisoner seeks to challenge conditions of his confinement or declaratory judgment as predicate to award of money damages or prospective injunctive relief. Richards v. Bellmon, C.A.10 (Okla.) 1991, 941 F.2d 1015. Civil Rights 1090; Declaratory Judgment 84

State prisoner's suit challenging conditions of confinement is cognizable under this section, but challenge to the fact or duration of confinement must be brought as a habeas corpus action. Keenan v. Bennett, C.A.5 (Ala.) 1980, 613 F.2d 127. Civil Rights 1090; Habeas Corpus 503.1; Civil Rights 1311

Habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Civil Rights 1311

To extent that plaintiff, in her pro se § 1983 action, sought release, such relief was only available through a petition for writ of habeas corpus. Figalora v. Smith, D.Del.2002, 238 F.Supp.2d 658. Civil Rights 1311

When prisoner challenges fact or duration of his confinement and seeks immediate release, claim is within core of

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habeas corpus, which is thus exclusive remedy; such claim may not be litigated in federal court § 1983 action. Cornett v. Longois, E.D.Tex.1994, 871 F.Supp. 918. Civil Rights 1311; Habeas Corpus 207

To determine whether action is properly considered § 1983 complaint or habeas petition, court must consider whether core of claim concerns length or duration of sentence and whether claim of damages is purely ancillary to independent or favorable resolution of length or duration of sentence. Locher v. Plageman, W.D.Va.1991, 765 F.Supp. 1260. Civil Rights 1311; Habeas Corpus 666

Claims which are indirect attacks on plaintiff's confinement are better pressed in habeas corpus proceeding rather than § 1983 proceeding. Hickombottom v. McGuire, N.D.Ill.1991, 765 F.Supp. 950. Civil Rights 1311

State inmate's failure to file petition for common law writ of certiorari challenging prison disciplinary board's extension of his mandatory release date deprived state courts of opportunity to pass upon substance of his claims, and thus barred federal habeas review of his claim that board violated his constitutional rights, even though inmate filed § 1983 suit in state court, where state court dismissed that suit because inmate had not succeeded in overturning his disciplinary conviction before suing, and action was filed after expiration of limitations period for filing petition for certiorari. Harr v. Karlen, C.A.7 (Wis.) 2003, 67 Fed.Appx. 968, 2003 WL 21461731, Unreported, rehearing denied. Habeas Corpus 342

Defendant, who had been denied habeas corpus relief, was not entitled to seek injunctive relief as a means of obtaining relief from his conviction, since habeas corpus was the exclusive avenue for relief. Brown v. Rhode Island, C.A.1 (R.I.) 2000, 215 F.3d 1311, Unreported. Habeas Corpus 900.1

5672. Custody requirement, habeas corpus

Person who does not meet "in custody" requirement for habeas relief is not precluded from challenging constitutionality of his or her state court conviction in action under this section, although defendants may be able to invoke collateral estoppel or res judicata as an affirmative defense to extent that those concepts apply. Battieste v. City of Baton Rouge, C.A.5 (La.) 1984, 732 F.2d 439. Civil Rights 1331(4); Judgment 648

This section relating to deprivation of federally protected rights was not intended to be a substitute for habeas corpus when there is no custody. Cavett v. Ellis, C.A.5 (Tex.) 1978, 578 F.2d 567. Civil Rights 1311

If plaintiff, whose state sentence had expired, was still suffering from the type of collateral consequences which would qualify him as being "in custody" for habeas corpus purposes, he would be required to maintain habeas corpus action before federal court could consider his civil rights suit based on alleged unconstitutionality of his arrest; if he did not qualify as being in custody, he could maintain his action without having previously instituted an action for habeas corpus relief. Conner v. Pickett, C.A.5 (Ala.) 1977, 552 F.2d 585. Civil Rights 1311

Evidence established that the most plausible interpretation of state prisoner's complaint alleging that he was made to run the "gauntlet of arbitrary reachings at due process of law and access into the court" was that he was being held in custody in violation of the Constitution or laws of the United States and, to extent that such a claim implied a demand for equitable relief by way of federal habeas corpus, prisoner could not proceed under this section. Gaito v. Ellenbogen, C.A.3 (Pa.) 1970, 425 F.2d 845. Civil Rights 1420

Heck v. Humphrey rule is only bar to §§ 1983 claim if plaintiff is trying to assert claim while he or she is still in custody, in which case proper remedy for plaintiff is habeas action, not §§ 1983 action. Cole v. Doe 1 thru 2 Officers of City of Emeryville Police Dept., N.D.Cal.2005, 387 F.Supp.2d 1084. Civil Rights 1311

Favorable termination rule of *Heck v. Humphrey*, under which civil rights plaintiff must show that conviction has been invalidated or called into question before challenging conduct whose unlawfulness would render conviction

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invalid, did not extend to released prisoner who was barred by custody requirement from bringing habeas petition challenging state conviction. Bembenek v. Donohoo, E.D.Wis.2005, 355 F.Supp.2d 942. Civil Rights 1088(5)

Heck "favorable termination" rule applied to preclude civil rights suit that called prior conviction into question, even though litigant was not in custody and thus could not challenge conviction via federal or state habeas review. Leonard v. Juge, C.A.5 (La.) 2003, 72 Fed.Appx. 129, 2003 WL 21770848, Unreported. Civil Rights 1088(5)

5673. Exhaustion of habeas corpus remedy--Generally

Where factual allegations of a complaint can give rise either to habeas relief or to civil rights remedies, former must be first pursued to a conclusion and requirement of exhaustion cannot be abated by casting complaint in civil rights form; not only state habeas remedies, but federal ones as well must be exhausted before a civil rights action based upon them may proceed. Hernandez v. Spencer, C.A.5 (Tex.) 1986, 780 F.2d 504. Civil Rights 1311

Prisoner's § 1983 suit against Commonwealth's Attorney, requesting access to and testing of biological evidence from his rape and sodomy trial in order to determine if it was exculpatory, was not, in effect, a petition for writ of habeas corpus subject to requirement of exhaustion of state remedies; prisoner did not seek immediate release from prison and disclaimed any challenge to his conviction at present time, conceding that the DNA tests may show his conviction was valid, and denial of access to possibly exculpatory evidence stated a claim of denial of due process and gave court jurisdiction under § 1983. Harvey v. Horan, E.D.Va.2000, 119 F.Supp.2d 581. Civil Rights 1311; Habeas Corpus 666

Although § 1983 allows prisoner to recover damages for constitutional violation and has no requirement of exhausting state remedies, prisoner cannot bring claim that could justify habeas corpus relief unless prisoner has complied with procedural prerequisites for habeas case. Norton v. Garro, E.D.Wis.1997, 957 F.Supp. 1067. Civil Rights 1319

If § 1983 claim is necessarily dependent upon proving that plaintiff's conviction was constitutionally infirm, he may not make that showing for first time in his § 1983 action, rather, plaintiff must first have successfully attacked his conviction in prior proceeding by having secured writ of habeas corpus; however, if plaintiff's § 1983 claim challenges only the constitutionality of the procedures employed in securing his conviction, and if any such error would not be sufficient to undermine his conviction, then plaintiff will be allowed to proceed with his § 1983 claim. Richmond v. Duke, E.D.Ark.1995, 909 F.Supp. 626. Civil Rights 1088(5)

If claim purportedly brought under § 1983 itself goes to constitutionality of criminal conviction, then exclusive remedy is habeas corpus, subject to essential requirement of exhaustion of remedies. Jones v. State, E.D.Tex.1995, 893 F.Supp. 643. Civil Rights 1311; Habeas Corpus 321

Since several of arrestee's § 1983 claims directly or indirectly challenged constitutionality of his state court conviction, arrestee was prevented from bringing these claims until he had exhausted his habeas remedies and thus, two-year Texas statute of limitations for personal injury actions, which was applicable to § 1983 actions, was tolled while arrestee completed the required exhaustion, however, statute of limitations was not suspended as to any claims that did not directly or indirectly challenge constitutionality of arrestee's conviction. Zuliani v. Boardman, W.D.Tex.1994, 865 F.Supp. 382. Civil Rights 1311; Limitation Of Actions 105(1)

Habeas corpus, with its attendant exhaustion requirement, is the exclusive initial cause of action where basis of a state prisoner's claim goes to the fact or duration of his confinement, whereas challenges to conditions of confinement may proceed under this section without any requirement of exhaustion of state judicial remedies; a federal court should be governed by such classifications irrespective of the relief sought or the label placed by the petitioner upon such action. Derrow v. Shields, W.D.Va.1980, 482 F.Supp. 1144. Civil Rights 1319; Habeas Corpus 321

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42 U.S.C.A. § 1983

Plaintiffs who had not resorted to habeas corpus remedies available to them were not entitled to injunctive relief and damages under this section for violation of their constitutional rights to due process and equal protection resulting from allegedly unconstitutional state court criminal proceedings. Greene v. State of N. Y., S.D.N.Y.1967, 281 F.Supp. 579. Civil Rights 1454; Injunction 7

5674. ---- Challenges to validity or duration of confinement, exhaustion of habeas corpus remedy

Civil rights suit pursuant to § 1983 was appropriate vehicle for state prisoner to challenge Alabama's proposed use of "cut-down" procedure to access his veins during lethal injection procedure, and thus, challenge was not properly dismissed as unauthorized second or successive habeas petition; prisoner's challenge was not to fact of his execution, but rather, to allegedly unnecessary cut-down procedure for gaining venous access. Nelson v. Campbell, U.S.2004, 124 S.Ct. 2117, 541 U.S. 637, 158 L.Ed.2d 924, on remand 377 F.3d 1162. Civil Rights 1088(5); Habeas Corpus 901

A suit seeking to enjoin a particular means of effectuating a sentence of death does not directly call into question the "fact" or "validity" of the sentence itself, such that the suit would properly be brought under the federal habeas corpus statute, and not pursuant to § 1983; by simply altering its method of execution, the state can go forward with the sentence. Nelson v. Campbell, U.S.2004, 124 S.Ct. 2117, 541 U.S. 637, 158 L.Ed.2d 924, on remand 377 F.3d 1162. Civil Rights 1088(5); Habeas Corpus 275.1

Preiser, which held that habeas corpus is exclusive remedy for state prisoner who challenges fact or duration of his confinement and seeks immediate or speedier release even though such claim may come within literal terms of § 1983, did not create exception to "no exhaustion" rule of § 1983; it merely held that certain claims by state prisoners are not cognizable under that provision and must be brought in habeas corpus proceedings, which do contain exhaustion requirement. Heck v. Humphrey, U.S.Ind.1994, 114 S.Ct. 2364, 512 U.S. 477, 129 L.Ed.2d 383 . Civil Rights 1311; Habeas Corpus 450.1

Arrestee's success on illegal entry claim, arising when officers allegedly entered his home without warrant, probable cause, or exigent circumstances, would not have necessarily implied invalidity of his state misdemeanor assault conviction for struggling with officers upon their entry, and thus *Heck v. Humphrey* rule did not bar assertion of illegal entry claim in federal civil rights suit, as illegality of entry under Fourth Amendment was not a defense to assault charge. Cummings v. City of Akron, C.A.6 (Ohio) 2005, 418 F.3d 676, rehearing and rehearing en banc denied. Civil Rights 1088(3)

New Jersey prisoner's challenge to being placed in prison's restricted activities program (RAP) was aimed at a condition of his confinement and was properly brought under § 1983, because prisoner could not have brought this claim as a habeas claim in that he did not and could not seek earlier release based on the adjudication of his constitutional claims; though there was a possibility that parole would be delayed if prisoner remained on RAP status, because of lack of access to therapy, prisoner, as a sex offender, did not earn credits to which he could claim entitlement if not on RAP status. Leamer v. Fauver, C.A.3 (N.J.) 2002, 288 F.3d 532. Civil Rights 1092; Civil Rights 1311; Habeas Corpus 231

Parolee's civil rights action against Texas Board of Pardon and Paroles, for allegedly failing to provide him with statement of its reasons for revoking his parole in alleged violation of his federal due process rights, was action which called into question the validity of parole revocation decision itself, and could not be pursued absent showing that Board's decision had been reversed, expunged, set aside or called into question. Littles v. Board of Pardons and Paroles Div., C.A.5 (Tex.) 1995, 68 F.3d 122. Civil Rights 1097

Petitioner had no § 1983 cause of action for money damages based on alleged violation of his Fourth Amendment rights concerning police search of his automobile, until such time as petitioner succeeded in having his conviction for driving under influence (DUI) of drugs found in vehicle set aside. Schilling v. White, C.A.6 (Ohio) 1995, 58

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42 U.S.C.A. § 1983

F.3d 1081. Civil Rights 1088(3)

Inmate's civil rights action seeking damages and restoration of good-time credits that he lost as result of disciplinary action would affect length of confinement and, thus, action was appropriately stayed pending exhaustion of state court remedies. Bressman v. Farrier, C.A.8 (Iowa) 1990, 900 F.2d 1305, rehearing denied, certiorari denied 111 S.Ct. 1090, 498 U.S. 1126, 112 L.Ed.2d 1194. Civil Rights 1319

Claims that plaintiff was falsely imprisoned, that he had been reindicted on charge that had been dismissed for speedy trial violation and that in his criminal trial the state had used perjured testimony against him challenged validity or length of plaintiff's confinement, and thus civil rights claim for damages was first subject to exhaustion of state remedies, because the challenge amounted to a habeas corpus proceeding. Johnson v. State of Tex., C.A.5 (Tex.) 1989, 878 F.2d 904, rehearing denied. Civil Rights 1311; Habeas Corpus 321

Federal prisoner's civil rights action for restoration of "good time" credits and parole eligibility, along with payment of damages for being wrongfully punished, due to alleged denial of prisoner's due process rights by being repeatedly subjected to disciplinary sanctions in retaliation for having rejected homosexual solicitations by guards and resisting improper searches having homosexual overtones, was in reality habeas corpus suit challenging duration of confinement, and thus prisoner was required to exhaust his administrative remedies before bringing suit. Greene v. Meese, C.A.7 (Ind.) 1989, 875 F.2d 639. Habeas Corpus 321; Habeas Corpus 277

Prisoner's civil rights complaint seeking declaration that Louisiana statute authorizing payment of parole supervision fees was unconstitutional as applied challenged validity of his current confinement; thus, allegations should have been pursued in habeas corpus proceedings, with concomitant exhaustion of state remedies; although prisoner did not seek release from prison, determination that fees were improper would necessarily undermine validity of his parole revocation proceeding. Sheppard v. State of La. Bd. of Parole, C.A.5 (La.) 1989, 873 F.2d 761. Civil Rights 1311

An inmate's § 1983 action in federal court for damages or declaratory relief for unconstitutional deprivation of good time credits should be stayed until inmate has satisfied exhaustion requirement for habeas petition with respect to underlying constitutional issue, as inmate who wins such action thereby establishes an irrefutable claim for early or immediate release under habeas. Offet v. Solem, C.A.8 (S.D.) 1987, 823 F.2d 1256. See, also, Franklin v. Webb, C.A.8 (Mo.) 1981, 653 F.2d 362. Action 69(5); Action 69(6)

Where state prisoner's contention, under this section, was that he was neither given notice of his right to final hearing nor a final hearing by Texas Board of Pardons and Paroles, was in reality challenge to duration of confinement, exhaustion of prisoner's federal habeas corpus remedy was required before civil rights action could proceed. Jackson v. Torres, C.A.5 (Tex.) 1983, 720 F.2d 877. Civil Rights 1311

State prisoner was required to bring claim as petition for habeas corpus to the extent that his civil rights action challenged fact or duration of his confinement by virtue of back-time ordered for state parole violation. Thomas v. Pennsylvania, M.D.Pa.2005, 375 F.Supp.2d 406. Civil Rights 1311

State prisoner who sought release from custody after revocation of his parole was required to do so only on a properly submitted petition seeking a writ of habeas corpus, not in a § 1983 action. Keyes v. Juul, E.D.N.Y.2003, 270 F.Supp.2d 327. Civil Rights 1311

Judgment favorable to inmate in his § 1983 claim seeking money damages for alleged deprivations arising out of a prison disciplinary hearing would necessarily imply the invalidity of the punishment imposed, and thus inmate's § 1983 claim would be dismissed; inmate argued that the wrong result was reached in his disciplinary hearing, not just that improper procedures were employed. Roberts v. Champion, N.D.Okla.2003, 255 F.Supp.2d 1272, affirmed 91 Fed.Appx. 108, 2004 WL 249617. Civil Rights 1092

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42 U.S.C.A. § 1983

To extent inmate was challenging duration of his sentence, in his § 1983 action alleging denial of parole violated his civil rights, claim would be dismissed pursuant to in forma pauperis statute; sole federal remedy was by way of writ of habeas corpus, and inmate's sentence had not been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. Ross v. Snyder, D.Del.2002, 239 F.Supp.2d 397. Federal Civil Procedure 2734

Prisoner could use a § 1983 suit rather than habeas corpus to make a due process challenge to disciplinary hearings where he had not lost "good time" credits and was not otherwise challenging the fact or duration of his confinement. Jackson v. Johnson, S.D.N.Y.1998, 15 F.Supp.2d 341. Civil Rights 1311

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Even state prisoner who has fully exhausted available state remedies has no cause of action under § 1983 arising out of allegedly unconstitutional conviction or imprisonment unless and until conviction or sentence is reversed, expunged, invalidated, or impugned by grant of writ of habeas corpus; however, if court determines that plaintiff's action, even if successful, would not demonstrate invalidity of any outstanding criminal judgment against plaintiff, action should be allowed to proceed, in absence of any other bar to suit. Cornett v. Longois, E.D.Tex.1994, 871 F.Supp. 918. Civil Rights 1088(5); Civil Rights 1090

Former inmate's § 1983 claims challenged validity of his state conviction, sentence, and fact or duration of state's custody and, thus, former inmate failed to state cognizable § 1983 claim to extent he sought monetary damages, absent allegation that conviction, sentence or fact or duration of his custody had previously been reversed on direct appeal, expunged by executive order, declared invalid by authorized state tribunal, or called into question by federal court's issuance of writ of habeas corpus. Hand v. Young, D.Nev.1994, 868 F.Supp. 289. Civil Rights 1088(5)

Section 1983 claims which call into question validity or duration of confinement, even if not seeking habeas relief, are subject to exhaustion requirement of habeas corpus statute. Tomey v. Gissy, N.D.W.Va.1993, 832 F.Supp. 172 . Civil Rights 1311; Habeas Corpus 319.1

Inmate could not maintain § 1983 suit seeking injunctive relief, as claim that state had not provided him with sufficient trial court records to ensure fair appellate review of his criminal convictions was at heart an attack on legality of his custody, for which habeas corpus, with its concomitant exhaustion-of-state-remedies requirement, was exclusive federal remedy. Jones v. Burris, N.D.Ill.1993, 825 F.Supp. 860. Civil Rights 1311; Habeas Corpus 319.1

State prisoner could not maintain civil rights action, seeking damages based on alleged conspiracy to obtain his confession to murder, without first exhausting his state law remedies; prevailing in the civil rights action would amount to determination that his conviction and subsequent incarceration were unconstitutional, thereby resulting in attack on fact or duration of his confinement. Crane v. Gasparini, N.D.Ill.1989, 719 F.Supp. 746. Civil Rights 1311

Prisoner's § 1983 action which challenged single allegedly defective prison disciplinary hearing, which in essence was attack on fact and duration of his custody, rather than on procedures employed, required dismissal; § 1983 action had to be construed as petition for writ of habeas corpus, which was premature based upon prisoner's failure to exhaust state court remedies. Harper v. Gibson, N.D.Ind.1987, 666 F.Supp. 1252. Civil Rights 1092

Where prisoner plaintiff challenged constitutionality of amendment of his sentence structure, and finding that

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plaintiff was entitled to damages on this issue would show that reduction in his sentence was required, plaintiff's initial and exclusive remedy lay in habeas corpus, with respect to any claims under this section arising out of his amended sentence structure, and therefore, those claims could not be heard. Barnes v. Wolff, D.C.Nev.1984, 586 F.Supp. 312. Civil Rights 1311

As general rule in civil rights actions, exhaustion of state remedies is not prerequisite, but when state prisoner is challenging very fact or duration of physical imprisonment, and relief he seeks is determination that he is entitled to immediate release or speedier release from imprisonment, his sole federal remedy is that of habeas corpus, and exhaustion requirement applies. Godbolt v. Commissioner of Dept. of Correctional Services, S.D.N.Y.1981, 524 F.Supp. 21. Civil Rights 1319; Habeas Corpus 321

To the extent Kansas state prisoner, who was bringing civil rights case against state officials, sought to challenge validity of his sentence based on new evidence which allegedly proved civil rights defendants conspired to mislead and defraud him about his return to Oklahoma to serve his sentences concurrently, such a claim should have been raised in a writ for habeas corpus, assuming prisoner first received permission from Court of Appeals to file successive habeas corpus petition. Brownfield v. Stovall, C.A.10 (Kan.) 2003, 85 Fed.Appx. 123, 2003 WL 23033727, Unreported. Civil Rights 1311

Inmate's claims seeking charges and civil suit against court-appointed attorney, prosecutor, and presiding judge from his criminal trial, on grounds that they denied him fair trial and helped secure his wrongful conviction, were not cognizable under § 1983 when inmate's conviction had not been invalidated. Jimenez v. Mittler, N.D.Cal.2003, 2003 WL 22080758, Unreported. Civil Rights 1088(5)

Success on inmate's claim that denial of his release on parole was unconstitutional would have resulted in his earlier release from prison, and thus, he had to bring his claim as a petition for a writ of habeas corpus, not in a civil rights complaint under § 1983. Driskel v. Davis, N.D.Cal.2003, 2003 WL 262234, Unreported. Civil Rights 1311

Prisoner, who alleged that his constitutional rights were violated when prison officials attempted to obtain a DNA sample from him, could not challenge the disciplinary proceeding resulting from his refusal to provide a DNA sample in an action under § 1983; when prisoner refused to allow a DNA sample to be taken from him by prison staff, he received a rule violation report and was assessed a 60-day credit forfeiture, and, to the extent prisoner wanted to challenge that decision in federal court, he had to do so by filing a petition for writ of habeas corpus because it called into question the duration of his confinement. Miller v. U.S. Dept. of Justice, N.D.Cal.2002, 2002 WL 31898213, Unreported. Civil Rights 1092

5675. ---- Challenges to conditions of confinement, exhaustion of habeas corpus remedy

Constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside the "core" of habeas corpus and may be brought pursuant to § 1983 in the first instance. Nelson v. Campbell, U.S.2004, 124 S.Ct. 2117, 541 U.S. 637, 158 L.Ed.2d 924, on remand 377 F.3d 1162. Civil Rights 1090; Habeas Corpus 277

Prisoner's complaint alleging that prison's parole procedures violated equal protection was not disguised habeas corpus petition and thus, prisoner could proceed under § 1983 without first exhausting state remedies. Thomas v. Georgia State Bd. of Pardons and Paroles, C.A.11 (Ga.) 1989, 881 F.2d 1032, rehearing denied 893 F.2d 346. Civil Rights 1311

Injunctive relief which plaintiff inmate sought on ground that failure of defendant state prison officials to institute a work release program at particular institution was violative of equal protection sought only to alter conditions of plaintiff's confinement rather than to diminish length of his incarceration and, hence, did not sound chiefly in

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habeas corpus for which plaintiff was required to fulfill concommitant exhaustion requirements. Jamieson v. Robinson, C.A.3 (Pa.) 1981, 641 F.2d 138. Civil Rights 1319

Where inmate obtained habeas corpus relief in state court based on claim of incorrect calculation of good-time work credits, it was not necessary for him to seek federal habeas relief in federal court before he could go forward in federal court with his civil rights claim for damages based on wrongful confinement because of the improper calculation of credits. Neal v. Hargrave, D.Nev.1991, 770 F.Supp. 553. Civil Rights 1311

Convicted defendant's § 1983 claim against arresting officers, based on alleged fabrication of evidence, was not barred by defendant's failure to bring habeas corpus action attacking validity of conviction; defendant was not attacking validity of his conviction, but rather was seeking monetary damages from officers for alleged misconduct. LaBoy v. Zuley, N.D.Ill.1990, 747 F.Supp. 1284, motion to vacate denied 749 F.Supp. 184. Civil Rights 1311

State inmate's civil rights complaint, although including allegations as to his innocence on charges for which he was confined, was not in fact petition for habeas corpus relief such that he had to exhaust available state remedies; despite surplusage as to innocence, crux of inmate's claim was that he could not be safely housed in local or state facilities because of official retaliation. Burgos v. Koehler, S.D.N.Y.1990, 727 F.Supp. 847. Habeas Corpus 666

5675A. ---- Parole, exhaustion of habeas corpus remedy

Former state prisoner's claims of seizure without probable cause and false imprisonment against police officer who had arrested him for parole violation, and his claim of false imprisonment against member of parole board that had revoked his parole, were not cognizable under §§ 1983, regardless of fact that federal habeas relief was no longer available; parole revocation decision had not been rendered invalid, and success on former prisoner's claims would necessarily invalidate revocation decision. Williams v. Consovoy, C.A.3 (N.J.) 2006, 453 F.3d 173. Civil Rights 1097

Claim that state parole procedure, which required that inmate attend a drug program based on religion and belief in a higher power, violated First Amendment could be brought under §§ 1983 as success on claim would not necessarily have demonstrated the invalidity of his confinement or its duration, but would have established that parole board used improper factors in making its parole determination. Nelson v. Horn, C.A.3 (Pa.) 2005, 138 Fed.Appx. 411, 2005 WL 1526454, Unreported. Civil Rights 1097

5676. ---- Jurisdiction, exhaustion of habeas corpus remedy

Unless statutorily mandated, application of the exhaustion doctrine in § 1983 case is not a jurisdictional requirement, but within the discretion of the district court. Torres Ramos v. Consorcio De La Montaña, D.Puerto Rico 2003, 286 F.Supp.2d 126. Civil Rights 1307

District court lacked jurisdiction to consider § 1983 claims in which prisoner claimed that prison disciplinary actions taken against him violated his rights under Eighth Amendment and due process clause where prisoner did not first exhaust his avenues for appeal of adverse prison disciplinary finding in state court, as is required prior to bringing federal habeas corpus petition. Norton v. Garro, E.D.Wis.1997, 957 F.Supp. 1067. Civil Rights 1319; Habeas Corpus 342

5677. Treatment of habeas corpus as civil rights action--Generally

Where state prisoners' habeas corpus petitions challenged their living conditions and disciplinary measures and did

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not seek release, pleading could be read to plead causes of action under this section which prisoners were entitled to have heard without exhaustion of state remedies. Wilwording v. Swenson, U.S.Mo.1971, 92 S.Ct. 407, 404 U.S. 249, 30 L.Ed.2d 418. Civil Rights 1319

5678. ---- Assistance of counsel, treatment of habeas corpus as civil rights action

Habeas petitioner who alleged that federal marshals and prison officials interfered with his Sixth Amendment right to self-representation at his escape trials in state and federal courts by denying him access to legal documents and materials collected by him and then losing materials stated challenge to duration and fact of confinement, rather than conditions of confinement so that habeas was proper avenue for relief, and thus, district court should have construed petition as habeas corpus petition challenging state escape conviction and habeas motion attacking federal escape conviction. Leacock v. Henman, C.A.10 (Kan.) 1993, 996 F.2d 1069. Habeas Corpus 670(1)

Action brought by condemned prisoner against state Department of Corrections, alleging civil rights violations through manner of pending execution, was properly characterized as §§ 1983 claim, rather than successive habeas corpus claim, and thus was not precluded from adjudication without special leave of court; prisoner's challenge was to condition of his confinement, not to fact of his conviction. Oken v. Sizer, D.Md.2004, 321 F.Supp.2d 658, stay vacated 124 S.Ct. 2868, 542 U.S. 916, 159 L.Ed.2d 290. Civil Rights 1088(5); Civil Rights 1098

Although habeas corpus petitioner was deprived of due process and effective assistance of counsel by his court-appointed counsel's failure to perfect appeal for six years, habeas petition would not be granted in that conviction had been confirmed on ultimately granted appeal, and thus petitioner's incarceration was lawful; petitioner's appropriate remedy was to bring action for damages under § 1983. Simmons v. Reynolds, E.D.N.Y.1989, 708 F.Supp. 505, affirmed 898 F.2d 865. Civil Rights 1493; Habeas Corpus 500.1

5679. ---- Classification of prisoners, treatment of habeas corpus as civil rights action

Claim by inmates that ex post facto clause precluded state from retroactively applying security classification system which made it more difficult for inmates to progress to less restrictive environments could be asserted in § 1983 civil rights action, and inmates were not limited solely to habeas corpus relief, where injunctive relief ordering that previous classification systems be applied would not intrude on or divest prison administration of its ultimate discretion to classify inmates, inmates did not ask for immediate release or shortening of sentences, and requested relief would not necessarily result in immediate release or shorter sentence. Faruq v. Herndon, D.Md.1993, 831 F.Supp. 1262, affirmed 56 F.3d 60. Civil Rights 1311

5680. ---- Delayed appeals, treatment of habeas corpus as civil rights action

When extreme circumstances are not present, even if due process violation is found, writ of habeas corpus should not issue for violation of petitioner's speedy appeal rights; rather, petitioner's relief should be in suit for damages under § 1983. Douglas v. Hendricks, D.N.J.2002, 236 F.Supp.2d 412. Habeas Corpus 500.1

Relief for prejudice suffered by habeas corpus petitioner as result of delay in bringing appeal was best obtained through suit under § 1983 for damages where, although delayed, conviction was appropriate. Yourdon v. Kelly, W.D.N.Y.1991, 769 F.Supp. 112, on reconsideration, affirmed 969 F.2d 1042. Civil Rights 1088(5)

5681. ---- Confiscation of prisoner property, treatment of habeas corpus as civil rights action

Despite fact that state prisoner, who did not challenge conviction or seek release from custody but only sought the return of personal property allegedly confiscated when he was placed in maximum security confinement or the cash equivalent of its value, labeled complaint as a petition for writ of habeas corpus, where prisoner in fact claimed access to the court on the basis of this section, prisoner was entitled to have action treated as a claim for relief

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under this section. Hansen v. May, C.A.9 (Idaho) 1974, 502 F.2d 728. Civil Rights 1395(7)

Appropriate remedy for inmate's challenge to the denial of good conduct credits was an action pursuant to §§ 1983, not a petition for writ of habeas corpus; even assuming, arguendo, that the disciplinary violation caused inmate to lose temporarily the ability to earn more good-time credits, at no point did inmate lose any already-earned good-time credits, nor did his reclassification extend the length of his sentence. Gaskins v. Johnson, E.D.Va.2006, 443 F.Supp.2d 800. Habeas Corpus 515

5682. ---- Discipline of prisoners, treatment of habeas corpus as civil rights action

Inmate's civil rights action claiming that prison disciplined him in retaliation for exercising First Amendment rights would not be treated as habeas corpus petition and, thus, inmate was not required to exhaust state remedies, even though discipline included forfeiture of good-time credits, where imposition of sanctions had been suspended. Bressman v. Farrier, C.A.8 (Iowa) 1990, 900 F.2d 1305, rehearing denied, certiorari denied 111 S.Ct. 1090, 498 U.S. 1126, 112 L.Ed.2d 1194. Civil Rights 1319; Habeas Corpus 666

State inmate had to show good cause why his §§ 2254 habeas petition challenging disciplinary sentence should not be recharacterized as §§ 1983 action, where disciplinary sentence did not appear to impact overall length of inmate's confinement on his state court criminal conviction. Adams v. McGinnis, W.D.N.Y.2004, 317 F.Supp.2d 246. Habeas Corpus 513

District Court would not recharacterize state pro se prisoner's habeas claim, challenging disciplinary sentence of placement for six months in the Special Housing Unit (SHU), as a §§ 1983 claim, without giving prisoner opportunity to show that disciplinary sanctions affected length of confinement, and to demonstrate exhaustion of administrative remedies. Adams v. McGinnis, W.D.N.Y.2004, 317 F.Supp.2d 243, subsequent determination 2004 WL 2944115. Habeas Corpus 674.1

5683. ---- Furlough of prisoners, treatment of habeas corpus as civil rights action

Eligibility or lack of eligibility for temporary home furloughs in Pennsylvania is a "condition of confinement" which may be challenged directly in an action under this section without resort to habeas corpus and its attendant requirement for exhaustion of state remedies, notwithstanding that total number of days spent behind bars can technically be reduced by number of days of furlough; declining to follow decisions to the contrary. Wright v. Cuyler, C.A.3 (Pa.) 1980, 624 F.2d 455, on remand 517 F.Supp. 637. Civil Rights 1319

Challenge to policy of Texas Board of Criminal Justice excluding convicted murderers from being considered for furlough was not a challenge to the "duration of confinement" and civil rights claim could be considered without exhaustion of state remedies. Morris v. McCotter, E.D.Tex.1991, 773 F.Supp. 969. Civil Rights 1319

5684. ---- Medical care of prisoners, treatment of habeas corpus as civil rights action

Proper avenue of relief for a former inmate based on prison officials' denial of his repeated requests for placement in a community treatment center was a civil rights action, rather than a habeas corpus action; inmate had been released on parole and no longer sought a transfer to the community treatment center. Badea v. Cox, C.A.9 (Cal.) 1991, 931 F.2d 573. Habeas Corpus 231

Although habeas was not the proper form of action for federal prisoner's claims challenging adequacy of medical care, court would not dismiss prisoner's claims, but rather, would treat the habeas petition as if it were properly filed as a section 1983 or *Bivens* claim, without requiring prisoner to change his pleadings; added value, if any, of permitting amendment of pleadings and additional filings would not justify further delay, the primary dispositive task in the case involved analysis of facts already submitted, not resolution of intricacies in civil rights law, and the

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parties' arguments centered around two issues that would be essentially identical whether the case were treated as a habeas case or a civil rights case. Kane v. Winn, D.Mass.2004, 319 F.Supp.2d 162. Civil Rights 1395(7); Habeas Corpus 672; United States 50.20

Proper remedy in case involving inadequate medical treatment to pretrial detainee is relief under § 1983, not writ of habeas corpus. Rodney v. Romano, E.D.N.Y.1993, 814 F.Supp. 311. Habeas Corpus 513

In action brought by quadriplegic inmate against Director of the Illinois Department of Corrections and warden of correctional center alleging deprivation of his civil rights due to inadequacy of his medical treatment and seeking transfer to a private institution "or some other medical facility other than those operated by the Illinois Department of Corrections," inmate's request did not necessarily involve release from state's custody but, rather, placement in any constitutionally sufficient facility, and thus his action was properly maintainable under this section prohibiting the deprivation of civil rights and relief was not obtainable only by federal habeas corpus. Villa v. Franzen, N.D.Ill.1981, 511 F.Supp. 231. Civil Rights 1091

5685. ---- Parole, treatment of habeas corpus as civil rights action

Inmate's pro se complaint requesting "Declaratory and Injunctive Relief ordering the defendants to stop denying Plaintiff Parole Recommendations based on" erroneous information provided by parole investigator and "a new Parole Board Hearing" in which Board did not use the erroneous information was partially an attack on parole procedures and was thus cognizable under federal civil rights statute, although inmate could challenge in federal court the result of his parole hearing only by filing habeas petition after exhausting state remedies. Herrera v. Harkins, C.A.10 (Okla.) 1991, 949 F.2d 1096. Civil Rights 1097; Civil Rights 1311; Habeas Corpus 279

Inmate's § 1983 claim seeking damages and declaratory judgment, effectively requesting prospective injunctive relief so that alleged consideration by parole board of his role in pursuing litigation against prison officers did not recur, was not petition for habeas corpus relief; inmate did not seek immediate release on parole, but wanted change in board's procedure for considering parole, so that he would receive fair parole decision in future. Clark v. State of Ga. Pardons and Paroles Bd., C.A.11 (Ga.) 1990, 915 F.2d 636. Habeas Corpus 666

To extent inmate's equal protection claims challenging denial of parole sought earlier release or damage award for this denial, such claims required exhaustion of state remedies, but insofar as complaint requested change in parole board's procedure so that inmate would receive fair parole decision in the future, claim could be properly brought under § 1983, because declaration of unconstitutionality of such procedures would not automatically lead to his release. Gwin v. Snow, C.A.11 (Ga.) 1989, 870 F.2d 616. Civil Rights 1319; Habeas Corpus 321

Since prisoner who claimed that parole board had improperly considered prior invalid convictions in determining his eligibility for parole did not assert that, if the four convictions were not considered, he would be entitled to parole immediately or at any time in the future, the claim for relief was required to be treated as suit under this section, rather than as petition for writ of habeas corpus. Strader v. Troy, C.A.4 (N.C.) 1978, 571 F.2d 1263. Civil Rights 1311

Civil rights action filed by prisoner alleging that he had been denied due process on grounds that he had not been given parole considerations was appropriately treated as civil rights action, and not as petition for writ of habeas corpus, and, therefore, prisoner was not required to exhaust state remedies before filing action. McCray v. Dietz, D.C.N.J.1980, 517 F.Supp. 787. Civil Rights 1319

5686. ---- Self-incrimination, treatment of habeas corpus as civil rights action

Prisoner's § 1983 claim for damages in connection with police officers' alleged use of coercion to extract

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self-incriminating statements from prisoner was not required to be brought as habeas corpus petition; prisoner's claims did not directly and solely relate to fact or duration of his confinement, and prisoner had waived his right to seek state or federal postconviction relief on grounds that he was unconstitutionally convicted on basis of coerced confession. Johnson v. City of Chicago, N.D.Ill.1989, 712 F.Supp. 1311. Civil Rights 1088(4)

5687. ---- Transfer of prisoners, treatment of habeas corpus as civil rights action

Prisoner's claim seeking transfer out of city jail system into state or federal prison system because of alleged brutality by prison guards and police officers was cognizable under § 1983, rather than habeas corpus which would have required exhaustion of state remedies, where prisoner was only seeking to change place of his confinement not fact or duration of confinement. Abdul-Hakeem v. Koehler, C.A.2 (N.Y.) 1990, 910 F.2d 66, on remand. Civil Rights 1095; Habeas Corpus 208

5688. ---- Release from confinement, treatment of habeas corpus as civil rights action

Fact that habeas petitioner might be unable to pursue civil rights action for alleged improprieties in revocation of his parole, unless he could first establish invalidity of that revocation, was not sufficient to save from mootness, once he was released from prison, a habeas petition which he had filed challenging the revocation of his parole; it was far from certain that any such damages action was available to petitioner or that court's failure to address habeas petition would foreclose petitioner from pursuing such an action. Spencer v. Kemna, U.S.Mo.1998, 118 S.Ct. 978, 523 U.S. 1, 140 L.Ed.2d 43. Habeas Corpus 226

5689. ---- Miscellaneous actions, treatment of habeas corpus as civil rights action

District courts faced with a § 1983 suit brought under federal habeas corpus statute should, rather than reach the merits, dismiss without prejudice to the possibility of a future § 1983 action or at least give notice that the suit will be converted to one under § 1983 if the plaintiff declines to dismiss voluntarily. Hadley v. Holmes, C.A.7 (Ill.) 2003, 341 F.3d 661, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 2398, 541 U.S. 1067, 158 L.Ed.2d 970. Habeas Corpus 691.1

The sole federal remedy for state prisoner who was convicted of rape and forcible sodomy, and who sought access to DNA evidence on ground that it might provide a basis for him to prove his innocence using technology that was unavailable at the time of his trial, was to petition for a writ of habeas corpus, rather than to bring a § 1983 action as a discovery device, as he was challenging the validity of his conviction even though he was not seeking immediate release. Harvey v. Horan, C.A.4 (Va.) 2002, 278 F.3d 370, rehearing and rehearing en banc denied 285 F.3d 298. Civil Rights 1311

State prisoner's section 1983 action which sought monetary damages and a transcript, and which neither directly challenged fact of his confinement or sought a determination that he was entitled to immediate or speedier release was not the functional equivalent of a petition for writ of habeas corpus, and thus prisoner could pursue action under this section and its jurisdictional counterpart. Lumbert v. Finley, C.A.7 (Ill.) 1984, 735 F.2d 239. Civil Rights 1311

Where state prisoner did not ask for any relief from his sentence nor ask that federal court order his release from confinement or modify confinement, and only possible effect that suit might have upon his confinement would be that, if he could obtain transcript and his state appeal was successful, he would escape confinement on state sentence, prisoner's suit for injunctive and monetary relief against state court clerk and court stenographer for their alleged failure to forward state trial court transcript to state appellate court was cognizable as civil rights suit rather than habeas corpus petition and should have been filed, served and tried as such. Rheuark v. Shaw, C.A.5 (Tex.) 1977, 547 F.2d 1257. Civil Rights 1311

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Death row inmate was willing to concede to acceptable alternatives to protocol for lethal injection used by Texas, as would show that death row inmate's challenge in action under §§ 1983 to method of execution was not a challenge to fact of sentence itself, as would be properly brought on federal habeas petition; inmate presented two "lethal-injection alternatives that would not cause undue pain and suffering." Harris v. Johnson, S.D.Tex.2004, 323 F.Supp.2d 797, vacated 376 F.3d 414. Civil Rights 1088(5); Habeas Corpus 508

Habeas corpus petitioner must bring claim regarding conditions of his confinement on Tennessee's death row in § 1983 action rather than as part of writ of habeas corpus. Austin v. Bell, M.D.Tenn.1996, 927 F.Supp. 1058. Civil Rights 1311; Habeas Corpus 513

State prisoner's complaint alleging that the resetting of his execution date 45 days after expiration of stay by federal court violated federal statute allowing petitions for writ of certiorari to be filed within 90 days after the judgment was properly brought as a civil rights action rather than as a petition for habeas corpus. James v. Edwards, E.D.La.1987, 683 F.Supp. 157. Habeas Corpus 275.1

Indigent state prisoner's complaint challenging actions which allegedly occurred during state criminal trial, direct appeal and collateral attack upon conviction would be treated as civil rights claim, rather than habeas corpus, where prisoner sought monetary damages, but did not seek either immediate release or reduction of his sentence. Holsey v. Bass, D.C.Md.1981, 519 F.Supp. 395, affirmed 712 F.2d 70. Civil Rights 1395(7)

Plaintiff's original complaint, which alleged that defendant court reporter deliberately altered portions of the transcript of plaintiff's criminal trial to "water down" the Allen charge given the jury, stated a cognizable claim for relief under this section and, therefore, should not have been converted, over plaintiff's objection, into a petition for writ of federal habeas corpus, for which no relief could be granted since plaintiff had not, as yet, exhausted his state remedies in connection with his criminal conviction. Odom v. Wilson, S.D.Ohio 1981, 517 F.Supp. 474. Civil Rights 1395(5); Habeas Corpus 666

Prisoner's action against county prosecutor, seeking ruling that his constitutional right to trial by jury was violated by application of state sentencing provision, was properly construed as civil rights complaint under §§ 1983 action rather than as habeas petition, warranting dismissal as improper challenge to allegedly unconstitutional sentence, even though prisoner specifically disavowed any intention of relying on §§ 1983 for relief and did not seek award of damages. Wooten v. Bates, C.A.6 (Ohio) 2004, 101 Fed.Appx. 14, 2004 WL 950063, Unreported, certiorari denied 125 S.Ct. 207, 543 U.S. 906, 160 L.Ed.2d 181. Civil Rights 1395(7)

5690. Treatment of civil rights action as habeas corpus--Generally

When an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence, § 1983 must yield to the more specific federal habeas statute, with its attendant procedural and exhaustion requirements; such claims fall within the "core" of habeas corpus and are thus not cognizable when brought pursuant to § 1983. Nelson v. Campbell, U.S.2004, 124 S.Ct. 2117, 541 U.S. 637, 158 L.Ed.2d 924, on remand 377 F.3d 1162. Civil Rights 1088(5); Civil Rights 1311; Habeas Corpus 275.1; Habeas Corpus 278

If state prisoner's claim alleges violation of procedural due process rights, determination of whether challenge is properly brought under § 1983 must be based on whether nature of challenge to procedures is such as necessarily to imply invalidity of judgment; if challenge would necessarily imply invalidity of judgment or continuing confinement, then it must be brought as petition for writ of habeas corpus. Neal v. Shimoda, C.A.9 (Hawai'i) 1997, 131 F.3d 818. Civil Rights 1311

Section 1983 actions are treated as habeas petitions if relief requested under § 1983 would undermine conviction. Prather v. Norman, C.A.11 (Ga.) 1990, 901 F.2d 915. Habeas Corpus 666

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42 U.S.C.A. § 1983

Merely because plaintiff is filing suit under § 1983 does not prevent district court from considering action as one for habeas relief, particularly when goal of plaintiff is to challenge validity of his incarceration. Pressly v. Gregory, C.A.4 (Va.) 1987, 831 F.2d 514. Habeas Corpus 666

Death row inmate who sought order requiring state Supreme Court to engage in proportionality review prior to execution failed to state § 1983 claim even though he alleged that he was not challenging fact or duration of physical confinement nor seeking immediate or speedy release; requested relief was proper subject for habeas corpus action, not civil rights action, as relief would impliedly invalidate state supreme court's decision which affirmed death sentence. Palmer v. Nebraska Supreme Court, D.Neb.1996, 927 F.Supp. 370. Civil Rights 1311; Habeas Corpus 508

Former inmate's § 1983 claims challenged validity of his state conviction, sentence, and fact or duration of state's custody and, thus, former inmate's claim would be construed as petition for habeas corpus to extent he sought injunctive relief. Hand v. Young, D.Nev.1994, 868 F.Supp. 289. Civil Rights 1311; Habeas Corpus 666

5691. ---- Dismissal or stay of proceedings, treatment of civil rights action as habeas corpus

Prisoner's §§ 1983 claim, seeking stay of execution and alleging that Alabama's failure to adopt American Bar Association's guidelines for counsel in death penalty cases as binding constituted a denial of his right to counsel and due process, constituted the "functional equivalent" of a second habeas petition, as it attacked the validity of his conviction and sentence, not the circumstances of his confinement. Hutcherson v. Riley, C.A.11 (Ala.) 2006, 468 F.3d 750. Habeas Corpus 894.1

Action under § 1983, rather than habeas corpus proceeding, was appropriate vehicle for as-applied constitutional attack on implementation of state court ruling limiting amount of discretionary good-time credit that any inmate could receive, as ruling did not result in loss of good-time already awarded and did not inevitably affect duration of sentence. Hadley v. Holmes, C.A.7 (Ill.) 2003, 341 F.3d 661, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 2398, 541 U.S. 1067, 158 L.Ed.2d 970. Habeas Corpus 342

When state prisoner seeks damages in § 1983 suit, district court must consider whether judgment in favor of prisoner would necessarily imply invalidity of his conviction or sentence; if it would, complaint must be dismissed unless prisoner can demonstrate that conviction or sentence has already been invalidated. Neal v. Shimoda, C.A.9 (Hawai'i) 1997, 131 F.3d 818. Civil Rights 1088(5)

Dismissal of § 1983 claim without prejudice did not deprive petitioner of federal forum for his claim of Fourth Amendment violation concerning search by arresting officers, in light of defendant's failure to overturn his conviction for driving under influence (DUI); unless and until conviction was set aside, petitioner simply lacked any legitimate § 1983 claim requiring adjudication. Schilling v. White, C.A.6 (Ohio) 1995, 58 F.3d 1081. Civil Rights 1088(3)

In situations where inmate's civil rights complaints involving monetary claims are construed as petitions for habeas corpus, but claims were not exhausted in state courts and officials named as defendants timely raise this defense, district court must, prior to dismissing complaint, consider what effect dismissal will have in terms of inmate's ability to relitigate claims after state court exhaustion in light of applicable statute of limitations, and thus determine whether dismissal or stay of proceedings is appropriate. Prather v. Norman, C.A.11 (Ga.) 1990, 901 F.2d 915. Habeas Corpus 431

5692. ---- Assistance of counsel, treatment of civil rights action as habeas corpus

Claim by state prisoner that his counsel's representation at trial violated his constitutional right to fair trial had to be pursued as petition for writ of habeas corpus rather than claim for damages under § 1983; prisoner was essentially

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challenging constitutionality of his conviction, and doctrine of comity mandated that prisoner first exhaust his state remedies prior to bringing suit under § 1983. Peterson v. Murante, W.D.N.Y.1987, 673 F.Supp. 669. Civil Rights 1088(5); Civil Rights 1319

Inmate's action charging that defendants wrongfully interfered with his attorney-client relationship so as to deprive him of his right to fair assistance of counsel was, in fact, a challenge to legality of his confinement and, thus, was in nature of a habeas corpus petition despite civil rights characterization of the claim. Flaherty v. Nadjari, E.D.N.Y.1982, 548 F.Supp. 1127. Habeas Corpus 666

5693. ---- Conspiracy, treatment of civil rights action as habeas corpus

Sole federal remedy of criminal defendant alleging, in civil rights suit against state judge who presided over criminal trial, district attorney, assistant district attorneys, narcotics agents who testified at trial, court reporter and state clerk of court, a conspiracy with regard to giving of perjured testimony by narcotics agents, was habeas corpus, not a civil rights suit, because if facts alleged in complaint were proved, they would factually undermine or conflict with state court conviction which resulted in his confinement. Clark v. Williams, C.A.5 (Tex.) 1982, 693 F.2d 381. Civil Rights 1311

5694. ---- Contempt, treatment of civil rights action as habeas corpus

Contemnor challenging contempt judgment under which city sought to imprison her, rather than conditions of her prospective confinement, did not state valid claim for relief under § 1983; appropriate remedy was writ of habeas corpus. Kirsh v. Michetti, S.D.N.Y.1992, 787 F.Supp. 403. Civil Rights 1311; Habeas Corpus 528.1

5695. ---- Good-time credits, treatment of civil rights action as habeas corpus

Complaint in which federal prisoner alleged that prison officials deprived him of good time credits in violation of due process was properly treated as a petition for a writ of habeas corpus. Ross v. Mebane, C.A.7 (Wis.) 1976, 536 F.2d 1199. Habeas Corpus 666

Disciplinary sentence that resulted in loss of two years of existing good-time credit affected overall length of state prisoner's confinement, such that habeas corpus proceeding, not federal civil rights action, was sole federal remedy for claimed deprivations of due process in disciplinary proceedings. Griffin v. Selksy, W.D.N.Y.2004, 326 F.Supp.2d 429. Civil Rights 1311

Habeas corpus, rather than a § 1983 action, is the appropriate remedy for a prisoner who has been deprived of good time credits or demoted in good time credit earning classification. Wilson v. Vannatta, N.D.Ind.2003, 291 F.Supp.2d 811. Civil Rights 1311; Habeas Corpus 515

Correcting any improper revocation of prisoner's good time is something that can be done only through habeas corpus proceedings, not through civil rights action. Rucker v. Johnson, N.D.Ill.1989, 724 F.Supp. 568. Civil Rights 1311

Habeas corpus proceeding, rather than §§ 1983 action, was appropriate means for state prisoner to seek restoration of earned-time credits that he lost when he was classified as a sex offender allegedly in violation of due process. Fistell v. Neet, C.A.10 (Colo.) 2005, 125 Fed.Appx. 219, 2005 WL 408055, Unreported. Civil Rights 1311; Habeas Corpus 342

5696. ---- Parole, treatment of civil rights action as habeas corpus

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42 U.S.C.A. § 1983

State prisoners' challenges to constitutionality of their parole-eligibility proceedings and parole-suitability proceedings were not collateral attacks on duration of their confinement required be raised in habeas corpus proceeding, rather than in action under §§ 1983 seeking declaratory and injunctive relief; although prisoners sought relief that would invalidate state procedures used to deny parole eligibility and parole suitability, neither sought an injunction ordering his immediate or speedier release into the community. Wilkinson v. Dotson, U.S.2005, 125 S.Ct. 1242, 544 U.S. 74, 161 L.Ed.2d 253, on remand 448 F.3d 936. Civil Rights 1097; Civil Rights 1311

State inmate's claim that he was unconstitutionally denied placement in state's pre-parole conditional supervision (PPCS) program challenged fact or duration of inmate's confinement, rather than conditions of confinement, and therefore claim had to be pursued via petition for writ for habeas corpus, rather than under §§ 1983, notwithstanding inmate's characterization of claim as challenging whether his conditions of confinement should be those of medium security facility or PPCS program's minimal security provisions, inasmuch as PPCS placement secured type of release from physical custody that could not be viewed as slight variance in circumstances of confinement. Boutwell v. Keating, C.A.10 (Okla.) 2005, 399 F.3d 1203. Civil Rights 1097; Civil Rights 1311

State prisoners' constitutional challenges to state's sex offender treatment program, pursuant to which they were labelled as sexual offenders and required to complete treatment as precondition of parole eligibility, did not undermine validity of their convictions or continuing confinement, and thus were properly brought under § 1983; only benefit of victory, in terms of confinement, was that prisoners would become eligible for parole consideration according to terms of their sentences. Neal v. Shimoda, C.A.9 (Hawai'i) 1997, 131 F.3d 818. Civil Rights 1097

Prisoner properly raised claim under federal civil rights statute, and thus was not required to instead pursue writ of habeas corpus, where his complaint alleged that reasons given for four parole denials were vague and ambiguous and thus did not comply with due process notice requirements, that numerous parole review procedures violated due process, and that application of new procedures violated ex post facto prohibition, as it appeared that favorable determination of these issues would not automatically entitle prisoner to accelerated release. Orellana v. Kyle, C.A.5 (Tex.) 1995, 65 F.3d 29, certiorari denied 116 S.Ct. 736, 516 U.S. 1059, 133 L.Ed.2d 686. Civil Rights 1311

Where state prisoner's complaint against State Board of Pardons and Paroles and its chairman did not seek prisoner's release, but alleged that he was arbitrarily denied face-to-face interview before denial of application for parole, complaint was not properly construed as habeas corpus petition, subject to exhaustion requirements. Williams v. McCall, C.A.5 (Ga.) 1976, 531 F.2d 1247. Habeas Corpus 670(8)

Inmate who attacked his parole hearing as constitutionally defective was required to exhaust his state habeas corpus remedies before asserting claim for injunctive relief to prevent parole board from considering his allegedly "void" prior convictions in future parole hearings; although inmate contended that his pleadings constituted civil rights complaint under § 1983, inmate was challenging only a single defective hearing, and thus it was appropriate to treat challenge as petition for writ of habeas corpus. Cook v. Collins, W.D.Tex.1993, 830 F.Supp. 348. Civil Rights 1319; Habeas Corpus 364; Habeas Corpus 666

5697. ---- Prisoner discipline, treatment of civil rights action as habeas corpus

State inmate's civil rights suit, claiming that prison discipline violated his due process rights and seeking damages, but not release from custody, should not have been ordered recast into habeas corpus petition. Moore v. Pemberton, C.A.7 (Ind.) 1997, 110 F.3d 22. Habeas Corpus 208

State prisoner's contention that he was denied due process in prison disciplinary hearing was in reality a challenge

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to the duration of his confinement, and as such could not properly be urged in a civil rights suit. Johnson v. Hardy, C.A.5 (Tex.) 1979, 601 F.2d 172. Civil Rights 1092

5698. ---- Release from confinement, treatment of civil rights action as habeas corpus

Proper venue for inmate to pursue requests that his misconduct violation be expunged and revoked credits restored was in a petition for writ of habeas corpus, rather than an action under § 1983, given that the request constituted a challenge to the length or duration of his custody because the restoration of credits would result in a speedier release from imprisonment. Roberts v. Champion, N.D.Okla.2003, 255 F.Supp.2d 1272, affirmed 91 Fed.Appx. 108, 2004 WL 249617. Civil Rights 1311

To extent that inmate sought release from confinement as remedy for alleged denial of access to courts, inmate was required to request release from incarceration pursuant to motion under habeas corpus statute, not § 1983 claim. Williams-El v. Dunning, E.D.Va.1993, 816 F.Supp. 418. Civil Rights 1094

To extent state prisoner was seeking his release from confinement based upon failure to provide him with timely parole revocation hearing, prisoner should have pursued petition for writ of habeas corpus, rather than action under § 1983. Camardo v. Walker, D.R.I.1992, 794 F.Supp. 65. Civil Rights 1311

Inmate could not seek relief from his incarceration from state police in § 1983 action; action for habeas corpus was exclusive means by which he could do so. Study v. U.S., S.D.Ind.1991, 782 F.Supp. 1293. Civil Rights 1311; Habeas Corpus 201

Former patient of state mental institution, who was merely challenging procedures by which his first trial visit was revoked, and was not seeking release from confinement, properly premised his lawsuit on 42 U.S.C.A. § 1983, rather than bringing habeas corpus proceedings. Birl v. Wallis, M.D.Ala.1985, 619 F.Supp. 481. Civil Rights 1311; Habeas Corpus 537.1

Habeas corpus was proper remedy for New York prison inmate, who sought a declaration of an earlier determination of his jail term and an earlier release from confinement, rather than action under this section. Thibadoux v. Jones, N.D.N.Y.1981, 505 F.Supp. 1107. Habeas Corpus 503.1

A state prisoner challenging the fact or duration of his custody and seeking immediate or speedier release therefrom must proceed under federal habeas statute, while a prisoner challenging the conditions of his custody must seek relief under §§ 1983. Jacobs v. Bertrand, E.D.Wis.2005, 228 F.R.D. 627, reconsideration denied 2005 WL 1719285. Habeas Corpus 207

Civil committee's §§ 1983 action, alleging confinement in violation of his constitutional rights, was barred by committee's failure to obtain invalidation of his commitment as a sexually violent predator, warranting dismissal of action without prejudice; proper means of seeking immediate or early release from confinement was through petition for writ of habeas corpus. Banda v. New Jersey, C.A.3 (N.J.) 2005, 134 Fed.Appx. 529, 2005 WL 1332613, Unreported, certiorari denied 126 S.Ct. 575, 163 L.Ed.2d 481. Habeas Corpus 537.1

Insofar as California prisoner sought to be released from state custody because of an invalid state court conviction or sentence, he was seeking habeas relief; accordingly, his § 1983 complaint would be dismissed without prejudice to his bringing his claims in a petition for a writ of habeas corpus, after he had exhausted his state court remedies by presenting his claims to the Supreme Court of California. Robinson v. Santa Clara County Dist. Attorney's Office, N.D.Cal.2002, 2002 WL 31499002, Unreported. Civil Rights 1311

Matter in which state prisoner challenged requirement that he complete therapeutic community program as a

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condition for parole in actuality involved a request for release or a shortening of the duration of his confinement, which was properly pursued through a petition for habeas corpus relief, rather than through a § 1983 action. Benke v. Norris, C.A.8 (Ark.) 2000, 230 F.3d 1362, Unreported. Civil Rights 1097

5699. ---- Miscellaneous actions, treatment of civil rights action as habeas corpus

Heck v. Humphrey rule, which precluded actions which would imply invalidity of conviction or sentence, did not preclude §§ 1983 action filed by state prisoner, seeking to compel state to release certain biological evidence that was used to convict him of kidnapping and sexual assault for DNA testing; prisoner's success in action would only yield access to evidence, results of further DNA testing may have no effect on validity of his confinement, and even if results of further testing did exonerate prisoner, a separate action, alleging a separate constitutional violation, would be required to overturn his conviction. Osborne v. District Attorney's Office for Third Judicial Dist., C.A.9 (Alaska) 2005, 423 F.3d 1050. Civil Rights 1088(5)

Inmate's § 1983 action challenging the method of administering the lethal injection of drugs at his execution as a constitutional violation of his right to be free from cruel and unusual punishment and seeking an injunction to postpone his execution was required to be treated as a second habeas action. In re Williams, C.A.6 2004, 359 F.3d 811, certiorari denied 124 S.Ct. 1478, 540 U.S. 1206, 158 L.Ed.2d 129. Habeas Corpus 666; Habeas Corpus 894.1

Civil rights action filed by state prisoner, seeking to compel state officials to produce biological evidence for DNA testing on theory that, by refusing to release such evidence, officials violated his constitutional rights by preventing him from gaining access to exculpatory evidence excluding him as perpetrator, was, in effect, a challenge to validity of his capital murder conviction, and was properly denied as successive habeas petition. Kutzner v. Montgomery County, C.A.5 (Tex.) 2002, 303 F.3d 339. Habeas Corpus 666; Habeas Corpus 894.1

Claims against state and federal officials for breach of plea agreements, implicating the terms of prisoner's conviction or sentence, had to be raised pursuant to a habeas petition, and thus did not state claim as § 1983 or *Bivens* action. Buhrman v. Wilkinson, S.D.Ohio 2003, 257 F.Supp.2d 1110, supplemented 2004 WL 2044055, report and recommendation adopted 2004 WL 2044056. Civil Rights 1311; United States 50.10(3)

An application for a writ of mandamus, rather than a § 1983 action, was the proper vehicle with which to address federal habeas petitioner's claims that the district court unduly delayed the resolution of his habeas petition. D'Amato v. Rattoballi, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 359, 2003 WL 22955858, Unreported. Civil Rights 1313

LXI. REVIEW

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42 U.S.C.A. § 1983

Supreme Court review of state court decision 5723

5721. Review of administrative decision

Decision which was rendered in state administrative proceedings and was not reviewed by state courts had preclusive effect on racial discrimination claims of university employee asserted under reconstruction civil rights statutes and, thus, precluded trial de novo on those claims in federal district court. University of Tennessee v. Elliott, U.S.Tenn.1986, 106 S.Ct. 3220, 478 U.S. 788, 92 L.Ed.2d 635. Judgment 828.7

In § 1983 actions, federal courts must afford same preclusive effect to unreviewed state administrative agency fact-finding to which it would be entitled in state's courts, provided state agency was acting in judicial capacity, and resolved disputed issues of fact properly before it which parties had adequate opportunity to litigate. Thornquest v. King, C.A.11 (Fla.) 1996, 82 F.3d 1001, rehearing and suggestion for rehearing en banc denied 111 F.3d 899. Administrative Law And Procedure 501; Federal Courts 433

County's grievance procedure provided employees with adequate opportunity to litigate, despite fact that there was no opportunity for court review of adverse finding; therefore, since administrative panel was acting in judicial capacity in grievance procedure, resolving issues of fact properly before it which parties had adequate opportunity to litigate, district court was precluded from reviewing panel's findings of fact under Supreme Court decision in *University of Tennessee v. Elliott* which requires district court in a § 1983 action to give agency's fact-finding same preclusive effect to which it would be entitled in state's courts. Layne v. Campbell County Dept. of Social Services, C.A.4 (Va.) 1991, 939 F.2d 217. Administrative Law And Procedure 501; Officers And Public Employees 72.33(1)

District court did not conduct mandatory de novo review of findings by United States Magistrate Judge, who had recommended dismissal of prison inmate's § 1983 action, where evidentiary hearing transcript was not available, and the district court's order adopting Magistrate's report and recommendations indicated only that court had reviewed Magistrate's findings and recommendations and objections thereto, without any mention of a review of the evidentiary-hearing tapes. Lair v. Norris, C.A.8 (Ark.) 2000, 242 F.3d 375, Unreported. United States Magistrates 27

5722. District court review of state court decision

Court of Appeals had jurisdiction, under the collateral order doctrine, over appeal by police chief and members of village's board of police commissioners from order denying their motion for summary judgment based on defense of qualified immunity in §§ 1983 action, but Court was required to accept version of the disputed facts offered by former police officers who brought suit and could not examine the sufficiency-of-the-evidence determinations made by the district court. Skehan v. Village of Mamaroneck, C.A.2 (N.Y.) 2006, 465 F.3d 96. Federal Courts 770

Proceedings that culminated in Illinois Supreme Court's decision to allow to stand state bar character and fitness committee's rejection of bar applicant's application were "judicial proceedings," and the Illinois Supreme Court decision was an "adjudication" in which applicant was able to litigate his constitutional challenges to the committee's decision, even though the Court decided applicant's petition for review on a paper record, and thus, the *Rooker-Feldman* doctrine and res judicata principles applied to preclude applicant's § 1983 action against the committee in federal court for same alleged violations of constitutional rights he asserted in his petition to the Illinois Supreme Court. Hale v. Committee on Character and Fitness for State of Illinois, C.A.7 (Ill.) 2003, 335 F.3d 678. Courts 509; Judgment 552; Judgment 560; Judgment 720

Rooker-Feldman doctrine did not apply to bar building owner's action alleging that city's zoning officials violated its due process rights by refusing to classify a sign on the wall of its building as a lawful non-conforming use,

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which concerned the city's the pre-litigation conduct rather than an injury caused by a judicial decision, though state court upheld a fine imposed on lessee of the wall for failure to remove the sign. General Auto Service Station LLC v. City of Chicago, Illinois, C.A.7 (Ill.) 2003, 319 F.3d 902. Courts 509

Rooker-Feldman doctrine precluded district court jurisdiction over junior mortgagee's civil rights action against village which was winning bidder at foreclosure sale, alleging that village had depressed price by commencing condemnation action in state court while foreclosure action was pending, where mortgagee was attacking state court's judgment confirming foreclosure sale and had no claim independent of the state court's adverse decision. GASH Associates v. Village of Rosemont, Ill., C.A.7 (Ill.) 1993, 995 F.2d 726, rehearing denied. Courts 509

Landowners could not bring § 1983 action in federal district court, claiming that state court judgment of foreclosure, for failure to pay property tax, violated their due process rights; landowners were essentially asking for federal district court review of state court decision, prohibited under Rooker-Feldman doctrine. Ritter v. Ross, C.A.7 (Wis.) 1993, 992 F.2d 750, rehearing denied, certiorari denied 114 S.Ct. 694, 510 U.S. 1046, 126 L.Ed.2d 661. Courts 509

Texas Supreme Court's denial of plaintiff's motion seeking recusal or disqualification on basis of due process clause could not be reviewed in federal district court in action claiming that Rule of Appellate Procedure on disqualification and recusal violated due process; plaintiff's constitutional challenge to rule and due process concerns were presented to and decided by Texas Supreme Court. Howell v. Supreme Court of Texas, C.A.5 (Tex.) 1989, 885 F.2d 308, rehearing denied, certiorari denied 110 S.Ct. 3213, 496 U.S. 936, 110 L.Ed.2d 661. Federal Courts 1142

Federal courts do not review state court civil proceedings under the guise of this subchapter. Fortune v. Mulherrin, C.A.1 (N.H.) 1976, 533 F.2d 21, certiorari denied 97 S.Ct. 170, 429 U.S. 864, 50 L.Ed.2d 143. Courts 509

The *Rooker-Feldman* doctrine did not apply to bar suit brought by Medicaid claimant with chronic progressive multiple sclerosis and pulmonary dysfunction, alleging that state department of social and rehabilitative services' denial of claimant's request for vest airway clearance system violated ADA; no state court judgment had been reached. Sanders ex rel. Rayl v. Kansas Dept. of Social and Rehabilitation Services, D.Kan.2004, 317 F.Supp.2d 1233. Courts 509

Rooker-Feldman doctrine barred federal district court from exercising jurisdiction over fraud, § 1983 and Racketeer Influenced and Corrupt Organizations Act (RICO) claims brought by former husband against former wife and against receiver appointed, pursuant to divorce proceeding, to sell couple's real property and divide proceeds; claims were brought primarily to attack receiver's authority to act as receiver and thus were inextricably intertwined with state-court judgment in divorce proceeding, regardless of federal statutes cited. Huszar v. Zeleny, E.D.N.Y.2003, 269 F.Supp.2d 98. Courts 509

A party may not escape the jurisdictional bar of the Rooker-Feldman doctrine by merely refashioning its attack on the state court judgment as a § 1983 claim. Rogers v. Swepston, S.D.W.Va.2003, 267 F.Supp.2d 549. Courts 509

To extent that plaintiff sought vacation or reversal of state court judge's dismissal of plaintiff's suit, based either upon claims of bias or alleged refusal to allow plaintiff representation, action was collateral attack in federal court on state court judgment, barred by *Rooker-Feldman* doctrine. Davidson v. Garry, E.D.N.Y.1996, 956 F.Supp. 265, affirmed 112 F.3d 503. Courts 509

This section does not provide for any general procedure for review of judgments or decrees of state courts. O'Connor v. O'Connor, C.A.5 (Tex.) 1963, 315 F.2d 420. See, also, Greene v. State of N.Y., D.C.N.Y.1967, 281 F.Supp. 579. Courts 509

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Rooker-Feldman doctrine barred district court from exercising jurisdiction over a father's civil rights action against state and judges who presided over state court proceedings concerning his minor child's custody and granting visitation rights to the child's maternal grandparents, in which father sought a restraining order to prevent the state court from enforcing the prior court-ordered visitation. Thurgood v. Burton, D.Utah 2003, 248 F.Supp.2d 1090, affirmed 56 Fed.Appx. 460, 2003 WL 465555, certiorari denied 124 S.Ct. 82, 540 U.S. 817, 157 L.Ed.2d 34. Courts 509

Rooker-Feldman doctrine precluded district court's assertion of jurisdiction over § 1983 suit brought by natural father of children against city child welfare services, seeking injunction compelling return of children surrendered for adoption and damages for violation of his federal due process rights; father could not relitigate state custody action in federal court. Alleyne v. City of New York, S.D.N.Y.2003, 244 F.Supp.2d 214. Courts 509

Rooker-Feldman doctrine, precluding federal court review of state court decisions, deprived court of jurisdiction over § 1983 civil suit brought by claimant alleging violation of his federal rights in connection with his arrest and incarceration for failure to comply with several municipal court judgments imposing civil forfeitures; all federal claims involved impermissible consideration of whether state judgments were wrongful. Haas v. Wisconsin, E.D.Wis.2003, 241 F.Supp.2d 922, affirmed 109 Fed.Appx. 107, 2004 WL 1799360, certiorari denied 125 S.Ct. 908, 543 U.S. 1053, 160 L.Ed.2d 776. Courts 509

Rooker-Feldman doctrine, which prohibits federal courts from reviewing state court judgments, did not prohibit district court from entertaining § 1983 action against three judges of state resentencing panel who removed prisoner from intensive supervision program (ISP), where decision was not appealable under state system and panel was acting in many ways as administrative, rather than judicial body. Forchion v. Intensive Supervised Parole, D.N.J.2003, 240 F.Supp.2d 302. Courts 509

Federal district court lacked jurisdiction under *Rooker-Feldman* doctrine to entertain § 1983 claims of landowners, who alleged that commercial entrance permit required by engineer violated their equal protection and due process rights, even though plaintiffs did not directly challenge or attack associated state court judgment; state court determined that issuance of permit to landowners was impermissible because road did not meet statutory requirements and court impliedly determined that permit requirement was constitutional as applied to landowners. Shooting Point, L.L.C. v. Cumming, E.D.Va.2002, 238 F.Supp.2d 729, motion to amend denied 243 F.Supp.2d 536, affirmed 368 F.3d 379. Courts 509

State court motions by corporate owner of rental properties to have condemnation of one building for code violations lifted did not preclude federal court, under *Rooker-Feldman* doctrine from hearing § 1983 claims by president of company, alleging that condemnation was in retaliation for constitutionally protected activity such as filing lawsuits; president was not a party to the state court proceeding. Grimm v. Borough of Norristown, E.D.Pa.2002, 226 F.Supp.2d 606, amended 2002 WL 737497. Courts 509

Federal court did not lack subject matter jurisdiction under *Rooker-Feldman* doctrine over § 1983 action challenging constitutionality of city's system-wide policy of resolving any ambiguity in child abuse investigation in favor of finding that abuse had occurred, even if exercise of jurisdiction would result in reversal or modification of state family court judgments upholding removal of plaintiffs' children; action did not challenge finding of neglect or abuse in any particular case. People United for Children, Inc. v. City of New York, S.D.N.Y.2000, 108 F.Supp.2d 275. Courts 509

Under *Rooker-Feldman* doctrine, district court lacked subject matter jurisdiction over parent's federal civil rights claim that he had been deprived of constitutional rights without due process by order issued in his state court child custody proceeding which prohibited him from having any contact with his child pending custody hearing, as such claim was inextricably intertwined with merits of the state court's order. Logan v. Lillie, E.D.Pa.1997, 965 F.Supp. 695, affirmed 142 F.3d 428. Courts 509

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Rooker-Feldman doctrine, under which federal district courts lack jurisdiction to review final state court decisions, barred § 1983 equal protection claim brought by former city police officers after Pennsylvania court upheld arbitrator's decision that officers were not entitled to compensation for accrued, unused vacation time; officers' § 1983 complaint was in essence a prohibited appeal of a final state court decision since officers were asking federal court effectively to overrule Pennsylvania court. Kirby v. City of Philadelphia, E.D.Pa.1995, 905 F.Supp. 222. Courts 509

Puerto Rico superior court resolution which upheld attachment order against procedural due process challenge could not be reviewed by federal court by way of civil rights action against superior court judge and parties to the superior court action. Radiology Institute, Inc. v. Padilla Rodriguez, D.Puerto Rico 1993, 818 F.Supp. 477. Courts 509

Judge who brought action against Pennsylvania Judicial Inquiry and Review Board and Pennsylvania Supreme Court challenging his removal from office did not avoid requirements of rule prohibiting federal district courts from reviewing decision of state's highest court by requesting only declaratory relief, where judge sought to use declaration in offensive manner to prevent ongoing state proceeding. White v. Judicial Inquiry and Review Bd. of Pennsylvania, E.D.Pa.1990, 744 F.Supp. 658. Courts 509

Section 1983 is not means for litigating in federal forum whether state or local administrative decision was wrong or even whether it was arbitrary or capricious. Blake v. Ambach, S.D.N.Y.1988, 691 F.Supp. 651. Civil Rights 1027

Federal district court lacked subject-matter jurisdiction to review claims that state courts acted unconstitutionally in disposition of plaintiff's case; proper forum would be the Supreme Court. Rosquist v. Jarrat Const. Corp., D.C.N.J.1983, 570 F.Supp. 1206. Federal Courts 501; Federal Courts 973

Rooker-Feldman doctrine barred claims in § 1983 action alleging due process violations by state court judge who presided over quiet title action following tax seizure; district court lacked jurisdiction to determine propriety of state court's rulings. Searcy v. Clawson, C.A.8 (Ark.) 2003, 70 Fed.Appx. 907, 2003 WL 21523644, Unreported. Courts 509

Both aspects of tenant's § 1983 claim against her landlord, which were that there were omissions from her eviction notice and that omitted Housing and Urban Development (HUD) regulations rendered her lease illegal, were germane to issue of possession and could have been raised in state court proceedings, and thus, *Rooker-Feldman* doctrine deprived federal district court of jurisdiction over tenant's subsequent § 1983 claim; although under Illinois law only claims or defenses that are germane to the right of possession may be raised in a forcible entry and detainer proceeding, one category of such issues includes claims challenging the validity or enforceability of agreement on which plaintiff bases right to possession. Chambers v. Habitat Co., C.A.7 (Ill.) 2003, 68 Fed.Appx. 711, 2003 WL 21377492, Unreported, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 1064, 540 U.S. 1119, 157 L.Ed.2d 913. Courts 509

District court was not barred from deciding property owner's § 1983 claims against town and town officials, based upon the demolition of building on his property, under *Rooker-Feldman* doctrine, barring a lower federal court from exercising jurisdiction over a case if doing so would result in the reversal or modification of a state court judgment; although prior New York state court proceeding, in which owner petitioned for stay of town's planned demolition was dismissed, on statute of limitations grounds, § 1983 claims could not have been raised in prior state proceeding, as building had not been demolished at time state proceeding commenced. Davis v. Ferdico, C.A.2 (N.Y.) 2003, 67 Fed.Appx. 43, 2003 WL 21309149, Unreported. Courts 509

Court of Appeals was precluded, on basis of *Rooker-Feldman* doctrine, from reviewing state court decisions which resulted in mother being stripped of her custody of her adult, developmentally disabled son and denied visitation

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privileges. Flejter v. Smith, C.A.7 (Ill.) 2003, 61 Fed.Appx. 257, 2003 WL 721724, Unreported. Courts 509

Rooker-Feldman doctrine did not bar homeowners' § 1983 action alleging that demolition company violated their civil rights by conspiring with city to demolish their home and property, even though demolition of residence was done pursuant to state court order, where owners alleged that company went beyond scope of order and destroyed other items not included in order. Fredericksen v. L.A. Demolition, Inc., C.A.7 (Ill.) 2002, 54 Fed.Appx. 858, 2002 WL 31856361, Unreported. Courts 509

Rooker-Feldman doctrine did not require district court to abstain from consideration of claims for prospective declaratory relief of custodial parents of minor children, who alleged that ex parte custody procedures followed by judge of county domestic relations court violated their due process rights, since some claims did not require reversal of specific decisions made by state court or substantive review of merits of decisions made by that court, and other claims may not have implicated merits of such decisions, depending upon how parents put on their proof. Butterfield v. Steiner, S.D.Ohio 2002, 2002 WL 31159304, Unreported. Courts 509

5723. Supreme Court review of state court decision

Interlocutory decision of Alabama Supreme Court, that Alabama Wrongful Death Act's allowance of only punitive damages governed recovery on federal civil rights claim when decedent's estate alleged that death resulted from deprivation of federal rights, and remanding cause for further proceedings on remaining state-law claims, did not finally decide federal issue, as required for certiorari review; resolution of state-law claims could effectively moot federal-law question, and issue could be reviewed on final judgement, even if Alabama Supreme Court adhered to its interlocutory ruling as "law of the case." Jefferson v. City of Tarrant, Ala., U.S.Ala.1997, 118 S.Ct. 481, 522 U.S. 75, 139 L.Ed.2d 433. Federal Courts 503

District court retained no further jurisdiction after it certified findings and conclusions following additional merits hearing ordered by Court of Appeals in prisoner's §§ 1983 action challenging lethal injection protocol. Taylor v. Crawford, C.A.8 2006, 457 F.3d 902. Federal Courts 951.1

Once a determination has been made by a state court relative to existence or nonexistence of a federal right, and any possible infringement of that right, the only avenue of review is to United States Supreme Court via 28 U.S.C.A. § 1257(3). Carbonell v. Louisiana Dept. of Health & Human Resources, C.A.5 (La.) 1985, 772 F.2d 185 . Federal Courts 504.1

5724. Court of appeals review of district court decision--Generally

Court of Appeals lacked appellate jurisdiction over child protection investigator's appeal of summary judgment denying qualified immunity, with respect to action brought by child-care provider alleging that investigator violated her due process rights by indicating her for child neglect or abuse despite knowing there was no evidence that she abused child in question; fact issues existed as to whether investigator indicated provider without any evidence of abuse or neglect. Via v. LaGrand, C.A.7 (Ill.) 2006, 469 F.3d 618. Federal Courts 579

District court retained no further jurisdiction after it certified findings and conclusions following additional merits hearing ordered by Court of Appeals in prisoner's §§ 1983 action challenging lethal injection protocol. Taylor v. Crawford, C.A.8 2006, 457 F.3d 902. Federal Courts 951.1

District Court order granting partial summary judgment in §§ 1983 action in favor of former District of Columbia employees, and reinstating disability benefits to hundreds of employees, was "appealable injunction," and thus Court of Appeals had jurisdiction to review order; the District Court ordered the relief sought by employees in their motion for preliminary injunction. Lightfoot v. District of Columbia, C.A.D.C.2006, 448 F.3d 392, 371 U.S.App.D.C. 95. Federal Courts 579

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42 U.S.C.A. § 1983

Court of Appeals lacked jurisdiction to review, on appeal from denial of summary judgment to police officers asserting defense of qualified immunity in §§ 1983 action, whether police were justified in using deadly force against passenger following stop of automobile, because district court's ruling was premised on genuineness of dispute about material facts, namely, whether passenger complied with officers' commands and whether he possessed a handgun. Holeman v. City of New London, C.A.2 (Conn.) 2005, 425 F.3d 184. Federal Courts 766

Evidence that was not submitted to jury, in murder suspect's § 1983 action against sheriff, could not be considered for first time on appeal. Burge v. St. Tammany Parish, C.A.5 (La.) 2003, 336 F.3d 363, rehearing denied, certiorari denied 124 S.Ct. 1074, 540 U.S. 1108, 157 L.Ed.2d 895. Federal Courts 752

Court of Appeals could not review jury verdict against citizen, who brought § 1983 action against county, sheriff, and deputy alleging unreasonable search and seizure, false arrest, and malicious prosecution, since she failed to challenge verdict at trial level by filing motion for judgment as matter of law or, in the alternative, for new trial, and district court's denial of her summary judgment motion could not be reviewed after full trial on the merits. Eaddy v. Yancey, C.A.8 (Ark.) 2003, 317 F.3d 914. Federal Courts 642; Federal Courts 769

Court of Appeals lacked jurisdiction over police officer's appeal from district court's denial of officer's motion for leave to file renewed motion for summary judgment based on qualified immunity in § 1983 action by estate of suspect, alleging that officer used excessive force when he shot and killed suspect while investigating burglary; officer failed to appeal from district court's denial of summary judgment, officer waited nearly ten months to bring motion to renew, and collateral order doctrine did not apply, since officer did not present additional facts, and initial denial of qualified immunity rested on determination that there were questions of fact. Garvin v. Wheeler, C.A.7 (Ind.) 2002, 304 F.3d 628. Federal Courts 579

Court of Appeals applies objective standard to determine whether defendant raising qualified immunity defense in § 1983 action violated clearly established statutory or constitutional rights of which reasonable person would have known. Pallottino v. City of Rio Rancho, C.A.10 (N.M.) 1994, 31 F.3d 1023. Civil Rights 1376(2)

Plaintiff in § 1983 action waived appellate review by failing to file specific objections to magistrate judge's report after receiving proper notice; magistrate judge advised plaintiff that failure to file timely, specific objections to his recommendation could waive appellate review of a district court order based upon the recommendation, and despite this warning, plaintiff filed only general objections about the magistrate judge's handling of the case, but did not state how the magistrate judge's actions prejudiced her. Tyler v. Wates, C.A.4 (S.C.) 2003, 84 Fed.Appx. 289, 2003 WL 22999380, Unreported. United States Magistrates 31

Court of Appeals lacked jurisdiction over district court's determination that former client's § 1983 claim against attorney was barred by *Heck v. Humphrey*, where district court did not certify partial final judgment when it dismissed claim. Parrillo v. Reilly, C.A.7 (Ill.) 2003, 59 Fed.Appx. 129, 2003 WL 137575, Unreported. Federal Courts 660.5

State inmate's failure to identify any error in his appellate brief, or to furnish reviewing court with a trial transcript or a reason to prepare one at government expense, precluded review of adverse judgment in § 1983 action brought against warden and others. Sherrod v. Hopkins, C.A.8 (Neb.) 2000, 210 F.3d 379, Unreported. Federal Courts 915

5725. ---- Scope of review, court of appeals review of district court decision

Appellate court, reviewing judgment according public officials qualified immunity from damages suit charging violation of federal right, need not disregard relevant legal authority not presented to or considered by court of first instance; appellate review of qualified immunity dispositions is to be conducted in light of all relevant precedents,

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not simply those cited to or discovered by district court. Elder v. Holloway, U.S.Idaho 1994, 114 S.Ct. 1019, 510 U.S. 510, 127 L.Ed.2d 344, on remand 22 F.3d 897. Federal Courts 755

Although Court of Appeals reviewed question of law when it reviewed federal district court's finding that police officers did not enjoy qualified immunity in § 1983 due process action against them, review neither required nor authorized de novo appellate review of evidence; rather, Court initially decided whether, taken in light most favorable to plaintiff, facts alleged showed that officers' conduct violated constitutional right, and if so, any subsequent review of sufficiency of evidence would be deferential. Newsome v. McCabe, C.A.7 (Ill.) 2003, 319 F.3d 301, certiorari denied 123 S.Ct. 2621, 539 U.S. 943, 156 L.Ed.2d 630. Federal Courts 776; Federal Courts 858

Order denying absolute immunity in § 1983 action is immediately appealable, and Court of Appeals reviews denial of absolute immunity de novo. Martin v. Hendren, C.A.8 (Ark.) 1997, 127 F.3d 720, rehearing and suggestion for rehearing en banc denied. Federal Courts 579; Federal Courts 776

Court of Appeals' review of jury charge was plenary, where plaintiff claimed district court employed an incorrect legal standard in stating that plaintiff was required to prove deliberate indifference by police officer to succeed on § 1983 claims of use of excessive force and arrest without probable cause. Mosley v. Wilson, C.A.3 (Pa.) 1996, 102 F.3d 85. Federal Courts 755

In reviewing qualified immunity defense to § 1983 excessive force claim arising from shooting by police officers who had entered individual's house without knocking and announcing, Court of Appeals would limit scope of its inquiry to the moments preceding shooting, as opposed to considering totality of circumstances; violation of knock and announce rule was conceptually different from excessive force claim, and importance of segmenting the two issues was minimized since Court had concluded that officers were qualifiedly immune from knock and announce claim. Dickerson v. McClellan, C.A.6 (Tenn.) 1996, 101 F.3d 1151. Civil Rights 1376(6)

District court's denial of qualified immunity claim is reviewed de novo. Ward v. Dyke, C.A.6 (Mich.) 1995, 58 F.3d 271, certiorari denied 116 S.Ct. 524, 516 U.S. 991, 133 L.Ed.2d 431. Federal Courts 776

Court of Appeals reviews denial of qualified immunity in § 1983 action de novo. Brady v. Fort Bend County, C.A.5 (Tex.) 1995, 58 F.3d 173, rehearing en banc granted, dismissed. Federal Courts 776

Court of Appeals reviews de novo district court's legal determination that no constitutional claim was presented in § 1983 action. Whitmore v. Gaines, C.A.8 (Ark.) 1994, 24 F.3d 1032, rehearing and suggestion for rehearing en banc denied. Federal Courts 776

Court of Appeals reviews de novo district court's denial of defense of qualified immunity. Hemphill v. Kincheloe, C.A.9 (Wash.) 1993, 987 F.2d 589, as amended. Federal Courts 776

Court of Appeals would review de novo district court's decision to dismiss, for lack of subject-matter jurisdiction, civil rights action of attorney and attorney's nonlegal associate challenging state attorney disciplinary proceedings. Leaf v. Supreme Court of State of Wis., C.A.7 (Wis.) 1992, 979 F.2d 589, certiorari denied 113 S.Ct. 2417, 508 U.S. 941, 124 L.Ed.2d 639. Federal Courts 776

Appellate review of district court's denial of summary judgment on immunity grounds was de novo, in § 1983 action brought against state officials, as Court of Appeals would resolve only a question of law: whether plaintiff's factual allegations, if proven, made out a violation of clearly established law. Johnson v. Odom, C.A.5 (La.) 1990, 910 F.2d 1273, certiorari denied 111 S.Ct. 1387, 499 U.S. 936, 113 L.Ed.2d 443. Federal Courts 776

Consideration of evicted tenant's Fair Housing Act (FHA) and civil rights claims would require inquiry into

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propriety of eviction warrant issued by New York housing court, affirmance of that decision by the Appellate Term, and denial of leave to appeal to Appellate Division, and therefore, pursuant to *Rooker-Feldman* doctrine, which prohibited federal court review of claims inextricably intertwined with prior state court determinations, district court lacked jurisdiction to consider claims. Babalola v. B.Y. Equities, Inc., C.A.2 (N.Y.) 2003, 63 Fed.Appx. 534, 2003 WL 1868487, Unreported. Courts 509

5726. ---- Damage awards, court of appeals review of district court decision

In suit against county and county investigator by husband of murder victim for violation of constitutional right to privacy by disclosing to author of book about the murder excerpts from victim's diary containing information that was both intimate and personal to husband, award of $650,000 damages did not shock the conscience of the Court of Appeals, so that denial of remittitur would be upheld. Sheets v. Salt Lake County, C.A.10 (Utah) 1995, 45 F.3d 1383, certiorari denied 116 S.Ct. 74, 516 U.S. 817, 133 L.Ed.2d 34. Civil Rights 1464

Compensatory damages for § 1983 purposes are governed by common-law tort principles; amount of damages awarded by fact finder must be sustained, absent error of law, unless reviewing court finds amount is clearly erroneous or so gross or inadequate as to be contrary to right reason. Thompkins v. Belt, C.A.5 (La.) 1987, 828 F.2d 298. Civil Rights 1464; Federal Courts 877

Amount of damages necessary to compensate an individual for deprivation of constitutional rights is a question of fact and therefore not to be upset on appeal unless district court's determination is clearly erroneous; factual determination can be found to be clearly erroneous only if court, after reviewing entire record, is left with the definite and firm conviction that mistake has been committed. Busche v. Burkee, C.A.7 (Wis.) 1981, 649 F.2d 509, certiorari denied 102 S.Ct. 396, 454 U.S. 897, 70 L.Ed.2d 212. Federal Courts 853; Federal Courts 877

5727. Moot claims, review

Close of city-sponsored art exhibit mooted city's appeal from district court's grant of preliminary injunction to animal-rights organization in its §§1983 action against city alleging that denial of organization's entry in exhibit infringed organization's free speech; dispute was not likely to recur given its highly fact-specific nature, turning on such things as what design criteria city actually had employed, and even if it did recur, it would not evade review since organization would bring §§1983 action seeking both injunctive relief and damages. People for Ethical Treatment of Animals, Inc. v. Gittens, C.A.D.C.2005, 396 F.3d 416, 364 U.S.App.D.C. 386, rehearing denied, on remand 2005 WL 3536193. Federal Courts 724

State university professor's claim that district court erred in dismissing his conspiracy claims against interim department chair on basis of intracorporate immunity doctrine was moot in light of jury's verdict that there was no underlying constitutional injury; professor had alleged conspiracy to deprive him of his constitutional rights to free speech and free association. Cook v. Tadros, C.A.8 (Neb.) 2002, 312 F.3d 386. Federal Courts 13.30

Appeal of denial of writ of sequestration to prevent prisoner from depleting his prison bank account before satisfaction of court order directing prisoner to pay costs to prison officials arising out of prisoner's § 1983 action against officials was moot where judgment of costs had been satisfied. Amar v. Whitley, C.A.5 (La.) 1996, 100 F.3d 22. Federal Courts 724

5728. Attorney fees, review

District court had discretion to award attorney fees at rate of $180, rather than at $200 current market rate claimed by attorney in his affidavit, in civil rights action by employee against his employer; affidavit claiming $200 rate did not specify that rate was in effect at time attorney represented employee, and attorney had stated that 80-90% of his practice was billed through his law firm and that the most recent civil rights litigation he undertook was billed at a

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rate of $180, although that case was not in federal court or contingent in nature. Denius v. Dunlap, C.A.7 (Ill.) 2003, 330 F.3d 919. Civil Rights 1488

District court's award of attorney fees to plaintiff in civil rights action was reviewable for abuse of discretion, and Court of Appeals would find underlying factual findings reversible only if they were clearly erroneous. Sheets v. Salt Lake County, C.A.10 (Utah) 1995, 45 F.3d 1383, certiorari denied 116 S.Ct. 74, 516 U.S. 817, 133 L.Ed.2d 34 . Federal Courts 830; Federal Courts 878

5729. Immunity determinations, review

"Qualified immunity" is an immunity from suit rather than a mere defense to liability; thus, in the interest of judicial economy, Court of Appeals reviews qualified immunity questions on interlocutory appeal rather than forcing the parties to endure trial, which would be rendered futile if the defendants were found to have been immune from suit on direct appeal. Board v. Farnham, C.A.7 (Ill.) 2005, 394 F.3d 469. Federal Courts 574

Court of Appeals would not exercise pendent appellate jurisdiction over appeal from district court's grant of summary judgment in favor of city and city police department in shooting victim's § 1983 claim, alleging failure to properly train police officer and unconstitutional practice regarding officer's use of firearms incidental to traffic stops, where Court of Appeals reviewed denial of officer's claim for qualified immunity arising from shooting, and factual issues involved in the municipal claims were separate and distinct from those involved in the qualified immunity defense. McCoy v. City of Monticello, C.A.8 (Ark.) 2003, 342 F.3d 842. Federal Courts 768.1

On review of judgment entered for state prison officials in inmate's § 1983 action arising out of prison disciplinary proceeding, Court of Appeals was not required first to declare whether inmate stated claim for violation of constitutional right, before considering whether officials were entitled to qualified immunity, although this normally was "better" sequence of decisions, given that immunity issue was clear, there was no reason to believe that challenged prison regulation would repeatedly escape judicial review by reason of qualified immunity, and use of judicial resources to decide issue that would have no effect on result of litigation was unwarranted. Horne v. Coughlin, C.A.2 (N.Y.) 1999, 178 F.3d 603, amended 191 F.3d 244, certiorari denied 120 S.Ct. 594, 528 U.S. 1052, 145 L.Ed.2d 493. Federal Courts 753

District court's conclusory statements that right allegedly violated by city officials had been clearly established, thus denying qualified immunity to officials in § 1983 action, fell short of requisite fact-intensive inquiry; nowhere in its decision did district court analyze specific conduct of each official with respect to constitutional right at issue. Grant v. City of Pittsburgh, C.A.3 (Pa.) 1996, 98 F.3d 116, opinion after remand 225 F.3d 648, certiorari denied 121 S.Ct. 1354, 532 U.S. 919, 149 L.Ed.2d 284. Civil Rights 1376(2)

Court of Appeals did not have jurisdiction of county officials' appeal of district court order denying their claim of qualified immunity in former employee's §§ 1983 action alleging violation of his right to counsel under state law during his internal affairs interview, where district court's decision was based on fact dispute as to whether officials handled employee's interview in appreciably different manner due to his political affiliation. Carroll v. Rochford, C.A.3 (N.J.) 2005, 123 Fed.Appx. 456, 2005 WL 30311, Unreported. Federal Courts 579

5730. Punitive damages, review

Even where punitive damages award is not beyond outer constitutional limit marked out, however imprecisely, by Supreme Court's *Gore* decision, Court of Appeals retains appellate responsibility to review punitive awards for excessiveness in applying federal statutes such as § 1983; that task requires comparison with awards approved in similar cases to determine, as with compensatory awards, whether punitive award is so high as to shock judicial conscience and constitute denial of justice. Mathie v. Fries, C.A.2 (N.Y.) 1997, 121 F.3d 808. Federal Courts 763.1

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42 U.S.C.A. § 1983

5731. Summary judgment, review

The Court of Appeals would review the issue of whether court erred in granting employer's motion for judgment as a matter of law on the issue of emotional damages in employee's § 1983 action de novo. Denius v. Dunlap, C.A.7 (Ill.) 2003, 330 F.3d 919. Federal Courts 776

Court of Appeals had jurisdiction to hear appeal of department of motor vehicles investigator, in § 1983 lawsuit, even though district court denied investigator's motion for summary judgment on his qualified immunity defense; question of whether investigator was under clearly established constitutional obligation to notify prosecutor of newly received information establishing plaintiff's innocence could be adjudicated without reference to disputed facts. Kinzer v. Jackson, C.A.2 (N.Y.) 2003, 316 F.3d 139. Federal Courts 579

District court's determination that defendant correctional officers were not entitled to summary judgment based on defense of qualified immunity in § 1983 action was a purely legal determination over which Court of Appeals had jurisdiction to review; defendants were not contesting sufficiency of employee's proof or district court's ruling that disputed issues of fact required denial of summary judgment motion but, rather, were arguing that even if employee's allegations were accepted as true, no clearly established constitutional right was violated. Jemmott v. Coughlin, C.A.2 (N.Y.) 1996, 85 F.3d 61. Federal Courts 579

5732. Final orders, review

In a civil rights case, appellate jurisdiction based on the denial of qualified immunity does not extend to matters that are not final unless the two are inextricably intertwined; a district court's construction of a complaint to adequately allege a claim is not inextricably intertwined with a district court's ruling on qualified immunity. Wever v. Lincoln County, Nebraska, C.A.8 (Neb.) 2004, 388 F.3d 601. Federal Courts 579

Dismissal without prejudice of state prisoner's Eighth Amendment conditions of confinement claim against prison officials based upon prisoner's alleged failure to exhaust his available administrative remedies was final appealable decision, where time for filing administrative grievances for claim expired pursuant to prison regulations, so that prisoner's alleged failure to exhaust was not curable. Mitchell v. Horn, C.A.3 2003, 318 F.3d 523, on remand 2005 WL 1060658. Federal Courts 589

5733. Interlocutory appeals, review--Generally

Interlocutory decision of Alabama Supreme Court, that Alabama Wrongful Death Act's allowance of only punitive damages governed recovery on federal civil rights claim when decedent's estate alleged that death resulted from deprivation of federal rights, was not final judgment, and was outside United States Supreme Court's jurisdiction to review on certiorari; Alabama Supreme Court decided federal-law issue on interlocutory certification from trial court, then remanded cause for further proceedings on remaining state-law claims. Jefferson v. City of Tarrant, Ala., U.S.Ala.1997, 118 S.Ct. 481, 522 U.S. 75, 139 L.Ed.2d 433. Federal Courts 503

Court of Appeals had jurisdiction over defendant town's and defendant police officer's interlocutory appeal from district court's decision that defendants were not entitled to summary judgment on qualified immunity grounds in § 1983 excessive force action, to extent that appeal was based on either undisputed facts or version of facts presented by plaintiff. Cowan ex rel. Estate of Cooper v. Breen, C.A.2 (Conn.) 2003, 352 F.3d 756. Federal Courts 579

The Court of Appeals lacked jurisdiction to review District Court's denial of private citizen's motion to dismiss § 1983 civil rights action against him, on grounds that private citizen did not act under color of state law, that complaint did not allege that private citizen himself caused any constitutional violation, or that action was time-barred, even though Court of Appeals reviewed, upon interlocutory appeal, the District Court's denial of qualified immunity, as other issues were not inextricably intertwined with the qualified immunity defense, nor were

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they otherwise necessary to ensure meaningful review of it. Toussie v. Powell, C.A.2 2003, 323 F.3d 178. Federal Courts 770

Under collateral order exception to final judgment rule, Court of Appeals had jurisdiction to review stay of civil rights action brought by federal prisoner seeking damages for deprivation of his constitutional rights in securing his conviction pending habeas review of those same allegations. Marchetti v. Bitterolf, C.A.9 (Cal.) 1992, 968 F.2d 963. Federal Courts 579

District court order staying further consideration of civil rights action by prisoner, who had been prohibited from serving as jailhouse lawyer, pending exhaustion of state postconviction relief was an appealable "collateral order.". Munz v. Nix, C.A.8 (Iowa) 1990, 908 F.2d 267. Federal Courts 579

5734. ---- Qualified immunity, interlocutory appeals, review

County commission's assertion that sheriff was not county policymaker was a mere defense to liability, not an immunity from suit; thus any error in ruling on liability could be reviewed effectively on appeal from final judgment and order was not appealable under collateral order doctrine. Swint v. Chambers County Com'n, U.S.Ala.1995, 115 S.Ct. 1203, 514 U.S. 35, 131 L.Ed.2d 60, on remand 51 F.3d 988. Civil Rights 1376(6); Federal Courts 579

Court of Appeals' limited jurisdiction to review interlocutory appeals from denial of qualified immunity in civil rights cases did not permit review of district court's crediting arrestee's version of facts or finding that arrestee was not collaterally estopped from bringing excessive force claim by his conviction for resisting arrest. Henderson v. Munn, C.A.8 (Ark.) 2006, 439 F.3d 497. Federal Courts 579

District Court's decision to not rule on police officers' motion for summary judgment on qualified immunity grounds in excessive force claim, and to instead grant arrestee an extension of time to respond to summary judgment motion was not a conclusive determination of issue of qualified immunity, and thus Court of Appeals lacked jurisdiction over interlocutory appeal, where district court stayed further proceedings until qualified immunity issue was dealt with. Kimble v. Hoso, C.A.6 (Ohio) 2006, 439 F.3d 331. Federal Courts 579

Denials of summary judgment motions of police officers and emergency medical technicians (EMTs) on section 1983 claims based on qualified immunity defense were subject to interlocutory review; however, officers' arguments that the district court erred in denying their defense of qualified immunity under New Jersey law, and claims raising evidentiary issues and issues of causation did not qualify for interlocutory review. Rivas v. City of Passaic, C.A.3 (N.J.) 2004, 365 F.3d 181. Federal Courts 579

The Court of Appeals lacked jurisdiction, upon interlocutory appeal of denial of summary judgment, to consider police detectives' argument that factual issues concerning detainee's consent to the detention and interrogation were controverted, and so they were entitled to qualified immunity from liability in detainee's § 1983 Fourth Amendment claim; argument concerned the sufficiency of the evidence offered by detainee, and did not raise abstract legal issues that could be separated from fact disputes. Hatheway v. Thies, C.A.10 (N.M.) 2003, 335 F.3d 1199. Federal Courts 579

Interlocutory appeal is available in § 1983 case to challenge trial judge's rejection of immunity defense where defendant contends that on stipulated facts, or on facts that plaintiff alleges are true, or on facts favorable to plaintiff that trial judge concluded jury might find, immunity defense is established as matter of law because those facts show either that he "didn't do it" or that it was objectively reasonable for him to believe that his action did not violate clearly established law. Tierney v. Davidson, C.A.2 (Vt.) 1998, 133 F.3d 189. Federal Courts 579

District court's denial of prison warden's and personnel officer's assertion of affirmative defense of qualified

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immunity to section 1983 claim was appealable on interlocutory basis, but review involved alternative inquiry of whether constitutional or statutory claim was stated and, if so, whether it was barred by doctrine of qualified immunity. Merritt v. Reed, C.A.8 (Ark.) 1997, 120 F.3d 124. Federal Courts 579

Interlocutory appeal was available to determine whether, assuming plaintiff's version of facts was correct, police officers were entitled to qualified immunity in § 1983 action, even though district court denied officers' summary judgment motion on qualified immunity ground and stated that questions of fact prevented ruling that officers were entitled to qualified immunity, where district court never specified exactly what were those fact questions. Martinez v. City of Schenectady, C.A.2 (N.Y.) 1997, 115 F.3d 111. Federal Courts 579

City's interlocutory appeal of district court's order, finding city liable to antiabortion protestors who were arrested because it had been deliberately indifferent in failing to train its police force, was not inextricably intertwined with question whether defendant police officers were entitled to qualified immunity, and thus Court of Appeals lacked appellate jurisdiction to consider appeal of city. Veneklase v. City of Fargo, C.A.8 (N.D.) 1996, 78 F.3d 1264, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 178, 519 U.S. 867, 136 L.Ed.2d 118. Federal Courts 770

Although district court in § 1983 action phrased its denial of qualified immunity in terms of finding more than scintilla of evidence supporting constitutional violation by defendant, order was immediately reviewable, despite rule that defendant may not appeal summary judgment order insofar as order determines whether pretrial record sets forth genuine issue of fact for trial, because plaintiff's version of events, regardless of sufficiency of supporting evidence, did not state claim for such violation. Sanderfer v. Nichols, C.A.6 (Mich.) 1995, 62 F.3d 151, rehearing and suggestion for rehearing en banc denied. Federal Courts 579

Question of whether conditions of strip cell violated Eighth Amendment was closely related to question of whether prison officials were entitled to qualified immunity in inmate's action challenging conditions of his confinement and, thus, Court of Appeals, on appeal from denial of qualified immunity, had jurisdiction to decide whether summary judgment should have been granted on claim for injunctive relief. Williams v. Delo, C.A.8 (Mo.) 1995, 49 F.3d 442. Federal Courts 770

Public employee's allegations that he exercised First Amendment rights by appealing and protesting unjustified write-ups given him by supervisor, and that supervisor contributed to employee's failure to obtain promotion, did not negate supervisor's defense of qualified immunity to employee's First Amendment claims, and thus district court's allowance of discovery on issue of qualified immunity prior to ruling on supervisor's motion to dismiss was improper and immediately appealable as denial of benefits of qualified immunity defense; absent matter of public concern, gravamen of complaint was merely attempt to redress personal grievance. Wicks v. Mississippi State Employment Services, C.A.5 (Miss.) 1995, 41 F.3d 991, certiorari denied 115 S.Ct. 2555, 515 U.S. 1131, 132 L.Ed.2d 809. Civil Rights 1398; Federal Courts 579

Court of Appeals reviews § 1983 qualified immunity questions on interlocutory appeal to further goal of prompt resolution of claims against officials and because entitlement is immunity from suit which is effectively lost after trial. Rowland v. Perry, C.A.4 (N.C.) 1994, 41 F.3d 167. Federal Courts 579

Defendant may appeal denial of claim of qualified immunity under collateral order doctrine in suit seeking both prospective relief and money damages; overruling *Prisco*, 851 F.2d 93. Acierno v. Cloutier, C.A.3 (Del.) 1994, 40 F.3d 597. Federal Courts 574

Court of Appeals lacked jurisdiction over appeal from denial of qualified immunity in § 1983 case, since determination by court that reasonable police officer could have believed that suspect fit description of fleeing felon against whom deadly force could legitimately be used would require resolution of fact questions regarding whether suspect's vehicle presented threat of serious physical harm and whether police officer unreasonably created

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encounter that ostensibly permitted officers to shoot and kill suspect. Estate of Starks v. Enyart, C.A.7 (Ind.) 1993, 5 F.3d 230. Federal Courts 585.1

Court of Appeals had jurisdiction over officer's interlocutory appeal from denial of qualified immunity, even though appeal was from ruling on summary judgment motion filed after new trial was granted, as interests of qualified immunity would still be served in limited fashion; while officer had already been subjected to trial, his interests in avoidance of second trial and, ultimately, in avoiding liability, would still be served by successful assertion of defense. Spann v. Rainey, C.A.5 (Miss.) 1993, 987 F.2d 1110. Federal Courts 595

Government officials may file interlocutory appeal when trial court denies defense of qualified immunity from civil damages liability. Fortner v. Thomas, C.A.11 (Ga.) 1993, 983 F.2d 1024. Federal Courts 574

District court's order denying motion to dismiss on grounds of official immunity in civil rights action brought against county district attorney and city police officers was subject to appellate review under collateral order doctrine, although order did not resolve factual issues regarding defendants' conduct. Kulwicki v. Dawson, C.A.3 (Pa.) 1992, 969 F.2d 1454. Federal Courts 574

While Court of Appeals may examine facts of controversy in determining whether it was "clearly established" at time that charged deeds of public official were forbidden, for purposes of defense of qualified immunity, it may not accept interlocutory appeal on issue of qualified immunity containing nothing but factual issue; public official's right to interlocutory appeal to vindicate right not to be tried does not encompass appeal to argue "we didn't do it." Elliott v. Thomas, C.A.7 (Ill.) 1991, 937 F.2d 338, rehearing denied, certiorari denied 112 S.Ct. 973, 502 U.S. 1074, 117 L.Ed.2d 138, certiorari denied 112 S.Ct. 1242, 502 U.S. 1121, 117 L.Ed.2d 475. Federal Courts 576.1

Court of Appeals had jurisdiction over interlocutory appeals of police officers sued in their individual capacities, based on defense of qualified immunity with respect to federal claims in civil rights action. Brown v. Grabowski, C.A.3 (N.J.) 1990, 922 F.2d 1097, rehearing denied, certiorari denied 111 S.Ct. 2827, 501 U.S. 1218, 115 L.Ed.2d 997. Federal Courts 579

State employees enjoyed immunity from suit, rather than immunity from liability, under Ohio law, and therefore district court's decision to exercise pendent jurisdiction over state-based wrongful death claim against corrections employees, effect of which was to subject employees to suit, was subject to immediate review under collateral order doctrine. Haynes v. Marshall, C.A.6 (Ohio) 1989, 887 F.2d 700. Federal Courts 583

Denial of plea of qualified immunity in civil rights action is generally appealable even though there is no final judgment on merits of case. Clark v. Link, C.A.4 (N.C.) 1988, 855 F.2d 156. Federal Courts 579

When defendant claims qualified and absolute immunity in civil rights action, Court of Appeals will not entertain interlocutory appeal on one of defenses while the other is reserved for later pretrial proceedings. Kaiter v. Town of Boxford, C.A.1 (Mass.) 1988, 836 F.2d 704. Federal Courts 579

Denial of claim of "qualified immunity" in § 1983 action was immediately appealable notwithstanding absence of final judgment. Whitt v. Smith, C.A.7 (Ill.) 1987, 832 F.2d 451. Federal Courts 579

In civil rights action, interlocutory appeal will lie from denial of summary judgment on claim of qualified immunity from damages, though petition for injunctive relief is pending; declining to follow *Bever v. Gilbertson*, 724 F.2d 1083 (4th Cir.). de Abadia v. Izquierdo Mora, C.A.1 (Puerto Rico) 1986, 792 F.2d 1187. Federal Courts 579

In §§1983 action asserting substantive due process and other claims, in which some defendant public officials unsuccessfully moved to dismiss substantive due process claim on qualified immunity grounds and thus, as to that

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claim, could appeal denial of motion as of right, same defendants were not entitled to interlocutory appeals on other claims as to which qualified immunity defense had not been asserted, nor could other defendants who had not asserted qualified immunity defense against any claims obtain interlocutory appeal. Small v. City of New York, E.D.N.Y.2004, 304 F.Supp.2d 401. Federal Courts 579

Court of Appeals' limited jurisdiction over appeal from denial of police officers' motion for summary judgment, based on qualified immunity, in § 1983 action arising from warrantless search to which plaintiffs had allegedly consented, did not extend to evidentiary issue of whether plaintiffs' affidavits created a genuine issue of material fact for trial. Flannery v. Hyde, C.A.8 (Ark.) 2000, 205 F.3d 1345, Unreported. Federal Courts 579

5735. ---- Sovereign immunity, interlocutory appeals, review

Whether § 1983 claims are barred by Eleventh Amendment immunity is issue that may be raised by interlocutory appeal under collateral order doctrine. Murphy v. State of Ark., C.A.8 (Ark.) 1997, 127 F.3d 750. Federal Courts 574

5736. ---- Injunctions, interlocutory appeals, review

District court and appellate standards appropriate to granting or denying of preliminary injunction were inapplicable in § 1983 action even though district court's injunction was interlocutory in sense that it was entered not as part of final judgment and pending further court order; injunction represented court's final disposition of claims concerning jail conditions as they existed up to time of trial and was not preliminary injunction contemplating later disposition after trial. Harris v. Angelina County, Tex., C.A.5 (Tex.) 1994, 31 F.3d 331, rehearing and suggestion for rehearing en banc denied. Civil Rights 1454; Civil Rights 1457(5)

Order granting medical school professor's motion for partial summary judgment on liability in suit challenging denial of tenure, and directing restoration of professor to her position until such time as she could be removed for cause, was immediately appealable as order granting injunction. Cohen v. Board of Trustees of the University of Medicine and Dentistry of New Jersey, C.A.3 (N.J.) 1989, 867 F.2d 1455. Federal Courts 573

Order which was entered in civil rights action and which denied plaintiff's motion to force city correctional department to give attorney-type visiting rights to three paraprofessionals assigned to action was procedural rather than substantive so that it was not appealable under § 1292 of Title 28, making decisions granting or denying injunctions appealable. Shakur v. Malcolm, C.A.2 (N.Y.) 1975, 525 F.2d 1144. Federal Courts 579

5737. ---- Summary judgment, interlocutory appeals, review

Court of Appeals has no jurisdiction to review an interlocutory appeal of a denial of a summary judgment motion based on qualified immunity if issues relate to whether actor actually committed act of which he is accused or other similar matters that the plaintiff must prove. Henderson v. Munn, C.A.8 (Ark.) 2006, 439 F.3d 497. Federal Courts 574

Court of Appeals lacked jurisdiction to hear interlocutory appeal of district court's grant of summary judgment for disabled New Mexico state employee on her breach of contract claim stemming from her termination; that claim was not necessarily related in any way to holding that due process was violated by lack of posttermination hearing but rather seemed to reflect finding that defendants breached implied employment contract by not properly performing procedures required by statute, and only issues inextricably intertwined with holding that defendants were not entitled to qualified immunity, such as §§ 1983 due process and equal protection claims, were subject to interlocutory appeals. Brown v. New Mexico State Personnel Office, C.A.10 (N.M.) 2005, 399 F.3d 1248. Federal Courts 576.1

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Denial of summary judgment motions based on qualified immunity in § 1983 action was not immediately appealable interlocutory order, given that denial was not based on any conclusion of law, but rather on existence of material factual issues rendering summary judgment inappropriate, and that the insufficiently developed record precluded assessment of qualified immunity claim. Naylor v. State of La., Dept. of Corrections, C.A.5 (La.) 1997, 123 F.3d 855. Federal Courts 579

Court of Appeals lacked jurisdiction to consider appeal from denial of motion for summary judgment with respect to Puerto Rico Electric Power Authority (PREPA) executive director's entitlement to qualified immunity in § 1983 action against director and PREPA, alleging violation of right to freedom of association, where district court found there existed issues of material fact regarding PREPA's and director's conduct. Santiago-Mateo v. Cordero, C.A.1 (Puerto Rico) 1997, 109 F.3d 39. Federal Courts 595

Police officers' interlocutory appeal of denial of their motion for summary judgment in civil rights action alleging that officers used excessive force against arrestee was proper where appeal did not involve whether particular conduct occurred, but rather, whether uncontroverted conduct represented use of excessive force. Elliott v. Leavitt, C.A.4 (Md.) 1996, 99 F.3d 640, rehearing en banc denied 105 F.3d 174, certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015. Federal Courts 579

District court order, granting summary judgment to county sheriff in his official capacity in civil rights action in which other issues were left to be resolved at trial, did not fall within collateral order doctrine so as be appealable prior to the district court's final judgment, where that order would be reviewable on appeal from the district court court's final judgment, and where plaintiffs sought neither immediate entry of judgment nor certification of an interlocutory appeal. Myers v. Oklahoma County Bd. of County Com'rs, C.A.10 (Okla.) 1996, 80 F.3d 421, certiorari denied 117 S.Ct. 383, 519 U.S. 963, 136 L.Ed.2d 301. Federal Courts 579

Court of Appeals lacked jurisdiction to hear appeal by police officers of district court's denial of summary judgment on defense of qualified immunity, asserted in a civil rights action based on fatal shooting of man who allegedly pointed rifle at officers; district court did not conclude officers' actions were reasonable when, in denying plaintiffs' motion for summary judgment, it stated that a jury could conclude officers had acted reasonably, and thus the issue in officers' appeal was not whether the constitutional right they allegedly violated was clearly established, so as to present an exception to rule against hearing interlocutory appeals of district court decisions. Myers v. Oklahoma County Bd. of County Com'rs, C.A.10 (Okla.) 1996, 80 F.3d 421, certiorari denied 117 S.Ct. 383, 519 U.S. 963, 136 L.Ed.2d 301. Federal Courts 579

Whether there was verifying medical evidence that prisoner failed to receive the medical treatment he desired and, if he did not, whether there was verifying medical evidence that the failure to treat prisoner was sufficiently serious were questions beyond jurisdiction of appellate court in interlocutory appeal from denial of doctors' summary judgment motion based on qualified immunity in prisoner's § 1983 action. Miller v. Schoenen, C.A.8 (Mo.) 1996, 75 F.3d 1305. Federal Courts 770

Absent certification to appeal decision, district court's ruling denying summary judgment to county and sheriff regarding training of chief criminal investigator for county in § 1983 action was merely interlocutory and was not appealable final decision over which court had jurisdiction. Haney v. City of Cumming, C.A.11 (Ga.) 1995, 69 F.3d 1098, certiorari denied 116 S.Ct. 1826, 517 U.S. 1209, 134 L.Ed.2d 931. Federal Courts 595

Where federal district court sitting in New York granted state prisoner's motion for summary judgment in default with respect to complaint alleging deprivation of civil rights based on claim that he had been denied due process by New York Parole Board in not being afforded copies of derogatory letters allegedly contained in his parole file, subsequent refusal to set aside default at time of entry of final judgment, despite court's statement that it had "accepted as valid" government counsel's excuses for delay which resulted in default, did not preclude review on merits by court of appeals where form of final judgment did not appear to be intended to preclude such review and

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where court of appeals could determine that government counsel had substantial meritorious defense. Williams v. Ward, C.A.2 (N.Y.) 1977, 556 F.2d 1143, certiorari dismissed 98 S.Ct. 469, 434 U.S. 944, 54 L.Ed.2d 323. Federal Courts 557

State inmate was not entitled to relief from prior judgment in §§ 1983 action denying his claim of denial of access to law library during his federal habeas proceedings, absent evidence that prison officials obtained summary judgment in their favor through fraud, misrepresentation, or misconduct. Brooks v. Alameida, S.D.Cal.2006, 446 F.Supp.2d 1179. Federal Civil Procedure 2654

Court of Appeals lacked jurisdiction on appeal from denial of summary judgment to determine whether arresting officers were entitled to qualified immunity from damages in civil rights suit on claim that arrest was made without probable cause, since there were material misstatements and omissions in affidavit, including potentially fabricated eyewitness identifications. Rivera v. Lopez, C.A.2 (Conn.) 2003, 67 Fed.Appx. 651, 2003 WL 21401292, Unreported. Federal Courts 579

5738. Pendent appellate jurisdiction, review

There is no reason not to examine a matter pendent to proper jurisdiction of the Court of Appeals when the jurisdictionally proper elements of the Court's decision have necessarily decided the pendent matter; thus, where a court grants summary judgment in §§ 1983 action to the individual defendants based on their qualified immunity on the grounds that the defendants did not violate the plaintiffs' constitutional rights, and that ruling necessarily forecloses a finding of municipal liability, the court may exercise its pendent appellate jurisdiction and reverse the denial of the municipality's summary judgment motion, as well. Skehan v. Village of Mamaroneck, C.A.2 (N.Y.) 2006, 465 F.3d 96. Federal Courts 768.1

On state troopers' appeal of denial of their summary judgment motions based on qualified immunity with respect to continued roadside detention of plaintiff motorist and strip search of her, Court of Appeals lacked pendant appellate jurisdiction over motorist's cross-appeal, alleging that district court erred in denying summary judgment in her favor on legality of initial stop and arrest; determination of whether first trooper was entitled to qualified immunity for claims arising out of strip search would not necessarily determine whether he had sufficient reason to arrest motorist or whether second trooper had sufficient reason to stop her, nor was resolution of motorist's nonappealable claims essential for effective review of troopers' appealable claims. Foote v. Spiegel, C.A.10 (Utah) 1997, 118 F.3d 1416, on remand 995 F.Supp. 1347. Federal Courts 768.1

Court of Appeals had jurisdiction over appeal from trial court's denial of summary judgment for defendants in § 1983 civil rights action, based on trial court's finding that defendants did not have qualified immunity, since trial court's analysis of issues of whether defendant's failure to render medical aid and defendants' cover up of failure violated clearly established constitutional duty were pure issues of law that were not dependent upon resolution of any facts; issue of whether plaintiff's excessive force claim presented genuine issue of material fact was reviewable on Court of Appeals' option of exercising pendent appellate jurisdiction. Wilson v. Meeks, C.A.10 (Kan.) 1996, 98 F.3d 1247. Federal Courts 770

Court of Appeals had pendent appellate jurisdiction to consider issue of class certification on appeal from grant of temporary injunction which prohibited members of proposed class in action against manufacturers of asbestos-containing products from pursuing claims in any other court pending issuance of final order; issue of class certification directly controlled disposition of injunction, and there was no indication that district court might alter its class certification, as would militate against review. Georgine v. Amchem Products, Inc., C.A.3 (Pa.) 1996, 83 F.3d 610, rehearing and suggestion for rehearing in banc denied, certiorari granted 117 S.Ct. 379, 519 U.S. 957, 136 L.Ed.2d 297, affirmed 117 S.Ct. 2231, 521 U.S. 591, 138 L.Ed.2d 689. Federal Courts 770

Court of Appeals lacked jurisdiction over county commissioner's interlocutory appeal of denial of qualified

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immunity and, therefore, Court of Appeals could not exercise pendent appellate jurisdiction to review district court's refusal to grant summary judgment on county employee's First Amendment claim or employee's due process, equal protection, and federal conspiracy claims on which district court granted summary judgment for board of county commissioners and commissioners. Shinault v. Cleveland County Bd. of County Com'rs, C.A.10 (Okla.) 1996, 82 F.3d 367, certiorari denied 117 S.Ct. 740, 519 U.S. 1078, 136 L.Ed.2d 678. Federal Courts 770

City's appeal of denial of summary judgment in former deputy chief of police's § 1983 and wrongful demotion action was inextricably intertwined with co-defendant chief of police's appeal, a properly reviewable claim, and, therefore, Court of Appeals would exercise pendent appellate jurisdiction over city's appeal; issues presented in city's appeal were no broader than those in chief of police's permissible collateral appeal and disposition of chief of police's appeal would fully dispose of claims against city. Moore v. City of Wynnewood, C.A.10 (Okla.) 1995, 57 F.3d 924. Federal Courts 770

5738A. Limitations, review

Prisoner forfeited any right to contest statute of limitations as ground for affirmance of grant of summary judgment in favor of state officials as to § 1983 claim, even though district court did not consider such issue, where officials renewed in Court of Appeals their argument that suit was untimely, prisoner's lawyer failed to address such issue in reply brief, and officials had preserved such issue in district court. Garner v. Cullinan, C.A.7 (Ill.) 2003, 66 Fed.Appx. 654, 2003 WL 21259754, Unreported, rehearing and rehearing en banc denied. Federal Courts 915

5739. Persons entitled to appeal, review

Assertions on cross-appeal, by family members of mentally retarded persons admitted to state human development centers (HDC), which family members had intervened in mentally retarded persons' §§ 1983 action challenging on procedural due process grounds post-admission review policies for HDCs, that district court's decision, which decision had been integrated into policy changes adopted by the HDCs, might limit the flexibility of decision-making for future patients and might set a precedent for future restrictions on guardian-ward relationship, were hypothetical, and thus, such assertions did not provide family members with Article III standing for their cross-appeal. Porter v. Knickrehm, C.A.8 (Ark.) 2006, 457 F.3d 794. Federal Courts 544

Guardian ad litem, whose motion to intervene was denied in class action brought by children who had been in custody of Illinois Department of Children and Family Services (DCFS) seeking declaratory and injunctive relief, lacked standing to appeal district court's order entering consent decree or its denial of motion to expand distribution of notice, to compel discovery, or to request evidentiary hearing and continuance of fairness hearing. B.H. by Pierce v. Murphy, C.A.7 (Ill.) 1993, 984 F.2d 196, certiorari denied 113 S.Ct. 2930, 508 U.S. 960, 124 L.Ed.2d 680. Federal Courts 544

Where verdict, in civil rights action which arose out of alleged police brutality, was an assessment of plaintiff's total damages stemming from the incident in question and any finding of liability against either police commissioner or city would not extend the scope of the damages, plaintiff was not adversely affected by dismissal of city as a defendant and, therefore, even if plaintiff technically had standing to appeal issue of city's dismissal, plaintiff should not be allowed an in forma pauperis appeal on the issue in order to obtain an appellate decision on a point of law that would have no practical consequences. Smith v. Lees, E.D.Pa.1977, 431 F.Supp. 923. Federal Civil Procedure 2743.1

5740. Remand to administrative agencies, review

Remand for analysis of discharged public employees' procedural due process claims was appropriate where

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adjudication process denied to employees comported with constitutional requirements for due process, state of record did not allow reviewing court to determine substantive merits of employees' suspensions, and reasons for discharge concerned matters of state law that could be adequately addressed by state bodies. Sutton v. Cleveland Bd. of Educ., C.A.6 (Ohio) 1992, 958 F.2d 1339. Federal Courts 942

Proper remedy upon district court's finding of deprivation of procedural due process in the determination of a school board not to renew teacher's contract is remand to the school board for compliance with minimum due process. Harkless v. Sweeny Independent School Dist. of Sweeny, Texas, S.D.Tex.1975, 388 F.Supp. 738, affirmed in part, reversed in part 554 F.2d 1353, certiorari denied 98 S.Ct. 507, 434 U.S. 966, 54 L.Ed.2d 452, on remand 466 F.Supp. 457. Schools 147.44

5741. Remand to state courts, review

Upon determining, on *McNary* comity grounds, that civil rights action challenging validity of state taxation scheme should not be adjudicated, district court was not required to dismiss case which had been removed from state court, but rather, could remand case to state court. Balazik v. County of Dauphin, C.A.3 (Pa.) 1995, 44 F.3d 209. Removal Of Cases 101.1; Removal Of Cases 108

To the extent that monetary relief was requested in suit brought by homeowners against state of New Jersey, Department of Community Affairs, Bureau of Construction Code Enforcement, claims had to be remanded to state court because federal court lacked jurisdiction to adjudge money damages against the state or its agencies by reason of U.S.C.A.Const. Amend. 11 grant to states of immunity from suit in federal court. Matter of Kahr Bros., Inc., Bkrtcy.D.N.J.1980, 5 B.R. 765. Federal Courts 265

5742. Remand to district court, review--Generally

Remand was required where parties and district court had been afforded no opportunity to address issues respecting exceptions to applicability of this section and also because complaint alleging violation of Education for All Handicapped Children Act of 1975, section 1401 et seq. of Title 20 and Rehabilitation Act of 1973, section 701 et seq. of Title 29, did not unequivocally disclose whether damages were sought pursuant to this section. Miener v. State of Mo., C.A.8 (Mo.) 1982, 673 F.2d 969, certiorari denied 103 S.Ct. 215, 459 U.S. 909, 74 L.Ed.2d 171, certiorari denied 103 S.Ct. 230, 459 U.S. 916, 74 L.Ed.2d 182, on remand 580 F.Supp. 562.

5743. ---- Amendment of complaint, remand to district court, review

Incarcerated, pro se plaintiff's § 1983 action that was dismissed due to his failure to timely name individual officials of sheriff's department as defendants in his complaint (department itself was only defendant named in original complaint) was required to be remanded for determination as to whether amended complaint related back to original complaint; on remand, district court should first permit reasonable discovery for identification of individual officers who might be responsible for alleged constitutional tort, and then determine whether and when any of these officers received such notice of plaintiff's suit against sheriff's department as would avoid prejudice to officers in maintaining suit. Donald v. Cook County Sheriff's Dept., C.A.7 (Ill.) 1996, 95 F.3d 548. Federal Courts 938

Remand was required with respect to inmate's § 1983 claim that corrections officer's misdelivery of his legal papers was intentional interference with his constitutional right of access to courts in order to permit inmate to add, if he could, nonconclusory allegations that would show actual injury necessary to support his claim, particularly where inmate prevailed at district court and his pleadings were pro se. Crawford-El v. Britton, C.A.D.C.1991, 951 F.2d 1314, 293 U.S.App.D.C. 47, rehearing denied, certiorari denied 113 S.Ct. 62, 506 U.S. 818, 121 L.Ed.2d 29, on remand 844 F.Supp. 795. Federal Courts 946

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Where it was not clear from the record of action in which parents sued city and school district for violations of their civil rights arising out of suicide of their son after being confronted by city police officer at school that parents could not plead facts supporting existence of an official governmental policy which deprived them of society of their child, and district court failed to address question because of erroneous ruling that parents had no constitutionally protected liberty interest in companionship and society of son, matter would be remanded in the interest of justice to give parents opportunity to amend their § 1983 claims against city and school district to comply with requirements for institutional liability under § 1983. Kelson v. City of Springfield, C.A.9 (Or.) 1985, 767 F.2d 651. Federal Courts 946

Where some, but not all, defendants were dismissed on finding of no tenable basis for jurisdiction under § 1343 of Title 28, but, after dismissal, discovery in the ongoing district court case allegedly revealed significant state action which might support claim for relief and jurisdiction, court of appeals would vacate order of dismissal and remand to district court for consideration of motion by plaintiffs to amend complaint. Holton v. Crozer-Chester Medical Center, C.A.3 (Pa.) 1977, 560 F.2d 575. Federal Courts 940

While plaintiff, seeking compensatory and injunctive relief against school board for alleged unlawful termination of his employment as a school teacher asserted jurisdiction under § 1343 of title 28, where board of education, the only named defendant, was not a "person" subject to suit under this section, jurisdiction could not lie, and case, having reached the court of appeals by reason of a judgment in plaintiff's favor, would be remanded to district court with leave to plaintiff to amend jurisdictional allegations of complaint. Singleton v. Vance County Bd. of Ed., C.A.4 (N.C.) 1974, 501 F.2d 429. Federal Courts 222; Federal Courts 946

5744. ---- Amendment of judgment, remand to district court, review

Remand was necessary to amend civil rights judgment to reflect fact that prisoner's judgment against jailer and his assistant was in their individual capacities, rather than in their official capacities as indicated on special verdict form and judgment entered; jury instructions made it clear that individual defendants were being held personally liable for their individual violations of prisoner's rights, and rendering judgment against officials and in their official capacities, which was generally only another way of pleading of action against entity of which officer was agent, was impossible, where county could not be held liable for officers' deliberate indifference to prisoner's serious medical needs. Johnson v. Hardin County, Ky., C.A.6 (Ky.) 1990, 908 F.2d 1280. Federal Courts 937.1

5745. ---- Clarification of opinion, remand to district court, review

No remand was necessary to require district court to make explicit statement of reasons for denying state troopers' defense of qualified immunity to § 1983 civil rights action arising from warrantless seizure of minor child, even though troopers' motion for summary judgment was summarily denied, since record plainly revealed existence of genuine issues of material fact. Hurlman v. Rice, C.A.2 (N.Y.) 1991, 927 F.2d 74. Federal Courts 922

In civil rights suit brought by former city public works department employee who alleged that she was discharged, in violation of her constitutional rights, "for no other reason than plaintiff being a transsexual," it could not be determined which, if any, of several theories presented by the parties formed the basis for district court's decision to grant summary judgment in favor of city defendants, and thus remand was appropriate to permit district court to articulate reasons for its decision. De Tore v. Local No. 245 of Jersey City Public Emp. Union, C.A.3 (N.J.) 1980, 615 F.2d 980, on remand 511 F.Supp. 171. Federal Courts 942

With respect to district court order requiring monthly medical examination of all food handlers at District of Columbia jail, record in suit by plaintiff pretrial detainees, asserting constitutional violations, was remanded for clarification as to its legal and factual foundation, since assuming that the jail regulation regarding medical examination of food handlers had force of law it was necessary to show violations or apparent violations of

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regulations as a predicate for injunctive relief. Campbell v. McGruder, C.A.D.C.1978, 580 F.2d 521, 188 U.S.App.D.C. 258, on remand 554 F.Supp. 562. Federal Courts 942

Judgment dismissing, on merits, complaint against municipality by discharged municipal employee seeking damages, reinstatement and declaratory relief under this section was required to be vacated and cause remanded for clarification where municipality appeared following service of complaint naming mayor as defendant and plaintiffs related that mayor, who did not appear, was to be sued in his individual capacity. Vargas v. Barcelo, C.A.1 (Puerto Rico) 1970, 435 F.2d 843, on remand 385 F.Supp. 879. Federal Courts 938

5746. ---- Development of record, remand to district court, review

Remand to district court was required for purpose of developing factual record as to conditions of prisoner's disciplinary confinement, in order to determine whether prisoner had protected liberty interest in not being transferred to disciplinary confinement from general prison population, where prisoner's due process claim was dismissed by district court sua sponte before any discovery, and prisoner's complaint was pro se. Mitchell v. Horn, C.A.3 2003, 318 F.3d 523, on remand 2005 WL 1060658. Federal Courts 947

Court of Appeals would decide § 1983 freedom of speech abridgment action brought by claimant denied admission to rally for presidential candidate until she concealed from view campaign button advocating election of opponent, even though there was nonconstitutional ground for remanding case, that it was not clear on present record that city had authorized political committee to exclude speech not supporting their candidate, creating doubt that state action requirement for bringing § 1983 action had been satisfied; remand when there was clearly framed constitutional question would be imprudent waste of time and judicial resources. Sistrunk v. City of Strongsville, C.A.6 (Ohio) 1996, 99 F.3d 194, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 2409, 520 U.S. 1251, 138 L.Ed.2d 175. Constitutional Law 46(1)

Insufficiency of record necessitated remand of civil rights action for determination of whether unsuccessful candidate for permanent job at state-run facility had standing to challenge earlier temporary award of job to political appointee on ground of patronage hiring practices. Tarpley v. Jeffers, C.A.7 (Ill.) 1996, 96 F.3d 921. Federal Courts 942

Although prison policy of not providing special diet was justified in relation to legitimate governmental interest of simplifying food service, the absence of sufficient factual findings regarding other three *Turner* factors precluded Court of Appeals from determining whether denial of kosher diet to only Orthodox Jewish prisoner was reasonably related to prison's legitimate interest in streamlining food service; as result, remand of claim to district court was required for specific factual findings and careful balancing of all four *Turner* factors. Ward v. Walsh, C.A.9 (Nev.) 1993, 1 F.3d 873, certiorari denied 114 S.Ct. 1297, 510 U.S. 1192, 127 L.Ed.2d 649. Federal Courts 941

District court's failure to follow proper procedure and to consider applicable factors in granting prison officials' motion to modify consent decree in inmates' § 1983 action to allow increased double-celling and inmate population warranted remand; court relied on unverified statements in record, unauthenticated materials, and oral argument to conclude that modification was necessary and failed to conduct complete hearing by not allowing any evidence or expert testimony at motion hearing, neither court nor officials identified change in circumstances warranting modification, court did not inquire into good faith of officials' settlement intentions or anticipation of changes in conditions which would make decree onerous and unworkable, and court failed to determine if proposed changes were tailored to changed circumstances. Heath v. DeCourcy, C.A.6 (Ohio) 1993, 992 F.2d 630. Federal Civil Procedure 2397.4; Federal Courts 914

Civil rights action arising from inmate's alleged confinement for 23 hours a day in unlighted, windowless cell into which water and human waste was allegedly allowed to seep from broken fixtures and pipes would be remanded to magistrate for findings of fact concerning inmate's contentions. McCord v. Maggio, C.A.5 (La.) 1990, 910 F.2d

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1248. United States Magistrates 31

Where it could not be determined from record in civil rights action under this section whether county supervisor's actions in wrongfully destroying landowner's culverts were taken pursuant to policy or custom of county board, or whether supervisor was ultimate repository of county power with respect to decision on culverts, county could not be held liable to landowner for compensatory damages and attorney fees awarded against supervisor, and case was properly remanded for further factual findings. Hart v. Walker, C.A.5 (Miss.) 1983, 720 F.2d 1443. Civil Rights 1351(3)

In view of parole violator's unrefuted testimony as to his meeting with member of Pennsylvania Parole Board and the ambiguity of record surrounding question of precisely what Board relied upon in reaching its decision recommitting parolee as a parole violator, judgment for defendants in parolee's civil right action for damages for violation of due process must be reversed and matter remanded for further proceedings to produce more adequate record of what transpired at alleged hearing. Thompson v. Burke, C.A.3 (Pa.) 1977, 556 F.2d 231, on remand 544 F.Supp. 173. Federal Courts 942

5747. ---- Immunity determinations, remand to district court, review

District court was required to identify the set of material facts and the legal reasoning the court used to determine whether to grant prison officials' summary judgment motion based upon claim of quasi-judicial absolute immunity, thus, remand was required for the district court to reconsider whether officials were entitled to quasi-judicial absolute immunity, in civil rights action brought by inmate alleging Eighth Amendment violations. Hamilton v. Leavy, C.A.3 (Del.) 2003, 322 F.3d 776, on remand 2004 WL 609334. Federal Courts 947

Remand was required to permit district court to consider whether upper-level Rural Housing Administration officials were qualifiedly immune from personal liability on employee's § 1983 claim alleging politically motivated constructive discharge. Balaguer-Santiago v. Torres-Gaztambide, C.A.1 (Puerto Rico) 1991, 932 F.2d 1015. Federal Courts 939

Remand was necessary of civil rights action alleging sexual harassment in workplace, where court failed to address issue of qualified immunity with reference to undisputed facts in record produced by discovery, and court neglected to fully state basis for its conclusion that defendant supervisors may have violated state employee's clearly established rights and hence were not qualifiedly immune. Poe v. Haydon, C.A.6 (Ky.) 1988, 853 F.2d 418, certiorari denied 109 S.Ct. 788, 488 U.S. 1007, 102 L.Ed.2d 780. Federal Courts 939; Federal Courts 941

5748. ---- Moot claims, remand to district court, review

Remand was warranted for consideration of whether prison officials caused inmate's transfer to different prison, thereby rendering moot officials' appeal from injunctive order, entered in inmate's right of access suit, which mandated improvements to prison law library, or whether transfer occurred due to "happenstance," to determine whether injunctive order should be vacated. Dilley v. Gunn, C.A.9 (Cal.) 1995, 64 F.3d 1365. Federal Courts 922

Where, following inmate's release from segregation, Administrative Review Board expunged inmate's record, thus protecting inmate from future prejudice in obtaining parole, work assignments, and transfer to prison near his home, and where record also showed that prisoner was no longer inmate at prison where events occurred that led to filing of his civil rights complaint against prison official, district court on remand should address issue whether his request for declaratory relief was moot. Stringer v. Rowe, C.A.7 (Ill.) 1980, 616 F.2d 993. Declaratory Judgment 395

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Where during pendency of appeal in action under this section by three Illinois prison inmates against Illinois correction officials challenging certain prison regulations one of the inmates was granted parole and released to Wisconsin authorities for delivery to the Wisconsin prison, there was no longer any concrete controversy touching legal relationship between defendant prison officials and the released inmate since only relief sought in complaint was prospective; and that portion of order relating to such inmate would be vacated and his action remanded with instructions to dismiss as moot. Bach v. Coughlin, C.A.7 (Ill.) 1974, 508 F.2d 303. Federal Courts 924.1; Federal Courts 936

5749. ---- Pendent state claims, remand to district court, review

Where it was apparent that damages awarded resulted from district court's finding of liability under this section and not as result of pendent state law claims, and state law issues had not been reached, Court of Appeals on petition for rehearing after reversing, would remand case so that district court might decide whether to consider state law claims. Breath v. Cronvich, C.A.5 (La.) 1984, 734 F.2d 225, certiorari denied 105 S.Ct. 332, 469 U.S. 934, 83 L.Ed.2d 268. Federal Courts 939

In civil rights suit under this section, court of appeals would remand and not pass on propriety of district court's conclusion that particular Supreme Court decision "would appear to support" the constitutionality of city personnel rule against "wantonly offensive language toward a fellow employee," which had been used as basis for suspension of police captain for his union newsletter publication, since factual development was insufficient, district court's asserted holding failed to articulate the rationale and in view of considerations of efficiency which dictated remand for disposition of pendent state claims anyway. Sims v. Young, C.A.5 (Fla.) 1977, 556 F.2d 732. Federal Courts 942

5750. ---- Recent judicial decisions, remand to district court, review

In view of new Supreme Court ruling that federal declaratory relief is not precluded when prosecution based on assertedly unconstitutional state statute has been threatened but not pending, even if showing of bad faith enforcement or other special circumstances has not been made, and where Supreme Court could not determine with certainty whether there were pending prosecutions or even whether district court had intended to enjoin them if there were, remand for further findings and reconsideration in light of such new ruling was appropriate. Allee v. Medrano, U.S.Tex.1974, 94 S.Ct. 2191, 416 U.S. 802, 40 L.Ed.2d 566. Federal Courts 480

Supreme Court's Sandin opinion warranted remand in inmate's § 1983 action against corrections officials, which alleged unconstitutional denial of transfer from minimum security to community custody, as Sandin altered method of analyzing protectable liberty interests in prison context. Hake v. Clarke, C.A.8 (Neb.) 1996, 91 F.3d 1129. Federal Courts 940

Upon remand of suit alleging wrongful seizure of number of items of personal property, mostly law books, on plaintiff prisoner's transfer from county jail to state penal system, district court was to consider whether claims fell within ambit of case holding that allegation of negligent loss of property by prison officials does not state claim under this section where adequate state remedy exists. Wright v. Dallas County Sheriff Dept., C.A.5 (Tex.) 1981, 660 F.2d 623. Civil Rights 1395(7)

In light of the Bakke decision, action challenging constitutionality of university regulation directing president of student body to appoint two black students and two women to the legislative body if an election failed to produce such result and regulation giving a student appearing before the judicial branch of student government the right to require that four of seven judges be members of his or her race was remanded to district court for taking of evidence and reconsideration, with university entitled to opportunity to justify its regulation under Bakke, i.e., whether classification was necessary to accomplish a constitutionally permissible purpose. Uzzell v. Friday, C.A.4 (N.C.) 1980, 625 F.2d 1117, certiorari denied 100 S.Ct. 2917, 446 U.S. 951, 64 L.Ed.2d 808, on remand 592

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F.Supp. 1502. Federal Courts 940

On remand of civil rights suit, in which plaintiff alleged that compliance by police officers with their duty to look in on prisoners periodically would have prevented her husband's suicide in jail cell, liability of township should be reappraised in view of suggestion in Monell that a municipality was not liable under this section governing civil action for deprivation of rights on traditional respondeat superior theory; furthermore, consideration should be given to its implication for acts of police officers. Swietlowich v. Bucks County, C.A.3 (Pa.) 1979, 610 F.2d 1157. Civil Rights 1348

Where, after state prisoner's civil rights action against Texas officials was dismissed, and pending prisoner's appeal, United States Supreme Court announced its opinion in Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, in which Court indicated that expectancy of release provided in Nebraska parole statute, R.R.S.Neb.1943, § 83-1-114(a), was entitled to measure of constitutional protection, remand of prisoner's action was necessary in order for trial court to determine effect, if any, of such Supreme Court decision. Williams v. Briscoe, C.A.5 (Tex.) 1979, 599 F.2d 620. Federal Courts 940

While leaving undisputed reinstatement directive and back pay award up to trial in school teacher's action against school district, school board, superintendent and elementary principal, issue of posttrial back pay against school district, which had not been found liable, would be remanded for reconsideration in light of the Supreme Court's recently decided Monell opinion, which foreclosed absolute immunity of local governing bodies in civil rights suits. Zoll v. Eastern Allamakee Community School Dist., C.A.8 (Iowa) 1978, 588 F.2d 246. Federal Courts 922

In view of fact that district court did not have benefit of United States Supreme Court decision delineating circumstances under which local governing bodies are subject to suit under this section, district court's award of back pay to class members was remanded for further consideration in light of the Supreme Court's ruling. Thurston v. Dekle, C.A.5 (Fla.) 1978, 578 F.2d 1167. Federal Courts 925

5751. ---- Recent legislative action, remand to district court, review

Amendment to Florida regulations governing expressive conduct in state parks required remand in nudist society's action challenging regulations on First Amendment grounds to determine whether they were unconstitutional on their face. Naturist Soc., Inc. v. Fillyaw, C.A.11 (Fla.) 1992, 958 F.2d 1515, on remand 858 F.Supp. 1559. Federal Courts 940

5752. ---- Remedies determinations, remand to district court, review

Following Court of Appeals' remand for additional merits hearing in prisoner's §§ 1983 action challenging lethal injection protocol, district court had authority to determine the constitutionality of the then existing execution procedures originally presented, to set forth in detail its reasons for such holding, and to grant the remedy of injunction or, in the alternative, to deny such relief, totally or conditionally. Taylor v. Crawford, C.A.8 2006, 457 F.3d 902. Federal Courts 951.1

Failure of district court, in awarding damages in civil rights action for county deputies' forceful entry into medical center in violation of physician-proprietor's rights under Fourth Amendment, to give adequate consideration or explanation for decision that proprietor's stress-related injuries could not be related to incident at issue and to mention proprietor's claims regarding business losses necessitated remand; inquiry demanded by law had to be conducted in full and fair manner, and factual basis for resolving appropriate amount of damages had to be sought until it was found or declared not to exist. Pembaur v. City of Cincinnati, C.A.6 (Ohio) 1989, 882 F.2d 1101, on remand 745 F.Supp. 446. Federal Courts 941

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Award of $800 to pretrial detainee who was detained for 16 days in "punishment" cell of county jail under conditions far out of proportion to legitimate objectives of pretrial detention was made with mistaken legal approach to quantum of compensable injury inflicted as punishment, with possible disregard of question of aggravation of detainee's hemorrhoidal condition as result of being compelled to sleep on cold concrete floor, and case would be remanded for reconsideration of damages award. Davis v. Smith, C.A.8 (Ark.) 1981, 638 F.2d 66. Federal Courts 944

Remand for further hearing was necessary prior to appellate determination as to propriety of trial court's approval of proposed plan for future use of county jail, which was used as a facility to house pretrial detainees, which was found to be overcrowded, lacking adequate food service and a fire hazard. Leeds v. Watson, C.A.9 (Idaho) 1980, 630 F.2d 674. Federal Courts 922

Before ordering that the inmate population of the El Paso county jail be limited to 500, district court should have conducted further hearings as to the overall conditions at the jail; on the record presented, it was impossible to determine whether the court's 500 inmate limitation was tailored to remedy a constitutional violation, rather than merely to bring the jail closer to compliance with state law; while a population limitation might be necessary, the district court could impose such limitation only if it should find, on remand, that the jail was overcrowded and that, considered with other conditions, incarceration therein is violative of prisoners' constitutional rights. Smith v. Sullivan, C.A.5 (Tex.) 1980, 611 F.2d 1039. Prisons 4(3)

Where school teacher appealed from judgment which, although it awarded him damages, denied reinstatement, and reviewing court found that reinstatement was denied on impermissible basis, entire judgment would be vacated and case remanded for proper determination of remedy. Sterzing v. Fort Bend Independent School Dist., Fort Bend, Texas, C.A.5 (Tex.) 1974, 496 F.2d 92. Federal Courts 943.1

5753. ---- Standards or tests erroneously applied, remand to district court, review

Remand was required where Court of Appeals did not consider inmate's civil rights claims under appropriate "deliberate indifference" standard, even though Court of Appeals stated that claims established negligence at best; it was conceivable that court would have reached different disposition under correct standard. Wilson v. Seiter, U.S.Ohio 1991, 111 S.Ct. 2321, 501 U.S. 294, 115 L.Ed.2d 271, on remand 940 F.2d 664. Federal Courts 462

Although prior district court order, denying defendant county official's motion for summary judgment in § 1983 case, was improperly relied upon as basis for issuing verdict as matter of law against defendant, Court of Appeals would not dismiss suit in its entirety, but, rather, would remand to district court to allow that court to determine in the first instance whether there remained genuine issues of material fact as to defendant's liability in his official capacity. DeCarlo v. Fry, C.A.2 (N.Y.) 1998, 141 F.3d 56. Federal Courts 938

5754. ---- State law interpretation, remand to district court, review

Once it had been determined that Ohio judgment obtained by supervisor of elementary education in state court action for breach of contract and wrongful interference with contract of employment would have same claim preclusive effect in federal court in supervisor's subsequent federal civil rights action as it would have had in Ohio state courts, remanded was necessary in order to permit district court to interpret Ohio preclusion law and apply it. Migra v. Warren City School Dist. Bd. of Educ., U.S.Ohio 1984, 104 S.Ct. 892, 465 U.S. 75, 79 L.Ed.2d 56. Federal Courts 462

Remand of defendant's § 1983 counterclaim and cross-claim was warranted, since federal district court previously remanded supplemental state claims and those state claims predominated over federal § 1983 counterclaim and cross-claim. Redevelopment Agency of City of San Bernardino v. Alvarez, C.D.Cal.2003, 288 F.Supp.2d 1112. Federal Courts 18; Removal Of Cases 101.1

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5754A. ---- Additional evidence to consider, remand to district court, review

Proposal of revised protocol for use in the execution of death sentence warranted remand to the district court for consideration of the newly propounded protocol and all other issues framed by the parties' pleadings and notices of appeal in prisoner's §§ 1983 action challenging protocol for lethal injection. Taylor v. Crawford, C.A.8 2006, 457 F.3d 902. Federal Courts 947

5755. Remand to court of appeals, review

After Supreme Court determined that 'deliberate indifference' standard applied to detainee's claim that city failed to adequately train police officers in deciding whether detainees needed medical care, issue of whether detainee was entitled to have opportunity to prove her case under deliberate indifference rule was matter for Court of Appeals to deal with on remand. City of Canton, Ohio v. Harris, U.S.Ohio 1989, 109 S.Ct. 1197, 489 U.S. 378, 103 L.Ed.2d 412. Federal Courts 462

Where civil rights action against State's Attorney alleged practice of wilful and malicious racial discrimination in the conduct of his office but charges were personal to the then incumbent, and where, following decision of the court of appeals that injunctive relief might be available, successor State's Attorney took office and was substituted as party but plaintiffs had never charged him with anything and did not presently seek to enjoin him from doing anything, it was necessary that case be remanded to the court of appeals for determination, in the first instance, of whether dispute was moot and whether plaintiffs would want to, and should be permitted to, amend their complaint to include claims for relief against the successor. Spomer v. Littleton, U.S.Ill.1974, 94 S.Ct. 685, 414 U.S. 514, 38 L.Ed.2d 694. Federal Courts 480

Decision of court of appeals in civil rights case based on a construction of this section that apparently was inconsistent with view subsequently taken by Supreme Court in another case was vacated and case was remanded for reconsideration. Egan v. City of Aurora, Ill., U.S.Ill.1961, 81 S.Ct. 684, 365 U.S. 514, 5 L.Ed.2d 741, on remand 291 F.2d 706. Federal Courts 462

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